Corrigé
Corrected

CR 2023/13

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2023

Public sitting

held on Monday 18 September 2023, at 10 a.m., at the Peace Palace,

President Donoghue, presiding,

***in the case concerning* Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine *v.* Russian Federation: 32 States intervening)**

VERBATIM RECORD

ANNÉE 2023

Audience publique

tenue le lundi 18 septembre 2023, à 10 heures, au Palais de la Paix,

sous la présidence de M^me^ Donoghue, présidente,

***en l'affaire relative à des* Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie ; 32 États intervenants)**

COMPTE RENDU

Present:	President	Donoghue
	Vice-President	Gevorgian
	Judges	Tomka
		Abraham
		Bennouna
		Yusuf
		Xue
		Sebutinde
		Bhandari
		Robinson
		Salam
		Iwasawa
		Nolte
		Charlesworth
		Brant
	Judge *ad hoc*	Daudet
	Registrar	Gautier

Présents :	M^me^	Donoghue, présidente
	M.	Gevorgian, vice-président
	MM.	Tomka
		Abraham
		Bennouna
		Yusuf
	M^mes^	Xue
		Sebutinde
	MM.	Bhandari
		Robinson
		Salam
		Iwasawa
		Nolte
	M^me^	Charlesworth
	M.	Brant, juges
	M.	Daudet, juge *ad hoc*
	M.	Gautier, greffier

The Government of Ukraine is represented by:

HE Mr Anton Korynevych, Ambassador-at-Large, Ministry of Foreign Affairs of Ukraine,

as Agent;

Ms Oksana Zolotaryova, Director General for International Law, Ministry of Foreign Affairs of Ukraine,

as Co-Agent;

Ms Marney L. Cheek, Covington & Burling LLP, member of the Bars of the Supreme Court of the United States and the District of Columbia,

Mr Jonathan Gimblett, Covington & Burling LLP, member of the Bars of the District of Columbia and the State of Virginia, solicitor of the Senior Courts of England and Wales,

Mr Harold Hongju Koh, Sterling Professor of International Law, Yale Law School, member of the Bars of the State of New York and the District of Columbia,

Mr Jean-Marc Thouvenin, Professor at the University of Paris Nanterre, Secretary-General of The Hague Academy of International Law, associate member of the Institut de droit international, member of the Paris Bar, Sygna Partners,

Mr David M. Zionts, Covington & Burling LLP, member of the Bars of the Supreme Court of the United States and the District of Columbia,

as Counsel and Advocates;

HE Mr Oleksandr Karasevych, Ambassador of Ukraine to the Kingdom of the Netherlands,

Mr Oleksandr Braiko, Department of International Law, Ministry of Foreign Affairs of Ukraine,

Ms Anastasiia Mochulska, Department of International Law, Ministry of Foreign Affairs of Ukraine,

Mr Dmytro Kutsenko, Department of International Law, Ministry of Foreign Affairs of Ukraine,

Ms Mariia Bezdieniezhna, Counsellor, Embassy of Ukraine in the Kingdom of the Netherlands,

Ms Paris Aboro, Covington & Burling LLP, member of the Bar of the State of New York and of the Bar of England and Wales,

Mr Volodymyr Shkilevych, Covington & Burling LLP, member of the Bar of the State of New York,

Mr Paul Strauch, Covington & Burling LLP, member of the Bars of the District of Columbia and the State of California,

Ms Gaby Vasquez, Covington & Burling LLP, member of the Bar of the District of Columbia,

Le Gouvernement de l'Ukraine est représenté par :

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comme agent ;

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comme coagente ;

M^me^ Marney L. Cheek, cabinet Covington & Burling LLP, membre des barreaux de la Cour suprême des États-Unis d'Amérique et du district de Columbia,

M. Jonathan Gimblett, cabinet Covington & Burling LLP, membre des barreaux du district de Columbia et de l'État de Virginie, *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

M. Harold Hongju Koh, professeur de droit international, titulaire de la chaire Sterling, faculté de droit de l'Université de Yale, membre des barreaux de l'État de New York et du district de Columbia,

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M. Oleksandr Braiko, département de droit international, ministère des affaires étrangères de l'Ukraine,

M^me^ Anastasiia Mochulska, département de droit international, ministère des affaires étrangères de l'Ukraine,

M. Dmytro Kutsenko, département de droit international, ministère des affaires étrangères de l'Ukraine,

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The Government of the Russian Federation is represented by:

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HE Mr Alexander Shulgin, Ambassador of the Russian Federation to the Kingdom of the Netherlands,

HE Ms Maria Zabolotskaya, Deputy Permanent Representative of the Russian Federation to the United Nations,

as Agents;

Mr Hadi Azari, Professor of Public International Law at the Kharazmi University of Tehran, Legal Adviser to the Center for International Legal Affairs of Iran,

Mr Alfredo Crosato Neumann, Graduate Institute of International and Development Studies, Geneva, member of the Lima Bar,

Mr Jean-Charles Tchikaya, member of the Paris and Bordeaux Bars,

Mr Kirill Udovichenko, Partner, Monastyrsky, Zyuba, Stepanov & Partners,

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Mr Konstantin Kosorukov, Head of Division, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

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Mr Yury Andryushkin, First Secretary, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

Ms Victoria Goncharova, First Secretary, Permanent Representation of the Russian Federation to the Organisation for the Prohibition of Chemical Weapons,

Ms Anastasia Khamenkova, Expert, Office of the Prosecutor General of the Russian Federation,

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S. Exc. M^me^ Maria Zabolotskaya, représentante permanente adjointe de la Fédération de Russie auprès des Nations Unies,

comme agents ;

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M. Jean-Charles Tchikaya, avocat aux barreaux de Paris et de Bordeaux,

M. Kirill Udovichenko, associé, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Sienho Yee, professeur de droit international à Changjiang Xuezhe, directeur de l'Institut chinois de droit international, Université des affaires étrangères de Chine à Beijing, membre des barreaux de la Cour suprême des États-Unis et de l'État de New York, membre de l'Institut de droit international,

comme conseils et avocats ;

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M^me^ Victoria Goncharova, première secrétaire, mission permanente de la Fédération de Russie auprès de l'Organisation pour l'interdiction des armes chimiques,

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The Government of the Federal Republic of Germany is represented by:

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HE Mr Cyrill Jean Nunn, Ambassador of the Federal Republic of Germany to the Kingdom of the Netherlands,

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Mr Caspar Sieveking, Embassy of the Federal Republic of Germany in the Kingdom of the Netherlands,

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Mr Marius Gappa, Embassy of the Federal Republic of Germany in the Kingdom of the Netherlands.

The Government of Australia is represented by:

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as Agent;

HE Mr Gregory Alan French, Ambassador of Australia to the Kingdom of the Netherlands,

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M^me^ Marina Kulidobrova, collaboratrice, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

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Le Gouvernement de la République fédérale d'Allemagne est représenté par :

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S. Exc. M. Cyrill Jean Nunn, ambassadeur de la République fédérale d'Allemagne auprès du Royaume des Pays-Bas,

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M. Lukas Georg Wasielewski, ministère des affaires étrangères de la République fédérale d'Allemagne,

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Le Gouvernement de l'Australie est représenté par :

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Mr Stephen Donaghue, KC, Solicitor-General of Australia,

Ms Kate Parlett, member of the Bar of England and Wales, Twenty Essex Chambers,

Ms Belinda McRae, member of the Bar of England and Wales, Twenty Essex Chambers,

Ms Emma Norton, Acting Principal Legal Officer, Attorney-General's Department,

Ms Katherine Arditto, Second Secretary (Legal Adviser and Consul), Australian Embassy in the Kingdom of the Netherlands,

Mr Sam Gaunt, Multilateral Policy Officer, Australian Embassy in the Kingdom of the Netherlands.

The Government of the Republic of Austria is represented by:

HE Mr Konrad Bühler, Ambassador, Legal Adviser, Federal Ministry for European and International Affairs of the Republic of Austria,

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The Government of the Kingdom of Belgium is represented by:

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Ms Sabrina Heyvaert, General Counsel, Directorate for Public International Law,

Ms Pauline De Decker, Attachée, Permanent Representation of the Kingdom of Belgium to the international institutions in The Hague,

Ms Laurence Grandjean, Attachée, Directorate for Public International Law,

Ms Aurélie Debuisson, Attachée, Directorate for Public International Law.

M. Stephen Donaghue, KC, *Solicitor-General* d'Australie,

M^me^ Kate Parlett, membre du barreau d'Angleterre et du pays de Galles, Twenty Essex Chambers,

M^me^ Belinda McRae, membre du barreau d'Angleterre et du pays de Galles, Twenty Essex Chambers,

M^me^ Emma Norton, juriste principale par intérim, services de l'*Attorney-General*,

M^me^ Katherine Arditto, deuxième secrétaire (conseillère juridique et consule), ambassade d'Australie au Royaume des Pays-Bas,

M. Sam Gaunt, spécialiste des politiques multilatérales, ambassade d'Australie au Royaume des Pays-Bas.

Le Gouvernement de la République d'Autriche est représenté par :

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M^me^ Katharina Kofler, conseillère juridique, ambassade de la République d'Autriche au Royaume des Pays-Bas,

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M^me^ Viktoria Ritter, juriste, ministère fédéral des affaires européennes et internationales de la République d'Autriche,

M^me^ Céline Braumann, conseillère,

M. Gerhard Hafner, conseiller,

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Le Gouvernement du Royaume de Belgique est représenté par :

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S. Exc. M. Olivier Belle, représentant permanent du Royaume de Belgique auprès des institutions internationales à La Haye,

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M^me^ Aurélie Debuisson, attachée, direction du droit international public.

The Government of the Republic of Bulgaria is represented by:

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HE Mr Konstantin Dimitrov, Ambassador of the Republic of Bulgaria to the Kingdom of the Netherlands,

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Ms Monika Velkova, Third Secretary.

The Government of Canada is represented by:

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Mr Louis-Martin Aumais, Director General and Deputy Legal Adviser, Global Affairs Canada,

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Mr Hugh Adsett, Ambassador-Designate of Canada to the Kingdom of the Netherlands,

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Mr Kristopher Yue, Second Secretary, Embassy of Canada in the Kingdom of the Netherlands.

The Government of the Republic of Cyprus is represented by:

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The Government of the Republic of Croatia is represented by:

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as Agent;

Le Gouvernement de la République de Bulgarie est représenté par :

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M[me] Raia Mantovska Vassileva, conseillère juridique, ambassade de la République de Bulgarie au Royaume des Pays-Bas ;

M[me] Monika Velkova, troisième secrétaire.

Le Gouvernement du Canada est représenté par :

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M[me] Rebecca Netley, directrice exécutive, direction de la responsabilisation, des droits de la personne et du droit onusien, ministère des affaires mondiales du Canada,

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M. Simon Collard-Wexler, conseiller, ambassade du Canada au Royaume des Pays-Bas,

M. Kristopher Yue, deuxième secrétaire, ambassade du Canada au Royaume des Pays-Bas.

Le Gouvernement de la République de Chypre est représenté par :

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The Government of the Kingdom of Denmark is represented by:

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The Government of the Kingdom of Spain is represented by:

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The Government of the Republic of Estonia is represented by:

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Le Gouvernement du Royaume du Danemark est représenté par :

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Le Gouvernement de la République d'Estonie est représenté par :

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M^me^ Dea Hannust.

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The Government of the French Republic is represented by:

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Mr Pierre Bodeau-Livinec, Professor at the University Paris Nanterre,

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Ms Anne-Thida Norodom, Professor at the University Paris Cité,

Mr Nabil Hajjami, Assistant Director for Public International Law, Directorate of Legal Affairs, Ministry for Europe and Foreign Affairs of the French Republic,

Ms Marion Esnault, Legal Consultant, Directorate of Legal Affairs, Ministry for Europe and Foreign Affairs of the French Republic,

Mr Stéphane Louhaur, Legal Counsellor, Embassy of the French Republic in the Kingdom of the Netherlands,

Ms Jade Frichitthavong, Chargée de mission for Legal Affairs, Embassy of the French Republic in the Kingdom of the Netherlands,

Ms Emma Bongat, intern, Legal Service, Embassy of the French Republic in the Kingdom of the Netherlands.

Le Gouvernement de la République de Finlande est représenté par :

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comme coagente ;

M^me^ Johanna Hossa, juriste de la section de droit international public, ministère des affaires étrangères de la République de Finlande,

M^me^ Verna Adkins, deuxième secrétaire, ambassade de la République de Finlande au Royaume des Pays-Bas.

Le Gouvernement de la République française est représenté par :

M. Diégo Colas, directeur des affaires juridiques, ministère de l'Europe et des affaires étrangères de la République française,

comme agent ;

S. Exc. M. François Alabrune, ambassadeur de la République française auprès du Royaume des Pays-Bas,

comme coagent ;

M. Hervé Ascensio, professeur à l'Université Paris 1 Panthéon-Sorbonne,

M. Pierre Bodeau-Livinec, professeur à l'Université Paris Nanterre,

M^me^ Maryline Grange, maîtresse de conférences en droit public à l'Université Jean Monnet à Saint-Étienne, Université de Lyon,

M^me^ Anne-Thida Norodom, professeure à l'Université Paris Cité,

M. Nabil Hajjami, sous-directeur du droit international public, direction des affaires juridiques, ministère de l'Europe et des affaires étrangères de la République française,

M^me^ Marion Esnault, consultante juridique, direction des affaires juridiques, ministère de l'Europe et des affaires étrangères de la République française,

M. Stéphane Louhaur, conseiller juridique, ambassade de la République française au Royaume des Pays-Bas,

M^me^ Jade Frichitthavong, chargée de mission juridique, ambassade de la République française au Royaume des Pays-Bas,

M^me^ Emma Bongat, stagiaire au service juridique, ambassade de la République française au Royaume des Pays-Bas.

The Government of the Hellenic Republic is represented by:

Ms Zinovia Chaido Stavridi, Legal Adviser, Head of the Legal Department of the Ministry of Foreign Affairs of the Hellenic Republic,

as Agent;

HE Ms Caterina Ghini, Ambassador of the Hellenic Republic to the Kingdom of the Netherlands,

as Co-Agent;

Ms Martha Papadopoulou, Senior Legal Counselor, Legal Department of the Ministry of Foreign Affairs of the Hellenic Republic,

Ms Evangelia Grammatika, Minister Plenipotentiary, Deputy Head of Mission, Embassy of the Hellenic Republic in the Kingdom of the Netherlands,

Mr Konstantinos Kalamvokidis, Second Secretary, Embassy of the Hellenic Republic in the Kingdom of the Netherlands.

The Government of Ireland is represented by:

Mr Declan Smyth, Legal Adviser, Department of Foreign Affairs, Ireland,

as Agent;

Mr Frank Groome, Deputy Head of Mission, Embassy of Ireland in the Kingdom of the Netherlands,

as Co-Agent;

HE Mr Brendan Rogers, Ambassador of Ireland to the Kingdom of the Netherlands,

Ms Michelle Ryan, Assistant Legal Adviser, Department of Foreign Affairs, Ireland,

Ms Louise Hartigan, Deputy Head of Mission, Embassy of Ireland in the Kingdom of the Netherlands.

The Government of the Italian Republic is represented by:

Mr Stefano Zanini, Head of the Service for Legal Affairs, Diplomatic Disputes and International Agreements, Ministry of Foreign Affairs and International Cooperation of the Italian Republic,

as Agent;

HE Mr Giorgio Novello, Ambassador of the Italian Republic to the Kingdom of the Netherlands,

as Co-Agent;

Mr Attila Massimiliano Tanzi, Professor of International Law at the University of Bologna, 3 Verulam Buildings,

Mr Alessandro Sutera Sardo, Attaché Legal Affairs, Embassy of the Italian Republic in the Kingdom of the Netherlands,

Le Gouvernement de la République hellénique est représenté par :

M^me^ Zinovia Chaido Stavridi, conseillère juridique, cheffe du département juridique, ministère des affaires étrangères de la République hellénique,

comme agente ;

S. Exc. M^me^ Caterina Ghini, ambassadrice de la République hellénique auprès du Royaume des Pays-Bas,

comme coagente ;

M^me^ Martha Papadopoulou, conseillère juridique principale, département juridique, ministère des affaires étrangères de la République hellénique,

M^me^ Evangelia Grammatika, ministre plénipotentiaire, cheffe de mission adjointe, ambassade de la République hellénique au Royaume des Pays-Bas,

M. Konstantinos Kalamvokidis, deuxième secrétaire, ambassade de la République hellénique au Royaume des Pays-Bas.

Le Gouvernement de l'Irlande est représenté par :

M. Declan Smyth, conseiller juridique, ministère des affaires étrangères de l'Irlande,

comme agent ;

M. Frank Groome, chef de mission adjoint, ambassade d'Irlande au Royaume des Pays-Bas,

comme coagent ;

S. Exc. M. Brendan Rogers, ambassadeur d'Irlande auprès du Royaume des Pays-Bas,

M^me^ Michelle Ryan, conseillère juridique adjointe, ministère des affaires étrangères de l'Irlande,

M^me^ Louise Hartigan, cheffe de mission adjointe, ambassade d'Irlande au Royaume des Pays-Bas.

Le Gouvernement de la République italienne est représenté par :

M. Stefano Zanini, chef du service des affaires juridiques, des différends diplomatiques et des accords internationaux, ministère des affaires étrangères et de la coopération internationale de la République italienne,

comme agent ;

S. Exc. M. Giorgio Novello, ambassadeur de la République italienne auprès du Royaume des Pays-Bas,

comme coagent ;

M. Attila Massimiliano Tanzi, professeur de droit international à l'Université de Bologne, cabinet 3 Verulam Buildings,

M. Alessandro Sutera Sardo, attaché aux affaires juridiques, ambassade de la République italienne au Royaume des Pays-Bas,

Mr Luigi Ripamonti, Counsellor, Service for Legal Affairs, Diplomatic Disputes and International Agreements, Ministry of Foreign Affairs and International Cooperation of the Italian Republic,

Ms Ludovica Chiussi Curzi, Senior Assistant Professor of International Law, University of Bologna,

Mr Gian Maria Farnelli, Associate Professor of International Law, University of Bologna.

The Government of the Republic of Latvia is represented by:

Ms Kristīne Līce, Legislation and International Law Adviser to the President of the Republic of Latvia,

as Agent;

Mr Edgars Trumkalns, Chargé d'affaires *a.i.* of the Republic of Latvia in the Kingdom of the Netherlands,

as Co-Agent;

Mr Mārtiņš Paparinskis, Professor of Public International Law, University College London, member of the International Law Commission, member of the Permanent Court of Arbitration,

Mr Mamadou Hébié, Associate Professor of International Law, University of Leiden, member of the Bar of the State of New York,

Mr Vladyslav Lanovoy, Assistant Professor in Public International Law, Université Laval,

Mr Cameron Miles, member of the English Bar, 3 Verulam Buildings,

Mr Joseph Crampin, Lecturer of International Law, University of Glasgow,

Mr Luis Felipe Viveros, PhD candidate, University College London,

Ms Elīna Luīze Vītola, Deputy Agent of the Government, Office of the Representative of Latvia before International Human Rights Organizations, Ministry of Foreign Affairs of the Republic of Latvia,

Mr Arnis Lauva, Head of the International Law Division, Ministry of Foreign Affairs of the Republic of Latvia,

Ms Katrīna Kate Lazdine, Jurisconsult at the International Law Division, Ministry of Foreign Affairs of the Republic of Latvia.

The Government of the Principality of Liechtenstein is represented by:

HE Mr Pascal Schafhauser, Ambassador and Head of Mission of the Principality of Liechtenstein to the Kingdom of Belgium,

as Agent;

Mr Sina Alavi, Senior Adviser.

M. Luigi Ripamonti, conseiller, service des affaires juridiques, des différends diplomatiques et des accords internationaux, ministère des affaires étrangères et de la coopération internationale de la République italienne,

M^me^ Ludovica Chiussi Curzi, professeure adjointe principale de droit international à l'Université de Bologne,

M. Gian Maria Farnelli, professeur associé de droit international à l'Université de Bologne.

Le Gouvernement de la République de Lettonie est représenté par :

M^me^ Kristīne Līce, conseillère en législation et droit international auprès du président de la République de Lettonie,

comme agente ;

M. Edgars Trumkalns, chargé d'affaires par intérim de la République de Lettonie au Royaume des Pays-Bas,

comme coagent ;

M. Mārtiņš Paparinskis, professeur de droit international public, University College London, membre de la Commission du droit international, membre de la Cour permanente d'arbitrage,

M. Mamadou Hébié, professeur associé de droit international, Université de Leyde, membre du barreau de l'État de New York,

M. Vladyslav Lanovoy, professeur adjoint de droit international public, Université Laval,

M. Cameron Miles, membre du barreau d'Angleterre, cabinet 3 Verulam Buildings,

M. Joseph Crampin, chargé d'enseignement en droit international, Université de Glasgow,

M. Luis Felipe Viveros, doctorant, University College London,

M^me^ Elīna Luīze Vītola, agente adjointe du gouvernement, bureau du représentant de la République de Lettonie devant les organisations internationales des droits de l'homme, ministère des affaires étrangères de la République de Lettonie,

M. Arnis Lauva, chef de la division du droit international, ministère des affaires étrangères de la République de Lettonie,

M^me^ Katrīna Kate Lazdine, jurisconsulte, division du droit international, ministère des affaires étrangères de la République de Lettonie.

Le Gouvernement de la Principauté du Liechtenstein est représenté par :

S. Exc. M. Pascal Schafhauser, ambassadeur et chef de mission de la Principauté du Liechtenstein auprès du Royaume de Belgique,

comme agent ;

M. Sina Alavi, conseiller principal.

The Government of the Republic of Lithuania is represented by:

Ms Gabija Grigaitė-Daugirdė, Vice-Minister of Justice of the Republic of Lithuania, Lecturer at Vilnius University,

as Agent;

Mr Ričard Dzikovič, Head of Legal Representation at the Ministry of Justice of the Republic of Lithuania, Lecturer at Mykolas Romeris University,

Ms Ingrida Bačiulienė, Head of the International Treaties Unit at the Ministry of Foreign Affairs of the Republic of Lithuania,

as Co-Agents;

Mr Pierre d'Argent, Professor at the University of Louvain (U.C. Louvain), member of the Institut de droit international, member of the Bar of Brussels,

Mr Gleider Hernández, Professor at the University of Leuven (K.U. Leuven),

Ms Inga Martinkutė, Advocate at MMSP, member of the Lithuanian Bar Association, Lecturer at Vilnius University,

Mr Christian J. Tams, Professor at the University of Glasgow and at Leuphana University, Lüneburg,

HE Mr Neilas Tankevičius, Ambassador of the Republic of Lithuania to the Kingdom of the Netherlands,

Mr Mindaugas Žičkus, Deputy Head of Mission, Embassy of the Republic of Lithuania in the Kingdom of the Netherlands.

The Government of the Grand Duchy of Luxembourg is represented by:

Mr Alain Germeaux, *Conseiller de légation adjoint*, Director of Legal Affairs, Ministry for Foreign and European Affairs of the Grand Duchy of Luxembourg,

as Agent;

Ms Léa Siffert, Legal Adviser at the Embassy of the Grand Duchy of Luxembourg in the Kingdom of the Netherlands,

as Deputy Agent;

HE Mr Mike Hentges, Ambassador of the Grand Duchy of Luxembourg to the Kingdom of the Netherlands.

The Government of the Republic of Malta is represented by:

Mr Christopher Soler, State Advocate, Republic of Malta,

as Agent;

HE Mr Mark Pace, Ambassador of the Republic of Malta to the Kingdom of the Netherlands,

as Co-Agent;

Le Gouvernement de la République de Lituanie est représenté par :

M[me] Gabija Grigaitė-Daugirdė, vice-ministre de la justice de la République de Lituanie, chargée d'enseignement à l'Université de Vilnius,

comme agente ;

M. Ričard Dzikovič, chef de la représentation juridique, ministère de la justice de la République de Lituanie, chargé d'enseignement à l'Université Mykolas Romeris,

M[me] Ingrida Bačiulienė, cheffe de la division des traités internationaux, ministère des affaires étrangères de la République de Lituanie,

comme coagents ;

M. Pierre d'Argent, professeur à l'Université de Louvain (U.C. Louvain), membre de l'Institut de droit international, membre du barreau de Bruxelles,

M. Gleider Hernández, professeur à l'Université de Louvain (K.U. Leuven),

M[me] Inga Martinkutė, avocate au cabinet MMSP, membre du barreau de Lituanie, chargée d'enseignement à l'Université de Vilnius,

M. Christian J. Tams, professeur à l'Université de Glasgow et à l'Université Leuphana de Lunebourg,

S. Exc. M. Neilas Tankevičius, ambassadeur de la République de Lituanie auprès du Royaume des Pays-Bas,

M. Mindaugas Žičkus, chef de mission adjoint, ambassade de la République de Lituanie au Royaume des Pays-Bas.

Le Gouvernement du Grand-Duché de Luxembourg est représenté par :

M. Alain Germeaux, conseiller de légation adjoint, directeur des affaires juridiques, ministère des affaires étrangères et européennes du Grand-Duché de Luxembourg,

comme agent ;

M[me] Lea Siffert, conseillère juridique à l'ambassade du Grand-Duché de Luxembourg au Royaume des Pays-Bas,

comme agente adjointe ;

S. Exc. M. Mike Hentges, ambassadeur du Grand-Duché de Luxembourg auprès du Royaume des Pays-Bas.

Le Gouvernement de la République de Malte est représenté par :

M. Christopher Soler, avocat de l'État, République de Malte,

comme agent ;

S. Exc. M. Mark Pace, ambassadeur de la République de Malte auprès du Royaume des Pays-Bas,

comme coagent ;

Ms Ariana Rowela Falzon, Lawyer, Office of the State Advocate,

Ms Margot Ann Schembri Bajada, Counsellor, Legal Unit, Ministry of Foreign and European Affairs and Trade of the Republic of Malta,

Ms Marilyn Grech, Legal Officer, Legal Unit, Ministry of Foreign and European Affairs and Trade of the Republic of Malta,

Mr Matthew Grima, Deputy Head of Mission, Counsellor, Embassy of the Republic of Malta in the Kingdom of the Netherlands,

Ms Mary Jane Spiteri, Research and Administrative Officer, Embassy of the Republic of Malta in the Kingdom of the Netherlands,

Mr Clemens Baier, Research and Administrative Officer, Embassy of the Republic of Malta in the Kingdom of the Netherlands.

The Government of the Kingdom of Norway is represented by:

Mr Kristian Jervell, Director General, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

as Agent;

Mr Martin Sørby, Deputy Director General, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

as Co-Agent;

HE Mr Bård Ivar Svendsen, Ambassador of the Kingdom of Norway to the Kingdom of the Netherlands and the Grand Duchy of Luxembourg,

Ms Kristin Hefre, Minister Counsellor for Legal Affairs, Royal Norwegian Embassy in the Kingdom of the Netherlands,

Ms Dagny Marie Ås Hovind, Adviser, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

Ms Frida Fostvedt, Adviser, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

Mr Zaid Waran, Intern, Legal Affairs, Royal Norwegian Embassy in the Kingdom of the Netherlands.

The Government of New Zealand is represented by:

Ms Victoria Hallum, Deputy Secretary, Ministry of Foreign Affairs and Trade of New Zealand,

as Agent;

Mr Andrew Williams, Chief International Legal Adviser (acting), Ministry of Foreign Affairs and Trade of New Zealand,

M^me^ Ariana Rowela Falzon, avocate, bureau de l'avocat de l'État,

M^me^ Margot Ann Schembri Bajada, conseillère au département juridique, ministère des affaires étrangères et européennes et du commerce de la République de Malte,

M^me^ Marilyn Grech, juriste, département juridique du ministère des affaires étrangères et européennes et du commerce de la République de Malte,

M. Matthew Grima, chef de mission adjoint, conseiller à l'ambassade de la République de Malte au Royaume des Pays-Bas,

M^me^ Mary Jane Spiteri, chargée d'administration et d'études, ambassade de la République de Malte au Royaume des Pays-Bas,

M. Clemens Baier, chargé d'administration et d'études, ambassade de la République de Malte au Royaume des Pays-Bas.

Le Gouvernement du Royaume de Norvège est représenté par :

M. Kristian Jervell, directeur général du département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

comme agent ;

M. Martin Sørby, directeur général adjoint du département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

comme coagent ;

S. Exc. M. Bård Ivar Svendsen, ambassadeur du Royaume de Norvège auprès du Royaume des Pays-Bas et du Grand-Duché de Luxembourg,

M^me^ Kristin Hefre, ministre-conseillère aux affaires juridiques, ambassade du Royaume de Norvège au Royaume des Pays-Bas,

M^me^ Dagny Marie Ås Hovind, conseillère au département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

M^me^ Frida Fostvedt, conseillère au département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

M. Zaid Waran, stagiaire aux affaires juridiques, ambassade du Royaume de Norvège au Royaume des Pays-Bas.

Le Gouvernement de la Nouvelle-Zélande est représenté par :

M^me^ Victoria Hallum, sous-ministre, ministère des affaires étrangères et du commerce extérieur de la Nouvelle-Zélande,

comme agente ;

M. Andrew Williams, conseiller juridique en chef (par intérim) pour le droit international, ministère des affaires étrangères et du commerce extérieur de la Nouvelle-Zélande,

HE Ms Susannah Gordon, Ambassador of New Zealand to the Kingdom of the Netherlands,

as Co-Agents;

Ms Elana Geddis, Barrister, Kate Sheppard Chambers, Wellington,

Mr Toby Fisher, Barrister, Matrix Chambers, London,

Ms Jane Collins, Senior Legal Adviser, Ministry of Foreign Affairs and Trade of New Zealand,

Ms Hannah Frost, Deputy Head of Mission, Embassy of New Zealand in the Kingdom of the Netherlands,

Mr Bastiaan Grashof, Policy Adviser, Embassy of New Zealand in the Kingdom of the Netherlands.

The Government of the Kingdom of the Netherlands is represented by:

Mr René J. M. Lefeber, Legal Adviser, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

as Agent;

Ms Mireille Hector, Deputy Legal Adviser, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

as Co-Agent;

Ms Annemarieke Künzli, Legal Counsel, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

Ms Marina Brilman, Legal Counsel, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

Ms Robin Geraerts, Legal Officer, Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Government of the Republic of Poland is represented by:

HE Ms Margareta Kassangana, Ambassador of the Republic of Poland to the Kingdom of the Netherlands,

as Co-Agent;

Mr Łukasz Kułaga, Counsellor of the Legal and Treaty Department, Ministry of Foreign Affairs of the Republic of Poland,

Ms Paulina Dudzik, First Secretary and Legal Adviser, Embassy of the Republic of Poland in the Kingdom of the Netherlands,

as Deputy Agents.

The Government of the Portuguese Republic is represented by:

Ms Patrícia Galvão Teles, Director of the Department of Legal Affairs, Ministry of Foreign Affairs of the Portuguese Republic, and member of the International Law Commission,

as Agent;

S. Exc. M^me^ Susannah Gordon, ambassadrice de Nouvelle-Zélande auprès du Royaume des Pays-Bas,

comme coagents ;

M^me^ Elana Geddis, avocate, Kate Sheppard Chambers (Wellington),

M. Toby Fisher, avocat, Matrix Chambers (Londres),

M^me^ Jane Collins, conseillère juridique principale, ministère des affaires étrangères et du commerce extérieur de la Nouvelle-Zélande,

M^me^ Hannah Frost, cheffe de mission adjointe, ambassade de Nouvelle-Zélande au Royaume des Pays-Bas,

M. Bastiaan Grashof, conseiller politique, ambassade de Nouvelle-Zélande au Royaume des Pays-Bas.

Le Gouvernement du Royaume des Pays-Bas est représenté par :

M. René J.M. Lefeber, conseiller juridique, ministère des affaires étrangères du Royaume des Pays-Bas,

comme agent ;

M^me^ Mireille Hector, conseillère juridique adjointe, ministère des affaires étrangères du Royaume des Pays-Bas,

comme coagente ;

M^me^ Annemarieke Künzli, jurisconsulte, ministère des affaires étrangères du Royaume des Pays-Bas,

M^me^ Marina Brilman, jurisconsulte, ministère des affaires étrangères du Royaume des Pays-Bas,

M^me^ Robin Geraerts, juriste, ministère des affaires étrangères du Royaume des Pays-Bas.

Le Gouvernement de la République de Pologne est représenté par :

S. Exc. M^me^ Margareta Kassangana, ambassadrice de la République de Pologne auprès du Royaume des Pays-Bas,

comme coagente ;

M. Łukasz Kułaga, conseiller, département du droit et des traités, ministère des affaires étrangères de la République de Pologne,

M^me^ Paulina Dudzik, première secrétaire et conseillère juridique, ambassade de la République de Pologne au Royaume des Pays-Bas,

comme agents adjoints.

Le Gouvernement de la République portugaise est représenté par :

M^me^ Patrícia Galvão Teles, directrice du département des affaires juridiques, ministère des affaires étrangères de la République portugaise, et membre de la Commission du droit international,

comme agente ;

HE Ms Clara Nunes dos Santos, Ambassador of the Portuguese Republic to the Kingdom of the Netherlands,

as Co-Agent;

Mr Mateus Kowalski, Director of the International Law Directorate, Ministry of Foreign Affairs of the Portuguese Republic,

Mr Henrique Azevedo, Deputy Head of Mission, Embassy of the Portuguese Republic in the Kingdom of the Netherlands,

Ms Ana Margarida Pinto de Seabra, Legal Intern, Embassy of the Portuguese Republic in the Kingdom of the Netherlands.

The Government of Romania is represented by:

HE Ms Alina Orosan, Ambassador, Director General for Legal Affairs, Ministry of Foreign Affairs of Romania,

HE Mr Lucian Fătu, Ambassador of Romania to the Kingdom of the Netherlands,

as Co-Agents;

Mr Filip-Andrei Lariu, Attaché, Legal Directorate of the Ministry of Foreign Affairs of Romania,

Mr Eugen Mihuţ, Minister Plenipotentiary and Legal Counsellor, Embassy of Romania in the Kingdom of the Netherlands.

The Government of the United Kingdom of Great Britain and Northern Ireland is represented by:

Ms Sally Langrish, Legal Adviser and Director General Legal at the Foreign, Commonwealth and Development Office, United Kingdom,

as Agent;

Mr Paul McKell, Legal Director at the Foreign, Commonwealth and Development Office, United Kingdom,

as Co-Agent;

the Rt. Hon. Victoria Prentis, KC, MP, Attorney General,

Mr Ben Juratowitch, KC, member of the Bar of England and Wales, the Paris Bar and the Bar of Belize, Essex Court Chambers,

Ms Philippa Webb, Professor of Public International Law, King's College London, member of the Bar of England and Wales, and the Bars of the State of New York and Belize, Twenty Essex Chambers,

Ms Naomi Hart, member of the Bar of England and Wales, Essex Court Chambers,

Ms Susan Dickson, Legal Counsellor and Head of Europe and Human Rights Team, Legal Directorate, Foreign, Commonwealth and Development Office, United Kingdom,

Ms Ruth Tomlinson, Deputy Director and Head of International Law, Attorney General's Office,

S. Exc. M^me^ Clara Nunes dos Santos, ambassadrice de la République portugaise auprès du Royaume des Pays-Bas,

comme coagente ;

M. Mateus Kowalski, directeur du service de droit international, ministère des affaires étrangères de la République portugaise,

M. Henrique Azevedo, chef de mission adjoint, ambassade de la République portugaise au Royaume des Pays-Bas,

M^me^ Ana Margarida Pinto de Seabra, stagiaire en droit, ambassade de la République portugaise au Royaume des Pays-Bas.

Le Gouvernement de la Roumanie est représenté par :

S. Exc. M^me^ Alina Orosan, ambassadrice, directrice générale des affaires juridiques, ministère des affaires étrangères de la Roumanie,

S. Exc. M. Lucian Fătu, ambassadeur de Roumanie auprès du Royaume des Pays-Bas,

*comme coagents ;*M. Filip-Andrei Lariu, attaché à la direction des affaires juridiques, ministère des affaires étrangères de la Roumanie,

M. Eugen Mihuţ, ministre plénipotentiaire et conseiller juridique, ambassade de Roumanie au Royaume des Pays-Bas.

Le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord est représenté par :

M^me^ Sally Langrish, conseillère juridique et directrice générale des affaires juridiques, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni,

comme agente ;

M. Paul McKell, directeur juridique, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni,

comme coagent ;

la très honorable M^me^ Victoria Prentis, KC, MP, *Attorney General*,

M. Ben Juratowitch, KC, membre du barreau d'Angleterre et du pays de Galles ainsi que des barreaux de Paris et du Belize, Essex Court Chambers,

M^me^ Philippa Webb, professeure de droit international public, King's College (Londres), membre du barreau d'Angleterre et du pays de Galles ainsi que des barreaux de New York et du Belize, Twenty Essex Chambers,

M^me^ Naomi Hart, membre du barreau d'Angleterre et du pays de Galles, Essex Court Chambers,

M^me^ Susan Dickson, conseillère juridique et cheffe de l'équipe chargée de l'Europe et des droits de l'homme, direction des affaires juridiques, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni,

M^me^ Ruth Tomlinson, directrice adjointe et cheffe de la section de droit international, bureau de l'*Attorney General*,

Mr Michael Boulton, Assistant Legal Adviser, Europe and Human Rights Team, Legal Directorate, Foreign, Commonwealth and Development Office, United Kingdom.

The Government of the Slovak Republic is represented by:

Mr Metod Špaček, Chief of Staff at the Office of the President of the Slovak Republic,

as Agent;

Mr Peter Klanduch, Director of the International Law Department, Ministry of Foreign and European Affairs of the Slovak Republic,

as Co-Agent;

HE Mr Juraj Macháč, Ambassador of the Slovak Republic to the Kingdom of the Netherlands,

Ms Zuzana Morháčová, Assistant Legal Adviser, Ministry of Foreign and European Affairs of the Slovak Republic,

Mr Jozef Kušlita, First Secretary, Embassy of the Slovak Republic in the Kingdom of the Netherlands,

Mr Peter Nagy, Second Secretary, Embassy of the Slovak Republic in the Kingdom of the Netherlands.

The Government of the Republic of Slovenia is represented by:

Mr Marko Rakovec, Director-General for International Law and Protection of Interests, Ministry of Foreign and European Affairs of the Republic of Slovenia,

as Agent;

HE Mr Jožef Drofenik, Ambassador of the Republic of Slovenia to the Kingdom of the Netherlands,

as Co-Agent;

Mr Daniel Müller, Lawyer at FAR Avocats,

Mr Andrej Svetličič, International Law Department, Ministry of Foreign and European Affairs of the Republic of Slovenia,

Ms Silvana Kovač, Directorate for International Law and Protection of Interests, Ministry of Foreign and European Affairs of the Republic of Slovenia,

Ms Maša Devinar Grošelj, Embassy of the Republic of Slovenia in the Kingdom of the Netherlands,

Ms Nina Bjelica.

The Government of the Kingdom of Sweden is represented by:

Ms Elinor Hammarskjöld, Director General for Legal Affairs, Ministry of Foreign Affairs of the Kingdom of Sweden,

as Agent;

M. Michael Boulton, conseiller juridique adjoint, équipe chargée de l'Europe et des droits de l'homme, direction des affaires juridiques, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni.

Le Gouvernement de la République slovaque est représenté par :

M. Metod Špaček, chef de cabinet du bureau de la présidente de la République slovaque,

comme agent ;

M. Peter Klanduch, directeur du département du droit international, ministère des affaires étrangères et européennes de la République slovaque,

comme coagent ;

S. Exc. M. Juraj Macháč, ambassadeur de la République slovaque auprès du Royaume des Pays-Bas,

M^me^ Zuzana Morháčová, conseillère juridique adjointe, ministère des affaires étrangères et européennes de la République slovaque,

M. Jozef Kušlita, premier secrétaire, ambassade de la République slovaque au Royaume des Pays-Bas,

M. Peter Nagy, deuxième secrétaire, ambassade de la République slovaque au Royaume des Pays-Bas.

Le Gouvernement de la République de Slovénie est représenté par :

M. Marko Rakovec, directeur général du droit international et de la protection des intérêts, ministère des affaires étrangères et européennes de la République de Slovénie,

comme agent ;

S. Exc. M. Jožef Drofenik, ambassadeur de la République de Slovénie auprès du Royaume des Pays-Bas,

comme coagent ;

M. Daniel Müller, avocat, cabinet FAR Avocats,

M. Andrej Svetličič, département du droit international, ministère des affaires étrangères et européennes de la République de Slovénie,

M^me^ Silvana Kovač, direction du droit international et de la protection des intérêts, ministère des affaires étrangères et européennes de la République de Slovénie,

M^me^ Maša Devinar Grošelj, ambassade de la République de Slovénie au Royaume des Pays-Bas,

M^me^ Nina Bjelica.

Le Gouvernement du Royaume de Suède est représenté par :

M^me^ Elinor Hammarskjöld, directrice générale des affaires juridiques, ministère des affaires étrangères du Royaume de Suède,

comme agente ;

Mr Daniel Gillgren, Deputy Director at the Department for International Law, Human Rights and Treaty Law, Ministry of Foreign Affairs of the Kingdom of Sweden,

as Co-Agent;

HE Mr Johannes Oljelund, Ambassador of the Kingdom of Sweden to the Kingdom of the Netherlands,

Ms Dominika Brott, First Secretary, Embassy of the Kingdom of Sweden in the Kingdom of the Netherlands.

The Government of the Czech Republic is represented by:

Mr Emil Ruffer, Director of the International Law Department, Ministry of Foreign Affairs of the Czech Republic,

as Agent;

HE Mr René Miko, Ambassador of the Czech Republic to the Kingdom of the Netherlands,

as Co-Agent;

Mr Pavel Caban, Head of Unit, International Law Department, Ministry of Foreign Affairs of the Czech Republic,

Ms Martina Filippiová, Legal Adviser, Embassy of the Czech Republic in the Kingdom of the Netherlands,

Mr Pavel Šturma, Professor of Public International Law, Charles University Prague, former member of the International Law Commission.

M. Daniel Gillgren, directeur adjoint du département du droit international, des droits de l'homme et du droit des traités, ministère des affaires étrangères du Royaume de Suède,

comme coagent ;

S. Exc. M. Johannes Oljelund, ambassadeur du Royaume de Suède auprès du Royaume des Pays-Bas,

M[me] Dominika Brott, première secrétaire, ambassade du Royaume de Suède au Royaume des Pays-Bas.

Le Gouvernement de la République tchèque est représenté par :

M. Emil Ruffer, directeur du département du droit international, ministère des affaires étrangères de la République tchèque,

comme agent ;

S. Exc. M. René Miko, ambassadeur de la République tchèque auprès du Royaume des Pays-Bas,

comme coagent ;

M. Pavel Caban, chef de section, département du droit international, ministère des affaires étrangères de la République tchèque,

Mme Martina Filippiová, conseillère juridique, ambassade de la République tchèque au Royaume des Pays-Bas,

M. Pavel Šturma, professeur de droit international public, Université Charles de Prague, ancien membre de la Commission du droit international.

The PRESIDENT: The sitting is open. Please be seated.

The Court meets today and will meet in the coming days to hear the oral arguments of the Parties on preliminary objections raised by the Respondent in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation: 32 States intervening)*, as well as the oral observations of the intervening States with respect to the subject-matter of their intervention. This morning, the Court will hear the first round of oral argument of the Russian Federation.

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I recall that, since the Court included no judge of Ukrainian nationality upon the Bench, Ukraine proceeded to exercise the right conferred upon it by Article 31, paragraph 2, of the Statute to choose a judge *ad hoc* to sit in the case. It chose Mr Yves Daudet, who was duly installed as Judge *ad hoc* on 7 March 2022, during the phase of the present case that was devoted to the Request for the indication of provisional measures submitted by Ukraine.

*

I shall now briefly recall the principal steps of procedure in the case.

On 26 February 2022, Ukraine filed in the Registry of the Court an Application instituting proceedings against the Russian Federation concerning "a dispute . . . relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide". I shall refer to this treaty as the "Genocide Convention".

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

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

On 7 March 2022, a public hearing on the Request for the indication of provisional measures was held at which only Ukraine presented arguments, the Russian Federation having indicated by a letter dated 5 March 2022 that it would not participate in the oral proceedings on the Request. After

the closure of the hearing on that Request, the Respondent transmitted a document setting out its position that the Court lacks jurisdiction in the case.

By an Order dated 16 March 2022, the Court indicated the following provisional measures:

> "(1) The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine;
>
> (2) The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point (1) above;
>
> (3) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve."

By an Order dated 23 March 2022, the Court fixed 23 September 2022 and 23 March 2023 as the respective time-limits for the filing of the Memorial of Ukraine and the Counter-Memorial of the Russian Federation. The Memorial of Ukraine was filed on 1 July 2022.

On 3 October 2022, within the time-limit prescribed by Article 79*bis*, paragraph 1, of the Rules of Court, the Russian Federation raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Consequently, by an Order of 7 October 2022, having noted that, by virtue of Article 79*bis*, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended, the Court fixed 3 February 2023 as the time-limit within which Ukraine could present a written statement of its observations and submissions on the preliminary objections raised by the Russian Federation. Ukraine filed its written statement within the time-limit thus fixed.

Between 21 July 2022 and 15 December 2022, 33 States filed declarations of intervention under Article 63, paragraph 2, of the Statute of the Court. I recall that Article 63 of the Statute provides as follows:

> "1. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.
>
> 2. Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it."

Pursuant to Article 83, paragraph 1, of the Rules of Court, the Parties presented written observations on the declarations of intervention that had been filed in the case. In light of the objections of the Russian Federation to the admissibility of all the declarations of intervention, the

Court, pursuant to Article 84, paragraph 2, of the Rules of Court, decided to hear by means of a written procedure the Parties and the States seeking to intervene on the admissibility of the declarations of intervention. On 13 February 2023, the States seeking to intervene presented their written observations on the admissibility of the declarations of intervention, followed by the written observations of the Parties on that same question on 24 March 2023.

By an Order dated 5 June 2023, the Court decided that the declarations of intervention under Article 63 of the Statute submitted by the following 32 States were admissible at the preliminary objections stage of the proceedings in so far as they concerned the construction of Article IX and other provisions of the Genocide Convention that are relevant for the determination of the jurisdiction of the Court: Australia, Austria, Belgium, Bulgaria, Canada and the Netherlands (jointly), Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. The Court indicated in that Order that it would not, at the preliminary objections stage, have regard to any part of the written or oral observations of the intervening States going beyond the scope thus fixed.

In its Order of 5 June 2023, the Court further found that the declaration of intervention under Article 63 of the Statute submitted by the United States was inadmissible in so far as it concerned the preliminary objections stage of the proceedings.

The Court also fixed 5 July 2023 as the time-limit for the filing of the written observations referred to in Article 86, paragraph 1, of the Rules of Court by the States whose declarations of intervention had been deemed admissible at the preliminary objections stage of the proceedings. The intervening States filed their written observations on the subject-matter of the intervention within the time-limit thus fixed. Liechtenstein, however, did not file written observations.

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After ascertaining the views of the Parties, the Court decided, pursuant to Article 53, paragraph 2, of its Rules, that copies of the written pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings. Further, after consulting the Parties and the States which had filed a declaration of intervention, the Court decided also to make accessible

to the public the written observations of the Parties on the declarations of intervention pursuant to Article 83, paragraph 1, of the Rules of Court, the written observations of the States seeking to intervene and those of the Parties on the admissibility of the declarations of intervention in accordance with Article 84, paragraph 2, of the Rules of Court, as well as the written observations of the intervening States on the subject-matter of their interventions referred to in Article 86, paragraph 1, of the Rules of Court. In accordance with the Court's practice, these documents will be placed on the Court's website from today.

I note the presence before the Court of the Agents and counsel of the two Parties, as well as the representatives of the intervening States.

I recall that, in its Order of 5 June 2023 on the admissibility of the declarations of intervention filed in the present case, the Court took note of the concerns expressed by the Russian Federation and stated that it was incumbent on the Court itself to organize the proceedings in a manner which ensures the equality of the parties and the good administration of justice. The Court indicated in that Order that it would ensure that each Party would have a fair opportunity and the necessary time to respond to the observations of the intervening States. The Court has taken these considerations into account in the organization of the present oral proceedings.

In accordance with the arrangements for the organization of the proceedings which have been decided by the Court, the hearings will comprise a first and second round of oral argument of the Parties, as well as two sittings for the oral observations of the intervening States between those two rounds. The first round of oral argument will begin with the statement of the Russian Federation today from 10 a.m. to 1 p.m. Tomorrow, Tuesday 19 September, Ukraine will present its first round of oral argument, from 10 a.m. to 1 p.m. On Wednesday 20 September, the intervening States will present their oral observations. The second round of oral argument will begin on the morning of Monday 25 September: the Russian Federation will have two sessions of three hours on that day to respond to the arguments of Ukraine and the oral observations of the intervening States. The second round will conclude on the afternoon of Wednesday 27 September: Ukraine will have a single session of three hours to respond to the arguments of the Russian Federation and the oral observations of the intervening States.

In this first sitting, the Russian Federation may, if required, avail itself of a short extension beyond 1 p.m., in view of the time taken up by my introductory remarks.

I shall now give the floor to the Agent of the Russian Federation, His Excellency Mr Gennady Kuzmin. You have the floor, Excellency.

Mr KUZMIN:

INTRODUCTION

1. Madam President, distinguished Members of the Court, I am pleased to appear here before you as the Agent of the Russian Federation and present Russia's position.

2. These hearings are devoted to the Genocide Convention. A time-honoured instrument, adopted in the wake of Second World War to ensure that the crimes of the Nazi régime are never repeated. My country was an active elaborator and has always been a strong supporter of the Convention, of which it is a party for almost 70 years. Prevention and punishment of genocide are the object and purpose of the Convention.

3. However, Ukraine is not accusing Russia of committing genocide. Ukraine is also not accusing Russia of failing to prevent or punish genocide. On the contrary, Ukraine insists no genocide has occurred. That alone should be enough to reject the case, because, according to the Court's jurisprudence, if there was no genocide, there cannot be a violation of the Genocide Convention.

4. What Ukraine complains about is Russia allegedly "abusing" the Genocide Convention as a "pretext" for recognizing the independence of Donetsk and Lugansk People's Republics (DPR and LPR) and conducting the special military operation (SMO).

5. It cannot be further from the truth. Firstly, it is a well-known fact that Russia launched the SMO under Article 51 of the UN Charter, which provides the right of individual and collective self-defence. This right is not affected at all by the Genocide Convention.

6. Secondly, in order to complain about an "abuse" of right, one must first establish such right. Ukraine seems to claim that the Genocide Convention provides some kind of right to use force, which Russia allegedly "abused". But the Convention, of course, provides no such right. Nor had Russia ever claimed it does.

7. The pretext that Ukraine uses to drag this case into the Court is, apparently, Russian officials using the word "genocide" when describing what Ukraine's forces have been doing with the people of Donbass for the past nine years, ever since the current Russophobic, neo-Nazi régime came to power in Kiev by violently overthrowing the constitutionally elected President of Ukraine in 2014. However, making statements regarding genocide cannot be illegal under international law, including the Genocide Convention.

8. The statements are unsurprising given the fact that Kiev launched in 2014 a full-scale war against Donbass, its policy to brutally quash any dissent[1], obstruct journalists[2] and promote hatred against ethnic Russians[3]. The current Kiev régime glorifies Nazi war criminals, adopts Nazi symbolism and does not ban neo-Nazi groups.

9. At the same time, Kiev bans education of the Russian language and pushing the Russian language out of all spheres of public life[4]. Russian books, films and Russian artists are banned. Russian Orthodox churches are violently seized by Ukrainian security forces and neo-Nazi militants.

10. The predominantly Russian people that lived in the southern and eastern Ukraine strongly opposed the 2014 coup and new neo-Nazi policy. In response, Kiev imposed a suffocating blockade on Donbass, robbing their populations of access to water, food, electricity, medicine and other critical goods, and launched the so-called "anti-terrorist operation", deploying military force against its own population, igniting a civil war.

MINSK AGREEMENTS

11. Russia tried to peacefully resolve the civil war in Ukraine. Russia actively participated in "Normandy format" negotiations and Trilateral Contact Group to develop solutions for Ukrainian crisis. It was the Russian President who first proposed to deploy UN peacekeeping units in Donbass — Ukraine impeded that initiative.

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[1] 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)*, Rejoinder of the Russian Federation, para. 455.

[2] See *ibid.*, para. 28.

[3] See *ibid.*, paras. 763-764.

[4] See *ibid.*, paras. 720-728.

12. Nevertheless, Russia's efforts brought results — I am talking about conclusion of the Minsk protocol dated 5 *September* 2014 and Minsk-2 agreement dated 12 February 2015. These are the only agreements concluded in relation to Ukraine's crisis; more than that, Minsk-2 was endorsed by the UN Security Council resolution[5].

13. The Minsk agreements provided for ceasefire, ban on heavy weaponry and drones, amnesty for participants to the conflict. Importantly, the agreements envisaged the re-integration of the DPR and LPR into Ukraine, on the condition of a constitutional reform in Ukraine and providing DPR and LPR greater autonomy.

14. However, neither Ukraine nor its Western handlers ever intended to fulfil these United Nations-approved agreements. Today, all of them — Ukraine's Presidents Poroshenko and Zelenskiy[6], Germany's former Chancellor Merkel, France's former President Hollande[7] — proudly declare that Ukraine was never expected to implement the Minsk agreements. Instead, the agreements were supposed to give Ukraine breathing space and time to beef up its military power.

15. In another case before the Court, Russia had already emphasized that even the majority of the people of Ukraine wanted the Donbass conflict to be resolved by peaceful means[8]. But nobody in the Ukrainian Government heard those voices. President Zelenskiy cynically exploited the peaceful aspirations of people in eastern Ukraine during his election campaign, promising to "hear Donbass" and "stop the shooting"[9].

16. However, the Kiev régime once again deceived its people — the violence never stopped, and Ukrainian officials openly mulled a military solution for the Donbass problem. For instance,

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[5] United Nations Security Council, resolution 2202 (2015), 17 Feb 2015, available at: https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F2202%2520(2015)&Language=E&DeviceType=Desktop&LangRequested=False (tab 1.1).

[6] Almayadeen, *Zelensky admits he never intended to implement Minsk agreements* (9 Feb 2023), available at: https://english.almayadeen.net/news/politics/zelensky-admits-he-never-intended-to-implement-minsk-agreeme (tab 1.2); The Press United, *Minsk deal was used to buy time — Ukraine's Poroshenko* (17 June 2022), available at: https://thepressunited.com/updates/minsk-deal-was-used-to-buy-time-ukraines-poroshenko/ (tab 1.3).

[7] The Eastern Herald, *Hollande Said the Minsk Agreements Allowed Kiev To Strengthen Its Military Power* (26 Mar 2023), available at: https://www.easternherald.com/2023/03/26/hollande-said-the-minsk-agreements-allowed-kiev-to-strengthen-its-military-power/ (tab 1.4).

[8] *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)*, Rejoinder Submitted by the Russian Federation, para. 55.

[9] YouTube, Visiting Gordon, *Zelensky: As long as not a single Ukrainian die, I am ready to make a deal even with a bald devil — easily* (22 Mar 2019), available at: https://www.youtube.com/watch?v=QmiBq7EdzAQ (tab 1.5).

Ukrainian Deputy Prime Minister Aleksey Reznikov, in charge of so-called "reintegration of temporarily occupied territories", called Donbass "a mentally ill territory" and a "cancerous tumor that could be cut out"[10].

17. Reznikov was not fired for these words. On the contrary, he soon became the Ukrainian Minister of Defence. Talking about how Ukraine would deal with Donbass, Reznikov gushed about Croatia's 1995 Operation Storm and Operation Lightning, which led to the complete expulsion of the Serbian population from this Balkan republic[11]. While planning Operation Storm, Croatian President Tudjman had said: "We have to inflict such blows that the Serbs will to all practical purposes disappear" and "[I]f we had enough [ammunition], then I too would be in favour of destroying everything by shelling prior to advancing"[12]. When examining Serbia's counter-claim against Croatia under the Genocide Convention, the Court had concluded that there had been ethnic cleansing on a massive scale, Serbian civilians were arbitrarily killed by Croat forces and driven from their lands[13]. Reznikov called these operations "successful" and said they "ensured military reintegration". It is easy to see how Kiev intended to deal with Russians from Donbass once it secured total control over the region.

18. With the foreign aid Ukraine built up its military capacity and kept bombing Donbass in violation of the Minsk Agreements, all the while preparing for the "final solution" of the Donbass problem — by force.

ESCALATION

19. By 2022, the conflict in Donbass had been ongoing for eight years, with hundreds of thousands of ceasefire violations every year and a constant flow of hundreds of civilian casualties.

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[10] YouTube, Channel 5, *Alexey Reznikov: "I do not follow Sivokh's reconciliation platform . . ." | Rendezvous with Yanina Sokolova* (31 October 2020), available at: https://www.youtube.com/watch?v=5vkfOlKkuQk&t=2014s&ab_channel=5канал (tab 1.13).

[11] ZN.UA, *Alexey Reznikov: We also gonna have to swallow toads* (19 October 2020), available at: https://zn.ua/internal/aleksej-reznikov-nam-tozhe-pridetsja-hlotat-zhab-.html (tab 1.6).

[12] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)*, *Judgment, I.C.J. Reports 2015 (I)*, p. 147, para. 502.

[13] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)*, *Judgment, I.C.J. Reports 2015 (I)*, pp. 138-145, paras. 476-496.

By far the most of the civilians were killed or injured by Ukrainian strikes on the DPR and LPR territory[14].

20. In 2021 the number of ceasefire violations increased by more than 300 per cent in comparison to 2020[15]. As usual, the vast majority of strikes came from the Ukrainian side, with more than 75 per cent of civilian casualties as a result of these attacks being reported in the DPR and LPR[16].

21. Finally, in February 2022, the violence in Donbass spiked. As Ukrainian forces stepped up their attacks, nearly 2,000 ceasefire violations were recorded by the OSCE in a single day on 21 February, including over 1,000 artillery and bomb strikes[17].

22. Ukraine's single-minded drive to take Donbass by force overturned eight years of diplomacy and negotiations. In a last bid to bring sense to warmongers in Kiev, on 21 February, the Russian Federation recognized the independence of DPR and LPR. However, this also failed to cool down Ukraine's desire to resolve the conflict through force of arms. The tempo of attacks persisted on 22 February, with almost 1,500 explosions along the contact line[18].

23. It is in these circumstances that the Russian Federation, on 24 February 2022, took the decision to commence a special military operation. The President of the Russian Federation in his publicly broadcast speech on that day, explained the reasons underlying that decision:

(a) *First*, the President expressly referred to Article 1 of the United Nations Charter and the principle of self-determination of peoples;

(b) *Second*, the President expressly referred to Article 51 of the United Nations Charter and the inherent right of a State to self-defence;

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[14] OSCE Special Monitoring Mission in Ukraine — Thematic Report Civilian Casualties in the Conflict-Affected Regions of Eastern Ukraine (1 January 2017–15 September 2020), November 2020, available at: https://www.osce.org/files/f/documents/f/b/469734.pdf (tab 1.7).

[15] OHCHR, Report on the human rights situation in Ukraine, 1 February to 31 July 2021, 23 September 2021, available at: https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2021 (tab 1.8).

[16] OHCHR, Report on the human rights situation in Ukraine, 1 August 2021 to 31 January 2022, 28 March 2022, available at: https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-august-2021-31-january-2022 (tab 1.9).

[17] OSCE Special Monitoring Mission to Ukraine, Daily Report 41/2022, 22 February 2022, available at: https://www.osce.org/special-monitoring-mission-to-ukraine/512842 (tab 1.10).

[18] OSCE Special Monitoring Mission to Ukraine, Daily Report 42/2022, 23 February 2022, available at: https://www.osce.org/special-monitoring-mission-to-ukraine/512872 (tab 1.11).

(c) Third, the President recalled the growing threat of NATO expansion into the territory of Ukraine and the futility of efforts to reach an agreement with NATO regarding equal and indivisible security in Europe;

(d) Fourth, the President referred to Russia's treaties on friendship with DPR and LPR, and to the Republics' appeals to Russia for military assistance in self-defence under those treaties;

(e) Finally, the President also referred to Ukraine's violations of the United Nations Security Council Resolution 2202 upholding the Minsk Agreements.

24. The reference to Article 51 of the Charter as the legal basis for the special military operation has been reiterated on the very same day by Russia's Permanent Representative to the United Nations in his speech before the Security Council and the General Assembly[19], as well as in a letter to the Security Council and the United Nations Secretary-General as a formal notification required under Article 51 of the Charter[20]. None of these speeches or documents which express the official position of the Russian Federation contained references to the Genocide Convention.

25. As to expressions of concern regarding the threat of genocide, as I said: they were unsurprising considering the policies of the Kiev régime, which was firmly entrenched in the history, doctrines and practices of Nazism.

THE NAZI ROOTS OF THE KIEV RÉGIME AND THEIR POLICIES

26. The Nazi roots of the Kiev régime come from the Organization of Ukrainian Nationalists (OUN), and its military wing — the Ukrainian Insurgent Army (UPA), which collaborated with the Nazis and took part in the massacre of hundreds of thousands of Jews, Poles and Russians.

27. These three are the founding fathers of Ukrainian Nazism:

28. At the centre is Stepan Bandera. He led the most radical faction of OUN — the OUN-b.

29. OUN believed that the alliance with Nazi Germany and its Führer Adolf Hitler was necessary to achieve this goal. Now you see the Ukrainian newspaper dated 31 July 1941, publishing the "Act of Proclamation of the Ukrainian State" signed by Bandera. It said that "the newly created

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[19] United Nations Security Council, 77th year, 8974th Meeting, 23 February 2022, pp. 11-12, available at: https://digitallibrary.un.org/record/3959147?ln=en (tab 1.12).

[20] Preliminary Objections of the Russian Federation (PORF), para. 47.

Ukrainian State will work closely with National Socialist Germany, which under the guidance of its leader Adolf Hitler is creating a new order in Europe".

30. The photo on the right is Roman Shukhevich, commander of the notorious punitive battalion — *Ukrainische Sondergruppe* "Nachtigall".

31. Two of the most heinous crimes in which the followers of Bandera and Shukhevich were involved — the Wolyn massacre and the Babiy Yar massacre. In all, more than 5.3 million people died in Ukraine at the hands of the Nazis and their henchmen.

32. Bandera and Shukhevich are both venerated by the current Kiev régime. Here you see Bandera's monuments in Lvov, Ivano-Frankovsk and Ternopol. Now see Shukhevich monuments in Lvov.

33. The leader of the second OUN faction — OUN-m was Andrey Melnik. Here you see the archival photo from 1941 taken in Western Ukraine. On the arch hangs a poster: "Long live Hitler! Long live Melnik!" On the right is a modern monument to Melnik in Ivano-Frankovsk, Western Ukraine. The Kiev régime's own ideologists have admitted that OUN-UPA was a typical Nazi organization[21].

34. On the next slide, you can see a Nazi march in then Stanislavov (now Ivano-Frankovsk), western Ukraine, 1941, and a march celebrating the 71st anniversary of SS Galicia Division founding, Lvov, western Ukraine.

35. In early 1990s, OUN was legalized in Ukraine under the new title — Congress of Ukrainian Nationalists. Yury Shukhevich, son of Roman Shukhevich, established and led another Ukrainian major neo-Nazi party — the Ukrainian National Assembly (UNA-UNSO)[22].

36. From these odious roots stem nowadays neo-Nazi movements in Ukraine, such as Svoboda, Trizub, Right Sector, Sych and many others. Here you see a 2008 congress of the Patriot of Ukraine movement in Kharkov. The speaker is Andrey Biletskiy — the future founder of the infamous neo-Nazi battalion Azov. The Patriot of Ukraine's official logo was the Nazi German

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[21] National Academy of Sciences of Ukraine, I. F. Kuras Institute of Political and Ethnic Studies, A. Sych, Thesis "Modern Ukrainian nationalism: political science aspects of paradigm transformation", p. 135, available at: https://ipiend.gov.ua/spetsializovana-vchena-rada-svr/dysertatsii/ (tab 1.17).

[22] Unian, *Hero of Ukraine Yuriy Shukhevich dies* (22 Nov. 2022), available at: https://www.unian.net/society/umer-geroy-ukrainy-yuriy-shuhevich-novosti-lvova-12053652 (tab 1.18).

Wolfsangel, which you can see on the banners. The same "wolf's hook" can be observed on the Tiger tank of the Nazi SS *Totenkopf* Division.

37. The resurgence of neo-Nazism in Ukraine did not go unnoticed in the world. In 2018, the Jewish Telegraphic Agency published an alarming report on the widespread use of Nazi symbols and Nazi salutes in neo-Nazi mass events across Ukraine[23].

38. These neo-Nazi groups became the driving force behind the violent coup d'état, where armed neo-Nazi fighters overthrew the legitimate Ukrainian authorities and formed an illegitimate new "government of victors", where key positions have been taken by neo-Nazi extremists.

39. Here are the Svoboda neo-Nazi party members who joined the new Government, shown with Svoboda's symbol — the Nazi *Wolfsangel* cross. Some background of these neo-Nazis is available on the next four slides.

40. This Ukrainian Government glorifies the collaborators who fought on the side of Hitler during the Second World War. Those who are still alive are granted with veteran status, State protection and benefits. More than 200 streets across Ukraine have been named after Nazi criminals.

41. On the next slide, you can see the SS Galicia Division being honoured in Kiev. Neo-Nazi summer camps for children were opened all over Ukraine, indoctrinating children with the ideas of Bandera and hatred of Russians. Now behold President Zelenskiy naming a Ukrainian mountain brigade "Edelweiss" — after the Nazi mountain division of the same name[24]. Finally, here is a modern German Leopard tank of the Ukrainian armed forces, proudly bearing the notorious Nazi *Balkenkreuz*, the white cross marking carried by Nazi armour during their campaigns in Poland and in the USSR.

42. On the international field, since 2014 Ukraine has been steadily voting *against* the UN General Assembly annual resolution on combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

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[23] Jewish Telegraphic Agency, *Nazi symbols and salutes on display at Ukrainian nationalist march* (29 Apr. 2018), https://www.jta.org/2018/04/29/global/nazi-symbols-salutes-display-ukrainian-nationalist-march (tab 1.19).

[24] Wikipedia, *1st Mountain Division (Wehrmacht)*, available at: https://en.wikipedia.org/wiki/1st_Mountain_Division_(Wehrmacht) (tab 1.28).

UKRAINE'S CLAIM IN LIGHT OF PREVIOUS JURISPRUDENCE OF THE COURT

43. Madam President, in its Order on provisional measures, the Court found 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".

44. However, that decision is preliminary in nature. When the Court will decide on the jurisdiction of the case, it should bear in mind that this finding is not consistent with the Court's previous finding in the *Legality of Use of Force* cases. Back then the Court discarded Yugoslavia's requests for provisional measures, despite Yugoslavia being the victim of an intensive bombing campaign by NATO forces.

45. Numerous NATO leaders had referred to genocide as the legal basis for the operation. Representatives of NATO States have repeatedly stated so before this Court. Just last year Germany's Chancellor Mr Scholz confirmed this in his dialogue with President Putin, saying that NATO acted in Yugoslavia because "there was a danger and a threat of genocide, and this ought to have been prevented"[25].

46. NATO States had no other justification for their attack. They never invoked Article 51 of the UN Charter, nor did they have any ground to do so. No genocide was established to take place in Kosovo.

47. Madam President, Members of the Court, according to this jurisprudence of the Court, no jurisdiction can be awarded to Ukraine's claims. Deciding otherwise would be effectively a reversal of the position that the Court took with regard to Yugoslavia's plea.

48. Of course, Russia has always condemned the bombing of Yugoslavia by NATO and rejected NATO's attempts at justification[26]. This confirms that Russia never believed the Genocide Convention to provide a legal basis for armed interventions.

GEORGIA CASE

49. Ukraine's attempt to use an unrelated treaty in order to bring claims related to use of force and State recognition to the Court despite absence of jurisdiction is nothing new. Back in 2008

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[25] Kremlin, News conference following Russian-German talks, 15 Feb. 2022, available at: http://en.kremlin.ru/events/president/news/67774 (tab 1.30).

[26] UN Press Release, Security Council Rejects Demand for Cessation of Use of Force Against Federal Republic of Yugoslavia, 26 Mar. 1999, available at: https://press.un.org/en/1999/19990326.sc6659.html (tab 1.29).

another country, Georgia — much like Ukraine — attempted to re-establish control over two break-away regions, Abkhazia and South Ossetia, by force, violating — like Ukraine — a United Nations-endorsed peace agreement, and even attacking Russian peacekeepers present under international mandate. Georgia, like Ukraine, attempted to mask the real nature of its dispute with Russia, and drag the Court into adjudicating use of force by "window-dressing" its claims as falling under a treaty with a compromissory clause — in that case, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

50. Back in 2011, the Court has correctly decided that Georgia's claims rooted in the allegations of use of force did not pertain to racial discrimination[27].

51. Summing up, Ukraine's legal position is hopelessly flawed and at odds with the long-standing jurisprudence of this Court. Our legal arguments to this effect will be developed in more detail by our counsellors.

INTRODUCTION OF PRESENTATIONS

52. Madam President, Professor Hadi Azari will present Russia's first preliminary objection, namely, that there is no dispute between Ukraine and Russia under the Genocide Convention. After that, Professor Alfredo Crosato Neumann will continue with the second objection on the lack of the Court's jurisdiction *ratione materiae* in this case. Professor Sienho Yee will explain Russia's third objection on the inadmissibility of new claims that Ukraine inappropriately advanced in its Memorial and the fourth objection on the lack of *effet utile* of the prospective judgment upholding Ukraine's claims in this case. Mr Kirill Udovichenko will further demonstrate Russia's fifth objection — that Ukraine's claims seek reverse compliance declaration and are therefore inadmissible and will complete the presentation with a point that is clear to everyone in this hall — that Ukraine's claim in itself and its tactics in these proceedings is a manifest disregard of the proper administration of justice and constitutes an abuse of process.

53. I thank you, Madam President, honourable Members of the Court, for your attention. I now kindly ask you, Madam President, to invite Professor Hadi Azari to address the Court.

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[27] See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*, *Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 118, para. 108.

The PRESIDENT: I thank the Agent of the Russian Federation for his statement. I now invite Professor Hadi Azari to take the floor. You have the floor, Professor.

M. AZARI : Merci beaucoup, Madame la présidente.

PREMIÈRE EXCEPTION PRÉLIMINAIRE : ABSENCE DE DIFFÉREND RELEVANT DE LA CONVENTION SUR LE GÉNOCIDE

1. Madame la présidente, Mesdames et Messieurs de la Cour, c'est un grand honneur pour moi d'apparaître à nouveau devant vous afin de présenter la première exception préliminaire de la Fédération de Russie dans l'affaire qui l'oppose à l'Ukraine. Ma tâche est de démontrer qu'il n'y a pas de différend au regard de la convention de 1948 sur le génocide, ce qui devrait amener la Cour à décliner sa compétence pour connaître des demandes de l'Ukraine.

2. Les conditions de l'existence d'un différend sont clairement précisées dans la jurisprudence de la Cour. Je les résumerai en quelques lignes comme suit : pour conclure à l'existence d'un différend, la Cour doit établir, sur la base des éléments de preuve que lui ont présentés les parties, que, à la date du dépôt de sa requête, le demandeur a formulé une réclamation qui se serait heurtée à l'opposition manifeste du défendeur[28].

3. Mesdames et Messieurs de la Cour, aucune des demandes formulées par l'Ukraine — qui s'affichent sur vos écrans — ne répond à ces conditions :

> « *b)* de dire et juger qu'il n'y a pas d'élément crédible prouvant que l'Ukraine est responsable de la commission d'un génocide en violation de la convention sur le génocide dans les oblasts ukrainiens de Donetsk et de Louhansk ;
>
> *c)* de dire et juger que l'emploi de la force auquel la Fédération de Russie recourt depuis le 24 février 2022 en Ukraine et contre celle-ci emporte violation des articles premier et IV de la convention sur le génocide ;
>
> *d)* de dire et juger que la reconnaissance des prétendues "République populaire de Donetsk" et "République populaire de Louhansk" le 21 février 2022 emporte violation des articles premier et IV de la convention sur le génocide. »[29]

4. Dans sa première conclusion, l'Ukraine prétend « qu'il n'y a pas d'élément crédible prouvant que l'Ukraine est responsable de la commission d'un génocide en violation de la convention

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[28] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2011 (I)*, p. 85, par. 31.

[29] Mémoire de l'Ukraine (MU), par. 178.

sur le génocide ». Cette demande de l'Ukraine est liée à la prétendue allégation de génocide que la Fédération de Russie aurait proférée à son encontre.

5. Dès lors, pour établir son premier chef de différend, l'Ukraine doit démontrer que 1) elle a revendiqué la violation de la convention de 1948 par l'accusation de génocide que la Fédération de Russie aurait formulée à son encontre ; 2) sa revendication s'est heurtée à l'opposition manifeste de la Fédération de Russie ; 3) le désaccord entre les Parties existait à la date du dépôt de la requête. L'Ukraine n'a pas réussi à le faire.

6. Comme première étape, l'Ukraine devait spécifier son allégation avant l'introduction de la procédure. Dans l'affaire *Géorgie c. Fédération de Russie*, la Cour a précisé que le demandeur

> « doit … s'être référé assez clairement à l'objet du traité pour que l'État contre lequel il formule un grief puisse savoir qu'un différend existe ou peut exister à cet égard. *Une référence expresse* ôterait tout doute quant à ce qui, selon cet État, constitue l'objet du différend et permettrait d'en informer l'autre État. »[30]

7. Un différend ne peut exister entre l'Ukraine et la Fédération de Russie qu'à l'égard des dispositions de la convention de 1948. Donc, à propos de la prétendue allégation de génocide, l'Ukraine est tenue d'identifier l'obligation découlant de la convention qui, selon elle, aurait été violée par la Russie[31]. Nul besoin de souligner qu'un différend ne peut naître d'une obligation qui n'existe pas.

8. L'Ukraine doit prouver que la convention interdit aux États de formuler des allégations de génocide les uns contre les autres. L'Ukraine n'a pas réussi à satisfaire à ce test. Rien de surprenant, car une telle obligation n'existe pas, et un différend ne peut naître d'une obligation qui n'existe pas. C'est d'ailleurs la raison pour laquelle, dans sa formulation des différends qu'elle soumet à la juridiction de la Cour, l'Ukraine n'invoque aucune disposition de la convention à l'appui de sa réclamation, contrairement à ce qu'elle fait pour ses deux autres revendications — comme vous le voyez souligné à l'écran :

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[30] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2011 (I)*, p. 85, par. 30 ; *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), exceptions préliminaires*, arrêt, C.I.J. Recueil 2022, par. 72 (l'italique est de nous).

[31] *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), arrêt, C.I.J. Recueil 2012 (II)*, p. 444-445, par. 54.

« *b)* de dire et juger qu'il n'y a pas d'élément crédible prouvant que l'Ukraine est responsable de la commission d'un génocide en violation de la convention sur le génocide dans les oblasts ukrainiens de Donetsk et de Louhansk ;

c) de dire et juger que l'emploi de la force auquel la Fédération de Russie recourt depuis le 24 février 2022 en Ukraine et contre celle-ci emporte violation des articles premier et IV de la convention sur le génocide ;

d) de dire et juger que la reconnaissance des prétendues "République populaire de Donetsk" et "République populaire de Louhansk" le 21 février 2022 emporte violation des articles premier et IV de la convention sur le génocide. »[32]

9. L'invocation de l'affaire *Gambie c. Myanmar* n'est d'aucun secours pour l'Ukraine dans la mesure où, dans son arrêt du 22 juillet 2022, la Cour n'a pas démenti la thèse soutenue par la Fédération de Russie. Bien au contraire, elle l'a confirmée. L'État demandeur — dit-elle — « doit … s'être référé assez clairement à l'objet du traité pour que l'État contre lequel il formule un grief puisse savoir qu'un différend existe ou peut exister à cet égard »[33].

10. Aucun grief par lequel l'Ukraine aurait reproché à la Russie la violation de la convention de 1948 n'a été formulé par l'Ukraine avant le dépôt de la requête. Même pas une seule preuve n'a été présentée à la Cour montrant la formulation d'un tel grief par l'Ukraine contre la Russie. Il n'existe pas une seule note verbale adressée par l'Ukraine à la Fédération de Russie dans laquelle l'Ukraine exposerait ses vues quant aux comportements de la Russie, supposés contraires à la convention. Aucune réclamation, similaire à celle que l'Ukraine a présentée dans sa requête et son mémoire, n'a été formulée à l'encontre de la Russie avant l'introduction de la présente instance. Il n'existe même pas une seule pièce dans laquelle l'Ukraine démontrait qu'elle a fait savoir à la Russie qu'elle considérait l'accusation de génocide comme contraire aux obligations de la Russie au titre de la convention de 1948. Or, la position de la Cour est sans ambiguïté à cet égard ; elle exige du demandeur d'adresser sa critique, son reproche, son allégation ou son accusation à la partie défenderesse avant de les formuler dans sa requête introductive d'instance devant la Cour internationale de Justice [34]. C'était cette exigence qui a amené la Cour à préciser dans l'affaire des *Îles Marshall* que le demandeur doit démontrer « que le défendeur avait connaissance, ou ne pouvait

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[32] MU, par. 178.

[33] *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), exceptions préliminaires*, arrêt, C.I.J. Recueil 2022, par. 72.

[34] *Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Îles Marshall c. Royaume-Uni), exceptions préliminaires, arrêt, C.I.J. Recueil 2016 (II)*, p. 850-851, par. 41 ; *ibid.*, opinion dissidente du juge Cançado Trindade, p. 917, par. 20.

pas ne pas avoir connaissance, de ce que ses vues se heurtaient à l'"opposition manifeste" du demandeur »[35]. Ainsi, comme le regretté juge Cançado Trindade l'a expliqué,

> « [la Cour] a en pratique posé des conditions ... qui reviennent en fait à exiger de l'État demandeur qu'il formule sa prétention juridique, qu'il la dirige spécifiquement contre l'État ou les États qu'il projette d'attraire devant la Cour, et qu'il précise en quoi consiste le comportement qu'il allègue lui avoir causé un préjudice »[36].

L'Ukraine ne l'a pas fait.

11. Comme deuxième étape, l'Ukraine doit démontrer que son grief s'est heurté à l'opposition manifeste de la Fédération de Russie. Elle n'a pas réussi à le faire, car c'était impossible de le faire. Il n'existe tout simplement pas de grief pouvant justifier la réaction de la Partie défenderesse.

12. Consciente qu'elle ne peut pas satisfaire au critère de l'existence de différend tel qu'exigé par la Cour, l'Ukraine a décidé d'inverser le critère. Elle s'est efforcée de montrer que la Fédération de Russie a allégué la responsabilité de l'Ukraine pour la violation de la convention de 1948, et qu'elle a exprimé son opposition manifeste à l'allégation de génocide[37]. Cependant, cet argument passe à côté de l'essentiel : le différend soulevé par l'Ukraine porte sur la responsabilité de la Russie au titre de la convention, et non sur celle de l'Ukraine. Ainsi, bien que cela ne soit pas ce que les règles jurisprudentielles en matière de l'existence de différend exigent de l'Ukraine de faire, je vais quand même démontrer que l'argumentation de l'Ukraine est dénuée de fondement. J'aborderai très brièvement ces deux points successivement.

13. Concernant le premier point, l'Ukraine fait d'abord référence à l'usage du terme « génocide » dans quelques déclarations des autorités et agents russes. Pourtant, elle n'a pas prouvé que, dans ces déclarations, ce terme a été utilisé au sens de la convention de 1948. À propos d'une déclaration semblable rendue dans un autre contexte, la Cour a déclaré qu'

> « une déclaration ne peut donner naissance à un différend que s'il y est fait référence "assez clairement à l'objet [d'une réclamation] pour que l'État contre lequel [celle-ci est] formul[ée] … puisse savoir qu'un différend existe ou peut exister à cet égard" »[38].

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[35] *Ibid.*, p. 851, par. 41.

[36] *Ibid.*, opinion dissidente du juge Cançado Trindade, p. 917, par. 20.

[37] Exposé de l'Ukraine en date du 3 février 2023 (EEU), par. 37.

[38] *Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Îles Marshall c. Royaume-Uni), exceptions préliminaires, arrêt, C.I.J. Recueil 2016 (II)*, p. 853, par. 49.

14. Il n'est peut-être pas sans intérêt de rappeler que, à l'occasion de l'introduction de cette affaire devant la Cour internationale de Justice, William Schabas a publié une étude fort intéressante dans laquelle il a expliqué la distinction qu'il convient de faire entre l'utilisation du terme génocide à des fins rhétoriques et l'invocation de la convention. Il commence son analyse en citant la déclaration du président Biden qui a accusé la Russie de commettre le génocide en attaquant l'Ukraine[39]. Bien d'autres déclarations de cette nature rendues dans d'autres contextes peuvent être rappelées.

15. La Commission du droit international (CDI) met en exergue qu'

> « [u]n État n'invoque pas la responsabilité d'un autre État simplement parce qu'il le critique d'avoir violé une obligation et l'engage à la respecter, ou bien même parce qu'il réserve ses droits ou émet de simples protestations. Aux fins des présents articles, la protestation en tant que telle n'est pas une invocation de la responsabilité ; elle peut prendre diverses formes et viser différents objectifs et ne se limite pas aux cas où la responsabilité de l'État est en jeu. »[40]

16. L'Ukraine soutient que la Russie a quand même invoqué la responsabilité de l'Ukraine puisque, selon la CDI, dit-elle, l'invocation de la responsabilité peut se faire par le fait de « prendre des mesures ». Elle ajoute :

> « En l'espèce, la Russie n'a pas seulement allégué que l'Ukraine avait violé la convention sur le génocide, elle a aussi pris des mesures contre l'Ukraine sur la base de cette allégation, à savoir la reconnaissance de la RPD et de la RPL et l'emploi de la force contre elle et sur son territoire. »[41]

17. Pour démentir l'argument de l'Ukraine, il suffirait de citer la phrase pertinente de la CDI où les mots opportunément sélectionnés par l'Ukraine se trouvent exprimés. La CDI souligne,

> « il faut entendre par invocation le fait de *prendre des mesures d'un caractère relativement formel*, par exemple le fait de déposer ou de présenter une réclamation contre un autre État, ou d'engager une procédure devant une cour ou un tribunal »[42].

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[39] W. Schabas, « Genocide and Ukraine Do Words Mean What We Choose them to Mean? », *Journal of International Criminal Justice*, 2022, vol. 20, nº 4, p. 843-844 (onglet 2.1).

[40] Commission du droit international, projet d'articles sur la responsabilité de l'État pour fait internationalement illicite, avec commentaires, Article 42, *Annuaire de la Commission du droit international*, 2001, vol. II, deuxième partie, p. 117, par. 2 (onglet 2.2).

[41] Exposé de l'Ukraine en date du 3 février 2023, par. 43.

[42] Commission du droit international, projet d'articles sur la responsabilité de l'État pour fait internationalement illicite, avec commentaires, article 42, *Annuaire de la Commission du droit international*, 2001, vol. II, deuxième partie, p. 117, par. 2 (onglet 2.2) (l'italique est de nous).

18. Nul ne peut raisonnablement prétendre que le recours à la force ou la reconnaissance d'État peut être considéré comme « des mesures d'un caractère relativement formel » en guise de l'invocation de la responsabilité d'un État en droit international.

19. Le comité d'enquête sur lequel l'Ukraine s'appuie pour fonder sa première revendication ne vise pas l'Ukraine elle-même. Ce comité est ce qu'indique son nom. Sa fonction est de conduire des investigations sur les crimes et les atrocités commis par les individus. Le comité n'appartient pas à la branche exécutive du gouvernement. Il ne représente nullement la vision de la Russie sur le plan international. Plus important encore, le comité n'a jamais entamé d'investigation sur la responsabilité de l'État de l'Ukraine. Ceci ne rentre pas dans le champ de ses activités.

20. Qu'il vise les « responsables ukrainiens »[43] n'y change rien. Comme la Cour a eu déjà l'occasion de le souligner, pour déterminer s'il y a un différend, la Cour tient compte des « motifs » tenant aux auteurs des déclarations ou documents, et aux personnes auxquelles ils sont destinés et de leurs contenus[44]. Dans notre cas, l'auteur des déclarations est un organe investi du pouvoir de conduire des investigations sur les crimes internationaux commis par les individus (pas les États), sans les juger.

21. Il n'en demeure pas moins que l'argument de l'Ukraine reste contraire à la pratique des États en matière de poursuite des crimes internationaux. En effet, dire que les investigations menées par ce comité créent le différend entre l'Ukraine et la Fédération de Russie reviendrait à reconnaître, par exemple, que l'exercice de la compétence universelle par les tribunaux des États à propos des crimes internationaux crée le différend entre l'État du tribunal et l'État de l'individu poursuivi pour lesdits crimes. Nul ne doute du mal-fondé d'une telle affirmation. Qui plus est, adhérer à l'argument de l'Ukraine reviendrait à méconnaître la distinction entre la responsabilité internationale de l'État et la responsabilité pénale des individus, pourtant bien établie en droit international et sanctionnée par la jurisprudence de la Cour[45].

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[43] EEU, par. 43.

[44] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2011 (I)*, p. 100, par. 63.

[45] *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I)*, p. 116, par. 173.

22. En ce qui concerne le deuxième point, à savoir la réaction de l'Ukraine à l'accusation de génocide, force est de constater que dans ses écritures l'Ukraine a du mal à prouver qu'elle s'est sérieusement opposée à la prétendue accusation de génocide proférée à son encontre. Bien consciente de la faiblesse de sa position[46], l'Ukraine cherche, dans ses observations écrites, à vous convaincre que son silence vaut le rejet des allégations de la Russie[47]. Elle soutient que « [c]ompte tenu de la gravité d'une allégation de génocide, l'absence de réaction d'un État face à celle-ci constituerait la preuve du rejet de cette allégation et de l'existence d'un différend entre les parties »[48]. L'Ukraine se trompe. Ce n'est pas la gravité de l'accusation, mais la présence des circonstances particulières où une réaction s'impose qui détermine si le silence vaut la réaction ou non. Rien ne permet de conclure que l'on se trouve dans une telle situation. En tout cas l'Ukraine ne l'a pas prouvé. Par ailleurs, si on suivait la thèse ukrainienne, aucun État n'aurait besoin de prouver que son adversaire s'était opposé à sa réclamation, et par conséquent, la condition même de l'existence d'un différend perdrait son sens et sa raison d'être.

23. En totale contradiction avec sa thèse que je viens de décrire, l'Ukraine prétend qu'elle a quand même réagi. Dans ses observations écrites, elle rappelle d'abord quelques déclarations des autorités ukrainiennes qu'elle avait déjà citées dans son mémoire, en y ajoutant quelques autres exemples[49]. Cependant, toutes ces autorités étaient visées par le comité d'enquête de la Russie, et lesdites autorités se sont adressées au comité dans leurs propos. Donc, elles n'ont pas répondu à une allégation étatique et leurs attitudes ne sauraient, partant, participer à la naissance d'un différend d'ordre juridique.

24. Le discours du 23 février 2022 de M. Kuleba, ministre des affaires étrangères de l'Ukraine, sur lequel l'Ukraine s'appuie avec insistance, ne l'aide pas du tout. Nulle part dans ce discours il n'est fait référence à la convention de 1948 et à son objet même. M. Kuleba ne faisait que dénoncer les allégations selon lesquelles l'Ukraine préparait une attaque contre le Donbass, et ce, dans le contexte de la Charte des Nations Unies.

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[46] EEU, par. 59-60.

[47] *Ibid.*, par. 60.

[48] *Ibid.*, par. 59.

[49] *Ibid.*, par. 62 et 64.

25. Et le dernier argument de l'Ukraine consiste à dire que son acte de défense nationale contre l'opération militaire de la Russie constitue son opposition à l'allégation de génocide[50]. Là aussi l'Ukraine a tort. Ce n'est pas la défense contre l'opération militaire spéciale qui entre ici en ligne de compte, mais l'opposition claire et manifeste à l'allégation de génocide.

26. Bref, l'Ukraine n'a pas démontré qu'elle a revendiqué la violation de la convention de 1948, et que sa revendication s'est heurtée à la réaction de la Russie. Elle n'a pas montré non plus que cette dernière connaissait ou ne pouvait pas ne pas connaître que l'Ukraine considérait son allégation de génocide comme contraire à la convention. Par conséquent, l'Ukraine n'a pas prouvé l'existence d'un différend l'opposant à la Russie en ce qui concerne le premier chef des demandes qu'elle a soumis à la Cour.

27. Madame la présidente, Mesdames et Messieurs de la Cour, j'en arrive au deuxième différend évoqué par l'Ukraine, celui relatif à la reconnaissance, par la Fédération de Russie, de la RPD et de la RPL et son recours à la force, qui, selon l'Ukraine, violent les articles premier et IV de la convention sur le génocide.

28. La Fédération de Russie n'a jamais prétendu que la convention sur le génocide l'autorisait à employer la force contre l'Ukraine aux fins de s'acquitter de l'obligation qui lui incombe, au titre de l'article premier de la convention, de prévenir et de punir le génocide. D'après les documents qu'elle a communiqués à la Cour ainsi qu'au Conseil de sécurité de l'ONU, la Fédération de Russie a invoqué l'article 51 de la Charte des Nations Unies sur la légitime défense et le droit international coutumier comme fondements juridiques de ses actes.

29. L'Ukraine s'attache au « prétexte de la perpétration du génocide » pour faire entrer des actes autrement interdits en droit international, comme l'emploi de la force et la reconnaissance des États dans le champ d'application de la convention. Comme l'a fait à raison observer la juge Xue — pardonnez-moi ma prononciation —, « [l]'affirmation de la demanderesse selon laquelle la Fédération de Russie recourt à une allégation de génocide "pour justifier [son] agression illicite" amène à douter que le génocide soit véritablement au cœur de la présente espèce »[51].

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[50] *Ibid*., par. 62 ; MU, par. 51.

[51] *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie)*, *mesures conservatoires, ordonnance du 16 mars 2022*, déclaration de la juge Xue, par. 2.

30. Nul besoin de souligner que la Cour n'est pas liée par la description de l'objet du différend présentée par la Partie demanderesse dans sa requête : « [c]'est … à la Cour qu'il appartient de définir, sur une base objective, l'objet du différend qui oppose les parties, c'est-à-dire de "circonscrire le véritable problème en cause et de préciser l'objet de la demande" »[52].

31. Le véritable problème en cause dans notre cas n'est pas le génocide, c'est l'emploi de la force et la reconnaissance d'État en droit international. C'est à propos de ces deux prétendus différends que les conditions de l'existence du différend devaient être réunies avant l'engagement par l'Ukraine de cette procédure. Dans son mémoire ainsi que dans ses observations écrites, l'Ukraine a consacré un long développement à expliquer que la Fédération de Russie l'a accusée d'avoir commis le génocide et qu'elle a rejeté cette accusation ; par conséquent, conclut-elle, il existe un différend entre les Parties.

32. L'Ukraine fait totalement fausse route. Comme je l'ai expliqué il y a un instant, pour établir l'existence d'un différend entre les Parties relatif à l'emploi de la force et la reconnaissance d'État, l'Ukraine doit d'abord prouver qu'elle a reproché à la Fédération de Russie la violation par ces actes des obligations qui lui incombent au titre de la convention de 1948. Elle doit ensuite montrer que son allégation s'est heurtée à l'opposition manifeste de la Russie. Elle n'a pas réussi à le faire.

33. L'Ukraine n'a formulé aucun grief relatif à l'emploi de la force et la reconnaissance d'État permettant à la Russie de savoir qu'un différend existe ou peut exister entre les Parties avant le dépôt de sa requête. Aucune preuve n'a été présentée par l'Ukraine démontrant qu'elle a reproché à la Fédération de Russie la violation par ses actes de ses obligations juridiques au titre de la convention de 1948.

34. L'invocation par l'Ukraine de la déclaration du ministère des affaires étrangères de l'Ukraine du 26 février 2022 n'est d'aucun secours pour elle. Cette déclaration a été postée sur le site du ministère à 18 h 39 le jour de l'introduction de l'affaire en cours. En fait, seulement quatre heures avant le dépôt de la requête. C'est peu dire que ce n'est pas une tentative réalisée de bonne foi du demandeur afin de prévenir son adversaire de l'existence d'un différend entre les Parties avant

[52] *Violations alléguées de droits souverains et d'espaces maritimes dans la mer des Caraïbes (Nicaragua c. Colombie), exceptions préliminaires, arrêt, C.I.J. Recueil 2016 (I)*, p. 27, par. 51.

l'engagement d'une affaire devant la CIJ. La Russie n'était pas censée avoir connaissance de cette déclaration pour pouvoir exprimer le cas échéant son opposition à son contenu.

35. Il convient de rappeler que la Cour a retenu l'écoulement d'un temps raisonnable entre la constatation du différend et le dépôt de la requête. La règle selon laquelle « le différend doit en principe *déjà* exister à la date du dépôt de la requête »[53] implique que le différend doit se cristalliser « avant la date du dépôt de la requête »[54], de sorte que le défendeur puisse avoir la possibilité de « réagir » à la réclamation du demandeur[55]. Dans notre cas, la Fédération de Russie ne pouvait pas avoir connaissance que, pour son adversaire, les actes en cause étaient contraires à ses obligations au titre de la convention de 1948. Pour la même raison, elle ne disposait pas du temps raisonnable pour réagir à la prétention de son adversaire. Il est à noter que, dans l'affaire relative à des *Questions concernant l'obligation de poursuivre ou d'extrader*, la remise au Sénégal d'une note verbale par la Belgique, deux mois avant le dépôt de la requête, apparut à la Cour à peine suffisant pour échanger avec le défendeur sur l'objet de la réclamation[56].

36. L'Ukraine affirme également que la déclaration de son ministère « est beaucoup plus précise dans sa référence à la convention sur le génocide que, par exemple, les déclarations faites par la Géorgie avant le dépôt de sa requête dans l'affaire *Géorgie c. Fédération de Russie* »[57]. Cet argument ne résiste pas à l'examen. Voici la conclusion de la Cour invoquée par l'Ukraine. Je lirai seulement les phrases pertinentes qui sont soulignées : « La Cour observe que rien dans ce décret n'accuse la Fédération de Russie d'avoir violé ses obligations en matière d'élimination de la discrimination raciale. Il y est question du recours prétendument illicite à la force armée. »[58]

37. On ne voit pas pourquoi il doit en aller autrement lorsque l'on en arrive à la déclaration du ministère ukrainien des affaires étrangères dans notre affaire. Cette déclaration portait sur l'usage

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[53] *Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Îles Marshall c. Royaume-Uni), exceptions préliminaires, arrêt, C.I.J. Recueil 2016 (II)*, p. 851, par. 43 (l'italique est de nous).

[54] *Ibid.*, p. 854, par. 54.

[55] *Ibid.*, p. 851, par. 43.

[56] *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), arrêt, C.I.J. Recueil 2012 (II)*, p. 444-445, par. 54.

[57] EEU, par. 77.

[58] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2011 (I)*, p. 118, par. 108.

prétendument illégal de la force armée par la Fédération de Russie, et non sur une hypothétique violation de la convention sur le génocide. La convention n'est entrée en jeu que parce que l'Ukraine l'a considérée comme un « prétexte » que la Russie aurait utilisé pour intervenir. Or, à aucun moment le ministère ukrainien n'a déclaré que les prétendues allégations de génocide ou le fait que la Russie se serait appuyée sur la convention sur le génocide pour mener l'opération militaire spéciale constituaient en soi une violation de la convention.

38. Mesdames et Messieurs de la Cour, l'Ukraine devait démontrer que sa revendication concernant l'emploi de la force et la reconnaissance d'État s'est heurtée à l'opposition manifeste de la Russie avant l'introduction de l'affaire en cause. Elle ne l'a pas fait. En fait, elle ne pouvait même pas le faire dès lors que l'opération militaire dont elle se plaint a commencé en même temps que l'introduction de l'affaire.

39. Dès lors que, « [e]n principe, la date à laquelle doit être appréciée l'existence d'un différend est celle du dépôt de la requête »[59], l'introduction de l'affaire concomitante à la violation alléguée du traité litigieux ne permet pas la réalisation des conditions de l'existence d'un différend. Elle rend difficile — voire impossible — tant l'allégation par le demandeur de la violation du traité litigieux que la réaction du défendeur à l'allégation formulée à son encontre.

40. Pour qu'un différend existe, « [i]l faut démontrer que la réclamation de l'une des parties se heurte à l'opposition manifeste de l'autre »[60]. Or, dans notre cas, il n'existe ni une réclamation ni une opposition manifeste. L'Ukraine n'a pas démontré qu'elle a reproché à la Fédération de Russie la violation par son opération militaire et la reconnaissance des régions, d'une quelconque de ses obligations juridiques découlant de la convention. Elle n'a pas montré non plus que la Russie s'est opposée aux vues de la Partie demanderesse.

41. Par conséquent, l'Ukraine n'a pas démontré qu'un différend l'opposait à la Russie en ce qui concerne le deuxième chef des demandes qu'elle a soumis à la Cour.

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[59] *Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Îles Marshall c. Royaume-Uni), exceptions préliminaires, arrêt, C.I.J. Recueil 2016 (II)*, p. 851, par. 42.

[60] *Sud-Ouest africain (Éthiopie c. Afrique du Sud ; Libéria c. Afrique du Sud), exceptions préliminaires, arrêt, C.I.J. Recueil 1962*, p. 328.

42. Mesdames et Messieurs de la Cour, j'en arrive au troisième volet de mon exposé qui concerne le prétendu différend relatif à l'usage abusif de la convention avancé par l'Ukraine dans son mémoire. Pour fonder sa réclamation, l'Ukraine suggère trois obligations implicites qui, selon elle, découleraient de la convention[61]. Elles sont affichées sur vos écrans. Je ne les lirai pas.

43. Je relèverai tout simplement qu'aucune des conditions de l'existence du différend n'est réunie dans cette revendication. Il convient de souligner tout d'abord que toutes ces affirmations sont fondées sur de fausses prémisses selon lesquelles la Fédération de Russie aurait invoqué la responsabilité de l'Ukraine pour le génocide commis au Donbass, et qu'elle a ensuite réagi de manière unilatérale pour y mettre fin. Le fait est que la Fédération de Russie n'a pas invoqué la responsabilité de l'Ukraine au titre de la convention de génocide et qu'elle n'a pas réagi pour y mettre fin. Permettez-moi, Madame la présidente, de souligner une fois de plus : prétendre qu'un crime est commis dans un territoire donné est une chose, invoquer la responsabilité d'un État pour ce même crime conformément aux règles du droit international en est une autre.

44. L'Ukraine a clairement indiqué dans sa requête qu'elle ne considère pas qu'un État puisse recourir à l'usage de la force ou reconnaître des États sur la base de la convention[62]. Comme je l'ai souligné il y a un instant, la Fédération de Russie n'a pas non plus allégué l'existence d'un tel droit dans le cadre de la convention, puisque le recours à la force et la reconnaissance d'État reposent sur d'autres sources du droit international, sur lesquelles la Russie a explicitement fondé ses actions[63]. Pour sa part, la Cour a mis au clair qu'« il est douteux que la convention, au vu de son objet et de son but, autorise l'emploi unilatéral de la force par une partie contractante sur le territoire d'un autre État, aux fins de prévenir ou de punir un génocide allégué »[64].

45. Lorsque les parties d'une part, et la Cour d'autre part, sont d'avis qu'un « droit » aux termes de la convention n'existe pas, peut-on sérieusement prétendre qu'un différend à son sujet peut exister ? Une réponse négative s'impose.

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[61] MU, par. 78.

[62] Requête de l'Ukraine, par. 27.

[63] Exceptions préliminaires de la Fédération de Russie, par. 154.

[64] *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 16 mars 2022*, par. 59.

46. Il me reste à souligner que la Fédération de Russie a pris connaissance de cette revendication de l'Ukraine lors du dépôt de son mémoire. Or, à la date critique du dépôt de la requête cette revendication n'existait pas. Aucune trace des points de vue nettement opposés des Parties sur ce point n'existait au moment de l'introduction de l'affaire. Dans ces circonstances, on ne peut conclure à l'existence d'un différend d'ordre juridique opposant les Parties à cet égard.

47. Pour toutes ces raisons, Mesdames et Messieurs de la Cour, la Fédération de Russie prie la Cour de décliner sa compétence pour connaître de la requête de l'Ukraine.

48. Mesdames et Messieurs les juges, ceci conclut mes propos. Je vous remercie infiniment de votre attention et vous prie, Madame la présidente, de bien vouloir appeler M. Alfredo Crosato à la barre. Merci.

The PRESIDENT: I thank Professor Azari. I now invite Mr Alfredo Crosato to take the floor. You have the floor, Sir.

Mr CROSATO:

SECOND PRELIMINARY OBJECTION: THE COURT LACKS JURISDICTION *RATIONE MATERIAE*

1. Madam President, distinguished Members of the Court, it is an honour to appear before you on behalf of the Russian Federation. My task today is to present Russia's second preliminary objection: that the Court lacks jurisdiction *ratione materiae* to entertain Ukraine's claims.

2. Ukraine has come to this Court with only one potential basis of jurisdiction: Article IX of the Genocide Convention. It provides that "[d]isputes . . . relating to the interpretation, application or fulfilment of the Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III", may be submitted to the Court.

3. Ukraine submits that Russia has violated Articles I and IV of the Genocide Convention. But it is evident to all, and simply undeniable, that this case is not about whether Russia has failed to prevent or punish genocide contrary to its obligations under the Convention. What this case is really about is the legality of the special military operation and the recognition of the DPR and LPR as States. The legality of these actions not under the Genocide Convention, but under the UN Charter and customary international law. The entire case before you hinges upon this.

4. This, Madam President, Members of the Court, calls for caution. Accepting Ukraine's position would be tantamount to rewriting the Convention and transforming its subject-matter. It would completely overturn your well-established jurisprudence on the limits of compromissory clauses. It would be a clear circumvention of the fundamental principle of State consent to the jurisdiction of the Court.

5. My presentation will be as follows: I shall first make some general remarks about Ukraine's case. I will show that the claims of Ukraine do not concern the Genocide Convention, but other rules of international law. Ukraine's attempt to shoehorn those claims into the Convention leads to several contradictory assertions and propositions that do not have any basis in the Convention.

6. I shall then set out the test for establishing the Court's jurisdiction *ratione materiae* under a compromissory clause, and recall what the Court has said about the scope of Article IX in previous cases. The Court has already carefully delineated its jurisdiction under this provision. It does not confer upon the Court the powers that Ukraine seeks to rely on.

7. I will then show that Ukraine's key contentions in this case are fundamentally wrong as a matter of international law. First, there is no obligation, under the Convention, to "act within the limits of international law", so as to incorporate an indefinite number of obligations unrelated to the Convention. Second, and to conclude, I will show that there is no right — no right — under the Convention that could have been abused by Russia.

I. General remarks

8. Madam President, let me start with some general remarks on Ukraine's claims.

9. Russia's second preliminary objection concerns conclusions *(c)* and *(d)* of Ukraine's Memorial. Ukraine asks the Court to adjudge and declare that, by using force and recognizing the DPR and LPR, Russia violates Articles I and IV of the Genocide Convention[65].

10. Articles I and IV are well known, but it is important to recall what they say. Article I reads:

> "The 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."

[65] Memorial of Ukraine (MU), para. 178.

11. Article IV provides that "[p]ersons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals".

12. One would expect an applicant under the Genocide Convention to claim that a Contracting Party had failed to prevent genocide or to punish its perpetrators. The applicant may request that those obligations be complied with by, for example, adopting measures to prevent further acts of genocide, prosecuting offenders and making reparation to victims. These are after all the obligations laid down in Articles I and IV of the Convention.

13. Ukraine claims something quite different. It argues that these provisions have been breached through acts that have no apparent connection with the required conduct: the use of force and the recognition of certain entities as States.

14. Articles I and IV do not refer to the use of force or to the recognition of States. The same is true for the preamble and other articles of the Convention, and for the drafting history. Ukraine's conclusions *(c)* and *(d)* are therefore, on any reading, foreign to the Convention — outside the scope of the Convention. The subject-matter of the treaty simply does not deal with the use of force or the recognition of States.

15. Ukraine cannot avoid accepting this simple truth[66], and this should be the end of the story. Yet Ukraine insists on transforming the scope of the Convention, by advancing three propositions, all of which are seriously flawed.

16. First, Articles I and IV contain, in Ukraine's view, an all-embracing obligation to "act within the limits of international law" when preventing or punishing genocide. The effect of this alleged obligation will be to incorporate into the Convention all obligations of States arising from other sources of international law, and to expand beyond measure the Court's jurisdiction under Article IX.

17. Second, Ukraine argues that a State may not abuse Articles I and IV by using force against another State, or by recognizing States within the territory of another State, without sufficient evidence of genocide or a risk of genocide. This claim, based on an abuse of right, presupposes that

[66] Written Observations of Ukraine on the Preliminary Objections of the Russian Federation (WOU), para. 132.

the Genocide Convention confers a right on States to unilaterally use force — a right of humanitarian intervention — as well as a right to recognize States.

18. Third, ignoring the Court's jurisprudence, Ukraine suggests that Article IX is a "unique", "broad" or "wide" compromissory clause.

19. Since Ukraine's obvious goal is to have the Court pass judgment on matters that do not fall within the subject-matter of the Convention, its case is inevitably riddled with inconsistencies and surprising propositions. I will mention just a few.

20. First, there is no doubt that an actual breach of the obligation to prevent or punish genocide is not claimed by Ukraine.

21. In the *Bosnia Genocide* case, the Court clarified that the obligations to prevent and punish arise: (1) if genocide has been committed; or (2) if there is a serious risk that genocide may be committed[67]. The Court also found that "a State can be held responsible for breaching the obligation to prevent genocide only if genocide was actually committed"[68].

22. Ukraine's case is based on two contradictory premises. On the one hand, it states that no genocide has been committed in Donbass, and that there is no risk of genocide[69]. So, for Ukraine, the application of Articles I and IV of the Convention has not been triggered[70]. There being no genocide, Russia clearly cannot be held responsible for failing to prevent or to punish it.

23. On the other hand, as I mentioned, Ukraine asserts that the Convention contains an obligation to "act within the limits of international law" when preventing or punishing genocide, and that Russia has violated this alleged obligation by breaching the UN Charter and customary international law.

24. This logic is clearly not consistent with your case law. It makes no sense to say that Russia has violated an obligation to "act within the limits of international law" when preventing or punishing genocide and, at the same time, that in this circumstance Russia had no obligation to prevent or

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[67] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 431.

[68] *Ibid.*

[69] Application of Ukraine (AU), paras. 2-3, 9, 21, 24, 30 *(a)*; MU, paras. 15, 18, 47-51, 93, 178 *(b)*.

[70] MU, para. 88. See also WOU, paras. 113-114.

punish. This convoluted reasoning confirms that the Convention is being instrumentalized to address a much broader and quite different dispute between the Parties.

25. Madam President, another flaw in Ukraine's case is the lack of a legal basis for the alleged right not to be subject to allegations of genocide, false or otherwise. This is related to Ukraine's most remarkable suggestion that the Convention may confer a right to use force against a State, or to recognize States within the territory of another State, for the purpose of preventing or punishing genocide. That is not only very controversial under customary international law: it has no basis whatsoever in the Convention.

26. In its Memorial, Ukraine suggests that States have an obligation to produce evidence of genocide before taking measures to prevent or punish, or before making an allegation of genocide[71]. It argues that not doing so would "contravene . . . the limits of Articles I and IV"[72], and that it has "[a] right[] not to be subject to a false claim of genocide"[73].

27. At the same time, Ukraine appears to be of the view that when a State does have evidence of genocide, that State may act "to the detriment of another State", or may "harm" that other State. Ukraine does not define what "detriment" or "harm" means exactly. But it seems to refer, for the purpose of this case, to the use of force and the recognition of States.

28. You may now see two excerpts on your screens. In the Memorial, Ukraine states that "Articles I and IV at a minimum require a State to conduct proper diligence . . . before a State takes action to the detriment of another State for the purported purpose of preventing and punishing genocide"[74].

29. The implication here appears to be that if a State does conduct proper diligence, the Convention empowers it to take action "to the detriment" of another State. For example, by unilaterally using force.

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[71] MU, paras. 102, 108.

[72] MU, para. 119.

[73] Request for indication of provisional measures, para. 12.

[74] MU, para. 102.

30. Ukraine also states that: "Articles I and IV do not authorize, but rather prohibit, one Contracting Party harming another Contracting Party under the guise of preventing and punishing a genocide that has been alleged without basis or due diligence"[75].

31. Here, Ukraine leaves a key question open: whether the Convention prohibits "harming" another State when the allegation of genocide is correct or at least based on due diligence.

32. Madam President, the Court no doubt applies the notion of "due diligence", not as Ukraine suggests to back up statements regarding genocide[76], but to establish whether a State has discharged its obligation to prevent genocide, where this obligation has been triggered[77]. Mere allegations of genocide or of a risk of genocide do not constitute a breach of Articles I or IV.

33. The Convention and its drafting history say nothing about a right not to be subject to an allegation of genocide. As noted by Judge Bennouna at the provisional measures stage, the Convention "does not cover, in any of its provisions, . . . allegations of genocide"[78]. Ukraine seems to finally accept this in its written statement[79].

34. But Ukraine's most remarkable suggestion, as I just showed, is that if a State has produced evidence of genocide, it may, under the Convention, "take action to the detriment of another State", or "harm" another State. This is a crucial aspect of the case before you. It lies at the heart of Ukraine's claims, and in particular its reliance on an abuse of rights doctrine.

35. Let us be clear: accepting this proposition would be to say that a right of humanitarian intervention exists under the Convention. The Court is well aware that this notion has already been rejected by most members of the international community[80].

36. For avoidance of doubt, I must recall Russia's position on this matter: the use of force is regulated by the UN Charter and customary international law, not by the Convention. The Genocide

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[75] WOU, para. 111.

[76] WOU, paras. 2, 107, 111.

[77] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I),* p. 221, para. 430.

[78] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022*, declaration of Judge Bennouna, p. 236, para. 5.

[79] WOU, para. 111.

[80] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022*, declaration of Judge Bennouna, p. 237, paras. 7-8.

Convention does not authorize, confer a right or impose an obligation to use force to prevent or punish genocide.

II. The applicable test to establish the Court's jurisdiction *ratione materiae*

37. Madam President, Members of the Court, after these general remarks, I now turn to the test to be applied to establish the Court's jurisdiction *ratione materiae* in this case. That test, in a nutshell, is whether a claim is capable of falling within the provisions of the treaty invoked by the applicant.

38. To answer this question, the Convention must be interpreted to determine its scope and whether it may be breached in the manner alleged by the Applicant. This is not a question of mere plausibility — a standard applicable at the provisional measures stage. The Court has a duty to ascertain that its jurisdiction is properly established before proceeding to the merits.

39. This is well established in your jurisprudence. In the *Oil Platforms* case, the Court stated that "the Court cannot limit itself to noting that one of the Parties maintains that such a dispute exists, and the other denies it. It must ascertain whether the violations of the Treaty of 1955 pleaded by Iran do or do not fall within the provisions of the Treaty"[81].

40. The same test was applied recently in *Certain Iranian Assets* and in *Immunities and Criminal Proceedings*[82].

41. In applying this test, the Court is entitled to interpret the submissions of the applicant and to identify the object of the claim[83].

42. In its written statement, Ukraine urges the Court to deal with the second preliminary objection at the merits stage[84]. They suggest that the Court should accept Ukraine's factual claims "as true"[85].

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[81] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 810, para.16.

[82] *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 23, para. 36; *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 308, para. 46.

[83] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 262, para. 29; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 466, para. 30. See also *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 26, para. 52.

[84] WOU, para. 90.

[85] WOU, paras. 107, 128.

43. But this is beside the point. At this stage, the Court is called upon to interpret the Convention in the light of Ukraine's claims to ascertain its jurisdiction[86]. A preliminary objection may be deferred to the merits if it raises complex questions of fact[87]. Russia's second objection does not raise such questions.

44. All the Court has to do is to interpret Articles I and IV, and determine whether they contain an indefinite number of obligations through an alleged obligation to act within the limits of international law; or a right to use force and recognize States, considering that in the absence of such rights there can be no abuse.

45. I would also note, Madam President, an issue that Ukraine wrongly presents as "factual". It asks the Court to accept *pro tem* its own interpretation of Russia's legal justification for the special military operation and the recognition of the DPR and LPR[88]. This is not a question of fact, but one of law. Russia is here today precisely to explain what its legal position is, as it is of course entitled to do.

Madam President, I pause here if you think it appropriate to have the coffee break now, or I can continue for another five minutes.

The PRESIDENT: You may proceed further, Mr Crosato. Thank you.

Mr CROSATO: Thank you.

III. The Court's interpretation of Article IX of the Genocide Convention

46. I now turn to your previous decisions concerning the scope of Article IX of the Convention. These decisions leave no place for doubt: the Court's jurisdiction, under Article IX, is limited to violations of the Convention itself.

47. Your 2007 Judgment in *Bosnia Genocide* is particularly relevant. The Court said:

> "It has no power to rule on alleged breaches of other obligations under international law, not amounting to genocide . . . That is so even if the alleged breaches

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[86] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, separate opinion of Judge Higgins, pp. 855-856, paras. 29 and 32.

[87] *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), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 586, para. 63.

[88] WOU, para. 107.

> are of obligations under peremptory norms, or of obligations which protect essential humanitarian values, and which may be owed *erga omnes*."[89]

48. This finding was unanimous. Sir Christopher Greenwood, writing as a commentator, explained that "the Court was able to rule only on the issues relating to the Genocide Convention . . . and could not consider other aspects of the broader dispute between the two countries such as the application of the international law on the use of force"[90].

49. The Court reaffirmed this understanding in the *Croatia Genocide* case. It was determined that "Article IX confines the Court to disputes regarding genocide"[91]; that jurisdiction under Article IX is "confined to obligations arising under the Convention itself"[92]; and that the Court can "only rule within the limits imposed by" the Convention[93].

50. We note, Madam President, that Ukraine proposes a novel interpretation of Article IX in its written statement. It suggests that Article IX would give the Court a "broad", "wide" or "comprehensive" jurisdiction[94]. Ukraine puts emphasis, for example, on the word "fulfilment", using a dozen dictionary definitions[95]. They also provide an incomplete account of the drafting history of Article IX, focusing on a single statement at the Sixth Committee[96]. And Ukraine quotes, selectively, the views of one author[97].

51. These arguments are wrong on several grounds, which we shall address in more detail next week. Today I will stress only one: Ukraine completely ignores the interpretation of Article IX that the Court has already adopted.

52. Indeed your jurisprudence is clear. There is no reason to depart from it or to sweep it under the carpet. Ukraine is asking you to do exactly what you said you cannot do under Article IX: to pass

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[89] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 104, para. 147.

[90] C. Greenwood, "Some Challenges of International Litigation", in *Cambridge Journal of International and Comparative Law*, Vol. 1 (1) (2012), p. 16.

[91] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 45, para. 85.

[92] *Ibid.,* p. 47, para. 88.

[93] *Ibid.*, p. 153, para. 523.

[94] WOU, paras. 92, 98, 100.

[95] WOU, para. 94.

[96] WOU, para. 95.

[97] WOU, para. 91.

judgment on, and even order reparation for, alleged violations of rules of international law that do not, cannot, arise under the Convention itself.

IV. There is no obligation to "act within the limits of international law" within the Convention

53. Madam President, let me now address Ukraine's first proposition aimed at transforming the subject-matter and scope of the Convention: that there is an obligation to "act within the limits of international law", allegedly implied in Articles I and IV.

54. Again, we should be clear about what this means. If such an obligation were found to exist, the Convention would incorporate all of international law. The Court would have jurisdiction, under Article IX alone, to rule on any claim, regardless of the source and the content of the rule invoked. This would conflate States' obligations arising from the Genocide Convention and obligations arising from other distinct rules. It may open the door for States to use compromissory clauses to address disputes unrelated to the specific treaties.

55. Ukraine proposes different formulations for this alleged obligation. But none of its formulations is to be found in the text of the Convention.

56. It is not difficult to see that, if this case were to proceed to the merits on this basis, the Convention would cease to be at issue. The case would revolve around whether Russia acted "within the limits of international law"; whether the special military operation and the recognition of the DPR and LPR were lawful not under the Genocide Convention, but under the UN Charter and customary international law. This could not be regarded as a case "relating to the interpretation, application, or fulfilment of the [Genocide] Convention".

57. So, put simply, the violations of Articles I and IV that Ukraine alleges are grounded or predicated on a violation, not of the Convention, but of other rules of international law. Determining that Russia has violated those other rules, which Ukraine admits "originate outside the Convention"[98], is a *sine qua non* for its claim to succeed.

The PRESIDENT: Mr Crosato, may I kindly interrupt you, as it appears that this would be a good time to adjourn for a coffee break of 15 minutes. The sitting is adjourned.

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[98] WOU, para. 132.

The Court adjourned from 11.30 a.m. to 11.50.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite Mr Crosato to complete his presentation. You have the floor, Sir.

Mr CROSATO:

58. Thank you, Madam President. Now, let me address Ukraine's specific arguments in support of what I was saying just before the break.

59. Ukraine relies primarily on the *Bosnia Genocide* case, where the Court clarified the nature of the obligation to prevent genocide.

60. In that case, the Court noted that the obligation to prevent is "one of conduct and not one of result", and that a State does not "incur responsibility simply because the desired result is not achieved"[99]. The Court then indicated that "[v]arious parameters operate when assessing whether a State has duly discharged the obligation concerned", one of which is "the capacity to influence effectively the action of persons likely to commit, or already committing genocide". The Court added that this capacity must be assessed by legal criteria, "since it is clear that every State may only act within the limits permitted by international law"[100].

61. The meaning of this last statement, when read in context, is straightforward: a State cannot be found responsible for failing to prevent genocide if international law imposes on it obligations that may limit its capacity to do so.

62. This is very different from what Ukraine argues in this case. The Court avoided an interpretation of the Convention that would require States, when preventing genocide, to do something that is prohibited by other rules of international law. Ukraine's position is that doing something that is prohibited by other rules of international law could trigger responsibility under the Convention itself. This logic is far removed from the Court's finding in 2007.

63. In the *Bosnia Genocide* case, the Court surely did not intend to conflate obligations arising under the Convention and obligations arising under other rules of international law, nor to expand its

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[99] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 430.

[100] *Ibid*., p. 104, para. 147.

jurisdiction beyond that conferred by Article IX. Again, as the Court has made clear, it "has no power to rule on alleged breaches of other obligations under international law".

64. Ukraine also relies on the Court's Order on provisional measures. The Order stated that acts undertaken to prevent and punish genocide must be in conformity with the spirit and aims of the United Nations[101], and that "it is doubtful that the Convention, in light of its object and purpose, authorizes a Contracting Party's unilateral use of force"[102].

65. Madam President, States must of course respect their obligations under international law, including under the United Nations Charter, also when executing or giving effect to a treaty. This goes without saying, and it is true not only for the Genocide Convention, but for all treaties. Ukraine says in its written statement that "[a] State may not claim to enforce international law by violating international law"[103]. But there is nothing new here.

66. The key point is that States' obligations arise each from its own distinct source. If a State executes a treaty and, in doing so, violates obligations arising under other rules of international law, the responsibility of that State will be triggered with respect to those other rules alone, but not under the treaty in question.

67. Ukraine seeks to get around this by saying that the Convention — the Convention — includes an obligation to "act within the limits of international law". But this is not the case unless that can be established as a matter of treaty interpretation. Otherwise, such an obligation could be read into any treaty. This would have a profound impact on the extent of jurisdiction under compromissory clauses. It would open the door for States to come to the Court or other tribunals invoking a particular treaty with the objective of solving a broader or entirely different dispute.

68. I should stress again that Russia does not find it doubtful whether the Convention authorizes the use of force for the purpose of preventing or punishing genocide. Russia's position, as I recalled, is that the Convention does not confer a right of humanitarian intervention.

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[101] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022*, p. 225, para. 58; MU, para. 95.

[102] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022*, p. 225, para. 59; MU, para. 100.

[103] WOU, para. 130.

69. The fact that a treaty does not authorize certain conduct does not mean that the treaty prohibits that conduct. Treaties have a limited subject-matter. They do not regulate States' relations generally. Treaties are silent on several issues; issues that may be governed by other rules of customary or conventional international law, or general principles of law. It would be wrong to suggest that conduct not "authorized" by a treaty, simply because it is beyond its scope of application, may constitute a breach of the treaty.

70. So, whether the Genocide Convention "authorizes" the use of force is not the relevant question. What the Court must determine is whether the Convention governs the use of force at all: whether it prohibits it, or whether it confers a right to use force and, if so, subject to which conditions. Russia's position, and it appears that Ukraine to some extent agrees[104], is that the Convention does not do any of these things. In the present context, the use of force is regulated by the United Nations Charter and customary international law, exclusively.

71. Ukraine also tries to justify its interpretation of the Convention relying on its preamble, Articles VIII and IX, and the United Nations Charter.

72. The preamble of the Convention makes clear that its object and purpose is to criminalize genocide under international law and to liberate mankind from this scourge. Genocide is contrary to the spirit and aims of the Charter. And of course, international co-operation may be required to achieve the goals of the Convention, something that could be said for all multilateral treaties — they all require co-operation among States. Russia stands by this object and purpose. But not a single word in the preamble is evidence of States' discernible intention to incorporate other rules of international law.

73. Article VIII does not impose specific obligations on the Contracting Parties, as it is clear from the words "may" and "as they consider appropriate". It simply points out some of the ways in which States and competent UN organs may, or may not, seek to prevent and suppress genocide.

74. In *Bosnia Genocide*, the Court noted that "Article VIII . . . may be seen as completing the system by supporting both prevention and suppression . . . at the political level"[105]; and that

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[104] WOU, para. 132.

[105] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 109, para. 159.

Article VIII does not "confer on [the Court] any functions or competence additional to those provided for in its Statute"[106]. This was reaffirmed in *The Gambia* v. *Myanmar* case, where the Court added that Article VIII "does not govern the seisin of the Court"[107].

75. As for Article IX, it is well established that compromissory clauses are "adjectival not substantive in their nature and effect"; and "do not determine whether parties have substantive rights"[108].

76. It follows that Ukraine's reliance on Articles VIII and IX is clearly misplaced. There is nothing in these provisions showing, even remotely, that Articles I and IV incorporate an indefinite number of obligations arising from other rules of international law.

77. Madam President, the Court has already dealt with attempts to expand the material scope of treaties through incorporation. The Court addresses this with caution, requiring clear, unequivocal evidence of States' intention to that effect. It is indeed important to proceed like this; if not, compromissory clauses could be misused to bring claims unrelated to the treaties in question, and to circumvent the principle of State consent to the Court's jurisdiction.

78. A few examples illustrate the Court's approach. In *Oil Platforms*, for example, Iran argued that Article I of the 1955 Treaty of Amity incorporated rules of international law concerning the use of force. The Court rejected this argument noting that

> "the object and purpose of the Treaty of 1955 was not to regulate peaceful and friendly relations between the two States in a general sense. . . Article I cannot be interpreted as incorporating into the Treaty all of the provisions of international law concerning such relations."[109]

79. The Genocide Convention likewise does not regulate relations between States "in a general sense". It is aimed at liberating mankind from genocide and ensuring that this crime is prevented and punished. This is no doubt a very important purpose, but it is also specific in scope.

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[106] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 23, para. 47.

[107] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022*, pp. 510-511, paras. 88-90.

[108] *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Second Phase, Judgment, I.C.J. Reports 1966,* p. 39, paras. 64-65. 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 (I)*, p. 113, para. 166.

[109] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 814, para. 28.

80. In *Immunities and Criminal Proceedings,* Equatorial Guinea claimed a violation of sovereign immunities by France relying on Article 4 (1) of the Palermo Convention, which provides that States "shall carry out their obligations . . . in a manner consistent with" the principles of sovereign equality and non-intervention. In the applicant's view, this provision incorporated rules on immunity, which States had to respect when fulfilling or executing their obligations under that Convention.

81. Even in the face of this express language, the Court did not agree with Equatorial Guinea's argument. It said that

> "Article 4 (1) does not impose, through its reference to sovereign equality, an obligation on States parties to act in a manner consistent with the many rules of international law which protect sovereignty in general, as well as all the qualifications to those rules.
>
> . . . . . .
>
> Article 4 does not incorporate the customary international rules relating to immunities of States and State officials"[110].

82. The similarities between the claims by Equatorial Guinea and Ukraine are obvious. In the present case, Ukraine argues that the Genocide Convention obliges States to act in a manner consistent with international law when executing their obligations. Equatorial Guinea also argued that States had to carry out their obligations under the Palermo Convention in a manner consistent with the principles of sovereign equality and non-intervention.

83. In both cases, the goal was the same: incorporating rules into a treaty and expanding the Court's jurisdiction *ratione materiae*. Equatorial Guinea sought to incorporate into the Palermo Convention rules relating to immunities. Ukraine, somewhat more ambitiously, seeks to incorporate all of international law into the Genocide Convention.

84. But there is a crucial difference. In *Immunities and Criminal Proceedings*, there was a textual basis in the Palermo Convention supporting an incorporation of the kind Ukraine seeks in this case: Article 4 (1). But despite express language and the close connection between sovereign equality and the rules on immunity, the Court did not consider that these rules were incorporated. There was no clear reference to them in the Convention or the *travaux*. The Court rather agreed with France that

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[110] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (II)*, p. 321, para. 93 and p. 323, para. 102.

the Convention was "not intended to organize in a general way the legal relations between States in light of the principle of sovereign equality . . . nor to create a system of immunities"[111].

85. There is no provision like Article 4 (1) in the Genocide Convention. There is also no indication in the text or the *travaux* that the Convention itself contains an obligation to act within the limits of international law when executing the Convention. This alleged obligation, therefore, has to be conjured up from thin air. This being so, Ukraine's position cannot succeed any more than Equatorial Guinea's position did.

86. The Court dealt with a similar issue in *Certain Iranian Assets*, where Iran argued that the 1955 Treaty of Amity incorporated customary rules on State immunity. The Court interpreted, in detail, the articles invoked by Iran and concluded that none of them were "capable of bringing within the jurisdiction of the Court" questions of immunity[112].

87. Iran's position was based on a reading of the Treaty of Amity that was at least plausible, taking into account several textual elements that to some extent supported a potential incorporation[113]. Yet the Court dismissed it.

88. In the present case, Ukraine's position finds no support — none — in the text of the Convention, nor in its object and purpose, nor in its drafting history. There is no "link" between the Convention and other rules of international law, no renvoi, that could lead to an incorporation[114].

89. Madam President, Members of the Court, the *Legality of Use of Force* cases are also relevant in this context.

90. At the outset, I should recall that the bombing of Yugoslavia by NATO members States was carried out as an intervention, alleging human rights violations and genocide[115]. Unlike Russia, those States did not justify their use of force by reference to the United Nations Charter.

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[111] *Ibid.*, p. 320, para. 88.

[112] *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, pp. 34-35, para. 80.

[113] *Ibid.*, pp. 25-34, paras. 48-79.

[114] *Ibid.*, p. 32, para. 70 .

[115] PORF, paras. 208-210.

91. The Court ultimately concluded that it did not have jurisdiction to hear the applicant's claims[116]. In its Order on provisional measures, the Court decided that the use of force did not necessarily amount to genocide, at least absent the required special intent[117]. The Court did not see the allegations of genocide as creating a jurisdictional link between the Convention and the rules on the use of force.

92. The respondent States indeed made it clear that the issues relating to the use of force and the Convention are distinct and should not be confused.

93. Canada, for instance, stated that "the dispute between Canada and the Applicant has nothing to do with breaches of the *Genocide Convention* . . . The Convention has been invoked as an artificial basis for bringing proceedings to which the compulsory jurisdiction of the Court does not extend"[118].

94. For France, "[t]he Court is . . . without jurisdiction to rule on the issues concerning alleged violations of the United Nations Charter . . . those issues do not fall within the provisions of Article IX of the . . . Convention"[119].

95. Germany considered that by presenting "a long list [of] all the breaches of rules of international law . . . [Yugoslavia] openly admits that . . . the bulk of the dispute lies outside the confines of the Genocide Convention"[120].

96. The United Kingdom was also clear: "Jurisdiction under Article IX would not extend to disputes regarding alleged violation of other rules of international law, such as the provisions of the United Nations Charter relating to the use of force"[121].

97. Madam President, Members of the Court, we could go on citing similar statements, but I think the point is clear. For the respondents in the *Legality of the Use of Force* cases, the Convention did not regulate matters relating to the use of force. It does not cover claims on alleged violations of

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[116] *Legality of Use of Force (Serbia and Montenegro* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2004 (II)*, p. 575, and related judgments.

[117] *Legality of Use of Force (Yugoslavia* v. *France), Provisional Measures, Order of 2 June 1999, 1.C.J. Reports 1999 (I)*, p. 372, para. 27.

[118] *Legality of Use of Force (Serbia and Montenegro* v. *Canada)*, Canada's Preliminary Objections, para. 171.

[119] *Legality of Use of Force (Serbia and Montenegro* v. *France)*, France's Preliminary Objections, para. 14.

[120] *Legality of Use of Force (Serbia and Montenegro* v. *Germany)*, Germany's Preliminary Objections, para. 3.28.

[121] *Legality of Use of Force (Serbia and Montenegro* v. *United Kingdom)*, United Kingdom's Preliminary Objections, para. 5.02.

the UN Charter. The Court did not disagree, and indeed maintained the position, as we have shown, that its jurisdiction under Article IX is limited to violations of the Convention itself.

98. Everything we have explained so far can lead to only one conclusion: the Convention, and in particular Articles I and IV, do not incorporate other rules of international law through an obligation to "act within the limits of international law". All claims by Ukraine based on this incorrect premise must be rejected for lack of jurisdiction *ratione materiae*.

V. The Convention does not confer a right to unilaterally use force or to recognize States within the territory of another State

99. Madam President, I now move to the last part of my presentation: Ukraine's reliance on an abuse of rights.

100. As I mentioned, Ukraine argues that Articles I and IV of the Convention oblige States not to "misapply", "misuse" or "abuse" the Convention[122]. This claim must also be dismissed to the extent that it requires the Court to exercise jurisdiction over alleged violations of the UN Charter or customary international law. The Court's jurisdiction under Article IX is, again, limited to breaches of the Convention itself.

101. But Ukraine's claim on abuse of rights raises an additional issue concerning the Court's jurisdiction *ratione materiae* that I will address separately.

102. For a claim of abuse of rights to be plausible, one must establish, at a minimum, the existence of the right that was allegedly abused[123]. The fundamental flaw in Ukraine's position is that it cannot identify any right under the Convention that could have been abused by Russia.

103. Ukraine's arguments in this regard are notable for their lack of clarity. At times, it states that Russia has abused Articles I and IV of the Convention[124]. It also claims that Russia has somehow abused the Convention as a whole[125]. And Ukraine often suggests that Russia has abused either rights or obligations, as if these concepts were indistinguishable for purposes of applying an abuse of rights doctrine.

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[122] WOU, paras. 26, 93, 126, 164, 195.

[123] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 337, para. 151.

[124] WOU, paras. 2, 88, 105, 117; MU, paras. 8, 73, 90.

[125] WOU, paras. 3, 10, 26, 77, 93; MU, paras. 3, 88.

104. In its written statement, Ukraine tries to clarify this by saying that the obligations under Articles I and IV of the Convention are also rights[126]. In other words, States not only have an obligation to prevent and punish genocide; they have a right to do so. This proposition is extremely doubtful. It is well known that when a treaty imposes an obligation on States, the only correlative right for other States is to see that obligation fulfilled[127].

105. But even if Ukraine were correct (*quod non*), this would not solve the core of the problem: what right or obligation under the Convention is at stake in this case?

106. Ukraine refers to the "right to invoke the responsibility of another State"[128]. But if that right is contained in the Convention itself, it can only be in Article IX, which Russia has not invoked. It is Ukraine who instituted the present proceedings, not Russia.

107. And in any event, if a State wrongly invokes the responsibility of another State, that is just that: a mistaken invocation of responsibility. The claim of the invoking State may be rejected by the Court. But this cannot amount to an abuse of rights, for otherwise every applicant whose claims are dismissed could be accused of abusive behaviour.

108. This leaves Ukraine only one potential right: a right under the Convention to use force against another State, and to recognize States within the territory of another State, to prevent or punish genocide. As I noted earlier, this is Ukraine's most extraordinary suggestion in this case, even if it avoids stating it in clear terms.

109. And there are indeed serious contradictions in Ukraine's position. On the one hand, Ukraine's written pleadings suggest that such rights — as I just listed — may exist under the Convention. Ukraine's view appears to be that when a State has sufficient evidence of genocide, that State may harm or take action to the detriment of another State.

110. On the other hand, Ukraine itself denies the existence of such rights, and rightly so. In its Written Statement, Ukraine said that it has never argued that the Convention contains a right to use force. The position now seems to be the one on your screens:

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[126] WOU, paras. 119, 126.

[127] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022*, pp. 515-516, paras. 106-108; ILC Articles on State Responsibility for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission, 2001*, Vol. II, Part Two, p. 35, para. 35.

[128] MU, para. 78.

> "By improperly using force and recognizing the DPR and LPR for the stated purpose of bringing a violation of the Genocide Convention to an end, Russia has abused its undertaking to prevent and punish genocide, and its right to take lawful action to end genocide."[129]

111. This is not a model of clarity. Ukraine refers, for example, to "improperly" using force. Does "improperly" mean unlawfully, or something else? Ukraine then speaks of abusing an "undertaking" and a "right" at the same time, confusing these concepts. And finally, Ukraine refers to a "right to take lawful action to end genocide". But it never explains what that lawful action might be.

112. Ukraine's silence is astounding, given that its claim of abuse depends precisely on whether the Convention confers a right, or imposes an obligation, to use force and recognize States to prevent or punish genocide. If the answer is no, as it clearly is, then there is no room for an abuse of rights argument. There would be no right to be abused.

113. So, in short, the position is as follows: Ukraine's claim of abuse of rights depends, at a minimum, on the existence of a right, under the Convention, to use force and to recognize States to prevent and punish genocide. Ukraine has not established the existence of such rights. It only obscurely suggests that they may exist and ultimately ends up denying their existence.

114. Russia also considers that such rights, or obligations, do not exist under the Convention.

115. This leaves us with the following question: if the Applicant, the Respondent and the Court all reject the existence of a right under the Convention to use force or recognize States, what is left for Ukraine's claims?

116. The answer is "nothing". An abuse of rights cannot apply to imagined rights that one party may ascribe to the other, while in fact both parties and the Court deny them. One cannot abuse something that does not exist. Ukraine's claim, therefore, is simply moot. It cannot be based on any right, or obligation, contained in the Convention.

117. This should lead you to dismiss Ukraine's claim for lack of jurisdiction *ratione materiae*. The abuse of a right that does not exist under the Convention cannot be the subject of proceedings under the compromissory clause of the Convention. There is no need to defer this matter to the merits because there is no real disagreement between the Parties. And the Court should avoid sending a

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[129] WOU, para. 127.

message that the Convention may contain a right to unilaterally use force or to recognize States within the territory of another State. The Convention does not contain such rights.

118. Madam President, Members of the Court, this concludes my presentation. I thank you for your kind attention and kindly request you, Madam President, to invite Professor Sienho Yee to the podium to present Russia's third and fourth preliminary objections.

The PRESIDENT: I thank Mr Crosato. I now invite Professor Sienho Yee to address the Court. You have the floor, Professor.

Mr YEE:

THIRD PRELIMINARY OBJECTION: UKRAINE'S NEW CLAIMS ADVANCED IN THE MEMORIAL ARE INADMISSIBLE

1. Madam President, distinguished judges of the Court, it is an honour for me to appear before you again on behalf of Russia. I will first present Russia's third preliminary objection regarding the inadmissibility of the new claims advanced in Ukraine's Memorial.

2. The Statute and the Rules of Court require the applicant to carefully formulate its claims before bringing a case. Article 40 of the Statute provides that the subject of the dispute must be indicated in the application instituting proceedings. Article 38 of the Rules further clarifies this requirement and envisages that the application shall specify "the *precise* nature of the claim".

3. The Court has emphasized that these provisions are "essential from the point of view of legal security and the good administration of justice"[130]. Thus, although a State's right to supplement and amend its claims after filing the application is not precluded, there is a high threshold for the exercise of that right.

4. Ukraine quoted[131] from a commentator to the effect that the exposition of the subject of the dispute and the nature of the claim in the application is expected to be supplemented and elaborated in further proceedings, insinuating much more than what the commentator said. That commentator has the honour to stand before you right now and he cannot resist reporting that Ukraine's quotation

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[130] *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 267, para. 69.

[131] WOU, para. 144.

is incomplete. The commentator also stressed the Court's case law on limits and restrictions[132]. Of course, supplementation and elaboration can be done not with limitless freedom, but only with a "latitude" that "must be restricted to some extent"[133].

5. That restriction is embodied in the criteria for admissibility of new claims established in *Nauru*[134], subsequently followed in several cases in this Court and *beyond*. As originally articulated and applied, and recapped in subsequent cases, *Diallo* in particular, the criteria can be summarized as follows:

— First, the application is the basis on which it is to be determined whether or not a claim is new. Ukraine's attempt[135] to put weight on the very late presentation of a new claim in an ITLOS case applying the *Nauru* criteria, as if presentation in the Memorial would be permissible, is without merit. As the Court emphasized in *Diallo*, "[i]n this respect, it is the Application which is relevant"[136].

— Second, "a new claim is not inadmissible *ipso facto*; the decisive consideration is the nature of the connection between that claim and the one formulated in the Application"[137].

— Third, regarding the nature of such connection, to find that a new claim has been included, as a matter of substance, in the original claim, "it is not sufficient that there should be links between them of a general nature"[138].

— Fourth, to be admissible, a new or "additional claim must have been implicit in the application" or must "arise directly out of the question which is the subject-matter of the Application"[139].

6. In assessing whether the *Nauru* criteria have been met, the Court has held that a new claim is inadmissible when, in order to address it on the merits, the Court has to examine a number of issues

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[132] Yee, *Article 40* in A. Zimmermann, C. Tams et al. (eds.), The Statute of the International Court of Justice: A Commentary (3rd ed., OUP, 2019), p. 1078, para. 101.

[133] *Ibid*., p. 1080, para. 104.

[134] *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, pp. 265-266, paras. 64-68.

[135] WOU, para. 152.

[136] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 656, para. 39.

[137] *Ibid*., p. 657, para. 41.

[138] *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 266, para. 67; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 657, para. 41.

[139] *Ibid.*

which are extraneous to the original claim, and that the claim is new and inadmissible when it is distinct from the original claim.

7. In the present case, Ukraine has significantly altered the vast majority of its submissions and introduced new ones. Above all, this showcases that no dispute under the Genocide Convention existed between the Parties at the time Ukraine filed its Application.

8. Now, let us look at Ukraine's original claims as presented in its Application. Initially Ukraine asked the Court to find that it did not violate the Genocide Convention, that Russia cannot take actions in or against Ukraine to prevent or punish an alleged genocide in Donetsk and Lugansk, that Russia's recognition of the DPR and LPR "has no basis in the Genocide Convention" and that the "special military operation" "has no basis in the Genocide Convention"[140]. Each of these requests is conditioned by a "false claim of genocide" element.

9. Now, I come to the new claims presented by Ukraine in its Memorial, and I will show that each of them fits the notion of inadmissible "new claims" as defined by the Court's Rules and jurisprudence.

10. Let us start with paragraph 178 *(b)* of Ukraine's Memorial. Here Ukraine asks the Court to "[a]djudge and declare that there is no credible evidence that Ukraine is responsible for committing genocide". But, initially Ukraine asked the Court to find that no acts of genocide within the meaning of Article III of the Convention have been committed in Donetsk and Lugansk. Ukraine's current request, as stated in the Memorial, is considerably different.

11. Ukraine tellingly dropped its initial claim that there are *no* genocidal acts in Donetsk and Lugansk. Its submission concedes that there *may have been* such acts but adds a nuance that Ukraine as a sovereign State is not responsible for them. These are two very different, distinct claims. It is one thing to allege that there has been no genocide in the Donbass and quite a different thing to disclaim attribution of such acts to Ukraine. Thus, Ukraine's new claim in the Memorial requires the Court to examine issues that are extraneous to Ukraine's original claim and is neither implicit in its Application nor does it arise directly out of the question which is the subject-matter of that Application.

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[140] AU, para. 30.

12. I now come to paragraph 178 *(c)* and *(d)* of the Memorial. Originally, Ukraine asked the Court to confirm that Russia's special military operation and recognition of the DPR and LPR "had no basis" in the Genocide Convention. In the Memorial, Ukraine changed its claim and seeks to establish Russia's responsibility for allegedly violating Articles I and IV of the Convention.

13. There is a glaring difference between actions that "have no basis" in a treaty and actions that "violate" that treaty. In *Equatorial Guinea* v. *France*, the Court used the phrase "find[a] basis in the . . . Convention" as a synonym of "exist under the . . . Convention"[141]. If an action "has a legal basis" in a treaty, then this action is allowed by the treaty or at least is regulated by it. This is clearly not the same as "violating" the treaty. Action that is not allowed or regulated by a source of law does not necessarily violate it. To illustrate, a State's right to explore the Moon has no basis in the UNCLOS, but it would be wrong to say that the UNCLOS is violated every time when a State sends something to the Moon. Thus, a "violation of the Convention" claim cannot be said to have been implicit in a "no basis in the Convention" claim, or to have arisen directly out of it.

14. Ukraine's inadmissible alteration of claims is further corroborated by the changes in the relief it seeks in paragraph 179 *(a)-(f)* of the Memorial. As mentioned earlier, Ukraine's requests in the Application concerned only the actions that Russia could take "on the basis of its false claim of genocide"[142]. Its requests in paragraph 179 of the Memorial, however, do not even contain the term "genocide" but continuously feature the "use of force" and the recognition of the DPR and LPR as the objects of Ukraine's claim. This change of claims clearly reflects Ukraine's true intention — to make the Court consider a claim relating to everything but genocide. The relief sought by Ukraine, as well as its claims, therefore are completely extraneous to the Genocide Convention and are therefore neither implicit in Ukraine's Application, nor could they arise directly from its subject-matter. These new claims have completely transformed the case from its original one about the Convention into a new one about the use of force.

15. Finally, Article IV of the Convention is not mentioned at all in the Application, but Ukraine sprinkles Article IV-based claims in different places in the Memorial. Such claims are completely

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[141] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Judgment, I.C.J. Reports 2020*, p. 323, para. 72.

[142] AU, para. 30.

new and are inadmissible. There is no good reason for the Court not to follow the ITLOS decision in holding an analogous new claim inadmissible in *M/V Louisa*[143], which decision is in fact a product of that Tribunal following this Court's *Nauru* precedent. It is important for a court of justice to hold such new claims inadmissible, or else the Court would give the unfortunate misimpression that it is just another hall of unwieldy discussion, and further, in the context of this very treaty, that as long as the word "genocide" is mentioned in the Application, all claims tangentially about the Convention can be added later on in the proceedings, leading to great abuse of it.

16. In any event, the *Nauru* criteria cannot be met here. First of all, the contradiction between the original claim, i.e. that no acts within the meaning of Article III were committed in relevant areas[144], and an Article IV-based claim, which states that "[p]ersons committing genocide or any of the other acts enumerated in article III shall be punished", cannot escape our eyes. An Article IV claim which is based on a presence of Article III acts cannot be implicit in the original claim for a finding of absence of Article III acts, nor can it arise directly out of the question which is the subject-matter of that Application. The clear and specific terms of Article IV are not susceptible to creative interpretation without doctoring it. Ukraine tries to cure the problem by asserting that: "Ukraine's Article IV claim, however, is related to its claim under Article I and arises from the same subject-matter"[145]. This in fact is saying that the link is of a general nature. Such a link, even if correct, is insufficient to rescue its new claims. In the end, Ukraine resorts to a conclusory statement that "the Memorial's invocation of Article IV in conjunction with Article I arises directly from the subject-matter of the Application"[146]. The nature of Article IV and of the original claim is such that adding Article I or any other articles would not remove the contradiction between Article IV claims and the original claim. Nor can it establish a link between them that would meet the *Nauru* criteria. Furthermore, Ukraine also mentioned that in the provisional measures Order in this case, the Court understood Article IV was implicated[147]. This is incorrect. First, the Court did not state a position but

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[143] *The M/V "Louisa" Case (Saint Vincent and the Grenadines* v. *Kingdom of Spain)*, ITLOS Case No. 18, Judgment, 28 May 2013, pp. 44-46, paras. 142-151.

[144] AU, para. 30.

[145] WOU, para. 152.

[146] *Ibid*.

[147] *Ibid.*, para. 147, referring to paras. 52-53 of the Order on provisional measures, 16 Mar. 2022.

merely related what Ukraine argued. I checked the paragraphs. Furthermore, since Article IV was not mentioned at all in the Application, the Court's mention has no impact, definitely none on the objecting party, as *Diallo* shows[148].

17. Ukraine attempts to rescue its new claims by describing them as "fall[ing] within", "relat[ing] to" or "related to" the subject-matter of the dispute or its Application, in the relevant section heading of the written statement, paragraph 146 and paragraph 152, respectively. This shows that Ukraine itself can only muster links of a general nature between its new claims and the original claim, which *Nauru*, you know, tells us are insufficient for such new claims to be admissible. This shows that the *Nauru* criteria are not met here.

18. Ukraine also occasionally describes Russia's arguments as "mere semantics without substance"[149]. I believe the arguments I have highlighted have plenty of substance in them.

19. Ukraine further tries to portray the transformation of its claims as mere "add[ing] specificity"[150] to the submissions it made in the Application. This characterization is, to say the very least, very far from reality.

(a) This cannot be mere "adding specificity" to the claim, when your submissions change not only in form, but also in substance. The submissions in the Application refer only to Article III of the Genocide Convention, without mentioning Article I or Article IV, and the submissions in the Memorial do not mention Article III at all but instead refer to two completely different articles — Articles I and IV.

(b) This cannot be mere "adding specificity" to the claim when each of the submissions in the Application referred to a "false claim of genocide" and, in contrast, the Memorial makes no mention of a "false claim of genocide" and instead half of Ukraine's submissions refer to the term "use of force", or issues of customary international law, having nothing to do with the Convention.

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[148] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 655, para. 34.

[149] WOU, paras. 147, 150.

[150] *Ibid.*, para. 150.

(c) And this is clearly not mere "adding specificity" to the claim when the submissions in the Memorial are at odds with what Ukraine claimed in the Application about the starting-point of its case theory — whether there were any genocidal acts in the DPR and LPR in the first place.

20. Madam President, Members of the Court, what Ukraine presents as clarification of its initial case is in fact a completely different, new claim, implying its own factual background, different subject of liability and distinct legal basis. Ukraine's submissions presented in the Memorial are neither implicit in its Application, nor arise directly out of the question which is the subject-matter of that Application.

21. Therefore, Russia asks the Court to declare inadmissible Ukraine's new claims presented in paragraph 178 *(b)-(d)* and paragraph 179 *(a)-(f)* of the Memorial.

FOURTH PRELIMINARY OBJECTION: THE COURT'S POTENTIAL JUDGMENT UPHOLDING UKRAINE'S CLAIMS WOULD BE DEVOID OF PRACTICAL EFFECT (*EFFET UTILE*)

22. Madam President, distinguished judges of the Court, I now come to Russia's fourth preliminary objection, and I will demonstrate why a judgment that this Court could render on Ukraine's claims would be devoid of any practical effect.

23. This Court has been established as a court of justice to deliver justice. To deliver justice, the Court must be also the guardian of its own judicial integrity. As the Court teaches in the *Northern Cameroons* case, the Court should only pronounce judgments that have practical effect, judgments that "can affect existing rights or obligations of the parties, thus removing uncertainty from their legal relations"[151], or, put another way, judgments that would be "capable of effective application"[152] or "susceptible of . . . compliance or execution"[153].

24. In our case, the critical question is: can the Court render a judgment under the Genocide Convention that would "affect existing rights or obligations of the parties, thus removing uncertainty from their legal relations"[154] surrounding the special military operation or Russia's recognition of the

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[151] *Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment*, *I.C.J. Reports 1963*, p. 34.

[152] *Ibid.*, p. 33.

[153] *Ibid.*, p. 37.

[154] *Ibid.*, p. 34.

DPR and LPR, or would be "capable of effective application"[155] or "susceptible of . . . compliance or execution"[156]?

25. The answer is a resounding "no".

26. First, the rights and obligations of the Parties surrounding the special military operation or Russia's recognition of the DPR and LPR arise under the right of self-defence under Article 51 of the UN Charter and relevant customary international law, over which the Court has no jurisdiction; any potential judgment of the Court in this case instituted under the Genocide Convention cannot possibly or properly address the right of self-defence under Article 51 of the UN Charter and relevant customary international law, and therefore cannot affect the rights and obligations, or remove the uncertainty in legal relations arising under these bodies of law.

27. Secondly, any potential judgment that the Court might render under the Genocide Convention in this case would not be "capable of effective application" or "susceptible of . . . compliance or execution" under Article 51 of the UN Charter and relevant customary international law. This is so because the Genocide Convention, on the one hand, and Article 51 of the UN Charter and relevant customary international law, on the other, are distinct bodies of law and a decision made under one does not prejudge the lawfulness of the same act under the other[157].

28. More importantly, a decision under the Convention cannot override Russia's inherent right of self-defence under Article 51 of the UN Charter and relevant customary international law, which no doubt is *jus cogens*. As has been noted at an earlier stage of this very case:

> "The right of self-defence recognized in Article 51 is inherent in every State and cannot be overridden by any pronouncement the Court may make as to the consistency of Russia's military operation with the Genocide Convention."[158]

29. As a result, whatever decision that the Court may render under the Genocide Convention over Ukraine's claims may not have any practical effect on the realities on the ground which have arisen under Article 51 of the UN Charter and customary international law.

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[155] *Ibid.*, p. 33.

[156] *Ibid.*, p. 37.

[157] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 138, para. 474.

[158] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022*, *I.C.J. Reports 2022*, separate opinion of Judge Robinson, p. 253, para. 32.

30. In addition to *Northern Cameroons*, the Court has also emphasized the importance of ensuring that a judgment be "capable of effective application" or "susceptible of compliance or execution", and not "wholly an academic exercise"[159]. Ukraine prefers not to see this emphasis.

31. Ukraine pinned a "Genocide Convention" label to the happenings on the ground, and continues to cling to such a label, for jurisdictional purposes, but its claims betray their true nature. Ukraine's Memorial demands that the Court order Russia to terminate use of force, etc. — all shown on the screen for you, which I need not read[160].

32. Clearly, these are claims arising under Article 51 of the UN Charter and relevant customary international law.

33. Furthermore, as Russia has explained many times, and in many fora, which Russia reiterates here, Russia never claimed such rights and never used the Genocide Convention as the basis for its actions; they are based on the right of self-determination and its inherent right to self-defence[161], also enshrined in Articles 2 and 51 of the UN Charter, and on corresponding customary international law[162].

34. In light of all this, any judgment that the Court may render under the Genocide Convention would not "affect existing rights and obligations of the parties, thus removing uncertainty from their legal relations" surrounding the special military operation or Russia's recognition of the DPR or LPR, or be "capable of effective application" or "susceptible of . . . compliance or execution".

35. Ukraine attempts to distinguish *Northern Cameroons* on a number of grounds. That attempt fails. First, Ukraine quotes the Court's statement that a judgment "must have some practical consequences in the sense that it can affect existing legal rights and obligations of the parties, thus removing uncertainty from their legal relations"[163]. As already shown above, Russia's legal rights stem from the UN Charter and customary international law and are thus not capable of being affected

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[159] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 96-97, para. 181. See also *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece), Judgment, I.C.J. Reports 2011 (II)*, dissenting opinion of Judge Xue, p. 718.

[160] MU, para. 179.

[161] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 102-103, para. 193.

[162] PORF, paras. 44, 46-49.

[163] *Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment*, *I.C.J. Reports 1963*, p. 34.

by a decision under the Genocide Convention. Furthermore, there is no uncertainty between Russia and Ukraine on the question of whether the Genocide Convention provides a basis for armed intervention — both Parties agree that it does not. Ukraine also says that "a judgment would . . . establish that Russia has an obligation to perform its obligations under the Convention in good faith"[164]. That is also uncontested by Russia, thus the Court's decision would add nothing of value.

36. Secondly, Ukraine attempts to make a great deal out of aspects of the facts in the *Northern Cameroons* case, such as the lapse of the treaty at issue. In fact, the Court did see some potential in Cameroon's litigation manoeuvre, but noted that Cameroon recognized that the Court could not invalidate the plebiscite, which was a key event there, and asked the Court to address a question of no relevance, which led the Court to realize that "[a]s a result, the Court is relegated to an issue remote from reality"[165]. Furthermore, agreeing that the use of a judgment, if rendered, in that case would lie on the political plane, the Court responded: "it is not the function of a court merely to provide a basis for political action if no question of actual legal rights is involved"[166]. The Court then declined the invitation to play there. Here too in this case, by asking the Court to rule on the interpretation and application of the Genocide Convention, Ukraine relegates the Court to an issue "remote from reality", the reality surrounding the special military operation, so as to provide a basis for Ukraine's political action. Madam President, distinguished judges of the Court, I would ask that, to this invitation from Ukraine, you say "thanks but no thanks".

37. Ukraine's attempt to distinguished *Nuclear Tests* also fails. Ukraine noted that certain type of nuclear tests was stopped in those cases, but that the special military operation is ongoing now. Again, the special military operation is not ongoing along the legal line as Ukraine claims, i.e. under the Genocide Convention. Whatever facts prevailed in *Nuclear Tests*, the key rule is that at the time of adjudication, there must be a live dispute between the parties for the Court to proceed, or, as the Court said: "The dispute brought before it must therefore continue to exist at the time when the Court

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[164] WOU, para. 155.

[165] *Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment*, *I.C.J. Reports 1963*, p. 33.

[166] *Ibid.*, p. 37.

makes its decision."[167] This has been confirmed in the recent Judgment in *Chile* v. *Bolivia*[168]. Here, there had never been a dispute between the Parties under the Genocide Convention to begin with, as Russia never claimed under the Convention what Ukraine puts in Russia's mouth, which was made clear in Russia's letter to the Security Council before the filing of the Application[169] — before the filing of the Application — and affirmed in Russia's letter to the Court dated 7 March 2022[170]. Quite a few other statements confirmed the same point[171].

38. Ukraine also suggests that "reparation for the harm suffered due to Russia's non-compliance"[172] would represent practical effect. However, such reparation would be impossible if the alleged harm was due to Russia's exercising its right to self-defence, over which the Court has no jurisdiction, and any such right of Ukraine would be overridden by Russia's right of self-defence.

39. Finally, Ukraine attempts to recast Russia's no practical effect objection from an objection on admissibility to a defence on the merits, but this is meritless. Ukraine argues: "If Russia wishes to deny that the Convention played any role in its actions, . . . then Russia is free to present that alternative factual narrative as a defense on the merits"[173]. But Russia has demonstrated in its Preliminary Objections, and in the presentations today, very clearly that the Genocide Convention plays no role in its military operation, *clearly and manifestly*. That operation is conducted under the right of self-defence and this objection of the Russian Federation should be decided at this stage.

40. In sum, any potential judgment upholding Ukraine's claims would be devoid of practical effect and, as a result, these claims are inadmissible. Madam President, I have come to the end of my

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[167] *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 476, para. 58.

[168] *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia)*, *Judgment of 1 December 2022*, p. 21, para. 41.

[169] Letter from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, 24 February 2022, available at https://digitallibrary.un.org/record/3959647?ln=en (tab 5.3).

[170] Document (with annexes) setting out the Russian Federation's position regarding the lack of jurisdiction of the Court in the case, available at https://www.icj-cij.org/sites/default/files/case-related/182/182-20220307-OTH-01-00-EN.pdf.

[171] Address by the President of the Russian Federation, 24 February 2022, available at: http://en.kremlin.ru/events%20/president/news/67843 (PORF, Ann. 21) (tab 5.1); Speech of the Permanent Representative of the Russian Federation to the UN Security Council, 8974th meeting, 23 February 2023, p. 12, available at https://digitallibrary.un.org/record/3959147 (tab 5.2).

[172] WOU, para. 158.

[173] *Ibid*., para. 157.

presentation. I would like to invite you to give the floor to Mr Udovichenko to continue the presentation.

The PRESIDENT: I thank Professor Yee for his statement. I now invite Mr Kirill Udovichenko to take the floor. You have the floor, Sir.

Mr UDOVICHENKO:

FIFTH PRELIMINARY OBJECTION: UKRAINE'S REVERSE COMPLIANCE REQUEST TO CERTIFY THAT UKRAINE DID NOT BREACH THE CONVENTION IS INADMISSIBLE

1. Madam President, distinguished Members of the Court, it is an honour for me to appear before you today on behalf of the Russian Federation. I will present Russia's fifth and sixth preliminary objections. And I begin by demonstrating that Ukraine cannot present, at least not in this Court, a reverse request that there is no evidence of genocide.

2. In its Application, Ukraine sought a declaration that no acts of genocide have been committed in Lugansk and Donetsk[174]. In the Memorial, Ukraine changes its claim and requests the Court to declare that there is no credible evidence that Ukraine is responsible for committing genocide[175].

3. Russia has already explained why this change is inadmissible. Nevertheless, both the original claims and the new claims are formulated to seek a negative declaration. Thus, none of them can be accepted by the Court for this reason alone.

4. The Court has before it an unusual situation where a potential wrongdoing State attempts to pre-empt the orderly process and rushes to the Court to get a judgment that there is no breach of its obligations. To request such a *reverse compliance* declaration is essentially to force the respondent State to litigate a legal claim that it has not made yet.

5. Such reversed requests are a specialty of the WTO law. But their implementation suggests specific provisions that were carefully negotiated in the WTO Dispute Settlement Understanding[176].

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[174] AU, para. 30 *(a)*.

[175] MU, para. 178 *(b)*.

[176] Agreement Establishing the World Trade Organization, Ann. 2, Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 21 (5), available at: https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm (tab 6.1).

Significantly, they allow a panel to assess the legality of measures that a party took to comply with recommendations issued in a dispute that had been already adjudicated.

6. Such reversed requests are not expressly permitted or even known in international dispute settlement more broadly. And for a good reason. A *reverse compliance* determination would pre-empt the right of the State to invoke responsibility of another State if and when it considers appropriate to do so. States that have not breached any obligations might become respondents and would have judgments issued against them.

7. Ukraine attempts to find a basis for its reversed claim in Article IX of the Genocide Convention, which states that a dispute can be referred to this Court at the request of any of the parties thereto[177]. But, according to the *travaux préparatoires*, the drafters of the Convention did not attach any specific meaning to this phrase and considered this addition as merely editorial in nature[178]. If we read this phrase properly, its meaning is very simple: should two Contracting Parties have diverging views as to the interpretation, application or fulfilment of the Convention, either can then refer this issue to the Court.

8. This phrase does not, cannot and, as the *travaux* confirms, was never intended to change the standard way of how the States invoke responsibility of each other. For half of the century that Article IX exists, no one has argued in favour or even suggested such a distorted reading of this phrase.

9. Besides the fact that *reverse compliance* claims are alien to the Convention and to international law in general, there are at least four additional reasons why the Court should refuse to proceed with Ukraine's request in this case.

10. *First*, the Genocide Convention does not, and was never intended to, determine whether a State has made a valid allegation of genocide against another State. Let alone whether such allegation is supported by credible evidence. As its title makes clear, the Genocide Convention concerns only the Contracting Parties' *erga omnes* obligations to prevent and punish this heinous crime.

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[177] WOU, para. 160.

[178] United Nations General Assembly, Third Session, Sixth Committee, Summary Records of Meetings 21 September – 10 December 1948, No. A/C.6/SR.61-140, p. 428, fn. 1; pp. 431-432 (tab 6.2).

11. In the declaration to the Order on provisional measures, Judge Bennouna has already exposed a fundamental flaw of Ukraine's claim and noted that it is unclear what right protected by the Convention is allegedly breached in this case[179]. Judge Bennouna is right: by advancing a reversed claim, Ukraine does not actually exercise any legal right under the Genocide Convention. Instead, it raises a premature defence against a potential claim, of which no one has yet seised this Court.

12. Whether or not Ukraine has breached the Convention is a matter for the Court to decide if and when such an issue is validly brought under the Convention *against* Ukraine, not *by* Ukraine.

13. Thus, Ukraine's reverse request still fails to engage a plausible right under the Convention so that the Court could allow that request and actually exercise jurisdiction over this case.

14. The *second* reason not to proceed with Ukraine's request is that Ukraine's reversed claim contradicts the international law principles of judicial propriety and equality of the parties.

15. Inter-State disputes require careful and lengthy preparatory work, especially when they concern serious human rights violations such as genocide. Hundreds of individuals need to be interviewed. Numerous records must be located and studied. Complex experiments need to be held. Years of fact-finding would elapse before an applicant is able to collect evidence worthy of the esteemed Court.

16. On the contrary, an applicant under the reversed claim by contrast is relieved from this burden. Ukraine attempts to prove a negative fact. It naturally serves Ukraine not to provide evidence of genocide to the Court, but to conceal it.

17. As the Court is well aware, for the past eight years the Donetsk and Lugansk regions have been suffering from ongoing attacks and other hostilities executed by the forces of the Kiev régime. This makes any fact-finding work on site very difficult, if not impossible. We all know cases in the past where definitive evidence of genocide transpired several years after it was committed. We should not turn a blind eye on this terrible experience of the belated revelation.

18. Under Article 60 of the Statute, the judgment of the Court "is final and without appeal". It would constitute *res judicata.* If a State is allowed to secure a pre-emptive victory against a patently

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[179] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022*, declaration of Judge Bennouna, pp. 236-237, paras. 5-6.

incomplete set of evidence, it would thus have protection against the subsequent claim against it — even on the basis of the new compelling evidence that would become available in the future.

19. On the other hand, if the Court dismisses Ukraine's claim, the Court will not automatically hold Ukraine responsible for the breach of the Genocide Convention. The Court will only rule that Ukraine cannot pre-emptively stop a claim that could be brought against it in the future.

20. The *third* reason is that engaging with Ukraine's reversed claim is incompatible with the judicial function of the Court. Ukraine asks the Court to assess the existence of genocide by Ukraine. But this Court is not a body that conducts complex investigations, especially those of criminal nature. It does not have a fact-finding mission. The United Nations has tasked this Court with settling legal disputes between States. It is not the Court's role to gather and assess factual matters on the ground, especially long before a legal dispute has actually materialized.

21. *Fourth*, the Court's own case law speaks against *reverse compliance* claims. The Court has simply refrained from considering them.

22. From almost 200 cases ever brought before the Court and its predecessor, Ukraine was only able to find *two* matters which it believes resemble *reverse compliance* claims. These are the *Lockerbie* proceedings and the *Rights of Nationals* case. But these references are clearly flawed.

23. Judge Shahabuddeen warned that the judgment may not be deemed as a convincing precedent when it did not rule on the disputed legal point[180]. This consideration is applicable to the present case. In the cases relied on by Ukraine, the reverse nature of the claim was not subject to the Court's review.

24. I will start with the *Lockerbie* case between Libya and the United Kingdom, to which Ukraine referred in its Written Observations[181].

25. In that case Libya asked the Court to declare that it had fully "complied with all of its obligations under the Montreal Convention" and that the United Kingdom had "breached, and is

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[180] M. Shahabuddeen, *Precedent in the World Court* (CUP, 1996), p. 119 (tab 6.3).

[181] WOU, para. 162.

continuing to breach, its legal obligations to Libya under . . . the Montreal Convention"[182]. This case is not comparable *with the present one* for several reasons.

26. *First*, in *Lockerbie*, the United Kingdom did not object against Libya's "non-violation complaint" per se[183]. Unlike the present case, its objections relied only on the existence of a dispute between the parties and did not concern admissibility of Libya's claims. In fact, the Court did not specifically address the United Kingdom's *reverse compliance* objection and limited itself to stating that the dispute exists between the parties under the Montreal Convention[184]. It would be improper to present the *Lockerbie* judgment as a case on admissibility of *reverse compliance* claims as the Court simply refrained from considering such claim.

27. *Second*, Libya's application on *Lockerbie* concerned its compliance with specific obligations on co-operation in criminal matters. Libya claimed that it had taken all measures to fulfil its duties under the Montreal Convention.

28. Libya addressed the Court with a request to prove a "positive fact" — that all measures were taken. On the contrary, Ukraine takes the matter much further when seeking a negative finding — that the genocide *did not* take place.

29. In order to argue that *Lockerbie* is relevant, Ukraine needed, at least, to argue that it took all reasonable measures to prevent genocide from happening. This of course would not make the underlying claim admissible, but the reference to *Lockerbie* would only then be appropriate.

30. *Third*, in *Lockerbie*, Libya only asked the Court to issue a declaratory judgment. In contrast, Ukraine raises the stakes and requests various specific remedies.

31. Ukraine has also referred *in passim* to the *Rights of Nationals* case[185]. Earlier Russia has already demonstrated why that matter is completely different from this case[186].

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[182] *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 14, para. 13.

[183] *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom)*, Preliminary Objections, CR 1997/16, p. 68, para. 4.35.

[184] *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 19, para. 27, p. 21, para. 29.

[185] WOU, para. 162.

[186] PORF, para. 287.

(a) First, the *Rights of Nationals* did not concern the investigation of crimes, especially of such magnitude as genocide. In that case, France asked the Court a question of a purely legal nature whether certain domestic regulations are consistent with international treaties[187]. This question did not hinge upon the examination of evidence.

(b) Second, as in the *Lockerbie* case, France did not seek any remedies in this regard. In contrast, Ukraine asks the Court to award various remedies, including compensation.

(c) Third, the *Rights of Nationals* case concerned what was essentially a bilateral matter between two States, whereas in this case the obligations under the Convention are of an *erga omnes* nature[188].

(d) Fourth and finally, even if one could consider France's application in the *Rights of Nationals* case to be even remotely similar to Ukraine's request in this case, any such resemblance ended when the respondent State, in that case the United States, chose not to pursue any objections on jurisdiction or admissibility. Instead it brought a counter-claim against France. From that moment, the *Rights of Nationals* was transformed into a standard contentious case between the two States.

32. As you may see, there are fundamental reasons why the Court has never descended to consider *reverse* claims in the context of invoking responsibility. Any such judgment would not rest on solid facts, would not be fair and would only spawn prejudice.

33. Madam President, this concludes my arguments on Russia's fifth preliminary objection. I would now move to the final one.

SIXTH PRELIMINARY OBJECTION: UKRAINE'S APPLICATION IS AN ABUSE OF PROCESS

34. The Court's case law acknowledges the existence of inherent limitations to its judicial function[189]. One of such limitations recognized by the Court is one party's abuse of process. The

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[187] *Rights of Nationals of the United States of America in Morocco (France* v. *United States of America), Judgment, I.C.J. Reports 1952*, pp. 179-180; France's Application, p. 12.

[188] *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, paras. 33-34.

[189] *Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment*, *I.C.J. Reports 1963*, p. 30.

Court has indicated that if the circumstances so require, it may render an application inadmissible and decline to proceed with the case based on the abuse of process doctrine[190].

35. According to Professor Kolb, abuse of process can be described as the "use of procedural instruments . . . with the aim to . . . secure an undue advantage to oneself, with the intent to deprive the proceedings . . . of their proper object and purpose or outcome"[191].

36. There could be no doubt by the virtue of the underlying proceedings Ukraine attempts to handcuff a State's right to self-defence. The right which the Charter describes as unimpairable. The Genocide Convention is used only as a pretext.

37. Even a quick look can reveal this straightforward plan.

38. Ukraine pursues the claim but does not have a dispute under the Convention. Otherwise, it would not have to fabricate the only piece of evidence of a so-called "dispute", just hours before filing this Application[192].

39. Ukraine pursues the claim, but it is different to what was requested at the outset of the proceedings. Ukraine changed its case in the Memorial. Its new requests to the Court have nothing to do with the allegations of genocide or even absence of genocidal acts in Donbass. Instead, they deal directly with the use of force and recognition of States. Just look how the word "genocide" disappears from Ukraine's submissions, while the references to the words "recognition" and "use of force" significantly multiplied.

40. Ukraine pursues the claim but cannot explain what right under the Convention was violated. The principle of legal certainty does not allow the claims to be vague and imprecise. Ukraine's Memorial tellingly fails to indicate the right envisaged by the Convention that was purportedly breached, even after Judge Bennouna directly raised this issue at the provisional measures stage. Therefore, Ukraine seeks an answer from Russia, but has posed no coherent question.

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[190] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 336, para. 150; *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, pp. 42-43, para. 113; *Jadhav (India* v. *Pakistan)*, *Judgment, I.C.J. Reports 2019 (II)*, p. 433, para. 49; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Preliminary Objections, Judgment of 22 July 2022*, p. 497, para. 49.

[191] R. Kolb, *General Principles of Procedural Law* in A. Zimmermann, K. Oellers-Frahm et al. (eds.), The Statute of the International Court Of Justice: A Commentary (3rd ed., OUP, 2019), pp. 998-999 (tab 7.1).

[192] 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 Feb. 2022, available at: https://www.kmu.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-nepravdivih-ta-obrazlivih-zvinuvachen-rosiyiv-genocidi-yak-privodu-dlya-yiyi-protipravnoyi-vijskovoyi-agresiyi (PORF, Ann. 27) (tab 7.2).

41. And finally, Ukraine pursues its claim with interveners. This twisted case cannot survive on its own. Any manipulation becomes more effective when supported by several actors. So, Ukraine rallied its supporters to arrange a massive intervention campaign in an attempt to bend the Court to their will. This was done openly[193], discussed in public[194] and performed in the most insolent manner: the wording of interventions is copy-pasted from one application to another[195].

42. Never before has the Court seen such a massive intervention campaign. A truly exceptional circumstance. While a rally to arrange such intervention is indeed an abuse. Hence, we observe exceptional circumstances, where there are strong reasons for the Court to find an abuse of process and declare Ukraine's claims inadmissible.

43. The present case is one where the abuse is so manifest that it should not be overlooked.

44. Madam President, Members of the Court, that concludes the submissions of the Russian Federation today. I thank you for your attention.

The PRESIDENT: I thank Mr Udovichenko, whose statement brings this sitting to a close. The oral proceedings in the case will resume at 10 a.m. tomorrow, Tuesday 19 September, when Ukraine will present its first round of oral argument.

The sitting is adjourned.

The Court rose at 1 p.m.

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[193] Joint statement on Ukraine's application against Russia at the International Court of Justice, 20 May 2022, available at: https://www.auswaertiges-amt.de/en/newsroom/news/-/2532254 (Ann. 1 to WO of the Russian Federation dated 17 Oct. 2022) (tab 7.3); Joint statement on supporting Ukraine in its proceeding at the International Court of Justice, 13 July 2022, available at: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_4509 (Ann. 2 to WO of the Russian Federation dated 17 Oct. 2022) (tab 7.4).

[194] Ministry of Foreign Affairs of Romania, press release, Romania Has Decided to Intervene in favour of Ukraine at the International Court of Justice in Proceedings against the Russian Federation, 18 May 2022, available at: https://www.mae.ro/en/node/58706#null (Ann. 3 to WO of the Russian Federation dated 17 Oct. 2022) (tab 7.5); Ministry of Foreign Affairs of Romania, press release, Consultations of Foreign Minister Bogdan Aurescu with Ukrainian Foreign Minister, Dmitry Kuleba, 22 Apr. 2022, available at: http://mae.gov.ro/node/58483 (Ann. 4 to the WO of the Russian Federation dated 17 Oct. 2022) (tab 7.6).

[195] Comparison of Declarations of Spain, Croatia, the Czech Republic, Ann. 23 to WO of the Russian Federation dated 16 Dec. 2022 (tab 7.7), Comparison of Declarations, Ann. 28 to WO of the Russian Federation dated 30 Jan. 2023 (tab 7.8).