

INTERNATIONAL COURT OF JUSTICE

ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION
ON THE PREVENTION AND PUNISHMENT
OF THE CRIME OF GENOCIDE
(UKRAINE v. RUSSIAN FEDERATION)

APPLICATION FOR PERMISSION TO INTERVENE
BY THE GOVERNMENT OF THE REPUBLIC OF POLAND

23 July 2024

1. The Government of the Republic of Poland has the honour to request permission from the International Court of Justice (“the Court”) to intervene in the case concerning the *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. The present Application (“Republic of Poland’s Application”) is made in accordance with Article 62 of the Statute of the Court.
2. The Republic of Poland would like to stress that nothing in the Statute of the Court precludes simultaneous interventions by the invocation of Article 63 and Article 62 of the Statute, when the interventions accomplish a double object.¹ In this case, the Republic of Poland sees its legal interest linked not only with the construction of the treaties in question, as presented in the declaration of intervention made under Article 63 of the Statute, but also with the Convention’s application in this case. For that reason, the Republic of Poland is also filing an application for permission to intervene under Article 62 of the Statute. The Republic of Poland makes a clear distinction between its intervention based on Article 63, in which it limits its comments to the mere construction of the treaties in question, and its intervention based on Article 62, in which the Republic of Poland refers to the way Convention has been applied by both parties to the dispute.

I. Preliminary Observations

3. The Republic of Poland limits its preliminary observations concerning the stages of the present proceeding and refers to its observations made in the Declaration of the Intervention submitted on 23 July 2024 based on Article 63.
4. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation (“Russia”) concerning a Dispute Relating to Allegations of Genocide.²

¹ ICJ, Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) case, Order of 22 September 1995, I.C.J. Reports 1995, p. 288, at p. 292, para 11 ff. Cf. also S.S. “Wimbledon” (Question of Intervention by Poland), Judgment of 28 June 1923, P.C.I.J., Series A, No. 1, p. 11, at p.12.

² Dispute Relating to Allegations of Genocide (Ukraine v. Russian Federation), Application instituting proceedings filed in the Registry of the Court on 26 February 2022.

5. Following a request for provisional measures from Ukraine, the Court on 16 March 2022 ordered that:

“(1) The Russian Federation shall immediately suspend the military operation that it commenced on 24 February 2022 on the territory of Ukraine;

(2) The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and person which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point (1) above; and

(3) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

6. In the written proceedings on the merits, the following submissions were presented on behalf of the Government of Ukraine in its Memorial:

“For the reasons set out in this Memorial, Ukraine respectfully requests the Court to:

(a) Adjudge and declare that the Court has jurisdiction over this dispute.

(b) Adjudge and declare that there is no credible evidence that Ukraine is responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk oblasts of Ukraine.

(c) Adjudge and declare that the Russian Federation’s use of force in and against Ukraine beginning on 24 February 2022 violates Articles I and IV of the Genocide Convention.

(d) Adjudge and declare that the Russian Federation’s recognition of the independence of the so-called ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’ on 21 February 2022 violates Articles I and IV of the Genocide Convention.

(e) Adjudge and declare that, by failing to immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine, and by failing to ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of these military operations, the Russian

Federation violated the independent obligations imposed on it by the Order indicating provisional measures issued by the Court of 16 March 2022”.³

7. In the Judgment rendered on 2 February 2024, the Court concluded that it has jurisdiction, on the basis of Article IX of the Genocide Convention, to entertain submission (b) in paragraph 178 of the Memorial of Ukraine, whereby Ukraine requests the Court to “[a]djudge and declare that there is no credible evidence that Ukraine is responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk oblasts of Ukraine”, and that this submission is admissible.⁴ The Court in its Judgment of 2 February 2024 on preliminary objections did not make any decisions concerning provisional measures ordered on 16 March 2022.
8. As of the date of this Application, Russia has failed to comply with the Order of 16 March 2022 and has intensified and expanded its military operations on the territory of Ukraine. Thus, Russia has aggravated the dispute pending before the Court.

II. The Republic of Poland’s Interest of a Legal Nature That May Be Affected by the Decision of the Court

9. In accordance with Article 62 of the Court’s Statute, States may be permitted to intervene in a contentious case if they consider that they have an interest of a legal nature which may be affected by the Court’s decision. In the present case, the Republic of Poland has such an interest that stems from:

A. The erga omnes partes nature of the obligations under the Genocide Convention

10. In its 1951 Advisory Opinion, the Court had already issued the following commentary on the issue of “interest” with respect to the Genocide Convention: “In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a

³ The Memorial of Ukraine, 1 July 2022, para 178.

⁴ ICJ, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening), Preliminary Objections, Judgement of 2 February 2024.

common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention”.⁵

11. In its subsequent 1970 judgment concerning the Barcelona Traction, Light and Power Company, The Court stressed that the obligations of a State towards the international community as a whole, derived for example from the outlawing of acts of genocide, “[b]y their very nature (...) are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.”⁶
12. In addition, the Court in its 2012 judgment on Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) emphasized that “any State party to the Convention may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes* (...) and to bring that failure to an end.”⁷
13. This view was confirmed by the Court in its 2022 judgment in the Gambia v. Myanmar case: “All the States 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. As the Court has affirmed, such a common interest implies that the obligations in question are owed by any State party to all the other States parties to the relevant convention; they are obligations *erga omnes partes*, in the sense that each State party has an interest in compliance with them in any given case.”⁸ In the Gambia v. Myanmar case, the Court also clarified that: “[t]he common interest in compliance with the relevant obligations under the Genocide Convention entails

⁵ ICJ, Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 16, at p. 23.

⁶ ICJ, The Barcelona Traction, Light and Power Company, Limited (New Application: 1962, Belgium v. Spain), Second Phase, Judgment of 5 February 1970, I.C.J. Reports 1970, p. 3, at p. 32, para. 33-34.

⁷ ICJ, Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Merits, Judgment of 20 July 2012, I.C.J. Reports 2012, p. 422, at p. 450, para. 69.

⁸ ICJ, 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, at p. 515-516, para. 107.

that any State party, without distinction, is entitled to invoke the responsibility of another State party for an alleged breach of its obligations *erga omnes partes*. Responsibility for an alleged breach of obligations *erga omnes partes* under the Genocide Convention may be invoked through the institution of proceedings before the Court, regardless of whether a special interest can be demonstrated.”⁹

14. Therefore, if every State Party to the Genocide Convention has a legal interest sufficient to provide it with standing in an application under Article IX of the Convention, then every State Party must also possess an "interest of a legal nature which may be affected by the decision in the case" contemplated by Article 62 of the Statute of the Court.
15. When matters of common interest are at stake, intervention in legal proceedings, by providing additional elements to the Court for its consideration and reasoning, can be of particular importance.¹⁰
16. According to the Court, "[t]he State seeking to intervene as a non-party therefore does not have to establish that one of its rights may be affected; it is sufficient for that State to establish that its interest of a legal nature may be affected".¹¹ The Republic of Poland, as a party to the Genocide Convention and as the beneficiary of the *erga omnes* rights embodied

⁹ Ibid., at p. 516, para. 108. See also Article 48 of the International Law Commission's ("ILC") Articles on State Responsibility for Internationally Wrongful Acts adopted in 2001: "[a]ny State other than an injured State is entitled to invoke the responsibility of another State (...) if (a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or (b) the obligation breached is owed to the international community as a whole."

¹⁰ ICJ, Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Declaration of Intervention by New Zealand, Order of 6 February 2013, Separate opinion of Judge Cançado Trindade, ICJ Reports 2013, p. 3, at p. 39-40, para 76; Institut de Droit International, Resolution: Obligations *Erga Omnes* in International Law, Kraków Session - 2005, Article 4.

¹¹ ICJ, Territorial and Maritime Dispute (Nicaragua v. Colombia), Application by Costa Rica for Permission to Intervene, Judgment, I.C.J. Reports 2011, p. 348, at p. 358-359, para. 26; ICJ, Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Application by Nicaragua for Permission to Intervene, Judgment, I.C.J. Reports 1990, p. 92, at p. 129, para. 87; ICJ, The Barcelona Traction, Light and Power Company, Limited (New Application: 1962, Belgium v. Spain), Second Phase, Judgment of 5 February 1970, I.C.J. Reports 1970, p. 3, at p. 36, para. 46.

in it, has a legal interest in the fulfilment of the conventional obligations by all States parties, including Russia and Ukraine.

B. Implications of the possible judgment for assessing Polish support for Ukraine

**The Republic of Poland's Position Based on the Available Facts about Ukraine,
2014-2022**

17. Firstly, the Republic of Poland wishes to recall some basic facts to clarify the circumstances of its conduct. It should be emphasized that the Russian Federation has engaged in aggression against Ukraine since February 2014, committing all acts of aggression identified in United Nations General Assembly Resolution 3314 of 14 December 1974, which “reflect customary international law”.¹²
18. Due to the Russian veto, the United Nations (UN) Security Council has not managed to condemn Russia's aggression in 2014.¹³ Still, the UN General Assembly in its resolution no. 68/262 of 27 March 2014 called upon all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol. The UN General Assembly simultaneously affirmed “its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders”. Subsequent UN General Assembly resolutions reaffirmed the non-recognition of Crimea's annexation by the Russian Federation.¹⁴ In the case of hostilities in eastern Ukraine, once again due to the

¹² ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment of 27 June 1986, I.C.J. Reports 1986, p. 14, at p.103, para 195; ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Merits, Judgment of 19 December 2005, I.C.J. Reports 2005, p. 168, at p. 222-223, para. 146.

¹³ UN Doc. S/2014/189 of 15 March 2014.

¹⁴ UN Doc. A/RES/71/205 of 19 December 2016 (Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine); UN Doc. A/RES/72/190 of 19 December 2017 (Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine); UN Doc. A/RES/73/263 of 22 December 2018 (Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine); UN Doc. A/RES/74/168 of 18 December 2019 (Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine); UN Doc. A/RES/75/29 of 7 December 2020 (Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the

high probability, verging on certainty, that Russia would use its veto, the UN Security Council was unable to openly cite any acts of aggression committed by Russia against Ukraine in its Eastern region. In accord with the view of the UN General Assembly, the Republic of Poland has taken the position that since 2014, the Russian Federation has seriously breached the prohibition of aggression, which is a peremptory norm of general international law¹⁵. This view is shared by many other states, including 27 NATO members.¹⁶

19. A similar position was taken by the Council of Europe, of which Russia was a member until its expulsion in 2022. The Parliamentary Assembly of the Council of Europe (“PACE”), in resolution no. 1988 (Recent developments in Ukraine: threats to the functioning of democratic institutions) adopted on 9 April 2014, condemned “the Russian military aggression and subsequent annexation of Crimea, which is in clear violation of international law, including the United Nations Charter, the OSCE Helsinki Act and the Statute and basic principles of the Council of Europe”. Furthermore, PACE in its resolution no. 2112 (The humanitarian concerns with regard to people captured during the war in Ukraine), adopted on 21 April 2016, stated: “Since the illegal annexation of Crimea by the Russian Federation and the beginning of military aggression in the Luhansk and Donetsk regions in eastern Ukraine, hundreds of Ukrainian servicemen and civilians have been reported captured or abducted”.

Black Sea and the Sea of Azov); UN Doc. A/RES/76/179 of 16 December 2021 (Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine).

¹⁵ “One needs to emphasise with all might that the occupation of Crimea and aggression in Ukraine is a violation of standards of international law and runs roughshod over the fundamental values of the United Nations”, address of the President of the Republic of Poland at the 69th Session of the UN General Assembly 25th September 2014, <https://www.president.pl/president-komorowski/news/president-poland-for-reform-of-un-security-council,38985>; Cf. ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens) adopted in 2022, Annex.

¹⁶ “We are extremely concerned by the further escalation of aggressive actions in eastern Ukraine. We see a concerted campaign of violence by Russia and Russian-backed separatists aimed at destabilising Ukraine as a sovereign state”, Wales Summit Declaration issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Wales, 5 September 2014, para 24 (available at https://www.nato.int/cps/en/natohq/official_texts_112964.htm, accessed on 22 July 2024).

20. The President of the Russian Federation himself said in 2015 that “[w]e’ve never said there are no people there [in Donbas] who deal with certain matters, including in the military area...”. For the European Court of Human Rights “[t]his statement, in and of itself, provides sufficient grounds for the inference that there were members of the Russian military operating inside eastern Ukraine at the relevant time” with respect to whom Russia has “consistently failed to provide any explanation whatsoever”¹⁷. In consequence, the European Court of Human Rights in its decision of 2022 in the case of *Ukraine and the Netherlands v. Russia* undoubtedly confirmed that Russia exercised effective control in eastern Ukraine¹⁸, as it did confirm the fact of Russia’s exercise of effective control in Crimea in its 2020 decision on *Ukraine v. Russia (re Crimea)*¹⁹. In the latter judgment, it described Russia’s conduct in a way which fully conforms to the definition of aggression under international law.

¹⁷ European Court of Human Rights (“ECtHR”), Decision of the Grand Chamber in the case of *Ukraine and the Netherlands v. Russia*, 30 November 2022 (Applications nos. 8019/16, 43800/14 and 28525/20), para 588.

¹⁸ ECtHR, Decision of the Grand Chamber in the case of *Ukraine and the Netherlands v. Russia*, 30 November 2022 (Applications nos. 8019/16, 43800/14 and 28525/20), para. 695: „The vast body of evidence above demonstrates beyond reasonable doubt that, as a result of Russia’s military presence in eastern Ukraine and the decisive degree of influence and control it enjoyed over the areas under separatist control in eastern Ukraine as a result of its military, political and economic support to the separatist entities, these areas were, from 11 May 2014 and subsequently, under the effective control of the Russian Federation (...); para. 697 “(...) the finding that the Russian Federation had effective control over the relevant parts of Donbass controlled by the subordinate separatist administrations or separatist armed groups means that the acts and omissions of the separatists are attributable to the Russian Federation in the same way as the acts and omissions of any subordinate administration engage the responsibility of the territorial State.”

¹⁹ ECtHR, Decision of the Grand Chamber in the case of *Ukraine v. Russia (re Crimea)* of 16 December 2020, (Applications nos. 20958/14 and 38334/18), para. 335; cf. 328 where the ECtHR referred to „specific actions taken by the Russian military forces with a view to ensuring the control of entry and exit points into Crimea, operations to block or disable (disarm) Ukrainian military forces and the detention of Ukrainian soldiers. The applicant Government’s account remained coherent throughout the proceedings before the Court, and involved consistent information regarding the manner, place and time of the alleged events, as well as the military formations of the respondent State involved. In this connection it is noteworthy that the respondent Government did not submit any evidence to refute the applicant Government’s account, such as deployment records in relation to the identified military formations, over which the respondent Government necessarily have exclusive control. Nor did they provide any convincing arguments that could call into question the credibility of the applicant Government’s version of events and the evidence submitted in support of it.”; ECtHR, Grand Chamber, Judgment in the case of *Ukraine v. Russia (re Crimea)* of 25 June 2024, (Applications nos. 20958/14 and 38334/18), para. 918.

21. These facts must necessarily affect the actions undertaken by Polish authorities as, in accordance with customary international law, all states are obliged to cooperate to bring to an end through lawful means the serious breach of the peremptory norm.²⁰
22. The Republic of Poland is aware of the content of the Court's preliminary objection judgment of 2 February 2024, in which the court decided that submissions made by Ukraine that the Russian Federation's use of force in and against Ukraine beginning in 24 February 2022 and the Russian Federation's recognition of the independence of the so-called 'Donetsk People's Republic' and 'Luhansk People's Republic' violate Articles I and IV of the Genocide Convention do not fall within the Convention's provisions. Nevertheless, the Court needs to consider that false accusations of Ukraine's responsibility for genocide have been used to justify the continuing aggression since 2014. One of the consequences of this aggression was an increase in hatred and incitements to violence. To call another state responsible for genocide is one of the gravest legal accusations, especially in a region which has already experienced bloodbaths of nations marked for extermination by totalitarian regimes.
23. During the period 2014-2022, no international organization, including the United Nations (e.g., the Human Rights Monitoring Mission in Ukraine²¹ deployed in March 2014) or the Organization for Security and Co-operation in Europe, whose Special Monitoring Mission in Ukraine²² was active between March 2014 and March 2022, confirmed or even suggested that Ukraine might be responsible for genocide. The Republic of Poland is unaware of any international proceeding initiated by any state, including Russia, to verify or claim that genocide might have been committed by Ukraine.

²⁰ Article 41(1) of ILC, Articles on Responsibility of States for Internationally Wrongful Acts adopted in 2001; Conclusion 19 of ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens) adopted in 2022.

²¹ As of July 2023, the Human Rights Monitoring Mission in Ukraine has released 35 periodic reports, 10 briefing papers, nine thematic reports and six updates on the human rights situation in Ukraine, all of them providing partners in Ukraine and beyond with evidence-based findings presented at each session of the Human Rights Council, <https://www.ohchr.org/en/countries/ukraine/our-presence> (accessed on 22 July 2024).

²² OSCE Special Monitoring Mission to Ukraine, <https://www.osce.org/special-monitoring-mission-to-ukraine/513337> (accessed on 22 July 2024).

24. Furthermore, while neither Russia nor Ukraine are parties to the Rome Statute of the International Criminal Court, only Ukraine has submitted two declarations to the Court, on 9 April 2014 and 8 September 2015, pursuant to Article 12(3) of the Rome Statute. In accordance with those declarations, the ICC has jurisdiction under the Rome Statute over alleged crimes occurring on Ukrainian territory after 21 November 2013. It is worth noting that the ICC's Office of the Prosecutor to this day has made no statement suggesting a reasonable basis to believe genocide was committed by Ukraine's officials.²³ Therefore, the Republic of Poland was and still is of the opinion that there is no evidence Ukraine engaged in any genocidal acts in the relevant time period.

Scale and Kind of Support Provided by the Republic of Poland to Ukraine

25. Throughout the 2014-2022 time period scrutinized by the Court in the current proceeding, the Republic of Poland has given comprehensive and complex support to the Ukrainian state and its nationals. This support was based on two crucial assumptions: (1) Ukraine is a victim of Russian aggression; (2) No genocide was committed by Ukraine on its territory.

26. Polish support ranged from the renovation and protection of cultural objects²⁴, scholarships²⁵, humanitarian and social assistance²⁶ to law enforcement²⁷ and military cooperation²⁸. The support was directed, among other places, to the Donetsk and Luhansk

²³ See e.g. Statement of the Prosecutor Fatou Bensouda on the conclusion of the preliminary examination in the situation in Ukraine of 11 December 2020, available at <https://www.icc-cpi.int/news/statement-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-ukraine> (accessed on 22 July 2024).

²⁴ See, for example, a 2015 programme financed by the Polish Ministry of Culture and National Heritage for the protection of cultural goods in emergency situations, along with 2014-2022 programmes financed by the same Ministry on renovation and conservation of dozens of monuments in Ukraine.

²⁵ E.g., the Stanisław Banach Scholarships financed by the Ministry of Education and Science; the Lane Kirkland Scholarships financed by the Ministry of Education and Science; and several other scholarship programmes financed by other Polish government ministries.

²⁶ E.g., the programme financed in 2019-2021 by the Polish Ministry of Foreign Affairs (MFA) through Polish Humanitarian Action to assess needs and provide high-quality social service centers in Donetsk oblast.

²⁷ See para 29 of the Republic of Poland's Application.

²⁸ See para 28 of the Republic of Poland's Application.

Oblasts of Ukraine, where the Republic of Poland provided humanitarian²⁹, social³⁰, medical³¹, and psychological³² assistance to victims of hostilities in Eastern Ukraine, in particular to children from Donbas. The Republic of Poland also launched various programmes aimed at enhancing the capacity of Ukrainian agencies to react to the crisis³³, help fight disinformation³⁴, safely educate children³⁵, and promote entrepreneurship³⁶ among people affected by the war in Eastern Ukraine.

27. In addition to the examples cited above, the Republic of Poland has financially contributed to UNICEF's Humanitarian Action for Children – Ukraine, the OSCE Special Monitoring Mission in Ukraine, the UN Human Rights Monitoring Mission in Ukraine, UN OCHA, UNDP and the International Committee of the Red Cross (ICRC), among others.

²⁹ E.g., the programme financed in 2016-2018 by the Polish MFA through Polish Humanitarian Action to provide humanitarian and social protection for displaced persons and local communities in Donetsk Oblast.

³⁰ E.g., the programme financed in 2018 by the Office of the Polish Prime Minister through Caritas Polska to extend direct social and psychological support to residents of Donetsk and Lugansk Oblast territories controlled by Ukraine; the programme financed in 2020 by the Polish MFA on social assistance centres in Eastern Ukraine; the programme financed in 2020 by the Polish MFA through the “Most Solidarności” Foundation to provide social and medical services in Donetsk Oblast.

³¹ E.g., the programme financed in 2020 by the Polish MFA to support efforts to combat the Covid-19 pandemic in Donetsk Oblast; the programme financed in 2018 by the Polish MFA through Caritas Polska to support local medical clinics in Eastern Ukraine.

³² E.g., the programme financed in 2018 by the Polish MFA to widen access to psychological counseling for internally displaced persons as well as the programme to improve the quality of the psychological health and palliative medicine services in Luhansk Oblast; the programme financed in 2018 by the Office of the Polish Prime Minister through Caritas Polska to provide psychological counseling for residents of Donetsk and Luhansk Oblast territories controlled by Ukraine; the programme financed in 2017 by the Polish MFA through the HumanDoc Foundation to support an integration centre for displaced persons in Kharkiv.

³³ E.g., several programmes financed by the Polish Ministry of Internal Affairs and Administration on improving the effectiveness and reaction times of Ukrainian emergency services.

³⁴ E.g., the programme financed in 2018 by the Polish MFA through the “Edukacja dla Demokracji” Foundation on helping Hromadskie Radio become an independent information source for Ukrainians; also, a programme financed in 2021 by the Polish MFA to support victims of the armed conflict in Donbas, including families of missing or illegally detained people and former prisoners.

³⁵ E.g., programmes financed in 2015 and 2021 by the Polish MFA to promote e-learning for students in Donbas.

³⁶ E.g., the programme financed in 2015 by the Polish MFA encouraging innovative forms of employment for internally displaced mothers; the programme financed in 2017 by the Polish MFA through Adventist Development and Relief Agency Polska help displaced persons develop entrepreneurial skills.

28. As for military support extended by the Republic of Poland to Ukraine, on 2 December 2016, a General Agreement was signed between the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine on mutual military cooperation, establishing a legal basis and framework for cooperation between the two states in the area of defence, as well as enabling support for Ukraine in the face of Russian aggression.³⁷ Article 12 of the agreement stipulates that in the event of a state of emergency, natural disaster or martial law declared in the territory of one or both Parties, the Parties may offer each other immediate support. This assistance can include gratuitous transfers of armaments, dual-use items and non-combat assets from the armed forces of the Parties, along with special advisory and support services, and temporary exchanges of trained and competent military and civilian personnel to perform predetermined work and services.
29. Furthermore, the Republic of Poland has provided wide-ranging support to Ukrainian law enforcement through training, know-how transfers and workshops led by Polish law enforcement personnel. These activities focused on combating crime, including terrorism, weapons training and criminology.³⁸
30. In addition, the Polish Police supported the activities of the OSCE special observation mission, established in 2014 at the request of the Ukrainian government and by a unanimous decision of all OSCE member countries, including Russia. The OSCE mission had a civilian character and its representatives served 24 hours a day, unarmed, in all regions of Ukraine. The mission's basic tasks included monitoring the situation in Ukraine and objectively reporting their observations to mission authorities.³⁹
31. Finally, in 2014-2015, the Republic of Poland provided humanitarian aid to Ukrainians internally displaced by Russian aggression.⁴⁰

³⁷ *Monitor Polski*, (Official Gazette of the Republic of Poland) of 2019, item no. 50.

³⁸ E.g., the capacity-building programme sponsored in 2018 by the Polish Ministry of Finance to strengthen Ukraine's ability to combat money laundering and financing of terrorism.

³⁹ OSCE Special Monitoring Mission to Ukraine, <https://www.osce.org/special-monitoring-mission-to-ukraine/513337> (accessed on 22 July 2024).

⁴⁰ E.g., programmes sponsored by the Polish MFA in 2014 through Caritas Polska and in 2015 through "Europejski Dom Spotkań-Fundacja Nowy Staw".

**The Republic of Poland’s Support in the Context of Allegations of Genocide
in the Donetsk and Luhansk Oblasts of Ukraine**

32. Russia’s President announced on 24 February 2022: “The purpose of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime.”⁴¹
33. In its Provisional Measures Order of 16 March 2022, the Court observed: “[T]he Investigative Committee of the Russian Federation — an official State organ — has since 2014 instituted criminal proceedings against high-ranking Ukrainian officials regarding the alleged commission of acts of genocide against the Russian speaking population living in the above-mentioned regions ‘in violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide’”.⁴²
34. During the oral hearing of 18 September 2023, Russia stated that “Kiev launched in 2014 a full-scale war against Donbass, its policy to brutally quash any dissent, obstruct journalists and promote hatred against ethnic Russians”⁴³ and that “Kiev imposed a suffocating blockade on Donbass, robbing their populations of access to water, food, electricity, medicine and other critical goods, and launched the so-called ‘anti-terrorist operation’, deploying military force against its own population, igniting a civil war”.⁴⁴
35. Furthermore, Russia’s baseless statements also directly referred to the Republic of Poland’s engagement in Ukraine. In 2015, President Putin accused the Republic of Poland of fomenting the so-called “Revolution of Dignity”, which took place in February 2014, and

⁴¹ Russian President Vladimir Putin, Address by the President of the Russian Federation (24 Feb. 2022), p. 8, available at <http://en.kremlin.ru/events/president/news/67843> (accessed on 22 July 2024).

⁴² ICJ, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Request for the indication of provisional measure, Order of 16 March 2022, I.C.J. Reports 2022, p. 211, at p. 221, para. 37.

⁴³ Public sitting held on Monday 18 September 2023, at 10 a.m., at the Peace Palace, President Donoghue, presiding, in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening), Verbatim Record, CR 2023/13, para 8.

⁴⁴ *Ibidem*, para 10.

of supposedly helping to prepare armed detachments⁴⁵ apparently for “a full-scale war against Donbas”.⁴⁶ Conversely, shortly after the Revolution, it was Russia that initiated acts of aggression against Ukraine. In 2016, State Duma Chairman Sergey Naryshkin suggested that “[t]he foreign ministers of Germany, France and Poland bear their share of responsibility for what is happening in Ukraine”.⁴⁷ In 2021, the spokeswoman of Russia’s Ministry of Foreign Affairs insinuated that the Republic of Poland also negatively contributed to the situation in Eastern Ukraine after 2014.⁴⁸ Dmitry Medvedev, Deputy Chairman of the Security Council of Russia since 2020, argued that the Republic of Poland is eternally Russophobic.⁴⁹ The comments by senior Russian officials indicate that amid ongoing Russian aggression, the Republic of Poland’s fears were not irrational.⁵⁰

⁴⁵ President Vladimir Putin’s statement of 15 March 2015: “It was they who helped prepare the nationalists, they helped prepare the combat units. Preparations were taking place both in western Ukraine and in Poland, and partly in Lithuania. What did our partners do? They contributed to the coup, that is, they began to act from a position of strength” <https://tass.ru/politika/1829664> (accessed on 22 July 2024).

⁴⁶ “Kiev launched in 2014 a full-scale war against Donbass, its policy to brutally quash any dissent, obstruct journalists and promote hatred against ethnic Russians”, Public sitting held on Monday 18 September 2023, at 10 a.m., at the Peace Palace, President Donoghue, presiding, in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening), Verbatim Record, CR 2023/13, para 8.

⁴⁷ Interfax, Moscow, 25 November 2014.

⁴⁸ Statement by Maria Zacharova, 1 April 2021: “I would like to recall the role of Baltic diplomats and state officials from Poland, Germany and the United States who directly fashioned and implemented the 2014 processes in Ukraine. Dozens and hundreds of the so-called foreign “specialists” in all fields, including security services and mercenaries, stayed in Ukraine and were involved in implementing Ukraine’s political agenda by posing as the ‘Ukrainian public’ or ‘consultants.’ This was interference in a sovereign state’s affairs,” https://mid.ru/ru/foreign_policy/news/1418864/ (accessed on 22 July 2024).

⁴⁹ Интервью Заместителя Председателя Совета Безопасности Российской Федерации Д.А.Медведева телекомпании, Deutsche Welle, 17 сентября 2021 года, <http://www.scrf.gov.ru/news/speeches/3077/>, (accessed on 22 July 2024).

⁵⁰ In a speech to the UN Security Council on 23 February 2024, the Republic of Poland’s Minister of Foreign Affairs Radosław Sikorski said: “I’m amazed at the tone and the content of the presentation by the Russian ambassador (...) He said we are prisoners of Russophobia. ‘Phobia’ means irrational fear. Yet, we are being threatened almost every day by the former president of Russia and Putin’s propagandists with nuclear annihilation. I put it to you that it is not irrational – when Russia threatens us, we trust them.” For the full text of Foreign Minister Sikorski’s speech, see: <https://www.gov.pl/web/diplomacy/minister-radoslaw-sikorski-deliveres-speech-at-the-un-security-council> (accessed on 22 July 2024).

36. Each Contracting Party to the Genocide Convention has a duty to prevent the commission of genocide. This obligation, pursuant to Article I of the Genocide Convention, requires States parties that are aware, or should normally have been aware, of the serious risk that acts of genocide could have been committed, to employ all means reasonably available to them to prevent genocide as far as possible.⁵¹ Recently, the Court affirmed that obligations stemming from the Genocide Convention must be taken into account by a State, especially when transferring arms to parties in an armed conflict.⁵²

37. As the Court has already indicated, various parameters operate when assessing whether a State has duly discharged its obligation of prevention under the Genocide Convention. In particular, the Court indicated, among other things, that the nature of this obligation depends in part on “the geographical distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events”.⁵³ Taking into account the fact that the Republic of Poland is Ukraine’s immediate neighbour and that since 2014, the Republic of Poland has provided Ukraine with significant assistance, including humanitarian aid and support delivered by military, law enforcement and emergency personnel to Luhansk and Donetsk Oblasts, where the alleged genocide was supposedly committed, it seems clear that a potential Court judgment on the existence of credible evidence that Ukraine is responsible for committing genocide would affect the Republic of Poland’s legal interest.

38. As a State can be held responsible for breaching the obligation to prevent genocide or the obligation not to provide aid or assistance in committing genocide only if genocide was actually committed,⁵⁴ the question whether there is a credible evidence that Ukraine is

⁵¹ ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, I.C.J. Reports 2007, p. 43, at pp. 221-222, paras. 430-431.

⁵² ICJ, Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (Nicaragua v. Germany), Order of 30 April 2024, at p. 8, para 24.

⁵³ ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, I.C.J. Reports 2007, p. 43, at p. 221, para. 430.

⁵⁴ *Ibidem*, at pp. 221-222, para. 431.

responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk Oblasts of Ukraine is of fundamental importance for the Republic of Poland's legal interests.

39. Therefore, the Republic of Poland's legal interest is linked with the need to secure a correct interpretation of the Convention, having in mind its application in the current case. The Republic of Poland's legal interest may be affected not only by "the dispositif or operative part of the Court's decision", but also by "the reasons which constitute the necessary steps to the dispositif".⁵⁵

40. As stated by the Court: "Article 62 requires the interest relied upon by the State seeking to intervene to be of a legal nature, in the sense that this interest has to be the object of a real and concrete claim of that State, based on law, as opposed to a claim of a purely political, economic or strategic nature. But this is not just any kind of interest of a legal nature; it must in addition be possible for it to be affected, in its content and scope, by the Court's future decision in the main proceedings."⁵⁶ As a party to the Genocide Convention, the Republic of Poland has a legal interest, as do all the other parties to the Convention, in the Convention's proper application by other states. Mindful of its own obligation to prevent violation of the Genocide Convention, the Republic of Poland is aware that it cannot transfer arms or provide other assistance to a State committing genocide. Therefore, an accusation of genocide addressed towards Ukraine simultaneously affects the Republic of Poland's legal position as a state providing a wide range of support to Ukraine, including its Eastern regions, since 2014.

41. Additionally, the Republic of Poland considers its application for permission to intervene as a means of fulfilling its obligation to prevent and punish genocide by recourse to the principal judicial organ of the United Nations, i.e. the International Court of Justice.

⁵⁵ ICJ, *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Application by the Philippines for Permission to Intervene, Judgment of 23 October 2001, I.C.J. Reports 2001, p. 575, at p. 596, para. 47.

⁵⁶ ICJ, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application by Honduras for Permission to Intervene, Judgment of 4 May 2011, I.C.J. Reports 2011, p. 420, at p. 434, para. 37.

42. Furthermore, the Republic of Poland's legal interest lies in the Genocide Convention's proper interpretation and application in this case, as in the Republic of Poland's opinion, Russia's false allegations are examples of the Convention's weaponisation.⁵⁷ Therefore, the Republic of Poland wishes to raise fundamental questions of international law on behalf of the international community concerning the scope of the prevention obligation in relation to false allegations, as the Republic of Poland believes all States would benefit from the Court pronouncing on this issue. This is exactly the reason Judge Schwebel indicated as the proper purpose of an intervention.⁵⁸

III. The Republic of Poland's object of intervention

43. The object of the Republic of Poland's intervention, as stipulated by Article 81 of the Rules of the Court, is to protect the Republic of Poland's legal interest and, as a State with strong political links and geographical proximity to Ukraine, to inform the Court of its assessment of whether credible evidence exists that Ukraine is responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk Oblasts of Ukraine.

44. In particular, the Republic of Poland wishes to indicate that the allegations are false.

IV. The Position of the Republic of Poland in Respect of Jurisdiction

45. The Republic of Poland neither wishes nor seeks to become a party to the case pending before the Court. As the Republic of Poland intends to intervene as a non-Party in the proceedings, there is no need to prove a jurisdictional link.⁵⁹

⁵⁷ ICJ, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Judgment of 2 February 2024, Joint Dissenting Opinions of Judges Sebutinde and Robinson, at p. 2, para. 6.

⁵⁸ ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Request for the indication of Provisional Measures, Order of 10 May 1984, Dissenting Opinion of Judge Schwebel, I.C.J. Reports 1984, p. 169, at pp. 195-196; *ibidem*, Declaration of Intervention of the Republic of El Salvador, Order of 4 October 1984, Dissenting Opinion of Judge Schwebel, I.C.J. Reports 1984, p. 215, at p. 235.

⁵⁹ ICJ, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application by Costa Rica for Permission to Intervene, Judgment of 4 May 2011, I.C.J. Reports 2011, p. 348, at p. 361, para. 38.

46. Nevertheless, the Republic of Poland wishes to note that it, like Ukraine and Russia, is a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, to which Poland acceded on 14 November 1950. On 16 October 1997, the Government of the Republic of Poland notified the Secretary-General that it had decided to withdraw its reservation with regard to Article IX of the Convention, made upon accession.

A handwritten signature in blue ink, appearing to read 'Artur Harazim', written in a cursive style.

Artur Harazim

Agent of the Government of the Republic of Poland

