

DECLARATION OF INTERVENTION OF SPAIN

INTERVENTION PURSUANT TO ARTICLE 63 OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

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

1. On behalf of the government of Spain, 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 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 2, 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.

PRELIMINARY OBSERVATIONS

4. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation in a dispute concerning the interpretation, application or fulfilment of the Convention on the Prevention and Punishment of Genocide (the "Genocide Convention").

5. In paras. 4-12 of its Application instituting proceedings, Ukraine contends 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.

6. On substance, Ukraine claims that the use of force by the Russian Federation in or against Ukraine since 24 February 2022 on the basis of alleged genocide, as well as the recognition that preceded the military operation, is incompatible with the Convention, quoting Articles I-III thereof (paras. 26-29 of the Application).

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

- (1) the Russian Federation shall immediately suspend the military operation that it started 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 person which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in points (1) above; and

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

8. As of date of this Declaration, Russia has failed to comply with the Order, has intensified and expanded its military operations on the territory of Ukraine and has thus aggravated the dispute pending before the Court.

9. On 30 March 2022, as contemplated by Article 63, paragraph 1, of the Statute of the Court, the Registrar duly notified the Government of Spain as a party to the Genocide Convention that by Ukraine's application the Genocide Convention "is invoked both as a basis for the Court's jurisdiction and the substantive basis of [Ukraine's] claims on the merits". The registrar also noted that:

"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"¹.

10. It is the understanding of Spain that the Genocide Convention is of utmost importance to prevent and punish genocide. Any acts committed with an intent to destroy, in whole or in part, national, ethnical, racial or religious group constitutes a crime under international law. The prohibition against genocide is a *jus cogens* norm in international law². The rights and obligations enshrined by the Convention are owed to the international community as a whole (rights and obligations *erga omnes partes*)³. In such a situation, when the treaty embodies matters of collective interest, the late Judge Cançado Trindade called upon all State Parties to contribute to the proper interpretation of the treaty as sort of a "collective guarantee of the observance of the obligations contracted by the State parties"⁴.

11. By this present Declaration, Spain avails itself of the right to intervene conferred upon it by Article 63, paragraph 2, of the Statute. This Court has recognized that Article 63 confers a "right" of intervention⁵. 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

¹ Letter from the Registrar of the Court of 30 March 2022 – see Annex A.

² 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, p. 43, at p. 111, paras. 161-162.

³ 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, I.C.J. Reports 2020, p. 3 with further references; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Judgment of 22 July 2022, p. 36, para. 107.

⁴ Separate Opinion of Judge Cançado Trindade, attached to Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 33, para 53.

⁵ Haya de la Torre (Colombia v. Peru), Judgment, I.C.J. Reports 1951, p. 76; Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 13, para. 21.

the case before the Court; and whereas such intervention cannot affect the equality of the Parties to the dispute”.⁶

12. Consistent with the restricted scope for interventions under Article 63 of the Statute, Spain will present its interpretation of the relevant Articles of the Genocide Convention in line with customary rules of interpretation as reflected in Article 31 of the Vienna Convention on the Law of Treaties⁷. It notes that Article 63 of the Statute does not make a distinction between provisions in a Convention, which relate to jurisdictional issues and those, which relate to substantive provisions. According to Judge Schwebel “intervention in the jurisdictional phase of a proceeding is within the scope of rights with which States are endowed by the terms of Article 63”⁸. Indeed, in both situations, States may offer their assistance to the Court in the construction of a particular Convention. Accordingly, interventions on both aspects are allowed⁹, and the wording in Article 82 of the Rules to file a declaration “as soon as possible” confirms that the filing of an Article 63 declaration is admissible at this stage of the proceedings.

13. At present, Spain focuses on the construction of Article IX of the Convention on the jurisdiction of the Court.

14. Spain does not seek to become a party to the Proceedings and accepts that the Genocide Convention’s construction given by the judgment will be equally binding upon it. Its intervention will not address issues of application of the Convention.

15. Spain also wishes to assure the Court that the intervention was filed “as soon as possible and no later than the date fixed for the opening of the oral proceedings” as stipulated in Article 82 of the Rules of the Court. It requests to be provided with copies of all pleadings filed by Ukraine and Russia, as well as any annexed documents, in line with Article 85, paragraph 1, of the Rules of the Court. It further informs the Court that it is willing to assist the Court in grouping its intervention together with similar interventions from other EU Member States for future stages of the proceedings, if the Court deems such a move useful in the interest of an expedient administration of justice.

⁶ 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.

⁷ 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.

⁸ See Opinion of Judge Schwebel in Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Declaration of Intervention of El Salvador), Order of 4 October 1984, I.C.J. Reports 1984, p. 223, at pp. 235-236.

⁹ MN Shaw (ed), *Rosenne’s Law and Practice of the International Court 1920-2015* (5th ed, Vol III, Brill Nijhoff 2016), p. 1533; H. Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* (Vol I, OUP 2013), p. 1031; A. Miron/C. Chinkin, “Article 63” in: Zimmermann/Tams/Oellers-Frahm/Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary* (3rd ed. OUP 2019), p. 1741, at p. 1763, note 46.

BASIS ON WHICH SPAIN IS PARTY TO THE CONVENTION

16. Spain acceded to the Convention and deposited its instrument of accession in accordance with Article XI, paragraph 4, of the Convention on 13 September 1968.

PROVISIONS OF THE CONVENTION IN QUESTION IN THE CASE:

JURISDICTION

17. Article IX of the Genocide Convention reads as follows:

“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.”

18. Spain contends that the notion of “dispute” is already well-established in the case law of the Court and supports the current interpretation. Accordingly, it concurs with the meaning given to the word dispute as “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties.¹⁰ In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”.¹¹ The two sides must “hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations”.¹² Moreover, “in case the respondent has failed to reply to the applicant’s claims, it may be inferred from this silence, in certain circumstances, that it rejects those claims and that, therefore, a dispute exists”¹³.

19. Spain hence concentrates on the interpretation of the other parts of Article IX, namely that the scope of such disputes must be “relating to the interpretation, application or fulfilment of the present Convention”. It contends that Article IX is a broad jurisdictional clause, allowing the Court to adjudicate upon disputes concerning the alleged fulfilment by a Contracting Party of its obligations under the Convention. As Judge Oda noted, the inclusion of the word “fulfilment” is “unique as compared with the compromissory clauses found in other multilateral treaties which

¹⁰ *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

¹¹ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of 21 December 1962, I.C.J. Reports 1962, p. 319, at p. 328.

¹² *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, p. 406, at p. 414, para. 18; *ICJ, Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 3, at p. 26, para. 50, citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion*, I.C.J. Reports 1950, p. 74.

¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment of 22 July 2022, p. 27, para. 71.

provide for submission of the International Court of such disputes between Contracting Parties as relate to the interpretation or application of the treaties in question”¹⁴.

20. The ordinary meaning of the phrase “relating to the interpretation, application or fulfilment of the Convention” may be divided in two sub-categories.

21. The first point (“relating to”) establishes a link between the dispute and the Convention.

22. The second point (“interpretation, application or fulfilment of the Convention”) encompasses many different scenarios. As Professor Kolb has observed, Article IX of the Convention is “a model of clarity and simplicity, opening the seizing of the Court as largely as possible”¹⁵.

23. There can be a dispute about the interpretation, application or fulfilment of the Convention when one State alleges that another State has committed genocide¹⁶. In that scenario, the Court verifies the factual basis for such allegation: if it is not satisfied that there were any acts of genocide actually being committed by the respondent State, it may decline its jurisdiction, also *prima facie*¹⁷.

24. While this scenario of (alleged) responsibility for acts of genocide constitutes an important type of dispute on the “interpretation, application or fulfilment” of the Convention, it is not the only one. For example, in *The Gambia v. Myanmar* (pending), the applicant claimed that the defendant was not only responsible for prohibited acts under Article III, but that it was also violating its obligations under the Convention by failing to prevent genocide in violation of Article I; and failing to punish genocide in violation of Articles I, IV and V¹⁸. In that example, one State alleges that another State is not honouring its commitment to “prevent” and “punish” genocide, because it grants impunity to acts of genocide committed on its territory. Therefore, there can also be disputes about “non-action” as a violation of the substantive obligations under Article I, IV and V.

¹⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Preliminary Objections, Declaration of Judge Oda, I.C.J. Reports 1996 (II), p. 627, para. 5 (emphasis in the original).

¹⁵ R. Kolb, “The Compromissory Clause of the Convention”, in: Paola Gaeta (ed), *The UN Genocide Convention: A Commentary*, (OUP 2009), p. 420.

¹⁶ 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, p. 43, at p. 75, para. 169.

¹⁷ Case Concerning Legality of Use of Force (*Yugoslavia v. France*), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 363, at pp. 372-373, paras. 24-31. Later, the ICJ declined its jurisdiction on the ground that Serbia and Montenegro did not have access to the Court, at the time of the institution of the proceedings, under Article 35 of the Statute (see e.g. ICJ, Case Concerning Legality of Use of Force (*Serbia and Montenegro v. France*), Preliminary Objections, Judgment of 15 December 2004, I.C.J. Reports 2004, p. 595).

¹⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Judgment of 22 July 2022, p. 12, para. 24, Points (1) (c), d) and (e).

25. Therefore, the ordinary meaning of Article IX makes it clear that there is no need to establish genocidal acts as a basis to affirm the Court’s jurisdiction. Rather, the Court has jurisdiction over the question whether genocidal acts have been or are being committed or not.¹⁹ Hence, it also has jurisdiction *ratione materiae* to declare the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law. In particular, the jurisdiction of the Court extends to disputes concerning the unilateral use of military force for the stated purpose of preventing and punishing alleged genocide²⁰.

26. The context of the phrase (“relating to …”) further confirms this reading. In particular, the unusual feature of the words “including” in the intermediate sentence indicates a broader scope of Article IX of the Convention when compared to standard compromissory clause²¹. Disputes relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III are therefore only one type of dispute covered by Article IX, which are “included” in the wider phrase of disputes “relating to the interpretation, application and fulfilment” of the Convention²². Moreover, Article IX expressly provides for ICJ jurisdiction “at the request of any of the parties to the dispute” (emphasis added). This language suggests that a State accused of committing genocide has the same right to submit the dispute to the Court as the State making the accusation. In particular, such a State may seek a “negative” declaration from the Court that the allegations from another State that it was responsible for genocide are without legal and factual foundation.

27. Hence, the context of the phrase (“relating to”) in Article IX confirms that the Court’s jurisdiction goes beyond disputes between States about the responsibility for alleged genocidal acts, but also covers disputes between States about the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law.

28. Finally, the object and purpose gives further support to the wide interpretation of Article IX. The Court noted that “[a]ll the States parties to the Genocide Convention [thus] have a common interest to ensure the prevention, suppression and punishment of genocide, by committing

¹⁹ 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, p. 10, para. 43; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Order of 23 January 2020, I.C.J. Reports 2020, p. 14, para. 30.

²⁰ 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, p. 11, para. 45;

²¹ 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, p. 43, at p. 75, para. 169.

²² See also the Written Observations of The Gambia on the Preliminary Objections raised by Myanmar, 20 April 2021, pp. 28-29, para. 3.22 (“The inclusion of disputes “relating to the responsibility of a State for genocide” among those that can be brought before the Court unmistakably means that responsibility for genocide can be the object of a dispute brought before the Court by any contracting party”).

themselves to fulfilling the obligations contained in the Convention”²³. Famously, in its 1951 Advisory Opinion, the Court held²⁴:

“The objects of such a convention must also be considered. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character 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, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.”

29. The Convention’s object to protect the most elementary principles of morality also prohibits any possibility of a State Party to abuse its provisions for other means. It would undermine the Convention’s credibility as a universal instrument to outlaw the most abhorrent crime of genocide if its authority could be abused by any State Party without a possibility of the victim of such abuse to turn to the Court. The purpose of the Convention hence speaks loudly in favour of a reading of Article IX, according to which disputes relating to the interpretation, application and fulfilment include disputes about the abuse of the Convention’s authority to justify a State’s action vis-à-vis another State party to the Convention.

30. In conclusion, the ordinary meaning of Article IX of the Convention, its context and the object and purpose of the entire Convention show that a dispute regarding acts carried out by one State against another State based on false claims of genocide falls under the notion of “dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention”. Accordingly, the Court has jurisdiction to declare the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law. In particular, the jurisdiction of the Court extends to disputes concerning the unilateral use of military force for the stated purpose of preventing and punishing alleged genocide.

²³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Judgment of 22 July 2022, p. 36, para. 107.

²⁴ Reservations to the Genocide Convention, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 23.

DOCUMENTS IN SUPPORT OF THE DECLARATION

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

- (a) Letter from the Registrar of the International Court of Justice to the Ambassador of Spain to the Kingdom of the Netherlands (30 March 2022);
- (b) Instrument of accession by the Government of Spain to the Genocide Convention.
- (c) Spain's withdrawal of Reservation to article IX.

CONCLUSION

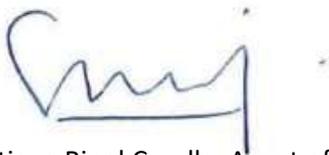
32. On the basis of the information set out above, Spain avails itself on the right conferred upon it by Article 63 paragraph 2 of the Statute to intervene as a non-party in the proceedings brought by Ukraine against the Russian Federation in this case.

33. The government of Spain has appointed the undersigned as Agent(s) for the purposes with this Declaration (Mr. Santiago Ripol Carulla and Ambassador María Consuelo Femenía Guardiola). The Registrar of the Court may channel all communication through them at the following address:

Embassy of Spain to the Kingdom of the Netherlands.

Lange Voorhout, 50.-2514 EG, The Hague

Respectfully,

A handwritten signature in blue ink, appearing to read 'Santiago Ripol Carulla', with a horizontal line underneath the name.

Santiago Ripol Carulla, Agent of the Government of Spain

Annex A: Letter from the Registrar of the International Court of Justice to the Ambassador of Spain to the Kingdom of the Netherlands (30 March 2022);

Annex B: Instrument of Accession by the Government of Spain to the Genocide Convention.

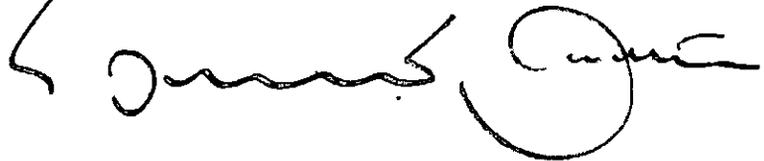
Annex C: Spain's withdrawal of Reservation to article IX.

FERNANDO MARIA CASTIELLA Y MAIZ

MINISTRO DE ASUNTOS EXTERIORES DE ESPAÑA

Cumplidos los requisitos exigidos por la legislación española, extendiendo el presente Instrumento de Adhesión de España al Convenio para la Prevención y la Sanción del delito de Genocidio aprobado por la Asamblea General de las Naciones Unidas el 9 de diciembre de 1948, con una reserva a la totalidad del Artículo IX (jurisdicción del Tribunal Internacional de Justicia)- a efectos de que, mediante su depósito previo y de conformidad con lo dispuesto en el párrafo 3º de su Artículo XI, España entre a ser Parte del Convenio.

En fe de lo cual firmo el presente en Madrid, a veintiseis de junio de mil novecientos sesenta y ocho.



JUAN CARLOS I
REY DE ESPAÑA

POR CUANTO el día 13 de septiembre de 1968, el Estado español depositó en la Secretaría General de las Naciones Unidas (Nueva York) el Instrumento de Adhesión al Convenio para la prevención y la sanción del delito de genocidio, hecho en Nueva York el 9 de diciembre de 1948, incluyendo empero una Reserva a la totalidad del artículo IX (jurisdicción del Tribunal Internacional de Justicia),

Habiendo cambiado las circunstancias que motivaban esta Reserva y cumplidos los requisitos exigidos por la Legislación española,

VENGO EN APROBAR la retirada de dicha Reserva, a cuyo efecto **MANDO** expedir el presente Instrumento firmado por Mí, debidamente sellado y refrendado por el infrascrito Ministro de Asuntos Exteriores y de Cooperación.

Dado en Madrid, a treinta y uno de julio de dos mil nueve



EL MINISTRO DE ASUNTOS EXTERIORES Y DE COOPERACION.



Miguel Ángel Moratinos

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE. UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE. UNATIONS NEWYORK

Reference: C.N.635.2009.TREATIES-2 (Depositary Notification)

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME
OF GENOCIDE

NEW YORK, 9 DECEMBER 1948

SPAIN: WITHDRAWAL OF THE RESERVATION IN RESPECT OF THE WHOLE OF ARTICLE IX
(JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE)

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

The above action was effected on 24 September 2009.

24 September 2009



Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are currently issued in both hard copy and electronic format. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, where interested individuals can subscribe to directly receive depositary notifications by e-mail through a new automated subscription service. Depositary notifications are available for pick-up by the Permanent Missions in Room NL-300.

(IV.1)

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CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

Référence : C.N.635.2009.TREATIES-2 (Notification dépositaire)

CONVENTION POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE
GÉNOCIDE

NEW YORK, 9 DÉCEMBRE 1948

ESPAGNE : RETRAIT DE LA RÉSERVE CONCERNANT LA TOTALITÉ DE L'ARTICLE IX
(COMPÉTENCE DE LA COUR INTERNATIONALE DE JUSTICE)

Le Secrétaire général de l'Organisation des Nations Unies, agissant en sa qualité de dépositaire, communique :

L'action susmentionnée a été effectuée le 24 septembre 2009.

Le 24 septembre 2009



Attention : Les Services des traités des Ministères des affaires étrangères et des organisations internationales concernés. Les notifications dépositaires sont actuellement publiées en formats papier et électronique. Les missions permanentes auprès des Nations Unies peuvent consulter les notifications dépositaires à l'adresse électronique suivante : missions@un.int. Ces notifications sont également disponibles sur le site Internet de la Collection des traités des Nations Unies à l'adresse <http://treaties.un.org>, où les personnes intéressées peuvent souscrire au nouveau service automatisé d'abonnement pour recevoir directement des notifications dépositaires par courriel. Les missions permanentes sont invitées à se procurer les notifications dépositaires mises à leur disposition au bureau NL-300.



156413

Le 30 mars 2022

Excellence,

J'ai l'honneur de me référer à ma lettre (n° 156253) en date du 2 mars 2022, par laquelle j'ai porté à la connaissance de votre Gouvernement que l'Ukraine a, le 26 février 2022, déposé au Greffe de la Cour internationale de Justice une requête introduisant une instance contre la Fédération de Russie en l'affaire relative à des Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie). Une copie de la requête était jointe à cette lettre. Le texte de ladite requête est également disponible sur le site Internet de la Cour (www.icj-cij.org).

Le paragraphe 1 de l'article 63 du Statut de la Cour dispose que

«[I]orsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige, le Greffier les avertit sans délai».

Le paragraphe 1 de l'article 43 du Règlement de la Cour précise en outre que

«[I]orsque l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige peut être en cause au sens de l'article 63, paragraphe 1, du Statut, la Cour examine quelles instructions donner au Greffier en la matière».

Sur les instructions de la Cour, qui m'ont été données conformément à cette dernière disposition, j'ai l'honneur de notifier à votre Gouvernement ce qui suit.

Dans la requête susmentionnée, la convention de 1948 pour la prévention et la répression du crime de génocide (ci-après la «convention sur le génocide») est invoquée à la fois comme base de compétence de la Cour et à l'appui des demandes de l'Ukraine au fond. Plus précisément, celle-ci entend fonder la compétence de la Cour sur la clause compromissoire figurant à l'article IX de la convention, prie la Cour de déclarer qu'elle ne commet pas de génocide, tel que défini aux articles II et III de la convention, et soulève des questions sur la portée de l'obligation de prévenir et de punir le génocide consacrée à l'article premier de la convention. Il semble, dès lors, que l'interprétation de cette convention pourrait être en cause en l'affaire.

J.

[Lettres aux Etats parties à la convention sur le génocide
(à l'exception de l'Ukraine et de la Fédération de Russie)]

Votre pays figure sur la liste des parties à la convention sur le génocide. Aussi la présente lettre doit-elle être regardée comme constituant la notification prévue au paragraphe 1 de l'article 63 du Statut. J'ajoute que cette notification ne préjuge aucune question concernant l'application éventuelle du paragraphe 2 de l'article 63 du Statut sur laquelle la Cour pourrait par la suite être appelée à se prononcer en l'espèce.

Veillez agréer, Excellence, les assurances de ma très haute considération.

Le Greffier de la Cour,



Philippe Gautier