

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

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)

EXCEPTIONS PRÉLIMINAIRES

ARRÊT DU 2 FÉVRIER 2024

2024

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

ALLEGATIONS OF GENOCIDE
UNDER THE CONVENTION
ON THE PREVENTION AND PUNISHMENT
OF THE CRIME OF GENOCIDE

(UKRAINE v. RUSSIAN FEDERATION: 32 STATES INTERVENING)

PRELIMINARY OBJECTIONS

JUDGMENT OF 2 FEBRUARY 2024

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JUDGMENT

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INTERNATIONAL COURT OF JUSTICE

YEAR 2024

2 February 2024

2024
2 February
General List
No. 182ALLEGATIONS OF GENOCIDE
UNDER THE CONVENTION
ON THE PREVENTION AND PUNISHMENT
OF THE CRIME OF GENOCIDE

(UKRAINE v. RUSSIAN FEDERATION: 32 STATES INTERVENING)

PRELIMINARY OBJECTIONS

General background — Application filed by Ukraine on 26 February 2022 — Article IX of Genocide Convention invoked as basis of jurisdiction — Russian Federation raised six preliminary objections to jurisdiction of Court and admissibility of Application.

*

First preliminary objection — Existence of dispute.

Statements of organs of Russian Federation that Ukraine committed genocide against Russian-speaking inhabitants of Donbas — Accusations rejected by Ukraine — Ukraine also disputed lawfulness of actions of Russian Federation undertaken on basis of such accusations — Dispute existed on date of Application — First preliminary objection rejected.

Two aspects of dispute — First aspect: request of Ukraine for declaration that no genocide attributable to it committed in Donbas — Second aspect: compatibility of actions of Russian Federation with Genocide Convention.

*

First aspect of dispute.

*Second preliminary objection — Jurisdiction *ratione materiae* under Genocide Convention — Objection does not concern first aspect of dispute*

and will be examined in relation to second aspect of dispute — No reason to call into question jurisdiction of Court to entertain first aspect of dispute.

Third preliminary objection — Alleged new claims — Additional or amended claims inadmissible if they transform subject of dispute in Application — Amended submission in Memorial merely clarifies claim in Application — Subject of dispute not transformed — Third preliminary objection rejected.

Fourth preliminary objection — Alleged lack of practical effect of judgment — First aspect of dispute between the Parties involves disagreement on facts and on interpretation, application or fulfilment of their rights and obligations under Genocide Convention — Declaratory judgment on first aspect would have effect of clarifying whether Ukraine acted in accordance with its obligations under Genocide Convention — Fourth preliminary objection rejected.

Fifth preliminary objection — Alleged inadmissibility of request for declaration that Ukraine did not breach its obligations — Examination by the Court of five arguments made by Russian Federation: — (1) Practices of WTO on “reverse compliance request” provide no assistance on this question — (2) Request not precluded by Article IX Genocide Convention — (3) Jurisprudence of the Court does not provide response to this question — (4) Request not incompatible with judicial function of Court — (5) Request does not contradict principles of judicial propriety and equality of parties — In assessing admissibility of Ukraine’s request, the Court takes account of following circumstances: — (1) Request made in context of armed conflict — (2) Russian Federation allegedly took measures in and against Ukraine to prevent and punish genocide in Donbas — Legal interest of Ukraine to make request in such special context — Request admissible in these particular circumstances — Fifth preliminary objection rejected.

Sixth preliminary objection — Alleged abuse of process — No exceptional circumstances to warrant rejection of claim for abuse of process — Sixth preliminary objection rejected.

*

Second aspect of dispute.

Third preliminary objection — Alleged new claims — Amended submissions in Memorial merely clarify claims in Application — Subject of dispute not transformed — Third preliminary objection rejected.

Second preliminary objection — Jurisdiction ratione materiae under Genocide Convention — Requirement that alleged violations fall within provisions of treaty — Allegation by Ukraine that Russian Federation violated obligations under Articles I and IV of Genocide Convention by false accusations of genocide and by invoking Convention in bad faith to justify unlawful actions, in particular military actions, on that basis — Court's view that acts alleged by Ukraine could not constitute violation of Articles I and IV — Ukraine does not claim that Russian Federation refrained from taking measures to prevent or punish a genocide — In these circumstances, difficult to see how conduct complained of could constitute violation of obligations to prevent genocide and punish perpetrators of genocide — Alleged bad faith and abuse by Russian Federation could not in themselves constitute violations of obligations under Articles I and IV — Allegation that Russian Federation violated rules of international law in seeking to fulfil obligations under Articles I and IV — Genocide Convention does not incorporate rules of international law extrinsic to it such as rules on use of force — Violation of such other rules cannot constitute violation of Genocide Convention — Court without jurisdiction to entertain second aspect of dispute — Second preliminary objection upheld.

No need to examine other preliminary objections in relation to second aspect of dispute.

*

Court has jurisdiction over first aspect of dispute on basis of Article IX of Genocide Convention — First aspect of dispute admissible.

JUDGMENT

Present: President DONOGHUE; Vice-President GEVORGIAN; Judges TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, ROBINSON, SALAM, IWASAWA, NOLTE, CHARLES-WORTH, BRANT; Judge ad hoc DAUDET; Registrar Gautier.

In the case concerning allegations of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide,

between

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as Agent;

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,

Romania,

represented by

HE Mr Bogdan Aurescu, Adviser to the President of Romania, former
Minister of Foreign Affairs of Romania, member of the International
Law Commission,

as Agent (until 19 January 2024);

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

as Agent (from 19 January 2024, prior to that Co-Agent);

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

as Co-Agent;

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

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

the United Kingdom of Great Britain and Northern Ireland,

represented by

Ms Sally Langrish, Legal Adviser and Director General Legal at the Foreign, Commonwealth and Development Office, United Kingdom of Great Britain and Northern Ireland,

as Agent;

Mr Paul McKell, Legal Director at the Foreign, Commonwealth and Development Office, United Kingdom of Great Britain and Northern Ireland,

as Co-Agent;

the Rt Hon. Ms 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 of Great Britain and Northern Ireland,

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

Mr Michael Boulton, Assistant Legal Adviser, Europe and Human Rights Team, Legal Directorate, Foreign, Commonwealth and Development Office, United Kingdom of Great Britain and Northern Ireland,

the Slovak Republic,

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 of the 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 Republic of Slovenia,

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,

the Kingdom of Sweden,

represented by

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

as Agent;

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 Czech Republic,

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 and chairman of the International Law Commission, associate member of the Institut de droit international,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 26 February 2022, Ukraine filed in the Registry of the Court an Application instituting proceedings against the Russian Federation concerning “a dispute . . . relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide” (hereinafter the “Genocide Convention” or the “Convention”).

2. In its Application, Ukraine seeks to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention.

3. Together with the Application, Ukraine submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

4. The Registrar immediately communicated the Application to the Russian Federation, in accordance with Article 40, paragraph 2, of the Statute of the Court, and the Request for the indication of provisional measures, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing of the Application and the Request by Ukraine.

5. In addition, by a letter dated 2 March 2022, the Registrar informed all States entitled to appear before the Court of the filing of the Application and the Request for the indication of provisional measures.

6. Pursuant to Article 40, paragraph 3, of the Statute of the Court, the Registrar subsequently notified the Member States of the United Nations through the Secretary-General, and any other State entitled to appear before the Court, of the filing of the Application, by transmission of the printed bilingual text.

7. Since the Court included no judge of Ukrainian nationality upon the Bench, Ukraine proceeded to exercise the right conferred upon it by Article 31, paragraph 2, of the Statute of the Court to choose a judge *ad hoc* to sit in the case; it chose Mr Yves Daudet.

8. By letters dated 1 March 2022, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of its Rules, the Court had fixed 7 and 8 March 2022 as the dates for the oral proceedings on the Request for the indication of provisional measures. By a letter dated 5 March 2022, the Ambassador of the Russian Federation to the Kingdom of the Netherlands stated that his Government had decided not to participate in the oral proceedings on the Request for the indication of provisional measures.

9. A public hearing was held on 7 March 2022, in which the Russian Federation did not participate. By a letter dated 7 March 2022, received in the Registry shortly after the closure of the hearing, the Ambassador of the Russian Federation to the Kingdom of the Netherlands transmitted a document setting out “the position of the Russian Federation regarding the lack of jurisdiction of the Court in th[e] case”.

10. By an Order dated 16 March 2022, the Court indicated the following provisional measures:

“(1) The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine;

(2) The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point 1 above;

(3) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”

11. Pursuant to the instructions of the Court under Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to the Genocide Convention the notification provided for in Article 63, paragraph 1, of the Statute of the Court. In addition, in accordance with Article 69, paragraph 3, of the Rules of Court, the Registrar addressed to the United Nations, through its Secretary-General, the notification provided for in Article 34, paragraph 3, of the Statute of the Court.

12. By an Order dated 23 March 2022, the Court fixed 23 September 2022 and 23 March 2023 as the respective time-limits for the filing of the Memorial of Ukraine and the Counter-Memorial of the Russian Federation. The Memorial of Ukraine was filed on 1 July 2022.

13. On 3 October 2022, within the time-limit prescribed by Article 79*bis*, paragraph 1, of the Rules of Court, the Russian Federation raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Consequently, by an Order of 7 October 2022, having noted that, by virtue of Article 79*bis*, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended, the Court fixed 3 February 2023

as the time-limit within which Ukraine could present a written statement of its observations and submissions on the preliminary objections raised by the Russian Federation. Ukraine filed its written statement within the time-limit thus fixed.

14. Between 21 July 2022 and 15 December 2022, 33 States filed Declarations of intervention under Article 63, paragraph 2, of the Statute of the Court. Such Declarations were filed by the Republic of Latvia (hereinafter “Latvia”) on 21 July 2022, the Republic of Lithuania (hereinafter “Lithuania”) on 22 July 2022, New Zealand on 28 July 2022, the United Kingdom of Great Britain and Northern Ireland (hereinafter the “United Kingdom”) on 5 August 2022, the Federal Republic of Germany (hereinafter “Germany”) on 5 September 2022, the United States of America (hereinafter the “United States”) on 7 September 2022, the Kingdom of Sweden (hereinafter “Sweden”) on 9 September 2022, Romania on 13 September 2022, the French Republic (hereinafter “France”) on 13 September 2022, the Republic of Poland (hereinafter “Poland”) on 15 September 2022, the Italian Republic (hereinafter “Italy”) on 15 September 2022, the Kingdom of Denmark (hereinafter “Denmark”) on 16 September 2022, Ireland on 19 September 2022, the Republic of Finland (hereinafter “Finland”) on 21 September 2022, the Republic of Estonia (hereinafter “Estonia”) on 22 September 2022, the Kingdom of Spain (hereinafter “Spain”) on 29 September 2022, Australia on 30 September 2022, the Portuguese Republic (hereinafter “Portugal”) on 7 October 2022, the Republic of Austria (hereinafter “Austria”) on 12 October 2022, the Grand Duchy of Luxembourg (hereinafter “Luxembourg”) on 13 October 2022, the Hellenic Republic (hereinafter “Greece”) on 13 October 2022, the Republic of Croatia (hereinafter “Croatia”) on 19 October 2022, the Czech Republic (hereinafter “Czechia”) on 31 October 2022, the Republic of Bulgaria (hereinafter “Bulgaria”) on 18 November 2022, the Republic of Malta (hereinafter “Malta”) on 24 November 2022, the Kingdom of Norway (hereinafter “Norway”) on 24 November 2022, the Kingdom of Belgium (hereinafter “Belgium”) on 6 December 2022, Canada and the Kingdom of the Netherlands (hereinafter “the Netherlands”), jointly, on 7 December 2022, the Slovak Republic (hereinafter “Slovakia”) on 7 December 2022, the Republic of Slovenia (hereinafter “Slovenia”) on 7 December 2022, the Republic of Cyprus (hereinafter “Cyprus”) on 13 December 2022 and the Principality of Liechtenstein (hereinafter “Liechtenstein”) on 15 December 2022.

15. On 17 August 2022, the European Union, referring to Article 34, paragraph 2, of the Statute of the Court, and Article 69, paragraph 2, of the Rules of Court, furnished, on its own initiative, information which it considered relevant to the case. The Registrar immediately transmitted the document filed by the European Union to the Governments of Ukraine and the Russian Federation, indicating that this transmission did not prejudice any decision the Court might take concerning the information thus furnished.

16. Pursuant to Article 83, paragraph 1, of the Rules of Court, the Parties were invited to present written observations on the Declarations of intervention filed by third States (see paragraph 14 above). Both Parties submitted such written observations on 17 October 2022 (written observations on the Declarations of intervention of Latvia, Lithuania, New Zealand, the United Kingdom, Germany, the United States, Sweden, Romania, France, Poland and Italy); 15 November 2022 (written observations on the Declarations of intervention of Denmark, Ireland, Finland, Estonia, Spain, Australia, Portugal, Austria, Luxembourg and Greece); 16 December 2022 (written observations on the Declarations of intervention of Croatia and Czechia) and 30 January 2023 (written observations on the Declarations of intervention of Bulgaria, Malta, Norway, Belgium, Canada and the Netherlands, Slovakia, Slovenia, Cyprus and Liechtenstein). In light of the objections of the Russian Federation to the admissibility of the Declarations of intervention, the Court, pursuant to Article 84, paragraph 2, of its Rules, decided to invite the States seeking to intervene and the Parties to submit their views on the admissibility of the Declarations of intervention in writing. On 10 and 13 February 2023, the States seeking to intervene thus presented their written observations on the admissibility of the Declarations of intervention, followed by the written observations of the Parties on that same matter on 24 March 2023.

17. By a letter dated 21 March 2023, the Registrar, acting pursuant to Article 69, paragraph 3, of the Rules of Court, transmitted to the Secretary-General of the United Nations copies of the written proceedings filed thus far in the case, and asked whether the Organization intended to present observations in writing under that provision in relation to the preliminary objections raised by the Russian Federation. By a letter dated 23 March 2023, the Assistant Secretary-General in charge of the Office of Legal Affairs stated that the Organization did not intend to submit any observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court.

18. By an Order dated 5 June 2023, the Court decided that the Declarations of intervention under Article 63 of the Statute submitted by 32 States (Australia, Austria, Belgium, Bulgaria, Canada and the Netherlands (jointly), Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom) were admissible at the preliminary objections stage of the proceedings in so far as they concerned the construction of Article IX and other provisions of the Genocide Convention that are relevant for the determination of the jurisdiction of the Court. The Court further found that the Declaration of intervention under Article 63 of the Statute submitted by the United States was inadmissible in so far as it concerned the preliminary objections stage of the proceedings. The Court

also fixed 5 July 2023 as the time-limit for the filing of the written observations referred to in Article 86, paragraph 1, of the Rules of Court by the States whose Declarations of intervention had been deemed admissible at the preliminary objections stage of the proceedings.

19. Further to the Order of 5 June 2023 and in accordance with Article 86, paragraph 1, of the Rules of Court, the States whose Declarations of intervention were admissible at the preliminary objections stage were furnished with copies of the Memorial of Ukraine, the Preliminary Objections of the Russian Federation and the Written Statement of Ukraine on those preliminary objections.

20. By letters dated 9 and 12 June 2023 respectively, the Parties and intervening States were informed that the Court had fixed 18 September 2023 as the date for the opening of the oral proceedings on the preliminary objections raised by the Russian Federation.

21. The intervening States, with the exception of Liechtenstein, filed their written observations on the subject-matter of their interventions, within the time-limit fixed in the Order of 5 June 2023.

22. After ascertaining the views of the Parties, the Court decided, pursuant to Article 53, paragraph 2, of its Rules, that copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings. Further, after consulting the Parties and the States which had filed a Declaration of intervention, the Court decided to make accessible to the public also the written observations of the Parties on the Declarations of intervention pursuant to Article 83, paragraph 1, of the Rules of Court, the written observations of the States seeking to intervene and those of the Parties on the admissibility of the Declarations of intervention in accordance with Article 84, paragraph 2, of the Rules of Court, as well as the written observations of the intervening States, referred to in Article 86, paragraph 1, of the Rules of Court, on the subject-matter of their interventions.

23. Public hearings on the preliminary objections raised by the Russian Federation were held on 18, 19, 20, 25 and 27 September 2023, at which the Court heard the oral arguments, replies and observations of:

For the Russian Federation:

HE Mr Gennady Kuzmin,
Mr Hadi Azari,
Mr Alfredo Crosato Neumann,
Mr Sienho Yee,
Mr Kirill Udovichenko,
HE Ms Maria Zabolotskaya,
Mr Jean-Charles Tchikaya,
HE Mr Alexander Shulgin.

For Ukraine:

HE Mr Anton Korynevych,
Mr Harold Hongju Koh,

Ms Marney L. Cheek,
Mr Jean-Marc Thouvenin,
Mr David M. Zionts,
Mr Jonathan Gimblett,
HE Ms Oksana Zolotaryova.

For the intervening States:

For Germany:

Ms Wiebke Rückert.

For Australia:

Mr Stephen Donaghue.

For Austria, Czechia, Liechtenstein
and Slovakia:

Mr Emil Ruffer.

For Belgium, Croatia, Denmark,
Estonia, Finland, Ireland, Luxem-
bourg, Romania and Sweden:

Ms Kerli Veski,
Mr Piet Heirbaut.

For Bulgaria:

Ms Dimana Dramova.

For Canada and the Netherlands:

Mr Alan H. Kessel,
Mr René J. M. Lefeber.

For Cyprus:

Ms Mary-Ann Stavrinides,
Mr Antonios Tzanakopoulos.

For Spain:

Mr Santiago Ripol Carulla.

For France:

HE Mr François Alabrune.

For Greece:

Ms Zinovia Chaido Stavridi.

For Italy:

Mr Stefano Zanini,
Mr Attila M. Tanzi.

For Latvia:

Mr Mārtiņš Pāparinskis.

For Lithuania:

Ms Gabija Grigaitė-Daugirdė.

For Malta:

Mr Christopher Soler.

For Norway:

Mr Kristian Jervell.

For New Zealand:

Mr Andrew Williams.

For Poland:

HE Ms Margareta Kassangana.

For Portugal:

Ms Patrícia Galvão Teles.

For the United Kingdom:

Rt Hon. Ms Victoria Prentis.

For Slovenia:

Mr Marko Rakovec.

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24. In the Application, the following requests were made by Ukraine:

“30. Ukraine respectfully requests the Court to:

- (a) Adjudge and declare that, contrary to what the Russian Federation claims, no acts of genocide, as defined by Article III of the Genocide Convention, have been committed in the Luhansk and Donetsk oblasts of Ukraine.

- (b) Adjudge and declare that the Russian Federation cannot lawfully take any action under the Genocide Convention in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims of genocide in the Luhansk and Donetsk oblasts of Ukraine.
- (c) Adjudge and declare that the Russian Federation's recognition of the independence of the so-called 'Donetsk People's Republic' and 'Luhansk People's Republic' on 22 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.
- (d) Adjudge and declare that the 'special military operation' declared and carried out by the Russian Federation on and after 24 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.
- (e) Require that the Russian Federation provide assurances and guarantees of non-repetition that it will not take any unlawful measures in and against Ukraine, including the use of force, on the basis of its false claim of genocide.
- (f) Order full reparation for all damage caused by the Russian Federation as a consequence of any actions taken on the basis of Russia's false claim of genocide."

25. In the written proceedings on the merits, the following submissions were presented on behalf of the Government of Ukraine in its Memorial:

"178. For the reasons set out in this Memorial, Ukraine respectfully requests the Court to:

- (a) Adjudge and declare that the Court has jurisdiction over this dispute.
- (b) Adjudge and declare that there is no credible evidence that Ukraine is responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk oblasts of Ukraine.
- (c) Adjudge and declare that the Russian Federation's use of force in and against Ukraine beginning on 24 February 2022 violates Articles I and IV of the Genocide Convention.
- (d) Adjudge and declare that the Russian Federation's recognition of the independence of the so-called 'Donetsk People's Republic' and 'Luhansk People's Republic' on 21 February 2022 violates Articles I and IV of the Genocide Convention.
- (e) Adjudge and declare that, by failing to immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine, and by failing to ensure that any military or irregular armed units which may be directed or supported by it, as

well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of these military operations, the Russian Federation violated the independent obligations imposed on it by the Order indicating provisional measures issued by the Court of 16 March 2022.

179. Accordingly, the Court is respectfully requested to:

- (a) Order the Russian Federation to immediately terminate its use of force in and against Ukraine that it commenced on 24 February 2022.
- (b) Order the Russian Federation to immediately withdraw its military units from the territory of Ukraine, including the Donbas region.
- (c) Order the Russian Federation to ensure that any military or irregular armed units which may be directed or supported by it (including but not limited to those of the DPR and the LPR), as well as any organizations and persons which may be subject to its control or direction, take no further steps in support of Russia's use of force in and against Ukraine that it commenced on 24 February 2022.
- (d) Order the Russian Federation to withdraw its recognition of the DPR and the LPR.
- (e) Order the Russian Federation to provide assurances that it will not undertake any further use of force in or against Ukraine.
- (f) Order full reparation for all harm suffered by Ukraine as a consequence of the Russian Federation's use of force in the territory of Ukraine that it commenced on 24 February 2022, in an amount to be quantified in a separate phase of these proceedings.
- (g) Order full reparation for all harm suffered by Ukraine as a consequence of the Russian Federation's violations of the Court's 16 March 2022 Order indicating provisional measures, in an amount to be quantified in a separate phase of these proceedings."

26. In the preliminary objections, the following submissions were presented on behalf of the Government of the Russian Federation:

"In view of the foregoing, the Russian Federation respectfully requests the Court to adjudge and declare that it lacks jurisdiction over the claims brought by Ukraine against the Russian Federation in its Application dated 26 February 2022 and Memorial dated 1 July 2022 and/or that Ukraine's claims are inadmissible.

The Russian Federation reserves the right to make further preliminary objections during further proceedings, if any."

27. In the Written Statement on the preliminary objections, the following submissions were presented on behalf of the Government of Ukraine:

“Accordingly, for the reasons set out in this Written Statement, Ukraine makes the following submissions, respectfully requesting the Court to:

- (a) Dismiss the Preliminary Objections filed by the Russian Federation on 3 October 2022;
- (b) Adjudge and declare that the Court has jurisdiction to hear the claims presented by Ukraine as set forth in its Application and Memorial, and that those claims are admissible; and
- (c) Proceed to hear those claims on the merits.”

28. At the oral proceedings on the preliminary objections, the following submissions were presented by the Parties:

On behalf of the Government of the Russian Federation,

“Having regard to the arguments set out in the Preliminary Objections of the Russian Federation and during the oral proceedings, the Russian Federation respectfully requests the Court to adjudge and declare that it lacks jurisdiction over the claims brought by Ukraine against the Russian Federation in the present proceedings, and/or that Ukraine’s claims are inadmissible.”

On behalf of the Government of Ukraine,

“On the basis of the facts and legal arguments presented in its written and oral pleadings, Ukraine respectfully requests the Court to:

- (a) Dismiss the Preliminary Objections filed by the Russian Federation on 3 October 2022;
- (b) Adjudge and declare that the Court has jurisdiction to hear the claims presented by Ukraine as set forth in its Application and Memorial, and that those claims are admissible; and
- (c) Proceed to hear those claims on the merits.”

* * *

I. GENERAL BACKGROUND

29. In the spring of 2014, an armed conflict erupted in the Donbas region of eastern Ukraine, between Ukrainian armed forces and forces linked to two entities that refer to themselves as the “Donetsk People’s Republic” (DPR) and the “Luhansk People’s Republic” (LPR). Despite attempts to

achieve a peaceful resolution, the armed conflict continued between 2014 and 2022.

30. On 21 February 2022, the Russian Federation, by decrees of its President, Mr Vladimir Putin, formally recognized the DPR and LPR as independent States. In an address delivered on the same day, the President of the Russian Federation stated, *inter alia*, that this decision was taken in light of continuing attacks against the Donbas communities and “[t]he killing of civilians, the blockade, the abuse of people, including children, women and the elderly” while

“the so-called civilised world, which our Western colleagues proclaimed themselves the only representatives of, prefers not to see this, as if this horror and genocide, which almost 4 million people are facing, do not exist”.

31. On 22 February 2022, the Russian Federation concluded what it refers to as two “Treaties on Friendship, Cooperation and Mutual Assistance”, one with the DPR and the other with the LPR. On the same date, the DPR and LPR requested military assistance from the Russian Federation pursuant to these “treaties”. At 6 a.m. (Moscow time) on 24 February 2022, the President of the Russian Federation declared that he had decided to conduct a “special military operation” in Ukraine. In his speech, he stated:

“[I]n 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, as ratified by the Federal Assembly on 22 February this year.

Its purpose is to protect people who have been subjected to abuse and genocide by the Kiev regime for eight years. And to this end, we will seek the demilitarization and the de-Nazification of Ukraine, as well as the prosecution of those who have committed numerous bloody crimes against civilians, including citizens of the Russian Federation.” (Address by the President of the Russian Federation, Annex to the letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, UN doc. S/2022/154 (24 February 2022), p. 6.)

32. The “special military operation” was launched early in the morning on the same day.

33. By a letter dated 24 February 2022, the Permanent Representative of the Russian Federation to the United Nations forwarded to the Secretary-General of the United Nations the text of the address of the President of the Russian Federation of the same date, explaining that this address informed

the citizens of Russia “of the measures taken in accordance with Article 51 of the Charter of the United Nations in exercise of the right of self-defence” (Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, UN doc. S/2022/154 (24 February 2022)).

34. On 26 February 2022, the Ministry of Foreign Affairs of Ukraine issued a statement denouncing “Russia’s false and offensive allegations of genocide as a pretext for its unlawful military aggression against Ukraine”. The Ministry asserted in particular:

“Ukraine resolutely denies Russia’s allegations of genocide and rejects any attempt to use such manipulative allegations as an excuse for its unlawful aggression. The crime of genocide is defined in the Genocide Convention, and under that Convention, Russia’s claims are baseless and absurd.” (Statement of 26 February 2022, subsequently distributed as a document of the General Assembly and the Security Council, namely the annex to the letter dated 26 February 2022 from the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General, UN doc. A/76/727-S/2022/161 (28 February 2022).)

35. On the same day, a few hours after the issuance of this statement, Ukraine filed its Application before the Court, together with a Request for the indication of provisional measures (see paragraphs 1 and 3 above). On 16 March 2022, the Court indicated provisional measures, ordering in particular that the Russian Federation immediately suspend the military operations that it had commenced on 24 February 2022 in the territory of Ukraine (see paragraph 10 above). The armed conflict between the Russian Federation and Ukraine continues to this day.

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36. Ukraine invokes Article IX of the Genocide Convention as a basis of the Court’s jurisdiction. This provision reads as follows:

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

37. The Russian Federation has raised six preliminary objections, contending that: (1) the Court lacks jurisdiction as there was no dispute between the Parties under the Genocide Convention at the time of the filing of the Application (first preliminary objection); (2) the Court lacks jurisdiction *ratione materiae* (second preliminary objection); (3) Ukraine made new claims in the Memorial and these should be found inadmissible (third preliminary objection); (4) Ukraine’s claims are inadmissible as the Court’s potential judgment would lack practical effect (fourth preliminary objec-

tion); (5) Ukraine's request for a declaration that it did not breach its obligations under the Convention is inadmissible (fifth preliminary objection); and (6) Ukraine's Application is inadmissible as it constitutes an abuse of process (sixth preliminary objection).

II. EXISTENCE AND SUBJECT OF THE DISPUTE

A. Existence of the Dispute (First Preliminary Objection)

38. In paragraph 30 of its Application filed on 26 February 2022 against the Russian Federation, Ukraine made the submissions that are reproduced in paragraph 24 above.

Ukraine contends, in essence, that the Russian Federation has made false allegations that the Applicant committed genocide in the Luhansk and Donetsk oblasts (administrative territorial units), and that the Respondent cannot lawfully, on the basis of such allegations, take any action against Ukraine under the Genocide Convention, in particular the recognition of the independence of the "Donetsk People's Republic" and the "Luhansk People's Republic" and the launch of the "special military operation".

39. The submissions in paragraph 178 of Ukraine's Memorial, filed on 1 July 2022, are formulated in terms different from those in the Application (see paragraph 25 above). The question whether this difference has legal implications — and, if so, what implications — will be examined below, in response to the third preliminary objection raised by the Russian Federation, which contests the admissibility of the submissions in the Memorial on the ground that the claims made therein are manifestly different from those advanced in the Application (see paragraphs 60 and 121 below).

40. The Court must first determine whether, on the date of the filing of the Application, a dispute existed between the Parties relating to the subject-matter of the Application submitted to the Court.

* *

41. In its first preliminary objection, the Russian Federation submits that there was no dispute between the Parties on that date under the Genocide Convention, which is the sole basis of jurisdiction relied on by Ukraine. It argues that, according to the jurisprudence of the Court, an applicant must demonstrate that a dispute existed on the date of the filing of the application relating to the claims it has made, and that the parties were aware, or could not have been unaware, that they held positively opposed views with respect to the obligations in question. The Russian Federation is of the view that

these conditions are not met in the present case. According to the Respondent, there is no evidence that, on the date the Application was filed, Ukraine had clearly alleged that the Russian Federation had acted inconsistently with the Genocide Convention. The statement posted by Ukraine's Ministry of Foreign Affairs on 26 February 2022 (see paragraph 34 above) was vague and imprecise, and had been published on the Ministry's website only very shortly before the filing of the Application, such that the Russian Federation was not aware, and could not have been aware, of it at that time. The Russian Federation further contends that, before the critical date of 26 February 2022, Ukraine had made no statement or communication alleging any "abuse" or "misuse" of the Convention. Finally, according to the Russian Federation, there was no dispute between the Parties with regard to the responsibility of Ukraine for a violation of its obligations under the Genocide Convention. It notes in this regard that it has never sought to invoke Ukraine's international responsibility under the Convention, and that Ukraine has not declared that there was a dispute on this subject. It observes that the use of the term "genocide" in certain public statements made by Russian officials cannot by itself be viewed as an invocation of the Applicant's responsibility under the Convention, or as evidence of the existence of a dispute concerning such responsibility.

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42. Ukraine replies that, at the time the Application was filed, there was indeed a dispute between the Parties concerning the commission of genocide and the appropriate measures to be taken to prevent and punish it. It notes that since 2014 the Russian Federation has falsely alleged that the Applicant and its officials have been committing acts of genocide in the Luhansk and Donetsk oblasts in the eastern part of Ukraine. The "Investigative Committee" of the Russian Federation was the first to make such allegations, which were echoed by Russian politicians at the highest level, including President Putin in his speech of 24 February 2022 announcing the launch of the "special military operation" against Ukraine.

43. The Applicant adds that it clearly refuted these allegations through a number of statements made by its official representatives before the filing of the Application. On 26 February 2022, Ukraine publicly condemned the Russian Federation's use of false allegations of genocide as "an excuse for its unlawful aggression". Finally, it submits that it openly demonstrated through its actions that it rejected the right claimed by the Russian Federation based on the Genocide Convention to use force to prevent, punish and bring to an end purported acts of genocide: it did not permit the Russian Federation to enter its territory for that purpose and even responded militarily.

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44. As the Court has recently stated, “[t]he existence of a dispute between the parties is a requirement for [its] jurisdiction under Article IX of the Genocide Convention” (*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 (II), p. 502, para. 63). According to established jurisprudence, a dispute is “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11). In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other” (*South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment*, I.C.J. Reports 1962, p. 328). As regards disputes concerning the alleged violation of an obligation, “the two sides [must] hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations” (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment*, I.C.J. Reports 2016 (I), p. 26, para. 50, quoting *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion*, I.C.J. Reports 1950, p. 74). It does not matter “which one of [the parties] advances a claim and which one opposes it” (*ibid.*).

45. The Court’s determination of the existence of a dispute is a matter of substance, not of form or procedure (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2011 (I), p. 84, para. 30). The date on which the existence of a dispute must be determined is in principle the date on which the application is filed (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment*, I.C.J. Reports 2016 (I), p. 27, para. 52). It must be demonstrated that, on that date, the respondent was aware, or could not have been unaware, that its views were positively opposed by the applicant (*Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India), Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 2016 (I), p. 271, para. 38; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment*, I.C.J. Reports 2016 (I), p. 32, para. 73; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2011 (I), p. 100, para. 63). However, it is not necessary that a State must expressly refer to a specific treaty in its exchanges with the other State to enable it later to invoke that instrument before the Court (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v.*

Russian Federation), *Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 85, para. 30). Nor is it always necessary for the respondent to have expressly opposed the claims of the applicant, since the silence of the respondent may be sufficient in certain circumstances for the Court to infer the existence of a dispute (*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 (II)*, p. 505, para. 71).

46. For the most part, the Parties agree on the criteria to be applied to establish the existence of a dispute but they differ on the application of those criteria in the present case. The Court will now turn to this application.

47. The Court observes that there was, on the date of the filing of the Application, a disagreement on the question whether genocide attributable to Ukraine had been, or was being, committed in the eastern part of its territory. Several organs of the Russian Federation, having the authority to represent the Russian Federation in international relations, issued statements that acts of Ukraine constituted genocide against the Russian-speaking inhabitants of the Donbas. The President of the Russian Federation declared, in his address of 21 February 2022 which coincided with that State's recognition of the "republics" of Donetsk and Luhansk, that "4 million people" living in the eastern region of Ukraine were victims of "genocide" (see paragraph 30 above). The Permanent Representative of the Russian Federation to the United Nations, defending the recognition of the two "republics" in question before the General Assembly on 23 February 2022, claimed that the inhabitants of the Donbas region were victims of a "blatant genocide" (United Nations, *Official Records of the General Assembly*, doc. A/76/PV.58 (23 February 2022), p. 14). In his address of 24 February 2022, the President of the Russian Federation claimed that the purpose of the "special military operation" was "to protect people who have been subjected to abuse and genocide by the Kiev regime for eight years" (see paragraph 31 above).

48. Ukraine has consistently rejected accusations that genocide was being committed in its territory. The Ukrainian authorities had already, in the years before the launch of the "special military operation", denounced the activities of the "Investigative Committee" of the Russian Federation, which was charged, *inter alia*, with investigating alleged acts of genocide committed in the Donbas region, as having no serious basis. In this context, as early as 2014, the Prosecutor General's Office of Ukraine initiated criminal proceedings against certain Russian officials who were members of the Committee.

Following the launch of the "special military operation" on 24 February 2022, the Ministry of Foreign Affairs of Ukraine issued a statement denouncing "Russia's false and offensive allegations of genocide" (statement of 26 February 2022; see paragraph 34 above). The Russian Federation could

therefore not have been unaware that the Applicant categorically rejected the allegations that it had committed genocide.

49. Furthermore, Ukraine denounced the use by the Russian Federation of allegations of genocide against it as a pretext for justifying an “unlawful aggression”, stating that such baseless allegations were “an insult to the Genocide Convention itself and the international community’s relentless efforts in preventing and punishing the world’s most egregious crime” (above-mentioned statement of the Ministry of Foreign Affairs of Ukraine).

50. Even though this statement was issued only shortly before the institution of the proceedings, it is clear that the Russian Federation knew at that time that its views were positively opposed by Ukraine, which was accusing it of acting unlawfully by using the Convention as a pretext to justify its actions against Ukraine. In the specific circumstances of the case, the Court considers that Ukraine could seize it without further delay.

51. The Court thus concludes that, on the date of the Application, a dispute existed between the Parties on the question whether acts of genocide attributable to Ukraine had been committed in the Donbas region and on the lawfulness of the Russian Federation’s actions allegedly undertaken on the basis of such an accusation.

The Russian Federation’s first preliminary objection must therefore be rejected.

52. In reaching the foregoing conclusion, the Court does not prejudge the question whether and to what extent the dispute in question falls within the provisions of the Genocide Convention and, consequently, within the scope of the compromissory clause in Article IX thereof. That question will be examined later in the present Judgment.

B. The Two Aspects of the Dispute

53. There are two aspects of the dispute submitted to the Court by Ukraine, the essential characteristics of which are distinct and which the Court therefore considers necessary to examine separately and in turn.

54. The first aspect of the dispute arises from Ukraine’s request that the Court declare that, contrary to the allegations of the Respondent, the Applicant has not committed genocide. This request is set out in paragraph 30, subparagraph (a), of the Application (“[a]djudge and declare that, contrary to what the Russian Federation claims, no acts of genocide . . . have been committed in the Luhansk and Donetsk oblasts of Ukraine”). It is repeated in different terms in paragraph 178, subparagraph (b), of the Memorial (“[a]djudge and declare that there is no credible evidence that Ukraine is responsible for committing genocide . . . in the Donetsk and Luhansk oblasts of Ukraine”).

By such a request, Ukraine does not seek to invoke the international responsibility of the Russian Federation for an internationally wrongful act

attributable to that State; it seeks a judicial finding that it has itself not committed the wrongful acts that the Russian Federation has, falsely in Ukraine's view, imputed to it in public statements.

55. The second aspect of the dispute arises from Ukraine's requests that the Court find that the Russian Federation has acted unlawfully with respect to the Genocide Convention, and corresponds to the submissions made in paragraph 30, subparagraphs *(b)*, *(c)* and *(d)*, of the Application and paragraph 178, subparagraphs *(c)* and *(d)*, of the Memorial. In its Application, Ukraine requests the Court to adjudge and declare "that the Russian Federation cannot lawfully take any action under the Genocide Convention in or against Ukraine" on the basis of its false claims that genocide has been committed (paragraph 30, subparagraph *(b)*); that the Russian Federation's recognition of the independence of the two "republics" of Donetsk and Luhansk has no basis in the Convention (paragraph 30, subparagraph *(c)*); finally that the "special military operation" carried out by the Russian Federation also "has no basis in the Genocide Convention", since it is based on a false claim (paragraph 30, subparagraph *(d)*). In its Memorial, Ukraine requests the Court to adjudge and declare that "the Russian Federation's use of force . . . beginning on 24 February 2022 violates Articles I and IV of the Genocide Convention" (paragraph 178, subparagraph *(c)*), as does the recognition of the two so-called "republics" (paragraph 178, subparagraph *(d)*).

56. The Court notes that this second aspect of the dispute is fundamentally different in nature from the first. Through these submissions, Ukraine seeks to invoke the international responsibility of the Russian Federation by imputing internationally wrongful conduct to it. The claims for reparation submitted by Ukraine in paragraph 30, subparagraphs *(e)* and *(f)*, of the Application and paragraph 179 of the Memorial are part of that second aspect.

57. In view of the foregoing, the Court will address below, in turn, the two aspects of the dispute thus described, and will examine in respect of each aspect, as necessary, the questions of jurisdiction and admissibility raised by the preliminary objections of the Russian Federation.

III. THE FIRST ASPECT OF THE DISPUTE: UKRAINE'S SUBMISSION THAT NO GENOCIDE ATTRIBUTABLE TO IT HAS BEEN COMMITTED IN THE DONBAS REGION

58. The Court has found that a dispute existed between the Parties and therefore concluded that the first preliminary objection must be rejected (see paragraph 51 above). During the oral proceedings, the Russian Federation

stated that its second preliminary objection, in which it contends that Ukraine's claims must be dismissed because the Court lacks jurisdiction *ratione materiae* under Article IX of the Genocide Convention, concerns submissions (c) and (d) in paragraph 178 of Ukraine's Memorial. Since the second preliminary objection does not concern the first aspect of the dispute, the Court will examine this objection in relation to the second aspect of the dispute in Part IV of the present Judgment. The Court sees no reason to call into question its jurisdiction to entertain the first aspect of the dispute.

59. The Court thus turns to the remaining four preliminary objections raised by the Russian Federation, which concern the admissibility of Ukraine's claims: (A) the Applicant has inappropriately changed the substance of the claims in its Memorial as compared to the claims raised in its Application (third preliminary objection); (B) any potential judgment rendered by the Court based on the Convention would lack practical effect (fourth preliminary objection); (C) Ukraine's request for a declaration that it did not breach its obligations under the Convention is contrary to the jurisprudence of the Court and detrimental to its judicial function (fifth preliminary objection); and (D) Ukraine's Application constitutes an abuse of process (sixth preliminary objection). As this part of the Judgment deals with the first aspect of the dispute, the Court will now examine these objections only in relation to that aspect.

*A. Introduction of New Claims
(Third Preliminary Objection)*

60. In its third preliminary objection, the Russian Federation contends that Ukraine has inappropriately changed the substance of its claim in the Memorial as compared to its claim raised in the Application. In its view, Ukraine's claim in the Memorial is manifestly different from the one advanced in the Application, and it is therefore inadmissible.

61. The Russian Federation argues that the applicant State must set out, in its application, the precise nature and the basis of its claims, which can be "built upon but not remade" in its subsequent submissions. For the Respondent, it is not possible for an applicant State to amend its claims or make new ones during the proceedings in such a way as to alter the subject of the dispute as originally set forth in the application. The Russian Federation maintains that the Court should follow the approach taken in *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, which has been confirmed in subsequent cases. It stresses that, to be admissible, a claim first introduced in the memorial must have been implicit in the application or must arise directly out of the question which is the subject-matter of that application.

62. Regarding Ukraine's submission (b) in paragraph 178 of its Memorial, the Russian Federation contends that Ukraine has changed the nature of its claims in respect of acts of genocide. The Respondent notes that Ukraine, in its Application, asked the Court to find that there were no acts of genocide, as defined in Article III of the Convention, committed in the Donbas region. In its Memorial, however, Ukraine merely seeks a confirmation from the Court that "there is no credible evidence that Ukraine is responsible" for any such acts. This shift in the submission indicates that the Applicant's purpose in instituting the proceedings before the Court has changed from confirming that no acts of genocide were committed to seeking to absolve itself from responsibility for such acts. In the Respondent's view, alleging that there has been no genocide in the Donbas region is different from claiming that such acts are not attributable to Ukraine. The Applicant's new claim in the Memorial thus requires the Court to examine issues extraneous to Ukraine's original claim; it is not implicit in its Application nor does it arise directly out of the question which is the subject-matter of that Application. The Respondent submits that Ukraine's new or amended claim significantly alters the one initially advanced by Ukraine in its Application and transforms it beyond recognition.

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63. Ukraine, for its part, argues that, during the course of the proceedings, a party is expected to develop and elaborate on its submissions, which may therefore evolve.

64. Ukraine does not dispute the relevance of the criteria formulated by the Court in *Certain Phosphate Lands in Nauru (Nauru v. Australia)* and maintains that the decisive question in that case was whether the subject of the dispute originally submitted to the Court would be transformed if the Court entertained the claim. In its view, what matters is that the adjusted claims should fall within the subject of the dispute brought before the Court.

65. With respect to submission (b) in paragraph 178 of its Memorial, Ukraine insists that it has not transformed the dispute by requesting the Court to find that there is no credible evidence that it committed acts of genocide in the Donetsk and Luhansk oblasts. The Applicant stresses that it simply added specificity to its claim, as is permitted by the Rules of Court. The formulations in the Application and the Memorial both arise from the same dispute with the same subject-matter. According to Ukraine, the Court will have to determine whether there is credible evidence of Ukraine's responsibility for genocide in order to settle the dispute submitted to it. The Applicant contends that a declaratory judgment framed in terms of an absence either of acts of genocide or of credible evidence of such acts would

equally advance the resolution of the present dispute, which concerns Ukraine's alleged responsibility for genocide.

66. Ukraine therefore submits that the dispute has in no way been transformed by its adjustment of the precise wording of the declaration it now seeks and that all its claims relate to the subject of the dispute before the Court.

* *

67. The Court recalls its well-settled jurisprudence on the subject of additional or amended claims formulated in the course of proceedings, based on Article 40, paragraph 1, of the Statute of the Court as well as Article 38, paragraph 2, and Article 49, paragraphs 1 and 4, of the Rules of Court.

Article 40, paragraph 1, of the Statute provides that "the subject of the dispute . . . shall be indicated" in an application. Article 38, paragraph 2, of the Rules of Court reads as follows:

"The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based; it shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based."

Article 49, paragraph 1, of the Rules of Court further provides that "[a] Memorial shall contain a statement of the relevant facts, a statement of law, and the submissions". Article 49, paragraph 4, specifies that "[e]very pleading shall set out the party's submissions at the relevant stage of the case . . . or shall confirm the submissions previously made". The Court has considered these provisions "essential from the point of view of legal security and the good administration of justice" (*Certain Phosphate Lands in Nauru (Nauru v. Australia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 1992, p. 267, para. 69).

68. On the basis of these provisions, the Court has declared that additional or amended claims formulated in the course of proceedings are inadmissible if they would "transform[] 'the subject of the dispute originally brought before [the Court] under the terms of the [a]pplication'" (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Merits, Judgment*, I.C.J. Reports 2010 (II), p. 656, para. 39, quoting *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, *Judgment*, I.C.J. Reports 2007 (II), p. 695, para. 108; see also *Société Commerciale de Belgique*, *Judgment*, 1939, P.C.I.J., Series A/B, No. 78, p. 173). In this respect, the memorial, "though it may elucidate the terms of the [a]pplication, must not go beyond the limits of the claim as set out therein" (*Certain Phosphate Lands in Nauru (Nauru v. Australia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 1992, p. 267, para. 69, quoting *Prince von Pless Administration, Order of 4 February 1933*, P.C.I.J., Series A/B, No. 52, p. 14).

69. An additional or amended claim is not inadmissible *ipso facto*; the decisive consideration is the nature of the connection between the claim presented in the memorial and the one formulated in the application (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Merits, Judgment*, *I.C.J. Reports 2010 (II)*, pp. 656-657, paras. 40-41). A connection of a general nature is not sufficient (see *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, *Judgment*, *I.C.J. Reports 2007 (II)*, pp. 695-696, para. 110). The Court has identified two criteria for assessing whether the required connection exists: either the additional or amended claims “must be implicit in the [a]pplication” or they “must arise directly out of the question which is the subject-matter of the [a]pplication” (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Merits, Judgment*, *I.C.J. Reports 2010 (II)*, p. 657, para. 41, citing *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 1992*, p. 266, para. 67). The purpose of these criteria is ultimately to determine whether the additional or amended claims would transform the subject of the dispute originally brought before the Court under the terms of the application.

70. The Court observes that Ukraine accepts that it made “adjustments” to its claims in the Memorial. The Russian Federation notes this “admi[ssion]” by Ukraine and argues that the claims in the Memorial are “new” and therefore inadmissible. The Court does not consider that a difference in the formulation of a claim would, in itself, render the claim inadmissible (see paragraph 69 above).

71. The Court has recognized that claims advanced subsequent to the application may clarify the scope of the dispute (*Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2016 (II)*, p. 855, para. 54). In the present case, both submission (a) in Ukraine’s Application and its amended submission (b) in its Memorial concern the same allegations of genocide made by the Respondent. The Court is of the view that Ukraine’s amended submission (b) merely clarifies the claim as presented in its Application and therefore does not transform the subject of the dispute originally brought before the Court under the terms of the Application. Accordingly, the Court hereinafter considers the first aspect of the dispute to be defined in terms of Ukraine’s submission (b) in its Memorial, namely whether “there is . . . credible evidence that Ukraine is responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk oblasts of Ukraine”.

72. In light of the foregoing, the Court finds that the Russian Federation’s third preliminary objection to the admissibility of Ukraine’s submission (b)

in paragraph 178 of the Memorial based on the introduction of additional or amended claims must be rejected.

*B. Lack of Practical Effect of the Judgment
(Fourth Preliminary Objection)*

73. In its fourth preliminary objection, the Russian Federation contends that a potential judgment of the Court on Ukraine's submissions would be devoid of any practical effect. Citing the *Northern Cameroons (Cameroon v. United Kingdom)* case, the Respondent argues that the Court may only render judgments on the merits that "have some practical consequence in the sense that [they] can affect existing legal rights or obligations of the parties" and are "capable of effective application" or "susceptible of . . . compliance or execution".

74. The Russian Federation maintains that the claims made by Ukraine in its Memorial are based on rules of international law that lie outside the Genocide Convention. The Respondent considers that any judgment under the Genocide Convention would be devoid of practical effect because it could not affect the Parties' rights and obligations, or remove the uncertainty in their legal relations.

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75. Ukraine, for its part, argues that a potential judgment of the Court will determine the rights and responsibilities of each Party under the Genocide Convention irrespective of whether the Russian Federation puts forward a separate justification for its actions under other rules of international law. In the Applicant's view, the Russian Federation has not established that "it is impossible for any judgment to have any purpose". Ukraine maintains that a declaratory judgment finding that there is no credible evidence that Ukraine is responsible for committing genocide will have a practical effect, because the legal position thus established could not again be called into question.

76. According to Ukraine, the circumstances in the present case are not like those in the *Northern Cameroons (Cameroon v. United Kingdom)* case, where the applicant sought a declaration concerning the respondent's obligations under an agreement that was no longer in force.

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77. The Court recalls that, even if it finds that it has jurisdiction, it is not compelled in every case to exercise it because "[t]here are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore" (*Northern Cameroons (Cameroon v. United Kingdom)*, *Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 29). The Court has stated that "[its] judgment must have some practical conse-

quence in the sense that it can affect existing legal rights or obligations of the parties, thus removing uncertainty from their legal relations” (*ibid.*, p. 34). It is not the function of the Court to provide a basis for political action if no question of actual legal rights is involved (*ibid.*, p. 37). Accordingly, the Court “cannot adjudicate upon the merits of the claim” when it considers that “any adjudication [would be] devoid of purpose” (*ibid.*, p. 38).

78. The Applicant requests the Court to “[a]djudge and declare that there is no credible evidence that Ukraine is responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk oblasts of Ukraine”. The Court notes that its jurisprudence and that of its predecessor make clear that the Court may, in an appropriate case, issue a declaratory judgment (*Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment, I.C.J. Reports 2011 (II), p. 662, para. 49, citing *Northern Cameroons (Cameroon v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 1963, p. 37). The purpose of a declaratory judgment

“is to ensure recognition of a situation at law, once and for all and with binding force as between the [p]arties; so that the legal position thus established cannot again be called in question in so far as the legal effects ensuing therefrom are concerned” (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*, Judgment No. 11, 1927, P.C.I.J., Series A, No. 13, p. 20).

79. The Court observes that the first aspect of the dispute between the Parties involves a disagreement on a point of fact as well as on the interpretation, application or fulfilment of their rights and obligations under the Genocide Convention. A declaratory judgment on whether there exists credible evidence that Ukraine is responsible for committing genocide in violation of its obligations under the Convention would have the effect of clarifying whether the Applicant acted in accordance with its obligations under Article I of the Convention.

80. In light of the foregoing, the Court finds that the Russian Federation’s fourth preliminary objection to the admissibility of Ukraine’s submission (b) in paragraph 178 of the Memorial based on the lack of practical effect of the judgment on the merits must be rejected.

*C. Inadmissibility of a Request for a Declaration that the Applicant
Did Not Breach Its Obligations
(Fifth Preliminary Objection)*

81. In its fifth preliminary objection, the Russian Federation contends that Ukraine’s submission (b) in paragraph 178 of the Memorial, which it refers

to as a “reverse compliance request”, is inadmissible. The Respondent has raised five arguments in support of this objection.

82. First, according to the Russian Federation, “reverse compliance requests” are extremely rare in inter-State dispute settlements because, in the normal course of a dispute, a State invokes the responsibility of another State for the latter’s internationally wrongful act. “Reverse compliance requests” are currently reserved for the World Trade Organization (hereinafter the “WTO”), whose practices are not directly transposable to the Court.

83. Second, the Russian Federation argues that Article IX of the Genocide Convention was never intended to determine whether a respondent State has made a valid allegation of genocide against an applicant State. It maintains that there is no textual basis in the Convention for the Court to entertain such a claim. Relying on the *travaux préparatoires*, it asserts that the drafters of the Convention attached no specific meaning to the phrase “any of the parties to the dispute” in Article IX and considered the addition merely editorial in nature. Under the Genocide Convention, submission (b) could effectively be considered only within the framework of an application brought against Ukraine, but not by Ukraine.

84. Third, the Russian Federation contends that the Court has never accepted a “reverse compliance request” in its jurisprudence. According to the Russian Federation, the nature of the claim and the circumstances in the present case are completely different from those in *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, where, in particular, France did not seek any remedies and asked the Court a question of a purely legal nature that did not hinge on the examination of evidence. Libya’s request in *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)* was different from the one made by Ukraine in the present case, as Libya sought proof of a “positive fact” that all measures were taken, while Ukraine seeks a negative finding. The Respondent further stresses that the Court limited itself to stating that a dispute existed and refrained from considering Libya’s non-violation claim.

85. Fourth, the Russian Federation contends that Ukraine’s “reverse compliance request” is incompatible with the judicial function of the Court, which has a duty to settle legal disputes and does not act as a fact-finding body. The Respondent insists that, by making this request while the competent authorities of the Russian Federation are engaged in ongoing criminal

investigations, Ukraine is attempting to use the Court as an interim fact-finding body. The Russian Federation asserts that it is not the Court's role to gather and assess the facts on the ground.

86. Fifth, the Russian Federation argues that Ukraine's submission (*b*) contradicts the principles of judicial propriety and the equality of the parties. A determination of Ukraine's claim may pre-empt the Russian Federation's right to invoke Ukraine's responsibility under the Convention if and when it considers it appropriate to do so. The Respondent considers that a premature "reverse compliance request" can have the unwarranted effect of not only exonerating the applicant from responsibility before other States have had the opportunity to prepare their claims and invoke the applicant's responsibility, but also obstructing any national or international investigation. If a State were allowed to secure a pre-emptive favourable finding based on incomplete evidence, it would be protected against subsequent claims against it, even those made on the basis of compelling new evidence that becomes available in the future. In its view, Ukraine could obtain an undue advantage by virtue of Article 60 of the Statute of the Court because an eventual judgment would constitute *res judicata*.

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87. Ukraine, for its part, contends that there is a dispute with the Respondent as to whether Ukraine is responsible for committing genocide in violation of the Genocide Convention and that, as a party to such a dispute, it may seek its resolution by the Court. The Applicant is of the view that its claim is better described as a request for a declaration of conformity or compliance rather than a "reverse compliance request".

88. Ukraine argues that, in accordance with the ordinary meaning of Article IX of the Genocide Convention, if there is a dispute over responsibility for genocide, "any of the parties" to that dispute, and not just the State making an allegation of genocide, is entitled to seek the resolution of such a dispute. The Applicant contends that this meaning of Article IX is confirmed by the *travaux préparatoires* of the Convention. Furthermore, Ukraine maintains that this is a dispute relating to the "fulfilment" of the Genocide Convention, which refers to a party's compliance or non-compliance with the provisions of the Convention.

89. According to Ukraine, the Court has already accepted requests for declarations of conformity. In *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, France's request that the Court find that its actions were in conformity with the relevant treaty was admitted. The factual differences between that case and the present one

are irrelevant. In *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, the Court did not dismiss Libya's claim that it had fully complied with the Montreal Convention.

In Ukraine's view, the Court's silence on requests for a declaration of compliance in these cases confirms that there is nothing judicially improper about the Court declaring a State to be in compliance with its obligation. Even if the Court were to consider that these cases do not provide a direct precedent, the alleged novelty of a particular type of claim is not a legal reason for the Court to decline to exercise jurisdiction.

90. Additionally, Ukraine contends that its claim is compatible with the judicial function of the Court. It maintains that acting as a fact-finding body in order to resolve a dispute in which the facts are contested is inherent in the Court's function as a judicial body.

91. Finally, Ukraine considers that its claim does not contradict the principles of judicial propriety and the equality of the parties. There is nothing "premature" about its request. For Ukraine, when the Court issues a judgment based on the best available factual record, there is nothing problematic about that judgment being *res judicata* between the respondent and the applicant.

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92. In interpreting Article IX of the Convention, the intervening States argue in general that nothing in the text of Article IX precludes the Court from admitting a claim requesting it to declare that an applicant State complied with or did not breach its obligations under the Genocide Convention. They further assert that the wording of Article IX, in particular the term "fulfilment" and the phrase "at the request of any of the parties to the dispute", indicates that the Court can issue a declaration of this kind.

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93. The Court notes a significant variation in the terms employed by the Parties and some intervening States to describe Ukraine's submission (*b*) in paragraph 178 of the Memorial. Relying in part on the practices of the WTO, the Russian Federation uses the term "reverse compliance request". Ukraine, on the other hand, refers to a request for "a declaration of conformity", "a declaration of compliance" or "a non-violation declaration". The intervening States have used terms such as "non-violation complaints" and requests for "negative declarations". The Court does not find it necessary to explore the legal significance of the various terms employed by the Parties and the inter-

vening States. It suffices to note that Ukraine's submission (*b*) is a request for a declaration that the Applicant did not breach its obligations under the Convention.

94. The Court will now turn to the five arguments made by the Russian Federation to support its fifth preliminary objection.

95. First, the Respondent contends that the practices of the WTO are not directly transposable to the Court. The Court considers that the practices of the WTO provide no assistance to the Court for determining the admissibility of Ukraine's request because they are based on particular provisions of the Marrakesh Agreement establishing the World Trade Organization.

96. Second, the Russian Federation argues that Article IX of the Genocide Convention was not intended for "reverse compliance requests".

97. Article IX of the Genocide Convention reads:

"Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

Article IX clearly allows a State that invokes the responsibility of another State for genocide to submit the dispute to the Court. The question before the Court is whether Article IX precludes the possibility for a State to seek a declaration that it is not responsible for committing genocide in violation of its obligations under the Convention.

98. The Court has considered the phrase "including those [disputes] relating to the responsibility of a State for genocide" to be an "unusual feature of Article IX", pointing out that

"[a]ccording to the English text of the Convention, the responsibility contemplated is responsibility 'for genocide' (in French, 'responsabilité . . . en matière de génocide'), not merely responsibility 'for failing to prevent or punish genocide'" (*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. 169).

The Court has also noted the exceptional inclusion of the additional term "fulfilment" in Article IX (see *ibid.*, para. 168). Moreover, Article IX speci-

fies that disputes “relating to the interpretation, application or fulfilment” of the Convention include disputes “relating to the responsibility of a State for genocide” and provides that “any of the parties to the dispute” may submit such a dispute to the Court (emphasis added).

99. In light of the above, the Court considers that Article IX does not preclude the possibility for a State to seek a declaration that it is not responsible for committing genocide in violation of the Convention.

100. Third, the Respondent argues that the Court has never accepted “reverse compliance requests” in its jurisprudence. The Parties disagree as to whether the Court’s decisions in *Rights of Nationals of the United States of America in Morocco* (France v. United States of America) and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* (Libyan Arab Jamahiriya v. United Kingdom) support the admissibility of Ukraine’s submission (b).

101. In *Rights of Nationals of the United States of America in Morocco* (France v. United States of America), France requested a declaration from the Court that “the Decree of December 30th, 1948, [wa]s in conformity with the treaty provisions which are applicable to Morocco and are binding on France and the United States” (*Judgment, I.C.J. Reports 1952*, p. 182). The United States did not file a preliminary objection to that request but instead made a submission requesting the Court to find that “[the Decree of December 30th, 1948] is in direct contravention of the treaty rights of the United States forbidding prohibition on American imports” (*ibid.*). Given these specific circumstances, the Court is of the view that this case does not demonstrate that a request for a declaration of compliance has been accepted in its jurisprudence.

In *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* (Libyan Arab Jamahiriya v. United Kingdom), Libya requested the Court to declare that it “ha[d] fully complied with all of its obligations under the Montreal Convention” and was therefore “justified in exercising the criminal jurisdiction provided for by that Convention” (*Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 14, para. 14). The Court observes that the nature of the claim made by Libya is different from that made by Ukraine in the present case. Libya sought a declaration that it had complied with its obligations under the Montreal Convention in order to assert its right to exercise criminal jurisdiction as provided for by the Convention; it did not institute proceedings in response to allegations by the respondent that it had violated the Convention (see *ibid.*, p. 14, para. 14 (b), and p. 18, para. 26 (b)). That case is thus not comparable to the present case.

Accordingly, the Court considers that these two cases do not provide a basis for concluding that the Court has either accepted or denied in its jurisprudence an applicant's request for a declaration that it did not breach its obligations under a treaty.

102. Fourth, the Respondent argues that Ukraine's submission (*b*) is incompatible with the judicial function of the Court. The Russian Federation contends that, by ruling on Ukraine's submission (*b*), the Court would be acting as an interim fact-finding body while criminal investigations are ongoing.

103. In the Court's view, to address Ukraine's submission (*b*), it would have to make findings of facts in light of the evidence presented by the Parties, and then apply the provisions of the Genocide Convention to the facts it has established. As the Court stated in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*,

“[i]t is the duty of the Court, after having given careful consideration to all the evidence in the record, to assess its probative value, to determine which facts must be considered relevant, and to draw conclusions from them as appropriate. In keeping with this practice, the Court will make its own determination of the facts, on the basis of the totality of the evidence presented to it, and it will then apply the relevant rules of international law to those facts which it has found to be established” (*Judgment, I.C.J. Reports 2015 (II)*, p. 726, para. 176).

The Court will only make such findings of fact as are necessary for it to be able to respond to Ukraine's submission (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Judgment, I.C.J. Reports 2005*, p. 200, para. 57). In doing so, it must “assess the relevance and probative value of the evidence proffered by the Parties in support of their versions of the facts” (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, *Judgment, I.C.J. Reports 2015 (I)*, p. 74, para. 180). The Court considers that it is an integral part of its judicial function to establish the facts in light of the evidence presented and apply the provisions of the Genocide Convention to the established facts. Accordingly, the Court finds that the reasons advanced by the Respondent cannot support its argument that Ukraine's submission (*b*) is incompatible with the judicial function of the Court.

104. Fifth, the Respondent argues that Ukraine's submission (*b*) contradicts the principles of judicial propriety and the equality of the parties. To support this argument, the Russian Federation, referring to the principle of *res judicata*, argues that Ukraine's claim, if upheld by the Court, may exon-

erate the Applicant from responsibility by pre-empting the rights of the Respondent and other States to invoke Ukraine's responsibility under the Genocide Convention in the future.

105. The Court need not consider questions that may arise in the hypothetical situation that, subsequent to a judgment on the merits in the present case, the Russian Federation decides to institute proceedings against Ukraine invoking the latter's responsibility for committing genocide in violation of its obligations under the Genocide Convention. The contents of a judgment on the merits are unknown, as is the substance of the claims the Russian Federation may make should it decide to seise the Court. It is not for the Court to speculate about these matters. It suffices for the Court to observe that, whenever a dispute is settled by the Court by way of a judgment, there is a possibility that a future claim is covered by the *res judicata* effect of that judgment. This possibility, however, does not per se provide a basis for finding that Ukraine's submission (b) contradicts the principles of judicial propriety and the equality of the parties.

106. For these reasons, the Court cannot accept the Respondent's fifth argument that Ukraine's submission (b) contradicts the principles of judicial propriety and the equality of the parties.

107. The Court has found that Article IX of the Genocide Convention does not preclude the possibility for a State to seek a declaration that it is not responsible for committing genocide in violation of the Convention (see paragraph 99 above). In assessing the admissibility of Ukraine's request contained in submission (b) of its Memorial, the Court takes account of the circumstances in which the request was made.

108. In the present case, Ukraine made a request for a declaration that it did not breach its obligations under the Genocide Convention in the context of an armed conflict between the Parties. The Respondent took the allegedly unlawful measures in and against Ukraine with a stated purpose of preventing and punishing genocide allegedly committed in the Donbas region. In such a special context, the Court recognizes the legal interest that Ukraine has under the Genocide Convention to resolve the dispute regarding its submission (b). The Court stated on 16 March 2022 that,

“[s]ince [24 February 2022], there has been intense fighting on Ukrainian territory, which has claimed many lives, has caused extensive displacement, and has resulted in widespread damage. The Court is acutely aware of the extent of the human tragedy that is taking place in Ukraine” (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 216, para. 17).

The armed conflict between the Applicant and the Respondent continues to this day. A judgment of the Court regarding Ukraine's submission (*b*) will clarify the rights and obligations of the Parties under the Genocide Convention, in particular whether Ukraine acted in accordance with its obligations under Article I of the Convention. The Court is mindful of its responsibilities in the maintenance of international peace and security as well as in the peaceful settlement of disputes under the Charter of the United Nations and the Statute of the Court.

109. In the particular circumstances of the present case, the Court considers that Ukraine's request for a declaration that it did not breach its obligations under the Convention is not inadmissible. In light of the foregoing, the Court finds that the fifth preliminary objection of the Russian Federation must be rejected.

D. Abuse of Process
(*Sixth Preliminary Objection*)

110. In its sixth preliminary objection, the Russian Federation contends that Ukraine's Application is inadmissible because it constitutes an abuse of process. It maintains that "Ukraine's claims and conduct in these proceedings constitute such a serious abuse of process that this [c]ase should qualify as an exceptional instance in which the Court should reject Ukraine's claims on the ground of abuse of process".

111. The Russian Federation presents three arguments in support of its contention. First, the Respondent alleges that Ukraine has abusively changed its legal case during the course of the proceedings. It explains that Ukraine has introduced new claims in its Memorial and invoked new provisions of the Convention that were not referred to in its Application. Second, the Russian Federation asserts that the timing of Ukraine's Application is abusive, because Ukraine did not file it against the Respondent until 2022, even though it alleges that a dispute has been in existence since 2014. Third, the Respondent asserts that Ukraine, in an attempt to put pressure on the Court, rallied States to arrange an abusive mass intervention in the case. The Russian Federation maintains that, in its Order of 5 June 2023, the Court did not rule on whether the manner in which Ukraine rallied States to arrange a mass intervention amounted to an abuse of process.

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112. Ukraine requests the Court to reject this objection by the Russian Federation. Regarding the Respondent's first argument, Ukraine is of the view that the Respondent is merely repeating its third objection under the guise of an abuse of process. The Russian Federation cannot claim abuse of process by feigning confusion over Ukraine's straightforward and consistent

case. Regarding the Respondent's second argument, Ukraine asserts that the Parties' disagreement over Ukraine's alleged responsibility for genocide took on new importance when the Russian Federation relied on its false allegations of genocide as a pretext for its recognition of the DPR and LPR and for its invasion of Ukraine. In relation to the Respondent's third argument, Ukraine stresses that the Russian Federation is merely repeating an argument that the Court already rejected in its Order of 5 June 2023. It adds that the intervening States have agreed to be bound by the Court's interpretation of the Convention and that their oral pleadings were focused on the questions of interpretation before the Court.

* *

113. The Court recalls that “[i]t is only in exceptional circumstances that the Court should reject a claim based on a valid title of jurisdiction on the ground of abuse of process” (*Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 336, para. 150). The Court has specified that there has to be “clear evidence” that the applicant's conduct amounts to an abuse of process (*Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 36 para. 93). An abuse of process “goes to the procedure before a court or tribunal” and concerns the question whether a State has misused that procedure to such an extent that its case should be rejected at the preliminary phase of the proceedings (see *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 335-336, paras. 146-150).

114. The Respondent's first argument that Ukraine introduced new claims in the Memorial is the same as the one in its third preliminary objection. The Court has already concluded that the third preliminary objection must be rejected with respect to the first aspect of the dispute (see paragraph 72 above). Accordingly, the Court does not accept the Respondent's first argument.

115. The Court recalls that it “cannot concern itself with the political motivation which may lead a State at a particular time, or in particular circumstances, to choose judicial settlement” (*Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 91, para. 52). The Court is therefore not persuaded by the Respondent's second argument relating to the timing of Ukraine's Application.

116. The Court observes that its Order of 5 June 2023 did not address the Respondent's third argument that the manner in which Ukraine allegedly rallied States to arrange a mass intervention amounts to an abuse of process.

Its analysis was limited to whether the Declarations of intervention were inadmissible on the ground of an abuse of process (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Admissibility of the Declarations of Intervention, Order of 5 June 2023, I.C.J. Reports 2023 (II)*, p. 368, para. 59).

117. The Court notes that, in support of the third argument, the Respondent relies exclusively on the conduct and statements of the intervening States. The Russian Federation has not adduced any evidence regarding Ukraine's alleged abuse of process. The Court does not consider that Ukraine, having established a valid title of jurisdiction, should be barred at this preliminary stage without clear evidence that its conduct with respect to the interventions amounts to an abuse of process (see *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 336, para. 150). For this reason, the Court does not consider the third argument of the Respondent convincing.

118. The Respondent thus has not demonstrated that there are exceptional circumstances that would warrant rejecting Ukraine's claim on the ground of abuse of process. Accordingly, the Court finds that the Russian Federation's sixth preliminary objection to the admissibility of Ukraine's submission (*b*) in paragraph 178 of the Memorial based on abuse of process must be rejected.

IV. THE SECOND ASPECT OF THE DISPUTE: UKRAINE'S SUBMISSIONS RELATING TO THE COMPATIBILITY OF THE RUSSIAN FEDERATION'S ACTIONS WITH THE CONVENTION

119. In subparagraphs (*c*) and (*d*) of paragraph 178 of its Memorial, Ukraine requests the Court to

“(c) [a]djudge and declare that the Russian Federation's use of force in and against Ukraine beginning on 24 February 2022 violates Articles I and IV of the Genocide Convention”

and

“(d) [a]djudge and declare that the Russian Federation's recognition of the independence of the so-called ‘Donetsk People's Republic’ and ‘Luhansk People's Republic’ on 21 February 2022 violates Articles I and IV of the Genocide Convention” (see paragraph 25 above).

These submissions differ in their formulation from those in the Application, in which Ukraine asked the Court to find

“that the Russian Federation cannot lawfully take any action under the Genocide Convention in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims of genocide in the Luhansk and Donetsk oblasts of Ukraine”,

to declare that the Russian Federation’s recognition of the two “so-called” republics was “based on a false claim of genocide and therefore ha[d] no basis in the Genocide Convention”, and to make a similar declaration regarding the “special military operation” conducted by the Russian Federation from 24 February 2022 (paragraph 30, subparagraphs (b), (c) and (d) of the Application, see paragraph 24 above).

120. The Russian Federation raises two arguments in particular against these submissions. First, according to the Respondent, the submissions presented in the Memorial are new submissions which have the effect of transforming the subject of the dispute as set out in the Application and are therefore inadmissible. This argument is set out in the third preliminary objection raised by the Russian Federation. Second, the submissions at issue fall outside the scope *ratione materiae* of the Convention and therefore do not fall within the compromissory clause in Article IX. This argument is part of the second preliminary objection. The Court must first examine the question of the admissibility of the submissions in the Memorial. In light of the answer to that question, it will then consider whether the submissions relating to the second aspect of the dispute, as described in paragraph 55 above, fall within its jurisdiction *ratione materiae*.

*A. Introduction of New Claims
(Third Preliminary Objection)*

121. According to the Russian Federation, the submissions in paragraph 178, subparagraphs (c) and (d), of Ukraine’s Memorial are inadmissible, because they differ from the claims in the Application to the point that they are beyond recognition and change the nature of the dispute submitted to the Court. The Respondent notes, in this regard, that the new submissions are based on provisions of the Convention which were not mentioned in the submissions in the Application, and that they contain allegations of violation of obligations under the Convention by the Russian Federation that were not in the Application, in which the Applicant merely claimed that the actions of the Russian Federation “ha[d] no basis in the Genocide Convention”, which is a completely different matter.

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122. Ukraine contends, on the contrary, that all the claims in its Memorial relate to the subject of the dispute as presented in the Application, namely

the Russian Federation's allegations that Ukraine is committing genocide and its reliance on such false allegations to take unilateral action in and against Ukraine. It observes that, contrary to the assertion of the Respondent, it already alleged in the Application that the actions of the Russian Federation were incompatible with the Convention and violated Ukraine's rights. According to the Applicant, the submissions presented at the end of the Memorial simply clarify the legal grounds of its original claims, namely the violation by the Russian Federation of Articles I and IV of the Convention. It notes in this regard that while Article IV of the Convention was not mentioned in the Application, it is directly linked to Article I, to which explicit reference was made.

* *

123. Earlier in this Judgment (see paragraphs 60-72 above), the Court examined the same objection to admissibility raised by the Russian Federation with regard to the submission in subparagraph (b) of paragraph 178 of the Memorial.

It recalled its well-established jurisprudence on the question of additional or amended claims (see paragraphs 68 and 69 above). An additional or amended claim formulated in the course of proceedings is inadmissible if it has the effect of transforming the subject of the dispute originally brought before the Court under the terms of the application; it is, however, admissible if it is implicit in the application or if it arises directly out of the question which is the subject-matter of the application (see in this sense *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 1992, p. 266, para. 67; see also *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Merits, Judgment*, I.C.J. Reports 2010 (II), pp. 656-657, paras. 39-41).

Having applied these criteria to subparagraph (b) of paragraph 178 of the Memorial (see paragraphs 70 and 71 above), the Court will now apply them to subparagraphs (c) and (d).

124. The wording of the claims presented by Ukraine in its Application is certainly not identical to that of the claims set out in the Memorial (see paragraph 119 above).

125. It is true, as the Russian Federation points out, that none of the claims in the Application refers specifically to Articles I and IV of the Convention. Nor is there an explicit assertion that the Russian Federation violated its obligations under the Convention. By contrast, the submissions at the end of the Memorial (see paragraph 25 above) contain the explicit allegation that the actions of the Russian Federation "violate" the Convention and specify that, in Ukraine's view, the provisions violated are those of Articles I and IV of the Convention.

126. However, a difference in wording is not in itself decisive. What must be ascertained is whether the claim as it is newly formulated would transform the subject of the dispute originally brought before the Court under the terms of the Application (see paragraph 69 above).

127. In this regard, the Court notes that, in paragraph 30, subparagraph (b), of the Application, Ukraine submitted that the Russian Federation could not “lawfully” take any action on the basis of its false claims of genocide. In addition, in paragraph 26 of the Application, Ukraine claimed that

“the Russian Federation’s declaration and implementation of measures in or against Ukraine in the form of a ‘special military operation’ declared on 24 February 2022 on the basis of alleged genocide, as well as the recognition that preceded the military operation, is incompatible with the Convention”.

This allegation is repeated in paragraph 29, according to which the actions of the Russian Federation “based on a false claim of genocide [are] incompatible with the Genocide Convention and violat[e] Ukraine’s rights”.

In asserting that the Russian Federation had acted unlawfully by carrying out actions incompatible with the Convention which violated Ukraine’s rights, the Applicant was already challenging in the Application the conformity of the Russian Federation’s conduct with its obligations under the Convention and raising the question of the Respondent’s responsibility vis-à-vis the Applicant, whose rights had purportedly been violated.

Lastly, by presenting claims for reparation under submissions (e) and (f) of its Application (see paragraph 24 above), Ukraine was necessarily calling into question the lawfulness of the actions undertaken by the Russian Federation.

128. It thus follows from the foregoing that, from the very institution of the proceedings, Ukraine was not merely requesting that the Court declare that it had not committed genocide but was also seeking a finding that the actions of the Russian Federation were incompatible with its obligations under the Convention. It is true that the submissions at the end of the Application were not without a certain ambiguity. It is also true that, while Article I of the Convention was referred to several times in the Application, there was no mention of Article IV. However, in the opinion of the Court, the submissions in the Memorial clarify Ukraine’s claims and make them more specific without transforming the subject of the dispute such as it was submitted to the Court in the Application instituting proceedings.

129. The Court concludes that the submissions set out in paragraph 178, subparagraphs (c) and (d), of the Memorial are admissible, and that, in this regard, the third preliminary objection raised by the Respondent is unfounded and must be rejected.

130. Consequently, the Court will examine the question of its jurisdiction *ratione materiae* to entertain the second aspect of the dispute on the basis of the Applicant's submissions as formulated in subparagraphs (c) and (d) of paragraph 178 of the Memorial.

*B. Jurisdiction Ratione Materiae of the Court
under the Genocide Convention
(Second Preliminary Objection)*

131. The Russian Federation contends that the Court lacks jurisdiction *ratione materiae* to entertain the claims in submissions (c) and (d) presented by Ukraine at the end of its Memorial. According to the Respondent, these claims fall outside the scope *ratione materiae* of the Genocide Convention and, consequently, do not fall within the scope of its compromissory clause. The Russian Federation considers that Ukraine does not really expect the Court to declare that the Respondent has breached its obligations under Articles I and IV of the Convention, but rather that the Court declare that the recognition of the “Donetsk People’s Republic” and the “Luhansk People’s Republic” and the “special military operation” are unlawful under the Charter of the United Nations and customary international law. However, in the view of the Russian Federation, the rules of international law relating to the recognition of States and the use of force are in no way incorporated in the Convention, in particular Articles I and IV. According to the Respondent, Ukraine erroneously attempts to read into the Convention certain implicit obligations, such as an obligation, for a State party, to act within the limits of international law and an obligation not to “misapply” or “abuse” the Convention. Such an approach would have the effect of incorporating into the Convention an indefinite number of other rules of international law and unduly expanding the Court’s jurisdiction *ratione materiae* under Article IX. According to the Respondent, it would be inconsistent with Article IX to broaden the Court’s jurisdiction under that provision to cover issues that are not regulated by the Convention, as Ukraine seeks to do.

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132. Ukraine argues, on the contrary, that the Court has jurisdiction to entertain claims that the Russian Federation has violated Articles I and IV of the Convention. According to the Applicant, these provisions do not authorize but rather prohibit one contracting party from harming another under the guise of preventing and punishing a genocide that has been alleged without basis. The Applicant adds that a State party to the Convention which takes action to prevent and punish the crime of genocide must do so in good faith and without abuse. It concludes that an abuse of the Convention constitutes a violation thereof and not merely a violation of a general principle of law outside the Convention.

133. Ukraine submits that, in the present case, the Russian Federation has acted for the stated purpose of bringing a genocide to an end and punishing the perpetrators; but that it has not done so in good faith, that it has done so abusively and by going beyond the limits of international law. Consequently, according to the Applicant, the Russian Federation has violated the undertakings it made under the Convention, since those undertakings involved an obligation to take measures to prevent and punish genocide in good faith, without abuse and within the limits of international law. Ukraine concludes therefrom that the ensuing dispute between the Parties falls squarely within the jurisdiction of the Court under the compromissory clause; it is immaterial whether or not the Parties also have another dispute under the Charter of the United Nations.

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134. In interpreting Article IX of the Genocide Convention, the intervening States argue in general that any dispute relating to the Convention falls within the scope of Article IX, irrespective of whether the parties also have a dispute concerning rights and obligations under other rules of international law. They contend that a dispute regarding the content or implementation of the obligation to prevent or punish genocide is necessarily a dispute about “the interpretation, application or fulfilment” of Articles I and IV of the Convention, and therefore falls within the Court’s jurisdiction under Article IX.

* *

135. According to its well-established jurisprudence, when the Court is seised on the basis of a treaty’s compromissory clause by a State invoking the international responsibility of another State party for the breach of obligations under the treaty, in order for the Court to have jurisdiction, it is not sufficient for the applicant to claim an alleged violation of the treaty and for the respondent to contest it. The Court must also “ascertain whether the violations of the [t]reaty . . . pleaded . . . do or do not fall within the provisions of the [t]reaty and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain, pursuant to” the compromissory clause (*Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Preliminary Objection, Judgment*, I.C.J. Reports 1996 (II), p. 810, para. 16; see also *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2018 (I), p. 308, para. 46). In some of its decisions, particularly among its most recent, the Court has expressed this same requirement in slightly different terms, by stating that it had jurisdiction only if “the acts of which the applicant complains fall within the provisions of the treaty containing the compromissory clause” (*Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Preliminary Objections, Judgment*, I.C.J.

Reports 2021, pp. 31-32, para. 75; see also *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2019 (II)*, p. 584, para. 57; *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2019 (I)*, p. 23, para. 36; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Provisional Measures, Order of 23 July 2018*, *I.C.J. Reports 2018 (II)*, p. 414, para. 18; *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Provisional Measures, Order of 7 December 2016*, *I.C.J. Reports 2016 (II)*, p. 1159, para. 47). The Court has also had occasion to ascertain “whether . . . the . . . claims [fall] within the scope of” a convention (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2021*, p. 94, para. 72).

136. All the formulations quoted above have the same meaning: it must be ascertained whether the actions or omissions of the respondent complained of by the applicant fall within the scope of the treaty allegedly violated, in other words whether the facts at issue, if established, are capable of constituting violations of obligations under the treaty.

This may require, to a certain extent, that the Court interpret the provisions which have allegedly been violated and which define the scope of the treaty (*Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2021*, p. 32, para. 75).

137. In the present case, the acts complained of by Ukraine are, in essence, that the Russian Federation falsely accused the Applicant of committing genocide and invoked the Convention in bad faith in order to justify, in an abusive manner, its actions, particularly its military actions, which go beyond the limits of international law. According to Ukraine, these acts constitute violations of obligations under the Convention. More specifically, the obligations allegedly violated are those under Articles I and IV of the Convention.

138. Article I of the Convention reads as follows: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

Article IV, for its part, provides that “[p]ersons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals”.

139. The Court is of the view that, even assuming that the acts of the Russian Federation complained of by Ukraine are fully established — which

is not for the Court to decide at this stage — they would not constitute a violation of obligations under Articles I and IV cited above.

140. Ukraine does not claim that the Russian Federation refrained from taking any measure to prevent a genocide or to punish persons who had committed such a genocide. On the contrary, the Applicant claims that the genocide invoked by the Russian Federation did not occur and the allegation was made in bad faith. The purpose of the first aspect of Ukraine's legal action is to request a finding by the Court that there is no credible evidence that it has committed any such genocide (see Part III of the present Judgment above). In these circumstances, it is difficult to see how the conduct of the Russian Federation complained of by Ukraine could constitute a violation, by the Respondent, of its obligations to prevent genocide and punish the perpetrators.

141. It is true that Ukraine seeks to demonstrate that the acts of which it accuses the Russian Federation constitute violations of obligations under Articles I and IV of the Convention by relying on two grounds: the first is that the Russian Federation has invoked the Convention in bad faith and implemented its obligations abusively; the second is that the measures it has adopted in invoking the Convention go beyond the limits permitted by international law. Most of the intervening States took the position that, in both situations, the Convention would be violated and, consequently, a claim based on such alleged violations would fall within the jurisdiction *ratione materiae* of the Court under Article IX.

The Court will examine the two arguments put forward by Ukraine below.

142. It is indisputable that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith” (Article 26 of the Vienna Convention on the Law of Treaties, reflecting customary international law). More generally, the Court has recalled on a number of occasions that the principle of good faith is “a well-established principle of international law” (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Preliminary Objections, Judgment*, I.C.J. Reports 1998, p. 296, para. 38) and “one of the basic principles governing the creation and performance of legal obligations” (*Border and Transborder Armed Actions (Nicaragua v. Honduras)*, *Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 1988, p. 105, para. 94, citing *Nuclear Tests (Australia v. France)*, *Judgment*, I.C.J. Reports 1974, p. 268, para. 46; *Nuclear Tests (New Zealand v. France)*, *Judgment*, I.C.J. Reports 1974, p. 473, para. 49).

However, the Court has also stated that the principle of good faith “is not in itself a source of obligation where none would otherwise exist” (*Border and Transborder Armed Actions (Nicaragua v. Honduras)*, *Jurisdiction and*

Admissibility, Judgment, I.C.J. Reports 1988, p. 105, para. 94). What matters, for the purpose of establishing the Court's jurisdiction *ratione materiae* when it is seised of an application alleging the respondent's violation of an obligation under a treaty, is whether the respondent State could have violated a specific obligation incumbent upon it and whether the alleged violation falls within the scope of the Court's jurisdiction. In the present case, even if the Russian Federation had, in bad faith, alleged that Ukraine committed genocide and taken certain measures against it under such a pretext — which the Respondent contests — this would not in itself constitute a violation of obligations under Articles I and IV of the Convention.

143. It is no more convincing to argue that the Respondent's conduct amounts to an "abuse of right" or, as Ukraine sometimes put it, an "abuse of the Convention". It is certainly not consistent with the principle of good faith to invoke a treaty abusively, by claiming that there is a specific situation falling within its scope when it is clearly not the case, or by deliberately interpreting the treaty incorrectly for the sole purpose of justifying a given action. However, while such an abusive invocation will result in the dismissal of the arguments based thereon, it does not follow that, by itself, it constitutes a breach of the treaty. In the present case, even if it were shown that the Russian Federation had invoked the Convention abusively (which is not established at this stage), it would not follow that it had violated its obligations under the Convention, and in particular that it had disregarded the obligations of prevention and punishment under Articles I and IV.

144. As regards the Applicant's argument that the actions undertaken by the Russian Federation on the basis of its false allegation of genocide go beyond the limits of international law, this raises questions that, in the opinion of the Court, do not fall within the scope *ratione materiae* of the Convention.

145. Ukraine and some of the intervening States rely in this respect on the dictum in paragraph 430 of the Judgment on the merits in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* cited above. The Court stated in that Judgment that the obligation to prevent genocide requires States parties to "employ all means reasonably available to them, so as to prevent genocide so far as possible", while adding that "it is clear that every State may only act within the limits permitted by international law" (*Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 430).

146. However, it does not follow from the foregoing that, if a State seeks to fulfil its obligation of prevention under the Convention through an act that is in breach of international law, such action by itself constitutes a violation of the Convention. The Court did not intend, by its 2007 ruling, to

interpret the Convention as incorporating rules of international law that are extrinsic to it, in particular those governing the use of force. It sought to clarify that a State is not required, under the Convention, to act in disregard of other rules of international law. Nor can a State avail itself of the obligation of prevention under the Convention to act beyond the limits permitted elsewhere by international law. Those limits are not defined by the Convention itself but by other rules of international law.

Thus, in the present case, assuming — for the sake of argument — that by recognizing the DPR and LPR and by launching the “special military operation”, the Russian Federation sought to implement its obligations under the Convention, and that the acts in question are contrary to international law, it is not the Convention that the Russian Federation would have violated but the relevant rules of international law applicable to the recognition of States and the use of force. These matters are not governed by the Genocide Convention and the Court does not have jurisdiction to entertain them in the present case.

147. In conclusion, the acts complained of by Ukraine in submissions (c) and (d) of the Memorial, from whichever point of view they are considered, are not capable of constituting violations of the provisions of the Convention relied on by Ukraine. These acts do not fall within the provisions of the Convention and, consequently, submissions (c) and (d), which constitute the second aspect of the dispute brought before the Court by Ukraine, fall outside the scope of the compromissory clause of Article IX.

It follows that the second preliminary objection raised by the Russian Federation must be upheld.

148. In view of the foregoing conclusion, it is not necessary for the Court to examine the other objections raised by the Respondent inasmuch as they relate to the second aspect of the dispute.

* * *

149. In summary, the Court considers that the Russian Federation’s second preliminary objection, according to which submissions (c) and (d) in paragraph 178 of Ukraine’s Memorial do not fall within the Court’s jurisdiction *ratione materiae*, must be upheld.

However, the Court considers that it must reject: the first preliminary objection, based on the lack of jurisdiction of the Court to entertain the totality of Ukraine’s submissions because of the alleged non-existence of a dispute; the third preliminary objection, based on the inadmissibility of the submissions presented in the Memorial on the ground that these submissions are allegedly new and transform the subject of the dispute; the fourth preliminary objection, based on the inadmissibility of Ukraine’s submissions because of the alleged lack of practical effect of a judgment on

the merits; the fifth preliminary objection, based on the inadmissibility of a request for a declaration that the Applicant did not breach its obligations under the Convention; and the sixth preliminary objection, based on the inadmissibility of the Application on the ground that it allegedly constitutes an abuse of process.

It follows from the foregoing that submissions (c) and (d) in paragraph 178 of Ukraine's Memorial do not fall within the jurisdiction of the Court and that the Court may not deal with them on the merits, while submission (b) in paragraph 178 of Ukraine's Memorial does fall within the jurisdiction of the Court and that the claim contained therein is admissible. At the next stage of the proceedings, the Court will therefore examine this claim on the merits.

150. The Court recalls, as it has on several occasions in the past, that there is a fundamental distinction between the question of the acceptance by States of the Court's jurisdiction and the conformity of their acts with international law. States are always required to fulfil their obligations under the Charter of the United Nations and other rules of international law. Whether or not they have consented to the jurisdiction of the Court, States remain responsible for acts attributable to them that are contrary to international law (see, for example, *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2004 (I), p. 328, para. 128; see also *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. 52-53, para. 127).

* * *

151. For these reasons,

THE COURT,

(1) By fifteen votes to one,

Rejects the first preliminary objection raised by the Russian Federation;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Daudet;

AGAINST: *Vice-President* Gevorgian;

(2) By twelve votes to four,

Upholds the second preliminary objection raised by the Russian Federation, which relates to submissions (c) and (d) in paragraph 178 of the Memorial of Ukraine;

IN FAVOUR: *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Salam, Iwasawa, Nolte, Brant; *Judge ad hoc* Daudet;

AGAINST: *President* Donoghue; *Judges* Sebutinde, Robinson, Charlesworth;

(3) By fifteen votes to one,

Rejects the third preliminary objection raised by the Russian Federation relating to submission (b) in paragraph 178 of the Memorial of Ukraine;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Daudet;

AGAINST: *Vice-President* Gevorgian;

(4) By fourteen votes to two,

Rejects the third preliminary objection raised by the Russian Federation relating to submissions (c) and (d) in paragraph 178 of the Memorial of Ukraine;

IN FAVOUR: *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Daudet;

AGAINST: *President* Donoghue; *Vice-President* Gevorgian;

(5) By fourteen votes to two,

Rejects the fourth preliminary objection raised by the Russian Federation;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Daudet;

AGAINST: *Vice-President* Gevorgian; *Judge* Bennouna;

(6) By thirteen votes to three,

Rejects the fifth preliminary objection raised by the Russian Federation;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Daudet;

AGAINST: *Vice-President* Gevorgian; *Judges* Abraham, Bennouna;

(7) By fifteen votes to one,

Rejects the sixth preliminary objection raised by the Russian Federation;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Daudet;

AGAINST: *Vice-President* Gevorgian;

(8) By fifteen votes to one,

Finds that it has jurisdiction, on the basis of Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, to entertain submission (b) in paragraph 178 of the Memorial of Ukraine;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Daudet;

AGAINST: *Vice-President* Gevorgian;

(9) By thirteen votes to three,

Finds that submission (b) in paragraph 178 of the Memorial of Ukraine is admissible.

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Daudet;

AGAINST: *Vice-President* Gevorgian; *Judges* Abraham, Bennouna.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this second day of February, two thousand and twenty-four, in thirty-five copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of Ukraine, the Government of the Russian Federation, and the Governments of Australia, the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, Canada, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the French Republic, the Federal Republic of Germany, the Hellenic Republic, Ireland, the Italian Republic, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, New Zealand, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Slovak

Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, and the United Kingdom of Great Britain and Northern Ireland, respectively.

(Signed) Joan E. DONOGHUE,
President.

(Signed) Philippe GAUTIER,
Registrar.

President DONOGHUE appends a separate opinion to the Judgment of the Court; Vice-President GEVORGIAN appends a dissenting opinion to the Judgment of the Court; Judge TOMKA appends a declaration to the Judgment of the Court; Judge ABRAHAM appends a partially dissenting opinion to the Judgment of the Court; Judge BENNOUNA appends a declaration to the Judgment of the Court; Judges SEBUTINDE and ROBINSON append a joint dissenting opinion to the Judgment of the Court; Judges IWASAWA and CHARLESWORTH append separate opinions to the Judgment of the Court; Judge BRANT appends a declaration to the Judgment of the Court; Judge *ad hoc* DAUDET appends a separate opinion to the Judgment of the Court.

(Initialed) J.E.D.

(Initialed) Ph.G.

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