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**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2023

Public sitting

held on Monday 30 January 2023, at 4 p.m., at the Peace Palace,

President Donoghue presiding,

in the case concerning **Application of the International Convention on the Elimination
of All Forms of Racial Discrimination
(Armenia v. Azerbaijan)**

VERBATIM RECORD

ANNÉE 2023

Audience publique

tenue le lundi 30 janvier 2023, à 16 heures, au Palais de la Paix,

sous la présidence de Mme Donoghue, présidente,

*en l'affaire relative à l'***Application de la convention internationale sur l'élimination
de toutes les formes de discrimination raciale
(Arménie c. Azerbaïdjan)**

COMPTE RENDU

Present: President Donoghue
 Vice-President Gevorgian
 Judges Tomka
 Abraham
 Bennouna
 Yusuf
 Xue
 Robinson
 Salam
 Iwasawa
 Nolte
 Charlesworth
 Brant
Judges *ad hoc* Keith
 Daudet

 Registrar Gautier

Présents : Mme Donoghue, présidente
M. Gevorgian, vice-président
MM. Tomka
Abraham
Bennouna
Yusuf
Mme Xue
MM. Robinson
Salam
Iwasawa
Nolte
Mme Charlesworth
M. Brant, juges
MM. Keith
Daudet, juges *ad hoc*

M. Gautier, greffier

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The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon to hear Azerbaijan present its single round of oral argument on the Request for the indication of provisional measures submitted by the Republic of Armenia on 28 December 2022 in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*.

I shall now give the floor to the Agent of Azerbaijan, His Excellency Mr. Elnur Mammadov. You have the floor, Excellency.

Mr. MAMMADOV:

I. INTRODUCTORY STATEMENT

1. Madam President, honourable Members of the Court, it is an honour to appear before you on behalf of the Republic of Azerbaijan.

2. Over the last several weeks and again this morning, Armenia proclaimed that the peaceful protests held by Azerbaijanis on the Lachin road are a “blockade”, even a “siege”, orchestrated by Azerbaijan and deliberately aimed at harming the ethnic Armenians who use the road. On this basis, Armenia has accused Azerbaijan of the gravest of misconduct, making allegations of attempted “ethnic cleansing”. Azerbaijan rejects Armenia’s baseless accusations in the strongest terms.

3. Tragically, Armenia has seized upon the Lachin road protests to try to create political leverage in the ongoing peace negotiations between the two States, and instead of trying to resolve issues, it encourages hatred and fear of Azerbaijan and Azerbaijanis. Azerbaijan will use its submissions today to correct the distortions about what is actually happening on the ground.

4. Azerbaijan has confirmed before the United Nations and the Organization for Security and Co-operation in Europe (OSCE)¹, and represents to the Court today, that it has not imposed any restrictions on traffic along the Lachin road, nor could it. As I will explain in a moment, by virtue of paragraph 6 of the Trilateral Statement agreed between Azerbaijan, the Russian Federation and

¹ Ann. 41, Permanent Mission of the Republic of Azerbaijan to the United Nations, *Statement by H.E. Mr. Yashar Aliyev, Permanent Representative of the Republic of Azerbaijan to the United Nations at the 9228th meeting of the U.N. Security Council* (20 Dec. 2022); Ann. 44, Statement by the Delegation of the Republic of Azerbaijan, *1406th (Special) Meeting of the Permanent Council of the Organization for Security and Cooperation in Europe* (17 Jan. 2023).

Armenia in November 2020, the Lachin Corridor is under the control of the Russian peacekeepers². The régime that applies to the Lachin road is the same today as it was before the protests started. The protesters themselves have declared publicly and repeatedly that they had and continue to have no intention of blocking traffic³. Indeed, every day, dozens of cars and trucks pass by the protest site on Lachin road. To date, more than 1,000 cars and trucks have passed. As I speak today, another 19 ICRC vehicles have just travelled from Garabagh to Armenia⁴. There have been no reports of violence, and no confrontations between the Azerbaijani protesters, individuals using the road to transit and the Russian peacekeepers who control the road.

5. When Azerbaijan, the Russian Federation and Armenia were due to meet on 23 December for another round of talks, including to address the situation around the Lachin road, it was Armenia that pulled out of those discussions at the last minute without prior notice or explanation⁵. Ever since, Armenia has declined all invitations to try and resolve the matter or to provide information that would enable others to do so.

6. No plausible interpretation of these events could lead to the conclusion that Azerbaijan is purposely seeking to harm ethnic Armenians living in the Garabagh Economic Region of Azerbaijan, to which I will refer as “Garabagh” for short. Time and time again, Azerbaijan has made clear that while it criticizes the actions of the Armenian Government — which deliberately aggravates the Parties’ dispute and refuses to abide by the Trilateral Statement — Azerbaijan’s message for the Armenian people is one of reconciliation, and of hope for a shared and peaceful future. You heard Armenia say this morning that Azerbaijan’s President has called for the expulsion of ethnic Armenians from Garabagh. He was quoted multiple times as threatening: “the road is open” for Armenians to leave⁶. But this is just distortion, pure and simple. You see on the screen before you

² Ann. 1, Annex to the Letter dated 10 November 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, UN doc. S/2020/1104 (11 Nov. 2020), para. 6.

³ Ann. 11, “Statement by participants of protest action held on Shusha-Khankandi road”, *Azerbaijan State News Agency* (21 Dec. 2022), https://azertag.az/en/xeber/Statement_by_participants_of_protest_action_held_on_Shusha_Khankandi_road-2418614.

⁴ “19 people from Karabakh are transferred to Armenia today under Red Cross escorting”, *News.am* (30 Jan. 2023), <https://news.am/eng/news/741960.html>.

⁵ Judges’ folder, tab 13, Ann. 30, Ministry of Foreign Affairs of the Russian Federation, *Foreign Minister Sergey Lavrov’s statement and answers to media questions at a joint news conference with Foreign Minister of the Republic of Azerbaijan Jeyhun Bayramov following talks* (23 Dec. 2022), https://mid.ru/en/press_service/minister_speeches/1845369/.

⁶ CR 2023/1 (Armenia’s speeches 30 Jan. 2023).

the full text of the statement that Armenia conveniently omitted this morning. Our President makes clear *in the very same statement cited by Armenia* this morning that ethnic Armenians are welcome citizens of Azerbaijan: “necessary conditions will be created for those who want to live there . . . Just like all the other citizens of Azerbaijan, their rights and security will be provided.”⁷

7. And this is not the only time that Azerbaijan has expressed messages of peaceful coexistence; on the occasion of Easter celebrations in April 2021, our President again stated in relation to all citizens of Azerbaijan: “the promotion of a culture of coexistence based on mutual respect and trust is one of the main priorities of [Azerbaijan’s] state policy”⁸. In September last year, Azerbaijan’s Minister for Foreign Affairs addressed the General Assembly of the United Nations and confirmed that “Azerbaijan is resolute to re-integrate its citizens of Armenian origin . . . into its political, social, economic space, guaranteeing the same rights and freedoms with all the citizens of Azerbaijan regardless of their ethnic, religious, or any other affiliation”⁹. Azerbaijan stands by those words.

8. As I am speaking today, a group of Azerbaijani citizens concerned about the impact of illegal mining on their environment is standing on the side of the road near Shusha, holding placards and chanting slogans. For those old enough to remember, Garabagh used to be one of the most diverse, biologically rich parts of Azerbaijan¹⁰. It is no longer, as the environmental damage inflicted during Armenia’s aggression and 30-year occupation is nothing short of staggering.

9. As I am speaking today, something else is happening not far from the protest site. Foreign companies, including Armenian ones, continue to mine Azerbaijan’s land in order to export its resources to Armenia, leaving behind a trail of destruction: deforestation, toxic waste and polluted rivers being just some of their legacy.

⁷ President of the Republic of Azerbaijan Ilham Aliyev, “Ilham Aliyev was interviewed by local TV channels” (10 Jan. 2023), <https://president.az/en/articles/view/58555>.

⁸ “President Aliyev congratulates Azerbaijan’s Orthodox Christian community on Easter”, *Trend News Agency* (30 Apr. 2021), <https://en.trend.az/azerbaijan/politics/3417418.html>. See also “Azerbaijani President Ilham Aliyev gives interview to local TV channels”, *Azernews* (11 Jan. 2023), <https://www.azernews.az/nation/204864.html>.

⁹ Statement by H.E. Mr. Jeyhun Aziz oglu Bayramov, Minister for Foreign Affairs, at the General Debate of the 77th session of the UN General Assembly (24 Sept. 2022), https://gadebate.un.org/sites/default/files/gastatements/77/az_en.pdf. See also “Ombudsman’s Office to make every effort to integrate Armenians living in Karabakh into Azerbaijan’s society — ombudsman”, *Trend News Agency* (20 Oct. 2022), <https://en.trend.az/azerbaijan/politics/3659425.html>.

¹⁰ Critical Ecosystem Partnership Fund, *Ecosystem Profile, Caucasus Biodiversity Hotspot* (31 July 2003), p. 4, https://www.cepf.net/sites/default/files/final.caucasus.ep_.pdf.

10. In trying to convince the world that the protesters and the protests are not genuine, Armenia tries to suppress the fact that for nearly 30 years, it has been illegally exploiting the resource-rich territories of Azerbaijan that it invaded and occupied in violation of international law. These territories of Azerbaijan that Armenia occupied for nearly 30 years are unrecognizable today. Out of 151 mineral deposits in those territories, more than a third were exploited for the first time during occupation, and others were expanded¹¹. Azerbaijan has long sought to bring these issues to the attention of the international community. In its 2003 report to the United Nations Secretary-General, for example, Azerbaijan highlighted the environmental damage caused by Armenia's operations in the then-occupied territories, including through illegal mining¹². Tragically, it became a common theme in Azerbaijan's subsequent reports¹³.

11. The full extent of the destruction became apparent only after Azerbaijan liberated its territories in November 2020. Most recently, last year a mission of experts from the United Nations Environmental Programme (UNEP) visited the formerly occupied territories and discovered that mining and quarrying operations — including, in the words of the United Nations expert, “some of the most aggressive and destructive forms of quarrying” — had been conducted without due regard for their environmental impact. The Mission described the assessment and monitoring of high-risk mining sites as an “immediate priority”¹⁴. Just last week, Azerbaijan submitted its Memorial in its case against Armenia detailing the evidence of the environmental devastation caused by Armenia. Earlier this year, Azerbaijan also initiated proceedings against Armenia under the Convention on the Conservation of European Wildlife and Natural Habitats, also known as the Bern Convention, in order to hold Armenia accountable for the wholesale environmental devastation of the formerly

¹¹ Judges' folder, tab 4, Ann. 5, Extract from United Nations Environment Programme, *Report of the UNEP Environmental Scoping Mission to the Conflict-Affected Territories of Azerbaijan* (Apr. 2022), http://eco.gov.az/frq-content/plugins/pages_v1/entry/20221223145000_59496900.pdf (“UNEP Report”), p. 20.

¹² Letter dated 12 November 2003 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/58/594-S/2003/1090 (13 Nov. 2003).

¹³ See e.g. Letter dated 28 July 2006 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/60/963 (2 Aug. 2006); Letter dated 3 February 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/74/676-S/2020/90 (3 Feb. 2020); Ann. 4, Ministry of Foreign Affairs of the Republic of Azerbaijan & Azercosmos, *Illegal Activities in the Territory of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery* (2019), <https://mfa.gov.az/files/5.1%20EN%20Exploitation%20of%20territories%20and%20resources%20of%20Azerbaijan.pdf>; Ministry of Foreign Affairs of the Republic of Azerbaijan, *Illegal Economic and other Activities in the Occupied Territories of Azerbaijan* (16 Aug. 2016), <https://un.mfa.gov.az/files/file/N1626110.pdf>.

¹⁴ Judges' folder, tab 4, Ann. 5, UNEP Report, p. 28.

occupied territories. In the last two years in particular, the environmental devastation caused by Armenia's occupation has been at the forefront of the Azerbaijani public's minds¹⁵.

12. What is more, Armenia continues to exploit Garabagh's natural resources and inflict damage on its environment through illegal mining. For the last two years, Armenia used the Lachin Corridor to traffic illegally mined minerals to Armenia¹⁶. This was in addition to other serious violations of the Trilateral Statement, such as rotating military personnel through the corridor, and, as will be addressed tomorrow, importing dangerous explosive devices which continue to kill and maim Azerbaijanis, and deny internally displaced Azerbaijanis their right to return to their homes.

13. Madam President, honourable Members of the Court, this morning Armenia chose not to tell you the story of how the protests actually started. For well over a year, since November 2021, Azerbaijan has raised the issue of illegal mining and landmines formally and informally with the Russian peacekeeping forces temporarily deployed in these areas¹⁷. Then in December last year, Azerbaijani representatives met with the Russian command and it was agreed that a group of Azerbaijan's experts would conduct a monitoring visit to the two mines called Gizilbulag and Damirli in Garabagh on 10 December¹⁸. When the experts arrived, they were prevented from accessing the sites by a group of local Armenians¹⁹.

¹⁵ See e.g. "The environmental cost of conflict", *Euractiv* (26 Nov. 2020), <https://www.euractiv.com/section/azerbaijan/opinion/the-environmental-cost-of-conflict/>; judges' folder, tab 8, Ann. 13, Compilation of recent statements by Azerbaijani non-governmental organizations (certified translation); Ann. 10, "Azerbaijani ecologists and activists appeal to Commander of Russian peacekeeping contingent", *Azerbaijan State News Agency* (9 Dec. 2022), https://azertag.az/en/xeber/Azerbaijani_ecologists_and_activists_appeal_to_Commander_of_Russian_peacekeeping_contingent-2403914.

¹⁶ Ann. 8, Letter dated 19 Dec. 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General, UN doc. S/2022/979 (19 Dec. 2022); "Swiss-Based Mining Company Halts Illegal Operation in Azerbaijan's Karabakh Region", *Caspian News* (29 Dec. 2022), <https://caspiannews.com/news-detail/swiss-based-mining-company-halts-illegal-operation-in-azerbaijans-karabakh-region-2022-12-29-0/> (citing Facebook, Caliber News (30 November 2022), <https://www.facebook.com/watch/?v=1131801220835283>).

¹⁷ Judges' folder, tab 5, Ann. 2, Letter from Azer Aliyev, Head of the Main Investigation Department, to Gennadiy Vladimirovich Anashkin, Commander of the Russian Peacekeeping Contingent, dated 6 November 2021 (certified translation).

¹⁸ Judges' folder, tab 6, Ann. 3, Azerbaijan's Note Verbale to the Russian Federation dated 11 Dec. 2022 (certified translation); Joint information of the Ministry of Economy and the Ministry of Ecology and Natural Resources of the Republic of Azerbaijan (7 Dec. 2022), <https://www.economy.gov.az/en/post/1037/azerbaycan-respublikasi-iqtisadiyyat-nazirliyi-ve-ekologiya-ve-tebii-servetler-nazirliyinin-birge-melumat>.

¹⁹ Ann. 9, Letter from Rauf Hajiyev, Deputy Minister of the Ministry of Ecology and Natural Resources, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 23 Jan. 2023, No. 3-14/2-152-D-04-08/2023, with enclosure; judges' folder, tab 13, Ann. 30, Ministry of Foreign Affairs of the Russian Federation, *Foreign Minister Sergey Lavrov's statement and answers to media questions at a joint news conference with Foreign Minister of the Republic of Azerbaijan Jeyhun Bayramov following talks* (23 Dec. 2022), https://mid.ru/en/press_service/minister_speeches/1845369/.

14. Two days later, on 12 December, peaceful protests started on a small section of the Lachin road next to Shusha. It is against this background that I invite the Court to judge someone's decision to stand outside in sub-zero temperatures, and chant "stop illegal mining" in front of a group of uniformed Russian soldiers guarding the road. The same road that was used by Armenian companies to remove truck-loads of Azerbaijan's resources to Armenia.

15. Following Armenia's submissions, it is important to set the record straight on two key points: first, what is the situation with the flow of traffic on the Lachin road; and second, what is Azerbaijan's role in it.

16. First, Armenia's claims of a protester-imposed blockade are simply false; this morning we heard accusations without any evidence. Azerbaijan's counsel will take you through the actual evidence — and I mean, not just statements, but videos and photographs — showing that traffic is passing next to the protest site. There are no general statistics available about the volume of traffic on the road prior to the protests, as the Russian peacekeepers did not keep track of such information. However, in October 2021, they reported that they ensured the safe movement of about 200 vehicles during one week²⁰. Since the start of the protests, over 1,000 vehicles have passed there unimpeded²¹. Most were large trucks carrying foodstuffs and other supplies. We know this because the protesters are keen to rebut the accusations of a "blockade" and show the world the truth. Daily, they record the comings and goings of cars and trucks on their phones, and journalists and camera crews are now also present on a daily basis²².

17. Armenia has not denied the reality of traffic passing the protest site this morning. Instead, it says that the fact that just Russian and ICRC vehicles are getting through proves that there is a blockade. But why is it that only Russian and ICRC vehicles come up to the protest site? It would be useful at this point to look at a map, which is now on screen, and is also in the slide deck in your folders at tab 1. The map shows the Lachin road, which starts at the Armenia-Azerbaijan border at

²⁰ Ann. 22, Ministry of Defense of the Russian Federation, Russian peacekeeping forces in Nagorno-Karabakh, *Russian peacekeepers ensured the safe movement of about 200 transit vehicles and around 1,000 people to Nagorno-Karabakh and back during the week* (21 October 2021) (certified translation).

²¹ "Azerbaijani Foreign Ministry responds to US State Department spokesperson", *Azerbaijan24* (25 Jan. 2023), <https://www.azerbaycan24.com/en/azerbaijani-foreign-ministry-responds-to-us-state-department-spokesperson/>.

²² Judges' folder, tab 10, Ann. 16, Compilation of videos showing traffic passing the protest site; judges' folder, tab 9, Ann. 17, Compilation of photographs from the protest site showing passing traffic.

the bottom and goes north to Khankandi. As I have already noted, since November 2020, the road is under the control of the Russian peacekeepers. The map shows Russian checkpoints on the Lachin road, based on maps published daily by the Russian command²³. The protest site is located right next to checkpoint 7, which is the only accessible point for Azerbaijanis, as it can be reached from Shusha. You can see that, before the protest site, there are 50 km of road and several Russian checkpoints when coming from Armenia. From Khankandi in the north, there are 13 km of road and at least one Russian checkpoint before the protest site. Azerbaijan does not have any presence in those areas, and it is not aware of how traffic there is being regulated by the Russian peacekeepers.

18. Armenian authorities falsely accuse the Azerbaijani protesters of violence and Azerbaijan of attempted ethnic cleansing, distorting the reality deliberately to create an atmosphere of fear and hatred of the protesters within the ethnic Armenian community in Garabagh. On that basis, Armenia and its Installed Régime in Garabagh broadcast statements and information to convince the local population that the Lachin road is closed even if they are hearing otherwise²⁴, and that they should be afraid to use the road because of the purported danger posed by Azerbaijani protestors. Armenia is deliberately fanning the flames of anti-Azerbaijani fear and hatred.

19. In its statements, Armenia insisted that the protesters acted as “terrorists”, “invaded” a bus wearing masks, and subjected children to “psychological terror”²⁵. This is just unsupported. What is clear from the videos that appear online daily is that traffic that *does* reach the protest site is able to pass next to it and that the protesters — most of them youths of Azerbaijan — are peaceful. This is a key point. To Azerbaijan’s knowledge, every car, truck or person who approached the protest site, regardless of identity, was able to pass that section of the road. As I have said, this is consistent with the statements issued by the protesters that they have no intention of blocking traffic²⁶. A video taken

²³ Ann. 21, Ministry of Defense of the Russian Federation, *Situation in the area of the peacekeeping operation as of December 12, 2022* (certified translation).

²⁴ Ann. 23, Extract from Facebook, Ruben Vardanyan live video (20 Dec. 2022) (certified translation).

²⁵ Ministry of Foreign Affairs of the Republic of Armenia, *The comment of the Press Secretary of the MFA of Armenia on the psychological terror and violation of rights of Armenian children by Azerbaijan* (19 Jan. 2023), https://www.mfa.am/en/interviews-articles-and-comments/2023/01/19/spoxcomment_children/11831; Human Rights Defender of the Republic of Armenia, *Announcement Regarding Violation of Children's Rights by Azerbaijani Eco-activists* (18 Jan. 2023), https://www.ombuds.am/en_us/site/ViewNews/2469.

²⁶ Ann. 11, “Statement by participants of protest action held on Shusha-Khankandi road”, *Azerbaijan State News Agency* (21 Dec. 2022), https://azertag.az/en/xeber/Statement_by_participants_of_protest_action_held_on_Shusha_Khankandi_road-2418614.

on 8 January shows a local Armenian safely passing the protest site on the way back to Khankandi²⁷, and on 17 January, 26 Armenians, including 20 teenagers, safely returned from Armenia to Khankandi along the Lachin road, again passing the protesters on their way²⁸. These are facts that can be readily verified, and show categorically that Armenia's claims of a blockade as a result of the actions of Azerbaijan or the protesters are false, as are Armenia's claims of the protesters posing a threat to passing traffic.

20. Azerbaijan has been monitoring news and other footage of the protest site daily, and if there were credible evidence that the protesters engaged in harassment, Azerbaijan would take steps within its jurisdiction to investigate the incident under its domestic law, which prohibits such acts, including by protesters. But there is none. Armenia's rhetoric before the Court and in other public fora is just another example of Armenia's attempt to portray every encounter with an Azerbaijani as a threat, instilling fear in people from an early age. It is precisely this fear-mongering, both from Armenia and those who purport to speak for the local residents in Garabagh, that is used to perpetuate the cycle of hatred against Azerbaijanis.

21. The second point I will address is Azerbaijan's role in the Lachin Corridor, and its efforts to help facilitate the resolution of the dispute. As I have already stated, under the terms of the Trilateral Statement, the Lachin Corridor is temporarily under the control of the Russian peacekeepers. In practice, that means that Azerbaijan is not exercising control there.

22. Contrary to Armenia's speculation, Azerbaijan is not orchestrating the protests. They started as, and continue to be, a civil society initiative, organized by domestic non-governmental organizations (NGOs)²⁹. Azerbaijan categorically rejects any accusation that it is sending people to the protests, or directing their conduct. In the absence of actual evidence, Armenia speculates about various "links" between the Government and the protesters. For example, Armenia's claim that some of the participating NGOs receive State funding is a distraction. Why? It is very common for NGOs

²⁷ "An Armenian resident of Karabakh, who asked for help, was provided with food and cigarettes, sent from Shusha to Khankendi", *APA* (8 an. 2023), <https://apa.az/en/domestic-policy/an-armenian-resident-of-karabakh-who-asked-for-help-was-provided-with-food-and-cigarettes-sent-from-shusha-to-khankendi-video-393282>.

²⁸ "Vehicles carrying 26 Armenians passed through protest area along Lachin-Khankandi road without hindrance", *Azerbaijan State News Agency* (18 Jan. 2023), https://azertag.az/en/xeber/26_Armenian_citizens_passed_through_protest_area_along_Lachin_Khankandi_road_without_hindrance-2449373.

²⁹ Judges' folder, tab 8, Ann. 13, Compilation of recent statements by Azerbaijani non-governmental organizations (certified translation); Ann. 14, Sample of non-governmental organizations' requests for access to the liberated territories (certified translation).

everywhere to receive State funding, and Azerbaijan is no exception, with 4,000 NGOs active in my country³⁰. The provision of State funding is regulated by the law and done in an open and transparent manner — which is why it was not difficult for Armenia to find the information. But the NGOs remain independent in their activities, including in their decision to join the Lachin road protests. Armenia also displayed photographs, selectively pulled from social media accounts, of some of the protesters in the past — *not* during the protests — wearing Azerbaijani military uniforms. In Azerbaijan, where military service is compulsory, such photos are not hard to come by for many young citizens. They in no way indicate that the individual is a current member of the armed forces, much less that the individual has joined the Lachin road protests on behalf of or on the instruction of Azerbaijan.

23. Armenia also says that the protesters had to receive a “special permission from the Government” to attend the protests. It is correct that the Azerbaijani protesters needed to register with Azerbaijan’s authorities to be able to travel through the liberated territories and enter the city of Shusha, which is closest to the protest site. This is required as a matter of safety, because these regions are heavily contaminated with landmines laid by Armenia during its 30-year occupation. The requirement applies to every person wishing to travel to the liberated territories, and is not specific to the protesters — in the last two years, experts, foreign delegations and Azerbaijani officials have gone through that same process. Azerbaijan has submitted a sample of the NGOs’ request letters into evidence³¹. Azerbaijan had no reason to deny the NGOs access to Shusha. But once the protesters get to Shusha, Azerbaijan plays no role in letting them onto the Lachin road itself, which is separated from Shusha by a fence and access point controlled by Russian peacekeepers. To be clear, Azerbaijan supports the message and objectives of the protests, and it has always been open about that. But it is not orchestrating them.

24. Throughout the protests, Azerbaijan has been fulfilling its obligations under the Trilateral Statement with respect to transit along the Lachin road. Azerbaijan continues to guarantee the safety

³⁰ Ann. 15, The Agency for State Support to Non-Governmental Organizations of the Republic of Azerbaijan, *The Agency announced the results of the 2022 small grant competition* (19 July 2022), <https://e-qrant.az/news/48> (certified translation).

³¹ Ann. 14, Sample of non-governmental organizations’ requests for access to the liberated territories (certified translation).

of movement actually taking place along the corridor³². Even though the protesters gave assurances that they had no intention of blocking civilian traffic, Azerbaijan has taken seriously the possible negative impact of the situation on the Armenians living in Garabagh — who enjoy the same rights as other Azerbaijani citizens. From the outset, on 22 December, Azerbaijan met with the representatives of the ICRC, which has been operating in the Garabagh region since the early 1990s. At the meeting, Azerbaijan confirmed its readiness to provide every assistance to the local residents either directly or through the ICRC³³. There has been ongoing communication with the ICRC since. Azerbaijan has repeated its offer of assistance throughout the protests³⁴ and its actions reflect its words. The Russian Foreign Minister confirmed on 18 January that the Russian peacekeepers facilitated a meeting between Azerbaijani representatives and the local Garabagh residents³⁵. This is a continuation of successful dialogue with local Armenians that has been ongoing since 2020, including on issues such as the construction of a bypass road in the Lachin Corridor, as envisaged by the Trilateral Statement, and the management of the Sarsang water reservoir. Azerbaijan is committed to maintaining dialogue on any issues which are of concern to the local residents. Consistent with Azerbaijan's obligations under the Trilateral Statement, Azerbaijan also is complying and will continue to comply with the 21 December 2022 order of the European Court of Human Rights to take measures within its jurisdiction to ensure the safe passage through the corridor of seriously ill persons and others who were stranded on the Lachin road without shelter or means of subsistence.

³² Ann. 1, Annex to the Letter dated 10 Nov. 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, UN doc. S/2020/1104, 11 Nov. 2020, para. 6.

³³ Judges' folder, tab 15, Ann. 36, Ministry of Foreign Affairs of the Republic of Azerbaijan, No. 599/22, *Press information on the meeting of the Minister of Foreign Affairs Jeyhun Bayramov with the Head of the Representation of the International Committee of the Red Cross (ICRC) in Azerbaijan Dragana Kojic*, 22 Dec. 2022, available at <https://mfa.gov.az/az/news/no59922> (certified translation).

³⁴ Ministry of Foreign Affairs of the Republic of Azerbaijan, No:582/22, *Commentary of the Press Service Department of the Ministry of Foreign Affairs on the statement of the Ministry of Foreign Affairs of Armenia dated December 13, 2022*, 13 Dec. 2022, available at <https://mfa.gov.az/en/news/no58222>; Ministry of Foreign Affairs of the Republic of Azerbaijan, No:583/22, *Head of the Press Service Department of the Ministry of Foreign Affairs of the Republic of Azerbaijan, Aykhan Hajizada, answers the questions of local media representatives*, 14 Dec. 2022, available at <https://mfa.gov.az/en/news/no58322>; Ann. 7, Ministry of Foreign Affairs of the Republic of Azerbaijan, No: 587/22 *Press Release on the briefing held for representatives of the diplomatic corps*, 15 Dec. 2022 (certified translation).

³⁵ Judges' folder, tab 17, Ann. 40, Ministry of Foreign Affairs of the Russian Federation, *Minister of Foreign Affairs of the Russian Federation S.V. Lavrov's speech and answers to the questions of media during the press-conference on the results of the Russian diplomatic activity in 2022 year*, 18 Jan. 2023 (certified translation).

25. Meanwhile, Armenia's approach could not have been more different. Ten days into the protests, on 23 December, Armenia pulled out of trilateral talks in Moscow at the last minute. Those talks were intended to address, among other matters, the Lachin road protests as well as the continuing problem of Armenia using the road to illegally transport military equipment such as landmines and booby traps into Azerbaijan, which you will hear more about tomorrow³⁶. Armenia pulled out of the talks abruptly and without prior notice — Russia and Azerbaijan learned of Armenia's decision to drop out *from Armenia's press release after the fact*³⁷. Since then, Armenia has declined multiple invitations from the Russian Federation³⁸ and Azerbaijan³⁹ — on 23 December, 12 January and 17 January, to name a few — to meet to resolve the situation.

26. Armenia has also refused to engage with the Russian peacekeepers to facilitate the delivery of supplies to Garabagh. On 12 January, Azerbaijan, in its letter to the Court, called on Armenia to provide information about food, medicine and other supplies that need to be delivered to the local residents, or any transfers of persons that require assistance, so that Azerbaijan can at least take up these matters bilaterally with the Russian peacekeepers⁴⁰. Armenia, again, has remained silent. Despite coming to the Court for relief, in mid-January Armenia's Prime Minister and the Speaker of the National Assembly inexplicably declared that "Armenia will not participate in the negotiations with Azerbaijan regarding the opening of the Lachin Corridor", and that it is the self-proclaimed

³⁶ Judges' folder, tab 13, Ann. 30, p. 1, Ministry of Foreign Affairs of the Russian Federation, *Foreign Minister Sergey Lavrov's statement and answers to media questions at a joint news conference with Foreign Minister of the Republic of Azerbaijan Jeyhun Bayramov following talks*, 23 Dec. 2022, available at https://mid.ru/en/press_service/minister_speeches/1845369/.

³⁷ Judges' folder, tab 13, Ann. 30, p. 6, Ministry of Foreign Affairs of the Russian Federation, *Foreign Minister Sergey Lavrov's statement and answers to media questions at a joint news conference with Foreign Minister of the Republic of Azerbaijan Jeyhun Bayramov following talks*, 23 Dec. 2022, available at https://mid.ru/en/press_service/minister_speeches/1845369/.

³⁸ See e.g. *ibid.*, pp. 1-2; judges' folder, tab 14, Ann. 32, Ministry of Foreign Affairs of the Russian Federation, *Answer of the Spokesperson of the Russian Foreign Ministry M.V. Zakharova to the media question about the statements of the Armenian side on the Nagorno-Karabakh settlement*, 12 Jan. 2023, available at https://mid.ru/ru/foreign_policy/news/1846891/ (certified translation).

³⁹ Ann. 44, Statement by the Delegation of the Republic of Azerbaijan, *1406th (Special) Meeting of the Permanent Council of the Organization for Security and Cooperation in Europe*, 17 Jan. 2023.

⁴⁰ Judges' folder, tab 16, Ann. 39, letter dated 12 Jan. 2023 from Mr. Elnur Mammadov, Deputy Minister of Foreign Affairs, Agent of the Republic of Azerbaijan, to Mr. Philippe Gautier, Registrar of the International Court of Justice.

so-called “officials” in Garabagh who should “negotiate directly with Azerbaijan”⁴¹. Since that is Armenia’s view, Madam President, Members of the Court, why are we even here? Why has Armenia seised the Court with allegations which, in Armenia’s own words, do not concern it? This is not the conduct of a State serious about resolving the situation. It is a State driven by its own political agenda. It is a State serious only about using every opportunity to broadcast on every international platform — including now the Court — its baseless allegation that Azerbaijan has orchestrated a siege of Garabagh.

27. I will now make one final point on Armenia’s distortion of facts before I conclude. On the last business day before this hearing, Armenia submitted an entirely new request for provisional measures, concerning an entirely unsubstantiated allegation that Azerbaijan is deliberately disrupting the gas supply to Garabagh. The Court has noted that Azerbaijan has not had an adequate opportunity to respond to these latest accusations, and Azerbaijan welcomes the opportunity to do so in due course. But for now, let me just say this. First, it is Armenia that supplies gas to Garabagh, not Azerbaijan. Azerbaijan’s only involvement is that a portion of the pipeline runs through Azerbaijan’s territory. Second, interruptions of gas supply are not uncommon in winter months, and are not specific to Garabagh — they also affect other parts of Azerbaijan’s territory, and indeed Armenia’s own network⁴². Whenever the root cause required Azerbaijan’s engineers to act to restore supply, they did so — in each case, repairs were made on an urgent basis and supply was restored as quickly as possible. There is a clear pattern where, as soon as a gas disruption occurs, Armenia accuses Azerbaijan of deliberate sabotage — without any evidence, and even if Azerbaijanis in other parts of Azerbaijan are experiencing disruptions at the same time, as was the case in December 2022⁴³. There

⁴¹ Judges’ folder, tab 16, Ann. 39, letter dated 12 Jan. 2023 from Mr. Elnur Mammadov, Deputy Minister of Foreign Affairs, Agent of the Republic of Azerbaijan, to Mr. Philippe Gautier, Registrar of the International Court of Justice; judges’ folder, tab 11, Ann. 35, Prime Minister Nikol Pashinyan’s Press Conference, YouTube, Government of Armenia, 10 Jan. 2023 (certified translation); judges’ folder, tab 12, Ann. 33, “Armenia should not engage in negotiations with Azerbaijan on the opening of the Lachin Corridor – Alen Simonyan”, *Armenpress*, 12 Jan. 2023, available at <https://www.armenpress.am/eng/news/1101552/>.

⁴² Ann. 37, Ann. 1 to letter dated 16 Dec. 2022 from Mr. Elnur Mammadov, Deputy Minister of Foreign Affairs, Agent of the Republic of Azerbaijan, to Mr. Philippe Gautier, Registrar of the International Court of Justice; Ann. 37, letter dated 16 Dec. 2022 from Mr. Elnur Mammadov, Deputy Minister of Foreign Affairs, Agent of the Republic of Azerbaijan, to Mr. Philippe Gautier, Registrar of the International Court of Justice, p. 2.

⁴³ Ann. 37, letter dated 16 Dec. 2022 from Mr. Elnur Mammadov, Deputy Minister of Foreign Affairs, Agent of the Republic of Azerbaijan, to Mr. Philippe Gautier, Registrar of the International Court of Justice, p. 2; “There will be interruptions in the gas supply of some regions of Azerbaijan”, *APA*, 15 Dec. 2022, available at <https://apa.az/en/incident/there-will-be-interruptions-in-the-gas-supply-of-some-regions-of-azerbaijan-391810>.

is no basis whatsoever for Armenia's assertion that these are deliberate acts of racial discrimination by Azerbaijan, targeting the residents of Garabagh. This is just wrong: Azerbaijan cannot take steps for which it is not responsible. It is Armenia that supplies the gas to Garabagh, but for its part, Azerbaijan can represent that it has not and does not intend to disrupt gas supplies or the provision of other public utilities to Garabagh.

28. It is telling that each of Armenia's baseless accusations against Azerbaijan is accompanied by a flurry of activity on the international stage. Armenia uses every opportunity to declare an impending humanitarian crisis and call on the global community to urgently act against Azerbaijan. In this instance, it has come to the Court to demand the *Court's* intervention, but is unwilling to take any steps *itself* to actually resolve the issue. Instead, Armenia inflames tensions by falsely accusing Azerbaijan of attempted ethnic cleansing without basis. Azerbaijan objects in the strongest terms to Armenia's tactics and its use of such rhetoric, which is offensive, dangerous and aggravates the dispute in violation of the Court's 7 December 2021 Order in Azerbaijan's case against Armenia.

29. On behalf of Azerbaijan, I urge the Court to carefully look at the actual evidence before it and judge the parties by their actions rather than Armenia's empty words, no matter how many times Armenia tries to amplify its allegations in various political fora.

30. Madam President, honourable Members of the Court, Azerbaijan has and undertakes to continue to take all steps within its power to guarantee the safety of movement of persons, vehicles and cargo along the Lachin road, including continued and regular engagement with the ICRC, communicating with and facilitating communications with Russian peacekeepers, taking steps to engage with the local residents in Garabagh, and — if Armenia finally decides that it is indeed its problem and agrees to come to the negotiating table — then with Armenia as well.

31. Azerbaijan's distinguished counsel will now address the Court and explain why Armenia's application should be dismissed.

32. *First*, Mr. Vaughan Lowe will discuss the factual and legal régime of the Lachin Corridor and Azerbaijan's role in it.

33. *Second*, Lord Peter Goldsmith will address the lack of plausible rights and urgency.

34. *And third*, Professor Laurence Boisson de Chazournes will conclude on behalf of Azerbaijan and explain why an order of provisional measures against Azerbaijan is not only unwarranted, but would also be inappropriate.

35. I will then return briefly for concluding submissions.

36. Thank you, Madam President, honourable Members of the Court, for the privilege of appearing before you. I now kindly ask you, Madam President, to invite Mr. Lowe to address this Court.

The PRESIDENT: I thank the Agent of Azerbaijan for his statement. I now invite Mr. Vaughan Lowe to take the floor. You have the floor, Sir.

Mr. LOWE:

II. THE FACTUAL AND LEGAL RÉGIME OF THE LACHIN CORRIDOR

1. Madam President, Members of the Court, it is a privilege to appear before you and an honour to have been entrusted with the presentation of this part of Azerbaijan's case.

2. Armenia's Request rests on the proposition that "[o]n 12 December 2022, Azerbaijan orchestrated a blockade of the only road connecting the 120,000 ethnic Armenians in Nagorno-Karabakh with the outside world, thereby preventing anyone and anything from entering or exiting"⁴⁴. This is not borne out by the evidence: as the Agent explained, there is no blockade, Azerbaijan is not orchestrating the protests, and — as I will explain — the practical ability to control access to the Lachin Corridor rests in the hands of others.

3. Armenia's Request then presents a mixture of actual and hypothetical consequences of this alleged blockade, ranging from abusive Twitter messages⁴⁵ to genocide⁴⁶.

⁴⁴ Armenia's Request for provisional measures ("Armenia's Request"), dated 27 Dec. 2022, para. 2.

⁴⁵ Armenia's Request, para. 16.

⁴⁶ Armenia's Request, para. 4.

A. There is no blockade by the protesters

4. Armenia is presenting the Court with a grossly distorted and misleading picture of the situation. There are three main misimpressions to correct. The first is that the protesters are not true environmental protesters.

5. Certainly, there has been a demonstration by Azerbaijani protesters at one point on the side of the Lachin road since 12 December 2022. These individuals are engaged in a peaceful objection to the continued pillaging of Azerbaijan's natural resources by Armenia under the very eyes of the peacekeeping force.

6. There is extensive evidence documenting the origins of the protest and the engagement of civil society.

7. On 9 December 2022, a group of 23 NGOs issued an appeal to the Russian peacekeeping forces to allow representatives of environmental NGOs to access the mining sites⁴⁷. On 10 December when an inspection of the sites by Azerbaijan's representatives was prevented by local Armenians, NGOs in Azerbaijan decided to organize a protest. As can be seen in Annex 14 to the Request, the NGOs informed the Azerbaijani authorities of their wish to enter the liberated territories in order to demonstrate, and to travel to Shusha, which is the only access point for Azerbaijanis onto the Lachin road⁴⁸. At tab 8 of your folders, you will find a sample of statements and social media posts issued by the participants in the protests showing how they organized themselves, and discussing their concerns and reporting from the protest site⁴⁹.

8. No doubt some of them are demonstrating as much against Armenia's environmentally ruinous open-cast mining of minerals in Azerbaijan, which are taken from Azerbaijan to Armenia along the Lachin road, as they are for other ecological reasons.

9. And why should they not? Making the protesters' views known is the whole point of peaceful protests, whether they be trade union pickets or ecological activists or political opponents. They are there to make known their belief that there is something wrong that must not be forgotten

⁴⁷ Ann. 10, "Azerbaijani ecologists and activists appeal to Commander of Russian peacekeeping contingent", *Azerbaijan State News Agency*, 9 Dec. 2022, available at https://azertag.az/en/xeber/Azerbaijani_ecologists_and_activists_appeal_to_Commander_of_Russian_peacekeeping_contingent-2403914.

⁴⁸ Ann. 14, Sample of non-governmental organizations' requests for access to the liberated territories (certified translation) (Annexes submitted by Azerbaijan, Azerbaijan's Letter (24 Jan. 2023), Ann. 14).

⁴⁹ Judges' folder, tab 8, Ann. 13, Compilation of recent statements by Azerbaijani non-governmental organizations (certified translation).

or ignored or brushed under the carpet. Anger at such unlawful exploitation of their homeland — if it were paintings or works of art that were being taken, we would call it “plunder” — is surely an understandable and a legitimate subject for protest.

B. The protest is not orchestrated by Azerbaijan

10. To correct a second misimpression, our Agent has confirmed to the Court that Azerbaijan did not orchestrate the protests. There is no indication in the evidence that these are State-run protests: they are protests like hundreds of other environmental protests around the world. And, as Professor Boisson de Chazournes will explain, Azerbaijan would contravene its domestic and international obligations if it were to suppress this peaceful protest.

11. The protesters are not blockading anyone, let alone specifically blockading Armenians. Their focus is on the illegal exploitation of natural resources and their removal from Azerbaijan along the Lachin road: it is not concerned with the race or ethnicity of those using the road. Statements issued by the protesters themselves make clear that traffic *will* be let through⁵⁰, and as will be explained by Lord Goldsmith, photographs and video evidence show the full extent of the protesters’ presence⁵¹.

12. So yes, there was a protest on the Lachin road on 12 December, and there have been some protesters there each day since. And yes, no doubt protesters do make clear their views about the exportation to Armenia of plundered Azerbaijani resources carried by vehicles transiting the Lachin road. But it is a *peaceful* protest. There have been no reports of violence; nothing that warrants an order from the world’s highest court to close down that protest.

C. The Russian peacekeeping force controls the Lachin Corridor

13. To correct a third misimpression, a key element of Azerbaijan’s case is that, as a matter of fact and as a matter of law, it is the Russian peacekeepers and not Azerbaijan who are regulating traffic along the Lachin road.

⁵⁰ Ann. 11, “Statement by participants of protest action held on Shusha-Khankandi road”, *Azerbaijan State News Agency*, 21 Dec. 2022, available at https://azertag.az/en/xeber/Statement_by_participants_of_protest_action_held_on_Shusha_Khankandi_road-2418614, p. 1.

⁵¹ Judges’ folder, tab 7, Ann. 12, Compilation of photographs from the Lachin road protest; judges’ folder, tab 10, Ann. 16, Compilation of videos showing traffic passing the protest site; judges’ folder, tab 9, Ann. 17, Compilation of photographs from the protest site showing passing traffic.

14. The November 2020 Trilateral Statement installed a peacekeeping contingent for a five-year period and provided, in paragraph 6, that the Lachin Corridor “shall remain under the control of the Russian Federation’s peacekeeping contingent”.

15. It was specifically agreed between Armenia, Azerbaijan and Russia that Azerbaijan would *not* have control over the Lachin Corridor. This was not in question during the two years after November 2020, until Armenia began to accuse Azerbaijan of mounting a “blockade”.

16. As the Agent explained, the protests are taking place next to the Russian checkpoint 7, which you can see on the slide, and that is because it is close to Shusha; but the road is over 60 km long and has several Russian checkpoints before and after the protest site. For instance, this is a photograph taken by a local photographer living in Khankandi, showing peacekeepers guarding the road leading towards the protest site, which is more than 10 km from the place where this photograph was taken.

17. I invite the Court to look at our Annex 24, in tab 2 of your folders, which is a transcript of a video taken on 26 December 2022 of an Armenian citizen explaining that he was unable to travel along the Lachin road from Armenia to Khankandi, because of the peacekeepers⁵². And you will see also Annex 25, at tab 3 of your folders, which is a transcript of a conversation between a local Armenian resident of Garabagh and a member of the peacekeeping force, in Khankandi, posted on social media on 23 December 2022. The transcripts demonstrate that the peacekeepers are present and are exercising authority and control over the road, and that Armenian citizens are displeased with the state of affairs⁵³.

18. All parties to the Trilateral Statement have acknowledged the reality of control by the Russian peacekeepers. Armenia is well aware of the situation. On 14 December 2022, just two days after the start of the protests, its own Parliament specifically called on the Russian Federation to unblock the road⁵⁴. You can see the Parliament’s statement on the screen. Russia itself, during a

⁵² Judges’ folder, tab 2, Ann. 24, “Why is the road still not open to Artsakh? Explanation of Deputy commander of Russian peacekeepers”, *News.am*, 26 Dec. 2022, available at <https://news.am/eng/news/737169.html> (certified translation).

⁵³ Judges’ folder, tab 3, Ann. 25, Telegram, Haqqin.az, 23 Dec. 2022, available at https://t.me/haqqin_azz/45391 (certified translation).

⁵⁴ Ann. 26, National Assembly of the Republic of Armenia, *RA NA Statement on Causing Humanitarian Crisis in Nagorno Karabakh by Azerbaijan*, 14 Dec. 2022, available at http://www.parliament.am/news.php?cat_id=2&NewsID=17918&year=2022&month=12&day=14&lang=eng.

United Nations Security Council debate on 20 December 2022 confirmed that: the “Lachin Corridor [is] under the control of the Russian Federation peacemaking force”⁵⁵.

19. Let me take you to the Trilateral Statement, part of which is now on the screen in English and in its Russian original. Russia controls the Lachin Corridor; and what precisely was it that Azerbaijan and Armenia agreed — in paragraph 6 of the Trilateral Statement — should be “guaranteed” by Azerbaijan to citizens, vehicles and goods travelling along the Lachin road in both directions?

20. It was the “safety”, in Azerbaijan’s English translation of the statement⁵⁶ — “safe movement” in Armenia’s translation⁵⁷ and “security” in Russia’s translation⁵⁸ — of persons, vehicles and cargo moving along the Lachin road. But in its Request for provisional measures, it is “uninterrupted free movement” along the Lachin Corridor that Armenia claims⁵⁹. The difference is obvious.

21. If Armenia is demanding that those travelling along the corridor be shielded from the demonstration of the views of the protesters, that is not what was agreed. Nor is it something that Armenia can properly demand. Armenia is bound by the European Convention on Human Rights to secure the freedom of expression without interference by public authority, unrestricted except as necessary in a democratic society⁶⁰. When Armenia took the question of the Lachin Corridor to the European Court of Human Rights last month, that Court decided — without a hearing, the matter was decided on the papers — only to indicate that Azerbaijan should take all measures to “ensure *safe passage*”⁶¹.

⁵⁵ Ann. 20, Permanent Mission of the Russian Federation to the United Nations, *Statement by Deputy Permanent Representative Anna Evstigneeva on UNSC briefing on threats to international peace and security*, 20 Dec. 2022.

⁵⁶ Ministry of Foreign Affairs of the Republic of Azerbaijan, *Trilateral Statement of the leaders of Azerbaijan, Russian Federation and Armenia of November 10, 2020*, available at <https://mfa.gov.az/en/category/end-of-the-conflict-in-november-2020-and-post-conflict-situation/trilateral-statement-of-the-leaders-of-azerbaijan-russian-federation-and-armenia-of-november-10-2020>.

⁵⁷ Prime Minister of the Republic of Armenia, *Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation*, 10 Nov. 2020, available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>.

⁵⁸ Ann. 1, Annex to the Letter dated 10 Nov. 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, UN doc. S/2020/1104, 11 Nov. 2020.

⁵⁹ Armenia’s Request, para. 7.

⁶⁰ European Convention on Human Rights, Art. 10.

⁶¹ Ann. 45, *Armenia v. Azerbaijan*, European Court of Human Rights (ECtHR), App. No. 15389/22, Decision on Interim Measure, 21 Dec. 2022.

22. The European Court accurately reflected paragraph 6 of the Trilateral Statement and its reference, in the European Court's translation, to the guarantee of "the *security* of persons, vehicles and cargo" moving along the Lachin Corridor.

23. Just consider that phrase — the "security", the "safety" of persons, vehicles and goods moving along the Lachin Corridor — in the context of the Trilateral Statement and in the light of its object and purpose. As you can see on the slide, the Trilateral Statement explicitly provided that the Lachin Corridor "shall remain under the control of the Russian Federation's peacekeeping contingent"⁶².

24. Can Azerbaijan be understood to have guaranteed exactly what the Russian peacekeeping contingent — which of course remains under Russian military command — will do, hour by hour and day by day? Plainly not: Azerbaijan cannot, and cannot have been expected to, guarantee something over which it has no control. It would be absurd to expect that.

25. The only plausible meaning is that Azerbaijan will absolutely not do anything itself to endanger the safety of traffic moving along the Lachin road and that it will take reasonable steps within its powers to stop others endangering the safety of traffic there.

26. Azerbaijan has done nothing to endanger traffic. Nor have the protesters. All goods have passed along the Lachin road safely. There is nothing more that Azerbaijan *can* do to control and secure traffic along the Lachin road. The Russian peacekeeping force is not only *present* in the corridor: it *controls* the corridor.

27. Of course, Azerbaijan can speak to those who command the Russian peacekeeping force: and it has done so, and it will continue to do so. But so can Armenia.

28. Armenia is as much a party to the Trilateral Statement as Azerbaijan. If it has genuine concerns about the situation on the ground, it can raise them with those whom it agreed should control the situation on the ground and who are in fact controlling the situation on the ground.

29. Instead, Armenia fails to attend meetings and pursues this request against the very State that it specifically wanted *not* to control the situation on the ground and that does not and, under the Trilateral Statement, *cannot* control the situation on the ground.

⁶² Ann. 1, Annex to the Letter dated 10 Nov. 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, UN doc. S/2020/1104, 11 Nov. 2020, para. 6.

30. The truth is that there is simply no factual basis for Armenia's suggestion that Azerbaijan is failing in its duties in relation to traffic along the Lachin road.

31. That is my first point.

32. There are two other short points in my submission, both of which are legal rather than factual.

D. Azerbaijan's commitments before the Court

33. The first of the two is that the Court has no occasion to make the order that Armenia requests.

34. Statements made by an authorized agent of a State before the Court are binding on the State⁶³. The commitments made by Azerbaijan, through its Agent, to the Court have already resulted in a legal obligation, created within the context of these proceedings, binding Azerbaijan to observe commitments that are at issue in Armenia's Request.

35. To recall those commitments: the Agent said, "Azerbaijan has and undertakes to continue to take all steps within its power to guarantee the safety of movement of persons, vehicles and cargo along the Lachin Road" and that it is ready "to provide every assistance to the local residents either directly or through the ICRC". The Agent also confirmed that, of course, Azerbaijan will do its best to prevent the cutting-off of gas and electricity supplies to those in Nagorno-Karabakh, just as it does for consumers in all other parts of its territory.

36. The Court may wish to record those commitments, but the commitments have removed the necessity for the making of an order repeating their terms.

E. Against whom should an order be made?

37. The third task in my submission is to draw the Court's attention to a legal issue that the Court might yet have to address, which has implications for any order it might be minded to make.

⁶³ *Certain German Interests in Polish Upper Silesia, Merits, Judgment No. 7, 1926, P.C.I.J., Series A, No. 7*, p. 13. See also *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 151, para. 71; *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Order of 23 January 2007, I.C.J. Reports 2007 (I)*, p. 11, paras. 31-33; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 248, para. 61; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I)*, p. 24, paras. 73-74; *Jadhav (India v. Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 244, para. 54.

38. At this stage the Court need only satisfy itself that it has, *prima facie*, jurisdiction⁶⁴; that the measures requested are plausible⁶⁵ and linked to the rights to be protected in the case⁶⁶; that the measures are necessary⁶⁷ to prevent the aggravation or extension of the dispute⁶⁸ or to avoid irreparable prejudice to rights which are the subject of dispute; and that the need for the measures is urgent⁶⁹.

39. But there is a significant legal complication arising from the fact that by virtue of the Trilateral Statement signed by Armenia, Azerbaijan and Russia, the Lachin Corridor was, and continues to be, under the *de facto* and *de jure* control of the Russian peacekeeping force.

40. This is not a situation of the kind envisaged by Article 6 of the ILC Articles on State Responsibility, where an organ of one State (Russia) has been placed at the disposal of another State (Azerbaijan) to exercise elements of the governmental authority of the latter State. As the ILC made clear in paragraph 2 of its Commentary on Article 6, to fall within that provision the organ must act in conjunction with the machinery of the other State and under its exclusive direction and control, rather than on instructions from the sending State⁷⁰.

41. The Russian peacekeeping force is not under the exclusive direction and control of Azerbaijan. In fact, it is not under Azerbaijan's direction or control in any way whatsoever. It is an independent force, operating under the direction of the Russian government.

42. Singling out Azerbaijan — the party to the Trilateral Statement whose control over the Lachin Corridor was deliberately and specifically *displaced* by the Statement for the purposes of the ceasefire agreement — makes no sense; and it disrupts the careful balance struck in that agreement and would risk aggravating an already tense situation.

⁶⁴ *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal), Provisional Measures, Order of 2 March 1990, I.C.J. Reports 1990*, pp. 68-69, para. 20.

⁶⁵ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I)*.

⁶⁶ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022*, para. 51.

⁶⁷ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022*, para. 78.

⁶⁸ *Ibid.*, paras. 65, 82.

⁶⁹ *Ibid.*, para. 66.

⁷⁰ ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), p. 44, para. 2, available at https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

43. It is clear that the request from Armenia is both hasty and misjudged. The Lachin Corridor remains open, and an Order against Azerbaijan is neither necessary nor properly framed as a matter of law.

44. Before I close, please allow me to make one more general point. The submissions this morning combined some fine rhetoric with an almost complete lack of supporting evidence. There is not time to rebut all the points — the alleged threat to down aircraft; the assumption that anyone wearing a military-style jacket must be an agent of the State; and so on. So let me go to the point at the heart of Armenia's request. Professor d'Argent said that Armenia does not ask that Azerbaijan disperse the protesters but only that it cease supporting them. He recognized that Azerbaijan does not control the Lachin road and said that all that Armenia asks is that Azerbaijan ceases orchestration of the protest and stops its logistical and financial support for it. But where is the evidence of that orchestration, or of financial or logistical support? If the Court were to base an Order on those assertions, what would it point to as proof of those assertions?

45. Armenia has had four weeks since it filed its Request to gather video footage and photographic evidence of the alleged blockade in operation. Where is it? Where is that evidence? It has had 50 days to gather evidence of Azerbaijan's alleged orchestration. Where is it? Armenia's main request rests on a bare factual assertion, which Azerbaijan flatly rejects; and Armenia has produced no evidence to substantiate that assertion.

46. Madam President, that concludes my part of the submissions on behalf of Azerbaijan in this case. I thank the Court for its attention and ask that you would now invite Lord Goldsmith to the lectern.

The PRESIDENT: I thank Mr. Lowe. I now invite Lord Goldsmith to address the Court. You have the floor.

Lord GOLDSMITH:

III. THE SITUATION DOES NOT NECESSITATE THE COURT'S INTERVENTION

1. Madam President, honourable Members of the Court, it is my honour to continue the submissions on behalf of the Republic of Azerbaijan and do so before you.

2. The Agent has already outlined for the Court what the situation actually looks like on the road, and I will further build on that. I am going to address two points. First, I will show that the environmental protests are not acts of racial discrimination, which is a threshold matter — meaning that, absent a plausible case of racial discrimination, the Court cannot issue provisional measures. Secondly, I will address urgency and necessity. I will show that Armenia has sought to create a narrative of urgency, because it suits its interests. But the heightened rhetoric does not reflect reality. In fact, Armenia’s conduct during the period of the protests is the best evidence of that: it goes beyond mere complacency, it is an outright refusal to engage. In these circumstances, it is not proper for Armenia to demand that the Court urgently intervene.

A. The protests are not acts of racial discrimination

3. I first turn to the threshold issue: is there a plausible case of racial discrimination, such that the CERD may be implicated? The answer is: no, there is not.

4. The acts we are talking about are Azerbaijanis exercising their right to peaceful protest and assembly. Unless the protests can be characterized as racial discrimination under Article 1 of the Convention, amounting to a distinction based on ethnic or national origin that at the same time has the purpose or effect of impairing protected rights, Armenia has no case for provisional measures. As you have already heard, the protesters are overwhelmingly representatives of civil society organizations in Azerbaijan⁷¹, a fact that is also accepted by Armenia⁷². In fact, no fewer than 102 NGOs have participated in the protests⁷³. The slide on the screen now shows what it looks like day-by-day at the protest site⁷⁴. These are generally young people, holding signs such as “stop ecocide”, “stop illegal mining”, and expressing their real concern about the ecological damage caused by the continued illegal plundering of their country’s natural resources.

5. This is the reason they are here. During the decades-long occupation of Azerbaijan’s territory, Armenia illegally mined and exported Azerbaijan’s natural resources, including gold,

⁷¹ Judges’ folder, tab 8, Ann. 13, Compilation of recent statements by Azerbaijani non-governmental organizations (certified translation); judges’ folder, tab 7, Ann. 12, Compilation of photographs from the Lachin road protest.

⁷² Armenia’s Ann. 5, para. 20.

⁷³ Ann. 11, “Statement by participants of protest action held on Shusha-Khankandi road”, *Azerbaijan State News Agency* (21 Dec. 2022), https://azertag.az/en/xeber/Statement_by_participants_of_protest_action_held_on_Shusha_Khankandi_road-2418614.

⁷⁴ Judges’ folder, tab 7, Ann. 12, Compilation of photographs from the Lachin road protest.

copper and other valuable minerals⁷⁵. On this slide, you can see the impact of mining at the Damirli mine, which the Armenian company Base Metals started to develop in 2012. On the left is the landscape as it looked before the mining started. By 2021, you can see, on the right, there is an open-pit mine on the western side of the satellite image, and a large tailings dam and sediment ponds in the east. There is substantial deforestation, and no apparent revegetation to minimize the environmental impacts of the mine. Armenia continued these illegal practices after the signing of the Trilateral Statement in November 2020⁷⁶, although opportunely, two days after Armenia filed its provisional measures Request, it announced that it would “apply to international organizations to conduct an international environmental review” of Base Metals’ operations⁷⁷. Though, contrary to Armenia’s assertion this morning, there was no offer of access for Azerbaijan.

6. As the Agent explained earlier, the companies that Armenia brought in to operate the mines were notorious for their lack of environmental standards. A group of experts from the United Nations Environment Programme — or UNEP — conducted a field visit to the formerly occupied territories in 2022, and observed that “mining development has had one of the largest physical footprints on the region’s environment”⁷⁸. You can see some of UNEP’s key findings on the slide, and you have an excerpt is in your folder at tab 4. UNEP found that “mining and quarrying operations [had been] generally conducted with inadequate environmental oversight and supervision”, leading to deforestation and water and soil pollution among others⁷⁹. The companies used instream quarrying, which UNEP described as “one of the most aggressive and destructive forms of quarrying⁸⁰”. This morning, Armenia called these serious concerns “wholly fictitious”⁸¹ and “an environmental fairy

⁷⁵ Ann. 4, Extract from Ministry of Foreign Affairs of the Republic of Azerbaijan & Azercosmos, *Illegal Activities in the Territory of Azerbaijan under Armenia’s Occupation: Evidence from Satellite Imagery* (2019), <https://mfa.gov.az/files/5.1%20EN%20Exploitation%20of%20territories%20and%20resources%20of%20Azerbaijan.pdf>; Ministry of Foreign Affairs of the Republic of Azerbaijan, *Illegal Economic and other Activities in the Occupied Territories of Azerbaijan* (16 Aug. 2016), <https://un.mfa.gov.az/files/file/N1626110.pdf>, p. 82.

⁷⁶ See e.g. “Swiss-Based Mining Company Halts Illegal Operation in Azerbaijan’s Karabakh Region”, *Caspian News* (29 Dec 2022), <https://caspiannews.com/news-detail/swiss-based-mining-company-halts-illegal-operation-in-azerbajjans-karabakh-region-2022-12-29-0/>.

⁷⁷ “Base Metals suspends development of company’s mine in Artsakh”, *Arminfo* (28 Dec. 2022), https://arminfo.info/full_news.php?id=73726&lang=3.

⁷⁸ Judges’ folder, tab 4, Ann. 5, UNEP Report, p. 20.

⁷⁹ Judges’ folder, tab 4, Ann. 5, UNEP Report, p. 21.

⁸⁰ Judges’ folder, tab 4, Ann. 5, UNEP Report, p. 21.

⁸¹ CR 2023/1, p. 24, para. 24 (Martin).

tale”. In fact, local Armenians have themselves in the past protested against the inadequate environmental standards at the Soyudlu mine, which is still under Armenian occupation⁸². The environmental devastation in the liberated territories is so widespread, that Azerbaijan has now launched inter-State proceedings against Armenia under the Convention on the Conservation of European Wildlife and Natural Habitats⁸³. It is therefore not surprising that Azerbaijanis are concerned with the state of the environment in Garabagh, and wish to do something.

7. As the Agent explained earlier, these concerns are not new. They have been consistently raised by Azerbaijan since at least 2003 in various international fora⁸⁴. After November 2020, Azerbaijan continued to press the issue with the Russian peacekeepers, who are temporarily stationed — as the Court knows — in this part of the Garabagh region, asking them to take urgent measures to stop the illegal mining as well as the trafficking of Azerbaijan’s natural resources to Armenia through the Lachin Corridor⁸⁵. Despite this, the issue has not abated.

8. Eventually, on 10 December 2022, a group of Azerbaijani experts arrived to conduct an agreed monitoring visit in the Damirli and Gizilbulag mines in Garabagh⁸⁶. However, they were prevented from accessing the sites by a group of local Armenians, as Russia’s Foreign Minister confirmed, “through no fault of Azerbaijan or the Russian peacekeepers”⁸⁷. Azerbaijan raised the failed inspection with the Russian peacekeepers in a Note Verbale on 11 December, which you can find in your folders at tab 6⁸⁸. The failure of a pre-agreed monitoring visit after more than a year of negotiations understandably caused widespread discontent among Azerbaijanis. Two days later, on

⁸² “GeoProMining Gold’s Toxic Impact on Sotk Village”, *Hetq* (29 Aug. 2020), <https://hetq.am/en/article/120828>.

⁸³ “Azerbaijan sues Armenia for wartime environmental damage”, *The Guardian* (26 Jan. 2023), <https://www.theguardian.com/environment/2023/jan/26/azerbaijan-sues-armenia-for-wartime-environmental-damage-bern-convention-biodiversity-aoc>.

⁸⁴ Letter dated 12 November 2003 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General, UN doc. A/58/594-S/2003/1090 (13 Nov. 2003).

⁸⁵ Judges’ folder, tab 5, Ann. 2, Letter from Azer Aliyev, Head of the Main Investigation Department, to Gennadiy Vladimirovich Anashkin, Commander of the Russian Peacekeeping Contingent, dated 6 November 2021 (certified translation).

⁸⁶ Judges’ folder, tab 6, Ann. 3, Azerbaijan’s Note Verbale to the Russian Federation dated 11 December 2022 (certified translation).

⁸⁷ Annex 9, Letter from Rauf Hajiyev, Deputy Minister of the Ministry of Ecology and Natural Resources, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 23 January 2023, with enclosure; judges’ folder, tab 13, Ann. 30, Ministry of Foreign Affairs of the Russian Federation, *Foreign Minister Sergey Lavrov’s statement and answers to media questions at a joint news conference with Foreign Minister of the Republic of Azerbaijan Jeyhun Bayramov following talks* (23 Dec. 2022), https://mid.ru/en/press_service/minister_speeches/1845369/.

⁸⁸ Judges’ folder, tab 6, Ann. 3, Azerbaijan’s Note Verbale to the Russian Federation dated 11 December 2022 (certified translation).

12 December, a group of Azerbaijani NGOs started a protest at a Russian checkpoint on the Lachin road, close to the city of Shusha. They wanted to voice their concerns — their demands — to the Russian peacekeepers who police the use of the road: an end to illegal exploitation of mines in Garabagh, and access for Azerbaijani experts to monitor active mine sites⁸⁹. I have shown you photographs from the protests earlier, and a compilation is included in your folders at tab 7.

9. Also in your folders, at tab 8, is a compilation of statements, reports and social media posts by the participants in the protests⁹⁰. This is what you would expect to see from people who are concerned about a public issue and wish to have their voices heard. Madam President, honourable Members of the Court, Armenia does not get to decide who has a right to protest, or about what, or who can call themselves an eco-activist, as it tried to do this morning. That is entirely the individual's decision, guaranteed under international law.

10. The question before the Court is this: is there a plausible case that these protests constitute racial discrimination under the CERD? There is not. The protests have neither the purpose nor the effect of impairing protected rights based on ethnic or national origin. As for purpose, as I have just explained, there is ample evidence that these are genuine environmental protests, not unlike many which regularly take place around the world. The protesters' actions are aimed at the companies operating the mines, and at the Russian peacekeepers who, the protesters say, should enforce stricter checks on the Lachin road, so that Azerbaijan's natural resources cannot be shipped off to Armenia⁹¹. The protests do not target the people living in Garabagh and have nothing to do with their ethnicity.

11. Yet, earlier today, Armenia ignored all this evidence and selectively cherry-picked social media posts, which it says show that some individual protesters are connected to extremist groups. I respectfully urge the Court to carefully examine the evidence for Armenia's statements, because very few are supported by any evidence. Armenia, for example, referred to two videos. For one, there is no indication that it relates to the protests. Armenia referred to a social media post by someone

⁸⁹ Judges' folder, tab 8, Ann. 13, Compilation of recent statements by Azerbaijani non-governmental organizations (certified translation); Ann. 49, Twitter, *The Caspian Post* (10 Jan. 2023), <https://twitter.com/thecaspianpost/status/1612920198742564864>.

⁹⁰ Judges' folder, tab 8, Ann. 13, Compilation of recent statements by Azerbaijani non-governmental organizations (certified translation). *See also* Annex 49, Twitter, *The Caspian Post* (10 Jan. 2023), <https://twitter.com/thecaspianpost/status/1612920198742564864>.

⁹¹ Judges' folder, tab 8, Ann. 13, Compilation of recent statements by Azerbaijani non-governmental organizations (certified translation); Ann. 49, Twitter, *The Caspian Post* (10 Jan. 2023), <https://twitter.com/thecaspianpost/status/1612920198742564864>.

allegedly attending the protests, that they say shows hate speech. The post was from August 2022 and not connected to the protests. Armenia also referred to people wearing military uniforms in old photographs, again without any demonstrated connection to the protests. As the Agent explained, in a country with compulsory military service, that means very little. In fact, it is conspicuous that Armenia has not even alleged this morning, let alone presented evidence, for there being *any* form of violence *at the protests* themselves. Even if Armenia were to identify *individual* instances of certain gestures being used by *some* of the protesters in *one* photo, that is a distraction. It is unfortunate but not uncommon that legitimate protests — especially when they bear upon politically charged issues, such as Armenia’s 30-year occupation of Garabagh — also attract individuals with mixed motives. But that is beside the point. Armenia’s request and the relief it seeks from this Court is targeted at the protests as a whole, not the individual one-off acts of a select minority. Unless Armenia can show that these protests, as a whole, are at least plausibly acts of racial discrimination, its case fails at the first hurdle.

12. Neither do the protests have the effect of impairing protected rights. As I will address shortly, the protesters have not imposed any restrictions on civilian traffic along the Lachin road, and there is extensive evidence of that.

13. Before I move on, though, I want to make one final brief remark on the issue of protests. Professor Boisson de Chazournes will address this point in her concluding speech, but at this stage I just want to put down a marker and say that the relief Armenia seeks from the Court should be seen for what it is: a request to order Azerbaijan to disperse and ban a peaceful protest, which amounts to asking the Court to interfere with the fundamental right of Azerbaijani people to assemble and protest, a right guaranteed under international law and recognized in the CERD⁹².

B. There is no urgency necessitating the Court’s intervention

14. I will now move to my second point: that there is no urgency necessitating the Court’s intervention. I will address it from two angles: first, what do we know about the impact of the protests; and second, what can be done — principally by Armenia — to resolve any issues without the necessity to involve the Court in this already crowded space that is the Lachin road.

⁹² See e.g. European Convention on Human Rights, Article 11; International Covenant on Civil and Political Rights, Articles 19-22.

15. When Armenia filed its Request for provisional measures on 27 December, its key assertion was that there is a “blockade” of the Lachin road, and I quote from the Request, “preventing anyone and anything from entering or exiting”⁹³. We know that statement is verifiably wrong. In your folders at tab 9, you have a collection of photographs⁹⁴, which you can look at now, that show traffic passing next to the protest site. Azerbaijan has also provided you with a selection of videos from various days of the protests, showing passing traffic⁹⁵, which are listed in your folders at tab 10. We will now play one such video from 12 January. You can see a long line of supply trucks coming from the direction of Khankandi. The protesters are on the side of the road, allowing the trucks to pass by with ease. You can also see the Russian peacekeepers in the background, guarding this particular road checkpoint. And this is happening every day, several times a day⁹⁶. In addition to the videos listed at tab 10, other similar examples are referenced in Azerbaijan’s earlier correspondence to the Court, which is at Annexes 37 to 39.

16. This morning, Armenia’s counsel quoted George Orwell, imploring you not to reject the evidence of your eyes and ears. Azerbaijan cannot agree more that it is the actual evidence, rather than Armenia’s rhetoric, that the Court needs to look at. And videos and photographs from the protest site show undeniably that Armenia’s claims that the road is blocked are not true. Can we just look now at what is actually happening on the ground? First, Armenia claimed in its Request that medical transfers have been rendered impossible. That was the substance of its initial request. That is wrong. As of yesterday, Armenian media have confirmed that at least 55 patients have been transported from Garabagh to Armenia since the start of the protests⁹⁷. The ICRC, which has operated in Garabagh since early 1990s, has itself confirmed publicly on 18 January 2023 that it had transported *dozens of*

⁹³ Armenia’s Request, para. 2.

⁹⁴ Judges’ folder, tab 9, Ann. 17, Compilation of photographs showing traffic passing the protest site.

⁹⁵ Judges’ folder, tab 10, Ann. 16, Compilation of videos showing traffic passing the protest site.

⁹⁶ *Ibid.*; judges’ folder, tab 16, Ann. 39, Letter dated 12 January 2023 from Mr. Elnur Mammadov, Deputy Minister of Foreign Affairs, Agent of the Republic of Azerbaijan, to Mr. Philippe Gautier, Registrar of the International Court of Justice.

⁹⁷ “ICRC facilitates transfer of six patients from blockaded Nagorno Karabakh to Armenia for treatment”, *Armenpress* (29 Jan. 2023), <https://armenpress.am/eng/news/1102820.html>.

patients along the Lachin road since 19 December⁹⁸. Indeed, there are countless videos from the protest site showing ICRC vehicles and Armenian ambulances passing freely through that area⁹⁹. As the Agent told you earlier, just today, the ICRC facilitated a transfer of 19 people from Garabagh to Armenia just this present day¹⁰⁰. Contrary to Armenia's unsubstantiated assertion this morning, the ICRC does not engage in any negotiations with the protesters. The protesters simply stand to the side and the vehicles pass, as is clear from the video evidence at Annex 14.

17. In summary, there is no indication in the evidence presented by Armenia, or otherwise available, that people requiring transfer to Armenia for medical treatment are *at risk as a result of the protests*. The repeated reference this morning to an unfortunate passing of an elderly local resident is not evidence that the person died as a result of the protests. In fact, ICRC medical transfers and Armenian ambulances were by that point coming through the protest site, and our Agent confirmed that Azerbaijan has granted all ICRC requests for access.

18. The second issue is access to food, medicine and other essential supplies for those living in Garabagh. The Russian peacekeepers are temporarily stationed in this region, so Azerbaijan does not have first-hand information about the situation on the ground. However, this is what is known:

(a) First, as we have seen in the video and can be confirmed from daily footage from the protest site,

ICRC vehicles and all vehicles belonging to the Russian peacekeeping forces are passing freely on the Lachin road next to the protest site¹⁰¹.

(b) Secondly, it is common ground that food, medicine and other essential supplies are being

delivered on those vehicles. For instance, Armenian media reported on 25 December that the

ICRC delivered on that day food supplies and medicine to Garabagh¹⁰². The Russian Foreign

⁹⁸ Annex 28, Twitter, International Committee of the Red Cross (19 Dec. 2022), https://twitter.com/icrc/status/1604858961437642759?s=61&t=KLopT6-KSK_A9e--rO-APQ; Ann. 18, "ICRC discloses the number of operations conducted on Lachin-Khankandi road-EXCLUSIVE", APA (18 Jan. 2023), <https://apa.az/en/foreign-policy/icrc-discloses-the-number-of-operations-conducted-on-lachin-khankandi-road-exclusive-394021>.

⁹⁹ See e.g. judges' folder, tab 10, Ann. 16, Compilation of videos showing traffic passing the protest site, Videos 11 and 12; "14 vehicles passed freely through Azerbaijan's Lachin-Khankendi road today", APA (29 Jan. 2023), <https://apa.az/en/domestic-policy/14-vehicles-passed-freely-through-azerbaijaacs-lachin-khankendi-road-today-photo-video-394952/>.

¹⁰⁰ "19 people from Karabakh are transferred to Armenia today under Red Cross escorting", News.am (30 Jan. 2023), <https://news.am/eng/news/741960.html>.

¹⁰¹ Judges' folder, tab 10, Ann. 16, Compilation of videos showing traffic passing the protest site, Videos 1-13; "31 vehicles of Russian peacekeepers move freely on Khankandi-Lachin road", *Report AZ*, 29 Jan. 2023, available at <https://report.az/en/karabakh/5-vehicles-of-russian-peacekeepers-move-freely-on-khankandi-lachin-road/>.

¹⁰² Armenia's Ann. 66.

Ministry confirmed on 12 January 2023 that “humanitarian convoys are using the corridor”¹⁰³, and the Russian peacekeepers’ daily briefings also confirm the delivery of humanitarian supplies on a regular basis¹⁰⁴. ICRC have also confirmed that they had delivered medicine, baby formula and food supplies to Garabagh¹⁰⁵.

19. That is what is known about the situation in Garabagh. But the key point is, if Armenia is saying “there are shortages of certain foods”, or other basic supplies, in Garabagh — as it did this morning — then those can be imported in the same way as they were before the protests started. There is no evidence before the Court that there are any impediments on the Lachin road to such traffic. The protesters have been very clear that they are not there to obstruct traffic. On 21 December 2022, they issued a statement in response to what they saw as an inaccurate portrayal of the situation in the Security Council debate the day before, and reaffirmed that humanitarian cargo, passenger vehicles, ambulances and other humanitarian vehicles can move freely along the road¹⁰⁶.

20. To summarize this second point, again, there is no indication in the evidence presented by Armenia, or otherwise available, that food, medicine and other basic supplies are not able to reach Garabagh *as a result of the protests*, still less as a result of any action of Azerbaijan. Azerbaijan does not know why Armenia has stopped supplying the 400 tonnes of essential goods that it says it normally imports into Garabagh daily¹⁰⁷, but it is clear they are *not* being stopped by the protesters on the Lachin road, or by Azerbaijan. For Armenia to say that it would actually have to have showed that it had tried but was stopped from importing such product. And there is no evidence of that. Instead, Armenia is flatly refusing to engage, and I will return to that, and what it means for their

¹⁰³ Ann. 31, Extract from Ministry of Foreign Affairs of the Russian Federation, Briefing by Foreign Ministry Spokeswoman Maria Zakharova, 12 Jan. 2023, available at https://mid.ru/en/foreign_policy/news/1847092/.

¹⁰⁴ Ann. 27, Compilation of news bulletins of the Ministry of Defense of the Russian Federation on the operations of the Russian peacekeeping forces (certified translation), pp. 6, 8, 10. See also Ann. 29, Transcript of the Security Council 9228th Meeting on 20 Dec. 2022, Letter from the Permanent Representative of Armenia to the United Nations Addressed to the President of the Security Council, Extract from the Statement by the United Nations Assistant Secretary-General for Europe, Central Asia and the Americas, available at <https://media.un.org/en/asset/k1o/k1o8d80kaj>, at 08:00-08:15.

¹⁰⁵ Ann. 18, “ICRC discloses the number of operations conducted on Lachin-Khankandi road-EXCLUSIVE”, *APA*, 18 Jan. 2023, available at <https://apa.az/en/foreign-policy/icrc-discloses-the-number-of-operations-conducted-on-lachin-khankandi-road-exclusive-394021>.

¹⁰⁶ Ann. 11, “Statement by participants of protest action held on Shusha-Khankandi road”, *Azerbaijan State News Agency*, 21 Dec. 2022, available at https://azertag.az/en/xeber/Statement_by_participants_of_protest_action_held_on_Shusha_Khankandi_road-2418614.

¹⁰⁷ Armenia’s Request, para. 3; Armenia’s Ann. 5.

Request, shortly. In summary, at this point there is no evidence of urgency *attributable to the activities of the protesters* on the Lachin road.

21. And the same actually applies to other civilian traffic. Armenia has alleged that some Armenians living in Azerbaijan's Garabagh region, including children, have not been able to travel and that families remain separated¹⁰⁸. Well, if that is correct, and Azerbaijan has no means of verifying those claims, Azerbaijan does not know why that is the case. It is not aware of any transfers being organized but stopped; and it has not received any communications from Armenia on this issue. To the contrary, as explained by the Agent and confirmed by Armenia earlier today, there is video evidence of dozens of local residents having passed by the protest site since the start of the protests¹⁰⁹. All Armenia is offering as evidence of there being an immediate risk of irreparable harm is rhetoric, and that is easily refuted by evidence from the ground. It is certainly no basis for the Court to order provisional measures against Azerbaijan.

22. Today, Armenia has presented to you a number of statements by international organizations which use the language of an impending humanitarian crisis. No doubt some of these statements reflect genuine concern about a situation that their authors have been told is critical. Some are mere political proclamations. However, none of these organizations have been on the ground, at the protest site, or in Garabagh, to see what the protesters are and are not doing, and they have not seen the evidence presented to the Court. In fact, we know that the statements were generally adopted without their authors having heard from Azerbaijan at all. During the United Nations Security Council debate on 20 December, the United Nations Assistant Secretary-General for Europe, Central Asia and the Americas confirmed that the Parties had presented very different versions of events, and that the United Nations, which does not have presence on the ground, "is not in a position to verify or confirm" the situation¹¹⁰. In fact, I respectfully submit that what came across strongly this

¹⁰⁸ Armenia's Request, para. 3.

¹⁰⁹ "An Armenian resident of Karabakh, who asked for help, was provided with food and cigarettes, sent from Shusha to Khankendi", *APA*, 8 Jan. 2023, available at <https://apa.az/en/domestic-policy/an-armenian-resident-of-karabakh-who-asked-for-help-was-provided-with-food-and-cigarettes-sent-from-shusha-to-khankendi-video-393282>; "Vehicles carrying 26 Armenians passed through protest area along Lachin-Khankandi road without hindrance", *Azerbaijan State News Agency*, 18 Jan. 2023, https://azertag.az/en/xeber/26_Armenian_citizens_passed_through_protest_area_along_Lachin_Khankandi_road_without_hindrance-2449373.

¹¹⁰ Ann. 29, Transcript of the Security Council 9228th Meeting on 20 December 2022, Letter from the Permanent Representative of Armenia to the United Nations Addressed to the President of the Security Council, Extract from the Statement by the United Nations Assistant Secretary-General for Europe, Central Asia and the Americas, available at <https://media.un.org/en/asset/k1o/k1o8d80kaj>, at 07:00-07:15.

morning from Armenia's presentation is the absence of actual evidence for the allegations being made, as opposed to assertion upon assertion, often emotionally expressed. But if the Court examines the actual evidence, you find the absence of key elements, the cherry-picking and selective quoting of statements, or no evidence at all. Let me just give some examples. As the Agent already explained, the selective quoting from President Aliyev's statement on 10 January. The random collection of social media posts, which are tied to the protests only by Armenia's rhetoric. Or the extraordinary accusation this morning that Azerbaijan threatened to shoot down any aircraft using the Khankandi airport, which was referred to as Stepanakert. This statement is in fact from June 2011, and it only says that Azerbaijan's air space is closed as a result of what was then an ongoing armed conflict.

23. I am not going to deal at any length with Armenia's late addition, this new request that Azerbaijan be ordered to "immediately fully restore and refrain from disrupting or impeding the provision of natural gas and other public utilities" to Garabagh. Even though Armenia dedicated a substantial portion of its presentation today to this issue, we are yet to see any evidence either that Azerbaijan is deliberately disrupting gas supplies to Garabagh — which, just to be clear, is supplied from Armenia — or that there is an ongoing disruption which would necessitate the Court's intervention. The Agent for Azerbaijan provided an initial response in his speech, and in line with the Court's invitation, we will defer further comment on this until after the conclusion of this oral hearing. But what is noteworthy, is how much Armenia's case has shifted from its initial Request. It started with allegations that medical transfers are impossible and that no food is getting through. Then, when Azerbaijan showed that ICRC vehicles, ambulances and Russian supply trucks were passing next to the protest site, Armenia said it is not enough. And when Armenia was faced with the evidence that *any* vehicle that approached the protest site was able to pass by, it has shifted its focus from the road to the alleged disruption of gas supply and other utilities.

C. What can be done to resolve the situation?

24. Madam President, Members of the Court, I will address one final point, which alone means that there is no urgency necessitating the Court's intervention. Despite the protesters' assurances and evidence that traffic is passing next to the protest site, as the Agent has already confirmed, from the outset Azerbaijan has taken seriously the possible negative impact of the situation on its citizens in

Garabagh. In the context of these proceedings, the key question for the Court is: what can be done about it?

25. There is only one meaningful answer, and that is co-operative action. The Lachin road is a sovereign territory of Azerbaijan, but as agreed in the Trilateral Statement, it is temporarily under the control of the Russian peacekeepers, and it links the Armenians living in Garabagh to Armenia. Armenia says, for instance, that it uses the road to supply a large amount of essential food items to Garabagh on a daily basis¹¹¹. Any issue with traffic along the Lachin Corridor therefore needs to be raised in the first instance with the Russian peacekeepers, and, as the Agent has confirmed, Azerbaijan is ready to and is in fact providing all necessary assistance. Armenia also needs to do its part. This has been Azerbaijan's position throughout the protests, and the international community has also consistently called for dialogue among all stakeholders¹¹². Yet, what has happened?

26. On 23 December 2022, 11 days into the protests, Armenia, Azerbaijan and the Russian Federation were due to hold tripartite talks in Moscow, to progress discussions about a peace treaty but also to address ongoing issues, such as the Lachin road protests¹¹³. Yet at the last moment, without informing Russia, without informing Azerbaijan — who instead found out about it from a press release¹¹⁴ — Armenia decided to pull out of the meeting, citing (at the time) the “humanitarian crisis resulting from the illegal blockade of the Lachin Corridor by Azerbaijan”¹¹⁵. So Armenia was quick to broadcast to the world its claim that there is a humanitarian crisis, but it walked away from negotiations that could address it. That is the opposite of constructive engagement. In fact, the

¹¹¹ Armenia's Request, para. 3.

¹¹² See e.g. United Nations, “Statement attributable to the Spokesperson for the Secretary-General – on the Lachin corridor [Armenia/Azerbaijan]”, 14 Dec. 2022, available at <https://www.un.org/sg/en/content/sg/statement/2022-12-14/statement-attributable-the-spokesperson-for-the-secretary-general-%E2%80%93-the-lachin-corridor-armenia-azerbaijan%C2%A0>; Twitter, *UN Human Rights Commissioner* (27 Dec. 2022), <https://twitter.com/UNHumanRights/status/1607738132069220353>; Organization of Islamic Cooperation, “OIC General Secretariat Condemns the Illegal Exploitation of Natural Resources in the Territory of Azerbaijan”, 11 Jan. 2023, available at https://www.oic-oci.org/topic/?t_id=38196&t_ref=26141&lan=en.

¹¹³ Judges' folder, tab 13, Ann. 30, Ministry of Foreign Affairs of the Russian Federation, *Foreign Minister Sergey Lavrov's statement and answers to media questions at a joint news conference with Foreign Minister of the Republic of Azerbaijan Jeyhun Bayramov following talks* (23 Dec. 2022), https://mid.ru/en/press_service/minister_speeches/1845369/; Ann. 31, Extract from Ministry of Foreign Affairs of the Russian Federation, *Briefing by Foreign Ministry Spokeswoman Maria Zakharova* (12 Jan. 2023), https://mid.ru/en/foreign_policy/news/1847092/.

¹¹⁴ Judges' folder, tab 13, Ann. 30, Ministry of Foreign Affairs of the Russian Federation, *Foreign Minister Sergey Lavrov's statement and answers to media questions at a joint news conference with Foreign Minister of the Republic of Azerbaijan Jeyhun Bayramov following talks* (23 Dec. 2022), https://mid.ru/en/press_service/minister_speeches/1845369/.

¹¹⁵ Ministry of Foreign Affairs of the Republic of Armenia, *The interview of the Foreign Minister of Armenia to RFE/RL* (24 Dec. 2022), https://www.mfa.am/en/interviews-articles-and-comments/2022/12/24/am_int/11802.

speaker of Armenia's National Assembly revealed the real reason behind Armenia's non-attendance in an interview on 17 January: he said that Armenia did not attend the 23 December talks in Moscow because it did not want to be drawn into negotiations over a land corridor which would link mainland Azerbaijan with its exclave Nakhchivan through Armenia's territory¹¹⁶, an issue which is intrinsically linked to the Lachin Corridor. Effectively, Armenia is refusing to sit down to try to resolve what it calls the humanitarian crisis in Garabagh because of its own political interests.

27. In fact, as you can see on the slide, on 10 January 2023, Armenia announced publicly that it would not negotiate with Azerbaijan on the Lachin road issues, which should instead be taken up by the so-called "authorities" in Garabagh¹¹⁷ — here, of course, Armenia is referring to its installed régime, the remnants of which are still stationed in Azerbaijan's territory. Those statements are in your folders at tabs 11 and 12. So why is Armenia asking the Court to urgently intervene, when Armenia itself is not willing to? Where is the necessity of handing this question to the Court? And here I echo my colleague Mr. Lowe's submission to the Court.

28. Despite, though, Armenia's refusal to engage with the situation, Azerbaijan made one more attempt to facilitate the flow of traffic along the Lachin road. In its letter to the Court on 12 January, which you will find in your folders at tab 16, it called upon Armenia to provide information about food, medical and other civilian supplies which it wished to deliver to Garabagh, designate companies which will perform the deliveries, and also share information about any required transfer of persons¹¹⁸. Upon the provision of such information, Azerbaijan was prepared to engage bilaterally with the Russian Federation to encourage them to permit these transfers without any restrictions. But there was no response from Armenia and that, we suggest, speaks for itself. Of course, it has always been open to Armenia to raise any issues directly with the Russian peacekeepers, but to Azerbaijan's knowledge, it has not done so. The Russian Federation has confirmed on several recent occasions

¹¹⁶ Ann. 34, "Simonyan: 'Armenia will not participate in the negotiations regarding the Lachin Corridor'", *Meydan TV* (17 Jan. 2023), <https://www.meydan.tv/en/article/simonyan-armenia-will-not-participate-in-the-negotiations-regarding-the-lachin-corridor/>.

¹¹⁷ Judges' folder, tab 11, Ann. 35, Extract from Prime Minister Nikol Pashinyan's Press Conference, *YouTube*, Government of Armenia (10 Jan. 2023) (certified translation); judges' folder, tab 12, Ann. 33, "Armenia should not engage in negotiations with Azerbaijan on the opening of the Lachin Corridor — Alen Simonyan", *Armenpress* (12 Jan. 2023), <https://www.armenpress.am/eng/news/1101552/>.

¹¹⁸ Judges' folder, tab 16, Ann. 39, Letter dated 12 January 2023 from Mr. Elnur Mammadov, Deputy Minister of Foreign Affairs, Agent of the Republic of Azerbaijan, to Mr. Philippe Gautier, Registrar of the International Court of Justice.

that it is Armenia's refusal to engage, its attempts to politicize the issue, that are preventing progress in the talks¹¹⁹. How then can Armenia stand here today and say that the situation urgently requires the Court to intervene?

29. The difference between Azerbaijan's and Armenia's approaches in the last few weeks has been stark. Armenia is unwilling to lift a finger to help, but it is first off the line to proclaim that there is an impending humanitarian catastrophe caused by Azerbaijan. As the Agent explained, the situation suits Armenia, because it is an opportunity to rally the world behind it, to issue statements which attract public attention and understandably elicit concerns among the international community. As the Agent already stated, it is particularly concerning that Armenia has been accusing Azerbaijan of ethnic cleansing and genocide, without a shred of evidence, just to drum up international support. Earlier this month, Armenia's Foreign Minister said to the OSCE Permanent Council: "We cannot stand by and watch how people are slowly starving to death, because of political games and perhaps geopolitical considerations. The time to act is now."¹²⁰ Yet Armenia is doing the exact opposite. It is refusing to act, and as things stand, it is Armenia who is the obstacle to the resolution of any remaining issues concerning civilian traffic along the Lachin road and the situation of people living in Garabagh.

30. As the Agent for the Republic explained earlier, and you can see that on this slide, Azerbaijan, on the other hand, has been not only willing to engage from the outset, but to back up its statements with real actions. It has been in communication with the ICRC throughout, has met with local residents, offered to address any humanitarian concerns they may have, and continued to engage

¹¹⁹ Judges' folder, tab 14, Ann. 32, Ministry of Foreign Affairs of the Russian Federation, *Answer of the Spokesperson of the Russian Foreign Ministry M.V. Zakharova to the media question about the statements of the Armenian side on the Nagorno-Karabakh settlement* (12 Jan. 2023), https://mid.ru/ru/foreign_policy/news/1846891/ (certified translation); judges' folder, tab 13, Ann. 30, Ministry of Foreign Affairs of the Russian Federation, *Foreign Minister Sergey Lavrov's statement and answers to media questions at a joint news conference with Foreign Minister of the Republic of Azerbaijan Jeyhun Bayramov following talks* (23 Dec. 2022), https://mid.ru/en/press_service/minister_speeches/1845369/.

¹²⁰ *Remarks by Minister of Foreign Affairs of Armenia Ararat Mirzoyan at the Special Meeting of OSCE Permanent Council* (17 Jan. 2023), https://www.mfa.am/en/speeches/2023/01/17/mirzoyan_speech_osce/11822.

with the Russian peacekeepers to facilitate the flow of traffic on the Lachin road¹²¹. And you have the details there on the slide before you.

31. So, Madam President, Members of the Court, the Court needs to ask itself: based on the evidence before it, what and who is the real problem here? The evidence points undeniably towards Armenia.

32. Madam President, Members of the Court, it has been an honour to appear before you. I thank you for your kind attention, and I invite the Court now to call Professor Boisson de Chazournes.

The PRESIDENT: I thank Lord Goldsmith for his statement. I now invite Professor Laurence Boisson de Chazournes to take the floor.

Mme BOISSON DE CHAZOURNES :

IV. LES MESURES NE SONT PAS NÉCESSAIRES ET SONT PRÉJUDICIALES

1. Madame la présidente, Mesdames et Messieurs les juges, c'est pour moi un grand honneur de me présenter une nouvelle fois devant la Cour au nom de la République d'Azerbaïdjan.

2. Il m'incombe cet après-midi d'aborder deux points. Tout d'abord, je traiterai des raisons pour lesquelles la requête de l'Arménie ne répond pas aux exigences requises pour l'indication de mesures conservatoires et doit donc être rejetée. Ensuite, j'aborderai le grave préjudice qui surviendrait si les mesures provisoires demandées par l'Arménie étaient octroyées, tant à l'égard des manifestants qu'à l'égard de pays tiers.

A. L'Arménie ne satisfait pas aux exigences requises pour l'indication des mesures conservatoires

3. Mesdames et Messieurs les juges, la requête de l'Arménie ne s'appuie pas sur une véritable urgence ou sur un risque de préjudice grave, qui justifierait des mesures conservatoires. En réalité, l'Arménie a avancé de fausses informations et a usé d'un langage pour le moins sensationnel et

¹²¹ Judges' folder, tab 15, Ann. 36, Ministry of Foreign Affairs of the Republic of Azerbaijan, *No. 599/22, Press information on the meeting of the Minister of Foreign Affairs Jeyhun Bayramov with the Head of the Representation of the International Committee of the Red Cross (ICRC) in Azerbaijan Dragana Kojic* (22 Dec. 2023), <https://mfa.gov.az/az/news/no59922> (certified translation); judges' folder, tab 17, Ann. 40, Ministry of Foreign Affairs of the Russian Federation, *Minister of Foreign Affairs of the Russian Federation S.V. Lavrov's speech and answers to the questions of media during the press-conference on the results of the Russian diplomatic activity in 2022 year* (18 Jan. 2023) (certified translation).

incendiaire en relation avec la notion de nettoyage ethnique comme prétexte pour se présenter devant la Cour. Comme l'a démontré l'Azerbaïdjan cet après-midi, l'objectif de cette requête est de servir l'agenda politique de l'Arménie, tant sur le plan national que sur le plan international. Toutefois, ces manœuvres politiques abusives ne sauraient occulter le fait que la demande de l'Arménie ne répond pas aux critères pour l'indication de mesures conservatoires tels qu'établis par la jurisprudence de la Cour.

4. Tout d'abord, l'Arménie n'a invoqué aucun droit plausible en vertu de la convention internationale sur l'élimination de toutes les formes de discrimination raciale, aussi dénommée CERD. Comme l'a expliqué Lord Goldsmith, il s'agit là d'une condition fondamentale. En l'absence d'un cas plausible de discrimination raciale, la Cour ne peut pas ordonner de mesures conservatoires. En l'espèce, une manifestation en faveur de la défense de l'environnement qui se déroule de manière pacifique ne peut pas être qualifiée de «discrimination raciale», sans aucune preuve crédible de restriction, voire d'un semblant de «blocus» le long de la route de Lachin, qui serait attribuable à l'Azerbaïdjan.

5. Il est vrai qu'à ce stade la Cour n'est pas tenue de statuer de manière définitive sur le bien-fondé de la requête arménienne en vertu de la CERD. Toutefois, cela ne dispense pas l'Arménie de devoir présenter un cas crédible *prima facie* de discrimination raciale. Comme Lord Goldsmith l'a démontré, l'Arménie n'a fourni à ce stade aucune preuve crédible de discrimination raciale, que ce soit en relation avec l'obstruction présumée de la route de Lachin ou en relation avec les récentes allégations de l'Arménie concernant l'approvisionnement en gaz et autres services publics.

6. Deuxièmement, il est évident qu'il n'existe aucun «lien» entre les mesures sollicitées par l'Arménie et les droits qu'elle cherche prétendument à protéger¹²². Selon la jurisprudence de la Cour, les mesures demandées doivent spécifiquement viser la préservation des droits réclamés dans l'instance devant votre juridiction¹²³. En d'autres termes, la Cour doit être convaincue que les

¹²² *Violations alléguées du traité d'amitié, de commerce et de droits consulaires de 1955 (République islamique d'Iran c. Etats-Unis d'Amérique), mesures conservatoires, ordonnance du 3 octobre 2018, C.I.J. Recueil 2018 (II), p. 639, par. 54.*

¹²³ *Immunités et procédures pénales (Guinée équatoriale c. France), mesures conservatoires, ordonnance du 7 décembre 2016, C.I.J. Recueil 2016 (II), p. 1167, par. 81 ; Violations alléguées du traité d'amitié, de commerce et de droits consulaires de 1955 (République islamique d'Iran c. Etats-Unis d'Amérique), mesures conservatoires, ordonnance du 3 octobre 2018, C.I.J. Recueil 2018 (II), p. 645, par. 75.*

mesures demandées sont adaptées à la protection des droits en cause. Or, en l'espèce, les deux mesures conservatoires sollicitées par l'Arménie ne satisfont pas à cette exigence.

7. La première mesure de l'Arménie, selon laquelle l'Azerbaïdjan devra «cease its orchestration and support of the alleged «protests» blocking uninterrupted free movement»¹²⁴, est sans fondement. Comme le démontrent les preuves photographiques et vidéo soumises à la Cour, la manifestation pacifique qui se déroule sur le bord de la route, dont le but est de dénoncer à la fois l'exploitation illégale par l'Arménie de sites miniers et la dégradation de l'environnement causée en Azerbaïdjan, ne bloque *pas* la route¹²⁵. De ce fait, cette mesure sollicitée à l'encontre de l'Azerbaïdjan sera sans effet, dans la mesure où ni l'Azerbaïdjan ni les manifestants azerbaïdjanais ne bloquent actuellement la circulation.

8. De même, la deuxième mesure de l'Arménie, à savoir que l'Azerbaïdjan devra «ensure uninterrupted free movement of all persons, vehicles, and cargo along the Lachin Corridor in both directions»¹²⁶, n'a pas lieu d'être, dans la mesure où elle ne s'adresse pas à la bonne partie. Comme l'a expliqué l'agent de la République d'Azerbaïdjan, le corridor de Lachin est sous le contrôle des forces russes de maintien de la paix. A cet égard, l'Azerbaïdjan n'a pris aucune mesure qui puisse mettre en danger la circulation : au contraire, l'Azerbaïdjan a fait tout son possible pour s'assurer que la circulation dans le corridor de Lachin demeure sûre et sécurisée, tout en maintenant le contact avec les commandants des autorités russes déployés sur le terrain. A ce stade, il n'y a rien de plus que l'Azerbaïdjan puisse raisonnablement faire pour contrôler et sécuriser la circulation dans le corridor de Lachin. L'Azerbaïdjan ne contrôle pas à l'heure actuelle le corridor de Lachin¹²⁷.

9. Madame la présidente, l'on peut se demander en quoi les mesures conservatoires demandées «visent» la protection des droits invoqués des Arméniens alors qu'il n'y a aucune restriction à l'exercice de ces droits. Il ne suffit pas d'avancer qu'il existe un droit. L'Arménie doit également démontrer qu'il existe un cas de discrimination raciale, *prima facie*, en vertu de la CERD. Dans la

¹²⁴ *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Arménie c. Azerbaïdjan)*, demande en indication de mesures conservatoires (ci-après la «requête arménienne»), 27 décembre 2022, par. 7 et 35.¹²⁵ Déclaration orale du représentant de l'Azerbaïdjan, par. 15.

¹²⁵ Déclaration orale du représentant de l'Azerbaïdjan, par. 15.

¹²⁶ Requête arménienne, par. 7 et 35.

¹²⁷ Déclaration orale du représentant de l'Azerbaïdjan, par. 3, 16 et 19.¹²⁸ *Mandat d'arrêt du 11 avril 2000 (République démocratique du Congo c. Belgique), mesures conservatoires, ordonnance du 8 décembre 2000, C.I.J. Recueil 2000, p. 196-197, par. 54-55.*

mesure où la requête de l'Arménie n'a pas d'effet matériel sur l'exercice des droits des Arméniens, les mesures demandées visent simplement à répondre à une crainte illusoire que les droits en vertu de la CEDR sont susceptibles d'être compromis. L'indication de telles mesures serait futile et conduirait la Cour à adopter une ordonnance qui n'a pas d'objet réel ou d'effet pratique. Sur ce point, la jurisprudence de votre Cour est claire : la Cour n'indique pas de mesures conservatoires si celles-ci sont «sans objet»¹²⁸. Par conséquent, les mesures conservatoires sollicitées sont manifestement inappropriées en l'espèce.

10. Enfin, l'Arménie n'a pas non plus satisfait à l'exigence essentielle d'urgence. Je n'ai pas l'intention de répéter les arguments avancés par Lord Goldsmith. Cependant, je ferai quelques observations supplémentaires.

11. Il est difficile de comprendre comment l'Arménie peut affirmer que sa demande actuelle est urgente alors que des mesures similaires ont d'ores et déjà été adoptées par la Cour européenne des droits de l'homme en décembre dernier, et ce dans un contexte similaire à celui qui nous réunit aujourd'hui. L'agent de la République d'Azerbaïdjan, M. Elnur Mammadov, vient de réitérer les engagements de son Etat à leur égard. Par ailleurs, les preuves qui émanent du terrain témoignent de l'absence d'urgence : le Comité international de la Croix-Rouge a confirmé son assistance en matière de transferts médicaux et de fournitures humanitaires (ce qui a également été reconnu par les médias arméniens)¹²⁹ ; les forces russes de maintien de la paix ont confirmé que les convois humanitaires utilisaient la route¹³⁰ ; et des dizaines de résidents locaux ont pu retourner à Garabagh depuis

¹²⁸ *Mandat d'arrêt du 11 avril 2000 (République démocratique du Congo c. Belgique), mesures conservatoires, ordonnance du 8 décembre 2000, C.I.J. Recueil 2000, p. 196-197, par. 54-55.*

¹²⁹ "ICRC discloses the number of operations conducted on Lachin-Khankandi road-EXCLUSIVE", APA (18 janvier 2023), accessible à l'adresse suivante : <https://apa.az/en/foreign-policy/icrc-discloses-the-number-of-operations-conducted-on-lachin-khankandi-road-exclusive-394021> (annexe 18) ; "ICRC helps transfer six more patients from Artsakh to Armenia", *Panorama* (21 janvier 2023), accessible à l'adresse suivante : <https://www.panorama.am/en/news/2023/01/21/ICRC-Artsakh-patients/2784310> (annexe 19).

¹³⁰ Compilation des bulletins d'information du ministère de la défense de la Fédération de Russie concernant les opérations des forces russes de maintien de la paix (annexe 27).

l'Arménie¹³¹. Il existe de nombreux enregistrements vidéo, ainsi que d'autres preuves, qui montrent que la traversée du corridor de Lachin peut se faire à l'endroit où se déroule la manifestation¹³². Aucun cas de blocage de la circulation n'a eu lieu. Dans ce contexte, le critère d'urgence n'est pas rempli.

12. Mesdames et Messieurs les juges, pour voir sa requête aboutir, l'Arménie se devait de fournir des preuves crédibles démontrant chacun des éléments suivants : i) que l'Azerbaïdjan a orchestré et est responsable de la manifestation pour l'environnement en cours le long de la route de Lachin ; ii) que la manifestation bloque véritablement la route ou obstrue gravement le flux de circulation le long de celle-ci ; iii) que, dans la mesure où la circulation est obstruée, l'intention ou l'effet était la discrimination raciale ; iv) que les conséquences des restrictions étaient telles qu'il existe désormais un risque réel de préjudice irréparable ; et enfin v) que les mesures demandées visent à remédier à la situation du corridor de Lachin, et sont susceptibles d'atteindre cet objectif. Pour les diverses raisons que la Cour a entendues aujourd'hui, la requête de l'Arménie ne satisfait aucun de ces critères. De ce fait, Madame la présidente, la requête de l'Arménie doit être rejetée.

B. Les mesures provisoires demandées causeraient un important préjudice

13. J'en arrive maintenant à la deuxième partie de ma plaidoirie, portant sur le préjudice irréparable qui serait causé si les mesures demandées étaient indiquées. L'article 41 du Statut de la Cour spécifie que votre juridiction a «le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire»¹³³. Dans l'octroi de mesures conservatoires, la Cour doit tenir compte des droits de la partie adverse,

¹³¹ "An Armenian resident of Karabakh, who asked for help, was provided with food and cigarettes, sent from Shusha to Khankendi", *APA* (8 janvier 2023), accessible à l'adresse suivante : <https://apa.az/en/domestic-policy/an-armenian-resident-of-karabakh-who-asked-for-help-was-provided-with-food-and-cigarettes-sent-from-shusha-to-khankendi-video-393282> ; "Vehicles carrying 26 Armenians passed through protest area along Lachin-Khankandi road without hindrance", Azerbaijan State News Agency (18 janvier 2023), accessible à l'adresse suivante : https://azertag.az/en/xeber/26_Armenian_citizens_passed_through_protest_area_along_Lachin_Khankandi_road_without_hindrance-2449373.¹³² Compilation de vidéos montrant le passage de la circulation devant le lieu de la manifestation (annexe 16), onglet n° 10 du dossier de plaidoiries ; compilation de photos du lieu de la manifestation montrant le passage de la circulation (annexe 17), onglet n° 9 du dossier de plaidoiries.

¹³² Compilation de vidéos montrant le passage de la circulation devant le lieu de la manifestation (annexe 16), onglet n° 10 du dossier de plaidoiries ; compilation de photos du lieu de la manifestation montrant le passage de la circulation (annexe 17), onglet n° 9 du dossier de plaidoiries.

¹³³ Article 41 du Statut de la Cour internationale de Justice.

ainsi que de ceux des Etats tiers¹³⁴. L'une des raisons à cela tient au caractère exceptionnel de sa compétence en matière de mesures conservatoires¹³⁵. Or, en l'espèce, les mesures demandées par l'Arménie ne tiennent pas compte des droits et intérêts d'autrui. Si les mesures que l'Arménie sollicite devaient être accordées, cela causerait un grave préjudice aux droits et obligations des autres parties affectées, un préjudice qui supplanterait largement tout objectif que les mesures prétendent servir.

a) Préjudice substantiel porté aux droits fondamentaux des manifestants

14. Madame la présidente, l'Arménie sollicite de la Cour qu'elle impose à l'Azerbaïdjan d'entraver les droits fondamentaux de ses citoyens à prendre part à une manifestation pacifique. Cela ressort clairement du paragraphe 19 de sa requête, dans lequel l'Arménie se plaint de la non-dispersion des manifestants par l'Azerbaïdjan¹³⁶. Ainsi, il est demandé à la Cour d'ordonner à l'Azerbaïdjan d'utiliser son droit pénal et des mesures répressives qui seraient à sa disposition, à l'encontre d'une manifestation qui répond pourtant aux critères de légalité.

15. Cette demande de l'Arménie n'est ni raisonnable ni proportionnelle. Au contraire, n'en déplaise à l'Arménie, l'Azerbaïdjan a l'obligation en vertu du droit national et international de respecter et de protéger les droits fondamentaux des citoyens à prendre part à une manifestation pacifique.

16. En effet, le droit de manifester est garanti en vertu de nombreux instruments internationaux et régionaux des droits de l'homme, notamment en vertu des droits à la liberté d'expression, à la liberté de pensée et de conscience, et à la liberté de rassemblement¹³⁷. Ces droits fondamentaux ne peuvent pas être abrogés sans justification juridique¹³⁸. Et quand bien même la manifestation aurait

¹³⁴ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Yougoslavie (Serbie-et-Monténégro)), mesures conservatoires, ordonnance du 13 septembre 1993, C.I.J. Recueil 1993, p. 344, par. 40.*¹³⁵ *Plateau continental de la mer Egée (Grèce c. Turquie), mesures conservatoires, ordonnance du 11 septembre 1976, C.I.J. Recueil 1976, p. 11, par. 32.*

¹³⁵ *Plateau continental de la mer Egée (Grèce c. Turquie), mesures conservatoires, ordonnance du 11 septembre 1976, C.I.J. Recueil 1976, p. 11, par. 32.*

¹³⁶ Requête arménienne, par. 19.

¹³⁷ Voir, par exemple, convention européenne des droits de l'homme, art. 11 ; pacte international relatif aux droits civils et politiques, art. 19 à 22.

¹³⁸ Observation générale n° 37 (2020) sur le droit de réunion pacifique, CCPR/C/GC/37, 17 septembre 2020, par. 23 : «Les Etats ... sont tenus ... de ne pas interdire, restreindre, bloquer, disperser ou perturber les réunions pacifiques sans raison impérieuse et de ne pas sanctionner les participants ou les organisateurs sans motif valable.»

provoqué une certaine entrave à la circulation, ce qui, comme l'a expliqué l'agent de l'Azerbaïdjan, n'est *pas* le cas, une telle entrave ne fournirait aucune justification juridique suffisante pour la réprimer.

17. En vertu du droit international, l'interdiction ou la dispersion d'une réunion ne peut être envisagée qu'en dernier ressort¹³⁹. Les restrictions générales, telles que celles demandées par l'Arménie, sont, par principe, disproportionnées¹⁴⁰. Sans le moindre support de preuve, l'Arménie accuse l'Azerbaïdjan d'orchestrer et de soutenir financièrement la manifestation. Toutefois, ainsi que Lord Goldsmith l'a dit, tel n'est pas le cas. En outre, toute restriction doit être «fixée[] par la loi»¹⁴¹. La manifestation qui se déroule au niveau de la route de Lachin ne trouble pas l'ordre public. Elle n'altère pas et ne restreint pas non plus le passage de l'aide humanitaire et celui des résidents locaux allant de l'Arménie au Garabagh. La circulation le long du corridor de Lachin n'est pas bloquée. Comme l'a noté le Comité des droits de l'homme des Nations Unies dans son «Observation générale ... sur le droit de réunion pacifique», «[l]es seuls faits de pousser et bousculer ou de perturber la circulation des véhicules ou des piétons ou les activités quotidiennes ne constituent pas de la «violence»»¹⁴². Le Comité a aussi observé que l'ampleur ou la nature des réunions publiques «peuvent causer des perturbations, par exemple gêner la circulation des véhicules ou des piétons ou entraver l'activité économique. Ces conséquences, qu'elles soient intentionnelles ou involontaires, ne remettent pas en cause la protection dont bénéficient ces rassemblements.»¹⁴³ L'Arménie n'a pas démontré l'existence d'une base juridique en vertu de laquelle l'Azerbaïdjan serait contraint d'entraver les droits des manifestants azerbaïdjanais.

18. Une approche proportionnée serait que l'Arménie se mette en contact avec la Fédération de Russie et mette en place un système de coopération afin d'assurer une circulation fluide des marchandises et des personnes le long du corridor de Lachin. Toutefois, l'Arménie a refusé de prendre contact avec la Fédération de Russie et s'est retirée sans préavis et sans justification

¹³⁹ Observation générale n° 37 (2020) sur le droit de réunion pacifique, CCPR/C/GC/37, 17 septembre 2020, par. 37 et 85.

¹⁴⁰ *Ibid.*, par. 38.

¹⁴¹ *Ibid.*, par. 39.

¹⁴² *Ibid.*, par. 15.

¹⁴³ *Ibid.*, par. 7.

appropriée des discussions trilatérales qui devaient avoir lieu dans le but de résoudre notamment la situation du corridor de Lachin. Au lieu d'adopter une approche raisonnable et proportionnée, l'Arménie a choisi de se présenter devant votre Cour pour demander une ordonnance en indication de mesures conservatoires visant à entraver le droit des personnes à manifester.

19. Comme je l'ai mentionné, lors de l'examen d'une demande en indication de mesures conservatoires, la Cour doit notamment prendre en compte le préjudice irréparable qui pourrait être causé aux droits de la partie adverse¹⁴⁴. Compte tenu du caractère fondamental des droits en jeu en l'espèce, la Cour devrait veiller à s'assurer que les droits des personnes physiques ne soient en aucun cas entravés par l'exercice de sa compétence. En contribuant au respect du droit international, la Cour ne peut pas ordonner le non-respect des droits de l'homme au bénéfice de personnes en Azerbaïdjan, ou ailleurs. Or, c'est ce qu'entraînerait une réponse favorable à la requête de l'Arménie.

b) Préjudice substantiel aux droits d'un Etat tiers

20. Il y a un autre point important en matière de préjudice qui doit être noté. L'Azerbaïdjan soutient qu'il serait inapproprié pour la Cour de donner suite à la demande de l'Arménie, si cela implique que la Cour statue sur les droits et intérêts d'un Etat tiers qui ne comparaît *pas* devant votre juridiction. Cela serait incompatible avec la bonne administration de la justice, voire avec la fonction judiciaire de la Cour.

21. Bien que la Fédération de Russie ne soit pas partie à la présente procédure, elle joue un rôle central dans ce litige. L'article 6 de la déclaration trilatérale prévoit que le corridor de Lachin «remain[s] under the control of the Russian Federation peacemaking forces»¹⁴⁵, et il n'est pas contesté que les forces russes de maintien de la paix exercent un contrôle *réel* sur le terrain. En outre, comme l'a expliqué M. Lowe, c'est la Fédération de Russie qui est réellement responsable de la gestion et de la limitation de la circulation le long du corridor de Lachin.

¹⁴⁴ *Usines de pâte à papier sur le fleuve Uruguay (Argentine c. Uruguay), mesures conservatoires, ordonnance du 13 juillet 2006, C.I.J. Recueil 2006*, opinion individuelle de M. le juge Abraham, p. 139, par. 6 ; *Délimitation de la frontière maritime dans l'océan Atlantique (Ghana/Côte d'Ivoire), mesures conservatoires, ordonnance du 25 avril 2015, TIDM Recueil 2015*, p. 146, par. 96, 99-102.

¹⁴⁵ Annexe à la lettre datée du 10 novembre 2020 adressée à la présidente du Conseil de sécurité par le représentant permanent de la Fédération de Russie auprès de l'Organisation des Nations Unies, UN doc. S/2020/1104 (11 novembre 2020) (annexe 1).

22. Dans la mesure où l'Arménie demande à la Cour d'ordonner «[the] uninterrupted free movement of all persons, vehicles, and cargo along the Lachin Corridor», cet objectif ne peut être atteint sans enjoindre la Russie, laquelle contrôle le corridor de Lachin. De la même manière, il est impossible de s'interroger sur le comportement de l'Azerbaïdjan sans d'abord comprendre la position de la Russie dans le cadre de la déclaration trilatérale et sa conduite le long du corridor de Lachin.

23. Aussi, une ordonnance de la Cour traitant de la situation dans le corridor de Lachin risquerait de modifier ou de réinterpréter le régime spécial du corridor, tel qu'il a été convenu entre l'Arménie, l'Azerbaïdjan et la Fédération de Russie dans la déclaration trilatérale. Le fait que la demande de l'Arménie implique les obligations d'un Etat tiers est un obstacle insurmontable à l'octroi d'une ordonnance en indication de mesures conservatoires. La Cour ne peut pas modifier l'équilibre de la répartition des obligations convenue par trois Etats dans le cadre d'un différend bilatéral. Dans le passé, la Cour a clairement indiqué qu'elle «peut, pour la sauvegarde de ces droits, indiquer des mesures conservatoires à prendre par les parties, mais non par des Etats tiers ou d'autres entités alors que ceux-ci ne seraient pas tenus de reconnaître et respecter ces droits par application de l'arrêt qui sera en définitive rendu»¹⁴⁶.

C. Conclusion

24. Madame la présidente, Mesdames et Messieurs les juges, les mesures conservatoires sollicitées en l'espèce sont inappropriées et futiles. La véritable motivation de l'Arménie n'est pas tant de protéger des droits qui découlent de la CERD contre un préjudice irréparable, mais plutôt de se servir de cette procédure devant votre haute juridiction comme d'une plateforme pour faire la promotion de ses griefs. Les mesures demandées par l'Arménie ne visent *pas* à améliorer la situation dans le corridor de Lachin. Elles visent à proférer des accusations politiques et médiatiques à l'encontre de l'Azerbaïdjan. La requête de l'Arménie ne satisfait aucun des critères juridiques nécessaires pour l'obtention de mesures conservatoires et risque, au contraire, de causer un préjudice substantiel aux droits et intérêts de personnes et d'Etats qui ne sont pas amenés à comparaître devant la Cour. Dans ces circonstances, la requête de l'Arménie doit être rejetée.

¹⁴⁶ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Yougoslavie (Serbie-et-Monténégro)), mesures conservatoires, ordonnance du 13 septembre 1993, C.I.J. Recueil 1993, p. 344, par. 40.*

25. Madame la présidente, Mesdames et Messieurs les juges, ceci conclut ma plaidoirie. Je vous saurais gré, Madame la présidente, de bien vouloir donner la parole à M. Elnur Mammadov, agent de la République d'Azerbaïdjan.

The PRESIDENT: I thank Professor Boisson de Chazournes. I now invite the Agent of Azerbaijan, His Excellency Mr. Elnur Mammadov to address the Court. You have the floor, Excellency.

Mr. MAMMADOV:

V. FINAL SUBMISSIONS

1. Madam President, honourable Members of the Court, it is my privilege to address you once again and to close the submissions by the Republic of Azerbaijan.

2. My country emphasizes its great respect for the Court and its continued commitment to fulfil its obligations under CERD and the Trilateral Statement. I want to take the opportunity to thank the Office of the Registrar and the interpreters for their tremendous work during these proceedings.

3. The Republic of Azerbaijan makes the following final submissions:

“In accordance with Article 60 (2) of the Rules of Court, for the reasons explained during these hearings, the Republic of Azerbaijan respectfully asks the Court to reject the request for the indication of provisional measures submitted by the Republic of Armenia.”

4. Madam President, honourable Members of the Court, I thank you for your kind attention.

The PRESIDENT: I thank the Agent of Azerbaijan, whose statement brings to an end the single round of oral argument of Azerbaijan, as well as the present series of sittings. In accordance with the usual practice, I shall request both Agents to remain at the Court's disposal to provide any additional information the Court may require. The Court will render its Order on the Request for the indication of provisional measures submitted by Armenia as soon as possible. The Agents of the Parties will be advised in due course as to the date on which the Court will deliver the Order at a public sitting. Since the Court has no other business before it today, the sitting is declared closed.

The Court rose at 6 p.m.
