

International Court of Justice preliminary decision in *Ukraine v Russia* (2022)

On 16 March 2022, after a fast-track procedure, the International Court of Justice ordered provisional measures in the *Ukraine v Russia* case. In bringing the case, Ukraine argued that Russia had wrongfully claimed a genocide in Ukraine to justify its invasion. Russia, meanwhile, rejected the Court's jurisdiction. Given the lack of evidence for Russia's genocide allegations, and the principle that any action to prevent genocide must be taken in good faith and in line with international law, the Court called on Russia to suspend military operations immediately.

The case at the International Court of Justice

On 26 February 2022, the Ukrainian Government lodged a [case](#) with the International Court of Justice (ICJ), regarding 'Allegations of Genocide under the 1948 [Convention](#) on the Prevention and Punishment of the Crime of Genocide (*Ukraine v Russian Federation*)' and [requested](#) that the Court order provisional measures, including an immediate suspension of the military operations. The Court fast-tracked the procedure and, on Wednesday 16 March 2022, announced its [decision](#) to order the following provisional measures:

1. Russia must suspend the military operations launched in Ukraine on 24 February immediately;
2. Russia must ensure that any military or irregular armed units directed or supported by it, and any organisations and persons under its control take no steps to advance the military operations;
3. Both parties must 'refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve'.

The ICJ is the principal judicial organ of the United Nations (UN), instituted by [Articles 92 to 96 of the UN Charter](#). The Court is competent to settle disputes submitted by States that have accepted its jurisdiction, in accordance with international law, through judgments that are binding and without appeal for the parties concerned. Neither Ukraine nor Russia have made a declaration accepting the ICJ's compulsory jurisdiction under Article 36 of the ICJ's [statute](#). Therefore, the ICJ's competence in the Ukraine case derives solely from the Genocide Convention, which both Russia and Ukraine have ratified. It obliges state parties to prevent and punish genocide and gives the Court jurisdiction over disputes between parties relating to 'interpretation, application or fulfilment' of the Convention.

Ukraine's main claim before the ICJ is that Russia has falsely accused it of attempting a genocide in the Luhansk and Donetsk oblasts of Ukraine as a pretext for recognising Luhansk and Donetsk as independent republics and engaging in a military invasion. Ukraine's application does not claim that Russia has committed the crime of genocide, but it hints that it may be 'planning acts of genocide in Ukraine' (para. 24). The question of whether abuse of the Genocide Convention as an argument for military intervention provides sufficient jurisdictional grounds for the ICJ to decide is apparently not straightforward. Ukraine's argumentation has been described by academics as taking a [creative approach](#).

Russia did not take part in the first Court [hearing](#), held on 7 March 2022. In a [letter](#) to the Court, of 5 March 2022, Russia argues that the ICJ has no jurisdiction, basing its argument on two points: i) the Genocide Convention governs neither the use of force between States nor the recognition of States, so the subject of Ukraine's claim and request falls outside the Convention; and ii) the 'military operation' was not legally based on the Genocide Convention, but on [Article 51 of the UN Charter](#) – on exercising the right of self-defence in the event of armed attack – and customary international law. Russia argues that references to acts of genocide in the President's statement announcing the military intervention do not provide a sufficient basis to claim that there was invocation of the Convention or the existence of a dispute under it.

Contradicting Russia's assertion, the Court's decision of 16 March 2022, adopted with a sound majority of 13 votes to 2, considers that there is sufficient evidence for Ukraine to invoke the compromissory clause in Article IX of the Convention, which attributes jurisdiction to the ICJ for disputes arising under the

Convention. Some noteworthy arguments of the Court to support its preliminary decision are as follows: in discharging its duty to prevent genocide, every State may only act within the limits permitted by international law; the Court 'is not in possession of evidence substantiating the genocide allegations of the Russian Federation'; the Court is 'doubtful' that the Convention authorises unilateral use of force in the territory of another State.

The judges from [China](#) and [Russia](#) voted against the first two provisional measures directed at the Russian Federation. In their declaration, annexed to the Court's conclusions, they essentially support the Russian interpretation that the ICJ does not have jurisdiction since the issue of concern is one of state recognition and use of force in international law, which do not fall within the scope of the Genocide Convention. Both voted in favour of the third measure, however. Three other judges made declarations and another presented a separate opinion. Two of these opposed the application of the third measure to Ukraine.

As expected, the Russian government – through Kremlin spokesperson Dmitry Peskov – [stated](#) on 17 March that Russia could not 'take this [preliminary] decision into account'. As the ICJ has no mechanisms to enforce its ruling, UN State Parties can take the case to the Security Council, where Russia's veto power would block any enforcement measures. The United States (US) acted in a similar way in 1986, when it refused to implement the ICJ ruling in [Nicaragua v the United States](#) on financing of military and paramilitary activities in Nicaragua, and voted against a Security Council resolution calling for full and immediate compliance.

Another [case](#), moved by Ukraine in 2017, is pending before the ICJ, alleging Russia's violation since 2014 of the International Convention for the Suppression of the Financing of Terrorism through its support for separatist forces in eastern Ukraine, and of the International Convention on the Elimination of Racial Discrimination in Crimea through suppression of the rights of Crimean Tatars and ethnic Ukrainians. Other judicial avenues are currently being activated or considered as means to hold the Russian leadership accountable for war-related crimes, namely the [International Criminal Court](#) and the establishment of a [special tribunal](#) on the crime of aggression.

Commission President Ursula von der Leyen welcomed the ICJ order in a [tweet](#), insisting that Putin heed the clear message from the international community. The High Representative/Vice-President of the Commission, Josep Borrell, referred to the ICJ's 16 March ruling to underscore his [call](#) for an immediate halt to military actions.

Broader implications of the decision

The court decision is [considered](#) a 'near total' victory for Ukraine, while non-respect of the decision is expected to cause further reputational harm to Russia. Although the decision does not rebut all Russia's stated grounds for invasion, it marks an important step towards proving the [illegality](#) of the war under international law. The [blocking](#) by Russia of the UN Security Council's attempt to condemn the invasion, meanwhile reveals the [limitations](#) of the UN system and the need for it to be [revisited](#).

It is argued that Russia's genocide-related war justification is based on an [abusive interpretation](#) of the concept of **humanitarian intervention**. Central to this is the 'responsibility to protect' (R2P) [doctrine](#), which 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, and should these fail, through collective action endorsed by the Security Council, in accordance with Chapter VII of the UN Charter. This was in line with ICJ jurisprudence. In [Bosnia and Herzegovina v Serbia](#) (2007), the ICJ stated that 'every State may only act [to prevent genocide] within the limits permitted by international law'. However, some [states](#), in particular the US and the United Kingdom, and [civil society organisations](#), have indicated support for humanitarian intervention *in extremis* without UN consent, when the Security Council proves dysfunctional because of the veto of a permanent member. In contradiction to the R2P, Russia did not use the diplomatic means at its disposal before the war, such as referring its allegations of genocide to UN bodies. The principle of genuine respect for international law appears all the more important, since the use of baseless genocide [allegations](#) in the world has been widespread and is 'as old as the Genocide Convention itself'. An important [implication](#) of the ICJ ruling is that there is 'no rule in international law automatically giving one state a right to invade another state to stop a genocide'. Condoning such justification for war would pose a [terrible danger](#).

