

# Memorial

INSTITUTING PROCEEDINGS filed in the Registry of the Court on 16 January 2017

## TERRORISM FINANCING AND RACIAL DISCRIMINATION IN UKRAINE

(UKRAINE v. RUSSIAN FEDERATION)

I. APPLICATION INSTITUTING PROCEEDINGS 16 January 2017.

To the Registrar, International Court of Justice.

I, the undersigned, duly authorized by the Government of the Ukraine, of which I am the Agent, have the honor to submit to the International Court of Justice, in accordance with Articles 36 (1) and 40 (1) of its Statute and Article 38 of its Rules, an application instituting proceedings brought by the Ukraine against the Russian Federation in the following case.

### **I. Subject of the Dispute**

1. On 24 August 1991, Ukraine declared its independence from the then Soviet Union, thus creating the modern state of Ukraine. Following this declaration, the Russian Federation made claims pertaining to the respecting of Ukraine's sovereignty and independence, within the settled borders. However, the last decade of international affairs has brought a new assembly of Russian leaders, with an inherent goal to reobtain dominance over neighboring states, reverting the status of Ukraine to a satellite state. Since that time, Ukraine has quickly become the site of a further escalating campaign of Russian interference and aggression. After the Orange Revolution in 2004, Ukraine has been faced with increasing pressure and intimidation by the Russian Federation. It is clear that the Russian Federation has infringed on its promise to respect the sovereignty and integrity of Ukraine and is ultimately seeking to restore its dominance over the State through political, economic, and military power.
2. In Eastern Ukraine, the Russian Federation has continued to commence illicit activities against the authority of the Ukrainian state, including supplying and arming anti-government groups with weaponry, money, personnel, and training. As previously stated, these efforts have been made not only to combat Ukrainian authorities, but to conduct terrorist attacks, including that of the shooting down of Malaysian Airlines flight MH17, attacking a residential area in the city of Mariupol, and taking action against a peaceful rally in Kharkiv by bombing the event. It is quite clear that throughout the entire country of Ukraine, the Russian Federation's sponsorship and support of these attacks, has adversely impacted the populous of the State, and these actions clearly undermine fundamental principles of international law, more specifically those enshrined in the International Convention for the Suppression of the Financing of Terrorism ("Terrorism Financing Convention").
3. Most significant to the international community as a whole, the Russian Federation's actions in the Autonomous Republic of Crimea and City of Sevastopol, have clearly defied the U.N. Charter, in that Russia has seized part of Ukraine's territory by military force. Russia noticed this fact, and in an attempt to legitimize its actions, the Russian

Federation engineered an illegal “referendum”. With this policy in place, the Russian Federation continued to impose its will over the people of the aforementioned territories, with the harassment and suppression of those who opposed the Russian involvement in their homes. As a result, it has been made clear that the Russian operations in Crimea are of one goal, that to erase the distinct cultures of ethnic Ukrainian and Tatar people in the territory. Those who were once part of the leadership structure of the territory are now exiled outside of Crimea. The community’s language and basic forms of human rights have come under assault, and this campaign of cultural erase that begun with the invasion, furthered by the referendum, and still continuing today violates the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”).

4. The Russian Federation’s unlawful aggression against Ukraine has resulted in thousands of deaths and the displacement of two million people. Those who propagate these attacks on the Ukrainian populous, and in the larger scheme of things, the world, need to be held accountable under international law. When Russia ratified the Terrorism Financing Convention and the CERD, it agreed to submit disputes under both of these treaties to the Court’s jurisdiction. It is imperative that these actions be addressed, and Russia be held accountable under these Conventions, otherwise the precedent of future actions like this will not be set, and actions will continue to occur.

## **II. The Facts**

1. The Russian Federation’s ongoing refusal to respect the sovereignty and independence of Ukraine has led to numerous consequences, including the Revolution of Dignity of the Ukrainian People. The Russian Federation’s ongoing practice of attempting to assert its dominance over Ukraine has led to disastrous consequences and violating the fundamental human rights of the Ukrainian People.
2. After Ukraine declared its independence from the Soviet Union on 24 August 1991, the newly created Russia committed to respect Ukraine’s sovereignty and independence.
3. Since that time however, the Russian Federation has abandoned those commitments to sovereignty and independence. It is clear that now, under the leadership of President Putin, the Russian Federation has made a goal to reassert its dominance over the Ukraine.
4. After the Revolution of Dignity, which consisted of protests of Ukrainian civilians responding to the government’s lack of authority pertaining to their affairs with Russia, the Russian Federation viewed this time period as the time to strike. Beginning with the invasion of Crimea on 20 February 2014, the Russian Federation has continued to violated sovereignty, independence, and the basic human rights of the Ukrainian state and its citizens.
5. The Russian Federation’s invasion of Crimea was perpetrated by groups that they had provided arms, money, personnel, and training to. The groups established control over all government buildings, along with other public institutions such as airports and media outlets. Russian President Putin denied the involvement of the Russian Federation at the beginning of the crisis, but as it progressed, admitted that Russian military force and personnel was used to carry out the attack. To this day, Russia continues to illegally occupy and administer Crimea. With effective control over Crimea established, the Russian Federation has imposed a policy of Russian dominance, seeking to erase the distinct cultural identities of the peninsula’s ethnic Ukrainian and Tatar communities through a pattern of discriminatory acts.
6. As Russian occupation of Crimea continued, the Russian government began indirectly arming, training, providing money, and supporting proxy terrorist groups within Ukraine. These Russian proxies loosely organized themselves into various entities, including the so-called Donetsk People’s Republic (“DPR”), Luhansk People’s Republic (“LPR”), and Partisans of the Kharkiv People’s Republic (“Kharkiv Partisans”).

## **III. The Jurisdiction of the Court**

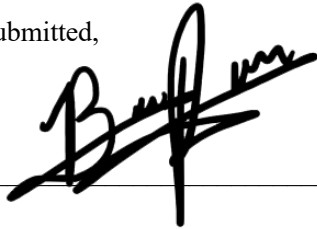
1. The Court had jurisdiction over “all matters specially provided for ... in treaties and conventions in force.” This case concerns matters relating to the interpretation and application of two conventions: The Terrorism Financing Convention and the CERD. Both the Russian Federation and the Ukraine have ratified both treaties, and as a result, have consented to the jurisdiction of the court to resolve any disputes relating to the interpretation and application of said treaties. Neither party maintains a reservation to either Convention’s compromissory clause.
2. Under Article 24(1) of the Terrorism Financing Convention it is stated,
  - i. “Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.”
3. It is clear that a dispute has emerged from the interpretation and the application of the Terrorism Financing Convention. As previously stated, Ukraine has been working tirelessly in stopping the Russian Federation’s violations of the Convention. Ukraine has tried communicating with the Russian Federation with over 40 diplomatic notes and four rounds of bilateral negotiation sessions. The Russian Federation has refused to recognize Ukraine’s claims under the Convention, and as such, the Ukraine is requesting the that International Court of Justice rule on this matter.
4. Although the Russian Federation ignored Ukraine for more than two months after Ukraine offered to the Russian Federation to participate in arbitration, they finally accepted the notion, but refused to confirm that it had indeed confirmed this request. As Russian policy towards arbitration has tended to be refusal, this has been an important step forward.
5. While the Russian Federation has intended to cooperate in arbitration, they still have delayed in responding to Ukraine’s views on how an arbitration should be organized. When they did respond, however, their proposal lacked key elements to the organization of the arbitration. Talks continued, but no agreement was reached. As it has been well over 6 months since Ukraine originally proposed talks of arbitration, the Convention states that either party may now refer the dispute to the Court.
6. Under article 22 of the CERD,
  - i. “Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.”
7. It is clear that a dispute has arisen concerning the implementation and application of the CERD. Ukraine has raised its concerns regarding the Russian Federation’s multiple violations of the CERD for more than 2 years. Negotiations have stalled, with Ukraine writing more than 20 diplomatic notes, and three rounds of bilateral negotiation sessions, but with Russia failing to negotiate in a substantial manner. Russia failed to address Ukraine’s concerns, and avoided discussions regarding substantial issues. It quickly became apparent that efforts for future negotiations would be wasteful, and harming to those impacted by the Russian Federation’s actions in Crimea. As such, the Convention states that either party may now refer this dispute to the court.

#### IV. The Legal Grounds upon Which Ukraine’s Claims Are Based

1. Article 18 of the Terrorism Financing Convention requires States to cooperate in the prevention of the financing of terrorism. Russia has clearly violated this provision of the Convention by supplying terrorist groups within Ukraine with weapons, training, money, and personnel.
2. Article 2(1) of the Convention defines acts of terrorism within the meaning of the Terrorism Financing Convention. As previously stated, groups supported by the Russian Federation within Ukraine have perpetrated numerous acts of terror within the country. These groups include, the DPR, the LPR, and the Kharkiv Partisans.
  - a. Article 2(1)(a) of the Terrorism Financing Convention defines acts of terrorism to include any violation of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The groups that the Russian Federation has supported have continued to incite violence against the people of Ukraine and the world. The 2014 attack on Malaysian Airlines flight MH17 violated Article 1 of the Montreal Convention, which prohibits “unlawfully and intentionally . . . destroying an aircraft in service.” The attack was therefore an act of terrorism under Article 2(1)(a) of the Terrorism Financing Convention.
3. Article 2 of the Terrorism Financing Convention goes on to define terrorism financing as, “directly or indirectly, unlawfully and willfully, providing or collecting funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out” acts of terrorism. As previously stated, the Russian Federation has engaged in activities that have directly supported terrorist organizations within Ukraine. Due to the fact that Russia was aware of what it was doing when supporting these terrorist groups, this is a clear and direct violation of Article 2 of the Terrorism Financing convention.
4. Article 1(1) of the Terrorism Financing Convention defines “funds” broadly to include “assets of every kind.” Whilst this is an extremely broad definition, the actions that that Russian Federation have taken in order to support these terrorist groups, such as providing money, weapons, training and personnel to these groups is in clear violation of Article 1(1).
5. Under Article 18, the Russian Federation is required to “cooperate in the prevention” of terrorism financing offenses as defined by Article 2. That obligation includes “taking all practical measures . . . to prevent and counter preparations in [its] territories for the commission of those offenses.” Far from preventing the financing of terrorism, the Russian Federation has financed terrorism as a matter of state policy. These actions are blatant violations of Article 18 of the Terrorism Financing Convention.
6. Article 9(1) of the Terrorism Financing Convention states that “upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.” As these attacks continue, the Russian Federation has failed to report to Ukraine any information pertaining to those who have perpetrated these attacks.
7. When the Russian Federation affirmed to the Terrorism Financing Convention, the Russian Federation assumed the responsibility to cooperate in the prevention of terrorist financing, and to investigate and prosecute those involved in terrorist financing. However, the Russian Federation has done the exact opposite of this, and has committed acts of terrorist financing, the refusal of attempting to stop terrorism within its territory, the failure to report on information that will help Ukraine stop terrorist activities within its own borders, and has further obstructed investigations that Ukraine has made when looking into terrorist matters.
8. It is clear that on the Ukrainian peninsula of Crimea, the Russian Federation has implemented a policy of cultural erasure. This can be observed through the Russian Federation’s pattern of discriminatory actions, treating groups that are not ethnic Russian as threats to the regime whose identity and culture must be suppressed.
9. Article 2 of the CERD commits States Parties to pursue “a policy of eliminating racial discrimination in all its forms,” and to “engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.” In addition to this overarching obligation, the CERD provides, *inter alia*, that:
10. States Parties must “prevent, prohibit and eradicate” “racial segregation and apartheid” (Article 3);

11. States Parties “shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination” (Article 4);
  12. The Russian Federation’s policy of cultural erasure in Crimea, targeting in particular the Crimean Tatar and ethnic Ukrainian communities, violates Articles 2, 3, 4, 5, and 6 of the CERD. In furtherance of this policy, and beginning with its illegal invasion and referendum, the Russian Federation has engaged in a widespread pattern of discriminatory acts, each of which is an independent violation of the CERD,
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1. For the purposes of Article 31 (3) of the Statute and Article 35 (1) of the Rules of the Court the Government of Peru declares its intention of exercising the right to designate a Judge ad hoc. All communications relating to this case should be sent to the Embassy of the Republic of Peru in the Netherlands, Nassauplein 4, 2585 EA The Hague, the Netherlands.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Blake Repp', is written over a horizontal line. The signature is stylized and cursive.

X

Blake Repp,  
Agent of the Government of the Ukraine.