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INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION
ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE
(UKRAINE v. RUSSIAN FEDERATION)**

**INTERVENTION UNDER ARTICLE 63 OF THE STATUTE
OF THE INTERNATIONAL COURT OF JUSTICE**

12 September 2022

[Translation by the Registry]

**INTERVENTION UNDER ARTICLE 63 OF THE STATUTE
OF THE INTERNATIONAL COURT OF JUSTICE**

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

1. On behalf of the French Republic, 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 *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 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 the documents in support, which documents shall be attached.”

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

PRELIMINARY OBSERVATIONS

4. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation in a dispute relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide¹ (the “Genocide Convention” or “Convention”)².

5. In its Application instituting proceedings, Ukraine seeks to establish “that Russia has no lawful basis to take action in and against Ukraine for the purpose of preventing and punishing any purported genocide”³. The Court delivered its Order indicating provisional measures on 16 March 2022.

6. Pursuant to Article 63, paragraph 1, of the Statute of the Court, the Registrar notified the French Government, as a party to the Convention, that Ukraine

¹ Convention on the Prevention and Punishment of the Crime of Genocide, signed in Paris on 9 Dec. 1948, United Nations, *Treaty Series (UNTS)*, Vol. 78, p. 277 (entered into force on 12 Jan. 1951).

² Application instituting proceedings filed in the Registry of the Court on 26 Feb. 2022 in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (hereinafter, “Application of Ukraine”).

³ Application of Ukraine, para. 3.

“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.”

7. The present Declaration by France is based on Article 63, paragraph 2, of the Statute. That article confers a “right” of intervention on any State party to a convention whose construction is in question in pending proceedings⁴.

8. As a party to the Genocide Convention, France finds it necessary to avail itself of its right of intervention in the present case, not least on account of the particular nature of the 1948 Convention, in which “the contracting States do not have any interests of their own [and] merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d’être* of the convention”⁵, as the Court noted in its Advisory Opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*.

9. In that same Opinion, the Court went on to state that “[t]he high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions”⁶. That consideration justifies France’s desire to exercise its right of intervention.

10. According to the Court’s jurisprudence, intervention under Article 63 of the Statute “is limited to submitting observations on the construction of the convention in question”⁷, and a State intending to avail itself of that right “does not become a party to the proceedings”⁸. In accordance with the scope of the intervention as defined by the Court, France will present its views only on the provisions of the Convention whose construction appears to be in question in the present case.

11. Moreover, any State wishing to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall, under the terms of Article 82, paragraph 1, of the Rules of Court, file its declaration “as soon as possible, and not later than the date fixed for the opening of the oral proceedings”. Hence, France is filing the present Declaration with the Registry of the Court today.

⁴ *Haya de la Torre (Colombia/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; *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 5, para. 7.

⁵ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 23; *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. 17, 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 of 22 July 2022, para. 107.

⁶ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 23.

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. 9, para. 18.

⁸ *Ibid.*

CASE AND CONVENTION CONCERNED

12. The present Declaration relates to the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, which the Ukrainian Government brought against Russia on 26 February 2022. The case concerns the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide⁹.

FRANCE IS A PARTY TO THE CONVENTION

13. France signed the Convention on 11 December 1948, in accordance with the first paragraph of Article XI. On 14 October 1950, in accordance with the second paragraph of Article XI of the Convention, it deposited its instrument of ratification with the Secretary-General of the United Nations, in his capacity as depositary. It has filed no declarations or reservations thereto.

PROVISIONS OF THE CONVENTION IN QUESTION IN THE CASE

14. The Application instituting proceedings filed by Ukraine states 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”¹⁰.

15. In its Application, Ukraine refers successively to Articles IX¹¹, I¹², VIII¹³, II¹⁴ and III¹⁵ of the Convention. In addition to the citations *in extenso* of Articles I, II and III¹⁶, reference is made to the Convention in these terms:

“9. Ukraine emphatically denies that any such genocide has occurred, and that the Russian Federation has any lawful basis to take action in and against Ukraine for the purpose of preventing and punishing genocide under Article I of the Convention. The unlawfulness of Russia’s actions is further confirmed by Article VIII of the Convention.

.....

11. A dispute has therefore arisen relating to the interpretation and application of the Genocide Convention, as Ukraine and Russia hold opposite views on whether genocide has been committed in Ukraine, and whether Article I of the Convention

⁹ Convention on the Prevention and Punishment of the Crime of Genocide, signed in Paris on 9 Dec. 1948, *UNTS*, Vol. 78, p. 277 (entered into force on 12 Jan. 1951).

¹⁰ Application of Ukraine, para. 7.

¹¹ *Ibid.*, paras. 5-7 and 12.

¹² *Ibid.*, paras. 9, 11 and 26-28.

¹³ *Ibid.*, para. 9.

¹⁴ *Ibid.*, paras. 24 and 26.

¹⁵ *Ibid.*, para. 26.

¹⁶ *Ibid.*

provides a basis for Russia to use military force against Ukraine to ‘prevent and to punish’ this alleged genocide.

.....

27. The duty to prevent and punish genocide enshrined in Article I of the Convention necessarily implies that this duty must be performed in good faith and not abused . . .

28. Russia’s actions erode the core obligation of Article I of the Convention, undermine its object and purpose, and diminish the solemn nature of the Contracting Parties’ pledge to prevent and punish genocide.

.....

30. 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.”

16. Moreover, in its Order of 16 March 2022, the Court observes that Ukraine “states that the Russian Federation has acted inconsistently with its obligations and duties, as set out in Articles I and IV of the Convention”¹⁷.

17. The construction of the Convention — and in particular Articles I, II, III, IV, VIII and IX thereof — is therefore in question; it is also of direct relevance for the purposes of settling the dispute brought before the Court by Ukraine by means of its Application.

18. The Articles in question read as follows:

“Article I

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 to punish.

Article II

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;

¹⁷ *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, paras. 52-53.*

- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article III

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.

Article IV

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.

.....

Article VIII

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.

Article IX

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.”

**CONSTRUCTION OF THE PROVISIONS IN QUESTION
FOR WHICH FRANCE CONTENDS**

19. France will interpret the Convention by relying on the customary rules of treaty interpretation, as reflected in Articles 31 to 33 of the 1969 Vienna Convention on the Law of Treaties¹⁸.

¹⁸ *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004 (I), p. 48, para. 83; *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 502, para. 101; *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), p. 812, para. 23; *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I.C.J. Reports 1994, pp. 21-22, para. 41; *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Judgment, I.C.J. Reports 1991, p. 70, para. 48.

20. For the purposes of interpreting the provisions of the Genocide Convention that are in question here, France will first recall the importance of the principle of good faith, which both governs the obligation to perform treaties, codified in Article 26 of the Vienna Convention on the Law of Treaties, and forms the starting-point of the general rule of treaty interpretation set out in Article 31 thereof. It will then explain its interpretation of Article IX of the Genocide Convention, which founds the jurisdiction of the Court to hear the dispute brought before it, before presenting its interpretation of Articles I, II, III, IV and VIII.

Good faith

21. The existence of an obligation to perform the Convention in good faith is established by the principle of *pacta sunt servanda*, which is a fundamental principle of public international law. Although of customary origin, the obligation to perform a treaty in good faith is necessarily incorporated within it, and must be taken into account in any dispute concerning the interpretation or application of a treaty. Like the rules of interpretation and the rules of the law on responsibility, the obligation of good faith forms an integral part of the treaty whose application or interpretation is being examined¹⁹. Good faith implies that the integrity of the Convention is respected. In its Judgment of 25 September 1997 in the case concerning the *Gabčíkovo-Nagymaros Project*, the Court describes the legal effect of good faith on the performance of any treaty as follows:

“Article 26 combines two elements, which are of equal importance. It provides that ‘Every treaty in force is binding upon the parties to it and must be performed by them in good faith.’ This latter element, in the Court’s view, implies that, in this case, it is the purpose of the Treaty, and the intentions of the parties in concluding it, which should prevail over its literal application. The principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized.”²⁰

22. As a “well-established principle of international law”²¹, the principle of good faith thus requires a text to be interpreted “in the light of its object and purpose”²². That precludes, for example, any improper or slanted interpretation. The parties are required to “co-operate in good faith to promote [its] objectives and purposes”²³.

23. Hence, the construction of the Genocide Convention for the purpose of its application may only be undertaken having regard to its “special”²⁴ object and purpose. The latter were defined by the Court in 1951:

“The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as ‘a crime under international law’ involving a denial of the right of existence of entire human groups, a denial which shocks the

¹⁹ On interpretation and responsibility, see *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. 105, para. 149.

²⁰ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, pp. 78-79, para. 142.

²¹ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 296, para. 38; *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 268, para. 46.

²² Article 31, paragraph 1, of the Vienna Convention on the Law of Treaties.

²³ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 96, para. 49.

²⁴ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 23.

conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations . . . 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.”²⁵

24. By its intervention, France wishes to stress the crucial importance of the principle of good faith in the range of contexts in which it is applicable. In accordance with the provisions of the Vienna Convention on the Law of Treaties, good faith governs both the interpretation and the application and fulfilment of the 1948 Convention²⁶.

Article IX

25. Article IX of the 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.”

26. This article is a compromissory clause founding the Court’s jurisdiction for all “[d]isputes . . . relating to the interpretation, application or fulfilment of the present Convention”. The term “dispute” must be understood here as “a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons”²⁷. As the Court has observed, for a dispute to exist, “[t]he two sides must hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations”²⁸.

27. According to the very terms of Article IX, the dispute can relate just as well to a question of interpretation of the Convention as to a question of the application or fulfilment thereof. Consequently, a dispute relating to the interpretation, that is to the meaning, of any one of the articles of the Convention, including Article IX itself, is capable of falling within the scope of the clause. In its Judgment of 11 July 1996 on the preliminary objections in the case between Bosnia-Herzegovina and Yugoslavia, which concerned the jurisdictional basis provided by the Convention, the Court noted that the Parties not only differed regarding its application, but also “with respect to the meaning and legal scope of several of [its] provisions, including Article IX”²⁹. It concluded that a dispute

²⁵ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

²⁶ E.g. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 64, para. 138.

²⁷ *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11.

²⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, para. 63.

²⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996*, p. 616, para. 33.

existed, as confirmed in its 2007 Judgment on the merits³⁰. A dispute between two parties pertaining to one of the categories of dispute capable of falling within the scope of Article IX therefore falls under the jurisdiction of the Court.

28. The interpretation of Article IX must then make it possible to determine which categories of dispute are capable of being submitted to the Court. The only limit set by the wording is the reference to the interpretation, application or fulfilment of the Convention. That signifies that the dispute may relate to any right or obligation borne by the parties to the Convention itself. This idea also appears in the Court's jurisprudence. In its Judgment of 3 February 2015 in the case between Croatia and Serbia, the Court held that its jurisdiction, based on Article IX of the Convention, was "confined to obligations arising under the Convention itself"³¹. According to the Court, for its jurisdiction to be established on the basis of Article IX, the dispute must "*relat[e]* to the interpretation, application or fulfilment of the . . . Convention" or "*concern* obligations under the Convention itself"³².

29. Hence, it would appear that the dispute, as provided for in Article IX, must relate to, or concern, an obligation arising under the Convention.

30. Moreover, the drafting of Article IX differs in some respects from that of traditional clauses for settling disputes between States parties to a treaty³³. Such clauses normally refer to disputes relating to "the interpretation and application" of the convention in question. Here, the term "fulfilment" has been added, attesting to a particular concern for obligations resulting from the principle of *pacta sunt servanda*, including the obligation to perform treaties in good faith³⁴. A dispute relating to an interpretation or application of the Convention which was incompatible with good faith would therefore fall within the scope of Article IX.

31. As regards responsibility, that is to say in the case of wrongful acts attributable to a State party, the Court has already had occasion to observe that Article IX "does not exclude any form of State responsibility"³⁵. That statement is perfectly consistent with the wording of Article IX, which not only contains no exclusion, but even stresses the fact that it includes all disputes "relating to the responsibility of a State for genocide". The French version of the text is to be taken into consideration here, since the expression "*en matière de génocide*" is sufficiently broad to encompass both the commission and the non-commission of acts of genocide. Furthermore, the word "including" suggests that other categories of dispute may fall within the scope of Article IX.

32. Nor do the terms of Article IX imply that there is any restriction on the configuration of the dispute. In particular, the wording does not require the applicant State to necessarily be the one alleging the existence of a genocidal act attributable to another State party, whose responsibility it

³⁰ *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. 107, para. 152. It concerned whether a dispute relating to responsibility for committing an act of genocide fell within the scope of Article IX.

³¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 47, para. 88.

³² *Ibid.*, p. 48, para. 89 (emphasis added).

³³ See *ibid.*, p. 114, para. 168.

³⁴ See above.

³⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment, I.C.J. Reports 1996, p. 616, para. 32.

seeks to engage. The phrase “at the request of any of the parties to the dispute” does not in any way prejudice which of the parties to the dispute before the Court is the applicant and which is the respondent.

Article I

33. Article I of the Convention reads as follows:

“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 to punish.”

34. The Court has had occasion to recall that “the norm prohibiting genocide was assuredly a peremptory norm of international law”³⁶ and that “Article I . . . impose[s] distinct obligations over and above those imposed by other Articles of the Convention. In particular, the Contracting Parties have a direct obligation to prevent genocide.”³⁷ That includes “taking into account the established purpose of the Convention, [that] the effect of Article I is to prohibit States from themselves committing genocide”³⁸.

35. Article I of the Convention thus contains a general obligation to “prevent” and “punish” genocide, without specifying the content of that obligation. As the Court recalled in its Order on provisional measures in the present case,

“Article I does not specify the kinds of measures that a Contracting Party may take to fulfil this obligation. However, the Contracting Parties must implement this obligation in good faith, taking into account other parts of the Convention, in particular Articles VIII and IX, as well as its Preamble.”³⁹

36. Several provisions of the Convention, including Articles IV, V, VI and VII, can be linked with the obligation to punish. As for prevention, that is expressly mentioned in Article VIII⁴⁰. Other articles may also be regarded as contributing to it, in particular Articles V and VI, since punitive measures also have “a deterrent and therefore a preventive effect or purpose”⁴¹.

37. The content of the obligation to prevent has hitherto been specified for disputes in which the applicant was invoking the respondent’s responsibility for acts of genocide or failure to prevent or punish such acts. In that context, the Court has identified a twofold obligation on States parties, considering that “the ban on genocide and the other acts listed in Article III, including complicity, places States under a negative obligation, the obligation not to commit the prohibited acts, while the

³⁶ *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. 111, para. 161.

³⁷ *Ibid.*, p. 113, para. 165.

³⁸ *Ibid.*, p. 113, para. 166.

³⁹ *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, para. 56.

⁴⁰ See paras. 44 *et seq.* below.

⁴¹ *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. 20, para. 51.

duty to prevent places States under positive obligations, to do their best to ensure that such acts do not occur”⁴².

38. In its 2007 Judgment, the Court construed two aspects of the obligation to prevent. On the one hand, it identified the event triggering that obligation, considering that the “obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed”⁴³. On the other, it noted that “a State can be held responsible for breaching the obligation to prevent genocide only if genocide was actually committed”⁴⁴. If neither genocide nor acts which constitute genocide are carried out, “violation of the obligation to prevent [does not occur]”⁴⁵. Consequently, the obligation to prevent only arises, and the measures adopted for that purpose can only be implemented by States parties, if they learn of “the existence of a serious risk that genocide will be committed”, evidence of which must be supplied by those making the allegation. If there is no genocide, or more precisely no serious risk that genocide will be committed, no measure can legitimately be taken by a State party under the Convention.

Articles II and III

39. Articles II and III of the Convention define the crime of genocide as follows:

“Article II

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.

Article III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;

⁴² *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. 223, para. 432.

⁴³ *Ibid.*, p. 222, para. 431.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

(d) Attempt to commit genocide;

(e) Complicity in genocide.”

40. These articles define the intentions and acts which constitute a crime of genocide. As provided for by Article 31 of the Vienna Convention on the Law of Treaties, subsequent practice in the application of a convention by the States parties may contribute to its interpretation. France intends to submit information to the Court on how the Convention is implemented in its legal system. It will thus be able to provide the Court, if necessary, with details of the national provisions implementing these articles of the Convention, and of the relevant practice and jurisprudence of the French courts.

Article IV

41. Under the terms of 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.”

42. Article IV of the Convention requires the States parties to take the necessary measures to punish the perpetrators of genocide or any of the other acts listed in Article III. Since it also serves as a deterrent, this obligation to punish contributes to the prevention sought by the Convention. In terms of punishment, it thus provides for judicial proceedings against individuals said to have committed such acts. In this regard, no provision in the Convention contemplates action by a State that might resemble a collective punishment.

43. France also intends to submit information to the Court regarding the measures adopted in its legal order to give effect to this obligation. If necessary, it will be able to provide details of the national legislation relating thereto, and of the jurisprudence of its courts.

Article VIII

44. Article VIII reads as follows:

“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.”

45. This provision contributes to achieving the objective of the Convention, as formulated in its Preamble: “to liberate mankind from such an odious scourge, international co-operation is required”. The fulfilment of the Convention in good faith involves international co-operation. Consequently, recourse to the organs of the United Nations, as the institutionalized mechanism for international co-operation, enables the States parties to perform the treaty in good faith.

46. By virtue of the collective action underpinning it, Article VIII is a special means of performing both the obligation to prevent and the obligation to punish acts of genocide, which have been recognized as two separate obligations⁴⁶. The relationship between Article VIII and the obligation to prevent is a distinctive one, however; while the obligation to punish is addressed in several provisions of the Convention, the obligation to prevent is referred to only in Articles I and VIII.

47. As regards the obligation to prevent and “the capacity to influence effectively the action of persons likely to commit, or already committing, genocide”, the Court has pointed out that “the combined efforts of several States . . . might have achieved the result — averting the commission of genocide — which the efforts of only one State were insufficient to produce”⁴⁷. In its Order of 16 March 2022, it once again emphasizes the collective dimension of the obligation to prevent by making direct reference to Articles VIII and IX, as well as to the Preamble to the Convention⁴⁸. Consequently, the implementation in good faith of the obligation to prevent⁴⁹ demands that co-operation, in particular within the organs of the United Nations, and the peaceful settlement of disputes be given precedence over unilateral actions of any kind.

DOCUMENTS IN SUPPORT OF THE DECLARATION

48. List of documents provided in support of the Declaration and attached hereto:

Annex 1: Letter from the Registrar of the International Court of Justice to the Ambassador of the French Republic to the Kingdom of the Netherlands dated 30 March 2022.

Annex 2: Instrument of ratification by the French Republic of the Convention on the Prevention and Punishment of the Crime of Genocide.

CONCLUSION

49. In the light of the foregoing, France avails itself of its right of intervention under Article 63, paragraph 2, of the Statute, as a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the construction of which is in question in the case brought before the Court by Ukraine against the Russian Federation.

50. The French Republic has designated the undersigned as Agent of the French Republic for the purposes of the present Declaration. It has also appointed Ms Sandrine Barbier, Deputy Director of the Directorate of Legal Affairs at the Ministry of Europe and Foreign Affairs, as Co-Agent.

⁴⁶ *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, pp. 219-220, para. 427.

⁴⁷ *Ibid.*, p. 221, para. 430.

⁴⁸ *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, para. 56.

⁴⁹ *Ibid.*

51. The French Republic requests that all communications concerning this case be transmitted to the following address:

Embassy of the French Republic in the Netherlands,
Anna Paulownastraat 76,
2518 BJ The Hague, Netherlands.

Respectfully,

(Signed) François ALABRUNE,

Legal Advisor,
Director of Legal Affairs
at the Ministry of Europe and Foreign Affairs
of the French Republic.

ANNEX 1

**LETTER FROM THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE
TO THE AMBASSADOR OF THE FRENCH REPUBLIC TO THE KINGDOM
OF THE NETHERLANDS DATED 30 MARCH 2022**



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.

./.

H.E. the Ambassador
of the French Republic
to the Kingdom of the Netherlands
Embassy of the French Republic
The Hague

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 'P. Gautier', with a long horizontal stroke extending to the right.

Philippe Gautier
Registrar

ANNEX 2

**INSTRUMENT OF RATIFICATION BY THE FRENCH REPUBLIC OF THE CONVENTION
ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE**

UNITED NATIONS  NATIONS UNIES
NEW YORK

CABLE ADDRESS · UNATIONS NEWYORK · ADRESSE TELEGRAPHIQUE

FILE NO.: C.N.177.1950.TREATIES

19 October 1950

CONVENTION OF 9 DECEMBER 1948 ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE

ENTRY INTO FORCE

Sir,

I am directed by the Secretary-General to refer to Article XIII of the Convention on the Prevention and Punishment of the Crime of Genocide, which provides in its first and second paragraphs that:

"On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a procès-verbal and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in article XI.

"The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession."

On 14 October 1950, the following States deposited with the Secretary-General their instruments of ratification or accession to the Convention:



Cambodia	Accession
Costa Rica	Accession
France	Ratification
Haiti	Ratification
Republic of Korea	Accession

On that date the conditions specified in the first paragraph of Article XIII having been fulfilled, the Secretary-General drew up the required Procès-Verbal, a copy of which is enclosed herewith.

In accordance with the provisions of the second paragraph of Article XIII, the Convention will then enter into force on 12 January 1951.

Up to 14 October 1950, the following States have submitted to the Secretary-General their instruments of ratification or accession to the said Convention:

<u>RATIFICATIONS</u>			<u>ACCESSIONS</u>		
Australia	8 July	1950	Bulgaria	21 July	1950
Ecuador	21 December	1949	(with reservations regarding Articles IX and XII)		
El Salvador	28 September	1950	Cambodia	14 October	1950
Ethiopia	1 July	1949	Ceylon	12 October	1950
France	14 October	1950	Costa Rica	14 October	1950
Guatemala	13 January	1950	Hashimite Kingdom of the Jordan	3 April	1950
Haiti	14 October	1950	Korea	14 October	1950
Iceland	29 August	1949	Monaco	30 March	1950
Israel	9 March	1950	Saudi-Arabia	13 July	1950
Liberia	9 June	1950			
Norway	22 July	1949			
Panama	11 January	1950			



Philippines
(with reservations
regarding Articles
IV, VI, VII and IX)
Yugoslavia

7 July 1950

Turkey
Viet-Nam

31 July 1950
11 August 1950

29 August 1950

I have the honour to be,

Sir,

Your obedient Servant,

[Handwritten signature]

Assistant Secretary-General
Legal Department

24

COPY

PROCES-VERBAL ESTABLISHING THE DEPOSIT
OF TWENTY INSTRUMENTS OF RATIFICATION
OR ACCESSION TO THE CONVENTION ON THE
PREVENTION AND PUNISHMENT OF THE CRIME
OF GENOCIDE

PROCES-VERBAL CONSTATANT LE DEPOT DE
VINGT INSTRUMENTS DE RATIFICATION OU
D'ADHESION A LA CONVENTION POUR LA
PREVENTION ET LA REPRESSION DU CRIME
DE GENOCIDE

CONSIDERING that article XIII, paragraphs one and two, of the Convention on the Prevention and Punishment of the Crime of Genocide provides that:

"On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a procès-verbal and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession."

CONSIDERING that the condition specified in paragraph one has, on this day, been fulfilled;

THEREFORE, the Secretary-General has drawn up this Procès-Verbal in the English and French languages.

CONSIDERANT que l'article XIII, de la Convention pour la prévention et la répression du crime de genocide stipule, dans ses paragraphes un et deux, que:

"Dès le jour où les vingt premiers instruments de ratification ou d'adhésion auront été déposés, le Secrétaire général en dressera procès-verbal. Il transmettra copie de ce procès-verbal à tous les Etats Membres des Nations Unies et aux non-membres visés par l'article XI.

La présente Convention entrera en vigueur le quatre-vingt-dixième jour qui suivra la date du dépôt du vingtième instrument de ratification ou d'adhésion."

CONSIDERANT que la condition prévue au paragraphe premier a, ce jour, été réalisée;

EN CONSEQUENCE, le Secrétaire général a dressé le présent Procès-Verbal en langue anglaise et en langue française.

Done at Lake Success, New York, this 14th day of October 1950
Fait à Lake Success, New York, le 14 octobre 1950

For the Secretary-General:
Pour le Secrétaire général:



Assistant Secretary-General
Legal Department
Secrétaire général adjoint
Département juridique

FILE NO.:

C.N.177.1950.TREATIES.CORRIGENDUM

and has the honour to refer to his letter No. C.N.177.1950.TREATIES of 19 October 1950 relating to the entry into force of the Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide.

Owing to a typographical error in the list of ratifications and accessions to the Convention, that portion of the list which reads:

RATIFICATIONS

Australia 8 July 1950

should be changed to read:

Australia 8 July 1949

1 November 1950