INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

(UKRAINE *v.* RUSSIAN FEDERATION)

JUDGMENT OF 31 JANUARY 2024

2024

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

APPLICATION DE LA CONVENTION INTERNATIONALE POUR LA RÉPRESSION DU FINANCEMENT DU TERRORISME ET DE LA CONVENTION INTERNATIONALE SUR L'ÉLIMINATION DE TOUTES LES FORMES DE DISCRIMINATION RACIALE

(UKRAINE c. FÉDÉRATION DE RUSSIE)

ARRÊT DU 31 JANVIER 2024

Official citation:
Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. *Russian Federation), Judgment, I.C.J. Reports 2024*, p. 78

Mode officiel de citation :
Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), arrêt, C.I.J. Recueil 2024, p. 78

ISSN 0074-4441
ISBN 978-92-1-003476-0
e-ISBN 978-92-1-107161-0

Sales number
N° de vente : 1314

PRINTED IN FRANCE/IMPRIMÉ EN FRANCE

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(UKRAINE c. FÉDÉRATION DE RUSSIE)

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ARRÊT

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INTERNATIONAL COURT OF JUSTICE

2024
31 January
General List
No. 166

YEAR 2024

31 January 2024

APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

(UKRAINE *v.* RUSSIAN FEDERATION)

General background — Proceedings instituted by Ukraine in January 2017 following events which occurred from early 2014 in eastern Ukraine and in Crimean peninsula — Subject-matter of dispute — Dispute brought under International Convention for the Suppression of the Financing of Terrorism (ICSFT) and International Convention on the Elimination of All Forms of Racial Discrimination (CERD) — Jurisdiction of the Court limited to alleged violations of those two Conventions.

* *

International Convention for the Suppression of the Financing of Terrorism.

Preliminary issue — "Clean hands" doctrine — Doctrine cannot be applied in inter-State dispute where the Court's jurisdiction is established and application is admissible — Invocation of "clean hands" doctrine as defence on merits rejected.

*

Interpretation of term "funds" as defined in Article 1, paragraph 1, of ICSFT in accordance with Articles 31 to 33 of 1969 Vienna Convention — In defining "funds", text of Article 1, paragraph 1, makes broad reference to "assets of every kind" — Context indicates that term "funds" is confined to resources possessing financial and monetary character and does not extend to means used to commit acts of terrorism — According to object and

purpose, ICSFT specifically concerns the financing aspect of terrorism — Interpretation confirmed by travaux préparatoires *— The Court's conclusion that term "funds" refers to resources provided or collected for their monetary value and does not include means used to commit acts of terrorism, including weapons or training camps — Consequently, alleged supply of weapons to armed groups operating in Ukraine and alleged organization of training for their members fall outside material scope of ICSFT.*

Offence of terrorism financing under Article 2, paragraph 1, of ICSFT — Scope ratione personae *— Financing of terrorism by a State outside scope of ICSFT — States are required to act to suppress and prevent commission of offence of terrorism financing by all persons, including by State officials — Scope* ratione materiae *— Distinction between offence of terrorism financing in* chapeau *of Article 2, paragraph 1, of ICSFT and categories of underlying offences in Article 2, paragraph 1* (a) *and* (b) *(Predicate acts) — Term "offences set out in Article 2" in ICSFT only refers to terrorism financing in the* chapeau *— Mental elements of offence of terrorism financing — Funds to be provided or collected either with the "intention" or in the "knowledge" that they will be used to carry out predicate acts — Not necessary that funds actually used to carry out predicate acts — Reliance by Ukraine upon mental element of "knowledge" — Ordinary meaning of term "knowledge" — Funder must have been aware that funds were to be used to carry out a predicate act — "Knowledge" to be determined on basis of objective factual circumstances — Whether groups notorious for committing predicate acts or were characterized as "terrorist" by United Nations organ — Characterization by a single State of organization or group as "terrorist" insufficient.*

Proof of predicate acts — Offence of terrorism financing distinct from commission of predicate acts — Not necessary to determine whether incidents alleged by Ukraine constitute predicate acts — Insufficient evidence to characterize armed groups implicated by Ukraine in commission of alleged predicate acts as groups notorious for committing such acts.

Questions of proof — Claims do not require application of heightened standard of proof — The Court will determine whether evidence is

convincing — Evidential threshold differs depending on nature of obligation imposed by particular provision of ICSFT invoked.

*

Alleged violations of obligations under ICSFT.

Obligation of States parties under Article 8 of ICSFT — Applicant's claim primarily concerns alleged obligation to freeze funds — Evidentiary threshold — Obligation to freeze funds comes into operation if State party has reasonable grounds to suspect that funds were used or allocated for purpose of terrorism financing — Notes Verbales and requests for legal assistance do not contain sufficiently specific and detailed evidence to give Russian Federation reasonable grounds to suspect that funds were allocated for carrying out predicate acts — Not established that Russian Federation violated its obligations under Article 8, paragraph 1, of ICSFT.

Obligations of State parties under Article 9, paragraph 1, of ICSFT — Relatively low evidentiary threshold for obligation to arise — Article 9 does not however require initiation of investigation into unsubstantiated allegations of terrorism financing — Information provided by Ukraine to Russian Federation met evidentiary threshold — Respondent required to undertake investigation — Failure of Russian Federation to fulfil its obligation — Violation by Russian Federation of its obligations under Article 9, paragraph 1, of ICSFT.

Obligations of States parties under Article 10, paragraph 1, of ICSFT — Applicant's allegation relates to obligation to prosecute — Obligation to prosecute is ordinarily implemented after conduct of an investigation — Article 10 does not impose absolute obligation — Competent authorities to determine whether prosecution warranted based on available evidence and applicable legal rules — Reasonable grounds must exist to suspect that an offence of terrorism financing has been committed — Information provided by Ukraine to Russian Federation did not meet that threshold — Respondent not under obligation to submit any specific cases to competent authorities for purpose of prosecution — Not established that Russian Federation violated its obligations under Article 10, paragraph 1, of ICSFT.

Obligation of States parties under Article 12 of ICSFT — Of 12 requests for legal assistance by Ukraine, only 3 concerned allegations regarding provision of funds to persons or organizations engaged in commission of predicate acts — Requests did not describe in any detail the commission of

alleged predicate acts by recipients of funds — No indication that alleged funders knew that funds provided would be used for commission of predicate acts — Requests did not give rise to obligation for Russian Federation to provide legal assistance for terrorism financing investigations — Not established that Russian Federation violated its obligations under Article 12, paragraph 1, of ICSFT.

Obligation of States parties under Article 18, paragraph 1, of ICSFT — Not necessary to find that offence of terrorism financing has been committed for a State party to have breached its obligations under Article 18, paragraph 1 — Ordinary meaning of term "all practicable measures" encompasses all reasonable and feasible measures — Such measures may include legislative and regulatory measures — Ukraine did not point to specific measures that Russian Federation failed to take to prevent terrorism financing offences — Russian Federation not under obligation to restrict all funding for the "Donetsk People's Republic" (DPR) and the "Luhansk People's Republic" (LPR) — Russian Federation not under obligation to designate a group as a terrorist entity under its domestic law — Russian Federation had no reasonable grounds to suspect the funds in question were to be used for purpose of terrorism financing — Not established that Russian Federation violated its obligations under Article 18, paragraph 1, of ICSFT.

*

Remedies in respect of claims under ICSFT.

Declaration by the Court that Russian Federation violated its obligations under Article 9, paragraph 1, of ICSFT and continues to be required to undertake investigations into sufficiently substantiated allegations of acts of terrorism financing in eastern Ukraine — Not necessary or appropriate to grant any of the other forms of relief requested.

* *

International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Preliminary issues — Doctrine of "clean hands" not applicable — Reference to "campaign of racial discrimination" in 2019 Judgment on preliminary objections — Pattern of racial discrimination needs to be established — Burden of proof varies depending on type of facts to be established — Standard of proof varies depending on gravity of allegation

— Convincing evidence necessary in present case — Probative value of evidence — Meaning of "racial discrimination" under Article 1, paragraph 1, of CERD — Neutral measure may be discriminatory if it produces disparate adverse effect on rights of a person or a group protected under CERD — Crimean Tatars and ethnic Ukrainians in Crimea are ethnic groups protected under CERD.

*

Alleged violations by Respondent of Articles 2 and 4 to 7 of CERD.

Incidents of physical violence directed at Crimean Tatars and ethnic Ukrainians in Crimea — Individuals targeted for their political and ideological positions — Any disparate adverse effect on rights of Crimean Tatars and ethnic Ukrainians may be the result of political opposition and not related to prohibited grounds — Physical violence in Crimea not only suffered by Crimean Tatars and ethnic Ukrainians — Alleged violation of duty to investigate allegations of racial discrimination not substantiated — Violations by Russian Federation of its obligations under CERD on account of incidents of physical violence not established.

Law enforcement measures, including searches, detentions and prosecutions directed at persons of Crimean Tatar origin — Disparate adverse effect of measures on rights of persons of Crimean Tatar origin — Measures not based on prohibited grounds — Allegations of failure by Russian Federation to adopt measures for prevention, eradication and punishment of hate speech not established — The Court not convinced that Russian Federation engaged in discriminatory law enforcement measures against Crimean Tatars based on ethnic origin.

Measures taken against the Mejlis *— Measures were taken in response to political opposition — Not established that measures were based on ethnic origin of targeted persons.*

Ban on the Mejlis *— Role of the* Mejlis *in representing Crimean Tatar community — The* Mejlis *is executive body of the* Qurultay *—* Qurultay *not banned — Ban on the* Mejlis *produced disparate adverse effect on rights of persons of Crimean Tatar origin — Ban on the* Mejlis *appears due to political activities of some of its leaders rather than based on ethnic origin — Not established that Russian Federation violated its obligations under CERD by imposing ban on the* Mejlis*.*

Measures relating to citizenship — Russian Federation applies citizenship régime in Crimea to all persons over whom it exercises jurisdiction — Not

established that Respondent violated its obligations under CERD as a result of citizenship régime in Crimea.

Restrictions relating to gatherings of cultural importance to Crimean Tatars and ethnic Ukrainians — Measures produced disparate adverse effect on rights of Crimean Tatars and ethnic Ukrainians — Restrictions not based on prohibited grounds — Not established that Russian Federation violated its obligations under CERD by imposing restrictions on certain gatherings of ethnic cultural importance.

Measures restricting Crimean Tatar and Ukrainian media outlets — Measures not based on ethnic origin of persons affiliated with those media outlets — Not established that Respondent violated its obligations under CERD by restricting Crimean Tatar and ethnic Ukrainian media.

Measures relating to cultural heritage of Crimean Tatar and ethnic Ukrainian communities — Not established that any differentiation of treatment of persons affiliated with ethnic Ukrainian cultural institutions in Crimea based on ethnic origin — Not established that Russian Federation violated its obligations under CERD by taking measures relating to cultural heritage of Crimean Tatar and ethnic Ukrainian communities.

Measures relating to education in Crimea — Restrictive measures taken by a State with respect to education in a minority language may fall within scope of CERD — Decline noted in number of students receiving education in Ukrainian language between 2014 and 2016 — Disparate adverse effect on rights of ethnic Ukrainian families — Russian Federation not in compliance with its duty to protect rights of ethnic Ukrainians to have access to education in Ukrainian language — The Court unable to conclude on basis of evidence that quality of education in Crimean Tatar language has significantly deteriorated since 2014 — The Court's finding that there is pattern of racial discrimination with regard to school education in Ukrainian language, but that no such pattern is established with regard to school education in Crimean Tatar language.

Russian Federation has violated Article 2 (1) (a) *and Article 5* (e) *(v) of CERD with regard to implementation of school education in Ukrainian language.*

*

Remedies in respect of claims under CERD.

Declaration by the Court that Russian Federation has acted in violation of Article 2 (1) (a) *of CERD and Article 5* (e) *(v) of CERD — Not necessary or appropriate to order any other remedy requested.*

* *

Alleged violation of obligations under Order on provisional measures of 19 April 2017.

Finding that Russian Federation, by maintaining ban on the Mejlis*, has violated first provisional measure — Finding is independent of conclusion that ban on the* Mejlis *not in violation of Russian Federation's obligations under CERD — Finding that Russian Federation has not violated second provisional measure requiring Respondent to ensure availability of education in Ukrainian language — Finding that Russian Federation, by recognizing the DPR and the LPR as independent States and by launching "special military operation" against Ukraine, has violated its obligation regarding non-aggravation of dispute.*

*

Remedies in respect of violations of provisional measures.

Declaration by the Court that Russian Federation acted in breach of provisional measures indicated in Order of 19 April 2017 provides adequate satisfaction to Ukraine — Not necessary or appropriate to order any other remedy requested.

JUDGMENT

Present: *President* DONOGHUE; *Judges* TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, SALAM, IWASAWA, NOLTE, CHARLESWORTH, BRANT; *Judges* ad hoc POCAR, TUZMUKHAMEDOV; *Registrar* Gautier.

In the case concerning the application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination,

between

Ukraine,

represented by

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Mr Dmytro Zyuzia, Security Service of Ukraine,
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and

the Russian Federation,

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as Advisers,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 16 January 2017, the Government of Ukraine filed in the Registry of the Court an Application instituting proceedings against the Russian Federation with regard to alleged violations by the latter of its obligations under the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999 (hereinafter the "ICSFT") and the

International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter "CERD").

2. In its Application, Ukraine sought to found the jurisdiction of the Court on Article 24, paragraph 1, of the ICSFT and on Article 22 of CERD, in conjunction with Article 36, paragraph 1, of the Statute of the Court.

3. On 16 January 2017, Ukraine also submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

4. The Registrar immediately communicated the Application to the Government of the Russian Federation in accordance with Article 40, paragraph 2, of the Statute of the Court, and the Request for the indication of provisional measures, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing of the Application and the Request for the indication of provisional measures by Ukraine.

5. In addition, by a letter dated 17 January 2017, the Registrar informed all Member States of the United Nations of the filing of the above-mentioned Application and Request for the indication of provisional measures.

6. Pursuant to Article 40, paragraph 3, of the Statute, the Registrar notified the Member States of the United Nations, through the Secretary-General, of the filing of the Application, by transmission of the printed bilingual text.

7. By letters dated 20 January 2017, the Registrar notified both Parties that the Member of the Court of Russian nationality, referring to Article 24, paragraph 1, of the Statute, had informed the President of the Court of his intention not to participate in the decision of the case. Pursuant to Article 31 of the Statute and Article 37, paragraph 1, of the Rules of Court, the Russian Federation chose Mr Leonid Skotnikov to sit as judge *ad hoc* in the case. Following the resignation of Judge *ad hoc* Skotnikov on 27 February 2023, the Russian Federation chose Mr Bakhtiyar Tuzmukhamedov to sit as judge *ad hoc*.

8. Since the Court included upon the Bench no judge of Ukrainian nationality, Ukraine proceeded to exercise the right conferred upon it by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case; it chose Mr Fausto Pocar.

9. By an Order of 19 April 2017, the Court, having heard the Parties, indicated the following provisional measures:

> "(1) With regard to the situation in Crimea, the Russian Federation must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,
>
> *(a)* Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*;

(b) Ensure the availability of education in the Ukrainian language;

(2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve." (*I.C.J. Reports 2017*, pp. 140-141, para. 106.)

10. In a letter dated 19 April 2018, Ukraine drew the Court's attention to the Russian Federation's alleged non-compliance with point (1) *(a)* of operative paragraph 106 of the Court's Order on the Request for the indication of provisional measures (hereinafter the "Order indicating provisional measures" or "Order of 19 April 2017"). Following this communication, at the Court's request, the Russian Federation provided information on measures that had been taken by it to implement point (1) *(a)* of operative paragraph 106 of the Court's Order of 19 April 2017, and Ukraine furnished comments on that information. At the Court's further request, additional information and comments were provided by the Parties. By letters dated 29 March 2019, the Parties were informed that the Court had considered and taken due note of the various communications submitted by them. It was further indicated in this respect that the issues raised in these communications may need to be addressed by the Court at a later juncture. It was also conveyed to the Parties that, in such an eventuality, they would be at liberty to raise any issues of concern relating to the provisional measures indicated by the Court.

11. Pursuant to the instructions of the Court under Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to the ICSFT and to States parties to CERD the notifications provided for in Article 63, paragraph 1, of the Statute. In addition, with regard to both of these instruments, in accordance with Article 69, paragraph 3, of the Rules of Court, the Registrar addressed to the United Nations, through its Secretary-General, the notifications provided for in Article 34, paragraph 3, of the Statute.

12. By an Order dated 12 May 2017, the President of the Court fixed 12 June 2018 and 12 July 2019 as the respective time-limits for the filing of a Memorial by Ukraine and a Counter-Memorial by the Russian Federation. The Memorial of Ukraine was filed within the time-limit thus fixed.

13. On 12 September 2018, within the time-limit prescribed by Article 79, paragraph 1, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, the Russian Federation raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Consequently, by an Order of 17 September 2018, the President of the Court noted that, by virtue of Article 79, paragraph 5, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, the proceedings on the merits were suspended, and, taking account of Practice Direction V, fixed 14 January 2019 as the time-limit within which Ukraine could present a

written statement of its observations and submissions on the preliminary objections raised by the Russian Federation. Ukraine filed such a statement within the time-limit so prescribed and the case thus became ready for hearing in respect of the preliminary objections.

14. Referring to Article 53, paragraph 1, of the Rules of Court, the Government of the State of Qatar asked to be furnished with copies of the Memorial of Ukraine and the preliminary objections of the Russian Federation filed in the case, as well as any documents annexed thereto. Having ascertained the views of the Parties in accordance with the same provision, the Court decided, taking into account the objection raised by one Party, that it would not be appropriate to grant that request. The Registrar duly communicated that decision to the Government of the State of Qatar and to the Parties.

15. Public hearings on the preliminary objections raised by the Russian Federation were held on 3, 4, 6 and 7 June 2019. In its Judgment of 8 November 2019, the Court found that it had jurisdiction on the basis of Article 24, paragraph 1, of the ICSFT to entertain the claims made by Ukraine under this Convention. In the same Judgment, the Court found that it had jurisdiction on the basis of Article 22 of CERD to entertain the claims made by Ukraine under this Convention and that the Application in relation to those claims was admissible.

16. By an Order of 8 November 2019, the Court fixed 8 December 2020 as the new time-limit for the filing of the Counter-Memorial of the Russian Federation. By Orders dated 13 July 2020 and 20 January 2021, respectively, the Court, at the request of the Respondent, extended that time-limit first until 8 April 2021 and then until 8 July 2021. By an Order dated 28 June 2021, the President of the Court, at the request of the Respondent, further extended that time-limit to 9 August 2021. The Counter-Memorial was filed within the time-limit thus extended.

17. By an Order dated 8 October 2021, the Court authorized the submission of a Reply by Ukraine and a Rejoinder by the Russian Federation, and fixed 8 April 2022 and 8 December 2022 as the respective time-limits for the filing of those pleadings. By an Order dated 8 April 2022, at the request of the Applicant, the Court extended to 29 April 2022 and 19 January 2023 the respective time-limits for the filing of these pleadings. The Reply was filed within the time-limit thus extended.

18. By Orders dated 15 December 2022 and 3 February 2023, respectively, the Court, at the request of the Respondent, extended the time-limit for the filing of the Rejoinder by the Russian Federation first until 24 February 2023 and then until 10 March 2023. The Rejoinder was filed within the time-limit thus extended.

19. By a letter dated 21 March 2023, the Registrar, acting pursuant to Article 69, paragraph 3, of the Rules of Court, transmitted to the Secretary-General of the United Nations copies of the written proceedings filed in the

merits stage of the case, and asked whether the Organization intended to present observations in writing under that provision. By a letter dated 23 March 2023, the Assistant Secretary-General in charge of the Office of Legal Affairs of the United Nations stated that the Organization did not intend to submit any observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court.

20. By a letter dated 30 May 2023, the Agent of the Russian Federation, referring to Article 56 of the Rules of Court and Practice Direction IX, submitted a document entitled "Expert report of Alexey Borisovich Artyushenko, Olga Anatolyevna Zolotareva, Viktor Viktorovich Merkuryev", together with annexed exhibits. By a letter dated 2 June 2023, the Agent of Ukraine informed the Court that his Government objected to the production of the said document by the Russian Federation. The Court, having considered the views of the Parties, decided to authorize the production by the Russian Federation of the Expert report and annexed exhibits pursuant to Article 56, paragraph 2, of the Rules of Court, it being understood that Ukraine would have the opportunity to comment thereon during the hearings. The Court further decided that, should Ukraine wish to comment in writing and submit documents in support of its comments pursuant to Article 56, paragraph 3, of the Rules of Court, it might do so by 26 June 2023. The decision of the Court with respect to the Russian Federation's request was duly communicated to the Parties by letters from the Registrar dated 5 June 2023. Ukraine provided written comments on the Expert report on 26 June 2023.

21. Pursuant to Article 53, paragraph 2, of the Rules of Court, the Court, after ascertaining the views of the Parties, decided that copies of the written pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings, with the exception of the names and personal data of certain witnesses referred to in the Counter-Memorial and Rejoinder of the Russian Federation, as well as in documents annexed thereto.

22. Public hearings were held on 6, 8, 12 and 14 June 2023, at which the Court heard the oral arguments and replies of:

For Ukraine:	HE Mr Anton Korynevych, Mr Harold Hongju Koh, Mr Jean-Marc Thouvenin, Mr David M. Zionts, Ms Marney L. Cheek, Ms Clovis Trevino, Mr Jonathan Gimblett, Ms Oksana Zolotaryova.
For the Russian Federation:	HE Mr Alexander Shulgin, HE Mr Gennady Kuzmin,

Mr Michael Swainston,
Mr Hadi Azari,
Mr Sienho Yee,
Mr Kirill Udovichenko,
HE Ms Maria Zabolotskaya,
Mr Jean-Charles Tchikaya,
Mr Konstantin Kosorukov.

23. At the hearings, a Member of the Court put a question to the Parties, to which replies were given orally, in accordance with Article 61, paragraph 4, of the Rules of Court.

24. Before the opening of its second round of oral pleadings on 14 June 2023, the Russian Federation, in accordance with usual practice, transmitted to the Registry the texts of its oral pleadings for that day, as well as a folder of documents for the convenience of the judges. Among these texts was a speech (with accompanying slides available in the judges' folder), in which counsel for the Russian Federation raised a certain matter that, according to the Respondent, might have implications for the administration of justice. The Court considered that, in the interests of the good administration of justice, the Russian Federation should not address that matter during the second round of oral argument, but should instead raise its concerns in writing. Ukraine would then be given an opportunity to comment thereon also in writing. The President made a statement to this effect at the opening of the public sitting on 14 June 2023. The Russian Federation, however, did not subsequently communicate in writing its concerns and therefore no further action by the other Party or by the Court ensued.

*

25. In the Application, the following claims were made by Ukraine:

With regard to the ICSFT:

> "134. Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, and through other agents acting on its instructions or under its direction and control, has violated its obligations under the Terrorism Financing Convention by:
>
> *(a)* supplying funds, including in-kind contributions of weapons and training, to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals, in violation of Article 18;
>
> *(b)* failing to take appropriate measures to detect, freeze, and seize funds used to assist illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv

Partisans, and associated groups and individuals, in violation of Articles 8 and 18;

(c) failing to investigate, prosecute, or extradite perpetrators of the financing of terrorism found within its territory, in violation of Articles 9, 10, 11, and 18;

(d) failing to provide Ukraine with the greatest measure of assistance in connection with criminal investigations of the financing of terrorism, in violation of Articles 12 and 18; and

(e) failing to take all practicable measures to prevent and counter acts of financing of terrorism committed by Russian public and private actors, in violation of Article 18.

135. Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation bears international responsibility, by virtue of its sponsorship of terrorism and failure to prevent the financing of terrorism under the Convention, for the acts of terrorism committed by its proxies in Ukraine, including:

(a) the shoot-down of Malaysia Airlines Flight MH17;

(b) the shelling of civilians, including in Volnovakha, Mariupol, and Kramatorsk; and

(c) the bombing of civilians, including in Kharkiv.

136. Ukraine respectfully requests the Court to order the Russian Federation to comply with its obligations under the Terrorism Financing Convention, including that the Russian Federation:

(a) immediately and unconditionally cease and desist from all support, including the provision of money, weapons, and training, to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals;

(b) immediately make all efforts to ensure that all weaponry provided to such armed groups is withdrawn from Ukraine;

(c) immediately exercise appropriate control over its border to prevent further acts of financing of terrorism, including the supply of weapons, from the territory of the Russian Federation to the territory of Ukraine;

(d) immediately stop the movement of money, weapons, and all other assets from the territory of the Russian Federation and occupied Crimea to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals, including by freezing all bank accounts used to support such groups;

(e) immediately prevent all Russian officials from financing terrorism in Ukraine, including Sergei Shoigu, Minister of Defence of the Russian Federation; Vladimir Zhirinovsky, Vice-Chairman of the State Duma; Sergei Mironov, member of the State Duma; and Gennadiy Zyuganov, member of the State Duma, and initiate prosecution against these and other actors responsible for financing terrorism;

(f) immediately provide full co-operation to Ukraine in all pending and future requests for assistance in the investigation and interdiction of the financing of terrorism relating to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals;

(g) make full reparation for the shoot-down of Malaysia Airlines Flight MH17;

(h) make full reparation for the shelling of civilians in Volnovakha;

(i) make full reparation for the shelling of civilians in Mariupol;

(j) make full reparation for the shelling of civilians in Kramatorsk;

(k) make full reparation for the bombing of civilians in Kharkiv; and

(l) make full reparation for all other acts of terrorism the Russian Federation has caused, facilitated, or supported through its financing of terrorism, and failure to prevent and investigate the financing of terrorism."

With regard to CERD:

"137. Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, including the *de facto* authorities administering the illegal Russian occupation of Crimea, and through other agents acting on its instructions or under its direction and control, has violated its obligations under the CERD by:

(a) systematically discriminating against and mistreating the Crimean Tatar and ethnic Ukrainian communities in Crimea, in furtherance of a State policy of cultural erasure of disfavoured groups perceived to be opponents of the occupation régime;

(b) holding an illegal referendum in an atmosphere of violence and intimidation against non-Russian ethnic groups, without any effort to seek a consensual and inclusive solution protecting those groups,

and as an initial step toward depriving these communities of the protection of Ukrainian law and subjecting them to a régime of Russian dominance;

(c) suppressing the political and cultural expression of Crimean Tatar identity, including through the persecution of Crimean Tatar leaders and the ban on the *Mejlis* of the Crimean Tatar People;
(d) preventing Crimean Tatars from gathering to celebrate and commemorate important cultural events;
(e) perpetrating and tolerating a campaign of disappearances and murders of Crimean Tatars;
(f) harassing the Crimean Tatar community with an arbitrary régime of searches and detention;
(g) silencing Crimean Tatar media;
(h) suppressing Crimean Tatar language education and the community's educational institutions;
(i) suppressing Ukrainian language education relied on by ethnic Ukrainians;
(j) preventing ethnic Ukrainians from gathering to celebrate and commemorate important cultural events; and

(k) silencing ethnic Ukrainian media.

138. Ukraine respectfully requests the Court to order the Russian Federation to comply with its obligations under the CERD, including:

(a) immediately cease and desist from the policy of cultural erasure and take all necessary and appropriate measures to guarantee the full and equal protection of the law to all groups in Russian-occupied Crimea, including Crimean Tatars and ethnic Ukrainians;

(b) immediately restore the rights of the *Mejlis* of the Crimean Tatar People and of Crimean Tatar leaders in Russian-occupied Crimea;
(c) immediately restore the rights of the Crimean Tatar People in Russian-occupied Crimea to engage in cultural gatherings, including the annual commemoration of the *Sürgün*;
(d) immediately take all necessary and appropriate measures to end the disappearance and murder of Crimean Tatars in Russian-occupied Crimea, and to fully and adequately investigate the disappearances of Reshat Ametov, Timur Shaimardanov, Ervin Ibragimov, and all other victims;
(e) immediately take all necessary and appropriate measures to end unjustified and disproportionate searches and detentions of Crimean Tatars in Russian-occupied Crimea;

(f) immediately restore licenses and take all other necessary and appropriate measures to permit Crimean Tatar media outlets to resume operations in Russian-occupied Crimea;

(g) immediately cease interference with Crimean Tatar education and take all necessary and appropriate measures to restore education in the Crimean Tatar language in Russian-occupied Crimea;

(h) immediately cease interference with ethnic Ukrainian education and take all necessary and appropriate measures to restore education in the Ukrainian language in Russian-occupied Crimea;

(i) immediately restore the rights of ethnic Ukrainians to engage in cultural gatherings in Russian-occupied Crimea;

(j) immediately take all necessary and appropriate measures to permit the free operation of ethnic Ukrainian media in Russian-occupied Crimea; and

(k) make full reparation for all victims of the Russian Federation's policy and pattern of cultural erasure through discrimination in Russian-occupied Crimea."

26. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Ukraine,

in the Memorial:

"653. For the reasons set out in this Memorial, Ukraine respectfully requests the Court to adjudge and declare that:

ICSFT

(a) The Russian Federation is responsible for violations of Article 18 of the ICSFT by failing to cooperate in the prevention of the terrorism financing offenses set forth in Article 2 by taking all practicable measures to prevent and counter preparations in its territory for the commission of those offenses within or outside its territory. Specifically, the Russian Federation has violated Article 18 by failing to take the practicable measures of: (i) preventing Russian state officials and agents from financing terrorism in Ukraine; (ii) discouraging public and private actors and other non-governmental third parties from financing terrorism in Ukraine; (iii) policing its border with Ukraine to stop the financing of terrorism; and (iv) monitoring and suspending banking activity and

other fundraising activities undertaken by private and public actors on its territory to finance . . . terrorism in Ukraine.

(b) The Russian Federation is responsible for violations of Article 8 of the ICSFT by failing to identify and detect funds used or allocated for the purposes of financing terrorism in Ukraine, and by failing to freeze or seize funds used or allocated for the purpose of financing terrorism in Ukraine.

(c) The Russian Federation has violated Articles 9 and 10 of the ICSFT by failing to investigate the facts concerning persons who have committed or are alleged to have committed terrorism financing in Ukraine, and to extradite or prosecute alleged offenders.

(d) The Russian Federation has violated Article 12 of the ICSFT by failing to provide Ukraine the greatest measure of assistance in connection with criminal investigations in respect of terrorism financing offenses.

(e) As a consequence of the Russian Federation's violations of the ICSFT, its proxies in Ukraine have been provided with funds that enabled them to commit numerous acts of terrorism, including the downing of Flight MH17, the shelling of Volnovakha, Mariupol, Kramatorsk, and Avdiivka, the bombings of the Kharkiv unity march and Stena Rock Club, the attempted assassination of a Ukrainian member of Parliament, and others.

CERD

(f) The Russian Federation has violated CERD Article 2 by engaging in numerous and pervasive acts of racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea and by engaging in a policy and practice of racial discrimination against those communities.

(g) The Russian Federation has further violated CERD Article 2 by sponsoring, defending or supporting racial discrimination by other persons or organizations against the Crimean Tatar and Ukrainian communities in Crimea.

(h) The Russian Federation has violated CERD Article 4 by promoting and inciting racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.

(i) The Russian Federation has violated CERD Article 5 by failing to guarantee the right of members of the Crimean Tatar and Ukrainian communities to equality before the law, notably in their enjoyment of (i) the right to equal treatment before the tribunals and all other organs administering justice; (ii) the right to security of person and protection by the State against violence or bodily harm, whether

inflicted by government officials or by any individual group or institution; (iii) political rights; (iv) other civil rights; and (v) economic, social and cultural rights.

(j) The Russian Federation has violated CERD Article 6 by failing to assure the Crimean Tatar and Ukrainian communities in Crimea effective protection and remedies against acts of racial discrimination.

(k) The Russian Federation has violated CERD Article 7 by failing to adopt immediate and effective measures in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.

654. The aforementioned acts constitute violations of the ICSFT and CERD, and are therefore internationally wrongful acts for which the Russian Federation bears international responsibility. The Russian Federation is therefore required to:

ICSFT

(a) Cease immediately each of the above violations of ICSFT Articles 8, 9, 10, 12, and 18 and provide Ukraine with appropriate guarantees and public assurances that it will refrain from such actions in the future.

(b) Take all practicable measures to prevent the commission of terrorism financing offences, including (i) ensuring that Russian state officials or any other person under its jurisdiction do not provide weapons or other funds to groups engaged in terrorism in Ukraine, including without limitation the DPR, LPR, Kharkiv Partisans, and other illegal armed groups; (ii) cease encouraging public and private actors and other non-governmental third parties to finance terrorism in Ukraine; (iii) police Russia's border with Ukraine to stop any supply of weapons into Ukraine; and (iv) monitor and prohibit private and public transactions originating in Russian territory, or initiated by Russian nationals, that finance terrorism in Ukraine, including by enforcing banking restrictions to block transactions for the benefit of groups engaged in terrorism in Ukraine, including without limitation the DPR, LPR, the Kharkiv Partisans, and other illegal armed groups.

(c) Freeze or seize assets of persons suspected of supplying funds to groups engaged in terrorism in Ukraine, including without limitation illegal armed groups associated with the DPR, LPR, and Kharkiv Partisans, and cause the forfeiture of assets of persons found to have supplied funds to such groups.

(d) Provide the greatest measure of assistance to Ukraine in connection with criminal investigations of suspected financers of terrorism.

(e) Pay Ukraine financial compensation, in its own right and as *parens patriae* for its citizens, for the harm Ukraine has suffered as a result of Russia's violations of the ICSFT, including the harm suffered by its nationals injured by acts of terrorism that occurred as a consequence of the Russian Federation's ICSFT violations, with such compensation to be quantified in a separate phase of these proceedings.

(f) Pay moral damages to Ukraine in an amount deemed appropriate by the Court, reflecting the seriousness of the Russian Federation's violations of the ICSFT, the quantum of which is to be determined in a separate phase of these proceedings.

CERD

(g) Immediately comply with the provisional measures ordered by the Court on 19 April 2017, in particular by lifting its ban on the activities of the *Mejlis* of the Crimean Tatar People and by ensuring the availability of education in the Ukrainian language.

(h) Cease immediately each of the above violations of CERD Articles 2, 4, 5, 6 and 7, and provide Ukraine with appropriate guarantees and public assurances that it will refrain from such actions in the future.

(i) Guarantee the right of members of the Crimean Tatar and Ukrainian communities to equality before the law, notably in the enjoyment of the human rights and fundamental freedoms protected by the Convention.

(j) Assure to all residents of Crimea within its jurisdiction effective protection and remedies against acts of racial discrimination.

(k) Adopt immediate and effective measures in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.

(l) Pay Ukraine financial compensation, in its own right and as *parens patriae* for its citizens, for the harm Ukraine has suffered as a result of Russia's violations of the CERD, including the harm suffered by victims as a result of the Russian Federation's violations of CERD Articles 2, 4, 5, 6 and 7, with such compensation to be quantified in a separate phase of these proceedings."

in the Reply:

"734. For the reasons set out in the Memorial and in this Reply, Ukraine respectfully requests the Court to adjudge and declare that:

ICSFT

(a) The Russian Federation is responsible for violations of Article 18 of the ICSFT by failing to cooperate in the prevention of the terrorism financing offenses set forth in Article 2 by taking all practicable measures to prevent and counter preparations in its territory for the commission of those offenses within or outside its territory. Specifically, the Russian Federation has violated Article 18 by failing to take the practicable measures of: (i) preventing Russian state officials and agents from financing terrorism in Ukraine; (ii) discouraging public and private actors and other non-governmental third parties from financing terrorism in Ukraine; (iii) policing its border with Ukraine to stop the financing of terrorism; and (iv) monitoring and suspending banking activity and other fundraising activities undertaken by private and public actors on its territory to finance . . . terrorism in Ukraine.

(b) The Russian Federation is responsible for violations of Article 8 of the ICSFT by failing to identify and detect funds used or allocated for the purpose of financing terrorism in Ukraine, and by failing to freeze or seize funds used or allocated for the purpose of financing terrorism in Ukraine.

(c) The Russian Federation has violated Articles 9 and 10 of the ICSFT by failing to investigate the facts concerning persons who have committed or are alleged to have committed terrorism financing in Ukraine, and to extradite or prosecute alleged offenders.

(d) The Russian Federation has violated Article 12 of the ICSFT by failing to provide Ukraine the greatest measure of assistance in connection with criminal investigations in respect of terrorism financing offenses.

(e) As a consequence of the Russian Federation's violations of the ICSFT, its proxies in Ukraine have been provided with funds that enabled them to commit numerous acts of terrorism, including the downing of Flight MH17, the shelling of Volnovakha, Mariupol, Kramatorsk, and Avdiivka, the bombings of the Kharkiv unity march and Stena Rock Club, the attempted assassination of a Ukrainian member of Parliament, and others.

CERD

(f) The Russian Federation has violated CERD Article 2 by engaging in numerous and pervasive acts of racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea and by engaging in a policy and practice of racial discrimination against those communities.

(g) The Russian Federation has further violated CERD Article 2 by sponsoring, defending or supporting racial discrimination by other persons or organizations against the Crimean Tatar and Ukrainian communities in Crimea.

(h) The Russian Federation has violated CERD Article 4 by promoting and inciting racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.

(i) The Russian Federation has violated CERD Article 5 by failing to guarantee the right of members of the Crimean Tatar and Ukrainian communities to equality before the law, notably in their enjoyment of (i) the right to equal treatment before the tribunals and all other organs administering justice; (ii) the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (iii) political rights; (iv) other civil rights; and (v) economic, social and cultural rights.

(j) The Russian Federation has violated CERD Article 6 by failing to assure the Crimean Tatar and Ukrainian communities in Crimea effective protection and remedies against acts of racial discrimination.

(k) The Russian Federation has violated CERD Article 7 by failing to adopt immediate and effective measures in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.

Provisional Measures Order

(l) The Russian Federation has breached the obligations incumbent upon it under the Order indicating provisional measures issued by the Court on 19 April 2017 by maintaining limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*.

(m) The Russian Federation has breached the obligations incumbent upon it under the Order indicating provisional measures issued by the Court on 19 April 2017 by failing to ensure the availability of education in the Ukrainian language.

(n) The Russian Federation has breached the obligations incumbent upon it under the Order indicating provisional measures issued by the Court on 19 April 2017 by aggravating and extending the dispute and making it more difficult to resolve by recognizing the independence and sovereignty of the DPR and LPR and engaging in acts of racial discrimination in the course of its renewed aggression against Ukraine.

735. The aforementioned acts constitute violations of the ICSFT, the CERD, and the Court's Order on provisional measures, and are therefore

internationally wrongful acts for which the Russian Federation bears international responsibility. The Russian Federation is therefore required to:

ICSFT

(a) Cease immediately each of the above violations of ICSFT Articles 8, 9, 10, 12 and 18 and provide Ukraine with appropriate guarantees and public assurances that it will refrain from such actions in the future.

(b) Take all practicable measures to prevent the commission of terrorism financing offenses, including (i) ensuring that Russian state officials or any other person under its jurisdiction do not provide weapons or other funds to groups engaged in terrorism in Ukraine, including without limitation the DPR, LPR, Kharkiv Partisans, and other illegal armed groups; (ii) cease encouraging public and private actors and other nongovernmental third parties to finance terrorism in Ukraine; (iii) police Russia's border with Ukraine to stop any supply of weapons into Ukraine; and (iv) monitor and prohibit private and public transactions originating in Russian territory, or initiated by Russian nationals, that finance terrorism in Ukraine, including by enforcing banking restrictions to block transactions for the benefit of groups engaged in terrorism in Ukraine, including without limitation the DPR, LPR, the Kharkiv Partisans, and other illegal armed groups.

(c) Freeze or seize assets of persons suspected of supplying funds to groups engaged in terrorism in Ukraine, including without limitation illegal armed groups associated with the DPR, LPR, and Kharkiv Partisans, and cause the forfeiture of assets of persons found to have supplied funds to such groups.

(d) Provide the greatest measure of assistance to Ukraine in connection with criminal investigations of suspected financers of terrorism.

(e) Pay Ukraine financial compensation, in its own right and as *parens patriae* for its citizens, for the harm Ukraine has suffered as a result of Russia's violations of the ICSFT, including the harm suffered by its nationals injured by acts of terrorism that occurred as a consequence of the Russian Federation's ICSFT violations, with such compensation to be quantified in a separate phase of these proceedings.

(f) Pay moral damages to Ukraine in an amount deemed appropriate by the Court, reflecting the seriousness of the Russian Federation's violations of the ICSFT, the quantum of which is to be determined in a separate phase of these proceedings.

CERD

(g) Cease immediately each of the above violations of CERD Articles 2, 4, 5, 6, and 7, and provide Ukraine with appropriate guarantees and public assurances that it will refrain from such actions in the future.

(h) Guarantee the right of members of the Crimean Tatar and Ukrainian communities to equality before the law, notably in the enjoyment of the human rights and fundamental freedoms protected by the Convention.

(i) Assure to all residents of Crimea within its jurisdiction effective protection and remedies against acts of racial discrimination.

(j) Adopt immediate and effective measures in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.

(k) Pay Ukraine financial compensation and moral damages, in its own right and as *parens patriae* for its citizens, for the harm Ukraine has suffered as a result of Russia's violations of the CERD, including the harm suffered by victims as a result of the Russian Federation's violations of CERD Articles 2, 4, 5, 6 and 7, with such compensation to be quantified in a separate phase of these proceedings.

Provisional Measures Order

(l) Immediately comply with the provisional measures ordered by the Court on 19 April 2017, in particular by lifting its ban on the activities of the *Mejlis* of the Crimean Tatar People and by ensuring the availability of education in the Ukrainian language.

(m) Immediately comply with the provisional measures ordered by the Court on 19 April 2017, in particular by ceasing its actions that aggravate the dispute and by not taking any further action to aggravate the dispute.

(n) Pay Ukraine financial compensation and moral damages, in its own right and as *parens patriae* for its citizens, for the harm Ukraine has suffered as a result of Russia's violations of the Court's order of 19 April 2017, with such compensation to be quantified in a separate phase of these proceedings."

On behalf of the Government of the Russian Federation,

in the Counter-Memorial:

With respect to the ICSFT:

"For the reasons set out in the present Counter-Memorial, and reserving its right to supplement or amend this Submission, the Russian Federation respectfully requests the Court to dismiss all of the claims made by Ukraine."

With respect to CERD:

"For the reasons set out in the present Counter-Memorial, and reserving its right to supplement or amend this Submission, the Russian Federation respectfully requests the Court to dismiss all of the claims made by Ukraine."

in the Rejoinder:

With respect to the ICSFT:

"In view of the foregoing, the Russian Federation respectfully requests the Court to dismiss all of the claims made by Ukraine under the ICSFT."

With respect to CERD:

"In view of the foregoing, the Russian Federation respectfully requests the Court to dismiss all of the claims made by Ukraine under the CERD."

27. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Ukraine,

at the hearing of 12 June 2023:

"1. On the basis of the facts and legal arguments presented in its written and oral pleadings, Ukraine respectfully requests the Court to adjudge and declare:

ICSFT

(a) The Russian Federation is responsible for violations of Article 18 of the ICSFT by failing to cooperate in the prevention of the terrorism financing offenses set forth in Article 2 by taking all practicable measures to prevent and counter preparations in its territory for the commission of those offenses within or outside its territory. Specifically, the Russian Federation has violated Article 18 by failing to take the practicable measures of: (i) preventing Russian state officials and agents from financing terrorism in Ukraine; (ii) discouraging public and private actors and other non-governmental third parties from financing terrorism in Ukraine; (iii) policing its border with Ukraine to stop the financing of terrorism; and (iv) monitoring and suspending banking activity and other fund-

raising activities undertaken by private and public actors on its territory to finance terrorism in Ukraine.

(b) The Russian Federation is responsible for violations of Article 8 of the ICSFT by failing to identify and detect funds used or allocated for the purposes of financing terrorism in Ukraine, and by failing to freeze or seize funds used or allocated for the purpose of financing terrorism in Ukraine.

(c) The Russian Federation has violated Articles 9 and 10 of the ICSFT by failing to investigate the facts concerning persons who have committed or are alleged to have committed terrorism financing in Ukraine, and to extradite or prosecute alleged offenders.

(d) The Russian Federation has violated Article 12 of the ICSFT by failing to provide Ukraine the greatest measure of assistance in connection with criminal investigations in respect of terrorism financing offenses.

(e) As a consequence of the Russian Federation's violations of the ICSFT, illegal armed groups in Ukraine have been provided with funds that enabled them to commit numerous acts of terrorism, including the shootdown of Flight MH17, the shelling of Volnovakha, Mariupol, Kramatorsk, and Avdiivka, the bombings of the Kharkiv unity march and Stena Rock Club, the attempted assassination of a Ukrainian member of Parliament, and others.

CERD

(f) The Russian Federation has violated CERD Article 2 by engaging in numerous and pervasive acts of racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea and by engaging in a policy and practice of racial discrimination against those communities.

(g) The Russian Federation has further violated CERD Article 2 by sponsoring, defending or supporting racial discrimination by other persons or organizations against the Crimean Tatar and Ukrainian communities in Crimea.

(h) The Russian Federation has violated CERD Article 4 by promoting and inciting racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.

(i) The Russian Federation has violated CERD Article 5 by failing to guarantee the right of members of the Crimean Tatar and Ukrainian communities to equality before the law, notably in their enjoyment of (i) the right to equal treatment before the tribunals and all other organs administering justice; (ii) the right to security of person and protection by the State against violence or bodily harm, whether

inflicted by government officials or by any individual group or institution; (iii) political rights; (iv) other civil rights; and (v) economic, social and cultural rights.

(j) The Russian Federation has violated CERD Article 6 by failing to assure the Crimean Tatar and Ukrainian communities in Crimea effective protection and remedies against acts of racial discrimination.

(k) The Russian Federation has violated CERD Article 7 by failing to adopt immediate and effective measures in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.

Provisional Measures Order

(l) The Russian Federation has breached its obligations under the Order indicating provisional measures issued by the Court on 19 April 2017 by maintaining limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*.

(m) The Russian Federation has breached its obligations under the Order indicating provisional measures issued by the Court on 19 April 2017 by failing to ensure the availability of education in the Ukrainian language.

(n) The Russian Federation has breached its obligations under the Order indicating provisional measures issued by the Court on 19 April 2017 by aggravating and extending the dispute and making it more difficult to resolve by recognizing the independence and sovereignty of the so-called DPR and LPR and engaging in acts of racial discrimination in the course of its renewed aggression against Ukraine.

2. The aforementioned acts constitute violations of the ICSFT, the CERD, and the Court's Order on provisional measures, and are therefore internationally wrongful acts for which the Russian Federation bears international responsibility. The Russian Federation is therefore required to:

ICSFT

(a) Cease immediately each of the above violations of ICSFT Articles 8, 9, 10, 12 and 18 and provide Ukraine with appropriate guarantees and public assurances that it will refrain from such actions in the future.

(b) Take all practicable measures to prevent the commission of terrorism financing offenses in Ukraine, including in the oblasts purportedly annexed by the Russian Federation on September 30, including in particular (i) ensuring that Russian state officials or any other person under its jurisdiction do not provide weapons or other

funds to groups engaged in terrorism in Ukraine; (ii) cease encouraging public and private actors and other nongovernmental third parties to finance terrorism in Ukraine; (iii) police Russia's border with Ukraine to stop any supply of weapons into Ukraine; and (iv) monitor and prohibit private and public transactions originating in Russian territory, or initiated by Russian nationals, that finance terrorism in Ukraine, including by enforcing banking restrictions to block transactions for the benefit of groups engaged in terrorism in Ukraine.

(c) Freeze or seize assets of persons suspected of supplying funds to groups engaged in terrorism in Ukraine, and cause the forfeiture of assets of persons found to have supplied funds to such groups.

(d) Provide the greatest measure of assistance to Ukraine in connection with criminal investigations of suspected financers of terrorism.

(e) Pay Ukraine financial compensation, in its own right and as *parens patriae* for its citizens, for the harm Ukraine has suffered as a result of Russia's violations of the ICSFT, including the harm suffered by its nationals injured by acts of terrorism that occurred as a consequence of the Russian Federation's ICSFT violations, with such compensation to be quantified in a separate phase of these proceedings.

(f) Pay moral damages to Ukraine in an amount deemed appropriate by the Court, reflecting the seriousness of the Russian Federation's violations of the ICSFT, the quantum of which is to be determined in a separate phase of these proceedings.

CERD

(g) Cease immediately each of the above violations of CERD Articles 2, 4, 5, 6 and 7, and provide Ukraine with appropriate guarantees and public assurances that it will refrain from such actions in the future.

(h) Guarantee the right of members of the Crimean Tatar and Ukrainian communities to equality before the law, notably in the enjoyment of the human rights and fundamental freedoms protected by the Convention.

(i) Assure to all residents of occupied Crimea effective protection and remedies against acts of racial discrimination.

(j) Adopt immediate and effective measures in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.

(k) Pay Ukraine financial compensation and moral damages, in its own right and as *parens patriae* for its citizens, for the harm Ukraine has suffered as a result of Russia's violations of the CERD, including the harm suffered by victims as a result of the Russian Federation's violations of CERD Articles 2, 4, 5, 6 and 7, with such compensation to be quantified in a separate phase of these proceedings.

Provisional Measures Order

(l) Provide full reparation for the harm caused for its actions, including restitution, financial compensation and moral damages, in its own right and as *parens patriae* for its citizens, for the harm Ukraine has suffered as a result of Russia's violations of the Court's Order of 19 April 2017, with such compensation to be quantified in a separate phase of these proceedings.

(m) Regarding restitution: restore the *Mejlis*' activities in Crimea and its members and all their rights, including their properties, retroactive elimination of all Russian administrative and other measures contrary to the Court's Order and release of members of *Mejlis* currently in jail."

On behalf of the Government of the Russian Federation,

at the hearing of 14 June 2023:

"For the reasons explained in its written submissions and developed further during the oral hearings, and for any other reasons that the Court may deem appropriate, the Russian Federation respectfully requests the Court

1. to dismiss all of the claims that Ukraine made under the International Convention for the Suppression of the Financing of Terrorism; and

2. to dismiss all of the claims that Ukraine made under the International Convention on the Elimination of All Forms of Racial Discrimination."

* * *

I. General Background

28. The present proceedings were instituted by Ukraine following events which occurred from early 2014 in eastern Ukraine and in the Crimean peninsula. The situation in Ukraine is very different today than it was when

Ukraine submitted its Application in January 2017. The Parties are presently engaged in an intense armed conflict that has led to a tremendous loss of life and great human suffering. Nevertheless, with regard to the situation in eastern Ukraine and in the Crimean peninsula, the case before the Court is limited in scope and is brought only under the provisions of the ICSFT and CERD. The Court is not called upon to rule in this case on any other issue in dispute between the Parties.

29. With regard to the ICSFT, the Applicant instituted proceedings relating to the events in eastern Ukraine, alleging that the Russian Federation failed to take measures to prevent and suppress the commission of offences of terrorism financing. In particular, the Applicant refers to acts and armed activities in eastern Ukraine allegedly perpetrated by armed groups linked to two entities that refer to themselves as the "Donetsk People's Republic" (DPR) and the "Luhansk People's Republic" (LPR). Other acts to which the Applicant refers were allegedly perpetrated by armed groups and individuals in other parts of Ukraine. With regard to CERD, the Applicant refers to events which took place in Crimea from early 2014, after the Russian Federation took control over the territory of the Crimean peninsula, alleging that the Russian Federation has engaged in a campaign of racial discrimination depriving Crimean Tatars and ethnic Ukrainians in Crimea of their political, civil, economic, social and cultural rights in violation of its obligations under CERD.

30. The Court recalls that, in its Judgment of 8 November 2019 on preliminary objections (hereinafter the "2019 Judgment"), it considered that the dispute consists of two aspects: the first relates to the ICSFT and the second relates to CERD. The Court therefore defined the subject-matter of the dispute between the Parties in the following terms:

> "[I]n so far as its first aspect is concerned, [the subject-matter of the dispute] is whether the Russian Federation had the obligation, under the ICSFT, to take measures and to co-operate in the prevention and suppression of the alleged financing of terrorism in the context of events in eastern Ukraine and, if so, whether the Russian Federation breached such an obligation. The subject-matter of the dispute, in so far as its second aspect is concerned, is whether the Russian Federation breached its obligations under CERD through discriminatory measures allegedly taken against the Crimean Tatar and Ukrainian communities in Crimea." (*Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 577, para. 32.)

The Court further stated that, in the present proceedings, Ukraine is not requesting that it rule on issues concerning the Russian Federation's alleged "aggression" or its alleged "unlawful occupation" of Ukrainian territory, nor is the Applicant seeking a pronouncement of the Court on the status of the Crimean peninsula under international law. These matters do not constitute the subject-matter of the dispute before the Court (*ibid.*, para. 29).

31. In the same Judgment, the Court found that it had jurisdiction on the basis of Article 24, paragraph 1, of the ICSFT and Article 22 of CERD to entertain the claims made by Ukraine under these Conventions. Thus, the jurisdiction of the Court is limited to the alleged violations by the Russian Federation of its obligations under the two instruments invoked by Ukraine and does not concern the conformity of conduct of the Russian Federation with its obligations under other rules of international law.

II. The International Convention for the Suppression of the Financing of Terrorism

32. The Court recalls that both Ukraine and the Russian Federation are parties to the ICSFT, which entered into force for them on 5 January 2003 and 27 December 2002, respectively. Neither Party entered any reservation to that instrument. As the Court has already stated (see paragraph 30 above), the aspect of the Parties' dispute under the ICSFT concerns alleged violations by the Russian Federation of certain obligations under that Convention.

A. Preliminary Issues

33. Before addressing Ukraine's claims under the ICSFT, the Court will first consider certain preliminary issues relevant to the determination of the dispute, namely the Russian Federation's invocation of the "clean hands" doctrine, the interpretation of relevant provisions of the ICSFT and certain questions of proof.

1. Invocation of the "clean hands" doctrine in respect of the ICSFT

34. The Russian Federation requests the Court to dismiss Ukraine's claims under the ICSFT on the grounds that the Applicant comes to the Court with "unclean hands". The Russian Federation argues that Ukraine has itself engaged in serious misconduct or wrongdoing that has a close connection with the relief that it seeks. First, the Russian Federation argues that Ukraine has failed to implement the "Package of Measures for the Implementation of the Minsk Agreements" adopted in Minsk on 12 February 2015. Secondly, the Respondent contends that Ukraine has shelled residential areas and used

indiscriminate weapons against civilians in eastern Ukraine. Thirdly, the Russian Federation argues that Ukraine has taken a "hypocritical approach" in its interpretation and application of the ICSFT. In this regard, the Respondent contends that the Applicant has brought charges of terrorism financing against political opponents of the Government of Ukraine, as well as residents of the Donetsk and Luhansk oblasts (administrative territorial units) for financial and commercial activities in the DPR and LPR, but failed to bring similar charges against other Ukrainian persons including top Ukrainian officials and politicians, who freely trade with the DPR and LPR in coal, steel and other goods, despite labelling the leadership of the DPR and LPR as "terrorists".

35. For its part, Ukraine asks the Court to disregard the arguments by the Russian Federation on the grounds that the Respondent misapplies the "clean hands" doctrine and has failed to substantiate Ukraine's alleged misconduct with evidence. In Ukraine's view, the Russian Federation falsely equates coal purchases by Ukrainian officials in their own territory with the supply of deadly weapons by officials of the Russian Federation to terrorist groups that target innocent civilians in Ukraine. The Applicant considers that the Russian Federation's invocation of the "clean hands" doctrine is a "distraction" and not a meaningful "defence" to Ukraine's claims.

* *

36. In its 2019 Judgment, the Court ruled on several preliminary objections to jurisdiction and admissibility raised by the Russian Federation in relation to Ukraine's claims (*I.C.J. Reports 2019 (II)*, p. 558). However, the Russian Federation's objection based on the "clean hands" doctrine was raised for the first time in its Rejoinder filed on 10 March 2023. The Respondent did not specify, either in its Rejoinder or in its oral arguments, whether it invokes the doctrine as an objection to the admissibility of Ukraine's claims or as a defence on the merits. Given that the Respondent raised the objection only at this late stage in the proceedings, the Court views its invocation as a defence on the merits.

37. The Court has hitherto treated the invocation of the "clean hands" doctrine with the utmost caution. It has never upheld the doctrine or recognized it either as a principle of customary international law or as a general principle of law (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 44, para. 122; *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2023 (I)*, p. 87, para. 81).

38. Furthermore, the Court has rejected the invocation of the doctrine as an objection to admissibility, stating that it "does not consider that an objec-

tion based on the 'clean hands' doctrine may by itself render an application based on a valid title of jurisdiction inadmissible" (*Jadhav (India* v. *Pakistan), Judgment, I.C.J. Reports 2019 (II)*, p. 435, para. 61; *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2023 (I)*, p. 87, para. 81). Similarly, the Court considers that the "clean hands" doctrine cannot be applied in an inter-State dispute where the Court's jurisdiction is established and the application is admissible. Accordingly, the invocation of the "clean hands" doctrine as a defence on the merits by the Russian Federation must be rejected.

2. Interpretation of certain provisions of the ICSFT

39. Before addressing Ukraine's claims under the ICSFT, the Court will consider the interpretation of certain provisions of that Convention that are in dispute between the Parties.

(a) *Article 1, paragraph 1, of the ICSFT*

40. The Parties disagree regarding the meaning of the term "funds" as defined in Article 1 and used in Article 2, paragraph 1, and other provisions of the ICSFT.

* *

41. Ukraine maintains that whenever States parties wish to accord a special meaning to a term in a treaty, they do so by including a definition in the treaty, as is the case regarding the definition of the term "funds" in Article 1 of the ICSFT. Ukraine, referring to the text of Article 1, paragraph 1, of the ICSFT, argues that the term "funds", according to its ordinary meaning and read in context and in light of the object and purpose of the ICSFT, has a broad meaning and includes "assets of every kind, whether tangible or intangible, movable or immovable". Ukraine further argues that, consistent with that broad definition, the term "funds" is not limited to "financial assets" but covers all forms of property, including weapons and other non-financial assets. In this regard, Ukraine emphasizes that the French and Spanish texts of the phrase "assets of every kind", namely "*biens de toute nature*" and "*los bienes de cualquier tipo*", respectively, support the conclusion that "funds" includes weapons and other non-financial assets. Ukraine also cites the *travaux préparatoires* of the ICSFT which, it contends, show that the terms "funds" and "financing" were understood by the drafters to include the provision of in-kind contributions including heavy weaponry.

*

42. The Russian Federation contends that the term "funds" used in Article 2 of the ICSFT is limited to resources intended to finance the commission of acts of terrorism, rather than resources that are themselves used as

means of committing those same terrorist acts. According to the Russian Federation, the term "assets" in Article 1, paragraph 1, of the ICSFT must be read in the context of the provision as a whole, in particular in light of the specific categories of assets listed, namely "bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, as well as documents or instruments evidencing title to or interest in such assets", all of which "assets" have "an inherently monetary value as such, are forms of payment and can be freely and legally purchased, exchanged and sold". In the view of the Russian Federation, the term "funds" as used in Article 2 of the ICSFT must be interpreted in light of the object and purpose of that Convention, which is to suppress a specific form of support of acts of terrorism, namely their financing, rather than broadly prohibiting all forms of in-kind support to alleged terrorist groups.

43. In response to Ukraine's reference to the French and Spanish texts of the phrase "assets of every kind", the Russian Federation refers to the Arabic and Russian texts of the same phrase, in particular the use of the words "أموال" ("*amwaal*") and "активы" ("*aktivy*"), respectively, which the Respondent maintains convey a limited meaning of assets of a financial or monetary nature. The Russian Federation also refers to other rules of international law, including the Arms Trade Treaty and resolutions by the United Nations Security Council, all of which, it argues, distinguish "financing" from "the provision of weapons". The Respondent highlights specific references to the term "financial resources" in the drafting history of the ICSFT and argues that the discussion by the drafters of that Convention revolved exclusively around various types of financial resources. Finally, the Russian Federation argues that domestic practice does not support a broad definition of the term "funds", asserting that Ukraine has mischaracterized certain national legislation and that some States have applied a notion of "funds" in their national laws that does not include weapons.

* *

44. In its 2019 Judgment, the Court did not interpret the term "funds", taking the view that it was not necessary to address the issue at that stage of the proceedings since the Russian Federation had not objected to the jurisdiction of the Court in that regard. The Court stated, however, that "the definition of 'funds' could be relevant, as appropriate, at the stage of an examination of the merits" (*I.C.J. Reports 2019 (II)*, p. 586, para. 62).

45. Under Article 2, paragraph 1, of the ICSFT, the provision or collection of funds is a constituent element of the offence of terrorism financing (the

actus reus). The term "funds" is defined in Article 1, paragraph 1, as meaning:

> "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit".

46. The Court will interpret the terms "funds" and "assets of every kind" in the ICSFT, in accordance with the rules of interpretation stipulated in Articles 31 to 33 of the 1969 Vienna Convention on the Law of Treaties (hereinafter the "Vienna Convention") to which Ukraine and the Russian Federation are party. According to those provisions, a treaty shall be interpreted in good faith, in accordance with the ordinary meaning to be given to its terms in their context and in light of that treaty's object and purpose. Furthermore, according to Article 31, paragraph 4, of the Vienna Convention, a special meaning shall be given to a term if it is established that the parties so intended.

47. The Court first turns to the text of Article 1, paragraph 1, of the ICSFT. The definition of "funds" in Article 1, paragraph 1, of the ICSFT begins with a broad reference to "assets of every kind, whether tangible or intangible, movable or immovable, however acquired". That phrase must be interpreted in accordance with the above-mentioned provisions of the Vienna Convention. The rest of that paragraph provides a non-exhaustive list of documents or instruments that may evidence title to or interest in such assets. Those instruments include bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit. Thus, while the phrase "assets of every kind" is an expansive one, the documents or instruments listed in the definition are ordinarily used for the purpose of evidencing title or interest only with regard to certain types of assets, such as currency, bank accounts, shares or bonds.

48. The Court notes that the use of the phrase "but not limited to" in Article 1, paragraph 1, suggests that the term "funds" covers more than traditional financial assets. The term also extends to a broad range of assets that are exchangeable or used for their monetary value. For instance, precious metals or minerals such as gold or diamonds, artwork, energy resources such as oil, and digital assets such as cryptocurrency may fall within the ordinary meaning of the definition of "funds" under the ICSFT where such assets are provided for their monetary value and not as a means of committing acts of terrorism. In addition, the definition in Article 1 specifically refers to

"immovable" assets, suggesting that "funds" may include the provision of land or real estate.

49. Secondly, the Court takes into account the context in which the term "funds" is used in the other provisions of the ICSFT, including Articles 8, 12, 13 and 18. Article 8, which concerns measures for the identification, detection and freezing or seizure of funds used or allocated for use in the commission of the offence of terrorism financing, suggests that the term "funds" covers different forms of monetary or financial support. Similarly, under Article 12, paragraph 2, States parties may not refuse a request for legal assistance on the grounds of bank secrecy, again suggesting that the ICSFT is concerned with financial or monetary transactions. Article 13, which provides that, for the purposes of extradition or mutual legal assistance, none of the offences set forth in Article 2 shall be regarded as "a fiscal offence", further suggests that the ICSFT is concerned with financial or monetary transactions. Finally, Article 18, which concerns the institution of practical measures regulating financial transactions, including in relation to physical cross-border transportation of cash and other negotiable instruments, also suggests that the ICSFT is concerned with financial or monetary transactions. In the view of the Court, the context provided by these provisions suggests that the term "funds" as used in Article 1, paragraph 1, of the ICSFT, is confined to resources that possess a financial or monetary character and does not extend to the means used to commit acts of terrorism.

50. Thirdly, the Court also takes into account the object and purpose of the ICSFT in determining the meaning of the term "funds". The preamble of the ICSFT demonstrates that that Convention was intended to address the "financing" of terrorism, rather than terrorism generally. For example, the preamble states that "the *financing* of terrorism is a matter of grave concern to the international community as a whole". It also notes that "the number and seriousness of acts of international terrorism depend on the *financing* that terrorists may obtain" and that "existing multilateral legal instruments do not expressly address such *financing*" (emphases added). In this regard, the Court recalls that in its 2019 Judgment, it explained that "[a]s stated in the preamble, the purpose of the Convention is to adopt 'effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators'" (*I.C.J. Reports 2019 (II)*, p. 585, para. 59). The title of the ICSFT, which refers to "the Suppression of the Financing of Terrorism", also suggests that that Convention specifically concerns the financing aspect of terrorism. Accordingly, the object of the ICSFT is not to suppress and prevent support for terrorism in general, but rather to prevent and suppress a specific form of support, namely its financing.

51. The *travaux préparatoires* confirm the above interpretation of the term "funds". The Parties referred to the text proposed by France in the Sixth Committee of the General Assembly and the subsequent negotiations in the *Ad Hoc* Committee established by General Assembly resolution 51/210 of 17 December 1996 and the Working Group on measures to eliminate international terrorism. The record of the negotiations appears to indicate that the concern of the drafters was that international law did not provide means for tracing and effectively punishing those who contribute finances to terrorist organizations, arguing that terrorist acts could be prevented by depriving criminal groups of their financial resources. It was this gap that the ICSFT was intended to fill. Proposals made by delegations regarding the text of what became Article 1 of the ICSFT, including the original proposal by France, expressed a focus on the issue of financial or monetary support.

52. A good-faith interpretation of the ICSFT must take into account the fact that the concern of States parties when drafting that Convention was not the means or military resources that terrorist groups might use to commit acts of terrorism, but rather the acquisition of financial resources that would enable them, *inter alia*, to acquire such means, including weaponry and training. In this regard, the *travaux préparatoires* reveal that one of the key problems identified by the States negotiating the ICSFT was the use by terrorist groups of real or spurious charitable institutions to collect funds for seemingly legitimate purposes.

53. In light of the foregoing, the Court concludes that the term "funds", as defined in Article 1 of the ICSFT and used in Article 2 of the ICSFT, refers to resources provided or collected for their monetary and financial value and does not include the means used to commit acts of terrorism, including weapons or training camps. Consequently, the alleged supply of weapons to various armed groups operating in Ukraine, and the alleged organization of training for members of those groups, fall outside the material scope of the ICSFT. In the present case, therefore, only monetary or financial resources provided or collected for use in carrying out acts of terrorism may provide the basis for the offence of terrorism financing, assuming that the other elements of the offence referred to in Article 2, paragraph 1, are also present.

(b) *The offence of "terrorism financing" under Article 2, paragraph 1, of the ICSFT*

54. Next, the Court turns to the interpretation of Article 2, paragraph 1, of the ICSFT, which provides as follows:

> "1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
>
> *(a)* An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
>
> *(b)* Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."

55. The Court will address several issues relevant to determining the scope of the offence defined in Article 2, paragraph 1, of the ICSFT (hereinafter referred to as "terrorism financing").

(i) The scope ratione personae *of the offence of terrorism financing*

56. The Court recalls its previous finding in the 2019 Judgment regarding the scope *ratione personae* of the ICSFT. The Court explained in relation to the phrase "any person" in Article 2, paragraph 1, that

> "this term covers individuals comprehensively. The Convention contains no exclusion of any category of persons. It applies both to persons who are acting in a private capacity and to those who are State agents. As the Court noted . . ., State financing of acts of terrorism is outside the scope of the ICSFT; therefore, the commission by a State official of an offence described in Article 2 does not in itself engage the responsibility of the State concerned under the Convention. However, all States parties to the ICSFT are under an obligation to take appropriate measures and to co-operate in the prevention and suppression of offences of financing acts of terrorism committed by whichever person. Should a State breach such an obligation, its responsibility under the Convention would arise." (*I.C.J. Reports 2019 (II)*, p. 585, para. 61.)

Accordingly, while the financing of terrorism by a State, as such, is not covered by the ICSFT, that Convention does require States to act to suppress and prevent the commission of the offence of terrorism financing by all persons, including by State officials.

(ii) The scope ratione materiae *of the offence of terrorism financing*

57. Multiple provisions of the ICSFT refer to the commission of "offences set forth in article 2", including Articles 4, 8, 9, 12 and 18. The Court notes that Article 2 sets out two kinds of offences. First, the offence of terrorism financing, which is addressed in the *chapeau* of Article 2, paragraph 1, and second, the two categories of underlying offences or acts, which are stipulated in Article 2, paragraph 1 *(a)* and *(b)* (hereinafter referred to as "predicate acts").

58. In the view of the Court, the phrase "offences set forth in article 2" should be understood to refer only to the offence of terrorism financing set out in the *chapeau* of Article 2, paragraph 1. The predicate acts described in subparagraphs *(a)* and *(b)* of paragraph 1 are relevant only as constituent elements of the offence of terrorism financing. They are not themselves offences falling within the scope of the ICSFT. If the phrase "offences set forth in article 2" was interpreted to include the predicate acts referred to in subparagraphs *(a)* and *(b)* of paragraph 1, the obligations of States parties under the ICSFT would extend far beyond the prevention and suppression of the financing of terrorism and would apply, *inter alia*, to the suppression and prevention of those predicate acts themselves. Such an interpretation goes beyond the scope *ratione materiae* of the ICSFT.

(iii) The mental elements of the offence of terrorism financing

59. Article 2 of the ICSFT sets out two mental elements of the offence of terrorism financing (the *mens rea*). According to that provision, the commission of the offence of terrorism financing requires that the funds in question be provided or collected either "with the intention that they should be used or in the knowledge that they are to be used" in order to carry out the predicate acts defined in Article 2, paragraph 1 *(a)* or *(b)*. As the use of "or" indicates, these are alternative mental elements. Accordingly, it suffices for the commission of the offence of terrorism financing that either "intention" or "knowledge" be present. In support of its claims, Ukraine relies entirely upon the mental element of "knowledge". Accordingly, the Court will confine its analysis to the interpretation of the phrase "in the knowledge that they are to be used", an element on which the Parties hold divergent views.

* *

60. Ukraine submits that proof of the mental element of "knowledge" may be satisfied where funds are provided or collected for the benefit of an organization or group that is "notorious" for the commission of terrorist acts. Ukraine emphasizes that it is not necessary to establish the funder's know-

ledge that the funds provided are to be used for specific acts of terrorism, and argues that Article 2, paragraph 3, of the ICSFT reinforces this interpretation. Ukraine also states that it is not necessary that any such group has previously been characterized by the international community as a terrorist organization.

61. The Russian Federation contends, regarding Article 2, paragraph 1, of the ICSFT, that the phrase "in the knowledge that they are to be used", in its ordinary meaning, refers to actual awareness that the funds are to be used to carry out a terrorist act. The Respondent argues that for the mental element of knowledge to be established, the Applicant must prove that the funder acted in the certain knowledge (and not merely with the risk) that the funds collected or provided would be used, in full or in part, to carry out a terrorist act referred to in Article 2, paragraph 1 *(a)* or *(b)*, of the ICSFT, rather than for some other purpose. The Russian Federation adds that, contrary to what Ukraine asserts, the members of the DPR and LPR have never been characterized in the same way as "notorious terrorist groups . . . such as Al-Qaida". The Russian Federation further argues that Ukraine has not met the high threshold required for establishing the "knowledge" element, in view of the fact that the DPR and LPR are not and have never been characterized as terrorist groups at the international level.

* *

62. The ordinary meaning of the term "knowledge" is an awareness of a fact or circumstance. For the mental element of "knowledge" to be established, it must be shown that, at the time of collecting or providing the funds in question, the funder was aware that they were to be used, in full or in part, in order to carry out a predicate act under Article 2, paragraph 1 *(a)* or *(b)*, of the ICSFT.

63. Article 2, paragraph 3, stipulates that "[f]or an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs *(a)* or *(b)*". Accordingly, the funder's knowledge may be established even where the funds collected or provided are not ultimately used to carry out a predicate act.

64. A determination of whether the element of "knowledge" is present must be made on the basis of objective factual circumstances. The element of "knowledge" may be established if there is proof that the funder knew that the funds were to be used for the commission of a predicate act. In this regard, it may be relevant to look to the past acts of the group receiving the funds in order to establish whether a group is notorious for carrying out predicate acts; for instance, where a group has previously been characterized as being terrorist in nature by an organ of the United Nations. The existence of the element of "knowledge" may be inferred from such circumstances. On the other hand, the characterization by a single State of an organization or a

group as "terrorist" is insufficient, on its own, to displace the need for proof of the funder's knowledge that the funds in question are to be used to carry out a predicate act under Article 2, paragraph 1 *(a)* or *(b)*.

(c) *Article 2, paragraph 1* (a) *and* (b)*, of the ICSFT*

65. Article 2, paragraph 1, of the ICSFT requires that for the offence of terrorism financing to be established, the funder must act with the intention or knowledge that these funds are to be used to carry out an act defined in Article 2, paragraph 1 *(a)* or *(b)*. The Parties disagree regarding the scope and interpretation of these predicate acts.

* *

66. Ukraine contends that Article 2, paragraph 1 *(a)*, identifies specific acts prohibited by prior conventions on terrorism. Ukraine submits that the question of whether an act amounts to a predicate act prohibited under Article 2, paragraph 1 *(a)* or *(b)*, is to be determined objectively and does not require a determination of the subjective intent of the perpetrator of such an act. In this regard, Ukraine considers that the "purpose" of an act may be inferred from its "nature or context" in order to determine whether it constitutes a predicate act.

67. The Russian Federation does not dispute that Article 2, paragraph 1 *(a)*, applies to acts falling within the scope of the treaties listed in the annex of the ICSFT. However, it disagrees with Ukraine as to the interpretation of Article 2, paragraph 1 *(b)*. In the view of the Russian Federation, it is necessary that there be a finding of subjective direct intent that civilians be harmed or killed for a predicate act to have been committed. Furthermore, the Russian Federation submits that the act must have had the primary purpose of spreading terror or compelling a government that goes beyond the ordinary military goals of a party in an armed conflict.

* *

68. The Court recalls its prior conclusion that the predicate acts stipulated in Article 2, paragraph 1 *(a)* and *(b)*, are themselves not offences falling within the scope of the ICSFT and are only relevant as constituent elements of the offence of terrorism financing (see paragraph 58 above). Indeed, it is not necessary that a predicate act should have occurred for the offence of terrorism financing to have been committed (see paragraph 63 above). Accordingly, the Court will only interpret the scope of Article 2, paragraph 1 *(a)* and *(b)*, to the extent necessary to inform its conclusions regarding the alleged violations by the Russian Federation of its obligations with respect to co-operation in the prevention and suppression of the offence of terrorism financing.

69. The Court notes that the Parties agree that the category of predicate acts specified in Article 2, paragraph 1 *(a)*, is defined by reference to the treaties listed in the annex to the ICSFT. With respect to the category of predicate acts specified in Article 2, paragraph 1 *(b)*, the Court notes that it is not enough for deliberate killings or serious bodily injury to civilians to have occurred. It is also essential to demonstrate that "the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act".

(d) *Proof of predicate acts under Article 2, paragraph 1* (a) *or* (b)*, of the ICSFT*

70. The Applicant claims that armed groups in eastern Ukraine supported by the Russian Federation have committed a variety of acts constituting predicate acts prohibited under Article 2, paragraph 1 *(a)* or *(b)*, of the ICSFT. First, Ukraine alleges that Malaysia Airlines Flight 17 (hereinafter "Flight MH17") was downed over eastern Ukraine by members of the DPR using a Buk-TELAR ground-to-air missile system in violation of Article 1, paragraph 1 *(b)*, of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, thereby constituting a predicate act under Article 2, paragraph 1 *(a)*, of the ICSFT. Secondly, Ukraine argues that armed groups in eastern Ukraine engaged in a series of kidnappings and extrajudicial killings of individuals who had provided support for, or were otherwise associated with, the Ukrainian Government, or had advocated for Ukrainian unity. Thirdly, Ukraine alleges that members of the DPR and LPR, supported by the Russian Federation, carried out a series of rocket attacks and shelling in eastern Ukraine intended to terrorize civilians and exert political pressure on the Government of Ukraine. These include the shelling of a civilian checkpoint in Volnovakha on 13 January 2015; the bombardment of a civilian area of the city of Mariupol on 24 January 2015; a rocket attack against a residential area of Kramatorsk on 10 February 2015; and the indiscriminate shelling of the city of Avdiivka in early 2017. Fourthly, Ukraine alleges that armed groups directly supported by officials of the Russian Federation committed bombing attacks in Ukrainian cities, making use of weapons provided by individuals in the Russian Federation.

71. Ukraine further contends that the support allegedly provided by officials of the Russian Federation and private persons within the jurisdiction of the Russian Federation, to the armed groups responsible for those incidents provides a basis for concluding that terrorism financing offences under Article 2 of the ICSFT have been committed by those officials and private persons.

*

72. The Russian Federation disputes that predicate acts set forth in Article 2, paragraph 1 *(a)* or *(b)*, of the ICSFT have been committed and contests many of Ukraine's factual assertions. It argues that, by failing to prove the commission of the alleged predicate acts with "fully conclusive evidence", Ukraine has failed to establish the requirements for the commission of an offence of terrorism financing under Article 2 of the ICSFT.

73. First, with respect to the shooting down of Flight MH17, the Russian Federation disputes that the aircraft was shot down by persons supported by the Russian Federation, or that it provided a Buk-TELAR missile system which was used for that purpose. Furthermore, the Respondent asserts that, in any event, there was no intent to shoot down a civilian aircraft and that the act therefore does not qualify as a predicate act prohibited under Article 2, paragraph 1 *(a)*, of the ICSFT. Secondly, the Russian Federation denies Ukraine's allegations regarding killings conducted by armed groups, arguing that the evidence does not conclusively show that there was a political motivation behind any of the alleged killings, to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act. Thirdly, the Respondent contests Ukraine's account of the shelling incidents. The Respondent puts forward evidence that, in its view, demonstrates that the attacks were aimed at military targets and did not have the purpose of terrorizing civilians or compelling political action. Fourthly, with respect to the alleged bombings, the Russian Federation suggests that many or all of the incidents may have been "staged" by Ukrainian security services and generally contests the evidence provided by Ukraine regarding both the nature of the attacks and the alleged support the alleged perpetrators received from individuals in the Russian Federation.

* *

74. Before turning to the examination of the alleged violation by the Russian Federation of its obligations under the ICSFT, the Court will make several preliminary observations. The question before the Court is whether the Respondent has violated its obligations under the ICSFT to take measures for, and to co-operate in, the prevention and suppression of terrorism financing, including by acting to freeze the accounts of suspected terrorism funders, assisting in the investigation of such offences, initiating prosecutions or otherwise taking practicable measures to prevent the financing of terrorism. Answering this question requires the Court to interpret and apply a series of obligations invoked by Ukraine under Articles 8, 9, 10, 12 or 18 of the ICSFT. While the Court will only examine allegations of offences of terrorism financing to the extent necessary to resolve the claims of Ukraine, its interpretation and analysis of the Parties' obligations under Articles 8, 9,

10, 12 and 18 of the ICSFT will be guided by its interpretation of Articles 1 and 2 of that Convention, in particular, its interpretation of the term "funds" as defined in Article 1 (see paragraph 53 above). Consequently, it is not necessary for the Court to evaluate alleged predicate acts the commission of which is sustained solely by the supply of weapons or other means used to commit such acts.

75. The Court further recalls that the offence of terrorism financing is distinct from the commission of predicate acts set out in Article 2, paragraph 1 *(a)* and *(b)*, of the ICSFT (see paragraph 58 above). In order to decide on the alleged violation of the obligations invoked by Ukraine, it is not necessary for the Court to first determine whether the specific incidents alleged by Ukraine constitute predicate acts described in Article 2, paragraph 1 *(a)* or *(b)*, of the ICSFT.

76. Finally, the Court notes that it does not have sufficient evidence before it to characterize any of the armed groups implicated by Ukraine in the commission of the alleged predicate acts as groups notorious for committing such acts. In the circumstances, the funder's knowledge that the funds are to be used to carry out a predicate act under Article 2 of the ICSFT cannot be inferred from the character of the recipient group (see paragraph 64 above). Accordingly, to establish the element of knowledge, it must be shown that, at the time the funds were allegedly collected or provided to the groups, the alleged funder knew that the funds were to be used to carry out predicate acts under Article 2, paragraph 1 *(a)* or *(b)*, of the ICSFT.

3. Questions of proof

77. The Parties disagree regarding the standard of proof required to substantiate the Applicant's claims under the ICSFT. Referencing the jurisprudence of the Court, Ukraine argues that the Court should apply a standard of proof requiring "sufficient" or "convincing" evidence to establish the alleged violation of obligations under the ICSFT. Ukraine also argues in favour of a more liberal recourse to inferences of fact and circumstantial evidence in the present case where relevant evidence may be outside its "exclusive territorial control".

78. The Russian Federation asserts that Ukraine must prove the commission of terrorism financing offences with evidence that is "fully conclusive". In the view of the Respondent, this standard of proof must be met to show that it has violated its obligations under the ICSFT, and the Court should not draw any inferences of fact from an alleged "pattern of conduct" unless

terrorism financing is the only reasonable inference to be drawn from the circumstances.

* *

79. It is well established that, "as a general rule, it is for the party which alleges a fact in support of its claims to prove the existence of that fact" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 54, para. 115, citing *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 33; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 660, para. 54).

80. The Court recalls that it has sometimes "allowed . . . a more liberal recourse to inferences of fact and circumstantial evidence" when a State lacks effective control over the territory where evidence is located (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 67, para. 157, citing *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 18). This practice may be relevant for certain allegations made in the present case regarding conduct that took place in areas over which Ukraine lacks effective control.

81. The Court further recalls that the standard of proof may vary from case to case, taking into account factors including the gravity of the allegation. In this regard, the Court has noted that "charges of exceptional gravity" such as the crime of genocide, require proof at "a high level of certainty" (*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. 129-130, paras. 209-210). In other cases not involving allegations of exceptional gravity, however, the Court has applied a less exacting standard of proof.

82. Ukraine's claims concern the Russian Federation's alleged violation of obligations under Articles 8, 9, 10, 12 and 18 of the ICSFT. Those obligations relate to the taking of specific measures and co-operating in the prevention or suppression of the financing of terrorism. In the Court's view, the Applicant's claims, while undoubtedly serious, are not of the same gravity as those relating to the crime of genocide and do not require the application of a heightened standard of proof.

83. Thus, in deciding Ukraine's claims, the Court will, in addition to assessing the relevance and probative value of the evidence adduced by Ukraine, determine whether such evidence is convincing.

84. The Court also notes that each provision of the ICSFT invoked by the Applicant imposes a distinct obligation upon States parties to that Convention. In each case, the Court must first ascertain the threshold of evidence of terrorism financing that must be met for an obligation under that provision of the ICSFT to arise. Such an evidentiary threshold may differ depending on the text of the provision under examination and the nature of the obligation it imposes. If the Court finds that, for a given provision of the ICSFT, the relevant obligation did arise for the Russian Federation, the Court must then determine whether the Russian Federation has violated that obligation.

85. The Court will now turn to the examination of the alleged violations by the Russian Federation of its obligations under the ICSFT.

B. Alleged Violations of Obligations under the ICSFT

1. Alleged violation of Article 8, paragraph 1

86. Article 8, paragraph 1, of the ICSFT reads as follows:

> "Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture."

* *

87. Ukraine argues that by failing to take appropriate measures to identify, detect and freeze or seize funds used for terrorism financing, the Russian Federation has violated its obligations under Article 8 of the ICSFT. Ukraine contends that the obligation to take the preventive measure of freezing funds is triggered by a "reasonable suspicion" that the funds in question may be used or allocated for the financing of terrorist activity, a standard that, it notes, has been recommended by many international organizations and adopted by States when implementing relevant domestic legislation. In support of applying its "reasonable suspicion" standard, Ukraine emphasizes that the freezing of assets is a proactive measure taken to prevent terrorism financing before it occurs.

88. Ukraine relies upon a range of Notes Verbales and requests for mutual legal assistance that were provided to the Russian Federation between 2014 and 2017. It asserts that these documents contained the names of dozens of individuals and organizations along with information regarding corresponding bank accounts, bank card numbers, taxpayer identification numbers, tax-registration codes and other identifying administrative information.

Ukraine further submits that it notified the Russian Federation in each of these instances that the identified individuals and associations had purposefully and knowingly used the specified accounts to collect and transfer money to finance terrorist activities in Ukraine. In Ukraine's view, this information, along with widely reported and known instances of fundraising for the DPR and LPR, was sufficient to give rise to reasonable suspicion that the funds in question would be used for terrorism financing, thereby obligating the Russian Federation to take action to freeze the funds. Ukraine argues that the Russian Federation, after receiving this information, failed to take any action to identify, detect, freeze or seize the funds at issue, in violation of its obligation under Article 8, paragraph 1, of the ICSFT.

*

89. The Russian Federation, for its part, denies any violation of its obligations under Article 8 of the ICSFT. It argues that Article 8 of the ICSFT only applies in circumstances where it has been established that offences under Article 2 of the ICSFT have been committed and with respect to funds that have been proved to be associated with the commission of such offences. It therefore disputes that Article 8 applies when there is merely "reasonable suspicion" that the funds in question may be used or allocated for the financing of acts of terrorism and it considers that the use of such a standard has no basis in the text of that provision.

90. The Russian Federation further argues that the Applicant has failed to establish either that predicate acts were committed or that the funds in the accounts referred to were used or allocated to be used for purposes of financing those acts. It contends that the communications cited by Ukraine provided no information whatsoever as to either how the alleged provision of financing to the specified individuals constituted financing of the DPR or LPR or how the alleged provision of financing to the DPR or LPR constituted financing of terrorism. In the view of the Russian Federation, Ukraine's allegations of terrorism and terrorism financing were made in bad faith and actually concerned peaceful campaigns of humanitarian assistance to the civilian population in eastern Ukraine. Finally, the Russian Federation also points out that several of the accounts referenced in the Ukrainian communications were located in Ukraine, not the Russian Federation. Accordingly, the Russian Federation denies that it had any obligation to freeze these funds or accounts.

* *

91. Article 8 of the ICSFT imposes upon States parties various obligations, *inter alia*, to identify, detect, freeze or seize funds used or allocated for the purpose of committing the offences set forth in Article 2 of the ICSFT. The Court will begin by considering the evidentiary threshold for an obligation under Article 8 of the ICSFT to arise. In the view of the Court, the applicable threshold under Article 8 of the ICSFT may differ depending on the scope and nature of the precise obligation at issue. For instance, the obligation to identify and detect funds allocated for the purpose of terrorism financing entails a lower threshold than the obligation to freeze such funds. Similarly, the decision to freeze funds may involve the application of a different evidentiary threshold than the more consequential decision of seizing funds. Ukraine has not pointed to any specific funds or accounts that the Russian Federation has allegedly failed to identify or detect. The Court notes that the Applicant is primarily concerned with the alleged non-compliance by the Russian Federation with its obligation to freeze certain funds belonging to individuals and organizations alleged to be involved in terrorism financing. It is therefore necessary to ascertain the evidentiary threshold required for a State party to the ICSFT to be required to freeze funds alleged to be used or allocated for terrorism financing.

92. The Court is of the view that the freezing of funds is a preventive measure that does not require that the commission of the offence of terrorism financing under Article 2 of the ICSFT be established. At the same time, the Court acknowledges that the freezing of funds is a serious step that can significantly limit the ability of the holder of those funds to use and dispose of them. In light of the foregoing, it is the Court's view that the obligation under Article 8 to freeze funds only comes into operation when the relevant State party has reasonable grounds to suspect that those funds are to be used for the purpose of terrorism financing.

93. The Court notes that this standard of reasonable grounds to suspect is in line with that adopted by the Financial Action Task Force (hereinafter the "FATF") in its Special Recommendations on Terrorist Financing. The FATF is an intergovernmental body that takes action, *inter alia*, to tackle money laundering and terrorism financing, including by issuing recommendations to assist States in implementing and fulfilling their obligations under relevant international instruments, such as the ICSFT, and monitoring compliance with them. Although not all States parties to the ICSFT are members of the FATF, the practice of States within the FATF in the interpretation and application of the ICSFT is relevant when interpreting its provisions. The Court further notes that the Russian Federation is a member of the FATF, while Ukraine has co-operated with the FATF with respect to the issuance of mutual evaluation reports summarizing and evaluating Ukraine's implementation of anti-money laundering and anti-terrorism financing measures. The Court also observes that Article 8 provides that, for

its implementation, "[e]ach State Party shall take appropriate measures, in accordance with its domestic legal principles". In this regard, it is relevant that Russian domestic law allows for the freezing of assets where there are "sufficient grounds to suspect" their use in terrorism financing. The Court considers that the standard used in Russian domestic law is analogous to one of reasonable grounds to suspect.

94. The Court must next determine whether the information available to the Respondent was sufficient to oblige it to take action to freeze any particular funds. The obligations under Article 8 are not, by its terms, contingent on a State party receiving information from another State party. Accordingly, a State party may be required to take action under Article 8 regardless of the means by which it becomes aware of particular funds used or allocated for the purpose of committing the offences set forth in Article 2 of the ICSFT. In the present case, Ukraine's arguments primarily relate to the communications it submitted to the Russian Federation regarding the alleged use of certain funds and accounts for the purpose of committing offences under Article 2. The Court will therefore focus its analysis on these communications.

95. Of the Notes Verbales and requests for legal assistance submitted to the Court by Ukraine, only four contain descriptions of specific persons and accounts alleged to have been associated with the financing of predicate acts under the ICSFT. These include two Notes Verbales sent by the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Russian Federation on 12 August 2014 and 29 August 2014, respectively. Both Notes Verbales generally allege the transfer of funds from the Russian Federation to the DPR and LPR and include allegations concerning identified individuals and the use of specified bank accounts, bank cards and electronic wallets for such transfer of funds. In both Notes Verbales, Ukraine referred to Article 8 of the ICSFT and requested that the Russian authorities take action to identify, detect, freeze and seize all funds used or allocated for committing the alleged offences.

96. Also relevant are two requests for legal assistance made by the Central Investigations Department of the Ministry of Internal Affairs of Ukraine to the competent authorities of the Russian Federation on 11 November 2014 and 3 December 2014. Although these communications were less detailed than the Notes Verbales of August 2014, both requests contained allegations concerning the raising of funds for the LPR and provided the Russian Federation with information regarding specific bank accounts allegedly used for that purpose.

97. After examining the allegations and evidence contained in these documents, the Court concludes that they do not contain sufficiently specific and detailed evidence to give the Russian Federation reasonable grounds to suspect that the accounts, bank cards and other financial instruments listed therein were used or allocated for the purpose of committing the offences under Article 2 of the ICSFT. In particular, the documents provide only vague and highly generalized descriptions of the acts that were allegedly committed by members of the DPR and LPR and were alleged to qualify as predicate acts under Article 2, paragraph 1 *(a)* or *(b)*, of the ICSFT. Accordingly, the evidence does not demonstrate the funders' "knowledge" that the funds being provided would be used to commit acts that qualify as predicate acts. Nor has Ukraine demonstrated that the Russian Federation should have been aware of this information from another source. In the absence of convincing evidence to the contrary, the Russian Federation had no reasonable grounds to suspect that the funds in question were to be used for the purpose of terrorism financing and, accordingly, was not required to freeze those funds.

98. In light of the foregoing, the Court concludes that it has not been established that the Russian Federation has violated its obligations under Article 8, paragraph 1, of the ICSFT. Therefore, Ukraine's claim under Article 8 cannot be upheld.

2. Alleged violation of Article 9, paragraph 1

99. Article 9, paragraph 1, of the ICSFT provides:

> "Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information."

* *

100. Ukraine contends that the Russian Federation repeatedly failed to investigate alleged terrorism financing offences committed by individuals present in the territory of the Russian Federation and, in so doing, violated its obligations under Article 9. Ukraine alleges that it submitted numerous requests to undertake investigations and, in response, the Russian Federation made no serious attempt to investigate the individuals named in the Ukrainian communications or entirely ignored the Ukrainian requests. The Applicant considers that Article 9 is broadly worded and sets a relatively low evidentiary threshold for the obligation to arise. According to Ukraine, the obligation under Article 9 "to investigate the facts contained in the information" arises as soon as a State party receives information concerning an

alleged terrorism financing offence and, if "the circumstances so warrant", the State "shall take the appropriate measures to ensure [the suspect's] presence for the purposes of prosecution or extradition". In its view, there is no requirement that a State should have received information identifying a specific person or providing detailed information establishing a reasonable suspicion that an offence of terrorism financing has been committed for it to be required to initiate an investigation.

101. The Russian Federation denies any violation of obligations under Article 9 of the ICSFT. In its view, Article 9 does not require a State party to examine every allegation of terrorism financing. The requesting State must provide sufficient information with respect to a specific person present in the requested State's territory, as well as evidence giving rise to a "reasonable suspicion" that an offence of terrorism financing under Article 2 of the ICSFT has taken place. The Russian Federation considers that the information it received from Ukraine did not contain sufficient or even credible allegations of terrorism financing by specific persons. In particular, the Respondent emphasizes that the Notes Verbales referred to by Ukraine contained little information other than conclusive statements. Furthermore, the Russian Federation notes that its request to Ukraine for additional information, including "factual data", on Ukraine's criminal investigations received no response. The Russian Federation therefore submits that it was under no duty to investigate any individuals present in its territory and that Ukraine has failed to establish that there has been a breach of Article 9 of the ICSFT.

* *

102. Article 9 of the ICSFT concerns the obligation of a State party to the ICSFT to investigate allegations of the commission of terrorism financing offences by alleged offenders present in its territory.

103. The Court will once again begin by considering the evidentiary threshold for the obligation to investigate the facts of an alleged terrorism financing offence to arise. The threshold set by Article 9, paragraph 1, is relatively low. For the obligation to investigate to arise, Article 9, paragraph 1, requires only that a State party receive information that a person who has committed or who is "alleged" to have committed the offence of terrorism financing may be present in its territory. In circumstances where the information only "alleges" the commission of an offence under Article 2, it is not necessary that the commission of the offence be established. Indeed, it is precisely the purpose of an investigation to uncover the facts necessary to determine whether a criminal offence has been committed. All the details surrounding the alleged offence may not yet be known and the facts provided may therefore be general in nature. Moreover, for an obligation to investigate

to arise, Article 9 does not require that a State party receive information from another State party. Credible information received from any other source may give rise to the obligation to investigate.

104. At the same time, however, the Court considers that Article 9 does not require the initiation of an investigation into unsubstantiated allegations of terrorism financing. Requiring States parties to undertake such investigations would not be in line with the object and purpose of the ICSFT.

105. If a State party has received sufficient information of alleged terrorism financing committed by an individual present on its territory, it is required to undertake a meaningful investigation into the alleged facts in accordance with the laws and procedures it would ordinarily follow when presented with information on the commission of a serious crime. Furthermore, in fulfilling its obligation to investigate, a State party must also endeavour to co-operate with any other interested States parties and must promptly inform them of the results of its investigation (see Article 9, paragraph 6, of the ICSFT). Such an obligation to co-operate in investigating terrorism financing offences is also informed by the object and purpose of the ICSFT, which is, as stated in its preamble, to "enhance international cooperation among States" in preventing and suppressing terrorism financing.

106. The Court will next consider whether the Russian Federation received sufficient information to require it to investigate any alleged offences under Article 2 of the ICSFT. Ukraine has pointed to several Notes Verbales sent from its Foreign Ministry to the Foreign Ministry of the Russian Federation which, it argues, contained credible allegations of terrorism financing by individuals in the territory of the Respondent. The Court will focus its attention on three of these documents: the Notes Verbales dated 12 August 2014, 29 August 2014 and 3 November 2014. The Court observes that the other Notes Verbales submitted to the Court concern only allegations of the provision of means to be used to commit predicate acts, including the supply of weapons, ammunition and military equipment. They therefore allege facts that fall outside the scope of Article 2 of the ICSFT (see paragraph 53 above).

107. In the view of the Court, the aforementioned three documents, in particular the Notes Verbales dated 12 August 2014 and 29 August 2014, contained sufficiently detailed allegations to give rise to an obligation by the Russian Federation to undertake investigations into the facts alleged therein. The information received included a summary of the types of conduct allegedly undertaken by members of armed groups associated with the DPR and LPR that Ukraine considered to constitute predicate acts under the ICSFT, the names of several individuals suspected of terrorism financing, and details regarding the accounts used and the types of items purchased

with the funds transferred. The Court considers that such information met the relatively low threshold set by Article 9 and thus required investigation by the Respondent.

108. In light of the above conclusion, the Court must now determine whether the Russian Federation met its obligation to undertake a meaningful investigation into the facts alleged in the Notes Verbales. The Ministry of Foreign Affairs of the Russian Federation first responded to the Ukrainian communications in a Note Verbale dated 14 October 2014. In that communication, the Ministry informed Ukraine about the "need to provide the Russian side with factual data on the issues brought up" in the Ukrainian communications. However, the Russian Federation provided no clarification as to the precise additional information that was required.

109. Subsequently, on 31 July 2015, in response to the information received from Ukraine, the Ministry of Foreign Affairs of the Russian Federation sent Ukraine a Note Verbale that included further details on the actions taken by the Russian competent authorities. This included the results of investigations into two of the alleged offenders. In both cases, the Russian Federation concluded that the individuals were not involved in providing financial support to the DPR and LPR. However, no clear information was provided by the Respondent concerning the other alleged offenders described in the Ukrainian communications as being present in Russian territory. With regard to one allegation, the Russian Federation stated that it had issued orders to obtain the personal data and account information of the alleged offenders. With respect to several other alleged offenders, the Russian Federation responded that the persons either "d[id] not exist in the Russian Federation" or their location could not be identified. Finally, with respect to the information received in the Ukrainian Note Verbale of 29 August 2014, the Russian Ministry of Foreign Affairs merely responded that the "investigative and operational work to identify the persons mentioned . . . is being processed at [the] current time".

110. The Court takes note of the amount of time that elapsed before the Russian Federation provided the aforementioned responses to the Ukrainian Notes Verbales. In this regard, the Court observes that the 2019 Mutual Evaluation Report issued by the FATF regarding the Russian Federation's anti-money laundering and counter-terrorist financing measures stated that the Russian Federation generally answers requests for mutual legal assistance "within one to two months" (Financial Action Task Force, "Anti-money laundering and counter-terrorist financing measures — Russian Federation", Fourth Round Mutual Evaluation Report (December 2019), p. 203). It is therefore notable that, almost one year after receiving the Ukrainian allegations, the Russian Federation appeared to have failed even to identify several of the alleged offenders. Furthermore, to the extent the

Respondent encountered difficulties ascertaining the location or identity of some of the individuals named in the Ukrainian communications, it was required to seek to co-operate with Ukraine to undertake the necessary investigations and specify to Ukraine what further information may have been required (see paragraph 105 above).

111. In light of the foregoing, the Court concludes that the Russian Federation has violated its obligations under Article 9, paragraph 1, of the ICSFT.

3. Alleged violation of Article 10, paragraph 1

112. Article 10, paragraph 1, of the ICSFT, reads:

> "The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State."

* *

113. Ukraine submits that the Russian Federation violated its obligations under Article 10, paragraph 1, of the ICSFT by failing to take any action to extradite or prosecute alleged offenders of terrorism financing offences present in its territory. The Applicant considers that the obligations under Article 10 apply regardless of whether another State provided information about the offence or whether a State party should have been aware of terrorism financing taking place in its territory. In addition, Ukraine asserts that the Russian Federation may not use its own failure to investigate terrorism financing offences as an excuse to avoid taking action to prosecute or extradite individuals suspected of engaging in terrorism financing.

114. The Russian Federation, for its part, argues that it has complied with its obligations under Article 10 of the ICSFT. It contends that the obligation to prosecute or extradite under Article 10 is only triggered in circumstances where information provided to the State party describes an offence of terrorism financing and identifies a specific alleged offender. The Respondent further emphasizes that Article 10, paragraph 1, does not impose an absolute obligation to prosecute or extradite and allows for a situation where the prosecuting authorities may decide that no sufficient basis for prosecution exists in light of the limited available evidence of terrorism financing offences. The

Russian Federation asserts that it had no obligation to submit any cases for prosecution given the failure by Ukraine to establish even a reasonable suspicion that the persons it identified had engaged in terrorism financing.

* *

115. Article 10, paragraph 1, requires States parties to the ICSFT to either prosecute or extradite alleged offenders of terrorism financing offences under Article 2. The Court observes that the Applicant has not brought to its attention any requests for extradition concerning alleged offenders and that the Applicant's argument accordingly appears to be limited to an alleged violation by the Russian Federation of its obligation to prosecute.

116. The Court begins by noting that the wording of Article 10, paragraph 1, bears a strong resemblance to language found in many other international conventions, including Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (hereinafter the "Convention against Torture"). The Court had occasion to consider the scope of the latter provision in its Judgment in *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)* (*I.C.J. Reports 2012 (II)*, p. 422).

117. In that Judgment, the Court described the relevant provision as follows:

> "As is apparent from the *travaux préparatoires* of the Convention, Article 7, paragraph 1, is based on a similar provision contained in the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970. The obligation to submit the case to the competent authorities for the purpose of prosecution (hereinafter the 'obligation to prosecute') was formulated in such a way as to leave it to those authorities to decide whether or not to initiate proceedings, thus respecting the independence of States parties' judicial systems. These two conventions emphasize, moreover, that the authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of the State concerned (Article 7, paragraph 2, of the Convention against Torture and Article 7 of the Hague Convention of 1970). It follows that the competent authorities involved remain responsible for deciding on whether to initiate a prosecution, in the light of the evidence before them and the relevant rules of criminal procedure." (*Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, pp. 454-455, para. 90.)

118. Just as with the obligation to prosecute or extradite in the Convention against Torture, the obligations found in Article 10, paragraph 1, of the

ICSFT are ordinarily implemented after the relevant State party has performed other obligations under the ICSFT, such as the obligation under Article 9 to conduct an investigation into the facts of alleged terrorism financing (see *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 455, para. 91). Ordinarily, it is only after an investigation has been conducted that a decision may be taken to submit the case to the competent authorities for the purpose of prosecution. In addition, just as with the obligation discussed by the Court in *Belgium* v. *Senegal*, the *aut dedere aut judicare* obligation found in Article 10 of the ICSFT does not impose an absolute obligation to prosecute (*ibid*., para. 90). The competent authorities of the States parties to the ICSFT retain the responsibility to determine whether prosecution is warranted, based on the available evidence and applicable legal rules, so long as such a decision is taken in the same manner as in the case of other grave offences under the law of that State.

119. The Court notes that the decision to submit a case to the competent authorities for purposes of prosecution is a serious one that requires, at a minimum, reasonable grounds to suspect that an offence has been committed. The Court recalls its finding that the information provided by Ukraine to the Russian Federation did not give rise to reasonable grounds to suspect that terrorism financing offences within the meaning of Article 2 of the ICSFT had been committed (see paragraph 97 above). In light of that finding, the Court does not consider that the Russian Federation was obligated under Article 10 of the ICSFT to submit any specific cases to the competent authorities for the purpose of prosecution.

120. Based on the foregoing, the Court concludes that it has not been established that the Russian Federation has violated its obligations under Article 10, paragraph 1, of the ICSFT. Therefore, Ukraine's claim under Article 10 of the ICSFT cannot be upheld.

4. Alleged violation of Article 12, paragraph 1

121. Article 12 of the ICSFT provides in part:

> "1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.
>
> . . . . . .
>
> 5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them.

In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law."

* *

122. Ukraine contends that the Russian Federation has violated its obligations under Article 12, paragraph 1, of the ICSFT by failing to provide any assistance in relation to Ukraine's investigations of terrorism financing offences. Ukraine relies upon at least 12 requests for legal assistance received by the Russian Federation from Ukraine. The Applicant takes the position that it was not required, in these requests, to specifically refer to the ICSFT and submits that the Russian Federation was aware that Ukraine was seeking assistance related to terrorism financing.

123. Ukraine states that the Russian Federation has cited supposed "procedural formalities" and "technicalities" as reasons to withhold assistance. It also questions the Russian Federation's refusal to provide legal assistance on grounds of sovereignty and security, arguing that the Respondent was required to explain its reasons for refusal in more detail than it did and that its invocation of these exceptions was made in bad faith. Additionally, Ukraine highlights the lengthy delays of the Russian Federation in responding to its requests for mutual legal assistance, which it argues further demonstrate the bad faith of the Respondent and constitute a breach of its obligations under Article 12.

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124. The Russian Federation, for its part, denies any violation of its obligations under Article 12, paragraph 1. It considers that the provision only applies where there are ongoing investigations and criminal proceedings, where those proceedings concern allegations that amount to an offence under Article 2 of the ICSFT, and where there are no reasons to deny mutual legal assistance under applicable treaties or legal arrangements between the Parties. The Respondent argues that the requests for assistance referred to by Ukraine did not mention or relate to the offence of terrorism financing under Article 2 of the ICSFT, but instead pertained to distinct offences under Ukrainian law.

125. The Russian Federation submits that it rejected or postponed the performance of Ukraine's requests either because Ukrainian authorities failed to comply with applicable treaty requirements, including the translation of documents into the Russian language, or because the requests posed a risk to sovereignty or security. Finally, the Respondent considers that it was not required to provide a detailed explanation for its refusal of certain Ukrainian requests in light of the practice of both Parties of invoking sover-

eignty or security reasons to deny requests for legal assistance without a detailed explanation.

* *

126. Article 12 of the ICSFT requires States parties to the ICSFT to assist other States parties in their investigations into terrorism financing. In its oral arguments, the Applicant stated that, according to its data, 91 requests for legal assistance were made of the Russian Federation between 2014 and 2020, of which only 29 were executed. The Respondent, for its part, submits that, during the same period, Russian authorities in fact received 814 requests for legal assistance from Ukraine, of which 777 were fully executed. The Court is unable, based on the evidence before it, to verify the contentions of either Party. It may only assess those requests for legal assistance that were submitted to the Court, which are limited to the 12 above-mentioned requests made between September 2014 and November 2017.

127. The Court will now consider whether the evidence demonstrates that the Russian Federation failed to comply with its obligations under Article 12 with respect to these 12 requests for legal assistance. The Court must first determine whether the requests fall within the scope of Article 12. In this regard, the Court recognizes that States possess significant discretion in implementing the ICSFT into their domestic law. All that is necessary for an investigation to fall within the scope of Article 12 is that the subject-matter of the investigation pertain to offences covered by Article 2 of the ICSFT. The Court therefore does not consider that the ICSFT itself must be specifically mentioned in a request for legal assistance for the obligation under Article 12 to come into operation.

128. Of the 12 requests for legal assistance that have been submitted by Ukraine, only three involved investigations into the provision of funds to persons or organizations alleged to have engaged in the commission of predicate acts. These were the requests for legal assistance sent by Ukraine to the competent Russian authorities on 11 November 2014, 3 December 2014 and 28 July 2015, all of which concerned allegations that citizens of the Russian Federation were involved in fundraising for the DPR or LPR. The other nine requests for legal assistance concerned either allegations of the commission of possible predicate acts or allegations relating to the provision of means used to commit such acts, including the supply of weapons, ammunition and military equipment. In accordance with the Court's interpretation of Article 1, such conduct does not fall within the scope of Article 2 of the ICSFT and the requests containing such allegations therefore cannot give rise to a violation by the Russian Federation of its obligations under Article 12. The Court will therefore limit its analysis to whether the Respondent fulfilled its obligations under Article 12 with respect to the aforementioned three requests for legal assistance.

129. The Court observes that, pursuant to Article 12, paragraph 5, of the ICSFT, the obligations under paragraph 1 of Article 12 must be carried out in conformity with other treaties of mutual legal assistance in force between the relevant States parties. Applicable treaties in the present case include the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 January 1993.

130. The requests for legal assistance of 11 November 2014 and 3 December 2014 both involved allegations that members of the Russian State Duma were engaged in raising funds for the LPR and had posted public announcements online for that purpose. The request of 28 July 2015 contained allegations that the Chief of the General Staff of the Russian armed forces was implicated in the financing of "extra-legal armed groups" operating in eastern Ukraine and in the establishment of the DPR and LPR. However, none of the three requests described in any detail the commission of alleged predicate acts by the recipients of the provided funds. Nor did they indicate that the alleged funders knew that the funds provided would be used for the commission of predicate acts (see paragraph 64 above). Accordingly, the Court considers that the requests for legal assistance cited by Ukraine did not give rise to an obligation by the Russian Federation under Article 12 of the ICSFT to afford Ukraine "the greatest measure of assistance" in connection with the criminal investigations in question. In view of the above finding, the Court is not required to determine whether the Russian Federation's refusal of these requests for legal assistance fell within the permissible grounds for denying such assistance under the mutual legal assistance treaties in force between the Parties.

131. For the aforementioned reasons, the Court concludes that it has not been established that the Russian Federation has violated its obligations under Article 12, paragraph 1, of the ICSFT. Ukraine's claim under Article 12 of the ICSFT therefore cannot be upheld.

5. Alleged violation of Article 18, paragraph 1

132. Article 18, paragraph 1, of the ICSFT, reads as follows:

> "States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:
>
> *(a)* Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international."

* *

133. Ukraine argues that Article 18, paragraph 1, of the ICSFT contains a wide-ranging obligation to "cooperate in the prevention of [terrorism financing] offences", which includes "taking all practicable measures . . . to prevent and counter preparations" for the commission of such offences. It contends that this provision is not limited to the adoption of a regulatory framework for the prevention of terrorism financing and submits that it incorporates the obligation to take all practicable measures to prevent offences under Article 2 of the ICSFT from taking place. The Applicant further emphasizes that this obligation applies to the commission of terrorism financing offences by both private persons and State officials. It maintains that Article 18 imposes an obligation to "cooperate" in the prevention of

terrorism financing and that, accordingly, this obligation is violated by the failure to take such measures when they are called for, regardless of whether acts of terrorism financing ultimately occur.

134. In Ukraine's view, the Russian Federation violated its obligations under Article 18 by failing to take at least four "practicable measures" to prevent terrorism financing. First, Ukraine submits that the Russian Federation failed to take measures to prevent its State officials from financing terrorism. It argues that the Respondent failed to direct its officials to refrain from providing assets to groups known to commit acts of terrorism in Ukraine. Second, the Applicant asserts that the Russian Federation took no steps to investigate private actors who were openly financing terrorism in eastern Ukraine or to prevent such financing from occurring. Third, Ukraine argues that the Russian Federation failed to take the practicable measure of policing its border to prevent the transfer of weapons or other forms of support to armed groups, despite Ukrainian requests for co-operation in border control. Finally, the Applicant alleges that the Russian Federation failed to monitor and disrupt financial and fundraising networks operating in Russian territory, including networks associated with the financing of the DPR and LPR.

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135. The Russian Federation, for its part, contends that the obligations imposed by Article 18, paragraph 1, are far more limited than Ukraine suggests. In the view of the Respondent, this provision sets out only the obligation to create a regulatory framework aimed at blocking or hindering terrorism financing and providing for information sharing. It emphasizes that Article 18, paragraph 1, does not impose a strict obligation to prevent terrorism financing but only to "cooperate in the prevention of" offences under Article 2 of the ICSFT. The provision thus only imposes an obligation of conduct, not of result, that is fulfilled by a State party's adoption of a suitable regulatory framework. The Russian Federation also asserts that Article 18, paragraph 1, only imposes an obligation to prevent acts that actually constitute terrorism financing and that, accordingly, to uphold Ukraine's claim the Court must determine that acts of terrorism financing have taken place. In this regard, it relies on the Court's findings in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* that a breach of the obligation to prevent genocide requires that genocide has actually been committed (*(Bosnia and Herzegovina* v. *Serbia and Montenegro)*, *Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 431).

136. The Russian Federation denies Ukraine's claim that it has breached its obligations under Article 18, paragraph 1. It maintains that Ukraine has failed to establish that the provision of funds to the DPR and LPR constituted an offence under Article 2 of the ICSFT. Furthermore, it argues that Ukraine's claim fails because it concerns the provision of weapons, which are not "funds" under the ICSFT, and because Ukraine has failed to identify any failure by the Russian Federation to adopt a regulatory framework to prevent terrorism financing. Finally, the Respondent submits that, even if Article 18 were construed broadly and applied to the incidents alleged by Ukraine, it could at most impose a due diligence obligation to prevent the transfer of funds, which Ukraine has not shown to have been violated.

* *

137. The Court will begin by considering the scope of the obligation imposed by Article 18, paragraph 1. This provision obliges States parties to

> "cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories".

138. The Court recalls its finding in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* case, which involved the interpretation and application of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the "Genocide Convention") (*(Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 43). In that case, the Court held that "a State can be held responsible for breaching the obligation to prevent genocide only if genocide was actually committed" (*ibid.*, p. 221, para. 431). In the Court's view, this finding does not apply in the context of Article 18 of the ICSFT. Unlike Article I of the Genocide Convention, which imposes the obligation to "prevent" a harmful act from occurring, the obligation under Article 18, paragraph 1, refers to the obligation to "cooperate in the prevention" of terrorism financing. The object of Article 18, paragraph 1, is to foster co-operation in the prevention of offences under Article 2, rather than to directly prevent the commission of those offences. Accordingly, the Court considers that it is not necessary to find that the offence of terrorism financing has been committed for a State party to have breached its obligations under Article 18, paragraph 1, of the ICSFT.

139. The Court will next examine the types of measures encompassed by Article 18, paragraph 1. The Court considers that the ordinary meaning of the term "all practicable measures" supports a broader reading of Article 18, paragraph 1, than the Respondent suggests. The provision, by its terms, encompasses all reasonable and feasible measures that a State may take to prevent the commission of the offence of terrorism financing under Article 2 of the ICSFT. Such measures include, but are not limited to, the adoption of a regulatory framework to monitor and prevent transactions with terrorist organizations.

140. The Court acknowledges that Article 18, paragraph 1, refers specifically to the obligation of States parties to the ICSFT to "adapt[] their domestic legislation". However, this reference to legislative measures is preceded by the term "*inter alia*", showing that it is only intended to be an example of the types of measures States are required to take, rather than a firm limit on the scope of the obligations imposed by Article 18. The Court also notes that Article 18 is the only article in the ICSFT that specifically mentions the "prevention" of terrorism financing offences. This context suggests that the phrase "all practicable measures" should not be interpreted too restrictively. Thus, the Court considers that Article 18, paragraph 1, encompasses a certain range of possible measures to prevent terrorism financing, including, but not limited to, legislative and regulatory measures.

141. The Court will now turn to consider Ukraine's submission that the Russian Federation has violated its obligations under Article 18, paragraph 1. The Court will examine each of Ukraine's arguments in turn.

142. The Court recalls that the first of Ukraine's arguments referred to above (para. 134) concerns the allegation that the Russian Federation failed to instruct its officials not to engage in terrorism financing. The Court recalls its finding in its 2019 Judgment that "all States parties to the ICSFT are under an obligation to take appropriate measures and to co-operate in the prevention and suppression of offences of financing acts of terrorism committed by whichever person" (*I.C.J. Reports 2019 (II)*, p. 585, para. 61). This includes actions taken to prevent terrorism financing by State officials (*ibid.*). At the same time, however, the Court also recalls its finding that "[t]he financing by a State of acts of terrorism is not addressed by the ICSFT" and consequently "lies outside the scope of the Convention" (*ibid.*, p. 585, para. 59). In essence, Ukraine requests that the Court find that the Russian Federation violated its obligations under the ICSFT not because of actions taken by State officials in their individual capacity, but because of the Russian Federation's alleged policy of financing armed groups in eastern Ukraine. This request does not fall within the scope of Article 18 of the ICSFT and therefore cannot be upheld.

143. The Court will next address Ukraine's second argument, which concerns whether the Russian Federation breached its obligations under Article 18 by failing to investigate and prevent the financing of terrorism by private persons. With respect to the Russian Federation's alleged failure to investigate terrorism financing, the Court considers that these allegations are not covered by Article 18, but instead relate to Ukraine's claims of a violation of Articles 9, 10 and 12, which the Court has already addressed (see paragraphs 99-131 above). Moreover, as for Ukraine's argument that the Russian Federation took no steps to investigate private actors who were openly financing terrorism, the Court considers that Ukraine has not substantiated such allegations. Nor has Ukraine pointed to specific measures that the Russian Federation failed to take to prevent the commission of terrorism financing offences. Accordingly, the Court sees no basis for finding a violation of Article 18 as concerns the Russian Federation's alleged failure to investigate and prevent the financing of terrorism by private persons.

144. Regarding Ukraine's third argument, concerning the issue of the policing of the border between the Parties, the Court observes that Ukraine's evidence concerning the alleged flow of support for armed groups operating in Ukraine across the border is limited to allegations relating to the supply of weapons and ammunition. The Court recalls its finding that the supply of weapons and ammunition as a means for committing predicate acts falls outside the material scope of the ICSFT (see paragraph 53 above). In the circumstances, the Court finds no convincing evidence demonstrating a failure by the Russian Federation to take practicable measures to prevent the movement of "funds" into Ukraine for purposes of terrorism financing.

145. Finally, in relation to Ukraine's fourth argument, the Court will examine whether the Russian Federation violated its obligation under Article 18 by failing to monitor and disrupt certain fundraising networks operating in its territory and by declining to designate the DPR or LPR as extremist or terrorist in nature. With respect to the first component of Ukraine's argument, the Court recalls its finding that the Russian Federation had no reasonable grounds to suspect the funds in question were to be used for the purpose of terrorism financing and accordingly was under no obligation to freeze those funds (see paragraph 97 above). In the absence of such reasonable suspicion, the Russian Federation was likewise not obligated under Article 18 to restrict all funding for the DPR and LPR. With respect to the second component of Ukraine's argument, concerning the decision by the Russian Federation not to include the DPR and LPR on its list of known extremist and terrorist groups, the Court finds that, in the circumstances of

this case, the Russian Federation was not under an obligation to designate a group as a terrorist entity under its domestic law, as a preventive measure.

146. In light of the foregoing, the Court concludes that it has not been established that the Russian Federation has violated its obligations under Article 18, paragraph 1, of the ICSFT. Ukraine's claim under Article 18 of the ICSFT therefore cannot be upheld.

6. General conclusions on the alleged violations of obligations under the ICSFT

147. On the basis of all the preceding considerations and findings, the Court concludes that the Russian Federation has violated its obligations under Article 9, paragraph 1, of the ICSFT.

C. Remedies

148. The Court recalls that, in respect of its claims under the ICSFT, Ukraine has requested, in addition to declaratory relief, the cessation by the Russian Federation of ongoing violations, guarantees and assurances of non-repetition, compensation and moral damages (see paragraph 27 above).

149. By the present Judgment, the Court declares that the Russian Federation has violated its obligations under Article 9, paragraph 1, of the ICSFT and continues to be required under that provision to undertake investigations into sufficiently substantiated allegations of acts of terrorism financing in eastern Ukraine.

150. The Court does not consider it necessary or appropriate to grant any of the other forms of relief requested by Ukraine.

III. The International Convention on the Elimination of All Forms of Racial Discrimination

151. The Court recalls that both Ukraine and the Russian Federation are parties to CERD. As the Court has already stated in its 2019 Judgment, the aspect of the Parties' dispute under CERD concerns allegations by Ukraine that the Russian Federation has breached its obligations under CERD through discriminatory measures taken against Crimean Tatars and ethnic Ukrainians in Crimea (see paragraph 30 above).

A. Preliminary Issues under CERD

152. In addressing Ukraine's claims under CERD, the Court will first consider certain preliminary issues relevant to its decision on this aspect of the dispute.

1. Invocation of the "clean hands" doctrine in respect of CERD

153. The Russian Federation contends that the "clean hands" doctrine precludes Ukraine from making claims under CERD. The Russian Federation asserts that, since 1991, Ukraine has failed to protect certain ethnic groups in Crimea and that, prior to 2014, representatives of different ethnic groups, including Crimean Tatars, regularly protested against their situation in Crimea. The Respondent also asserts that, outside Crimea, Ukraine fails to protect certain ethnic groups from violence and hate speech, that objects of those groups' cultural heritage are being vandalized, and that some ethnic groups suffer from unemployment and lack of adequate housing. The Russian Federation further alleges that restrictions have progressively been imposed on the use of the Russian language and culture.

154. According to Ukraine, the Russian Federation seeks to distract from its own misconduct by asserting that Ukraine is mistreating ethnic minorities in its territory, including Crimean Tatars. Ukraine asserts that, before the Russian Federation's purported annexation, it undertook significant efforts to build a genuinely multi-ethnic society in Crimea. It maintains that the allegations by the Russian Federation that Ukrainians and the Ukrainian Government are oppressing Russian speakers are baseless. Finally, Ukraine underlines that the Russian Federation has refrained from raising any counter-claims challenging Ukraine's responsibility under the Convention. In its view, this omission demonstrates that the Russian Federation's invocation of the "clean hands" doctrine is not only false, but also legally irrelevant to the case.

* *

155. As indicated above, the Court does not consider that the "clean hands" doctrine is applicable in an inter-State dispute where the Court's jurisdiction is established and the application is admissible (see paragraph 38). Therefore, the Court cannot uphold the defence raised by the Respondent based on the "clean hands" doctrine with respect to Ukraine's claims under CERD.

2. Nature and scope of the alleged violations

156. The Parties disagree about the nature and scope of the alleged violations to be examined by the Court in the present case. The Court recalls that,

in its 2019 Judgment, it stated that it would address, at the merits stage of the proceedings, "the question of whether the Russian Federation has actually engaged in the campaign of racial discrimination alleged by Ukraine, thus breaching its obligations under CERD" (*I.C.J. Reports 2019 (II)*, p. 606, para. 131).

* *

157. Ukraine contends that the Russian Federation has committed numerous individual violations of CERD which, taken together, constitute a pattern and practice of discriminatory conduct directed against the Crimean Tatar and Ukrainian ethnic communities in Crimea. According to Ukraine, the Court's 2019 Judgment does not exclude arguments that the Russian Federation has committed multiple violations of CERD which, viewed in the aggregate, constitute a campaign of racial discrimination. In its view, a "pattern of conduct" and "campaign of racial discrimination" by the Russian Federation violates CERD, as demonstrated by illustrative, individual instances of acts that also constitute racial discrimination. According to Ukraine, the many individual violations of CERD that Ukraine has demonstrated, when viewed as a whole, support the conclusion that the Russian Federation has engaged in a systematic campaign of discrimination.

158. The Russian Federation, for its part, submits that the present case is limited in scope. It maintains that Ukraine has not brought before the Court a case concerning discrete incidents constituting alleged violations of CERD by the Russian Federation, but rather a claim that the Russian Federation has engaged in a "systematic campaign of racial discrimination" against Crimean Tatar and ethnic Ukrainian communities in Crimea. According to the Russian Federation, Ukraine tries to shift the focus of its claim to isolated and unconnected instances of alleged racial discrimination. However, in the Russian Federation's view, the Court's 2019 Judgment makes it plain that the sole claim that Ukraine may advance in this case is one of a "systematic racial discrimination campaign", and not allegations of individual instances of racial discrimination. It was, after all, because of the particular formulation of Ukraine's claim that the Court rejected the Russian Federation's objection to the admissibility of Ukraine's Application on the ground of non-exhaustion of local remedies.

* *

159. The Court considers that the disagreement between the Parties regarding the nature and scope of the alleged violations to be examined by the Court is more apparent than real. Both Parties agree that the 2019 Judgment is determinative. In the 2019 Judgment, the Court rejected the

objection of the Russian Federation, based on the requirement of exhaustion of local remedies, to the admissibility of Ukraine's Application. The Court held that this requirement does not apply to the claim submitted to the Court by Ukraine because

> "Ukraine does not adopt the cause of one or more of its nationals, but challenges, on the basis of CERD, the alleged pattern of conduct of the Russian Federation with regard to the treatment of the Crimean Tatar and Ukrainian communities in Crimea" (*I.C.J. Reports 2019 (II)*, p. 606, para. 130).

160. At the same time, the Court noted "that the individual instances to which Ukraine refers in its submissions emerge as illustrations of the acts by which the Russian Federation has allegedly engaged in a campaign of racial discrimination" (*I.C.J. Reports 2019 (II)*, p. 606, para. 130).

161. Accordingly, the Court is not called upon to determine, in the operative part of its Judgment, whether violations of obligations under CERD have occurred in individual instances. This does not prevent the Court from examining, "as illustrations", any "acts by which the Russian Federation has allegedly engaged in a campaign of racial discrimination" (*I.C.J. Reports 2019 (II)*, p. 606, para. 130). In this regard, the Court notes that the expression "campaign of racial discrimination" has been used by Ukraine to characterize the Russian Federation's "overall pattern of conduct". In its 2019 Judgment, the Court found admissible Ukraine's claim alleging a "pattern of conduct" of racial discrimination by the Russian Federation (*ibid*.). This may relate to each category of violations alleged by Ukraine. In order to arrive at the conclusion that a pattern of racial discrimination has occurred, the Court must be satisfied, first, that a significant number of individual acts of racial discrimination within the meaning of Article 1, paragraph 1, of CERD have taken place, and, secondly, that these acts together constitute a pattern of racial discrimination.

3. Questions of proof

162. Having established the nature and scope of the alleged violations to be examined in the present case, the Court notes that the Parties disagree with respect to a number of facts. The Court observes that the differences between the Parties relate less to the occurrence of certain factual situations than to the inferences to be drawn from them for the purpose of proving an act of racial discrimination and a "pattern" of racial discrimination.

163. The Court notes that the Parties disagree about various questions of proof. The Court will therefore address, in turn, the standard and methods of proof, and the weight to be given to certain forms of evidence, before applying the relevant rules of international law (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 53, para. 111; *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. 72, para. 167).

(a) *Burden and standard of proof*

164. Ukraine submits that the Russian Federation provides no justification for departing from the Court's usual requirement of "sufficient" or "convincing evidence" to prove serious claims falling short of genocide. It argues that the high threshold applied by the Court in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)* does not apply in the present case. While acknowledging that its allegations are serious in nature, Ukraine argues that the acts concerned are not of the same kind as those that were at issue in that Judgment. Ukraine further rejects the Russian Federation's assertion that Ukraine must meet a higher standard of proof as a result of Ukraine's characterization of the Russian Federation's conduct as a "systematic campaign" of racial discrimination.

165. Ukraine argues that it is not in a position to provide direct proof of certain facts owing to its lack of access to Crimea and that it should therefore be allowed a more liberal recourse to inferences of fact and circumstantial evidence, in accordance with the Court's Judgments in the *Corfu Channel (United Kingdom* v. *Albania)* and *Armed Activities on the Territory of the Congo (Democratic Republic of Congo* v. *Uganda)* cases. According to Ukraine, the Russian Federation has not only directly impeded Ukraine's ability to collect statistical data in Crimea, but it has also — in the words of the Committee on the Elimination of Racial Discrimination (hereinafter the "CERD Committee") — "refus[ed] . . . to discuss and respond to questions posed by the [CERD] Committee" on its conduct in Crimea.

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166. According to the Russian Federation, Ukraine must meet a standard of proof that is appropriate to the gravity of its allegations. In its view, a claim that a State is involved in a systematic campaign of racial discrimination and cultural erasure is exceptionally grave. Citing the Court's Judgments in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)* and the *Corfu Channel* cases, the Russian Federation contends that the gravity of Ukraine's claim — a "systematic racial discrimination campaign" — requires that the Applicant provide "proof at a high level of certainty appropriate to the seriousness of the allegation" that is "fully conclusive". It contends that the same standard applies for the attribution of such acts.

167. The Russian Federation further argues that the proposition that Ukraine lacks access to Crimea is irrelevant in this case, because statistical data is publicly available. It points out that, in the Court's jurisprudence, the consideration of circumstantial evidence requires a high standard of proof.

* *

168. The Court recalls the general principle that it is for the party alleging a fact to demonstrate its existence (see paragraph 79 above). Consequently, it is for Ukraine to demonstrate the existence of the facts alleged in support of its claims.

169. While the burden of proof rests in principle on the party which alleges a fact, this does not relieve the other party of its duty to co-operate "in the provision of such evidence as may be in its possession that could assist the Court in resolving the dispute submitted to it" (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 71, para. 163). The Court has also recognized that a State that is not in a position to provide direct proof of certain facts "should be allowed a more liberal recourse to inferences of fact and circumstantial evidence" (*Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 18). Bearing in mind some of the obligations in question and the circumstances of the present case, including the lack of access of Ukraine to Crimea, the Court considers that the burden of proof varies depending on the type of facts which it is necessary to establish (see *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, pp. 660-661, paras. 55-56).

170. The Court notes that the Parties disagree on the applicable evidentiary standard for proving a "pattern" of racial discrimination. It recalls that the standard of proof may vary from case to case, *inter alia*, depending on the gravity of the allegation (*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. 129-130, paras. 209-210). In cases involving allegations of massive human rights violations, the Court has previously required "convincing" evidence (see e.g. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 241, para. 210, and p. 249, para. 237). In the present case, the Court will assess whether there is convincing evidence when considering the allegations made by Ukraine under CERD.

171. The Court will therefore examine whether there is convincing evidence that individual acts of racial discrimination have taken place and, if so, whether these acts together constitute a "pattern" of racial discrimination (see paragraph 161 above).

(b) *Methods of proof*

172. Responding to the Russian Federation's contention that it is necessary to prove its allegations with statistical data, Ukraine argues that neither the Court nor the CERD Committee have ever set forth a requirement for statistical data in order to prove discrimination under CERD. Ukraine further points out that the Ukrainian Government has been temporarily excluded from Crimea and is therefore in no position to compile statistics, although it has proffered such analyses where the data exists. Moreover, Ukraine emphasizes that statistical comparisons offered by the Russian Federation are inconclusive. In its view, these comparisons do not indicate if a specific ethnic group was more frequently affected than others within a specific region, nor do they account for the qualitative significance of the impact on the ethnic group in question.

173. According to the Russian Federation, "differentiation in treatment" must be demonstrated by comparison using "statistical data". Regarding the weight to be attributed to the evidence presented, the Russian Federation is of the view that the evidence put forward by Ukraine stems from individuals who do not have first-hand knowledge of the situation in Crimea and that the reports by the Office of the High Commissioner for Human Rights (hereinafter the "OHCHR") on the situation in Crimea can hardly be treated as compelling evidence because the OHCHR has not visited Crimea to collect evidence first-hand, in spite of the Russian Federation's invitations to do so.

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174. In order to rule on Ukraine's allegations, the Court must assess the relevance and probative value of the evidence proffered by the Parties in support of their versions of the facts in relation to the different claims (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)*, p. 74, para. 180; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 200, para. 58). The Court recalls that it has applied various criteria to assess evidence (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 55, para. 120; *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. 129-130, paras. 209-210). It considers that racial discrimination may be proved by statistical evidence that is reliable and significant, as well as by any other methods of reliable proof.

175. As to the weight to be given to certain kinds of evidence, the Court recalls that it

> "will treat with caution evidentiary materials specially prepared for this case and also materials emanating from a single source. It will prefer contemporaneous evidence from persons with direct knowledge. It will give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person making them (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41, para. 64). The Court will also give weight to evidence that has not, even before this litigation, been challenged by impartial persons for the correctness of what it contains." (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 201, para. 61; see also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, pp. 130-131, para. 213; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 55, para. 121.)

The Court has also stated that the probative value of reports from official or independent bodies

> "depends, among other things, on (1) the source of the item of evidence (for instance partisan, or neutral), (2) the process by which it has been generated (for instance an anonymous press report or the product of a careful court or court-like process), and (3) the quality or character of the item (such as statements against interest, and agreed or uncontested facts)" (*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. 76, para. 190; see also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 56, para. 122).

176. The Court will consider the probative value of such reports on a case-by-case basis, in accordance with these criteria.

177. Concerning statements by witnesses, the Court recalls that "witness statements which are collected many years after the relevant events, especially when not supported by corroborating documentation, must be treated with caution" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 63, para. 147). Moreover, the Court has noted that "any part of the testimony given which was not a statement of fact, but a mere expression of opinion as to the probability or otherwise of the existence of such facts, not directly known to the witness . . . cannot take the place of evidence" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua*

v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 42, para. 68). In determining the probative value of evidence provided by a party, the Court also treats with caution statements by witnesses who are not disinterested in the outcome of the case, especially when not supported by corroborating documentation. In determining the evidentiary weight of any witness statement, the Court will take these considerations into account.

178. Finally, the Court has held that certain materials, such as press articles and extracts from publications, are regarded "not as evidence capable of proving facts, but as material which can nevertheless contribute, in some circumstances, to corroborating the existence of a fact, i.e. as illustrative material additional to other sources of evidence" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 40, para. 62) or when they are "wholly consistent and concordant as to the main facts and circumstances of the case" (*United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, p. 10, para. 13; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 204, para. 68). The Court sees no reason to depart from this approach when assessing the probative value of such materials.

4. Article 1, paragraph 1, of CERD

179. The Parties disagree about the meaning of "racial discrimination" as defined in Article 1, paragraph 1, of CERD.

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180. Ukraine submits that the definition of "racial discrimination" in Article 1, paragraph 1, of CERD comprises three elements: (i) a "distinction, exclusion, restriction or preference" that is (ii) "based on" a protected ground, namely race, colour, descent, or national or ethnic origin, and that (iii) has the "purpose or effect of nullifying or impairing the recognition, enjoyment or exercise . . . of human rights and fundamental freedoms".

181. According to Ukraine, the first element, the requirement of a "distinction, exclusion, restriction or preference", encompasses all forms of racial discrimination. It argues that this broad understanding is also supported by the *travaux préparatoires* of the Convention.

182. In Ukraine's view, the second requirement that discrimination be "based on" a protected ground is a broad concept encompassing not only restrictions that are expressly based on a protected ground, but also those that "directly implicate" a person or group on one or more of those grounds. In support of this interpretation, Ukraine points out that the CERD

Committee has explained in its General Recommendation XIV that "the words 'based on' do not bear any meaning different from 'on the grounds of'". According to Ukraine, the fact that discriminatory conduct is also motivated by political reasons does not preclude such conduct from being "based on" a protected ground. The Applicant emphasizes that, if this were the case, a State could avoid responsibility under CERD by additionally asserting political reasons for its actions. Ukraine illustrates this argument by recalling that the deportation of the Crimean Tatars in 1944 was motivated by accusations of collaboration with Germany during World War II, but that this measure would have had to be qualified as a distinction based on ethnic origin if CERD had been in force in 1944.

183. Regarding the third element, Ukraine argues that Article 1, paragraph 1, protects against conduct that can be demonstrated to have a discriminatory purpose, as well as effects-based discrimination. With respect to discriminatory purpose, Ukraine submits that such purpose may be deduced both from the stated purpose of a measure or inferred from circumstantial evidence. In its view, circumstantial evidence of racial animus may be drawn from the nature and context of a measure, or where a facially neutral measure targets in fact a protected group. Ukraine is of the view that there is no requirement that discrimination be intentional and that discrimination in effect — which it understands as being synonymous with the term "indirect discrimination" — is covered by Article 1, paragraph 1. Citing the CERD Committee's General Recommendation XIV on the definition of racial discrimination, Ukraine argues that a discriminatory effect exists if a facially neutral measure "results in a disproportionate prejudicial impact" or "has an unjustifiable disparate impact" on a protected group. In its view, a disparate impact is justifiable where it is based on a justification that is "legitimate" when "judged against the objectives and purposes of the Convention". This, in turn, requires that the relevant measure is necessary, has a legitimate aim and is proportionate, in that the expected benefit in furtherance of the legitimate aim outweighs any adverse impact on human rights.

184. Ukraine claims that the prohibition of racial discrimination under CERD is absolute and that no derogation from it is permitted, whether the measure in question is discriminatory in purpose or in effect. Ukraine argues that, to the extent that the Russian Federation asserts that national security, anti-extremism or public order justify certain restrictions of substantive human rights, the Russian Federation has failed to meet the widely accepted legal requirements for such restrictions to be imposed.

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185. The Russian Federation, in turn, contends that the term "racial discrimination" under Article 1, paragraph 1, of CERD contains four elements: (i) a "distinction, exclusion, restriction or preference" that is (ii) "based on" one or more criteria mentioned in Article 1, paragraph 1, having (iii) the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise (iv) on an equal footing, of human rights and fundamental freedoms.

186. The Russian Federation agrees that the definition contained in Article 1, paragraph 1, of CERD encompasses discriminatory purpose, as well as discriminatory effect. However, it argues that Ukraine's broad understanding of "indirect discrimination" should be rejected. According to the Russian Federation, Ukraine's definition of "indirect discrimination", as "equal treatment which has a disproportionate effect on a group defined by the enumerated grounds" or as a "disparate impact" arising from "inequality of results rather than inequality of treatment" is incompatible with the four elements which, in its view, define racial discrimination, as well as with the Court's Judgment in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)*.

187. Regarding the first element, the Russian Federation emphasizes that the obligations under the Convention hinge upon "differential treatment", i.e. a "distinction, exclusion, restriction or preference". In its view, the concept of "indirect discrimination" as put forward by Ukraine is incompatible with this element since "equal treatment" cannot constitute racial discrimination.

188. With respect to the second element, the Russian Federation states that any differentiation of treatment must be "based on" one of the criteria enumerated in Article 1, paragraph 1, and that ethnicity cannot incorporate the protection of political opinions or religion. This means that "indirect discrimination" would only fall within the scope of CERD if the differential treatment "directly targeted or singled out Tatar and Ukrainian communities as such".

189. As for the third element, the Russian Federation accepts that racial discrimination by effect can constitute a violation of CERD, but it argues that Ukraine's broad understanding of "indirect discrimination" is not covered by the Convention. In its view, a disparity of results between ethnic groups does not by itself constitute racial discrimination, unless it is an objective consequence of a distinction, exclusion, restriction or preference based on race, colour, descent, national origin or ethnic origin. According to the Russian Federation, not every disparity amounts to racial discrimination, especially where such disparity is just a secondary or collateral effect of a measure. The Russian Federation stresses that a "disparate" effect only amounts to racial discrimination if it can be causally linked to an act of differential treatment on racial grounds.

190. With respect to the fourth element, the Russian Federation argues that the wording "nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms" makes it plain that there must be an actual nullification or impairment (i.e. a violation) of an existing right, and not a mere possibility thereof. In its view, the definition of racial discrimination within the meaning of Article 1, paragraph 1, therefore necessarily presupposes a violation of a human right protected under international law.

191. The Russian Federation finally argues that a measure does not qualify as discriminatory in effect if it can be "reasonably justified" or deemed legitimate in the circumstances. In its view, possible justifications include, among others, reasonable limitations to human or civil rights as may be necessary in a democratic society, provided for under the applicable law and subject to due process, in order to protect public order from acts of terrorism and extremism.

* *

192. The Parties disagree on the meaning of "racial discrimination" in Article 1, paragraph 1, of CERD as well as on whether any conduct of the Russian Federation qualifies as racial discrimination within the meaning of that provision. The Court will, at the outset, interpret the term "racial discrimination" under Article 1, paragraph 1, of the Convention to the extent that it is necessary to determine whether the Russian Federation has violated substantive or procedural obligations under CERD.

193. Article 1, paragraph 1, of CERD provides that

> "the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

194. The Convention prohibits all forms and manifestations of racial discrimination as set forth by this definition. Accordingly, any differentiation of treatment that is "based on" one of the prohibited grounds — race, colour, descent, or national or ethnic origin — is discriminatory in the sense of Article 1, paragraph 1, of the Convention, when the resulting impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms arises from its purpose or effect (see *Application of the Inter-*

national Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, pp. 108-109, para. 112).

195. "Racial discrimination" under Article 1, paragraph 1, of CERD thus consists of two elements. First, a "distinction, exclusion, restriction or preference" must be "based on" one of the prohibited grounds, namely, "race, colour, descent, or national or ethnic origin". Secondly, such a differentiation of treatment must have the "purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights".

196. Any measure whose purpose is a differentiation of treatment based on a prohibited ground under Article 1, paragraph 1, constitutes an act of racial discrimination under the Convention. A measure whose stated purpose is unrelated to the prohibited grounds contained in Article 1, paragraph 1, does not constitute, in and of itself, racial discrimination by virtue of the fact that it is applied to a group or to a person of a certain race, colour, descent, or national or ethnic origin. However, racial discrimination may result from a measure which is neutral on its face, but whose effects show that it is "based on" a prohibited ground. This is the case where convincing evidence demonstrates that a measure, despite being apparently neutral, produces a disparate adverse effect on the rights of a person or a group distinguished by race, colour, descent, or national or ethnic origin, unless such an effect can be explained in a way that does not relate to the prohibited grounds in Article 1, paragraph 1. Mere collateral or secondary effects on persons who are distinguished by one of the prohibited grounds do not, in and of themselves, constitute racial discrimination within the meaning of the Convention (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, pp. 108-109, para. 112).

197. When determining whether the Russian Federation has violated its obligations under CERD, the Court will be guided by the above interpretation of Article 1, paragraph 1, of CERD.

5. Crimean Tatars and ethnic Ukrainians as protected groups

198. According to Ukraine, both Parties agree that Crimean Tatars and ethnic Ukrainians in Crimea constitute ethnic groups protected under CERD and their differences over the precise definition of an ethnic group are legally irrelevant. Ukraine argues that a frequently observed characteristic of ethnic groups is a desire to live together within a common political State.

Ukraine is of the view that the Court's Judgment in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)* does not preclude this position, since the question at issue in that case was the meaning of the term "national origin", rather than "ethnic origin".

199. The Russian Federation agrees that Crimean Tatars and ethnic Ukrainians constitute ethnic groups protected under CERD. However, the Russian Federation insists that there is no room in CERD for political views or political identification to be incorporated into the concept of "ethnic origin". Any such incorporation would distort this term beyond recognition, which in turn may diminish the effectiveness of the Convention as the "non-political and universal Convention" the drafters envisioned. According to the Russian Federation, the Court's Judgment in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)* indicated in no unclear terms that "references to 'origin' denote, respectively, a person's bond to a national or ethnic group at birth".

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200. The Court recalls that the Parties agree that Crimean Tatars and ethnic Ukrainians constitute ethnic groups protected under CERD (*Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 595, para. 95). It sees no reason to call this characterization into question. The Court observes in this context "that the definition of racial discrimination in the Convention includes 'national or ethnic origin'" and that "[t]hese references to 'origin' denote, respectively, a person's bond to a national or ethnic group at birth", as do "the other elements of the definition of racial discrimination, . . . namely race, colour and descent" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 98, para. 81). Accordingly, the political identity or the political position of a person or a group is not a relevant factor for the determination of their "ethnic origin" within the meaning of Article 1, paragraph 1, of CERD.

B. Alleged Violations of Articles 2 and 4 to 7 of CERD

201. Before turning to the alleged violations of obligations under CERD, the Court recalls that its jurisdiction is limited by virtue of Article 22 of CERD to Ukraine's claims under that Convention. In the present case, the

Court lacks jurisdiction to rule on alleged breaches of other obligations under international law, such as those deriving from other international human rights instruments. However, the fact that a court or tribunal does not have jurisdiction to rule on alleged breaches of those obligations does not mean that they do not exist. They retain their validity and legal force. States are required to fulfil their obligations under international law, and they remain responsible for acts contrary to international law which are attributable to them (*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. 46, para. 86; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, pp. 52-53, para. 127).

1. Disappearances, murders, abductions and torture of Crimean Tatars and ethnic Ukrainians

202. Ukraine submits that the Russian Federation violated its obligations under CERD, in particular Articles 2, paragraph 1 *(a)* and *(b)*, 5 *(b)* and 6, by directly engaging in acts of physical violence against Crimean Tatars and ethnic Ukrainians in Crimea, by encouraging and tolerating such acts through its agents and, in any event, by failing to prevent and effectively investigate the alleged incidents.

203. Ukraine refers to 13 incidents of physical violence against named Crimean Tatars and ethnic Ukrainians as "illustrations" of what it considers to be the Russian Federation's "systematic pattern of violence and intimidation". These incidents include the murder of Reshat Ametov, and the abduction and torture of Mykhailo Vdovchenko, Andrii Shchekun, Anatoly Kovalsky, Aleksandr Kostenko and Renat Paralamov. Ukraine emphasizes that these instances are not exhaustive. In its view, the Russian Federation is responsible for all these incidents, whether they occurred before or after 18 March 2014.

204. According to Ukraine, the acts of physical violence of which it complains were based on a racial or ethnic distinction. In support of its assertion, Ukraine contends that the acts targeted prominent activists, thereby depriving the Crimean Tatar and ethnic Ukrainian communities respectively of current or potential future leaders. Ukraine argues that these acts were designed to force into submission ethnic groups presumed to be opposing the Russian occupation.

205. To substantiate its allegations, Ukraine relies on reports by intergovernmental and non-governmental organizations showing, in its view, that

Crimean Tatars and ethnic Ukrainians have been particularly hard hit by such physical violence. Referring to UN reports, Ukraine argues that nine out of ten persons who have disappeared and who are still missing are either Crimean Tatar or ethnic Ukrainian. According to Ukraine, these reports prove not just discriminatory effect, but also discriminatory purpose. In response to the Russian Federation's argument that Ukraine has failed to supply statistical data, Ukraine maintains that it has provided statistical evidence and that more detailed statistics are not required to prove a CERD violation. Ukraine points out that the Russian Federation has failed to offer credible data refuting Ukraine's claims despite having unfettered access to the relevant data.

206. Ukraine also asserts that the Russian Federation violated Article 6 of CERD by failing to investigate the disappearances and other acts of physical violence. In support of its allegations, Ukraine mainly relies on witness statements and reports by intergovernmental organizations, in particular on two reports by the OHCHR.

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207. The Russian Federation argues that Ukraine has not proved that any of the alleged incidents are attributable to the Russian Federation. The Respondent asserts that none of the incidents alleged by Ukraine can be linked to the ethnicity of the respective victims and that it has complied with its obligations to investigate all these incidents. It points out that even the UN reports relied on by Ukraine attributed the incidents to the political views of the victims, rather than to their ethnicity. The Russian Federation further argues that Ukraine cannot rely on incidents that allegedly occurred prior to what the Respondent calls the "reunification" of Crimea with the Russian Federation on 18 March 2014, since they are not within the Court's jurisdiction *ratione temporis* as defined in the 2019 Judgment.

208. The Russian Federation also contends that these incidents cannot validly be said to have disproportionally affected any ethnic group. In its view, these incidents are unconnected and isolated and thus do not establish a pattern of physical violence directed against the Crimean Tatar and ethnic Ukrainian population. The Russian Federation argues that Ukraine has failed to provide a full-scale statistical analysis of the reported cases in comparison with other ethnic groups and with the population of Crimea as a whole. The Russian Federation refers to statistical information originating from the Office of the Russian Federation's Prosecutor General, which, in its view, proves that Crimean Tatars and ethnic Ukrainians were not disproportionately affected by disappearances. According to the Russian Federation, most of the disappeared persons in relation to whom criminal proceedings have been initiated are ethnic Russians, who account for almost 80 per cent

of all missing persons in Crimea. The Russian Federation also emphasizes that the OHCHR reports relied on by Ukraine do not support its allegations and are, moreover, based on inadequate methodologies.

209. The Russian Federation also rejects the allegation of Ukraine that it violated its obligations under Article 6 of CERD by failing to investigate the alleged incidents of physical violence in a satisfactory manner. According to the Russian Federation, a proper criminal investigation is a matter of legal due process rather than achieving a particular result. The Respondent argues that Ukraine has not established the existence of any investigative irregularities. In support of its assertion, the Russian Federation provides documents which, in its view, prove that investigations were undertaken in a satisfactory manner.

210. The Russian Federation thus contends that its responsibility under CERD is not engaged by the incidents of physical violence alleged by Ukraine and that Ukraine's claims in this regard must be rejected.

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211. The Court notes that the Parties agree that several incidents of physical violence have occurred in Crimea since early March 2014. This includes the murder of Reshat Ametov in March 2014, the disappearances of Timur Shaimardanov and Seiran Zinedinov in May 2014, and the disappearance of Ervin Ibragimov in May 2016. Further, the Court takes note of reports by the OHCHR stating that "from 3 March 2014 to 30 June 2018 . . . at least 42 persons were victims of enforced disappearances" (OHCHR, Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (13 September 2017 to 30 June 2018), UN doc. A/HRC/39/CRP.4, para. 32; see also OHCHR, United Nations Human Rights Monitoring Mission in Ukraine, Briefing Paper: "Enforced disappearances in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation" (31 March 2021), pp. 3-12). These reports also support Ukraine's allegations regarding the ill-treatment of abducted persons in Crimea, indicating that "[p]erpetrators have used torture and ill-treatment to force victims to self-incriminate or testify against others" (*ibid.*, p. 1; see also OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017), UN doc. A/HRC/36/CRP.3 (25 September 2017), para. 101).

212. The Court observes that it must determine whether an act of racial discrimination as defined in Article 1 of the Convention has occurred before it can decide whether the Russian Federation has violated its obligations under Articles 2, paragraph 1 *(a)* and *(b)*, and 5 *(b)* of CERD. Therefore, the Court must first examine whether the acts of physical violence alleged by Ukraine constitute instances of racial discrimination within the meaning of Article 1, paragraph 1, of CERD.

213. The Court notes that Ukraine relies on two main arguments to substantiate its claim that the alleged acts of physical violence were based on the ethnic origin of the targeted individuals. First, with respect to the 13 alleged incidents of physical violence concerning named persons, Ukraine asserts that the targeted individuals were prominent Crimean Tatar and ethnic Ukrainian activists representing their respective ethnic communities. Secondly, Ukraine refers to reports of intergovernmental and non-governmental organizations to show that individuals affected by acts of physical violence in Crimea were disproportionately of Crimean Tatar and ethnic Ukrainian origin.

214. With respect to Ukraine's first argument, the Court observes that reports by the OHCHR confirm that several targeted persons were pro-Ukrainian activists, as well as members and affiliates of the *Mejlis* (OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017), UN doc. A/HRC/36/CRP.3 (25 September 2017), para. 81 and note 105 (Ametov), paras. 86, 98, 101 and 104; OHCHR, United Nations Human Rights Monitoring Mission in Ukraine, Briefing Paper: "Enforced disappearances in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation" (31 March 2021), p. 8 (Shaimardanov, Zinedinov and Ibragimov)). The reports of intergovernmental organizations and other publications relied on by Ukraine further indicate that the victims were attacked for their political and ideological positions, in particular for their opposition to the March 2014 referendum held in Crimea and their support for the Ukrainian Government. For example, one report noted that these acts constituted "retaliation for their political affiliation or position" (*ibid.*, p. 1). Another report referred to "[c]ircumstances which may suggest political motives" (OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017), UN doc. A/HRC/36/CRP.3 (25 September 2017), para. 104). The Court recalls that the political identity or the political position of a person or a group is not a relevant factor for the determination of their "ethnic origin" within the meaning of Article 1, paragraph 1, of CERD (see paragraph 200 above). The Court therefore considers that the prominent political role and views of these persons within their respective

communities do not, as such, establish that they were targeted on the basis of their ethnic origin.

215. The Court notes that, according to Ukraine's second argument, a large proportion of Crimean Tatars and ethnic Ukrainians were among the persons affected by physical violence, demonstrating discriminatory treatment based on ethnic origin. The limited statistical evidence furnished by Ukraine is mainly derived from reports of intergovernmental organizations (see paragraph 205 above). While the Court generally ascribes particular weight to reports by international organizations that are specifically mandated to monitor the situation in a given area (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 125, para. 360), it must also take into consideration the lack of access to Crimea of the Human Rights Monitoring Mission in Ukraine on whose observations the relevant reports are based (OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017), UN doc. A/HRC/36/CRP.3 (25 September 2017), paras. 2 and 35).

216. Bearing these considerations in mind, the Court observes that the above-mentioned reports confirm that physical violence in Crimea was not only suffered by Crimean Tatars and ethnic Ukrainians, but also by persons of Russian and Central Asian origin (OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017), UN doc. A/HRC/36/CRP.3 (25 September 2017), para. 102; OHCHR, Report on the Ssituation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (13 September 2017 to 30 June 2018), UN doc. A/HRC/39/CRP.4, para. 33; OHCHR, United Nations Human Rights Monitoring Mission in Ukraine, Briefing Paper: "Enforced disappearances in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation" (31 March 2021), p. 4).

217. The Court acknowledges that Ukraine is not in a position to provide further evidence owing to its lack of access to Crimea. However, even when allowing a more liberal recourse to inferences of fact and circumstantial evidence for that reason (see paragraph 169 above), the Court is not convinced by the evidence placed before it that Crimean Tatars and ethnic Ukrainians were subjected to acts of physical violence based on their ethnic origin. In fact, any disparate adverse effect on the rights of Crimean Tatars and ethnic Ukrainians can be explained by their political opposition to the conduct of the Russian Federation in Crimea and not by considerations relating to the

prohibited grounds under CERD (see paragraph 196 above). Since the conditions set forth in Article 1, paragraph 1, of CERD are not met, it is not necessary for the Court to examine whether any of the acts in question are attributable to the Russian Federation, nor to determine the precise date on which the Russian Federation started to exercise territorial control over Crimea.

218. With respect to Ukraine's claim that the Russian Federation did not effectively investigate the acts of physical violence involving Crimean Tatar and ethnic Ukrainian persons, the Court recalls that Article 6 provides that

> "States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention".

219. The Court observes that Article 6 constitutes a procedural safeguard for the prohibition of racial discrimination by establishing an obligation for States to provide effective protection and remedies through judicial and other State organs against any acts of racial discrimination. This obligation encompasses a duty to investigate allegations of racial discrimination where there are reasonable grounds to suspect that such discrimination has taken place. In this regard, a violation of Article 6 does not require that a violation of any of the substantive guarantees under CERD has occurred. Article 6 may also be violated if, in a given case, there were reasonable grounds to suspect that racial discrimination occurred and measures to effectively investigate the incident in question were not taken at the relevant time, even if these suspicions proved to be unfounded at a later stage.

220. The Court takes note of the Russian Federation's contention that it has conducted investigations into the incidents of physical violence alleged by Ukraine. At the same time, the Court observes that doubts regarding the effectiveness of these investigations have been expressed in reports of intergovernmental organizations. For example, the OHCHR, in its report on the Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), covering the period from 22 February 2014 to 12 September 2017, stated that

> "[t]he [contact] group [focusing on the disappearances] convened for the first time on 14 October 2014 in the presence of investigative authorities and the relatives of five missing Crimean Tatar men but achieved little beyond information-sharing and the decision to transfer the investigations to the central Investigation Department of the Russian Federation. Of the 10 disappearances mentioned, criminal investigations were still

> ongoing in only one case as of 12 September 2017. They were suspended in six cases due to the inability to identify suspects, and in three cases no investigative actions have been taken as the disappearances were allegedly not reported." (UN doc. A/HRC/36/CRP.3 (25 September 2017), para. 103.)

However, the evidence does not establish that the Russian Federation failed to effectively investigate whether the acts complained of by Ukraine amount to racial discrimination. Ukraine has not demonstrated that, at the relevant time, reasonable grounds to suspect that racial discrimination had taken place existed which should have prompted the Russian authorities to investigate. Consequently, Ukraine has failed to substantiate its allegation that the Russian Federation has violated its duty to investigate under Article 6 of CERD.

221. The Court concludes that it has not been established the Russian Federation has violated its substantive or procedural obligations under CERD on account of the incidents of physical violence alleged by Ukraine.

2. Law enforcement measures, including searches, detentions and prosecutions

222. According to Ukraine, the Russian Federation violated CERD, in particular Articles 2, paragraph 1, 4, 5 *(a)* and 6, by singling out and subjecting both the Crimean Tatar leadership and the wider Crimean Tatar population to manifestly disproportionate law enforcement measures based on its anti-extremism laws, in particular in the form of arbitrary searches, detentions and prosecutions. It contends that the Russian Federation's anti-extremism laws are in themselves evidence of the discriminatory purpose of these law enforcement measures. In its view, the broad and vague character of these laws makes them prone to be abused to arbitrarily silence groups vulnerable to discrimination, such as ethnic minorities.

223. The Russian Federation maintains that it did not violate CERD through what it considers to be law enforcement measures adopted against members of the Crimean Tatar leadership and against certain other members of the Crimean Tatar community in response to extremist, separatist and terrorist activities in Crimea. It contends that its domestic legal framework on which the law enforcement measures are based, consisting of Federal Law No. 114-FZ of 25 July 2002 "On counteracting extremist activities" (hereinafter the "Anti-Extremism Law"), Federal Law No. 35-FZ of 6 March 2006 "On combatting terrorism" (hereinafter the "Anti-Terrorism Law") and the Decree of the Head of the Republic of Crimea No. 26-U of 30 January 2015 "On approval of the Comprehensive Plan countering the ideology of terrorism in the Republic of Crimea, for 2015-2018", complies with the standards enshrined in many international legal instruments.

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224. The Court will first determine whether the law enforcement measures taken by the Russian Federation constitute acts of racial discrimination in the sense of Article 1, paragraph 1, of CERD before deciding whether the Respondent has violated its obligations under the Convention to prevent, protect against and remedy such acts.

225. Accordingly, the Court will first consider the question of whether the legislation adopted by the Russian Federation in itself constitutes racial discrimination, and then turn to the allegations concerning the application of such legislation. In this regard, the Court takes note of Ukraine's claim that the measures undertaken by the Russian Federation were based on anti-extremism legislation which, according to Ukraine, is in itself evidence of racial discrimination.

226. The Court notes that the conformity of the relevant laws of the Russian Federation, in particular the provisions on "extremist activities", with the human rights obligations of that State has been called into question by international judicial and monitoring bodies. In this regard, it notes that the European Court of Human Rights (hereinafter the "ECtHR") found that

> "the extremely broad definition of 'extremist activities' in section 1 of [the Anti-Extremism Law] which does not require any elements of violence or hatred opens up the possibility of having individuals and organisations prosecuted on extremism charges for entirely peaceful forms of expression or worship, such as those pursued by the applicants in the instant case. That broad definition of 'extremism' not only could — and did — lead to arbitrary prosecutions, but also prevented individuals or organisations from being able to anticipate that their conduct, however peaceful and devoid of hatred or animosity it was, could be categorised as 'extremist' and censured with restrictive measures." (ECtHR, *Taganrog LRO and Others* v. *Russia*, Application Nos. 32401/10 and 19 others, Judgment of 7 June 2022 (merits and just satisfaction), paras. 158; ECtHR, *Ibragim Ibragimov and Others* v. *Russia*, Application Nos. 1413/08 and 28621/11, Judgment of 28 August 2018, para. 85.)

227. The Court further takes note of the Opinion of the Venice Commission of the Council of Europe according to which the Anti-Extremism Law, "on account of its broad and imprecise wording", gives "too wide discretion in its interpretation and application, thus leading to arbitrariness" and carries "potential dangers to individuals and NGOs" and "can be interpreted in harmful ways" (European Commission for Democracy through Law (Venice Commission), Revised Draft Opinion on the Federal Law on combating extremist activity of the Russian Federation, doc. CDL(2012)011rev, 1 June 2012, paras. 77-78).

228. The Court observes that it is not called upon to review the compatibility of the domestic legislation of States parties to CERD with their international human rights obligations generally. Instead, the Court's role is limited to examining whether such legislation either has the purpose of differentiating between persons or groups of persons distinguished by one of the prohibited grounds contained in Article 1, paragraph 1, of CERD, or is likely to produce a disparate adverse effect, in this case, on the rights of Crimean Tatars or ethnic Ukrainians.

229. In this regard, no evidence has been put before the Court which would suggest that the purpose of the relevant domestic law is to differentiate between persons, based on one of the prohibited grounds contained in Article 1, paragraph 1, of CERD. Instead, the above-referenced domestic legal framework regulates the prevention, prosecution, and punishment of certain broadly defined criminal offences. Moreover, Ukraine has not provided evidence that this legal framework is likely to produce a disparate adverse effect on the rights of Crimean Tatars or ethnic Ukrainians. Therefore, the Court is of the view that the domestic legal framework in and of itself does not constitute a violation of CERD. However, this finding is without prejudice to the question whether the application of such domestic legislation is in breach of obligations under CERD. The Court notes that both Parties distinguish between the application of these domestic laws to the wider Crimean Tatar population, on the one hand, and to persons forming part of the Crimean Tatar leadership, on the other. It will therefore address these two categories separately and in turn.

(a) *Measures taken against persons of Crimean Tatar origin*

230. Ukraine argues that the Russian Federation has subjected the wider Crimean Tatar community to arbitrary searches and detentions in order to unsettle the entire community. According to Ukraine, since the referendum in March 2014, these practices have included conducting searches of Crimean Tatar mosques, schools and private homes, which have continued after the filing of the Application by Ukraine. It claims that these searches have been based mainly on allegations of religious extremism, which had not been part of the history of Crimea before its control by the Russian Federation, suggesting that they are a pretext for discrimination. Ukraine also points to "blockades" of roads leading to villages, to searches of public spaces including markets, restaurants and cafés favoured by Crimean Tatars, and to the targeting of Crimean Tatars on the basis of their appearance.

231. To substantiate its claim that these acts amount to racial discrimination, Ukraine refers to United Nations General Assembly resolution 75/192,

reports by the United Nations Secretary-General, reports by the OHCHR, observations by the CERD Committee, statements by intergovernmental organizations and reports by non-governmental organizations.

232. Ukraine asserts that the Russian Federation's compliance with its own domestic law does not justify the acts of which the Applicant complains, and that these laws are in themselves evidence of racial discrimination. It emphasizes that international courts and monitoring bodies have expressed concern that these laws do not contain clear and precise criteria for defining "extremist" conduct.

233. Ukraine maintains that, in any event, the application by the Russian Federation of its domestic law was discriminatory. In this regard, Ukraine points out that the measures of the Russian Federation against "religious" extremism, including against members of Hizb-ut Tahrir or Tablighi Jamaat, were pretextual and disproportionately affected the predominantly Muslim Crimean Tatar community. Ukraine also argues that the Russian Federation violated Article 4 by targeting Crimean Tatars as religious extremists, thereby fuelling mutual distrust between ethnic communities and making racial discrimination more likely.

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234. With respect to Ukraine's allegations concerning a pattern of discriminatory searches and detentions against the wider Crimean Tatar population, the Russian Federation maintains that these measures were mostly directed against "religious extremism", "Muslim radicalism" and "Islamic terrorism", and were not based on the ethnic origin of the Crimean Tatar community. In its view, the said measures were based on objective and reasonable grounds and taken in accordance with the applicable domestic law, excluding any possibility of racial discrimination under CERD. The Russian Federation underlines that the relevant legislation, such as the Anti-Extremism Law and the Anti-Terrorism Law, complies with international law, in particular with human rights standards.

235. The Russian Federation maintains that the evidence relied on by Ukraine lacks probative value. With respect to measures adopted against members of Hizb-ut Tahrir or Tablighi Jamaat, the Russian Federation points out that these are justified and constitute legitimate limitations and that the ECtHR has confirmed the legality of the ban of these organizations, in other countries as well as in the Russian Federation. It contends that the fact that some of the persons subjected to searches and detentions were Crimean Tatars is not sufficient to establish racial discrimination. Rather, it argues that the domestic legal framework concerning suspected extremist activities

and banned organizations is applied in the same way to everyone, including non-Crimean Tatar individuals and organizations, and that a differentiation of treatment based on ethnic origin cannot thus be established. The high number of Crimean Tatars concerned is, according to the Russian Federation, a reflection of the fact that Muslims in Crimea mostly happen to be Crimean Tatars, and not ethnic Russians or ethnic Ukrainians. The Respondent points out that religious extremism had been identified as a security concern in Ukraine before the referendum in March 2014.

236. The Russian Federation asserts that the fact that Ukraine only referred to Crimean Tatars and not to ethnic Ukrainians in its allegations of racially-discriminatory law enforcement measures demonstrates that such measures were not based on unlawful distinctions on the grounds of ethnic origin, but served to fight extremism in Crimea in accordance with the law.

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237. The Court begins by emphasizing that law enforcement measures that are applied to persons or groups solely on the basis of an assumption that they are prone to commit certain types of criminal offences because of their ethnic origin are unjustifiable under CERD. In the present case, Ukraine has provided evidence suggesting that persons of Crimean Tatar origin have been particularly exposed to law enforcement measures taken by the Russian Federation. The Court must therefore examine whether these measures had either the purpose of targeting Crimean Tatars or a disparate adverse effect on the rights of members of this group.

238. In this regard, the Court attributes considerable weight to reports of several United Nations organs and monitoring bodies according to which the measures in question disproportionately affected Crimean Tatar persons. This is the case, in particular, with respect to reports by the United Nations Secretary-General and the OHCHR, which state that "Crimean Tatars were disproportionately subjected to police and FSB raids of their homes, private businesses or meeting places, often followed by arrests" (OHCHR, Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (13 September 2017 to 30 June 2018), UN doc. A/HRC/39/CRP.4 (21 September 2018), para. 31; see also United Nations General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, Report of the Secretary-General, UN doc. A/74/276 (2 August 2019), para. 18). The disproportionate number of persons of Crimean Tatar origin who were subjected to abusive raids has been reported by the Commissioner for Human Rights of the Council of Europe. Moreover, the Court notes that the United Nations General Assembly, in its resolution 75/192 concerning the

"Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine", stated that it was

> "*[d]eeply concerned* about continued reports that the law enforcement system of the Russian Federation conducts searches and raids of private homes, businesses and meeting places in Crimea, which disproportionally affect Crimean Tatars".

In light of these materials, the Court finds that Ukraine has sufficiently demonstrated that the law enforcement measures concerned produced a disparate adverse effect on the rights of persons of Crimean Tatar origin. It is therefore necessary to consider whether such effect can be explained in a way that does not relate to the prohibited grounds in Article 1, paragraph 1, of CERD (see paragraph 196 above).

239. The Court notes that the Russian Federation has described the circumstances that motivated the law enforcement measures taken against persons of Crimean Tatar origin in certain individual cases. In this regard, the Court observes that the Russian Federation justifies many of the law enforcement measures as being part of its fight against religious "extremism" and "terrorism". The Russian Federation links a large number of its law enforcement measures to the affiliations of the persons concerned with religious groups that have been banned throughout the Russian Federation and in other countries, and recalls that the bans of these organizations have been considered lawful by international judicial bodies.

240. With respect to other individual cases, the Russian Federation points to circumstances which, in its view, gave rise to the belief that the persons in question were involved in criminal activities, notably attacks on law enforcement officials, disrupting the public order, trading in stolen goods, weapons, ammunition and drugs, and extorting money. Other measures were, according to the Russian Federation, undertaken as part of a "large-scale strategic training exercise" which was conducted at six different locations at the same time across the whole territory over which the Russian Federation exercises control. With respect to some searches, the Russian Federation cites "public health" concerns linked to the sale of spoilt food.

241. The Court notes that the stated purpose of certain measures appears to have served as a pretext for targeting persons who, because of their religious or political affiliation, the Russian Federation deems to be a threat to its national security. However, the Court is of the view that Ukraine has not presented convincing evidence to establish that persons of Crimean Tatar origin were subjected to such law enforcement measures based on their ethnic origin. Therefore, the Court does not consider that these measures are

based on the prohibited grounds contained in Article 1, paragraph 1, of CERD.

242. With respect to Ukraine's claim that the Russian Federation violated Article 4 of CERD, the Court notes that Article 4 *(a)* and *(b)* requires States parties to adopt immediate and effective measures for the prevention, eradication and punishment of speech that seeks to promote or justify racial hatred or to incite discrimination based on one or more of the prohibited grounds contained in Article 1, paragraph 1. Moreover, Article 4 *(c)* specifically provides that States parties shall not permit "public authorities or public institutions, national or local, to promote or incite racial discrimination". However, in the present case, the Court is not convinced that Ukraine has presented convincing evidence that statements have been made by State officials of the Russian Federation that were directed against Crimean Tatars based on their ethnic or national origin. Nor did Ukraine prove its allegation that the Russian Federation failed to comply with its obligation to prevent, eradicate and punish speech by private persons seeking to promote or justify racial hatred against Crimean Tatars and ethnic Ukrainians based on their national or ethnic origin.

243. Turning to Ukraine's claims that the Russian Federation violated Article 6 by failing to investigate effectively allegations of discriminatory law-enforcement measures taken against Crimean Tatars and ethnic Ukrainians, the Court considers that Ukraine failed to demonstrate that there were, at the relevant time, reasonable grounds to suspect that racial discrimination had taken place, which should have prompted the Russian authorities to investigate (see paragraphs 219-220 above). Therefore, the Court is not persuaded that Ukraine has established that the Russian Federation violated its obligation to investigate.

244. For these reasons, the Court is not convinced that the Russian Federation has engaged in law enforcement measures that discriminate against persons of Crimean Tatar origin based on their ethnic origin.

(b) *Measures taken against the* Mejli*s*

245. As far as persons belonging to the Crimean Tatar leadership are concerned, Ukraine asserts that the Russian Federation has restricted the movements of Crimean Tatar leaders, banning them from entering Crimea or preventing them from leaving Crimea. Ukraine further contends that the Russian Federation took measures against the *Mejlis* and its leaders prior to the ban on the *Mejlis* in April 2016, including searching its building and seizing assets from entities associated with it. Ukraine adds that the Russian Federation has resorted to discriminatory prosecutions and convictions of

certain *Mejlis* leaders, including two of its Deputy Chairmen, namely Akhtem Chiygoz, for his participation in a demonstration in front of the Crimean Parliament building on 26 February 2014, and Ilmi Umerov, on charges of separatism. Ukraine alleges that both were mistreated in detention before being released. According to Ukraine, the measures taken against these leading figures of the Crimean Tatar community served "to intimidate the wider Crimean Tatar community" and to deprive them of their political leadership and their ability to advocate for their rights. To substantiate its claim that these acts amount to racial discrimination, Ukraine points to reports by intergovernmental and non-governmental organizations and to witness statements of the individuals concerned. Moreover, Ukraine asserts that, rather than protecting the Crimean Tatar and ethnic Ukrainian communities from racial discrimination, the courts have actively participated in the discriminatory conduct by convicting Crimean Tatar leaders on "trumped-up" charges. In the Applicant's view, the Russian Federation has thus also violated its obligations under Article 6 of CERD.

246. The Russian Federation argues that these measures adopted against the *Mejlis* and persons belonging to the Crimean Tatar leadership were taken in application of its own domestic law, were directed against political extremism and separatism and were thus not based on ethnic origin. With respect to the restrictions on the movements of Crimean Tatar leaders, the Russian Federation argues that entry to Crimea was validly denied to some individuals on the ground that they were not Russian citizens and that CERD does not apply to distinctions between citizens and non-citizens. With respect to the remaining cases, the Russian Federation submits that Ukraine has failed to establish that these restrictions were based on the ethnic origin of those involved. Regarding the measures taken against the *Mejlis* and against persons and organizations affiliated with the *Mejlis* prior to its ban, the Russian Federation argues that these were based on the non-compliance with the law by the person or entity concerned and not on ethnic grounds. The Russian Federation maintains that the retroactive prosecutions and convictions of Akhtem Chiygoz, Ilmi Umerov and others relating to demonstrations on 26 February 2014 were not based on ethnic grounds, but on the involvement of those persons in extremist activities and in undermining "the territorial integrity of the Russian Federation". The Russian Federation rejects Ukraine's allegation that the individuals in question were mistreated during their detention. The Respondent also maintains that the measures adopted against members of the *Mejlis* were based on objective and reasonable grounds, complied with the standard procedure applicable in such cases, and had nothing to do with racial discrimination.

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247. The Court notes that the Russian Federation does not contest the occurrence of the alleged measures taken against the *Mejlis* prior to its ban and against Crimean Tatar leaders, but disputes that they constitute acts of racial discrimination within the scope of Article 1, paragraph 1, of CERD. According to the Russian Federation, these measures were not based on the ethnic origin of the persons concerned, but rather on their involvement in what the Russian Federation considers to be "extremist" and "separatist" conduct.

248. The Court recalls that the fact that targeted persons belong to the leadership of an ethnic group does not, in and of itself, suffice to establish that measures which adversely affect such persons amount to racial discrimination (see paragraph 214 above). Ukraine would also need to demonstrate that the relevant measures were "based on" the ethnic origin of the persons or the ethnically representative character of the institutions subjected to these measures. The Court considers that the context in which the measures were taken indicates that they were in response to the political opposition that these persons and institutions displayed against the exercise of territorial control by the Russian Federation in Crimea.

249. In the Court's view, Ukraine has not substantiated the claim that Crimean Tatar leaders who had engaged in political opposition against the control of Crimea by the Russian Federation were disproportionately affected by law enforcement measures compared with other persons who were engaged in similar conduct. The Court thus considers that the measures concerned were not based on the ethnic origin of the targeted persons and thus do not fall within the scope of Article 1, paragraph 1, of CERD.

250. The Court notes Ukraine's allegation that the measures taken against the Crimean Tatar leadership served to intimidate and unsettle the entire Crimean Tatar population. Ukraine invokes witness statements and reports by intergovernmental and non-governmental organizations in support of that allegation. The Court recalls its observation that "witness statements which are collected many years after the relevant events, especially when not supported by corroborating documentation, must be treated with caution" (see paragraph 177 above). Given their lack of specificity with respect to that allegation by Ukraine, the Court finds that the reports relied on by Ukraine are of limited value in confirming that the relevant measures are of a racially discriminatory character.

251. Taking all these considerations into account, the Court concludes that it has not been established that the measures taken by the Russian Federation against the members of the *Mejlis* were based on the ethnic origin of the persons concerned.

3. Ban on the Mejlis

252. Ukraine alleges that the Russian Federation violated CERD, in particular its Articles 2, paragraph 1 *(a)*, 4, 5 and 6, by imposing a ban on the *Mejlis* on 26 April 2016.

253. Ukraine argues that the *Mejlis* was the representative body of the Crimean Tatars. It contends that the *Mejlis*, a body indirectly elected by the entire Crimean Tatar population, has long been recognized by international organizations as representing the Crimean Tatar population. In its view, none of the alternative bodies referred to by the Russian Federation share its legitimacy and representativeness. In response to the Russian Federation's claim that the Crimean Tatar population and other Crimean Tatar institutions have distanced themselves from the *Mejlis* and expressed support for the ban, Ukraine argues that these institutions either do not possess the same electoral legitimacy or have been installed by the Russian Federation's "occupation authorities" in order to undermine the *Mejlis*. The Applicant also emphasizes that, in its Order on provisional measures, the Court recognized that none of these organizations can claim the same role as the *Mejlis* as the legitimate representative institution of the Crimean Tatar people.

254. In Ukraine's view, the ban on the *Mejlis* forms part of a sustained campaign aimed at dismantling the Crimean Tatar community's central political and cultural institution. Ukraine argues that its claim is not premised on the argument that CERD grants minorities a right to a representative body. Rather, it asserts that, first, the ban on the *Mejlis* exemplifies the Russian Federation's concerted discriminatory attack on the political and civil rights of Crimean ethnic groups, including the rights to equal treatment before tribunals, freedom of opinion and expression, and freedom of association and of peaceful assembly, and, secondly, that the ban on the *Mejlis* indicates that the Crimean Tatar community itself is being singled out for discriminatory treatment.

255. According to Ukraine, the Russian Federation cannot justify the ban on the *Mejlis* on grounds of national security. Ukraine claims that the prohibition of racial discrimination is absolute and, accordingly, cannot be justified on the basis of the Russian Federation's domestic law. Ukraine asserts that even if CERD allows for restrictions based on national security reasons, the ban did not comply with the strict requirements for such restrictions. Relying on expert reports, Ukraine argues that the Russian Federation's domestic anti-extremism laws as such have a discriminatory impact. It maintains that the outright ban on the *Mejlis* was, in any event, disproportionate. It contends that it targets the Crimean Tatar community, relying on a statement by the OHCHR according to which the ban could be perceived as a collective punishment against the Crimean Tatar community. Ukraine also cites statements by the United Nations General Assembly,

the CERD Committee, and the European Parliament calling for a lifting of the ban.

256. Ukraine maintains that the reasons given for the ban on the *Mejlis* are without any factual basis. In its view, that ban was a collective punishment of the Crimean Tatar people for opposing the Russian Federation's aggression. It rejects the Russian Federation's assertion that the *Mejlis* has historically been an extremist group, highlighting instead the lingering effects of the persecution of the Crimean Tatar people by Stalin in 1944. Moreover, Ukraine points out that the *Mejlis* has never been banned by the Ukrainian Government. Ukraine maintains that the allegations of extremist and violent activities attributed by the Russian Federation to the *Mejlis* are factually inaccurate and pretextual. Specifically with respect to the 2015 "civil blockade", Ukraine argues that the blockade was a peaceful and principled protest which was open to the public, which took place within the territory of Ukraine and which was directed against Ukrainian legislation that was understood as facilitating trade with Crimea. Ukraine asserts that, in any event, the blockade does not justify a ban on the *Mejlis* because the *Mejlis* did not initiate, organize or participate in the blockade. In its view, the participating *Mejlis* members, Mr Chubarov and Mr Dzhemilev, did so in their personal capacity. Moreover, Ukraine points out that all the attempts undertaken by members of the *Mejlis* to achieve a lifting of the ban have failed.

257. In Ukraine's view, the ban of the *Mejlis* forms part of the Russian Federation's "disinformation campaign" designed to dismantle the Crimean Tatar community's central political and cultural institution and to vilify Crimean Tatars and thus violates Article 4. Ukraine further alleges that the courts of the Russian Federation participated in the discriminatory conduct by brushing off applications by Crimean Tatar litigants seeking review of the ban of the *Mejlis* and that the Russian Federation therefore also violated its obligation under Article 6 of CERD.

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258. The Russian Federation, for its part, contends that the ban on the *Mejlis* does not violate CERD.

259. The Russian Federation argues that its ban on the *Mejlis* was not directed at the Crimean Tatar community as such. In its view, the *Mejlis* has never been, *de jure* or *de facto*, the representative body of the Crimean Tatars in Crimea, but rather an executive body responsible to the *Qurultay*. The Respondent points out that the Crimean Tatar community is represented by many organizations and associations in Crimea. It emphasizes that

among all existing institutions, organizations and associations that purport to defend the interests of the Crimean Tatar community, including the *Qurultay*, the *Mejlis* was the only organization that was banned, due to its violent activities. The Russian Federation also points out that the majority of members of the Crimean Tatar community does not feel represented by the *Mejlis* and expressed support for restrictions against it.

260. The Russian Federation claims that, in any event, the ban on the *Mejlis* falls outside the scope of CERD. It argues that CERD does not provide for a right of minorities to have and maintain a representative body. It claims that the ban did not violate its obligations under Article 2, paragraph 1 *(a)*, of CERD as this provision applies to institutions like the *Mejlis* only to the extent that it represents the Crimean Tatar community, which is, according to the Russian Federation, not the case. Regarding Article 4 of CERD, the Respondent maintains that Ukraine has not demonstrated how the ban could possibly infringe this provision. It contends that the ban does not violate its obligations under Article 5 *(a)* of CERD, arguing that this provision cannot be understood to grant a substantive right, but only a procedural one. The Russian Federation points out that representatives of the *Mejlis* were provided with means to request a judicial review and appeal the decisions on the ban, that they were heard and allowed to be represented in court. It asserts that the ban on the *Mejlis* does not violate its obligations under Article 5 *(c)* of CERD since the Crimean Tatars have not been prevented from participating in government or in public affairs on the basis of their ethnicity. With respect to Article 5 *(d)* (ix) of CERD, the Russian Federation contends that this right is not applicable to the *Mejlis* since the *Mejlis* was neither an "assembly" nor "peaceful".

261. The Russian Federation argues that, in any event, the ban on the *Mejlis* was based on security reasons, due to concerns over extremist activities, which in its view constitute a "valid ground" for restrictive measures under the applicable domestic and international rules. Relying on expert reports, the Respondent emphasizes that in banning the *Mejlis*, it did not treat the *Mejlis* differently from other extremist organizations. Referring to the list of extremist organizations kept by the Government which currently contains 101 entities, it states that these entities are composed of individuals belonging to different ethnicities, including primarily pseudo-Russian nationalists.

262. To substantiate its allegations regarding the violent activities of the *Mejlis*, the Russian Federation points, firstly, to the trade and transport blockades of Crimea in 2015 which, in its view, severely affected the population and environment of Crimea. It rejects Ukraine's claim that the members of the *Mejlis* participating in the blockade did so in their personal capacity and insists that they acted as representatives of the *Mejlis*. The Russian Federation also argues that the *Mejlis* did not dissociate itself from the actions of Mr Dzhemilev and Mr Chubarov, chairpersons of the *Mejlis*. In support of its allegations regarding the *Mejlis*' involvement in the blockade, the Respondent refers to reports by United Nations organizations and to the decision of the Supreme Court of the Russian Federation upholding the ban on appeal on 29 September 2016.

263. Apart from the alleged involvement of the *Mejlis* in the blockade, the Russian Federation argues that the *Mejlis* was involved in a series of violent and extremist activities stretching over an extensive period of time which were considered in detail by the Supreme Court of the Russian Federation in its decision to uphold the ban and were not addressed by Ukraine. The Russian Federation maintains that the ban was proportionate as it was preceded by several warnings to members of the *Mejlis*. It also points out that the *Mejlis* and its leaders continue to incite and engage in violent activities despite the ban. In response to Ukraine's allegations that all attempts to appeal the ban after the decision of the Supreme Court of the Russian Federation have failed, the Respondent underlines that the severe threat to national security and public order emanating from the *Mejlis* continues to exist.

264. The Russian Federation rejects Ukraine's allegation that the ban of the *Mejlis* violates Article 4 and points out that Ukraine has not explained how Article 4 could possibly be relevant in this context. With respect to the violation of Article 6 alleged by Ukraine, the Russian Federation maintains that the representatives of the *Mejlis* had the opportunity to appeal the decision on the ban, that their positions were heard, and their attorneys allowed to present their position in full, as reflected in the text of the judgments, and thus the Russian Federation did not violate its obligations under CERD.

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265. The Court notes at the outset that various intergovernmental organizations and monitoring bodies have called upon the Russian Federation to lift the ban on the *Mejlis* because of its negative impact on civil and political rights (United Nations General Assembly resolution 71/205, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) adopted on 19 December 2016, doc. A/RES/71/205 (1 February 2017), para. 2 *(g)*; CERD, Concluding observations on the combined twenty-fifth and twenty-sixth periodic reports of the Russian

Federation (25 April 2023), CERD/C/RUS/CO/25-26, para. 24 *(d)*). However, the Court does not have jurisdiction, in the present case, to examine the conformity of the ban on the *Mejlis* with the international human rights obligations of the Russian Federation generally. Instead, its jurisdiction is confined by Article 22 of CERD to assessing the conformity of the ban on the *Mejlis* with the Russian Federation's obligations under CERD (see paragraph 201 above).

266. The Court must determine whether an act of racial discrimination as defined in Article 1, paragraph 1, of the Convention has occurred before it can decide whether the Russian Federation violated its obligations under Articles 2, paragraph 1 *(a)* and *(b)*, and 5 *(a)* and *(c)* of CERD. It thus has to assess whether the ban on the *Mejlis* constitutes an act of racial discrimination within the meaning of Article 1, paragraph 1, of CERD (see paragraph 212 above). To this end, the Court will examine whether the ban on the *Mejlis* amounts to a differentiation of treatment that is based on a prohibited ground and whether it has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by the Crimean Tatars of their human rights and fundamental freedoms.

267. The ban entails the exclusion of the *Mejlis* from public life in Crimea. However, for the ban to amount to racial discrimination, Ukraine would also need to demonstrate that this exclusion was based on the ethnic origin of the Crimean Tatars as a group or of the members of the *Mejlis*, and that it had the purpose or effect of nullifying or impairing the enjoyment of their rights.

268. The Court takes note of the OHCHR Report on the human rights situation in Ukraine (16 May to 15 August 2016), according to which "the ban on the Mejlis, which is a self-government body with quasi-executive functions, appears to deny the Crimean Tatars — an indigenous people of Crimea — the right to choose their representative institutions" (Report, para. 177). It also notes the subsequent OHCHR Report on the human rights situation in Ukraine (16 August to 15 November 2016) according to which "none of the Crimean Tatar NGOs currently registered in Crimea can be considered to have the same degree of representativeness and legitimacy as the Mejlis, elected by the Crimean Tatars' assembly, namely the Kurultai" (*ibid*., para. 188).

269. The Court acknowledges that the *Mejlis* has historically played an important role in representing the interests of the Crimean Tatar community since that community resettled in Crimea in 1991, after being deported to Central Asia in 1944. At the same time, the Court is of the view that the *Mejlis* is neither the only, nor the primary institution representing the Crimean Tatar community. The Court does not need to decide whether the Crimean Tatar institutions that were established after 2014 also play a role in

genuinely representing the Crimean Tatar people. It suffices for the Court to observe that the *Mejlis* is the executive body of the *Qurultay* by which its members are elected and to which they remain responsible (Organization for Security and Co-operation in Europe (OSCE), High Commissioner on National Minorities (HCNM), "The Integration of Formerly Deported People in Crimea, Ukraine: Needs Assessment" (August 2013), p. 16). The *Qurultay* is, in turn, elected directly by the Crimean Tatar people and, as Ukraine acknowledges, it is "regarded by most Crimean Tatars as their representative body". The *Qurultay* has not been banned, nor is there sufficient evidence before the Court that it has been effectively prevented by the authorities of the Russian Federation from fulfilling its role in representing the Crimean Tatar community. Therefore, the Court is not convinced that Ukraine has substantiated its claim that the ban on the *Mejlis* deprived the wider Crimean Tatar population of its representation. It follows that it is not necessary in this case for the Court to determine under which circumstances the treatment of institutions representing groups that are distinguished by their national or ethnic origin may violate obligations under CERD.

270. The ban on the *Mejlis*, by its very nature, also produces a disparate adverse effect on the rights of persons of Crimean Tatar origin in so far as the members of the *Mejlis* are, without exception, of Crimean Tatar origin. However, the Court needs to assess whether this effect can be explained in a way that does not relate to the prohibited grounds in Article 1, paragraph 1 (see paragraph 196 above).

271. Based on the evidence before it, it appears to the Court that the *Mejlis* was banned due to the political activities carried out by some of its leaders in opposition to the Russian Federation, rather than on grounds of their ethnic origin. This was confirmed by Ukraine in its Reply, according to which, "[t]he real reason for the ban is the opposition of the Crimean Tatar people, voiced by the Mejlis, to Russia's illegal acts of aggression".

272. The Court thus concludes that Ukraine has not provided convincing evidence that the ban of the *Mejlis* was based on the ethnic origin of its members, rather than its political positions and activities, and would therefore constitute an act of discrimination within the meaning of Article 1, paragraph 1, of CERD.

273. With respect to Ukraine's claim that the Russian Federation violated Article 4 of CERD, the Court is not satisfied that Ukraine has convincingly established that, by adopting the ban of the *Mejlis*, authorities or institutions of the Russian Federation promoted or incited racial discrimination (see paragraph 242 above). The Court is thus not persuaded that the Russian Federation violated its obligations under this provision.

274. Turning to Ukraine's claim that the Russian Federation violated its obligations under Article 6 of CERD by failing to provide effective redress against the ban on the *Mejlis*, the Court observes that Ukraine did not establish that effective redress was denied by the Russian Federation.

275. For these reasons the Court concludes that it has not been established that the Russian Federation has violated its obligations under CERD by imposing a ban on the *Mejlis*.

4. Measures relating to citizenship

276. Ukraine claims that the Russian Federation violated its obligations under CERD, in particular Articles 5 *(c)*, 5 *(d)* (i), 5 *(d)* (ii), 5 *(d)* (iii), 5 *(e)* (i) and 5 *(e)* (iv), through the introduction of its own nationality and immigration framework into Crimea, as part of the Federal Constitutional Law No. 6-FKZ of 21 March 2014 "On the Admission of the Republic of Crimea into the Russian Federation and the Formation of New Constituent Entities of the Russian Federation: The Republic of Crimea and the Federal City of Sevastopol" (also known as the "Law on Admission").

277. Ukraine argues that the exclusions contained in Article 1, paragraph 2, and Article 1, paragraph 3, of CERD do not apply to the special citizenship régime imposed by the Russian Federation. Ukraine points out that the Court concluded, in its 2019 Judgment, that the measures of which Ukraine complains, including forced citizenship, "fall within the provisions of the Convention". Moreover, it submits that the Russian Federation's position is incompatible with a pronouncement of the CERD Committee.

278. Ukraine further asserts that the Russian Federation "weaponized" its citizenship law to advance a policy and practice of racial discrimination against the Crimean Tatar and ethnic Ukrainian communities. In its view, this facially neutral citizenship law served to facilitate discrimination against Crimean Tatars and ethnic Ukrainians. Accordingly, Ukraine argues, this citizenship régime had the purpose or effect of suppressing the core civil rights of the two communities.

279. In Ukraine's view, discrimination stems from the fact that the Russian Federation has forced members of the Ukrainian and Crimean Tatar ethnic groups to choose between receiving Russian citizenship and swearing allegiance to the Russian Federation or retaining Ukrainian citizenship and accepting restrictions on their civil and political rights on the territory of Crimea. Ukraine argues that this choice does not represent a voluntary, informed or free choice. Ukraine further contends that Crimean Tatars and ethnic Ukrainians were disproportionately affected compared with ethnic Russians residing in Crimea.

280. Ukraine submits that the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)* did not address the discriminatory "downstream effects" of a forced citizenship régime on a group protected under CERD. In its view, the Court addressed a distinct question in that case, namely whether discrimination based on a person's current nationality falls within the scope of the prohibition of racial discrimination within the meaning of the Convention.

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281. The Russian Federation contends that its citizenship régime in Crimea does not violate CERD and that Ukraine's claims should thus be rejected.

282. In the Russian Federation's view, the introduction and implementation of its citizenship laws in Crimea, including the grant of citizenship, restrictions of citizenship and restrictions based on citizenship, do not fall within the scope of Article 1, paragraph 1, of CERD. The Russian Federation argues that distinctions, restrictions or preferences based on citizenship are excluded from the scope of CERD by Article 1, paragraphs 2 and 3. It refers to the Court's Judgment in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)* in support of its contention that citizenship, as pertaining to "nationality", is not covered by any of the criteria mentioned in Article 1, paragraph 1, including the criterion of "national origin".

283. The Russian Federation further argues that, even if Ukraine's claim fell within the scope of Article 1, paragraph 1, of CERD, it could only concern the question whether the grant of citizenship and the associated régime constituted discrimination against any particular nationality, or any particular group as enumerated in Article 1, paragraph 1, of the Convention. The Russian Federation maintains that its citizenship régime is not discriminatory against any particular nationality or group. It points out that the provisions in question apply to all residents of Crimea without distinction based on their ethnicity.

284. The Russian Federation contends that the so-called "downstream" effects of its citizenship régime are of a "collateral or secondary" character and are thus not capable of falling within the scope of Article 1, paragraph 1. The Russian Federation further alleges that its citizenship régime is consistent with longstanding international practice. It emphasizes that inhabitants of Crimea, including ethnic Ukrainians and Crimean Tatars, were not forced to receive Russian citizenship but were merely given an option in that respect.

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285. The Court must determine whether the citizenship régime introduced by the Russian Federation in Crimea and the measures based thereon fall within the scope of Article 1 of CERD.

286. The Court notes that differential treatment "between citizens and non-citizens" (Art. 1, para. 2) and "legal provisions of States Parties concerning nationality, citizenship or naturalization" (Art. 1, para. 3) are per se excluded from the scope of the Convention. These paragraphs imply that CERD is not concerned with the grounds on which, or the way in which, nationality is granted. However, they cannot be understood as excluding from the scope of CERD any application of citizenship laws that results in an act of discrimination based on national or ethnic origin by purpose or effect.

287. In the present case, the Court does not find that Ukraine has convincingly established that the application of the Russian citizenship régime in Crimea amounts to a differentiation of treatment based on ethnic origin. To establish discrimination against Crimean Tatars and ethnic Ukrainians based on their ethnic origin, Ukraine mainly relies on the difficulty faced by the persons concerned when choosing between the legal consequences of adopting Russian citizenship or retaining Ukrainian citizenship. However, the Court is of the view that those legal consequences flow from the status of being either a Russian citizen or a foreigner. The respective status applies to all persons over whom the Russian Federation exercises jurisdiction regardless of their ethnic origin. While the measures may affect a significant number of Crimean Tatars or ethnic Ukrainians residing in Crimea, this does not constitute racial discrimination under the Convention (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, pp. 108-109, para. 112).

288. For these reasons, the Court concludes that it has not been established that the Russian Federation has violated its obligations under CERD through the adoption and application of its citizenship régime in Crimea.

5. Measures relating to culturally significant gatherings

289. Ukraine contends that the Russian Federation violated its obligations under CERD, in particular Articles 2, paragraph 1 *(a)*, 5 *(d)* (ix) and 5 *(e)* (vi), by suppressing gatherings that are of cultural importance to both the Crimean Tatar and the ethnic Ukrainian communities.

290. Ukraine asserts that, in the Crimean peninsula, the Russian Federation has unlawfully replaced Ukraine's régime for public assemblies with its own

more restrictive laws. In its view, these laws represent a "precondition" for a multitude of infringements by the Russian Federation of its obligations under CERD, as they give officials of the Russian Federation wide discretion to arbitrarily restrict the rights of freedom of expression and assembly. In support of its claim, Ukraine relies on two cases decided by the ECtHR in which that court held that the powers granted under these laws "are often used in an arbitrary and discriminatory way".

291. Moreover, Ukraine claims that the Russian Federation violated its obligations under CERD by applying those laws in a discriminatory manner to deny the Crimean Tatar and ethnic Ukrainian communities the ability to commemorate culturally important events. In this regard, Ukraine refers to examples of restrictions applied to culturally significant gatherings of both communities, which constitute, in its view, a pattern of discrimination. Regarding Crimean Tatar gatherings, Ukraine refers, *inter alia*, to the restrictions on commemorating the *Sürgün* between 2014 and 2017 and International Human Rights Day. With respect to ethnic Ukrainian gatherings, Ukraine points to the persecution of Sergei Dub for celebrating Ukrainian Flag Day in 2014 and the interference with the commemoration of Taras Shevchenko's birthday in 2015.

292. According to Ukraine, both the high number and the culturally significant character of ethnic Ukrainian and Crimean Tatar cultural gatherings blocked by the Russian Federation indicate a discriminatory effect. In support of its argument that Crimean Tatars and ethnic Ukrainians were disproportionately affected, Ukraine relies on reports of intergovernmental and non-governmental organizations. Ukraine further relies on an Expert report by Professor Magocsi to establish that the commemoration of historical figures and events is central to the Crimean Tatar cultural identity, and on witness statements and correspondence relating to the various applications made, and rejections received, for culturally significant events. In response to the Russian Federation's argument that the Crimean Tatars were not treated less favourably than ethnic Russians, Ukraine argues that several applications by ethnic Russians to commemorate culturally significant events were successful.

293. Ukraine asserts that the justifications which the Russian Federation advances for restricting the public gatherings in question cannot constitute a defence to a violation of CERD given that CERD's prohibition on racial

discrimination is absolute and permits no exceptions on national security or other grounds. It points out that while the International Covenant on Civil and Political Rights and the European Convention on Human Rights may allow for limitations and derogations in narrow circumstances, those treaties make equally clear that such limitations and derogations may not be applied in a racially discriminatory manner.

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294. According to the Russian Federation, all the measures of which Ukraine complains were taken because the applicants had failed to comply with the requirements of Russian law for the holding of such events and thus do not violate any of its obligations under CERD.

295. The Russian Federation argues that the Russian laws apply uniformly throughout the entire territory of the Russian Federation and without any discrimination based on national or ethnic origin. The Russian Federation further points out that the legal framework governing the holding of public events in Crimea relies on a system of prior notification of intended events by their organizers to the competent authorities. It notes that the holding of a notified public event may be refused, suspended or terminated and that the reasons therefore, provided for by statutory law, constitute legitimate limitations on the exercise of the right to freedom of peaceful assembly. The Respondent maintains that the question whether these requirements are too strict in light of international standards is beyond the scope of the Court's jurisdiction under CERD.

296. According to the Russian Federation, Ukraine has not shown that the measures were taken on the basis of ethnicity and not for other reasons, namely security considerations. It points out that Ukraine failed to provide comparative statistics that would prove that the events of Crimean Tatars and ethnic Ukrainians were specifically targeted or were treated differently from those organized by Russians.

297. The Russian Federation states that its review of the individual incidents relied on by Ukraine reveals that Ukraine has not established that the law has been applied in a discriminatory or arbitrary manner against any ethnic group in Crimea, including the Crimean Tatars and ethnic Ukrainians, when compared with ethnic Russians. In its view, the "culturally significant" nature of the gatherings was used by the *Mejlis* as a pretext to organize events of a political nature. The Russian Federation points out that gatherings by Crimean Tatars and ethnic Ukrainians were allowed by the authorities and relies on witness statements to this effect.

298. In the Respondent's view, the two cases decided by the ECtHR and cited by Ukraine, *Lashmankin and Others* v. *Russia* and *Navalnyy* v. *Russia*, as well as statistical data from Crimea on public events, demonstrate that the two communities were not disproportionately affected by the regulation of public gatherings. In response to Ukraine's reliance on several cases in which events organized by ethnic Russians were permitted, the Russian Federation argues that these permissions were based on their compliance with the applicable requirements under Russian domestic law. It further maintains that the pro-Russian attitude of the Crimean Tatar organization whose gatherings were permitted does not undermine the value of these events as evidence of the lack of racial discrimination.

299. The Russian Federation emphasizes that both the freedom of expression and the freedom of assembly are subject to limitations. It contends that the facts confirm that the measures in question were based on an objective and reasonable justification, were legitimate and lawful, and bore no link to racial discrimination.

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300. The Court will first determine whether an act of racial discrimination as defined in Article 1 of the Convention has occurred before deciding whether the Respondent has violated its obligations under the Convention to prevent, protect against and remedy such acts. The determination of a violation of the Russian Federation's obligations under Articles 2, paragraph 1 *(a)*, 5 *(d)* (ix) and 5 *(e)* (vi) of CERD thus requires that the restrictions of gatherings by Crimean Tatars and ethnic Ukrainians constitute acts of racial discrimination in the sense of Article 1, paragraph 1, of CERD.

301. In this regard, the Court takes note of Ukraine's claim that the measures undertaken by the Russian Federation were based on legislation which is prone to being abused for discriminatory treatment. The Court observes that the conformity of the relevant laws of the Russian Federation, notably the provisions on "extremism", with that State's human rights obligations has been called into question by international judicial and expert bodies owing to the risk of arbitrary interpretation and abuse (see *Lashmankin and Others* v. *Russia*, ECtHR Application No. 57818/09, Judgment of 7 February 2017 (merits), para. 415; *Navalnyy* v. *Russia*, ECtHR Application No. 29580/12, Judgment of 15 November 2018, para. 118; Venice Commission, Opinion on the Federal Law No. 54-FZ of 19 June 2004, "On assemblies, meetings, demonstrations, marches and picketing" of the Russian Federation (adopted 16-17 March 2012), para. 49).

302. The domestic legal framework regulates the prevention, prosecution, and punishment of certain broadly defined criminal offences. There is no evidence that would suggest that the purpose of the relevant domestic legislation is to differentiate based on one of the prohibited grounds contained in Article 1, paragraph 1, of CERD. Moreover, Ukraine has not provided evidence that this legal framework is likely to produce a disparate adverse effect on the rights of persons of Crimean Tatar or ethnic Ukrainian origin. Therefore, the Court is of the view that the domestic legal framework does not, in and of itself, constitute a violation of an obligation under CERD. However, this finding is without prejudice to the question whether the application of the relevant domestic legislation constitutes an act of discrimination based on one of the prohibited grounds under Article 1, paragraph 1, of CERD by its effect (see paragraph 196 above).

303. The Court observes that reports by intergovernmental and non-governmental organizations suggest that prohibitions and other restrictions imposed on gatherings commemorating certain events produced a disparate adverse effect on the rights of Crimean Tatars. The Court notes in particular the observation made in a report of the OHCHR that: "Crimean Tatars were particularly affected, receiving such warnings in advance of commemorative dates for Crimean Tatars" (OHCHR, Civic Space and Fundamental Freedoms in Ukraine, 1 November 2019-31 October 2021 (7 December 2021), para. 77).

304. As far as restrictions on culturally significant gatherings by ethnic Ukrainians are concerned, the Court considers it to be proved that the Russian Federation imposed restrictive measures regarding the celebration of Ukrainian Flag Day and the birthday of Taras Shevchenko, and that these measures produced a disparate adverse effect on the rights of persons of ethnic Ukrainian origin involved in the organization of and wishing to participate in culturally significant events.

305. However, the Court notes that the Russian Federation has provided explanations for these restrictions that do not relate to one of the prohibited grounds contained in Article 1, paragraph 1, of the Convention. There is evidence that certain ethnic Ukrainian and Crimean Tatar organizations have in fact been successful in applying to hold events and that multiple events organized by ethnic Russians have been denied. Moreover, given the context of these restrictions, and the fact that the ECtHR has in several decisions confirmed that the approach of the Russian Federation towards public gatherings is generally restrictive (see e.g. *Lashmankin and Others* v. *Russia*, ECtHR Application No. 57818/09, Judgment of 7 February 2017 (merits), paras. 419-420; *Navalnyy* v. *Russia*, ECtHR Application No. 29580/12, Judgment of 15 November 2018, para. 118), Ukraine has not,

in the Court's view, sufficiently substantiated its assertion that the restrictions were based on one or more of the prohibited grounds referred to in Article 1, paragraph 1. Accordingly, the Court is not convinced that Ukraine has sufficiently established that Crimean Tatars and ethnic Ukrainians have been discriminated against based on their ethnic origin.

306. For these reasons, the Court concludes that it has not established that the Russian Federation has violated its obligations under CERD by imposing restrictions on gatherings of cultural importance to the Crimean Tatar and the ethnic Ukrainian communities.

6. Measures relating to media outlets

307. Ukraine claims that the Russian Federation violated its obligations under CERD, specifically Articles 2, paragraph 1, 5 *(d)* (viii) and 5 *(e)* (vi), by imposing restrictions on persons and institutions representing the media serving the Crimean Tatar and ethnic Ukrainian communities in Crimea (hereinafter the "Crimean Tatar and Ukrainian media").

308. Ukraine submits that the Russian Federation has enforced a registration requirement as a "means of excluding potentially critical voices" in the media, in particular those of Crimean Tatars and ethnic Ukrainians. According to Ukraine, the Russian Federation has further imposed its own anti-extremism laws in Crimea which allow it to arbitrarily interfere with freedom of expression.

309. Ukraine further asserts that the Russian Federation has applied its legal framework in a way which discriminates against Crimean Tatar and Ukrainian media organizations and journalists. According to Ukraine, the Court's Judgment in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)* does not preclude Ukraine's allegations concerning restrictions on media organizations falling within the scope of CERD where the discriminatory impact of the restrictions falls on protected groups, rather than just the media corporations themselves. In this regard, Ukraine argues that Crimean Tatars and ethnic Ukrainians have been disproportionately disadvantaged by the Russian Federation's application of its re-registration requirements. In support of its allegations, Ukraine further points to individual instances of denial of registration and re-registration, and harassment of media organizations and journalists. To substantiate its allegation of discriminatory treatment of Crimean Tatar and Ukrainian media outlets, Ukraine refers to reports of international and non-governmental organizations.

310. Ukraine argues that, as a result of the discriminatory application of the Russian Federation's laws in Crimea, the number of media outlets serving the Crimean Tatar and ethnic Ukrainian communities has significantly decreased since the introduction of the media laws and anti-extremism legislation in Crimea in 2014. Moreover, the content offered by the remaining media outlets does not compare, in its view, to the authentic and diverse content offered by Crimean Tatar and Ukrainian media outlets previously active and accessible in Crimea.

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311. The Russian Federation claims that Ukraine's allegations with respect to the treatment of Crimean Tatar and Ukrainian media are unfounded and that its claims in this regard should thus be rejected.

312. The Russian Federation submits that Ukraine has failed to establish that the legal framework applicable to the activities of the media in Crimea is discriminatory. The Russian Federation points out that its legal framework governing media activities is similar to Ukraine's own legal framework in this regard.

313. With respect to allegations concerning media restrictions, the Russian Federation recalls that the Court confirmed, in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)*, that CERD "concerns only individuals or groups of individuals" and that legal entities such as media corporations fall outside its scope. The Russian Federation further contends that Ukraine has not established that the measures taken against media corporations were specifically directed at the Crimean Tatar or ethnic Ukrainian communities as such, or that Crimean Tatar and Ukrainian media outlets were treated in a manner that qualifies as discrimination under CERD. It points out that Ukraine itself has not claimed that any of the alleged discriminatory treatment was based on any of the grounds contained in Article 1, paragraph 1, of CERD, but rather that it was based on the political opinions of the persons or entities concerned.

314. With respect to the individual instances of harassment and denial of re-registration alleged by Ukraine, the Russian Federation maintains that the small number of cases raised does not reflect the general situation of the media in Crimea and, in any event, does not evidence discriminatory treatment based on national or ethnic grounds. The Russian Federation claims that the measures taken against the media organizations and journalists in question were based on their non-compliance with the registration rules and on the conduct, qualifying as extremist under Russian laws, of the persons and entities in question.

315. The Russian Federation asserts that the media landscape in Crimea allows all cultural and ethnic groups, including Crimean Tatars and ethnic

Ukrainians, to preserve and promote their history, language and culture. With respect to the alleged closure of Crimean Tatar and Ukrainian media outlets, the Russian Federation argues that the majority of them continue to operate. As for the closed outlets, the Russian Federation asserts that they were either closed by the owners themselves or in accordance with Russian media laws. The Russian Federation points to statistical data comparing the closure of Crimean Tatar media outlets and the closure of media outlets in the Russian Federation generally, which, in its view, confirms that "far fewer Crimean Tatar media were closed by judicial decisions in Crimea compared with the rest of the Russian Federation".

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316. The Court will determine at the outset whether an act of racial discrimination as defined in Article 1, paragraph 1, of the Convention has occurred in relation to media outlets before deciding whether the Respondent has violated its obligations under the Convention to prevent, protect against and remedy such acts. The determination whether violations of the Respondent's obligations under Articles 2, paragraph 1, 5 *(d)* (viii) and 5 *(e)* (vi) of CERD have occurred requires that the restrictions imposed by the Russian Federation on persons and institutions representing Crimean Tatar and Ukrainian media constitute acts of racial discrimination in the sense of Article 1, paragraph 1, of CERD.

317. The Court notes Ukraine's claim that the measures taken by the Russian Federation are based on legislation that can be abused for discriminatory treatment. In this regard, the Court observes that the conformity of the Russian laws in question, notably its anti-extremism legislation, with its obligations under international human rights has been called into question by international judicial and monitoring bodies owing to the risk of their arbitrary interpretation and abuse (see paragraphs 226-227 above).

318. The Court recalls that restrictions imposed on media organizations fall within the scope of CERD only in so far as these media organizations are "collective bodies or associations, which represent individuals or groups of individuals" and the measures imposed on them are based on national or ethnic origin by purpose or effect (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 107, para. 108). It is, however, not necessary to determine whether the media organizations concerned represent individuals or groups of individuals if the measures imposed on these organizations are not based on national or ethnic origin.

319. The domestic legal framework regulates the activities of mass media and the prevention, prosecution and punishment of certain broadly defined criminal offences. The Court observes that there is no convincing evidence which would suggest that the purpose of the relevant domestic legislation is to differentiate between media outlets affiliated with persons of Crimean Tatar or ethnic Ukrainian origin and other such outlets based on one of the prohibited grounds contained in Article 1, paragraph 1, of CERD. Ukraine has also not provided evidence that this legal framework is likely to produce a disparate adverse effect on the rights of persons of Crimean Tatar or ethnic Ukrainian origin. Therefore, the Court considers that the domestic legal framework does not, in and of itself, constitute a violation of the Russian Federation's obligations under CERD. However, this finding is without prejudice to the question whether the application of the relevant domestic legislation constitutes an act of discrimination based on one of the prohibited grounds under Article 1, paragraph 1, of CERD by its effect (see paragraph 196 above).

320. The Court is of the view that the reports of international organizations referred to by Ukraine lend some support to Ukraine's allegation that Crimean Tatar and Ukrainian media outlets have been severely affected by the application and implementation of the Russian Federation's laws on mass media and the suppression of extremism (see OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015) (17 September 2015), paras. 75-79; OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017), UN doc. A/HRC/36/CRP.3 (25 September 2017), paras. 156-157).

321. The Court also observes that some of these reports suggest the existence of a link between the measures taken with respect to Crimean Tatar media outlets and the ethnic origin of their owners or those concerned (see OSCE, ODIHR and HCNM, Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015), p. 7, para. 17). At the same time, the Court notes that statements made in the said reports of intergovernmental and non-governmental organizations are vague and not corroborated by further evidence with respect to the existence of racial discrimination.

322. On the evidence submitted by Ukraine, the Court cannot find that the measures taken against Crimean Tatar and Ukrainian media outlets were based on the ethnic origin of the persons affiliated with them. The Court is of the view that the explanations given by the Russian Federation, particularly the statistically substantiated comparison between the closure of media outlets in Crimea and other territories (see paragraph 315 above), suggest that the restrictions were not based on national or ethnic origin. For the same reason, the Court is not convinced that Ukraine has established that the measures taken against persons affiliated with Crimean

Tatar media outlets were based on the national or ethnic origin of those persons.

323. For these reasons, the Court concludes that it has not been established that the Russian Federation violated its obligations under CERD by imposing restrictions on Crimean Tatar and Ukrainian media and by taking measures against persons affiliated with Crimean Tatar and Ukrainian media organizations.

7. Measures relating to cultural heritage and cultural institutions

324. Ukraine submits that the Russian Federation violated its obligations under CERD, specifically Articles 2, paragraph 1, 5 *(e)* (vi) and 6, by undertaking a "general assault" on the cultural heritage of Crimean Tatar and ethnic Ukrainian communities, particularly through the destruction, demolition, failure to preserve and closure of historically and culturally significant sites and institutions.

325. As far as Crimean Tatar heritage is concerned, Ukraine alleges that the historical site of the Palace of the Crimean Khans (the "Khan's Palace") is being partly destroyed by "a culturally insensitive renovation commissioned and managed by the Crimean authorities". Citing the Court's jurisprudence, Ukraine states that "a State's vandalization of cultural heritage sites can constitute a violation of the CERD". Ukraine also refers to other examples of degradation of Crimean Tatar cultural heritage, including the demolition of Muslim burial grounds and of archaeological sites at the Palace of Kalga-Sultan Akmejitsaray. Moreover, Ukraine argues that the Russian Federation violated Article 6 of CERD by denying relief to protect Crimean Tatar cultural heritage.

326. Regarding Ukrainian cultural heritage, Ukraine refers, *inter alia*, to the closure of a Ukrainian-language drama school and to the reduction of the space available for the Lesya Ukrainka museum. It also refers to harassment of persons affiliated with Crimea-based non-governmental organizations which, in its view, are instrumental in promoting Ukrainian-language media, and harassment of staff at the Ukrainian Cultural Centre in Simferopol.

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327. The Russian Federation, in turn, argues that none of the measures adopted by the Russian authorities of which Ukraine complains amount to racial discrimination and that Ukraine's claims should therefore be rejected.

328. Regarding allegations concerning the preservation of the cultural heritage of Crimean Tatars, the Russian Federation asserts that Ukraine is

attempting to portray measures aimed at preserving sites of cultural and historical significance to the Crimean Tatar community as an assault on that community's cultural heritage. The Russian Federation maintains that works in the Khan's Palace were necessary. It considers that, in any event, the record contradicts Ukraine's allegations of defective repair and restoration of that building. The Russian Federation points to a series of photographs which, in its view, show improvements made to the condition of the Palace.

329. Regarding the alleged demolition of Muslim burial grounds and other sites, the Russian Federation contends that these allegations are unfounded and ought to be dismissed. It notes that, contrary to Ukraine's allegations, the Russian authorities have taken numerous measures with a view to maintaining and promoting the cultural heritage of the Crimean Tatar community.

330. In respect of Ukraine's invocation of Article 6 of CERD, the Russian Federation submits that the Crimean Tatar applicants whose claims were dismissed by domestic courts lacked standing under the relevant domestic law.

331. The Russian Federation further maintains that Ukraine's factual allegations regarding the closure of Ukrainian cultural institutions are incorrect. Concerning the alleged harassment of persons affiliated with cultural institutions, the Russian Federation contends that the measures taken against certain activists were connected to inspections and to investigations of violations of anti-extremism laws, not to the activity of those persons within the Ukrainian Cultural Centre in Simferopol. Moreover, it argues that the centre itself was never closed.

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332. The Court recalls that it will first determine whether an act of racial discrimination as defined in Article 1, paragraph 1, of the Convention has occurred before deciding whether the Respondent has violated its obligations under the Convention to prevent, protect against and remedy such acts.

333. The Court notes that the Russian Federation denies that there has been any differentiation of treatment of Crimean Tatar cultural heritage that would put the Crimean Tatar community at a disadvantage. On the contrary, the Russian Federation submits, based on legislation, documents and photographic evidence, that it has undertaken measures to preserve the cultural heritage of the Crimean Tatar community. At the same time, the Court takes note of the concluding observations of the CERD Committee of 1 June 2023, referred to by Ukraine, according to which

> "the Committee is deeply concerned about . . . [r]eports of the destruction of and damage to Crimean Tatar cultural heritage, including tombstones, monuments and shrines, and the lack of information on

> investigations carried out into such allegations and on other measures to prevent such vandalism . . . recommend[ing] that the State party . . . [e]ffectively investigate reports on the destruction of and damage to Crimean Tatar cultural heritage and adopt measures to prevent such acts" (CERD Committee, Concluding observations on the combined twenty-fifth and twenty-sixth periodic reports of the Russian Federation, doc. CERD/C/RUS/CO/25-26 (1 June 2023), paras. 23 *(b)* and 24 *(b)*).

334. The Court observes, however, that the CERD Committee does not take a position as to whether the respective reports are accurate and does not rely on first-hand evidence. Moreover, even if the preservation works undertaken by the Russian Federation with respect to the Khan's Palace were carried out negligently, the Court is not convinced that such negligence would amount to discrimination based on the ethnic origin of Crimean Tatars. The Court further finds that Ukraine has not sufficiently substantiated the alleged degradation of two other Crimean Tatar cultural sites. For these reasons, the Court is not convinced, based on the evidence provided by Ukraine, that the measures undertaken by the Russian Federation regarding the sites in question discriminate against the Crimean Tatars as a group.

335. With respect to the alleged violation of Article 6 of CERD, the Court notes that a challenge made in domestic courts by a member of the Crimean Tatar community against the use of certain contractors for the renovation works at the Khan's Palace was unsuccessful, while another court found that the same contractors had violated renovation standards when working on an object of cultural importance to the ethnic Russian community. However, the Russian Federation has given a plausible explanation for this differentiation of treatment, namely the lack of standing of the Crimean Tatar applicants, which is unrelated to the grounds contained in Article 1, paragraph 1, of CERD.

336. With respect to Ukraine's allegations concerning the degradation of certain aspects of the cultural heritage of ethnic Ukrainians, the Court is of the view that Ukraine has not established that any differentiation of treatment of persons affiliated with cultural institutions in Crimea was based on their ethnic origin. The Court notes that the Russian Federation has provided explanations for the measures taken against the persons in question that are unrelated to the prohibited grounds contained in Article 1, paragraph 1, of CERD. The Court also notes that the Russian Federation has produced evidence substantiating its attempts at preserving Ukrainian cultural heritage and has provided explanations for the measures undertaken with respect to that heritage. Ukraine, in turn, has not substantiated how the closure of certain institutions would amount to discrimination based on ethnic origin.

337. For these reasons, the Court concludes that it has not been established that the Russian Federation has violated its obligations under CERD by taking measures relating to the cultural heritage of the Crimean Tatar and the ethnic Ukrainian communities.

8. Measures relating to education

338. Ukraine asserts that the Russian Federation has used changes to the educational system in Crimea to promote Russian language and culture at the expense of Ukrainian and Crimean Tatar languages and cultures and has taken measures impeding the education of school children from the two communities, thereby violating the prohibition of acts and practices of racial discrimination under Article 2, paragraph 1 *(a)*, of CERD, as well as the obligation under Article 5 *(e)* (v) of CERD to guarantee equality before the law in the enjoyment of the right to education and training.

339. Ukraine submits that the Russian Federation has pursued a strategy of cultural erasure by taking measures to prevent the culture of the Crimean Tatar and Ukrainian ethnic groups from being passed on to future generations through the educational system. The Applicant maintains that the radical shift in the Crimean educational system towards Russian language and culture will deprive Crimean Tatars and ethnic Ukrainians of future educational and job opportunities in their preferred country, forcing many Crimean families to relocate to mainland Ukraine in order to preserve the vestiges of their native culture. According to Ukraine, the Russian Federation's "occupation authorities" have worked overtly and covertly to limit opportunities for Crimean children to be taught in the Crimean Tatar or Ukrainian languages, accompanied by a new emphasis on Russian as the dominant language of tuition, and have reoriented both the curriculum and educational qualifications towards the Russian Federation. According to Ukraine, the changes that the Russian Federation has introduced to the Crimean education system have had a disparate impact on access to education and training in general across ethnic lines.

340. Ukraine explains that its claim does not presuppose a right to education in a minority language. To establish racial discrimination in violation of CERD, it is sufficient to show that the Russian Federation has removed access to minority language education for some ethnic groups and not others. In support of its claim, Ukraine refers to the Advisory Opinion in *Minority Schools in Albania* case in which the Permanent Court of International Justice applied the principle that "equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations" in a comparable situation.

341. Ukraine maintains that the Russian Federation has imposed restrictions on education in the Ukrainian and Crimean Tatar languages in Crimea since 2014. It alleges that many Crimean parents have found that their requests for Ukrainian- or Crimean Tatar-language instruction have been ignored by the "occupation authorities" and that other parents have felt unsafe even making such requests or under pressure to choose Russian-language education and have been harassed when daring to advocate for education in their children's native language.

342. Ukraine submits that, as a result of the Russian Federation's actions, the number of schools in Crimea serving the Ukrainian population and the number of ethnic Ukrainians in Crimea currently enrolled in Ukrainian-language schools have significantly decreased. Thus, according to Ukraine, in the 2013-2014 school year, general education in the Ukrainian language was provided to 12,694 children, however, in the following school year, the number of children receiving Ukrainian-language education fell to 2,154. In the 2015-2016 school year, that number was cut in half, reduced to less than 1,000 students. Of the seven Ukrainian-language educational institutions that existed in Crimea until 2014, only one remains in operation, and even this school had ceased instruction in Ukrainian in the first and second grades.

343. Regarding school education in the Crimean Tatar language, Ukraine claims that although the number of students receiving education in Crimean Tatar schools has remained relatively steady, the quality of education provided at these schools has decreased significantly since 2014. Until the 2017-2018 school year, textbooks were provided late, presented a heavily Russified version of history and portrayed Stalin as a hero — despite his deportation of Crimean Tatars in 1944. According to Ukraine, one tenth-grade history textbook depicted Crimean Tatars as Nazi collaborators in World War II, rehabilitating the stereotype propounded by Stalin as an excuse to deport Crimean Tatars from the Crimean peninsula in 1944. Finally, Ukraine alleges that the Russian "occupation authorities" have disrupted Ukrainian and Crimean Tatar education in Crimea by carrying out intrusive searches of the schools and educators serving those communities.

344. Ukraine alleges that, taken together, the evidence demonstrates not only the discriminatory effect of the Russian Federation's measures, but also their clear discriminatory purpose. According to Ukraine, that discriminatory purpose was made clear in June 2014, when the so-called Crimean Ministry of Education declared that studying the Crimean Tatar and Ukrainian languages "must not be conducted at the expense of instruction and study of the official language of the Russian Federation".

*

345. The Russian Federation maintains that the right to education and training under Article 5 *(e)* (v) of CERD does not encompass a right to education in a minority language. It states that the prohibition of discrimination in relation to education refers to "the right of everyone regardless of ethnic origin to have access to a national educational system without discrimination". It observes that Ukraine does not allege the existence of a right to education in a minority language under CERD and has not explained how its claim that the introduction of Russian-language education in Crimea has had a disparate impact on access to education and training across ethnic lines can stand if a specific right to education in a minority language does not exist.

346. The Russian Federation contends that the invocation by Ukraine of the Advisory Opinion of the Permanent Court of International Justice in *Minority Schools in Albania* is unfounded. It maintains that non-discriminatory access to public education is guaranteed in Crimea not only in the Russian language but also in Crimean Tatar and Ukrainian which are both recognized as official languages of the Republic of Crimea and which have been incorporated into the educational system. The Respondent also argues that its legislation gives all Russian citizens the right to receive basic general education, which lasts for nine years, in one of the languages of the peoples of the Russian Federation, including the Ukrainian and Crimean Tatar languages. This length of general education reflects a policy choice of the Russian Federation. The Russian Federation contends that the decline in the demand for education in Ukrainian in Crimea does not in any event constitute a breach of CERD since the option to receive general education in the Ukrainian language has been maintained in the Crimean education system for everyone at all times since 2014. It presents witness statements by officials, including teachers and headmasters, according to whom schools are ready to provide education in Ukrainian should there be a demand, as well as other evidence seeking to demonstrate the accessibility of education in Ukrainian and Crimean Tatar languages in Crimea.

347. The Russian Federation does not contest that there has been a decline in the number of students opting to receive general education in the Ukrainian language since 2014, as alleged by Ukraine. However, it asserts that this decline was not due to any legal measure or constraint imposed by the Russian Federation. The Respondent presents several witness statements according to which the decrease in demand was caused by other reasons, including the reduced need for citizens to have their children receive education in the Ukrainian language, a utilitarian or pragmatic relationship to the Ukrainian language based on higher education opportunities, and restrictions on access to Ukrainian institutions of higher education established by Ukraine itself. Other factors included, according to the Russian Federation,

the policy carried out by Ukraine before 2014, which consisted in forcibly imposing the Ukrainian language on students in education programmes, and the fact that some ethnic Ukrainians left Crimea after March 2014, mostly for Ukraine. The Russian Federation considers that Ukraine's allegations that requests from parents were ignored or that the parents were pressured into not choosing Crimean Tatar or Ukrainian as teaching languages are rebutted by the Russian Federation's explanations and unsupported by Ukraine's evidence.

348. With respect to education in the Crimean Tatar language, the Russian Federation maintains that it has significantly improved the conditions for those wishing to study in that language. It points out that 16 schools continue to offer full education in Crimean Tatar until the ninth grade and this number is not lower than it was before 2014. The Russian Federation disputes that the quality of education in the Crimean Tatar language is lower since 2014, offering different indicators in support, including with respect to funding.

349. The Russian Federation maintains that Ukraine's contention that textbooks "perpetuate Russian propaganda and hateful narratives, instead of historical fact" relies on only one textbook that mentioned that there were collaborators among Crimean Tatars at the time of World War II, just as there were collaborators among other ethnicities, including Russians. It adds that this element of the textbook was withdrawn after an appeal by the Crimean Tatar community.

350. With respect to the alleged discriminatory searches of Crimean Tatar and Ukrainian schools, the Russian Federation maintains that Ukraine has not established that these searches were discriminatory. The materials cited by Ukraine indicate that the operations took place mainly in religious schools and that the law enforcement authorities were looking for extremist literature as part of a preventive strategy against extremist religious organizations active in Crimea.

351. Finally, according to the Russian Federation, the point made in a letter of the Crimean Ministry of Education that studying the Crimean Tatar and Ukrainian languages "must not be conducted at the expense of instruction and study of the official language of the Russian Federation" was nothing more than a reminder of what the applicable federal law provides.

* *

352. The Court will examine whether the conduct of the Russian Federation with regard to education in Crimea qualifies as racial discrimination in the sense of Article 1, paragraph 1, of CERD and violates the obligations contained in Articles 2, paragraph 1 *(a)*, 5 *(e)* (v) and 7.

353. Article 2, paragraph 1 *(a)*, provides that

> "1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
>
> *(a)* Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation".

Article 5 *(e)* (v) provides that

> "[i]n compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
>
> . . . . . .
>
> *(e)* Economic, social and cultural rights, in particular:
>
> . . . . . .
>
> (v) The right to education and training".

354. The Court considers that, even if Article 5 *(e)* (v) of CERD does not include a general right to school education in a minority language, the prohibition of racial discrimination under Article 2, paragraph 1 *(a)*, of CERD and the right to education under Article 5 *(e)* (v), may, under certain circumstances, set limits to changes in the provision of school education in the language of a national or ethnic minority. For those provisions to apply, the Court must first determine whether the conduct in question qualifies as racial discrimination within the meaning of Article 1, paragraph 1, of CERD.

355. Most of the measures complained of by Ukraine concern limitations to the availability of Ukrainian or Crimean Tatar as the language of instruction in primary schools. Language is often an essential social bond among the members of an ethnic group. Restrictive measures taken by a State party with respect to the use of language may therefore in certain situations manifest a "distinction, exclusion, restriction or preference based on . . . descent, or national or ethnic origin" within the meaning of Article 1, paragraph 1, of CERD.

356. States parties possess a broad discretion under CERD with respect to school curricula and with respect to the primary language of instruction.

However, in designing and implementing a school curriculum, a State party may not discriminate against a national or ethnic group. The fact that a State chooses to offer school education in only one language does not, in and of itself, give rise to discrimination under CERD against members of a national or ethnic minority who wish to have their children educated in their own language.

357. Structural changes with respect to the available language of instruction in schools may constitute discrimination prohibited under CERD if the way in which they are implemented produces a disparate adverse effect on the rights of a person or a group distinguished by the grounds listed in Article 1, paragraph 1, of CERD, unless such an effect can be explained in a way that does not relate to the prohibited grounds in that Article (see paragraph 196 above). This would be the case, in particular, if a change in the education in a minority language available in public schools is implemented in such a way, including by means of informal pressure, as to make it unreasonably difficult for members of a national or ethnic group to ensure that their children, as part of their general right to education, do not suffer from unduly burdensome discontinuities in their primary language of instruction.

(a) *Access to education in the Ukrainian language*

358. With respect to school education in the Ukrainian language, the Court notes, and the Parties agree, that there was a steep decline in the number of students receiving their school education in the Ukrainian language between 2014 and 2016. According to the OHCHR,

> "[t]he number of students undergoing instruction in Ukrainian language has dropped dramatically. In the 2013-2014 academic year, 12,694 students were educated in the Ukrainian language. Following the occupation of Crimea, this number fell to 2,154 in 2014-2015, 949 in 2015-2016, and 371 in 2016-2017 . . . Between 2013 and 2017, the number of Ukrainian schools decreased from seven to one, and the number of classes from 875 to 28." (OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017), UN doc. A/HRC/36/CRP.3 (25 September 2017), para. 197.)

359. There was thus an 80 per cent decline in the number of students receiving an education in the Ukrainian language during the first year after 2014 and a further decline of 50 per cent by the following year. It is undisputed that no such decline has taken place with respect to school education in other languages, including the Crimean Tatar language. Such a sudden and steep decline produced a disparate adverse effect on the rights of ethnic Ukrainian children and their parents.

360. The Russian Federation exercises full control over the public school system in Crimea, in particular over the language of instruction and the conditions for its use by parents and children. However, it has not provided a convincing explanation for the sudden and radical changes in the use of Ukrainian as a language of instruction, which produces a disparate adverse effect on the rights of ethnic Ukrainians. Here, the Parties disagree about the reasons for the decline in the number of students receiving their school education in the Ukrainian language after 2014.

361. The explanations put forward by the Russian Federation for the decline are not fully convincing. It is true that, in its report, the OHCHR considers "that the main reasons for this decrease include a dominant Russian cultural environment and the departure of thousands of pro-Ukrainian Crimean residents to mainland Ukraine." However, even considering that many ethnic Ukrainian families left Crimea after 2014, the Court is not convinced that this, together with the "reorientation of the Crimean school system towards Russia", can alone account for a reduction of more than 90 per cent of genuine demand in Crimea for school instruction in the Ukrainian language.

362. Both Parties have submitted evidence to the Court regarding the degree of freedom of parents to choose Ukrainian as the principal language of instruction for their children. Ukraine has submitted witness statements according to which a significant number of parents and children have been subjected to harassment and manipulative conduct with a view to deterring them from articulating or pursuing their preference. The Russian Federation, on the other hand, has submitted witness statements according to which parents' choice of the language of instruction was genuine and not subject to pressure, as confirmed by a general unresponsiveness on the part of parents to some teachers' active encouragement to continue having their children receive instruction in Ukrainian.

363. The Court observes that the witness statements presented by both Parties were made by persons who are not disinterested in the outcome of the case. They are also not corroborated by reliable documentation. It should, however, be noted that the OHCHR has observed that "[p]ressure from some teaching staff and school administrations to discontinue teaching in Ukrainian language has also been reported". Although the Court is unable to conclude, on the basis of the evidence presented, that parents have been subjected to harassment or manipulative conduct aimed at deterring them from articulating their preference, the Court is of the view that the Russian Federation has not demonstrated that it complied with its duty to protect the rights of ethnic Ukrainians from a disparate adverse effect based on their ethnic origin by taking measures to mitigate the pressure resulting from the exceptional "reorientation of the Crimean educational system towards

Russia" on parents whose children had until 2014 received their school education in the Ukrainian language.

(b) *Access to education in the Crimean Tatar language*

364. With respect to school education in the Crimean Tatar language, the Court notes that Ukraine's claims concern the quality of the education available in that language, rather than its actual availability or a significant change in the number of students. The Court is unable to conclude, based on the evidence submitted by the Parties, that the quality of the education in the Crimean Tatar language has significantly deteriorated since 2014.

365. The Court notes with concern that there has been one instance of a textbook which referred to the history of the Crimean Tatar community in a discriminatory way. However, the Court considers that Ukraine has not refuted the assertion of the Russian Federation that this was an isolated case which was remedied following an appeal by representatives of the Crimean Tatar community.

366. The Court notes that Ukraine provided some evidence that religious schools attended by Crimean Tatar children were repeatedly searched by agents of the Russian Federation. The Court also takes note of the explanation given by the Russian Federation for these searches according to which they were undertaken for the purpose of identifying "extremist literature" distributed by "extremist religious organizations". However, Ukraine has not convincingly established a disparate adverse effect on religious schools attended by Crimean Tatar persons as compared to religious schools attended by other ethnic groups of Muslim faith.

367. Regarding the alleged violation of the obligation under Article 7 of CERD, the Court recalls that this provision sets forth that

> "States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention."

368. The Court notes that Ukraine has alleged that some incidents took place which demonstrate, in its view, that the Russian Federation did not

meet its obligations under Article 7. Such incidents include the use of the textbook described in paragraph 365 above and statements by teachers justifying the deportation of Crimean Tatars in 1944. The Court recalls that Article 7 requires States parties to take immediate and effective measures to prevent incidents such as those alleged by Ukraine. However, the evidence before the Court does not demonstrate that the Russian Federation failed to adopt immediate and effective measures against racial discrimination. The Court concludes that it has not been established that the Russian Federation has violated its obligation under Article 7 of CERD.

(c) *Existence of a pattern of racial discrimination*

369. To find whether the Russian Federation violated its obligations under CERD in the present case, the Court needs to determine if the violations found constitute a pattern of racial discrimination (see paragraph 161 above). The legislative and other practices of the Russian Federation with regard to school education in the Ukrainian language in Crimea applied to all children of Ukrainian ethnic origin whose parents wished them to be instructed in the Ukrainian language and thus did not merely concern individual cases. As such, it appears that this practice was intended to lead to a structural change in the educational system. The Court is therefore of the view that the conduct in question constitutes a pattern of racial discrimination. On the other hand, the Court is not convinced, based on the evidence before it, that the incidents with regard to school education in the Crimean Tatar language constitute a pattern of racial discrimination.

(d) *Conclusion*

370. In light of the above, the Court concludes that the Russian Federation has violated its obligations under Article 2, paragraph 1 *(a)*, and Article 5 *(e)* (v) of CERD by the way in which it has implemented its educational system in Crimea after 2014 with regard to school education in the Ukrainian language.

C. Remedies

371. Having established that the Russian Federation has violated its obligations under Article 2, paragraph 1 *(a)*, of CERD and Article 5 *(e)* (v) of CERD (see paragraph 370 above), the Court now turns to the determination of remedies for this internationally wrongful conduct.

372. The Court recalls that, in respect of its claims under CERD, Ukraine has requested, in addition to a declaration of violations, the cessation by

the Russian Federation of ongoing violations, guarantees and assurances of non-repetition, compensation and moral damages (see paragraph 27 above).

373. By the present Judgment, the Court declares that the Russian Federation has violated its obligations under Article 2, paragraph 1 *(a)*, of CERD and Article 5 *(e)* (v) of CERD. It considers that the Russian Federation remains under an obligation to ensure that the system of instruction in the Ukrainian language gives due regard to the needs and reasonable expectations of children and parents of Ukrainian ethnic origin.

374. The Court does not find it necessary or appropriate to order any other remedy requested by Ukraine.

IV. Alleged Violation of Obligations under the Order on Provisional Measures of 19 April 2017

A. Compliance with Provisional Measures

375. In its final submissions, Ukraine requests the Court to adjudge and declare that:

"*(l)* The Russian Federation has breached its obligations under the Order indicating provisional measures issued by the Court on 19 April 2017 by maintaining limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*.

(m) The Russian Federation has breached its obligations under the Order indicating provisional measures issued by the Court on 19 April 2017 by failing to ensure the availability of education in the Ukrainian language.

(n) The Russian Federation has breached its obligations under the Order indicating provisional measures issued by the Court on 19 April 2017 by aggravating and extending the dispute and making it more difficult to resolve by recognizing the independence and sovereignty of the so-called DPR and LPR and engaging in acts of racial discrimination in the course of its renewed aggression against Ukraine."

376. The Court indicated the following provisional measures in its Order of 19 April 2017 (*I.C.J. Reports 2017*, pp. 140-141, para. 106):

"(1) With regard to the situation in Crimea, the Russian Federation must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

(a) Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*;
(b) Ensure the availability of education in the Ukrainian language;

(2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve."

377. The Parties disagree about whether the Russian Federation complied with the Court's Order of 19 April 2017.

* *

378. Ukraine alleges that the Russian Federation has violated the Court's Order of 19 April 2017 by failing to lift its ban on the *Mejlis*, by failing to ensure that education in the Ukrainian language is available in Crimea, and by aggravating the dispute and making it more difficult to resolve.

379. According to Ukraine, the Order clearly required the Russian Federation to revoke its ban on the *Mejlis*, which is necessarily a "limitation[] on the . . . Mejlis". It points out that the Russian Federation has not lifted the ban. Ukraine rejects the interpretation put forward by the Russian Federation which would be tantamount to treating the obligations under the first provisional measure as self-judging. In its view, this reading is incompatible both with the precise text of the first provisional measure, as well as with the binding character of provisional measures generally. Ukraine argues that if the Court were to follow this interpretation, any State before the Court would be free to ignore a provisional measures order solely based on its belief that it might someday prevail on the merits.

380. Ukraine also submits that the Russian Federation has violated the Order as far as language education is concerned. It claims that since the Russian Federation took control of Crimea, the number of students receiving Ukrainian-language education has declined by nearly 100 per cent. More specifically, Ukraine maintains that of the seven Ukrainian-language education institutions that existed in 2014, only one remains and that even in this school Ukrainian is only taught as a subject to a few classes in specific grades. According to Ukraine, this sharp decline is not due to a lack of demand, but to the fact that parents are harassed and discouraged from selecting a Ukrainian-language education for their children and that resources for Ukrainian-language education in Crimea are dwindling sharply.

381. Finally, Ukraine submits that the Russian Federation, through its conduct subsequent to the adoption of the Order of 19 April 2017, aggravated the dispute between the Parties both in respect of the ICSFT and of CERD.

382. Regarding the ICSFT, Ukraine argues that the dispute is defined by the Application filed by Ukraine, which requests the Court to declare that the Russian Federation must

> "immediately provide full co-operation to Ukraine in all pending and future requests for assistance in the investigation and interdiction of the financing of terrorism relating to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals".

In its view, the Russian Federation aggravated the dispute by formally and retrospectively endorsing the acts undertaken by armed groups in eastern Ukraine, by recognizing the DPR and LPR, by providing them with financial and military assistance and by invading Ukraine's territory in 2022.

383. Regarding CERD, Ukraine claims that the Russian Federation has aggravated the dispute by various statements and other efforts subsequent to the adoption of the Order of 19 April 2017 which have perpetuated and aggravated racial discrimination against ethnic Ukrainians and Crimean Tatars. Ukraine points, *inter alia*, to a statement by the CERD Committee of June 2023 criticizing the Russian Federation for its "[i]ncitement to racial hatred and propagation of racist stereotypes against ethnic Ukrainians, in particular on State-owned radio and television networks, . . . as well as by public figures and government officials". Ukraine also refers to recent statements made by President Putin, who characterized Ukrainians as Nazis and denied the existence of a separate Ukrainian people and the right of Ukrainians to their own State.

*

384. The Russian Federation denies that it has violated the Court's Order indicating provisional measures.

385. The Russian Federation is of the view that the first measure does not necessarily require it to lift or suspend the ban on the activities of the *Mejlis*, since this measure only requires that it take measures in keeping with its obligations under CERD. Consistent with the fact that rights under CERD are not unlimited, it would be difficult, according to the Russian Federation, to imagine that the Court would demand that States parties to CERD renounce their right to maintain their national security and public order. The Russian Federation maintains that, it has genuinely been addressing the situation of the *Mejlis* without at the same time hampering the principle of the rule of law and undermining the protection of national security.

386. Regarding the measure concerning access to education in the Ukrainian language, the Russian Federation does not dispute the fact that there has been a decline in the number of students being taught in Ukrainian. In its view, this decline stems from the low demand for education in the Ukrainian language subsequent to what it considers the change in sovereignty in Crimea. It maintains that, despite the low demand for teaching in Ukrainian, the Russian Federation has never restricted that possibility or obstructed students' wishes to study in Ukrainian. The Russian Federation maintains that such access is not denied to those who wish to pursue it and that Ukrainian can be the language of instruction for students upon request. The Respondent asserts that possibilities to study Ukrainian at various Crimean universities continue to exist.

387. Finally, as far as the third measure is concerned, the Russian Federation is of the view that the case before the Court is limited in scope and that events that have unfolded since February 2022, which Ukraine invokes, bear no relation to the present proceedings. In its view, this is illustrated by the fact that Ukraine brought a separate Application invoking the Genocide Convention with respect to the events occurring since February 2022. Moreover, the Respondent claims that the Russian Federation has actively sought a negotiated settlement between the Parties in the context of the present case, which was rejected by Ukraine as inappropriate. In this regard, the Russian Federation points out that the Court has previously held that "pending a decision of the Court on the merits, any negotiation between the Parties with a view to achieving a direct and friendly settlement is to be welcomed".

* *

388. The Court recalls that its "orders on provisional measures under Article 41 [of the Statute] have binding effect" (*LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109).

389. The Court will address the question of compliance with each of the provisional measures contained in its Order of 19 April 2017 in turn.

With respect to the first provisional measure, the Court recalls that it ordered that

> "(1) With regard to the situation in Crimea, the Russian Federation must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,
>
> *(a)* Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*".

390. Ukraine claims that the Russian Federation has violated this measure by not lifting the ban on the *Mejlis*. It is uncontested between the Parties that

the Russian Federation has neither suspended nor lifted the ban on the *Mejlis*. However, the Parties disagree about whether the *chapeau* of the provisional measure, by its reference to CERD, can be interpreted as leaving a margin of discretion for the Russian Federation as to how to implement its obligations under the measure.

391. The Court recalls that obligations arising from provisional measures bind the parties independently of the factual or legal situation which the provisional measure in question aims to preserve (see *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, p. 714, para. 129). The Court is of the view that the reference in the Order of 19 April 2017 to the obligations of the Russian Federation under CERD does not provide any scope for the Russian Federation to assess, for itself, whether the ban on the *Mejlis* and the confirmation of the ban by the Russian courts were, and remain, justified. The formulation in the *chapeau* "in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination" refers to the source of the rights which the measure seeks to preserve and does not qualify the measure nor confers discretion upon the Party addressed to decide whether or not to implement the measure indicated.

392. The Court therefore finds that the Russian Federation, by maintaining the ban on the *Mejlis*, has violated the Order indicating provisional measures. The Court notes that this finding is independent of the conclusion set out above (see paragraph 275 above) that the ban on the *Mejlis* does not violate the Russian Federation's obligations under CERD.

393. With respect to the second provisional measure, the Court recalls that it ordered that

> "(1) [w]ith regard to the situation in Crimea, the Russian Federation must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,
>
> . . . . . .
>
> *(b)* [e]nsure the availability of education in the Ukrainian language".

394. The Court notes that the Order of 19 April 2017 required the Russian Federation to ensure that education in the Ukrainian language remains "available". In this regard, the Court takes note of a report by the OHCHR, according to which "instruction in Ukrainian was provided in one Ukrainian school and 13 Ukrainian classes in Russian schools attended by 318 children" (OHCHR, Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and city of Sevastopol (Ukraine)

(13 September 2017 to 30 June 2018), UN doc. A/HRC/39/CRP.4, para. 68), which confirms that instruction in the Ukrainian language was available after the adoption of the Order. While Ukraine has shown that a sharp decline in teaching in the Ukrainian language took place after 2014, it has not been established that the Russian Federation has violated the obligation to ensure the availability of education in the Ukrainian language contained in the Order indicating provisional measures.

395. The Court therefore concludes that the Russian Federation has not violated the Order in so far as it required the Respondent to ensure the availability of education in the Ukrainian language.

396. In the Order indicating provisional measures, the Court also stated that "[b]oth Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve".

397. The Court observes that, subsequent to the Order indicating provisional measures, the Russian Federation recognized the DPR and LPR as independent States and launched a "special military operation" against Ukraine. In the view of the Court, these actions severely undermined the basis for mutual trust and co-operation and thus made the dispute more difficult to resolve.

398. For these reasons, the Court concludes that the Russian Federation violated the obligation under the Order to refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

B. Remedies

399. In its final submissions, Ukraine also requests the Court to adjudge and declare that the Russian Federation is required to:

> "*(l)* Provide full reparation for the harm caused for its actions, including restitution, financial compensation and moral damages, in its own right and as *parens patriae* for its citizens, for the harm Ukraine has suffered as a result of Russia's violations of the Court's Order of 19 April 2017, with such compensation to be quantified in a separate phase of these proceedings.
>
> *(m)* Regarding restitution: restore the Mejlis' activities in Crimea and its members and all their rights, including their properties, retroactive elimination of all Russian administrative and other measures contrary to the Court's Order and release of members of Mejlis currently in jail."

400. The Court recalls that orders indicating provisional measures create a legal obligation for the States involved (*LaGrand (Germany* v. *United*

States of America), Judgment, I.C.J. Reports 2001, p. 506, para. 110) and that it is well established in international law that "the breach of an engagement involves an obligation to make reparation in an adequate form" (*Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21).

401. The Court considers that its declaration that the Russian Federation has breached the Order indicating provisional measures by maintaining the ban on the *Mejlis* and has breached its obligations under the non-aggravation measure contained in the same Order provides adequate satisfaction to Ukraine.

402. Regarding Ukraine's requests for restitution with respect to the *Mejlis*, the Court finds that, since it has concluded that the ban on the *Mejlis* does not violate the Russian Federation's obligations under CERD (see paragraph 275 above), no restitution can be due after the date of this finding, the assessment at the provisional measures stage having not been confirmed on the merits.

403. The Court does not find it necessary or appropriate to order any other remedy requested by Ukraine.

* * *

404. For these reasons,

THE COURT,

(1) By thirteen votes to two,

Finds that the Russian Federation, by failing to take measures to investigate facts contained in information received from Ukraine regarding persons who have allegedly committed an offence set forth in Article 2 of the International Convention for the Suppression of the Financing of Terrorism, has violated its obligation under Article 9, paragraph 1, of the said Convention;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Yusuf, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge* ad hoc Pocar;

AGAINST: *Judge* Xue; *Judge* ad hoc Tuzmukhamedov;

(2) By ten votes to five,

Rejects all other submissions made by Ukraine with respect to the International Convention for the Suppression of the Financing of Terrorism;

IN FAVOUR: *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Salam, Iwasawa, Nolte, Brant; *Judge* ad hoc Tuzmukhamedov;

AGAINST: *President* Donoghue; *Judges* Sebutinde, Bhandari, Charlesworth; *Judge* ad hoc Pocar;

(3) By thirteen votes to two,

Finds that the Russian Federation, by the way in which it has implemented its educational system in Crimea after 2014 with regard to school education in the Ukrainian language, has violated its obligations under Articles 2, paragraph 1 *(a)*, and 5 *(e)* (v) of the International Convention on the Elimination of Racial Discrimination;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Xue, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge* ad hoc Pocar;

AGAINST: *Judge* Yusuf; *Judge* ad hoc Tuzmukhamedov;

(4) By ten votes to five,

Rejects all other submissions made by Ukraine with respect to the International Convention on the Elimination of Racial Discrimination;

IN FAVOUR: *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Salam, Iwasawa, Nolte, Brant; *Judge* ad hoc Tuzmukhamedov;

AGAINST: *President* Donoghue; *Judges* Sebutinde, Bhandari, Charlesworth; *Judge* ad hoc Pocar;

(5) By eleven votes to four,

Finds that the Russian Federation, by maintaining limitations on the *Mejlis*, has violated its obligation under paragraph 106 (1) *(a)* of the Order of 19 April 2017 indicating provisional measures;

IN FAVOUR: *President* Donoghue; *Judges* Abraham, Bennouna, Yusuf, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Charlesworth; *Judge* ad hoc Pocar;

AGAINST: *Judges* Tomka, Xue, Brant; *Judge* ad hoc Tuzmukhamedov;

(6) By ten votes to five,

Finds that the Russian Federation has violated its obligation under paragraph 106 (2) of the Order of 19 April 2017 indicating provisional measures to refrain from any action which might aggravate or extend the dispute between the Parties, or make it more difficult to resolve;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge* ad hoc Pocar;

AGAINST: *Judges* Abraham, Bennouna, Yusuf, Xue; *Judge* ad hoc Tuzmukhamedov;

(7) By eleven votes to four,

Rejects all other submissions made by Ukraine with respect to the Order of the Court of 19 April 2017 indicating provisional measures.

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Salam, Iwasawa, Brant; *Judge* ad hoc Tuzmukhamedov;

AGAINST: *Judges* Sebutinde, Nolte, Charlesworth; *Judge* ad hoc Pocar.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this thirty-first day of January, two thousand and twenty-four, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of Ukraine and the Government of the Russian Federation, respectively.

(Signed) Joan E. DONOGHUE,
President.

(Signed) Philippe GAUTIER,
Registrar.

President DONOGHUE appends a separate opinion to the Judgment of the Court; Judges TOMKA, ABRAHAM, BENNOUNA and YUSUF append declarations to the Judgment of the Court; Judge SEBUTINDE appends a dissenting opinion to the Judgment of the Court; Judges BHANDARI, IWASAWA and CHARLESWORTH append separate opinions to the Judgment of the Court; Judge BRANT appends a declaration to the Judgment of the Court; Judge *ad hoc* POCAR appends a separate opinion to the Judgment of the Court; Judge *ad hoc* TUZMUKHAMEDOV appends a separate opinion, partly concurring and partly dissenting, to the Judgment of the Court.

(Initialled) J.E.D.
(Initialled) Ph.G.