

**INTERNATIONAL COURT OF JUSTICE**

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

**(UKRAINE V. RUSSIAN FEDERATION)**

**MEMORIAL**

**SUBMITTED BY UKRAINE**

**1 JULY 2022**

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## **Chapter 1. INTRODUCTION**

1. Ukraine recently celebrated 30 years as an independent nation. But as the people of Ukraine have affirmed their sovereignty and charted an independent course over the last three decades, the Russian Federation has responded with threats, coercion, aggression and atrocity.

2. Since 2014, the year of Ukraine's Revolution of Dignity and its peaceful demonstrations against Russian interference in its domestic affairs, Russia has alleged, without basis, that Ukraine and Ukrainian officials have sought to destroy the Russian-speaking population in the Donbas region of eastern Ukraine in violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention"). The Russian Federation has now used these false claims of genocide as a pretext for launching a new phase of its aggression against Ukraine: invading more territory, committing atrocities against thousands of innocent Ukrainians, displacing millions more, and inflicting tens of billions of dollars in destruction in Ukraine's cities, towns, and villages. In so doing, Russia has once again demonstrated to the world its complete disdain for the rule of law, its callous indifference to human suffering, and its utter contempt for this Court and the international legal order.

3. To justify its barbaric behavior, the Russian Federation has not hesitated to abuse and misuse the Genocide Convention — the legitimate purpose of which is to foster international cooperation to liberate mankind from the odious scourge of genocide. When members of the international community came together on the ashes of World War II and the Holocaust to forge a convention on the prevention and punishment of genocide, this is, unquestionably, not how they thought that convention should be interpreted, applied, and fulfilled. The Court should not tolerate such abuse of a signature human rights treaty.

4. In the name of preventing and punishing a falsely alleged genocide in the Donbas region of eastern Ukraine, Russia first recognized the so-called "Donetsk People's Republic" ("DPR") and "Luhansk People's Republic" ("LPR") as sovereign entities on 21

February 2022, and then, on 24 February 2022, launched what President Putin euphemistically referred to as a so-called “special military operation” throughout Ukrainian territory.

5. Russia’s use of force in and against Ukraine in the name of preventing and punishing alleged genocide has caused unimaginable horror. Russian troops and their proxies have blazed a trail of destruction throughout Ukraine. In Kharkiv, for example, indiscriminate Russian shelling and cluster munitions have devastated the civilian population. In Mariupol, Russian shelling has destroyed 80 to 90 percent of all residential buildings, and Volnovakha similarly is in ruins. In Kramatorsk, Russia bombed a railway station where civilians were gathering to evacuate. The city of Borodyanka and the town of Izyum are reported to have been subject to near-total destruction by Russian bombardments. In Irpin, authorities have found that nearly 50 percent of the city’s critical infrastructure has been destroyed.

6. With this destruction has come an astronomical human cost. According to the United Nations, in the first six days of Russia’s invasion, there were nearly as many recorded civilian casualties as in the last five years of the conflict in the Donbas region. Russia’s atrocities also include extrajudicial killings, such as those at Bucha, deliberate attacks against civilian infrastructure, the use of thermobaric and hypersonic weapons, rape, deportation of civilians from occupied territories, and the implementation of so-called filtration camps. Ukraine and the international community are just beginning to investigate these crimes and bring the individual perpetrators to justice.

7. All the while, Russia’s aggression is having a global impact. Ukraine’s economy is suffering and the threat to peace and stability around the world is growing. Russia’s blockade of Ukrainian export routes has created an international food crisis, forcing the price of bread to rise dramatically in middle-income countries in Africa, the Middle East, and Asia. Russia’s attacks on fuel and other resource facilities have caused extreme environmental harm.

8. Such abuse and misuse of Articles I and IV of the Genocide Convention constitute a breach of that treaty. The Russian Federation has put forward no evidence to support its genocide claims, and the Genocide Convention does not permit a Contracting Party to invoke the responsibility of another Contracting Party under the Convention, or to take unilateral action to prevent and punish genocide in the territory of another Contracting party, on the basis of a falsely alleged genocide. As Ukraine’s Ministry of Foreign Affairs explained after Russia invaded Ukraine, “Russia’s claims of genocide as justification for its lawless conduct are an insult to the Genocide Convention, and to the work of the international community in preventing and punishing the world’s most serious crime.”<sup>1</sup> Ukraine urges this Court to hold the Russian Federation internationally responsible for its transparent abuse of the Genocide Convention in the service of its own flagrant violations of international law.

9. Two days after Russia commenced its brutal invasion of Ukraine, on 26 February 2022, Ukraine filed its application instituting these proceedings and requested that this Court indicate provisional measures. On 7 March 2022, the Court held a public hearing at Ukraine’s request — a hearing that Russia declined to attend. Just three weeks after the beginning of Russia’s invasion, on 16 March 2022, the Court issued an order indicating provisional measures (the “Order” or “Provisional Measures Order”), finding *prima facie* that it had jurisdiction over the parties’ dispute and that Ukraine had invoked plausible rights under the Genocide Convention.<sup>2</sup>

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<sup>1</sup> Ministry of Foreign Affairs of Ukraine, *Statement of the Ministry of Foreign Affairs of Ukraine on Russia’s False and Offensive Allegations of Genocide as a Pretext for Its Unlawful Military Aggression* (26 February 2022), accessed at <https://www.kmu.gov.ua/en/news/zayava-mzs-ukrayini-shchodonepravdivih-ta-obrazlivih-zvinuvachen-rosiyi-v-genocidi-yak-privodu-dlya-yiyi-protipravnoyi-vijskovoyi-agresiyi>.

<sup>2</sup> See *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order on Provisional Measures (16 March 2022) [hereinafter Provisional Measures Order of 16 March 2022], paras. 48, 64.

10. The Court ordered the Russian Federation to “immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine,” and to “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 . . . above.”<sup>3</sup> The Court also ordered both parties to “refrain from any action which might aggravate or extend the dispute before the Court.”<sup>4</sup>

11. Yet Russia has shown flagrant disregard for the Court’s Order, which is an independent violation of its international obligations. On 17 March 2022, just one day after the Court’s Order, Kremlin spokesperson Dmitry Peskov announced that Russia would “not be able to take this decision into account.”<sup>5</sup> Since that date, the Russian Federation’s blatant non-compliance with every measure indicated in the Court’s Order has been plain for the world to see.

12. Far from ensuring that its military units and other organizations and persons under its direction and control take no further steps in furtherance of military operations in Ukraine, Russian forces, and others under Russia’s direction and control, continue to kill Ukrainians indiscriminately and to destroy the country’s infrastructure. DPR militants fought alongside Russian troops in the sieges of Mariupol and Lyman, for example, and LPR militants have been engaged in the battle for the Ukrainian city of Severodonetsk.

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<sup>3</sup> Provisional Measures Order of 16 March 2022, para. 86.

<sup>4</sup> *Ibid.*

<sup>5</sup> Sofia Stuart Leeson, *Russia Rejects International Court Ruling to Stop Invasion of Ukraine*, EURACTIV (17 March 2022), accessed at <https://www.euractiv.com/section/europe-s-east/news/russia-rejects-international-court-ruling-to-stop-invasion-of-ukraine/>; see also Interfax, *Russia Can’t Accept Int’l Court of Justice Order to Halt Operation in Ukraine – Peskov* (17 March 2022), accessed at <https://interfax.com/newsroom/top-stories/76917/>.

13. At the time that Ukraine requested provisional measures from this Court, Ukraine cautioned with regard to Russia that “[s]hould this aggression go unchecked, there is not only a risk but a certainty of significant and irreparable loss of life and property and a humanitarian crisis.”<sup>6</sup> The reality is in fact far worse than could have been imagined even then, as the known facts already demonstrate.

14. The Russian Federation claims that its recognition of the DPR and LPR and its invasion of Ukraine were to prevent and punish genocide, and that it was exercising a right to invoke the responsibility of Ukraine for its alleged violations of the Convention. There is a tragic irony in the false and unsupported grounds upon which Russia’s unilateral actions rest. In Kyiv, Kharkiv, Mariupol, Kherson, Severodonetsk, Volnovakha, and many other Ukrainian cities and villages, the greatest threat to the Russian-speaking population of Ukraine is the actions of the Russian Federation. This Court should find that the Genocide Convention does not permit a Contracting Party to violate the sovereignty of another Contracting Party or unilaterally use force against another Contracting Party in the name of preventing or punishing a falsely alleged genocide.

15. On the facts before the Court, there is no evidence that Ukraine is responsible for committing any acts of genocide in the Donbas region of Ukraine. To the contrary, Russia’s accusations are a transparent pretext to disguise its own internationally wrongful conduct. By attempting to justify its aggression and atrocities in Ukraine as acts taken in light of its rights and obligations under the Genocide Convention, the Russian Federation has misused and abused the Convention and violated the solemn undertakings it made to Ukraine and to all other Contracting Parties.

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<sup>6</sup> *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 Submitted by Ukraine (26 February 2022), p. 6, para. 18.



16. This Memorial is divided into six chapters.

17. **Chapter 2** of this Memorial sets out the factual context to the parties' dispute.

This chapter describes Russia's pattern of falsely alleging that Ukraine has committed acts of genocide in the Donbas region of eastern Ukraine in violation of the Genocide Convention, and the measures Russia has taken for the stated purpose of preventing and punishing that genocide. It also addresses the consequences of Russia's actions in and against Ukraine on the pretext of preventing and punishing a falsely alleged genocide.

18. **Chapter 3** explains that Russia has violated Articles I and IV of the Genocide Convention. The Convention does not permit a State to unilaterally use force in the territory of another State or to violate another State's sovereignty in order to prevent or punish a non-existent genocide, and, in this case, Russia's allegations of genocide in Ukraine are entirely false and unsupported. This chapter further establishes that by using force in Ukraine and recognizing the DPR and LPR on the basis of a falsely alleged genocide, Russia misused and abused its solemn undertakings with regard to its rights and obligations *erga omnes partes* under the Convention. It further violated the Genocide Convention's requirement that Contracting Parties act within the limits of international law.

19. **Chapter 4** establishes that in addition to its substantive violations of the Genocide Convention, Russia has violated the three provisional measures indicated by this Court. The Court's Order imposed binding obligations, which Russia has brazenly ignored as it continues wantonly to use military force in the territory of Ukraine and continues to commit horrendous atrocities against the Ukrainian people.

20. **Chapter 5** confirms that Ukraine has brought to this Court a dispute that relates to the interpretation, application, or fulfilment of the Genocide Convention. Accordingly, the Court has jurisdiction over the parties' dispute, pursuant to Article 36(1) of the Statute of the Court and Article IX of the Genocide Convention.

21. **Chapter 6** outlines the remedies Ukraine seeks in this case. Ukraine is owed full reparation for the damage Russia has caused by its violation of the Genocide Convention

and this Court's Provisional Measures Order, including declaratory relief, orders of cessation and non-repetition, and compensation for the widespread damage suffered by Ukraine and the Ukrainian people.

22. Finally, Ukraine sets out its submissions.

## **Chapter 2. FACTUAL BACKGROUND**

23. As this Court noted in its Provisional Measures Order, since the Russian Federation commenced its full-scale invasion of Ukraine on 24 February 2022, “[t]here has been intense fighting on Ukrainian territory, which has claimed many lives, has caused extensive displacement and has resulted in widespread damage.”<sup>7</sup> The Court then indicated, among other measures, that “the Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine.”<sup>8</sup> Russia has willfully defied that Order. Instead, even more horrific Russian conduct has emerged, such as the systematic executions of civilians in Bucha, Irpin, Borodyanka, and other areas, the razing of Mariupol, and the deportation of children, among many other atrocities. As Ukraine submits this Memorial, Russia continues its brutal use of force in and against Ukraine. Approximately one-fifth of Ukraine’s territory is occupied, Ukraine’s economy is being strangled at enormous cost, millions of Ukrainians are displaced, and Ukraine’s defenders and civilians alike are being killed every day.

### **A. Background to the Dispute**

24. Though Russia has long attempted to stoke tensions within Ukraine on ethnic and linguistic grounds, Ukraine has forged a strong national identity that does not depend on the language one speaks. In December 1991, when the Ukrainian people voted overwhelmingly for independence, every region of the country supported that decision, including 83 percent of the population in each of the heavily Russian-speaking Donetsk and Luhansk oblasts.<sup>9</sup> Ukraine’s Constitution declares Ukrainian the national language, but

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<sup>7</sup> Provisional Measures Order of 16 March 2022, para. 17.

<sup>8</sup> *Ibid.*, para. 86.

<sup>9</sup> See Thomas Young, *10 Maps that Explain Ukraine’s Struggle for Independence*, Brookings (21 May 2015) (map data provided by the Verkhovna Rada of Ukraine and the State Archival Service of Ukraine),

simultaneously guarantees “the free development, use and protection of Russian,” and prohibits discrimination on grounds that include “ethnic and social origin” and “linguistic . . . characteristics.”<sup>10</sup> Indeed, many Ukrainians are bilingual, and large numbers consider Russian their first language.<sup>11</sup> Quite simply, use of the Russian language has not been a basis of discrimination in Ukraine.

25. Nor has discrimination in Ukraine been directed at those who identify as ethnic Russians, as confirmed by a report of the U.N. Special Rapporteur on minority issues published in January 2015. The report states:

The Special Rapporteur was not provided with evidence that anti-Russian sentiment was widespread. There have been few incidents of discrimination, harassment or abuse of individuals or groups on the basis of their Russian identity in Kyiv or other localities. Russians and ethnic Ukrainians frequently stated that their relations remained good. Incidents of intercommunal violence were extremely rare or non-existent in most localities at the time of the Special Rapporteur’s visit.<sup>12</sup>

The Special Rapporteur also “note[d] the poor election results of far-right and allegedly anti-Russian parties in the May 2014 elections.”<sup>13</sup>

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*accessed at* <https://www.brookings.edu/blog/brookings-now/2015/05/21/10-maps-that-explain-ukraines-struggle-for-independence/>; Nadiya Kravets, *Ukraine and Russia: Together or Apart*, Ukrainian Research Institute - Harvard University (“On December 1, 1991, 92.3 percent of the citizens of the newly established Ukrainian state (voter turnout was 84.18 percent) supported the Declaration of Independence, adopted a few months earlier by the Ukrainian parliament. These results included 83.86 and 83.90 percent of voters in the Luhansk and Donetsk regions of Ukraine supporting independence . . .”), *accessed at* <https://gis.huri.harvard.edu/ukraine-and-russia-together-or-apart>.

<sup>10</sup> Ukrainian Constitution, arts. 10, 24.

<sup>11</sup> See State Statistics Committee of Ukraine, *General Results of the Census: Linguistic Composition of the Population*, *accessed at* <http://2001.ukrcensus.gov.ua/eng/results/general/language/> (showing that 14.8% of persons identifying as being of Ukrainian nationality consider Russian to be their first language).

<sup>12</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on Minority Issues, Rita Izsák*, U.N. Doc. A/HRC/28/64/Add.1 (27 January 2015), para. 23.

<sup>13</sup> *Ibid.*, para. 22.

26. The Russian Federation has nonetheless sought to use Ukraine’s linguistic diversity against it. Following Ukraine’s Revolution of Dignity in 2014, Russia illegally invaded and occupied Crimea, which President Putin justified with the baseless claim that “the Russian speaking population was threatened.”<sup>14</sup> Far from bringing peaceful coexistence to Crimea, however, Russia launched a campaign of discrimination against the ethnic Ukrainian and Crimean Tatar populations, leading to this Court’s Order of Provisional Measures of 19 April 2017 protecting these vulnerable groups.<sup>15</sup>

27. Having occupied Crimea, the Russian Federation attempted to assert influence and dominance over the Donbas region of eastern Ukraine, using more covert tactics. From February to March 2014, Russia encouraged, organized, and financed anti-government protests in cities with large Russian-speaking populations — even bussing in and paying people to take part in protests and cause violent incidents.<sup>16</sup> When these efforts failed, Russia funneled arms and other support to illegal armed groups in the Donbas region. Two of these illegal armed groups referred to themselves as the so-called Donetsk People’s Republic (“DPR”) and Luhansk People’s Republic (“LPR”), the same groups that Russia would later recognize as sovereign states within Ukrainian territory.<sup>17</sup> Many of the DPR’s and LPR’s leaders had close ties to, and received support from, Russia.<sup>18</sup> As these armed groups became

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<sup>14</sup> *Direct Line with Vladimir Putin*, President of Russia (17 April 2014), p. 7 (Annex 30).

<sup>15</sup> *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.

<sup>16</sup> OHCHR, *Report on Human Rights Situation in Ukraine* (15 April 2014), para. 68, accessed at <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-17>.

<sup>17</sup> For the avoidance of doubt, this recognition was a violation of Ukraine’s sovereignty and territorial integrity, and there was no legitimate grounds under international law for such recognition. See *infra* Chapter 3, para. 127, n.220.

<sup>18</sup> See OHCHR, *Report on the Human Rights Situation in Ukraine* (15 July 2014), para. 8, accessed at [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine\\_Report\\_15July2014.p](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_Report_15July2014.p)

increasingly organized, they also received an influx of weapons from sources inside the Russian Federation.<sup>19</sup> Former Russian military members also reportedly embedded within the DPR and LPR to provide assistance.<sup>20</sup>

28. Since the spring of 2014, the DPR and LPR have committed numerous deadly atrocities in Ukraine. In June 2014, for example, U.N. monitors from the Office of the High Commissioner for Human Rights (“OHCHR”) in Ukraine reported that the DPR and LPR were “increasingly . . . spreading violence” and their “attacks target ordinary people, who take no part in the fighting.”<sup>21</sup> In July 2014, it reported as follows:

The armed groups fighting in the east must abide by international law but unfortunately this has not been the case. Grave human rights abuses have been committed by those armed groups. And it must be remembered that these groups have taken control of Ukrainian territory and inflicted on the populations a reign of intimidation and terror to maintain their position of control.<sup>22</sup>

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df; OHCHR, *Report on the Human Rights Situation in Ukraine* (17 August 2014), para. 2, accessed at <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UkraineReport28August2014.pdf>; Council of the European Union, *List of Persons and Entities Under EU Restrictive Measures Over the Territorial Integrity of Ukraine* pp. 18–20 (2017), accessed at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0269-20171121&from=EN>.

<sup>19</sup> See OHCHR, *Report on the Human Rights Situation in Ukraine* (15 December 2014), paras. 1, 86, accessed at [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/OHCHR\\_eighth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/OHCHR_eighth_report_on_Ukraine.pdf); OHCHR, *Report on the Human Rights Situation in Ukraine: 16 August to 15 November 2015* (9 December 2015), para. 2, accessed at <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>.

<sup>20</sup> See Global Rights Compliance, *International Law and Defining Russia’s Involvement in Crimea and Donbas* (13 February 2022), pp. 172–175, accessed at [https://globalrightscompliance.com/wp-content/uploads/2022/05/International-Law-and-Russia-Involvement-in-Crimea-and-Donbas.pdf?fbclid=IwAR1uCoKAsEW\\_T\\_ZRT7tfCUrvjdBonx-SgC3MdeKYomxCsjr-u2zDb4wxr1s](https://globalrightscompliance.com/wp-content/uploads/2022/05/International-Law-and-Russia-Involvement-in-Crimea-and-Donbas.pdf?fbclid=IwAR1uCoKAsEW_T_ZRT7tfCUrvjdBonx-SgC3MdeKYomxCsjr-u2zDb4wxr1s); Shaun Walker, *Putin Admits Russian Military Presence in Ukraine for the First Time*, *The Guardian* (17 December 2015), accessed at <https://www.theguardian.com/world/2015/dec/17/vladimir-putin-admits-russian-military-presence-ukraine>.

<sup>21</sup> OHCHR, *Report on the Human Rights Situation in Ukraine* (15 June 2014), para. 154, accessed at <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/HRMMUReport15June2014.pdf>.

<sup>22</sup> OHCHR, *Report on the Human Rights Situation in Ukraine* (15 July 2014), para. 26, accessed at [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine\\_Report\\_15July2014.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_Report_15July2014.pdf); see also OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), paras. 4, 144, 175, 207, accessed at <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/HRMMU>

29. Faced with these illegal armed groups in the Donbas region murdering civilians and waging a campaign of terror against ordinary Ukrainians, the Ukrainian government launched an anti-terrorist operation to restore law, order, and respect for human rights in the Donbas region. As documented by the United Nations monitoring mission, in the operation's early days, Ukraine paused the operation for the Easter holiday, but was compelled to resume again “[f]ollowing the discovery of the bodies (with alleged signs of torture) of Volodymyr Rybak, Horlivka city councillor, and Yuriy Popravko, a student and Maidan activist from Kyiv, in a river near Slovyansk on 19 April.”<sup>23</sup> This well-known incident was discussed at the U.N. Security Council — Mr. Rybak was kidnapped, tortured, and assassinated in the part of the Donetsk region controlled by the DPR for the crime of raising the Ukrainian flag.<sup>24</sup>

30. While Ukraine sought to secure its territory and protect its people in eastern Ukraine, these Russian-sponsored illegal armed groups continued to commit grave human rights abuses. For example, on 17 July 2014, the DPR shot down Flight MH17, a civilian aircraft flying in civilian airspace over eastern Ukraine, killing all 298 civilians on board.<sup>25</sup>

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Report15June2014.pdf.; OHCHR, *Report on Human Rights Situation in Ukraine* (19 September 2014), para. 16, accessed at <https://www.ohchr.org/en/documents/country-reports/report-situation-human-rights-ukraine>. The Special Rapporteur on minority issues likewise viewed the “informal, unofficial and sometimes illegally armed groups” operating in eastern Ukraine as “highly destabilizing,” and urged that it was “essential to quickly re-establish the rule of law and the role of legitimate law enforcement actors and for all non-official groups to be disarmed and dispersed.” United Nations Human Rights Council, *Report of the Special Rapporteur on Minority Issues, Rita Izsák*, U.N. Doc. A/HRC/28/64/Add.1 (27 January 2015), para. 20.

<sup>23</sup> OHCHR, *Report on the Human Rights Situation in Ukraine* (15 May 2014), para. 95, accessed at <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/HRMMUReport15May2014.pdf>.

<sup>24</sup> U.N. Security Council, Official Record, 7165th meeting, U.N. Doc. S/PV.7165 (29 April 2014), p. 8 (Statement of Ms. Lucas (Luxembourg)).

<sup>25</sup> U.N. Security Council Resolution 2166, U.N. Doc. S/RES/2166 (21 July 2014); Joint Investigation Team, *Presentation of First Results of the MH17 Criminal Investigation*, Openbaar Ministerie [Public Prosecution Service] (28 September 2016), accessed at <https://www.prosecutionservice.nl/topics/mh17-plane-crash/criminal-investigation-jit-mh17/jit-presentation-first-results-mh17-criminal-investigation-28-9-2016>.

Then, over four weeks in January and February 2015, these illegal armed groups committed three major shelling attacks against Ukrainian civilians in the Donbas region. In Volnovakha, the DPR attacked a checkpoint frequented by civilian cars and buses that killed 12 civilians and injured 17 others.<sup>26</sup> Less than two weeks later, DPR militants shelled a densely populated residential neighborhood of Mariupol, killing 30 civilians and injuring over 100 others.<sup>27</sup> And in early February 2015, the DPR attacked Kramatorsk, killing seven civilians and seriously injuring 26 more, including five children.<sup>28</sup>

31. Ukraine continued to strive for the restoration of peace and security in the Donbas region and made repeated efforts at a negotiated solution. However, the negotiations did not stop the attacks and in 2018, faced with the reality of Russian control of parts of the Donbas region, Ukraine declared certain areas of the region as occupied territory.<sup>29</sup>

32. The U.N. human rights monitoring mission recognized Russian support for the DPR and LPR as early as 2014, reporting that “[t]he total breakdown in law and order and the violence and fighting in the eastern regions” was “fuelled by the cross-border inflow of heavy and sophisticated weaponry as well as foreign fighters, including from the Russian

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<sup>26</sup> OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine, 14 January 2015: 12 Civilians Killed and 17 Wounded When a Rocket Exploded Close to a Civilian Bus Near Volnovakha* (14 January 2015), accessed at <https://www.osce.org/ukraine-smm/134636>.

<sup>27</sup> Laura Smith-Spark and Radina Gigova, *At Least 30 Killed in Shelling in Ukrainian City of Mariupol, Officials Say*, CNN (24 January 2015), accessed at <https://www.cnn.com/2015/01/24/europe/ukraine-crisis/index.html>; see also OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol* (24 January 2015), accessed at <https://www.osce.org/ukraine-smm/136061>.

<sup>28</sup> OSCE, *Statement by OSCE Chief Monitor in Ukraine on Situation in Kramatorsk* (10 February 2015), accessed at <https://www.osce.org/ukraine-smm/139796>; OSCE, *Spot report by the OSCE Special Monitoring Mission to Ukraine (SMM): Shelling in Kramatorsk, 10 February 2015* (10 February 2015), accessed at <https://www.osce.org/ukraine-smm/139836>.

<sup>29</sup> Law of Ukraine, No. 2268-VIII, “About Features of State Policy on Ensuring the State Sovereignty of Ukraine in Temporarily Occupied Territories in the Donetsk and Luhansk Regions” (18 January 2018), accessed at <https://cis-legislation.com/document.fwx?rgn=104612>.



Federation.”<sup>30</sup> The International Criminal Court (“ICC”) Office of the Prosecutor in a 2017 report likewise tied the “increased intensity of fighting” in the Donbas region to “influxes of troops, vehicles and weaponry from the Russian Federation.”<sup>31</sup>

33. This reality of Russian support for armed groups that targeted Ukrainian civilians in eastern Ukraine underscores the absurdity of Russia’s allegations that Ukraine has been committing genocide against its own people in the Donbas region since 2014.

**B. The Russian Federation Has Baselessly Accused Ukraine of Committing Genocide as a Pretext for Justifying Its Recognition of the DPR and LPR and for Its Military Invasion of Ukraine.**

34. The Russian Federation has accused Ukraine of committing genocide in the Donbas region of eastern Ukraine since 2014, and yet Russia has not introduced any credible evidence to support this serious claim. Nevertheless, in February 2022, Russia used this allegation of genocide to justify its recognition of the DPR and LPR as sovereign states and to launch a further military invasion of Ukraine.

**1. The Russian Federation Has Falsely Claimed Ukraine and Ukrainian Officials Are Responsible for Genocide Under the Genocide Convention Since 2014.**

35. For the past eight years, the Russian Federation has perpetuated a lie: that Ukraine, and Ukrainian officials, have committed acts of genocide in violation of the Genocide Convention in the Donetsk and Luhansk regions in eastern Ukraine. Russia’s allegations were first advanced in earnest by the Investigative Committee of the Russian Federation (the “Investigative Committee”). As the Court observed in its Provisional Measures Order:

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<sup>30</sup> OHCHR, *Report on the Human Rights Situation in Ukraine* (15 December 2014), para. 1, accessed at [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/OHCHR\\_eighth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/OHCHR_eighth_report_on_Ukraine.pdf).

<sup>31</sup> International Criminal Court, *Report on Preliminary Examination Activities 2017* (4 December 2017), para. 92, accessed at [https://www.icc-cpi.int/sites/default/files/itemsDocuments/2017-PE-rep/2017-otp-rep-PE\\_ENG.pdf](https://www.icc-cpi.int/sites/default/files/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf).

[T]he 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’.<sup>32</sup>

36. The Investigative Committee is a state body of the Russian Federation established to investigate criminal cases, including against high-ranking public officials.<sup>33</sup> It is supervised by the President of the Russian Federation and its members have extensive investigative authority.<sup>34</sup> The Investigative Committee has, for years, pursued criminal proceedings against high-ranking Ukrainian officials based on alleged acts of genocide against the Russian-speaking population of the Donbas region, and has repeatedly alleged that Ukrainian officials, including two consecutive Ministers of Defense, have committed crimes under the Genocide Convention.<sup>35</sup> For example:

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<sup>32</sup> Provisional Measures Order of 16 March 2022, para. 37.

<sup>33</sup> Investigative Committee of the Russian Federation, The Federal Law of 28.12.2010 No 403-FZ “On the Investigative Committee of the Russian Federation” (Extract), *accessed at* [https://en.sledcom.ru/Legal\\_information](https://en.sledcom.ru/Legal_information).

<sup>34</sup> *Ibid.*

<sup>35</sup> *See, e.g.*, Investigative Committee of the Russian Federation, *A Criminal Case Has Been Initiated Against a Number of High-Ranking Officials of the Armed Forces of Ukraine* (2 October 2014) (announcing the initiation of a criminal case against Ukraine’s Minister of Defense, Valeriy Heletey, the Chief of the General Staff of Ukraine’s Armed Forces (referred to as the AFU), Viktor Muzhenko, and the Commander of the 25th Brigade of Ukraine’s Armed Forces, Oleg Mykas, among other unidentified members of the Armed Forces claiming that “Geletey, Muzhenko, Mykas and the commanders of the 93rd brigade (AFU), deliberately, in violation of the 1948 Convention ‘On the Prevention and Punishment of the Crime of Genocide’ and other international legal acts condemning genocide, gave orders for the complete destruction of the national group of Russian-speaking persons living on the territory of the self-proclaimed Luhansk and Donetsk People’s Republics.”) (Annex 11); Investigative Committee of the Russian Federation, *Criminal Proceedings Have Been Initiated Against High-Ranking Ukrainian Military Personnel, As Well as Against Oleg Lyashko, A Member of the Parliament* (10 September 2015) (announcing the initiation of a criminal case against the then Ukrainian Minister of Defense, Stepan Poltorak, as well as other named military officials and stating “in the period from 31 May to 1 September 2015, unidentified persons from among the military personnel of the Armed Forces of Ukraine and the National Guard of Ukraine, following the deliberately criminal orders of Poltorak, Muzhenko, Pushnyakov and Balan in order to destroy the national group of the Russian-speaking population living on the territory of the self-proclaimed Donetsk People’s Republic, carried out targeted

- In September 2014, the Committee claimed that “in violation of the 1948 Convention ‘On the Prevention and Punishment of the Crime of Genocide,’ as well as other international legal acts condemning genocide, unidentified persons from among the top political and military leadership of Ukraine, the Armed Forces of Ukraine, the National Guard of Ukraine and the ‘Right Sector’ gave orders aimed to completely destroy specifically the Russian-speaking population living on the territory of the Donetsk and Luhansk republics.”<sup>36</sup>
- In January 2015, the Committee alleged that “mass shelling” by the Ukrainian military in Donbas “can only be qualified as genocide,” and that “such acts carried out by the Ukrainian military constitute especially grave crimes not only under Russian law, but also under the norms of international law,” including the “Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 09.12.1948).”<sup>37</sup>
- In September 2017, the Committee announced 20 criminal cases against Ukrainian officials, including the sitting Minister of Defense. It alleged that they acted “in violation of . . . the Convention on the Prevention and Punishment of the Crime of Genocide,” by giving “deliberately criminal orders” to shell civilian infrastructure in Donetsk and Luhansk, while “act[ing] out of hatred to the Russian-speaking population living in the Donbas[], wishing them to die.”<sup>38</sup>
- In a press release on 9 December 2019, the Investigative Committee marked the anniversary of the adoption of the Genocide Convention by observing that “it is customary to remember and honor the memory of the people who became victims of genocide” on this date. It added: “Guided by the norms of both national and international law, the investigators, of course, cannot stand aside when acts of genocide are committed in our time. The Investigative Committee

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artillery shelling from heavy types of weapons (caliber not less than 122 mm) of civilian infrastructure objects that are not military targets in the settlements of the republic. The investigation believes that Ukrainian servicemen violated: . . . the Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 09.12.1948)” (Annex 13).

The Investigative Committee has consistently claimed that Ukrainian officials have acted in violation of the Genocide Convention, as well as other international legal instruments, and Russian domestic law.

<sup>36</sup> Investigative Committee of the Russian Federation, *The Investigative Committee Opened a Criminal Investigation Concerning the Genocide of the Russian-Speaking Population in the South-East of Ukraine* (29 September 2014) (Annex 9); see also Investigative Committee of the Russian Federation, *Kommersant: “Ukraine Has Been Compared to South Osetia”* (30 September 2014) (Annex 10).

Ukraine uses its own transliteration spellings of Ukrainian place names such as “Donbas” and “Kyiv.”

<sup>37</sup> Investigative Committee of the Russian Federation, *A Criminal Investigation was Initiated Over New Facts of Genocide of Russian-Speaking Civilians During Shelling of Towns and Settlements in Donbas* (13 January 2015) (Annex 12).

<sup>38</sup> Investigative Committee of the Russian Federation, *Criminal Cases Initiated Against 20 High-Ranking Officials of the Ministry of Defense of Ukraine* (11 September 2017) (Annex 14).

of Russia is investigating crimes of genocide of the Russian-speaking population of Donbas, where civilians are dying at the hands of the Ukrainian military under targeted fire.”<sup>39</sup>

37. The Investigative Committee’s Chairman, Aleksander Bastrykin, has publicly touted Russia’s allegations that Ukraine and its officials are committing genocide in violation of the Genocide Convention. For example:

- In November 2017, in a lecture to students of a prominent state-owned Russian university, Mr. Bastrykin explained: “Since 2014 to the present, 196 criminal cases have been initiated with 127 people being prosecuted. Among them are high-ranking officials of the Ministry of Defense of Ukraine . . . . These persons in violation of . . . the Convention on the Prevention and Punishment of the Crime of Genocide . . . issued deliberately criminal orders to carry out targeted artillery shelling of civilian infrastructure and settlements of the self-proclaimed Donetsk and Luhansk People’s Republics.”<sup>40</sup>
- In November 2018, Mr. Bastrykin informed a conference at a Russian state-owned university that the Investigative Committee is “investigating criminal cases that involve more than 230 episodes of criminal activity of Ukrainian military personnel,” including in respect of “the genocide of the Russian-speaking population” in the DPR and LPR.<sup>41</sup>
- In June 2019, Mr. Bastrykin remarked that the Investigative Committee had reported 374 episodes of crimes against the civilian population of southeastern Ukraine, “impute[d] . . . to the servicemen of the Armed Forces of Ukraine” on the basis of “prohibited means and methods of warfare, genocide, murder, and kidnapping.”<sup>42</sup>

38. There is simply no foundation to the Investigative Committee’s claims, yet the lack of credible evidence has not prevented Russian officials from perpetuating these false

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<sup>39</sup> Investigative Committee of the Russian Federation, *International Day of Commemoration for the Victims of Genocide* (9 December 2019) (Annex 17).

<sup>40</sup> Investigative Committee of the Russian Federation, *Alexander Bastrykin Gave a Lecture for Students of the Moscow State Institute of International Relations (MGIMO) on the Investigation of War Crimes* (25 November 2017) (Annex 15).

<sup>41</sup> Investigative Committee of the Russian Federation, *The Chairman of the Investigative Committee of Russia Took Part in the International Scientific and Practical Conference “Crimes Against Peace”* (30 November 2018) (Annex 16).

<sup>42</sup> Ria Novosti, *Investigative Committee Accuses Ukrainian Military of 374 Crimes Against Residents of Donbas* (28 June 2019) (Annex 34).

allegations. Although civilian casualties in Donbas continuously decreased from 2017 to 2021,<sup>43</sup> in the lead-up to Russia's invasion of Ukraine on 24 February 2022, high-ranking Russian officials intensified their allegations claiming Ukraine's responsibility for acts of genocide under the Genocide Convention. For example:

- In November 2021, Boris Gryzlov, Russia's Authorized Representative in the Contact Group on Settling the Situation in Eastern Ukraine, explained that a decree by President Putin supporting the DPR and LPR was a "forced response to Kyiv's actions, which are aimed at escalating the conflict and actually fall under the UN Convention On the Prevention of Genocide."<sup>44</sup>
- The Russian Duma sent an appeal to President Putin on 15 February 2022 "on the necessity to recognize the Donetsk People's Republic and the Luhansk People's Republic."<sup>45</sup> The appeal claimed recognition would "create legal grounds for guaranteeing the security and protection of the peoples of the [DPR] and [LPR] from external threats and the implementation of a policy of genocide."<sup>46</sup>
- Only days before the invasion, on 18 February 2022, the Speaker of the Russian Duma claimed without evidence that mass graves of civilians have been unearthed and asserted that if "Kyiv's crimes" are "not genocide, then what is?"<sup>47</sup>
- On 23 February 2022, Russia's Commissioner for Human Rights, Tatyana Moskalkova, speaking about the situation in Donbas, stated: "We must admit that the situation that has developed there meets all the signs of genocide that are enshrined in international documents and national legislation."<sup>48</sup>

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<sup>43</sup> OHCHR, *Report on the Human Rights Situation in Ukraine* (23 September 2021), p. 8, accessed at <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2021>.

<sup>44</sup> RIA Novosti, *Gryzlov Called Putin's Decree on Donbas a Response to Kyiv's Actions* (18 November 2021) (18 November 2021) (Annex 35); see also TASS, *Putin's Decree on Donbas is Response to Kyiv's Refusal to Honor Minsk Accords – Envoy* (18 November 2021), accessed at <https://tass.com/politics/1363441>.

On 15 November 2021, President Putin passed a decree purporting to "provid[e] humanitarian support to the self-proclaimed DPR and LPR." RIA Novosti, *Gryzlov Called Putin's Decree on Donbas a Response to Kyiv's Actions* (18 November 2021) (Annex 35).

<sup>45</sup> Resolution of the State Duma of the Federal Assembly of the Russian Federation of February 15, 2022 N 743-8 GD, "On the appeal of the State Duma of the Federal Assembly of the Russian Federation to the President of the Russian Federation V.V. Putin on the need to recognize the Donetsk People's Republic and the Luhansk People's Republic," (15 February 2022) (Annex 4).

<sup>46</sup> *Ibid.*

<sup>47</sup> TASS, *State Duma Speaker Says Kyiv's Genocidal Crimes Swept Under the Rug by US, EU* (18 February 2022), accessed at <https://tass.com/world/1405755>.

<sup>48</sup> RIA Novosti, *The Situation in Donbas Meets All the Signs of Genocide, Says Moskalkova* (23 February 2022) (Annex 36).

39. Russia then took two extraordinary measures on the pretext of preventing and punishing this alleged genocide. First, on 21 February 2022, President Putin formally recognized the DPR and LPR, treating parts of Ukrainian territory as independent sovereigns. Second, on 24 February 2022, Russia commenced a massive use of military force throughout Ukrainian territory, which President Putin euphemistically referred to as a so-called “special military operation.”

**2. The Russian Federation Recognized the DPR and LPR as Sovereign States on 21 February 2022 on the Basis of Its False Allegations of Genocide Against Ukraine.**

40. In a speech on 21 February 2022, President Putin recognized the “independence” of the DPR and LPR, stating, “I consider it necessary to take a long overdue decision and to immediately recognise the independence and sovereignty of the Donetsk People’s Republic and the Luhansk People’s Republic.”<sup>49</sup> He did so on the basis that the people living in this region of Ukraine were victims of genocide:

Not a single day goes by without Donbas communities coming under shelling attacks. The recently formed large military force makes use of attack drones, heavy equipment, missiles, artillery and multiple rocket launchers. The killing of civilians, the blockade, the abuse of people, including children, women and the elderly, continues unabated. As we say, there is no end in sight to this. Meanwhile, the so-called civilised world, which our Western colleagues proclaimed themselves the only representatives of, prefers not to see this, as if this horror and genocide, which almost 4 million people are facing, do not exist.

41. Russia’s Permanent Representative to the United Nations, Vassily Nebenzia, defended this recognition before the General Assembly on the ground that Russia “could no longer remain indifferent to the fate of the 4 million people of the Donbas,” “in the light of the

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<sup>49</sup> President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (21 February 2022), accessed at <http://en.kremlin.ru/events/president/transcripts/statements/67828> (Annex 5).

blatant genocide” there.<sup>50</sup> President Putin subsequently reiterated that “the main motivating force behind our decision to recognise the independence of the Donbas people’s republics” was the “feelings and pain of these people” in Donbas who had suffered “genocide.”<sup>51</sup>

**3. On 24 February 2022, the Russian Federation Launched a Massive Use of Force in and Against Ukraine with the Stated Purpose of Preventing and Punishing Alleged Genocide.**

42. In an address to the Russian people on 24 February 2022, President Putin announced a so-called “special military operation” against Ukraine.<sup>52</sup> It quickly became apparent that this was, in fact, a large-scale and indiscriminate military assault throughout the territory of Ukraine, using missiles, airstrikes, tanks, multiple launch rocket systems, and other weaponry while besieging and destroying cities, targeting civilians, abducting and removing local political leaders, and blocking crucial international ports.

43. As the pretext for Russia’s use of force, President Putin stated that the “purpose” of Russia’s invasion was to prevent and punish the genocide that Russia alleged was occurring in eastern Ukraine:

As I said in my previous address, you cannot look without compassion at what is happening there. It became impossible to tolerate it. We had to stop that atrocity, that genocide of the millions of people who live there and who pinned their hopes on Russia, on all of us.

...

The purpose of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kyiv regime. To this end, we will seek to demilitarise and denazify Ukraine, as well as bring to trial those

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<sup>50</sup> U.N. General Assembly Official Records, 76th Session: 58th Plenary Meeting, U.N. Doc. A/76/PV.58 (23 February 2022), p. 14.

<sup>51</sup> President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (24 February 2022), accessed at <http://en.kremlin.ru/events/president/news/67843> (Annex 6).

<sup>52</sup> *Ibid.*

who perpetrated numerous bloody crimes against civilians, including against citizens of the Russian Federation.<sup>53</sup>

44. Other Russian officials echoed this justification. In remarks to the United Nations Security Council shortly after Putin’s speech, the Permanent Representative of the Russian Federation asserted that President Putin “decided to start a military operation in Donbas” and that “[t]he goal of this special operation is protection of people who have been victimized and exposed to genocide by the Kyiv regime.”<sup>54</sup>

45. At a press conference on 25 February 2022, Russian Foreign Minister Sergey Lavrov also justified Russia’s military aggression against Ukraine as “preventing the neo-Nazis and those who promote methods of genocide from ruling this country.”<sup>55</sup> Mr. Lavrov also stated that “the Kyiv regime” had “openly embarked on the path of Russophobia and genocide.”<sup>56</sup> In an interview also on 25 February 2022, the Russian Ambassador to the European Union was asked about President Putin’s reference to genocide as justification for Russia’s unlawful acts against Ukraine and said, “[w]e can turn to the official term of genocide as coined in international law. If you read the definition it fits pretty well.”<sup>57</sup>

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<sup>53</sup> *Ibid.*

<sup>54</sup> Permanent Mission of the Russian Federation to the United Nations, *Statement and Reply by Permanent Representative Vassily Nebeniza at UNSC Briefing on Ukraine* (23 February 2022) (Annex 7). Due to the time zone differences of the locations of the remarks, the statement to the UNSC was given shortly after Putin’s speech but on the previous day.

<sup>55</sup> TASS, *Kyiv Regime Controlled by West, Neo-Nazis, Lavrov Says* (25 February 2022), accessed at <https://tass.com/politics/1411139>.

<sup>56</sup> Interfax, *Lavrov: Moscow Considers the Attitude of the Ukrainian Authorities Towards the Residents of Donbas as Genocide* (25 February 2022) (Annex 37); see also RBC, *Lavrov Announced the Non-Recognition of the Democratic Government of Ukraine* (25 February 2022) (Lavrov reportedly stating “[w]e see no way to recognize as democratic a government that oppresses and uses methods of genocide against its own people”) (Annex 38).

<sup>57</sup> Georgi Gotev, *Russian Ambassador Chizhov: Nord Stream 2 Is Not Dead, It’s a Sleeping Beauty*, EURACTIV (25 February 2022), accessed at <https://www.euractiv.com/section/global-europe/interview/russian-ambassador-chizhov-nord-stream-2-is-not-dead-its-a-sleeping-beauty/>.

As a leading commentary on the Genocide Convention notes, “[t]oday, the definition contained in Article II of the Convention is widely accepted and generally recognized as the authoritative definition



46. Since the invasion began, President Putin and others have reaffirmed the pretext that Russia’s use of force is intended to prevent and punish genocide. In a speech given on 18 March 2022, two days after this Court indicated provisional measures in this case, President Putin reiterated Russia’s claim that people in Donbas were subjected to “genocide” and that the “goal and motive of the military operation that we launched in Donbas and Ukraine is to relieve these people of suffering, of this genocide.”<sup>58</sup>

**C. Ukraine Has Rejected the Russian Federation’s Allegations of Genocide, as well as Russia’s Reliance on Those Allegations as a Pretext to Recognize the DPR and LPR and to Use Force to Prevent and Punish Genocide.**

47. Ukraine has strongly disputed the Russian Federation’s allegations of genocide in violation of the Genocide Convention, dating back to the launch of the Investigative Committee’s first “investigations” in 2014. In September 2014, shortly after the Investigative Committee announced that it had initiated a criminal case against unidentified Ukrainian officials concerning alleged violations of the Genocide Convention, it was publicly reported that the Prosecutor General’s Office of Ukraine stated that the actions of the Investigative Committee were “groundless,” and in fact were “aimed at supporting the activities of the so-called ‘DPR’ and ‘LPR.’”<sup>59</sup>

48. Anton Gerashchenko, an adviser to the Ukrainian Interior Minister, explained that Russia’s opening of this case was “outright nonsense” and merely “PR noise” intended to

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of the crime of genocide.” Florian Jeßberger, *The Definition of Genocide*, in *THE UN GENOCIDE CONVENTION: A COMMENTARY* (Paola Gaeta, ed. 2009), p. 88 (Annex 25).

<sup>58</sup> President of Russia Vladimir Putin, *Remarks at the Concert Marking the Anniversary of Crimea’s Reunification with Russia* (18 March 2022), <http://en.kremlin.ru/events/president/transcripts/68016> (Annex 8).

<sup>59</sup> BBC News, *Investigative Committee of Russia Accused the Military Leadership of Ukraine of “Genocide”* (2 October 2014) (Annex 33).

justify “completely separat[ing] Donbas from Ukraine.”<sup>60</sup> The Russian service of Radio Free Europe reported a statement by another adviser to the Ukrainian Interior Minister, Zoryan Shkiryak, stating that it was a “thankless task” to comment on the “nonsense of the Investigative Committee of the Russian Federation,” “[e]specially when they use terms like genocide.”<sup>61</sup>

49. At the same time, the Prosecutor General’s Office of Ukraine initiated its own criminal proceedings against Russian officials of the Investigative Committee.<sup>62</sup> Mr. Shkiryak explained that the criminal investigations Ukraine had opened relating to the Investigative Committee’s work were “the response of the Ukrainian side to the blatant facts . . . of the legal schizophrenia demonstrated by the Russian imperial government today.”<sup>63</sup>

50. As Russian officials intensified their claims of genocide in the lead up to Russia’s February 2022 invasion, Ukraine continued to refute these claims. For example, on 26 January 2022, the information agency of the Ukrainian Ministry of Defense published an article responding to Kremlin propaganda “myths,” addressing the “absurd[ity]” of Russia’s allegations of genocide:

The claim that Ukraine is attacking its own territory and persecuting its own citizens is absurd. To intensify domestic support for Russian military aggression, the Russian state media are relentlessly trying to denigrate Ukraine, accusing it of

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<sup>60</sup> BBC News, *The Prosecutor General’s Office Opened Proceedings Against Russian Investigators* (30 September 2014) (Annex 31).

<sup>61</sup> Lyubov Chyzhova, *It is Putin Who Should be Tried for Genocide—Adviser to the Head of the Ministry of Internal Affairs of Ukraine*, RFE/RL (1 October 2014) (Annex 32).

<sup>62</sup> See Prosecutor General’s Office of Ukraine, *The Prosecutor General’s Office of Ukraine Initiated Criminal Proceedings Against Officials of the Investigative Committee of the Russian Federation* (29 September 2014) (Annex 1); BBC News, *The Prosecutor General’s Office Opened Proceedings Against Russian Investigators* (30 September 2014) (Annex 31); BBC News, *Investigative Committee of Russia Accused the Military Leadership of Ukraine of “Genocide”* (2 October 2014), (Annex 33).

<sup>63</sup> Lyubov Chyzhova, *It is Putin Who Should be Tried for Genocide—Adviser to the Head of the Ministry of Internal Affairs of Ukraine*, RFE/RL (1 October 2014) (Annex 32).

genocide in eastern Ukraine, drawing groundless parallels with Nazism and World War II.

In fact, there is no evidence that Russian-speaking or ethnic Russians in eastern Ukraine are being persecuted, not to mention genocide, by the Ukrainian authorities. This is confirmed in reports published by the Council of Europe, the UN High Commissioner for Human Rights and the OSCE.<sup>64</sup>

51. After Russia recognized the so-called DPR and LPR as sovereign states on the basis of Russia's allegations of genocide in the Donbas region, Ukraine's Foreign Minister, Mr. Dmytro Kuleba, responded on 23 February 2022 that "Russia's accusations of Ukraine are absurd."<sup>65</sup> On 26 February 2022, two days after Russia commenced its use of force on the pretext of preventing and punishing genocide, Ukraine's Ministry of Foreign Affairs issued a statement "on Russia's False and Offensive Allegations of Genocide as a Pretext for its Unlawful Military Aggression."<sup>66</sup> The Ministry stated:

Ukraine strongly denies Russia's allegations of genocide and denies any attempt to use such manipulative allegations as an

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<sup>64</sup> Ruslan Tkachuk, *Seven Myths of the Kremlin Propaganda About the Russian-Ukrainian Conflict*, ArmyINFORM (26 January 2022) (summarizing the research of EUvsDisinfo, a project of the European External Action Service's East StratCom Task Force) (Annex 3). ArmyINFORM is the information agency of the Ukrainian Ministry of Defense. See ArmyINFORM, *About Us* (27 May 2019) (Annex 2).

<sup>65</sup> Ministry of Foreign Affairs of Ukraine, *Statement by H.E. Mr. Dmytro Kuleba, Minister of Foreign Affairs of Ukraine, at the UN General Assembly Debate on the Situation in the Temporarily Occupied Territories of Ukraine* (23 February 2022), accessed at <https://www.kmu.gov.ua/en/news/vistup-ministra-zakordonnih-sprav-ukrayini-dmitra-kuleba-na-debatah-generalnoyi-asambleyi-oon-situaciya-na-timchasovo-okupovanih-teritoriyah-ukrayini-23022022>; see also Ministry of Foreign Affairs of Ukraine, *Statement of the Ministry of Foreign Affairs of Ukraine on the Russian Federation's Decision to Recognise the "Independence" of the So-Called "DPR" and "LPR"* (22 February 2022) (rejecting Russia's recognition of the DPR and LPR), accessed at <https://mfa.gov.ua/en/news/statement-ministry-foreign-affairs-ukraine-russian-federations-decision-recognise-independence-so-called-dpr-and-lpr>; see also President of Ukraine, Volodymyr Zelenskyy, *Ukraine Qualifies Russia's Latest Actions as a Violation of the Sovereignty and Territorial Integrity of Our State* (22 February 2022) (same), accessed at <https://www.president.gov.ua/en/news/ukrayina-kvalifikuye-ostanni-diyi-rosiyi-yak-porushennya-suv-73037>.

<sup>66</sup> Ministry of Foreign Affairs of Ukraine, *Statement of the Ministry of Foreign Affairs of Ukraine on Russia's False and Offensive Allegations of Genocide as a Pretext for Its Unlawful Military Aggression* (26 February 2022), accessed at <https://www.kmu.gov.ua/en/news/zayava-mzs-ukrayini-shchodonepravdivih-ta-obrazlivih-zvinuvachen-rosiyi-v-genocidi-yak-privodu-dlya-yiyi-protipravnoyi-vijskovoyi-agresiyi>.

excuse for unlawful aggression. The crime of genocide is defined in the Genocide Convention, and under that Convention Russia's claims are baseless and absurd.

Russia's claims of genocide as justification for its lawless conduct are an insult to the Genocide Convention, and to the work of the international community in preventing and punishing the world's most serious crime.

Russia must immediately cease its unlawful aggression against Ukraine taken under this baseless pretext.<sup>67</sup>

Ukraine also demonstrated by its actions that it rejected Russia's claimed right under the Genocide Convention to use force to prevent and punish purported acts of genocide: Ukraine did not permit Russia to enter its territory for this purpose, but instead mounted a strong national defense.

#### **D. The Russian Federation Has Committed Atrocities and Caused Extreme Destruction and Losses Throughout Ukraine.**

52. The Russian Federation's use of force in and against Ukraine in the name of preventing and punishing alleged genocide has caused unimaginable horror and devastation throughout Ukraine. According to the United Nations, in the *first six days* of Russia's invasion, there were nearly as many recorded civilian casualties in Ukraine as in *the last five years* of the conflict in the Donbas region.<sup>68</sup> As of 22 June 2022, the United Nations recorded over 4,660 civilian deaths and over 5,800 civilian injuries, but notes that "the actual figures are considerably higher" given delays in receiving information from areas such as Mariupol and Izyum.<sup>69</sup> According to the OHCHR, "[m]ost of the civilian casualties recorded were caused

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<sup>67</sup> *Ibid.*

<sup>68</sup> OHCHR, *Civilian Casualty Report* (3 March 2022), accessed at <https://ukraine.un.org/sites/default/files/202203/Civilian%20casualties%20as%20of%2024.00%202%20March%202022%20ENG.pdf>.

<sup>69</sup> OHCHR, *Ukraine: Civilian Casualty Update* (23 June 2022), accessed at <https://www.ohchr.org/en/news/2022/06/ukraine-civilian-casualty-update-23-june-2022>.

by the use of explosive weapons with a wide impact area, including shelling from heavy artillery and multiple launch rocket systems, and missile and air strikes.”<sup>70</sup>

53. The Russian assault has combined indiscriminate shelling of civilians from afar with face-to-face brutality on a shocking level. On 13 April 2022, the Organization for Security and Co-operation in Europe (“OSCE”) published a report on the atrocities committed since Russia’s 24 February invasion, and found extensive evidence of violations of fundamental human rights by the Russian armed forces.<sup>71</sup> Russian forces have attacked humanitarian convoys<sup>72</sup> and arrested and tortured civilians, including journalists.<sup>73</sup> For example, Russian forces seized a Ukrainian interpreter working for Radio France, held him in captivity, left him in an icy cellar, beat him repeatedly with an iron bar and rifle butts, tortured him with electricity, starved him of food for days, and subjected him to a mock execution.<sup>74</sup> Russian forces are also responsible for disappearances of local Ukrainian political leaders and pro-Ukrainian activists.<sup>75</sup>

54. In Mariupol, Russian shelling destroyed 80 to 90 percent of all residential buildings.<sup>76</sup> For weeks, hundreds of thousands of residents were trapped in the city with no heat, little food or water, and the constant terror of non-stop shelling by Russia.<sup>77</sup> Russia killed

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<sup>70</sup> *Ibid.*

<sup>71</sup> Wolfgang Benedek, Veronika Bílková & Marco Sassòli, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine since 24 February 2022*, OSCE (13 April 2022) [hereinafter OSCE Report], p. ii, accessed at <https://www.osce.org/files/f/documents/f/a/515868.pdf>.

<sup>72</sup> *Ibid.*, pp. 16–17.

<sup>73</sup> *Ibid.*, p. 18.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*, pp. 20–21.

<sup>76</sup> *Ibid.*, p. 32.

<sup>77</sup> *Ibid.*

thousands of civilians in its siege of the city.<sup>78</sup> Kharkiv, Ukraine's second largest city, has faced relentless indiscriminate shelling, with 18 killed and more than 100 wounded in just one four day period, for example,<sup>79</sup> and the town of Izyum, according to the OSCE, "has been nearly completely destroyed by constant Russian bombardments."<sup>80</sup> Residents were forced to hide in their basements for safety and went days without electricity, gas, heating, and communication.<sup>81</sup>

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<sup>78</sup> See, e.g., Ukrinform, *New Mass Graves Discovered in Mariupol, There May Be More than 22,000 Dead* (30 May 2022), accessed at <https://t.co/dbbQzKD5gq>; Saskya Vandoorne & Melissa Bell, *Mariupol Death Toll at 22,000, Says Mayor's Adviser*, CNN (25 May 2022), accessed at [https://www.cnn.com/europe/live-news/russia-ukraine-war-news-05-25-22/h\\_2ad9e6d653b92f03fc7f19312c17d7e9](https://www.cnn.com/europe/live-news/russia-ukraine-war-news-05-25-22/h_2ad9e6d653b92f03fc7f19312c17d7e9); Anthony Faiola et al., *In Mariupol, Echoes of History, Utter Devastation and a Last Stand*, The Washington Post (24 April 2022), accessed at <https://www.washingtonpost.com/world/2022/04/24/mariupol-ukraine-last-days/>

<sup>79</sup> See, e.g., Oleksandr Kozhukar, *Kharkiv Shelling Kills 18, Injures Scores Over Past Four Days, Zelenskiy Says*, Reuters (17 April 2022), accessed at <https://www.reuters.com/world/europe/shelling-kills-five-injures-13-kharkiv-city-centre-report-2022-04-17/>; Amnesty International, *Ukraine: "Anyone Can Die at Any Time": Indiscriminate Attacks by Russian Forces in Kharkiv, Ukraine* (13 June 2022), accessed at <https://www.amnesty.org/en/documents/eur50/5682/2022/en/>.

<sup>80</sup> OSCE Report, p. 32.

<sup>81</sup> *Ibid.* (citing Amnesty International, *Ukraine: Beleaguered Town of Izyum at Breaking Point After Constant Attack from Russian Forces – New Testimony* (16 March 2022), accessed at <https://www.amnesty.org/en/latest/news/2022/03/ukraine-beleaguered-town-of-izium-at-breaking-point-after-constant-attack-from-russian-forces-new-testimony/>).

**Figure 1**<sup>82</sup>



***Emergency Workers Carrying an Injured Pregnant Woman Outside a Bombed Maternity Hospital in Mariupol on 9 March 2022***<sup>83</sup>

55. In March, heavy fighting in Irpin in the Kyiv region forced a majority of residents to flee the town. When Ukraine liberated the city, authorities found that approximately 50 percent of critical infrastructure had been destroyed.<sup>84</sup> In March, Russian forces killed and wounded numerous civilians in Chernihiv — attacks that Human Rights

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<sup>82</sup> Kyle Almond & Brett Roegiers, *The Photos that Have Defined the War in Ukraine*, CNN (13 May 2022) (photo by Evgeniy Maloletka/AP), accessed at <https://www.cnn.com/interactive/2022/05/world/ukraine-war-photographers-cnnphotos/>.

<sup>83</sup> The woman and her baby later died. *Ibid.*

<sup>84</sup> Vasco Cotovio et al., *Ukrainians Have Retaken Irpin from the Russian Invaders. But It's a City that Now Lies in Ruins*, CNN (31 March 2022), accessed at <https://www.cnn.com/2022/03/31/europe/irpin-ukraine-war-destruction-intl/index.html>.

Watch found were in violation of the laws of war.<sup>85</sup> The attacks included a bombing of an apartment building that killed 47 civilians; an attack that killed 17 people waiting for bread outside of a supermarket; and cluster munition attacks that damaged two hospitals.<sup>86</sup>

56. In the devastated city of Borodyanka, close to Ukraine's border with Belarus, Russian forces repeatedly shelled the city, destroying or causing extensive damage to a majority of the buildings.<sup>87</sup> Several hundred bodies were found in a mass grave after Russia withdrew, with many more civilians likely buried beneath collapsed buildings.<sup>88</sup> And the world will never forget the unimaginable disregard for civilian life by Russian forces in Bucha, where Ukrainian forces freeing the town discovered bodies in the street and hundreds of bodies buried in mass graves.<sup>89</sup>

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<sup>85</sup> Human Rights Watch, *Ukraine: Russian Strikes Killed Scores of Civilians in Chernihiv* (10 June 2022), accessed at <https://www.hrw.org/news/2022/06/10/ukraine-russian-strikes-killed-scores-civilians-chernihiv>.

<sup>86</sup> *Ibid.*

<sup>87</sup> Scott Detrow et al., *This Is What One Town in Ukraine Looks Like After Russian Troops Withdrew*, NPR (9 April 2022), accessed at <https://www.npr.org/sections/pictureshow/2022/04/09/1091740132/ukraine-russia-borodyanka>; Julia Jacobo, *Images Show Destruction Left in Ukraine Town of Borodyanka After Russian Occupation*, ABC News (6 April 2022), accessed at <https://abcnews.go.com/International/images-show-destruction-left-ukraine-town-borodyanka-russian/story?id=83910345>.

<sup>88</sup> Jeremy Bowen, *Borodyanka: 'There Are a Lot of People Left Under the Rubble'*, BBC News (6 April 2022), accessed at <https://www.bbc.com/news/world-europe-61007427>.

<sup>89</sup> Jeremy Bowen, *Ukraine War: Bucha Street Littered with Burned-Out Tanks and Corpses*, BBC News (3 April 2022), accessed at <https://www.bbc.com/news/world-europe-60970818>.



**Figure 2**<sup>90</sup>



***A Ukrainian Soldier Stands Next to a Discovered Mass Gravesite in Bucha***

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<sup>90</sup> Reuters, *The Bodies of Bucha: Images of Dead Civilians Cause Outrage Worldwide* (7 April 2022) (photo by Alkis Konstantinidis/Reuters), accessed at <https://www.reuters.com/news/picture/the-bodies-of-bucha-images-of-dead-civil-idUSRTS6VN22>.

**Figure 3**<sup>91</sup>



***Irpin After Suffering Heavy Russian Shelling***

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<sup>91</sup> Daniel Boffey, 'We Had Too Much to Do to Be Scared': The Couple Who Fled Irpin with 19 Dogs, The Guardian (23 May 2022) (photo from Google Earth), accessed at <https://www.theguardian.com/world/2022/may/23/we-had-too-much-to-do-to-be-scared-the-couple-who-fled-irpin-with-19-dogs>.

**Figure 4**<sup>92</sup>



***A Family Killed by a Russian Mortar Attack in Irpin***

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<sup>92</sup> Kyle Almond & Brett Roegiers, *The Photos that Have Defined the War in Ukraine*, CNN (13 May 2022) (photo by Lynsey Addario/Getty Images), accessed at <https://www.cnn.com/interactive/2022/05/world/ukraine-war-photographers-cnnphotos/>.

**Figure 5**<sup>93</sup>



***Destruction in Borodyanka***

57. Russia has also used thermobaric weapons, or vacuum bombs, and hypersonic missiles in Ukraine.<sup>94</sup> Thermobaric weapons are considered especially dangerous, as the fuel mixture released on the first charge penetrates any openings not totally sealed, and the second charge detonates the cloud, resulting in a massive blast and vacuuming up surrounding

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<sup>93</sup> Julia Jacobo, *Images Show Destruction Left in Ukraine Town of Borodyanka After Russian Occupation*, ABC News (6 April 2022) (photo by Vadim Ghirda/AP), accessed at <https://abcnews.go.com/International/images-show-destruction-left-ukraine-town-borodyanka-russian/story?id=83910345>.

<sup>94</sup> See Ana Rivas et al., *Ukraine Is Accusing Russia of Again Using Thermobaric Weapons. Here's What Makes Them So Devastating*, The Wall Street Journal (27 May 2022), accessed at <https://www.wsj.com/articles/ukraine-is-accusing-russia-of-again-using-thermobaric-weapons-heres-what-makes-them-so-devastating-11653679508>; Brad Lendon, *What to Know About Hypersonic Missiles Fired by Russia at Ukraine*, CNN (10 May 2022), accessed at <https://www.cnn.com/2022/03/22/europe/biden-russia-hypersonic-missiles-explainer-intl-hnk/index.html>.

oxygen.<sup>95</sup> The use of the weapon results in devastation of both the people and infrastructure in the surrounding area.

58. In addition to civilian losses and damages, Ukraine's military has also suffered significant losses. As just one example, in early March a Russian missile strike on a military base in Okhtyrka killed more than 70 Ukrainian soldiers.<sup>96</sup> On 18 March, Russia attacked Ukrainian military barracks where 200 soldiers were sleeping, and at least 50 soldiers were killed and 57 injured.<sup>97</sup> On 17 May, a Russian strike on another military barracks in Desna killed 87 soldiers.<sup>98</sup> In early June, Ukraine repatriated the bodies of 210 Ukrainian soldiers who died in Mariupol.<sup>99</sup> Russian forces used thermobaric weapons on Ukrainian forces in Lyman in the Donbas area of Ukraine as Russia captured the city.<sup>100</sup>

59. The conflict has also caused a mass displacement of Ukrainians. As of mid-June 2022, over 5 million refugees from Ukraine have fled to other European countries.<sup>101</sup>

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<sup>95</sup> BBC News, *What is a Thermobaric or Vacuum Bomb?* (10 March 2022), accessed at <https://www.bbc.com/news/business-60571395>.

<sup>96</sup> Nicola Slawson, *First Thing: More than 70 Ukrainian Soldiers Killed Near Kharkiv*, The Guardian (1 March 2022), accessed at <https://www.theguardian.com/us-news/2022/mar/01/first-thing-more-than-70-ukrainian-soldiers-killed-near-kharkiv>.

<sup>97</sup> Andrew Harding, *Ukraine Conflict: Scores Feared Dead After Russia Attack on Mykolaiv Barracks*, BBC News (19 March 2022), accessed at <https://www.bbc.com/news/world-europe-60807636>.

<sup>98</sup> Reuters, *Ukraine Says 87 Were Killed in Russian Air Strike Last Week* (23 May 2022), accessed at <https://www.reuters.com/world/europe/ukraine-says-87-were-killed-russian-air-strike-last-week-2022-05-23/>.

<sup>99</sup> Yulia Kesaieva & Ben Wedeman, *Bodies of 210 Ukrainian Soldiers who Died in Mariupol Now Repatriated, Defense Ministry Says*, CNN (7 June 2022), accessed at [https://www.cnn.com/europe/live-news/russia-ukraine-war-news-06-07-22/h\\_217987274a0016bfb4a102b9e89bf985](https://www.cnn.com/europe/live-news/russia-ukraine-war-news-06-07-22/h_217987274a0016bfb4a102b9e89bf985).

<sup>100</sup> Ana Rivas et al., *Ukraine Is Accusing Russia of Again Using Thermobaric Weapons. Here's What Makes Them So Devastating*, The Wall Street Journal (27 May 2022), accessed at <https://www.wsj.com/articles/ukraine-is-accusing-russia-of-again-using-thermobaric-weapons-heres-what-makes-them-so-devastating-11653679508>.

<sup>101</sup> U.N. High Commissioner for Refugees, *Ukraine Refugee Situation: Operational Data Portal* (as of 21 June 2022) (Annex 40).

Internally, the conflict has displaced over 8 million people.<sup>102</sup> The U.N. High Commissioner for Refugees has voiced concern for the “grave situation inside Ukraine” and noted that those seeking refuge “need safety and protection, first and foremost, but also shelter, food, hygiene and other support; and they need it urgently.”<sup>103</sup>

60. Ukraine’s economy has also suffered immensely. According to the World Bank, Russia’s aggression will likely shrink Ukraine’s economy by 45 percent in 2022.<sup>104</sup> Russia has blocked Ukraine’s ports in the Black Sea and port traffic has fallen more than 75 percent.<sup>105</sup> Ukraine was forced to close four important ports in the Black Sea — Pivdenny, Chornomorsk, Mykolayiv, and Odesa.<sup>106</sup> Other important ports in the Black Sea and Sea of Azov — Mariupol, Berdyansk, Skadovsk, and Kherson — were occupied by Russian forces.<sup>107</sup> Russia’s blockade has not only had dire consequences for Ukraine’s economy, it has also triggered an international food crisis. According to the director of the United Nations World Food

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<sup>102</sup> U.N. High Commissioner for Refugees, *Ukraine Emergency* (17 June 2022), accessed at <https://www.unrefugees.org/emergencies/ukraine/>.

<sup>103</sup> *Ibid.*

<sup>104</sup> World Bank, *Russian Invasion to Shrink Ukraine Economy by 45 Percent this Year* (10 April 2022), accessed at <https://www.worldbank.org/en/news/press-release/2022/04/10/russian-invasion-to-shrink-ukraine-economy-by-45-percent-this-year>.

<sup>105</sup> Phillip Inman, *Ukraine Economy to Shrink by Almost Half this Year, World Bank Forecasts*, The Guardian (10 April 2022), accessed at <https://www.theguardian.com/business/2022/apr/10/ukraine-economy-gdp-russia-invasion-world-bank-forecast>.

<sup>106</sup> Paulia Devitt et al., *Ukraine Shuts Ports as Conflict Threatens Grain Supplies*, Reuters (23 February 2022), accessed at <https://www.reuters.com/world/europe/russia-halts-vessel-movement-azov-sea-black-sea-open-2022-02-24/>.

<sup>107</sup> Reuters, *Ukraine Formally Closes Seaports Captured by Russia* (2 May 2022), accessed at <https://www.reuters.com/world/europe/ukraine-formally-closes-seaports-captured-by-russia-2022-05-02/>.

Programme, Russia’s “[f]ailure to open Black Sea ports is a declaration of war on global food security.”<sup>108</sup>

61. Russia’s invasion has also caused extreme environmental harm. In the opening days of the invasion, Russian troops entered the Chernobyl protected zone, tearing up radioactive soil and increasing the background level of radiation in the area twentyfold.<sup>109</sup> Russia has also attacked numerous fuel depots, releasing toxic smoke into the air.<sup>110</sup> Ukraine’s natural environment is also suffering. Forests near major cities are littered with abandoned military equipment.<sup>111</sup> Damage from missiles has scorched the earth and contaminated soil with heavy metals.<sup>112</sup>

**E. Ukraine Instituted Proceedings and the Court Indicated Provisional Measures, but the Russian Federation Has Stated Its Defiant Noncompliance with the Court’s Order and Has Continued Causing Death and Destruction in and Against Ukraine.**

62. On 26 February 2022, Ukraine filed its application with the Court and simultaneously submitted a request for the indication of provisional measures. On 1 March 2022, the President of the Court addressed an urgent communication to the Russian Federation, “call[ing] the attention of the Russian Federation to the need to act in such a way

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<sup>108</sup> Peyvand Khorsandi, *War in Ukraine: WFP Renews Call to Open Black Sea Ports Amid Fears for Global Hunger*, World Food Programme (20 May 2022), accessed at <https://www.wfp.org/stories/war-ukraine-wfp-renews-call-open-black-sea-ports-amid-fears-global-hunger>.

<sup>109</sup> Victoria Gill, *Chernobyl: Why Radiation Levels Spiked at Nuclear Plant*, BBC (25 February 2022), accessed at <https://www.bbc.com/news/science-environment-60528828>.

<sup>110</sup> Reuters, *Ukraine Says Russian Troops Blow Up Gas Pipeline in Kharkiv* (26 February 2022), accessed at <https://www.reuters.com/world/europe/ukraine-says-russian-troops-blow-up-gas-pipeline-kharkiv-2022-02-27/>; Bethan McKernan, *Russian Missiles Strike Fuel Depot in Key Ukraine Port of Odesa*, The Guardian (3 April 2022), accessed at <https://www.theguardian.com/world/2022/apr/03/russian-missiles-thought-to-have-hit-odesa-fuel-depot>.

<sup>111</sup> Ivana Kottasová, *Ukraine’s Natural Environment is Another Casualty of War. The Damage Could be Felt for Decades*, CNN (22 May 2022), accessed at <https://www.cnn.com/2022/05/22/europe/ukraine-russia-war-environment-intl-cmd/index.html>.

<sup>112</sup> *Ibid.*

as will enable any order the Court may make on the request for provisional measures to have its appropriate effects.”<sup>113</sup> The Court held a hearing on 7 March 2022, in which Russia declined to participate. On 16 March 2022, the Court ordered Russia to “immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine” and to “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 . . . above.”<sup>114</sup>

63. Russia has made no effort to comply, instead expressly rejecting the Court’s Provisional Measures Order and continuing to unlawfully use force in and against Ukraine and its people. The day after the Court issued its Order, Kremlin spokesperson Dmitry Peskov announced that Russia would “not be able to take this decision into account.”<sup>115</sup>

64. At the same time the Court was issuing its Order, Russian forces destroyed a theater in the center of Mariupol in an airstrike.<sup>116</sup> The theater was marked as housing children and sheltered many civilians who had taken refuge.<sup>117</sup> Evidence indicates close to 600 people were killed, with many more injured.<sup>118</sup> In the following weeks, Russian forces continuously

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<sup>113</sup> Press Release, *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Urgent Communication to the Russian Federation from the President Under Article 74, paragraph 4, of the Rules of Court (1 March 2022).

<sup>114</sup> Provisional Measures Order of 16 March 2022, para. 86.

<sup>115</sup> Sofia Stuart Leeson, *Russia Rejects International Court Ruling to Stop Invasion of Ukraine*, EURACTIV (17 March 2022), accessed at <https://www.euractiv.com/section/europe-s-east/news/russia-rejects-international-court-ruling-to-stop-invasion-of-ukraine/>; see also Interfax, *Russia Can’t Accept Int’l Court of Justice Order to Halt Operation in Ukraine – Peskov* (17 March 2022), accessed at <https://interfax.com/newsroom/top-stories/76917/>.

<sup>116</sup> OSCE Report, p. 47–48.

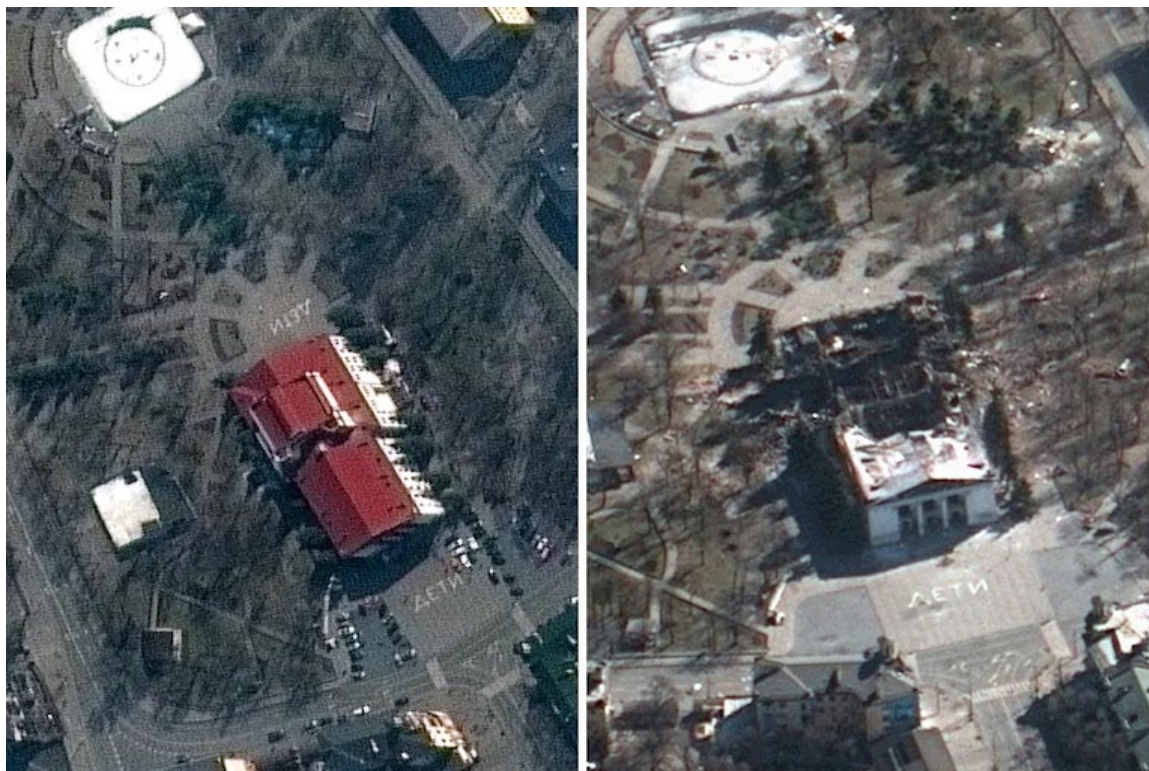
<sup>117</sup> *Ibid.*, p. 48.

<sup>118</sup> Lori Hinnant et al., *AP Evidence Points to 600 Dead in Mariupol Theater Airstrike*, AP News (4 May 2022), accessed at <https://apnews.com/article/Russia-ukraine-war-mariupol-theater-c321a196fbd568899841b506afcac7a1>.



bombarded Mariupol, reducing the city to rubble.<sup>119</sup> The mayor of Mariupol reports more than 22,000 residents died in the siege.<sup>120</sup>

**Figure 6**<sup>121</sup>



**Left: The Mariupol Drama Theater on 14 March 2022. The word “children” is written in Russian in large white letters in front of and behind the theater.**

**Right: The Mariupol Drama Theater on 19 March 2022, after a Russian airstrike.**

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<sup>119</sup> Rhodri Davis & Yaroslav Lukov, *Mariupol Steelworkers: ‘We Have Wounded and Dead Inside the Bunkers,’* BBC News (21 April 2022), accessed at <https://www.bbc.com/news/world-europe-61183062>.

<sup>120</sup> Ukrinform, *New Mass Graves Discovered in Mariupol, There May Be More than 22,000 Dead* (30 May 2022), accessed at <https://t.co/dbbQzKD5gq>; Saskya Vandoorne & Melissa Bell, *Mariupol Death Toll at 22,000, Says Mayor’s Adviser*, CNN (25 May 2022), accessed at [https://www.cnn.com/europe/live-news/russia-ukraine-war-news-05-25-22/h\\_2ad9e6d653b92f03fc7f19312c17d7e9](https://www.cnn.com/europe/live-news/russia-ukraine-war-news-05-25-22/h_2ad9e6d653b92f03fc7f19312c17d7e9).

<sup>121</sup> Meg Kelly & Karly Domb Sadof, *New Satellite Imagery Shows Bombed-Out Mariupol Theater*, The Washington Post (19 March 2022) (images provided by Maxar Technologies), accessed at <https://www.washingtonpost.com/investigations/2022/03/19/mariupol-theater-satellite-images/>.

65. In early April, Ukrainian forces liberating the town of Bucha near Kyiv found the bodies of civilians executed in the streets. As reported by the OSCE, civilians were “killed with their hands tied” and mass graves have been uncovered.<sup>122</sup> Satellite imagery has debunked Russia’s claims that these photos were staged.<sup>123</sup> According to Amnesty International, Russia executed five men in Bucha between 4 and 19 March.<sup>124</sup> This includes killings after the Court issued its Provisional Measures Order. On 22 or 23 March, Russian soldiers killed a 44-year-old construction worker who was leaving a basement where residents were sheltering, then threw a grenade down the stairs.<sup>125</sup>

66. Bucha is tragically not alone — as Ukrainian cities have been liberated, Ukraine and the world have uncovered a trail of atrocity. Amnesty International has found that “[t]here is compelling evidence” that actions by the Russian Federation “constitute war crimes” including extrajudicial executions of civilians and airstrikes that resulted in the deaths of numerous civilians.<sup>126</sup> The OHCHR has also received over 300 allegations of killings of civilians in areas under control of Russian armed forces and noted that “[w]ilful killing of protected persons, including summary executions, are gross violations of international human

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<sup>122</sup> OSCE Report, p. 22; *see also ibid.*, pp. 2, 56; Daniel Boffey & Martin Farrer, *‘They Were All Shot’: Russia Accused of War Crimes as Bucha Reveals Horror of Invasion*, *The Guardian* (3 April 2022), accessed at <https://www.theguardian.com/world/2022/apr/03/they-were-all-shot-russia-accused-of-war-crimes-as-bucha-reveals-horror-of-invasion>; Louisa Loveluck, *In Bucha, A Massive Search for Bodies Left by Russian Occupiers*, *The Washington Post* (8 April 2022), accessed at <https://www.washingtonpost.com/world/2022/04/08/bucha-body-search-massacre/>.

<sup>123</sup> BBC News, *Bucha Killings: Satellite Image of Bodies Site Contradicts Russian Claims*, (11 April 2022), accessed at <https://www.bbc.com/news/60981238>.

<sup>124</sup> Amnesty International, *Ukraine: Russian Forces Must Face Justice for War Crimes in Kyiv Oblast* (May 2022), accessed at <https://www.amnesty.org/en/latest/news/2022/05/ukraine-russian-forces-must-face-justice-for-war-crimes-in-kyiv-oblast-new-investigation/>.

<sup>125</sup> *Ibid.*

<sup>126</sup> Amnesty International, *Ukraine: “He’s Not Coming Back” War Crimes in Northwest Areas of Kyiv Oblast* (6 May 2022), p. 36, accessed at <https://www.amnesty.org/en/documents/eur50/5561/2022/en/>.

rights law and serious violations of international humanitarian law, and amount to war crimes.”<sup>127</sup>

**Figure 7**<sup>128</sup>



***Bodies Found in a Street in Bucha in April 2022***

67. On 8 April 2022, Russia bombed a railway station in Kramatorsk, killing over 50 people waiting for evacuation trains and injuring over 100 others.<sup>129</sup> The U.N. High Commissioner for Human Rights said this attack “is emblematic of the failure to adhere to the principle of distinction, the prohibition of indiscriminate attacks and the principle of

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<sup>127</sup> OHCHR, *Bachelet Urges Respect for International Humanitarian Law Amid Growing Evidence of War Crimes in Ukraine* (22 April 2022), accessed at <https://www.ohchr.org/en/press-releases/2022/04/bachelet-urges-respect-international-humanitarian-law-amid-growing-evidence>.

<sup>128</sup> Tara John et al., *Bodies of ‘Executed People’ Strewn Across Street in Bucha as Ukraine Accuses Russia of War Crimes*, CNN (3 April 2022), accessed at <https://www.cnn.com/2022/04/03/europe/bucha-ukraine-civilian-deaths-intl/index.html>.

<sup>129</sup> See BBC News, *Kramatorsk Station Attack: What We Know So Far* (9 April 2022), accessed at <https://www.bbc.com/news/world-europe-61036740>; OHCHR, *Bachelet Urges Respect for International Humanitarian Law Amid Growing Evidence of War Crimes in Ukraine* (22 April 2022), accessed at <https://www.ohchr.org/en/press-releases/2022/04/bachelet-urges-respect-international-humanitarian-law-amid-growing-evidence>.

precaution enshrined in international humanitarian law.”<sup>130</sup> According to the OHCHR, “Russian armed forces have indiscriminately shelled and bombed populated areas, killing civilians and wrecking hospitals, schools and other civilian infrastructure, actions that may amount to war crimes.”<sup>131</sup>

**Figure 8**<sup>132</sup>



***Aftermath of Russia’s Attack on the Train Station in Kramatorsk***

68. Other atrocities committed by Russia include rape and forced deportations.

Reports from the United Nations, Human Rights Watch, Amnesty International, and OSCE

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<sup>130</sup> OHCHR, *Bachelet Urges Respect for International Humanitarian Law Amid Growing Evidence of War Crimes in Ukraine* (22 April 2022), accessed at <https://www.ohchr.org/en/press-releases/2022/04/bachelet-urges-respect-international-humanitarian-law-amid-growing-evidence>.

<sup>131</sup> *Ibid.*

<sup>132</sup> Ambassador Michael Carpenter, *The Russian Federation’s Ongoing Aggression Against Ukraine: the Attack in Kramatorsk of April 8 2022*, U.S. Mission to the OSCE (11 April 2022) (image from

document that Russian soldiers have systematically raped Ukrainian civilians during the invasion.<sup>133</sup> The OSCE reported in April 2022 that Russia had also forcibly deported about 500,000 civilians from areas it occupies to Russia, including subjecting them to filtration camps.<sup>134</sup> In these camps, Russian soldiers threaten detainees with torture and executions.<sup>135</sup> Reports from the camps indicate detainees have no access to medical attention and are often subjected to unsanitary conditions.<sup>136</sup> As of the date of this filing, Ukraine estimates that the total number of civilians deported to Russia is closer to 1,200,000.<sup>137</sup>

69. These and other acts by the Russia Federation are evidence of gross violations of international humanitarian law. Forty-three States have filed an expedited State Party referral to the International Criminal Court (“ICC”) to investigate Russia’s war crimes in Ukraine, and ICC Prosecutor Karim Khan has announced he will proceed to an investigation into war crimes, crimes against humanity, and genocide during Russia’s illegal and

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President Zelensky’s Telegram channel), accessed at <https://osce.usmission.gov/the-russian-federations-ongoing-aggression-against-ukraine-the-attack-in-kramatorsk-of-april-8-2022/>.

<sup>133</sup> See United Nations, *Press Briefing by the Head of the UN Human Rights Monitoring Mission in Ukraine Matilda Bogner* (10 May 2022), accessed at <https://www.unognewsroom.org/story/en/1271/un-human-rights-briefing-by-matilda-bogner-head-of-the-un-human-rights-monitoring-mission-in-ukraine>; Human Rights Watch, *Ukraine: Apparent War Crimes in Russia-Controlled Areas* (3 April 2022), accessed at <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>; Amnesty International, *Ukraine: Russian Forces Extrajudicially Executing Civilians in Apparent War Crimes – New Testimony* (7 April 2022), accessed at <https://www.amnesty.org/en/latest/news/2022/04/ukraine-russian-forces-extrajudicially-executing-civilians-in-apparent-war-crimes-new-testimony/>; OSCE Report, p. 76.

<sup>134</sup> OSCE Report, p. 23.

<sup>135</sup> Joyce Sohyun Lee & Jonathan Edwards, *Video Shows Russian ‘Filtration Camp,’ Mariupol Mayor’s Office Says*, *The Washington Post* (6 May 2022), accessed at <https://www.washingtonpost.com/world/2022/05/06/ukraine-mariupol-russian-filtration-camp-video/>.

<sup>136</sup> *Ibid.*

<sup>137</sup> Reuters, *Ukraine Accuses Russia of Forcibly Deporting Over 210,000 Children* (13 May 2022), accessed at <https://www.reuters.com/world/europe/ukraine-accuses-russia-forcibly-deporting-over-210000-children-2022-05-13/>.

unprovoked invasion of Ukraine.<sup>138</sup> In April 2022, the ICC Prosecutor’s Office joined the joint investigation team (“JIT”) that includes Estonia, Latvia, Lithuania, Poland, Slovakia, and Ukraine to investigate international crimes committed by Russia in Ukraine.<sup>139</sup> Germany has also launched an investigation into Russian war crimes in Ukraine.<sup>140</sup>

70. In addition to supporting these other accountability mechanisms, Ukraine is actively investigating Russia’s gross human rights violations, including potential acts of genocide, war crimes, and crimes against humanity, and reserves its rights to bring further claims based specifically on these atrocities.

71. Tragically, there is little doubt that Russian forces in Ukraine will commit more atrocities after this Memorial is filed. To be clear: Russia’s atrocities are not incidental byproducts of its aggression against Ukraine; they comprise the *means* by which Russian aggression has been implemented. Yet for eight years the Russian Federation, through its Investigative Committee and other means, has tried to lay the groundwork for justifying such aggression and atrocity by advancing false allegations of genocide in the Donbas region purportedly committed by Ukraine. This abuse and misuse of the Genocide Convention has led to the unlawful recognition of the DPR and LPR, the unlawful use of force against Ukraine, and ongoing widespread destruction and loss of countless Ukrainian lives.

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<sup>138</sup> International Criminal Court, *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation* (2 March 2022), accessed at <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>; International Criminal Court, *Situation in Ukraine, ICC-01/22*, accessed at <https://www.icc-cpi.int/ukraine>; see also Press Release, United Kingdom, *UK Leads Call for ICC to Investigate Russia’s War Crimes* (2 March 2022), accessed at <https://www.gov.uk/government/news/uk-leads-call-for-icc-to-investigate-russias-war-crimes>.

<sup>139</sup> International Criminal Court, *Statement by ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor Joins National Authorities in Joint Investigation Team on International Crimes Committed in Ukraine* (25 April 2022), accessed at <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-office-prosecutor-joins-national-authorities-joint>; EUROJUST, *Estonia, Latvia and Slovakia Become Members of Joint Investigation Team on Alleged Core International crimes in Ukraine* (31 May 2022), accessed at <https://www.eurojust.europa.eu/news/estonia-latvia-and-slovakia-become-members-joint-investigation-team-alleged-core-international>.

<sup>140</sup> RFE/RL, *German Authorities Investigating Several Hundred Possible Russian War Crimes in Ukraine* (18 June 2022), accessed at <https://www.rferl.org/a/german-authorities-investigating-war-crimes-russia-ukraine/31904157.html>.

**Chapter 3. THE RUSSIAN FEDERATION’S ACTIONS TAKEN ON THE PRETEXT OF PREVENTING AND PUNISHING AN ALLEGED GENOCIDE VIOLATE ARTICLES I AND IV OF THE GENOCIDE CONVENTION**

72. The Russian Federation has made the extraordinary and false accusation that Ukraine and its officials are responsible for committing acts of genocide in violation of the Genocide Convention. On the basis of this serious but unsubstantiated allegation, Russia has claimed through its recognition of the DPR and LPR that Ukraine is no longer sovereign over a portion of its territory, and it has launched a massive use of military force and campaign of atrocity against Ukraine and its people. According to Russia, it has taken these actions in response to violations of the Genocide Convention by Ukraine.

73. This Court has already found in its Order indicating provisional measures 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.”<sup>141</sup> Now, the Court should conclude that the Genocide Convention does not permit Russia to unilaterally use force to prevent or punish the genocide it has falsely alleged, that Russia’s allegations that Ukraine has breached its obligations under the Convention are false, and that Russia’s misuse and abuse of its solemn undertaking under the Convention is a violation of Articles I and IV of that important treaty.

**A. The Russian Federation’s Recognition of the DPR and LPR and Its Use of Force in and Against Ukraine Is Based on a Misinterpretation and Misapplication of the Genocide Convention.**

74. Article I of the Genocide Convention reflects a common undertaking among the Contracting Parties. Article I provides that “[t]he Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.” This Court has concluded that Article I “necessarily implies the prohibition of the commission of genocide” by States.<sup>142</sup> Article IV further provides

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<sup>141</sup> See Provisional Measures Order of 16 March 2022, para. 60.

<sup>142</sup> *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, p. 113, para. 166.

that “[p]ersons committing genocide or any of the other acts enumerated in article III shall be punished.” The present dispute raises questions of whether, as Russia claims, Ukraine is responsible for “the commission of genocide” for purposes of Article I, whether Ukrainian officials are “persons committing genocide” as defined in the Convention for purposes of Article IV, and whether Russia may engage in a use of force in and against Ukraine and violations of Ukraine’s sovereignty in response to a perceived failure by Ukraine to fulfil its obligations under Article I, and as a measure to prevent and punish the genocide alleged by Russia.

75. As the Court recognized in its judgment on preliminary objections in *Bosnian Genocide*, “the rights and obligations enshrined by the Convention are rights and obligations *erga omnes*.”<sup>143</sup> Professor Giorgio Gaja explained, in a report for the Institut de droit international, that “[w]hen a State is under an obligation *erga omnes*, all the States to whom the obligation *erga omnes* is owed have a corresponding right.”<sup>144</sup> Applying this principle to the Genocide Convention, the Court in *The Gambia v. Myanmar* concluded that “any State party to the Genocide Convention, and not only a specially affected State, may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, and to bring that failure to an end.”<sup>145</sup> This

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<sup>143</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Preliminary Objections, Judgment, I.C.J. Reports 1996*, p. 616, para. 31.

<sup>144</sup> Giorgio Gaja, *Obligations and Rights Erga Omnes in International Law*, Second Report, *Annuaire de l’Institut de droit international*, Vol. 71, p. 191 (Krakow Session, 2005) (Annex 23).

<sup>145</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order, I.C.J. Reports 2020*, p. 17, para. 41; *see also Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, Joint Separate Opinion by Judges Higgins, Kooijmans, Elaraby, Owada, and Simma*, p. 72, para. 28 (“Under that Convention it is States who are the monitors of each other’s compliance with prohibition on genocide.”).



understanding of the Convention accords with the observation made by Judge *ad hoc* Elihu Lauterpacht in *Bosnian Genocide*, that “[t]he duty to ‘prevent’ genocide is a duty that rests upon all parties and is a duty owed by each party to every other,” creating a “network of duties” that “is matched by a network of correlative rights.”<sup>146</sup>

76. Russia, however, has misinterpreted the right it possesses under Article I of the Genocide Convention, and misapplied it to the detriment of Ukraine. A right to “invoke the responsibility of another State party” for genocide is not a right to *falsely* accuse another Contracting Party of committing genocide in violation of the Convention, and then to inflict harm on that Contracting Party based on that pretext. Asserting a right under the Convention to “invoke the responsibility of another State party” for genocide and then taking unilateral measures that exceed the limits of international law is a manifest abuse of that right, particularly in light of the egregious campaign of destruction and atrocity Russia has carried out in Ukraine.

77. Pursuant to settled principles of treaty interpretation, the obligations and rights of the Contracting Parties under Articles I and IV of the Genocide Convention must be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”<sup>147</sup> The object and purpose of the Genocide Convention, as reflected in its Preamble, is to foster “international co-operation” in order to “liberate mankind” from the “odious scourge” of genocide that has

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<sup>146</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Order of 13 September 1993, *I.C.J. Reports 1993, Separate Opinion of Judge ad hoc Elihu Lauterpacht*, p. 436, para. 86.

<sup>147</sup> Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331, art. 31(1) [hereinafter “Vienna Convention”].

“inflicted great losses on humanity.”<sup>148</sup> In its 1951 Advisory Opinion on *Reservations to the Genocide Convention*, this Court explained the “objects” of the Genocide Convention as follows:

The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality.<sup>149</sup>

78. On a proper interpretation of Articles I and IV as described below, three principles emerge that are relevant to the present dispute between Ukraine and Russia. *First*, the Convention does not permit one Contracting Party to invoke the responsibility of another Contracting Party under Article I of the Genocide Convention on the basis of a falsely alleged genocide. *Second*, should a Contracting Party invoke the responsibility of another Contracting Party for a breach of the Convention, or should a Contracting Party take action to prevent and punish genocide, such action must be taken in good faith and without abuse. *Third*, even if a State were to fail to meet its obligations under Article I of the Convention, a Contracting Party may not unilaterally act to bring this failure to an end and to prevent and punish genocide in a manner that exceeds the limits of international law.

**1. A State May Not Purport To Prevent and Punish A Genocide That It Has Falsely Alleged.**

79. Article I of the Genocide Convention is written as a mutual commitment among “[t]he Contracting Parties,” who “undertake to prevent and to punish” genocide, which the Contracting Parties “confirm . . . is a crime under international law.” The ordinary meaning of these terms, read in good faith, in their context, and in light of the Convention’s object and

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<sup>148</sup> Genocide Convention, Preamble; see also *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

<sup>149</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23; see also *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*, pp. 110–111, paras. 161–162.

purpose, creates duties that the Contracting Parties owe to one another. They impose an obligation not to commit genocide, to take action to prevent genocide when there is a serious risk of genocide occurring, and to punish genocide when it has occurred. As an obligation *erga omnes partes*, Article I also creates a right and interest for every Contracting Party to see any State's violation of Article I brought to an end. When there is no reasonable basis to conclude that a genocide or serious risk of genocide is occurring, there is neither an obligation to take action to prevent and punish such an alleged genocide, nor a right to take action to bring to an end another State's non-existent violation of Article I. Inherent in this network of obligations and rights is a duty *not* to act to the detriment of other States on the basis of preventing and punishing a falsely alleged genocide.

80. As this Court explained in *Bosnian Genocide*, “the ordinary meaning of the word ‘undertake’ is to give a formal promise, to bind or engage oneself, to give a pledge or promise, to agree, to accept an obligation.”<sup>150</sup> Article I underscores the collective nature and mutuality of this undertaking as made by “[t]he Contracting Parties,” confirming their obligations to each other.

81. The specific, mutual undertaking in Article I is to “punish” and “prevent” genocide. According to the Oxford English Dictionary, the word “punish” is “[t]o cause (an offender) to suffer for an offence, esp. a transgression of a legal or moral code; to subject to a penalty or sanction as retribution or as a caution against further offences.”<sup>151</sup> If no offense has occurred, there is nothing that a State could, or should, “punish.” Similarly, the ordinary

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<sup>150</sup> *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*, p. 111, para. 162; see also Oxford English Dictionary, *undertake*, *v.* (2d ed., 1989) (defining the verb “undertake” as, among other things, “[t]o take upon oneself”), accessed at <https://www.oed.com/oed2/00265114>.

<sup>151</sup> See Oxford English Dictionary, *punish*, *v.* (3rd ed., 2007), accessed at <https://www.oed.com/view/Entry/154671?redirectedFrom=punish#eid>.

meaning of “prevent” is “[t]o preclude the occurrence” of “an anticipated event, state, etc.,” indicating that the possibility of genocide must be reasonably anticipated.<sup>152</sup> Consistent with this understanding, the Court has explained that “a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.”<sup>153</sup> The Court also explained that “the notion of ‘due diligence’, which calls for an assessment *in concreto*, is of critical importance.”<sup>154</sup>

82. The terms of Article I also must be read in their context. The Preamble to the Convention indicates that the Contracting Parties’ undertaking in Article I is intended to foster “international co-operation.” Other provisions of the Convention likewise focus on cooperative behavior. States “pledge themselves” to “grant extradition,” a form of law enforcement cooperation, in cases of genocide.<sup>155</sup> And the Convention provides that Contracting Parties “may call upon the competent organs of the United Nations,” a forum for international cooperation, to take action “for the prevention and suppression of acts of genocide.”<sup>156</sup> This context underscores that when States fulfil their “undertaking” to fellow “Contracting Parties” to “prevent and to punish genocide,” they must do so consistent with the Convention’s objective of fostering international cooperation. They may not, instead, unilaterally take harmful measures to the detriment of another Contracting Party by falsely accusing it of breaching its obligations under the Convention, particularly where there is no

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<sup>152</sup> See Oxford English Dictionary, *prevent*, v. (3rd ed., 2007), accessed at <https://www.oed.com/view/Entry/151073?rskey=aXTcHQ&result=2&isAdvanced=false#eid>.

<sup>153</sup> *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, p. 222, para 431.

<sup>154</sup> *Ibid.*, p. 221, para 430.

<sup>155</sup> Genocide Convention, art. VII.

<sup>156</sup> *Ibid.*, art. VIII.

evident risk of genocide and there is no demonstrated breach of the Convention that a Contracting Party would have an interest in bringing to an end.

83. This interpretation of Article I is further compelled by the Convention's object and purpose. As noted above, this Court has explained the Convention's "purely humanitarian and civilizing purpose," including to "confirm and endorse the most elementary principles of morality."<sup>157</sup> In light of that object and purpose, the undertaking in Article I cannot be read to authorize one Contracting Party to do harm to another Contracting Party, in the guise of preventing and punishing a genocide that has been alleged without basis or support. Instead, the pledge that Contracting Parties make to one another must be read to include a commitment not to act to each other's detriment on the basis of preventing and punishing a falsely alleged genocide, without performing the requisite due diligence as to whether genocide is occurring or is a serious risk, and without regard to whether the other State is in fact violating its obligations under the Convention.

84. A good faith interpretation of the Contracting Parties' "undertaking" mandates that conclusion, and is further confirmed by the *travaux préparatoires*. Throughout the negotiations, delegates were on guard against provisions that might be abused in order to provoke international discord. A rejected proposal for the protection of "political groups," for example, was viewed as "provid[ing] a very convenient pretext for interference in the internal affairs of States."<sup>158</sup> Similar concerns were raised that a proposal to penalize all forms of public

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<sup>157</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

<sup>158</sup> Summary Record of Meetings of the Economic and Social Council, Two Hundred and Eighteenth Meeting, U.N. Doc. E/SR.218, p. 712 (26 August 1948) (Mr. Katz-Suchy (Poland)): "Owing to the reversal of its position by the Chinese delegation, the draft Convention adopted by the *ad hoc* Committee included provisions relating to the so-called protection of political groups. Without entering into full details of the procedural manoeuvres adopted by the United States representative and the Chairman of the *ad hoc* Committee to ensure inclusion of such provisions, he wished to point out that their inclusion

propaganda “aimed at inciting racial, national or religious enmities or hatreds” or at “provoking the commission of acts of genocide” could “become a pretext for serious abuses.”<sup>159</sup> Having rejected these proposals because of the risk they would be abused as pretexts, the Contracting Parties could not have intended Article I’s mutual undertaking to prevent and punish the crime of genocide to be twisted as a pretext for serious abuse and undue interference in the internal affairs of other States.

85. The solemn nature of the “undertaking” to fellow “Contracting Parties,” read in context, in good faith, and in light of the Convention’s object and purpose, precludes a State from acting to the detriment of another Contracting Party on the pretext of preventing and punishing a non-existent genocide.

**2. States Must Perform Their Obligations to Prevent and Punish Genocide, and Exercise Their Right to Invoke the Responsibility of States in Breach of Their Obligations, in Good Faith and Without Abuse.**

86. A similar conclusion follows from the foundational principle of *pacta sunt servanda*, the good faith performance of treaties. This Court has concluded that, while “Article I does not specify the kinds of measures that a Contracting Party may take to fulfil th[e] obligation” to prevent and punish genocide, “the Contracting Parties must implement this obligation in good faith.”<sup>160</sup> In making the solemn undertaking to take measures to prevent

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would not only provide a very convenient pretext for interference in the internal affairs of States, but would also make it impossible for a number of States to accede to the Convention.”).

<sup>159</sup> Sixth Committee of the General Assembly, Eighty-Seventh Meeting, U.N. Doc. A/C.6/SR.87, pp. 251, 253 (29 October 1948) (Mr. Fitzmaurice (United Kingdom): “The representative of the United Kingdom was opposed to the amendment of the Soviet Union, not because he in any way approved of incitement to hatred, but because that amendment, if it were adopted, together with the protection of political groups, might become a pretext for serious abuses; it would give Governments—and there were a number which disliked criticism, particularly newspaper criticism—the right to complain of the Press of other countries.”).

<sup>160</sup> Provisional Measures Order of 16 March 2022, para. 56.

and punish the odious scourge of genocide, States necessarily agreed to take such measures only in good faith, and not to abuse that undertaking.

87. As reflected in Article 26 of the Vienna Convention, “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.”<sup>161</sup> Considering this rule in its judgment in *Gabčíkovo-Nagymaros Project*, the Court explained that “[t]he principle of good faith obliges the Parties to apply [the treaty] in a reasonable way and in such a manner that its purpose can be realized.”<sup>162</sup>

88. Thus, in undertaking to prevent and to punish genocide, Contracting Parties bound themselves to take measures *only* to prevent and punish a genocide that has diligently and reasonably been determined to be at risk of occurring. Similarly, while the *erga omnes* character of the obligation creates a right of all Contracting Parties to invoke the responsibility of a State that breaches Article I of the Convention, no Contracting Party has a right to abuse the Convention for improper purposes. In particular, no Contracting Party may claim a right

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<sup>161</sup> Vienna Convention, art. 26.

<sup>162</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, *I.C.J. Reports 1997*, pp. 78–79, para. 142; see also *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, Judgment, *I.C.J. Reports 1952*, p. 212 (finding that the power to determine values of imported goods for customs purposes “rests with the Customs authorities, but it is a power which must be exercised reasonably and in good faith”); *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, *I.C.J. Reports 2008*, p. 229, para. 145 (“[W]hile it is correct, as France claims, that the terms of Article 2 provide a State to which a request for assistance has been made with a very considerable discretion, this exercise of discretion is still subject to the obligation of good faith codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties.”). Similarly, in the *Nuclear Test* case, the Court noted that “the very rule of *pacta sunt servanda* in the law of treaties is based on good faith.” *Nuclear Tests (Australia v. France)*, Judgment, *ICJ Reports 1974*, p. 268, para. 46; see also Michel Virally, *Panorama du droit international contemporain. Cours général de droit international public*, Recueil Des Cours 1983-V, Collected Courses of the Hague Academy of International Law, Vol. 183, p. 197 (discussing the Court’s judgment in the *Nuclear Tests* case and observing that “[the] dictum of the Court formulated a general principle for unilateral acts that was quite analogous to *pacta sunt servanda* for treaties. The foundation is the same in both cases, that of good faith”) (Annex 22).

to take action against another State it unreasonably and pretextually accuses of committing genocide in violation of the Convention.

89. Judge Keith explained in his Declaration in *Mutual Assistance in Criminal Matters* that, under “the principles of good faith, abuse of rights and *détournement de pouvoir*,” a State exercising a power under a treaty must “exercise the power for the purposes for which it was conferred and without regard to improper purposes or irrelevant factors.”<sup>163</sup>

Bin Cheng similarly wrote that:

The reasonable and bona fide exercise of a right implies an exercise which is genuinely in pursuit of those interests which the right is destined to protect and which is not calculated to cause any unfair prejudice to the legitimate interests of another State, whether these interests be secured by treaty or by general international law.<sup>164</sup>

And the eighth edition of Oppenheim’s *International Law* treatise, edited by Sir Hersch Lauterpacht, explained that a State abuses a right “when [it] avails itself of its right in an arbitrary manner in such a way as to inflict upon another State an injury which cannot be justified by a legitimate consideration of its own advantage.”<sup>165</sup>

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<sup>163</sup> *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, *I.C.J. Reports 2008*, Declaration of Judge Keith, p. 279, para. 6.

<sup>164</sup> Bin Cheng, *GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS*, pp. 131–132 (Stevens and Sons Ltd. 1953) (Annex 20).

<sup>165</sup> L. Oppenheim, *INTERNATIONAL LAW: A TREATISE, VOLUME 1 — PEACE*, p. 345 (H. Lauterpacht, ed., David McKay Company Inc., 8th ed. 1955) (Annex 21); see also *OPPENHEIM’S INTERNATIONAL LAW: VOLUME 1 PEACE*, p. 407 (Robert Jennings & Arthur Watts, eds., Oxford University Press, 9th ed. 2008) (Annex 24); Robert Kolb, *GOOD FAITH IN INTERNATIONAL LAW*, pp. 144–145 (Hart 2017) (“[T]here is a last and more general sphere of abuse of rights. It encompasses arbitrary, unreasonable and fraudulent acts. Arbitrary conduct rests on acts which are manifestly unjustified with regard to the facts, objectively shocking exercises of a right, acts injuring the elementary legal conscience or certain discriminatory exercises of rights. Unreasonable acts are those which are beyond the pale of a shareable justification. Finally, fraudulent acts are those which seek to circumvent a legal prohibition by recourse to subtle formal constructions.”) (Annex 28).



90. In this instance, the Russian Federation has asserted that it may recognize new sovereigns on Ukrainian territory and use force on Ukrainian territory — actions which are contrary to international law. To the extent Article I confers both obligations and corresponding rights on the Contracting Parties, any such rights must be exercised in a manner that is not pretextual, that is well-founded, and that is consistent with the Convention’s “purely humanitarian and civilizing purpose.” In asserting a right to take these *ultra vires* actions under the claimed authority of the Genocide Convention, Russia has done none of these things. Instead, it has abused and misused Articles I and IV of the Genocide Convention for its own aims.

91. When a State abuses and misuses a treaty in this manner, it has violated that treaty. In *Certain German Interests in Polish Upper Silesia*, this Court’s predecessor explained that a “misuse” of a right to alienate property would “endow” such an act “with the character of a breach of the Treaty [of Versailles].”<sup>166</sup> As similarly explained by Bin Cheng, an action “inconsistent with the bona fide execution of the treaty obligation” is “a breach of the treaty.”<sup>167</sup> Other international tribunals have adopted the same logic. In examining the General Agreement on Tariffs and Trade (the “GATT”), the Appellate Body of the World Trade Organization has relied on Bin Cheng’s treatise to conclude that “[a]n abusive exercise by a Member of its own treaty right thus results in a breach of the treaty rights of the other

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<sup>166</sup> *Certain German Interests in Polish Upper Silesia (Germany v. Poland)*, Merits, Judgment No. 7, 25 May 1926, P.C.I.J., Series A. – No. 7, p. 30.

<sup>167</sup> Bin Cheng, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS, p. 125 (Stevens and Sons Ltd. 1953) (Annex 20). Moreover, with respect to the *Upper Silesia* case specifically, Cheng explains: “While the bona fide exercise of the right would be compatible with Germany’s treaty obligations, its exercise contrary to the principle of good faith would constitute an abuse of right and a breach of these obligations, *i.e.*, an unlawful act.” *Ibid.*, p. 128.

Members and, as well, a violation of the treaty obligation of the Member so acting.”<sup>168</sup> Such an observation is not limited to economic treaties such as the GATT; in fact, such a principle is perhaps even more compelling in the context of a human rights treaty.

92. The abuse of a treaty constitutes a violation of that treaty. That conclusion applies with particular force when a Contracting Party misapplies and misuses the undertakings it has made under Articles I and IV of the Genocide Convention. The Genocide Convention is a unique treaty, which, as the Court has recognized, was “manifestly adopted for a purely humanitarian and civilizing purpose.”<sup>169</sup> As the Court has explained, the Contracting Parties share “a common interest, namely, the accomplishment of those high purposes which are the *raison d’être* of the convention.”<sup>170</sup>

93. In light of the treaty’s object and purpose, this Court in the *Bosnian Genocide* case identified obligations that are not stated “*expressis verbis*” in the terms of the Convention, but rather follow from what the treaty “necessarily implies.”<sup>171</sup> Thus, the Court determined that when the Contracting Parties agreed to “categorize[] genocide as ‘a crime under international law,’” each Contracting Party “must logically be undertaking not to commit the act so described.”<sup>172</sup> Similarly, when a Contracting Party undertakes to prevent

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<sup>168</sup> Appellate Body Report, *United States - Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Doc. WT/DS58/AB/R (12 October 1998), pp. 61–62, para. 158 (“The chapeau of Article XX is, in fact, but one expression of the principle of good faith. This principle, at once a general principle of law and a general principle of international law, controls the exercise of rights by states. One application of this general principle, the application widely known as the doctrine of *abus de droit*, prohibits the abusive exercise of a state’s rights and enjoins that whenever the assertion of a right ‘impinges on the field covered by [a] treaty obligation, it must be exercised bona fide, that is to say, reasonably.’ An abusive exercise by a Member of its own treaty right thus results in a breach of the treaty rights of the other Members and, as well, a violation of the treaty obligation of the Member so acting. Having said this, our task here is to interpret the language of the chapeau, seeking additional interpretative guidance, as appropriate, from the general principles of international law.”) (quoting Bin Cheng, *GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS*, p. 125 (Stevens and Sons Ltd. 1953)) (second internal citation omitted).

<sup>169</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 23.

<sup>170</sup> *Ibid.*

<sup>171</sup> *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, p. 113, para. 166.

<sup>172</sup> *Ibid.*

and punish genocide, it “must logically be undertaking” not to abuse that solemn responsibility. Russia violates the Convention when it misuses it to pursue interests other than accomplishing the Convention’s high purpose, takes pretextual actions against Ukraine without any reasonable basis to conclude there is a serious risk of genocide, and bases its actions on a false accusation that Ukraine is violating its own obligations under the Convention.

**3. A State May Act to Prevent and Punish Genocide Only Within the Limits of International Law.**

94. Russia’s claim that Ukraine has violated the Genocide Convention by committing genocide is baseless and unsupported. But even in the case of a State that has violated its obligations under Article I of the Convention, another State seeking to invoke the international responsibility of that State may act only within the limits of international law.

95. In interpreting Article I in *Bosnian Genocide*, the Court emphasized that “it is clear that every State may only act within the limits permitted by international law.”<sup>173</sup> In its Order indicating provisional measures in this case, the Court similarly observed: “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.”<sup>174</sup> The Court referred specifically to the purpose of the United Nations enshrined in the U.N. Charter “[t]o maintain international peace and security,” 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

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<sup>173</sup> *Ibid.*, p. 221, para. 430.

<sup>174</sup> Provisional Measures Order of 16 March 2022, para. 58.

breach of the peace.”<sup>175</sup> Also relevant is the objective of the U.N. Charter enshrined in the Preamble, stating that U.N. Members are “determined to save succeeding generations from the scourge of war.”<sup>176</sup>

96. As Judge Robinson underscored in his Separate Opinion on provisional measures, “Article I of the Genocide Convention imposes an obligation on Russia not only to act to prevent genocide, but to act *within the limits permitted by international law* to prevent genocide.”<sup>177</sup> Thus, action under Articles I and IV of the Genocide Convention must be consistent with the limits of international law, and, in particular, the fundamental norms reflected in the object and purpose of the Convention.

97. One reaches the same conclusion when reading the terms of Articles I and IV of the Genocide Convention in their context. Articles VIII and IX of the Genocide Convention must, in the words of the Court, be “tak[en] into account” when examining the undertaking to prevent and punish genocide.<sup>178</sup> Under Article VIII, Contracting Parties “may call upon the competent organs of the United Nations to take such action . . . as they consider appropriate” for the prevention and suppression of genocide. Article IX, for its part, sets forth the role of the International Court of Justice in respect of disputes relating to the interpretation, application, or fulfilment of the Convention. In expressly assigning roles to the political and judicial organs of the United Nations with regard to the prevention and suppression of

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<sup>175</sup> *Ibid.* (quoting U.N. Charter, art. I).

<sup>176</sup> U.N. Charter, Preamble.

<sup>177</sup> Provisional Measures Order of 16 March 2022, Separate Opinion of Judge Robinson, para. 27.

<sup>178</sup> Provisional Measures Order of 16 March 2022, para. 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.”).

genocide, these articles further indicate that the undertaking to prevent and punish genocide must be performed within the limits of international law and in a manner consonant with the spirit and aims of the United Nations. These are recognized ways a State may, in the words of this Court in *The Gambia v. Myanmar*, “invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, and to bring that failure to an end.”<sup>179</sup> Articles VIII and IX may not be the exclusive measures available to a State acting in good faith to do so, but they provide strong evidence within the structure of the Convention that a State performing its undertakings under Articles I and IV may not subvert international law and the U.N. system.

98. The Court has viewed other human rights treaties in a similar vein. In *Military and Paramilitary Activities in Nicaragua*, the Court considered the implications of the U.S. position that Nicaragua had violated human rights prior to the United States’ intervention in that country.<sup>180</sup> The Court explained that, “while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect.”<sup>181</sup> In particular, the Court determined that the United States’ activities, which the Court had found to be unlawful, could not be justified by a purported humanitarian purpose, particularly where those actions themselves were not compatible with humanitarian objectives: “With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the *contras*.”<sup>182</sup>

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<sup>179</sup> *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. 17, para. 41.

<sup>180</sup> *See Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, Judgment. I.C.J. Reports 1986*, p. 134, para. 267; *see also ibid.*, p. 130, para. 257.

<sup>181</sup> *Ibid.*, pp. 134–135, para. 268.

<sup>182</sup> *Ibid.*

99. The same conclusion should apply when force is used in the manner the Russian Federation has used it, including overwhelming destruction and commission of atrocities throughout Ukraine, in the name of the strictly humanitarian objective of preventing and punishing a genocide allegedly committed by Ukraine in violation of the Convention. This is especially true when there is no basis to conclude that the alleged breach of the Convention, the alleged genocide, or even a serious risk of genocide, exists.

100. In its Order indicating provisional measures, the Court observed that “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.”<sup>183</sup> What is certain is that the Genocide Convention does not authorize a Contracting Party’s unilateral use of force in the territory of another State on the pretext of preventing or punishing an alleged genocide, whose existence has not been, and could not plausibly be, supported. It is equally certain that the Genocide Convention does not authorize a Contracting Party to commit atrocities in the territory of another State for the stated purpose of preventing or punishing an alleged genocide. To conclude otherwise would mean that a Convention that is fundamentally humanitarian in character could be distorted so as to justify grave international wrongs, including gross violations of both *jus ad bellum* and *jus in bello*.

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<sup>183</sup> Provisional Measures Order of 16 March 2022, para. 59.

**B. In a Further Misinterpretation and Misapplication of the Convention, the Russian Federation Falsely Alleged that Ukraine Was Responsible For Committing Acts of Genocide in the Donbas Region of Ukraine.**

101. As demonstrated in Chapter 2, the Russia Federation has justified its asserted right to recognize the DPR and LPR, and to use force in and against Ukraine, on the pretext of an alleged genocide committed by Ukraine. According to the Russian Federation, both Ukraine and Ukrainian officials were responsible for acts of genocide in the Donbas region in violation of the Genocide Convention, and Russia therefore had a right to take measures to prevent and punish that genocide, and to bring Ukraine’s alleged violations of the Convention to an end.<sup>184</sup>

102. Yet for the reasons explained above, Russia cannot violate Ukraine’s sovereignty by recognizing the DPR and LPR, or use force in Ukrainian territory, to prevent and punish a genocide that is alleged as pure pretext, without any substantiation *in concreto*. Articles I and IV at a minimum require a State to conduct proper diligence, and to have a reasonable basis to conclude there is at least a serious risk of a genocide, before a State takes action to the detriment of another State for the purported purpose of preventing and punishing genocide. Here, Russia has acted inconsistently with Articles I and IV, by taking action to prevent and punish genocide and to invoke Ukraine’s responsibility for genocide where there is no factual or legal basis whatsoever for Russia’s allegation of genocide by Ukraine.

103. Given the unusual nature of Russia’s allegations, Ukraine will address them as best as they can be understood. Russia’s allegation of genocide appears to be based on a false narrative that Ukraine and its officials set out to “destroy” Russian-speaking residents in the Donbas region of eastern Ukraine, in breach of Article I of the Convention. The apparent proof of such acts of genocide, according to Russia, is that there have been civilian casualties during the conflict in the Donbas region since 2014. Applying the actual facts to the definition of

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<sup>184</sup> In his Separate Opinion, Judge Robinson expressly observed that “[i]t is reasonable to conclude that it was in the exercise of this duty [under Article I] that the Russian Federation acted in initiating a military campaign in Ukraine.” See Provisional Measures Order of 16 March 2022, Separate Opinion of Judge Robinson, para. 27.

genocide under Article II of the Convention, however, there is no reasonable basis to conclude that Ukraine or Ukrainian officials have committed, or were ever at serious risk of committing, any acts qualifying as genocide under the Convention.

**1. The Definition of Genocide in the Genocide Convention Requires Both Genocidal Intent and Action, and the Russian Federation Has Substantiated Neither.**

104. Article II of the Genocide Convention defines genocide as any of five acts, if the act is committed with the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.” The list of five acts in Article II is exhaustive and includes: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group.

105. Standing alone, none of the five acts specified in Article II is capable of amounting to genocide unless accompanied by the requisite specific intent (*dolus specialis*).<sup>185</sup> As stated by this Court in the *Croatian Genocide* case, the “intent to destroy” element constitutes “the essential characteristic of genocide, which distinguishes it from other serious crimes.”<sup>186</sup> The Court went on to explain that this is “a specific intent, which, in order for genocide to be established, must be present in addition to the intent required for each of the individual acts involved.”<sup>187</sup>

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<sup>185</sup> See, e.g., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, pp. 80, 128, paras. 207, 440–441 (finding that Serbia had not committed genocide, although the *actus reus* of genocide had been established and Serbia had acknowledged that “war crimes, crimes against humanity and other atrocities were perpetrated against Croats by various armed groups”); Florian Jeßberger, *The Definition of Genocide, in THE UN GENOCIDE CONVENTION: A COMMENTARY* (Paola Gaeta, ed., Oxford University Press 2009), p. 105 (“In order to amount to genocide each of the individual acts described in subparagraphs (a) through (e) must be committed with the intent to destroy a protected group.”) (Annex 25).

<sup>186</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 62, para. 132.

<sup>187</sup> *Ibid.*



## **2. The Russian Federation Has No Credible Evidence that Ukraine or Ukrainian Officials Have Committed Acts of Genocide in the Donbas Region of Ukraine or Elsewhere.**

106. Since 2014, the Russian Federation — through its organs of State and its highest officials — has alleged that Ukraine and Ukrainian officials are committing genocide in the Donbas region of eastern Ukraine in violation of the Genocide Convention. However, there is simply no credible evidence that the Government of Ukraine or that any of its officials has ever harbored an intent to destroy a group of Russian-speaking individuals in the Donbas or any other region of Ukraine. Rather, Russia’s allegations are based on a conflict that began when Russian-sponsored illegal armed groups seized territory in eastern Ukraine, committed “[g]rave human rights abuses” in the areas under their control,<sup>188</sup> and spread violence and lawlessness throughout the Donbas region.<sup>189</sup>

107. In response, Ukraine did what any responsible government would have done: namely, it sought to restore law, order, and respect for human rights throughout its sovereign territory. Ukraine has undertaken military activity in the Donbas region not to destroy any group of its citizens in whole or in part, but to resist aggression and reclaim Ukraine’s sovereign territory from illegal armed groups such as the DPR and LPR who, with Russian support, engaged in what U.N. human rights monitors referred to as a “reign of intimidation and terror” on Ukrainian territory.<sup>190</sup> There is no evidence that Ukraine’s efforts in this regard

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<sup>188</sup> OHCHR, *Report on the Human Rights Situation in Ukraine* (15 July 2014), para. 26, accessed at [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine\\_Report\\_15July2014.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_Report_15July2014.pdf).

<sup>189</sup> See, e.g., OHCHR, *Report on the Human Rights Situation in Ukraine* (15 June 2014), para. 154, accessed at <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/HRMMUReport15June2014.pdf>.

<sup>190</sup> OHCHR, *Report on the Human Rights Situation in Ukraine* (15 July 2014), para. 26, accessed at [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine\\_Report\\_15July2014.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_Report_15July2014.pdf); see also OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), para. 4, <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/HRMMUReport15June2014.pdf>; OHCHR, *Report on Human Rights Situation in Ukraine* (19 September 2014), para. 16, accessed at

targeted any group of civilians. There is certainly no evidence of any intent to destroy the Russian-speaking Ukrainian population in the Donbas region.

108. In an attempt to ground its allegation of genocide in the definition set out in Article II of the Genocide Convention, Russia has made the outrageous allegation that members of Ukraine’s political and military leadership “gave orders aimed to completely destroy specifically the Russian-speaking population living on the territory of the Donetsk and Luhansk republics.”<sup>191</sup> This allegation is wholly unsubstantiated. The Investigative Committee of the Russian Federation has disclosed no credible or objectively verifiable evidence supporting the serious allegations it has levied against Ukraine and Ukrainian officials.

109. This is no surprise, as no such credible evidence exists. Russian-speaking citizens live peacefully throughout Ukraine, including in the Donetsk and Luhansk regions. Numerous Russian-speaking Ukrainians were living peacefully in cities such as Kyiv, Kharkiv, Kherson, and Mariupol, until *the Russian armed forces* subjected them and their fellow Ukrainian citizens to brutal and indiscriminate attacks. Russia’s spurious allegation of Ukrainian orders to destroy the “Russian-speaking” Ukrainian population cannot be reconciled with the peaceful coexistence of Russian- and Ukrainian-speaking Ukrainians throughout the country, including in the Donbas region of Ukraine. In addition to this fundamental factual error in Russia’s claim, Russia also attempts to manipulate the scope of

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<https://www.ohchr.org/en/documents/country-reports/report-situation-human-rights-ukraine>; OHCHR, *Report on Human Rights Situation in Ukraine* (15 December 2014), para. 41, accessed at [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/OHCHR\\_eighth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/OHCHR_eighth_report_on_Ukraine.pdf).

<sup>191</sup> Investigative Committee of the Russian Federation, *The Investigative Committee Opened a Criminal Investigation Concerning the Genocide of the Russian-Speaking Population in the South-East of Ukraine* (29 September 2014) (Annex 9); see also *supra* Chapter 2, Section B(1).

the Convention, which provides that genocidal acts must be “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.” Russian speakers in Ukraine do not self-identify on that basis alone as a distinct ethnic group that could fall within the scope of the Convention. Many of those who self-identify as Ukrainians are bilingual or consider Russian their first language.<sup>192</sup>

110. The Russian Federation’s claims of genocide appear to rely on a view that civilian casualties in the conflict in Donbas since 2014 constitute proof of acts of genocide as defined by Article II of the Genocide Convention.<sup>193</sup> But while there have unfortunately been civilian casualties in Donbas in the course of armed conflict there, this does not, on its own, constitute the *actus reus* of genocide under the Genocide Convention. As this Court explained in *Croatian Genocide*, “if one takes the view that the attacks were exclusively directed at military targets, and that the civilian casualties were not caused deliberately, one cannot consider those attacks, inasmuch as they caused civilian deaths, as falling within the scope of Article II (a) of the Genocide Convention.”<sup>194</sup> In any case, killings or causing serious bodily harm is not capable of amounting to genocide without the requisite specific intent.<sup>195</sup> Even

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<sup>192</sup> See *supra* Chapter 2, Section A; see also State Statistics Committee of Ukraine, *General Results of the Census: Linguistic Composition of the Population*, accessed at <http://2001.ukrcensus.gov.ua/eng/results/general/language/> (showing that 14.8% of persons identifying as being of Ukrainian nationality consider Russian to be their first language).

<sup>193</sup> See President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (21 February 2022), accessed at <http://en.kremlin.ru/events/president/transcripts/statements/67828> (Annex 5).

<sup>194</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, *I.C.J. Reports 2015*, p. 138, para. 474. Article II(a) of the Genocide Convention refers specifically to “killing[s]” of members of a national, ethnical, racial or religious group.

<sup>195</sup> See, e.g., *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*, p. 121, para. 187 (“It is not enough to establish, for instance in terms of paragraph (a), that deliberate unlawful killings of members of the group have occurred. The additional intent must also be established, and is defined very precisely. It is often referred to as a special or specific intent.”); Florian Jeßberger, *The Definition of Genocide*, in *THE UN GENOCIDE CONVENTION: A COMMENTARY*, p. 96 (Paola Gaeta, ed., Oxford University Press 2009) (“Under Article II(a) killing members of a protected group is genocide if

though the conflict in Donbas has led tragically to civilian deaths, there is simply no evidence of any intent by Ukraine or Ukrainian officials to destroy the Russian-speaking Ukrainian population there.

111. The reports of various international observers and U.N. bodies further confirm the lack of any genocidal acts or intent on Ukraine's part, in respect of its actions taken in the course of the conflict in the Donbas region of eastern Ukraine. The OHCHR, OSCE, and ICC Office of the Prosecutor all have focused on the situation in Ukraine since 2014.<sup>196</sup> None have, at any point, suggested that there is evidence of genocidal acts by Ukraine. Considering the robust record of international monitoring in the Donbas region, the only possible conclusion is that Ukraine's military operations had the intent of restoring Ukraine's territorial integrity,

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committed with the required intent."); *see also ibid.*, p. 105 ("[I]n order to amount to genocide each of the individual acts described in subparagraphs (a) through (e) must be committed with the intent to destroy a protected group.") (Annex 25).

<sup>196</sup> The United Nations Human Rights Monitoring Mission in Ukraine ("HRMMU") of the Office of the High Commissioner of Human Rights was deployed in 2014 and "monitors, reports and advocates on the human rights situation in Ukraine, with a particular focus on the conflict area of eastern Ukraine and the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation." *See* OHCHR, *UN Human Rights in Ukraine: Profile*, accessed at <https://www.ohchr.org/en/countries/ukraine/our-presence>; *see also* OHCHR, *Report on the Human Rights Situation in Ukraine* (15 April 2014), para. 33 ("The objectives of the HRMMU are to: . . . establish facts and circumstances and conduct a mapping of alleged human rights violations committed in the course of the demonstrations and ensuing violence between November 2013 and February 2014 and to establish facts and circumstances related to potential violations of human rights committed during the course of the deployment."), accessed at <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-17>. The OSCE Special Monitoring Mission to Ukraine was deployed in March 2014, with a mandate extended through March 2022. The mandate provided as follows: "The Mission will gather information and report on the security situation, establish and report facts in response to specific incidents, including those concerning alleged violations of fundamental OSCE principles and commitments." *See OSCE Special Monitoring Mission To Ukraine, Mandate*, accessed at <https://www.osce.org/special-monitoring-mission-to-ukraine/mandate>. The ICC Prosecutor opened a preliminary examination in 2014. *See* International Criminal Court, *Report on Preliminary Examination Activities 2020* (14 December 2020), p. 68, accessed at <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>. On 2 March 2022, the Prosecutor announced the opening of an investigation into the Situation of Ukraine: "[T]he scope of the situation encompasses any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person from 21 November 2013 onwards." *See* International Criminal Court, *Situation in Ukraine*, ICC-01/22, accessed at <https://www.icc-cpi.int/ukraine>.

stopping terrorist acts, and returning the protection of law and constitutional order to the Donetsk and Luhansk oblasts.

112. Moreover, had there been attacks on civilians rising to the level of genocide in the period leading up to the use of force that Russia commenced on 24 February 2022, one would have expected documentation of a significant escalation in civilian casualties. To the contrary, according to the year-over-year casualty data tracked by human rights monitors, such casualties have significantly *declined*. In 2014, there were 2,084 conflict-related civilian deaths in the Donbas region on both sides of the contact line.<sup>197</sup> By contrast, in 2020 there were 26 deaths, and in 2021 there were 25 deaths.<sup>198</sup> Further confirmation of the lack of any escalation in civilian casualties in the period leading up to Russia's invasion is demonstrated by the renewal of a cease-fire agreement in December 2021.<sup>199</sup>

113. In any event, it is not plausible to infer, as the Russian Federation seeks to do, that the fact of civilian casualties standing alone establishes wrongdoing by the Ukrainian Armed Forces, much less that those casualties support a finding of genocidal intent. To the contrary, it is well documented by U.N. human rights monitors that DPR and LPR fighters "conduct[ed] attacks from densely populated areas thereby putting the whole civilian

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<sup>197</sup> OHCHR, *Report on the Human Rights Situation in Ukraine (1 February – 31 July 2021)*, p. 8 (23 September 2021), accessed at <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2021>.

<sup>198</sup> OHCHR, *Conflict-related Civilian Casualties in Ukraine (27 January 2022)*, accessed at [https://ukraine.un.org/sites/default/files/2022-02/Conflict-related%20civilian%20casualties%20as%20of%2031%20December%202021%20%28rev%2027%20January%202022%29%20corr%20EN\\_o.pdf](https://ukraine.un.org/sites/default/files/2022-02/Conflict-related%20civilian%20casualties%20as%20of%2031%20December%202021%20%28rev%2027%20January%202022%29%20corr%20EN_o.pdf); OHCHR, *Report on the Human Rights Situation in Ukraine*, p. 8 (23 September 2021), <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2021>.

<sup>199</sup> See OSCE, *Press Statement of Special Representative Kinnunen After the Regular Meeting of Trilateral Contact Group on 22 December 2021* (22 December 2021), accessed at <https://www.osce.org/chairmanship/509006>.

population at risk.”<sup>200</sup> Russia’s assumption ignores this obvious alternative explanation that it was Ukraine’s unscrupulous adversaries who put civilians on both sides of the contact line at risk.

114. In fact, the evidentiary record supports a quite different conclusion than the one Russia claims to have reached. According to substantial evidence, it is the DPR and LPR fighters — not the Ukrainian Armed Forces — that have knowingly targeted residential areas and civilians in eastern Ukraine. That evidence is reflected in the record of the separate case Ukraine has brought to the Court under the International Convention for the Suppression of the Financing of Terrorism.<sup>201</sup> To provide just a few examples: the U.N. High Commissioner for Human Rights in July 2014 reported that a DPR leader had stated that “underage children and women are legitimate targets and that the goal is to ‘immerse them in horror’”;<sup>202</sup> U.N. human rights monitors reported on the murder of multiple civilian activists because of their support for Ukrainian unity in 2014;<sup>203</sup> the U.N. Security Council condemned the DPR’s shelling of a passenger bus transporting pensioners in Volnovakha in January 2015 as a

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<sup>200</sup> OHCHR, *Report on the Human Rights Situation in Ukraine* (15 July 2014), para. 31, accessed at [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine\\_Report\\_15July2014.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_Report_15July2014.pdf).

<sup>201</sup> See *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)*.

<sup>202</sup> OHCHR, *Intensified Fighting Putting at Risk Lives of People in Donetsk and Luhansk — Pillay* (4 July 2014), accessed at <https://www.ohchr.org/en/press-releases/2014/07/intensified-fighting-putting-risk-lives-people-donetsk-and-luhansk-pillay>.

<sup>203</sup> See, e.g., OHCHR, *Report on Human Rights Situation in Ukraine* (15 May 2014), paras. 95–96, accessed at <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/HRMMUReport15May2014.pdf>; OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), para. 209, accessed at <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/HRMMUReport15June2014.pdf>.

“reprehensible act”;<sup>204</sup> and an under-Secretary General of the United Nations concluded that a horrific DPR attack on a residential area of Mariupol in February 2015 “knowingly targeted a civilian population.”<sup>205</sup>

115. A series of reports published by the OHCHR further place into sharp relief the differences between the aims of Ukraine’s armed forces, on the one hand, and Russia and Russian-backed forces, on the other. For example, the reports demonstrate that only one side of the conflict – the illegal armed groups supported by Russia – have “inflicted on the populations a reign of intimidation and terror to maintain their position of control.”<sup>206</sup> The reports document in detail the substantial harm to civilians committed by the Russian-backed forces of the DPR and LPR. The reports evidence, for example, a pattern of violence and extrajudicial killings targeting supporters of Ukrainian unity.<sup>207</sup> There has been ongoing reporting by various human rights monitors up until 24 February 2022, and yet there have been no allegations of genocidal acts by Ukraine by these human rights groups.

116. On this record, the Court can and should conclude that the Russian Federation’s repeated and outrageous allegations that Ukraine violated the Genocide Convention by committing genocide in the Donbas region are unsupported, without basis, pretextual, and plainly false. By alleging without basis that Ukraine and Ukrainian officials are responsible for committing genocide in violation of the Convention, and using this false

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<sup>204</sup> U.N. Security Council, *Security Council Press Statement on Killing of Bus Passengers In Donetsk Region, Ukraine* (13 January 2015), accessed at <https://www.un.org/press/en/2015/sc11733.doc.htm#:~:text=The%20members%20of%20the%20Security,region%2C%20on%2013%20January%202015.>

<sup>205</sup> U.N. Security Council, Official Record, 7368th mtg., U.N. Doc. S/PV.7368 (26 January 2015), p. 2 (statement of Jeffrey Feltman, U.N. Under-Secretary-General for Political Affairs).

<sup>206</sup> OHCHR, *Report on the Human Rights Situation in Ukraine* (15 July 2014), para. 26, accessed at [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine\\_Report\\_15July2014.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_Report_15July2014.pdf); see also OHCHR, *Report on Human Rights Situation in Ukraine* (19 September 2014), para. 16, accessed at <https://www.ohchr.org/en/documents/country-reports/report-situation-human-rights-ukraine>; OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), paras. 4, 144, 175, 207, accessed at <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/HRMMUReport15June2014.pdf>.

<sup>207</sup> See, e.g., OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), paras. 209–210 (presenting examples of extrajudicial killings by Russian forces but none by Ukrainian forces), accessed at <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/HRMMUReport15June2014.pdf>.

claim of genocide as a pretext supporting its recognition of the DPR and LPR and its use of force in and against Ukraine, the Russian Federation has made a mockery of the Convention's definition of the international crime of genocide, and of its solemn undertaking to prevent and punish *real* acts of genocide under Articles I and IV of the Convention.

**C. The Russian Federation's Recognition of the DPR and LPR and Use of Force in and Against Ukraine, on the Pretext of Preventing and Punishing an Alleged Genocide in the Donbas Region, Violates Articles I and IV of the Genocide Convention.**

117. Notwithstanding the lack of any credible basis for its allegations of genocide under the Convention, the Russian Federation relied on those allegations as the basis for taking two extraordinary measures. First, on 21 February 2022, Russia recognized the independence of two so-called "republics" within Ukraine's recognized borders in the Donbas region — bearing the same names ("Donetsk People's Republic" and "Luhansk People's Republic") as the armed groups that since 2014 had been terrorizing Ukrainian civilians. Second, on 24 February 2022, Russia commenced a so-called "special military operation," in which Russia launched a full-scale invasion of Ukraine. As explained in Chapter 2, Russia's rationale underpinning its recognition of the DPR and LPR and its subsequent use of force were directly tied to its false allegations that Ukraine and Ukrainian officials had committed genocide in violation of the Genocide Convention.<sup>208</sup>

118. President Putin's official statements as to the justification and objectives of these actions focus on an alleged need to stop this genocide, protect its victims, and punish its perpetrators.<sup>209</sup> In other words, Russia claims a right to act under the Genocide Convention, specifically by recognizing independent republics within the State of Ukraine, and by using force throughout the territory of Ukraine, as measures to prevent and punish genocide under the Convention, and to bring to an end alleged violations of the Convention by Ukraine. But President Putin's fabrications are not protected by international law. To the contrary, Russia's

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<sup>208</sup> See *supra* Chapter 2, Section B(2)–(3).

<sup>209</sup> See *supra* Chapter 2, Section B(2)–(3).



abusive actions, taken on the false pretext of preventing and punishing genocide, violate the solemn undertakings Russia made to Ukraine, and to all other Contracting Parties, under Articles I and IV of the Genocide Convention.

**1. The Russian Federation Had No Basis to Take Any Measures Detrimental to Ukraine to Prevent and Punish a Genocide in Ukraine Because There Is No Credible Support for the Existence of Such a Genocide.**

119. As explained in Section A(1) above, Articles I and IV of the Convention do not permit a State to act to the detriment of another Contracting Party in order to prevent and punish genocide when there is no reasonable basis to conclude that genocide is occurring, or is at serious risk of occurring. Russia's claim that Ukraine committed genocide in violation of the Convention is baseless, and entirely undermines Russia's claim of a right to bring a violation of the Convention to an end. Lacking any basis under the Convention to act, the Russian Federation nonetheless took extreme and harmful measures against Ukraine for the stated purpose of preventing and punishing genocide. For this simple reason, Russia has contravened the limits of Articles I and IV of the Genocide Convention.

**2. The Russian Federation Has Not Performed Its Undertaking to Prevent and Punish Genocide in Good Faith, and Has Instead Abused Articles I and IV of the Convention.**

120. As explained in Section A(2) above, States that accede to the Genocide Convention agree to perform that treaty in good faith, and not to abuse or misuse the solemn undertaking to prevent and punish genocide. The hallmarks of an abuse of a treaty are where a State acts for a purpose other than the one called for by the treaty, or acts to the unfair prejudice of another State.<sup>210</sup> In undertaking to prevent and punish genocide in Article I of the Genocide Convention, the Russian Federation agreed to act only for the Convention's intended purpose. To the extent the Convention confers on Russia a right to invoke the responsibility of any other Contracting Party for a breach, Russia may not abuse that right through pretextual actions that prejudice the rights and interests of another Contracting Party.

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<sup>210</sup> See *supra* Chapter 3, Section A(2).

Yet that is precisely what Russia has done, taking measures under a false pretense of alleged genocide, in flagrant abuse of Articles I and IV of the Convention.

121. *First*, the Russian Federation predicated its recognition of the DPR and LPR on its false and unsupported claim of genocide committed by Ukraine in violation of the Convention.<sup>211</sup> Because Russia had no basis for that allegation, its invocation of genocide for the purpose of justifying recognition of the DPR and LPR was pretextual, and not done for a *bona fide* purpose of preventing and punishing genocide. That action purporting to prevent and punish genocide, moreover, severely prejudices Ukraine. The Donetsk and Luhansk oblasts — whose territory is claimed by the DPR and LPR recognized by Russia — lie within the recognized international borders of Ukraine. Indeed, Russia confirmed and memorialized its recognition of Ukraine’s sovereignty over this area in the 2003 Treaty between Ukraine and the Russian Federation on the Ukrainian-Russian State Border.<sup>212</sup> Thus, Russia’s recognition of putative states on sovereign Ukrainian territory, without any reasonable basis for the allegation of genocide this act of recognition was supposed to address, is an abuse and misuse of Articles I and IV of the Convention.

122. *Second*, the Russian Federation’s use of force in and against Ukraine commencing on 24 February 2022 was, in the words of President Putin, expressly predicated on the need to “protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kyiv regime,” to “stop that atrocity, that genocide of the millions of people who live there” (i.e., the Donbas), and to “bring to trial those who perpetrated” this

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<sup>211</sup> See *supra* Chapter 2, Section B(2).

<sup>212</sup> See Treaty between Ukraine and the Russian Federation on the Ukrainian-Russian State Border (28 January 2003), accessed at <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002803fe18a>.

alleged genocide.<sup>213</sup> Thus, according to Russia, its invasion of Ukraine was a measure to prevent and punish a genocide — a genocide it maintains “actually fall[s] under the UN Convention On the Prevention of Genocide.”<sup>214</sup>

123. Yet while Russia claimed to be investigating its allegations of genocide since 2014 — specifically under the rubric of the Genocide Convention — it has produced no credible support for its allegations. Russia did not conduct the diligent “assessment *in concreto*” that this Court explained in *Bosnian Genocide* “is of critical importance.”<sup>215</sup> The only conclusion to be drawn is that Russia invoked its allegation of genocide as a pretext, and relied on its undertaking to prevent and punish genocide under the Convention to justify a unilateral invasion of another Contracting Party. Russia has wreaked devastation across Ukraine through this unlawful use of force. Nothing could be a greater abuse of the serious rights and obligations set forth in Articles I and IV of the Genocide Convention.

124. The Russian Federation’s abuse of the Genocide Convention is all the more egregious in view of the atrocities it has committed in Ukraine. As this Court has stressed, “[t]he Convention was manifestly adopted for a purely humanitarian and civilizing purpose.”<sup>216</sup> A State violates the Convention when it assaults the humanitarian and civilizing purpose of the Convention through a use of force on the pretext of preventing and punishing genocide. Russian forces in Ukraine have targeted civilians, committed extrajudicial killings

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<sup>213</sup> President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (24 February 2022), accessed at <http://en.kremlin.ru/events/president/news/67843> (Annex 6).

<sup>214</sup> RIA Novosti, *Gryzlov Called Putin’s Decree on Donbas a Response to Kyiv’s Actions* (18 November 2021) (Annex 35); see also TASS, *Putin’s Decree on Donbas is Response to Kyiv’s Refusal to Honor Minsk Accords – Envoy* (18 November 2021), accessed at <https://tass.com/politics/1363441>.

<sup>215</sup> *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*, p. 221, para 430.

<sup>216</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, *I.C.J. Reports 1951*, p. 23.

and rape, destroyed cities with indiscriminate attacks, threatened environmental harm and nuclear disaster, deported children, and destroyed grain terminals meant to feed the world. The Office of the Prosecutor of the ICC has launched an investigation on the situation in Ukraine based on a referral from 43 States. Many governments and civil society organizations have condemned Russia's violations of humanitarian norms and commission of war crimes and crimes against humanity as part of its aggression against Ukraine and its people. Ukraine itself has already completed its first criminal trials of Russian soldiers who have pleaded guilty to committing war crimes.<sup>217</sup>

125. In short, the Russian Federation has cynically turned on its head the Genocide Convention, one of the most important human rights instruments of the post-World War II era. Russia has manufactured a false pretext of a violation of the Genocide Convention by Ukraine to justify recognizing puppet states within the territory of another sovereign, and a use of military force that inflicts great losses on the Ukrainian military and the civilian populations of Kyiv, Bucha, Boryanka, Kharkiv, Chernihiv, Mariupol, Melitopol, Kherson, Hostomel, Volnovakha, Severodonetsk, and more. These fabricated claims, and their use as measures to purportedly prevent and punish genocide and bring a violation of the Convention to an end, unabashedly pervert the undertakings made by Contracting Parties to the Convention, as well as the Convention's object and purpose. As such, Russia is flagrantly abusing and violating Articles I and IV of the Genocide Convention.

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<sup>217</sup> See, e.g., Claire Parker et al., *Russian Soldiers Get Prison Terms in Second Ukraine War Crimes Trial*, The Washington Post (31 May 2022), accessed at <https://www.washingtonpost.com/world/2022/05/31/ukraine-russian-war-crimes-second-trial-sentencing/>.

### **3. The Russian Federation Has Not Acted Within the Limits of International Law when Purportedly Acting to Prevent and Punish Genocide and to Bring to an End Alleged Violations of the Convention by Ukraine.**

126. As explained in Section A(3) above, States acting to prevent and punish genocide under the Genocide Convention must act within the limits of international law, consistent with the spirit and aims of the United Nations.<sup>218</sup> Russia has flouted this limitation as well.

127. *First*, in recognizing the DPR and LPR as purportedly independent states within Ukraine’s sovereign territory, Russia violated Ukraine’s territorial integrity. As this Court explained in its *Kosovo* Advisory Opinion, “the principle of territorial integrity is an important part of the international legal order and is enshrined in the Charter of the United Nations, in particular in Article 2, paragraph 4.”<sup>219</sup> In U.N. General Assembly Resolution ES-11/1, dated 2 March 2022, 141 Member States of the United Nations “[d]eplore[d] the 21 February 2022 decision by the Russian Federation related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine as a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the Charter.”<sup>220</sup> Russia’s

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<sup>218</sup> See *supra* Chapter 3, Section A(3); see also Provisional Measures Order of 16 March 2022, para. 57 (quoting *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, p. 221, para. 430).

<sup>219</sup> *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 437, para. 80; see also, e.g., *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 35 (“Between independent States, respect for territorial sovereignty is an essential foundation of international relations.”).

<sup>220</sup> U.N. General Assembly Resolution ES-11/1, U.N. Doc. A/RES/ES-11/1, *Aggression Against Ukraine* (2 March 2022), p. 3; see also UN News, *General Assembly Resolution Demands End to Russian Offensive in Ukraine* (2 March 2022) (mentioning that 141 countries voted in favor of the Resolution), accessed at <https://news.un.org/en/story/2022/03/1113152>. Russia’s claim that it could recognize the DPR and LPR as a measure to prevent and punish genocide appears to suggest reliance on the concept of remedial secession, but any such right is strictly limited. See, e.g., James Crawford, *BROWNIE’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, p. 133 (Oxford University Press, 9th ed. 2019) (“The international system remains opposed to secession and the few putative states which have been widely

recognition of the DPR and LPR as a measure to prevent and punish genocide did not respect the limits of international law or the spirit and aims of the United Nations.

128. *Second*, the Russian Federation’s use of force in and against Ukraine as a measure to prevent and punish genocide transgresses the most fundamental norms of international law. Under Article 2(4) of the U.N. Charter, “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” In Resolution ES-11/1, 141 Member States of the United Nations “[d]eplore[d] in the strongest terms the aggression by the Russian Federation,” which this overwhelming number of States considered to be “in violation of Article 2(4) of the Charter.”<sup>221</sup> In Resolution ES-11/2, dated 24 March 2022, 140 Member States “recall[ed]” the General Assembly’s demand that “the Russian Federation immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders.”<sup>222</sup> Numerous other international organizations, such as

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recognized after unilateral declarations of independence—Kosovo, South Sudan—still struggle.”) (Annex 29); Daniel Thürer & Thomas Burri, *Secession*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, paras. 14, 17, 19 (June 2009) (stating that “[i]nternational law provides no unambiguous basis for a right to secession,” and noting that even under a progressive interpretation of the 1970 Friendly Relations Declaration “the right to secession—is usually dormant, but may be activated in exceptional circumstances”) (Annex 27). In fact, Russia itself has advised the Court that if a right to remedial secession exists at all, it “should be limited to truly extreme circumstances, such as an outright armed attack by the parent State, threatening the very existence of the people in question.” See *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo*, Written Statement of the Russian Federation (16 April 2009), para. 88. An allegation of genocide with no basis in fact cannot support any potential exception to Russia’s obligation to respect Ukraine’s territorial integrity.

<sup>221</sup> U.N. General Assembly Resolution ES-11/1, U.N. Doc. A/RES/ES-11/1, *Aggression Against Ukraine* (2 March 2022), p. 3.

<sup>222</sup> U.N. General Assembly Resolution ES-11/2, U.N. Doc. A/RES/ES-11/2, *Humanitarian Consequences of the Aggression Against Ukraine* (24 March 2022), p. 1; see also UN News, *Ukraine: General Assembly Passes Resolution Demanding Aid Access, by Large Majority* (24 March 2022) (mentioning that 140 Member States voted in favor of the Resolution), accessed at <https://news.un.org/en/story/2022/03/1114632#:~:text=A%20man%20removes%20debris%20arou>

the Organization of American States, have condemned Russia’s “unlawful” use of force, “[r]eiterate[d] the importance of the fundamental principles of the United Nations Charter and of respect for the sovereignty, political independence, and territorial integrity of Ukraine,” and “[c]all[ed] on the Russian Federation to withdraw immediately all its military forces and equipment from within the internationally recognized borders of Ukraine, and return to a path of dialogue and diplomacy.”<sup>223</sup>

129. While the Russian Federation invoked Article 51 of the U.N. Charter to justify its use of force as a measure to prevent and punish genocide, doing so was not just baseless, but legally incoherent. President Putin claimed no basis to act in individual self-defense, but rather referenced Article 51 after stating that “[t]he people’s republics of Donbas have asked Russia for help.”<sup>224</sup> Yet Article 51 refers to “collective self-defence if an armed attack occurs against a *Member of the United Nations*,”<sup>225</sup> which the DPR and LPR indisputably are not.<sup>226</sup>

130. Russia’s use of force in the territory of a sovereign State, without its consent, in order to prevent and punish an alleged genocide and end a violation of the Convention for

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nd%20a%20residential%20building%20in%20Kyiv%2C%20Ukraine.&text=The%20UN%20General%20Assembly%20overwhelmingly,invasion%20exactly%20one%20month%20ago.

<sup>223</sup> See Organization of American States, *The Crisis in Ukraine*, CP/RES. 1192 (2371/22) (adopted 25 March 2022), accessed at [https://www.oas.org/en/council/CP/documentation/res\\_decs/](https://www.oas.org/en/council/CP/documentation/res_decs/); see also African Union, Statement from Chair of the African Union, H.E President Macky Sall and Chairperson of the AU Commission H.E Moussa Faki Mahamat, on the Situation in Ukraine (24 February 2022), accessed at <https://au.int/sites/default/files/pressreleases/41529-pr-english.pdf> (“The current Chair of the African Union and President of Senegal, president Macky Sall, and the Chairperson of the African Union Commission, Moussa Faki Mahamat, express their extreme concern at the very serious and dangerous situation created in Ukraine. They call on the Russian Federation and any other regional or international actor to imperatively respect international law, the territorial integrity and national sovereignty of Ukraine.”); Economic Community of West African States, *ECOWAS Commission - Communique on the War in Ukraine* (27 February 2022), accessed at <https://ecowas.int/wp-content/uploads/2022/02/ECOWAS-Commission-Communique-on-the-War-in-Ukraine.pdf> (“The Economic Community of West African States (ECOWAS) is following with great concern the military invasion of the Republic of Ukraine by Russia which has led to human casualties, particularly among civilians. ECOWAS strongly condemns this action and calls for both parties to stop the fighting and to use dialogue to solve their differences in the interest of peace in this region.”).

<sup>224</sup> President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (24 February 2022), <http://en.kremlin.ru/events/president/news/67843> (Annex 6).

<sup>225</sup> U.N. Charter, art. 51 (emphasis added).

<sup>226</sup> See List of Member States, United Nations, accessed at <https://www.un.org/en/about-us/member-states>.

which there is no basis in fact, falls well outside the limits imposed by international law. The horrifying conduct of the Russian armed forces in Ukraine, including its attacks on Ukrainian civilians, cities, and villages, is also utterly incompatible with the United Nations' aim to "save succeeding generations from the scourge of war," maintain "peace and security" and "suppres[s] . . . aggression," and "reaffirm faith in fundamental human rights," as reflected in Article 1 of the U.N. Charter and its Preamble.

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131. The Russian Federation's recognition of the DPR and LPR and its unilateral use of force in and against Ukraine has been predicated on a false accusation of genocide, with devastating results. There is no evidence indicating that Ukraine is responsible for committing any acts of genocide in violation of the Convention in the Donbas region of Ukraine; instead all evidence demonstrates that Russia's accusation amounts to a mere pretext for its own internationally-wrongful conduct. By attempting to justify its aggression and atrocities in Ukraine as acts taken in light of Russia's and Ukraine's solemn undertakings in the Genocide Convention, Russia has abused and violated the Convention.



#### **Chapter 4. RUSSIA HAS FLAGRANTLY VIOLATED THE COURT’S PROVISIONAL MEASURES ORDER OF 16 MARCH 2022**

132. In addition to its substantive violations of the Genocide Convention, Russia has continuously acted in flagrant violation of the Provisional Measures Order of 16 March 2022. This ongoing violation of a binding order of the Court is an independent internationally wrongful act for which separate relief is warranted and required.

133. In its Provisional Measures Order of 16 March 2022, this Court ordered Russia, first, to “immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine,” and second, to “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.”<sup>227</sup> In addition, the Court indicated a third measure requiring both parties to “refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”<sup>228</sup>

134. These three provisional measures imposed ongoing, binding obligations on Russia. As this Court explained in *LaGrand*, provisional measures orders issued pursuant to Article 41 of the Court’s Statute “have binding effect.”<sup>229</sup> The Court further explained that since provisional measures orders are “binding in character,” they “create[] a legal obligation” for the States involved.<sup>230</sup> The obligation to comply with a provisional measures order is also independent of any rights or duties a State may have with respect to the dispute in the context

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<sup>227</sup> See Provisional Measures Order of 16 March 2022, para. 86.

<sup>228</sup> *Ibid.*

<sup>229</sup> *LaGrand Case (Germany v. United States of America), Merits, Judgment, I.C.J. Reports 2001*, p. 506, para. 109.

<sup>230</sup> See *ibid.*, p. 506, para. 110.

of which the measures were indicated, or the existence of any rights protected by the measures.<sup>231</sup>

135. Here, there is no question that Russia has disregarded the Court's Order, as Russia's non-compliance has been expressly professed by Russia itself. Just one day after the Court indicated provisional measures, Dmitry Peskov, the official spokesperson for the Kremlin and press secretary to Russian President Vladimir Putin, stated that the Russian Federation "will not be able to take this decision into account."<sup>232</sup>

136. The Russian Federation's flagrant non-compliance with every measure indicated in the Court's Order has also been plain for the world to see every day since the Court's Order was issued. One need look no further than the reporting of international organizations and major international news outlets, including admissions by Russia's official press agency (TASS), to see that Russia's use of force on Ukrainian territory has continued unabated since 16 March 2022, and that this remains the case as of the date Ukraine submits its Memorial.<sup>233</sup>

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<sup>231</sup> See *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, Merits, Judgment, *I.C.J. Reports 2015*, p. 714, para. 129 (concluding that Nicaragua's violation of the Court's provisional measures order was "independent of the conclusion . . . that the same conduct also constitute[d] a violation of the territorial sovereignty of Costa Rica"); see also *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*, p. 238, para. 471 (dismissing several substantive genocide-related claims but finding that Serbia had violated its separate obligation to comply with provisional measures orders).

<sup>232</sup> Sofia Stuart Leeson, *Russia Rejects International Court Ruling to Stop Invasion of Ukraine*, EURACTIV (17 March 2022), accessed at <https://www.euractiv.com/section/europe-s-east/news/russia-rejects-international-court-ruling-to-stop-invasion-of-ukraine/>.

<sup>233</sup> See, e.g., Matthew Weaver, *Russia-Ukraine War: What We Know on Day 123 of the Invasion*, The Guardian (26 June 2022), accessed at <https://www.theguardian.com/world/2022/jun/26/russia-ukraine-war-what-we-know-on-day-123-of-the-invasion>; United Nations, *Press Briefing by the Head of the UN Human Rights Monitoring Mission in Ukraine Matilda Bogner* (10 May 2022) accessed at <https://www.unognewsroom.org/story/en/1271/un-human-rights-briefing-by-matilda-bogner-head-of-the-un-human-rights-monitoring-mission-in-ukraine>; OHCHR, *Bachelet Urges Respect for International Humanitarian Law Amid Growing Evidence of War Crimes in Ukraine* (22 April 2022), accessed at <https://www.ohchr.org/en/press-releases/2022/04/bachelet-urges-respect-international-humanitarian-law-amid-growing-evidence>; BBC News, *Kramatorsk Station Attack: What We Know So Far* (9 April 2022), accessed at <https://www.bbc.com/news/world-europe-61036740>; Amnesty

This is in direct violation of the Court’s first provisional measure ordering the Russian Federation to “immediately suspend the military operations that it commenced on 24 February in the territory of Ukraine.”

137. Russia’s deliberate decision to flout this core provision of the Court’s Order has been both widely recognized and widely condemned. At a meeting of the Security Council held the day after the Court issued its Order, multiple States specifically referred to the Court’s Order and emphasized that Russia was required to comply with it.<sup>234</sup> France, for instance, “call[ed] on Russia to immediately stop its bloody war and to comply with the order of the International Court of Justice,” and Mexico stated that “we welcome the decision issued yesterday by the International Court of Justice, ordering the immediate suspension of military operations that began on 24 February.”<sup>235</sup> Three weeks later, on 7 April 2022, the Group of 7 (“G7”) Foreign Ministers published a joint statement specifically calling on Russia to respect the Court’s Order. According to the statement: “Russia must immediately comply with the

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International, *Ukraine: Russian Forces Must Face Justice for War Crimes in Kyiv Oblast* (May 2022), accessed at <https://www.amnesty.org/en/latest/news/2022/05/ukraine-russian-forces-must-face-justice-for-war-crimes-in-kyiv-oblast-new-investigation/>; BBC News, *Bucha Killings: Satellite Image of Bodies Site Contradicts Russian Claims* (11 April 2022), accessed at <https://www.bbc.com/news/60981238>; TASS, *Donbas Forces, Russian Army Pushing Towards Slavyansk, Territorial Defense Center Reports* (10 June 2022), accessed at <https://tass.com/politics/1463361>; see also *supra* Chapter 2, Section E.

<sup>234</sup> See U.N. Security Council, Official Record, 8998<sup>th</sup> meeting, U.N. Doc. S/PV.8998 (17 March 2022).

<sup>235</sup> *Ibid.*, pp. 9, 18. The United States stated: “The International Court of Justice issued a profound and important order yesterday to the Russian Federation, and we call on Russia to comply immediately.” *Ibid.*, p. 7. The United Kingdom stated: “The International Court of Justice has issued a legally binding order, requiring Russia to suspend military action in Ukraine immediately.” *Ibid.*, p. 9. Ireland stated: “In the light of the Court’s decision, which is binding on the Russian Federation and which it cannot ignore, Ireland once again calls on the Russian Federation to comply with its obligations under international law and immediately end its aggression, unconditionally withdraw its forces from the entire territory of Ukraine and refrain from further threat or use of force of any kind against Ukraine or any other Member State.” *Ibid.*, p. 11. Norway stated: “Russia must stop its military aggression against Ukraine. Russia must comply with the order by the International Court of Justice to immediately suspend its military operations in Ukraine.” *Ibid.*

legally binding order of the International Court of Justice (ICJ) to suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine.”<sup>236</sup> Six weeks later, Russia’s aggression continued unabated. More than forty States and the European Union issued a joint statement on 20 May 2022, once again calling upon Russia to comply with the Court’s Order:

In these proceedings, the ICJ issued a significant ruling on March 16, 2022, which orders Russia to immediately suspend its military operations in Ukraine. We welcome the Court’s ruling and strongly urge Russia to comply with this legally binding order.<sup>237</sup>

138. More generally, there is a clear international consensus that Russia’s failure to halt its military operations in violation of the Court’s first provisional measure has caused, and continues to cause, further destruction and devastating humanitarian consequences. Eight days after the Court issued its Order, the U.N. General Assembly adopted a resolution noting the growing humanitarian crisis caused by Russia’s actions and “demand[ing] an immediate cessation of the hostilities by the Russian Federation against Ukraine.”<sup>238</sup> In a report

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<sup>236</sup> European External Action Service, *Russia: Statement of the G7 Foreign Ministers on the Continued Aggression Against Ukraine* (7 April 2022), accessed at [https://www.eeas.europa.eu/eeas/russia-statement-g7-foreign-ministers-continued-aggression-against-ukraine\\_en](https://www.eeas.europa.eu/eeas/russia-statement-g7-foreign-ministers-continued-aggression-against-ukraine_en).

<sup>237</sup> Government of Canada, *Joint Statement on Ukraine’s Application Against Russia at the International Court of Justice*, Global Affairs Canada (20 May 2022), accessed at <https://www.canada.ca/en/global-affairs/news/2022/05/joint-statement-on-ukraines-application-against-russia-at-the-international-court-of-justice.html>. The group of States include: Albania, Australia, Austria, Belgium, Bosnia & Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Marshall Islands, Micronesia (Federated States of), Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom, and the United States.

<sup>238</sup> U.N. General Assembly Resolution ES-11/2, U.N. Doc. A/RES/ES-11/2, *Humanitarian Consequences of the Aggression Against Ukraine* (24 March 2022), p. 3; see also U.N. General Assembly Resolution ES-11/3, U.N. Doc. A/RES/ES-11/3, *Suspension of the Rights of Membership of the Russian Federation in the Human Rights Council* (7 April 2022), p. 1 (“Expressing grave concern at the ongoing human rights and humanitarian crisis in Ukraine, in particular at the reports of violations and abuses of human rights and violations of international humanitarian law by the Russian Federation, including gross and systematic violations and abuses of human rights . . .”).

published on 26 March 2022, the OHCHR found that, during its 24 February to 26 March 2022 reporting period, “Russian armed forces used cluster munitions in populated areas at least 16 times, resulting in civilian casualties as well as damage to civilian objects.”<sup>239</sup> The OHCHR also reported that “[u]nguided munitions fired from ground-based systems such as heavy artillery, MLRS as well as unguided air bombs, have been extensively used by Russian armed forces in attacks on the urban areas of Chernihiv, Hostomel, Irpin, Kharkiv, Kyiv, Lysychansk, Mariupol, Severodonetsk, Sumy, Volnovakha and Zhytomyr.”<sup>240</sup> In April 2022, the OHCHR has also called attention to the “staggering scale of human rights violations in Bucha,” documenting the “unlawful killing, including summary executions of 50 civilians” there, among other horrendous incidents.<sup>241</sup> The U.N. Secretary General subsequently reiterated the call for Russia to end its use of military force in Ukraine. As Mr. Guterres stated in an address to the Security Council on 5 May 2022:

Russia’s invasion of Ukraine is a violation of its territorial integrity and of the Charter of the United Nations . . . . It must end for the sake of the people of Ukraine, Russia, and the entire world . . . the cycle of death, destruction, dislocation and disruption must stop.<sup>242</sup>

139. The continuing use of force on the territory of Ukraine by Russian-sponsored armed groups also directly violates the Court’s second provisional measure requiring the Russian Federation to “ensure that any military or irregular armed units which may be

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<sup>239</sup> OHCHR, *Update on the Human Rights Situation in Ukraine* (28 March 2022), para. 11, accessed at [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf).

<sup>240</sup> *Ibid*, para. 9.

<sup>241</sup> OHCHR, *Ensuring Accountability for Atrocities Committed in Ukraine* (27 April 2022), accessed at <https://www.ohchr.org/en/statements/2022/04/ensuring-accountability-atrocities-committed-ukraine>.

<sup>242</sup> UN News, *Ukraine: ‘Cycle of Death, Destruction’ Must Stop, UN Chief Tells Security Council* (5 May 2022), accessed at <https://news.un.org/en/story/2022/05/1117652>.

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.” Both the Russian military and Russian-sponsored armed groups continue to take steps in furtherance of Russia’s full-scale invasion of Ukraine. For example, DPR militants have fought alongside Russian troops in the siege of Mariupol and have helped manage a major filtration center near that city.<sup>243</sup> LPR militants have also been engaged in the battle for the Ukrainian city of Severodonetsk,<sup>244</sup> and DPR militants participated in the brutal offensive against and capture of Lyman.<sup>245</sup>

140. Through its conduct since 16 March 2022, the Russian Federation has also aggravated and extended the dispute, in violation of the Court’s third provisional measure. Each new atrocity committed, each new weapon used, and each new front opened or tactic deployed against the Ukrainian people by the Russian Federation only deepens the moral gulf

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<sup>243</sup> See, e.g., Tim Lister & Olga Voitovych, *Russian Separatists Say More than 500 Evacuated from Mariupol Through Their Center in One Day*, CNN (4 May 2022) (referring to DPR management of a filtration center at Bezimenne and coordination with Russian forces in taking Mariupol residents to that center), accessed at [https://www.cnn.com/europe/live-news/russia-ukraine-war-news-05-04-22/h\\_b5fa6f7040e064a3fa7ffd9e88b3c3f1](https://www.cnn.com/europe/live-news/russia-ukraine-war-news-05-04-22/h_b5fa6f7040e064a3fa7ffd9e88b3c3f1); CBSNews, *Siege of Mariupol Over as Russia Says Ukraine’s Holdout Forces from Steelworks Have “Surrendered,”* (17 May 2022) (referring to activities of DPR forces in Mariupol), accessed at <https://www.cbsnews.com/news/ukraine-russia-war-azovstal-steel-mill-defenders-mission-complete/>; Olga Voitovych et al., *Russia and Ukraine are Both Reporting Fighting Around Azovstal Plant in Mariupol*, CNN (3 May 2022) (quoting Russian defense ministry spokesperson mentioning DPR troops fighting alongside Russian forces at the Azovstal steel plant), accessed at [https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-05-03-22/h\\_3e0b533049d2dc6145d2c51de449539e](https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-05-03-22/h_3e0b533049d2dc6145d2c51de449539e); see also TASS, *DPR Official Says Mariupol Port is 80% Liberated* (11 April 2022), accessed at <https://tass.com/defense/1435567>.

<sup>244</sup> See TASS, *Luhansk Republic’s Forces Gain Foothold in Severodonetsk Industrial Zone – LPR Militia* (16 June 2022), accessed at <https://tass.com/politics/1466327>; Joseph Golder, *Pro-Russia Militia Says It’s Knocking Ukrainian Forces out of Severodonetsk Industrial Zone*, Newsweek (15 June 2022), accessed at <https://www.newsweek.com/pro-russia-militia-says-its-knocking-ukrainian-forces-out-severodonetsk-industrial-zone-1716267>.

<sup>245</sup> See EURACTIV, *Pro-Russian Separatists Claim Control of Lyman in East Ukraine* (27 May 2022), accessed at <https://www.euractiv.com/section/global-europe/news/pro-russian-separatists-claim-control-of-lyman-in-east-ukraine/>; TASS, *Donetsk Republic’s Forces Gain Full Control of Krasny Lyman, says DPR Defense Headquarters* (27 May 2022), accessed at <https://tass.com/politics/1456765>.

dividing the parties to this dispute and makes that dispute harder to resolve. Yet, in willful disregard of the Court's Order, Russia has engaged in ever more serious violations of international humanitarian law since 16 March. Indeed, on the very day that the Court issued its Order, a Russian airstrike destroyed a theater housing civilians in the center of Mariupol; the OSCE reported in April that 300 people died in the incident, and a more recent investigation put the number at closer to 600 deaths.<sup>246</sup> The attack occurred despite the fact that the theater had been clearly marked as housing children: the Russian word for "children" had been painted in very large letters on the pavement on both sides of the theater.<sup>247</sup> As the OSCE concluded, the attack was indisputably deliberate and "most likely an egregious violation of IHL."<sup>248</sup>

141. The Court noted in its Order that it "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."<sup>249</sup> The Court was right to be concerned in March and has even more reason to be concerned now. In the weeks following the Order, Russian forces continued to reduce Mariupol to rubble as they relentlessly bombarded the city.<sup>250</sup> Officials in Mariupol

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<sup>246</sup> OSCE Report, pp. 47–48; Lori Hinnant et al., *AP Evidence Points to 600 Dead in Mariupol Theater Airstrike*, AP News (4 May 2022) ("Amid all the horrors that have unfolded in the war on Ukraine, the Russian bombing of the Donetsk Academic Regional Drama Theater in Mariupol on March 16 stands out as the single deadliest known attack against civilians to date. An Associated Press investigation has found evidence that the attack was in fact far deadlier than estimated, killing closer to 600 people inside and outside the building. That's almost double the death toll cited so far, and many survivors put the number even higher."), accessed at <https://apnews.com/article/Russia-ukraine-war-mariupol-theater-c321a196fbd568899841b506afc7a1>.

<sup>247</sup> OSCE Report, p. 48; Lori Hinnant et al., *AP Evidence Points to 600 Dead in Mariupol Theater Airstrike*, AP News (4 May 2022), accessed at <https://apnews.com/article/Russia-ukraine-war-mariupol-theater-c321a196fbd568899841b506afc7a1>.

<sup>248</sup> OSCE Report, p. 48.

<sup>249</sup> Provisional Measures Order of 16 March 2022, para. 17.

<sup>250</sup> See, e.g., Rhodri Davis & Yaroslav Lukov, *Mariupol Steelworkers: 'We Have Wounded and Dead Inside the Bunkers'*, BBC News (21 April 2022), accessed at <https://www.bbc.com/news/world-europe-61183062>.

have reported a death toll well into the thousands due to the siege, which effectively leveled the city.<sup>251</sup>

142. Two months after the hearing on provisional measures, Amnesty International reported “compelling evidence” that Russia’s actions “constitute war crimes,” including extrajudicial executions of civilians, and airstrikes that resulted in the deaths of numerous civilians.<sup>252</sup> By the time that report was published, the world had already watched in horror as Ukrainian troops liberating Bucha from Russian forces revealed a massacre of civilians, many lying dead in the street and others found in shallow or mass graves.<sup>253</sup> Ukrainian civilians were targeted again on 8 April 2022 when Russia bombed a railway station in Kramatorsk that killed over 50 people waiting to be evacuated from the city and injured over 100 others.<sup>254</sup>

143. This accumulation of atrocities sadly bears out Ukraine’s predictions at the hearing on 7 March 2022 of the likely consequences if Russia’s use of force in Ukraine

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<sup>251</sup> See Anthony Faiola et al., *In Mariupol, Echoes of History, Utter Devastation and a Last Stand*, The Washington Post (24 April 2022), accessed at <https://www.washingtonpost.com/world/2022/04/24/mariupol-ukraine-last-days/>; Saskya Vandoorne & Melissa Bell, *Mariupol Death Toll at 22,000, Says Mayor’s Adviser*, CNN (25 May 2022), accessed at [https://www.cnn.com/europe/live-news/russia-ukraine-war-news-05-25-22/h\\_2ad9e6d653b92f03fc7f19312c17d7e9](https://www.cnn.com/europe/live-news/russia-ukraine-war-news-05-25-22/h_2ad9e6d653b92f03fc7f19312c17d7e9); Ukrinform, *New Mass Graves Discovered in Mariupol, There May be More than 22,000 Dead* (30 May 2022), accessed at <https://t.co/dbbQzKD5gq>.

<sup>252</sup> Amnesty International, “*He’s Not Coming Back.*” *War Crimes in Northwest Areas of Kyiv Oblast* (6 May 2022), p. 36, accessed at <https://www.amnesty.org/en/documents/eur50/5561/2022/en/>.

<sup>253</sup> See Daniel Boffey & Martin Farrer, “*They Were All Shot*”: *Russia Accused of War Crimes as Bucha Reveals Horror of Invasion*, The Guardian (3 April 2022), accessed at <https://www.theguardian.com/world/2022/apr/03/they-were-all-shot-russia-accused-of-war-crimes-as-bucha-reveals-horror-of-invasion>; Joel Gunter, *Collecting the Dead in Bucha*, BBC News (13 April 2022), accessed at <https://www.bbc.com/news/world-europe-61085810>; Louisa Loveluck, *In Bucha, A Massive Search for Bodies Left by Russian Occupiers*, The Washington Post (8 April 2022), accessed at <https://www.washingtonpost.com/world/2022/04/08/bucha-body-search-massacre/>.

<sup>254</sup> BBC News, *Kramatorsk Station Attack: What We Know So Far* (9 April 2022), accessed at <https://www.bbc.com/news/world-europe-61036740>; OHCHR, *Bachelet Urges Respect for International Humanitarian Law Amid Growing Evidence of War Crimes in Ukraine* (22 April 2022), accessed at <https://www.ohchr.org/en/press-releases/2022/04/bachelet-urges-respect-international-humanitarian-law-amid-growing-evidence>.



continued unchecked. Similarly, Ukraine anticipated that Russia would resort to the use of ever more devastating and inhumane weaponry.<sup>255</sup> Since then, there have been reports of Russia's use of thermobaric weapons, hypersonic missiles, and cluster munitions.<sup>256</sup> The humanitarian crisis has deepened too, in line with Ukraine's predictions. By 5 March 2022, two days before the provisional measures hearing, 1.5 million Ukrainians had sought refuge in neighboring countries according to UNHCR reporting.<sup>257</sup> As of 21 June 2022, over 5 million refugees have fled from Ukraine to other European countries.<sup>258</sup> On 16 March, the day the Order was issued, the OHCHR reported 1,900 civilian casualties: 726 killed, 1,174 injured.<sup>259</sup> As of 22 June 2022 the OHCHR reported over 4,660 civilians killed and 5,800 injured – although it notes that the real number is likely “considerably higher.”<sup>260</sup>

144. By targeting Ukraine's agricultural exports, Russia is also aggravating and extending the dispute in a manner that threatens global peace and security. Russia's blockade of important Ukrainian ports has triggered an international food crisis as Russia holds hostage 20 million tons of grain.<sup>261</sup> According to the Executive Director of the World Food Programme,

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<sup>255</sup> See *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Verbatim Record of Oral Proceedings Held 7 March 2022, CR 2022/5 (corrected), pp. 51–52, para. 12 (Gimblett).

<sup>256</sup> See *supra* Chapter 2, Section D.

<sup>257</sup> U.N. High Commissioner for Refugees, *Ukraine Refugee Situation: Operational Data Portal* (as of 5 March 2022) (Annex 39).

<sup>258</sup> U.N. High Commissioner for Refugees, *Ukraine Refugee Situation: Operational Data Portal* (as of 21 June 2022) (Annex 40).

<sup>259</sup> OHCHR, *Ukraine: Civilian Casualty Update* (16 March 2022), accessed at <https://www.ohchr.org/en/news/2022/03/ukraine-civilian-casualty-update-16-march-2022>.

<sup>260</sup> OHCHR, *Ukraine: Civilian Casualty Update* (23 June 2022), accessed at <https://www.ohchr.org/en/news/2022/06/ukraine-civilian-casualty-update-23-june-2022>.

<sup>261</sup> U.N. Security Council, 9036th Meeting, *Lack of Grain Exports Driving Global Hunger to Famine Levels, as War in Ukraine Continues*, Speakers Warn Security Council (19 May 2022) (Statement of the Secretary of State of the United States), accessed at <https://www.un.org/press/en/2022/sc14894.doc.htm>.

Ukraine provides food for 400 million people across 36 countries, and Russia’s failure to open Ukraine’s ports “is a declaration of war on global food security” and “will result in famines, destabilization and mass migration around the world.”<sup>262</sup> As grain prices soar as a result of Russia’s war against Ukraine, press reports indicate that the price of bread in Cairo increased by 25 percent, requiring the government to put a cap on the price of bread.<sup>263</sup> The social instability that can be expected to result from such a sharp increase in the price of essential food in middle-income countries will effectively globalize the consequences of Russian aggression — which is presumably exactly what Russia intends by its naval blockade.<sup>264</sup>

145. Russia has further aggravated and extended the dispute between the parties by repeating its baseless allegation that Ukraine is responsible for committing genocide in the Donbas region on numerous occasions since 16 March 2022. For example, as mentioned in Chapter 2, almost immediately following the Provisional Measures Order, President Putin expressly reaffirmed that the purpose of Russia’s use of force in Ukraine is to prevent and punish genocide. In a speech given on 18 March 2022 celebrating the anniversary of Russia’s unlawful seizure of Crimea in 2014, Putin again stated that people in Donbas were subject to “genocide,” and he pronounced that the “main goal and motive of the military operation that we launched in Donbas and Ukraine” is to “relieve these people of suffering, of this

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<sup>262</sup> *Ibid.*

<sup>263</sup> See Sarah Butler, *Egypt Fixes Price of Bread as Ukraine War Hits Wheat Supply*, The Guardian (21 March 2022), accessed at <https://www.theguardian.com/world/2022/mar/21/egypt-fixes-price-of-unsubsidised-bread-as-ukraine-war-hits-wheat-supply>; see also Claire Parker, *5 Countries Hit Hard by the Grain Crisis in Ukraine*, The Washington Post (15 June 2022), accessed at <https://www.washingtonpost.com/world/2022/06/15/ukraine-war-russia-grain-food-crisis-world-hunger/>.

<sup>264</sup> See Sarah El Saffy & Aidan Lewis, *Egyptians Count Rising Bread Costs as Ukraine War Disrupts Wheat Exports*, World Economic Forum (22 March 2022), accessed at <https://www.weforum.org/agenda/2022/03/egyptians-rising-bread-costs-ukraine-war-disrupts-wheat-exports/>.

genocide.”<sup>265</sup> Moreover, since 16 March, the Investigative Committee of the Russian Federation has opened new criminal cases against “the Armed Forces of Ukraine and other Ukrainian military formations,” again on the basis that they have committed genocide “[i]n violation of the requirements of the Convention on the Prevention and Punishment of the Crime of Genocide.”<sup>266</sup>

146. In short, Russia has not only failed to comply with the Court's Order on Provisional Measures. Russia has explicitly rejected this Court's binding order and acted in bald defiance of each and every measure the Court indicated. Russia has not “suspend[ed] the military operations . . . in the territory of Ukraine.” It has continued its support for “military or irregular armed units which may be directed or supported by [Russia], as well as any organizations and persons who may be subject to its control or direction.” And it has aggravated and extended the dispute between the parties to the point that it is fast becoming an even greater threat to global security and the world economy. Every action the Russian Federation has taken in Ukraine since 16 March 2022 is a violation of the Court's Order, and an internationally wrongful act for which Russia is responsible, independent from and in addition to Russia's abuse and misuse of the Genocide Convention.

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<sup>265</sup> President of Russia Vladimir Putin, *Remarks at the Concert Marking the Anniversary of Crimea's Reunification with Russia* (18 March 2022), <http://en.kremlin.ru/events/president/transcripts/68016> (Annex 8).

<sup>266</sup> Investigative Committee of the Russian Federation, *A Criminal Case Has Been Initiated for Genocide Against the Residents of the Town of Shchastya in the LPR* (18 April 2022) (Annex 18); see also *Izvestia: The Investigative Committee of Russia Initiated a Case on the Genocide Against the Residents of the Town of Shchastya in the LPR* (19 April 2022) (Annex 19).

## **Chapter 5. THIS COURT HAS JURISDICTION OVER THE PARTIES' DISPUTE RELATING TO THE GENOCIDE CONVENTION**

147. Pursuant to Article 36(1) of the Statute of the Court, this Court has jurisdiction over “all cases which the parties refer to it and matters specifically provided for in . . . treaties and conventions in force.”<sup>267</sup> Ukraine invokes the Court’s jurisdiction pursuant to Article IX of the Genocide Convention, to which both Ukraine and the Russian Federation are parties without any reservation currently in force.<sup>268</sup> Article IX provides:

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

148. The breadth of the Court’s jurisdiction under Article IX is apparent from its text. As five Members of this Court observed in a joint separate opinion to the Court’s judgment in *Democratic Republic of the Congo v. Rwanda*, “Article IX speaks not only of disputes over the interpretation and application of the Convention, but over the ‘fulfilment of the Convention,’” and Article IX further specifies that “the disputes that may be referred to the Court under Article IX ‘includ[e] those relating to the responsibility of a State for genocide’.”<sup>269</sup> The joint separate opinion further noted that Article IX confirms that the Court has “an important role under the Genocide Convention.”<sup>270</sup> A leading commentary on the Convention also explains that this broad language of Article IX was intentional:

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<sup>267</sup> Statute of the Court, art. 36(1).

<sup>268</sup> Genocide Convention, List of Contracting Parties, accessed at [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-1&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en).

<sup>269</sup> *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, Joint Separate Opinion of Judges Higgins, Kooijmans, Elaraby, Owada, and Simma*, p. 72, para. 28.

<sup>270</sup> *Ibid.*

The aim was . . . to close down all possible loopholes weakening the jurisdictional reach of the Court. The purpose pursued in 1948 was to grant the Court a jurisdiction as wide as possible in the life of the Convention, forestalling all the potential subtle arguments denying jurisdiction on account of an insufficient link with that Convention.<sup>271</sup>

149. Accordingly, Ukraine has brought to the Court a dispute relating to the Russian Federation’s false allegation that Ukraine is responsible for genocide in violation of the Convention, which it has used as a pretext for recognizing the independence of the DPR and LPR and for using military force in and against Ukraine, avowedly to prevent and punish genocide and to bring Ukraine’s supposed violations of the Convention to an end. As set forth in Chapter 3, Ukraine claims that Russia’s actions are an abuse and violation of Articles I and IV of the Convention. This dispute relates to the interpretation, application, or fulfilment of the Genocide Convention, as this Court has already determined on a *prima facie* basis.<sup>272</sup>

150. In addition to its jurisdiction over the dispute between Ukraine and the Russian Federation relating to the Genocide Convention, the Court also has inherent jurisdiction to address Russia’s responsibility for its non-compliance with the Court’s Provisional Measures Order of 16 March 2022.

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151. In the words of this Court’s predecessor in *Mavrommatis*, “[a] dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests” between

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<sup>271</sup> Robert Kolb, *The Scope Ratione Materiae of the Compulsory Jurisdiction of the ICJ*, in THE UN GENOCIDE CONVENTION: A COMMENTARY (Paola Gaeta, ed., Oxford University Press 2009), p. 453 (Annex 26).

<sup>272</sup> See Provisional Measures Order of 16 March 2022, para. 47.

parties.<sup>273</sup> The existence of a dispute is a question of substance, not of form.<sup>274</sup> In this context, this Court has recognized that both the statements and the conduct of the parties may be relevant to its decision as to whether there is a dispute.<sup>275</sup> Chapter 2 above describes the disagreement between Ukraine and the Russian Federation relating to Russia's false allegation that Ukraine is responsible for committing genocide in violation of the Genocide Convention, and its use of that allegation as a pretext to recognize the DPR and LPR, and to use force in and against Ukraine, for the purpose of preventing and punishing genocide and bringing to an end alleged violations of the Convention.<sup>276</sup> Chapter 3 above explains Ukraine's claim that Russia abused and violated the Genocide Convention when it acted in this manner. The Court, in its Order on provisional measures, summarized the parties' dispute as follows:

[S]tatements 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.<sup>277</sup>

152. While the Russian Federation's recognition of the DPR and LPR as a measure to prevent and punish genocide was not a focal point during the provisional measures phase, as the ongoing use of force was central to the urgency of the situation, it is also contested between the parties.

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<sup>273</sup> *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A – No. 2, p. 11.*

<sup>274</sup> *See, e.g., Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 26, para. 50; see also Provisional Measures Order of 16 March 2022, para 35.*

<sup>275</sup> *See, e.g., Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 850, paras. 39–40; Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016, pp. 32–33, paras. 71 & 73; Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 315, para. 89.*

<sup>276</sup> *See supra* Chapter 2, Sections B–C.

<sup>277</sup> Provisional Measures Order of 16 March 2022, para. 45.

153. The dispute relates to “the interpretation, application and fulfilment of the Genocide Convention” in at least three principal respects.

154. *First*, the dispute relates to the Russian Federation’s claim that Ukraine is responsible for committing genocide in violation of Article I of the Convention, and that Ukrainian officials are “persons committing genocide” who “shall be punished” for the purposes of Article IV. Article IX expressly states that its reach “includ[es]” disputes “relating to the responsibility of a State for genocide.” As explained above, Russia has repeatedly accused Ukraine of responsibility for genocide in violation of the Convention — a claim Russia has used as the pretext for its recognition of the DPR and LPR and its use of force — and Ukraine adamantly denies Russia’s allegation. To resolve Ukraine’s claim that Russia has improperly used a false allegation of genocide under the Convention as a pretext for recognizing DPR and LPR and using force in and against Ukraine, the Court must apply the Genocide Convention to the relevant facts to determine whether there is a basis for Russia’s claim that Ukraine is responsible for genocide in violation of the Convention. The dispute thus unquestionably “relates” to, among other things, “the responsibility of a State for genocide,” which Article IX expressly qualifies as conferring jurisdiction on this Court.

155. In the document it communicated to the Court on 7 March 2022, the Russian Federation claimed that “[a] reference to genocide is not equal to the invocation of the Convention or the existence of a dispute under it, since the notion of genocide exists in customary international law,” and “also exists in national legal systems of States including in the Russian Federation and Ukraine.”<sup>278</sup> Yet, as this Court has explained, “it is not necessary

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<sup>278</sup> *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Document (with Annexes) From the Russian Federation Setting Out its Position Regarding the Alleged “Lack of Jurisdiction” of the Court in the Case (7 March 2022), pp. 5-6, para. 20.

for a State to refer expressly to a specific treaty in its exchanges with the other State” for purposes of establishing a dispute under such a treaty’s compromissory clause, so long as it “refer[s] to the subject-matter of the treaty.”<sup>279</sup> Russia has unquestionably referred to the subject-matter of the Genocide Convention: both genocide itself, and measures to prevent and punish genocide.<sup>280</sup> Even if express invocations of the Convention itself were required, however, Russia has repeatedly done that here, by expressing its allegations in terms of “violation[s] of the 1948 Convention ‘On the Prevention and Punishment of the Crime of Genocide,’”<sup>281</sup> and stating that “Kyiv’s actions . . . actually fall under the UN Convention On the Prevention of Genocide.”<sup>282</sup>

156. *Second*, the dispute relates to the Russian Federation’s recognition of the DPR and LPR and its use of force in and against Ukraine as measures to fulfil Russia’s obligation to prevent and punish genocide under Articles I and IV of the Genocide Convention, and as an exercise of a right to invoke the responsibility of Ukraine for alleged violations of the Convention. Russia has claimed that these measures are aimed at stopping violations of the Genocide Convention committed by Ukraine.<sup>283</sup> In fact, they have been steps towards unleashing death and destruction throughout Ukraine. Russia has claimed a right to use force

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<sup>279</sup> *Provisional Measures Order of 16 March 2022, para. 44 (citing 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; 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, p. 85, para. 30).*

<sup>280</sup> *See supra* Chapter 2, Section B.

<sup>281</sup> *See, e.g.*, Investigative Committee of the Russian Federation, *The Investigative Committee Opened a Criminal Investigation Concerning the Genocide of Russian-Speaking Population in the South-East of Ukraine* (29 September 2014) (Annex 9); *see generally supra* Chapter 2, Section B(1).

<sup>282</sup> RIA Novosti, *Gryzlov Called Putin's Decree on Donbas a Response to Kyiv's Actions* (18 November 2021) (Annex 35); *see also* TASS, *Putin’s Decree on Donbas is Response to Kyiv’s Refusal to Honor Minsk Accords – Envoy* (18 November 2021), accessed at <https://tass.com/politics/1363441>.

<sup>283</sup> *See supra* Chapter 2, Section B.



on the territory of Ukraine to prevent and punish genocide and to bring violations of the Convention to an end, and Ukraine emphatically disputes that Russia has any lawful or legitimate basis for doing so.<sup>284</sup> To resolve Ukraine’s claim that Russia has no basis for using a false allegation of genocide as a pretext for recognizing the DPR and LPR and using force in and against Ukraine the Court will need to interpret the Convention and apply its provisions to the relevant facts. Ukraine claims that Russia has misinterpreted and misapplied Articles I and IV of the Convention in its purported fulfilment of its undertakings under those articles, and in its exercise of a claimed right to bring alleged violations of the Convention to an end. Ukraine’s claims thus inherently relate to the interpretation, application, or fulfilment of the Convention.

157. In the document it communicated to the Court, the Russian Federation argued that the Genocide Convention “does not regulate either the use of force between States or the recognition of States.”<sup>285</sup> But Ukraine nowhere maintains that the use of force or the recognition of States is regulated by the Convention as such. What the Convention does regulate is the measures to be taken “to prevent and to punish” genocide, and whether and to what extent a Contracting Party has the right to take such measures to bring to an end alleged violations of the Convention.<sup>286</sup> Ukraine’s complaint is that Russia has recognized the DPR and LPR, and used force in and against Ukraine, both as measures to prevent and punish genocide and in the exercise of a right to bring claimed violations of the Convention to an end, when it had no basis whatsoever in the Convention for doing so.

158. *Third*, the dispute relates to Ukraine’s claim that by taking these actions, the Russian Federation has abused, misused, and violated the Genocide Convention. Ukraine

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<sup>284</sup> See *supra* Chapter 2, Sections B–C.

<sup>285</sup> *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Document (with Annexes) From the Russian Federation Setting Out its Position Regarding the Alleged “Lack of Jurisdiction” of the Court in the Case (7 March 2022), p. 2, para. 10.

<sup>286</sup> Genocide Convention, art. I; see also *ibid* art. IV.

claims that Russia’s recognition of the DPR and LPR and its use of force in and against Ukraine for the stated purpose of preventing and punishing genocide, and to purportedly hold Ukraine accountable for alleged violations of the Convention, constitutes an abuse of the rights and obligations in Articles I and IV, and thus is a violation of the Convention. Articles I and IV of the Convention impose on Russia a duty *not* to act to Ukraine’s detriment on the basis of a falsely alleged genocide, and not to exceed the limits of international law in any measures it takes to prevent and punish genocide or to invoke the responsibility of another Contracting Party for genocide. To resolve Ukraine’s claim, the Court will need to interpret the Convention and apply its provisions. Specifically, the Court will need to determine whether Russia, in purporting to fulfil its obligations under the Convention to prevent and punish genocide and in purporting to exercise its right to invoke the responsibility of another State for violating the Convention, has itself violated the Convention by misusing and abusing Articles I and IV. The Court has already found that Russia’s acts complained of by Ukraine “appear to be capable of falling within the provisions of the Genocide Convention.”<sup>287</sup> Chapter 3 explains in further detail why Russia is responsible for violating that Convention.<sup>288</sup> In this respect as well, the dispute between the parties relates to the interpretation, application, and fulfilment of the Convention.

159. In the document it communicated to the Court, Russia claimed that it had a “legal basis” to use force in Ukraine as an “exercise of the right of self-defense” under the U.N.

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<sup>287</sup> Provisional Measures Order of 16 March 2022, para. 45.

<sup>288</sup> *See supra* Chapter 3, Section C.

Charter.<sup>289</sup> Apart from the legal incoherence of this claim, as already described,<sup>290</sup> it is irrelevant to the question of the Court’s jurisdiction over the present dispute. As the Court observed in its Order indicating provisional measures, “certain acts or omissions may give rise to a dispute that falls within the ambit of more than one treaty.”<sup>291</sup> Even if Ukraine and Russia *also* have a dispute that relates to the U.N. Charter, that would not change the fact that the dispute before this Court relates to the Genocide Convention. Specifically, Russia has alleged that Ukraine is responsible for violating the Convention, justifying Russia’s recognition of the DPR and LPR and its use of force as a means to fulfil its obligation to prevent and punish genocide under the Convention, and as an exercise of a right to bring Ukraine’s alleged violation to an end. Ukraine alleges that Russia’s actions under this pretext are a breach of the Convention. Moreover, to the extent Russia’s invocation of Article 51 can even be considered despite its lack of coherence, it is not independent of Russia’s reliance on the Genocide Convention. In the speech that Russia transmitted to the United Nations as the sole justification for its actions in and against Ukraine, Russia referred to Article 51 only in stating that “[t]he people’s republics of Donbas have asked Russia for help,” and Russia stated expressly that the “purpose” of that help was to “protect people” from “genocide.”<sup>292</sup>

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160. The Russian Federation has accused Ukraine of violating the Genocide Convention by committing genocide against Russian-speakers in the Donbas region of

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<sup>289</sup> See *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Document (with Annexes) From the Russian Federation Setting Out its Position Regarding the Alleged “Lack of Jurisdiction” of the Court in the Case (7 March 2022), p. 4, para. 15; see also *ibid.*, Annex.

<sup>290</sup> See *supra* Chapter 3, Section C(3).

<sup>291</sup> Provisional Measures Order of 16 March 2022, para. 46 (citing *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States) Preliminary Objections, Judgment of 3 February 2021*, para. 56).

<sup>292</sup> President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (24 February 2022), accessed at <http://en.kremlin.ru/events/president/news/67843> (Annex 6); see also *Letter Dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General*, U.N. Doc. S/2022/154 (24 February 2022).

Ukraine. Russia has relied on this allegation of genocide as a pretext for recognizing the DPR and LPR and using military force in and against Ukraine. Ukraine has vehemently denied Russia's allegations, resisted the notion that Russia has any basis under the Convention to take these measures in fulfilment of its obligation to prevent and punish genocide or as a right to enforce the Convention against Ukraine, and claims that Russia's extraordinary actions are an abuse and misuse of the Convention. In particular, those actions create a dispute between these two Contracting Parties regarding the interpretation, application, or fulfilment of the Genocide Convention. On its face, Article IX of the Convention confers jurisdiction on the Court to resolve this dispute.

## **Chapter 6. REMEDIES**

161. As Ukraine has demonstrated in the preceding sections of this Memorial, the Russian Federation has committed internationally wrongful acts that violate the Genocide Convention and this Court's Provisional Measures Order of 16 March 2022. The Russian Federation's violations of the Genocide Convention and of this Court's Order have resulted in unthinkable damage to Ukraine and its citizens. Not only has Russia destroyed cities and critical infrastructure, but it has killed thousands of innocent civilians in the name of preventing and punishing genocide. Those lucky enough to survive assaults by Russian forces and other armed groups directed or supported by Russia still feel the impact of the invasion as Ukrainian cities have been ruined, citizens deported, and the economy severely weakened. In this Chapter, Ukraine sets out the relief it seeks from the Court for these grave injuries to Ukraine and the Ukrainian people as a result of Russia's violations of the Genocide Convention and this Court's Provisional Measures Order of 16 March 2022.

### **A. The Court Should Order Declaratory Relief.**

162. As the predecessor to this Court explained when interpreting its judgment in the seminal *Factory at Chorzów* case:

“[T]he intention of [a declaratory judgment] is to ensure recognition of a situation at law, once and for all and with binding force as between the Parties ; so that the legal position thus established cannot again be called in question in so far as the legal effects ensuing therefrom are concerned.”<sup>293</sup>

163. Here, where the Court has jurisdiction to resolve a dispute relating to whether the Genocide Convention is violated by Russia's use of force against Ukraine on the pretext of preventing and punishing an alleged genocide in the Donbas region, the Court should bring legal certainty to the parties by making declarations that resolve this dispute.

164. First, Ukraine requests a declaration from the Court that it has jurisdiction over this dispute. Second, Ukraine requests a declaration that there is no credible evidence of

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<sup>293</sup> *Factory at Chorzów, Interpretation of Judgments Nos. 7 and 8, Judgment No. 11, 16 December 1927, P.C.I.J., Series A. – No. 13, p. 20.*

genocidal acts as defined in Article II of the Genocide Convention committed by Ukraine in the Donetsk and Luhansk oblasts of Ukraine. Third, Ukraine seeks a declaration that the Russian Federation's recognition of the independence of the so-called "Donetsk People's Republic" and "Luhansk People's Republic" on 21 February 2022 is predicated on this false claim of genocide in violation of Articles I and IV of the Genocide Convention and is therefore null and void. Finally, Ukraine seeks a declaration that the Russian Federation's use of force against Ukraine beginning on 24 February 2022 on the pretext of preventing and punishing a falsely alleged genocide in the Donetsk and Luhansk oblasts of Ukraine violates Articles I and IV of the Genocide Convention.

**B. The Court Should Order the Russian Federation to Cease Its Unlawful Acts and Provide Assurances of Non-Repetition.**

165. Russia is under an obligation to immediately cease its unlawful behavior and end its campaign of destruction and terror in Ukraine. Article 30 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts ("Articles on State Responsibility") provides that a State responsible for a wrongful act is under an obligation "to cease that act if it is continuing" and "to offer appropriate assurances and guarantees of non-repetition, if circumstances so require."<sup>294</sup> That relief is appropriate here to protect the interests of Ukraine.

166. In addition to cessation, assurances and guarantees of non-repetition play an important preventative role with regard to the potential of ongoing or future violations. As the commentary to the Draft Articles on State Responsibility reflect, such assurances and

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<sup>294</sup> U.N. General Assembly Resolution 56/83, U.N. Doc. A/RES/56/83, *Responsibility of States for Internationally Wrongful Acts* (12 December 2001), Annex, art. 30; see also ILC Report of the International Law Commission on the Work of Its Fifty-Third Session, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, 53rd Session, U.N. Doc. No. A/56/10 (23 April–1 June, 2 July–10 August 2001), art. 30, p. 89, paras. 4–5 [hereinafter ILC Commentary on Draft Articles on State Responsibility].

guarantees are “most commonly sought when the injured State has reason to believe that the mere restoration of the pre-existing situation does not protect it satisfactorily.”<sup>295</sup> As this Court is aware, the Russian Federation has a history of disrespecting international law and the territorial sovereignty of Ukraine. President Putin has made numerous statements over the years, including in his speech preceding the 24 February use of force, that “Ukraine actually never had stable traditions of real statehood.”<sup>296</sup> Therefore, cessation alone is not an adequate form of relief under the circumstances. This Court has frequently recognized the legitimacy of seeking assurances and guarantees and has ordered the cessation of wrongful conduct and assurances of non-repetition where appropriate.<sup>297</sup>

167. Specifically, Ukraine requests that to remedy Russia’s violations of the Genocide Convention, the Court order the cessation of wrongful conduct and that Russia provide assurances of non-repetition, including that:

- Russia immediately terminate its use of force in and against Ukraine that it commenced on 24 February 2022.

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<sup>295</sup> ILC Commentary on Draft Articles on State Responsibility, art. 30, p. 89, para. 9.

<sup>296</sup> President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (21 February 2022), accessed at <http://en.kremlin.ru/events/president/transcripts/statements/67828> (Annex 5); see also, e.g., President of Russia Vladimir Putin, *Article by Vladimir Putin “On the Historical Unity of Russians and Ukrainians,”* (12 July 2021) (including the claim that “there was no historical basis — and could not have been any” for “the idea of Ukrainian people as a nation separate from the Russians”), <http://en.kremlin.ru/events/president/news/66181>; Angela Stent, *Putin’s Ukrainian Endgame and Why the West May Have a Hard Time Stopping Him*, CNN (4 March 2014) (including a 2008 quote from Putin to then-U.S. President George W. Bush: “You have to understand, George, that Ukraine is not even a country. Part of its territory is in Eastern Europe and the greater part was given to us.”), accessed at <https://www.cnn.com/2014/03/03/opinion/stent-putin-ukraine-russia-endgame/index.html>.

<sup>297</sup> See *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment of 21 April 2022, para. 195 (finding that “Colombia breached its international obligation to respect Nicaragua’s sovereign rights and jurisdiction” and noting that “[t]his wrongful conduct engages Colombia’s responsibility under international law. Colombia must therefore immediately cease its wrongful conduct”); *ibid.*, para. 261(4); see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 197, para. 150 (“The Court observes that Israel also has an obligation to put an end to the violation of its international obligations flowing from the construction of the wall in the Occupied Palestinian Territory. The obligation of a State responsible for an internationally wrongful act to put an end to that act is well established in general international law, and the Court has on a number of occasions confirmed the existence of that obligation.”).

- Russia immediately withdraw its military units from the territory of Ukraine, including the Donbas region.
- Russia ensure that any military or irregular armed units which may be directed or supported by it (including but not limited to those of the DPR and LPR), as well as any organizations and persons which may be subject to its control or direction, take no further steps in support of Russia’s use of force in and against Ukraine launched on 24 February 2022.
- Russia immediately cease its military, financial and other support for any military or irregular armed units which may be directed or supported by it (including but not limited to those of the DPR and LPR), as well as any organizations and persons which may be subject to its control or direction, who are engaged in military operations in and against Ukraine, including in the Donbas region.
- Russia withdraw its recognition of the DPR and LPR, predicated on a false claim of genocide.
- Russia provide assurances that it will not undertake any further use of force in or against Ukraine.

**C. The Court Should Order the Russian Federation to Pay Ukraine Full Reparation for Its Injury.**

168. Since its unlawful invasion of Ukraine commenced under the pretext of preventing and punishing genocide, Russia has killed thousands of innocent civilians and caused billions of dollars of damage to Ukraine’s infrastructure and economy.<sup>298</sup> It is well established in this Court’s jurisprudence that “a State which bears responsibility for an internationally wrongful act is under an obligation to make full reparation for the injury caused by that act.”<sup>299</sup>

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<sup>298</sup> See *supra* Chapter 2, Sections D–E.

<sup>299</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Merits, Judgment, I.C.J. Reports 2005*, p. 257, para. 259; see also *Factory at Chorzów, Jurisdiction, Judgment No. 8, 26 July 1927, P.C.I.J., Series A – No. 9*, p. 21; *Gabcíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 81, para. 152; *Avena and Other Mexican*



169. Article 34 of the Articles on State Responsibility provides that “[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination.” Consistent with the principle of *restitutio in integrum*, this Court’s predecessor found in *Factory at Chorzów* that “reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.”<sup>300</sup> According to the Permanent Court of International Justice, this includes “[r]estitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear.”<sup>301</sup> This Court recently observed that “compensation may be an appropriate form of reparation, particularly in those cases where restitution is materially impossible.”<sup>302</sup>

170. Ukraine and all those who have suffered damages because of Russia’s actions are owed full reparation by Russia for the unimaginable harm inflicted by its unlawful use of force under the pretext of preventing and punishing genocide, the quantum of which Ukraine will calculate at a later stage of the proceedings. Specifically, Russia owes compensation to remedy all material losses suffered as a result of Russia’s violations of the Genocide Convention through its use of force based on a pretext of alleged genocide, including, without limitation, for loss of life and injury to both civilians and service members; the displacement of the Ukrainian population; damage to and destruction of military and civilian equipment and infrastructure; the loss of natural resources and damage to the environment; all other damage to public and private property, including their future earning value as going concerns; and the negative impacts on Ukraine’s economy.

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*Nationals (Mexico v. United States of America)*, Merits, Judgment, I.C.J. Reports 2004, p. 59, para. 119.

<sup>300</sup> *Factory at Chorzów*, Merits, Judgment, 13 September 1928, P.C.I.J., Series A. – No. 17, p. 47.

<sup>301</sup> *Ibid.*

<sup>302</sup> See *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment of 9 February 2022, para. 101.

171. Russia also owes Ukraine compensation to remedy the moral damage suffered by Ukraine and its people as a result of Russia’s violation of the Genocide Convention through its use of force based on a pretext of alleged genocide, including for its innumerable atrocities against the Ukrainian people, including without limitation, for loss of life and injury to both civilians and service members; the displacement of the Ukrainian population; and the violation of Ukraine’s territorial integrity and sovereignty.

172. While the United Nations’ official estimate is that over 4,660 civilians have been killed in Ukraine since 24 February 2022, it acknowledges that the number is likely significantly higher given difficulties in gathering correct data.<sup>303</sup> Russia’s violations of the Genocide Convention have taken a significant toll on the Ukrainian people. Thousands of civilians have been killed or injured by Russian forces in shellings, airstrikes, and cold-blooded executions.<sup>304</sup> Even more have faced unlawful deportations to Russian territories, including Russian “filtration camps” where they face inhumane conditions.<sup>305</sup> Russia’s relentless campaign of violence has destroyed cities — including residential buildings and critical infrastructure — and the World Bank predicts Ukraine’s economy will shrink by almost half this year due to the invasion.<sup>306</sup> Compensation that as far as possible wipes out all the consequences of Russia’s illegal acts is due to Ukraine.

**D. The Court Should Grant Ukraine Further Relief Regarding the Russian Federation’s Violation of this Court’s Order Indicating Provisional Measures.**

173. In addition to the remedies mentioned above, Ukraine seeks further relief in relation to Russia’s violations of the Court’s Provisional Measures Order of 16 March 2022. As explained above, Russia publicly declared that it would not comply with the Court’s Order on

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<sup>303</sup> OHCHR, *Ukraine: Civilian Casualty Update* (23 June 2022), accessed at <https://www.ohchr.org/en/news/2022/06/ukraine-civilian-casualty-update-23-june-2022>.

<sup>304</sup> See *supra* Chapter 2, Sections D–E.

<sup>305</sup> See *ibid*.

<sup>306</sup> See *ibid*; World Bank, *Russian Invasion to Shrink Ukraine Economy by 45 Percent this Year* (10 April 2022), accessed at <https://www.worldbank.org/en/news/press-release/2022/04/10/russian-invasion-to-shrink-ukraine-economy-by-45-percent-this-year>.

17 March 2022, has failed to suspend its military operations on the territory of Ukraine, has failed to ensure that armed groups directed or supported by Russia and organizations and persons subject to its control and direction cease all steps in furtherance of those operations, and has severely aggravated the dispute. In short, Russia has been in defiance of the Court's provisional measures since the moment of their issuance. Ukraine accordingly requests that the Court declare that the Russian Federation has violated the Court's 16 March 2022 Order indicating provisional measures and is independently responsible under international law for all the consequences of that violation.

174. Russia also owes compensation for its violation of the Court's Order. Ukraine requests compensation to remedy all material losses suffered by Ukraine as a result of Russia's failure to suspend its military operations in the territory of Ukraine since 16 March 2022, including, without limitation, for loss of life and injury of both civilians and service members; the displacement of the Ukrainian population; damage and destruction of military and civilian equipment and infrastructure; the loss of natural resources and damage to the environment; all other damage to public and private property including their future earning value as going concerns; and the negative impacts on Ukraine's economy.

175. Finally, Ukraine seeks compensation to remedy all moral damage suffered by Ukraine and its people as a result of Russia's failure to suspend its military operations in the territory of Ukraine since 16 March 2022, including, without limitation, for loss of life and injury to both civilians and service members; the displacement of the Ukrainian population; and the violation of Ukraine's territorial integrity and sovereignty.

176. As noted above, Russia’s atrocities have continued to be relentless even after this Court’s Provisional Measure Order.<sup>307</sup> Russian forces have killed, raped, and deported civilians.<sup>308</sup> The whole world shared Ukraine’s horror at the discovery of Russia’s massacre in Bucha, where Russian troops summarily executed innocent civilians.<sup>309</sup> Even children are not immune from such atrocities as Russia targets those seeking shelter and those waiting to be evacuated.<sup>310</sup> As the U.N. Secretary-General stated to the Security Council, “the cycle of death, destruction, dislocation and disruption must stop.”<sup>311</sup>

177. Obviously, there is no way to make Ukraine and its people whole again after suffering through these and the countless other atrocities committed by the Russian Federation. But given that Russia has defiantly refused to suspend military operations as of 16 March 2022 and failed to ensure that armed groups directed or supported by Russia and organizations and persons subject to its control and direction ceased all steps in furtherance of those operations, Ukraine is at least owed compensation to hold Russia accountable for its flagrant violations of this Court’s Order.

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<sup>307</sup> See *supra* Chapter 2, Section E; Chapter 4.

<sup>308</sup> See *supra* Chapter 2, Section E.

<sup>309</sup> See *ibid.*

<sup>310</sup> See *ibid.*

<sup>311</sup> UN News, *Ukraine: ‘Cycle of Death, Destruction’ Must Stop, UN Chief Tells Security Council* (5 May 2022), accessed at <https://news.un.org/en/story/2022/05/1117652>.

## **SUBMISSIONS**

178. For the reasons set out in this Memorial, Ukraine respectfully requests the Court to:

- a. Adjudge and declare that the Court has jurisdiction over this dispute.
- b. Adjudge and declare that there is no credible evidence that Ukraine is responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk oblasts of Ukraine.
- c. Adjudge and declare that the Russian Federation's use of force in and against Ukraine beginning on 24 February 2022 violates Articles I and IV of the Genocide Convention.
- d. 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 21 February 2022 violates Articles I and IV of the Genocide Convention.
- e. Adjudge and declare that, by failing to immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine, and by failing to 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, the Russian Federation violated the independent obligations imposed on it by the Order indicating provisional measures issued by the Court of 16 March 2022.

179. Accordingly, the Court is respectfully requested to:

- a. Order the Russian Federation to immediately terminate its use of force in and against Ukraine that it commenced on 24 February 2022.
- b. Order the Russian Federation to immediately withdraw its military units from the territory of Ukraine, including the Donbas region.
- c. Order the Russian Federation to ensure that any military or irregular armed units which may be directed or supported by it (including but not limited to those of the DPR and the LPR), as well as any organizations and persons which may be subject to its

control or direction, take no further steps in support of Russia's use of force in and against Ukraine that it commenced on 24 February 2022.

- d. Order the Russian Federation to withdraw its recognition of the DPR and the LPR.
- e. Order the Russian Federation to provide assurances that it will not undertake any further use of force in or against Ukraine.
- f. Order full reparation for all harm suffered by Ukraine as a consequence of the Russian Federation's use of force in the territory of Ukraine that it commenced on 24 February 2022, in an amount to be quantified in a separate phase of these proceedings.
- g. Order full reparation for all harm suffered by Ukraine as a consequence of the Russian Federation's violations of the Court's 16 March 2022 Order indicating provisional measures, in an amount to be quantified in a separate phase of these proceedings.

1 July 2022

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Mr. Anton Korynevych

Agent of Ukraine

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Ms. Oksana Zolotaryova

Co-Agent of Ukraine

**CERTIFICATION**

I hereby certify that the annexes are true copies of the documents referred to and that the translations provided are accurate.

1 July 2022

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Mr. Anton Korynevyh

Agent of Ukraine



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