

INTERNATIONAL COURT OF JUSTICE

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

DECLARATION OF INTERVENTION
UNDER ARTICLE 63 OF THE STATUTE OF THE COURT
SUBMITTED BY THE REPUBLIC OF POLAND

15 SEPTEMBER 2022

The Hague, 15 September 2022



Embassy
of the Republic of Poland
in The Hague

Excellency,

I have the honour to attach the Republic of Poland's Declaration 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 the Republic of Poland has appointed Dr. Konrad Jan Marciniak, Legal Adviser and Director of the Legal and Treaty Department of the Ministry of Foreign Affairs, as its 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 signature on the Declaration is that of the appointed Agent, Dr. Konrad Jan Marciniak. 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 (including, if possible, email addresses):

Embassy of the Republic of Poland in The Hague
Alexanderstraat 25
2514 JM The Hague
Netherlands
haga.amb.sekretariat@msz.gov.pl
dpt.sekretariat@msz.gov.pl

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Piotr Samerek'.

Piotr Samerek
Chargé d'affaires a.i.

H.E. Mr Philippe Gautier
Registrar
International Court of Justice

Declaration of Intervention
of the Government of the Republic of Poland

Intervention pursuant to Article 63 of the Statute
of the International Court of Justice

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

1. On behalf of the Government of the Republic of Poland, I have the honour to submit to the Court a Declaration of Intervention pursuant to the right to intervene set out in Article 63, paragraph 2, of the Statute of the Court (“the Statute”), 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 declaration of a State’s desire to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall specify the case and the convention to which it relates and shall contain:
 - (a) particulars of the basis on which the declarant State considers itself a party to the convention;
 - (b) identification of the particular provisions of the convention the construction of which it considers to be in question;
 - (c) a statement of the construction of those provisions for which it contends;
 - (d) a list of documents in support, which documents shall be attached.

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

I. Preliminary Observations

4. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation concerning a Dispute Relating to Allegations of Genocide.¹

5. In its Application instituting proceedings, Ukraine asks 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.”²

¹ Dispute Relating to Allegations of Genocide (Ukraine v. Russian Federation), Application instituting proceedings filed in the Registry of the Court on 26 February 2022.

² Ibidem, para 30.

6. 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".
7. Following a request for provisional measures from Ukraine, the Court ordered on 16 March 2022 that:
 - (1) The Russian Federation shall immediately suspend the military operation that it commenced on 24 February 2022 on the territory of Ukraine;
 - (2) The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and person which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point (1) above; and
 - (3) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.
8. As of the date of this Declaration, the Russian Federation has failed to comply with the Order, has intensified and expanded its military operations on the territory of Ukraine and has thus aggravated the dispute pending before the Court.
9. On 30 March 2022, as contemplated by Article 63, paragraph 1, of the Statute of the Court, the Registrar duly notified the Government of the Republic of Poland as a party to the Convention that the construction of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide may be in question in the case.³
10. By this present Declaration, the Republic of Poland avails itself of the right to intervene conferred upon it by Article 63, paragraph 2, of the Statute. This Court has recognized that Article 63 confers a "right" of intervention, where the State seeking to intervene

³ See Annex A to this Declaration.

confines its intervention to “the point of interpretation which is in issue in the proceedings, and does not extend to general intervention in the case”.⁴

11. Consistent with the restricted scope for interventions under Article 63 of the Statute, the Republic of Poland will present its interpretation of the relevant Articles of the Genocide Convention in line with customary rules of interpretation as reflected in Article 31 of the Vienna Convention on the Law of Treaties. It notes that Article 63 of the Statute does not make a distinction between provisions in a Convention, which relate to jurisdictional issues, and those which relate to substantive provisions. According to Judge Schwebel, “intervention in the jurisdictional phase of a proceeding is within the scope of rights with which States are endowed by the terms of Article 63”.⁵ Indeed, in both situations, States may offer their assistance to the Court in the construction of a particular Convention. Accordingly, interventions on both aspects are allowed, and the wording in Article 82 of the Rules to file a declaration “as soon as possible” confirms that the filing of an Article 63 declaration is admissible at this stage of the proceedings.
12. The Republic of Poland further informs the Court that it is willing to assist the Court by grouping its intervention together with similar interventions from other State parties, in particular European Union Member States, for future stages of the proceedings, if the Court deems that this would assist the expedient administration of justice.
13. The Republic of Poland’s right to intervene in the present case arises from its status as a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention” or “Convention”). It is in this limited context that the Republic of Poland intervenes before the Court.
14. The Republic of Poland wishes to stress that the Convention’s preamble famously states that “at all periods of history genocide has inflicted great losses on humanity”. Therefore, the Republic of Poland's views on the present case before the Court are further informed

⁴ Haya de la Torre (*Colombia v. Peru*), Judgment, I.C.J. Reports 1951, p. 76; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 13, para. 21.

⁵ See Opinion of Judge Schwebel in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (Declaration of Intervention of El Salvador), Order of 4 October 1984, I.C.J. Reports 1984, p. 223, at pp. 235-236.

by its long history of supporting efforts to prevent and punish genocide. Our taking such a position is also a consequence of the genocide perpetrated on Polish nationals during World War II by Nazi Germany and the Soviet Union (the predecessor of the Russian Federation). In particular, Soviet individuals responsible for the 1940 Katyn massacre, both the direct perpetrators as well as political leaders, including Joseph Stalin and Lavrentiy Beria, were never held to account for this crime.

15. Consistent with the statements of the Court cited above concerning the scope of the right of intervention, the Republic of Poland will present its views to the Court on the issues of interpretation under the Convention relevant to the determination of the case.

In that regard, the Republic of Poland emphasizes that it does not seek to be a party to the proceedings. But, in accordance with Article 63 of the Statute, the Republic of Poland confirms that by availing itself of its right to intervene, it accepts that the construction given by the judgment in the case will be equally binding upon it.

II. The Basis on which the Republic of Poland is a Party to the Convention

16. The Republic of Poland acceded to the Convention on 14 November 1950, subject to reservations concerning Article IX and Article XII of the Convention.⁶ The Republic of Poland remains party to the Convention.

17. On 16 October 1997, the Government of the Republic of Poland notified the Secretary-General that it had decided to withdraw its reservation with regard to Article IX of the Convention made upon accession.⁷

III. The Relevance of the Convention and the Approach to its Interpretation

18. The key legal issue that is in dispute is the interpretation of the Genocide Convention, which “is invoked both as a basis of the Court's jurisdiction and as a substantive basis of

⁶ See Annex B to this Declaration.

⁷ See Annex C to this Declaration.

the Applicant's claims on the merits”⁸. Thus, the proper construction of the Convention, in particular Article I in connection with Article II, is directly relevant to the resolution of the dispute placed before the Court by Ukraine’s Application.

19. The Republic of Poland’s interpretation of the Convention is based on the provisions of Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties. Article 31 provides as the basic rule of interpretation: “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”. Such interpretation must also take account of the subsequent practice of the parties to the treaty and may also be confirmed by reference to supplementary means of interpretation. These provisions, as indicated by the Court on numerous occasions, reflect customary law and can be applied also to treaties concluded before the date of adoption of the Vienna Convention on the Law of Treaties. This was also the practice of the Court.⁹

20. The Republic of Poland is further mindful that interpretation must take into account any relevant rules of international law applicable in the relations between the parties, including any developments in those rules since the adoption of the treaty. Moreover, the principle of good faith requires a party to apply a treaty provision “in a reasonable way and in such a manner that its purpose can be realized”.¹⁰

21. It is to be noted 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 to entire human groups, a denial which shocks the 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”.¹¹ Furthermore:

⁸ Letter to the States parties to the Genocide Convention by Philippe Gautier Registrar, 30 March 2022.

⁹ *Kasikili/Sedudu Island (Botswana/Namibia)*, I.C.J. Rep 1999 p.18.

¹⁰ *Gabčíkovo-Nagymaros Project (Hungary v Slovakia) (Merits)* [1997] ICJ Rep 7, 79.

¹¹ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 23.

„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”.¹²

22. Finally, it is to be noted that the Court considered the prohibition of genocide has the character of a peremptory norm (*jus cogens*).¹³ This Court has also acknowledged that the rights and obligations enshrined in the Convention have an *erga omnes* character.¹⁴
23. These considerations highlight the importance of the Convention’s subject matter and its proximity to the legal and moral obligation of States Parties to protect individuals under their jurisdiction. Certainly, the Convention was created for a purely humanitarian purpose and cannot be construed in a manner that would allow any State to invoke it to justify military conquest or imperialistic designs. As the provisions of the Convention contain peremptory norms aimed at safeguarding human groups, they cannot be construed as a legal instrument justifying aggression against other States.

IV. Article IX of the Convention

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

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute”.

¹² Ibidem.

¹³ Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, pp. 31-32, para. 64).

¹⁴ 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 1996, p. 595, at p. 615, para. 31.

25. The Republic of Poland contends that the notion of a “dispute” is already well-established in the case law of the Court and supports the current interpretation. Accordingly, it concurs with the meaning given to the word “dispute” as “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties.¹⁵ In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”.¹⁶ The two sides must “hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations”.¹⁷ Moreover, “in case the respondent has failed to reply to the applicant’s claims, it may be inferred from this silence, in certain circumstances, that it rejects those claims and that, therefore, a dispute exists”.¹⁸

26. With respect to Article IX of the Convention, it is to be noted that it is a compromissory clause, which covers disputes “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”. This is a broad formulation that does not contain any specific restrictions. Thus, it exceeds typical clauses of the type limited only to “interpretation and application”. Furthermore, it expressly relates to the “responsibility of a State for genocide”.

27. The ordinary meaning of the phrase “relating to the interpretation, application or fulfilment of the Convention” may be divided in two sub-categories. The first (“relating to”) establishes a link between the dispute and the Convention. The second (“interpretation, application or fulfilment of the Convention”) encompasses many different scenarios.

¹⁵ *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

¹⁶ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of 21 December 1962, I.C.J. Reports 1962, p. 319, at p. 328.

¹⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, p. 406, at p. 414, para. 18; *ICJ, Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 3, at p. 26, para. 50, citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion*, I.C.J. Reports 1950, p. 74.

¹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment of 22 July 2022, p. 27, para. 71.

28. An example of the latter sub-category could be a dispute over the interpretation, application or fulfilment of the Convention when one State alleges that another State has committed genocide.¹⁹ In that scenario, the Court verifies the factual basis for such an allegation. If it is not satisfied that there were any acts of genocide actually being committed by the respondent State, it may decline its jurisdiction.
29. While the above-described scenario of (alleged) responsibility for acts of genocide constitutes an important type of dispute on the “interpretation, application or fulfilment” of the Convention, it is certainly not the only one. For example, in the *Gambia v. Myanmar* (pending), the applicant claimed that the defendant was not only responsible for prohibited acts under Article III, but that it was also violating its obligations under the Convention by failing to prevent genocide in violation of Article I; and failing to punish genocide in violation of Articles I, IV and V.²⁰ In that example, one State alleges that another State is not honouring its commitment to “prevent” and “punish” genocide, because it grants impunity to acts of genocide committed on its territory. Therefore, there can also be disputes about “non-action” as a violation of the substantive obligations under Article I, IV and V. At the most general level, taking into account the object and purpose of the Convention, including the Court’s pronouncements on this issue, the Republic of Poland wishes to stress that the exclusion of such types of disputes would run counter to the particular provisions of the Convention, as well as the humanitarian and civilizing purposes for which it was adopted.
30. Therefore, the ordinary meaning of Article IX makes it clear that there is no need in the present case to establish genocidal acts as a basis to affirm the Court’s jurisdiction. Rather, the Court has jurisdiction over the question whether or not genocidal acts have been or are being committed.²¹ Hence, it also has jurisdiction *ratione materiae* to declare the

¹⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, I.C.J. Reports 2007, p. 43, at p. 75, para. 169.

²⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Judgment of 22 July 2022, p. 12, para. 24, Points (1) (c), d) and (e).

²¹ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*), Order of 16 March 2022, p. 10, para. 43; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Order of 23 January 2020, I.C.J. Reports 2020, p. 14, para. 30.

absence of genocide and the violation of good faith performance of the Convention, resulting in an abuse of the law. In particular, the jurisdiction of the Court extends to disputes concerning the unilateral use of military force for the stated purpose of preventing and punishing alleged genocide.²²

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

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

33. Finally, the object and purpose of the Convention give further support to a broad interpretation of Article IX. The Court noted that “[a]ll the States parties to the Genocide Convention [thus] have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention”.²³ In its 1951 Advisory Opinion, the Court held:

²² Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order of 16 March 2022, p. 11, para. 45.

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

“The objects of such a convention must also be considered. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.”²⁴

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

35. In conclusion, the ordinary meaning of Article IX of the Convention, its context and the object and purpose of the entire Convention show that a dispute regarding acts carried out by one State against another State based on false claims of genocide falls under the notion of a “dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention”. Thus, this provision concerns a situation in which one State invokes the commission of genocide by another State and

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

the latter opposes such a claim.²⁵ As a result, if the representative of one State makes a general allegation that another State has committed genocide and tries to infer from this allegation certain rights, such conduct is covered by the subject matter of the Genocide Convention. Certainly, such behaviour cannot be considered insignificant from the perspective of the Convention's jurisdictional and substantive provisions. Accordingly, the Court has jurisdiction to declare the absence of genocide and the violation of good faith performance of the Convention, resulting in an abuse of the law. In particular, the jurisdiction of the Court extends to disputes concerning the unilateral use of military force for the stated purpose of preventing and punishing alleged genocide.

36. Finally, from a systemic perspective, it is posited that the Court as the principal judicial organ of the United Nations, whose primary function is the preservation of international peace and security, has a positive obligation to contribute to that aim by providing a judicial framework for the resolution of legal conflicts, especially one which not only threatens international peace and security but also has escalated to a full-scale military invasion involving enormous human suffering and continuing loss of life.²⁶

V. Article I (in connection with Article II) of the Convention

37. Article I of the Genocide 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”.

Article II of the Genocide Convention reads 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:

²⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43, at p. 75, para. 169.

²⁶ Legality of Use of Force (Yugoslavia v. United States of America). Request for the Indication of Provisional Measures (Removal from List), I.C.J. Reports 1999, Declaration of Judge Koroma, p. 930.

- (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 of the Genocide convention states:

“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 I contains obligations of fundamental importance to the application of the Convention. The word “genocide” was first coined by Polish lawyer Rafał Lemkin in 1944 in his book *Axis Rule in Occupied Europe*. Lemkin developed the term partly in response to the previous instances in history of targeted actions aimed at the destruction of particular groups of people as such, in particular the systematic murder of Jews during the Holocaust. Later on, Lemkin led the campaign to have genocide recognized and codified as an international crime. As it was stated by the Court:

“Under Article I the States parties are bound to prevent such an act, which it describes as ‘a crime under international law’, being committed. The Article does not *expressis verbis* require States to refrain from themselves committing genocide. However, in the view of the Court, taking into account the established purpose of the Convention, the effect of Article I is to prohibit States from themselves committing genocide. Such a prohibition follows, first, from the fact that the Article categorizes genocide as ‘a crime under international law’: by agreeing to such a categorization, the States parties must logically be undertaking not to commit the act so described. Secondly, it follows from the expressly

stated obligation to prevent the commission of acts of genocide. That obligation requires the States parties, *inter alia*, to employ the means at their disposal, in circumstances to be described more specifically later in this Judgment, to prevent persons or groups not directly under their authority from committing an act of genocide or any of the other acts mentioned in Article III. It would be paradoxical if States were thus under an obligation to prevent, so far as within their power, commission of genocide by persons over whom they have a certain influence, but were not forbidden to commit such acts through their own organs, or persons over whom they have such firm control that their conduct is attributable to the State concerned under international law. In short, the obligation to prevent genocide necessarily implies the prohibition of the commission of genocide”.²⁷

38. A State Party is expected to use its best efforts (a due diligence standard) when it has a “capacity to influence effectively the action of persons likely to commit, or already committing”²⁸ the acts, which in turn depends on the State Party’s geographic, political and other links to the persons or groups at issue. Still, this obligation requires significant evidence that genocide is likely to be or is already being committed. It does not allow for action solely on the basis of claims of genocide without any serious evidence of its commission.

39. Furthermore, States, when discharging their duty to prevent genocide, “may only act within the limits permitted by international law”, as was stated in a previous case brought under the Convention.²⁹ Such an interpretation is further corroborated by a reading of Article I, in particular in the context of Article VIII of the Convention. This provision encourages the Contracting Parties to act through “the competent organs of the United Nations”. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. The actions of States undertaken allegedly in order to “prevent and punish” genocide cannot be contrary to these aims. Furthermore, Article I must be interpreted in light of the principles of international law, among others the prohibition of aggression or

²⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment p. 113, para. 166.

²⁸ *Ibid.*, p. 221, para. 430.

²⁹ (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 (I), p. 221, para. 430).

crimes against humanity. Thus, Article I cannot be understood as authorising aggression or the commission of international crimes. In any case, a duty to “prevent” genocide necessarily encompasses the duty not to create and disseminate false accusations of such a grave crime being committed.

40. With respect to the duty to punish, which is an obligation distinct yet connected to the duty to prevent such crimes,³⁰ the Republic of Poland is of the opinion that it certainly requires clear and convincing evidence of the commission of genocide. Furthermore, Article I of the Genocide Convention must be interpreted as meaning that the obligation to punish genocide is limited to punitive measures of a criminal nature directed against individuals.

The concept of “punishment” is known to national and international criminal law. It covers a reaction to a prohibited act aimed at deterrence, retribution, and rehabilitation of an offender (in proportions different for each and every legal system). By its very nature such “punishment” cannot be used against a State, but only against individuals (without prejudice to the question of whether for the purpose of criminal responsibility, a corporation can be considered to be “an individual”).

This ordinary meaning of the word “punishment” is confirmed by systemic analyses of the Genocide Convention. In the context of “punishment”, it deals with classical criminal law institutions of individual criminal responsibility (elements of crime – Article II, modes of conduct – Article III, personal immunities – Article IV, effectiveness of penalty – Article V, jurisdiction – Article VI, extradition – Article VII). On the other hand, in the context of action that can be taken against a State (not individual), it uses the term “suppression” (Article VIII) instead of “punishment”.

41. Thus, the Convention, interpreted in good faith and taking into account relevant rules of international law applicable in the relations between the State Parties, does not allow for

³⁰ Ibid., para. 425.

conduct involving the use of force as a method of preventing false allegations of genocide in the State targeted by the use of force.

VI. Conclusion

42. In conclusion, the Republic of Poland agrees with the interpretation that invoking a manifestly ill-founded allegation of genocide as justification for the use of force against another State is in clear contravention of Article I of the Genocide Convention.

43. The Republic of Poland reserves the right to amend or supplement this Declaration in the course of written and oral observation and by filing a further declaration with the Court.

VII. Documents in Support of the Declaration

44. The Republic of Poland submits the following documents in support of this Declaration:

- Annex A: Letter from the Registrar sent pursuant to Article 63, paragraph 1, of the Court's Statute;
- Annex B: Confirmation of the Deposition of the Instrument of Accession of the Republic of Poland to the Convention on the Prevention and Punishment of the Crime of Genocide;
- Annex C: Confirmation of Withdrawal of Poland's Reservation to the Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide.



Dr. Konrad Jan Marciniak
Agent of the Government of the Republic of Poland

CERTIFICATION

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

A handwritten signature in blue ink, appearing to read 'Konrad Jan Marciniak', written in a cursive style.

Dr. Konrad Jan Marciniak

Agent of the Government of the Republic of Poland

Annex A

Letter from the Registrar sent pursuant to Article 63, paragraph 1, of the Court's Statute



156413

30 March 2022

Excellency,

I have the honour to refer to my letter (No. 156253) dated 2 March 2022 informing your Government that, on 26 February 2022, Ukraine filed in the Registry of the Court an Application instituting proceedings against the Republic of the Russian Federation in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). A copy of the Application was appended to that letter. The text of the Application is also available on the website of the Court (www.icj-cij.org).

Article 63, paragraph 1, of the Statute of the Court provides that:

[w]henever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith".

Further, under Article 43, paragraph 1, of the Rules of Court:

"Whenever the construction of a convention to which States other than those concerned in the case are parties may be in question within the meaning of Article 63, paragraph 1, of the Statute, the Court shall consider what directions shall be given to the Registrar in the matter."

On the instructions of the Court, given in accordance with the said provision of the Rules of Court, I have the honour to notify your Government of the following.

In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the "Genocide Convention") is invoked both as a basis of the Court's jurisdiction and as a substantive basis of the Applicant's claims on the merits. In particular, the Applicant seeks to found the Court's jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention, asks the Court to declare that it has not committed a genocide as defined in Articles II and III of the Convention, and raises questions concerning the scope of the duty to prevent and punish genocide under Article I of the Convention. It therefore appears that the construction of this instrument will be in question in the case.

J.

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

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COUR INTERNATIONALE
DE JUSTICE

INTERNATIONAL COURT
OF JUSTICE

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.

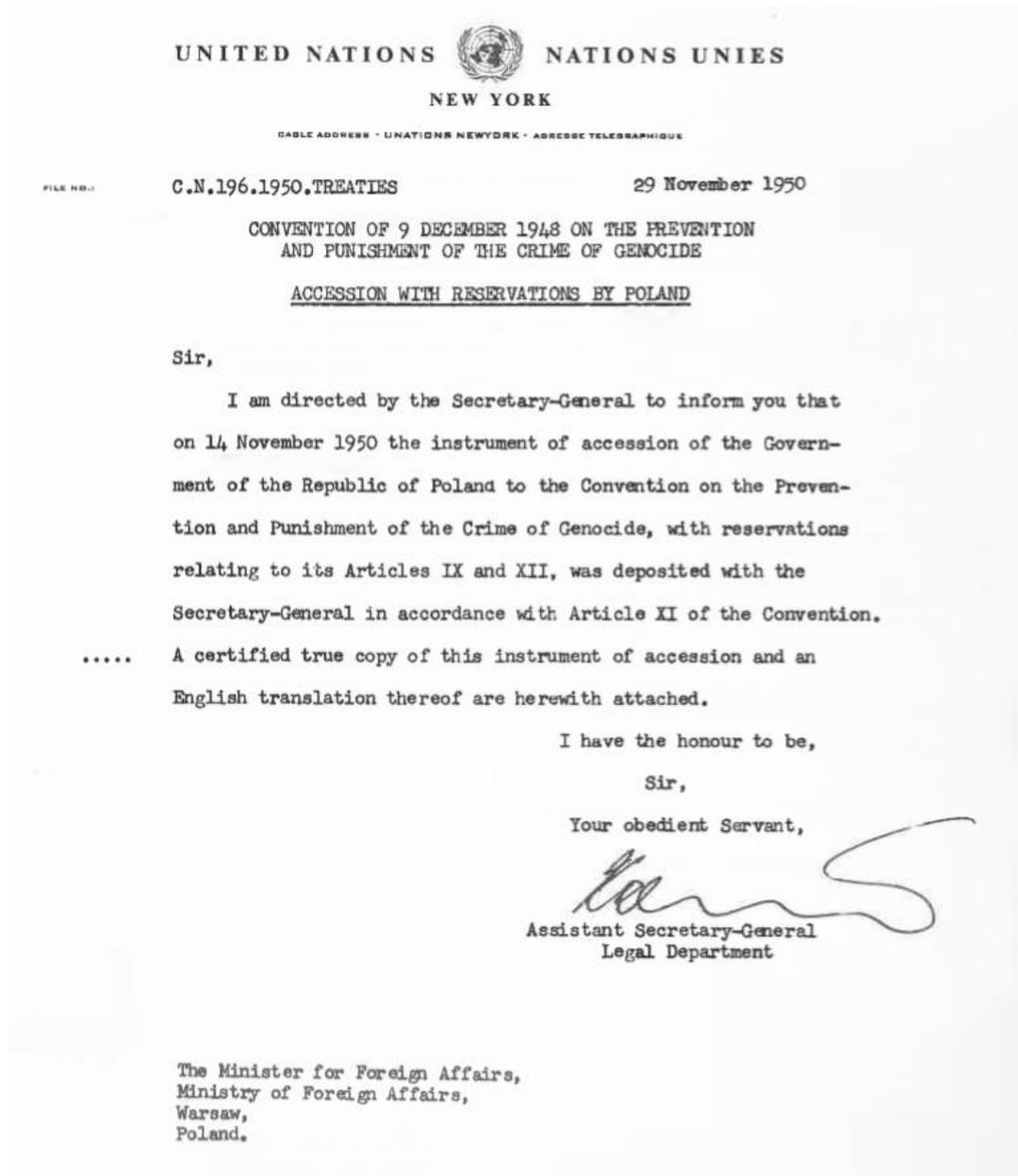
Accept, Excellency, the assurances of my highest consideration.



Philippe Gautier
Registrar

Annex B

Confirmation of the Deposition of the Instrument of Accession of the Republic of Poland
to the Convention on the Prevention and Punishment of the Crime of Genocide



Annex C

Confirmation of Withdrawal of Poland's Reservation to Article IX of the Convention
on the Prevention and Punishment of the Crime of Genocide

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POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
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REFERENCE: C.N.460.1997.TREATIES (Depositary Notification)

MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY GENERAL

WITHDRAWAL OF RESERVATIONS MADE BY POLAND

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

In a notification received 16 October 1997, the Government of Poland notified the Secretary-General that it has decided to withdraw the reservations made by Poland concerning the compulsory jurisdiction of the International Court of Justice and compulsory arbitration with respect to the treaties deposited with the Secretary-General, as listed below. The text of the reservations can be found in the relevant chapters of the publication Multilateral treaties deposited with the Secretary-General¹:

- III.2 CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES. APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947 (With regard to sections 24 and 32)
- IV.1 CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 9 DECEMBER 1948 (With regard to article IX)
- IV.2 INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION. OPENED FOR SIGNATURE AT NEW YORK ON 7 MARCH 1966 (With regard to article 22)
- IV.8 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 18 DECEMBER 1979 (With regard to article 29, paragraph 1)
- VI.16 CONVENTION ON PSYCHOTROPIC SUBSTANCES. CONCLUDED AT VIENNA ON 21 FEBRUARY 1971 (With regard to article 31, paragraph 2)
- XI.A.6 CONVENTION CONCERNING CUSTOMS FACILITIES FOR TOURING. DONE AT NEW YORK ON 4 JUNE 1954 (With regard to article 21)

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

¹ The treaty reference numbers (combinations of Roman and Arabic numerals) indicated with respect to each treaty as listed refer to the relevant chapter of the publication Multilateral treaties deposited with the Secretary-General (ST/LEG/SER.R/15) and to the individual treaties within that chapter

- XI.A.7 ADDITIONAL PROTOCOL TO THE CONVENTION CONCERNING CUSTOMS FACILITIES FOR TOURING, RELATING TO THE IMPORTATION OF TOURIST PUBLICITY DOCUMENTS AND MATERIAL. DONE AT NEW YORK ON 4 JUNE 1954 (With regard to article 15)
- XI.A.8 CUSTOMS CONVENTION ON THE TEMPORARY IMPORTATION OF PRIVATE ROAD VEHICLES. DONE AT NEW YORK ON 4 JUNE 1954 (With regard to article 10)
- XI.A.10 CUSTOMS CONVENTION ON THE TEMPORARY IMPORTATION OF COMMERCIAL ROAD VEHICLES. DONE AT GENEVA ON 18 MAY 1956 (With regard to article 38)
- XI.A.14 EUROPEAN CONVENTION ON CUSTOMS TREATMENT OF PALLETS USED IN INTERNATIONAL TRANSPORT. DONE AT GENEVA ON 9 DECEMBER 1960 (With regard to article 11, paragraphs 2 and 3)
- XI.A.16 CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT OF GOODS UNDER COVER OF TIR CARNETS (TIR CONVENTION). CONCLUDED AT GENEVA ON 14 NOVEMBER 1975 (With regard to article 57, paragraphs 2 to 6)
- XI.B.10 CONVENTION ON THE TAXATION OF ROAD VEHICLES FOR PRIVATE USE IN INTERNATIONAL TRAFFIC. DONE AT GENEVA ON 18 MAY 1956 (With regard to article 10, paragraphs 2 and 3)
- XI.B.11 CONVENTION ON THE CONTRACT FOR THE INTERNATIONAL CARRIAGE OF GOODS BY ROAD (CMR). DONE AT GENEVA ON 19 MAY 1956 (With regard to article 47)
- XI.B.12 CONVENTION ON THE TAXATION OF ROAD VEHICLES ENGAGED IN INTERNATIONAL GOODS TRANSPORT. DONE AT GENEVA ON 14 DECEMBER 1956 (With regard to article 9, paragraphs 2 and 3)
- XI.B.13 CONVENTION ON THE TAXATION OF ROAD VEHICLES ENGAGED IN INTERNATIONAL PASSENGER TRANSPORT. DONE AT GENEVA ON 14 DECEMBER 1956 (With regard to article 9, paragraphs 2 and 3)
- XI.B.16 AGREEMENT CONCERNING THE ADOPTION OF UNIFORM TECHNICAL PRESCRIPTIONS FOR WHEELED VEHICLES, EQUIPMENT AND PARTS WHICH CAN BE FITTED AND/OR BE USED ON WHEELED VEHICLES AND THE CONDITIONS FOR RECIPROCAL RECOGNITION OF APPROVALS GRANTED ON THE BASIS OF THESE PRESCRIPTIONS. DONE AT GENEVA ON 20 MARCH 1958 (With regard to article 10)
- XI.B.19 CONVENTION ON ROAD TRAFFIC. CONCLUDED AT VIENNA ON 8 NOVEMBER 1968 (With regard to article 52)
- XI.B.20 CONVENTION ON ROAD SIGNS AND SIGNALS. CONCLUDED AT VIENNA ON 8 NOVEMBER 1968 (With regard to article 44)

- XI.B.22 AGREEMENT ON THE INTERNATIONAL CARRIAGE OF PERISHABLE FOODSTUFFS AND ON THE SPECIAL EQUIPMENT TO BE USED FOR SUCH CARRIAGE (ATP). CONCLUDED AT GENEVA ON 1 SEPTEMBER 1970 (With regard to article 15, paragraphs 2 and 3)
- XI.B.23 EUROPEAN AGREEMENT SUPPLEMENTING THE CONVENTION ON ROAD TRAFFIC OPENED FOR SIGNATURE AT VIENNA ON 8 NOVEMBER 1968. CONCLUDED AT GENEVA ON 1 MAY 1971 (With regard to article 9)
- XI.B.24 EUROPEAN AGREEMENT SUPPLEMENTING THE CONVENTION ON ROAD SIGNS AND SIGNALS OPENED FOR SIGNATURE AT VIENNA ON 8 NOVEMBER 1968. CONCLUDED AT GENEVA ON 1 MAY 1971 (With regard to article 9)
- XI.B.25 PROTOCOL ON ROAD MARKINGS, ADDITIONAL TO THE EUROPEAN AGREEMENT SUPPLEMENTING THE CONVENTION ON ROAD SIGNS AND SIGNALS OPENED FOR SIGNATURE AT VIENNA ON 8 NOVEMBER 1968. CONCLUDED AT GENEVA ON 1 MARCH 1973 (With regard to article 9)
- XI.B.28 EUROPEAN AGREEMENT ON MAIN INTERNATIONAL TRAFFIC ARTERIES (AGR). CONCLUDED AT GENEVA ON 15 NOVEMBER 1975 (With regard to article 13)
- XII.3 CONVENTION RELATING TO THE UNIFICATION OF CERTAIN RULES CONCERNING COLLISIONS IN INLAND NAVIGATION. CONCLUDED AT GENEVA ON 15 MARCH 1960 (With regard to article 14)
- XVI.1 CONVENTION ON THE POLITICAL RIGHTS OF WOMEN. OPENED FOR SIGNATURE AT NEW YORK ON 31 MARCH 1953 (With regard to article IX)
- XVIII.7 CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 14 DECEMBER 1973 (With regard to article 13, paragraph 1)

18 December 1997

SJ