

INTERNATIONAL COURT OF JUSTICE

**DECLARATION OF INTERVENTION UNDER ARTICLE 63
OF THE FEDERAL REPUBLIC OF GERMANY**

2 August 2024

In the case of

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

(UKRAINE *v.* RUSSIAN FEDERATION)

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

1. On behalf of the Government of Germany, I have the honour to submit to the Court a Declaration of Intervention pursuant to Article 63 paragraph 2 of the Statute of the Court in the merits phase of the Case concerning *The Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

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. Those matters are addressed in sequence below, following some preliminary observations.

I. Preliminary Observations

4. By this present Declaration, Germany informs about its desire to avail itself of the right to intervene in the merits phase of the present case, a right which is conferred upon it by Article 63, paragraph 2, of the Statute. This Court has recognized that Article 63 confers a “right” of intervention¹. The Court has also underlined that an intervention “is limited to submitting observations on the construction of the convention in question and does not allow the intervenor, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court; and whereas such intervention cannot affect the equality of the Parties to the dispute”.²

¹ *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 76; *Continental Shelf (Tunisia/Libyan Arab Jamahirija)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 13, para. 21.

² *Whaling in the Antarctic (Australia v. Japan)*, *Declaration of Intervention of New Zealand*, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, at p. 9, para. 18.

5. Consistent with the restricted scope for interventions under Article 63 of the Statute, Germany will solely present its interpretation of the relevant Articles of the Genocide Convention in line with customary rules of interpretation as reflected in Articles 31-33 of the Vienna Convention on the Law of Treaties³. Neither the present Declaration of Intervention nor a later intervention can, therefore, in any way be construed as having implications with regard to Germany's position on factual or legal aspects covered in the case at hand that are going beyond the specific aspects covered in Germany's intervention. In particular, Germany wishes to stress that presenting an interpretation regarding genocidal intent must not in any way be construed as implicitly acknowledging the existence of any genocidal action.

6. In its intervention of 1 September 2022, Germany had focused solely on Article IX of the Convention relating to the jurisdiction of the Court. With the present Declaration of Intervention Germany informs of its intent to intervene in the merits phase of the case on the interpretation of Article II of the Convention, while reserving the right to also comment on Article III of the Convention.

II. Basis on which Germany is Party to the Convention

7. Germany deposited its instrument of ratification to the Genocide Convention in accordance with its Article XI on 9 October 1954⁴ and it accordingly entered into force for Germany by virtue of its Article XIII ninety days thereafter. Germany has entered no reservations to the Convention and remains a Party to the Convention.

III. Provisions of the Convention in Question in the Case (Merits)

8. Germany wishes to share with the Court its interpretation of Article II of the Convention, which it considers relevant for the merits of the case and which reads:

“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:

³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment of 22 July 2022, p. 31, para. 87: “The Court will have recourse to the rules of customary international law on treaty interpretation as reflected in Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969”; see also *Application of the International Convention On the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment of 4 February 2021, p. 24, para. 75 with further references.

⁴ See Annex B to this Declaration.

- (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.”

9. Article II of the Convention contains the definition of genocide. Germany contends that on the interpretation of the elements of genocide there is pertinent case law of the Court that is well-established.

10. In particular, in order for genocide to occur, there is a requirement to establish both that genocidal acts listed in Article II (including certain mental elements) have occurred as well as that they were committed with a (specific) genocidal intent.⁵

11. Genocidal intent, often referred to as specific intent or *dolus specialis*, means the intention to destroy, in whole or in part, the group to which the victims belong as such. It is to be distinguished from other motives or reasons the perpetrator may have. It is not sufficient if members of the group are targeted because they belong to that group, in other words because of the presence of a discriminatory intent. It is rather required to establish a different intention that clearly goes beyond discriminatory intent and great care must be taken in finding in the facts a sufficiently clear manifestation of any genocidal intent.⁶

12. In turn, the fact that civilian casualties occurred during the course of an armed conflict is not per se evidence of genocidal action or genocidal intent.

13. 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”.⁷

14. Thereby, the Court has long recognized that claims against a State involving charges of exceptional gravity must be proved by evidence that is fully

⁵ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 43, at pp. 121-122, paras. 186-189.

⁶ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 43, at pp. 121-122, paras. 187, 189.

⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 3, at p. 67, para. 148.

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. The same standard applies to the proof of attribution for such acts.⁸

IV. Documents in Support of the Declaration

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

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

Annex B: Instrument of Accession of the Federal Republic of Germany to the Convention on the Prevention and Punishment of the Crime of Genocide;

it is hereby certified that the documents attached in the Annexes to this Declaration are true copies of the originals.

V. Conclusion

16. On the basis of the information set out above, Germany informs about its desire to avail itself of the right conferred upon it by Article 63 paragraph 2 of the Statute to intervene in the proceedings brought by Ukraine against the Russian Federation in this case.

17. Germany reserves the right to amend or supplement this Declaration of Intervention in the course of written and oral observations and by filing a further declaration with the Court.

18. The government of Germany has appointed the undersigned as Agent for the purposes with this Declaration, together with Dr. Wiebke Rückert, Director for Public International Law, Federal Foreign Office of the Federal Republic of Germany and Mr Edgar Alfred Gansen, Deputy Ambassador of the Federal Republic of Germany to the Kingdom of the Netherlands, as Co-Agents. The Registrar of the Court may channel all communication through them at the following address:

Embassy of the Federal Republic of Germany in the Netherlands
Groot Hertoginnelaan 18-20
NL-2517 EG Den Haag

⁸ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 43, at p. 129, para. 209.

Respectfully submitted,

A handwritten signature in blue ink, reading "Tania v. Uslar-Gleichen", is displayed on a light gray rectangular background.

Tania von Uslar-Gleichen
Agent of the Government of Germany



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.”

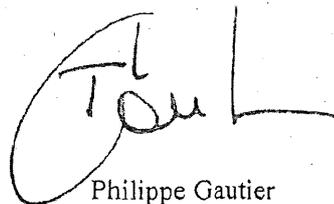
On the instructions of the Court, given in accordance with the said provision of the Rules of Court, I have the honour to notify your Government of the following.

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)]

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.

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

Philippe Gautier
Registrar

DER PRÄSIDENT
DER BUNDESREPUBLIK DEUTSCHLAND

Beitrittserklärung

Im Namen der Bundesrepublik Deutschland erkläre ich hiermit,
daß die Bundesrepublik Deutschland der am 9. Dezember 1948
von der Vollversammlung der Vereinten Nationen angenommenen

Konvention über die Verhütung und Bestrafung
des Völkermordes

beitritt.

Bonn, den 9. Okt. 1954

Der Bundespräsident



Der Bundeskanzler
und Bundesminister des Auswärtigen



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