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Summary
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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)*

Summary of the Judgment of 31 January 2024

I. GENERAL BACKGROUND (PARAS. 28-31)

The Court begins by recalling that 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.

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.

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).

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 (PARAS. 32-150)

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.

A. Preliminary issues (paras. 33-85)

Before addressing Ukraine's claims under the ICSFT, the Court first considers 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 (paras. 34-38)

The Court recalls that 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".

In this respect, the Court notes that 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. 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.

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. Furthermore, the Court has already rejected the invocation of the doctrine as an objection to admissibility, stating that it "does not consider that an objection 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 of 30 March 2023*, 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 (paras. 39-76)

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

(a) ***Article 1, paragraph 1, of the ICSFT*** (paras. 40-53)

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.

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".

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". 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.

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.

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.

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.

The *travaux préparatoires* confirm the above interpretation of the term "funds".

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.

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*** (paras. 54-64)

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."

The Court addresses 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 (para. 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 (paras. 57-58)

The Court notes that 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").

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 (paras. 59-64)

The Court notes that 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 confines 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.

The Court observes that 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.

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.

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*** (paras. 65-69)

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.

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. Indeed, it is not necessary that a predicate act should have occurred for the offence of terrorism financing to have been committed. Accordingly, the Court only interprets 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.

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*** (paras. 70-76)

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 only examines 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 is 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. 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.

The Court further recalls that the offence of terrorism financing is distinct from the commission of predicate acts. 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.

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. 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.

3. Questions of proof (paras. 77-85)

Addressing questions of proof, the Court notes that 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. 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. 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.

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. In other cases not involving allegations of exceptional gravity, however, the Court has applied a less exacting standard of proof.

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.

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

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.

B. Alleged violations of obligations under the ICSFT (paras. 86-147)

1. Alleged violation of Article 8, paragraph 1 (paras. 86-98)

The Court notes that 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 begins 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.

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.

The Court notes that this standard of reasonable grounds to suspect is in line with that adopted by the Financial Action Task Force in its Special Recommendations on Terrorist Financing. The Financial Action Task Force 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. 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.

The Court next seeks to 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 therefore focuses its analysis on these communications.

After examining the allegations and evidence, 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.

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 (paras. 99-111)

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.

The Court once again begins 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.

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.

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.

The Court considers next 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 focuses its attention on three of these documents. 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.

In the view of the Court, three Notes Verbales 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.

In light of the above conclusion, the Court must then 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.

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".

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 Financial Action Task Force 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". 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.

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 (paras. 112-120)

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.

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").

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. 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. The *aut dedere aut judicare* obligation found in Article 10 of the ICSFT does not impose an absolute obligation to prosecute. 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.

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. 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.

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 (paras. 121-131)

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 requests made between September 2014 and November 2017.

The Court begins by considering 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. To this end, the Court must 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.

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 therefore limits its analysis to whether the Respondent fulfilled its obligations under Article 12 with respect to the aforementioned three requests for legal assistance.

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.

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. 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.

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 (paras. 132-146)

The Court begins 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".

The Court observes that 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.

The Court next examines 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.

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.

The Court then turns to Ukraine's submission that the Russian Federation has violated its obligations under Article 18, paragraph 1.

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. 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.

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. 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.

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. 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.

Finally, the Court examines 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. 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.

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 (para. 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 (paras. 148-150)

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.

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.

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 (paras. 151-374)

Having addressed Ukraine's claims under the ICSFT, the Court then turns to the Applicant's claims under CERD. The Court recalls that both Ukraine and the Russian Federation are parties to CERD.

A. Preliminary issues under CERD (paras. 152-200)

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

1. Invocation of the "clean hands" doctrine in respect of CERD (paras. 153-155)

The Russian Federation contends that the "clean hands" doctrine precludes Ukraine from making claims under CERD.

As indicated earlier, 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. 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 (paras. 156-161)

The Parties disagree about the nature and scope of the alleged violations to be examined by the Court in the present case. The Court considers that this 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).

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).

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". 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. 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 (paras. 162-178)

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.

The Court notes that the Parties disagree about various questions of proof. The Court therefore addresses, 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.

(a) ***Burden and standard of proof*** (paras. 164-171)

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

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. 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. 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.

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. In cases involving allegations of massive human rights violations, the Court has previously required "convincing" evidence. In the present case, the Court assesses whether there is convincing evidence when considering the allegations made by Ukraine under CERD.

The Court therefore examines 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.

(b) ***Methods of proof*** (paras. 172-178)

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. The Court recalls that it has applied various criteria to assess evidence. 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.

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. 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.

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).

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

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.

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 or when they are wholly consistent and concordant as to the main facts and circumstances of the case. 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 (paras. 179-197)

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 interprets, at the outset, 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.

The Court notes that 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".

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.

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.

5. Crimean Tatars and ethnic Ukrainians as protected groups (paras. 198-200)

With regard to the question of protected groups under CERD, the Court recalls that the Parties agree that Crimean Tatars and ethnic Ukrainians constitute ethnic groups protected under that Convention. 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 these 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. 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 (paras. 201-370)

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.

1. Disappearances, murders, abductions and torture of Crimean Tatars and ethnic Ukrainians (paras. 202-221)

The Court then turns to the specific allegations of violations of obligations under CERD, starting with allegations concerning disappearances, murders, abductions and torture of Crimean Tatars and ethnic Ukrainians. The Court first examines whether the acts of physical violence alleged by Ukraine constitute instances of racial discrimination within the meaning of Article 1, paragraph 1, of CERD.

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, Ukraine asserts that certain targeted individuals were prominent Crimean Tatar and ethnic Ukrainian

activists and 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.

With respect to Ukraine's first argument, the Court observes that reports by the Office of the High Commissioner for Human Rights (OHCHR) confirm that several targeted persons were pro-Ukrainian activists, as well as members and affiliates of the *Mejlis*. 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. The Court recalls that the political identity or 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. 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.

With regard to Ukraine's second argument, the Court observes that the limited statistical evidence furnished by Ukraine is mainly derived from reports of intergovernmental organizations. While the Court generally ascribes particular weight to reports by international organizations that are specifically mandated to monitor the situation in a given area, 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.

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.

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, 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. 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.

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 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".

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.

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. 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.

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 (paras. 222-251)

The Court then addresses the allegations concerning the Respondent's conduct in terms of law enforcement measures, including searches, detentions and prosecutions. It first seeks to 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.

Accordingly, the Court begins by considering the question of whether the legislation adopted by the Russian Federation in itself constitutes racial discrimination.

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 both the European Court of Human Rights and the Venice Commission of the Council of Europe have expressed concern that the Russian Federal Law on Anti-Extremism is very broadly worded, thereby allowing wide discretion in its interpretation and application, thus leading to arbitrariness and potential dangers to individuals and NGOs.

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.

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 therefore addresses these two categories separately and in turn.

(a) ***Measures taken against persons of Crimean Tatar origin*** (paras. 230-244)

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.

In this regard, the Court attributes considerable weight to reports of several UN organs and monitoring bodies according to which the measures in question disproportionately affected Crimean Tatar persons. 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.

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.

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. Moreover, Article 4 *(c)* specifically provides that State 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.

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. Therefore, the Court is not persuaded that Ukraine has established that the Russian Federation violated its obligation to investigate.

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*** **Mejlis** (paras. 245-251)

Turning to measures taken against persons forming part of the Crimean Tatar leadership, 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 under CERD.

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. 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.

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.

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 those allegations. 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. Given their lack of specificity with respect to those allegations 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.

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* (paras. 252-275)

The Court next addresses the Parties' arguments regarding the ban on the *Mejlis*. It notes at the outset that various intergovernmental organizations and monitoring bodies have called upon the Russian Federation to lift that ban because of its negative impact on civil and political rights. 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.

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 (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. To this end, the Court 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.

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.

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. The Qurultay is, in turn, elected directly by the Crimean Tatar people. 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.

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.

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.

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.

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. The Court is thus not persuaded that the Russian Federation violated its obligations under this provision.

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.

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 (paras. 276-288)

The Court then turns to the claims relating to measures relating to citizenship. In particular, 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.

The Court notes that differential treatment between citizens and non-citizens and legal provisions of States parties concerning nationality, citizenship or naturalization 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.

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.

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 (paras. 289-306)

With regard to measures relating to culturally significant gatherings, the Court observes that the determination of a violation of the Russian Federation's obligations under CERD 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, thereof.

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.

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.

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.

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.

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 ECHR has in several decisions confirmed that the approach of the Russian Federation towards public gatherings is generally restrictive, 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.

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 (paras. 307-323)

With regard to measures imposed by the Respondent in relation to Crimean Tatar and Ukrainian media outlets, the Court observes that the determination of a violation of the Russian Federation's obligations under CERD requires that the relevant restrictions constitute acts of racial discrimination in the sense of Article 1, paragraph 1, thereof.

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. 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.

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.

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.

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. 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.

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, 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.

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 (paras. 324-337)

The Court then turns to the claims concerning measures relating to cultural heritage and cultural institutions. The Court takes note of concerns expressed by the CERD Committee of 1 June 2023 regarding reports of the destruction of and damage to Crimean Tatar cultural heritage, including tombstones, monuments and shrines.

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. The Court moreover finds that Ukraine has not sufficiently substantiated its claims regarding the alleged degradation of 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.

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 that heritage. Ukraine, in turn, has not substantiated how the closure of certain institutions would amount to discrimination based on ethnic origin.

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 (paras. 338-370)

The Court then examines whether the conduct of the Russian Federation with regard to education in Crimea qualifies as racial discrimination and violates the obligations contained in Articles 2 (1) *(a)*, 5 *(e)* (v) and 7.

Under Article 2 (1) *(a)*, each State party undertakes not to engage in any 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, act in conformity with this obligation. Under Article 5 *(e)* (v), States parties undertake to prohibit and to eliminate racial discrimination 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 certain categories of rights. Within the category of economic, social and cultural rights, individuals have the right to education and training.

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 (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.

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.

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.

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. 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*** (paras. 358-363)

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 data from the OHCHR, there was 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.

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.

The explanations put forward by the Russian Federation for the decline are not fully convincing. It is true that, according to the OHCHR, 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.

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.

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. 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 reorientation of the Crimean educational system on parents whose children had until 2014 received their school education in the Ukrainian language.

(b) ***Access to education in the Crimean Tatar language*** (paras. 364-368)

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.

Regarding the alleged violation of the obligation under Article 7 of CERD, the Court recalls that under this provision 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. 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*** (para. 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. 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*** (para. 370)

In light of the above, the Court concludes that the Russian Federation has violated its obligations under Article 2 (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 (paras. 371-374)

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

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.

By the present Judgment, the Court declares that the Russian Federation has violated its obligations under Article 2 (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.

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 (paras. 375-403)

A. Compliance with provisional measures (paras. 375-398)

Having addressed Ukraine's claims under the ICSFT and CERD, the Court turns to the request made by the Applicant in its final submissions that the Court adjudge and declare that the Russian Federation has breached its obligations under the Court's Order of 19 April 2017 indicating provisional measures.

The Court recalls that it indicated the following provisional measures in that Order:

> "(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."

With respect to the first provisional measure, 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.

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. 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.

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

With respect to the second provisional measure, 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", 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 on provisional measures.

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.

In the Order on 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".

The Court observes that, subsequent to the Order on 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.

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 (paras. 399-403)

The Court recalls that orders indicating provisional measures create a legal obligation for the States involved 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.

The Court considers that its declaration that the Russian Federation has breached the Order on provisional measures of 19 April 2017 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.

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, 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.

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

OPERATIVE CLAUSE (PARA. 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 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.

Joan E. DONOGHUE,
President.

Philippe GAUTIER,
Registrar.

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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.

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Separate opinion of President Donoghue

In her separate opinion, President Donoghue explains why she considers that, by banning the *Mejlis*, the Russian Federation violated its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. She also believes that the Russian Federation violated its obligations under Article 12 of the International Convention for the Suppression of the Financing of Terrorism. In addition, President Donoghue comments on the Court's decisions regarding the alleged violations of obligations created by the provisional measures Order of 19 April 2017, with which she agrees.

Declaration of Judge Tomka

Judge Tomka explains that he has been unable to support the Court's finding that the Russian Federation, by maintaining limitations on the *Mejlis*, has violated its obligation under paragraph 106 (1) *(a)* of the Court's Order of 19 April 2017 indicating provisional measures. He begins by recalling that he did not support the indication of that provisional measure in 2017, for the reasons provided in his declaration appended to the Court's Order. He continues to believe that the Court went too far when it required the Russian Federation to refrain from maintaining limitations on the ability of the Crimean Tatar community to conserve the *Mejlis*. Be that as it may, in today's Judgment the Court concludes that the *Mejlis* was banned by the Russian Federation due to the political activities carried out by some of its leaders, and not because of their ethnic origin. Accordingly, 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*. Judge Tomka notes that, despite this finding on the merits, the Court goes on to conclude in the present Judgment that the Russian Federation has violated its obligation under paragraph 106 (1) *(a)* of the Court's Order of 19 April 2017 not to impose limitations on the *Mejlis*. Judge Tomka wonders whether this finding, which is somewhat surprising, is in harmony with the Court's declaration that the Russian Federation has not violated its obligations under CERD.

Judge Tomka observes that the Court in today's Judgment provides an interpretation of the term "funds" as defined in the ICSFT. The Court holds that the term "funds" 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 the supply of weapons or training camps. The Court then concludes that the alleged supply of weapons by the Russian Federation to various armed groups operating in Ukraine falls outside the material scope of the ICSFT, meaning that the Court has no jurisdiction *ratione materiae* to deal with Ukraine's claims concerning this alleged supply of weapons. Judge Tomka agrees with this conclusion. He recalls that he had reached the same conclusion in his separate opinion appended to the Court's 2019 Judgment on preliminary objections. Judge Tomka regrets that the Court refrained from interpreting the term "funds" in its 2019 Judgment, leaving the issue to be determined in the present Judgment. Had the Court interpreted the term "funds" in 2019, this would have spared the Parties unnecessary submissions, including extremely voluminous evidence, on claims which are now declared to fall outside the scope of the ICSFT. For Judge Tomka, the Court adopted an approach that was not in keeping with the principle of procedural economy.

Déclaration de M. le juge Abraham

Dans sa déclaration, le juge Abraham explique les raisons l'ayant conduit à voter contre le point 6 du dispositif. Selon lui, la reconnaissance des deux entités dites « république populaire de Donetsk » et « république populaire de Louhansk » comme des États indépendants et l'« opération militaire spéciale » lancée contre l'Ukraine par la Fédération de Russie sont totalement étrangères au différend soumis à la Cour dans la présente affaire et n'ont aucun effet sur celui-ci. Il estime, par

conséquent, que la solution judiciaire du différend soumis à la Cour n'a pas été rendue plus difficile par ces événements. Il ajoute que les motifs retenus par la Cour à cet égard introduisent une regrettable ambiguïté sur la question de la licéité des actions de la Fédération de Russie.

Declaration of Judge Bennouna

Judge Bennouna expresses his disagreement with the Court's decision that the Russian Federation violated the provisional measure of non-aggravation indicated by the Court on 19 April 2017. He further notes that the Court has consistently maintained the position that it cannot order non-aggravation as an isolated measure, as it is intended to accompany concrete or specific measures for the preservation of certain rights. He believes that this measure does not carry the same obligatory nature as specific measures designed to safeguard the parties' rights.

Declaration of Judge Yusuf

Judge Yusuf does not agree with the Court's conclusion that the Russian Federation violated the obligation on non-aggravation under the Order of 19 April 2017 to refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

The Court made clear, in the present Judgment and in its Judgment of 8 November 2019, that its jurisdiction is limited to the dispute between the Parties, which concerns only Ukraine's claims under the ICSFT and CERD. Moreover, in its Order, the Court found that the conditions for indicating measures in respect of Ukraine's claims under the ICSFT, relating to events in eastern Ukraine, were not met. It only indicated measures relating to claims under CERD, in respect of events in Crimea.

For Judge Yusuf, non-aggravation clauses are subordinate to substantive provisional measures and their function is to avoid escalation and extension of the dispute so that the Court can settle it through the law. The Court has never indicated a measure of non-aggravation other than as an addendum to measures aimed at preserving specific rights of parties. Such an auxiliary measure cannot be used to extend the scope of the Order or the obligations prescribed by it.

In this Judgment, the Court refers to the Russian Federation's recognition of the LPR and DPR as independent States and to the launching of a "special military operation" as the basis for finding a violation of the non-aggravation measure. Judge Yusuf, however, recalls that the non-aggravation clause was connected to two measures indicated by the Court in relation to alleged violations of CERD in Crimea. The jurisdictional basis for those measures was CERD and a non-aggravation clause could not, in the view of Judge Yusuf, extend such jurisdiction to the recognition of territorial entities as States or to the armed conflict between Ukraine and the Russian Federation. However, the Court has now applied the non-aggravation measure as having created obligations for the Russian Federation with regard to the DPR and LPR in eastern Ukraine and the armed conflict between the two States. As a result, for Judge Yusuf, the Court has mistaken the legal basis and scope of the non-aggravation measure it indicated in the Order of 19 April 2017.

Judge Yusuf observes that Ukraine has instituted separate proceedings relating to a dispute with the Russian Federation concerning the events of February 2022 between Ukraine and the Russian Federation. Those proceedings are still under consideration by the Court and are distinct and separate from the present case. They also have no relationship whatsoever to the non-aggravation clause in the provisional measures indicated by the Court in this case.

Dissenting opinion of Judge Sebutinde

In her dissenting opinion, Judge Sebutinde explains why she disagrees with some of the Court's findings. In her opinion, the Russian Federation has violated its obligations under Articles 12 and 18 of the ICSFT. The Russian Federation is also in violation of its obligations under the CERD with respect to measures taken against the Mejlis and in relation to the law enforcement measures directed at members of the Crimean Tatar population. Judge Sebutinde also elaborates upon the Court's interpretation and conclusion with respect to the measure of non-aggravation indicated in the Court's provisional measures Order.

In Judge Sebutinde's view, the evidentiary threshold applied by the Court under Article 12 is unnecessarily stringent and imposes an impracticable burden upon States requesting mutual assistance. In her view, when making a request for legal assistance, it is not necessary for a State to demonstrate that the alleged funders "knew" what the funds provided were to be used for. The Russian Federation, by failing to provide Ukraine with any assistance at all in relation to Ukraine's investigation of possible terrorism financing offences, acted in violation of its obligation under Article 12 of the ICSFT.

Judge Sebutinde also finds that with respect to Article 18, the Russian Federation failed to take "all practicable measures" that were within its disposal to prevent and counter preparations for the commission of terrorism financing offences. By endorsing the fundraising activities of officials and private persons under its jurisdiction, for the benefit of the DPR and LPR and failing to take "practicable measures" that were at its disposal to prevent, restrict or limit such fundraising activities, the Russian Federation acted in violation of its obligation under Article 18.

With respect to CERD, Judge Sebutinde finds that the Russian Federation has violated its obligations in relation to its law enforcement measures taken against persons of Crimean Tatar origin and in relation to the measures taken against the Mejlis. In her opinion, the Russian Federation's indiscriminate enforcement of its anti-extremism legislation against members of the Crimean Tatar community had the effect of discriminating against Crimean Tatars on the basis of their ethnic or national origin. The Russian Federation's actions taken under this legislation impaired the rights of members of this ethnic minority protected under Articles 2 and 5 *(d)* (viii) and (ix) of CERD.

Furthermore, the ban against the Mejlis constituted an act of racial discrimination. The representative role uniquely played by the Mejlis as the executive body of the Crimean Tatar people is neither equivalent to that played by the Qurultay, nor can it be replaced by that of any other representative body in Crimea, including the "Qurultay of the Muslims of Crimea" and the "Shura". Therefore, the ban had the effect of impairing not only the civil rights of the individual members of the Mejlis, but also the civil and cultural rights of the Crimean Tatar community to determine their cultural leaders, in violation of the CERD.

Finally, Judge Sebutinde agrees with the conclusion that the Russian Federation has violated its obligations under the provisional measures indicated by the Court by failing to refrain from action that might aggravate or extend the dispute before the Court or render it more difficult to resolve.

Separate opinion of Judge Bhandari

In his separate opinion, Judge Bhandari expresses his disagreement with the Court's interpretation of Article 1, paragraph 1, of the International Convention for the Suppression of the Financing of Terrorism ("ICSFT"). In his opinion, the term "funds", as defined in that provision, includes weapons, and the Court errs in holding otherwise.

Judge Bhandari states that the parties to the ICSFT intended to give a special meaning to the term "funds" by providing a definition of that term in Article 1, paragraph 1, "for the purposes of

this Convention". That special meaning is the starting point for any interpretation of the term "funds". The focus of interpretation must therefore be on the intended special meaning. The Court, however, collapses the term "funds" and the special meaning that the parties to the ICSFT give to that term.

As Judge Bhandari notes, Article 1, paragraph 1, provides that "funds means assets of every kind" without limitation. In his view, the Court's interpretation departs from this ordinary meaning. In particular, Judge Bhandari disagrees with the Court's conclusion that the definition of funds in Article 1, paragraph 1, only includes limited categories of assets and does not include weapons. According to him, the list of financial and other instruments listed in that provision offers examples of documents or instruments evidencing title to or interest in assets. These examples do not, by contrast, limit or determine the scope of the term "assets of any kind".

Further, Judge Bhandari states that the Court's interpretation, according to which the term "funds" also extends to a range of assets exchangeable or used for their monetary value, is self-defeating. Like other assets, weapons can be sold and thereby exchanged for their monetary value. It also strains the text to suggest that "funds", as defined in Article 1, paragraph 1, cannot include weapons when the definition specifically includes "tangible" and "moveable" assets, terms that typically refer to chattel property. Moreover, Article 1, paragraph 1, also refers to "immovable" property. If "assets of any kind" can include real estate, it must also be capable of including weapons.

The phrase "where such assets are provided for their monetary value but not as means of committing acts of terrorism" in the Court's Judgment introduces a new, unsupported dimension, according to Judge Bhandari. These words suggest that one and the same asset could either be "funds" or not be "funds", depending on the intention of the providing party. That is in tension with the text of Article 1, paragraph 1, which provides an objective definition of "funds", and with Article 2, paragraph 1, which treats funds and intention separately.

Finally, according to Judge Bhandari, neither the context of Article 1, paragraph 1, nor the object and purpose or the negotiating history of the ICSFT justify a departure from this reading of the definition of "funds".

Separate opinion of Judge Iwasawa

In his opinion, Judge Iwasawa elaborates on two points on which the Court has made important decisions in the present case.

1. Judge Iwasawa recalls that the Court has previously not accepted arguments based on the clean hands doctrine either as a ground for the inadmissibility of a claim or as a defence on the merits. Nor has the Court denied the applicability of the clean hands doctrine before it entirely. In the present case, the Court rejects the clean hands doctrine as a defence on the merits in a situation where the respondent State argues in proceedings before the Court that the applicant State has engaged in unlawful conduct. Judge Iwasawa considers that the Court does not address the applicability of the clean hands doctrine in investment arbitration.

2. According to Judge Iwasawa, international human rights courts and treaty bodies have used similar frameworks for determining whether a differentiation of treatment constitutes discrimination. A differentiation of treatment is considered to constitute discrimination, unless the criteria for such a differentiation are reasonable and objective; in other words, unless the differentiation pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

He considers that a measure based on a prohibited ground listed in Article 1, paragraph 1, of CERD is inherently suspect. A State bears a very heavy burden of demonstrating that it is justified. The level of scrutiny must be most rigorous and the threshold must be especially high.

Judge Iwasawa then explains the notion of indirect discrimination under CERD. If a rule, measure or policy that appears on its face to be neutral has an unjustifiable disproportionate prejudicial impact on a group distinguished by race, colour, descent, or national or ethnic origin, it constitutes racial discrimination, even if it is not specifically aimed at that group. The analysis of disproportionate impact requires a comparison to be made between different groups. A disproportionate prejudicial impact on a group is unjustifiable, unless such an impact can be justified by a legitimate reason that does not implicate any of the prohibited grounds under Article 1, paragraph 1, of CERD. The context and circumstances in which the differentiation was introduced must be taken into account in determining whether it amounts to racial discrimination.

In the view of Judge Iwasawa, it is important that, even though the Court in the present case has refrained from using the term "indirect discrimination", it has embraced the notion and laid down a framework for analysing indirect discrimination under CERD. The framework laid down by the Court is consistent with the notion of indirect discrimination adopted by other international human rights courts and treaty bodies.

After laying down the framework for indirect discrimination, the Court adds that "collateral and secondary effects" on persons who are distinguished by one of the prohibited grounds do not, in and of themselves, constitute racial discrimination. According to Judge Iwasawa, this addition is wholly unnecessary because the framework adopted by the Court can fully explain why "collateral and secondary effects" do not constitute racial discrimination.

Judge Iwasawa observes that, in the present case, the Russian Federation does not deny the notion of indirect discrimination as such. Rather, it challenges the "very broad notion" as put forward by Ukraine. He points out that, in accordance with the notion of indirect discrimination, equal treatment can also constitute racial discrimination if it has an unjustifiable disproportionate prejudicial impact on a protected group under CERD.

Separate opinion of Judge Charlesworth

While agreeing with much of the Court's reasoning and many of its conclusions, Judge Charlesworth explains the points of her difference with the majority with respect to the International Convention for the Suppression of the Financing of Terrorism ("ICSFT"), the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD") and the Court's Order of 19 April 2017 indicating provisional measures.

Judge Charlesworth thinks that non-financial assets are not excluded from the concept of "funds" under the ICSFT when they are used as means for the commission of offences under Article 2. Although she acknowledges that the ICSFT focuses on financial assets, she considers that its scope is broader and covers non-financial assets even where they are not used for their monetary or financial value. For Judge Charlesworth, the contrary conclusion is counter-intuitive and complicates the application of the ICSFT in practice, because it creates confusion as to the situations in which the parties are to take action under the Convention.

Judge Charlesworth also points to the similarities between Article 9 of the ICSFT, which the Court finds to have been violated in the present case, and Article 12. In her view, the Russian Federation was obliged to take action following Ukraine's requests for legal assistance pursuant to Article 12. Judge Charlesworth observes that the Russian Federation's response was delayed and unreasoned, and on that basis she thinks that Article 12 was violated.

Turning to CERD, Judge Charlesworth notes that the Court's enquiry was framed following Ukraine's claims. She emphasizes that individual acts of racial discrimination are wrongful under CERD regardless of whether they form part of a pattern of racial discrimination, and she adds that a pattern of racial discrimination may emerge from a single measure affecting an undefined number of persons.

Judge Charlesworth then discusses the concept of racial discrimination. Relying on the practice of the Committee on the Elimination of Racial Discrimination and other international bodies, she explains that measures producing a disparate adverse effect must be explicable by an objective and reasonable justification. In this connection, she considers that this justification must be subjected to rigorous scrutiny and that, in particular, the measures in question ought to be applied pursuant to a legitimate aim and be proportional to the achievement of this aim.

Against this background, Judge Charlesworth considers that the Court's assessment of Ukraine's claims in the present case is not fully consistent. In relation to the Russian Federation's application of law enforcement measures, which produce a disparate adverse effect on Crimean Tatars, she takes account of reports of the Office of the High Commissioner for Human Rights. In light of those reports, Judge Charlesworth thinks that the Russian Federation's invocation of considerations of security and public health does not suffice to justify the disparate adverse effect of these measures. Judge Charlesworth also criticizes the finding that the ban on the *Mejlis* is owing to the political activities carried out by some of its leaders, rather than on grounds of their ethnic origin. In her view, a common feature of measures is that they rely on a variety of justifications, therefore a finding that differential treatment is based on political grounds does not preclude it being also based on prohibited grounds under CERD. For Judge Charlesworth, the Russian Federation has not successfully discharged its burden of establishing that the ban on the *Mejlis* is justified, because it has not convincingly explained why an outright ban of the entire institution was the appropriate measure in the circumstances.

Judge Charlesworth then offers her views on the Court's finding of a violation of the provisional measure concerning the non-aggravation of the dispute. According to Judge Charlesworth, the obligation not to aggravate a dispute is an aspect of the obligation to use exclusively peaceful means for the settlement of disputes. Therefore, she argues, conduct that is incompatible with the obligation of peaceful dispute settlement, such as the use of force, is in principle likely to aggravate a dispute pending before the Court. Judge Charlesworth observes that the "special military operation" launched by the Russian Federation since the Court's Order entails the use of force, and she concludes that this conduct is incompatible with the obligation of non-aggravation. Judge Charlesworth explains that this finding does not concern the compatibility of the Russian Federation's use of force with international law in general, but rather with the very specific obligation imposed on it under the terms of the Court's Order. She adds that this finding is without prejudice to the question as to whether Ukraine, to which the same measure was addressed, also failed to comply with it.

Finally, Judge Charlesworth considers that the Russian Federation has also breached the provisional measure relating to ensuring the availability of education in the Ukrainian language. In her view, this measure was aimed at mitigating the risk posed by documented restrictions that had been imposed on the use of Ukrainian as a language of instruction. Therefore, according to Judge Charlesworth, this measure obliges the Russian Federation to ensure that students in Crimea wishing to be educated in the Ukrainian language are able to do so. Relying on reports by the Secretary-General, Judge Charlesworth finds that the availability of instruction in Ukrainian has not always satisfied demand, and therefore she concludes that the Russian Federation has breached its obligation under the Court's Order.

Déclaration de M. le juge Brant

Dans sa déclaration, le juge Brant explique les raisons pour lesquelles il ne peut pas se rallier à la conclusion de la Cour selon laquelle la Fédération de Russie a violé l'ordonnance en indication de mesures conservatoires du 19 avril 2017 en raison de la mesure d'interdiction prise à l'encontre du *Majlis*. Il relève que la Cour est arrivée à la conclusion que les mesures prises par la Fédération de Russie à l'encontre du *Majlis* n'emportent pas violation des obligations découlant de la CIEDR. Il estime que la mesure telle qu'elle a été indiquée dans l'ordonnance du 19 avril 2017 s'en est trouvée dépourvue d'objet et qu'il n'y avait donc pas lieu pour la Cour d'accueillir la demande de l'Ukraine tendant à faire constater une violation de l'ordonnance par la Fédération de Russie.

Separate opinion of Judge *ad hoc* Pocar

In his partly dissenting opinion, Judge *ad hoc* Pocar disagrees with the Court's methodological approach to the interpretation of the term "funds" in the International Convention for the Suppression of the Financing of Terrorism (hereinafter "ICSFT"). In particular, he criticizes the exclusion of weapons and other objects used operatively in terrorist acts from the definition of "funds" as "assets of every kind". In his opinion, this exclusion creates an additional element of intent that has no basis in the Convention. As a result, the Court refused to evaluate predicate acts the commission of which was sustained solely by the supply of weapons, including the shooting down of MH17.

Judge *ad hoc* Pocar also criticizes the Court's analysis of the co-operation obligations under Articles 10 and 12 of the ICSFT. He believes that the Russian Federation should have at least brought Ukraine's requests to the attention of the relevant prosecutorial authorities in line with Article 10 of the ICFST, who should have then engaged in a preliminary inquiry into potential acts of terrorism financing. He also dissents from the Court's decision that the relevant 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.

Moreover, Judge *ad hoc* Pocar disagrees with the Court's definition of racial discrimination under the Convention for the Elimination of All Forms of Racial Discrimination (hereinafter "CERD") set out in paragraph 196 of the Judgment. This paragraph suggests that prohibited discrimination must always contain an intentional element, whether concealed or not. In Judge *ad hoc* Pocar's view, requiring proof of discriminatory intent is inconsistent with the Convention's prohibition of conduct having a discriminatory effect. His partly dissenting opinion also emphasises that once a prima facie case of discrimination is established by demonstrating the disparate adverse impact on a group protected by the CERD, it is up to the Respondent to demonstrate that the measure in question was taken for a legitimate aim and in a proportionate manner.

Judge *ad hoc* Pocar points out that the Court failed to apply these principles correctly to the ban of the *Mejlis*, which, in his opinion, created an unjustified disparate impact on the rights of Crimean Tatars and therefore constitutes a violation of the Russian Federation's obligations under the CERD.

Finally, Judge *ad hoc* Pocar notes that the protection of minority language education under the CERD is broader than acknowledged by the Court in its Judgment. He dissents from the Judgment's conclusion that the Russian Federation has not violated the Court's provisional measures Order of 2017 in relation to the availability of Ukrainian language education. In his view, a State cannot escape an obligation to ensure the availability of language education by artificially reducing demand, including by displacement and intimidation.

Separate opinion, partly concurring and partly dissenting, of Judge *ad hoc* Tuzmukhamedov

In his partly concurring and partly dissenting separate opinion, Judge *ad hoc* Tuzmukhamedov explains his reasons for dissenting and elaborates upon some of the issues not addressed in the Judgment.

Regarding the ICSFT, Judge *ad hoc* Tuzmukhamedov observes that the Court did not determine with certainty that the attacks which took place in Donbass were attributable to the Donbass forces. He also regrets that the Majority did not examine the incident involving the MH17 more deeply, as it could have found it was not the DPR responsible for it. However, Judge *ad hoc* Tuzmukhamedov concurs with the Majority's view that there was a distinct lack of terrorist intent. The incidents that Ukraine cast as "acts of terrorism" occurred in the course of hostilities and involved military targets. There was no intent to harm civilians, spread terror and the intent or knowledge on behalf of an alleged financier that financing would go towards those goals was not present.

Judge *ad hoc* Tuzmukhamedov takes the view that the lack of proof of terrorism financing should have excluded violation of ancillary obligations to co-operate under Article 9 of the ICSFT. In his view, the Majority could not have found a breach of an obligation ancillary to the principal obligation to combat terrorism financing when it had not been proven that terrorism financing took place at all. Judge *ad hoc* Tuzmukhamedov is also of the opinion that the threshold adopted by the Court with regard to Article 9 of the ICSFT was far too low. He believes that Ukraine has presented nothing but mere "allegations" of the commission of the offence under Article 2 of the ICSFT. Finally, the Judge argues that, in any case, the Respondent did engage in adequate co-operation with the Applicant under Article 9.

Judge *ad hoc* Tuzmukhamedov believes that the Majority was correct in finding absence of violation of Article 12 as the Ukrainian MLA requests did not explicitly refer to terrorism financing offences or the ICSFT; Russia's refusals to co-operate on several matters were legitimately based on sovereignty as well as national security; and the circumstances prevailing in relations between the Parties justified such refusals.

Regarding the meaning of "funds", Judge *ad hoc* Tuzmukhamedov concurs with the view of the Majority. He believes that excluding weapons from the definition of "funds" is clear from the ordinary meaning of the term, the development history of the ICSFT, its structure and the context.

In the view of Judge *ad hoc* Tuzmukhamedov, all the requirements established in the Court's previous jurisprudence were present for the Court to apply the "clean hands" doctrine with respect to the ICSFT case, which it had missed.

Turning to CERD, Judge *ad hoc* Tuzmukhamedov believes that the Court properly found no evidence of racial discrimination regarding the vast majority of Ukraine's allegations. Moreover, he agrees with the Majority that political views do not constitute an element of "ethnic origin" which must be a "characteristic acquired at birth".

Judge *ad hoc* Tuzmukhamedov also opines that the ban on "Mejlis" does not constitute racial discrimination. To him, the key factor of considering the ban lawful was its role in the blockade of Crimea. It is regrettable that the Court chose to neglect the United Nations OHCHR reports on the human rights situation in Crimea which called attention to the action of "Mejlis" leadership together with Ukrainian neo-Nazi armed groups in organizing the blockade of trade routes and other infrastructure vital to the livelihood of Crimeans.

According to Judge *ad hoc* Tuzmukhamedov, the Court rightfully dismissed Ukraine's concept of "indirect discrimination". In his view, Ukraine tried to advance a particularly broad interpretation of the concept, which is not rooted in CERD, nor supported by judicial practice.

Judge *ad hoc* Tuzmukhamedov strongly disagrees with the Majority's view with respect to school education in the Ukrainian language. Since CERD does not contain a general right to school education in a minority language and a State is free in choice and scope of offer of school education in minority languages, the Court should have concluded that there was no violation under CERD. In the absence of a protected right under CERD there cannot be racial discrimination with regard to the exercise of that right. Moreover, Judge *ad hoc* Tuzmukhamedov has a different view from that of the Majority that a decline in numbers of parents choosing Ukrainian as a language in which their children were to be educated could only result from a policy of racial discrimination imposed by Russia. To him, it has occurred as an objective consequence of the Crimean population — predominantly Russians and Russian speakers — choosing Russian as language of school education. In addition to that, Judge *ad hoc* Tuzmukhamedov observes that the Russian system of education already provides an opportunity to educate children in Ukrainian. For all these reasons, he believes that the Court reached a mistaken conclusion with regard to language of school education and, to make matters worse, the remedies formulated by the Court are too imprecise.

Like with the ICSFT, the circumstances were present for the Court to apply the doctrine of "clean hands" to the CERD case, according to Judge *ad hoc* Tuzmukhamedov. Ukraine has been systematically violating the rights of Russians and other ethnic groups. And yet the Majority opted for not engaging substantively with the facts cited by Russia.

Finally, Judge *ad hoc* Tuzmukhamedov concurs with the Majority's opinion that there was no violation of the provisional measures Order with regard to education in the Ukrainian language, however, he disagrees with the decision regarding the ban on "Mejlis". To him, from the very beginning the measure in respect of "Mejlis" was ill-founded, but especially since the Court eventually found the ban not to be in contravention of CERD, the Applicant had no right that needed to be protected and thus the Respondent could not have been found responsible for not protecting the non-existent or already successfully protected right. Regarding the measure on non-aggravation, in the opinion of Judge *ad hoc* Tuzmukhamedov, the events of 2022 are beyond the scope of the dispute brought to the Court in 2017 and the provisional measure of non-aggravation should have ceased to be operative upon conclusion of the case. There had been no "aggravation" of the ICSFT/CERD dispute. In addition to that, Judge *ad hoc* Tuzmukhamedov observes that the Court did not conform to the principle of impartiality and equal treatment of the Parties since it did not even attempt to examine Ukraine's compliance with the provisional measure of non-aggravation, as prescribed by the Order of 19 April 2017 addressed to both Parties.

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