

DECLARATION OF JUDGE *AD HOC* DAUDET

[*Original English Text*]

1. I deeply regret that operative paragraph 3 of the Order, concerning the obligation to refrain from any act that might aggravate or extend the dispute, is addressed to Ukraine as well as to the Russian Federation. In my view, this measure of non-aggravation of the dispute should have been directed solely at the Russian Federation, which I recall was designated by the United Nations General Assembly<sup>1</sup> as the perpetrator of aggression against Ukraine.

2. *Volens nolens*, however, I found myself obliged to vote in favour of this measure addressed to both Parties. Indeed, to vote in the negative in order to spare Ukraine would at the same time have exonerated the Russian Federation, which would have been the worst solution. But I would like to make it clear here that this vote, as far as Ukraine is concerned, is in my view meaningless.

3. Indeed, it is going against the evidence to think that Ukraine is likely to “aggravate” the conflict, when the reality shows that the Russian Federation alone is constantly amplifying military operations and making them more painful and tragic every day for a growing number of Ukrainians. The heroic defence of Ukrainians, both military and civilian, is taking place in a totally unbalanced way, in an unequal conflict marked by numerous and profound violations of international law and humanitarian law attributable to one side — the Russian Federation — which has military means of which the other side — Ukraine — is deprived, so that the possibilities of aggravation can only come from the former. In the current conflict, it is clear that the obvious escalation of the conflict, as it is developing day by day, is largely (but not only) due to the control of the skies by the Russian air force, which can bomb any target it decides to attack in more and more parts of Ukraine.

4. Ukraine is under bombardment and can only fight a defensive war and resist as best it can against an attack by the world’s second largest army. If the Russian military operation is not going as smoothly as President Putin had hoped, it is certainly not because the Ukrainians are escalating the conflict, nor because they are in danger of doing so, but simply because they are showing a courage and determination that is admired the world over. I hope that they will not regard the Court’s position as a form of insult to their courage, which it clearly does not intend to be.

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<sup>1</sup> United Nations, General Assembly resolution A/RES/ES-11/1, 2 March 2022.

5. Finally, it should be recalled that more and more victims are to be deplored among the civilian population, among women and children, victims of the unspeakable cruelty of a Head of State whose designs violate the most elementary principles of humanity and civilization.

6. It therefore goes against all logic to enjoin the Ukrainians not to aggravate the dispute, since their dearest wish is that it should cease, that the women and children who have had to flee should be able to return to a country at peace and be reunited with their husbands and fathers who have gone to war. They also want to live in a régime of freedom and democracy, which the perpetrator of the aggression would deprive them of. They want peace and their State has turned to the Court to obtain it through international law.

7. If there is therefore one Party to the dispute, and only one, towards which non-aggravation measures make sense, it is the Russian Federation and only it. The Court was perfectly entitled to decide in this sense, since there is no rule that requires this kind of balance between the parties, which would make it necessary to address both of them at the same time in order to enjoin them to respect the same measure, even if it is its usual practice to do so.

8. Having made this reservation with regard to one element of this third provisional measure decided by the Court, I wish to emphasize that I have agreed in full with the reasons for the Order. Indeed, I considered that the Court, at the stage of provisional measures and under the legal basis — the Convention on the Prevention and Punishment of the Crime of Genocide — chosen by the Applicant, had succeeded in the difficult exercise of fully respecting the limits and requirements of the provisional measures procedure, while at the same time satisfying to the best of its ability Ukraine's requests for the suspension of military operations and for the other guarantees it sought.

9. Public opinion was informed by the media of Ukraine's referral to the Court and many people placed their hopes in the voice of international law that the World Court would carry. I believe that this Order will meet their legitimate expectations.

10. To this hope, I would add a wish: President Putin cannot be reproached for willingly referring to Russian history and sometimes to the period of the Empire. I hope that he will remember the initiative of Tsar Nicholas II in convening the first Peace Conference in The Hague in 1899, which was the cornerstone of the construction of a world order for peace and the peaceful settlement of disputes.

*(Signed)* Yves DAUDET.

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