 DOI: https://doi.org/10.15388/PhDStudentsConference.2023.4

ALL WE NEED TO KNOW ABOUT THE PROVISIONAL MEASURES OF THE INTERNATIONAL COURT OF JUSTICE IN ALLEGATIONS OF GENOCIDE (UKRAINE V RUSSIAN FEDERATION), BUT THE MEDIA REPORTS INACCURATELY

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Keywords: special military operation, Genocide Convention, non-violation complaint, Ukraine v. Russian Federation, press release.

Abstract. On 27 February 2022, Ukraine filed the application instituting proceedings against Russia before the International Court of Justice to obtain provisional measures protecting its rights. It resulted from Russia's launch of the "special military operation" against Ukraine on 24 February 2022, in response to the alleged genocide of Donbass communities by the Kyiv regime. The Courted delivered its Order on 16 Marco 2022 and indicated provisional measures. Unfortunately, the Polish media coverage distorted the content of the Order. This article aims to present how the Order was covered and to demystify its content.

INTRODUCTION

On 24 February 2022, Russia launched a "special military operation" on the territory of Ukraine for its "demilitarisation and denazification". In practice, it meant an armed attack on the territory of a neighbouring state, preceded by a week-long military build-up on the Ukrainian-Russian border and the recognition of the independence of the so-called Donetsk People's Republic and Luhansk People's Republic. According to the President of Russia, all these actions were meant to be a response to the genocide carried out by the Kyiv regime against the Donbass community (Address).

In addition to the apparent military response, on 27 February 2022, Ukraine decided to fight for its rights at the International Court of Justice (hereinafter the "ICJ" or the "Court") based on the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the "Genocide Convention" or the "Genocide"). Along with the application instituting proceedings (hereinafter the "Application"), Ukraine filed a request for an order for provisional measures (hereinafter the "Request") following Article 41 of the ICJ Statute (hereinafter the "Statute"). The Court delivered its Order on 16 March 2022, in which it decided to impose 3 provisional measures. For evident reasons, this aroused the interest of the media, which unfortunately in Poland deformed the content of the Order.

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This article aims to present truthfully the subject matter of the Order together with the deformed Polish press release. For this purpose, the article discusses general issues concerning the jurisdiction of the ICJ, the Genocide Convention, the Application, the grounds for indicating provisional measures, the Order together with the attached declarations and the content of the Polish press release.

1. PRELIMINARY ISSUES ON THE JURISDICTION OF THE COURT

In matters of contentious jurisdiction, the ICJ decides cases only between states (Art. 34(1) of the Statute) and its competence derives from the free will of the parties themselves (*Anglo-Iranian Oil Co. (United Kingdom v. Iran), Jurisdiction, Judgment, I.C.J Reports 1952*, pp. 102-103). This follows from international practice and, in the absence of provisions to the contrary, is a logical consequence of the sovereign equality of states (Crawford, 2019, p. 697). Jurisdiction over disputes can be based on one of 7 legal bases:

- Consent ad hoc is provided for in Article 36(1) of the Statute as "all cases which the parties refer to [the ICJ]". It can take the form of, for example, compromis.
- Consent post hoc, called forum prorogatum. It assumes that a party joins the proceedings before the Court, by which it gives its consent to the ICJ's exercise of jurisdiction (see, e.g., Certain Criminal Proceedings in France (Republic of the Congo v. France), Provisional Measure, Order of 17 June 2003, I.C.J. Reports 2003, pp. 103-104).
- Consent ante hoc can be expressed in two ways:
  - Under Article 36(1) of the Statute, the ICJ has jurisdiction over the matters referred to it under the adequate provisions of treaties and conventions in force.
  - States may make a declaration recognising as compulsory ipso facto and without a special agreement the jurisdiction of the ICJ in a specific range of cases (Art. 36(2) of the Statute).
- According to Article 36(1) of the Statute, the ICJ has jurisdiction over "all matters specially provided for in the Charter of the United Nations" (hereinafter the "UN Charter").
- The ICJ also exercises transferred jurisdiction concerning treaties and conventions that have referred to the Permanent Court of International Justice (hereinafter the "PCIJ"; Art. 37 of the Statute).
- In the case of state consent, the ICJ may also decide a case ex aequo et bono (Art. 28(2) of the Statute). This power has never been exercised.

The ICJ, like any other international court or tribunal and in the absence of treaty provisions to the contrary, has the competence to determine its jurisdiction (*Nottebohm (Lichtenstein v Guatemala), Preliminary Objection, Judgment, I.C.J Reports 1953*, p. 119). This power is called *kompetenz-kompetenz* and is sanctioned under Article 36(6) of the Statute. This does not mean, however, that parties do not have the right to raise preliminary objections to the Court's jurisdiction. Such objections are dealt with after a possible order on provisional measures. However, this is not an absolute rule, as a request for provisional measures can be made at any stage of the proceedings, including after the ICJ has decided on its jurisdiction (see, e.g., 50 years after deciding on the jurisdiction in *Request for*

Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) *(Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011*; hereinafter "Request for Interpretation").

2. GENOCIDE CONVENTION

In the case at hand, there was no possibility of any "gentlemen's agreement" to refer the dispute to the ICJ. Given the failure of both parties to make the declaration provided for in Article 36(2) of the Statute and the inadequacy of the other grounds of jurisdiction, the only solution was to base the application on a jurisdictional clause contained in a treaty or convention in force between the parties.

In its Application, Ukraine seeks to find the Court's jurisdiction on Article IX of the Genocide Conventions, which reads:

> "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."

It is also worth noting that Article I of the Convention obliges all parties to prevent and punish genocide, which is a crime under international law irrespectively if committed in a time of peace or war.

As for the Convention itself, it formed the basis of the Court's jurisdiction in high-profile cases like the *Legality of Use of Force* (e.g. *(Yugoslavia v. Belgium), Provisional Measures, Order of 2 June 1999, I.C.J. Reports, 1999*) and in the alleged genocide of the Rohingya people in *The Gambia v Myanmar*.

As the case law of the Court provides, in this type of convention, states do not have any interest of their own, they merely have, one and all, a common interest (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports, 1951*, p. 23). The obligations contained in the Genocide Convention are *erga omnes partes* understood as the interest of each party in ensuring that all other parties comply with them in all situations (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment*, para. 107). "It follows that any State party to the Genocide Convention may invoke the responsibility of another State party, including through the institution of proceedings before the Court, with a view to determining the alleged failure to comply with its obligations erga omnes partes under the Convention and to bringing that failure to an end" (*ibid.*, para. 112).

3. APPLICATION INSTITUTING PROCEEDINGS

In its Application, Ukraine claims that Russia's false accusations of genocide in the Donbass served as grounds to recognise the so-called Republics and launch the "special military operation" "with the express purpose of preventing and punishing purported acts of genocide that have no basis in fact"

(Application, para. 2) and asks the Court to recognise it (*ibid.*, para. 3). Ukraine contends that Russia has repeatedly accused it of committing genocide against the people of Donbass, which Ukraine has denied (*ibid.*, paras. 8-10). As a result, there is a dispute between the parties to the proceedings as to the fact if Ukraine is committing genocide and whether Article I of the Convention provides a basis for the "special military operation" (*ibid.*, para. 11). Turning to the assessment of the facts, Ukraine stresses that there is no independent international report containing evidence of genocide in Donbass (*ibid.*, paras. 21-22).

Ukraine further underlines that the duty to prevent and punish genocide from Article I must be performed in good faith and not abused, especially by not subjecting another party to unlawful action, like a military attack, based on a wholly unsubstantiated claim (*ibid.*, para. 27). It emphasises that "Russia has turned the Genocide Convention on its head" and "it appears that it is Russia planning acts of genocide in Ukraine" by aiming at members of the Ukrainian nationality (*ibid.*, para. 24).

To sum up, Ukraine asks the Court to declare that it did not violate the Genocide Convention by committing genocide in the Donbass and that Russia had no right to conduct the "special military operation" against Ukraine, as this was a brazen abuse of Article I of the Convention. The unexceptional nature of this Application stems from the applicant's first-ever direct claim that it did not violate international law.

Preliminary issues concerning Article 41 of the Statute

Provisional measures in international law can be defined as "interim orders issued at the end of incidental proceedings, often with the aim of safeguarding the object of the proceedings or to ensure that the subjective rights in question are duly safeguarded – awarded by international courts and tribunals" (Virzo, 2021, p. 1) or as "just a holding operation, to avoid applicant's interests being compromised before the court can rule" (Thirlway, 2021, p. 9.). Whatever the definition adopted, they are only provisional in character, which cannot be equated with an interim judgment on the merits (*Factory at Chorzów (indemnities), Measures of Interim Protection, Order of 21 November 1927, P.C.I.J., Series A, No. 12*).

According to the International Law Institute, the object of provisional measures may aim to achieve one of four situations:

- to maintain the status quo pending the determination of disputes
- to preserve the ability to grant final effective relief
- to prevent irreparable injury caused to the rights in dispute before final judgment
- and not to aggravate the dispute (Report on Provisional Measures, Yearbook of Institute of International Law 2017, vol. 78, p. 106, Guiding Principles No. 1, 2 and 4).

The power of the ICJ to order provisional measures derives from the wording of Article 41(1) of the Statute, which provides that:

> "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."

In general, independently of the international judicial body in question, 6 main grounds for ordering provisional measures are distinguishable. They comprise *prima facie* jurisdiction, *prima facie* admissibility, *fumus boni juris/*plausibility, the link between the measures requested and the main case, urgency and the risk of irreparable prejudice (Le Floch, 2021).

Neither the Statute nor the Rules of the ICJ (hereinafter the "Rules") provide the rationale for indicating provisional measures, which derive from the jurisprudence of the Court (Practice Directions XI). In its recent judgments, the ICJ requires 3 conditions to be met: *prima facie* jurisdiction, *fumus boni juris*/plausibility cumulatively with the link between the measures requested and the main case, and urgency and the risk of irreparable prejudice (see, e.g., *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021*; hereinafter "Armenia v. Azerbaijan").

- The question of **jurisdiction** in proceedings concerning provisional measures constitutes *conditio sine qua non.* However, it should be borne in mind that the basis of jurisdiction has to only appear to provide it *prima facie*. As stated in *Qatar v. United Arab Emirates*: "a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case" (*Provisional Measures, Order of 14 June 2019, I.C.J. Reports 2019*, para. 15).
- **Plausibility** is one of the most controversial grounds for ordering provisional measures, only introduced in 2009 in *Obligation to Prosecute or Extradite* as "the rights asserted by a party are at least plausible" (*Provisional Measures*, *Order of 28 May 2009, I.C.J. Reports 2009*, para. 57). Although in Judge Owada's view, this was simply making explicit what was already implicit (*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, Order of 19 April 2017, I.C.J. Reports* 2017, Separate opinion of Judge Owada, para. 11). As Judge Koroma stated in his separate opinion: it is a vague term and it bound itself out of nowhere (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011*, Separate opinion of Judge Koroma, paras. 6-7). This requirement was first raised by Denmark in *Passage through the Great Belt* arguing that "not even a prima facie case exists in favour of the Finnish contention" (*Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, para. 21). The Court did not address this argument apart from Judge Shababuddeen, who in his separate opinion emphasised that logically the Court cannot indicate provisional measures without assessing the possibility of the existence of the right sought to be protected (*ibid*., Separate opinion of Judge Shahabuddeen, paras. 28 *et al*.). Since *Certain Activities in the Border Area* plausibility is merged with the link between the rights whose protection is sought and the provisional measures being requested (*Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011*, paras. 53-54).
- **Urgency** can be described as "a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision" (*Jadhav (India v. Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, para. 50). The assessment

of each case is always casuistical and the behaviour of the applicant, respondent or general circumstances may deprive the situation of the attribute of urgency (Le Floch, pp. 38 *et al*.). The *irreparable prejudice* "affect[s] the possibility of their full restoration in the event of a judgement in its favour" (*Fisheries Jurisdiction (United Kingdom of Great Britain and Northern Ireland v. Iceland), Interim Protection, Order of 17 August 1972, I.C.J. Reports 1972*, paras. 21-22). The ICJ, like any other international court or tribunal, tends to interpret irreparability as the impossibility of full execution of the final judgment (Le Floch, p. 42), nonetheless, the prejudice does not always be established with absolute certainty (*Nuclear Tests (Australia v. France), Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973*, para. 29).

It is worth noting that, based on Rule 75(2) of the Rules, the ICJ may also indicate measures other than those requested by a party and direct measures to both parties to the proceedings (see, e.g., *Request for Interpretation*).

As the ICJ stated in *LaGrand*, provisional measures are binding and states are obliged to comply with them (*Judgement, I. C.J. Reports 2001*; Article 94(1) of the UN Charter). However, the problem is the lack of an effective mechanism to control states' implementation of provisional measures. Of the non-judicial options, recourse to the United Nations Security Council remains. As the ICJ is bound by the *non ultra petita* principle, this usually leads to one party's request for a declaration of the other party's failure to execute provisional measures. Scholars do not pay particular attention to this issue, with few particular exceptions, like Miles who analyses the non-enforcement in the context of the responsibility of states for internationally wrongful acts (2017, pp. 328 *et al.*).

4. REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

In its Request, Ukraine indicates that the Court has *prima facie* jurisdiction because of two disputes between the parties: one based on Article II of the Convention (dispute of fact) and another on Article VIII of the Convention (dispute of law). The first of these concerns whether genocide has occurred or is occurring in the Luhansk and Donetsk oblasts, the latter if Russia has any lawful basis to take military action in and against Ukraine to prevent and punish genocide under Article I of the Convention (Request, para. 11).

Ukraine contends that as states must act within the limits established by international law while taking actions to prevent genocide (*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*, para. 430), it has the plausible right not to be subject to a false claim of genocide, and "not to be subjected to another state's military operations on its territory based on a brazen abuse of Article I of the Genocide Convention" (Request, para. 12).

The risk of irreparable harm and urgency is argued to stem from the fact that any further day of Russian invasion would "result in additional significant loss of life and property in Ukraine, further serious human rights violations and greater instability for the Ukrainian people" (*ibid.*, para. 19). Finally, Ukraine asks the Court to indicate following measures (*ibid*., para. 20):

"*(a)* The Russian Federation shall immediately suspend the military operations commenced on 24 February 2022 that have as their stated purpose and objective the prevention and punishment of a claimed genocide in the Luhansk and Donetsk oblasts of Ukraine.

(b) The Russian Federation shall immediately ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, take no steps in furtherance of the military operations which have as their stated purpose and objective preventing or punishing Ukraine for committing genocide.

(c) The Russian Federation shall refrain from any action and shall provide assurances that no action is taken that may aggravate or extend the dispute that is the subject of this Application, or render this dispute more difficult to resolve.

(d) The Russian Federation shall provide a report to the Court on measures taken to implement the Court's Order on Provisional Measures one week after such Order and then on a regular basis to be fixed by the Court."

5. ORDER OF 16 MARCH 2022

The Order was delivered on 16 March 2022, 18 days after receiving the Request. Russia chose not to participate neither in the oral proceedings on 7 March 2012 nor during the delivery of the Order. In its official letter to the Court, Russia challenged the ICJ's jurisdiction and said it was basing its action on Article 51 of the UN Charter. In general, it is worth emphasising that Russian attempts to justify its unlawful actions by international law have been criticised as "bullshit" (Zarbiyev, 2022).

The Court started by expressing its deep concern about the use of force by Russia and questions it raised under international law (Order, para. 18). Moreover, it took notice of the United for Peace Resolution (doc. A/RES/ES-11/1) but underlined that the present dispute was limited only to the proceedings under the Genocide Convention (Order, para. 19).

In analysing *prima facie* jurisdiction, the Court deliberated whether there was a dispute between the parties based on the Convention. After summarising the exchanges between Ukraine and Russia (*ibid.*, paras. 36-42), the ICJ concluded that they related to the subject matter of the Convention (*ibid.*, paras. 44-45), what constituted its *prima facie* jurisdiction (*ibid.*, para. 48).

As to the plausibility of the rights claimed by Ukraine and their relation to the main case, the ICJ stressed that states must implement Article I of the Convention "in good faith, taking into account other parts of the Convention, in particular Articles VIII and IX, as well as its Preamble" (*ibid*., para. 56) and "in conformity with the spirit and aims of the United Nations, as set out in Article 1 of the United Nations Charter" (*ibid.*, para. 58). Moreover, in the Court's view, the right of a state to use force in the territory of another state to prevent or punish an alleged genocide is questionable (*ibid*., para. 59). The ICJ, therefore, considered that these requirements were also met (*ibid.*, paras. 60 and 64).

The ICJ emphasised that the Russian operation on Ukrainian territory "inevitably causes loss of life, psychological and bodily harm, and damage to property and the environment" (*ibid*., para. 74). Considering the gravity of the situation, as noted in the United for Peace Resolution (*ibid*., para. 76), the Court found the existence of the risk of irreparable prejudice and urgency (*ibid*., para. 77). For this reason, it indicated the following provisional measures (*ibid*., para. 86):

(1) By thirteen votes to two,

The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Yusuf, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth; *Judge* ad hoc Daudet;

AGAINST: *Vice-President* Gevorgian; *Judge* Xue;

(2) By thirteen votes to two,

The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point (1) above;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Yusuf, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth; *Judge* ad hoc Daudet;

AGAINST: *Vice-President* Gevorgian; *Judge* Xue;

(3) Unanimously,

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

The Court, therefore, granted Ukraine's first two requests ((a) and (b)), directed the non-aggravation measure to both parties, and refused to impose the last measure (d) without explaining this in any way (*ibid*., para. 83). Russia had already announced that it would not execute provisional measures because the Court had no jurisdiction and was under political pressure (Statement).

In his statement explaining reasons for disagreeing with the majority, Vice-President Gevorgian states that Ukraine's request concerns Russia's use of armed force on its territory (Declaration of Vice-President Gevorgian, para. 5), which is not related to the subject matter of the Genocide Convention (*ibid*., para. 7). Acceptance of such a situation is opposed to the principle of basing ICJ jurisdiction on the consent of the parties (*ibid*.). Any "non-violation complaint" can only result from consent *post hoc* or an express treaty provision, which is not found in the Convention by Vice-President (*ibid*., para. 8). Presenting two similar cases, he underlines that in *Rights of Nationals of the United States of America in Morocco* the jurisdiction of the ICJ arose from Article 36(2) of the Statute (*Judgment, I.C.J. Reports 1952*), while in *Lockerbie* such a non-violation complaint was combined with an actual violation complaint (*Preliminary Objections, Judgment, I.C.J. Reports, 1998*). (*ibid.*).

In her declaration, Judge Xue states that indicated measures are contrary to established practice, as rights sought to be protected are not plausible (Declaration of Judge Xue, para. 1). The demand for recognition of the so-called Republics and the "special military operation" as illegal falls outside the scope of the Convention (*ibid*., para. 2), and while explaining its actions Russia never referenced to the alleged genocide, only to the exercise of the right of self-defence under Article 51 of the UN Charter (*ibid*., para. 3).

Also, his doubts about the lack of jurisprudence of the ICJ and the artificial use of the Convention are expressed by Judge Bennouna, who, due to the enormity of the tragedy, voted in favour of all provisional measures (Declaration of Judge Bennouna, paras. 1 and 11).

Another position is taken by Judge Nolte, who clearly distinguishes the situation in *Legality of Use of Force*, where Yugoslavia argued that NATO attacks constituted genocide, from the present case, which concerns the question of whether the allegation of genocide and the resulting military operation are both consistent with the Convention (Declaration of Judge Nolte, paras. 3 and 5).

A similar position is expressed by Judge Robinson, who conducts a comprehensive analysis of the dispute between the parties and the *prima facie* jurisdiction of the Court (Declaration of Judge Robinson, paras. 4 *et al.*). In his opinion, the Order is fully consistent with the established jurisprudence of the ICJ and is based on the plausible law of Ukraine (*ibid*., paras. 2 and 31). He regrets, however, that the third measure was directed to both sides and that Russia was not obligated to submit regular reports on the implementation of the measures (*ibid*., para. 33). A similar regret about the imposition of measures on Ukraine is expressed by Judge *ad hoc* Daudet (Declaration of Judge *ad hoc* Daudet).

Commenting on the declarations, they exhibit two doubts about the Court's jurisdiction: the possibility of a non-violation complaint and the grounding of this claim in the Genocide Convention. As to the former, "there is nothing in doctrine or practice that precludes the Court to have jurisdiction over the claim of non-violation" (Declaration of Judge Robinson, para. 16). As to the latter, there have already been concerns about the light picking of conventions for the sole purpose of bringing a complaint before the ICJ (*Armenia v. Azerbaijan*, Dissenting opinion of Judge Yusuf). However, this seems to be an accusation against the judges themselves, as none of the judges currently raising doubts had them before in a similar case: *Armenia v. Azerbaijan* (para. 98).

6. POLISH MEDIA COVERAGE OF THE ORDER

For evident reasons, the international community, horrified by the scale of the tragedy in Ukraine, was extremely interested in any information showing that Russia was suffering a just punishment for its actions. Thus, the delivery of the Order reverberated in the media. In the author's country of origin, Poland, information about the Order appeared in all leading media. Surprisingly, the information provided was virtually identical, regardless of whether state-owned media (see Polskie Radio) or private media (see, e.g., Onet, Wirtualna Polska) are concerned. This was because all these sources used a press release prepared by the Polish Press Agency. The author would like to present three translated passages that have been of particular interest to him:

(1) Title:
The tribunal in The Hague has declared the Russian invasion of Ukraine illegal and ordered it to stop.
(2) Subtitle:
The International Court of Justice (ICJ) in The Hague said on Wednesday that Russia's attack on Ukraine was illegal and issued an interim order requiring the cessation of the military operation.
(3) The second part of the body:
„Russia had no right to armed intervention"
Ultimately, the ICJ rejected Russian allegations of genocide in eastern Ukraine and issued an interim measure ordering Russia to halt the invasion. It is binding under international law.
„The court held that there was insufficient evidence of genocide and at the same time Russia had no right to intervene militarily, costing civilian lives and causing a refugee crisis" - President Donoghue read out the ICJ decision.

As can be seen, the press coverage calls for at least some comments:

(1)-(2) The ICJ did not state that the Russian military operation on Ukrainian territory was illegal. It is true that it ordered its cessation (Order, paras. 86(1) and (2)) but not because of its illegality, but only to ensure that the final judgment in the case, to be issued later, could be enforced (de facto so that Ukraine would continue to exist at the time of the final judgment). Nevertheless, as to the legality of the use of force under the Convention, as indicated earlier, the Court only expressed its doubts (Order, para. 59).

(3) This part of the press release raises several questions:

- As indicated above, the ICJ did not find the Russian actions illegal, but only expressed its doubt (ibid.).
- The Court did not reject the Russian allegations of genocide, it only pointed out that there is no evidence of genocide in the Donetsk and Luhansk oblast for the time being (ibid.).
- The third paragraph is particularly outrageous as President Donoghue did say any of these words.

Hence, Polish media coverage misses completely the nature of the proceedings for provisional measures, treating it as an interim judgment, so to speak, prejudging the merits ("Russia's attack on Ukraine was illegal"). Even leaving aside the fact of the false quote, it also fails to capture the novelty of the Application as a non-violation complaint.

Is the situation in question at all relevant? This is merely a rhetorical question. The press release has "turned the Order on its head" (cf. Application, para. 24). The average citizen hearing such information is convinced that Russia has already been tried by an international court and Ukraine has won the case. In reality, Ukraine may still lose the case on jurisdiction or merits, which is possible as the main aim of the Ukrainian action was primarily to obtain provisional measures (Milanović in EJIL: The Podcast!). In addition, the Court's jurisdiction is limited only to the Genocide Convention and not the general rationale for the use of force in international law.

And what practical implications does this have? Public support for Ukraine is essential to put pressure on governments to support Ukraine. Had Ukraine lost the case at some stage people might feel let down, cheated, and lose faith (if they have any) in an order based on international law. Not to mention that the press release in question is contrary to journalistic integrity. The author would like to mention that on the day the article in question appeared, he wrote an email requesting its correction to both the Polish Press Agency and many other media. Only the former institution replied and, despite the request to correct the release, which the author did, the erroneous article continues to appear on the official website. Also, the author is not aware of any instances in other countries of the media broadcasting similarly erroneous information.

CONCLUSION

1. Ukraine decided to repel the Russian military attack on the battlefield and the judicial field by instituting proceedings before the ICJ. Resultantly, it has proved that it belongs to civilised states that prefer peaceful methods of dispute resolution.
2. The Application, drafted in just two days, is ground-breaking for international law (a non-violation complaint made by the applicant) and creatively uses the available basis of the Court's

jurisdiction (Article IX of the Convention). Leaving aside the facts of the present case, the ICJ's judgment is bound to be a landmark for the entire system of international law, possibly encouraging other states to follow the same path.

3. The judges of the ICJ should take a consistent view of how to assess disputes without a link to the subject matter of the treaty where a party attempts to use the jurisdiction clause only to bring a case before the Court.
4. When the media prepares a press release on a politically relevant topic that requires additional specialist knowledge (which journalists do not necessarily have), they must consult specialists in the field.
5. The community of lawyers specialising in public international law should be more proactive to inform the public about events directly arising from international law, especially if they are misrepresented in public coverage.

List of sources

Legal acts:

1. Application instituting proceedings from 27 February 2022;
2. Charter of the United Nations;
3. Letter from the Russian Federation setting out its position regarding the alleged "lack of jurisdiction" of the Court in the case from 7 March 2022;
4. Practice Directions of the International Court of Justice;
5. Report on Provisional Measures, Yearbook of Institute of International Law 2017, vol. 78;
6. Request for the indication of provisional measures submitted by Ukraine from 27 February 2022;
7. Rules of the International Court of Justice;
8. Statute of the International Court of Justice;
9. United for Peace Resolution doc. A/RES/ES-11/1 of 2 March 2022.

Case law

1. Permanent Court of International Justice

1.1. Factory at Chorzów (indemnities), Measures of Interim Protection, Order of 21 November 1927, P.C.I.J., Series A, No. 12, p. 7

2. International Court of Justice

2.1. Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022;

2.2. Anglo-Iranian Oil Co. (United Kingdom v. Iran), Jurisdiction, Judgment, I.C.J Reports 1952;

2.3. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment;

2.4. 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;

2.5. 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, Order of 19 April 2017, I.C.J. Reports 2017;

2.6. Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021;

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