

Before the  
INTERNATIONAL COURT OF JUSTICE

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

1 August 2022

In the case of

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

(UKRAINE *v.* RUSSIAN FEDERATION)

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British Embassy  
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Lucy Ferguson  
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The Netherlands

LETTER FROM THE CHARGÉE D'AFFAIRES BRITISH  
EMBASSY THE HAGUE TO THE REGISTRAR OF THE  
INTERNATIONAL COURT OF JUSTICE

I have the honour to attach a Declaration by the United Kingdom of Great Britain and Northern Ireland of its intervention pursuant to Article 63, paragraph 2, of the Statute of the International Court of Justice in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

I hereby confirm that United Kingdom of Great Britain and Northern Ireland has appointed Sally Langrish, Legal Adviser and Director General Legal, Foreign, Commonwealth and Development Office, as Agent and Paul McKell, Legal Director, Foreign, Commonwealth and Development Office, as Co-Agent for the purposes of intervention pursuant to Article 63, paragraph 2 of the Statute of the International Court of Justice in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

I certify that the signatures on the Declaration are those of the appointed Agent, Sally Langrish and Co-Agent, Paul McKell. Finally, I have the further honour to advise that the address for service to which all communications concerning these proceedings should be sent is that of this Embassy at the following address:

British Embassy The Hague  
Lange Voorhout 10  
2514 ED The Hague  
Netherlands

Yours sincerely,

4/8/22

Lucy Ferguson  
Chargée d'affaires British Embassy The Hague

# 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)*.
2. Article 82, paragraph 2, of the Rules of the Court provides that a State that wishes 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.
3. This Declaration addresses each of these requirements in turn, following certain preliminary observations on the legal proceedings to date.

## **1. The Legal Proceedings**

4. 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.

5. 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”.

6. The Court issued its order on provisional measures on 16 March 2022 in which it indicated that:<sup>1</sup>

(1) The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine;

(2) The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point (1) above;

(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.

7. On 23 March 2022 the Court issued an order that fixed the time-limits for the filing of Ukraine’s Memorial and the Russian Federation’s Counter-Memorial as 23 September 2022 and 23 March 2023, respectively.

8. 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

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<sup>1</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 86.

raises questions concerning the scope of the duty to prevent and punish genocide under Article I of the Convention.”<sup>2</sup>

9. Article 82, paragraph 1, of the Rules of Court provides that a declaration of a State desiring to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall be filed “as soon as possible and not later than the date fixed for the opening of the oral proceedings”. This Declaration has been filed at the earliest reasonably available opportunity.
10. 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.
11. 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,<sup>3</sup> and that the prohibition against genocide is a *jus cogens* norm in international law.<sup>4</sup> 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:

“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...”<sup>5</sup>

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<sup>2</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Letter from the Registrar of the Court No 156413, to the Contracting Parties to the Genocide Convention, dated 30 March 2022.

<sup>3</sup> *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, 22 July 2022, paras. 107–109.

<sup>4</sup> *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.

<sup>5</sup> *Reservations to the Convention on Genocide*, Advisory Opinion, ICJ Reports 1951, p. 15, at p. 23.

The Court has very recently affirmed these principles.<sup>6</sup> 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.<sup>7</sup>

12. 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**

13. 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)*. Proceedings were instituted by Ukraine against the Russian Federation on 26 February 2022. The case raises questions concerning the construction of the Genocide Convention.
14. 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. For that reason, the United Kingdom is exercising its right to intervene conferred by Article 63 of the Statute. The United Kingdom's intervention is accordingly directed to the questions of construction of the Convention arising in this case.

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<sup>6</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ, 22 July 2022, paras. 106–107, 113.

<sup>7</sup> Convention on the Prevention and Punishment of the Crime of Genocide of 1948, Preamble: “Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required”.

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

15. 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.<sup>8</sup> The United Kingdom has not filed any reservations, declarations, or objections to the Convention, and remains a Contracting Party to the Convention.

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

16. This case raises questions about the construction of multiple provisions of the Genocide Convention, including the compromissory clause that affords the Court jurisdiction over disputes relating to the interpretation, application or fulfilment of the Convention. There is no limitation in Article 63 of the Statute of the Court or Article 82, paragraph 2, of the Rules of the Court that would prevent the United Kingdom from exercising its right to intervene on the construction of provisions of the Genocide Convention pertaining to issues of jurisdiction in addition to issues pertaining to the merits.<sup>9</sup> To the contrary, Article 63, paragraph 1, permits a State to intervene “[w]hensoever” the construction of a convention to which it is a party is in question. This part of the Declaration of intervention is therefore divided into two sections: **section A** on provisions of the Convention the construction of which is relevant to jurisdictional issues; and **section B** on provisions of the Convention the construction of which is relevant to the merits. If the Court proceeds to examine questions of jurisdiction together with questions of the merits, the United Kingdom will accordingly make observations in relation to the matters addressed in sections A and B together. If there were to be a separate phase of the proceedings dedicated to the Court’s jurisdiction, the United Kingdom would in that phase make observations only in relation to those matters addressed in section A. In a subsequent phase concerning the merits, the United

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<sup>8</sup> See Annex B to this Declaration.

<sup>9</sup> Hugh Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence*, Volume 1, (OUP, 2013), p. 1031. Also see Andreas Zimmermann and Christian J. Tams (Eds.), *The Statute of the International Court of Justice: A Commentary*, 3rd Ed., (OUP, 2019), p. 1763.

Kingdom would make observations in relation to those matters addressed in section B. Furthermore, in circumstances where the United Kingdom has complied with its procedural obligation under Article 82, paragraph 1, of the Rules to file this Declaration “as soon as possible”, the United Kingdom reserves the right to supplement the present Declaration and the scope of its observations to the extent that additional matters of jurisdiction or the merits 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.

#### **A. Provisions of the Convention in Question in the Case: Jurisdiction**

17. Ukraine seeks to found the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention. Article IX of the Genocide Convention provides:

“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. Ukraine contends that a dispute exists between it and the Russian Federation relating to the interpretation, application or fulfilment of the Genocide Convention. Ukraine argues that the dispute between the Parties “concerns the question whether, as a consequence of the Russian Federation’s unilateral assertion that genocide is occurring, the Russian Federation has a lawful basis to take military action in and against Ukraine to prevent and punish genocide pursuant to Article I of the Genocide Convention”.<sup>10</sup> Article I of the Genocide Convention provides:

“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.”

19. In this regard, Ukraine also contends that “rather than taking military action to prevent and punish genocide, the Russian Federation should have seised the organs of the

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<sup>10</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 31.

United Nations under Article VIII of the Convention or seised the Court under Article IX thereof.”<sup>11</sup> Article VIII reads:

“Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.”

20. The proper construction of, at least, Articles I, VIII and IX of the Convention are therefore in question in the case as regards the jurisdiction of the Court.

### **B. Provisions of the Convention in Question in the Case: Merits**

21. In its Application, Ukraine respectfully requests the Court to:

“(a) Adjudge and declare that, contrary to what the Russian Federation claims, no acts of genocide, as defined by Article III of the Genocide Convention, have been committed in the Luhansk and Donetsk oblasts of Ukraine.

(b) Adjudge and declare that the Russian Federation cannot lawfully take any action under the Genocide Convention in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims of genocide in the Luhansk and Donetsk oblasts of Ukraine.

(c) Adjudge and declare that the Russian Federation’s recognition of the independence of the so-called ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’ on 22 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.

(d) Adjudge and declare that the ‘special military operation’ declared and carried out by the Russian Federation on and after 24 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.

(e) Require that the Russian Federation provide assurances and guarantees of non-repetition that it will not take any unlawful measures in and against Ukraine, including the use of force, on the basis of its false claim of genocide.

(f) Order full reparation for all damage caused by the Russian Federation as a consequence of any actions taken on the basis of Russia’s false claim of genocide.”

22. These submissions concern the interpretation of Article I of the Genocide Convention, including the obligation to prevent and punish genocide (see paragraph 18 above). They also call for the Court to interpret Article III of the Convention, which states that:

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<sup>11</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 31.

“The following acts shall be punishable:

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

23. The obligation to punish genocide is found in Article IV of the Convention:

“Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.”

24. Articles V and VI of the Convention are also relevant in this regard. Article V provides that:

“The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III.”

Article VI provides that:

“Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.”

25. Articles I, III, IV, V and VI of the Convention all refer 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.”

26. The process by which the risk of genocide is assessed, and the scope for a Contracting Party to act unilaterally in this regard, calls for the interpretation of Article VIII, quoted at paragraph 19 above.

27. The proper construction of Articles I, II, III, IV, V, VI and VIII of the Convention are therefore in question in the case as regards the merits of the dispute.

## **VI. Construction of the Provisions for which the United Kingdom Contends**

28. 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, representing 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.”

29. 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.<sup>12</sup> In certain circumstances, recourse may also be had to supplementary means of interpretation, including the preparatory work of the treaty.<sup>13</sup>

30. As with the previous part of this Declaration, this part is divided into two sections. **Section A** addresses the provisions of the Genocide Convention that are relevant to jurisdictional issues, setting out the construction of those provisions for which the United Kingdom contends. **Section B** does the same for the provisions of the Genocide Convention that are relevant to the merits. The same observations as set out at paragraph 16 above apply equally to this part of the Declaration and its two different and separable sections.

### **A. Construction of the Provisions for which the United Kingdom Contends: Jurisdiction**

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<sup>12</sup> 1969 Vienna Convention on the Law of Treaties, Article 31(3)(b)–(c).

<sup>13</sup> 1969 Vienna Convention on the Law of Treaties, Article 32.

Article IX of the Genocide Convention confers on the Court jurisdiction to declare the applicant State's compliance with the Convention, where this is a matter in dispute between the parties to a case

31. In his Declaration accompanying the Court's Order on Provisional Measures, Judge Gevorgian observed that he was "unconvinced that Ukraine can invoke the compromissory clause under Article IX of the Convention only to have the Court confirm its compliance" with the Convention.<sup>14</sup> Judge Bennouna expressed a similar reservation: "I am not convinced that the [Genocide Convention] was conceived, and subsequently adopted, in 1948, to enable a State, such as Ukraine, to seize the Court of a dispute concerning allegations of genocide made against it by another State, such as the Russian Federation, even if those allegations were to serve as a pretext for an unlawful use of force".<sup>15</sup>
32. The United Kingdom respectfully contends that Article IX of the Genocide Convention does grant the Court jurisdiction to make a declaration of an applicant State's compliance with its obligations under the Convention, provided that this is a matter in dispute between the parties to the case.
33. Article IX confers jurisdiction over "[d]isputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention". There is nothing in these terms that limits the Court's jurisdiction to cases where it is the applicant State accusing the respondent State of breaching its obligations under the Convention. The term "dispute" has long been given a wide meaning in international law. It is well established that a dispute exists when there is "a disagreement on a point of law or fact, a conflict of legal views or interests between two persons",<sup>16</sup> provided that the States in question hold views which are opposed to each other.<sup>17</sup> The term

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<sup>14</sup> See *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Provisional Measures Order of 16 March 2022, Declaration of Judge Gevorgian, para. 8.

<sup>15</sup> See *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Provisional Measures Order of 16 March 2022, Declaration of Judge Bennouna, para. 2.

<sup>16</sup> *Mavrommatis Palestine Concessions*, PCIJ, Series A, No. 2, 1924, p. 11.

<sup>17</sup> *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, ICJ Reports 1962, p. 319, at p. 328; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833, at p. 850, para. 41.

“dispute” is of sufficient breadth to encompass a disagreement over the lawfulness of the conduct of an *applicant* State. Further, the inclusion of the word “fulfilment” in Article IX in addition to the more common formulation of “interpretation and application” in compromissory clauses supports the view that the Court’s jurisdiction is sufficiently broad to allow it to issue a declaration that the applicant State is not responsible for a breach of its obligations under the Convention as alleged by the respondent State.

34. This construction is confirmed by the fact that Article IX of the Genocide Convention expressly states that disputes shall be referred to the Court “at the request of *any of the parties* to the dispute” (emphasis added). The Court has observed that this “phrase clarifies that only a party to the dispute may bring it before the Court”.<sup>18</sup> The relevant limitation is that the party seising the Court must be a party to the dispute, but there is no limitation as to which party to the dispute. It can be “any” party to the dispute. Disputes capable of being referred to the Court pursuant to Article IX expressly include “those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III”. Thus, where there is a dispute concerning whether a State has engaged in conduct contrary to the Convention, the State accused of such conduct has the same right to submit the dispute to the Court as the State that has made the accusation, and the Court will have jurisdiction over that dispute.

*Article IX of the Genocide Convention confers jurisdiction over the question of the extent to which the Convention requires Contracting Parties to act in good faith in ascertaining the existence or serious risk of genocide and in responding to any such genocide or serious risk of genocide*

35. As set out above, Article IX of the Genocide Convention confers on the Court jurisdiction in respect of any dispute concerning the “interpretation, application or fulfilment” of the Convention.

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<sup>18</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ, 22 July 2022, para. 111.

36. Article I of the Convention sets out Contracting Parties' undertaking "to prevent and punish" genocide. A dispute concerning the "interpretation, application or fulfilment" of this provision is a dispute within the jurisdiction conferred by Article IX.
37. As developed further below in relation to the merits, a Contracting Party purportedly acting in fulfilment of the obligations in Article I is required to assess whether genocide is occurring, or there is a serious risk of genocide occurring. Like all treaty provisions, Article I must be both interpreted and performed in good faith.<sup>19</sup>
38. Thus, a dispute as to whether a Contracting Party has acted in good faith in purporting to perform its undertaking under Article I, including in relation to ascertaining the existence or serious risk of genocide, and responding in accordance with its undertaking to prevent and punish genocide, is a dispute concerning "the interpretation, application or fulfilment" of Article I. Such a dispute falls within the scope of Article IX.

*Article IX of the Genocide Convention confers jurisdiction over the question of the extent to which Article I allows or requires a Contracting Party to engage in certain conduct that might otherwise be unlawful under international law*

39. In its document communicated to the Court on 7 March 2022, the Russian Federation stated that Ukraine's claim is outside the Court's competence because Ukraine "is seeking to bring before the Court the issues of legality of the use of force by Russia in Ukraine and the recognition by Russia of the Donetsk and Lugansk [sic] Peoples' Republics".<sup>20</sup> It proceeded to state that the Genocide Convention "does not regulate either the use of force between States or the recognition of States", and that these matters are instead "regulated by the United Nations Charter and customary international law".<sup>21</sup>

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<sup>19</sup> 1969 Vienna Convention on the Law of Treaties, Articles 26, 31(1), reflecting rules of customary international law.

<sup>20</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Document communicated to the Court by the Russian Federation, 7 March 2022, para. 4.

<sup>21</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Document communicated to the Court by the Russian Federation, 7 March 2022, paras. 10, 12.

40. As developed further below, in assessing whether a dispute before it falls within the scope of Article IX of the Genocide Convention, the Court “cannot limit itself to noting that one of the Parties maintains that the Convention applies, while the other denies it”.<sup>22</sup>
41. Properly construed, Article IX of the Genocide Convention confers jurisdiction over a dispute as to whether a Contracting Party’s conduct can properly be said to be in “fulfilment” of the Genocide Convention. Article I of the Genocide Convention sets out an obligation on Contracting Parties to “*prevent and punish*” genocide. The scope of conduct that Article I allows or requires is a matter concerning “the interpretation, application or fulfilment” of this provision and is therefore within the scope of the jurisdiction conferred by Article IX of the Convention.
42. Thus, the Court has jurisdiction to determine whether a Contracting Party’s conduct is allowed or required by Article I of the Genocide Convention. It can exercise such jurisdiction without determining whether or not the conduct in question breaches rules of international law extrinsic to the Genocide Convention entailing the responsibility of the relevant State, and whether or not the Court has jurisdiction over those matters.
43. This construction of Articles I and IX is not to be conflated with the argument advanced, and rejected, in *Yugoslavia v. Belgium* concerning whether a use of force was a breach of the Genocide Convention. In that case, the Court held that “the threat or use of force against a State cannot in itself constitute an act of genocide within the meaning of Article II of the Genocide Convention” in the absence of the requisite element of intent, addressed below (see paragraphs 48–52).<sup>23</sup> The construction of Articles I and IX for which the United Kingdom contends is not related to whether a use of force, or any other conduct, constitutes a breach of Article II of the Convention. Rather, the United Kingdom contends that a dispute as to whether certain conduct is a lawful discharge of the undertaking “to prevent and punish” genocide in Article I is a dispute concerning

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<sup>22</sup> *Legality of Use of Force (Yugoslavia v. Belgium)*, Provisional Measures Order of 2 June 1999, ICJ Rep 1999, p. 124, para. 38.

<sup>23</sup> *Legality of Use of Force (Yugoslavia v. Belgium)*, Provisional Measures Order of 2 June 1999, ICJ Rep 1999, p. 124, para. 40.

the “interpretation, application or fulfilment” of the Convention within the meaning of Article IX.

*For the Court to exercise jurisdiction pursuant to Article IX of the Genocide Convention, there must be a ‘dispute’ concerning the interpretation, application or fulfilment of the Convention, and the term ‘dispute’ is to be given the meaning normally given to it under international law*

44. In its document communicated to the Court on 7 March 2022, the Russian Federation drew attention to the need for there to be a “dispute” within the meaning of Article IX of the Genocide Convention in order for the Court’s jurisdiction to be engaged.<sup>24</sup>
45. The existence of a dispute between the parties to a case is, pursuant to the express terms of Article IX of the Genocide Convention, a precondition to the Court having jurisdiction.
46. The term ‘dispute’ as used in Article IX should be interpreted consistently with the wide meaning given to that term generally in international law, as the Court has very recently affirmed.<sup>25</sup> Thus, a dispute exists wherever there is (as stated above<sup>26</sup>) “a disagreement on a point of law or fact, a conflict of legal views or interests” between the parties,<sup>27</sup> “the parties ‘hold clearly opposite views’ with respect to the issue brought before the Court” and “the respondent was aware, or could not have been unaware, that its views were ‘positively opposed’ by the applicant”.<sup>28</sup> It is not necessary that a respondent State has expressly responded to the position of the applicant State.<sup>29</sup> Further, specifically in the context of the Genocide Convention, a dispute may be

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<sup>24</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Document communicated to the Court by the Russian Federation, 7 March 2022, para. 8.

<sup>25</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ, 22 July 2022, para. 63.

<sup>26</sup> See para. 33.

<sup>27</sup> *Mavrommatis Palestine Concessions*, PCIJ, Series A, No. 2, 1924, p. 11, as most recently affirmed in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ, 22 July 2022, para. 63.

<sup>28</sup> See, e.g., *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833, at p. 850, para. 41. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ, 22 July 2022, para. 63.

<sup>29</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ, 22 July 2022, para. 71.

proven to exist despite the absence of a “*specific reference*” to the Convention or its provisions in public statements by the parties, provided that those statements “*refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter*”.<sup>30</sup>

47. The existence of a ‘dispute’, properly construed, must be determined objectively. One party’s unilateral denial of a dispute cannot be determinative of whether a dispute exists for the purposes of Article IX of the Genocide Convention.<sup>31</sup>

## **B. Construction of the Provisions for which the United Kingdom Contends: Merits**

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

48. Article II of the Convention makes clear that the commission of genocide relies on both genocidal intent and genocidal action.

49. 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”.<sup>32</sup> This mental element, which the drafters of the Convention “defined very precisely”, is properly characterised as a “specific or special intent or *dolus specialis*”.<sup>33</sup> It is “the essential characteristic of genocide, which distinguishes it from other serious

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<sup>30</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ, 22 July 2022, para. 72, citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70, at p. 85, para. 30.

<sup>31</sup> See, e.g., *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833, at pp. 849–851, paras. 37–43.

<sup>32</sup> *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.

<sup>33</sup> *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.

crimes”.<sup>34</sup> 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.<sup>35</sup>

50. 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.”<sup>36</sup>

51. 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”.<sup>37</sup> 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 births within the group; and (v) forcibly transferring children of the group to another group.

52. Thus, properly construed, Article II contains detailed elements concerning intent and action. It is clearly not the case, for example, that Article II covers the causing of civilian casualties in the course of armed conflict in the absence of the requisite *dolus specialis*.

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<sup>34</sup> *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.

<sup>35</sup> *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.

<sup>36</sup> *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, ICTR-96-3-T, Judgment and Sentence, 6 December 1999, para. 60.

<sup>37</sup> *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.

When a Contracting Party purports to act pursuant to the undertaking to prevent genocide in Article I, it is required to ascertain in good faith whether genocide is occurring or whether there is a serious risk of genocide, and, without having done so, it is not entitled to invoke the Convention as a basis for conduct that would otherwise be unlawful under international law

53. The undertaking expressed in Article I “to prevent” genocide requires Contracting Parties to “employ all means reasonably available to them, so as to prevent genocide so far as possible”.<sup>38</sup> An essential aspect of this undertaking is a duty of “due diligence” in relation to a potential genocide.<sup>39</sup> The Court has described due diligence as being “of critical importance”.<sup>40</sup> It requires a Contracting Party which is purporting to take action pursuant to the obligation to prevent genocide to carry out an assessment, based on all the information available to it, as to whether genocide is occurring or whether there is a serious risk of genocide occurring.

54. This is an undertaking that must be performed in good faith.<sup>41</sup> As the Court has observed, the principle of good faith “obliges the Parties to apply [a treaty] in a reasonable way and in such a manner that its purpose can be realized”.<sup>42</sup> It is inconsistent with the principle of good faith for a Contracting Party to carry out an assessment of the occurrence or risk of genocide abusively. It would be abusive, for example, for a Contracting Party purporting to take action pursuant to its undertaking to prevent genocide to: (i) manufacture evidence as to the occurrence or serious risk of genocide; (ii) disregard evidence indicating that genocide is *not* occurring or at serious risk of occurring; and/or (iii) declare the existence or serious risk of genocide where such a declaration was not objectively supported by a good faith assessment of all relevant and genuine evidence.

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<sup>38</sup> *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. 221, para. 430.

<sup>39</sup> *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. 221, para. 430.

<sup>40</sup> *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. 221, para. 430.

<sup>41</sup> 1969 Vienna Convention on the Law of Treaties, Article 26.

<sup>42</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, ICJ Reports 1997, p. 7, at p. 79, para. 142.

55. The *travaux préparatoires* of the Genocide Convention reinforce this construction of Article I and are relevant under the customary rule reflected in Article 32 of the Vienna Convention as a supplementary means of interpretation confirming the ordinary meaning. During the drafting of the Convention, the State delegates were concerned about the Convention being used as a pretext for interference and sought to keep the definition of genocide as precise as possible. A proposal to include the protection of political groups was rejected as it would “provide a very convenient pretext for interference in the internal affairs of States”.<sup>43</sup> The delegates also voted to reject proposals by the USSR to penalise all forms of public propaganda aimed at provoking genocide and to disband any organisations aimed at inciting hatred or encouraging crimes of genocide because, in the words of the United States, it “would merely serve as pretexts to harass States parties to the Convention”.<sup>44</sup>

56. The Genocide Convention notably places a heavy emphasis on multilateral cooperation in States discharging their undertaking to prevent genocide, with the final recital in the preamble to the Convention emphasising that “international co-operation” is required “in order to liberate mankind from [the] odious scourge” of genocide. Further:

- a. Article VIII provides that a State “may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide”; and
- b. Article IX provides that disputes relating to the interpretation, application or fulfilment of the Convention “shall be submitted to the International Court of Justice at the request of any of the parties to the dispute”.

57. Article I of the Genocide Convention is to be read in the context of these provisions (consistent with the interpretive rule reflected in Article 31(1) of the Vienna Convention). Neither of these provisions mandates that a State have recourse to

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<sup>43</sup> Hiram Abtahi and Philippa Webb, *The Genocide Convention: The Travaux Préparatoires* (Martinus Nijhoff, 2008), Vol. I, p. 1230 (Mr Katz-Suchy, Poland).

<sup>44</sup> Hiram Abtahi and Philippa Webb, *The Genocide Convention: The Travaux Préparatoires* (Martinus Nijhoff, 2008), Vol. II, p. 1800 (Mr Maktos, United States of America). See also, Hiram Abtahi and Philippa Webb, *The Genocide Convention: The Travaux Préparatoires* (Martinus Nijhoff, 2008), Vol. II, p. 1577 (Mr Fitzmaurice, United Kingdom) (noting the USSR’s proposed amendment, if adopted with the proposal to expand protection to political groups, “might become a pretext for serious abuses”).

international mechanisms if it suspects that a genocide may be occurring.<sup>45</sup> This is evident from the use of the permissive term “may” in Article VIII. Article IX, despite using the word “shall”, does not *require* a Contracting Party to submit disputes to the Court; it instead makes clear that, if any party to a dispute arising under the Convention wishes to submit it to binding dispute resolution, the Court is the forum for doing so.<sup>46</sup> Nonetheless, it is clear that the Genocide Convention places strong emphasis on multilateralism and the application of international law. This context is relevant to the construction of Article I. It supports an interpretation that a State must act diligently, reasonably and in good faith in carrying out an assessment of whether genocide is occurring or at serious risk of occurring, including through recourse to multilateral institutions where appropriate. It is also relevant to the analysis of what conduct could not be justified by the undertaking to prevent genocide, as developed below.

58. It follows from the obligation to carry out a good faith assessment of the existence of genocide or risk of genocide that, where a State has not carried out such an assessment, it cannot invoke the “undertak[ing] to prevent” genocide in Article I of the Convention as a justification for its conduct. Thus, a Contracting Party cannot invoke Article I in order to render lawful conduct that would otherwise be unlawful under international law if it has not established, on an objective basis and pursuant to a good faith assessment of all relevant evidence, that genocide is occurring or that there is a serious risk of genocide occurring.

*The “undertak[ing] to prevent” genocide in Article I of the Genocide Convention does not in any circumstances permit a State to engage in aggression, war crimes or crimes against humanity*

59. Where a Contracting Party is purporting to act pursuant to the undertaking to prevent genocide articulated in Article I, there are certain types of conduct that can never be justified on the basis of this undertaking of prevention. Such conduct includes violation

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<sup>45</sup> See *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 57, addressing the possibility of a Contracting Party having “resort to other means of fulfilling its obligation to prevent and punish genocide that it believes to have been committed by another Contracting Party, such as bilateral engagement or exchanges within a regional organization”.

<sup>46</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, ICJ, 22 July 2022, para. 89.

of the prohibition on aggression, violation of international humanitarian law, and crimes against humanity.

60. Article I of the Genocide Convention cannot be construed as being capable of countenancing aggression, violations of international humanitarian law or crimes against humanity. This is for reasons including the following:

- a. Although Article I “does not specify the kinds of measures that a Contracting Party may take to fulfil th[e] obligation”, the Contracting Parties “must implement this obligation in good faith”.<sup>47</sup>
- b. Further, Article I must be construed in light of the object and purpose of the Convention.<sup>48</sup> The Convention was intended to advance “moral law and ... the spirit and aims of the United Nations”, has a “purely humanitarian and civilizing purpose”, and “endorse[s] the most elementary principles of humanity”.<sup>49</sup>
- c. Article I must also be construed in light of other international rules applicable between the Contracting Parties,<sup>50</sup> including the prohibitions on aggression, war crimes and crimes against humanity.
- d. This is put beyond doubt by the fact that these prohibitions have the status of *jus cogens* rules of international law, such that no derogation is permitted from them.<sup>51</sup> Any treaty which conflicted with them would be void.<sup>52</sup>
- e. As set out above, the final recital to the Convention’s preamble, as well as Article VIII and IX of the Convention, emphasise international cooperation, multilateralism and compliance with international law.<sup>53</sup>
- f. In particular, the acts undertaken by Contracting Parties purportedly in fulfilment of the undertaking “to prevent and punish” genocide “must be in

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<sup>47</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 56.

<sup>48</sup> 1969 Vienna Convention on the Law of Treaties, Article 31(1).

<sup>49</sup> *Reservations to the Convention on Genocide*, Advisory Opinion, ICJ Reports 1951, p. 15, at p. 23.

<sup>50</sup> 1969 Vienna Convention on the Law of Treaties, Article 31(3)(c).

<sup>51</sup> See, e.g., *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226, at p. 257, para. 79; *The Prosecutor v. Zoran Kupreškić et al.*, IT-95-16-T, Judgment, 14 January 2000, para. 520.

<sup>52</sup> 1969 Vienna Convention on the Law of Treaties, Article 53, reflecting a rule of customary international law.

<sup>53</sup> See *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 56.

conformity with the spirit and aims of the United Nations, as set out in Article 1 of the United Nations Charter”.<sup>54</sup>

61. It would be anathema to each of these considerations if Article I were construed in such a way that a State could commit acts of aggression, violations of international humanitarian law or crimes against humanity under the guise of taking steps to prevent genocide.

62. For the avoidance of doubt, the United Kingdom notes that in construing the Genocide Convention the Court is not called upon to engage in any broader analysis of the international legality of uses of force in response to, for example, grave humanitarian crises, including under the doctrine of humanitarian intervention.

*The words “undertake to ... punish” in Article I of the Genocide Convention relate only to the punishment of individuals and cannot serve as a justification for action against a State*

63. The obligation to punish genocide enshrined in Article I of the Genocide Convention must be construed in light of other provisions of the Convention dealing with such punishment.<sup>55</sup> This includes Articles IV–VI of the Convention, all of which are quoted above,<sup>56</sup> as well as Article VII which states:

“Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.”

64. All of these provisions relate to the exercise of criminal jurisdiction over individuals accused of one of the acts enumerated in Article III of the Convention. A Contracting Party may discharge its duty to punish genocide by prosecuting individuals within their

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<sup>54</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the Court of 16 March 2022 on the Request for the Indication of Provisional Measures, para. 58.

<sup>55</sup> 1969 Vienna Convention on the Law of Treaties, Article 31(1); *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. 226, paras. 439, 441.

<sup>56</sup> See paras. 23–24.

own criminal courts (which it is obliged to do where the genocide or other act in Article III took place within its territory), by cooperating with an international tribunal the jurisdiction of which it has accepted and which is competent to try the individuals, or by extraditing individuals accused of genocide for trial in another State.<sup>57</sup>

65. This interpretation of the words “undertake to ... punish” in Article I is consistent with the ordinary meaning of the word “punish”, which connotes an exercise of penal power over an individual and, in international law, is not used in connection with conduct between States. Accordingly, the undertaking to punish genocide could not justify any conduct by one State against another.

## **VII. Documents in Support of the Declaration**

66. The United Kingdom submits the following documents in support of this Declaration:
- a) Annex A – Letter from the Registrar sent pursuant to Article 63, paragraph 1, of the Court’s Statute
  - b) Annex B – Instrument of Accession of the United Kingdom to the Convention on the Prevention and Punishment of the Crime of Genocide

## **VIII. Conclusion**

67. 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.

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<sup>57</sup> Genocide Convention, Articles VI–VII; *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 pp. 226–227, paras. 442–443.

68. 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.



Sally Langrish  
AGENT OF THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND



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.

*Sally Langrish*

Sally Langrish  
AGENT OF THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND

*Paul McKell*

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



## Annex A

### Letter 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](http://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.

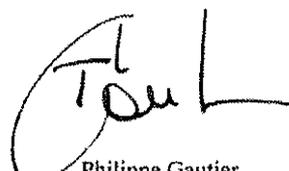
[Letter to the States parties to the Genocide Convention  
(except Ukraine and the Russian Federation)]

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Website : [www.icj-cij.org](http://www.icj-cij.org)

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 B

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: UNITED NATIONS NEW YORK

REFERENCES: 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
Fidji		Turks and
Gibraltar		Caicos Islands

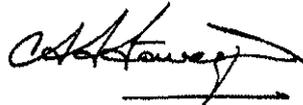
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Furthermore, the instrument of accession was accompanied by a declaration that the Government of the United Kingdom do not accept the reservations to articles IV, VII, VIII, IX or XII of the Convention made by Albania, Algeria, Argentina, Bulgaria, 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