

INTERNATIONAL COURT OF JUSTICE

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

DECLARATION OF INTERVENTION
UNDER ARTICLE 63 OF THE STATUTE OF THE COURT
SUBMITTED BY THE REPUBLIC OF POLAND

23 July 2024

To the Registrar, International Court of Justice, the undersigned being duly authorized by the Government of the Republic of Poland:

1. On behalf of the Government of the Republic of Poland, I have the honour to submit to the Court a new Declaration of Intervention pursuant to the right to intervene set out in Article 63, paragraph 2, of the Statute of the Court (“the Statute”), in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). The purpose of submitting a new Declaration of Intervention stems from the Republic of Poland’s intention to broaden its scope of intervention compared with the Declaration of Intervention submitted on 15 September 2022, taking into account the Court’s Judgment of 2 February 2024 clarifying preliminary objections and deciding to proceed with the merits of the case.
2. Article 82, paragraph 5, of the Rules of the Court provides that a declaration of a State’s desire to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall specify the case and the convention to which it relates and shall contain:
 - (a) particulars of the basis on which the declarant State considers itself a party to the convention;
 - (b) identification of the particular provisions of the convention the construction of which it considers to be in question;
 - (c) a statement of the construction of those provisions for which it contends;
 - (d) a list of documents in support, which documents shall be attached.
3. These matters are addressed in sequence below, after some preliminary observations.

I. Preliminary Observations

4. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation concerning a Dispute Relating to Allegations of Genocide.¹

¹ 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. In its Application instituting the proceedings, Ukraine asks the Court to:

“a. Adjudge and declare that, contrary to what the Russian Federation claims, no acts of genocide, as defined by Article III of the Genocide Convention, have been committed in the Luhansk and Donetsk oblasts of Ukraine.

b. Adjudge and declare that the Russian Federation cannot lawfully take any action under the Genocide Convention in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims of genocide in the Luhansk and Donetsk oblasts of Ukraine.

c. 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 22 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.

d. Adjudge and declare that the “special military operation” declared and carried out by the Russian Federation on and after 24 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.

e. Require that the Russian Federation provide assurances and guarantees of non-repetition that it will not take any unlawful measures in and against Ukraine, including the use of force, on the basis of its false claim of genocide.

f. Order full reparation for all damage caused by the Russian Federation as a consequence of any actions taken on the basis of Russia’s false claim of genocide.”²

6. In a document communicated to the Court on 7 March 2022, the Russian Federation contended that the Court lacked jurisdiction to entertain the case and "request[ed] the Court to refrain from indicating provisional measures and to remove the case from the list".

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

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

² *Ibidem*, para 30.

(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 persons 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.

8. On 30 March 2022, pursuant to Article 63, paragraph 1, of the Statute of the Court, the Registrar duly notified the Government of the Republic of Poland as a party to the Convention that the construction of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide may be in question in the case.³
9. Between 21 July 2022 and 15 December 2022, 33 States (including the Republic of Poland) filed declarations of intervention under Article 63, paragraph 2, of the Statute of the Court. By an Order dated 5 June 2023, the Court decided that the declarations of intervention under Article 63 of the Statute submitted by 32 States were admissible at the preliminary objections stage of the proceedings, insofar as they concerned the construction of Article IX and other provisions of the Genocide Convention relevant to determining the Court's jurisdiction.
10. In the Judgment rendered on 2 February 2024, the Court concluded that it has jurisdiction, based on 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 the provisional measures ordered on 16 March 2022.

³ See Annex A to this Declaration.

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.

11. As a State Party to the Genocide Convention, the Republic of Poland, having a common interest in the construction of the Convention resulting from the case brought by Ukraine, exercises its right to intervene in these proceedings pursuant to Article 63(2) of the Statute. This Court has recognized that Article 63 confers a “right” of intervention, where the State seeking to intervene confines its intervention to “the point of interpretation which is in issue in the proceedings, and does not extend to general intervention in the case”. Thus, a third State not party to the proceedings, but party to a convention whose construction is in question in those proceedings, limits the object of the intervention to “present to the Court its observations on the construction of that convention”.⁵
12. Consistent with the restricted scope for interventions under Article 63 of the Statute, the Republic of Poland will present its interpretation of the relevant Articles of the Genocide Convention as well as of the Statute of International Court of Justice in line with the general rules of interpretation of treaties, as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. The Declarant will also refer to “judicial decisions and the teachings of the most highly qualified publicists of various nations” as a subsidiary means of interpretation, pursuant to Article 38(1)(d) of the Statute.
13. The Republic of Poland’s right to intervene in the present case arises from its status as a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention” or “Convention”), as well as a party to the Charter of the United Nations, to which the Statute of the International Court of Justice is annexed.

II. The Basis on which the Republic of Poland is a Party to the Convention and is bound by the Statute of the International Court of Justice

14. The Republic of Poland acceded to the Convention on 14 November 1950, before it entered into force on 12 January 1951. Upon its accession, Poland made reservations concerning

⁵ PCIJ, 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; ICJ, *Haya de la Torre (Colombia v. Peru)*, Judgment of 13 June 1951, I.C.J. Reports 1951, p. 71, at p. 76; ICJ, *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application by Malta for Permission to Intervene, Judgment of 14 April 1981, I.C.J. Reports 1981, p. 3, at pp. 15-16, para. 26; ICJ, *Whaling in the Arctic (Australia v. Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, at p. 5, para 7.

Articles IX and XII of the Convention⁶. However, on 16 October 1997, the Government of the Republic of Poland notified the Secretary-General that it had decided to withdraw its reservation made upon accession with regard to Article IX of the Convention.⁷ The Republic of Poland remains party to the Convention with full acceptance of the International Court of Justice's jurisdiction concerning disputes between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III.

15. The Republic of Poland is an Original Member of the United Nations. Thus, it has been bound by the Charter of the United Nations since 24 October 1945. In accordance with Article 93, paragraph 1, of the Charter of the United Nations: "All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice."

III. The Provisions of the Genocide Convention in Question in the Present Dispute

III.1. Introduction

16. The Genocide Convention, "is invoked both as a basis of the Court's jurisdiction and as a substantive basis of the Applicant's claims on the merits"⁸. Thus, the proper construction of the Convention is directly relevant to resolving the dispute placed before the Court by Ukraine's Application.
17. The Republic of Poland feels a particular obligation to avail itself of its right to submit observations on the interpretation of relevant provisions of the Convention. The word "genocide" was first coined in 1944 by the Polish lawyer Rafał Lemkin in his book *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (New York: Columbia University Press). Lemkin's work gave impulse to the drafting of the Genocide Convention, which Lemkin personally initiated. Simultaneously, Polish delegates were directly involved in negotiating its provisions and frequently referred

⁶ See Annex B to this Declaration.

⁷ See Annex C to this Declaration.

⁸ Letter to the States parties to the Genocide Convention by Philippe Gautier, Registrar, 30 March 2022.

to genocide committed on Polish territory against various nations, including Polish one, by enemy states, often using them to justify the wording of specific articles. Poland was also the first state in the world which prosecuted Nazi criminals for involvement in genocide.⁹

18. The Republic of Poland's interpretation of the Convention is based on the provisions of Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties. Article 31, paragraph 1 provides as the basic rule of interpretation: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". Such interpretation must also take account of the subsequent practice of the parties to the treaty and may be confirmed by reference to supplementary means of interpretation. These rules, as indicated by the Court on numerous occasions, reflect customary law and can also be applied to treaties concluded before the date of adoption of the Vienna Convention on the Law of Treaties¹⁰.
19. The Republic of Poland is further mindful that interpretation must take into account any relevant rules of international law applicable in relations between the parties, including any developments in those rules since the treaty's adoption. Moreover, the principle of good faith requires a party to apply a treaty provision "in a reasonable way and in such a manner that its purpose can be realized".¹¹

⁹ As an example, we would like to mention judgments of the Supreme National Tribunal (Najwyższy Trybunał Narodowy) of 9 July 1945 in the case against Arthur Greiser (The United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. XIII, His Majesty's Stationery Office, London 1949, pp.70-117); and of 5 September 1946 in the case against Amon Leopold Göth (The United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. VII, His Majesty's Stationery Office, London, 1948, pp.1-10). Both judgments referred directly to the notion of genocide and were issued before the announcement of the final verdict of the International Military Tribunal in Nuremberg on 1 October 1946. Moreover, the notion of genocide was also referred to by the Supreme National Tribunal in other verdicts, including on Rudolf Höss (Judgment of 2 April 1947) or on the Auschwitz camp staff (Arthur Liebehenschel et al.) (Judgment of 22 December 1947).

¹⁰ E.g. ICJ, Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment of 3 February 1994, I.C.J. Reports 1994, p. 6, at pp. 21-22, para. 41; ICJ, Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Jurisdiction and Admissibility, Judgment of 15 February 1995, I.C.J. Reports 1995, p. 6, at p. 18, para. 33; ICJ, Kasikili/Sedudu Island (Botswana/Namibia), Judgment of 13 December 1999, I.C.J. Reports 1999, p. 1045, at p. 1060, para 20.

¹¹ ICJ, Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment of 25 September 1997, I.C.J. Reports 1997, p. 7, at p. 79, para. 142.

20. Finally, it is to be noted that the Court considered the prohibition of genocide to have the character of a peremptory norm (*jus cogens*).¹² This Court has also acknowledged that the rights and obligations enshrined in the Convention have an *erga omnes* character.¹³ The Republic of Poland is thus fully aware of the common interest in fulfilling the humanitarian purposes of the Convention. Therefore, it understands that proper, good faith interpretation of the Convention's provisions is of the highest importance.
21. It can be stated with certainty that the Convention was created for a purely humanitarian purpose and cannot be construed in a manner that would allow any State to invoke it to justify military conquest or imperialistic designs.

III.2. Identification of the particular provisions of the Genocide Convention

22. Pursuant to the requirement stipulated in Article 82, paragraph 2(b) of the Rules of Court, Republic of Poland identifies the following provisions of the Convention which it considers to be particularly in question: Article I; Article II; Article VIII.
23. Furthermore, Republic of Poland reserves the right to comment on the following provisions of the Genocide Convention: Article III; Article IV; Article V; Article VI; Article VII and Article IX.

III. 3. Construction of provisions for which the Republic of Poland contends

Obligation not to commit genocide

24. Article I of the Genocide Convention reads as follows:

“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish”.

¹² ICJ, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction of the Court and Admissibility of the Application, Judgment of 3 February 2006, I.C.J. Reports 2006, p.6, at pp. 31-32, para. 64.

¹³ ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Preliminary Objections, Judgment of 11 July 1996, I.C.J. Reports 1996, p. 595, at pp. 615-616, para. 31.

Article I contains obligations of fundamental importance to the application of the Convention. As stated by the Court: “Under Article I the States parties are bound to prevent such an act, which it describes as ‘a crime under international law’, being committed. The Article does not *expressis verbis* require States to refrain from themselves committing genocide. However, in the view of the Court, taking into account the established purpose of the Convention, the effect of Article I is to prohibit States from themselves committing genocide”.¹⁴

25. The obligation not to commit genocide encompasses all acts indicated in Article III of the Genocide Convention, *i.e.* genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; complicity in genocide.

26. In order to assign to a State responsibility for the commission of genocide, it must be proven not only that genocide was committed but also that it is attributable to the State. Thus, it must be proven that acts of genocide were committed by State organs or by other entities exercising elements of governmental authority or that the conduct of a person committing genocide was directed or controlled by a State in accordance with the law of State responsibility.¹⁵

Obligation to prevent genocide

27. A State Party is expected to use its best efforts (a due diligence standard) when it has a “capacity to influence effectively the action of persons likely to commit, or already committing”¹⁶ acts of genocide, which in turn depends on the State Party’s geographic, political and other relations with the persons or groups at issue. Still, this obligation

¹⁴ 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. 113, para. 166.

¹⁵ Articles 4-11 on Attribution of Conduct to a State of Articles on State Responsibility for Internationally Wrongful Acts (2001) adopted by the International Law Commission, Yearbook of the International Law Commission 2001, vol. II, part two.

¹⁶ 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.

requires significant evidence that genocide is likely to be or is already being committed. It does not allow for conduct based solely on claims of genocide without any serious evidence of its commission.

28. An essential part of the obligation to prevent genocide is the adoption of national laws setting effective penalties for persons guilty of genocide (Article V). Fulfilling this obligation creates conditions conducive to genuine efforts to prosecute or extradite/surrender perpetrators (Article IV). Another associated obligation is not to classify genocide as a political crime for purposes of extradition (Article VII). Finally, acceptance of the International Criminal Court's jurisdiction via ratification of the Rome Statute or by declaration on acceptance of the Court's jurisdiction with respect to genocide pursuant to Article 12, paragraph 3, of the Rome Statute are potential steps which States might undertake to fulfil the obligation derived from Article VI of the Convention.

Calling upon competent organs

29. Furthermore, States, when discharging their duty to prevent genocide, "may only act within the limits permitted by international law", as stated in a previous case brought under the Convention.¹⁷ Such an interpretation is further corroborated by a reading of Article I, in particular in the context of Article VIII of the Convention. The latter provision reads as follows: "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III".

30. Article VIII of the Convention encourages the Contracting Parties to act through "the competent organs of the United Nations". It must be emphasized that travaux préparatoires of the Convention clearly indicate that Soviet delegates insisted that States should be obliged to report genocide to the Security Council.¹⁸ The final wording of Article VIII is not as strict as desired by the USSR, of which the Russian Federation is a continuator. Article VIII uses the phrase "may call upon", which might suggest that informing UN bodies is an option but not an obligation. However, the subsequent practice

¹⁷ *Ibidem*.

¹⁸ UN Doc. E/AC.25/7.

of States parties to the Genocide Convention within the United Nations should be taken into account. Those states supported the exercise by various UN organs of their powers to address genocide or the threat to commit genocide. Nowadays, genocide is treated as a threat to peace,¹⁹ and so-called “crime of crimes” that constitutes the most serious violation of human rights.²⁰ As such, it should be of concern to the principal organs of the United Nations, including the Security Council, the General Assembly, the Economic and Social Council, the Secretariat and the International Court of Justice, as this case demonstrates, as well as to various subsidiary bodies like the Human Rights Council or the Office on Genocide Prevention and the Responsibility to Protect. Confirmation of this concern was provided, for example, by Security Council Resolution 2150 of 16 April 2014, General Assembly Resolution 60/1 of 20 September 2005 (para. 138-141), and Human Rights Council Resolution 43/29 of 22 June 2020 on the Prevention of Genocide.²¹ Therefore, in today’s well-developed system of prevention and reaction to genocide, States that suspect such a crime may have been committed can and should call upon the competent organs of the UN before they decide on unilateral action, especially if it involves the use of force. This interpretation is consistent with the Preamble of the Genocide Convention, which emphasizes that “in order to liberate mankind from such an odious scourge, international co-operation is required”. In consequence, having in mind the gravity of accusations of genocide, the Convention’s Preamble directs States to multilateral institutions to properly assess the situation in an unbiased fashion.

31. The involvement of competent United Nations organs can be essential in assessing the credibility of evidence for the commission of genocide. In particular, this applies to determining the existence of any evidence – direct or indirect – indicating specific intent. Due to the legal and social gravity of accusations of genocide, specific intent cannot be presumed in such cases.

¹⁹ E.g. S/RES/955 of 8 November 1994; S/RES/2150 of 16 April 2014; see also International Law Commission, ‘Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May–26 July 1996’, UN Doc. A/51/10, p. 22.

²⁰ International Criminal Tribunal for Rwanda (ICTR), Prosecutor v. Kambanda, Judgment and Sentence of 4 September 1998, ICTR-97-23-S, para. 16.

²¹ Cf. also Resolution of Human Rights Council no. 7/25 of 28 March 2008, 22/22 of 22 March 2013, 28/34 of 27 March 2015 and 37/26 of 23 March 2018.

32. Similarly, the International Law Commission in Article 41 of its Articles on State Responsibility for Internationally Wrongful Acts (2001), with reference to a serious breach of obligations under peremptory norms of general international law, emphasized the obligation of States to cooperate to bring to an end any such breach through lawful means.²²

False accusations of genocide

33. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. Its aim was to protect specific groups from abuses leading to their physical extermination over the short or the long term. The deliberate fabrication and dissemination of false accusations of genocide, without any genuine effort to verify them through the competent organs of the United Nations pursuant to Article VIII, can have serious negative consequences. Such conduct creates an atmosphere of fear and hatred or at the very least revives old resentments which can provide fertile ground for the commission of genocide, crimes against humanity, and war crimes against groups that have been falsely accused and dehumanized. Threats related to misinformation and disinformation were also recognized by the Security Council in its Resolution 2686 of 14 June 2023.

34. The notion of genocide today cannot be reduced solely to a legal concept which triggers State responsibility and international mechanisms. A special odium attached to genocide provokes a correspondingly strong social reaction. This is why the international community of states is so cautious about labelling atrocities as genocide. In any case, the duty to “prevent” genocide necessarily encompasses the duty not to create and disseminate false accusations of such a grave crime being committed.

Obligation to punish genocide

35. With respect to the duty to punish, which is an obligation distinct yet connected to the duty to prevent such crimes,²³ the Republic of Poland is of the opinion that it certainly requires clear and convincing evidence of the commission of genocide. Furthermore, Article I of the Genocide Convention must be interpreted as meaning that the obligation to punish genocide is limited to punitive measures of a criminal nature directed against individuals.

²² Cf. also ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), 2022, Conclusion 19.

36. The concept of “punishment” is known to national and international criminal law. It covers a reaction to a prohibited act aimed at deterrence, retribution, and rehabilitation of an offender (in proportions different for each and every legal system). By its very nature, such “punishment” cannot be imposed on a State. For this reason, the International Law Commission in Articles on State Responsibility for Internationally Wrongful Acts abandoned the concept of “international crime” and “punishment” in reference to State responsibility.
37. This ordinary meaning of the word “punishment” is confirmed by systemic analyses of the Genocide Convention. In the context of “punishment”, the Convention deals with classical criminal law institutions of individual criminal responsibility (elements of crime – Article II, modes of conduct – Article III, personal immunities – Article IV, effectiveness of penalty – Article V, jurisdiction – Article VI, extradition – Article VII). On the other hand, in the context of action that can be taken against a State (not against an individual person), it uses the term “suppression” (Article VIII) instead of “punishment.”

Elements of the definition of genocide

38. Article II of the Genocide Convention reads as follows:

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group”.

Article II of the Convention deals with the definition of genocide. The Republic of Poland contends that the elements of genocide are already well established in the case law of the Court and supports its interpretation.

Requirement of special intention

39. In order to assign responsibility to a State for breaching the obligation not to commit genocide, it must be demonstrated that genocide as defined in Article II of the Convention has been committed.²⁴
40. Specifically, in order to demonstrate that genocide has occurred, there is a requirement to establish both genocidal acts (*actus reus*) and a (specific) genocidal intent (*mens rea*) besides the mental elements present in the acts listed in Article II.²⁵
41. The Genocide Convention is designed to prevent the physical or biological destruction of all or part of a protected group. When assessing the existence of genocide, the International Criminal Tribunal for the former Yugoslavia considered the detrimental long-term consequences the actions in question had for the physical survival of the group, as well as the residual possibility that the group could reconstitute itself²⁶, endorsing a quantitative and qualitative element for the *actus reus*.
42. Genocidal intent, often referred to as specific (special) intent, is considered as the intention to destroy, in whole or in part, the group protected by the Convention as such. It is to be distinguished from other motivations the perpetrator may have which are legally irrelevant.²⁷ Therefore, the Court stressed that “from the viewpoint of *mens rea*, genocide is an extreme and most inhuman form of persecution.”²⁸ However, in order to classify attacks against members of the group as genocide, there needs to be a sufficiently clear manifestation of the intent to destroy the group as such in whole or in part.²⁹ Genocide is aimed against the existence of the group as such, rather than seeking its subjugation or mere persecution of its members.

²⁴ *Ibidem*, at p. 119, para. 180.

²⁵ *Ibidem*, at pp. 121-122, paras. 186-189.

²⁶ International Criminal Tribunal for the former Yugoslavia (ICTY), Prosecutor v Radislav Krstic, IT-98-33-A, Judgement in Sentencing Appeals of 19 April 2004, paras. 24-31.

²⁷ ICTR, Niyitegeka v. Prosecutor, ICTR-96-14-A, Judgment, 9 July 2004, para. 49, *idem*, Prosecutor v. Ntakirutimana (ICTR-96-10-A and ICTR-96-17-A, Judgment, 13 December 2004, para. 304, 363.

²⁸ 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. 122, para. 188.

²⁹ *Ibidem*, at pp. 121-122, paras. 187, 189.

43. In turn, the fact that civilian casualties occurred during the course of armed conflict is not *per se* evidence of genocidal action or genocidal intent. Unlawful killings of civilians or other kinds of attacks against civilians in armed conflicts might be classified as war crimes, and if those attacks are systematic or widespread, it is possible to classify them as crimes against humanity. The genocide label may be used only if specific intent is clearly demonstrated. Specific intent – as this Court has stressed – is the “essential characteristic of genocide, which distinguishes it from other serious crimes”.³⁰
44. Where direct evidence for specific intent is absent, the Court has determined that “in order to infer the existence of *dolus specialis* from a pattern of conduct, it is necessary and sufficient that this is the only inference that could reasonably be drawn from the acts in question”.³¹ This statement clearly shows that classification of any atrocities as genocide should not be done lightly. Genocide is grounded in such extreme hatred and has such an odious, incomprehensible aim (the irreversible destruction of a group as a whole or in part) that the Court indicates other explanations and – in consequence – other legal qualifications must be taken into account.
45. As for standards of proof, the Court requires that it be fully convinced of allegations made during the proceedings that the crime of genocide or other acts enumerated in Article III are clearly established to have been committed. The same standard applies to the proof of attribution for such acts.³²

IV. Construction of the Statute of the International Court of Justice

IV.1. Introduction

46. In its Memorial, Ukraine requests that the Court, among other things:

“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

³⁰ ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Merits, Judgment of 3 February 2015, I.C.J. Reports 2015, p. 3, at p. 62, para. 132.

³¹ *Ibidem*, at p. 67, para. 148; 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. 196-197, para. 373.

³² *Ibidem*, at p. 129, para. 209.

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”.³³

47. Accordingly, pursuant to the requirement stipulated in Article 82, paragraph 2(b) of the Rules of Court, Republic of Poland states that Article 41 of the Statute of the International Court of Justice is also a provision which it considers to be in question.

48. It should be noted that the Registrar of the Court has not notified the Members of the United Nations that the construction of the Statute of the International Court of Justice – and in particular Article 41 – could be in question. There are obvious reasons for this. The Registrar cannot be expected to know at the initial phase of proceedings whether the construction of the Statute will be in question in a particular case. The proceeding concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation) proves this assertion. The Registrar’s notification is dated 30 March 2022, while the Memorial submitted by Ukraine which drew attention to the obligations stemming from Article 41 of the Statute is dated 1 July 2022.³⁴ Thus, the Registrar’s lack of notification that the construction of the Statute could be in question does not deprive Republic of Poland of its right to intervene in this respect.

49. The provisions and purpose of Article 63 suggest no reason why a State should not be permitted to intervene over the construction of the Statute of the International Court of Justice. Article 63 does not differentiate between treaty types and is unqualified in its wording: “[w]henever the construction of a convention ... is in question”. This approach is corroborated by Article 82, para 6 of the Rules of the Court, which states: “Such a declaration may be filed by a State that considers itself a party to the convention, the

³³ Memorial submitted by Ukraine, 1 July 2022, para 178.

³⁴ Memorial submitted by Ukraine, Chapter 4 Russia Has Flagrantly Violated The Court’s Provisional Measures Order Of 16 March 2022.

construction of which is in question but has not received the notification referred to in Article 63 of the Statute”.

50. Furthermore, it should be noted that the Registrar does not expressly notify Members of the United Nations when the Charter of the United Nations is cited before the Court.³⁵ Under Article 92 of the Charter the Statute of the Court, which is annexed to the Charter, forms its integral part.
51. Additionally, Article IX of the Genocide Convention refers to the jurisdiction of the International Court of Justice. Therefore, in an indirect way, Article IX alludes to the Statute of the International Court of Justice, which provides the basis for the Court’s conduct. It also authorises States Parties to the Genocide Convention to refer in their interventions based in Article 63 of the Statute to those provisions of the Statute which are of particular importance to achieve the Convention’s aims.
52. When applied to cases concerning genocide, respect for provisional measures is of special importance. Bearing in mind the humanitarian character of the Genocide Convention, the obligation to respect provisional measures ordered by the Court has an absolute character. Through the introduction of Genocide Convention’s compromissory clause in Article IX, States Parties recognised the Court, with all its powers, as an instrument not only for reacting to but also for prevention of genocide. This also means that provisional measures ordered pursuant to Article 41 of the Statute aimed at non-aggravation of the situation might be linked with Article I of the Genocide Convention and derive from it an obligation to prevent genocide. By accepting the compromissory clause contained in Article IX, States Parties accept that the Court is solely empowered to decide both on the content of provisional measures and about the duration of any obligation they may impose, from beginning to end.
53. Furthermore, a particular unique characteristic of Article 41 of the Statute should be noted – namely, that it can potentially be activated through the Court’s provisional measures

³⁵ Alina Miron, Christine Chinkin, ‘Article 63’ in: Christian J. Tams, Karin Oellers-Frahm, Christian Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary (3rd Edition)*, Andreas Zimmermann, Oxford: Oxford University Press, 2019, p. 1754.

order, imposing an independent obligation under international law. Any breach of this independent obligation would engage the international responsibility of a State.

IV.2. The Statute provision whose construction Republic of Poland considers to be in question

54. Article 41 of the Statute of the International Court of Justice reads as follows: “1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party. 2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.”

Binding character of provisional measures

55. In accordance with the Court’s jurisprudence, the provisional measures order has a binding character³⁶ pending a final decision by the Court. As the Court has stressed, “Obligations arising from provisional measures bind the parties independently of the factual or legal situation which the provisional measure in question aims to preserve”.³⁷ Finding the violation of an order indicating provisional measures is independent of the conclusion that other international law obligations were violated.³⁸

56. The Court’s silence in its judgment on preliminary objections concerning provisional measures must be understood as expressing its will to maintain these provisional measures until its final judgment in merit phase.

³⁶ ICJ, *LaGrand (Germany v. United States of America)*, Merits, Judgment of 27 June 2001, I.C.J. Reports 2001, p. 466, at p. 506, para. 109.

³⁷ ICJ, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Merit, Judgment of 16 December 2015, I.C.J. Reports 2015, p. 665, at p. 714 para. 129; ICJ, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention of the Elimination of All Forms of Racial Discrimination*, Judgment of 31 January 2024, at p. 110, para 391

³⁸ ICJ, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention of the Elimination of All Forms of Racial Discrimination*, Judgment of 31 January 2024, at p. 110, para. 392.

V. Conclusion

57. In conclusion, based on the arguments presented above, the Republic of Poland avails itself of the right conferred upon it by Article 63(2) of the Statute to intervene as a non-party in the proceedings brought by Ukraine against Russia in this case.
58. The Republic of Poland reserves the right to amend or supplement this Declaration in the course of written and oral observation and by filing a further declaration with the Court.

VI. Documents in Support of the Declaration

59. The Republic of Poland submits the following documents in support of this Declaration:
- Annex A: Letter from the Registrar sent pursuant to Article 63, paragraph 1, of the Court's Statute;
 - Annex B: Confirmation of the Deposition of the Instrument of Accession of the Republic of Poland to the Convention on the Prevention and Punishment of the Crime of Genocide;
 - Annex C: Confirmation of Withdrawal of Poland's Reservation to Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide.



Artur Harazim

Agent of the Government of the Republic of Poland

CERTIFICATION

I certify that the documents attached in the Annexes to this Declaration are true copies of the originals.

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

Artur Harazim

Agent of the Government of the Republic of Poland

Annex A

Letter from the Registrar sent pursuant to Article 63, paragraph 1, of the Court's Statute



156413

30 March 2022

Excellency,

I have the honour to refer to my letter (No. 156253) dated 2 March 2022 informing your Government that, on 26 February 2022, Ukraine filed in the Registry of the Court an Application instituting proceedings against the Republic of the Russian Federation in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). A copy of the Application was appended to that letter. The text of the Application is also available on the website of the Court (www.icj-cij.org).

Article 63, paragraph 1, of the Statute of the Court provides that:

[w]henever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith".

Further, under Article 43, paragraph 1, of the Rules of Court:

"Whenever the construction of a convention to which States other than those concerned in the case are parties may be in question within the meaning of Article 63, paragraph 1, of the Statute, the Court shall consider what directions shall be given to the Registrar in the matter."

On the instructions of the Court, given in accordance with the said provision of the Rules of Court, I have the honour to notify your Government of the following:

In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the "Genocide Convention") is invoked both as a basis of the Court's jurisdiction and as a substantive basis of the Applicant's claims on the merits. In particular, the Applicant seeks to found the Court's jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention, asks the Court to declare that it has not committed a genocide as defined in Articles II and III of the Convention, and raises questions concerning the scope of the duty to prevent and punish genocide under Article I of the Convention. It therefore appears that the construction of this instrument will be in question in the case.

[Letter to the States parties to the Genocide Convention
(except Ukraine and the Russian Federation)]

Palais de la Paix, Carnegieplein 2
2517 KJ La Haye - Pays-Bas
Téléphone : +31 (0) 70 302 23 23 - Facsimile : +31 (0) 70 364 99 28
Site Internet : www.icj-cij.org

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Website : www.icj-cij.org

COUR INTERNATIONALE
DE JUSTICE

INTERNATIONAL COURT
OF JUSTICE

Your country is included in the list of parties to the Genocide Convention. The present letter should accordingly be regarded as the notification contemplated by Article 63, paragraph 1, of the Statute. I would add that this notification in no way prejudices any question of the possible application of Article 63, paragraph 2, of the Statute, which the Court may later be called upon to determine in this case.

Accept, Excellency, the assurances of my highest consideration.



Philippe Gautier
Registrar

Annex B

Confirmation of the Deposition of the Instrument of Accession of the Republic of Poland
to the Convention on the Prevention and Punishment of the Crime of Genocide

UNITED NATIONS  NATIONS UNIES
NEW YORK

CABLE ADDRESS - UNATIONS NEWYORK - ADRESSE TELEGRAPHIQUE

FILE NO.:

C.N.196.1950.TREATIES

29 November 1950

CONVENTION OF 9 DECEMBER 1948 ON THE PREVENTION
AND PUNISHMENT OF THE CRIME OF GENOCIDE

ACCESSION WITH RESERVATIONS BY POLAND

Sir,

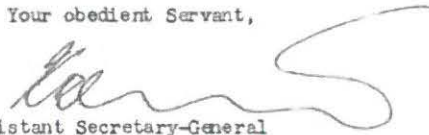
I am directed by the Secretary-General to inform you that on 14 November 1950 the instrument of accession of the Government of the Republic of Poland to the Convention on the Prevention and Punishment of the Crime of Genocide, with reservations relating to its Articles IX and XII, was deposited with the Secretary-General in accordance with Article XI of the Convention.

..... A certified true copy of this instrument of accession and an English translation thereof are herewith attached.

I have the honour to be,

Sir,

Your obedient servant,



Assistant Secretary-General
Legal Department

The Minister for Foreign Affairs,
Ministry of Foreign Affairs,
Warsaw,
Poland.

Annex C

Confirmation of Withdrawal of Poland's Reservation to Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N. Y. 10011
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNITED NATIONS NEW YORK

***** C.N.460.1997.TREATIES (Depositary Notification)

MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY GENERAL

WITHDRAWAL OF RESERVATIONS MADE BY POLAND

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

In a notification received 16 October 1997, the Government of Poland notified the Secretary-General that it has decided to withdraw the reservations made by Poland concerning the compulsory jurisdiction of the International Court of Justice and compulsory arbitration with respect to the treaties deposited with the Secretary-General, as listed below. The text of the reservations can be found in the relevant chapters of the publication Multilateral treaties deposited with the Secretary-General¹:

- III.2 CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES. APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947 (With regard to sections 24 and 32)
- IV.1 CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 9 DECEMBER 1948 (With regard to article IX)
- IV.2 INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION. OPENED FOR SIGNATURE AT NEW YORK ON 7 MARCH 1966 (With regard to article 22)
- IV.8 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 18 DECEMBER 1979 (With regard to article 29, paragraph 1)
- VI.16 CONVENTION ON PSYCHOTROPIC SUBSTANCES. CONCLUDED AT VIENNA ON 21 FEBRUARY 1971 (With regard to article 31, paragraph 2)
- XI.A.6 CONVENTION CONCERNING CUSTOMS FACILITIES FOR TOURING. DONE AT NEW YORK ON 4 JUNE 1954 (With regard to article 21)

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

¹ The treaty reference numbers (combinations of Roman and Arabic numerals) indicated with respect to each treaty as listed refer to the relevant chapter of the publication Multilateral treaties deposited with the Secretary-General (ST/LEG/SER.R/15) and to the individual treaties within that chapter

- XI.A.7 ADDITIONAL PROTOCOL TO THE CONVENTION CONCERNING CUSTOMS FACILITIES FOR TOURING, RELATING TO THE IMPORTATION OF TOURIST PUBLICITY DOCUMENTS AND MATERIAL. DONE AT NEW YORK ON 4 JUNE 1954 (With regard to article 15)
- XI.A.8 CUSTOMS CONVENTION ON THE TEMPORARY IMPORTATION OF PRIVATE ROAD VEHICLES. DONE AT NEW YORK ON 4 JUNE 1954 (With regard to article 10)
- XI.A.10 CUSTOMS CONVENTION ON THE TEMPORARY IMPORTATION OF COMMERCIAL ROAD VEHICLES. DONE AT GENEVA ON 18 MAY 1956 (With regard to article 38)
- XI.A.14 EUROPEAN CONVENTION ON CUSTOMS TREATMENT OF PALLETS USED IN INTERNATIONAL TRANSPORT. DONE AT GENEVA ON 9 DECEMBER 1960 (With regard to article 11, paragraphs 2 and 3)
- XI.A.16 CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT OF GOODS UNDER COVER OF TIR CARNETS (TIR CONVENTION). CONCLUDED AT GENEVA ON 14 NOVEMBER 1975 (With regard to article 57, paragraphs 2 to 6)
- XI.B.10 CONVENTION ON THE TAXATION OF ROAD VEHICLES FOR PRIVATE USE IN INTERNATIONAL TRAFFIC. DONE AT GENEVA ON 18 MAY 1956 (With regard to article 10, paragraphs 2 and 3)
- XI.B.11 CONVENTION ON THE CONTRACT FOR THE INTERNATIONAL CARRIAGE OF GOODS BY ROAD (CMR). DONE AT GENEVA ON 19 MAY 1956 (With regard to article 47)
- XI.B.12 CONVENTION ON THE TAXATION OF ROAD VEHICLES ENGAGED IN INTERNATIONAL GOODS TRANSPORT. DONE AT GENEVA ON 14 DECEMBER 1956 (With regard to article 9, paragraphs 2 and 3)
- XI.B.13 CONVENTION ON THE TAXATION OF ROAD VEHICLES ENGAGED IN INTERNATIONAL PASSENGER TRANSPORT. DONE AT GENEVA ON 14 DECEMBER 1956 (With regard to article 9, paragraphs 2 and 3)
- XI.B.16 AGREEMENT CONCERNING THE ADOPTION OF UNIFORM TECHNICAL PRESCRIPTIONS FOR WHEELED VEHICLES, EQUIPMENT AND PARTS WHICH CAN BE FITTED AND/OR BE USED ON WHEELED VEHICLES AND THE CONDITIONS FOR RECIPROCAL RECOGNITION OF APPROVALS GRANTED ON THE BASIS OF THESE PRESCRIPTIONS. DONE AT GENEVA ON 20 MARCH 1958 (With regard to article 10)
- XI.B.19 CONVENTION ON ROAD TRAFFIC. CONCLUDED AT VIENNA ON 8 NOVEMBER 1968 (With regard to article 52)
- XI.B.20 CONVENTION ON ROAD SIGNS AND SIGNALS. CONCLUDED AT VIENNA ON 8 NOVEMBER 1968 (With regard to article 44)

- XI.B.22 AGREEMENT ON THE INTERNATIONAL CARRIAGE OF PERISHABLE FOODSTUFFS AND ON THE SPECIAL EQUIPMENT TO BE USED FOR SUCH CARRIAGE (ATP). CONCLUDED AT GENEVA ON 1 SEPTEMBER 1970 (With regard to article 15, paragraphs 2 and 3)
- XI.B.23 EUROPEAN AGREEMENT SUPPLEMENTING THE CONVENTION ON ROAD TRAFFIC OPENED FOR SIGNATURE AT VIENNA ON 8 NOVEMBER 1968. CONCLUDED AT GENEVA ON 1 MAY 1971 (With regard to article 9)
- XI.B.24 EUROPEAN AGREEMENT SUPPLEMENTING THE CONVENTION ON ROAD SIGNS AND SIGNALS OPENED FOR SIGNATURE AT VIENNA ON 8 NOVEMBER 1968. CONCLUDED AT GENEVA ON 1 MAY 1971 (With regard to article 9)
- XI.B.25 PROTOCOL ON ROAD MARKINGS, ADDITIONAL TO THE EUROPEAN AGREEMENT SUPPLEMENTING THE CONVENTION ON ROAD SIGNS AND SIGNALS OPENED FOR SIGNATURE AT VIENNA ON 8 NOVEMBER 1968. CONCLUDED AT GENEVA ON 1 MARCH 1973 (With regard to article 9)
- XI.B.28 EUROPEAN AGREEMENT ON MAIN INTERNATIONAL TRAFFIC ARTERIES (AGR). CONCLUDED AT GENEVA ON 15 NOVEMBER 1975 (With regard to article 13)
- XII.3 CONVENTION RELATING TO THE UNIFICATION OF CERTAIN RULES CONCERNING COLLISIONS IN INLAND NAVIGATION. CONCLUDED AT GENEVA ON 15 MARCH 1960 (With regard to article 14)
- XVI.1 CONVENTION ON THE POLITICAL RIGHTS OF WOMEN. OPENED FOR SIGNATURE AT NEW YORK ON 31 MARCH 1953 (With regard to article IX)
- XVIII.7 CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 14 DECEMBER 1973 (With regard to article 13, paragraph 1)

18 December 1997

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