

INTERNATIONAL COURT OF JUSTICE

# APPLICATION INSTITUTING PROCEEDINGS

filed in the Registry of the Court  
on 26 February 2022

DISPUTE RELATING TO ALLEGATIONS OF GENOCIDE

(UKRAINE v. RUSSIAN FEDERATION)

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COUR INTERNATIONALE DE JUSTICE

# REQUÊTE INTRODUCTIVE D'INSTANCE

déposée au Greffe de la Cour  
le 26 février 2022

DIFFÉREND RELATIF À DES ALLÉGATIONS DE GÉNOCIDE

(UKRAINE c. FÉDÉRATION DE RUSSIE)

## **APPLICATION INSTITUTING PROCEEDINGS SUBMITTED BY UKRAINE**

### **I. INTRODUCTION**

1. In accordance with Articles 36(1) and 40 of the Statute of the Court and Article 38 of the Rules of Court, Ukraine hereby submits this Application instituting proceedings against the Russian Federation.

2. This Application concerns a dispute between Ukraine and the Russian Federation relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention” or “Convention”). As Ukraine further explains below, 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. 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.

3. Ukraine emphatically denies that any such genocide has occurred and brings this Application to establish that Russia has no lawful basis to take action in and against Ukraine for the purpose of preventing and punishing any purported genocide.

### **II. JURISDICTION OF THE COURT**

4. Ukraine and the Russian Federation are both Members of the United Nations and therefore bound by the Statute of the Court, including Article 36 (1), which provides that the Court’s jurisdiction “comprises . . . all matters specially provided for . . . in treaties and conventions in force.”

5. Ukraine and the Russian Federation are both parties to the Genocide Convention.<sup>1</sup>

6. Article IX of the Genocide Convention provides:

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.

7. There is a dispute between Ukraine and the Russian Federation within the meaning of Article IX relating to the interpretation, application or fulfilment of the Genocide Convention.

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<sup>1</sup> Genocide Convention, List of Contracting Parties,  
[https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-1&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en).

8. The Russian Federation claims that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and has undertaken military and other actions against Ukraine, including recognizing purportedly independent states on Ukrainian territory, with the express purpose of preventing and punishing such alleged acts of genocide:

- a. In his address of 21 February 2022, the President of the Russian Federation referred to “horror and genocide” allegedly suffered by Donbas communities at the hands of the State of Ukraine as the basis to “take a long overdue decision and to immediately recognise the independence and sovereignty of the Donetsk People’s Republic and the Luhansk People’s Republic.”<sup>2</sup>
- b. In his address to the Russian people on the morning of 24 February 2022, President Putin similarly explained that the purpose of the military operation against Ukraine was “to stop that atrocity, that genocide of the millions of people who live there and who pinned their hopes on Russia.”<sup>3</sup>
- c. In remarks to the United Nations Security Council on 23 February 2022, the Permanent Representative of the Russian Federation asserted that President Putin “decided to start a military operation in Donbas” and that “[t]he goal of this special operation is protection of people who have been victimized and exposed to genocide by the Kiev regime.”<sup>4</sup> The Permanent Representative continued: “To ensure this, we will seek demilitarization and denazification of Ukraine.”<sup>5</sup>
- d. At a press conference on 25 February 2022, Russian Foreign Minister Sergey Lavrov also justified Russia’s military actions against Ukraine as “preventing the neo-Nazis and those who promote methods of genocide from ruling this country.”<sup>6</sup>
- e. In an interview on 25 February 2022, the Russian Ambassador to the European Union was asked about President Putin’s reference to genocide as justification for Russia’s unlawful acts against Ukraine and said, “[w]e can turn to the official term of genocide as coined in international law. If you read the definition it fits pretty well.”<sup>7</sup>

9. Ukraine emphatically denies that any such genocide has occurred, and that the Russian Federation has any lawful basis to take action in and against Ukraine for the purpose

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<sup>2</sup> Address by the President of the Russian Federation of 21 February 2022, <http://en.kremlin.ru/events/president/transcripts/statements/67828>.

<sup>3</sup> Address by the President of the Russian Federation of 24 February 2022, <http://en.kremlin.ru/events/president/transcripts/statements/by-date/24.02.2022>.

<sup>4</sup> Statement and reply by Permanent Representative Vassily Nebenzia at UNSC briefing on Ukraine, 23 February 2022, <https://russiaun.ru/en/news/230222un>.

<sup>5</sup> *Ibid.*

<sup>6</sup> TASS, *Kiev regime controlled by West, neo-Nazis, Lavrov says*, 25 February 2022, <https://tass.com/politics/1411139>.

<sup>7</sup> Georgi Gotev, EURACTIV, *Russian ambassador Chizhov: Nord Stream 2 is not dead, it’s a sleeping beauty*, 25 February 2022, <https://www.euractiv.com/section/global-europe/interview/russian-ambassador-chizhov-nord-stream-2-is-not-dead-its-a-sleeping-beauty/>.

of preventing and punishing genocide under Article I of the Convention. The unlawfulness of Russia's actions is further confirmed by Article VIII of the Convention.

10. In response to Russia's claim, the Ministry of Foreign Affairs of Ukraine issued a statement that Ukraine "strongly denies Russia's allegations of genocide and denies any attempt to use such manipulative allegations as an excuse for Russia's unlawful aggression," noting that under the Genocide Convention, "Russia's claims are baseless and absurd."<sup>8</sup>

11. A dispute has therefore arisen relating to the interpretation and application of the Genocide Convention, as Ukraine and Russia hold opposite views on whether genocide has been committed in Ukraine, and whether Article I of the Convention provides a basis for Russia to use military force against Ukraine to "prevent and to punish" this alleged genocide.

12. Accordingly, pursuant to Article 36 (1) of the Court's Statute and Article IX of the Genocide Convention, the Court has jurisdiction to hear the claims submitted in the present Application by Ukraine against the Russian Federation.

### III. FACTS

13. In an effort to assert its influence and dominance over Ukraine, since the Spring of 2014, the Russian Federation and persons within Russia have systematically supplied illegal armed groups, including the Donetsk People's Republic ("DPR") and the Luhansk People's Republic ("LPR"), with heavy weaponry, money, personnel, and training. With active Russian support, these illegal armed groups comprised of pro-Russian Ukrainians and Russian nationals emerged in the Donbas region of eastern Ukraine, spanning the Donetsk and Luhansk oblasts.<sup>9</sup> In March and April 2014, these illegal armed groups occupied public and administration buildings in Donetsk and Luhansk.<sup>10</sup> On 11 May 2014, the DPR and LPR announced their political goal as autonomy from Kyiv, and held a purported "referendum" that has been roundly condemned.<sup>11</sup>

14. In early September 2014, in the midst of negotiations in Minsk between the Ukrainian and Russian governments to end the conflict in eastern Ukraine, the DPR and LPR articulated a list of political demands, including that the Ukrainian government recognize the special status of their territories and grant them greater autonomy; grant them the right to make

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<sup>8</sup> Statement of the Ministry of Foreign Affairs of Ukraine on Russia's False and Offensive Allegations of Genocide As a Pretext For Its Unlawful Military Aggression, 26 February 2022, <https://mfa.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-nepravdivih-ta-obrazlivih-zvinuvachen-rosiyi-v-genocidi-yak-privodu-dlya-yiyi-protipravnoyi-vijskovoyi-agresiyi>.

<sup>9</sup> See BBC News, *Ukraine Crisis: Key Players in Eastern Unrest* (28 August 2014); Council of the European Union, *List of Persons and Entities Under EU Restrictive Measures Over the Territorial Integrity of Ukraine*, pp. 17, 19 (2017).

<sup>10</sup> OHCHR, *Report on Human Rights Situation in Ukraine* (15 May 2014), para. 90.

<sup>11</sup> OHCHR, *Report on the Human Rights Situation in Ukraine* (15 June 2014), paras. 2, 160–161.

Russian their official language; and grant each region the ability to engage in its own economic relations with Russia.<sup>12</sup>

15. In February 2015, on the eve of further negotiations in Minsk and amidst a wave of attacks on Ukrainian civilians by the illegal armed groups, leaders of both the DPR and LPR again released a detailed list of political demands including “constitutional reforms in Ukraine, including extensive decentralization by granting individual areas of the Donbas an autonomous status.”<sup>13</sup> In service of these aims, the DPR and LPR engaged in what the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) has described as a “reign of intimidation and terror.”<sup>14</sup>

16. The Court already has pending before it a case on the merits concerning the *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination* (Ukraine v. Russian Federation). Ukraine’s pleadings in that case document Russia’s sustained violations of its international obligations from 2014 onwards by failing to take measures to prevent the provision of weapons and other support for the DPR and LPR, as well as engaging in a campaign of discrimination in occupied Crimea. Over the last few days, Russia has moved beyond these already serious breaches of international law to launch a full-scale invasion against Ukraine, based on false and pretextual allegations of genocide in Ukraine’s Luhansk and Donetsk oblasts.

17. Further, in December 2019, leaders from Russia, Ukraine, France and Germany met to affirm their commitment to the deal reached in Minsk in 2015, but there has been no progress since.<sup>15</sup> After a spike in violence, the Joint Forces Operation of Ukraine sought to strengthen a new ceasefire in July 2020.<sup>16</sup> A full ceasefire was restored in December 2021 after numerous violations of the July 2020 ceasefire.<sup>17</sup>

18. After a well-documented military build-up around Ukraine’s borders, on 21 February 2022, the President of Russia issued a statement announcing that he “consider[ed] it necessary to take a long overdue decision and to immediately recognise the independence and

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<sup>12</sup> MKRU, *The DPR and LPR Promise Kiev That They Will Remain Part of Ukraine in Exchange for Recognition of Their Status* (1 September 2014); Petyr Kozlov & Alexey Nikolsky, *The Self-Proclaimed Republics in the East of Ukraine Put Forward their “Negotiation Demands” to Kiev*, *Vedomosti* (2 September 2014).

<sup>13</sup> Lb.ua, *Media Publish the Demands of the DPR and LPR for the Resolution of the Conflict (Documents)* (11 February 2015); Zn.ua, *The DPR’s and LPR’s Proposals at the Negotiations in Minsk* (11 February 2015).

<sup>14</sup> OHCHR, *Report on the Human Rights Situation in Ukraine* (15 July 2014), para. 26.

<sup>15</sup> John Iris, Reuters, *Putin meets Ukraine leader for the first time at Paris peace summit* (9 December 2019), <https://www.reuters.com/article/us-ukraine-crisis-summit/putin-meets-ukraine-leader-for-first-time-at-paris-peace-summit-idUSKBN1YD1TP>.

<sup>16</sup> Reuters, *OSCE says ceasefire agreement reached for eastern Ukraine* (22 December 2021), <https://www.reuters.com/world/europe/osce-says-ceasefire-agreement-reached-eastern-ukraine-2021-12-22/>.

<sup>17</sup> *Ibid.*

sovereignty of the Donetsk People's Republic and the Luhansk People's Republic.”<sup>18</sup> President Putin grounded Russia's actions on unsupported allegations of “horror and genocide” allegedly sponsored, tolerated or somehow initiated by Ukraine:

Not a single day goes by without Donbass communities coming under shelling attacks. The recently formed large military force makes use of attack drones, heavy equipment, missiles, artillery and multiple rocket launchers. The killing of civilians, the blockade, the abuse of people, including children, women and the elderly, continues unabated. As we say, there is no end in sight to this.

Meanwhile, the so-called civilised world, which our Western colleagues proclaimed themselves the only representatives of, prefers not to see this, as if this horror and genocide, which almost 4 million people are facing, do not exist. But they do exist and only because these people did not agree with the West-supported coup in Ukraine in 2014 and opposed the transition towards the Neanderthal and aggressive nationalism and neo-Nazism which have been elevated in Ukraine to the rank of national policy. They are fighting for their elementary right to live on their own land, to speak their own language, and to preserve their culture and traditions.<sup>19</sup>

19. On the same day, President Putin signed an Executive Order on the Recognition of the Donetsk People's Republic and an Executive Order on the Recognition of the Luhansk People's Republic.<sup>20</sup> President Putin also signed a Treaty of Friendship, Cooperation and Mutual Assistance with the so-called Donetsk People's Republic and a Treaty of Friendship, Cooperation and Mutual Assistance with the so-called Luhansk People's Republic.<sup>21</sup> These purported treaties were ratified on 22 February 2022.<sup>22</sup>

20. On 24 February 2022, President Putin announced that he had made a decision to carry out a special military operation” and that “[t]he purpose of this operation is to protect

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<sup>18</sup> Address by the President of the Russian Federation of 21 February 2022, <http://en.kremlin.ru/events/president/transcripts/statements/67828>.

<sup>19</sup> *Ibid.*

<sup>20</sup> Signing of documents recognising Donetsk and Luhansk People's Republics, <http://en.kremlin.ru/events/president/news/67829>.

<sup>21</sup> Signing of documents recognising Donetsk and Luhansk People's Republics, <http://en.kremlin.ru/events/president/news/67829>.

<sup>22</sup> President signed Federal Law On Ratifying the Treaty of Friendship, Cooperation and Mutual Assistance Between the Russian Federation and the Donetsk People's Republic, dated 22 February 2022, <http://en.kremlin.ru/events/president/news/67835>; President signed Federal Law On Ratifying the Treaty of Friendship, Cooperation and Mutual Assistance Between the Russian Federation and the Luhansk People's Republic, dated 22 February 2022, <http://en.kremlin.ru/events/president/news/67834>.

people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime.”<sup>23</sup> President Putin added:

As I said in my previous address, you cannot look without compassion at what is happening there. It became impossible to tolerate it. We had to stop that atrocity, that genocide of the millions of people who live there and who pinned their hopes on Russia, on all of us. It is their aspirations, the feelings and pain of these people that were the main motivating force behind our decision to recognise the independence of the Donbass people’s republics.<sup>24</sup>

21. There is no factual basis for the existence of genocide in the Luhansk and Donetsk oblasts, and Russia has advanced no evidence to substantiate its allegation. Indeed, reports on the human rights situation in Ukraine by the OHCHR do not mention any evidence of genocide in Ukraine. These reports are “verified information collected from primary and secondary sources that are assessed as credible and reliable” and “included in the report where the ‘reasonable grounds to believe’ standard of proof is met.”<sup>25</sup> The human rights report published on 23 September 2021, covering a period from 1 February to 31 July 2021, does not mention any evidence of genocide.<sup>26</sup> The most recent update on the human rights situation in Ukraine, covering the period from 1 August to 31 October 2021 “focuses on key human rights developments in Ukraine” and also does not mention any evidence of genocide.<sup>27</sup>

22. In addition to these human rights reports, the OHCHR also publishes related reports, like its recent report on fundamental freedoms in Ukraine covering the period from 1 November 2019 to 31 October 2021.<sup>28</sup> Again, this report on fundamental freedoms mentioned no indication of genocide in Ukrainian territory.<sup>29</sup> Given the lack of any evidence indicating acts of genocide, Russia clearly has no basis on which to allege such an egregious human rights violation. The Russian Federation’s claimed objective to “de-nazify” Ukraine is a transparent pretext for an unprovoked war of aggression.

23. The harm suffered by Ukraine due to Russia’s unprovoked invasion will be immeasurable. The U.N. Secretary-General called the impending war “what may be the most devastating war since the start of the century.”<sup>30</sup> In addition to heavy shelling and civilian

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<sup>23</sup> Address by the President of the Russian Federation of 24 February 2022, <http://en.kremlin.ru/events/president/news/67843>.

<sup>24</sup> *Ibid.*

<sup>25</sup> OHCHR, *Report on the Human Rights Situation in Ukraine (1 February - 31 July 2021)* (23 September 2021), para. 21.

<sup>26</sup> *See ibid.*

<sup>27</sup> OHCHR, Human Rights Monitoring Mission in Ukraine, *Update on the Human Rights Situation in Ukraine (1 August - 31 October 2021)* (30 November 2021), p. 1.

<sup>28</sup> *See* OHCHR, *Civic Space and Fundamental Freedoms in Ukraine (1 November 2019- 31 October 2021)* (8 December 2021).

<sup>29</sup> *See ibid.*

<sup>30</sup> UN News, *As Security Council meets on Ukraine crisis, Russia announces start of ‘special military operation,’* (24 February 2022), <https://news.un.org/en/story/2022/02/1112592>.

and military casualties, Russia has also launched a large-scale cyberattack aimed at Ukrainian infrastructure.<sup>31</sup> The U.N. Under-Secretary-General for Political and Peacebuilding Affairs noted the “unacceptably high cost – in human suffering and destruction” caused by Russia’s escalation.<sup>32</sup>

24. In short, Russia has turned the Genocide Convention on its head – making a false claim of genocide as a basis for actions on its part that constitute grave violations of the human rights of millions of people across Ukraine. Russia’s lie is all the more offensive, and ironic, because it appears that it is Russia planning acts of genocide in Ukraine. Russia is intentionally killing and inflicting serious injury on members of the Ukrainian nationality – the *actus reus* of genocide under Article II of the Convention. These acts must be viewed together with President Putin’s vile rhetoric denying the very existence of a Ukrainian people, which is suggestive of Russia’s intentional killings bearing genocidal intent.

25. Russia’s assault on Ukraine and the international order has been widely condemned by the international community. In response to the Russian Federation’s armed attack on Ukraine, on 25 February 2022 the Council of Europe suspended Russia’s representation rights in the organization’s decision-making body and debate forum.<sup>33</sup> Only the Russian Federation’s veto prevented the adoption of a draft U.N. Security Council resolution that would have condemned Russia’s actions.<sup>34</sup> The Organization of American States (OAS) has also condemned Russia’s “naked aggression, the likes of which have not been seen in Europe for some 70 years.”<sup>35</sup>

#### IV. LEGAL GROUNDS FOR UKRAINE’S CLAIMS

26. 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.

- a. Article I of the Convention provides that “genocide, whether committed in time of peace or in time of war, is a crime under international law” and that the Contracting Parties “undertake to prevent and punish such a crime.”
- b. Article II of the Convention defines genocide as “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

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<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Council of Europe suspends Russia’s rights of representation* (25 February 2022), <https://www.coe.int/en/web/portal/-/council-of-europe-suspends-russia-s-rights-of-representation>.

<sup>34</sup> UN News, *Russia blocks Security Council action on Ukraine* (25 February 2022), <https://news.un.org/en/story/2022/02/1112802>.

<sup>35</sup> *OAS Member States Condemn Russian Attack on Ukraine* (25 February 2022), <https://usoas.usmission.gov/oas-member-states-condemn-russian-attack-on-ukraine/>.



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.”

- c. Article III of the Convention provides that “[t]he 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.”

27. The duty to prevent and punish genocide enshrined in Article I of the Convention necessarily implies that this duty must be performed in good faith and not abused, and that one Contracting Party may not subject another Contracting Party to unlawful action, including armed attack, especially when it is based on a wholly unsubstantiated claim of preventing and punishing genocide.

28. 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.

29. The Russian Federation’s declaration and implementation of measures in the form of a “special military operation,” as well as acts of recognition, based on a false claim of genocide is incompatible with the Genocide Convention and violates Ukraine’s rights.

## **V. RELIEF SOUGHT**

30. Ukraine respectfully requests the Court to:

- a. Adjudge and declare that, contrary to what the Russian Federation claims, no acts of genocide, as defined by Article III of the Genocide Convention, have been committed in the Luhansk and Donetsk oblasts of Ukraine.
- b. Adjudge and declare that the Russian Federation cannot lawfully take any action under the Genocide Convention in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims of genocide in the Luhansk and Donetsk oblasts of Ukraine.
- c. Adjudge and declare that the Russian Federation’s recognition of the independence of the so-called “Donetsk People’s Republic” and “Luhansk People’s Republic” on 22 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.
- d. Adjudge and declare that the “special military operation” declared and carried out by the Russian Federation on and after 24 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.
- e. Require that the Russian Federation provide assurances and guarantees of non-repetition that it will not take any unlawful measures in and against Ukraine, including the use of force, on the basis of its false claim of genocide.
- f. Order full reparation for all damage caused by the Russian Federation as a consequence of any actions taken on the basis of Russia’s false claim of genocide.

## **VI. JUDGE *Ad Hoc***

31. In accordance with the provisions of Article 31(2) of the Statute of the Court, and Article 35(1) of the Rules of the Court, Ukraine declares its intention to exercise its right to choose a judge *ad hoc*.

## **VII. RESERVATION OF RIGHTS**

32. Ukraine reserves the right to supplement and/or amend this Application, as well as the legal grounds invoked and the relief requested, as may be necessary to preserve and vindicate its rights under the Genocide Convention.

## **VIII. APPOINTMENT OF AGENT**

33. Ukraine hereby designates as its Agent Mr. Anton Korynevich, Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea.


34. Ukraine hereby designates as its Co-Agent Ms. Oksana Zolotaryova, Director, International Law Department, Ministry of Foreign Affairs of Ukraine.

35. Pursuant to Article 40(1) of the Rules of the Court, communications relating to this case should be sent to:

Embassy of Ukraine in the Kingdom of the Netherlands  
Zeestraat, 78  
2518 AD The Hague  
Kingdom of the Netherlands



Anton Korynevich  
Permanent Representative of the President of Ukraine  
in the Autonomous Republic of Crimea  
Agent of Ukraine



Oksana Zolotaryova  
Director, International Law Department  
Ministry of Foreign Affairs of Ukraine  
Co-Agent of Ukraine

26 February 2022