DECLARATION OF JUDGE XUE

1. While I fully endorse the call that the military operations in Ukraine should immediately be brought to an end so as to restore peace in the country as well as in the region, I reserve my position on the first two provisional measures indicated in this Order. Contrary to the established practice of the Court, these measures are, in fact, not linked with the rights that Ukraine may plausibly claim under the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the "Genocide Convention"); the right identified by the Court as plausible cannot be established under the Genocide Convention (see paragraph 60 of the Order). More importantly, given the complicated circumstances that give rise to the conflict between Ukraine and the Russian Federation, the measures that the Russian Federation is solely required to take will not contribute to the resolution of the crisis in Ukraine. The Court, in my view, should be cautious in entertaining the request submitted by Ukraine and avoid prejudgment on the merits of the case.

2. Although Ukraine bases its claim on the Genocide Convention, the purpose of its Application is apparently to seek a determination from the Court that the Russian Federation's recognition of the Luhansk and Donetsk oblasts of Ukraine as independent republics and its military operations in Ukraine are unlawful. Ukraine's contention that the Russian Federation's allegation of genocide against Ukraine is just "an excuse for Russia's unlawful aggression" raises doubt that this is a genuine case about genocide. It appears that the acts complained of by Ukraine — namely Russia's recognition of the independence of the Luhansk and Donetsk regions of Ukraine and Russia's military operations in Ukraine — cannot be directly addressed by the interpretation and application of the provisions of the Genocide Convention, as the issues they have raised are concerned with the questions of recognition and use of force in international law. They do not appear to be capable of falling within the scope of the Genocide Convention (*Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 239, para. 30).

3. Referring to the statements of the President of the Russian Federation dated 21 February and 24 February 2022, Ukraine argues that the only possible reason for the justifications put forward by the Russian Federation for the launch of the military operations in Ukraine is that, in the Russian Federation's view, the Genocide Convention gives it "the right, perhaps even the duty or the responsibility" to prevent and punish the alleged genocide perpetrated in Ukraine, by means of a "special military operation". Ukraine's contention, however, is based on a mischarac-

terization of the Russian Federation's position on its military operations. The document communicated by the Russian Federation to the Court shows that the legal grounds that the Russian Federation invokes for its military operations are Article 51 of the United Nations Charter on self-defence and customary international law. Nowhere has the Russian Federation claimed that the Genocide Convention authorizes it to use force against Ukraine as a means of fulfilling its obligation under Article I thereof to prevent and punish genocide. Whether the Russian Federation may exercise self-defence, as it claims, under the circumstances is apparently not governed by the Genocide Convention.

4. Although the Russian Federation did refer to the alleged genocidal acts committed in the Luhansk and Donetsk regions of Ukraine in its official statements, it appears that the issue of the alleged genocide is not just one aspect of a broader political problem between the two States which may be separately examined, or the very reason for the Russian Federation to launch military operations against Ukraine, as claimed by Ukraine; it is an integral part of the dispute between the Russian Federation and Ukraine over the security issue in the region. Ukraine's claim ultimately boils down to the very question whether recourse to use of force is permitted under international law in case of genocide. Ukraine's grievances against the Russian Federation, therefore, directly bear on the legality of use of force by Russia under general international law, rather than the Genocide Convention. Therefore, I am of the view that the rights and obligations which Ukraine claims are not plausible under the Genocide Convention.

5. This is not the first time that the Court is confronted with a tragic situation caused by the use of force. In the *Legality of Use of Force* cases, even without indicating provisional measures, the Court reminded the States before it that

> "they remain in any event responsible for acts attributed to them that violate international law, including humanitarian law; whereas any disputes relating to the legality of such acts are required to be resolved by peaceful means, the choice of which, pursuant to Article 33 of the Charter, is left to the parties" (*Legality of Use of Force (Yugoslavia* v. *Belgium), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 140, para. 48; see also *Legality of Use of Force (Yugoslavia* v. *Canada), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 273, para. 44; *Legality of Use of Force (Yugoslavia* v. *France), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 374, para. 36; *Legality of Use of Force (Yugoslavia* v. *Germany), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 433, para. 35; *Legality of Use of Force (Yugoslavia* v. *Italy), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 492, para. 36; *Legality of Use of Force*

(Yugoslavia v. *Netherlands), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 557, para. 48; *Legality of Use of Force (Yugoslavia* v. *Portugal), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 671, para. 47; *Legality of Use of Force (Yugoslavia* v. *Spain), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 773, para. 37; *Legality of Use of Force (Yugoslavia* v. *United Kingdom), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 839, para. 40; *Legality of Use of Force (Yugoslavia* v. *United States of America), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 925, para. 31).

This also applies to the present case.

6. The present situation in Ukraine demands all efforts that will contribute to a peaceful resolution of the dispute between Ukraine and the Russian Federation. The present Order, to my regret, prejudges the merits of the case (see paragraphs 56-59 of the Order). Moreover, in the context of an armed conflict, one may wonder how those provisional measures can be meaningfully and effectively implemented by only one Party to the conflict. When the situation on the ground requires urgent and serious negotiations of the Parties to the conflict for a speedy settlement, the impact of this Order remains to be seen.

(Signed) XUE Hanqin.