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RUSSIA-UKRAINE WAR, ICJ, AND THE GENOCIDE CONVENTION

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The Russian invasion of Ukraine is a blatant violation of several rules of international law such as the prohibition on the use of force in international relations given in the U.N. Charter. Russia has justified its aggression alleging that Ukraine is committing genocide. Ukraine vociferously contests this assertion and has moved the International Court of Justice (ICJ) against Russia under the Genocide Convention requesting an indication of provisional measures. The ICJ on 16 March 2022 indicated provisional measures ordering Russia to immediately stop the war. It found that Ukraine has a plausible right under the Genocide Convention not to be subjected to military operations aimed at preventing and punishing an alleged genocide. Although Russia has not complied with the ICJ's binding decision, the weight of global opinion against Russia's illegal actions is mounting.

Keywords: Russia, Ukraine, ICJ, Genocide Convention, Provisional Measures, the Law of the Use of Force



INTRODUCTION

The international community is witnessing unprecedented times today, with Russia, a prominent nuclear super-power, having chosen a path of full-fledged war and aggression against its neighbour, Ukraine. Just days before invading Ukraine, Russia recognized the supposedly independent territories of Donetsk and Luhansk in eastern Ukraine and signed treaties of friendship with these entities paving the way for Russian troops moving in as “peacekeepers.” Alleging that Ukraine is committing genocide in these regions, Russia invaded Ukraine on 24 February 2022. This devastating war, in the last couple of months, has led to massive destruction and death in Ukraine, which includes non-combatants and civilians.

Russia is facing the ire of the international community for its unprovoked invasion of Ukraine. The United Nations (U.N.) General Assembly has passed a resolution¹ condemning and deploring Russia’s international law violations. Several countries have also imposed severe economic sanctions against Russia.² This includes trade sanctions most notably by the developed world such as the United States (U.S.), the European Union (E.U.), the United Kingdom, etc. For instance, Canada has suspended the most favoured nation (MFN) treatment to Russia, which it owes to the latter under the WTO rules.³ Likewise, the E.U. has also announced that it will not treat Russia on an MFN basis.⁴ Russia

1. 11th Emergency Special Session (Ukraine), United Nations General Assembly, General Assembly Resolution A/RES/ES-11/1 (March 2022).
2. *E.g.*, U.S. has imposed sanctions: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>; E.U.: https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-sanctions-against-russia-following-invasion-ukraine_en; Australia: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/russia-sanctions-regime>.
3. Government of Canada, Canada cuts Russia and Belarus from Most-Favoured-Nation Tariff treatment, March 3, 2022, <https://www.canada.ca/en/department-finance/news/2022/03/canada-cuts-russia-and-belarus-from-most-favoured-nation-tariff-treatment.html>.
4. European Commission, Statement by Executive Vice-President Dombrovskis on EU Decision to Stop Treating Russia as a Most-Favoured-Nation at the WTO,

has also been suspended from the U.N. Human Rights Council over the reports of “gross and systematic violations and abuses of human rights” by Russian troops in Ukraine.⁵

Parallel to all these reactions by the international community, Ukraine moved the International Court of Justice (ICJ) against Russia under the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)—a treaty to which both Ukraine and Russia are signatories—seeking a finding that Russia’s claims of genocide in Luhansk and Donetsk are baseless.⁶ Ukraine also requested the ICJ to indicate provisional measures against Russia. The ICJ, in its 16 March 2022 order, has indicated provisional measures, *inter alia*, ordering Russia to immediately cease its military operations in Ukraine.⁷ However, Russia hasn’t complied with ICJ’s order.

Given this tumultuous background, this paper examines the illegality of the Russian action under international law in Section 1. In Section 2, the paper focusses on Ukraine’s application to the ICJ under the Genocide Convention. Next, in Section 3, the paper discusses the ICJ’s order against Russia indicating provisional measures. Finally, the last Section offers the concluding remarks.

I. RUSSIAN ILLEGALITY

Article 2(4) of the United Nations (U.N.) Charter codifies the foundational principle of international law i.e. the prohibition against the use

15 March 2022 https://ec.europa.eu/commission/commissioners/2019-2024/dombrovskis/announcements/statement-executive-vice-president-dombrovskis-eu-decision-0_en.

5. U.N. General Assembly votes to suspend Russia from UNHCR, CGTN, 8 April 2022, <https://newsaf.cgtn.com/news/2022-04-08/UN-General-Assembly-votes-to-suspend-Russia-from-UNHCR-192YbAP1EqI/index.html>
6. Request for Indication of Provisional Measures submitted by Ukraine, ICJ, Request of 26 February 2022, <https://www.icj-cij.org/public/files/case-related/182/182-20220227-WRI-01-00-EN.pdf>.
7. Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, (Ukraine v. Russian Federation), Request for the Indication of Provisional Measures, Order, 16 March 2022 (hereinafter Ukraine v. Russia, Provisional Measures).

of force in international relations, upon which the peaceful conduct of States in a post-World War II global legal order is founded. Article 2(4) obligates States to “refrain from threat or use of force against the territorial integrity or political independence of any State.” Article 2(4), also called the principle of prohibition of aggression, is part of the customary international law as confirmed by the International Court of Justice (ICJ) in the *Nicaragua* case.⁸ The International Law Commission recognizes the principle of prohibition of aggression as a preemptory norm i.e. fundamental norms of international law from which no derogation is possible.⁹

Russia’s unprovoked military invasion of Ukraine not only violates the basic tenet of international law that prohibits the use of force in international relations but also several other international obligations, including the provisions of the Minsk Agreements¹⁰ that conferred a special status on the territories of Donetsk and Luhansk. Russian actions are also in clear violation of the Kellogg—Briand Pact¹¹ that renounces war, and the doctrine of *jus ad bellum* (legitimizes the use of force in international relations if some conditions are satisfied) in the absence of legitimate reasons for initiating the use of force in a foreign sovereign’s territory.

Russia claims that it is acting in self-defence under Article 51 of the U.N. Charter.¹² Article 51 is an exception to Article 2(4) of the U.N.

8. Case Concerning Military And Paramilitary Activities In And Against Nicaragua (*Nicaragua v. United States of America*), 1986 I.C.J. 14, paras 191-201.
9. International Law Commission, Fourth report on preemptory norms of general international law (*jus cogens*) by Dire Tladi, Special Rapporteur (2019) A/CN.4/727.
10. The Minsk Protocol (also known as Minsk-1) with the Minsk Memorandum of September 2014 and the Package of Measures for the Implementation of the Minsk Agreements of February 2015 (also known as Minsk 2).
11. General Treaty for Renunciation of War as an Instrument of National Policy, Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57 (entered into force Jul. 24, 1929) (also known as the Kellogg—Briand Pact).
12. Document (with Annexes) from the Russian Federation setting out its position regarding the alleged “lack of jurisdiction” of the Court in the case, ICJ, Submission of 7 March 2022, <https://www.icj-cij.org/public/files/case-related/182/182-20220307-OTH-01-00-EN.pdf>.

Charter. It recognizes the inherent right of individual or collective self-defence in the case of an armed attack by one State against another State. However, Ukraine did not launch an “armed attack” against Russia. So, Russia has no legal basis to invoke the self-defence argument. Russian actions cannot be justified even under the controversial theory of anticipatory self-defence in international law. The anticipatory self-defence theory has its roots in the Caroline incident of 1837.¹³ The incident involved a pre-emptive strike by British forces in Canada against *Caroline*, an American ship. American sympathisers, with the rebels against British rule in Canada, used the ship to ferry arms to rebels.

As per the anticipatory self-defence doctrine, a State claiming self-defence will have to show that there was a threat of an imminent attack, which was overwhelming, which made it necessary for it to use force. Further, the force used should be proportionate. In Russia’s invasion of Ukraine, none of these conditions are satisfied. There is no evidence to suggest that Russia faced an imminent threat from Ukraine. Moreover, Russia has used force disproportionately by bombing several parts of Ukraine, including its major cities and civil targets. The Russian attack can also not be justified under collective self defence given in Article 51 for two reasons. First, the right to collective self-defence under Article 51 exists only for states. Donetsk and Luhansk, on whose behalf Russia is purportedly acting, are not States under international law. Second, Ukraine didn’t attack these purportedly independent states. However, it is doubtful whether Russia’s military actions would be adjudicated before an international court.

II. UKRAINE’S ICJ APPLICATION

As already mentioned, Ukraine applied to the ICJ under the Genocide Convention charging Russia for falsely accusing it of genocide to start an illegal war. This new case is in addition to a pending case that Ukraine has initiated against Russia at the ICJ under the Terrorism Financing Convention and the Convention on the Elimination of Racial

13. For the facts, see the discussion in Robert Y. Jennings, *The Caroline and McLeod Cases*, 32 AM. J. INT’L L. 82, 82-84 (1938).

Discrimination (*Ukraine v. Russia*).¹⁴

Access to ICJ is granted to all States that are Parties to the Statute of the ICJ¹⁵ and all member countries of the U.N. are ipso facto Parties to the Statute of the ICJ.¹⁶ However, the jurisdiction of the ICJ in contentious proceedings is based on the consent of the States that have access to the ICJ. Article 36 of the Statute of the ICJ states that this consent may be expressed by employing unilateral declarations, in treaties, or through special agreements.

Article 36(2) of the ICJ Statute provides that States party to the Statute may “at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court”. Each State which has recognized the compulsory jurisdiction of the ICJ submits declarations deposited with the Secretary-General of the United Nations.¹⁷ However, Russia has not submitted the declaration and therefore, does not recognize ICJ’s compulsory jurisdiction.

Consequently, the only alternative available to Ukraine to sue Russia before the ICJ is by counting on a treaty that provides for the ICJ as the forum to settle the disputes between the treaty partners. Thus, Ukraine has moved the ICJ against Russia under the Genocide Convention. The Genocide Convention was adopted in 1948¹⁸ following the declaration of genocide as an international crime in 1946 by the U.N. General Assembly.¹⁹ The term “genocide” was coined by Raphael Lemkin, a lawyer and Jewish refugee from Poland who was a teacher in the U.S. in 1944.²⁰ The Genocide Convention was unique in its scope

14. 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*, Provisional Measures, ICGJ 514 (ICJ 2017), [2017] ICJ GL No 166
15. Article 35(1), Statute of the International Court of Justice of 26 June 1945.
16. Article 93(2), Charter of the United Nations of 26 June 1945.
17. Declarations recognizing the jurisdiction of the Court as compulsory, ICJ, <https://www.icj-cij.org/en/declarations>.
18. Adopted Dec. 9, 1948, U.N., Treaty Series, Vol.78, page 277.
19. UN General Assembly Resolution 96, U.N. Doc. A/231, at 3 (1946).
20. *Genocide*, UNITED NATIONS, <https://www.un.org/en/genocideprevention/genocide.shtml>.

and potential for both the U.N. and the international community with its moral obligation for signatories to prevent genocide when faced with potential cases of genocide. The actual text of the Convention is comprised of nineteen articles. Of those nineteen the most important for understanding the purpose and applicability of the Convention are Articles I, II, III, V, VI, and VIII. Article I adds genocide to a growing number of international crimes while Article II specifies the acts constituting genocide. Article III of the Genocide Convention specifies the five acts involving genocide that shall be punishable. Article V clarifies that implementing legislation is required to give effect to the Convention and the Convention is not self-executing. Article VI of the Convention provides that a competent tribunal of the state in the territory the act was committed should try persons charged with genocide. Article VIII authorizes contracting parties to call on the U.N. to take action as it considers appropriate for the prevention and suppression of genocide.

However, the Genocide Convention has been criticized heavily and has flaws in terms of its failure to clarify what the obligation to prevent entails, including what actions might be required and legitimate, its definitional ambiguities which cause debilitating debates over whether a situation is in fact genocide, and its punitive focus which draws attention away from prevention and intervention.²¹

Ukraine's argument is based on Article IX of the Genocide Convention, which provides: "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute." Thus, only "dispute" between States under Article IX can be submitted to the ICJ. Article IX is a compromissory clause i.e., a treaty provision whereby parties accept that disputes between them under that treaty will be settled by an independent body such as the ICJ.

21. Kelly Maddox, "Liberat[ing] Mankind from such an Odious Scourge:" *The Genocide Convention and the Continued Failure to Prevent or Halt Genocide in the Twenty-First Century*, 9 GENOCIDE STUD. & PREVENTION: AN INT'L J., 48-65 (2015).

In its application²² against Russia before the ICJ,²³ Ukraine requested provisional measures against Russia under Article 41 of the ICJ Statute. Article 41 provides: “The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.” Provisional measures under the ICJ Statute are the international equivalent of an interim injunction that can be provided by the court to preserve the rights of the parties pending a final decision on the merits of the case.²⁴ Ukraine moved the ICJ against Russia accusing it of falsely claiming that Ukrainians are committing genocide in their territory and using this untruthful premise to start an illegal war. This, Ukraine believes, breaches its rights under the Genocide Convention.

We now turn our focus to understanding how the ICJ dealt with Ukraine’s application for indication of provisional measures.

III. ICJ’S DECISION ON PROVISIONAL MEASURES

On 16 March 2022, the ICJ accepted most of the demands made by Ukraine and gave its decision indicating the following provisional measures.²⁵ First, Russia shall immediately stop its military operations in Ukraine. Second, Russia shall ensure that any military or irregular armed units and any organizations and persons, which enjoy Russian

22. Application Instituting Proceedings, Disputes Relating to Allegations of Genocide (Ukraine v. Russian Federation), Application of 26 February 2022, ICJ, <https://www.icj-cij.org/public/files/case-related/182/182-20220227-APP-01-00-EN.pdf>.
23. Request for Indication of Provisional Measures submitted by Ukraine, ICJ, Request of 26 February 2022, <https://www.icj-cij.org/public/files/case-related/182/182-20220227-WRI-01-00-EN.pdf>.
24. CAMERON A. MILES, PROVISIONAL MEASURES BEFORE INTERNATIONAL COURTS AND TRIBUNALS, 13-130 (2017).
25. Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, (Ukraine v. Russian Federation), Request for the Indication of Provisional Measures, Order, 16 March 2022 (hereinafter Ukraine v. Russia, Provisional Measures).

support and direction shall also stop their military operations in the Ukrainian territory. Third, both Russia and Ukraine shall refrain from any action that might aggravate or extend the dispute.

To understand how the ICJ arrived at these decisions, we divide the discussion into three parts. First, the court held that an important condition to indicate provisional measures is whether the provisions that the applicant (Ukraine) relies upon, *prima facie*, provide a basis on which the court's jurisdiction could be founded. Russia had contended that its "special military operation" on the territory of Ukraine was based on Article 51 of the U.N. Charter and customary international law.²⁶ By this, they asserted that the Genocide Convention cannot provide a legal basis for a military operation and therefore, Russia's military action is beyond the scope of the ICJ. Russia sought to use its notification to the U.N. Security Council under Article 51 of the U.N. Charter as the legal basis for such a claim.²⁷ Russia further contended that the claims of "genocide" (in Donetsk and Luhansk) by the Russian President Vladimir Putin in his public addresses are not the same as Russia invoking the Genocide Convention as a justification for its "special military operation" and that such claims in the address do not constitute a dispute under the Convention.²⁸

At the stage of provisional measures, the court is only required to determine *prima facie* jurisdiction and not in a definitive manner as regards the merits of the case.²⁹ The ICJ rejected Russia's arguments, citing *Nicaragua v. United States of America*³⁰ and *Georgia v. Russian Federation*,³¹ ruled that it was not necessary for Ukraine to specifically

26. Ukraine v. Russia, Provisional Measures, para 32.

27. Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, UN Security Council, S/2022/154.

28. Ukraine v. Russia, Provisional Measures, para 33.

29. CAMERON A. MILES, PROVISIONAL MEASURES BEFORE INTERNATIONAL COURTS AND TRIBUNALS, 133-73 (2017).

30. Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, pp. 428-29.

31. 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)

refer to the Genocide Convention for it to invoke Article IX of the Convention, but rather if its exchanges with Russia referred to the subject matter of the Convention with sufficient clarity as to enable Russia to ascertain the existence (or not) of a dispute.³² The court then went on to examine whether there is a “dispute” between the two sides under Article IX of the Genocide Convention.

Relying on the *Mavrommatis Palestine Concessions case*,³³ the ICJ held that “a dispute is a disagreement on a point of law or fact, a conflict of legal views or interests between parties.” Another important point about the existence of a dispute is that it has to be objectively determined. The existence of a dispute is not a question of form or procedure but rather a matter of substance, as was held in the case of *Marshall Islands v. India*.³⁴ In determining whether there was a dispute between the Parties at the time of the filing of the application, ICJ takes into consideration any statements or documents exchanged between the Parties and any exchanges made in multilateral settings.³⁵ Furthermore, at the stage of indicating provisional measures, the ICJ is not required to ascertain whether any violations of either party’s obligations under the Genocide Convention have occurred as was also held in *The Gambia v. Myanmar*.³⁶

Applying these principles in the current case, the ICJ held that there is a “dispute” between the two sides on a question of fact i.e. whether Ukraine has committed acts of genocide in its territory. Since 2014, Russia has been accusing Ukraine of committing acts of genocide in the

32. Ukraine v. Russia, Provisional Measures, para 44.

33. *Mavrommatis Palestine Concessions (Greece v. Great Britain)*, Judgment of 30 August 1924, 1924 PCIJ (Ser. A) No. 2, at 11.

34. Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (*Marshall Islands v. India*), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I), p. 270, paras. 35-36

35. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020 (I), p.12, para 26.

36. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020 (I), p.10, para 20, citing Immunities and Criminal Proceedings (*Equatorial Guinea v. France*), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II), p. 1159, para. 47.

Luhansk and Donetsk regions. This is evident from numerous official statements that various State organs and senior representatives of Russia have issued. Russian President Vladimir Putin in his speech on 24 February 2022, just before Ukraine's invasion, said that Russia was launching a "special military operation" with the purpose to protect people who have been subjected to genocide in Ukraine since 2014. Ukraine vehemently rejects this charge.

The ICJ also held that there is a dispute between the two sides on whether Russia can use force for preventing and punishing alleged genocide in fulfilment of its obligation under Article I of the Convention.³⁷ Article I of the Genocide Convention provides: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish." Thus, the countries are under an obligation to take measures to "prevent and to punish" genocide. Article I of the Genocide Convention does not specify what measures a country can take to fulfill its obligation of preventing and punishing genocide. However, an indication of such measures is given in Articles VIII and IX of the Genocide Convention. Under Article VIII, a country can request the competent bodies of the UN to take actions as per the UN Charter to stop the genocide. Likewise, under Article IX of the Convention, a country can submit a dispute to the ICJ regarding "interpretation, application or fulfilment" of the Genocide Convention.³⁸ Within the boundaries of international law, countries can resort to other means as well to prevent or punish genocide such as bilateral diplomatic exchanges. However, the ICJ stressed reiterating as stated in *Bosnia and Herzegovina v. Serbia and Montenegro*,³⁹ that States in discharging their duties to prevent a genocide, "may only act within the limits permitted by international law."

Given this, whether Russia has violated Article I of the Genocide Convention by using force against Ukraine in the name of preventing and punishing alleged genocide is a question to be answered at the

37. Ukraine v. Russia, Provisional Measures, para 45.

38. Ukraine v. Russia, Provisional Measures, para 56.

39. 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)

merits stage. However, the ICJ expressed its doubt over whether under the Genocide Convention, a country can unilaterally use force against another country for punishing or preventing an alleged act of genocide.⁴⁰

Second, after establishing prima facie jurisdiction, the ICJ held that the objective of indicating provisional measures is to preserve the rights claimed by the parties, pending the decision on merits. This is consistent practice with the practice of the Permanent Court of International Justice (PCIJ), the predecessor to the ICJ, which in three cases referring to Article 41 of the ICJ statute spoke of the provisional measures “which ought to be taken to preserve the respective rights of the parties.”⁴¹ The ICJ in the *Fisheries Jurisdiction (UK v. Iceland)*⁴² cases decided that “the right of the Court to indicate provisional measures . . . has as its object to preserve the respective rights of the Parties pending the decision of the Court.”⁴³ This position has been reaffirmed in the case *Certain Documents and Data (Timor-Leste v. Australia)*.⁴⁴

Further, the ICJ may indicate provisional measures, as held in *Qatar v UAE*, only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible.⁴⁵ As mentioned, Ukraine argued before the ICJ that it seeks provisional measures to protect the following rights—not to be subject to a false claim of genocide, and not to be subjected to another State’s military operations on its territory on the ground of alleged genocide. The ICJ did not decide definitively whether Ukraine has such a right under the Genocide Convention. Nonetheless, the ICJ found Ukraine’s right not to be subjected to military

40. Ukraine v. Russia, Provisional Measures, para 59.

41. Ewa Sałkiewicz-Munnerlyn, *Jurisprudence of the PCIJ and of the ICJ on Interim Measures of Protection*, Springer (2022).

42. *Fisheries Jurisdiction, United Kingdom v Iceland*, Judgment, Jurisdiction, ICJ Rep 3, ICGJ 141, ICJ, 2 February 1973.

43. *Id.*

44. *Questions relating to the Seizure and Detention of Certain Documents and Data, Timor-Leste v Australia*, Order on Provisional Measures, ICGJ 472 (ICJ 2014), 3 March 2014.

45. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Provisional Measures), Qatar v. UAE*, Order of 23 July 2018, para 43.

operations by Russia for the purpose of preventing and punishing an alleged genocide in Ukraine is “plausible.” In other words, the ICJ found that Ukraine has a plausible right not to be subjected to military operations by Russia to prevent and punish an alleged genocide in the territory of Ukraine. This, in turn, is sufficient to indicate provisional measures.

Once the rights are plausible, the next requirement is that there should be a link between the rights claimed and the provisional measures sought. This “link” requirement of ICJ jurisprudence means that the rights to be protected by the provisional measures must be linked to those rights that are the subject of the main claim.

In this case, the court found that a link or a sufficient connection exists between Ukraine’s plausible right (not to be subjected to military operations on the ground of alleged genocide) and the provisional measures (immediate suspension of military operations by Russia or by any group backed by Russia) it has sought.

Third, once it is established that the applicant’s rights are plausible, the next question is whether a failure to indicate provisional measures will result in irreparable prejudice to these plausible rights or whether their alleged disregard may involve irreparable consequences.⁴⁶ Also, for the indication of provisional measures, there should be an urgency i.e. there must be a real and imminent risk of irreparable harm being caused to the rights found plausible.⁴⁷ Applying this principle, the ICJ held that given the magnitude of destruction that the Russian invasion of Ukraine has caused, there is indeed a real and imminent risk of irreparable prejudice to Ukraine’s plausible right. On this basis, the ICJ indicated the provisional measures mentioned earlier.

CONCLUSION

The Russian invasion of Ukraine is an egregious violation of international law, which has attracted worldwide condemnation from the in-

46. *Supra* note 43 [Ewa Sałkiewicz-Munnerlyn, Jurisprudence of the PCIJ and of the ICJ on Interim Measures of Protection, Springer (2022).].

47. Cameron A. Miles, *Provisional Measures before International Courts and Tribunals, Prejudice and Urgency*, (Cambridge University Press) (2017).

ternational community. While all the facets of Russian actions are not before the ICJ, its use of force to prevent and punish alleged genocide in Ukraine is an issue that the ICJ will consider. ICJ's recognition of Ukraine's right not to be subjected to military action to prevent and punish an alleged genocide as plausible is very important. It now opens the door to determine whether such a right definitively exists under the Genocide Convention and whether unilateral use of force to prevent and punish genocide is a violation of Article I of the Genocide Convention.⁴⁸ If the ICJ goes on to conclude that Ukraine has a definite right under the Genocide Convention not to be subjected to military action on a false pretext of allegedly committing genocide, this finding will have impact on military operations in the name of humanitarian intervention.

The ICJ's 16 March 2022 decision ordering Russia to end the war is binding on Russia and constitutes part of its international legal obligations as laid down by Article 94(1) of the U.N. Charter. However, Russia hasn't complied with the decision yet and continues with its military operations in Ukraine. This is a brazen violation of international law on part of Russia.

If a country fails to comply with an ICJ decision, Article 94(2) of the U.N. Charter provides that the "other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment". Thus, Ukraine can approach the U.N. Security Council. However, this will not help because Russia is a permanent member of the U.N. Security Council and will veto any decision against it.

Nonetheless, the ICJ's legally binding decision is an important addition to the volume of the global opinion against the Russian invasion. The decision also strengthens the hands of Ukraine and other countries to apply pressure on Russia to stop the war. Russia will suffer enormous reputational costs if it continues to violate international law so barefacedly. It should put an immediate end to the hostilities and return to the negotiating table to sort out its differences with Ukraine.

48. Joshua M. Kagan, *The Obligation to Use Force to Stop Acts of Genocide: An Overview of Legal Precedents, Customary Norms, and State Responsibility*, 7 SAN DIEGO INT'L L. J. 461 (2006).