

INTERNATIONAL COURT OF JUSTICE

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

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

SUBMITTED BY MALTA ON 24 NOVEMBER 2022

DECLARATION OF INTERVENTION OF THE REPUBLIC OF MALTA

**in the case *Allegations of Genocide under the
Convention on the Prevention and Punishment of the Crime of Genocide*
(Ukraine v. Russian Federation)**

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

To the Registrar of the International Court of Justice, H.E. Mr. Philippe Gautier, the undersigned being duly authorised by the Government of Malta:

1. On behalf of the government of Malta, 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 pertinent preliminary observations.

I. PRELIMINARY OBSERVATIONS ON THE PROCEDURAL ITER

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 paragraphs 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. In 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 (paragraphs 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 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 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 Malta 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

II. THE BASIS UPON WHICH MALTA IS PARTY TO THE GENOCIDE CONVENTION

10. Malta acceded to the Genocide Convention and deposited its instrument of accession² in accordance with Article XI, paragraph 4, of the Genocide Convention on 6 June 2014.

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

² See Annex B.

III. THE REASONS UPON WHICH MALTA'S INTERVENTION IS GROUNDED

11. It is the understanding of the Government of Malta 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 law.³ The rights and obligations enshrined by the Genocide Convention are owed to the international community as a whole (rights and obligations *erga omnes partes*).⁴ 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 a sort of a “collective guarantee of the observance of the obligations contracted by the State parties.”⁵
12. By this present Declaration, the Government of Malta avails itself of the right to intervene conferred upon it by Article 63, paragraph 2, of the Statute. This Court has recognised that Article 63 confers a “right” of intervention.⁶ 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.*”⁷
13. Consistent with the restricted scope for interventions under Article 63 of the Statute, the Government of Malta 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 Treaties.⁸ It notes that Article 63 of the Statute does not make a distinction between provisions in a Convention which relate to

³ *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.

⁴ *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.

⁵ 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.

⁶ *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.

⁷ *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.

⁸ *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.

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.”⁹ 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 allowed,¹⁰ 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. Notwithstanding this, **such intervention is strictly limited to the prevailing jurisdictional issue, this being the construction of the compromissory clause contained in Article IX of the Genocide Convention.** Hence, Malta reserves its right to submit further declarations concerning the construction of the Articles of the Genocide Convention which relate to the merits of the case at a later stage of these proceedings.

14. Therefore, by means of this declaration, Malta currently focuses on the construction of Article IX of the Genocide Convention on the jurisdiction of the Court.
15. For the sake of clarity, Malta 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 Genocide Convention.
16. Malta 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 European Union 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.

⁹ 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.

¹⁰ 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.

IV. PROVISIONS OF THE GENOCIDE CONVENTION RELATING TO THE JURISDICTION OF THE COURT

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. Malta 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.¹¹ In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other.”¹² The two sides must “*hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations.*”¹³ 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.*”¹⁴

19. Malta 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 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.”¹⁵ Even eminent jurists contend that:

¹¹ *Mavrommatis Palestine Concessions (Greece v United Kingdom)*, Preliminary Objections, Judgment No. 2, 30 August 1924, P.C.I.J., Series A, No. 2, p. 11.

¹² *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.

¹³ *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.

¹⁴ *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.

¹⁵ *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).

“In its Article 36, the ICJ Statute envisages three main forms of expressing consent: by virtue of a special agreement (*compromis*); by way of a unilateral declaration recognising the jurisdiction of the Court (so-called ‘optional clause declarations’); and through a treaty clause envisaging the submission of disputes to the Court (so-called ‘compromissory clauses’). Article IX belongs to the third category; it is one of the many compromissory clauses establishing (as Article 36 para. 1 of the ICJ Statute puts it) ‘the jurisdiction of the Court [over]...all matters specially provided for in ... treaties and conventions in force.’ Article 36 para. 1 of the ICJ Statute thus may be seen as an **‘enabling clause’ allowing States to rely on the Court as an agency of dispute resolution – and of course; it equally permits them to make the exercise of that jurisdiction subject to specific conditions.** Article IX makes use of that enabling clause and also clarifies the scope of the Court’s jurisdiction by describing the types of disputes that can be brought before the Court, viz. those concerning the ‘interpretation, application or fulfilment of the ... [Genocide] Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III.’ As will be shown below, compared to other compromissory clauses, **it is a fairly straightforward jurisdictional clause that does not make that jurisdiction subject to further, special conditions.**¹⁶ (emphasis added)

20. A general rule of treaty interpretation dictates that treaties are to be interpreted in terms of their ordinary meaning.¹⁷ 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 which include any form of State responsibility**¹⁸ deriving from any form (mode) of conduct, including false allegations of genocide. As Professor Kolb has observed, Article IX of the Genocide Convention is “a model of clarity and simplicity, opening the seizing of the Court as largely as possible.”¹⁹

¹⁶ C.J. Tams, ‘Article IX’ in C.J. Tams/L. Berster/B.Schiffbauer (eds.), *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* (Verlag C.H. Beck oHG, Hart Publishing and Nomos Verlagsgesellschaft mBH, 2014), pp. 303-304.

¹⁷ *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment of 3 February 1994, I.C.J. Reports 1994, p. 6, at p. 22, para. 41.

¹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Preliminary Objections, Judgment of 11 July 1996, I.C.J. Reports 1996, p. 595, at p. 616, para. 32.

¹⁹ R. Kolb, “The Compromissory Clause of the Convention”, in: Paola Gaeta (ed), *The UN Genocide Convention: A Commentary*, (OUP 2009), p. 420.

23. There can be a dispute about the interpretation, application or fulfilment of the Genocide Convention when one State alleges that another State has committed genocide.²⁰ 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*.²¹
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 Genocide Convention by failing to prevent genocide in violation of Article I; and failing to punish genocide in violation of Articles I, IV and V.²² 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” or omissions as a violation of the substantive obligations under Article I, IV and V.
25. Thus, the ordinary meaning of Article IX of the Genocide Convention 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 otherwise.²³ Hence, it also has **jurisdiction *ratione materiae* to declare the absence (non-consummation) 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.²⁴
26. The importance of the context of a treaty and/or a conventional provision is underlined by Article 31, paragraphs 2 and 3 of the Vienna Convention on the Law of Treaties. The **context** of the phrase (“relating to ...”) further confirms this reading. In particular, the unusual feature of the word “including” in the intermediate sentence indicates a broader

²⁰ *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.

²¹ *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).

²² *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).

²³ *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.

²⁴ *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.

scope of Article IX of the Genocide Convention when compared to standard compromissory clauses.²⁵ 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 Convention.²⁶

27. Moreover, Article IX expressly provides for ICJ jurisdiction “at the request of **any of the parties** to the dispute” (emphasis added). This language unequivocally 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 to the effect that the allegations from another State in the sense that it was responsible for genocide are without legal and factual foundation. This because **negative declarations** establishing that a State has not breached an international obligation fall squarely within the remit of the Court’s competence as declaratory relief for the violation of obligations. By way of example, the Lockerbie judgment has shown that the Court reiterated its jurisdiction over the applicant’s request for a negative declaration establishing that it had not violated the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.²⁷
28. 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 both about the absence (non-consummation) of genocide and about the **violation of a good faith performance of the Convention**, resulting in an abuse of the law. Moreover, the principle of good faith, mirrored in Article 31 of the Vienna Convention on the Law of Treaties “*obliges the Parties to apply [a treaty] in a reasonable way and in such a manner that its purpose can be realized*”.²⁸ It serves to shield the treaty itself from any misuse of its terms or from any abusive interpretation thereof. A State Party may be deemed to have failed to interpret, apply and fulfil the Genocide Convention in good faith if its allegations (accusations) of genocide, and any ensuing actions it has taken on the pretext of such allegations (accusations) and purportedly to prevent and punish genocide, are not objectively supported by a solid factual and/or legal foundation.

²⁵ *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.

²⁶ 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”).

²⁷ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United Kingdom)*, Preliminary Objections, Judgment of the 27 February 1998, I.C.J. Reports 1998, p. 9.

²⁸ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment of 25 September 1997, I.C.J. Reports 1997, p. 7, at p. 79, para. 142.

29. Finally, treaty law, namely Article 31 of the Vienna Convention on the Law of Treaties, demands that a treaty is to be interpreted in the light of its object and purpose which may be reflected in the preamble to the treaty. **The object and purpose** give 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 themselves to fulfilling the obligations contained in the Convention”²⁹. Famously, in its 1951 Advisory Opinion, the Court held:³⁰

“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.”

30. The Genocide 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 Genocide 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 Genocide Convention hence speaks loudly in favour of an unrestrictive reading of Article IX, according to which disputes relating to the interpretation, application and fulfilment include disputes about the abuse of the Genocide Convention’s authority in order to justify a State’s action vis-à-vis another State party to the Genocide Convention.
31. In conclusion, the ordinary meaning of Article IX of the Genocide Convention, its context and the object and purpose of the entire Convention manifest, both individually but especially cumulatively, 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 (non-consummation) 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

²⁹ *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.

³⁰ *Reservations to the Genocide Convention*, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 23.

extends to disputes concerning the unilateral use of military force for the stated purpose of preventing and punishing alleged genocide.

V. DOCUMENTS IN SUPPORT OF THE DECLARATION

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

(a) Annex A - Letter from the Registrar of the Court of 30 March 2022;

(b) Annex B - Instrument of accession by the Government of Malta to the Convention.

VI. CONCLUSION

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

34. For the reasons given in this Declaration, Malta respectfully requests the Court to recognise the admissibility of this Declaration and that Malta is availing itself of its right under Article 63, paragraph 2, of the Statute of the Court to intervene in these proceedings.

35. Malta reserves the right to amend or supplement this Declaration in the course of written and/or oral observations, and furthermore reserves the right to file a further declaration with the Court.


36. The Government of Malta has appointed the undersigned as its Agents for the purposes of this Declaration. The Registrar of the Court may channel all communication through them at the following address:

Embassy of Malta
Nassaulaan 15
2514 JT
The Hague
The Netherlands

e-mail: maltaembassy.thehague@gov.mt

Tel. No.: +31 (0)70 356 1252

Respectfully,



Christopher Soler
STATE ADVOCATE
AGENT OF THE GOVERNMENT OF MALTA



Mark Pace
MALTA'S AMBASSADOR TO THE KINGDOM OF THE NETHERLANDS
CO-AGENT OF THE GOVERNMENT OF MALTA

Annex A - Letter from the Registrar of the Court of 30 March 2022;

Annex B - Instrument of Accession by the Government of Malta to the Convention.

CERTIFICATION

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

A handwritten signature in blue ink, consisting of several overlapping, sweeping strokes that form a stylized, somewhat abstract shape.

Christopher Soler
STATE ADVOCATE
AGENT OF THE GOVERNMENT OF MALTA

A handwritten signature in blue ink, featuring a large, prominent loop at the beginning followed by a series of smaller, connected loops and a wavy tail.

Mark Pace
MALTA'S AMBASSADOR TO THE KINGDOM OF THE NETHERLANDS
CO-AGENT OF THE GOVERNMENT OF MALTA



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.

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

Philippe Gautier
Registrar

UNITED NATIONS  NATIONS UNIES

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

Reference: C.N.328.2014.TREATIES-IV.1 (Depositary Notification)

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME
OF GENOCIDE

PARIS, 9 DECEMBER 1948

MALTA: ACCESSION

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

The above action was effected on 6 June 2014.

The Convention will enter into force for Malta on 4 September 2014 in accordance with its
article XIII (3) which reads as follows:

"Any ratification or accession effected subsequent to the latter date [the date of deposit of the
twentieth instrument of ratification or accession] shall become effective on the ninetieth day following
the deposit of the instrument of ratification or accession."

6 June 2014



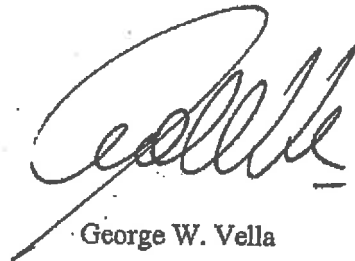
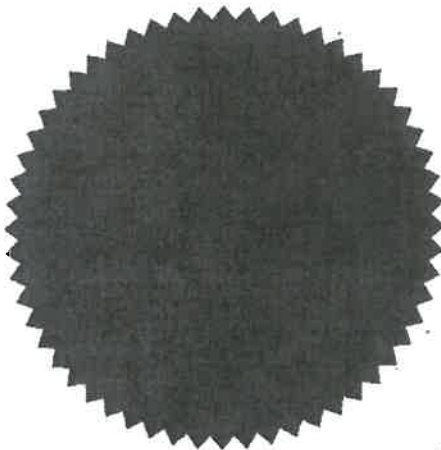
Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated Subscription Services", which is also available at <http://treaties.un.org>.

**INSTRUMENT OF ACCESSION**

WHEREAS the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly on 9 December 1948,

NOW THEREFORE I, George W. Vella, Minister for Foreign Affairs of the Republic of Malta, declare that the Government of the Republic of Malta, having considered the above mentioned Convention, accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed and sealed this Instrument of Accession at Valletta, this *19* day of *May*, Two Thousand and Fourteen.



George W. Vella