

Ārlietu ministrija

Ministry of Foreign Affairs of the Republic of Latvia

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Riga, 26 July 2024

No. H1-15379

Mr. Philippe Gautier

Registrar of the International Court of Justice
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

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Your Excellency,

I have the honour to refer to your letter of 18 June 2024 to the Government of the Republic of Latvia with reference to the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

I note that you stated that

States which sought to intervene at the preliminary objections stage and at the merits stage are invited to indicate, by 2 August 2024, whether they maintain their declarations of intervention. If deemed necessary, they may adjust by the same date their declarations of intervention in light of the Judgment of 2 February 2024.

Latvia confirms that it has sought to intervene under Article 63 of the Statute of the International Court of Justice at the preliminary objections stage and at the merits stage, as stated in its Declaration of Intervention of 21 July 2022¹, Written Observation on the admissibility of its Declaration of Intervention of 13 February

¹ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation) (Declaration of Intervention of Latvia of 21 July 2022) <<https://www.icj-cij.org/sites/default/files/case-related/182/182-20220719-WRI-01-00-EN.pdf>> [15] (“Latvia wishes to intervene in order to make submissions on construction of the Genocide Convention on issues relating to merits as well as jurisdiction”), Section E(iii) (“Provisions of the Genocide Convention in question regarding merits of the claim”), [35]-[37].

2023,² and oral proceedings of 20 September 2023.³

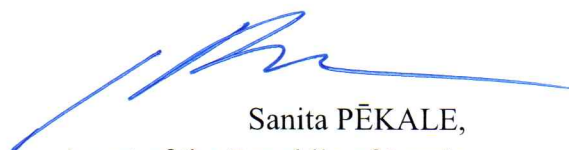
I have the honour to inform you that Latvia indicates that it maintains its declaration of intervention at the merits stage, as adjusted by the Annex to this letter.

In addition, four electronic versions in word and pdf formats of the adjusted declaration will be sent electronically as requested.

Please find enclosed the letter for Appointment of Agent and Co-Agent for the Republic of Latvia before the International Court of Justice concerning the case *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

Please accept, Excellency, the assurances of my highest consideration.

Respectfully,



Sanita PĒKALE,
Agent of the Republic of Latvia

² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (Written Observations of Latvia on admissibility of its Declaration of Intervention of 13 February 2023) <<https://www.icj-cij.org/sites/default/files/case-related/182/182-20230213-wri-18-00-en.pdf>> [21], [26](iii) (“In view of the foregoing, Latvia respectfully requests the Court: ... (c) to declare the Declaration admissible as to the merits phase of the proceedings.”).

³ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)* CR 2023/15 81 [15] (Paparinskis) (“this concludes the submissions of Latvia *at the present stage of the proceedings*”) (emphasis added).

Annex

1. Latvia maintains the position expressed in its Declaration of Intervention of 21 July 2022 (“Declaration”) on construction of the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”) at the merits stage of the case of the International Court of Justice (“Court”) concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (“Proceedings”).⁴
2. More particularly, Latvia stated in the Declaration that it considered that Articles I, II, III, and VIII of the Genocide Convention were in question at the merits stage of the Proceedings.⁵ Latvia maintains this position, adjusted in light of Court’s Judgment of 2 February 2024 in the Proceedings in the manner set out below.
3. As it did in the preliminary objections phase,⁶ Latvia will submit detailed observations on the subject-matter of its intervention under Article 63 of the Statute of the Court at the merits stage in the written and (unless the Court decides otherwise) oral proceedings, once furnished with copies of the pleadings.⁷ Latvia notes the Court’s recent confirmation that there is no requirement in the Statute or the Rules of Court for a State intervening under Article 63 of the Statute to show in its declaration that the interpretive points raised are in dispute in the proceedings between the parties or to present a proposition for a construction of the convention in question with a particular standard of specificity.⁸
4. Latvia adjusts the Declaration by adding a new Section G, to be inserted after the current paragraph 55 of the Declaration (with footnotes in the inserted paragraphs renumbered accordingly, and paragraphs 56-58 of the Declaration renumbered as respectively paragraphs 61-63):

“G. Latvia’s Proposed Construction of The Provisions of the Genocide Convention on the Merits

56. Latvia contends for the construction of the relevant provisions of the Genocide Convention adopted by the Court in its judgments on the merits in *Application of the Convention on the Prevention and Punishment of the Crime*

⁴ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (Declaration of Intervention of Latvia of 21 July 2022) <<https://www.icj-cij.org/sites/default/files/case-related/182/182-20220719-WRI-01-00-EN.pdf>>.

⁵ *Ibid* [35].

⁶ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)* (Written observations of Latvia on the subject-matter of its intervention, 5 July 2023) <<https://www.icj-cij.org/sites/default/files/case-related/182/182-20230705-wri-03-00-en.pdf>>; *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)* CR 2023/15 76-81.

⁷ Article 86 of the Rules of Court.

⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Declarations of Intervention, Order of 3 July 2024) [2024] ICJ Rep <<https://www.icj-cij.org/sites/default/files/case-related/178/178-20240703-ord-01-00-en.pdf>> [35].

of *Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*⁹ and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*.¹⁰

(i) **Article II of the Genocide Convention**

57. Concerning Article II of the Genocide Convention, Latvia contends that,

According to that Article, genocide contains two constituent elements: the physical element, namely the act perpetrated or *actus reus*, and the mental element, or *mens rea*. Although analytically distinct, the two elements are linked. The determination of *actus reus* can require an inquiry into intent. In addition, the characterization of the acts and their mutual relationship can contribute to an inference of intent.¹¹

58. Concerning the *mens rea* of genocide under Article II of the Genocide Convention, Latvia contends that

The “intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such” is the essential characteristic of genocide, which distinguishes it from other serious crimes. It is regarded as a *dolus specialis*, that is to say a specific intent, which, in order for genocide to be established, must be present in addition to the intent required for each of the individual acts involved ...¹²

...

“causing serious . . . mental harm to members of the group” within the meaning of Article II (b), even if it does not directly concern the physical or biological destruction of members of the group, must be regarded as encompassing only acts carried out with the intent of achieving the physical or biological destruction of the group, in whole or in part.¹³

...

Since it is the group, in whole or in part, which is the object of the

⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* [2007] ICJ Rep 43 Chapters IV, VII, and VIII.

¹⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* [2015] ICJ Rep 3 Chapter III.

¹¹ *Ibid* [130].

¹² *Ibid* [132]. See also *Application of the Genocide Convention (Bosnia and Herzegovina v. Serbia and Montenegro)* (n 3) [187] (“Article II [of the Genocide Convention] requires a further mental element. It requires the establishment of the ‘intent to destroy, in whole or in part, . . . [the protected] group, as such’. It is not enough to establish, for instance in terms of paragraph (a), that deliberate unlawful killings of members of the group have occurred. The additional intent must also be established, and is defined very precisely. It is often referred to as a special or specific intent or *dolus specialis* ... It is not enough that the members of the group are targeted because they belong to that group, that is because the perpetrator has a discriminatory intent. Something more is required. The acts listed in Article II must be done with intent to destroy the group as such in whole or in part. The words ‘as such’ emphasize that intent to destroy the protected group.”).

¹³ *Application of the Genocide Convention (Croatia v. Serbia)* (n 4) [136].

genocidal intent, ... it is difficult to establish such intent on the basis of isolated acts. ... in the absence of direct proof, there must be evidence of acts on a scale that establishes an intent not only to target certain individuals because of their membership to a particular group, but also to destroy the group itself in whole or in part.¹⁴

...

to state that, “for a pattern of conduct to be accepted as evidence of . . . existence [of genocidal intent], it [must] be such that it could only point to the existence of such intent” amounts to saying 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.¹⁵

59. Concerning the *actus reus* of genocide under Article II of the Genocide Convention, Latvia contends that

The acts listed in Article II of the Convention constitute the *actus reus* of genocide. Such acts are proscribed in the context of genocide inasmuch as they are directed against the members of the protected group and reflect the intent to destroy that group in whole or in part. ... such acts cannot be taken in isolation, but must be assessed in the context of the prevention and punishment of genocide, which is the object of the Convention.¹⁶

(ii) Articles I, III and VIII of the Genocide Convention

60. As stated in paragraph 56, Latvia contends for the construction adopted by the Court in its judgments on the merits on the Genocide Convention. In particular, Latvia maintains the construction of Article I in conjunction with the other provisions of the Genocide Convention as contended for in Section F(ii) of the Declaration, to the extent that it is relevant for the merits stage of the Proceedings”.

¹⁴ Ibid [139].

¹⁵ Ibid [148].

¹⁶ Ibid [149].

INTERNATIONAL COURT OF JUSTICE

**ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION ON THE
PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE**

(UKRAINE v. RUSSIAN FEDERATION)

ADJUSTED DECLARATION OF THE REPUBLIC OF LATVIA

26 JULY 2024

A. INTERVENTION PURSUANT TO ARTICLE 63, PARAGRAPH 2, OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

To the Registrar of the International Court of Justice (“the Court”), the undersigned being duly authorized by the Government of the Republic of Latvia (“Latvia”):

1. On behalf of Latvia, I have the honour to submit to the Court a Declaration of Intervention (“the Declaration”) 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 Proceedings”).

2. Article 82, paragraph 2, of the Rules of Court provides that a declaration of a State’s desire to avail itself of the right conferred upon it by Article 63, paragraph 2, of the Statute:

“[S]hall specify the case and 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. Following preliminary observations on its interest in the case and its right to intervene in the Proceedings, Latvia will address these requirements in sequence.

B. PRELIMINARY OBSERVATIONS

4. Latvia will first introduce the Proceedings and then address its intervention under Article 63 of the Statute. Finally, it will consider the right to intervene on jurisdictional issues.

(i) Proceedings by Ukraine against the Russian Federation

5. On 26 February 2022, Ukraine instituted the Proceedings against the Russian Federation (“Russia”) by submitting an application (“Ukraine’s Application”)¹ concerning a dispute between Ukraine and Russia relating to the interpretation, application, and fulfilment of the Convention on the Prevention and Punishment of the Crime of Genocide (“the Genocide Convention” or “the Convention”).²

6. In Ukraine’s Application, it contended that:

“2. ... [T]he Russian Federation has falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and on that basis recognized the so-called ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic,’ and then declared and implemented a ‘special military operation’ against Ukraine with the express purpose of preventing and punishing purported acts of genocide that have no basis in fact. On the basis of this false allegation, Russia is now engaged in a military invasion of Ukraine involving grave and widespread violations of the human rights of the Ukrainian people.

3. Ukraine emphatically denies that any such genocide has occurred and brings this Application to establish that Russia has no lawful basis to take action in and against Ukraine for the purpose of preventing and punishing any purported genocide.”³

7. In Section V of Ukraine’s Application, Ukraine requested that the Court:

“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

¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (Application instituting Proceedings of 26 February 2022) <<https://www.icj-cij.org/public/files/case-related/182/182-20220227-APP-01-00-EN.pdf>> [1]. All URLs accessed on the date of submission of the Declaration.

² *Ibid* [2]; Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277.

³ Ukraine’s Application (n 1) [2]-[3].

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.”⁴

8. Also on 26 February, Ukraine filed a request for provisional measures of protection with the Court in accordance with Article 41 of the Statute, together with Articles 73–75 of the Rules of Court (“Ukraine’s Request for Provisional Measures”).⁵ On 16 March 2022, the Court granted Ukraine’s request (“the Order”), ordering that:

“(1) The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in 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 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.”⁶

9. As of the date of this Declaration, Russia has failed to comply with the Order.⁷

(ii) Latvia’s intervention under Article 63 of the Statute

10. On 30 March 2022, the Registrar notified Latvia, as a Party to the Genocide Convention, as contemplated by Article 63, paragraph 1, of the Statute (“Registrar’s Letter”), that by Ukraine’s Application the Genocide Convention “is invoked both as a basis of the Court’s jurisdiction and the substantive basis of [Ukraine’s] claims on the merits”. The Registrar also noted that:

⁴ Ibid [30].

⁵ *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 Measures of 26 February 2022) <<https://www.icj-cij.org/public/files/case-related/182/182-20220227-WRI-01-00-EN.pdf>>.

⁶ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (Order of 16 March 2022) <<https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>>.

⁷ ‘Joint Statement of support for Ukraine’s application before the International Court of Justice against Russia’ (13 July 2022) <<https://www.gov.uk/government/news/joint-statement-of-support-for-ukraines-application-before-the-international-court-of-justice-against-russia>>.

“[Ukraine] 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 [the Genocide Convention] will be in question in this case.”⁸

11. By this Declaration, Latvia avails itself of the right conferred on it by Article 63 of the Statute.⁹ The purpose of this right “is to allow a third State not party to the proceedings, but party to a convention whose construction is in question in those proceedings, to present to the Court its observations on the construction of that convention”.¹⁰ The status of intervener will be *ipso facto* conferred on a declarant State “when the declaration concerned falls within the provisions of Article 63”.¹¹ Therefore, “the Court must ensure that such is the case before accepting a declaration of intervention as admissible”.¹² However, under Article 63 the Court “is not required to ascertain whether the State which is the author of that declaration has ‘an interest of a legal nature’ which ‘may be affected by the decision [of the Court]’ in the main proceedings”.¹³

12. Latvia will present its views to the Court on issues of construction of the Genocide Convention in question, consistently with the statements of the Court quoted above concerning the scope of the right to intervention set out in Article 63, paragraph 2, of the Statute. Latvia does not seek to become a party to the Proceedings by exercising that right, but does accept that the Genocide Convention’s “construction given by the judgment will be equally binding upon it”. Latvia’s intervention will be limited to issues of construction (interpretation), and will not address application.

13. Article 82, paragraph 1, of the Rules of Court provides that a declaration of a State seeking to intervene under Article 63 of the Statute shall be “filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings”. In accordance with that requirement, Latvia has filed this Declaration at the earliest opportunity reasonably available to it, well in advance of the oral proceedings, having informed the Court of its intention to intervene by the letter dated 6 April 2022.¹⁴

14. Latvia is mindful of the Court’s longstanding commitment to the administration of justice, conscious of its duty to assist the Court, and desires to participate effectively in the Proceedings. Should the Court confirm its right to intervene, Latvia requests that it be provided with copies of all pleadings filed by Ukraine and Russia in these Proceedings as well as any documents annexed thereto, as contemplated by Article 85, paragraph 1, of the Rules of Court.

⁸ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (Letter from the Registrar of the Court to the Ambassador of Latvia to The Netherlands of 30 March 2022).

⁹ *Haya de la Torre (Colombia v. Peru)* [1951] ICJ Rep 71, 76; also *Whaling in the Antarctic (Australia v. Japan)* (Declaration of Intervention of New Zealand, Order of 6 February 2013) [2013] ICJ Rep 3 [7] (with further references).

¹⁰ *Whaling* (n 9) [7].

¹¹ *Ibid* [8].

¹² *Ibid* [8].

¹³ *Ibid* [7].

¹⁴ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (Letter from the Minister of Foreign Affairs of Latvia to the Registrar of the Court of 6 April 2022).

(iii) Latvia's right of intervention on jurisdictional issues

15. Latvia wishes to intervene in order to make submissions on construction of the Genocide Convention on issues relating to merits as well as jurisdiction. In this sub-section, Latvia will explain why an intervention under Article 63 on issues relating to jurisdiction is, in principle, just as admissible as an intervention on issues relating to the merits.

16. First, Article 63, paragraph 1, of the Statute requires that “the construction of a convention to which states other than those in the case are parties is in question”. This language draws no distinction between the provisions of the convention on which the jurisdiction of the Court might be founded, and the provisions relevant to the claim on the merits.

17. Secondly, the Court routinely engages in construction of treaty provisions when assessing its jurisdiction, which includes both jurisdictional provisions (such as Article IX of the Genocide Convention in the Proceedings) and, as required, substantive provisions.¹⁵ It would be odd to introduce a distinction that would exclude such important issues of interpretation from the scope of Article 63 of the Statute, particularly in the absence of any textual basis.¹⁶

18. Thirdly, the suggested interpretation also appears consistent with the Court's practice of notifying States party to a convention that Article 63, paragraph 1, of the Statute is potentially engaged prior to the Court conclusively determining its jurisdiction (via instructions given to the Registrar under Article 43, paragraph 1, of the Rules of Court). For example, in the present case, the Registrar's Letter stated that “the Applicant seeks to found the Court's jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention ... and raises questions concerning the scope of the duty to prevent genocide under Article I of the Convention”. In response, Latvia has addressed the construction of jurisdictional issues raised by Articles IX and I in this Declaration.

19. Fourthly, the Order, read together with the declarations and separate opinion attached thereto, revealed lack of uniformity on the important question of the Court's *prima facie* jurisdiction over the Proceedings.¹⁷ Latvia's proposed intervention on the construction of Articles IX and I of the Genocide Convention could therefore assist the Court in determining its jurisdiction.

¹⁵ See, in the last five years, *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)* (Preliminary Objections) [2017] ICJ Rep 3 [121]-[133]; *Immunities and Criminal Proceedings (Equatorial Guinea v. France)* (Preliminary Objections) [2018] ICJ Rep 292 [42]-[47]; *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)* (Preliminary Objections) [2019] ICJ Rep 7 [45]-[46], [57]-[58], [62]-[65], [70], [78]-[79], [90]-[92]; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)* (Preliminary Objections) [2019] ICJ Rep 558 [33]-[37]; *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)* (Jurisdiction of the Court) [2020] ICJ Rep 455 [61]-[101]; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)* (Preliminary Objections) [2021] ICJ Rep <<https://www.icj-cij.org/public/files/case-related/172/172-20210204-JUD-01-00-EN.pdf>> [74]-[105].

¹⁶ MN Shaw (ed), *Rosenne's Law and Practice of the International Court 1920-2015* (5th ed, Vol III, Brill Nijhoff 2016) 1533 (“such an interpretation as a generality does violence to the specific terms of Article 63 of the Statute”).

¹⁷ Order (n 6) [34]-[47]; *ibid* Declaration of Vice-President Gevorgian <<https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-01-EN.pdf>> [2]-[10]; *ibid* Declaration of Judge Bennouna <<https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-02-EN.pdf>> [2]-[11]; *ibid* Declaration of Judge Xue <<https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-03-EN.pdf>> [2].

20. Latvia's interpretation of Article 63 of the Statute is in line with the Court's practice, including in its decision to refuse El Salvador's application to intervene under Article 63, paragraph 1, of the Statute in the jurisdictional phase of the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.¹⁸ First, neither the Court nor Judges writing individually in that case suggested that Article 63 could not, in principle, apply to jurisdictional issues. The only explicit discussion of the issue is found in Judge Schwebel's extended argument that "intervention in the jurisdictional phase of a proceeding is within the scope of the right with which States are endowed by the terms of Article 63."¹⁹ Similar views are held by leading scholars.²⁰ Secondly, a key element that led to the rejection of El Salvador's declaration of intervention in that case was that the Court and Judges perceived it as primarily or even exclusively directed at the merits of the case.²¹ Conversely, in the Proceedings, Latvia wishes to intervene on matters that concern the Court's jurisdiction under Articles IX and I of the Genocide Convention. To the extent it is on foot with the Proceedings, therefore, the Court's prior practice supports the admissibility of properly framed Article 63 interventions on issues of jurisdiction.

C. CASE AND CONVENTION TO WHICH THIS DECLARATION RELATES

21. This Declaration relates to the Proceedings, which concern the interpretation, application, and fulfilment of the Genocide Convention.

22. As a Party to the Genocide Convention, Latvia has a direct interest in the construction that might be placed upon that treaty in the Court's decision in the Proceedings. For that reason, Latvia is exercising its right to intervene conferred by Article 63, paragraph 2, of the Statute. Latvia's intervention is directed at the construction of the Genocide Convention that is in question in the Proceedings, in particular Articles I, II, III, VIII, and IX of the Convention. To

¹⁸ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (Declaration of Intervention, Order of 4 October 1984) [1984] ICJ Rep 215.

¹⁹ *Ibid* Dissenting Opinion of Judge Schwebel 223, 235-236.

²⁰ H Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* (Vol I, OUP 2013) 1031; A Miron and C Chinkin, 'Article 63' in A Zimmermann, CJ Tams, K Oellers-Frahm, and C Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary* (3rd edn, OUP 2019) 1741 [46] ("There appears to be no reason within the Statute, or its *travaux préparatoires* why intervention should not be allowed for the purpose of challenging the Court's jurisdiction or the admissibility of the case. In fact, several arguments plead in favour of the possibility for a third State to make a request to intervene at the phase of jurisdiction and admissibility, at least under Article 63. The wording of Article 63 is unqualified in asserting '[w]henever the construction of a convention ... is in question' which implies that it is applicable in all phases of the case. Article 63 does not differentiate between types of treaty provisions, or types of treaty. The purpose of Article 63 is to allow parties to a multilateral convention to put their construction of the convention to the Court in proceedings to which they are not parties.") (footnotes omitted).

²¹ *Nicaragua Intervention* (n 18) [2] ("the Declaration of Intervention of the Republic of El Salvador, which relates to the present phase of the proceedings, addresses itself also in effect to matters, including the construction of conventions, which presuppose that the Court has jurisdiction"); *ibid* Separate Opinion of Judge Singh 218, 218 ("It has been explained in paragraph 2 of the Court's Order that El Salvador's Declaration *in effect* appears directed to the merits of the case - an observation with which I do agree and which has also weighed with the Court.") (emphasis in the original); Separate Opinion of Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière 219 [3] ("we have not been able to find, in El Salvador's written communications to the Court, the necessary identification of such particular provision or provisions which it considers to be in question in the jurisdictional phase"); Separate Opinion of Judge Oda 220 [2] ("Declaration of Intervention ... appeared mainly directed to the merits of the case").

the extent that any other provisions of the Genocide Convention are specifically put in question in these Proceedings, Latvia reserves the right to supplement this Declaration.

D. BASIS ON WHICH LATVIA IS A PARTY TO THE GENOCIDE CONVENTION

23. On 14 April 1992, Latvia deposited its instrument of accession to the Genocide Convention with the Secretary-General of the United Nations in accordance with Article XI of the Convention. Upon that instrument becoming effective on 13 July 1992, Latvia became a Contracting Party of the Genocide Convention in accordance with Article XIII of the Convention.

E. PROVISIONS OF THE GENOCIDE CONVENTION IN QUESTION IN THE PROCEEDINGS

24. The provisions of the Genocide Convention which are in question in the Proceedings are Articles I, II, III, VIII, and IX of the Convention. Latvia will first set out the text of the provisions in question and then explain which provisions are in question regarding the jurisdiction of the Court. Finally, it will address provisions in question regarding merits of the claim.

(i) Text of the provisions of the Genocide Convention in question

25. Article I:

“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”.

26. Article II:

“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.”

27. Article III:

“The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.”

28. Article VIII:

“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.”

29. Article IX:

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

(ii) Provisions of the Genocide Convention in question regarding jurisdiction of the Court

30. In its Application, Ukraine submits that:

“There is a dispute between Ukraine and the Russian Federation within the meaning of Article IX relating to the interpretation, application or fulfilment of the Genocide Convention. [...] [A]s Ukraine and Russia hold opposite views on whether genocide has been committed in Ukraine, and whether Article I of the Convention provides a basis for Russia to use military force against Ukraine to ‘prevent and to punish’ this alleged genocide.”²²

31. First, Article IX of the Convention is in question since “the Applicant seeks to found the Court’s jurisdiction on the compromissory clause contained in” that provision.²³ A range of views have been expressed regarding the important point of construction of the scope of the Court’s jurisdiction under Article IX (i.e. whether the dispute concerns the “interpretation, application or fulfilment” of the Genocide Convention) in the Order,²⁴ by Judges writing individually,²⁵ and the Parties.²⁶ On the important point of construction of whether Article IX encompasses non-violation complaints, views have been expressed by the Court,²⁷ Judges writing individually,²⁸ and Ukraine.²⁹

32. Secondly, Article I of the Convention is in question since “the Applicant ... raises questions concerning the scope of the duty to prevent and punish genocide under Article I of

²² Ukraine’s Application (n 1) [7], [11].

²³ Registrar’s Letter (n 8).

²⁴ Order (n 6) [48].

²⁵ *Allegations of Genocide* Declaration of Vice-President Gevorgian (n 17) [9]; *Allegations of Genocide* Declaration of Judge Xue (n 17) [9]; Order (n 6) Separate Opinion of Judge Robinson <<https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-04-EN.pdf>> [30].

²⁶ Cf. Ukraine’s Application (n 1) [6]-[7]; *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (Document (with annexes) from the Russian Federation setting out its position regarding the alleged “lack of jurisdiction” of the Court in the case of 7 March 2022) <<https://www.icj-cij.org/en/case/182/jurisdiction-admissibility>> (“Russia’s Letter”) [7]-[11], [21].

²⁷ Order (n 6) [48].

²⁸ *Allegations of Genocide* Declaration of Vice-President Gevorgian (n 17) [8]; by implication *Allegations of Genocide* Declaration of Judge Bennouna (n 17) [2].

²⁹ Ukraine’s Application (n 1) [30(a)].

the Convention”.³⁰ Views have been expressed regarding the important point of construction of whether Article I of the Genocide Convention includes a prohibition against making abusive allegations of genocide, by the Court,³¹ Judges writing individually,³² and the Parties.³³

33. Thirdly, Article I (in conjunction with Articles VIII and IX) is also in question with respect to whether it authorizes unilateral use of force for the purpose of preventing or punishing an alleged genocide, and a variety of views have been expressed by the Court,³⁴ Judges writing individually,³⁵ and Ukraine.³⁶

34. Thus, the proper construction of Articles IX, I, and VIII of the Genocide Convention is in question in the Proceedings.

(iii) Provisions of the Genocide Convention in question regarding merits of the claim

35. Articles I, II, III, and VIII of the Genocide Convention are in question in the Proceedings, and have been expressly relied upon by Ukraine as the basis of its claims.³⁷

36. First, Article I is in question in evaluating the claim regarding the veracity of Russia’s allegations that Ukraine has committed genocide.³⁸ Views have been expressed by the Parties regarding the construction of the obligation not to abusively allege genocide.³⁹ Construction of Article I in conjunction with Articles II and III is also likely to be in question in determining the scope and content of the concept of genocide.⁴⁰

37. Secondly, Article I in conjunction with Article VIII is in question in evaluating Ukraine’s claim regarding Russia’s unlawful unilateral use of force as a means for prevention and punishment of the crime of genocide. Views on this matter have been expressed by the Court⁴¹ and the Parties regarding the construction of the scope and content of this obligation.⁴²

F. LATVIA’S PROPOSED CONSTRUCTION OF THE PROVISIONS OF THE GENOCIDE CONVENTION IN QUESTION

38. Latvia will first introduce the proposed construction of Article IX of the Genocide Convention as covering non-violation complaints, then address the proposed construction of Article I in conjunction with other provisions as prohibiting abusive allegations of genocide. It

³⁰ Registrar’s Letter (n 8).

³¹ Order (n 6) [45].

³² *Allegations of Genocide* Declaration of Judge Bennouna (n 17) [5].

³³ Cf. Ukraine’s Application (n 1) [8]-[9], [24]; Russia’s Letter (n 26) [11].

³⁴ Order (n 6) [45].

³⁵ *Allegations of Genocide* Declaration of Vice-President Gevorgian (n 17) [5]; *Allegations of Genocide* Declaration of Judge Bennouna (n 17) [11]; *Allegations of Genocide* Declaration of Judge Xue (n 17) [2].

³⁶ Ukraine’s Application (n 1) [9].

³⁷ *Ibid* [26(a)-(c)].

³⁸ Order (n 6) [37]-[42].

³⁹ Cf. Ukraine’s Application (n 1) [27], [28]; Russia’s Letter (n 26) [20]-[21].

⁴⁰ Ukraine’s Application (n 1) [26].

⁴¹ Order (n 6) [56].

⁴² Cf. Ukraine’s Application (n 1) [27], [28]; Russia’s Letter (n 26) [11].

will then continue to explain its proposed construction of Article I in conjunction with other provisions as not authorizing otherwise unlawful unilateral use of force as a means for prevention and punishment of the crime of genocide, and conclude by summarizing the proposed construction. Latvia's proposed construction of the provisions of the Genocide Convention relates to jurisdiction of the Court as well as to the merits of the claim.

39. Latvia will rely upon the principles of treaty interpretation expressed in the Vienna Convention on the Law of Treaties ("Vienna Convention") since, even if it is not applicable as a treaty in the Proceedings, "it is well established that Articles 31 and 32 of the Vienna Convention reflect rules of customary international law".⁴³

(i) Article IX of the Genocide Convention covers non-violation complaints

40. Latvia contends that Article IX of the Genocide Convention is formulated in broad terms and covers claims that have been described as "non-violation complaints".⁴⁴ Latvia will make two points concerning the construction of Article IX: (1) Article IX is formulated in broad terms; (2) Article IX covers non-violation complaints.

41. First, Article IX of the Genocide Convention is formulated in broad terms. There is a twofold difference between Article IX and the standard dispute settlement provision commonly relied upon in the judicial practice of the Court that grant jurisdiction over interpretation and application of the relevant treaties.⁴⁵ Article IX "add[s] the word 'fulfilment' to the provision conferring on the Court jurisdiction over disputes as to the 'interpretation and application' of the Convention".⁴⁶ Article IX also has "[t]he unusual feature [of] the phrase 'including those [disputes] relating to responsibility of a State for genocide or any of the other acts enumerated in Article III'", which has been applied by the Court in supporting a broad construction of the Convention.⁴⁷

42. Secondly, the broad formulation of Article IX of the Genocide Convention covers non-violation complaints. The jurisdiction granted to the Court by Article IX includes disputes in which a State alleges that another State has committed genocide.⁴⁸ It also includes disputes in which a State, having been subjected to allegations of genocide by another State, brings a case against the latter State, seeking a "negative" declaration from the Court that these allegations are without legal and factual foundation. Such a claim plainly raises questions of "interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State". It would also enable the Court to perform an important function in confirming the (non-)compliance by a State with its obligations.

43. Non-violation complaints are known in the Court's practice. For example, in the case concerning *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, France commenced proceedings before the Court seeking a declaration that

⁴³ *Application of the ICERD* (n 15) [75].

⁴⁴ *Allegations of Genocide Declaration of Vice-President Gevorgian* (n 17) [8].

⁴⁵ See *Immunities and Criminal Proceedings* (n 15) [44]-[45]; *Certain Iranian Assets* (n 15) [29]; *Application of ICSFT and of ICERD* (n 15) [34]; *Application of the ICERD* (n 15) [72].

⁴⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* [2007] ICJ Rep 43 [168].

⁴⁷ *Ibid* [169].

⁴⁸ *Ibid*.

the license control system in question “is in conformity with the economic system which is applicable to Morocco, according to the conventions which bind France and the United States”.⁴⁹ The Court unanimously rejected France’s submission on the merits but there was no suggestion by either the Court or Judges writing individually (or indeed the United States) that the non-violation framing of the claim was legally problematic.⁵⁰ Another important consideration is that the Court engaged in the same type of analysis of interpretation and application of treaties as in other cases considered under standard dispute settlement provisions, in line with the construction contended for above.

44. The result of Latvia’s construction of Article IX of the Genocide Convention is that where a State has accused another State of genocide such that a dispute has arisen, the Court will have jurisdiction over any claim by the latter State seeking a declaration that the former State’s accusations are without legal and factual foundation.

(ii) Article I of the Genocide Convention prohibits abusive allegations of genocide

45. Latvia contends that no Party to the Genocide Convention should be permitted to make abusive allegations of genocide. Such allegations risk undermining the character of genocide as a crime of exceptional gravity and the stigma that attaches to it as an affront to the “most elementary principles of morality”.⁵¹ This would be contrary to the object and purpose of the Convention. Latvia will make three points concerning the construction of Article I: (1) Article I obligations shall be performed and interpreted in good faith; (2) a unilateral and unfounded determination that a situation constitutes genocide is abusive and contrary to the letter and the spirit of the Convention; (3) the Convention provides guidance concerning the means by which the Parties may act lawfully to prevent and punish genocide.

46. First, Article I obligations must be performed and interpreted “in a reasonable way and in such a manner that [the Convention’s] purpose can be realized”.⁵² It would be unreasonable to allow a Contracting Party to make abusive allegations of genocide and to distort the terms of the Convention. Indeed, this would be contrary to the basic moral and humanitarian objectives that the Convention seeks to protect. Good faith interpretation thus operates as a safeguard against misuse of the terms and institutions of the Convention. As “[o]ne of the basic principles governing the creation and performance of legal obligations”, good faith is also directly linked to the “[t]rust and confidence [that] are inherent in international co-operation”.⁵³ This is particularly important in the context of the Convention, given that it is an instrument in relation to which the Contracting Parties “do not have any interests of their own; they merely have, one and all, a common interest, namely the accomplishment of those high purposes which are the *raison d’être* of the convention”.⁵⁴

47. Secondly, a unilateral and unfounded allegation that a situation constitutes genocide is abusive and contrary to the letter and the spirit of the Convention. Genocide requires proof of

⁴⁹ *Rights of Nationals of the United States of America in Morocco (France v. United States of America)* [1952] ICJ Rep 176, 182.

⁵⁰ *Ibid* 182-184.

⁵¹ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion)* [1951] ICJ Rep 15, 23.

⁵² *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* [1997] ICJ Rep 7 [142].

⁵³ *Nuclear Tests (Australia v. France)* [1974] ICJ Rep 253 [46].

⁵⁴ *Reservations to the Genocide Convention* (n 51) 23.

specific intent (*dolus specialis*): “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.⁵⁵ As noted by the Court, “claims against a State involving charges of exceptional gravity must be proved by evidence that is fully conclusive ... The Court requires that it be fully convinced that allegations made in the proceedings, that the crime of genocide or the other acts enumerated in Article III have been committed, have been clearly established”.⁵⁶ Given the nature of these obligations and the standard of proof attached to genocide, Contracting Parties to the Genocide Convention often rely on the results of independent investigations⁵⁷ and information exchanged through international⁵⁸ and regional cooperation mechanisms before qualifying a situation as genocide and taking any further action pursuant to Article I.⁵⁹ The best practices for implementation of the Convention prioritise cooperation through existing and further-enhanced international mechanisms.⁶⁰

48. Thirdly, the Convention provides guidance concerning the lawful means by which the Contracting Parties may prevent and punish genocide. The proper construction of Article I in this respect requires consideration of other parts of the Convention, including “Articles VIII and IX, as well as its Preamble”,⁶¹ and Article VI.

- A Contracting Party may discharge its obligation to punish alleged perpetrators of genocide by having recourse to domestic or international penal tribunals.⁶² For example, the International Criminal Court (‘ICC’) is well equipped to investigate, prosecute, and punish the crime of genocide. States Parties to the Rome Statute of the ICC may refer situations in which genocide or other acts enumerated in Article III are alleged to have been committed to the attention of the ICC Prosecutor.⁶³ Even if they are not parties to the Rome Statute, they may recognize its competence over specific crimes, including genocide, alleged to have occurred in their own territory.⁶⁴
- A Contracting Party with reason to believe that genocide or other acts enumerated in Article III have occurred or that there is a risk that such acts may occur, may call upon the competent United Nations organs to undertake necessary enforcement actions.⁶⁵ Article VIII of the Convention sets out a basic framework of cooperation within which the obligations to prevent and to punish may be performed and provides a reference

⁵⁵ Genocide Convention (n 2) Article II.

⁵⁶ *Application of the Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (n 46) [209]; also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* [2015] ICJ Rep 3 [178].

⁵⁷ For example, the unilateral determination by the United States of alleged genocide in Darfur was based on the findings of the Darfur Atrocities Documentation Project (DADP), an investigation conducted by independent experts, see the declaration before the Senate Foreign Relations Committee by Colin Powell, ‘The Crisis in Darfur’ (9 September 2004), <<https://2001-2009.state.gov/secretary/former/powell/remarks/36042.htm>>.

⁵⁸ For example, The Gambia communicated its allegations to Myanmar prior to commencing proceedings before the Court and relied *inter alia* on the reports of the Independent International Fact-Finding Mission on Myanmar, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Provisional Measures, Order of 23 January 2020) [2020] ICJ Rep 3 [28].

⁵⁹ ‘Report of the Secretary-General: Advancing Atrocity Prevention: Work of the Office on Genocide Prevention and the Responsibility to Prevent’ (3 May 2021) UN Doc A/75/863–S/2021/424 [21]-[27].

⁶⁰ UN Human Rights Council, ‘Resolution 43/29: Prevention of Genocide’ (29 June 2020) UN Doc A/HRC/RES/43/29 [10]-[11].

⁶¹ Order (n 6) [56].

⁶² Genocide Convention (n 2) Article VI.

⁶³ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 Article 14(1).

⁶⁴ *Ibid* Article 12(3).

⁶⁵ Genocide Convention (n 2) Article VIII.

point for the actions that States Parties should resort to in the discharge of those obligations. If Article I were to be interpreted in a way that permits a Contracting Party to make an abusive unilateral characterisation of a situation as genocide and act upon it, Article VIII would be redundant (*effet utile*). This would be contrary to “the well-established principle in treaty interpretation that words ought to be given appropriate effect”.⁶⁶

- As discussed in the previous sub-section, a Contracting Party may submit to the Court a dispute under Article IX “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 other acts enumerated in article III”.⁶⁷ Given the breadth of this provision and the fact that it “does not exclude any form of State responsibility”, Article IX extends to any dispute relating to the performance or non-performance of Convention obligations, including under Article I.⁶⁸ The Court is well placed to make determinations as to the occurrence of genocide or other acts enumerated in Article III and has the power to order provisional measures. Accordingly, a Contracting Party which knows or has reason to suspect that genocide or other acts set out in Article III have occurred or are about to occur may institute judicial proceedings against the alleged perpetrator. Importantly, beyond the usual requirement of the dispute there are no procedural preconditions in the Genocide Convention, such as the obligation to negotiate or the obligation to resort first to other means of dispute settlement. Considerations of *effet utile*, similar to those noted earlier in respect of Article VIII, also apply when interpreting Article I in light of Article IX.

49. The means for the prevention and punishment of genocide described above are consistent with “the spirit and aims of the United Nations” and the need for “international co-operation”, two elements that are expressly reflected in the Preamble of the Convention.⁶⁹ The construction contended for is also confirmed by the *travaux préparatoires* of the Convention.⁷⁰ Conversely, it would be inconsistent with the rationale of the Convention to allow a Contracting Party to make abusive allegations of genocide and employ means to prevent and to punish it that are not themselves in accordance with the aims and purposes of the United Nations.

⁶⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (Preliminary Objections) [2011] ICJ Rep 70 [133]; also *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* [1994] ICJ Rep 6 [51] (with further references).

⁶⁷ Genocide Convention (n 2) Article IX.

⁶⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)* (Preliminary Objections) [1996] ICJ Rep 595 [32].

⁶⁹ Genocide Convention (n 2) Preamble.

⁷⁰ See UN Economic and Social Council, ‘Prevention and Punishment of Genocide: Comments by Governments on the Draft Convention Prepared by the Secretariat’ (30 January 1948) UN Doc E/623 (statement by Venezuela); UN Economic and Social Council, Ad Hoc Committee on Genocide, ‘Summary Record of the Seventh Meeting held on 12 April 1948’ (20 April 1948) UN Doc E/AC.25/SR.7 (statement by Poland); Official Records of the Third Session of the General Assembly, Sixth Committee, Summary Records of Meetings (21 September-10 December 1948), in particular UN Doc A/C.6/SR.96 (statement by the Union of Soviet Socialist Republics); UN Doc A/C.6/SR.98 (statement by the Union of Soviet Socialist Republics); UN Doc A/C.6/SR.109 (statement by the United States of America); UN Doc A/C.6/SR.109 (statement by Uruguay).

(iii) The Genocide Convention does not authorize otherwise unlawful unilateral use of force as a means for prevention and punishment of genocide

50. Latvia contends that the Genocide Convention does not authorize otherwise unlawful unilateral use of force as a means for prevention and punishment of genocide. Latvia will make four points: (1) the Convention does not authorize use of force that would otherwise be unlawful under applicable international law; (2) the means of fulfilling the obligation to prevent and punish genocide not provided for in the Convention cannot include the unlawful use of force; (3) the Convention prohibits the otherwise unlawful unilateral use of force as a means for prevention and punishment of genocide; (4) the content of the rule prohibiting unlawful unilateral use of force as a means of prevention and punishment of genocide is to be determined by taking into account other relevant rules of international law.

51. First, the Convention does not authorize a use of force that would otherwise be unlawful under applicable international law. The Genocide Convention contains no explicit authorization of use of force. Indeed, no authorizing provision of the Genocide Convention refers to the use of force. This textual silence stands in contrast with the detailed provisions employed when the Convention does authorize particular conduct by the Parties; for example regarding trial of persons charged with genocide,⁷¹ their extradition,⁷² and submission of disputes to the Court.⁷³ Nor is a rule dispensing with such an important principle of international law as the prohibition of unlawful use of force tacitly provided for in the Convention.⁷⁴ The Court has stated that “every State may only act within the limits permitted by international law” in discharging its duty to prevent genocide under the Convention,⁷⁵ which is accepted to signify that the Convention does not authorize an otherwise unlawful use of force.⁷⁶ Latvia agrees with the point made in the Order that “it is doubtful that the Convention, in light of its object and purpose, authorizes a Contracting Party’s unilateral use of force in the territory of another State for the purpose of preventing or punishing an alleged genocide.”⁷⁷

52. Secondly, any means of fulfilling the obligation to prevent and punish genocide not provided for in the Convention cannot include a use of force that would otherwise be unlawful under applicable international law.⁷⁸ The Court notes in the Order that “Article I does not specify the kinds of measures that a Contracting State may take to fulfil this obligation”,⁷⁹ and

⁷¹ Genocide Convention (n 2) Article VI.

⁷² Ibid Article VII.

⁷³ Ibid Article IX.

⁷⁴ *Elettronica Sicula SpA (ELSI) (United States of America v. Italy)* [1989] ICJ Rep 15 [50]; *Oil Platforms (Islamic Republic of Iran v. United States of America)* [2003] ICJ Rep [41].

⁷⁵ *Application of the Genocide Convention (Bosnia and Herzegovina v. Serbia and Montenegro)* (n 46) [430]; Order (n 6) [57].

⁷⁶ CJ Tams, L Berster, and B Schiffbauer (eds), *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* (Beck/Hart/Nomos 2014) 51; A de Hoogh, ‘*Jus Cogens and the Use of Armed Force*’ in M Weller (ed), *The Oxford Handbook on the Use of Force in International Law* (OUP 2015) 1161, 1185 (“absence of a justification for the use of armed force laid down in the Genocide Convention”); R O’Keefe, *International Criminal Law* (OUP 2015) 344-5; G Mettraux, *International Crimes: Law and Practice* (Volume I: Genocide, OUP 2019) 96 (“the duty to prevent [genocide] does not purport to provide an exception to ... the general principles regulating the lawful use force”).

⁷⁷ Order (n 6) [59].

⁷⁸ If the obligation is breached, States may rely on applicable customary secondary rules to implement State responsibility, *Application of the Genocide Convention Order (The Gambia v. Myanmar)* (n 58) [41]; International Law Commission, ‘Articles on responsibility of States for internationally wrongful acts’ *Yearbook of the International Law Commission 2001: Volume II Part 2* UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2) 26 Articles 48, 54. These rules do not authorize otherwise unlawful use of force either, *ibid* Article 50(1)(a).

⁷⁹ Order (n 6) [56].

further identifies the engagement with the competent organs of the United Nations⁸⁰ and submission of disputes to the Court as measures authorized to prevent and punish the genocide.⁸¹ The Court also refers to “other means ... such as bilateral engagement or exchanges within a regional organization”.⁸² In Latvia’s view, these rules of the Charter of the United Nations on peaceful means for the settlement of international disputes are legally relevant to the construction of the Convention by way of Article 31, paragraph 3, sub-paragraph (c), of the Vienna Convention.⁸³ The principles of effectiveness and good faith in treaty interpretation require that the (for its time) innovatory and far-reaching regime of measures set out in the Convention and the Charter cannot be supplemented by unlawful use of force.

53. Thirdly, the Convention prohibits an otherwise unlawful use of force as a means for prevention and punishment of genocide. The balance struck between the means for prevention and punishment of genocide in the Convention, demonstrated above, is consistent with a positive prohibition of those other means not in conformity with the spirit and aims of the United Nations Charter (such as “the suppression of acts of aggression or other breaches of the peace”).⁸⁴ This construction is supported by the ordinary meaning of Article I (“genocide ... is a crime under international law which they undertake to prevent and to punish”), which interpreted in good faith entails the prohibition of “the supreme international crime”⁸⁵ as a means for implementing the Convention.⁸⁶ It is further supported by interpretation of “measures that a Contracting State may take to fulfil this obligation” in Article I⁸⁷ consistently with the relevant rules of international law on the use of force⁸⁸ of *jus cogens* character.⁸⁹ Consequently, the Court’s jurisdiction under Article IX of the Convention extends, where appropriate, to the determination of whether action alleged to be taken as a means for prevention and punishment of the crime of genocide was or was not unlawful use of force.⁹⁰

54. Fourthly, the content of the prohibition of unlawful use of force as a means for prevention and punishment of genocide is to be determined by taking into account other relevant rules of international law. Consistently with Article 31, paragraph 3, sub-paragraph (c), of the Vienna Convention, the determination of whether action alleged to be taken as a means for prevention and punishment of genocide was or was not unlawful use of force is to be carried out by reference to international law applicable to this question, that is to say, the provisions of the Charter of the United Nations and customary international law on the use of force.⁹¹ Latvia’s proposed construction is in line with the approach taken in the Order,⁹² which Latvia regards as correct.

⁸⁰ Genocide Convention (n 2) Article VIII.

⁸¹ Ibid Article IX.

⁸² Order (n 6) [57].

⁸³ Ibid [58]; Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI Articles 1, 33(1).

⁸⁴ Order (n 6) [58].

⁸⁵ ‘Judgment of the International Military Tribunal for the Trial of German Major War Criminals, Nuremberg, 30 September and 1 October 1946 (Reproduced)’ (1947) 41 AJIL 172, 186.

⁸⁶ *Application of the Genocide Convention (Bosnia and Herzegovina v. Serbia and Montenegro)* (n 46) [163].

⁸⁷ Order (n 6) [56].

⁸⁸ *Oil Platforms* (n 74) [41]-[42].

⁸⁹ 2022 ILC Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) <<https://legal.un.org/docs/?symbol=A/CN.4/L.967>> Draft conclusion 20, Draft annex (a).

⁹⁰ To paraphrase the Court in *Oil Platforms* (n 74) [42].

⁹¹ To again paraphrase the Court in *ibid*.

⁹² Order (n 6) [58].

(iv) Summary of Latvia's construction of the Genocide Convention

55. Latvia will make three broad points of construction. First, Article IX of the Genocide Convention is formulated in broad terms to include the “fulfilment” of obligations under the Convention and covers complaints of non-violation. Secondly, Article I of the Genocide Convention, interpreted in conjunction with other parts of the Convention, including Articles VIII and IX and the Preamble, prohibits abusive allegations of genocide. Thirdly, Article I of the Genocide Convention, interpreted in conjunction with other provisions of the Convention, does not authorize otherwise unlawful use of force as a means for prevention and punishment of genocide.

G. LATVIA'S PROPOSED CONSTRUCTION OF THE PROVISIONS OF THE GENOCIDE CONVENTION ON THE MERITS

56. Latvia contends for the construction of the relevant provisions of the Genocide Convention adopted by the Court in its judgments on the merits in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*⁹³ and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*.⁹⁴

(i) Article II of the Genocide Convention

57. Concerning Article II of the Genocide Convention, Latvia contends that,

According to that Article, genocide contains two constituent elements: the physical element, namely the act perpetrated or *actus reus*, and the mental element, or *mens rea*. Although analytically distinct, the two elements are linked. The determination of *actus reus* can require an inquiry into intent. In addition, the characterization of the acts and their mutual relationship can contribute to an inference of intent.⁹⁵

58. Concerning the *mens rea* of genocide under Article II of the Genocide Convention, Latvia contends that

The “intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such” is the essential characteristic of genocide, which distinguishes it from other serious crimes. It is regarded as a *dolus specialis*, that is to say a specific intent, which, in order for genocide to be established, must be present in addition to the intent required for each of the individual acts involved ...⁹⁶

⁹³ *Application of the Genocide Convention (Bosnia and Herzegovina v. Serbia and Montenegro)* (n 46) Chapters IV, VII, and VIII.

⁹⁴ *Application of the Genocide Convention (Croatia v. Serbia)* (n 56) Chapter III.

⁹⁵ *Ibid* [130].

⁹⁶ *Ibid* [132]. See also *Application of the Genocide Convention (Bosnia and Herzegovina v. Serbia and Montenegro)* (n 46) [187] (“Article II [of the Genocide Convention] requires a further mental element. It requires the establishment of the ‘intent to destroy, in whole or in part, . . . [the protected] group, as such’. It is not enough to establish, for instance in terms of paragraph (a), that deliberate unlawful killings of members of the group have occurred. The additional intent must also be established, and is defined very precisely. It is often referred to as a special or specific intent or *dolus specialis* ... It is not enough that the members of the group are targeted because

...

“causing serious . . . mental harm to members of the group” within the meaning of Article II (b), even if it does not directly concern the physical or biological destruction of members of the group, must be regarded as encompassing only acts carried out with the intent of achieving the physical or biological destruction of the group, in whole or in part.⁹⁷

...

Since it is the group, in whole or in part, which is the object of the genocidal intent, . . . it is difficult to establish such intent on the basis of isolated acts. . . . in the absence of direct proof, there must be evidence of acts on a scale that establishes an intent not only to target certain individuals because of their membership to a particular group, but also to destroy the group itself in whole or in part.⁹⁸

...

to state that, “for a pattern of conduct to be accepted as evidence of . . . existence [of genocidal intent], it [must] be such that it could only point to the existence of such intent” amounts to saying 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.⁹⁹

59. Concerning the *actus reus* of genocide under Article II of the Genocide Convention, Latvia contends that

The acts listed in Article II of the Convention constitute the *actus reus* of genocide. Such acts are proscribed in the context of genocide inasmuch as they are directed against the members of the protected group and reflect the intent to destroy that group in whole or in part. . . . such acts cannot be taken in isolation, but must be assessed in the context of the prevention and punishment of genocide, which is the object of the Convention.¹⁰⁰

(ii) Articles I, III and VIII of the Genocide Convention

60. As stated in paragraph 56, Latvia contends for the construction adopted by the Court in its judgments on the merits on the Genocide Convention. In particular, Latvia maintains the construction of Article I in conjunction with the other provisions of the Genocide Convention as contended for in Section F(ii) of the Declaration, to the extent that it is relevant for the merits stage of the Proceedings.

they belong to that group, that is because the perpetrator has a discriminatory intent. Something more is required. The acts listed in Article II must be done with intent to destroy the group as such in whole or in part. The words ‘as such’ emphasize that intent to destroy the protected group.”).

⁹⁷ *Application of the Genocide Convention (Croatia v. Serbia)* (n 56) [136].

⁹⁸ *Ibid* [139].

⁹⁹ *Ibid* [148].

¹⁰⁰ *Ibid* [149].

H. DOCUMENTS IN SUPPORT OF THE DECLARATION

61. The following is a list of documents in support of this Declaration, which documents are attached hereto:

(a) Letter from the Registrar of the International Court of Justice to the States parties to the Genocide Convention (except Ukraine and the Russian Federation) (30 March 2022).

(b) Letter from the Ambassador of Latvia to the Kingdom of the Netherlands to the Registrar of the International Court of Justice (6 April 2022).

(c) Instrument of accession by the Government of Latvia to the Convention on the Prevention and Punishment of the Crime of Genocide (24 March 1992) and Depository notification on the accession by Latvia (4 June 1992).

(d) Accompanying letter from the Agent of the Republic of Latvia indicating that the original declaration of intervention is adjusted (26 July 2024).

I. CONCLUSION

62. On the basis of the information set out above, Latvia avails itself of the right conferred upon it by Article 63, paragraph 2, of the Statute to intervene in Proceedings.

63. Latvia has appointed the undersigned as Agent for the purposes of the Adjusted Declaration, together with H.E. Solvita Ābolčiņa, Ambassador Extraordinary and Plenipotentiary of the Republic of Latvia to the Kingdom of the Netherlands, as Co-Agent. It is requested that all communications in this case be sent to the following address:

Embassy of Latvia
Koninginnegracht 27,
2514 AB, The Hague,
The Netherlands.

Respectfully,

(Signed) Sanita PĒKALE,
Agent of the Republic of Latvia

Annex ALETTER FROM THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE TO THE
AMBASSADOR OF LATVIA TO THE NETHERLANDS

30 March 2022.

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.

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.

(Signed) Philippe GAUTIER,
Registrar

Annex B

LETTER FROM THE AMBASSADOR OF LATVIA TO THE NETHERLANDS TO THE REGISTRAR OF THE
INTERNATIONAL COURT OF JUSTICE

6 April 2022.

I have the honour to refer to your letters no. 156253 of 2 March 2022 and no. 156413 of 30 March 2022 informing the Government of the Republic of Latvia of the proceedings instituted by Ukraine against the Russian Federation on 26 February 2022 concerning ‘a dispute relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide’ (the ‘Convention’) and the request of Ukraine pursuant to Article 41 of the Statute of the Court for the indication of provisional measures in this case.

I note that Ukraine claims that

“the Russian Federation’s declaration and implementation of measures in or against Ukraine in the form of a “special military operation” declared on 24 February 2022 on the basis of alleged genocide, as well as the recognition that preceded the military operation, is incompatible with the Convention and violates Ukraine’s right to be free from unlawful actions, including military attack, based on a claim of preventing and punishing genocide that is wholly unsubstantiated.”¹

I also note that the Court’s order on the request for the indication of provisional measures of 16 March 2022 relies upon Articles I, II, III, VIII, and IX of the Convention for the purpose of assessing the existence of *prima facie* jurisdiction and the plausibility of rights asserted by Ukraine.² It follows that the construction of the Convention may be in question in the case.

I have the honour to inform you that the Government of the Republic of Latvia, as a State party to the Convention, has a direct interest in the construction thereof and intends to exercise its right to intervene in the abovementioned case under Article 63, paragraph 2, of the Statute of the Court.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,

(Signed) Aiga LIEPIŅA,
Ambassador.

¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russia)* (Application instituting proceedings) <https://www.icj-cij.org/public/files/case-related/182/182-20220227-APP-01-00-EN.pdf> [26].

² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russia)* [2022] ICJ Rep <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf> [26], [27], [28], [45], [48], [56]-[58].

Annex C

INSTRUMENT OF ACCESSION BY THE GOVERNMENT OF LATVIA
TO THE CONVENTION ON THE PREVENTION AND PUNISHMENT
OF THE CRIME OF GENOCIDE

Riga, 24 March 1992.

Your Excellency,

The Minister of Foreign Affairs of the Republic of Latvia presents his compliments to the Secretary-General of the United Nations and has the honour to enclose a declaration by the Supreme council of the Republic of Latvia adopted on 4 May 1990, titled "On the Accession of the Republic of Latvia to International Instruments Relating to Human Rights". The document declares Latvia's accession to the following international instruments:

/../

12. December 9, 1948 Convention on the Prevention and Punishment of the Crime of Genocide in conformity with Article 11.

/../

The provisions of the above mentioned conventions will be observed in their entirety.

(Signed) Jānis JURKĀNS,
Minister.

DEPOSITARY NOTIFICATION

4 June 1992.

CONVENTION ON THE PREVENTION AND PUNISHMENT
OF THE CRIME OF GENOCIDE
ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS
ON 9 DECEMBER 1948

ACCESSION BY LATVIA

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

On 14 April 1992, the instrument of accession by the Government of Latvia to the above-mentioned Convention was deposited with the Secretary General.

In accordance with its article XIII, the Convention will enter into force for Latvia on the ninetieth day after the date of deposit of the instrument, i.e., on 13 July 1993.