Russia's New Front: Weaponizing Counter-Claims in the *Ukraine v Russia* ICJ Genocide Proceedings

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Background

On December 5, 2025, the International Court of Justice (ICJ) *admitted* Russia's counter-claims against Ukraine in *Ukraine v. Russian Federation* ('Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide'). In so doing, the Court transformed a case that Ukraine brought to dismantle Russia's false and pretextual genocide narrative into a procedural vehicle for Russia to lob genocide accusations against the victim State itself. The decision risks normalizing the abusive invocation of the Genocide Convention, eroding equality of arms, and leaving the Court ill-equipped to prevent the weaponization of its own procedural mechanisms at a moment of acute global insecurity.

How the Case Was Turned on Its Head

Ukraine instituted proceedings on February 26, 2022—two days after Russia launched its full-scale invasion—arguing that Russia had abused the Genocide Convention by falsely alleging that Ukraine was committing genocide in eastern Ukraine as a justification for its use of force. Alongside its *application*, Ukraine *requested* provisional measures demanding Russia to suspend its 'military operations'. The Court *granted* that request on March 16, 2022, an order Russia has openly defied ever since.

Ukraine's claims had a clear internal logic. To show that Russia's invocation of genocide was unlawful, Ukraine *asked* the Court to declare that there was no credible evidence that Ukraine had committed genocide in the Donetsk and Luhansk regions, and that Russia's reliance on those allegations to justify military action violated the Convention.

That purpose was dismantled at the preliminary objections stage. In its February 2024 *judgment* (¶53), the Court split Ukraine's submissions into two distinct "aspects." The Court held that it lacked jurisdiction over Ukraine's claim that Russia had violated the Genocide Convention by using false genocide allegations as a pretext for war. At the same time, the Court retained jurisdiction over what it characterized as a residual, declaratory request: a determination that there was no credible evidence that Ukraine had committed genocide.

As *Judge Cleveland* subsequently noted, this severance elevated what had been an accessory finding necessary to establish Russia's responsibility—that there was no evidence Ukraine had committed genocide—into a free-standing claim. Once the responsibility-based aspect of Ukraine's case was removed, the remaining claim no longer sought to engage Russia's international responsibility at all. It sought only judicial clarification of Ukraine's own compliance with the Convention. The Court's decision to find inadmissible Ukraine's principal claim concerning Russia's State responsibility should have automatically resulted in the inadmissibility of the accessory determination, which was solely aimed at demonstrating that State responsibility.

That initial flawed judgement opened the door to Russia's abuse of the Convention. In response to Ukraine's residual declaratory claim, Russia submitted eight counter-claims alleging that Ukraine itself violated multiple obligations under the Genocide Convention, including by committing, attempting, conspiring to commit, and inciting genocide; by failing to prevent and punish genocide;

and by failing to enact implementing legislation. These counter-claims seek findings of Ukraine's international responsibility and, ultimately, reparations. As a result, Ukraine's effort to rebut a false genocide narrative used to justify Russia's aggressive war has been transformed into a full-blown case of State responsibility against the victim of aggression.

The December 2025 Order

On December 5, 2025, the Court *held* (¶68(A)) that Russia's counter-claims were admissible. The admissibility of counter-claims is governed by Article 80(1) of *the ICJ Rules*, which requires that they fall within the Court's jurisdiction and be directly connected, in fact and in law, to the subject-matter of the principal claim. The Court found both conditions satisfied with regard to Ukraine's declaratory request and Russia's genocide accusations, invoking State responsibility.

Relying on its P*reliminary Objections Judgment,* the Court defined the subject matter of Ukraine's claim as whether acts of genocide attributable to Ukraine had been committed in the Donbas region. On that basis, it concluded (¶¶51–59) that the parties' claims were factually connected (same territory, overlapping time frame, and related factual allegations) and legally connected (both invoking the Genocide Convention and seeking determinations concerning Ukraine's compliance with it).

Crucially, the Court *held* (¶¶56–59) that the difference between Ukraine's request for a declaratory judgment of non-responsibility and Russia's affirmative claims of State responsibility "does not alter" the existence of a direct legal connection. That conclusion rests on a formalistic reading of Article 80(1).

Why the Counter-Claims Should Have Been Rejected

Declaratory Claims Are Not Responsibility Claims: The Order's central flaw lies in its treatment of Ukraine's residual claim as commensurable with Russia's counter-claims. It is not. In the *Preliminary Objections Judgment* (¶¶78–79, 93)., the Court emphasized that Ukraine's surviving submission sought only a declaratory judgment—one that would clarify whether Ukraine had acted in accordance with its obligations under the Convention. The Court was explicit about what the claim did not do: Ukraine did not seek to invoke Russia's international responsibility, obtain reparations, or secure coercive relief (¶54). Crucially, the Court emphasized that Ukraine's responsibility-based claim—excluded at the preliminary objections stage—was "fundamentally different in nature" from the declaratory aspect, precisely because it sought to establish State responsibility and reparations (¶56).

As the dissenting judges correctly noted (*here*, *here*, *here*, and *here)*, Russia's counter-claims are strikingly different. The counter-claims accuse Ukraine of internationally wrongful acts and seek its State responsibility, including reparations. In other words, these counter-claims reintroduce precisely what the Court removed from Ukraine's case in 2024: a determination of responsibility and its legal consequences. This is a question of type, not of scope. Counter-claims are meant to react to the principal claim, not to reintroduce a different kind of dispute, particularly not one that the Court

has already excluded from the Applicant's claim. Treating a declaratory non-responsibility claim as "directly connected" to responsibility-based counter-claims collapses a distinction embedded in the Court's own practice.

Transforming Counter-Claims into Defenses: Relatedly, the Order fails to make a meaningful distinction between counter-claims and a defence on the merits. As *Judge Abraham* notes, Russia's submissions function less as genuine counter-claims than as a defence to Ukraine's case. *Judge ad hoc Daudet* goes further, concluding that Russia and Ukraine pursue entirely different legal purposes, causing the counter-claims to merge with the defence on the merits—a departure from the Court's own jurisprudence and its prior ruling on preliminary objections.

Ukraine's residual submission asks only for a declaration of non-responsibility. Russia's counter-claims do not respond to that request. Instead, they reintroduce what the Court deliberately removed: responsibility-based claims alleging multiple violations of the Convention and seeking findings of Ukraine's international responsibility, including reparations. This is not a matter of degree ("broader" or "narrower" than the principal claim); it is a matter of type.

The Court cannot coherently *maintain* (¶56) that Ukraine's responsibility-based claims are "fundamentally different in nature" from declaratory claims, while simultaneously *holding* (¶51-59) that Russia's responsibility-based counter-claims are "directly connected" to Ukraine's declaratory submission. Either the two types of claim are "fundamentally different", or they are "directly connected", but they cannot be both.

Counter-claims seeking determinations of State responsibility pursue a different remedial logic than those seeking declaratory judgments. Russia's counter-claims thus lack direct connection to Ukraine's original claim, and should have been held inadmissible according to Article 80(1).

(In)Equality of Arms and Procedural Asymmetry: The procedural consequences are stark. Ukraine, confined to a narrow declaratory claim, is procedurally barred from introducing corresponding responsibility-based claims of its own. Russia, by contrast, is now able to pursue eight expansive allegations of genocide against Ukraine within the same proceedings.

This glaring asymmetry is the product of admitting counter-claims that "massively broaden and transform" the dispute, as *Judge Cleveland* observed. The result is a one-sided accusatory framework that undermines equality of arms and places a disproportionate burden on the Applicant—precisely the outcome Article 80(1) is intended to prevent. Had Russia been required to file a separate application, Ukraine could have responded on equal procedural footing. By allowing the counter-claims to proceed within the existing case, the Court instead entrenched procedural imbalance.

The Court's Missed Chance to Use Discretion

Article 80(1) provides that the Court may entertain counter-claims. That language reflects discretion, not obligation. Yet the Order treats admissibility as effectively automatic once formal requirements are met, an approach contested by several dissenting and separate opinions.

Several judges emphasized that Article 80(1) gives the Court discretion to refuse counter-claims even where formal requirements are met. *Judge Gómez Robledo* stressed that the word "may" signals latitude to decline counter-claims, particularly where they jeopardize the Applicant's interest in timely adjudication. *Judge ad hoc Daudet* likewise criticized the Court for failing to consider whether exceptional circumstances, including the inevitable delay of the merits, warranted exercising its discretionary power. *Judge Cleveland* does not consider it necessary to rely on discretion because the counter-claims "so transform the subject of the dispute as to place them beyond the boundaries of an acceptable counter-claim." She nonetheless states that even if the counter-claims did satisfy Article 80(1), "the transformation of the nature of the case, and the resulting burdens on the Parties and the Court" would "constitute a basis for exercising such discretion".

In past ICJ cases—*Bosnia v. Serbia* and *Nicaragua v. Colombia*—dissenting judges have asserted[1] that counter-claims may be refused where their admission would undermine the sound administration of justice, stall adjudication, or distort procedural equality. Those risks are acute in the present case. Yet the Court declined to exercise discretion, admitting expansive counter-claims whose examination is postponed until the end of 2027, dramatically prolonging the case.

The Court's latest Order comes amid Russia's continued defiance of its 2022 provisional measures to halt military operations and in the context of escalating atrocities in Ukraine, increasingly *characterized* as genocide. Arising in the shadow of Russia's ongoing war of aggression and its *documented* use of legal narratives as a form of hybrid warfare, the Court's approach carries consequences far beyond docket management.

Impacts Beyond Ukraine: Anticipated Systemic Consequences For The International Justice System

By admitting Russia's counter-claims following the severance of Ukraine's core claim, the Court risks setting in motion a series of systemic consequences compromising the operation of the ICJ and international justice system, the integrity and protective role of the Genocide Convention, and the broader role of international adjudication in situations of armed conflict and mass atrocities.

Consequences for the ICJ and international justice: The procedural path of Ukraine v. Russia risks normalizing the bad-faith use of the Genocide Convention and the ICJ's procedural mechanisms. What began as Ukraine's attempt to rebut Russia's false genocide allegations—used to justify aggression—has been recast into a State responsibility case against the victim. This inversion legitimizes counter-claims as a tool to delay proceedings, reverse the burden of proof, and erode equality of arms. By failing to curb such abuse, the Court risks weakening its authority at a time when Russia is openly abandoning human-rights protection mechanisms and deriding international criminal law.

1 In Bosnia v. Serbia, *Judge ad hoc Lauterpacht* stressed that Article 80 is judge-made law and must be applied flexibly and reasonably in light of the circumstances of each case, noting that the Court is not only free but obliged to exercise discretion when warranted. *Vice-President Weeramantry* further emphasized that this discretion is especially critical where counter-claims risk stalling adjudication of the applicant's claims and producing "damaging effects upon the due administration of international justice". Similarly, in Nicaragua v. Colombia, a J*oint Opinion of five judges* clarified that even if formal Article 80(1) requirements are met, the Court may, in exceptional situations, decline to entertain counter-claims that do not serve the proper and effective administration of justice, instead leaving the respondent to pursue a separate application.

Consequences for human-rights protection under the Genocide Convention: The Order also threatens the Convention's protective function. If victim States risk exposure to expansive counter-litigation and years-long procedural burdens simply by seeking judicial clarification, they may hesitate to turn to the Court at all. The model endorsed here invites aggressor States to weaponize counter-claims to shift proceedings onto the victim, undermining the Convention's role as a safeguard against atrocity crimes and turning it into a litigation strategy for political ends—one that extends beyond Ukraine to other genocide cases on the Court's docket.

Consequences for regional and global security: Finally, the case carries serious security implications. When international adjudication appears vulnerable to procedural manipulation, law itself becomes a tool of hybrid warfare. *Moscow's reaction* to the Court Order is telling: "The West's hopes of wielding 'legal weaponry' against Russia have once again been dashed", the Ministry of Foreign Affairs declared. Russia applauds the ICJ when a ruling serves its narrative, even as it continues to ignore the Court's order to halt its invasion of Ukraine. Russia's selective embrace of international law illustrates how procedural outcomes can be instrumentalized to legitimize aggression and erode trust in international justice, at a moment when the system's credibility is most needed.

A Court at a Crossroads

The latest developments in Ukraine v. Russia illustrates how Russia instrumentalizes the language of international law as part of its imperial posture—casting itself as a victim while waging war against a State it unlawfully claims as its own.

But the damage is not irreparable. The Court retains tools—at the merits stage and through a more context-sensitive application of Article 80—to prevent further distortion of the proceedings. Reasserting the incidental nature of counter-claims, exercising discretion to refuse abusive litigation tactics, and restoring genuine equality of arms would reaffirm the Court's role as a guardian of international law.