

Corrigé
Corrected

CR 2023/19

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2023

Public sitting

held on Wednesday 27 September 2023, at 3 p.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 mercredi 27 septembre 2023, à 15 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
 Judges Tomka
 Abraham
 Yusuf
 Xue
 Sebutinde
 Bhandari
 Robinson
 Salam
 Iwasawa
 Nolte
 Charlesworth
 Brant
Judge *ad hoc* Daudet

Registrar Gautier

Présents : M^{me} Donoghue, présidente
MM. Tomka
Abraham
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,

M^{me} Paris Aboro, cabinet Covington & Burling LLP, membre du barreau de l'État de New York et du barreau d'Angleterre et du pays de Galles,

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,

as Counsel;

Ms Caroline Ennis, Covington & Burling LLP,

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,

comme conseils ;

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
Russian Federation,

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,

M. Nikolay Zinovyev, collaborateur senior, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

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,

comme coagent ;

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 :

M^{me} Gordana Vidović Mesarek, directrice générale chargée du droit européen et du droit international, ministère des affaires étrangères et européennes de la République de Croatie,

comme agente ;

Ms Anamarija Valković, Head of Sector for International Law, Ministry of Foreign and European Affairs of the Republic of Croatia,

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,

as Agent;

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

as Co-Agent;

Mr Martin Lolle Christensen, Head of Section, Ministry of Foreign Affairs of the Kingdom of Denmark,

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,

as Co-Agent;

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,

as Agent;

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

as Co-Agent;

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,

comme coagent ;

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 :

M. Santiago Ripol Carulla, professeur de droit international public, Universitat Pompeu Fabra, Barcelone,

comme agent ;

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

comme coagente ;

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,

as Agent;

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

as Co-Agent;

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:

Mr Diégo Colas, Director of Legal Affairs, Ministry of Europe and Foreign Affairs of the French Republic,

as Agent;

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

as Co-Agent;

Mr Hervé Ascensio, Professor, at the University Paris 1 Panthéon-Sorbonne,

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 Sutura 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, juriste, 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 Mihuț, 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 Drofenik, Ambassador of the Republic of Slovenia to the Kingdom of the Netherlands,

as Co-Agent;

Mr Daniel Müller, Lawyer at FAR Avocats,

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

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

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

Ms Nina Bjelica.

The Government of the Kingdom of Sweden is represented by:

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

as Agent;

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

Le Gouvernement de la République slovaque est représenté par :

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

comme agent ;

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

comme coagent ;

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

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

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

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

Le Gouvernement de la République de Slovénie est représenté par :

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

comme agent ;

S. Exc. M. Jožef 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 this afternoon to hear the second round of oral argument of Ukraine.

For reasons duly made known to me, Vice-President Gevorgian and Judge Bennouna are unable to sit with us this afternoon.

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**

1. Madam President, Members of the Court: I am again honoured to appear before you on behalf of Ukraine. As this hearing comes to a close, let us together take stock of where we are.

2. Nineteen months ago, Ukraine brought you this case, after Russia launched a full-scale invasion of Ukraine that continues today, in a breathtaking display of aggression, atrocity, and war crimes. Russia made clear its goals for this military action: to stop an alleged genocide, and to bring the persons committing that genocide to trial. Russia took this and other actions citing many official claims that Ukraine was committing violations of the 1948 Genocide Convention. So the basis of Russia's action was unmistakable: that Ukraine and its officials were "committing" a "genocide" that Russia was required to take actions to "prevent and punish" under Articles I and IV of the Genocide Convention.

3. Ukraine immediately and strenuously denied Russia's allegations, charging that Russia had not assessed that a serious risk of genocide exists, and that Russia had systematically abused the Convention by taking multiple unilateral actions: recognizing sham republics in Donetsk and Luhansk, invading throughout Ukraine, brutalizing its citizens, and devastating its homeland, all for the stated purpose of preventing and punishing a non-existent genocide.

4. So from the start, as *Mavrommatis* requires, there has been a sharp "disagreement on a point of law or fact, a conflict of legal views or of interests" over which this Court may exercise jurisdiction¹. Let me, first, review why a dispute undeniably exists that confers Article IX jurisdiction

¹ *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J. Series A, No. 2, p. 11.*

on this Court, and second, reject Russia’s distorted legal theory, which argues that this Court may not rule on the merits because of Russia’s use of force.

**I. A dispute undeniably exists over which this Court has
Article IX jurisdiction**

5. After the provisional measures hearing last March, you found that the difference between the Parties’ positions on facts and law were “sufficient at this stage to establish prima facie the existence of a dispute between the Parties relating to the interpretation, application or fulfilment of the Genocide Convention [and] jurisdiction pursuant to Article IX of the Genocide Convention”².

6. Russia’s self-serving evasions throughout this hearing only confirm your initial understanding of this dispute. Even as Russia’s bombs rain down on Ukraine and its people, Russia continues brazenly to deny your jurisdiction and ignore your provisional measures Order. Russia claims that there is no legal dispute between these Parties, but these proceedings have shown why this is nonsense.

7. My initial presentation described four textual features that define Article IX’s distinctively broad scope³. First, Article IX broadly specifies that “any of the parties” to a dispute under the Convention may submit it to the Court. As stated by five Members of the Court in *DRC v. Rwanda*, under the Genocide Convention, “it is States who are the monitors of each other’s compliance”⁴. So, last Wednesday, a landmark day in this Court’s history, 32 intervening States — who agreed to be bound by your judgment — explained in a strong and unified voice why the dispute before you raises a question of “interpretation, application or fulfilment” of the Convention that this Court must decide under Article IX.

8. Russia’s counsel tried to dismiss these interventions as “puppeting” and “sheeplike” behaviour that “pervert[ed]” Article 63 of the Court’s Statute⁵. In fact, the unanimity of these

² *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* (provisional measures Order of 16 March 2022), p. 223, paras. 47–48 (emphasis added).

³ See CR 2023/14, pp. 41–45, paras. 7–20 (Koh).

⁴ *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, joint separate opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, p. 72, para. 28.

⁵ See CR 2023/17, p. 53, para. 93 (Zabolotskaya); CR 2023/18, p. 54, para. 42 (Udovichenko); CR 2023/18, p. 73, para. 64 (Tchikaya).

interventions reflects not a dark conspiracy, as Russia claims, but a “generality of the opinion which appears to have been cherished by States parties” to the Convention⁶, regarding its proper interpretation. There is a better explanation than conspiracy as to why 32 States have intervened to confirm Ukraine’s legal interpretation, and none have intervened to confirm Russia’s — Russia’s extreme conduct in Ukraine has so gravely abused the Genocide Convention that no other contracting State will endorse Russia’s offensive theory. In granting 32 of these interventions as of right, this Court not only rejected Russia’s absurd abuse of process claim⁷, but also encouraged joint declarations and oral pleadings, recognizing there is nothing conspiratorial about law-abiding States talking to one another to co-ordinate common legal positions. These interventions graphically illustrate why, in addition to resolving this contentious dispute, your decision here will help to define the scope of this Court’s power to stop the flagrant abuse of the world’s most important human rights treaty.

9. Second, as the joint separate opinion in *DRC v. Rwanda* underscored, “Article IX speaks *not only* of disputes over the interpretation and application of the Convention, *but over the ‘fulfilment of the Convention’*”⁸. Russia would have you treat the word “fulfilment” as surplusage, and thereby rewrite Article IX to strike out that critical word. But as long as “fulfilment” is there, the principle of *effet utile* requires that the term be given distinct meaning independent of the clause’s other terms. Indeed, in your own provisional measures Order *in this case* you expressly noted that direct disagreement between the two Parties gives you prima facie jurisdiction to decide “whether the use of force by the Russian Federation for the stated purpose of preventing and punishing alleged genocide is a measure that can be taken in *fulfilment* of the obligation to prevent and punish genocide contained in Article I of the Convention”⁹. Russia’s counsel falsely insisted that the term “adds nothing”¹⁰. But as my initial remarks explained, adding “fulfilment”, defined as “accomplishment”,

⁶ *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 410, para. 40.

⁷ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening), Intervention, Order of 5 June 2023*, paras. 59–60.

⁸ *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, joint separate opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, p. 72, para. 28 (emphasis added).

⁹ Provisional measures Order of 16 March 2022, p. 223, para. 45 (emphasis added).

¹⁰ CR 2023/18, p. 63, para. 24 (Tchikaya).

“performance” or “completion” of treaty obligations¹¹ — or in French, “*exécution*”¹², as that term is used in Article 26, the good faith provision of the Vienna Convention on the Law of Treaties¹³ — codifies Russia’s duty to *perform, execute and fulfil* its treaty obligations with due diligence and in good faith. Adding “fulfilment” ensures that the Court can review not just whether Russia, as a contracting Party, has violated particular articles of the Convention, but also whether it has performed in good faith its treaty obligations — or instead misused or abused its rights or the Convention as a whole.

10. Third, Russia has also created a dispute about “interpretation”, because the Parties strenuously disagree about the *meaning* of their respective legal rights and obligations under the Convention¹⁴.

11. Fourth, Ukraine and the 32 intervening States established that this dispute raises questions of “application”. As you noted last March, there is a clear “divergence of views as to whether certain acts allegedly committed by Ukraine in the Luhansk and Donetsk regions amount to genocide” that Russia became obliged to prevent and punish¹⁵. As the *Gabčíkovo-Nagymaros* case stated, “[t]he principle of good faith obliges the Parties to *apply* [a treaty] in a reasonable way and in such a manner that its purpose can be realized”¹⁶. By abusing the text and purpose of the treaty to make false allegations, conduct sham recognitions and launch unlawful military invasions, Russia misapplied the Convention — in the words of *Chorzów Factory*, “creating a situation contrary to” Articles I and IV¹⁷. This case thus falls within what the Court in *Bosnian Genocide* called the “unusual feature” of Article IX: “a broader group of disputes relating to” Russia’s responsibility for fulfilling its

¹¹ Oxford English Dictionary, *fulfilment*, *n.* (3rd ed., 2016), accessed at <https://www.oed.com/view/Entry/75295?redirectedFrom=fulfilment#eid>.

¹² Larousse Dictionnaire Français, *exécution*, *n.f.* (online ed., 2018), accessed at <https://www.larousse.fr/dictionnaires/francais/ex%C3%A9cution/32065>.

¹³ Vienna Convention on the Law of Treaties, 23 May 1969, *UNTS*, Vol. 1155, p. 331, Art. 26.

¹⁴ Accord Written Observations on Preliminary Objections (WO) of Belgium, Croatia, Denmark, Estonia, Finland, Ireland, Luxembourg, Malta, and Sweden, para. 16; WO of Bulgaria, paras. 12–13; WO of France, para. 26; WO of Germany, para. 17; WO of Greece, para. 31; WO of Italy, para. 29; WO of New Zealand, para. 31; WO of Norway, para. 19; WO of Poland, para. 24; WO of Portugal, para. 24; WO of Slovenia, para. 13; WO of Spain, para. 43.

¹⁵ Provisional measures Order of 16 March 2022, pp. 222–223, para. 45.

¹⁶ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *Judgment*, *I.C.J. Reports 1997*, p. 79, para. 142 (emphasis added); see also WO of New Zealand, paras. 17, 44–47.

¹⁷ *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, pp. 20–21.

obligations under the Convention¹⁸. Everyone, including Russia, agrees that a State that levels allegations of genocide against another can ask the Court to resolve that dispute as “relating to” State responsibility for genocide under the Convention. But if so, so too must a State like Ukraine be able to resolve an issue relating to State responsibility for genocide by *disputing* pretextual allegations of genocide and illegal actions taken on the basis of those false allegations.

12. Ukraine and the intervening States all further agree that Article IX’s distinctively broad scope reflects both the *erga omnes* character of the Convention’s obligations and the Convention’s historic object and purpose. This Court famously pronounced more than 70 years ago that the Convention was adopted for “a purely humanitarian and civilizing purpose”¹⁹. Granting this Court broad Article IX jurisdiction helps to achieve that object and purpose. States offend the Convention’s object and purpose when they ignore a genocide that is clearly occurring. But they also offend that object and purpose when they falsely allege a genocide that is clearly *not* occurring, in order to seek licence to illegally attack and invade an innocent neighbour.

13. On Monday, Mr Udovichenko presented a map of “Ukraine’s Legal Position” that purportedly showed the vagueness of Ukraine’s theory of Article IX jurisdiction²⁰. Instead, what his chart well illustrated was the widely agreed-upon breadth of Article IX in five column headings that happen to track the wording of Article IX: “abused”, “violated”, “misused”, “misapplied” and “misinterpreted”²¹. As his chart showed, this Court has Article IX jurisdiction not just when Russia has (1) “violated” or (2) “abused” Articles I and IV of the Convention, but also when Russia has (3) misinterpreted, (4) misapplied and (5) not fulfilled — misused — the Convention. Ukraine’s claim regarding Russia’s failure of good-faith performance is plainly “related” to “fulfilment”; the requirement that Articles I and IV be applied reasonably and in good faith is connected with, that is, related to, “application”. To exercise jurisdiction, that is all you must find.

14. So the jurisdictional question here is simple: does the necessary “relationship” exist between the dispute Ukraine brings — over Russia’s failure to fulfil its obligations to prevent and

¹⁸ *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.

¹⁹ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 23.

²⁰ CR 2023/18, p. 54, paras. 39-40 (Udovichenko).

²¹ Russian Federation, judges’ folder, second round (25 Sept. 2023), tab C, p. 94.

punish genocide in good faith — and “interpretation, application or fulfilment” of the Convention. The answer is “yes”.

15. For that reason, as you will hear more from Mr Zions, Russia has entirely fabricated its contention that requests for a declaration of non-violation are alien to the Convention and to international law in general²². As Cyprus put it last week, a State falsely accused of genocide “must be afforded the opportunity to ‘clear its name’ . . . especially when an allegation of genocide is relied upon to resort to armed force”²³.

16. Mr Udovichenko mocked this assertion as a laughable “reputational” interest²⁴. But as both Lithuania and Cyprus explained, the capacity to bring such claims is an existential necessity for small States who are at risk of unlawful, pretextual invasion²⁵. As Cyprus explained, it is “crucial for [these countries] that provisions in treaties are not left to the ‘own appraisal’ of any State party in order to justify the use of force against other States, but are properly construed by States and ultimately by this Court”²⁶. In *Nicaragua v. United States*, the Court similarly explained that, while the respondent “might form its own appraisal of the situation as to respect for human rights in [the applicant State], the use of force could not be the appropriate method to monitor or ensure such respect”²⁷. To prevent such unilateral appraisals from becoming entirely self-judging, Article IX must be read to empower this Court to review State claims of unilateral power to assess, and to use force to prevent and punish, a perceived genocide²⁸.

II. The Russian Federation’s mechanical legal theory distorts the text, history, object and purpose, and jurisprudence of the Genocide Convention

17. Madam President, Members of the Court, Russia’s counsel has offered a mechanical legal theory arguing that this Court may not rule on the merits because of three fabricated “either–or” propositions, relating to jurisdiction, breach and potential application of other rules of international

²² See generally CR 2023/13, pp. 91-95, paras. 4-31 (Udovichenko).

²³ CR 2023/15, p. 61, paras. 9-10 (Tzanakopoulos).

²⁴ CR 2023/18, p. 50, para. 19 (Udovichenko).

²⁵ See CR 2023/15, p. 60, para. 4 (Stavrínides); CR 2023/16, p. 34, para. 2 (Grigaitė-Daugirdė).

²⁶ *Ibid.*, p. 60, para. 4 (Stavrínides).

²⁷ See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment. I.C.J. Reports 1986*, p. 134, para. 268.

²⁸ See CR 2023/15, p. 62, para. 13 (Tzanakopoulos).

law. Their theory distorts the text, history, object and purpose, and jurisprudence of the Genocide Convention.

18. First, Russia has repeatedly insisted that jurisdiction is precluded here, because the case Ukraine brings before you is not really about Russia's abuse of the Genocide Convention, but about the legality of Russia's use of force under the UN Charter and customary international law²⁹.

19. But in demanding that a dispute must *either* concern the use of force *or* the Genocide Convention, Russia sets up a false dichotomy. The Court's jurisdiction covers Russia's use of force in this context precisely *because Russia used force as a chosen measure to execute its stated goal of preventing and punishing genocide*. The Court has regularly rejected similar claims by other respondents that a relationship between use of force issues and the applicants' claims brings a case outside the scope of the relevant treaty. In those cases, this Court has appropriately rejected Russia's untenable position that the co-existence of use of force issues somehow renders a claim per se inadmissible. Instead, the Court has carefully evaluated, as you should do again here, whether a dispute exists under the treaty at issue over which you have jurisdiction, regardless of any role that the respondent's use of force might play in the ultimate resolution of the case.

20. In *Oil Platforms*, the Court rejected the preliminary objection of a P-5 Member of the Security Council that the applicant's claims fell outside the relevant compromissory clause because "essentially, the dispute relates to the lawfulness of actions by naval forces . . . that 'involved combat operations'"³⁰. The Court held that a "violation of the rights of one party under the Treaty by means of the use of force is as unlawful as would be a violation by administrative decision or by any other means. Matters relating to the use of force are therefore *not per se* excluded from the reach of the Treaty"³¹. Here as well, connection to use of force issues creates no per se exclusion from the reach of the Genocide Convention. By using force as its measure to prevent and punish genocide, it is Russia that has placed its own use of force within the scope of the Genocide Convention. If any

²⁹ See Russia's Objections, paras. 122-136; CR 2023/13, p. 56, para. 31 (Azari); Russia's Objections, para. 226 (citing to Russia's Objections, paras. 44, 46-50).

³⁰ *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 810, para. 18 (internal quotations omitted).

³¹ *Ibid.*, pp. 811-812, para. 21 (emphasis added).

examination of the legality of Russia's use of force were to occur, it should happen at the merits, as it did in *Oil Platforms*.

21. More recently, in *Georgia v. Russia*, this Court similarly resisted Russia's attempt to divest the Court of jurisdiction because the applicant's claims challenged use of force. Last week, Russia's Agent misleadingly claimed that "[b]ack in 2011, the Court ha[d] correctly decided that Georgia's claims rooted in the allegations of use of force did not pertain to racial discrimination"³². In fact, what the Court squarely *rejected* was Russia's argument that Georgia's evidence of a dispute related to the use of force in Abkhazia and South Ossetia somehow divested the Court of jurisdiction over a dispute related to the interpretation and application of the race discrimination convention, the CERD. Instead, the Court determined that "while the Georgian claims . . . were primarily claims about the allegedly unlawful use of force", Georgia had presented sufficient evidence of the existence of a dispute between the parties related to the interpretation or application of the human rights treaty at issue³³. Similarly, Ukraine's claims here centre on Russia's allegations and actions based on another human rights treaty at issue, the Genocide Convention. The mere existence of use of force issues has never created a per se carve-out from this Court's jurisdiction or admissibility that overrides the Contracting Parties' consent.

22. Second, Russia's counsel attempted to erect a similarly sharp divide between Russia's breaches of the Convention and its duty to perform in good faith, which Russia characterized as only relevant to conduct outside "the scope of the Convention", whatever that means³⁴. Again, this entirely manufactured distinction in no way reflects reality. Mr Crosato conceded that the *Gabčíkovo-Nagymaros* duty to act in good faith with respect to a treaty is about "performance" or, as Article IX puts it, "fulfilment" of the treaty's obligations³⁵. Given that litigating about "fulfilment" falls within the express terms of the Convention, how can litigating about performance in good faith be an obligation that falls "outside" the Convention?

³² CR 2023/13, p. 47, para. 50 (Kuzmin).

³³ *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. 120, para. 113.

³⁴ CR 2023/17, p. 89, para. 75 (Crosato); see also CR 2023/18, p. 70, para. 53 (Tchikaya); WOU, para. 124.

³⁵ CR 2023/17, p. 88, para. 72 (Crosato).

23. Or take this Court’s Genocide Convention jurisprudence. The 1999 *Legality of Use of Force* case concerned NATO bombing to protect innocent civilians. Russia’s Agent cited many public statements in April 1999 by various government policymakers — including myself — warning that Serbian leaders were committing “acts of genocide”³⁶. Without evidence, Russia’s Agent called this a “pretext”³⁷. But Slobodan Milošević, the President of Serbia, was later indicted by the ICTY for crimes against humanity, and for genocide in related conflicts³⁸. That case offers no parallel to Russia’s pretextual allegations of genocide without due diligence, which are at issue here.

24. For that reason, we must separate thoughtful legal analysis from the kind of political diatribe we heard from Russia’s Agent on Monday. As Judge Nolte acknowledged in his separate declaration to the provisional measures Order in this case: in the *Legality of Use of Force* case³⁹,

“[i]t is true that, in 1999, certain respondent States came close to justifying their use of force by stating that their actions were taken with the intent to prevent genocide . . . and that certain of their officials made allegations of genocide in that context. *However, such justifications were not the stated purpose of the military operations by the respondent States, nor was that purpose so perceived by the applicant State.* That aspect was therefore *not* the subject-matter of the earlier cases before the Court.”⁴⁰

25. As a legal matter, Judge Nolte observed, “neither the applicant State nor the respondent States stated before the Court that the use of force by the respondent States had the purpose of preventing an alleged genocide”⁴¹. So unlike Ukraine, Serbia did *not* allege that NATO allegations of genocide were pretextual, nor did it invite the Court to consider whether it was responsible for genocide. In the present case, by contrast, Judge Nolte noted Russia has “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’”⁴².

³⁶ See CR 2023/17, p. 51, paras. 80-81 (Zabolotskaya); see also *ibid.*, pp. 50-51, paras. 79, 82.

³⁷ CR 2023/17, pp. 49, 51, paras. 68, 83 (Zabolotskaya).

³⁸ See e.g. *Prosecutor v. Milošević*, Case No. IT-01-51-I, Indictment (22 Nov. 2001); *Prosecutor v. Milošević*, Case No. IT-01-54-T, Amended Indictment (22 Nov. 2002); *Prosecutor v. Milošević et al.*, Case No. IT-99-37-I, Amended Indictment (29 June 2001); *Prosecutor v. Milošević et al.*, Case No. IT-99-37-PT, Second Amended Indictment (16 Oct. 2001).

³⁹ *Legality of Use of Force (Yugoslavia v. Belgium), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 124.

⁴⁰ Provisional measures Order of 16 March 2022, declaration of Judge Nolte, p. 255, para. 6 (emphasis added).

⁴¹ *Ibid.*, p. 254, para. 2; see also *ibid.*, pp. 254-255, paras. 3-7.

⁴² *Ibid.*, pp. 254-255, paras. 2 and 4.

26. The *Bosnian Genocide* case also arose in an entirely different posture. This Court took jurisdiction under Article IX after Bosnia and Herzegovina charged Serbia and Montenegro with committing genocide under the Genocide Convention⁴³. Mr Crosato selectively quoted parts of *Bosnian Genocide* to support his “either/or” claim that a case against a responding State must be brought inside, not outside the Convention⁴⁴. But just two paragraphs after the language he quoted, in language oddly omitted from his presentation, the *Bosnian Genocide* Judgment stated that,

“[i]n order to determine whether the Respondent breached its obligation under the Convention . . . , the Court will have recourse not only to the Convention itself, *but also to the rules of general international law on treaty interpretation and on responsibility of States for internationally wrongful acts*”⁴⁵.

27. In short, this Court has rejected precisely the mechanical “inside/outside” distinction that Russia’s counsel advocates.

28. Third and finally, there is nothing in this Court’s jurisprudence barring “other sources of international law” from being consulted to help determine whether Russia has acted unlawfully to prevent and punish genocide under the Convention. In *Croatian Genocide*, the Court took jurisdiction under Article IX, and on the merits, dismissed both the Croatian claim and Serbian counter-claim on the ground that neither side had provided sufficient evidence of the respondents’ specific intent to commit genocide⁴⁶. Mr Crosato emphasized the Court’s holding it would not consider a State’s liability for war crimes falling short of genocide⁴⁷. But what he omitted was that the Court immediately followed with this caveat:

“That does not prevent the Court from considering, in its reasoning, whether a violation of international humanitarian law or international human rights law has

⁴³ 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)*, pp. 600-603, 614-621, paras. 13-14, 27-41; *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. 101-102, para. 140.

⁴⁴ CR 2023/13, pp. 67-68, paras. 47-48 (Crosato); CR 2023/17, p. 78, para. 28 (Crosato); see also *ibid.*, p. 80, para. 36 (citing 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. 464).

⁴⁵ *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. 105, para. 149 (emphasis added).

⁴⁶ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015 (I)*, pp. 128-129, 153, paras. 441-442, 522.

⁴⁷ CR 2023/17, p. 78, para. 28 (Crosato).

occurred to the extent that this is relevant for the Court’s determination of whether or not there has been a breach of an obligation under the Genocide Convention.”⁴⁸

29. That is the situation here. As Latvia observed last week: “The concerns, institutions and teleology of the Genocide Convention and the rules on the use of force expressed in the UN Charter are . . . closely intertwined.”⁴⁹ Thus, the Genocide Convention’s preamble refers to “the spirit and aims of the United Nations”⁵⁰, whose Charter includes maintaining “peace and security”, “suppres[sing] . . . aggression”, “reaffirm[ing] faith in fundamental human rights” and promoting the peaceful settlement of disputes⁵¹.

30. As this case proceeds to the merits, the Court may be called on — as it was in *Croatian Genocide* — to apply other sources of international law

“to decide a dispute [under the Genocide Convention . . . In so far as both of these bodies of rules may be applicable in the context of a particular armed conflict, the rules of international humanitarian law might be relevant in order to decide whether the acts alleged by the Parties constitute genocide within the meaning of Article II of the Convention.”⁵²

31. As the United Kingdom noted in its intervention:

“The ‘scope’ of other rules of international law that constrain [State] conduct permitted by Article I [of the Convention] is not ‘indefinite’ . . . [or] extrinsic to the Convention. Rather, they are embedded within it, consistently with the object and purpose of the Convention. *It is unthinkable that a State fulfilling its undertaking to prevent genocide in good faith could do so through aggression or other international crimes.*”⁵³

Again, Russia’s counsel mocked this final statement. But that only confirms what we have all witnessed on the battlefield these last 19 months: use of such illegal tools is not unthinkable to Russia. But in due course, as the United Kingdom urged, this Court might decide to look to governing *jus ad bellum* and *jus in bello* rules to decide whether such Russian use of force measures as aggression, crimes against humanity or war crimes taken in the name of punishing genocide are ever compatible

⁴⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015 (I)*, pp. 45-46, para. 85. See also *ibid.*, p. 68, para. 153; WOU, para. 140.

⁴⁹ CR 2023/15, p. 80, para. 13 (Paparinskis).

⁵⁰ Genocide Convention, preamble (judges’ folder, tab 2).

⁵¹ Charter of the United Nations, Preamble, Art. 1.

⁵² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 68, para. 153.

⁵³ CR 2023/16, p. 58, para. 12 (Prentis) (emphasis added).

with the Genocide Convention⁵⁴. But such considerations are for the merits and pose no barrier to this Court's jurisdiction to reach that stage.

32. In sum, Russia's mechanical legal theory artificially flattens the issues before you into false dichotomies. This Court may take jurisdiction over a dispute that fits under Article IX's various heads of jurisdiction — whether or not it involves use of force — and on the merits may consider other sources of international law to help determine whether Russia's actions — including its use of force — violate its obligations under the Genocide Convention.

33. Madam President, Members of the Court, on the eve of the 75th anniversary of the historic Genocide Convention, it is time to reaffirm this Court's commitment to your crucial role in deciding the real issue before you: *may a powerful State falsely accuse its neighbour of genocide, then use illegal force to kill its citizens, devastate their homeland, and destabilize the global legal order, all on the pretext of preventing and punishing genocide?* However bloodless and antiseptic Russia's legal theory may appear, Russia is deploying that theory daily and unilaterally to destroy lives and attack the global foundations of human rights law and the rule of international law for which the Genocide Convention stands. The jurisdictional questions before you are neither close, nor are they difficult. And while you deliberate, the world awaits a speedy hearing on the merits.

34. Distinguished judges, for these reasons, the Court should promptly dismiss Russia's preliminary objections and schedule a hearing on the merits. Madam President, it has been my honour to appear before you. I thank you and I ask you to call my colleague Ms Cheek to the podium. Thank you.

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

Ms CHEEK:

⁵⁴ CR 2023/16, pp. 57-58, paras. 10-11 (Prentis).

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

I. The evidence of the Parties' dispute

1. Madam President, Members of the Court, it is an honour to appear before you again on behalf of Ukraine. This afternoon I will once again focus on the existence of a dispute between Ukraine and the Russian Federation related to the subject-matter of the Genocide Convention.

2. In its second round of oral pleadings, Russia argues that this Court should ignore statement after statement made by senior Russian officials referencing Ukraine's alleged commission of genocide. It argues that its reliance on genocide to justify its recognition of the so-called "DPR" and "LPR" and its full-scale invasion of Ukraine is simply rhetoric. At the same time, it has no answer for why its officials, including the Deputy Chairman of the Security Council, have referred to the Genocide Convention by name when justifying Russia's actions.

3. Russia instead asks this Court to find that Article 51 of the UN Charter was the sole justification for its actions in and against Ukraine. Russia asks you to disregard the words of its President clearly stating that the purpose of Russia's so-called "special military operation" was to stop genocide⁵⁵. Instead, Russia invites you to rely on Russia's bare invocation of Article 51 in a letter transmitted to the United Nations on 24 February 2022 — even though the same letter attaches President Putin's speech that declares the purpose of Russia's actions against Ukraine to be genocide prevention. In the alternative, Russia argued, for the first time in these oral hearings, that even if a dispute regarding the subject-matter of the Convention existed at the time of Ukraine's Application, no such dispute exists today, and so Ukraine's claims are devoid of object and should be dismissed.

4. Having heard Russia's rebuttal on Monday, it remains the case that an objective examination of the facts shows that at the time Ukraine filed its Application with this Court, the Parties had a dispute related to the interpretation, application or fulfilment of the Genocide Convention.

5. My presentation this afternoon will proceed in three parts. First, I will demonstrate that on the current record before the Court, there existed a dispute between the Parties relating to the interpretation, application or fulfilment of the Genocide Convention at the time Ukraine filed its Application. Second, I will explain how Russia's letter to the UN Secretary-General regarding its

⁵⁵ 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 12).

purported exercise of the right to self-defence under Article 51 of the UN Charter does not negate the Parties' dispute with regard to the Genocide Convention, but, rather, affirms it. Finally, I will address Russia's new argument that Ukraine's claims are without object because Russia has asserted in these oral proceedings that it agrees with certain of Ukraine's interpretations of the Convention.

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

6. What should the Court make of Russia's repeated references to genocide? In the words of Professor Azari: "Regarding the statements of Russian politicians who used the term genocide, it must be recognized that the simple reference to this term is insufficient to establish the existence of a dispute under the Genocide Convention."⁵⁶ But this Court should not disregard Russia's statements alleging that Ukraine was committing genocide.

7. Russia cannot credibly claim that its long-standing allegations of genocide against Ukraine and its officials were mere "rhetoric[]" or simply "political"⁵⁷. To start, Russia's State organs and officials have, for years, claimed that Ukraine and its officials are committing genocide *in violation of the Genocide Convention*.

8. As for Russia's Investigative Committee, not only did it explicitly claim that Ukrainian officials were violating the Genocide Convention, but Russia's domestic criminal code defines genocide in nearly identical terms to the definition in Article II of the Genocide Convention⁵⁸. Therefore, when Russia's Investigative Committee uses the term "genocide", it means genocide as that term is defined in the Genocide Convention. Russia has not shown otherwise.

9. On Monday, Russia again tried to dismiss the numerous statements of the Investigative Committee by insisting that the Investigative Committee does not speak for Russia at the "international level"⁵⁹. But Russia's complete failure to engage at all with the content of the statements of the Investigative Committee is telling. I need not repeat each of the Investigative

⁵⁶ CR 2023/17, p. 66, para. 30 (Azari). See generally CR 2023/17, pp. 66-67, 68-69, paras. 30-32, 39-40.

⁵⁷ CR 2023/17, p. 66, para. 31 (Azari).

⁵⁸ The Criminal Code of the Russian Federation, No. 63-FZ of 13 June 1996, Art. 357, accessed at https://www.imolin.org/doc/amlid/Russian_Federation_Criminal_Code.pdf (judges' folder, tab 3).

⁵⁹ CR 2023/17, p. 67, para. 36 (Azari).

Committee's statements that I took you to last week⁶⁰, but I include one example here on the screen. As the Court will recall, the Investigative Committee has consistently and explicitly alleged that high-ranking Ukrainian officials have acted in violation of the Genocide Convention⁶¹. Russia cannot escape this fact, and it does not even try.

10. More telling still, you heard nothing from Russia about the Investigative Committee's own efforts to publicize the results of its investigations, to use Russia's words: "at the international level"⁶². These efforts were amplified by Russia's Ministry of Foreign Affairs, which published the Investigative Committee's English language book documenting its investigations, including its allegations of genocide against Ukrainian officials — Russia calls it the "White Book of Crimes"⁶³. This book was published on the Foreign Ministry's website, within its Foreign Policy section, as you can see in the snapshot of the Russian Foreign Ministry website on the screen⁶⁴.

11. Further, on 3 March 2022, just one week after Russia's full-scale invasion of Ukraine, the spokesperson for Russia's Foreign Ministry highlighted its role in publicizing the Investigative Committee's reports and its conclusions. Regarding the Investigative Committee's work, she commented: "Do you think we have hidden it in a secret library? Of course not. It is available on the Foreign Ministry website and . . . social media. We sent it to all our partner countries and international organisations."⁶⁵ The Investigative Committee's consistent allegations that Ukrainian officials were violating the Genocide Convention is plainly evidence of the existence of the Parties' dispute.

12. Russia has had every opportunity to tell this Court that, no, it does not believe and it never believed that Ukraine is committing genocide in Donbas in violation of the Genocide Convention.

⁶⁰ See generally CR 2023/14, pp. 54-57, paras. 27-36 (Cheek).

⁶¹ See e.g. Investigative Committee of the Russian Federation, *Criminal Cases Initiated Against 20 High-Ranking Officials of the Ministry of Defense of Ukraine* (11 Sept. 2017) (MU, Ann. 14) (judges' folder, tab 4).

⁶² See CR 2023/17, p. 68, para. 36 (Azari).

⁶³ See Ministry of Foreign Affairs of the Russian Federation, White Books on Crimes of the Western States and Their Allies, accessed at https://www.mid.ru/en/foreign_policy/belye_knigi/ (judges' folder, tab 5); see also 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>.

⁶⁴ See Ministry of Foreign Affairs of the Russian Federation, White Books on Crimes of the Western States and Their Allies, accessed at https://www.mid.ru/en/foreign_policy/belye_knigi/ (judges' folder, tab 5).

⁶⁵ Ministry of Foreign Affairs of the Russian Federation, *Briefing by Foreign Ministry Spokeswoman Maria Zakharova, Moscow* (3 Mar. 2022), p. 8, accessed at https://mid.ru/en/foreign_policy/news/1802683/ (judges' folder, tab 6).

Or to somehow explain why its officials repeatedly referenced the Genocide Convention specifically. But it has not done so.

13. Russia's arguments on the existence of a dispute suffer from a fatal flaw: Russia cannot escape the facts. Russia has repeatedly advanced allegations of genocide against Ukraine, and has expressly claimed that Ukraine and its officials are violating the Genocide Convention. Russia has taken action against Ukraine on the explicit basis of preventing and punishing that alleged genocide.

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

14. Russia also has made various attempts to discount evidence that Ukraine opposed both Russia's allegations of genocide and Russia's actions taken in and against Ukraine in reliance on those allegations.

15. First, with regard to the statements by Ukrainian officials opposing the genocide allegations of Russia's Investigative Committee: Russia's only comment on Ukraine's statements calling Russia's allegations "groundless" and "a complete delusion" was to argue on Monday that because the Investigative Committee is not acting at the international level, Ukraine's opposition to its accusations of genocide cannot be credited⁶⁶. But I have already disposed of this issue. The Investigative Committee has levelled inherently international allegations against high-ranking officials of another sovereign State. Russia's Foreign Ministry promoted those allegations. There is no reason the Court cannot consider both the Investigative Committee's statements and Ukraine's opposition to them as evidence of the Parties' dispute.

16. Russia also had little to say about Ukraine's Foreign Minister Kuleba's statement before the UN General Assembly on 23 February — two days after Russia had recognized the so-called "DPR" and "LPR" in reliance on its false allegations of genocide — Minister Kuleba called Russia's accusations "absurd"⁶⁷. Professor Azari noted that Minister Kuleba did not mention genocide or the Genocide Convention⁶⁸. But as I noted previously, in context, it is quite reasonable to view Minister

⁶⁶ CR 2023/17, p. 69, para. 42 (Azari).

⁶⁷ 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 15).

⁶⁸ CR 2023/17, p. 69, para. 43 (Azari).

Kuleba's remarks as a comment on Russia's view that it had recognized the so-called "DPR" and "LPR" in order to bring a genocide in Donbas to an end.

17. Second, with regard to conduct, I urge the Court to consider the substance of Ukraine's opposition, since it involved denouncing Russia in the United Nations and fighting Russia's full-scale invasion launched in the name of preventing and punishing genocide. On Monday, Professor Azari invoked this Court's decision in *Georgia v. Russia* at paragraph 108⁶⁹. He invoked that paragraph in response to Ukraine's conduct and specifically with regard to Ukraine's actions in its own self-defence. But that paragraph is silent on the relevance of conduct when assessing whether the parties hold opposing views such that a dispute exists regarding the subject-matter of the treaty. That paragraph examined a Georgian decree focused on the use of force rather than the subject-matter of that dispute, which was the CERD. It is irrelevant here.

18. As I set out last week, 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 parties⁷⁰. That consideration is quite relevant in this case.

C. Further evidence of the Parties' opposed views

19. There is further evidence of the Parties' opposed viewpoints. Russia criticizes the statement of the Ministry of Foreign Affairs published on 26 February 2022. On Monday, Russia's counsel went as far as to accuse Ukraine's Foreign Ministry of "fabricati[ng] . . . evidence"⁷¹. Ukraine objects to that in the strongest terms.

20. As stated previously, the 26 February statement confirmed that a dispute between the Parties had already crystalized. In any case, Russia's principal point seems to be that even if it was aware of the statement, it did not have time to react to it⁷². In the context of this case and the urgency

⁶⁹ CR 2023/17, p. 71, para. 49 (Azari), quoting *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 118, para. 108.

⁷⁰ 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.

⁷¹ CR 2023/18, p. 54, para. 41 (Udovichenko).

⁷² See e.g. CR 2023/13, p. 57, para. 34 (Azari); CR 2023/17, p. 70, para. 46 (Azari).

of the situation when this case was filed — not to mention the language of the compromissory clause of the Genocide Convention which requires no consultation prior to seising the Court — Russia’s argument does nothing to detract from the conclusion that Ukraine and the Russian Federation held opposing views on the subject-matter of the Genocide Convention at the time Ukraine filed its Application with this Court.

21. Further, as a factual matter, the statement was published on the website of the Ministry of Foreign Affairs⁷³, across its social media channels⁷⁴ and shortly thereafter on the official Ukrainian government portal⁷⁵. The Parties are agreed that this statement was issued prior to Ukraine filing its Application.

22. On Monday, Russia’s counsel relied on *Marshall Islands v. United Kingdom* in an attempt to undermine the significance of this 26 February statement⁷⁶. But the statements in *Marshall Islands* of the applicant lacked specificity and were “hortatory”⁷⁷ in nature⁷⁸. The factual distinction between that case and the case before you here is readily apparent. In the present case, Russia made explicit and direct allegations that Ukraine and its officials were committing genocide. Russia was aware — or it could not have been unaware — that Ukraine opposed those allegations. Yet, in February 2022, rather than remedying this disagreement and withdrawing its allegations of genocide against Ukraine, Russia took action on the stated basis of bringing an alleged genocide to an end. Ukraine forcefully opposed those actions.

⁷³ 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> (judges’ folder, tab 7).

⁷⁴ *MFA Statement on Russia’s False and Offensive Allegations of Genocide As a Pretext For Its Unlawful Military Aggression*, Facebook Post of the Ukrainian Ministry of Foreign Affairs / MFA of Ukraine, dated 26 Feb. 2022 (WOU, Ann. 3) (judges’ folder, tab 8); *MFA Statement on Russia’s False and Offensive Allegations of Genocide As a Pretext For Its Unlawful Military Aggression*, Twitter Post of the Ukrainian Ministry of Foreign Affairs (@MFA_Ukraine), dated 26 Feb. 2022 (WOU, Ann. 4) (judges’ folder, tab 9).

⁷⁵ 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 10).

⁷⁶ See CR 2023/17, p. 70, para. 46 (Azari).

⁷⁷ *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. 853, para. 49.

⁷⁸ See *ibid.*, pp. 853-854, paras. 49-51.

23. Despite Russia's continued insistence⁷⁹, the objective question of whether the parties hold opposite views with respect to the subject-matter of the treaty does not turn on whether the respondent expressly and explicitly opposed the claims of the applicant State. The Court made this clear in *The Gambia v. Myanmar*, adding that "[i]f that were the case, a respondent could prevent a finding that a dispute exists by remaining silent in the face of an applicant's legal claims. Such a consequence would be unacceptable."⁸⁰

24. Professor Azari is not correct when he insists that Ukraine must prove "that before the filing of the Application it claimed a violation of the 1948 Convention and that its claim was manifestly opposed by the Russian Federation"⁸¹. The Court could not have been clearer in *Nicaragua v. Colombia*: "It does not matter which one of them advances a claim and which one opposes it. What matters is that 'the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain' international obligations"⁸².

25. I also take note of Judge Crawford's dissent in *Marshall Islands*, where he stated that "[e]gregious conduct can create a dispute *ipso facto*, without the need for a letter before action or other communication"⁸³. Russia's invasion of Ukraine on 24 February 2022, whose stated purpose was to stop a genocide in Donbas and punish the perpetrators, is a stark example of such egregious conduct.

26. Russia's allegations, and the actions it has taken in purported reliance on those allegations, plainly fall within the subject-matter of the Genocide Convention: namely genocide, and the prevention and punishment thereof. Ukraine has opposed these allegations and the actions Russia has taken in reliance on those allegations, and Ukraine did so before filing its Application. Consistent

⁷⁹ See e.g. CR 2023/17, pp. 61-64, paras. 5-21 (Azari).

⁸⁰ *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. 71.

⁸¹ CR 2023/17, p. 60, para. 3 (Azari) (unofficial translation). See also CR 2023/13, p. 48, paras. 2, 11-12 (Azari).

⁸² *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), p. 26, para. 50; see also *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), separate opinion of Judge Donoghue, p. 333, para. 11.

⁸³ *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), dissenting opinion of Judge Crawford, p. 1100, para. 17.

with the Court's well-established standards, this is sufficient to establish the existence of a dispute between the Parties related to the Genocide Convention.

27. This Court found at the provisional measures stage that the evidence demonstrated prima facie the existence of the Parties' dispute⁸⁴. Russia has presented no evidence since the Court's Order that undermines that prima facie conclusion. On the other hand, Ukraine has supplemented the record with additional evidence that confirms that, by the time of Ukraine's Application, there was a dispute between the Parties related to the Genocide Convention.

II. The Russian Federation's reference to Article 51 of the UN Charter does not negate the existence of a dispute between the Parties relating to the Genocide Convention

28. Russia thus turns to Article 51 of the UN Charter. According to Russia's counsel, Professor Yee, "the rights and obligations of the Parties surrounding the special military operation or Russia's recognition of the DPR and LPR arise under the right of self-defence under Article 51 of the UN Charter and relevant customary international law, over which the Court has no jurisdiction"⁸⁵.

29. But it is this Court's role, not Russia's, to objectively characterize the specific dispute brought to it by Ukraine⁸⁶. Objectively, that dispute relates to Russia's actions for the stated purpose of preventing and punishing genocide — a subject governed by the Genocide Convention. One piece of evidence of that dispute, as Russia notes, is its one-paragraph letter from Russia to the Secretary-General of the United Nations, which refers to Article 51 of the UN Charter and attaches President Putin's speech of 24 February 2022⁸⁷. That cover note is devoid of reasoning. But the speech of Russia's President, transmitted to the United Nations as an annex, expressly declares that

⁸⁴ *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. 47.*

⁸⁵ CR 2023/13, p. 87, para. 26 (Yee); see also CR 2023/17, pp. 82, 85, paras. 42-43, 58 (Crosato); CR 2023/18, pp. 42, 45, 46, paras. 27, 37, 39 (Yee).

⁸⁶ 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)*, 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).

⁸⁷ *Letter Dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General*, UN doc. S/2022/154 (24 Feb. 2022) (judges' folder, tab 11).

the “purpose” of the so-called “special military operation” is to “stop a genocide”⁸⁸. That is the key jurisdictional fact. Russia cannot avoid it by hiding behind references to Article 51. We heard many references to Article 51 on Monday, but I encourage the Court to look at the short letter from Mr Nebenzia to the Secretary-General that Russia on Monday called “decisive”⁸⁹. This is the language in its entirety on the screen. It identifies no “armed attack”. It specifies no particular measure as being proportionate and necessary to respond to an armed attack. The letter simply refers to an annex — that annex being President Putin’s address of 24 February 2022⁹⁰.

30. Russia, like other States, has in other circumstances made reports to the Secretary-General or the Security Council under Article 51. Russia did so in 2008 following its use of force in Georgia⁹¹. In that report, Russia set out expressly its basis for acting in self-defence. And that report is on your screen. It asserted:

“the use of force by the Russian side is strictly proportionate to the scale of the attack and pursues no other goal but to protect the Russian peacekeeping contingent and citizens of the Russian Federation from the illegal actions of the Georgian side and to prevent future attacks against them”⁹².

31. These two letters to the United Nations are quite different. It is striking that when Russia claimed self-defence in Georgia, it identified a specific alleged armed attack by Georgia, it defended the proportionate nature of its defensive actions in response and it stressed that Russia’s military actions “pursue[d] no other goal” than self-defence⁹³. Russia’s 2022 letter to the United Nations with respect to Ukraine does nothing of the sort.

32. Of course, at this stage of the proceedings, the Court does not need to examine the merits of Russia’s assertion that its reference to Article 51 of the UN Charter shields it from liability under the Genocide Convention. But for the purposes of jurisdiction, this letter is relevant in that it shows that the *only* justification provided by the Russian Federation for its full-scale invasion of Ukraine

⁸⁸ 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 12).

⁸⁹ CR 2023/18, p. 45, para. 35 (Yee).

⁹⁰ *Letter Dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General*, UN doc. S/2022/154 (24 Feb. 2022) (judges’ folder, tab 11).

⁹¹ *Letter Dated 11 August 2008 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the President of the Security Council*, UN doc. S/2008/545 (11 Aug. 2008) (judges’ folder, tab 13).

⁹² *Ibid.*

⁹³ *Ibid.*

was a purported genocide occurring in Donbas. Russia's 2022 letter simply incorporates President Putin's 24 February speech, which makes abundantly clear that Russia was not limiting itself to purely defensive purposes and goals. To the contrary, President Putin's speech explains that the so-called special military operation had one purpose: "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."⁹⁴ President Putin said that "to this end" Russia would take measures to "denazify Ukraine" and to "bring to trial those who perpetrated numerous bloody crimes against civilians"⁹⁵.

33. Thus, as Judge Robinson observed: President Putin's speech

"makes clear that, notwithstanding the possible defensive aims of the special military operation, the operation has a clear protective aim; more specifically, it aims to protect against alleged acts of genocide committed by Ukraine which . . . Russia considered to be contrary to Ukraine's obligations under the Genocide Convention"⁹⁶.

Mr Nebenzia's cover letter mentioning Article 51 of the UN Charter does not cancel out President Putin's stated purpose for Russia's actions in Ukraine. To the contrary, the letter *incorporates* President Putin's stated purpose. And President Putin's statement is the only substantive explanation provided by the Russian Federation to the United Nations for Russia's actions.

34. In view of the unusual nature of Russia's letter to the Secretary-General, it is doubtful whether it qualifies, in either form or substance, as the report to the Security Council required by Article 51 for all measures taken in self-defence. But the fundamental point at this stage of the proceedings is that Russia's reference to Article 51 of the UN Charter does not mean that a dispute does not exist between the Parties relating to genocide.

35. The Court has consistently recognized, as it did recently in the *Alleged Violations* case, that "[c]ertain acts may fall within the ambit of more than one instrument and a dispute relating to those acts may relate to the 'interpretation or application' of more than one treaty or other

⁹⁴ 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 12).

⁹⁵ *Ibid.*

⁹⁶ *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. 247, para. 19.

instrument”⁹⁷. Even if Russia claims its actions fall within Article 51 of the UN Charter, that does not exclude the same actions from also falling within the scope of the Genocide Convention. Ukraine’s Application pertains to the Parties’ dispute under the Genocide Convention. As the Court went on to note in *Alleged Violations*, it “cannot infer the subject-matter of a dispute from the political context in which the proceedings have been instituted, rather than basing itself on what the applicant has requested of it”⁹⁸.

36. As Professor Koh mentioned earlier, this is also not the first time the Court has been presented with a dispute involving the use of force and assertions of a right of self-defence. In *Oil Platforms*, the Court determined that it had jurisdiction over whether the use of force breached the Treaty of Amity — even though the United States had not consented to the Court’s jurisdiction over use-of-force disputes more generally⁹⁹. In deciding whether the United States breached the Treaty of Amity, the Court considered that the United States’ claims of self-defence was not an automatic exclusion from jurisdiction, but a defence on the merits¹⁰⁰.

37. Here, assuming for the sake of argument that there is a dispute between the Parties as to whether Russia’s use of force was permitted under Article 51 of the UN Charter, there is also a dispute between the Parties under the Genocide Convention. That dispute relates to whether Russia’s actions in and against Ukraine, for the stated purpose of stopping and punishing a genocide, violates Articles I and IV of the Genocide Convention.

38. In other words, Russia’s reference to the right of self-defence under the UN Charter does not re-define the dispute that Ukraine has brought to this Court, nor does it negate the existence of a dispute relating to the Genocide Convention. The Court already considered Russia’s reference to

⁹⁷ 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. 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.

⁹⁸ *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. 28, para. 59.

⁹⁹ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), pp. 810-812, paras. 18, 21.

¹⁰⁰ See *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2003, pp. 182-183, paras. 41-43.

Article 51 and made this fundamental point at paragraph 46 of its provisional measures Order¹⁰¹. There is no reason to reach a different conclusion now.

39. There is another way to frame this question, but the outcome is the same. Namely, the Genocide Convention governs the prevention and punishment of genocide — whether through the use of force or other measures. Russia has acted for the stated purpose of bringing a genocide to an end and punishing its perpetrators. That action, for that stated purpose, falls squarely within the subject-matter of the Genocide Convention. Ukraine contends that under the Convention, Russia has committed to certain undertakings pertaining to the prevention and punishment of genocide: Russia has committed to act to prevent and punish genocide in good faith, without abuse and within the limits of international law. Ukraine claims that Russia has acted for the stated purpose of preventing and punishing genocide, but did so not in good faith, it did so abusively and beyond the limits of international law. By acting in contravention of the undertakings it made under the Genocide Convention, Ukraine claims Russia violated the Convention. Whether or not Ukraine and Russia *also* have a dispute that relates to the UN Charter, the Court may assert jurisdiction over the dispute brought by Ukraine under the treaty signed by both Parties that governs the prevention and

40. Finally, I note that Russia’s discussion of self-defence is not relevant to Ukraine’s claim that Russia violated the Genocide Convention in connection with its recognition of the so-called “DPR” and “LPR”. Russia’s Permanent Representative to the United Nations justified Russia’s recognition of the so-called “DPR” and “LPR” by claiming that “[i]n the light of the blatant genocide . . . Russia could no longer remain indifferent to the fate of the 4 million people of the Donbas”¹⁰². In this Court, Russia has suggested that its recognition of the so-called “DPR” and “LPR” related to customary international law principles of self-determination. But that justification was not clearly presented at the time.

41. In any case, the analysis remains the same. Even if the parties *also* have a dispute over whether Russia’s act of recognition has a basis in some other principle of international law, there is also a dispute concerning Russia’s recognition of the so-called “LPR” and “DPR” as a measure to

¹⁰¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022*, p. 223, para. 46.

¹⁰² United Nations General Assembly Official Records, 76th Session: 58th Plenary Meeting, UN doc. A/76/PV.58 (23 Feb. 2022), p. 14 (judges’ folder, tab 15).

prevent and punish a genocide. That dispute relates to the interpretation, application or fulfilment of the Genocide Convention. As such, it is within this Court's jurisdiction, whatever else Russia may wish to say about it on the merits.

III. Russia's statements in these proceedings have not rendered Ukraine's claims moot or without object

42. The last topic I will address this afternoon is Russia's new argument against jurisdiction, pled for the first time in these oral pleadings. Russia asserts that, regardless of whether there was a dispute at the time Ukraine filed its Application, there is no live dispute now¹⁰³. Professor Yee relies on the Court's recent judgment in *Chile v. Bolivia* on this point¹⁰⁴, where the Court stated with regard to the parties' dispute relating to the waters of the Silala:

“If the Court finds that the parties have come to agree in substance regarding a claim or a counter-claim, it will take note of that agreement in its judgment and conclude that such a claim or counter-claim has become without object. In such a case, there is no call for a declaratory judgment.”¹⁰⁵

43. Neither *Chile v. Bolivia*, nor any of the other cases Professor Yee cited, applies to the situation before this Court¹⁰⁶.

44. Russia identified two purported points of agreement between itself and Ukraine. First, Russia says that it agrees that it “has an obligation to perform its obligations under the Convention in good faith”¹⁰⁷. Second, Russia says that it agrees that the “Genocide Convention does not authorize, confer a right or impose an obligation to use force to prevent or punish genocide”¹⁰⁸.

45. But the alleged agreement between the Parties on these two points of law does not come close to establishing that “the parties have come to agree [on the] substance regarding a *claim*”. First, Russia's purported agreement that it must perform its obligations in good faith does not resolve any claim. Ukraine alleges that Russia has *not* performed its obligations under Articles I and IV of the Genocide Convention in good faith. Nowhere has Russia agreed with that claim. Put differently, even

¹⁰³ See e.g. CR 2023/18, pp. 42-43, para. 30 (Yee).

¹⁰⁴ CR 2023/18, p. 43, para. 31 (Yee).

¹⁰⁵ *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia), Merits, Judgment of 1 December 2022*, para. 46.

¹⁰⁶ CR 2023/18, pp. 43-44, paras. 31-32 (Yee).

¹⁰⁷ CR 2023/13, p. 89, para. 35 (Yee).

¹⁰⁸ CR 2023/13, p. 65, para. 36 (Crosato); see also CR 2023/18, p. 42, para. 30 (Yee); PORF, paras. 181, 226.

if Ukraine and Russia agree on the *interpretation* of this aspect of the Convention, they do not agree on its *application and fulfilment*. That dispute still exists.

46. Second, Russia's statement that the "Genocide Convention does not authorize, confer a right or impose an obligation to use force to prevent or punish genocide"¹⁰⁹ is not the only question before this Court, and it has not been put to this Court in the abstract. Ukraine claims that Russia has abused Articles I and IV of the Convention by taking unilateral action in and against Ukraine based on false allegations of genocide. In that regard, Ukraine asks this Court to find that Russia's "use of force in and against Ukraine beginning on 24 February 2022 violates Articles I and IV of the [] Convention" among Ukraine's other submissions¹¹⁰. Nowhere has Russia agreed that it used force in violation of the Genocide Convention. There is no agreement on the application, fulfilment or even the interpretation of the Convention on that point. Ukraine's claims have not become without object.

47. *Nuclear Tests* is of no assistance to Russia, either. There the Court relied on a legally binding undertaking by France's President¹¹¹. That undertaking committed France to the precise, and complete, relief that Australia and New Zealand sought before this Court. Nothing of the sort has happened here.

48. To quote Professor Yee, "the key rule is that at the time of adjudication, there must be a live dispute between the parties for the Court to proceed"¹¹². Ukraine agrees, and this is a live dispute, indeed. Russia has not agreed to a single one of Ukraine's submissions. Simply put, a dispute exists between the Parties related to the subject-matter of the Convention.

IV. Conclusion

49. Madam President, Members of the Court, let me offer a few concluding remarks. Russia's argument that the object of the dispute has disappeared is a variation on Russia's theme: it believes that it can say one thing in the Great Hall of Justice and quite another thing outside of this courtroom. While Russia has argued here that there is no real dispute between the Parties and that it took action

¹⁰⁹ CR 2023/13, p. 65, para. 36 (Crosato).

¹¹⁰ MU, para. 178.

¹¹¹ *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 269, para. 51; *Nuclear Tests (New Zealand v. France)*, Judgment, I.C.J. Reports 1974, pp. 474-475, para. 53.

¹¹² CR 2023/13, p. 89, para. 37 (Yee).

in and against Ukraine for solely defensive purposes, its leadership has told the international community another story.

50. Outside of this courtroom, senior Russian officials, and President Putin himself, have fastidiously stuck to Russia's genocide rationale, first articulated by President Putin in February 2022. The sole "purpose" President Putin identified for Russia's so-called "special military operation" was to prevent and punish a purported genocide in Donbas¹¹³. "To this end", he said, Russia announced the objectives of "denazify[ing] Ukraine" and "bring[ing] to trial those who perpetrated numerous bloody crimes"¹¹⁴. At a briefing of the United Nations Security Council, Russia's representative announced that the "goal" was to stop genocide¹¹⁵.

51. Russia says in this Great Hall that its leadership did not invoke the Genocide Convention by name. It says that genocide is just used by Russia, indeed, by all countries, as political rhetoric. But Russia's statements and actions outside of this courtroom tell another story. Russia did not just use the word genocide, it acted on those words. It engaged in a full-scale invasion on the pretext of stopping a genocide. Outside of this courtroom, Russian officials did invoke the Genocide Convention by name. The Convention was relied upon by Russia's Investigative Committee¹¹⁶. It was referenced by Foreign Minister Lavrov in 2020¹¹⁷. It was highlighted two weeks ago by Dmitry Medvedev, the Deputy Chairman of Russia's Security Council¹¹⁸.

52. Russia stands before you in this Great Hall and ignores this evidence. On Monday, Russia did not deny or contradict Medvedev's statement. It did not tell you that its Foreign Ministry routinely relies on its Investigative Committee and that its allegations of genocide are published at the

¹¹³ 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 12).

¹¹⁴ 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 12).

¹¹⁵ 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) (judges' folder, tab 19).

¹¹⁶ See, e.g. CR 2023/14, pp. 54-57, paras. 27-37; see also MU, paras. 36-37; WOU, paras. 38-40.

¹¹⁷ Ministry of Foreign Affairs of the Russian Federation, *Foreign Minister Sergey Lavrov's Remarks and Answers to Questions During the Meeting with Members of the Association of European Businesses in Russia, Moscow* (5 Oct. 2020), p. 19 (judges' folder, tab 18).

¹¹⁸ Telegram Post of Dmitry Medvedev (Deputy Chairman of Russia's Security Council) (5 Sept. 2023) (judges' folder, tab 16); see also TASS, *Total Victory over Genocide-Promoting Kiev Only Possible Outcome of Special Op — Medvedev* (5 Sept. 2023) (judges' folder, tab 17).

“international level”. It never explained why this Court should ignore the purpose and goal of Russia’s use of force as stated by its President and communicated to the United Nations.

53. While Russia will say many things in this Great Hall of Justice, it did not contradict its President. It did not denounce its Foreign Minister or discredit the Deputy Chairman of its Security Council. I urge this Court to look at the evidence in the record and not just the words uttered in this courtroom. The evidence before you demonstrates that a dispute exists between these Parties related to the interpretation, application or fulfilment of the Genocide Convention. Russia’s first preliminary objection should therefore be rejected.

54. Thank you, Madam President, Members of the Court. I now ask that you call upon Professor Jean-Marc Thouvenin.

The PRESIDENT: I thank Ms Cheek. I now invite Professor Jean-Marc Thouvenin to address the Court. You have the floor, Professor.

M. THOUVENIN : Merci beaucoup, Madame la présidente.

DEUXIÈME EXCEPTION PRÉLIMINAIRE :
LA COMPÉTENCE *RATIONE MATERIAE*

1. Madame la présidente, Mesdames et Messieurs les juges, je reviens une dernière fois évoquer devant vous la question de votre compétence *ratione materiae*, telle que vous pouvez l’évaluer à ce stade incident de la procédure.

2. Lundi, la Russie vous a abreuvés d’approximations. Elle a tenté de transformer les demandes de l’Ukraine en ce qu’elles ne sont pas, reconnaissant d’ailleurs ouvertement en travestir les termes — l’idée est forte, je la répète — à l’aide de déductions douteuses, et, faussement naïve, elle a tenté de vous faire voir des contradictions là où il n’y en a pas, à grand renfort de points d’interrogation. Plutôt que d’assister la Cour dans sa tâche, nos contradicteurs se sont astreints à la compliquer. C’est une tactique habituelle de la Russie.

3. Mais les volutes de l’écran de mauvaise fumée érigé par nos contradicteurs s’étioilent à peine prononcées. Je ne les illustrerai donc que brièvement en évoquant trois points qui obsèdent littéralement la Partie adverse, avant de revenir sur le rôle de la bonne foi, de l’abus de droit, et de

l'obligation d'agir dans les limites de la légalité internationale, dans le cadre de l'interprétation, de l'application ou de l'exécution de la convention.

I. Les demandes de l'Ukraine portent exclusivement sur des violations de la convention et relèvent de la compétence de la Cour en vertu de l'article IX de la convention

4. Madame la présidente, la première idée aussi fixe que fausse de la Partie russe est que les demandes ukrainiennes concerneraient tout sauf la convention. Croyant pertinent de répondre à ce qui n'est qu'un mirage, M. Crosato oppose à l'Ukraine que la clause compromissoire ne peut pas fonder votre compétence « beyond disputes regarding alleged breaches of the Convention itself » « as Ukraine seems to suggest »¹¹⁹.

5. L'Ukraine ne suggère évidemment rien de tel. Le différend qu'elle porte devant vous concerne exclusivement des violations de la convention et la responsabilité qui y est attachée.

6. Bien qu'il s'en défende¹²⁰, mon contradicteur n'a pas d'autre choix pour donner vie à son idée fixe que de réécrire les demandes de l'Ukraine, ce qu'il ne peut pas faire. Pour vous convaincre que c'est sa réécriture qui prévaut, il a projeté sur vos écrans la liste des réparations sollicitées par l'Ukraine dans son mémoire¹²¹. Mais, bien entendu, la seule question qui se pose ici pour savoir si vous pouvez exercer votre compétence en vertu de la convention concerne les violations du droit international que l'Ukraine demande à la Cour de constater, pas les réparations des dommages qui en découlent. Or, toutes les violations alléguées par l'Ukraine dans les conclusions de son mémoire entrent dans le champ de la convention. Comme vous le voyez, les conclusions *b)*, *c)* et *d)* visent spécifiquement et *exclusivement* des violations de la convention sur le génocide. L'Ukraine prie la Cour

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

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

¹¹⁹ CR 2023/17, p. 73, par. 3 (Crosato).

¹²⁰ *Ibid.*, p. 77, par. 20 (Crosato).

¹²¹ *Ibid.*, p. 75, par. 10-11 (Crosato).

d) de dire et juger que la reconnaissance des prétendues “République populaire de Donetsk” et “République populaire de Louhansk” le 21 février 2022 *emporte violation des articles premier et IV de la convention sur le génocide* »¹²².

7. La première volute de fumée de M. Crosato se dissipe. Contrairement à ce qu’il a martelé de diverses manières, l’Ukraine ne demande à la Cour de constater que des violations de la convention. Je crois d’ailleurs que, si nous avons un tour supplémentaire de plaidoiries orales, nous pourrions peut-être aboutir à un accord. Mon contradicteur a en effet indiqué que « if Ukraine’s suggestion is that Article IX somehow grants jurisdiction more generally to rule on breaches of obligations not set forth in the Convention itself, the argument must be rejected »¹²³. Je viens de le rassurer : ce n’est pas ce que l’Ukraine suggère. Le différend qu’elle porte devant la Cour peut donc être traité au fond.

8. Madame la présidente, j’en profite pour préciser que, bien évidemment, la violation de la convention peut impliquer la violation d’autres règles de droit international. C’est du reste ce que la Cour a indiqué dans l’affaire *Croatie c. Serbie*, citée de manière tronquée — c’est une habitude — par la Russie¹²⁴. La Cour y indique que la compétence que lui confère l’article IX

« n’empêche pas la Cour de rechercher, dans sa motivation, s’il y a eu violation du droit international humanitaire ou du droit international relatif aux droits de l’homme, dans la mesure où cela lui serait utile pour déterminer s’il y a eu violation d’une obligation découlant de la convention sur le génocide »¹²⁵.

9. Autrement dit, ce n’est pas parce que le moyen utilisé pour violer la convention est lui-même une violation d’une autre règle de droit international que, pour autant, la violation de la convention disparaît.

10. Cette évidence met à bas la logique russe qui, quand on la regarde de près, se réduit finalement à soutenir ceci : dans le cas hypothétique où un État ordonnerait à ses troupes de pénétrer sur le territoire d’un autre État, d’écraser sa résistance, et de massacrer l’ensemble d’un groupe ethnique qui se trouve localisé sur son territoire, la convention serait inapplicable parce que, selon la

¹²² MU, par. 178 (les italiques sont de nous).

¹²³ CR 2023/17, p. 78, par. 25 (Crosato).

¹²⁴ CR 2023/13, p. 68, par. 49 (Crosato) ; CR 2023/17, p. 78-79, par. 28 (Crosato).

¹²⁵ *Application de la convention pour la prévention et la répression du crime de génocide (Croatie c. Serbie), arrêt, C.I.J. Recueil 2015 (I), p. 45-46, par. 85.*

thèse martelée par M. Crosato, « the Genocide Convention does not regulate matters related to the use of force and the recognition of States »¹²⁶. C'est intenable.

11. Madame la présidente, on m'a reproché, on a reproché à l'Ukraine, d'avoir gardé le silence sur la jurisprudence de la Cour à propos de l'article IX de la convention, comme si nous ressentions une quelconque gêne de ce côté-ci de la barre¹²⁷.

12. C'est d'abord le paragraphe 431 de l'arrêt sur le fond dans l'affaire relative au *Génocide en Bosnie*, dont la Russie fait grand cas¹²⁸. Il indique que « la responsabilité d'un État pour violation de l'obligation de prévenir le génocide n'est susceptible d'être retenue que si un génocide a effectivement été commis »¹²⁹. Pour la Russie, puisque l'Ukraine dit qu'aucun génocide n'a été commis, il ne saurait y avoir violation de la convention, l'affaire serait donc réglée¹³⁰.

13. Mais ce que l'Ukraine dit est que la Russie a accusé et accuse l'Ukraine de commettre et de laisser commettre un génocide comme prétexte pour invoquer sa responsabilité et engager des actions sur son territoire et à son encontre¹³¹. L'affaire n'est donc pas réglée : la Russie n'a pas retiré ses allégations de génocide, n'a pas reconnu les avoir invoquées comme pur prétexte pour justifier de conduire des actions totalement incompatibles avec ce que requiert la convention, et n'a pas réparé les dommages causés par son comportement illicite. Au contraire, elle continue, jour après jour, à mettre en œuvre des actions en Ukraine pour prévenir ce prétendu génocide et en punir les auteurs.

14. Quant aux ordonnances sur les mesures conservatoires dans les affaires relatives à la *Licéité de l'emploi de la force*, autre leitmotiv de la Russie¹³², elles se bornent à dire, ce qui est possible seulement au stade des mesures conservatoires, que l'accusation de génocide portée alors par la Serbie-et-Monténégro contre divers pays n'était pas plausible. Cela n'a aucune pertinence ici puisque nous ne sommes pas au stade des mesures conservatoires. Quant aux arrêts sur les exceptions préliminaires dans ces mêmes affaires, il est difficile de comprendre ce que la Russie en retire de

¹²⁶ CR 2023/17, p. 77, par. 19 (Crosato).

¹²⁷ *Ibid.*, p. 74, par. 9 et p. 79, par. 30-31 (Crosato).

¹²⁸ *Ibid.*, p. 75, par. 13 (Crosato).

¹²⁹ *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. 431.

¹³⁰ CR 2023/17, p. 73, par. 2 et p. 76, par. 16 (Crosato).

¹³¹ EEU, par. 3.

¹³² CR 2023/17, p. 75-76, par. 14 (Crosato).

pertinent¹³³. La Cour s'est bornée à juger que la Serbie-et-Monténégro n'avait pas qualité pour ester devant la Cour au moment du dépôt de sa requête, sans rien dire de l'article IX. Là encore, il n'y a aucun rapport avec la présente espèce.

15. Pour être tout à fait complet, j'ajouterai que c'est toujours en vain que la Russie a adossé sa thèse, lundi¹³⁴ comme la semaine dernière¹³⁵, au paragraphe 147 de l'arrêt sur le fond dans l'affaire relative au *Génocide en Bosnie*.

16. La Cour y indique qu'elle ne peut pas se prononcer, en vertu de l'article IX de la convention, sur des griefs tirés de violations de conventions internationales et du droit international coutumier, formulés sans lien avec la convention sur le génocide¹³⁶.

17. Ce disant, la Cour répondait aux nombreuses conclusions du demandeur qui reposaient sur une autre base de compétence que l'article IX de la convention. Dans son arrêt, la Cour a rejeté cette autre base de compétence, et constaté qu'elle ne pouvait donc se prononcer qu'en vertu de l'article IX. Elle en tira la conséquence qu'elle ne pouvait pas exercer sa compétence, établie uniquement sur la base de l'article IX de la convention, à l'égard des conclusions du demandeur, qui visaient exclusivement des violations des conventions de Genève, de traités relatifs aux droits de l'homme, de la Charte des Nations Unies ou du droit international coutumier¹³⁷.

18. Le contraste avec la présente affaire est donc saisissant puisque l'Ukraine ne vise pas d'autre base de compétence que l'article IX de la convention, et ne demande rien d'autre à la Cour que de constater des violations de la convention.

Madame la présidente, si le moment est venu, c'est un endroit opportun, si vous le souhaitez, pour que j'interrompe mon discours et vous laisse prendre un peu de repos.

The PRESIDENT: I thank Mr Thouvenin. I see that the next section of your speech is rather short, so perhaps you could just complete that section and after that we shall take a break.

¹³³ *Ibid.*, p. 79, par. 29 (Crosato).

¹³⁴ *Ibid.*, p. 78, par. 28 (Crosato).

¹³⁵ CR 2023/13, p. 67-68, par. 46-48 (Crosato).

¹³⁶ *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. 104, par. 147.

¹³⁷ *Ibid.*, p. 62-64, par. 64.

M. THOUVENIN : Parfait, Madame la présidente, je vous remercie.

II. Les relations entre la convention et le recours à la force

19. Madame la présidente, un autre point de fixation de la Partie russe qu'il me faut évoquer rapidement est la relation entre la convention et le recours à la force, que mes collègues ont déjà clarifiée, mais sur laquelle je vais revenir quelques instants.

20. Sur ce point, mes contradicteurs de l'autre côté de la barre ont prétendu me surprendre en pleine contradiction en mettant côte à côte deux phrases que j'ai prononcées la semaine dernière. J'ai dit, ont-ils rappelé, à la fois que l'article premier de la convention ne confère pas un droit de recourir à la force, et que la convention n'interdit pas *tout* recours à la force¹³⁸. Un premier conseil de la Russie croit y déceler une « clear hesitance »¹³⁹. Aurais-je suggéré que la convention conférerait un droit de recourir unilatéralement à l'usage de la force¹⁴⁰ ? Son collègue a pour sa part fait comprendre, à sa manière, que la finesse de mon propos lui avait totalement échappé¹⁴¹.

21. Il est pourtant élémentaire. La Cour a jugé à deux reprises que les mesures qu'un État doit et est en droit de prendre pour prévenir un génocide et en poursuivre les auteurs doivent demeurer dans les limites de ce que le droit international permet. Il en découle qu'un État est en droit de prévenir et punir un génocide en vertu de la convention en menant diverses actions, y compris en recourant à la force si ce dernier se situe dans les limites de la légalité internationale¹⁴².

22. Par exemple, si le Conseil de sécurité des Nations Unies considère qu'une situation génocidaire dans un pays particulier constitue une menace pour la paix et la sécurité internationale, il peut décider d'autoriser le recours à la force pour mettre un terme à ce génocide. Chacun se souvient à cet égard que, dans le cas du Rwanda, le Conseil de sécurité n'avait pas brillé par son efficacité ; mais il avait adopté la résolution 929 (1994) autorisant le recours à la force au Rwanda pour prévenir des massacres massifs qualifiés, on le sait, de génocide¹⁴³. De là, les États parties à la convention sur le génocide pouvaient sans aucun doute se mettre en action pour mettre un terme au génocide au

¹³⁸ CR 2023/17, p. 85, par. 57 (Crosato).

¹³⁹ *Ibid.* (Crosato).

¹⁴⁰ *Ibid.*, par. 58 (Crosato).

¹⁴¹ CR 2023/18, p. 53-54, par. 36-38 (Udovichenko).

¹⁴² Voir CR 2023/15, p. 62, par. 14 (Tzanakopoulos).

¹⁴³ Nations Unies, résolution 929 du Conseil de sécurité, 3392^e séance, 22 juin 1994, doc. S/RES/929 (1994).

Rwanda, y compris, le cas échéant, en recourant à la force dans les limites fixées par le Conseil de sécurité. Certains États l'ont fait, avec plus ou moins de réussite.

23. De la même manière, une action de force dans le but affirmé de prévenir et punir un génocide pourrait demeurer dans les limites de la légalité internationale si ledit recours à la force militaire est une mesure de légitime défense, dès lors, bien sûr, que les conditions d'ouverture du droit de légitime défense sont dûment remplies, et que les mesures prises sont effectivement des mesures licites de légitime défense.

24. S'agissant de l'affirmation de la Russie selon laquelle, en conduisant les actions de prévention et de punition d'un prétendu génocide en Ukraine, elle a agi en vertu de son droit de légitime défense, il appartiendra à la Cour, mais seulement au fond, d'entendre ce que la Russie a à en dire. La Russie aura alors tout loisir d'expliquer, si elle le souhaite, que ses mesures de prévention et de punition du prétendu génocide sont aussi des mesures de légitime défense et que, par conséquent, elle s'est acquittée de son obligation d'appliquer et d'exécuter la convention de bonne foi, en utilisant tous les moyens raisonnables à sa disposition et en respectant les limites de ce que le droit international permet. Et il reviendra à la Cour d'en juger.

25. Bref, la convention sur le génocide n'interdit pas tout recours à la force aux fins de son exécution. C'est ce que j'ai indiqué la semaine dernière¹⁴⁴. Il n'en demeure pas moins que la convention, en tant que telle, ne confère pas un droit de recourir à la force. Elle oblige les États à agir en vue de mettre un terme à un génocide, et leur confère une marge discrétionnaire dans le choix des moyens qu'ils peuvent mobiliser à cette fin. Mais elle ne leur confère pas, en elle-même, un droit de recourir à la force. Je reviendrai tout à l'heure sur le pouvoir discrétionnaire et sur l'abus de droit, notions là encore élémentaires que mes contradicteurs peinent à concevoir mais ce sera, Madame la présidente, si vous le souhaitez, après la pause.

The PRESIDENT: Thank you, Professor Thouvenin. Indeed, this is an appropriate time for the Court to adjourn for a coffee break of 10 minutes. The sitting is adjourned.

The Court adjourned from 4.30 p.m. to 4.50 p.m.

¹⁴⁴ CR 2023/14, p. 72, par. 25 (Thouvenin).

The PRESIDENT: Please be seated. The sitting is resumed. So I now invite Professor Thouvenin to complete his presentation. You have the floor, Professor.

M. THOUVENIN :

III. La crainte infondée de la Russie relative à l'incorporation d'un nombre indéfini d'obligations externes à la convention

26. Merci, Madame la présidente. Madame la présidente, Mesdames et Messieurs les juges, la troisième idée fixe de nos contradicteurs, déjà traitée la semaine dernière¹⁴⁵ mais sur laquelle je dois revenir, est que l'Ukraine voudrait incorporer dans la convention un nombre « indéfini » d'obligations provenant de sources de droit international externes à la convention, et de ce fait, élargir indûment la portée de l'article IX et la compétence de la Cour *ratione materiae*¹⁴⁶. La Russie craint que l'article IX devienne une forme de trou noir qui attirerait à lui toutes sortes de différends sans rapport avec l'interprétation, l'application ou l'exécution de la convention ; bref, que l'article IX se mue en une clause compromissive universelle.

27. Mais, contrairement à ce que martèlent nos contradicteurs, il n'y a rien dans les écritures de l'Ukraine¹⁴⁷, et pas davantage dans ses observations orales, qui ressemble à une telle prétention. Les États intervenants n'ont d'ailleurs pas décelé une telle suggestion dans les plaidoiries de l'Ukraine¹⁴⁸, et aucun n'a nourri la même crainte que celle exprimée par la Russie.

28. Il reste que les actions que les États parties à la convention peuvent engager pour mettre en œuvre leur obligation de prévenir un génocide et en punir les auteurs en vertu de la convention doivent demeurer, comme l'a affirmé votre Cour, « dans les limites de ce que l[eur] permet la légalité internationale »¹⁴⁹. Ce disant, vous n'avez fait qu'interpréter les articles premier et IV de la convention en déterminant la mesure de ce qu'ils obligent et habilent à faire. J'ai déjà traité ce point

¹⁴⁵ *Ibid.*, p. 79-80, par. 51-56 (Thouvenin).

¹⁴⁶ Voir EPFR, par. 83, 170, 215. Voir aussi CR 2023/13, p. 61, par. 7, p. 62, par. 16, p. 69, par. 53-54, p. 73, par. 76, p. 76-77, par. 98 (Crosato) ; CR 2023/17, p. 77, par. 23, p. 81-84, par. 38-54 (Crosato) ; CR 2023/18, p. 66-67, par. 34-37, p. 68, par. 42-43 (Tchikaya).

¹⁴⁷ Voir EEU, par. 109, 129, 137-139.

¹⁴⁸ CR 2023/15, p. 40-41, par. 14-16 (Donaghue), p. 66-68, par. 9-13 (Alabrune), p. 80, par. 14 (Paparinskis) ; CR 2023/16, p. 57-58, par. 8-12 (Prentis).

¹⁴⁹ *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.

la semaine dernière et n'y reviendrai donc pas¹⁵⁰. Il suffit simplement de rappeler qu'en interprétant ces dispositions, vous n'avez nullement incorporé dans la convention des règles de droit international qui n'y sont pas. Votre Cour n'a pas davantage procédé à une « incorporation » interdite lorsqu'elle a jugé que l'exercice de sa compétence sur la seule base de l'article IX ne l'empêche pas

« de rechercher, dans sa motivation, s'il y a eu violation du droit international humanitaire ou du droit international relatif aux droits de l'homme, dans la mesure où cela lui serait utile pour déterminer s'il y a eu violation d'une obligation découlant de la convention sur le génocide »¹⁵¹.

29. Et il n'y a rien non plus qui ressemble à une incorporation débridée, dans un traité, de règles externes à ce traité, lorsque, en application de l'article 31, paragraphe 3, alinéa c) de la convention de Vienne sur le droit des traités, la Cour interprète ce traité à la lumière de, je cite la convention de Vienne sur le droit des traités : « toute règle pertinente de droit international applicable dans les relations entre les parties »¹⁵².

IV. Interprétation, application ou exécution de bonne foi de la convention

A. L'obligation d'interpréter, d'appliquer ou d'exécuter la convention de bonne foi

30. Madame la présidente, les points de fixation de la Russie étant maintenant derrière nous, je me tourne à présent vers le rôle de la bonne foi dans l'interprétation, l'application ou l'exécution de la convention.

31. Là encore, M. Crosato a été contraint de travestir les propos de l'Ukraine pour pouvoir les réfuter, tout en reconnaissant que « Ukraine does not say so expressly »¹⁵³. Selon lui, la thèse cachée de l'Ukraine serait que, si un État n'exécute pas la convention de bonne foi, la juridiction de la Cour en vertu de cette dernière peut s'étendre à des allégations de violations de règles extérieures au traité, qui pourraient avoir un lien quelconque avec la mauvaise exécution du traité¹⁵⁴. Et mon contradicteur

¹⁵⁰ CR 2023/14, p. 73-75, par. 29-35 (Thouvenin).

¹⁵¹ *Application de la convention pour la prévention et la répression du crime de génocide (Croatie c. Serbie)*, arrêt, C.I.J. Recueil 2015 (I), p. 45-46, par. 85.

¹⁵² Convention de Vienne sur le droit des traités, *Recueil des traités*, vol. 1155, p. 363, art. 31, par. 3, alinéa c), 23 mai 1969. Voir aussi CR 2023/15, p. 44, par. 5 (Ruffer), p. 51-52, par. 5 (Dramova), p. 76, par. 26 (Tanzi), p. 80, par. 14 (Paparinskis).

¹⁵³ CR 2023/17, p. 88, par. 70 (Crosato).

¹⁵⁴ *Ibid.*

de répondre à cette thèse cachée que le principe de bonne foi n'est pas une source autonome d'obligations, et ne peut donc pas créer d'obligations pour les parties à la convention si ces obligations n'y sont pas déjà consignées¹⁵⁵.

32. Ce n'est pas ce que l'Ukraine plaide. L'Ukraine soutient que vous avez compétence en vertu de l'article IX pour trancher un différend portant sur l'interprétation, l'application ou l'exécution de la convention qui ne serait pas de bonne foi, c'est-à-dire qui serait contraire à son objet et à son but, ou – mais si les deux aspects se cumulent c'est encore plus flagrant – qui serait radicalement contraire aux fins pour lesquelles la convention a été adoptée. Un tel comportement serait manifestement une violation de la convention. Et, bien évidemment, pour déterminer si la Russie a violé son obligation d'interpréter, d'appliquer ou d'exécuter de bonne foi la convention, la Cour pourra, si cela lui est utile, se référer à d'autres violations, sans que cela la conduise à outrepasser les limites de sa compétence fixée par l'article IX.

33. Madame la présidente, Mesdames et Messieurs les juges, l'Ukraine est parfaitement au fait que la Cour a déjà jugé que le principe de bonne foi n'est pas en soi une source d'obligation quand il n'en existerait pas autrement¹⁵⁶. Mais lorsqu'un traité lie des parties, c'est le *dictum* de la Cour dans *Gabčíkovo-Nagymaros* qui éclaire la place de la bonne foi dans leurs relations conventionnelles :

« “Tout traité en vigueur lie les parties et doit être exécuté par elles de bonne foi.” De l'avis de la Cour, ce dernier élément implique qu'au cas particulier c'est le but du traité, et l'intention dans laquelle les parties ont conclu celui-ci, qui doivent prévaloir sur son application littérale. Le principe de bonne foi oblige les Parties à l'appliquer de façon raisonnable et de telle sorte que son but puisse être atteint. »¹⁵⁷

34. Le but de la convention sur le génocide est de débarrasser l'humanité du fléau que le génocide constitue¹⁵⁸. C'est dans ce but que les États parties se sont engagés à prévenir et punir le crime de génocide. C'est ce but, conforme à l'intention des parties, qui doit présider à l'interprétation, l'application ou l'exécution des articles premier et IV de la convention. L'Ukraine soutient qu'il ne peut pas exister de comportement plus contraire à ces exigences que celui adopté par la Russie et

¹⁵⁵ CR 2023/17, p. 88, par. 72 (Crosato).

¹⁵⁶ *Actions armées frontalières et transfrontalières (Nicaragua c. Honduras)*, compétence et recevabilité, arrêt, C.I.J. Recueil 1988, p. 105, par. 94.

¹⁵⁷ *Projet Gabčíkovo-Nagymaros (Hongrie/Slovaquie)*, arrêt, C.I.J. Recueil 1997, p. 78-79, par. 142.

¹⁵⁸ CR 2023/14, p. 80, par. 55-57 (Thouvenin).

dénoncé par l'Ukraine dans la présente affaire. Et elle soutient, surtout à ce stade de la procédure, que vous avez clairement compétence *ratione materiae* pour trancher ce grief au fond.

B. Abus de droit

35. Mesdames et Messieurs de la Cour, passant à l'abus de droit, il est apparent que l'argument clé de nos contradicteurs pour tenter d'exclure ce grief de votre compétence *ratione materiae* consiste à dire que la Russie a agi, et continue d'agir, en et contre l'Ukraine pour prévenir et punir un génocide imaginaire, sans que la convention lui donne le droit de le faire, même si elle l'a invoquée pour s'en justifier. Elle n'aurait donc, dit-elle, pas pu abuser d'un droit qui ne lui est pas conféré par la convention¹⁵⁹.

36. Mais force est de constater que la Russie retient de l'abus de droit une compréhension passablement étriquée¹⁶⁰.

37. Il est d'abord loisible d'aborder la notion d'abus de droit en considérant qu'elle qualifie une forme de « lésion » du principe de bonne foi¹⁶¹, c'est-à-dire de violation de ce principe, comme l'a indiqué Karl Strupp dans son cours spécial donné à l'Académie de droit international de La Haye, ou encore, ce qui revient au même, qu'elle est un « corollaire du principe de bonne foi », comme l'indique le dictionnaire du regretté Jean Salmon¹⁶². Dans cette perspective, l'invocation de l'abus de droit est une autre manière d'aborder l'obligation d'interpréter, d'appliquer ou d'exécuter la convention de bonne foi, que je viens d'évoquer.

38. Mais on peut aussi aborder l'abus de droit indépendamment, en estimant qu'il est caractérisé, et je cite ici le cours spécial de Jean-Paul Jacqué, « lorsque l'État utilise certaines de ses compétences pour une fin autre que celle prévue par le droit international »¹⁶³.

39. Dans le même ordre d'idées, Georges Abi-Saab, toujours devant les auditeurs de l'Académie mais cette fois à l'occasion de son cours général, professait à propos des contre-mesures

¹⁵⁹ CR 2023/13, p. 77, par. 102 (Crosato) ; CR 2023/17, p. 85, par. 56 (Crosato).

¹⁶⁰ CR 2023/17, p. 84-87, par. 55-67 (Crosato) ; CR 2023/18, p. 70, par. 52-53 (Tchikaya).

¹⁶¹ Karl Strupp, « Les règles générales du droit de la paix », *RCADI*, vol. 47, p. 559.

¹⁶² *Dictionnaire Salmon (Bruylant 2001)*, p. 3, note 94.

¹⁶³ Jean-Paul Jacqué, « Acte et norme en droit international public », *RCADI*, vol. 227, p. 381.

que « le “détournement” de l’institution ou son utilisation comme prétexte à des fins inavouées tombent sous l’interdiction ... de l’abus de droit »¹⁶⁴.

40. En l’espèce, le comportement de la Russie tel que dénoncé par l’Ukraine est l’exemple le plus parfait d’un abus de droit en matière de prévention et de punition du génocide. La Russie utilise certaines des compétences qui lui sont reconnues par la convention pour des fins totalement étrangères, en fait radicalement contraires, à celles prévues par la convention. La Russie a détourné la convention en l’utilisant à des fins aussi inavouées que terriblement dommageables, non seulement pour l’Ukraine, mais aussi pour la communauté internationale, ce qui est un abus de droit caractérisé.

41. Au surplus, même à en rester à la vision étriquée de mon contradicteur, la réalité est que la convention confère expressément aux États parties à la convention le droit de prendre certaines actions en cas de survenance d’un génocide. L’article VIII consacre le droit de saisir les organes compétents de l’ONU. La formule de l’article VIII est claire : « Toute Partie contractante peut saisir les organes compétents ». Ce n’est pas un devoir, c’est un droit, ou une habilitation comme je l’ai qualifiée la semaine dernière¹⁶⁵, droit dont l’étendue n’est précisée ni dans l’article premier ni dans l’article IV, mais spécifiquement dans l’article VIII. De même l’article IX confère un droit, celui pour tout État, directement lésé ou non, d’agir pour mettre un terme au génocide en engageant la responsabilité d’un État, et, éventuellement — mais c’est autre chose —, de saisir la Cour d’un différend à cet égard.

42. La convention, tout particulièrement les articles premier et IV, habilite aussi les États à, c’est-à-dire leur reconnaît le droit de, conduire d’autres actions qu’elle ne définit pas explicitement, leur reconnaissant un pouvoir discrétionnaire, mais non illimité, d’en décider.

43. La Russie affirme douter que les Parties aient, au titre de la convention, le pouvoir discrétionnaire de décider de la manière dont elles doivent s’acquitter de leurs obligations¹⁶⁶.

44. Pourtant, la Cour a considéré que, s’il est clair que « [l]’article premier ne précise pas quels types de mesures une partie contractante peut prendre pour s’acquitter de cette obligation »¹⁶⁷, « [l]es

¹⁶⁴ Georges Abi-Saab, « Cours général de droit international public », *RCADI*, vol. 207, p. 299.

¹⁶⁵ CR 2023/14, p. 74, par. 32 (Thouvenin).

¹⁶⁶ CR 2023/17, p. 86, par. 63 (Crosato).

¹⁶⁷ *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 16 mars 2022*, par. 56. Voir aussi CR 2023/15, p. 78, par. 9 (Paparinskis).

parties contractantes doivent toutefois exécuter cette obligation de bonne foi, en tenant compte d'autres parties de la convention, en particulier ses articles VIII et IX, ainsi que son préambule »¹⁶⁸.

45. Et on retrouve la même articulation, à vrai dire évidente, dans l'affaire *Djibouti c. France*, où la Cour a jugé que, si les termes de l'article 2 de la convention pertinente dans cette affaire

« donnent un très large pouvoir discrétionnaire à l'État requis, l'exercice de ce pouvoir demeure soumis à l'obligation de bonne foi codifiée à l'article 26 de la convention de Vienne de 1969 sur le droit des traités »¹⁶⁹.

46. Autrement dit, aucun pouvoir discrétionnaire reconnu par une convention n'est sans limites. S'agissant de la convention sur le génocide, la Cour en a déterminé la limite inférieure, un « plancher » si l'on veut, en jugeant que les États doivent mettre en œuvre tous les moyens qui sont raisonnablement à leur disposition¹⁷⁰. La Cour a également déterminé la limite supérieure, ou le « plafond », en interprétant la convention comme exigeant que toute action de prévention et de punition d'un génocide se situe dans les limites de ce que permet la légalité internationale. Dans ces limites, fixées par la convention elle-même telle que correctement interprétée, la convention reconnaît aux États le pouvoir discrétionnaire, donc le droit, de déterminer et de conduire les actions de prévention et de punition qui s'imposent à eux.

47. Ceci revient à dire, comme la Cour en a convenu, qu'

« [u]ne partie contractante peut recourir à d'autres moyens d'exécuter son obligation de prévenir et de punir un génocide qui, selon elle, aurait été commis par une autre partie contractante, par exemple en entamant des discussions bilatérales ou des échanges de vues dans le cadre d'une organisation régionale. Cependant, la 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" »¹⁷¹.

48. C'est sur cette base que l'Ukraine soutient que le comportement de la Russie qu'elle met en cause dans la présente affaire est non seulement une violation des articles premier et IV de la convention tels qu'interprétés par la Cour, mais aussi un abus manifeste, en ce qu'elle a prétendu

¹⁶⁸ *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 16 mars 2022*, par. 56. Voir aussi CR 2023/15, p. 79, par. 12 (Paparinskis).

¹⁶⁹ *Certaines questions concernant l'entraide judiciaire en matière pénale (Djibouti c. France), arrêt, C.I.J. Recueil 2008*, p. 229, par. 145.

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. 221, par. 430.

¹⁷¹ *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 16 mars 2022*, par. 57 (citant *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).

s'acquitter de ses obligations au titre de la convention en déployant une action qui se trouve aux antipodes de ce que lui permet la convention dans les limites de la légalité internationale, et qui est radicalement contraire aux fins pour lesquelles la convention a été conclue. Il ne saurait exister d'abus plus grave.

49. Mais à ce stade, l'Ukraine ne demande pas à la Cour de juger d'un quelconque abus. Elle soutient simplement que son allégation à cet égard relève, comme les autres, de la compétence *ratione materiae* de votre Cour.

50. Ceci conclut ma plaidoirie de ce jour. Madame la présidente, Mesdames et Messieurs de la Cour, en pensant toujours au fil à retordre que je donne aux interprètes, dont je salue les prestations toujours talentueuses, il me reste à vous remercier de votre patiente écoute, et à vous prier de bien vouloir appeler à la barre M^e Zionts.

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

Mr ZIONTS:

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

1. Madam President, Members of the Court, I am honoured to appear before you again on behalf of Ukraine. My task is to address Russia's admissibility objections, which remain entirely without basis.

**I. Ukraine's claims have not transformed the subject-matter of the dispute:
Russia's third objection fails**

2. I turn first to Russia's third preliminary objection, regarding supposedly "new claims". On Monday, Russia's counsel spoke at length about the *Nauru* case¹⁷². Yet he ignored the decisive question in *Nauru* — whether "the subject of the dispute originally submitted to the Court would be transformed if [the Court] entertained th[e] claim"¹⁷³.

¹⁷² See CR 2023/18, pp. 34-35, 40, 41, paras. 3-6, 20, 23 (Yee).

¹⁷³ *Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 267, para. 70.

3. Russia even faulted Ukraine for crystallizing the “overall subject-matter” of the dispute, rather than parsing it into various specific “issues”¹⁷⁴. One wonders how Russia expects the Court to decide if the subject of the dispute has been transformed, without identifying the dispute’s fundamental subject-matter.

4. To this overarching legal point, I add four brief factual ones.

5. First, Russia believes the Application does not refer to the subject-matter of the dispute as Ukraine has summarized it during this hearing. On your screen is Ukraine’s concise crystallization of the dispute that Russia’s counsel does not like, and next to it the first substantive paragraph of Ukraine’s Application. The Court can decide whether there has been some radical transformation.

6. Second, I refer the Court to paragraph 27 of Ukraine’s Application, which identifies a “duty” located in Article I of the Genocide Convention, and describes Russia’s conduct as something a State “may not” do consistent with that duty. This, together with the parts of the Application I highlighted last week, confirms that Ukraine has always claimed that Russia violated the Convention.

7. Third, Russia considers Ukraine’s reliance on Article IV inadmissible because the Application purportedly did not concern anything “related to criminal punishment”¹⁷⁵. Yet the Application addressed prevention *and punishment* of genocide, and highlighted President Putin’s speech of 24 February. That speech declared that the “purpose” of the so-called special military operation was to stop the alleged genocide, *and* to “bring to trial those who perpetrated it”¹⁷⁶.

8. Fourth, with respect to Ukraine’s non-violation claim — i.e. requesting a declaration that it has not violated the Genocide Convention — Russia believes that Ukraine has “dropped its initial claim that there are *no* genocidal acts in Donetsk and Luhansk” and now asserts only that “Ukraine as a sovereign State is not responsible for them”¹⁷⁷. This is not a remotely fair reading of either the Application or the Memorial. Russia omits that, in the Application, Ukraine requested a declaration that no acts of genocide had been committed, “*contrary to what the Russian Federation claims*”¹⁷⁸.

¹⁷⁴ CR 2023/18, p. 38, para. 15 (Yee).

¹⁷⁵ CR 2023/18, p. 40, para. 22 (Yee).

¹⁷⁶ 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 12).

¹⁷⁷ CR 2023/13, p. 82, para. 11 (Yee).

¹⁷⁸ AU, para. 30 (a).

There is no mystery as to who the Russian Federation claims was responsible for committing genocide — Ukraine.

II. A judgment on Ukraine’s claims would not be devoid of purpose: Russia’s fourth objection fails

9. Madam President, Members of the Court, I will briefly return now to Russia’s fourth objection, alleging that any possible judgment would be devoid of purpose. To maintain this objection, Russia continues to ignore several of Ukraine’s submissions. It focuses on one request, for the termination of Russia’s use of force, noting that this submission does not itself use the words “genocide” or “Genocide Convention”¹⁷⁹. But Ukraine claims that Russia’s use of force violates the Genocide Convention¹⁸⁰. Ukraine’s “termination” request simply seeks cessation of the act that violates the Convention. As Ukraine has already explained, Russia’s reference to self-defence establishes nothing about the inherent ineffectiveness of Ukraine’s requested order; at most, it raises questions about the merits or perhaps the scope of relief.

10. In any event, Ukraine also requests other relief. Take Ukraine’s request for a declaration that there is no credible evidence it is responsible for committing genocide. Since 2014, Russia has alleged that Ukraine was committing genocide. Just last week, the Russian Agent disturbingly accused Ukraine of planning a “final solution” for Donbas¹⁸¹. And when Russia launched its full-scale invasion of Ukraine, the stated “purpose” and “goal” of Russia’s use of force was to stop this genocide¹⁸². In this context, the declaratory judgment Ukraine requests would have practical effect. In the words of *Chorzów Factory*, “the legal position thus established [could not] again be called in question”¹⁸³. Would Russia truly persist in alleging that Ukraine violated the Convention? Would Russia truly continue acting for the “purpose” and “goal” of stopping a genocide committed

¹⁷⁹ CR 2023/18, p. 42, para. 29 (Yee).

¹⁸⁰ MU, para. 178 (c)-(d).

¹⁸¹ CR 2023/13, p. 41, para. 18 (Kuzmin).

¹⁸² 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 12); 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) (judges’ folder, tab 19).

¹⁸³ *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*, *Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 20; see also *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, *Judgment of 1 December 2022*, declaration of Judge Charlesworth, para. 19 (quoting *Northern Cameroons (Cameroon v. United Kingdom)*, *Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 34).

by Ukraine, in the face of a judgment by this Court declaring there is no credible evidence that this alleged genocide is occurring? The Court cannot assume so as a basis for declining to exercise its jurisdiction.

11. Consider also Ukraine's request for declarations that Russia's use of force, and its recognitions of the so-called "DPR" and "LPR", "violate[] Articles I and IV of the Genocide Convention"¹⁸⁴. The fact that Russia violated the Convention *through* a use of force does not make a potential judgment devoid of purpose. This Court had no such concern in *Oil Platforms*, where — as my colleagues already noted — the applicant requested a declaration that a particular use of force violated — not the UN Charter — but a treaty under which the Court had jurisdiction¹⁸⁵.

III. Ukraine's request for a non-violation declaration is proper and admissible: Russia's fifth objection fails

12. Madam President, Members of the Court, I turn now to the admissibility of Ukraine's claim requesting a declaration that it has not violated the Genocide Convention. It is worth noting the limits of Russia's objection to this claim. Russia does not object to the Court's jurisdiction *ratione materiae* to assess Russia's allegations that Ukraine is responsible for committing genocide. Russia makes the more limited argument that the Court should treat Ukraine's request for a declaration on this question as inadmissible — that is, to decline to *exercise* jurisdiction the Court admittedly possesses¹⁸⁶.

13. To be clear, Ukraine's case is about more than Russia's allegations of genocide in isolation. The subject-matter of the dispute is Russia's reliance on allegations of genocide to harm Ukraine. Ukraine's requested non-violation declaration is legally intertwined with this subject-matter: Ukraine alleges that Russia relied on false allegations of genocide to act against Ukraine, without even having credible evidence that those allegations are true¹⁸⁷. Ukraine also seeks important additional relief,

¹⁸⁴ MU, para. 178 (c)-(d).

¹⁸⁵ See *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), pp. 807, 811-812, 820, paras. 9-10, 21 and 53.

¹⁸⁶ See *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland, and United States of America)*, Preliminary Question, Judgment, I.C.J. Reports 1954, p. 33; *Northern Cameroons (Cameroon v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 1963, p. 37; *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 262, para. 55; *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2003, p. 177, para. 29; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Preliminary Objections, Judgment, I.C.J. Reports 2008, p. 456, para. 120; *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Preliminary Objection, Judgment of 6 April 2023, paras. 63-64.

¹⁸⁷ See also CR 2023/15, pp. 36-37, paras. 14-16 (Rückert).

some of which I have just recounted. But questions about whether the Court should order all, some or none of the relief that Ukraine requests, or should fashion some other remedies that the Court deems appropriate, is a classic question for the merits, after the Court has weighed the facts and fully interpreted the treaty. At present, the notable point is that Russia has no meaningful argument against the jurisdiction of this Court. The Parties unquestionably disagree over Ukraine's alleged responsibility for genocide, and the Court has jurisdiction to resolve that disagreement. Full stop.

14. With this in mind, I turn to the question of the admissibility of that claim.

15. The Court can begin and end its analysis with Article IX's text. Under its ordinary meaning, if there is a dispute over responsibility of a State for genocide, "any of the parties" to that dispute may bring it to the Court. On Monday, Russia reiterated its view that *only* a State that accuses another State of genocide may seize the Court. Russia's counsel even invented a rule out of nothing: "the claim shall be filed by a State that invokes the responsibility of the other State"¹⁸⁸. In other words, according to Russia, in a dispute between two States over responsibility for genocide, *only one of the parties to that dispute* may submit it to the Court. The disconnect between the treaty's text and Russia's argument can end the discussion.

16. But if that were not enough, Russia makes four additional errors.

17. *First*, Russia relies on the *travaux préparatoires* to argue that the phrase "any of the parties" was "merely editorial in nature" and so can be disregarded¹⁸⁹. In light of the clarity of the text, resort to the negotiating history is unnecessary¹⁹⁰. But in any event, Russia's selective presentation of that history is misleading.

18. In an early draft, the compromissory clause would have provided in simple terms that disputes shall be submitted to the Court — without any reference to who may submit the dispute¹⁹¹. A series of amendments followed. The United Kingdom proposed that disputes would be referred to this Court "at the request of any party to the dispute"¹⁹². This amendment was then consolidated with

¹⁸⁸ CR 2023/18, p. 50, para. 16 (Udovichenko).

¹⁸⁹ CR 2023/13, p. 92, para. 7 (Udovichenko).

¹⁹⁰ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 *UNTS* 331, Arts. 31-32.

¹⁹¹ Official Records of the Economic and Social Council, Report of the Ad Hoc Committee on Genocide and Draft Convention, 24 May 1948, UN doc. No. E/794, pp. 56-57 (judges' folder, tab 20).

¹⁹² Official Records of the Third Session of the General Assembly, Part I, Sixth Committee, United Kingdom: Further Amendments to the Draft Convention, 16 October 1948, UN doc. No. A/C.6/236, p. 2 (judges' folder, tab 21).

a Belgian proposal, yielding a joint amendment under which disputes would be submitted to the Court “at the request of any of the High Contracting Parties”¹⁹³. The Indian delegate “felt that that change of wording did not improve the text” and proposed a formulation closer to the original UK proposal: “at the request of any of the parties to the dispute”¹⁹⁴. It was this reversion, from “any of the High Contracting Parties” back to “any of the parties to the dispute”, that the French delegate said could be accepted as “merely a drafting matter”¹⁹⁵. In other words, the “drafting matter” was a choice between two “anys”. Under either version, *any* party could turn to the Court. From this history, there is no basis for inferring that the word “any” was “editorial” or otherwise unimportant.

19. *Second*, Russia cannot ground its admissibility objection in the Court’s jurisprudence. Certainly there is no decision of the Court that *rejects* the admissibility of a non-violation declaration. Even if there were no direct precedent, the alleged novelty of a particular type of claim is not a legal reason for the Court to decline jurisdiction that has been duly conferred on it. In any event, non-violation claims are not unprecedented. In the *Rights of Nationals* and *Lockerbie* cases, the Court entertained such claims.

20. Russia accepted this point in the first round, saying merely that the Court “did not rule on the disputed legal point”¹⁹⁶. In the second round, Russia backtracked, suggesting that in *Lockerbie*, the Court might have implicitly rejected Libya’s non-violation claim¹⁹⁷. Merely glancing at the dispositive paragraphs of the Court’s Judgment confirms that the Court dismissed all of the United Kingdom’s objections and allowed all of Libya’s claims to proceed to the merits¹⁹⁸. That includes its non-violation claim.

¹⁹³ Official Records of the Third Session of the General Assembly, Part I, Sixth Committee, Belgium and United Kingdom: Joint Amendment to Article IX of the Draft Convention, 10 November 1948, UN doc. No. A/C.6/258 (judges’ folder, tab 22).

¹⁹⁴ 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. No. A/C.6/SR.61-140, pp. 428 n. 1, 437 (judges’ folder, tab 23).

¹⁹⁵ *Ibid.*, p. 431 (judges’ folder, tab 23).

¹⁹⁶ CR 2023/13, p. 94, para. 23 (Udovichenko).

¹⁹⁷ CR 2023/18, p. 49, paras. 7-10 (Udovichenko).

¹⁹⁸ *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. 30, para. 53.

21. Recall what Russia is saying: that a non-violation claim “is incompatible with the judicial function of the Court”¹⁹⁹. If that were so, surely the Court would have said something in *Lockerbie* and *Rights of Nationals* — even on its own initiative — upon being asked to act beyond its judicial function. Indeed, in *Northern Cameroons*, the Court raised *proprio motu* its concern that adjudication “would be inconsistent with its judicial function”²⁰⁰. The Court’s silence in *Rights of Nationals* and *Lockerbie* confirms that there is nothing judicially improper about the Court declaring a State to be in compliance with its obligation, when that is in dispute.

22. Little needs to be said of the irrelevant differences Russia has seized on to distinguish these cases. I will just note the oddity of Russia’s point that in *Rights of Nationals*, the issue did not have the same “magnitude as genocide” or involve obligations *erga omnes*²⁰¹. The magnitude of the issue of genocide, and the *erga omnes* character of the obligations at issue, is a point in *favour* of broad access to judicial resolution. This case illustrates why: a false allegation of genocide can form an unjust basis for taking action against that State. By declaring that there is no credible evidence that an alleged genocide is in fact occurring, the Court can resolve the factual issue at the heart of this dispute that forms the predicate for Russia’s ongoing actions. As the Court noted in its provisional measures Order in this case, it is mindful of its “own responsibilities in the maintenance of international peace and security as well as in the peaceful settlement of disputes under the Charter and the Statute of the Court”²⁰². Far from Ukraine’s request being “incompatible with the Court’s judicial role”, the Court is asked to discharge its most vital judicial responsibility.

23. *Third*, Russia objects that Ukraine’s claims may entail fact-finding, while conditions in Donbas “make[] any fact-finding work on site very difficult, if not impossible”²⁰³. The notion that fact-finding in Donbas is impossible would come as a surprise to the UN Human Rights Monitoring

¹⁹⁹ CR 2023/13, p. 94, para. 20 (Udovichenko).

²⁰⁰ Case concerning the *Northern Cameroons (Cameroon v. United Kingdom)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 1963*, p. 37. See also Christian Tomuschat, “Article 36”, in *The Statute of the International Court of Justice: A Commentary* (Zimmermann et al., eds., Oxford University Press 2019), p. 783.

²⁰¹ CR 2023/13, p. 96, para. 31 (a) (Udovichenko).

²⁰² *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. 216, para. 18.

²⁰³ CR 2023/13, p. 93, para. 17 (Udovichenko).

Mission in Ukraine²⁰⁴. And the OSCE²⁰⁵. And the Office of the Prosecutor of the ICC²⁰⁶. In any case, a respondent's assertion that fact-finding *might* prove difficult is not a ground for finding a claim inadmissible before the facts are even at issue.

24. *Fourth*, and finally, there is no reason to credit Russia's concerns over the *res judicata* effect of a judgment on a "patently incomplete set of evidence"²⁰⁷. This is just Russia's speculation about a future evidentiary record. Ukraine submits that the record, including many reports from the bodies I just mentioned, will support a conclusion that there is no credible evidence of Ukraine's responsibility for genocide. But the Court will assess that for itself at the merits stage. When the Court issues whatever judgment it finds supported and appropriate, there is nothing problematic about that judgment being *res judicata* between Russia and Ukraine — a binding judgment, based on the best available factual record and a full airing of the legal issues, is precisely the point of referring disputes to the Court for a final resolution. An even more basic point, however, is that a claim cannot be dismissed as inadmissible based on hypotheticals. The Court has ample tools to address Russia's professed concerns when, or if, they ever actually arise²⁰⁸.

IV. Ukraine has committed no "abuse of process": Russia's sixth preliminary objection fails

25. Finally, Madam President, Members of the Court, regarding Russia's sixth objection, Russia has not identified anything close to the extraordinary circumstances that could constitute an abuse of process by Ukraine.

26. Russia relies on a wilful misreading of Ukraine's case in order to sow confusion. After pointing to different statements made in different contexts, Russia's counsel sarcastically asks, "So,

²⁰⁴ See e.g. OHCHR, Situation of Human Rights in Ukraine (1 February-31 July 2021) (23 Sept. 2021), para. 1 and fn. 1, accessed at <https://www.ohchr.org/sites/default/files/Documents/Countries/UA/32ndReportUkraine-en.pdf> (judges' folder, tab 24). See also UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Ukraine* (19 Sept. 2014), UN doc. No. A/HRC/27/75, paras. 7-8; OHCHR, *Ukraine: UN and OHCHR Reports*, accessed at <https://www.ohchr.org/en/countries/ukraine>.

²⁰⁵ See OSCE Special Monitoring Mission to Ukraine, *Status Report* (24 Jan. 2022), accessed at <https://www.osce.org/files/f/documents/0/6/511045.pdf> (24 Jan. 2022). See also OSCE Special Monitoring Mission to Ukraine, *Daily and Spot Reports*, accessed at <https://www.osce.org/ukraine-smm/reports?filters=&solrsort=score%20desc&rows=50>.

²⁰⁶ See ICC Office of the Prosecutor, *Report on Preliminary Examination Activities 2020* (14 Dec. 2020), pp. 68-72, accessed at <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf> (judges' folder, tab 26).

²⁰⁷ CR 2023/13, pp. 93-94, para. 18 (Udovichenko).

²⁰⁸ CR 2023/15, p. 78, para. 7 (Paparinskis).

is it Russia's or is it Ukraine's liability we are looking into?"²⁰⁹ The answer is not difficult: both. The dispute relates to Ukraine's liability, because the Parties disagree over whether Ukraine is responsible for genocide. And the dispute relates to Russia's liability, because the Parties disagree over whether Russia has misinterpreted, misapplied, mis-fulfilled and violated the Genocide Convention. Russia cannot claim abuse of process by feigning confusion over Ukraine's straightforward and consistent case.

27. Russia also cannot claim abuse of process just because it feels victimized by the legal interpretations of 32 intervening States. At times, Russia complains that the interveners' interpretations are too similar to Ukraine's²¹⁰. Other times, Russia complains that the interveners' positions are too different from Ukraine's²¹¹. The inconsistency of Russia's position aside, neither situation is an abuse. In the *Whaling in the Antarctic* case, New Zealand as the intervener explained: "[W]e acknowledge that the points we make may differ in substance or in emphasis from those of the Parties — that is entirely to be expected."²¹² The interventions this Court heard last week likewise proceeded as Article 63 of the Statute envisions. Indeed, the interveners' oral pleadings were studiously focused on the questions of interpretation before the Court — in stark contrast to Russia's extraneous presentations about all manner of irrelevant topics. And if the Court finds that any of the interveners' submissions strayed beyond their authorized scope, it already said in its Order that it would simply disregard such remarks²¹³. Dismissing Ukraine's case as an abuse of process plainly would not follow.

28. Russia's charges of hypocrisy against the interveners also fall flat. As Professor Koh explained, the interpretive issues in this case are quite different from those in the *Legality of Use of Force* cases. For that reason, and for all of its rhetoric, Russia could not identify a single statement from those cases in which the interveners interpreted Articles I, IV or IX of the Convention

²⁰⁹ CR 2023/18, p. 53, para. 35 (Udovichenko).

²¹⁰ See e.g. CR 2023/17, pp. 52, 53, paras. 89, 91 (Zabolotskaya); CR 2023/17, pp. 77-78, 80, paras. 22-23, 36 (Crosato); CR 2023/18, pp. 59-60, para. 2 (Tchikaya).

²¹¹ See e.g. CR 2023/17, p. 78, para. 24 (Crosato); CR 2023/18, p. 52, paras. 33-34 (Udovichenko).

²¹² *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, CR 2013/17 (corrected), p. 14, para. 3 (Ridings).

²¹³ *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. 99.

differently than they do now. Russia may speculate that “the interveners’ intent is purely instrumental”²¹⁴, but a complete answer to that charge is Article 63 itself. As the Statute requires, each of the interveners agreed to be bound by the Court’s interpretation. The interveners are not engaged in cheap talk — they have something important to say about important questions of law, and they have willingly accepted the stakes of saying it here.

29. Ultimately, the historic interventions in this case are not an abuse, but a reflection of the importance of the interpretive issues in this case. The Genocide Convention is a special treaty. It establishes obligations *erga omnes*. And this case raises interpretive issues that are unique and profound: whether the most noble human rights instrument may be repurposed for the most ignoble ends.

30. Madam President, Members of the Court, this concludes my remarks confirming the admissibility of Ukraine’s claims. I thank the Court for its attention and I now ask that you give the floor to Mr Jonathan Gimblett.

The PRESIDENT: I thank Mr Zions. 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**

1. Madam President, Members of the Court: it is an honour to appear before you again on behalf of Ukraine. I will respond to Russia’s limited remarks concerning Ukraine’s claim that you have jurisdiction over Russia’s violation of the Court’s Order on provisional measures.

2. Russia’s brevity on this issue on Monday was really an excuse to duck some critical issues. First and foremost, does Russia accept that it has a binding legal obligation to comply with the Court’s Order? According to the statement by Dmitry Peskov, the spokesman of the Russian President the day after the Order issued, Russia does not. In his words, Russia could not “take account

²¹⁴ CR 2023/18, p. 56, para. 48 (Udovichenko).

of” the Order because it had not consented to do so²¹⁵. Whatever Russia’s lawyers may say here in The Hague, we know that Mr Peskov’s words are a truer reflection of Russian government policy because Russia has continued its full-scale military invasion of Ukraine since 16 March 2022 in defiance of this Court’s Order to immediately suspend all military operations on the territory of Ukraine. Indeed, as Ukraine’s Co-Agent will describe, Russia’s brazen non-compliance with that Order has continued to result in civilian deaths and damage to critical infrastructure over the last ten days of these hearings.

3. On Monday, Russia sought to deflect attention away from this core issue by misstating Ukraine’s position and misapplying the Court’s jurisprudence. As to Ukraine’s position, contrary to the impression given by Russia, Ukraine is not asking you to rule on Russia’s non-compliance with the provisional measures Order as part of this preliminary objections phase of the case. This is clear from the submissions included in Ukraine’s written statement on Russia’s preliminary objections, which asked you to “[a]djudge and declare that the Court has jurisdiction to hear the claims presented by Ukraine as set forth in its Application and Memorial, and that those claims are admissible” and to “[p]roceed to hear those claims on the merits”²¹⁶.

4. Ukraine’s claim that Russia is violating the provisional measures Order and its request for reparations was set forth in Ukraine’s Memorial. As I explained last week, Ukraine has demonstrated that the Court has jurisdiction to hear Ukraine’s substantive claims on the merits and that those claims are admissible²¹⁷. As a matter of procedural efficiency, Ukraine’s expectation is that the Court will address Russia’s non-compliance with provisional measures alongside the merits of Ukraine’s substantive claims²¹⁸. But also implicit in the submissions I just read to you is the notion that, even if you were to uphold Russia’s preliminary objections as to Ukraine’s underlying substantive claims, you can and you should exercise jurisdiction and proceed to the merits on Ukraine’s claim concerning provisional measures²¹⁹.

²¹⁵ 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 27).

²¹⁶ WOU, para. 196.

²¹⁷ CR 2023/14, pp. 92-94, paras. 8-15 (Gimblett).

²¹⁸ See CR 2023/14, p. 92, paras. 9-10 (Gimblett).

²¹⁹ See CR 2023/14, pp. 93-94, paras. 11-14 (Gimblett).

5. Russia voiced no objection on Monday or in its written pleadings on preliminary objections to the Court exercising jurisdiction over Ukraine's provisional measures claim if the Court finds it has jurisdiction over the substantive claims. Most of the cases that it cited were ones in which the Court had found it had jurisdiction over the merits of an applicant's substantive claims and decided to address alleged violations of provisional measures at the same time. Such was the case in *Qatar v. United Arab Emirates*, the 2019 Judgment of the Court in the *ICSFT* and *CERD* case, in the *Treaty of Amity* case and in *The Gambia v. Myanmar*²²⁰. The Court may therefore take it as a point of agreement between the Parties that it has jurisdiction to address Ukraine's non-compliance claim on the merits if it finds jurisdiction over one or more of Ukraine's substantive claims.

6. Russia appears, however, to take the position that the Court will lack the power to address its non-compliance with provisional measures if the Court finds that it has no jurisdiction over Ukraine's substantive claims²²¹. This is presumably the twisted way in which Russia hopes to reconcile its refusal to heed the Court's Order with its declared respect for the Court as an institution. In Russia's view, if the Court ultimately lacks the power to address Russia's brazen non-compliance with provisional measures, those measures will effectively become retroactively non-binding. But of course that is incorrect — the Court's authority is not so transitory in nature.

7. The only support that Russia advanced on Monday in support of this position was its own flawed interpretation of the Court's rulings in *Request for Interpretation of the Avena Judgment*, a case to which I referred in my remarks last week²²². The point I was making then was that the Court had found itself competent to address the United States' violation of a provisional measures order in that case even though it ruled that Mexico's substantive claim was "outside the jurisdiction specifically conferred on the Court by Article 60" of the Court's Statute²²³. That finding on jurisdiction is reflected in paragraph 45 of the Court's 19 January 2009 Judgment in the case, shown on the present slide²²⁴. Paragraph 51 of the same Judgment makes clear that, notwithstanding the

²²⁰ See CR 2023/18, pp. 57-58, paras. 54-58 (Udovichenko).

²²¹ CR 2023/18, p. 57, para. 53 (Udovichenko).

²²² See CR 2023/18, p. 59, paras. 61-63 (Udovichenko).

²²³ See CR 2023/14, pp. 93-94, para. 13 (Gimblett).

²²⁴ *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.

Court's decision not to exercise jurisdiction under Article 60, it was still able to address the United States' non-compliance by virtue of its "incidental jurisdiction to make findings about alleged breaches of the Order indicating provisional measures"²²⁵.

8. In my remarks last week, I explained that this incidental jurisdiction is inherent in the power to indicate provisional measures conferred on the Court by Article 41 of the Statute, and that Article 41 would be deprived of its effectiveness if the Court lacked the power to address violations of the provisional measures so indicated²²⁶. The absence of a specific reference in Article 41 to the Court's power to assess violations of provisional measures is neither surprising and nor is it an obstacle to inferring the existence of such a power. It is not surprising because it is in the nature of foundational documents like the Statute of the International Court of Justice that they typically do not contain an exhaustive list of all the functions and powers of the institutions to which they relate. It is not an obstacle because this Court has found on many occasions that powers not expressly mentioned in an organization's constituent instruments can nonetheless be implied based on the functions accorded to the organization in question²²⁷. For example, in its 1949 Advisory Opinion in *Reparation for Injuries Suffered in the Service of the United Nations*, the Court held that

“[u]nder international law, the Organization [that is, the United Nations] must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties”²²⁸.

9. The language that I cited last week from *Request for Interpretation of the Avena Judgment* is consistent with this understanding. In its attempt to distinguish the case, Russia completely misses the point. Instead of focusing on the Court's January 2009 Judgment explaining the basis on which

²²⁵ *Ibid.*, p. 19, para. 51.

²²⁶ CR 2023/14, p. 93, para. 12 (Gimblett). See e.g. Karin Oellers-Frahm & Andreas Zimmermann, “Article 41”, in *The Statute of the International Court of Justice: A Commentary* (Zimmermann et al., eds., Oxford University Press 2019), p. 1191, para. 113 (WOU, Ann. 11); Paolo Palchetti, “Responsibility for Breach of Provisional Measures of the ICJ: Between Protection of the Rights of the Parties and Respect for the Judicial Function”, *Rivista di Diritto Internazionale* (2017), p. 12 (WOU, Ann. 10); Pierre d'Argent, “Preliminary Objections and Breaches of Provisional Measures”, *Rivista di Diritto Internazionale* (2021), p. 127 (WOU, Ann. 13).

²²⁷ See e.g. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, pp. 182-184; *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 79, para. 25; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, I.C.J. Reports 1962, p. 168; *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, Advisory Opinion, I.C.J. Reports 1954, pp. 56-57; *Jurisdiction of the European Commission of the Danube*, Advisory Opinion, 1927, P.C.I.J., Series B, No. 14, pp. 63-65; *Competence of the ILO to Regulate Incidentally the Personal Work of the Employer*, Advisory Opinion, 1926, P.C.I.J., Series B, No. 13, pp. 18-21.

²²⁸ *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 182.

it could exercise jurisdiction over non-compliance with the provisional measures order, Russia pointed you to language in paragraph 44 of the July 2008 provisional measures Order in that case, which has nothing to do with the issue at hand. Specifically, Russia showed you the language now on the screen, which reads:

“Whereas the Court’s jurisdiction on the basis of Article 60 of the Statute is not preconditioned by the existence of any other basis of jurisdiction as between the parties to the original case; and whereas it follows that, even if the basis of jurisdiction in the original case lapses, the Court, nevertheless, by virtue of Article 60 of the Statute, may entertain a request for interpretation”²²⁹.

10. This passage merely explains how it is that the Court could exercise Article 60 jurisdiction over the substantive claim advanced by Mexico — a request for interpretation — even though the basis for jurisdiction in the original *Avena* case, a claim arising under the Vienna Convention on Consular Relations, had lapsed²³⁰. It has nothing to do with the Court’s jurisdiction to address a subsequent alleged violation of provisional measures in the *Interpretation* proceedings. The conclusion that Russia’s counsel drew from this irrelevant passage — that use of the word “lapsed” indicates that “jurisdiction in the ‘original’ case is still a must” — is equally beside the point²³¹. In short, the present case involves no request for interpretation, Article 60 is not in play and nor is its relationship to an original basis for jurisdiction.

11. Evidently, then, Russia has failed to engage with Ukraine’s position that the Court has jurisdiction to address Russia’s non-compliance with the Court’s provisional measures Order, even if it lacks jurisdiction over Ukraine’s substantive claims. Russia similarly failed on Monday to address a separate basis for the Court’s jurisdiction outlined in my remarks last week and expanded upon by Mr Williams, the representative of New Zealand last Wednesday²³². That is that Ukraine’s claim that Russia has not complied with the Court’s binding provisional measures Order, and owes reparations as a result, is a distinct claim arising directly under Article IX of the Genocide

²²⁹ *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. 323, para. 44.

²³⁰ See *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*, pp. 312, 323, paras. 1, 44.

²³¹ See CR 2023/18, p. 59, para. 62 (Udovichenko).

²³² CR 2023/14, p. 93, para. 12 (Gimblett); CR 2023/16, pp. 44-48, paras. 6-23 (Williams); see also Written Observations on Preliminary Objections of New Zealand, paras. 16-22.

Convention. By ceding to the Genocide Convention, Russia assumed an obligation to comply with its mandatory dispute resolution procedures and to do so reasonably and in good faith. Ukraine's claim that Russia has violated that obligation by failing to comply with provisional measures ordered by the Court, which Russia contests, is therefore a dispute relating to the interpretation, application or fulfilment of the Genocide Convention, falling directly within the Court's jurisdiction under Article 36 (1) of the Statute.

12. To sum up, at this stage of the proceedings Ukraine is asking you to find that you can exercise jurisdiction over Russia's non-compliance with provisional measures. The Parties appear to agree that you can do so if you find jurisdiction over any of Ukraine's substantive claims. For the reasons I have outlined, Ukraine submits that you also may exercise jurisdiction under Articles 36 or 41 of the Statute even if jurisdiction over the substantive claims is lacking.

13. Madam President, that concludes my remarks. I respectfully request that you call next Ms Oksana Zolotaryova, the Co-Agent of Ukraine, who will deliver some closing remarks and read the submissions of Ukraine.

The PRESIDENT: I thank Mr Gimblett. I now invite the Co-Agent of Ukraine, Ms Oksana Zolotaryova, to address the Court. You have the floor, Madam.

Ms ZOLOTARYOVA:

CONCLUDING STATEMENT AND FINAL SUBMISSIONS OF UKRAINE

1. Madam President, distinguished Members of the Court, I am honoured to stand before you to make concluding remarks and present the final submissions of Ukraine.

2. Last week, the Agent of Ukraine recalled that "five hundred and seventy-three days ago, Russia launched a brutal, full-scale military assault on Ukraine"²³³. He explained that Russia has inflicted this devastation on Ukraine for an express, clearly stated purpose: preventing genocide and punishing the perpetrators of genocide²³⁴. As Ukraine has explained, when Russia acted for this specific purpose, it placed its own actions within the framework of the Genocide Convention. This

²³³ CR 2023/14, p. 34, para. 2 (Korynevych).

²³⁴ See CR 2023/14, p. 34, para. 3 (Korynevych).

Court plays a vital role in safeguarding the Genocide Convention, guaranteeing its compliance, and protecting it from abuse. That is why Ukraine is here.

3. Today, as this hearing comes to a close, it has been 581 days since Russia unleashed these horrors. Here in The Hague, Russia paints itself as a victim. In Ukraine, Russia has continued to show its true colours.

4. Last Tuesday in The Hague, we stood before you and pled our case. Last Tuesday in Ukraine, Russia unleashed a drone attack on the city of Lviv in western Ukraine. The attack killed a civilian and burned down the warehouse of a Roman Catholic charity²³⁵. The UN Humanitarian Coordinator for Ukraine “condemn[ed] in the strongest terms [the] Russian airstrike”²³⁶. She said that a “vital humanitarian facility, which contained approximately 300 tons of relief supplies, was burned to the ground”²³⁷.

5. Last Wednesday in The Hague, the Court heard historic legal arguments from 32 intervening States. The very next morning in Ukraine, people across my country woke up to cruise missiles. Russia targeted civilian infrastructure across the country, causing blackouts in Rivne, Zhytomyr, Kyiv, Dnipro and Kharkiv²³⁸. In Kyiv, the Russian missile attack injured a nine-year-old girl. Russia is reminding us that this winter, it will try again to terrorize our people and freeze us into submission.

6. This past weekend in The Hague, Russia prepared what I can only call a propaganda show. Over the weekend in Ukraine, Russia launched airstrikes in the Kherson region, killing at least two civilians and injuring many more²³⁹.

7. This Monday in The Hague, Russia made its final plea to escape your jurisdiction. Monday morning in Ukraine, we surveyed the damage from an overnight attack on the port of Odesa, a blatant attack on Ukraine’s economy and its ability to feed the world with its grain. Russia launched this

²³⁵ Illia Novikov, *Russian Drone Attack Western Ukraine City Sparks an Inferno at a Warehouse and Kills 1*, PBS (19 Sept. 2023), accessed at <https://www.pbs.org/newshour/world/russian-drone-attack-western-ukraine-city-sparks-an-inferno-at-a-warehouse-and-kills-1>.

²³⁶ UN Ukraine, *Statement by the Humanitarian Coordinator for Ukraine, Denise Brown, on an Attack that Destroyed the Caritas-Spes Warehouse in Lviv* (19 Sept. 2023), accessed at <https://ukraine.un.org/en/246490-statement-humanitarian-coordinator-ukraine-denise-brown-attack-destroyed-caritas-spes>.

²³⁷ *Ibid.*

²³⁸ Olena Harmash and Tom Balmforth, *Russia Hits Ukrainian Energy Facilities in Biggest Attack in Weeks, Kyiv Says*, Reuters (21 Sept. 2023), accessed at <https://www.reuters.com/world/europe/blasts-heard-kyiv-other-parts-ukraine-2023-09-21/>.

²³⁹ VOA News, *Zelenskyy Describes Visit to the West as “Very Productive”* (24 Sept. 2023), accessed at <https://www.voanews.com/a/deadly-russian-attacks-target-ukraine-s-kherson-region/7281947.html>.

attack on the evening of Yom Kippur, a Jewish holy day, in an important city for Ukraine's Jewish community. On the same day, Russia stood in this Court and repeated its slander that Ukrainians are neo-Nazis.

8. Madam President, Members of the Court, we turned to you a year and a half ago because we were in dire need of protection. We still need your protection today. Russia's lawyers have lectured us, saying that States must wait years before the Court can decide a case about whether genocide is taking place²⁴⁰. Ukraine does not have the luxury of time. When Russia used its false allegations of genocide as a pretext to attack us, we had no choice but to come to this Court immediately.

9. We have been brutally attacked based on false allegations of genocide. Russia has repeatedly claimed that Ukraine violates the Genocide Convention. Russia's President said it clearly, repeated by official after official: it is attacking to prevent and punish genocide²⁴¹. Preventing and punishing genocide is the subject of the Genocide Convention. Russia is a party to the Genocide Convention. It agreed to your jurisdiction over disputes relating to the interpretation, application or fulfilment of the Genocide Convention. It was completely logical for Ukraine to invoke that jurisdiction and bring its dispute under the Genocide Convention to this Court.

10. Russia tries to cloud the issues, distort Ukraine's claims and ignore objective reality. Russia professes not to understand Ukraine's case, but Ukraine's case is straightforward. Russia has made false allegations of genocide under the Genocide Convention. It used those allegations as a pretext to recognize the so-called "DPR" and "LPR", and to use force in and against Ukraine. Russia is abusing its rights under the Convention, and abusing the Convention as a whole. Russia is not performing its obligation to prevent and punish genocide in good faith. Russia is failing to act within the limits of international law when it acts to prevent and punish genocide. It is obvious why Russia tries to make this case seem more complicated than it is. But, when the Court looks at the actual dispute, and Ukraine's actual claims, the jurisdiction of the Court is clear.

²⁴⁰ See e.g. CR 2023/13, p. 93, para. 15 (Udovichenko).

²⁴¹ 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 12); see generally CR 2023/14, pp. 57-59, paras. 40-45 (Check).

11. Russia also works hard to ignore its own stated purpose for the full-scale invasion of Ukraine. Last week, the Agent of Ukraine highlighted the specific words of the Russian President, which Russia's Agent and counsel had ignored²⁴². This Monday, the Court gave Russia six hours. Russia used this for propaganda and irrelevant arguments. Not once did you hear Russia acknowledge President Putin's statement of purpose for his full-scale invasion of Ukraine. So I have no choice but to recall the actual, stated purpose of Russia's actions. I quote: "The *purpose* of this operation is to protect people who, for eight years now, have been facing humiliation and *genocide* perpetrated by the Kiev regime."²⁴³ I quote again: "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."²⁴⁴ Russia quickly dismisses this as providing "a wider context of the situation, where genocide was mentioned among other factors"²⁴⁵. We should not let Russia be evasive. This was not a "mention". It was not "wider context". It was not a "rhetorical" statement²⁴⁶. It was the only stated purpose of Russia's full-scale invasion of Ukraine: to stop a purported genocide.

12. I would also prefer not to recall the hateful words of the Deputy Chairman of Russia's Security Council. But Russia's Agent and counsel were afraid of those words as well. Does Russia truly expect the Court to ignore a high-ranking Russian official, who states clearly that Russia is acting to punish the perpetrators of genocide under the Genocide Convention? He mentioned the Convention by name²⁴⁷. He said that *this* is the reason why the so-called "special military operation" continues²⁴⁸. Russia did not deny that this statement reflects official Russian policy. It could not —

²⁴² See CR 2023/14, p. 35, para. 8 (Korynevych).

²⁴³ 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 12) (emphasis added).

²⁴⁴ 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 12).

²⁴⁵ CR 2023/17, p. 35, paras. 6 and 8 (Zabolotskaya).

²⁴⁶ See CR 2023/13, p. 52, para. 14 (Azari); CR 2023/17, p. 66, para. 31 (Azari).

²⁴⁷ 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 16); see also TASS, *Total Victory Over Genocide-Promoting Kiev Only Possible Outcome of Special Op — Medvedev* (5 Sept. 2023), accessed at <https://tass.com/politics/1670035> (judges' folder, tab 17).

²⁴⁸ 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 16); see also TASS, *Total Victory Over Genocide-Promoting Kiev Only Possible Outcome of Special Op — Medvedev* (5 Sept. 2023), accessed at <https://tass.com/politics/1670035> (judges' folder, tab 17).

this is the official Russian policy. Only in this Great Hall does Russia's Agent ignore it, while its senior leadership continues to repeat it in the public sphere.

13. Madam President, Members of the Court, when it comes to the critical facts of this case, it is Russia's silence that speaks volumes.

14. However, silence would have been preferable to what the Court had to listen to on Monday. This is a court of law, not a platform for propaganda. Yet Russia used its time to tell astonishing lies. Russia disgraced this institution with a conspiracy theory that there were no killings in Bucha²⁴⁹. Tragically, the mass summary executions were all too real. This is not Ukraine's word against Russia's. It is the conclusion of the United Nations. Recently, the United Nations' Independent International Commission of Inquiry on Ukraine found:

“Evidence collected shows a widespread pattern of summary executions in areas that Russian armed forces controlled in 17 localities of the Chernihiv, Kharkiv, Kyiv, and Sumy regions, with the highest number in the Kyiv region, including in the town of Bucha.”²⁵⁰

15. Russia also blamed Ukraine for the missile attack on the Kramatorsk railway station that killed 59 civilians. The United Nations Commission disagreed²⁵¹. So did the OSCE²⁵². Human Rights Watch also conducted an extensive investigation, and concluded: “[A]ll evidence points to Russian forces having fired the Tochka-U missile with cluster munitions on the Kramatorsk train station”²⁵³.

16. Finally, the Russian Agent said that “Ukraine now dares to say the evacuation of children . . . were ‘abductions’”²⁵⁴. This is not just what Ukraine says. The International Criminal Court says it, too²⁵⁵. It understands that the forcible deportation of children from their homeland is not an “evacuation”. It is an international crime. That is why the ICC issued arrest warrants.

²⁴⁹ See CR 2023/17, pp. 46-47, paras. 55-59 (Zabolotskaya).

²⁵⁰ United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on Ukraine*, UN doc. A/HRC/52/62 (15 Mar. 2023), pp. 8-9, para. 53.

²⁵¹ United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on Ukraine*, UN doc. A/HRC/52/62 (15 Mar. 2023), pp. 8-9, para. 31.

²⁵² See OSCE, *Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine* (22 July 2022), paras. 43-46, accessed at https://www.osce.org/files/f/documents/c/d/523081_0.pdf.

²⁵³ Human Rights Watch, *Death at the Station Russian Cluster Munition Attack in Kramatorsk: A Human Rights Watch and SITU Research Investigation* (21 Feb. 2023), accessed at <https://www.hrw.org/video-photos/interactive/2023/02/21/death-at-the-station/russian-cluster-munition-attack-in-kramatorsk>.

²⁵⁴ CR 2023/17, p. 44, para. 45 (Zabolotskaya).

²⁵⁵ 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>.

17. Russia's whole presentation was built on a foundation of similar lies. But we are not here to play Russia's games. We are here to address the Court's jurisdiction, which is plainly established. Russia appears eager to argue about the facts. So is Ukraine. That is what the merits stage is for.

18. Russia is angry that 32 States intervened to present their interpretation of the Genocide Convention. Russia may not like those interpretations. But the historic presentations you saw last Wednesday was a really good day for international law. It showed Article 63 of the Statute operating as intended. State after State recognized the importance of the Genocide Convention, offered their views on questions of law — not politics — and agreed to be legally bound by your interpretation.

19. To Russia, the fact that so many parties to the Genocide Convention interpret it the same way must be a conspiracy. But there is a simpler explanation: so many States agree with Ukraine's interpretation because it is correct. And so many States intervened because they saw the extraordinary danger of a different interpretation, under which States may callously abuse their solemn obligation to prevent and punish genocide.

20. Madam President, distinguished Members of the Court, in the provisional measures Order that Russia continues to defy, you recalled the Court's essential role in peacefully resolving disputes. Seventy-five years ago, the drafters of the Genocide Convention recognized that role as well. That is why they decided to grant this Court jurisdiction that would be as wide as possible. It is in that spirit, mindful of the Court's role in the United Nations system, and mindful of the true object and purpose of the Genocide Convention, that Ukraine has come to you. We have a dispute with Russia that relates to the interpretation, application and fulfilment of the Genocide Convention. Your jurisdiction to resolve that dispute is clear. Your judgment remains urgently needed.

21. I now have the honour to present Ukraine's final submissions:

“On the basis of the facts and legal arguments presented in its written and oral pleadings, Ukraine respectfully requests the Court to:

- a. Dismiss the Preliminary Objections filed by the Russian Federation on 3 October 2022;
- b. Adjudge and declare that the Court has jurisdiction to hear the claims presented by Ukraine as set forth in its Application and Memorial, and that those claims are admissible; and
- c. Proceed to hear those claims on the merits.”

22. This concludes Ukraine's oral pleadings and its submissions.

23. On behalf of Ukraine, allow me to thank the Registry for its assistance. I thank the interpreters and the staff of the Court for their professionalism during these proceedings. And finally, Madam President, distinguished Members of the Court, I thank you for your attention in this important matter.

24. We are in your hands.

The PRESIDENT: I thank the Co-Agent of Ukraine. The Court takes note of the final submissions that you have just read out on behalf of your Government.

This brings us to the end of the hearings on the preliminary objections of the Russian Federation 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)*. I thank the representatives of the two Parties and the intervening States for the assistance they have given to the Court through their presentations in the course of these hearings. In accordance with practice, I shall request the Agents of the Parties and the representatives of the intervening States to remain at the Court's disposal to provide any additional information it may require.

The Court will now retire for deliberation. The Agents of the Parties and the intervening States will be advised in due course as to the date on which the Court will deliver its Judgment. As the Court has no other business before it today, the sitting is now closed.

The Court rose at 6 p.m.
