

e.
publica
public law journal

**Judicial relief in war times?
Ukraine vs. Russia (2022) before the
International Court of Justice**

**Tutela judicial em tempos de guerra?
Ucrânia vs. Rússia (2022) perante o Tribunal
Internacional de Justiça**

Ana Rita Gil

Vol. 10 No. 1
maio 2023
e-publica.pt

ISSN 2183-184x

Com o apoio de:

fct Fundação
para a Ciência
e a Tecnologia

**JUDICIAL RELIEF IN WAR TIMES?
UKRAINE VS. RUSSIA (2022) BEFORE THE INTERNATIONAL COURT
OF JUSTICE**

TUTELA JUDICIAL EM TEMPOS DE GUERRA?
UCRÂNIA VS. RÚSSIA (2022) PERANTE O TRIBUNAL
INTERNACIONAL DE JUSTIÇA

ANA RITA GIL¹

Faculdade de Direito da Universidade de Lisboa
Alameda da Universidade - Cidade Universitária
1649-014 Lisboa
anaritagil@gmail.com

Abstract: The armed conflict that began in 2022 between Russia and Ukraine provides a good case-study on how International Courts may be called to rule on wars. Shortly after the first large-scale attacks, Ukraine seized both the International Court of Justice and the European Court of Human Rights, asking for the enactment of judicial provisional measures aimed at suspending the Russian offensives. In this Article, the UN Court's order is studied in detail, as it may represent a landmark decision on the matter, due to its findings both on jurisdiction and on the merits, due to the number of intervenient States and also due to the complex questions that it deals with. The European Court of Human Rights also enacted a decisive measure in this regard. However, there is the risk that both decisions remain mainly symbolic, as their enforcement remains a mirage one year after the beginning of the war.

Keywords: Ukraine war; use of force; genocide; International Courts; International Court of Justice.

Resumo: O conflito que se iniciou em 2022 entre a Rússia e a Ucrânia é um bom caso de estudo sobre como os tribunais internacionais podem ser chamados a decidir em matéria de guerra. Logo após os primeiros ataques em larga escala, a Ucrânia recorreu ao Tribunal Internacional de Justiça e ao Tribunal Europeu de Direitos Humanos, pedindo a adoção de medidas judiciais provisórias destinadas a suspender as ofensivas russas. Neste artigo estudar-se-á, com particular detalhe, a decisão do Tribunal da ONU. A mesma poderá bem vir a ser uma *landmark decision*, quer no que toca à matéria da jurisdição, ao mérito da decisão, ao número de Estados intervenientes e também às questões fraturantes abordadas. O Tribunal Europeu de Direitos Humanos, por seu turno, também decidiu conceder medidas provisórias em benefício da Ucrânia. No entanto, existe o risco de que ambas as decisões permaneçam apenas simbólicas, pois a sua aplicação continua a ser uma miragem um ano após o início da guerra.

Palavras-chave: Guerra da Ucrânia; uso da força; genocídio; Tribunais Internacionais; Tribunal Internacional de Justiça.

1. PhD, Assistant Professor, University of Lisbon School of Law. Researcher at Lisbon Public Law Research Centre / Centro de Investigação em Direito Público. <https://orcid.org/0000-0002-8518-1482>.

1. Introduction

After World War II, and even after the series of conflicts that characterised the ex-Yugoslavia collapse, a traditional war in Europe would seem almost unthinkable. However, more than 32 years after the fall of the Berlin Wall, the Russian Federation emerges as a new threat to the peace on this continent, following the Ukraine's invasion in February 2022, through "traditional attacks" and armed forces. As one author pointed out, "*a particularly disturbing aspect of this devastating conflict constitutes the direct and unbridled armed attack against a neighbour by a permanent member of the United Nations (UN) Security Council, actually bestowed with the task to maintain and preserve international peace and security*" (Kulic, 2022).

It is considered that 24th February signs the beginning of this new war, following Russia's bombing attacks to the Ukrainian capital, Kiev, in what the UN General Assembly (GA) expressly considered an act of aggression². As a natural consequence, millions of persons almost immediately abandoned the Ukrainian territory. One year after the conflict, the death toll was impressive, with more than 8.000 victims on both sides³.

Despite the development of so-called "new forms of warfare" (economic, informational, tech-wars, etc.), the conflict in Ukraine maintained the traditional "war theatre", involving the conventional use of force through weaponry. In this case, it was not only the economy, the information, or the political self-determination of the targeted country that were under attack, but its own physical territory and population, as it was common before the new International Order. Even though, that "new Order" brought actors that are also playing a role in the 2022 Ukraine/Russia conflict. Several International Organisations and International Courts were created precisely with the goal of *preventing* armed conflicts – as a part of the peaceful means for conflicts' resolution⁴. And, as a matter of fact, the war in Ukraine is also taking place before international judges.

An armed conflict raises a plethora of matters that may fall in different branches of International Law: general or conventional norms, International Humanitarian Law, International Human Rights Law, International States' responsibility and even International Refugee Law. Depending on how involved actors want to discuss the conflict, different International Courts may be called to decide. Thus, it is common that different aspects of the same dispute are discussed by separate Courts at the same time. Procedures and decisions rarely overlap since each jurisdiction has a different mandate⁵. That was the case, for example, of the Yugoslavia wars, that gave rise to diverse cases decided by several Courts: cases before the International

2. Resolution adopted on 2 March 2022 entitled "Aggression against Ukraine", UN Doc A/RES/ES-11/1.

3. According to the United Nations Office of the High Commissioner of Human Rights, in the first anniversary of the conflict, at least 8.000 non-combatants have been confirmed killed – with nearly 13.300 injured. Data available in <https://www.ohchr.org/en/news/2023/02/ukraine-civilian-casualty-update-27-february-2023> (consulted in 01.03.2023).

4. On the role of Courts as parts of the peaceful means for conflicts' resolution, see Brownlie (1997: 735 ss.), Klabbers (2017: 154 ss.), Mesquita (2010: 39 ss.).

5. Still, positive conflicts of competence are not to be excluded, although have a different nature in this realm. For a study on some cases, see Martinez (2003).

Court of Justice (ICJ) such as the case *Croatia v. Serbia*⁶ or the cases brought by the former Federal Republic of Yugoslavia against ten NATO's Member States, following the unauthorized aerial bombing campaign during the Kosovo War,⁷ both of which were initiated in 1999. These conflicts were also analysed by the European Court of Human Rights (ECtHR) in a number of proceedings where individuals claimed the violation of several rights protected by the European Convention on Human Rights such as the famous cases *Bankovic*⁸ (application lodged in 1999) and the *Behrami*⁹ (2000). Finally, a special criminal court - the International Criminal Tribunal for the former Yugoslavia was created as soon as in 1993 to trial war crimes that took place during the conflicts in these wars¹⁰. One could think that the number of judicial procedures is justified on the multiplication of conflicts that characterized the fall of the ex-Yugoslavia. However, the war that begun in 2022 between Russia and Ukraine may well give rise, as well, to a complex set of case-law authored by different International judges.

In the early 2022, few days after the official beginning of the conflict, Ukraine decided to appeal to two of the most important international courts - the ICJ and the ECtHR -, asking for the conviction of the Federal Republic of Russia to cease the attacks. The International Courts were, then, used as an additional way to halt the conflict, through the enforcement of International Law. Almost at the same time, the Prosecutor of the International Criminal Court (ICC) was opening investigations on actions that were taking place in the Ukrainian's territory.

The 2022 conflict between Russia and Ukraine is a good case-study to understand how the main judicial body of the UN - the ICJ, a Court with general jurisdiction - , a Human Rights Court, and also the International Criminal Court may all have a role to play in international armed conflicts¹¹. These Courts have different purposes, diverse material scope and jurisdiction, and distinct subjects can be parties to their cases. That is why they may have a complementary role on judging the *ius ad bellum* and the *ius in bello*.

The activity of the ICJ and the ECtHR in 2022 as regards the conflict between the Russian Federation and Ukraine is crucial and will certainly be pivotal for future cases on armed conflicts. During the first year of the conflict, these two Courts had already issued binding decisions ordering Russia to stop the armed attacks in the Ukrainian territory. They have in common the fact that they judge States, and not individuals, contrarily to

6. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*.

7. *Legality of Use of Force (Yugoslavia v. Belgium) (Yugoslavia v. Canada) (Yugoslavia v. France) (Yugoslavia v. Germany) (Yugoslavia v. Italy) (Yugoslavia v. Netherlands) (Yugoslavia v. Portugal) (Yugoslavia v. Spain) (Yugoslavia v. United Kingdom) (Yugoslavia v. United States of America)*.

8. *Bankovic and Others v Belgium and Others*, application n. 52207/99.

9. *Behrami and Behrami v. France and Saramati v. France, Germany and Norway*, application n. 71412/01.

10. The Tribunal was established by the United Nations, though the SC Resolution 827 of 25 May 1993, in response to mass atrocities then taking place in Croatia and Bosnia and Herzegovina.

11. Mindova (2018) already pointed out this trend in the context of the already existing conflicts regarding Crimea.

the ICC, which judges the practice of international crimes by individuals.¹² Moreover, although their mandate may differ, they may play a role in preventing conflicts, whereas the ICC, by its very nature as a criminal court, may only act if, and after, international crimes (typified in the Rome Statute), have been committed.

In this Article, the UN Court's decision will be studied in detail, as it may represent a landmark decision on the matter, due to its findings both on jurisdiction and on the merits, due to the number of intervenient States, and also due to the complex questions that it deals with, which will inevitably contribute to develop the *ius ad bellum*.

2. Brief notes on the ICJ's jurisdiction

The ICJ, the most important jurisdictional body of the UN, has competence to deal with every matter on International Law.¹³ It is, thus, invested with general jurisdiction, and has already decided on all sorts of disputes, from violation of Human Rights, to quarrels over borders, interpretation of all types of Treaties and use of force. It is not surprising, thus, that it may decide on matters that can be also dealt with by other Courts, such as Human Rights Courts or even the ICC.¹⁴ Moreover, contrarily to the ECtHR, that only interprets the ECHR, the ICJ may interpret all sources of International Law, from international or regional custom, *ius cogens* norms, and general principles of Law and Treaties (as set forth in Article 38 of its Statute, which is still considered, for the majority of International legal scholars, the central norm on the sources of International Law).¹⁵

The ICJ deals with complaints made by States against other States (Article 34, 1 of the ICJ's Statute) – thus, only States can be part of procedures taking place before the World Court. All UN Member States are, *ipso facto*, Parties to the ICJ Statute (Article 93 of the UN Charter). However, this only means that all Member States can have access to the Court, but it says little on whether a certain State has accepted to be part in a specific case. The fact is that the ICJ can only decide if both parties have agreed to stand before it.¹⁶ Article 36 of the Statute sets forth the forms of acceptance of the Court's jurisdiction, which encompass: (1) a *compromis* between the two parties, whereby they decide to submit the dispute to the ICJ, (2) the signature of an International Treaty that submits questions related to the Treaty to the ICJ's jurisdiction, (3) declaration of acceptance of the Court's

12. On Concurrence between Individual Responsibility and State Responsibility in International Law, see Nolkaemper (2003).

13. On the ICJ, see Brownlie (1997: 735 ss.), Shaw (2017: 803 ss.)

14. Cases on genocide are one example of a matter that may fall under the jurisdiction of the ICJ, or of a regional Human Rights Court, when the objective is to claim a responsibility of a certain State, or by the ICC, if the responsibility is to be ascribed to an individual. As for cases on Human Rights, general jurisdiction Courts may also have the competence to deal with them. On this topic, see Rieter (2019).

15. See, for example, Baptista (2018: 81 ss.), Duarte (2019: 104 ss.).

16. This has been pointed out as one of the shortcomings of International Law: States can only be parts of a judicial procedure if they had anyhow admitted the Court's jurisdiction, either by being parties to a Court's statute, by entering into an International Organisation with a Court with mandatory jurisdiction, by signing a Treaty with an adjudication clause to a specific Court or, when admissible, by giving consent to be judged by a Court in a particular dispute.

jurisdiction, according to n.2 of Article 36.¹⁷ and, finally, (4) the ad hoc or even implied acceptance through “*forum prorogatum*”.¹⁸ One of the most complex issues dealt with by the ICJ is invariably whether it has jurisdiction to decide on a particular case. The case of *Ukraine vs Russian Federation* was not an exception.

3. The application of Ukraine in 2022

3.1. Context

On 26 February 2022, only two days after the attacks perpetrated by Russian Federation in the Ukrainian capital, Ukraine filed an application instituting a proceeding against the Russian Federation before the ICJ. The application gave origin to the case *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. The object of the dispute was conveyed as follows: “the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide”.¹⁹ Indeed, Ukraine did not ground its claim on the prohibition of the use of force, established by Article 2 (4) of the UN Charter, as perhaps would seem more obvious. The fact why Ukraine invoked the interpretation and application of the Genocide Convention instead is strategic: it is both related to the context of the conflict and to the problem of jurisdiction.

Starting with the first point: one of the reasons invoked by the Russian Federation to begin the attacks to Ukraine, after weeks of high tension and failed negotiations, was that this country was proceeding to mass killings and genocide of people having Russian ethnicity in the regions of Donetsk and Luhansk (collectively known as the Donbass), located in eastern Ukraine, near the border with Russia.²⁰ Russia also invoked Article 51 of the UN

17. Article 36(2) sets forth the “optional clause” on “compulsory jurisdiction”, according to which the State parties may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes. These declarations may be made unconditionally or on conditions (e.g., excluding to be part in a procedure with certain States or in certain time), and may be amended or withdrawn at any time. Declarations issued under this Article are generally known as “declarations recognizing the jurisdiction of the Court as compulsory”.

18. According to Article 38 of the Rules of the Court, it is possible to start proceedings against a State that has not yet accepted the Court’s jurisdiction. In the case *Corfu Channel*, the Court admitted some sort of implied acceptance of the defendant State: Albania had never accepted the jurisdiction but responded to the Court, sent documents, etc., and so the Court considered that it had admitted being part of the procedure. See *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, 15 December 1949.

19. The Convention was approved and proposed for signature and ratification or accession by the GA resolution 260 A (III) of 9 December 1948. It entered into force on 12 January 1951.

20. As Kourtis (2022) points out, Russia was making allegations claiming that the Kyiv government was guilty of genocide committed against ethnic Russians in Ukraine since 2014. On 23 February 2022, President Putin repeated this claim as a justification for attacking the territory of Ukraine. On the arguments invoked by the Russian Federation to start the war, see Ingimundarson (2022). On the claims of genocide from both parts of the conflict, and on how they are inconsistent with the crime of genocide

Charter to justify the use of force: according to its allegations, it was acting in collective self-defence, to protect the people from Donbass from the alleged genocide. This “collective self-defence” was also based on the Russian’s recognition that the two regions were autonomous republics: the so-called ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’²¹.

In its application, Ukraine contended, *inter alia*, that “*the Russian Federation has falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine*”, which the applicant denied, and, furthermore, that “*Russia has no lawful basis to take action in and against Ukraine for the purpose of preventing and punishing any purported genocide*”. Ukraine requested the Court to:

(a) Adjudge and declare that, contrary to what the Russian Federation claims, no acts of genocide, as defined by Article III of the Genocide Convention, have been committed in the Luhansk and Donetsk oblasts of Ukraine.

(b) Adjudge and declare that the Russian Federation cannot lawfully take any action under the Genocide Convention in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims of genocide in the Luhansk and Donetsk oblasts of Ukraine.

(c) Adjudge and declare that the Russian Federation’s recognition of the independence of the so-called ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’ on 22 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.

(d) Adjudge and declare that the ‘special military operation’ declared and carried out by the Russian Federation on and after 24 February 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.

(e) Require that the Russian Federation provide assurances and guarantees of non-repetition that it will not take any unlawful measures in and against Ukraine, including the use of force, on the basis of its false claim of genocide.

as defined in Article II of the 1948 Convention, see Shabbas (2022). According to that definition, Convention, genocide means any of the following acts committed *with intent to destroy*, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group. For a study on the concept of genocide in International Law in general, see Shabbas (2009).

21. According to the Russian Government, the legal basis for the military operation was communicated on 24 February 2022 to the Secretary-General of the United Nations and to the SC in a letter where the President of the Russian Federation informed that “*the people’s republics of Donbass have asked Russia for help. In this context, in accordance with Article 51 (Chapter VII) of the UN Charter, with permission of Russia’s Federation Council, and in execution of the treaties of friendship and mutual assistance with the Donetsk People’s Republic and the Lugansk People’s Republic, ratified by the Federal Assembly on February 22, I made a decision to carry out 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>.

(f) Order full reparation for all damage caused by the Russian Federation as a consequence of any actions taken on the basis of Russia's false claim of genocide.”

The Ukrainian's request can be divided in two main ideas: first, the Court was asked to make a negative declaration, confirming that no genocide was being perpetrated by Ukraine. Second, a positive establishment was pursued, according to which the Genocide Convention does not allow recourse to military action in order to prevent genocide. Ukraine claimed that Russia was responsible for having breached the Genocide Convention, for considering otherwise and acting as such.

3.2. Grounding the Court's Jurisdiction

The case *Ukraine v Russia* (2022) raised particular concerns as regards the ICJ's jurisdiction, as Russia had not issued the declaration recognizing the jurisdiction of the Court as compulsory, for the purposes of Article 36 (2) of the ICJ Statute. As such, Ukraine grounded the Court's jurisdiction on Article 36 (1). According to this 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”. The Ukraine's claim was based in the last part. It invoked Article IX of the Genocide Convention, to which both Ukraine and the Russian Federation were Parties. According to this provision “[d]isputes 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”. This left the door opened for Ukraine to bring Russia before the ICJ, claiming that: (1) there was a dispute between the two parties (2) the dispute concerned the interpretation and application of the Genocide Convention, since all contended aspects were related to allegations of genocide made by Russia against Ukraine, which were invoked as a lawful basis to take armed action.

Some authors claim that the Ukrainian strategy was somewhat “creative” (Milanovic, 2022). However, this was not the first time that Ukraine used this approach on a dispute with the Russian Federation. With the annexation of Crimea in 2017, Ukraine had also submitted a lawsuit against Russia, alleging violations of International Conventions: that time, the Convention for the Suppression of the Financing of Terrorism (ICSFT) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), both of which had similar clauses awarding jurisdiction to the ICJ.²²

22. Ukraine followed the example of Georgia, that had previously brought action before the ICJ against Russia on the grounds of violation of CERD, following the 2008 breakaway regions of Abkhazia and South Ossetia. See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*. In the 2017 case, Ukraine grounded its request on the CERD by alleging numerous reports on the human rights violations of non-Russian ethnic population at the territory of Crimea. It asked the ICJ to order provisional measures, in particular to oblige the Russian Federation to refrain from any act of racial discrimination and of political and cultural suppression in the territory under its effective control. Ukraine also

3.3. Request for provisional measures

Together with the application, Ukraine filed a request for the indication of provisional measures, pursuant to Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court. According to these provisions, the Court has 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. The request for provisional measures takes priority over all other cases and notice of the measures suggested shall forthwith be given to the parties and to the Security Council (SC).

Ukraine asked the Court to order an immediate suspension of the Russia's military operations commenced on 24 February 2022.²³ 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".²⁴ 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".²⁵ Another consequence was the "massive humanitarian crisis", that achieved

invoked a violation of the ICSFT, claiming that Russia had been supporting pro-Russian separatist groups in eastern Ukraine in the form of financing, arms and ammunition, personnel, and training. It requested the Court to order provisional measures that would oblige the Russian Federation to refrain from any action in this regard. In March 2017, the Court delivered its decision, indicating provisional measures with respect to Ukraine's claims under CERD, requesting Russia to "refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis" and to "ensure the availability of education in the Ukrainian language". In addition, it indicated an additional measure of general nature, directing the parties on non-aggravation of the dispute and "to work for the full implementation of the Minsk Agreements in order to achieve a peaceful settlement of the conflict in the eastern regions of Ukraine". The Court did not order provisional measures with respect to the ICSFT. *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)*, Order of 19 April 2017. For a detailed analysis of this case, see Marchuk (2017) and Starosvit (2017).

23. In detail, Ukraine asked the Court to order the following: "The Russian Federation shall immediately: (a) 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) 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) 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) 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."

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

25. The Ukrainian representative argued that several war crimes were taking place in Ukraine, such as willful killing of civilians, intentional attacks against civilian objects, bombings to towns, villages, dwellings, or buildings that were undefended non-military objectives, as well as attacks against buildings dedicated to religion, education, and against places where the sick and the wounded were collected.

a speed and scale that were unprecedented in recent European history.²⁶ Finally, Ukraine also claimed the harmful environmental impacts of the attacks, namely due to Russia's disregard for nuclear safety²⁷ and the targeting of fuel depots, "releasing vast clouds of toxic smoke into the atmosphere". Alongside the loss of life, also the loss of homes for thousands of displaced persons and the environmental damage would be irreparable harms, calling for urgent measures.

4. The position of the Russian Federation

In a letter addressed to the ICJ, the Russian Federation claimed that the Court lacked jurisdiction to decide the case. As such, it could not entertain the claim, even at a provisional measures stage. Russia thus indicated that it would not participate in the proceedings, namely the oral hearings that took place on 4 March 2022.

According to the Russia's understanding, contrarily to what Ukraine was claiming, the case could not be framed in the 1948 Genocide Convention. Its arguments can be organised in two ideas: (1) Ukraine was, in reality, contesting the legality of use of force by Russia, which was not a matter regulated under the invoked Convention, and (2) the "special military operation" organised by Russia had not been grounded on that Convention, but instead on the right to collective self-defence, enshrined in Article 51 of the UN Charter and customary international law. The references made by the President Vladimir Putin on genocide were general and would not provide a sufficient basis to claim that the dispute concerned the Genocide Convention. At most, when alleging violation of prohibition of genocide, Russia was referring to the customary international norm on that matter. In sum, according to Russia's perspective, there was *no dispute* concerning the interpretation and application of the 1948 Genocide Convention.²⁸ Thus, there was no way of framing the case in the ICJ's jurisdiction: the Court could neither order provisional measures nor decide on the merits.

5. The ICJ's decision

On 16 March 2022, the ICJ delivered its order on the request for provisional measures. As it stems from the Court's case-law, the power to indicate provisional measures is seen as Court's "right": it can order them both by

26. According to the UNCHR, at the date of the oral hearing over two million people have been forced to flee their homes. One million, according to UNHCR, were internally displaced. A further 1.040.000 refugees had sought safety in neighboring countries – often after travelling in inhumane conditions. Data available in <https://data.unhcr.org/en/situations/ukraine>.

27. The Ukrainian representative mentioned that the Russian forces shelled the nuclear power station at Zaporizhzhia, the largest nuclear facility in Europe.

28. See, in this context, the famous case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, 03 February 2015, where the Court highlighted that "since Article IX provides for jurisdiction only with regard to 'the interpretation, application or fulfillment of the Convention, including . . . the responsibility of a State for genocide or for any of the other acts enumerated in Article III', the jurisdiction of the Court does not extend to allegations of violation of the customary international law on genocide."

request, but also *motu proprio* and *ultra petita*.²⁹ After the *Fisheries Jurisdiction* cases, the Court points out that several requirements must be met to order a provisional measure. First, the Court must be convinced that it possesses at least *prima facie* jurisdiction to decide the case – both on the provisional measure and on the main request. The “prima facie” criteria means that the Court simply confirms that its jurisdiction is at least *not logically excluded*.³⁰ This doctrine clearly gives prevalence to the interest of preventing serious harms to the interests at stake. However, even when such a “prima facie” jurisdiction is recognised, it does not guarantee that the ICJ’s competence is definitively established.

Second, there must be a link between the provisions requested and the object of the proceedings on the merits.³¹ This condition consists in what is known as the “plausibility test”. Although with some variations, the Court has been interpreting this requirement quite thoroughly: it demands not only the existence of the connection between the merits and the requested provisional measures, but also a “*fumus bonus iuris*” on the side of the applicant.

Third, the rights claimed must be at risk of irreversible harm: which may happen, as the Court elaborated, that “*when irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences*”.³² This requirement is closely linked to the urgency of the measures. In assessing whether this condition is satisfied, the Court looks at a variety of factors. In the *LaGrand Case*, the Court clearly recognised that cases concerning dangers of death or inhuman treatment would undoubtedly amount to irreparable harm. In cases involving ongoing conflict, it assesses whether the population at risk is particularly vulnerable and “the fragility of the overall situation”, including the likelihood of aggravation of the dispute and the risk of recurrence of harm.³³

The Court began by recalling its case-law on jurisdiction, namely on its *prima facie* understanding. Secondly, it decided on the merits of the request for provisional measures.

29. Article 75 Rules of the Court. As affirmed in the case *Fisheries*: “the right of the Court to indicate provisional measures [...] has as its object to preserve the respective rights of the Parties pending the decision of the Court; in order to prevent irreparable prejudice to the rights claimed” (emphasis added). *Fisheries Jurisdiction (United Kingdom v Iceland)*, Interim Measures, Order of 12 July 1972.

30. For more developments, see Le Floch (2021).

31. This requirement has been mentioned after the decision in the case *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Provisional Measures, Order of 23 January 2007. For more details, Kulick (2022).

32. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, Order of 7 December 2021, para. 69.

33. *LaGrand (Germany v United States of America)*, Judgment of 27 June 2001. See, among others, *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008.

5.1. Decision on jurisdiction

The Court began to address the absence of the Russian Federation from the oral hearings. It recalled that the non-participation of a party in the proceedings at any stage of the case cannot, in any circumstances, affect the validity of its decision or prevent the adoption of a provisional measure.³⁴ However, the Court can – and did – take formal note under Article 49 of the Statute on the absence. The ICJ has indeed claimed, several times, that the non-appearance of a party has negative impacts on the sound administration of justice, as it deprives the Court from the inputs of a Party. Moreover, it may also indicate non-willingness to comply with the decision.³⁵ Some authors point out that this absence contrasts with the Russia's behaviour in other procedures in the ICJ, where this State accepted to appear before the Court. They highlight that this may suggest its broader “disengagement from international institutions” in the context of the 2022 conflict (Nicholson, 2022). Still, the World Court decided to consider the letter sent by the Russian Federation, even if it was a way of participating in the procedure not foreseen in the Statute, considering that “*it is valuable for the Court to know the views of both parties in whatever form those views may have been expressed*”.

The Court concluded that it had *prima facie* jurisdiction to decide the case. It was satisfied that: (1) Ukraine had brought the case under the Genocide Convention; (2) both States were parties to the Convention and (3) no reservations were in force respecting Article IX, which gives competence to the ICJ on matters of interpretation and application of the Convention. The fact that Russia also invoked the right to collective self-defence, enshrined in Article 51 of the UN Charter, to justify its invasion of Ukraine was considered innocuous, given that “*certain acts or omissions may give rise to a dispute that falls within the ambit of more than just one treaty*”.

Secondly, the Court analysed whether this case concerned a “dispute”. This is considered as a question of substance, and not merely on procedure. According to its jurisprudence, inherited from the Permanent Court of International Justice, a dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons.³⁶ For the purpose of deciding whether a dispute exists between the Parties, the ICJ takes into account any statements or documents exchanged between them, including in multilateral contexts. In this case, the Court recognised that, since 2014, several State organs and senior representatives of the Russian Federation have referred, in official statements and to the UN bodies, the commission of acts of genocide by Ukraine in the Luhansk and Donetsk regions, and had even initiated criminal procedures against high-rank Ukrainian officials on the grounds of the violation of the Genocide Convention itself. Also from the documents and statements produced

34. In this context, see the landmark decision on the case *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment of 27 June 1986, where the ICJ was faced with the non-appearance of the United States.

35. That was the case in the *Nicaragua v. United States of America*. The non-appearance of the US in the procedure did not preclude its conviction, but the US failed to implement the Court's decision. For more comments on this case, see Bahiru (2022).

36. *Mavrommatis Palestine Concessions case, (Greece vs. Great Britain)* 30 August 1924.

before the Court, it could determine that Ukraine had publicly denied those acts of genocide. As a result, the Court concluded that *“the evidence in the case file demonstrates prima facie that statements made by the Parties referred to the subject-matter of the Genocide Convention in a sufficiently clear way to allow Ukraine to invoke the compromissory clause in this instrument as a basis for the Court’s jurisdiction”*.

This decision was not taken unanimously, but by thirteen votes to two. The Vice-President, Judge Gevorgian and Judge Xue voted against, considering that the Court had no jurisdiction over this matter.³⁷ Interestingly, Judge Bennouna also had the same opinion.³⁸, but stated to have voted in favour of the Order because *“he felt compelled by this tragic situation, in which terrible suffering is being inflicted on the Ukrainian people, to join the call by the World Court to bring an end to the war”*. It seems that the Moroccan Judge clearly wanted to make effective the role of the Court on guaranteeing the *ius cogens* principle of the *prohibition of the use of force*. In his point of view, this principle should prevail over formal considerations. However, his position raises important doubts as regards the principle of effective administration of Justice, which cannot prescind from the strict rules on jurisdiction on an *ad hoc* basis.

5.2. Decision on the merits

The Court began its reasoning by stressing its concern about the use of force by the Russian Federation in Ukraine, *“which raises very serious issues of international law”* and reminded that all must act in conformity with their obligations under the UN Charter and other rules of international law, including international humanitarian law. In this context, it recalled its own responsibilities in the maintenance of international peace and security, as well as in the peaceful settlement of disputes under the Charter.

Analysing the merits, it focused on the requirement regarding the “plausibility test”. First, it examined the *“fumus bonus iuris”* dimension. It considered that there was not enough evidence substantiating that genocide has been committed in Ukrainian territory. Moreover, it added to be doubtful that the Convention, *“in light of its object and purpose, authorizes a Contracting Party’s unilateral use of force in the territory of another State, for the purpose of preventing or punishing an alleged*

37. The Russian judge considered that the dispute concerned the use of force, and not genocide. Therefore, the clause enshrined in the Genocide Convention was not applicable. In this context, one must recall that the participation of the Court’s Vice President as a Russian national is not automatically precluded by a conflict of interests. In order to guarantee a balance, Article 32 (2) of the Statute sets forth that the other party may appoint a judge of its own nationality, in case where no member of the Court is its national. Ukraine appointed judge Yves Daudet for this purpose. Bahiru (2022) elaborates deeply on this solution, questioning whether this creates a system of judges aimed at representing national interests, and thus, disrupting the very essence of the principle of judicial independence, which would be at the very core of the ICJ’s philosophy as a real Court, as opposed to other UN political bodies.

38. The judge considered that this case is similar to the one brought in 1999 by Serbia against several NATO’s member States: in both cases, the applicant called upon the Genocide Convention on a matter pertaining to the use of force. In the judge’s words, *“artificially linking a dispute concerning the unlawful use of force to the Genocide Convention does nothing to strengthen the instrument”*.

genocide". This is a very important passage, as it will be further highlighted. Indeed, the Court had already stressed in other cases that, in fulfilling their duties on the prevention of genocide, "every State could only act within the limits permitted by international law".³⁹ As a conclusion, the Court decided that "Ukraine has a plausible right not to be subjected to military operations by the Russian Federation for the purpose of preventing and punishing an alleged genocide in the territory of Ukraine". Finally, it admitted the connection between the plausible rights of Ukraine under the Convention and the requested provisional measures: "by [its] very nature' Ukraine's request that Russia suspend its military operations is 'aimed at preserving the right of Ukraine that the Court has found plausible'".

As for the risk of irreparable harm and urgency, the ICJ also considered that this requirement was satisfied. The judges recalled the case-law according to which the condition of urgency is met when the acts susceptible of causing irreparable prejudice can "occur at any moment" before the Court makes a final decision on the case. The Court highlighted that *any military operation* inevitably causes loss of life, mental and bodily harm, and damage to property and to the environment. In particular, it deemed that the civilian population affected by the conflict was extremely vulnerable.⁴⁰

Having concluded that the conditions for deciding provisional measures were met, the Court ordered that the Russian Federation should, pending the final decision in the case, suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine. In addition, it should also "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 these military operations". Some authors argue that these measures were broader than those requested, as Ukraine asked for a halt of the military operations *based on the allegations of genocide*, and the Court decided to order a suspension of all operations, including eventually those which were not grounded on such allegations (Lopez, Worthington, 2022).

However, the Court decided not to adhere to the Ukrainian's request on directing the Russian Federation to provide a report the implementation the Court's Order in one week, and then on a regular basis. Such a measure would indeed contribute to a scrutiny of the enforcement of the provisional measures. As such, the acceptance and implementation of those measures by Russia was left with no inspection.

Finally, the Court ordered both Parties to "*refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve*". Some judges criticised this part. The American judge

39. *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.

40. The Court quoted the resolution of the UN GA of 2 March 2022, which recognised, *inter alia*, that "*the military operations of the Russian Federation inside the sovereign territory of Ukraine are on a scale that the international community has not seen in Europe in decades and that urgent action is needed to save this generation from the scourge of war*", and also expressed "*grave concern at the deteriorating humanitarian situation in and around Ukraine, with an increasing number of internally displaced persons and refugees in need of humanitarian assistance*".

Robinson and the *ad hoc* judge Daudet stressed the measure of non-aggravation should have been directed exclusively towards Russia.⁴¹ Even though, taking into account that escalation of violence may be fuelled by both sides of an armed conflict, the Court's position in this realm seems instructive, balanced and responsible. It is also equitable as regards to both parties of the dispute, showing an equidistance that is desirable at this stage of the proceedings.

6. Interventions of Third States

After the Order of 16th March 2022, several States requested to intervene in the main procedure.⁴² Third States may intervene in a case before the ICJ in two situations: (1) if they have an interest of a legal nature which may be affected by the decision, in which case they may submit a request to the Court to be permitted to intervene (Article 62); and (2) where the ICJ is deciding on an interpretation of a Convention, all State Parties to the Convention have the right to intervene in the proceedings. If they use this right, the construction given by the judgment will be equally binding upon them (Article 63).

Until March 2023, 32 States, mostly European, together with the US, Canada, Australia and New Zealand,⁴³ filed declarations of intervention. The number of interventions is unparalleled in the History of the ICJ. It is especially interesting to note that some States, who are traditionally very restrictive in recognising jurisdiction to the Court, have opted to join the case, and to defend that the Court has the power to adjudicate it.⁴⁴ Moreover, they all mentioned to accept the binding effects of the decision. As an author points out, this "*seems to have been acknowledged as the necessary price to be paid for the protection of a general interest*" (Bonafé, 2022). Even so, the importance of the general interest at stake is not the sole reason that justifies the remarkable number of interventions, as other cases, such as the pending genocide case of *Gambia vs. Myanmar*, also raise paramount collective

41. Judge ad hoc Daudet claimed that, in the circumstances of the case, only the Russian Federation should have been ordered to do so, as the escalation of the conflict was largely due, in his opinion, to "*Russian military strikes and increasing human rights violations committed against civilians, particularly women and children*".

42. For a complete analysis, see Khubchandani (2022).

43. In chronological order: Latvia, Lithuania, New Zealand, United Kingdom, Germany, United States of America, Sweden, France, Romania, Poland, Italy, Denmark, Ireland, Finland, Estonia, Spain, Australia, Portugal, Austria, Greece, Luxembourg, Croatia, Czechia, Bulgaria, Norway, Malta, Belgium, Slovenia, Slovakia, Canada and Netherlands (joint declaration of intervention), Cyprus and Liechtenstein. On 17 August 2022, referring to Article 34 (2) of the Statute and Article 69 (2) of the Rules of Court, the European Union furnished the Court with relevant information in the case.

44. See, on the US participation, Keitner (2022). It must be noted, though, that the United States made a reservation to Article IX of the Convention, according to which, "*before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case*". Bonafé (2022) argues that, because of this reservation, the US's intervention should not be admissible in what concerns article IX.

interests.⁴⁵ What seems to justify the mass interventions is the significance of the case as representing one of the most serious breaches of the prohibition of the use of force, for having been made by a permanent member of the SC and the risk of nuclear escalation (Bonafé, 2022). Also unprecedented is the unrequested and spontaneous participation of an International Organisation (the EU),⁴⁶ in the case, through the filing of information to the Court.

All the intervenient States supported Ukraine's claims, both on jurisdiction and on the merits. As for jurisdiction, all agreed that there was a dispute, opposing the two States, which concerned the interpretation of the 1948 Genocide Convention. Several States pointed out that Article IX of the Convention was indeed a broad jurisdictional clause.

Some States addressed expressly the complex question on whether allegations of genocide could justify the use of force. Probably conscious of the deep controversy of the question – which calls the very contentious doctrines of humanitarian intervention and responsibility to protect – the majority refrained from absolute conclusions on this regard. For example, Denmark and the UK only highlighted that *“the interpretation of the Convention could not be construed as being capable of countenancing certain types of conduct, including violations of the prohibition of aggression, violation of international humanitarian law, and crimes against humanity”*. The USA also opted to focus on the strict concept of *aggression*, stressing that *“no provision of the Genocide Convention, properly interpreted in good faith, explicitly or implicitly authorizes a Contracting Party, acting on the pretext of preventing or punishing genocide, to commit aggression, including territorial acquisition resulting from aggression”*.⁴⁷ It seems that the US chose the words very carefully: it does not condemn the *use of force per se* in cases of genocide, but only *aggression*.⁴⁸ Indeed, adopting a

45. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, initiated on 11 November 2019. The case concerns the alleged acts of genocide committed by the Republic of the Union of Myanmar against members of the Rohingya group. In this case, Canada and the Netherlands issued a request of intervention. See, on this issue, McGarry (2020).

46. This participation was made possible after a 2005 amendment to the Rules of the Court, and is now foreseen in Article 43, according to which any “public international organisation” may also question a construction of a Convention before the Court.

47. Declaration of intervention, para. 29.

48. It is to be understood that “aggression” has, in this context, the meaning codified by UN GA resolution 3314 (XXIX) of 14 December 1974: the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. According to Article 3 of the Resolution, some acts always represent acts of aggression, regardless of a declaration of war: (a) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; (b) bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; (c) the blockade of the ports or coasts of a State by the armed forces of another State; (d) an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; (e) the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the

broader language could compromise the US's perspectives on humanitarian intervention, mainly developed after the Clinton presidency.⁴⁹

Some States, however, adopt a more straightforward view. Norway submits that prevention of genocide in conformity with Article I of the Genocide Convention “does not in any case permit a State to engage in any use of force in contravention of the Charter of the United Nations”. The Portuguese declaration also points towards a more absolute prevention of the use of force, by claiming that “the obligation to prevent genocide provided for in Article I of the Convention does not provide by and in itself a legal basis for the use of force in violation of Article 2, paragraph 4, of the Charter of the United Nations”. It further added that “the fulfilment of the obligation of prevention of genocide in good faith would require favouring cooperation, in particular in the context of the United Nations organs and of peaceful settlement of disputes, over any unilateral military action”. Cyprus, on its turn, seems to exclude any possibility of unilateral humanitarian intervention. It recalls Article VIII of the Convention, which urges States parties to call upon the competent organs of the UN to take action for the prevention and suppression of acts of genocide, which, in its opinion, is precisely meant to safeguard the collective security system established by the Charter. In this context, it highlighted that, in the *Nicaragua vs US* case, the Court stated “in no uncertain terms that «the use of force could not be the appropriate method to monitor or ensure [...] respect [for human rights]»”.

Three States, however, show some acceptance of an unilateral action in the context of prevention of genocide. Estonia, Luxembourg and Belgium mention that the Convention imposes on States “a duty to employ multilateral and peaceful means to prevent genocide first before taking unilateral action as a matter of last resort”. The latter State further added that “la légalité de toute mesure préventive unilatérale extraterritoriale est subordonnée à la saisine préalable des organes compétents des Nations Unies conformément à l'article VIII et à l'absence d'action de ces organes conformément à la Charte.” It seems clear, then, that these States do accept unilateral interventions, although with some procedural conditions.

Irrespective of the different perspectives on the types of measures admitted, all States agreed that authorities are always under a *due diligence* obligation to gather evidence of the situation from independent sources,⁵⁰ and must seek support in the UN bodies. This interpretation is fully harmonised with the Convention's *ratio* and is wholly in conformity with Article VIII.⁵¹ As for measures aimed to “punish” genocide, all those interveners pointed that

agreement; (f) the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; (g) the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

49. See, on the so-called “Clinton doctrine”, Stevenson (1996) and Dumbrell (2020).

50. For a depth analysis on the notion of “due diligence”, see the Australia's declaration of intervention, para. 51. It stresses, *inter alia*, that assessment must be done *in concreto* by reference to verifiable facts and evidence, and carried out in good faith.

51. Article VIII reads: “Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III”.

these concerned domestic criminal proceedings aimed at punishing individuals who had committed such crime, or cooperation with international criminal courts.⁵², and not reprisals to a State. Therefore, even for those who showed some openness to the idea of unilateral intervention, it is understood that such measure can never be used for punishment purposes.

7. Enforcement of the provisional Order

After the notification of the decision, Russia's Spokesperson informed that "*Russia cannot take this decision into account*". However, in the famous *LaGrand* case, the Court established that the orders on provisional measures are *binding*, despite the wording of the Statute, which mentions the power to "indicate" the measures.⁵³. Therefore, it must be understood that Article 94 of the Statute is applicable: it compels each member of the United Nations to comply with the ICJ's decisions in all cases to which they are parties. This Article also authorizes the winning Party to submit the noncompliance to the SC, which may then decide on measures "if it deems necessary". However, legal scholars claim that it is not clear whether provisional orders may be *enforced*, as the case-law in this context is dubious.⁵⁴. Yet, after the *LaGrand* case, to defend otherwise would render futile the affirmation the binding nature of these decisions.⁵⁵.

Nonetheless, even if it is to be accepted that the SC is competent to deal with enforcement of provisional measures, this possibility can hardly be satisfactory in the case discussed, as Russia, as a permanent Member.⁵⁶, will undoubtedly veto any action in this regard. This would not be the first time in History: in the case *Nicaragua v. United States*, the ICJ considered that this latter had violated the customary norm on prohibition of the use of force and non intervention in internal affairs, but the US vetoed the enforcement of the decision by the SC. Perhaps that is why, as some authors point out, the question on the enforcement of the ICJ's decision in *Ukraine vs Russia* was not put on the SC's agenda (Bahiru, 2022). This may indeed be the less damageable option: as Bahiru mentions, watching the UN judicial organ verdict rejected by a single vote of the defendant State could lead to even more damages in the Court's authoritative image.

A possible way to overcome this impasse would be to frame the SC's intervention on the UN Charter's Chapter VI, on peaceful resolution of conflicts. Indeed, a previous recourse to the ICJ does not preclude an action

52. See Denmark declaration of intervention.

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

54. Borjas (2022) claims that in the case *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, judgment of 24 February 1982, the ICJ considered that an order granting provisional measures cannot be enforced through the SC, as Article 94(2) of the UN Charter is reserved to "judgements" only. However, the passage quoted by the author does not seem definitive in that regard.

55. Recently, the ICJ adopted Article 19 of the Rules of Court, which establishes an enforcement monitoring committee mandated to supervise implementation of provisional orders. Nevertheless, this development will not provide a comprehensive solution to lack of enforcement, as the mechanism created is only aimed at monitoring, not at enforcing the orders as such, and it has not yet functioned. Moreover, the creation of this mechanism cannot signify, per se, that the SC is not competent to enforce provisional measures.

56. Article 23 and 27(3) UN Charter.

under Chapter VI of the Charter.⁵⁷ – although it may have a negative impact on the symbolic force of the ICJ’s authority. Article 36 of the Charter mentions that the SC may “*recommend appropriate procedures or methods of adjustment*”, and, for that purpose, “*should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties*”. Thus, the content of the ICJ’s decision is obviously to be taken into consideration.⁵⁸ The advantage to frame the next step in this Chapter is that, pursuant to Article 27 (3), the intervening parties of a dispute must abstain in any voting on the SC in that realm. Moreover, despite the Article’s mention to “*recommendation*”, the ICJ has already considered that the SC’s decisions in Chapter VI are also binding.⁵⁹

During the period where the order is not fully respected, Russia is breaching International Law, and, as such, may be responsible for all damages caused as a result. Thus, in parallel with possible convictions for individual criminal responsibility in cases of war crimes, the Russian Federation may be charged with duty of reparation for damages for not having complied with the ICJ’s provisional order in due time.

8. Critical Analysis of the provisional order

The ICJ’s decision of March 2022 was of the utmost symbolic importance. As Nicholson (2022) interestingly highlights, “*we already knew Russia’s invasion was illegal in international law. But the ICJ decision now makes it virtually impossible for anyone, including Russia, to deny such illegality*”. This is even more striking when the order was not issued in a procedure where the use of force was technically the main object. Moreover, it reinforces the importance of the judiciary. As Bonafé (2022) points out, “*the Court in the exercise of its contentious function, which has a fundamentally bilateral character, is finally the only UN organ having adopted a binding decision in the context of the Russo-Ukrainian war*”.

Some authors, however, point the excessive broadness of the decision. Kulic (2022) stresses that the order shows the “*the vastness of what parties to international proceedings can ask for and what an international court or tribunal can order in respect of provisional measures*”. The author argues that the applicant gained in the provisional order what it would not gain in the main procedure, where a mere declaratory decision is sought. I do not fully agree with this view, as ceasing the attacks would be a necessary consequence of a full obedience with the so-sought declaratory decision.

Kourtis (2022) argues that it is doubtful whether Ukraine’s claims vis-à-vis the consequences of Russian aggression can be addressed by the ICJ under Article IX: “*this provision deals with the interpretation, application, or fulfilment of the Genocide Convention. As the ICJ noted in Bosnian Genocide,*

57. With the same opinion, Borjas (2022). The author highlights that Chapter VI’s measures remain open until the SC takes an action based on Chapter VII.

58. With a contrary perspective, claiming that the UN Charter does not entail compulsory jurisdiction of the Court to entertain claims concerning a dispute, see Borjas (2022).

59. *Legal Consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971, para. 115.

Art. IX does not empower the Court to ‘rule on alleged breaches of other obligations’ not covered by the Convention (...) Aggression does not pertain to the interpretation, application, or fulfilment of the Convention”. It is true that, in other cases, the Court avoided to admit some automatic connections between international use of force and genocide.⁶⁰ But the Court was merely stressing that mass casualties deriving from conflict do not necessarily amount to genocide, and should be dealt with by International Humanitarian Law. Invoking “genocide” in every armed conflict may, indeed, contribute to weaken the concept.⁶¹ However, this was not the argument in *Ukraine v Russia*: here, it was *the attacker itself* that had invoked a purported genocide as a justification for the use of force. What the Ukraine was seeking to affirm was *precisely that the law on genocide and the law on the use of force are two distinct regimes*, and that any artificial bridge between the two must be condemned.

Kulick (2022) considers that *“possibly the strongest potential of the Order does not lie in what it enables, but in what it disables: it may deter states that are not a permanent member of the United Nations Security Council from employing insincere human rights arguments as a pretext for a military intervention in a neighbouring state”*. I fully agree with the author on this point, as the provisional measure pointed towards a *“prima facie”* condemnation of the use of force as a measure for preventing genocide.

Some parts of the decision, however, may offer some criticism. The Court clearly wanted to pass a message of strong condemnation of the Russia’s acts, and at times goes a little too far on its role, moving away from purely legal considerations and even from the specific *vexata quaestio*. For example, it claims that it is *“profoundly concerned about the use of force by the Russian Federation in Ukraine”*, which is not a legal consideration and should be put aside at this early stage of the procedure. Some authors claim that *“the Standard of attention is different from the earlier cases that were submitted, which is the discriminatory treatment between parties”* (Bahiru, 2022).⁶² Stepping away from purely legal constructions and invading political considerations may weaken, rather than reinforcing, the ICJ’s role and its recognition as a fully independent body.

As Kulick (2022) illustratively emphasizes, this measure is both powerful and powerless: the power of its words and the content of its order contrasts deeply of its effectiveness. Indeed, until February 2023, Russia had not yet obeyed the order, continuing to inflict attacks in the Ukrainian territory. As mentioned, the circumstance of a SC Permanent Member being convicted by the ICJ and then failing to enforce the decision had already happened in

60. See, for example, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia (Serbia and Montenegro))*, Provisional Measures, Order of 13 September 1993.

61. Criticizing the misuse of the term “genocide” in the anti-war rhetoric, Schabbas (2022), and Kourtis (2022). The last author points out that the notion was frequently invoked during the Cold War to stigmatize State conduct which most of the times fulfilled the conditions of aggression rather than genocide: that would be the case of cross-allegations between India and Pakistan, Chad’s allegations against Lybia and the statements of several Latin American States on the US intervention in Nicaragua.

62. The author points out that the judges showed some favoritism with this procedure overall. Another symptom would be urgency of the decision, which was not comparable with other similar cases (for example, in the ongoing case *Gambia v. Myanmar*, the ICJ took three months to decide provisional measures).

the past, and there, as well, the system had proven to be dysfunctional. By making the SC the competent body for the enforcement of the ICJ's decisions, the Charter has, also in the judicial field, shielded the system in favor of the SC's permanent members. A scenario with one of these States as an aggressor was merely not envisaged by the drafters of the UN Charter. Thus, the system simply does not work if such a development becomes real.

9. What to expect in the final decision?

In the final decision the Court will have several things to settle. First, despite having considered to have "*prima facie*" jurisdiction in the case, it will still have to establish its competence in a definitive manner. This means that the Court will need to address whether the Genocide Convention protects a State Party from being falsely accused of committing genocide. Moreover, as Keitner (2022) clearly puts, it must decide (2) whether Russia in fact unlawfully invaded Ukraine based on false allegations of genocide (and if so, whether Russia is responsible under the Genocide Convention for the harm it has inflicted to Ukraine), and (3) what Russia owes to Ukraine as a result of the eventually unlawful acts.

It is to be believed that in the final decision the World Court will confirm its jurisdiction. Article IX of the Genocide Convention provides for ICJ jurisdiction "*at the request of any of the parties to the dispute*". Since the Convention does not establish otherwise, a State accused of committing genocide has the same right to submit the dispute to the Court as the State making the accusation. This understanding allows the Court to supervise possible abuses of right, namely the right to prevent genocide⁶³. In the Ukraine's perspective, the attacks were the result of Russia's abusive exercise of the rights to denounce and prevent genocide, expressly foreseen in the Convention. As Kourtis (2022) points out, "*allegations of abuse of right have taken a special form that of détournement de pouvoir since, as Ukraine observes, Russia distorted the scope of its rights under the Convention and exercised them in striking disharmony with the latter's object and purpose*".

Another question that may be discussed in the final decision is the *means that States may use for prevention of a possible genocide*. Although all intervener States that tackled this issue agreed that the *punishment* of genocide is to be made under domestic or international criminal justice, there were some discrepancies as regards the means to *prevent* genocide. This problem is linked to the very sensitive topic of "humanitarian interventions" in the context of genocide prevention. As seen, a few States showed some openness to admit unilateral interventions in cases where there are sound proofs of this crime, and where collective means have failed. Some authors, however, stress that such an understanding is a distortion of the Convention. Kourtis (2022) claims that from a *jus ad bellum* point of view, an attack is still unlawful even when committed to prevent or stop the perpetration of genocide. A State which invades the territory of another State to exercise its right/duty to prevent genocide does not act "within the limits permitted by international law", as the ICJ held in *Bosnian Genocide*

63. On the abuse of rights in International Law, see Lauterpacht (1982: 264 ss.).

case. Schabbas argues that “a ‘good faith’ analysis may result in an obligation to prevent genocide but it does not generate a ‘right’ to prevent it” (2022).

I tend to agree with these views, namely if we adopt the perspective of intervention as a “right”, which would go against the ICJ’s very understanding of the Genocide Convention, as stressed, for example, in the Advisory Opinion *Reservations to the Genocide Convention*.⁶⁴ However, if one frames actions on prevention of genocide on the broader theory of the “responsibility to protect”, which envisages intervention not as a right, but as a complex duty of the international community as a whole, that would perhaps make the debate on interpretation of the Convention more intricate.⁶⁵

However, the Court may opt not to address the issue of “humanitarian intervention” directly.⁶⁶ The United Kingdom noted that “*in construing the Genocide Convention the Court is not called upon to engage in any broader analysis of the international legality of uses of force in response to, for example, grave humanitarian crises, including under the doctrine of humanitarian intervention*”. First, the Court may only consider that there were no proofs of genocide whatsoever, and so no preventive actions were needed. Even for those who consider that the ICJ, if doing so, would fail to decide on all the disputed questions, the Court may still opt to use a broad formula. However, in the provisional Order, it has already highlighted that “*it is doubtful that the Convention, in light of its object and purpose, authorizes a Contracting Party’s unilateral use of force in the territory of another State for the purpose of preventing or punishing an alleged genocide*” (para. 59). The Court, then, seems to point towards an exclusion of any unilateral intervention based on the use of force, at least grounded on the Genocide

64. *Reservations to the Genocide Convention*, Advisory Opinion of 28 May 1951. The Court stressed that “*in such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the raison d’être of the convention*”.

65. The “responsibility to protect” (R2P) doctrine was developed in response to the atrocities committed in Rwanda and in the former Yugoslavia in the 1990s. At the 2005 high-level UN World Summit, UN member states committed to the principle of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity through the use of appropriate diplomatic, humanitarian and other peaceful means. When these means are not sufficient the GA committed “*to take collective action, in a timely and decisive manner, through the SC, in accordance with the Charter, including Chapter VII*” (A/RES/60/1). Some States and civil society organizations consider that military intervention to prevent genocide in the absence of a SC decision was ruled out by the GA resolution. However, the US and the United Kingdom have indicated support for humanitarian intervention *in extremis* without UN consent, when a collective action is not possible, namely because the SC is paralyzed due to the use of veto. A report issued in the US in 2008, authored by Madeleine Albright and William Cohen mentions that “*while the United States may face criticism for taking strong action in these cases, we must never rule out doing what is necessary to stop genocide or mass atrocities*”. Thus, as Schabbas (2022) highlights, “*perhaps the United States government disagrees with Ukraine when it says the prevention of genocide cannot justify the use of force against another country. But the Russian aggression underscores the terrible danger of tolerating military intervention based on unilateral claims that genocide is threatened*”. On the R2P see Vilmer (2015) and Lopes (2020: 194 ss.).

66. That is the Keitner’s opinion (2022). The author argues that “*because of Russia’s genocide allegations were so obviously pretextual, in this case the Court can – and likely will, if the order on preliminary measures is any indication – avoid that broader question here*”.

Convention. If such an intervention is admissible under other international norms is something that cannot be analysed in the final decision, as the object of the procedure is restricted to the interpretation of the 1948 Convention.

10. Conclusion

As mentioned in the beginning of this Article, the war in Ukraine may give rise to a significant litigation in distinct jurisdictions. Besides the ICJ intervention, the war is also being considered by other International Courts⁶⁷, such as the ECtHR. Future criminal cases will also probably join the already existing judicial procedures. Indeed, immediately after the Russian's invasion to the Ukraine's territory, the Office of the Prosecutor of the International Criminal Court issued a statement, as early as 28 February, asserting that the Office had already found a reasonable basis to believe crimes within the jurisdiction of the Court had been committed, and had identified potential cases that would be admissible. In mids-2022, around forty States Parties to the Rome Statute had already referred the situation in the Ukraine to the ICC. As with the ICJ's case, this was the first time in the ICC's history that such a number of States have referred a specific case to the Court.

The same trend happened in the ECtHR. On 28 February 2022, the Ukrainian Government lodged an application to the ECtHR, also inviting this Court to adopt urgent interim measures, under Rule 39 of the Rules of Court, in relation to "*massive human rights violations being committed by the Russian troops in the course of the military aggression against the sovereign territory of Ukraine*"⁶⁸. The very day after, the Strasbourg Court ordered a number of interim measures to the Russian Government, and recalled that an interim measure indicated on 13 March 2014 to both the Russian Federation and Ukraine in relation to the events in eastern Ukraine remained in force. The Court considered that the military action which had commenced on 24 February 2022 in various parts of Ukraine gave rise to a real and continuing risk of serious violations of the Convention rights of the civilian population, in particular Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment or punishment) and 8 (right to respect for private and family life). As a consequence, it asked the Government of Russia to refrain from military attacks against civilians and civilian objects, "*including residential premises, emergency vehicles and other specially protected civilian objects such as schools and hospitals, and to ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops*". Contrarily to the ICJ, the ECtHR decided that the Government of the Russian Federation

67. The Permanent Court of Arbitration is also deciding a case opposing the two countries, related with the Crimea's annexation: the case *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation)*. It was initiated on 16 September 2016 by Ukraine, which made a claim under Annex VII to the 1982 United Nations Convention on the Law of the Sea (UNCLOS) referring to a dispute concerning coastal state rights in the Black Sea, Sea of Azov, and Kerch Strait. The procedure is still pending.

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

should inform the Court as soon as possible of the measures taken in this context. However, as happened with the ICJ's order, until now no notice was made on the fulfilment of this decision, which is even more problematic, as the Russian Federation ceased to be a Party to the European Convention on Human Rights further to Resolution CM/Res(2022)2, adopted by the Committee of Ministers on 16 March 2022.⁶⁹ Even though, the procedure is still pending, and, by September 2022, twenty-three Governments have requested leave to intervene as third parties in the proceeding. The number of interventions was again considered extraordinary.

Besides the application made by Ukraine, the Strasbourg Court also received several requests from individuals against Russia.⁷⁰ These persons included those taking refuge in shelters, houses and other buildings, fearing for their lives or with limited access to food, healthcare, water, sanitation, electricity and other essential services. The Court highlighted that the interim measure decided on 1 March should cover any request brought by persons "*falling into the above category of civilians who provide sufficient evidence showing that they face a serious and imminent risk of irreparable harm to their physical integrity and/or right to life*".

One year after the beginning of the large-scale attacks, Russia had taken no notice neither of the ICJ's nor of the ECtHR's interim measures. These decisions remain important, but risk to have a purely symbolic meaning. One may ask, thus, with Duarte (2022), whether the resource to lawfare in armed conflicts is indeed a trump or a risk to International Law. On one side, it is to be applauded the swiftness with which Ukraine has directed the conflict to the ICJ - and also to the ECtHR -, showing the recognition that these jurisdictions may have a paramount role to play in matters of armed conflict. Additionally, both Courts - and also the ICC - have revealed how seriously they take their responsibilities as paramount guarantors of the principle of peaceful settlement of disputes and also of *ius in bello*. Note must be given to the fact that the three Courts responded very quickly to the Ukraine's and other States' applications. In the past, both the ICJ and the ECtHR took several months or weeks to decide on provisional measures. In this case, the ICJ decided in a few days, and the ECtHR in the very day after the application.

However, all this effectiveness contrasts deeply with the lack of efficiency of these decisions. One year after their enactment, their enforcement seems to be a mirage, a fantasy that would not convince even the most heated enthusiast of International Law. Sternly, the international community looks at this total inertia as the natural and only expected outcome of the decisions. There is, thus, the risk, that these judgments will be seen as the definitive proof of a botched system - a system that has not only failed *by design* (as one could argue with the ICJ, enshrined in the UN's Post War edifice), but also *by nature*, as showed by the European Council, where Russia did not have the same prerogatives as in the UN. International

69. However, the Court remains competent to deal with applications that are pending until 16 September 2022. Therefore, the case *Ukraine vs. Russia* will continue to be analysed.

70. According to the Courts' webpage, in June 2022 there were approximately 8,500 pending individual applications related to the events in Crimea, eastern Ukraine and the Sea of Azov. See <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-7372751-10076076%22%5D%7D>.

judgements, especially in the ICJ, may become more and more nominal and not executed, which can have serious consequences for the principles of effective justice within the UN and, due to the general competence of the Court, to the International Law more generally.

However, International Law has its own ways of being effective, and these do not have necessarily to be the same as those applicable to domestic law.⁷¹ The symbolic force of the judgments may indeed be very powerful in the international arena, for confirming the broad condemnation of the attacks that was already shared among the vast majority of international actors. In fact, as seen, western States have massively adhered to the judicial procedures taking place in the International Courts, even if at the end they seem not to be very surprised with the Russia's contempt. These interventions show how the international community recognises the important part that Courts may play when the basic principles of International Law are being severely breached by one of the most powerful States in the world.

Bibliography

Bahiru BA. Challenges of Dispute Settlement through International Court of Justice (ICJ): The Case of Ukraine v. Russian Federation - the Decision on Provisional Measures on Alleged Violation of Genocide Convention. In: European Scientific Journal. 2022;18 (29). Available from: <https://eujournal.org/index.php/esj/article/view/15907>.

Baptista EC. Direito Internacional Público. Volume I. Lisboa: AAFDL Editora; 2018.

Bonafé B. The Collective dimension of bilateral litigation: The Ukraine vs Russia case before the ICJ. Questions of International Law. 2022;96:64. Available from <http://www.qil-qdi.org/the-collective-dimension-of-bilateral-litigation-the-ukraine-v-russia-case-before-the-icj/>.

Borjas S. The ICJ Order in Ukraine v. Russia - Quo Vadis?. Volkrechtsblog. 28 March 2022. Available from <https://voelkerrechtsblog.org/the-icj-order-in-ukraine-v-russia/>.

Brownlie I. Princípios de Direito Internacional Público. Lisboa: Fundação Calouste Gulbenkian; 1997.

Duarte ML. A Jurisdicionalização do Conflito na Ucrânia: um trunfo ou um risco para o Direito Internacional?. Communication presented in the Congress A Ordem Internacional em Mutação: a Guerra na Ucrânia. 5 April 2022. Faculdade de Direito da Universidade de Lisboa.

Duarte ML. Direito Internacional Público e Ordem Jurídica Global do Século XXI. Lisboa: AAFDL; 2019.

71. Criticizing the traditional arguments that consider International Law as a *minus* in comparison with domestic law, for using uncritically the same methods of assessment, see Duarte (2019 48 ss.). On ways to "measure" effectiveness of International Courts, see Shany (2012).

Dumbrell J. Was There a Clinton Doctrine? President Clinton's Foreign Policy Reconsidered. *Diplomacy and Statecraft*. 2020. 13(2): 43.

Ingimundarson V. The «Kosovo Precedent»: Russia's justification of military interventions and territorial revisions in Georgia and Ukraine. London School of Economics and Political Sciences IDEAS. July 2022. Available from <https://www.lse.ac.uk/ideas/publications/updates/kosovo>.

Keitner C. US Intervention in Ukraine v. Russia at the ICJ. *JustSecurity.org*. 27 September 2022. Available from <https://www.justsecurity.org/83144/us-intervention-ukraine-russia-ici-keitner/>.

Khubchandani M. The Pandora's Box of Article 63 Interventions in the Ukraine v. Russia Dispute at the ICJ: The Need for Joint Interventions to Strike a Balance. In: *OpinioJuris*. 17 October 2022. Available from <http://opiniojuris.org/2022/10/17/the-pandoras-box-of-article-63-interventions-in-the-ukraine-v-russia-dispute-at-the-ici-the-need-for-joint-interventions-to-strike-a-balance/>.

Klabblers J. *International Law*. 2nd Edition. Cambridge: Cambridge University Press; 2017.

Kourtis DA. Are States Allowed to 'Cry Wolf'? Genocide and Aggression in Ukraine v. Russia. *Opinio Juris*. 21 March 2022. Available from <https://opiniojuris.org/2022/03/21/are-states-allowed-to-cry-wolf-genocide-and-aggression-in-ukraine-v-russia/>.

Kulick. Provisional Measures after Ukraine v Russia (2022). *Journal of International Dispute Settlement*. 2022. 13: 323.

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

Le Floch G. Requirements for the Issuance of Provisional Measures. In Palombino FM, Virzo R, Zarra G, editors. *Provisional Measures Issued by International Courts and Tribunals*. Springer; 2021.

Lopes JAA. Uso da Força e Direito Internacional: Direito em Tempos de Cólera. In: Lopes JAA, coordinator. *Regimes Jurídicos Internacionais*. Volume I. Porto: Universidade Católica Editora; 2020.

Lopez J, Worthington B. What's the status of Ukraine's case against Russia at the ICJ. In: *Lawfare*. 21 April 2022. Available from <https://www.lawfareblog.com/whats-status-ukraines-case-against-russia-ici>.

Marchuk I. 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 Russia). *Melbourne Journal of International Law*. December 2017. 18(2): 436.

Martinez JS. Towards an International Judicial System. *Stanford Law Review*. 2003. 56(2): 429.

McGarry B. Third-State Intervention in the Rohingya Genocide Case: How, When, and Why? [Part II]. In: *OpinioJuris*. 11 September 2020. Available from <http://opiniojuris.org/2020/09/11/third-state-intervention-in-the-rohingya-genocide-case-how-when-and-why-part-i/>.

Mesquita MJR. *Justiça Internacional: Lições. Parte I*. Lisboa: AAFDL Editora; 2010.

Milanovic M. ICJ indicates provisional measures against Russia, in a near total win for Ukraine. *EJIL:Talk!*. 16 march 2022. Available from <https://www.ejiltalk.org/ici-indicates-provisional-measures-against-russia-in-a-near-total-win-for-ukraine-russia-expelled-from-the-council-of-europe/>.

Mindova I. *Ukraine v. Russia: At the Stage of International Justice*. *Harmonius: Journal of Legal and Social Studies in South East Europe*. 2018: 410.

Nicholson R. The International Court of Justice has ordered Russia to stop the war. What does this ruling mean?. *The Conversation*. *Encyclopedia Britannica*. 17 March 2022. Available from <https://theconversation.com/the-international-court-of-justice-has-ordered-russia-to-stop-the-war-what-does-this-ruling-mean-179466#:~:text=It%20means%20even%20if%20Russia.same%20as%20an%20enforceable%20one>.

Nollkaemper A. Concurrence between Individual Responsibility and State Responsibility in International Law. *The International and Comparative Law Quarterly*. 2003. 52(3): 615.

Rieter E. The International Court of Justice and its Contribution to Human Rights Law. In: Kadelbach S, Rensmann T, Rieter E, editors. *Judging International Human Rights: Courts of General Jurisdiction as Human Rights Courts*. Springer; 2019.

Schabbas WA. *Genocide in International Law: The Crime of Crimes*. 2nd Edition. Cambridge: Cambridge University Press; 2009.

Schabbas WA. Genocide and Ukraine - Do Words Mean What We Choose them to Mean?. *Journal of International Criminal Justice*. 2022. 20: 843.

Shany Y. Assessing the Effectiveness of International Courts: A Goal-Based Approach. *The American Journal of International Law*. 2012; 106(2): 225.

Shaw MN. *International Law*. 8th Edition. Cambridge: Cambridge University Press; 2017.

Starosvit S. *Ukraine v. Russia: Reflections on the Indication of Provisional Measures of 19 April 2017 and the Possibility of Enforcement*. In: *Ukrainian Journal of International Law*. 2017. (4): 154.

Stevenson CA. The Evolving Clinton Doctrine on the Use of Force. *Armed Forces & Society*. 1996. 22(4): 511.

Vilmer JBJ. *LA Responsabilité de Protéger*. Paris: PUF; 2015.