Note: This translation has been prepared by the Registry for internal purposes and has no official character

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

[Translation]

To the Registrar of the International Court of Justice (hereinafter the "Court"), the undersigned being duly authorized by the Government of the Kingdom of Belgium (hereinafter "Belgium"):

1. On behalf of Belgium, 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 (hereinafter 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 Court (hereinafter the "Rules") 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. The declaration must 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. Belgium also intends to make certain preliminary observations.

PRELIMINARY OBSERVATIONS

4. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation (hereinafter "Russia") in a dispute concerning the interpretation, application and fulfilment of the Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide[1] (hereinafter the "Genocide Convention" or the "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].

---

[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 the "Application").

[3] Application of Ukraine, para. 3.

6. On 16 March 2022, the Court issued an Order indicating provisional measures[4], stating that:

(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; 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.

7. On 30 March 2022, pursuant to Article 63, paragraph 1, of the Statute, the Registrar notified the Belgian Government, as a party to the Convention, that, in Ukraine's Application, 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". The Registrar also noted that Ukraine:

> "seeks to found the Court's jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention, asks the Court to declare that it has not committed a genocide as defined in Articles II and III of the Convention, and raises questions concerning the scope of the duty to prevent and punish genocide under Article I of the Convention. It therefore appears that the construction of this instrument will be in question in the case."[5]

8. The present Declaration by Belgium is based on Article 63, paragraph 2, of the Statute. As the Court has recognized on numerous occasions[6], that provision grants parties to a convention the construction of which is in question "the right to intervene in the proceedings".

In light of the fact that these are incidental proceedings involving the exercise of a right, the Court specified, in its Order of 6 February 2013 in the case concerning *Whaling in the Antarctic (Australia* v. *Japan)* that:

> "when presented with a 'declaration' of intervention based on Article 63 of the Statute, [it] is not required to ascertain whether the State which is the author of that declaration has 'an interest of a legal nature' which 'may be affected by the decision [of the Court]' in the main proceedings, as it is obliged to do when it is seised of an 'application' for permission to intervene under Article 62 of the Statute; whereas, in accordance with the terms of Article 63 of the Statute, the limited object of the intervention is to allow a third State not party to the proceedings, but party to a convention whose construction is in question in those proceedings, to present to the Court its observations on the construction of that convention"[7].

---

[4] Such an order is legally binding: *LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, pp. 502-506, paras. 102-109.

[5] See Annex A, Letter from the Registrar of the Court of 30 Mar. 2022.

[6] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Honduras for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II)*, p. 434, para. 36; *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.

[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. 5, para. 7.

9. Belgium considers that the Genocide Convention is an essential instrument for preventing and punishing the crime of genocide. Any act committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group constitutes a crime under international law. Moreover, the prohibition of genocide is recognized as a *jus cogens* norm in international law[8]. As the Court ruled in its Judgment of 22 July 2022 in *The Gambia* v. *Myanmar*, the rights and obligations enshrined in the Convention are owed to the international community as a whole:

> "All 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. As the Court has affirmed, such a common interest implies that the obligations in question are owed by any State party to all the other States parties to the relevant convention; they are obligations *erga omnes partes*, in the sense that each State party has an interest in compliance with them in any given case"[9].

Belgium considers that the exercise, in the present case, of the right of intervention as provided for by Article 63 of the Statute enables States parties to the Convention to reaffirm both their collective commitment to upholding the rights and obligations contained therein, and the essential role of the Court.

10. Belgium is conscious of the fact that, in its Order of 6 February 2013 in the case concerning *Whaling in the Antarctic (Australia* v. *Japan)*, the Court emphasized that:

> "intervention under Article 63 of the Statute is limited to submitting observations on the construction of the convention in question and does not allow the intervenor, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court"[10].

11. Belgium will therefore confine itself to presenting its views on the provisions of the Convention whose construction appears to be in question in the present case. This is consistent with the object of Article 63 of the Statute, which is to promote unity in the understanding of multilateral conventions and to prevent disputes between States concerning the interpretation and application of such conventions[11].

---

[8] *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*, p. 31, para. 64; *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)*, pp. 110-111, paras. 161-162.

[9] *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*, p. 36, para. 107.

[10] *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.

[11] G. N. Barrie, "Third-Party State Intervention in Disputes Before the International Court of Justice: A Reassessment of Articles 62 and 63 of the ICJ Statute", *Comparative and International Law Journal of Southern Africa*, 2020, Vol. 53 (1), p. 12: "The object of Article 63 is to promote unity in the understanding of multilateral conventions and to prevent disputes between states about the interpretation and application of such conventions."

Belgium will present its views in accordance with the rules of treaty interpretation contained in Articles 31 to 33 of the Vienna Convention on the Law of Treaties, which, as the Court has observed in numerous cases, also reflect customary international law[12].

12. In its aforementioned Order in the case concerning *Whaling in the Antarctic (Australia* v. *Japan)*, the Court stated that

> "the fact that intervention under Article 63 of the Statute is of right is not sufficient for the submission of a 'declaration' to that end to confer *ipso facto* on the declarant State the status of intervener; [that] such right to intervene exists only when the declaration concerned falls within the provisions of Article 63; and [that], therefore, the Court must ensure that such is the case before accepting a declaration of intervention as admissible . . .; [and that] it also has to verify that the conditions set forth in Article 82 of the Rules of Court are met"[13].

13. Belgium does not seek to become a party to the proceedings.

14. Belgium wishes to assure the Court that its Declaration has been filed as soon as reasonably possible, in accordance with Article 82 of the Rules.

THE BASIS ON WHICH BELGIUM IS A PARTY TO THE CONVENTION

15. Belgium signed the Convention on 12 December 1949, in accordance with the first paragraph of Article XI. In accordance with the second paragraph of Article XI, it deposited its instrument of ratification of the Genocide Convention with the Secretary-General of the United Nations, in his capacity as depositary, on 5 September 1951. It has filed no reservations thereto.

PROVISIONS OF THE CONVENTION IN QUESTION

16. The questions raised in the present case relate to the proper construction of Articles I, VIII and IX of the Genocide Convention. The present intervention pertains to those articles in so far as they concern the jurisdiction of the Court. At the same time, Belgium reserves the right to supplement this Declaration and broaden the scope of its observations should additional questions relating to the construction of any of the provisions of the Genocide Convention be raised, or following its receipt

---

[12] See, recently, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 95, para. 75; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 598, para. 106; *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 320-321, para. 91; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 116, para. 33; *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*, p. 31, para. 87.

[13] *Whaling in the Antarctic (Australia* v. *Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013*, pp. 5-6, para. 8, with reference to the cases concerning *Haya de la Torre (Colombia* v. *Peru), Judgment, I.C.J. Reports 1951,* pp. 76-77, and *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Declaration of Intervention, Order of 4 October 1984, I.C.J. Reports 1984*, p. 216.

of the pleadings and documents annexed thereto, in accordance with Article 86, paragraph 1, of the Rules.

DECLARATION ON THE CONSTRUCTION OF THE PROVISIONS IN QUESTION

Article I

17. 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."

18. According to Article I, all the States parties are required to prevent and punish the crime of genocide. Belgium recalls that the Court has observed that in the performance of their obligation to prevent the crime of genocide, the Contracting Parties may only act within the limits permitted by international law[14]. Furthermore, the obligation provided for in Article I of the Convention must be performed in good faith (Article 26 of the Vienna Convention on the Law of Treaties). 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. 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"[15]. Good faith interpretation is therefore a safeguard against the misuse of a convention's terms and institutions. As "one of the basic principles governing the creation and performance of legal obligations", good faith is also directly linked to "[t]rust and confidence[, which] are inherent in international co-operation"[16].

19. As the Court observed in its Order indicating 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 [to prevent and punish genocide]. 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."[17]

20. In Belgium's view, the obligation to prevent implies that each State party must assess the existence of genocide or a serious risk of genocide before taking measures under Article I[18]. That assessment must be justified by substantial evidence "that is fully conclusive"[19]. An essential aspect

---

[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 2007 (I)*, p. 221, para. 430; *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. 57.

[15] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 79, para. 142.

[16] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 268, para. 46.

[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*, para. 56.

[18] *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)*, pp. 221-222, paras. 430-431.

[19] *Ibid.*, p. 129, para. 209.

of this undertaking to prevent is the obligation to exercise due diligence in respect of a potential genocide[20]. The Court has described due diligence as being "of critical importance"[21].

21. It is important to note that the United Nations Human Rights Council has called upon all States,

> "in order to deter future occurrences of genocide, to cooperate, including through the United Nations system, in strengthening appropriate collaboration among existing mechanisms that contribute to the early detection and prevention of massive, serious and systematic violations of human rights that, if not halted, could lead to genocide"[22].

It is therefore good practice to have recourse to the findings of independent investigations conducted under the auspices of the United Nations[23] before characterizing a situation as genocide and taking any other measures under the Convention.

22. The proper construction of Article I of the Convention is therefore that a State that claims to be taking action has a due diligence obligation to gather such evidence from independent sources, before taking any other measures in accordance with Article I.

23. The scope of the obligation to "prevent" is also made clear by the last paragraph of the Genocide Convention's preamble, which emphasizes the need for "international co-operation". Moreover, pursuant to Article VIII of the Convention, States can request that the competent organs of the United Nations take action, while Article IX provides for judicial settlement. All of this suggests a duty to use first multilateral and peaceful means to prevent genocide, before taking unilateral measures as a last resort. This reading is also consistent with Article 2, paragraph 3, of the United Nations Charter, which contains a general obligation for States to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered". In this regard, Belgium notes that all States parties have undertaken to eliminate genocide throughout the world for the good of humanity, and not to protect their own interests.

24. It follows from the obligation to carry out a good faith assessment of the existence of genocide or the serious risk of genocide that, when a State has failed to carry out such an assessment, it cannot invoke the obligation to "prevent" genocide provided for in Article I of the Convention as justification for its conduct. Thus, a Contracting Party cannot invoke Article I of the Convention 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 substantial evidence from independent sources, that genocide is occurring or that there is a serious risk of genocide occurring.

---

[20] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 430.

[21] *Ibid.*

[22] United Nations Human Rights Council, resolution 43/29: Prevention of genocide (29 June 2020), UN doc. A/HRC/RES/43/29, para. 11.

[23] For example, before seising the Court, The Gambia relied on the reports of the Independent International Fact-Finding Mission on Myanmar established by the United Nations Human Rights Council; for more information, see *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*, pp. 25-27, paras. 65-69.

25. As regards the obligation to "punish", which appears in Article I of the Convention, Belgium considers that it encompasses the adoption and application of all the necessary legislation and, in particular, effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III. This is confirmed by Articles IV to VII of the Convention. In other words, a State should use its domestic criminal law or co-operate, as appropriate, with international criminal investigations conducted by a competent international criminal court in order to punish crimes of genocide committed by natural persons, and not engage in any other kind of measures, in particular the use of armed force against another State.

Article VIII

26. Article VIII of the Genocide Convention 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."

27. Article VIII provides that States parties may request the competent organs of the United Nations to take action under the Charter for the prevention and suppression of acts of genocide. The Security Council and the General Assembly are both "competent organs" that can take collective action (either by a resolution of the General Assembly or by enforcement action decided or authorized by the Security Council pursuant to Chapter VII of the Charter). Together with the right to seise the Court under Article IX of the Convention, the possibility to call upon the competent organs of the United Nations under Article VIII reflects the design of the Convention, which favours collective and institutional action for the prevention and suppression of acts of genocide. The Court has considered that "Article VIII may be seen as addressing the prevention and suppression of genocide 'at the political level rather than as a matter of legal responsibility'"[24].

28. Belgium recalls that the prevention and suppression of the crime of genocide concern the international community as a whole[25]. It further recalls that, in accordance with Articles 31 to 33 of the Vienna Convention on the Law of Treaties, the proper construction of Article VIII of the Genocide Convention requires that provision to be read in its context, in particular together with Article I. The object and purpose of Article VIII is to underline the preference for collective enforcement over unilateral enforcement. Hence, the legality of any extraterritorial unilateral preventive measure is contingent on the prior seising of the competent United Nations organs pursuant to Article VIII, and on the failure of those organs to take action in accordance with the Charter. Any such unilateral preventive measure must comply with the requirements of Article I as set out above.

---

[24] *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*, p. 31, para. 88, citing *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. 109, para. 159.

[25] *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), Preliminary Objections, Judgment of 22 July 2022*, p. 36, para. 107; *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, pp. 449-450, paras. 68-70.

Article IX

29. Article IX of the Genocide Convention provides 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."

30. Belgium respectfully contends that Article IX gives the Court jurisdiction to entertain disputes between the parties to the Convention. The notion of "dispute" has long been established in the jurisprudence of both the Court and its predecessor, the Permanent Court. Belgium supports the broad interpretation of this term in public international law, as reaffirmed very recently by the Court. Indeed, in its Judgment of 22 July 2022 in *The Gambia* v. *Myanmar*, the Court reiterated that

> "[a]ccording to the established case law of the Court, a dispute is 'a disagreement on a point of law or fact, a conflict of legal views or of interests' between parties . . . In order for a dispute to exist, '[i]t must be shown that the claim of one party is positively opposed by the other' . . . The two sides must hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations."[26]

31. First, as the Permanent Court had previously held in its 1924 Judgment in the *Mavrommatis Palestine Concessions* case, there must be "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons"[27]. In the view of the present Court, for a dispute to exist, it must "be shown that the claim of one party is positively opposed by the other"[28]. A dispute between States exists "where they hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations"[29]. Moreover, as established by the Court's aforementioned Judgment of 22 July 2022, "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 at the time of the application"[30]. In the same Judgment, in the context of the Genocide Convention, the Court specified that it, "however, does not

---

[26] *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*, p. 25, para. 63.

[27] *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11. See, *inter alia*, *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 116, para. 124.

[28] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 85, para. 30; *Certain Property (Liechtenstein* v. *Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005,* p. 18, para. 24; *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,* p. 40, para. 90; *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328.

[29] *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 (II)*, p. 414, para. 18; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 115, para. 22; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 26, para. 50; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74.

[30] *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*, p. 27, para. 71.

consider that a specific reference to a treaty or to its provisions is required" for a dispute to exist[31]. Nevertheless, it reiterated its jurisprudence that

> "[w]hile it is not necessary that a State must expressly refer to a specific treaty in its exchanges with the other State to enable it later to invoke that instrument before the Court . . . the exchanges must 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"[32].

Moreover, the Court has consistently held that "[w]hether there exists an international dispute is a matter for objective determination"[33]. The Court has noted that such determination "must turn on an examination of the facts. The matter is one of substance, not of form."[34]

32. Since the term "dispute" is abundantly clear, Belgium wishes to focus on the interpretation of the other parts of Article IX of the Convention, namely that disputes must "relat[e] to the interpretation, application or fulfilment of the present Convention". Belgium considers that Article IX is a very broad jurisdictional clause, enabling the Court to rule on all disputes between the Contracting Parties concerning the interpretation, application or fulfilment of all the provisions of the Convention, including Article IX itself, and all the rights and obligations contained in the Convention[35].

33. Having regard to Article 31 of the Vienna Convention on the Law of Treaties, the ordinary meaning of the expression "relating to the interpretation, application or fulfilment of the . . . Convention" can be divided into two parts.

34. The first part ("relating to") establishes a link between the dispute and the Convention. In its Judgment of 3 February 2015 in the case between Croatia and Serbia, the Court considered that in order for its jurisdiction to be established on the basis of Article IX, the dispute must "*relat[e] to*

---

[31] *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*, p. 27, para. 72.

[32] *Ibid.*; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 85, para. 30.

[33] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 442, para. 46; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 85, para. 30; *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 100, para. 22; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998,* p. 17, para. 22; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 122-123, para. 21; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74.

[34] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 85, para. 30; *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 442, para. 46.

[35] See C. J. Tams, "Article IX", in C. J. Tams, L. Berster and B. Schiffbauer (Eds.), *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary*, Beck/Hart, 2014, p. 312, para. 44: "As no particular aspect of the Convention is excluded, this suggests that all rights and obligations enshrined in the Convention can form the subject of inter-state litigation: it is the 'present Convention' in its entirety that is referred to."

the interpretation, application or fulfilment of the Genocide Convention" or "*concern* obligations under the Convention itself"[36].

35. Hence, it would appear that the dispute, within the meaning of Article IX, must relate to, or concern, an obligation arising under the Convention.

36. The second part ("interpretation, application or fulfilment of the . . . Convention") encompasses a number of different scenarios, especially since Article IX covers all disputes "relating to the responsibility of a State for genocide". The Court has confirmed that Article IX does not exclude any form of State responsibility[37]. As the paragraphs that follow also demonstrate, this indicates that the Court's jurisdiction is not limited to situations in which one State alleges that another State has committed the crime of genocide.

37. Furthermore, as Professor Kolb has observed, Article IX of the Convention is "a model of clarity and simplicity, opening the seizing of the Court as largely as possible"[38]. The word "including" suggests that the categories of disputes capable of falling within the scope of Article IX are not exhaustive[39]. More specifically, there may be a dispute about the interpretation, application or fulfilment of the Convention when one State alleges that another State has committed genocide[40].

38. While this scenario of (alleged) responsibility for acts of genocide is one important type of dispute relating to "the interpretation, application or fulfilment" of the Convention, it is not the only one. For example, in *The Gambia* v. *Myanmar,* the applicant asserts that the respondent is not only responsible for acts prohibited under Article III, but that it is also violating its obligations under the Convention by not preventing genocide, in breach of Article I, and by not punishing genocide, in violation of Articles I, IV and V[41]. In that instance, one State is alleging that another State is failing to comply with its obligations to "prevent" and "punish" genocide, by allowing acts of genocide to be committed with impunity on its territory. Hence, disputes can also arise in respect of "non-action", as a violation of the substantive obligations provided for in Articles I, IV and V.

39. Accordingly, the ordinary meaning of Article IX of the Convention clearly indicates that it is not necessary to establish whether acts of genocide have occurred in order for the Court's jurisdiction to be affirmed. The Court has jurisdiction to ascertain *whether or not* acts of genocide have been or are being committed[42]. It follows that the Court also has jurisdiction to declare that genocide has not occurred. In particular, the Court's jurisdiction extends to disputes involving

---

[36] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 47, para. 89 (emphasis added).

[37] *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 (II)*, p. 616, para. 32.

[38] R. Kolb, "The compromissory clause of the Convention", in P. Gaeta (Ed.), *The UN Genocide Convention: A Commentary,* Oxford University Press, 2009, p. 420.

[39] *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. 114, para. 169.

[40] *Ibid.*, pp. 108-114, paras. 155-169, and pp. 118-119, para. 179.

[41] *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*, p. 12, para. 24, points (1) *(c)*, *(d)* and *(e)*.

[42] *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.

competing interpretations as to whether the use of force for the stated purpose of preventing and punishing alleged genocide is a measure that can be taken in fulfilment of the obligation to "prevent and punish" contained in Article I of the Convention[43].

40. The context of the phrase "relating to" confirms this reading. As the Court observed in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*:

> "The word 'including' tends to confirm that disputes relating to the responsibility of Contracting Parties for genocide, and the other acts enumerated in Article III to which it refers, are comprised within a broader group of disputes relating to the interpretation, application or fulfilment of the Convention."[44]

41. Nor, furthermore, do the terms of Article IX imply that there is any restriction on the configuration of the dispute. In particular, Article IX does not require the applicant State necessarily to be the one alleging the existence of a genocidal act attributable to another State party, whose responsibility it seeks to engage. The phrase "at the request of any of the parties to the dispute" does not in any way prejudge which of the parties to the dispute before the Court is the applicant and which is the respondent.

42. Thus, the context of the phrase "relating to" in Article IX of the Convention confirms that the Court's jurisdiction covers not only inter-State disputes concerning responsibility for alleged acts of genocide, but also inter-State disputes concerning the absence of genocide.

43. Finally, the object and purpose of the Convention provide additional support for a broad interpretation of Article IX of that instrument. In its 1951 Advisory Opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, the Court stated that:

> "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."[45]

44. The Court has recently reaffirmed these principles and noted that "[a]ll the States parties to the Genocide Convention thus have a common interest to ensure the prevention, suppression and

---

[43] *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.

[44] *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. 114, para. 169.

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

punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention"[46].

45. The object of the Convention, which is to protect the most elementary principles of morality, also precludes any misuse of its provisions by a State party for other purposes. The credibility of the Convention as a universal instrument aimed at prohibiting the most heinous crime of genocide would be undermined if a State party could abuse its authority without the victim of such abuse being able to turn to the Court. The Convention's object thus speaks loudly in favour of a reading of Article IX whereby disputes relating to the interpretation, application or fulfilment of the Convention include those relating to abuse of the Convention's authority to justify the action taken by one State party to the Convention against another.

46. In conclusion, it is clear from the ordinary meaning and context of Article IX of the Convention, and from the object and purpose of the Convention as a whole, that a dispute relating to acts carried out by one State against another on the basis of false allegations of genocide falls under the notion of "disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention". Therefore, the Court has jurisdiction to declare that there has been no genocide. This interpretation concerning the Court's jurisdiction confirms that the latter extends to disputes concerning the unilateral use of armed force for the stated purpose of preventing and punishing alleged genocide.

DOCUMENTS IN SUPPORT OF THE DECLARATION

47. The following documents in support of this Declaration are attached hereto:

(A) Letter from the Registrar of the International Court of Justice, dated 30 March 2022, to the Permanent Representative of the Kingdom of Belgium to the International Organizations in The Hague;

(B) Excerpt from the United Nations Treaty Series for 1951 showing that Belgium deposited its instrument of ratification of the Convention on 5 September 1951.

CONCLUSION

48. On the basis of the information set out above, Belgium avails itself of the right of intervention conferred upon it by Article 63, paragraph 2, of the Statute, as a party to the Convention on the Prevention and Punishment of the Crime of Genocide, the construction of which is in question in the present case brought before the Court by Ukraine against the Russian Federation.

49. The Government of the Kingdom of Belgium has appointed as Agents:

— Mr. Piet Heirbaut, Legal Adviser, Director-General of Legal Affairs, Federal Public Service for Foreign Affairs, Foreign Trade and Development Co-operation; and

— Mr. William Roelants de Stappers, Ambassador, Permanent Representative of the Kingdom of Belgium to the International Organizations in The Hague.

---

[46] *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*, p. 36, para. 107.

50. The Registrar of the Court may send all communications relating to the present case to the following address:

Permanent Representation of the Kingdom of Belgium
to the International Organizations in The Hague
Johan van Oldenbarneveltlaan 11
2582 NE The Hague
Netherlands

Brussels, 2 December 2022.

Respectfully,

(Signed) Piet HEIRBAUT,

Agent of the Government,
Legal Adviser, Director-General of Legal Affairs,
Federal Public Service for Foreign Affairs,
Foreign Trade and Development Co-operation.

_____