

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES SUBMITTED BY UKRAINE

I. INTRODUCTION

1. Ukraine filed an Application with the Court on 25 February 2022, instituting proceedings against the Russian Federation in a dispute concerning the interpretation, application or fulfilment of the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”). Ukraine hereby submits, in accordance with Article 41 of the Statute of the Court and Articles 73, 74, and 75 of the Rules of the Court, an urgent Request that the Court indicate provisional measures. In light of the extraordinary urgency of the situation, Ukraine respectfully asks the Court to hold a hearing or otherwise take immediate action on Ukraine’s Request early in the week of 28 February 2022 or as soon as possible thereafter. In addition, pursuant to Article 74(4) of the Rules of Court, Ukraine requests the President of the Court to call upon the Russian Federation to immediately halt all military actions in Ukraine pending the holding of a hearing, to enable any order the Court may make on the request for provisional measures to have its appropriate effects.

2. In the early morning hours of 24 February 2022, the Russian Federation declared what President Vladimir Putin called a “special military operation” against Ukraine. The stated purpose of the special military operation, according to President Putin, is “to stop” a “genocide of the millions of people who live” in the Luhansk and Donetsk oblasts of Ukraine (a region also referred to as the Donbas).¹ Specifically, the President of the Russian Federation asserted that “[t]he purpose of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime.”² The Russian Federation asserts that it intends to “denazify Ukraine” and “bring to trial those who perpetrated numerous bloody crimes against civilians.”³ On the basis of these claims of genocide, the Russian Federation immediately commenced an unprovoked invasion throughout Ukrainian territory, which is already causing catastrophic harms to Ukraine and its people, both military and civilian.

3. Russia thus expressly bases its “special military operation” – in fact a full-scale, brutal invasion of Ukraine – on an absurd lie: the nonsensical and utterly unsupported claim that genocide has been committed in the Luhansk and Donetsk oblasts of Ukraine. Both Russia and Ukraine are parties to the Genocide Convention, which defines genocide as a crime under international law and obliges them to undertake to prevent and punish genocide. Russia claims that acts of genocide have been committed and that it has a basis to take military action in Ukraine to prevent and punish genocide. Ukraine emphatically denies that acts of genocide have been committed and maintains that Russia has no lawful basis to take any action in and against Ukraine to prevent and punish genocide. Accordingly, the parties have a straightforward dispute concerning the interpretation, application or fulfilment of the Genocide Convention. The President of the Russian Federation openly based the current

¹ Address by the President of the Russian Federation of 24 February 2022, <http://en.kremlin.ru/events/president/transcripts/statements/67843>.

² *Ibid.*

³ *Ibid.*

military action on questions that fall within the scope of the Genocide Convention: the existence of an alleged genocide in Ukraine, and claimed rights and obligations of Russia vis-à-vis Ukraine to conduct a military operation that derive from this alleged genocide. Russia's misuse of the concept of genocide to justify its lawless and aggressive behavior degrades and defiles the object and purpose of the Genocide Convention, and undermines the solemn commitments made by all Contracting Parties to prevent and punish actual cases of genocide.

4. This Court must urgently protect Ukraine pending its resolution of this dispute. Ukraine is currently facing catastrophic and wholly unprovoked military attacks, and every day that these actions continue, the human rights of the Ukrainian people are gravely violated. Under these unprecedented circumstances, Ukraine asks the Court to urgently indicate provisional measures. Russia's claims of both genocide and a right to take action to prevent and punish such genocide are legal claims governed by the Genocide Convention. The parties' dispute over Russia's claims should be resolved by this Court or through other lawful, peaceful means. Until this Court is able to finally resolve that dispute, the Court should preserve the status quo and protect the people of Ukraine by ordering Russia to suspend its senseless military operation, which is based expressly on Russia's false and absurd claim to be taking action to prevent and punish acts of genocide.

II. PRIMA FACIE JURISDICTION OF THE COURT

5. The Court has the power to indicate provisional measures "if the provisions relied on by the Applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case." *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 9, para. 16.

6. Article IX of Genocide Convention provides:

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

7. Both Ukraine and the Russian Federation are parties to the Genocide Convention and bound by Article IX.

8. "According to the established case law of the Court, a dispute is 'a disagreement on a point of law or fact, a conflict of legal views or of interests' between parties." *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*, p. 849, para. 37 (quoting *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11). Ukraine and the Russian Federation have such a dispute that relates to the interpretation, application or fulfilment of the Genocide Convention.

9. The Russian Federation’s specific claims alleging genocide, and invoking that alleged genocide as the basis for military action against Ukraine, include:

- a. On 21 February 2022, the President of the Russian Federation stated in an official address that there was a “genocide” occurring in Ukraine, “which almost 4 million people are facing.”⁴
- b. On 24 February 2022, the President of the Russian Federation stated in an official address that, with reference to the Luhansk and Donetsk oblasts of Ukraine, “[w]e had to stop that atrocity, that genocide of the millions of people who live there and who pinned their hopes on Russia, on all of us.”⁵
- c. The President of the Russian Federation then announced a “special military operation” and stated that “[t]he purpose of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime.”⁶ He then stated that “we will seek to demilitarise and denazify Ukraine, as well as bring to trial those who perpetrated numerous bloody crimes against civilians, including against citizens of the Russian Federation.”⁷
- d. Concurrent with the address of the President of the Russian Federation of 24 February 2022, the Permanent Representative of the Russian Federation to the United Nations stated in an emergency session of the U.N. Security Council that “[t]he goal of this special operation is protection of people who have been victimized and exposed to genocide by the Kiev regime.”⁸

⁴ Address by the President of the Russian Federation of 21 February 2022, <http://en.kremlin.ru/events/president/transcripts/statements/67828>.

⁵ Address by the President of the Russian Federation of 24 February 2022, <http://en.kremlin.ru/events/president/transcripts/statements/67843>.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Statement and reply by Permanent Representative Vassily Nebenzia at UNSC briefing on Ukraine, 23 February 2022, <https://russiaun.ru/en/news/230222un>.

- e. At a press conference on 25 February 2022, Russian Foreign Minister Sergey Lavrov also justified Russia's military actions against Ukraine as "preventing the neo-Nazis and those who promote methods of genocide from ruling this country."⁹
- f. In an interview on 25 February 2022, the Russian Ambassador to the European Union was asked about President Putin's reference to genocide as justification for Russia's unlawful acts against Ukraine and said "[w]e can turn to the official term of genocide as coined in international law. If you read the definition it fits pretty well."¹⁰

10. Ukraine has emphatically denied that any act of genocide has occurred in the Luhansk and Donetsk oblasts or elsewhere in Ukraine, and that Russia has any lawful basis whatsoever to take action in and against Ukraine for the purpose of preventing and punishing genocide. In response to Russia's claim, the Ministry of Foreign Affairs of Ukraine issued a statement that Ukraine "strongly denies Russia's allegations of genocide and denies any attempt to use such manipulative allegations as an excuse for Russia's unlawful aggression," noting that under the Genocide Convention, "Russia's claims are baseless and absurd."¹¹

11. The parties therefore have a factual dispute as to whether genocide, which is defined by Article II of the Genocide Convention, has occurred or is occurring in the Luhansk and Donetsk oblasts of Ukraine. The parties also have a legal dispute as to whether, as a consequence of Russia's unilateral assertion that genocide is occurring, Russia has any lawful basis to take military action in and against Ukraine to prevent and punish genocide pursuant to Article I of the Genocide Convention. The parties further have a dispute under Article VIII of the Genocide Convention as to whether Russia may take such military steps unilaterally when that article provides that Contracting Parties may call upon "the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide," and Russia is not acting in a manner permitted by the Charter of the United Nations. Therefore, the parties' dispute over first, the existence of acts of genocide, and second, Russia's claim to legal authority to take military action in and against Ukraine to punish and prevent such alleged genocide, is a dispute that concerns the interpretation, application or fulfilment of the Genocide Convention. Accordingly, the Court should recognize its jurisdiction on a *prima facie* basis for purposes of indicating provisional measures.

⁹ TASS, *Kiev regime controlled by West, neo-Nazis, Lavrov says*, 25 February 2022, <https://tass.com/politics/1411139>.

¹⁰ Georgi Gotev, EURACTIV, *Russian ambassador Chizhov: Nord Stream 2 is not dead, it's a sleeping beauty*, 25 February 2022, <https://www.euractiv.com/section/global-europe/interview/russian-ambassador-chizhov-nord-stream-2-is-not-dead-its-a-sleeping-beauty/>.

¹¹ Statement of the Ministry of Foreign Affairs of Ukraine on Russia's False and Offensive Allegations of Genocide As a Pretext For Its Unlawful Military Aggression, 26 February 2022, <https://mfa.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-nepravdivih-ta-obrazlivih-zvinuvachen-rosiyi-v-genocidi-yak-privodu-dlya-yiyi-protipravnoyi-vijskovoyi-agresiyi>.

III. THE RIGHTS UKRAINE SEEKS TO PRESERVE

12. Ukraine seeks provisional measures to protect its rights not to be subject to a false claim of genocide, and not to be subjected to another State's military operations on its territory based on a brazen abuse of Article I of the Genocide Convention.

13. Pursuant to Article I of the Genocide Convention, genocide is a crime under international law, and Contracting Parties undertake to prevent and punish such a crime. Given the seriousness of both the crime of genocide and the undertaking to prevent and punish it, if a State Party engages in unlawful action which it claims authority to undertake in order to prevent and punish alleged acts of genocide, where acts of genocide manifestly do not exist, it undermines the object and purpose of Article I of the Convention, and diminishes the solemn nature of the Contracting Parties' pledge to prevent and punish such crimes.

14. The Court has previously concluded that while the Convention "does not *expressis verbis* require States to refrain from themselves committing genocide," that is what the duty to prevent genocide "necessarily implies." *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, p. 113, para. 116. An equally necessary implication of the duty to prevent and punish genocide is that it must be performed in good faith and not abused, and that one Contracting Party may not subject another Contracting Party to armed attack based on a wholly fabricated claim of preventing and punishing genocide. Any other application of the Convention would undermine what the Court has described as the "moral and humanitarian" basis of the Convention. Ukraine has a right to be free from unlawful and damaging action by Russia that has been expressly justified as preventing and punishing genocide, where no plausible claim of genocide in fact exists.

15. Article VIII of the Convention further indicates that a Contracting Party taking action with the purported basis of preventing and punishing genocide cannot do so in a manner that violates the U.N. Charter. Under Article VIII, "[a]ny Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III." The Court has likewise recognized, in addressing actions pursuant to the duty to prevent genocide under the Genocide Convention, that "it is clear that every State may only act within the limits permitted by international law." *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, p. 221, para. 430. Russia's military action against a sovereign State based on a manifestly *false* claim of genocide is not consistent with either the Convention, or the provisions of the Charter referred to in Article VIII of the Convention, and thus exceeds the limits permitted by international law.

16. The Russian Federation's invasion of Ukraine based on a false claim of genocide is thus incompatible with the Genocide Convention and violates Ukraine's rights. The rights claimed by Ukraine in this case are at a minimum plausible, which is sufficient for provisional measures to be indicated.

IV. THE RISK OF IRREPARABLE PREJUDICE AND URGENCY

17. The Court has found it appropriate to indicate provisional measures in circumstances that are “unstable and could rapidly change,” and when there is “ongoing tension” without any “overall settlement to [an ongoing] conflict.” *See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 396, para. 143. Similarly, provisional measures have been granted when conflicts and similar “incidents have occurred on various occasions . . . leading to fatalities, injuries and the displacement of local inhabitants.” *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011*, p. 550, para. 53.

18. The urgency of the current situation is self-evident. Ukraine requests provisional measures to protect its people from the irreparable harm caused by Russia’s military measures that have been launched on a pretext of genocide, contrary to a good faith implementation of the Convention. The Russian Federation’s measures to punish Ukraine for an alleged genocide in the Luhansk and Donetsk Oblasts constitute a large scale invasion of Ukraine on several fronts. Should this aggression go unchecked, there is not only a risk but a certainty of significant and irreparable loss of life and property and a humanitarian crisis. As of this filing, Russia’s invasion has resulted in numerous casualties among Ukrainian civilians and military personnel, the bombing of numerous cities across Ukraine, and the displacement of tens of thousands of Ukrainian citizens both within Ukraine and across its international borders.

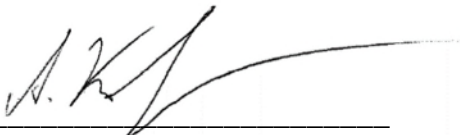
19. The current Russian aggression against Ukraine also must be observed against the backdrop of years-long Russian support for illegal armed groups in eastern Ukraine, who have targeted civilians and committed acts of terror, as well as its illegal occupation of Crimea which has involved a campaign of racial discrimination and other human rights abuses. The Ukrainian people are vulnerable and in need of the Court’s protection, and the urgency of the situation is apparent. *See Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 396, para. 143. Each and every day that Russia’s invasion continues, based on a false premise in violation of the

Convention, will result in additional significant losses of life and property in Ukraine, further grave human rights violations, and more instability for the Ukrainian people.

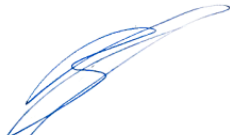
V. THE MEASURES REQUESTED

20. On the basis of the facts set forth above, and in order to prevent irreparable prejudice to the rights of Ukraine and its people and to avoid aggravating or extending the dispute between the parties under the Genocide Convention, Ukraine respectfully requests that the Court indicate the following provisional measures:

- a. The Russian Federation shall immediately suspend the military operations commenced on 24 February 2022 that have as their stated purpose and objective the prevention and punishment of a claimed genocide in the Luhansk and Donetsk oblasts of Ukraine.
- b. The Russian Federation shall immediately 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, direction or influence, take no steps in furtherance of the military operations which have as their stated purpose and objective preventing or punishing Ukraine for committing genocide.
- c. The Russian Federation shall refrain from any action and shall provide assurances that no action is taken that may aggravate or extend the dispute that is the subject of this Application, or render this dispute more difficult to resolve.
- d. The Russian Federation shall provide a report to the Court on measures taken to implement the Court's Order on Provisional Measures one week after such Order and then on a regular basis to be fixed by the Court.



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