

Corrigé
Corrected

CR 2023/14

**International Court
of Justice**

THE HAGUE

**Cour internationale
de Justice**

LA HAYE

YEAR 2023

Public sitting

held on Tuesday 19 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 mardi 19 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. Zions, 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 :

S. Exc. M. Anton Korynevych, ambassadeur itinérant, ministère des affaires étrangères de l'Ukraine,

comme agent ;

M^{me} Oksana Zolotaryova, directrice générale du département de droit international, ministère des affaires étrangères de l'Ukraine,

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,

M. Jean-Marc Thouvenin, professeur à l'Université Paris Nanterre, secrétaire général de l'Académie de droit international de La Haye, membre associé de l'Institut de droit international, membre du barreau de Paris, cabinet Sygna Partners,

M. David M. Zions, cabinet Covington & Burling LLP, membre des barreaux de la Cour suprême des États-Unis d'Amérique et du district de Columbia,

comme conseils et avocats ;

S. Exc. M. Oleksandr Karasevych, ambassadeur de l'Ukraine auprès du Royaume des Pays-Bas,

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,

M^{me} Mariia Bezdniezhna, conseillère, ambassade de l'Ukraine au Royaume des Pays-Bas,

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M. Volodymyr Shkilevych, cabinet Covington & Burling LLP, membre du barreau de l'État de New York,

M. Paul Strauch, cabinet Covington & Burling LLP, membre des barreaux du district de Columbia et de l'État de Californie,

M^{me} Gaby Vasquez, cabinet Covington & Burling LLP, membre du barreau du district de Columbia,

Ms Jessica Joly Hébert, member of the Bar of Quebec, PhD candidate at CEDIN, University Paris Nanterre,

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as Assistant.

The Government of the Russian Federation is represented by:

HE Mr Gennady Kuzmin, Ambassador-at-Large, Ministry of Foreign Affairs of the Russian Federation,

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,

Mr Sienho Yee, Changjiang Xuezhong Professor of International Law and Director of the Chinese Institute of International Law, China Foreign Affairs University, Beijing, member of the Bars of the United States Supreme Court and the State of New York, member of the Institut de droit international,

as Counsel and Advocates;

Mr Dmitry Andreev, Counsel, Monastyrsky, Zyuba, Stepanov & Partners,

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

as Counsel;

Mr Mikhail Abramov, Senior Associate, Monastyrsky, Zyuba, Stepanov & Partners,

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,

M^{me} Jessica Joly Hébert, membre du barreau du Québec, doctorante au CEDIN, Université Paris Nanterre,

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M^{me} Caroline Ennis, cabinet Covington & Burling LLP,

comme assistante.

Le Gouvernement de la Fédération de Russie est représenté par :

S. Exc. M. Gennady Kuzmin, ambassadeur itinérant du ministère des affaires étrangères de la Fédération de Russie,

S. Exc. M. Alexander Shulgin, ambassadeur de la Fédération de Russie auprès du Royaume des Pays-Bas,

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

comme agents ;

M. Hadi Azari, professeur de droit international public à l'Université Kharazmi à Téhéran, conseiller juridique auprès du centre des affaires juridiques internationales d'Iran,

M. Alfredo Crosato Neumann, Institut de hautes études internationales et du développement de Genève, membre du barreau de Lima,

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 Xuezhong, 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 ;

M. Dmitry Andreev, conseil, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Konstantin Kosorukov, chef de division au département juridique, ministère des affaires étrangères de la Fédération de Russie,

comme conseils ;

M. Mikhail Abramov, collaborateur senior, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Yury Andryushkin, premier secrétaire au département juridique, ministère des affaires étrangères de la Fédération de Russie,

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

M^{me} Anastasia Khamenkova, experte, parquet général de la Fédération de Russie,

Mr Stanislav Kovpak, Principal Counsellor, Department for Multilateral Human Rights Cooperation,
Ministry of Foreign Affairs of the Russian Federation,

Ms Marina Kulidobrova, Associate, Monastyrsky, Zyuba, Stepanov & Partners,

Ms Maria Kuzmina, Head of Division, Second CIS Department, Ministry of Foreign Affairs of the
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Mr Artem Lupandin, Associate, Monastyrsky, Zyuba, Stepanov & Partners,

Mr Aleksei Trofimenkov, Counsellor, Legal Department, Ministry of Foreign Affairs of the Russian
Federation,

Ms Kata Varga, Associate, Monastyrsky, Zyuba, Stepanov & Partners,

Mr. Nikolay Zinovyev, Senior Associate, Monastyrsky, Zyuba, Stepanov & Partners,

as Advisers;

Ms Svetlana Poliakova, Monastyrsky, Zyuba, Stepanov & Partners,

as Assistant.

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

Ms Wiebke Rückert, Director for Public International Law, Foreign Office of the Federal Republic
of Germany,

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

as Co-Agents;

Mr Lukas Georg Wasielewski, Foreign Office of the Federal Republic of Germany,

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

Mr Johannes Scharlau, Embassy of the Federal Republic of Germany in the Kingdom of the
Netherlands,

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

The Government of Australia is represented by:

Mr Jesse Clarke, General Counsel (International Law), Attorney-General's Department,

as Agent;

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

as Co-Agent;

M. Stanislav Kovpak, conseiller principal au département pour la coopération multilatérale pour les droits de l'homme, ministère des affaires étrangères de la Fédération de Russie,

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

M^{me} Maria Kuzmina, cheffe de division au deuxième département de la communauté d'États indépendants, ministère des affaires étrangères de la Fédération de Russie,

M. Artem Lupandin, collaborateur, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Aleksei Trofimenkov, conseiller au département juridique, ministère des affaires étrangères de la Fédération de Russie,

M^{me} Kata Varga, collaboratrice, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

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comme conseillers ;

M^{me} Svetlana Poliakova, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

comme assistante.

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

M^{me} Wiebke Rückert, directrice de la section de droit international public, ministère des affaires étrangères de la République fédérale d'Allemagne,

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

comme coagents ;

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

M. Caspar Sieveking, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas,

M. Johannes Scharlau, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas,

M. Marius Gappa, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas.

Le Gouvernement de l'Australie est représenté par :

M. Jesse Clarke, *General Counsel* (droit international), services de l'*Attorney-General*,

comme agent ;

S. Exc. M. Gregory Alan French, ambassadeur d'Australie auprès du Royaume des Pays-Bas,

comme coagent ;

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,

as Co-Agent;

Ms Katharina Kofler, Legal Adviser, Embassy of the Republic of Austria in the Kingdom of the Netherlands,

Mr Haris Huremagić, Legal Officer, Federal Ministry for European and International Affairs of the Republic of Austria,

Ms Viktoria Ritter, Legal Officer, Federal Ministry for European and International Affairs of the Republic of Austria,

Ms Céline Braumann, Adviser,

Mr Gerhard Hafner, Adviser,

Ms Karoline Schnabl, Embassy of the Republic of Austria in the Kingdom of the Netherlands.

The Government of the Kingdom of Belgium is represented by:

Mr Piet Heirbaut, Jurisconsult, Director-General of Legal Affairs, Ministry of Foreign Affairs of the Kingdom of Belgium,

as Agent;

HE Mr Olivier Belle, Permanent Representative of the Kingdom of Belgium to the international institutions in The Hague,

as Co-Agent;

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 :

S. Exc. M. Konrad Bühler, ambassadeur, conseiller juridique, ministère fédéral des affaires européennes et internationales de la République d'Autriche,

comme coagent ;

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

M. Haris Huremagić, juriste, ministère fédéral des affaires européennes et internationales de la République d'Autriche,

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,

M^{me} Karoline Schnabl, ambassade de la République d'Autriche au Royaume des Pays-Bas.

Le Gouvernement du Royaume de Belgique est représenté par :

M. Piet Heirbaut, juriconsulte, directeur général des affaires juridiques, ministère des affaires étrangères du Royaume de Belgique,

comme agent ;

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

comme coagent ;

M^{me} Sabrina Heyvaert, conseillère générale, direction du droit international public,

M^{me} Pauline De Decker, attachée, représentation permanente du Royaume de Belgique auprès des institutions internationales à La Haye,

M^{me} Laurence Grandjean, attachée, direction du droit international public,

M^{me} Aurélie Debuissou, attachée, direction du droit international public.

The Government of the Republic of Bulgaria is represented by:

Ms Dimana Dramova, Head of the International Law Department, International Law and Law of the European Union Directorate, Ministry of Foreign Affairs of the Republic of Bulgaria,

as Agent;

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

as Co-Agent;

Ms Raia Mantovska Vassileva, Legal Adviser, Embassy of the Republic of Bulgaria in the Kingdom of the Netherlands,

Ms Monika Velkova, Third Secretary.

The Government of Canada is represented by:

Mr Alan H. Kessel, Assistant Deputy Minister and Legal Adviser, Global Affairs Canada,

as Agent;

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

as Co-Agent;

Ms Rebecca Netley, Executive Director, Accountability, Human Rights and United Nations Law Division, Global Affairs Canada,

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

Mr Simon Collard-Wexler, Counsellor, Embassy of Canada in the Kingdom of the Netherlands,

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

The Government of the Republic of Cyprus is represented by:

Ms Mary-Ann Stavrinides, Attorney of the Republic, Law Office of the Republic of Cyprus,

as Co-Agent;

Ms Joanna Demetriou, Counsel of the Republic A', Law Office of the Republic of Cyprus,

Mr Antonios Tzanakopoulos, Professor of Public International Law, University of Oxford.

The Government of the Republic of Croatia is represented by:

Ms Gordana Vidović Mesarek, Director-General for European and International Law, Ministry of Foreign and European Affairs of the Republic of Croatia,

as Agent;

Le Gouvernement de la République de Bulgarie est représenté par :

M^{me} Dimana Dramova, cheffe du département du droit international, direction du droit international et du droit européen, ministère des affaires étrangères de la République de Bulgarie,

comme agente ;

S. Exc. M. Konstantin Dimitrov, ambassadeur de la République de Bulgarie auprès du Royaume des Pays-Bas,

comme coagent ;

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 :

M. Alan H. Kessel, sous-ministre adjoint et conseiller juridique, ministère des affaires mondiales du Canada,

comme agent ;

M. Louis-Martin Aumais, directeur général et conseiller juridique adjoint, ministère des affaires mondiales du Canada,

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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,

M. Hugh Adsett, ambassadeur désigné du Canada auprès du Royaume des Pays-Bas,

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 :

M^{me} Mary-Ann Stavrinides, *Attorney of the Republic*, bureau de l'*Attorney General* de la République de Chypre,

comme coagente ;

M^{me} Joanna Demetriou, *Counsel of the Republic A'*, bureau de l'*Attorney General* de la République de Chypre,

M. Antonios Tzanakopoulos, professeur de droit international public, Université d'Oxford.

Le Gouvernement de la République de Croatie est représenté par :

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as Co-Agent.

The Government of the Kingdom of Denmark is represented by:

HE Ms Vibeke Pasternak Jørgensen, Ambassador, Under-Secretary for Legal Affairs (the Legal Adviser), Ministry of Foreign Affairs of the Kingdom of Denmark,

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HE Mr Jarl Frijs-Madsen, Ambassador of the Kingdom of Denmark to the Kingdom of the Netherlands,

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Mr Victor Backer-Gonzalez, Legal Adviser, Royal Embassy of Denmark in the Kingdom of the Netherlands,

Ms Anna Sofie Leth Nymand, Intern, Royal Embassy of Denmark in the Kingdom of the Netherlands.

The Government of the Kingdom of Spain is represented by:

Mr Santiago Ripol Carulla, Professor of International Public Law, Universitat Pompeu Fabra, Barcelona,

as Agent;

HE Ms Consuelo Femenía Guardiola, Ambassador of the Kingdom of Spain to the Kingdom of the Netherlands,

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Mr Emilio Pin Godos, International Legal Adviser, Ministry of Foreign Affairs of the Kingdom of Spain,

Mr Juan Almazán Fuentes, Legal Adviser, Embassy of the Kingdom of Spain in the Kingdom of the Netherlands.

The Government of the Republic of Estonia is represented by:

Ms Kerli Veski, Director General of the Legal Department, Ministry of Foreign Affairs of the Republic of Estonia,

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HE Mr Lauri Kuusing, Ambassador of the Republic of Estonia to the Kingdom of the Netherlands,

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Ms Dea Hannust.

M^{me} Anamarija Valković, cheffe du service de droit international, ministère des affaires étrangères et européennes de la République de Croatie,

comme coagente.

Le Gouvernement du Royaume du Danemark est représenté par :

S. Exc. M^{me} Vibeke Pasternak Jørgensen, ambassadrice, sous-secrétaire aux affaires juridiques (conseillère juridique), ministère des affaires étrangères du Royaume du Danemark,

comme agente ;

S. Exc. M. Jarl Frijs-Madsen, ambassadeur du Royaume du Danemark auprès du Royaume des Pays-Bas,

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M. Martin Lolle Christensen, chef de section, ministère des affaires étrangères du Royaume du Danemark,

M. Victor Backer-Gonzalez, conseiller juridique, ambassade royale du Danemark au Royaume des Pays-Bas,

M^{me} Anna Sofie Leth Nymand, stagiaire, ambassade royale du Danemark au Royaume des Pays-Bas.

Le Gouvernement du Royaume d'Espagne est représenté par :

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S. Exc. M^{me} Consuelo Femenía Guardiola, ambassadrice du Royaume d'Espagne auprès du Royaume des Pays-Bas,

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M. Emilio Pin Godos, conseiller juridique pour le droit international, ministère des affaires étrangères du Royaume d'Espagne,

M. Juan Almazán Fuentes, conseiller juridique, ambassade du Royaume d'Espagne au Royaume des Pays-Bas.

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

M^{me} Kerli Veski, directrice générale du département juridique, ministère des affaires étrangères de l'Estonie,

comme agente ;

S. Exc. M. Lauri Kuusing, ambassadeur de la République d'Estonie auprès du Royaume des Pays-Bas,

comme coagent ;

M^{me} Dea Hannust.

The Government of the Republic of Finland is represented by:

Ms Kaija Suvanto, Director General, Legal Service, Ministry of Foreign Affairs of the Republic of Finland,

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Ms Tarja Långström, Deputy Director, Unit for Public International Law, Ministry of Foreign Affairs of the Republic of Finland,

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Ms Johanna Hossa, Legal Officer, Unit for Public International Law, Ministry of Foreign Affairs of the Republic of Finland,

Ms Verna Adkins, Second Secretary, Embassy of the Republic of Finland in the Kingdom of the Netherlands.

The Government of the French Republic is represented by:

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HE Mr François Alabrune, Ambassador of the French Republic to the Kingdom of the Netherlands,

as Co-Agent;

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

Ms Maryline Grange, Associate Professor in Public Law at the Jean Monnet University in Saint-Etienne, University of Lyon,

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 Frichithavong, 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 :

M^{me} Kaija Suvanto, directrice générale du service juridique, ministère des affaires étrangères de la République de Finlande,

comme agente ;

M^{me} Tarja Långström, directrice adjointe de la section de droit international public, ministère des affaires étrangères de la République de Finlande,

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 Frichithavong, 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 Suter 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 Pāparinskis, 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, juriconsulte, 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 Brillman, 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, juriconsulte, ministère des affaires étrangères du Royaume des Pays-Bas,

M^{me} Marina Brillman, juriconsulte, 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 Mișuț, 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 Mihaș, 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 Drogenik, 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 Hammar skjöld, 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 Drogenik, 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: Please be seated. The sitting is open. The Court meets today to hear the first round of oral argument of Ukraine.

I now give the floor to the Agent of Ukraine, His Excellency Mr Anton Korynevych. You have the floor, Excellency.

Mr KORYNEVYCH:

INTRODUCTORY STATEMENT

1. Madam President, distinguished Members of the Court, I am honoured to stand before you, in this Great Hall of Justice, to represent my country.

2. Five hundred and seventy-three days ago, Russia launched a brutal, full-scale military assault on Ukraine. This is a war of annihilation: Russia denies the very existence of the Ukrainian people and wants to wipe us off the map. It is a war of imperialism: Russia tries to overthrow our democratically elected Government. It is a war of conquest: Russia has attempted to claim Ukrainian territory for itself. And it is a war of atrocity, terror and war crimes: mass graves in Bucha, torture chambers in Kherson and Izyum, tens of thousands of civilians abducted and held captive, cities and towns such as Mariupol and Volnovakha completely destroyed, villages flooded, children stolen and deported, deliberate attacks on civilian infrastructure, and many more unspeakable horrors. Yesterday, you did not hear any of this. Listening to Russia, you would never know what it is doing to my country. But it is the reality.

3. Why does Russia do all of this? In the twenty-first century, what could possibly justify such barbaric action? Russia has given an answer: a cynical misuse of the Convention on the Prevention and Punishment of the Crime of Genocide. For almost a decade, Russia has been laying the groundwork. Since 2014, Russia has falsely accused Ukraine of committing genocide in violation of the Genocide Convention. On 24 February 2022, the President of the Russian Federation used that absurd allegation as a sword: he said Russia was acting — *it had to act* — to stop this genocide.

4. Russia is waging war against my country in the name of this terrible lie: that Ukraine is committing genocide against its own people. This lie is Russia's pretext for aggression and conquest. Russia has presented no credible evidence. It cannot. In reality, Russia has turned the Genocide

Convention on its head. The international community adopted the Genocide Convention to protect. Russia invokes the Genocide Convention to destroy.

5. Over the past 573 days, Russia has shown the world what Ukraine already understood. Russia does not respect international law. For Russia, international law is not a constraint. For Russia, international law does not exist to ensure respect for sovereignty and human rights. For Russia, international law is a tool to be abused.

6. Unlike Russia, Ukraine respects international law. Ukraine believes in settling disputes peacefully. That is why, at our moment of greatest peril, Ukraine turned to this Court. Your Court has broad jurisdiction over disputes relating to the Genocide Convention. The relationship between this dispute and the Genocide Convention is straightforward. Russia accused Ukraine of committing genocide. It launched a full-scale invasion for the stated purpose of stopping genocide. In other words, Russia abused and violated the Genocide Convention, by using allegations of genocide as a pretext for a full-scale invasion. But Russia is not above the law. It must be held accountable.

7. Yesterday, Russia told you that this dispute has nothing to do with the Genocide Convention. According to the Agent of the Russian Federation, a few Russian officials just “use[ed] the word ‘genocide’”¹. Russia’s counsel suggested it was “for rhetorical purposes”². This is another one of Russia’s brazen lies. There is nothing “rhetorical” about Russia’s allegations. For years, Russian State organs declared that Ukrainian high-ranking officials committed the crime of genocide under the Genocide Convention³. Senior Russian diplomats declared that Ukraine, the State itself, committed genocide under the Genocide Convention⁴.

8. There was also nothing “rhetorical” about Russia’s violent actions on the basis of preventing and punishing genocide. I would prefer not to quote the President of the Russian Federation. But for three hours yesterday, Russia’s Agent and its counsel were afraid to tell the Court what he said. So I will repeat what the Russian President announced on 24 February 2022: “The *purpose* of this

¹ See e.g. CR 2023/13, p. 39, para. 7 (Kuzmin).

² CR 2023/13, p. 52, para. 14 (Azari).

³ See e.g. Investigative Committee of the Russian Federation, *The Investigative Committee Opened a Criminal Investigation Concerning the Genocide of the Russian-Speaking Population in the South-East of Ukraine* (29 Sept. 2014) (MU, Ann. 9) (judges’ folder, tab 10).

⁴ See e.g. RIA Novosti, *Gryzlov Called Putin’s Decree on Donbas a Response to Kyiv’s Actions* (18 Nov. 2021) (MU, Ann. 35) (judges’ folder, tab 16).

operation is to protect people who, for eight years now, have been facing humiliation and *genocide* perpetrated by the Kiev regime.”⁵ Inside Russia, the express purpose of the full-scale invasion is openly stated, at the highest levels. But in this Court, it is inconvenient for Russia. So Russia hides from the truth.

9. You were also subjected yesterday to Russia’s story of a “coup d’état”, and the “Kiev régime” filled with “neo-Nazis” who threatened the people in Donbas. These are more lies, but they confirm an important point: there is a dispute. The Agent of the Russian Federation even had the audacity to stand in this hall and say that Ukraine was planning a “final solution”⁶. We all know what those chilling words mean. How can Russia’s Agent utter those words, and then deny that there is a dispute about genocide? This case must proceed to the merits. Then Russia can try to defend its false claim. If Russia believes its actions are not an abuse of the Genocide Convention, that President Putin did not mean what he said about genocide, let Russia explain why on the merits. For nine years we have endured lies about genocide from the highest level of the Russian Government. For a year and a half we have suffered terrible attacks because of those lies. Today Ukraine is simply asking for its day in court so that the Court can resolve the dispute.

10. Madam President, Members of the Court, Russia’s disrespect for international law is far-reaching. It includes this Court.

11. Eighteen months ago, this Court issued a clear order: Russia must immediately suspend its military operations in Ukraine.

12. But Russia had no interest in complying. Russia immediately announced that it would ignore the binding provisional measures Order of the World Court. Russia did not stop its military operations in Ukraine as you ordered. To this day, Russia rains down missiles on our cities and our people, still in the name of preventing a purported genocide. The consequences of Russia’s defiance have been devastating.

13. An example of this devastation is Russia’s deliberate attacks on critical civilian infrastructure. These attacks left entire regions and millions of people without heat or electricity,

⁵ President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (24 Feb. 2022), p. 8, accessed at <http://en.kremlin.ru/events/president/news/67843> (MU, Ann. 6) (judges’ folder, tab 8); emphasis added.

⁶ CR 2023/13, p. 41, para. 18 (Kuzmin)

including in freezing temperatures⁷. The United Nations has documented the grave harm to civilians⁸. This past June, Russia's destruction of the Kakhovka hydroelectric power plant dam in the Kherson region caused grave and far-reaching consequences for thousands of people in southern Ukraine, including a lack of access to clean water.

14. Objective international observers have documented this devastation. The World Bank has calculated that the damage Russia has inflicted on Ukraine will require US\$411 billion to repair⁹. The UN Human Rights Council's "Independent International Commission of Inquiry on Ukraine" has found that Russian forces committed a "wide range" of violations of international law, "many" war crimes, and acts that "may amount to crimes against humanity"¹⁰. One example: Russia's military operations in the area of the Zaporizhzhia nuclear power plant, which risk a serious nuclear incident, gravely endangering civilians¹¹.

15. Another horrifying example is the forcible deportation of Ukrainian children. I quote what the Minister for Foreign Affairs of Ukraine, Dmytro Kuleba, said in July: "To date, we have identified 19,474 illegally transferred kids, including 4,390 who are orphans or lack parental care."¹² For these shocking actions, the International Criminal Court issued arrest warrants. It found reasonable grounds to believe that the Head of State of Russia, who sits on the UN Security Council, is personally responsible for these war crimes¹³. This is how far Russia is willing to go: on the pretext of preventing genocide, it commits the war crime of forcibly transferring children from their homeland.

⁷ See UN Human Rights Council, *Report of the Independent International Commission of Inquiry on Ukraine*, UN Doc. A/HRC/52/62 (15 Mar. 2023), para. 42 (judges' folder, tab 3).

⁸ See generally *ibid.*

⁹ World Bank, *Ukraine Rapid Damage and Needs Assessment (February 2022 – February 2023)*, pp. 19-25, accessed at <https://documents1.worldbank.org/curated/en/099184503212328877/pdf/P1801740d1177f03c0ab180057556615497.pdf>.

¹⁰ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on Ukraine*, UN doc. A/HRC/52/62 (15 Mar. 2023), p. 1 (judges' folder, tab 3).

¹¹ See *ibid.*, paras. 44-45.

¹² Ministry of Foreign Affairs, *Statement by Minister of Foreign Affairs of Ukraine Dmytro Kuleba at the UN General Assembly Meeting on the Situation in the Temporarily Occupied Territories of Ukraine* (18 July 2023), accessed at <https://mfa.gov.ua/en/news/statement-minister-foreign-affairs-ukraine-dmytro-kuleba-un-general-assembly-meeting-situation-temporarily-occupied-territories-ukraine>.

¹³ See ICC, *Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova* (17 Mar. 2023), accessed at <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> (judges' folder, tab 4).

16. It is not just Ukraine that suffers from such terrible acts. By blockading Ukrainian ports and threatening international shipping, Russia has destroyed or held hostage millions of tons of grain, worsening global food shortages in Africa and beyond¹⁴.

17. Russia's defiance is also an attack on this Court's authority. Every missile that Russia fires at our cities, it fires in defiance of this Court. Just last week, Russia attacked a market in Kostiantynivka, killing 17 people, including a child. Every one of these victims was killed because of Russia's defiance of this Court. Every child that Russia has deported, it deported in defiance of this Court. And every brave Ukrainian defender that Russia maims or kills, it has maimed or killed in defiance of this Court.

18. Your provisional measures Order is another inconvenient topic for Russia. Yesterday, it said almost nothing about it. When Russia did acknowledge your Order, Russia did not hesitate to tell you that you were wrong¹⁵. But Russia's opinion does not change its international obligations. Your Order is binding. Russia openly defies it.

19. This Court now has the opportunity to reject such defiance. You have the power to ensure that international obligations are meaningful. You can decide that States that tirelessly abuse and misuse a human rights treaty will be held to account. You have the power to declare that Russia's actions are unlawful, that its continued abuses must stop, that your orders must be followed, and that Russia must make reparation.

20. One year ago, President Volodymyr Zelenskyy said to the UN Security Council that, in Ukraine, "not only our independence is being defended, not only the right to life for our people, but also international law as such"¹⁶. In this Court as well, international law, as such, is at stake. Ukraine urges the Court to reject Russia's abuse of international law. Ukraine asks you to ensure that the Genocide Convention remains a force for protecting human rights, not a means for denying millions of people their human rights.

¹⁴ See, e.g., Anna Caprile and Eric Pichon, *Russia's War on Ukraine: Impact on Global Food Security and EU Response*, European Parliament (Sept. 2022), pp. 3, 5, accessed at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733667/EPRS_BRI\(2022\)733667_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733667/EPRS_BRI(2022)733667_EN.pdf).

¹⁵ See CR 2023/13, p. 46, paras. 43-44 (Kuzmin).

¹⁶ President of Ukraine, *Speech by President Volodymyr Zelenskyy at the Meeting of the UN Security Council Convened at the Initiative of Ukraine* (27 Sept. 2022), accessed at <https://www.president.gov.ua/en/news/vistup-prezidenta-volodimira-zelenskogo-na-zasidanni-radi-be-78053>.

21. Yesterday, you heard Russia twist the facts and distort the law. Today, Ukraine will explain why this Court can, and must, hear Ukraine's case on the merits.

22. Professor Harold Hongju Koh will first address the interpretation of Article IX of the Genocide Convention and the broad jurisdiction it confers on this Court. He will explain why Russia cannot escape this Court's jurisdiction by mischaracterizing Ukraine's claims.

23. Ms Marney Cheek will then show that there is a dispute between the States relating to the Genocide Convention.

24. Professor Jean-Marc Thouvenin will demonstrate that this dispute falls squarely within this Court's jurisdiction *ratione materiae*.

25. Mr David Zions will address why Ukraine's claims are admissible.

26. Finally, Mr Jonathan Gimblett will discuss this Court's jurisdiction to address the Russian Federation's ongoing and flagrant violations of this Court's Order indicating provisional measures.

27. Madam President, Members of the Court, on the ashes of World War II and the Holocaust, the world produced a landmark human rights treaty in the Genocide Convention. It reflects the highest ideals of humanity. A few months from now, the world will mark this Convention's 75th anniversary. This can be an opportunity for the international community to recommit itself to the Convention's civilizing aims and humanitarian purpose.

28. But if Russia's abuse goes unanswered, this anniversary will be a dark one. Can it truly be the case that a State can abuse the Genocide Convention to justify a war of conquest? Can a State use false allegations of genocide as a pretext to destroy cities, bomb civilians and deport children from their homes? And when the Genocide Convention is so cynically abused, is this Court powerless? The answer to these questions must be "no". It must be "no" for the sake of the Ukrainian people, who remain under brutal attack. And it must be "no" for the sake of the world, to prevent international law from being twisted into a tool for human rights abuses and destruction.

29. Ukraine is grateful for the Court's attention this morning. Madam President, I now kindly ask you to call Professor Koh to the podium.

The PRESIDENT: I thank the Agent of Ukraine for his statement, and I now give the floor to Professor Harold Hongju Koh. You have the floor, Professor.

Mr KOH:

**INTERPRETATION OF ARTICLE IX AND CHARACTERIZATION
OF THE DISPUTE BEFORE THE COURT**

I. Introduction

1. Madam President, Members of the Court: it is again my honour to appear before you on behalf of Ukraine. In February 2022, shortly after Russia’s full-scale invasion, Ukraine brought before you this dispute relating to Russia’s false allegations to justify its unilateral actions in and against Ukraine on the pretext of preventing and punishing a “genocide”. When Russia ratified the Genocide Convention in 1954, it consented to this Court’s jurisdiction over any dispute “relating to the interpretation, application or fulfilment of” the Convention. Yesterday, Russia’s counsel denied that there is an ongoing dispute that brings this case within Article IX of the Convention.

2. Russia takes one position: because Ukraine is responsible for committing genocide, they say, it *must* use military force to prevent and punish that alleged genocide in violation of the Convention. But Ukraine takes the opposite position: it strenuously disputes Russia’s outrageous claims, rejects Russia’s claimed right and duty to use force to stop this claimed “genocide”, and shows that it is Russia that has abused, misused and violated the Convention by invading Ukraine on the pretext of genocide prevention.

3. Yesterday, in their oddly antiseptic presentation, Russia’s counsel repeatedly denied that it had invoked the Genocide Convention to authorize the use of force. But they ignored President Putin’s own words launching the invasion, where he explicitly declared: “The purpose of this [“special military”] operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kyiv regime. To this end, [Russia] will seek to demilitarize and denazify Ukraine” — as our Agent has just recounted — by using brutal force for the last 19 months¹⁷.

4. As defined in *Mavrommatis*, a “dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons” over which this Court may exercise jurisdiction¹⁸.

¹⁷ President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (24 Feb. 2022), p. 8, accessed at <http://en.kremlin.ru/events/president/news/67843> (MU, Ann. 6) (judges’ folder, tab 8).

¹⁸ *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J. Rep. Series A., No. 2*, p. 11.

Here, we clearly have such a disagreement relating to the interpretation, application or fulfilment of the Convention. Under Article IX, that brings this case squarely within your jurisdiction.

5. When we first appeared before you last March seeking provisional measures, this Court found by a vote of 13 to 2 that “[i]n the Court’s view, the acts complained of by [Ukraine] appear to be capable of falling within the provisions of the Genocide Convention”¹⁹.

6. Upon closer examination, this Court’s prima facie ruling was plainly correct and should lead you now to dismiss Russia’s preliminary objections. Dismissal is required first, because of Article IX’s distinctively broad scope, which reflects the importance and purpose of the Genocide Convention itself. Second, because Russia cannot avoid the Court’s manifest jurisdiction by grossly mischaracterizing Ukraine’s claims, ignoring settled jurisprudence and asking you to disregard the facts and evidence Ukraine has offered and will prove at the merits stage.

II. The Court has broad jurisdiction under the Genocide Convention’s compromissory clause, Article IX

7. Madam President, Members of the Court: the treaty’s text, object and purpose, negotiating history and historical context all show that Article IX was intended to grant the Court jurisdiction over the widest range of disputes relating to the Genocide Convention, including this dispute.

8. In their presentation yesterday, Russia’s counsel glided over the specific and distinctive language of Article IX, the Convention’s dispute-settlement provision²⁰.

9. Russia ignores four ways in which Article IX is both distinctive and broader than other such clauses, because the Genocide Convention is a broad and distinctive treaty.

10. First, and most obvious, the clause does not confine itself to cases concerning “interpretation or application” of the treaty, as many such clauses do. It also includes disputes relating to whether and how parties like Russia have *fulfilled* their treaty obligations. During the drafting debates, after the Indian delegation made clear that “fulfilment” has “a much wider meaning” than

¹⁹ *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. 223, para. 45.*

²⁰ Genocide Convention, Art. IX.

“application”, the delegations defeated a proposal to delete “fulfilment”, confirming their intent to adopt the broadest formulation possible²¹.

11. The *Oxford English Dictionary* defines “fulfilment” as “accomplishment, performance, completion”²²; in French, *Larousse* defines “l’exécution” as the performance or accomplishment of an obligation²³. So adding the word “fulfilment” to the familiar template of “interpretation and application” was designed to ensure that the Court’s jurisdiction would reach disputes relating to the ways in which the Contracting Parties, like Russia, *perform* or accomplish their obligations under the Convention²⁴.

12. When Russia invaded Ukraine last February for the pretextual reason of stopping a genocide, it failed to perform in good faith — in fact, it abused — the Convention. Contrary to what Russia’s counsel asserted yesterday²⁵, this case differs significantly from the *Legality of Use of Force* case²⁶, where no party “stated before the Court that the use of force by the respondent States had the purpose of preventing an alleged genocide”²⁷. In contrast, as Judge Nolte observed in his separate

²¹ Official Records of the Third Session of the General Assembly, Part I, Sixth Committee, Summary Records of Meetings 21 September–10 December 1948, UN doc. A/C.6/SR.61-140, pp. 428, 437, 447; 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)*, pp. 125-126, paras. 133-134; *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece), Judgment, I.C.J. Reports 2011 (II)*, p. 673, para. 92. See also WOU, paras. 94-95.

²² *Oxford English Dictionary*, “fulfilment, n.” (3rd ed., 2016), accessed at <https://www.oed.com/view/Entry/75295?redirectedFrom=fulfilment#eid> (judges’ folder, tab 5). See also WOU, para. 94.

²³ *Larousse, Dictionnaire de français*, “exécution, n.f.” (online ed., 2018), accessed at <https://www.larousse.fr/dictionnaires/francais/ex%C3%A9cution/32065> (judges’ folder, tab 6). See also WOU, para. 94.

²⁴ See WOU, paras. 94-95. See also Joint Written Observations on Preliminary Objections of Austria, the Czech Republic, and the Slovak Republic, para. 18; Written Observations on Preliminary Objections of Belgium, Croatia, Denmark, Estonia, Finland, Ireland, Luxembourg, and Sweden, para. 15; Written Observations on Preliminary Objections of Bulgaria, paras. 15-17; Joint Written Observations on Preliminary Objections of Canada and the Netherlands, para. 23; Written Observations on Preliminary Objections of Cyprus, para. 11; Written Observations on Preliminary Objections of France, paras. 29-31; Written Observations on Preliminary Objections of Germany, para. 17; Written Observations on Preliminary Objections of Greece, paras. 33-34; Written Observations on Preliminary Objections of Italy, paras. 23, 31-33; Written Observations on Preliminary Objections of Latvia, para. 7; Written Observations on Preliminary Objections of Lithuania, para. 5; Written Observations on Preliminary Objections of Malta, paras. 15, 51-52; Written Observations on Preliminary Objections of New Zealand, paras. 15, 31; Written Observations on Preliminary Objections of Norway, paras. 20-21; Written Observations on Preliminary Objections of Poland, paras. 21, 24; Written Observations on Preliminary Objections of Portugal, paras. 24-25; Written Observations on Preliminary Objections of Romania, para. 28; Written Observations on Preliminary Objections of Slovenia, para. 13; Written Observations on Preliminary Objections of Spain, paras. 47-50, 55; Written Observations on Preliminary Objections of the United Kingdom, para. 29.

²⁵ See CR 2023/13, pp. 76-75, paras. 89-97 (Crosato).

²⁶ See *Legality of Use of Force (Yugoslavia v. Belgium), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 124.

²⁷ *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*, declaration of Judge Nolte, p. 254, para. 2; see also *ibid.*, pp. 254-255, paras. 3-7.

declaration to the provisional measures Order, Russia has in the present case “made allegations that Ukraine is committing genocide and has affirmed that its ‘special military operation’ serves the purpose of preventing genocide”, thereby “act[ing] in a way ‘that is capable of coming within the provisions of the Genocide Convention’”²⁸. The plain text of Article IX thus authorizes this Court to review Russia’s violations of the Genocide Convention on the merits.

13. To be clear: this is a dispute not just about the Convention’s “fulfilment”, but also about its “interpretation and application”. This dispute is about “interpretation” because the Parties disagree about the meaning of their respective legal rights and obligations under the Convention²⁹. This dispute is about “application”, as the *Chorzów Factory* case explained, because “application” includes disputes related to “whether the application of a particular clause has or has not been correct” and whether a State has “creat[ed] a situation contrary to the said articles”³⁰. Here, Russia has clearly misapplied the Convention by abusing the text and purpose of this treaty to launch an unlawful military invasion. So even if Article IX had the same narrower scope as many other compromissory clauses, this dispute would still fall squarely within it. But the unusual addition of the word “fulfilment” gives Article IX its distinctively comprehensive sweep, placing this Court’s jurisdiction beyond any doubt.

14. Second, Article IX extends jurisdiction to disputes “relating to” the interpretation, application, or fulfilment of the Convention; it does not require that a treaty’s “interpretation, application, or fulfilment” alone be the subject-matter of the dispute. The ordinary meaning of “relate”, as defined by the *Oxford English Dictionary*, is to have a “connection with” something³¹. In the *Yakimetz* case — which addressed whether the UN Administrative Tribunal had “erred on a

²⁸ *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*, declaration of Judge Nolte, pp. 254-255, paras. 2 and 4.

²⁹ See Written Observations on Preliminary Objections of Belgium, Croatia, Denmark, Estonia, Finland, Ireland, Luxembourg, Malta, and Sweden, para. 15; Written Observations on Preliminary Objections of Bulgaria, paras. 12-13; Written Observations on Preliminary Objections of France, para. 26; Written Observations on Preliminary Objections of Germany, para. 17; Written Observations on Preliminary Objections of Greece, para. 31; Written Observations on Preliminary Objections of Italy, para. 29; Written Observations on Preliminary Objections of New Zealand, para. 31; Written Observations on Preliminary Objections of Norway, para. 19; Written Observations on Preliminary Objections of Poland, para. 24; Written Observations on Preliminary Objections of Portugal, para. 24; Written Observations on Preliminary Objections of Slovenia, para. 13; Written Observations on Preliminary Objections of Spain, para. 43.

³⁰ *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, pp. 20-21.

³¹ *Oxford English Dictionary*, “relate, v.” (3rd ed., 2009), accessed at https://www.oed.com/dictionary/relate_v?tab=meaning_and_use#25955291; see also *Merriam-Webster Dictionary*, “relate, v.”, accessed at <https://www.merriam-webster.com/dictionary/relate>. See WOU, para. 97.

question of law *relating to* the provisions” of the UN Charter — Judge Schwebel explained that such an error “need not squarely and directly engage a provision of the Charter. It is sufficient if such an error . . . ‘is connected with’ the Charter”³². Here, Russia’s pretextual allegations that Ukraine committed genocide in violation of the Convention, which Russia used as its basis for violently invading Ukraine, obviously are “connected” with — that is, relate to — the responsibility of a State for genocide, genocide prevention and genocide punishment³³.

15. Third, Article IX specifies that it “includ[es]” those particular disputes “relating to the responsibility of a State for genocide”. As this Court observed in the *Bosnian Genocide* case, this clause is an “unusual feature of Article IX”³⁴:

“The word ‘including’ tends to confirm that disputes relating to the responsibility of Contracting Parties for genocide, and the other acts enumerated in Article III to which it refers, are comprised within a broader group of disputes relating to the interpretation, application or fulfilment of the Convention.”³⁵

16. That broader group of disputes would include, for example, the questions relating to responsibility for genocide here: is Ukraine, as Russia alleges, really responsible for committing genocide? Or is it Russia that violates its duties under the Convention by falsely alleging that *Ukraine* is committing genocide; then invoking that pretext to invade and brutalize its sovereign neighbour?

17. Fourth, Article IX specifies that “any of the parties” to a dispute under the Convention may submit it to the Court. Article IX imposes no preconditions, leaving no doubt it was meant to ensure broad access to the Court. So if, as Russia acknowledges, a State that levels allegations of genocide against another can ask the Court to resolve that dispute, there is no reason why a State such as Ukraine — that *disputes* allegations of genocide against it and illegal actions based on pretextual allegations — cannot do the same.

18. Article IX’s four unique textual features were not accidental. As Professor Kolb describes in the Gaeta commentary to the Genocide Convention, the drafters deliberately decided to “close down all possible loopholes weakening the jurisdictional reach of the Court” so as to “grant the Court

³² *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1987*, dissenting opinion of Judge Schwebel, pp. 113-114.

³³ WOU, para. 97.

³⁴ *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. 114, para. 169.

³⁵ *Ibid.*

a jurisdiction as wide as possible in the life of the Convention”³⁶. But yesterday, Russia asked you to undo that careful drafting decision by narrowing what the drafters meant to broaden, and reopening the very loopholes they meant to close.

19. As the written observations of the intervening States confirm, the intentional breadth of this Court’s jurisdiction flows not just from the expansive language of Article IX, but also from the Genocide Convention’s broad object and purpose³⁷. Genocide is the worst crime in international law and human history. It is the ultimate crime: the kind of horrible intentional effort to destroy an entire national, ethnic, racial or religious group that we have witnessed all too often in our collective past. The Convention’s preamble sets out its historic purpose as a good faith endeavour of “international co-operation” to “liberate [hu]mankind” from this “odious scourge”³⁸.

20. As this Court stated in its landmark 1951 Advisory Opinion: “The Convention was manifestly adopted for a purely humanitarian and civilizing purpose.”³⁹ Conferring broad Article IX jurisdiction on this Court helps to achieve that object and purpose, which yesterday Russia’s counsel claimed that “Russia stands by”⁴⁰. A genuine, good faith determination that genocide or a serious risk of genocide exists may empower preventive action, consistent with international law, which must not be exercised lightly. Because along with that power comes the responsibility to avoid abusing it and degrading the *jus cogens* norm against genocide that the Convention protects. States offend the object and purpose of the Convention when they ignore a genocide that is clearly occurring, but also when they falsely allege a genocide that is clearly *not* occurring — not to achieve the Convention’s humanitarian purposes, but to seek licence to illegally attack and invade another

³⁶ Robert Kolb, “The Scope Ratione Materiae of the Compulsory Jurisdiction of the ICJ”, in *The UN Genocide Convention: A Commentary* (Paola Gaeta, ed., Oxford University Press 2009), p. 453 (MU, Ann. 26) (judges’ folder, tab 7).

³⁷ See Joint Written Observations on Preliminary Objections of Austria, the Czech Republic and the Slovak Republic, paras. 33-40; Joint Written Observations on Preliminary Objections of Belgium, Croatia, Denmark, Estonia, Finland, Ireland, Luxembourg, Malta and Sweden, paras. 23-25; Written Observations on Preliminary Objections of Bulgaria, paras. 24-25; Joint Written Observations on Preliminary Objections of Canada and the Netherlands, paras. 10, 26; Written Observations on Preliminary Objections of Germany, paras. 23-24; Written Observations on Preliminary Objections of Greece, paras. 44-47; Written Observations on Preliminary Objections of Italy, paras. 10-13; Written Observations on Preliminary Objections of Lithuania, para. 6; Written Observations on Preliminary Objections of Norway, para. 23; Written Observations on Preliminary Objections of Poland, paras. 31-37; Written Observations on Preliminary Objections of Portugal, para. 48; Written Observations on Preliminary Objections of Romania, paras. 6-8, 37-39; Written Observations on Preliminary Objections of Slovenia, paras. 22-23, 27; Written Observations on Preliminary Objections of Spain, paras. 6-13, 56.

³⁸ Genocide Convention, preamble.

³⁹ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

⁴⁰ See CR 2023/13, p. 72, para. 72 (Crosato).

State. Both kinds of disputes unmistakably “relate[] to” the interpretation, application and fulfilment of the Convention, including the responsibility of a State for genocide.

21. The extreme facts of this case show the grave danger of allowing Russia to subvert the Genocide Convention’s noble purposes. Article IX gives this Court a crucial role not just when a State violates the Convention by committing genocide, but also when it misinterprets it, misapplies it, or falsely claims to “fulfil” its treaty obligations by inflicting grievous harm on a neighbouring nation and people. The many interventions that you will hear tomorrow announce that this case is far bigger than Ukraine versus Russia. It is about what the world’s most important human rights treaty really means, how it may be lawfully used, and whether this Court is powerless when that Convention is flagrantly abused.

III. The Court should reject the Russian Federation’s mischaracterization of the dispute

22. Madam President, Members of the Court: Russia’s presentation yesterday sought to avoid Article IX’s broad sweep by mischaracterizing this dispute as one that relates to whether Russia’s recognition of the so-called Donetsk and Luhansk Peoples’ Republics (the “DPR” and “LPR”) complied with customary international law, and whether its use of force against Ukraine complied with the UN Charter⁴¹. But we all know Russia only took those actions on the pretext that launching a full-scale military invasion of Ukraine was necessary to prevent and punish genocide.

23. The real dispute that Ukraine has put before you — not the one that Russia has manufactured — relates to the questions of interpretation, application or fulfilment of the Genocide Convention raised by Russia’s invocation of its false allegations to justify its pretextual unilateral actions, including sham recognition and use of force, and atrocity in the name of self-defence. Ukraine claims that Russia violated Article I of the Convention by acting on the false allegation that Ukraine “committed” the international crime of genocide which Russia became obliged to prevent and punish. Ukraine further claims that Russia violated Article IV by invading Ukraine to punish a genocide based on false allegations that Ukraine’s officials are “persons committing genocide” for purposes of Article IV. At this preliminary objections stage, this Court, not Russia, must isolate the

⁴¹ PORF, para. 136.

real issue and objectively determine the subject-matter of the dispute, taking particular account of the facts on which Ukraine as applicant rests its claim⁴².

24. Russia may disagree with Ukraine’s position on the merits. It may wish to defend its outrageous allegations that Ukraine and its officials “committed” genocide. It may wish to deny that these allegations had anything to do with its brutal full-scale invasion. If so, Russia can make those empty arguments at the merits stage. But for now, these merits arguments are irrelevant to the only thing that matters at this stage: Ukraine and Russia undeniably have a dispute over which this Court has jurisdiction under Article IX.

25. Yesterday, you repeatedly heard Russia justify its actions under customary international law or Article 51 of the UN Charter. But it does not matter whether Ukraine and Russia also have a dispute that relates to other sources of international law. As this Court recently made clear, “[c]ertain acts may fall within the ambit of more than one instrument”⁴³. And as this Court elaborated in another case between these same two Parties:

“The fact that a dispute before the Court forms part of a complex situation that includes various matters, however important, over which the States concerned hold opposite views, cannot lead the Court to decline to resolve that dispute, provided that the parties have recognized its jurisdiction to do so”⁴⁴.

26. Madam President, Members of the Court: in a great many cases, you are asked to decide close and difficult questions. But this is not one of them. When we first met here at the provisional measures hearing, you clearly understood the dispute before you. Ukraine charged Russia with launching a full-scale invasion of Ukraine on the pretext of preventing and punishing a claimed genocide that transparently is not occurring, and invoking a Convention that conferred no lawful authority upon Russia to invade Ukraine, kill its citizens and destroy its homeland. Russia acted, and

⁴² See e.g. *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, paras. 52-53; *Fisheries Jurisdiction (Spain v. Canada)*, Jurisdiction of the Court, Judgment, I.C.J. Reports 1998, pp. 447-449, paras. 29-32.

⁴³ *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. 27, para. 56; see also *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. 223, para. 46.

⁴⁴ *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. 576, para. 28.

continues to act, based on false allegations of genocide against Ukraine and twisted readings of the law, both of which Ukraine disputes.

27. Simply put, Ukraine and Russia have a dispute “relating to the interpretation, application or fulfilment of” the Convention that this Court must decide. Russia’s allegations and actions give rise to this Court’s jurisdiction, full stop. Accordingly, this Court should dismiss Russia’s preliminary objections and proceed to the merits.

28. Madam President, I now ask you to call Ms Cheek to the podium to explain why Russia’s first preliminary objection should be dismissed.

The PRESIDENT: I thank Professor Koh. I now invite Ms Marney Cheek to address the Court. You have the floor, Madam.

Ms CHEEK:

FIRST PRELIMINARY OBJECTION: THE EXISTENCE OF A DISPUTE RELATING TO THE GENOCIDE CONVENTION

I. Introduction

1. Madam President, Members of the Court, it is an honour to appear again before you on behalf of Ukraine. This morning I will address Russia’s first preliminary objection regarding the existence of a dispute between the Parties relating to the interpretation, application or fulfilment of the Genocide Convention. Russia’s first preliminary objection should be rejected.

2. In the first instance, Russia is wrong on the law. Russia has departed from this Court’s test to determine whether a dispute exists between the Parties. That test focuses on the Parties’ opposing views regarding the subject-matter of the treaty. Second, Russia is wrong on the facts. The evidence before the Court confirms the existence of a dispute between the Parties relating to the Genocide Convention. There is no question that at the time of Ukraine’s Application, the Parties held opposing views on Russia’s reliance on allegations of genocide to justify its unilateral actions in and against Ukraine for the stated purpose of bringing an alleged genocide to an end.

II. The standards the Court applies to determine the existence of a dispute

3. I will first turn to the legal test this Court applies to determine the existence of a dispute between the parties. The legal test is well settled and normally we would not need to spend much time on it. But Russia has urged the Court to adopt a radically different approach and it is therefore worth taking a few minutes to clarify the standards that have been consistently applied by your Court. Yesterday, Russia's counsel focused on the submissions in Ukraine's Memorial and asked this Court whether a dispute between the Parties existed as to each of those submissions. But, respectfully, this is the wrong approach. Ukraine's Application invokes a single treaty — the Genocide Convention — and the question before the Court is whether a dispute exists regarding the subject-matter of that treaty.

4. The standards the Court applies to determine whether a dispute exists regarding the subject-matter of a treaty are well established. The Court has consistently emphasized that the existence of a dispute should be determined objectively on the basis of the facts before the Court⁴⁵. The existence of a dispute is a question of substance, not of form or procedure⁴⁶. And such an assessment takes account of the statements of the parties⁴⁷, as well as the parties' conduct⁴⁸.

⁴⁵ See e.g. *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (II), pp. 849-850, para. 39; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (I), pp. 26-27, para. 50 (citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion*, I.C.J. Reports 1950, p. 74; *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, *Judgment*, I.C.J. Reports 2012 (II), p. 442, para. 46; *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. 84, para. 30; *Nuclear Tests (Australia v. France)*, *Judgment*, I.C.J. Reports 1974, p. 271, para. 55; *Nuclear Tests (New Zealand v. France)*, *Judgment*, I.C.J. Reports 1974, p. 476, para. 58).

⁴⁶ See e.g. *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, p. 502, para. 64; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (II), p. 849, para. 38; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (I), pp. 26-27, para. 50.

⁴⁷ See e.g. *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, p. 502, para. 64; *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (II), pp. 849-850, para. 39; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (I), pp. 32-33, paras. 71-74.

⁴⁸ See e.g. *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (II), p. 850, para. 40; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (I), pp. 32-33, paras. 71-74; *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Preliminary Objections, Judgment*, I.C.J. Reports 1998, p. 315, para. 89.

5. The Court has consistently applied these standards. They are set out in *Georgia v. Russian Federation*⁴⁹, *Marshall Islands v. United Kingdom*⁵⁰ and *Alleged Violations (Nicaragua v. Colombia)*, to name a few⁵¹. It is of particular note that the Court recently applied these standards in its Judgment on preliminary objections in *The Gambia v. Myanmar*, a case also under the Genocide Convention⁵².

6. Russia does embrace some aspects of the Court's settled jurisprudence, observing that a dispute exists where "the claim of one party is positively opposed by the other" and "a dispute exists when . . . the respondent was aware, or could not have been unaware, that its views were positively opposed"⁵³.

7. At the same time, however, the Russian Federation seeks to impose novel requirements, many of which this Court has considered previously and rejected.

8. Russia's main argument is that, at the time of Ukraine's Application to this Court, Ukraine's legal claims must have been identified with exacting specificity. This is the foundation of Russia's first preliminary objection and was echoed yesterday as Russia's counsel took you to the submissions in Ukraine's Memorial, rather than focusing on the subject-matter of the Genocide Convention.

9. Russia asks this Court to focus on whether Ukraine articulated specific legal claims under the Genocide Convention, ignoring whether a dispute existed relating to the subject-matter of the Convention. Russia argues, for example, that "Ukraine must demonstrate that a dispute existed with respect to each of the claims . . . formulated in the Memorial at the time [that Ukraine filed its]

⁴⁹ *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. 84, para. 30.

⁵⁰ *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016 (II)*, pp. 849-851, paras. 38-42.

⁵¹ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, pp. 26-27, para. 50; see also *ibid.*, pp. 32-33, paras. 71-74.

⁵² See generally *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*, p. 502, paras. 63-64.

⁵³ PORF, para. 62 (quoting *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016 (II)*, pp. 849-851, paras. 37-44).

Application”⁵⁴. Russia also suggests that the evidence of a dispute must reflect “positively opposed views with respect to the specific obligations under the Convention”⁵⁵.

10. But the Court has previously rejected that proposed test. In *The Gambia v. Myanmar*, Myanmar argued, as Russia does here, that statements made prior to The Gambia’s application “did not specifically articulate its legal claims”⁵⁶. As Russia does now, Myanmar argued that, prior to instituting proceedings, the applicant must have identified “the provisions of international law [that have] been . . . breached”⁵⁷.

11. Your Court rejected this argument. The Court explained that it “does not consider that a specific reference to a treaty or to its provisions is required”⁵⁸. The Court went on to say that a State must only “refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute [regarding] that subject-matter”⁵⁹. Contrary to Russia’s presentation yesterday, the focus of the Court is on the existence of a dispute with regard to the subject-matter of the treaty.

12. Russia’s allegations of genocide against Ukraine and its unilateral actions for the stated purpose of bringing that genocide to an end fall squarely within the subject-matter of the Genocide Convention: the commission of genocide and the prevention and punishment of that heinous crime.

13. This Court has consistently found the existence of a dispute in a wide range of circumstances. In *The Gambia v. Myanmar*, for example, The Gambia had made two statements before the United Nations — neither of which referred expressly to the Genocide Convention —

⁵⁴ PORF, para. 72.

⁵⁵ *Ibid.*, para. 65.

⁵⁶ *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*, p. 505, para. 70.

⁵⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections of Myanmar (20 January 2021)*, para. 531.

⁵⁸ *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*, p. 505, para. 72; see *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. 222, para. 44.

⁵⁹ *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*, p. 505, para. 72 (citing *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. 85, para. 30); see also *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. 222, para. 44.

which this Court found were opposed by Myanmar and sufficient evidence of the parties' dispute under the Convention⁶⁰.

14. In *Georgia v. Russian Federation*, Georgia never expressly referred to the CERD in exchanges between the parties before Georgia seised the Court under that treaty⁶¹. Nevertheless, the Court concluded that Georgia's statements made in the course of Russia's August 2008 invasion, though "primarily claims about the allegedly unlawful use of force, . . . also expressly referred to [allegations of] ethnic cleansing by Russian forces"⁶². The Court found that Georgia's statements referring to "ethnic cleansing" in this context were sufficient evidence that there was a dispute under the CERD⁶³.

15. In short, this Court has established that when determining whether a dispute exists, the focus is on whether there were communications regarding the subject-matter of the treaty at issue. The parties do not need to refer to the treaty by name. There is certainly no requirement to expressly reference specific treaty provisions or legal submissions.

16. Perhaps realizing the weakness of this principal legal argument that Russia puts forward, Russia attempts to erect a series of additional, technical legal hurdles. But these efforts similarly run afoul of the Court's jurisprudence and should therefore be rejected as well.

17. *First*, Russia argues that a dispute between the Parties relating to the Genocide Convention cannot exist because Russia never formally "invoked" Ukraine's responsibility for genocide under the Convention⁶⁴. On this basis, Russia asks the Court to simply disregard Russia's statements accusing Ukraine of committing genocide and Russia's express reliance on those allegations to justify its recognition of the DPR and LPR and its full-scale invasion of Ukraine.

18. Russia claims to find support for its argument in the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, which Russia also referenced

⁶⁰ *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. 502–507, paras. 63–77.

⁶¹ See generally *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), pp. 81–120, paras. 23–113.

⁶² *Ibid.*, para. 113.

⁶³ See *ibid.*

⁶⁴ PORF, paras. 95–97, 106.

yesterday. But the commentaries to the ILC Articles on invocation of State responsibility specify that they “are not concerned with questions of the jurisdiction of international courts and tribunals, or in general with the conditions for the admissibility of cases brought before such courts or tribunals”⁶⁵. The Court also rejected the Respondent’s reliance on the ILC Articles in *Marshall Islands*, observing that: “The Court’s jurisprudence treats the question of the existence of a dispute as a jurisdictional one that turns on whether there is, in substance, a dispute, not on what form that dispute takes or whether the respondent has been notified.”⁶⁶ Similarly, the Court should reject Russia’s novel proposal in this case.

19. *Second*, Russia asks the Court to ignore the conduct of the Parties. Specifically, Russia asks the Court to ignore Ukraine’s conduct demonstrating its rejection of Russia’s claimed right to invade Ukraine for the stated purpose of preventing and punishing a genocide⁶⁷. But this Court has previously confirmed that the conduct of the parties may be relevant to its assessment of whether or a not a dispute exists, particularly in cases where, for various reasons, there have been no diplomatic exchanges between the parties⁶⁸. For example, in *Marshall Islands*, in this Court’s discussion of *Bosnian Genocide*, the Court noted that, in that particular case, “which involved an ongoing armed conflict, the prior conduct of the parties was sufficient to establish the existence of a dispute”⁶⁹. As I will shortly demonstrate, the Parties’ conduct in this case also underscores the existence of a dispute here.

20. Simply put, Russia’s attempt to erect as many legal hurdles as possible to this Court finding the existence of a dispute should be rejected.

⁶⁵ ILC Commentaries on Draft Articles on State Responsibility, Art. 44, p. 120, para. 1; *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment, I.C.J. Reports 2016 (II)*, p. 852, para. 45.

⁶⁶ *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment, I.C.J. Reports 2016 (II)*, p. 852, para. 45.

⁶⁷ PORF, paras. 113–114.

⁶⁸ See e.g. *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment, I.C.J. Reports 2016 (II)*, p. 850, para. 40.

⁶⁹ *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment, I.C.J. Reports 2016 (II)*, p. 855, para. 54 (discussing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, *Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 614, paras. 27–29)).

III. A dispute between Ukraine and the Russian Federation relating to the Genocide Convention existed at the time of Ukraine's Application

21. To summarize: the Court's jurisprudence is clear. The Court looks objectively at the facts to determine whether, at the time Ukraine filed its Application, a dispute existed between the Parties relating to the subject-matter of the Genocide Convention. The Court does not require the articulation of specific legal claims by Ukraine in order to find a dispute. Nor does the Court require that Russia must have formally invoked Ukraine's international responsibility under the Genocide Convention for this case to proceed. In making its assessment, the Court should take into account both statements and conduct.

22. With this in mind, we turn to the facts before you.

A. The Russian Federation has accused Ukraine of committing genocide in violation of the Genocide Convention and has invaded Ukraine to prevent and punish that alleged genocide

23. Russia has, repeatedly, accused Ukraine and its officials of committing genocide in the Donbas region of Ukraine. Russia then relied on those allegations of genocide in February 2022 to recognize the DPR and the LPR and to justify Russia's full-scale invasion of Ukraine.

24. Russia has made these accusations of genocide for years. Sometimes referring expressly to alleged violations of the Convention, sometimes referring to the subject-matter of the Convention without calling the Convention out by name. Russia cannot deny these statements and so it claims they have no significance.

25. The world was in shock when Russia launched its full-scale invasion of Ukraine in February 2022. But the steps culminating in that brazen use of force did not only include a build-up of troops along the Ukraine-Belarusian border. It also included eight years of building a sham justification for Putin's so-called "special military operation": allegations that Ukraine had committed genocide in Donbas that must be prevented and punished. This was not just political rhetoric, as Russia would like you to believe.

26. I will now walk you through a bit of that eight-year history.

27. You heard little yesterday about the Investigative Committee of the Russian Federation. Since 2014, the Investigative Committee has repeatedly, and expressly, alleged that Ukrainian officials, including two Ministers of Defence, have committed crimes under the Genocide

Convention⁷⁰. The Investigative Committee has pursued criminal proceedings against Ukrainian officials based on alleged acts of genocide against the Russian-speaking population of eastern Ukraine. As you may recall, the Investigative Committee is a State organ of the Russian Federation⁷¹ and it is supervised by the President of the Russian Federation⁷².

28. Let me highlight just a few specific statements made by Russia's Investigative Committee. You will also note that the Committee repeatedly refers to the Genocide Convention by name.

29. In September 2014, the Committee claimed that

“in violation of the 1948 Convention ‘On the Prevention and Punishment of the Crime of Genocide,’ . . . unidentified persons from among the top political and military leadership of Ukraine . . . gave orders aimed to completely destroy specifically the Russian-speaking population living on the territory of the Donetsk and Luhansk republics”⁷³.

30. In January 2015, the Committee stated that the actions of top political and military leadership of Ukraine “can only be qualified as genocide” and

“that such acts carried out by the Ukrainian military constitute especially grave crimes not only under Russian law, but also under the norms of international law. In particular . . . the Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 09.12.1948).”⁷⁴

31. In September 2017, the Committee announced 20 criminal cases against Ukrainian officials, including the sitting Minister of Defence. It alleged that they acted “in violation of . . . the Convention on the Prevention and Punishment of the Crime of Genocide” by giving “deliberately criminal orders” to shell civilian infrastructure. The Committee stated that: “It is obvious that all of these persons acted out of hatred to the Russian-speaking population living in the Donbas, wishing them to die.”⁷⁵ Make no mistake, these allegations are false. Ukraine unequivocally denies them. But

⁷⁰ See MU, paras. 36-37; WOU, para. 38.

⁷¹ *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. 221, para. 37.

⁷² Investigative Committee of the Russian Federation, *The Federal Law of 28.12.2010 No 403-FZ “On the Investigative Committee of the Russian Federation” (Extract)*, accessed at https://en.sledcom.ru/Legal_information (judges' folder, tab 9).

⁷³ Investigative Committee of the Russian Federation, *The Investigative Committee Opened a Criminal Investigation Concerning the Genocide of the Russian-Speaking Population in the South-East of Ukraine* (29 Sept. 2014) (MU, Ann. 9) (judges' folder, tab 10).

⁷⁴ Investigative Committee of the Russian Federation, *A Criminal Investigation was Initiated Over New Facts of Genocide of Russian-Speaking Civilians During Shelling of Towns and Settlements in Donbas* (13 Jan. 2015) (MU, Ann. 12) (judges' folder, tab 11).

⁷⁵ Investigative Committee of the Russian Federation, *Criminal Cases Have Been Initiated Against 20 High-Ranking Officials of the Ministry of Defense of Ukraine* (11 Sept. 2017) (MU, Ann. 14) (judges' folder, tab 12).

they also clearly involve the subject-matter of the Genocide Convention. And as I will get to in a moment, they also have been opposed by Ukraine both through its words and its actions.

32. In December 2019, in a press release that marked the anniversary of the adoption of the Genocide Convention, the Russian Investigative Committee explained that “[g]uided by the norms of both national and international law, investigators, of course, cannot stand aside when acts of genocide are committed in our time”. Accordingly, it added that it was “investigating crimes of genocide of the Russian-speaking population of Donbas, where civilians are dying at the hands of the Ukrainian military under targeted fire”⁷⁶.

33. Now Russia claims that these statements by its Investigative Committee cannot form the basis of a dispute with Ukraine relating to the subject-matter of the Genocide Convention. According to Russia, these statements do not represent the position of the Russian State on “the international level” as the Investigative Committee was merely “conducting a national investigation”⁷⁷, although yesterday Russia did concede that these investigations relate to the “international crime” of genocide⁷⁸.

34. There is no legal requirement that statements be made “on the international level”. But in any event, Russia’s argument that the Investigative Committee was doing nothing but a domestic investigation rings hollow. The Investigative Committee is a Russian State organ that has levelled inherently international allegations against Ukrainian officials: crimes under the Genocide Convention. And as a factual matter, the Investigative Committee *has* represented Russia at the international level — attending, for example, formal bilateral negotiations between Ukraine and Russia⁷⁹.

35. The Investigative Committee itself has trumpeted its allegations of genocide to the international community. For example, in 2016, the Investigative Committee hosted a formal presentation, in English, for foreign diplomats “aimed . . . at sensitizing international and foreign

⁷⁶ Investigative Committee of the Russian Federation, *International Day of Commemoration for the Victims of Genocide* (9 Dec. 2019) (MU, Ann. 17) (judges’ folder, tab 13).

⁷⁷ PORF, para. 110; see also *ibid.*, para. 112.

⁷⁸ CR 2023/13, p. 53, para. 20 (Azari).

⁷⁹ See Report on the Results of the First Round of Negotiations of the Delegation of Ukraine with the Russian Federation on the Meaning and Application of the International Convention for the Suppression of the Financing of Terrorism (28 Feb. 2015) (WOU, Ann. 2) (judges’ folder, tab 14).

communities to the problem of combating international crimes in Ukraine” and they discussed the “possibility of submitting evidence . . . gathered by the [Russian] Investigative Committee to the bodies of international justice . . . to determine the Ukrainian government’s responsibility for internationally wrongful acts”⁸⁰.

36. Russia cannot seriously ask this Court to find that it never made allegations of genocide “at the international level”.

37. Beyond the Investigative Committee, countless Russian officials, including President Putin himself, have levelled the same accusation that Ukraine is responsible for genocide, often specifically referencing the Convention. And Russian officials have explicitly referenced that these allegations of genocide justify their recognition of DPR and LPR and their full-scale invasion of Ukraine.

38. For example, in November 2021, three months before Russia’s recognition of DPR and LPR and its full-scale invasion, Boris Gryzlov, Russia’s representative to the Trilateral Contact Group on Settling the Situation in Ukraine, justified Russia’s support for DPR and LPR by referencing “Kyiv’s actions which are aimed at escalating the conflict and actually fall under the UN Convention On the Prevention of Genocide”⁸¹. As an aside, I would note that that statement made by Russia’s envoy to the Trilateral Contact Group was most certainly a statement at “the international level”. I also would note that Mr Gryzlov referenced the Genocide Convention by name.

39. Since 2014, as you have seen, Russia has alleged that Ukraine was committing genocide in violation of the Convention. And at the end of February 2022, Russia went further. It took two extraordinary measures on the express basis of preventing and punishing an alleged genocide in Donbas. These actions were opposed by Ukraine. And these actions happened with startling speed.

40. First, on 21 February 2022, President Putin formally recognized the “independence and sovereignty” of the DPR and LPR. In an address given on that day, President Putin claimed “it necessary to take a long overdue decision and to immediately recognize the independence and

⁸⁰ Investigative Committee of the Russian Federation, *Presentation of the English Version of Book “The Tragedy of Southeastern Ukraine. The White Book of Crimes”* (10 Feb. 2016), accessed at <https://en.sledcom.ru/news/item/1015734> (judges’ folder, tab 15).

⁸¹ See, e.g., RIA Novosti, *Gryzlov Called Putin’s Decree on Donbas a Response to Kyiv’s Actions* (18 Nov. 2021) (MU, Ann. 35) (judges’ folder, tab 16); see also TASS, *Putin’s Decree on Donbas is Response to Kyiv’s Refusal to Honor Minsk Accords – Envoy* (18 Nov. 2021), accessed at <https://tass.com/politics/1363441>.

sovereignty of the DPR and LPR”. Why? Because of a “genocide, which almost 4 million people [were] facing” in the DPR and LPR⁸².

41. This was the same justification that Russia’s Permanent Representative to the United Nations, Vassily Nebenzia, provided to the United Nations General Assembly. On 23 February 2022, Mr Nebenzia justified Russia’s recognition of the DPR and LPR by claiming that: “In the light of the blatant genocide . . . Russia could no longer remain indifferent to the fate of the 4 million people of the Donbas.”⁸³ In other words, Russia justified its recognition of the DPR and LPR as a measure to bring an alleged genocide to an end.

42. What happened the next day, on 24 February 2022, is known to us all. President Putin announced his so-called “special military operation”⁸⁴, which was, in fact, a full-scale invasion of Ukraine.

43. Yesterday, Russia was selective in quoting the speech of its President. Russia noted President Putin’s reference to Article 51 of the UN Charter and its treaties of friendship with the DPR and LPR. But President Putin’s speech did not end there. In his very next sentence, President Putin stated the purpose of his military intervention, the justification for his actions. And that justification was to stop a genocide. He stated: “We had to stop that atrocity, that genocide of the millions of people who live there and who pinned their hopes on Russia, on all of us.”⁸⁵ Putin went on: “The *purpose* of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kyiv regime.”⁸⁶ The express “purpose” of Russia’s invasion, according to Russia’s President, was the prevention and punishment of a genocide that Russia alleged was occurring in eastern Ukraine. Russia transmitted President Putin’s address, in its entirety, to the UN Security Council.

⁸² President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (21 Feb. 2022), pp. 20-21, accessed at <http://en.kremlin.ru/events/president/transcripts/statements/67828> (MU, Ann. 5) (judges’ folder, tab 17).

⁸³ UN General Assembly Official Records, 76th Session, 58th Plenary Meeting, UN Doc. A/76/PV.58 (23 Feb. 2022), p. 14 (judges’ folder, tab 18).

⁸⁴ See e.g. President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (24 Feb. 2022), p. 7, accessed at <http://en.kremlin.ru/events/president/news/67843> (MU, Ann. 6) (judges’ folder, tab 8).

⁸⁵ President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (24 Feb. 2022), p. 6, accessed at <http://en.kremlin.ru/events/president/news/67843> (MU, Ann. 6) (judges’ folder, tab 8).

⁸⁶ *Ibid.*; emphasis added.

44. Following this address, Russian officials echoed the justification for Russia's actions set out by their President. For example, this time speaking to the UN Security Council, Russia's UN Permanent Representative stated that President Putin "decided to start a military operation in Donbas" and that "[t]he goal of this special operation is protection of people who have been . . . exposed to genocide by the Kyiv regime"⁸⁷. Russia's official representation to the United Nations was that its actions in Ukraine were justified in order to protect those in Donbas from an alleged genocide.

45. The following day, on 25 February 2022, Russia's Foreign Minister, Sergei Lavrov, similarly justified Russia's aggression against Ukraine as "preventing the neo-Nazis and those who promote methods of genocide from ruling this country", referring to Ukraine⁸⁸. And, in an interview that same day, Russia's Ambassador to the European Union was asked about President Putin's reference to genocide as a justification for his invasion of Ukraine. The Ambassador said: "We can turn to the official term of genocide as coined in international law. . . . If you read the definition, it fits pretty well."⁸⁹ The Ambassador was clear. Russia does not use the term genocide for rhetorical purposes. It uses the term as it is formally defined in international law, in other words, as that term is defined in the Genocide Convention.

B. Ukraine opposed the Russian Federation's allegations of genocide as well as Russia's reliance on those allegations to take unilateral action in and against Ukraine

46. Ukraine did not remain silent in the face of Russia's allegations of genocide and its reliance on them to recognize the DPR and LPR and invade Ukraine. Ukraine positively opposed both Russia's allegations of genocide and Russia's steps to prevent and punish alleged genocide on Ukraine's territory. From the very beginning, in 2014, Ukrainian officials denounced the allegations of genocide put forward by Russia and Russia's Investigative Committee. For example: in

⁸⁷ Permanent Mission of the Russian Federation to the United Nations, *Statement and Reply by Permanent Representative Vassily Nebenzia at UNSC Briefing on Ukraine* (23 Feb. 2022) (MU, Ann. 7).

⁸⁸ TASS, *Kyiv Regime Controlled by West, Neo-Nazis, Lavrov Says* (25 Feb. 2022), accessed at <https://tass.com/politics/1411139> (judges' folder, tab 19); see also Interfax, *Moscow Considers the Attitude of the Ukrainian Authorities Towards the Residents of Donbas as Genocide* (25 Feb. 2022) (MU, Ann. 37); RBC, *Lavrov Announced the Non-Recognition of the Democratic Government of Ukraine* (25 Feb. 2022) (MU, Ann. 38).

⁸⁹ Georgi Gotev, *Russian Ambassador Chizhov: Nord Stream 2 Is Not Dead, It's a Sleeping Beauty*, EURACTIV (25 Feb. 2022), accessed at <https://www.euractiv.com/section/global-europe/interview/russian-ambassador-chizhov-nord-stream-2-is-not-dead-its-a-sleeping-beauty/> (judges' folder, tab 20).

October 2014, then President of Ukraine, Petro Poroshenko, commented on the decision of the Investigative Committee to open a criminal case against the military leadership of Ukraine for the alleged genocide of the Russian-speaking population of Donbas. The President of Ukraine rejected the premise of the Investigative Committee's case, stating: "I am sure that the blow to the Russian-speaking people was inflicted by the northern neighbor" — pointing a finger at Russia⁹⁰.

47. The Prosecutor General's Office of Ukraine also stated that the Investigative Committee's actions were "groundless"⁹¹. And one of the Ukrainian officials accused by the Investigative Committee — then Minister of Defence, Mr Valeriy Heletey — publicly rejected the Committee's allegations. He stated: "Regarding the criminal case against me and my colleagues in Russia for 'genocide of the Russia-speaking population': This whole thing is a complete delusion."⁹² Minister Heletey added that "[o]nly crazy Kremlin propagandists can accuse the Ukrainian army, which is 40% Russian-speaking, of hating other Russian-speakers"⁹³.

48. Minister Heletey's sentiment was echoed by advisers to the Ukrainian Minister of the Interior who also denounced the actions of the Investigative Committee as "nonsense"⁹⁴. As one adviser responded, "I have to tell you that commenting on another nonsense of the Investigative Committee of the Russian Federation is a thankless task. Especially when they use terms like genocide."⁹⁵

49. In November 2015, following additional allegations of genocide by the Investigative Committee, Ukraine's Speaker of the Presidential Administration on Anti-Terrorist Operational

⁹⁰ VGOLOS, *It Was Russia Who Dealt a Blow to the Russian-Speaking Population — Poroshenko* (11 Oct. 2014) (WOU, Ann. 15) (judges' folder, tab 21); UNIAN, *Russian-Speaking Ukrainians Suffered the Most from the Actions of Russia — Poroshenko* (11 Oct. 2014) (WOU, Ann. 14).

⁹¹ BBC News, *Investigative Committee of Russia Accused the Military Leadership of Ukraine of "Genocide"* (2 Oct. 2014) (MU, Ann. 33) (judges' folder, tab 22).

⁹² Facebook Post of Valeriy Heletey (Minister of Defence of Ukraine) (3 Oct. 2014) (WOU, Ann. 1) (judges' folder, tab 23); see also Investigative Committee of the Russian Federation, *A Criminal Case Has Been Initiated Against a Number of High-Ranking Officials of the Armed Forces of Ukraine* (2 Oct. 2014) (MU, Ann. 11).

⁹³ Facebook Post of Valeriy Heletey (Minister of Defence of Ukraine) (3 Oct. 2014) (WOU, Ann. 1) (judges' folder, tab 23).

⁹⁴ Lyubov Chyzhova, *It is Putin Who Should be Tried for Genocide — Adviser to the Head of the Ministry of Internal Affairs of Ukraine*, RFE/RL (1 Oct. 2014) (MU, Ann. 32) (judges' folder, tab 24); BBC News, *The Prosecutor General's Office Opened Proceedings Against Russian Investigators* (30 Sept. 2014) (MU, Ann. 31).

⁹⁵ Lyubov Chyzhova, *It is Putin Who Should be Tried for Genocide — Adviser to the Head of the Ministry of Internal Affairs of Ukraine*, RFE/RL (1 Oct. 2014) (MU, Ann. 32) (judges' folder, tab 24).

Issues explained that the Russian side is fabricating data about Ukraine's alleged genocide of the Russian-speaking population in Donbas⁹⁶.

50. In an effort to undermine the relevance of these Ukrainian statements refuting Russia's allegations of genocide, Russia argues that these Ukrainian officials do not have authority to represent Ukraine's position at the international level⁹⁷. Further, according to Russia, Russia could not have been expected to be aware of these statements⁹⁸. In other words, Russia looks for any way it can to say that Ukraine did not actually oppose Russia's baseless view that Ukraine was committing genocide against its own people.

51. But these efforts by Russia to ignore evidence of a dispute between the Parties falls flat. Ukraine has presented numerous examples of statements made by Ukrainian officials, including Ukraine's President and its Minister of Defence, rejecting Russia's allegations. These statements were reported on government websites, in the press and on social media. Russia could not have been unaware that Ukraine opposed its allegations of genocide⁹⁹.

52. To this day, the Investigative Committee continues to levy accusations against Ukrainian officials. Ukraine, already on the record opposing these allegations as fabrications, "nonsense" and "a complete delusion", saw no need to give Russia's propaganda more legitimacy by continuing to condemn Russia's allegations. Ukraine's position was clear.

53. And then, in late 2021 and early 2022, as Russia amassed troops along the Ukrainian border, its allegations of genocide took on a new, and more sinister, significance. Russia's propaganda machine was in full swing. Ukraine responded. On 26 January 2022, the information agency of Ukraine's Ministry of Defence published an article responding to Kremlin propaganda

⁹⁶ Tatiana Tkachenko, *Russia is Going to Accuse Ukraine of "Genocide" of the Russian-Speaking Population in The Hague — Presidential Administration's Speaker*, ZU.UA (12 Nov. 2015) (WOU, Ann. 17) (judges' folder, tab 25); see also Korrespondent.net, *Poroshenko's Officials Accused the Russian Federation of Preparing Provocations* (12 Nov. 2015) (WOU, Ann. 16).

⁹⁷ PORF, para. 99.

⁹⁸ *Ibid.*

⁹⁹ See *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2016 (II), p. 850, para. 41.

“myths” in which it stated: “there is no evidence that Russian-speaking or ethnic Russians in eastern Ukraine are persecuted, not to mention genocide, by the Ukrainian authorities”¹⁰⁰.

54. On 23 February 2022, at the same UN General Assembly meeting where Russia’s Permanent Representative to the United Nations claimed that Russia’s recognition of the DPR and LPR was in response to a “blatant genocide”, Ukraine’s Minister for Foreign Affairs, Dmytro Kuleba, denounced “Russia’s accusations against Ukraine” as “absurd”¹⁰¹. Russia is critical of the fact that Minister Kuleba’s statement did not explicitly refer to genocide or the Genocide Convention¹⁰². But while Minister Kuleba chose not to amplify Russia’s accusations of genocide, he very clearly and forcefully defended his Government’s actions in Donbas and condemned Russia’s illegal recognition of the DPR and LPR.

55. And the next day, Russia launched its full-scale invasion of Ukraine, the “purpose” of which, according to President Putin, was “to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kyiv regime”¹⁰³. Russia acted on a purported right under the Genocide Convention to use force to prevent, punish and bring to an end an act of genocide in Ukraine.

56. Ukraine immediately opposed Russia’s reliance on allegations of genocide to invade Ukraine. Ukraine opposed Russia’s position with a sense of urgency, as bombs rained down on Ukrainian cities and Russian troops invaded from the east, the north and the south. Ukraine did so first and foremost through its actions: Ukraine resisted Russia’s purported fulfilment of the Genocide Convention in the strongest terms, defending its territory and its people — including in the Donbas region — from Russian aggression. Was Ukraine protecting its territorial integrity? Absolutely. But in doing so, Ukraine also was rejecting the notion that Russia had the authority to use force in and

¹⁰⁰ Ruslan Tkachuk, *Seven Myths of the Kremlin Propaganda About the Russian-Ukrainian Conflict*, ArmyINFORM (26 Jan. 2022) (MU, Ann. 3) (judges’ folder, tab 26).

¹⁰¹ UN General Assembly Official Records, 76th Session, 58th Plenary Meeting, UN Doc. A/76/PV.58 (23 Feb. 2022), pp. 2-3 (judges’ folder, tab 18); Ministry of Foreign Affairs of Ukraine, *Statement by HE Mr Dmytro Kuleba, Minister of Foreign Affairs of Ukraine, at the UN General Assembly Debate on the Situation in the Temporarily Occupied Territories of Ukraine* (23 Feb. 2022), accessed at <https://www.kmu.gov.ua/en/news/vistup-ministra-zakordonnih-sprav-ukrayini-dmitra-kuleba-na-debatah-generalnoyi-asambleyi-oon-situaciya-na-timchasovo-okupovanih-teritoriyah-ukrayini-23022022>.

¹⁰² PORF, para. 100.

¹⁰³ President of Russia Mr Vladimir Putin, *Address by the President of the Russian Federation* (24 Feb. 2022), p. 8, accessed at <http://en.kremlin.ru/events/president/news/67843> (MU, Ann. 6) (judges’ folder, tab 8).

against Ukraine to stop a genocide. In this case, as in *Bosnian Genocide* — which also involved an ongoing armed conflict — the Parties' conduct demonstrates a dispute relating to the Genocide Convention¹⁰⁴.

57. At this point, there was a dispute between the Parties relating to the Genocide Convention that included Russia's reliance on its fabricated allegations of genocide to justify its recognition of DPR and LPR and its full-scale invasion of Ukraine. The opposing positions of the two States had been established by the statements and the conduct of each Party, and no further action was required by either Ukraine or the Russian Federation to bring the dispute within the ambit of Article IX of the Genocide Convention.

58. Lest there have been any doubt, however, Ukraine reiterated its opposition before filing its Application with this Court. In a statement by Ukraine's Ministry of Foreign Affairs, published on 26 February 2022, on the third day of Russia's full-scale invasion and prior to filing Ukraine's Application with this Court, the Ministry of Foreign Affairs again rejected Russia's narrative, publishing a statement "on Russia's False and Offensive Allegations of Genocide as a Pretext for Its Unlawful Military Aggression"¹⁰⁵.

59. In this statement, the Ministry explained that "Ukraine strongly denies Russia's allegations of genocide and denies any attempt to use such manipulative allegations as an excuse for unlawful aggression"¹⁰⁶. The Ministry went on:

"The crime of genocide is defined in the Genocide Convention, and under that Convention Russia's claims are baseless and absurd. Russia's claims of genocide as justification for its lawless conduct are an insult to the Genocide Convention, and to the work of the international community in preventing and punishing the world's most serious crime."¹⁰⁷

¹⁰⁴ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, *Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 614, paras. 27-29; see also *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment, I.C.J. Reports 2016 (II)*, p. 855, para. 54.

¹⁰⁵ Ministry of Foreign Affairs of Ukraine, *Statement of the Ministry of Foreign Affairs of Ukraine on Russia's False and Offensive Allegations of Genocide as a Pretext for Its Unlawful Military Aggression* (26 Feb. 2022), accessed at <https://www.kmu.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-nepravdivih-ta-obrazlivih-zvinuvachen-rosiyi-v-genocidi-yak-privodu-dlya-yiyi-protipravnoyi-vijskovoyi-agresiyi> (judges' folder, tab 27); see also Ministry of Foreign Affairs of Ukraine, *Statement of the Ministry of Foreign Affairs of Ukraine on Russia's False and Offensive Allegations of Genocide as a Pretext for Its Unlawful Military Aggression* (26 Feb. 2022), accessed at <https://mfa.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-nepravdivih-ta-obrazlivih-zvinuvachen-rosiyi-v-genocidi-yak-privodu-dlya-yiyi-protipravnoyi-vijskovoyi-agresiyi>.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

The Ministry called on Russia to immediately cease aggression against Ukraine taken under this pretext¹⁰⁸.

60. Russia claims that Ukraine's statement was "imprecise" or "vague", but that is disproven from the statement's plain language¹⁰⁹. As to timing, given the fast pace at which Russia's full-scale invasion was unfolding, with Russian troops attempting to take Kyiv and bring down Ukraine's Government, the timing and manner of the statement's publication do not detract from its relevance in confirming that there is a dispute existing related to the Genocide Convention at the time of Ukraine's Application to this Court. It is common ground that Ukraine published this statement prior to filing its Application¹¹⁰. It is reasonable to presume that, in the circumstances of war, the Russian Federation would have been closely monitoring any official statements from Ukraine's Ministry of Foreign Affairs.

C. The Parties' statements and conduct subsequent to Ukraine's Application confirm the existence of this dispute

61. Finally, I would direct this Court's attention to the subsequent conduct of the Parties in this case. In *The Gambia v. Myanmar*, the Court observed that "conduct of the parties subsequent to the application may be relevant for various purposes, in particular to confirm the existence of a dispute"¹¹¹.

62. After Ukraine's Application, and after the Court indicated provisional measures in this case, the Russian Federation maintained its claim that its actions in and against Ukraine are based on bringing an alleged genocide to an end. In remarks given on 18 March 2022, just two days after this Court indicated provisional measures, President Putin reiterated that people in Donbas were subjected to genocide, and he claimed that the "main goal and motive of the military operation that we launched in Donbas and Ukraine is to relieve these people of suffering of this genocide"¹¹².

¹⁰⁸ *Ibid.*

¹⁰⁹ See PORF, para. 80.

¹¹⁰ *Ibid.*, para. 81.

¹¹¹ *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*, p. 502, para. 64; see also *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016 (II)*, p. 851, para. 43.

¹¹² President of Russia Vladimir Putin, *Remarks at the Concert Marking the Anniversary of Crimea's Reunification with Russia* (18 Mar. 2022), <http://en.kremlin.ru/events/president/transcripts/68016> (MU, Ann. 8) (judges' folder, tab 28).

63. Just this summer, the Secretary of Russia's Security Council explained again that the "special military operation has specific goals" and that Russia is "saving the population" of the DPR and LPR "from the genocide that has been carried out by Ukrainian neo-Nazis for eight years"¹¹³.

64. If any possible doubt remained, it was put to rest two weeks ago in a statement by Dmitry Medvedev, the Deputy Chairman of Russia's Security Council — and formerly Russia's President and Prime Minister. Medvedev stated:

"The UN Convention on the Prevention and Punishment of the Crime of Genocide states that 'genocide is understood to mean acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such.' This is exactly what the Kyiv regime has been doing since 2014"¹¹⁴.

Medvedev went on, using a derogatory term meaning "Ukrainian scum":

"The Convention also states that perpetrators of genocide must be justly punished. ["Ukrainian scum"], who are guilty of killing civilians in Donbas, will receive a well-deserved punishment for everything they have done. *That is why* the special military operation must go on until its goals are fully achieved."¹¹⁵

That is a chilling statement, but it is also quite clear.

IV. Conclusion

65. To conclude: since 2014, the Russian Federation has accused Ukraine and its officials of committing genocide in Donbas in violation of the Genocide Convention. Ukraine called such allegations "a complete delusion". But Russia did not back down. Instead, it relied on those allegations of genocide to justify its recognition of DPR and LPR and to launch a full-scale invasion of Ukraine. Ukraine protested, vehemently. It protested before the UN General Assembly, through statements by its Ministry of Foreign Affairs, and by fighting against the Russian incursion. Russia, to this day, continues to allege that genocide justifies its war. It continues to invoke the subject-matter of the Genocide Convention, and to even call out the Genocide Convention by name. Madam President, Members of the Court, the facts speak for themselves. There is a dispute between these Parties relating to the Genocide Convention and Russia's first preliminary objection must be denied.

¹¹³ TASS, *Need to Demilitarize Ukraine Driven By Threat Its Arms Pose to Russia*, CTSO — Patrushev (8 June 2023), accessed at <https://tass.com/defense/1629631> (judges' folder, tab 29).

¹¹⁴ Telegram post of Dmitry Medvedev (Deputy Chairman of Russia's Security Council) (5 Sept. 2023), accessed at https://t.me/medvedev_telegram/383 (judges' folder, tab 30); see also TASS, *Total Victory Over Genocide-Promoting Kyiv Only Possible Outcome of Special Op — Medvedev* (5 Sept. 2023), accessed at <https://tass.com/politics/1670035>.

¹¹⁵ *Ibid.*

66. I now ask that you call Professor Jean-Marc Thouvenin to the podium to address Russia's second preliminary objection.

The PRESIDENT: I thank Ms Cheek. Before I invite the next speaker to take the floor, the Court will observe a coffee break of 10 minutes. The sitting is adjourned.

The Court adjourned from 11.25 a.m. to 11.40 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I shall now give the floor to Professor Jean-Marc Thouvenin. You have the floor, Professor.

M. THOUVENIN : Merci beaucoup, Madame la présidente.

**DEUXIEME EXCEPTION PRELIMINAIRE :
LA COMPETENCE *RATIONE MATERIAE***

1. Madame la présidente, Mesdames et Messieurs les juges, j'ai l'honneur de me présenter devant votre Cour pour représenter l'Ukraine, dont la confiance m'oblige. Je m'attacherai à la deuxième exception préliminaire selon laquelle votre Cour n'aurait pas compétence *ratione materiae* pour juger le présent différend. En dépit des longs développements que la Russie y consacre, que j'aborderai à titre subsidiaire en donnant l'interprétation adéquate des articles premier et IV de la convention (II), vous pourrez aisément rejeter cette exception d'incompétence comme manifestement dénuée de fondement (I).

**I. L'EXCEPTION D'INCOMPETENCE *RATIONE MATERIAE* EST
MANIFESTEMENT INFONDEE**

2. Madame la présidente, Mesdames et Messieurs les juges, l'argument de la Russie pour tromper votre compétence *ratione materiae* est que, selon son interprétation de la convention, qu'elle vous a demandé hier d'entériner, la convention ne s'appliquerait pas aux faits dénoncés par l'Ukraine¹¹⁶.

3. Ce faisant la Russie ne vous demande rien d'autre que d'exercer pleinement votre compétence pour trancher le différend sur l'interprétation de la convention, alors même que ce

¹¹⁶ Voir CR 2023/13, p. 61-62, par. 9-17 (Crosato).

différend est au cœur de la présente affaire. La logique la plus évidente voudrait que vous rejetiez cette exception, de la même manière que vous l'aviez fait dans l'affaire du génocide en Bosnie, en considérant qu'

« il ressort à suffisance des termes mêmes de cette exception que les Parties, non seulement s'opposent sur les faits de l'espèce, sur leur imputabilité et sur l'applicabilité à ceux-ci des dispositions de la convention sur le génocide, mais, en outre, sont en désaccord quant au sens et à la portée juridique de plusieurs de ces dispositions, dont l'article IX. Pour la Cour, il ne saurait en conséquence faire de doute qu'il existe entre elles un différend relatif à "l'interprétation, l'application ou l'exécution de la ... convention..." »¹¹⁷.

II. À TITRE SUBSIDIAIRE : LES GRIEFS SATISFONT AU TEST DE LA COMPÉTENCE RATIONE MATERIAE ÉTABLI DANS L'AFFAIRE DES PLATES-FORMES PETROLIERES

4. Je pourrais m'arrêter là, mais je démontrerai maintenant, à titre subsidiaire, que le présent différend satisfait à l'autre test de compétence *ratione materiae*, que vous avez inauguré dans l'affaire des *Plates-formes pétrolières* (A), et ce sans qu'il soit nécessaire de procéder à l'interprétation des articles premier et IV. À titre encore plus subsidiaire, si vous décidiez de procéder à ce stade à l'interprétation de ces articles, vous constateriez qu'elle confirme que votre compétence *ratione materiae* pour trancher le présent différend est établie (B).

A. La Cour peut établir sa compétence *ratione materiae* sur la base de l'article IX

5. Madame la présidente, dans des affaires ne se rapportant pas à la convention sur le génocide, la Cour a affirmé à plusieurs reprises depuis l'affaire des *Plates-formes pétrolières* que :

« pour déterminer si elle a compétence *ratione materiae* au titre d'une clause compromissoire visant les différends concernant l'interprétation ou l'application d'un traité, il lui faut rechercher si les actes dont le demandeur tire grief "entrent dans les prévisions" du traité contenant la clause »¹¹⁸.

¹¹⁷ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Yougoslavie), exceptions préliminaires, arrêt, C.I.J. Recueil 1996 (II), p. 616-617, par. 33.*

¹¹⁸ *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2019 (II), p. 584, par. 57, p. 595, par. 95. Voir aussi Certains actifs iraniens (République islamique d'Iran c. États-Unis d'Amérique), exceptions préliminaires, arrêt, C.I.J. Recueil 2019 (I), p. 23, par. 36 ; Immunités et procédures pénales (Guinée équatoriale c. France), exceptions préliminaires, arrêt, C.I.J. Recueil 2018 (I), p. 308, par. 46.*

6. L'application de ce « test », à supposer qu'il soit pertinent, consisterait donc :

- premièrement, à prendre les faits dont le demandeur fait état « tels qu'ils sont allégués »¹¹⁹ ; il ne s'agit pas de déterminer si ces allégations sont crédibles ou non ; il s'agit de prendre les faits allégués tels qu'ils sont formulés par le demandeur. L'appréciation des éléments de preuve est renvoyée au stade de l'examen au fond¹²⁰ ;
- partant des allégations, il revient en deuxième lieu à la Cour de déterminer si le différend est relatif à l'interprétation, l'application, ou l'exécution de la convention sur le génocide, y compris la responsabilité d'un État en matière de génocide¹²¹.

1. Les actes dont l'Ukraine tire grief

7. Les faits que l'Ukraine allègue sont connus : la Russie a accusé faussement l'Ukraine de commettre et de laisser se perpétrer un génocide, dans le but de justifier son action en Ukraine et contre celle-ci, en tant qu'une action de prévention et de répression de ce prétendu génocide.

8. Ce faisant, la Russie a prétendu agir par devoir.

9. Comme l'ordonnance en indication de mesures conservatoires le relève, le président de la Fédération de Russie a affirmé que la Russie « devait mettre fin “au génocide” perpétré contre des millions de personnes et qu'elle traduirait en justice les auteurs des nombreux crimes sanglants perpétrés contre des civils, dont des citoyens russes »¹²².

10. Pour souligner encore davantage ce prétendu devoir impérieux, le président de la Russie a affirmé au moment même de lancer son opération militaire en et contre l'Ukraine que : « all

¹¹⁹ *Plates-formes pétrolières (République islamique d'Iran c. États-Unis d'Amérique)*, exception préliminaire, arrêt, C.I.J. Recueil 1996 (II), opinion individuelle de la juge Higgins, p. 856, par. 33.

¹²⁰ *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie)*, exceptions préliminaires, arrêt, C.I.J. Recueil 2019 (II), déclaration de la juge Donoghue, p. 653, par. 10.

¹²¹ Voir *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie)*, exceptions préliminaires, arrêt, C.I.J. Recueil 2019 (II), p. 584, par. 56.

¹²² *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, C.I.J. Recueil 2022, p. 221-222, par. 39. Voir aussi Allocution prononcée le 24 février 2022 par le président de la Fédération de Russie, p. 6 et 8, accessible à l'adresse suivante : <http://www.en.kremlin.ru/events/president/news/67843> (MU, annexe 6) (dossier des juges, onglet n° 8).

responsibility for the possible bloodshed will lie fully and wholly with the ruling Ukrainian regime »¹²³. « We all know that having justice and truth on our side is what makes us truly strong. »¹²⁴

11. Trois jours avant ces affirmations le chef de l'État russe avait critiqué les autres États pour ne pas avoir rempli leur propre devoir de prévenir et punir le prétendu génocide en Ukraine :

«the so-called civilised world, which our Western colleagues proclaimed themselves the only representatives of, prefers not to see this, as if this horror and genocide, which almost 4 million people are facing, do not exist. But they do exist . . .

.....

How long can this tragedy continue? How much longer can one put up with this?»¹²⁵

12. Tels sont les faits allégués : la Russie a accusé l'Ukraine de se livrer à un génocide, de ne pas prévenir ce génocide, et de ne pas en poursuivre les auteurs ; elle a accusé aussi la communauté internationale de refuser d'agir pour mettre un terme à ce prétendu génocide ; et elle a alors estimé que son devoir d'agir pour prévenir et punir ce prétendu génocide lui donnait un droit corrélatif de le faire notamment en recourant à la force armée.

13. C'est très exactement ce qu'a dit le président Poutine pour justifier son « opération militaire spéciale » — une citation que l'on a déjà entendue ce matin mais que je veux remettre à votre mémoire :

« The purpose of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the K[yi]v regime. To this end, we will seek to demilitarise and denazify Ukraine, as well as bring to trial those who perpetrated numerous bloody crimes against civilians, including against citizens of the Russian Federation. »¹²⁶

14. La Russie raconte une autre histoire, et prétend qu'elle aurait agi plutôt sous couvert de légitime défense. Autrement dit, les faits allégués par l'Ukraine ne seraient pas plausibles. Mais il s'agit clairement d'une défense sur le fond, comme l'a déjà expliqué le professeur Koh. C'est que, comme la Cour l'a affirmé dans sa jurisprudence sur la compétence *ratione materiae*, il ne lui revient

¹²³ *Ibid.*, p. 9.

¹²⁴ *Ibid.*, p. 10.

¹²⁵ Allocution prononcée le 21 février 2022 par le président de la Fédération de Russie, p. 20, accessible à l'adresse suivante : <http://en.kremlin.ru/events/president/news/67828> (MU, annexe 5) (dossier des juges, onglet n° 17).

¹²⁶ Allocution prononcée le 24 février 2022 par le président de la Fédération de Russie, p. 8, accessible à l'adresse suivante : <http://www.en.kremlin.ru/events/president/news/67843> (MU, annexe 6) (dossier des juges, onglet n° 8).

pas au stade des exceptions préliminaires de déterminer si les faits allégués par le demandeur sont avérés. Au contraire,

« [à] ce stade de la procédure, point n'est généralement besoin pour la Cour de procéder à un examen des actes illicites allégués ou de la plausibilité des griefs. La tâche de la Cour ... est d'examiner les points de droit et de fait ayant trait à l'exception d'incompétence soulevée. »¹²⁷

15. Point n'est donc besoin pour la Cour de procéder à un examen des actes illicites allégués ou de la plausibilité des griefs. Vous devez seulement vous interroger sur le point de savoir si « les actes dont le demandeur tire grief », tels que je les ai rappelés à l'instant, « entrent dans les prévisions du traité »¹²⁸, autrement dit si « le différend en question entre bien dans les prévisions de l'article IX de la convention sur le génocide »¹²⁹.

16. J'ajoute que la Russie ne peut pas réécrire la requête de l'Ukraine, pour prétendre que son « véritable objet » serait sans rapport avec la convention sur le génocide mais viserait à contester le droit de la Russie d'agir en légitime défense¹³⁰. Cet argument est vain puisque, d'une part, les conclusions que l'Ukraine demande à la Cour de lui adjuger se réfèrent à des violations de la convention sur le génocide, et que, d'autre part, la Cour a déjà jugé que « [l]e “devoir ... de circonscrire le véritable problème en cause et de préciser l'objet de la demande” ... ne lui permet pas de modifier l'objet des conclusions, surtout lorsque celles-ci ont été formulées de manière claire et précise »¹³¹.

2. Les griefs « entrent dans les prévisions » de la convention sans qu'il soit besoin de résoudre le différend relatif à son interprétation

17. Madame la présidente, Mesdames et Messieurs les juges, n'en déplaise à la Russie, les griefs articulés par l'Ukraine sont ce qu'ils sont. Aux fins de vérifier s'ils « entrent dans les prévisions

¹²⁷ *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2019 (II), p. 584, par. 58.*

¹²⁸ *Ibid.*, par. 57 (citations internes omises). Voir aussi *Immunités et procédures pénales (Guinée équatoriale c. France), exceptions préliminaires, arrêt, C.I.J. Recueil 2018 (I), p. 319, par. 85.*

¹²⁹ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Yougoslavie), exceptions préliminaires, arrêt, C.I.J. Recueil 1996 (II), p. 615, par. 30.*

¹³⁰ EPFR, par. 139 ; voir *ibid.*, par. 140, 151. Voir aussi CR 2023/13, p. 60, par. 3 (Crosato) ; p. 87, par. 6, p. 88, par. 33 (Yee).

¹³¹ *Violations alléguées du traité d'amitié, de commerce et de droits consulaires de 1955 (République islamique d'Iran c. États-Unis d'Amérique), exceptions préliminaires, arrêt, C.I.J. Recueil 2021, p. 28, par. 59.*

du traité », la Cour a jugé par le passé qu'« [i]l peut ... se révéler nécessaire d'interpréter les dispositions qui définissent le champ d'application du traité »¹³².

18. Ici, il n'est nécessaire que d'interpréter l'article IX. Ce dernier dispose que votre compétence s'étend à tous différends « relatifs à l'interprétation, l'application ou l'exécution de la présente Convention ». Or, le présent différend est manifestement relatif à l'interprétation, l'application, ou l'exécution de la convention. Je rappelle que l'Ukraine affirme, entre autres, que la Russie a gravement abusé de la convention en justifiant l'action unilatérale que l'on sait, en et contre l'Ukraine, pour prévenir et punir un génocide imaginaire. Or, il a déjà été jugé qu'un différend relatif à la question de savoir si un État a interprété, appliqué ou exécuté une convention de manière abusive relève de la compétence *ratione materiae* de la Cour. Dans l'arrêt sur les exceptions préliminaires dans la première affaire *Guinée équatoriale c. France*, la Cour a en effet jugé que « [t]out argument relatif à un abus de droit sera examiné au stade du fond »¹³³.

19. Par ailleurs, l'article IX dispose aussi, et ceci est unique pour une clause compromissoire, que votre compétence recouvre les différends « relatifs à la responsabilité d'un État en matière de génocide ou de l'un quelconque des autres actes énumérés à l'article III ».

20. Et votre Cour a déjà considéré « qu'en visant "la responsabilité d'un État en matière de génocide ou de l'un quelconque des autres actes énumérés à l'article III", l'article IX n'exclut aucune forme de responsabilité d'État »¹³⁴.

21. Or, le présent différend est indubitablement un différend relatif à la responsabilité d'un État en matière de génocide, comme le professeur Koh l'a rappelé. Ceci suffit là encore à déterminer votre compétence *ratione materiae* pour traiter ce différend au fond.

B. Les griefs articulés par l'Ukraine entrent dans les prévisions des autres dispositions de la convention

22. Madame la présidente, Mesdames et Messieurs les juges, j'aborde maintenant à titre subsidiaire l'interprétation des autres dispositions pertinentes de la convention, en particulier des

¹³² *Ibid.*, p. 32, par. 75.

¹³³ *Immunités et procédures pénales (Guinée équatoriale c. France), exceptions préliminaires, arrêt, C.I.J. Recueil 2018 (I), p. 337, par. 151.*

¹³⁴ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Yougoslavie), exceptions préliminaires, arrêt, C.I.J. Recueil 1996 (II), p. 616, par. 32.*

articles premier et IV, tout en considérant — je l’ai indiqué — qu’il n’est pas nécessaire de vous livrer à cet exercice pour déterminer votre compétence *ratione materiae*.

1. L’interprétation de la convention dans l’ordonnance en indication de mesures conservatoires atteste que les griefs articulés par l’Ukraine entrent dans les prévisions de la convention

23. Je note en premier lieu que votre ordonnance en indication de mesures conservatoires donne suffisamment d’indications pour clarifier le sens et la portée de ces dispositions :

« [C]onformément à l’article premier de la convention, tous les États parties à celle-ci se sont engagés “à prévenir et à punir” le crime de génocide. L’article premier ne précise pas quels types de mesures une partie contractante peut prendre pour s’acquitter de cette obligation.

.....

Une partie contractante peut recourir à [divers] moyens d’exécuter son obligation de prévenir et de punir un génocide qui, selon elle, aurait été commis par une autre partie contractante ... [L]a Cour souligne que, en s’acquittant de l’obligation de prévenir le génocide, “chaque État ne peut déployer son action que dans les limites de ce que lui permet la légalité internationale”, comme cela a été précisé dans une affaire antérieure introduite au titre de la convention (*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. 221, par. 430).

... Les actes entrepris par les parties contractantes pour “prévenir et ... punir” un génocide doivent être conformes à l’esprit et aux buts des Nations Unies, tels qu’énoncés à l’article 1 de la Charte des Nations Unies ...

.....

[I]l 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. »¹³⁵

24. Faut-il en dire davantage ? L’Ukraine en doute. Les explications données par votre Cour résolvent à suffisance la question.

25. Mais la Russie affirme, et c’est un des éléments clés de son exception préliminaire, que, s’il est vrai que la convention n’autorise pas le recours unilatéral à la force pour prévenir et punir un prétendu génocide, elle n’interdit pas le recours à la force¹³⁶.

¹³⁵ *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, C.I.J. Recueil 2022, p. 224-225, par. 56-59.*

¹³⁶ Voir EPFR, par. 183 ; voir aussi CR 2023/13, p. 65, par. 36, p. 71-72, par. 68-70 (Crosato).

26. Madame la présidente, Mesdames et Messieurs les juges, l'Ukraine ne soutient certainement pas que la convention sur le génocide interdit tout recours unilatéral par un État à la force armée contre un autre État. Cette question ne se présente pas dans la présente espèce. Ce que l'Ukraine soutient est que le recours à la force armée contre un État aux fins de prévenir et punir un génocide inventé de toutes pièces est un abus et une violation graves des obligations et droits conférés par la convention.

27. Ceci nous conduit à la question de fond posée par l'exception préliminaire russe : un État viole-t-il ses obligations relatives à l'application et l'exécution de la convention s'il recourt à la force armée contre un autre État aux fins de prévenir et punir un génocide fictif ?

28. L'Ukraine considère que tel est incontestablement le cas. Je vais maintenant développer ce point plus avant en m'attachant à l'interprétation des articles premier et IV de la convention.

2. Les articles premier et IV de la convention créent des obligations et habilite les États à agir pour prévenir et punir le génocide où qu'il se produise

29. Comme la Cour le sait fort bien, ces dispositions établissent, et je reprends une formule de la Cour, « des droits et obligations *erga omnes* »¹³⁷. Selon l'article premier, les parties s'engagent « à prévenir et à punir » tout génocide, ce qui les engage à mettre un terme à un génocide en train d'être « commis », et à punir les responsables, ou à empêcher qu'un génocide ne soit commis si un risque est avéré. Comme l'a dit votre Cour, en vertu de cette disposition, « les parties contractantes ont directement l'obligation de prévenir le génocide »¹³⁸. Les États ont « l'obligation de mettre en œuvre, chacun dans la mesure de ses capacités, les moyens propres à prévenir la survenance d'un génocide, dans le respect de la Charte des Nations Unies et des décisions prises, le cas échéant, par les organes compétents de l'Organisation »¹³⁹. En outre, « l'obligation qu'a ainsi chaque État de prévenir et de réprimer le crime de génocide n'est pas limitée territorialement par la convention »¹⁴⁰. C'est ce

¹³⁷ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Yougoslavie), exceptions préliminaires, arrêt, C.I.J. Recueil 1996 (II), p. 616, par. 31 ; voir aussi EEU, par. 126, note 227.*

¹³⁸ *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. 113, par. 165.*

¹³⁹ *Ibid.*, p. 220, par. 427.

¹⁴⁰ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Yougoslavie), exceptions préliminaires, arrêt, C.I.J. Recueil 1996 (II), p. 616, par. 31. Voir aussi 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. 120, par. 183.*

dernier point qui rend d'ailleurs cette convention unique. Par ailleurs, la Cour a déjà jugé que le contenu de cette obligation se situe au-delà de ce qui est énoncé « *expressis verbis* ». Il inclut également, par implication logique, l'obligation pour les États parties de ne pas commettre de génocide¹⁴¹. L'Ukraine soutient qu'il inclut tout aussi logiquement l'interdiction de recourir à la force contre un autre État sous le prétexte fallacieux qu'il a « commis » un génocide qu'il faut, en application de l'article premier, prévenir et punir.

30. De son côté, l'article IV pose que « [l]es personnes ayant commis le génocide ou l'un quelconque des autres actes énumérés à l'article III seront punies, qu'elles soient des gouvernants, des fonctionnaires ou des particuliers ». Les États parties se sont donc également obligés à punir les personnes qui ont commis un génocide et certains autres actes connexes.

31. Il découle des obligations imposées à chaque État de prévenir et de punir le génocide où qu'il ait été commis, et où qu'il soit commis, y compris sur le territoire d'un État tiers, un droit correspondant d'agir pour mettre fin à ce génocide et en punir les auteurs. C'est le sens de la formule de la Cour lorsqu'elle a interprété la convention comme posant des « droits et obligations *erga omnes* »¹⁴².

32. Les droits dont il s'agit forment une norme d'habilitation — en anglais, une « enabling rule » —, en ce sens que la convention habilite tout État à mettre en œuvre « tous les moyens qui sont raisonnablement à leur disposition »¹⁴³ pour prévenir et punir le génocide où qu'il soit commis, y compris en dehors de son territoire. Autrement dit, le constat d'un risque qu'un génocide soit commis, et plus encore qu'un génocide est en train d'être commis, a pour conséquence juridique, au titre de l'article premier, non seulement l'obligation pour tout État de le prévenir et d'agir en vue d'y mettre un terme, mais encore un droit de mener une action pour y parvenir. Dans ce sens, la résolution de l'Institut de droit international adoptée lors de la session de Cracovie en 2005 confirme à son

¹⁴¹ *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. 113, par. 166.

¹⁴² *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Yougoslavie)*, exceptions préliminaires, arrêt, C.I.J. Recueil 1996 (II), p. 616, par. 31.

¹⁴³ *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. 221, par. 430.

article premier que la violation d'une obligation *erga omnes* « autorise » les autres États à réagir¹⁴⁴. Dans son rapport préparatoire à cette résolution, le professeur Giorgio Gaja faisait également valoir que, « [w]hen a State is under an obligation *erga omnes*, all the States to whom the obligation *erga omnes* is owed have a corresponding right »¹⁴⁵.

33. Dans le cadre de la convention sur le génocide, ce droit autorise tout État à mettre en œuvre une action effective pour « prévenir et punir un génocide » que l'État sur le territoire duquel il se produit ne prévient pas, ou qu'il commet. Dans l'affaire *Gambie c. Myanmar*, votre Cour a confirmé que « tout État partie à la convention sur le génocide, et non pas seulement un État spécialement affecté, peut invoquer la responsabilité d'un autre État partie en vue ... de mettre fin à ce manquement »¹⁴⁶.

34. Madame la présidente, les affirmations de la Russie selon lesquelles les articles premier et IV contiennent des obligations mais pas des droits est donc fondamentalement erronée¹⁴⁷.

35 Or, si la convention fixe des devoirs et droits corrélatifs de prévenir et punir un génocide, elle fixe aussi des limites juridiques aux actions qui peuvent être conduites pour ce faire. Ces limites ne sont pas en dehors de la convention comme le prétend la Russie¹⁴⁸, mais découlent du texte des articles premier et IV, lus de bonne foi dans leur contexte, et à la lumière de l'objet et du but de la convention. Elles sont en outre étayées par des principes bien établis du droit international.

3. La violation de l'obligation d'exécuter de bonne foi et de ne pas abuser de la convention, en particulier de ses articles premier et IV, est un grief qui entre dans les prévisions de la convention

36. Quelles sont ces limites ?

37. Il est tout d'abord évident que les États parties ne peuvent pas invoquer et mettre en œuvre leurs droits et obligations au titre de la convention d'une manière qui serait contraire à son objet et à

¹⁴⁴ Institut de droit international, cinquième commission, rapporteur : M. Giorgio Gaja, résolution, *Les obligations et les droits erga omnes en droit international* (session de Cracovie, 2005), accessible à l'adresse suivante : https://www.idi-iii.org/fr/sessions/krakow-2005/?post_type=publication.

¹⁴⁵ Giorgio Gaja, *Obligations and Rights Erga Omnes in International Law*, Second Report, *Annuaire de l'Institut de droit international*, vol. 71 (session de Cracovie, 2005), p. 191 (MU, annexe 23).

¹⁴⁶ *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar)*, mesures conservatoires, ordonnance du 23 janvier 2020, *C.I.J. Recueil 2020*, p. 17, par. 41.

¹⁴⁷ Voir EPFR, par. 223 ; voir aussi CR 2023/13, p. 77-78, par. 103-104 (Crosato).

¹⁴⁸ Voir CR 2023/13, p. 69, par. 54-57 (Crosato).

son but, ou à des fins opposées à celles pour lesquelles la convention a été adoptée. Certes, comme la Cour l'a indiqué dans l'ordonnance en indication de mesures conservatoires, l'article premier de la convention « ne précise pas quels types de mesures une partie contractante peut prendre pour s'acquitter de cette obligation »¹⁴⁹. L'article premier confère donc un pouvoir discrétionnaire. Mais un tel pouvoir discrétionnaire n'est précisément pas sans limites. À cet égard, la Cour a « affirmé à maintes reprises que, lorsqu'un État jouit d'un pouvoir discrétionnaire conféré par un traité, ce pouvoir doit être exercé de manière raisonnable et de bonne foi »¹⁵⁰.

38. L'exemple le plus frappant d'un abus d'un tel pouvoir est celui d'un État qui prétend faussement qu'un génocide a été commis et est en train d'être commis dans ou par un autre État, dans le seul but de faire valoir un prétendu droit d'agir au détriment de cet État, y compris en utilisant la force contre celui-ci.

39. Une telle conduite constituerait d'abord une violation très évidente de l'obligation d'exécuter la convention de bonne foi. L'article 26 de la convention de Vienne sur le droit des traités reflète cette règle lorsqu'il dispose que « [t]out traité en vigueur lie les parties et doit être exécuté par elles de bonne foi »¹⁵¹. La Cour a, pour sa part, jugé que « [l]e principe de bonne foi oblige les Parties à [appliquer [le traité] de façon raisonnable et de telle sorte que son but puisse être atteint »¹⁵². Bien entendu, l'obligation d'appliquer un traité de bonne foi est inhérente à tout traité, en ce sens que même si le traité ne contient pas de disposition le stipulant expressément, elle constitue une obligation conventionnelle.

40. C'est tout particulièrement vrai de la convention sur le génocide puisque l'article IX dispose que les différends sur l'application ou l'exécution de la convention peuvent être portés devant la Cour. Ceci inclut nécessairement les différends sur l'application ou l'exécution de la convention qui ne serait pas de bonne foi, et en contradiction manifeste avec son objet et son but.

¹⁴⁹ *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, C.I.J. Recueil 2022, p. 224, par. 56.

¹⁵⁰ *Immunités et procédures pénales (Guinée équatoriale c. France)*, arrêt, C.I.J. Recueil 2020, p. 323, par. 73 (citant *Droits des ressortissants des États-Unis d'Amérique au Maroc (France c. États-Unis d'Amérique)*, arrêt, C.I.J. Recueil 1952, p. 212 ; *Certaines questions concernant l'entraide judiciaire en matière pénale (Djibouti c. France)*, arrêt, C.I.J. Recueil 2008, p. 229, par. 145).

¹⁵¹ Convention de Vienne sur le droit des traités, Nations Unies, *Recueil des traités*, vol. 1155, n° 18232.

¹⁵² *Projet Gabčíkovo-Nagymaros (Hongrie/Slovaquie)*, arrêt, C.I.J. Recueil 1997, p. 79, par. 142.

41. Il en découle, *a minima*, que l'évaluation de la commission d'un génocide ou d'un risque de génocide dans le but de justifier une action doit être effectuée avec toute la diligence requise avant que cette action soit entreprise pour le prévenir et le réprimer ; en d'autres termes, une allégation de génocide ne doit pas être un simple prétexte pour justifier un prétendu droit d'agir au détriment d'un État tiers.

42. Selon la Cour,

« l'obligation de prévention et le devoir d'agir qui en est le corollaire prennent naissance, pour un État, au moment où celui-ci a connaissance, ou devrait normalement avoir connaissance, de l'existence d'un risque sérieux de commission d'un génocide »¹⁵³.

43. Toujours selon la Cour, lorsqu'il s'agit de déterminer s'il existe un risque de génocide, « la notion de “*due diligence*”, qui appelle une appréciation *in concreto*, revêt une importance cruciale »¹⁵⁴.

44. Le préambule de la convention, qui pose que la « coopération internationale » est une nécessité pour mettre fin au fléau qu'est le génocide, ainsi que d'autres dispositions de la convention, comme l'article VIII, qui appelle les États à recourir aux mécanismes multilatéraux, renforcent l'obligation de « *due diligence* » qui s'impose à l'État qui entend conduire une action unilatérale pour mettre fin à ce qu'il prétend être un génocide commis dans ou par un autre État.

45. Les travaux préparatoires confirment que la convention n'habilite pas les États à nuire à d'autres États sous prétexte de prévenir et punir un génocide qui ne serait pas constaté ou dont le risque ne serait pas sérieusement évalué. Les négociateurs de la convention ont rejeté une proposition prévoyant la protection des « groupes politiques », car elle était considérée comme « un prétexte commode pour s'immiscer dans les affaires intérieures des États »¹⁵⁵. Quant à la proposition visant à pénaliser toutes les formes de propagande publique « visant à attiser les haines ou les inimitiés raciales, nationales ou religieuses » ou à « pousser à l'exécution de crimes de génocide », elle a été rejetée parce qu'elle risquait de « devenir le prétexte de graves abus »¹⁵⁶ — et je cite les travaux

¹⁵³ *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. 222, par. 431.

¹⁵⁴ *Ibid.*, p. 221, par. 430.

¹⁵⁵ Nations Unies, compte rendu des séances du Conseil économique et social, 218^e séance, 26 août 1948, doc. E/SR.218, p. 712 (M. Katz-Suchy (Pologne)).

¹⁵⁶ Nations Unies, Sixième Commission de l'Assemblée générale, 87^e séance, 29 octobre 1948, doc. A/C.6/SR.87, p. 251 et 253 (M. Fitzmaurice (Royaume-Uni)).

préparatoires. Le rejet d'amendements pour la raison qu'ils risquaient de fournir un prétexte à de graves abus confirme que les négociateurs n'avaient aucune intention de tolérer qu'un État abuse gravement des articles premier et IV de la convention.

46. Madame la présidente, Mesdames et Messieurs les juges, s'agissant précisément de l'abus des droits conférés par un traité, la Cour a déterminé qu'il est constitué lorsque cet État — je cite la Cour : « revendique l'exercice des droits qui lui sont conférés par [c]e traité ... à des fins différentes de celles pour lesquelles les droits en cause ont été établis »¹⁵⁷.

47. En l'espèce, contrairement à ce que vous avez entendu *ad nauseam* hier¹⁵⁸, l'Ukraine ne soutient pas que l'article premier de la convention confère un droit de recourir à la force. Elle soutient que l'article premier habilite les États à mener certaines actions, que l'article premier ne définit pas, autrement dit, leur confère un droit d'agir pour prévenir et punir un génocide, et que c'est ce droit dont la Russie a abusé aux fins de justifier les actes que l'Ukraine conteste, lesquels n'ont à l'évidence rien à voir avec les fins pour lesquelles ce droit leur a été reconnu.

48. En outre, contrairement à ce que la Russie a soutenu dans ses écritures¹⁵⁹, il ne fait aucun doute qu'un abus d'un droit conféré par un traité peut être une violation de ce traité. Dès l'affaire de *Certains intérêts allemands*, la Cour permanente de Justice internationale avait admis qu'un « abus [du] droit » conféré par le traité de Versailles pouvait avoir « le caractère d'une violation du Traité »¹⁶⁰. Et, très récemment, alors que sa compétence dans *Certains actifs iraniens* était fondée sur la clause compromissoire d'un traité bilatéral qui ne contenait aucune disposition interdisant l'abus de droit, la Cour ne s'est nullement dite incompétente *ratione materiae* pour connaître d'un grief d'abus des droits posés par ledit traité, qu'elle a dûment tranché au fond¹⁶¹. Il en a été de même, je l'ai déjà mentionné, dans la première affaire *Guinée équatoriale c. France*.

49. En tout état de cause, l'article IX de la convention sur le génocide donne expressément compétence à la Cour concernant les différends sur l'exécution de la convention, ce qui — je

¹⁵⁷ *Certains actifs iraniens (République islamique d'Iran c. États-Unis d'Amérique)*, arrêt du 30 mars 2023, par. 93.

¹⁵⁸ Voir CR 2023/13, p. 38, par. 6 (Kuzmin) ; p. 62, par. 17, p. 65, par. 34-36, et p. 77-79, par. 99-117 (Crosato).

¹⁵⁹ EPFR, par. 143-144.

¹⁶⁰ *Certains intérêts allemands en Haute-Silésie polonaise, fond*, arrêt n° 7, 1926, C.P.J.I. série A n° 7, p. 30.

¹⁶¹ *Certains actifs iraniens (République islamique d'Iran c. États-Unis d'Amérique)*, arrêt du 30 mars 2023, par. 93.

reprends les termes de la Cour — « implique nécessairement »¹⁶² de prendre en compte les différends sur l'abus des obligations et droits issus de la convention que l'État en cause prétend exécuter.

50. La Russie a outrageusement abusé de la convention pour justifier ce que la convention ne peut aucunement justifier. Elle a allégué l'existence d'un génocide imaginaire en Ukraine comme prétexte pour justifier son action en et contre l'Ukraine. Il ne peut pas y avoir d'abus plus sévère des droits et obligations de la convention. Ce grief entre dans les prévisions de la convention et la Cour a compétence *ratione materiae* pour exercer son office au fond.

4. La violation de l'obligation de ne pas exécuter la convention en violation des limites posées par le droit international est un grief qui entre dans les prévisions de la convention

51. Madame la présidente, Mesdames et Messieurs les juges, votre Cour a rappelé dans l'ordonnance en indication de mesures conservatoires qu'il est clair que « chaque État ne peut déployer son action que dans les limites de ce que lui permet la légalité internationale »¹⁶³.

52. On peut probablement considérer que l'obligation d'exécuter la convention dans les limites de ce que permet la légalité internationale est une modalité de l'obligation de ne pas abuser des droits et obligations que la convention confère aux États, que je viens d'évoquer. En effet, ce serait abuser de la convention que de l'utiliser comme outil de violation du droit international. Dans cette perspective, la limite constituée par la légalité internationale se confond avec celle interdisant l'abus de droit.

53. Mais on peut aussi considérer que, telle qu'elle a été mise en lumière par la Cour, cette limite est indépendante de l'interdiction de l'abus de droit, et conditionne de manière inhérente l'exercice des obligations et droits posés par les articles premier et IV de la convention.

54. Dans cette perspective, et contrairement à ce que la Russie prétend, les termes choisis par la Cour pour caractériser cette limite sont d'une parfaite limpidité¹⁶⁴. Un État *ne peut pas* — ce qui signifie qu'il n'a pas le droit de — déployer quelque action que la convention l'oblige et l'habilite à

¹⁶² *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. 113, par. 166.

¹⁶³ *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. 221, par. 430) ; voir aussi *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, C.I.J. Recueil 2022, p. 225, par. 57.

¹⁶⁴ Voir EPFR, par. 176.

conduire aux fins de prévenir et punir le génocide, qui irait au-delà de ce que lui permet le droit international.

55. En affirmant ceci, ni la Cour ni l'Ukraine n'« incorporent » dans la convention des obligations qui ne s'y trouvent pas¹⁶⁵. Au contraire, la convention ne peut être comprise que comme *exigeant* que les devoirs et droits qu'elle pose s'exercent avec mesure, c'est-à-dire dans les limites posées par la légalité internationale. Comme l'a affirmé la Cour, « [l]a considération des fins supérieures de la Convention est, en vertu de la volonté commune des parties, le fondement et la mesure de toutes les dispositions qu'elle renferme »¹⁶⁶.

56. Il n'y a rien là de comparable avec les affaires des *Plates-formes pétrolières*¹⁶⁷, *Certains actifs iraniens*¹⁶⁸ ou avec la première affaire *Guinée équatoriale c. France*¹⁶⁹. C'est la convention elle-même, interprétée de bonne foi, à lumière de son objet et de son but, et des « fins supérieures » qu'elle poursuit, qui pose une limite aux droits uniques qu'elle confère aux États, limite dont le contenu est déterminé par ce qui constitue la légalité internationale. La convention ne saurait être interprétée autrement.

57. La convention est un instrument destiné, comme l'affirme son préambule, à débarrasser l'humanité d'un crime du droit des gens et à la libérer d'un des fléaux les plus odieux. Elle ne peut pas être un outil permettant de justifier des crimes du droit des gens et la prolifération des fléaux les plus odieux. Le « but purement humanitaire et civilisateur de la Convention » — ce sont les termes de la Cour¹⁷⁰, de jolis termes ! — interdit une telle interprétation.

58. Madame la présidente, Mesdames et Messieurs les juges, ceci conclut ma plaidoirie de ce jour, et je vous prie à présent d'appeler à la barre M^e David Zionts.

¹⁶⁵ *Ibid.*, par. 83, 170, 215 ; voir aussi CR 2023/13, p. 61, par. 7 ; p. 62, par. 16 ; p. 69, par. 54 ; p. 73-75, par. 76-88, p. 76-77, par. 98 (Crosato).

¹⁶⁶ *Réserves à la convention pour la prévention et la répression du crime de génocide, avis consultatif, C.I.J. Recueil 1951*, p. 23 ; voir aussi *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), mesures conservatoires, ordonnance du 23 janvier 2020, C.I.J. Recueil 2020*, p. 17, par. 41 ; *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), exceptions préliminaires, arrêt du 22 juillet 2022*, p. 515, par. 106.

¹⁶⁷ EPFR, par. 195-196.

¹⁶⁸ *Ibid.*, par. 201-206.

¹⁶⁹ *Ibid.*, par. 197-200.

¹⁷⁰ *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. 111, par. 162 ; voir aussi *Réserves à la convention pour la prévention et la répression du crime de génocide, avis consultatif, C.I.J. Recueil 1951*, p. 23.

The PRESIDENT: I thank Professor Thouvenin. I now invite Mr David Zions to address the Court. You have the floor, Sir.

Mr ZIONTS:

**THIRD, FOURTH, FIFTH AND SIXTH PRELIMINARY OBJECTIONS:
UKRAINE'S CLAIMS ARE ADMISSIBLE**

I. Introduction

1. Madam President, Members of the Court, it is an honour to appear before you today on behalf of Ukraine.

2. I will address Russia's four admissibility objections. None of these objections has any sound basis. All of them are just another artificial attempt by Russia to escape the broad jurisdiction conferred by Article IX of the Genocide Convention.

II. Russia's third preliminary objection fails: Ukraine's Memorial does not transform the dispute presented in the Application

3. Russia's third preliminary objection is that Ukraine's Memorial advances "new claims"¹⁷¹. It contends that Ukraine's Application was limited to a "request to confirm that the Russian Federation's actions had no basis in the Convention"¹⁷². According to Russia, Ukraine's Memorial goes beyond that, by seeking "to establish the responsibility of the Russian Federation for allegedly violating Articles I and IV of the Convention"¹⁷³. Russia is wrong, on both the facts and the law¹⁷⁴.

4. Part IV of Ukraine's Application states the grounds of Ukraine's claims¹⁷⁵. It concludes: "The Russian Federation's declaration and implementation of measures in the form of a [so called] 'special military operation,' as well as acts of recognition, based on a false claim of genocide is incompatible with the Genocide Convention and violates Ukraine's rights."¹⁷⁶ And in Part V of the Application, Ukraine requested that the Court declare that Russia "cannot lawfully take any action

¹⁷¹ PORF, para. 242.

¹⁷² *Ibid.*, para. 243.

¹⁷³ *Ibid.*

¹⁷⁴ See WOU, paras. 147-149.

¹⁷⁵ See AU, para. 26.

¹⁷⁶ *Ibid.*, para. 29.

under the Genocide Convention in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims of genocide”¹⁷⁷. A claim that Russia’s actions are *incompatible* with the Convention, that they *violated* Ukraine’s rights, that Russia’s actions are *not lawfully taken*, is unmistakably a claim that Russia violated the Convention.

5. The Court understood the nature of Ukraine’s case in its provisional measures Order, summarizing Ukraine’s position as follows: “[T]he Russian Federation has acted inconsistently with its obligations and duties, as set out in Articles I and IV of the Convention.”¹⁷⁸

6. For this basic factual reason, Russia’s third preliminary objection is baseless. But Russia’s objection also flouts the law, for three reasons.

7. First, as the Court explained in the first *Nicaragua v. Colombia* case, even if a claim is “new”, that “does not, in itself, render the claim inadmissible”¹⁷⁹. A new claim is inadmissible only if it “transforms the subject-matter of the dispute”¹⁸⁰. And, as explained in *Certain Phosphate Lands*, a claim does not transform the dispute if it is at least “implicit in the application” or “arise[s] ‘directly out of the question which is the subject-matter of that Application’”¹⁸¹.

8. The subject-matter of this dispute is, and always has been, the same: Russia’s reliance on allegations of genocide to justify harming Ukraine¹⁸². Yesterday, Russia dissected the words of Ukraine’s submissions, but it missed the point: each submission arises directly out of Russia’s actions in reliance on its allegations of genocide.

¹⁷⁷ *Ibid.*, para. 30 (b).

¹⁷⁸ *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. 224, para. 52.

¹⁷⁹ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 664, para. 109.

¹⁸⁰ *Ibid.* See also *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 333, para. 137; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 695, para. 108; *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003*, p. 213, para. 117; *Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 267, paras. 69-70.

¹⁸¹ *Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 266, para. 67 (internal citations omitted); see also *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012 (II)*, pp. 664-665, paras. 109-111; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007 (II)*, pp. 695-696, paras. 108-110; *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 318-319, para. 99 (citing *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 28).

¹⁸² See WOU, paras. 146-149.

9. As I have explained, Ukraine’s Application asked for more than a declaration that Russia’s actions lacked a basis in the Genocide Convention. But even if that had been the sole request, the question of whether Russia’s actions could be justified under the Convention is closely related to whether those same actions violate the Convention. They stem from the same dispute.

10. Second, Russia improperly focuses on the wording of Ukraine’s requests for relief. It is common practice for parties to adjust their submissions as a case proceeds. Freedom to do so may not be “limitless”, as Russia’s counsel says, but neither are the submissions written in stone¹⁸³.

11. In *Nicaragua*, at the second round of written pleadings on the merits, Nicaragua “changed . . . the solution being sought”, i.e. its requested relief¹⁸⁴. The Court still rejected Colombia’s admissibility objection. Ukraine’s adjustments to its submissions here are far less dramatic.

12. Russia emphasizes the phrasing of the Application’s request for a declaration that Russia’s actions have “no basis in the Genocide Convention”¹⁸⁵. Yet it ignores Ukraine’s separate request for a declaration that Russia “cannot lawfully take” the action it was taking. And it ignores the Application’s legal claim that Russia acted inconsistently with its obligations under the Convention¹⁸⁶. Against this background, it was unremarkable — and not remotely a transformation — for Ukraine to clarify in its Memorial that it requested a declaration of Russia’s violation.

13. Similarly, Russia notes that the Application requested a declaration that “no acts of genocide . . . have been committed” by Ukraine, while the Memorial, it points out, seeks a declaration “that there is no credible evidence that Ukraine is responsible for committing genocide in violation of the Genocide Convention”¹⁸⁷. Both formulations arise from the same dispute with the same subject-matter: Russia’s reliance on false allegations of genocide, without credible evidence, to take harmful action against Ukraine¹⁸⁸. Ukraine’s Application discussed this lack of evidence for Russia’s

¹⁸³ CR 2023/13, p. 81, para. 4 (Yee).

¹⁸⁴ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 665, para. 111.

¹⁸⁵ PORF, para. 245.

¹⁸⁶ AU, para. 30 (b).

¹⁸⁷ PORF, paras. 249-250.

¹⁸⁸ See WOU, paras. 150-151.

allegations¹⁸⁹. And the fact that Russia acted against Ukraine, without any such evidence, is relevant to Ukraine's claim of abuse — also an integral part of Ukraine's Application. Incorporating this point into Ukraine's submissions does not transform the dispute.

14. Third, Russia faults Ukraine for not expressly referencing Article IV in its Application¹⁹⁰. Article IV concerns the punishment of “persons committing genocide”. Ukraine claims that Russia improperly sought to punish Ukraine and its officials as persons committing genocide, even though they are *not* such persons. Again, this claim arises directly out of the subject-matter of the Application: Russia's actions taken for the express purpose of preventing and punishing genocide.

15. In sum, Ukraine has in no way transformed the dispute. Russia barely engages with the question of transformation, instead mechanically comparing word choice. That has never been this Court's approach. This case — where the Court has already found that Ukraine prepared its Application in circumstances of extreme urgency¹⁹¹ — should not be the first to adopt Russia's rigid methodology.

III. Russia's fourth preliminary objection fails: a judgment from this Court upholding Ukraine's claims would have practical effect

16. Madam President, Members of the Court, Russia's fourth objection fares no better. Russia contends that the Court could not deliver an effective judgment, because in Russia's unilateral opinion, Ukraine's claims are “based on rules of international law that are beyond the Convention”¹⁹².

17. As my colleagues have explained, this is not true: Ukraine's claims are based firmly on the Genocide Convention. Once its mischaracterization of the dispute is set aside, Russia's fourth objection falls alongside its others.

18. At most, the Russian Federation debates the precise scope of appropriate relief. Russia seems to suggest that even if its actions are found unlawful under the Genocide Convention, it would be free to continue invading Ukraine on some purported alternative basis¹⁹³. Russia's argument is

¹⁸⁹ See AU, paras. 21-22.

¹⁹⁰ PORF, para. 244.

¹⁹¹ *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*, pp. 228-229, paras. 74-77.

¹⁹² PORF, paras. 268 and 273.

¹⁹³ See PORF, paras. 131-137, 268 and 273.

wrong, but more importantly for today, it is premature. Russia has not established that it is *impossible* for any judgment to have *any* purpose. At this stage, that is more than enough. If Ukraine prevails, the Court can at minimum adjudge that Russia abused and violated the Genocide Convention¹⁹⁴. It can order non-repetition. It can order reparation for the consequences of the violation¹⁹⁵.

19. A judgment would further establish, at minimum, that Russia may not use force to prevent and punish an alleged genocide in Ukraine — which Ukraine alleges was, and is, the stated purpose for Russia’s actions. A binding judgment of this Court holding Russia accountable would undoubtedly be meaningful.

20. Once the case proceeds to the merits, Russia is free to argue that its actions were unrelated to preventing genocide. If Russia believes that it can continue its actions for a *different* purpose, different than the one it has stated, and that this might affect the scope of relief, Russia is free to present that argument as well. But none of this makes it inevitable that any possible judgment would be devoid of purpose¹⁹⁶.

21. Russia asks you to entertain these merits defences now — apparently because they assert in the strongest possible terms that they are so obviously correct. In the view of Russia’s counsel yesterday, “the Genocide Convention plays no role in its military operation, *clearly and manifestly*”¹⁹⁷. But whatever Russia’s counsel says, on the day Russia launched its full-scale invasion, the President of the Russian Federation said that its “purpose” was to stop a genocide¹⁹⁸. And just two weeks ago, a high-ranking Russian official reaffirmed the *reason* Russia’s military action continues: to punish perpetrators of genocide, *as required by the Genocide Convention*¹⁹⁹. The Court should listen to Russia’s leaders — not its lawyers — and consider whether it is really so clear and manifest that the Genocide Convention plays no role in Russia’s actions.

¹⁹⁴ See MU, para. 178.

¹⁹⁵ See *ibid.*, para. 179.

¹⁹⁶ See WOU, paras. 157–158.

¹⁹⁷ CR 2023/13, p. 90, para. 39 (Yee).

¹⁹⁸ See President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (24 Feb. 2022), p. 8, accessed at <http://en.kremlin.ru/events/president/news/67843> (MU, Ann. 6) (judges’ folder, tab 8); see also *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. 250, para. 25.

¹⁹⁹ See Telegram Post of Dmitry Medvedev (Deputy Chairman of Russia’s Security Council) (5 Sept. 2023), accessed at https://t.me/medvedev_telegram/383 ((judges’ folder, tab 30).

22. The circumstances here are nothing like the cases Russia draws on for support. In *Northern Cameroons*, Cameroon sought a declaration about the United Kingdom's obligations under a trusteeship agreement that was no longer in force and expressly disclaimed any claim for reparation²⁰⁰. In the *Nuclear Tests* cases, Australia and New Zealand asked the Court to order France to stop nuclear tests, and France, at the highest levels of its Government, made a binding undertaking to do so, so there was nothing left for the Court to order²⁰¹. Further adjudication would have been, as the Court put it in those cases, "devoid of purpose"²⁰². Here, the Genocide Convention remains in effect. Every day, Russia continues to abuse and violate the Convention by acting against Ukraine for the stated purpose of preventing and punishing a falsely alleged genocide. And Ukraine requests reparation for those abuses and violations. Russia may deny these claims, and it may oppose this relief. But that only confirms that there is a live dispute, and that your judgment will matter.

IV. Russia's fifth preliminary objection fails: Ukraine can request a declaration that there is no credible evidence that Ukraine has committed genocide in violation of the Convention

23. Madam President, Members of the Court, I turn to Russia's fifth preliminary objection, which concerns only one of Ukraine's requests for relief: a declaration on the lack of credible evidence that Ukraine is responsible for committing genocide²⁰³.

24. Russia calls this a "reverse compliance request"²⁰⁴. A better description is that Ukraine asks the Court to resolve a disputed question of responsibility for genocide. Russia says Ukraine is responsible for committing genocide. Ukraine says it is not responsible, and that there is not even credible evidence for Russia's allegations. Article IX says the Court can resolve this question.

²⁰⁰ *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, pp. 32–34.

²⁰¹ *Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974*, pp. 476–477, paras. 59 and 62; *Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974*, pp. 268–272, paras. 47–59.

²⁰² See *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 38; *Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974*, p. 477, para. 61; *Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974*, p. 271, para. 58.

²⁰³ See PORF, para. 274; MU, para. 178 (b).

²⁰⁴ *Ibid.*, para. 274.

25. Russia asserts that only one of the Parties to this dispute — Russia — can ask the Court to resolve it²⁰⁵. But Article IX plainly says that “any of the parties to the dispute” may submit it to the Court. “Any” means any. The Court should reject Russia’s invitation to rewrite the treaty.

26. If this textual deficiency were not enough, not a single decision of this Court supports Russia’s objection. The only jurisprudence touching on this issue *favours* the Court hearing Ukraine’s request. In *Rights of Nationals*, the Court entertained France’s submission that it find France acted “in conformity” with the relevant treaty²⁰⁶. Similarly, in *Lockerbie*, the Court did not dismiss Libya’s request, as the applicant, for a declaration that it has “fully complied with all of its obligations under the Montreal Convention”²⁰⁷.

27. Russia labours to find factual distinctions, but these only confirm that Russia is inventing a doctrine purpose-built for this one case²⁰⁸. The similarities are more striking and fundamental: Libya requested a declaration of its own compliance, alongside claims that the United Kingdom breached the Convention. Likewise, Ukraine asks the Court to conclude that Russia breached the Convention and, in doing so, to declare that there is no credible evidence that Ukraine violated the Genocide Convention.

28. Lacking legal support, Russia offers policy reasons for creating a new admissibility doctrine²⁰⁹.

29. Russia chiefly objects that Ukraine’s case “pre-empts” Russia’s right to bring a case at the time of its own choosing²¹⁰. This is not fair, says Russia’s counsel, because Russia needs time “to collect evidence worthy of the esteemed Court”²¹¹. Whatever weight this argument might have in a different case, it is shocking to hear Russia make it here. Russia claims to have been collecting evidence of Ukraine’s responsibility for genocide since 2014. Russia launched a full-scale invasion

²⁰⁵ *Ibid.*, para. 280; see also e.g. CR 2023/13, p. 91, para. 4, and p. 93, para.12 (Udovichenko).

²⁰⁶ *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, Judgment, *I.C.J. Reports 1952*, p. 182.

²⁰⁷ *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, paras. 13-14, and p. 30, para. 53.

²⁰⁸ See CR 2023/13, pp. 95-96, paras. 26-31 (Udovichenko).

²⁰⁹ PORF, paras. 283-288.

²¹⁰ *Ibid.*, para. 283.

²¹¹ CR 2023/13, p. 93, para. 15 (Udovichenko).

on the basis of its allegation that Ukraine was committing genocide. If Russia concluded that it possessed sufficient evidence to warrant invading another sovereign State, it surely has had ample opportunity to assemble the evidence needed before this Court, however much esteem Russia really has for the Court.

30. Russia also complains that this Court is asked to sit as a “fact-finding body”²¹². But Article IX gives this Court jurisdiction over any dispute relating to the Genocide Convention. When resolving such a dispute involves finding facts, this Court can of course find facts, as it regularly does²¹³.

V. Russia’s sixth preliminary objection fails: Ukraine’s Application is not an abuse of process

31. Madam President, Members of the Court, I will conclude with Russia’s sixth objection: that Ukraine has committed an abuse of process²¹⁴.

32. As the Court recently reiterated in its Order admitting 32 interventions, “only in exceptional circumstances should it reject a claim based on a valid title of jurisdiction on the ground of abuse of process”²¹⁵. There are no exceptional circumstances suggesting that Ukraine has committed an abuse here.

33. In fact, Russia’s allegations of abuse add nothing to its other objections. I will therefore be brief.

²¹² PORF, para. 286.

²¹³ See generally *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); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015 (I). See also WOU, para. 163.

²¹⁴ PORF, para. 289.

²¹⁵ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declarations of Intervention, Order of 5 June 2023, para. 57 (citing *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018 (I), p. 336, para. 150; *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, p. 497, para. 49; *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. 36, para. 93; *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).

34. First, Russia says Ukraine committed an abuse because it “does not have a dispute under the Convention”²¹⁶. This is yet another objection that depends on Russia’s false characterization of the dispute.

35. Second, Russia accuses Ukraine of abuse by purportedly changing its claims²¹⁷. As I’ve already explained, Ukraine has not come close to transforming the dispute. Repeating this objection under the guise of “abuse of process” does not make it any more credible.

36. Third, in its written pleadings Russia called the timing of Ukraine’s Application abusive²¹⁸. Russia did not repeat the point yesterday but suffice it to say that it is not surprising — much less abusive — that Ukraine would seize the Court immediately after Russia acted on its false allegations of genocide to launch a full-scale invasion²¹⁹.

37. Fourth and finally, yesterday Russia repeated its argument that the interventions in this case constitute an abuse of process²²⁰. The Court has of course already rejected this claim in its Order of 5 June 2023²²¹.

38. Madam President, Members of the Court, Ukraine instituted these proceedings in the face of an existential threat: a full-scale military assault that was expressly justified on the pretext of abusive allegations of genocide. In these trying circumstances, Ukraine turned to this Court. It reaffirmed its commitment to international law and peaceful resolution of disputes. Since then, Russia has continued to defy international law and to defy the authority of this Court.

39. Yet Russia accuses *Ukraine* of an abuse of process. Russia says that *Ukraine* invokes the Genocide Convention as a “pretext”²²². Ukraine’s alleged “abuse” is seeking peaceful dispute resolution before this Court. Russia’s actual abuse of the Genocide Convention is a full-scale invasion of Ukraine. That difference says it all. Russia’s sixth preliminary objection, like its others, must be rejected. All of Ukraine’s claims are admissible.

²¹⁶ CR 2023/13, p. 97, para. 38 (Udovichenko); see also PORF, para. 301.

²¹⁷ PORF, Chap. V, Sec. D (ii); see also CR 2023/13, p. 97, para. 39 (Udovichenko).

²¹⁸ PORF, Chap. V, Sec. D (iii).

²¹⁹ See WOU, paras. 168–169.

²²⁰ CR 2023/13, p. 98, paras. 41–42 (Udovichenko).

²²¹ See *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Declarations of Intervention, Order of 5 June 2023*, paras. 59–60.

²²² CR 2023/13, p. 97, para. 36 (Udovichenko).

40. Madam President, I now request that you give the floor to Mr Jonathan Gimblett.

The PRESIDENT: I thank Mr Zionts. I now give the floor to Mr Jonathan Gimblett. You have the floor, Sir.

Mr GIMBLETT:

**THE COURT HAS JURISDICTION OVER UKRAINE’S REQUEST TO HOLD
THE RUSSIAN FEDERATION RESPONSIBLE FOR VIOLATING THE
COURT’S BINDING PROVISIONAL MEASURES ORDER**

I. Introduction

1. Madam President, Members of the Court: it is an honour to appear before you again on behalf of Ukraine. I will address the Court’s jurisdiction over Ukraine’s claim relating to the Russian Federation’s violation of the binding provisional measures Order of this Court.

2. On 16 March 2022, the Court indicated binding provisional measures to preserve the respective rights of the Parties to the dispute²²³. Among those measures was an Order requiring Russia to immediately suspend all military operations in the territory of Ukraine. Since then, the Russian Federation has continuously violated the Court’s Order. As Ukraine’s Agent described earlier, Russia’s full-scale invasion continues to inflict suffering and death on the population of Ukraine to this day.

3. In its Memorial, Ukraine asked the Court to hold Russia responsible for violating the Order and to order it to make full reparation for the harm Ukraine has suffered as a result²²⁴. Russia’s preliminary objections ask the Court to dismiss all of Ukraine’s claims but fail to explain the basis on which Russia believes that the Court lacks jurisdiction to address violations of its Order on provisional measures. Nor did Russia have much to say on the subject yesterday, its Agent merely noting that the measures were “preliminary” and in Russia’s view wrong, as if that alone excused Russia from heeding them²²⁵.

²²³ See provisional measures Order of 16 March 2022.

²²⁴ MU, Chap. 4; see also WOU, Chap. 5, Sec. A.

²²⁵ CR 2023/13, p. 46, para. 44 (Kuzmin).

4. Madam President, Members of the Court, the disdain that Russia has shown towards a binding Order of this Court cannot be left without remedy²²⁶. The Court has the power to hold Russia accountable for its violation of the Order and should use that power lest other wrongdoing States draw the wrong conclusion from the Court's inaction. I will cover three points on this issue. *First*, and most obviously, Russia has a binding legal obligation to comply with the provisional measures Order. *Second*, the Court has jurisdiction to address Russia's violations. And, *third*, there is indisputable evidence that Russia has continued its flagrant violations of the Court's Order to this very day.

II. The Russian Federation has an obligation to comply with the provisional measures Order

5. I will begin with Russia's obligation to comply with the provisional measures Order.

6. That obligation flows from Article 41 of the Court's Statute²²⁷. As this Court explained in *LaGrand*, provisional measures orders issued pursuant to Article 41 of the Court's Statute "have binding effect"²²⁸. The jurisprudence of this Court since the *LaGrand* case has consistently confirmed the binding nature of provisional measures ordered by this Court, including in this case²²⁹.

7. Nowhere in its preliminary objections does Russia question the binding force of the Court's Order. Indeed, in other cases Russia has expressly recognized the binding and mandatory nature of

²²⁶ See MU, Chap. 4; WOU, Chap. 5.

²²⁷ *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 506, para. 108.

²²⁸ *Ibid.*

²²⁹ Provisional measures Order of 16 March 2022, para. 84. See also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 258, para. 263; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II), p. 433, para. 77; *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018 (II), p. 652, para. 100; *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, p. 397, para. 147; *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)*, Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II), p. 554, para. 67. See also Karin Oellers-Frahm and Andreas Zimmermann, *Article 41*, in *The Statute of the International Court of Justice: A Commentary* (Zimmermann et al., eds., Oxford University Press 2019), pp. 1186-1187 [hereinafter Zimmermann, *Article 41*] (WOU, Ann. 11); Pierre d'Argent, *Preliminary Objections and Breaches of Provisional Measures*, *Rivista di Diritto Internazionale* (2021), p. 117 (WOU, Ann. 13).

this Court's provisional measures orders²³⁰. It is therefore common ground that the provisional measures indicated by this Court "create[] a legal obligation" for the Russian Federation²³¹. Russia's non-compliance with the provisional measures indicated in this case accordingly constitutes an internationally wrongful act engaging the international responsibility of Russia²³².

III. The Court has jurisdiction to address the Russian Federation's violations of the provisional measures Order

8. I turn next to the Court's jurisdiction to address Russia's violations, for which there are three independent grounds.

9. *First*, it should be uncontroversial that, where the Court finds that it has jurisdiction over a claimant's substantive claims, it may address during the merits stage of a case claims relating to the violation of provisional measures ordered earlier in the proceedings. This much is clear from the Court's Judgment in *LaGrand*, where the Court explained that where it "has jurisdiction to decide a case, it also has jurisdiction to deal with submissions requesting it to determine that an order indicating measures which seeks to preserve the rights of the Parties to this dispute has not been complied with"²³³.

10. As explained by my colleagues today, the Court has jurisdiction over the present dispute relating to the interpretation, application or fulfilment of the Genocide Convention²³⁴. It therefore also has jurisdiction over Ukraine's claim arising from Russia's violation of the provisional measures Order²³⁵.

²³⁰ See e.g. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, CR 2008/27 (uncorrected), p. 46, para. 36 (Kolodkin); *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)*, CR 2017/2 (corrected), p. 22, para. 3 (Wordsworth); *ibid.*, CR 2017/4 (translation), p. 54, para. 47 (Forteau).

²³¹ *LaGrand (Germany v. United States of America)*, Judgment, *I.C.J. Reports 2001*, p. 506, para. 110.

²³² See *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)*, pp. 230-231, paras. 452, 458. See also Zimmermann, *Article 41*, pp. 1188-1190 (WOU, Ann. 11).

²³³ *LaGrand (Germany v. United States of America)*, Judgment, *I.C.J. Reports 2001*, p. 484, para. 45.

²³⁴ See MU, Chap. 5; WOU, Chaps. 2-3.

²³⁵ See e.g. *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, *I.C.J. Reports 2015 (II)*, p. 713, para. 127; *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)*, pp. 231, 236, 238, paras. 456, 469, 471 (7); *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, pp. 258-259, para. 264.

11. *Second*, the Court has jurisdiction over Russia's violations of the Order independent of its jurisdiction over the underlying dispute relating to the Genocide Convention. The Court's jurisdiction to indicate provisional measures is derived from Article 41 of the Statute, and in particular the first sub-part of that article. By consenting to the Statute of the Court, a State consents to the Court's exercise of that power. As Judge Abraham's separate opinion in *Qatar v. United Arab Emirates* explained:

“The Court's jurisdiction to entertain a request for provisional measures, for its part, does not derive from the jurisdictional basis invoked in the proceedings on the merits . . . It is based directly on Article 41 of the Court's Statute, which gives the Court the power, when seised of a case, to indicate any provisional measures which ought to be implemented to preserve the rights of either party.

This basis of jurisdiction is entirely independent of that relied on, by the applicant or by both parties, in the context of the principal proceedings.”²³⁶

12. The Court's jurisdiction to make findings about breaches of provisional measures derives directly from its power under Article 41 to indicate such measures in the first place, and is independent from the Court's jurisdiction to adjudicate the merits. Inherent in the jurisdiction conferred under Article 41 of the Statute is the power not only to indicate provisional measures, but also to monitor compliance with them, and to adjudicate alleged breaches. A restriction on the Court's ability to address violations of provisional measures independent of the merits would be inconsistent with the object and purpose of the Statute to ensure the peaceful settlement of disputes and the effective administration of justice²³⁷. Indeed, Article 41 would be deprived of its effectiveness if the Court could only hear claims for violations of provisional measures after a decision to exercise jurisdiction over the underlying substantive dispute. If that were so, recalcitrant States would be encouraged to ignore the Court's orders on provisional measures in the hope of prevailing on preliminary objections.

13. That the Court may determine non-compliance with provisional measures independent of its jurisdiction over the merits finds support in the Court's jurisprudence. In *Request for*

²³⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 14 June 2019, I.C.J. Reports 2019 (I)*, separate opinion of Judge Abraham, p. 379, para. 9. See also Zimmermann, *Article 41*, p. 1191 (WOU, Ann. 11); Pierre d'Argent, *Preliminary Objections and Breaches of Provisional Measures*, *Rivista di Diritto Internazionale* (2021), p. 118 (WOU, Ann. 13).

²³⁷ See *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, I.C.J. Reports 1980*, p. 43, para. 93.

Interpretation of the Avena Judgment, Mexico sought to invoke the Court's jurisdiction under Article 60 of the Statute, and requested provisional measures. While the Court indicated provisional measures²³⁸, it ultimately decided that "the question underlying Mexico's Request for interpretation is outside the jurisdiction specifically conferred upon the Court by Article 60"²³⁹. Nonetheless, the Court concluded that it had "incidental jurisdiction to make findings about alleged breaches of the Order indicating provisional measures", and that jurisdiction existed "even when the Court decides, upon examination of the Request for interpretation, as it has done in the present case, not to exercise its jurisdiction to proceed under Article 60"²⁴⁰.

14. The same conclusion holds when jurisdiction over the substantive claims is sought not under Article 60 but, as in this case, under Article 36. In short, even setting aside the question of your jurisdiction over Ukraine's substantive claims, you may address its claim for violation of the provisional measures Order.

15. *Third*, the Court has another independent ground of jurisdiction to address Russia's violation of the Order pursuant to the compromissory clause of the Genocide Convention, Article IX. Under that article, Russia has assumed an obligation to comply with mandatory procedures, and to do so reasonably and in good faith²⁴¹. By agreeing to submit disputes under the Convention to the Court, Russia has agreed to comply with the Court's procedures, including any decisions issued by this Court, such as on provisional measures.

IV. The Russian Federation has continuously violated the Court's provisional measures Order

16. I will now briefly recall the overwhelming evidence that Russia has continuously and flagrantly violated the Court's Order of 16 March 2022.

²³⁸ *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 331, para. 80.

²³⁹ *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America), Judgment, I.C.J. Reports 2009*, p. 17, para. 45.

²⁴⁰ *Ibid.*, p. 19, para. 51.

²⁴¹ See United Nations, General Assembly resolution 37/10, UN doc. A/RES/37/10, *Manila Declaration on the Peaceful Settlement of International Disputes* (15 Nov. 1982), para. 11; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, ICJ Reports 1997*, pp. 78-79, para. 142; *South China Sea Arbitration (Philippines v. China)*, PCA Case No. 2013-19, Award, 12 July 2016, para. 1171; *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 67, paras. 145-146.

17. In that Order, the Court required Russia, *first*, to “immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine”, and *second*, to “ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations”²⁴². The Order further required both Parties to refrain from taking any action that might aggravate or extend the dispute²⁴³.

18. There is no question that Russia has completely disregarded the Court’s Order. Indeed, Russia’s non-compliance has been expressly admitted by Russia itself. Just one day after the Court indicated provisional measures, Dmitry Peskov, the official spokesman for the Kremlin and press secretary to Russian President Vladimir Putin, stated that Russia “will not be able to take this decision into account”²⁴⁴. Such disrespect is an affront to the integrity of this Court and the UN system of which the Court is a part.

19. Russia’s flagrant non-compliance with every measure indicated in the Court’s Order has been plain for the world to see since the day the Order issued. It is common knowledge, confirmed by the reporting of international organizations and major international news outlets, including statements by Russia’s official press agency (TASS), that Russia’s military operations in the territory of Ukraine remain ongoing²⁴⁵.

²⁴² *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*, pp. 230-231, para. 86.

²⁴³ *Ibid.*

²⁴⁴ Sofia Stuart Leeson, *Russia Rejects International Court Ruling to Stop Invasion of Ukraine*, EURACTIV (17 Mar. 2022), accessed at <https://www.euractiv.com/section/europe-s-east/news/russia-rejects-international-court-ruling-to-stop-invasion-of-ukraine/> (judges’ folder, tab 31).

²⁴⁵ See e.g. Matthew Weaver, *Russia-Ukraine War: What We Know on Day 123 of the Invasion*, The Guardian (26 June 2022), accessed at <https://www.theguardian.com/world/2022/jun/26/russia-ukraine-war-what-we-know-on-day-123-of-the-invasion>; United Nations, *Press Briefing by Matilda Bogner Head of the UN Human Rights Monitoring Mission in Ukraine* (10 May 2022), accessed at <https://www.unognewsroom.org/story/en/1271/un-human-rights-briefing-by-matilda-bogner-head-of-the-un-human-rights-monitoring-mission-in-ukraine>; OHCHR, *Bachelet Urges Respect for International Humanitarian Law Amid Growing Evidence of War Crimes in Ukraine* (22 Apr. 2022), accessed at <https://www.ohchr.org/en/press-releases/2022/04/bachelet-urges-respect-international-humanitarian-law-amid-growing-evidence>; BBC News, *Kramatorsk Station Attack: What We Know So Far* (9 Apr. 2022), accessed at <https://www.bbc.com/news/world-europe-61036740>; Amnesty International, *Ukraine: Russian Forces Must Face Justice for War Crimes in Kyiv Oblast* (May 2022), accessed at <https://www.amnesty.org/en/latest/news/2022/05/ukraine-russian-forces-must-face-justice-for-war-crimes-in-kyiv-oblast-new-investigation/>; BBC News, *Bucha Killings: Satellite Image of Bodies Site Contradicts Russian Claims* (11 Apr. 2022), accessed at <https://www.bbc.com/news/60981238>; TASS, *Donbas Forces, Russian Army Pushing Towards Slavyansk, Territorial Defense Center Reports* (10 June 2022), accessed at <https://tass.com/politics/1463361>; see also MU, Chap. 4; WOU, Chap. 5, Sec. A.

20. Russia's continuing, full-scale invasion necessarily violates the Court's first and second provisional measures. Put simply, Russia has not suspended its military operations in Ukraine. It has extended and intensified them. Nor has Russia ensured that military or irregular armed units that it directs or supports, or organizations and persons subject to its direction and control, take no steps in furtherance of the military operations. Instead, Russia has drafted tens of thousands of young men and sent them to fight on Ukrainian soil²⁴⁶.

21. Russia's conduct also violates the Court's third provisional measure by aggravating and extending the dispute between the Parties. As you heard from Ms Cheek earlier today, the dispute that Ukraine has brought to the Court concerns the use of false allegations of genocide as a pretext for aggression against a neighbouring State to bring that alleged genocide to an end. When the provisional measures Order was issued on 16 March 2022, Russia claimed to be engaged in a so-called "special military operation" with the specific goal of punishing those responsible for the falsely alleged genocide in Donbas. As Ms Cheek also described, Russia continues to rely on its false allegation of genocide to justify its intervention in its neighbour's affairs. But, since March last year, Russia has intensified its assault on Ukraine, resorting to the use of ever more destructive weapons and tactics and deploying them increasingly against civilian targets²⁴⁷.

22. When I last addressed you in this case, during the hearing on provisional measures, Russia's military was pushing towards Kyiv, in an apparent attempt to decapitate Ukraine's democratically elected Government. Evidence of war crimes against civilians was already emerging and more was to be uncovered in the following weeks after Russia's brief but deadly occupation of towns near Kyiv, including Bucha and Irpin. The Russian military was deploying indiscriminate weapons in its attempt to quickly overwhelm the country's defences, including cluster bombs and

²⁴⁶ See e.g. President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (21 Sept. 2022), accessed at <http://en.kremlin.ru/events/president/news/69390> (WOU, Ann. 5); TASS, *Shoigu Tells Putin Partial Mobilization Over in Russia* (28 Oct. 2022), accessed at <https://tass.com/politics/1529415> (judges' folder, tab 32); see also Emmanuel Grynszpan, *Russia's Mobilized Soldiers Speak Out: 'We Were Thrown on to the Frontline with No Support'*, *Le Monde* (10 Nov. 2022), accessed at https://www.lemonde.fr/en/international/article/2022/11/10/russia-s-mobilized-soldiers-speak-we-were-thrown-onto-the-frontline-with-no-support_6003764_4.html; Mikhail Metzger, *Russia's Partial Mobilisation is Complete, Shoigu Says*, *Reuters* (28 Oct. 2022), accessed at <https://www.reuters.com/world/europe/russias-shoigu-says-partial-mobilisation-complete-82000-recruits-conflict-zone-2022-10-28/>.

²⁴⁷ See OHCHR, *Ukraine: Civilian Casualty Update* (19 June 2023), accessed at <https://www.ohchr.org/en/news/2023/06/ukraine-civilian-casualty-update-19-june-2023#:~:text=Total%20civilian%20casualties,9%2C083%20killed%20and%2015%2C779%20injured> (judges' folder, tab 33).

Grad multi-launch rocket systems. Russian shelling had damaged a training facility at the Zaporizhzhia nuclear power plant²⁴⁸.

23. Eighteen months on, Russia's military operations have not only continued in defiance of the Court's Order, they have intensified, exposing the vulnerable Ukrainian population to ever-greater risks and hardships. After the failure of its initial assault on Kyiv, Russia has resorted to the most destructive forms of modern warfare, eradicating whole cities like Mariupol through concentrated artillery assaults, using weapons of enhanced lethality such as thermobaric shells and hypersonic missiles, and repeatedly targeting Ukraine's infrastructure in an attempt to break the country's economic backbone and intimidate its people into submission²⁴⁹. Russian forces now physically control the Zaporizhzhia nuclear power plant, the largest in Europe, and they have used that control to engage in a form of nuclear blackmail — including by placing objects resembling explosives on the roofs of buildings at the site²⁵⁰. And the war crimes and human rights abuses that have been a significant feature of Russia's campaign from the very start have reached new levels, to the point where the International Criminal Court has issued an arrest warrant against the President of the Russian Federation for his involvement in the mass deportation of Ukrainian children to Russia²⁵¹.

24. Russia has further aggravated the dispute between the Parties through its purported annexation of the oblasts of Donetsk, Luhansk, Kherson and Zaporizhzhia on 30 September 2022²⁵².

²⁴⁸ Margaret Besheer, *IAEA Chief: Ukraine's Zaporizhzhia Nuclear Plant Safe After Russian Strike*, VOA (4 Mar. 2022), <https://www.voanews.com/a/iaea-chief-ukraine-s-zaporizhzhia-nuclear-plant-safe-after-russian-strike-/6470760.html>.

²⁴⁹ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on Ukraine*, UN Doc. A/HRC/52/62 (15 Mar. 2023), paras. 23-27, 42 (judges' folder, tab 3); UN News, *Russia's Energy Grid Attacks, Torture in Ukraine, Could be Crimes Against Humanity: UN Rights Probe* (16 Mar. 2023), accessed at <https://news.un.org/en/story/2023/03/1134652> (judges' folder, tab 34). See also MU, para. 141 n. 251 (Vandoorne and Bell); Mariya Knight et al., *Flooding Turns Odesa's Coastline into 'Garbage Dump and Animal Cemetery' After Dam Collapse*, CNN (18 June 2023), accessed at <https://www.cnn.com/2023/06/17/europe/ukraine-nova-kakhovka-dam-deaths/index.html>.

²⁵⁰ Jack Clover and Viktoria Sybir, *Why This Ukrainian Nuclear Plant Is Now on Brink of a 'Fukushima' Disaster*, The Sunday Times (16 Sept. 2023), accessed at <https://www.thetimes.co.uk/article/is-this-ukrainian-nuclear-plant-on-brink-of-fukushima-style-disaster-vcgqvh9k#:~:text=A%20recent%20exodus%20of%20top,a%20prewar%20workforce%20of%2011%20C000>.

²⁵¹ ICC, *Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova* (17 Mar. 2023), accessed at <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> (judges' folder, tab 4).

²⁵² The Kremlin, *Signing of Treaties on Accession of Donetsk and Luhansk People's Republics and Zaporizhzhia and Kherson Regions to Russia* (30 Sept. 2022), accessed at <http://en.kremlin.ru/events/president/news/69465/photos> (WOU, Ann. 6) (judges' folder, tab 35); The State Duma, *The State Duma Ratified Treaties and Adopted Laws on Accession of DPR, LPR, Zaporizhzhia and Kherson Regions to Russia* (3 Oct. 2022), accessed at <http://duma.gov.ru/en/news/55407/> (WOU, Ann. 7) (judges' folder, tab 36); TASS, *Treaties on Accession of Donbas and Other Liberated Territories to Russia Signed* (30 Sept. 2022), accessed at <https://tass.com/politics/1516023>; President of Russia Vladimir Putin, *Address by the President of the Russian Federation* (21 Sept. 2022), accessed at <http://en.kremlin.ru/events/president/news/69390> (WOU, Ann. 5). See also WOU, para. 181.

This represents a step change from the situation that existed as of 16 March 2022, when the relevant aspect of the dispute was limited to Ukraine’s claim that Russia’s recognition of the Donetsk People’s Republic and the Luhansk People’s Republic, based on a false claim of genocide, was an abuse and violation of the Genocide Convention. The attempted assimilation of Ukraine’s sovereign territory into the Russian Federation is an unambiguous infringement on rights that the provisional measures Order was intended to protect.

25. In short, Russia has not only failed to comply with the Court’s Order, it has explicitly rejected this Court’s binding Order and defied each and every measure the Court indicated. It is telling that, in the face of this clear evidence of its disrespect for both its international obligations and the Court, Russia has nothing to say.

V. Concluding remarks

26. Exercise of this Court’s jurisdiction to address non-compliance with a provisional measures Order is particularly critical under the extraordinary circumstances of this case. Russia’s defiance of the Court’s binding Order represents a blatant challenge to this institution. If left unaddressed, such conduct risks making the Court dependent on the good will of the parties and can hardly be reconciled with the position of the Court as the principal judicial organ of the United Nations. As Judge Weeramantry observed in the *Bosnia Genocide* case, “[t]o view the Order made by the Court as anything less than binding . . . would weaken the régime of international law in the very circumstances in which its restraining influence is most needed”²⁵³.

27. This brings to a close Ukraine’s opening oral submissions. As my colleagues have detailed over the last few hours, Ukraine has brought before this Court a dispute that falls squarely within your jurisdiction under Article 36 (1) of the Statute of the Court and Article IX of the Genocide Convention. The correct course is for the Court to dismiss Russia’s preliminary objections in their entirety and proceed to the merits, where Ukraine’s Article 41 claim for Russia’s violations of the provisional measures Order can be addressed alongside its substantive claims.

28. Ukraine thanks the Court for its attention.

²⁵³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, separate opinion of Judge Weeramantry, p. 389.

The PRESIDENT: I thank Mr Gimblett, whose statement brings to an end this morning's session and the first round of oral argument of Ukraine. The Court will meet again tomorrow, at 10 a.m., to hear the oral observations of the intervening States. The sitting is adjourned.

The Court rose at 1 p.m.
