

INTERNATIONAL COURT OF JUSTICE



ALLEGED SMUGGLING OF MIGRANTS

(LITHUANIA V. BELARUS)

**DECLARATION OF INTERVENTION
SUBMITTED BY THE RUSSIAN FEDERATION
UNDER ARTICLE 63 OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE**

20 JULY 2026

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To the Registrar of the International Court of Justice (the “**Court**”), the undersigned being duly authorised by the Government of the Russian Federation:

1. On behalf of the Russian Federation, I have the honour to submit to the Court the Declaration of Intervention (the “**Declaration**”) under 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. This Declaration is structured as follows. **Section I** of this Declaration sets out the procedural history of the case and includes several preliminary remarks concerning the context of this Declaration. **Section II** states the basis on which the Russian Federation considers itself a party to the Protocol Against the Smuggling of Migrants by Land, Sea and Air (the “**Protocol**”), Supplementing the United Nations Convention Against Transnational Organized Crime (the “**Convention**”). **Section III** identifies the provisions of the Protocol the construction of which the Russian Federation considers to be in question. In **Section IV**, the Russian Federation outlines construction of those provisions. **Section V** includes the list of the documents submitted in support of this Declaration and attached thereto. Finally, **Section VI** contains the concluding observations of the Russian Federation.

I. INTRODUCTORY REMARKS

A. PROCEDURAL HISTORY

3. On 19 May 2025, Lithuania filed an application instituting proceedings against Belarus (the “**Application**”) under the Protocol. The Application referred to alleged “breaches by Belarus of its obligations under the Protocol ... in relation to the large-scale smuggling of irregular migrants from Belarus into Lithuania.”¹
4. On 10 July 2025, the Russian Federation, as a party to the Convention and the Protocol, received the Registrar’s notification pursuant to Article 63(1) of the Statute and Article 43(1) of the Rules of Court.²

¹ Application, ¶2.

² Letter of the Registrar dated 10 July 2025, sent under Article 63(1) of the Statute.

5. On 17 July 2025, the Court issued its Order fixing 20 July 2026 as the time-limit for the filing by Lithuania of its Counter-Memorial. Per Article 82(1) of the Rules of Court, the same time-limit applies to any declaration of intervention filed pursuant to Article 63(2) of the Statute.
6. On 30 June 2026, Poland filed a Declaration of Intervention under Article 63(2) of the Statute (“**Poland’s Declaration**”).

B. THE CONTEXT OF THIS DECLARATION

7. Both Lithuania’s Application and Poland’s Declaration must be viewed against a single backdrop. They were submitted pursuant to the solidifying regrettable trend of misusing international dispute resolution mechanisms as a tool for exerting pressure on geopolitical opponents. This “international lawfare” campaign has involved coordinated action before numerous judicial, quasi-judicial and arbitral bodies,³ characterised by blatant distortion of treaties, factually false and legally unsound allegations, and extensive use of politicised interventions in the Court’s proceedings.⁴
8. It is recalled that the Court has already faced an unprecedented campaign of mass interventions in *Allegations of Genocide*,⁵ where 33 States submitted their declarations of intervention to support Ukraine’s case, and 32 were allowed to intervene.⁶ The

³ Including proceedings before this Court in *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)* and *Allegations of Genocide*; several arbitral proceedings before the Permanent Court of Arbitration, including *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation)* and *Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. the Russian Federation)*; numerous applications filed by Ukraine and other Western States with the European Court of Human Rights, such as *Ukraine v. Russia (re Crimea)* (Applications Nos. 20958/14 and 38334/18) and *Case of Ukraine and the Netherlands v. Russia* (Applications nos. 8019/16, 43800/14, 28525/20 and 11055/22); and proceedings initiated by Australia and the Netherlands against the Russian Federation before the Council of International Civil Aviation Organization, which concluded with the 30 June 2026 decision that is now on appeal before this Court in *Appeal from the ICAO Council decision dated 30 June 2025 (Russian Federation v. Australia and Netherlands)*.

⁴ See Joint statement on Ukraine’s application against Russia at the International Court of Justice, 20 May 2022, available at: <https://www.auswaertiges-amt.de/en/newsroom/news/-/2532254> (Annex 1 to the Written Observations of the Russian Federation on Admissibility of the Declarations of Intervention in *Allegations of Genocide*, 17 October 2022).

⁵ See Federal Foreign Office, Joint statement on Ukraine’s application against Russia at the International Court of Justice, 20 May 2022, available at: <https://www.auswaertiges-amt.de/en/newsroom/news/-/2532254>. See also European Commission, Joint statement on supporting Ukraine in its proceeding at the International Court of Justice, 13 July 2022, available at: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_4509.

⁶ See *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of 5 June 2023, I.C.J. Reports 2023, ¶99.

interveners in that case, including Lithuania⁷ and Poland,⁸ used this opportunity to raise broader political accusations against the Russian Federation that went beyond the limited purpose of clarifying the construction of the Convention on the Prevention and Punishment of the Crime of Genocide (the “**Genocide Convention**”) under Article 63(2) of the Statute.

9. In that case, the Russian Federation demonstrated that the interveners’ procedural tactics were not aimed at a genuine interpretation of the Genocide Convention, but rather sought to impair the equality of the Parties and good administration of justice to the detriment of the Russian Federation. Nevertheless, the Court permitted the legion of politically aligned interveners to engage in the written and oral pleadings before it – all uniformly in favour of one Party to the dispute and adverse to the other – thus normalising and enabling this disruptive practice. The opening of this “Pandora’s box” created a new reality where third-party interventions are used as a tool of political struggle.
10. Lithuania’s earlier legal action against Belarus, *inter alia* in the field of international criminal litigation, has already been characterised by commentators as forming part of such “lawfare”.⁹ Lithuania’s Application before this Court, ostensibly presented as an effort to “defend [its] national interests”, “safeguard [its] reputation” and hold Belarus “legally accountable for orchestrating” illegal migration to Lithuania,¹⁰ represents a

⁷ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declaration of Intervention of the Republic of Lithuania, 19 July 2022, ¶16: “the Russian Federation’s unsubstantiated claims that genocide occurred in Ukraine and that this entitled it to launch a military invasion of its neighbour so to prevent further acts of genocide. In advancing such fabricated claims, the Russian Federation has, through the use of force against Ukraine, turned on its head one of the most fundamental multilateral treaties of our times so as to justify an egregious breach of the founding principles of the UN Charter for which it bears a specific responsibility as permanent member of the Security Council. Lithuania joins the Court in expressing its deepest concern “about the use of force by the Russian Federation in Ukraine” and “the extent of the human tragedy that is taking place in Ukraine”, including “the continuing loss of life and human suffering” resulting from this use of force.”

⁸ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declaration of Intervention of the Republic of Poland, 15 September 2022, ¶35, alluding to the Russian Federation’s supposed “abuse of the law” through “unilateral use of military force for the stated purpose of preventing and punishing alleged genocide.”

⁹ Justice Info, *Lithuania, Belarus and the ICC* (11 October 2024), available at: <https://www.justiceinfo.net/en/137009-lithuania-belarus-and-the-icc.html>.

¹⁰ The Ministry of Justice of the Republic of Lithuania, *Minister of Justice Rimantas Mockus: Lithuania has taken Belarus to the International Court of Justice, seeking accountability of Belarusian regime for the state-orchestrated migrant smuggling that has endangered lives and violated international law* (19 May 2025), available at: <https://tm.lrv.lt/en/news/minister-of-justice-rimantas-mockus-lithuania-has-taken-belarus-to-the-international-court-of-justice-seeking-accountability-of-belarusian-regime-for-the-state-orchestrated-migrant-smuggling-that-has-endangered-lives-and-violated-international-law/>.

further development of this campaign under the pretext of the alleged “instrumentalisation of migrants”.¹¹

11. Similarly to multiple prior cases, including Ukraine’s “lawfare” campaign against the Russian Federation, Lithuania’s case against Belarus is based on a *mala fides* misinterpretation of the treaty in question, in an attempt to artificially expand its scope and extrapolate its jurisdictional basis to cover events and acts that do not properly fall under the treaty and under the jurisdiction of the Court.
12. Lithuania openly sought to reinforce its case against Belarus through coordinated third-party interventions. Lithuania’s President Gitanas Nausėda explicitly invited other States in the Baltic region to join Lithuania’s proceedings against Belarus, which he described as an “aggressor State” that “deliberately [weaponised migration] with the aim of escalating tensions, destabilizing the situation, and creating additional problems for [the Baltic States] and the European Union as a whole.”¹² The Ministry of Foreign Affairs of Poland, which has since heeded that call, publicly entertained Lithuania’s proposal, affirming that it had been given prior notice of Lithuania’s plans to sue Belarus in the Court, and “agree[ing] with Lithuania’s assessment of Belarus’ gross violation of international law, including the protocol against the illegal transportation of migrants.”¹³ Latvia has also taken note of Lithuania’s invitation to join the case, stressing its agreement with Lithuania that “the migrant crisis on the Belarus–Latvia border is a deliberately orchestrated process” and highlighting that European States “have greater strength when they act together.”¹⁴
13. Lithuania’s call for political and legal support was acknowledged at the level of the European Union.¹⁵ Magnus Brunner, European Commissioner for Internal Affairs and

¹¹ Application, Chapter II(B).

¹² LRT.lt, *President: Countries of the Region May Join Lithuania’s Claim Against Belarus in The Hague* (20 May 2025), available at: <https://www.lrt.lt/ru/novosti/17/2568065/prezident-strany-regiona-mogut-prisoedinit-sia-k-isku-litvy-protiv-belarusi-v-gaage>.

¹³ Charter97, *Poland Considers Lithuania’s Proposal to Join the Lawsuit Against Lukashenko* (23 May 2025), available at: <https://charter97.org/en/news/2025/5/23/641626/>.

¹⁴ LSM, *Latvia May Join Lithuania’s Lawsuit Against Belarus at the UN Court Regarding the Migration Crisis* (23 May 2025), available at: <https://www.lsm.lv/raksts/zinas/arzemes/23.05.2025-latvija-varetu-pievienoties-lietuvass-prasibai-ano-tiesa-pret-baltkrieviju-par-migracijas-krizi.a600298/>.

¹⁵ European Union, Communication from the Commission to the European Parliament and the Council on countering hybrid threats from the weaponisation of migration and strengthening security at the EU’s external borders, 11 December 2024, available at: <https://eur-lex.europa.eu/legal->

Migration, publicly advocated in favour of Lithuania's claim for damages in the context of the present case against Belarus in the Court.¹⁶

14. Multiple other Western States have publicly aligned themselves with Lithuania's "lawfare" effort against Belarus, including France, Norway, Ireland, the United States, and the United Kingdom, who undersigned a joint statement at the UN Security Council, calling for "strong international reaction and cooperation to hold Belarus accountable".¹⁷ There is thus a tangible risk that further interventions from the same geopolitical group may occur, and that the Court's procedural integrity may yet again be exploited.
15. By this Declaration, the Russian Federation avails itself of the right to intervene conferred upon it by Article 63(2) of the Statute for the limited purpose of stating its position concerning the proper interpretation of the provisions of the Protocol that are in question in this case. The Russian Federation does not seek to become a party to the case, nor does it intend to address any issues that fall outside of genuine treaty interpretation. The Russian Federation notes that its goal is obtaining a proper interpretation of the Protocol which should not be influenced by coordinated political campaigns but genuinely clarifies the rights and obligations of States Parties and helps fulfil the Protocol's purpose of combatting migrant smuggling. It is the Russian Federation's hope and expectation that its intervention – which is advanced only under the exceptional circumstances of the emerging threat of significant misconstruction of the Protocol and possible adverse consequences to the international treaty body as a whole – will serve to assist in maintaining a stable and correct interpretation of the Protocol that is consistent with the principles of international law, thus preserving the interests of international justice.

content/EN/TXT/?uri=celex:52024DC0570; see also European Commission, Commission steps up support for Member States to strengthen EU security and counter the weaponisation of migration, 11 December 2024, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6251.

¹⁶ LRT, *European Commissioner Supports Vilnius' Efforts to Seek Damages From Belarus Over the Migrant Crisis* (28 May 2025), available at: <https://www.lrt.lt/naujienos/lietuvoje/2/2576273/eurokomisaras-remia-vilniaus-sieki-is-baltarusijos-prisiteisti-zala-del-migrantu-krizes>.

¹⁷ GOV.UK, Joint statement on Belarusian authorities' instrumentalisation of migrants, delivered by Ambassador Sven Jürgenson, Estonian Permanent Representative to the UN on behalf of EU members of the Security Council, Norway, UK, US and Albania, 11 November 2021, available at: <https://www.gov.uk/government/speeches/joint-statement-on-belarusian-authorities-instrumentalisation-of-migrants>.

16. Mindful of the Court’s previous practice,¹⁸ at the current stage of the proceedings the Russian Federation seeks to assist the Court in the interpretation of the relevant provisions of the Protocol insofar as they have a bearing on the question of the Court’s jurisdiction.

II. PARTICULARS OF THE BASIS ON WHICH THE RUSSIAN FEDERATION IS A PARTY TO THE CONVENTION AND THE PROTOCOL

17. The Russian Federation acceded to the Convention and the Protocol and deposited its instruments of ratification thereof with the United Nations Secretary-General on 26 May 2004.¹⁹ They entered into force for the Russian Federation by virtue of their Articles 38 and 22, respectively, thirty days thereafter on 25 June 2004.²⁰ The Russian Federation remains a Party to the Convention and Protocol and has entered no reservations thereto.

III. PARTICULAR PROVISIONS OF THE PROTOCOL WHICH ARE IN QUESTION IN THE CASE

18. Lithuania asserts the Court’s jurisdiction based on Article 20 of the Protocol.²¹
19. In the Application, Lithuania alleged the following:

“As explained further below, the present dispute between Lithuania and Belarus falls within the scope of the Protocol, as it concerns the smuggling of migrants as defined in Article 3 and other offences established in accordance with Article 6 of the Protocol. Lithuania will demonstrate over the course of these proceedings that Belarus has breached many of its obligations under the Protocol by: facilitating, supporting, and enabling the smuggling of migrants, and also failing to take necessary border measures to prevent and detect the smuggling of migrants and to ensure the security and control of documents in breach of Articles 11 and 12; failing to exchange information to prevent, detect, and investigate the smuggling of migrants, strengthen cooperation

¹⁸ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of 5 June 2023, I.C.J. Reports 2023, ¶79: “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 such as Article IX of the Genocide Convention 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”.

¹⁹ United Nations Convention Against Transnational Organised Crime, Russian Federation: Ratification, C.N.569.2004.TREATIES-20 (Depositary Notification), 3 June 2004; Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, Russian Federation: Ratification, C.N.571.2004.TREATIES-16 (Depositary Notification), 3 June 2004.

²⁰ *Ibid.*

²¹ Application, ¶9.

with Lithuania's border control agencies, and cooperate in the field of public information to prevent potential migrants from falling victim to organised criminalized groups in breach of Articles 10, 11 (6), and 15; and failing to preserve and protect the rights of migrants and afford them appropriate assistance in violation of Article 16.”²²

20. Furthermore, Lithuania bases its claims on the notion of an “organized criminal group” under Article 4 of the Protocol.²³

21. While Lithuania does not reference Article 2 of the Protocol directly in the Application, the Russian Federation considers that the proper meaning of relevant provisions of the Protocol must be interpreted in line with the purpose of the Protocol, which is set out in Article 2:²⁴

“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.”

22. The Russian Federation notes that the Court ruled in *Allegations of Genocide* that States can intervene at the jurisdictional stage of the proceedings with respect to provisions that “have a bearing on the question of the jurisdiction of the Court”.²⁵

23. In the Russian Federation's view, such provisions include Articles 2, 3, 4, 6, 10, 11, 12, 15, 16 and 20 of the Protocol. Articles 2, 3, 4, 6, 10, 11, 12, 15, 16 pertain to questions relevant to the Court's jurisdiction *ratione materiae* under the Protocol. While the Russian Federation acknowledges that Articles 10, 11, 12, 15, 16 relate to issues connected with Lithuania's specific allegations on the merits, which shall be addressed at a later stage of the proceedings, should this case reach it, these provisions are interpreted in the present Declaration to the extent that they are relevant at the current jurisdictional phase.²⁶ Article 20, in turn, is a compromissory clause, the interpretation of which is pertinent at this stage of the proceedings.

²² *Ibid.*, ¶5.

²³ *Ibid.*, ¶58.

²⁴ The Russian Federation notes that Poland refers to Article 2 in its Declaration as well.

²⁵ *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, Order of 5 June 2023, I.C.J. Reports 2023, p. 369, ¶¶63-64. See also, ¶69.

²⁶ The Russian Federation takes note of the fact that Poland interprets these provisions in its Declaration as well.

24. Should any further Articles be engaged in this case, the Russian Federation reserves the right to provide its position concerning the constructions on such Articles and amend or supplement the present Declaration.

IV. CONSTRUCTION OF THE PROVISIONS IN QUESTION

A. CONSTRUCTION OF THE COMPROMISSORY CLAUSE OF THE PROTOCOL

25. As outlined above, Lithuania founds the Court's jurisdiction in respect of its Application on Article 20(2) of the Protocol. Article 20(2) provides as follows:

“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.”

26. Article 20(2) lays down several cumulative²⁷ conditions for the Court's jurisdiction:

- (a) **First**, the existence of a dispute between the parties,²⁸ defined by the Court as “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties,²⁹ which “‘hold clearly opposite views concerning the question of the performance or non-performance of certain’ international obligations”.³⁰ To demonstrate the existence of such a dispute, “[i]t must be shown that the claim of one party [is] positively opposed by the other”,³¹

²⁷ See the Court's interpretation of a similar clause embodied in Article 29 of the Convention on the Elimination of All Forms of Discrimination against Women: *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Judgment, I.C.J. Reports 2006, p. 39, ¶87: “In the view of the Court, it is apparent from the language of Article 29 of the Convention that these conditions are cumulative.”

²⁸ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 849, ¶36: “Under Article 38 of the Statute, the function of the Court is to decide in accordance with international law disputes that States submit to it. Under Article 36, paragraph 2, of the Statute, the Court has jurisdiction in all “legal disputes” that may arise between States parties to the Statute having made a declaration in accordance with that provision. The existence of a dispute between the Parties is thus a condition of the Court's jurisdiction.”

²⁹ *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

³⁰ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2016 (I), p. 26, ¶50.

³¹ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Judgment, I.C.J. Reports 1962, p. 328.

- (b) ***Second***, prior negotiations to settle the dispute, which require “a genuine attempt by one of the disputing parties to engage in discussions with the other disputing party with a view to resolving the dispute”;³² and,
 - (c) ***Third***, failure to agree on the organization of the arbitration within six months from the date of the request for arbitration.
27. The legal principles that should govern the Court when assessing the existence of its jurisdiction under Article 20(2) of the Protocol in the present case are:
- (a) The principle of consent to jurisdiction;
 - (b) The principle of reciprocity;
 - (c) The principle of equality of States;
 - (d) The principle of free choice of means of dispute settlement; and,
 - (e) The principle of non-retroactivity of treaties and their relevant provisions, including dispute settlement clauses.

**B. CONSTRUCTION OF THE PROTOCOL’S PROVISIONS PERTAINING TO JURISDICTION
*RATIONE MATERIAE***

28. In its Application, Lithuania appears to accuse Belarus of the so-called “instrumentalisation of migrants”,³³ as well as of “enabling illegal migration” into Lithuania and the European Union.³⁴ At the present stage of the proceedings, the Court will have to determine the scope of the Protocol to decide whether or not such concepts fall within its confines, and therefore whether or not they are covered by its compromissory clause. As the Russian Federation explained above,³⁵ to that end the Court will need to interpret both the scope-defining provisions of the Protocol (*i.e.* interpret such terms as “smuggling”, “financial and other material benefit”,

³² *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Judgment, I.C.J. Reports 2011, p. 132, ¶157.

³³ Lithuania’s Application, Section II(B).

³⁴ *Ibid.*, Section II(A).

³⁵ See above, ¶23.

“organised criminal group”, and “intent”) and other provisions of the Protocol invoked by Lithuania, which are connected to substantive claims but may nonetheless have a bearing on the Court’s jurisdiction *ratione materiae*.

i. **Provisions relating to the Protocol’s scope**

a. ***Article 2 “Statement of purpose”***

29. Article 2 of the Protocol states as follows:

“The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among State Parties to that end, while protecting the rights of smuggled migrants”.

30. This provision makes it clear that the Protocol is aimed at law enforcement regulation of the issues of prevention and combating the offence of migrant smuggling, as well as cooperation among States in this regard. It does not purport to cover situations of illegal migration in general. Instead, it covers only one specific offence: the smuggling of migrants. Accordingly, the scope of the Protocol is narrow.

31. The Naples Political Declaration and Global Action Plan against Organised Transnational Crime approved in 1994 by the UN General Assembly are particularly instructive as to the purposes of the Protocol. The document lists various initiatives to strengthen international cooperation against organised transnational crime, including the development of international instruments “promoting closer alignment or compatibility of national legislation with regard to the criminalisation of organised transnational crime, the adoption of more effective criminal justice measures and the greater use of mutual assistance and extradition” [Emphasis added].³⁶ Such measures are inherently law enforcement in nature.

32. The specific law enforcement nature of the Protocol is widely acknowledged in legal doctrine:

³⁶ UNGA, Crime prevention and criminal justice, A/49/748, 2 December 1994, available at: <https://docs.un.org/en/A/49/748>.

(a) In his commentary to Article 2 of the Protocol, Taylor states that “[t]he Protocol as a whole is principally a criminal justice instrument...”,³⁷

(b) Mallia clarifies this as follows:

“As noted above, the Smuggling Protocol aims to create an enforcement machinery to suppress migrant smuggling by creating a framework for cooperation while at the same time protecting the rights of smuggled migrants.

To this end, Article 2 of the Protocol states that ‘[t]he 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’. The approach adopted in the Smuggling Protocol is not innovative insofar as it requires States Parties to criminalize certain acts in their domestic law, to make them punishable by appropriate sanctions and to subject them to various measures such as extradition and mutual legal assistance.

...

The Smuggling Protocol is a law enforcement instrument, providing for *inter alia* issues of border control, which State Parties are required to strengthen to the greatest extent possible as well as considering strengthening cooperation between border-control agencies.”³⁸ [Emphasis added]

(c) Gallagher stresses that the Protocol itself does not address the root causes of migrant smuggling. Its purpose is narrow, namely, to require States to undertake specific actions aimed at preventing the smuggling of migrants through the law enforcement and criminal justice measures:

“Application of the [Protocol] is limited to situations of international migrant smuggling involving an organized criminal group. States parties are required

³⁷ M. Taylor, *Article 2, Statement of Purpose* in A. Schloenhardt et al. (eds.), *UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME: A COMMENTARY* (OUP, 2023), p. 540. *See also* A. Schloenhardt, K. Stacey, *Assistance and Protection of Smuggled Migrants: International Law and Australian Practice*, *The Sydney Law Review*, 2013, Vol. 35, No. 1, p. 54: “As the first indication of consensus within the international community towards the criminalisation of migrant smuggling, the Protocol against the Smuggling of Migrants by Land, Sea and Air (‘Smuggling of Migrants Protocol’) is a significant instrument of international criminal justice. It forms the basis for a collaborative approach to the prosecution and prevention of a dangerous, exploitative crime. While the Smuggling of Migrants Protocol’s emphasis is on mutual assistance between States Parties in the criminalisation of migrant smuggling, it also creates an obligation to ‘afford appropriate assistance’ to smuggled migrants. In the midst of the numerous criminal justice provisions, this assistance obligation sticks out like the proverbial sore thumb” [Emphasis added].

³⁸ P. Mallia, *The cooperative mechanism established by the Migrant Smuggling Protocol to the UN Convention against Transnational Organized Crime* in F. Ippolito, S. Trevisanut et al. (eds.), *MIGRATION IN THE MEDITERRANEAN: MECHANISMS OF INTERNATIONAL COOPERATION* (CUP, 2016), p. 297. Boister notes in a similar vein that the Protocol serves as an anchor point to various law enforcement measures: “[i]n order to serve as the anchor point for a range of law enforcement measures, the Migrant Smuggling Protocol requires each party to criminalize three distinct forms of conduct, each built around the definition of ‘smuggling of migrants’.” *See* N. Boister, *AN INTRODUCTION TO TRANSNATIONAL CRIMINAL LAW* (2nd ed., OUP, 2018), p. 78.

to criminalize the smuggling of migrants as well as related offenses including the production, provision, and possession of fraudulent travel or identity documents... The protocol requires the adoption of general measures to prevent migrant smuggling with a particular emphasis on prevention through improved law enforcement. Little attention is given to the root causes of migrant smuggling.”³⁹

33. Furthermore, similarly to the International Convention for the Suppression of the Financing of Terrorism (the “ICSFT”), the Protocol should not be read to encompass issues of State responsibility. In *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)* (the “ICSFT/CERD case”), the Court concluded that allegations of State-conducted terrorism financing are not addressed by the ICSFT and, consequently, lie beyond the Court’s jurisdiction *ratione materiae*:

“As stated in the preamble, the purpose of the Convention is to adopt “effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators”. The ICSFT addresses offences committed by individuals. In particular, Article 4 requires each State party to the Convention to establish the offences set forth in Article 2 as criminal offences under its domestic law and to make those offences punishable by appropriate penalties. The financing by a State of acts of terrorism is not addressed by the ICSFT.”⁴⁰

34. The Protocol ought to be interpreted in a similar manner, as both treaties have similar purposes, *i.e.*, criminalisation of certain offences and cooperation between States.
35. In light of the foregoing, the Russian Federation’s view is that Article 2 of the Protocol, properly interpreted, shows that the Protocol is not intended to regulate the root causes of migration or illegal migration as such. Nor is the Protocol intended to regulate issues of State responsibility for smuggling of migrants.
36. Consequently, any alleged acts of migrant smuggling by a State (so-called “instrumentalisation of migrants”), as well as illegal migration in general, fall outside of the Protocol’s scope.

³⁹ A. Gallagher, Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis, *Human Rights Quarterly*, 2001, Vol. 23, No. 4 p. 996.

⁴⁰ *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, p. 585, ¶59.

b. Article 3 “Use of terms”

37. Article 3 of the Protocol reads as follows:

“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.”

38. Under Article 3(a) of the Protocol, “smuggling of migrants” is defined 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.” [Emphasis added]

39. Article 2 of the Convention, which defines an “organised criminal group”, contains a similar qualifier, limiting the offences regulated by the Convention to those committed in order to obtain, directly or indirectly, a financial or other material benefit only. Article 6(1) contains the same requirement.

40. Accordingly, an alleged procurement of a person’s illegal entry when carried out without the aim of obtaining a financial or other material benefit would not trigger the application of the Protocol.

41. Thus, in the Russian Federation’s view, the term “financial or other material benefit” warrants separate consideration. This phrase signifies an advantage of purely economic

nature. For instance, the United Nations Office on Drugs and Crime (the “UNODC”) explained that:

“Migrant smuggling is about making money by assisting a person to enter or stay in a country without having the legal permission to do so. Migrant smugglers are driven by the desire for financial or material gain.”⁴¹
[Emphasis added]

42. Lithuania claims in its Application that “financial or other material benefit” should be understood broadly as it was intended to emphasise that the Protocol’s scope excludes the activities of those providing support to migrants for humanitarian reasons or on the basis of close family ties.⁴² Lithuania then elaborates that the benefit may be non-financial and adds that it is irrelevant whether the migrant smuggling offense resulted in “actual benefits”.⁴³
43. Poland, similarly, is trying to expand the term “financial or other material benefit” by including therein the situations of illegal migration that have been artificially created or facilitated by State actors.⁴⁴ With reference to the Interpretative Note on Article 3 of the Protocol, Poland expressed the view that decriminalisation of conduct motivated by family-related, religious and humanitarian considerations proves the broad construction of this provision and it, thus, includes “complex motivations of those associated with migrant smuggling in situations of irregular migratory movements that have been artificially created or facilitated by State actors”.⁴⁵
44. The conclusion that Poland reaches is at odds with the source that it uses in support of its interpretation. The Interpretative Note states as follows:

“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

⁴¹ UNODC, “What Is Migrant Smuggling?”, available at: <https://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/faqs.html>. See also UNODC, “5 facts you need to know about migrant smuggling”, available at: <https://www.unodc.org/unodc/en/frontpage/2024/December/5-facts-you-need-to-know-about-migrant-smuggling.html>.

⁴² Application, ¶58.

⁴³ *Ibid.*

⁴⁴ Poland’s Declaration, ¶59.

⁴⁵ *Ibid.*

intention of the protocol to criminalize the activities of family members or support groups such as religious or non-governmental organizations.”⁴⁶

45. The Interpretative Note on Article 3 of the Protocol plainly confirms that the term “financial or other material benefit” should be understood as covering actions of criminal groups aimed exclusively at gaining material benefit. Thus, it is only logical that “artificially created” migratory movements would not be connected with the motive of gaining a “financial or other material benefit”, *i.e.* profit, and would fall outside of the Protocol’s scope.
46. The *travaux préparatoires* further demonstrate that only economic considerations were taken by the drafters to be pertinent. Political objectives were proposed to be included into the definition of “financial or other material benefit” but this proposal was ultimately not approved. It is thus absent from the Convention and, consequently, the Protocol:

“Uruguay proposed that the reference to material and financial means could end with the words ‘also when those benefits are sought for political or other purposes’ ... Belgium proposed that consideration should be given to excluding from the scope of application of the convention organizations with solely political objectives and organizations whose purpose was solely humanitarian, philosophical or religious. Several delegations expressed their support for this limitation of the scope of the convention.”⁴⁷
[Emphasis added]

47. Thus, Uruguay’s proposition to include a reference to political purposes was not supported by other States and was ultimately not adopted as evidenced from the text of the Protocol.
48. A group of experts operating within the framework of the Conference of the Parties to the Convention also explained that groups with purely political motives are not economically driven and therefore do not satisfy the definition of an “organised criminal group”:

“[T]he purpose element of the definition of “organized criminal group” in article 2, paragraph (a), of the Convention establishes a firm connection to the “financial or other material benefit” as the main motivation of these groups. This, in turn, means that groups with purely political or social motives, and crimes that are not economically motivated, such as environmentally or politically motivated offences, fall outside the scope of the definition.

⁴⁶ *Ibid.*, fn. 23.

⁴⁷ UNDOC, *Travaux préparatoires: United Nations Convention against Transnational Organized Crime*, New York, 2006, p. 12, available at: https://www.unodc.org/documents/treaties/UNTOC/Publications/Travaux%20Preparatoire/04-60074_ebook-e.pdf.

Similarly, the Convention has no application to groups and offences that are motivated primarily by ideology, rather than profit. The Convention should not be used as a pretext to eliminate political rivals, criminalize protest and advocacy or outlaw social groups. It may, however, apply to crimes covered by the Convention and committed by those groups in order to obtain financial or material benefits.”⁴⁸ [Emphasis added]

c. Article 4 “Scope of application”

49. Article 4 of the Protocol reads 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.”

50. It follows that the Protocol is exclusively applicable to offences involving an “organised criminal group.” The definition of an organised criminal group is provided in Article 2(a) of the Convention:

“Organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”⁴⁹ [Emphasis added]

51. The Convention therefore requires that an “organised criminal group” must be structured and consist of three or more “persons”. There is no indication in the text of the Protocol or the Convention, or in the *travaux préparatoires*, that the definition of an “organised criminal group” was ever intended to encompass States, their organs and/or officials, and designate them as “persons” for the purposes of the Protocol.

52. This interpretation accords with the purpose of the Protocol.⁵⁰ As discussed above, the object of the Protocol is to impose obligations on States concerning their domestic law

⁴⁸ Conference of the Parties to the United Nations Convention against Transnational Organized Crime Working Group of Government Experts on Technical Assistance, Criminalization of participation in an organized criminal group (article 5 of the United Nations Convention against Transnational Organized Crime), 23 May 2014, p. 17, available at: <https://docs.un.org/en/ctoc/cop/wg.2/2014/2>.

⁴⁹ Convention, Article 2(a).

⁵⁰ See above, Section IV(B)(i)(a).

enforcement and criminal justice systems as well as cooperation with other States. In this regard, as noted above, the Convention and the Protocol are similar to the ICSFT.⁵¹

53. The Court's findings in the *ICSFT/CERD case* are particularly informative in this respect. Article 2 of the ICSFT, just like Article 2(a) of the Convention, specifies that a qualifying offence must be committed by a person or a group of persons. In light of Article 2 of the ICSFT, the Court examined whether a State could incur responsibility for the financing of terrorism and concluded that the financing of terrorism by a State official does not, in itself, engage the responsibility of the State:

“The ICSFT imposes obligations on States parties with respect to offences committed by a person when “that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out” acts of terrorism as described in Article 2, paragraph 1 (a) and (b). As stated in the preamble, the purpose of the Convention is to adopt “effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators. The ICSFT addresses offences committed by individuals. In particular, Article 4 requires each State party to the Convention to establish the offences set forth in Article 2 as criminal offences under its domestic law and to make those offences punishable by appropriate penalties. The financing by a State of acts of terrorism is not addressed by the ICSFT. It lies outside the scope of the Convention.

...

As the Court noted (see paragraph 59 above), State financing of acts of terrorism is outside the scope of the ICSFT; therefore, the commission by a State official of an offence described in Article 2 does not in itself engage the responsibility of the State concerned under the Convention.”⁵²
[Emphasis added]

54. Accordingly, the responsibility of State officials as “persons” forming part of an organised criminal group within the meaning of Article 2(a) of the Convention and Article 4 of the Protocol for alleged migrant smuggling does not in itself engage the responsibility of the State pursuant to the Protocol. If such State officials were hypothetically involved in the commission of an offence covered by the Protocol, that

⁵¹ See above, ¶¶33-34.

⁵² *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, ¶¶59, 61.

would entail their personal criminal liability under the applicable national criminal law and not State responsibility under the Protocol.

55. Moreover, neither the *travaux préparatoires*, doctrinal sources, nor State practice support the proposition that State organs themselves may qualify as “organized criminal groups”. To the contrary, legal authorities indicate that the notion of such groups is confined exclusively to non-State actors.⁵³

d. Article 6 “Criminalisation”

56. Article 6 of the Protocol reads as follows:

“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;

⁵³ H. Decoeur, *State Responsibility for State Organized Crime* in H. Decoeur, *Confronting the Shadow State: An International Law Perspective on State Organized Crime* (OUP, 2018), p. 54: “To begin with the obvious: no treaty contemplates the involvement of state organs or agents in organized crime, and no treaty contains a provision expressly prohibiting states parties acting through their organs or agents from participating in or facilitating organized crime.” See also F. Staiano, *Transnational organized crime as a new phenomenon on the international criminal law scene* in F. Staiano, *Transnational Organized Crime: Challenging International Law Principles on State Jurisdiction* (Elgar, 2022), p. 1: “Transnational organized crime offers a timely illustration of internationally relevant conducts carried out not by States (or State organs) but rather by individuals or groups.”; see also Constitutional Court of the Russian Federation, Ruling, No. 1366-O, 8 July 2021, available at: <https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-08072021-n-1366-o/>.

(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.”

57. Article 6 of the Protocol concerns criminalisation of smuggling of migrants through implementation in the States’ national legal systems. Consistent with the definition of smuggling of migrants in Article 3 of the Protocol, Article 6 provides that States shall criminalise offences committed in order to obtain, directly or indirectly, a financial or other material benefit.

58. Article 6(1) requires that an offence must be committed “intentionally” [Emphasis added]. The offence of smuggling of migrants envisaged by the Protocol is therefore qualified by the requirement of a specific form of *mens rea*. Accordingly, the Protocol shall only be triggered where an organised criminal group acts with a dual-layered intent, which includes: (a) a general intent to facilitate migrants’ illegal entry into another State and (b) a specific intent to obtain a financial or other material benefit from the procurement of such entry.

ii. **Articles connected to Lithuania’s substantive claims but relevant to the Court’s jurisdiction *ratione materiae***

59. As discussed above,⁵⁴ the Russian Federation only addresses the interpretation of these provisions inasmuch as it is relevant to the determination of the Court’s jurisdiction *ratione materiae*.

⁵⁴ See above, ¶23.

a. *Article 10 “Information”*

60. Article 10 of the Protocol reads as follows:

“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.”

61. Article 10 of the Protocol establishes that, without prejudice to Article 27 “Law enforcement cooperation” and Article 28 “Collection, exchange and analysis of information on the nature of organized crime” of the Convention, States are required to exchange relevant information on criminal justice response to the smuggling of migrants.⁵⁵ This provision establishes a framework for cooperation between States that

⁵⁵ M. Taylor, *Article 10, Information* in A. Schloenhardt et al. (eds.), *UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME: A COMMENTARY* (OUP, 2023), p. 617: “Paragraph 1, which is for the most part self-explanatory, places an obligation on States Parties to share information, subject to the qualification that they should do so ‘consistent with their respective domestic legal and administrative systems’. It identifies specific areas for information sharing geared primarily at criminal justice responses to migrant smuggling. The paragraph makes it clear that this obligation is without prejudice to those contained in Articles 27 and 28 of UNTOC.” [Emphasis added]

is specifically limited to the offence of smuggling of migrants and does not extend to issues that clearly fall beyond the scope of the Protocol, such as illegal migration.

62. Thus, contrary to what Lithuania⁵⁶ and Poland suggest,⁵⁷ where there is *ab initio* no offence related to the smuggling of migrants, the obligation to exchange information under Article 10 of the Protocol is not triggered.

b. Article 11 “Border measures”

63. Article 11 of the Protocol provides 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.”

64. Article 11(1) of the Protocol requires States to “strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.”

⁵⁶ Application, ¶69: “Belarus has failed to cooperate with Lithuanian authorities in relation to the migration influx in violation of such obligations under the Protocol” [Emphasis added]. Thus, it appears that unspecified “migration influx” is not related to obligation on the exchange of information regarding smuggling of migrants under Article 10 of the Protocol.

⁵⁷ Poland’s Declaration, ¶61.

65. It follows from the language of the Article that these controls should be effected without prejudice to the State's international law obligations relating to the free movement of people, and must be implemented "to the extent possible":

"Paragraph 1 sets out the Article's general objective, requiring States Parties to strengthen border measures as a means of preventing and detecting migrant smuggling. The paragraph has several internal qualifiers. The first is that such measures must not prejudice the State Party's international law obligations relating to the free movement of people. The second notes that such measures must be done to 'the extent possible', recognizing that what is possible in one state may be different than what is possible in another. Some States may be able to devote greater resources to border controls; others, meanwhile, with extensive land and/or sea borders may face greater difficulties monitoring and policing them."⁵⁸

66. The obligation under Article 11 of the Protocol is thus limited by other obligations relating to the free movement of people and the objective possibility of States to strengthen its border security (for instance, States' law enforcement resources).
67. Article 11 is further limited to situations involving the smuggling of migrants, *i.e.*, to illegal procurement of migrants' entry committed by organised criminal groups in order to gain financial or other material benefit. Article 11 does not require any greater restrictions on immigration:

"It must be stressed that the paragraph does not advocate for a generalized strengthening of borders or greater restrictions on immigration. Rather, it supports only those controls 'necessary to prevent and detect' smuggling. States should be careful to avoid breaching their other international obligations, in particular those under human rights and refugee law as preserved by Article 19, as well as balancing the fact that border controls contribute to the reliance by irregular migrants on smugglers."⁵⁹
[Emphasis added]

68. Both Lithuania's⁶⁰ and Poland's⁶¹ interpretation of Article 11(1) assumes that where a State allegedly engages in or "orchestrates" migrant smuggling it violates this provision despite its efforts to strengthen border control. This interpretative suggestion finds no support in the doctrine, and was never mentioned during preparatory work of the Protocol.

⁵⁸ M. Taylor, *Article 11, Border Measures* in A. Schloenhardt et al. (eds.), *UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME: A COMMENTARY* (OUP, 2023), p. 624.

⁵⁹ *Ibid.*

⁶⁰ Application, ¶61.

⁶¹ Poland's Declaration, ¶¶62-63.

Moreover, as was mentioned above, the Protocol does not cover acts of migrant smuggling allegedly perpetrated by a State.⁶²

69. When it comes to Paragraphs 2, 3 and 4 of Article 11, these establish the so-called “carrier liability”, obliging a State to require commercial carriers to ensure that passengers have the necessary travel documents in their possession.⁶³ Thus, it is a narrow obligation. Paragraphs 5 and 6, in turn, only oblige a State to “consider” implementing consequences for those involved in the smuggling of migrants and establishing communication. They do not impose any further specific obligations on States.
70. Lithuania contends that the alleged involvement of Belarus’ national airline and State-owned tourism companies in the physical transportation of migrants into Belarus and across its State border infringes Articles 11(2)-11(5) of the Protocol.⁶⁴ Furthermore, Lithuania asserts that failure to cooperate in relation to the migration influx triggers violation of Article 11(6) of the Protocol.⁶⁵
71. In the Russian Federation’s view, such interpretation impermissibly widens the scope of the obligation imposed by Article 11 and goes beyond what it envisages both with respect to a State’s regulation of its borders and air carriers.

c. Article 12 “Security and control of documents”

72. Article 12 of the Protocol reads as follows:

“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.”

⁶² See above, Section IV(B)(i)(c).

⁶³ United Nations Office on Drugs and Crime, *Travaux préparatoires* of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, 2006, p. 521, available at: https://www.unodc.org/documents/treaties/UNTOC/Publications/Travaux%20Preparatoire/04-60074_ebook-e.pdf.

⁶⁴ Application, ¶64.

⁶⁵ Application, ¶69.

73. Article 12 of the Protocol describes measures that States shall take in relation to travel or identity documents in order to counteract migrant smuggling.
74. Article 12(a) regulates a narrow and specific issue, requiring States to ensure that travel and identity documents issued are up to a certain standard that prevents their misuse, falsification, or forgery. The UNODC explained it as follows:
- “In short, article 12, subparagraph (a), refers to the actual quality of documents themselves, while article 12, subparagraph (b), refers to the process of issuing documents, so that such processes cannot be infiltrated or corrupted by migrant smugglers.”⁶⁶
75. It is thus the Russian Federation’s view that Article 12 imposes a narrow obligation on States to oversee the process of issuing travel documents and ensure their quality.
76. Lithuania avers that the simplification of the visa regime to facilitate “mass irregular migration” and cooperation with private companies in the issuance of short-term visas constitute a violation of Article 12 of the Protocol.⁶⁷ These alleged violations fall outside the scope of obligation to ensure security and integrity of documents.

d. Article 15 “Other prevention measures”

77. Article 15 of the Protocol provides the following:

“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.”

⁶⁶ United Nations Office on Drugs and Crime, International Framework for Action: To Implement the Smuggling of Migrants Protocol, 2011, p. 44, ¶171, available at: https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Framework_for_Action_Smuggling_of_Migrants.pdf.

⁶⁷ Application, ¶65.

78. Article 15 of the Protocol establishes a general framework designed to raise awareness about the dangers of smuggling so as to inform prospective migrants about such dangers and prevent them from falling prey to organised criminal groups. Rather than prescribing specific means of conveying such information, this provision grants States significant freedom to determine how they choose to raise awareness of such issues.
79. The UNODC reinforces this understanding in its recent Legislative Guide for the Implementation of the Protocol:

“Article 15, paragraphs 1 and 2, seek to target potential migrants and others involved in smuggling more directly using public information about the evils of organized crime in general and the smuggling of migrants in particular. Recognizing that a root cause of smuggling is the desire of people to move away from conditions such as poverty, conflict, climate disasters and oppression in search of better lives, article 15, paragraph 3, requires States Parties to promote or strengthen development programmes to address the socioeconomic causes of smuggling.”⁶⁸

80. With respect to Articles 15(1) and 15(2), the Protocol does not stipulate any specific requirements regarding the substance of the information or the ways of its distribution. It merely mandates that a State implements measures to raise awareness of this illicit activity, leaving the evaluation of campaign efficacy and success entirely to the State’s sovereign discretion.⁶⁹
81. In a similar vein, although Article 15(3) calls upon States to promote or strengthen development programmes and cooperation to address the roots of smuggling, its legal weight is qualified by the words “as appropriate”. This language underscores the discretion that States Parties have in choosing the methods of implementation of this broad obligation.⁷⁰ While the text touches upon the sensitive domain of economic migration, it stops short of requiring a State to adopt any specific policy.⁷¹

⁶⁸ UNODC, Legislative Guide for the Implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, 2026, ¶394.

⁶⁹ *Ibid.*, ¶¶397-399.

⁷⁰ On the sidelines of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, working groups benchmark best State practices to draft tailored recommendations for elevating such information campaigns, though the execution of these guidelines remains perennially at each State’s discretion. *See*, for example, United Nations Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Report on the meeting of the Working Group on the Smuggling of Migrants held in Vienna on 11 and 12 July 2024, CTOC/COP/WG.7/2024/5, 26 July 2024.

⁷¹ D. McClean, TRANSNATIONAL ORGANIZED CRIME: A COMMENTARY ON THE UN CONVENTION AND ITS PROTOCOLS (OUP, 2007), p. 425.

82. Accordingly, the scope of Article 15 is confined to issues of public information exchange.
83. Lithuania believes that a failure to cooperate in relation to the migration influx is in itself a violation of Article 15 of the Protocol.⁷² This interpretation appears to unnecessarily broaden the scope of the Article by requiring States to cooperate on every separate episode of such “migration influx”. Poland likewise attempts to extend the application of Article 15 beyond its proper limits clearly defined in its text. Poland argues that a State’s proactive support to the commission of “human trafficking” through the participation of State institutions will be in breach of Article 15.⁷³
84. However, smuggling of migrants and human trafficking are distinct offences regulated by different instruments. Furthermore, alleged State support for the commission of an offence bears no relation to the obligation to ensure public awareness of that offence, let alone to compliance with that obligation. Finally, the Protocol also does not cover acts of migrant smuggling allegedly perpetrated by a State.⁷⁴

e. Article 16 “Protection and assistance measures”

85. Article 16 of the Protocol reads as follows:

“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.

⁷² Application, ¶¶69.

⁷³ Poland’s Declaration, ¶¶65.

⁷⁴ See above, Section IV(B)(i)(c).

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.”

86. Article 16 outlines a fundamental, yet strictly delineated, regime of protection and assistance measures for smuggled migrants.⁷⁵
87. Specifically, Article 16(1) requires States Parties to take all appropriate measures to preserve and protect the rights of smuggled migrants afforded to them by international law. Crucially, this provision does not confer any novel rights upon smuggled migrants, nor does it impose new obligations on States. Rather, it merely reinforces those human rights and protections that are already recognised under international human rights and humanitarian law.⁷⁶ Importantly, Article 16 only concerns persons who have been subjected to migrant smuggling, and not to any migrant *per se*.⁷⁷
88. The Protocol grants States a wide margin of appreciation regarding its implementation. Namely, Article 16(2) obliges States to protect smuggled migrants from physical violence. It contains no specific guidelines about the way in which such protection may be provided.⁷⁸ As the UNODC clarifies in this regard:

“Though paragraph 2 is a mandatory requirement, States Parties have some flexibility to decide what measures they consider appropriate to protect smuggled migrants from violence, bearing in mind the types of violence likely to be inflicted on smuggled migrants, the situations where violence may arise, the communities and individuals that may be affected and the resources that are available to respond to these issues. Good practices in this respect include considering smuggled migrants in crime prevention programmes, providing support programmes to nationals overseas who are smuggled migrants and

⁷⁵ D. McClean, TRANSNATIONAL ORGANIZED CRIME: A COMMENTARY ON THE UN CONVENTION AND ITS PROTOCOLS (OUP, 2007), p. 426.

⁷⁶ A. Gallagher, Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis, *Human Rights Quarterly*, 2001, Vol. 23, p. 58.

⁷⁷ UNODC, Legislative Guide for the Implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, 2026, p. 63, ¶286.

⁷⁸ A. Gallagher, Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis, *Human Rights Quarterly*, 2001, Vol. 23, p. 58.

ensuring that migrants have access to justice and physical protection through law enforcement.”⁷⁹

89. The remaining provisions address several specific scenarios and situations. Article 16(3) calls upon States Parties to “afford appropriate assistance to migrants whose lives or safety are endangered by reason of being [smuggled migrants]”, while Article 16(4) specifically acknowledges and mandates attention to the heightened vulnerability of women and children. Article 16(5) reiterates the requirement of consular communication under the Vienna Convention on Consular Relations, implying a distinct obligation on States to facilitate access of smuggled migrants to their respective consular authorities.
90. Article 16, therefore, does not serve as a universal framework covering the treatment of all migrants.
91. Lithuania asserts that Belarus breached Article 16 of the Protocol by allegedly “encouraging migrants to travel to its territory and facilitating their irregular crossing into neighbouring countries”, and thus “exposing them to a heightened risk of grave abuses and increased position of vulnerability to organised criminal groups”.⁸⁰ Evidently, this averment is beyond the scope of Article 16 of the Protocol.

V. DOCUMENTS IN SUPPORT OF THE DECLARATION

92. The following is the list of documents in support of this Declaration and attached hereto:
 - (a) Letter of the Registrar dated 10 July 2025, sent under Article 63(1) of the Statute (Annex 1);
 - (b) United Nations Convention Against Transnational Organised Crime, Russian Federation: Ratification, C.N.569.2004.TREATIES-20 (Depositary Notification), 3 June 2004 (Annex 2);
 - (c) Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, Russian

⁷⁹ UNODC, Legislative Guide for the Implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, 2026, p. 64, ¶292.

⁸⁰ Application, ¶73.

Federation: Ratification, C.N.571.2004.TREATIES-16 (Depositary Notification),
3 June 2004 (Annex 3).

VI. CONCLUSION

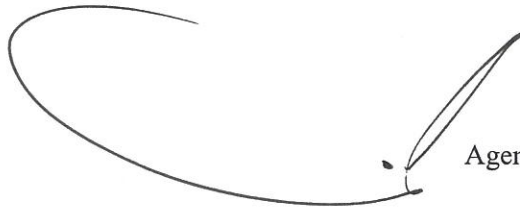
93. Based on the above, the Russian Federation avails itself of the right provided by Article 63(2) of the Statute to intervene as a non-party in the proceedings brought by Lithuania against Belarus in this case.
94. If the Court admits the present intervention, the Russian Federation requests to be provided with copies of all pleadings filed by Lithuania and Belarus, as well as any annexed documents, in accordance with Article 86(1) of the Rules of the Court, in order to submit its written observations on the subject-matter of the intervention.
95. The Government of the Russian Federation has appointed the following persons as its agents in the present matter:
- (a) Mr Maksim Musikhin, Director of the Legal Department, Ministry of Foreign Affairs of the Russian Federation;
 - (b) Mr Gennady Kuzmin, Ambassador-at-Large of the Russian Federation;
 - (c) Mr Vladimir Tarabrin, Ambassador Extraordinary and Plenipotentiary of the Russian Federation to the Kingdom of the Netherlands; and,
 - (d) Mr Konstantin Kosorukov, Deputy Director of the Legal Department, Ministry of Foreign Affairs of the Russian Federation.
96. It is requested that all communications in this case be sent to the following address: Andries Bickerweg 2, 2517 JP Den Haag, e-mail: rusembassy.nl@mid.ru.



Maksim MUSIKHIN
Agent of the Russian Federation

CERTIFICATION

I hereby confirm that the Annexes attached to this Declaration are true copies of the originals.

A large, stylized handwritten signature in black ink, consisting of a long horizontal stroke that curves upwards and then loops back to the right, ending with a small dot.

Maksim MUSIKHIN
Agent of the Russian Federation

**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.

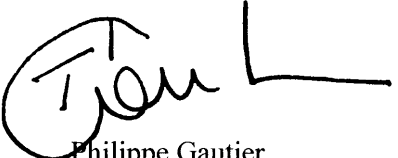
In its Application instituting proceedings in the above-mentioned case, Lithuania seeks to found the jurisdiction of the Court on Article 20, paragraph 2, of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000 (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)]

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 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 long horizontal line extending to the right.

Philippe Gautier
Registrar



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

Reference: C.N.569.2004.TREATIES-20 (Depositary Notification)

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED
CRIME

NEW YORK, 15 NOVEMBER 2000

RUSSIAN FEDERATION: RATIFICATION

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

The above action was effected on 26 May 2004, with:

Declarations and notifications (Translation) (Original: Russian)

1. The Russian Federation, in accordance with article 13, paragraph 6 of the Convention, declares that, on the basis of reciprocity, it will consider the Convention the necessary and sufficient treaty basis for the taking of the measures referred to in article 13, paragraphs 1 and 2 of the Convention;

2. The Russian Federation shall have jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of the Convention in the cases envisaged in article 15, paragraphs 1 and 3 of the Convention;

3. The Russian Federation, in accordance with article 16, paragraph 5 (a) of the Convention, declares that, on the basis of reciprocity, it will take the Convention as the legal basis for cooperation on extradition with other States Parties to the Convention;

4. The Russian Federation considers that the provisions of article 16, paragraph 14 of the Convention must be applied in such a way as to ensure the inevitability of responsibility for the commission of offences falling within the purview of the Convention, without detriment to the effectiveness of international cooperation in the areas of extradition and legal assistance;

5. The Russian Federation, on the basis of article 18, paragraph 7 of the Convention, declares that, on the basis of reciprocity, it will apply article 18, paragraphs 9 to 29 instead of the relevant provisions of any treaty of mutual legal assistance concluded by the Russian Federation with another State Party to the Convention, if, in the view of the central authority of the Russian Federation, that will facilitate cooperation;

6. The Russian Federation, on the basis of the last sentence of article 18, paragraph 13 of the Convention, declares that, on the basis of reciprocity, and in urgent circumstances, it will receive requests for mutual legal assistance and communications through the International Criminal Police Organization, on condition that documents containing such requests or communications are transmitted

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://untreaty.un.org>.

without delay under the established procedure;

7. The Russian Federation, in accordance with article 18, paragraph 14 of the Convention, declares that requests for legal assistance and related materials transmitted to the Russian Federation must be accompanied by a translation into Russian, unless otherwise provided by an international treaty of the Russian Federation, or unless agreement has otherwise been reached between the central authority of the Russian Federation and the central authority of the other State Party to the Convention;

8. The Russian Federation declares that, in accordance with article 27, paragraph 2 of the Convention, it will consider the Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention, on condition that such cooperation does not include the conduct of investigatory or other procedural actions in the territory of the Russian Federation.

The Convention will enter into force for the Russian Federation on 25 June 2004 in accordance with its article 38 (2) which reads as follows:

"For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument."

3 June 2004

A handwritten signature in black ink, consisting of stylized initials or a name, located below the date.



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

Reference: C.N.571.2004.TREATIES-16 (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

RUSSIAN FEDERATION: RATIFICATION

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

The above action was effected on 26 May 2004.

The Protocol will enter into force for the Russian Federation on 25 June 2004 in accordance
with its article 22 (2) which reads as follows:

"For each State or regional economic integration organization ratifying, accepting, approving
or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall
enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant
instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article,
whichever is the later."

3 June 2004

A handwritten signature in black ink, appearing to be "H/V", is located below the date.

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned.
Depositary notifications are made available to the Permanent Missions to the United Nations at the
following e-mail address: missions@un.int. Such notifications are also available in the United Nations
Treaty Collection on the Internet at <http://untreaty.un.org>.