
LEGAL CONNOTATIONS OF THE UKRAINE-RUSSIA WAR AND THE JUDGEMENT OF ICJ

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Introduction

There is a reasonable cause to think that both alleged war crimes and crimes against humanity have been committed," said head prosecutor Karim Khan of the International Criminal Court, which is based in The Hague. 1 March 2022, The Hague - As the invasion enters its sixth day, Kyiv has filed an application with the United Nations' highest International Court of Justice where Russia is accused by Hague of "genocide planning" in Ukraine. Five key questions about Russia, Ukraine, and international law are as follows:

1. Is Russia in violation of international law? - Of course. According to Geoff Gordon, senior researcher at the Hague-based Asser Institute for International and European Law, Russia has violated UN Charter article 2(4), which prohibits the use of force internationally. "The use of Russian military force is not uncommon" in Ukraine, according to Philippe Sands, a British-based international law professor.
2. Which courts have jurisdiction over disputes involving Ukraine? - Ukraine has filed a case with the International Court of Justice, which will very definitely hear arguments regarding jurisdiction, according to Gordon. He went on to say that national courts might hear cases involving international law infractions, and that Russia could be hauled to the European Court of Human Rights for human rights crimes.

The International Criminal Court (ICC) has the authority to investigate war crimes committed by individuals on the territory of Ukraine, which is not a member but accepted the Court's jurisdiction in 2014. Russia, on the other hand, withdrew from the ICC, so the court will only be able to reach Russians if they are arrested on the territory of a country that recognises the court's jurisdiction.

3. Is it possible to hold individuals accountable? - Of course. The International Criminal Court

(ICC) prosecutes people accused of the world's worst crimes, such as genocide, war crimes, and crimes against humanity. Individuals may be tried in national courts as well.

However, if a country does not ratify the ICC's Rome Statute, which neither Russia nor Ukraine has done, the ICC can not pursue the crime of aggression, which is defined as an attack on another state organised by a political or military authority. Sands, on the other hand, proposed establishing a dedicated international criminal tribunal to investigate Russian aggression against Ukraine.

4. What is the next step? - The International Court of Justice (ICJ), situated in The Hague, will first determine whether it has jurisdiction to hear the case. "I think we'll see hearings in the next couple weeks, and a decision within a couple weeks after that — or maybe even sooner given the gravity of the situation," Cecily Rose, an assistant professor of public international law at Leiden University, predicted. Should the ICC's judges agree that the court has jurisdiction and evidence to back it up, a probe could lead to indictments and prosecution by chief prosecutor Khan. ⁽¹⁾ However, if a member state refers the matter to the ICC, the procedure could be accelerated by avoiding the necessity to acquire the judges' consent.

5. - How will it affect things? - Experts agree that answering the question is challenging. According to Gordon, the ICJ "lacks a typical enforcement mechanism to make its judgements effective" because its rulings are final and cannot be challenged. ⁽²⁾ Similarly, the International Criminal Court (ICC) has its own police force and must rely on member governments to conduct arrests.

"On the other hand," Gordon added, "we're seeing a variety of more or less synchronised mechanisms mobilised to penalise Russia for waging an illegal war". Economic sanctions, travel restrictions, and the cancellation of sporting events were among the measures used. "An ICJ judgement could play a role in any future such activities," Gordon added, "whether as part of a specific legal argument or a public debate about legitimacy. "

Philosophy of law

The subject of tyrannicide - the assassination of a ruler who rules illegitimately, oppressively, and/or forcefully at home or abroad — is fraught with ambiguity. Putin seems to fit this description. Hugo Grotius and Emer de Vattel, titans of ancient jurisprudence (or legal

philosophy), thought that dictators were "common enemies of humanity" who should be hunted down like pirates.

However, the question of whether such tyrants can be targeted under international law is a bit muddled, with both pro and con views. We also know that assassination has a significant impact on national and worldwide political stability.

THE UKRAINE INVASION BY RUSSIA AND THE LAW OF WAR

Many countries criticised Russia's invasion of Ukraine on February 24, 2022, as a violation of international law that governs when countries may use force against one another. Several observers, including the US Secretary of State and other foreign government officials, have identified evidence that the Russian military has targeted civilians, struck protected places, and engaged in other actions that violate international law governing the conduct of war since then. This Legal Sidebar begins with a brief overview of the international legal framework authorising the use of force in the invasion of Ukraine and finishes with a discussion of accountability alternatives and congressional choices.

Deconstructing the Justifications for War in Ukraine (Jus ad Bellum)

The United Nations Charter is the starting point for most areas of jus ad bellum analysis. There are certain exceptions to Article 2(4), which prohibits member nations from using or threatening to use force against one another.

When an armed attack occurs, Article 51 of the charter protects member-states' right to act in self-defence, either individually or collectively, and Chapter VII of the charter allows the United Nations Security Council to authorise military actions necessary to maintain or restore international peace and security.

A state may also agree to the use of force within its borders. Jus ad bellum is also informed by customary international law (as explained in this CRS Report).

Claims of Russia's Jus as bellum

Three arguments dominated Russia's legal doctrines:

First, Russia claimed to be protecting itself against a broader danger originating in Ukraine and presented primarily by the US and other NATO members. When a "armed attack" occurs, Article 51 of the United Nations Charter protects states' "inherent right" to self-defence, although it does not specify the right's specific limits. While there are differing opinions on how imminent an attack must be before using force in self-defence, analysts have widely agreed that the lack of military action in Ukraine that threatens the Russian state renders Russia's self-defence argument invalid.

Second, Russia claimed to be engaged in collective self-defence of separatist enclaves in Ukraine's Luhansk and Donetsk regions, which it recognised as independent entities three days before the invasion. However, the two areas do not appear to meet the traditional criteria for statehood in international law. Legal analysts argue that the territories are not nations since their ostensible independence was achieved via the use of force; they do not govern the entirety of their claimed territory; and they rely on Russia for economic, financial, political, and military support. Even if the breakaway regions were considered states, observers point out that *jus ad bellum* principles of necessity and proportionality would require Russia to limit its military intervention to actions that protect only these breakaway regions, rather than a full-scale invasion aimed at "demilitarising" Ukraine as a whole.

Third, Russia claimed that its invasion is intended to stop the Kiev authorities from committing "genocide" against Russians and Russian-speakers in Ukraine. Ukraine "categorically disputes" the genocide allegation, as stated in this Legal Sidebar, and has challenged Russia's claim before the International Court of Justice. Most observers regard the assertion as a completely contrived excuse for ousting Ukraine's government, as neither the US nor UN human rights monitors have revealed proof of such genocide in their evaluations.

The following are key *jus in bello* principles:

Military necessity: States engaged in armed conflict may adopt means necessary to achieve legitimate military objectives, as long as international law does not prohibit them.

Humanity: Military actions cannot cause suffering, harm, or devastation unless they are essential to achieve a legitimate military goal.

Parties to a conflict shall avoid attacks that are likely to inflict incidental harm to civilians or property damage to people that is excessive in relation to the real and direct military advantage to be obtained. Parties must take all reasonable steps to avoid or minimise civilian casualties.

Parties to a war must make a distinction between civilians and fighters, as well as between protected and unprotected objects. (4) Parties are prohibited from attacking civilians or protected property.

In addition to these broad principles, law in bello protects specific groups such as civilians, minors, medical and religious staff, and volunteer assistance workers. It also safeguards groups that are no longer involved in combat, such as the wounded, sick, shipwrecked, and prisoners of war. The four Geneva Conventions' Common Article 3 provides a "minimum yardstick" of safeguards for persons who do not have protected status. The principle of jus in bello restricts the weapons that nations can use in armed warfare. It outlaws two types of weapons: those that inflict unnecessary harm or are fundamentally indiscriminate, and those that are particular, such as toxic weapons and gases, chemical weapons, and biological weapons. By outlawing pillaging, limiting the damage and seizure of non-military property, requiring the free passage of some humanitarian aid, and controlling the conduct and techniques of combat, Jus in Bello regulates the conduct and methods of warfare among other things, the white flag of surrender.

Jus in Bello in Ukraine

Some of Russia's claimed actions, according to US and international government officials and observers, The following actions, among others, could be considered violations of the law of war:

The indiscriminate use of ballistic missiles and other explosive weapons in locations with a high density of people;

A Holocaust memorial that was damaged by airstrikes;

Artillery, airstrikes, and other forms of violence against people;

Nuclear power stations are being targeted and seized.

Hospitals are subjected to airstrikes and other types of violence.

Using cluster munitions to destroy a civilian hospital, residential districts, and a school; and attacking and mining agreed-upon humanitarian corridors⁽³⁾ designed to allow civilians to evacuate from and humanitarian items to be transported into regions of active warfare. (While neither Ukraine nor Russia are signatories to the Convention on Cluster Munitions, other jus in bello prohibitions may be implicated by the use of weapons.)

Certain commentators have pointed out that some of Ukraine's actions could be considered illegal. Specifically, The public exhibition of captured Russian soldiers at news conferences could put the Third Geneva Convention at jeopardy. Soldiers must be treated humanely and protected from "insults and public curiosity," according to the Geneva Convention.

Finding, compiling evidence of, and establishing jus in bello infractions is a highly fact-specific endeavour that necessitates knowledge of on-the-ground facts and decision-making. It can be particularly difficult to determine whether civilian casualties and strikes on civilian infrastructure were deliberate (and hence illegal) or unintentional (and thus not excessive) (and therefore potentially permitted under the principle of proportionately). The International Criminal Court is gathering evidence in Ukraine of alleged war crimes and other international law violations.

User-generated recordings showing Russian military activity have accumulated in the hands of media outlets, private citizens, and other nongovernmental organisations, which could be used as evidence of war crimes. However, many obstacles remain in the way of international responsibility, and Russia denies targeting civilians or breaking international law.

Accountability Methods and Legislative Options

Finding channels of accountability for violations of the law of war involves a slew of logistical, legal, and jurisdictional issues. Ukraine is pursuing claims against Russia in the International Court of Justice and other international tribunals, as mentioned in this Legal Sidebar, but jurisdictional and enforcement constraints may limit the cases' practical impact. Some analysts have suggested that a new international tribunal with expanded jurisdiction be established to deal with Russia's conduct. According to reports, Germany and Poland have launched investigations to see if the invasion has resulted in crimes that can be prosecuted under their respective domestic laws. Although the United States has a war crimes legislation (18 USC

2441), it does not grant universal jurisdiction, and the Department of Justice has never tried or convicted anyone for a war crime in this statute.

Some observers have suggested that Congress alter this act to give it more authority. Others have proposed modifying the Foreign Sovereign Immunities Act to allow civil lawsuits and asset attachments against Russia. 141 countries voted in favour of UN General Assembly Resolution ES-11/L. 1, which "deplores"⁽⁵⁾ the invasion as an illegal use of force, but it is nonbinding. At the United Nations Security Council, Russia vetoed a different resolution that would have included a binding "decision" that Russia must immediately cease using force and unconditionally withdraw from Ukraine. U. N. bodies may continue to address aspects of the Russian incursion, as discussed in this CRS Insight, and Congress and the executive branch have ways to influence (but not control) U.N. activity.

Congress may adopt legislation ordering the Foreign Claims Settlement Commission of the United States to allow claims emanating from Russia's invasion and possible nationalisation of American-owned property in Russia. This CRS discusses the Foreign Claims Settlement Commission (FCSC) is a quasi-judicial, independent institution within the Department of Justice that adjudicates claims brought by U. S. citizens who have been wronged by foreign governments. Its power is confined to country-specific initiatives established through legislation or by request from the US State Department. In an effort to hold Russia accountable for the invasion, the United States, the European Union, and allies have slapped sanctions on it. Some members of Congress have argued that the sanctions should be broadened. Members of Congress have also filed legislation that would allow the President to confiscate and liquidate the assets of Russian oligarchs in the US. The President can prohibit transactions and "freeze" assets under the International Emergency Economic Powers Act (IEEPPA), but his ability to vest (take ownership to) those assets is confined to situations in which the US has been attacked or is involved in hostilities.

UKRAINE VS RUSSIAN FEDERATION

The International Court of Justice (ICJ) heard allegations of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). On February 26, 2022, Ukraine filed a complaint against Russia in response to the latter's invasion over a dispute over the 1948 Convention on the Prevention and Punishment of the

Crime of Genocide. The Court declared on March 16, 2022, that Russia must "immediately halt military actions" in Ukraine.

Charges

Ukraine made two submissions. The first established that, contrary to Russian assertions, acts of genocide did not occur within the oblasts of Luhansk and Donetsk. The ensuing Special Operation is not warranted because these statements constitute the basis of Russian recognition of the Donetsk People's Republic and the Luhansk People's Republic

The second point dealt with allegations that the Russian government had planned "acts of genocide in Ukraine," and that Russian Armed Forces were "intentionally killing and inflicting serious injury During the invasion, members of the Ukrainian nationality were the actus reus of genocide under Article II" of the Genocide Convention.

Proceedings for interim relief

The first hearings in the case were held on March 7, 2022, at the Peace Palace in The Hague, Netherlands, to determine Ukraine's eligibility for provisional relief. The Russian delegation did not attend the hearings, although they did submit a written testimony. With Vice-President Kirill Gevorgian of Russia and Judge Xue Hansin of China dissenting, the court found 13-2 on March 16, 2022 that Russia must "immediately cease the military activities" it began in Ukraine on February 24, 2022. The court also unanimously urged both parties to refrain from taking any action that may worsen or prolong the issue in front of the court, or make it more difficult to resolve.

The ICJ published a 20-page ruling describing its reasons, in addition to a concise explanation of its conclusion. Six judges, including Vice-President Gevorgian and Judge Xue, wrote separate comments outlining their different perspectives on the matter. While the court's judgements are binding on member nations, it lacks the ability to directly enforce its orders. In the past, governments have disobeyed rulings in a few instances.

The reasoning of the court

The court initially ruled that it had jurisdiction to issue temporary remedy "pursuant to Article IX of the Genocide Convention," which gives the International Criminal Court (ICC) the power

to settle disputes about the Convention's interpretation, application, or fulfilment. The court stated that Article IX applied because Russia and Ukraine disagree on whether or not genocide is taking place in Donetsk and Luhansk.

The court therefore ruled that there was a conceivable link between Ukraine's claimed rights under the Genocide Convention and the major interim relief it sought—the suspension of Russia's military operations—but that there was no such link for two other types of relief asked by Ukraine. Ukraine invoked two rights: "not to be subjected to a false claim of genocide" and "not to be subjected to military actions on its territory by another State based on [an abuse] of the Genocide Convention. " Ukraine has "a reasonable right not to be exposed to military actions by the Russian Federation for the aim of preventing and punishing which according to the court, there was "a purported genocide" in its territory.

Finally, the court decided that the situation in Ukraine was critical enough to allow temporary reprieve. "The civilian population affected by the current conflict is particularly vulnerable," the court concluded. The Russian Federation's 'special military operation' has resulted in a large number of civilian deaths and injuries. It has also resulted in severe material damage, such as the destruction of structures and infrastructure. The attacks are still going on, and the civilian population is facing increasingly harsh living conditions. Many people do not have access to the most basic foods, clean water, energy, life-saving medicines, or adequate heating. Under highly dangerous conditions, a big number of people are attempting to evacuate the most impacted cities. "

Statements which are separated

Vice-President Gevorgian and Judge Xue disagreed that the ICJ had jurisdiction, noting that Ukraine was seeking a judgement on the legitimacy of the Russian invasion, not a genuine dispute under the Genocide Convention. Judge Mohamed Bennouna also expressed reservations about the Genocide Convention's applicability and Judge ad hoc Yves Daudet wrote a separate opinion criticising the ICJ.

Responses to the decision

Ukraine's President Volodymyr Zelenskyy praised the decision as a total success for his country, warning that disobeying the order will further isolate Russia. UN Secretary-General

António Guterres said the decision reaffirmed his repeated calls for peace.

The Group of Seven Foreign Ministers issued an unified statement the next day, accusing Russia of waging a "unprovoked and disgraceful war" and urging it to follow the court's verdict. Dmitry Pskov, Russia's press secretary, denounced the judgement, saying that Russia could not "take this decision into account" and that the decision was invalid without both sides' consent.

ICJ'S ORDER ON PROVISIONAL MEASURES IN RUSSIA & UKRAINE

The International Court of Justice (ICJ) has issued an order on Ukraine's request for provisional sanctions against the Russian Federation under the 1948 Convention on the Prevention and Punishment of Genocide (the Genocide Convention). These provisional measures request was heard by 15 judges, including 14 ICJ members (Judge Cancado Trindade was unable to attend the oral session), as well as one ad hoc judge chosen by Ukraine. Joan E. Donoghue, a US judge, is the current President of the Court, and Kirill Gevorgian, a Russian judge, is the Vice President. The International Court of Justice (ICJ) ordered the following by a majority of 13-2:

- (1) The Russian Federation shall immediately cease military actions in Ukraine's territory, which began on February 24, 2022:
- (2) The Russian Federation shall guarantee that any military or irregular armed units directed or supported by it, as well as any organisations and persons under its control or direction, do not take any actions in support of the military activities mentioned in point (1)above. The Court indicated a third provisional measure by a unanimous vote
- (3) Neither Party shall take any action that may aggravate or prolong the dispute before the Court or make its resolution more difficult.

The degree of unanimity among the judges is the first thing that stands out. Only the Russian and Chinese judges voted against the indication of provisional measures, and the the Court unanimously directed the parties to "refrain from any action that may aggravate or prolong the dispute before the Court or make it more difficult to resolve. "(It's difficult to see how Russia's current military campaign doesn't "aggravate or extend the conflict" - therefore Judges Xue and Gevorgian's votes might also be interpreted as tacitly calling on Russia to stop aggressive military activities.)The Court was plainly conscious of the narrow basis for its jurisdiction in

this instance. "On 2 March 2022, the United Nations General Assembly issued a resolution alluding to several aspects of the conflict (doc. A/RES/ES-11/1)," the Order states.

However, the scope of the current action before the Court is limited, as Ukraine has brought these proceedings only under the Genocide Convention" (para. 19). The ruling further states that a party's failure to attend "cannot by itself constitute an impediment to the issuance of provisional measures" (para. 23, citing the Iran hostages' case, in which Iran did not appear), and that "a party's failure to participate in the proceedings at any level of the case cannot, under any circumstances, invalidate its decision" (id. , citing *Guyana v. Venezuela* and *Nicaragua v. United States*). While acknowledging receipt of Russia's submission dated March 7, 2022, the Court stated that it would consider it "to the degree that it finds it suitable in discharging its obligations" (para. 22).

Jurisdiction prima facie

Both Ukraine and Russia (as "the State continuing the legal personality" of the USSR) are parties to the Genocide Convention, and both withdrew their reservations to Article IX (the treaty's compromissory clause) in 1989, indicating that both have agreed to the ICJ's jurisdiction over treaty disputes. The Court explains Ukraine's and Russia's arguments on this issue after restating the standard for determining jurisdiction at the provisional measures stage. It mentions Russia's position that "the plain wording of the Convention makes it apparent that it does not regulate the use of force between States" (para. 32).

Furthermore, Russia stated in its written communication that the Genocide Convention (which, in its opinion, "cannot offer a legal basis for a military operation") (id.) was not the justification for its use of force, but rather Article 51 of the UN Charter and customary international law. Russia maintained that the International Court of Justice (ICJ) has jurisdiction over the case since the only foundation for jurisdiction is the Genocide Convention, which Russia believes does not apply to the facts at hand. The frequent, documented conversations between Ukraine and Russia including charges of genocide, according to the Court, allow Ukraine to apply the Genocide Convention's compromissory clause as the foundation for the Court's jurisdiction (para. 44). Whether or not the issue involves additional treaties or international legal duties, this is the case.

According to the Court, regardless of whether they also fall "within the ambit" of other treaties. Given the copious record of Russia's invocations of genocide as a pretext for its invasion, the Court's judgement that Ukraine has met its burden to prove *prima facie*. It is not surprising that there is a disagreement between the Parties to the Genocide Convention. The jurisdictional analysis did not sit well with Vice President Gevorgian "Ultimately, the jurisdiction of every international court stem from the consent of States to submit a dispute between them to binding resolution by a judicial body," he explained. According to him, Russia's approval is missing in this case. Because the Genocide Convention does not regulate the use of force, and the use of force does not constitute genocide in and of itself, this is the case (para. 6). (It's worth noting that Ukraine's initial appeal did not accuse Russia of genocide.)

Despite the fact that ICJ judges do not serve in a representative capacity, it is perhaps unsurprising that the Russian judge was the least receptive to Ukraine's claim that the Genocide Convention also includes a right not to be invaded on the basis of pretextual allegations of genocide (para. 7). He also expressed scepticism about Ukraine's ability to use the treaty's compromissory clause to ask the ICJ to issue a declaration of "non-violation" (para. 8) – despite the fact that, as Dapo Akande pointed out in a recent EJIL podcast, the respondent in contentious cases almost always asks the Court to find that it has not violated a given legal obligation. Vice President Gevorgian, on the other hand, voted in favour of the "non-aggravation" measure, stating that "[t]he authority to suggest such measure is a power inherent to the Court" and does not require *prima facie* evidence of jurisdiction (para. 10).

Possibility of the Asserted Rights According to the Treaty

After establishing jurisdiction, the Court must consider whether provisional measures are necessary to protect "the rights which may later be adjudged to belong to either party by [the Court]" (para. 50). Much of Ukraine's argument during the provisional measures stage was based on the need to perform treaty obligations in good faith, which also informs the Court's analysis (para. 56). Ukraine and Russia agree that the Genocide Convention forbids one party from using force to prevent and punish genocide on the territory of another. As a result, Russia claims that Ukraine cannot utilise the Convention as a legal basis for its right to be free of Russian force. (7)The Court writes (para. 59). (The term "doubtful" could be interpreted as an attempt to avoid prejudicing the United Kingdom's humanitarian intervention theory, despite the fact that there is now no UK judge on the Court. In any case, the Court is not being asked

to interpret the Convention finally at this juncture, thus there is no necessity for it to state its observations conclusively.)The need of good faith and the lack of a treaty basis for employing force to prevent genocide, according to the Court, make Ukraine's asserted treaty rights conceivable rather than eliminating them entirely from the treaty's scope.

Judge Bennouna (Morocco) voted in support of the interim remedies, but he added a declaration to convey his dissatisfaction with the Court's jurisdictional analysis. He points out that the Genocide Convention "does not encompass, in any of its terms, either charges of genocide or the alleged use of force in response to such allegations" (para. 5). According to him, the plausibility analysis requires the Court to "find [an] alleged plausible right based on one of the provisions of the Genocide Convention that the Russian Federation is said to have violated" (para. 6).

The Relationship Between Ukraine's Probable Rights and the Requested Provisional Measures

Although Ukraine asserted two rights – the right not to be subjected to "false claims of genocide" and the right not to be subjected to military operations on its territory based on such a claim (para. 52), the Court focuses on the second asserted right (para. 60), which is the source of Ukraine's immense suffering. The Court reframes this right as "Ukraine's right under Article I [of the Convention] to the performance of the Convention in good faith by any State party" (para. 62). The Court finds the necessary link between this right and the requested measures enjoining Russian military operations. The reasoning goes something like this: (1) Russia justified its "special military operation" in part by fabricating allegations of genocide; (2) Ukraine has a plausible right under the Genocide Convention not to be subjected to military operations based on such allegations. (3) Russia must halt its military operations in order to protect Ukraine's asserted rights until the merits of the legal dispute are resolved.

This logic provides the necessary link between the requested measures and Ukraine's plausible rights. Judge Xue explained her decision to "reserve her position" on the first two provisional measures, citing a lack of the necessary link between the measures and the claimed rights. As per (para1), she mentions that the purpose of Ukraine's application is "It appears to be seeking a ruling from the Court that the Russian Federation's recognition of Ukraine's Luhansk and Donetsk regions is illegal blasts as independent republics and its military operations in Ukraine are unlawful" (para. 2). She, like Vice President Gevorgian, would not read the Genocide

Convention with such zeal. She objects to the finding of a "link," rather than the finding of jurisdiction *prima facie*. She also finds the Court's analysis of plausibility unconvincing because "the rights and obligations which Ukraine claims are not plausible under the Genocide Convention," in her opinion (para. 4).

Judge Robinson's separate opinion, on the other hand, states that "the dispute between the Parties was defined eight years ago by the several investigations carried out by Russia Ukraine is accused of genocide under the 1948 Convention " (para. 14), and that "the real issue in the case is not the use of force. Rather, it is Russia's allegation that Ukraine committed genocide under the Genocide Convention, and Ukraine's denial of that allegation" (para. 13).

The Court's rationale for finding a link between the requested measures and the asserted rights is largely dependent on the timeframe at issue in the litigation (*i. e.* , the start or continuation of hostilities) and on taking Russia's pretextual allegations of genocide seriously enough to preserve the "hook" for ICJ jurisdiction. Russia's written submission essentially disavowed alleged genocide as a justification for the invasion and sought to place all legal weight on (equally bogus) self-defence arguments. Putin is unlikely to retract his claims of genocide, so the following point may be purely academic.

However, if Ukraine's right is not to be subjected to military operations based on false allegations of genocide, the question becomes whether retraction of those allegations is sufficient to preserve Ukraine's asserted rights. I believe the answer must be "no," because unfathomable damage has already been inflicted and continues to be inflicted on Ukraine. Even asking the question, however, highlights some of the difficulties presented by the Court's limited jurisdiction.

However, as Judge Xue emphasises with a string of citations to the Court's many *Legalities of Use of Force* cases (para. 5), states continue to bear responsibility for acts attributed to them that violate international law, including international humanitarian law, and any disputes over the legality of such acts must be resolved by the court through peaceful measures.

Irreparable Damage Possibility

Needless to say, the criteria of urgency and impending irreparable harm were easily met in this case. The Court's haste in scheduling the oral hearing and issuing its order demonstrates how

seriously it takes this matter. It is worth noting that, according to UNHCR, the figure of 1.5 million displaced civilians provided by Ukraine and cited by the Court (para. 68) is now likely closer to 3 million refugees and a projected total of up to 6.7 million internally displaced people. The measures ordered do not include the limiting language proposed by Ukraine in its request. The order of the Court emphasises that "the measures to be indicated do not have to be identical to those requested" (para. 80).

The Court's order aimed at preventing the dispute from escalating is self-explanatory, though the Court did not see fit to require Russia to provide periodic reports on its compliance. The Court issued this order to both Parties. As previously stated, the non-aggravation order received unanimous support, which would not have been the case if it had been one-sided. The first measure directs Russia to "immediately suspend military operations that started on February 24, 2022. Unlike Ukraine's request, it does not further qualify the operations based on their stated purpose, but it does limit the order to operations on the ground of Ukrainian territory." (It's difficult not to think of Crimea and the eastern provinces of Ukraine that Russia occupied in 2014, but this order clearly targets the recent operations that were preceded by allegations of genocide.) Ukraine had included additional proposed language stating that the operations to be halted were "those with the stated purpose and objective of preventing and punishing a claimed genocide in Ukraine's Luhansk and Donetsk oblasts." In practise, it would have been impossible to distinguish between parts of the operation that have that stated purpose and those that do not, and Russia's statements have not differentiated between different aspects of its military advance.

In any case, it's difficult to see how any of Russia's ongoing attacks are intended to prevent or punish genocide, even if that were their actual, rather than fictitious, justification. To the extent that Russia's original goal appears to have been regime change in Kyiv, the limiting language proposed by Ukraine is unnecessary. Furthermore, Ukraine clearly wants Russia to cease all activity; the limiting language only served to tie the measures more closely to the jurisdictional basis for Ukraine's request. The proposed limiting language is also absent from the second measure.

The Court omitted the genocide-related limiting language proposed by Ukraine once more, instead indicating that the operations covered by this measure are the same as those mentioned in the first measure. The Court also omitted a portion of the order that would have required

Russia to ensure that any organisations or individuals under its influence do not take any steps to further the operations. As a result, the order applies to any military or armed units directed or supported by Russia, as well as any organisations or individuals under its control or direction. This morning, Brian Finucane wondered if the inclusion of "support" represents "an expansion of principles of state responsibility. "

Given the extensive discussions clearly taking place within the US government and between the US and its allies about what types of support they can provide to Ukraine without crossing an invisible (political, not legal) line and provoking a larger response from Russia, this formulation could benefit from further parsing – while recognising that questions of state responsibility for providing support to a party to an armed conflict can be nuanced and context-specific. However, at the moment, this language appears to be aimed at preventing Russia from continuing the conflict by proxy, rather than deliberately broadening the legal basis for attributing proxies' actions to a state.

The World Court could not remain silent in the face of such flagrant violation of international law, and Judge Xue's observation that political negotiations have more clout than legal decisions in bringing this conflict to an end. The decision was greeted as a victory for Ukraine, but the strategy of isolating Russia has potential drawbacks if Russia decides that it does not want or need to be brought back "into the fold. "

Normally, a briefing schedule would be established for the merits phase of the case as well. At this point, Russia appears unlikely to participate in a merits phase, though it is worth noting that Russia's written communication appeared to blame its absence on the timing of the oral hearing rather than a principled objection to the Court's authority.

If Russia intends to participate in future ICJ cases, it has a vested interest in shaping the Court's jurisprudence on jurisdiction – which the Court could revisit after additional briefing and argument, given that it only needed to find a prima facie case for jurisdiction at the provisional measures stage. Russia does not appear to have changed its behaviour in response to the Court's 2017 non-aggravation order in the Crimea case. The ability of P5 members and their proteges to exempt themselves from the practical enforcement of international legal rules has always been a weakness of the UN system. This may be an unavoidable feature of a global system based on the principle of state consent.

The use of soft power and persuasive diplomacy, rather than coercive diplomacy, has advanced the central goal of protecting individuals, but the conditions for effectively deploying soft power cannot be assumed. Because the ICJ rules on issues of state rather than individual responsibility, its provisional measures order will have little practical impact on ongoing efforts to gather evidence for future war crimes prosecutions.

For the foreseeable future, the Security Council will be unable to pass resolutions under Chapter VII. However, accountability frameworks developed in the aftermath of previous conflicts can and will inform the imposition of consequences on individuals responsible for atrocities committed during the current conflict. Most importantly, we must figure out how to put a stop to the carnage. On this point, all members of the Court appear to be in agreement.

Summary

The International Court of Justice (ICJ), the principal judicial organ of the United Nations, issues its Order on Ukraine's Request for the Indication of Provisional Measures on Crime of Genocide under the⁽⁸⁾Convention on the Punishment & Prevention (Russian Federation Vs Ukraine).

The International Court of Justice (ICJ), the UN's principal judicial organ, issues its Order on the Request for the Indication of Provisional Measures presented by Ukraine on March 16, 2022 at the Peace Palace in The Hague, the Court's seat. Judge Joan E. Donoghue, President of Court, presided over the session.