

**REQUEST FOR THE INDICATION OF
PROVISIONAL MEASURES OF PROTECTION
SUBMITTED BY UKRAINE**

1. I have the honor to refer to the Application filed with the Court on 13 January 2017, instituting proceedings on behalf of Ukraine against the Russian Federation, and to submit, in accordance with Article 41 of the Statute of the Court and Articles 73, 74, and 75 of the Rules of the Court, an urgent Request that the Court indicate provisional measures. In the course of the Russian Federation's unlawful and ongoing aggression against Ukraine, the Russian Federation has committed and continues to commit violations of the International Convention for the Suppression of the Financing of Terrorism ("Terrorism Financing Convention") and the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"). Provisional measures are requested in this case to protect the lives and basic human rights of the people of Ukraine, who are endangered by these acts of terrorism financing and racial discrimination committed by the Russian Federation. The Court should indicate provisional measures to prevent further aggravation or extension of the disputes between the parties under these treaties.

2. Ukraine's Application describes a multifaceted attack on the people of Ukraine for which the Russian Federation is responsible under international law. In eastern Ukraine, the Russian Federation has supplied heavy weaponry and other critical support to illegal armed groups, knowing that these groups are engaged in acts of terrorism against civilians. With this Russian assistance, these groups have perpetrated appalling attacks, including the shoot-down of Malaysian Airlines Flight MH17 with the resulting deaths of 298 civilians, the shelling of civilians in Volnovakha, Kramatorsk, and Mariupol, and the bombing of a peaceful unity rally in Kharkiv. The Russian Federation violates its obligations under the Terrorism Financing Convention not just by its failure to prevent or investigate the financing of terrorism but also by its direct sponsorship of terrorism.

3. In Crimea, the Russian Federation has illegally occupied and purported to annex a part of Ukraine. The Russian Federation has used its control over the Crimean peninsula to impose a policy of Russian ethnic dominance, pursuing the cultural erasure of non-Russian communities through a systematic and ongoing campaign of discrimination. The Russian Federation's pattern of discriminatory conduct in pursuit of this policy of cultural erasure violates its obligations under the CERD.

4. Provisional measures are necessary because the fundamental rights of civilians in Ukraine remain under constant threat. The Russian Federation's arms transfers and other support for illegal armed groups that have carried out terrorist attacks are ongoing; the Russian Federation's campaign of cultural erasure in Crimea continues unabated. Vulnerable civilians, in an unstable environment susceptible to rapid deterioration, are at risk of suffering from the Russian Federation's continuing violations of international law. This is precisely the type of situation in which this Court has said provisional measures should be indicated to preserve the respective rights of the parties to a dispute. *See 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, I.C.J. Reports 2008, p. 396, para. 143; Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2000, p. 128, para. 43.*

I. PRIMA FACIE JURISDICTION OF THE COURT

5. As set forth in the Application, the Court has jurisdiction over the present case pursuant to its Statute and Rules, Article 24(1) of the Terrorism Financing Convention, and Article 22 of the CERD. The Russian Federation has consented under both Conventions to the Court's jurisdiction.

II. FACTS SUPPORTING THE REQUEST

6. This case concerns violations of the Russian Federation's treaty obligations in the course of the Russian Federation's ongoing aggression against Ukraine. Ukraine's Application describes in detail the disputes between the parties under the Terrorism Financing Convention and the CERD.

A. Financing of Terrorism in Ukraine

7. The Russian Federation has instigated and sustained an armed insurrection against the authority of the Ukrainian state, including by systematically supplying illegal armed groups, such as the "Donetsk People's Republic" ("DPR"), the "Luhansk People's Republic" ("LPR"), the "Partisans of the Kharkiv People's Republic" ("Kharkiv Partisans"), and associated groups and individuals, with heavy weaponry, money, personnel, training, and other support. These Russian proxies operate with no regard for civilian life, often murdering and torturing civilians. The Russian Federation knew that these illegal groups were not only engaged in combat against the Ukrainian authorities, but were routinely perpetrating acts of terrorism against Ukrainian civilians. Knowing that these groups engaged in acts of terrorism, the Russian Federation nevertheless decided to sponsor their activities, providing cash, critical weapons, and other support. With that assistance, Russian-backed illegal armed groups in Ukraine have committed a series of terrorist attacks, including:

- a. The shoot-down of Malaysian Airlines Flight MH17, murdering 298 civilians of numerous nationalities, including infants;
- b. The attack on a passenger bus on a well-traveled highway near Volnovakha, murdering twelve civilians;
- c. The assault on a densely-populated residential area in Mariupol, murdering thirty civilians;
- d. The bombardment of a residential area in Kramatorsk, killing seven civilians; and
- e. A string of successful and foiled bomb attacks in Ukrainian cities, far from any zone of conflict, including a deadly bombing of a peaceful rally held in Kharkiv to support Ukrainian unity.

8. These acts of terrorism have occurred suddenly and without warning to the at-risk civilian population. Acts of terrorism and civilian deaths have occurred rapidly after instances of Russian financing and support. It was only a matter of hours after the Russian Federation transferred a powerful anti-aircraft weapon to eastern Ukraine that the weapon was used to shoot a civilian airliner from the sky. When Russian-backed illegal armed

groups took the offensive in the winter of 2015, civilians in Volnovakha, Mariupol, and Kramatorsk were attacked in rapid succession. Present conditions raise serious concerns over a repeat of such attacks, if not worse.

9. The situation in eastern Ukraine remains unstable and subject to rapid change. The conflict in the region has been ongoing for almost three years without resolution, and there have been numerous acts of terrorism against civilians throughout this period. Despite the record of terrorist attacks perpetrated by Russian proxies, the Russian Federation continues to send these groups supplies from across the border. As the United Nations High Commissioner for Human Rights reported in August 2016, the Russian Federation continues to supply “ammunition, weaponry and fighters” to its proxies in eastern Ukraine.¹ Moreover, there are troubling signs of escalation, as the Russian Federation has increased its military presence near Ukraine and has engaged in bellicose rhetoric.² Further, highlighting the pressure civilians are under, Russian-backed armed groups have recently expelled an international aid group from the territory they control.³

10. In these circumstances, absent provisional measures, the civilian population remains hostage and vulnerable to a campaign of terrorist violence that can be escalated at any moment. There is significant risk that the continuing influx of Russian weapons and other support will be used to perpetrate acts of terrorism against civilians, as they have in the past.

B. Cultural Erasure Through Discrimination in Crimea

11. In the Crimean peninsula, the Russian Federation has employed a different set of tactics, but has shown the same contempt for the fundamental human rights of the people of Ukraine. The Russian Federation is pursuing its goal of imposing ethnic Russian dominance on the peninsula with a campaign of cultural erasure through discrimination. As an initial step, in March 2014, the Russian Federation held an illegal referendum amid an intense climate of intimidation. As collective punishment against the non-Russian communities that refused to accept the illegal occupation and purported annexation, the Russian Federation proceeded to mount a broad-based campaign of cultural erasure. Against the Crimean Tatar community, the Russian Federation has suppressed its political leaders and institutions, prevented important cultural gatherings, perpetrated a regime of disappearances and murders, conducted a campaign of arbitrary searches and detentions, silenced media voices, and suppressed educational rights. Against the ethnic Ukrainian community, the Russian Federation has also attacked educational rights, prevented important cultural gatherings, and harassed and intimidated the media.

12. This pattern of discrimination is brutal and ongoing. For example, in April 2016, the Russian Federation’s escalating pressure on the Tatar community culminated in the prohibition of the Mejlis of the Crimean Tatar People, the community’s central political

¹ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 May–15 August 2016), para. 3.

² See, e.g., Max Fisher, *Signs of Trouble in Ukraine Prompt Question: What’s Vladimir Putin Up To?*, *New York Times* (11 August 2016).

³ Organization for Security and Co-operation in Europe, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, Based on Information Received as of 19:30, 27 November 2016* (28 November 2016).

and cultural institution.⁴ This ban is being enforced; eight members of the Mejlis were fined for holding an “illegal meeting” in September 2016, and Mejlis members have been unable to organize the community’s annual commemoration of the victims of the Soviet deportation of Crimean Tatars.⁵ Tatar leaders continue to be arrested for “crimes” such as declaring that Crimea is part of Ukraine, and one prominent leader was involuntarily confined in a psychiatric hospital in September 2016.⁶ Disappearances continue as well, for example in the case of Ervin Ibragimov, whose May 2016 abduction Russian authorities have failed to investigate.⁷

13. This pattern of political and cultural suppression over almost three years has undermined the leadership of the Crimean Tatar community and left its population particularly vulnerable to additional acts of Russian discrimination and violence. With its representative organization now banned and its leaders either in exile or subject to psychiatric detention, arrest, searches, or other harassment at any time, the Crimean Tatar community is under great pressure, suffering the ongoing effects of discrimination, and at risk of further actions leading toward the erasure of its distinct culture in Crimea. The dramatic decrease in the Tatar population on the Crimean peninsula – from 243,400 in the last Ukrainian census to just 42,254 since the occupation – demonstrates the imminent and continuing danger to the Crimean Tatar people and their culture.⁸

14. Ethnic Ukrainians likewise remain extremely vulnerable. The Russian Federation has proven especially effective in suppressing ethnic Ukrainians’ education and ability to maintain their language and culture. Over the past two years, Ukrainian-language education in Crimea has been all but eliminated, with the number of students receiving such education falling from more than 12,000 before the occupation to less than 1,000.⁹ Of the

⁴ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 February–15 May 2016), para. 186; Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 May–15 August 2016), para. 164.

⁵ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2016), para. 168.

⁶ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 May–15 August 2016), para. 178; Human Rights Watch, *Crimean Tatar Activist Confined in Psychiatric Hospital* (26 August 2016); Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2016), para. 159; Radio Free Europe/Radio Liberty, *Punitive Medicine? Crimean Tatars Shaken By Leader’s Confinement to Mental Asylum* (24 August 2016); Amnesty International, *Help Drop Charges Against Activist Released From Forced Psychiatric Detention (Ukraine: UA 205/16)* (9 September 2016).

⁷ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 May–15 August 2016), para. 154; Amnesty International, *URGENT ACTION: Crimean Tatar Activist Forcibly Disappeared* (26 May 2016).

⁸ State Statistics Committee of Ukraine, *About Number and Composition Population of Autonomous Republic of Crimea by Data All-Ukrainian Population Census*, <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea>; Russia Census in the Republic of Crimea; Russia Census in the Republic of Crimea, *National Composition of the Population* (18 August 2015), http://crimea.gks.ru/wps/wcm/connect/rosstat_ts/crimea/ru/census_and_researching/census/crimea_census_2014/score_2010/.

⁹ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2015), para. 157.

seven Ukrainian-language educational institutions that existed in Crimea until 2014, only one remains in operation in the 2016–17 school year – and even this school has ceased Ukrainian-language instruction in the first and second grades.¹⁰ Provisional measures are required to prevent this cultural erasure from deepening while this case proceeds.

III. THE RIGHTS UKRAINE SEEKS TO PROTECT

15. In accordance with Article 41 of the Statute of the Court, the object of provisional measures is to preserve the respective rights of the parties pending the decision of the Court. *See e.g., Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Yugoslavia), Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 19, para. 34. The Court at this stage does not make “definitive findings.” *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2000*, p. 127, para. 41; *see also Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011, Declaration of Judge Greenwood*, p. 46, para. 2. Provided that the Court concludes that the rights claimed are “plausible,” provisional measures may be indicated. *See Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016*, para. 78. Ukraine’s claims far exceed this modest standard.

16. Ukraine seeks to protect its rights, and those of its people, under the Terrorism Financing Convention. As explained in the Application,¹¹ Article 18 of the Terrorism Financing Convention requires the Russian Federation to “cooperate in the prevention” of terrorism financing. Far from “cooperating,” the Russian Federation has instead repeatedly violated its obligations under this Convention by directly financing terrorism in Ukraine, as well as refusing to halt or investigate the financing of terrorism by public and private actors on its territory. Ukraine requests provisional measures to protect its people from additional terrorist acts they may suffer as a consequence of Russian sponsorship of terrorism in violation of the Convention.

17. Ukraine further seeks to protect its rights, and those of its people, under the CERD. As explained in the Application,¹² the Russian Federation’s campaign of cultural erasure through discrimination violates Articles 2, 3, 4, 5, and 6 of the CERD. Ukraine requests provisional measures to protect its people from the irreparable harm caused by this ongoing discriminatory campaign of cultural erasure.

IV. THE REASON FOR URGENCY

18. The Court has found it appropriate to indicate provisional measures in circumstances that are “unstable and could rapidly change,” and when there is “ongoing tension” without any “overall settlement to [an ongoing] conflict.” *See 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*,

¹⁰ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2016), para. 180.

¹¹ Application, paras. 125–30.

¹² Application, paras. 131–33.

I.C.J. Reports 2008, p. 396, para. 143. Similarly, provisional measures have been granted when conflicts and similar “incidents have occurred on various occasions . . . leading to fatalities, injuries and the displacement of local inhabitants.” *Request for Interpretation of the Judgment of 15 June 1962 in Temple of Preah Vihear (Cambodia v. Thailand)*, *Provisional Measures, Order of 18 July 2011*, *I.C.J. Reports 2011*, p. 550, para. 53. Where past violations have occurred, provisional measures are appropriate so long as it is “not inconceivable” that they will recur, a standard easily met here. *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Provisional Measures, Order of 7 December 2016*, para. 89. All of these reasons for indicating provisional measures are heightened when there is a “vulnerable” population in need of the Court’s protection. *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*, *I.C.J. Reports 2008*, p. 396, para. 143.

19. For the reasons explained above and in the Application, the civilian populations of Ukraine, including in particular eastern Ukraine and Crimea, are extremely vulnerable and require the Court’s immediate protection.

20. In eastern Ukraine, the situation is unstable and subject to rapid change. The Russian Federation continues to arm and otherwise finance its proxies that have engaged in acts of terrorism in Ukraine, to devastating effect. Absent measures to prevent this continuing conduct, there is significant risk that the civilian population will face more terrorist violence.

21. In Crimea, the Russian Federation’s policy of cultural erasure through discrimination remains similarly ongoing and unrelenting. The Crimean Tatar and ethnic Ukrainian communities face continuing harassment, abuse, and restrictions. Absent measures to prevent this continuing conduct, these vulnerable groups will face further acts of discrimination and a significant risk that the Russian policy of erasing their distinct cultural identities will succeed.

V. THE MEASURES REQUESTED

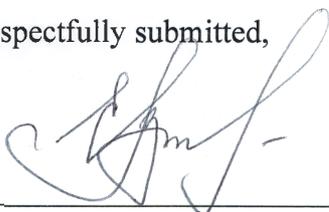
22. On the basis of the facts set forth above, and in order to prevent irreparable prejudice to the rights of Ukraine and its citizens and to avoid aggravating or extending the disputes between the parties under the Terrorism Financing Convention and the CERD, Ukraine respectfully requests the Court to indicate provisional measures to protect its rights and the rights of its people pending the determination of this case on the merits.

23. With respect to the Terrorism Financing Convention, Ukraine requests that the Court order the following provisional measures:

- a. The Russian Federation shall refrain from any action which might aggravate or extend the dispute under the Terrorism Financing Convention before the Court or make this dispute more difficult to resolve.
- b. The Russian Federation shall exercise appropriate control over its border to prevent further acts of terrorism financing, including the supply of weapons from the territory of the Russian Federation to the territory of Ukraine.

- c. The Russian Federation shall halt and prevent all transfers from the territory of the Russian Federation of money, weapons, vehicles, equipment, training, or personnel to groups that have engaged in acts of terrorism against civilians in Ukraine, or that the Russian Federation knows may in the future engage in acts of terrorism against civilians in Ukraine, including but not limited to the “Donetsk People’s Republic,” the “Luhansk People’s Republic,” the “Kharkiv Partisans,” and associated groups and individuals.
 - d. The Russian Federation shall take all measures at its disposal to ensure that any groups operating in Ukraine that have previously received transfers from the territory of the Russian Federation of money, weapons, vehicles, equipment, training, or personnel will refrain from carrying out acts of terrorism against civilians in Ukraine.
24. With respect to the CERD, Ukraine requests that the Court order the following provisional measures:
- a. The Russian Federation shall refrain from any action which might aggravate or extend the dispute under CERD before the Court or make it more difficult to resolve.
 - b. The Russian Federation shall refrain from any act of racial discrimination against persons, groups of persons, or institutions in the territory under its effective control, including the Crimean peninsula.
 - c. The Russian Federation shall cease and desist from acts of political and cultural suppression against the Crimean Tatar people, including suspending the decree banning the Mejlis of the Crimean Tatar People and refraining from enforcement of this decree and any similar measures, while this case is pending.
 - d. The Russian Federation shall take all necessary steps to halt the disappearance of Crimean Tatar individuals and to promptly investigate those disappearances that have already occurred.
 - e. The Russian Federation shall cease and desist from acts of political and cultural suppression against the ethnic Ukrainian people in Crimea, including suspending restrictions on Ukrainian-language education and respecting ethnic Ukrainian language and educational rights, while this case is pending.
25. Ukraine reserves the right to amend this Request and the measures sought.
26. Ukraine respectfully asks that this Request be considered at the Court’s earliest possible opportunity, including the expeditious scheduling of a hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'O. Zerkal', written over a horizontal line.

Ms. Olena Zerkal
Deputy Foreign Minister of Ukraine
Agent of Ukraine

16 January 2017