

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

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

(UKRAINE v. RUSSIAN FEDERATION)

REQUEST FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER OF 16 MARCH 2022

2022

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

ALLÉGATIONS DE GÉNOCIDE
AU TITRE DE LA CONVENTION
POUR LA PRÉVENTION ET LA RÉPRESSION
DU CRIME DE GÉNOCIDE

(UKRAINE c. FÉDÉRATION DE RUSSIE)

DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES

ORDONNANCE DU 16 MARS 2022

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ORDONNANCE

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INTERNATIONAL COURT OF JUSTICE

YEAR 2022

16 March 2022

ALLEGATIONS OF GENOCIDE
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ON THE PREVENTION AND PUNISHMENT
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(UKRAINE v. RUSSIAN FEDERATION)

REQUEST FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER

Present: President DONOGHUE; Vice-President GEVORGIAN; Judges TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, ROBINSON, SALAM, IWASAWA, NOLTE, CHARLESWORTH; Judge ad hoc DAUDET; Registrar GAUTIER.

The International Court of Justice,
Composed as above,
After deliberation,
Having regard to Articles 41 and 48 of the Statute of the Court and
Articles 73, 74 and 75 of the Rules of Court,

Makes the following Order:

1. On 26 February 2022, at 9.30 p.m., Ukraine filed in the Registry of the Court an Application instituting proceedings against the Russian Federation concerning “a dispute . . . relating to the interpretation, applica-

tion and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide” (hereinafter the “Genocide Convention” or the “Convention”).

2. At the end of its Application, 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.”

3. In its Application, Ukraine seeks to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention.

4. Together with the Application, Ukraine submitted a Request for the indication of provisional measures with reference to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

5. At the end of its Request, Ukraine asked the Court to indicate the following provisional measures:

- “(a) The Russian Federation shall immediately suspend the military operations commenced on 24 February 2022 that have as their stated purpose and objective the prevention and punishment of a claimed genocide in the Luhansk and Donetsk oblasts of Ukraine.

- (b) The Russian Federation shall immediately ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, take no steps in furtherance of the military operations which have as their stated purpose and objective preventing or punishing Ukraine for committing genocide.
- (c) The Russian Federation shall refrain from any action and shall provide assurances that no action is taken that may aggravate or extend the dispute that is the subject of this Application, or render this dispute more difficult to resolve.
- (d) The Russian Federation shall provide a report to the Court on measures taken to implement the Court's Order on Provisional Measures one week after such Order and then on a regular basis to be fixed by the Court."

6. Ukraine also requested the President of the Court

"pursuant to Article 74 (4) of the Rules of Court . . . to call upon the Russian Federation to immediately halt all military actions in Ukraine pending the holding of a hearing, to enable any order the Court may make on the request for provisional measures to have its appropriate effects".

7. In the morning of 27 February 2022, the Registrar communicated by email to the Russian Federation an advance copy of the Application and Request for the indication of provisional measures. These documents were formally communicated to the Russian Federation on 28 February 2022, pursuant to Article 40, paragraph 2, of the Statute of the Court in respect of the Application, and pursuant to Article 73, paragraph 2, of the Rules of Court in respect of the Request for the indication of provisional measures. The Registrar also notified the Secretary-General of the United Nations of the filing of the Application and the Request by Ukraine.

8. Pending the notification provided for by Article 40, paragraph 3, of the Statute, the Registrar informed all States entitled to appear before the Court of the filing of the Application and the Request for the indication of provisional measures by a letter dated 2 March 2022.

9. Since the Court included upon the Bench no judge of Ukrainian nationality, Ukraine proceeded to exercise the right conferred upon it by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case; it chose Mr. Yves Daudet.

10. By a letter dated 1 March 2022, the President of the Court, exercising the powers conferred upon her under Article 74, paragraph 4, of the Rules of Court, called the attention of the Russian Federation to the need to act in such a way as would enable any order the Court may make on the request for provisional measures to have its appropriate effects.

11. By letters dated 1 March 2022, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of the Rules, the Court had fixed 7 and 8 March 2022 as the dates for the oral proceedings on the request for the indication of provisional measures. The Registrar indicated that the hearings would be held in a hybrid format, pursuant to which each Party could choose to have a certain number of representatives present in the Great Hall of Justice, with other members of the delegation participating by video-link.

12. By a letter dated 5 March 2022, the Ambassador of the Russian Federation to the Kingdom of the Netherlands indicated that his Government had decided not to participate in the oral proceedings due to open on 7 March 2022.

13. At the public hearing held in a hybrid format on 7 March 2022, oral observations on the request for the indication of provisional measures were presented by:

On behalf of Ukraine: Mr. Anton Korynevych,
Mr. Jean-Marc Thouvenin,
Mr. David M. Zionts,
Ms Marney L. Cheek,
Mr. Jonathan Gimblett,
Mr. Harold Hongju Koh,
Ms Oksana Zolotaryova.

14. At the end of its oral observations, Ukraine asked the Court to indicate the following provisional measures:

- “(a) The Russian Federation shall immediately suspend the military operations commenced on 24 February 2022 that have as their stated purpose and objective the prevention and punishment of a claimed genocide in the Luhansk and Donetsk oblasts of Ukraine.
- (b) The Russian Federation shall immediately ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, take no steps in furtherance of the military operations which have as their stated purpose and objective preventing or punishing Ukraine for committing genocide.
- (c) The Russian Federation shall refrain from any action and shall provide assurances that no action is taken that may aggravate or extend the dispute that is the subject of this Application, or render this dispute more difficult to resolve.
- (d) The Russian Federation shall provide a report to the Court on measures taken to implement the Court’s Order on Provisional Measures one week after such order and then on a regular basis to be fixed by the Court.”

15. Under cover of a letter dated 7 March 2022 received in the Registry shortly after the closure of the hearing, the Ambassador of the Russian Federation to the Kingdom of the Netherlands communicated to the Court a document setting out “the position of the Russian Federation regarding the lack of jurisdiction of the Court in t[he] case”.

16. Since the Government of the Russian Federation did not appear at the oral proceedings, no formal request was presented by that Government. However, in the document communicated to the Court on 7 March 2022, the Russian Federation contends that the Court lacks jurisdiction to entertain the case and “requests the Court to refrain from indicating provisional measures and to remove the case from its list”.

* * *

I. INTRODUCTION

17. The context in which the present case comes before the Court is well-known. On 24 February 2022, the President of the Russian Federation, Mr. Vladimir Putin, declared that he had decided to conduct a “special military operation” against Ukraine. Since then, there has been intense fighting on Ukrainian territory, which has claimed many lives, has caused extensive displacement and has resulted in widespread damage. The Court is acutely aware of the extent of the human tragedy that is taking place in Ukraine and is deeply concerned about the continuing loss of life and human suffering.

18. The Court is profoundly concerned about the use of force by the Russian Federation in Ukraine, which raises very serious issues of international law. The Court is mindful of the purposes and principles of the United Nations Charter and of its own responsibilities in the maintenance of international peace and security as well as in the peaceful settlement of disputes under the Charter and the Statute of the Court. It deems it necessary to emphasize that all States must act in conformity with their obligations under the United Nations Charter and other rules of international law, including international humanitarian law.

19. The ongoing conflict between the Parties has been addressed in the framework of several international institutions. The General Assembly of the United Nations adopted a resolution referring to many aspects of the conflict on 2 March 2022 (doc. A/RES/ES-11/1). The present case before the Court, however, is limited in scope, as Ukraine has instituted these proceedings only under the Genocide Convention.

*

20. The Court regrets the decision taken by the Russian Federation not to participate in the oral proceedings on the request for the indication

of provisional measures, as set out in the above-mentioned letter of 5 March 2022 (see paragraph 12 above).

21. The non-appearance of a party has a negative impact on the sound administration of justice, as it deprives the Court of assistance that a party could have provided to it. Nevertheless, the Court must proceed in the discharge of its judicial function at any phase of the case (*Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 2020*, p. 464, para. 25; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, *I.C.J. Reports 1986*, p. 23, para. 27).

22. Though formally absent from the proceedings, non-appearing parties sometimes submit to the Court letters and documents in ways and by means not contemplated by its Rules (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, *I.C.J. Reports 1986*, p. 25, para. 31). It is valuable for the Court to know the views of both parties in whatever form those views may have been expressed (*ibid.*). The Court will therefore take account of the document communicated by the Russian Federation on 7 March 2022 to the extent that it finds this appropriate in discharging its duties.

23. The Court recalls that the non-appearance of one of the States concerned cannot by itself constitute an obstacle to the indication of provisional measures (*United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, *Provisional Measures, Order of 15 December 1979*, *I.C.J. Reports 1979*, p. 13, para. 13). It emphasizes that the non-participation of a party in the proceedings at any stage of the case cannot, in any circumstances, affect the validity of its decision (cf. *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 2020*, p. 464, para. 26; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, *I.C.J. Reports 1986*, p. 23, para. 27). Should the present case extend beyond the current phase, the Russian Federation, which remains a Party to the case, will be able, if it so wishes, to appear before the Court to present its arguments (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, *I.C.J. Reports 1986*, pp. 142-143, para. 284).

II. PRIMA FACIE JURISDICTION

1. General Observations

24. The Court may indicate provisional measures only if the provisions relied on by the applicant appear, *prima facie*, to afford a basis on which its jurisdiction could be founded, but it need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case

(see, for example, *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. 9, para. 16).

25. In the present case, Ukraine seeks to found the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention (see paragraph 3 above). The Court must therefore first determine whether those provisions prima facie confer upon it jurisdiction to rule on the merits of the case, enabling it — if the other necessary conditions are fulfilled — to indicate provisional measures.

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

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

27. Ukraine and the Russian Federation are both parties to the Genocide Convention. Ukraine deposited its instrument of ratification on 15 November 1954 with a reservation to Article IX of the Convention; on 20 April 1989, the depositary received notification that this reservation had been withdrawn. The Russian Federation is a party to the Genocide Convention as the State continuing the legal personality of the Union of Soviet Socialist Republics, which deposited its instrument of ratification on 3 May 1954 with a reservation to Article IX of the Convention; on 8 March 1989, the depositary received notification that this reservation had been withdrawn.

2. *Existence of a Dispute relating to the Interpretation, Application or Fulfilment of the Genocide Convention*

28. Article IX of the Genocide Convention makes the Court’s jurisdiction conditional on the existence of a dispute relating to the interpretation, application or fulfilment of the Convention. According to the established case law of the Court, a dispute is “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11). In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other” (*South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328). The two sides must “‘hold clearly opposite views concerning the question of the performance or non-performance of certain’ international obligations” (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*,

p. 26, para. 50, citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74). To determine whether a dispute exists in the present case, the Court cannot limit itself to noting that one of the Parties maintains that the Convention applies, while the other denies it (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 414, para. 18).

29. Since Ukraine has invoked as the basis of the Court's jurisdiction the compromissory clause in an international convention, the Court must ascertain, at the present stage of the proceedings, whether it appears that the acts complained of by the Applicant are capable of falling within the scope of that convention *ratione materiae* (cf. *Jadhav (India v. Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 239, para. 30).

* *

30. Ukraine contends that a dispute exists between it and the Russian Federation relating to the interpretation, application or fulfilment of the Genocide Convention. It maintains that the Parties disagree on whether genocide, as defined in Article II of the Convention, has occurred or is occurring in the Luhansk and Donetsk oblasts of Ukraine and whether Ukraine has committed genocide. In this regard, the Applicant submits that it profoundly disagrees with the unsubstantiated allegation of the Russian Federation that genocide has taken place in Ukraine and that it has made this known to the Russian Federation on multiple occasions since September 2014, including through a statement by the Minister for Foreign Affairs of Ukraine before the General Assembly of the United Nations on 23 February 2022.

31. Ukraine further argues that the dispute between the Parties concerns the question whether, as a consequence of the Russian Federation's unilateral assertion that genocide is occurring, the Russian Federation has a lawful basis to take military action in and against Ukraine to prevent and punish genocide pursuant to Article I of the Genocide Convention. Ukraine considers that the Russian Federation "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. It asserts that, rather than taking military action to prevent and punish genocide, the Russian Federation should have seised the organs of the United Nations under Article VIII of the Convention or seised the Court under Article IX thereof. Ukraine states that it vehemently disagrees with the Russian Federation's interpretation, application and fulfilment of the Convention. Referring, *inter alia*, to a statement by the Ukrainian Ministry of Foreign Affairs of 26 February 2022, Ukraine asserts that the Russian Federation "could

not have been unaware, that its views were ‘positively opposed’” by Ukraine.

*

32. In the document communicated to the Court on 7 March 2022, the Russian Federation states that the only basis for jurisdiction referred to by Ukraine is the dispute resolution clause contained in Article IX of the Genocide Convention. However, according to the Respondent, it is clear from the plain language of the Convention that it does not regulate the use of force between States. The Respondent submits that, in order to “glue” the Convention to the use of force for the purposes of invoking its dispute resolution clause, Ukraine has claimed that the Russian Federation commenced its “special military operation” on the basis of allegations of genocide committed by Ukraine. The Russian Federation asserts that, in reality, its “special military operation” on the territory of Ukraine is based on Article 51 of the United Nations Charter and customary international law and that the Convention cannot provide a legal basis for a military operation, which is beyond the scope of the Convention.

33. The Respondent further states that the legal basis for the “special military operation” was communicated on 24 February 2022 to the Secretary-General of the United Nations and the United Nations Security Council by the Permanent Representative of the Russian Federation to the United Nations in the form of a notification under Article 51 of the United Nations Charter (circulated as document S/2022/154 of the Security Council). The Russian Federation contends that, while the address of President Putin “to the citizens of Russia” that was appended to the notification may in certain contexts have referred to genocide, this reference is not the same as the invocation of the Convention as a legal justification for its operation, nor does it indicate that the Russian Federation recognizes the existence of a dispute under the Convention. The Russian Federation emphasizes that there are no references to the Genocide Convention in the address made by its President on 24 February 2022.

34. The Russian Federation therefore concludes that Ukraine’s “Application and Request manifestly fall beyond the scope of the Convention and thus the jurisdiction of the Court”; it asks the Court to remove the case from its List.

* *

35. The Court recalls that, for the purposes of deciding whether there was a dispute between the Parties at the time of the filing of the Application, it takes into account in particular any statements or documents exchanged between the Parties, as well as any exchanges made in multilateral settings. In so doing, it pays special attention to the author of the

statement or document, their intended or actual addressee, and their content. The existence of a dispute is a matter for objective determination by the Court; it is a matter of substance, and not a question of form or procedure (see *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. 12, para. 26).

36. The Court notes that the Applicant disputes the Russian Federation's allegation that Ukraine has committed or is committing genocide in the Luhansk and Donetsk regions of Ukraine. Ukraine also asserts that nothing in the Convention authorizes the Russian Federation to use force against Ukraine as a means to fulfil its obligation under Article I thereof to prevent and punish genocide.

37. In this regard the Court observes that, since 2014, various State organs and senior representatives of the Russian Federation have referred, in official statements, to the commission of acts of genocide by Ukraine in the Luhansk and Donetsk regions. The Court observes, in particular, that the Investigative Committee of the Russian Federation — an official State organ — has, since 2014, instituted criminal proceedings against high-ranking Ukrainian officials regarding the alleged commission of acts of genocide against the Russian-speaking population living in the above-mentioned regions “in violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide”.

38. The Court recalls that, in an address made on 21 February 2022, the President of the Russian Federation, Mr. Vladimir Putin, described the situation in Donbass as a “horror and genocide, which almost 4 million people are facing”.

39. By a letter dated 24 February 2022 (see paragraph 33 above), the Permanent Representative of the Russian Federation to the United Nations requested the Secretary-General to circulate, as a document of the Security Council, the

“text of the address of the President of the Russian Federation, Vladimir Putin, to the citizens of Russia, informing them of the measures taken in accordance with Article 51 of the Charter of the United Nations in exercise of the right of self-defence”.

In his address, pronounced on 24 February 2022, the President of the Russian Federation explained that he had decided, “in accordance with Article 51 (Chapter VII) of the Charter of the United Nations . . . to conduct a special military operation with the approval of the Federation Council of Russia and pursuant to the treaties on friendship and mutual assistance with the Donetsk People's Republic and the Lugansk People's Republic”. He specified that the “purpose” of the special operation was “to protect people who have been subjected to abuse and genocide by the Kiev regime for eight years”. He stated that the Russian Federation had to stop “a genocide” against millions of people and that it would seek the

prosecution of those who had committed numerous bloody crimes against civilians, including citizens of the Russian Federation.

40. The Permanent Representative of the Russian Federation to the United Nations, referring to the address by the President of the Russian Federation of 24 February 2022, explained at a meeting of the Security Council on Ukraine that “the purpose of the special operation [was] to protect people who ha[d] been subjected to abuse and genocide by the Kyiv regime for eight years”.

41. Two days later, the Permanent Representative of the Russian Federation to the European Union stated in an interview that the operation was a “peace enforcement special military operation” carried out in an “effort aimed at de-Nazification”, adding that people had been actually “exterminated” and that “the official term of genocide as coined in international law[, if one] read[s] the definition, . . . fits pretty well”.

42. In response to the Russian Federation’s allegations and its military actions, the Ministry of Foreign Affairs of Ukraine issued a statement on 26 February 2022, saying that Ukraine “strongly denies Russia’s allegations of genocide” and disputes “any attempt to use such manipulative allegations as an excuse for Russia’s unlawful aggression”.

43. At the present stage of these proceedings, the Court is not required to ascertain whether any violations of obligations under the Genocide Convention have occurred in the context of the present dispute. Such a finding could be made by the Court only at the stage of the examination of the merits of the present case. At the stage of making an order on a request for the indication of provisional measures, the Court’s task is to establish whether the acts complained of by Ukraine appear to be capable of falling within the provisions of the Genocide Convention.

44. The Court recalls that, while it is not necessary for a State to refer expressly to a specific treaty in its exchanges with the other State to enable it later to invoke the compromissory clause of that instrument to institute proceedings before the Court (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility, Judgment*, *I.C.J. Reports 1984*, pp. 428-429, para. 83), the exchanges must refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to ascertain that there is, or may be, a dispute with regard to that subject-matter (*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 (I)*, p. 85, para. 30). The Court considers that, in the present proceedings, the evidence in the case file demonstrates prima facie that statements made by the Parties referred to the subject-matter of the Genocide Convention in a sufficiently clear way to allow Ukraine to invoke the compromissory clause in this instrument as a basis for the Court’s jurisdiction.

45. The statements made by the State organs and senior officials of the Parties indicate a divergence of views as to 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. In the Court's view, the acts complained of by the Applicant appear to be capable of falling within the provisions of the Genocide Convention.

46. The Court recalls the Russian Federation's assertion that its "special military operation" is based on Article 51 of the United Nations Charter and customary international law (see paragraphs 32-33). The Court observes in this respect that certain acts or omissions may give rise to a dispute that falls within the ambit of more than one treaty (cf. *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 27, para. 56). The above-referenced assertion of the Russian Federation does not therefore preclude a prima facie finding by the Court that the dispute presented in the Application relates to the interpretation, application or fulfilment of the Genocide Convention.

47. The Court finds therefore that the above-mentioned elements are sufficient at this stage to establish prima facie the existence of a dispute between the Parties relating to the interpretation, application or fulfilment of the Genocide Convention.

3. Conclusion as to Prima Facie Jurisdiction

48. In light of the foregoing, the Court concludes that, prima facie, it has jurisdiction pursuant to Article IX of the Genocide Convention to entertain the case.

49. Given the above conclusion, the Court considers that it cannot accede to the Russian Federation's request that the case be removed from the General List for manifest lack of jurisdiction.

III. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE LINK BETWEEN SUCH RIGHTS AND THE MEASURES REQUESTED

50. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits thereof. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (see, for example, *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. 18, para. 43).

51. At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which Ukraine wishes to see protected exist; it need only decide whether the rights claimed by Ukraine on the merits, and for which it is seeking protection, are plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested (*ibid.*, para. 44).

* *

52. In the present proceedings, Ukraine argues that it seeks provisional measures to protect its rights “not to be subject to a false claim of genocide”, and “not to be subjected to another State’s military operations on its territory based on a brazen abuse of Article I of the Genocide Convention”. It states that the Russian Federation has acted inconsistently with its obligations and duties, as set out in Articles I and IV of the Convention.

53. Ukraine contends that it has a right to demand good faith performance of obligations under the Genocide Convention by the Russian Federation, in accordance with the object and purpose of the Convention. It states that the Russian Federation has abused and misused the rights and duties stipulated in the Convention and that the “special military operation” of the Respondent is an aggression undertaken “under the guise” of the duty to prevent and punish genocide, enshrined in Articles I and IV of the Convention, and that it frustrates the object and purpose of the Convention.

54. The Applicant further submits that it has a right under the Convention not to be harmed by the Russian Federation’s misuse and abuse of the Convention. It considers in particular that it has a right not to suffer grave harm as a result of a military action falsely cloaked as one undertaken to prevent and punish genocide.

55. Ukraine asserts that the above-mentioned rights are grounded in a possible interpretation of the Genocide Convention and are therefore plausible.

* *

56. The Court observes that, in accordance with Article I of the Convention, all States parties thereto have undertaken “to prevent and to punish” the crime of genocide. Article I does not specify the kinds of measures that a Contracting Party may take to fulfil this obligation. However, the Contracting Parties must implement this obligation in good faith, taking into account other parts of the Convention, in particular Articles VIII and IX, as well as its preamble.

Pursuant to Article VIII of the Convention, a Contracting Party that considers that genocide is taking place in the territory of another Con-

tracting 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”. In addition, pursuant to Article IX, such a Contracting Party may submit to the Court a dispute relating to the interpretation, application or fulfilment of the Convention.

57. A Contracting Party may resort to other means of fulfilling its obligation to prevent and punish genocide that it believes to have been committed by another Contracting Party, such as bilateral engagement or exchanges within a regional organization. However, the Court emphasizes that, in discharging its duty to prevent genocide, “every State may only act within the limits permitted by international law”, as was stated in a previous case brought under the Convention (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *I.C.J. Reports 2007 (I)*, p. 221, para. 430).

58. The acts undertaken by the Contracting Parties “to prevent and to punish” genocide must be in conformity with the spirit and aims of the United Nations, as set out in Article 1 of the United Nations Charter. In this regard, the Court recalls that, under Article 1 of the United Nations Charter, the purposes of the United Nations are, *inter alia*,

“[t]o maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”.

59. The Court can only take a decision on the Applicant’s claims if the case proceeds to the merits. At the present stage of the proceedings, it suffices to observe that the Court is not in possession of evidence substantiating the allegation of the Russian Federation that genocide has been committed on Ukrainian territory. Moreover, it is doubtful that the Convention, in light of its object and purpose, authorizes a Contracting Party’s unilateral use of force in the territory of another State for the purpose of preventing or punishing an alleged genocide.

60. Under these circumstances, the Court considers that Ukraine has a plausible right not to be subjected to military operations by the Russian Federation for the purpose of preventing and punishing an alleged genocide in the territory of Ukraine.

* *

61. The Court now turns to the condition of the link between the rights claimed by Ukraine and the provisional measures requested.

* *

62. Ukraine claims that there is a clear link between the plausible rights that it seeks to preserve and the first two provisional measures that it requests. In particular, the first two provisional measures share a direct link to Ukraine's right under Article I to good faith performance of the Convention by any State party.

* *

63. The Court has already found that Ukraine is asserting a right that is plausible under the Genocide Convention (see paragraphs 50-60 above). The Court considers that, by their very nature, the first two provisional measures sought by Ukraine (see paragraph 14 above) are aimed at preserving the right of Ukraine that the Court has found to be plausible. As to the third and fourth provisional measures requested by Ukraine, the question of their link with that plausible right does not arise, in so far as such measures would be directed at preventing any action which may aggravate or extend the existing dispute or render it more difficult to resolve, and at providing information on the compliance with any specific provisional measure indicated by the Court (see *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. 24, para. 61).

64. The Court concludes, therefore, that a link exists between the right of Ukraine that the Court has found to be plausible and the requested provisional measures.

IV. RISK OF IRREPARABLE PREJUDICE AND URGENCY

65. The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences (see, for example, *ibid.*, para. 64, referring to *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018 (II)*, p. 645, para. 77).

66. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights claimed before the Court gives its final decision. The condition of urgency is met when the acts susceptible of causing irreparable prejudice can

“occur at any moment” before the Court makes a final decision on the case (*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. 24, para. 65). The Court must therefore consider whether such a risk exists at this stage of the proceedings.

67. The Court is not called upon, for the purposes of its decision on the request for the indication of provisional measures, to establish the existence of breaches of obligations under the Genocide Convention, but to determine whether the circumstances require the indication of provisional measures for the protection of the right found to be plausible. It cannot at this stage make definitive findings of fact, and the right of each Party to submit arguments in respect of the merits remains unaffected by the Court’s decision on the request for the indication of provisional measures.

* *

68. Ukraine submits that there is an urgent need to protect its people from the irreparable harm caused by the Russian Federation’s military measures that have been launched on a pretext of genocide. It emphasizes that the invasion by the Russian Federation has resulted in numerous casualties among Ukrainian civilians and military personnel, the bombing of numerous cities across Ukraine, and the displacement of over one and a half million Ukrainian civilians both within Ukraine and across its international borders.

69. Ukraine asserts that, in assessing whether the condition of urgency is satisfied in cases involving ongoing conflict, the Court typically considers whether the population at risk is particularly vulnerable, the fragility of the overall situation, including the likelihood of aggravation of the dispute, and the risk of reoccurrence of harm. Ukraine submits that the Court has frequently stated that loss of life constitutes an irreparable harm.

70. In this regard, Ukraine contends that thousands of people have already been killed in the conflict and that, with every day that passes, more lives will be lost and probably at an accelerating rate. It argues that the refugee crisis is another example of irreparable harm, pointing to the uncertainty that these displaced individuals will ever be able to return to their homes and the lasting psychological trauma the conflict will cause them even if they are resettled. It emphasizes that the population is extremely vulnerable, with many lacking food, electricity and water; that the overall situation is extremely fragile; and that the risk of aggravation of the crisis is acute. Ukraine further asserts that the Russian Federation’s military action poses grave environmental risks, not only to Ukraine but also for the wider region, referring in particular to the dangers posed to Ukraine’s civil nuclear industry and toxic smoke released by attacks on fuel depots.

71. Ukraine submits that the seriousness of the situation unambiguously satisfies the conditions of irreparable harm and urgency necessary for the imposition of provisional measures.

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72. The Russian Federation, for its part, submits that, contrary to what Ukraine asserts, the urgency must pertain not to the situation in general but to the protection of rights provided for by the Convention.

* *

73. Having previously determined that Ukraine can plausibly assert a right under the Genocide Convention and that there is a link between this right and the provisional measures requested, the Court now considers whether irreparable prejudice could be caused to this right and whether there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to this right before the Court gives its final decision.

74. The Court considers that the right of Ukraine that it has found to be plausible (see paragraph 60 above) is of such a nature that prejudice to it is capable of causing irreparable harm. Indeed, any military operation, in particular one on the scale carried out by the Russian Federation on the territory of Ukraine, inevitably causes loss of life, mental and bodily harm, and damage to property and to the environment.

75. The Court considers that the civilian population affected by the present conflict is extremely vulnerable. The “special military operation” being conducted by the Russian Federation has resulted in numerous civilian deaths and injuries. It has also caused significant material damage, including the destruction of buildings and infrastructure. Attacks are ongoing and are creating increasingly difficult living conditions for the civilian population. Many persons have no access to the most basic foodstuffs, potable water, electricity, essential medicines or heating. A very large number of people are attempting to flee from the most affected cities under extremely insecure conditions.

76. In this regard, the Court takes note of resolution A/RES/ES-11/1 of 2 March 2022, of the General Assembly of the United Nations, which, *inter alia*, “[e]xpress[es] grave concern at reports of attacks on civilian facilities such as residences, schools and hospitals, and of civilian casualties, including women, older persons, persons with disabilities, and children”, “[r]ecogniz[es] that the military operations of the Russian Federation inside the sovereign territory of Ukraine are on a scale that the international community has not seen in Europe in decades and that urgent action is needed to save this generation from the scourge of war”, “[c]ondemn[s] the decision of the Russian Federation to increase the readiness of its nuclear forces” and “[e]xpress[es] grave concern at the deteriorating humanitarian situation in and around Ukraine, with an

increasing number of internally displaced persons and refugees in need of humanitarian assistance”.

77. In light of these circumstances, the Court concludes that disregard of the right deemed plausible by the Court (see paragraph 60 above) could cause irreparable prejudice to this right and that there is urgency, in the sense that there is a real and imminent risk that such prejudice will be caused before the Court makes a final decision in the case.

V. CONCLUSION AND MEASURES TO BE ADOPTED

78. The Court concludes from all of the above considerations that the conditions required by its Statute for it to indicate provisional measures are met. It is therefore necessary, pending its final decision, for the Court to indicate certain measures in order to protect the right of Ukraine that the Court has found to be plausible (see paragraph 60 above).

79. The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are, in whole or in part, other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power on several occasions in the past (see, for example, *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. 28, para. 77).

80. In the present case, having considered the terms of the provisional measures requested by Ukraine and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

81. The Court considers that, with regard to the situation described above, the Russian Federation must, pending the final decision in the case, suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine. In addition, recalling the statement of the Permanent Representative of the Russian Federation to the United Nations that the “Donetsk People’s Republic” and the “Lugansk People’s Republic” had turned to the Russian Federation with a request to grant military support, the Court considers that the Russian Federation must also ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of these military operations.

82. The Court recalls that Ukraine also requested it to indicate measures aimed at ensuring the non-aggravation of the dispute with the Russian Federation. When it indicates provisional measures for the pur-

pose of preserving specific rights, the Court may also indicate provisional measures with a view to preventing the aggravation or extension of the dispute if it considers that the circumstances so require (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 392, para. 94; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, pp. 429-430, para. 72). In the present case, having considered all the circumstances, in addition to the specific measures it has decided to order, the Court deems it necessary to indicate an additional measure directed to both Parties and aimed at ensuring the non-aggravation of the dispute.

83. The Court further recalls that Ukraine requested it to indicate a provisional measure directing the Russian Federation to “provide a report to the Court on measures taken to implement the Court’s Order on Provisional Measures one week after such Order and then on a regular basis to be fixed by the Court”. In the circumstances of the present case, however, the Court declines to indicate this measure.

* * *

84. The Court reaffirms that its “orders on provisional measures under Article 41 [of the Statute] have binding effect” (*LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109) and thus create international legal obligations for any party to whom the provisional measures are addressed.

* * *

85. The Court further reaffirms that the decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Ukraine and of the Russian Federation to submit arguments in respect of those questions.

* * *

86. For these reasons,

THE COURT,

Indicates the following provisional measures:

(1) By thirteen votes to two,

The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine;

IN FAVOUR: *President Donoghue; Judges Tomka, Abraham, Bennouna, Yusuf, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth; Judge ad hoc Daudet;*

AGAINST: *Vice-President Gevorgian; Judge Xue;*

(2) By thirteen votes to two,

The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point 1 above;

IN FAVOUR: *President Donoghue; Judges Tomka, Abraham, Bennouna, Yusuf, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth; Judge ad hoc Daudet;*

AGAINST: *Vice-President Gevorgian; Judge Xue;*

(3) Unanimously,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this sixteenth day of March, two thousand and twenty-two, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of Ukraine and the Government of the Russian Federation, respectively.

(Signed) Joan E. DONOGHUE,
President.

(Signed) Philippe GAUTIER,
Registrar.

Vice-President GEVORGIAN appends a declaration to the Order of the Court; Judges BENNOUNA and XUE append declarations to the Order of the Court; Judge ROBINSON appends a separate opinion to the Order of the Court; Judge NOLTE appends a declaration to the Order of the Court; Judge *ad hoc* DAUDET appends a declaration to the Order of the Court.

(Initialed) J.E.D.

(Initialed) Ph.G.