

Before the
INTERNATIONAL COURT OF JUSTICE

DECLARATION OF INTERVENTION UNDER ARTICLE 63
OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND

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: 32 STATES INTERVENING)

DECLARATION OF INTERVENTION UNDER ARTICLE 63 OF THE STATUTE OF THE COURT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

To the Registrar of the International Court of Justice, the undersigned being duly authorised by the United Kingdom of Great Britain and Northern Ireland (“United Kingdom”):

1. I have the honour to submit to the Court a Declaration of intervention on behalf of the United Kingdom, pursuant to Article 63, paragraph 2, of the Statute of the Court, in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*.
2. On 1 August 2022, the United Kingdom filed a Declaration of Intervention, pursuant to Article 63, paragraph 2, of the Statute of the Court in the same case. That Declaration addressed matters pertaining to both the preliminary objections stage and the merits stage of the case. By its order dated 5 June 2023, the Court decided that the United Kingdom’s Declaration was admissible insofar as it related to the preliminary objections phase.¹
3. By its judgment dated 2 February 2024 (“the Preliminary Objections Judgment”), the Court found that it had jurisdiction, on the basis of Article IX of the Genocide Convention, to entertain submission (*b*) in paragraph 178 of the Memorial of Ukraine, and that the same submission was admissible.²
4. According to the letter of the Registrar dated 18 June 2024,³ States which sought to intervene at the preliminary objections stage and at the merits stage were invited to indicate, by 2 August 2024, whether they maintain their declarations of intervention, and, if deemed necessary, to adjust by the same date their declarations of intervention in light of the Preliminary Objections Judgment.
5. By way of the present Declaration of Intervention, the United Kingdom indicates that it wishes to maintain its intervention, and further adjusts its Declaration in light of the Preliminary Objections Judgment.

¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Order of 5 June 2023, para. 102(1), (3).

² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Judgment, Preliminary Objections, 2 February 2024, para. 151(8)–(9).

³ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, Letter from the Registrar of the Court No 162412, to the Contracting Parties to the Genocide Convention, dated 18 June 2024. See Annex A to this Declaration.

6. Article 82, paragraph 5, of the Rules of the Court (as amended, with the amendments entering into force on 1 June 2024) provides that a State that desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall file a declaration that specifies the name of an agent, the case and the convention to which the declaration relates, and which contains:
 - (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.
7. This Declaration addresses each of these requirements in turn, following certain preliminary observations on the legal proceedings to date.

1. The Legal Proceedings

8. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation 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 Genocide Convention”). Together with the Application, Ukraine submitted a Request for the indication of provisional measures.
9. A hearing was held on 7 March 2022. The Russian Federation did not participate in the oral proceedings. However, 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”.
10. The Court issued its order on provisional measures on 16 March 2022 in which it indicated that:⁴
 - (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

⁴ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 86.

be subject to its control or direction, take no steps in furtherance of the military operations referred to in point (1) above;

(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.

11. On 30 March 2022, pursuant to Article 63, paragraph 1, of the Statute of the Court, the Registrar of the Court, on the instructions of the Court, notified the United Kingdom that in this case 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.”⁵

12. By filing this Declaration, the United Kingdom is availing itself of its right under Article 63, paragraph 2, of the Statute of the Court to intervene as a Contracting Party to the Genocide Convention.
13. As stated above, the Court identified the scope of its jurisdiction in the Preliminary Objections Judgment. In accordance with the invitation in the Registrar’s letter of 18 June 2024, the United Kingdom has adjusted its Declaration of Intervention in light of that Judgment. It has been filed within the time-limit specified by the Registrar in that letter.
14. This case raises important issues concerning the Genocide Convention. The Court has found that the provisions of the Convention impose *erga omnes partes* obligations on Contracting Parties to the Convention,⁶ and that the prohibition against genocide is a *jus cogens* norm.⁷ The Court recognised the international community’s common interest in the rights and duties enshrined in the Convention more than seven decades ago, observing that:

⁵ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, Letter from the Registrar of the Court No 156413, to the Contracting Parties to the Genocide Convention, dated 30 March 2022. See Annex B to this Declaration.

⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, ICJ Reports 2015, p. 3, at p. 47, para. 87; *Case Concerning Armed Activities on the Territory of the Congo (New Application; 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, ICJ Reports 2006, p. 6, at p. 31, para. 64; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ Reports 2022, p. 477 at pp. 515–517, paras. 107–109.

⁷ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 43, at p. 111, paras. 161–162.

“It is indeed difficult to imagine a convention that might have this dual character [a purely humanitarian and civilizing purpose] to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention the contracting States 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. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States . . .”⁸

15. The Court has subsequently affirmed these principles.⁹ The United Kingdom recognises that intervening in this case enables Contracting Parties to the Genocide Convention to reaffirm their collective commitment to upholding the rights and obligations contained in the Convention, including by supporting the crucial role of the Court and emphasising that international co-operation is required to prevent, adjudicate on and punish acts of genocide.¹⁰
16. The United Kingdom also recognises that, by availing itself of the right to intervene under Article 63 of the Statute, the construction of the Genocide Convention given by the judgment in this case will be equally binding upon it.

2. The Case and Convention to which this Declaration Relates

17. The United Kingdom is filing this Declaration to intervene in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*. Proceedings were instituted by Ukraine against the Russian Federation on 26 February 2022. The case raises questions concerning the construction of the Genocide Convention.
18. As a Contracting Party to the Genocide Convention, the United Kingdom has a direct interest in the construction that might be placed upon provisions of the Convention by the Court in these proceedings. Indeed, in the case of an intervention under Article 63, “[t]he legal interest of the declarant State in the construction of the convention is presumed by virtue of its status as a party thereto”.¹¹ For that reason, the United Kingdom is exercising its right to intervene conferred by Article 63 of the Statute. The

⁸ *Reservations to the Convention on Genocide*, Advisory Opinion, ICJ Reports 1951, p. 15, at p. 23.

⁹ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ Reports 2022, p. 477 at pp. 515–516, paras. 106–107, pp. 517–518, para. 113.

¹⁰ Convention on the Prevention and Punishment of the Crime of Genocide, signed on 9 December 1948, entered into force 12 January 1951, 78 UNTS 277, Preamble: “Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required”.

¹¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Order of 5 June 2023, para. 27; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 3 July 2024, para. 21.

United Kingdom’s intervention is accordingly directed to the questions of construction of the Convention arising in this case.

3. The Basis upon which the United Kingdom is a Party to the Convention

19. On 30 January 1970, the United Kingdom 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.¹² The United Kingdom has not filed any reservations, declarations, or objections to the Convention, and remains a Contracting Party to the Convention.
20. The Court has already confirmed that the United Kingdom is, on the basis of the above, a State party to the Genocide Convention and thus entitled to intervene under Article 63 of the Statute of the Court.¹³

4. The Provisions of the Convention that are in Question in the Case

21. The present Declaration addresses only those provisions which are relevant to the merits stage of the case: Article I and II of the Genocide Convention. The United Kingdom reserves the right to supplement the present Declaration and the scope of its observations to the extent that additional matters arise as the case progresses, or as the United Kingdom becomes aware of them upon receipt (in accordance with Article 86, paragraph 1, of the Rules) of the pleadings and documents annexed to them, beyond the Memorial of Ukraine which has already been provided to it.
22. As stated above, the Court has found that it has jurisdiction to entertain submission (b) in paragraph 178 of the Memorial of Ukraine, and that the same submission is admissible.¹⁴ The relevant submission requests the Court to:

“Adjudge and declare that there is no credible evidence that Ukraine is responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk oblasts of Ukraine”.¹⁵
23. This submission requires the Court to interpret Article I of the Genocide Convention, which states:

¹² See Annex C to this Declaration.

¹³ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Order of 5 June 2023, para. 36. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 3 July 2024, paras. 33–36.

¹⁴ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Judgment, Preliminary Objections, 2 February 2024, para. 151(8)–(9).

¹⁵ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Memorial of Ukraine, 1 July 2022, para. 178(b).

“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 punish.”

24. Article I refers to “genocide”, which is defined in Article II 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.”

25. The proper construction of Articles I and II of the Convention are therefore in question in the case as regards the merits of the dispute.

5. Construction of the Provisions for which the United Kingdom Contends

26. The United Kingdom naturally begins the exercise of construction of the Genocide Convention by reference to the rules of interpretation reflected in the terms of Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties, reflecting customary international law. Article 31(1) provides:

“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.”

27. Together with the context, the interpretation of a treaty must also take account of the subsequent practice of the parties to the treaty to the extent that this establishes the agreement of the parties regarding the treaty’s interpretation, as well as any rules of international law applicable in the relations between the parties.¹⁶ In certain circumstances, recourse may also be had to supplementary means of interpretation, including the preparatory work of the treaty.¹⁷

28. This section of the Declaration sets out two matters of construction for which the United Kingdom contends.

¹⁶ Vienna Convention on the Law of Treaties, signed on 23 May 1969, entered into force 27 January 1980, 1155 UNTS 331, Article 31(3)(b)–(c).

¹⁷ Vienna Convention on the Law of Treaties, signed on 23 May 1969, entered into force 27 January 1980, 1155 UNTS 331, Article 32.

(i) Under Article II of the Genocide Convention, genocide will occur only where there is both genocidal intent and genocidal action

29. Article II of the Convention makes clear that the commission of genocide relies on both genocidal intent and genocidal action.
30. As regards genocidal intent, Article II provides that genocide may only occur if the relevant act is committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”. The Court has emphasised that, in a dispute concerning responsibility for genocide, “[g]reat care” must be exercised in ascertaining whether the evidence before it shows “a sufficiently clear manifestation of that intent”.¹⁸ This mental element, which the drafters of the Convention “defined very precisely”, is properly characterised as a “specific or special intent or *dolus specialis*”.¹⁹ It is “the essential characteristic of genocide, which distinguishes it from other serious crimes”.²⁰ It is not enough, for example, that the alleged perpetrator has some form of “discriminatory intent”; rather, there must be an intent to destroy, in whole or in part, the group as such.²¹
31. Specifically, the requirement that a protected group be targeted “as such” means that:
- “the said acts must have been committed against one or more persons because such person or persons were members of a specific group, and specifically, because of their membership in this group. Thus, the victim is singled out not by reason of his individual identity, but rather on account of his being a member of a national, ethnical, racial or religious group. The victim of the act is, therefore, a member of a given group selected as such, which, ultimately, means the victim of the crime of genocide is the group itself and not the individual alone.”²²
32. As to genocidal action, Article II provides an exhaustive list of the acts which are capable of constituting the relevant action, all of which “are by their very nature conscious, intentional or volitional acts”.²³ These consist of: (i) killing members of the group; (ii) causing serious bodily or mental harm to members of the group; (iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (iv) imposing measures intended to prevent

¹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 43, at p. 122, para. 189.

¹⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 43, at p. 121, para. 187.

²⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, ICJ Reports 2015, p. 3, at p. 62, para. 132.

²¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 43, at p. 121, para. 187.

²² *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, ICTR-96-3-T, Judgment and Sentence, 6 December 1999, para. 60.

²³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 43, at p. 121, para. 186.

births within the group; and (v) forcibly transferring children of the group to another group.

33. Thus, properly construed, Article II contains detailed elements concerning intent and action. Article II cannot be construed, for example, to include the causing of civilian casualties in the course of armed conflict in the absence of the requisite *dolus specialis*.

(ii) *In a case in which the applicant State seeks a declaration that it is not responsible for committing genocide, the burden of proof is on the respondent State to establish any such responsibility*

34. The Court held in its Preliminary Objections Judgment that its jurisdiction under Article IX of the Genocide Convention extends to a case in which the applicant State seeks a declaration that it is not responsible for committing genocide.²⁴ The question now arises of whether, in such a case, the applicant State bears the burden of proving that it is *not* responsible for committing genocide, or the respondent State bears the burden of proving that the applicant State *is* responsible for committing genocide. In his Declaration accompanying the Preliminary Objections Judgment, Judge Tomka addressed the burden of proof in such a case and stated that “it would be useful for the Parties to address this fundamental question as the case proceeds to the merits”.²⁵

35. The Court has highlighted that “[t]he determination of the burden of proof is in reality dependent on the subject-matter and the nature of each dispute brought before the Court; it varies according to the type of facts which it is necessary to establish for the purposes of the decision of the case”.²⁶ The United Kingdom contends that, in a case under the Genocide Convention in which the applicant State seeks negative declaratory relief, it is the respondent State which bears the burden of proving that the applicant State is responsible for committing genocide. It further contends that this allocation of the burden of proof arises as a matter of construction of the Genocide Convention.

36. That the respondent State bears the burden of proof in such a case is clear from Articles I and II of the Genocide Convention.

(a) Article I refers to genocide as “a crime under international law”. The provision could simply have stated that the Contracting Parties undertook to prevent and punish genocide, without emphasising the criminal character of genocide. It was evidently a deliberate choice to characterise genocide as a “crime”. The term

²⁴ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Judgment, Preliminary Objections, 2 February 2024, paras. 93–109, 151(3).

²⁵ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Judgment, Preliminary Objections, 2 February 2024, Declaration of Judge Tomka, para. 20.

²⁶ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits: Judgment, ICJ Reports 2010, p. 639 at p. 660, para. 54.

“crime” connotes that an individual accused of the conduct in question cannot be required to prove their innocence. There is a presumption of innocence.²⁷

- (b) Article I contains an undertaking by the Contracting Parties “to punish” genocide. This underscores the characterisation of genocide as a *criminal act*, and it is inherent in such an act that an individual who stands accused does not bear the burden of establishing their innocence.
- (c) The proposition that genocide must be affirmatively proven against the party accused of it applies both in the context of individual criminal proceedings, and proceedings in which what is alleged is State responsibility for genocide. This is consistent with the ordinary meaning of the word “crime” and with the Court’s previous finding that, in order to establish a State’s international responsibility for genocide, the evidence against the State must be “fully conclusive”.²⁸
- (d) Articles I and II both refer to genocide being “committed”. The term “committed” is frequently associated with perpetration of a crime (a person is accused of having “committed a crime”). The use of the word “committed” in this context supports the conclusion that it is for the accusing party to prove the perpetration of genocide (as a “crime”), rather than for the party which stands accused of being responsible for genocide to disprove the allegation.

37. The positions above are reinforced by the context of the Genocide Convention as a whole, which is heavily focused on the character of genocide as a criminal act which must be punished. For example:

- (a) The Preamble refers to Resolution 96(I) of the United Nations General Assembly dated 11 December 1946 which characterised genocide as a crime under international law;
- (b) Article III contains a list of acts which are “punishable”;
- (c) Article IV refers to the fact that any person who commits genocide “shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals”;

²⁷ See, e.g., International Covenant on Civil and Political Rights, signed on 16 December 1966, entered into force 23 March 1976, 999 UNTS 171, Article 14(2); Rome Statute of the International Criminal Court, signed on 17 July 1998, entered into force 1 July 2002, 2187 UNTS 3, Article 66(1).

²⁸ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 43, at p. 129, para. 209, p. 175, para. 319.

- (d) Article V requires a State to enact “necessary legislation . . . to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III”;
- (e) Article VI sets out certain requirements of a trial of “[p]ersons charged with genocide or any of the other acts enumerated in article III”.

All of these provisions underscore that genocide is an act that is primarily to be viewed through the prism of criminal law, including in light of the presumption of innocence. While many of these provisions are focused on the trial and/or punishment of individuals accused of having committed, or found to have committed, genocide, they are a strong indication that where a State has been accused of responsibility for genocide, the State making the accusation has the burden of proving it, irrespective of which State seises the Court (see para. 36(c) above).

38. Further contextual support for the interpretation set out above can be derived from Article IX of the Genocide Convention.

- (a) Article IX refers to “[d]isputes between the Contracting Parties” being submitted to the Court “at the request of any of the parties to the dispute”. This provision makes it clear (as the Court has already accepted in its Preliminary Objections Judgment²⁹) that the Court may be seised either by a Contracting Party accusing another of genocide, or by a Contracting Party which stands so accused. The Convention is neutral as to which party seises the Court to adjudicate on whether a State is responsible for committing genocide. That does not, however, alter the existence or content of the underlying “dispute” or the Contracting Parties’ respective positions in the context of that dispute, with one party claiming that the other is responsible for genocide, and the other denying that claim. It is those underlying facts, rather than the identity of the party which seises the Court, that should determine the Court’s approach to the burden of proof. Specifically, the Court should resolve that dispute in light of the basic principle that a State which asserts a fact bears the burden of proving that fact.³⁰ In this context, the State which accuses another of a breach of its international obligations under the Genocide Convention bears the burden of proving any such breach.
- (b) Significantly, Article IX refers to disputes “including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III”. Provided that the responsibility of “a State” is in question, it is immaterial whether that State is the applicant or respondent State before the

²⁹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Judgment, Preliminary Objections, 2 February 2024, paras. 93–109, 151(3).

³⁰ See, e.g., *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14, at p. 71, para. 162.

Court. What matters is the character of the underlying dispute, including which State is making the serious allegation which needs to be proven.

- (c) Any other conclusion would create fundamental unfairness. If a State considers that it has been wrongly accused of genocide, Article IX makes clear that it is entitled to seise the Court to adjudicate on that accusation. It cannot be the case that by doing so the State in question, simply by virtue of being the applicant State, must then bear the burden of establishing that genocide has not occurred. Given the recognised difficulties of proving a negative,³¹ seising the Court would entail extraordinary and in many cases presumably unacceptable risk if the applicant State bore a burden to establish its own lack of responsibility. That would undermine the purpose of Article IX being available to any party to a dispute over whether a State has committed genocide.

6. Documents in Support of the Declaration

- 39. The United Kingdom submits the following documents in support of this Declaration:
 - (a) Annex A – Letter from the Registrar dated 18 June 2024;
 - (b) Annex B – Letter from the Registrar sent pursuant to Article 63, paragraph 1, of the Court’s Statute dated 30 March 2022; and
 - (c) Annex C – Instrument of Accession of the United Kingdom to the Convention on the Prevention and Punishment of the Crime of Genocide

7. Conclusion

- 40. For the reasons given in this Declaration, the United Kingdom respectfully requests the Court to recognise the admissibility of this Declaration and that the United Kingdom is availing itself of its right under Article 63, paragraph 2, of the Statute of the Court to intervene in these proceedings.
- 41. The United Kingdom reserves the right to amend or supplement this Declaration in the course of written and oral observations and by filing a further declaration with the Court if circumstances require.

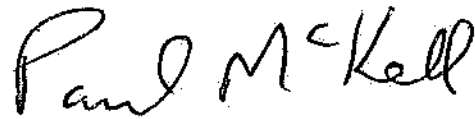
³¹ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits: Judgment*, ICJ Reports 2010, p. 639 at pp. 660-661, para. 55.

Paul McKell

Paul McKell
CO-AGENT OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND

CERTIFICATION

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

A handwritten signature in black ink that reads "Paul McKell". The signature is written in a cursive style with a large, prominent 'P' and 'M'.

Paul McKell
CO-AGENT OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND

Annex A

Letter dated 18 June 2024 from the Registrar of the International Court of Justice to Ms. Sally Langrish, Agent of the United Kingdom of Great Britain and Northern Ireland



By email only

162412

18 June 2024

Madam,

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 have the honour to recall that by its Order dated 5 June 2023, the Court decided that the declarations of intervention under Article 63 of the Statute submitted by 32 States (Australia, Austria, Belgium, Bulgaria, Canada and the Netherlands (jointly), Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom) were admissible at the preliminary objections stage of the proceedings in so far as they concerned the construction of Article IX and other provisions of the Genocide Convention that are relevant for the determination of the jurisdiction of the Court. The Court further decided that the declaration of intervention under Article 63 of the Statute submitted by the United States was inadmissible in so far as it concerned the preliminary objections stage of the proceedings. I also recall that by its Judgment dated 2 February 2024, the Court found that it had jurisdiction, on the basis of Article IX of the Genocide Convention, to entertain submission (b) at paragraph 178 of the Memorial of Ukraine, whereby Ukraine requested 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 was admissible. In light of the fact that the case has now proceeded to the merits, I have the honour to inform you of the following.

J.

Ms Sally Langrish
Agent of the United Kingdom of Great Britain and Northern Ireland
before the International Court of Justice
Embassy of the United Kingdom
The Hague

cc: Mr Paul McKell
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Website: www.icj-cij.org

- 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.
- States which only sought to intervene at the preliminary objections stage, but which now wish to intervene at the merits stage should file a new declaration of intervention by 2 August 2024.
- Pursuant to Article 83, paragraph 1, of its Rules, the Court will then invite the Parties to file written observations on the admissibility of the declarations of intervention at the merits stage. If one of the Parties objects to the admissibility of the declarations of intervention, there will be a further round of written observations, in accordance with Article 84, paragraph 2, of the Rules. Thereafter, the Court will decide on the admissibility of the declarations of intervention at the merits stage.

Accept, Madam, the assurances of my highest consideration.



Philippe Gautier
Registrar

Annex B

Letter dated 30 March 2022 from the Registrar of the International Court of Justice to the
Ambassador of the United Kingdom to the Netherlands



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.

J.

[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.



Philippe Gautier
Registrar

Annex C

Instrument of Accession of the United Kingdom to the Convention on the Prevention and Punishment of the Crime of Genocide

UNITED NATIONS  NATIONS UNIES
NEW YORK

CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEW YORK

REFERENCE: C.N.18.1970.TREATIES-1 24 February 1970

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 THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND

Sir,

I am directed by the Secretary-General to inform you that, on 30 January 1970, the instrument of accession by the Government of the United Kingdom of Great Britain and Northern Ireland to the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948, was deposited with the Secretary-General, in accordance with article XI.

At the time of deposit of the instrument of accession, the Government of the United Kingdom notified the Secretary-General, in accordance with article XII of the Convention, that the Convention shall apply to the following territories:

	Channel Islands	
	Isle of Man	
	Dominica	
	Grenada	
	St. Lucia	
	St. Vincent	
Bahamas		Hong Kong
Bermuda		Pitcairn
British Virgin Islands		St. Helen and
Falkland Islands		Dependencies
and Dependencies		Seychelles
Fiji		Turks and
Gibraltar		Caicos Islands

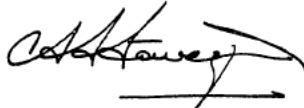
UNITED NATIONS  NATIONS UNIES

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Furthermore, the instrument of accession was accompanied by a declaration that the Government of the United Kingdom do not accept the reservations to articles IV, VII, VIII, IX or XII of the Convention made by Albania, Algeria, Argentina, Bulgaria, Burma, the Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, India, Mongolia, Morocco, the Philippines, Poland, Romania, Spain, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics or Venezuela.

In accordance with the third paragraph of article XIII of the Convention, the accession of the United Kingdom will become effective on the ninetieth day following the deposit of the instrument of accession, that is to say, on 30 April 1970.

Accept, Sir, the assurances of my highest consideration.



Constantin A. Stavropoulos
The Legal Counsel