DECLARATION OF JUDGE ABRAHAM

[Translation]

1. I voted in favour of all the subparagraphs of the operative part of the present Judgment, with the exception of subparagraph (6) whereby the Court finds that the Russian Federation has violated its obligation to comply with the provision of the Order indicating provisional measures of 19 April 2017 directing it to refrain from any action which might aggravate or extend the dispute, or make it more difficult to resolve.

Indeed, I am not convinced by the reason given in the Judgment in support of such a finding, and I can see no other reason that could justify it.

2. The reason given by the Court is set out in paragraph 397. This paragraph notes that, subsequent to the Order on provisional measures, the Russian Federation recognized the two entities referred to as the "Donetsk People's Republic" and the "Luhansk People's Republic" as independent States and launched a "special military operation" against Ukraine which started the war that is still ongoing. These are indisputable facts. But the Court adds that "these actions severely undermined the basis for mutual trust and co-operation and thus made the dispute more difficult to resolve".

3. It is with the latter point that I disagree. There is no doubt that by recognizing the independence of two territorial entities that had hitherto formed an integral part of Ukrainian territory — and which, in Ukraine's view, are still legally part of its territory — and by starting a war against Ukraine, the Russian Federation has not contributed to strengthening "mutual trust" and "co-operation" between the two States parties to the present dispute, since the new situation resulting from these events precludes any realistic possibility of "co-operation" and "trust".

But it is difficult to see how these facts, which are completely extraneous to the dispute submitted to the Court in the present case, could have "made the dispute more difficult to resolve". They have no effect on either the aspect of the dispute concerning the application in Crimea of the Convention on the Elimination of All Forms of Racial Discrimination or on the aspect concerning the alleged violations by the Russian Federation of its obligations under the Convention for the Suppression of the Financing of Terrorism. It is true that the latter aspect, which calls into question activities having occurred in the eastern part of Ukraine and which, according to the Applicant, are terrorist in nature, appears to bear some relationship to the status of the territories concerned: but it is a very indirect relationship. In reality, the

judicial resolution of the dispute submitted to the Court, as set out in the present Judgment, has not been made more difficult (nor, needless to say, has it been facilitated) by the dramatic events that have taken place in this part of the world since February 2022. Given that the obligation arising from the Order of 19 April 2017 was not to facilitate the resolution of the dispute but not to make it more difficult to resolve, I can see no reason to conclude that the Russian Federation has violated such an obligation.

4. In my view, paragraph 397 of the Judgment has an additional shortcoming. The obligation set out in the Order to refrain from any action which might aggravate the dispute or make it more difficult to resolve was addressed to both Parties. It is clear that the Court could not find that both Parties violated this obligation, since it was seised in this respect only of submissions from the Applicant against the Respondent. But in upholding these submissions, the Court might appear to be passing judgment on the events of February 2022, by in some way apportioning responsibility in this regard. Each judge may, in their own mind, have an opinion on the respective wrongs of the Parties in the situation that gave rise to the events of February 2022 and their aftermath. But the Court, in the judicial function it exercises in the present case on the basis of the two applicable conventions, must stay within the subject-matter of the dispute.

5. Paragraph 397 does not address the lawfulness under general international law of the measures taken by the Russian Federation during the period under consideration. But, by declaring that the Respondent violated its obligations under the Order by carrying out the actions concerned, it necessarily considers them as unlawful from another point of view. It is true that the consequences of this unlawfulness have little impact for the Respondent, since they are limited to a simple finding by the Court that the Order has been violated, which constitutes "adequate satisfaction" in the present case (para. 401).

6. Besides, it may be asked how it could be that the acts in question (the recognition of the two "republics" and the launch of military operations) entail violation of the Order if they are, otherwise, consistent with international law. I do not contest that, as a general rule, an act can be in breach of a provisional measure ordered by the Court without being contrary to any rule of international law other than that which obliges the States parties to a case to comply with orders indicating provisional measures. However, in the present case, in my view, it is rather a delicate matter to adhere to such a distinction: if, hypothetically, a State acts in self-defence (and I would stress that I am not stating that the Russian Federation was doing so in this case), it is difficult, if not logically impossible, to say that, in doing so, it has aggravated a dispute or made it more difficult to resolve.

7. The Court, through paragraph 397, has introduced an inconvenient ambiguity, which it could easily have avoided by adopting a more rigorous interpretation of the provisional measure that it considers — wrongly in my view — to have been breached.

(Signed) Ronny ABRAHAM.