

INTERNATIONAL COURT OF JUSTICE

***APPLICATION OF THE CONVENTION ON THE PREVENTION
AND PUNISHMENT OF THE CRIME OF GENOCIDE***

IN THE GAZA STRIP

(SOUTH AFRICA V. ISRAEL)

**DECLARATION OF INTERVENTION
UNDER ARTICLE 63 OF THE STATUTE
SUBMITTED BY
THE UNITED STATES OF AMERICA**

MARCH 12, 2026



*Ambassador of the United States of America
The Hague, the Netherlands*

**LETTER FROM THE AMBASSADOR OF THE UNITED STATES OF AMERICA TO
THE KINGDOM OF THE NETHERLANDS TO THE REGISTRAR OF THE
INTERNATIONAL COURT OF JUSTICE**

March 12, 2026

I have the honor to attach a Declaration by the Government of the United States of America of its intervention pursuant to Article 63, paragraph 2, of the Statute of the Court in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.

I also attach an instrument signed by the U.S. Secretary of State appointing the Agent of the United States for the purposes of these proceedings. I certify that the signature on the Declaration is that of the appointed Agent, Reed D. Rubinstein.

Finally, I have the further honor to advise that the address for service to which all communications concerning these proceedings should be sent is that of this Embassy.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Popolo', written over the printed name.

Joseph V. Popolo
Ambassador

The Honorable
Philippe Gautier
Registrar of the International Court of Justice
The Hague

Dear Mr. Gautier:

For the purposes of intervention pursuant to Article 63 of the Statute of the Court in the case before the International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, I hereby appoint Reed D. Rubinstein, Legal Adviser of the U.S. Department of State, as Agent for the United States, and Ms. Alison Welcher, Legal Counselor of the Embassy of the United States of America, as Deputy Agent.

Please accept the assurances of my highest consideration

Yours sincerely,

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

Marco A. Rubio
Secretary of State

DECLARATION OF INTERVENTION OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA 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 United States:

1. On behalf of the Government of the United States, I have the honor 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, in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.
2. Article 82, paragraph 5, 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 documents in support, which documents shall be attached.
3. Those matters are addressed in sequence below, following some preliminary observations.

PRELIMINARY OBSERVATIONS

4. On December 29, 2023—less than three months after the October 7, 2023 attack by Hamas on the people of Israel—the Government of the Republic of South Africa instituted proceedings against the State of Israel regarding a dispute “relating to the interpretation, application or fulfilment” of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention” or “Convention”).¹ South Africa’s Application acknowledges “the attacks in Israel on 7 October 2023,”² but it nevertheless contends that Israel’s self-defense measures were inconsistent with Israel’s obligations under the Convention.³

5. To avoid any doubt, the United States affirms, in the strongest terms possible, that the allegations of “genocide” against Israel are false. They are also unfortunately nothing new. The United States recalls that international fora have been misused to level false charges of “genocide” against the State of Israel since at least May 1976⁴ as part of a broader campaign (including UN General Assembly resolution 3379)⁵ to delegitimize the State of Israel and the Jewish people and to justify or encourage terrorism against them. Sadly, that effort remains ongoing. Only days after Hamas launched its assault of mass rape, murder, and kidnapping on October 7, 2023, pro-Hamas actors, including the Islamic Republic of Iran, were already falsely charging Israel once again with “genocide.”⁶

6. As contemplated by Article 63, paragraph 1, of the Statute of the Court, the Registrar by letter dated February 6, 2024, duly notified the Government of the United States as a party

¹ Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951) (hereinafter, “Genocide Convention”).

² Application Instituting Proceedings (hereinafter, “Application”), ¶ 1 (referencing “the attacks in Israel on 7 October 2023” and noting that it “unequivocally condemns all violations of international law by all parties, including the direct targeting of Israeli civilians and other nationals and hostage-taking by Hamas and other Palestinian armed groups”).

³ *Id.* (“The acts in question include killing Palestinians in Gaza, causing them serious bodily and mental harm, and inflicting on them conditions of life calculated to bring about their physical destruction. The acts are all attributable to Israel, which has failed to prevent genocide and is committing genocide in manifest violation of the Genocide Convention, and which has also violated and is continuing to violate its other fundamental obligations under the Genocide Convention, including by failing to prevent or punish the direct and public incitement to genocide by senior Israeli officials and others.”)

⁴ *See, e.g.*, U.N. SCOR, 31st Year, 1919th mtg., p. 15, ¶ 110, U.N. Doc. S/PV.1918 (1976) (statement of Mr. Malik (U.S.S.R.)).

⁵ The United States, represented by the Honorable Daniel Patrick Moynihan, observed with respect to General Assembly resolution 3379: “The United States rises to declare before the General Assembly of the United Nations and before the world that it does not acknowledge, it will not abide by, it will never acquiesce in this infamous act. [A] great evil has been loosed upon the world. The abomination of anti-Semitism -- as this year’s Nobel Peace Laureate Andrei Sakharov observed in Moscow just a few days ago -- the abomination of anti-Semitism has been given the appearance of international sanction. The General Assembly today grants symbolic amnesty -- and more -- to the murderers of the six million European Jews.” U.N. GAOR, 30th Sess., 2400th plen. mtg., pp. 795-96, ¶ 309-312, U.N. Doc. A/PV.2400 (1975) (statement of Mr. Moynihan (U.S.)).

⁶ *See, e.g.*, “Iran Accuses Israel of Seeking ‘Genocide’ by Besieging Gaza,” Reuters, Oct. 12, 2023, available at <https://www.reuters.com/world/middle-east/iran-accuses-israel-seeking-genocide-by-besieging-gaza-state-tv-2023-10-12/>.

to the Convention that in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*:

[T]he [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 and alleges violations of Articles I, III, IV, V, and VI of the Convention. It therefore appears that the construction of this instrument will be in question in the case.⁷

7. The United States, as a non-party to this case, intends to present its views to the Court on the issues of construction of the Convention relevant to the determination of the case in accordance with Article 63 of the Statute. By this Declaration, the United States avails itself of the right to intervene under Article 63, paragraph 2.⁸

8. The proper construction of the Genocide Convention is of paramount concern to all States Parties. The United States’ views on the questions at issue in this case are further informed by the United States’ particular role in the negotiations and shaping of the final text of the Genocide Convention.⁹ The United States accordingly deems it necessary to intervene in this case in order to place its views on the construction of the relevant provisions of the Convention before the Court.

9. Article 82, paragraph 1, of the Rules of Court adds that a declaration of a State desiring to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall be filed “as soon as possible, and no later than the date fixed for the filing of the Counter Memorial.” In accordance with that requirement, this Declaration has been filed at the earliest opportunity reasonably open to the United States.

Case and Convention to Which This Declaration Relates

10. This Declaration relates to the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*

⁷ Letter from the Registrar to States Parties to the Genocide Convention (Feb. 6, 2024) (**Annex A**).

⁸ The Court has recognized that an intervention based on Article 63 of the Statute constitutes the exercise of a right. *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, ¶ 7; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application by Honduras for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II), p. 434, ¶ 36; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 15, ¶ 26; *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 76; S.S. “Wimbledon,” Judgments, 1923, P.C.I.J., Series A, No. 1, p. 12.

⁹ The United States, among other things, served as chair of the Ad Hoc Committee created by the UN Economic and Social Council in early 1948 to prepare a draft convention on the crime of genocide and, after that draft was debated by the Sixth Committee of the UN General Assembly in the fall of 1948, served on the Sixth Committee’s drafting committee.

instituted on December 29, 2023 by South Africa against Israel. That case concerns the construction of the Genocide Convention.

Particulars of the Basis on Which the United States Considers Itself a Party to the Genocide Convention

11. The United States deposited its instrument of ratification to the Convention in accordance with Article XI of the Convention on November 25, 1988.¹⁰ The United States remains a party to the Convention.

Provisions of the Genocide Convention the Construction of Which the United States Considers to Be in Question

12. The Court is called on to address legal issues relating to the construction of the Genocide Convention in the case South Africa filed against Israel. In its Application, South Africa claims that the acts and omissions by the State of Israel are genocidal in character because they are intended to bring about the destruction of a substantial part of the Palestinian national, racial, and ethnical group. South Africa claims that Israel has failed to prevent genocide and is committing genocide in violation of the Genocide Convention.¹¹

13. Israel counters that the case:

is wholly unfounded in fact and law, morally repugnant, and represents an abuse both of the Genocide Convention and of the Court itself. Israel moreover wishes to reiterate that its commitment to the observance of international law, including the Genocide Convention and international humanitarian law, is unwavering and applies—as Israel has demonstrated in word and deed—in relation to the conduct of the present hostilities in Gaza and independently of any proceeding before the Court.¹²

14. The United States' intervention is accordingly directed to the questions of construction of Articles I, II, and III of the Convention, which are in question in the case, and directly relevant to the resolution of the dispute placed before the Court by South Africa's Application.

¹⁰ Instrument of Ratification of the Genocide Convention by the Government of the United States of America (November 25, 1988) (**Annex B**). The United States ratified the Genocide Convention with, *inter alia*, the reservation that, with reference to Article IX of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.

¹¹ Application, ¶ 1.

¹² Observations of the State of Israel on the Request for Additional Measures under Article 75(1) of the Rules of Court, ¶¶ 2-3.

Construction of Those Provisions for Which the United States Contends

15. The United States' interpretation of the Genocide Convention is based on the customary international law of treaty interpretation, as reflected in provisions of the 1969 Vienna Convention on the Law of Treaties, including Articles 31 and 32.¹³

16. Article II of the Genocide Convention defines the crime of genocide as any of five acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."¹⁴ The United States ratified the Convention with, *inter alia*, the understanding that the term "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such" means "the *specific* intent to destroy, in whole or in *substantial* part, a national, ethnical, racial or religious group as such by the acts specified in article II" and the understanding that "acts in the course of armed conflicts committed without the specific intent required by article II are not sufficient to constitute genocide as defined by" the Convention.¹⁵

17. The United States' understandings are consistent with the Court's interpretation of "intent to destroy" to mean "a *dolus specialis* that . . . must be present in addition to the intent required for each of the individual acts involved."¹⁶

18. As the Court has held previously, "claims against a State involving charges of exceptional gravity must be proved by evidence that is fully conclusive," and the Court must be "fully convinced" that allegations of the crime of genocide have been committed.¹⁷ When *dolus specialis* must be inferred from perpetrators' conduct the Court requires that:

The *dolus specialis*, the specific intent to destroy the group in whole or in part, has to be convincingly shown by reference to particular circumstances, unless a general plan to that end can be convincingly demonstrated to exist; and for a pattern of conduct to be accepted as evidence of its existence, it would have to be such it could *only* point to the existence of such intent.¹⁸

¹³ Vienna Convention on the Law of Treaties, May 23, 1969, arts. 31-32, 1155 U.N.T.S. 331, 340 (entered into force Jan. 27, 1980). While the United States is not a party to the Vienna Convention on the Law of Treaties, it recognizes that a number of its provisions, including those in Articles 31 and 32, reflect customary international law.

¹⁴ Genocide Convention, art. 2.

¹⁵ Instrument of Ratification of the Genocide Convention by the Government of the United States of America (November 25, 1988), p. 2 (**Annex B**).

¹⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, 2015 I.C.J. Reports 3, p. 62, ¶ 132.

¹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Reports 43, p. 129, ¶ 209.

¹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Reports 43, pp. 196-97, ¶ 373 (emphasis added). In *Croatia v. Serbia*, the Court noted this finding "now must be regarded as solidly rooted in its jurisprudence." *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, 2015 I.C.J. Reports 3, p. 150, ¶ 510.

19. The Court later clarified this standard, stating it “amounts to saying that, in order to infer the existence of *dolus specialis* from a pattern of conduct, it is necessary and sufficient that this is the *only* inference that could reasonably be drawn from the acts in question.”¹⁹

20. The United States submits that the Court should maintain its standard for inferring intent. Lowering the standard risks broadening the application of the term “genocide” such that it no longer carries its original weight and meaning, and invites attempts to misuse the Genocide Convention as a gateway for bringing extraneous disputes before the Court. The United States recognizes that the Convention specifically contemplates genocide occurring in times of war, which suggests that a perpetrator may pursue a military objective while also having the intent to destroy the group, in whole or in part. As the Court has held repeatedly, however, the applicable standard demands that the only reasonable inference from such conduct be that the perpetrator(s) acted with genocidal intent.²⁰ If it might reasonably be inferred from a pattern of conduct that the perpetrator acted without such intent, the standard has not been met.

21. In assessing whether a perpetrator has genocidal intent, it is essential to take into account the context of the situation. As the Court has stated, it “examine[s] the context in which the acts constituting the *actus reus* of genocide . . . were committed, in order to determine the aim pursued by the authors of those acts.”²¹ This is paramount when the situation involves an armed conflict, where certain acts that might otherwise qualify as *actus rei* of genocide may occur without the requisite genocidal intent. Civilian casualties, even widespread civilian casualties, are not necessarily probative of genocidal intent, particularly when they occur in the context of an armed conflict involving urban combat. The law of armed conflict not only recognizes the possibility of civilian harm but permits it so long as the relevant principles of discrimination and proportionality are met. In drawing inferences during an armed conflict, evidence of efforts to comply with the law of armed conflict with respect to the protection of civilians, as well as other efforts to avoid or mitigate civilian harm, should be taken into account as evidence that genocide is *not* a reasonable inference from the conduct in question—and is certainly not the *only* reasonable inference that may be drawn from that conduct. For example, taking prisoners of war who are members of the protected group, as well as allowing the release or exchange of such prisoners, may rebut genocidal intent.²² The conduct of the targeted

¹⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, 2015 I.C.J. Reports 3, p. 67, ¶ 148 (emphasis added).

²⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Reports 43, pp. 196-97, ¶ 373; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, 2015 I.C.J. Reports 3, p. 67, ¶ 148.

²¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, 2015 I.C.J. Reports 3, p. 122, ¶ 419.

²² The Court previously took into account the number of civilians evacuated and the fact that many prisoners of war had not been executed as evidence that “the existence of intent to physically destroy the Croatian population is not the only reasonable conclusion that can be drawn from the illegal attack.” *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, 2015 I.C.J. Reports 3, pp. 124-27, ¶¶ 430-36.

combatants may also matter: for instance, combatants' use of civilians as human shields (a war crime) may thwart even the most rigorous efforts to minimize civilian harm.

22. In addition, it is well established that “intent” requires more than mere knowledge. Not only does the ordinary meaning of “intent” support such a conclusion, but the preparatory work of the Genocide Convention confirms it as well. In the course of drafting the Convention, States proposed language such as, “with the purpose of”; “aimed at”; and, finally, “with intent to” to ensure only perpetrators with a certain *mens rea* were found to have committed genocide.²³ These proposals evince a shared understanding—from its inception—that genocide requires a *mens rea* beyond “knew or should have known.”

Documents in Support of the Declaration

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

(a) Letter from the Registrar to States Parties to the Genocide Convention, dated February 6, 2024 (Annex A); and

(b) Instrument of Ratification of the Genocide Convention by the Government of the United States of America, dated November 25, 1988 (Annex B).

²³ See generally Draft Convention for the Prevention and Punishment of Genocide (prepared by the Secretariat), U.N. Doc. A/AC.10/42/Rev.1 (June 12, 1947); U.N. Econ. & Soc. Council, Draft Convention on the Crime of Genocide, U.N. Doc. E/447 (June 26, 1947).

Conclusion

24. On the basis of the information set out above, the United States avails itself of the right conferred upon it by Article 63, paragraph 2, of the Statute to intervene as a non-party in the proceedings brought by South Africa against Israel in this case.

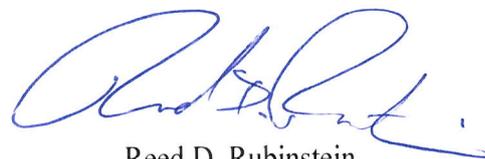
25. The United States reserves the right to supplement or amend this Declaration as may be necessary.



Reed D. Rubinstein
AGENT OF THE UNITED STATES
OF AMERICA

CERTIFICATION

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



Reed D. Rubinstein
AGENT OF THE UNITED STATES
OF AMERICA

Annex A

Letter from the Registrar to States Parties
to the Genocide Convention, dated February 6, 2024



By email only

161308

6 February 2024

Excellency,

I have the honour to refer to my letter (No. 161010) dated 3 January 2024 informing your Government that, on 29 December 2023, South Africa filed in the Registry of the Court an Application instituting proceedings against the State of Israel in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. 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.

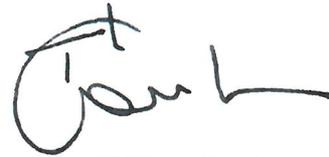
In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”) is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant seeks to found the Court’s jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention and alleges violations of Articles I, III, IV, V and VI of the Convention. It therefore appears that the construction of this instrument will be in question in the case.

./.

[Letter to the States parties to the Genocide Convention
(except South Africa and Israel)]

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 'Gautier', with a stylized flourish at the end.

Philippe Gautier
Registrar

Annex B

Instrument of Ratification of the Genocide Convention by the
Government of the United States of America, dated November 25, 1988

RONALD REAGAN

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

CONSIDERING THAT:

The Convention on the Prevention and Punishment of the Crime of Genocide was signed on behalf of the United States of America on December 11, 1948; and

The Senate of the United States of America by its resolution of February 19, 1986, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention, subject to the following reservations:

"(1) That with reference to Article IX of the Convncation, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.

(2) That nothing in the Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States as interpreted by the United States."

The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Convention:

"(1) That the term 'intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such' appearing in Article II means the specific intent to destroy, in whole or in substantial part, a national, ethnical, racial or religious group as such by the acts specified in Article II.

(2) That the term 'mental harm' in Article II(b) means permanent impairment of mental faculties through drugs, torture or similar techniques.

(3) That the pledge to grant extradition in accordance with a state's laws and treaties in force found in Article VII extends only to acts which are criminal under the laws of both the requesting and the requested state and nothing in Article VI affects the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside a state.

(4) That acts in the course of armed conflicts committed without the specific intent required by Article II are not sufficient to constitute genocide as defined by this convention.

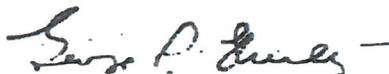
(5) That with regard to the reference to an international penal tribunal in Article VI of the Convention, the United States declares that it reserves the right to effect its participation in any such tribunal only by a treaty entered into specifically for that purpose with the advice and consent of the Senate."

NOW, THEREFORE, I, Ronald Reagan, President of the United States of America, ratify and confirm the said Convention, subject to the above reservations and understandings.

IN TESTIMONY WHEREOF, I have signed this instrument of ratification and caused the seal of the United States of America to be affixed.

DONE at the city of Washington
this fourteenth day of
November in the year of
our Lord one thousand
nine hundred eighty-eight
and of the Independence
of the United States of
America the two hundred
thirteenth.

By the President:



Secretary of State