Corrigé
Corrected

CR 2023/17

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2023

Public sitting

held on Monday 25 September 2023, at 10 a.m., at the Peace Palace,

President Donoghue, presiding,

***in the case concerning* Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine *v.* Russian Federation: 32 States intervening)**

VERBATIM RECORD

ANNÉE 2023

Audience publique

tenue le lundi 25 septembre 2023, à 10 heures, au Palais de la Paix,

sous la présidence de M^{me} Donoghue, présidente,

***en l'affaire relative à des* Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie ; 32 États intervenants)**

COMPTE RENDU

Present:	President	Donoghue
	Vice-President	Gevorgian
	Judges	Tomka
		Abraham
		Bennouna
		Yusuf
		Xue
		Sebutinde
		Bhandari
		Robinson
		Salam
		Iwasawa
		Nolte
		Charlesworth
`		Brant
	Judge *ad hoc*	Daudet
	Registrar	Gautier

Présents : M^me^ Donoghue, présidente
M. Gevorgian, vice-président
MM. Tomka
Abraham
Bennouna
Yusuf
M^mes^ Xue
Sebutinde
MM. Bhandari
Robinson
Salam
Iwasawa
Nolte
M^me^ Charlesworth
M. Brant, juges
M. Daudet, juge *ad hoc*

M. Gautier, greffier

The Government of Ukraine is represented by:

HE Mr Anton Korynevych, Ambassador-at-Large, Ministry of Foreign Affairs of Ukraine,

as Agent;

Ms Oksana Zolotaryova, Director General for International Law, Ministry of Foreign Affairs of Ukraine,

as Co-Agent;

Ms Marney L. Cheek, Covington & Burling LLP, member of the Bars of the Supreme Court of the United States and the District of Columbia,

Mr Jonathan Gimblett, Covington & Burling LLP, member of the Bars of the District of Columbia and the State of Virginia, solicitor of the Senior Courts of England and Wales,

Mr Harold Hongju Koh, Sterling Professor of International Law, Yale Law School, member of the Bars of the State of New York and the District of Columbia,

Mr Jean-Marc Thouvenin, Professor at the University of Paris Nanterre, Secretary-General of The Hague Academy of International Law, associate member of the Institut de droit international, member of the Paris Bar, Sygna Partners,

Mr David M. Zionts, Covington & Burling LLP, member of the Bars of the Supreme Court of the United States and the District of Columbia,

as Counsel and Advocates;

HE Mr Oleksandr Karasevych, Ambassador of Ukraine to the Kingdom of the Netherlands,

Mr Oleksandr Braiko, Department of International Law, Ministry of Foreign Affairs of Ukraine,

Ms Anastasiia Mochulska, Department of International Law, Ministry of Foreign Affairs of Ukraine,

Mr Dmytro Kutsenko, Department of International Law, Ministry of Foreign Affairs of Ukraine,

Ms Mariia Bezdieniezhna, Counsellor, Embassy of Ukraine in the Kingdom of the Netherlands,

Ms Paris Aboro, Covington & Burling LLP, member of the Bar of the State of New York and of the Bar of England and Wales,

Mr Volodymyr Shkilevych, Covington & Burling LLP, member of the Bar of the State of New York,

Mr Paul Strauch, Covington & Burling LLP, member of the Bars of the District of Columbia and the State of California,

Ms Gaby Vasquez, Covington & Burling LLP, member of the Bar of the District of Columbia,

Le Gouvernement de l'Ukraine est représenté par :

S. Exc. M. Anton Korynevych, ambassadeur itinérant, ministère des affaires étrangères de l'Ukraine,

comme agent ;

M^me^ Oksana Zolotaryova, directrice générale du département de droit international, ministère des affaires étrangères de l'Ukraine,

comme coagente ;

M^me^ Marney L. Cheek, cabinet Covington & Burling LLP, membre des barreaux de la Cour suprême des États-Unis d'Amérique et du district de Columbia,

M. Jonathan Gimblett, cabinet Covington & Burling LLP, membre des barreaux du district de Columbia et de l'État de Virginie, *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

M. Harold Hongju Koh, professeur de droit international, titulaire de la chaire Sterling, faculté de droit de l'Université de Yale, membre des barreaux de l'État de New York et du district de Columbia,

M. Jean-Marc Thouvenin, professeur à l'Université Paris Nanterre, secrétaire général de l'Académie de droit international de La Haye, membre associé de l'Institut de droit international, membre du barreau de Paris, cabinet Sygna Partners,

M. David M. Zionts, cabinet Covington & Burling LLP, membre des barreaux de la Cour suprême des États-Unis d'Amérique et du district de Columbia,

comme conseils et avocats ;

S. Exc. M. Oleksandr Karasevych, ambassadeur de l'Ukraine auprès du Royaume des Pays-Bas,

M. Oleksandr Braiko, département de droit international, ministère des affaires étrangères de l'Ukraine,

M^me^ Anastasiia Mochulska, département de droit international, ministère des affaires étrangères de l'Ukraine,

M. Dmytro Kutsenko, département de droit international, ministère des affaires étrangères de l'Ukraine,

M^me^ Mariia Bezdieniezhna, conseillère, ambassade de l'Ukraine au Royaume des Pays-Bas,

M^me^ Paris Aboro, cabinet Covington & Burling LLP, membre du barreau de l'État de New York et du barreau d'Angleterre et du pays de Galles,

M. Volodymyr Shkilevych, cabinet Covington & Burling LLP, membre du barreau de l'État de New York,

M. Paul Strauch, cabinet Covington & Burling LLP, membre des barreaux du district de Columbia et de l'État de Californie,

M^me^ Gaby Vasquez, cabinet Covington & Burling LLP, membre du barreau du district de Columbia,

Ms Jessica Joly Hébert, member of the Bar of Quebec, PhD candidate at CEDIN, University Paris Nanterre,

as Counsel;

Ms Caroline Ennis, Covington & Burling LLP,

as Assistant.

The Government of the Russian Federation is represented by:

HE Mr Gennady Kuzmin, Ambassador-at-Large, Ministry of Foreign Affairs of the Russian Federation,

HE Mr Alexander Shulgin, Ambassador of the Russian Federation to the Kingdom of the Netherlands,

HE Ms Maria Zabolotskaya, Deputy Permanent Representative of the Russian Federation to the United Nations,

as Agents;

Mr Hadi Azari, Professor of Public International Law at the Kharazmi University of Tehran, Legal Adviser to the Center for International Legal Affairs of Iran,

Mr Alfredo Crosato Neumann, Graduate Institute of International and Development Studies, Geneva, member of the Lima Bar,

Mr Jean-Charles Tchikaya, member of the Paris and Bordeaux Bars,

Mr Kirill Udovichenko, Partner, Monastyrsky, Zyuba, Stepanov & Partners,

Mr Sienho Yee, Changjiang Xuezhe Professor of International Law and Director of the Chinese Institute of International Law, China Foreign Affairs University, Beijing, member of the Bars of the United States Supreme Court and the State of New York, member of the Institut de droit international,

as Counsel and Advocates;

Mr Dmitry Andreev, Counsel, Monastyrsky, Zyuba, Stepanov & Partners,

Mr Konstantin Kosorukov, Head of Division, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

as Counsel;

Mr Mikhail Abramov, Senior Associate, Monastyrsky, Zyuba, Stepanov & Partners,

Mr Yury Andryushkin, First Secretary, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

Ms Victoria Goncharova, First Secretary, Permanent Representation of the Russian Federation to the Organisation for the Prohibition of Chemical Weapons,

Ms Anastasia Khamenkova, Expert, Office of the Prosecutor General of the Russian Federation,

M^me^ Jessica Joly Hébert, membre du barreau du Québec, doctorante au CEDIN, Université Paris Nanterre,

comme conseils ;

M^me^ Caroline Ennis, cabinet Covington & Burling LLP,

comme assistante.

Le Gouvernement de la Fédération de Russie est représenté par :

S. Exc. M. Gennady Kuzmin, ambassadeur itinérant du ministère des affaires étrangères de la Fédération de Russie,

S. Exc. M. Alexander Shulgin, ambassadeur de la Fédération de Russie auprès du Royaume des Pays-Bas,

S. Exc. M^me^ Maria Zabolotskaya, représentante permanente adjointe de la Fédération de Russie auprès des Nations Unies,

comme agents ;

M. Hadi Azari, professeur de droit international public à l'Université Kharazmi à Téhéran, conseiller juridique auprès du centre des affaires juridiques internationales d'Iran,

M. Alfredo Crosato Neumann, Institut de hautes études internationales et du développement de Genève, membre du barreau de Lima,

M. Jean-Charles Tchikaya, avocat aux barreaux de Paris et de Bordeaux,

M. Kirill Udovichenko, associé, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Sienho Yee, professeur de droit international à Changjiang Xuezhe, directeur de l'Institut chinois de droit international, Université des affaires étrangères de Chine à Beijing, membre des barreaux de la Cour suprême des États-Unis et de l'État de New York, membre de l'Institut de droit international,

comme conseils et avocats ;

M. Dmitry Andreev, conseil, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Konstantin Kosorukov, chef de division au département juridique, ministère des affaires étrangères de la Fédération de Russie,

comme conseils ;

M. Mikhail Abramov, collaborateur senior, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Yury Andryushkin, premier secrétaire au département juridique, ministère des affaires étrangères de la Fédération de Russie,

M^me^ Victoria Goncharova, première secrétaire, mission permanente de la Fédération de Russie auprès de l'Organisation pour l'interdiction des armes chimiques,

M^me^ Anastasia Khamenkova, experte, parquet général de la Fédération de Russie,

Mr Stanislav Kovpak, Principal Counsellor, Department for Multilateral Human Rights Cooperation, Ministry of Foreign Affairs of the Russian Federation,

Ms Marina Kulidobrova, Associate, Monastyrsky, Zyuba, Stepanov & Partners,

Ms Maria Kuzmina, Head of Division, Second CIS Department, Ministry of Foreign Affairs of the Russian Federation,

Mr Artem Lupandin, Associate, Monastyrsky, Zyuba, Stepanov & Partners,

Mr Aleksei Trofimenkov, Counsellor, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

Ms Kata Varga, Associate, Monastyrsky, Zyuba, Stepanov & Partners,

Mr. Nikolay Zinovyev, Senior Associate, Monastyrsky, Zyuba, Stepanov & Partners,

as Advisers;

Ms Svetlana Poliakova, Monastyrsky, Zyuba, Stepanov & Partners,

as Assistant.

The Government of the Federal Republic of Germany is represented by:

Ms Wiebke Rückert, Director for Public International Law, Foreign Office of the Federal Republic of Germany,

HE Mr Cyrill Jean Nunn, Ambassador of the Federal Republic of Germany to the Kingdom of the Netherlands,

as Co-Agents;

Mr Lukas Georg Wasielewski, Foreign Office of the Federal Republic of Germany,

Mr Caspar Sieveking, Embassy of the Federal Republic of Germany in the Kingdom of the Netherlands,

Mr Johannes Scharlau, Embassy of the Federal Republic of Germany in the Kingdom of the Netherlands,

Mr Marius Gappa, Embassy of the Federal Republic of Germany in the Kingdom of the Netherlands.

The Government of Australia is represented by:

Mr Jesse Clarke, General Counsel (International Law), Attorney-General's Department,

as Agent;

HE Mr Gregory Alan French, Ambassador of Australia to the Kingdom of the Netherlands,

as Co-Agent;

M. Stanislav Kovpak, conseiller principal au département pour la coopération multilatérale pour les droits de l'homme, ministère des affaires étrangères de la Fédération de Russie,

M^me^ Marina Kulidobrova, collaboratrice, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M^me^ Maria Kuzmina, cheffe de division au deuxième département de la communauté d'États indépendants, ministère des affaires étrangères de la Fédération de Russie,

M. Artem Lupandin, collaborateur, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Aleksei Trofimenkov, conseiller au département juridique, ministère des affaires étrangères de la Fédération de Russie,

M^me^ Kata Varga, collaboratrice, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

M. Nikolay Zinovyev, collaborateur senior, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

comme conseillers ;

M^me^ Svetlana Poliakova, cabinet Monastyrsky, Zyuba, Stepanov & Partners,

comme assistante.

Le Gouvernement de la République fédérale d'Allemagne est représenté par :

M^me^ Wiebke Rückert, directrice de la section de droit international public, ministère des affaires étrangères de la République fédérale d'Allemagne,

S. Exc. M. Cyrill Jean Nunn, ambassadeur de la République fédérale d'Allemagne auprès du Royaume des Pays-Bas,

comme coagents ;

M. Lukas Georg Wasielewski, ministère des affaires étrangères de la République fédérale d'Allemagne,

M. Caspar Sieveking, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas,

M. Johannes Scharlau, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas,

M. Marius Gappa, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas.

Le Gouvernement de l'Australie est représenté par :

M. Jesse Clarke, *General Counsel* (droit international), services de l'*Attorney-General*,

comme agent ;

S. Exc. M. Gregory Alan French, ambassadeur d'Australie auprès du Royaume des Pays-Bas,

comme coagent ;

Mr Stephen Donaghue, KC, Solicitor-General of Australia,

Ms Kate Parlett, member of the Bar of England and Wales, Twenty Essex Chambers,

Ms Belinda McRae, member of the Bar of England and Wales, Twenty Essex Chambers,

Ms Emma Norton, Acting Principal Legal Officer, Attorney-General's Department,

Ms Katherine Arditto, Second Secretary (Legal Adviser and Consul), Australian Embassy in the Kingdom of the Netherlands,

Mr Sam Gaunt, Multilateral Policy Officer, Australian Embassy in the Kingdom of the Netherlands.

The Government of the Republic of Austria is represented by:

HE Mr Konrad Bühler, Ambassador, Legal Adviser, Federal Ministry for European and International Affairs of the Republic of Austria,

as Co-Agent;

Ms Katharina Kofler, Legal Adviser, Embassy of the Republic of Austria in the Kingdom of the Netherlands,

Mr Haris Huremagić, Legal Officer, Federal Ministry for European and International Affairs of the Republic of Austria,

Ms Viktoria Ritter, Legal Officer, Federal Ministry for European and International Affairs of the Republic of Austria,

Ms Céline Braumann, Adviser,

Mr Gerhard Hafner, Adviser,

Ms Karoline Schnabl, Embassy of the Republic of Austria in the Kingdom of the Netherlands.

The Government of the Kingdom of Belgium is represented by:

Mr Piet Heirbaut, Jurisconsult, Director-General of Legal Affairs, Ministry of Foreign Affairs of the Kingdom of Belgium,

as Agent;

HE Mr Olivier Belle, Permanent Representative of the Kingdom of Belgium to the international institutions in The Hague,

as Co-Agent;

Ms Sabrina Heyvaert, General Counsel, Directorate for Public International Law,

Ms Pauline De Decker, Attachée, Permanent Representation of the Kingdom of Belgium to the international institutions in The Hague,

Ms Laurence Grandjean, Attachée, Directorate for Public International Law,

Ms Aurélie Debuisson, Attachée, Directorate for Public International Law.

M. Stephen Donaghue, KC, *Solicitor-General* d'Australie,

M^me^ Kate Parlett, membre du barreau d'Angleterre et du pays de Galles, Twenty Essex Chambers,

M^me^ Belinda McRae, membre du barreau d'Angleterre et du pays de Galles, Twenty Essex Chambers,

M^me^ Emma Norton, juriste principale par intérim, services de l'*Attorney-General*,

M^me^ Katherine Arditto, deuxième secrétaire (conseillère juridique et consule), ambassade d'Australie au Royaume des Pays-Bas,

M. Sam Gaunt, spécialiste des politiques multilatérales, ambassade d'Australie au Royaume des Pays-Bas.

Le Gouvernement de la République d'Autriche est représenté par :

S. Exc. M. Konrad Bühler, ambassadeur, conseiller juridique, ministère fédéral des affaires européennes et internationales de la République d'Autriche,

comme coagent ;

M^me^ Katharina Kofler, conseillère juridique, ambassade de la République d'Autriche au Royaume des Pays-Bas,

M. Haris Huremagić, juriste, ministère fédéral des affaires européennes et internationales de la République d'Autriche,

M^me^ Viktoria Ritter, juriste, ministère fédéral des affaires européennes et internationales de la République d'Autriche,

M^me^ Céline Braumann, conseillère,

M. Gerhard Hafner, conseiller,

M^me^ Karoline Schnabl, ambassade de la République d'Autriche au Royaume des Pays-Bas.

Le Gouvernement du Royaume de Belgique est représenté par :

M. Piet Heirbaut, jurisconsulte, directeur général des affaires juridiques, ministère des affaires étrangères du Royaume de Belgique,

comme agent ;

S. Exc. M. Olivier Belle, représentant permanent du Royaume de Belgique auprès des institutions internationales à La Haye,

comme coagent ;

M^me^ Sabrina Heyvaert, conseillère générale, direction du droit international public,

M^me^ Pauline De Decker, attachée, représentation permanente du Royaume de Belgique auprès des institutions internationales à La Haye,

M^me^ Laurence Grandjean, attachée, direction du droit international public,

M^me^ Aurélie Debuisson, attachée, direction du droit international public.

The Government of the Republic of Bulgaria is represented by:

Ms Dimana Dramova, Head of the International Law Department, International Law and Law of the European Union Directorate, Ministry of Foreign Affairs of the Republic of Bulgaria,

as Agent;

HE Mr Konstantin Dimitrov, Ambassador of the Republic of Bulgaria to the Kingdom of the Netherlands,

as Co-Agent;

Ms Raia Mantovska Vassileva, Legal Adviser, Embassy of the Republic of Bulgaria in the Kingdom of the Netherlands,

Ms Monika Velkova, Third Secretary.

The Government of Canada is represented by:

Mr Alan H. Kessel, Assistant Deputy Minister and Legal Adviser, Global Affairs Canada,

as Agent;

Mr Louis-Martin Aumais, Director General and Deputy Legal Adviser, Global Affairs Canada,

as Co-Agent;

Ms Rebecca Netley, Executive Director, Accountability, Human Rights and United Nations Law Division, Global Affairs Canada,

Mr Hugh Adsett, Ambassador-Designate of Canada to the Kingdom of the Netherlands,

Mr Simon Collard-Wexler, Counsellor, Embassy of Canada in the Kingdom of the Netherlands,

Mr Kristopher Yue, Second Secretary, Embassy of Canada in the Kingdom of the Netherlands.

The Government of the Republic of Cyprus is represented by:

Ms Mary-Ann Stavrinides, Attorney of the Republic, Law Office of the Republic of Cyprus,

as Co-Agent;

Ms Joanna Demetriou, Counsel of the Republic A', Law Office of the Republic of Cyprus,

Mr Antonios Tzanakopoulos, Professor of Public International Law, University of Oxford.

The Government of the Republic of Croatia is represented by:

Ms Gordana Vidović Mesarek, Director-General for European and International Law, Ministry of Foreign and European Affairs of the Republic of Croatia,

as Agent;

Le Gouvernement de la République de Bulgarie est représenté par :

M^me^ Dimana Dramova, cheffe du département du droit international, direction du droit international et du droit européen, ministère des affaires étrangères de la République de Bulgarie,

comme agente ;

S. Exc. M. Konstantin Dimitrov, ambassadeur de la République de Bulgarie auprès du Royaume des Pays-Bas,

comme coagent ;

M^me^ Raia Mantovska Vassileva, conseillère juridique, ambassade de la République de Bulgarie au Royaume des Pays-Bas ;

M^me^ Monika Velkova, troisième secrétaire.

Le Gouvernement du Canada est représenté par :

M. Alan H. Kessel, sous-ministre adjoint et conseiller juridique, ministère des affaires mondiales du Canada,

comme agent ;

M. Louis-Martin Aumais, directeur général et conseiller juridique adjoint, ministère des affaires mondiales du Canada,

comme coagent ;

M^me^ Rebecca Netley, directrice exécutive, direction de la responsabilisation, des droits de la personne et du droit onusien, ministère des affaires mondiales du Canada,

M. Hugh Adsett, ambassadeur désigné du Canada auprès du Royaume des Pays-Bas,

M. Simon Collard-Wexler, conseiller, ambassade du Canada au Royaume des Pays-Bas,

M. Kristopher Yue, deuxième secrétaire, ambassade du Canada au Royaume des Pays-Bas.

Le Gouvernement de la République de Chypre est représenté par :

M^me^ Mary-Ann Stavrinides, *Attorney of the Republic*, bureau de l'*Attorney General* de la République de Chypre,

comme coagente ;

M^me^ Joanna Demetriou, *Counsel of the Republic A'*, bureau de l'*Attorney General* de la République de Chypre,

M. Antonios Tzanakopoulos, professeur de droit international public, Université d'Oxford.

Le Gouvernement de la République de Croatie est représenté par :

M^me^ Gordana Vidović Mesarek, directrice générale chargée du droit européen et du droit international, ministère des affaires étrangères et européennes de la République de Croatie,

comme agente ;

Ms Anamarija Valković, Head of Sector for International Law, Ministry of Foreign and European Affairs of the Republic of Croatia,

as Co-Agent.

The Government of the Kingdom of Denmark is represented by:

HE Ms Vibeke Pasternak Jørgensen, Ambassador, Under-Secretary for Legal Affairs (the Legal Adviser), Ministry of Foreign Affairs of the Kingdom of Denmark,

as Agent;

HE Mr Jarl Frijs-Madsen, Ambassador of the Kingdom of Denmark to the Kingdom of the Netherlands,

as Co-Agent;

Mr Martin Lolle Christensen, Head of Section, Ministry of Foreign Affairs of the Kingdom of Denmark,

Mr Victor Backer-Gonzalez, Legal Adviser, Royal Embassy of Denmark in the Kingdom of the Netherlands,

Ms Anna Sofie Leth Nymand, Intern, Royal Embassy of Denmark in the Kingdom of the Netherlands.

The Government of the Kingdom of Spain is represented by:

Mr Santiago Ripol Carulla, Professor of International Public Law, Universitat Pompeu Fabra, Barcelona,

as Agent;

HE Ms Consuelo Femenía Guardiola, Ambassador of the Kingdom of Spain to the Kingdom of the Netherlands,

as Co-Agent;

Mr Emilio Pin Godos, International Legal Adviser, Ministry of Foreign Affairs of the Kingdom of Spain,

Mr Juan Almazán Fuentes, Legal Adviser, Embassy of the Kingdom of Spain in the Kingdom of the Netherlands.

The Government of the Republic of Estonia is represented by:

Ms Kerli Veski, Director General of the Legal Department, Ministry of Foreign Affairs of the Republic of Estonia,

as Agent;

HE Mr Lauri Kuusing, Ambassador of the Republic of Estonia to the Kingdom of the Netherlands,

as Co-Agent;

Ms Dea Hannust.

M^me^ Anamarija Valković, cheffe du service de droit international, ministère des affaires étrangères et européennes de la République de Croatie,

comme coagente.

Le Gouvernement du Royaume du Danemark est représenté par :

S. Exc. M^me^ Vibeke Pasternak Jørgensen, ambassadrice, sous-secrétaire aux affaires juridiques (conseillère juridique), ministère des affaires étrangères du Royaume du Danemark,

comme agente ;

S. Exc. M. Jarl Frijs-Madsen, ambassadeur du Royaume du Danemark auprès du Royaume des Pays-Bas,

comme coagent ;

M. Martin Lolle Christensen, chef de section, ministère des affaires étrangères du Royaume du Danemark,

M. Victor Backer-Gonzalez, conseiller juridique, ambassade royale du Danemark au Royaume des Pays-Bas,

M^me^ Anna Sofie Leth Nymand, stagiaire, ambassade royale du Danemark au Royaume des Pays-Bas.

Le Gouvernement du Royaume d'Espagne est représenté par :

M. Santiago Ripol Carulla, professeur de droit international public, Universitat Pompeu Fabra, Barcelone,

comme agent ;

S. Exc. M^me^ Consuelo Femenía Guardiola, ambassadrice du Royaume d'Espagne auprès du Royaume des Pays-Bas,

comme coagente ;

M. Emilio Pin Godos, conseiller juridique pour le droit international, ministère des affaires étrangères du Royaume d'Espagne,

M. Juan Almazán Fuentes, conseiller juridique, ambassade du Royaume d'Espagne au Royaume des Pays-Bas.

Le Gouvernement de la République d'Estonie est représenté par :

M^me^ Kerli Veski, directrice générale du département juridique, ministère des affaires étrangères de l'Estonie,

comme agente ;

S. Exc. M. Lauri Kuusing, ambassadeur de la République d'Estonie auprès du Royaume des Pays-Bas,

comme coagent ;

M^me^ Dea Hannust.

The Government of the Republic of Finland is represented by:

Ms Kaija Suvanto, Director General, Legal Service, Ministry of Foreign Affairs of the Republic of Finland,

as Agent;

Ms Tarja Långström, Deputy Director, Unit for Public International Law, Ministry of Foreign Affairs of the Republic of Finland,

as Co-Agent;

Ms Johanna Hossa, Legal Officer, Unit for Public International Law, Ministry of Foreign Affairs of the Republic of Finland,

Ms Verna Adkins, Second Secretary, Embassy of the Republic of Finland in the Kingdom of the Netherlands.

The Government of the French Republic is represented by:

Mr Diégo Colas, Director of Legal Affairs, Ministry of Europe and Foreign Affairs of the French Republic,

as Agent;

HE Mr François Alabrune, Ambassador of the French Republic to the Kingdom of the Netherlands,

as Co-Agent;

Mr Hervé Ascensio, Professor, at the University Paris 1 Panthéon-Sorbonne,

Mr Pierre Bodeau-Livinec, Professor at the University Paris Nanterre,

Ms Maryline Grange, Associate Professor in Public Law at the Jean Monnet University in Saint-Etienne, University of Lyon,

Ms Anne-Thida Norodom, Professor at the University Paris Cité,

Mr Nabil Hajjami, Assistant Director for Public International Law, Directorate of Legal Affairs, Ministry for Europe and Foreign Affairs of the French Republic,

Ms Marion Esnault, Legal Consultant, Directorate of Legal Affairs, Ministry for Europe and Foreign Affairs of the French Republic,

Mr Stéphane Louhaur, Legal Counsellor, Embassy of the French Republic in the Kingdom of the Netherlands,

Ms Jade Frichitthavong, Chargée de mission for Legal Affairs, Embassy of the French Republic in the Kingdom of the Netherlands,

Ms Emma Bongat, intern, Legal Service, Embassy of the French Republic in the Kingdom of the Netherlands.

Le Gouvernement de la République de Finlande est représenté par :

M[me] Kaija Suvanto, directrice générale du service juridique, ministère des affaires étrangères de la République de Finlande,

comme agente ;

M[me] Tarja Långström, directrice adjointe de la section de droit international public, ministère des affaires étrangères de la République de Finlande,

comme coagente ;

M[me] Johanna Hossa, juriste de la section de droit international public, ministère des affaires étrangères de la République de Finlande,

M[me] Verna Adkins, deuxième secrétaire, ambassade de la République de Finlande au Royaume des Pays-Bas.

Le Gouvernement de la République française est représenté par :

M. Diégo Colas, directeur des affaires juridiques, ministère de l'Europe et des affaires étrangères de la République française,

comme agent ;

S. Exc. M. François Alabrune, ambassadeur de la République française auprès du Royaume des Pays-Bas,

comme coagent ;

M. Hervé Ascensio, professeur à l'Université Paris 1 Panthéon-Sorbonne,

M. Pierre Bodeau-Livinec, professeur à l'Université Paris Nanterre,

M[me] Maryline Grange, maîtresse de conférences en droit public à l'Université Jean Monnet à Saint-Étienne, Université de Lyon,

M[me] Anne-Thida Norodom, professeure à l'Université Paris Cité,

M. Nabil Hajjami, sous-directeur du droit international public, direction des affaires juridiques, ministère de l'Europe et des affaires étrangères de la République française,

M[me] Marion Esnault, consultante juridique, direction des affaires juridiques, ministère de l'Europe et des affaires étrangères de la République française,

M. Stéphane Louhaur, conseiller juridique, ambassade de la République française au Royaume des Pays-Bas,

M[me] Jade Frichitthavong, chargée de mission juridique, ambassade de la République française au Royaume des Pays-Bas,

M[me] Emma Bongat, stagiaire au service juridique, ambassade de la République française au Royaume des Pays-Bas.

The Government of the Hellenic Republic is represented by:

Ms Zinovia Chaido Stavridi, Legal Adviser, Head of the Legal Department of the Ministry of Foreign Affairs of the Hellenic Republic,

as Agent;

HE Ms Caterina Ghini, Ambassador of the Hellenic Republic to the Kingdom of the Netherlands,

as Co-Agent;

Ms Martha Papadopoulou, Senior Legal Counselor, Legal Department of the Ministry of Foreign Affairs of the Hellenic Republic,

Ms Evangelia Grammatika, Minister Plenipotentiary, Deputy Head of Mission, Embassy of the Hellenic Republic in the Kingdom of the Netherlands,

Mr Konstantinos Kalamvokidis, Second Secretary, Embassy of the Hellenic Republic in the Kingdom of the Netherlands.

The Government of Ireland is represented by:

Mr Declan Smyth, Legal Adviser, Department of Foreign Affairs, Ireland,

as Agent;

Mr Frank Groome, Deputy Head of Mission, Embassy of Ireland in the Kingdom of the Netherlands,

as Co-Agent;

HE Mr Brendan Rogers, Ambassador of Ireland to the Kingdom of the Netherlands,

Ms Michelle Ryan, Assistant Legal Adviser, Department of Foreign Affairs, Ireland,

Ms Louise Hartigan, Deputy Head of Mission, Embassy of Ireland in the Kingdom of the Netherlands.

The Government of the Italian Republic is represented by:

Mr Stefano Zanini, Head of the Service for Legal Affairs, Diplomatic Disputes and International Agreements, Ministry of Foreign Affairs and International Cooperation of the Italian Republic,

as Agent;

HE Mr Giorgio Novello, Ambassador of the Italian Republic to the Kingdom of the Netherlands,

as Co-Agent;

Mr Attila Massimiliano Tanzi, Professor of International Law at the University of Bologna, 3 Verulam Buildings,

Mr Alessandro Sutera Sardo, Attaché Legal Affairs, Embassy of the Italian Republic in the Kingdom of the Netherlands,

Le Gouvernement de la République hellénique est représenté par :

M^me^ Zinovia Chaido Stavridi, conseillère juridique, cheffe du département juridique, ministère des affaires étrangères de la République hellénique,

comme agente ;

S. Exc. M^me^ Caterina Ghini, ambassadrice de la République hellénique auprès du Royaume des Pays-Bas,

comme coagente ;

M^me^ Martha Papadopoulou, conseillère juridique principale, département juridique, ministère des affaires étrangères de la République hellénique,

M^me^ Evangelia Grammatika, ministre plénipotentiaire, cheffe de mission adjointe, ambassade de la République hellénique au Royaume des Pays-Bas,

M. Konstantinos Kalamvokidis, deuxième secrétaire, ambassade de la République hellénique au Royaume des Pays-Bas.

Le Gouvernement de l'Irlande est représenté par :

M. Declan Smyth, conseiller juridique, ministère des affaires étrangères de l'Irlande,

comme agent ;

M. Frank Groome, chef de mission adjoint, ambassade d'Irlande au Royaume des Pays-Bas,

comme coagent ;

S. Exc. M. Brendan Rogers, ambassadeur d'Irlande auprès du Royaume des Pays-Bas,

M^me^ Michelle Ryan, conseillère juridique adjointe, ministère des affaires étrangères de l'Irlande,

M^me^ Louise Hartigan, cheffe de mission adjointe, ambassade d'Irlande au Royaume des Pays-Bas.

Le Gouvernement de la République italienne est représenté par :

M. Stefano Zanini, chef du service des affaires juridiques, des différends diplomatiques et des accords internationaux, ministère des affaires étrangères et de la coopération internationale de la République italienne,

comme agent ;

S. Exc. M. Giorgio Novello, ambassadeur de la République italienne auprès du Royaume des Pays-Bas,

comme coagent ;

M. Attila Massimiliano Tanzi, professeur de droit international à l'Université de Bologne, cabinet 3 Verulam Buildings,

M. Alessandro Sutera Sardo, attaché aux affaires juridiques, ambassade de la République italienne au Royaume des Pays-Bas,

Mr Luigi Ripamonti, Counsellor, Service for Legal Affairs, Diplomatic Disputes and International Agreements, Ministry of Foreign Affairs and International Cooperation of the Italian Republic,

Ms Ludovica Chiussi Curzi, Senior Assistant Professor of International Law, University of Bologna,

Mr Gian Maria Farnelli, Associate Professor of International Law, University of Bologna.

The Government of the Republic of Latvia is represented by:

Ms Kristīne Līce, Legislation and International Law Adviser to the President of the Republic of Latvia,

as Agent;

Mr Edgars Trumkalns, Chargé d'affaires *a.i.* of the Republic of Latvia in the Kingdom of the Netherlands,

as Co-Agent;

Mr Mārtiņš Paparinskis, Professor of Public International Law, University College London, member of the International Law Commission, member of the Permanent Court of Arbitration,

Mr Mamadou Hébié, Associate Professor of International Law, University of Leiden, member of the Bar of the State of New York,

Mr Vladyslav Lanovoy, Assistant Professor in Public International Law, Université Laval,

Mr Cameron Miles, member of the English Bar, 3 Verulam Buildings,

Mr Joseph Crampin, Lecturer of International Law, University of Glasgow,

Mr Luis Felipe Viveros, PhD candidate, University College London,

Ms Elīna Luīze Vītola, Deputy Agent of the Government, Office of the Representative of Latvia before International Human Rights Organizations, Ministry of Foreign Affairs of the Republic of Latvia,

Mr Arnis Lauva, Head of the International Law Division, Ministry of Foreign Affairs of the Republic of Latvia,

Ms Katrīna Kate Lazdine, Jurisconsult at the International Law Division, Ministry of Foreign Affairs of the Republic of Latvia.

The Government of the Principality of Liechtenstein is represented by:

HE Mr Pascal Schafhauser, Ambassador and Head of Mission of the Principality of Liechtenstein to the Kingdom of Belgium,

as Agent;

Mr Sina Alavi, Senior Adviser.

M. Luigi Ripamonti, conseiller, service des affaires juridiques, des différends diplomatiques et des accords internationaux, ministère des affaires étrangères et de la coopération internationale de la République italienne,

M^me^ Ludovica Chiussi Curzi, professeure adjointe principale de droit international à l'Université de Bologne,

M. Gian Maria Farnelli, professeur associé de droit international à l'Université de Bologne.

Le Gouvernement de la République de Lettonie est représenté par :

M^me^ Kristīne Līce, conseillère en législation et droit international auprès du président de la République de Lettonie,

comme agente ;

M. Edgars Trumkalns, chargé d'affaires par intérim de la République de Lettonie au Royaume des Pays-Bas,

comme coagent ;

M. Mārtiņš Paparinskis, professeur de droit international public, University College London, membre de la Commission du droit international, membre de la Cour permanente d'arbitrage,

M. Mamadou Hébié, professeur associé de droit international, Université de Leyde, membre du barreau de l'État de New York,

M. Vladyslav Lanovoy, professeur adjoint de droit international public, Université Laval,

M. Cameron Miles, membre du barreau d'Angleterre, cabinet 3 Verulam Buildings,

M. Joseph Crampin, chargé d'enseignement en droit international, Université de Glasgow,

M. Luis Felipe Viveros, doctorant, University College London,

M^me^ Elīna Luīze Vītola, agente adjointe du gouvernement, bureau du représentant de la République de Lettonie devant les organisations internationales des droits de l'homme, ministère des affaires étrangères de la République de Lettonie,

M. Arnis Lauva, chef de la division du droit international, ministère des affaires étrangères de la République de Lettonie,

M^me^ Katrīna Kate Lazdine, jurisconsulte, division du droit international, ministère des affaires étrangères de la République de Lettonie.

Le Gouvernement de la Principauté du Liechtenstein est représenté par :

S. Exc. M. Pascal Schafhauser, ambassadeur et chef de mission de la Principauté du Liechtenstein auprès du Royaume de Belgique,

comme agent ;

M. Sina Alavi, conseiller principal.

The Government of the Republic of Lithuania is represented by:

Ms Gabija Grigaitė-Daugirdė, Vice-Minister of Justice of the Republic of Lithuania, Lecturer at Vilnius University,

as Agent;

Mr Ričard Dzikovič, Head of Legal Representation at the Ministry of Justice of the Republic of Lithuania, Lecturer at Mykolas Romeris University,

Ms Ingrida Bačiulienė, Head of the International Treaties Unit at the Ministry of Foreign Affairs of the Republic of Lithuania,

as Co-Agents;

Mr Pierre d'Argent, Professor at the University of Louvain (U.C. Louvain), member of the Institut de droit international, member of the Bar of Brussels,

Mr Gleider Hernández, Professor at the University of Leuven (K.U. Leuven),

Ms Inga Martinkutė, Advocate at MMSP, member of the Lithuanian Bar Association, Lecturer at Vilnius University,

Mr Christian J. Tams, Professor at the University of Glasgow and at Leuphana University, Lüneburg,

HE Mr Neilas Tankevičius, Ambassador of the Republic of Lithuania to the Kingdom of the Netherlands,

Mr Mindaugas Žičkus, Deputy Head of Mission, Embassy of the Republic of Lithuania in the Kingdom of the Netherlands.

The Government of the Grand Duchy of Luxembourg is represented by:

Mr Alain Germeaux, *Conseiller de légation adjoint*, Director of Legal Affairs, Ministry for Foreign and European Affairs of the Grand Duchy of Luxembourg,

as Agent;

Ms Léa Siffert, Legal Adviser at the Embassy of the Grand Duchy of Luxembourg in the Kingdom of the Netherlands,

as Deputy Agent;

HE Mr Mike Hentges, Ambassador of the Grand Duchy of Luxembourg to the Kingdom of the Netherlands.

The Government of the Republic of Malta is represented by:

Mr Christopher Soler, State Advocate, Republic of Malta,

as Agent;

HE Mr Mark Pace, Ambassador of the Republic of Malta to the Kingdom of the Netherlands,

as Co-Agent;

Le Gouvernement de la République de Lituanie est représenté par :

M^me^ Gabija Grigaitė-Daugirdė, vice-ministre de la justice de la République de Lituanie, chargée d'enseignement à l'Université de Vilnius,

comme agente ;

M. Ričard Dzikovič, chef de la représentation juridique, ministère de la justice de la République de Lituanie, chargé d'enseignement à l'Université Mykolas Romeris,

M^me^ Ingrida Bačiulienė, cheffe de la division des traités internationaux, ministère des affaires étrangères de la République de Lituanie,

comme coagents ;

M. Pierre d'Argent, professeur à l'Université de Louvain (U.C. Louvain), membre de l'Institut de droit international, membre du barreau de Bruxelles,

M. Gleider Hernández, professeur à l'Université de Louvain (K.U. Leuven),

M^me^ Inga Martinkutė, avocate au cabinet MMSP, membre du barreau de Lituanie, chargée d'enseignement à l'Université de Vilnius,

M. Christian J. Tams, professeur à l'Université de Glasgow et à l'Université Leuphana de Lunebourg,

S. Exc. M. Neilas Tankevičius, ambassadeur de la République de Lituanie auprès du Royaume des Pays-Bas,

M. Mindaugas Žičkus, chef de mission adjoint, ambassade de la République de Lituanie au Royaume des Pays-Bas.

Le Gouvernement du Grand-Duché de Luxembourg est représenté par :

M. Alain Germeaux, conseiller de légation adjoint, directeur des affaires juridiques, ministère des affaires étrangères et européennes du Grand-Duché de Luxembourg,

comme agent ;

M^me^ Lea Siffert, conseillère juridique à l'ambassade du Grand-Duché de Luxembourg au Royaume des Pays-Bas,

comme agente adjointe ;

S. Exc. M. Mike Hentges, ambassadeur du Grand-Duché de Luxembourg auprès du Royaume des Pays-Bas.

Le Gouvernement de la République de Malte est représenté par :

M. Christopher Soler, avocat de l'État, République de Malte,

comme agent ;

S. Exc. M. Mark Pace, ambassadeur de la République de Malte auprès du Royaume des Pays-Bas,

comme coagent ;

Ms Ariana Rowela Falzon, Lawyer, Office of the State Advocate,

Ms Margot Ann Schembri Bajada, Counsellor, Legal Unit, Ministry of Foreign and European Affairs and Trade of the Republic of Malta,

Ms Marilyn Grech, Legal Officer, Legal Unit, Ministry of Foreign and European Affairs and Trade of the Republic of Malta,

Mr Matthew Grima, Deputy Head of Mission, Counsellor, Embassy of the Republic of Malta in the Kingdom of the Netherlands,

Ms Mary Jane Spiteri, Research and Administrative Officer, Embassy of the Republic of Malta in the Kingdom of the Netherlands,

Mr Clemens Baier, Research and Administrative Officer, Embassy of the Republic of Malta in the Kingdom of the Netherlands.

The Government of the Kingdom of Norway is represented by:

Mr Kristian Jervell, Director General, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

as Agent;

Mr Martin Sørby, Deputy Director General, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

as Co-Agent;

HE Mr Bård Ivar Svendsen, Ambassador of the Kingdom of Norway to the Kingdom of the Netherlands and the Grand Duchy of Luxembourg,

Ms Kristin Hefre, Minister Counsellor for Legal Affairs, Royal Norwegian Embassy in the Kingdom of the Netherlands,

Ms Dagny Marie Ås Hovind, Adviser, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

Ms Frida Fostvedt, Adviser, Legal Department, Ministry of Foreign Affairs of the Kingdom of Norway,

Mr Zaid Waran, Intern, Legal Affairs, Royal Norwegian Embassy in the Kingdom of the Netherlands.

The Government of New Zealand is represented by:

Ms Victoria Hallum, Deputy Secretary, Ministry of Foreign Affairs and Trade of New Zealand,

as Agent;

Mr Andrew Williams, Chief International Legal Adviser (acting), Ministry of Foreign Affairs and Trade of New Zealand,

M^me^ Ariana Rowela Falzon, avocate, bureau de l'avocat de l'État,

M^me^ Margot Ann Schembri Bajada, conseillère au département juridique, ministère des affaires étrangères et européennes et du commerce de la République de Malte,

M^me^ Marilyn Grech, juriste, département juridique du ministère des affaires étrangères et européennes et du commerce de la République de Malte,

M. Matthew Grima, chef de mission adjoint, conseiller à l'ambassade de la République de Malte au Royaume des Pays-Bas,

M^me^ Mary Jane Spiteri, chargée d'administration et d'études, ambassade de la République de Malte au Royaume des Pays-Bas,

M. Clemens Baier, chargé d'administration et d'études, ambassade de la République de Malte au Royaume des Pays-Bas.

Le Gouvernement du Royaume de Norvège est représenté par :

M. Kristian Jervell, directeur général du département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

comme agent ;

M. Martin Sørby, directeur général adjoint du département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

comme coagent ;

S. Exc. M. Bård Ivar Svendsen, ambassadeur du Royaume de Norvège auprès du Royaume des Pays-Bas et du Grand-Duché de Luxembourg,

M^me^ Kristin Hefre, ministre-conseillère aux affaires juridiques, ambassade du Royaume de Norvège au Royaume des Pays-Bas,

M^me^ Dagny Marie Ås Hovind, conseillère au département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

M^me^ Frida Fostvedt, conseillère au département des affaires juridiques, ministère des affaires étrangères du Royaume de Norvège,

M. Zaid Waran, stagiaire aux affaires juridiques, ambassade du Royaume de Norvège au Royaume des Pays-Bas.

Le Gouvernement de la Nouvelle-Zélande est représenté par :

M^me^ Victoria Hallum, sous-ministre, ministère des affaires étrangères et du commerce extérieur de la Nouvelle-Zélande,

comme agente ;

M. Andrew Williams, conseiller juridique en chef (par intérim) pour le droit international, ministère des affaires étrangères et du commerce extérieur de la Nouvelle-Zélande,

HE Ms Susannah Gordon, Ambassador of New Zealand to the Kingdom of the Netherlands,

as Co-Agents;

Ms Elana Geddis, Barrister, Kate Sheppard Chambers, Wellington,

Mr Toby Fisher, Barrister, Matrix Chambers, London,

Ms Jane Collins, Senior Legal Adviser, Ministry of Foreign Affairs and Trade of New Zealand,

Ms Hannah Frost, Deputy Head of Mission, Embassy of New Zealand in the Kingdom of the Netherlands,

Mr Bastiaan Grashof, Policy Adviser, Embassy of New Zealand in the Kingdom of the Netherlands.

The Government of the Kingdom of the Netherlands is represented by:

Mr René J. M. Lefeber, Legal Adviser, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

as Agent;

Ms Mireille Hector, Deputy Legal Adviser, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

as Co-Agent;

Ms Annemarieke Künzli, Legal Counsel, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

Ms Marina Brilman, Legal Counsel, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

Ms Robin Geraerts, Legal Officer, Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Government of the Republic of Poland is represented by:

HE Ms Margareta Kassangana, Ambassador of the Republic of Poland to the Kingdom of the Netherlands,

as Co-Agent;

Mr Łukasz Kułaga, Counsellor of the Legal and Treaty Department, Ministry of Foreign Affairs of the Republic of Poland,

Ms Paulina Dudzik, First Secretary and Legal Adviser, Embassy of the Republic of Poland in the Kingdom of the Netherlands,

as Deputy Agents.

The Government of the Portuguese Republic is represented by:

Ms Patrícia Galvão Teles, Director of the Department of Legal Affairs, Ministry of Foreign Affairs of the Portuguese Republic, and member of the International Law Commission,

as Agent;

S. Exc. M^me^ Susannah Gordon, ambassadrice de Nouvelle-Zélande auprès du Royaume des Pays-Bas,

comme coagents ;

M^me^ Elana Geddis, avocate, Kate Sheppard Chambers (Wellington),

M. Toby Fisher, avocat, Matrix Chambers (Londres),

M^me^ Jane Collins, conseillère juridique principale, ministère des affaires étrangères et du commerce extérieur de la Nouvelle-Zélande,

M^me^ Hannah Frost, cheffe de mission adjointe, ambassade de Nouvelle-Zélande au Royaume des Pays-Bas,

M. Bastiaan Grashof, conseiller politique, ambassade de Nouvelle-Zélande au Royaume des Pays-Bas.

Le Gouvernement du Royaume des Pays-Bas est représenté par :

M. René J.M. Lefeber, conseiller juridique, ministère des affaires étrangères du Royaume des Pays-Bas,

comme agent ;

M^me^ Mireille Hector, conseillère juridique adjointe, ministère des affaires étrangères du Royaume des Pays-Bas,

comme coagente ;

M^me^ Annemarieke Künzli, jurisconsulte, ministère des affaires étrangères du Royaume des Pays-Bas,

M^me^ Marina Brilman, jurisconsulte, ministère des affaires étrangères du Royaume des Pays-Bas,

M^me^ Robin Geraerts, juriste, ministère des affaires étrangères du Royaume des Pays-Bas.

Le Gouvernement de la République de Pologne est représenté par :

S. Exc. M^me^ Margareta Kassangana, ambassadrice de la République de Pologne auprès du Royaume des Pays-Bas,

comme coagente ;

M. Łukasz Kułaga, conseiller, département du droit et des traités, ministère des affaires étrangères de la République de Pologne,

M^me^ Paulina Dudzik, première secrétaire et conseillère juridique, ambassade de la République de Pologne au Royaume des Pays-Bas,

comme agents adjoints.

Le Gouvernement de la République portugaise est représenté par :

M^me^ Patrícia Galvão Teles, directrice du département des affaires juridiques, ministère des affaires étrangères de la République portugaise, et membre de la Commission du droit international,

comme agente ;

HE Ms Clara Nunes dos Santos, Ambassador of the Portuguese Republic to the Kingdom of the Netherlands,

as Co-Agent;

Mr Mateus Kowalski, Director of the International Law Directorate, Ministry of Foreign Affairs of the Portuguese Republic,

Mr Henrique Azevedo, Deputy Head of Mission, Embassy of the Portuguese Republic in the Kingdom of the Netherlands,

Ms Ana Margarida Pinto de Seabra, Legal Intern, Embassy of the Portuguese Republic in the Kingdom of the Netherlands.

The Government of Romania is represented by:

HE Ms Alina Orosan, Ambassador, Director General for Legal Affairs, Ministry of Foreign Affairs of Romania,

HE Mr Lucian Fătu, Ambassador of Romania to the Kingdom of the Netherlands,

as Co-Agents;

Mr Filip-Andrei Lariu, Attaché, Legal Directorate of the Ministry of Foreign Affairs of Romania,

Mr Eugen Mihuţ, Minister Plenipotentiary and Legal Counsellor, Embassy of Romania in the Kingdom of the Netherlands.

The Government of the United Kingdom of Great Britain and Northern Ireland is represented by:

Ms Sally Langrish, Legal Adviser and Director General Legal at the Foreign, Commonwealth and Development Office, United Kingdom,

as Agent;

Mr Paul McKell, Legal Director at the Foreign, Commonwealth and Development Office, United Kingdom,

as Co-Agent;

the Rt. Hon. Victoria Prentis, KC, MP, Attorney General,

Mr Ben Juratowitch, KC, member of the Bar of England and Wales, the Paris Bar and the Bar of Belize, Essex Court Chambers,

Ms Philippa Webb, Professor of Public International Law, King's College London, member of the Bar of England and Wales, and the Bars of the State of New York and Belize, Twenty Essex Chambers,

Ms Naomi Hart, member of the Bar of England and Wales, Essex Court Chambers,

Ms Susan Dickson, Legal Counsellor and Head of Europe and Human Rights Team, Legal Directorate, Foreign, Commonwealth and Development Office, United Kingdom,

Ms Ruth Tomlinson, Deputy Director and Head of International Law, Attorney General's Office,

S. Exc. M^me^ Clara Nunes dos Santos, ambassadrice de la République portugaise auprès du Royaume des Pays-Bas,

comme coagente ;

M. Mateus Kowalski, directeur du service de droit international, ministère des affaires étrangères de la République portugaise,

M. Henrique Azevedo, chef de mission adjoint, ambassade de la République portugaise au Royaume des Pays-Bas,

M^me^ Ana Margarida Pinto de Seabra, stagiaire en droit, ambassade de la République portugaise au Royaume des Pays-Bas.

Le Gouvernement de la Roumanie est représenté par :

S. Exc. M^me^ Alina Orosan, ambassadrice, directrice générale des affaires juridiques, ministère des affaires étrangères de la Roumanie,

S. Exc. M. Lucian Fătu, ambassadeur de Roumanie auprès du Royaume des Pays-Bas,

*comme coagents ;*M. Filip-Andrei Lariu, attaché à la direction des affaires juridiques, ministère des affaires étrangères de la Roumanie,

M. Eugen Mihuț, ministre plénipotentiaire et conseiller juridique, ambassade de Roumanie au Royaume des Pays-Bas.

Le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord est représenté par :

M^me^ Sally Langrish, conseillère juridique et directrice générale des affaires juridiques, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni,

comme agente ;

M. Paul McKell, directeur juridique, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni,

comme coagent ;

la très honorable M^me^ Victoria Prentis, KC, MP, *Attorney General*,

M. Ben Juratowitch, KC, membre du barreau d'Angleterre et du pays de Galles ainsi que des barreaux de Paris et du Belize, Essex Court Chambers,

M^me^ Philippa Webb, professeure de droit international public, King's College (Londres), membre du barreau d'Angleterre et du pays de Galles ainsi que des barreaux de New York et du Belize, Twenty Essex Chambers,

M^me^ Naomi Hart, membre du barreau d'Angleterre et du pays de Galles, Essex Court Chambers,

M^me^ Susan Dickson, conseillère juridique et cheffe de l'équipe chargée de l'Europe et des droits de l'homme, direction des affaires juridiques, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni,

M^me^ Ruth Tomlinson, directrice adjointe et cheffe de la section de droit international, bureau de l'*Attorney General*,

Mr Michael Boulton, Assistant Legal Adviser, Europe and Human Rights Team, Legal Directorate, Foreign, Commonwealth and Development Office, United Kingdom.

The Government of the Slovak Republic is represented by:

Mr Metod Špaček, Chief of Staff at the Office of the President of the Slovak Republic,

as Agent;

Mr Peter Klanduch, Director of the International Law Department, Ministry of Foreign and European Affairs of the Slovak Republic,

as Co-Agent;

HE Mr Juraj Macháč, Ambassador of the Slovak Republic to the Kingdom of the Netherlands,

Ms Zuzana Morháčová, Assistant Legal Adviser, Ministry of Foreign and European Affairs of the Slovak Republic,

Mr Jozef Kušlita, First Secretary, Embassy of the Slovak Republic in the Kingdom of the Netherlands,

Mr Peter Nagy, Second Secretary, Embassy of the Slovak Republic in the Kingdom of the Netherlands.

The Government of the Republic of Slovenia is represented by:

Mr Marko Rakovec, Director-General for International Law and Protection of Interests, Ministry of Foreign and European Affairs of the Republic of Slovenia,

as Agent;

HE Mr Jožef Drofenik, Ambassador of the Republic of Slovenia to the Kingdom of the Netherlands,

as Co-Agent;

Mr Daniel Müller, Lawyer at FAR Avocats,

Mr Andrej Svetličič, International Law Department, Ministry of Foreign and European Affairs of the Republic of Slovenia,

Ms Silvana Kovač, Directorate for International Law and Protection of Interests, Ministry of Foreign and European Affairs of the Republic of Slovenia,

Ms Maša Devinar Grošelj, Embassy of the Republic of Slovenia in the Kingdom of the Netherlands,

Ms Nina Bjelica.

The Government of the Kingdom of Sweden is represented by:

Ms Elinor Hammarskjöld, Director General for Legal Affairs, Ministry of Foreign Affairs of the Kingdom of Sweden,

as Agent;

M. Michael Boulton, conseiller juridique adjoint, équipe chargée de l'Europe et des droits de l'homme, direction des affaires juridiques, ministère des affaires étrangères, du Commonwealth et du développement du Royaume-Uni.

Le Gouvernement de la République slovaque est représenté par :

M. Metod Špaček, chef de cabinet du bureau de la présidente de la République slovaque,

comme agent ;

M. Peter Klanduch, directeur du département du droit international, ministère des affaires étrangères et européennes de la République slovaque,

comme coagent ;

S. Exc. M. Juraj Macháč, ambassadeur de la République slovaque auprès du Royaume des Pays-Bas,

M[me] Zuzana Morháčová, conseillère juridique adjointe, ministère des affaires étrangères et européennes de la République slovaque,

M. Jozef Kušlita, premier secrétaire, ambassade de la République slovaque au Royaume des Pays-Bas,

M. Peter Nagy, deuxième secrétaire, ambassade de la République slovaque au Royaume des Pays-Bas.

Le Gouvernement de la République de Slovénie est représenté par :

M. Marko Rakovec, directeur général du droit international et de la protection des intérêts, ministère des affaires étrangères et européennes de la République de Slovénie,

comme agent ;

S. Exc. M. Jožef Drofenik, ambassadeur de la République de Slovénie auprès du Royaume des Pays-Bas,

comme coagent ;

M. Daniel Müller, avocat, cabinet FAR Avocats,

M. Andrej Svetličič, département du droit international, ministère des affaires étrangères et européennes de la République de Slovénie,

M[me] Silvana Kovač, direction du droit international et de la protection des intérêts, ministère des affaires étrangères et européennes de la République de Slovénie,

M[me] Maša Devinar Grošelj, ambassade de la République de Slovénie au Royaume des Pays-Bas,

M[me] Nina Bjelica.

Le Gouvernement du Royaume de Suède est représenté par :

M[me] Elinor Hammarskjöld, directrice générale des affaires juridiques, ministère des affaires étrangères du Royaume de Suède,

comme agente ;

Mr Daniel Gillgren, Deputy Director at the Department for International Law, Human Rights and Treaty Law, Ministry of Foreign Affairs of the Kingdom of Sweden,

as Co-Agent;

HE Mr Johannes Oljelund, Ambassador of the Kingdom of Sweden to the Kingdom of the Netherlands,

Ms Dominika Brott, First Secretary, Embassy of the Kingdom of Sweden in the Kingdom of the Netherlands.

The Government of the Czech Republic is represented by:

Mr Emil Ruffer, Director of the International Law Department, Ministry of Foreign Affairs of the Czech Republic,

as Agent;

HE Mr René Miko, Ambassador of the Czech Republic to the Kingdom of the Netherlands,

as Co-Agent;

Mr Pavel Caban, Head of Unit, International Law Department, Ministry of Foreign Affairs of the Czech Republic,

Ms Martina Filippiová, Legal Adviser, Embassy of the Czech Republic in the Kingdom of the Netherlands,

Mr Pavel Šturma, Professor of Public International Law, Charles University Prague, former member of the International Law Commission.

M. Daniel Gillgren, directeur adjoint du département du droit international, des droits de l'homme et du droit des traités, ministère des affaires étrangères du Royaume de Suède,

comme coagent ;

S. Exc. M. Johannes Oljelund, ambassadeur du Royaume de Suède auprès du Royaume des Pays-Bas,

M^me^ Dominika Brott, première secrétaire, ambassade du Royaume de Suède au Royaume des Pays-Bas.

Le Gouvernement de la République tchèque est représenté par :

M. Emil Ruffer, directeur du département du droit international, ministère des affaires étrangères de la République tchèque,

comme agent ;

S. Exc. M. René Miko, ambassadeur de la République tchèque auprès du Royaume des Pays-Bas,

comme coagent ;

M. Pavel Caban, chef de section, département du droit international, ministère des affaires étrangères de la République tchèque,

Mme Martina Filippiová, conseillère juridique, ambassade de la République tchèque au Royaume des Pays-Bas,

M. Pavel Šturma, professeur de droit international public, Université Charles de Prague, ancien membre de la Commission du droit international.

The PRESIDENT: Please be seated. The sitting is open. The Court meets today to hear the second round of oral argument of the Russian Federation. The Russian Federation will have two sessions of three hours, today, to respond to the arguments of Ukraine and the oral observations of the intervening States.

I shall now give the floor to Her Excellency Ms Maria Zabolotskaya, Agent of the Russian Federation. You have the floor, Excellency.

Ms ZABOLOTSKAYA:

OPENING STATEMENT OF THE AGENT OF THE RUSSIAN FEDERATION

Introduction

1. Madam President, distinguished Members of the Court, last week you have heard 33 States, including Ukraine, repeat over and over how Russia allegedly violated international law governing State sovereignty, State recognition, use of force, human rights and other rules. None of these matters pertain to the Genocide Convention. These statements reveal the real goal of Ukraine and its supporters — to drag this Court into adjudicating matters plainly outside its jurisdiction. Speaking of these matters, which do not pertain to the present case, they have completely avoided certain topics and actively misled the Court about others.

2. Today, I will speak on the issues that Ukraine and its cohort want to conceal.

Ukraine omits Russia's key notification to the United Nations Security Council

3. Madam President, as Russia noted in its preliminary objections[1], on 24 February 2022 the legal basis for the special military operation had been communicated to the UN Security Council and the UN Secretary-General by the Permanent Representative of the Russian Federation through an official notification under Article 51 of the UN Charter. The notification reads as follows:

> "I have the honour to forward herewith the text of the address of the President of the Russian Federation, Vladimir Putin, to the citizens of Russia, *informing them of the measures taken in accordance with Article 51 of the Charter of the United Nations in exercise of the right of self-defence*"[2].

[1] PORF, para. 47.

[2] Letter dated 24 Feb. 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, available at: https://digitallibrary.un.org/record/3959647 (judges' folder, tab 5.3).

4. As you see on the slide, the letter of Ambassador Nebenzia referred only to Article 51 of the Charter and did not mention any other legal grounds. Moreover, there is a separate legal significance in the fact that such notification under Article 51 was sent, as recognized by the Court in the *Military and Paramilitary Activities* case. In that case, the Court put in doubt the assertion of the United States that it was acting under Article 51 of the Charter in view of the absence of such notification[3]. Thus, the existence of such notification *a contrario* shows such a conviction on the part of Russia.

5. The speech of President Putin was attached to the said notification and expressed the same legal basis for the special military operation:

> "We simply have been left with no other way to defend Russia and our people than the one we are forced to use today. The circumstances require us to act decisively and immediately. The People's Republics of Donbass appealed to Russia for help. *In this regard, in accordance with Article 51 (Chapter VII) of the Charter of the United Nations, I have decided to conduct a special military operation with the approval of the Federation Council of Russia and pursuant to the treaties on friendship and mutual assistance with the Donetsk People's Republic and the Lugansk People's Republic*"[4].

6. The Genocide Convention was not referred to as a legal basis for the special military operation. However, the speech gave a wider context of the situation, where genocide was mentioned among other factors.

7. Neither was the Convention invoked as a legal basis for the recognition of the DPR and LPR in the statement of the President of 21 February 2022.

8. In providing an attachment to the notification under Article 51 that described the wider context of the situation, the Russian Federation did not depart from the practice of other notifications of this kind under Article 51 and did not diminish the fact that self-defence is the legal basis for the use of force.

9. I will bring just some examples. In one case of such notification, 12 civilian casualties and 174 ceasefire violations have been reported[5]. In another, Article 51 has been invoked in response to a plea from an exiled president for assistance against rebels who took power in armed coup d'état

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[3] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 434, para. 94.

[4] PORF, para. 44.

[5] Letter addressed to the UN Secretary-General from the Adviser to the Prime Minister on National Security and Foreign Affairs, 12 Oct. 2014, available at: https://mofa.gov.pk/letter-addressed-to-the-un-secretary-general-from-the-adviser-to-the-prime-minister-on-national-security-and-foreign-affairs/.

while being supported by external forces seeking to project power over the country[6]. Yet on another occasion, the notification under Article 51 referred to "bloodshed, agony and the suffering of the people" which "continue to grow after the regime . . . has chosen to wage a war against [its own] people"[7]. In a fourth case, circumstances regarding relocation of an extraterritorial site were described, related to treaties establishing borders[8]. Numerous rather famous examples of Article 51 notifications, including those from States intervening in the present case, involve combating terrorism[9]. Russia does not presently comment on the veracity or legality of these notifications; however, these instances show how different considerations may colour such invocations, without necessarily implicating their legal basis.

10. In Russia's case, Article 51 has been invoked after eight years of attacks on Donbass by the Kiev régime, nearly *two million* ceasefire violations, tens of thousands of artillery strikes by Ukrainian forces, more than 3,500 Donbass civilians killed and over 10,000 wounded, including over 100 children killed by Ukrainian attacks[10].

Ukraine conceals the escalation of hostilities in Donbass

11. Madam President, another point that Ukraine wishes you to forget is a drastic escalation of hostilities in Donbass in February 2022. As Ukraine was getting increasingly more weapons from NATO countries, its military pressure against Donbass was escalating and the situation in Ukraine became extremely volatile. Eager to stabilize it, in December 2021 Russia had approached NATO

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[6] Permanent Representative of Qatar, Identical letters to the United Nations addressed to the Secretary-General and the President of the Security Council, 26 Mar. 2015, No. S/2015/217, available at: https://undocs.org/Home/Mobile?FinalSymbol=S%2F2015%2F217&Language=E&DeviceType=Desktop&LangRequested=False (judges' folder, tab 8.1).

[7] The Chargé d'affaires a.i. of the Permanent Mission of Turkey, Letter to the United Nations addressed to the President of the Security Council, 24 July 2015, No. S/2015/563, available at: https://undocs.org/Home/Mobile?FinalSymbol=S%2F2015%2F563&Language=E&DeviceType=Desktop&LangRequested=False (judges' folder, tab 8.2)

[8] Permanent Representative of Turkey, Identical letters to the United Nations addressed to the Secretary-General and the President of the Security Council, 22 Feb. 2015, No. S/2015/127, available at: https://undocs.org/Home/Mobile?FinalSymbol=S%2F2015%2F127&Language=E&DeviceType=Desktop&LangRequested=False (judges' folder, tab 8.3).

[9] Permanent Representative of the United States of America, Letter to the United Nations addressed to the Secretary-General and the President of the Security Council, 7 Oct. 2001, No. S/2001/946, available at: https://www.undocs.org/Home/Mobile?FinalSymbol=s%2F2001%2F946&Language=E&DeviceType=Desktop&LangRequested=False (judges' folder, tab 8.4).

[10] OSCE, 2020 Trends and Observations, available at: https://www.osce.org/files/f/documents/e/8/476809.pdf; OSCE, 2021 Trends and Observations, available at: https://www.osce.org/files/f/documents/2/a/511327.pdf.

with proposals for a new security arrangement in Europe, which would ensure peace in Ukraine[11]. However, these proposals were rejected by the United States and its European allies out of hand[12].

12. Nevertheless, even faced with such grave security concerns and misgivings about the fate of Donbass, Russia did not act. Only in 2022, when Ukrainian forces escalated their armed attacks to an intolerable threshold, Russia recognised DPR and LPR's independence and together with them exercised the right to self-defence. This came after thousands of civilian deaths, nearly two million ceasefire violations — it is rising to more than 2,000 per day[13] — and immense damage to Donbass civilian infrastructure, all in the name of Ukraine's bid to join NATO and become a platform for that organization's forces, hostile to the Russian Federation.

13. In his speech of 21 February 2022, the President of the Russian Federation Vladimir Putin made the following statements:

(a) "Ukraine's accession to NATO and the subsequent deployment of NATO facilities has already been decided and is only a matter of time. We clearly understand that given this scenario, the level of military threats to Russia will increase dramatically, several times over."

(b) In March 2021, a new military strategy was adopted by Ukraine. This document is almost entirely dedicated to confrontation with Russia and sets the goal of involving foreign States in a conflict with our country. The strategy stipulates the organization of what can be described as a terrorist underground movement in Russia's Crimea and in Donbass. It also sets out the contours of potential war, which should end, according to Kiev strategists, "with the assistance of the international community on favourable terms for Ukraine", as well as — listen carefully, please — "with foreign military support in the geopolitical confrontation with the Russian Federation".

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[11] Ministry of Foreign Affairs of the Russian Federation, press release on Russian draft documents on legal security guarantees from the United States and NATO, 17 Dec. 2021, available at: https://mid.ru/en/foreign_policy/news/1790809/ (judges' folder, tab 8.5).

[12] The New York Times, Russia Lays Out Demands for a Sweeping New Security Deal With NATO (17 Dec. 2021), available at: https://www.nytimes.com/2021/12/17/world/europe/russia-nato-security-deal.html#:~:text=The%20Russian%20proposal%20%E2%80%94%20immediately%20dismissed,now%2Dindependent%20states%20extending%20from (judges' folder, tab 8.6); Reuters, Russia demands NATO roll back from East Europe and stay out of Ukraine (17 Dec. 2021), available at: https://www.reuters.com/world/russia-unveils-security-guarantees-says-western-response-not-encouraging-2021-12-17/.

[13] OSCE Special Monitoring Mission to Ukraine (SMM) Daily Report 40/2022, 21 Feb. 2022, available at: https://www.osce.org/special-monitoring-mission-to-ukraine/512842.

(c) "With regard to the state of affairs in Donbass, we see that the ruling Kiev elites never stop publicly making clear their unwillingness to comply with the Minsk Package of Measures to settle the conflict and are not interested in a peaceful settlement. On the contrary, they are trying to orchestrate a blitzkrieg in Donbass as was the case in 2014 and 2015 . . . Not a single day goes by without Donbass communities coming under shelling attacks. The recently formed large military forces makes use of attack drones, heavy equipment, missiles, artillery and multiple rocket launchers. The killing of civilians, the blockade, the abuse of people, including children, women and elderly, continues unabated . . . there is no end in sight to this."

(d) "Russia has done everything to preserve Ukraine's territorial integrity. All these years, it has persistently and patiently pushed for the implementation of UN Security Council Resolution 2202 of February 17, 2015, which consolidated the Minsk Package of Measures of February 12, 2015, to settle the situation in Donbass. Everything was in vain. Ukrainian Presidents and Rada deputies come and go, but deep down the aggressive and nationalistic regime that seized power in Kiev remains unchanged. It is entirely a product of the 2014 coup, and those who then embarked on the path of violence, bloodshed and lawlessness did not recognise then and do not recognise now any solution to the Donbass issue other than a military one."

(e) "In this regard, I consider it necessary to take a long overdue decision and to immediately recognise the independence and sovereignty of the Donetsk People's Republic and the Lugansk People's Republic . . . We want those who seized and continue to hold power in Kiev to immediately stop hostilities."[14]

14. Thus, the principal concern was over a devastating military campaign against Donbass in spite of UN-approved peace accords and the threat to the security of the Russian Federation.

15. In this regard let me recall what US Secretary of State Condoleezza Rice stated when recognizing the independence of Kosovo:

> "[W]e've been very clear that Kosovo is *sui generis* and that that is because of the special circumstances out of which the breakup of Yugoslavia came. *The special*

[14] Address by the President of the Russian Federation, 21 Feb. 2022, available at: http://en.kremlin.ru/events/president/news/67828 (judges' folder, tab 8.7).

circumstances of the aggression of the Milosevic forces against Kosovars, particularly Albanian Kosovars, and it's a special circumstance"[15].

16. Of course, there is nothing "unique" about Kosovo. In 2008 Georgia attacked the break-away republics of Abkhazia and South Ossetia, in violation of the UN-approved regional peace arrangement; likewise, in 2022 Ukraine escalated its attacks against the Donbass republics in violation of the Minsk Agreements. Both cases led to the recognition of the seceding States. The difference between these cases lies in the complete lack of legal basis for NATO's armed intervention in Kosovo, to which I will come in a moment.

17. As you all know, the vast majority of the intervening States have recognized the independence of Kosovo.

18. Ukraine did not heed any warnings, and only escalated its strikes. On 24 February 2022, Russia together with the DPR and LPR were forced to invoke Article 51 of the UN Charter.

19. Madam President, distinguished judges of the Court, this shows that Russia acted under Article 51 of the UN Charter. But this courtroom has only recently been full of people representing States who did *not* act under Article 51 when using force against a sovereign State under a pretext of alleged genocide that has never been confirmed.

Ukraine conceals its failure to fulfil the Minsk Agreements

20. Madam President, another crucial point for the special military operation that Ukraine seeks to pass in silence is Ukraine's disdain to the Minsk Agreements. Despite Kiev's brutal assault on Donbass since 2014, Russia has at that moment neither recognized the DPR and LPR, nor conducted a military operation for their defence. For eight long years, Russia has been hoping to implement the Minsk Agreements, the 2015 peace accord between Kiev, Donetsk and Lugansk endorsed by the Security Council and supported by France, Germany and Russia. These agreements only required Ukraine to grant autonomy to Donbass, while preserving its territory. But Kiev refused to do so, instead acting by force of arms.

[15] Civil Georgia, US Rules Out Recognising S. Ossetia (6 Mar. 2008), available at: https://civil.ge/archives/114437 (judges' folder, tab 8.8).

21. Last week Russia's Agent explained how Ukraine and its western sponsors revealed that they never intended to fulfil the Minsk Agreements. Kiev has in effect rejected them by numerous and substantive violations. A list of them is available online[16] and in the judges' folders.

22. Ukraine rejected the implementation of the peace plan and never stopped striking Donbass.

Ukraine omits the barbaric war it has waged on Donbass

23. Madam President, Members of the Court, Ukraine also wishes to strike out eight years of war against Donbass.

24. According to the OHCHR Report on Ukraine, during the conflict period, from 2014 to 2022, OHCHR recorded a total of 3,107 conflict-related deaths, including 152 children. The number of injured civilians is estimated to exceed 7,000[17]. The majority of civilian casualties took place in the DPR and LPR.

25. However, the real number of casualties is much higher, as not all of the killed or injured fell within the sight of international monitors. According to the authorities of the People's Republics, until 2022, more than 6,000 civilians were killed, and about 16,000 people, including more than 400 children, were injured on their territories[18].

26. It was due to mass shellings of residential areas in Donbass by Ukrainian forces.

27. In order to punish the people of Donbass who refused to recognise the neo-Nazi régime, on 14 April 2014 Kiev began a full-scale military operation[19].

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[16] Ministry of Foreign Affairs of the Russian Federation, On the Progress in the Implementation of the Minsk Agreements, 24 Sept. 2023, available at: https://mid.ru/en/foreign_policy/news/themes/id/1906015/ (judges' folder, tab 8.9).

[17] OHCHR, Report on the human rights situation in Ukraine, 1 August 2021 to 31 January 2022, available at: https://www.ohchr.org/sites/default/files/2022-03/33rdReportUkraine-en.pdf (judges' folder, tab 8.25).

[18] TASS, *Almost 6 Thousand Civilians Died During the Donbass Conflict* (25 Jan. 2018), available at: https://tass.ru/mezhdunarodnaya-panorama/4901583.

[19] Unian, *Full-fledged ATO in Slavyansk: Checkpoints Taken, Two Helicopters Shot Down, Fatalities (to be updated)* (2 May 2014), available at: https://www.unian.net/politics/913887-v-slavyanske-prohodit-polnomasshtabnaya-ato-blokpostyi-vzyatyi-sbityi-dva-vertoleta-est-pogibshie-obnovlyaetsya.html; Decree of the Acting President of Ukraine No. 405/2014 "On the Decision of the National Security and Defence Council of Ukraine dated 13 April 2014 'On Urgent Measures to Overcome the Terrorist Threat and Preserve the Territorial Integrity of Ukraine'", 14 April 2014, available at: https://zakon.rada.gov.ua/laws/show/405/2014#text; BBC News, *Ukraine Crisis: Turchynov Announces Anti-Terror Operation* (13 Apr. 2014), available at: https://www.bbc.com/news/av/world-europe-27013169.

28. In May 2014, the right-wing radicals burned down around 46 civilians, who called for the establishment of a federal system in Ukraine, in the building of trade unions in Odessa[20]. Nobody has been punished for this crime.

29. A few months later in this city, President Poroshenko made his infamous speech in which he promised that the people of the Donbass would have neither pensions nor salaries, and their children would sit in basements instead of going to school[21].

30. On 14 July 2014, the Ukrainian forces shelled the Mirny and Gaevoy microdistricts of Lugansk. As a result, at least 17 people were killed[22]. On 1 August, Lugansk City Council reported that 93 civilians had been killed and 407 injured between 1 and 28 July. There had been extensive damage to buildings, including schools, residences, factories and stores[23]. A month later, Ukrainian Gromadske TV published the story called "Lugansk under siege". It showed Ukrainian Grad MLRSs firing towards Lugansk from the outskirts of its suburb Veselaya Gora[24].

31. On the same day, 11 people were killed in Snezhnoye, Donetsk region, as Ukrainian forces conducted an airstrike against the residential area[25].

32. On 27 July 2014, during a massive shelling of a civilian residential area in the city of Gorlovka by the Ukrainian army, 22 people were killed. In total, in Gorlovka, 52 persons, including nine children, were killed, and 170 injured between 27 July and 10 August 2014[26].

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[20] OHCHR, Report on the human rights situation in Ukraine, 15 May 2014, p. 10, para. 36, available at: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/HRMMUReport15May2014.pdf (judges' folder, tab 8.26); OSCE, *Latest from the Special Monitoring Mission to Ukraine — Based on Information Received up until 02 May 2014, 19:00*, available at: https://www.osce.org/ukraine-smm/118292; Russia Today, *39 People Die After Radicals Set Trade Unions House on Fire in Ukraine's Odessa* (2 May 2014), available at: https://www.rt.com/news/156480-odessa-fire-protesters-dead/; Report of the International Advisory Panel on its Review of the Investigations into the Events in Odessa on 2 May 2014, 4 Nov. 2015, pp. 12, 14-15, 65-66, paras. 20, 30, 286, 288, 291, 292, 294, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048610f.

[21] YouTube, Randy Mandy, Poroshenko: "Their children will hide in basements" (Odessa, 27.10.14) (17 Apr. 2015), available at: https://www.youtube.com/watch?v=zmhar0J27Hw (judges' folder, tab 8.27).

[22] OHCHR, Report on the human rights situation in Ukraine, 15 July 2014, para. 33, available at: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_Report_15July2014.pdf.

[23] OHCHR, Report on the human rights situation in Ukraine, 17 August 2014, para. 6, available at: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UkraineReport28August2014.pdf.

[24] YouTube, Hromadske, Lugansk Under Siege (19 Aug. 2014), available at: https://www.youtube.com/watch?v=uuVS4gkq5tE.

[25] OHCHR, Report on the human rights situation in Ukraine, 15 July 2014, para. 33, available at: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Ukraine_Report_15July2014.pdf.

[26] OHCHR, Report on the human rights situation in Ukraine, 17 August 2014, para. 33, available at: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UkraineReport28August2014.pdf.

33. Several times the Russian Federation has shown in this room a photo of a trolleybus that was shredded by a Ukrainian projectile that fell in Donetsk in early morning on 22 January 2015. The OSCE SMM monitors confirmed that the deadly projectile was fired from Ukrainian forces' positions[27].

34. The Ukrainian armed forces regularly attacked critical facilities, leaving the civilian population of Donbass without access to water, electricity and sanitation. For example, the Donetsk filtering station, which supplied water to more than 300,000 people on both sides of the contact line, had to suspend operations several times because of Ukrainian shelling. Ukraine also blocked attempts to fix the station, attacking station workers: for example, on 12 March 2018 near Yasinovataya, the Ukrainian military perforated a bus station full of workers with machine guns, wounding five of them[28].

35. On 3 May 2018, the OSCE SMM Chief Monitor Apakan made a special statement that "hundreds of ceasefire violations have been recorded on a daily basis by the SMM in the wider area surrounding the Donetsk Filtration Station, endangering lives and jeopardizing the operation of the facility"[29].

36. Now look at these smiling faces. On this photo taken in 2021 President Poroshenko stands with Irina Gerashchenko, an MP from Poroshenko's party. It was she who, as Ukraine's representative in the humanitarian subgroup of the Trilateral Contact Group — part of the implementation mechanism of Minsk agreements — regularly impeded its meetings, refusing to sit in the same room with representatives of Donetsk and Lugansk. This photo was published on her Facebook page. Now these two are standing in front of a damaged house in Avdeyevka — together with an embarrassed local teacher whose students were hiding in a basement — and smiling.

37. Ukrainian attackers gave no mercy to children. On the next slide you can see the Alley of Angels in Donetsk. The names of the children killed by Ukrainian strikes are engraved on the granite

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[27] OSCE SMM, Spot Report: Shelling Incident on Kuprina Street in Donetsk City, 22 January 2015, available at: https://www.osce.org/ukraine-smm/135786 (judges' folder, tab 8.28).

[28] Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), based on information received as of 19:30, 17 April 2018, available at: https://www.osce.org/special-monitoring-mission-to-ukraine/378136.

[29] OSCE Chief Monitor in Ukraine says ongoing failure to implement Minsk agreements jeopardizes Donetsk Filtration Station's work, puts civilians on both sides of contact line at risk, available at: https://www.osce.org/special-monitoring-mission-to-ukraine/379429.

slab. Four of them were not even a year old. Ten month old Sofya Danilkina was killed on 21 January this year as a United States-made HIMARS missile fired by the Ukrainian forces hit her family's house in Kremennaya, LPR[30].

38. On 14 March 2022, Ukraine hit the centre of Donetsk using a Tochka-U missile with a cluster warhead, leaving 15 people dead. You may see the consequences of this attack on the next slide.

39. At least five children were killed on 8 April 2022, as Ukraine launched a Tochka-U missile towards the railway station in Kramatorsk. The aim of this horrific attack was cynically simple — to intimidate civilians so they would keep away from any public transport and stay in the town. Thus, *Ukrainian forces* could use them as human shields. Kiev propagandists, as always, groundlessly blamed Russia for this attack, but they forgot the main thing: Russia withdrew Tochka-U missiles from service many years ago.

40. Three months later, on 5 July 2022, a 10 year old girl was ripped in half in Donetsk by a NATO shell fired by *Ukrainian forces*. On the next day, President Zelenskiy said "finally it is felt that the Western artillery — the weapons we received from our partners — started working very powerfully. Its accuracy is exactly as needed".

41. Many children were killed or wounded by Ukrainian mines. From the very beginning of the special military operation, the Ukrainian forces have been using MLRS cluster rockets to scatter Lepestok anti-personnel mines in the cities of Donbass. On the slide you can see a 15 year old boy wounded by such a mine.

42. It is worth recalling that children's personal data were posted on the infamous "Mirotvorets" (Peacemaker) website, which is a "shooting list" of the Maidan régime. Over 350 minors are listed on this site without any impediments from Ukrainian authorities. On the slide you can see the profile of 15 year old Faina Savenkova[31], a young writer from Lugansk, who was

[30] Available at https://alleyaangelov.ru/.

[31] Available at https://myrotvorets.center/criminal/savenkova-faina-vladimirovna/.

listed on the site when she was 13. The portal administrators refused to remove her personal data, even after a special warning from UNICEF[32].

43. In our preliminary objections, we have mentioned that the Russian Federation was the country that hosted the largest number of Ukrainian refugees in the world[33].

44. To be more precise, since February 2022, the Russian Federation received about 4.8 million residents of Ukraine and the Donbass Republics, of whom more than 700,000 were children. The overwhelming majority of minors arrived together with their parents and other relatives. About 2,000 orphans were moved for security reasons from orphanages in Donetsk and Lugansk and accommodated in children's institutions in Russian regions far from the frontline[34]. These people choose Russia to be their shelter.

45. Ukraine now dares to say the evacuation of children from this constant shelling and bombing were "abductions". In their view, children should have been kept in the line of fire of the Ukrainian cannons.

46. Since 2014, the Ukrainian army had widely used residential areas and socially significant facilities in Donetsk and Lugansk regions to cover its troops and heavy weapons. At the same time, the Ukrainian forces intentionally used weapon systems from residential areas aiming to provoke return fire and then blame Russia and DPR and LPR militia for the consequences.

47. Thus, on the screen you can see a slide from OSCE SMM Deputy Chief Alexander Hug's briefing for the diplomatic corps of 1 June 2018, depicting a school building in Teploye, Lugansk region, occupied by Ukrainian forces. You can also see students outside the school building.

48. Amnesty International — the organization which has always been far from sympathizing with Russia — pointed out in its report of 4 August 2022 that "Ukrainian forces have put civilians in harm's way by establishing bases and operating weapons systems in populated residential areas, including in schools and hospitals".

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[32] Cosmos Chronicle, *UNICEF calls for removing Children's Personal Info from Ukraine's Website* (7 Dec. 2022), available at: https://cosmoschronicle.com/unicef-calls-for-removing-childrens-personal-info-from-ukraines-website/; Urdupoint, *UNICEF Calls For Removing Children's Personal Info From Ukraine's Myrotvorets Website* (7 Dec. 2022), available at: https://www.urdupoint.com/en/world/unicef-calls-for-removing-childrens-personal-1606342.html.

[33] PORF, para. 53.

[34] Report on the activities of the Presidential Ombudsperson for Children's Rights for 2022, p. 117, available at: https://deti.gov.ru/Deyatelnost/documents/245.

49. In February 2022, while the Russian Federation — in order to protect the civilian population and avoid needless losses — provided humanitarian corridors for the evacuation of civilians and foreign nationals in the Kiev, Chernigov, Sumy, Kharkov and Mariupol areas on at least 26 occasions, the Ukrainian side always categorically refused to allow citizens to safely evacuate to Russian territory.

Ukraine ignores evidence of the Kiev régime's neo-Nazi ties

50. Madam President, Members of the Court, last Monday Russia has shown you the Nazi roots of the Kiev régime. Ukraine's Agent had nothing to say to that, except dismissing everything as "lies"[35]. The reason is simple: Ukraine cannot argue against the plain historical truth. Here is another example: as Ukrainian President Poroshenko poses with his troops, a soldier boldly and prominently wears a large emblem of the 3rd SS Panzer Division "Totenkopf", which was formed from concentration camp guards and became notorious for brutality and war crimes, including mass killings of French and British prisoners[36].

51. Poroshenko was the one under whose leadership Ukrainian troops devastated Donbass. Ukraine's Agent had the audacity to quote this man as saying that it was Russia who attacked Donbass, not Ukraine. You have already seen the Donetsk Alley of Angels, memorials to children killed by Ukrainian strikes. Just these days, in the Canadian Parliament, President Volodymyr Zelenskiy, together with Canadian high-level officials, honoured by round of applause a person who served in the notorious Nazi military unit during World War II, SS Galicia.

Ukraine attempts to conceal its fault for numerous hits on civilian objects and blames Russia instead

52. Madam President, Members of the Court, in its presentation before this Court, Ukraine attempts to conceal its fault for numerous hits on civilian objects and blames Russia instead.

53. I shall begin with Ukraine's Agent blaming Russia for a missile attack on a market in Konstantinovka on 6 September 2023[37]. Evidence showed that the strike, which killed 17 civilians,

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[35] CR 2023/14, p. 36, para. 9 (Korynevych).

[36] The Grayzone, NATO-backed Ukrainian President Petro Poroshenko poses with pro-Nazi soldier, available at: https://thegrayzone.com/2018/12/10/nato-ukraine-president-poroshenko-nazi-soldier-totenkopf/.

[37] CR 2023/14, p. 38, para. 17 (Korynevych).

including one child, was by a Ukrainian anti-aircraft missile. Even western media, such as *The New York Times*, admitted that. But not the Ukrainian Agent.

54. After this publication saw the light of day, Ukraine threatened the American journalists with criminal prosecution.

55. Last Tuesday, Ukraine's Agent as well as one of Ukraine's counsellors once again mentioned the so-called "Bucha massacre". However, that story is as full of holes as any other coming from Kiev. To begin with, Ukraine has still not provided any data on persons allegedly killed in Bucha. In September 2022, Russian Foreign Minister Sergey Lavrov has called on United Nations Secretary-General António Guterres to get the Ukrainian authorities to publish a list of people killed in Bucha. No reaction followed[38]. No post-mortem examinations or even names of the deceased were provided. No relatives of the deceased have appeared in the public space. We do not know the basic results of the investigation. Ukraine is silent beyond the initial broad allegations.

56. On 31 March 2022, when the Mayor of Bucha, Anatoliy Fedoruk, entered the town with Ukrainian forces, he recorded a congratulatory video on YouTube. In that video, there are no hints of any tragedy on the streets littered with corpses — only happy smiles and pleasant words[39].

57. On 2 April 2022, the national police of Ukraine published video footage of Ukrainian forces entering Bucha. Again, no reference to any "massacre" is made, no dead bodies can be seen in this footage.

58. Then, suddenly, on 3 April a Ukrainian newspaper publishes an article about "hundreds of murdered civilians" allegedly discovered "lying on the streets" in Bucha[40]. This "information bomb" then exploded all over western media.

59. Later in September, an Italian journalist, who was present at the scene in Bucha in the first days of April, said in a public statement that he saw Ukrainian "military and civilians taking corpses out of trucks" and laying them on the road "in piles", corpses which were tied with "very clean bandages" despite there having been heavy rains in Bucha for the two previous days. He also said

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[38] TASS, Lavrov urges UN chief to get Kiev to publish list of those killed in Bucha (22 Sept. 2022), available at: https://tass.com/politics/1511935.

[39] Facebook, Buchanska Miska Rada (1 Apr. 2022), available at: https://www.facebook.com/watch/?v=2701613 21982745.

[40] Russia's Civic Chamber, *Bucha: testimony of an eyewitness, French volunteer, journalist Adrian Boke* (25 Aug. 2022), available at: https://youtu.be/2M_c1ggdxLg?si=27mduUXVXpwDIfoU.

that a volunteer informed him about corpses being taken from other locations to Bucha and then "laid out" for media to photograph[41].

60. As with the other incidents, Kiev was eager to shut down any questioning of the official narrative. In August 2022, the Kiev city prosecutor's office brought charges of "denial of the Russian armed aggression" against a local resident of Irpen, Kiev region. According to the case file, the accused woman "denied the facts of murders and violence against civilians by the Russian military in her phone conversations with relatives"[42]. Irpen is located very close to Bucha: the two towns are separated only by the bridge blown up by the Ukrainian forces during their retreat, a photograph of which Mr Gimblett showed in this courtroom on 7 March.

61. On Tuesday, Ukraine once more accused Russia of destroying the Kakhovka hydroelectric power plant, which resulted in flooding, the deaths of dozens of people and an ecological disaster. However, facts again indicate that Ukraine is behind this crime[43].

62. Perhaps the most brazen accusation of all was made by Ukraine's Agent about Russia's alleged attacks on the Zaporozhye nuclear power plant. Russia has been in control of the plant since 1 March 2022 and it is Ukraine that has been shelling it and the neighbouring town of Energodar for over a year. During discussions of these shelling incidents at the UN Security Council, not even Ukraine's supporters accused Russia of attacking the plant its forces were controlling[44]. The International Atomic Energy Agency (IAEA) briefing Ukraine's Agent cited had not named Russia as the attacker.

63. Finally, Ukraine's Agent voiced an incomprehensible allegation that "by blockading Ukrainian ports" Russia "has destroyed or held hostage millions of tons of grain, worsening global food shortages in Africa and beyond"[45]. Firstly, as you can see on the slide, it is the prosperous intervening States who were consuming the lion's share of the "grain deal" shippings, while African

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[41] *Ibid*.

[42] Kyiv City Prosecutor's Office, *She denied the armed aggression of the Russian Federation against Ukraine - residents of Irpen were informed of the suspicion* (17 Aug. 2022), available at: https://kyiv.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=318136&fp=20.

[43] Statement by Permanent Representative Vassily Nebenzia at UNSC briefing on the situation around the Kakhovka Hydroelectric Power Plant, available at: https://russiaun.ru/en/news/unsc_060623.

[44] Briefing Security Council, International Atomic Energy Agency Director Outlines Five Principles to Prevent Nuclear Accident at Zaporizhzhia Power Plant in Ukraine, 30 May 2023, SC/15300, available at: https://press.un.org/en/2023/sc15300.doc.htm (judges' folder, tab 8.11).

[45] CR 2023/14, p. 38, para. 16 (Korynevych).

countries only received a tiny portion. Secondly, it is the sanctions imposed on Russia by the intervening States and their allies which block export of Russian grain — grain that could feed those in need in Africa and Asia. Thirdly, it is Ukraine's continuous attack on Russia's Black Sea objects, including civilian infrastructure such as the Crimean Bridge, which necessitated measures against Ukraine's maritime facilities.

64. Madam President, distinguished Members of the Court, I have described the various ways in which Ukraine misleads this Court. However, it is not alone in this practice. I will now turn to what the intervening States do not want you to hear.

Ukraine and the interveners ignore NATO's armed intervention in Yugoslavia done under a pretext of preventing genocide

65. I am, of course, talking about NATO States and their supporters who, in 1999, attacked Yugoslavia, inflicting death and devastation upon that country in the name of stopping a so-called genocide of Kosovars.

66. Declared NATO's "humanitarian intervention" turned out to be a humanitarian catastrophe. On 31 May 1999, even before the end of the NATO's bombing, the High Commissioner for Human Rights reported more than 1,200 civilians dead and about 4,500 injured as a result of the NATO bombing. NATO destroyed bridges, schools, hospitals and places of worship, making people seek shelter and separating children from their parents. NATO used cluster and graphite bombs in densely populated areas, putting civilian lives in enormous danger and leaving them without water and electricity[46].

67. In another report, the High Commissioner for Human Rights highlighted the following:

> "In the NATO bombing of the Federal Republic of Yugoslavia, large numbers of civilians have incontestably been killed, civilian installations targeted on the basis that they are or could be of military application, and NATO remains the sole judge of what is or is not acceptable to bomb."[47]

[46] OHCHR, Report by the High Commissioner for Human Rights on the Situation of Human Rights in Kosovo, 31 May 1999, available at: https://www.ohchr.org/en/statements/2009/10/report-high-commissioner-human-rights-situation-human-rights-kosovo (judges' folder, tab 8.12).

[47] OHCHR, Report on the Human Rights Situation Involving Kosovo, Submitted by Mary Robinson, High Commissioner for Human Rights, 30 Apr. 1999, available at: https://www.ohchr.org/en/statements/2009/10/default-title-70 (judges' folder, tab 8.13).

68. NATO States had no reason to attack Yugoslavia in self-defence, nor have they invoked Article 51 to that effect. Their self-styled "humanitarian intervention" was performed under one "pretext" — stopping an alleged genocide in Kosovo. That, with all due respect, is not true.

69. Last week Mr Koh went as far as saying "nobody stated there was a purpose to prevent genocide". That, with all due respect, is not true. Russia has already provided in its preliminary objections a long list of statements from high-ranking officials of NATO countries — claiming they were acting for that precise purpose[48]. I will now remind the Court of these statements, as well as provide some new ones including the ones belonging to Mr Koh himself.

70. The US President Bill Clinton had declared: "this was genocide in the heart of Europe . . . we must apply that lesson in Kosovo"[49]; "NATO stopped deliberate, systematic efforts at ethnic cleansing and genocide"[50].

71. The UK Prime Minister Tony Blair had declared: "*We fought this conflict . . . because we believed it was wrong to have* ethnic cleansing and *racial genocide* here in Europe towards the end of the 20th century"[51].

72. The German Chancellor Gerhard Schröder stated: "[T]he genocide in Yugoslavia cannot be met with pacifism."[52]

73. The Prime Minister of Spain José María Aznar said: "NATO must be on watch for any crisis in the world . . . *I support the attacks*. Ethnic cleansing, *genocide . . . cannot be the rules we live by*."[53]

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[48] PORF, para. 208.

[49] PORF, Ann. 118.

[50] The New York Times, Crisis in the Balkans: the President; Clinton Underestimated Serbs, He Acknowledged, (26 June 1999), available at: https://www.nytimes.com/1999/06/26/world/crisis-in-the-balkans-the-president-clinton-underestimated-serbs-he-acknowledges.html (PORF, Ann. 119) (judges' folder, tab 8.41).

[51] The Washington Post, *Kosovo's Cruel Realities* (4 Aug. 1999), available at: https://www.washingtonpost.com/archive/opinions/1999/08/04/kosovos-cruel-realities/28f9e16b-1d00-44d4-a85c-d2c22952209c/ (PORF, Ann. 120) (judges' folder, tab 8.42).

[52] The New York Times, An Echo of Kosovo in Bonn (13 Apr. 1999), available at: https://archive.nytimes.com/www.nytimes.com/library/world/europe/041399kosovo-germany.html (PORF, Ann. 121) (judges' folder, tab 8.47).

[53] Harvard Crimson, *Spain's PM Lauds NATO* (27 Apr. 1999), available at: https://www.thecrimson.com/article/1999/4/27/spains-pm-lauds-nato-spains-prime/ (Observations on Interventions of the Russian Federation, 22 Nov. 2022, Ann. 21) (judges' folder, tab 8.50).

74. The Minister of Foreign Affairs of Poland told the General Assembly: "We have come to accept that absolute sovereignty and total non-interference are no longer tenable. There could be no sovereign right to ethnic cleansing and genocide."[54]

75. Almost every intervener in the present case supported NATO's bombing of Yugoslavia under the pretext of the so-called "humanitarian intervention" aimed at preventing "genocide" and "ethnic cleansing". The intervening NATO countries did not hesitate to openly reveal the purpose of the NATO's attack on Yugoslavia before this Court back in 2004. In particular, Germany plainly declared that: "It is a matter of common knowledge . . . that the military operations against the FRY were undertaken in an attempt to rescue the Kosovo Albanians from being subjected to atrocities, including genocidal acts."[55]

76. Italy also openly admitted before this Court that NATO's purpose was preventing genocide: "the Atlantic Alliance was compelled to intervene to prevent an ongoing genocide . . . A group of States . . . have felt compelled to intervene against a State to halt genocide"[56].

77. To make another example, Canada made the following statement: "Genocide is the gravest of international crimes. Canada's participation in the NATO air operation was prompted by a pattern of events in Kosovo that has shocked the conscience of the world."[57]

78. Even those interveners who were not NATO Member States still supported the bombing campaign under the pretext of preventing genocide. Poland's Prime Minister Buzek, voicing support for NATO bombings, had stated: "There is no question that what is going on in Kosovo is genocide."[58]

79. I now come to the past statements of Ukraine's counsel Mr Harold Koh. On 24 April 1999, one month into NATO's bombing campaign against Yugoslavia, Mr Koh, in his capacity as

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[54] United Nations, press release, Speakers in General Assembly Urge Even-Handed Approaches to Crises, 29 Sept. 1999, available at: https://press.un.org/en/1999/19990929.ga9616.doc.html (Observations on Interventions of the Russian Federation, 17 Oct. 2022, Ann. 13) (judges' folder, tab 8.45).

[55] *Legality of Use of Force (Serbia and Montenegro* v. *Germany)*, CR 2004/11, p. 23, para. 44.

[56] *Legality of Use of Force (Serbia and Montenegro* v. *Italy)*, Request for the indication of provisional measures, CR 1999/19, p. 14, para. 3, p. 16, para. 5, p. 17, para. 7.

[57] *Legality of Use of Force (Serbia and Montenegro* v. *Canada)*, Request for the indication of provisional measures, CR 1999/16, p. 13, para. 27, p. 19, para. 48.

[58] Buffalo News, *Polish Leader Voices Support for Bombing* (24 Apr. 1999), available at: https://buffalonews.com/news/polish-leader-voices-support-for-bombing/article_9316d186-aed3-5f6a-a1fe-8c6d10b8a18f.html (Observations on Interventions of the Russian Federation, 17 Oct. 2022, Ann. 20) (judges' folder, tab 8.14).

US Assistant Secretary of State, speaking before the UN Commission on Human Rights in Geneva, stated the following:

> "[I]t is impossible for me to introduce my country's resolution on the human rights situation in the former Yugoslavia . . . without referring to the catastrophic human rights violations taking place in Kosovo. . . . We are witnessing a mass human rights epidemic that includes war crimes, crimes against humanity, grave breaches of international law, *and indicators of genocide*."[59]

80. It was not a singular instance. Mr Koh repeated his allegations of genocide at various *fora*. On 16 April 1999, he had spoken at The Hague, saying that:

> "As we speak, the region-wide killing, raping, shelling, burning and deportations continue in Kosovo. In the Balkans in the 1990s, we have similarly witnessed the rise of 'ethnic cleansing,' a massive human rights violation that includes war crimes, crimes against humanity, *and acts of genocide*"[60].

81. On 18 April 1999, he reiterated his claim in Skopje: "We are witnessing a mass human rights epidemic that includes war crimes, crimes against humanity, grave breaches, and *acts of genocide*"[61].

82. Neither were these statements purely humanitarian in nature. On the contrary, Mr Koh had used allegations of genocide to directly promote NATO's military intervention in Yugoslavia:

> "Such a massive human rights crisis demands immediate and major human rights response. Fifty years after Nuremberg, our only choice cannot be to sit back, watch ethnic cleansing occur, and only then seek accountability after the fact. *The United States, the Netherlands, and their NATO allies exhausted all diplomatic avenues before finally turning to force*, backed by diplomacy, justified by international law and humanitarian necessity. *We must continue this course until these victims can return to their homes in freedom*."[62]

83. As you can see, contrary to what Ukraine says, NATO had acted under the pretext of preventing genocide.

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[59] US Department of State, H. H. Koh, Assistant Secretary for Democracy, Human Rights, and Labor, Resolution L-34: Human Rights in the Former Yugoslavia, 23 Apr. 1999, available at: https://1997-2001.state.gov/policy_remarks/1999/990423_koh_kosovo.html (judges' folder, tab 8.15)

[60] US Department of State, H. H. Koh, Assistant Secretary for Democracy, Human Rights, and Labor, Flag bar, 16 Apr. 1999, available at: https://1997-2001.state.gov/policy_remarks/1999/990416_koh_hague.html (judges' folder, tab 8.16)

[61] US Department of State, H. H. Koh, Assistant Secretary for Democracy, Human Rights, and Labor, Flag bar, 18 Apr. 1999, available at: https://1997-2001.state.gov/policy_remarks/1999/990418_koh_skopje.html (judges' folder, tab 8.17)

[62] US Department of State, H. H. Koh, Assistant Secretary for Democracy, Human Rights, and Labor, Flag bar, 16 Apr. 1999, available at: https://1997-2001.state.gov/policy_remarks/1999/990416_koh_hague.html (judges' folder, tab 8.16).

84. Moreover, Ukraine itself had slammed Belgrade's actions in Kosovo and said that its refusal to implement "relevant Security Council resolutions" "led to the use of force" by NATO:

> "Belgrade's refusal to sign the agreements formulated by the Contact Group had resulted in the breakdown of negotiations. Therefore, the provisions of the relevant Security Council resolutions had not been fully implemented, and had led to the use of force."[63]

85. Ukraine also stated that "a peaceful political settlement" was possible on the basis of "granting a wide autonomy to Kosovo"[64].

86. In an astounding volte-face, Ukraine then refused to implement the Security Council resolution 2202 endorsing the Minsk Agreements, which stipulated the granting of autonomy to Donbass, and instead chose to aggressively attack the DPR and LPR, thus leading to the use of force by Russia.

The duplicity of the intervening States

Lack of genuine interest, focus on political expediency

87. Madam President, Members of the Court, now I will address contributions of the intervening States in this process.

88. The intervening States have shown that they possess no genuine interest in interpretation of the Genocide Convention, but are instead guided by purely political expediency, and act in direct contradiction to their previous legal positions expressed before this Court.

89. The common cause between Ukraine and the interveners is so obvious that restating it would be almost trite. They make no secret of it, instead brandishing various joint declarations and open admissions of "close cooperation". Despite their self-professed interest in interpreting the Genocide Convention, they have never chosen to intervene before in cases related to it, even when actual allegations of genocide were at stake.

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[63] UN, Security Council Rejects Demand for Cessation of Use of Force Against Federal Republic of Yugoslavia, 26 Mar. 1999, No. SC/6659, available at: https://press.un.org/en/1999/19990326.sc6659.html (judges' folder, tab 8.18).

[64] *Ibid.*

90. Russia has already drawn the Court's attention to the joint statements of 20 May[65] and 13 July 2022[66] signed virtually by each intervener. Ukraine's allies explicitly state that they "*welcome Ukraine's application against Russia*" and have "*joint intention to explore all options to support Ukraine in its efforts before the ICJ*"[67].

91. This common purpose was so apparent at the oral hearings there is no need to give examples, except perhaps one of the most extreme: Latvia went as far as directly quoting the speech of Ukraine's counsel Monsieur Thouvenin, while restating support for his views no less than three times in a row. No better illustration of total lack of original interpretation or interest can be provided[68], except perhaps this collective photo of the interveners together with Ukraine's legal team. The representative of France openly underlined close co-ordination efforts provided by all the Member States of the European Union in this regard.

92. However, the interveners go well beyond a common purpose. Their interventions also betray a commonality of substance, often literal — with parts being identical to the letter[69]. You can appreciate some glaring examples of such plagiarism on the slide.

93. These suspicious similarities have not gone unnoticed in the international juridical community. A group of international lawyers have published recently a research report dissecting these interventions, and have come to a rather obvious conclusion:

> "Whether the stark similarities between the argumentation of many of the intervening states flows from a non-paper circulated among these states, or simply some states following the lead of others, cannot (currently) be verified. However, our findings seem to suggest a somewhat sheep-like behaviour pattern of many intervening states by uniformly adopting arguments from elsewhere."[70]

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[65] Joint statement on Ukraine's application against Russia at the International Court of Justice, 20 May 2022, available at: https://www.auswaertiges-amt.de/en/newsroom/news/-/2532254 (judges' folder, tab 8.19).

[66] Joint statement on supporting Ukraine in its proceeding at the International Court of Justice, 13 July 2022, available at: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_4509 (judges' folder, tab 8.20).

[67] Joint statement on Ukraine's application against Russia at the International Court of Justice, 20 May 2022, available at: https://www.auswaertiges-amt.de/en/newsroom/news/-/2532254 (judges' folder, tab 8.19).

[68] CR 2023/15, pp. 78-78, paras. 9, 10, 12 (Paparinskis).

[69] Ann. 24 to the Russian Federation's Written Observations on Admissibility of the Declarations of Intervention Submitted by Australia, Austria, Denmark, Estonia, Finland, Greece, Ireland, Luxembourg, Portugal and Spain; Ann. 23 to the Russian Federation's Written Observations on Admissibility of the Declarations of Intervention Submitted by Croatia and Czech Republic; Ann. 28 to the Russian Federation's Written Observations on Admissibility of the Declarations of Intervention Submitted by Belgium, Bulgaria, Cyprus, Liechtenstein, Malta, Canada and the Netherlands, Norway, Slovakia and Slovenia.

[70] K. Wigard, O. Pomson, J. McIntyre, Keeping Score: An Empirical Analysis of the Interventions in *Ukraine* v. *Russia*, *Journal of International Dispute Settlement*, 2023, Vol. 14, p. 323 (judges' folder, tab 8.21).

94. Another example of the interveners' hypocrisy is Germany, which addressed Russia's admissibility objection contained in a document which Germany did not or should not have had access to[71].

95. Further, the metadata shows that France, Portugal and the United Kingdom used the same author to prepare their observations[72]. However, even when the Court urged the States to group their submissions to preserve good administration of justice, most of these countries refused to make joint statements. The reason is clear — the interventions in this case are not used to genuinely interpret the Convention — they represent an attempt to hypnotize the Court by pronouncing Ukraine's position as many times as possible or to put pressure on the Court by presenting an appearance of overwhelming support of its position.

Contradiction with prior positions of the intervening States before the Court

96. Madam President, but the far more egregious example of the intervening States' duplicity is the plain contradiction of their current claims with their own legal positions as expressed in the *Legality of Use of Force* cases. As Russia has shown before, the NATO States had openly stated that they attacked Yugoslavia under the pretext of preventing genocide. This was done not only by their leaders on the political plane, but also by their representatives in this Court.

97. To list just a few examples, Italy contended before this Court: "[i]t is accordingly clear that *the Atlantic Alliance was compelled to intervene to prevent an ongoing genocide . . . A group of States, who* — much against their will — *have felt compelled to intervene against a State to halt genocide*"[73].

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[71] The Russian Federation's Written Observations on the Written Observations Submitted by Australia, Austria, Belgium, Bulgaria, Canada and the Netherlands, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom and the United States, paras. 4-6.

[72] Written Observations of France; Written Observations of Portugal; Written Observations of the United Kingdom of Great Britain and Northern Ireland.

[73] *Legality of Use of Force (Serbia and Montenegro* v. *Italy)*, Request for the indication of provisional measures, CR 1999/19 (translation), p. 14, para. 3.C, p. 16, para. 5, p. 17, para. 7 (Leanza); emphasis added.

98. Germany, in turn, stated before this Court: "It is a matter of common knowledge . . . that the military operations against the FRY were undertaken in an attempt to rescue the Kosovo Albanians from being subjected to . . . genocidal acts"[74].

99. More than that, intervening States have previously held a drastically different position on the interpretation of Article IX of the Genocide Convention and its scope *ratione materiae*. Now the NATO States have drastically shifted their positions regarding aforementioned issues.

100. On this topic, in 1999 Germany had stated in its preliminary objections:

> "Article IX of the Genocide Convention could provide the only basis of jurisdiction. *However, given the absolute lack of information regarding the subjective ingredient of the crime of genocide, that clause is simply inapplicable. There can be no question of a dispute relating to the 'interpretation, application or fulfilment' of the Convention.*"[75]

101. Germany went on, criticizing Yugoslavia's case against it:

> "Even a short glance at the FRY's Memorial reveals instantly that [Article IX] is referred to in *a last-ditch effort to find a basis for submitting the case to the Court . . . the bulk of the dispute lies outside the confines of the Genocide Convention . . . as far as in particular the principle of non-use of force*, the principle of non-intervention and the duty not to harm the environment *are concerned, the jurisdiction of the Court has never been established either in the Charter or 'in treaties and conventions in force'*"[76].

102. Now, however, Germany espouses a diametrically opposite view:

> "Article IX of the Genocide Convention also covers disputes in which one State party of the Convention alleges that another State party is committing acts of genocide and where, relying on such accusations, the former State party then takes action in the form of using military force against the latter."[77]

103. In another example, in 1999 France argued:

> "The Court is . . . without jurisdiction to rule on the issues concerning alleged violations of the United Nations Charter and of certain principles and rules of international humanitarian law applicable in armed conflict, as those issues do not fall within the provisions of Article IX of the 1948 Genocide Convention."[78]

104. But now France claims the exact opposite:

> "Indeed, since Article IX sets forth that the Court may be seized of all disputes 'relating to [. . .] the present Convention', *the fact that certain acts or omissions at the*

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[74] *Legality of Use of Force (Serbia and Montenegro* v. *Germany)*, Preliminary Objections, CR 2004/11, p. 23, para. 44 (Läufer).

[75] *Legality of Use of Force (Serbia and Montenegro* v. *Germany)*, Preliminary Objections of Germany, p. 45, para. 3.46.

[76] *Ibid.*, p. 39, para. 3.28.

[77] CR 2023/15, pp. 37, para. 20 (Rückert).

[78] *Legality of Use of Force (Serbia and Montenegro* v. *France)*, Preliminary Objections of France, p. 11, para. 14.

origin of the dispute may be subject to different legal qualifications, which may fall within the scope of instruments other than the 1948 Convention, has no bearing on the application of this provision."[79]

105. France repeated this during the oral hearings:

"disputes involving improper allegations of genocide, or relating to improper use of the obligation to prevent and punish genocide, therefore fall within the scope of the provisions of the Genocide Convention and, consequently, within the scope of the consent provided for in Article IX thereof"[80].

106. Is that to be considered a genuine position by the intervening State? The Russian Federation does not believe so, given that, under this approach, France or any other intervener may do another U-turn on its interpretation of the Genocide Convention, once it would benefit them. It becomes even more evident when we observe France blaming Russia for its special military operation in Ukraine and at the same time supporting military intervention in Niger[81].

107. To take yet another example, in the *Legality of Use of Force* case, the United Kingdom asserted the following:

"Jurisdiction under Article IX would not extend to disputes regarding alleged violation of other rules of international law, such as the provisions of the United Nations Charter relating to the use of force and the Geneva Conventions and Additional Protocols of 1997 relating to the conduct of armed conflict."[82]

108. At the same time, in its written observations, the United Kingdom claims:

"Article IX of the Genocide Convention confers upon the Court jurisdiction *ratione materiae* to determine the extent to which Article I allows or requires a Contracting Party to engage in certain conduct that might otherwise be unlawful under international law"[83].

109. The United Kingdom was especially brazen in its oral assertion:

"The 'scope' of other rules of international law that constrain conduct permitted by Article I is not 'indefinite' . . . This is not the case for the constraints within Article I. . . . *It is unthinkable that a State fulfilling its undertaking to prevent genocide in good faith could do so through aggression or other international crimes.*"[84]

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[79] Written Observations of France, para. 25.

[80] CR 2023/15, p. 66, paras. 6, 7 (Alabrune).

[81] France 24, *France supports ECOWAS intervention in Niger, foreign minister says* (5 Aug. 2023), available at: https://www.france24.com/en/france/20230805-france-supports-ecowas-intervention-in-niger-foreign-minister-says (judges' folder, tab 8.22).

[82] *Legality of Use of Force (Serbia and Montenegro* v. *United Kingdom)*, Preliminary Objections of the United Kingdom, p. 68, para. 5.02.

[83] Written Observations of the United Kingdom of Great Britain and Northern Ireland, para. 4 *(d)*.

[84] CR 2023/16, pp. 55, 58, paras. 2, 12 (Prentis).

And yet it was the United Kingdom which, along with other NATO States, committed aggression against Yugoslavia under a false pretext of genocide in Kosovo.

110. It is clear, to align their position with the one of Ukraine, the interveners now have to claim the exact opposite of what they claimed some 25 years ago. But it is not the content of the Genocide Convention that changed over the past quarter century, it is the political motivation of Ukraine's allies. However, with such a change of position they risk nothing.

111. I would like to finish this part of my speech with another extremely pertinent quote from Germany's Preliminary Objections:

> "*Article IX must not degenerate into a weapon for the purpose of frivolously discrediting an adversary*. The jurisdictional requirements of Article 36 have precisely as one of their main objectives *to protect a respondent from utterly baseless claims*. Whether they are fulfilled must therefore be considered with the utmost care. This is necessary in particular with a view to *shielding the authority of the Genocide Convention from being abused in instances where any other attempts to find a foundation for the Court's jurisdiction have failed*."[85]

I can only hope the Court follows this astute approach.

Conclusion regarding interventions

112. Madam President, esteemed judges of the Court, the only conclusion that can be drawn from the interventions is that they are not genuine, contravene the interveners' prior positions taken before this Court and amount to abuse of process.

113. In this context I would like to draw your attention to the document which has been adopted two days ago at the United Nations: the political declaration of the fourth ministerial meeting of the Group of Friends in Defense of the Charter of the United Nations and undersigned by 18 States[86]. This declaration includes the following appeal:

> "We reaffirm the principle of peaceful settlement of disputes and express our firm conviction that States shall resolve their disputes through the dispute settlement mechanisms that they have agreed upon, and underline that all means of settlement of disputes should be used in good faith and in the spirit of cooperation, in order to serve the goal of resolving disputes in a peaceful manner, in accordance with applicable international law and, thus, leading to de-escalation of tensions and the promotion of friendly relations and cooperation among States, in accordance with the Charter of the

[85] *Legality of Use of Force (Serbia and Montenegro* v. *Germany)*, Preliminary Objections of Germany, p. 55, para. 3.73.

[86] Algeria, Belarus, Bolivia, Cambodia, China, Cuba, the Democratic People's Republic of Korea, Equatorial Guinea, Eritrea, Iran, the Lao People's Democratic Republic, Mali, Nicaragua, the Russian Federation, Saint Vincent and the Grenadines, Syria, Venezuela and Zimbabwe.

> United Nations. In this regard, *we stress the importance of safeguarding the credibility and independence of the principal judicial body of the United Nations*, as established by the Charter of the United Nations, *and caution against the misuse of Article 63 of the ICJ Statute*."[87]

114. This is what we are facing now, a blatant misuse of the right to intervene and of the Genocide Convention, by the very States which have previously used genocide as a pretext in order to launch an attack on a sovereign State, all the while claiming that the Court has no jurisdiction to entertain claims under the Genocide Convention regulating their use of force. But now when they need to support their client — Ukraine — and the only way to do that is to claim the opposite of their previous legal views, they do so without a shred of hesitation.

115. Such inconsistent statements and hypocritical attitudes of the intervening States should have no effect on the interpretation of the Genocide Convention; it is plain that these statements are made for purely political purposes and should not be given any legal value or force in the interpretation of the Genocide Convention. If anything, the actual legal positions of these States before this Court in cases concerning themselves should be taken as the real reflection of their understanding of the Genocide Convention.

116. The interpretation of a document so crucial as the Genocide Convention should not be bent at will to serve the political goals of one group of States.

Conclusion

117. Madam President, Members of the Court, I will not touch upon the countless flaws of Ukraine's legal position — our counsel will deal with them shortly. But I will emphasize key points: if Ukraine's views were to be accepted by the Court, it would be the first time when the Court would ascribe a legal basis for the use of force or recognition of States to a State that took these actions and it would be done explicitly against its will. It would also overturn the entire international legal system with regard to critical rules bearing the nature of *jus cogens*: the right of self-defence and the right to self-determination of peoples.

118. Following Ukraine's logic, any action in self-defence or recognition of States would fall under the Court's jurisdiction whenever their invocation is even remotely linked, including only on

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[87] Gof-uncharter.org, *Political Declaration #6* (22 Sept. 2023), available at: https://www.gof-uncharter.org/portfolio-collections/my-portfolio/project-6-1-e1c79e-1-afb667 (judges' folder, tab 8.24).

the political plane, to a subject-matter of a treaty with a compromissory clause. Be it anti-terrorism, racial discrimination, genocide or any other topic, any such remote link would, according to Ukraine, potentially engage the Court's jurisdiction regarding States responsibility in respect of both the treaty and the *jus cogens* norm. Needless to say, that would be completely contrary to the fundamental principle of voluntary jurisdiction and will severely upset the realm of international law.

Introduction of speakers

119. Madam President, esteemed Members of the Court, I will now introduce the advocates who will present these and other arguments in more detail. Professor Hadi Azari will explain further Russia's first preliminary objection, namely, that there is no dispute between Ukraine and Russia under the Genocide Convention. Professor Alfredo Crosato Neumann will continue with the second objection on the lack of the Court's jurisdiction *ratione materiae*. Professor Sienho Yee will go on with Russia's third objection on the inadmissibility of new claims and the fourth objection on the lack of *effet utile*. Mr Kirill Udovichenko will further demonstrate Russia's fifth objection — that Ukraine's claims seeking a reverse compliance declaration are inadmissible and that Ukraine's claim constitutes an abuse of process. He will also briefly comment on the matter of the Order on provisional measures, which is not appropriate for discussion at the present stage. Finally, M. Jean-Charles Tchikaya will give a presentation on the issue of Article IX and will address some of the points made by the interveners.

120. I thank you, Madam President and honourable Members of the Court, for your attention. I now kindly ask you, Madam President, to invite Professor Hadi Azari to address the Court, unless you would like to announce a coffee break.

The PRESIDENT: I thank the Agent of the Russian Federation. I invite Professor Hadi Azari to take the floor. You have the floor, Professor.

M. AZARI : Merci beaucoup, Madame la présidente.

PREMIERE EXCEPTION PRELIMINAIRE : ABSENCE DE DIFFEREND RELEVANT DE LA CONVENTION SUR LE GENOCIDE

1. Madame la présidente, Mesdames et Messieurs de la Cour, dans mon exposé de lundi dernier j'ai expliqué pourquoi il n'existe pas de différend entre les Parties au regard de la convention de 1948 sur le génocide, ce qui devrait amener la Cour à décliner sa compétence pour connaître des requêtes de l'Ukraine.

2. Le conseil de l'Ukraine a affirmé mardi que la Russie avait tort sur le plan du droit et des faits. Ce n'est pas le cas. En ce qui concerne le droit, la position juridique de la Russie repose sur la jurisprudence bien établie de la Cour ; et la Russie n'invite pas la Cour à modifier son approche, mais à la confirmer et à l'appliquer au cas d'espèce **(A)**. Quant aux faits, la position de l'Ukraine ne répond pas à l'exigence fixée par la Cour **(B)**. J'aborderai ces deux points successivement.

A. La jurisprudence de la Cour exige du demandeur de faire connaître sa position au défendeur avant le dépôt de la requête

3. J'ai souligné lundi dernier que, selon la jurisprudence bien établie de la Cour, pour conclure à l'existence d'un différend, la Cour doit établir, sur la base des éléments de preuve que lui ont présentés les Parties, que, à la date du dépôt de sa requête, le demandeur a formulé une réclamation qui s'est heurtée à l'opposition manifeste du défendeur. J'ai conclu que la requête de l'Ukraine doit être rejetée car elle n'a pas prouvé qu'avant le dépôt de la requête elle a revendiqué la violation de la convention de 1948 et que sa revendication s'est heurtée à l'opposition manifeste de la Fédération de Russie.

4. Le conseil de l'Ukraine ne s'est pas engagé dans ce débat, il n'a pas montré le contraire, se contentant de prétendre que cette approche est erronée[88] et que la Russie cherche à imposer de « nouvelles exigences » déjà rejetées par la Cour[89]. Je vais démontrer aujourd'hui que, loin d'être de « nouvelles exigences », l'approche soutenue par la Russie est bien enracinée dans la jurisprudence de la Cour et qu'il n'existe pas de raison valable d'en départir dans la présente instance.

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[88] CR 2023/14, p. 49, par. 3 (Cheek).

[89] *Ibid.*, p. 50, par. 7 (Cheek).

5. Mesdames et Messieurs de la Cour, le critère de l'existence d'un différend tel que je viens de le rappeler est précisé par la Cour dans l'affaire *Géorgie c. Fédération de Russie*, comme suit :

> « 31. La Cour recherchera à présent si les éléments de preuve que lui ont présentés les Parties démontrent que, au moment du dépôt de la requête … un différend concernant l'interprétation ou l'application de la CIEDR opposait la Géorgie, comme celle-ci le soutient, à la Fédération de Russie. … *À cet effet, elle doit établir si la Géorgie a formulé une réclamation en ce sens et si celle-ci s'est heurtée à l'opposition manifeste de la Fédération de Russie, de sorte qu'il existe un différend au sens de l'article 22 de la CIEDR entre les deux États*. »[90]

6. C'est à la lumière de ce critère que la Cour a examiné les preuves, y compris les lettres, les déclarations, l'acte du Parlement et d'autres documents que la Géorgie avait versés au dossier de l'affaire. Elle a rejeté tout ce qui ne contenait pas un grief, un reproche, une accusation ou une allégation formulée par la Géorgie contre la Russie[91]. En revanche, elle a retenu comme preuve de l'existence d'un différend la seule qui contenait des griefs formulés par la Géorgie contre la Russie, et seulement pour cette raison. La conclusion de la Cour s'affiche sur vos écrans :

> « La Cour observe que, si *les griefs* formulés par la Géorgie entre le 9 et le 12 août 2008 portaient essentiellement sur le prétendu recours illicite à la force, ils *se référaient aussi expressément à un prétendu nettoyage ethnique perpétré par les forces russes. Ces griefs visaient directement la Fédération de Russie et non telle ou telle autre partie aux conflits antérieurs, et ils furent rejetés par la Fédération de Russie. La Cour en conclut qu[']un différend relatif au respect par la Fédération de Russie de ses obligations en vertu de la CIEDR invoquées par la Géorgie existait entre ces deux États.* »[92]

7. L'affaire *Géorgie c. Fédération de Russie* a fait jurisprudence, on en convient. Le président Owada, les juges Simma, Abraham, Donoghue et le juge *ad hoc* Gaja ont fait observer dans leur opinion commune attachée à cette décision, qu'

> « il ressort des motifs retenus par la Cour qu'un différend n'existe que si, avant l'introduction de la requête, le demandeur a notifié au défendeur ses prétentions, et si le défendeur "s'est opposé" auxdites prétentions »[93].

8. Il n'en demeure pas moins que ladite jurisprudence fut suivie à ce jour dans d'autres affaires. Par exemple, dans l'affaire *Belgique c. Sénégal*, la Cour a conclu à l'absence de différend entre les

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[90] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2011 (I)*, p. 85, par. 31 (les italiques sont de nous).

[91] *Ibid.*, par. 66, 77, 81, 84, 95, 107.

[92] *Ibid*., p. 120, par. 113 (les italiques sont de nous).

[93] *Ibid*., opinion dissidente commune du juge Owada, président, des juges Simma, Abraham, Donoghue, et du juge *ad hoc* Gaja, p. 143, par. 3.

parties, après avoir constaté que les documents invoqués par la Belgique n'indiquaient pas clairement quel était le comportement qu'elle reprochait au défendeur. Voici la conclusion de la Cour. Je lirai seulement les parties pertinentes qui sont soulignées :

> « [A]ucun de ces deux documents n'indiquait ou ne laissait entendre que le Sénégal était tenu, au regard du droit international, d'exercer sa compétence à l'égard desdits crimes, s'il n'extradait pas M. Habré. … Au vu de la correspondance diplomatique échangée entre les Parties, qui a été examinée plus haut …, la Cour estime qu'un tel différend n'existait pas à cette date. »[94]

9. Comme je l'ai souligné la semaine dernière, c'était cette exigence à la charge du demandeur de formuler sa prétention contre le défendeur qui a amené la Cour à préciser dans l'affaire des *Îles Marshall* que le demandeur doit démontrer « que le défendeur avait connaissance, ou ne pouvait pas ne pas avoir connaissance, de ce que ses vues se heurtaient à l'"opposition manifeste" du demandeur »[95].

10. Dans la même affaire, en appliquant ce critère aux déclarations invoquées par la partie demanderesse, la Cour a conclu à l'inexistence du différend entre les parties. En effet, pour la Cour, la déclaration invoquée par les Îles Marshall,

> « qui revêt un caractère d'exhortation, *ne saurait toutefois être considérée comme une allégation selon laquelle le Royaume-Uni (ou toute autre puissance nucléaire) manquait à l'une quelconque de ses obligations juridiques. Il n'y est pas fait mention de l'obligation de négocier, pas plus qu'il n'y est indiqué que les États dotés d'armes nucléaires manquent aux obligations qui leur incombent à cet égard.* »[96]

11. La Cour a également rejeté la seconde déclaration invoquée par la partie demanderesse parce que, dit-elle, « cette déclaration ne précise pas le comportement du Royaume-Uni qui serait à l'origine du manquement allégué »[97].

12. L'accent est ainsi mis sur le comportement prétendument illégal du défendeur. L'absence de précision et d'identification de ce comportement a motivé le rejet de la requête des Îles Marshall.

13. La Cour a appliqué le même critère aux demandes formulées par le Nicaragua dans l'affaire relative à des *Violations alléguées de droits souverains et d'espaces maritimes dans la mer des*

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[94] *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), arrêt, C.I.J. Recueil 2012 (II),* p. 444, par. 54.

[95] *Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Îles Marshall c. Royaume-Uni), exceptions préliminaires, arrêt, C.I.J. Recueil 2016 (II),* p. 850-851, par. 41.

[96] *Ibid.*, p. 853, par. 49 (les italiques sont de nous).

[97] *Ibid*., p. 853-854, par. 50.

Caraïbes. Elle a conclu à l'existence d'un différend entre les parties parce que et pour autant que « la Colombie savait que la promulgation du décret 1946 et son comportement dans les espaces maritimes … se heurtaient à l'opposition manifeste du Nicaragua »[98].

14. La Cour ne peut pas être plus claire. Ces affaires montrent que, pour la haute juridiction internationale, il existe un différend si, et seulement si, la partie demanderesse parvient à prouver qu'elle a reproché à son adversaire son comportement prétendument illégal, et qu'elle lui a exposé son opposition manifeste. Elle doit en outre montrer que le défendeur avait connaissance que ses vues se heurtaient à l'« opposition manifeste » du demandeur.

15. C'est ainsi qu'un différend juridique se cristallise et devient justiciable.

16. L'Ukraine et les États intervenants ont beaucoup misé sur l'affaire *Gambie c. Myanmar*. Ils ne l'auraient pas fait, s'ils l'avaient lue plus attentivement. Dans cette affaire la Cour ne s'est nullement départie de sa jurisprudence que je viens de décrire. Deux déclarations de la Gambie étaient en cause : la déclaration de septembre 2018 et celle de septembre 2019[99]. Toutes les deux s'adressaient aux rapports de la mission d'établissement des faits. Or, le rapport de 2018, j'empreinte les mots de la Cour,

> « contenait des allégations spécifiques quant à la perpétration dans l'État rakhine de crimes de nature, de gravité et d'ampleur semblables à celles de crimes qui avaient permis d'établir l'intention génocidaire dans d'autres contextes, tandis que celui de 2019 faisait expressément mention de la responsabilité du Myanmar au regard de la convention sur le génocide ».

Et la Cour de souligner :

> « [L]e fait que le Myanmar ait rejeté les conclusions desdits rapports démontre que *les allégations selon lesquelles un génocide était commis* par ses forces de sécurité contre les communautés rohingya au Myanmar ainsi que la mise en cause de sa responsabilité au regard de la convention à raison d'actes de génocide *se heurtaient à son opposition manifeste*. De telles allégations étaient contenues dans les deux rapports et ont été publiquement reprises par la Gambie. »[100]

17. Ainsi le Myanmar, l'État défendeur, savait clairement que son comportement, à savoir « le traitement du groupe des Rohingya », lui était reproché par le demandeur et qu'il était accusé d'avoir

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[98] *Violations alléguées de droits souverains et d'espaces maritimes dans la mer des Caraïbes (Nicaragua c. Colombie), exceptions préliminaires, arrêt, C.I.J. Recueil 2016 (I)*, p. 32, par. 73.

[99] *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), exceptions préliminaires, arrêt du 22 juillet 2022*, p. 500-501, par. 60-61.

[100] *Ibid.*, p. 506, par. 72 (les italiques sont de nous).

violé la convention sur le génocide et qu'il pourrait être traduit devant cette Cour. Même si la convention n'a pas été expressément mentionnée dans les déclarations faites à l'Assemblée générale des Nations Unies, les parties ont débattu de la question de la responsabilité de l'État pour le génocide. Elles l'ont fait à la lumière des conclusions des rapports de la mission d'établissement des faits, qui contenaient des références expresses à la convention sur le génocide.

18. N'en déplaise à l'Ukraine et aux États intervenants qui l'ont soutenue, dans l'affaire *Gambie c. Myanmar*, il y avait bel et bien une allégation formulée contre le défendeur et une opposition manifeste exprimée par le défendeur, deux éléments *sine qua non* de l'existence d'un différend qui sont tous les deux absents dans l'affaire qui nous occupe aujourd'hui.

19. Mesdames et Messieurs les juges, vous l'avez mis au clair : la Cour n'accepte pas l'introduction surprise de l'affaire. L'État demandeur est tenu de formuler sa prétention juridique contre l'État défendeur avant le dépôt de la requête, pour le mettre en mesure de savoir en quoi consiste son comportement prétendument illégal afin d'y réagir le cas échéant.

20. Répéter sans cesse, comme l'ont fait l'Ukraine et les États intervenants, que le concept de différend est vaste n'aide pas l'Ukraine ; loin s'en faut. Si la Cour partageait cette manière de voir, elle n'aurait jamais exigé le respect d'autant de règles pour la constatation du différend ; et elle n'aurait jamais été amenée à rejeter dans le passé plusieurs requêtes et demandes soumises à elle pour le manquement des États requérants à ces exigences.

21. L'affirmation que « l'existence d'un différend est une question de fond, non de forme ou de procédure », souvent évoquée par l'Ukraine et certains États intervenants, ne signifie nullement que le demandeur est libre de se conformer ou non à ces exigences. Elle signifie tout simplement qu'il est libre dans le choix des moyens de formuler son grief contre son adversaire, et de manifester son opposition au comportement du défendeur.

22. Madame la présidente, j'en arrive au deuxième volet de mon exposé qui est relatif aux faits de l'affaire. Je suis sous vos mains si vous voulez ordonner une pause ou je continue le deuxième volet de mon exposé.

The PRESIDENT: I thank professor Azari for raising the question. Let's continue for another 15 or 20 minutes. When you get to a suitable point in 15 or 20 minutes, please let me know, we can take a break then.

M. AZARI :

B. L'Ukraine n'a pas fait connaître sa position à la Russie avant le dépôt de sa requête

23. L'Ukraine entend fonder la compétence de la Cour sur l'article IX de la convention de 1948. Dès lors, pour établir son différend, l'Ukraine doit démontrer que 1) elle a revendiqué la violation par la Fédération de Russie de la convention de 1948 par ses comportements prétendument illégaux ; 2) sa revendication s'est heurtée à l'opposition manifeste de la Fédération de Russie ; et 3) le désaccord entre les Parties existait à la date du dépôt de la requête. Comme je l'ai indiqué la semaine dernière, l'Ukraine n'a pas réussi à remplir ces conditions. Son conseil n'a pas soutenu le contraire mardi dernier.

24. L'affirmation d'une partie qu'un différend existe n'est pas déterminante pour la question de savoir si le différend existe ou non. Il revient à la Cour d'en décider, en tenant notamment compte « de l'ensemble des déclarations ou documents échangés entre les parties »[101]. Le fait est que, dans notre cas, il n'y a aucune trace des déclarations ou documents échangés entre les Parties relatifs au prétendu différend soumis à la Cour dans cette affaire.

25. Bien qu'elle ait beaucoup communiqué avec la Fédération de Russie sur de nombreuses questions entre 2014 et 2022, l'Ukraine n'a jamais fait référence à la convention sur le génocide (ou à son objet), que ce soit dans les correspondances diplomatiques ou de toute autre manière permettant à la Fédération de Russie de prendre connaissance de sa position.

26. Conscients de la faiblesse de la position de l'Ukraine, certains États intervenants ont tenté de défendre l'inaction de l'Ukraine. Le Royaume-Uni a affirmé que « la Cour a expressément reconnu qu'un différend peut exister même "en l'absence d'échanges diplomatiques" »[102]. Toutefois, cette constatation s'applique aux situations où il n'y a pas de communication entre les parties.

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[101] *Ibid.*, p. 502, par. 64.

[102] WO of the United Kingdom dated 5 July 2023, p. 6, par. 11.

Naturellement, l'absence d'une telle communication ne devrait pas les empêcher de saisir la Cour. Cependant, cette logique ne peut s'appliquer à la situation où les parties communiquent activement depuis de nombreuses années, mais aucune référence à l'objet présumé du litige n'a été faite par le requérant dans ses communications.

27. Permettez-moi de répéter, Madame la présidente, entre 2014 et 2022, l'Ukraine et la Fédération de Russie ont entretenu une correspondance diplomatique intense, longue et continue. Leurs représentants se sont rencontrés à de nombreuses reprises dans différents cadres, tant bilatéraux que multilatéraux, pourtant l'Ukraine n'a jamais évoqué la convention sur le génocide ou son objet.

28. L'Ukraine a envoyé des centaines de documents diplomatiques à la Fédération de Russie sur une multitude de questions, mais jamais sur la convention sur le génocide ou son objet.

29. Mesdames et Messieurs de la Cour, comme je l'ai souligné la semaine dernière, l'Ukraine s'échine à vous faire croire que le différend existait quand même à la date du dépôt de la requête dans la mesure où la Russie a accusé l'Ukraine d'avoir commis le génocide, et que celle-ci s'est opposée à l'accusation de la Russie. Toutefois, cette affaire concerne la responsabilité de la Russie non celle de l'Ukraine. Cette tentative de l'Ukraine d'inverser le critère de l'existence du différend est vouée à l'échec. La Cour elle-même veillera bien entendu au maintien de la cohérence de sa jurisprudence. Pour ma part, je démontrerai que, même à l'aune de ce critère inversé, l'argumentation de l'Ukraine est dénuée de fondement.

30. S'agissant des déclarations d'hommes politiques russes qui ont utilisé le terme de génocide, force est de reconnaître que la simple référence à ce terme est insuffisante pour établir l'existence d'un différend au titre de la convention sur le génocide.

31. Lundi dernier, j'ai cité un article de William Schabas à l'appui de mon argument selon lequel il convient de faire la distinction entre l'usage du terme « génocide » à des fins rhétoriques ou politiques et l'invocation de la convention de 1948. Il n'est peut-être pas sans intérêt de rappeler que, juste au moment où les représentants de l'Ukraine dénonçaient cette affirmation dans cette salle, le président Zelensky accusait la Russie de commettre le génocide en Ukraine dans son discours à l'Assemblée générale de l'ONU[103].

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[103] Address by H.E. Volodymyr Zelenskyy, the President of Ukraine, at the 78th session of the UN General Assembly, 19 September 2023, accessible à l'adresse suivante : https://gadebate.un.org/sites/default/files/gastatements/%5Bvariable%3Acurrent_session%5D/ua_en_rev.pdf (dossier des juges, onglet 8.23).

32. D'autres exemples — et vous verrez des citations sur vos écrans — montrent à quel point les hommes politiques utilisent souvent ce terme. Des responsables cubains et mexicains ont qualifié l'embargo américain imposé à Cuba de « génocide »[104]. En 2023, le président kenyan a qualifié la situation au Soudan de « génocide »[105]. Le président vénézuélien Chavez a utilisé à plusieurs reprises le mot « génocide » dans ses déclarations adressées au président américain Bush et à Israël[106]. Les exemples sont abondants, nul besoin de les reproduire tous ici.

33. Le conseil de l'Ukraine s'est longuement attardé sur le comité d'enquête de la Russie. Le comité d'enquête est un organe chargé, comme l'indique son nom, de mener des enquêtes criminelles individuelles. Même si ces enquêtes aboutissaient à des allégations de génocide, le dossier serait alors transmis à un tribunal compétent qui, lui seul, serait à même de juger du bien-fondé d'une éventuelle allégation de génocide.

34. L'affaire relative aux *Immunités juridictionnelles*, à laquelle certains États intervenants ont fait référence, ne présente aucune analogie avec notre affaire. Cette affaire concernait les décisions judiciaires définitives qui sans aucun doute peuvent et doivent être considérées comme le fait de l'État, contrairement aux déclarations du comité rendues au terme d'une enquête ouverte en vertu du code pénal russe. Encore une fois, elles ne concernent pas la responsabilité de l'État pour le génocide, mais la responsabilité pénale individuelle.

35. Une enquête en cours à l'encontre d'un individu, qui peut aboutir à un classement de l'affaire pour manque de preuves ou à un transfert de l'affaire à la Cour, ne peut en aucun cas indiquer l'existence d'un différend entre États.

36. La tentative de l'Ukraine de présenter le comité d'enquête comme un organe représentant la Russie au niveau international doit échouer. D'abord et avant tout parce que la loi est claire : le

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[104] Reuters, *Mexican president slams U.S. embargo on Cuba as "genocidal policy"* (17 May 2022), accessible à l'adresse suivante : https://www.reuters.com/world/americas/mexican-president-calls-us-embargo-cuba-genocidal-policy-2022-05-17/ (onglet 9.1); United Nations, *General Assembly Adopts Annual Resolution Calling on United States to End Embargo against Cuba, as Brazil Rejects Text for First Time* (7 November 2019), available at: https://press.un.org/en/2019/ga12212.doc.htm (dossier des juges, onglet 9.2).

[105] France24, *Kenyan President William Ruto: "There are already signs of genocide in Sudan", available at:* (23 June 2023), accessible à l'adresse suivante : https://www.france24.com/en/tv-shows/the-interview/20230623-kenya-president-william-ruto-there-are-already-signs-of-genocide-in-sudan (dossier des juges, onglet 9.3).

[106] CNN, *Chavez: Imprison "genocidal" Bush* (8 November 2006), available at: https://edition.cnn.com/2006/WORLD/europe/05/15/britain.chavez/index.html (onglet 9.4); Reuters, *Venezuela's Chavez accuses Israel of genocide* (9 September 2009), accessible à l'adresse suivante : https://www.reuters.com/article/us-venezuela-chavez-israel-idUSTRE5881H820090909 (dossier des juges, onglet 9.5).

comité d'enquête n'a manifestement pas de tels pouvoirs ou fonctions[107]. Un organe qui ne représente pas la vision de l'État sur le plan international ne peut pas créer de différend entre deux États.

37. L'Ukraine a indiqué que « le comité d'enquête a représenté la Russie au niveau international — participant, par exemple, à des négociations bilatérales formelles entre l'Ukraine et la Russie »[108]. Toutefois, l'Ukraine a dissimulé dans ses diapositives que la délégation était dirigée par le ministère des affaires étrangères de la Russie, qui est effectivement l'organe chargé de représenter la Russie au niveau international, et que les membres du comité y participaient en qualité d'experts pour aborder des choses relatives à l'assistance juridique mutuelle — comme vous le voyez sur vos écrans.

38. En outre, les deux délégations se sont rencontrées au sujet de la convention internationale pour la répression du financement du terrorisme (ICSFT), qui est manifestement une convention de droit pénal couvrant la responsabilité pénale individuelle pour les actes de financement du terrorisme. La Cour a clairement indiqué dans son arrêt sur les exceptions préliminaires dans l'affaire CERD et ICSFT que cette convention ne couvrait pas ce que l'on appelle le terrorisme d'État ou le financement du terrorisme d'État[109]. Par conséquent, l'affirmation de l'Ukraine concernant une prétendue poursuite par le comité d'enquête de la « responsabilité internationale de l'Ukraine pour le génocide » est complètement dénuée de sens.

39. S'agissant de la référence faite par la Russie aux articles de la CDI sur la responsabilité de l'État, l'Ukraine et certains États intervenants ont fait valoir que l'article 43 du projet d'articles de la CDI sur la responsabilité de l'État, selon le commentaire du projet, ne concerne pas les questions relatives à la juridiction ou à la recevabilité d'une requête.

40. L'Ukraine et ces États ont mal interprété la position de la Russie. La Russie n'a pas soulevé cet argument comme une objection à la compétence de la Cour ou à la recevabilité de la demande ukrainienne, mais comme une preuve de l'absence de différend entre les Parties. En d'autres termes, il est invoqué pour expliquer que, même si le mot « génocide » a été prononcé par certaines autorités

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[107] Federal Law No. 403-FZ "On the Investigative Committee of the Russian Federation", 28 December 2010 (as amended on 1 April 2022) (Annex 14 to PO of the Russian Federation dated 1 October 2022) (dossier des juges, onglet 9.6).

[108] CR 2023/14, p. 56, par. 34 (Cheek).

[109] *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2019 (II)*, p. 585, par. 59.

russes, il ne s'agissait pas d'une accusation faite en référence à la convention. La CDI explique, et elle a raison, qu'

> « [u]n État qui souhaite protester contre la violation du droit international par un autre État, ou rappeler à celui-ci ses responsabilités internationales découlant d'un traité ou une autre obligation par laquelle ils sont liés, n'est généralement pas tenu d'établir un titre ou intérêt particulier pour le faire »[110].

41. Le conseil de l'Ukraine a fait passer les travaux du comité pour « huit années de préparation d'une fausse justification » pour l'« opération militaire spéciale » de la Russie[111], mais il n'a pas expliqué pourquoi l'Ukraine a attendu huit ans pour saisir la Cour si elle pensait sérieusement que les travaux du comité étaient contraires aux obligations juridiques de la Russie au titre de la convention.

42. Mesdames et Messieurs de la Cour, l'Ukraine prétend qu'elle s'est « opposée aux allégations de génocide formulées par la Russie ainsi qu'aux mesures prises par la Russie pour prévenir et punir les allégations de génocide sur le territoire ukrainien »[112]. Le fait est que toutes les réactions citées par le conseil de l'Ukraine à l'appui de cet argument émanaient des autorités visées par le comité d'enquête de la Russie et ces autorités elles-mêmes s'adressaient dans leurs déclarations audit comité[113]. Donc, elles n'ont pas répondu à une allégation étatique et leur attitude ne saurait participer à la naissance d'un différend d'ordre juridique.

43. S'agissant du discours du 23 février 2022 de M. Kuleba, ministre des affaires étrangères de l'Ukraine, force est de constater que M. Kuleba n'a fait aucune référence à l'allégation de génocide ou à la convention sur le génocide. Le conseil de l'Ukraine ne dit pas le contraire. Elle accepte que

> « le ministre Kuleba a choisi de ne pas amplifier les accusations de génocide formulées par la Russie, il a défendu très clairement et avec force les actions de son gouvernement dans le Donbas et a condamné la reconnaissance illégale par la Russie de la RPD et de la RPL »[114].

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[110] Commission du droit international, projet d'articles sur la responsabilité de l'État pour fait internationalement illicite, avec commentaires, article 42, *Annuaire de la Commission du droit international*, 2001, vol. II, deuxième partie, p. 117, par. 2 (dossier des juges, onglet 2.2).

[111] CR 2023/14, p. 54, par. 25 (Cheek).

[112] *Ibid*., p. 59, par. 46 (Cheek).

[113] *Ibid*., p. 59-61, par. 46-49 (Cheek).

[114] *Ibid*., p. 62, par. 54 (Cheek).

44. Lundi dernier, j'ai expliqué pourquoi l'invocation par l'Ukraine de la déclaration du ministère des affaires étrangères de l'Ukraine du 26 février 2022 n'est d'aucun secours pour elle. J'ai établi que la Cour retient l'écoulement d'un temps raisonnable entre la constatation du différend et le dépôt de la requête. M[me] Cheek a répondu que

> « compte tenu de la rapidité avec laquelle l'invasion russe s'est déroulée, … le moment et la manière dont la déclaration a été publiée n'enlèvent rien à sa pertinence pour confirmer l'existence d'un différend relatif à la convention sur le génocide à la date de la requête de l'Ukraine devant la Cour »[115].

45. Cet argument montre une fois de plus que l'Ukraine a instrumentalisé la convention de 1948. Son objectif sous-jacent, en introduisant cette affaire, consiste à obtenir de la Cour un jugement sur l'opération militaire de la Russie. En fait, ce qui a poussé l'Ukraine à saisir la Cour n'est pas l'allégation de génocide, mais la question du recours à la force. Réagir à l'« allégation de génocide » en tant que violation alléguée de la convention de 1948 ne peut se faire par des moyens militaires. Une opposition claire et manifeste à la hauteur de l'accusation verbale de génocide était requise. Elle est absente.

46. Le conseil de l'Ukraine a affirmé que le ministère ukrainien « a publié cette déclaration avant de déposer sa requête ». Il ajoute : « Il est raisonnable de présumer que, dans des circonstances de guerre, la Fédération de Russie aurait surveillé de près toute déclaration officielle du ministère ukrainien des affaires étrangères. »[116] Cet argument est intenable. La déclaration a été publiée moins de 4 heures avant le dépôt de la requête. Cela ne suffit pas. La position de la Cour sur le moment de la cristallisation du différend est sans ambiguïté. Elle a mis au clair que la règle selon laquelle « le différend doit en principe *déjà* exister à la date du dépôt de la requête »[117] signifie que le différend doit exister « avant la date du dépôt de la requête »[118], de sorte que le défendeur puisse avoir la possibilité de « réagir » à la réclamation du demandeur[119].

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[115] *Ibid*., p. 64, par. 60 (Cheek).

[116] *Ibid*.

[117] *Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Îles Marshall c. Royaume-Uni), exceptions préliminaires, arrêt, C.I.J. Recueil 2016 (II)*, p. 851, par. 43 (les italiques sont de nous).

[118] *Ibid*., p. 854, par. 54.

[119] *Ibid*., p. 851, par. 43.

Madame, il me reste deux petites pages, si vous me permettez de continuer ou j'arrête pour la pause-café, comme vous décidez.

The PRESIDENT: I thank you for your question, Professor Azari. You indeed are quite close to the end of your remarks, so please go ahead and complete them and then we will take a break.

M. AZARI :

47. Merci beaucoup, Madame la présidente. La Fédération de Russie n'était pas en mesure de « réagir » à la réclamation de l'Ukraine exprimée dans ladite déclaration. D'autant plus qu'elle n'était pas censée en être avertie. Il est à rappeler que, dans l'affaire des *Iles Marshall*, la Cour n'a pas retenu la déclaration que les Îles Marshall ont faite lors de la conférence de Nayarit comme preuve de l'existence du différend entre les parties, malgré le fait qu'elle contenait une allégation précise sur le manquement allégué de l'État défendeur à ses obligations internationales, parce que, dit-elle, « le Royaume-Uni n'était pas présent à la conférence de Nayarit »[120].

48. La connaissance du défendeur de ce que ses vues se heurtaient à l'« opposition manifeste » du demandeur ne se présume pas.

49. L'argument de M[me] Cheek, selon lequel les actions de « légitime défense de l'Ukraine contre l'agression russe » prouvent en quelque sorte que l'Ukraine s'opposait par son action à la prétendue allégation de génocide, n'est pas convaincant. À propos d'un argument semblable avancé par la partie demanderesse dans l'affaire *Géorgie c. Fédération de Russie*, la Cour a rejeté le lien entre le supposé exercice de la légitime défense et le rejet de l'allégation de la violation du traité litigieux. La déclaration de la Cour s'affiche sur vos écrans :

> « 108. [L]e président affirmait que, par son attaque armée, la Fédération de Russie fournissait "un appui sans réserve … aux forces séparatistes" et que son "agression militaire" exigeait l'exercice du droit de légitime défense prévu à l'article 51 de la Charte et dans d'autres documents. La Cour observe que rien dans ce décret n'accuse la Fédération de Russie d'avoir violé ses obligations en matière d'élimination de la discrimination raciale. Il y est question du recours prétendument illicite à la force armée. »[121]

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[120] *Ibid.*, p. 853, par. 50.

[121] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2011 (I)*, p. 118, par. 108.

50. Mesdames et Messieurs de la Cour, j'en arrive au dernier volet de mon exposé, qui concerne le prétendu différend relatif à l'usage abusif de la convention avancé par l'Ukraine dans son mémoire. Je serai très bref.

51. J'ai expliqué lundi dernier pourquoi aucune des conditions de l'existence du différend n'était réunie dans cette revendication. Sur mes arguments, l'Ukraine est restée totalement silencieuse la semaine dernière. Ceci étant dit, je terminerai mon exposé en soulignant les principaux traits de mon argumentation sur ce prétendu différend :

— Toutes les affirmations de l'Ukraine relatives à l'usage abusif de la convention sont fondées sur de fausses prémisses selon lesquelles la Fédération de Russie aurait invoqué la responsabilité de l'Ukraine pour le génocide commis au Donbass, et qu'elle a ensuite réagi de manière unilatérale pour y mettre fin. Cela est faux.

— Il n'y a pas de divergence de vues entre les Parties sur ce point. Lorsque les parties d'une part, et la Cour d'autre part, sont d'avis qu'un « droit » aux termes de la convention n'existe pas, cela serait incongru de prétendre qu'un différend à son sujet existe ou peut exister.

— La Fédération de Russie a pris connaissance de cette allégation de l'Ukraine lors du dépôt de son mémoire. Or, à la date critique du dépôt de la requête, cette revendication n'existait pas.

52. Dans ces circonstances, on ne peut conclure à l'existence d'un différend d'ordre juridique opposant les Parties à cet égard.

53. Pour toutes ces raisons, Mesdames et Messieurs de la Cour, la Fédération de Russie prie la Cour de décliner sa compétence pour connaître de la requête de l'Ukraine pour l'absence du différend entre les Parties.

54. Mesdames et Messieurs les juges, ceci conclut mes propos. Je vous remercie infiniment de votre bienveillante attention et vous prie, Madame la présidente, de bien vouloir appeler M. Alfredo Crosato à la barre après la pause-café, si vous en décidez ainsi. Merci beaucoup.

The PRESIDENT: I thank Professor Azari. Before I invite the next speaker to take the floor, the Court will observe a coffee break of 10 minutes. The sitting is adjourned.

The Court adjourned from 11.35 a.m. to 11.50 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I shall now give the floor to Mr Alfredo Crosato to address the Court. You have the floor, Sir.

Mr CROSATO:

SECOND PRELIMINARY OBJECTION: THE COURT LACKS JURISDICTION *RATIONE MATERIAE*

1. Madam President, distinguished Members of the Court, I shall now respond on behalf of the Russian Federation to what Ukraine said last Tuesday concerning the Court's lack of jurisdiction *ratione materiae* under Article IX of the Genocide Convention.

2. My presentation will be structured as follows. First, I will recall why Ukraine's claims do not concern an alleged breach of the Genocide Convention. I shall briefly address the conditions which, according to the Court's jurisprudence, must be met for the application of the Convention to be triggered in the first place: the existence of genocide or of a risk of genocide. Even accepting, *arguendo*, Ukraine's own factual claims, you should find that there is no jurisdiction in the present case; the Convention is simply not applicable.

3. Second, I shall set out the correct interpretation of Article IX of the Convention. This compromissory clause cannot expand the Court's jurisdiction, as Ukraine seems to suggest, beyond disputes regarding alleged breaches of the Convention itself. The Court has already interpreted Article IX and determined its scope. That interpretation — the Court's interpretation — is the one to follow.

4. Third, I will respond to what little Ukraine had to say regarding an all-encompassing incorporation of all of international law into the Convention, allegedly implied in Articles I and IV. Ukraine cannot sustain the existence of such a sweeping obligation consistent with the generally accepted rules of treaty interpretation and the Court's jurisprudence on this matter.

5. Fourth, I shall respond to what Ukraine said on abuse of rights. There is no doubt by now that Ukraine cannot identify any right under the Convention for purposes of applying an abuse of rights doctrine. Its hesitant suggestion that the Convention may contain a right of humanitarian intervention — a controversial exception to Article 2 (4) of the UN Charter — cannot be countenanced by the Court.

6. Fifth, I will address what appears to be Ukraine's last line of argument: a general reliance on the principle of good faith, or *pacta sunt servanda*. The exact effect that Ukraine wants to give to these general principles does not emerge clearly from its pleadings. But there is one thing that certainly cannot be achieved by relying on good faith alone: creating new obligations under the Genocide Convention and thus expanding the Court's jurisdiction under Article IX. Ukraine's submissions *(c)* and *(d)* in its Memorial, and its entire prayer for relief, cannot be based on this principle alone.

I. Ukraine's claims do not concern alleged breaches of the Genocide Convention

7. Madam President, Members of the Court, as we showed last week, the case before you does not, in the words of Article IX, concern the interpretation, application or fulfilment of the Genocide Convention. Ukraine's claims relate to an alleged violation by Russia of the UN Charter and customary international law. We are not here today to discuss the merits of Ukraine's allegations, but whether the Court has the power to rule on them. To entertain Ukraine's claims, the Court must have an appropriate basis of jurisdiction, consistent with the fundamental principle of State consent. Article IX of the Genocide Convention does not afford that basis.

8. That the case is not about the Genocide Convention has become even more evident after listening to the interveners and to Ukraine. Their pleadings referred throughout to allegations of violations by Russia of the prohibition of the use of force, the prohibition of aggression, Ukraine's sovereignty, the prohibition of war crimes or the prohibition of crimes against humanity. These are all very serious claims. But these are not claims relating to the Genocide Convention.

9. And in all the time available to them, Ukraine and interveners failed to address the one matter that they should have addressed: the Court's previous decisions concerning Article IX of the Convention, which clearly establish the limits of jurisdiction under that provision. This disregard for your jurisprudence makes one thing clear: the goal is to go beyond, far beyond, the confines of the Convention; to bring before you alleged breaches of obligations that do not arise under the Convention itself. The implications for all States bound by Article IX are obvious.

10. It is enough to glance at Ukraine's prayer for relief, which is now on your screens, to realize that this case is not about the Genocide Convention[122]. This does not read like a relief one would seek from a State that has breached its obligation to prevent genocide or its obligation to punish genocide.

11. Ukraine's request for compensation does not concern compensation of victims for acts of genocide. It asks the Court to award damages for all losses that may arise from the ongoing armed conflict. This prayer for relief, in short, does not have any connection with potential breaches of the Genocide Convention.

12. Ukraine's heavy reliance on your Order on provisional measures is also revealing[123]. Russia did not address this issue in its preliminary objections because it is simply irrelevant at this stage of the proceedings. Ukraine's suggestion appears to be that it may bring a claim against Russia based on a breach of the Order, even if Ukraine's primary claims are dismissed for lack of jurisdiction *ratione materiae*. The fact that Ukraine advanced this argument in such length shows once more where the real objective lies: having the Court address matters related to the use of force, as opposed to the Genocide Convention itself.

13. Last week we explained that, according to the Court's 2007 Judgment in the *Bosnia Genocide* case, the obligations to prevent and punish genocide are triggered when genocide has been committed, or when there is a serious risk that it may be committed[124]. The Court also clarified that a State "can be held responsible for breaching the obligation to prevent genocide only if genocide was actually committed"[125].

14. This is confirmed by the Order on provisional measures in the *Legality of Use of Force* cases, where the Court considered that it did not have jurisdiction *ratione materiae* even on a prima

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[122] MU, para. 179.

[123] CR 2023/14, pp. 90-99, paras. 1-27 (Gimblett).

[124] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 431.

[125] *Ibid.*, p. 221, para. 431.

facie basis because there was no evidence of genocidal intent of the parties accused of committing genocide by Yugoslavia[126].

15. So, put simply, the Convention does not become applicable in the first place unless there is indeed a genocide or a serious risk thereof. A State cannot be held responsible for violating Articles I and IV if genocide has not happened. The Court's jurisprudence in this regard confirms that the Convention deals exclusively with issues relating to genocide — with actual acts or risk of genocide.

16. Ukraine states that the facts it alleges should be accepted by the Court *pro tem* at this stage of the proceedings[127]. Among the facts alleged by Ukraine is that no genocide has been committed in Donbass. That there is not even a risk of genocide[128]. If the Court accepts these facts *arguendo*, then the conclusion should be that the Convention is simply not applicable in the present case. There would be, following your jurisprudence, no obligation that could have been breached; no jurisdiction *ratione materiae* under Article IX. This alone should be enough to dismiss Ukraine's claims.

17. Declaring that the objection does not possess an exclusively preliminary character would be a departure from the *Bosnia Genocide* and *Legality of Use of Force* cases. The Court would need to determine that the Convention may become applicable even where no genocide has occurred, and where there is no risk of genocide, as claimed by the Applicant. At that point, the Convention would clearly cease to be at issue.

18. If this position is upheld by the Court, only the legality of the use of force and the recognition of States would be left. But such legality can obviously not be assessed against the provisions of the Genocide Convention, which does not govern these matters. As we have stressed, they are regulated by the UN Charter and customary international law. Hence Ukraine's imperative to import into the Convention obligations that do not arise under the Convention itself, with all their qualifications.

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[126] *Legality of the Use of Force (Yugoslavia* v. *France), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, pp. 372-373, paras. 25-28; K. Wigard; O. Pomson; J. McIntyre, "Keeping score: an empirical analysis of the interventions in *Ukraine* v. *Russia*", in *Journal of International Dispute Settlement*, Vol. 00 (2023), pp. 19-20 (judges' folder, tab 10.1).

[127] CR 2023/14, p. 68, para. 6 (Thouvenin).

[128] CR 2023/14, p. 34, para. 4 (Korynevych).

19. All this, Madam President, Members of the Court, clearly precludes the establishment of the Court's jurisdiction *ratione materiae* under Article IX. This was again confirmed last week when Ukraine urged the Court once more to defer Russia's second preliminary objection to the merits, making only some brief "subsidiary" remarks on the substance of this objection[129]. But, for the reasons we gave last week, there is no reason to defer this objection to the merits. Nothing prevents the Court from stating the obvious: that the Genocide Convention does not regulate matters related to the use of force and the recognition of States. There is no textual basis, no indication in the drafting history, no jurisprudence, no authority whatsoever in support of a different position.

20. We note that Ukraine also suggested last Tuesday that Russia cannot "rewrite Ukraine's Application"[130]. But Russia is not doing anything of the sort. This preliminary objection directly addresses Ukraine's submissions in the Memorial and the manner in which they have been justified. Those submissions "are what they are"[131], as counsel for Ukraine said, and Ukraine has had the opportunity to explain how they could be based on the Genocide Convention. It has failed to do so.

II. The proper interpretation of Article IX of the Convention

21. Madam President, let me now turn to the proper interpretation of Article IX of the Convention. At the outset, three brief general remarks are in place.

22. First, Article IX did not play a prominent role in Ukraine's Memorial[132]. It was only in Ukraine's written statement[133], and in the submissions of the interveners, that the interpretation of this provision came to the front. In the Memorial, Ukraine was mainly concerned with Articles I and IV of the Convention[134].

23. Second, the emphasis put on Article IX by Ukraine and the interveners suggests that they too recognize that no other provision of the Convention could be interpreted as incorporating other rules of international law and expanding the Court's jurisdiction *ratione materiae*. In other words, it

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[129] CR 2023/14, p. 67, para. 4 (Thouvenin).

[130] CR 2023/14, p. 70, para. 16 (Thouvenin).

[131] CR 2023/14, p. 70, para. 17 (Thouvenin).

[132] MU, paras. 147-150.

[133] WOU, paras. 91-102.

[134] MU, Chap. 3.

is now Article IX that is being presented, at least by some, as the gateway for the Court to go beyond the substantive provisions of the Convention.

24. Third, Ukraine and interveners seem to rely on Article IX in different ways. Ukraine itself seems to argue that, under this provision, the Court has jurisdiction to hear claims regarding an "abuse of the Convention" to justify a unilateral use of force or the recognition of States within the territory of another State[135].

25. As we have shown, Ukraine's reliance on an abuse of rights doctrine raises a separate problem for Ukraine — the inexistence of a right under the Convention that could have been abused in the circumstances of this case. I will get back to this shortly. But if Ukraine's suggestion is that Article IX somehow grants jurisdiction more generally to rule on breaches of obligations not set forth in the Convention itself, the argument must be rejected.

26. As we noted last week, the interpretation of Article IX advanced by Ukraine contains many flaws. I will now explain briefly why this is so. Maître Tchikaya will go into some more details later this afternoon, in response to the submissions of the interveners.

27. The first fundamental problem in Ukraine's position is that it simply ignores the fact that the Court has already clarified the scope of Article IX. We addressed this in detail. But since you were told for several hours, including by Ukraine[136], that Article IX is an exceptionally "broad" compromissory clause, I hope the Court will indulge me for restating, only once and briefly, because there is no need for more, what the correct position is.

28. The Court has already clearly, unequivocally, determined that Article IX does not empower the Court to "rule on alleged breaches of other obligations under international law, not amounting to genocide"[137]. That Article IX "confines the Court to disputes regarding genocide"[138].

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[135] CR 2023/14, p. 71, para. 18 (Thouvenin).

[136] CR 2023/14, p. 71, para. 19 (Thouvenin).

[137] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 104, para. 147.

[138] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 45, para. 85.

That jurisdiction under Article IX is "confined to obligations arising under the Convention itself" [139]. That the Court can "only rule within the limits imposed by" the Convention[140].

29. Similarly, in the *Legality of Use of Force* cases, as we noted last week, the Court did not see the allegations of genocide as bringing within the jurisdiction of the Court under Article IX questions relating to the use of force. Arguments were advanced by the Parties on this question[141]. Yet the Court did not consider, even *proprio motu*, that Article IX could confer upon it jurisdiction over alleged violations of the UN Charter.

30. It is surprising, Madam President, Members of the Court, that last week you did not hear a single word — not one — concerning your previous decisions on this matter. Ukraine and the interveners had more than ample opportunity — more than ample opportunity — to address them. They chose silence.

31. This silence is revealing. It reveals in the clearest way that this case is not about an alleged breach of the Genocide Convention. If it were, they would have no problem in acknowledging your interpretation of Article IX. They cannot do this.

32. Be that as it may, your clear and consistent interpretation of Article IX is the correct one. To argue otherwise, Ukraine puts emphasis, for example, on the word "fulfilment". But fulfilment, as Ukraine notes[142], simply means compliance with or performance of the rules enshrined in the Convention. Determining whether a State has complied with its obligations and, if not, what the legal consequences of a breach are. That is what the Court does in all cases brought under a compromissory clause, even if it does not use the word "fulfilment".

33. This understanding is confirmed by the 2007 Judgment in the *Bosnia Genocide* case, where the Court stated that the addition of the word "fulfilment" was not "significant"[143] and that Article IX by itself did not impose obligations on the Contracting Parties[144]. There was no disagreement among the judges on this conclusion. Judge Skotnikov, for instance, stated that the addition of this word —

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[139] *Ibid.*, p. 47, para. 88.

[140] *Ibid.*, p. 153, para. 523.

[141] PORF, paras. 211-212.

[142] WOU, para. 161; CR 2023/14, p. 41, para. 11 (Koh).

[143] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 114, para. 168.

[144] *Ibid.*, p. 113, para. 166.

"fulfilment" — in Article IX "is not particularly significant"[145]. Similarly, Judge Tomka stated that "fulfilment" "does not add anything to the substantive obligations of the parties to the Convention and does not expand [the Court's] jurisdiction *ratione materiae*"[146].

34. Ukraine also refers to the phrase "including [disputes] relating to the responsibility of a State for genocide"[147]. This is the phrase that the Court found "unusual" in the *Bosnia Genocide* case[148], not the word "fulfilment". Indeed, it was by interpreting this phrase, together with the substantive provisions of the Convention, and the object and purpose, as well as the drafting history, that the Court came to the conclusion that Article I obliged States not to commit genocide themselves[149].

35. Nothing more can be deduced from this phrase. Ukraine seems to suggest that because the word "including" is used, other types of disputes are not excluded from the scope of the compromissory clause. But as Article IX makes clear, the dispute must in all cases relate to the "interpretation, application or fulfilment of the Convention" — of the Convention. Nothing in Article IX could justify expanding the Court's jurisdiction to alleged breaches of other rules of international law. The Court has already said so expressly.

36. Finally, a short word on writings. Ukraine and all the interveners refer to a book chapter written by one professor[150]. But they cite a single sentence taken out of context. What they fail to mention is that, in the same chapter, the author also explains that "the compromissory clause does not expand the jurisdiction of the [Court] to areas not covered in other provisions of the Convention"[151]; and that, in *Bosnia Genocide*, "the Court . . . stressed the intrinsically limited jurisdiction under the compromissory clause"[152].

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[145] *Ibid*., declaration of Judge Skotnikov, p. 373.

[146] *Ibid*., declaration of Judge Tomka, p. 338, para. 52.

[147] CR 2023/14, p. 71, para. 18 (Thouvenin).

[148] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 114, paras. 168-169.

[149] *Ibid*., pp. 115-119, paras. 170-179.

[150] R. Kolb, "The Scope Ratione Materiae of the Compulsory Jurisdiction of the ICJ", in P. Gaeta (ed.), *The UN Genocide Convention: A Commentary* (OUP, 2009) (judges' folder, tab 10.2).

[151] *Ibid*., p. 454.

[152] *Ibid*., p. 464.

37. It appears, therefore, that the author cited by Ukraine and the interveners correctly laid down the proper scope of Article IX of the Convention, having due regard to your previous decisions. In the same vein, another well-known author has noted that "jurisdiction under Article IX covers disputes under the Convention only, but not disputes relating to other rules of international law, even where they are intertwined with allegations of genocide"[153].

38. To conclude on this point, Madam President, Members of the Court, there is nothing exceptionally "broad" about Article IX of the Convention. It has the same scope as other compromissory clauses under the auspices of the United Nations. It limits the Court to alleged breaches of the Convention itself. Article IX most certainly does not impose additional obligations on the Contracting Parties. The compromissory clause cannot serve to incorporate other, external rules into the Convention.

III. Articles I and IV do not incorporate an indefinite number of obligations through an alleged obligation under the Convention to act within the limits of international law

39. Madam President, let me now turn to Ukraine's attempt to incorporate rules into the Convention through an alleged obligation, under Articles I and IV, to act within the limits of international law.

40. I can be brief because Ukraine did not have much to say last Tuesday. It was only suggested that Ukraine did not seek an incorporation in this case[154]; that the *Bosnia Genocide* case and the Order on provisional measures in this case suffice to determine this issue[155]; and that the object and purpose of the Convention could lead to an incorporation[156].

41. Madam President, the meaning of incorporation is well known and the Court has never admitted such an argument to date. Incorporation means importing into a treaty rights or obligations that do not arise under the treaty itself. States sometimes seek to incorporate external rules as self-standing, independent rules within a treaty, as was the case in *Oil Platforms*. Sometimes, States

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[153] C. Tams et al., *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* (Hart, 2014), p. 312 (judges' folder, tab 14.1).

[154] CR 2023/14, p. 80, para. 55 (Thouvenin).

[155] CR 2023/14, p. 72, paras. 23-24, p. 79, para. 51 (Thouvenin).

[156] CR 2023/14, p. 80, para. 57 (Thouvenin).

argue that external rules to a treaty are reflected in certain provisions of the treaty. That was the case in *Certain Iranian Assets*.

42. And at times, States maintain that a treaty includes rules arising from other sources of international law so as to address the manner in which a State has to perform its obligations under the treaty in question — whether they executed their obligations under the treaty without breaching other rules of international law. This was the case in *Immunities and Criminal Proceedings* — it is also quite evidently the manner of incorporation that Ukraine seeks to rely on in this case.

43. Last week we pointed out that accepting Ukraine's position would open the door for all kinds of disputes unrelated to the Convention to be brought to the Court invoking Article IX alone. A few examples may help illustrate this point. A State could, for example, institute proceedings against another State for an alleged violation of the customary rules on the immunity of State officials from foreign criminal jurisdiction for prosecuting an official for genocide, pursuant to Article IV of the Convention. A State may also come to the Court to challenge the legality of unilateral measures or sanctions adopted by another State on the basis of allegations of genocide. Such measures, which are not uncommon in cases of an alleged genocide, may be claimed to be in violation of a myriad of rules of international law with no connection to the Convention itself, depending on the circumstances.

44. And of course, the claims I am speaking of may not only concern the legality of measures that could be adopted by States in the future. States may also seek to challenge the legality of past measures. Nothing in principle would prevent this if the parties have accepted the Court's jurisdiction under Article IX of the Convention.

45. It is precisely because of the endless scope of disputes that could be brought under a compromissory clause unrelated to the substantive provisions of the treaty in question that the Court has consistently rejected attempts of incorporation. As the Court stated in *Djibouti* v. *France*,

> "[t]he consent allowing for the Court to assume jurisdiction must be certain . . . whatever the basis of consent, the attitude of the respondent State must 'be capable of being regarded as an "unequivocal indication" of the desire of that State to accept the Court's jurisdiction in a "voluntary and indisputable" manner'"[157].

[157] *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 204, para. 62.

46. The Court made a similar point in the *Croatia Genocide* case, where it was stated that a "discernible" intention is necessary to expand the Court's jurisdiction beyond the interpretation, application or fulfilment of the Convention itself[158]. In that case, the Court concluded that Article IX did not confer jurisdiction on the Court even regarding claims of breaches of customary obligations regarding genocide — that is, external rules having the same subject-matter as the Convention.

47. It follows, Madam President, that Ukraine's attempt to incorporate other rules of international law, including the UN Charter, cannot prevail. The text of the Convention does not come close to showing an intention, a discernible and certain intention, by States to incorporate those other rules and to submit their disputes to the Court. The drafting history is of no assistance either. Nor is the object and purpose of the Convention, important as it is, because it cannot suffice in itself to expand the Court's jurisdiction beyond what States have consented to[159].

48. As we showed last week, the *Bosnia Genocide* case cannot be relied upon either: when the Court said that "every State" — every State, not the Contracting Parties to the Genocide Convention specifically — "may only act within the limits permitted by international law"[160], that was a general statement of law, not a conflation of obligations arising under different sources or an expansion of jurisdiction under Article IX. Again, in the same Judgment the Court determined that jurisdiction only covers alleged breaches of the Convention itself.

49. In *Immunities and Criminal Proceedings*, the Court was careful in delineating the subject-matter and scope of the specific treaty in relation to other rules of international law, even if those other rules may have been breached when executing the specific treaty, and even in the face of express language that could have led to an incorporation[161]. The same approach is clearly also applicable in the present case.

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[158] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 48, para. 88.

[159] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, pp. 31-32, para. 64.

[160] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 430.

[161] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 320-323, paras. 91-102.

50. Again, in the *Bosnia Genocide* case, the Court was simply clarifying in which circumstances a State may not — not — be found responsible for failing to prevent genocide. The Court avoided putting States in a situation where they would face conflicting obligations.

51. Ukraine also relies, almost exclusively at this point, on your Order on provisional measures[162]. But the Order in no way prejudges the question of the jurisdiction of the Court or any questions relating to the merits[163]. It is now that the Court is called upon to determine the question of jurisdiction, having before it the full arguments of both Parties.

52. Ukraine also refers to the Court's finding in *Bosnia Genocide* that States have an obligation not to commit genocide themselves, even if this is not stated *expressis verbis* in the Convention[164]. But as I noted some moments ago, the Court arrived at this conclusion after a careful interpretation of the actual text of the Convention, in particular its Article I, the object and purpose and the drafting history. This step was taken, I would add, with respect to an obligation that goes to the heart of the Convention.

53. In the present case, the suggestion that the Convention obliges States, by implication, to comply with all their obligations under international law has no basis in the text or the drafting history of the Convention. Accepting Ukraine's position would lead to a similar implicit obligation to be read into all treaties, with the ensuing consequences for the system of compromissory clauses.

54. To be clear, Russia's position is not that States do not have to comply with their obligations under international law when executing or giving effect to the Convention or to any other treaty. The position is simply that this is not a treaty obligation under the Convention itself. The Court's jurisdiction *ratione materiae* under Article IX cannot be expanded on this basis.

IV. There can be no abuse of a non-existent right. The Convention does not contain a right to unilaterally use force or to recognize States within the territory of another State

55. Madam President, Members of the Court, I now turn to Ukraine's reliance on an abuse of right doctrine.

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[162] CR 2023/14, p. 72, paras. 23-24, p. 79, para. 51 (Thouvenin).

[163] *Allegations of Genocide under the Convention on the Prevention and Punishment of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022*, p. 230, para. 85.

[164] CR 2023/14, p. 74, para. 29 (Thouvenin).

56. As we explained last week, for this argument to have merit, Ukraine must first establish the existence of a specific right under the Convention that may be the object of abuse. Ukraine does not contest that a right that does not exist cannot be abused. It does not contest that the alleged abuse of a right that does not exist under the Convention cannot be the subject of proceedings under Article IX.

57. We also showed that Ukraine's position regarding the precise right that was allegedly abused in this case is obscure. Ukraine does not say anything, for example, about a right to recognize States under the Convention, even though the recognition of the DPR and LPR also forms part of its submissions. And when it comes to the unilateral use of force, Ukraine suggests that the Convention confers such a right, only to then deny that they exist under the Convention. The slide on your screens shows Ukraine's clear hesitance to assert the existence of a right to use force.

58. Madam President, Members of the Court, Ukraine's hesitance is understandable because it cannot be seriously suggested that the Convention confers a right to unilaterally use force — a right of humanitarian intervention. The use of force is regulated by the UN Charter and customary international law. The inexistence of a right to humanitarian intervention was confirmed by States in the 2005 World Summit Outcome Document[165]. Reading a right to unilaterally use force into the Convention would entail creating a novel exception to Article 2 (4) of the Charter. Such an interpretation of the Convention would have no basis whatsoever in the text or the drafting history of the treaty. Issues relating to the use of force, again, do not fall within the scope of the Convention.

59. Another problem with Ukraine's position is the way it argues that Articles I and IV of the Convention contain rights and obligations at the same time[166]. By doing so, Ukraine seems to agree that an abuse of rights doctrine may only apply to rights, not to obligations. It could of course not be otherwise. But Ukraine is wrong to suggest that the prevention and punishment of genocide are "rights" of States.

60. The difference between obligations and rights is straightforward. An obligation is something that a State is obliged, mandated to do. If the obligation is triggered, the State must comply

[165] "2005 World Summit Outcome", UN General Assembly resolution 60/1, 16 Sept. 2005, paras. 138-139 (tab 10.3).

[166] CR 2023/14, p. 74, paras. 31-32 (Thouvenin).

with it. In case of breach, the law of State responsibility will apply to determine the legal consequences. Rights, for their part, are something States are free to exercise. States are not required to exercise a right.

61. The Court's jurisprudence makes clear that Articles I and IV impose obligations. As the Court noted in *Bosnia Genocide*, "[t]he ordinary meaning of the word 'undertake' is to give a formal promise, to bind or engage oneself, to give a pledge or a promise, to agree, to accept an obligation. It is a word regularly used in treaties setting out . . . obligations . . ."[167].

62. These obligations are of an *erga omnes partes* character; they are owed to all the other Contracting Parties of the Convention[168]. The only correlative right for a State arising under Articles I and IV is to invoke compliance with those obligations by other States when they are required to do so. As the Court noted in *The Gambia* v. *Myanmar* case, this includes the possibility to invoke the responsibility of the State which has failed to prevent genocide[169], which in the case of the Convention is contained in Article IX.

63. So, it is wrong to suggest that Articles I and IV confer on States a "discretionary power"[170]. What may be expected from each State in fulfilling its obligation may vary depending on circumstances, as the Court clarified in *Bosnia Genocide*[171]. But States still have the obligation to act. To say that States have a "discretionary power" would significantly weaken — if not altogether deny — the obligations to prevent and punish.

64. Ukraine's reference to *Djibouti* v. *France* is irrelevant for the purpose of this case. In that case, the Court was dealing with a dispute regarding mutual legal assistance. The treaty in question gave France discretion to refuse requests for assistance, based on certain defined criteria[172]. No analogy can be drawn between that treaty and Articles I and IV of the Genocide Convention, which impose clear obligations on the Contracting Parties.

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[167] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 111, para. 162.

[168] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar*), *Preliminary Objections, Judgment, I.C.J. Reports 2022*, pp. 515-516, para. 107, p. 517, para. 112.

[169] *Ibid*., p. 516, para. 108.

[170] CR 2023/14, p. 76, para. 37 (Thouvenin).

[171] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 430.

[172] *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 229, para. 145.

65. Also inapposite is Ukraine's reference to the work of the Institut on "Obligations *erga omnes* in international law"[173]. In its 2005 resolution, the Institut was dealing with action that States may take under the law of State responsibility when facing the breach of an *erga omnes* obligation, such as invoking responsibility and requesting compliance with that obligation[174]. Articles I and IV of the Convention contain primary obligations incumbent upon all the Contracting Parties — they should not be confused with secondary rules.

66. Madam President, it is true that, in the circumstances of the *Immunities and Criminal Proceedings* case, the Court found that arguments relating to an abuse of rights were something for the merits[175]. But the Court did not say that this must always be the case. It does not have to be the case when a respondent is accused of abusing a right that manifestly does not exist under the treaty invoked. It cannot be the case when the applicant cannot openly and clearly state what that right is, and when the respondent does not claim any right. And it certainly cannot be the case when admitting the existence of the right would create an undefined exception to Article 2 (4) of the UN Charter.

67. In short, Articles I and IV impose obligations on States. They do not create rights. And they most certainly do not confer a right to unilaterally use force or to recognize States within the territory of another State. Ukraine's submissions based on an abuse of rights doctrine must therefore be dismissed for lack of jurisdiction *ratione materiae*.

V. The principle of good faith cannot be relied on to create new obligations under the Convention or to expand the Court's jurisdiction *ratione materiae* under Article IX

68. Madam President, I now move on to what appears to be Ukraine's last line of argument, having failed to identify a right under the Convention for purposes of applying an abuse of rights doctrine: a more general reliance on the principle of good faith, as reflected in Article 26 of the Vienna Convention on the Law of Treaties.

69. On Tuesday, counsel for Ukraine stated that a State cannot "invoke" and "execute" its obligations under the Convention in a manner contrary to the object and purpose of the

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[173] CR 2023/14, p. 74, para. 32 (Thouvenin).

[174] MU, Ann. 23, p. 192.

[175] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 337, para. 151; CR 2023/14, p. 71, para. 18 (Thouvenin).

Convention[176]. He suggested that, since Article I does not specify the actions a State may adopt to prevent genocide, it confers a "discretionary power" on the Contracting Parties, which must be exercised reasonably and in good faith[177]. And he added that an example of "abuse" of that "discretionary power" is falsely claiming a genocide with the objective of "claiming a right to act to the detriment of another State, including by using force"[178].

70. Ukraine does not say so expressly, but the suggestion appears to be — in line with Ukraine's general strategy in this case — that if a State does not execute its obligations under Articles I and IV of the Convention in good faith, the jurisdiction of the Court under Article IX may extend to alleged breaches of other rules of international law that may be somehow linked to the improper execution of the treaty.

71. This calls for a few remarks.

72. First, as the Court noted in *Border and Transborder Armed Actions*, the principle of good faith "is not in itself a source of obligation where none would otherwise exist"[179]. In the present context, good faith cannot create additional obligations for States under the Genocide Convention. The principle only relates to the performance of the obligations already contained in the Convention itself[180]. It requires States, following the Judgment in the *Gabčíkovo-Nagymaros* case, to apply a treaty "in a reasonable way and in such a manner that that its purpose can be realized"[181].

73. Second, good faith cannot be used to expand the Court's jurisdiction under Article IX of the Convention. As we have reiterated, the Court requires unequivocal evidence of States' discernible, certain intention to submit disputes to the Court. Such an intention could obviously not be established by reference to an abstract general principle of law.

74. Third, as we just showed, Article I of the Convention does not confer a "discretionary power" on States. It is an obligation that States must comply with. It is true that the specific action

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[176] CR 2023/14, pp. 75-76, para. 37 (Thouvenin).

[177] CR 2023/14, p. 76, para. 37 (Thouvenin).

[178] CR 2023/14, p. 76, para. 38 (Thouvenin).

[179] *Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 105, para. 94.

[180] *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 473, para. 49.

[181] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 79, para. 142.

that a State is required to take is not laid down in Article I. But one thing is certain: that action is not the unilateral use of force or the recognition of States. These are matters that are exclusively regulated by the UN Charter and customary international law, and which do not fall within the scope of the Convention.

75. This last point is particularly important. The principle of good faith may only apply, in proceedings under Article IX of the Convention, to the extent that the obligations under the Convention itself are at issue. If the conduct of a State does not fall within the scope of the Convention, such as the use of force, one cannot use Article IX to apply the principle of good faith in relation to the conduct not arising under the Convention.

76. Ukraine's reliance on Article IV of the Convention illustrates this point well. This Article only concerns criminal proceedings and the prosecution of perpetrators of genocide. If a State, in the belief that a genocide was being committed, invoked this provision to use force — which Russia denies is the situation in this case — that mere invocation would have no bearing on the legality of such action under Article IV, which does not regulate the use of force. The legality of that conduct will be appraised by reference to the UN Charter and customary international law, but not the Genocide Convention itself, and so would not fall within the compromissory clause of Article IX. The same would be true for an invocation of Article I of the Convention for the same purpose: that Article has no connection to matters relating to the use of force.

77. So, the problem with Ukraine's argument is that it continues to conflate conduct that falls within the scope of the Convention with conduct that falls clearly outside its scope — or, as Ukraine puts it in its Memorial, "*ultra vires*" conduct[182]. The use of force and the recognition of States are issues that manifestly do not fall under any provision of the Convention. The legality of the use of force and of recognition cannot be assessed, therefore, within the terms of the Convention. The UN Charter and customary international law regulate those matters. The principle of good faith cannot affect this.

[182] MU, para. 90.

Conclusion

78. Madam President, Members of the Court, to conclude, Ukraine instituted the present proceedings invoking Article IX of the Genocide Convention. The Convention does not regulate matters relating to the use of force. It does not regulate matters relating to the recognition of States. Article IX, as the Court has already determined, limits jurisdiction to alleged breaches of obligations arising under the Convention itself.

79. The Court must also reject Ukraine's conclusions *(c)* and *(d)* of the Memorial inasmuch as they require the Court to exercise jurisdiction over alleged breaches of other rules of international law and order reparation for those alleged breaches. Specifically, the Court's jurisdiction *ratione materiae* cannot be established in the present case for five reasons:

— One: even accepting Ukraine's own alleged facts *arguendo*, the provisions of the Convention have not been triggered and the Convention is therefore not applicable in the circumstances of this case.

— Two: the Court has already established that jurisdiction under Article IX is limited to alleged breaches of obligations arising under the Convention itself. It does not confer on the Court broader jurisdiction.

— Three: the Convention itself does not impose an obligation to act within the limits of all of international law when executing or giving effect to the Convention. Such a sweeping incorporation cannot be established as a matter of treaty interpretation, bearing in mind the Court's jurisprudence.

— Four: the Convention does not confer a right on States to unilaterally use force or to recognize States within the territory of another State. In the manifest absence of these rights, Ukraine cannot rely on an abuse of rights doctrine.

— Five: the general principle of good faith may not be used to expand the Court's jurisdiction beyond that conferred by Article IX.

80. Madam President, Members of the Court, this concludes my presentation and Russia's presentation for this morning. Thank you for your kind attention.

The PRESIDENT: I thank Mr Crosato, whose statement brings to an end this morning's session. The Court will meet again this afternoon, at 3 p.m., to hear the remainder of the second

round of the Russian Federation. At the end of that sitting, the Russian Federation will present its final submissions.

The sitting is adjourned.

The Court rose at 12.30 p.m.

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