

**INTERNATIONAL COURT OF JUSTICE**

---

**DISPUTE RELATING TO ALLEGATIONS OF GENOCIDE  
(Ukraine v Russian Federation)**

---

**DECLARATION OF INTERVENTION  
PURSUANT TO ARTICLE 63 OF THE STATUTE OF THE COURT  
BY THE  
GOVERNMENT OF NEW ZEALAND**

To the Registrar, International Court of Justice.

The undersigned being duly authorized by the Government of New Zealand.

1. On behalf of the Government of New Zealand, I have the honour to submit to the Court a Declaration of Intervention pursuant to the right to intervene as a non-party set out in Article 63(2) of the Statute of the Court, in the *Dispute Relating to Allegations of Genocide (Ukraine v Russian Federation)*.
2. Article 82(2) of the Rules of the Court provides that a declaration of a State's desire to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall specify the case and the convention to which it relates and shall contain:
  - a. Particulars of the basis on which the declarant State considers itself a party to the convention.
  - b. Identification of the particular provisions of the convention the construction of which it considers to be in question.
  - c. A statement of the construction of those provisions for which it contends.
  - d. A list of documents in support, which documents shall be attached.
3. Those matters are addressed in sequence below.

#### **CASE AND CONVENTION TO WHICH THIS DECLARATION RELATES**

4. On 26 February 2022 the Government of Ukraine instituted proceedings against the Russian Federation under Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide 1948 ("Convention") in accordance with Articles 36(1) and 40 of the Statute.<sup>1</sup> The Application instituting proceedings was accompanied

---

<sup>1</sup> Application instituting proceedings, filed in the Registry of the Court on 27 February 2022 ("Ukraine's Application").

by a request to the Court for the indication of provisional measures in accordance with Article 41 of the Statute.<sup>2</sup>

5. Ukraine states that its Application “concerns a dispute between Ukraine and the Russian Federation relating to the interpretation, application and fulfilment of the [Convention]”.<sup>3</sup> It contends that:<sup>4</sup>

... the Russian Federation has falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and on that basis recognized the so-called “Donetsk People’s Republic” and “Luhansk People’s Republic”, and then declared and implemented a “special military operation” against Ukraine with the express purpose of preventing and punishing purported acts of genocide that have no basis in fact.

6. Ukraine’s Application further contends that:<sup>5</sup>

Russia’s actions erode the core obligation of Article I of the Convention, undermine its object and purpose, and diminish the solemn nature of the Contracting Parties’ pledge to prevent and punish genocide.

7. On 30 March 2022, as provided for in Article 63(1) of the Statute, the Registrar duly notified the Government of New Zealand of the proceedings as a party to the Convention.<sup>6</sup> The Registrar noted:

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

---

<sup>2</sup> Request for the indication of provisional measures, filed in the Registry of Court on 27 February 2022.

<sup>3</sup> Ukraine’s Application at paragraph 2.

<sup>4</sup> *Id.*

<sup>5</sup> Ukraine’s Application at paragraph 28.

<sup>6</sup> Letter of 30 March 2022 from the Registrar of the Court to the Ambassador of New Zealand to the Netherlands.

the Convention. It therefore appears that the construction of this instrument will be in question in the case.

8. On 7 March 2022, the Russian Federation delivered a document (with Annexes) to the Registry of the Court, setting out its position regarding the alleged “lack of jurisdiction” of the Court in this case.
9. On 16 March 2022, following an oral hearing and consideration of the document filed by the Russian Federation, the Court issued an Order indicating provisional measures in the case.<sup>7</sup>

#### **BASIS ON WHICH NEW ZEALAND IS PARTY TO THE CONVENTION**

10. New Zealand signed the Convention on 25 November 1949 and deposited its instrument of ratification to the Convention in accordance with Article XI of the Convention on 28 December 1978.

#### **SCOPE OF NEW ZEALAND’S INTERVENTION**

11. New Zealand is profoundly concerned by the gravity of the circumstances giving rise to this case. New Zealand’s Foreign Minister, Hon Nanaia Mahuta, has expressed this concern thus:<sup>8</sup>

Russia’s illegal invasion of Ukraine and disingenuous attempt to justify it under the Genocide Convention is a significant threat to basic principles of international law, the United Nations Charter and the rules-based international system on which New Zealand strongly relies.

We are profoundly concerned about the loss of life and human suffering in Ukraine as a result of Putin’s illegal invasion, and seek to emphasise that all countries must uphold the rules of international law and the purpose and principles of the United Nations Charter.

---

<sup>7</sup> *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation), Provisional Measures, Order of 16 March 2022* (“Provisional Measures Order”).

<sup>8</sup> New Zealand Government press release, 30 June 2022, available at: <https://www.beehive.govt.nz/release/nz-join-international-court-justice-case-against-russia>

12. New Zealand considers that the legal issues raised by this case touch on some of the most fundamental principles and obligations of international law. As this Court has acknowledged, the rights and obligations enshrined in the Convention are rights and obligations *erga omnes*.<sup>9</sup> It follows that all States Parties to the Convention have an interest in the proper interpretation, application and fulfilment of those obligations.
13. New Zealand has accordingly decided to avail itself of the right to intervene as a non-party conferred upon it by Article 63(2) of the Statute. In doing so New Zealand acknowledges the prior statements of the Court that:<sup>10</sup>
- ...intervention under Article 63 of the Statute is limited to submitting observations on the construction of the convention in question and does not allow the intervenor, who does not become a party in the proceedings, to deal with any other aspect of the case before the Court...
- and, therefore, that “such an intervention cannot affect the equality of the Parties to the dispute”.<sup>11</sup>
14. Consistent with this, the scope of New Zealand’s intervention is limited to the issues relating to the construction of the Convention that arise in the context of the present case. In accordance with Article 63(2) of the Statute, New Zealand further confirms that, by availing itself of its right to intervene, it accepts that the construction given to the Convention by the judgment in the case will be equally binding upon it.

#### **Provisions of the Convention in question in the case**

15. Ukraine’s Application, and the Russian Federation’s document of 7 March 2022, together evidence that there is a fundamental difference of views between the parties as to whether there is a dispute within the scope of Article IX of the Convention giving rise to the jurisdiction of the Court.

---

<sup>9</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Preliminary Objections, Judgment, I.C.J. Reports 1996, p. 595 at p. 615 (paragraph 31); and *Armed Activities on the Territory of the Congo (New Application: 2002)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p.6 at p. 31 (paragraph 64).

<sup>10</sup> *Whaling in the Antarctic (Australia v Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. reports 2013, p. 3 at p. 9 (paragraph 18).

<sup>11</sup> *Id.*

16. As discussed in the Court's Provisional Measures Order of 16 March 2022, the substance of that dispute engages two central questions, namely:<sup>12</sup>

whether certain acts allegedly committed by Ukraine in the Luhansk and Donetsk regions amount to genocide in violation of its obligations under the Genocide Convention, as well as whether the use of force by the Russian Federation for the stated purpose of preventing and punishing alleged genocide is a measure that can be taken in fulfilment of the obligation to prevent and punish genocide contained in Article I of the Convention.

17. On that basis, New Zealand considers that issues raised in the case turn on a proper interpretation of:

- a. The obligation in Article IX of the Convention that disputes "relating to the interpretation, application or fulfilment of [the Convention]...shall be submitted to the [Court] at the request of any of the parties to the dispute".
- b. The obligation in Article I of the Convention, whereby States "undertake to prevent and punish" the crime of genocide. That obligation, in turn, must be interpreted in light of Articles II, III and VIII of the Convention.

#### **Statement of the construction of those provisions for which New Zealand contends**

##### *General principles of interpretation and the obligation of good faith*

18. The obligations of the Convention must be interpreted, and performed, in good faith. It is a fundamental rule of both treaty and customary international law that "every treaty in force is binding upon the parties to it and must be performed by them in good faith".<sup>13</sup> Article 31(1) of the Vienna Convention on the Law of Treaties accordingly

---

<sup>12</sup> Provisional Measures Order at paragraph 45.

<sup>13</sup> Article 26 *Vienna Convention on the Law of Treaties*. See also paragraph 3 of the preamble: "Noting that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized." For a discussion of the customary nature of the principle in Article 26, see: International Law Commission, *Yearbook of the International Law Commission, 1966, Vol II*, at p. 211 (paragraphs 1 and 2).

provides as the basic rule of interpretation that: “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.

19. The obligation of good faith requires a party to apply the Convention “in a reasonable way and in such a manner that its purpose can be realized”.<sup>14</sup> It is implicit in this obligation that a party must abstain from acts calculated to frustrate the object and purpose of the Convention.<sup>15</sup> Such acts would constitute a breach of the Convention itself.
20. New Zealand is further mindful that any interpretation of the Convention must also take into account any relevant rules of international law applicable in the relations between the parties, including the obligations contained in the United Nations Charter.<sup>16</sup>

#### *Object and purpose of the Convention*

21. The origins of the Convention lie in the shared intention of the members of the United Nations to condemn and punish genocide as a “crime under international law”. As recognised by this Court in its Advisory Opinion on *Reservations to the Genocide Convention*, the Convention was “manifestly adopted for a purely humanitarian and civilizing purpose”.<sup>17</sup> Its object is to both “safeguard the very existence of certain human groups” and to “confirm and endorse the most elementary principles of morality”.<sup>18</sup> Those “high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.”<sup>19</sup>

---

<sup>14</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment of 25 September 1997, I.C.J. Reports 1997, p.7 at p. 79 (paragraph 142).

<sup>15</sup> International Law Commission, above n. 13, at p. 211 (paragraph 4); see also the other authorities cited in paragraph 2.

<sup>16</sup> Article 31(3)(c) of the 1969 Vienna Convention on the Law of Treaties; see e.g., *Legal Consequences for States of the Continued Presence of South Africa in Namibia (S.W. Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16 at p. 31 (paragraph 53), *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment of 25 September 1997, above n. 14 at pp. 67-68 (paragraph 112), and *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment of 6 November 2003, I.C.J. Reports 2003, p. 161 at p. 182 (paragraph 41).

<sup>17</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 15 at p. 23.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

22. As this Court further stated in its Advisory Opinion, the principles underlying the Convention “are principles which are recognized by civilized nations as binding on States, even without conventional obligations”.<sup>20</sup> They therefore have the character of customary international law. The central prohibition on the commission of genocide has further been recognised as a peremptory norm.<sup>21</sup> Nevertheless, parties to the Convention remain bound to engage with one another through the prism of the Convention and cannot evade their obligations through reliance on parallel custom.

#### *Interpretation of Article IX*

23. Article IX provides a procedure for the settlement of “disputes...relating to the interpretation, application or fulfilment” of the Convention. By accepting Article IX Contracting Parties to the Convention have voluntarily consented to settle such disputes through the Court, as provided for in Article 36(1) of the Statute. Absent any express reservation on the part of either party, Article IX therefore provides a basis for the Court to exercise jurisdiction over such disputes.<sup>22</sup>
24. Article IX encompasses disputes regarding the “interpretation, application or fulfilment” of the Convention. It thus encompasses disputes about both the scope and content of the provisions of the Convention and actions taken (or not taken) by the parties in respect of those obligations. It applies equally to disputes submitted to the Court by, or against, a party alleged to have breached the Convention.
25. Article IX gives effect to the parties’ pre-existing obligation under Articles 2(3) and 33 of the United Nations Charter and customary international law<sup>23</sup> to settle their disputes by peaceful means. It must be interpreted and applied in a way that achieves that

---

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Compare e.g., *Legality of Use of Force (Yugoslavia v Belgium)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 124 at pp. 137-138 (paragraphs 37 to 41) with *Legality of Use of Force (Yugoslavia v Spain)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 761 at p. 772 (paragraphs 29 to 33) and *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v Rwanda)*, Jurisdiction and Admissibility, Judgment, above n. 9 p. 30 (paragraph 70).

<sup>23</sup> *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p.14 at p. 145 (paragraph 290).



obligation.<sup>24</sup> Parties must accordingly fulfil their obligations under Article IX in good faith, in order to achieve its central objective of the peaceful settlement of disputes.<sup>25</sup>

In practice, that means:

- a. A respondent party that contests the application of Article IX in a particular case must do so through the prescribed procedures of the Court<sup>26</sup> and abide by any orders or judgments issued by it.<sup>27</sup>
- b. A failure by a respondent party to engage with the Court does not prevent the Court from determining or exercising jurisdiction under Article IX.<sup>28</sup>
- c. A failure by a party to abide by any order for provisional measures is itself a breach of that party's international obligations under Article IX of the Convention and Articles 2(3), 33 and 94 of the United Nations Charter.<sup>29</sup>

26. Whether a "dispute...relating to the interpretation, application or fulfilment of [the Convention]" exists is a question of substance, not form.<sup>30</sup> Acts or omissions may give rise to a dispute that falls within the ambit of more than one treaty.<sup>31</sup> The fact that jurisdiction may not exist in respect of one treaty therefore does not preclude the existence of jurisdiction under another.

---

<sup>24</sup> Article 103 of the United Nations Charter; Article 31(3)(c) of the Vienna Convention on the Law of Treaties.

<sup>25</sup> Article 2(2) of the United Nations Charter; Articles 26 and 31(1) of the Vienna Convention on the Law of Treaties; see also authorities in n 14 and 15 above.

<sup>26</sup> As set out in the Statute of the Court and the Rules of the Court.

<sup>27</sup> Article 94(1) of the United Nations Charter.

<sup>28</sup> Article 53 of the Statute of the Court; *Arbitral Award of 3 October 1899 (Guyana v Venezuela)*, *Jurisdiction, Judgment*, I.C.J. Reports 2020, p. 464 at p 463 – 464 (paragraph 25); *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)*, *Merits, Judgment*, above n. 23 at p. 23 (paragraph 27).

<sup>29</sup> See, in particular: the Court's finding in *La Grand (Germany v United States of America)*, *Judgment*, I.C.J. Reports 2001, p. 466 at p. 506 (paragraph 109) that: its "orders on provisional measures under Article 41 [of the Statute] have binding effect"; *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 230 – 231 (paragraphs 451 to 458).

<sup>30</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)*, *Provisional Measures, Order of 23 January 2020*, I.C.J. Reports 2020, p.3 at p.12 (paragraph 26).

<sup>31</sup> *Alleged Violation of the 1955 treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v United States of America)*, *Preliminary Objections, Judgment of 3 February 2021*, at paragraph 56. See also *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 120 (paragraph 113), where the Court found that there were two parallel disputes: one relating to the lawfulness of Russia's use of force, and another falling within the scope of CERD.

27. This Court's approach in its 1996 Judgment at the preliminary objections phase of the *Bosnia Genocide* case provides the clearest guidance as to whether a dispute within the scope of Article IX exists in a particular case.<sup>32</sup> In that case, the Court found that the parties disagreed with respect to: the facts of the case; the application of the provisions of the Convention to those facts; and the meaning and legal scope of those provisions. The Court accordingly was of "no doubt" that a dispute existed within the terms of Article IX.<sup>33</sup>

#### *Interpretation of Article I*

28. Under Article I, parties to the Convention have confirmed that genocide is a crime under international law "which they undertake to prevent and to punish". That undertaking imposes an obligation on all Contracting Parties to "employ all means reasonably available so as to prevent genocide as far as possible".<sup>34</sup> Article I thus sets out a positive duty to act, although it is not in itself an authority for action.
29. In fulfilling the obligation to prevent genocide Contracting Parties must act reasonably and in good faith.<sup>35</sup> It is implicit in the requirement of good faith that a party must abstain from actions that subvert the objectives of the Convention underlying Article I or abuse its provisions.<sup>36</sup> Such actions, if taken in purported reliance on Article I, would constitute a breach of the Convention itself.
30. Article VIII of the Convention underscores that, in the first instance, parties will seek to act collectively to prevent and suppress genocide through the mechanisms of the United Nations. Members of the United Nations have accepted a corresponding duty to

---

<sup>32</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Judgment*, above n. 9.

<sup>33</sup> *Ibid* at pp. 616 - 617 (paragraph 33). The Court's finding of jurisdiction was subsequently confirmed in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, *Judgment*, above n. 29.

<sup>34</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, *Judgment*, above n. 29 at p. 221 (paragraph 430).

<sup>35</sup> Articles 26 and 31(1) *Vienna Convention the Law of Treaties; Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *Judgment*, above n. 14 at p.79 (paragraph 142).

<sup>36</sup> See n. 15 above.

respond to requests for action presented to them under Article VIII of the Convention.<sup>37</sup>

31. As this Court has recognised, Article VIII does not exhaust a party's duty to prevent genocide.<sup>38</sup> Actions beyond recourse to the competent organs of the United Nations may be required – particularly where the competent organs of the United Nations have manifestly failed to act. However, on its own the Article I obligation to prevent genocide does not provide a legal basis for the use of force in violation of Article 2(4) of the UN Charter.<sup>39</sup> As this Court recognised in the *Bosnian Genocide case*, the obligation to prevent genocide must be exercised within the limits permitted by international law.<sup>40</sup> In exceptional circumstances, where peaceful means and actions have been exhausted, it may be that an emerging customary norm of unilateral humanitarian intervention provides a justification for the use of force to protect a population from genocide. However, to the extent that such a norm exists, it is tightly circumscribed.
32. The duty to prevent genocide in Article I applies whenever a State learns of, or should normally have learned of, the commission of genocide or a serious risk that genocide will be committed.<sup>41</sup> Whether acts amount to “genocide” so as to trigger the application of Article I is not simply a matter of a party's subjective interpretation. The definition of “genocide” in Articles II and III of the Convention applies and must be satisfied on the facts.
33. Where a Contracting Party takes actions which infringe the legal rights of another state in purported reliance on the duty to prevent genocide, the Contracting Party must be prepared to defend those actions on the basis of compelling evidence that genocide has, or is about to, occur.<sup>42</sup> In practice, such evidence will include: news reports,

---

<sup>37</sup> By extension of their own duty to prevent under Article I of the Convention and international customary law, and as confirmed by UNGA resolution A/RES/60/1 (2005) at paragraphs 138 and 139.

<sup>38</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, above n. 29 at pp. 219 – 220 (paragraph 427).

<sup>39</sup> Article 2(4) of the United Nations Charter, as elaborated by the GA in Resolution 3314 (XXIX) *Definition of Aggression*.

<sup>40</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, above n. 29 at p 221 (paragraph 430).

<sup>41</sup> *Ibid* at p. 222 (paragraph 431).

<sup>42</sup> *Ibid* at p. 129 (paragraph 208).

witness accounts, official government statements, reports of relevant regional and international bodies, and opinions of qualified non-governmental organisations.<sup>43</sup> The Court must look to the party taking measures to prevent genocide under Article I of the Convention to prove the objective basis for its determination.<sup>44</sup>

#### **DOCUMENTS IN SUPPORT OF THE DECLARATION**

34. The following is a list of the documents in support of this Declaration, certified copies of which documents are attached hereto:

- a. Letter of 30 March 2022 from the Registrar of the Court to the Ambassador of New Zealand to the Netherlands.
- b. United Nations Depository Notification confirming the Government of New Zealand's ratification of the Convention on the Prevention and Punishment of the Crime of Genocide on 28 December 1978.

#### **CONCLUSION**

35. On the basis of the information set out above, New Zealand avails itself of the right conferred upon it by Article 63(2) of the Statute to intervene as a non-party in the proceedings brought by Ukraine against the Russian Federation in this case. New Zealand reserves its right to supplement or amend this Declaration, and any associated Written Observations submitted with respect to it, as it considers necessary in response to any developments in the proceedings.

---

<sup>43</sup> *Ibid* at p. 130 (paragraphs 212 to 213).

<sup>44</sup> *Ibid* at pp. 128 – 129 (paragraphs 204 and 209).

36. The construction contended for in this Declaration is relevant both to the Court's jurisdiction and to the substantive basis of Ukraine's claims on the merits. In summary, New Zealand contends that, on a proper construction of the Convention:
- a. In terms of the jurisdictional issues raised by Ukraine's application, the Court has jurisdiction under Article IX of the Convention to determine:
    - i. A dispute as to the occurrence of genocide submitted by the Contracting Party alleged to have committed such acts;
    - ii. Whether purported allegations of genocide are established by sufficient evidence and meet the definition of genocide in the Convention; and
    - iii. Whether the use of force for the stated purpose of preventing and punishing genocide, in the absence of sufficient evidence that genocide has occurred or is imminent, is a measure that can be taken in fulfilment of the obligation to prevent and punish genocide contained in Article I of the Convention.
  - b. In terms of the issues raised by the substance of Ukraine's application:
    - i. Contracting Parties are obliged to perform their obligations under the Convention in good faith and in a manner that does not subvert the object and purpose of the Convention.
    - ii. A refusal by a Contracting Party to comply with provisional measures ordered by the Court is a breach of the obligation in Article IX of the Convention.
    - iii. A Contracting Party acting in purported reliance on their obligation to prevent genocide under Article I of the Convention must have a sufficient evidential basis for their determination that genocide has occurred or is imminent.
    - iv. On its own, Article I of the Convention does not provide a lawful basis for the use of force in violation of Article 2(4) of the United Nations Charter.
37. The Government of New Zealand has appointed Victoria Hallum, New Zealand's Chief International Legal Adviser as Agent, and the undersigned as Co-Agent for the purposes

of the present Declaration. It is requested that all communications in this case be notified to the following address:

New Zealand Embassy  
Eisenhowerlaan 77N  
2517 KK The Hague  
Kingdom of the Netherlands

Respectfully,



Susannah Gordon  
**Ambassador of New Zealand to the Netherlands**  
**Co-Agent of the Government of New Zealand**





Annex A

156413

Letter from the Registrar of the International Court of  
Justice to the Ambassador of New Zealand to the  
Netherlands

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](http://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.

/.

[Letter to the States parties to the Genocide Convention  
(except Ukraine and the Russian Federation)]

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.



Philippe Gautier  
Registrar



(IV.1)

Annex B

United Nations Depository Notification confirming the Government of New Zealand's ratification of the Genocide Convention 79/47 EH

UNITED NATIONS  NATIONS UNIES

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

REFERENCE: C.N.325.1978.TREATIES-1

30 January 1979

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE  
ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 9 DECEMBER 1948

RATIFICATION BY NEW ZEALAND

ACCESSION BY THE GAMBIA

Sir,

I have the honour, upon instructions from the Secretary-General, to inform you that, on 28 December 1978, the instrument of ratification by the Government of New Zealand of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948, was deposited with the Secretary-General.

I further wish to inform you that, on 29 December 1978, the instrument of accession by the Government of the Gambia to the above-mentioned Convention was deposited with the Secretary-General.

In accordance with its article XIII (3), the Convention will enter into force for New Zealand and the Gambia on the ninetieth day following the deposit of their instrument of ratification or accession, that is to say, on 28 and 29 March 1979, respectively.

Accept, Sir, the assurances of my highest consideration.



Erik Suy  
The Legal Counsel

Sent to the Ministry of Foreign Affairs  
of Member States

JANUARY 1979

CORRESPONDENCE UNIT

106 MEMBER STATES plus 4 NON-MEMBERS

ENGLISH AND SPANISH

AFGHANISTAN	HONDURAS	PORTUGAL
AUSTRALIA	HUNGARY	QATAR
AUSTRIA	ICELAND	SAMOA
BAHAMAS	INDIA	SAUDI ARABIA
BAHRAIN	INDONESIA	SEYCHELLES
BANGLADESH	IRAQ	SIERRA LEONE
BARBADOS	IRELAND	SINGAPORE
BHUTAN	ISRAEL	SOLOMON ISLANDS
BOLIVIA	JAMAICA	SOMALIA
BOTSWANA	JAPAN	SOUTH AFRICA
BRAZIL	JORDAN	SPAIN
BURMA	KENYA	SRI LANKA
BYELORUSSIAN SSR	KUWAIT	SUDAN
CANADA	LESOTHO	SURINAME
CHILE	LIBERIA	SWAZILAND
CHINA	LIBYAN ARAB JAMAHIRIYA	SWEDEN
COLOMBIA	MALAWI	SYRIAN ARAB REPUBLIC
COSTA RICA	MALAYSIA	THAILAND
CUBA	MALDIVES	TRINIDAD AND TOBAGO
CYPRUS	MALTA	TURKEY
CZECHOSLOVAKIA	MAURITIUS	UGANDA
DEMOCRATIC YEMEN	MEXICO	UKRAINIAN SSR
DENMARK	MONGOLIA	UNION OF SOVIET SOCIALIST REPUBLICS
DOMINICA	MOZAMBIQUE	UNITED ARAB EMIRATES
DOMINICAN REPUBLIC	NEPAL	UNITED KINGDOM
ECUADOR	NETHERLANDS	UNITED REPUBLIC OF TANZANIA
EL SALVADOR	NEW ZEALAND	UNITED STATES OF AMERICA
ETHIOPIA	NICARAGUA	VENEZUELA
FIJI	NIGERIA	YEMEN
FINLAND	NORWAY	YUGOSLAVIA
GAMBIA	OMAN	ZAMBIA
GERMAN DEMOCRATIC REPUBLIC	PAKISTAN	
GERMANY (FEDERAL REPUBLIC OF)	PANAMA	<u>NON-MEMBER STATES</u>
GHANA	PAPUA NEW GUINEA	<del>DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA</del>
GREECE	PERU	KOREA (REPUBLIC OF)
GRENADA	PHILIPPINES	<del>NAURU</del>
GUATEMALA	POLAND	<del>TONGA</del>
GUYANA		

ALSO SENT TO:

INFORMATION COPY SENT TO:

COPY SENT TO:

4 Information Centres  
Legal Division, United Nations High Commissioner for Refugees, Palais des Nations, Geneva, Switzerland  
UNHCR, Rm. C-301 B  
Office of Human Rights, Rm. 2545  
Juriste Principal, Palais des Nations, Geneva, Switzerland  
Division of Human Rights, Palais des Nations, Geneva, Switzerland  
(Yearbook Editor), Miss Tom, Rm. 322  
Deputy Director Codification Division, Rm. 3412

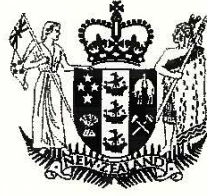
**CERTIFICATION**

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

25.07.22

A handwritten signature in black ink, appearing to be 'V Hallum', written over a horizontal line.

**Victoria Hallum**  
**Agent of the Government of New Zealand**



#### APPOINTMENT OF AGENT AND CO-AGENT

For the purposes of intervention pursuant to Article 63 of the Statute of the Court in the case before the International Court of Justice *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*, I hereby appoint Victoria Hallum, Chief International Legal Adviser, Ministry of Foreign Affairs and Trade, as Agent for New Zealand and Susannah Gordon, Ambassador of New Zealand to the Kingdom of the Netherlands, as Co-Agent for New Zealand.

A handwritten signature in black ink, appearing to read 'N. Mahuta'.

Hon Nanaia Mahuta  
Minister for Foreign Affairs