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INTERPRETATION AND APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE IN THE RECENT PRACTICE OF THE INTERNATIONAL COURT OF JUSTICE

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Annotation. *The article discusses on how the Genocide Convention was applied and interpreted in the practice of the International Court of Justice. The article contains the analysis of ICJ's cases: Bosnia and Herzegovina v. Serbia and Montenegro, Gambia v. Myanmar, Ukraine v. russia. The authors have allocated how the ICJ's decisions influenced the practice of application and interpretation of the Convention, defining the main points of each. Analysis of the Advisory opinion on making reservations to the Convention showed the main objectives of the Convention and which obligations were put on its signed parties. In conclusion it has been shown the specific nature of the Genocide Convention and how it is interpreted in modern judicial practice.*

Key words: *international law, genocide, Genocide Convention, International Court of Justice.*

Introduction

The term "genocide" became new for the scholarly works of international law in the XX century, after the Nuremberg trial. It was created by Raphael Lemkin, who also initiated the Genocide Convention. Thus, the Convention on the Prevention and Punishment of the Crime of Genocide entered into force on 12 January 1951 and has

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152 state parties as of 2022. Its main aim is to prevent and punish such international crimes as genocide and protect groups who may be under threat of destruction. The Convention opened a dispute on its practice in the judiciary, such as the composition of the crime, its components, and specific details.

Despite the fact that the Convention was created with a preventive aim, rather than a practical, in 2022 it became one of the most topical in modern law practice due to the russian full-scale invasion to Ukraine and its war crimes in occupied towns. Thus, it is convenient for legal studies to understand the nature of the Genocide Convention and underline the facts which should be taken into attention for discussing the possible international court claims.

The main purpose of this article is to discuss how the Genocide Convention was applied and interpreted in the practice of the International Court of Justice. The article contains the analysis of ICJ's cases, looking into their historical background, as actions, referred to genocide, were usually conducted in war times. The authors have allocated how the ICJ's decisions influenced the practice of application and interpretation of the Convention, defining the main points of each. By analyzing the Advisory opinion of ICJ on making reservations to the Convention, it has been shown the main objectives of the Convention and which obligations were put on its signed parties. The practical implementation of the material, which was discussed in the main part of the article, was put into the scope of the ongoing ICJ's case regarding the application of the Genocide Convention to the crimes performed by russian army in the war against Ukraine. It should be also mentioned that the only legal forum which will have the authority to state russia's state responsibility for the aggression against Ukraine – is ICJ. Thus, the Genocide Convention, and it specificity to put responsibility not only on persons but on states, became highly actual in modern judicial practice.

Main part

The reasons for creating new legislative mechanisms are diverse, and often they are deeper than the external purposes. More meaningful sense can include the necessity of paying society's attention to acute problems that arise, or the demand to conclude humanity's experience of dealing with complex conflicts and collect solutions to prevent the occurrence of the following ones. UN Genocide Convention became the way of distinguishing an extremely dangerous crime that existed but was not clarified for centuries.

"Genocide" was created as a non-abstract, concrete, and personally realized term. Its meaning and appearance in the legal arena became one of the main life goals of an intelligent lawyer – Raphael Lemkin. He contributed to the international law doctrine by qualitatively researching violence against whole nations and naming these crimes by a clear concept, forming the meaning of genocide and the necessity of punish-

ment for those who commit it. His "Axis Rule in Occupied Europe" was published in 1944 – there he gave the name to what Winston Churchill had called "a crime without a name" (The Origins of Genocide – Raphael Lemkin as a historian of mass violence. Dominik J. Schaller and Jurgen Zimmerer). "Genocide" meant the destruction of a nation or an ethnic group, but in a wider sense, including an intention and coordinated plan of action, aiming at the destruction.

The knowledge of the sense and nature of such kind of mass murder brought a significant accent of how threatening not individuals, but groups on purpose, is crucial. It showed, that even a desire to destroy not a physical human, but the whole cultural and historical heritage of nationality is irreparable because of spreading the idea of inequity and hierarchy of "honorable" or "not honorable" nations.

In 1947 Raphael Lemkin with Vespasian V. Pella and Henri Donnedieu de Vabres was commissioned by the General Secretary of the United Nations to create a draft of the legal instrument of codification of the genocide crime (The Origins of Genocide – Raphael Lemkin as a historian of mass violence. Dominik J. Schaller and Jurgen Zimmerer). In 1948 the UN General Assembly adopted its first human rights treaty – Genocide Convention. It bears the date of 9 December 1948 and defines genocide as acts, listed in Article II (such as killing members of the group or causing serious bodily or mental harm to them), aimed at destroying a national, racial, or religious group. (Convention on the Prevention and Punishment of the Crime of Genocide 1948, Art. XI). These formulations lead to the understanding, that the conscious intention to kill off the group because of their criterions can not only be unpunished but must be classified as a particularly brutal type of crime with corresponding consequences.

A compelling part of the process of adopting the Genocide Convention was mentioning the crime of genocide in United Nations General Assembly Resolution 96 of 11 December 1946 – it was declared, that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world (UN General Assembly Resolution №96(I), 11 December 1946). The Convention on the Prevention and Punishment of the Crime of Genocide became an international law instrument that recognized the crime of genocide.

The number of Parties, for now, reached 152 – and Article V of the Convention declares the obligation to "enact the necessary legislation to the provisions of the present Convention". (Convention on the Prevention and Punishment of the Crime of Genocide 1948, Art. V). Therefore, the effect of accession or ratification of the UN Genocide Convention contributed not only to the fact of international recognition of the crime of genocide but to the promotion of appropriate changes in national legal frameworks.

In order to reveal the nature of the aims listed by the Convention it should be looked upon the Advisory opinion of the ICJ about the right of the state to make reservations to be a party of the Convention. (Reservations to the Convention on the

Prevention and Punishment of the Crime of Genocide 1951, p.4) This advisory opinion of the ICJ was the first case when the Court had a chance to speak on this Convention, which showed its fundamental nature. In order to understand the importance of the Genocide Convention and its main objectives, it should be paid attention that ICJ emphasized that its Advisory opinion intends to show the importance of the Convention, and has rather theoretical than practical value.

First of all, according to the Vienna Convention on the Law of Treaties, a State may, when signing, ratifying, accepting, approving, or acceding to a treaty, formulate a reservation. (Vienna Convention on the Law of Treaties 1969, p.8) Thereby, a reservation modifies the provisions under it for the reserving State in its relations with that other party. Thus, the reservation is an instrument that each State could use to modify the relations under the convention it approves to that extent as it is convenient for the political, economical, or social situation in each state. However, the issue with making reservations to the Genocide Convention has a more complicated nature due to the sense of its provisions.

Overall, in its advisory opinion, the ICJ held that making reservations to some of the provisions of the Convention is possible if it is compatible with the object and the purpose of the Convention. In its arguments the Court paid explicit attention to the aim of the reservations, which is to make the international law system more flexible, especially concerning the multilateral agreements. (Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide 1951, p.10) The court articulated the dilemma as being between the universality and the integrity of the Convention. (Muthukumar 2018, p.228) The ICJ stated that the Genocide Convention has a special defining characteristic as the core issue of the Convention is the universality of participation. This aspect was also highlighted by defining the purpose of the Convention – "to condemn and punish genocide as a crime under international law, involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations". (Convention on the Prevention and Punishment of the Crime of Genocide 1948, p.1) Moreover, the object of the Convention has humanitarian and civilizing purposes. Due to that, the Convention was not made to satisfy the private interests of some states, or have a perfect contractual balance between the rights and duties of member states, but rather to protect humanity and especially vulnerable minorities.

All in all, the Court noted that the question about the possibility of making reservations is rather abstract. Thus, that possibility should be settled in a scope of established international law practice – general principles of law recognized by civilized nations and signed treaties – the Vienna Convention on the Law of Treaties. (Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide 1951, p.9) On the other hand, the Court also noted that the principles that

the Convention is protecting are principles that are recognized by civilized nations as binding, even without any conventional obligation. (Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide 1951, p.10) Thus, it is clear that the ICJ considered genocide to be a crime under international customary law. It has also been stated that the Genocide Convention is beyond doubt a part of international customary law. The Genocide Convention binds only States and the prohibition of Genocide in international customary law should therefore also bind only States. (Henriksson 2003, p.10) It imposes no duties and no responsibility directly on the individual, only a State exercising its jurisdiction under national legal systems could normally prosecute an individual. (Henriksson 2003, p. 10)

In conclusion, the Advisory opinion has highlighted the specific nature of the Convention, taking into consideration that the aims that it is protecting are universal for every state. Due to its characteristic as the humanitarian convention, aimed at protecting individuals and criminalizing international crimes, there are no provisions that could be reserved. By the analysis of the Convention's objects, it could be seen that any reservation which could be made by a state would rather interfere with the main aims of the Convention, and so make those reservations unlawful.

The first inter-state dispute that was held in the ICJ and dealt with the practical interpretation and application of the Genocide Convention was Bosnia and Herzegovina v. Serbia and Montenegro. The historical background was taken place during the Balkan War in the 1990s, which alleged that Serbia had attempted to exterminate the Bosniak (Bosnian Muslim) population of Bosnia and Herzegovina.

The ICJ's opinion of the applicability of the Convention was held twice in 1996 and 2007 concerning the same historical background. However, it is more convenient to analyze the decision from 2007, which interprets the previous 1996 decision and looks through the wider Court's practice and more evidence that was revealed. In its first judgment interpreting the 1948 Genocide Convention, the Court held that the massacre of Bosnian Muslims at Srebrenica in July 1995 amounted to genocide, but at the same time determined that there was not enough evidence to find Serbia directly responsible or even complicit in that genocide. Nevertheless, in its landmark ruling, the Court also found that Serbia had violated the Genocide Convention by failing to prevent the massacre and, later, by failing to punish those responsible for the killings in Srebrenica. (SáCouto 2007, p. 2)

In order to understand properly the essence of the case, it should be shortly described the historical background of it. After World War II there was formed the Socialist Federal Republic of Yugoslavia, which included Macedonia, Slovenia, Croatia, Serbia, Montenegro, Bosnia and Herzegovina. After the fall of the socialistic regime, the states started declaring their independence one by one. Slovenia, Croatia, and Macedonia did it successfully in 1991-1992. However, the complicatedness appeared in Bosnia and Herzegovina, where it was started a war between Bosnian Muslims and Croat

Catholics against Serbian Orthodox Christians who had official and unofficial support from what remained of Yugoslavia and the Socialist Republic of Serbia. The proactive forces of that were Republika Srpska (the Serb component of Bosnia and Herzegovina) and the VRS (Republika Srpska's army). (Lampe and Allcock 2023) Those remained Yugoslavia included Serbia and Montenegro, which are defendants in that case.

It should be underlined and discussed a number of peculiarities of this case which furtherly reflected in the interpretation of the Genocide Convention. First of all, there was raised a question about the ICJ's jurisdiction in this case. Serbia has rejected the Court's jurisdiction over it as it was not a continuator State of the Socialist Federal Republic of Yugoslavia (SFRY), thus it was not a party of the Genocide Convention. However, the ICJ ruled by "res judicata" and told that those matters were already solved by the 1996 Judgement, which dealt with preliminary objections. (Bosnia and Herzegovina v. Serbia and Montenegro 1996, p.32) Turning to the 1996 Judgement, it is said that both Bosnia and Serbia were parties of the Genocide Convention, underlining the main objection of the Convention – to protect individuals from the acts of genocide. The Court said that as former SFRY (both Bosnia and Serbia were a part of it) was a state-party of the Convention, thus, the following states automatically became a part of the Convention. Moreover, the Court noted: "These matters might, at the most, possess a certain relevance with respect to the determination of the scope "ratione temporis" of the jurisdiction of the Court". (Bosnia and Herzegovina v. Serbia and Montenegro 1996, p. 21) This emphasizes the provision, often held in international law, that the most serious crimes should be properly investigated, prioritizing human rights above written provisions of positive law. Moreover, the Court also paid attention to its advisory opinion on the possibility of making reservations to the Genocide Convention. There could be found next: "the complete exclusion from the Convention of one or more States would not only restrict the scope of its application but would detract from the authority of the moral and humanitarian principles which are its basis". (Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide 1951, p.13)

Going toward the main findings of the case, which has detailed the interpretation of the Genocide Convention, there were a couple of peculiarities. Firstly, the Court found that the actions of genocide during the 1990s Balkan war were committed only in Srebrenica, called it a massacre. (Bosnia and Herzegovina v. Serbia and Montenegro 2007, p.116) Then, the Court put into question who has done those actions: individuals or a state, which, thus, influences the applicability of the Convention. In that view, the Court constituted that the massacre in Srebrenica was done by Bosnian Muslims who were not ruled by Government, thus Serbia was not in charge of committing the genocide. (Bosnia and Herzegovina v. Serbia and Montenegro 2007, p. 40) In this point of view, the Court interpreted the Article IV of the Convention in the view that subjects were private individuals, who were not controlled by the Govern-

ment, that is why Serbia is not a direct respondent to those actions and, thus, does not fall in scope of direct and public incitement to commit genocide, nor had it conspired, through its organs or persons whose acts engage its responsibility under customary international law, in violation of its obligations under the Convention. (Bosnia and Herzegovina v. Serbia and Montenegro 2007, p. 163) However, the Court admitted that Serbia violated its obligations under the Convention by having failed to prevent and punish possible acts of genocide. "In the view of the Court, the Yugoslav federal authorities should have made the best efforts within their power to try and prevent the tragic events then taking shape, whose scale might have been surmised. Yet the Respondent has not shown that it took any initiative to prevent what happened, or any action on its part to avert the atrocities which were committed" as required by the Convention on the Prevention and Punishment of the Crime of Genocide. (Bosnia and Herzegovina v. Serbia and Montenegro 2007, p.186) Moreover, the Court noted that Serbia has also failed its obligation to punish genocide by having failed to transfer Ratko Mladic, indicted for genocide in Srebrenica, for trial by the International Criminal Tribunal for the Former Yugoslavia. (Bosnia and Herzegovina v. Serbia and Montenegro 2007, p.199) In conclusion, the ICJ underlined that whether a state does not give an instruction to commit actions that could be interpreted as genocide, it is still in charge to punish persons who did those actions.

The other important object which was discussed by the ICJ was the evidence of the specific intent on the part of the perpetrators to destroy, in whole or in part, a national, ethnical, racial or religious group, which falls in scope of Article 2 of the Genocide Convention. (Convention on the Prevention and Punishment of the Crime of Genocide 1948) While there is evidence that massive killings throughout Bosnia and Herzegovina were perpetrated during the conflict, the Court said it was not convinced that these were accompanied by that intent regarding the group of Bosnian Muslims, although they may amount to war crimes and crimes against humanity. (Bosnia and Herzegovina v. Serbia and Montenegro 2007, p.83) However, that necessary specific intent was clearly present in the actions of Republika Srpska's army during the events in Srebrenica. It noted that while there is little doubt that the atrocities in Srebrenica were committed, at least in part, with the resources which the perpetrators possessed as a result of the general policy of aid and assistance by the FRY, one of the very specific conditions for Serbia's legal responsibility was not met since "it has not been conclusively established that, at the crucial time, the FRY supplied aid to the perpetrators of the genocide in full awareness that the aid supplied would be used to commit genocide." (Bosnia and Herzegovina v. Serbia and Montenegro 2007, p.219)

In conclusion, the ICJ's Bosnian genocide judgment underlined further peculiarities in the interpretation of the Genocide Convention:

1. To punish a state for genocide there should be evidence that proves the connection between individuals who committed genocide and the state's financial

involvement or awareness. In the internal state conflict between different national groups, it should be clearly proved that the persons, who are suspected in committing genocide, have done that by the ruling of the defendant state.
2. It should be clearly proved on the part of the perpetrators a specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group. This intent is the most vulnerable part in the qualification of the act of mass killings as genocide. Thus, this intent is the peculiar characteristic of the subjective side of such crime as genocide.
3. It would be stated the indirect responsibility of the state for failing to prevent the genocide, failing to investigate those actions and punishing those, who were responsible for such actions.

Summarizing the main points which have been stressed during the case, it could be noticed that there was left a place for active public discussions, focusing on historical background and compliance with legal justice. The events in former Yugoslavia were complicated as there were involved people from different nationalities, political groups, and states, who were mixed alongside the disintegrating state. The publicity was waiting for ICJ's decision in that case, as it will have to influence the interpretation of the Convention and put the responsibility on the state, which citizens were responsible for the massacre. However, the decision looked like a good conclusion of negotiations between states, and, thus, has an ambiguous final statement. By noting that the presented pieces of evidence weren't enough for punishing the state, there was raised the question of which kind of evidence would be considered applicable. Also, the Court has said that genocide was committed only in Srebrenica, not taking into account the actions, committed by Republica Srpska's Army in other locations. Focusing on one location complicated the Court on finding the intent of the prosecuted and if it could be considered genocidal. In our opinion, as the prevention and punishment of genocide is recognized as the Convention's main objective, it should be paid more explicit attention to the actions of its member-states, looking from an extensive prospect, taking into account the historical background. Moreover, it should be understood that by the disintegration of the union of states, the states and people, which live there do not automatically disappear or completely change, they are continuing the social ideas and public discourse just in another state organizational form. Thus, the society of states should be aware of responding to the actions, taken by their predecessors.

Another case that proves the value of the Genocide Convention in the context of emphasizing the common interest of the States in preventing genocide and punishing for crimes of it was "Gambia vs. Myanmar". In 2022 during the proceedings, the International Court of Justice concluded, that it is not obligatory for the claimant to be specifically affected by a crime of genocide: such application can be accepted not only from direct victims.

The Gambia v. Myanmar is an ongoing case, which issue was raised in 2019. Its valid significance appears because one state (Gambia) filed the application to protect citizens of another state (Myanmar), aiming to stop crimes, which continued there. It led to the Court to recognise such an application to the ICJ, which admitted its admissibility.

The facts of the case are based on the acts of genocide, committed against a small Muslim minority – Rohingya. The Rohingya live in The Republic of the Union of Myanmar, which is a Buddhist-majority country. They have a huge historical and cultural heritage, and their territory has been their residential region for centuries. Nevertheless, according to the Myanmar law, representatives of Rohingya have been denied citizenship: which means, that the Government of Myanmar does not consider Rohingyas as one of the legally recognized ethnic groups. (Stensrud 2018) The Rohingya are described as „one of, if not the, most discriminated people in the world" by UN Secretary-General Antonio Guterres (BBC News, Myanmar Rohingya: What you need to know about the crisis).

In 2017 Rohingyas massively migrated to Bangladesh: arriving by sea or on foot, they told about Buddhist mobs burning their villages and killing civilians. (BBC News, 2017) In 2018 the Fact-Finding Mission on Myanmar, established by the Human Rights Council, concluded that „on reasonable grounds…the facts allowing the inference of genocidal intent were present". (Report of the independent international fact-finding mission on Myanmar 2018, p. 16)

The Republic of Gambia accuses Myanmar of killing members of the group of Rohingya, causing serious bodily or mental harm to them, deliberately inflicting on their conditions of life calculated to bring about its physical destruction in whole or in part, and imposing measures intended to prevent birth within this group. (Gambia v. Myanmar 2022)

Myanmar requested ICJ to adjudge and declare, that the Court lacks jurisdiction to hear the case brought by the Gambia against Myanmar, and that the Gambia`s application is inadmissible. Myanmar raised four preliminary objections – it determines the reasons for the inadmissibility as:

1. the „real applicant" is the Organization of Islamic Cooperation;
2. the Gambia lacks standing to bring this case;
3. the Court lacks jurisdiction because of Myanmar`s reservation to Article VIII of the Genocide Convention;
4. there was no dispute between the Parties under the Genocide Convention on the application filing date.

The first raised question of law and question of fact (meaning the issue of dividing the „real applicant" and the nominal one) was resolved by the Court: it stated, that the Gambia instituted the present proceedings in its own name, which means that the

Gambia is the only applicant. Therefore, the Court decided, that the first preliminary objection by Myanmar must be rejected.

In the second preliminary objection Myanmar stated, that considering Article IX of the Convention, only „injured States“ have standing to present a claim before the Court, proving an individual legal interest. The Court affirmed, that the Genocide Convention „was manifestly adopted for a purely humanitarian and civilizing purpose“, and for the purpose of the institution of proceedings, a State does not need to demonstrate that victims are its nationals.

In its third preliminary objection, Myanmar noted, that its instrument of ratification of the Genocide Convention contained the reservation of Article VIII, and the effect of such reservation leads to the inadmissibility of the Gambia`s application because the Gambia could not validly seise the Court under the Genocide Convention. Article VIII of the Convention states, that any Contracting Party may call upon the competent organs of the United Nations for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III. The Court interpreted the content of this Article in the context of the discretion of these organs in determining the action that should be taken with a view to „the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III“. Also, considering treaty interpretation, reflected in Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969, the Court stated that the terms of Article VIII of the Genocide Convention must be interpreted in light of other provisions of the Genocide Convention. (Gambia v. Myanmar 2022) It means, that understanding the ordinary meaning of the terms of Article VIII demonstrates, that it does not govern the seisin of the Court. Therefore, Myanmar`s reservation is irrelevant to listed Myanmar`s third preliminary objection`s purpose.

In the fourth preliminary objection, Myanmar again argued that Gambia`s application is inadmissible: it stated, that the Article IX of the Convention requires a dispute between Parties on the date of filing of the application, but Gambia did not establish such a dispute. According to its case law, the Court determines dispute as „a disagreement on a point of law or fact, a conflict of legal views or of interests between parties“. (Gambia v. Myanmar 2022) In 2018 the Fact-Finding Mission on Myanmar determined the genocidal effect of committed crimes in its first report and identified the Gambia as the State, that makes efforts to pursue a case against Myanmar before the Court under the Convention in the second report. (Gambia v. Myanmar 2022) Due to these facts, the Court recalled that Myanmar was informed about the allegations. (Gambia v. Myanmar 2022)

All of four Myanmar`s objections were rejected by the Court. Such actions reminded and proved the main principles of the Genocide Convention: interpreting due to the purposes of the Convention in protecting human rights and applying its norms in complex and holistically.

The case brought a huge impact on the practice of the application of the Genocide Convention. It showed its substance and the main aim in deliberating mankind from the crime of genocide: the collective necessity of preventing the genocide, stopping its committing, and punishing for it. The Court demonstrated its valuable consciousness by declaring the admissibility of the case, which was brought not by the direct victims. The proceeding is being continued, and there is a number of factors, which can be influenced by the final decision.

The full-scale war, started by russian federation on the territory of Ukraine is unique and has no precedent. Human rights violations, physical and mental damages, and untruthful argumentation, held by russia, are the processes, which could not have been totally predictable, but must be solved now.

In the early morning of 24 February 2022, the russian federation declared a „special military operation" against Ukraine, aiming „to stop a genocide of the million people who live" in the Luhansk and Donetsk regions of Ukraine. „Special military operation" meant mass murdering and raping of civilians, ruining thousands of people`s private houses, schools, hospitals, museums, theatres, and every single object or subject, that got in the way of russian military forces to occupy the territory of Ukraine.

Ukraine filed in the Registry of the International Court of Justice Application, instituting proceedings against russian federation in a dispute concerning the interpretation, application, or fulfillment of the Genocide Convention. The presence of such a dispute is the necessary requirement for confirmation of the Court`s jurisdiction in the case – therefore, Ukraine sought to find the Court`s jurisdiction on Article IX of the Genocide Convention. (Request for the indication of provisional measures submitted by Ukraine, 2022)

As the Application of Ukraine was filed just while Ukrainians defended their territories and suffered from the continuing crimes, committed by russian military, Ukraine submitted its request for the indication of provisional measures immediately. (Request for the indication of provisional measures submitted by Ukraine, 2022)

In particular, Ukraine requested the Court to indicate such provisional measures:

- the russian federation shall immediately suspend the military operations that commenced on 24 February 2022;
- the russian federation shall immediately ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction, or influence, take no steps in furtherance of the military operations;
- the russian federation shall refrain from any action and shall provide assurances that no action is taken that may aggravate or extend the dispute that is the subject of this Application, or render this dispute more difficult to resolve. (Request for the indication of provisional measures submitted by Ukraine, 2022, p. 7)

The outrageous peculiarity of this case is that Ukraine operates not only the arguments to accuse russian federation of committing crimes, but also to deny its false actions of genocide, untruthfully declared by russia.

So, Ukraine seeks provisional measures to protect its rights:

- not to be subject to a false claim of genocide,
- not to be subjected to another State`s military operations on its territory.

An infuriation fact is an absolute and immoral untruth, which raises ground for russian arguments in explaining the war against Ukraine. Calling people's desire to live in their own Ukrainian sovereign independent state a „genocide, committed by Ukraine", russia replaces concepts and hides its cruel crimes in light of its „rightful goal".

The quantity of the word „immediate" in Ukraine`s Application and Request, demonstrates the seriousness of the time-lapse. The thing is that every second, while russia pretends to be a civilised state and twists from the war by creating new lies, people in Ukraine are being raped, tortured, and murdered by russian military.

The russian federation decided not to participate in the oral proceedings on the request for the indication of provisional measures due to open on 7 March 2022, but it provided a document with its position regarding the alleged „lack of competence" of the Court in the case. (Document RF 2022, p. 1) According to it, the Genocide Convention does not regulate the use of force between states, and that eliminates the application of the Convention in this case.

The Court in its order of 16 March 2022 had to determine whether Ukrainian provisions prima facie confer upon the Court`s jurisdiction to rule on the merits of the case and indicate provisional measures.

Ukraine and russian federation are both parties to the Genocide Convention – they raise as Contracting Parties, due to Article IX of the Convention. The existence of a dispute between Parties, necessary for the Court`s jurisdiction in the case, is a matter of substance, and not a question of form or procedure. (Gambia v. Myanmar 2022) As Ukrainian and russian representatives repeatedly expressed opposite positions about the crimes, committed by russian federation in the Donbas region, the recognition of such dispute is obvious. ICJ stated, that the statements made by the State organs of Parties indicate a divergence of views on actions, committed in the Luhansk and Donetsk regions. Therefore, the Court has jurisdiction pursuant to Article IX of the Genocide Convention to entertain the case, and it indicated provisional measures, requested by Ukraine.

The Court defined time limits for the filling of the written pleadings: 23 September 2022 for the Memorial of Ukraine, and 23 March 2023 for the Counter-Memorial of the russian federation (Allegations of genocide under the convention on the prevention and punishment of the crime of genocide (Ukraine v. russian federation) 2022,

p. 2). Ukraine submitted its Memorial prematurely, on 1 July 2022 – which demonstrated its vital necessity to rule on this case.

As this war has no precedents, its solution can not have such as well. One more specifically effective instrument to demonstrate the world`s position in the context of supporting Ukraine became using of the Declaration of intervention of states, which accessed the Genocide Convention. Latvia and Lithuania became the first parties to avail themselves of the right to intervene in the Proceedings – and more than thirty states joined them. This international unity with Ukraine marked the seriousness of this war and the protection of the obviously right party.

We are relatively lucky because of the possibility to operate the terms and expressions, created to define crimes, committed during World War II. The development of international law was intensified due to the Nuremberg precedent: the results of this process led to new fundamental points of view, which changed the understanding of the ground of the state`s nature and its obligation to be responsible for its actions. This tribunal emphasized the responsibility of the state in committing international crimes: it defined its increased scope, denying the existence of a state as an abstract formation. It pushed the thought, that the state is people, and if the state commits crimes, the state is guilty of them.

This responsibility, totally realized in Ukraine and absolutely ignored in russia, became a mark of diversity between these two nations, falsely called by russian propaganda as "brotherly people". The Revolution of Dignity will always stay one of the points to be proud of for every Ukrainian. In 2014 people of Ukraine came out to protest for making the vector of their state on the way to join the European Union. And those of them, who were murdered by armed groups, sent by fugitive Ukrainian president Viktor Yanukovych, will not let us forget, what power the nation is capable of. That is the reason, why the first phrase I saw in the media on my way to the shelter on 24 February 2022 was "Every russian is responsible for this". This fault for keeping silent and accepting illegal decisions by the authorities lies in every russian. We can not punish every russian as an individual – so they are responsible as a state, as a nation.

It is impossible not to take into consideration the emotional side of this war: the scope of psychological damage to the world as a whole. The reason holds the suffering, specifically mental, of almost every person in the world. Financing losses because of economical changes, the generally complicated world situation, and, primitively, stressful fear of the risk of nuclear war reached billions of people. How to take the measure of such damage? Probably, we can find out only after the Ukrainian victory.

Conclusions

1. The topic of genocide can not be discussed without an emotional approach to it. This term had been invented partially due to the personal experience and con-

cerns of Raphael Lemkin – and now we can observe the same exceptionally fair interpretation of the Convention on the Prevention and Punishment of the Crime of Genocide by the International Court of Justice, which emphasizes its substance and sense for achieving justice.

2. The defining characteristic of the Genocide Convention is the universality of participation. It shows that the core objective of the Convention is to protect vulnerable minorities, and, thus humanity, due to its humanitarian and civilising purposes. Moreover, it imposes duties and responsibilities on states, but not individuals, which also shows its universal approach and permanent nature.
3. Due to its specific nature, it could not be placed any reservations in practice, as they would contradict the aims of the Convention.
4. The interpretations of the Convention proved the possibility of the effective fulfillment of erga omnes obligations, related to the prevention of genocide by the third and not directly related states. It demonstrated common interest in realizing the main aim of the Genocide Convention – prevention of genocide, stopping of committing it, and punishment for guilty parties.
5. To state the direct responsibility of the state for committing the genocide it should be proved the connection between individuals who committed genocide and state's financial involvement or awareness of committed actions with the specific intent to destroy in whole or in part, a national, ethnic, racial, or religious group. Otherwise, the state would be subjected to indirect responsibility for failing to prevent the actions, considered as genocide, which were committed by its citizens.
6. Today we face continuous committing of the crime of genocide of russian federation on the territory of Ukraine. Such a full-scale war, where the aggressor state bases its arguments on untruth and invented reality has no precedent. That is a case to "test" whether available legal instruments are enough to protect not only human rights but even state's sovereignty. That is the case to use the instruments of the legal forum in its whole power, that is the time of the new level of development of international law. Now we can observe a new stage of this proceeding`s ongoing: people in Ukraine pay a disproportionally huge price for such practice, so it must have exceptionally fair results, punishing the russian federation.
7. The ICJ is the only legal forum that has the opportunity to interpret the Genocide Convention, thus, its decisions directly influence international law at a whole. The Genocide Convention, which was created in 1948 remains the same, but its aims, potential, and senses are still revealing with history. The ICJ's application and interpretation of the Genocide Convention shows how international law reflects the changes in the world order.

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INTERPRETATION AND APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE IN THE RECENT PRACTICE OF THE INTERNATIONAL COURT OF JUSTICE

Summary

The article "Interpretation and application of the Convention on the Prevention and Punishment of the Crime of Genocide in the recent practice of the International Court of Justice", written by Iryna Hrebenets and Anhelina Rozhets, summarize the recent practice of genocide cases of ICJ, find its main points and how it reflects in international law system. It was defined that the topic of genocide can not be discussed without an emotional approach to it, paying attention to the substance of the Genocide Convention – its universality of participation, binding states and not individuals. It was defined the main aim of the Convention – prevention of genocide, stopping of committing it, and punishment for guilty parties. In that point of view, it could not be placed any reservations in practice, as they would contradict the aims of the Convention. The peculiarity of punishing the state for genocide actions is the obligation to prove the connection between individuals who committed genocide and state's financial involvement or awareness of committed actions with the specific intent to destroy in whole or in part, a national, ethnic, racial, or religious group. The interpretations of the Convention proved the possibility of the effective fulfilment of erga omnes obligations, related to the prevention of genocide by the third and not directly related states. As the ICJ is the only legal forum that has the opportunity to interpret the Genocide Convention, thus, how it applies and interprets the Genocide Convention – shows how international law reflects the changes in the world order. Today it can be seen the results of it in the ongoing case Ukraine v. russia, where the last acquisitions are applied in practice.