



## The conflict in Nagorno-Karabakh before international dispute settlement bodies

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Cover photo: [Ethnic Armenians of Nagorno-Karabakh evacuated from their homes](#) (Wikicommons)

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### Summary

- States have had difficulties bringing claims before international dispute-settlement bodies due to jurisdictional constraints.
- Armenia has brought numerous claims before dispute-settlement bodies regarding the conflict in Nagorno-Karabakh.
- The impact of these applications is questionable, especially when contrasted with the situation on the ground.
- The practice of bringing numerous claims which do not touch upon the crux of the dispute has also been employed by Georgia, Ukraine and other states in the past.
- To date, the results of these cases have not been uniform.
- While it is true that these attempts are not always successful, States persist in following this path, which proves that the legal process mirrors the political and military realities and cannot be clinically detached from these.

## Introduction

*The report raises (rather than answers) questions that revolve around State attempts at lawfare, its implications.*

On 19 September 2023, Azerbaijan initiated a military offensive in Nagorno-Karabakh, a part of its territory where the ethnic Armenian majority had proclaimed the Republic of Artsakh (or Republic of Nagorno-Karabakh) in 1991. Within 24 hours, a ceasefire was agreed between Azerbaijan and the ethnic Armenians. This marked the most recent, and possibly the final, operation in a series of military campaigns in Nagorno-Karabakh over the last 35 years. In the aftermath of the operation, Artsakh's leader announced that all state institutions would be dissolved by 1 January 2024.<sup>1</sup> A massive exodus of ethnic Armenians is already underway. At the time of writing, Armenia has brought cases against Azerbaijan before both the International Court of Justice (ICJ), the judicial organ of the United Nations, and the European Court of Human Rights (ECtHR), the judicial organ of the European Convention of Human Rights<sup>2</sup> in the Council of Europe. Azerbaijan has responded with applications before the two courts.

This report sets out to discuss the legal choices Armenia (and to a lesser extent Azerbaijan) has made and place them in the wider context of similar moves by other states in similar circumstances. The report raises (rather than answers) questions that revolve around State attempts at lawfare, its implications (mainly legal, but also political), and the use and abuse of the diplomatic and political power of international courts. Lawfare is defined for the purposes of this report as the practice of transferring a conflict from the ground to the courts. The report will begin by presenting the pertinent facts, as they form the basis for the subsequent discussion of the legal aspects of the conflict. The second part discusses the cases which Armenia has brought before international courts. Finally, the third part will examine the broader conclusions that can be drawn from Armenia's legal actions, in particular vis-a-vis the concept of lawfare (broadly understood)<sup>3</sup> and the idea of shoehorning disputes into compromissory clauses for lack of alternative methods of dispute resolution that would be better suited to the situation on the ground.<sup>4</sup>

## The conflict in Nagorno Karabakh

The origins of the conflict in Nagorno-Karabakh are complex and can be traced back to the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. The point of departure should be the Armenian genocide,<sup>5</sup> which led a vast number of ethnic Armenians to flee towards Nagorno-Karabakh, especially in 1914–1916. Having settled there, and more generally in the area of Southern Caucasus, the ethnic Armenians outnumbered the Muslim population, which

<sup>1</sup> A. Demourian, G. Yenokian, Half of Nagorno-Karabakh's population flees as the separatist government says it will dissolve <<https://apnews.com/article/nagorno-karabakh-azerbaijan-armenia-separatist-government-689e9e437f60a92eaca2523d57bc3d42>> Associated Press, 28 September 2023.

<sup>2</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS 5.

<sup>3</sup> 'Lawfare' is a term coined by Charles J. Dunlap Jr. in 'Law and Military Interventions: Preserving Humanitarian Values in 21<sup>st</sup> Century Conflict', prepared for the Humanitarian Challenges in Military Intervention Conference, Carr Centre for Human Rights Policy, Kennedy School of Government, Harvard University, Washington DC, November 29 2001, available at <chrome-extension://efaidnbnmnnibpcajpcglclefindmkaj/[https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6193&context=faculty\\_scholarship](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6193&context=faculty_scholarship)>.

<sup>4</sup> See, for instance, L. Hill-Cawthorne, 'Disaggregation of Disputes: Ukraine/Russia as a Case Study', 68 ICLQ 2019 779, A. Tzanakopoulos, 'Resolving Disputes over the South China Sea under the Compulsory Settlement System of the UN Convention on the Law of the Sea' Oxford Legal Studies Research Paper No.31/2016 available at <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2772659#](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2772659#)>.

<sup>5</sup> Recognised as such by the Parliamentary Assembly of the Council of Europe, see Written Declaration No.320, 2<sup>nd</sup> edition, originally tabled on 24 April 2001, available at <<https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=9280&lang=EN>>. The UN has not recognised the Armenian Genocide, nor have the majority of states. Only around 30 states have done so.

then followed the opposite route, settling in Turkey and Iran.<sup>6</sup> Following the establishment of Soviet rule over Azerbaijan, Nagorno-Karabakh became a separate administrative unit, the Nagorno-Karabakh Autonomous Oblast (NKAO), between 1921 and 1991.

As early as 1988, the NKAO made a request to the USSR that the Oblast be transferred to Armenia. When the Soviet leadership proved reluctant to agree upon a transfer, the NKAO opted for a different route: demanding self-determination.<sup>7</sup> As a result, the Nagorno-Karabakh Republic<sup>8</sup> was established in 1991. Almost immediately, the sporadic fighting in the region turned into an armed conflict between Armenia and Azerbaijan.<sup>9</sup> The conflict lasted until 1994, when a ceasefire was agreed upon with Russian mediation.<sup>10</sup> In the meantime, the Armenians had ended up controlling the territory of the self-proclaimed Republic of Artsakh, but also a large chunk of Azerbaijani territory which created a buffer around Nagorno-Karabakh.<sup>11</sup>

There have been tensions in the region since the 1994 ceasefire, which culminated in Azerbaijan's 2020 offensive. Fighting broke out in the region again between September and November 2020, leading to a humanitarian crisis. On this occasion, the ceasefire, which was once again brokered by Russia, changed significantly the terms of territorial control on the ground. The areas captured by Azerbaijan were to remain under Azerbaijani control; Armenia had to return the Agdam, Kalbajar and Lachin districts to Azerbaijan; and Russian peacekeeping forces were to control the Lachin corridor, which connected what remained of the Republic of Artsakh with Armenia.

The second ceasefire was, however, short-lived. After just twenty four hours of fighting on the 19 September 2023, Azerbaijan brought the Republic of Artsakh to an end. At the time of writing, eighty percent of the region's Armenian population has fled, while Azerbaijan has arrested top officials of the self-proclaimed republic and issued an arrest warrant for its president.

*It was the 2020 conflict in Nagorno-Karabakh that led Armenia to file claims against Azerbaijan (and vice-versa) before both the ICJ and the ECtHR.*

## The Nagorno-Karabakh conflict before international courts

It was the 2020 conflict in Nagorno-Karabakh that led Armenia to file claims against Azerbaijan (and vice-versa) before both the ICJ and the ECtHR. An examination of these claims will open up the discussion on the purpose and effects of fighting a war before international courts after the actual conflict on the ground is over. It is impossible to measure the 'effectiveness' of such actions in any meaningful way, given that any outcome of armed conflict is overdetermined and focusing on just one parameter is short-sighted. Yet, there is something to be said about Armenia choosing to pursue the avenue of international litigation before multiple fora. It is certainly not novel—both Georgia and Ukraine have done the same (before and after the Armenian claims)—, but it is still worth examining, if only to capture some thoughts over the aftermath of armed conflict and its connection to international dispute settlement.

<sup>6</sup> G.M. Yemelianova, 'The De Facto State of Nagorno-Karabakh: Historical and Geopolitical Perspectives' (2023) *Europe-Asia Studies* 1, 6. See also P. Manoli, 'Nagorno-Karabakh: 30 years of Conflict' ELIAMEP Policy Brief no.135, 14 October 2020, available at < chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://www.eliamep.gr/wp-content/uploads/2020/10/Policy-Brief-135-Manoli-final-1.pdf>> [in Greek].

<sup>7</sup> Id. 14.

<sup>8</sup> The Republic was renamed the Republic of Artsakh in 2017 after a referendum, but also retained its former name. The Azerbaijanis had boycotted the referendum.

<sup>9</sup> (n 6).

<sup>10</sup> The Ceasefire Agreement that came into force on 12 May 1994 was preceded by a Joint Declaration of the Commonwealth of Independent States on April 15 1994, which essentially laid the groundwork for the Agreement.

<sup>11</sup> (n 6) 15.

... it must be noted that there is a long list of individual applications that have been brought before the Court in the past.

Before unpacking the legal actions of Armenia, a few remarks on the way international dispute settlement works are in order. Regarding the European Court of Human Rights, things are straightforward: the European Convention on Human Rights provides that States may bring an interstate case claiming a breach of the Convention by another State.<sup>12</sup> Turning to the International Court of Justice, this body has jurisdiction over disputes between States that have consented to its jurisdiction. This proposition may sound like a tautology, but the difference between the ICJ and courts with compulsory jurisdiction over disputes (most domestic courts, for instance) is crucial to the discussion. There are four ways in which a State may bring a claim before the ICJ: First, through acceptance of the optional clause in the Statute of the Court which stipulates that the State in question directly accepts the jurisdiction of the Court.<sup>13</sup> This signature is often coupled with a declaration by the State stipulating exceptions to the acceptance of the jurisdiction of the Court. To give an example, Greece has filed a declaration according to which it recognizes the jurisdiction of the Court as compulsory, but with three exceptions.<sup>14</sup> The second way a dispute may find its way before the ICJ is through a dispute-settlement clause in an international convention which all parties to the dispute have ratified: the so-called 'compromissory clause'.<sup>15</sup> For example, the Convention on the Prevention of the Crime of Genocide in Article 9 stipulates that any dispute relating to the interpretation, application, or fulfilment of the Convention may be submitted by any party to the International Court of Justice.<sup>16</sup> The third avenue leading to the ICJ is a *compromis*. Article 36(1) of the Statute of the Court stipulates that the parties to a dispute may agree ad hoc to bring the particular dispute before the ICJ. The fourth way the ICJ may have jurisdiction over a dispute is *forum prorogatum*; this is where a State that has not accepted the jurisdiction of the Court at the time a claim is filed against it subsequently accepts such jurisdiction for the case in question.

Returning to the substantive aspects of the claims lodged by Armenia and starting with the ECtHR, it must be noted that there is a long list of individual applications that have been brought before the Court in the past. The most important of these include *Chigarov v. Armenia*, in which the ECtHR affirmed that Armenia did indeed exercise effective control over Nagorno-Karabakh, thereby accepting that it had jurisdiction over the case.<sup>17</sup> Another example, and one that sheds light on the extreme fraught situation in the region, is *Makuchyan and Minasyan v. Azerbaijan and Hungary*.<sup>18</sup> However, no interstate applications were made between the two States prior to 2020.

<sup>12</sup> ECHR art. 33.

<sup>13</sup> ICJ Statute, Article 36 (2)-(5).

<sup>14</sup> The exceptions are the following: a) any dispute relating to military activities and measures taken by the Hellenic Republic for the protection of its sovereignty and territorial integrity, for national defense purposes, as well as for the protection of its national security; b) any dispute concerning State boundaries or sovereignty over the territory of the Hellenic Republic, including any dispute over the breadth and limits of its territorial sea and its airspace; c) any dispute in respect of which any other party to the dispute has accepted the compulsory jurisdiction of the Court only in relation to or for the purpose of that dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court.

<sup>15</sup> ICJ Statute, Article 36 (1).

<sup>16</sup> Convention on the Prevention of the Crime of Genocide (adopted 9 December 1958, entered into force 12 January 1951) 78 UNTS 277.

<sup>17</sup> *Chigarov and others v. Armenia*, App. no. 13216/05, Grand Chamber, 16 June 2015, para. 168.

<sup>18</sup> *Makuchyan and Minasyan v. Azerbaijan and Hungary*, App. No. 17247/13, May 26 2020. For an insightful commentary see M. Milanovic, T. Papić, 'Makuchyan and Minasyan v. Azerbaijan and Hungary', App. No. 17247/13' (2021) 115(2) *AJIL* 94. The case concerned the beheading of an Armenian officer during a NATO English language course in Hungary by an Azerbaijani officer. Azerbaijan requested the return of their national in case after he was duly tried and convicted in Hungary. Upon arrival in Azerbaijan he was released and promoted. He also appeared to have been welcomed as a national hero. The ECtHR found a violation of the procedural limb of the right to life (art.2) as well as article 14 of the ECHR.



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The thrust of the Armenian application was that Azerbaijan had committed grave violations of the CERD.<sup>26</sup> These included hate speech instigated by the leadership, educational system, and the media;<sup>27</sup> atrocities and a policy of ethnic cleansing;<sup>28</sup> and condoning and rewarding acts of racism.<sup>29</sup> Armenia also claimed that Azerbaijan had not taken effective measures to eliminate racial discrimination<sup>30</sup> and had failed to provide Armenians with equal treatment, effective protection, and remedies.<sup>31</sup> Armenia claimed that all of the above constituted violations of CERD and in particular of the provisions contained in articles two through seven. Having linked the application to its provisional measures request, Armenia maintained that each of the breaches being claimed was connected to its request for provisional measures.<sup>32</sup>

On 7 December 2021, the ICJ ordered Azerbaijan to prevent the incitement and promotion of racial hatred and discrimination and to take measures to protect Armenian cultural heritage. This was followed by a continuous back and forth between Armenia and the ICJ, with the former repeated requesting that the latter either modify the existing provisional measures or issue fresh orders for provisional measures. First, Armenia came back to the ICJ with a request for the modification of the order of 7 December; this request was rejected by the ICJ. Then Armenia came back with a fresh request, namely that the ICJ order Azerbaijan to ensure that movement through the Lachin corridor was unimpeded; in this case, the Court effectively granted Armenia's request on 22 February 2023. A fourth request was filed by Armenia a few months later asking that the provisional measures contained in the previous order be modified. On this occasion, Armenia was seeking further measure requiring Azerbaijan to withdraw from the Lachin corridor; the ICJ rejected this modification request with its order of 6 July 2023.

*It is, admittedly, rather difficult to comprehend both the sheer number of the legal actions Armenia undertook over the space of three years and their depth.*

It is, admittedly, rather difficult to comprehend both the sheer number of the legal actions Armenia undertook over the space of three years and their depth. Azerbaijan also responded to each of the moves made by Armenia, bringing cases before the ECtHR and the ICJ as well, but also taking two additional steps located a little beyond the traditional international dispute settlement fora. First, it brought a claim against Armenia under the dispute settlement clause of the Bern Convention on the Conservation of European Wildlife and Habitats,<sup>33</sup> asking Armenia to cease all violations of the provisions of the Convention and pay reparation for any damage caused.<sup>34</sup> Not only is this spectacular move one of the few times a dispute settlement clause contained within an environmental convention has been invoked in an seemingly unrelated dispute,<sup>35</sup> it is also the first time that the dispute settlement clause in question, that contained within the Bern Convention, has been invoked in the 44 years since the Convention came into force. But Azerbaijan did not stop there, proceeding to bring a claim under the Energy Charter Treaty, claiming Armenia has illegally exploited Azerbaijan's energy resources.<sup>36</sup>

<sup>26</sup> *Application Instituting Proceedings Armenia v. Azerbaijan* para.6.

<sup>27</sup> *Id.* paras. 41 *et seq.*

<sup>28</sup> *Id.* paras. 50 *et seq.*

<sup>29</sup> *Id.* paras. 57 *et seq.* Here, the application uses as its primary example *Makuchyan and Minasyan v. Azerbaijan and Hungary* (n 18).

<sup>30</sup> *Id.* paras. 79 *et seq.*

<sup>31</sup> *Id.* paras. 94 *et seq.*

<sup>32</sup> *Id.* para. 122.

<sup>33</sup> Convention on the Conservation of European Wildlife and Natural Habitats (adopted 19 September 1979, entered into force 6 June 1982) *ETS* no.104.Citation

<sup>34</sup> W. Abualrob, M. Longobardo, R. Mackenzie, 'Applying International Environmental Law Conventions in Occupied Territory: The Azerbaijan v. Armenia Case under the Bern Convention' available at < <https://www.ejiltalk.org/applying-international-environmental-law-conventions-in-occupied-territory-the-azerbaijan-v-armenia-case-under-the-bern-convention/>>. See also, Kei Nakajima, And the Azerbaijan-Armenia Lawfare Expanded: The Arbitration brought by Azerbaijan under the Bern Convention, *Völkerrechtsblog*, 30.01.2023, doi: 10.17176/20230130-201620-0.

<sup>35</sup> Abualrob *et. al.* (n 34).

<sup>36</sup> See the Azerbaijani Press Release here < <https://mfa.gov.az/en/news/no09323>>.

## Lawfare, shoehorning, and international dispute settlement

The number of cases brought by Armenia against Azerbaijan and vice versa, combined with the multiple courts and dispute-settlement bodies that have been called upon to hear those cases, is overwhelming. Given the reality on the ground and the dissolution of the Republic of Artsakh, most if not all of these cases will have no impact on the territorial arrangements in the region. However, the cases carry significant weight nonetheless, since their content is meaningful both politically and diplomatically. The Armenian claims of gross human rights violations and ethnic cleansing are the two most obvious examples. Two questions thus loom over this situation: how did this multiplicity of legal actions come into being, and is it meaningful in an international law and politics context.

Lawfare is the starting point of this discussion and is defined as ‘a method of warfare where law is used as a means of realizing a military objective’.<sup>37</sup> As a term, ‘lawfare’ was first employed in a questionable legal and political context, being used to convey the frustration of the US military at its opponents, who were unable to win battles against the US, using (or misusing) the law in order to gain a political advantage that would impact the battlefield. The claim used most often by its opponents was that the US was violating the law of armed conflict.<sup>38</sup> This is not the way the term is used in this report. Here, it is used purely as shorthand for legal techniques—in this case, states bringing claims before international dispute settlement bodies—employed before, during or after the end of hostilities, and is not limited to cases where these legal actions are designed to achieve a specific military objective. Rather, lawfare is used here to denote cases where States turn to multiple fora with a variety of claims that often do not correspond to the subject matter of the main dispute. This may be because a state is unable to bring a claim regarding the issue at hand directly, either because it does not have the political and/or diplomatic clout to do so, or because it lacks access to a dispute settlement body with jurisdiction over that issue. The latter reason is the most common; given the need for States to consent in international adjudication, this hardly comes as a surprise. So, given the evident difficulty of engaging an international court under the existing rules of jurisdiction, states try to identify any way possible to appear before an international court, in the hope that the real issue they need the court to address will come up indirectly.

The number of disputes in which one of the parties follows a route similar to that taken by Armenia is not insignificant. A few examples will help to showcase the magnitude of the issue. The dispute between Georgia and Russia over South Ossetia and Abkhazia (both autonomous oblasts, like Nagorno-Karabakh) is a good example, given its similarities from an international dispute-settlement standpoint to the dispute between Armenia and Azerbaijan. Thus, Georgia brought claims against Russia regarding the armed conflict in South Ossetia and Abkhazia before both the ECtHR<sup>39</sup> and the ICJ<sup>40, 41</sup>. Obviously, the ECtHR had then to evaluate whether Russia had breached its obligations under the ECHR, while the ICJ had to adjudicate whether Russia had breached its obligations under the CERD. Having carefully evaluated Russia’s conduct during the military operations in South Ossetia and Abkhazia, the ECtHR found violations on numerous occasions and handed down its judgments. The ICJ, on the other hand, found that it did not have jurisdiction over the case. The compromissory clause contained in Article 22 of the CERD required the parties to the

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<sup>37</sup> Dunlap (n 3) 4.

<sup>38</sup> Id.

<sup>39</sup> *Georgia v. Russia (I)* App. no. 13255/07, Chamber Decision, 3 July 2014; *Georgia v. Russia (I)* (Just Satisfaction) App. no. 13255/07, Grand Chamber, 31 January 2019.

<sup>40</sup> *Application of the Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (Preliminary Objections) [2011] ICJ Rep 70.

<sup>41</sup> *Georgia v. Russia (II)*, App. no. 3862/08, Grand Chamber, 21 January 2021.

dispute to have entered into negotiations on issues pertaining to the Convention as a precondition for a claim to be filed successfully with the ICJ. The ICJ held that there had been no genuine attempts at negotiations between the two parties to the dispute in this case.<sup>42</sup>

It is not disputed that issues of the law of armed conflict and humanitarian law were at the heart of the original dispute. In fact, Russia raised this very point before both courts, claiming that the cases before them were not actually about human rights or racial discrimination. The point was rejected: there is nothing preventing a Court from deciding on a case by applying the specific international rules of international law over which it has jurisdiction.<sup>43</sup> In effect, the ICJ has therefore stated that, in principle, it does not view shoe-horning as a problem. This is ironic in a way, because the case before the ICJ did actually look a lot like shoe-horning. Given the difficulty of bringing a case on the law of armed conflict or humanitarian law within the jurisdiction of the Court, Georgia tried to squeeze the factual circumstances into a compromissory clause (in this case Article 22 of CERD). However, this route was blocked by the ICJ, despite its position that shoe-horning is not, in principle, a problem, given that the Court can distinguish and appropriately apply the law within the contours of its jurisdiction.

The problems do not stop there, however. It is clear that the issue here was the conflict between the two states over South Ossetia and Abkhazia. However, despite the cases brought before both the ICJ and the ECtHR, the situation on the ground had not yet been resolved. This is evident from Georgia's fourth application before the ECtHR, which is based on what Georgia claims to be an attempt by Russia to 'borderize' the area by installing physical borders between the two breakaway regions and Georgia.<sup>44</sup> It is thus evident that lawfare cannot guarantee results, despite its promises.

The dispute between Ukraine and Russia is also similar in some ways to the disputes between both Georgia and Russia and Armenia and Azerbaijan. All three involve competing territorial claims, issues of self-determination, armed conflict, intervention, human rights abuses and humanitarian law. The Ukrainian claims are spread out over time due to the multiplicity of disputes on the ground. There were three breakaway regions in Ukraine, whose secession lies at the heart of the dispute. Thus, while Crimea held a referendum following Russian intervention, declared independence and was subsequently annexed by the Russian Federation,<sup>45</sup> the regions of Donetsk and Luhansk became embroiled in an armed struggle and declared independence in 2014. Russia would formally recognize the Donetsk People's Republic (DPR) and the Luhansk People's Republic (LPR) on 21 February 2022, three days before its forces invaded Ukraine.<sup>46</sup> Russia would go on to annex both regions in September 2022. Seeing its territory shrink significantly over just a few years, it was only natural that Ukraine should try to get the issue before as many international courts as it could, in any way possible, in an effort to enhance its chances of a successful legal outcome.

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<sup>42</sup> *Georgia v. Russia* (ICJ), paras. 181-2.

<sup>43</sup> *Georgia v. Russia* (ICJ), para. 114, *Georgia v. Russia* (II), paras. 92-95.

<sup>44</sup> *Georgia v. Russia* (IV), App. no. 39611/18, Chamber Decision, 28 March 2023.

<sup>45</sup> See T.D Grant, 'Annexation of Crimea' (2015) 109(1) *AJIL* 68.

<sup>46</sup> On the legality of the secession and recognition, see Júlia Miklasová, *Russia's Recognition of the DPR and LPR as Illegal Acts under International Law*, *Völkerrechtsblog*, 24.02.2022, doi: 10.17176/20220224-120943-0;

Ukraine has brought claims before both the ICJ<sup>47</sup> and the ECtHR.<sup>48</sup> It has also brought claims before an Annex VII Tribunal under the UN Convention on the Law of the Sea, before investment tribunals, and before the WTO dispute-settlement mechanism.<sup>49</sup> It is impossible to know how the ICJ will respond to the challenges posed by Ukraine's applications. The legal bases (the CERD in the first, the Genocide Convention in the second case) are familiar to the Court and it remains to be seen; is impossible to predict whether it will reject them based on reasons of jurisdiction, as it did in *Georgia v. Russia*, or change course. What is certain is that the ECtHR will engage with these cases in exhaustive detail, and that its judgments will be important reading.

So lawfare seems to be quite a common phenomenon in international law.

Alongside these veritable sagas, there have been other cases in which the applicants were striving to find a compromissory clause or suitable dispute settlement mechanism that would allow them to have their day in court. Iran against the US in *Oil Platforms*<sup>50</sup> is a good example of this sort of claim, as is the claim the Philippines brought against China in *South China Sea*.<sup>51</sup> The main themes were the use of force in the former and sovereignty in the latter, and both applicants had to be creative (Iran more than the Philippines) in their choice of legal action. Consequently, Iran brought its case before the ICJ on the basis of a Treaty of Friendship with the US, which stretched the interpretative limits of the Court. The Philippines had to navigate the pitfalls of the LOSC dispute settlement procedures in order to convince the Tribunal that it had jurisdiction over the numerous claims, since it would not need to touch upon the issue of sovereignty. In *Oil Platforms*, the ICJ found that the US had not breached its obligations under the Treaty, while in *South China Sea*, the Tribunal found China to be in breach of a number of its obligations under the UNCLOS. What is crucial in both cases, however, is that the ICJ on the one hand and the Tribunal on the other found that they had jurisdiction.

So lawfare seems to be quite a common phenomenon in international law. States will try to appear before an international court even in cases where the actual dispute cannot be litigated as such. Courts might avoid the issue, in the light of their jurisdictional constraints, as they go ahead and try the case, or might throw the case out altogether. In any event, states seem happy to try, in the hope the court in question will hear their case and incidentally provide some remarks that could help their cause. States also go to extremes, bringing claims before every possible forum, even fora that are obviously irrelevant to the dispute, simply to intensify their legal fight.

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<sup>47</sup> *Application of the International Convention for the Suppression of the Financing of Terrorism and of the Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)* (Preliminary Objections) [2019] ICJ Rep 558; *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (Provisional Measures) [2022] ICJ Rep 211.

<sup>48</sup> There are numerous applications, *Ukraine v. Russia (re Crimea)*, Appl. nos. 20958/14, 38334/18 regarding the administrative practices of the Russian Federation in Crimea, *Ukraine v. Russia*, Appl. no. 10691/21 regarding the administrative practices of the Russian Federation in relation to assassination operations. There is also the case regarding flight MH17 brought alongside the Netherlands, *Ukraine and the Netherlands v. Russia*, Appl. nos. 8019/16, 43800/14 and 28525/20. Finally *Ukraine v. Russia* (IX) Appl. no. 55855/18 related to the capture of Ukrainian naval vessels.

<sup>49</sup> See Hill-Cawthorne (n 4).

<sup>50</sup> *Oil Platforms (Islamic Republic of Iran v. United States of America)* [2003] ICJ Rep 161

<sup>51</sup> *The Republic of Philippines v The People's Republic of China* (Award) 2016

<<http://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf>>. See R.Beckman, 'The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea' (2013) 107 *AJIL* 142. See also Tzanakopoulos, who argues that the LOSC dispute settlement system has also been prone to shoehorning in multiple instances (n.4) 6.

## Concluding remarks

*the barrage of applications to international dispute settlement bodies rarely produces a completely homogenous result, but the legal process also mirrors the political and military realities and the result cannot be clinically detached from these.*

All these disputes stem from difficult, sensitive, and complex political situations. The question of whether the strategy of lawfare *lato sensu* is effective, and to what extent, remains. If the goal, as the original definition of lawfare posits, is to gain a military advantage and achieve military objectives, it is highly doubtful (though not impossible, if one runs an ambitious cause and effect scenario) that they have this sort of impact. In most cases, the armed conflict has been prolonged and precipitous moves by the respondents have set new standards in the political and diplomatic arena (annexation, borderization, the dissolution of the breakaway entity's governmental structure etc.). If, however, the goal is to deny the respondents the chance to avoid multiple hearings in multiple fora where they might face a legal defeat that is not purely symbolic, then there might be some merit to this choice. Judgments as detailed as those provided by international courts often serve multiple purposes: in setting reparations and apportioning legal blame in an authoritative text in which the facts are presented in a cool and detached manner and checked against the law. It is only reasonable that states or other entities will try anything that has the potential to provide some solutions, even if they do so retroactively and are not entirely effective.

The more esoteric legal discussion has raised a question regarding the fragmentation of the dispute settlement process. The question is valid, yet some of the concerns it raises might be exaggerated as international dispute settlement bodies often find ways to offer more or less coherent answers to this problem. It is true that the barrage of applications to international dispute settlement bodies rarely produces a completely homogenous result, but the legal process also mirrors the political and military realities and the result cannot be clinically detached from these.