

INTERNATIONAL COURT OF JUSTICE
DECLARATION OF INTERVENTION UNDER ARTICLE 63
OF NORWAY

10 November 2022

In the case of

ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION ON THE
PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

(UKRAINE v. RUSSIAN FEDERATION)

DECLARATION OF INTERVENTION OF NORWAY

DECLARATION OF INTERVENTION PURSUANT TO ARTICLE 63 OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

To the Registrar, International Court of Justice, the undersigned being duly authorized by the Government of Norway.

1. On behalf of the Government of Norway, I have the honour to submit to the Court a Declaration of Intervention pursuant to Article 63 paragraph 2 of the Statute of the Court in the Case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation).

2. Article 82, paragraph 2, of the Rules of the Court provides that a State which desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall file a declaration that states the name of an agent, and specifies 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.

These matters are addressed below, following certain preliminary observations.

PRELIMINARY OBSERVATIONS

3. On 26 February 2022, Ukraine instituted proceedings against the Russian Federation in a dispute concerning the interpretation, application or fulfilment of the Convention on the Prevention and Punishment of Genocide (the “Genocide Convention” or the “Convention”).

4. In paras. 4-12 of its Application instituting proceedings, Ukraine contends that there is a dispute between Ukraine and the Russian Federation within the meaning of Article IX of the Genocide Convention, relating to the interpretation, application or fulfilment of the Convention.

5. On substance, Ukraine claims that the use of force by the Russian Federation in or against Ukraine since 24 February 2022 on the basis of alleged genocide, as well as the Russian Federation’s preceding recognition of the so-called Donetsk People’s Republic and the so-called

Luhansk People's Republic with the pronounced aim of stopping a genocide of people living there¹, is incompatible with the Genocide Convention, quoting Articles I-III thereof (paras. 26-29 of the Application).

6. On 30 March 2022, in accordance with Article 63, paragraph 1, of the Statute of the Court, the Registrar notified the Government of Norway as a party to the Genocide Convention that by Ukraine's application the Genocide Convention "is invoked both as a basis for the Court's jurisdiction and the substantive basis of the Applicant's claims on the merits". The registrar also noted that:

"[T]he applicant seeks to found the Court's jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention, asks the Court to declare that it has not committed a genocide as defined in Articles II and III of the Convention, and raises questions concerning the scope of the duty to prevent and punish genocide under Article I of the Convention. It therefore appears that the construction of [the Genocide Convention] will be in question in the case".²

7. This case raises legal issues of central importance to the Genocide Convention and the international legal order more generally. The Court has established that the Genocide Convention imposes obligations *erga omnes partes* on States parties to the Convention,³ and that the prohibition against genocide is a *jus cogens* norm in international law.⁴ It follows from the *erga omnes partes* character of the obligations enshrined in the Convention that all States parties have a common interest to ensure the prevention, suppression and punishment of genocide, as well as a legal interest of their own in the interpretation, application and implementation of the Convention.⁵ The Genocide Convention is of utmost importance to prevent and punish genocide, and interventions in the present case is a means by which States parties to the Convention may live up to and reaffirm their collective responsibilities for the protection of the rights and obligations enshrined in the Convention, and support the crucial role of the Court in this regard.

8. It is in this context, that Norway hereby avails itself of its right to intervene in the proceedings conferred upon it by Article 63, paragraph 2, of the Statute.⁶ Norway recognises that, by using its

¹ Address by the President of the Russian Federation of 24 February 2022, <http://en.kremlin.ru/events/president/news/67843>.

² Letter from the Registrar of the Court of 30 March 2022 – see Annex A.

³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Judgment of 22 July 2022, p. 36, para. 107.

⁴ Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43, at p. 111, paras. 161-162.

⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Judgment of 22 July 2022, p. 36, para. 107.

⁶ This Court has recognized that Article 63 confers a "right" of intervention, cf. *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 76; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 13, para. 21. The Court has also underlined that an intervention "*is limited to submitting observations on the construction of the convention in question and does not allow the intervenor, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court; and whereas such intervention cannot affect the equality of the Parties to the dispute*", cf. *Whaling in the Antarctic*

right to intervene under Article 63 of the Statute, the construction of the Genocide Convention given by the judgement in this case will be equally binding upon it.

9. Consistent with the scope for interventions under Article 63 of the Statute, Norway will present its interpretation of the relevant Articles of the Genocide Convention in line with customary rules of interpretation as reflected in Article 31 and 32 of the Vienna Convention on the Law of Treaties.⁷

10. At present, Norway will focus on the construction of Article IX, I, II, III and VIII of the Convention. Norway reserves its right to supplement the present declaration and the scope of its observations to the extent that additional matters of jurisdiction or on the merits arise as the case progresses, or as Norway becomes aware of them upon receipt (in accordance with Article 86, paragraph 1, of the Rules) of the pleadings and documents annexed thereto.

11. As stipulated in Article 82 of the Rules of the Court, this declaration of intervention is filed “as soon as possible and no later than the date fixed for the opening of the oral proceedings”. Reference is also made to the letter of 31 October 2022 from the Registrar, urging any State that intends to avail itself of the right of intervention to file its declaration no later than Thursday 15 December 2022. Norway respectfully requests to be provided with copies of all pleadings filed by Ukraine and Russia, as well as any annexed documents, in accordance with Article 86, paragraph 1, of the Rules of the Court. Norway further informs the Court that it is willing to assist the Court in grouping its intervention together with similar interventions from other States for future stages of the proceedings, if the Court deems this useful in the interest of an expedient administration of justice.

NORWAY IS A PARTY TO THE CONVENTION

12. Norway signed the Genocide Convention on 11 December 1948 and deposited its instrument of ratification on 22 July 1949 in accordance with Article XI, paragraph 2, of the Convention.⁸ Norway has not filed any reservations or declarations to the Convention, and remains a Contracting Party to the Convention.

(Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, at p. 9, para. 18.

⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Judgment of 22 July 2022, p. 31, para. 87: “*The Court will have recourse to the rules of customary international law on treaty interpretation as reflected in Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969*”; see also Application of the International Convention On the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment of 4 February 2021, p. 24, para. 75 with further references.

⁸ Letter from the United Nations regarding the Ratification by the Government of Norway of the Convention on the Prevention and Punishment of the Crime of Genocide – see Annex B

PROVISIONS OF THE CONVENTION IN QUESTION IN THE CASE:

ARTICLE IX

13. In its Application, Ukraine bases the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention. The Russian Federation, in its "Document" of 7 March 2022 addressed to the Court, claims that Article IX of the Genocide Convention does not confer jurisdiction on the Court in this case. Thus, the construction of Article IX of the Genocide Convention is in question in this case. In line with the arguments presented above, Norway considers that it has an interest of its own in the interpretation of this issue, and submits that the Court has jurisdiction to adjudicate the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law.

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

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

15. The notion of “dispute” is already well-established in the case law of the Court. The Court has described the meaning given to the word dispute as “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties.⁹ In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”.¹⁰ The two sides must “hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations”.¹¹ 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”.¹² Finally, as the Court has also made clear, the existence of a dispute “is a matter for objective determination by the Court which must turn on an examination of the facts”, and a dispute can be found to exist whenever it is demonstrated, on the basis of the evidence available, “that the respondent was aware, or could not have been unaware, that its views were “positively opposed” by the applicant”.¹³ It follows from this that the unilateral denial of a

⁹ Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

¹⁰ South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment of 21 December 1962, I.C.J. Reports 1962, p. 319, at p. 328.

¹¹ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, p. 406, at p. 414, para. 18; ICJ, Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment of 17 March 2016, I.C.J. Reports 2016, p. 3, at p. 26, para. 50, citing Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 74.

¹² Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Judgment of 22 July 2022, p. 27, para. 71.

¹³ See, e.g. 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. 833, at pp. 849-851, paras. 37-43.

dispute by one party does not disprove the existence of a dispute between the parties within the meaning of Article IX of the Convention, conferring jurisdiction on the Court to adjudicate a claim by the applicant.

16. As follows from the wording of Article IX, a dispute within the meaning of that provision is one that relates to “the interpretation, application or fulfilment of the present Convention”. The inclusion of the word “fulfilment” is “unique as compared with the compromissory clauses found in other multilateral treaties which provide for submission to the International Court of Justice of such disputes between Contracting Parties as relate to the interpretation or application of the treaties in question.”¹⁴ Its inclusion in the text of the provision makes clear that the Court may assert jurisdiction pursuant to Article IX of the Convention over disputes concerning the alleged fulfilment by a Contracting Party of its obligations under the Convention.

17. The phrase “including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III” confirms this reading. The word “including” also signifies a broader scope of Article IX of the Convention when compared to other compromissory clauses.¹⁵ Disputes relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III are only *one* type of dispute covered by Article IX, which are “included” in the disputes “relating to the interpretation, application and fulfilment” of the Convention.¹⁶

18. While the scenario of (alleged) responsibility for acts of genocide is a dispute on the “interpretation, application or fulfilment” of the Convention, the Court’s jurisprudence confirms it is not the only one. There can also be disputes about “non-action” as a violation of the substantive obligations under Article I, IV and V, for instance where one State alleges that another State is not honouring its commitment to “prevent” and “punish” genocide, because it grants impunity to acts of genocide committed on its territory. In *The Gambia v. Myanmar* (pending), the applicant claimed that the defendant was not only responsible for prohibited acts under Article III, but that it was also violating its obligations under the Convention by failing to prevent genocide in violation of Article I; and failing to punish genocide in violation of Articles I, IV and V.¹⁷

19. A dispute as to whether any violations of the Convention have occurred or not, is a dispute concerning the “interpretation, application or fulfillment” of those obligations over which the Court may exercise jurisdiction pursuant to Article IX, if requested to do so by any of the parties to the

¹⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Preliminary Objections, Declaration of Judge Oda, I.C.J. Reports 1996 (II), p. 627, para. 5 (emphasis in the original).

¹⁵ Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, I.C.J. Reports 2007, p. 43, at p. 75, para. 169.

¹⁶ See also the Written Observations of *The Gambia* on the Preliminary Objections raised by Myanmar, 20 April 2021, pp. 28-29, para. 3.22 (“*The inclusion of disputes “relating to the responsibility of a State for genocide” among those that can be brought before the Court unmistakably means that responsibility for genocide can be the object of a dispute brought before the Court by any contracting party*”).

¹⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*).

dispute.¹⁸ This includes jurisdiction to declare the absence of genocide and the violation of an obligation of good faith performance of the Convention, resulting in an abuse of the law. In particular, the jurisdiction of the Court extends to disputes concerning the question of whether a unilateral use of military force was a lawful discharge of the undertaking to fulfil the obligation of preventing and punishing alleged genocide in accordance with Article I of the Convention.¹⁹

20. Moreover, a dispute relating to the “interpretation, application or fulfilment” of the Convention exists despite the absence of a “specific reference” to a Convention or its provisions in public statements by the parties, as long as those statements “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”.²⁰

21. Article IX further expressly provides that the jurisdiction of the ICJ is established “at the request of *any of the parties* to the dispute” (emphasis added). Thus, it is clear that a State accused of committing genocide has *the same right* to submit the dispute to the Court as the State making the accusation. This is also confirmed by the object and purpose of the Convention. The Court recently noted that “[a]ll the States parties to the Genocide Convention [thus] have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention”.²¹ Famously, in its 1951 Advisory Opinion, the Court held:²²

“The objects of such a convention must also be considered. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality.”

22. The Convention’s object to protect the most elementary principles of morality prohibits a State party from abusing its provisions for other means. It would undermine the Convention’s credibility as a universal instrument to outlaw the most abhorrent crime of genocide if its authority were to be abused by any State party without there being a legal option for the victim of such abuse to invoke the compromissory clause of that Convention and turn to the Court for relief. The purpose of the

¹⁸ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order of 16 March 2022, p. 10, para. 43; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Order of 23 January 2020, I.C.J. Reports 2020, p. 14, para. 30.

¹⁹ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order of 16 March 2022, p. 11, para. 45.

²⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment, ICJ, 22 July 2022, para. 72, citing Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 70, at p. 85, para. 30.

²¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Judgment of 22 July 2022, p. 36, para. 107.

²² Reservations to the Genocide Convention, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 23.

Convention speaks loudly in favour of a reading of Article IX where disputes relating to the interpretation, application and fulfilment includes disputes concerning the alleged abuse of the Convention's authority to justify a State's action vis-à-vis another State party to the Convention.

23. In conclusion, the ordinary meaning of the terms of Article IX of the Convention, in its context and in the light of the object and purpose of the Convention shows that a dispute regarding acts carried out by one State against another State based on false claims of genocide constitutes a "dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention" pursuant to Article IX. Accordingly, Norway submits that the Court has jurisdiction on the basis of the Applicant's submission to declare the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law.

24. In the event that it should be argued that Norway cannot intervene in the question of the construction of the Convention's Article IX, Norway disputes this. Article 63 of the Statute does not make a distinction between provisions in a Convention. On the contrary, Article 63 clearly states that the right to intervene arises "*whenever* the construction of a convention to which States other than those concerned in the case are parties is in question" (emphasis added). The right to intervene thus arises at *any point any* provision of such a convention is in question before the Court. The terms of Article 63 of the Statute, and the terms of Article 82 of the Rules of the Court to file a declaration "as soon as possible" both confirm that the filing of an Article 63 declaration is admissible at this stage of the proceedings. Indeed, States may offer their assistance to the Court in the construction of a particular convention both in relation to provisions which relate to jurisdictional issues and those which relate to substantial issues. Accordingly, interventions on both aspects are allowed.²³

ARTICLE I, CFR. ARTICLE VIII, ARTICLE II AND III

25. Ukraine argues that the dispute between the Parties concerns the question whether, as a consequence of the Russian Federation's unilateral assertion that genocide is occurring, the Russian Federation has a lawful basis to take military action in and against Ukraine to prevent and punish genocide pursuant to Article I of the Genocide Convention.²⁴ In line with the arguments presented in paragraph 7 above, Norway considers that it has an interest of its own in the interpretation of this issue. Norway submits that an undertaking to prevent or to punish genocide in conformity with Article I of the Genocide Convention does not in any case permit a State to engage in acts of aggression or any use of force in contravention of the Charter of the United Nations.

26. Article I of the Convention reads as follows:

²³ MN Shaw (ed), *Rosenne's Law and Practice of the International Court 1920-2015* (5th ed, Vol III, Brill Nijhoff 2016), p. 1533; H. Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* (Vol I, OUP 2013), p. 1031; A. Miron/C. Chinkin, "Article 63" in: Zimmermann/Tams/Oellers-Frahm/Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary* (3rd ed. OUP 2019), p. 1741, at p. 1763, note 46.

²⁴ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of 16 March 2022, para 31.

“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

27. Article I of the Convention concerns the duty of the Contracting Parties “to prevent and to punish” genocide, whether committed in time of peace or in time of war. The notion of “undertake to prevent” in Article I entails that each State party must assess whether a genocide or a serious risk of genocide exists prior to taking action pursuant to Article I.²⁵ Such an assessment must be justified by substantial evidence “that is fully conclusive”.²⁶ A State purporting to act “to prevent” genocide is under an obligation to gather evidence of the situation from relevant sources, such as independent investigations conducted under the auspices of the United Nations. The Court has previously considered this assessment “of critical importance”.²⁷ Moreover, the duty under Article I must be carried out in good faith.²⁸ The principle of good faith, operates as a safeguard against misuse of the terms and institutions of the Convention, as it, in line with the Court’s previous observation, “obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized”.²⁹

28. Furthermore, Article I must be read in conjunction with Article VIII when interpreting “undertake to prevent”. Article VIII reads:

“Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of The United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III.”

29. The invitation to call upon the competent organs of the United Nations, together with the provision in Article IX for judicial settlements, indicates that the Convention imposes on States a duty to seek collective responses to the prevention and suppression of acts of genocide through the employment of multilateral and peaceful means. Such a reading coincides with Chapter VI of the UN Charter, which entails a general obligation for States to settle disputes by peaceful means. Moreover, the preamble of the Convention clearly reflects the collective approach underlying it, when explicitly referring to a common conviction by the undersigned that “international co-operation is required” in order to liberate mankind from the “odious scourge” that acts of genocide truly represent. The prevention of genocide is a worldwide task for the benefit of humankind, not a matter for the protection of national interests. The object and purpose of Article VIII is to underline the preferability of collective over unilateral measures.

²⁵ Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43, at pp. 221-222, paras. 430-431.

²⁶ Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 90, para. 209.

²⁷ Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43, at pp. 221-222, para. 430-431.

²⁸ Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997, p. 79, para. 142.

²⁹ Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997, p. 79, para. 142.

30. In fulfilling their duty to prevent genocide, Contracting Parties must act within the limits set by international law.³⁰ Paramount among obligations limiting the freedom of action are the obligation of States pursuant to article 2 (4) of the UN Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, and the obligation under articles 2 (3) and 33 of the UN Charter to settle their disputes peacefully in such a manner that international peace and security are not endangered. Any acts undertaken by the Contracting Parties “to prevent and to punish” genocide must be in conformity with the obligations established in the UN Charter, including herein the spirit and aims of the United Nations as set out in Article 1 of the UN Charter.³¹ This includes, in particular, the prohibition of aggression.

31. Turning to the undertaking “to punish” in Article I of the Convention, Norway contends that the obligation is limited to punitive measures of a criminal law character directed against individuals. This is confirmed by Articles IV-VI of the Convention. It is evident that Article I of the Convention cannot serve as a legal basis for military measures to “punish” a State or a people, in violation of the most fundamental norms of international law.

32. Norway submits that “undertake to prevent” genocide in conformity with Article I of the Genocide Convention does not in any case permit a State to engage in any use of force in contravention of the Charter of the United Nations.

33. In addition to Article VIII, Article I must be interpreted in light of Articles II and III. Article II of the Convention deals with the definition of genocide and Article III lists five specific types of acts punishable as genocide. Norway contends that the elements of genocide are already well-established in the Court’s case law. In particular, in order for genocide to occur, there is a requirement to establish both genocidal action and a (specific) genocidal intent. For the purposes of the Convention, genocidal intent is defined as an “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such” through the committal of any of the acts listed in Article II.³² The Convention thus contains specific elements as to intent and action required for an act to constitute an act of genocide. The occurrence, even on a large scale, of civilian casualties during the course of armed conflict is not itself evidence of genocidal action or genocidal intent, as it cannot in itself be qualified as evidence of the extreme and most inhuman form of persecution that is designed to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

³⁰ Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43, at p. 221, para. 430.

³¹ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order of 16 March 2022, para 58.

³² Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I. C.J. Reports 2007 (I), p. 43, at pp. 121-122, paras. 186-189.

DOCUMENTS IN SUPPORT OF THE DECLARATION

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

Annex A: Letter from the Registrar of the International Court of Justice to the Ambassador of Norway to the Kingdom of the Netherlands dated 30th of March 2022;

Annex B: Letter from the United Nations regarding the Ratification by the Government of Norway of the Convention on the Prevention and Punishment of the Crime of Genocide.

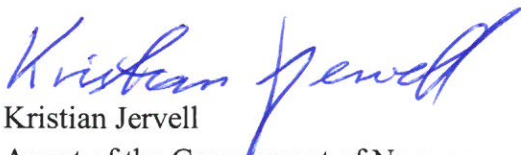
CONCLUSION

35. On the basis of the information set out above, Norway uses the right conferred upon it by Article 63 paragraph 2 of the Statute to intervene in the proceedings brought by Ukraine against the Russian Federation in this case.

36. The government of Norway has appointed Kristian Jervell, Director General of the Legal Affairs Department of the Ministry of Foreign Affairs as Agent for the purposes of this Declaration together with Martin Sørby, Deputy Director General of the Legal Affairs Department of the Ministry of Foreign Affairs, as Co-Agent. The Registrar of the Court may channel all communication through the following address:

Royal Norwegian Embassy in the Hague
Eisenhowerlaan 77J
NL-2517 KK
Den Haag
Netherlands

Respectfully,



Kristian Jervell
Agent of the Government of Norway

Annex A: Letter from the Registrar of the International Court of Justice to the Ambassador of Norway to the Kingdom of the Netherlands dated 30th of March 2022



156413

30 March 2022

Excellency,

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

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

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

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

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

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

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

./.

H.E. the Ambassador
of the Kingdom of Norway
to the Kingdom of the Netherlands
Embassy of the Kingdom of Norway
The Hague

Your country is included in the list of parties to the Genocide Convention. The present letter should accordingly be regarded as the notification contemplated by Article 63, paragraph 1, of the Statute. I would add that this notification in no way prejudices any question of the possible application of Article 63, paragraph 2, of the Statute, which the Court may later be called upon to determine in this case.

Accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'P. Gautier', with a long horizontal stroke extending to the right.

Philippe Gautier
Registrar

UNITED NATIONS  NATIONS UNIES
LAKE SUCCESS, NEW YORK

TELEPHONE: FIELDSTONE 7-1100

CABLE ADDRESS: UNATIONS NEWYORK - ADRESSE TELEGRAPHIQUE

REFERENCE: C.N.91.1949.TREATIES

29 July 1949

CONVENTION OF 9 DECEMBER 1948 ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE

RATIFICATION BY NORWAY

Sir,

I am directed by the Secretary-General to inform you that on 22 July 1949 the instrument of ratification by the Government of Norway of the Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide was deposited with the Secretary-General of the United Nations, in accordance with the provisions of Article XI.

The present notification is made in accordance with Article XVII (a) of the Convention.

I have the honour to be,

Sir,

Your obedient Servant
For the Assistant Secretary-General
in charge of the Legal Department

Director

UNITED NATIONS  NATIONS UNIES
LAKE SUCCESS, NEW YORK

TELEPHONE: FIELDSTONE 7-1100

CABLE ADDRESS: UNATIONS NEWYORK · ADRESSE TELEGRAPHIQUE

REFERENCE: C.N.91.1949.TREATIES

le 29 juillet 1949

CONVENTION DU 9 DECEMBRE 1948 POUR LA PREVENTION
ET LA REPRESSION DU CRIME DE GENOCIDE

RATIFICATION PAR LE NORVEGE

Monsieur

Je suis chargé par le Secrétaire général de porter à votre connaissance que l'instrument de ratification par le gouvernement de la Norvège de la Convention du 9 décembre 1948 pour la prévention et la répression du crime de Génocide a été déposé auprès du Secrétaire général de l'Organisation des Nations Unies le 22 juillet 1949, conformément aux dispositions de l'article XI de la Convention.

La présente notification est faite en application de l'article XVII (a) de la Convention.

Je vous prie d'agréer, Monsieur
l'assurance de ma haute considération.

Pour le Secrétaire général adjoint
chargé du Département juridique

Directeur