



INTERNATIONAL COURT OF JUSTICE

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Summary

Unofficial

Summary 2025/8

5 December 2025

Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)

Summary of the Order of 5 December 2025

The Court begins by recalling that 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”). In its Application, Ukraine sought 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. The Court further recalls that on 3 October 2022, the Russian Federation raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application. In its Judgment dated 2 February 2024, the Court found that it had jurisdiction, on the basis of Article IX of the Genocide Convention, to entertain submission (b) in paragraph 178 of the Memorial of Ukraine, asking 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”, and that the submission in question was admissible. It found, however, that submissions (c) and (d) in paragraph 178 of Ukraine’s Memorial fell outside the scope of the compromissory clause in Article IX of the Genocide Convention and, consequently, that the Court lacked jurisdiction *ratione materiae* to entertain them. In the Counter-Memorial that it filed on 18 November 2024, the Russian Federation, referring to Article 80 of the Rules of Court, presented counter-claims. Ukraine disputes the admissibility of those counter-claims as such.

I. GENERAL FRAMEWORK (PARAS. 25-30)

The Court begins by noting that under Article 80, paragraph 1, of its Rules, it may entertain a counter-claim only if two requirements are met, namely that the counter-claim “comes within the jurisdiction of the Court” and that it “is directly connected with the subject-matter of the claim of the other party”. In earlier pronouncements, the Court has characterized these requirements as relating to the “admissibility of a counter-claim as such”. The Court has accepted that the term “admissibility”, in this context, must be understood to encompass both the jurisdictional requirement and the direct-connection requirement under Article 80, paragraph 1, of the Rules of Court. The requirements for the admissibility of counter-claims under Article 80 of the Rules of Court are cumulative; each requirement must be satisfied for a counter-claim to be found admissible.

The Court then considers whether the counter-claims made by the Russian Federation satisfy the above requirements. In this regard, it notes that the Respondent presents eight counter-claims, requesting the Court to adjudge and declare that

- (i) Ukraine committed genocide in violation of Articles I and III (*a*) of the Genocide Convention;
- (ii) Ukraine attempted to commit genocide in violation of Articles I and III (*d*) of the Genocide Convention;
- (iii) Ukraine is complicit in genocide in violation of Articles I and III (*e*) of the Genocide Convention;
- (iv) Ukraine was in conspiracy to commit genocide in violation of Articles I and III (*b*) of the Genocide Convention;
- (v) Ukraine directly and publicly incited to commit genocide in violation of Articles I and III (*c*) of the Genocide Convention;
- (vi) Ukraine failed to prevent genocide and any other acts prohibited by Article III of the Genocide Convention in violation of Article I of the Convention;
- (vii) Ukraine failed to investigate and punish persons responsible for genocide, or for any other acts enumerated in Article III, in violation of Articles I, IV and VI of the Genocide Convention; and
- (viii) Ukraine failed to enact the necessary legislation to give effect to the provisions of the Genocide Convention and to provide effective penalties for persons guilty of genocide or of any of the acts enumerated in Article III, in violation of Article V of the Genocide Convention.

The Court further notes that all the counter-claims presented by the Russian Federation concern alleged violations of obligations arising under various provisions of the Genocide Convention and the legal consequences to be drawn therefrom. The Court also observes that both Parties address the Russian Federation's various counter-claims as a whole in their respective written observations concerning the admissibility thereof. Therefore, the Court deems it appropriate to examine the admissibility of the counter-claims of the Russian Federation together, keeping in mind, however, that there are eight separate counter-claims.

II. JURISDICTION (PARAS. 31-36)

The Court recalls that its jurisdiction in the present case is founded on the compromissory clause in Article IX of the Genocide Convention. It observes that, in order to establish whether counter-claims come within its jurisdiction, it must also examine whether the conditions contained in the instrument providing for such jurisdiction are met. It follows that, in ascertaining whether it has jurisdiction to entertain the Russian Federation's counter-claims, the Court needs to examine whether the conditions set out in Article IX of the Genocide Convention have been satisfied. As the Court has stated, "[t]he existence of a dispute between the parties is a requirement for [its] jurisdiction under Article IX of the Genocide Convention".

In its Judgment of 2 February 2024, the Court concluded that it had jurisdiction, on the basis of Article IX of the Genocide Convention, to entertain Ukraine's submission whereby the Applicant asked it 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 the Russian Federation also relies on Article IX of the Genocide

Convention to found the Court's jurisdiction in respect of its counter-claims. In its counter-claims, the Respondent alleges that the Applicant, by its conduct in the Donbas region, has violated its obligations under Articles I, III, IV, V and VI of the Convention. Ukraine denies these allegations. The Court considers that there exists a dispute between the Parties as to whether the Applicant has violated its obligations referred to above. This dispute concerns the interpretation, application or fulfilment of the Genocide Convention and thus falls within the Court's jurisdiction under Article IX thereof.

In light of the above, the Court concludes that the Russian Federation's counter-claims come within its jurisdiction under Article IX of the Genocide Convention.

III. DIRECT CONNECTION (PARAS. 37-59)

It is for the Court to assess "whether the counter-claim is sufficiently connected to the principal claim, taking account of the particular aspects of each case". In previous decisions relating to the admissibility of counter-claims as such, the Court has taken into consideration a range of factors that could establish a direct connection in fact and in law between a counter-claim and the claims of the other party for the purposes of Article 80 of the Rules. With respect to the question of connection in fact, the Court has considered whether the parties' respective claims relate to the same factual complex, including the same geographical area or the same time period. It has also considered whether the facts relied upon by each party are of the same nature, in that they allege similar types of conduct. With respect to the question of connection in law, the Court has examined whether there is a direct connection between the counter-claim and the principal claim in terms of the legal principles or instruments relied upon by the parties, as well as whether the applicant and the respondent could be considered as pursuing the same legal aim by their respective claims.

The Court first notes that the Parties have expressed diverging views as to what constitutes, in the present case, the "subject-matter of the claim" of Ukraine for the purposes of Article 80, paragraph 1, of the Rules of Court. It recalls that, in its Judgment of 2 February 2024, it found that it had jurisdiction, on the basis of Article IX of the Genocide Convention, to entertain the submission whereby the Applicant asked it 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", and that this submission was admissible. The Court also observed that a declaratory judgment on whether such credible evidence exists would "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 considers therefore that the subject-matter of the principal claim in the present case encompasses the question whether acts of genocide within the meaning of Article II attributable to Ukraine have been committed in the Donbas region, in violation of its obligations under the Genocide Convention. The Court further notes that, in the present case, the Parties' claims both address the question whether certain facts, including for example alleged attacks on civilians by the Ukrainian forces in the Donbas region, have occurred and whether these facts have given rise to violations of obligations under the Genocide Convention.

Turning to the question whether the counter-claims of the Russian Federation are directly connected in fact with the subject-matter of the claim of Ukraine, the Court recalls that it has found counter-claims to be admissible where their connection with the principal claim was "so direct that certain conditions which are required to exist [for the principal claim to succeed] depend precisely on facts which are raised by the counter-claim". The Court has also found a direct connection between the parties' claims where a State intended to rely on the same facts and circumstances in order both to refute the allegations made by another State in its principal claims and to obtain judgment against that State. With respect to the question of connection in fact, the Court recalls that it must determine whether the parties' respective claims relate to the same factual complex, including

the same geographical area or the same time period, and whether the facts relied upon by each party are of the same nature.

The Court has held that the geographical area in which the events giving rise to the counter-claims and the one in which those underlying the principal claims allegedly took place do not necessarily have to be identical, and that one could be “much wider” than the other. The Court notes that, in the present case, the Parties both address the question whether certain facts occurred in the Donbas region and, if so, whether these facts gave rise to violations of obligations under the Genocide Convention. The Parties’ claims thus relate to the same geographical area.

The Court further observes that some of the facts and events referred to by the Russian Federation in its counter-claims allegedly occurred after 24 February 2022, the date on which the Russian Federation began its “special military operation” in the territory of Ukraine. Ukraine, for its part, has characterized its principal claim as relating to allegations made prior to 24 February 2022. The Court does not need to decide, at the present stage, the precise temporal scope of Ukraine’s principal claim. For the purpose of determining whether there is a temporal connection between the Parties’ claims, it is not necessary for the facts and events underlying the counter-claims and those underpinning the principal claim to have occurred during an identical period. In the Court’s view, a counter-claim could be based on facts ranging over a longer period of time than that covered by the principal claim.

The Court notes that, in the present case, the Parties both address the question whether certain facts occurred in the Donbas region in the period from 2014 to 24 February 2022 and, if so, whether these facts gave rise to violations of obligations under the Genocide Convention. The Court further notes that the Russian Federation also relies on events that allegedly took place after 24 February 2022 but which concern similar types of conduct in the same territory and against the same groups of people as the events that allegedly occurred before that date. Therefore, the Court considers that the Parties’ respective claims present a sufficient temporal connection and thus form part of the same continuing factual complex.

Finally, the Court considers that the Parties’ respective claims address the question of the alleged occurrence of facts of the same nature, namely the alleged treatment by Ukraine of certain groups in the Donbas region, and whether these facts gave rise to violations of obligations under the Genocide Convention.

In light of the above, the Court considers that the Parties’ respective claims relate to the same factual complex and that there is a direct connection in fact between Ukraine’s principal claim and the Russian Federation’s counter-claims. Moreover, the Court notes that the Russian Federation intends to rely, for the most part, on the same evidence in order both to refute Ukraine’s claim and to substantiate its own counter-claims. In this regard, as the Court has held, “the idea [of a counter-claim] is essentially to achieve a procedural economy whilst enabling [it] to have an overview of the respective claims of the parties and to decide them more consistently”.

With respect to the question of connection in law, the Court notes that both Parties rely, in their respective claims, on the same instrument, the Genocide Convention, which is invoked both as the title of jurisdiction and as the basis of the Parties’ claims on the merits. In the present case, the Applicant’s principal claim focuses on whether there exists credible evidence that Ukraine has committed genocide in the Donbas region, in violation of its obligations under Article I of the Genocide Convention. The Russian Federation alleges that Ukraine has violated its obligations, not only under Article I, but also under Articles III, IV, V and VI of that Convention. The Court recalls, in this regard, that the specific provisions or legal principles invoked by each party need not be identical in order for the requirement of a direct connection in law to be satisfied.

Further, the Court considers that the Applicant and the Respondent pursue, by their respective claims, the same legal aim, namely to establish whether Ukraine is responsible for violating its

obligations under the Genocide Convention. The fact that the Applicant seeks primarily a declaratory judgment 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”, while the Respondent invokes Ukraine’s international responsibility for the violation of various provisions of the Genocide Convention, does not alter this conclusion.

In light of the above, the Court concludes that there is a direct legal connection between Ukraine’s principal claim and the Russian Federation’s counter-claims.

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The Court therefore concludes that the counter-claims of the Russian Federation satisfy the requirements of Article 80, paragraph 1, of the Rules of Court, and that they are admissible as such.

IV. WHETHER THE COURT SHOULD DECLINE TO ENTERTAIN THE COUNTER-CLAIMS (PARAS. 60-62)

The Court notes that in Ukraine’s view, even if the counter-claims of the Russian Federation could satisfy the requirements for admissibility, the Court should nevertheless refuse to entertain them in the “exceptional circumstances” of the present case. The Applicant states in particular that the Respondent has consistently rebuffed the peaceful resolution of the dispute between the Parties, favouring its ongoing use of force in and against Ukraine to prevent an alleged genocide. In addition, according to Ukraine, a decision by the Court to entertain the counter-claims would “delay justice for Ukraine without providing any efficiencies in resolving Russia’s claims” and would allow the Court to be “instrumentalized not for [the] purposes of peaceful resolution of a dispute, but as a complement to a strategy of forcible resolution of the same dispute”. The Russian Federation, for its part, contends that the Court does not have discretion to decline to entertain a counter-claim that is admissible as such. It considers that, where the conditions laid down in Article 80, paragraph 1, of the Rules are met, the Court must proceed to consider the counter-claims in question on the merits.

In the Court’s view, in the circumstances of the present case, the sound administration of justice and the interests of procedural economy call for the simultaneous consideration of those counter-claims and the principal claim.

V. CONCLUSION (PARAS. 63-67)

Taking into account the conclusions it has reached regarding the admissibility of the counter-claims as such, as well as the views expressed by the Parties, the Court considers it necessary for Ukraine to file a Reply and for the Russian Federation to file a Rejoinder, addressing the claims of both Parties in the current proceedings, the subsequent procedure being reserved.

OPERATIVE CLAUSE (PARA. 68)

THE COURT,

(A) By eleven votes to four,

Finds that the counter-claims submitted by the Russian Federation are admissible as such and form part of the current proceedings;

IN FAVOUR: *President* Iwasawa; *Vice-President* Sebutinde; *Judges* Tomka, Xue, Bhandari, Nolte, Charlesworth, Brant, Tladi, Hmoud; *Judge ad hoc* Tuzmukhamedov;

AGAINST: *Judges* Abraham, Gómez Robledo, Cleveland; *Judge ad hoc* Daudet;

(B) Unanimously,

Authorizes Ukraine to submit a Reply and the Russian Federation to submit a Rejoinder relating to the claims of both Parties in the current proceedings and *fixes* the following time-limits for the filing of those pleadings:

For the Reply of Ukraine, 7 December 2026;

For the Rejoinder of the Russian Federation, 7 December 2027; and

Reserves the subsequent procedure for further decision.

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Vice-President SEBUTINDE, Judges GÓMEZ ROBLEDO and CLEVELAND, and Judge *ad hoc* DAUDET append a joint declaration to the Order of the Court; Judges ABRAHAM, GÓMEZ ROBLEDO and CLEVELAND append dissenting opinions to the Order of the Court; Judge TLADI appends a separate opinion to the Order of the Court; Judge HMOUD appends a declaration to the Order of the Court; Judge *ad hoc* DAUDET appends a dissenting opinion to the Order of the Court¹.

¹ The summaries of opinions and declarations are annexed in the language available.

Joint declaration of Vice-President Sebutinde, Judges Gómez Robledo and Cleveland, and Judge *ad hoc* Daudet

1. The joint declaration addresses the Court’s discussion in Section IV of the Order regarding whether the Court should exercise discretion to decline to entertain the Russian Federation’s counter-claims, even if they meet the formal requirements for admissibility under Article 80, paragraph 1, of the Rules of Court. The authors believe the Court’s language is best understood as recognizing that, in principle, such discretion is available under Article 80, paragraph 1, of the Rules of Court.

2. The declaration observes that this is also the appropriate interpretation of Article 80, paragraph 1. That provision, by using the term “may” rather than “shall”, grants the Court a measure of discretion to refuse to entertain counter-claims that formally satisfy the rule’s requirements. The judges note that such discretion is also essential for the sound administration of justice and judicial economy.

3. The declaration concludes that exceptional circumstances — such as when a counter-claim significantly expands or delays the case — could justify the Court’s refusal to entertain a counter-claim. The authors agree that Article 80, paragraph 1, is properly understood as preserving this discretion for the Court.

Dissenting opinion of Judge Cleveland

1. Judge Cleveland dissents from the Court’s decision to admit the Russian Federation’s counter-claims. She argues that the Court fails to appreciate the limited scope of the dispute, particularly after the Court’s earlier severance of Ukraine’s original claims regarding the Russian Federation’s international responsibility under the Genocide Convention. Judge Cleveland emphasizes that Ukraine’s limited claim seeks only a declaration of non-responsibility — specifically, that there is no credible evidence Ukraine committed genocide. It cannot result in a determination of Ukraine’s international responsibility under the Convention. By contrast, the Russian Federation’s counter-claims seek to establish Ukraine’s international responsibility for genocide and a broad range of other alleged violations under the Genocide Convention — vastly expanding the factual and legal inquiry before the Court. Adjudication of the counter-claims will require a determination of whether conclusive evidence exists to establish each and every element of numerous obligations under the Convention, including the *dolus specialis* requirement under Article II. Moreover, by mischaracterizing the original claim, as well as the counter-claims, as involving “violations” of the Convention, the Court fails to appreciate or confront the entirely different character of the counter-claims.

2. Judge Cleveland contends that Article 80, paragraph 1, of the Court’s Rules must be applied in a manner consistent with the Court’s restrictions on the addition or amendment of claims and that the counter-claims improperly transform and invert the subject of the dispute. She notes that the Court itself has recognized a fundamental difference in nature between disputes seeking to establish international responsibility (like the counter-claims) and those (like the original claim) that do not. The Court’s Order accordingly is inconsistent with the Court’s Rules, principles of procedural economy and the sound administration of justice, and raises serious questions regarding judicial propriety.

3. Judge Cleveland, however, welcomes the Court's suggestion that Article 80, paragraph 1, grants a certain measure of discretion to the Court to decline to entertain a counter-claim, as noted in today's joint declaration, which she also signs. She does not consider it necessary to resort to the question of discretion in this case, since, in her opinion, the counter-claims are inadmissible as such. If, however, the counter-claims could somehow be viewed as satisfying the requirements of Article 80, paragraph 1, their fundamental transformation of the nature of the case would constitute a basis for exercising such discretion.

4. She concludes that the Court should have upheld Ukraine's objection to the admissibility of the counter-claims, allowing the Russian Federation to pursue its claims in separate proceedings, if it so wished.
