

# Joint statement on Ukraine's application against Russia at the International Court of Justice

20.05.2022 - Press release 

Statement on behalf of Albania, Australia, Austria, Belgium, Bosnia & Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Marshall Islands, Micronesia (Federated States of), Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom, United States, European Union:

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We, the undersigned, welcome Ukraine's application against Russia before the International Court of Justice (ICJ), which seeks to establish that Russia has no lawful basis to take military action in Ukraine on the basis of unsubstantiated allegations of genocide.

In these proceedings, the ICJ issued a significant ruling on March 16, 2022, which orders Russia to immediately suspend its military operations in Ukraine. We welcome the Court's ruling and strongly urge Russia to comply with this legally binding order.

Reaffirming our commitment to accountability and the rules-based international order, we hereby express our joint intention to explore all options to support Ukraine in its efforts before the ICJ and to consider a possible intervention in these proceedings.

We strongly believe that this is a matter that is rightfully brought to the ICJ, so that it can provide judgement on Russia's allegations of genocide as basis for its unprovoked and brutal invasion of Ukraine. As the principal judicial organ of the United Nations, the ICJ is a pillar of the rules-based international order and has a vital role to play in the peaceful settlement of disputes.

We call upon the international community to explore all options to support Ukraine in its proceedings before the ICJ.



Statement | 13 July 2022 | Brussels

# Joint statement on supporting Ukraine in its proceeding at the International Court of Justice

*Statement on behalf of Albania, Andorra, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Marshall Islands, Moldova, Monaco, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Palau, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, United Kingdom, United States and the European Union:*

We reiterate our support for Ukraine's Application instituting proceedings against the Russian Federation before the International Court of Justice under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which seeks to establish that Russia has no lawful basis to take military action in Ukraine on the basis of unsubstantiated allegations of genocide.

We reiterate the importance of these proceedings and urge, again, Russia to immediately suspend its military operations in Ukraine, as ordered by the Court in its Order on Provisional Measures of 16 March 2022.

As the Court has repeatedly stated, its orders on provisional

measures are legally binding on the Parties to the dispute. Therefore, failure to comply with the Court's 16 March 2022 Order constitutes a further breach, by Russia, of its international obligations.

We take note of the public statement of 1<sup>st</sup> July 2022, according to which Ukraine announced that it had submitted its Memorial to the Court.

We welcome once again Ukraine's efforts to ensure that international law is respected and that the Court can fulfill its fundamental function of promoting the peaceful settlement of disputes.

The Genocide Convention embodies the solemn pledge to prevent the crime of genocide and hold those responsible to account. As the International Court of Justice itself stated in its advisory opinion of 28 May 1951 on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, the object of the Convention “on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality”.

It is in the interest of all States Parties to the Genocide Convention, and more broadly of the international community as a whole, that the Convention not be misused or abused. That is why the signatories of the present declaration which are Parties to the Genocide Convention intend to intervene in these proceedings.

In light of the serious questions raised in this case, and in view of the far-reaching consequences of the judgment that the Court will render, it is important that the States Parties to this Convention be able to share with the International Court of Justice their interpretation of some of its essential provisions.

In closing, we reiterate that Russia must be held accountable for its actions. In this regard, we consider that Russia's violations of international law engage its international responsibility, and that the losses and damage suffered by Ukraine as a result of Russia's violations of international law require full and urgent reparation by Russia, in accordance

We once again call upon the international community to explore all options to support Ukraine in its proceedings before the ICJ.

## Press contact

### **Peter STANO**

**Phone**

+32 2 295 45 53

**Mail**

[peter.stano@ec.europa.eu](mailto:peter.stano@ec.europa.eu)

### **Paloma HALL CABALLERO**

**Phone**

+32 2 296 85 60

**Mail**

[Paloma.HALL-CABALLERO1@ec.europa.eu](mailto:Paloma.HALL-CABALLERO1@ec.europa.eu)

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## Ministry of Foreign Affairs

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### Home

#### Romania Has Decided to Intervene in favour of Ukraine at the International Court of Justice in Proceedings against the Russian Federation

Type: Press release

Date: 05/18/22

In continuation of the measures taken in support of Ukraine as a result of the illegal war of aggression unleashed by the Russian Federation against this state, the Romanian authorities approved, at the highest level, that Romania will formulate a request for intervention in the proceedings initiated by Ukraine against the Russian Federation at the International Court of Justice (ICJ) on 26 February 2022, regarding a dispute on the interpretation, application and fulfilment of the obligations set out in the *1948 UN Convention on the Prevention and Punishment of the Crime of Genocide*.

The Romanian démarche to intervene in this process comes at the express request of the Ukrainian side, which was transmitted by Ukrainian Minister of Foreign Affairs Dmytro Kuleba to his Romanian counterpart Bogdan Aurescu during the Ukrainian Minister's visit to Bucharest on April 22, 2022 (<https://www.mae.ro/node/58483>).

In the context of these proceedings, Romania will coordinate with other *like minded* states that have taken a similar decision and will cooperate closely with Ukraine's representatives involved in the proceedings at the ICJ.

The decision of the Romanian authorities was communicated by Minister of Foreign Affairs Bogdan Aurescu to his European colleagues and Ukrainian counterpart during the European Affairs Council meeting held in Brussels on 16 May 2022 (<https://www.mae.ro/node/58670>), as an expression of the constant and principled support of the Romanian authorities for the Ukrainian cause.

Romania's decision reflects, once again, our country's constant position in favour of the use of international law instruments and institutions in support of maintaining and restoring international peace and security, as well as its unconditional trust in the fundamental role of the ICJ as a promoter of international justice.

#### Additional information

On February 26, 2022, Ukraine lodged a request to initiate proceedings against the Russian Federation at the ICJ concerning a dispute over the interpretation, application and fulfilment of obligations under the *1948 Convention on the Prevention and Punishment of the Crime of Genocide*.

Ukraine claimed that the Russian Federation falsely invoked acts of genocide in the Luhansk and Donetsk regions in order to justify the recognition of the so-called Donetsk P.R. and Luhansk P.R. and to conduct a special military operation against Ukraine. On the basis of these false accusations, the Russian Federation is currently engaged in a process of military invasion of Ukraine, resulting in serious and widespread violations of human rights and international humanitarian law.

In an Order dated March 16, 2022, the Court indicated interim/conservative measures, whereby it imposed an obligation on the Russian Federation to immediately suspend military operations commenced on 24 February 2022 on the territory of Ukraine and to ensure that military or irregular units which the Russian Federation would direct or support, as well as any organisations or persons subject to its control or direction, do not take any steps to continue military operations. The Order also provides that both parties shall refrain from any action that might aggravate or extend the dispute before the Court or make it more difficult to be resolved.

In an Order dated March 23, 2022, the ICJ indicated September 23, 2022 as the deadline for the submission of the Memorial of Ukraine and March 23, 2023 as the deadline for the submission of the Counter-Memorial of the Russian Federation.

Under the rules laid down in the Statute of the International Court of Justice, if a case appears to involve the interpretation of a multilateral convention to which States, other than those involved in the dispute are parties, the Registrar must notify those States, and any notified State has the right to intervene in the proceedings.

Romania (as well as the other States Parties to the *Convention on the Prevention and Punishment of the Crime of Genocide*) has been notified by the ICJ Registry that the proceedings initiated by Ukraine appear to raise issues of

interpretation of this Convention, and that those States Parties may avail themselves of the possibility to intervene in the case.

The statement of intervention, which may be made before the date scheduled for the opening of oral proceedings in the dispute in question, involves certain additional procedures on the part of the intervening State.

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## Ministerul Afacerilor Externe

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#### Consultările ministrului afacerilor externe Bogdan Aurescu cu ministrul afacerilor externe al Ucrainei, Dmytro Kuleba

Tip: Comunicat de presă

Data: 22.04.2022

Ministrul afacerilor externe Bogdan Aurescu a avut vineri, 22 aprilie 2022, consultări politice cu ministrul afacerilor externe al Ucrainei, Dmytro Kuleba, aflat în vizită în România, la invitația șefului diplomației române.

Vizita ministrului Dmytro Kuleba la București a avut loc în contextul agresiunii militare ilegale a Rusiei în Ucraina și al situației deosebit de grave de securitate și din punct de vedere umanitar provocate de aceasta.

Ministrul Bogdan Aurescu a reiterat sprijinul ferm al României pentru independența, suveranitatea și integritatea teritorială ale Ucrainei, precum și pentru efortul autorităților ucrainene de a respinge agresiunea rusă. Totodată, șeful diplomației române a transmis, și cu acest prilej, poziția fermă a României de condamnare a invaziei Rusiei în Ucraina, ce reprezintă o încălcare flagrantă a dreptului internațional.

La finalul consultărilor, ministrul Bogdan Aurescu și ministrul Dmytro Kuleba au susținut declarații comune de presă, disponibile în format video aici: <http://www.mae.ro/node/58482>.

**Transmitem, mai jos, transcrierea declarațiilor de presă ale ministrului afacerilor externe Bogdan Aurescu și ale ministrului afacerilor externe al Ucrainei, Dmytro Kuleba.**

#### Ministrul afacerilor externe Bogdan Aurescu:

Bine ați venit la Ministerul Afacerilor Externe!

Dragă domnule ministru, dragă Dmytro, bine ai venit la București! Bun venit la Ministerul Afacerilor Externe, din nou. Mă bucur că am avut ocazia să ne revedem, să discutăm în persoană în această perioadă extrem de complicată. Vreau să te felicit din inimă pentru activitatea excepțională pe care o desfășori, în beneficiul Ucrainei și al valorilor noastre comune.

Am avut astăzi un dialog foarte consistent pe care, de altfel, îl vom continua după această conferință de presă, un schimb de opinii foarte aplicat despre situația gravă de securitate și umanitară din Ucraina, generată de războiul ilegal, neprovocat, nejustificat și premeditat al Rusiei asupra Ucrainei. Am reiterat sprijinul ferm al României pentru independența, pentru suveranitatea, pentru integritatea teritorială ale Ucrainei, precum și pentru efortul eroic al autorităților ucrainene, al cetățenilor ucraineni de a respinge agresiunea rusă, care constituie o încălcare flagrantă a tuturor obligațiilor internaționale asumate de Rusia.

Nici România, nici Ucraina, nici comunitatea internațională nu pot accepta călcarea în picioare a ordinii internaționale bazate pe reguli, care ar însemna impunerea arbitrarului prin forță.

Exprim și cu această ocazie condoleanțe și regretul profund pentru pierderile de vieți omenești, pentru atât de multele vieți omenești care au fost curmate în această agresiune ilegală, pentru masivele distrugerii materiale din Ucraina, care influențează într-un mod profund negativ viața societății ucrainene. Dramele umane, ororile, suferința prin care trece poporul ucrainean ne-au lăsat, alături de întreaga lume, îndoliați. Suntem alături de poporul ucrainean. Dragă Dmytro, toți cei care au murit uciși în Ucraina sunt, de fapt, frații și surorile noastre, sunt părinții și copiii noștri. De aceea, atrocitățile și crimele de război, crimele împotriva umanității, crimele de genocid nu pot să rămână nepedepsite, iar România sprijină activ eforturile comunității internaționale pentru investigarea acestor încălcări ale dreptului internațional, ale drepturilor omului, ale dreptului internațional umanitar. După cum știți, Guvernul României a decis acordarea unei contribuții financiare voluntare către Curtea Penală Internațională, pentru a sprijini investigația din Ucraina.

De asemenea, am reacționat prompt și consistent, încă de la începutul invaziei ruse, prin numeroase măsuri pentru a oferi adăpost și asistență refugiaților ucraineni, pentru care agresiunea rusă a avut efecte dramatice. Până în prezent, au intrat pe teritoriul țării noastre peste 800.000 de refugiați ucraineni. Asistența acordată acestor persoane, inclusiv celor care au rămas pe teritoriul României, a fost în valoare de peste 63 de milioane de euro, constând în acces gratuit la

servicii medicale, la învățământ - peste 1600 de copii sunt deja înregistrați în sistemul românesc, studenții sunt primiți în universitățile din România – , a constat în măsuri de sprijin pentru copiii aflați în situații deosebite, asigurarea transportului gratuit pe teritoriul României, deschiderea pieței de muncă - sunt peste 2.000 de cetățeni ucraineni care sunt deja angajați în România, după începutul invaziei.

Doresc să vă asigur, domnule ministru, dragă Dmytro, că toți cetățenii ucraineni refugiați în România sunt și vor fi tratați corespunzător, vor avea șansa să-și continue, în condițiile date, traiul normal, până când condițiile vor permite reîntoarcerea lor, în siguranță, în Ucraina. Trebuie să menționez și să salut încă o dată atitudinea de extraordinară solidaritate și ospitalitate a cetățenilor români, care au sprijinit, încă de la primele momente ale conflictului, pe refugiații care au ajuns în România, dar și pe cei care au rămas în Ucraina. Platforma guvernamentală, care a fost creată în acest sens, arată mai mult de 9.200 de inițiative de sprijin din partea societății civile. De asemenea, am trimis mai multe tranșe de ajutor umanitar, combustibil, medicamente, alimente. Amintesc aici mai multe pachete de sprijin: cel din 28 februarie, de 3,4 milioane de euro, din 16 martie, 2,3 milioane de euro, donația celor 11 ambulanțe care a fost finalizată în cursul acestei săptămâni și altele. De asemenea, hub-ul umanitar de la Suceava, care este funcțional din 9 martie, asigură livrarea, în mod constant, de sprijin internațional pentru Ucraina, fiind în prezent tranzitat de peste 31 de convoaie umanitare, adică aproximativ 162 de camioane din numeroase țări europene - Italia, Franța, Bulgaria, Austria, Slovenia, Cipru, România și alte state.

Ucraina trebuie să câștige acest război și sunt convins că-l va câștiga.

Apoi va urma procesul de reconstrucție, după ce conflictul se va fi încheiat. În cadrul acestui proces de reconstrucție, care va fi unul de durată, întreaga comunitate internațională va trebui să acorde sprijin și îl asigur pe colegul meu că România este gata să fie parte a acestui efort susținut.

De asemenea, vreau să transmit, cu acest prilej, felicitări Ucrainei pentru transmiterea răspunsului la prima parte a chestionarului pentru aderare la Uniunea Europeană și vreau să reiterez, și cu acest prilej, sprijinul extrem de puternic al României pentru aspirațiile europene ale Ucrainei, pentru recunoașterea perspectivei europene a acestui stat prieten și vecin. Am transmis și susținut constant, la nivelul Uniunii Europene, atât la nivelul reuniunii șefilor de stat și de guvern, la reuniunile miniștrilor de externe, la care am participat, că Uniunea Europeană trebuie să arate viziune, să arate curaj, pentru a da Ucrainei, precum și Republicii Moldova, Georgiei, semnalul pe care îl așteaptă - și anume acela că sunt îndreptățite să facă parte, cu drepturi depline, din Uniunea Europeană.

De asemenea, mă bucur să salut faptul că astăzi și Republica Moldova a transmis răspunsul la prima parte a chestionarului pentru aderare.

În același timp, știu din propria noastră experiență că parcursul pentru aderare este unul complicat care presupune multe eforturi și reforme. Vom continua să sprijinim în mod activ, în măsura în care va fi necesar, Ucraina, în tot acest proces complex și laborios.

De asemenea, am discutat și despre deschiderea Ambasadei României la Kiev, am informat cu privire la decizia pe care am luat-o – la momentul la care am anunțat acest demers al României, erau opt misiuni ale statelor membre ale Uniunii Europene deja deschise la Kiev. Sper ca pregătirile să se finalizeze cât mai curând și să putem să ne reluăm activitatea în capitala Ucrainei.

De asemenea, am discutat despre creșterea conectivității fizice între statele noastre. Am discutat despre deschiderea de noi puncte de trecere a frontierei, pentru că este nevoie de mai multă conectivitate între noi, pentru a facilita fluxurile de persoane, fluxurile de mărfuri și este, din acest punct de vedere, grăitor rolul pe care, de exemplu, punctul de trecere a frontierei de la Isaccea l-a jucat pentru deplasarea în România a cetățenilor ucraineni afectați de război.

Am luat măsuri legate și de facilitarea comerțului Ucrainei cu alte state - de exemplu, liberalizarea temporară a transportului efectuat de operatorii ucraineni pe teritoriul României - decizie adoptată la 5 aprilie. Am discutat și despre cooperarea în materie de securitate energetică și mă bucur să salut conectarea Ucrainei la rețeaua europeană de electricitate, la data de 16 martie.

Am discutat, de asemenea, și despre faptul că legăturile puternice dintre țările noastre sunt date și de minoritățile noastre înrudite. Am evidențiat comportamentul exemplar al etnicilor români din Ucraina, care au sprijinit efortul comun de apărare a statului ucrainean. Vom continua să ne ocupăm de problemele comunităților române și, respectiv, ucrainene din România, respectiv din Ucraina și sunt convins că vom soluționa toate problemele acestora.

Mă opresc aici. Îmi exprim încă o dată convingerea că, prin efortul nostru comun, putem să ridicăm relațiile noastre bilaterale la un nou nivel, să construim în această zonă a Europei un model de cooperare. Știu, din relația foarte apropiată pe care o avem, și pe care am construit-o în ultimii ani, că sunt nu doar perspective, dar certitudini din acest punct de vedere. Iar perioada aceasta foarte complexă, cu război, cu agresiune, cu suferință umană, nu a făcut altceva decât să apropie și mai mult societățile noastre, cetățenii noștri.

Dragă Dmytro, te rog.

#### **Ministrul afacerilor externe al Ucrainei, Dmytro Kuleba:**

Thank you, Bogdan! I really appreciate that you agreed to receive me on the Eve of Easter, as your Prime Minister and your Minister of Defense did. This is yet another example of the real, sincere friendship that we have between Ukraine and Romania.

When it comes to the substance, you almost stole all of my speaking points, I can only subscribe to what Bogdan just said, on all accounts. Let me say just a couple of points, in addition to that.

Every time President Putin tries to stop Ukraine in its development, in its European integration, the only result that he achieves is the speeding up of this process. To my and our deepest regret, every such attempt by Putin comes at a price for Ukraine. But what is happening now is not only another attempt of Russia to maintain its influence in this part of

Europe, in the Black Sea region, not only the attempt to stop Ukraine, it's also the final battle. The final battle for the right of all European nations - and it's not only about Ukraine, it's also about Georgia, about Moldova, about all countries in the Black Sea region - it's our common final battle for the opportunity to live in peace, in prosperity, as part of a whole and free Europe. And I have no doubts, and I appreciate that Bogdan doesn't have any doubts either, that we will win this battle! Ukraine will prevail!

And there are two components which are necessary for us to prevail. The first one is the Ukrainian stamina and courage. The second one is friends, friends who stand by Ukraine in practical terms, who support providing Ukraine with all necessary equipment, who support more sanctions against Russia, who embrace Ukrainian refugees, giving the chance for husbands, fathers and brothers to fight against Russia, knowing that their mothers, sisters, and children are in safety and taken care of. As long as these two ingredients are in place, the victory is getting closer and closer.

And I would like to commend the Government of Romania for shaping a very smart policy, since the beginning of aggression, to provide, to stand by Ukraine.

We all share the Black Sea and this war, as I said, is also about the future of the Black Sea region. Our security is your security. You are helping us, you are also helping yourself. The fair deal that Ukraine offers to the world is simple: you give us everything that we need to fight and to win, and we, in return, contain Putin in Ukraine and defeat him there, so that he doesn't dare to test Article 5 of NATO, and doesn't try to expand further his aggression.

Those in Europe, who believe that this is just a Ukraine - Russia war and Putin will never dare to test Article 5, shouldn't be naive! We, in Central and Eastern Europe, are not naive, we know history. But others should be aware of a very simple fact: the best way to stop Putin is to give Ukraine everything it needs.

During the war, the divisions are all gone. In Ukraine, ethnic Ukrainians, ethnic Romanians, ethnic Hungarians, ethnic Belarusians, ethnic Georgians, Moldovans, Russians, they all fight for Ukraine. Some of them, regretfully, die in the war, in combat, but they understand what they're fighting for: they're fighting not only for Ukraine, but for their own motherlands, for their countries, so that they do not know the tragedy of war. And we respect highly every sacrifice on the battleground. And the Romanian community in Ukraine, while being an inseparable part of a broader Romanian culture, they also fight for their motherland, for Ukraine, and this is another element that brings us even closer, us - Ukraine and Romania.

Now, unspeakable crimes were committed by the Russian army in Ukraine, but unfortunately this is only the tip of the iceberg of all the crimes committed, especially in Mariupol. Romania and Bogdan personally, have vast experience in international adjudication, in the prosecution of international crimes, at international level, so, yes, we discussed how we can use the ICJ - International Court of Justice, the International Criminal Court, to bring Russia to account for everything it has done, and we will be happy to learn, to work with Romania on this.

I would like, once again, to thank the Romanian Government for embracing Ukrainian refugees. These people could have been victims of the Russian war crimes, and the fact that you allowed them to come to the country saved the lives of many of them.

Now, it would be unfair for me not to mention that, of course, I want all of my compatriots to go back to Ukraine, and to live a new life, and to rebuild the country, and hopefully together we will bring the moment closer to when this will be possible. But let's be objective: some of them will stay in Romania and will start a new life here. I would like to assure you that they will be very committed new members of your society, and the Ukrainian community will fill, will enrich the Romanian society, and will be another joint between our governments.

Thank you for the readiness of Romania to participate in the post-war reconstruction of Ukraine. We are already thinking about it, we are already building plans; we already have a picture of the new Ukraine that will be built. And this new Ukraine will be a European Ukraine, and the support of Romania in providing Ukraine with candidate status at the nearest opportunity in the end of June is very much appreciated. This will be a Ukraine that will remain a happy home, a home for many ethnicities and nationalities, and this will be a Ukraine that will, together with friends and partners like Romania and other countries, ensure safety and security of the entire Black Sea region.

The final words that I want to use are the following: Please, have no doubts, we will prevail!

But to make this happen rather sooner than later, we need to continue working on all fronts, on every issue, in the fastest way possible to make sure that Ukraine receives everything that it needs, to make sure that all necessary sanctions are imposed on Russia, to make sure that Russia is isolated everywhere in the world! We cannot stop; neither we, nor you, nor anyone else can stop until we all defeat this evil! Thank you!



## **Ministry of Foreign Affairs**

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### **Consultations of Foreign Minister Bogdan Aurescu with Ukrainian Foreign Minister, Dmytro Kuleba**

Type: Press release

Date: 22.04.2022

On Friday, 22 April 2022, Minister of Foreign Affairs Bogdan Aurescu held political consultations with Ukrainian Foreign Minister, Dmytro Kuleba, who is visiting Romania at the invitation of the head of Romanian diplomacy.

Minister Dmytro Kuleba's visit to Bucharest took place in the context of Russia's illegal military aggression in Ukraine and the extremely serious security and humanitarian crisis caused by it.

Minister Bogdan Aurescu reiterated Romania's firm support for Ukraine's independence, sovereignty and territorial integrity, as well as for the Ukrainian authorities' efforts to repel Russian aggression. At the same time, the Romanian Head of Delegation also conveyed Romania's firm position condemning Russia's invasion of Ukraine, which is a flagrant violation of international law.

At the end of the consultations, Minister Bogdan Aurescu and Minister Dmytro Kuleba made joint press statements, available in video format here: <http://www.mae.ro/node/58482>.

**Below is a transcript of the press statements by Foreign Minister Bogdan Aurescu and Ukrainian Foreign Minister, Dmytro Kuleba.**

**Minister of Foreign Affairs Bogdan Aurescu:**

Welcome to the Ministry of Foreign Affairs!

Dear Minister, dear Dmytro, welcome to Bucharest! Welcome to the Ministry of Foreign Affairs again. I'm glad we had the opportunity to meet again, to talk in person during this extremely complicated time. I want to congratulate you from the bottom of my heart for the exceptional work you are doing for the benefit of Ukraine and our common values.

We had a very substantial dialogue today, which we will continue after this press conference, a very detailed exchange of views on the serious security and humanitarian crisis in Ukraine caused by Russia's illegal, unprovoked, unjustified and premeditated war on Ukraine. I reiterated Romania's firm support for the independence, sovereignty and territorial integrity of Ukraine, as well as for the heroic efforts of the Ukrainian authorities and Ukrainian citizens to repel Russian aggression, which constitutes a flagrant violation of Russia's international obligations.

Neither Romania, nor Ukraine, nor the international community can accept the trampling of the international rule-based order, which would mean the imposition of arbitrariness by force.

I also take this opportunity to express my condolences and deep regret for the loss of human lives, for so many human lives that have been lost in this illegal aggression, for the massive property destruction in Ukraine, which has a profoundly negative impact on the life of Ukrainian society. The human dramas, the horrors, the suffering that the Ukrainian people are going through have left us, along with the whole world, in a state of grief. We stand with the Ukrainian people. Dear Dmytro, all those who have been killed in Ukraine are, in fact, our brothers and sisters, our parents and our children. That is why atrocities and war crimes, crimes against humanity, crimes of genocide cannot go unpunished, and Romania actively supports the efforts of the international community to investigate these violations of international law, of human rights, of international humanitarian law. As you know, the Romanian Government has decided to make a voluntary financial contribution to the International Criminal Court to support the investigation in Ukraine.

We have also reacted promptly and consistently since the beginning of the Russian invasion with numerous measures to provide shelter and assistance to Ukrainian refugees, for whom the Russian aggression has had dramatic effects. So far, more than 800,000 Ukrainian refugees have entered our country. The assistance provided to these people, including those who have remained on Romanian territory, has been worth more than 63 million euros, consisting of free access to medical services, education - more than 1600 children are already registered in the Romanian system, students are admitted to Romanian universities -, support measures for children in special

circumstances, free transport on Romanian territory, opening of the labor market - more than 2000 Ukrainian citizens are already employed in Romania after the beginning of the invasion.

I would like to assure you, Minister, dear Dmytro, that all Ukrainian citizens who are refugees in Romania are and will be treated properly, will have the chance to continue their normal life under the given circumstances, until the conditions allow their safe return to Ukraine. I must mention and welcome once again the extraordinary solidarity and hospitality of Romanian citizens, who have supported the refugees who arrived in Romania, as well as those who remained in Ukraine, since the first moments of the conflict. The government platform, which was created for this purpose, contains more than 9,200 support initiatives from civil society. We have also sent several tranches of humanitarian aid, fuel, medicines, food. I would like to mention here several support packages: that of 28 February, EUR 3.4 million, that of 16 March, EUR 2.3 million, the donation of 11 ambulances which was completed this week and others. The humanitarian hub in Suceava, which has been operational since 9 March, also ensures the constant provision of international support to Ukraine, with over 31 humanitarian convoys currently passing through it, about 162 trucks from many European countries - Italy, France, Bulgaria, Austria, Slovenia, Cyprus, Romania and others.

Ukraine has to win this war and I am convinced that it will.

Then the reconstruction process will follow, once the conflict is over. In this reconstruction process, which will be a long-lasting one, the whole international community will have to provide support and I assure my colleague that Romania is ready to be part of this sustained effort.

I would also like to take this opportunity to congratulate Ukraine on its submission of the reply to the first part of the questionnaire for accession to the European Union and I would like to reiterate, also on this occasion, Romania's extremely strong support for Ukraine's European aspirations, for the recognition of the European perspective of this friendly and neighboring state. I have constantly stated and argued at European Union level, both at meetings of heads of state and government and at meetings of foreign ministers, which I have attended, that the European Union must show leadership and courage in order to give Ukraine, as well as the Republic of Moldova and Georgia, the signal they are waiting for - namely that they are entitled to be full members of the European Union.

I am also pleased to welcome the fact that today the Republic of Moldova has also submitted its reply to the first part of the accession questionnaire.

At the same time, we know from our own experience that the path to accession is a complicated one which requires a lot of efforts and reforms. We will continue to actively support, as necessary, Ukraine throughout this complex and laborious process.

We also discussed the opening of the Romanian Embassy in Kiev, we reported on the decision we had taken - at the time we announced Romania's approach, eight missions of the European Union Member States were already open in Kiev. I hope that the preparations will be completed as soon as possible and that we will be able to resume our work in the Ukrainian capital.

We also discussed increasing physical connectivity between our states. We discussed the opening of new border checkpoints, because we need more connectivity between us, to facilitate the flow of people, the flow of goods, and it shows the role that, for example, the Isaccea border crossing point has played for the movement of war-affected Ukrainian citizens to Romania.

We have also taken measures to facilitate Ukraine's trade with other countries - for example, temporary liberalization of transport by Ukrainian operators on Romanian territory - a decision adopted on 5 April. We also discussed cooperation on energy security and I am pleased to welcome Ukraine's connection to the European electricity grid on 16 March.

We also discussed the fact that the strong ties between our countries stem also from our related minorities. We highlighted the exemplary role of ethnic Romanians in Ukraine, who supported the joint effort to defend the Ukrainian state. We will continue to deal with the problems of the Romanian and Ukrainian communities in Romania and Ukraine respectively and I am convinced that we will solve all their problems.

I will conclude here. I express once again my conviction that, through our joint effort, we can bring our bilateral relations to a new level, to build a model of cooperation in this part of Europe. I know from the very close relationship we have, and which we have built up over the last few years, that there are not only prospects, but certainties in this respect. And this very complex period, of war, of aggression, of human suffering, has only brought our societies, our citizens, closer together.

Dear Dmytro, please.

**Minister of Foreign Affairs of Ukraine, Dmytro Kuleba:**

Thank you, Bogdan! I really appreciate that you agreed to receive me on the Eve of Easter, as your Prime Minister and your Minister of Defense did. This is yet another example of the real, sincere friendship that we have between Ukraine and Romania.

When it comes to the substance, you almost stole all of my speaking points, I can only subscribe to what Bogdan just said, on all accounts. Let me say just a couple of points, in addition to that.

Every time President Putin tries to stop Ukraine in its development, in its European integration, the only result that he achieves is the speeding up of this process. To my and our deepest regret, every such attempt by Putin comes at a price for Ukraine. But what is happening now is not only another attempt of Russia to maintain its influence in this part of Europe, in the Black Sea region, not only the attempt to stop Ukraine, it's also the final battle. The final battle for the right of all European nations - and it's not only about Ukraine, it's also about Georgia, about Moldova, about all countries in the Black Sea region - it's our common final battle for the opportunity to live in peace, in prosperity, as part of a whole and free Europe. And I have no doubts, and I appreciate that Bogdan doesn't have any doubts either, that we will win this battle! Ukraine will prevail!

And there are two components which are necessary for us to prevail. The first one is the Ukrainian stamina and courage. The second one is friends, friends who stand by Ukraine in practical terms, who support providing Ukraine with all necessary equipment, who support more sanctions against Russia, who embrace Ukrainian refugees, giving the chance for husbands, fathers and brothers to fight against Russia, knowing that their mothers, sisters, and children are in safety and taken care of. As long as these two ingredients are in place, the victory is getting closer and closer.

And I would like to commend the Government of Romania for shaping a very smart policy, since the beginning of aggression, to provide, to stand by Ukraine.

We all share the Black Sea and this war, as I said, is also about the future of the Black Sea region. Our security is your security. You are helping us, you are also helping yourself. The fair deal that Ukraine offers to the world is simple: you give us everything that we need to fight and to win, and we, in return, contain Putin in Ukraine and defeat him there, so that he doesn't dare to test Article 5 of NATO, and doesn't try to expand further his aggression.

Those in Europe, who believe that this is just a Ukraine - Russia war and Putin will never dare to test Article 5, shouldn't be naive! We, in Central and Eastern Europe, are not naive, we know history. But others should be aware of a very simple fact: the best way to stop Putin is to give Ukraine everything it needs.

During the war, the divisions are all gone. In Ukraine, ethnic Ukrainians, ethnic Romanians, ethnic Hungarians, ethnic Belarusians, ethnic Georgians, Moldovans, Russians, they all fight for Ukraine. Some of them, regretfully, die in the war, in combat, but they understand what they're fighting for: they're fighting not only for Ukraine, but for their own motherlands, for their countries, so that they do not know the tragedy of war. And we respect highly every sacrifice on the battleground. And the Romanian community in Ukraine, while being an inseparable part of a broader Romanian culture, they also fight for their motherland, for Ukraine, and this is another element that brings us even closer, us - Ukraine and Romania.

Now, unspeakable crimes were committed by the Russian army in Ukraine, but unfortunately this is only the tip of the iceberg of all the crimes committed, especially in Mariupol. Romania and Bogdan personally, have vast experience in international adjudication, in the prosecution of international crimes, at international level, so, yes, we discussed how we can use the ICJ - International Court of Justice, the International Criminal Court, to bring Russia to account for everything it has done, and we will be happy to learn, to work with Romania on this.

I would like, once again, to thank the Romanian Government for embracing Ukrainian refugees. These people could have been victims of the Russian war crimes, and the fact that you allowed them to come to the country saved the lives of many of them.

Now, it would be unfair for me not to mention that, of course, I want all of my compatriots to go back to Ukraine, and to live a new life, and to rebuild the country, and hopefully together we will bring the moment closer to when this will be possible. But let's be objective: some of them will stay in Romania and will start a new life here. I would like to assure you that they will be very committed new members of your society, and the Ukrainian community will fill, will enrich the Romanian society, and will be another joint between our governments.

Thank you for the readiness of Romania to participate in the post-war reconstruction of Ukraine. We are already thinking about it, we are already building plans; we already have a picture of the new Ukraine that will be built. And this new Ukraine will be a European Ukraine, and the support of Romania in providing Ukraine with candidate status at the nearest opportunity in the end of June is very much appreciated. This will be a Ukraine that will remain a happy home, a home for many ethnicities and nationalities, and this will be a Ukraine that will, together with friends and partners like Romania and other countries, ensure safety and security of the entire Black Sea region.

The final words that I want to use are the following: Please, have no doubts, we will prevail!

But to make this happen rather sooner than later, we need to continue working on all fronts, on every issue, in the fastest way possible to make sure that Ukraine receives everything that it needs, to make sure that all necessary sanctions are imposed on Russia, to make sure that Russia is isolated everywhere in the world! We cannot stop; neither we, nor you, nor anyone else can stop until we all defeat this evil! Thank you!

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[Homepage](#) > [Press](#) > [Croatia files declaration of intervention in the case of Ukraine v. Russian Federation](#) >

Published: 20.10.2022.

# Croatia files declaration of intervention in the case of Ukraine v. Russian Federation

Based on the government's decision on Croatia's intervention in the International Court of Justice case concerning the Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Croatia filed on 19 October 2022 a declaration of intervention in said case.

On 26 February 2022, Ukraine instituted proceedings against the Russian Federation in a dispute concerning the interpretation, application or fulfilment of the Convention on the Prevention and Punishment of Genocide (the "Genocide Convention"). Ukraine claims that the Russian Federation's declaration and implementation of measures in or against Ukraine in the form of a "special military operation" declared on 24 February 2022 on the basis of alleged genocide, as well as the recognition by the Russian Federation of so-called "Donetsk People's Republic" and "Luhansk People's Republic" that preceded the military operation, is incompatible with the Convention. Following Ukraine's request for provisional measures, the Court ordered on 16 March 2022 that the Russian Federation should immediately suspend the military operation that it had commenced on 24 February 2022 in the territory of Ukraine.

As a party to the Convention, Croatia has the right to intervene in the proceedings and intends to put forth its own interpretation of the relevant provisions. In its declaration, Croatia focuses on Article IX of the Convention, stating that the Court has jurisdiction in said case.

To date, declarations of intervention have also been filed by Latvia, Lithuania, New Zealand, United Kingdom, Germany, United States, Sweden, Romania, France, Italy, Poland, Denmark, Ireland, Finland, Estonia, Spain, Australia, Portugal, Austria, Luxembourg, and Greece.

Croatia reiterates its full commitment to international order based on rules and respect for the international law, notably the obligation of countries not to resort to threats or use of force against the territorial integrity or political independence of another country, and to respect human rights and the international humanitarian law as well as the Genocide Convention.

[Press releases](#)



## Tweet

Annex 6



**Czech Embassy The Hague**

@CzechEmbassyNL



🇨🇪 has filed a declaration of intervention in the case [#Ukraine](#) v. [#Russia](#) before the ICJ. The Court has jurisdiction in the case. Justice matters.



4:11 PM · Nov 2, 2022

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## Minister for Foreign Affairs

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Further actions in response to Russia's illegal invasion of Ukraine

# Further actions in response to Russia's illegal invasion of Ukraine

## Joint media release with:

- Mark Dreyfus KC MP, Attorney-General

**02 October 2022**

The Australian Government will impose further costs on Russia for its unilateral, illegal and immoral war on Ukraine.

Additional targeted financial sanctions and travel bans will be imposed on 28 Russian-appointed separatists, ministers and senior officials.

Among them are individuals who are flouting international law to legitimise Russia's illegal actions in Ukraine through sham referenda, disinformation and intimidation.

Russia's sham referenda in occupied areas of Ukraine are illegitimate and have no legal effect.

The regions of Luhansk, Donetsk, Kherson and Zaporizhzhia are sovereign Ukrainian territory. President Putin's annexation is illegal and any claims that these territories are now part of Russia are baseless and false.

Australia has also filed an intervention in the International Court of Justice (ICJ) case brought by Ukraine against Russia, supporting Ukraine's claims Russia has violated the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).

Australia continues to call on Russia to immediately comply with the ICJ's legally binding order of 16 March 2022 to immediately withdraw its military forces from Ukraine.

We remind Russia that as a member of the United Nations, Russia is legally obliged to comply with decisions of the ICJ in any case to which it is a party.

Australia will continue to coordinate closely with our partners to impose high costs on those responsible for Russia's invasion of Ukraine.

Attributable to the Minister for Foreign Affairs, Senator the Hon Penny Wong:

**"These additional sanctions reinforce Australia's strong objection to the actions of President Putin and those carrying out his orders.**

**"The areas of Ukraine currently occupied by Russian forces are the sovereign territory of Ukraine. No sham referendum will change this.**

Attributable to the Attorney-General, the Hon Mark Dreyfus KC MP:

**"We stand with Ukraine in bringing these proceedings against Russia before the International Court of Justice.**

**"Our intervention underscores our commitment to upholding fundamental rules of international law and the integrity of the Genocide Convention."**

## Media enquiries

- Minister's office: (02) 6277 7500
- DFAT Media Liaison: (02) 6261 1555



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**Denmark MFA** 🇩🇰

@DanishMFA



For første gang anmoder Danmark om at gå ind i en sag mellem to andre stater ved Den Internationale Domstol (ICJ) i Haag. Det sker for at støtte Ukraines anklager om Ruslands falske beskyldninger om folkedrab.

Læs mere her [via.ritzau.dk/pressemeddelel...](https://via.ritzau.dk/pressemeddelel...)  
[#dkpol](#)



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**Boom** @hulledulle · Sep 20



Replying to @DanishMFA

Hvordan kan Jeppe Kofod vide at Ruslands anklager er falske, inden domstolen har taget stilling til om anklagerne er falske? 🤔



1



Ministry of Foreign Affairs of Denmark, Twitter, 20 September 2022, 10:47 AM, available at: <https://twitter.com/DanishMFA/status/1572130256542375938>.

## Tweet



Denmark MFA    
@DanishMFA

For the first time, Denmark asks to intervene in a case between two other states at the International Court of Justice (ICJ) in The Hague. It does so to support Ukraine's accusations of Russia's false allegations of genocide.

Read more here  <https://via.ritzau.dk/pressemeddelelse/udenrigsminister-jeppe-kofod-ruslands-falske-anklager-om-folkedrab-skal-for-domstolen?publisherId=2012662&releaseId=13659910>

[#dkpol](#)

<Text in the attached picture>

*It is quite extraordinary that there is such a big build-up to a case at the International Court of Justice. It is important for me that we continue to show unity to bring justice to Ukrainians.*

JEPPE KOFOD  
Minister for Foreign Affairs

<End of the text>

10:47 AM · Sep 20, 2022 · Twitter Web App



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Denmark at NATO

@DK\_NATO

...

🇩🇰 is committed to support 🇺🇦 in their fight for freedom and justice & has for the first time filed a declaration of intervention to the International Court of Justice to support 🇺🇦 concerning Russia's false accusations of genocide #Standwithukraine #dkpol



Denmark MFA 🇩🇰 @DanishMFA · Sep 20

For første gang anmoder Danmark om at gå ind i en sag mellem to andre stater ved Den Internationale Domstol (ICJ) i Haag. Det sker for at støtte Ukraines anklager om Ruslands falske beskyldninger om folkedrab.

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Boerge R. Jensen @BoergeOf61 · Sep 20

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**Denmark MFA** 🇩🇰   
@DanishMFA

...

Russia's false charges of genocide in Ukraine must be refuted in court. Denmark files declaration of intervention to @CIJ\_ICJ in the Ukraine vs. Russia genocide case. 🇩🇰 will always defend the rule of law and we are happy to see that already 12 nations support 🇺🇦 in the ICJ #dkpol

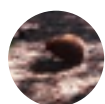
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## **Minister Coveney on Ireland's intervention at the International Court of Justice in Ukraine v Russia**

News

21 September 2022

### **Minister Coveney on Ireland's intervention at the International Court of Justice in Ukraine v Russian Federation**

The Minister for Foreign Affairs, Simon Coveney TD, today announced that Ireland has filed an intervention at the International Court of Justice (ICJ) as a third party in the case taken by Ukraine against the Russian Federation under the Genocide Convention.

Ukraine instituted proceedings against the Russian Federation in February. In its application to the Court Ukraine argued that Russia falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and used this as a basis to recognise the 'Donetsk People's Republic' and 'Luhansk People's Republic', and to invade Ukraine.

On 16 March 2022, the Court made an order granting provisional measures requested by Ukraine, including an order that Russia must suspend its military operations in Ukraine. To date Russia has ignored the Court's order for provisional measures. Russia did not participate in the hearing preceding the Order of Provisional Measures and denies that the ICJ has jurisdiction to hear the case.

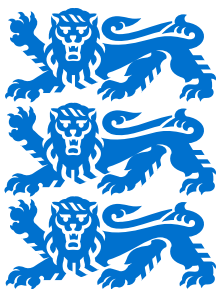
Ireland is entitled to intervene in the proceedings as a Party to the Genocide Convention. Ireland's intervention argues that the ICJ does have jurisdiction in this case and that the use of force by Russia on the pretext of a false allegation of genocide in Ukraine is a serious violation of the Genocide Convention.

The Minister said:

*"As a party to the Genocide Convention and a strong defender of the international rules-based system, Ireland has a strong interest in ensuring that the Convention is properly interpreted and applied. The ICJ is the principal judicial organ of the United Nations and plays a key role underpinning that rules-based system. Intervention allows a country that is not a party to the case to support that system by putting its legal interpretation of the Convention before the Court."*

*"Ireland is also firmly committed to ensuring accountability for serious breaches of international law, including abuse of the Genocide Convention as a pretext for the illegal use of force against Ukraine. As an elected member of the UN Security Council, we have consistently condemned Russian aggression, co-sponsoring a landmark resolution at the General Assembly denouncing the invasion as illegal, unjustified, and unprovoked. Ireland's intervention in this case is a further demonstration of our determination to ensure accountability."*

**ENDS****Press Office****21 September 2022****to editors**



# PERMANENT MISSION OF ESTONIA TO THE UN

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## Estonia submits a declaration of intervention to International Court of Justice in the case of Ukraine versus Russia

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Posted on: 24.09.2022

Estonia submitted a declaration of intervention to the International Court of Justice (ICJ) in relation to the dispute between Ukraine and Russia on compliance with the Convention on the Prevention and Punishment of the Crime of Genocide.

“Estonia, along with other parties to the Convention on the Prevention of the Crime of Genocide, would like to intervene in the dispute between Ukraine and Russia because Russia’s aggression on the pretext of preventing and punishing genocide has seriously undermined the meaning of such a horrible crime as genocide,” Foreign Minister Urmas Reinsalu said, adding that the court must give an assessment on Russia’s actions and false accusations.

Ukraine turned to the ICJ on 26 February, as Russia justified its invasion of Ukraine on 24 February with the need to prevent and punish Ukraine for the genocide allegedly committed in the Luhansk and Donetsk oblasts. Reinsalu said it was a false pretext for recognising the Luhansk and Donetsk oblasts as separate countries. “Russia had no right to invade Ukraine, as there is no substance to Russia’s accusations that Ukraine has committed genocide,” the minister added.

Ukraine turned to the ICJ to ask the court to state that there was no evidence of Ukraine committing genocide in the Luhansk and Donetsk oblasts and that Russia’s aggression in Ukraine on the pretext of preventing genocide is illegal. On 7 March, the court held a hearing but Russia did not attend the oral proceedings. On 16 March, the ICJ issued a provisional measure, stating that Russia must immediately stop the military aggression it launched on 24 February. Russia has not complied with the decision so far.

The other countries that have filed a declaration of intervention are alongside Estonia are the United States, United Kingdom, Germany, Latvia, Lithuania, France, New Zealand, Romania and Sweden and some more countries may join later.

**Seotud uudised**

# Spain files a Declaration of Intervention with the International Court of Justice in the case of Ukraine vs. Russia Annex 13

September 29, 2022

The Spanish Embassy in The Hague has filed a Declaration of Intervention by Spain with the International Court of Justice (ICJ) in the case of Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine vs. the Russian Federation).

On 26 February 2022, Ukraine filed an action before the International Court of Justice against the Russian Federation that invoked the commission of genocide by the Ukrainian authorities as the pretext to justify Russian military aggression against Ukraine. As a State Party to the Convention on the Prevention and Punishment of the Crime of Genocide, Spain is entitled to intervene in the process as an interested State. By taking this step, Spain joins other Member States of the European Union, along with the United States and Canada, among others, that have filed similar declarations. In its declaration, Spain argues that the ICJ has jurisdiction to try this case.

Spain reiterates its strong condemnation of the military intervention of Ukraine by the Russian Federation, which is a serious threat to international peace and security, and underlines its commitment to the territorial integrity and independence of Ukraine.

Spain reaffirms its commitment to international law and, in particular, to the obligations of States to not resort to threats or the use of force against the territorial integrity or political independence of any State and to respect international law on human rights, to which end the Convention on the Crime of Genocide is a fundamental text.

*-NON OFFICIAL TRANSLATION-*

## More information

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My Government

Annex 14



## Ministry of Justice of the Republic of Lithuania

### Lithuania formally intervenes in a case at the International Court of Justice

Date

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**Following Lithuania's formal application to intervene in the case Ukraine v. Russia at the International Court of Justice (ICJ), the Minister of Justice Ewelina Dobrowolska stressed at a press conference that this step is particularly important because in this case charges are made against Russia, i.e., against the state but not against its individual citizens.**

According to Ms Dobrowolska, if Russia is held liable in this case, this fact would allow Ukraine to claim damages which is, among others, Ukraine's most important expectation that the Ukrainian Minister of Justice has been raising in all international formats. The funds received as

compensation would help Ukrainians not only to rebuild the country but also to continue to defend its freedom, sovereignty and democracy.

The Minister stressed that Lithuania is the first country to take legal aid initiatives to help Ukraine in order to ensure that justice is not delayed.

The Vice Minister of Justice Gabija Grigaitė-Daugirdė noted at the press conference that Lithuanian lawyers are working hand-in-hand with Ukrainian lawyers seeking to strengthen Ukraine's legal struggle, to express support and to prove once again that the solutions of international law do exist; however, it is important to mobilize efforts and make use of these solutions without delay.

The Vice-Minister stressed that under international law, the International Court of Justice is the only institution that can address issues concerning responsibility of a state.

„All members of the United Nations are bound by the decisions of this Court, so it is very important that non-compliance with these decisions could be addressed by the United Nations Security Council or the General Assembly; this raises hopes that Russia's responsibility for the violation of international law will be established and that reparation for the damage done to Ukraine will be guaranteed", - said Ms Grigaitė-Daugirdė.

As many as 43 European states and world powers as well as the entire EU have expressed their intention to intervene in this case at the International Court of Justice thus condemning Russia's military aggression and the international crimes Russia has committed.

In this case, Ukraine also asked the Court to establish interim measures, and on 16 March 2022, the Court issued an order whereby it ordered to immediately cease the hostilities committed by military units that are under the direct or indirect control of Russia. Failure to comply with this judgment is a violation of international law.

War crimes and crimes against humanity committed by Russia are also investigated by the International Criminal Court. Lithuania has proposed to the international community to consider establishment of a Special Tribunal on Russia's aggression against Ukraine.

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30 JUNE 2022

# NZ to join International Court of Justice case against Russia



**HON DAVID PARKER**(/MINISTER/HON-DAVID-PARKER)



**HON NANAIA MAHUTA**(/MINISTER/HON-NANAIA-MAHUTA)

Attorney-General (/portfolio/labour-2020-2023/attorney-general)

Foreign Affairs (/portfolio/labour-2020-2023/foreign-affairs)

Aotearoa New Zealand will join Ukraine's case against Russia at the International Court of Justice (ICJ), which challenges Russia's spurious attempt to justify its invasion under international law.

Ukraine filed a case at the ICJ (<https://www.icj-cij.org/en/case/182>) in February arguing Russia has falsely claimed genocide had occurred in Luhansk and Donetsk regions, as a prelude to its so-called 'special military operation'. Ukraine emphatically denies a genocide has occurred.

Attorney-General David Parker and Foreign Affairs Minister Nanaia Mahuta announced the government has agreed to formally intervene as a third party in the case at the ICJ, the United Nations principal judicial body based in The Hague.

"As a party to the Genocide Convention and a strong defender of the international rules-based system, New Zealand has a real interest in ensuring the Genocide Convention is properly interpreted and applied. Disputes between states should be resolved by peaceful means, including through the ICJ, and not by the illegal use of force," David Parker said.

"Intervention enables a country that is not a party to the case to put its legal views before the court," said Nanaia Mahuta.

“Aotearoa New Zealand has only taken such action at the ICJ once before, in Australia’s 2012 case against Japanese whaling in the Southern Ocean.

“Russia’s illegal invasion of Ukraine and disingenuous attempt to justify it under the Genocide Convention is a significant threat to basic principles of international law, the United Nations Charter and the rules-based international system on which New Zealand strongly relies.

“We are profoundly concerned about the loss of life and human suffering in Ukraine as a result of Putin’s illegal invasion, and seek to emphasise that all countries must uphold the rules of international law and the purpose and principles of the United Nations Charter.

“Aotearoa New Zealand is prepared to play its part in assisting Ukraine and has already done so through a range of diplomatic, military and economic measures,” Nanaia Mahuta said.

## Notes

An intervention would include making written and possibly oral submissions to ensure Aotearoa New Zealand’s views on the proper interpretation and use of the Genocide Convention are on the record.

Third Party Interventions will be filed after Ukraine files its substantive case, which is due by 23 September 2022. Ukraine’s case seeks to establish that no acts of genocide occurred in Luhansk and Donetsk and that Russia has no lawful basis to its invasion.

Aotearoa New Zealand recently joined a Canada-led statement (<https://www.canada.ca/en/global-affairs/news/2022/05/joint-statement-on-ukraines-application-against-russia-at-the-international-court-of-justice.html>) along with more than 40 other countries which indicated those countries would all consider the possibility of making a third party intervention to support Ukraine.



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## Ministry of Foreign Affairs Republic of Poland

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# Poland filed a declaration of intervention to the International Court of Justice in Ukraine's case against Russia

16.09.2022

**On 15 September 2022, Poland filed a declaration of intervention to the International Court of Justice (ICJ) in Ukraine's case against the Russian Federation over allegations of genocide under the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. the Russian Federation).**



With this act, Poland has joined – for the first time in its post-war history – contentious proceedings before the ICJ. The declaration is part of Poland's consistent policy of firmly condemning all unlawful actions by Russia and is an expression of our support and solidarity for Ukraine. It complements other actions the Republic of Poland is currently taking in this area, including referral of crimes committed in Ukraine to the International Criminal Court and a request for intervention in the Ukrainian-Russian dispute before the European Court of Human Rights, among others.

Poland's intervention with the ICJ, in keeping with the formal requirements set out in Article 63 of the ICJ Statute, concerns the interpretation of the Genocide Convention, in particular Articles I and IX. With reference to Article IX, the Polish side stressed that this provision also applies to disputes in which a request is made that the ICJ declare that the Convention has not been violated. Thus, if one state accuses another of genocide, the latter may ask the ICJ to declare that the accusation is factually and legally unfounded. With reference to Article I, the Polish side emphasized that unilateral and groundless accusations of genocide constitute an abuse of the Convention contrary to its letter and spirit, and that the Convention requires that measures to prevent and punish the crime of genocide be consistent with international law.

As of 15 September, apart from Poland, relevant declarations of intervention have been made by (in chronological order) Latvia, Lithuania, New Zealand, Great Britain, the Federal Republic of Germany, the United States, Sweden, Romania and France. The full text of the Polish intervention is available on the ICJ website: <https://www.icj-cij.org/en/case/182/intervention>

**Łukasz Jasina**  
**MFA Spokesperson**

Ministry of Foreign Affairs Republic of Poland

ADDRESS  
J. Ch. Szucha 23

The Wayback Machine - <https://web.archive.org/web/20220921194249/http...>



**Government Offices of Sweden**

Press release from [Ministry for Foreign Affairs](#)

# Sweden participating in two court cases concerning the war in Ukraine

Published 09 September 2022

Sweden has chosen to intervene (participate) in two court cases concerning Russia's responsibility for violations of international law. A case between Ukraine and Russia on allegations of genocide is pending before the International Court of Justice in The Hague. At the same time, the European Court of Human Rights in Strasbourg is hearing an inter-state case against Russia concerning serious violations of human rights during the war in Ukraine.

"Accountability for crimes committed in connection with Russia's aggression against Ukraine is a high priority for Sweden. Sweden has therefore chosen to participate in several of the court cases currently pending to hold Russia accountable," says Minister for Foreign Affairs Ann Linde.

Sweden is a party to the Genocide Convention and has chosen to participate in the case brought by Ukraine against Russia in the International Court of Justice earlier this year. A declaration of intervention submitted to the Court today sets out Sweden's view on the questions of interpretation raised in the case.

The inter-state case before the European Court concerns widespread and serious violations of human rights during the war in Ukraine. A key question in the case is the extent to which Russia can be held legally responsible under the European Convention on Human Rights for events on Ukrainian territory. Yesterday, the Government decided that Sweden should request leave to intervene in the case as a third party.

In both cases, Sweden will put forward positions that are in line with those of Ukraine. For Sweden, it is of fundamental importance that international law is respected, that accountability for acts of aggression is ensured and that any potential war crimes are investigated. Deliberate attacks on civilians and civilian objects are contrary to the laws of war. Human rights and fundamental freedoms apply even in wartime and must always be protected.

### Press contact

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Adriana Haxhimustafa

Press Secretary to the Minister for Foreign Affairs Ann Linde

Phone (switchboard) +46 8 405 10 00

Mobile +46 76 117 32 60

✉ email to Adriana Haxhimustafa, via senior registry clerk



## News

## Statement on behalf of the Baltic States at the United Nations 77th Session of the United Nations General Assembly

Created: 2022.10.27 / Updated: 2022.10.27 21:38

*Statement on behalf of the Baltic States at the United Nations 77th Session of the United Nations General Assembly, Agenda item 70 "Report of the International Court of Justice" on Thursday, October 27, 2022.*

Mister President,  
Distinguished Delegates,

I have the honor to speak today on behalf of the three Baltic States - Estonia, Latvia and my own country, Lithuania.

The Baltic States align with the statement made by the European Union and its Member States.

Firstly, we would like to thank President Joan E. Donoghue for presenting the report of the International Court of Justice covering the period 1 August 2021 – 31 July 2022. The Baltic States welcome the report and commend the important work of the Court.

During the reporting period the workload of the Court continued to increase due to diverse subject matter and a broad range of international law issues to be resolved, as well as a widening geographical representation of the States addressing the Court. That proves once again the Court's crucial role in adjudicating legal disputes among the States, in promoting peaceful settlement of international disputes, developing international law, advancing the rule of law globally, and directly contributing to the maintenance of international peace and security.

Therefore, we would like to express our appreciation for the dedicated daily work of the International Court of Justice and welcome the Court's ongoing efforts in improving its procedures and working methods, including by swiftly reacting and adopting prompt decisions in exceptional circumstances when addressing particularly urgent situations.

Mister President,

We firmly believe that the principle of peaceful settlement of disputes and respect for international law must be the main guidance for the conduct of all States, as enshrined in the United Nations Charter. In this regard, we reiterate our strong support to the preeminent role of the International Court of Justice as the principal judicial organ of the United Nation and as reaffirmed in the Declaration on upholding and promoting respect for international law, including the principles of the UN Charter, adopted by the European Union and its Member States in June 2022.

Mister President,

We believe that the role of the Court in promoting the rule of law, ensuring respect for international law, and maintaining international peace can be reinforced by widening the application of its jurisdiction. We consider that further universal acceptance of the jurisdiction of the Court needs to be enhanced and, therefore, we call on all UN Member States that have not yet done so to accept the jurisdiction of the Court, to enhance its universal reach, as also called upon by the General Assembly most recently last year in the Resolution 76/117.

Moreover, in order to ensure successful judicial resolution of disputes it is not sufficient to establish the jurisdiction of the Court. International justice can only be pursued and the rule of law upheld by immediate and full implementation of binding rulings and decisions of the Court, including orders on provisional measures. Therefore, besides reminding the legal obligation of all States involved in a dispute before the Court to completely and unconditionally implement final rulings, as well as any provisional measures indicated by the Court, we believe international community should also find means to ensure that decisions of the Court are executed.

Mister President,

The report of the ICJ evidently illustrates that States making recourse to the International Court of Justice are confident that the Court with its universal character, unique mandate, impartiality and integrity, authoritative value of its decisions, high legal standards, vast expertise and comprehensive jurisprudence, is a pillar of the rules-based international order and plays a vital role in the peaceful settlement of disputes.

We, the Baltic States, remain confident that the Court will continue to successfully perform its crucial mandate in ensuring justice and contributing to stability and peace in the world. The war of aggression of Russia against Ukraine very poignantly demonstrates the need of the ICJ to deliver on its mandate.

Mister President,

As a final remark, we would like to touch upon a pending ICJ case Ukraine v. Russian Federation under the Genocide Convention, where Ukraine seeks to establish that Russia has no lawful basis for ongoing, unprovoked and brutal military invasion of Ukraine on the grounds of unsubstantiated allegations of genocide. We commend the Court for initiating speedy proceedings and swift issuing of an order on provisional measures on 16 March 2022, which orders Russia to immediately cease its military actions that it commenced on 24 February 2022 in the territory of Ukraine. We welcome this legally binding order and strongly urge Russia to comply with it, as highlighted together with other like-minded states in the declaration of May 2022 and noted by the European Council in March.

Reaffirming our commitment to the rules-based international order and wishing to assist the ICJ in the administration of justice, the Baltic States, like many other States, have already filed their declarations of intervention as third parties in this case. The aim of the intervening contracting States of the Genocide Convention, while not having any interests of their own but merely having a common interest, is to assist the Court, as to the interpretation, application and fulfillment of the Genocide Convention and shed light on the extent of the obligations of the State parties. In this context, we encourage other contracting States, who have not yet done so, to consider intervention in the case.

Lastly, assuring justice and accountability is of vital importance to the credibility of the UN and its principle judicial organ. We, the Baltic States, reaffirm our strong and continued support to the mandate and activities of the Court on peaceful settlement of disputes and ensuring rules-based international order.

I thank you.

**UN Web TV, General Assembly: 21st plenary meeting, 77th session, 27 October 2022, available at: <https://media.un.org/en/asset/k1z/k1z9kavn6u>.**

**77th Session of the United Nations General Assembly**

**Statement of Ukraine on the Report of the International Court of Justice**

**(01:49:24)**

Mr President, distinguished Colleagues,

I would like to provide a brief overview of the state of play and the most recent developments regarding the two cases Ukraine brought versus the Russia in the International Court of Justice.

These cases represent the center piece of the overarching and multifaceted legal response of Ukraine towards the unjustified and unprovoked military aggression that Russia has waged against my country back in 2014.

Since then, **(01:50:00)** since Russia tried to commit a brutal land grab of the Autonomous Republic of Crimea and the city of Sevastopol of Ukraine, my country adherently referred to instruments of international law seeking to protect its rights and legitimate interests.

First, after a lengthy time and effort consuming pre-trial settlement procedures commenced practically at the inception of the Russian aggression, on January 16, 2017, Ukraine has filed its first Application instituting proceedings in the ICJ. The Application is based on allegation that Russia violates the Convention on the Suppression of Financing of Terrorism of 1999 and the Convention on Elimination of All Forms of Racial Discrimination of 1965. In essence, Ukraine claims that Russia is failing to prevent the financing of terrorism in Ukraine, including by provision of Russian weapons **(01:51:00)** to groups engaged in terrorism, such as supply of Buk that was used to shoot down the MH-17, and that Russia is engaged in a systematic campaign of cultural erasure in the occupied Crimea against the Crimean Tatar and Ukrainian ethnic communities. On 19 April 2017 the Court issued an Order on Ukraine's request for the indication of provisional measures. The Order required Russia, among other things, to "refrain from maintaining or imposing limitations on ability of the Crimean Tatar community to preserve its representative institution including the Mejlis" and the... and to "ensure the availability of education in Ukrainian language". 19 April 2017 - this is the first **(01:52:00)** date that I kindly ask you to memorize – there will be just three days I'll ask you to keep in mind. On 8 October 2019 the Court issued the Decision that it has jurisdiction to hear this case on the merits. By now the Parties have already held the first round of exchange of written documents, the second round has been found also

necessary. Thus, the Court has fixed April 8, 2022 for the Reply of Ukraine and 8 December 2022 for the Rejoinder of Russian Federation. Despite the ongoing full-scale invasion of the Russian forces of Ukraine on 24 February we pulled ourselves together and showed resilience not only in warfare, but also in lawfare. We requested extension and filed our Reply just three weeks later than original deadline. Russian Rejoinder is due on 19 January 2023. Noteworthy, in short aftermath of 24 February (01:53:00) invasion, the international legal team defending Russia in this case led by large by professor Alain Pellet has resigned, at least publicly.

Second, just two days after the start of the full-scale Russian invasion, on 26 February 2022, Ukraine filed its second Application to the International Court of Justice. This case concerns Russia's accusations of genocide against the Russian speaking population in Ukraine under the Convention on the Prevention and Punishment of the Crime of Genocide. At the same time Ukraine filed a request for the indication of provisional measures. On 16 March 2022, the Court has issued an Order that required Russia, among other things, to "immediately suspend the hostilities launched on February 24, 2022 aimed at preventing and punishing genocide in (01:54:00) Lugansk and Donetsk regions of Ukraine" and "to ensure that any military or irregular armed formations, any organizations, persons controlled, supported and under the influence of Russia do not take any measures to carry out the so-called "military operation". 16 March 2022 is the second date I kindly ask you to keep in mind for a short period of time. Ukraine has already filed its Memorial in this case on 1<sup>st</sup> July 2022, almost three months in advance of established deadline. On 3<sup>rd</sup> October 2022 Russia submitted its Preliminary Objection on jurisdiction. But between those two dates indeed an unprecedented event in the history of ICJ has happened. Between those two dates seventeen States from different parts of the (01:55:00) world have filed their interventions into this case. Latvia, Lithuania, New Zealand, the United Kingdom, Germany, the United States of America, Sweden, France, Romania, Poland, Italy, Denmark, Ireland, Finland, Estonia, Spain, and Australia. Just during October, five more countries were added to this honorable list: Portugal, Austria, Greece, Luxembourg, and Croatia. Thus, the total number of interventions in this case, as of now, is twenty-two. We know that more interventions are coming. I would like to express sincere gratitude to those countries who decided to stand beside us in the World Court, especially on behalf of Ukraine's legal team, that I represent here. We shall continue working together on this case. Apart from that I call on and strongly encourage those countries, who believe in rule of law and are parties to the (01:56:00) Genocide Convention, consider intervening into our case. Together we can form a coalition that upholds a rules-based, not force-based world order. Only a rules-based order can provide for peace and prosperity of States that are equal in their sovereignty and

independence. Ukraine sees no viable arguments against interventions and is ready to assist in all possible ways.

As I about to conclude, I would like to remind you two of the three days I kindly ask you to keep in memory - 19 April 2017 and 16 March 2022. More than five and a half years has passed since the former and more than eight months has passed since the latter. This is exactly how much time the Russian Federation is in violation of the binding Orders of the International Court of Justice. Five and a half years and more than eight months. **(01:57:00)** Just hours after the ICJ delivered its Order on preliminary measures in the Alleged Genocide case, the official spokesman for Kremlin has publicly and unequivocally declared that Russia is not going to abide by the Order. Came it no surprise for us, as at that time the Russia was ignorant to previous Order for almost five years. The massive occasionally spilled ink on the page was Article 41 of the Statute of the Court.

So, the third and the final date I kindly ask you to keep in mind is the date when Russia shall finally comply with the Orders of the ICJ. On that day we shall all become just one step closer to the rules-based order, to peace, to equality, to fulfillment of aims of this organization. Whether this day arrives sooner or later, depends on you, my dear Colleagues. Just keep these dates in mind and keep working on it.

Thank you, Mr President.

**(01:58:00)**



UDENRIGSMINISTERIET

# Udenrigsminister Jeppe Kofod: Ruslands falske anklager om folkedrab skal for domstolen

19.9.2022 19:30:00 CEST | [Udenrigsministeriet](#)Del     

## For første gang anmoder Danmark om at gå ind i en sag mellem to andre stater ved Den Internationale Domstol (ICJ) i Haag.

For første gang anmoder Danmark om at gå ind i en sag mellem to andre stater ved Den Internationale Domstol (ICJ) i Haag. Det sker for at støtte Ukraine, som anklager Rusland for at komme med falske beskyldninger om folkedrab for at retfærdiggøre sit angreb mod Ukraine. Rusland er i forbindelse med invasionen af Ukraine gentagne gange kommet med usande anklager om folkedrab mod den russiske befolkning i regionerne Donetsk og Luhansk.

- Ruslands brutale overgreb på Ukraine skal stoppe, og Putins forsøg på at manipulere virkeligheden og misbruge folkedrabskonventionen skal blottægges. Derfor skal vi støtte Ukraine – både i kampzonen og nu her i retslokalet – og det er derfor, vi går ind i sagen ved at anmode om at fremlægge Danmarks syn på, hvordan konventionen skal fortolkes, siger udenrigsminister Jeppe Kofod.

Der er massiv opbakning til Ukraine i denne proces. I juli tilsluttede 42 stater, inklusive Danmark, sig en politisk erklæring til støtte for Ukraine i den anlagte sag.

- Det er helt ekstraordinært, at der er så stor opbakning til en sag ved Den Internationale Domstol. Det er vigtigt for mig, at vi fortsat udviser sammenhold for at skabe retfærdighed for ukrainerne. Det er også derfor, at Danmark i foråret gik forrest for at danne en tværregional gruppe af FN-medlemsstater, som arbejder for at fastholde internationalt fokus på at sikre ansvar for forbrydelser begået i Ukraine som følge af Ruslands invasion, udtaler Jeppe Kofod.

### Baggrund om intervention ved Den Internationale Domstol (ICJ)

Både Ukraine og Rusland har tiltrådt FN's folkedrabskonvention fra 1948. Ukraine har den 26. februar 2022 anlagt sag mod Rusland ved ICJ.

Domstolen skal tage stilling til om, at Ruslands angreb på Ukraine var baseret på falske anklager om folkedrab, og om det er misbrug af folkedrabskonventionen. Den 16. marts 2022 besluttede ICJ foreløbigt, at Rusland øjeblikkeligt skulle suspendere den militære operation i Ukraine, hvilket Rusland ikke har efterlevet.

De øvrige stater, som har tiltrådt folkedrabskonventionen, kan bede Domstolen om lov til at fremlægge deres fortolkning af konventionen. Det har Danmark gjort, og det er første gang, at der tages et sådan dansk skridt i en retssag ved ICJ.

## Information om Udenrigsministeriet

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UDENRIGSMINISTERIET

Udenrigsministeriet  
Asiatisk Plads 2  
1448 København K

[33 92 00 00](tel:33920000)

<http://um.dk/>

## Følg pressemeddelelser fra Udenrigsministeriet

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### Dansk vare- og tjenesteeksport i september 2022

9.11.2022 16:23:02 CET | Pressemeddelelse

### Global varehandel steg 0,7 pct. i august i forhold til juli. Årsvækstraten faldt til 4,9 pct.

27.10.2022 11:50:18 CEST | Pressemeddelelse

**Via Ritzau, Foreign Minister Jeppe Kofod: Russia's false accusations of genocide must go to court (19 September 2022), available at:**

**<https://via.ritzau.dk/pressemeddelelse/udenrigsminister-jeppe-kofod-ruslands-falske-anklager-om-folkedrab-skal-for-domstolen?publisherId=2012662&releaseId=13659910>.**



**Ministry of Foreign Affairs**

## **Foreign Minister Jeppe Kofod: Russia's false accusations of genocide must go to court**

19.9.2022 19:30:00 CEST | [Ministry of Foreign Affairs](#)

**For the first time, Denmark seeks to intervene in a case between two other states at the International Court of Justice (ICJ) in Hague.**

For the first time, Denmark seeks to intervene in a case between two other states at the International Court of Justice (ICJ) in Hague. It is doing so to support Ukraine, which accuses Russia of making false allegations of genocide to justify its attack on Ukraine. Russia has repeatedly made false allegations of genocide against the Russian population in the Donetsk and Luhansk regions during its invasion of Ukraine.

- Russia's brutal aggression against Ukraine must stop, and Putin's attempts to manipulate reality and abuse the Genocide Convention must be exposed. That is why we must support Ukraine - both in the combat zone and now here in the courtroom - and that is why we are entering the case by providing Denmark's views on how the Convention should be interpreted, says Foreign Minister Jeppe Kofod.

There is massive support for Ukraine in this process. In July, 42 states, including Denmark, signed a political declaration in support of Ukraine in the pending case.

- It is quite extraordinary that there is so much support for a case at the International Court of Justice. It is important for me that we continue to show unity to create justice for Ukrainians. That is also why Denmark took the lead in the spring to form a cross-regional group of UN member states working to uphold international focus on ensuring accountability for crimes committed in Ukraine as a result of Russia's invasion, says Jeppe Kofod.

[Background on intervention before the International Court of Justice \(ICJ\)](#)

Both Ukraine and Russia have ratified the 1948 UN Genocide Convention. On 26 February 2022, Ukraine brought an action against Russia before the ICJ.

The Court must decide whether Russia's attack on Ukraine was based on false allegations of genocide and whether it is an abuse of the Genocide Convention. On 16 March 2022, the ICJ provisionally ruled that Russia should immediately suspend the military operation in Ukraine, which Russia has not complied with.

Other states that have ratified the Genocide Convention may ask the Court for permission to present their interpretation of the Convention. Denmark has done so, and this is the first time, Denmark has taken such a step in a case before the ICJ.

## **Information about the Ministry of Foreign Affairs**

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**Ministry of Foreign Affairs**

Ministry of Foreign Affairs

Asiatisk Plads 2

1448 Copenhagen K

33 92 00 00

<http://um.dk/>

# Less a Wave Than a Tsunami

## Procedural Implications for the ICJ of the Article 63 Interventions in *Ukraine v. Russia*

11.10.2022

The International Court of Justice (ICJ) faces an [unprecedented](#) procedural situation in the *Ukraine v. Russia* case, as a result of the never-before-seen number of states intervening in the case pursuant to [Article 63](#) of the Court's Statute.

Before Russia had even [filed its preliminary objections](#) 17 states had filed [declarations of intervention](#). The European Union (EU) has also [furnished](#) the Court with '[relevant information](#)' pursuant to Article 34(2) of the Court's Statute. The latest intervention at the time of writing came from Portugal, making 18 in total. So far.

This post addresses some of the procedural implications arising from this, with a particular focus on the management of oral proceedings. The Court will need to be wary that it does not allow the sheer weight of the number of interventions to overshadow the parties to the case.

### Article 63 Interventions

While contentious proceedings before the Court are usually bilateral, the [Statute](#) in Article 63 grants a right to States to intervene in a contentious case when they are party to a multilateral treaty that will be interpreted in the Court's judgment. Article 63 states, in full: "1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith. 2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it."

Article 63 interventions are incidental proceedings, governed by procedures under Articles 81-86 of the [Rules](#) of Court. As an incidental proceeding, the original parties' consent is not required to admit the intervenor to the proceedings; the Court's competence derives directly from the Statute and can be exercised even in the face of opposition from the parties. Article 63 intervention results in a judgment that binds parties and intervenors alike.

However, although Article 63 intervention is a "right", the Court retains the power to decide whether or not the conditions in Article 63 have been fulfilled, and thus whether an intervention is "admissible". To that end, it is worth observing that every intervening state in *Ukraine v. Russia* has emphasized their "right" to intervene at this stage of the case and make submissions on questions of jurisdiction. It will be difficult for the Court, in the face of such overwhelming concurrence between states, to deny them the exercise of this right and declare the interventions premature and inadmissible, such as occurred in *Military and Paramilitary Activities in and against Nicaragua*, when the Court decided to [reject El Salvador's Article 63](#) declaration on the basis that application was untimely for being made in the jurisdictional phase of the proceedings.

### An Unprecedented Procedural Moment

Proceeding on the assumption that these declarations will be held admissible, the Court has never had to grapple with such a vast number of intervenors. In only one previous case have multiple states attempted to intervene at the same time. In the *Request for an Examination of the Situation (New Zealand v. France)* case, the Solomon Islands, the Federated States of Micronesia, the Marshall Islands, and Samoa all filed [identically-worded interventions](#) on the basis of both Article 63 and Article 62. Samoan diplomat Tuiloma

Neroni Slade was appointed as Agent for all four States. On this basis, despite the somewhat awkward use of separate-but-identical written declarations, one can infer that the Pacific states would have been able to make a single set of observations during the oral proceedings. However, the Court took no action in respect of the interventions before the case was dismissed.

## Management of the Oral Proceedings

As such, there is no precedent for the Court regarding how to manage multiple intervenors, particularly during the oral phase of proceedings. The Court's [Rules](#) governing oral proceedings in Article 60(1) require that "oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the adequate presentation of that party's contentions at the hearing". This is bolstered by the Court's [Practice Direction VI](#), which firmly requests "full compliance" with Article 60(1) regarding brevity in oral pleadings. It is to be noted that formally, these Rules only apply to the parties, which intervenors are not. However, there is no doubt that the Court will expect intervening States to adopt a similar rigorous attitude to verbosity.

At the same time there are Rules concerning the right of intervention that will govern how the Court is to manage proceedings. First, Article 84(2) requires that an entirely separate round of hearings be held on the question of the admissibility of a declaration of intervention where an objection is filed. Second, Article 86(2) requires that:

"The intervening State shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention."

The language of this provision is mandatory. That is, if a state's intervention is admissible, it has a right to make submissions during the oral proceedings. In the ordinary course, the Court holds two rounds of oral hearings for each stage of the case. That amounts to a minimum of four rounds of oral hearings: two for jurisdiction and two for merits (should we get there), plus potentially another two rounds in respect of the question of admissibility of the declarations. Further rounds of hearings are also on occasion held to address questions from the bench. Within each of those phases, two sets of oral argument by the parties are usually followed by one or two rounds of oral argument from the intervenors, followed again by the parties with their observations on the intervenor submissions. It is easy to see how, as noted by Brian McGarry, even a single intervention can '[add months or even years to the life of a case](#)'.

The Court is familiar with managing large numbers of states in hearings for Advisory Opinions. During the [Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965](#) hearings no less than 22 states appeared, as well as representatives of the African Union. In standard advisory proceedings, there is a single round of hearings and the oral submissions are significantly shorter.

The problem for the Court in *Ukraine v. Russia* is that these case management principles cannot be adopted without due consideration for the fact that this is a contentious case between two main parties. In seeking to manage the sheer volume of intervenors, the Court cannot do away with the basic protections regarding the administration of justice in respect of the original parties. In advisory proceedings, there are no parties, so the Court is entitled to treat all states equally. In this case, there are formal parties, and a distinction should be drawn between them and the intervenors. For example, the Court cannot hold only a single round of hearings and thus deprive Ukraine and Russia of the opportunity to make their rejoinder to the other party's submissions.

One means of addressing this situation could be to restrict the intervenors to one round of oral argument only, while the parties have the right to a second round of hearings to address their opponent's arguments. A further potential mechanism includes asking the intervening states to make their submissions in concert, although so far only Spain, Germany, Sweden, Poland and Denmark have indicated their willingness to do so.

## The World v. Russia

This leads to another issue; the requirement for the Court to ensure procedural fairness and equality of arms between the parties.

It is clear that all of the intervenors come in support of Ukraine. All argue that the Court has jurisdiction to make a negative declaration in favour of Ukraine, to the effect that Ukraine has not committed any acts of genocide. Many also make arguments regarding the merits of the case, including that the [Genocide Convention](#) does not permit Russia to use military force to either prevent or punish genocide. No intervenor makes a case in favour of Russia.

The Court has previously taken the view that intervention to support a party's particular interpretation of the relevant treaty is permissible. In the most recent intervention admitted under Article 63, that of New Zealand in [Whaling in the Antarctic](#), the Court confirmed that Article 63 interventions "cannot affect the equality of the parties to the dispute", because the intervenor cannot acquire the status of a party. Japan's contention that Australia and New Zealand were, for all intents and purposes, parties in the same interest "pursuing what may in effect be a joint case" received minimal attention. Sweden, Australia, Spain, New Zealand, and Romania have each made this point in their declarations of intervention.

The present case tends to suggest that although intervention was not intended to be a mechanism for '[taking sides](#)', Article 63 interventions can be a way for States to communally condemn breaches of international obligations deemed of sufficient importance. Arguably, it's largely performative, with a reasonably small price to pay where the obligations in question are unlikely to be interpreted in ways that could adversely affect the intervening States future actions.

But for the respondent, it means being faced with what in practice is a 19-to-1 battle. In the interests of fairness, and its own institutional legitimacy, the Court needs to be conscious of this when making orders for the conduct of the case. It would seem unduly formal to merely declare that 18 one-sided Article 63 interventions could not affect the equality of the parties to the dispute, and leave it at that.

## Conclusion

In conclusion, the Court will likely echo the Permanent Court of International Justice (PCIJ) in [Mavrommatis](#) when it said that: "[t]he Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law." The Court has a certain amount of procedural flexibility, that it will no doubt rely on in this case. At the same time, however, the Court must ensure that the basic standards of procedural fairness are upheld in respect of the parties, no matter how many intervenors become involved.

Cite as

*Juliette McIntyre*, Less a Wave Than a Tsunami: Procedural Implications for the ICJ of the Article 63 Interventions in Ukraine v. Russia, *Völkerrechtsblog*, 11.10.2022, doi: [10.17176/20221011-110234-0](https://doi.org/10.17176/20221011-110234-0).

## Beyond the False Claim of Genocide: Preliminary Reflections on Ukraine's Prospects in Its Pursuit of Justice at the ICJ

Iryna Marchuk<sup>a</sup> and Aloka Wanigasuriya<sup>b</sup>

<sup>a</sup>Faculty of Law, University of Copenhagen, Copenhagen, Denmark; <sup>b</sup>Centre for Law & Social Justice, Newcastle Law School, University of Newcastle (Australia), Newcastle, Australia

### Introduction and Significance of the Case

The word “genocide” is not used lightly when it is invoked in the context of proceedings before international courts and tribunals. Responsibility for genocide, be it individual criminal responsibility or state responsibility, is notoriously difficult to prove as the genocidal intent of perpetrators upon which both forms of responsibility are predicated, tends to often be somewhat elusive. When Ukraine initiated a lawsuit against the Russian Federation (Russia) before the International Court of Justice (ICJ) merely two days after Russia's invasion of Ukraine, it was initially assumed that Ukraine accused Russia of engaging in genocide against the Ukrainian people. However, in an unexpected twist, Ukraine sought for Russia to be held accountable for violating the terms of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) by using the purported “genocide in Donbas” as the pretext for launching a full-scale war against Ukraine disguised as a “special military operation.”<sup>1</sup> In other words, Ukraine claimed that Russia breached its obligation to prevent and punish genocide by advancing a false claim of genocide in order to justify its aggression against Ukraine.

This is the first “false claim of genocide” case in the history of the ICJ, given that in previous cases the claimants argued that a wrongdoing state had breached the Genocide Convention by engaging in genocide against protected groups. Ukraine's argument is twofold in that it claims: (1) as a matter of fact, Ukraine has not engaged in genocide in Donbas; and, (2) as a matter of law, there is no legal basis for Russia to use force against Ukraine as a means of fulfilling its purported obligation to prevent and punish genocide under Article I of the Genocide Convention.<sup>2</sup> The case is notable for many reasons. First, Ukraine attempts to combat the Kremlin's propaganda and disinformation about Ukrainians allegedly committing “genocide” in Donbas in a court of law. Second, Ukraine highlights the abuse of international instruments that were adopted after World War II (WWII) with a view to protecting humankind from the horrors of war and the Holocaust in the future. This points towards the larger issue of Russia resorting to the abuse of fundamental concepts of international law, such as humanitarian intervention, responsibility to protect (R2P), self-defence, self-determination, etc., to justify its

**CONTACT** Iryna Marchuk ✉ iryna.marchuk@jur.ku.dk 📧 Faculty of Law, University of Copenhagen, Karen Blixens Plads 16, Building 6A (Afsnit 3), 2300 Copenhagen, Denmark

<sup>1</sup> International Court of Justice, *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Application Instituting Proceedings, 26 February 2022 (hereinafter – ICJ Ukraine Application), para. 2.

<sup>2</sup> *Ibid.*, para. 3.

warmongering actions in its neighbouring satellite states.<sup>3</sup> The protection of the Russian-speaking population has become a common denominator in the Russian narratives that have been promoted over the last years. The “genocide” rhetoric in Ukraine by the Kremlin is nothing new, as Russia earlier accused Georgia of alleged “genocide” against South Ossetians during the 2008 war and commenced investigations into alleged genocide through its Investigative Committee.<sup>4</sup> The same *modus operandi* was replicated with respect to Ukraine when Russia began circulating disinformation about the alleged genocide in Donbas by Ukrainians.<sup>5</sup>

Third, the case has been supported by 42 states that expressed their solidarity with Ukraine in denying Russian claims of genocide as an excuse to use force against Ukraine, and stated that they are considering an intervention in the proceedings.<sup>6</sup> At the time of writing, 22 States have filed Article 63 interventions with the Court seeking the clarification of issues pertinent to the construction of the Genocide Convention in the given case.<sup>7</sup> Further declarations of intervention by other states are likely to roll in. In August 2022, the EU in its capacity as a public international organization, furnished the ICJ with relevant information in support of Ukraine’s case pursuant to Article 34(2) of the Statute of the Court and Article 69(2) of the Rules of Court.<sup>8</sup> Such unprecedented mass support for an ICJ claimant state is rare and signifies the united stance of the international community in its efforts to prevent the abuse of the Genocide Convention. While third-party interventions have been welcomed by the Ukrainian government,<sup>9</sup> it is important to bear in mind that they may result in further extending the length of the proceedings, as the ICJ now has to consider submissions from multiple intervening states.<sup>10</sup> However, as observed by international law pundits, such interventions also entail potential positives by “creat[ing] opportunities to make complementary legal arguments.”<sup>11</sup>

This article will situate Russia’s false claim of genocide within a broader discussion on the relationship between genocide and the use of force under international law, and reflect on the potential handling of such issues by the ICJ. It will provide a recap of

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<sup>3</sup> Iryna Marchuk, “Russia, International Law and the International Court of Justice,” in *Research Handbook on the International Court of Justice*, ed. Achilles Skordas (Cheltenham: Edward Elgar Publishing, forthcoming 2022).

<sup>4</sup> Investigative Committee of the Russian Federation, “Interview of the Chairperson of the Investigative Committee of the Prosecution Office of the Russian Federation A.I. Bastrykin for Journal ‘Orientir’,” Investigative Committee of the Russian Federation, 31 August 2009, <https://sledcom.ru/press/interview/item/507343/> (accessed 1 September 2022) (in Russian).

<sup>5</sup> Investigative Committee of the Russian Federation, “Russian Investigative Committee: All Persons Who Committed Crimes on the Territory of Donbas Will Be Identified and Held Accountable,” Investigative Committee of the Russian Federation, 19 March 2022, <https://sledcom.ru/news/item/1665761/> (accessed 1 September 2022) (in Russian).

<sup>6</sup> UK Government: Foreign, Commonwealth & Development Office, “Ukraine’s Application Against Russia Before the International Court of Justice: Joint Statement,” 20 May 2022, <https://www.gov.uk/government/news/ukraine-joint-statement-on-ukraines-application-against-russia-before-the-international-court-of-justice> (accessed 1 September 2022).

<sup>7</sup> International Court of Justice, Intervention, <https://www.icj-cij.org/en/case/182/intervention> (accessed 24 October 2022).

<sup>8</sup> International Court of Justice, *Information furnished by the European Union*, 18 August 2022.

<sup>9</sup> Volodymyr Zelenskyy, *Twitter*, 20 May 2022, <https://twitter.com/ZelenskyyUa/status/1527625956038524933> (accessed 1 September 2022).

<sup>10</sup> Brian McGarry, “Mass Intervention?: The Joint Statement of 41 States on Ukraine v. Russia,” *EJIL:Talk!*, 30 May 2022, <https://www.ejiltalk.org/mass-intervention-the-joint-statement-of-41-states-on-ukraine-v-russia/> (accessed 1 September 2022).

<sup>11</sup> Mike Becker, *Twitter*, 3 September 2020, <https://mobile.twitter.com/mabecker17/status/1301240928141705221> (accessed 1 September 2022).

major arguments advanced by intervening states in Art. 63 declarations, and highlight substantive and procedural issues arising out of such declarations that the ICJ will have to grapple with. It will further analyse Ukraine's prospects of extending its claim beyond the false claim of genocide by advancing the argument that Russia breached the Genocide Convention by committing genocide in such areas as Bucha, Mariupol and Izyum. It will also highlight how the Russian practice of forcible transfer of children from the occupied territories to Russia bears all the hallmarks of an organized genocidal campaign.

## Genocide and the Use of Force Under International Law

Ukraine's claim on the factual absence of genocide in Donbas is intertwined with its legal argument on the prohibition of the use of force under the pretext of upholding the values contained in the Genocide Convention. Taking a step back from Ukraine's case regarding the false claim of genocide, it is necessary to note that the relationship between the use of force and genocide is complex. The much debated R2P doctrine was articulated during the UN World Summit that challenged the conventional prohibition on the use of force laid down in the UN Charter.<sup>12</sup> Hence, it was recognized that in exceptional circumstances, collective military action may be warranted (R2P Third Pillar) if national authorities are manifestly failing to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>13</sup> However, such action has to be authorised by the UN Security Council (UNSC), a political body mostly unable to agree on matters of peace and security, whose work has often been hampered by individual permanent five (P5) states using their veto power. The conflict in Libya was the only instance in which the R2P doctrine was used in order to authorise collective military action in response to the brutality of the Gaddafi regime towards the Libyan population.<sup>14</sup> However, the doctrine failed to garner the necessary support for a collective military response in Syria. This was despite the enormous human suffering endured by Syrians, even when the red line of using chemical weapons had been crossed by the Assad regime.<sup>15</sup> Russia vetoed any attempt to invoke the R2P doctrine in relation to Syria at the UNSC and was backed by its strongest ally, China.<sup>16</sup> However, despite Russia's portrayal and dismissal of the R2P doctrine as a Western invention to justify neo-colonial ambitions, it has been keen to seize the opportunity to invoke the doctrine in order to justify its ever-increasing imperial appetite for power by engaging in land grabbing in neighbouring satellite states.<sup>17</sup> Russia has done so by emphasizing the need to "protect" and "liberate" the Russian-speaking

<sup>12</sup> 2005 World Summit Outcome, A/Res/60/1, 24 October 2005, paras 138–140.

<sup>13</sup> Ibid., para. 139.

<sup>14</sup> UNSC Resolution 1973 (2011), S/RES/1973 (2011), 17 March 2011.

<sup>15</sup> United Nations, "Clear and Convincing Evidence of Chemical Weapons Use in Syria, UN Team Reports," UN News, 16 September 2013, <https://news.un.org/en/story/2013/09/449052-clear-and-convincing-evidence-chemical-weapons-use-syria-un-team-reports> (accessed 1 September 2022); Human Rights Watch, "Death by Chemicals: The Syrian Government's Widespread and Systematic Use of Chemical Weapons," 1 May 2017, Human Rights Watch, <https://www.hrw.org/report/2017/05/01/death-chemicals/syrian-governments-widespread-and-systematic-use-chemical-weapons> (accessed 1 September 2022).

<sup>16</sup> Richard Croker, "Russia's Justification for Using Its Veto on Syria is Pure Fiction," UK Government, 21 July 2022, <https://www.gov.uk/government/speeches/russias-justification-for-using-its-veto-on-syria-is-pure-fiction> (accessed 1 September 2022).

<sup>17</sup> Marchuk, "Russia, International Law and the International Court of Justice."

communities in these states from “genocide,” an argument which it rehashed and replicated in the Ukrainian context.<sup>18</sup>

The Kremlin’s official statements on the purported genocide in Donbas, as well as the initiation of criminal proceedings by the Russian Investigative Committee on charges of genocide have been referred to by the ICJ when making findings on the existence of a dispute between Russia and Ukraine regarding the interpretation, application or fulfilment of the Genocide Convention.<sup>19</sup> Initially, Russia chose not to participate in the proceedings and communicated a letter to the ICJ, in which it changed its narrative on the justification of the use of force in Ukraine by removing the reference to genocide.<sup>20</sup> Instead, Russia claimed that it has been acting in self-defence in accordance with Article 51 of the UN Charter.<sup>21</sup> By offering an alternative justification regarding the use of force anchored in the UN Charter, Russia attempted to have Ukraine’s case dismissed by the Court on the basis of it lacking merit to be heard on the alleged violations of the Genocide Convention. At the preliminary measures stage, the ICJ made it clear that Russia’s assertion on the use of force in self-defence does not, in any case, invalidate its *prima facie* finding on the existence of a dispute between the parties within the meaning of the Genocide Convention.<sup>22</sup>

Subsequently, in a sudden change of litigation strategy that may be linked to the pressure exerted on Russia by the multiple incoming Art. 63 declarations, it decided to abandon its stance of disengagement in the proceedings by filing preliminary objections to the jurisdiction of the ICJ. The Russian Ministry of Foreign Affairs published a brief press release in which it maintained that the dispute before the ICJ had nothing to do with the Genocide Convention and pertained to the “lawfulness of the special military operation” and “the legal status of the ‘DPR’ and ‘LPR.’”<sup>23</sup> The move is most likely calculated to delay the proceedings in light of the bifurcation of the ICJ proceedings into separate stages addressing jurisdiction/admissibility and issues pertaining to the merits.<sup>24</sup>

As a conservative judicial body with a sober outlook on international law, the ICJ has consistently steered clear of adjudging broader claims on the use of force by narrowly focusing on claims falling within the instruments that parties have relied upon to initiate proceedings for establishing the jurisdictional basis. Nothing suggests that the ICJ will deviate from its conventional line of reasoning in this matter. In its order on provisional

<sup>18</sup> “Vladimir Putin’s Speech Announcing ‘Special Military Operation’ in Ukraine,” The Kremlin, 24 February 2022, <http://kremlin.ru/events/president/news/67843> (accessed 1 September 2022) (in Russian).

<sup>19</sup> International Court of Justice, *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order, 16 March 2022, General List No. 182, paras 37–47 (hereinafter – *Ukraine v. Russia Provisional Measures Order*).

<sup>20</sup> International Court of Justice, *Document (with annexes) from the Russian Federation Setting Out Its Position Regarding the Alleged “Lack of Jurisdiction” of the Court in the Case*, 7 March 2022 (hereinafter – ICJ Russia Submission).

<sup>21</sup> *Ibid.*, para. 15; For a critique of Russia’s argument of self-defence, see Kevin Jon Heller, “Options for Prosecuting Russian Aggression Against Ukraine: A Critical Analysis,” *Journal of Genocide Research* (6 July 2022): DOI 10.1080/14623528.2022.2095094, pp. 2–3.

<sup>22</sup> *Ukraine v. Russia Provisional Measures Order*, para. 46.

<sup>23</sup> Russian Ministry of Foreign Affairs, Press release on the filing of Russia’s written objections to the jurisdiction of the International Court of Justice in the case initiated by Kiev in February 2022 under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, 5 October 2022, [https://www.mid.ru/en/foreign\\_policy/news/1832628/?lang=en](https://www.mid.ru/en/foreign_policy/news/1832628/?lang=en).

<sup>24</sup> International Court of Justice, *Fixing of time-limit: Written statement of observations and submissions on preliminary objections*, Order, 3 October 2022. See: Ori Pomson, “Ukraine Symposium – Russian Preliminary Objections at the ICJ: The Case Must Go On?”, *Article of War Lieber Institute*, 13 October 2022, <https://lieber.westpoint.edu/russian-preliminary-objections-icj-case-must-go-on/> (accessed 13 October 2022).

measures, the ICJ stated that Ukraine's case is "limited in scope" with respect to the Genocide Convention and found it "doubtful" that the Convention, in light of its object and purpose "authorises a Contracting Party's unilateral use of force in the territory of another state for the purpose of preventing or punishing an alleged genocide."<sup>25</sup> Should the case proceed to the merits stage, the ICJ is likely to limit itself to fact-finding in ascertaining whether genocide has occurred in Donbas. This is despite the fact that the ICJ had already stated that it was not in possession of evidence substantiating Russia's allegations of genocide.<sup>26</sup> Russia's participation in the proceedings will not have a significant impact on evidentiary issues, since its allegations of genocide in Donbas are not supported by any genuine and reliable evidence.<sup>27</sup> Such unsubstantiated allegations routinely feature in declaratory statements of senior Russian politicians, including those of President Putin, and statements of the Russian Investigative Committee.<sup>28</sup> While it is logical that the false claim of genocide cannot sustain the use of force under international law, a broader question as to whether genuine claims of genocide can give rise to the use of force is unlikely to be answered by the ICJ.<sup>29</sup> The present dispute first and foremost exposes the dangers of the abusive interpretation of the duty to prevent and punish genocide as outlined in Art. I of the Genocide Convention. The legal issues arising out of the current dispute received wider international resonance as many states that condemn the abusive interpretation of the duty to prevent and punish genocide as a pretext for the unilateral use of force have submitted Art. 63 declarations in which they strongly warn against such abuse of the law.

### Mass Intervention: Article 63 Declarations

Although 42 states expressed their support for Ukraine's case at the ICJ and signalled their intention to intervene in the proceedings, the declarations under Art. 63 of the ICJ Statute did not start to come in till the end of July. The most fervent supporters of the Ukrainian cause that maintain a strong anti-war stance in Europe, Latvia<sup>30</sup> and Lithuania,<sup>31</sup> filed the very first declarations that set the tone for the subsequent submissions from intervening states. The respective declarations that have been filed thus far by 22 states (Latvia, Lithuania, New Zealand,<sup>32</sup> United Kingdom and Northern Ireland,<sup>33</sup>

<sup>25</sup> *Ukraine v. Russia* Provisional Measures Order, para. 19.

<sup>26</sup> *Ibid.*, para. 59.

<sup>27</sup> Alexander Etkind, "Ukraine, Russia, and Genocide of Minor Differences," *Journal of Genocide Research* (7 June 2022): DOI 10.1080/14623528.2022.2082911, p. 18 (calling Russia's claims of "genocide of millions of Russians" in Donbas "outlandish").

<sup>28</sup> "Vladimir Putin's Speech Announcingsp 'Special Military Operation' in Ukraine," The Kremlin, 24 February 2022, <http://kremlin.ru/events/president/news/67843> (accessed 1 September 2022) (in Russian); Investigative Committee of the Russian Federation, "Russian Investigative Committee: All Persons Who Committed Crimes on the Territory of Donbas Will Be Identified and Held Accountable," Investigative Committee of the Russian Federation, 19 March 2022, <https://sledcom.ru/news/item/1665761/> (accessed 1 September 2022) (in Russian).

<sup>29</sup> William Schabas, "Preventing Genocide and the Ukraine/Russia Case," *EJIL:Talk!*, 10 March 2022, <https://www.ejiltalk.org/mass-intervention-the-joint-statement-of-41-states-on-ukraine-v-russia/> (accessed 1 September 2022).

<sup>30</sup> International Court of Justice, *Declaration of Intervention of Latvia*, 19 July 2022 (hereinafter – ICJ Latvia Declaration).

<sup>31</sup> International Court of Justice, *Declaration of Intervention of Lithuania*, 19 July 2022 (hereinafter – ICJ Lithuania Declaration).

<sup>32</sup> International Court of Justice, *Declaration of Intervention of New Zealand*, 25 July 2022 (hereinafter – ICJ New Zealand Declaration).

<sup>33</sup> International Court of Justice, *Declaration of Intervention of the United Kingdom of Great Britain and Northern Ireland*, 1 August 2022 (hereinafter – ICJ UK Declaration).

Germany,<sup>34</sup> USA,<sup>35</sup> Sweden,<sup>36</sup> France,<sup>37</sup> Romania,<sup>38</sup> Italy,<sup>39</sup> Poland,<sup>40</sup> Denmark,<sup>41</sup> Ireland,<sup>42</sup> Finland,<sup>43</sup> Estonia,<sup>44</sup> Spain,<sup>45</sup> Australia,<sup>46</sup> Portugal,<sup>47</sup> Austria,<sup>48</sup> Luxembourg,<sup>49</sup> Greece,<sup>50</sup> and Croatia<sup>51</sup>) under Art. 63 differ in the breadth and depth of their legal arguments. These declarations are a testament to the solidarity among state parties to the Genocide Convention that expose the dangers of the abusive interpretation of the Genocide Convention, which lends support to the unlawful use of force and waging an aggressive war under the pretext of upholding the values enshrined in the Convention. Interestingly, the declarations have predominantly flown in from European and “Western” states and there is a notable absence of states from the Global South. In fact, many countries from the Global South have adopted a noninterventionist approach to the Russia-Ukraine war.<sup>52</sup> The ongoing war has been portrayed by Ukraine and Western states as a battle against Russia’s assault on the rules-based international order,<sup>53</sup> which Russia views as being unipolar and skewed in favour of the West.<sup>54</sup> Hence, the narrative has

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<sup>34</sup> International Court of Justice, *Declaration of Intervention of Germany*, 1 September 2022 (hereinafter – ICJ German Declaration).

<sup>35</sup> International Court of Justice, *Declaration of Intervention of the United States of America*, 7 September 2022 (hereinafter – ICJ USA Declaration).

<sup>36</sup> International Court of Justice, *Declaration of Intervention of Sweden*, 9 September 2022 (hereinafter – ICJ Sweden Declaration).

<sup>37</sup> International Court of Justice, *Declaration of Intervention of France*, 12 September 2022 (hereinafter – ICJ France Declaration).

<sup>38</sup> International Court of Justice, *Declaration of Intervention of Romania*, 13 September 2022 (hereinafter – ICJ Romania Declaration).

<sup>39</sup> International Court of Justice, *Declaration of Intervention of Italy*, 12 September 2022 (hereinafter – ICJ Italy Declaration).

<sup>40</sup> International Court of Justice, *Declaration of Intervention of Poland*, 15 September 2022 (hereinafter – ICJ Poland Declaration).

<sup>41</sup> International Court of Justice, *Declaration of Intervention of Denmark*, 16 September 2022 (hereinafter – ICJ Denmark Declaration).

<sup>42</sup> International Court of Justice, *Declaration of Intervention of Ireland*, 19 September 2022 (hereinafter – ICJ Ireland Declaration).

<sup>43</sup> International Court of Justice, *Declaration of Intervention of Finland*, 21 September 2022 (hereinafter – ICJ Finland Declaration).

<sup>44</sup> International Court of Justice, *Declaration of Intervention of Estonia*, 22 September 2022 (hereinafter – ICJ Estonia Declaration).

<sup>45</sup> International Court of Justice, *Declaration of Intervention of Spain*, 29 September 2022 (hereinafter – ICJ Spain Declaration).

<sup>46</sup> International Court of Justice, *Declaration of Intervention of Australia*, 30 September 2022 (hereinafter – ICJ Australia Declaration).

<sup>47</sup> International Court of Justice, *Declaration of Intervention of Portugal*, 7 October 2022 (hereinafter – ICJ Portugal Declaration).

<sup>48</sup> International Court of Justice, *Declaration of Intervention of Austria*, 12 October 2022 (hereinafter – ICJ Austria Declaration).

<sup>49</sup> International Court of Justice, *Declaration of Intervention of Luxembourg*, 13 October 2022 (hereinafter – ICJ Luxembourg Declaration).

<sup>50</sup> International Court of Justice, *Declaration of Intervention of Greece*, 13 October 2022 (hereinafter – ICJ Greece Declaration).

<sup>51</sup> International Court of Justice, *Declaration of Intervention of Croatia*, 19 October 2022 (hereinafter – ICJ Croatia Declaration).

<sup>52</sup> Jonathan Guyer, “Why some countries don’t want to pick a side in Russia’s war in Ukraine”, *Vox*, 9 June 2022, <https://www.vox.com/23156512/russia-ukraine-war-global-south-nonaligned-movement> (accessed 30 October 2022).

<sup>53</sup> European Commission, “Speech by President von der Leyen at the European Parliament Plenary on the Russian aggression against Ukraine”, *European Commission*, 1 March 2022, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_22\\_1483](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_1483) (accessed 30 October 2022).

<sup>54</sup> Ministry of Foreign Affairs of Russia, *Twitter*, 29 September 2022, [https://twitter.com/mfa\\_russia/status/1575573460839198725](https://twitter.com/mfa_russia/status/1575573460839198725) (accessed 30 October 2022).

been one of the West/Europe and Western/"European values"<sup>55</sup> against Russia. Given this, the overwhelming support from a particular portion of states for Ukraine at the ICJ does not come as a surprise. Moreover, against the backdrop of such a dichotomy, states in the Global South may not see themselves reflected or included in this portrayal of the conflict that is framed as "the West against Russia" hence, providing little incentive for such states to intervene in the proceedings. Additionally, with some of the regional heavyweights from the Global South such as China, India, Pakistan, the UAE and South Africa failing to condemn Russian actions in Ukraine and continuing to maintain trade and other ties with Russia,<sup>56</sup> a trend may have been set against openly displaying support for Ukraine. The absence of interventions from states from the Global South may also be due to pragmatic reasons. Smaller and less geopolitically powerful states in the Global South are reliant on regional heavyweights and some are aligned with Russia for economic and political reasons, which may prevent interventions that risk stoking the ire of Russia and its allies. The large number of Article 63 interventions in the present case, also stands in stark contrast to the lack of interventions in the only other case concerning genocide currently on the ICJ's docket, namely *The Gambia v. Myanmar*. This is despite the case predating Ukraine's application to the Court and despite the fact that several Western governments had earlier expressed their intent to intervene in the case. The precise reason for the lack of interventions in *The Gambia v. Myanmar* is unclear. While it is true that no states from the Global South have intervened in *The Gambia v. Myanmar* case either, the lack of Western interventions with regard to the Myanmar case, when contrasted with the plethora of Western interventions in the present case, may send a signal to states in the Global South that Western states are less concerned with atrocity crimes being perpetrated in non-Western states. Thus, as some commentators opine, the stark contrast in the levels of engagement in the two cases may give rise to "accusations of Eurocentric bias."<sup>57</sup> This may be an additional factor that contributes towards disincentivizing countries from the Global South from intervening in the present case.

As for the interventions, first, it is necessary to clarify that a state intervening under Art. 63 exercises its right to seek the construction of a Convention to which it has acceded to as a state party. Unlike interventions under Art. 62 that presuppose that an intervening state has an interest of a legal nature, which may be affected by the decision of the

<sup>55</sup> European Parliament, "Russia's war on Ukraine: Speeches by Ukraine's President to the European Parliament and national parliaments", *European Parliament*, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729354/EPRS\\_BRI\(2022\)729354\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729354/EPRS_BRI(2022)729354_EN.pdf) (accessed 30 October 2022).

<sup>56</sup> E.g. United Nations, "Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Weilds Veto," *United Nations*, 25 February 2022, <https://press.un.org/en/2022/sc14808.doc.htm> (accessed 30 October 2022); "General Assembly resolution demands end to Russian offensive in Ukraine", 2 March 2022, <https://news.un.org/en/story/2022/03/1113152> (accessed 1 September 2022); C. Raja Mohan, "Imran Khan Goes to Moscow as Pakistan Romances Russia: A warming relationship adds a new twist to South Asian geopolitics", *Foreign Policy*, 23 February 2022, <https://foreignpolicy.com/2022/02/23/imran-khan-pakistan-russia-putin-india-geopolitics/> (accessed 30 October 2022); Rejendra Jadhav, Nupur Anand and Aftab Ahmed, "India explores setting up rupee trade accounts with Russia to soften sanctions blow – sources," *Reuters*, 25 February 2022, <https://www.reuters.com/world/india/india-explores-setting-up-rupee-trade-accounts-with-russia-soften-sanctions-blow-2022-02-25/> (accessed 30 October 2022); Aanu Adeoye, "UN vote on Russia invasion shows a changing Africa", *Chatham House*, 7 March 2022, <https://www.chathamhouse.org/2022/03/un-vote-russia-invasion-shows-changing-africa> (accessed 30 October 2022).

<sup>57</sup> Juliette McIntyre and Adam Simpson, "Myanmar's Genocide Overshadowed by Ukraine," *East Asia Forum*, 5 October 2022, <https://www.eastasiaforum.org/2022/10/05/myanmars-genocide-overshadowed-by-ukraine/> (accessed 30 October 2022).

case at hand, an Art. 63 intervention does not make a third state a party to the proceedings. The states that intervened in *Ukraine v. Russia* have made it clear that they do not seek to become parties to the proceedings, but that their interventions exclusively pertain to issue regarding the construction of the Convention.<sup>58</sup> The Art. 63 declarations raised the issue of the scope of the intervention, in particular, whether the observations of intervening states pertaining to the construction of the Genocide Convention may include both issues of jurisdiction as well as merits. Based on the wording of Art. 63 and the ICJ's earlier practice, there appears to be a commonly shared stance that Art. 63 declarations do not hinder intervening states from seeking the construction of jurisdictional issues on equal footing with issues pertaining to the merits.<sup>59</sup> Hence, the majority of intervening states submitted their observations with respect to issues of jurisdiction and merits. Germany, Austria and Greece were exceptions in that they limited their intervention to matters of jurisdiction.

In the context of the present case, an important procedural issue is whether Art. IX of the Genocide Convention, which allows state parties to bring a dispute in relation to the interpretation, application or fulfilment of the Convention, may encompass non-violation claims by the Applicant State. In the case in question, Ukraine ultimately seeks to prove that it has not violated the terms of the Genocide Convention, as it stands falsely accused by Russia of committing "genocide in Donbas" in order to justify Russia's aggression against Ukraine. The intervening states argue that non-violation complaints fall within the scope of Art. IX, and the ICJ may entertain its jurisdiction in cases when a state accused of genocide argues that such accusations are without merit.<sup>60</sup> Some intervening states pay more attention to the wording of the compromissory clause, submitting observations regarding the meaning of separate words in the clause "disputes ... relating to"<sup>61</sup> ... the fulfilment<sup>62</sup> of the present Convention, including those relating to the responsibility of a State for genocide ... "<sup>63</sup> The intervening states argue that the jurisdiction of the ICJ under Art. IX extends to disputes concerning the fulfilment of the duty to prevent and punish under Art. I, which encompasses the present dispute regarding Russia's unilateral use of force for the purported prevention and punishment of genocide under

<sup>58</sup> E.g. ICJ Latvia Declaration, para. 12; ICJ New Zealand Declaration, para. 13; ICJ Denmark Declaration, paras 10–11; ICJ Estonia Declaration, para. 18; ICJ Italy Declaration, paras 16–17; ICJ Ireland Declaration, para. 11; ICJ German Declaration, para. 17; ICJ Finland Declaration, paras 11–13; ICJ USA Declaration, para. 11; ICJ Sweden Declaration, para. 18; ICJ Spain Declaration, paras 11, 14; ICJ Romania Declaration, paras 12–13; ICJ Poland Declaration, paras 10–11; ICJ Portugal Declaration, para. 15; ICJ Austria Declaration, para. 7; ICJ Greece Declaration, para. 18; ICJ Australia Declaration, para. 8; ICJ Croatia Declaration, paras 11, 14.

<sup>59</sup> ICJ Latvia Declaration, paras 15–20; ICJ Lithuania Declaration, para. 18; ICJ New Zealand Declaration, para. 17; ICJ Denmark Declaration, para. 13; ICJ Estonia declaration, para. 15; ICJ Spain Declaration, para. 12; ICJ Poland Declaration, para. 11; ICJ German Declaration, para. 25; ICJ Finland Declaration, para. 14; ICJ Portugal Declaration, paras 17–19; ICJ Greece Declaration, para. 25; ICJ Croatia Declaration, para. 12.

<sup>60</sup> ICJ Latvia Declaration, paras 40–44; ICJ UK Declaration, paras 32–33; ICJ Denmark Declaration, para. 23; ICJ Estonia, paras 31–32; ICJ Ireland Declaration, paras 23–25; ICJ Finland Declaration, paras 29–33; ICJ Romania Declaration, paras 27–30; ICJ Portugal Declaration, para. 27; ICJ Austria Declaration, paras 21–23; ICJ Greece Declaration, para. 37; ICJ Australia Declaration, paras 34–38; ICJ Croatia Declaration, paras 26–31.

<sup>61</sup> ICJ Denmark Declaration, para. 25; ICJ Estonia Declaration, paras 34–35; ICJ Portugal, para. 25; ICJ Greece Declaration, paras 31–32.

<sup>62</sup> ICJ Latvia Declaration, para. 41; ICJ Lithuania, para. 23; ICJ UK Declaration, para. 33; ICJ Portugal, para. 26; ICJ Austria Declaration, para. 33; ICJ Greece Declaration, para. 35.

<sup>63</sup> ICJ Lithuania, para. 24; ICJ Denmark Declaration, para. 24; ICJ Estonia Declaration, para. 27; ICJ Austria Declaration, paras 37–38.

Art. I.<sup>64</sup> Many of the intervening states emphasize that the ICJ has the jurisdiction to declare the absence of genocide linked to the breach of the good faith obligations under the Convention as resulting in the abusive interpretation of the Convention's provisions.<sup>65</sup>

One of the most important issues of substantive law that requires resolution is the scope of the duty to prevent and punish under Art. I of the Genocide Convention and its interplay with other provisions, in particular Art. VIII of the Convention. What runs like a red thread through the declarations is a reference to the good faith fulfilment of treaty obligations in line with the Vienna Convention on the Law of Treaties 1969 that precludes the abusive interpretation of the treaty that frustrates the object and the purpose of the Genocide Convention.<sup>66</sup> New Zealand makes a somewhat a novel argument that the fulfilment of the good faith requirement in relation to Art. IX entails a respondent state's participation in the proceedings as well as its compliance with respective court orders and judgments.<sup>67</sup> The UK advances the good faith discussion by enumerating a number of acts that may be considered as contributing towards the abusive assessment of the occurrence of genocide, including inter alia, manufacturing evidence of the commission of genocide.<sup>68</sup> In addition to the good faith requirement, some states place emphasis on exercising "due diligence" in assessing whether genocide is taking place or there is "a serious risk ... genocide will be committed" in a situation where a state "purports to allegedly prevent genocide" under Art. I.<sup>69</sup> Furthermore, the intervening states caution against "unilateral and unfounded allegations of genocide" that are not supported by "fully conclusive" evidence that genocide has in fact been committed or there is a serious risk of it occurring.<sup>70</sup>

Lithuania appears to lower the bar to "substantial evidence" on the existence of genocide or a "serious risk that it will be committed."<sup>71</sup> Poland sets out that action based on claims of genocide is impermissible in the absence of "serious evidence of its commission."<sup>72</sup> New Zealand and Portugal maintain that the claim of genocide must be satisfied "on the facts" and supported by "compelling evidence" that genocide "has, or is about, to occur".<sup>73</sup> The UK and Denmark emphasize the "good faith assessment of all relevant evidence on an objective basis" as to whether genocide is occurring or there is a serious risk of genocide occurring.<sup>74</sup>

As for the scope of the duty to punish genocide, intervening states appear to agree that it is mostly associated with punitive measures linked to individual criminal

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<sup>64</sup> ICJ Lithuania, para. 24; ICJ UK Declaration, para. 43; ICJ Denmark Declaration, paras 24–25; ICJ Estonia Declaration, para. 33; ICJ German Declaration, paras 35–45; ICJ Poland Declaration, paras 31–32; ICJ Spain Declaration, paras 26–30; ICJ Sweden Declaration, paras 34–38; ICJ Romania Declaration, para. 31; ICJ Greece Declaration, paras 31–32.

<sup>65</sup> ICJ Denmark Declaration, para. 30; ICJ Estonia Declaration, para. 33; ICJ Portugal Declaration, para. 28; ICJ Austria Declaration, para. 42; ICJ Greece Declaration, para. 41.

<sup>66</sup> ICJ Latvia Declaration, paras 45–46; ICJ Lithuania Declaration, para. 20; ICJ New Zealand Declaration, paras 18–19; ICJ UK Declaration, para. 54; ICJ Denmark Declaration, para. 31; ICJ Estonia Declaration, para. 41; ICJ Finland Declaration, para. 20; ICJ Sweden Declaration, para. 44; ICJ Romania Declaration, paras 19–20; ICJ Ireland Declaration, paras 18–19; ICJ Portugal Declaration, para. 35; ICJ Austria Declaration, paras 40–42; ICJ Greece Declaration, para. 29; ICJ Australia Declaration, paras 24–26.

<sup>67</sup> ICJ New Zealand Declaration, para. 25.

<sup>68</sup> ICJ UK Declaration, para. 54.

<sup>69</sup> ICJ Lithuania Declaration, para. 20; ICJ UK Declaration, para. 53; ICJ Denmark Declaration, para. 37; ICJ Estonia Declaration, para. 44; ICJ USA Declaration, para. 22; ICJ Finland Declaration, para. 22; ICJ Australia Declaration, paras 49–51.

<sup>70</sup> ICJ Latvia Declaration, para. 47; ICJ Romania Declaration, paras 38–41; ICJ Sweden Declaration, para. 45; ICJ Estonia Declaration, para. 42; ICJ USA Declaration, para. 26.

<sup>71</sup> ICJ Lithuania Declaration, para. 20.

<sup>72</sup> ICJ Poland Declaration, para. 38.

<sup>73</sup> ICJ New Zealand Declaration, paras 32–33; ICJ Portugal Declaration, para. 37.

<sup>74</sup> ICJ UK Declaration, para. 58; ICJ Denmark Declaration, para. 36.

responsibility and does not extend to cover situations, where one state seeks to “punish” another state through unleashing military force against it or its population.<sup>75</sup>

In terms of the appropriate international fora for addressing grievances relating to genocide as a matter of preference, reference has been made to Art. VIII, which includes a possibility to engage the UN to take appropriate measures for the prevention and suppression of genocide,<sup>76</sup> although it is not viewed either as an exhaustive<sup>77</sup> or a binding measure.<sup>78</sup> Recourse to the UN is construed as a reflection of the Genocide Convention’s “strong emphasis” on “multilateralism and application of international law”<sup>79</sup> and the preference for “collective institutional measures to prevent and suppress genocide.”<sup>80</sup> In addition, it has been pointed out that the duty to prevent and punish under Art. I may be discharged by states through recourse to domestic and international penal tribunals, such as the International Criminal Court.<sup>81</sup> Denmark and Estonia emphasize international cooperation in upholding values enshrined in the Genocide Convention, and construe Art. VIII, Art. IX and the Preamble of the Convention as creating “a duty to employ multilateral and peaceful means to prevent genocide” prior to undertaking “unilateral action as a matter of last resort”.<sup>82</sup> Similarly, Romania, Sweden and Portugal interpret Art. VIII as signalling the essence of the Genocide Convention that enshrines a preference for international cooperation and collective action rather than for undertaking unilateral measures.<sup>83</sup> Additionally, Estonia, Sweden and Finland refer to the “good practice” of engaging independent UN investigative mechanisms in order to ascertain whether a situation qualifies as genocide.<sup>84</sup>

The interventions make clear that resorting to the unlawful use of force cannot be regarded as a means of fulfilling the duty to prevent and punish in Art. I of the Genocide Convention.<sup>85</sup> However, the intervening states tend to omit any discussion as to whether the use of force may be justified when the international community is confronted with genuine claims of genocide under the R2P doctrine. Lithuania and Estonia advance an argument that the combined reading of Art. I and Art. VIII conditions “legality of any unilateral preventive measure pursuant to Art I ... in the territory of another state” to the prior action by the competent UN organs or their failure to do so.<sup>86</sup> Denmark makes an identical argument,<sup>87</sup> however, it expressly outlines that it does not consider that the construction of the Genocide Convention necessitates a discussion of the broader issues

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<sup>75</sup> ICJ Lithuania Declaration, para. 21; ICJ UK Declaration, paras 63–65; ICJ Denmark Declaration, para. 39; ICJ Estonia Declaration, para. 47; ICJ Finland Declaration, para. 23; ICJ Poland Declaration, paras 40–41; ICJ Australia Declaration, para. 54.

<sup>76</sup> ICJ Latvia Declaration, para. 48; ICJ USA Declaration, para. 27; ICJ Sweden Declaration, para. 53; ICJ Romania Declaration, para. 44; ICJ Finland Declaration, para. 26.

<sup>77</sup> ICJ New Zealand Declaration, para. 31; ICJ Portugal Declaration, para. 40.

<sup>78</sup> ICJ UK Declaration, para. 57.

<sup>79</sup> *Ibid.*

<sup>80</sup> ICJ Estonia Declaration, para. 50.

<sup>81</sup> ICJ Latvia Declaration, para. 48; ICJ Romania Declaration, para. 45; ICJ Sweden Declaration, para. 49.

<sup>82</sup> ICJ Denmark Declaration, para. 34; ICJ Estonia Declaration, para. 45.

<sup>83</sup> ICJ Sweden Declaration, para. 54; ICJ Romania Declaration, para. 44; ICJ Portugal Declaration, para. 41.

<sup>84</sup> ICJ Estonia Declaration, para. 43; ICJ Sweden Declaration, para. 46; ICJ Finland Declaration, para. 22; ICJ Australia Declaration, paras 52–53.

<sup>85</sup> ICJ Latvia Declaration, paras 50–54; ICJ Estonia Declaration, para. 46; ICJ New Zealand Declaration, para. 31; ICJ Finland Declaration, paras 24, 35; ICJ Sweden Declaration, para. 48; ICJ Portugal Declaration, para. 40; ICJ Australia Declaration, para. 55.

<sup>86</sup> ICJ Lithuania Declaration, para. 22; ICJ Estonia Declaration, para. 51.

<sup>87</sup> ICJ Denmark Declaration, para. 42.

linked to the unilateral use of force, such as humanitarian intervention.<sup>88</sup> Portugal makes a broad argument that the legality of any unilateral action should be assessed against Art. VIII and the obligations enshrined in the UN Charter.<sup>89</sup> Meanwhile, New Zealand makes then most far-fetched argument on the existence of “an emerging customary norm of unilateral humanitarian intervention” in exceptional circumstances when it is necessary to protect population from genocide.<sup>90</sup> It appears that the majority of intervening states advocate for a narrow construal of the Genocide Convention omitting a broader discussion on the legality of the use of force in response to “grave humanitarian crises” known as “humanitarian intervention”.<sup>91</sup>

The interventions that have poured in signify several important aspects. As previously mentioned, they are symbolic in that they display a united “Western” and European stance in condemning Russian actions in Ukraine and show how the intervening nations stand in solidarity with Ukraine. The interventions also symbolize the united stance of the states submitting the declarations especially in advocating for the ICJ’s exercise of its jurisdiction in the present case.<sup>92</sup> Moreover, despite Russia’s recent filing of its preliminary objections to the jurisdiction in the case, this concurrence on the issue of the exercise of jurisdiction by the intervening states may have a positive impact on the ICJ’s analysis of the scope of its jurisdiction, thus allowing Ukraine’s case to proceed swiftly to the merits stage.<sup>93</sup> What is also important to note is that as the case progresses and as the two parties shape their legal arguments, the intervening states may take further steps to amend their declarations of intervention to reflect their respective positions.<sup>94</sup> The interventions also raise important procedural questions as to how the Court will decide to address such declarations. While there is a possibility that the ICJ may dismiss the declarations altogether, the overwhelming concurrence between the intervening states in arguing their right to intervene, may have created a situation where it is difficult for the Court to refuse to consider the declarations on technical grounds and deny admissibility.<sup>95</sup> Should the ICJ’s stance be in favour of the intervening states, it is then yet to be seen how it will choose to afford time to such states in the oral proceedings for presenting their arguments. According to some commentators, in tackling this issue, the Court may choose one of three options, namely: (i) grouping several submissions together (as agreed to by states such as Greece, Germany and Austria<sup>96</sup>); (ii) choosing to only hear submissions by the representatives of selected states; or (iii) allocating a time slot at the end of the proceedings to each of the intervening states to make submissions.<sup>97</sup>

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<sup>88</sup> Ibid., para. 38.

<sup>89</sup> ICJ Portugal Declaration, para. 40.

<sup>90</sup> ICJ New Zealand Declaration, para. 31.

<sup>91</sup> ICJ UK Declaration, para. 62; ICJ Denmark Declaration, para. 38.

<sup>92</sup> Juliette McIntyre, “The Russia-Ukraine War: Contemporary Developments and Challenges,” University of Newcastle, Australia University of Newcastle, Australia: YouTube, 17 October 2022, <https://www.youtube.com/watch?v=ZzWWNeCL-wI> (accessed 21 October 2022).

<sup>93</sup> Ibid.

<sup>94</sup> Ibid. E.g. ICJ Austria Declaration, paras 16–17.

<sup>95</sup> McIntyre, “The Russia-Ukraine War.”

<sup>96</sup> States such as Greece, Germany, and Austria have expressed their willingness to work collaboratively in presenting their arguments so as to assist the Court in the interest of an “expedient administration of justice”. ICJ Greece Declaration, para. 19; ICJ German Declaration, para. 19; ICJ Austria Declaration, para. 8.

<sup>97</sup> McIntyre, “The Russia-Ukraine War”.

## Genocide by Russia?

Whereas Ukraine's present case is limited to the false claim of genocide, it has the potential to go beyond this by advancing a claim that Russia has engaged in genocide against Ukrainians as a protected national group under the Genocide Convention. The ICJ is competent to adjudge a claim of whether Russia has violated the Genocide Convention by committing genocide against Ukrainians. The Court has earlier found that an obligation not to commit genocide, although not being explicitly mentioned in the Convention, "follows from the expressly stated obligation to prevent the commission of acts of genocide".<sup>98</sup> Elaborating on the scope of the duty to prevent, it emphasized that it would be "paradoxical" if states were only under an obligation to prevent, but "were not forbidden to commit such acts".<sup>99</sup> Hence, the case law of the ICJ has clearly spelled out that "the obligation to prevent genocide implies the prohibition of the commission of genocide".<sup>100</sup>

State responsibility for genocide is predicated on the actual commission of the crime of genocide. The ICJ is not a criminal court and thus cannot attribute guilt for the crime of genocide to individual perpetrators. Hence, in its earlier case law, the ICJ chose to defer to the findings of an international criminal tribunal such as the ICTY when deciding whether genocide had been committed by Serbia on the territory of Croatia and Bosnia, prior to engaging in the discussion as to what extent Serbia breached its obligations under the Genocide Convention.<sup>101</sup> However, despite such deferral to the ICTY's findings on genocide, the ICJ outlined that there was no legal bar against it making a "finding that genocide or the other acts enumerated in Article III have been committed [...] while applying the standard of proof appropriate to charges of exceptional gravity."<sup>102</sup> The ICJ found that "State responsibility can arise under the Convention for genocide and complicity, without an individual being convicted of the crime or an associated one."<sup>103</sup> Hence, in the present instance, even in the absence of any finding of individual criminal responsibility for genocide by an international body such as the International Criminal Court (ICC), which is currently seized of the situation in Ukraine,<sup>104</sup> the ICJ is not barred from making its determination regarding Russia's state responsibility for genocide.

In Ukraine, the first allegations of genocide began to emerge following the discovery of mass graves and the emergence of horrific scenes containing the lifeless bodies of civilians strewn across the streets of Bucha and other deoccupied areas in the Kyiv region.<sup>105</sup> World leaders joined in the condemnation of the crimes committed by the Russian forces against civilians. Former UK prime minister, Boris Johnson stated in April 2022 that the attacks on civilians in Bucha did not "look far short of

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<sup>98</sup> International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 26 February 2007, I.C.J. Reports 2007, p. 43, para. 166 (hereinafter – Bosnian Genocide Judgment).

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid., para. 223 (finding the ICTY findings "highly persuasive"); International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Croatia v. Serbia), Judgment, 3 February 2015, I.C.J. Reports 2015, p. 3, paras 440–441.

<sup>102</sup> Bosnian Genocide Judgment, para. 181.

<sup>103</sup> Ibid., para. 182.

<sup>104</sup> International Criminal Court, "Situation in Ukraine," International Criminal Court, <https://www.icc-cpi.int/ukraine> (accessed 1 September 2022).

<sup>105</sup> CNN, "Zelensky Accuses Russia of Genocide in Ukraine," CNN, 4 April 2022, <https://edition.cnn.com/videos/world/2022/04/04/ukraine-russia-zelensky-genocide-bucha-nr-vpx.cnn> (accessed 1 September 2022).

genocide.”<sup>106</sup> The same month, US president, Joe Biden stated that Putin was attempting to “wipe out the idea” of a Ukrainian identity and accused Russian forces of committing genocide in Ukraine.<sup>107</sup> In addition, the Canadian House of Commons unanimously passed a resolution recognizing that Russia has committed genocide against the Ukrainian people.<sup>108</sup> The Lithuanian, Latvian and Estonian parliaments followed suit by recognizing that Russia had engaged in genocide against the Ukrainian people.<sup>109</sup> On the home front, the Ukrainian parliament passed a decree, in which it recognized that the actions of the Russian political and military leadership, and Russian armed forces amount to the crime of genocide.<sup>110</sup> It provided a long, albeit a non-exhaustive, list of underlying acts that are believed to have been accompanied by genocidal intent, such as: (1) wilful killings and other violent crimes (e.g. murder, torture, enforced disappearances, imprisonment committed on the territory of the Kyiv region); (2) deliberate imposition of conditions to bring about the destruction of the group (e.g. intentional destruction of civilian infrastructure indispensable for the survival of civilians, blockade of humanitarian corridors intended for the evacuation of civilians, siege of Ukrainian cities and villages, etc.); (3) infliction of serious physical and mental harm upon civilians, including clergy, journalists, activists, governmental and NGO representatives; (4) forcible transfer of children from the occupied territories to Russia; and lastly, (5) the imposition of measures intended to interfere with the Ukrainian economic development that are calculated to bring about the slow destruction of the group (e.g. obstruction of grain sowing campaigns, blockade of trade routes, etc.).<sup>111</sup>

The provided instances of alleged genocide correspond to the underlying genocidal acts as defined in the case law of international criminal courts and tribunals, with the exception of the economic interference that has been interpreted by the Ukrainian parliament as being capable of bringing about the slow destruction of the group. Yet it is doubtful that Russia’s destructive acts aimed at undermining the Ukrainian economy satisfy the *actus reus* of genocide. However, the situation could have been different if, for example, Russia’s obstruction of agricultural sowing activities would have resulted in the starvation of civilians and led to the physical destruction of members of the group.

As mentioned above, the term “genocide” was initially prominently used in response to the crimes committed in Bucha and the surrounding deoccupied areas in the Kyiv region. However, the allegations of genocide surfaced yet again following the deoccupation of

<sup>106</sup> Joseph Lee and Doug Faulkner, “Ukraine War: Bucha Deaths ‘Not Far Short of Genocide’ – PM,” *BBC News*, 6 April 2022, <https://www.bbc.com/news/uk-61011022> (accessed 1 September 2022).

<sup>107</sup> Steve Holland and Jeff Mason, “Biden Accuses Russia of Genocide in Ukraine,” *Reuters*, 12 April 2022 <https://www.reuters.com/world/biden-says-americans-should-not-pay-price-dictator-who-commits-genocide-2022-04-12/> (accessed 1 September 2022). See also Remarks by President Biden Before 77th Session of the United Nations General Assembly, *The White House*, 21 September 2022, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/09/21/remarks-by-president-biden-before-the-77th-session-of-the-united-nations-general-assembly/> (accessed 21 September 2022).

<sup>108</sup> Elizabeth Whatcott, “Compilation of Countries Statements Calling Russian Actions in Ukraine ‘Genocide,’” *Just Security*, 20 May 2022, <https://www.justsecurity.org/81564/compilation-of-countries-statements-calling-russian-actions-in-ukraine-genocide/> (accessed 1 September 2022).

<sup>109</sup> *Ibid.*

<sup>110</sup> Verkhovna Rada of Ukraine, “Declaration on the Commission of Genocide by the Russian Federation in Ukraine, No. 2188-IX,” Verkhovna Rada of Ukraine, 14 April 2022, <https://zakon.rada.gov.ua/laws/show/2188-20#Text> (accessed 1 September 2022).

<sup>111</sup> *Ibid.*

large swathes of the Kharkiv region during a successful Ukrainian-led counteroffensive, which led to the grim discovery of mass graves in the forest near Izyum. More than 440 bodies were discovered, with the majority of victims being civilians.<sup>112</sup> Many bodies bore horrific signs of torture, and some civilians died as a result of rocket attacks and were buried in the forest to conceal the traces of crimes by Russian forces.<sup>113</sup> President Zelenskyy delivered a speech in which he accused Russia of razing the city to the ground and genocide of Ukrainian people.<sup>114</sup> The overwhelming evidence of death and torture of civilians paints a grim picture of a genocidal campaign unleashed by the occupying Russian forces against Ukrainians who were targeted for the physical destruction on account of the belonging to a national group.

However, the difficulty in proving the crime of genocide rarely lies with the physical element of the crime (i.e. *actus reus*). It is the mental element, i.e. genocidal intent, that has proved to be the stumbling block in many cases. The crime of genocide requires a double intent (i.e. a general intent in relation to the underlying genocidal act(s), as well as a surplus or ulterior intent (*dolus specialis*) going beyond *actus reus*, which is “the intent to destroy” a protected group, in whole or in part, as such. The case law of international courts and tribunals has consistently embraced a purpose-based definition of genocidal intent, having rejected a less rigorous knowledge-based definition to intent.<sup>115</sup> In other words, it does not suffice to prove the perpetrator’s knowledge that the acts in question will lead to the destruction of the protected group, however, it should be demonstrated that it is the express purpose of the perpetrator to destroy the protected group, in whole or in part, as such.<sup>116</sup>

An important prerequisite for establishing the crime of genocide is to ascertain that the group in question is protected under the Genocide Convention, thus meeting a set of criteria for defining a national, ethnic, racial or religious group.<sup>117</sup> Applying the definition of a national group as formulated by the International Criminal Tribunal for Rwanda (ICTR) in *Akayesu* (i.e. “collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties”),<sup>118</sup> it may be convincingly concluded that Ukrainians constitute a national group protected by the Genocide Convention.<sup>119</sup> The practice of forced passportization that has been implemented by Russians since 2014 and is currently being attempted to be enforced in the occupied territories, does not, in any case, change the national group membership for those affected, as their Ukrainian citizenship and status of belonging to the Ukrainian national group remain intact.<sup>120</sup>

<sup>112</sup> President Zelenskyy’s Video Address, *The Presidential Office of Ukraine*, 16 September 2022, <https://www.president.gov.ua/videos/rosiya-povtorila-v-izyumi-te-sho-zrobita-v-buchi-svit-povine-3249>.

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> ICTR, *The Prosecutor v. Jean-Paul Akayesu*, Judgment, Case No. ICTR-96-4-T, Trial Chamber I, 2 September 1998 (hereinafter *Akayesu* Trial Judgement), paras 517–518; ICTY, *The Prosecutor v. Goran Jelisić*, Judgment, Case No. IT-95-10-A, Appeals Chamber, 5 July 2001, paras 42–52.

<sup>116</sup> Kai Ambos, “What Does ‘Intent to Destroy’ in Genocide Mean?” *International Review of the Red Cross* 91, no. 876 (2009): 838–839.

<sup>117</sup> *Akayesu* Trial Judgement, paras 512–515.

<sup>118</sup> *Ibid.*, para. 512.

<sup>119</sup> *Ibid.*

<sup>120</sup> Decree of the President of the Russian Federation dated 11.07.2022, No 440, “On amending the decree of the President of the Russian Federation dated 24 April 2019,” No 183, “On defining on humanitarian grounds persons who are entitled to apply for Russian citizenship in accordance with a simplified procedure” and Decree of the

One may question whether Russia targets victims based on their ethnicity rather than nationality. The Russian ethnic group constitutes only 17.3% of Ukrainian population.<sup>121</sup> This number should not be conflated with the percentage of the Russian-speaking population in Ukraine. Prior to 2022, a sociological survey showed that 31.8% of Ukrainians used Russian in their daily lives.<sup>122</sup> Regardless of ethnicity and the language spoken, all those who live in Ukraine constitute the Ukrainian nation with a commonly shared legal bond of Ukrainian nationality. As evidenced by the atrocities committed in eastern Ukraine that is home to a predominantly Russian speaking population and higher numbers of ethnic Russians, no one has been spared from death and violence. Russians have often claimed they target “banderivtsi” or “Nazis,” which they use as derogatory words to describe supporters of Ukrainian statehood. This demonstrates that Ukrainians are targeted based on their belonging to a national group rather than their ethnicity or language.

### **Intent to Destroy**

The next step is to determine whether the intent is related to the destruction of the protected group. In this sense, the “destruction of a group” means “the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group.”<sup>123</sup> There are traces of both physical and cultural destruction of Ukrainians as a national group exhibited by the actions of the Russian leadership and Russian forces. As for the physical destruction, Ukrainians have been subjected to unprecedented levels of violence from Russian forces (i.e. killings, attacks against civilians and civilian infrastructure, the use of prohibited weapons to maximize the damage and death toll).<sup>124</sup> Although some actions did not lead to immediate physical destruction, they have nevertheless paved the way for a slow death. This especially holds true for the horrendous situation in occupied Mariupol, a city which epitomises despicable suffering and a major humanitarian catastrophe.<sup>125</sup> Here, the absence of access to clean water, food, medicine and healthcare are intended measures to bring about the physical destruction of the group. In Mariupol, the Russian leadership appears to have made a conscious decision to blatantly disregard civilian lives and reduce the city to rubble. Russian forces have not only destroyed the

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President of the Russian Federation dated 29 April 2019, No 187 “On separate categories of foreign citizens and stateless persons who are entitled to apply for Russian citizenship in accordance with a simplified procedure,” Official Internet Portal of Legal Information, <http://publication.pravo.gov.ru/Document/View/0001202207110002> (accessed 1 September 2022) (in Russian).

<sup>121</sup> Valentyna Borysenko, “How Many ‘Peoples’ Live in Ukraine,” *Government’s Gazette*, 9 June 2017, <https://ukurier.gov.ua/uk/articles/skilki-narodiv-zhive-v-ukrayini/> (accessed 1 September 2022) (in Ukrainian).

<sup>122</sup> Larysa Masenko, “Language Situation in Socio-Linguistic Dimensions: War with Russia Affected Many [Ukrainians],” *Radio Svoboda*, 1 May 2020, <https://www.radiosvoboda.org/amp/30586236.html> (accessed 1 September 2022) (in Ukrainian).

<sup>123</sup> ILC Report (1996), Draft Code of Crimes Against the Peace and Security of Mankind, Article 17 (commentary), pp. 45–46, para. 12; ICTR, *The Prosecutor v. Laurent Semanza*, Judgment and Sentence, Case No. ICTR-97-20-T, Trial Chamber III, 15 May 2003, para. 315; ICTY, *The Prosecutor v. Radislav Krstić*, Judgment, Case No. IT-98-33-A, Appeals Chamber, 19 April 2004, para. 25 (original footnote omitted).

<sup>124</sup> OHCHR, *Situation of Human Rights in Ukraine in the Context of the Armed Attack by the Russian Federation* (24 February – 15 May 2022), 29 June 2022; Human Rights Watch, “Ukraine: Apparent War Crimes in Russia-Controlled Areas,” 3 April 2022, <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas> (accessed 1 September 2022).

<sup>125</sup> Paul Niland, “Putin’s Mariupol Massacre is One of the 21st Century’s Worst War Crimes,” *Atlantic Council*, 24 May 2022, <https://www.atlanticcouncil.org/blogs/ukrainealert/putins-mariupol-massacre-is-one-the-worst-war-crimes-of-the-21st-century/> (accessed 1 September 2022).

foundations of livelihood but have also physically killed thousands of civilians who were later hastily buried in mass graves or burnt in mobile crematoria.<sup>126</sup>

One may question whether the siege of Mariupol only served Russian military objectives in creating a land corridor to Crimea, rather than constituting a campaign to physically destroy Ukrainians living in Mariupol. It is difficult to accept that only military goals have been pursued given the scale of devastation and death. The bombings of Mariupol theatre and maternity ward were devoid of any military objectives.<sup>127</sup> Likewise, the destruction of 95% of residential buildings in Mariupol hardly served any military purpose.<sup>128</sup> The blocking of humanitarian corridors impeded the evacuation of thousands of civilians who were doomed to death by falling bombs and had to endure unbearable living conditions described as “hellish.”<sup>129</sup> To suggest that the violence and death in Mariupol did not reach the intensity threshold to qualify as genocide is to deny the ground realities that Ukrainians living in besieged Mariupol had to endure: they were systematically targeted for destruction with no option of fleeing the city unless they were willing to put their lives at risk by choosing dangerous escape routes.<sup>130</sup>

The trail of death that the Russian military left behind in deoccupied Bucha and Izyum is shocking as many civilians died or those who survived endured torture and inhuman treatment in “torture chambers.”<sup>131</sup> It appears that civilians were killed or tortured on a whim simply because they were Ukrainians and perceived as being hostile to the Russian military.<sup>132</sup> The replication of the Bucha scenario in other deoccupied areas points towards the existence of a deliberate policy to target Ukrainians for destruction. In deoccupied Bucha, women were subjected to systematic rape and sexual violence by Russian soldiers. They testified that during the occupation, they had been threatened by Russian soldiers to be raped to the point where they would refuse “sexual contact with any man in the future to hinder them from having Ukrainian children”.<sup>133</sup> In addition, the Ukrainian Security Service routinely publishes intercepted phone conversations of Russian soldiers who boast to their relatives about killing Ukrainian civilians and speaking about victims in a dehumanizing manner.<sup>134</sup>

<sup>126</sup> Halya Coynash, “Russia Accused of Using Mobile Crematoria to Hide Its War Crimes in Mariupol,” Kharkiv Human Rights Protection Group, 11 April 2022, <https://khpgrg.org/en/1608810391> (accessed 1 September 2022).

<sup>127</sup> Amnesty International, “Ukraine: Deadly Mariupol Theatre Strike ‘A Clear War Crime’ by Russian Forces,” 30 June 2022, <https://www.amnesty.org/en/latest/news/2022/06/ukraine-deadly-mariupol-theatre-strike-a-clear-war-crime-by-russian-forces-new-investigation/> (accessed 1 September 2022); Truth Hounds, “Labour of Truth: Myths and Reality: Russia’s Attack on a Maternity Hospital in Mariupol as a War Crime,” 16 March 2022, <https://truth-hounds.org/en/myths-and-reality-russias-attack-on-a-maternity-hospital-in-mariupol-as-a-war-crime/> (accessed 1 September 2022) (in Ukrainian).

<sup>128</sup> BBC Interview with President Zelenskyy, “It Is Not War, It Is Genocide”: Full Text of the Interview, 14 April 2022, [https://www.bbc.com/russian/features-61100748?ocid=wsrussian.social.in-app-messaging.telegram..russiantelegram.\\_edit](https://www.bbc.com/russian/features-61100748?ocid=wsrussian.social.in-app-messaging.telegram..russiantelegram._edit) (accessed 1 September 2022).

<sup>129</sup> Pjotr Sauer and Andrew Roth, “‘It was worse than hell’: Life in Mariupol Under Russian Occupation,” *The Guardian*, 16 June 2022, <https://www.theguardian.com/world/2022/jun/16/ukraine-life-in-mariupol-under-russian-occupation> (accessed 25 October 2022).

<sup>130</sup> Noelle Quénivet, “The Conflict in Ukraine and Genocide,” *Journal of International Peacekeeping*, 25 (2022): 151; Telegram channel, Advisor to Mariupol City Mayor Petro Andriyushenko, 21 May 2022, 18:12 (on impossibility of leaving Mariupol for residents).

<sup>131</sup> Human Rights Watch, “Ukraine: Russian Forces Tortured Izyum Detainees”, 19 October 2022, <https://www.hrw.org/news/2022/10/19/ukraine-russian-forces-tortured-izium-detainees> (accessed 19 October 2022).

<sup>132</sup> Ibid.

<sup>133</sup> Ukraine conflict: “Russian soldiers raped me and killed my husband”, *BBC News*, 11 April 2022, <https://www.bbc.com/news/world-europe-61071243> (accessed 1 September 2022).

<sup>134</sup> E.g. Intercepted phone conversation on torture, in which Ukrainians were described as “not human” [ne lyudi], <https://armyinform.com.ua/2022/05/04/katuvannya-rosijskymy-vijskovymy-zdijsnyuyutsya-pid-kontrolem-fsb/>, 4 May 2022

Apart from the intent to physically destroy Ukrainians, Russian genocidal intent can also be evinced from its systematic practice of forcibly transferring Ukrainian children from the occupied areas to Russia. This underlying genocidal act is under-explored in the case law of international criminal courts and tribunals. In fact, it sits somewhat uncomfortably with the intended physical destruction of a particular group. As evidenced by the earlier practices of the forcible transfer of children from one group to another (e.g. removal of aboriginal children from their indigenous communities in Australia,<sup>135</sup> removal of Greenlandic children by Denmark<sup>136</sup>), it is rare that the physical destruction is intended. In such instances, the children's cultural identity and self-identification with a particular group are targeted.<sup>137</sup> The effects of the forcible transfer on such children are serious and mentally destabilizing, since they lose ties with their culture, language and communities. Subjecting children to forcible transfer from one group to another for assimilation or re-education purposes is tantamount to physical destruction, as the very survival of the group depends on its future generation.<sup>138</sup>

In the context of Ukraine, the forcible transfer of children, who are later put up for "fast-track" adoption in Russia, has taken place in a particularly coercive manner, with reported instances of removal of orphaned children and children separated from their families by war in the occupied areas.<sup>139</sup> Recently, the European Parliament condemned the practice of forcible transfer of Ukrainian children to Russia as "genocide", which has been undertaken by the Russian authorities with the aim of "forced assimilation" by putting those children through forced adoption and forced passportization.<sup>140</sup> While forcible transfer of children as an underlying genocidal act may be less shocking than the physical destruction of the group, its implications are far-reaching for the very survival of the group. In this process, Ukraine stands to lose thousands of children who will be raised and educated as "Russians" leading to the severance of all ties to their Ukrainian heritage.<sup>141</sup>

The presence of genocidal intent is also evidenced by the assault on Ukrainian culture. In the occupied territories, Russian forces burnt Ukrainian books, banned the Ukrainian language, destroyed cultural buildings and even changed the language on road and other signs from Ukrainian to Russian.<sup>142</sup> The attacks on culture do not qualify as genocide

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(accessed 1 September 2022); Security Service of Ukraine, Telegram Channel, 24 May 2022, 12:24 (on fulfilling a "dream" of killing "ukr" used as a derogatory word for Ukrainian).

<sup>135</sup> Australian Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997).

<sup>136</sup> Danish Prime Minister's Office, "Apology to 22 Greenlandic Children Who Were Sent to Denmark in 1951", 8 December 2020, <https://www.stm.dk/presse/pressemeldelser/undskyldning-til-de-22-groenlandske-boern-som-blev-sendt-til-danmark-i-1951/> (accessed 1 September 2022) (in Danish).

<sup>137</sup> Matthew Lippman, "Genocide: The Crime of the Century. The Jurisprudence of Death at the Dawn of the New Millennium," *Hous. J. Int'l L.* 23, no. 23(3) (2000): 467, at 524 (noting that forcible transfer of children "appears to constitute more of a cultural than a biological attack on the integrity of a group").

<sup>138</sup> GA, 6th Committee, 83rd meeting, UN Doc A/C.6/SR.83 (1948) (per Mr Perez Perozo), at 195.

<sup>139</sup> Human Rights Watch, "We Had No Choice": "Filtration" and the Crime of Forcibly Transferring Ukrainian Civilians to Russia," 1 September 2022, <https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians> (accessed 1 September 2022).

<sup>140</sup> European Parliament resolution on human rights violations in the context of the forced deportation of Ukrainian civilians to and the forced adoption of Ukrainian children in Russia (2022/2825RSP), 15 September 2022, [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0320\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0320_EN.html) (accessed 15 September 2022).

<sup>141</sup> Laurie R. Blank, "Forcible Transfer of Children in Ukraine: An Element of Genocide," *Jurist*, 21 April 2022, <https://www.jurist.org/commentary/2022/04/laurie-blank-russia-invasion-ukraine-genocide/> (accessed 1 September 2022).

<sup>142</sup> UNESCO, "Damaged Cultural Sites in Ukraine Verified by UNESCO," UNESCO, 20 August 2022, <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco> (accessed 1 September 2022). See also: Denis Azarov, Dmytro Koval, Gaiane Nuridzhanian and Volodymyr Venher, "Genocide committed by the Russian Federation in Ukraine: Legal Reasoning And Historical Context," 1 August 2022, SSRN: <https://ssrn.com/abstract=4217444> (accessed 1 September 2022), 28–30.

per se, but may serve as important evidence pointing to the existence of the requisite genocidal intent to physically destroy the group.<sup>143</sup> Overall, Russia's conduct in Ukraine "carries all the hallmarks of a genocidal campaign bent on eviscerating Ukrainian national identity."<sup>144</sup>

### ***In Whole or in Part?***

An important question arises as to whether the intent to physically destroy has been directed at the entire group or only part of it. Reflecting on the publicly available information, it appears that the term "genocide" can be plausibly used to describe the crimes committed with particular ruthlessness in Mariupol, and the deoccupied regions in Kyiv and Kharkiv regions (e.g. Bucha, Borodyanka, Izyum). The destruction envisioned by the Genocide Convention does not have to be aimed at the whole group, since the destruction of the group "in part" – yet a substantial part – would also satisfy the definition.<sup>145</sup> Whether the targeted part constitutes a substantial portion of the group can be ascertained based on geography or the sheer number of those targeted from the group in comparison to the total group.<sup>146</sup> In terms of the numeric size of the targeted group in Bucha and surrounding areas, more than 1,100 dead bodies have been recovered by Ukrainian authorities.<sup>147</sup> The number of victims in Mariupol is unknown, as the town remains under Russian control. However, even according to modest estimates, more than 20,000 have died, with 600 civilians perishing as a result of the strike on the Mariupol theatre alone.<sup>148</sup> It was confirmed that 447 bodies were exhumed from mass graves in Izyum, with the majority of those being civilians and only 22 bodies being identified as Ukrainian soldiers.<sup>149</sup> Ukrainian authorities estimate that over 200,000 children were forcibly transferred to Russia.<sup>150</sup> Given the numbers above, the targeted part of Ukrainians would satisfy the necessary "substantiality" requirement and qualify as "in part" within the definition of genocide. Moreover, had the Russian military succeeded in occupying larger swathes of Ukrainian territory, the above number of Ukrainian victims targeted for destruction would have been immeasurably higher. In attempting

<sup>143</sup> ICTY, *The Prosecutor v. Radovan Karadzic*, Judgment, Case No. IT-95-5/18-T, Trial Chamber, 24 March 2016, para. 553.

<sup>144</sup> Kristina Hook, "Why Russia's War in Ukraine Is a Genocide: Not Just a Land Grab, but a Bid to Expunge a Nation," *Foreign Affairs*, 28 July 2022, <https://www.foreignaffairs.com/ukraine/why-russias-war-ukraine-genocide> (accessed 1 September 2022).

<sup>145</sup> ICTY, *Prosecutor v. Radislav Krstić*, Judgment, Case No. IT-98-33-T, Trial Chamber, 2 August 2001 (hereinafter – *Krstić* Trial Judgment), para. 590; ILC Report (1996), Draft Code of Crimes Against the Peace and Security of Mankind, Article 17 (commentary), p. 45, para. 8.

<sup>146</sup> Catherine Renshaw, "The Numbers Game: Substantiality and the Definition of Genocide," *Journal of Genocide Research* (22 June 2021): 3; David Alonzo-Maizlish, "In Whole or in Part: Group Rights, the Intent Element of Genocide, and the Quantitative Criterion," *New York University Law Review* 77, no. 5 (2002): 1388.

<sup>147</sup> Yaroslav Pryshchepa, "1,167 Bodies of Ukrainians Were Found around Bucha, Says Ministry of Interior," *Suspilne Media*, 7 June 2022, <https://suspilne.media/247767-poblizu-buci-znajsli-vze-1137-til-zagiblih-ukrainciv-mvs/> (accessed 1 September 2022) (in Ukrainian).

<sup>148</sup> Saskya Vandoorne and Melissa Bell, "Mariupol Death Toll at 22,000, Says Mayor's Adviser," *CNN News*, 24 May 2022, [https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-05-24-22/h\\_95e94c548d8a5f49e0b97bc3415c9320](https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-05-24-22/h_95e94c548d8a5f49e0b97bc3415c9320) (accessed 1 September 2022).

<sup>149</sup> Ministry of Interior of Ukraine, "Igor Klymenko [Head of Ukrainian National Police]: Exhumation of Bodies Has Been Completed in Izyum," 24 September 2022, <https://www.kmu.gov.ua/news/igor-klymenko-ekshumatsiia-til-iz-mistsia-masovoho-pokhovannia-v-iziumi-zavershena> (accessed 24 September 2022) (in Ukrainian).

<sup>150</sup> Yuliya Sokolova, "[Russian] Occupiers Transferred to RF More Than 1 million Ukrainians, 200,000 of These are Children – Denysova [former Ukrainian Ombudsman]," *Fakty*, 9 May 2022, <https://fakty.com.ua/ua/ukraine/20220509-okupanty-vyvezly-do-rf-ponad-1-mln-ukrayinciv-z-nyh-200-tys-ditej-denisova/> (accessed 1 September 2022) (in Ukrainian).

to fend off the Russian army from advancing further into Ukraine, the Ukrainian armed forces have impeded Russia from carrying out genocide on a larger scale against Ukrainians.

### **As Such**

The term “as such” implies that the intent to destroy concerns a collection of people on account of their particular group identity based on nationality, race, ethnicity, or religion.<sup>151</sup> This characteristic connotes the gravity of the crime of genocide since the perpetrator denies a protected group the right to exist, thus infringing upon human diversity.<sup>152</sup> The Kremlin’s rhetoric that denies Ukrainians the right to exist as a nation combined with its vicious propaganda aimed not only at depriving Ukrainians of their national identity but also at dehumanizing them,<sup>153</sup> thus making them a “justified object” of violence by Russian forces, points to the fact that Ukrainians have been targeted based on their belonging to the Ukrainian national group.

### **Genocide or Wartime Terrorism?**

A series of missile strikes launched across the entirety of Ukraine with highly indiscriminate weapons aimed at the critical civilian infrastructure and civilian objects that have caused significant casualties and damage raises the question as to whether those attacks against the wider Ukrainian population may also point towards the existence of genocidal intent. Out of 4,500 rockets launched by Russia against Ukraine since February 2022, a staggering number of around 100 rockets and Iranian-made kamikaze drones were launched at major Ukrainian cities on a single day in Russia’s alleged retaliation for the partial destruction of the Kerch bridge linking Crimea and mainland Russia, with new waves of attacks that have followed.<sup>154</sup>

President Zelensky and other senior Ukrainian officials have spoken of the campaign of “missile terror” unleashed by Russian forces against Ukrainians and called on the UNSC to designate Russia as a state sponsor of terrorism.<sup>155</sup> While such calls remain unanswered by the UN, PACE became the very first international organization that designated Russia as a terrorist state.<sup>156</sup> The Ukrainian government’s insistence on designating

<sup>151</sup> ICTY, *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Appeals Chamber, 22 March 2006 (hereinafter – *Stakić Appeal Judgment*), para. 20.

<sup>152</sup> ILC Report (1996), Draft Code of Crimes Against the Peace and Security of Mankind, Article 17 (commentary), p. 45, para. 7; *Akayesu Trial Judgment*, para. 521; *Krstić Trial Judgment*, para. 552.

<sup>153</sup> Vladimir Putin, “Article by Vladimir Putin ‘On the Historical Unity of Russians and Ukrainians,’” President of Russia, 12 July 2021, <http://en.kremlin.ru/events/president/news/66181> (accessed 1 September 2022); Timofei Sergeitsev, “What Should Russia Do With Ukraine”, *RIA Novosti*, 3 April 2022, <https://ria.ru/20220403/ukraina-1781469605.html> (accessed 1 September 2022) (in Russian).

<sup>154</sup> President Zelenskyy’s Address to Democracy Summit Haaretz, 24 October 2022, <https://www.president.gov.ua/videos/mozhna-pozbaviti-sensu-alyans-rosiyi-ta-iranu-yaksho-mi-bude-3489> (accessed 24 October 2022); President Zelenskyy’s Address, 17 October 2022, <https://www.president.gov.ua/videos/sho-menshe-terroristichnih-mozhlivostej-bude-v-rosiyi-shvidsh-3453> (accessed 17 October 2022); President Zelenskyy’s Address, 10 October 2022, <https://www.president.gov.ua/videos/ukrayinu-nemozhливо-zalyakati-tilki-she-bilshe-obyednati-zve-3409> (accessed 10 October 2022) (in Ukrainian).

<sup>155</sup> Volodymyr Zelensky, “It Is Necessary That Russia Stops Killing People: Full Text Of Zelenskyy’s Speech at The UN Security Council,” Presidential Office, 29 June 2022, <https://www.president.gov.ua/en/news/potribno-shob-rosiya-pripinila-vbivati-lyudej-potribno-prity-76109> (accessed 1 September 2022); Dmytro Kuleba, *Twitter*, 10 October, 14:19 (speaking of Russia’s “missile terror” as an attempt “to change the pace of war in [Russia’s] favour”).

<sup>156</sup> PACE, Further escalation in the Russian Federation’s aggression against Ukraine, Res 2463 (2022).

Russia as a terrorist state is clearly aimed at entrenching Russia's isolation in the international arena thus reducing its geopolitical standing to that similar of Iran and North Korea.<sup>157</sup>

The terrorist and genocide rhetoric advanced by the Ukrainian leadership run in parallel creating an impression that Russia engages in genocide through "missile terror" across Ukraine. At this juncture, it appears that the sustained Russian campaign of missile strikes against the critical infrastructure and other civilian objects is more indicative of the special intent in support of the acts of terror as a war crime aimed at sowing fear among the civilian population<sup>158</sup> rather than genocidal intent. However, as the war unfolds, the intent to terrorize the civilian population in Ukraine, which is being relentlessly pursued by Russian leadership and its military, may evolve and transform into genocidal intent across Ukraine, especially if the Kremlin were to act on its threats to destroy Ukrainian critical infrastructure leaving Ukrainians without electricity, heating and water during the cold winter months or resort to the use of nuclear weapons, thus deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

## Beyond the False Claim of Genocide

Viewed strategically, it would make sense for Ukraine to expand its argument beyond the false claim of genocide by arguing that Russia breached the Genocide Convention by engaging in genocide against the protected part of the group. This would align Ukraine's litigation strategy with the numerous political statements of the Ukrainian leadership on the commission of genocide.<sup>159</sup> Given that Russian officials described the atrocity crimes in Bucha and Izyum as "fake,"<sup>160</sup> it is highly desirable that Ukraine involves a highly reputable international court such as the ICJ to carry out independent fact-finding in relation to the commission of genocide, which will contribute towards establishing a truthful account about the war.

However, expanding the argument also comes with certain risks. Ukraine has a good chance of prevailing with regard to the case on the false claim of genocide. The order on provisional measures already alludes to this potential positive outcome for Ukraine.<sup>161</sup> The abuse of international instruments, such as the Genocide Convention, for the purpose of attacking a sovereign neighbouring state deserves the utmost

<sup>157</sup> Ingrid (Wuerth) Brunk, "How Congress Should Designate Russia a State Sponsor of Terrorism", *Just Security*, 27 September 2022, <https://www.justsecurity.org/83263/how-congress-should-designate-russia-a-state-sponsor-of-terrorism/> (accessed 1 October 2022).

<sup>158</sup> ICTY, *Prosecutor v. Stanislav Galić*, Appeal Judgment, Case No. IT-98-29-A, Appeals Chamber, 30 November 2006 (hereinafter – *Galić* Appeal Judgement), para. 104.

<sup>159</sup> E.g. Presidential Office, "Speech by President of Ukraine Volodymyr Zelenskyy in the Saeima of Latvia," Presidential Office, 26 May 2022, <https://www.president.gov.ua/en/news/vistup-prezidenta-ukrayini-volodimira-zelenskogo-u-saejmi-la-75385> (accessed 1 September 2022); Presidential Office, "Speech by Head of the Office of the President of Ukraine Andriy Yermak at the Securing Europe Panel in the Framework of the World Economic Forum in Davos," Presidential Office, 24 May 2022, <https://www.president.gov.ua/en/news/vistup-kerivnika-ofisu-prezidenta-ukrayini-andriya-yermaka-n-75353> (accessed 1 September 2022); Dmytro Kuleba, *Twitter*, 22 October 2022, 15:13 (describing strikes on Ukrainian critical infrastructure as "genocide" under Art. 2(c) of the Genocide Convention); 23 October 2022 (calling the remarks of RT's Director of Broadcasting Anton Krasovsky as "incitement to genocide").

<sup>160</sup> President of Russia, "Joint News Conference with President of Belarus Alexander Lukashenko," President of Russia, 12 April 2022, <http://en.kremlin.ru/events/president/news/68182> (accessed 1 September 2022); "Kyiv is promoting the same scenario in Izyum as in Bucha," declared in the Kremlin," *RIA*, 19 September 2022, <https://ria.ru/20220919/izyume-1817804180.html> (accessed 19 September 2022) (in Russian).

<sup>161</sup> *Ukraine v. Russia* Provisional Measures Order, paras 59, 86.

condemnation. The argument runs like a red thread through the Article 63 declarations filed by multiple intervening states. In the present case, the ICJ may play an important role by affirming that the abuse of the provisions of the Genocide Convention violates the good faith fulfilment of treaty obligations undertaken by states to maintain the integrity of the rules-based international legal order and protect humankind from genocide. Yet, taking the case further by arguing that Russia engaged in genocide would require tremendous effort on the part of Ukraine to demonstrate the existence of genocidal intent of individual perpetrators, which is a prerequisite for attribution of state responsibility for genocide to Russia. Ukraine is not aided in this task by the findings of international courts and tribunals, as had been the case in the *Bosnian Genocide case*, in which the ICTY findings on genocide had proved to be persuasive for the ICJ in its fact-finding.<sup>162</sup>

It also appears that the ICC has thus far focused on the potential prosecution of war crimes and crimes against humanity in its ongoing investigation in the situation of Ukraine. No public statements have been issued by the ICC's Office of the Prosecutor (OTP) on the preliminary findings of the investigation regarding the alleged commission of genocide. This is notwithstanding the public press release by the OTP following prosecutor Karim Khan's visits to Bucha and the Kyiv region.<sup>163</sup> Similarly, at the domestic level, the Office of the Prosecutor General of Ukraine (OPG) initiated in absentia criminal proceedings only in relation to war crimes by Russian soldiers who are suspected of committing alleged atrocity crimes in Bucha.<sup>164</sup> The newly appointed Ukrainian Prosecutor General Andriy Kostin announced that his office is in the process of collecting evidence for building a convincing case on genocide, yet it appears that such work is in its early stage.<sup>165</sup> Hence, apart from political statements, Ukraine cannot rely on any criminal cases, either in the national context or at the international level (i.e. ICC), that can strengthen its claim of the commission of genocide by Russia. However, this is not to suggest that Ukraine stands no chance in proving that Russia should bear responsibility for genocide at least in relation to the forcible transfer of Ukrainian children, as well as the despicable atrocities in Mariupol and the deoccupied areas in the Kyiv and Kharkiv regions. To maximize the chance of success, the Ministry of Foreign Affairs of Ukraine (MFA) together with the OPG will need to furnish the ICJ with compelling evidence of the commission of genocide by individuals whose conduct can be fully attributable to Russia. For this, Ukraine will need to invest significantly in demonstrating that the alleged genocide committed by Russian foot soldiers had been fully endorsed and orchestrated by the Russian leadership.

<sup>162</sup> For a broader discussion on the limits of international law in qualifying Russian crimes in Ukraine as genocide, see A. Dirk Moses, "The Ukraine Genocide Debate Reveals the Limits of International Law," *Lawfare*, 16 May 2022, <https://www.lawfareblog.com/ukraine-genocide-debate-reveals-limits-international-law> (accessed 6 September 2022).

<sup>163</sup> Karim A.A. Khan, "Statement of ICC Prosecutor, Karim A.A. Khan QC, at the Arria-Formula Meeting of the UN Security Council on 'Ensuring Accountability for Atrocities Committed in Ukraine,'" *International Criminal Court*, 27 April 2022, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-arria-formula-meeting-un-security-council-ensuring> (accessed 1 September 2022).

<sup>164</sup> On 28 April 2022, Bucha District Prosecutor's Office initiated criminal proceedings against 10 Russian military on the charges of 'the cruel treatment of the civilian population under Article 438(1) CC. See: OPG official Facebook page, 28 April 2022, <https://www.facebook.com/pgopg.gov.ua/posts/359030732926433> (accessed 1 September 2022) (in Ukrainian)).

<sup>165</sup> Ruth Green, "The IBA Interview: Andriy Kostin, Prosecutor General of Ukraine," *International Bar Association*, 4 October 2022, <https://www.ibanet.org/interview-Andriy-Kostin-Prosecutor-General-of-Ukraine> (accessed 4 October 2022).

A number of factors point towards the existence of a Russian genocidal policy in Ukraine, from which the genocidal intent may be inferred: (1) denying the existence of a Ukrainian identity, history and culture; (2) denying Ukrainians the right to exist as a nation; (3) invoking the justification of “denazification” for its invasion of Ukraine with the view of dehumanizing Ukrainians; (4) the use of derogatory language against Ukrainians; (5) portraying Ukrainians as an existential threat to Russia; and (6) conditioning the Russian military to commit atrocities against Ukrainians and the general public in Russia to condone such crimes.<sup>166</sup> Official Russian government statements, the language used by Russian state-run channels and traditional print media, as well as the use of social media for amplifying disinformation,<sup>167</sup> point toward the existence of genocidal intent on the part of Russian officials and supporters of the Putin regime who spread hateful rhetoric against Ukrainians, which calls for the destruction of Ukrainians as a group. Such genocidal rhetoric coupled with the physical destruction of the members of the group in the deoccupied areas and the areas under Russian control should suffice in convincing the ICJ that Russia, through its organs, state agents and its proxies acting on its instructions, has violated the Genocide Convention by engaging in genocide against Ukrainians.

No international treaty other than the Genocide Convention provides an avenue through which to invoke state responsibility for atrocity crimes. While the *ILC Draft Convention on Prevention and Punishment of Crimes Against Humanity* contains a compromissory clause to engage the jurisdiction of the ICJ, this long overdue international instrument is yet to become a reality.<sup>168</sup> Holding Russia accountable for genocide in Ukraine, a country where the inventor of genocide Raphael Lemkin once lived and studied, will be hugely symbolic for Ukrainians who have campaigned for years to recognize the “Holodomor” as genocide where the USSR communist regime subjected Ukrainians to a man-made famine to crush Ukrainian aspirations for statehood.<sup>169</sup> Tragically today, history appears to be repeating itself. Russia as the main successor of the USSR inherited its brutal tactics and has not given up on the idea of erasing Ukraine as an independent country from the world map and eradicating Ukrainians as a national group once they decided to abandon the “brotherly union” with Russia in favour of Western democratic values.<sup>170</sup> The World Court is an appropriate venue to hear the case on the allegations of the ongoing genocide that Russia is unleashing against Ukrainians, as it has a duty to sustain the post-WWII rules-based order based on universal values that leave no room for genocide.

<sup>166</sup> New Lines Institute for Strategy and Policy and Raoul Wallenberg Centre for Human Rights, *An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent* (May 2022): 1–2, 13–20.

<sup>167</sup> For specific examples of disinformation narratives, calls for more violence and genocide against Ukrainians shared on pro-Russian Telegram channels after Bucha, see Ian Garner, “‘We’ve Got to Kill Them’: Responses to Bucha on Russian Social Media Groups,” *Journal of Genocide Research* (9 May 2022): DOI: 10.1080/14623528.2022.2074020.

<sup>168</sup> International Law Commission, Draft articles on Prevention and Punishment of Crimes Against Humanity, A/CN.4/L.935, *Yearbook of the International Law Commission*, 2019, vol. 2, Part II.

<sup>169</sup> Roman Serbyn, “Lemkin on Genocide of Nations,” *Journal of International Criminal Justice* 7, no. 1 (2009): 123–130. For more on the evolution of Lemkin’s thinking regarding the qualification of Soviet crimes committed during the “Holodomor” in Ukraine as “genocide,” see Etkind, “Ukraine, Russia, and Genocide of Minor Differences,” 4–12.

<sup>170</sup> Kristina Hook, “Vladimir Putin’s War to Crush Ukraine is Part of a Long Kremlin Tradition,” *Atlantic Council*, 17 March 2022, <https://www.atlanticcouncil.org/blogs/ukrainealert/vladimir-putins-war-to-crush-ukraine-is-part-of-a-long-kremlin-tradition/> (accessed 1 September 2022).

## Disclosure Statement

No potential conflict of interest was reported by the author(s).

## Notes on Contributors

*Iryna Marchuk* is an associate professor of international and criminal law at the Faculty of Law, University of Copenhagen. Her main research interests lie in the fields of international criminal law, public international law and international dispute settlement.

*Aloka Wanigasuriya* is a postdoctoral research fellow at the Centre for Law and Social Justice, Newcastle Law School, University of Newcastle. Aloka's research interests lie within the fields of international criminal law and public international law.

## Comparison of Declarations

### Declaration of Spain, ¶¶17-30; Declaration of Croatia ¶¶17-31

[Emphasis added where there are differences]

Declaration of Estonia	Declaration of Croatia
<p>17. Article IX of the Genocide Convention reads as follows:</p> <p>"Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."</p>	<p>17. Article IX of the Genocide Convention reads as follows:</p> <p><i>"Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."</i></p>
<p>18. <u>Spain</u> contends that the notion of "dispute" is already well-established in the case law of the Court and supports the current interpretation. Accordingly, it concurs with the meaning given to the word dispute as "a disagreement on a point of law or fact, a conflict of legal views or of interests" between parties. In order for a dispute to exist, "[i]t must be shown that the claim of one party is positively opposed by the other." The two sides must "hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations". Moreover, "in case the respondent has failed to reply to the applicant's claims, it may be inferred from this silence, in certain circumstances, that it rejects those claims and that, therefore, a dispute exists".</p>	<p>18. <u>The Republic of Croatia</u> contends that the notion of "dispute" is already well-established in the case law of the Court and supports the current interpretation. Accordingly, it concurs with the meaning given to the word dispute as <i>"a disagreement on a point of law or fact, a conflict of legal views or of interests"</i> between parties. In order for a dispute to exist, <i>"[i]t must be shown that the claim of one party is positively opposed by the other"</i>. The two sides must <i>"hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations"</i>. Moreover, <i>"in case the respondent has failed to reply to the applicant's claims, it may be inferred from this silence, in certain circumstances, that it rejects those claims and that, therefore, a dispute exists"</i>.</p>
<p>19. <u>Spain</u> hence concentrates on the interpretation of the other parts of Article IX, namely that the scope of such disputes must be "relating to the interpretation, application or fulfilment of the present Convention". It contends that Article IX is a broad jurisdictional clause, allowing the Court to adjudicate upon disputes concerning the alleged fulfilment by a Contracting Party of its obligations under the Convention. As Judge Oda noted, the inclusion of the word "fulfilment" is "unique as compared with the compromissory clauses found in other multilateral treaties which provide for submission of the International Court of such disputes between Contracting Parties as relate to the interpretation or application of the treaties in question".</p>	<p>19. <u>The Republic of Croatia</u> hence concentrates on the interpretation of the other parts of Article IX, namely that the scope of such disputes must be "relating to the interpretation, application or fulfilment of the present Convention". It contends that Article IX is a broad jurisdictional clause, allowing the Court to adjudicate upon disputes concerning <u>not only the application and interpretation but also</u> alleged fulfilment by a Contracting Party of its obligations under the Convention. As Judge Oda noted, the inclusion of the word "fulfilment" is "unique as compared with the compromissory clauses found in other multilateral treaties which provide for submission of the International Court of such disputes between Contracting Parties as relate to the <i>interpretation or application</i> of the treaties in question".</p>
	<p>20. <u>The Republic of Croatia's interpretation of Article IX in general and of the phrase "relating to the interpretation, application or fulfilment of the Convention" in particular, is based on Article 31 of the Vienna Convention on the Law of Treaties which paragraph 1 reads as follows:</u></p>

	<p><u>"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."</u></p>
20. The ordinary meaning of the phrase "relating to the interpretation, application or fulfilment of the Convention" may be divided in two sub-categories.	21. <u>With regard to the</u> phrase "relating to the interpretation, application or fulfilment of the Convention" <u>its</u> ordinary meaning may be divided in two sub-categories.
21. The first point ("relating to") establishes a link between the dispute and the Convention.	22. The first point ("relating to") establishes a link between the dispute and the Convention.
22. The second point ("interpretation, application or fulfilment of the Convention") encompasses many different scenarios. <u>As Professor Kolb has observed, Article IX of the Convention is "a model of clarity and simplicity, opening the seizing of the Court as largely as possible".</u>	23. The second point ("interpretation, application or fulfilment of the Convention") encompasses many different scenarios.
23. There can be a dispute about the interpretation, application or fulfilment of the Convention when one State alleges that another State has committed genocide. In that scenario, the Court verifies the factual basis for such allegation: <u>if it is not satisfied that there were any acts of genocide actually being committed by the respondent State, it may decline its jurisdiction, also prima facie.</u>	24. There can be a dispute about the interpretation, application or fulfilment of the Convention when one State alleges that another State has committed genocide. In that scenario, the Court verifies the factual basis for such allegation, <u>that is whether genocide has been committed or not.</u>
24. While this scenario of (alleged) responsibility for acts of genocide constitutes an important type of dispute on the "interpretation, application or fulfilment" of the Convention, it is not the only one. For example, in <i>The Gambia v. Myanmar</i> (pending), the applicant claimed that the defendant was not only responsible for prohibited acts under Article III, but that it was also violating its obligations under the Convention by failing to prevent genocide in violation of Article I; and failing to punish genocide in violation of Articles I, IV and V. In that example, one State alleges that another State is not honouring its commitment to "prevent" and "punish" genocide, because it grants impunity to acts of genocide committed on its territory. Therefore, there can also be disputes about "non -action" as a violation of the substantive obligations under Article I, IV and V.	25. While this scenario of (alleged) responsibility for acts of genocide constitutes an important type of dispute on the "interpretation, application or fulfilment" of the Convention, it is not the only one. For example, in <i>The Gambia v. Myanmar</i> (pending), the applicant claimed that the defendant was not only responsible for prohibited acts under Article III, but that it was also violating its obligations under the Convention by failing to prevent genocide in violation of Article I; and failing to punish genocide in violation of Articles I, IV and V. In that example, one State alleges that another State is not honouring its commitment to "prevent" and "punish" genocide, because it grants impunity to acts of genocide committed on its territory. Therefore, there can also be disputes about "non -action" as a violation of the substantive obligations under Article I, IV and V.
25. <u>Therefore,</u> the ordinary meaning of Article IX makes it clear that there is no need to establish genocidal acts as a basis to affirm the Court's jurisdiction. <u>Rather,</u> the Court has jurisdiction over the question whether genocidal acts have been or are being committed or not. Hence, it also has jurisdiction <i>ratione materiae</i> to declare the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law. In particular, the jurisdiction of the Court extends to disputes concerning the unilateral use of military force for the stated purpose of preventing and punishing alleged genocide.	26. The ordinary meaning <u>of the phrase ("relating to the interpretation, application or fulfilment of the Convention") in Article IX</u> makes it clear that there is no need to establish genocidal acts as a basis to affirm the Court's jurisdiction. <u>In addition to establishing genocidal acts</u> the Court <u>also</u> has jurisdiction <i>over the question whether</i> genocidal acts have been or are being committed or not. Hence, it also has jurisdiction <i>ratione materiae</i> to declare the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law. In particular, the jurisdiction of the Court extends to disputes concerning the unilateral use of military force for the

26. The context of the phrase ("relating to ...") further confirms this reading. In particular, the unusual feature of the words "including" in the intermediate sentence indicates a broader scope of Article IX of the Convention when compared to standard compromissory clause. Disputes relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III are therefore only one type of dispute covered by Article IX, which are "included" in the wider phrase of disputes "relating to the interpretation, application and fulfilment" of the Convention. Moreover, Article IX expressly provides for ICJ jurisdiction "at the request of any of the parties to the dispute" (emphasis added). This language suggests that a State accused of committing genocide has the same right to submit the dispute to the Court as the State making the accusation. In particular, such a State may seek a "negative" declaration from the Court that the allegations from another State that it was responsible for genocide are without legal and factual foundation.

27. Hence, the context of the phrase ("relating to") in Article IX confirms that the Court's jurisdiction goes beyond disputes between States about the responsibility for alleged genocidal acts, but also covers disputes between States about the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law.

28. Finally, the object and purpose gives further support to the wide interpretation of Article IX. The Court noted that "[a]ll the States parties to the Genocide Convention [thus] have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention". Famously, in its 1951 Advisory Opinion, the Court held:

"The objects of such a convention must also be considered. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or

stated purpose of preventing and punishing alleged genocide.

27. The context of the phrase ("relating to the interpretation, application or fulfilment of the Convention") further confirms this reading. In particular, the unusual feature of the words "including" in the intermediate sentence indicates a broader scope of Article IX of the Convention when compared to standard compromissory clause. Disputes relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III are therefore only one type of dispute covered by Article IX, which are "included" in the wider phrase of disputes "relating to the interpretation, application and fulfilment" of the Convention.

28. Moreover, Article IX expressly provides for ICJ jurisdiction "at the request of *any of the parties* to the dispute" (emphasis added). This language suggests that a State accused of committing genocide has the same right to submit the dispute to the Court as the State making the accusation. In particular, such a State may seek a "negative" declaration from the Court that the allegations from another State that it was responsible for genocide are without legal and factual foundation.

29. Finally, the object and purpose of the Convention gives further support to the wide interpretation of Article IX. The Court noted that "*[a]ll the States parties to the Genocide Convention [thus] have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention*". Famously, in its 1951 Advisory Opinion, the Court held:

*"The objects of such a convention must also be considered. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or*

disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions."	<i>disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions."</i>
29. The Convention's object to protect the most elementary principles of morality also prohibits any possibility of a State Party to abuse its provisions for other means. It would undermine the Convention's credibility as a universal instrument to outlaw the most abhorrent crime of genocide if its authority could be abused by any State Party without a possibility of the victim of such abuse to turn to the Court. The purpose of the Convention hence speaks loudly in favour of a reading of Article IX, according to which disputes relating to the interpretation, application and fulfilment include disputes about the abuse of the Convention's authority to justify a State's action vis-a-vis another State party to the Convention.	30. The Convention's object to protect the most elementary principles of morality also prohibits any possibility of a State Party to abuse its provisions for other means. It would undermine the Convention's credibility as a universal instrument to outlaw the most abhorrent crime of genocide if its authority could be abused by any State Party without a possibility of the victim of such abuse to turn to the Court. The purpose of the Convention hence speaks loudly in favour of a reading of Article IX, according to which disputes relating to the interpretation, application and fulfilment include disputes about the abuse of the Convention's authority to justify a State's action vis-à-vis another State party to the Convention.
30. In conclusion, the ordinary meaning of Article IX of the Convention, its context and the object and purpose of the entire Convention show that a dispute regarding acts carried out by one State against another State based on false claims of genocide falls under the notion of "dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention". Accordingly, the Court has jurisdiction to declare the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law. <u>In particular</u> , the jurisdiction of the Court extends to disputes concerning the unilateral use of military force for the stated purpose of preventing and punishing alleged genocide.	31. In conclusion, <u>the construction of Article IX of the Convention shows that the Court's jurisdiction goes beyond disputes between States about the responsibility for alleged genocidal acts, but also covers disputes between States about the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law. It also confirms that a dispute regarding acts carried out by one State against another State based on false claims of genocide falls under the notion of "dispute between Contracting Parties relating to the interpretation, application or fulfilment of the present Convention". Accordingly, the Court has jurisdiction to declare the absence of genocide and the violation of a good faith performance of the Convention, resulting in an abuse of the law. Therefore the jurisdiction of the Court extends to disputes concerning the unilateral use of military force which is based on the false claims that act of genocide have occurred.</u>

## Declaration of Croatia, ¶¶10, 18, 19, 28; Declaration of the Czech Republic ¶¶11, 24, 25, 27

[Emphasis added where there are differences]

Declaration of Croatia	Declaration of the Czech Republic
10. <u>It is the understanding of the Republic of Croatia that the Genocide Convention is of utmost importance to prevent and punish genocide. Any acts committed with an intent to destroy, in whole or in part, national, ethnical, racial or religious group constitutes a crime under international law. The prohibition against genocide is a jus cogens norm in international law. The rights and obligations enshrined by the Convention are owed</u>	11. The Genocide Convention is of utmost importance to prevent and punish genocide <u>and to protect the basic values of the international community as a whole. This case raises important issues concerning the interpretation of the Genocide Convention.</u> The Court already found and confirmed that the provisions of the Genocide Convention impose obligations <i>erga omnes</i> , which are owed to the international community as a whole, and that the

<p>to the international community as a whole (rights and obligations <i>erga omnes partes</i>).</p>	<p>prohibition against genocide is a <i>ius cogens</i> norm of international law.</p>
<p>19. The Republic of Croatia hence concentrates on the interpretation of <u>the other parts of</u> Article IX, namely that the scope of such disputes must be “relating to the interpretation, application or fulfilment of the present Convention”. It contends that Article IX is a broad jurisdictional clause, allowing the Court to adjudicate upon disputes <u>concerning not only the application and interpretation but also alleged</u> fulfilment by a Contracting Party of its obligations under the Convention</p>	<p>24. The Czech Republic will focus on the interpretation of Article IX, namely <u>on the condition</u> that the scope of such disputes must be “relating to the interpretation, application or fulfilment of the present Convention”. It contends that Article IX is a broad jurisdictional clause, allowing the Court to adjudicate upon disputes <u>between Contracting States relating to all aspects of interpretation, application or</u> fulfilment by a Contracting Party of its obligations under the Convention.</p>
<p>18. The Republic of Croatia contends that the notion of "dispute" is already well-established in the case law of the Court and supports the current interpretation. Accordingly, <u>it</u> concurs with the meaning given to the word dispute as “<i>a disagreement on a point of law or fact, a conflict of legal views or of interests</i>” between parties. In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”. The two sides <u>must</u> “<i>hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations</i>”.</p>	<p>25. The notion of a “dispute” is already well-established in the case law of the Court and supports the current interpretation. Accordingly, <u>the Czech Republic</u> concurs with the meaning given to the word dispute as “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties. <u>A dispute exists wherever</u> the two sides “hold clearly opposite views” <u>with respect to the issue brought before the Court</u>, “the claim of one party is positively opposed by the other”, and “the respondent was aware, or could not have been unaware, that its views were positively opposed’ by the applicant”.</p>
<p>28. Moreover, Article IX expressly provides for ICJ jurisdiction “at the request of <i>any of the parties to the dispute</i>” (emphasis added). This language suggests that a State accused of committing genocide has the same right to submit the dispute to the Court as the State making the accusation. In particular, such a State may seek a “negative” declaration from the Court that the allegations <u>from</u> another State that it was responsible for genocide are without legal and factual foundation.</p>	<p>27. Therefore, whenever there is a dispute between two or more Contracting Parties concerning whether a Contracting Party has engaged in conduct contrary to the Genocide Convention, the Contracting Party accused of such conduct has the same right to submit the dispute to the Court as the <u>Contracting Party that has made</u> the accusation, <u>and the Court will be in a position to exercise its jurisdiction</u>. In particular, such a State may seek a “negative” declaration from the Court that the allegations <u>by</u> another State that it was responsible for <u>the acts of</u> genocide are without legal and factual foundation.</p>