DISSENTING OPINION OF JUDGE SEBUTINDE

In my opinion, the Russian Federation has violated its obligations under Articles 12 and 18 of the ICSFT. The Russian Federation is also in violation of its obligations under the CERD with respect to measures taken against the Mejlis and its law enforcement measures — The evidentiary threshold applied by the Court under Article 12 is unnecessarily stringent and imposes an impracticable burden upon States requesting mutual assistance — The Russian Federation by failing to provide Ukraine with any assistance at all in relation to the Applicant's investigation of possible terrorism financing offences, acted in violation of its obligation under Article 12 of the ICSFT — With respect to Article 18, the Russian Federation failed to take "practicable measures" that were within its disposal to prevent terrorism financing — By endorsing the fundraising activities of officials and private persons under its jurisdiction, for the benefit of the DPR and LPR and failing to take "practicable measures" that were at its disposal to prevent, restrict or limit such fundraising activities, the Russian Federation acted in violation of its obligation under Article 18 of the ICSFT — The Russian Federation's indiscriminate enforcement of its anti-extremism legislation against members of the Crimean Tatar community had the effect of discriminating against Crimean Tatars on the basis of their ethnic or national origin — The Russian authorities undertook raids directed against businesses and religious sites without any apparent specific basis for determining that the men detained may have been linked to criminal activity, thus impairing the rights of members of this ethnic minority protected under Articles 2 and 5 (d) *(viii) and (ix) of CERD — The ban of the Mejlis constituted an act of racial discrimination — The representative role uniquely played by the Mejlis as the executive body of the Crimean Tatar people is neither equivalent to that played by the Qurultay, nor can it be replaced by that of any other representative body in Crimea, including the "Qurultay of Muslim of Crimea" and the "Shura" — The ban had the effect of impairing not only the civil rights of the individual members of the Mejlis, but also the civil and cultural rights of the Crimean Tatar community to determine their cultural leaders, in violation of the CERD — The conduct of the Russian Federation manifestly violated its obligation to refrain from action that might aggravate or extend the dispute before the Court or render it more difficult to resolve.*

INTRODUCTION

1. Although I agree with some of the Court's conclusions regarding the violation by the Russian Federation of some of its international obligations and have voted in favour of operative paragraphs 404 (1), (3), (5) and (6), I disagree with several of the Court's findings in other respects and have voted against operative paragraphs 404 (2), (4) and (7). In particular, I disagree with the Court's conclusion that Ukraine has failed to establish the violation by the Russian Federation of its obligations under Articles 12 and 18 of the ICSFT and under CERD with respect to measures taken against the Mejlis and in relation to the law enforcement measures directed at members of the Crimean Tatar population. Furthermore, I elaborate upon the Court's interpretation and conclusion with respect to the measure indicated in the Court's provisional measures Order, which required the Parties to "refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve". The following are my reasons.

I. ALLEGED VIOLATION OF OBLIGATIONS UNDER THE ICSFT

2. In large part, I agree with the Court's interpretation of the applicable provisions of the ICSFT. In particular, I agree that the term "funds" as defined in Article 1, paragraph 1, of the ICSFT does not encompass the provision of weapons or other forms of support used as means of committing predicate acts referred to in Article 2, paragraph 1 *(a)* or *(b)*, of the ICSFT.

3. I also agree with the Court's conclusion in paragraph 111 of the Judgment that the Russian Federation has violated its obligations under Article 9, paragraph 1, of the ICSFT through its failure to investigate credible allegations made by Ukraine concerning the financing of terrorism by persons present in Russian-controlled territory.

4. However, in my view, the conduct of the Russian Federation also demonstrates a violation of its obligations under Article 12, paragraph 1, and Article 18, paragraph 1. In this regard, I disagree with the conclusions of the Court in paragraphs 131 and 146 of the Judgment for the following reasons.

A. Article 12 of the ICSFT

5. As stated by the Court in paragraph 126 of its Judgment, Article 12 of the ICSFT obligates States parties to afford one another the greatest assistance in their investigations into the commission of terrorism financing offences. Specifically, Article 12, paragraph 1, provides that States parties "shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings" in respect of the offence of terrorism financing and its predicate acts, "including assistance in obtaining evidence in their possession necessary for the proceedings". I am of the view that in the present case, the Russian Federation has violated this obligation.

6. Although Ukraine claimed having sent over 91 requests to Russia between 2014 and 2020, the Court rightly only considered the 12 requests for mutual legal assistance (hereinafter "MLA") produced before the Court by Ukraine (paragraph 126 of the Judgment). Furthermore, the Court was correct to limit its analysis to those requests that specifically mentioned the provision of financial support to persons or organizations alleged to have engaged in acts of terrorism (paragraph 128 of the Judgment). However, I disagree with the Court's reasoning in paragraph 130 of the Judgment, which led to its conclusion that these requests for legal assistance did not meet the evidentiary threshold required to give rise to the Russian Federation's obligation under Article 12 to assist Ukraine in its investigations.

7. The Court considers that the requests for legal assistance provided by Ukraine to the Russian Federation were insufficient to trigger the obligation under Article 12 because they did not describe in sufficient detail the commission of alleged predicate acts by the recipients of the funds and because they failed to substantiate the fact that the alleged funders knew that the funds would be used to commit such acts (paragraph 130 of the Judgment). In my view, the evidentiary threshold applied by the Court is unnecessarily stringent and imposes an impracticable burden upon States requesting assistance with investigations into terrorism financing. The State requesting legal assistance is often not in possession of such detailed information regarding the precise nature of the predicate acts, prior to submitting its request, and that is the very reason for the request for legal assistance in the first place.

8. When making a request for legal assistance, it is not necessary for a State to demonstrate that the alleged funders "knew" what the funds provided were to be used for. It is precisely this information concerning the *mens rea* of the funders that the requesting State seeks to uncover during its investigation. At the stage of requesting legal assistance, the requesting State should not be expected to be in possession of all the relevant facts concerning the alleged offence. It is sufficient that the request contains credible allegations that a terrorism financing offence may have been committed. This is an analogous standard to that applied in the context of Article 9 of the ICSFT, which concerns the obligation to undertake investigations. In my opinion, the obligation under

Article 9 to conduct a criminal investigation and the obligation under Article 12 to assist with an investigation are two sides of the same coin. Ordinarily, if the requesting State has met the evidentiary threshold required for the trigger of an obligation under Article 9, as Ukraine did in the present case, the same will be true with respect to the evidentiary threshold required to trigger an obligation under Article 12.

9. In the present case, the Court concluded with respect to Article 9 that the communications made by Ukraine to the Russian Federation contained sufficiently detailed allegations of terrorism financing to obligate the Russian Federation to undertake investigations into the facts alleged therein (paragraph 107 of the Judgment). For the same reasons, the Court should have concluded that the Russian Federation was obligated to provide Ukraine with the "greatest measure of assistance" in respect of Ukraine's own criminal investigations or extradition proceedings in respect of individuals alleged to have committed terrorism financing offences. The requests for legal assistance provided by Ukraine credibly alleged that individuals present on the territory of the Russian Federation provided financing to armed groups associated with armed groups involved in attacks on civilians in Ukraine. For example, the requests included information regarding fundraising websites set up by members of the Russian State Duma and bank accounts used to finance LPR operations. At the time, the Russian Federation had also been made aware by Ukraine, of conduct allegedly undertaken by armed groups associated with the DRP and LPR that Ukraine considered to constitute predicate acts under the ICSFT (see paragraph 107 of the Judgment). In my view, this information was sufficient to meet the evidentiary threshold for triggering the obligation of the Russian Federation under Article 12.

10. In my view, the Russian Federation failed to fulfil its obligation to provide Ukraine with such assistance. As noted, the most relevant requests for legal assistance are those made by Ukraine on 11 November 2014, 3 December 2014, and 28 July 2015. The Russian Federation entirely rejected each of these requests. In all three cases, it cited Article 2 *(b)* of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (hereinafter the "European Convention") and Article 19 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 January 1993, as amended by Protocol of 28 March 1997 (hereinafter the "Minsk Convention") to justify its rejection of the requests. These articles concern the rejection of requests for legal assistance on grounds of sovereignty or security. In the circumstances, I do not consider that the Russian Federation's rejection of Ukraine's requests for MLA was justified for two reasons.

11. First, the Russian Federation did not adequately explain its reasons for rejecting Ukraine's request. Even if the security exceptions invoked by the Russian Federation applied in the present case, which is far from clear, the Russian Federation was required to substantiate that ground. Article 19 of the European Convention and Article 19 of the Minsk Convention both require that the Russian Federation notify Ukraine of the reasons for its refusal when denying a request for legal assistance. As the Court has explained in the past, a "bare reference" to a treaty provision does not suffice to satisfy a requirement that a State give reasons for a refusal for mutual assistance[1]. But that is precisely what the Russian Federation did here. Its rejection of the Ukrainian requests contained little more than a reference to the treaty provisions it invoked without any further explanation. This, in my view, was insufficient to sustain an exception to the obligation under Article 12 of the ICSFT.

12. Secondly, it is notable that even though its response rejecting Ukraine's requests for MLA were little more than a paragraph long, the Russian Federation took many months to send its response to Ukraine. The Russian Federation did not respond to the request dated 11 November 2014 until

[1] *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 231, para. 152.

31 August 2015, entailing a delay of over nine months. Similarly, the Russian Federation took over eight months to respond to the request dated 3 December 2014 and over seven months to respond to the request dated 28 July 2015. This is despite the fact that, as the Court notes in the present Judgment, "the Russian Federation generally answers requests for mutual legal assistance 'within one to two months'" (paragraph 110 of the Judgment). These inordinate delays, coupled with the failure to substantiate the reasons for declining Ukraine's MLA requests, clearly demonstrate a failure by the Russian Federation to meet its obligations under Article 12.

13. In short, the Russian Federation not only failed to provide Ukraine with "the greatest measure of assistance" in its investigations into terrorism financing, but it also failed to provide Ukraine with reasons for declining the Applicant's MLA requests. I therefore cannot agree with the Court's finding that Ukraine has failed to establish a violation by the Russian Federation of Article 12, paragraph 1, of the ICSFT.

B. Article 18 of the ICSFT

14. I also cannot agree with the Court's conclusion in paragraph 146 of the Judgment concerning the compliance by the Russian Federation with its obligation pursuant to Article 18 of the ICSFT. In my view, the Russian Federation violated its obligations under this provision.

15. As the Court notes, Article 18, paragraph 1, obligates States parties to take "all practicable measures" to prevent and counter preparations for the commission of terrorism financing offences. I agree that for a violation of this obligation to occur, it is not necessary that the offence of terrorism financing should have occurred (paragraph 138 of the Judgment). I also agree that the provision is a broad one encompassing all reasonable and feasible measures that a State may take to combat terrorism financing, including but not limited to adoption of a regulatory framework to monitor and prevent transactions with terrorist organizations (paragraphs 139-140 of the Judgment). However, I disagree that Ukraine has failed to demonstrate that the Russian Federation failed to meet this obligation.

16. As the Court explains in the present Judgment, Ukraine submitted multiple Notes Verbales and requests for mutual legal assistance to the Russian Federation alleging that Russian officials and private persons were engaged in the financing of acts of terrorism. Indeed, some of these individuals made no attempt to hide the fact that they were fundraising for activities carried out by armed groups whose overall aim was to compel Ukraine to accept the demands of the DPR and LPR. Upon receiving this information, it was incumbent upon the Russian Federation to investigate these persons in their individual capacity and, where necessary, to take "all practicable measures" to counter any preparations by those individuals to commit the offence of terrorism financing.

17. I am of the view that the Russian Federation failed to take such "practicable measures" that were within its disposal. I agree with the Court that the direct financing by the Russian Federation of acts of terrorism does not fall within the scope of the ICSFT (paragraph 142 of the Judgment). However, this does not absolve the Russian Federation of the obligation to take actions to counter the financing of terrorism by its officials or other private actors on its territory, in their individual capacity. The evidence shows that the Russian Federation did not take such actions. To the contrary, it appeared to endorse and even encourage the financing of armed groups associated with the DPR and LPR.

18. Similarly, I believe that the Russian Federation did not do all that it could to discourage and counter fundraising by private individuals for armed groups operating in Eastern Ukraine alleged

to have committed acts of terrorism. The Russian Federation has a robust framework for the prevention of terrorism financing[2]. However, it chose not to make use of that framework to in any way restrict or limit fundraising for the DPR and LPR while investigations were ongoing into the possible complicity of both entities in the commission of acts of terrorism.

II. ALLEGED VIOLATION OF OBLIGATIONS UNDER CERD

19. I have voted against operative paragraph 404 (4) in which the Court generally rejects all submissions of Ukraine relating to CERD not addressed in the preceding paragraph. In my view, the Russian Federation, in addition to the violations of CERD described in operative paragraph 404 (3), has violated its CERD obligations in relation to its law enforcement measures taken against persons of Crimean Tatar origin and in relation to the measures taken against their leaders known as the Mejlis. The following are my reasons.

A. Law enforcement measures

20. One of Ukraine's claims under CERD is that the law enforcement measures implemented by the Russian Federation in relation to members of the Crimean Tatar community and its leadership in Ukraine, violated CERD, in particular Articles 2 (1), 4, 5 *(a)* and 6 (paragraphs 222-224 of the Judgment). Having examined the law enforcement measures, and the manner in which they were implemented, the Court rightly concluded that the measures regulating the prevention, prosecution and punishment of certain broadly defined criminal offences — whilst in and of themselves not possessing a discriminatory purpose — were nonetheless implemented and enforced in a manner that had a disparate adverse effect on the rights of Crimean Tatars (paragraphs 226-238 of the Judgment).

21. However, the Court having noted that the stated purpose of certain law enforcement measures appears to have served as a pretext for targeting persons who, because of their religious or political affiliation, the Russian Federation deems to be a threat to its national security, went on to conclude that it has not been established that "persons of Crimean Tatar origin were subjected to such law enforcement measures based on their ethnic origin" (paragraph 241 of the Judgment). It is this finding with which I disagree.

22**.** In my view, there is sufficient evidence to conclude that the Russian Federation's enforcement of its anti-extremism legislation against members of the Crimean Tatar community amounted to racial discrimination under CERD because it had the effect of discriminating against Crimean Tatars on the basis of their ethnic or national origin. Besides, even if there was credible evidence showing that the Crimean Tatar community was targeted because they espoused political views opposed to the presence of the Russian Federation in Crimea after the events of 2014, this would not be sufficient to exclude the possibility that they were also targeted because of their racial or ethnic origin. This is particularly so where, as in this case, the political views or concerns of an ethnic minority are inextricably intertwined with its ethnic identity. Furthermore, it is also not inconceivable that a given measure may have more than one objective. Thus, while it may be true that the law enforcement measures against the Crimean Tatars were based on the political positions and views they espoused, this does not exclude the possibility that the measures also had a discriminatory purpose or effect on the rights of that protected group.

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[2] Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures — Russian Federation*, Fourth Round Mutual Evaluation Report (Dec. 2019), p. 4.

23. The Court correctly finds that the law enforcement measures undertaken by the Russian Federation in Crimea had a disproportionate effect upon Crimean Tatars, a fact that has also been noted by the OHCHR and the UN General Assembly (paragraph 238 of the Judgment). Accordingly, such measures constitute acts of racial discrimination unless they can be credibly justified by reasons unrelated to race, colour, descent or national or ethnic origin. I do not believe that the Russian Federation has advanced such a credible alternative rationale for its treatment of Crimean Tatars. The Russian Federation's purported justification for its conduct is that individuals of Crimean Tatar heritage are linked to religious extremism and other criminal activities. However, the evidence it supplies in support of this assertion is far from persuasive.

24. In essence, the Russian Federation appears to consider that, because some persons of Crimean Tatar heritage have been linked to acts of religious extremism and crimes such as drug trafficking, this provided a general justification for searches and other law enforcement measures directed against Crimean Tatars more generally and the places in which they socialize and worship. Indeed, the Court notes in its Judgment that "the stated purpose of certain measures appears to have served as a pretext for targeting persons who, because of their religious or political affiliation, the Russian Federation deems to be a threat to its national security" (paragraph 241 of the Judgment). In my view, the evidence also shows that such measures were targeted against Crimean Tatars on the basis of their ethnic and national origin. Such acts of racial profiling are impermissible under CERD. The evidence before the Court, including reports by the OHCHR, demonstrates that the Russian authorities undertook raids directed against businesses and religious sites, resulting in the detention of large numbers of Crimean Tatars, without any apparent specific basis for determining that the men detained may have been linked to criminal activity[3]. In many cases, no charges were brought against those detained. Such disproportionate targeting of members of a particular ethnic group, with no justified basis, constitutes an act of racial discrimination under Articles 2 and 5 of CERD.

B. Ban against the Mejlis

25. I do not agree with the conclusion of the Court that the ban against the Mejlis was only politically motivated and that, consequently, the Russian Federation did not violate its obligations under CERD (paragraph 275 of the Judgment). In my view, the ban constituted an act of racial discrimination. In particular, I take issue with two aspects of the Court's reasoning regarding this issue.

26. First, I disagree that because the Mejlis is not the only institution representing the Crimean Tatar community, the ban did not deprive the Crimean Tatar population of its representation (paragraph 269 of the Judgment). The majority's conclusion that the cultural rights of the Crimean people were not affected by the ban of the Mejlis is based upon the mistaken assumption that the representative role formerly played by the Mejlis can be ably carried out by the current Qurultay. However, the role played by the Mejlis as the executive body of the Crimean Tatar people is not equivalent to that played by the Qurultay. The two bodies are not equivalent but are distinct and complementary. Furthermore, there is evidence that the Mejlis is considered by many Crimean Tatars as a traditional organ of an indigenous people that enjoys a high degree of representative legitimacy[4].

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[3] See e.g. OHCHR, Report on the human rights situation in Ukraine, 16 February to 15 May 2016, paras. 183-185; OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017), para. 12; OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (13 September 2017 to 30 June 2018), para. 31.

[4] OHCHR, Report on the human rights situation in Ukraine (16 August to 15 November 2016), para. 169.

There is also uncontroverted evidence that the current body known as the "Qurultay of Muslims of Crimea" is not representative of the Crimean Tatar community.

27. Ukraine argues that both the Mejlis and the Qurultay are legitimate representative institutions of the Crimean Tatar people. Ukraine explains the Mejlis is the "traditional organ of the Crimean Tatar people", which is elected by the Qurultay. It notes that in June 1991, the Crimean Tatars organized the election of the Qurultay, a "democratic body, whose name recalls an ancient institution of the Crimean Khanate that governed Crimea from the fifteenth to the eighteenth centuries". The delegates of the Qurultay are elected directly by the Crimean Tatar people at large every five years. The Qurultay in turn elects a Mejlis, "an executive body to be the legitimate representative voice for the Crimean Tatar community when the Qurultay is out of session". Ukraine also cites an OHCHR report noting that "[w]hile approximately 30 Crimean Tatar NGOs are currently registered in Crimea, none can be considered to have the same degree of representativeness and legitimacy as the Mejlis and Qurultay".

28. According to Ukraine, the relationship between the Qurultay and the Mejlis (before the Russian measures banning the Mejlis) was as follows. The Qurultay was the highest representative body of Crimean Tatars and was composed of 250 delegates elected by secret ballots cast by Crimean Tatars and their families. The Qurultay was elected for a period of five years, although it did not sit permanently, but only temporarily for sessions. For example, the Qurultay, elected in 1991, sat for five days. The Mejlis was composed of 33 people elected by the Qurultay. It operated as the sole authorized representative executive body between sessions of the Qurultay. For most of the time, when the Qurultay was not in session, the Mejlis operated to represent Crimean Tatars[5]. The Mejlis was given the authority to represent Crimean Tatars in all negotiations with the governing authorities.

29. Ukraine also states that "the new pro-Russia organizations that Russia deems to have replaced the Mejlis [do not] represent the Crimean Tatar community at large"[6]. For its part, Russia refers to an "extraordinary session of the extended Qurultay of the Muslims of Crimea" that took place on 17 February 2018, and which elected the so-called "Council" of the Crimean Tatar People, or *Shura*. Ukraine responds that this "Qurultay", whose delegates are appointed by local religious organizations, is a distinct organization with a religious focus and not a representative institution elected by the Crimean Tatar people. Ukraine further claims that Mr Ablayev, a leading member of this supposed "Qurultay" and now the head of the Shura, is well known within the Crimean Tatar community as a renegade outlier who has chosen to work with the Russian authorities in Crimea.

30. The Russian Federation emphasizes that "[n]o restrictions or bans have been imposed against the Qurultay in the Russian Federation". However, the Respondent appears to acknowledge that there has been some change to the make-up of the original Qurultay, stating that "currently the functions of the Qurultay of the Crimean Tatar People are performed by the Qurultay of Muslims of Crimea that has delegated representatives of the Crimean Tatar community to the Council of Crimean Tatars".

31. Based on the uncontroverted facts presented by both Parties, it is clear that while the original Qurultay has traditionally been elected by the Crimean Tatar people themselves, by contrast, the "Qurultay of the Muslims of Crimea" is made up of delegates chosen by local religious organizations. It is also clear that the "Shura" chosen by the Qurultay of Muslims of Crimea is clearly a distinct body from that of the Mejlis. Consequently, the ban of the Mejlis had the effect of impairing

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[5] Memorial of Ukraine, Ann. 15, p. 9, para. 23.

[6] Reply of Ukraine, para. 482.

the cultural rights of the Crimean Tatar community to elect their representatives, in violation of Articles 2 and 5 *(d)* (viii) and (ix) of CERD.

32. Secondly, I disagree that the ban of the Mejlis was based purely or exclusively upon the political positions and activities of its members in opposition to the Russian Federation rather than on their ethnicity (paragraphs 271-272 of the Judgment). As stated above, where the political views and activities of an ethnic minority or group are inextricably intertwined with its ethnic identity, one cannot preclude the possibility that a measure may also have been based upon ethnicity and national origin and was therefore discriminatory in effect. The same measure may have multiple rationales and these different bases of motivation are not mutually exclusive. The political opposition of the Mejlis to Russian control over Crimea is linked with their ethnic identity, given the history of persecution of the Crimean Tatar community by the Soviet authorities. Thus, the ban had the effect of impairing the civil rights of the individual members of the Mejlis, including their right to freedom of opinion, freedom of expression, freedom of association and freedom of peaceful assembly. Furthermore, even to the extent that the activities of individual members of the Mejlis may have justified measures being taken against them as individuals, there is no reason why such activities required the full-scale dissolution of the institution of the Mejlis as such. Instead, measures could have been taken against the individual members of the Mejlis alleged to have engaged in criminal activities and the Qurultay could have been permitted to elect new members to replace them, thereby maintaining the operation and activities of the Mejlis as an institution. I am therefore of the view that the Russian Federation violated its CERD obligations including under Article 2 and Article 5 *(d)* (viii) and (ix) by banning the institution of the Mejlis.

III. ALLEGED BREACH OF OBLIGATIONS UNDER THE PROVISIONAL MEASURES ORDER

33. I agree with the Court's conclusion that the Russian Federation has violated its obligations under the provisional measures indicated by the Court in paragraphs 106 (1) *(a)* and 106 (2) of the Order of 19 April 2017.

34. In my opinion, the non-aggravation measure contains two aspects, in that it encompasses both conduct that aggravates the dispute between the parties more broadly and conduct that is more precisely directed against hampering the Court's ability to resolve the dispute with which it is seised in a particular case. In my view, where such a measure has been indicated by the Court in the operative clause of a provisional measures order, both aspects create binding obligations upon a party to which the order is directed. The obligation not to aggravate the dispute has its roots in Article 2 (3) of the Charter of the United Nations, which states that "[a]ll Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered". As the use of the word "shall" makes clear, Article 2 (3) is likewise a legally binding obligation.

35. It has long been clear since the Court's Judgment in *LaGrand* that the Court's orders on provisional measures under Article 41 have binding effect[7]. This conclusion applies equally to all provisional measures indicated by the Court. The Parties' obligation not to "aggravate or extend the dispute before the Court" was not merely a suggestion or exhortation, but a binding obligation that may be enforced by the Court.

36. In the present case, the conduct of the Russian Federation manifestly violated its obligation to refrain from action that might aggravate or extend the dispute before the Court or render it more

[7] *LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109.

difficult to resolve. In February 2022, weeks after the Court had indicated the provisional measures in question, the Russian Federation recognized the DPR and LPR as sovereign States and launched a large-scale military invasion of Ukraine, in support of their autonomy. It is difficult to imagine a more serious form of conduct with the potential to aggravate the tensions between the Parties than what the Respondent has done in Ukraine since the Court's Order on provisional measures. The Respondent's conduct not only dramatically worsened the relations between the Parties, almost entirely eliminating the possibility that the dispute could be peacefully settled, but concretely affected Ukraine's ability to prepare its case before the Court, including its ability to collect evidence located in the territory now under Russian control, thereby making the dispute more difficult to resolve.

(Signed) Julia SEBUTINDE.

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