INTERNATIONAL COURT OF JUSTICE

Alleged Smuggling of Migrants
(Lithuania v. Belarus)

Declaration of Intervention of the Republic of Poland pursuant to Article 63 of the Statute of the International Court of Justice

30 June 2026

To the Registrar of the International Court of Justice ("the Court"), the undersigned, being duly authorized by the Republic of Poland ("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(2) of the Statute of the International Court of Justice (the "Statute"), in the case concerning Alleged Smuggling of Migrants (Lithuania v. Belarus).

2. Article 82(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. Concerning point a) above, Poland recalls that on 26 September 2003 Poland deposited its instrument of ratification to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter the "Protocol" and the "Convention", respectively) with the United Nations Secretary General, in accordance with Article 21(3) of the Protocol. The Protocol entered into force towards Poland on 28 January 2004.

4. Concerning point b) above, Poland considers that the particular provisions of the Protocol, the construction of which is in question in the pending case between the Republic of Lithuania ("Lithuania) and Republic of Belarus ("Belarus"), and upon which Poland wishes to comment, are: Articles 2, 3, 4, 6, 10, 11, 15, 16, 20. At the same time, Poland reserves the right to comment on further provisions, if parties to the dispute decide to refer to them in the current case.

5. Concerning point c) above, Poland's statement on the construction of Articles 2, 3, 4, 6, 10, 11, 15, 16, 20 begins at paragraph 38 below.

6. Concerning point d) above, Poland indicates that at this stage, its Declaration of Intervention relies on publicly available documents, listed in paragraph 70 below and annexed to this Declaration.

7. The Declaration addresses each of the mentioned requirements in turn, following certain preliminary observations on the legal proceedings to date.

I. Preliminary observations

8. On 19 May 2025, Lithuania instituted proceedings against Belarus with regard to the dispute concerning "breaches by Belarus of its obligations under the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations

Convention against Transnational Organized Crime (...), in relation to the large-scale smuggling of irregular migrants from Belarus into Lithuania".[1]

9. According to its Application instituting proceedings, Lithuania considers Belarus responsible for violations of its obligations under the Protocol, in particular obligations set forth under Articles 10, 11, 12, 15 and 16.[2]

10. The Court in its Order of 17 July 2025 noted that Minister of Foreign Affairs of Belarus in a letter dated 17 June 2025 expressed the Belarusian Government's intention to raise objections on the Court's jurisdiction and the admissibility of the Application. The Court decided then to apply the procedure provided for in Article 79 of the Rules of the Court in order to resolve "first of all the question of the jurisdiction of the Court and that of the admissibility of the Application, and that these questions should accordingly be separately determined before any proceedings on the merits". In consequence, the written pleadings shall first be addressed to the questions of the Court's jurisdiction and of Application's admissibility. The Court decided that Belarus should submit Memorial by 19 January 2026 and then Lithuania should submit the Counter-Memorial by 20 July 2026.

11. On 10 July 2025, pursuant to Article 63(1) of the Court's Statute and Article 43(1) of the Rules of the Court, the Registrar of the Court, on the Court's instructions, notified Poland that in this case "Lithuania seeks to found the jurisdiction of the Court on Article 20, paragraph 2, of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000 (…), and alleges violations by the Respondent of obligations arising under that Protocol in relation to «the large-scale smuggling of irregular migrants from Belarus into Lithuania». Lithuania relies, in the Application, on certain definitions set out in the Convention which, in its view, are relevant to the interpretation of provisions of the Protocol. It would appear, therefore, that the construction of the Protocol and of the Convention may be in question in the case."

12. Article 82(1) of the Rules of Court provides that a declaration of a State desiring to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall be filed "as soon as possible, and no later than the date fixed for the filing of the Counter Memorial". In this case, as mentioned above, the date fixed for the submission of the Counter-Memorial is 20 July 2026. This Declaration has been filed at the earliest reasonable opportunity, before the expiration of the deadline set by Article 82(1) of the Rules of the Court.

13. By filing this Declaration, Poland is availing itself of its right under Article 63(2) of Court's Statute to intervene as a State Party to the Protocol. The case raises questions concerning the construction of the Protocol.

14. Poland recognises that intervening in this case enables States Parties to the Protocol to reaffirm their collective commitment to uphold the rights and obligations contained in the Protocol, which aims to "prevent and combat the smuggling of migrants by land, sea and air", including by supporting the crucial role of the Court in resolving any disputes between States concerning the interpretation and application of the Protocol and emphasising – as stated in the Protocol's Preamble – "a comprehensive international approach, including

[1] Application Instituting Proceedings filed in the Registry of the Court on 19 May 2025, Alleged Smuggling of Migrants (Lithuania v. Belarus, para. 2.

[2] *Ibidem*, para. 5.

cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international level". Poland considers that its Intervention may contribute to clarifying the purposes mentioned in the Preamble.

15. Poland also recognises that, by availing itself of the right to intervene under Article 63(2) of the Statute, the construction of the Protocol given by the judgment in this case will be equally binding upon it.

16. Poland 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 matters. Taking into account the Court's decision to first address issues concerning its jurisdiction and the admissibility of the case, Poland would like to offer at this stage of the proceeding its assistance to the Court concerning the construction of the Protocol, in respect to the above-mentioned provisions as they relate to jurisdictional issues.

17. Poland notes that the Court by its Order of 5 June 2023 in *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* confirmed that "intervention under Article 63 of the Statute may concern any provision the construction of which is in question at a specific stage of the proceedings. In particular, compromissory clauses (...) may be the subject-matter of an intervention under Article 63 of the Statute, and such an intervention may be admitted at the preliminary objections stage (...)."[3] Therefore, Poland claims that its Intervention aims to assist the Court in the interpretation of the Protocol's compromissory clause and of other relevant provisions.

II. The Basis upon which Poland is a Party to the Convention and its Protocol

18. On 12 November 2001, Poland deposited its instrument of ratification to the United Nations Convention against Transnational Organized Crime with the Secretary-General of the United Nations, in accordance with Article 36(3) of the Convention. Poland has not filed any reservations, objections or declarations apart from that required pursuant to Articles 18(13) and (14), which concern the central authority competent to receive requests for mutual legal assistance and languages acceptable in the submission of requests to that authority. Poland remains a Contracting Party to the Convention.

19. On 26 September 2003, Poland deposited its instrument of ratification to the Protocol with the Secretary-General of the United Nations, in accordance with Article 21(3) of the Protocol. Poland has not filed any reservations or declarations.

20. On 31 July 2023, Belarus submitted an "Interpretative Declaration" which states: "The Republic of Belarus proceeds from the assumption that the provisions of paragraphs 2-4 of Article 20 of the Protocol shall be interpreted in good faith as not binding for the States Parties to the Protocol with the obligations to settle disputes in the International Court of Justice with that State Party to the Protocol which withdraws its reservation on non-recognition of its jurisdiction, in situations when disputes concerning the interpretation or application of the Protocol have arisen from and/or become the subject of peaceful settlement, inter alia through negotiations and/or arbitration, before, on, or immediately after the withdrawal of such a reservation". On 30 July 2024, Poland submitted to the Secretary-General a Communication in which it objected to the "Interpretative Declaration" to the Protocol submitted by Belarus "insofar as it seeks to modify the treaty

[3] ICJ, Order of 5 June 2023, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Admissibility of the Declarations of Intervention,* I.C.J. Reports 2023, p. 354, at para. 77.

obligations and as such constitutes an invalid reservation devoid of any legal effects". Poland in its Communication recalled that according to Article 20(3) of the Protocol, a reservation to Article 20(2) can only be submitted "at the time of signature, ratification, acceptance or approval of or accession to this Protocol". In consequence, as Belarus submitted its reservation disguised as "Interpretative Declaration" on 31 July 2023, two decades after it submitted document of ratification, this reservation is invalid and does not have any legal effects, including in relations between Poland and Belarus.

21. Poland remains a Contracting Party to the Protocol.

III. The Provisions of the Convention that are in Question in the Case

22. This case raises questions about the construction of multiple provisions of the Protocol, including the clause on settlement of disputes that affords the Court jurisdiction over disputes relating to the Protocol's interpretation or application. There is no limitation in Article 63 of the Statute or Article 82, paragraph 2, of the Rules of the Court that would prevent Poland from exercising its right to intervene on the construction of any provisions of the Protocol. As the Court decided in its Order of 17 July 2025 to rule first on its jurisdiction and the admissibility of the case, Poland focuses its observations on the construction of provisions relevant to jurisdiction and admissibility. If the Court decides that the Court has jurisdiction and the case is admissible, Poland would like to submit a further declaration of intervention and make observations on the provisions relevant for the merits.

23. As Poland has complied with its procedural obligation under Article 82(1) of the Rules to file this Declaration "as soon as possible", Poland reserves the right to supplement the present Declaration and the scope of its observations to the extent that additional matters of jurisdiction or merit arise in the progression of the case, or as Poland becomes aware of them upon receipt of the pleadings and documents annexed to them (in accordance with Article 86(1) Rules).

24. The crucial provision concerning the Court's jurisdiction in this case is Article 20 of the Protocol.

25. Article 20 reads as follows:

> "1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
> 2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
> 3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

> 4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

26. In its Application, Lithuania requests the Court to adjudge and declare:

> "That Belarus has breached its obligations under the Protocol, in particular the obligations provided under Articles 10, 11, 12, 15 and 16".

Therefore, it appears, that substantial obligations envisaged in the mentioned provisions, could be assessed by the Court. In consequence, it is important to assess whether the obligations listed in those provisions are covered with the jurisdiction of the Court based on judicial clause from Article 20(2) of the Protocol.

27. Article 10 of the Protocol titled "Information" states:

> "1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:
> (a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;
> (b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;
> (c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;
> (d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;
> (e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and
> (f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.
> 2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use."

28. Article 11 of the Protocol refers to "Border measures" and reads as follows:

> "1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.
> 2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 (a), of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication".

29. Article 12 of the Protocol deals with "Security and control of documents" and states:

"Each State Party shall take such measures as may be necessary, within available means:
(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use."

30. Article 15 of the Protocol deals with "Other prevention measures" and reads as follows:

"1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.
2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.
3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment."

31. Article 16 of the Protocol refers to "Protection and assistance measures" and states:

"1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.
3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.
4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.
5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers."

32. In order to assess jurisdiction and admissibility of the case, general provisions concerning purpose of the Protocol, its use of terms and scope of application must be taken into account. Therefore, Article 2, 3, 4, 6 requires relevant analysis in which Poland would like to assist.

33. Article 2 "Statement of purpose" provides:

> "The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.'

34. Article 3 "Use of Terms" states:

> "For the purposes of this Protocol:
> (a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;
> (b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;
> (c) "Fraudulent travel or identity document" shall mean any travel or identity document:
> (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
> ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
> (iii) That is being used by a person other than the rightful holder;
> (d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service."

35. Article 4 defines the "Scope of application" of the Protocol as follows:

> "This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences".

36. Article 6, referred to in the aforementioned provision, is entitled "Criminalization", and provides:

> "1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:
> (a) The smuggling of migrants;
> (b) When committed for the purpose of enabling the smuggling of migrants:
>   (i) Producing a fraudulent travel or identity document;
>   (ii) Procuring, providing or possessing such a document;
> (c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.
> 2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
> (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
> (b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;
> (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.
> 3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:
> (a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or
> (b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.
> 4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law."

37. Poland reserves its right to comment as well on other provisions discussed by parties to the current dispute in documentation now unavailable to third states like Poland.

IV. Construction of the Provisions for which Poland Contends

38. Poland's interpretation of the Protocol is guided by Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties (VLCT), representing customary international law, and

applied by the Court on numerous occasions.[4] Article 31 (1) reads: "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." Interpretation of a treaty must also take account of the subsequent practice of the parties to the treaty, as well as any rules of international law applicable in the relations between the parties, including any developments in those rules since the adoption of the treaty, and may be – in specific circumstances – supported with reference to supplementary means of interpretation, including the preparatory work of the treaty.[5] In addition, the principle of good faith requires a State Party to apply a treaty provision "in a reasonable way and in such a manner that its purpose can be realized".[6]

39. Poland first addresses construction of Article 20 of the Protocol in relation to Article 36(1) of the Statute of the Court, then turns to other provisions relevant to assessing the Court's jurisdiction and the admissibility of the case.

40. Since Article 20 of the Protocol concerns the "Settlement of Disputes" procedure, the very first question which must be asked is what should be understood as a dispute according to the aforementioned Article.

41. Poland contends that the notion of a "dispute" is already well-established in the Court's case law and supports the current interpretation. Accordingly, it concurs with the definition of the word "dispute" as "a disagreement on a point of law or fact, a conflict of legal views or of interests" between parties.[7] In order for a dispute to exist, "[i]t must be shown that the claim of one party is positively opposed by the other".[8] 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".[9]

42. According to Article 20 of the Protocol, the dispute must concern "the interpretation or application of this Protocol". Even so, in exchanges with the other State, it is not necessary for the State initiating negotiations to expressly refer to a specific treaty.[10] It suffices that initiating States "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".[11]

43. If the Court decides that there is a dispute between Lithuania and Belarus, then the Court needs to assess whether it has temporal and material jurisdiction over the case.

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[4] ICJ, Judgment of 3 February 1994, *Territorial Dispute (Libyan Arab JarnahiriyalChad)*, I.C.J. Reports 1994, p. 6, at para. 41; ICJ, Judgment of 12 December 1996, *Oil Platforms (Islarnic Republic of Iran* v. *United States of America), Preliminary Objections*, I.C.J. Reports 1996, p. 803, at para. 23; ICJ, Judgment of 13 December 1999, *Kasikili/Sedudu Island (Botswana/Namibia)*, I.C.J. Reports 1999, p. 1045, at para. 18.

[5] *Ibidem.*

[6] ICJ, Judgment of 13 December 1999, *Kasikili/Sedudu Island (Botswana/Namibia)*, I.C.J. Reports 1999, p. 1045, at para. 18 and 20.

[7] ICJ, Judgment of 30 August 1924, *Mavrommatis Palestine Concessions*, P.C.I.J., Series A, No. 2, at p. 11.

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

[9] ICJ, Judgment of 22 July 2022, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections*, I.C.J. Reports 2022, p. 477, at para. 71.

[10] ICJ, Judgment of 26 November 1984, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility*, I.C.J. Reports 1984, p. 392, at para. 83.

[11] ICJ, Judgment of 1 April 2011, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation), Preliminary Objections*, I.C.J. Reports 2011, p. 70, at para. 30.

A. Temporal jurisdiction

44. Article 36(1) of the Court's Statute envisages that the Court's jurisdiction "comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force." This kind of clause allowing for a case to be referred to the Court is included in Article 20(2) of the Protocol.

45. Article 20(3) allows the submission of a reservation to Article 20(2) and in consequence for exclusion of the Court's jurisdiction. The same provision emphasizes that other States shall not be bound by the judicial clause with respect to the State that has made a reservation based on Article 20(3). Simultaneously, Article 20(4) clearly stresses that the State Party which made a reservation may withdraw it at any time.

46. Poland is of the opinion that any reservation submitted to Article 20(2) refers solely to the possibility of filing a claim to the International Court of Justice. Conversely, Article 20(2) does not concern the possibility of negotiations, which are the most common means of resolving disputes. The academic literature indicates that "Article 20(3) permits States Parties to opt out of arbitration and ICJ processes by making a reservation; that reservation may later be withdrawn pursuant to Article 20(4)"[12]. Thus, there is no provision in the Protocol that would allow States-Parties to opt out from negotiations understood broadly as "encouragement to States to exhaust all avenues of peaceful settlement of disputes, including conciliation, mediation and recourse to regional bodies".[13]

47. Poland is convinced that a State which submits a reservation to Article 20(2) limits the effects of the treaty only insofar as activation of the Court's jurisdiction is concerned. When the reservation is withdrawn, Article 20(2) may be applied in relations between two States which recognise the jurisdiction of the Court based on this provision. Such an interpretation is confirmed by the academic literature.[14]

48. According to the Court's well-established jurisprudence, "in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment."[15]

49. Article 20(2) of the Protocol relates to "any dispute between two or more States Parties". Poland believes that the wording of this provision implies that the judicial clause may be used for any dispute arising from substantial obligations derived from the Protocol, including those which were previously outside the Court's jurisdiction due to a reservation submitted under Article 20(3).

50. Poland notes that the Court's jurisdiction is based on consent. In the case of a State which did not submit a reservation to Article 20(2), it must be assessed that this State, from the moment the Protocol entered into force, was willing to settle its disputes based on the

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[12] Andreas Schloenhardt, 'Settlement of Disputes', in: Andreas Schloenhardt et al. (eds), *UN Convention against Transnational Organized Crime: A Commentary* (OUP: 2023), p. 677.

[13] See *The interpretative note on Article 35 of the Convention* approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions, A/55/383/Add.1, para. 60.

[14] Andreas Schloenhardt, 'Settlement of Disputes', in: Andreas Schloenhardt et al. (eds), *UN Convention against Transnational Organized Crime: A Commentary*, Oxford Commentaries on International Law (OUP: 2023), p. 344, where the author states: "The withdrawal brings paragraph 2 back into operation."

[15] PCIJ, Judgment of 30 August 1924, *Mavrommatis Palestine Concessions,* PCIJ Series A, p. 35; see also ICJ, Judgment of 11 July 1996, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections*, I.C.J Reports 1996, p. 595, at para. 34.

Protocol within the framework of Article 20(2), but in some cases – due to reservations submitted by other States based on Article 20(3) – could not use the full framework envisaged by Article 20(2). With the withdrawal of the reservation based on Article 20(3), the Court is "apt to cover any «dispute» which exists between the parties at the time of the institution of proceedings" regardless of when the underlying acts or the dispute itself arose.[16] The Court then has jurisdiction over any dispute "existing at the time of when the Court's jurisdiction is accepted".[17]

51. In addition, as Article 20(4) emphasizes, any State party may at any time (!) withdraw a reservation based on Article 20(3) by notification to the Secretary-General of the United Nations. Therefore, all States Parties were and are aware that the Court's jurisdiction might be activated at any moment by the appropriate withdrawal of the mentioned reservation. Article 22(3) VCLT also stresses that withdrawal of reservation becomes operative in relation to another contracting State as soon as this State receives notification of withdrawal. This rule is also stressed in 2.5.8 (*Effective date of withdrawal of a reservation*) of guidelines contained in the *Guide to Practice on Reservations to Treaties*, adopted by the International Law Commission in 2011. In its commentary to the *Guide*, the Commission discussed the potentially retroactive character of withdrawing reservations and did not exclude "that the withdrawal takes immediate, even retroactive effect, if the State making the original reservation so wishes".[18] In addition, some members of the ILC noted: "In spite of an attempt to introduce alternative model clauses on the deferment of the effective date of the withdrawal of a reservation, on an earlier effective date of withdrawal of a reservation, and on the freedom to set the effective date of withdrawal of a reservation, the final version of the Guide does not include any model clause."[19] Poland considers that this opinion confirms there is no obstacle for an immediate application of provisions that were covered by the reservation after its withdrawal. In consequence, in light of the Protocol's ordinary meaning, and taking into account relevant rules of international law applicable in relations between the parties, it is possible to apply the judicial clause to any disputes concerning acts or omissions that occurred after the entry into force of the Protocol, but before the withdrawal of the reservation to the compromissory clause.

52. The above interpretation is consistent with Article 2(3) of the UN Charter, which requires that all UN Members "shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered", as well as Article 36(3) of the UN Charter, which emphasizes that "legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court." Any attempt to exclude the Court's jurisdiction despite the direct authorisation to activate it by a State at any moment if the State decides to withdraw its reservation, should be understood as contradictory with the general principle of peaceful settlement of disputes.

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[16] Judge Tomka, Separate Opinion, Judgment of 12 November 2024, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Preliminary Objections*, I.C.J Reports 2024, p. 1058, at para. 8; and the whole literature cited by Judge Tomka.

[17] Judge Charlesworth, Separate Opinion, Judgment of 12 November 2024, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Preliminary Objections*, I.C.J Reports 2024, p. 1186, at para. 8.

[18] Commentary to 2.5.9, para. 5, *Yearbook of the International Law Commission, 2011*, vol. II, Part Two, https://legal.un.org/ilc/texts/instruments/english/draft_articles/GuidetoPracticeReservations_commentaries.pdf

[19] Alain Pellet (2013),'The ILC Guide to Practice on Reservations to Treaties: A General Presentation by the Special Rapporteur', 24(4) *The European Journal of International Law* 1061, p. 1066.

53. Poland also notes the distinction between substantial obligations, which States Parties accept fully at the moment of ratifying or acceding to the Protocol, and procedural obligations related to the activation of the Court's jurisdiction, which might be limited due to the reservation under Article 20(3) of the Protocol. Poland is convinced that from the Protocol's entry into force, a State is responsible for its full implementation and thus is responsible for any violations of its provisions. However, the possibility of settling before the Court a dispute concerning such violations is opened only if both parties recognise the Court's jurisdiction by not making a reservation to the compromissory clause. If one of the States Parties to the dispute made a reservation according to Article 20(3), its responsibility to respect the material obligations in untouched. In such a case, only the possibility of invocation of this responsibility before the Court is limited till the moment of withdrawal of the reservation by a State.

54. In Poland's opinion, the above conclusion finds support in Article 26 VCLT, which cites a basic principle of the law of treaties: "Every treaty in force is binding upon its parties and must be performed by them in good faith." In consequence, a State cannot claim lack of responsibility for non-fulfilment of its obligation because of non-application of the compromissory clause.

55. Poland also notes the Court's Judgment of 26 November 1957 on the *Right of Passage over Indian territory (Preliminary Objections)*, where the Court stressed: "Accordingly, every State which makes a Declaration of Acceptance must be deemed to take into account the possibility that, under the Statute, it may at any time find itself subjected to the obligations of the Optional Clause in relation to a new Signatory as the result of the deposit by that Signatory of a Declaration of Acceptance. A State accepting the jurisdiction of the Court must expect that an Application may be filed against it before the Court by a new declarant State on the same day on which that State deposits with the Secretary-General its Declaration of Acceptance."[20] This excerpt confirms the rule that a State's acceptance of jurisdiction has an immediate effect against other States which previously recognized the Court's jurisdiction.

B. Material jurisdiction

56. The aims of the Protocol are strictly connected with the aims of the Convention, which focus on harmonisation of national legislation, law enforcement and cooperation. However, the Protocol's relatively short Preamble highlights three important ideas underlying its adoption: (1) the need to address the root causes that contribute to smuggling of migrants; (2) the value of international cooperation and comprehensive action to prevent and combat smuggling of migrants; and (3) the need to protect the rights and safety of smuggled migrants.[21] States by adhering to the Protocol confirmed their will to be bound by its provisions, which aim to realise these goals.

57. Regardless of the foregoing considerations concerning the specific obligations of States under the Protocol, it should be noted that according to Article 2 of the Protocol, its purpose is "to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants". Article 4 further stipulates that the Protocol shall apply "to the prevention,

[20] I.C. J. Reports 1957, p. 125, at p. 146.
[21] Matthew R Taylor, 'Preamble' in: Andreas Schloenhardt et al., *UN Convention against Transnational Organized Crime: A Commentary* (OUP: 2023), p. 532.

investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences". Among the offences listed in Article 6 are the smuggling of migrants, as well as criminal offences committed for the purposes of enabling the smuggling of migrants [Article 6(1)(a) and (b)]. Moreover, Article 6 encompasses various forms of participation in these offences, apart from principal perpetration, including acting as an accomplice or organizing and directing other persons to commit offences [Article 6 (2) (b) and (c)].

58. Poland wishes to point out that States which become parties to a treaty by exercising their sovereignty are expected to perform their treaty obligations in good faith. This *pacta sunt servanda* principle entails obligation to abstain from acts frustrating the treaty's object and purpose.[22] Accordingly, it follows that States Parties to the Protocol must refrain from participating in or facilitating any acts criminalized under Article 6(1) and (2) of the Protocol.

59. Poland notes that Article 3 of the Protocol defines smuggling of migrants as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident". In Poland's view, the construction of this definition should be guided by the Protocol's preparatory works. Accordingly, a broad understanding of the expression "in order to obtain directly or indirectly, a financial or other material benefit" must be applied. The Interpretative Note to this provision persuasively demonstrates that a narrow interpretation would be inconsistent with the Protocol's object and purpose, given the realities of smuggling activities and the different motivations behind them.[23] In light of the rationale underlying the incorporation of this criterion into the definition, namely the intention to exclude from criminalization conduct based on close family ties, religious or humanitarian considerations, it should be accepted that the concept is broad enough to encompass the complex motivations of those associated with migrant smuggling in situations of irregular migratory movements that have been artificially created or facilitated by State actors.

60. Article 10 mandates that States Parties cooperate by exchanging information regarding the smuggling of migrants. This includes details on smuggling routes, arrival and departure points, concealment methods, and use of fraudulent travel or identity documents. Such an exchange is subject to the domestic laws of the States involved. In the view of Poland, this

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[22]ICJ, Judgment of 27 June 1986, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility*, I.C.J. Reports 1986, p. 14, at paras. 270-276.

[23] Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions. Addendum. Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (see A/55/383/Add.1, paras. 88-90). The Interpretative Note in Subparagraph (a) states: "The reference to «a financial or other material benefit» as an element of the definition in subparagraph *(a)* was included in order to emphasize that the intention was to include the activities of organized criminal groups acting for profit, but to exclude the activities of those who provided support to migrants for humanitarian reasons or on the basis of close family ties. It was not the intention of the protocol to criminalize the activities of family members or support groups such as religious or non-governmental organizations."

obligation should be interpreted broadly to encompass a whole range of joint activities, as it complements a number of related Convention obligations, notably: Article 26 (enhanced cooperation with law enforcement authorities); Article 27 (law enforcement cooperation); Article 28 (information collection and exchange); Article 29 (training and technical assistance); and Article 30 (economic development and technical assistance).[24]

61. It clearly follows that the wording of Article 10 encompasses obligations to prevent and punish smuggling. Reasoned claims that organised transboundary smuggling of migrants is occurring through a shared State border immediately trigger a bilateral obligation to cooperate. Furthermore, given the growing and highly disquieting role of State actors in artificially creating and facilitating irregular migration, as well as in the smuggling of migrants observed recently in many regions, it can be contended that a State's exploitation of migratory flows should be taken into account when reconstructing the scope and forms of necessary cooperation required under Article 10.

62. Poland notes that Article 11 imposes concrete, mandatory and objective obligations on States Parties. The use of the term "shall" stipulates specific performance obligations. Border measures are a crucial element in combating migrant smuggling. In Poland's view, this provision implicitly confirms, similarly to Articles 2 and 6, that a State Party which itself engages in smuggling of migrants does not act in conformity with its obligation under the Protocol. Thus, it is not credible for a State to claim it is strengthening border controls to prevent smuggling of migrants while at the same time orchestrating that process.

63. The phrase "as may be necessary" contained in Article 11(1) indicates a need for objective assessment of the circumstances in question. In such cases, an objective determination of "to the extent possible" suggests States have an obligation to strengthen border controls in situations where there is significant risk or evidence of migrant smuggling.

64. Article 11(2), interpreted in accordance with the purposes of the Protocol, requires a State Party to take all measures within its power to ensure that transport operated by commercial carriers is not used in the commission of offences specified by Article 6(1)(a) of the Protocol. Thus, a State Party would be in breach of this obligation if it accepts or orchestrates the smuggling of migrants through the use of commercial carriers.

65. Article 15(2) of the Protocol read together with Article 31 of the Convention establishes robust preventive obligations in the field of public information. In particular, it requires States Parties to the Protocol to promote public awareness of the threat posed by transnational organized crime. A State would be in breach of this obligation not only when it fails to inform the public about the scale of human trafficking in order to encourage public involvement in preventing and combating such crimes, but also when it proactively supports the commission of such crimes through the participation of state institutions.

66. Article 16 requires States to take "all appropriate measures" to protect the rights of smuggled migrants, particularly their right to life and right not to be subjected to torture or

[24] Matthew R Taylor, 'Article 10, Information' in: Andreas Schloenhardt et al. (eds), *UN Convention against Transnational Organized Crime: A Commentary*, (OUP: 2023), p. 616.

other cruel, inhuman, or degrading treatment. It also mandates that States protect migrants against violence and provide appropriate assistance if their lives or safety are endangered.

67. Article 16 presents in detail one of the Protocol's main goals: to ensure that smuggled migrants are treated humanely and with full protection of their rights. To achieve this aim, States must act in accordance with binding norms of international law.

68. Paragraph 1 of Article 16 should not be understood as imposing any new or additional obligations on States Parties to the Protocol beyond those contained in existing international instruments and customary international law.[25] However, the obligations to which it refers, namely, to "preserve and protect" migrants, to afford "appropriate protection against violence", and to provide "appropriate assistance", have to be effectuated in light of the overall obligations incumbent upon the State concerned, such as the 1951 Geneva Convention Relating to the Status of Refugees, the 1967 additional Protocol Relating to the Status of Refugees, or the 1966 UN International Covenant on Civil and Political Rights. Appropriate implementation of obligations to fulfil the "special needs" of children stipulated in Article 16, paragraph 4 should be interpreted in light of States' obligations imposed by the Convention on the Rights of the Child.

69. States have a duty to protect and promote human rights, which includes prevention, punishment of perpetrators, and providing victims with access to effective remedies.

IV. Documents in Support of the Declaration

70. Poland submits the following documents in support of this Declaration:
    a) Annex A - Letter from the Registrar sent pursuant to Article 63(1) of the Court's Statute
    b) Annex B - Instrument of Ratification of Poland of the United Nations Convention against Transnational Organized Crime
    c) Annex C - Instrument of Ratification of Poland of the Protocol the against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime
    d) Annex D – Communication of Poland concerning Belarus' "Interpretative Declaration"

V. Conclusion

71. For the reasons given in this Declaration, Poland respectfully requests the Court to recognise the admissibility of this Declaration and that Poland is availing itself of its right under Article 63(2) of the Statute of the Court to intervene in these proceedings.

Paweł Wierdak

Agent of the Government of the Republic of Poland

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[25] *Travaux préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols* (United Nations: 2010), p. 541.

CERTIFICATION

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

Paweł Wierdak

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

COUR INTERNATIONALE DE JUSTICE | INTERNATIONAL COURT OF JUSTICE

By email only

164746

10 July 2025

Excellency,

I have the honour to refer to the Application filed in the Registry of the Court on 19 May 2025, whereby the Government of the Republic of Lithuania instituted proceedings against the Republic of Belarus in the case concerning *Alleged Smuggling of Migrants (Lithuania* v. *Belarus).* The text of that Application is available on the website of the Court (www.icj-cij.org).

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

> "Whenever 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 its Application instituting proceedings in the above-mentioned case, Lithuania seeks to found the jurisdiction of the Court on Article 20, paragraph2, of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000 (hereinafter the "Protocol" and the "Convention", respectively), and alleges violations by the Respondent of obligations arising under that Protocol in relation to "the large-scale smuggling of irregular migrants from Belarus into Lithuania". Lithuania relies, in the Application, on certain definitions set out in the Convention which, in its view, are relevant to the interpretation of provisions of the Protocol. It would appear, therefore, that the construction of the Protocol and of the Convention may be in question in the case.

./.

[Letter to the States parties to the United Nations Convention against Transnational Organized Crime and to the Protocol against the Smuggling of Migrants by Land, Sea and Air (except Lithuania and Belarus)]

Palais de la Paix, Carnegieplein 2
2517 KJ La Haye - Pays-Bas
Téléphone : +31 (0) 70 302 23 23 - Facsimilé : +31 (0) 70 364 99 28
Site Internet : www.icj-cij.org

Peace Palace, Carnegieplein 2
2517 KJ The Hague - Netherlands
Telephone: +31 (0) 70 302 23 23 - Telefax: +31 (0) 70 364 99 28
Website: www.icj-cij.org

Your country is included in the list of parties to the Convention, as well as in the list of parties to the Protocol. 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 prejudges any question of the possible application of Article 63, paragraph 2, of the Statute, which the Court may later be called upon to determine in this case.

Accept, Excellency, the assurances of my highest consideration.

Philippe Gautier
Registrar

Annex B

Instrument of Ratification of Poland of the United Nations Convention against Transnational Organized Crime

(XVIII.12)

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

Reference: C.N.1358.2001.TREATIES-19 (Depositary Notification)

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

NEW YORK, 15 NOVEMBER 2000

POLAND: RATIFICATION

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

The above action was effected on 12 November 2001, with:

Declarations (Courtesy Translation) (Original: Polish)

Declarations:

Pursuant to article 18, paragraph 13 the Republic of Poland declares that the Ministry of Justice is designated as the central authority competent to receive requests for mutual legal assistance.

The Republic of Poland declares that Polish and English shall be the languages acceptable pursuant to article 18, paragraph 14.

29 November 2001

Annex C
Instrument of Ratification of Poland of the Protocol the against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

(XVIII.12.b)

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

Reference: C.N.1079.2003.TREATIES-15 (Depositary Notification)

PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

NEW YORK, 15 NOVEMBER 2000

POLAND: RATIFICATION

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

The above action was effected on 26 September 2003.

26 September 2003

Annex D
Communication of Poland concerning Belarus' "Interpretative Declaration"

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017

Reference: C.N.317.2024.TREATIES-XVIII.12.b (Depositary Notification)

PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME
NEW YORK, 15 NOVEMBER 2000

POLAND: COMMUNICATION

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

The above action was effected on 30 July 2024.

(Original: English)

"The Government of the Republic of Poland has examined the 'Interpretative Declaration' of the Republic of Belarus submitted on 31 July 2023 (C.N.225.2023. TREATIES-XVIII.12.b (Depositary Notification)) to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on 15 November 2000 (hereinafter 'the Protocol').

The Government of the Republic of Poland objects to the aforementioned 'Interpretative Declaration' insofar as it seeks to modify the treaty obligations and as such constitutes an invalid reservation devoid of any legal effects.

The 'Interpretative Declaration' implies that a State that has agreed to submit to the jurisdiction of the International Court of Justice under Article 20(2) of the Protocol will not be bound by such provision in relation to another State Party that has withdrawn its reservation to that provision in accordance with Article 20(4) of the Protocol 'in situations where disputes concerning the interpretation or application of the Protocol have arisen from and/or have become the subject of peaceful settlement, inter alia through negotiations and/or arbitration, before, on, or immediately after the withdrawal of such a reservation.'

However, in accordance with article 20(4) of the Protocol, 'Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations'. Furthermore, in accordance with Article 20(3) of the Protocol, a reservation to Article 20(2) can only be submitted 'at the time of signature, ratification, acceptance or approval of or accession to this Protocol'.

Since the Republic of Belarus did not make a reservation to Article 20(2) at the time of its accession to the Protocol, it cannot currently modify or exclude its effects vis-à-vis a State which, pursuant to Article 20(4), has exercised its right to withdraw 'at any time' its own reservation to Article 20(2)."

***

6 August 2024