

Unveiling the Impact of Genocide Allegations on Economic, Social, and Cultural Rights: A Critical Analysis in the Context of the International Court of Justice

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Abstract

This abstract proposes a comprehensive analysis of the landmark case "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)" before the International Court of Justice (ICJ). This case epitomizes the intricate overlay of legal frameworks addressing terrorism financing, racial discrimination, and their broader implications on Economic, Social, and Cultural Rights (ESCR), as well as other human rights violations and crimes. The paper begins by outlining the foundational aspects of the case, where Ukraine accuses the Russian Federation of violating the International Convention for the Suppression of the Financing of Terrorism by purportedly providing funds, weapons, and other forms of support to illegal armed groups. These groups have committed acts of terrorism in Ukrainian territory, including the tragic downing of Malaysia Airlines Flight MH17. Concurrently, Ukraine alleges violations of the International Convention on the Elimination of All Forms of Racial Discrimination, asserting that Russia has engaged in systematic discrimination against Ukrainian and Crimean Tatar communities, particularly in the annexed region of Crimea. Our analysis then delves into the procedural and substantive legal arguments presented by both Ukraine and the Russian Federation, highlighting the novel legal questions raised by the case regarding the interpretation and application of the two conventions. It emphasizes the ICJ's role in interpreting these international instruments within the context of contemporary geopolitical conflicts and the challenges posed by asymmetric warfare and non-state actors. Furthermore, the paper explores the connections between violations of the conventions and broader human rights concerns, particularly focusing on Economic, Social, and Cultural Rights (ESCR).

It argues that the financing of terrorism and racial discrimination have far-reaching implications for the realization of ESCR, as they can exacerbate poverty, hinder access to education and healthcare, and disrupt social cohesion. By undermining the economic and social infrastructure, these violations perpetuate a cycle of deprivation and discrimination that extends beyond the immediate victims. Additionally, the analysis extends to the interrelation between the alleged violations and other forms of human rights abuses, including the potential for acts of terrorism to constitute crimes against humanity, and the systemic discrimination against ethnic groups to trigger international concerns over genocide and ethnic cleansing. It critically examines how the intersectionality of human rights violations requires a holistic approach to international law that encompasses the protection of civil, political, economic, social, and cultural rights. The paper concludes by reflecting on the broader implications of the case for international legal practice and the enforcement of international human rights norms. It underscores the importance of international judicial mechanisms in addressing complex human rights issues and the need for robust international cooperation to prevent the financing of terrorism and eliminate racial discrimination. The case study serves as a pivotal reference point for understanding the dynamic interplay between different facets of international law and human rights, highlighting the challenges and opportunities for advancing global justice and human dignity.

1. Introduction

Overview of the Case

The case "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)" before the ICJ is a pivotal legal battle between Ukraine and the Russian Federation. Ukraine accuses Russia of breaching the International Convention for the Suppression of the Financing of Terrorism by allegedly providing funds, weapons, and other support to illegal armed groups that have committed acts of terrorism on Ukrainian soil, including the downing of Malaysia Airlines Flight MH17. Concurrently, Ukraine charges Russia with violations of the International Convention on the Elimination of All Forms of Racial Discrimination, particularly pointing to systematic discrimination against Ukrainian and Crimean Tatar communities in the annexed Crimea region. This author aims to delve into the intricate overlay of legal frameworks this case presents, with a keen focus on the implications for ESCR. The objective is to dissect the procedural and substantive legal arguments brought forward by both parties, interpret the ICJ's role and decisions within the context of these international legal instruments, and explore the broader implications of such legal battles on the realization and protection of ESCR. By examining the interconnectedness of terrorism financing, racial discrimination, and human rights violations, the paper will provide a nuanced analysis of how these legal domains impact the enforcement and realization of ESCR globally.

Significance of the Case

Ukraine v. Russian Federation case represents a pivotal juncture in the annals of international law, exemplifying the nuanced challenges that arise when traditional legal frameworks are applied to the complex scenarios of modern geopolitical conflicts, particularly those involving non-state actors and asymmetric warfare strategies. The engagement with non-state actors in conflict introduces significant legal complexities, as these groups do not fit neatly into the traditional paradigms governed by international law, which has historically centered on state actors. This Challenge has been identified as far back as 1995, by scholars such as Catherine Tinker and Paul Szasz in their analysis of the legal treatment of non-state actors in international conflicts.¹

Furthermore, this case highlights the critical intersection of various human rights violations—specifically those relating to terrorism financing and racial discrimination—and their collective implications on Economic, Social, and Cultural Rights (ESCR). The juxtaposition of these issues within the context of armed conflict provides a unique perspective on the layered nature of human rights violations and the requisite legal responses. The intersectionality of human rights issues, as explored in this case, underscores the evolving nature of international human rights law, a point elaborated upon by scholars such as Philip Alston and Ryan Goodman in their work on the progressive realization of ESCR.²

¹ Tinker, Catherine, and Paul Szasz. "The Role of Non-State Actors in International Law-Making During the UN Decade of International Law." *Proceedings of the Annual Meeting (American Society of International Law)*, vol. 89, 1995, pp. 177–85. *JSTOR*, <http://www.jstor.org/stable/25658908>. Accessed 29 Apr. 2024.

² Philip Alston International and Ryan Human Rights, Oxford: Oxford University Press, 2012.

The ICJ's engagement with these issues in its 2017 decision³ illustrates a critical precedent in recognizing and addressing the multifaceted nature of conflicts that transcend traditional racial and geopolitical boundaries, and directly impact the human rights landscape.

By delving into these complex interrelations, the case serves as a critical reference for the ongoing development of legal frameworks designed to effectively address the realities of modern conflicts and the associated human rights challenges. The case thus not only marks a landmark moment in the application of international law but also sets a precedent for future legal and scholarly work in this evolving field, as noted in the legal analysis by scholars and practitioners. In conclusion, the significance of this case lies not only in its immediate legal implications but also in its broader contribution to the evolving jurisprudence on the role of international law in addressing new forms of conflict and human rights issues. This case serves as a cornerstone for future debates and developments in international legal frameworks, providing a critical lens through which the international community can reassess and refine its approach to complex, multifaceted conflicts and human rights protections.

2. Background and Context

2.1. Context

On 26th February 2022, just forty-eight hours subsequent to the assaults perpetrated by the Russian Federation in the Ukrainian capital, Ukraine lodged an application initiating proceedings against the Russian Federation before the ICJ.⁴ This application marked the inception of the case entitled "Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)." The crux of the dispute was delineated as pertaining to "the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide." Notably, Ukraine chose not to predicate its claim on the prohibition of the use of force, as enshrined in Article 2(4) of the UN Charter, which might have appeared as the more intuitive approach. The strategic rationale behind Ukraine's invocation of the interpretation and application of the Genocide Convention lies in its relevance to both the conflict's backdrop and the issue of jurisdiction.

Addressing the first aspect, one of the justifications put forth by the Russian Federation for initiating the attacks on Ukraine, following weeks of heightened tensions and unsuccessful negotiations, was the alleged perpetration of mass killings and genocide against individuals of Russian ethnicity in the Donetsk and Luhansk regions (collectively known as the Donbass), situated in eastern Ukraine near the Russian border. Additionally, Russia cited Article 51 of the UN Charter to rationalize its use of force, contending that it was acting in collective self-defense to safeguard the populace of Donbass from the purported genocide. This assertion of "collective self-defense" was further predicated on Russia's acknowledgment of the autonomy of the two regions, designated as the 'Donetsk People's Republic' and 'Luhansk People's Republic.'⁵

³ (ICJ General List No. 166).

⁴ Ukraine v Russian Federation (Application Instituting Proceedings) [2022] ICJ Rep [pending].

⁵ As per the Russian Government, the legal justification for the military campaign was communicated on 24th February 2022 to the Secretary-General of the United Nations and to the Security Council in a missive wherein the President of the Russian Federation conveyed that "the people's republics of Donbass have solicited Russia's assistance. In this context, in accordance with Article 51 (Chapter VII) of the UN Charter, with the consent of

In its submission, Ukraine asserted, among other points, that "the Russian Federation has erroneously alleged the occurrence of acts of genocide in the Luhansk and Donetsk oblasts of Ukraine", a claim the applicant refuted, and further contended that "Russia lacks any legal justification to intervene in and against Ukraine with the aim of preventing and punishing any purported genocide." Ukraine petitioned the Court to:⁶

(a) Affirm and declare that, contrary to assertions made by the Russian Federation, no acts meeting the definition of genocide as outlined in Article III of the Genocide Convention have transpired in the Luhansk and Donetsk oblasts of Ukraine.

(b) Affirm and declare that the Russian Federation is not authorized under the Genocide Convention to undertake any actions within or against Ukraine with the objective of preventing or penalizing an alleged genocide, based on its unfounded allegations of genocide in the Luhansk and Donetsk oblasts of Ukraine.

(c) Affirm and declare that the Russian Federation's acknowledgment of the independence of the so-called 'Donetsk People's Republic' and 'Luhansk People's Republic' on 22nd February 2022 is predicated on a spurious claim of genocide and therefore lacks foundation in the Genocide Convention.

(d) Affirm and declare that the 'special military operation' declared and executed by the Russian Federation on and after 24th February 2022 is grounded on a baseless claim of genocide and thus lacks foundation in the Genocide Convention.

(e) Mandate that the Russian Federation furnish assurances and guarantees of non-repetition, pledging not to undertake any unlawful actions within or against Ukraine, including the application of force, based on its unsubstantiated assertion of genocide.

(f) Direct the Russian Federation to provide complete reparations for all harm inflicted because of any actions taken on the premise of Russia's unfounded assertion of genocide."

The request put forth by Ukraine can be delineated into two primary concepts: initially, the Court was urged to issue an adverse declaration affirming the absence of any genocide perpetrated by Ukraine. Secondly, a constructive determination was sought, asserting that the Genocide Convention prohibits resorting to military measures to forestall genocide. Ukraine asserted that Russia bore responsibility for violating the Genocide Convention by espousing a contrary view and acting accordingly.

2.2. Establishing the Court's Jurisdiction

The case raised specific jurisdictional concerns for the ICJ, given that Russia had not made a declaration recognizing the Court's jurisdiction as compulsory under Article 36(2) of the ICJ Statute. Consequently, Ukraine grounded the Court's jurisdiction on Article 36(1). As per this

Russia's Federation Council, and pursuant to the treaties of friendship and mutual assistance with the Donetsk People's Republic and the Lugansk People's Republic, endorsed by the Federal Assembly on February 22, I have taken the decision to undertake a special military operation." (President of the Russian Federation official website, "Address by the President of the Russian Federation," 24 February 2022, available at: <http://en.kremlin.ru/events/president/news/67843>.)

⁶ Based on the submissions Ukrainian Submissions.

provision, "the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the UN Charter or in treaties and conventions in force." Ukraine's argument was based on the latter part. It invoked Article IX of the Genocide Convention, to which both Ukraine and the Russian Federation were parties. Pursuant to this provision, *"[d]isputes between the Contracting Parties relating to the interpretation, application or fulfillment 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."*

This provided Ukraine with the opportunity to bring Russia before the ICJ, asserting that:

- (1) there existed a dispute between the two parties and
- (2) the dispute pertained to the interpretation and application of the Genocide Convention, as all contested aspects were linked to Russia's allegations of genocide against Ukraine, which were invoked as a legal basis for taking armed action.

While the Ukrainian approach was somewhat innovative, it nevertheless, was not the first instance of Ukraine employing this strategy in a dispute with the Russian Federation. Following the annexation of Crimea in 2017, Ukraine had also filed a lawsuit against Russia, alleging violations of International Conventions: namely, the Convention for the Suppression of the Financing of Terrorism (ICSFT) and the International Convention on the Elimination of All Forms of Racial Discrimination.

2.3. Request for Provisional Measures

Alongside the application, Ukraine submitted a plea for the indication of provisional measures, in accordance with Article 41 of the Statute of the Court and Articles 73, 74, and 75 of the Rules of Court. Pursuant to these provisions, the Court is empowered to prescribe, if it deems necessary, any interim measures that should be taken to safeguard the respective rights of either party. The plea for provisional measures takes precedence over all other cases, and notification of the suggested measures shall promptly be provided to the parties and to the Security Council (SC). Ukraine urged the Court to mandate an immediate halt to Russia's military operations initiated on 24th February 2022. In the oral hearings, its representatives claimed that Russian military operations in the Ukrainian soil have triggered a "military, humanitarian and environmental crisis of a like not seen in Europe since 1945".⁷ They were allegedly causing huge human suffering, including "widespread commission of war crimes", displacement of millions of civilians, and "privations imposed on many millions more trapped in cities facing bombardment by the Russian armed forces".⁸ Lastly, Ukraine also asserted the adverse environmental consequences of the assaults, particularly attributable to Russia's neglect of nuclear safety protocols and the deliberate targeting of fuel depots, resulting in "the release of vast clouds of toxic smoke into the atmosphere."⁹ In addition to the loss of life, the displacement of thousands of individuals from their homes and the resultant environmental degradation constituted irreparable harms, necessitating immediate action. The Russian position on the other hand, contended that the Court lacked jurisdiction to adjudicate the case, thereby precluding any consideration of the claim, even at the provisional measures phase. Consequently, Russia indicated its abstention from participating in the proceedings, including the oral hearings convened on 4th March 2022.

⁷ J. Gimblett, Oral hearing, p. 49, para. 5.

⁸ Ibid.

⁹ Ibid.

According to Russia's interpretation, contrary to Ukraine's assertions, the case could not be construed within the framework of the 1948 Genocide Convention. Its arguments can be categorized into two key points: firstly, Ukraine was effectively challenging the legality of Russia's use of force, which fell outside the purview of the invoked Convention; and secondly, the "special military operation" orchestrated by Russia was not predicated on that Convention, but rather on the right to collective self-defense enshrined in Article 51 of the UN Charter and customary international law. President Vladimir Putin's references to genocide were deemed general and insufficient to establish a solid basis for framing the dispute within the Genocide Convention. At best, Russia's allegations of genocide violations alluded to customary international norms on the subject. In essence, from Russia's perspective, there existed no dispute regarding the interpretation and application of the 1948 Genocide Convention. Consequently, there was no viable means of framing the case within the jurisdiction of the ICJ: the Court could neither issue provisional measures nor render decisions on the merits.

3. Court's Ruling

In initiating its deliberations, the Court noted the Russian Federation's absence from the oral proceedings. It emphasized that such non-participation does not undermine the legitimacy of the Court's rulings or impede the imposition of interim measures. Nonetheless, the Court acknowledged the absence formally, pursuant to Article 49 of the Statute, expressing that a party's absence negatively affects the judicial process by depriving the Court of essential contributions and could reflect a lack of intent to adhere to the Court's decisions. Russia's previous participations at the ICJ, suggesting a broader disengagement from international bodies amidst the 2022 conflict. One key reason behind Russia's non-participation could be seen as part of a broader strategy of disengagement from international institutions amidst the ongoing conflict in Ukraine. By choosing not to appear, Russia might be attempting to delegitimize the proceedings or avoid giving the impression that it acknowledges the ICJ's jurisdiction over the matter.

This approach aligns with a broader trend observed in recent years, where Russia has distanced itself from various international legal and diplomatic mechanisms, particularly those that could constrain its actions or lead to adverse judgments. Despite its absence from the oral proceedings, Russia did communicate with the Court through a letter. The letter, while not constituting formal participation, was still valued by the ICJ as it provided some insight into Russia's position. The contents of the letter are crucial because they allow the Court and the international community to understand Russia's perspective, even if indirectly. The letter contained arguments justifying Russia's actions in Ukraine, reiterating its claims of self-defense under Article 51 of the UN Charter accusing Ukraine of genocidal acts in the Luhansk and Donetsk regions. However, the Court emphasized that such a letter does not carry the same weight as formal participation, and Russia's absence was formally acknowledged under Article 49 of the ICJ Statute. This absence, the Court noted, negatively impacts the judicial process by depriving it of essential contributions and could indicate a lack of intent on Russia's part to adhere to any eventual decision of the Court.

The Court also addressed the issue of jurisdiction, asserting its authority to hear the case based on the Genocide Convention. Both Ukraine and Russia are signatories to this Convention, and neither has placed reservations on Article IX, which grants the ICJ jurisdiction over disputes related to the Convention's interpretation and application. Despite

Russia's invocation of collective self-defense as a justification for its actions, the ICJ clarified that a single act or omission could fall under multiple treaty obligations.

In this context, Russia's claims of genocide by Ukraine in the Luhansk and Donetsk regions since 2014, including criminal actions initiated against Ukrainian leaders, were noted by the Court as relevant to its jurisdiction under the Genocide Convention. In summary, Russia's absence and its letter to the ICJ reflect a complex legal and political stance. While the non-participation may be aimed at undermining the Court's authority, the ICJ proceeded with its deliberations, emphasizing the importance of jurisdiction and the broader implications of the case under international law.

3.1. On Merits

The Court initiated its analysis by expressing significant concerns over the Russian Federation's use of military force in Ukraine. This is done so by highlighting the grave implications this has under international law. The Court reiterated the imperative for all nations to comply with their obligations as stipulated by the UN Charter and other relevant international legal frameworks, including international humanitarian law. In doing so, the Court also reflected on its own duties regarding the upkeep of international peace and security and the peaceful resolution of disputes as outlined in the Charter.

In its assessment of the case's merits, the Court turned its attention to the "plausibility test." The Court found the evidence insufficient to establish that acts of genocide had occurred within Ukrainian borders. Furthermore, it questioned whether the Genocide Convention supports the notion that a Contracting Party may unilaterally exercise military force on another State's territory to prevent or punish purported genocide, considering the Convention's aims and objectives. This passage is crucial, and merits detailed attention. The Court had previously emphasized in other cases that states must adhere strictly to international law in their efforts to prevent genocide, stating that "every State could only act within the limits permitted by international law."¹⁰ Concluding from these principles, the Court noted that Ukraine has a plausible right not to be subjected to military operations by the Russian Federation aimed at preventing and punishing an alleged genocide on its territory. The Court also linked Ukraine's plausible rights under the Genocide Convention directly to the provisional measures requested, noting that Ukraine's appeal for Russia to halt its military operations inherently seeks to preserve the right of Ukraine that the Court has found plausible.

Regarding the criteria of irreparable harm and urgency, the ICJ found these conditions met as well. It referenced its jurisprudence which determines urgency as situations where acts causing irreparable damage could happen at any time before the Court's final decision. The Court pointed out that military operations invariably result in loss of life, as well as mental, physical, and environmental damage, highlighting the vulnerability of the civilian populations involved. Consequently, the Court mandated that the Russian Federation suspend all military activities initiated on 24 February 2022 in Ukraine until a final decision is reached. It further required that any military or irregular units, as well as any entities or individuals under Russian control or direction, cease actions related to these operations. Notably, this suspension was more comprehensive than Ukraine's original request, which specifically cited allegations of

¹⁰ As way of example see, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007.

genocide; the Court's broader injunction covered all military actions, regardless of their basis in the allegations. However, the Court declined Ukraine's request to compel Russia to report on compliance with these orders within a week, and thereafter regularly, which would have allowed for monitoring of the enforcement of these measures. This left the implementation of the provisional measures without formal oversight. Lastly, the Court instructed both parties to avoid any actions that could worsen or complicate the dispute or its resolution. While some judges, like American judge Robinson and ad hoc judge Daudet, argued that this non-aggravation order should have been directed solely at Russia, the Court opted for a more neutral stance, potentially reflecting a strategic and balanced approach to prevent any escalation of hostilities, which underscores the Court's commitment to fairness and equity at this procedural stage.

3.2. Enforcement

Following the announcement of the decision, a spokesperson for Russia stated that "Russia cannot take this decision into account."¹¹ However, in the landmark *LaGrand* case, the Court clarified that its orders on provisional measures are indeed binding, despite the language of the Statute that uses the term "indicate" for these measures.¹² Thus, it is important to recognize that Article 94 of the Statute obliges all United Nations members to adhere to the decisions of the ICJ in cases in which they are parties. This Article also enables the victorious party to bring instances of non-compliance to the attention of the Security Council (SC), which can then decide upon necessary actions. Despite this, of whether provisional measures are enforceable, as case-law on this matter remains unclear. Nevertheless, the precedent set by the *LaGrand* case supports the enforceable nature of these decisions.

However, the effectiveness of the SC in enforcing provisional measures in this particular case is questionable since Russia, being a permanent member of the SC, would likely veto any actions proposed. This wouldn't be unprecedented; in the *Nicaragua v. United States* case, the ICJ found the U.S. had breached international norms regarding the use of force and non-intervention, yet the U.S. vetoed the SC's enforcement of the decision. Consequently, the question of enforcing the ICJ's decision in *Ukraine vs. Russia* was not presented to the SC, potentially to avoid further undermining the Court's authority through a veto by the defendant state. A potential resolution might involve leveraging Chapter VI of the UN Charter, which focuses on the peaceful resolution of conflicts. Although resorting to the ICJ does not prevent action under Chapter VI, it could diminish the symbolic weight of the ICJ's authority. Article 36 of the Charter states that the SC may "recommend appropriate procedures or methods of adjustment," taking into account any previously adopted dispute resolution procedures by the parties. Thus, the ICJ's decision should be considered in this context. Importantly, under Article 27(3), any party involved in the dispute must abstain from voting in the SC regarding that dispute. Despite the term "recommendation," decisions under Chapter VI by the SC have been deemed binding by the ICJ. While the order remains unfulfilled, Russia's non-compliance constitutes a breach of international law, making it liable for all resultant damages. Concurrently, alongside potential indictments for individual criminal responsibilities in cases

¹¹ Telegraph Reporters, 'Russia-Ukraine War: Putin and Zelensky Peace Talks - Live Updates' (The Telegraph, 17 March 2022) <https://www.telegraph.co.uk/world-news/2022/03/17/russia-ukraine-war-news-putin-zelensky-peace-talks-live/> accessed 30.08.2024.

¹² *LaGrand (Germany v United States of America)*, Judgment of 27 June 2001.

of war crimes, the Russian Federation may also face obligations for reparations due to non-compliance with the ICJ's provisional order.

The ICJ's March 2022 decision holds symbolic significance the ICJ decision now makes it virtually impossible for anyone, including Russia to deny illegality. Notably, the Order was issued in a context where the use of force was not the primary issue under consideration, thereby underscoring the judiciary's vital role. The Court, in executing its contentious functions, uniquely among UN bodies, issued a binding decision during the Russo-Ukrainian conflict. However, the executive scope of what parties can request in international proceedings and what an international court can mandate concerning provisional measures. The provisional order granted Ukraine more than what might be achieved in the main procedure, where only a declaratory decision is typically sought. This perspective is debatable, as halting the attacks would logically follow from full compliance with the sought declaratory decision.

The ICJ can address the consequences of Russian aggression under Article IX, which pertains to the interpretation, application, or fulfillment of the Genocide Convention.¹³ The ICJ's past rulings, such as in the Bosnian Genocide case, indicated that Article IX does not extend to breaches of obligations outside the Convention. The Court has avoided making automatic connections between international force use and genocide, emphasizing that mass casualties from conflict do not equate to genocide and are covered under International Humanitarian Law. The case of Ukraine v. Russia is distinct, as it was Russia that claimed genocide as a justification for its actions. Ukraine aimed to clarify that genocide laws and laws on force use are separate, and any false linkage should be rejected. The potential strength of the Order lies not in what it enables, but in what it prevents: it may deter non-permanent members of the United Nations Security Council from using insincere human rights claims as a pretext for military interventions. This point is compelling, as the provisional measure effectively issues a preliminary condemnation of using force to prevent genocide. Some aspects of the decision invite criticism. The Court expressed a profound concern about the use of force by the Russian Federation in Ukraine, a statement more reflective of political than legal reasoning, which might be considered premature in the procedural context. This deviation from strictly legal reasoning to political considerations could undermine, rather than strengthen, the ICJ's authority and its perception as an independent entity. The measure is both powerful and powerless: its strong language and the nature of its orders contrast sharply with its actual effectiveness. As of February 2023, Russia had not complied with the order, continuing its military activities in Ukraine. This situation echoes past instances where a Security Council Permanent Member, despite ICJ convictions, failed to execute the decision, revealing a systemic flaw. The UN Charter did not anticipate a Permanent Member as an aggressor, rendering the enforcement mechanism ineffective under such circumstances.

4. What must become of the Future?

The Court faces multiple significant issues to resolve. Initially, despite recognizing its *prima facie* jurisdiction, the Court must definitively establish its competence. This involves determining whether the Genocide Convention shields a State Party from being wrongfully accused of committing genocide.

Furthermore, as highlighted, the Court needs to ascertain;

¹³ Lauterpacht H. The Development of International Law by the International Court. Cambridge: Cambridge University Press; 1982.

- (1) whether Russia unlawfully invaded Ukraine based on unfounded allegations of genocide,
- (2) if Russia is accountable under the Genocide Convention for any resulting harm to Ukraine, and
- (3) what reparations Russia must make to Ukraine for any illegal acts.

It is anticipated that the World Court will affirm its jurisdiction. Article IX of the Genocide Convention stipulates that the ICJ has jurisdiction at the request of any party involved in the dispute. The Convention does not differentiate between a state accused of genocide and the accuser, which supports the Court's role in overseeing potential abuses of rights, specifically the right to prevent genocide. From Ukraine's perspective, the attacks were the result of Russia's abusive exercise of the rights to denounce and prevent genocide, clearly outlined in the Convention. The allegations of abuse of right have taken a special form since, as Ukraine observes, Russia distorted the scope of its rights under the Convention and exercised them in stark disharmony with its objectives and purposes.

Another issue for final determination is the permissible means for preventing potential genocide. While all intervening states that addressed this topic agreed that genocide should be punished under domestic or international criminal law, there was less consensus on the preventive measures. This issue touches on the delicate subject of "humanitarian interventions" in the context of genocide prevention. Some states have expressed a willingness to accept unilateral interventions when there is solid evidence of genocide and collective measures have failed. However, from a *jus ad bellum* perspective, an attack remains unlawful even when aimed at preventing genocide. While a "good faith" analysis may mandate a duty to prevent genocide, it does not create a corresponding right.

These views align with the ICJ's interpretations of the Genocide Convention, notably in its Advisory Opinion on Reservations to the Genocide Convention. However, if one considers prevention actions within the broader framework of the "responsibility to protect," which views intervention not as a right but as a duty of the international community, this could complicate the interpretation of the Convention. Nonetheless, the Court might choose not to directly address "humanitarian intervention." The United Kingdom noted that when interpreting the Genocide Convention, the Court is not required to engage in a broader analysis of the international legality of force used in response to grave humanitarian crises, including under the doctrine of humanitarian intervention. The Court may conclude that there were no proofs of genocide, thus negating the need for preventive actions. Although some may feel that avoiding these broader questions might seem like a judicial omission, the Court could still use a broad formula in its decisions. However, in the provisional Order, it expressed skepticism that the Convention, considering its aims and purposes, authorizes unilateral military interventions by a State to prevent or punish alleged genocide (para. 59). The Court seems to lean towards excluding unilateral interventions based on the Genocide Convention. Whether such interventions could be justified under other international norms remains outside the scope of this procedure, which is confined to interpreting the 1948 Convention.

Conclusion

The ongoing war in Ukraine is poised to generate substantial litigation across various jurisdictions. Besides the ICJ, the conflict is under consideration by other international courts, such as the European Court of Human Rights (ECtHR).¹⁴

The recent involvement of the International Criminal Court (ICC) in the legal proceedings related to the Ukraine conflict marks a significant development in the international community's efforts to address the alleged atrocities. Last week, the ICC signed an agreement to participate in the investigation of war crimes, crimes against humanity, and potentially genocide that have occurred during the conflict. This involvement underscores the seriousness of the charges being investigated and the ICC's commitment to ensuring that individuals responsible for these grave violations of international law are held accountable. The ICC's participation adds a crucial dimension to the ongoing litigation across various jurisdictions, complementing the work already being undertaken by the ICJ and the ECtHR. While the ICJ and ECtHR focus primarily on state responsibility and human rights violations, the ICC's mandate extends to individual criminal responsibility, providing a broader scope for justice. The inclusion of the ICC in these proceedings enhances the international legal framework addressing the conflict, offering a more comprehensive approach to justice and accountability. The ECtHR also saw significant activity. On February 28, 2022, the Ukrainian Government filed an application with the ECtHR, requesting urgent interim measures under Rule 39 of the Rules of Court to address "massive human rights violations by Russian troops." The very next day, the ECtHR issued several interim measures to the Russian Government and noted that an interim measure from March 13, 2014, concerning events in eastern Ukraine remained effective. The Court identified a real and continuing risk of serious violations of the Convention rights of the civilian population, notably Articles 2, 3, and 8.

To help clarify the concept of "genocide" in the context of this conflict, it is crucial to explain how both Ukraine and Russia define and perceive this term. Ukraine refutes Russia's allegations that it is committing genocide against ethnic Russians in the Donetsk and Luhansk regions, accusing Russia of using these claims as a pretext for military intervention. Ukraine argues that Russia's invocation of genocide lacks legal foundation under the 1948 Genocide Convention. On the other hand, Russia justifies its military actions by claiming it is acting in collective self-defense to prevent genocide against Russian-speaking populations in these regions. Providing a clear understanding of these divergent views on what constitutes "genocide" is essential for readers to grasp the legal and rhetorical stakes in this case.

In addition to the focus on genocide, it is important to explore how other rights are affected by the conflict. Key rights enshrined in the European Convention on Human Rights (ECHR) are under threat, notably the right to life (Article 2), the prohibition of torture and inhuman treatment (Article 3), and the right to respect for private and family life (Article 8). The ongoing conflict has led to indiscriminate attacks on civilians, resulting in loss of life, physical and psychological harm, and the destruction of homes and livelihoods. These violations intersect with broader human rights concerns, especially Economic, Social, and Cultural Rights (ESCR), which have been severely impacted by the war. The right to education, healthcare, and an adequate standard of living have been compromised as infrastructure crumbles and social services become inaccessible to millions of displaced individuals.

¹⁴ Application number 11055/22, *Ukraine v. Russia*. The case is known in the ECtHR as *Inter-State case Ukraine v. Russia (X)*.

The intersection of genocide allegations with these other human rights violations underscores the broader human toll of the conflict. The destruction of vital infrastructure, such as hospitals and schools, coupled with the forced displacement of civilians, compounds the humanitarian crisis. It is essential to analyze how these violations go beyond the immediate allegations of genocide and contribute to a larger picture of human suffering. This interconnectedness between different sets of rights—civil and political, as well as economic, social, and cultural—illustrates the multifaceted nature of the conflict and highlights the critical need for international legal responses that address the full spectrum of human rights violations.

Consequently, it directed the Russian Government to avoid military attacks against civilians and civilian objects and to ensure the safety of medical establishments, personnel, and emergency vehicles in the affected areas. Unlike the ICJ, the ECtHR required the Russian Federation to report on the measures it had taken, which remains unfulfilled, further complicated by Russia's cessation from the European Convention on Human Rights as of March 16, 2022, via Resolution CM/Res (2022).

Furthermore, the ECtHR received multiple individual requests from people affected by the conflict, which emphasized the ongoing risks to their lives and access to essential services.¹⁵ The Court specified that the interim measure from March 1 should cover any such requests demonstrating an imminent risk of irreparable harm. Years into the conflict, Russia had not acknowledged the interim measures from either the ICJ or the ECtHR, casting these decisions as potentially symbolic. This raises questions about the effectiveness of lawfare in armed conflicts. Is it a strategic advantage or a risk to International Law? The swift actions of Ukraine in directing the conflict towards the ICJ and the ECtHR underscore the significant role these courts can play in armed conflict contexts. Additionally, these courts, including the ICC, have demonstrated their commitment to upholding the principles of peaceful dispute resolution and the laws of war. Notably, these courts responded more rapidly to applications than in the past; the ICJ issued a decision within days, and the ECtHR responded the day following Ukraine's application.

Despite this effectiveness in issuing decisions, the enforcement of these decisions appears illusory, a reality that could undermine the credibility of international law. The international community's apparent resignation to this inertia may be perceived as proof of a flawed system. However, the symbolic power of these judgments remains significant in the international sphere, affirming the widespread condemnation of the attacks.

There are quite a number of statements in this paper that needs to be supported with citations- To avoid littering comments, I have highlighted a few statements, but there are more through out the work.

¹⁵ **Ukraine v Russia (X)** (Application no 11055/22) ECtHR [pending].