

## SEPARATE OPINION OF JUDGE ROBINSON

1. I voted in favour of the provisional measures ordered by the Court. In this opinion, I explain why I have supported the orders granted by the Court, and in particular the order requiring Russia to suspend its military operation in Ukraine.

2. The purpose of an indication of provisional measures is to preserve the respective rights claimed by the parties, pending the Court's decision on the merits of the claim. The Court's Order is wholly consistent with the law relating to the indication of such measures. In view of the fundamental importance attached to the purpose served by the indication of provisional measures, the law has developed so as not to impose high evidentiary requirements for the indication of such measures. To begin with, it is settled that the provisions relied upon by the applicant must appear, *prima facie*, to afford a basis on which the Court's jurisdiction may be founded, but the Court need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case. It is also established that the Court's *prima facie* jurisdiction depends on a determination that the claims appear to be capable of falling within the provisions of the respective treaty<sup>1</sup>. In relation to the plausibility of rights, the Court's case law is that, at this stage of the proceedings, it need not determine definitively whether the rights for which protection is sought exist; it need only decide whether the rights claimed on the merits are plausible. Plausibility of a right depends on whether it is grounded in a possible interpretation of the convention<sup>2</sup>. Moreover, the more relaxed approach to the evidentiary requirements in the indication of provisional measures is evident from the frequent use of the word "appear" in provisional measures orders made by the Court, including the Court's Order in this case.

3. The central issues in this case are whether the Court has *prima facie* jurisdiction over the dispute brought by Ukraine and whether the rights for which Ukraine seeks protection are plausible.

## THE COURT'S PRIMA FACIE JURISDICTION

4. The identification and characterization of the dispute is of cardinal importance in responding to Ukraine's request for the identification of provisional measures.

5. Case law of the International Court of Justice establishes three features in the process of identifying and characterizing a dispute. First, the Court examines how the parties themselves have identified and characterized the dispute, but in doing so it has particular regard to the applicant's characterization of the dispute<sup>3</sup>. However, and second, it is ultimately the responsibility of the Court to determine on an objective basis the dispute between the parties<sup>4</sup>. Third, it does that by "isolat[ing] the real issue in the case and . . . identify[ing] the object of the claim"<sup>5</sup>. A party's characterization of the dispute is therefore only a starting-point, and a dispute, properly characterized, may have more than one element, and indeed, a case may have more than one dispute.

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<sup>1</sup> *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Provisional Measures, Order of 7 December 2016*, ICJ Reports 2016 (II), p. 1159, para. 47.

<sup>2</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, *Provisional Measures, Order of 28 May 2009*, ICJ Reports 2009, p. 152, para. 60.

<sup>3</sup> *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 1998, p. 448, paras. 29-30.

<sup>4</sup> *Ibid.*, para. 30.

<sup>5</sup> *Nuclear Tests (New Zealand v. France)*, *Judgment*, I.C.J. Reports 1974, p. 466, para. 30.

6. Ukraine sees the dispute as having two elements. In its first element, Ukraine argues that a dispute exists as to whether, on the basis of Russia's allegations, Ukraine has breached its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide" (hereinafter the "Genocide Convention" or the "1948 Convention"). In its second element, Ukraine sees the dispute as the question whether Russia has the right under the Genocide Convention to engage in the military action initiated against Ukraine on 24 February 2022. Russia, on the other hand, argues that the dispute has nothing to do with the Genocide Convention; rather, it maintains that the dispute relates to the use of force under customary international law. More specifically, Russia maintains that in carrying out a "special military operation" in Ukraine it is exercising its right of self-defence under Article 51 of the Charter of the United Nations.

### **The first element of the dispute**

7. There is an abundance of evidence showing that Russia alleged breaches of the Genocide Convention by Ukraine and denials by Ukraine of those allegations. These allegations were either made expressly or arose by implication from the context in which they were made. Indeed, it is settled that there is no need for parties to refer to a particular treaty in order for a dispute to exist between them under that treaty, although it must be clear to the respondent that there is a dispute relating to the subject-matter of the treaty<sup>6</sup>.

8. The Investigative Committee of the Russian Federation is an official Russian agency in charge of federal criminal prosecutions and reports directly to the President of the Russian Federation. The Investigative Committee opened an inquiry into "the genocide of the Russian-speaking population" living in the Luhansk and Donetsk oblasts. In September 2014, the Committee found that

"during the period from 12 April 2014 to the present, in violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, . . . the top political and military leadership of Ukraine, the Armed Forces of Ukraine, the National Guard of Ukraine and the 'Right Sector' gave orders to completely destroy specifically Russian-speaking population living on the territory of the Donetsk and Luhansk republics".

It may be observed that this finding has implications for the specific requirement in the Genocide Convention of an intent "to destroy, in whole . . . , a national, ethnic, racial or religious group" and obviously indicates that Russia's attention was focused on whether the purported acts of Ukraine fell under the Genocide Convention. In January 2015, the Committee found that acts carried out by the Ukrainian military constituted crimes under the 1948 Convention. In September 2017, the Committee announced criminal proceedings against 20 senior officials in Ukraine's Ministry of Defence in respect of orders that they issued to soldiers in violation of the Genocide Convention.

9. In November 2021, President Putin adopted a decree in respect of the territory in eastern Ukraine, which, according to the Russian Ambassador to the Contact Group for the settlement of the situation in eastern Ukraine, was a response to actions in Kyiv that "actually fall under the United Nations Convention on the Prevention of Genocide". On 18 February 2021, the Chairman of the Russian Parliament accused Ukraine of committing in eastern Ukraine "acts prohibited based on international accords", observing: "[I]f this is not genocide, then what is?" On 21 February 2022, President Putin, in relation to his decision to recognize the republics of Donetsk and Luhansk, referred to this "horror and genocide, which almost 4 million people are facing". In an address on

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<sup>6</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 85, para. 30.

24 February 2022, President Putin stated: “the purpose of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime”. President Putin further stated that Russia intends to “de-Nazify Ukraine” and “bring to trial those who perpetrated numerous bloody crimes against civilians”. On 25 February 2022, the Russian Foreign Minister stated that Russia’s military actions “prevent[ed] the neo-Nazis and those who promote methods of genocide from ruling this country”. Also on 25 February 2022, the Russian Ambassador to the European Union remarked that “[w]e can turn to the official term of genocide as coined in international law. If you read the definition, it fits pretty well.” The three explicit statements by Russian officials concerning the Genocide Convention in 2014 and 2015, the beginning of the dispute between the two States, provide a basis for the inference that, by the subsequent references in 2021 and 2022 to “genocide”, Russian officials meant genocide under the Genocide Convention.

10. On 23 February 2022, the Russian Ambassador to the United Nations, addressing Russia’s recognition of the republics of Donetsk and Luhansk, pointed to “the flagrant genocide . . . of the 4 million people in the Donbass”. In response, the Ukrainian Minister of Foreign Affairs stated, “Russia’s accusations of Ukraine are absurd. Ukraine has never threatened or attacked anyone. Ukraine has never planned and does not plan any such action.”

11. On 26 February 2022, the Minister for Foreign Affairs of Ukraine stated:

“Ukraine strongly denies Russia’s allegations of genocide and denies any attempt to use such manipulative allegations as an excuse for unlawful aggression. The crime of genocide is defined in the Genocide Convention, and under that Convention Russia’s claims are baseless and absurd. Russia’s claims of genocide as justification for its lawless conduct are an insult to the Genocide Convention, and to the work of the international community in preventing and punishing the world’s most serious crime.”

12. The above-mentioned statements clearly reference a claim by Russia that Ukraine has committed acts that constitute genocide under the 1948 Genocide Convention and a denial by Ukraine of that claim. In its Application, Ukraine maintains that “[t]here is no factual basis for the existence of genocide in the Luhansk and Donetsk oblasts” and asks the Court to find that no acts of genocide as alleged by Russia were committed by Ukraine.

### **Isolation of the real issue**

13. In the circumstances of this case, it falls to the Court to determine on an objective basis the dispute between the Parties by “isolat[ing] the real issue in the case and . . . identify[ing] the object of the claim”<sup>7</sup>. The dispute between the Parties did not commence on 24 February 2022 when Russia sent its forces into Ukraine. Although the dispute may be traced to events before 2014 (including those following the break-up of the former Union of Soviet Socialist Republics (“USSR”) and the emergence into independence of several States that were formerly part of the USSR), for the purposes of this case that date may serve as its origin. An objective examination of the statements of the Parties and their diplomatic exchanges from that date show that the real issue in the case is not the use of force, as argued by Russia. Rather, it is the allegation by Russia that Ukraine was carrying out acts that constituted genocide under the Genocide Convention and Ukraine’s denial of that allegation. This conclusion is supported by the several investigations carried out by the Russian Investigative Committee in the period from 2014 to 2017 into alleged acts of genocide committed by Ukrainian officials against the Russian-speaking population in the Donetsk and Luhansk oblasts in breach of the Genocide Convention. A very significant investigation is that of September 2014 which

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<sup>7</sup> *Nuclear Tests (New Zealand v. France)*, Judgment, I.C.J. Reports 1974, p. 466, para. 30.

found that Ukraine gave orders to “completely destroy” specifically Russian-speaking populations, a finding that directly relates to the intent requirement to establish genocide under Article II of the Genocide Convention. In light of Russia’s assertion that it has the right to exercise universal jurisdiction on the basis of the Genocide Convention, the investigations carried out by the Investigative Committee led to the institution of criminal proceedings by Russia against Ukrainian officials for breaches of the Genocide Convention. It would be hard to have more conclusive evidence of a dispute between Russia and Ukraine than criminal proceedings initiated by Russia against Ukrainian officials for a breach of the Genocide Convention.

14. Russia’s stated reliance on the right of self-defence under the Charter by the President on 24 February 2022 does not serve to define the dispute between the Parties as one relating to the use of force. The dispute between the Parties was defined eight years before by the several investigations carried out by Russia into alleged acts of genocide by Ukraine under the 1948 Convention. That the dispute relates to Russia’s allegation of genocide is confirmed by the Russian President’s statement that the purpose of the special military operation is to “protect people who have been subjected to abuse and genocide by the Kiev regime for eight years”. Against the background of the criminal investigations, it is entirely reasonable to understand President Putin’s reference to genocide as meaning genocide under the Genocide Convention, to which both States are parties. There is therefore evidence of a line of discourse between the Parties, over a period of eight years, in which Russia alleges Ukraine’s breach of the Genocide Convention and Ukraine denies that allegation. This shows an opposition of views sufficient to constitute a dispute between Ukraine and Russia as to whether Ukraine has committed acts of genocide within the meaning of the Convention. In short, the dispute before the Court does not, as alleged by Russia, relate to the question of the use of force under customary international law.

15. The acts that Russia alleges to have been carried out by Ukraine include the killing of persons from the Russian-speaking population in the Donetsk and Luhansk oblasts, members of an ethnic group in Ukraine. These acts appear to be capable of falling within the provisions of Article II of the Genocide Convention, because that provision lists, as one of the acts constituting genocide, killing members of an ethnic group with intent to destroy in whole or in part that group.

16. In light of Russia’s allegation that Ukraine has committed genocide against the Russian-speaking population in the Donetsk and Luhansk oblasts, in its Application, Ukraine requests the Court to find that it has not committed genocide. More usually, in its practice, the Court is called upon to exercise its jurisdiction in cases where the applicant maintains that the respondent has committed a breach under the relevant treaty. However, there is nothing in doctrine or practice that precludes the Court from having jurisdiction to find that an applicant has not committed a breach of a treaty, where that applicant has requested the Court to make such a finding.

17. In light of the foregoing, the Court has *prima facie* jurisdiction to entertain the dispute brought by Ukraine.

### **The second element of the dispute**

18. Ukraine argues that there is another aspect of the dispute that it has brought before the Court. Ukraine submits that there is a legal dispute between the Parties as to whether Russia may take military action in and against Ukraine to punish and prevent alleged acts of genocide within the meaning of Article I of the Convention. Russia maintains that the “special military operation” it is carrying out in Ukraine has nothing to do with the Genocide Convention; rather, it constitutes the exercise by a State of its right of self-defence under Article 51 of the Charter of the United Nations.

19. Although President Putin stated that the military operation was initiated “in accordance with Article 51 . . . of the Charter of the United Nations”, he expressly noted that “[i]ts purpose is to protect people who have been subjected to . . . genocide by the Kiev regime for eight years”. This makes clear that, notwithstanding the possible defensive aims of the special military operation, the operation has a clear protective aim; more specifically, it aims to protect against alleged acts of genocide committed by Ukraine which, as has already been shown, Russia considered to be contrary to Ukraine’s obligations under Genocide Convention. In response to Russia’s claim, the Ukrainian Ministry of Foreign Affairs issued a statement that Ukraine “strongly denies Russia’s allegations of genocide and denies any attempt to use such manipulative allegations as an excuse for Russia’s unlawful aggression”. There is undoubtedly a question of the lawfulness of Russia’s use of force within the framework of the United Nations Charter which arises in the context of a broader dispute between the Parties, but this does not preclude the Court from assuming jurisdiction with respect to the aspect of the dispute which properly falls within its jurisdiction under the Genocide Convention.

20. In its 2021 Judgement in *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States)*, the Court ruled that the fact that certain acts committed by the United States may fall within the ambit of more than one instrument, or may relate to the interpretation or application of more than one treaty, did not preclude the Court from finding that those acts related to the interpretation or application of the Treaty of Amity to the extent that the measures adopted by the United States might constitute breaches of that Treaty<sup>8</sup>. In the circumstances of the present case, although Russia’s “special military operation” may relate to the prohibition of the use of force and the right of self-defence provided for in Articles 2 (4) and 51 of the United Nations Charter respectively, that fact does not preclude the Court from finding that a dispute also arises from the initiation of the “special military operation” with respect to the Genocide Convention.

21. The difficulties attendant on situating cases involving the use of force by a State on the territory of another State within the framework of the Genocide Convention have previously arisen in the Court’s jurisprudence. In the *Legality of Use of Force* cases, as in the present case, Yugoslavia sought to found the jurisdiction of the Court on Article IX of the 1948 Genocide Convention. In the cases brought against Spain and the United States, the Court concluded, with respect to its jurisdiction under Article IX of the Genocide Convention, that

“Article IX of the Genocide Convention cannot found the jurisdiction of the Court to entertain a dispute between Yugoslavia and [the respondent] alleged to fall within its provisions . . . that Article manifestly does not constitute a basis of jurisdiction in the present case, even prima facie”<sup>9</sup>.

The Court further observed that

“the Court manifestly lacks jurisdiction to entertain Yugoslavia’s Application . . . it cannot therefore indicate any provisional measure whatsoever in order to protect the rights invoked therein;

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there is a fundamental distinction between the question of the acceptance by a State of the Court’s jurisdiction and the compatibility of particular acts with international law;

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<sup>8</sup> *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 27, para. 56.

<sup>9</sup> *Legality of Use of Force (Yugoslavia v. Spain)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II), p. 772, para. 33.

the former requires consent; the latter question can only be reached when the Court deals with the merits after having established its jurisdiction and having heard full legal arguments by both parties”<sup>10</sup>.

22. For the purposes of the present case, it is critical to understand that the Court’s finding that it manifestly lacked jurisdiction under Article IX of the Genocide Convention was not at all related to the action that formed the basis of the claims, that is, the use of force by the respondent States. Having found that its Statute and Rules could not afford a basis for jurisdiction, the Court examined Article IX of the Genocide Convention as a basis for resolving the dispute between the States. It found, however, that both Spain and the United States had made reservations to Article IX, which had the effect of excluding the jurisdiction of the Court in the cases before it<sup>11</sup>. These cases are, therefore, distinguishable from the present case because the Court does not manifestly lack jurisdiction over Ukraine’s claims. Both Ukraine and Russia are parties to the Genocide Convention and neither State has entered a reservation to Article IX of the Convention. Thus, the Court is not facing a situation of manifest lack of jurisdiction; rather, in determining its *prima facie* jurisdiction, the question before the Court is whether Ukraine’s claims are capable of falling within the provisions of the Genocide Convention.

23. In the cases brought against the other eight States, there being no basis for a manifest lack of jurisdiction under Article IX of the Genocide Convention, the Court went on to consider whether it had *prima facie* jurisdiction under that provision to grant the measures requested by Yugoslavia against each of those States.

24. In its Application, Yugoslavia defined the subject-matter of the dispute as “acts of [the respondent] by which it has violated its international obligation banning the use of force against another State”, as well as other norms of international humanitarian and international human rights law, and “the obligation not to deliberately inflict conditions of life calculated to cause the physical destruction of a national group”<sup>12</sup>. Yugoslavia requested that the Court adjudge and declare that each respondent State “has acted . . . in breach of its obligation not to use force against another State”, in breach of various standards of international humanitarian and international human rights law, and “in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part”<sup>13</sup>. In its Request for the indication of provisional measures, Yugoslavia asked the Court to order that each State “shall cease immediately the acts of use of force and shall refrain from any act or threat or use of force against the Federal Republic of Yugoslavia”<sup>14</sup>. With respect to its jurisdiction under Article IX of the Genocide Convention, the Court concluded that it was not in a position to find, in the absence of evidence as to an intention to destroy a national group, “that the acts imputed by Yugoslavia to the Respondent are capable of coming within the provisions of the Genocide Convention”<sup>15</sup>. The Court found that “the threat or use of force against a State cannot in itself constitute an act of genocide within the meaning of Article II of the Genocide Convention”<sup>16</sup>. In the present case, however, Ukraine has not

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<sup>10</sup> *Legality of Use of Force (Yugoslavia v. Spain), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 773, paras. 35-36.

<sup>11</sup> *Ibid.*, p. 772, paras. 29, 32-33.

<sup>12</sup> *Legality of Use of Force (Yugoslavia v. Belgium), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 125, para. 1.

<sup>13</sup> *Ibid.*, pp. 126-127, para. 4.

<sup>14</sup> *Ibid.*, p. 131, para. 15.

<sup>15</sup> *Ibid.*, p. 138, para. 41.

<sup>16</sup> *Ibid.*, para. 40.

put before the Court a general question of the legality of Russia's use of force. Instead, it has asked the Court to "[a]djudge and declare that the 'special military operation' declared and carried out by the Russian Federation . . . is based on a false claim of genocide and therefore has no basis in the Genocide Convention".

25. In justifying its "special military operation" in Ukraine, Russia expressly stated that the purpose of the operation is "to stop . . . [the] genocide of the millions of people" in the Donetsk and Luhansk oblasts, and "to protect people who have been subjected to abuse and genocide by the Kiev regime". It is this express purpose which brings the dispute within the terms of the Genocide Convention, and specifically Article I, which imposes on States parties an obligation "to prevent and to punish" genocide. There is, therefore, a live issue in the present case as to whether Russia can use of force to prevent and to punish alleged genocide. As such, in describing the subject-matter of the dispute, Ukraine submits that the parties hold opposing views on "whether Article I of the Convention provides a basis for Russia to use military force against Ukraine to 'prevent and to punish' . . . alleged genocide". The fact that the acts of which Ukraine complains constitute a use of force by the Russian Federation does not mean that those acts are incapable of amounting to breaches of the Genocide Convention.

26. In using force, Russia has purported to act to prevent alleged genocide by Ukraine. Ukraine, on the other hand, asserts that Russia "had no right under the Convention to engage in the military action initiated on 24 February 2022". In doing so, Ukraine argues, Russia has acted contrary to Article I of the Genocide Convention. There is, therefore, a dispute between the States as to whether Russia could employ the use of force in and against Ukraine to protect persons from alleged genocide. However, while the breach of the Convention alleged by Ukraine need not be established at this stage, it must be demonstrated that the acts complained of appear to be "capable of falling within the provisions of that instrument"<sup>17</sup>.

27. Ukraine submits that the duty to prevent genocide provided for in Article I of the Genocide Convention is limited in scope. More specifically, it submits that Article VIII of the Convention "anchors the duty to prevent and punish genocide in the principles of international law reflected in the Charter of the United Nations". In its merits Judgment in the *Bosnia Genocide* case, the Court found that Article I of the Genocide Convention imposes an obligation on States parties to "employ all means reasonably available to them, so as to prevent genocide so far as possible"<sup>18</sup>. It is reasonable to conclude that it was in the exercise of this duty that the Russian Federation acted in initiating a military campaign in Ukraine. The Court further noted that, in carrying out the duty to prevent, a State party "may only act within the limits permitted by international law"<sup>19</sup>. Therefore, Article I of the Genocide Convention imposes an obligation on Russia not only to act to prevent genocide, but to act *within the limits permitted by international law* to prevent genocide.

28. The preamble to the Genocide Convention states that "genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world". In that regard, it is noted that Article 1 of the United Nations Charter describes the purposes of the United Nations as including "bring[ing] about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace". Reliance on the preamble to the Genocide

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<sup>17</sup> *Legality of Use of Force (Yugoslavia v. Belgium), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 137, para. 38.

<sup>18</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 430.

<sup>19</sup> *Ibid.*

Convention is in order because, in terms of Article 31 of the Vienna Convention on the Law of Treaties, the preamble is a part of the context in which a treaty must be interpreted. The Genocide Convention also provides, by its Article VIII, that it is open to States parties to call upon the competent organs of the United Nations to take appropriate action to prevent and suppress genocide. Equally significant is Article IX which provides that disputes relating to the interpretation, application or fulfilment of the Convention are to be brought before the Court. These are therefore means for the resolution of disputes that the Convention provides. These means would of course have been open to Russia as alternatives to the military action that it commenced in Ukraine on 24 February 2022.

29. The Court, in its *Nicaragua v. United States* Judgment, noted that the protection of human rights under international conventions “takes the form of such arrangements for monitoring or ensuring respect for human rights as are provided for in the conventions themselves”<sup>20</sup>. Article VIII therefore may be seen as an indication of the kind of action that a Contracting Party may take for monitoring or ensuring respect for the human rights provided for in the Genocide Convention. The Court also expressed the view that “while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect”<sup>21</sup>. By the same token, while Russia may form its own appraisal as to the situation relating to the respect of the human rights of persons of Russian ethnicity in the Donetsk and Luhansk oblasts, in light of the object and purpose of the Genocide Convention and the circumstances of its conclusion, the use of force would not appear to be the appropriate method to monitor or ensure such respect. It is therefore possible to interpret the duty under Article I to prevent and punish genocide as precluding the force used by Russia in its “special military operation” in Ukraine.

30. In view of the relatively low evidentiary threshold applicable at this stage of the proceedings, it can be concluded that the breach of the Genocide Convention alleged by Ukraine, that is, that Russia has acted contrary to Article I of the Convention in initiating a military campaign with the aim of preventing genocide, appears to be capable of falling within the provisions of that instrument. As such, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain pursuant to Article IX of the Convention.

#### APPROPRIATENESS OF THE MEASURES REQUESTED

31. Since Ukraine’s right not to have force used against it by Russia as a means of preventing the alleged genocide in Ukraine is grounded in a possible interpretation of the Convention, that right is plausible. The evidence before the Court shows that there have been numerous casualties resulting from the military intervention as well as bombing of numerous cities across Ukraine, and that over one and a half million persons have fled Ukraine to escape the atrocities. Consequently, given the patent irreparable harm caused by the “special military operation” and the urgent need for the measures, it is appropriate for the Court to grant Ukraine’s request for an order requiring Russia to suspend its special military operation in Ukraine until such time as the Court has determined the merits of the case.

32. It is critical to note that the fact that the military operation by Russia appears to be capable of falling within the Convention as being in breach of Article I, has no implication for Russia’s claimed right of self-defence. The right of self-defence recognized in Article 51 is inherent in every

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<sup>20</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 134, para. 267.

<sup>21</sup> *Ibid.*, p. 134, para. 268.

State and cannot be overridden by any pronouncement the Court may make as to the consistency of Russia's military operation with the Genocide Convention.

33. Special comments are warranted in relation to the third and fourth provisional measures requested by Ukraine. The third measure ordered by the Court calls on both Parties to refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve. In my view, there is no justification for directing this measure to Ukraine. It should have been directed solely to the Russian Federation. Nonetheless, the formulation of the measure called for an affirmative vote in order to ensure that there would be a non-aggravation measure that would be applicable to the Russian Federation. Ukraine also requested as a fourth provisional measure that the Court should order the Russian Federation to "provide a report to the Court on measures taken to implement the Court's Order on Provisional Measures one week after such order and then on a regular basis to be fixed by the Court". The Court did not grant this request. In my view, this decision is regrettable, since in light of the very grave situation in Ukraine caused by the "special military operation", it would have been advantageous for the Court to examine periodic reports by Russia on its implementation of the provisional measures and to make appropriate orders.

*(Signed)* Patrick L. ROBINSON.

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