

19 AVRIL 2017

ORDONNANCE

**APPLICATION DE LA CONVENTION INTERNATIONALE POUR LA RÉPRESSION
DU FINANCEMENT DU TERRORISME ET DE LA CONVENTION
INTERNATIONALE SUR L'ÉLIMINATION DE TOUTES
LES FORMES DE DISCRIMINATION RACIALE**

(UKRAINE c. FÉDÉRATION DE RUSSIE)

**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)

19 APRIL 2017

ORDER

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INTERNATIONAL COURT OF JUSTICE

YEAR 2017

**2017
19 April
General List
No. 166**

19 April 2017

**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)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

Present: *President* ABRAHAM; *Vice-President* YUSUF; *Judges* OWADA, TOMKA, BENNOUNA, CANÇADO TRINDADE, GREENWOOD, XUE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, CRAWFORD; *Judges ad hoc* POCAR, SKOTNIKOV; *Registrar* COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

Makes the following Order:

Whereas:

1. On 16 January 2017, the Government of Ukraine filed in the Registry of the Court an Application instituting proceedings against the Russian Federation with regard to alleged violations of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999 (hereinafter the “ICSFT”) and the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter “CERD”).

2. With regard to the ICSFT, Ukraine presented the following claims in its Application:

“134. Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, and through other agents acting on its instructions or under its direction and control, has violated its obligations under the Terrorism Financing Convention by:

- (a) supplying funds, including in-kind contributions of weapons and training, to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals, in violation of Article 18;
- (b) failing to take appropriate measures to detect, freeze, and seize funds used to assist illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals, in violation of Articles 8 and 18;
- (c) failing to investigate, prosecute, or extradite perpetrators of the financing of terrorism found within its territory, in violation of Articles 9, 10, 11, and 18;
- (d) failing to provide Ukraine with the greatest measure of assistance in connection with criminal investigations of the financing of terrorism, in violation of Articles 12 and 18; and
- (e) failing to take all practicable measures to prevent and counter acts of financing of terrorism committed by Russian public and private actors, in violation of Article 18.

135. Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation bears international responsibility, by virtue of its sponsorship of terrorism and failure to prevent the financing of terrorism under the Convention, for the acts of terrorism committed by its proxies in Ukraine, including:

- (a) the shoot-down of Malaysian Airlines Flight MH17;
- (b) the shelling of civilians, including in Volnovakha, Mariupol, and Kramatorsk; and
- (c) the bombing of civilians, including in Kharkiv.

136. Ukraine respectfully requests the Court to order the Russian Federation to comply with its obligations under the Terrorism Financing Convention, including that the Russian Federation:

- (a) immediately and unconditionally cease and desist from all support, including the provision of money, weapons, and training, to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals;
- (b) immediately make all efforts to ensure that all weaponry provided to such armed groups is withdrawn from Ukraine;
- (c) immediately exercise appropriate control over its border to prevent further acts of financing of terrorism, including the supply of weapons, from the territory of the Russian Federation to the territory of Ukraine;
- (d) immediately stop the movement of money, weapons, and all other assets from the territory of the Russian Federation and occupied Crimea to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals, including by freezing all bank accounts used to support such groups;
- (e) immediately prevent all Russian officials from financing terrorism in Ukraine, including Sergei Shoigu, Minister of Defense of the Russian Federation; Vladimir Zhirinovskiy, Vice-Chairman of the State Duma; Sergei Mironov, member of the State Duma; and Gennadiy Zyuganov, member of the State Duma, and initiate prosecution against these and other actors responsible for financing terrorism;
- (f) Immediately provide full co-operation to Ukraine in all pending and future requests for assistance in the investigation and interdiction of the financing of terrorism relating to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals;
- (g) make full reparation for the shoot-down of Malaysian Airlines Flight MH17;

- (h) make full reparation for the shelling of civilians in Volnovakha;
- (i) make full reparation for the shelling of civilians in Mariupol;
- (j) make full reparation for the shelling of civilians in Kramatorsk;
- (k) make full reparation for the bombing of civilians in Kharkiv; and
- (l) make full reparation for all other acts of terrorism the Russian Federation has caused, facilitated, or supported through its financing of terrorism, and failure to prevent and investigate the financing of terrorism.”

3. With regard to CERD, Ukraine presented the following claims in its Application:

“137. Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, including the de facto authorities administering the illegal Russian occupation of Crimea, and through other agents acting on its instructions or under its direction and control, has violated its obligations under the CERD by:

- (a) systematically discriminating against and mistreating the Crimean Tatar and ethnic Ukrainian communities in Crimea, in furtherance of a state policy of cultural erasure of disfavored groups perceived to be opponents of the occupation regime;
- (b) holding an illegal referendum in an atmosphere of violence and intimidation against non-Russian ethnic groups, without any effort to seek a consensual and inclusive solution protecting those groups, and as an initial step toward depriving these communities of the protection of Ukrainian law and subjecting them to a regime of Russian dominance;
- (c) suppressing the political and cultural expression of Crimean Tatar identity, including through the persecution of Crimean Tatar leaders and the ban on the *Mejlis* of the Crimean Tatar People;
- (d) preventing Crimean Tatars from gathering to celebrate and commemorate important cultural events;
- (e) perpetrating and tolerating a campaign of disappearances and murders of Crimean Tatars;

- (f) harassing the Crimean Tatar community with an arbitrary regime of searches and detention;
- (g) silencing Crimean Tatar media;
- (h) suppressing Crimean Tatar language education and the community's educational institutions;
- (i) suppressing Ukrainian language education relied on by ethnic Ukrainians;
- (j) preventing ethnic Ukrainians from gathering to celebrate and commemorate important cultural events; and
- (k) silencing ethnic Ukrainian media.

138. Ukraine respectfully requests the Court to order the Russian Federation to comply with its obligations under the CERD, including:

- (a) immediately cease and desist from the policy of cultural erasure and take all necessary and appropriate measures to guarantee the full and equal protection of the law to all groups in Russian-occupied Crimea, including Crimean Tatars and ethnic Ukrainians;
- (b) immediately restore the rights of the *Mejlis* of the Crimean Tatar People and of Crimean Tatar leaders in Russian-occupied Crimea;
- (c) immediately restore the rights of the Crimean Tatar people in Russian-occupied Crimea to engage in cultural gatherings, including the annual commemoration of the *Sürgün*;
- (d) immediately take all necessary and appropriate measures to end the disappearance and murder of Crimean Tatars in Russian-occupied Crimea, and to fully and adequately investigate the disappearances of Reshat Ametov, Timur Shaimardanov, Ervin Ibragimov, and all other victims;
- (e) immediately take all necessary and appropriate measures to end unjustified and disproportionate searches and detentions of Crimean Tatars in Russian-occupied Crimea;
- (f) immediately restore licenses and take all other necessary and appropriate measures to permit Crimean Tatar media outlets to resume operations in Russian-occupied Crimea;
- (g) immediately cease interference with Crimean Tatar education and take all necessary and appropriate measures to restore education in the Crimean Tatar language in Russian-occupied Crimea;

- (h) immediately cease interference with ethnic Ukrainian education and take all necessary and appropriate measures to restore education in the Ukrainian language in Russian-occupied Crimea;
- (i) immediately restore the rights of ethnic Ukrainians to engage in cultural gatherings in Russian-occupied Crimea;
- (j) immediately take all necessary and appropriate measures to permit the free operation of ethnic Ukrainian media in Russian-occupied Crimea; and
- (k) make full reparation for all victims of the Russian Federation's policy and pattern of cultural erasure through discrimination in Russian-occupied Crimea."

4. In its Application, Ukraine seeks to found the Court's jurisdiction on Article 24, paragraph 1, of the ICSFT and on Article 22 of CERD.

5. On 16 January 2017, Ukraine also 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.

6. With respect to the ICSFT, in paragraph 23 of its Request for the indication of provisional measures, Ukraine asked the Court to indicate the following provisional measures:

- "(a) The Russian Federation shall refrain from any action which might aggravate or extend the dispute under the Terrorism Financing Convention before the Court or make this dispute more difficult to resolve.
- (b) The Russian Federation shall exercise appropriate control over its border to prevent further acts of terrorism financing, including the supply of weapons from the territory of the Russian Federation to the territory of Ukraine.
- (c) The Russian Federation shall halt and prevent all transfers from the territory of the Russian Federation of money, weapons, vehicles, equipment, training, or personnel to groups that have engaged in acts of terrorism against civilians in Ukraine, or that the Russian Federation knows may in the future engage in acts of terrorism against civilians in Ukraine, including but not limited to the 'Donetsk People's Republic', the 'Luhansk People's Republic', the 'Kharkiv Partisans', and associated groups and individuals.
- (d) The Russian Federation shall take all measures at its disposal to ensure that any groups operating in Ukraine that have previously received transfers from the territory of the Russian Federation of money, weapons, vehicles, equipment, training, or personnel will refrain from carrying out acts of terrorism against civilians in Ukraine."

7. With respect to CERD, in paragraph 24 of its Request for the indication of provisional measures, Ukraine asked the Court to indicate the following provisional measures:

- “(a) The Russian Federation shall refrain from any action which might aggravate or extend the dispute under CERD before the Court or make it more difficult to resolve.
- (b) The Russian Federation shall refrain from any act of racial discrimination against persons, groups of persons, or institutions in the territory under its effective control, including the Crimean peninsula.
- (c) The Russian Federation shall cease and desist from acts of political and cultural suppression against the Crimean Tatar people, including suspending the decree banning the *Mejlis* of the Crimean Tatar People and refraining from enforcement of this decree and any similar measures, while this case is pending.
- (d) The Russian Federation shall take all necessary steps to halt the disappearance of Crimean Tatar individuals and to promptly investigate those disappearances that have already occurred.
- (e) The Russian Federation shall cease and desist from acts of political and cultural suppression against the ethnic Ukrainian people in Crimea, including suspending restrictions on Ukrainian-language education and respecting ethnic Ukrainian language and educational rights, while this case is pending.”

8. The Registrar immediately communicated to the Government of the Russian Federation the Application, 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.

9. Pending the notification provided for by Article 40, paragraph 3, of the Statute by transmission of the printed bilingual text of the Application to the Members of the United Nations through the Secretary-General, the Registrar informed those States of the filing of the Application.

10. By letters dated 20 January 2017, the Registrar informed both Parties that the Member of the Court of the nationality of the Russian Federation, referring to Article 24, paragraph 1, of the Statute, had notified the Court of his intention not to participate in the decision of the case. Pursuant to Article 31 of the Statute and Article 37, paragraph 1, of the Rules of Court, the Russian Federation chose Mr. Leonid Skotnikov to sit as judge *ad hoc* in the case.

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

12. By letters dated 25 January 2017, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of the Rules, the Court had fixed 6, 7, 8 and 9 March 2017 as the dates for the oral proceedings on the Request for the indication of provisional measures.

13. At the public hearings held from 6 to 9 March 2017, oral observations on the Request for the indication of provisional measures were presented by:

On behalf of Ukraine: H.E. Ms Olena Zerkal,
Mr. Harold Hongju Koh,
Ms Marney Cheek,
Mr. Jonathan Gimblett.

On behalf of the Russian Federation: H.E. Mr. Roman Kolodkin,
Mr. Ilya Rogachev,
Mr. Samuel Wordsworth,
Mr. Andreas Zimmermann,
Mr. Grigoriy Lukiyantsev,
Mr. Mathias Forteau.

14. At the end of its second round of oral observations, Ukraine asked the Court to indicate the following provisional measures:

“With respect to the Terrorism Financing Convention, Ukraine requests that the Court order the following provisional measures:

- (a) the Russian Federation shall refrain from any action which might aggravate or extend the dispute under the Terrorism Financing Convention before the Court or make this dispute more difficult to resolve.
- (b) the Russian Federation shall exercise appropriate control over its border to prevent further acts of terrorism financing, including the supply of weapons from the territory of the Russian Federation to the territory of Ukraine.
- (c) the Russian Federation shall halt and prevent all transfers from the territory of the Russian Federation of money, weapons, vehicles, equipment, training, or personnel to groups that have engaged in acts of terrorism against civilians in Ukraine, or that the Russian Federation knows may in the future engage in acts of terrorism against civilians in Ukraine, including but not limited to the ‘Donetsk People’s Republic’, the ‘Luhansk People’s Republic’, the ‘Kharkiv Partisans’, and associated groups and individuals.

(d) the Russian Federation shall take all measures at its disposal to ensure that any groups operating in Ukraine that have previously received transfers from the territory of the Russian Federation of money, weapons, vehicles, equipment, training, or personnel will refrain from carrying out acts of terrorism against civilians in Ukraine.

.....

With respect to the CERD, Ukraine requests that the Court order the following provisional measures:

(a) the Russian Federation shall refrain from any action which might aggravate or extend the dispute under CERD before the Court or make it more difficult to resolve.

(b) the Russian Federation shall refrain from any act of racial discrimination against persons, groups of persons, or institutions in the territory under its effective control, including the Crimean peninsula.

(c) the Russian Federation shall cease and desist from acts of political and cultural suppression against the Crimean Tatar people, including suspending the decree banning the *Mejlis* of the Crimean Tatar People and refraining from enforcement of this decree and any similar measures, while this case is pending.

(d) the Russian Federation shall take all necessary steps to halt the disappearance of Crimean Tatar individuals and to promptly investigate those disappearances that have already occurred.

(e) the Russian Federation shall cease and desist from acts of political and cultural suppression against the ethnic Ukrainian people in Crimea, including suspending restrictions on Ukrainian-language education and respecting ethnic Ukrainian language and educational rights, while this case is pending.”

15. At the end of its second round of oral observations, Russia made the following statement:

“In accordance with Article 60 of the Rules of the Court for the reasons explained during these hearings the Russian Federation requests the Court to reject the request for the indication of provisional measures submitted by Ukraine.”

*

* *

16. The context in which the present case comes before the Court is well known. In large parts of eastern Ukraine, that context is characterized by periods of extensive fighting which, as the record before the Court demonstrates, has claimed a large number of lives. The destruction, on 17 July 2014, of Malaysia Airlines Flight MH17 while it was flying over Ukrainian territory en route between Amsterdam and Kuala Lumpur, caused the deaths of 298 people. The Court is well aware of the extent of this human tragedy. Nevertheless, the case before the Court is limited in scope. In respect of the events in the eastern part of its territory, Ukraine has brought proceedings only under the ICSFT. With regard to the events in Crimea, Ukraine's claim is based solely upon CERD and the Court is not called upon, as Ukraine expressly recognized, to rule upon any issue other than allegations of racial discrimination.

I. PRIMA FACIE JURISDICTION

1. General introduction

17. The Court may indicate provisional measures only 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 (see, for example, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Provisional Measures*, Order of 7 December 2016, para. 31).

18. In the present case, Ukraine seeks to found the jurisdiction of the Court on Article 24, paragraph 1, of the ICSFT and on Article 22 of CERD (see paragraph 4 above). The Court must therefore first seek to determine whether the jurisdictional clauses contained in these instruments *prima facie* confer upon it jurisdiction to rule on the merits of the case, enabling it — if the other necessary conditions are fulfilled — to indicate provisional measures.

19. Ukraine and the Russian Federation are parties to the ICSFT, which entered into force on 10 April 2002. They deposited their instruments of ratification on 6 December 2002 and 27 November 2002, respectively. Neither of them entered reservations to that instrument.

Further, Ukraine and the Russian Federation are parties to CERD, which entered into force on 4 January 1969. Ukraine deposited its instrument of ratification on 7 March 1969 with a reservation to Article 22 of the Convention; on 20 April 1989, the depositary received notification that this reservation had been withdrawn. The Russian Federation is a party to CERD as the State continuing the legal personality of the Union of Soviet Socialist Republics which deposited its instrument of ratification on 4 February 1969 with a reservation to Article 22 of the Convention; on 8 March 1989, the depositary received notification that this reservation had been withdrawn.

20. Article 24, paragraph 1, of the ICSFT provides that:

“Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.”

21. As regards CERD, Article 22 of that instrument reads as follows:

“Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.”

2. Existence of a dispute concerning the interpretation or application of the ICSFT and CERD

22. Both Article 24, paragraph 1, of the ICSFT and Article 22 of CERD make the Court’s jurisdiction conditional on the existence of a dispute arising out of the interpretation or application of the respective Convention. A dispute between States exists where they “‘hold clearly opposite views concerning the question of the performance or non-performance of certain’ international obligations” (see *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 26, para. 50, citing *Interpretation of Peace treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74). The claim of one party must be “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). In order to determine, even prima facie, whether a dispute exists, the Court “cannot limit itself to noting that one of the Parties maintains that the Convention applies, while the other denies it” (*Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Provisional Measures*, Order of 7 December 2016, para. 47). Since Ukraine has invoked as a basis for the Court’s jurisdiction the compromissory clauses in two international conventions, the Court must ascertain whether “the acts complained of by [the Applicant] are prima facie capable of falling within the provisions of [those] instrument[s] and . . . as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain” (*ibid.*).

23. At this stage of the proceedings, the Court must examine (1) whether the record shows a disagreement on a point of law or fact between the two States; and (2) whether that disagreement concerns “the interpretation or application” of the respective convention, as required by Article 24, paragraph 1, of the ICSFT and Article 22 of CERD.

(a) The International Convention for the Suppression of the Financing of Terrorism

24. Ukraine asserts that “[a] dispute has plainly arisen concerning the interpretation and application of the Terrorism Financing Convention”. Ukraine states that in a diplomatic Note dated 28 July 2014, it “gave notice that it considered the Russian Federation to be violating the Terrorism Financing Convention” and that it continued, repeatedly, to inform the Russian Federation of the nature of its claims. According to Ukraine, “both by word and deed, the Russian Federation has made it abundantly clear that it disputes Ukraine’s claims”.

25. Ukraine contends that, in the eastern part of its territory, since the spring of 2014, the Russian Federation has systematically supplied “illegal armed groups”, such as the “Donetsk People’s Republic” (DPR), the “Luhansk People’s Republic” (LPR), the “Partisans of the Kharkiv People’s Republic”, and associated groups and individuals, with heavy weaponry, money, personnel, training, and by giving other backing. That assistance, according to Ukraine, has been used not only to support combat against the Ukrainian authorities, but also to conduct terrorist attacks against civilians, within the meaning of Article 2, paragraph 1 (a) and (b), of the ICSFT, such as the shelling of civilians in Volnovakha, Kramatorsk and Mariupol, the bombing of a peaceful rally in support of national unity in Kharkiv and the shooting-down of Malaysia Airlines Flight MH17. Ukraine contends that the definition of funds contained in the ICSFT is “extremely broad” and includes in particular such weapons as those which it maintains have been provided by the Russian Federation. Ukraine adds that the Russian Federation knew that the “illegal armed groups” supported by it were perpetrating acts of terrorism. It also asserts that the obligation contained in Article 18 (see paragraph 72 below) to co-operate in the prevention of the financing of terrorism “is a broad one” and includes the obligation to take all practicable measures to prevent individuals from providing or collecting funds for terrorism as well as the State obligation not to finance terrorism directly. It claims that the Russian Federation has failed to co-operate in the prevention of financing acts of terrorism, and has “unlawfully financed terrorism directly” in violation of Article 18 of the ICSFT.

*

26. The Russian Federation denies that there is any dispute between the Parties as to the interpretation and application of the ICSFT. Although it agrees that, during the conflict which started in spring 2014, instances of alleged indiscriminate shelling and other humanitarian law violations by both sides have been reported, it considers that these acts are not capable of falling within the definition of acts of terrorism provided for in Article 2, paragraph 1, of the Convention (see paragraph 73 below). The Russian Federation contends that no international body or organization seized of the current situation in eastern Ukraine has qualified the ongoing hostilities in terms of terrorism. It further contends that Ukraine has failed to submit any document from any international organization or any State other than Ukraine itself, characterizing the acts of the DPR

and the LPR as acts of terrorism. The Russian Federation adds that most of the civilian casualties are in the territories under the control of the DPR and the LPR, and that multiple sources report that Ukrainian armed forces are themselves responsible for numerous acts of indiscriminate shelling, starting with the shelling of residential areas in Slavyansk in May 2014, where many civilians were killed and wounded by the shelling by Ukrainian armed forces, while residential buildings, hospitals and infrastructures were destroyed or damaged. In respect of the allegations regarding the shooting-down of Malaysia Airlines Flight MH17, the Russian Federation argues that the evidence does not suggest that any funds were provided with the intent or knowledge that they were to be used for acts of terrorism against civilians.

27. The Russian Federation claims that, in any event, the ICSFT obliges States to co-operate in the prevention and punishment of the financing by private actors of terrorist activities, but that it does not cover matters of State responsibility for the financing of such activities by the State itself. It contends that the text of the Convention, its drafting history, as well as subsequent practice, confirm that it was only meant to address State obligations with respect to private actors, rather than broadly regulating issues of a State's responsibility for its own acts. It follows that, in the opinion of the Russian Federation, purported instances of a State itself allegedly financing acts of terrorism as defined by the Convention do not fall within the jurisdiction provided for in Article 24 of the Convention.

28. More specifically, the Russian Federation argues that the duty to prevent, as laid down in Article 18 of the ICSFT, is significantly limited in various respects. First, States are only under an obligation to co-operate in the prevention of the specific acts of financing criminalized by the Convention. Article 18 of the Convention does not contain an obligation per se to prevent such acts. Secondly, the obligation is limited to co-operation in the prevention of "preparations in [the] respective territories" of States parties for the commission of acts prohibited by the Convention. Thirdly, a State party to the Convention may only be held responsible for breaching Article 18 if the acts prohibited by the Convention have actually been committed.

* *

29. The Court considers that, as it appears from the record of the proceedings, the Parties differ on the question of whether the events which occurred in eastern Ukraine starting from the spring of 2014 have given rise to issues relating to their rights and obligations under the ICSFT. The Court notes that Ukraine contends that the Russian Federation has failed to respect its obligations under Articles 8, 9, 10, 11, 12 and 18. In particular, Ukraine maintains that the Russian Federation has failed to take appropriate measures to prevent the financing of terrorism in Ukraine by public and private actors on the territory of the Russian Federation and that it has repeatedly refused to investigate, prosecute, or extradite "offenders within its territory brought to its attention by Ukraine". The Russian Federation positively denies that it has committed any of the violations set out above.

30. The Court must ascertain whether the acts of which Ukraine complains are *prima facie* capable of falling within the provisions of the Convention (see paragraph 22 above). The Court considers that at least some of the allegations made by Ukraine (see paragraph 29 above) appear to be capable of falling within the scope of the ICSFT *ratione materiae*.

31. In the view of the Court, the above-mentioned elements are sufficient at this stage to establish *prima facie* the existence of a dispute between the Parties concerning the interpretation and application of the ICSFT. During the hearings, the question of the definition of “funds” in Article 1, paragraph 1, of the Convention (see paragraph 73 below) was raised. The question was also raised whether acts of financing of terrorist activities by the State itself fall within the scope of the Convention. For the purposes of determining the existence of a dispute relating to the Convention, the Court does not need to make any pronouncement on these issues.

(b) The International Convention on the Elimination of All Forms of Racial Discrimination

32. Ukraine claims that a dispute exists between the Parties concerning the interpretation and application of CERD. In particular, it asserts that the Russian Federation, by discriminating against Crimean Tatars and ethnic Ukrainians in Crimea, has violated provisions of this Convention.

33. Ukraine contends that, following the purported annexation of the Crimean peninsula in March 2014, the Russian Federation has used its control over this territory to impose a policy of Russian ethnic dominance, “pursuing the cultural erasure of non-Russian communities through a systematic and ongoing campaign of discrimination”.

34. With regard to the Crimean Tatar community, Ukraine argues that the Russian Federation has suppressed its political leaders and institutions — having, in particular, “outlawed the *Mejlis*, the central self-governing institution of Crimean Tatar life” — and has “prevented important cultural gatherings, perpetrated a regime of disappearances and murders, conducted a campaign of arbitrary searches and detentions, silenced media voices, and suppressed educational rights”. Ukraine alleges that, “[j]ust recently, eleven Crimean Tatars who were peacefully protesting against arbitrary searches were forcefully detained”. With regard to ethnic Ukrainians living in Crimea, Ukraine states that the Russian Federation has restricted their educational rights and ability to maintain their language and culture, and imposed discriminatory limitations on ethnic Ukrainian media in the peninsula.

35. The Russian Federation contends that there is no dispute between the Parties concerning the interpretation or application of CERD. It claims that Ukraine has failed to demonstrate that, prima facie, the alleged facts constitute violations of the provisions of the Convention. It asserts, in particular, that the Applicant has not demonstrated that the searches, preventive measures or criminal proceedings undertaken by the Crimean authorities against certain people of Tatar or Ukrainian origin were applied in a discriminatory manner on the basis of the racial or ethnic origin of those concerned. In its view, neither has Ukraine established that the Russian authorities were engaged in a systematic practice of forced disappearances and murders motivated by racial or ethnic considerations.

36. The Russian Federation further contests Ukraine's allegations that the educational rights of the Tatar and Ukrainian communities have been restricted. It claims, for instance, that the Crimean Federal University recognizes the Ukrainian and Tatar languages as languages of instruction, and that there are a dozen schools that offer Ukrainian-language education. The Russian Federation also disagrees with Ukraine's assertion that the Respondent has been seeking to silence the Tatar and Ukrainian media in Crimea. It argues that more than 80 radio stations, television channels and newspapers in the Ukrainian and Tatar languages are registered in Crimea today and that only a few media outlets in those two languages were not registered, on the ground that their application file was incomplete. The Russian Federation further denies that it has suppressed the political leaders and institutions of the Tatar and Ukrainian communities. With respect to the *Mejlis*, the Russian Federation claims that it has been wrongly characterized by Ukraine as "the central self-governing institution of Crimean Tatar life": it is not the only representative body of the Crimean Tatars. It adds that, in any event, the decision to ban the *Mejlis* was taken on security grounds and for public order reasons and bore no relation to the ethnicity of its members.

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37. The Court considers that, as evidenced by the documents placed before the Court, the Parties differ on the question of whether the events which occurred in Crimea starting from late February 2014 have given rise to issues relating to their rights and obligations under CERD. The Court notes that Ukraine has claimed that the Russian Federation violated its obligations under this Convention by systematically discriminating against and mistreating the Crimean Tatars and ethnic Ukrainians in Crimea, suppressing the political and cultural expression of Crimean Tatar identity, banning the *Mejlis*, preventing Crimean Tatars and ethnic Ukrainians from gathering to celebrate and commemorate important cultural events, and by suppressing the Crimean Tatar language and Ukrainian-language education. The Russian Federation has positively denied that it has committed any of the violations set out above.

38. The acts referred to by Ukraine, in particular the banning of the *Mejlis* and the alleged restrictions upon the cultural and educational rights of Crimean Tatars and ethnic Ukrainians, appear to be capable of falling within the scope of CERD *ratione materiae*.

39. In the view of the Court, the above-mentioned elements are sufficient at this stage to establish *prima facie* the existence of a dispute between the Parties concerning the interpretation and application of CERD.

3. Procedural preconditions

40. The ICSFT and CERD set out procedural preconditions to be fulfilled before the seisin of the Court.

41. Under Article 24, paragraph 1, of the ICSFT (see paragraph 20 above), a dispute that “cannot be settled through negotiation within a reasonable time” shall be submitted to arbitration at the request of one of the parties and it may be referred to the Court only if the parties are unable to agree on the organization of the arbitration within six months from the date of the request.

42. Under Article 22 of CERD (see paragraph 21 above), the dispute referred to the Court must be a dispute “not settled by negotiation or by the procedures expressly provided for in this Convention”. In addition, Article 22 states that the dispute may be referred to the Court at the request of one of the parties thereto only if the parties have not agreed to another mode of settlement. The Court notes that neither Party contests that this latter condition is fulfilled in the case.

43. Regarding the negotiations to which both compromissory clauses refer, the Court observes that negotiations are distinct from mere protests or disputations and require a genuine attempt by one of the parties to engage in discussions with the other party, with a view to resolving the dispute. Where negotiations are attempted or have commenced, the precondition of negotiation is only met when the attempt to negotiate has been unsuccessful or where negotiations have failed, become futile or deadlocked. In order to meet the precondition of negotiation contained in the compromissory clause of a treaty, “the subject-matter of the negotiations must relate to the subject-matter of the dispute which, in turn, must concern the substantive obligations contained in the treaty in question” (see *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)*, pp. 132-133, paras. 157-161).

44. At this stage of the proceedings, the Court first has to assess whether it appears that Ukraine genuinely attempted to engage in negotiations with the Russian Federation, with a view to resolving their dispute concerning the latter’s compliance with its substantive obligations under the ICSFT and CERD, and whether Ukraine pursued these negotiations as far as possible.

45. With regard to the dispute under the ICSFT, if the Court finds that negotiations took place but failed, it will also have to examine whether, prior to the seisin of the Court, Ukraine attempted to settle this dispute through arbitration, under the conditions provided for in Article 24, paragraph 1, of the Convention.

46. With regard to CERD, along with the precondition of negotiation, Article 22 includes another precondition, namely the use of “the procedures expressly provided for in the Convention”. In this context, the Court will need to determine whether, for the purposes of its decision on the Request for the indication of provisional measures, it is necessary to examine the question of the relationship between both preconditions and Ukraine’s compliance with the second one.

(a) The International Convention for the Suppression of the Financing of Terrorism

47. Regarding the procedural conditions set out in Article 24, paragraph 1, of the ICSFT, Ukraine contends that during a period of two years it has made “efforts to negotiate a resolution to the dispute” with the Russian Federation, including the exchange of more than 40 diplomatic Notes and participation in four rounds of bilateral negotiations. According to Ukraine, the Russian Federation “largely failed to respond to Ukraine’s correspondence, declined to engage on the substance of the dispute, and consistently failed to negotiate in a constructive manner”, arguing that Ukraine’s claims did not raise issues under the ICSFT. Ukraine contends that it therefore became apparent that the dispute could not be settled by way of negotiations within a reasonable time, and that further negotiations would be futile. Consequently, by a Note Verbale dated 19 April 2016, Ukraine suggested to the Russian Federation that the dispute be submitted to arbitration, pursuant to Article 24, paragraph 1, of the ICSFT.

48. Ukraine explains that it was more than two months before the Russian Federation agreed to discuss the arbitration. Ukraine asserts that in August 2016 it informed the Russian Federation of its views on how an arbitration should be organized. It indicates that it was only in October 2016 that the Russian Federation stated “clearly its intent to participate in an arbitration if the parties reached agreement on its organization” and presented a partial counter-proposal. Ukraine contends that it continued to meet with the Russian Federation and engaged in diplomatic exchanges in an attempt to reach agreement on the organization of the arbitration. According to Ukraine, however, no agreement could be reached. Ukraine contends that the main reasons why the Parties were unable to agree upon arbitration were that there had been months of delay on the part of the Russian Federation and a divergence of views on various important issues. Because more than six months had passed since Ukraine’s request for arbitration without the parties reaching agreement on the organization of the arbitration, Ukraine claims that the procedural conditions of Article 24, paragraph 1, of the ICSFT had been met when it seised the Court.

49. The Russian Federation, for its part, claims that Ukraine has not fulfilled its obligation to negotiate, as required by Article 24 of the ICSFT. It contends, in particular, that Ukraine did not negotiate in good faith as to the substance of its claim that the Russian Federation had allegedly violated its obligations under the Convention; and that it did not make a bona fide effort to try to set up an arbitral tribunal.

50. With respect to its first argument, the Russian Federation explains that, throughout the exchange of diplomatic Notes, Ukraine constantly insisted on its own position without showing any willingness to engage in a meaningful discussion with the Russian Federation on relevant issues. In particular, it contends, Ukraine consistently put forward allegations that went well beyond the scope of the Convention. The Russian Federation asserts that nearly all of Ukraine's diplomatic Notes, which were meant to address issues arising under the Convention, were closely interwoven with accusations against the Russian Federation regarding the prohibition of the use of force. The Russian Federation claims to have requested, on several occasions, that Ukraine provide evidentiary material and comprehensive information and data in order to be able to verify Ukraine's claims. The Russian Federation states that, should such elements have substantiated Ukraine's claims, it would have then taken the appropriate measures as required by the Convention. However, Ukraine did not follow up on such requests, thereby rendering pointless the further round of negotiations that had been envisaged.

51. With respect to its second argument, the Russian Federation states, in particular, that Ukraine has never submitted concrete proposals for an arbitration agreement. According to the Russian Federation, resorting to an *ad hoc* chamber of this Court as proposed by Ukraine could not qualify as arbitration within the meaning of Article 24 of the ICSFT. In the Respondent's view, it was the Russian Federation which submitted full drafts for an arbitration agreement, as well as draft rules of procedure with a view to addressing the concerns of Ukraine. The Russian Federation adds that it never received any specific comments from Ukraine on its draft arbitration agreement.

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52. The Court notes that it appears from the record of the proceedings that issues relating to the application of the ICSFT with regard to the situation in eastern Ukraine have been raised in bilateral contacts and negotiations between the Parties. In particular, Ukraine addressed a diplomatic Note to the Russian Federation on 28 July 2014 in which it alleged that the latter was violating its obligations under the ICSFT. By means of a diplomatic Note of 15 October 2015, the Russian Federation denied the claims being made by Ukraine. Further diplomatic exchanges followed, in which Ukraine specifically referred to alleged breaches by the Russian Federation of its obligations under the ICSFT. Over a period of two years, the Parties also held four in-person negotiating sessions specifically addressed to the ICSFT.

These facts demonstrate that, prior to the filing of the Application, Ukraine and the Russian Federation had engaged in negotiations concerning the latter's compliance with its substantive obligations under the ICSFT. It appears from the facts on the record that these issues could not then be resolved by negotiations.

53. With regard to the precondition relating to the submission of the dispute to arbitration, the Court notes that by a Note Verbale dated 19 April 2016 Ukraine submitted a request for arbitration to the Russian Federation. The Russian Federation responded by means of a Note Verbale dated 23 June 2016, in which it offered to discuss "issues concerning setting up" the arbitration at a meeting it suggested should be held a month later. By a Note Verbale dated 31 August 2016 Ukraine proposed to the Russian Federation to resort to the mechanism of an *ad hoc* Chamber of this Court. In its Note Verbale to Ukraine, dated 3 October 2016, the Russian Federation rejected this proposal and submitted its own draft arbitration agreement and accompanying rules of procedure. At a meeting on 18 October 2016, the Parties discussed the organization of the arbitration but no agreement was reached. Further exchanges between the Parties did not resolve the impasse. It appears that, within six months from the date of the arbitration request, the Parties were unable to reach an agreement on its organization.

54. The above-mentioned elements are sufficient at this stage to establish, *prima facie*, that the procedural preconditions under Article 24, paragraph 1, of the ICSFT for the seisin of the Court have been met.

(b) The International Convention on the Elimination of All Forms of Racial Discrimination

55. Regarding the procedural conditions set out in Article 22 of CERD, Ukraine contends that it "has made extensive efforts to negotiate a resolution to the dispute, including the exchange of more than 20 diplomatic Notes and participation in three rounds of bilateral negotiation sessions". Ukraine refers, in particular, to a diplomatic Note dated 23 September 2014, in which it "brought a series of violations of the CERD to Russia's attention". However, Ukraine states that the Russian Federation largely failed to respond to Ukraine's correspondence, declined to engage on the substance of the dispute, and consistently failed to negotiate in a constructive manner. It failed to engage in detailed discussions of the claims presented by Ukraine, and avoided substantive discussions of the relevant issues. According to Ukraine, during the three bilateral negotiation sessions held in Minsk to try to settle the dispute, the "Russian Federation never provided straight and specific responses on the issues raised". Ukraine alleges that, at the same time as it was refusing to engage in a meaningful discussion of issues of discrimination in Crimea, the Russian Federation was continuing and intensifying its pattern of discrimination against Crimean Tatars and ethnic Ukrainians in Crimea. It therefore became apparent that "further negotiations would be futile, and prejudicial to the people living under a discriminatory occupation regime". According to Ukraine, the procedural conditions of Article 22 of CERD have thus been complied with.

56. Ukraine further states that the Russian Federation is wrong in claiming that Ukraine was obliged both to exhaust bilateral negotiations, and to attempt proceedings before the Committee on the Elimination of Racial Discrimination established under the Convention (hereinafter the "CERD

Committee”). In any event, whether or not the preconditions of Article 22 of CERD are cumulative, is not, according to Ukraine, a matter for the current stage of the proceedings, which only requires a finding of prima facie jurisdiction.

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57. The Russian Federation, for its part, claims that none of the procedural conditions set out in Article 22 of CERD has been fulfilled by Ukraine. First, it contends that there is no evidence of a “genuine attempt to negotiate”. Although the Respondent acknowledges that, for two and a half years, exchanges have taken place between the Parties, in the form of Notes Verbales and three rounds of meetings, it contends that Ukraine has merely placed on record a certain number of accusations that have constantly shifted from one Note Verbale to the next, rendering it impossible to establish the positions of the two Parties on the questions at issue. Secondly, the Russian Federation observes that Ukraine did not refer its claims to the CERD Committee, whereas Articles 11 to 13 of the Convention establish a specific procedure for bringing State-to-State complaints before this Committee. It adds that, in the exchange of diplomatic Notes, it had expressly recalled to the Applicant, on 27 November 2014, that it should follow this procedure. It recalls that the Committee can trigger an urgent action procedure when a situation requires “immediate attention to prevent or limit the scale or number of serious violations of the Convention”.

58. The Russian Federation is of the view that the two preconditions in Article 22 of CERD — namely, recourse to negotiations and to the procedures expressly provided for in the Convention — are cumulative. It observes that the Court has recognized in its jurisprudence that, at the time CERD was being elaborated, the idea of submitting to the compulsory settlement of disputes by the Court was not readily acceptable to a number of States, which explains why additional limitations to resort to judicial settlement — in the form of prior negotiations and other settlement procedures without time-limits — were provided for with a view to facilitating wider acceptance of CERD by States.

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59. The Court recalls that it has earlier concluded that the terms of Article 22 of CERD established preconditions to be fulfilled before the seisin of the Court (see *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. 128, para. 141). It notes that, as evidenced by the record of the proceedings, issues relating to the application of CERD with regard to the situation in Crimea have been raised in bilateral contacts and negotiations between the Parties, which have exchanged numerous diplomatic Notes and held three rounds of bilateral negotiations on this subject. These facts demonstrate that, prior to the filing of the

Application, Ukraine and the Russian Federation engaged in negotiations regarding the question of the latter's compliance with its substantive obligations under CERD. It appears from the record that these issues had not been resolved by negotiations at the time of the filing of the Application.

60. Article 22 of CERD also refers to "the procedures expressly provided for" in the Convention. According to Article 11 of the Convention, "[i]f a State Party considers that another State Party is not giving effect to the provisions of this Convention", the matter may be brought to the attention of the CERD Committee. Neither Party claims that the issues in dispute have been brought to the attention of the CERD Committee. Although both Parties agree that negotiations and recourse to the procedures referred to in Article 22 of CERD constitute preconditions to be fulfilled before the seisin of the Court, they disagree as to whether these preconditions are alternative or cumulative. The Court considers that it need not make a pronouncement on the issue at this stage of the proceedings. Consequently the fact that Ukraine did not bring the matter before the CERD Committee does not prevent the Court from concluding that it does have prima facie jurisdiction.

61. The Court considers, in view of all the foregoing, that the procedural preconditions under Article 22 of CERD for the seisin of the Court have, prima facie, been complied with.

4. Conclusion as to prima facie jurisdiction

62. In light of the foregoing, the Court considers that, prima facie, it has jurisdiction pursuant to Article 24, paragraph 1, of the ICSFT and Article 22 of CERD to deal with the case to the extent that the dispute between the Parties relates to the "interpretation or application" of the respective Convention.

II. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE MEASURES REQUESTED

1. General introduction

63. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits thereof. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (see, for example, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Provisional Measures*, Order of 7 December 2016, para. 71).

64. At this stage of the proceedings, the Court, however, is not called upon to determine definitively whether the rights which Ukraine wishes to see protected exist; it need only decide whether the rights claimed by Ukraine on the merits, and for which it is seeking protection, are plausible (see, for example, *ibid.*, para. 78). Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested (*ibid.*, para. 72).

2. The International Convention for the Suppression of the Financing of Terrorism

65. In its Application, Ukraine asserts rights under Articles 8, 9, 10, 11, 12 and 18 of the ICSFT. However, for the purposes of its Request for the indication of provisional measures, in order to identify the rights which it seeks to protect pending the decision on the merits, Ukraine relies exclusively upon Article 18 of the ICSFT.

66. Ukraine submits that, under Article 18 of the ICSFT, it has a right to the Russian Federation's co-operation in preventing the financing of terrorism, i.e., the provision or collection of funds with the intention that they should be used, or in the knowledge that they will be used, in order to carry out acts of terrorism defined in Article 2, paragraphs 1 (a) and 1 (b) of the Convention. As examples of such acts, committed on its territory, Ukraine refers, in particular, to (a) the bombing of peaceful marchers in Kharkiv; (b) the bombardment of Mariupol; (c) the attacks on Volnovakha and Kramatorsk; and (d) the shooting-down of Malaysia Airlines Flight MH17, all of which, according to the Applicant, plausibly involved an "intent to cause death or serious injury to civilians" and had a plausible purpose "to intimidate a population".

67. Ukraine contends that a state of armed conflict does not exclude the application of the ICSFT. According to Ukraine, international humanitarian law is not the only relevant law applicable in situations of armed conflict. The ICSFT also applies in such situations, as long as those attacked are not actively engaged in armed conflict. Civilians living far from conflict zones who are not taking an active part in hostilities can be victims of terrorist attacks financed by external suppliers of war materiel. Ukraine argues that the obligations under the ICSFT are different from those under international humanitarian law, because that convention addresses the financing of terrorism, "a topic not covered at all by the laws governing armed conflict".

68. Ukraine maintains that, given the evidence before the Court, "it is far more than simply 'plausible'" that the Russian Federation has engaged and continues to engage in prohibited behaviour under the ICSFT. Ukraine states that various "highly credible international organizations" have found that the Russian Federation "has financed its proxies in Ukraine for many years". In this regard, Ukraine refers, *inter alia*, to the reports of the Special Monitoring Mission of the Organization for Security and Co-operation in Europe (OSCE) detailing multiple military convoys of tanks, armoured personnel carriers, and heavy artillery, moving from Russian territory across the Ukrainian border.

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69. The Russian Federation claims that the specific rights claimed by Ukraine under the ICSFT are not plausible. In particular, referring to the right to co-operation under Article 18 of the Convention, which is "the sole right that Ukraine asserts with respect to the Request", it explains that this right is linked to the existence of financing of acts of terrorism as specified in Article 2. However, according to the Russian Federation, there is no plausible allegation of acts of

terrorism under the Convention, committed on the territory of Ukraine. The Respondent contends that the civilian casualties referred to by Ukraine in its Request were caused by indiscriminate shelling of areas controlled by both sides, and not by acts of terrorism within the meaning of Article 2. In this regard, it adds that Ukraine's own evidence shows that the Applicant has equally engaged in these acts.

70. The Russian Federation asserts that Ukraine has mischaracterized the nature of the case by erroneously seeking to invoke the ICSFT. According to the Russian Federation, the facts at hand fall directly within the scope of international humanitarian law. The Respondent points out that reports on human rights prepared by organizations such as the Office of the United Nations High Commissioner for Human Rights (OHCHR), the OSCE and the International Committee of the Red Cross (ICRC) refer to the need to "respect international humanitarian law" and to "violations of the [international humanitarian law] principles of distinction, proportionality and precaution", but never characterize such acts as acts of terrorism. The Russian Federation states that incidents of attacks in residential areas are not plausibly governed by the ICSFT and that, by contrast, international humanitarian law is self-evidently relevant.

71. According to the Russian Federation, first, it cannot have breached its obligations under Article 18 of the ICSFT, since it has not been demonstrated that the armed groups in eastern Ukraine were engaging in acts of terrorism. Secondly the Russian Federation recalls its position that the ICSFT obliges States to co-operate in the punishment and prevention of the financing by private actors of terrorist activities. In any event, it contends that there is no plausible allegation that it financed terrorism within the meaning of Article 2, paragraph 1, of the ICSFT. It recalls that Article 2 is concerned solely with funds supplied with the knowledge or intent that they are to be used for acts of terrorism, and that no evidence has been adduced that the Russian Federation purposefully provided funds for the commission of alleged terrorist acts.

* * *

72. The Court notes that the ICSFT imposes a number of obligations on States parties with regard to the prevention and suppression of the financing of terrorism. However, for the purposes of its Request for the indication of provisional measures, Ukraine invokes its rights and the respective obligations of the Russian Federation solely under Article 18 of the Convention, which reads as follows:

"1. States Parties shall co-operate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

- (a) measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;
- (b) measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:
 - (i) adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;
 - (ii) with respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;
 - (iii) adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;
 - (iv) requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further co-operate in the prevention of offences set forth in article 2 by considering:

- (a) measures for the supervision, including, for example, the licensing, of all money-transmission agencies;
- (b) feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further co-operate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

- (a) establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;
- (b) co-operating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:
 - (i) the identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;
 - (ii) the movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).”

73. Article 18 should be read together with Article 2 of the ICSFT because under Article 18 States parties must co-operate in the prevention of the offences set forth in Article 2, which reads as follows:

“1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
- (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

.....

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

- (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;
- (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;
- (c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or
 - (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.”

Under Article 1, paragraph 1, of the Convention, the notion of “funds” which Article 2 refers to

“means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit”.

74. Thus, the obligations under Article 18 and the corresponding rights are premised on the acts identified in Article 2, namely the provision or collection of funds with the intention that they should be used or in the knowledge that they are to be used in order to carry out acts set out in paragraphs 1 (a) and 1 (b) of this Article. Consequently, in the context of a request for the indication of provisional measures, a State party to the Convention may rely on Article 18 to require another State party to co-operate with it in the prevention of certain types of acts only if it is plausible that such acts constitute offences under Article 2 of the ICSFT.

75. In the present case, the acts to which Ukraine refers (see paragraph 66 above) have given rise to the death and injury of a large number of civilians. However, in order to determine whether the rights for which Ukraine seeks protection are at least plausible, it is necessary to ascertain whether there are sufficient reasons for considering that the other elements set out in Article 2, paragraph 1, such as the elements of intention or knowledge noted above (see paragraph 74), and the element of purpose specified in Article 2, paragraph 1 (b), are present. At this stage of the proceedings, Ukraine has not put before the Court evidence which affords a sufficient basis to find it plausible that these elements are present.

76. Therefore, the Court concludes that the conditions required for the indication of provisional measures in respect of the rights alleged by Ukraine on the basis of the ICSFT are not met.

77. The above conclusion is without prejudice to the Parties' obligation to comply with the requirements of the ICSFT, and, in particular, Article 18 thereof.

3. The International Convention on the Elimination of All Forms of Racial Discrimination

78. In its Application, Ukraine asserts rights under Articles 2, 3, 4, 5 and 6 of CERD. However, for the purposes of its Request for the indication of provisional measures, in order to identify the rights which it seeks to protect pending a decision on the merits, Ukraine relies exclusively on Articles 2 and 5 of the Convention (see paragraph 80 below). Ukraine states that each of the measures requested relate to these rights. In this respect, it recalls that it is requesting the Court to order the Russian Federation to refrain from any act of racial discrimination, to suspend the decision to ban the *Mejlis* of the Crimean Tatar People, to take all necessary steps to halt the disappearance of Crimean Tatar individuals and to suspend restrictions on Ukrainian-language education.

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79. The Russian Federation considers that the rights Ukraine asserts are not plausible and are not grounded in a possible interpretation of CERD. It explains that it is not enough to allege that a person has suffered a prejudice or that one of his or her rights under the Convention has been infringed. It must be shown that the prejudice or the infringement of a right is discriminatory in nature. Yet, according to the Russian Federation, Ukraine has not established that the Respondent has adopted measures which had a discriminatory effect on the Tatar and Ukrainian communities, showing a differentiation of treatment between those communities and the other residents in Crimea. Focusing on Articles 2 and 5 of CERD, the Russian Federation considers that Ukraine merely gives a list of alleged violations of human rights that have affected people of Tatar or Ukrainian origin; at no point does it explain how these alleged violations constitute racial discrimination under CERD.

* *

80. The Court notes that CERD imposes a number of obligations on States parties with regard to the elimination of racial discrimination in all its forms and manifestations. For the purposes of CERD, the term “racial discrimination” includes discrimination on the basis of ethnic origin (Article 1, paragraph 1). Articles 2 and 5 of the Convention, invoked by Ukraine for the purposes of its Request for the indication of provisional measures, read as follows:

“Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

- (a) each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
- (b) each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
- (c) each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
- (d) each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
- (e) each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”;

“Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) the right to equal treatment before the tribunals and all other organs administering justice;
- (b) the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) political rights, in particular the right to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) other civil rights, in particular:
 - (i) the right to freedom of movement and residence within the border of the State;
 - (ii) the right to leave any country, including one's own, and to return to one's country;
 - (iii) the right to nationality;
 - (iv) the right to marriage and choice of spouse;
 - (v) the right to own property alone as well as in association with others;
 - (vi) the right to inherit;
 - (vii) the right to freedom of thought, conscience and religion;
 - (viii) the right to freedom of opinion and expression;
 - (ix) the right to freedom of peaceful assembly and association;
- (e) economic, social and cultural rights, in particular:
 - (i) the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) the right to form and join trade unions;
 - (iii) the right to housing;
 - (iv) the right to public health, medical care, social security and social services;
 - (v) the right to education and training;
 - (vi) the right to equal participation in cultural activities;
- (f) the right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks”.

81. The Court observes that there is a correlation between respect for individual rights, the obligations of States parties under CERD and the right of States parties to seek compliance therewith (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*, pp. 391-392, para. 126).

82. The Court notes that Articles 2 and 5 of CERD are intended to protect individuals from racial discrimination. Consequently, in the context of a request for the indication of provisional measures, a State party to CERD may avail itself of the rights under Articles 2 and 5 only if it is plausible that the acts complained of constitute acts of racial discrimination under the Convention.

83. In the present case, on the basis of the evidence presented before the Court by the Parties, it appears that some of the acts complained of by Ukraine fulfil this condition of plausibility. This is the case with respect to the banning of the *Mejlis* and the alleged restrictions on the educational rights of ethnic Ukrainians.

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84. The Court now turns to the issue of the link between the rights claimed and the provisional measures requested.

85. The provisional measures sought by Ukraine in paragraph 24, points (b) to (e) of its Request, which were reiterated at the close of its oral argument, are aimed at preventing the Russian Federation from committing acts of racial discrimination against persons, groups of persons, or institutions in the Crimean peninsula (point (b)); preventing acts of political and cultural suppression against the Crimean Tatar people, including suspending the decree banning the *Mejlis* (point (c)); preventing the disappearance of Crimean Tatar individuals and ensuring prompt investigation of disappearances that have already occurred (point (d)); and preventing acts of political and cultural suppression against the ethnic Ukrainian people in Crimea, including suspending restrictions on Ukrainian-language education (point (e)).

86. As the Court has already recalled, there must be a link between the measures which are requested and the rights which are claimed to be at risk of irreparable prejudice. In the current proceedings, this is the case with respect to the measures aimed at safeguarding the rights of Ukraine under Articles 2 and 5 of CERD with regard to the ability of the Crimean Tatar community to conserve its representative institutions and with regard to the need to ensure the availability of Ukrainian-language education in schools in Crimea.

III. RISK OF IRREPARABLE PREJUDICE AND URGENCY

87. In view of the conclusion reached in paragraph 76, the issue of the risk of irreparable prejudice and urgency only arises in relation to the provisional measures sought with regard to CERD.

88. The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings (see, for example, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Provisional Measures*, Order of 7 December 2016, para. 82).

89. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision (*ibid.*, para. 83). The Court must therefore consider whether such a risk exists at this stage of the proceedings.

90. The Court is not called upon, for the purposes of its decision on the Request for the indication of provisional measures, to establish the existence of breaches of CERD, but to determine whether the circumstances require the indication of provisional measures for the protection of rights under this instrument. It cannot at this stage make definitive findings of fact. The right of each Party to submit arguments in respect of the merits remains unaffected by the Court's decision on the Request for the indication of provisional measures.

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91. Ukraine maintains that in Crimea, the Russian Federation is conducting a “policy of cultural erasure” through its discrimination against the Crimean Tatar and ethnic Ukrainian population. Ukraine claims that the risk of irreparable prejudice to the rights it invokes is imminent in view of the persecution of the community's leaders and the banning of the *Mejlis* (described by Ukraine as the community's central political and cultural institution), as well as the suppression of the cultural and educational rights of Crimean Tatars and ethnic Ukrainians. Ukraine refers to General Assembly resolution 71/205 of 19 December 2016 which expressed serious concern over the banning of the *Mejlis*. Ukraine in addition refers to various reports of the OHCHR which, it states, are highly critical of the intimidatory tactics used by the Russian Federation to silence political expression by the Crimean Tatar community. Ukraine also cites reports of the OSCE's Human Rights Assessment Mission on Crimea and another report of the OHCHR which voiced great concern over the rapid decline of Ukrainian-language instruction in Crimea.

92. According to Ukraine, without the interim measures of protection that Ukraine urgently seeks, by the time this case is decided, “the ethnic Ukrainian and Crimean Tatar communities will be severely weakened or destroyed as culturally distinct communities”. Ukraine stresses that all of

the prejudice caused to those communities in the intervening years will be irreparable. It points out that “[t]he vulnerability of these non-Russian groups is confirmed by the numbers who have left Crimea since the peninsula was occupied”.

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93. The Russian Federation, for its part, denies that there exists a risk of irreparable prejudice to the rights of the Applicant under CERD. As regards the decision to ban the *Mejlis*, the Russian Federation states that, in his report on the human rights situation in Ukraine (16 August to 15 November 2016), the United Nations High Commissioner for Human Rights, who was aware of the contents of General Assembly resolution 71/205 of 19 December 2016, because this document was drafted before the High Commissioner submitted his last report, made no criticism of the decision of the Supreme Court of Crimea to ban the *Mejlis*, which was subsequently confirmed by the Supreme Court of the Russian Federation. The Russian Federation contends that these judicial decisions were taken on security grounds and for public order reasons and bore no relation to the ethnicity of the members of the *Mejlis*.

94. The Russian Federation further asserts that the situation is not urgent, as alleged by Ukraine. The Russian Federation points out that throughout the two and a half years of consultations between the Parties, Ukraine has never made any reference to any kind of urgency or to an imminent risk of prejudice. Quite the contrary, Ukraine has acted as if there were no urgency at all. In addition, the Russian Federation argues that the CERD Committee, which is in its view the most competent body in this area and has all the information to hand, has not deemed it necessary to trigger the urgent action procedure at its disposal, despite having the possibility of doing so at any time and being aware of the situation of minorities in Crimea for a long time. According to the Respondent, this fact “deprives of all credibility Ukraine’s accusation that the Russian authorities are pursuing a systematic campaign of cultural erasure in Crimea with the aim of eliminating the Tatar and Ukrainian communities”.

95. Furthermore, the Russian Federation contends that it has taken substantive measures to support the Crimean Tatar and Ukrainian communities and to promote their culture. It refers, in particular, to the adoption of a presidential decree on 21 April 2014 on the rehabilitation of the Crimean Tatar people, providing support for their revival and development, and granting them specific social benefits. The Russian Federation states that it is aware of the need to provide education in the language of that community, which, according to it, is being met. It also mentions the fact that Crimean Tatars are represented in the political, legislative and judicial institutions of the Republic of Crimea. It furthermore considers it important to point out that Crimea’s new Constitution, which was adopted on 11 April 2014, establishes both the Crimean Tatar and Ukrainian languages as official languages of Crimea. The Russian Federation adds that the educational rights of the Tatar and Ukrainian communities are duly protected.

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96. The Court notes that certain rights in question in these proceedings, in particular, the political, civil, economic, social and cultural rights stipulated in Article 5, paragraphs (c), (d) and (e) of CERD are of such a nature that prejudice to them is capable of causing irreparable harm. Based on the information before it at this juncture, the Court is of the opinion that Crimean Tatars and ethnic Ukrainians in Crimea appear to remain vulnerable.

97. In this regard, the Court takes note of the report on the human rights situation in Ukraine (16 May to 15 August 2016), whereby the OHCHR acknowledged that “the ban on the *Mejlis*, which is a self-government body with quasi-executive functions, appears to deny the Crimean Tatars — an indigenous people of Crimea — the right to choose their representative institutions”, as well as of his report on the human rights situation in Ukraine (16 August to 15 November 2016), in which the OHCHR explained that none of the Crimean Tatar NGOs currently registered in Crimea can be considered to have the same degree of representativeness and legitimacy as the *Mejlis*, elected by the Crimean Tatars’ assembly, namely the *Kurultai*. The Court also takes note of the report of the OSCE Human Rights Assessment Mission on Crimea (6 to 18 July 2015), according to which “[e]ducation in and of the Ukrainian language is disappearing in Crimea through pressure on school administrations, teachers, parents and children to discontinue teaching in and of the Ukrainian language”. The OHCHR has observed that “[t]he start of the 2016-2017 school year in Crimea and the city of Sevastopol confirmed the continuous decline of Ukrainian as a language of instruction” (report on the human rights situation in Ukraine (16 August to 15 November 2016)). These reports show, prima facie, that there have been restrictions in terms of the availability of Ukrainian-language education in Crimean schools.

98. The Court considers that there is an imminent risk that the acts, as set out above, could lead to irreparable prejudice to the rights invoked by Ukraine.

IV. CONCLUSION AND MEASURES TO BE ADOPTED

99. The Court concludes from all of the above considerations that the conditions required by its Statute for it to indicate provisional measures in respect of CERD are met. It is therefore appropriate, pending its final decision, for the Court to indicate certain measures in order to protect the rights claimed by Ukraine, as identified above.

100. The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are in whole or in part other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power on several occasions in the past (see, for example, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Provisional Measures*, Order of 7 December 2016, para. 94).

101. In the present case, having considered the terms of the provisional measures requested by Ukraine and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

102. Reminding the Russian Federation of its duty to comply with its obligations under CERD, the Court considers that, with regard to the situation in Crimea, the Russian Federation must refrain, pending the final decision in the case, from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*. In addition, the Russian Federation must ensure the availability of education in the Ukrainian language.

103. The Court recalls that Ukraine has requested it to indicate measures aimed at ensuring the non-aggravation of the dispute with the Russian Federation. When it is indicating provisional measures for the purpose of preserving specific rights, the Court also possesses the power to indicate provisional measures with a view to preventing the aggravation or extension of a dispute whenever it considers that the circumstances so require (see *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 (II)*, pp. 551-552, para. 59). In this case, having considered all the circumstances, in addition to the specific measures it has decided to take, the Court deems it necessary to indicate an additional measure aimed at ensuring the non-aggravation of the dispute between the Parties.

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104. With regard to the situation in eastern Ukraine, the Court reminds the Parties that the Security Council, in its resolution 2202 (2015), endorsed the “Package of Measures for the Implementation of the Minsk Agreements”, adopted and signed in Minsk on 12 February 2015 by representatives of the OSCE, Ukraine and the Russian Federation, as well as by representatives of “certain areas of the Donetsk and Luhansk regions”, and endorsed by the President of the Russian Federation, the President of Ukraine, the President of the French Republic and the Chancellor of the Federal Republic of Germany. The Court expects the Parties, through individual and joint efforts, to work for the full implementation of this “Package of Measures” in order to achieve a peaceful settlement of the conflict in the eastern regions of Ukraine.

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105. The decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Ukraine and the Russian Federation to submit arguments in respect of those questions.

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106. For these reasons:

THE COURT,

Indicates the following provisional measures,

(1) With regard to the situation in Crimea, the Russian Federation must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

(a) By thirteen votes to three,

Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*;

IN FAVOUR: *President* ABRAHAM; *Vice-President* YUSUF; *Judges* OWADA, BENNOUNA, CANÇADO TRINDADE, GREENWOOD, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, CRAWFORD; *Judge ad hoc* POCAR;

AGAINST: *Judges* TOMKA, XUE; *Judge ad hoc* SKOTNIKOV;

(b) Unanimously,

Ensure the availability of education in the Ukrainian language;

(2) Unanimously,

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

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this nineteenth day of April two thousand and seventeen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of Ukraine and the Government of the Russian Federation.

(Signed) Ronny ABRAHAM,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge OWADA appends a separate opinion to the Order of the Court; Judge TOMKA appends a declaration to the Order of the Court; Judges CANÇADO TRINDADE and BHANDARI append separate opinions to the Order of the Court; Judge CRAWFORD appends a declaration to the Order of the Court; Judges *ad hoc* POCAR and SKOTNIKOV append separate opinions to the Order of the Court.

(Initialed) R. A.

(Initialed) Ph. C.
