

**INTERNATIONAL COURT OF JUSTICE**

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

**(UKRAINE v. RUSSIAN FEDERATION)**

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

**SEPTEMBER 7, 2022**





*Embassy of the United States of America*

**LETTER FROM THE CHARGE D’AFFAIRES, A.I. OF THE UNITED STATES OF  
AMERICA TO THE KINGDOM OF THE NETHERLANDS TO THE REGISTRAR OF  
THE INTERNATIONAL COURT OF JUSTICE**

September 6, 2022

I have the honor to attach a Declaration by the Government of the United States of America of its intervention pursuant to Article 63, paragraph 2, of the Statute of the Court in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

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

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read "A Woodward".

Aleisha Woodward  
Chargé d’Affaires ad interim



THE SECRETARY OF STATE  
WASHINGTON

AUG 29 2022

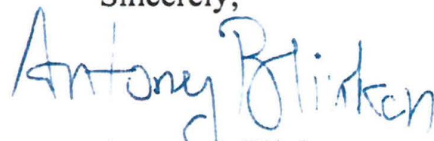
The Honorable  
Philippe Gautier  
Registrar of the International Court of Justice  
The Hague

Dear Mr. Gautier:

For the purposes of intervention pursuant to Article 63 of the Statute of the Court in the case before the International Court of Justice, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), I hereby appoint Richard C. Vissek, Acting Legal Adviser of the U.S. Department of State, as Agent for the United States, and Emily Kimball, Legal Counselor of the Embassy of the United States of America, as Deputy Agent.

Please accept the assurances of my highest consideration.

Sincerely,

A handwritten signature in blue ink that reads "Antony Blinken". The signature is fluid and cursive, with the first name "Antony" and last name "Blinken" clearly distinguishable.

Antony J. Blinken  
Secretary of State

DECLARATION OF INTERVENTION OF THE GOVERNMENT OF THE UNITED  
STATES OF AMERICA PURSUANT TO ARTICLE 63 OF THE STATUTE OF THE  
INTERNATIONAL COURT OF JUSTICE

To the Registrar, International Court of Justice, the undersigned being duly authorized by the Government of the United States:

1. On behalf of the Government of the United States, I have the honor to submit to the Court a Declaration of Intervention pursuant to the right to intervene set out in Article 63, paragraph 2, of the Statute of the Court, in the case concerning *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 Court provides that a declaration of a State's desire to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall specify the case and the convention to which it relates and shall contain:
  - (a) particulars of the basis on which the declarant State considers itself a party to the convention;
  - (b) identification of the particular provisions of the convention the construction of which it considers to be in question;
  - (c) a statement of the construction of those provisions for which it contends;
  - (d) a list of documents in support, which documents shall be attached.
3. Those matters are addressed in sequence below, following some preliminary observations.

## PRELIMINARY OBSERVATIONS

4. On February 27, 2022, the Government of Ukraine instituted proceedings against the Russian Federation regarding “a dispute . . . relating to the interpretation, application or fulfilment” of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention” or “Convention”).<sup>1</sup>

5. In its Application instituting proceedings, Ukraine contends that:

[T]he 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. On the basis of this false allegation, Russia is now engaged in a military invasion of Ukraine involving grave and widespread violations of the human rights of the Ukrainian people.<sup>2</sup>

6. In particular, Ukraine contends that the Russian Federation’s actions are inconsistent with its obligations under the Convention:

[T]he Russian Federation’s declaration and implementation of measures in or against Ukraine in the form of a “special military operation” declared on 24 February 2022 on the basis of alleged genocide, as well as the recognition that preceded the military operation, is incompatible with the Convention and violates Ukraine’s right to be free from unlawful actions, including military attack, based on a claim of preventing and punishing genocide that is wholly unsubstantiated.<sup>3</sup>

7. As contemplated by Article 63, paragraph 1, of the Statute of the Court, the Registrar by letter dated March 30, 2022, duly notified the Government of the United States as a party to the Convention that in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*:

[T]he [Convention] is invoked both as a basis of the Court’s jurisdiction and as a substantive basis of the Applicant’s claims on the merits. In particular, the Applicant seeks to found the Court’s jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention, 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.

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<sup>1</sup>Application Instituting Proceedings (hereinafter, “Application”), para 2.

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*, para. 26.

8. By this present Declaration, the United States avails itself of the right to intervene conferred upon it by Article 63, paragraph 2, of the Statute. This Court has recognized that an intervention based on Article 63 of the Statute is an incidental proceeding that constitutes the exercise of a right.<sup>4</sup> The United States' right to intervene in the present case arises from its status as a party to the Genocide Convention.
9. The Court has recognized that the proper construction of the Genocide Convention is of paramount concern to all States Parties. As the Court has previously observed, States Parties adopted the Convention "for a purely humanitarian and civilizing purpose," recognizing that the Convention has as "its object on the one hand . . . to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality."<sup>5</sup> In this sense, States Parties to the Genocide Convention "do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the Convention."<sup>6</sup> Such a common interest, in the view of the Court, indicates that the provisions of the Convention are obligations *erga omnes partes*.<sup>7</sup> Moreover, the prohibition on genocide is a peremptory norm of international law (*jus cogens*).<sup>8</sup> In this regard, all States Parties have a significant interest in ensuring the correct interpretation, application, or fulfilment of the Genocide Convention.
10. The United States' views on the questions at issue in this case are further informed by the United States' long history of supporting efforts to prevent and punish genocide. During and following World War II, the United States played an instrumental role in establishing the International Military Tribunal at Nuremberg and prosecuting those responsible for serious international crimes committed during the Holocaust through the International Military Tribunal and subsequent U.S. military tribunals. The Nuremberg trials served, in many respects, as a catalyst for States to negotiate a convention addressing the prevention and punishment of genocide; the U.S. delegation actively participated in those negotiations and its contributions helped shape the final text of the Genocide Convention.<sup>9</sup> The United States ratified the Genocide Convention in 1988 and in the

<sup>4</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. 5, para. 7; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application by Honduras for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II), p. 434, para. 36; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 15, para. 26; *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 76; S.S. "Wimbledon," Judgments, 1923, P.C.I.J., Series A, No. 1, p. 12.

<sup>5</sup> Reservations to the Convention on Genocide, Advisory Opinion, 1951 I.C.J. 15, at 23 (May 28).

<sup>6</sup> *Id.*

<sup>7</sup> Application of the Convention on the Prevention and Punishment of the Crimes of Genocide (*The Gambia v. Myanmar*), Judgment, 2022 General List No. 107 (July 22); Application of the Convention on the Prevention and Punishment of the Crimes of Genocide (*Croatia v. Serbia*), Judgment, 2015 I.C.J. Reports 3, ¶ 87 (Feb. 3); Armed Activities on the Territory of the Congo (New Application: 2002) (*Democratic Republic of the Congo v. Rwanda*), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, ¶ 64 (Feb. 3).

<sup>8</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, 2007 I.C.J. Rep. 43, ¶ 161 (February 26); *Democratic Republic of the Congo v. Rwanda* 2006 I.C.J. Reports ¶ 64.

<sup>9</sup> The United States, among other things, served as chair of the Ad Hoc Committee created by the UN Economic and Social Council in early 1948 to prepare a draft convention on the crime of genocide and, after that draft was



years thereafter supported the establishment of international and hybrid criminal tribunals with jurisdiction over genocide and other serious international crimes. The United States is one of the only parties to the Genocide Convention to have publicly invoked Article VIII in calling on the United Nations to address genocide in the territory of another Contracting Party.<sup>10</sup> The United States accordingly has determined that it is necessary for it to intervene in this case in order to place its views on the construction of the relevant provisions of the Convention before the Court.

11. The United States, as a non-party to this case, intends to present its views to the Court on the issues of construction of the Convention relevant to the determination of the case, including the construction of the compromissory clause in Article IX, in accordance with Article 63 of the Statute. The United States recognizes that, by availing itself of the right to intervene under Article 63 of the Statute, the construction of the Convention given by the judgment in this case will be equally binding upon the United States.
12. In addition to the matters set out above, Article 82, paragraph 1, of the Rules of Court further provides that a declaration of a State desiring to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall be filed “as soon as possible and not later than the date fixed for the opening of the oral proceedings.” In accordance with that requirement, this Declaration has been filed at the earliest opportunity reasonably open to the United States.

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debated by the Sixth Committee of the UN General Assembly in the fall of 1948, served on the Sixth Committee’s drafting committee.

<sup>10</sup> See The Crisis in Darfur, Secretary Colin L. Powell, Testimony Before the Senate Foreign Relations Committee, Washington, DC, September 9, 2004 (last visited Aug. 8, 2022), available at <https://2001-2009.state.gov/secretary/former/powell/remarks/36042.htm> (“Because of that obligation under Article VIII of the Convention, and since the United States is one of the contracting parties[,] today we are calling on the United Nations to initiate a full investigation [into atrocities in Darfur]”).

### **Case and Convention to which this Declaration Relates**

13. This Declaration relates to the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* instituted on February 27, 2022, by Ukraine against the Russian Federation. That case concerns the construction of the Genocide Convention.

### **Particulars of the Basis on which the United States Considers Itself a Party to the Genocide Convention**

14. The United States deposited its instrument of ratification to the Convention in accordance with Article XI of the Convention on November 25, 1988.<sup>11</sup> The United States remains a party to the Convention.

### **Provisions of the Genocide Convention the Construction of which the United States Considers to be in Question**

15. The Court is called on to address jurisdictional and other legal issues relating to the construction of the Genocide Convention in the dispute between Ukraine and Russia. In its Application,

Ukraine claims that the Russian Federation's declaration and implementation of measures in or against Ukraine in the form of a "special military operation" declared on 24 February 2022 on the basis of alleged genocide, as well as the recognition that preceded the military operation, is incompatible with the Convention and violates Ukraine's right to be free from unlawful actions, including military attack, based on a claim of preventing and punishing genocide that is wholly unsubstantiated.<sup>12</sup>

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<sup>11</sup> The United States ratified the Genocide Convention with, inter alia, the reservation that, with reference to Article IX of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case. Further, the United States ratified the Genocide Convention with, among other understandings, the understanding that the term "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such" appearing in Article II means the specific intent to destroy, in whole or in substantial part, a national ethnical, racial or religious group as such by the facts specified in Article II; the understanding that the term "mental harm" in Article II(b) means permanent impairment of mental faculties through drugs, torture or similar techniques; and the understanding that acts in the course of armed conflicts committed without the specific intent required by Article II are not sufficient to constitute genocide as defined by this Convention. The United States' reservation relating to Article IX does not inhibit the right of the United States to intervene under Article 63 as to the correct construction of the Genocide Convention, including Articles I, II, III, IV, VIII, and IX. See S.S. "Wimbledon," Britain et al. v. Germany, Question of Intervention by Poland, PCIJ, Series A, No. 1, pp. 11, 12 (noting that intervention under Article 62 "is based on an interest of a legal nature advanced by the intervening party" whereas "when the object of the suit before the Court is the interpretation of an international convention, any State which is a party to this convention has, under Article 63 of the Statute, the right to intervene in the proceedings instituted by others").

<sup>12</sup> Application, para. 26.

16. Ukraine's application raises the question of whether the Court may entertain jurisdiction under Article IX of the Genocide Convention, where a Contracting Party commits aggression against another Contracting Party on the pretext of preventing or punishing genocide. Likewise, there is a question relevant to the merits of whether the obligation under Article I to prevent and punish genocide, as defined in Article II, or the obligation under Article IV to punish persons committing genocide or any of the other acts enumerated in Article III, permits one Contracting Party to commit aggression against another Contracting Party on the pretext of preventing or punishing genocide.
17. The United States' intervention is accordingly directed to the questions of construction of Articles I, II, III, IV, VIII, and IX of the Convention, which are in question in the case, and directly relevant to the resolution of the dispute placed before the Court by Ukraine's Application.<sup>13</sup>

Article I:

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.

Article II:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

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<sup>13</sup> Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature Dec. 9, 1948, art. I, II, III, IV, VIII, IX, 102 Stat. 3045, 3035, 78 U.N.T.S. 277, 280 (entered into force Jan. 12, 1951) (hereinafter, "Genocide Convention").

Article III:

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV:

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article VIII:

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.

Article IX:

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.

**Construction of Those Provisions for which the United States Contends**

18. The United States' interpretation of the Genocide Convention is based on the customary international law of treaty interpretation, as reflected in provisions of the 1969 Vienna Convention on the Law of Treaties.<sup>14</sup>

19. Article 31 provides that:<sup>15</sup>

1. 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.

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<sup>14</sup> While the United States is not a party to the Vienna Convention on the Law of Treaties, it recognizes that a number of its provisions, including those in Articles 31 and 32, reflect customary international law.

<sup>15</sup> Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, art. 31, 1155 U.N.T.S. 331, 340 (entered into force Jan. 27, 1980) (hereinafter, "VCLT").

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

20. Such interpretation may also be confirmed by reference to supplementary means of interpretation. These supplementary means may include the *travaux préparatoires* of the Genocide Convention. Article 32 of the Vienna Convention on the Law of Treaties provides that:<sup>16</sup>

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.

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<sup>16</sup> *Id.* art. 32.



*The Genocide Convention Sets Forth the Definition of Genocide and the Contracting Parties' Obligations with Respect to the Prevention and Punishment of Genocide*

21. The Genocide Convention, in Article I, confirms that “genocide, whether committed in time of peace or in time of war, is a crime under international law which [the Contracting Parties] undertake to prevent and to punish.”<sup>17</sup> As the Court previously has explained:

The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as ‘a crime under international law’ involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and the spirit and aims of the United Nations. The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the co-operation required ‘in order to liberate mankind from such an odious scourge.’<sup>18</sup>

22. The United States notes that the Court has interpreted Article I, in particular its undertaking to prevent genocide, to create obligations distinct from those that appear in the subsequent articles of the Convention, which primarily address the punishment of genocide by individuals.<sup>19</sup> This includes, in the Court’s view, an obligation on Contracting Parties to “employ all means reasonably available to them, so as to prevent genocide so far as possible,” recognizing that a Contracting Party “may only act within the limits permitted by international law.”<sup>20</sup> In this regard, the Court has recognized that “the notion of ‘due diligence’, which calls for an assessment *in concreto*, is of critical importance”<sup>21</sup> and emphasized that “a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a *serious risk* that genocide will be committed” (emphasis added).<sup>22</sup>
23. Article II defines the crime of genocide as any of five acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”<sup>23</sup> The United States ratified the Convention with, *inter alia*, the understanding that the term “intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such” means “the *specific* intent to destroy, in whole or in *substantial* part, a national, ethnical, racial or religious group as such by the acts specified in article II” and the understanding that “acts in the course of armed conflicts committed without the specific

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<sup>17</sup> Genocide Convention art. 1.

<sup>18</sup> Reservations to the Convention on Genocide, Advisory Opinion, 1951 I.C.J. 15, at 23 (May 28).

<sup>19</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 2007 I.C.J. Rep. 43, ¶ 162 (February 26).

<sup>20</sup> *Id.* ¶ 430.

<sup>21</sup> Bosnia and Herzegovina v. Serbia and Montenegro, 2007 I.C.J. ¶ 430.

<sup>22</sup> Bosnia and Herzegovina v. Serbia and Montenegro, 2007 I.C.J. ¶ 431.

<sup>23</sup> Genocide Convention art. 2.

intent required by article II are not sufficient to constitute genocide as defined by” the Convention (emphasis added).

24. The United States’ understandings are consistent with the Court’s interpretation of “intent to destroy” to mean “a *dolus specialis* that . . . must be present in addition to the intent required for each of the individual acts involved”<sup>24</sup> and interpretation of “in part” to mean a “substantial part of the particular group.”<sup>25</sup> The term “substantial part” is defined in the legislation that implements the United States’ obligations under the Convention to mean a part of a protected group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such group is a part.<sup>26</sup> However, the United States recognizes that the Court, in assessing whether the allegedly targeted part of a protected group is substantial in relation to the overall group, has taken into account both the quantitative element and evidence regarding the geographic location and prominence of the allegedly targeted part of the group.<sup>27</sup> Finally, the United States, like the Court, understands “destroy” in Article II to mean the physical or biological, rather than cultural, destruction of a national, ethnical, racial or religious group.<sup>28</sup>
25. Article III lists genocide and related acts that shall be punishable under the Convention, and Article IV requires the punishment of persons guilty of committing genocide or any of the other acts enumerated in Article III.<sup>29</sup> Taken together, these articles generally set forth the scope of the subject matter the Genocide Convention is intended to address.

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<sup>24</sup> Bosnia and Herzegovina v. Serbia and Montenegro, 2007 I.C.J. ¶ 132.

<sup>25</sup> *Id.* ¶ 198.

<sup>26</sup> See 18 U.S.C. § 1093(8).

<sup>27</sup> Application of the Convention on the Prevention and Punishment of the Crimes of Genocide (Croatia v. Serbia), Judgment, 2015 I.C.J. Reports 3, ¶ 142 (Feb. 3) (citing Bosnia and Herzegovina v. Serbia and Montenegro, 2007 I.C.J. ¶¶ 198-199, 201 and Prosecutor v. Krstic, Case No. IT-98-33-A, Judgment (Int’l Crim. Trib. For the Former Yugoslavia Apr. 19, 2004)).

<sup>28</sup> Bosnia and Herzegovina v. Serbia and Montenegro, 2007 I.C.J. ¶ 136. During the drafting of the Genocide Convention, the United States opposed the inclusion of a proposed article that would have broadened the definition of genocide to encompass acts targeting the cultural identity of a protected group, stating:

In the first place, the new and far-reaching concept of cultural genocide, i.e., the destruction of a culture, had no connection with the better known conception of genocide as the physical destruction of members of a human group. For the inclusion of cultural genocide in the convention on genocide, it was not enough to say the acts enumerated in [the proposed article] shocked the conscience of mankind. In the second place, [the proposed article], as it now stood or in any amended form, would not meet the wishes of those who favoured its retention. . . . If the objective were to preserve the culture of a group, then it was primarily freedom of thought and expression for the members of the group which needed protection. Such protection came within the sphere of human rights. If the individual’s fundamental right to use his own language, to practice his own religion and to attend the school of his choice were protected, that would be tantamount to protecting the group of which the individual was a member.

GAOR, 3<sup>rd</sup> session, Part I, Sixth Comm. (83<sup>rd</sup> meeting), at 203, 25 Oct. 1948.

<sup>29</sup> Genocide Convention art. III-IV.

*The Genocide Convention Does Not Authorize a Contracting Party to Commit Aggression against Another Contracting Party on the Pretext of Preventing or Punishing Genocide*

26. While the structure and negotiating history of the Convention make clear that it is principally concerned with individual criminal responsibility for genocide and the other acts enumerated in Article III, the Court has observed that the Convention also prohibits Contracting Parties from committing, through their organs, or persons or groups whose conduct is attributable to them, such acts. In this regard, the Court has viewed the Convention as reflecting a duality of responsibility and contemplating the possibility of State responsibility for genocide and the other acts enumerated in Article III.<sup>30</sup> In recognition of the exceptional gravity of allegations that a Contracting Party is responsible for genocide or other acts enumerated in Article III, the Court has observed that it must be “fully convinced” that such allegations “have been clearly established.”<sup>31</sup> In “the absence of a State plan expressing the intent to commit genocide,” the Court has noted that, to infer the existence of such intent from a pattern of acts covered by Article II of the Convention, “it is necessary and sufficient that this is the only inference that could reasonably be drawn from the acts in question.”<sup>32</sup> The Court likewise has set a high bar for establishing that a Contracting Party has breached its obligations to prevent or punish genocide, requiring “proof at a high level of certainty appropriate to the seriousness of the allegation.”<sup>33</sup>
27. The Genocide Convention expressly provides Contracting Parties recourse where they believe another Contracting Party is responsible for genocide or for any of the other acts enumerated in Article III of the Convention or has failed to prevent or punish such acts. Article VIII of the Genocide Convention provides that Contracting Parties “may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they [the competent organs of the United Nations] consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III” of the Genocide Convention.<sup>34</sup> As the Court has previously observed, Article VIII is the only article after Article I that expressly addresses the prevention of genocide.<sup>35</sup>
28. Article IX further provides that “[d]isputes 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 this Court at the request of any of the parties to the dispute.<sup>36</sup>

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<sup>30</sup> Bosnia and Herzegovina v. Serbia and Montenegro, 2007 I.C.J. ¶ 179.

<sup>31</sup> *Id.* ¶ 209.

<sup>32</sup> Croatia v. Serbia, 2015 I.C.J. ¶¶ 145-148.

<sup>33</sup> Bosnia and Herzegovina v. Serbia and Montenegro, 2007 I.C.J. ¶ 210.

<sup>34</sup> Genocide Convention art. VIII.

<sup>35</sup> Bosnia and Herzegovina v. Serbia and Montenegro, 2007 I.C.J. ¶ 426.

<sup>36</sup> Genocide Convention art. IX.



29. No provision of the Genocide Convention, properly interpreted in good faith, explicitly or implicitly authorizes a Contracting Party, acting on the pretext of preventing or punishing genocide, to commit aggression, including territorial acquisition resulting from aggression.<sup>37</sup>

*The Genocide Convention Confers Jurisdiction on the Court Concerning Disputes Between the Contracting Parties Relating to the Interpretation, Application or Fulfilment of the Convention, Including Those Relating to the Responsibility of a State for Genocide*

30. Article IX of the Genocide Convention provides that this Court has jurisdiction over “[d]isputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention,” which may be submitted to the Court “at the request of any of the parties to the dispute.”<sup>38</sup> This includes disputes “relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III” of the Convention.<sup>39</sup> The Court has previously considered allegations by one Contracting Party that another Contracting Party is responsible for genocide or other acts enumerated in Article III to constitute a dispute within the meaning of Article IX.<sup>40</sup> Use of the term “fulfilment” in Article IX, in addition to “interpretation” and “application,” which more commonly appear in compromissory clauses, likewise suggests that the Contracting Parties intended the scope of the compromissory clause to be understood broadly, to include the Court exercising jurisdiction over a Contracting Party’s request that the Court find that Party has not committed a breach of the Convention where its compliance with the Convention is disputed by another Contracting Party.<sup>41</sup>
31. Where a Contracting Party commits aggression against another Contracting Party on the pretext of preventing or punishing genocide, and the Contracting Party subjected to aggression denies that it is responsible for genocide, it is plain that the parties disagree as to the interpretation, application, or fulfilment of the Genocide Convention, including with respect to the responsibility of a State for genocide or the other acts enumerated in Article III, within the meaning of Article IX.

<sup>37</sup> See G.A. Res. ES-11/1, U.N. Doc. A/ES-11/L.1 (Mar. 1, 2022) (“*Reaffirming* that no territorial acquisition resulting from the threat or use of force shall be recognized as legal . . . .”); see also G.A. Res. 3314 (XXIX), U.N. Doc. A/9631 (Dec. 14, 1974) (“No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.”). More generally, the prohibition of aggression is a peremptory norm of international law (*jus cogens*) from which no derogation is permitted.

<sup>38</sup> Genocide Convention art. IX.

<sup>39</sup> *Id.*

<sup>40</sup> Croatia v. Serbia, 2015 I.C.J. 3; Bosnia and Herzegovina v. Serbia and Montenegro, 2007 I.C.J. 43. See also Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order, 2022 I.C.J. ¶ 16 (Mar. 16) (separate opinion by Robinson, J.) (“[T]here is nothing in doctrine or practice that precludes the Court from having jurisdiction to find that an applicant has not committed a breach of a treaty, where that applicant has requested the Court to make such a finding.”).

<sup>41</sup> See Official Records of the Third Session of the General Assembly, Part I, Sixth Committee, Summary Records of Meetings 21 September-10 December 1948, at 447 (Indian delegate explaining that while “application” included the study of circumstances in which the Convention should or should not apply, the word “fulfilment” referred to the compliance or non-compliance of a party with the provisions of the Convention). See, e.g., PAULA L. GAETA, THE UN GENOCIDE CONVENTION – A COMMENTARY 413, 420, 452 (Oxford University Press 2009); LAWRENCE J. LEBLANC, THE UNITED STATES AND THE GENOCIDE CONVENTION 204 (1991).

### **Documents in Support of the Declaration**

32. The following is a list of the documents in support of this Declaration and attached hereto:

(a) Letter from the Registrar to States Parties to the Genocide Convention, dated March 30, 2022 (Annex A);

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

### **Conclusion**

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

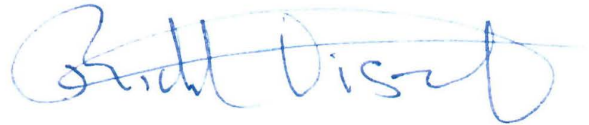
34. The United States reserves the right to supplement or amend this declaration as may be necessary.



Richard C. Visek  
AGENT OF THE UNITED STATES  
OF AMERICA

CERTIFICATION

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

A handwritten signature in blue ink, appearing to read "Richard Vissek", with a large, sweeping flourish extending from the end of the name.

Richard C. Vissek  
AGENT OF THE UNITED STATES  
OF AMERICA

Annex A

Letter from the Registrar to States Parties  
to the Genocide Convention, dated March 30, 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](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.

./.

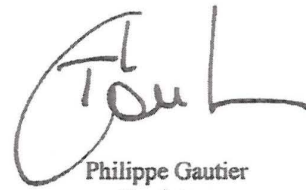
[Letter to the States parties to the Genocide Convention  
(except Ukraine and the Russian Federation)]

COUR INTERNATIONALE  
DE JUSTICE

INTERNATIONAL COURT  
OF JUSTICE

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 dark ink, appearing to read 'P. Gautier', with a large, sweeping initial 'P' and a long horizontal stroke at the end.

Philippe Gautier  
Registrar

Annex B

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

RONALD REAGAN

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

CONSIDERING THAT:

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

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



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

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

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

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

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

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

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

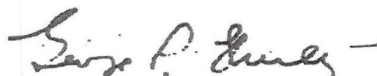
(5) That with regard to the reference to an international penal tribunal in Article VI of the Convention, the United States declares that it reserves the right to effect its participation in any such tribunal only by a treaty entered into specifically for that purpose with the advice and consent of the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

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

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

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

By the President:



Secretary of State