

DECLARATION OF JUDGE BRANT

[Translation]

1. I am in general agreement with the reasoning and conclusions of the Court as set out in the present Judgment. However, I cannot endorse the decision in subparagraph (5) of the operative clause, by which the Court finds that the Russian Federation, as a result of the measure banning the *Mejlis*, has violated the Order of 19 April 2017 indicating provisional measures. I therefore wish to set out briefly the reasons why I disagree with the majority of the Court on this aspect of the Judgment.

2. In subparagraph (5) of the operative clause (paragraph 404 of the Judgment), the Court “[f]inds that the Russian Federation, by maintaining limitations on the *Mejlis*, has violated its obligation under paragraph 106 (1) (a) of the Order of 19 April 2017 indicating provisional measures”. Subparagraph (1) (a) of that Order provides as follows:

“(1) With regard to the situation in Crimea, the Russian Federation must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

(a) Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*”¹.

According to the Court, the finding relating to the Respondent’s violation of the Order indicating provisional measures is “independent” of the conclusion that the ban on the *Mejlis* imposed by Russian Federation authorities “does not violate the Russian Federation’s obligations under CERD” (paragraph 392).

3. I do not share this view. It seems to me that the formulation used by the Court in the Order of 19 April 2017, in which it refers to the Russian Federation’s “obligations under the International Convention on the Elimination of All Forms of Racial Discrimination”, clearly shows that obligations under CERD constituted the legal basis for the measure thus indicated. In other words, the plausible rights of Ukraine that the Order aimed to protect derived their plausibility from CERD.

4. It should be noted that provisional measures are intended to preserve the rights of the parties pending a decision on the merits (Article 41 of the Statute of the Court). Since, in the present Judgment, the Court has come to the conclusion — which I support — that the measures taken by the Russian Federation against the *Mejlis* do not violate the above-mentioned obligations (paragraph 275 of the Judgment), I consider that the provisional measure as indicated in the Order of 19 April 2017 is without object. If there is no right, there is nothing to protect. The Judgment has established that the provisional measure in question could not serve to preserve Ukraine’s rights under CERD, given that the ban on the *Mejlis* did not constitute a violation of the Russian Federation’s obligations under that Convention. Article 41 of the Court’s Statute, taken in isolation, is not sufficient to create obligations for the Respondent now that it has become clear that the provisional measure had no basis in CERD.

¹ *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), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017, p. 140, para. 106.*

There was therefore no ground for the Court to uphold Ukraine's claim, which, like the provisional measure itself, was without object.

(Signed) Leonardo Nemer Caldeira BRANT.
