

Corrigé
Corrected

CR 2023/16

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2023

Public sitting

held on Wednesday 20 September 2023, at 3 p.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 15 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
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
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 Bezdieniezhna, 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 Xuezhe, 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 Drogenik, 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 Hammar skjöld, 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 Drofenik, 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 this afternoon to hear the remainder of the oral observations of the intervening States.

For reasons duly made known to me, the Vice-President is unable to sit with us this afternoon.

I give the floor now to Ms Gabija Grigaitė-Daugirdė, for Lithuania. You have the floor, Madam.

Ms GRIGAITĖ-DAUGIRDĖ:

INTERVENTION OF THE REPUBLIC OF LITHUANIA

1. Good afternoon. Madam President, Members of the Court, it is an honour to appear before you as Agent of the Republic of Lithuania in this important case.

2. Previously, Lithuania took part in two cases¹ and one advisory proceeding² before the Permanent Court of International Justice. Soon after, it was illegally annexed by the Soviet Union for nearly half a century. During those years of injustice and since resuming independence, Lithuania has always relied on international law to sustain its existence and freedom, and it consistently objected to the alternative international law narrative created by the Soviet Union and later by the Russian Federation. Today, for the same reasons and in quite reminiscent circumstances, Lithuania stands for the respect of the territorial integrity of a fellow sovereign State and against the blatant disregard of international law by the Respondent under false pretexts based on the Genocide Convention that form the gist of this case.

3. Today's hearing is dedicated to the Court's jurisdiction under Article IX of the Convention and I have two points to make about the construction of that provision: my first point concerns the type of disputes that fall within the ambit of Article IX; my second point concerns the Court's jurisdiction *ratione materiae*, that is the claims that the Court may entertain pursuant to that provision.

4. I turn to my first point, regarding the types of disputes that fall within Article IX.

¹ *Interpretation of the Statute of the Memel Territory, Preliminary Objection, Judgment, 1932, P.C.I.J., Series A/B, No. 47; Interpretation of the Statute of the Memel Territory, Merits, Judgment, 1932, P.C.I.J., Series A/B, No. 49; Panevezys-Saldutiskis Railway, Judgment, 1939, P.C.I.J., Series A/B, No. 76.*

² *Railway Traffic between Lithuania and Poland, Advisory Opinion, 1931, P.C.I.J., Series A/B, No. 42.*

5. Members of the Court, it is an undisputed proposition that Article IX must be read in the context of the other provisions of the Convention³. In this regard, contrasting Articles VIII and IX, the Court held last year that

“Article IX provides the conditions for recourse to the principal judicial organ of the United Nations in the context of a dispute between Contracting Parties, whereas Article VIII allows any Contracting Party to appeal to other competent organs of the United Nations, even in the absence of a dispute with another Contracting Party.”⁴

Moreover, as the text of Article VIII makes clear, it solely concerns “the prevention and suppression of acts of genocide or any of the other acts enumerated in article III”. In contrast, disputes falling under Article IX are not limited to the “prevention and suppression of acts of genocide”, but may more broadly “relat[e] 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” (emphasis added). And as the Court also previously made clear: “disputes relating to the responsibility of Contracting Parties for genocide . . . are comprised *within a broader group of disputes* relating to the interpretation, application or fulfilment of the Convention”⁵.

6. Therefore, the functional and textual differences between Article VIII and IX, that is the “distinct areas of application”⁶, indicate that disputes stemming from allegations of acts of genocide may be submitted to the Court for adjudication, even if the claims submitted to the Court by the applicant do not concern the perpetration of acts of genocide by the respondent. In other words, the Court’s jurisdiction under Article IX extends here to disputes resulting from the contestation by the applicant of allegations by the respondent that acts of genocide occurred, or were about to occur, on the territory of the applicant. Lithuania considers that when a State accuses another State of committing genocide, and that the other State rejects such accusations, a “dispute” exists under Article IX of the Convention⁷. This includes instances in which the accusation of genocide is made

³ Article 31, paragraph 2, of the Vienna Convention on the Law of Treaties and see not. *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, *Preliminary Objections, Judgment, I.C.J. Reports 2017*, pp. 29-30, paras. 64-65.

⁴ *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. 510-511, para. 89.

⁵ *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, para. 169; emphasis added.

⁶ *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. 510, para. 89.

⁷ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declaration of Intervention of the Republic of Lithuania, 19 July 2022, para. 24.

with a view to justifying acts allegedly preventing genocide which may, at the same time, engage other rules of international law.

7. This construction of Article IX is confirmed by two of its textual elements, on which other intervening States rightly insist:

- *First*, under Article IX a dispute can arise about the “fulfilment” of the Convention. This means that when one State protests against another State’s allegations that genocide is occurring or about to occur, such contestation gives rise to a dispute about the *fulfilment* of obligations under the Convention.
- And *secondly*, Article IX explicitly states that the seisin of the Court can be the initiative of “any of the parties to the dispute”. Accordingly, such a dispute can be submitted to the Court by either of the disputing States.

8. To sum up on this first point: a State party that considers itself falsely accused of genocide by another State party may rebut such accusation and submit the ensuing dispute to the Court pursuant to Article IX. Lithuania submits that this construction of Article IX entirely conforms with the terms and is also consonant with the higher purposes of the Convention and the preservation of its integrity.

9. Madam President, Members of the Court, I now turn to my second point which concerns your jurisdiction *ratione materiae* under the Convention.

10. A State that considers itself falsely accused of genocide may notably claim that such accusation is the result of a breach of Article I of the Convention and that the actions undertaken for the alleged purpose of preventing the purported genocide are likewise wrongful under the Convention. As Lithuania has set out in its declaration of intervention, the question of whether a party has fulfilled its obligations under the Convention may be particularly salient in relation to the obligation of due diligence, entailed by Article I, that is to collect substantial evidence from independent sources that acts of a genocidal nature are being perpetrated, before undertaking any preventive action pursuant to the same provision⁸. Such a claim falls within the jurisdiction *ratione materiae* of the Court under Article IX of the Convention. Whether Article I entails an

⁸ *Ibid.*, para. 20.

obligation of due diligence to collect substantial evidence before engaging in the prevention of an alleged genocide is a question of interpretation of the Convention that falls “unquestionably within [the Court’s] jurisdiction”⁹. And we further submit that such a question of interpretation would fall to be determined during the merits of this case, because Article I is not a provision that “define[s] the scope of the treaty”¹⁰.

11. Lithuania further recalls that, as the Court already made clear, the means by which an international obligation is allegedly breached are irrelevant for jurisdictional purposes¹¹. The nature of the means by which the Respondent wrongly fulfilled the obligation to prevent genocide under Article I are thus entirely irrelevant at this stage of the proceedings and do not concern your jurisdiction *ratione materiae*. This being said, the Court’s jurisdiction under Article IX undoubtedly extends to disputes over the measures taken purportedly to prevent genocide pursuant to Article I.

12. Finally, Lithuania recalls that when the Court has jurisdiction under Article IX, such jurisdiction also extends to applying “the rules of general international law on treaty interpretation and on responsibility of States for internationally wrongful acts”¹². Lithuania respectfully submits that the Court’s jurisdiction extends for the same purpose to applying other rules of treaty law, in particular the one concerning the obligation to perform treaties in good faith¹³, when they are pertinent, of course, to the dispute at hand. Therefore, claims concerning the breach of such obligations necessarily fall within the Court’s jurisdiction. This is all the more the case in relation to Article I of the Convention because, under that provision, the Contracting Parties solemnly “undertake to prevent and to punish genocide”. Thus, *under the Convention itself*, the Contracting Parties are bound to perform such obligation in good faith.

13. Madam President, Members of the Court, I thank you for your kind attention. I also take this opportunity to thank my legal counsel, Professors Pierre d’Argent, Gleider Hernández, Inga

⁹ *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment, I.C.J. Reports 1972, p. 66, para. 36.

¹⁰ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2019 (II), p. 584, para. 57.

¹¹ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), pp. 811-812, para. 21.

¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 105, para. 149.

¹³ See Art. 26 of the Vienna Convention on the Law of Treaties.

Martinkute and Christian Tams, for their assistance in preparing Lithuania's submissions. Finally, I also express our gratitude to the Registrar, his staff and the Court's interpreters for their professional and courteous assistance. Thank you, Madam President.

The PRESIDENT: I thank Ms Grigaitė-Daugirdė and I invite Mr Christopher Soler to address the Court on behalf of Malta. You have the floor, Sir.

Mr SOLER:

ORAL OBSERVATIONS OF THE REPUBLIC OF MALTA

Preliminary observations

1. Madam President, honourable Members of the Court, good afternoon. I have the privilege to stand before you today to submit oral pleadings on behalf of the Republic of Malta.

2. At the outset and by way of a preliminary observation, I declare that Malta adopts the conjoint submissions articulated by Belgium, Croatia, Denmark, Estonia, Finland, Ireland, Luxembourg, Romania and Sweden throughout this morning's session¹⁴. Malta does so in terms of the letter of the Registrar dated 23 June 2023 and in adherence with the Order of this Court dated 5 June 2023 respectively, wherein intervening States are encouraged "to present joint written and oral observations, to the extent possible"¹⁵, in so far as "the joint presentation of shared views can advance the good administration of justice"¹⁶. Today's oral observations are intended, and shall serve, to *complement* the observations, both written and oral, of such like-minded States.

3. Malta's intervention relates exclusively to the compromissory clause of the Genocide Convention, this being a broad and "a fairly straight-forward jurisdictional clause that does not make that jurisdiction subject to [any] further, special conditions"¹⁷. Hence, I shall focus on the proposition which Malta has advanced in Part IV of its written observations. Essentially, an examination of the character of a norm can serve to act as a tool of interpretation thereof.

¹⁴ See Malta's Written Observations filed on 3 July 2023, Part II, paras. 4-48.

¹⁵ Letter by the Registrar, 23 June 2023.

¹⁶ *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. 88.

¹⁷ Christian J. Tams, "Article IX" in C. J. Tams/L. Berster/B. Schiffbauer (eds.), *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* (Verlag C.H. Beck oHG, Hart Publishing and Nomos Verlagsgesellschaft mBH, 2014), pp. 303-304.

Understanding the word “fulfilment” within the context of the compromissory clause of the Genocide Convention

4. I will first address the term “fulfilment” in Article IX of the Genocide Convention. By endorsing the conjoint position of the like-minded States, Malta has already acknowledged the importance of the *insertion* of the word “fulfilment” for the purposes of an interpretation of the compromissory clause of the Genocide Convention. As Judge Oda noted in the *Bosnian Genocide* case, the inclusion of the word “fulfilment” within Article IX of the Convention is “unique as compared with the compromissory clauses found in other multilateral treaties”¹⁸. Therefore, the added value of the word “fulfilment” should be fully explored.

The hierarchical superiority of *jus cogens* norms

5. I now turn to the legal relevance of the *jus cogens* character enjoyed by the norm prohibiting genocide¹⁹. Such norms “give rise to obligations owed to the international community as a whole (obligations *erga omnes*)”²⁰. This means that “[a]ll the State parties to the Genocide Convention thus have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention”²¹. Malta accepts the fact that a dispute relating to a norm having such character cannot “of itself” provide a basis for the jurisdiction of the Court to entertain such a dispute²². However, when interpreting a compromissory clause establishing the Court’s jurisdiction, the *nexus* between the word “fulfilment” and the *jus cogens* character of the substantive obligations under Article I of the Genocide Convention should be taken into account. In particular, the interpretation of Article IX of the Genocide Convention should reflect and embrace the peremptory character of the prohibition of genocide.

¹⁸ *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)*, declaration of Judge Oda, p. 627, para. 5.

¹⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 47, para. 87; see also Christopher Soler, *The Global Prosecution of Core Crimes under International Law* (T.M.C. Asser Press & Springer-Verlag, 2019), p. 91, fn. 9.

²⁰ Draft Conclusion 17 of the Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*) adopted by the International Commission at its Seventy-third session, in 2022, and submitted to the General Assembly as part of the Commission’s report covering the work of that session (A/77/10, para. 43), *Yearbook of the International Law Commission, 2022, Vol. II, Part Two*.

²¹ *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. 515, para. 107.

²² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 47, para. 88.

The *nexus* between the word “fulfilment” on one hand and the inherent nature, characteristics and consequences of *jus cogens* norms on the other hand

6. I shall now address the *nexus* between the word “fulfilment” and the *jus cogens* character of the prohibition in more detail. In so far as disputes about the “fulfilment” of the Genocide Convention raise questions of “compliance” with other rules, the interpretation of Article IX should take into account the *jus cogens* character of such norm. The interpretation of the word “fulfilment” requires engagement with the concept of compliance²³. This, in turn, calls for a closer analysis of the rule which is to be complied with, including its inherent nature, its particular characteristics and the consequences it engenders. Hence, the emphasis on “compliance” in this regard generates the need to interpret Article IX in the light of the character of the underlying provisions. This is true both cumulatively, when the entire Convention is interpreted in a logical manner with reference to its object and purpose, and individually, when only a clause thereof, such as Article IX, is interpreted in a literal manner with a focus on its ordinary meaning.

7. In other words, a judicial organ cannot disentangle the character of a norm from the construction of that same norm because the norm was not conceived, and does not subsist, *in abstracto*. The peremptory character of the norm is significant when a judicial organ, like this Court, is entrusted to analyse the treaty provisions which unequivocally outlaw genocide. Such an *approach, or a method of interpretation* is consonant with the tenet of *effet utile*.

8. Furthermore, the *travaux préparatoires* confirm that “the word ‘fulfilment’ referred to the compliance or non-compliance of a party with the provisions of the Convention. The word ‘fulfilment’ therefore had a much wider meaning than the word ‘application’.”²⁴ They reveal in particular that the word “‘application’ included the study of circumstances in which the Convention should or should not apply, while the word ‘fulfilment’ referred to the compliance or non-compliance of a party with the provisions of the Convention”²⁵.

²³ *Official records of the Third Session of the General Assembly, Part I, Legal Questions, Sixth Committee, Summary Records of Meetings 21 September – 10 December 1948*, p. 437, cited in R. Kolb, “The Scope Ratione Materiae of the Compulsory Jurisdiction of the ICJ”, in Paola Gaeta (ed), *The UN Genocide Convention: A Commentary*, (OUP 2009), p. 452.

²⁴ *Official records of the Third Session of the General Assembly, Part I, Legal Questions, Sixth Committee, Summary Records of Meetings 21 September – 10 December 1948*, p. 437.

²⁵ *Official records of the Third Session of the General Assembly, Part I, Legal Questions, Sixth Committee, Summary Records of Meetings 21 September – 10 December 1948*, p. 437, cited in R. Kolb, “The Scope Ratione Materiae of the Compulsory Jurisdiction of the ICJ”, in Paola Gaeta (ed), *The UN Genocide Convention: A Commentary*, (OUP 2009), p. 452.

9. The elasticity of the word “fulfilment” is revealed not only when compared to the word “application”, but also when compared to the word “interpretation”. The latter term — “interpretation” — describes “the process of establishing the true meaning of a treaty”²⁶, whereas “fulfilment” describes the extent to which the true meaning, scope and spirit of the treaty are executed, implemented, enforced and complied with by its signatories.

10. Madam President, Members of the Court, in view of the multilingual dimension of this Court, I shall undertake my concluding observations in French.

Remarques finales

11. Il s’ensuit que les clauses compromissaires qui renvoient à des dispositions de nature *jus cogens*, comme et notamment l’article IX de la convention sur le génocide, ne doivent pas être interprétées de manière restrictive. Le rejet de la compétence dans cette affaire pourrait remettre en cause le statut particulier des normes de *jus cogens* au sein de l’ordre juridique international, tel qu’il est consacré à l’article 53 de la convention de Vienne sur le droit des traités. Merci beaucoup pour votre attention.

The PRESIDENT: I thank Mr Soler. I now invite Mr Kristian Jervell to address the Court on behalf of Norway. You have the floor, Sir.

Mr JERVELL:

ORAL OBSERVATIONS OF NORWAY

Introduction

1. Madam President, honourable Members of the Court, it is an honour to appear before you on behalf of the Kingdom of Norway.

2. Norway is using its right to intervene in this case brought by Ukraine against the Russian Federation based on the Genocide Convention. This is the first time that Norway intervenes in contentious proceedings before the Court. We do not do so lightly. However, it quickly became clear to us that this case raises legal issues of utmost importance not only to the Genocide Convention, to

²⁶ Oliver Dörr, “Article 31: General rule of interpretation”, in O. Dörr and K. Schmalenbach, *Vienna Convention on the Law of Treaties: A Commentary*, 2012, Springer, p. 522.

which Norway is a party but, more fundamentally, to the integrity of the international legal order. The Court's ability to play its critical role in this legal order is at the forefront already at this preliminary objections' stage. It will remain so for the potential merits' stage of these proceedings. Norway's remarks are made in this context.

The construction of the Genocide Convention Article IX

3. Turning now to the construction of Article IX. Norway considers that Article IX raises three questions for the Court to consider: Firstly, the Court must ask whether a dispute exists in the case before it. If the Court finds that a dispute exists, the next question is whether the Court has jurisdiction *ratione materiae* to adjudicate this dispute. For this to be the case, the dispute must relate to the "interpretation, application or fulfilment" of the Genocide Convention. If this is also answered in the affirmative, the third question is whether the Court has been seised by one of the parties to the dispute. As always, the answers to these questions, must follow from an application of the means of treaty interpretation as they follow from customary international law, and as reflected in the Vienna Convention on the Law of Treaties Articles 31-33.

4. Further analysis of these three questions can be found in our written submissions. To the third question, whether the Court has been seised by one of the parties to the dispute, Norway submits that if the Court finds that a dispute exists over which it has jurisdiction *ratione materiae*, it necessarily follows from this conclusion that all parties to that dispute are entitled to seise the Court. This is evident from the words "any of the parties to the dispute" in Article IX. In the Court's words: "[i]t does not matter which one of them advances a claim and which one opposes it"²⁷. Furthermore, the choice of the word "shall" in Article IX (as in "shall be submitted to the International Court of Justice") affirms the intention that all disputes pertaining to the Genocide Convention were to be brought to the Court's attention. In sum, the wording of Article IX, read in good faith and in context, clearly speaks against establishing a high threshold for the Court's jurisdiction.

5. This is further substantiated by the Convention's object and purpose. Of the different avenues available under the Convention, recourse to the Court under Article IX is particularly

²⁷ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 26, para. 50.*

important. *Ad hoc* Judge Kress in his declaration related to jurisdiction in *The Gambia v. Myanmar* states:

“While the entitlement of a State party to invoke the responsibility of another State party for an alleged violation of an obligation *erga omnes partes* under the Genocide Convention is not the only way to act in the relevant common interest, a State’s entitlement to seek judicial protection before the Court significantly complements the other avenues through which it may uphold that interest.”²⁸

6. Norway considers that the common interest and *erga omnes partes* character underpinning the Genocide Convention speak against narrowly construing the “*entitlement* to seek judicial protection before the Court”. Such an interpretation would risk precluding a victim State from seeking relief from the Court when faced with abuses of the Convention. This would undermine the Convention’s credibility and efficiency as a universal instrument for the prevention of genocide, as well as the role of the Court as a critical avenue for redress against abuses of the law.

Advancing the good administration of justice

7. Now, as a second point, I will turn to the advancing of the good administration of justice. The Russian Federation has argued that the interventions made by other State parties in this case are “not genuine” and that their goal is to “pursue a joint case with Ukraine”. This was initially forwarded as grounds for dismissal of the interventions — an argument the Court correctly has rejected. However, we also understand this as an attempt to convince the Court that the number and character of the interventions could interfere with the good administration of justice and that this should impact the Court’s approach and procedure.

8. Madam President, honourable Members of the Court, it is a matter of fact that a legal dispute of the kind where a State seises the Court, rarely appears in a vacuum. Such cases will always exist within a broader context of both factual and political circumstances. This should not impact the Court’s legal assessment and method, which must always be based on the generally recognized means of treaty interpretation. In Norway’s view, the good administration of justice is achieved precisely through the Court performing its role in accordance with the Statute and based on the Rules of Court irrespective of the circumstances surrounding a particular case. *This* is the way to ensure

²⁸ *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*, declaration of Judge *ad hoc* Kress, p. 546, para. 18.

that cases are addressed based on the fundamental objectives of fairness, impartiality and timeliness. If the Court were persuaded to deviate from these rules or to interpret them narrowly based on such external circumstances, it would be detrimental to the principles which the Court seeks to uphold.

9. For example, it is true that Norway has condemned the Russian Federation's war of aggression against Ukraine in the strongest possible terms as a blatant violation of international law in *other* relevant fora. However, and as confirmed by the Court's decision on admissibility of Norway's intervention, this is not relevant for Norway's right to opine on the construction of the Genocide Convention under Article 63 of the Statute as a means for other States than the ones at bar to provide their views to the Court. Respectfully, the two are not mutually exclusive.

10. Madam President, distinguished Members of the Court, this concludes my observations on behalf of Norway. Thank you.

The PRESIDENT: I thank Mr Jervell. I now give the floor to Mr Andrew Williams, for New Zealand. You have the floor, Sir.

Mr WILLIAMS:

ORAL SUBMISSIONS OF THE GOVERNMENT OF NEW ZEALAND

1. Madam President, Members of the Court, it is an honour to appear before you today and to present New Zealand's submissions in these critical proceedings.

2. New Zealand has chosen to intervene in these proceedings because we consider that the issues in this case go to the very heart of the international rule of law and the protection of this Court's role in the peaceful settlement of disputes.

Support for the submissions of Ukraine and intervening States

3. Madam President, I do not intend to repeat every point put forward in New Zealand's written observations. Nor will I rehearse the arguments made by Ukraine and the other intervening States in their written and oral submissions. We broadly support the points they have made.

4. In particular:

(a) New Zealand supports the United Kingdom's analysis of the criteria for the establishment of a legal dispute;

(b) we also endorse the points that Australia made this morning regarding the scope of the Court’s jurisdiction *ratione materiae* under Article IX; and

(c) we agree with the arguments put forward by the other intervening States confirming that this Court clearly has the power to declare that an applicant State has complied with its obligations under the Convention.

5. On all three issues, the Russian Federation seeks to artificially restrict the jurisdiction of this Court — in a manner that is inconsistent both with the plain language of Article IX and the Court’s previous decisions. In New Zealand’s view, there is nothing in the arguments put forward by the Russian Federation that warrants a departure from the jurisprudence of this Court.

**Consequences of refusal to comply with provisional measures for
the determination of jurisdiction**

6. Madam President, I will focus the remainder of my submissions on one specific element of New Zealand’s written observations regarding the interpretation of Article IX.

7. That is: how a party’s outright refusal to comply with provisional measures may be relevant to the Court’s determination of jurisdiction under the Convention²⁹.

8. As Ukraine has already set out in its written observations, and as elaborated by Mr Gimblett yesterday, there is no question that this Court can find that a party has violated a provisional measures order, regardless of how it may ultimately rule on jurisdiction³⁰. Such a violation is both an insult to the judicial authority of the Court and a breach of the Statute itself.

9. In New Zealand’s submission, however, a party’s refusal to comply with provisional measures also carries two further important legal consequences:

(a) first, it can provide evidence of the existence of a legal dispute between the parties³¹; and

(b) second, it is a substantive breach of Article IX itself³².

²⁹ Addressed in the Written Observations of the Government of New Zealand, 4 July 2023, paras. 16-22 and 23-26.

³⁰ WOU, paras. 184-193.

³¹ *Ibid.*, paras. 23-26.

³² *Ibid.*, paras. 16-22.

10. Madam President, as this Court recognized when applying Article IX in the *Myanmar Genocide* case³³, in order for a dispute to exist, there must be a clear “conflict of legal views”³⁴ — “the claim of one party [must be] positively opposed by the other”³⁵.

11. Further, and as the Court stated in the same case, the conduct of the parties after an application is filed can provide evidence of the existence of a dispute³⁶. In determining whether a dispute exists, the Court can look at what a party did — and did not do — after the application was filed.

12. A party’s refusal to comply with the provisional measures is a clear example of such conduct. Where, in the defiance of the Court’s direction to stop, a party:

(a) persists with actions that form the basis of the claim against it, and then

(b) justifies those actions on the very same basis as gave rise to the claim,

the Court may look to that as evidence. Evidence not just that the party denies the jurisdiction of this Court, but evidence also of the existence of a legal dispute.

13. Indeed, it is hard to imagine any stronger indication that a party positively opposes the legal and factual claims that have been made against it — or conduct that more clearly demonstrates that there is a conflict of views between the parties on the legal issues and their consequences. Such non-compliance acts as a complete rejection of the applicant’s claims. It is conduct that speaks as loud as any words.

14. But the consequences of a party’s refusal to comply with provisional measures are more than evidential. In New Zealand’s submission, such a refusal constitutes a substantive breach of Article IX itself — thus creating a basis for the jurisdiction of the Court.

15. Madam President, Article IX forms an integral part of the Convention. It serves the same high ideals as the rest of the Convention, which form the “foundation and measure of all its

³³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022, I.C.J. Reports 2022*, p. 477.

³⁴ *Ibid.*, p. 502, para. 63.

³⁵ *Ibid.*

³⁶ *Ibid.*, p. 502, para. 64.

provisions”³⁷. Proper fulfilment of Article IX is essential to the fulfilment of the objects and purposes of the Convention itself.

16. Like all treaty obligations, Article IX must be performed in good faith. The centrality of that principle — codified in Articles 26 and 31 of the Vienna Convention on the Law of Treaties — is beyond doubt.

17. It is likewise established that the principle of good faith carries with it a duty to co-operate in the settlement of a dispute. That duty to co-operate — expressly confirmed by the Arbitral Tribunal in the *South China Sea Arbitration*³⁸ — mirrors the duty to co-operate in the context of negotiation, which was affirmed by this Court in the *North Sea Continental Shelf* cases³⁹, and has been consistently reaffirmed in the 50 years since.

18. Article IX is thus more than a merely procedural obligation. It also has a substantive character. Through Article IX, the Contracting Parties have agreed to a procedure for the settlement of their disputes — that is, the submission to this Court. At the same time, they have assumed a substantive duty to co-operate and comply with all aspects of that procedure reasonably and in good faith. That duty applies equally to all States — whether large or small.

19. A party to a dispute may breach its obligations under Article IX in a number of ways. It may, for example, ignore the Court’s proceedings entirely. Or it may reject the Court’s authority and refuse to comply with the provisional measures it has indicated.

20. Such actions constitute a substantive breach of Article IX itself. By failing to comply with the Court’s procedure, the party has breached the duty implicit within Article IX itself. And that breach may in turn give rise to a dispute as to the “application or fulfilment” of the Convention — itself providing a basis for the jurisdiction of this Court.

Conclusion

21. Madam President, the impacts of a refusal to comply with the binding orders of this Court extend well beyond the parties to an individual dispute.

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

³⁸ *South China Sea Arbitration, Philippines v. China, Award, PCA case 2013-19*, para. 1171.

³⁹ *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 47, para. 85 (a), and pp. 48-49, paras. 86-87.

22. As the Court has consistently found — most recently in the *Myanmar Genocide* case — the obligations contained in the Convention are obligations *erga omnes*⁴⁰. It follows that all States parties to the Convention have an interest in securing compliance with those obligations — including the obligations in Article IX.

23. A party's refusal to comply with provisional measures is a breach of Article IX, one with significant and far-reaching consequences. It undermines the high ideals of the Convention; it challenges the authority of this Court; it aggravates the underlying dispute; and it threatens the maintenance of international peace and security. As this case demonstrates, those consequences are not merely theoretical: they are real, with political, economic and humanitarian impacts that have been felt across the globe.

24. Thank you, Madam President, distinguished Members of the Court, that concludes the submissions of New Zealand.

The PRESIDENT: I thank Mr Williams and I now invite HE Ms Margareta Kassangana to address the Court on behalf of Poland. You have the floor, Excellency.

Ms KASSANGANA:

ORAL OBSERVATIONS OF THE REPUBLIC OF POLAND

Introduction

1. Madam President, distinguished Members of the Court, it is an honour to appear before you on behalf of the Republic of Poland.

2. Poland intervenes in these proceedings in its capacity as a party to the Convention on the Prevention and Punishment of the Crime of Genocide. My remarks will present views on the construction of Article IX and other provisions of the Convention relevant to a determination of the Court's jurisdiction. These views can be divided into four main points.

⁴⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022, I.C.J. Reports 2022*, pp. 515-516, paras. 106-107.

Broad formulation of Article IX

3. First, Article IX is a broadly formulated compromissory clause that does not contain any specific restrictions. Already in the *Bosnian Genocide* case, the Court noted that Article IX contains “one unusual feature” distinguishing it from “a standard dispute settlement provision” — namely, that the Court’s jurisdiction “includ[es] those disputes relating to the responsibility of a State for genocide”⁴¹. Article IX’s ordinary meaning makes it clear there is no need to establish genocidal acts as a basis to affirm the Court’s jurisdiction. Article IX does not entail any limitations for this type of judgment. 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 making the accusation. In particular, the context of the phrase “relating to” in Article IX confirms that the Court’s jurisdiction extends beyond disputes between States over responsibility for alleged genocidal acts, and also covers disputes between States over the absence of genocide and the performance of treaty obligations by one or more State parties. As a result, the Court has jurisdiction over the question of whether genocidal acts have been or are being committed.

Object and purpose of Genocide Convention and Article IX

4. Second, the Convention’s object and purpose give further support to a broad interpretation of Article IX. As the Court noted in the *Reservations to the Convention on Genocide* Advisory Opinion: “The Convention was manifestly adopted for a purely humanitarian and civilizing purpose”⁴² and “its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality”⁴³. The importance of the issue regulated by the Convention makes such an interpretation of particular value, as it can contribute to understanding the term genocide under the Convention and influence its appropriate future application. The exclusion of such types of disputes would run counter to the Convention’s provisions, as well as to the humanitarian and civilizing purposes for which it was adopted.

⁴¹ *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.

⁴² *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 23.

⁴³ *Ibid.*

Article IX and abusive allegations of genocide

5. Third, Article IX of the Genocide Convention applies to disputes about false and abusive allegations of genocide, as they raise the question of compliance with Article I of the Convention. According to this provision, all State Parties are obliged to prevent and punish genocide. As the Court already emphasized, “the Contracting Parties must implement this obligation in good faith, taking into account other parts of the Convention, in particular Articles VIII and IX, as well as its preamble”⁴⁴. A false and abusive allegation by one State against another runs counter to the obligation to apply Article I in good faith and thus distorts the terms of the Convention. Accordingly, Article IX also covers such disputes.

Disputes concerning unilateral action for the stated purpose of genocide

6. Fourth, Article IX concerns disputes about otherwise unlawful actions as a means for the prevention and punishment of genocide. Thus, as Judge Robinson stated in his separate opinion “Article I of the Convention imposes an obligation on Russia not only to act to prevent genocide, but to act within the limits permitted by international law to prevent genocide”⁴⁵. The Court’s jurisdiction under Article IX of the Convention extends to disputes concerning unilateral action for the stated purpose of preventing and punishing alleged genocide, as it encompasses issues of interpretation concerning several provisions of the Convention.

Conclusion

7. In conclusion, Madam President and distinguished Members of the Court, Poland submits that the ordinary meaning of Article IX of the Convention and its context, along with the Convention’s entire object and purpose, show that a dispute regarding acts carried out by one State against another State based on claims of genocide falls under the notion of a “dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention”. Thus, this provision concerns a situation in which one State raises the commission of genocide by another State and the latter opposes such an assertion. As a result, if the representative of one State makes a general allegation that another State has committed genocide and tries to infer

⁴⁴ *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.*

⁴⁵ *Ibid.*, separate opinion of Judge Robinson, p. 251, para. 27.

from this allegation certain rights, such conduct is covered by the subject-matter of the Convention. Certainly, such behaviour cannot be considered insignificant from the perspective of the Convention's jurisdictional and substantive provisions.

8. Finally, from a systemic perspective, it is posited that the Court, as the principal judicial organ of the United Nations, whose primary function is the preservation of international peace and security, has a positive obligation to contribute to that aim by providing a judicial framework for the resolution of legal acts, especially those which not only threaten international peace and security but have also escalated to a full-scale military invasion, involving enormous human suffering and continuing loss of life. Madam President and distinguished Members of the Court, I thank you for your attention.

The PRESIDENT: I thank HE Ms Kassangana, and I shall now give the floor to Ms Patrícia Galvão Teles, for Portugal. You have the floor, Madam.

Ms GALVÃO TELES:

ORAL OBSERVATIONS OF THE PORTUGUESE REPUBLIC

1. Madam President, honourable Members of the Court, it is a great honour to appear today before you to convey the Portuguese Republic's observations on the construction of Article IX of the Genocide Convention and other provisions relevant to the determination of the jurisdiction of the Court in the present proceedings.

2. The Portuguese Republic has requested to intervene on the basis of Article 63 of the Statute of the Court since, as a State party to the 1948 Genocide Convention — a cornerstone instrument of the current international legal order and for the protection of human dignity — it felt compelled to do so. Not by choice, but precisely because the construction of such a fundamental convention to which Portugal is a party is in question in the present proceedings.

3. Madam President, Members of the Court, in these oral observations today, we wish to convey to the Court our main points on the construction of the Genocide Convention concerning the Court's jurisdiction. Taking into consideration the specific claims before the Court, the Portuguese Republic wishes to submit four observations on the construction of the Genocide Convention, in

particular of its Article IX, concerning the Court's jurisdiction, as follows: (i) the claim concerns an existing dispute; (ii) the dispute relates to the interpretation, application or fulfilment of the Convention; (iii) the dispute relates to substantive obligations under the Convention; and (iv) the claim was duly submitted by one of the Parties to the dispute.

4. Allow me briefly to develop these four observations.

5. *First*, the Portuguese Republic observes that the claim submitted by Ukraine concerns an existing dispute.

6. The notion of "dispute" is already well established in the case law of the Court, which considers the meaning given to the word "dispute" as "a disagreement on a point of law or fact, a conflict of legal views or of interests"⁴⁶ between the parties.

7. As already determined by this Court in its Order of 16 March 2022:

"The statements made by the State organs and senior officials of the Parties indicate a divergence of views as to whether certain acts allegedly committed by Ukraine in the Luhansk and Donetsk regions amount to genocide in violation of its obligations under the Genocide Convention, as well as whether the use of force by the Russian Federation for the stated purpose of preventing and punishing alleged genocide is a measure that can be taken in fulfilment of the obligation to prevent and punish genocide contained in Article I of the Convention"⁴⁷.

8. Moreover, it follows from the established case law of the Court that certain facts or omissions may give rise to a dispute that falls within the scope of more than one treaty. Hence, a parallel dispute arising out of the same facts does not create an obstacle to the jurisdiction of the Court under Article IX of the Genocide Convention, provided that its conditions are fulfilled.

9. *Second*, the Portuguese Republic further observes that the dispute relates to the interpretation, application or fulfilment of the Convention.

10. The Portuguese Republic is of the view that Article IX constitutes a broad jurisdictional clause, allowing the Court to adjudicate upon a vast array of disputes concerning the interpretation, application or fulfilment by a State party of its obligations under the Convention.

11. As the Court has stated before, the inclusion of the term *fulfilment* is unique as compared with other compromissory clauses found in other multilateral treaties which provide for submission

⁴⁶ *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.*

⁴⁷ *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. 222-223, para. 45.*

to the Court of such disputes between Contracting Parties as relate just to the interpretation or application of these treaties in question⁴⁸.

12. It appears that by inserting all the three alternative terms, the drafters of the Convention had sought to “give a coverage as exhaustive as possible to the compromissory clause” and to “close down all possible loopholes”⁴⁹. In particular, the term *fulfilment* supports a broad interpretation of Article IX.

13. In addition, the use of the expression of *the Convention* confirms the broad scope of the compromissory clause. It makes clear that Article IX relates to the entirety of the Convention, including the wide range of provisions thereof.

14. *Third*, the Portuguese Republic is of the view that the dispute in question relates to substantive obligations under or connected with the Convention. In fact, the jurisdiction *ratione materiae* of the Court includes the competence to address allegations of genocide that contravene the limits imposed by international law, as they raise the question of compliance with Article I of the Convention, which in turn provides the context for the construction of Article IX.

15. In accordance with Article I of the Convention, all States parties are obliged to prevent and punish genocide by employing “all means reasonably available so as to prevent genocide as far as possible”⁵⁰. However, in fulfilling their duty to prevent genocide, States parties must act within the limits permitted by international law, including, among others, the limits imposed by the definition of “genocide”, the principle of good faith, the prohibition of abuse of law, the obligation to settle disputes peacefully, and the principle of sovereignty. A State may not claim to enforce international law by violating international law. Therefore, if a State acts beyond the limits permitted in international law in the case at hand, the acts of that State would constitute a breach of the Convention.

⁴⁸ *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)*, declaration of Judge Oda, p. 627, para. 5.

⁴⁹ C. Tams (note 18), Art. IX, note 45; R. Kolb, “The Scope Ratione Materiae of the Compulsory Jurisdiction of the ICJ”, in: Paola Gaeta (ed.), *The UN Genocide Convention: A Commentary*, (OUP 2009), p. 451.

⁵⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 430.

16. For genocide to occur, there is a requirement to establish, based on compelling evidence, both genocidal action and a specific genocidal intent next to the mental elements present in the acts listed in Article II.

17. Where a State has not carried out a good faith assessment of genocide or serious risk of genocide, it cannot invoke the “undertak[ing] to prevent” genocide in Article I of the Convention as justification for its conduct. This includes conduct that involves the threat or use of force that would be contrary to international law.

18. The Convention’s object and purpose and the high values and principles it protects also prohibit any possibility of a State party to abuse its provisions and invoke them for any other purpose — other than those foreseen in the Convention.

19. Furthermore, it results from Article VIII of the Genocide Convention that the prevention and suppression of genocide is not a domestic matter but concerns the international community as a whole. States parties may call upon the competent organs of the United Nations to take necessary action under the Charter for the prevention and suppression of acts of genocide. This includes the Security Council, the General Assembly, and the Court itself as well.

20. Also, it is Portugal’s view that the Court has jurisdiction *ratione materiae* to declare the absence of genocide when a State makes false allegations that are not based on existing facts, thus constituting a violation of performance in good faith of the obligations under the Convention resulting in an abuse of its provisions.

21. The Convention’s credibility would be undermined if its authority could be abused by any State party without possibility of review by the Court.

22. *Fourth*, any party to the dispute may seise the Court under Article IX, including in particular the party which is the victim of an abusive allegation of genocide or any unlawful action as a means for prevention and punishment of genocide. To put it briefly, this is in our view the case in the current proceedings.

23. Madam President, honourable Members of the Court, *in conclusion*, the Portuguese Republic is of the view that the observations just presented should inform the construction of Article IX in what concerns the determination of the jurisdiction of the Court in the present

proceedings under the said article and other relevant provisions of the Genocide Convention. I thank you for your attention.

The PRESIDENT: I thank Ms Galvão Teles. I now give the floor to Ms Victoria Prentis, for the United Kingdom. You have the floor, Madam.

Ms PRENTIS:

**ORAL SUBMISSIONS OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**

1. Madam President, Members of the Court, I have the honour to appear before you on behalf of the United Kingdom as Attorney General. My submissions will focus on the Court's subject-matter jurisdiction.

2. The Court is engaged in the task of determining whether on a proper construction of Article IX it has subject-matter jurisdiction over this dispute. To perform that task it is necessary to characterize the dispute objectively. That requires close attention to Article I of the Convention. In that Article the Contracting Parties "undertake to prevent" genocide. In this case at least three issues of interpretation arise just from the words "undertake to prevent".

- (a) The *first* is whether a State must exercise due diligence in good faith in determining whether genocide is taking place or if there is a serious risk that it might take place⁵¹.
- (b) The *second* issue arises where a State takes measures purporting to fulfil its obligation to prevent genocide. The issue is whether it must act in good faith in choosing measures of prevention and in implementing them⁵².
- (c) The *third* issue relates to the second but is more specific. It is whether, when fulfilling its obligation to prevent genocide, a State must avoid measures that would breach the international law prohibitions on aggression, war crimes or crimes against humanity⁵³.

⁵¹ Declaration of Intervention under Article 63 of the United Kingdom of Great Britain and Northern Ireland ("Declaration of Intervention of the United Kingdom"), 1 August 2022, paras. 35-38; Written Observations of the United Kingdom of Great Britain and Northern Ireland on the Preliminary Objections of the Russian Federation ("Written Observations of the United Kingdom"), 5 July 2023, para. 42.

⁵² Declaration of Intervention of the United Kingdom, para. 38; Written Observations of the United Kingdom, para. 43.

⁵³ Declaration of Intervention of the United Kingdom, paras. 59-62; Written Observations of the United Kingdom, para. 44.

Those are questions of construction. The related questions of application and fulfilment are whether those limitations on the performance of Article I have been complied with. Article IX gives the Court jurisdiction over all of those questions of interpretation, application and fulfilment.

3. Madam President, in this case the Russian Federation asserts that Ukraine’s case requires the Court to exercise jurisdiction in respect of rules extrinsic to the Genocide Convention. It contends that Ukraine is attempting to “expand[] the Court’s jurisdiction under Article IX over matters that manifestly fall outside the subject-matter of the [Genocide] Convention”⁵⁴. The real debate, however, is about whether Ukraine is attempting to expand the scope of Article I. That is exactly the kind of debate over which Article IX gives the Court jurisdiction.

4. In that context, let us look at the good faith requirements within Article I.

5. The Court has explained that 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”⁵⁵. Indeed, the Court has recognized good faith as “[o]ne of the basic principles governing the . . . performance of legal obligations, whatever their source”⁵⁶. In this case, the Court has already indicated that the Contracting Parties to the Genocide Convention must perform — or “fulfil” — Article I in good faith⁵⁷.

6. The question of whether the undertaking to prevent genocide includes good faith requirements plainly comes within the Court’s jurisdiction. It is a question of the “interpretation” of Article I.

7. A dispute as to whether a Contracting Party has *in fact* performed that undertaking in good faith is a dispute relating to the “application or fulfilment” of Article I. It therefore also falls within the Court’s jurisdiction⁵⁸. By certain conduct a State may purport to fulfil the undertaking to prevent genocide, but not do so in good faith. By the same conduct, a State may simultaneously breach other

⁵⁴ PORF, 1 October 2022, para. 141 (emphasis in original removed). See also CR 2023/13, p. 62, para. 16, p. 68, para. 52 (Crosato).

⁵⁵ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 79, para. 142.

⁵⁶ *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 268, para. 46.

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. 224, para. 56.

⁵⁸ Declaration of Intervention of the United Kingdom, para. 37; Written Observations of the United Kingdom, para. 43.

rules of international law, in respect of which the Court has no jurisdiction. That does not affect the Court's jurisdiction over a dispute relating to fulfilment of the Genocide Convention⁵⁹.

8. Madam President, I now turn to the rules of international law said by the Russian Federation to be extrinsic to the Genocide Convention. The Russian Federation argues that

“the Convention does not incorporate an indefinite scope of other rules of international law, including those relating to the use of force, territorial integrity, self-determination and the recognition of States, through an alleged implicit obligation to ‘act within the limits of international law’”⁶⁰.

On Monday, the Russian Federation argued that Ukraine was asking the Court to incorporate “all of international law”⁶¹ into the Genocide Convention.

9. In the *Bosnian Genocide* case, the Court observed that, in performing obligations under Article I, “every State may only act within the limits permitted by international law”⁶². The Russian Federation argues that this statement is inapplicable because it was made in a case where the respondent State was accused of failing to take action to prevent genocide⁶³. That distinction is irrelevant. The Court was explaining limits that would constrain a State in performing its Article I obligations. The Court has already cited that part of *Bosnian Genocide* in the present case when it observed that “acts undertaken by the Contracting Parties ‘to prevent and to punish’ genocide must be in conformity with the spirit and aims of the United Nations”⁶⁴.

10. In its preamble, the Genocide Convention makes clear that its object and purpose is to prevent a “crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world”. Along the same lines, the Court has stated that “[t]he Convention was manifestly adopted for a purely humanitarian and civilizing purpose”, with its “object” being “on the one hand . . . to safeguard the very existence of certain human groups and on the other to

⁵⁹ Written Observations of the United Kingdom, paras. 26-28.

⁶⁰ PORF, para. 215. 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, I.C.J. Reports 2022*, separate opinion of Judge Robinson, p. 251, para. 27. See also CR 2023/13, p. 61, para. 7, p. 62, para. 16, p. 67, para. 44, p. 69, para. 54, p. 73, para. 76 (Crosato).

⁶¹ CR 2023/13, p. 69, para. 54 (Crosato).

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. 221, para. 430.

⁶³ PORF, para. 175; CR 2023/13, p. 70, paras. 60-62 (Crosato).

⁶⁴ *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.

confirm and endorse the most elementary principles of morality”⁶⁵. Article I must be interpreted to reflect this object and purpose. This means that measures taken pursuant to Article I to prevent genocide cannot involve aggression, war crimes or crimes against humanity. Commission of these crimes is evidently not compatible with the Genocide Convention’s humanitarian underpinnings.

11. Such crimes may generate responsibility outside the Genocide Convention under different rules of international law. Their commission may also be inconsistent with the constraints in Article I of the Genocide Convention, including the requirement for good faith. A dispute about whether such conduct is inconsistent with those constraints would relate to the application and fulfilment of the Convention and therefore be within the Court’s jurisdiction.

12. The “scope” of other rules of international law that constrain conduct permitted by Article I is not “indefinite”. In other cases on which the Russian Federation has relied⁶⁶, the Court has found that rules of international law extrinsic to the treaty in question were not relevant to its interpretation. This was because the rules were “unrelated” or “simply not germane” to the treaty’s object and purpose⁶⁷. This is not the case for the constraints within Article I. These constraints are not extrinsic to the Convention. Rather, they are embedded within it, consistently with the object and purpose of the Convention. It is unthinkable that a State fulfilling its undertaking to prevent genocide in good faith could do so through aggression or other international crimes.

13. Madam President, Members of the Court, those are the submissions of the United Kingdom. I thank you for your attention.

The PRESIDENT: I thank Ms Prentis. I now invite Mr Marko Rakovec to address the Court on behalf of Slovenia. You have the floor, Sir.

⁶⁵ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

⁶⁶ PORF, paras. 158, 197-206; CR 2023/13, pp. 73-75, paras. 80-88 (Crosato).

⁶⁷ See e.g. *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 321-322, paras. 95-96; *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.

Mr RAKOVEC:

ORAL OBSERVATIONS OF THE REPUBLIC OF SLOVENIA

1. Madam President, distinguished Members of the Court, it is an honour to appear before you, and to do so as Agent of the Republic of Slovenia. We have the highest respect for this Court and its important mission to ensure respect for international law, of which it is the organ. Therefore, we are grateful for the opportunity to present Slovenia's observations on the construction of the Genocide Convention and to assist the Court in accomplishing its mission.

2. Madam President, today, the Court had the opportunity to listen to the observations and presentations of my colleagues from other States intervening in the present case. The Republic of Slovenia will not try to summarize these observations. But, as you will have noticed, the positions of the intervening States concerning the proper construction of Article IX of the Genocide Convention are fully aligned. Counsel for the Russian Federation suggested on Monday that the interventions were part of "a massive intervention campaign"⁶⁸ and an abuse of process. You have already rejected this unfounded allegation in your Order of 5 June⁶⁹.

3. Indeed, the large interest of other States in the construction of the Genocide Convention shows the importance and the value attached to the Convention itself, to its proper interpretation and application, and to its integrity⁷⁰, which are essential for the realization of its "purely humanitarian and civilizing purpose"⁷¹. Moreover, the similarities in the positions expressed by intervening States attest to the soundness of their construction of Article IX and other provisions of the Convention.

4. Mindful of the Court's Order of 5 June, which you recalled on Monday⁷², the Republic of Slovenia will draw the Court's attention to three points concerning Article IX of the Convention.

⁶⁸ CR 2023/13, p. 98, para. 41 (Udovichenko).

⁶⁹ *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*, paras. 55-60.

⁷⁰ See also CR 2023/14, p. 45, para. 19 (Koh).

⁷¹ *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. 111, para. 162; *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

⁷² CR 2023/13, p. 37 (President). See also *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. 99.

5. Madam President, Members of the Court, the jurisdiction and authority of the Court under Article IX — and this is my first point — is not limited to the assessment of whether a State is responsible for acts of genocide. The Russian Federation suggested repeatedly on Monday morning that the Court’s jurisdiction is “limited to breaches of the Convention”⁷³ or that “[o]ne would expect an applicant under the Genocide Convention to claim that a Contracting Party had failed to prevent genocide”⁷⁴. Of course, Article IX specifically refers to disputes “relating to the responsibility of a State for genocide”. But this is only one kind of dispute specifically included by the terms of the provision. Article IX does not restrict the Court’s jurisdiction to disputes concerning the *breach* of the obligation not to commit genocide.

6. The drafters of the Convention have carefully formulated Article IX in order to grant the Court with the most comprehensive jurisdiction in respect of the Convention⁷⁵. As has been recalled by Ukraine⁷⁶ and the intervening States, and as is readily apparent from the text of the provision, the Contracting States entrusted the Court with jurisdiction on any dispute “relating to the interpretation, application or fulfilment of the . . . Convention” submitted “at the request of any of the parties to the dispute”.

7. The text and scope of Article IX include the situation, considered “unusual” by the Russian Federation⁷⁷, where a Contracting State submits that it has been the object of false accusations of genocide and claims that it had not committed genocide. This brings me to my second point, Madam President. The text of Article IX leaves no doubt: any dispute can be submitted “at the request of any of the parties to the dispute”: the State claiming that the genocide was or is committed by another State, but also the State that is falsely accused of having committed genocide. There is no reason why under Article IX a State could not have recourse to the Court in order to establish that no genocide has taken place; it is plainly a question relating to the interpretation, application and fulfilment of the Convention. In any event, it is unreasonable to suggest that a State accused of having committed genocide and against which another State has taken measures relying on its obligation to prevent or

⁷³ CR 2023/13, p. 77, para. 100 (Crosato).

⁷⁴ *Ibid.*, p. 62, para. 12 (Crosato).

⁷⁵ Written Observations of the Republic of Slovenia, para. 7.

⁷⁶ CR 2023/14, p. 35, para. 6 (Korynevych); p. 43, para. 13 (Koh).

⁷⁷ CR 2023/13, p. 91, para. 4 (Udovichenko).

to punish genocide must wait for the latter to institute proceedings before the Court. Such a narrow interpretation of Article IX is not only contradicted by the ordinary meaning of its terms; it would also deprive the Court of its essential role within the system established under the Convention⁷⁸.

8. The proper construction of Article IX thus proves the arguments of the Russian Federation concerning what it called “a reverse compliance declaration”⁷⁹ wrong. A request that a State has not committed genocide does not only fall within the terms of Article IX. It is also entirely consistent with the mission and judicial function of the Court. Being a court of law, its function includes, as recalled by the Statute, deciding “legal disputes concerning . . . the interpretation of a treaty” and those concerning “the existence of any fact, which, if established, would constitute a breach of an international obligation”⁸⁰ or not. Contrary to the allegations of the Russian Federation⁸¹, a judgment on the issues submitted in the present proceedings is not a simple academic exercise. The Court will “state the law . . . in connection with [a] concrete case[]”⁸², its judgment will have “practical consequence . . . [and] remov[e] uncertainty from [the] legal relations”⁸³ of the parties concerned — to use the words of the Court’s Judgment in *Northern Cameroons*. Indeed, your judgment will clarify whether a State has committed genocide or not and whether another State wrongfully relied on Article I of the Convention in order to implement measures punishing or preventing alleged genocide.

9. Madam President, Members of the Court, this brings me to my third and last point. The Republic of Slovenia considers, in line with the position expressed by other States today, that, under a proper interpretation of Article IX, the Court has also jurisdiction on the question of the measures implemented and of the means deployed by a State in order to purportedly comply with — indeed, to fulfil — its obligations under Article I of the Convention. This, too, is a question relating to the interpretation, the application or the fulfilment of the Convention. The Convention provides guidance

⁷⁸ *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, joint separate opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, p. 72, para. 28.

⁷⁹ CR 2023/13, p. 91, para. 4 (Udovichenko).

⁸⁰ Statute of the International Court of Justice, Article 36 (2) (a) and (c).

⁸¹ CR 2023/13, p. 88, para. 30 (Yee).

⁸² *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 33.

⁸³ *Ibid.*, p. 34.

on the means of the implementation of its obligations. In particular, it establishes mechanisms for its proper implementation through international co-operation to which the Republic of Slovenia attaches utmost importance⁸⁴. The fulfilment or the purported reliance on the obligation to prevent and to punish genocide must be also assessed in light of the general principle, inherent in any treaty⁸⁵, of good-faith application as codified in Article 26 of the Vienna Convention⁸⁶; it must also be assessed, as you recalled, in light of “the limits permitted by international law”⁸⁷. These questions, and the consequences that result from an incorrect, abusive application or fulfilment of the Convention, will fall within the scope of Article IX. This holds true even if and independently of the different issue whether considerations that are claimed to lie outside the Convention may be involved. As recalled in the *Appeal Relating to the Jurisdiction of the ICAO Council* case, “[t]he fact that a defence on the merits is cast in a particular form, cannot affect the competence of the tribunal or other organ concerned, — otherwise parties would be in a position themselves to control that competence, which would be inadmissible”⁸⁸.

10. Madam President, Members of the Court, the correct construction of Article IX is not only an issue particular to the present proceedings; it has far-reaching consequences for the integrity of the Convention and for the essential role of the Court in the implementation and correct application of this landmarked human rights instrument at the eve of its 75th anniversary. The Court has been entrusted with the power to deal with these questions, and it must exercise that power to its full extent⁸⁹.

11. Madam President, this concludes Slovenia’s observations and brings an end to this long day of pleadings. Since I am the last speaker today, allow me to thank, in the name of intervening

⁸⁴ Written Observations of the Republic of Slovenia, para. 35.

⁸⁵ CR 2023/14, p. 76, para. 39 (Thouvenin).

⁸⁶ See also *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 78-79, para. 142.

⁸⁷ *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. 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, I.C.J. Reports 2022, p. 225, para. 57.

⁸⁸ *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, Judgment, I.C.J. Reports 1972, p. 61, para. 27.

⁸⁹ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 23, para. 19.

States, the Registry, its staff and the interpreters for their assistance and smooth organization of today's hearings. I thank you for your kind attention.

The PRESIDENT: I thank Mr Rakovec. Your statement brings to an end this afternoon's session. The Court will meet again on Monday 25 September, at 10 a.m., to hear the second round of argument of the Russian Federation.

The sitting is adjourned.

The Court rose at 4.15 p.m.
