

Corrigé
Corrected

CR 2023/15

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2023

Public sitting

held on Wednesday 20 September 2023, at 10 a.m., at the Peace Palace,

President Donoghue, presiding,

*in the case concerning Allegations of Genocide under the Convention on the Prevention
and Punishment of the Crime of Genocide (Ukraine v. Russian Federation:
32 States intervening)*

VERBATIM RECORD

ANNÉE 2023

Audience publique

tenue le mercredi 20 septembre 2023, à 10 heures, au Palais de la Paix,

sous la présidence de M^{me} Donoghue, présidente,

*en l'affaire relative à des Allégations de génocide au titre de la convention pour la prévention
et la répression du crime de génocide (Ukraine c. Fédération de Russie ;
32 États intervenants)*

COMPTE RENDU

Present: President Donoghue
Vice-President Gevorgian
Judges Tomka
Abraham
Bennouna
Yusuf
Xue
Sebutinde
Bhandari
Robinson
Salam
Iwasawa
Nolte
Charlesworth
Brant
Judge *ad hoc* Daudet
Registrar Gautier

Présents : M^{me} Donoghue, présidente
M. Gevorgian, vice-président
MM. Tomka
Abraham
Bennouna
Yusuf
M^{mes} Xue
Sebutinde
MM. Bhandari
Robinson
Salam
Iwasawa
Nolte
M^{me} Charlesworth
M. Brant, juges
M. Daudet, juge *ad hoc*

M. Gautier, greffier

The Government of Ukraine is represented by:

HE Mr Anton Korynevych, Ambassador-at-Large, Ministry of Foreign Affairs of Ukraine,

as Agent;

Ms Oksana Zolotaryova, Director General for International Law, Ministry of Foreign Affairs of Ukraine,

as Co-Agent;

Ms Marney L. Cheek, Covington & Burling LLP, member of the Bars of the Supreme Court of the United States and the District of Columbia,

Mr Jonathan Gimblett, Covington & Burling LLP, member of the Bars of the District of Columbia and the State of Virginia, solicitor of the Senior Courts of England and Wales,

Mr Harold Hongju Koh, Sterling Professor of International Law, Yale Law School, member of the Bars of the State of New York and the District of Columbia,

Mr Jean-Marc Thouvenin, Professor at the University of Paris Nanterre, Secretary-General of The Hague Academy of International Law, associate member of the Institut de droit international, member of the Paris Bar, Sygna Partners,

Mr David M. Zions, Covington & Burling LLP, member of the Bars of the Supreme Court of the United States and the District of Columbia,

as Counsel and Advocates;

HE Mr Oleksandr Karasevych, Ambassador of Ukraine to the Kingdom of the Netherlands,

Mr Oleksandr Braiko, Department of International Law, Ministry of Foreign Affairs of Ukraine,

Ms Anastasiia Mochulska, Department of International Law, Ministry of Foreign Affairs of Ukraine,

Mr Dmytro Kutsenko, Department of International Law, Ministry of Foreign Affairs of Ukraine,

Ms Mariia Bezdieniezhna, Counsellor, Embassy of Ukraine in the Kingdom of the Netherlands,

Ms Paris Aboro, Covington & Burling LLP, member of the Bar of the State of New York and of the Bar of England and Wales,

Mr Volodymyr Shkilevych, Covington & Burling LLP, member of the Bar of the State of New York,

Mr Paul Strauch, Covington & Burling LLP, member of the Bars of the District of Columbia and the State of California,

Ms Gaby Vasquez, Covington & Burling LLP, member of the Bar of the District of Columbia,

Le Gouvernement de l'Ukraine est représenté par :

S. Exc. M. Anton Korynevych, ambassadeur itinérant, ministère des affaires étrangères de l'Ukraine,

comme agent ;

M^{me} Oksana Zolotaryova, directrice générale du département de droit international, ministère des affaires étrangères de l'Ukraine,

comme coagente ;

M^{me} Marney L. Cheek, cabinet Covington & Burling LLP, membre des barreaux de la Cour suprême des États-Unis d'Amérique et du district de Columbia,

M. Jonathan Gimblett, cabinet Covington & Burling LLP, membre des barreaux du district de Columbia et de l'État de Virginie, *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

M. Harold Hongju Koh, professeur de droit international, titulaire de la chaire Sterling, faculté de droit de l'Université de Yale, membre des barreaux de l'État de New York et du district de Columbia,

M. Jean-Marc Thouvenin, professeur à l'Université Paris Nanterre, secrétaire général de l'Académie de droit international de La Haye, membre associé de l'Institut de droit international, membre du barreau de Paris, cabinet Sygna Partners,

M. David M. Zions, cabinet Covington & Burling LLP, membre des barreaux de la Cour suprême des États-Unis d'Amérique et du district de Columbia,

comme conseils et avocats ;

S. Exc. M. Oleksandr Karasevych, ambassadeur de l'Ukraine auprès du Royaume des Pays-Bas,

M. Oleksandr Braiko, département de droit international, ministère des affaires étrangères de l'Ukraine,

M^{me} Anastasiia Mochulska, département de droit international, ministère des affaires étrangères de l'Ukraine,

M. Dmytro Kutsenko, département de droit international, ministère des affaires étrangères de l'Ukraine,

M^{me} Mariia Bezdniezhna, conseillère, ambassade de l'Ukraine au Royaume des Pays-Bas,

M^{me} Paris Aboro, cabinet Covington & Burling LLP, membre du barreau de l'État de New York et du barreau d'Angleterre et du pays de Galles,

M. Volodymyr Shkilevych, cabinet Covington & Burling LLP, membre du barreau de l'État de New York,

M. Paul Strauch, cabinet Covington & Burling LLP, membre des barreaux du district de Columbia et de l'État de Californie,

M^{me} Gaby Vasquez, cabinet Covington & Burling LLP, membre du barreau du district de Columbia,

Ms Jessica Joly Hébert, member of the Bar of Quebec, PhD candidate at CEDIN, University Paris Nanterre,

as Counsel;

Ms Caroline Ennis, Covington & Burling LLP,

as Assistant.

The Government of the Russian Federation is represented by:

HE Mr Gennady Kuzmin, Ambassador-at-Large, Ministry of Foreign Affairs of the Russian Federation,

HE Mr Alexander Shulgin, Ambassador of the Russian Federation to the Kingdom of the Netherlands,

HE Ms Maria Zabolotskaya, Deputy Permanent Representative of the Russian Federation to the United Nations,

as Agents;

Mr Hadi Azari, Professor of Public International Law at the Kharazmi University of Tehran, Legal Adviser to the Center for International Legal Affairs of Iran,

Mr Alfredo Crosato Neumann, Graduate Institute of International and Development Studies, Geneva, member of the Lima Bar,

Mr Jean-Charles Tchikaya, member of the Paris and Bordeaux Bars,

Mr Kirill Udovichenko, Partner, Monastyrsky, Zyuba, Stepanov & Partners,

Mr Sienho Yee, Changjiang Xuezhong Professor of International Law and Director of the Chinese Institute of International Law, China Foreign Affairs University, Beijing, member of the Bars of the United States Supreme Court and the State of New York, member of the Institut de droit international,

as Counsel and Advocates;

Mr Dmitry Andreev, Counsel, Monastyrsky, Zyuba, Stepanov & Partners,

Mr Konstantin Kosorukov, Head of Division, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

as Counsel;

Mr Mikhail Abramov, Senior Associate, Monastyrsky, Zyuba, Stepanov & Partners,

Mr Yury Andryushkin, First Secretary, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

Ms Victoria Goncharova, First Secretary, Permanent Representation of the Russian Federation to the Organisation for the Prohibition of Chemical Weapons,

Ms Anastasia Khamenkova, Expert, Office of the Prosecutor General of the Russian Federation,

M^{me} Jessica Joly Hébert, membre du barreau du Québec, doctorante au CEDIN, Université Paris Nanterre,

comme conseils ;

M^{me} Caroline Ennis, cabinet Covington & Burling LLP,

comme assistante.

Le Gouvernement de la Fédération de Russie est représenté par :

S. Exc. M. Gennady Kuzmin, ambassadeur itinérant du ministère des affaires étrangères de la Fédération de Russie,

S. Exc. M. Alexander Shulgin, ambassadeur de la Fédération de Russie auprès du Royaume des Pays-Bas,

S. Exc. M^{me} Maria Zabolotskaya, représentante permanente adjointe de la Fédération de Russie auprès des Nations Unies,

comme agents ;

M. Hadi Azari, professeur de droit international public à l'Université Kharazmi à Téhéran, conseiller juridique auprès du centre des affaires juridiques internationales d'Iran,

M. Alfredo Crosato Neumann, Institut de hautes études internationales et du développement de Genève, membre du barreau de Lima,

M. Jean-Charles Tchikaya, avocat aux barreaux de Paris et de Bordeaux,

M. Kirill Udovichenko, associé, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Sienho Yee, professeur de droit international à Changjiang Xuezhong, directeur de l'Institut chinois de droit international, Université des affaires étrangères de Chine à Beijing, membre des barreaux de la Cour suprême des États-Unis et de l'État de New York, membre de l'Institut de droit international,

comme conseils et avocats ;

M. Dmitry Andreev, conseil, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Konstantin Kosorukov, chef de division au département juridique, ministère des affaires étrangères de la Fédération de Russie,

comme conseils ;

M. Mikhail Abramov, collaborateur senior, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Yury Andryushkin, premier secrétaire au département juridique, ministère des affaires étrangères de la Fédération de Russie,

M^{me} Victoria Goncharova, première secrétaire, mission permanente de la Fédération de Russie auprès de l'Organisation pour l'interdiction des armes chimiques,

M^{me} Anastasia Khamenkova, experte, parquet général de la Fédération de Russie,

Mr Stanislav Kovpak, Principal Counsellor, Department for Multilateral Human Rights Cooperation,
Ministry of Foreign Affairs of the Russian Federation,

Ms Marina Kulidobrova, Associate, Monastyrsky, Zyuba, Stepanov & Partners,

Ms Maria Kuzmina, Head of Division, Second CIS Department, Ministry of Foreign Affairs of the
Russian Federation,

Mr Artem Lupandin, Associate, Monastyrsky, Zyuba, Stepanov & Partners,

Mr Aleksei Trofimenkov, Counsellor, Legal Department, Ministry of Foreign Affairs of the Russian
Federation,

Ms Kata Varga, Associate, Monastyrsky, Zyuba, Stepanov & Partners,

Mr. Nikolay Zinovyev, Senior Associate, Monastyrsky, Zyuba, Stepanov & Partners,

as Advisers;

Ms Svetlana Poliakova, Monastyrsky, Zyuba, Stepanov & Partners,

as Assistant.

The Government of the Federal Republic of Germany is represented by:

Ms Wiebke Rückert, Director for Public International Law, Foreign Office of the Federal Republic
of Germany,

HE Mr Cyrill Jean Nunn, Ambassador of the Federal Republic of Germany to the Kingdom of the
Netherlands,

as Co-Agents;

Mr Lukas Georg Wasielewski, Foreign Office of the Federal Republic of Germany,

Mr Caspar Sieveking, Embassy of the Federal Republic of Germany in the Kingdom of the
Netherlands,

Mr Johannes Scharlau, Embassy of the Federal Republic of Germany in the Kingdom of the
Netherlands,

Mr Marius Gappa, Embassy of the Federal Republic of Germany in the Kingdom of the Netherlands.

The Government of Australia is represented by:

Mr Jesse Clarke, General Counsel (International Law), Attorney-General's Department,

as Agent;

HE Mr Gregory Alan French, Ambassador of Australia to the Kingdom of the Netherlands,

as Co-Agent;

M. Stanislav Kovpak, conseiller principal au département pour la coopération multilatérale pour les droits de l'homme, ministère des affaires étrangères de la Fédération de Russie,

M^{me} Marina Kulidobrova, collaboratrice, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M^{me} Maria Kuzmina, cheffe de division au deuxième département de la communauté d'États indépendants, ministère des affaires étrangères de la Fédération de Russie,

M. Artem Lupandin, collaborateur, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Aleksei Trofimenkov, conseiller au département juridique, ministère des affaires étrangères de la Fédération de Russie,

M^{me} Kata Varga, collaboratrice, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Nikolay Zinovyev, collaborateur senior, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

comme conseillers ;

M^{me} Svetlana Poliakova, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

comme assistante.

Le Gouvernement de la République fédérale d'Allemagne est représenté par :

M^{me} Wiebke Rückert, directrice de la section de droit international public, ministère des affaires étrangères de la République fédérale d'Allemagne,

S. Exc. M. Cyrill Jean Nunn, ambassadeur de la République fédérale d'Allemagne auprès du Royaume des Pays-Bas,

comme coagents ;

M. Lukas Georg Wasielewski, ministère des affaires étrangères de la République fédérale d'Allemagne,

M. Caspar Sieveking, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas,

M. Johannes Scharlau, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas,

M. Marius Gappa, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas.

Le Gouvernement de l'Australie est représenté par :

M. Jesse Clarke, *General Counsel* (droit international), services de l'*Attorney-General*,

comme agent ;

S. Exc. M. Gregory Alan French, ambassadeur d'Australie auprès du Royaume des Pays-Bas,

comme coagent ;

Mr Stephen Donaghue, KC, Solicitor-General of Australia,

Ms Kate Parlett, member of the Bar of England and Wales, Twenty Essex Chambers,

Ms Belinda McRae, member of the Bar of England and Wales, Twenty Essex Chambers,

Ms Emma Norton, Acting Principal Legal Officer, Attorney-General's Department,

Ms Katherine Arditto, Second Secretary (Legal Adviser and Consul), Australian Embassy in the Kingdom of the Netherlands,

Mr Sam Gaunt, Multilateral Policy Officer, Australian Embassy in the Kingdom of the Netherlands.

The Government of the Republic of Austria is represented by:

HE Mr Konrad Bühler, Ambassador, Legal Adviser, Federal Ministry for European and International Affairs of the Republic of Austria,

as Co-Agent;

Ms Katharina Kofler, Legal Adviser, Embassy of the Republic of Austria in the Kingdom of the Netherlands,

Mr Haris Huremagić, Legal Officer, Federal Ministry for European and International Affairs of the Republic of Austria,

Ms Viktoria Ritter, Legal Officer, Federal Ministry for European and International Affairs of the Republic of Austria,

Ms Céline Braumann, Adviser,

Mr Gerhard Hafner, Adviser,

Ms Karoline Schnabl, Embassy of the Republic of Austria in the Kingdom of the Netherlands.

The Government of the Kingdom of Belgium is represented by:

Mr Piet Heirbaut, Jurisconsult, Director-General of Legal Affairs, Ministry of Foreign Affairs of the Kingdom of Belgium,

as Agent;

HE Mr Olivier Belle, Permanent Representative of the Kingdom of Belgium to the international institutions in The Hague,

as Co-Agent;

Ms Sabrina Heyvaert, General Counsel, Directorate for Public International Law,

Ms Pauline De Decker, Attachée, Permanent Representation of the Kingdom of Belgium to the international institutions in The Hague,

Ms Laurence Grandjean, Attachée, Directorate for Public International Law,

Ms Aurélie Debuisson, Attachée, Directorate for Public International Law.

M. Stephen Donaghue, KC, *Solicitor-General* d'Australie,

M^{me} Kate Parlett, membre du barreau d'Angleterre et du pays de Galles, Twenty Essex Chambers,

M^{me} Belinda McRae, membre du barreau d'Angleterre et du pays de Galles, Twenty Essex Chambers,

M^{me} Emma Norton, juriste principale par intérim, services de l'*Attorney-General*,

M^{me} Katherine Arditto, deuxième secrétaire (conseillère juridique et consule), ambassade d'Australie au Royaume des Pays-Bas,

M. Sam Gaunt, spécialiste des politiques multilatérales, ambassade d'Australie au Royaume des Pays-Bas.

Le Gouvernement de la République d'Autriche est représenté par :

S. Exc. M. Konrad Bühler, ambassadeur, conseiller juridique, ministère fédéral des affaires européennes et internationales de la République d'Autriche,

comme coagent ;

M^{me} Katharina Kofler, conseillère juridique, ambassade de la République d'Autriche au Royaume des Pays-Bas,

M. Haris Huremagić, juriste, ministère fédéral des affaires européennes et internationales de la République d'Autriche,

M^{me} Viktoria Ritter, juriste, ministère fédéral des affaires européennes et internationales de la République d'Autriche,

M^{me} Céline Braumann, conseillère,

M. Gerhard Hafner, conseiller,

M^{me} Karoline Schnabl, ambassade de la République d'Autriche au Royaume des Pays-Bas.

Le Gouvernement du Royaume de Belgique est représenté par :

M. Piet Heirbaut, juriconsulte, directeur général des affaires juridiques, ministère des affaires étrangères du Royaume de Belgique,

comme agent ;

S. Exc. M. Olivier Belle, représentant permanent du Royaume de Belgique auprès des institutions internationales à La Haye,

comme coagent ;

M^{me} Sabrina Heyvaert, conseillère générale, direction du droit international public,

M^{me} Pauline De Decker, attachée, représentation permanente du Royaume de Belgique auprès des institutions internationales à La Haye,

M^{me} Laurence Grandjean, attachée, direction du droit international public,

M^{me} Aurélie Debuissou, attachée, direction du droit international public.

The Government of the Republic of Bulgaria is represented by:

Ms Dimana Dramova, Head of the International Law Department, International Law and Law of the European Union Directorate, Ministry of Foreign Affairs of the Republic of Bulgaria,

as Agent;

HE Mr Konstantin Dimitrov, Ambassador of the Republic of Bulgaria to the Kingdom of the Netherlands,

as Co-Agent;

Ms Raia Mantovska Vassileva, Legal Adviser, Embassy of the Republic of Bulgaria in the Kingdom of the Netherlands,

Ms Monika Velkova, Third Secretary.

The Government of Canada is represented by:

Mr Alan H. Kessel, Assistant Deputy Minister and Legal Adviser, Global Affairs Canada,

as Agent;

Mr Louis-Martin Aumais, Director General and Deputy Legal Adviser, Global Affairs Canada,

as Co-Agent;

Ms Rebecca Netley, Executive Director, Accountability, Human Rights and United Nations Law Division, Global Affairs Canada,

Mr Hugh Adsett, Ambassador-Designate of Canada to the Kingdom of the Netherlands,

Mr Simon Collard-Wexler, Counsellor, Embassy of Canada in the Kingdom of the Netherlands,

Mr Kristopher Yue, Second Secretary, Embassy of Canada in the Kingdom of the Netherlands.

The Government of the Republic of Cyprus is represented by:

Ms Mary-Ann Stavrinides, Attorney of the Republic, Law Office of the Republic of Cyprus,

as Co-Agent;

Ms Joanna Demetriou, Counsel of the Republic A', Law Office of the Republic of Cyprus,

Mr Antonios Tzanakopoulos, Professor of Public International Law, University of Oxford.

The Government of the Republic of Croatia is represented by:

Ms Gordana Vidović Mesarek, Director-General for European and International Law, Ministry of Foreign and European Affairs of the Republic of Croatia,

as Agent;

Le Gouvernement de la République de Bulgarie est représenté par :

M^{me} Dimana Dramova, cheffe du département du droit international, direction du droit international et du droit européen, ministère des affaires étrangères de la République de Bulgarie,

comme agente ;

S. Exc. M. Konstantin Dimitrov, ambassadeur de la République de Bulgarie auprès du Royaume des Pays-Bas,

comme coagent ;

M^{me} Raia Mantovska Vassileva, conseillère juridique, ambassade de la République de Bulgarie au Royaume des Pays-Bas ;

M^{me} Monika Velkova, troisième secrétaire.

Le Gouvernement du Canada est représenté par :

M. Alan H. Kessel, sous-ministre adjoint et conseiller juridique, ministère des affaires mondiales du Canada,

comme agent ;

M. Louis-Martin Aumais, directeur général et conseiller juridique adjoint, ministère des affaires mondiales du Canada,

comme coagent ;

M^{me} Rebecca Netley, directrice exécutive, direction de la responsabilisation, des droits de la personne et du droit onusien, ministère des affaires mondiales du Canada,

M. Hugh Adsett, ambassadeur désigné du Canada auprès du Royaume des Pays-Bas,

M. Simon Collard-Wexler, conseiller, ambassade du Canada au Royaume des Pays-Bas,

M. Kristopher Yue, deuxième secrétaire, ambassade du Canada au Royaume des Pays-Bas.

Le Gouvernement de la République de Chypre est représenté par :

M^{me} Mary-Ann Stavrinides, *Attorney of the Republic*, bureau de l'*Attorney General* de la République de Chypre,

comme coagente ;

M^{me} Joanna Demetriou, *Counsel of the Republic A'*, bureau de l'*Attorney General* de la République de Chypre,

M. Antonios Tzanakopoulos, professeur de droit international public, Université d'Oxford.

Le Gouvernement de la République de Croatie est représenté par :

M^{me} Gordana Vidović Mesarek, directrice générale chargée du droit européen et du droit international, ministère des affaires étrangères et européennes de la République de Croatie,

comme agente ;

Ms Anamarija Valković, Head of Sector for International Law, Ministry of Foreign and European Affairs of the Republic of Croatia,

as Co-Agent.

The Government of the Kingdom of Denmark is represented by:

HE Ms Vibeke Pasternak Jørgensen, Ambassador, Under-Secretary for Legal Affairs (the Legal Adviser), Ministry of Foreign Affairs of the Kingdom of Denmark,

as Agent;

HE Mr Jarl Frijs-Madsen, Ambassador of the Kingdom of Denmark to the Kingdom of the Netherlands,

as Co-Agent;

Mr Martin Lolle Christensen, Head of Section, Ministry of Foreign Affairs of the Kingdom of Denmark,

Mr Victor Backer-Gonzalez, Legal Adviser, Royal Embassy of Denmark in the Kingdom of the Netherlands,

Ms Anna Sofie Leth Nymand, Intern, Royal Embassy of Denmark in the Kingdom of the Netherlands.

The Government of the Kingdom of Spain is represented by:

Mr Santiago Ripol Carulla, Professor of International Public Law, Universitat Pompeu Fabra, Barcelona,

as Agent;

HE Ms Consuelo Femenía Guardiola, Ambassador of the Kingdom of Spain to the Kingdom of the Netherlands,

as Co-Agent;

Mr Emilio Pin Godos, International Legal Adviser, Ministry of Foreign Affairs of the Kingdom of Spain,

Mr Juan Almazán Fuentes, Legal Adviser, Embassy of the Kingdom of Spain in the Kingdom of the Netherlands.

The Government of the Republic of Estonia is represented by:

Ms Kerli Veski, Director General of the Legal Department, Ministry of Foreign Affairs of the Republic of Estonia,

as Agent;

HE Mr Lauri Kuusing, Ambassador of the Republic of Estonia to the Kingdom of the Netherlands,

as Co-Agent;

Ms Dea Hannust.

M^{me} Anamarija Valković, cheffe du service de droit international, ministère des affaires étrangères et européennes de la République de Croatie,

comme coagente.

Le Gouvernement du Royaume du Danemark est représenté par :

S. Exc. M^{me} Vibeke Pasternak Jørgensen, ambassadrice, sous-secrétaire aux affaires juridiques (conseillère juridique), ministère des affaires étrangères du Royaume du Danemark,

comme agente ;

S. Exc. M. Jarl Frijs-Madsen, ambassadeur du Royaume du Danemark auprès du Royaume des Pays-Bas,

comme coagent ;

M. Martin Lolle Christensen, chef de section, ministère des affaires étrangères du Royaume du Danemark,

M. Victor Backer-Gonzalez, conseiller juridique, ambassade royale du Danemark au Royaume des Pays-Bas,

M^{me} Anna Sofie Leth Nymand, stagiaire, ambassade royale du Danemark au Royaume des Pays-Bas.

Le Gouvernement du Royaume d'Espagne est représenté par :

M. Santiago Ripol Carulla, professeur de droit international public, Universitat Pompeu Fabra, Barcelone,

comme agent ;

S. Exc. M^{me} Consuelo Femenía Guardiola, ambassadrice du Royaume d'Espagne auprès du Royaume des Pays-Bas,

comme coagente ;

M. Emilio Pin Godos, conseiller juridique pour le droit international, ministère des affaires étrangères du Royaume d'Espagne,

M. Juan Almazán Fuentes, conseiller juridique, ambassade du Royaume d'Espagne au Royaume des Pays-Bas.

Le Gouvernement de la République d'Estonie est représenté par :

M^{me} Kerli Veski, directrice générale du département juridique, ministère des affaires étrangères de l'Estonie,

comme agente ;

S. Exc. M. Lauri Kuusing, ambassadeur de la République d'Estonie auprès du Royaume des Pays-Bas,

comme coagent ;

M^{me} Dea Hannust.

The Government of the Republic of Finland is represented by:

Ms Kaija Suvanto, Director General, Legal Service, Ministry of Foreign Affairs of the Republic of Finland,

as Agent;

Ms Tarja Långström, Deputy Director, Unit for Public International Law, Ministry of Foreign Affairs of the Republic of Finland,

as Co-Agent;

Ms Johanna Hossa, Legal Officer, Unit for Public International Law, Ministry of Foreign Affairs of the Republic of Finland,

Ms Verna Adkins, Second Secretary, Embassy of the Republic of Finland in the Kingdom of the Netherlands.

The Government of the French Republic is represented by:

Mr Diégo Colas, Director of Legal Affairs, Ministry of Europe and Foreign Affairs of the French Republic,

as Agent;

HE Mr François Alabrune, Ambassador of the French Republic to the Kingdom of the Netherlands,

as Co-Agent;

Mr Hervé Ascensio, Professor, at the University Paris 1 Panthéon-Sorbonne,

Mr Pierre Bodeau-Livinec, Professor at the University Paris Nanterre,

Ms Maryline Grange, Associate Professor in Public Law at the Jean Monnet University in Saint-Etienne, University of Lyon,

Ms Anne-Thida Norodom, Professor at the University Paris Cité,

Mr Nabil Hajjami, Assistant Director for Public International Law, Directorate of Legal Affairs, Ministry for Europe and Foreign Affairs of the French Republic,

Ms Marion Esnault, Legal Consultant, Directorate of Legal Affairs, Ministry for Europe and Foreign Affairs of the French Republic,

Mr Stéphane Louhaur, Legal Counsellor, Embassy of the French Republic in the Kingdom of the Netherlands,

Ms Jade Frichithavong, Chargée de mission for Legal Affairs, Embassy of the French Republic in the Kingdom of the Netherlands,

Ms Emma Bongat, intern, Legal Service, Embassy of the French Republic in the Kingdom of the Netherlands.

Le Gouvernement de la République de Finlande est représenté par :

M^{me} Kaija Suvanto, directrice générale du service juridique, ministère des affaires étrangères de la République de Finlande,

comme agente ;

M^{me} Tarja Långström, directrice adjointe de la section de droit international public, ministère des affaires étrangères de la République de Finlande,

comme coagente ;

M^{me} Johanna Hossa, juriste de la section de droit international public, ministère des affaires étrangères de la République de Finlande,

M^{me} Verna Adkins, deuxième secrétaire, ambassade de la République de Finlande au Royaume des Pays-Bas.

Le Gouvernement de la République française est représenté par :

M. Diégo Colas, directeur des affaires juridiques, ministère de l'Europe et des affaires étrangères de la République française,

comme agent ;

S. Exc. M. François Alabrune, ambassadeur de la République française auprès du Royaume des Pays-Bas,

comme coagent ;

M. Hervé Ascensio, professeur à l'Université Paris 1 Panthéon-Sorbonne,

M. Pierre Bodeau-Livinec, professeur à l'Université Paris Nanterre,

M^{me} Maryline Grange, maîtresse de conférences en droit public à l'Université Jean Monnet à Saint-Étienne, Université de Lyon,

M^{me} Anne-Thida Norodom, professeure à l'Université Paris Cité,

M. Nabil Hajjami, sous-directeur du droit international public, direction des affaires juridiques, ministère de l'Europe et des affaires étrangères de la République française,

M^{me} Marion Esnault, consultante juridique, direction des affaires juridiques, ministère de l'Europe et des affaires étrangères de la République française,

M. Stéphane Louhaur, conseiller juridique, ambassade de la République française au Royaume des Pays-Bas,

M^{me} Jade Frichithavong, chargée de mission juridique, ambassade de la République française au Royaume des Pays-Bas,

M^{me} Emma Bongat, stagiaire au service juridique, ambassade de la République française au Royaume des Pays-Bas.

The Government of the Hellenic Republic is represented by:

Ms Zinovia Chaido Stavridi, Legal Adviser, Head of the Legal Department of the Ministry of Foreign Affairs of the Hellenic Republic,

as Agent;

HE Ms Caterina Ghini, Ambassador of the Hellenic Republic to the Kingdom of the Netherlands,

as Co-Agent;

Ms Martha Papadopoulou, Senior Legal Counselor, Legal Department of the Ministry of Foreign Affairs of the Hellenic Republic,

Ms Evangelia Grammatika, Minister Plenipotentiary, Deputy Head of Mission, Embassy of the Hellenic Republic in the Kingdom of the Netherlands,

Mr Konstantinos Kalamvokidis, Second Secretary, Embassy of the Hellenic Republic in the Kingdom of the Netherlands.

The Government of Ireland is represented by:

Mr Declan Smyth, Legal Adviser, Department of Foreign Affairs, Ireland,

as Agent;

Mr Frank Groome, Deputy Head of Mission, Embassy of Ireland in the Kingdom of the Netherlands,

as Co-Agent;

HE Mr Brendan Rogers, Ambassador of Ireland to the Kingdom of the Netherlands,

Ms Michelle Ryan, Assistant Legal Adviser, Department of Foreign Affairs, Ireland,

Ms Louise Hartigan, Deputy Head of Mission, Embassy of Ireland in the Kingdom of the Netherlands.

The Government of the Italian Republic is represented by:

Mr Stefano Zanini, Head of the Service for Legal Affairs, Diplomatic Disputes and International Agreements, Ministry of Foreign Affairs and International Cooperation of the Italian Republic,

as Agent;

HE Mr Giorgio Novello, Ambassador of the Italian Republic to the Kingdom of the Netherlands,

as Co-Agent;

Mr Attila Massimiliano Tanzi, Professor of International Law at the University of Bologna, 3 Verulam Buildings,

Mr Alessandro Sutura Sardo, Attaché Legal Affairs, Embassy of the Italian Republic in the Kingdom of the Netherlands,

Le Gouvernement de la République hellénique est représenté par :

M^{me} Zinovia Chaido Stavridi, conseillère juridique, cheffe du département juridique, ministère des affaires étrangères de la République hellénique,

comme agente ;

S. Exc. M^{me} Caterina Ghini, ambassadrice de la République hellénique auprès du Royaume des Pays-Bas,

comme coagente ;

M^{me} Martha Papadopoulou, conseillère juridique principale, département juridique, ministère des affaires étrangères de la République hellénique,

M^{me} Evangelia Grammatika, ministre plénipotentiaire, cheffe de mission adjointe, ambassade de la République hellénique au Royaume des Pays-Bas,

M. Konstantinos Kalamvokidis, deuxième secrétaire, ambassade de la République hellénique au Royaume des Pays-Bas.

Le Gouvernement de l'Irlande est représenté par :

M. Declan Smyth, conseiller juridique, ministère des affaires étrangères de l'Irlande,

comme agent ;

M. Frank Groome, chef de mission adjoint, ambassade d'Irlande au Royaume des Pays-Bas,

comme coagent ;

S. Exc. M. Brendan Rogers, ambassadeur d'Irlande auprès du Royaume des Pays-Bas,

M^{me} Michelle Ryan, conseillère juridique adjointe, ministère des affaires étrangères de l'Irlande,

M^{me} Louise Hartigan, cheffe de mission adjointe, ambassade d'Irlande au Royaume des Pays-Bas.

Le Gouvernement de la République italienne est représenté par :

M. Stefano Zanini, chef du service des affaires juridiques, des différends diplomatiques et des accords internationaux, ministère des affaires étrangères et de la coopération internationale de la République italienne,

comme agent ;

S. Exc. M. Giorgio Novello, ambassadeur de la République italienne auprès du Royaume des Pays-Bas,

comme coagent ;

M. Attila Massimiliano Tanzi, professeur de droit international à l'Université de Bologne, cabinet 3 Verulam Buildings,

M. Alessandro Suter Sardo, attaché aux affaires juridiques, ambassade de la République italienne au Royaume des Pays-Bas,

Mr Luigi Ripamonti, Counsellor, Service for Legal Affairs, Diplomatic Disputes and International Agreements, Ministry of Foreign Affairs and International Cooperation of the Italian Republic,

Ms Ludovica Chiussi Curzi, Senior Assistant Professor of International Law, University of Bologna,

Mr Gian Maria Farnelli, Associate Professor of International Law, University of Bologna.

The Government of the Republic of Latvia is represented by:

Ms Kristīne Līce, Legislation and International Law Adviser to the President of the Republic of Latvia,

as Agent;

Mr Edgars Trumkalns, Chargé d'affaires *a.i.* of the Republic of Latvia in the Kingdom of the Netherlands,

as Co-Agent;

Mr Mārtiņš Paparinskis, Professor of Public International Law, University College London, member of the International Law Commission, member of the Permanent Court of Arbitration,

Mr Mamadou Hébié, Associate Professor of International Law, University of Leiden, member of the Bar of the State of New York,

Mr Vladyslav Lanovoy, Assistant Professor in Public International Law, Université Laval,

Mr Cameron Miles, member of the English Bar, 3 Verulam Buildings,

Mr Joseph Crampin, Lecturer of International Law, University of Glasgow,

Mr Luis Felipe Viveros, PhD candidate, University College London,

Ms Elīna Luīze Vītola, Deputy Agent of the Government, Office of the Representative of Latvia before International Human Rights Organizations, Ministry of Foreign Affairs of the Republic of Latvia,

Mr Arnis Lauva, Head of the International Law Division, Ministry of Foreign Affairs of the Republic of Latvia,

Ms Katrīna Kate Lazdine, Jurisconsult at the International Law Division, Ministry of Foreign Affairs of the Republic of Latvia.

The Government of the Principality of Liechtenstein is represented by:

HE Mr Pascal Schafhauser, Ambassador and Head of Mission of the Principality of Liechtenstein to the Kingdom of Belgium,

as Agent;

Mr Sina Alavi, Senior Adviser.

M. Luigi Ripamonti, conseiller, service des affaires juridiques, des différends diplomatiques et des accords internationaux, ministère des affaires étrangères et de la coopération internationale de la République italienne,

M^{me} Ludovica Chiussi Curzi, professeure adjointe principale de droit international à l'Université de Bologne,

M. Gian Maria Farnelli, professeur associé de droit international à l'Université de Bologne.

Le Gouvernement de la République de Lettonie est représenté par :

M^{me} Kristīne Līce, conseillère en législation et droit international auprès du président de la République de Lettonie,

comme agente ;

M. Edgars Trumkalns, chargé d'affaires par intérim de la République de Lettonie au Royaume des Pays-Bas,

comme coagent ;

M. Mārtiņš Pāparinskis, professeur de droit international public, University College London, membre de la Commission du droit international, membre de la Cour permanente d'arbitrage,

M. Mamadou Hébié, professeur associé de droit international, Université de Leyde, membre du barreau de l'État de New York,

M. Vladyslav Lanovoy, professeur adjoint de droit international public, Université Laval,

M. Cameron Miles, membre du barreau d'Angleterre, cabinet 3 Verulam Buildings,

M. Joseph Crampin, chargé d'enseignement en droit international, Université de Glasgow,

M. Luis Felipe Viveros, doctorant, University College London,

M^{me} Elīna Luīze Vītola, agente adjointe du gouvernement, bureau du représentant de la République de Lettonie devant les organisations internationales des droits de l'homme, ministère des affaires étrangères de la République de Lettonie,

M. Arnis Lauva, chef de la division du droit international, ministère des affaires étrangères de la République de Lettonie,

M^{me} Katrīna Kate Lazdine, juriconsulte, division du droit international, ministère des affaires étrangères de la République de Lettonie.

Le Gouvernement de la Principauté du Liechtenstein est représenté par :

S. Exc. M. Pascal Schafhauser, ambassadeur et chef de mission de la Principauté du Liechtenstein auprès du Royaume de Belgique,

comme agent ;

M. Sina Alavi, conseiller principal.

The Government of the Republic of Lithuania is represented by:

Ms Gabija Grigaitė-Daugirdė, Vice-Minister of Justice of the Republic of Lithuania, Lecturer at Vilnius University,

as Agent;

Mr Ričard Dzikovič, Head of Legal Representation at the Ministry of Justice of the Republic of Lithuania, Lecturer at Mykolas Romeris University,

Ms Ingrida Bačiulienė, Head of the International Treaties Unit at the Ministry of Foreign Affairs of the Republic of Lithuania,

as Co-Agents;

Mr Pierre d'Argent, Professor at the University of Louvain (U.C. Louvain), member of the Institut de droit international, member of the Bar of Brussels,

Mr Gleider Hernández, Professor at the University of Leuven (K.U. Leuven),

Ms Inga Martinkutė, Advocate at MMSP, member of the Lithuanian Bar Association, Lecturer at Vilnius University,

Mr Christian J. Tams, Professor at the University of Glasgow and at Leuphana University, Lüneburg,

HE Mr Neilas Tankevičius, Ambassador of the Republic of Lithuania to the Kingdom of the Netherlands,

Mr Mindaugas Žičkus, Deputy Head of Mission, Embassy of the Republic of Lithuania in the Kingdom of the Netherlands.

The Government of the Grand Duchy of Luxembourg is represented by:

Mr Alain Germeaux, *Conseiller de légation adjoint*, Director of Legal Affairs, Ministry for Foreign and European Affairs of the Grand Duchy of Luxembourg,

as Agent;

Ms Léa Siffert, Legal Adviser at the Embassy of the Grand Duchy of Luxembourg in the Kingdom of the Netherlands,

as Deputy Agent;

HE Mr Mike Hentges, Ambassador of the Grand Duchy of Luxembourg to the Kingdom of the Netherlands.

The Government of the Republic of Malta is represented by:

Mr Christopher Soler, State Advocate, Republic of Malta,

as Agent;

HE Mr Mark Pace, Ambassador of the Republic of Malta to the Kingdom of the Netherlands,

as Co-Agent;

Le Gouvernement de la République de Lituanie est représenté par :

M^{me} Gabija Grigaitė-Daugirdė, vice-ministre de la justice de la République de Lituanie, chargée d'enseignement à l'Université de Vilnius,

comme agente ;

M. Ričard Dzikovič, chef de la représentation juridique, ministère de la justice de la République de Lituanie, chargé d'enseignement à l'Université Mykolas Romeris,

M^{me} Ingrida Bačiulienė, cheffe de la division des traités internationaux, ministère des affaires étrangères de la République de Lituanie,

comme coagents ;

M. Pierre d'Argent, professeur à l'Université de Louvain (U.C. Louvain), membre de l'Institut de droit international, membre du barreau de Bruxelles,

M. Gleider Hernández, professeur à l'Université de Louvain (K.U. Leuven),

M^{me} Inga Martinkutė, avocate au cabinet MMSP, membre du barreau de Lituanie, chargée d'enseignement à l'Université de Vilnius,

M. Christian J. Tams, professeur à l'Université de Glasgow et à l'Université Leuphana de Lunebourg,

S. Exc. M. Neilas Tankevičius, ambassadeur de la République de Lituanie auprès du Royaume des Pays-Bas,

M. Mindaugas Žičkus, chef de mission adjoint, ambassade de la République de Lituanie au Royaume des Pays-Bas.

Le Gouvernement du Grand-Duché de Luxembourg est représenté par :

M. Alain Germeaux, conseiller de légation adjoint, directeur des affaires juridiques, ministère des affaires étrangères et européennes du Grand-Duché de Luxembourg,

comme agent ;

M^{me} Lea Siffert, conseillère juridique à l'ambassade du Grand-Duché de Luxembourg au Royaume des Pays-Bas,

comme agente adjointe ;

S. Exc. M. Mike Hentges, ambassadeur du Grand-Duché de Luxembourg auprès du Royaume des Pays-Bas.

Le Gouvernement de la République de Malte est représenté par :

M. Christopher Soler, avocat de l'État, République de Malte,

comme agent ;

S. Exc. M. Mark Pace, ambassadeur de la République de Malte auprès du Royaume des Pays-Bas,

comme coagent ;

Ms Ariana Rowela Falzon, Lawyer, Office of the State Advocate,

Ms Margot Ann Schembri Bajada, Counsellor, Legal Unit, Ministry of Foreign and European Affairs and Trade of the Republic of Malta,

Ms Marilyn Grech, Legal Officer, Legal Unit, Ministry of Foreign and European Affairs and Trade of the Republic of Malta,

Mr Matthew Grima, Deputy Head of Mission, Counsellor, Embassy of the Republic of Malta in the Kingdom of the Netherlands,

Ms Mary Jane Spiteri, Research and Administrative Officer, Embassy of the Republic of Malta in the Kingdom of the Netherlands,

Mr Clemens Baier, Research and Administrative Officer, Embassy of the Republic of Malta in the Kingdom of the Netherlands.

The Government of the Kingdom of Norway is represented by:

Mr Kristian Jervell, Director General, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

as Agent;

Mr Martin Sørby, Deputy Director General, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

as Co-Agent;

HE Mr Bård Ivar Svendsen, Ambassador of the Kingdom of Norway to the Kingdom of the Netherlands and the Grand Duchy of Luxembourg,

Ms Kristin Hefre, Minister Counsellor for Legal Affairs, Royal Norwegian Embassy in the Kingdom of the Netherlands,

Ms Dagny Marie Ås Hovind, Adviser, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

Ms Frida Fostvedt, Adviser, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

Mr Zaid Waran, Intern, Legal Affairs, Royal Norwegian Embassy in the Kingdom of the Netherlands.

The Government of New Zealand is represented by:

Ms Victoria Hallum, Deputy Secretary, Ministry of Foreign Affairs and Trade of New Zealand,

as Agent;

Mr Andrew Williams, Chief International Legal Adviser (acting), Ministry of Foreign Affairs and Trade of New Zealand,

M^{me} Ariana Rowela Falzon, avocate, bureau de l'avocat de l'État,

M^{me} Margot Ann Schembri Bajada, conseillère au département juridique, ministère des affaires étrangères et européennes et du commerce de la République de Malte,

M^{me} Marilyn Grech, juriste, département juridique du ministère des affaires étrangères et européennes et du commerce de la République de Malte,

M. Matthew Grima, chef de mission adjoint, conseiller à l'ambassade de la République de Malte au Royaume des Pays-Bas,

M^{me} Mary Jane Spiteri, chargée d'administration et d'études, ambassade de la République de Malte au Royaume des Pays-Bas,

M. Clemens Baier, chargé d'administration et d'études, ambassade de la République de Malte au Royaume des Pays-Bas.

Le Gouvernement du Royaume de Norvège est représenté par :

M. Kristian Jervell, directeur général du département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

comme agent ;

M. Martin Sørby, directeur général adjoint du département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

comme coagent ;

S. Exc. M. Bård Ivar Svendsen, ambassadeur du Royaume de Norvège auprès du Royaume des Pays-Bas et du Grand-Duché de Luxembourg,

M^{me} Kristin Hefre, ministre-conseillère aux affaires juridiques, ambassade du Royaume de Norvège au Royaume des Pays-Bas,

M^{me} Dagny Marie Ås Hovind, conseillère au département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

M^{me} Frida Fostvedt, conseillère au département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

M. Zaid Waran, stagiaire aux affaires juridiques, ambassade du Royaume de Norvège au Royaume des Pays-Bas.

Le Gouvernement de la Nouvelle-Zélande est représenté par :

M^{me} Victoria Hallum, sous-ministre, ministère des affaires étrangères et du commerce extérieur de la Nouvelle-Zélande,

comme agente ;

M. Andrew Williams, conseiller juridique en chef (par intérim) pour le droit international, ministère des affaires étrangères et du commerce extérieur de la Nouvelle-Zélande,

HE Ms Susannah Gordon, Ambassador of New Zealand to the Kingdom of the Netherlands,

as Co-Agents;

Ms Elana Geddis, Barrister, Kate Sheppard Chambers, Wellington,

Mr Toby Fisher, Barrister, Matrix Chambers, London,

Ms Jane Collins, Senior Legal Adviser, Ministry of Foreign Affairs and Trade of New Zealand,

Ms Hannah Frost, Deputy Head of Mission, Embassy of New Zealand in the Kingdom of the Netherlands,

Mr Bastiaan Grashof, Policy Adviser, Embassy of New Zealand in the Kingdom of the Netherlands.

The Government of the Kingdom of the Netherlands is represented by:

Mr René J. M. Lefeber, Legal Adviser, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

as Agent;

Ms Mireille Hector, Deputy Legal Adviser, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

as Co-Agent;

Ms Annemarieke Künzli, Legal Counsel, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

Ms Marina Brillman, Legal Counsel, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

Ms Robin Geraerts, Legal Officer, Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Government of the Republic of Poland is represented by:

HE Ms Margareta Kassangana, Ambassador of the Republic of Poland to the Kingdom of the Netherlands,

as Co-Agent;

Mr Łukasz Kułaga, Counsellor of the Legal and Treaty Department, Ministry of Foreign Affairs of the Republic of Poland,

Ms Paulina Dudzik, First Secretary and Legal Adviser, Embassy of the Republic of Poland in the Kingdom of the Netherlands,

as Deputy Agents.

The Government of the Portuguese Republic is represented by:

Ms Patrícia Galvão Teles, Director of the Department of Legal Affairs, Ministry of Foreign Affairs of the Portuguese Republic, and member of the International Law Commission,

as Agent;

S. Exc. M^{me} Susannah Gordon, ambassadrice de Nouvelle-Zélande auprès du Royaume des Pays-Bas,

comme coagents ;

M^{me} Elana Geddis, avocate, Kate Sheppard Chambers (Wellington),

M. Toby Fisher, avocat, Matrix Chambers (Londres),

M^{me} Jane Collins, conseillère juridique principale, ministère des affaires étrangères et du commerce extérieur de la Nouvelle-Zélande,

M^{me} Hannah Frost, cheffe de mission adjointe, ambassade de Nouvelle-Zélande au Royaume des Pays-Bas,

M. Bastiaan Grashof, conseiller politique, ambassade de Nouvelle-Zélande au Royaume des Pays-Bas.

Le Gouvernement du Royaume des Pays-Bas est représenté par :

M. René J.M. Lefeber, conseiller juridique, ministère des affaires étrangères du Royaume des Pays-Bas,

comme agent ;

M^{me} Mireille Hector, conseillère juridique adjointe, ministère des affaires étrangères du Royaume des Pays-Bas,

comme coagente ;

M^{me} Annemarieke Künzli, juriconsulte, ministère des affaires étrangères du Royaume des Pays-Bas,

M^{me} Marina Brillman, juriconsulte, ministère des affaires étrangères du Royaume des Pays-Bas,

M^{me} Robin Geraerts, juriste, ministère des affaires étrangères du Royaume des Pays-Bas.

Le Gouvernement de la République de Pologne est représenté par :

S. Exc. M^{me} Margareta Kassangana, ambassadrice de la République de Pologne auprès du Royaume des Pays-Bas,

comme coagente ;

M. Łukasz Kułaga, conseiller, département du droit et des traités, ministère des affaires étrangères de la République de Pologne,

M^{me} Paulina Dudzik, première secrétaire et conseillère juridique, ambassade de la République de Pologne au Royaume des Pays-Bas,

comme agents adjoints.

Le Gouvernement de la République portugaise est représenté par :

M^{me} Patrícia Galvão Teles, directrice du département des affaires juridiques, ministère des affaires étrangères de la République portugaise, et membre de la Commission du droit international,

comme agente ;

HE Ms Clara Nunes dos Santos, Ambassador of the Portuguese Republic to the Kingdom of the Netherlands,

as Co-Agent;

Mr Mateus Kowalski, Director of the International Law Directorate, Ministry of Foreign Affairs of the Portuguese Republic,

Mr Henrique Azevedo, Deputy Head of Mission, Embassy of the Portuguese Republic in the Kingdom of the Netherlands,

Ms Ana Margarida Pinto de Seabra, Legal Intern, Embassy of the Portuguese Republic in the Kingdom of the Netherlands.

The Government of Romania is represented by:

HE Ms Alina Orosan, Ambassador, Director General for Legal Affairs, Ministry of Foreign Affairs of Romania,

HE Mr Lucian Fătu, Ambassador of Romania to the Kingdom of the Netherlands,

as Co-Agents;

Mr Filip-Andrei Lariu, Attaché, Legal Directorate of the Ministry of Foreign Affairs of Romania,

Mr Eugen Mihuț, Minister Plenipotentiary and Legal Counsellor, Embassy of Romania in the Kingdom of the Netherlands.

The Government of the United Kingdom of Great Britain and Northern Ireland is represented by:

Ms Sally Langrish, Legal Adviser and Director General Legal at the Foreign, Commonwealth and Development Office, United Kingdom,

as Agent;

Mr Paul McKell, Legal Director at the Foreign, Commonwealth and Development Office, United Kingdom,

as Co-Agent;

the Rt. Hon. Victoria Prentis, KC, MP, Attorney General,

Mr Ben Juratowitch, KC, member of the Bar of England and Wales, the Paris Bar and the Bar of Belize, Essex Court Chambers,

Ms Philippa Webb, Professor of Public International Law, King's College London, member of the Bar of England and Wales, and the Bars of the State of New York and Belize, Twenty Essex Chambers,

Ms Naomi Hart, member of the Bar of England and Wales, Essex Court Chambers,

Ms Susan Dickson, Legal Counsellor and Head of Europe and Human Rights Team, Legal Directorate, Foreign, Commonwealth and Development Office, United Kingdom,

Ms Ruth Tomlinson, Deputy Director and Head of International Law, Attorney General's Office,

S. Exc. M^{me} Clara Nunes dos Santos, ambassadrice de la République portugaise auprès du Royaume des Pays-Bas,

comme coagente ;

M. Mateus Kowalski, directeur du service de droit international, ministère des affaires étrangères de la République portugaise,

M. Henrique Azevedo, chef de mission adjoint, ambassade de la République portugaise au Royaume des Pays-Bas,

M^{me} Ana Margarida Pinto de Seabra, stagiaire en droit, ambassade de la République portugaise au Royaume des Pays-Bas.

Le Gouvernement de la Roumanie est représenté par :

S. Exc. M^{me} Alina Orosan, ambassadrice, directrice générale des affaires juridiques, ministère des affaires étrangères de la Roumanie,

S. Exc. M. Lucian Fătu, ambassadeur de Roumanie auprès du Royaume des Pays-Bas,

comme coagents ; M. Filip-Andrei Lariu, attaché à la direction des affaires juridiques, ministère des affaires étrangères de la Roumanie,

M. Eugen Mihaș, ministre plénipotentiaire et conseiller juridique, ambassade de Roumanie au Royaume des Pays-Bas.

Le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord est représenté par :

M^{me} Sally Langrish, conseillère juridique et directrice générale des affaires juridiques, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni,

comme agente ;

M. Paul McKell, directeur juridique, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni,

comme coagent ;

la très honorable M^{me} Victoria Prentis, KC, MP, *Attorney General*,

M. Ben Juratowitch, KC, membre du barreau d'Angleterre et du pays de Galles ainsi que des barreaux de Paris et du Belize, Essex Court Chambers,

M^{me} Philippa Webb, professeure de droit international public, King's College (Londres), membre du barreau d'Angleterre et du pays de Galles ainsi que des barreaux de New York et du Belize, Twenty Essex Chambers,

M^{me} Naomi Hart, membre du barreau d'Angleterre et du pays de Galles, Essex Court Chambers,

M^{me} Susan Dickson, conseillère juridique et cheffe de l'équipe chargée de l'Europe et des droits de l'homme, direction des affaires juridiques, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni,

M^{me} Ruth Tomlinson, directrice adjointe et cheffe de la section de droit international, bureau de l'*Attorney General*,

Mr Michael Boulton, Assistant Legal Adviser, Europe and Human Rights Team, Legal Directorate, Foreign, Commonwealth and Development Office, United Kingdom.

The Government of the Slovak Republic is represented by:

Mr Metod Špaček, Chief of Staff at the Office of the President of the Slovak Republic,

as Agent;

Mr Peter Klanduch, Director of the International Law Department, Ministry of Foreign and European Affairs of the Slovak Republic,

as Co-Agent;

HE Mr Juraj Macháč, Ambassador of the Slovak Republic to the Kingdom of the Netherlands,

Ms Zuzana Morháčová, Assistant Legal Adviser, Ministry of Foreign and European Affairs of the Slovak Republic,

Mr Jozef Kušlita, First Secretary, Embassy of the Slovak Republic in the Kingdom of the Netherlands,

Mr Peter Nagy, Second Secretary, Embassy of the Slovak Republic in the Kingdom of the Netherlands.

The Government of the Republic of Slovenia is represented by:

Mr Marko Rakovec, Director-General for International Law and Protection of Interests, Ministry of Foreign and European Affairs of the Republic of Slovenia,

as Agent;

HE Mr Jožef Drofenik, Ambassador of the Republic of Slovenia to the Kingdom of the Netherlands,

as Co-Agent;

Mr Daniel Müller, Lawyer at FAR Avocats,

Mr Andrej Svetličič, International Law Department, Ministry of Foreign and European Affairs of the Republic of Slovenia,

Ms Silvana Kovač, Directorate for International Law and Protection of Interests, Ministry of Foreign and European Affairs of the Republic of Slovenia,

Ms Maša Devinar Grošelj, Embassy of the Republic of Slovenia in the Kingdom of the Netherlands,

Ms Nina Bjelica.

The Government of the Kingdom of Sweden is represented by:

Ms Elinor Hammarskjöld, Director General for Legal Affairs, Ministry of Foreign Affairs of the Kingdom of Sweden,

as Agent;

M. Michael Boulton, conseiller juridique adjoint, équipe chargée de l'Europe et des droits de l'homme, direction des affaires juridiques, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni.

Le Gouvernement de la République slovaque est représenté par :

M. Metod Špaček, chef de cabinet du bureau de la présidente de la République slovaque,

comme agent ;

M. Peter Klanduch, directeur du département du droit international, ministère des affaires étrangères et européennes de la République slovaque,

comme coagent ;

S. Exc. M. Juraj Macháč, ambassadeur de la République slovaque auprès du Royaume des Pays-Bas,

M^{me} Zuzana Morháčová, conseillère juridique adjointe, ministère des affaires étrangères et européennes de la République slovaque,

M. Jozef Kušlita, premier secrétaire, ambassade de la République slovaque au Royaume des Pays-Bas,

M. Peter Nagy, deuxième secrétaire, ambassade de la République slovaque au Royaume des Pays-Bas.

Le Gouvernement de la République de Slovénie est représenté par :

M. Marko Rakovec, directeur général du droit international et de la protection des intérêts, ministère des affaires étrangères et européennes de la République de Slovénie,

comme agent ;

S. Exc. M. Jožef Drogenik, ambassadeur de la République de Slovénie auprès du Royaume des Pays-Bas,

comme coagent ;

M. Daniel Müller, avocat, cabinet FAR Avocats,

M. Andrej Svetličič, département du droit international, ministère des affaires étrangères et européennes de la République de Slovénie,

M^{me} Silvana Kovač, direction du droit international et de la protection des intérêts, ministère des affaires étrangères et européennes de la République de Slovénie,

M^{me} Maša Devinar Grošelj, ambassade de la République de Slovénie au Royaume des Pays-Bas,

M^{me} Nina Bjelica.

Le Gouvernement du Royaume de Suède est représenté par :

M^{me} Elinor Hammarskjöld, directrice générale des affaires juridiques, ministère des affaires étrangères du Royaume de Suède,

comme agente ;

Mr Daniel Gillgren, Deputy Director at the Department for International Law, Human Rights and Treaty Law, Ministry of Foreign Affairs of the Kingdom of Sweden,

as Co-Agent;

HE Mr Johannes Oljelund, Ambassador of the Kingdom of Sweden to the Kingdom of the Netherlands,

Ms Dominika Brott, First Secretary, Embassy of the Kingdom of Sweden in the Kingdom of the Netherlands.

The Government of the Czech Republic is represented by:

Mr Emil Ruffer, Director of the International Law Department, Ministry of Foreign Affairs of the Czech Republic,

as Agent;

HE Mr René Miko, Ambassador of the Czech Republic to the Kingdom of the Netherlands,

as Co-Agent;

Mr Pavel Caban, Head of Unit, International Law Department, Ministry of Foreign Affairs of the Czech Republic,

Ms Martina Filippiová, Legal Adviser, Embassy of the Czech Republic in the Kingdom of the Netherlands,

Mr Pavel Šturma, Professor of Public International Law, Charles University Prague, former member of the International Law Commission.

M. Daniel Gillgren, directeur adjoint du département du droit international, des droits de l'homme et du droit des traités, ministère des affaires étrangères du Royaume de Suède,

comme coagent ;

S. Exc. M. Johannes Oljelund, ambassadeur du Royaume de Suède auprès du Royaume des Pays-Bas,

M^{me} Dominika Brott, première secrétaire, ambassade du Royaume de Suède au Royaume des Pays-Bas.

Le Gouvernement de la République tchèque est représenté par :

M. Emil Ruffer, directeur du département du droit international, ministère des affaires étrangères de la République tchèque,

comme agent ;

S. Exc. M. René Miko, ambassadeur de la République tchèque auprès du Royaume des Pays-Bas,

comme coagent ;

M. Pavel Caban, chef de section, département du droit international, ministère des affaires étrangères de la République tchèque,

Mme Martina Filippiová, conseillère juridique, ambassade de la République tchèque au Royaume des Pays-Bas,

M. Pavel Šturma, professeur de droit international public, Université Charles de Prague, ancien membre de la Commission du droit international.

The PRESIDENT: Please be seated. The sitting is open. The Court meets today to hear the oral observations of the 32 intervening States.

Intervening States will address the Court today following the alphabetical order in French. A period of 10 minutes has been reserved for each State that elected to make individual oral observations, while States that elected to present joint oral observations will have 15 minutes for those observations.

I now give the floor to Ms Wiebke Rückert, for Germany. You have the floor, Madam.

Ms RÜCKERT:

ORAL OBSERVATIONS ON BEHALF OF THE FEDERAL REPUBLIC OF GERMANY

1. Madam President, distinguished Members of the Court, it is a great honour to address you on behalf of Germany and to commence the oral observations of States intervening in this important case.

2. Ukraine initiated these proceedings on 26 February 2022, just two days after the Russian Federation invaded Ukraine on 24 February. In an attempt to justify its armed aggression, Russia had alleged that Ukraine was committing genocide on its territory, the alleged victims of this purported “genocide” being ethnic Russians living in the eastern part of Ukraine.

3. As the Court is all too aware, the duty to prevent and to punish genocide is enshrined in Article I of the Genocide Convention. It constitutes, as the Court had occasion to confirm¹, a central obligation under international law and an essential feature of the Convention. As the other obligations under the Genocide Convention, it is an obligation of an *erga omnes partes* character² that States owe not to one but to all Contracting Parties of the said Convention. When relying upon the alleged genocide purportedly committed by Ukraine to justify its military action, Russia in substance and in essence referred to this *erga omnes* obligation.

¹ *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 (I), pp. 110-111, paras. 161-162.

² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015 (II), p. 47, para. 87; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, pp. 515-517, paras. 107-109.

4. In an unprecedented move, 32 States parties of the Genocide Convention, more than one in five Contracting Parties, have asked to intervene in the current proceedings. This in itself shows that the parties to the Genocide Convention have a very strong interest in its proper interpretation in this case.

5. Germany ratified the Genocide Convention as early as 1954. My country is particularly grateful to the Court for this opportunity to intervene according to Article 63 of the Statute of the Court because Germany has a specific interest in upholding the integrity of the Genocide Convention not least in view of our own past.

6. Madam President, distinguished Members of the Court, the question before the Court *today* is limited to the issue as to whether it has jurisdiction to hear this case. Germany strongly believes that it does.

7. This question concerns the proper construction of the Convention's compromissory clause, that is, Article IX.

8. Allow me to address four elements that in our view are essential for the interpretation of that Article with regard to the case at hand. These elements individually — and even more so when considered together — unequivocally confirm that the Court does indeed have jurisdiction to hear Ukraine's case:

9. *First*, the question as to whether a "dispute" exists under the Genocide Convention. There is no need for me to deal with the notion of "dispute" as so consistently interpreted by the Court in its jurisprudence³. It suffices to note that, when the case was brought, Ukraine and Russia undoubtedly held diametrically opposing views as to whether or not Ukraine was responsible for acts of genocide on its territory.

10. Let me also comment in passing that it is telling that once the case had been brought — and thus after it had already invaded Ukraine — the Russian Federation no longer relied on this justification after the critical date but, given the Court's jurisprudence, this is of no relevance. On the whole there can be no doubt that there is a disagreement on a point of law and of fact, a conflict of legal views and, thus, a dispute between the two parties.

³ See, *inter alia*, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2022*, p. 502, para 63.

11. Let me also note that in the case of *The Gambia v. Myanmar*, the Court confirmed that it is not a prerequisite for seising the Court that a treaty, or one or more of its provisions, were explicitly referred to in a specific way prior to the seisin of the Court. Rather, the existence of a dispute is a matter of substance, not a question of form or procedure. It is therefore Germany's considered view that a "dispute" in the sense of Article IX of the Convention exists in the present case.

12. *Second*, Germany is of the view that Article IX of the Genocide Convention was intentionally formulated in a broad manner. This Article gives the Court jurisdiction not only over the interpretation and application of the Genocide Convention but also over its "fulfilment". In order to decide whether a State party has "fulfilled" its obligation under the Genocide Convention, the Court must be able to declare whether or not acts of genocide have occurred. It thus logically follows from both the wording and the object and purpose of the provision that it provides the Court with jurisdiction in cases where the question is whether or not genocidal acts have indeed been, or are being, committed by a State party. How could the Court otherwise decide whether a State party is fulfilling its obligation not to commit genocide arising under the Convention?

13. *Third*, Germany contends that Article IX also applies to a situation in which one State party, in the case at hand the Russian Federation, relies on and refers to the Genocide Convention in order to justify another action, which would otherwise be manifestly unlawful under international law.

14. According to Article IX of the Genocide Convention, and as confirmed by the Court⁴, States may bring disputes before the Court "including those *relating to the responsibility . . . for genocide*". Whether or not State responsibility of a State party of the Genocide Convention for alleged acts of genocide can be relied upon to justify another act, constitutes a dispute — a dispute that relates and is intrinsically linked to the responsibility for genocide. This is due to the fact that, if a responsibility for acts of genocide had indeed been incurred, an *erga omnes partes* obligation under the Genocide Convention would have been violated. And that could in turn provide a justification for countermeasures under specific circumstances and within the limits of international law.

⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 614, para. 29.

15. A State party to the Genocide Convention — in the case at hand the Russian Federation — may at the very least however not take actions which are otherwise unlawful merely based on abusive and wholly unsubstantiated allegations of genocide. Rather, the Genocide Convention contains a duty to employ all multilateral and peaceful means available to prevent genocide, in particular to bring the situation to the attention of the United Nations Security Council, as contemplated in Article VIII of the Convention. This reading of the Genocide Convention is further confirmed by its preamble, which emphasizes the need for “international co-operation” to liberate mankind from genocide.

16. Consequently, a State party is violating its obligation to apply the Genocide Convention in good faith when it abusively alleges that another State party has committed acts of genocide and relies upon this allegation to justify an action, which would otherwise be unlawful.

17. *Fourthly*, in Germany’s view, not only a State party that raises accusations of genocide is able to submit a dispute to the Court. Rather, the State party accused of acts of genocide may do so as well. The wording of Article IX makes this clear when it states that “any” of the State parties to a dispute may seize the Court. A State party accused of acts of genocide in particular has a vested legal interest in obtaining a resolution of the dispute by the Court. Otherwise, a State party that is being portrayed without even a hint of evidence as being involved in a genocidal campaign or, as in the case at hand, is even invaded by a neighbouring State on such a pretext could not seek protection from the Court despite the broad language of the Convention’s compromissory clause.

18. Madam President, distinguished Members of the Court, let me summarize Germany’s interpretation of Article IX in the case at hand as follows:

19. Article IX of the Genocide Convention confers on the Court jurisdiction to find whether an applicant State complied with the Convention, where this is the object of disagreement and opposing legal views and thus the object of a dispute between the parties to a case.

20. Article IX of the Genocide Convention also covers disputes in which one State party of the Convention alleges that another State party is committing acts of genocide and where, relying on such accusations, the former State party then takes action in the form of using military force against the latter.

21. In order to resolve such a dispute, the Court is, in Germany's considered view, called upon to apply the Genocide Convention to the relevant facts in order to determine whether there is a basis for such allegations.

Madam President, distinguished Members of the Court, this concludes Germany's observations in this case, which, let me reiterate, is of particular importance for Germany. Thank you for your kind attention.

The PRESIDENT: I thank Ms Rückert, and I now give the floor to Mr Stephen Donaghue, for Australia. You have the floor, Sir.

Mr DONAGHUE:

A. INTRODUCTION

1. Madam President, distinguished Members of the Court, it is a great honour to appear before you again on behalf of Australia.

2. Australia's Prime Minister and Foreign Minister have strongly condemned the Russian Federation's invasion of Ukraine, and share the Court's deep concern, as expressed in its provisional measures Order, about the continuing loss of life and human suffering taking place in Ukraine⁵.

3. Australia's intervention in this proceeding reflects and reaffirms its commitment to protecting and promoting the rules-based international order and to upholding the integrity of the Genocide Convention⁶. Australia also intervenes in the spirit of assisting the Court in discharging its vital role in the peaceful settlement of international disputes, as the principal judicial organ of the United Nations.

B. THE COURT'S JURISDICTION *RATIONE MATERIAE* UNDER ARTICLE IX OF THE GENOCIDE CONVENTION

4. Madam President, Members of the Court, I will make two submissions.

⁵ *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, I.C.J. Reports 2022* (the "provisional measures Order"), p. 216, para. 17.

⁶ The Convention on the Prevention and Punishment of the Crime of Genocide, United Nations, *Treaty Series (UNTS)*, Vol. 78, p. 277 (the "Genocide Convention" or "Convention").

(1) A dispute regarding the scope, content or exercise of the obligations under Articles I and IV falls within Article IX

5. The *first* submission is that a dispute regarding the scope, content or exercise of obligations under Articles I and IV of the Genocide Convention falls within Article IX. More specifically, a dispute as to the *scope* or *content* of those articles by definition relates to the “interpretation” of the Convention, while a dispute concerning the *exercise* of obligations arising or allegedly arising under those articles relates to the “application or fulfilment” of the Convention. In this case, for reasons I will briefly develop, Article IX is engaged on both bases.

6. As Australia understands it, the essence of Ukraine’s case is that the Russian Federation has accused it of committing genocide in breach of the Convention, and has then relied on its own obligation under Article I to “prevent and punish” genocide, and its obligation under Article IV to punish persons committing genocide, as a pretext for taking harmful action in and against Ukraine⁷. Ukraine, of course, denies that it has done anything that might constitute genocide⁸. The Russian Federation, on the other hand, now denies that it has relied on the Convention to take action in and against Ukraine⁹.

7. The resolution of those competing contentions I have just summarized is for the merits stage. The point of present importance is that the competing claims reveal a dispute about, at least, the “application or fulfilment” of Articles I and IV of the Convention with respect to Ukraine’s alleged conduct. That dispute is within the Court’s jurisdiction under Article IX.

8. A separate but related reason why Article IX is engaged concerns Ukraine’s arguments with respect to good faith and due diligence.

9. As with any treaty, the rights and obligations set out in the Genocide Convention must be interpreted and performed in good faith¹⁰. Contracting Parties must therefore abstain from actions that frustrate the Convention’s purpose or abuse its provisions, including actions that are taken or allegedly taken “to prevent and punish” genocide.

⁷ WOU, paras. 27 and 81; MU, paras. 72 and 149; AU, para. 2.

⁸ WOU, para. 160; MU, para. 103; and AU, paras. 2 and 9.

⁹ PORF, para. 182. See also CR 2023/13, pp. 42-43, paras. 23-25 (Kuzmin).

¹⁰ Vienna Convention on the Law of Treaties, *UNTS*, Vol. 1155, p. 339, Article 26, and p. 340, Article 31. 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*, p. 224, para. 56.

10. Ukraine contends that State parties to the Convention must act in good faith and with due diligence both in determining *whether* genocide is occurring, and that they must also act in good faith in determining *what measures* of prevention or punishment are appropriate in response. Both of those submissions go directly to the *interpretation* of Article I. Their correctness is an issue properly within the jurisdiction of the Court under Article IX.

11. As to Ukraine's submission that the Russian Federation has *breached* those requirements, that submission concerns the *application or fulfilment* of Articles I and IV.

12. It follows, in our submission, that both aspects of those contentions — being the existence of the good faith and due diligence obligations under Articles I and IV, and the assessment of the conduct of the Russian Federation against those obligations — fall within the Court's jurisdiction under Article IX.

(2) The Court has jurisdiction to determine a dispute regarding whether a unilateral use of force by a Contracting Party is compatible with the duty to prevent and punish genocide

13. Madam President, Members of the Court, that brings me to Australia's *second* submission, which is that a dispute concerning whether a unilateral use of force by a Contracting Party is compatible with the duty to prevent and punish genocide also falls within Article IX.

14. Ukraine has submitted that Articles I and IV both contain an implicit obligation to act within the limits of international law when preventing and punishing genocide¹¹. In response, the Russian Federation asserts that this argument would incorporate “an indefinite number of rules of international law” with the “objective of unduly expanding the Court's jurisdiction *ratione materiae* under Article IX”¹². Russia asserts that “the implicit obligation conjured up by Ukraine is independent from the obligations that actually exist under the Convention and whether a violation thereof has been committed”¹³. In fact, however, at least to the extent that Ukraine's argument concerns the unilateral use of force, that argument has a clear connection to the extent of the obligations that “actually exist”¹⁴ under Articles I and IV.

¹¹ MU, para. 126.

¹² PORF, para. 170.

¹³ PORF, para. 173.

¹⁴ PORF, para. 173.

15. That connection was recognized by the Court when it observed, in its provisional measures Order in this case, that “it is doubtful that the Convention, in light of its object and purpose, authorizes a Contracting Party’s unilateral use of force in the territory of another State for the purpose of preventing or punishing an alleged genocide”¹⁵. The Russian Federation has now not only accepted that statement, but has gone further, stating that “its position is that the Convention does not provide such a legal basis”¹⁶. Thus, despite justifying its so-called “special military operation” on the basis of an alleged genocide¹⁷, the Russian Federation has now belatedly accepted — at least in its submissions before this Court — that State parties cannot unilaterally use force to prevent or punish genocide in the performance of their duties under Article I or IV of the Convention.

16. In those circumstances, whatever the interaction might be between Articles I and IV of the Genocide Convention and other rules of international law, neither Party now argues in their submissions before this Court that Articles I or IV themselves authorize the unilateral use of force to prevent or punish genocide¹⁸. The Court’s jurisdiction under Article IX extends to making a declaration to that effect, which would be a declaration concerning the scope of the undertaking under Articles I and IV. It follows, in our submission, that the Court would also have jurisdiction to declare that the Russian Federation’s so-called “special military operation” in Ukraine was not authorized by the Genocide Convention. That is a matter concerning the application of Articles I and IV and thus falls within the scope of the Court’s jurisdiction under Article IX.

17. Finally, as is clear from this Court’s jurisprudence, its jurisdiction under Article IX is unaffected by the fact that the conduct of the Russian Federation may also engage rules of customary international law or treaty obligations outside the Genocide Convention¹⁹.

¹⁵ *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*, p. 225, para. 59.

¹⁶ PORF, paras. 181 and 226. See also CR 2023/13, p. 65, para. 36 (Crosato) (“The Genocide Convention does not authorize, confer a right or impose an obligation to use force to prevent or punish genocide”).

¹⁷ CR 2023/14, pp. 54-59, paras. 23-45, and p. 65, para. 64 (Cheek).

¹⁸ CR 2023/13, p. 65, para. 36 (Crosato); and CR 2023/14, p. 78, para. 47 (Thouvenin).

¹⁹ See e.g. *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Relations (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 27, para. 56; *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)*, pp. 85-86, para. 32. See also CR 2023/14, p. 47, para. 25 (Koh).

C. CONCLUSION

18. Madam President, Members of the Court, we respectfully invite the Court to confirm the points of construction of Article IX of the Genocide Convention that I have just addressed, and we otherwise refer the Court to Australia's written observations in relation to the other issues that arise at this stage of the proceeding. I thank you for your attention. That concludes Australia's oral address.

The PRESIDENT: I thank Mr Donaghue. I now invite HE Mr Emil Ruffer to address the Court on behalf of Austria, Czechia, Liechtenstein and Slovakia. You have the floor, Sir.

Mr RUFFER:

JOINT ORAL OBSERVATIONS BY THE GOVERNMENTS OF THE REPUBLIC OF AUSTRIA, THE CZECH REPUBLIC, THE PRINCIPALITY OF LIECHTENSTEIN AND THE SLOVAK REPUBLIC

1. Madam President, Members of the Court, it is a great honour and privilege to appear before the Court on behalf of the Governments of the Republic of Austria, the Czech Republic, the Principality of Liechtenstein and the Slovak Republic. Our Governments presented joint written observations in the current dispute between Ukraine and the Russian Federation. The Convention on the Prevention and Punishment of the Crime of Genocide is a universal treaty acknowledging the inherent importance of and granting protection to some of the basic values of the international community as a whole. Therefore, we have a legal interest in and attach fundamental importance to its correct interpretation. As Contracting Parties to the Convention, we wish to present to the Court our views on the correct interpretation of relevant obligations under the Convention. In accordance with the Court's Order, our observations solely concern the construction of Article IX of the Convention, which is relevant for the determination of the Court's jurisdiction. We accept that, in accordance with Article 63, paragraph 2, of the Court's Statute, we will be bound by the Court's construction of the Convention in this case.

2. My task today is to address the salient elements of the interpretation of Article IX of the Convention, which we regard as relevant in the present dispute. In the interest of time, I will focus my observations on the following three points:

- First, Article IX of the Convention is a broad jurisdictional clause, allowing the Court to decide on “negative declarations” establishing the non-violation of the Genocide Convention by an applicant State;
- Second, Article IX also vests the Court with the jurisdiction to adjudicate upon disputes relating to a violation of the Convention through false or abusive allegations of genocide; and
- Third, the Genocide Convention, including its Article IX, must be interpreted in the context of the obligations of State parties under the United Nations Charter.

3. Madam President, Members of the Court, with your permission, I would now like to turn to our *first point* — that Article IX allows the Court to decide on “negative declarations” establishing the non-violation of the Genocide Convention by an applicant State. This means that the Court has jurisdiction over disputes concerning the request of an applicant State for a declaration that it had not violated the Genocide Convention. We would like to highlight that Article IX expressly allows the Court to adjudicate upon disputes relating to all aspects of interpretation, application or fulfilment of the Genocide Convention, including disputes “relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III” of the Convention. Thus, we submit that when a State is accused by another State of being responsible for committing genocide, it has *the same* right to initiate proceedings before the Court, just as the State making such accusation. In both cases, the responsibility of a State for genocide, or the absence of such responsibility, is at stake and forms the subject-matter of the dispute. This interpretation of Article IX is confirmed by the Court’s jurisprudence. The Court accepted jurisdiction in cases regarding claims of non-violation of conventional obligations, as referenced in our written observations, such as the dispute between France and the United States of America concerning *Rights of Nationals of the United States of America in Morocco* or the dispute between Libya and the United Kingdom concerning the *Aerial Incident at Lockerbie*. Therefore, we submit that, under Article IX, the Court is competent to adjudge and declare the absence of responsibility for genocide, that is the non-violation of the Genocide Convention by an applicant State.

4. The *second point* of our observations concerns disputes about a violation of the Convention through false or abusive allegations of genocide. The customary rule reflected in Article 31 of the Vienna Convention on the Law of Treaties obliges States to interpret a treaty in good faith. As this

Court held, in the *Gabčíkovo-Nagymaros* case, 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”²⁰. The principle of good faith constitutes the positive side of the prohibition of abuse of rights. As such, the principle of good faith prohibits an abusive interpretation and/or application of the treaty. We submit that the subject-matter of the dispute under Article IX may concern the good faith interpretation, application or fulfilment of any right and obligation under the Convention, as well as the good faith performance of the Convention as a whole. For instance, in a situation where a Contracting Party accuses another Party of committing genocide, without any factual and legal foundations, and acts in contravention of international law for the alleged purpose of preventing such genocide, the Contracting Party fails to interpret, apply or fulfil the Convention in good faith and thus violates the Convention. For these reasons, it is our position that Article IX of the Convention covers disputes concerning false or abusive allegations of genocide made with the aim of justifying illegal unilateral acts and disregarding the principle of good faith interpretation and application of the Convention.

5. *Third*, we would like to point to the requirement of a contextual interpretation of Article IX of the Convention. Under the customary rule reflected in Article 31, paragraph 3 (c), of the Vienna Convention, the Genocide Convention, including its Article IX, has to be interpreted in the context of “any relevant rules of international law applicable in the relations between the parties”. The Charter of the United Nations constitutes such relevant international law applicable between the Contracting Parties of the Convention. One of the fundamental principles of the Charter stipulates that States shall settle their international disputes by peaceful means in such a manner that international peace, security and justice, are not endangered. In the words of the Court in the *Nicaragua* case, this principle is complementary to the “principle prohibiting recourse to the threat or use of force in international relations” or the “principle of non-intervention”²¹. Article IX of the Convention reflects and specifies the principle of peaceful settlement of disputes for the purposes of the Convention. Any dispute among Contracting Parties concerning the interpretation, application or fulfilment of the Genocide Convention has to be settled peacefully in accordance with Article IX. Consequently, we submit that Article IX of the Convention also covers disputes whether a

²⁰ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 79, para. 142.

²¹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 145, para. 290.

Contracting Party violated the Convention by failing to interpret, apply or fulfil the Convention in accordance with its obligations regarding the peaceful settlement of disputes under the UN Charter.

6. To conclude, we would like to emphasize that Article IX of the Convention establishes a mandatory procedure for the peaceful settlement of disputes, which aligns with the aims of the UN Charter and allows the effective fulfilment of the object and purpose of the Convention. We submit that Article IX, interpreted in good faith in accordance with the ordinary meaning of its terms in their context and in light of the object and purpose of the Convention, covers disputes regarding the non-violation of the Genocide Convention by an applicant State and disputes relating to a violation of the Convention through false or abusive allegations of genocide, as we described in our joint written observations and outlined in this presentation.

Madam President, Members of the Court, I thank you for your kind attention.

The PRESIDENT: I thank HE Mr Ruffer. I now invite Ms Kerli Veski to address the Court on behalf of Belgium, Croatia, Denmark, Estonia, Finland, Ireland, Luxembourg, Romania and Sweden. You have the floor, Madam.

Ms VESKI:

**ORAL OBSERVATIONS OF BELGIUM, CROATIA, DENMARK, ESTONIA, FINLAND,
IRELAND, LUXEMBOURG, ROMANIA AND SWEDEN**

1. Madam President, distinguished Members of the Court, it is an honour to appear before you today, as the Agent of the Republic of Estonia, on behalf of Belgium, Croatia, Denmark, Estonia, Finland, Ireland, Luxembourg, Romania and Sweden in these proceedings. Our States have the greatest respect for the Court and for the system of international justice in which it exercises its functions. Our group will solely focus on upholding international law notwithstanding political comments regarding some intervening States. We are dedicated to supporting the Court in its efforts to ensure the good administration of justice.

2. We wish to present four observations on the construction of Article IX of the Genocide Convention.

I. Article IX of the Genocide Convention is formulated in broad terms and covers disputes about the “fulfilment” of the Convention

3. The first observation we wish to make is that Article IX is a broad jurisdictional clause. It confers on the Court jurisdiction over disputes concerning the fulfilment by a Contracting Party of its obligations under the Genocide Convention.

4. The inclusion of the term “fulfilment” in Article IX is rare in the dispute resolution clause of a multilateral convention which is usually limited to disputes concerning “interpretation” and “application”. The inclusion of the term gives the jurisdictional clause a coverage as exhaustive as possible, covering disputes regarding the performance of all obligations under the Convention. This interpretation reflects the intent of the drafters and finds support in the *travaux préparatoires*.

5. In its preliminary objections, the Russian Federation maintains that the claims of Ukraine engage matters beyond the Genocide Convention and are therefore outside the Court’s jurisdiction. However, it follows from the case law of the Court that certain facts or omissions may give rise to a dispute that falls within the ambit of more than one treaty. A parallel dispute arising out of the same facts (for instance about the use of force between two States) does not create an obstacle to the Court’s jurisdiction under Article IX of the Convention, if the conditions for the exercise of its jurisdiction are otherwise met. Therefore, a dispute relating to the interpretation, application or fulfilment of the Genocide Convention falls within the Court’s jurisdiction irrespective of whether there exists — based on the same facts — a dispute between the parties concerning their rights and obligations under any other instrument.

6. The case law of the Court shows that disputes concerning the Genocide Convention can be about “non-action”, i.e. about allegations that a Contracting Party is not honouring its obligations to prevent and punish genocide. The ordinary meaning of the terms of Article IX also makes it clear that there is no need to establish that genocidal acts have been committed in order to engage the Court’s jurisdiction.

7. In our view, under Article IX the Court’s jurisdiction goes beyond disputes about responsibility for alleged genocidal acts: it also covers disputes about the performance of any obligation imposed by the Convention, as well as whether allegations of genocidal acts are true or have been made in bad faith.

8. Accordingly, we submit that the Court has jurisdiction over the question of whether genocidal acts have been or are being committed when there is a dispute about such a question between two or more Contracting Parties to the Genocide Convention.

II. Article IX includes jurisdiction to establish whether the obligation to fulfil the Genocide Convention in good faith has been violated

9. Madam President, let me now turn to our second observation on the construction of Article IX.

10. As this Court has stated, it is difficult to imagine a Convention with a greater humanitarian and civilizing purpose than the Genocide Convention. Article I of the Convention obliges Contracting Parties to prevent and punish genocide. The Contracting Parties must implement this obligation in good faith.

11. The Court has noted in the *Nuclear Tests* case that good faith is “[o]ne of the basic principles governing the creation and performance of legal obligations”²². It held in *Gabčíkovo-Nagymaros* that “[t]he principle of good faith obliges the Parties to [a treaty to] apply it in a reasonable way and in such a manner that its purpose can be realized”²³. As such, the obligation to interpret and apply treaties in good faith safeguards against misuse of the Convention.

12. Prior to taking any action in purported prevention of genocide, States must assess whether a genocide — or serious risk of genocide — exists. While acknowledging that Article I does not specify how to fulfil this obligation, the Court considered that States “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”²⁴.

13. If a State purports to act to prevent a genocide that it has falsely alleged is taking place, such action is clearly unreasonable and contrary to the principle of good faith as well as being manifestly abusive and incapable of conferring any legality on the conduct concerned.

14. Contracting Parties to the Genocide Convention have undertaken to prevent genocide for the benefit of humanity, not to protect their own interests. It would be a denial of the purely

²² *Nuclear Tests (New Zealand v. France)*, Judgment, I.C.J. Reports 1974, p. 473, para. 49.

²³ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 79, para. 142.

²⁴ *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, I.C.J. Reports 2022, p. 224, para. 56.

“humanitarian and civilizing purpose” of the Convention if it could be used to try to mask the wrongfulness of action taken in its name. In addition, the Convention’s object — to protect “the most elementary principles of morality” — requires that a Contracting Party does not abuse its provisions for other purposes.

15. Accordingly, the ordinary meaning of the terms of Article IX, read in the context of the Convention as a whole and in the light of its object and purpose, must include the jurisdiction of the Court to determine whether the making of false and abusive allegations of genocide by a Contracting Party has resulted in a violation by that Party of its obligation to fulfil the Convention in good faith.

16. Madam President, Members of the Court, this concludes my presentation. Mr Piet Heirbaut will now present our last two observations on Article IX. I thank you and the Court for your kind attention, and ask that you invite Mr Heirbaut to the podium.

The PRESIDENT: I thank Ms Veski. I now invite the second speaker for these nine States, Mr Piet Heirbaut, to address the Court. You have the floor, Sir.

M. HEIRBAUT :

**III. L’article IX de la convention sur le génocide s’applique également
aux différends relatifs à la légalité des moyens pris dans le but
affiché de prévenir et de punir le génocide**

17. Madame la présidente, Mesdames et Messieurs les Membres de la Cour, c’est un privilège pour moi de me présenter aujourd’hui devant la Cour en tant qu’agent du Royaume de Belgique, au nom de notre groupe d’États.

18. Avec la permission de la Cour, je vais maintenant aborder notre troisième observation.

19. L’article IX de la convention sur le génocide s’applique également aux différends relatifs à la licéité des moyens pris dans le but affiché de prévenir et de punir un génocide allégué. Comme la Cour l’a indiqué à plusieurs reprises, les parties contractantes, lorsqu’elles exécutent des obligations qui leur incombent en vertu de l’article premier, doivent agir dans les limites permises par le droit international. À cet égard, les États ne peuvent entreprendre que des actes conformes à la Charte des Nations Unies. En conséquence, un État ne peut invoquer l’engagement qu’il a pris au

titre de l'article premier de la convention pour justifier un comportement illicite, y compris la menace ou l'emploi de la force.

20. La convention sur le génocide donne des indications sur les moyens légaux par lesquels les parties contractantes peuvent prévenir et réprimer le génocide. L'interprétation correcte de l'article premier nécessite la prise en compte d'autres parties de la convention, notamment son préambule et l'article VIII, en vertu duquel toutes les parties peuvent demander aux organes compétents des Nations Unies de prendre des mesures, ainsi que l'article IX, qui prévoit le règlement judiciaire des différends.

21. Un différend relatif à l'interprétation, à l'application ou à l'exécution de la convention sur le génocide — au sens de l'article IX — existe dans tous les cas où deux parties contractantes ont des vues opposées sur ce qu'implique réellement l'engagement de prévenir et de punir le génocide, conformément à l'article premier.

IV. Toute partie au différend peut saisir la Cour en vertu de l'article IX de la convention sur le génocide

22. Madame la présidente, permettez-moi d'en venir à notre quatrième et dernière observation.

23. Comme l'a établi ma collègue, les notions de « différend » et d'« exécution » de l'article IX de la convention sont suffisamment larges pour conférer à la Cour la compétence de déclarer qu'une partie contractante requérante n'a pas commis de violation de la convention, telle qu'alléguée par une partie défenderesse.

24. En outre, le libellé de l'article IX lui-même confirme que « toute partie » au différend peut saisir la Cour. En tout état de cause, le caractère *erga omnes partes* de l'interdiction du génocide qui sous-tend la convention s'oppose à un accès restreint à la protection judiciaire de la Cour. Toute position contraire risquerait d'empêcher une partie victime d'allégations fausses et abusives de génocide de demander réparation à la Cour en cas d'abus de la convention par une autre partie. La crédibilité de la convention en tant qu'instrument universel de prévention du génocide s'en trouverait affaiblie.

25. Il convient de souligner qu'une partie contractante à la convention sur le génocide peut invoquer l'article IX et demander à la Cour de déclarer qu'elle n'a pas violé les obligations qui lui incombent en vertu de la convention — dans l'affaire *Lockerbie*, par exemple, la Cour a confirmé sa

compétence à l'égard de la demande de la Libye de déclarer qu'elle n'avait pas violé la convention de Montréal de 1971 pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile. Notre interprétation de l'article IX est donc conforme à la jurisprudence de la Cour.

Conclusion

26. Madame la présidente, nos États ont présenté à la Cour quatre observations sur l'interprétation de la convention sur le génocide, ceci conclut notre intervention et nous remercions la Cour pour sa bienveillante attention.

The PRESIDENT: I thank Mr Heirbaut. I now give the floor to Ms Dimana Dramova, for Bulgaria. You have the floor, Madam.

Ms DRAMOVA:

ORAL PLEADINGS OF THE REPUBLIC OF BULGARIA

I. Introduction

1. Madam President, distinguished Members of the Court, it is a privilege and honour to appear before you on behalf of the Republic of Bulgaria.

2. On 18 November 2022, the Republic of Bulgaria submitted a declaration of intervention in the present case concerning the Convention on the Prevention and Punishment of the Crime of Genocide. Our foremost aim is to assist the Court in the interpretation of the construction in question of the Convention. As a Contracting Party to this treaty, Bulgaria has a fundamental interest to observe and contribute to the consistent interpretation, application and fulfilment of the provisions of the Convention, recognized as *erga omnes* norms in international law.

3. With regard to the limits of the right of intervening States under Article 63, paragraph 2, of the Statute, in this statement, first, I intend to present Bulgaria's understanding of the proper interpretation of the compromissory clause of Article IX of the Convention. Then I will address distinctive elements of the present case, referring to the rules and principles of customary international law, as reflected in Article 31 of the Vienna Convention on the Law of Treaties.

II. The interpretation of Article IX of the Genocide Convention by the Republic of Bulgaria

4. Bulgaria concurs that Article IX of the Convention is a broad jurisdictional clause, vesting the Court with the proper power to adjudicate upon disputes about the interpretation, application or fulfilment of the Convention by a positive or negative declaration. Respectively, the Court has jurisdiction to pronounce the existence or the absence of genocide, thus evaluating the allegations of one of the parties to that dispute that the other committed genocide. In addition, within the jurisdiction of the Court pursuant to Article IX falls the assessment of the conformity of acts based on false allegations of genocide within the provisions of the Convention. This competence of the Court includes evaluation of the lawfulness of actions taken for the purpose of preventing and punishing genocide that, if not performed in good faith, result in *abus de droit*.

III. General rule of interpretation of Article 31 of the Vienna Convention on Law of Treaties, in particular paragraph 3 (c)

5. Now I would like to turn to the question of the general rule of interpretation of Article 31 of the Vienna Convention. There is no question about the relevance of interpretation in good faith in accordance with the ordinary meaning of the terms in the context of the treaty and in light of its object and purpose. Considering the time given, we would focus on paragraph 3 (c) of Article 31 of the Vienna Convention stating that, together with the context, “any relevant rules of international law applicable in the relations between the parties” shall be taken into account. As the International Law Commission stated (in the 2006 Report of the Study Group on the topic of Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, paras. 17-18): strategic integration governs all treaty interpretation and gives expression of the fact that treaties are a creation and conception of the international legal system. The Court observed, in its 1971 Advisory Opinion on *Namibia (South West Africa)*, that “an international instrument has to be interpreted and applied within the framework of the entire legal system” (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 31, para. 53), thus, giving consideration of the systemic integration provision in the process of evaluation of the case immediately after the interpretation of the primary intention of the parties by the conclusion of the treaty, as well as its object and purpose. Within the context of the use of force principle in the *Oil*

Platforms case, the Court further stated that a treaty cannot be intended to operate wholly independently of the relevant rules of international law (*Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2003, p. 182, para. 41). Moreover, within the context of the Genocide Convention, this Court has stated that “every State may only act within the limits permitted by international law” (*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 (I), p. 221, para. 430). The doctrine claims the status of a quasi-constitutional foundational norm of the systemic integration principle (Campbell McLachlan, “The Principle of Systemic Integration and Article 31 (3) (c) of the Vienna Convention”, *International and Comparative Law Quarterly*, 2005, Vol. 54, Issue 2). It was once defined by Judge Bruno Simma as “a legally insurmountable limit to permissible treaty interpretation” (*Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2003, separate opinion of Judge Simma, p. 330, para. 9).

6. Mindful of this, Bulgaria submits that Article IX of the Convention must be interpreted in a manner to define and guarantee the fundamental place of the Genocide Convention within the international legal system. In line with the peremptory nature of this instrument, its object and purpose as a reflection of “the most elementary principle of morality”, created in a reaction of the “denial of the right of existence on entire human group” and that “genocide has inflicted great losses on humanity”, the proper construction of Article IX of the Convention should ensure the role of the Convention within the framework of the entire legal system.

IV. Conclusion

7. In conclusion, Madam President, distinguished Members of the Court, the Republic of Bulgaria respectfully submits that the proper construction of Article IX of the Genocide Convention confers jurisdiction on the Court to determine and declare that there is no violation of the Convention by the Applicant. Furthermore, the failure to fulfil the Convention in good faith constitutes a violation of the Convention. In light of the above, today, it is of great importance that the decision of the esteemed Court upholds and defends the values of the Genocide Convention as intended by its drafters 75 years ago and the parties thereto. Thank you for your attention.

The PRESIDENT: I thank Ms Dramova. I now invite Mr Alan Kessel to address the Court on behalf of Canada and the Netherlands. You have the floor, Sir.

Mr KESSEL:

PART I — CANADA

Introduction

1. Madam President, distinguished Members of the Court, it is a great honour and a privilege for me to appear before this Court as the Agent of Canada.

2. Madam President, Canada and the Netherlands jointly appear before the Court today because of our shared interest in ensuring that the convention at issue in the dispute between Ukraine and Russia, the Genocide Convention, is properly interpreted and applied. As Contracting Parties, we have a common interest in the accomplishment of the high purposes of this convention. We therefore intervene in this case pursuant to Article 63 of the Statute of the Court to place our interpretation of the relevant provisions of the Genocide Convention before the Court.

3. We do so in response to the gravity of the circumstances giving rise to this case and its implications on the obligations shared by all parties. Canada and the Netherlands recall the profound consequences of Russia's illegal invasion of Ukraine, which has resulted in immense human suffering. It is against this backdrop that we intervene as part of our commitment to the protection and promotion of the rules-based international order and the peaceful settlement of disputes, in which the Court plays a vital role.

4. In this regard, we welcomed the Court's swift decision on Ukraine's Request for provisional measures in March 2022, which clearly and unequivocally ordered Russia to immediately suspend its military operations in Ukraine. And since then, we have repeatedly called on Russia to comply with the Court's legally binding Order.

5. Madam President, I will now turn to Russia's preliminary objections. In our joint written observations filed in July 2023, we set out our views on the construction of Article IX and other provisions of the Genocide Convention that are relevant for the determination of the Court's jurisdiction, in accordance with the Court's Order of 5 June 2023.

6. Similarly, our presentation today will be confined to observations on the construction of Article IX of the Genocide Convention, focusing on the principles that guide the interpretation of Article IX, and on the scope of this provision as the basis of the Court's jurisdiction.

Section I: principles of interpretation

7. With respect to the principles that guide the interpretation of Article IX of the Convention, I will focus on the following two elements:

- (i) First, I will present the provisions of the Vienna Convention on the Law of Treaties (VCLT) that govern the interpretation of the Genocide Convention.
- (ii) And second, I will examine the object and purpose of the Genocide Convention.

The Vienna Convention on the Law of Treaties

8. Madame la présidente, à titre d'accord international, la convention sur le génocide doit être interprétée en vertu des articles 31 et 32 de la convention de Vienne sur le droit des traités.

9. L'article 31, paragraphe 1, de la convention de Vienne énonce comme suit la règle de base d'interprétation des traités : « Un traité doit être interprété de bonne foi suivant le sens ordinaire à attribuer aux termes du traité dans leur contexte et à la lumière de son objet et de son but. » Le « contexte » inclut le texte et la structure du traité dans son ensemble²⁵, y compris son préambule et ses annexes²⁶. De plus, le principe de bonne foi oblige les parties à appliquer le traité « de façon raisonnable et de telle sorte que son but puisse être atteint »²⁷.

10. Par conséquent, lorsqu'on interprète la convention sur le génocide, le sens ordinaire de ses termes doit être considéré dans le contexte de la convention dans son ensemble et à la lumière de son objet et de son but.

The object and purpose of the Genocide Convention

11. This brings me to the object and purpose of the Genocide Convention. And as recognized by this Court in its Advisory Opinion on *Reservations to the Genocide Convention*, the object of this

²⁵ See, for example, *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment, I.C.J. Reports 2011 (II), p. 675, paras. 97-98.

²⁶ Article 31 (2) of the Vienna Convention on the Law of Treaties.

²⁷ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 79, para. 142.

Convention is to “safeguard the very existence of certain human groups” and “confirm and endorse the most elementary principles of morality”²⁸. The Genocide Convention was “manifestly adopted for a purely humanitarian and civilizing purpose”²⁹ and those “high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions”³⁰.

12. The Court further noted that

“it was the intention of the United Nations to condemn and punish genocide as ‘a crime under international law’ involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations”³¹.

13. Madam President, in our view, the object and purpose of the Genocide Convention support a broad interpretation of Article IX. A narrow interpretation of this provision, which relates to the peaceful settlement of disputes, would indeed undermine the Convention’s humanitarian and civilizing purpose.

Section II: Article IX of the Genocide Convention

14. This brings me to the second topic of our presentation, which is the scope of Article IX.

This provision 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.”

15. While the scope of Article IX will be expanded upon by the Agent of the Netherlands, I wish to make two general observations.

16. First, Article IX of the Genocide Convention sets out the Contracting Parties’ agreement on how to resolve disputes under the Convention peacefully, in accordance with their obligations under Articles 2 (3) and 33 of the UN Charter. Article IX of the Genocide Convention must thus be

²⁸ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

interpreted and applied in a manner consistent with the provision's central objective of achieving the peaceful settlement of disputes under the Convention.

17. Second, Article IX of the Convention attributes jurisdiction to the Court under Article 36 (1) of the Statute for disputes arising under and with respect to this Convention. It confers jurisdiction to the Court over “[d]isputes between the Contracting Parties relating to the interpretation, application or fulfilment” of the Convention. There is nothing in Article IX that limits the Court’s jurisdiction to cases where it is an applicant State accusing a respondent State of breaching its obligations under the Genocide Convention. It can equally apply to situations where an applicant State disagrees with accusations of a respondent State with respect to breaches of obligations under the Convention.

18. Madam President, this concludes my presentation and I thank you for your attention. May I invite my colleague, the Agent of the Netherlands, Mr René Lefeber, to expand on the scope of Article IX and to conclude our observations. Thank you, Madam President.

The PRESIDENT: I thank Mr Kessel. I now invite the second speaker for Canada and the Netherlands, Mr René Lefeber, to address the Court. You have the floor, Sir.

Mr LEFEBER: Thank you.

PART II — THE KINGDOM OF THE NETHERLANDS

19. Madam President, distinguished Members of the Court, it is a great honour and privilege for me to appear before this Court as the Agent of the Kingdom of the Netherlands.

20. The Agent of Canada has presented the guiding principles on the interpretation of Article IX of the Genocide Convention and offered general remarks on the scope of this provision. In my presentation, I will not address the existence of a dispute between the Parties in this case, but will highlight the following three points relating to the scope of Article IX:

- (i) First, the term “dispute” must be interpreted consistently with the wide meaning given to that term in the case law of the Court.
- (ii) Second, disputes can be referred to the Court “at the request of any of the parties”.

(iii) And third, the inclusion of the word “fulfilment” in Article IX supports a broad interpretation of this provision.

21. I will turn first to the proper interpretation of the term “dispute”, as included in Article IX of the Genocide Convention. The Court made clear in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* that the term “dispute” as used in Article IX should be interpreted consistently with the wide meaning given to that term generally in international law³².

22. It is well established that a dispute exists when there is “a disagreement on a point of law or fact” or “a conflict of legal views or of interests”³³ between parties, provided that they hold views which are opposed to each other. It is not necessary that a respondent State has expressly opposed the claims of the applicant State³⁴. Furthermore, one State’s denial that a dispute has arisen is not determinative of whether a dispute exists.

23. This Court also recognized that “certain acts or omissions may give rise to a dispute that falls within the ambit of more than one treaty”³⁵. The Court can thus exercise its jurisdiction under Article IX in relation to allegations of violations of the Genocide Convention, irrespective of whether the conduct in question breaches other rules of international law.

24. Finally, I wish to emphasize that a dispute under the Genocide Convention may exist despite the absence of a specific reference to the Convention in public statements by the parties. This Court has recognized that a dispute may exist if public statements “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”³⁶.

³² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 502, para. 63.

³³ *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

³⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 505, para. 71.

³⁵ *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, I.C.J. Reports 2022, p. 223, para. 46.

³⁶ *Ibid.*, p. 222, para. 72.

25. Madam President, I will now turn to our second point, which is that disputes can be referred to the Court “at the request of any of the parties”, as expressly stated in Article IX of the Genocide Convention.

26. It is clear from the ordinary meaning of these words that any Contracting Party facing what it considers to be unfounded allegations of a breach of the Genocide Convention can, on its own accord, bring the matter before the Court. This language underscores that the Court’s jurisdiction is not limited to situations where an applicant State claims that a respondent State is responsible for genocide.

27. I will now turn to our third and final point on the scope of Article IX, which relates to the inclusion of the word “fulfilment” in that provision.

28. In our view, this addition to the more common formulation often found in compromissory clauses supports a broad interpretation of Article IX. This provision clearly encompasses disputes about the scope and content of the provisions of the Genocide Convention and the Contracting Parties’ actions in respect of their obligations thereunder, including the duty to prevent and punish genocide outlined in Article I.

29. If a Contracting Party accuses another Contracting Party of committing genocide and takes corresponding actions purporting to respond to the alleged genocide, the “interpretation, application or fulfilment” of the Convention is clearly at stake. The inclusion of the word “fulfilment” in Article IX supports the view that the Court has jurisdiction to declare whether allegations of genocide made by one Contracting Party against another are justified under the Genocide Convention, and also to decide on the lawfulness of any measures taken to prevent and punish an alleged genocide.

30. A broad interpretation of Article IX is further supported by the context of this provision, in particular the use of the words “including” and “relating to”, which underscore the comprehensive nature of Article IX.

Conclusion

31. Madam President, Members of the Court, I now wish to make concluding observations on the scope of Article IX of the Genocide Convention.

32. As we have outlined in our presentation today, the ordinary meaning of this provision, taken together with its context and the object and purpose of the Genocide Convention, confirms that a dispute over allegations of genocide and measures taken to prevent and punish such a purported genocide, clearly relates to the interpretation, application or fulfilment of the Convention, and therefore falls within the scope of Article IX.

33. The provision grants jurisdiction to the Court to rule on a Contracting Party's compliance with its obligations under the Genocide Convention, irrespective of whether it is the acts or omissions of the applicant State or the respondent State that are at issue, provided that this is a matter in dispute between the parties to the case.

34. Madam President, Members of the Court, this concludes the observations of Canada and the Netherlands on the construction of the provisions of the Genocide Convention that are relevant for the determination of the Court's jurisdiction. Thank you for your attention.

The PRESIDENT: I thank Mr Lefeber. Before I invite the next speaker to take the floor, the Court will observe a coffee break of 10 minutes. The sitting is adjourned.

The Court adjourned from 11.05 a.m. to 11.25 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I shall now give the floor to Ms Mary-Ann Stavrinides, for Cyprus. You have the floor, Madam.

Ms STAVRINIDES:

ORAL SUBMISSION OF THE REPUBLIC OF CYPRUS

1. Madam President, Members of the Court, it is an honour to appear before you again on behalf of the Republic of Cyprus. Allow me first to offer some introductory remarks, highlighting the importance of the interpretive question before the Court at this preliminary objections stage of the proceedings. Mr Antonios Tzanakopoulos will then address the Court on the construction of Articles IX and I of the Genocide Convention³⁷.

³⁷ 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. Cyprus has exercised its right to intervene in this case under Article 63 of the Statute of the Court for two reasons.

3. First, Cyprus wishes to put forward its views on the interpretation of the compromissory clause of a convention of great importance, whose construction is evidently in question at the present stage of the proceedings. This is not only because of the steadfast devotion of Cyprus to the peaceful settlement of international disputes. It is also because, as these proceedings make clear, the construction of the compromissory clause necessarily brings into the frame the interpretation of other provisions of the Convention and of relevant rules of international law. These provisions and rules are, to quote from the Court's Order of 5 June 2023, "relevant to determining jurisdiction *ratione materiae*" in this case and are thus "in question in the preliminary objections phase"³⁸.

4. Second, Cyprus speaks on a matter that is existential for it. Being a small State with its own experience as a victim of unlawful invasion and occupation, Cyprus heavily relies for its security on the international legal order, with the Charter of the United Nations at its core. It is thus crucial for Cyprus that provisions in treaties are not left to the "own appraisal" of any State party in order to justify the use of force against other States, but are properly construed by States and ultimately by this Court. The construction of Article IX of the Convention will allow the Court to consider whether reliance on the Convention can ever serve as a lawful basis for recourse to armed force.

5. The submissions of Cyprus focus solely on the construction of the Convention, without assuming or discussing any purported facts. Cyprus has thus limited itself throughout the written and these oral proceedings to making observations on the construction of the Convention without taking a position on any other matter before the Court in this case.

Madam President, I would now ask you to call Mr Tzanakopoulos to the podium. I thank the Court for its attention.

The PRESIDENT: I thank Ms Stavrinides. I now invite the second speaker for Cyprus, Professor Antonios Tzanakopoulos, to address the Court. You have the floor, Professor.

³⁸ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Declarations of Intervention, Order of 5 June 2023*, para. 74.

Mr TZANAKOPOULOS:

6. Madam President, Members of the Court, it is an honour to appear before you today on behalf of the Republic of Cyprus. Cyprus makes two submissions on the construction of Articles IX and I of the Convention.

7. First, the scope of Article IX encompasses disputes over whether the Convention has been invoked and over whether facts that call the Convention into application have taken place.

8. It has been set out in written argument, as well as in the oral proceedings thus far, that the compromissory clause of the Convention is expressed in broad terms. Cyprus need not revisit the arguments on the broad scope of Article IX right now. I will rather use an example to approach the question of scope, referring explicitly to the terms of Article IX.

9. If one State party asserts that another State party is violating the Convention, and the two States disagree on this, the former State party can evidently bring a claim before the Court on the basis of Article IX. If this is accepted, then it must also be that the latter State party, that is, the one accused of violating the Convention and positively opposing this accusation, may avail itself of the very same right. A State party must be able to request the Court to determine that any accusations of violation of the Convention levelled against it are ill-founded. In other words, it must be afforded the opportunity to “clear its name”. Article IX provides it exactly with that opportunity: the relevant dispute is thus clearly one that “relates to” “the responsibility of a State for genocide”.

10. This must be so, especially when an allegation of genocide is relied upon to resort to armed force. In such cases, a State party cannot hide behind the vagueness of its claims relating to the invocation of the Convention, or the reliance upon the Convention, in order to avoid having its allegations tested before the Court. If the compromissory clause could not be invoked to bring such matters to the Court, its effectiveness would be severely curtailed.

11. Second, Cyprus submits that Article IX of the Convention encompasses disputes as to the proper scope of the obligations to prevent and punish genocide under Article I.

12. An allegation that genocide is taking place “activates” the obligations of States parties to the Convention to prevent and punish the crime of genocide, in accordance with its Article I. Cyprus submits that the action taken by a State party in purported performance of its obligations to prevent genocide must be able to be tested. And it must be tested against the requirements of the Convention

regarding the obligation — and thus also the outer limits of the right — of a State party to prevent genocide.

13. To put it simply: much like in alleging genocide, when taking unilateral action to purportedly prevent it, a State party “appraises” its own legal position and acts at its own risk³⁹. This means that it may be challenged as to its own “appraisal” and the unilateral action that it chooses to take, and thus runs the risk of being found to have misinterpreted the Convention and to have misapplied it to the alleged facts. If one State party claims to be acting to prevent genocide and the other State party considers this action to be unlawful, then this is clearly a dispute “relating to” the interpretation, application or fulfilment of the Convention. The Court has subject-matter jurisdiction over such a dispute under Article IX, which, effectively, brings to bear the risk assumed by the State party acting unilaterally.

14. What the obligation of prevention entails is crucial. In particular, the Court has already determined that in acting under Article I, “[a] State may only act within the limits permitted by international law”, as we have heard many times over the last three days⁴⁰. In line with this finding, Cyprus submits that no action taken in response to either a real or a perceived breach of a treaty could ever lawfully involve the use of armed force in violation of Article 2, paragraph 4, of the United Nations Charter. This is true also for determining the scope of the obligation to prevent genocide under Article I of the Convention.

Madam President, this concludes the submission on behalf of the Republic of Cyprus. I would like to thank the Court for its attention.

The PRESIDENT: I thank Professor Tzanakopoulos. I now invite Professor Santiago Ripol Carulla to address the Court on behalf of Spain. You have the floor, Professor.

³⁹ *Air Service Agreement of 27 March 1946 between the United States of America and France, Decision of 9 December 1978, Reports of International Arbitral Awards*, Vol. XVII, p. 443, para. 81: “each State establishes for itself its legal situation vis-à-vis other States”; *Lac Lanoux (Espagne, France), sentence du 16 novembre 1957, Reports of International Arbitral Awards*, Vol. XII, p. 310, para. 16: “il appartient à chaque État d’apprécier, raisonnablement et de bonne foi, les situations et les règles qui le mettent en cause”; but: “en exerçant sa compétence, elle *prend le risque* de voir sa responsabilité internationale mise en cause s’il est établi qu’elle n’a pas agi dans la limite de ses droits” (emphasis added).

⁴⁰ *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 (I)*, p. 221, para. 430.

Mr RIPOL CARULLA:

1. Madam President, distinguished Members of the Court, it is a great honour to appear before you as Agent of the Kingdom of Spain.

2. Spain, among other 31 States, submitted a declaration of intervention under Article 63, paragraph 2, of the Statute of the International Court of Justice.

As determined by the Court in paragraph 69 of its Order on the admissibility of the declarations of intervention adopted in June 2023, “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”.

Spain wishes to offer the Court its interpretation of Article IX, considering that its statement may be of help for the construction of this article and aware that this intervention implies that Spain will be bound by the Court’s decision.

3. Distinguished Members of the Court, Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide confers jurisdiction to the Court to hear any dispute concerning the interpretation, application or fulfilment of any provision of the Convention.

Whereas the terms “interpretation” and “application” are terms commonly included in many compromissory clauses, the term “fulfilment” is unique as compared with the compromissory clauses found in other multilateral treaties. Indeed, during the drafting process of the Genocide Convention there was a debate on the inclusion or not of the term “fulfilment”, which ended with its retention in the text finally adopted.

4. Consequently, Spain considers that the term “fulfilment” should be interpreted as an autonomous reference to one of the three categories of disputes between States parties that may be submitted to the Court under Article IX, that is, in a manner similar to disputes concerning the interpretation or application of the Convention.

5. Let me, Madam President, elaborate on this idea in a little more detail.

States parties to the Genocide Convention assume some specific duties to prevent and prosecute the crime of genocide at the national level. They are obliged not only not to commit genocide, but also to take measures to prevent and punish the crime of genocide, including the enactment of relevant legislation and punishing the perpetrators.

Additionally, based on the assessment that genocide is a crime under international law, the Convention also encourages States to fight against genocide at the international level.

Indeed, as the Court has stated, the Contracting Parties to the Convention must prevent and punish any act of genocide independently of the context “of war” or “of peace” in which it takes place and independently of the circumstances linked to the domestic or international nature of the conflict. Moreover, this obligation is not territorially limited by the Convention. In this sense, in its Judgment of February 2007 on the Application of the Genocide Convention, the Court has referred to the obligation to prevent genocide even by States distant from the place of the events.

6. As Spain has argued in its written text, it follows that the adoption of all these measures to prevent and punish the crime of genocide, both at the national and international levels and with a scope as broad as the one described above, all these measures should be included under the concept of fulfilment.

Therefore, in Spain’s view, the inclusion of the term “fulfilment” entitles States parties to the Genocide Convention to submit to the Court a dispute that relates to any measure or action taken by another State party, including any form of measure or action clearly contrary to Article I and to the object and purpose of the Convention.

7. Madam President, this interpretation of the term “fulfilment” is, as Spain has demonstrated in its written observation, consistent with the interpretation given to it in international human rights law, of which the Genocide Convention is one of its most prominent precedents, as the Court pointed out in 1951.

It is clear, moreover, that in adopting measures to prevent genocide, a State must act in accordance with the principles of international law as formulated in the Charter of the United Nations and in General Assembly resolution 2625, including the principles of good faith, prohibition of the use of force and non-intervention in internal affairs.

Thus, the adoption of preventive measures that exceed the limits permitted by international law can also constitute a violation of the obligation to prevent stated by the Convention, especially if such measures involve an abuse of law or have been taken contrary to the principle of good faith.

8. Distinguished Members of the Court, according to the interpretation of Article IX, and, in particular, of the term “fulfilment” offered by Spain, it is possible for a State party to submit to the

Court any dispute regarding measures, actions or omissions adopted by another State party supposed to prevent a situation, qualified by the latter as genocide, but which nevertheless constitute measures, actions or omissions that turn to be contrary to the object and purpose of the Convention because of the manner in which they are carried out, or their lack of good faith or because of their manifest abuse.

Whether or not these acts or omissions are contrary to the object and purpose of the Convention, or whether or not they are taken in bad faith, or whether or not the recourse to the convention is abusive, is to be determined by the Court.

9. Madam President, distinguished Members of the Court, Spain considers that this interpretation of Article IX is consistent with the ultimate objective of the Convention, which, as stated in its preamble, is none other than to liberate humanity from genocide, a crime under international law contrary to the spirit and aims of the United Nations and condemned by the civilized world. Spain thanks the Court for your attention.

The PRESIDENT: I thank Professor Ripol Carulla. I now give the floor to HE Mr François Alabrune, for France. You have the floor, Excellency.

M. ALABRUNE :

1. Madame la présidente, Mesdames et Messieurs les juges, c'est un grand honneur pour moi de représenter comme coagent mon pays devant la Cour.

2. Comme trente et un autres États parties à la convention pour la prévention et la répression du crime de génocide, la France a estimé nécessaire de se prévaloir de son droit d'intervenir en la présente affaire sur le fondement de l'article 63 du Statut de la Cour. La France souhaite à cet égard souligner les efforts d'étroite coordination fournis par l'ensemble des États membres de l'Union européenne participant à la présente procédure, afin notamment de faciliter le travail de la Cour.

3. Madame la présidente, Mesdames et Messieurs les juges, mon propos s'articulera en deux points. Je soulignerai d'abord qu'une interprétation de l'article IX de bonne foi met en lumière la compétence de la Cour pour traiter une large variété de différends relatifs à la convention (I). Dans un second temps, je reviendrai sur la pertinence du droit international général pour l'interprétation de la convention de 1948, et plus spécifiquement son article IX (II).

I. L'INTERPRÉTATION DES TERMES DE L'ARTICLE IX DE LA CONVENTION SUR LE GÉNOCIDE

4. S'agissant de la question de l'interprétation de l'article IX, elle se pose au stade de la compétence puisqu'elle permet de déterminer quelles catégories de litiges sont susceptibles d'être soumises à la Cour. Or, comme cela a déjà été souligné par plusieurs États intervenants, la formulation de l'article IX est « unique » en son genre et comporte en effet plusieurs spécificités qui ont pour effet d'en élargir la portée par rapport à d'autres clauses compromissaires.

5. Conformément aux règles d'interprétation codifiées dans la convention de Vienne de 1969, les termes utilisés à l'article IX de la convention sur le génocide doivent être interprétés pour en cerner avec exactitude la portée. Et je formulerai, à cet égard, deux brèves remarques.

6. Premièrement, les termes de l'article IX n'impliquent pas de restriction quant à la configuration contentieuse. La Cour peut être saisie par toute « Partie contractante », bien sûr pour faire constater une violation éventuellement par le défendeur de ses obligations internationales, mais aussi, le cas échéant, pour faire constater une non-violation des obligations par le demandeur.

7. Deuxièmement, la Cour peut traiter de différends relatifs non seulement à l'interprétation et l'application, mais également à l'exécution de la convention sur le génocide. Et il s'agit, de l'avis de mon pays, d'un important indice plaidant à l'encontre d'une interprétation trop restrictive du champ couvert par l'article IX de la convention.

II. L'ARTICULATION ENTRE LA CONVENTION SUR LE GÉNOCIDE ET LE DROIT INTERNATIONAL GÉNÉRAL

8. Je souhaiterais maintenant formuler quelques observations sur la façon dont la convention de 1948 s'articule avec le droit international et sur les conséquences de cette articulation quant à l'interprétation qu'il convient de retenir de l'article IX. Et, à cet égard, la France estime nécessaire de réagir à certaines interprétations de cet article proposées dans le cadre de cette procédure.

9. Je reviendrai, en particulier, sur le parallèle hasardeux qui a pu être invoqué⁴¹ entre la présente affaire et celle relative aux *Immunités et procédures pénales* qui a opposé, il y a quelques années, la Guinée équatoriale à la France, et qui a donné lieu, notamment, à un arrêt sur les exceptions préliminaires en date du 6 juin 2018.

⁴¹ EPFR, par. 197-200.

10. Dans cette affaire, la partie demanderesse avait proposé une interprétation extensive de l'article 4 de la convention de Palerme contre la criminalité transnationale organisée, en tentant d'étendre artificiellement le champ du consentement donné en vertu de cet instrument. Pour rappel, le paragraphe 1 de cet article 4 énonce que

« [l]es États Parties exécutent leurs obligations au titre de la présente [c]onvention d'une manière compatible avec les principes de l'égalité souveraine et de l'intégrité territoriale des États et avec celui de la non-intervention dans les affaires intérieures d'autres États ».

11. Et la partie demanderesse avait déduit de cet article que

« les règles du droit international coutumier relatives aux immunités des États et de leurs agents ainsi qu'à l'immunité d'exécution des biens d'État, sont incorporées dans l'article 4 »⁴².

12. Et la Cour n'avait pas admis une telle lecture et avait, au contraire, estimé que « [l]'article 4 se contente de renvoyer à des principes généraux du droit international » et que « les règles du droit international coutumier relatives aux immunités des États et de leurs agents ne sont pas incorporées dans l'article 4 »⁴³.

13. Mais on ne saurait toutefois s'appuyer sur cette affaire pour soutenir une interprétation exagérément réductrice de la convention de 1948⁴⁴, car les questions de droit sont résolument distinctes. Je ferai, à ce titre, deux remarques :

— En premier lieu, l'article 4 de la convention de Palerme est une clause générale, située au début de la convention, dont l'objet est de rappeler le principe de souveraineté et non de poser de nouvelles obligations conventionnelles. En revanche, l'article IX de la convention de 1948 est une clause compromissoire, donc propre à cette convention et relative au règlement des différends portant sur les obligations conventionnelles. On sait que les clauses compromissoires ont pour objet très spécifique d'attribuer une compétence à un organe juridictionnel. Il s'agit de « dispositions de procédure et non de fond »⁴⁵, elles fonctionnent par renvoi : elles ne déterminent pas par elles-mêmes le droit applicable au règlement des différends relatifs à une

⁴² *Immunités et procédures pénales (Guinée équatoriale c. France), exceptions préliminaires, arrêt, C.I.J. Recueil 2018 (I), p. 320, par. 90.*

⁴³ *Ibid.*, p. 321, par. 93, et p. 323, par. 102.

⁴⁴ EPFR, par. 197-200.

⁴⁵ *Sud-Ouest africain (Éthiopie c. Afrique du Sud ; Libéria c. Afrique du Sud), deuxième phase, arrêt, C.I.J. Recueil 1966, p. 39, par. 64.*

convention, mais renvoient au reste de cette convention pour que ce droit soit déterminé. Ce sont donc des clauses qui ont leur logique propre dont il convient de tenir compte lorsqu'il s'agit de procéder à leur interprétation.

- En second lieu, dans l'affaire relative aux *Immunités et procédures pénales*, la Cour a rappelé qu'une disposition d'une convention ne pouvait être interprétée de façon à intégrer des règles entièrement étrangères à cette même convention. Mais, ce faisant, la Cour n'a jamais considéré que l'interprétation et l'exécution abusives d'une disposition d'une convention, à des fins manifestement contraires aux buts et principes de celle-ci, seraient en dehors du champ de ladite convention. Une telle solution reviendrait, paradoxalement, à faire sortir les différends les plus graves, et qui porteraient sur des interprétations et mesures d'exécution manifestement abusives du traité, du champ couvert par la clause compromissaire.

Dans cette affaire toujours, la Cour n'a nullement indiqué qu'un différend sur la manière d'exécuter une convention ne relevait pas de « l'application ou [de] l'interprétation » de cette convention. À l'inverse, bien que ce n'ait pas été l'objet du litige en l'espèce, elle a admis que « [t]out différend qui pourrait surgir au sujet de "l'interprétation ou [de] l'application" de l'article 4 de la convention [de Palerme] ne pou[v]ait ... porter que sur la manière dont les États parties exécutent leurs obligations au titre de la convention »⁴⁶.

Et, dans la présente affaire, ce sont bien les obligations figurant dans la convention qui sont en cause et le différend porte sur la manière dont elles sont exécutées. À cet égard, comme l'a expliqué la Cour, il peut être attendu des États parties qu'ils s'acquittent d'obligations contenues dans une convention d'une certaine manière, sans pour autant que le texte ne prévoie d'obligations spécifiques⁴⁷. Il en est ainsi, par exemple, de l'obligation d'exécuter les traités de bonne foi. La convention de 1948 ne contient certes pas de disposition interdisant expressément de l'interpréter ou de l'exécuter d'une manière déraisonnable au regard de son objet et de son but, mais, pour autant, il ne s'ensuit pas qu'un État puisse le faire, car l'exécution de bonne foi découle nécessairement de toute obligation conventionnelle.

⁴⁶ *Immunités et procédures pénales (Guinée équatoriale c. France)*, mesures conservatoires, ordonnance du 7 décembre 2016, C.I.J. Recueil 2016 (II), p. 1160, par. 49.

⁴⁷ *Immunités et procédures pénales (Guinée équatoriale c. France)*, exceptions préliminaires, arrêt, C.I.J. Recueil 2018 (I), p. 321, par. 93.

Du point de vue de la France, il en résulte que les différends portant sur des allégations abusives de génocide, ou relatifs à des instrumentalisations abusives de l'obligation de prévenir et de réprimer un génocide, entrent donc dans le champ des dispositions de la convention sur le génocide et, par suite, dans le champ du consentement prévu par son article IX.

14. Madame la présidente, Mesdames et Messieurs les juges, je vous remercie pour votre attention.

The PRESIDENT: I thank HE Mr Alabrune, and I now invite Ms Zinovia Chaido Stavridi to address the Court on behalf of Greece. You have the floor, Madam.

Ms STAVRIDIS:

ORAL OBSERVATIONS OF THE HELLENIC REPUBLIC

I. Introductory remarks

1. Madam President, distinguished Members of the Court, it is a great honour and privilege for me to appear before this Court today on behalf of my country. It should be stressed that as a matter of principle, the Hellenic Republic attaches the utmost importance to the peaceful settlement of international disputes, in particular through the International Court of Justice.

2. The Hellenic Republic, as a party to the Genocide Convention, a major treaty seeking to condemn and punish a crime “which shocks the conscience of mankind”⁴⁸, appears here today because of its interest in ensuring the Convention’s proper interpretation, and, by extension, application and fulfilment. Consistent with our declaration of intervention and our written observations, I will focus on what we believe to be the proper construction of Article IX of the Genocide Convention. This construction converges with that put forward by other intervening European Union Member States.

3. Our interpretation of Article IX is based on Article 31 of the 1969 Vienna Convention on the Law of Treaties, reflecting customary international law. In line with paragraph 1 of this article, I will show that the ordinary meaning of Article IX, read in its context and in the light of the object

⁴⁸ See *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

and purpose of the Convention, calls for its broad interpretation and brings within the scope of this Court's jurisdiction the widest possible range of disputes arising under the Convention.

II. The construction of Article IX of the Genocide Convention

A. The ordinary meaning of Article IX

4. I will start with the ordinary meaning of Article IX.

5. I will not dwell upon the notion of “dispute”. Suffice it to say that the Hellenic Republic concurs with the interpretation given by the Court, *inter alia*, in the present case, in its Order of 16 March 2022⁴⁹.

6. Regarding the phrase “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 allows the Court to adjudicate upon a dispute concerning the alleged fulfilment by a Contracting Party of its obligations under the Convention. For the purposes of this presentation, I will divide the text of this phrase in three parts: first part, the words “relating to”; second part, the phrase “interpretation, application or fulfilment of the present Convention”; and third part, the phrase “including those relating to the responsibility of a State for genocide”.

7. In the first part, the words “relating to” require only that the subject-matter of the dispute concerns any alleged violations of the Convention. Hence, where, like in the present case, an application concerns the conformity of certain acts with the Convention, the Court can exercise its jurisdiction under Article IX irrespective of the question whether or not the conduct in question simultaneously breaches other rules of international law and whether or not the Court has jurisdiction over those matters.

8. In the second part, which reads “interpretation, application or fulfilment of the present Convention”, the addition of the word “fulfilment” to the more common formulation usually found in compromissory clauses, confers an “added breadth”⁵⁰ to the clause, as confirmed by the *travaux*

⁴⁹ See in particular *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, I.C.J. Reports 2022*, p. 218, para. 28, pp. 220-221, para. 35, and p. 222, para. 44, with further references.

⁵⁰ WOU, para. 95.

préparatoires, and 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.

9. Furthermore, the words “of the Convention” make clear that the compromissory clause refers back to all the provisions of the Convention, its entire life, including breaches thereof⁵¹. Thus, while there can be a dispute under Article IX when one State alleges that another State has committed genocide, there can also be a dispute under the Court’s jurisdiction over the question whether genocidal acts have not been committed.

10. The third part, the phrase “including those relating to the responsibility of a State for genocide” further corroborates “the comprehensive nature of Article IX”⁵² and its broader scope compared to a standard compromissory clause. Furthermore, the context of the words “relating to” in this phrase confirms that the Court’s jurisdiction also covers disputes between States about the absence of genocide and about the performance of treaty obligations by one or more States parties.

11. I will now discuss the last part of Article IX, namely the phrase “at the request of any of the parties to the dispute”. This phrase expressly provides for the jurisdiction of the Court at the request of either the State that has made the accusation or the State accused. 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. Otherwise, a State party could freely invent violations of the Convention, allegedly committed by another State party, without the latter being able to have recourse to the Court. This would exclude from the Court’s jurisdiction genocide-related disputes, leading potentially to serious misuses of the Convention.

12. In addition, the absence in Article IX of any of the usual procedural requirements, such as to first attempt negotiation or arbitration, corroborates the broad character of this article.

B. The object and purpose of the Genocide Convention

13. Madam President, distinguished Members of the Court, I will now turn to the *object and purpose* of the Convention, which, as eloquently described by this Court, further advocates for a

⁵¹ See 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, pp. 453-454.

⁵² WOU, para. 98.

wide interpretation of Article IX⁵³. I will not quote here the relevant excerpts of this Court's judgments. I should only stress that the *erga omnes partes* character underpinning the Convention is associated with the mission entrusted to the Court back in 1948 to enforce it in the interest of all States and speaks against an interpretation which would preclude a State against which false allegations of genocide have been made from seeking relief from the Court in the face of abuses of the Convention.

14. The Convention's object to protect the most elementary principles of morality also requires from a State party not to abuse its provisions to pursue other aims. The purpose of the Convention clearly allows a State party which believes that the authority of the Convention has been abused by another State party, to turn to this Court. Otherwise, the *raison d'être* of the Convention and its credibility as a universal instrument for the prevention of genocide would be defeated and the role of the Court as a critical avenue for redress would be undermined.

III. Conclusion

15. Madam President, distinguished Members of the Court, in conclusion, my country strongly believes that Article IX encompasses any dispute relating to the interpretation, application or fulfilment of the Genocide Convention, including a dispute regarding acts carried out by one State party against another State party based on abusive claims of genocide resulting in the violation of a good faith performance of the Convention. I thank you for your attention.

The PRESIDENT: I thank Ms Stavridi. I now give the floor to Mr Stefano Zanini, for Italy. You have the floor, Sir.

Mr ZANINI:

1. OPENING STATEMENT BY THE AGENT OF THE ITALIAN REPUBLIC

1. Madam President, distinguished Members of the Court, it is an honour to address you as the Agent of the Italian Republic.

⁵³ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2022*, p. 36, para. 107, with further references.

2. After my opening remarks, Professor Attila Tanzi will address a few of the arguments advanced by Italy in its written pleadings which pertain to the Court's jurisdiction *ratione materiae*.

3. Ever since becoming a party to the Genocide Convention in 1952, Italy has committed fully to its promotion in all relevant fora. Italy is, therefore, particularly pleased to seize the opportunity to assist this Court in the interpretation of the provisions which are disputed in the present case.

4. The *erga omnes* nature of the core obligations of the Convention accounts for the general and indivisible interest of all Contracting Parties in their proper interpretation, application and fulfilment.

5. Accordingly, Italy believes that when the interpretation of this kind of obligations is at stake and the Court is seised of the matter, the Court should exercise its jurisdiction to the fullest extent.

6. In so doing, as the principal judicial organ of the United Nations, the Court can discharge its role of guardian of the international legality in a domain where objectivity and third-party assessment are of the essence.

7. Madam President, I thank you for your attention and I kindly request that you invite Professor Tanzi to the podium.

The PRESIDENT: I thank Professor Zanini. I now invite the second speaker for Italy, Professor Attila Tanzi, to address the Court. You have the floor, Professor.

Mr TANZI:

2. CONSTRUCTION OF ARTICLE IX OF THE CONVENTION FOR THE PURPOSES OF JURISDICTION *RATIONE MATERIAE*

Introduction

8. Thank you, Madam President. Madam President, distinguished Members of the Court, it is an honour to be appearing before you today, and to do so on behalf of Italy, in so highly important proceedings.

9. In the interest of time, I shall confine myself to two issues of construction of the broad compromissory clause in Article IX, which bear on the Court's jurisdiction *ratione materiae*⁵⁴.

⁵⁴ *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 (I), p. 43, paras. 168-169 (judges' folder tab 3).

10. The first one concerns the peculiar nature of an aspect of the Applicant's cause of action, which qualifies as a "non-violation claim". The second pertains to the contours of the law which the Court has the power to interpret and apply to the facts in dispute.

The jurisdiction of the Court over "non-violation claims"

11. Madam President, as to the first point, the Court's jurisprudence shows that its jurisdiction encompasses disputes submitted by States requesting a finding of compliance when compliance has been disputed by the defendant⁵⁵. The fact that in such cases the defendant had not challenged the admissibility of non-violation claims is irrelevant, since the Court could have raised it *motu proprio*, under the *kompetenz-kompetenz* principle.

12. This general proposition applies all the more to applications grounded in Article IX, whereby the jurisdiction of the Court may be set in motion "at the request of any of the parties to the dispute". This construction is corroborated by the interpretive principle of the *effet utile*. And it cannot be derogated from by a retrogressive interpretation of the *travaux* of the Convention.

13. It is thus wrong to construe Article IX as conferring jurisdiction exclusively over applications complaining of violations allegedly committed by the defendant.

14. Madam President, Members of the Court, the prohibition on genocide and its ancillary obligations of prevention and punishment reflect a peremptory norm of international law. Therefore, the applicant has a compelling interest in the ascertainment of a situation of non-violation of the Convention, as do each and all Contracting Parties, as well as the international community as a whole⁵⁶.

15. Italy believes that it is considerations of this kind which account for the wide scope of the compromissory clause in Article IX.

⁵⁵ *Rights of nationals of the United States of America in Morocco, Judgment, I.C.J. Reports 1952: I.C.J. Reports 1952*, p. 176; *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. 9.

⁵⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022*, p. 516, para. 107 (judges' folders, tab 4).

The spectrum of the substantive provisions whose interpretation and application falls within the jurisdiction of the Court under Article IX

16. Madam President, Members of the Court, as to my second point, I wish to stress that Italy finds that the material scope of application of the Convention covers precisely the kind of situations which are disputed in the instant case. This fully conforms with the *prima facie* ascertainment of your Court⁵⁷.

17. Nothing in the present incidental proceedings justifies reversing the authoritative statement by a former President of the Court, whereby, for the purposes of jurisdiction, the facts as alleged by the applicant are *pro tem* to be accepted as true⁵⁸. Further ascertainment will be for the merits.

18. Consequently, Article IX confers jurisdiction on the Court to interpret and apply Articles I to IV in relation to the disputed facts before you.

19. Articles I and IV provide for the obligation to prevent and punish acts of genocide. This implies, *a fortiori*, an outright prohibition of genocidal conduct.

20. This supports the contention that Article IX confers jurisdiction on the Court over the Defendant's allegations concerning the Applicant's alleged breach of Articles I and IV. And all the more so, over allegations of genocide *tout court*.

21. By the same token, Article IX also affords jurisdiction over the Applicant's claim that the Defendant's allegations amount to an abusive interpretation of Articles I and IV.

22. If assessed, such an abusive interpretation would be plainly in contravention with the general principle of good faith in treaty interpretation under Article 31 (1) of the Vienna Convention on the Law of Treaties. And this would amount, at one and the same time, also to a breach of the very Articles I and IV.

23. Madam President, Italy deems that Article IX plainly confers jurisdiction also over the Applicant's complaint concerning the Defendant's act of aggression against it. The jurisdictional link between such complaint and the Convention is twofold.

⁵⁷ *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, I.C.J. Reports 2022*, p. 211, para. 44, (judges' folders, tab 5).

⁵⁸ *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, separate opinion of Judge Higgins, p. 856, para. 32 (judges' folders, tab 6).

24. First, it derives from the argument that the ostensible breach of Article I by the applicant would preclude the wrongfulness of the Defendant's aggression.

25. Second, the Defendant's act of aggression brings the interpretation of Article IV into play in relation to the scope of the admissible measures against alleged breaches of the Convention. To that end, Article IV — which provides exclusively for criminal law measures against individuals — cannot be interpreted in isolation from the basic principles of the United Nations Charter, as confirmed by your Court⁵⁹.

26. In conclusion, Madam President, Italy finds that Article IX empowers the Court to interpret and apply Articles I to IV to all the facts in dispute. And to do so in conformity with Article 31 (1) and (3) (c) of the Vienna Convention on the Law of Treaties.

Madam President, distinguished Members of the Court, this concludes my speech and I thank you for your attention.

The PRESIDENT: I thank Professor Tanzi. I now invite Professor Mārtiņš Paparinskis to address the Court on behalf of Latvia. You have the floor, Professor.

Mr PAPANINSKIS:

ORAL OBSERVATIONS OF THE REPUBLIC OF LATVIA

1. Madam President, Members of the Court, good afternoon. It is an honour for me to appear before you on behalf of the Republic of Latvia, in the first case in which Latvia has chosen to take part in the oral proceedings either before the Court or its predecessor. I do so with gratitude to Latvia's Agent, Ms Kristīne Līce, for her exemplary leadership and in the presence of Latvia's Co-Agent, Mr Edgars Trumkalns.

2. Latvia's intervention in this case reflects the importance that Latvia attributes to the integrity of the Convention on the Prevention and Punishment of the Crime of Genocide and therefore its proper construction in this case.

⁵⁹ *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, I.C.J. Reports 2022, p. 225, para. 58 (judges' folders, tab 7).*

3. I will first make one general, overarching point. Latvia considers that the conclusions on construction of Article IX and of other provisions of the Genocide Convention concerning the Court's jurisdiction *ratione materiae*, reached in the Order of 16 March 2022 on a prima facie basis⁶⁰ and in terms of plausibility of rights claimed⁶¹, are, upon full and considered reflection, correct, and should also be adopted at the present stage of the proceedings.

4. I will now proceed to three particular submissions on the construction of the Genocide Convention.

Article IX of the Genocide Convention is formulated in broad terms and also covers disputes concerning what Russia calls “reverse compliance complaints”

5. I will first address the broad formulation of Article IX. In this respect, Latvia asks the Court to follow the construction adopted in paragraphs 168 and 169 of the Judgment in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*⁶².

6. It would similarly go with the established judicial grain for Article IX to cover “disputes” concerning what Russia calls “reverse compliance complaints”⁶³. That is not something “alien” to international law, as Russia suggested on Monday⁶⁴, but what the Court did in *Rights of Nationals of the United States of America in Morocco*⁶⁵ and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*⁶⁶.

⁶⁰ *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, I.C.J. Reports 2022*, pp. 220-221, paras. 35-38.

⁶¹ *Ibid.*, pp. 224-225, paras. 56-60.

⁶² *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 (I)*, p. 114, paras. 168-169.

⁶³ PORF, Vol. I, Chap. III, Sec. C. CR 2023/13, pp. 91-96, paras. 1-33 (Udovichenko)

⁶⁴ CR 2023/13, p. 92, para. 9 (Udovichenko).

⁶⁵ *Rights of Nationals of the United States of America in Morocco (France v. United States of America), Judgment, I.C.J. Reports 1952*, p. 182.

⁶⁶ *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*, pp. 14-15 and 18-19, paras. 14 and 26; *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*, pp. 119-120 and 123-124, paras. 12, 13 and 25.

7. Russia's attempts to distinguish these judgments must fail⁶⁷, since it cannot be the case that the Court has thrice misapplied "the well-established jurisprudence" requiring it to "go into the matter *proprio motu*" "to always be satisfied that it has jurisdiction"⁶⁸. Nor is there anything in the hypotheticals that trouble Russia about such claims⁶⁹ that could not be resolved by good administration of justice by the Court, including on time-limits, as well as by the proper application of the general principle of *res judicata*⁷⁰.

Article IX of the Genocide Convention applies to "disputes" concerning the prohibition of abusive allegations of genocide

8. I turn now to Latvia's second submission, namely that Article IX applies to "disputes" concerning the prohibition of abusive allegations of genocide.

9. Latvia agrees that "Article I does not specify the kinds of measures that a Contracting Party may take to fulfil [the] obligation [to prevent and to punish the crime of genocide]"⁷¹. However, Latvia's submission is that, when interpreted in good faith in the context of Articles IV, VI, VII, VIII and IX and in the light of the object and purpose of the Genocide Convention, Article I *does* prohibit allegations of genocide that are abusive. Article IX therefore encompasses disputes about abusive allegations of genocide where a Contracting Party making them and acting upon them has neither pursued any of the means in the Genocide Convention nor provided, in the words of the Court, "proof at a high level of certainty appropriate to the seriousness of the allegation"⁷². We say, in short, that we substantially agree with Professor Thouvenin⁷³.

⁶⁷ CR 2023/13, pp. 94-96, paras. 22-31 (Udovichenko).

⁶⁸ *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, pp. 117-118, para. 40.

⁶⁹ CR 2023/13, pp. 92-94, paras. 10-20 (Udovichenko).

⁷⁰ *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 126, para. 59.

⁷¹ *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, I.C.J. Reports 2022*, p. 224, para. 56.

⁷² *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 (I)*, p. 130, para. 210, also para. 211.

⁷³ CR 2023/14, p. 77, para. 41, generally pp. 75-79, paras. 36-50 (Thouvenin).

Article IX of the Genocide Convention applies to “disputes” about whether a State has acted within the limits permitted by international law in preventing the commission of genocide

10. I will conclude with Latvia’s third submission, namely that Article IX applies to “disputes” under Articles I and IV about whether a “State [has] act[ed] within the limits permitted by international law” “in preventing the commission of genocide”⁷⁴. We say, again, that we substantially agree with Professor Thouvenin⁷⁵.

11. This construction builds on the point made by the Court that in discharging its duty to prevent genocide under Article I of the Genocide Convention, “every State may only act within the limits permitted by international law”⁷⁶. This also applies to the limits set by the applicable rules on the use of force⁷⁷.

12. Latvia’s submission is that Articles I and IV preclude those means for prevention of genocide which are not in conformity with the spirit and aims of the United Nations highlighted in the first preambular recital of the Convention, in particular the Charter’s first purpose of “the suppression of acts of aggression”⁷⁸. Further, Article I characterizes genocide as “a crime under international law”. Good-faith construction of this ordinary meaning confirms impermissibility of aggression, called “the supreme international crime” by the International Military Tribunal just two years before the Convention’s adoption, as a means for prevention of genocide⁷⁹. Professor Thouvenin must be right: the Convention, to quote him: “ne peut pas être un outil permettant de justifier des crimes du droit des gens et la prolifération des fléaux les plus odieux”⁸⁰.

⁷⁴ *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 (I), p. 221, para. 430; *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, I.C.J. Reports 2022, p. 225, para. 57.

⁷⁵ CR 2023/14, p. 80, para. 55, generally pp. 79-80, paras. 51-57 (Thouvenin).

⁷⁶ *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 (I), p. 221, para. 430; *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, I.C.J. Reports 2022, p. 225, para. 57.

⁷⁷ R. O’Keefe, *International Criminal Law* (OUP 2015), 344-345.

⁷⁸ *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, I.C.J. Reports 2022, p. 225, paras. 58 and 60.

⁷⁹ “Judgment of the International Military Tribunal for the Trial of German Major War Criminals, Nuremberg, 30 September and 1 October 1946 (Reproduced)” (1947) 41 *AJIL* 172, 186.

⁸⁰ CR 2023/14, p. 80, para. 57 (Thouvenin).

13. Latvia's submission is not undermined by judgments in cases concerning preliminary objections in *Oil Platforms*, *Immunities and Criminal Proceedings* and *Certain Iranian Assets*, which Russia invoked as authorities for rejecting rules outside the treaty for the purposes of interpretation⁸¹. Reliance on *Oil Platforms* is a category error since Article I of the Treaty of Amity imposed no obligation but merely formulated a general aim⁸². As for the latter two cases, the key point is that those rules were, in the words of the Court, respectively "unrelated to the stated object and purpose"⁸³ and "simply not germane to the concerns underlying the drafting of" the treaties being interpreted⁸⁴. Specialized treaties on co-operation in economic⁸⁵ and criminal matters, on the one hand⁸⁶, and the customary corpus on State immunity, on the other, may indeed inhabit distinct juridical spheres. The concerns, institutions and teleology of the Genocide Convention and the rules on the use of force expressed in the United Nations Charter are, conversely, closely intertwined.

14. Latvia's proposed construction would not, as Russia argued on Monday, "incorporate into the Convention all obligations of States arising from other sources of international law"⁸⁷, but only take into account in the process of interpretation the relevant rules mandated by the custom-reflecting Article 31, paragraph 3 (c), of the Vienna Convention on the Law of Treaties⁸⁸. To paraphrase the merits Judgment in *Oil Platforms*, the Court's jurisdiction under Article IX to interpret Articles I and IV extends, where appropriate, to the determination of whether action alleged to be taken as a means for prevention and punishment of genocide was within the limits of international law, including law on the use of force⁸⁹.

⁸¹ PORF, Vol. I, paras. 194-207; CR 2023/13, pp. 73-75, paras. 78-87 (Crosato).

⁸² *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), p. 814, para. 28; *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018 (I), p. 321, para. 92.

⁸³ *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018 (I), p. 322, para. 95.

⁸⁴ *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019 (I), p. 30, para. 65, also p. 28, para. 58.

⁸⁵ *Ibid.*, p. 28, para. 57.

⁸⁶ *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018 (I), pp. 321-322, para. 95.

⁸⁷ CR 2023/13, p. 62, para. 16 (Crosato).

⁸⁸ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declarations of Intervention, Order of 5 June 2023, para. 84.

⁸⁹ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2003, pp. 182-183, para. 42.

15. Madam President, Members of the Court, this concludes the submissions of Latvia at the present stage of the proceedings. I thank you for your kind attention.

The PRESIDENT: I thank Professor Paporinskis. Your statement brings to an end this morning's session. The Court will meet again this afternoon, at 3 p.m., to hear the remainder of the oral observations of the intervening States. The sitting is adjourned.

The Court rose at 12.20 p.m.
