

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

APPLICATION
OF THE INTERNATIONAL CONVENTION
ON THE ELIMINATION OF ALL FORMS
OF RACIAL DISCRIMINATION

(ARMENIA *v.* AZERBAIJAN)

REQUEST FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER OF 22 FEBRUARY 2023

2023

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

APPLICATION
DE LA CONVENTION INTERNATIONALE
SUR L'ÉLIMINATION DE TOUTES LES FORMES
DE DISCRIMINATION RACIALE

(ARMÉNIE *c.* AZERBAÏDJAN)

DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES

ORDONNANCE DU 22 FÉVRIER 2023

Official citation:

*Application of the International Convention
on the Elimination of All Forms of Racial Discrimination
(Armenia v. Azerbaijan), Provisional Measures,
Order of 22 February 2023, I.C.J. Reports 2023, p. 14*

Mode officiel de citation :

*Application de la convention internationale
sur l'élimination de toutes les formes de discrimination raciale
(Arménie c. Azerbaïdjan), mesures conservatoires,
ordonnance du 22 février 2023, C.I.J. Recueil 2023, p. 14*

ISSN 0074-4441
ISBN 978-92-1-003943-7

Sales number N° de vente:	1277
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PRINTED IN FRANCE/IMPRIMÉ EN FRANCE

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ORDONNANCE

TABLE OF CONTENTS

	<i>Paragraphs</i>
CHRONOLOGY OF THE PROCEDURE	1-21
I. GENERAL OBSERVATIONS	22-25
II. PRIMA FACIE JURISDICTION	26
III. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE LINK BETWEEN SUCH RIGHTS AND THE MEASURES REQUESTED	27-44
IV. RISK OF IRREPARABLE PREJUDICE AND URGENCY	45-57
V. CONCLUSION	58-66
OPERATIVE CLAUSE	67

INTERNATIONAL COURT OF JUSTICE

YEAR 2023

2023
22 February
General List
No. 180

22 February 2023

APPLICATION
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(ARMENIA *v.* AZERBAIJAN)

REQUEST FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER

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.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74, 75 and 76 of the Rules of Court,

Makes the following Order:

1. By an Application filed in the Registry of the Court on 16 September 2021, the Republic of Armenia (hereinafter “Armenia”) instituted proceedings against the Republic of Azerbaijan (hereinafter “Azerbaijan”) concerning alleged violations of the International Convention on the

Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter “CERD” or the “Convention”).

2. The Application contained a Request for the indication of provisional measures submitted with reference to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court (the “first Request”).

3. After hearing the Parties, the Court, by an Order of 7 December 2021, indicated the following provisional measures:

“(1) The Republic of Azerbaijan shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

(a) Protect from violence and bodily harm all persons captured in relation to the 2020 Conflict who remain in detention, and ensure their security and equality before the law;

(b) Take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin;

(c) Take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts;

(2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.” (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021, p. 393, para. 98.*)

4. By an Order of 21 January 2022, the Court fixed 23 January 2023 and 23 January 2024 as the respective time-limits for the filing of a Memorial by Armenia and a Counter-Memorial by Azerbaijan. The Memorial was filed within the time-limit thus prescribed.

5. By a letter dated 16 September 2022, Armenia, referring to Article 76 of the Rules of Court, requested the modification of the Court’s Order of 7 December 2021 (the “second Request”).

6. By a communication dated 27 September 2022, Azerbaijan filed its written observations on the second Request.

7. By an Order dated 12 October 2022, the Court found that “the circumstances, as they [then] present[ed] themselves to the Court, [were] not such as to require the exercise of its power to modify the measures indicated in the Order of 7 December 2021”. In addition, the Court reaffirmed the provisional measures indicated in its Order of 7 December 2021, in particular the requirement that both Parties refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

8. On 28 December 2022, Armenia, referring to Article 41 of the Statute and Article 73 of the Rules of Court, filed a new Request for the indication of provisional measures.

9. In that Request, Armenia states that, on 12 December 2022, Azerbaijan “orchestrated a blockade of the only road connecting the 120,000 ethnic Armenians in Nagorno-Karabakh with the outside world”. It adds that this alleged blockade “is ongoing as of the date of the present Request”.

10. At the end of the 28 December 2022 Request, Armenia requests that the Court indicate the following provisional measures:

- “Azerbaijan shall cease its orchestration and support of the alleged ‘protests’ blocking uninterrupted free movement along the Lachin Corridor in both directions[;]
- Azerbaijan shall ensure uninterrupted free movement of all persons, vehicles, and cargo along the Lachin Corridor in both directions.”

11. The Deputy-Registrar immediately communicated a copy of the 28 December 2022 Request to the Government of Azerbaijan, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing of that Request by Armenia on 28 December 2022.

12. By letters dated 6 January 2023, the Deputy-Registrar informed the Parties that the Court had fixed 30 January 2023 as the date for the oral proceedings on the 28 December 2022 Request.

13. By letters dated 3 and 12 January 2023, Azerbaijan provided observations with respect to the 28 December 2022 Request. It stated, in particular, that under the terms of the Statement by the President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation of 9 November 2020 (the “Trilateral Statement”), movement along the Lachin Corridor is controlled by the Russian peacemakers and not Azerbaijan. Azerbaijan further stated that it has “continuously demonstrated its willingness to engage in dialogue with Armenia and the Russian Federation with a view to facilitating the humanitarian needs of its Armenian citizens living in the territories where the Russian peacekeeping forces are temporarily deployed”.

14. By a letter dated 26 January 2023, the Agent of Armenia communicated to the Court the text of a further provisional measure sought by his Government, namely that Azerbaijan be directed to “immediately fully restore and refrain from disrupting or impeding the provision of natural gas and other public utilities to Nagorno-Karabakh”.

15. By a letter dated 27 January 2023, the Agent of Azerbaijan provided certain preliminary views of his Government on the third provisional measure sought by Armenia. He stated that, in order to respond to “Armenia’s last-minute request for provisional measures”, Azerbaijan would need to

obtain additional technical information from its public utility providers and others about the true cause of previous disruptions in the gas supply and the specific measures that were taken to restore service, as well as any information about the practical consequences of such disruptions. In this regard, the Agent indicated that his Government would not be able to obtain this information before the beginning of the hearings. He further affirmed, “[f]or the avoidance of doubt”, that Azerbaijan “has not intentionally disrupted, and has no intention of disrupting, the supply of gas or other utilities to the areas where the Russian peacekeepers are temporarily deployed”.

16. By a letter of the same date, the Registrar informed the Parties that the Court had taken note of Azerbaijan’s concerns as to the short period of time between the communication of the third provisional measure sought by Armenia and the hearing due to take place on 30 January 2023. He further indicated that, while it was open to Azerbaijan to offer any initial response to the third provisional measure sought during the hearing, the Court also intended to authorize Azerbaijan to submit written comments limited to that requested measure after the close of the oral proceedings.

17. By a letter dated 30 January 2023, the Registrar reiterated to the Parties that Azerbaijan was free to offer any initial response to the third provisional measure sought during the oral proceedings and added that the Court had decided that Azerbaijan would also be authorized to submit written comments limited to that provisional measure no later than 1 February 2023.

18. At the public hearing, oral observations on the request for the indication of provisional measures filed by Armenia were presented by:

On behalf of Armenia: HE Mr Yeghishe Kirakosyan,
Mr Lawrence H. Martin,
Mr Linos-Alexandre Sicilianos,
Mr Constantinos Salonidis,
Mr Pierre d’Argent.

On behalf of Azerbaijan: HE Mr Elnur Mammadov,
Mr Vaughan Lowe,
Lord Peter Goldsmith,
Ms Laurence Boisson de Chazournes.

19. At the end of its oral observations, Armenia asked the Court to indicate the following provisional measures (the “third Request”):

“On the basis of its Request for provisional measures dated 27 December 2022, its letter dated 26 January 2023, and its oral pleadings, Armenia respectfully requests the Court to indicate the following

provisional measures pending its determination of this case on the merits:

- Azerbaijan shall cease its orchestration and support of the alleged ‘protests’ blocking uninterrupted free movement along the Lachin Corridor in both directions[;]
- Azerbaijan shall ensure uninterrupted free movement of all persons, vehicles, and cargo along the Lachin Corridor in both directions[;]
- Azerbaijan shall immediately fully restore and refrain from disrupting or impeding the provision of natural gas and other public utilities to Nagorno-Karabakh.”

20. At the end of its oral observations, Azerbaijan made the following request:

“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.”

21. By a letter dated 1 February 2023, the Agent of Azerbaijan submitted within the time-limit fixed for that purpose the written comments of his Government on the third provisional measure sought by Armenia.

* * *

I. GENERAL OBSERVATIONS

22. In its third Request, Armenia asks the Court to order Azerbaijan to “cease its orchestration and support of the alleged ‘protests’ blocking uninterrupted free movement along the Lachin Corridor in both directions”, to “ensure uninterrupted free movement of all persons, vehicles, and cargo along the Lachin Corridor in both directions” and to “fully restore and refrain from disrupting or impeding the provision of natural gas and other public utilities to Nagorno-Karabakh” (see paragraphs 10, 14 and 19 above).

23. Pursuant to Article 76, paragraph 1, of the Rules of Court, a decision concerning provisional measures may be modified if, in the Court’s opinion, “some change in the situation justifies” doing so. According to Article 75, paragraph 3, of the Rules of Court, “[t]he rejection of a request for the indication of provisional measures shall not prevent the party which made it from making a fresh request in the same case based on new facts”. The same

applies when additional provisional measures are requested (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 337, para. 22). It is therefore for the Court to satisfy itself that the third Request by Armenia is based upon “new circumstances such as to justify [it] being examined” (*ibid.*).

24. The Court notes that, in its third Request, Armenia refers to the alleged blockade by Azerbaijan, as of 12 December 2022, of the Lachin Corridor, described as “the only strip of land connecting the 120,000 ethnic Armenians in Nagorno-Karabakh with Armenia, and thus also with the outside world”. The Court recalls that Armenia’s first Request related to the treatment by Azerbaijan of Armenian prisoners of war, hostages and other detainees in its custody who were taken captive during the September-November 2020 hostilities and in their aftermath; to the alleged incitement and promotion by Azerbaijan of racial hatred and discrimination targeted at persons of Armenian national or ethnic origin; and to the alleged harm caused by Azerbaijan to Armenian historic, cultural and religious heritage.

25. In light of the foregoing, the Court considers that the circumstances underlying Armenia’s present Request differ from those on the basis of which the Court indicated provisional measures on 7 December 2021. It follows that there are new circumstances that justify the examination of Armenia’s third Request.

II. PRIMA FACIE JURISDICTION

26. The Court recalls that, in its Order of 7 December 2021 indicating provisional measures in the present case, it concluded that “prima facie, it has jurisdiction pursuant to Article 22 of CERD to entertain the case to the extent that the dispute between the Parties relates to the ‘interpretation or application’ of the Convention” (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 375, para. 43). The Court sees no reason to revisit this conclusion for the purposes of the present Request.

III. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE LINK BETWEEN SUCH RIGHTS AND THE MEASURES REQUESTED

27. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits

thereof. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 375, para. 44).

28. At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which Armenia wishes to see protected exist; it need only decide whether the rights claimed by Armenia on the merits, and for which it is seeking protection, are plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 375, para. 45).

* *

29. Armenia asserts that its third Request seeks the preservation and protection of a number of rights under CERD for the benefit of the ethnic Armenians in Nagorno-Karabakh. It refers in particular to the general prohibition of racial discrimination enshrined in Article 2, paragraph 1, of the Convention and to the corresponding obligation for States parties to “engage in no act or practice of racial discrimination against persons, groups of persons or institutions” (subparagraph (a)) and “not to sponsor, defend or support racial discrimination by any persons or organizations” (subparagraph (b)). It also refers to the obligation for States parties to “discourage anything which tends to strengthen racial division” (subparagraph (e)). Armenia further refers to the freedom of movement (Article 5, subparagraph (d) (i)), to the right to leave any country, including one’s own and to return to one’s country, including family reunification (Article 5, subparagraph (d) (ii)) and to the right to public health, medical care, social security and social services (Article 5, subparagraph (e) (iv)). Armenia claims that these rights are plausible because the “blockade” of the Lachin Corridor is discriminatory in nature; it has “both the purpose and effect of impairing the enjoyment and exercise by ethnic Armenians of their human rights on an equal footing with other ethnic groups”.

30. Armenia contends that, since the end of the 2020 conflict between Armenia and Azerbaijan, the Lachin Corridor is the only route connecting Nagorno-Karabakh and Armenia. It asserts that the clear and overt purpose of the “blockade” is fully integrated into what it calls Azerbaijan’s long-standing policy of ethnic cleansing, in the sense that it is aimed at creating living conditions so unbearable for ethnic Armenians that they are forced to leave the area. Armenia further contends that the “blockade” was deployed

on 12 December 2022 by a group of persons who present themselves as “eco-activists” but have in fact another goal in mind, many of them being well known for “posting anti-Armenian hate speech publicly on social media”, for having “direct ties to the Government [of Azerbaijan]” or even for being supported by it. For all these reasons, Armenia considers that “the blockade and its support and encouragement constitute plausible and even manifest breaches of the obligations and corresponding rights under Article 2 (1), subparagraphs (a), (b) and (e), of CERD”.

31. Armenia further contends that the “blockade” of the Lachin Corridor violates the freedom of movement implied in the right to leave any country, including one’s own, and the right to return to one’s country. In this regard, it asserts that the “blockade” has separated many families. Armenia adds that the “blockade” violates the right to public health, medical care, social security and social services, by preventing critically ill ethnic Armenians hospitalized in Nagorno-Karabakh to be transferred to medical facilities in Armenia for urgent medical care and for life-saving treatment. It claims, in addition, that the “blockade” has prevented the importation of essential goods, foodstuffs, medical and medicine supplies into Nagorno-Karabakh. Finally, Armenia alleges that, since 13 December 2022, the natural gas supply to Nagorno-Karabakh has been regularly cut off, leading to a number of adverse humanitarian consequences, such as disruption of the educational process in schools and disruption of the smooth running of hospitals. In conclusion, Armenia considers that the alleged blockade and related measures entail a series of highly plausible violations of rights protected under Article 5 (d), subparagraphs (i) and (ii), and Article 5 (e), subparagraph (iv), of CERD.

*

32. Azerbaijan asserts that the acts complained of by Armenia do not constitute acts of racial discrimination as defined in Article 1 of CERD. Therefore, in its view, the rights claimed by the Applicant are not plausible.

33. While Azerbaijan recognizes that Azerbaijani protesters have demonstrated on the side of the Lachin Corridor since 12 December 2022, it contends that these protests are not orchestrated by the State of Azerbaijan and constitute genuine environmental protests against the “continued pillaging of Azerbaijan’s natural resources by Armenia”. Azerbaijan considers that Armenia has failed to prove that the protests as a whole, and not the individual one-off acts of a select minority, are at least plausibly acts of racial discrimination.

34. Azerbaijan adds that the protests do not have the effect of impairing protected rights under CERD. It claims that the protesters have not imposed any restrictions on civilian traffic along the Lachin Corridor. It claims, in this regard, that since the start of the protests, over 1,000 vehicles have passed by the protest site on the Lachin Corridor and that there have been no reports of violence, and no confrontations between the Azerbaijani protesters, the individuals using the road to transit and the Russian peacekeepers who control the road. Azerbaijan further claims that there is no evidence that the protests impede people who need to reach Armenia for medical treatment from doing so. It also alleges that there is no evidence that food, medicine and other basic supplies are failing to reach Nagorno-Karabakh as a result of the protests. According to Azerbaijan, the evidence shows that vehicles of the International Committee of the Red Cross (the “ICRC”), Armenian ambulances and all vehicles belonging to the Russian peacekeeping forces are passing freely in the Lachin Corridor next to the protest site and that food, medicine and other essential supplies are being delivered. Azerbaijan adds that the same applies to other civilian traffic.

35. As for the alleged disruption of the natural gas supply, Azerbaijan observes that it does not supply gas or provide any gas service in Nagorno-Karabakh; rather, the gas supply comes from Armenia and is distributed in Nagorno-Karabakh by an Armenian utility. It further observes that interruptions of the gas supply are not uncommon in the winter months, and are not specific to Nagorno-Karabakh; they also affect other parts of Azerbaijan’s territory, and indeed Armenia’s own network. It finally observes that, whenever a disruption required action from Azerbaijan’s engineers, repairs were made on an urgent basis and supply was restored as quickly as possible. According to Azerbaijan, there is therefore no basis for Armenia’s assertion that these are deliberate acts of racial discrimination by the Respondent, targeting the residents of Nagorno-Karabakh.

* *

36. The Court notes that CERD imposes a number of obligations on States parties with regard to the elimination of racial discrimination in all its forms and manifestations. Article 1, paragraph 1, of CERD defines racial discrimination in the following terms:

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

In accordance with Article 2 of the Convention, States parties “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms”. Under Article 5, States parties undertake to guarantee the right of everyone to equality before the law in the enjoyment of a non-exhaustive list of rights, in particular the “right to freedom of movement and residence within the border of the State”, the “right to leave any country, including one’s own, and to return to one’s country”, and the “right to public health, medical care, social security and social services”.

37. The Court observes that Articles 2 and 5 of CERD are intended to protect individuals from racial discrimination. It recalls, as it did in past cases in which Article 22 of CERD was invoked as the basis of its jurisdiction, that there is a correlation between respect for individual rights enshrined in the Convention, the obligations of States parties under CERD and the right of States parties to seek compliance therewith (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 382, para. 57).

38. A State party to CERD may invoke the rights set out in the above-mentioned articles only to the extent that the acts complained of can constitute acts of racial discrimination as defined in Article 1 of the Convention (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 382, para. 58). In the context of a request for the indication of provisional measures, the Court examines whether the rights claimed by an applicant are at least plausible.

39. The Court considers plausible at least some of the rights that Armenia claims to have been violated in light of Articles 2 and 5 of CERD through the interruption of movement along the Lachin Corridor.

* *

40. The Court now turns to the condition of the link between the rights claimed by Armenia that the Court has found to be plausible and the provisional measures requested.

* *

41. Armenia considers that the rights for which protection is sought are linked to the provisional measures requested because those measures, if indicated, would safeguard those rights. In particular, it is of the view that lifting the “blockade”, ensuring uninterrupted free movement of all persons, vehicles and cargo along the Lachin Corridor would put an end

to “the unbearable living conditions of ethnic Armenians” in violation of obligations under Article 2, paragraph 1, of the Convention, and to “a series of discriminatory measures in violation of Article 5 of the Convention”.

42. Azerbaijan asserts that there is no link between the rights claimed by Armenia and the provisional measures requested. In particular, it considers that the measures sought by Armenia would be “devoid of effect, since neither Azerbaijan nor the Azerbaijani protestors are currently blocking traffic”. Similarly, it claims that these measures are inappropriate in so far as “the Lachin Corridor is under the control of Russian peacekeeping forces” and

“Azerbaijan has not taken any measures that could endanger traffic; on the contrary, it has done everything it can to ensure that traffic in the Lachin Corridor remains safe and secure, all while maintaining contact with the commanders of the Russian authorities deployed on the ground”.

* *

43. The Court has already found that at least some of the rights claimed by Armenia under CERD are plausible (see paragraph 39 above). It considers that a link exists between the second measure requested by Armenia, which aims at requesting Azerbaijan to ensure uninterrupted free movement of all persons, vehicles and cargo along the Lachin Corridor in both directions (see paragraphs 10 and 19 above), and the plausible rights that Armenia seeks to protect. This measure, in the Court’s view, is directed at safeguarding plausible rights invoked by Armenia under CERD.

44. The Court concludes, therefore, that a link exists between some of the rights claimed by Armenia and one of the requested provisional measures.

IV. RISK OF IRREPARABLE PREJUDICE AND URGENCY

45. The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 385, para. 69).

46. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights claimed

before the Court gives its final decision. The condition of urgency is met when the acts susceptible of causing irreparable prejudice can “occur at any moment” before the Court makes a final decision on the case (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 385, para. 70). The Court must therefore consider whether such a risk exists at this stage of the proceedings.

47. The Court is not called upon, for the purposes of its decision on the third Request, to establish the existence of breaches of CERD, but to determine whether the circumstances require the indication of provisional measures for the protection of rights under this instrument. It cannot at this stage make definitive findings of fact, and the right of each Party to submit arguments in respect of the merits remains unaffected by the Court’s decision on the third Request.

* *

48. Armenia submits that Azerbaijan’s conduct is capable of causing irreparable prejudice to the rights that it seeks to protect under Articles 2 and 5 of CERD. In this regard, it considers that Azerbaijan “has put in jeopardy the security of 120,000 people, deprived them of freedom of movement and their rights to be with their family and loved ones, their rights to receive food, medical care, education, heat and electricity amidst a freezing winter”.

49. Armenia further submits that there is urgency, in the sense that Azerbaijan’s conduct entails ongoing and imminent irreparable prejudice to the rights it seeks to protect under Articles 2 and 5 of CERD. It notes in this regard that a number of critically ill ethnic Armenians hospitalized in Nagorno-Karabakh and requiring urgent medical care in Armenia are at imminent risk of death and that one person has already died because emergency medical care is contingent upon negotiations conducted by the Russian peacekeepers or the ICRC. In addition, planned surgeries have been indefinitely suspended and medical treatments — such as chemotherapy provided in cancer clinics across the border — have been impossible to schedule due to the anticipated shortage in medicines and medical supplies. It further observes that the serious shortages in essential foodstuffs and medicine supplies, with the small quantities allowed to pass being distributed to the most vulnerable, also cause “irreparable prejudice and consequences for the health and lives of individuals in question”. The Applicant asserts that over a thousand people remain separated from their families and friends, including hundreds of children, which can cause irreparable consequences in terms of psychological distress. According to Armenia, “all of this irreparable prejudice and these irreparable consequences can occur at any moment before the Court makes a final decision on the case, as the blockade remains ongoing”.

*

50. Azerbaijan maintains that Armenia has not demonstrated that “the protest is actually blocking the road or seriously obstructing the flow of traffic along it”; that, “to the extent the traffic is obstructed, the intention or effect was racial discrimination”; and that “the consequences of the restrictions were such that there is now a real risk of irreparable prejudice”.

51. Azerbaijan further maintains that the evidence obtained on the ground attests to the absence of urgency. In particular, it asserts that the ICRC has confirmed that it is assisting with medical transfers and humanitarian supplies, that the Russian peacekeeping forces have established that humanitarian convoys have been using the road, and that dozens of local residents have been able to return to Nagorno-Karabakh from Armenia. In addition, according to Azerbaijan, the evidence shows that the Lachin Corridor can be crossed at the protest site and that traffic has not been blocked.

* *

52. Having previously determined that at least some of the rights asserted by the Applicant are plausible and that there is a link between those rights and one of the provisional measures requested, the Court now considers whether irreparable prejudice could be caused to those rights and whether there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to those rights before the Court gives its final decision.

53. The Court recalls that in past cases in which CERD was at issue, it stated that the rights stipulated in Article 5 (*d*) and (*e*) are of such a nature that prejudice to them is capable of causing irreparable harm (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 389, para. 81).

54. The Court observes that, since 12 December 2022, the connection between Nagorno-Karabakh and Armenia via the Lachin Corridor has been disrupted. The Court notes that a number of consequences have resulted from this situation and that the impact on those affected persists to this date. The information available to the Court indicates that the disruption on the Lachin Corridor has impeded the transfer of persons of Armenian national or ethnic origin hospitalized in Nagorno-Karabakh to medical facilities in Armenia for urgent medical care. The evidence also indicates that there have been hindrances to the importation into Nagorno-Karabakh of essential goods, causing shortages of food, medicine and other life-saving medical supplies.

55. As the Court has noted previously, a prejudice can be considered as irreparable when the persons concerned are exposed to danger to health and

life. The Court has further noted that restrictions on the importation and purchase of goods required for humanitarian needs, such as foodstuffs and medicines, including life-saving medicines, treatment for chronic disease or preventive care, and medical equipment may have a serious detrimental impact on the health and lives of individuals (see *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018 (II)*, p. 650, para. 91).

56. At the public hearing that took place on 30 January 2023, the Agent of Azerbaijan affirmed that his Government

“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 local residents in Garabagh, and — if Armenia finally decides that it is indeed its problem and agrees to come to the negotiating table — with Armenia as well”.

The Court takes note of this statement. However, it does not remove entirely the imminent risk of irreparable prejudice created by the disruption in movement along the Lachin Corridor.

57. In light of the considerations set out above, the Court concludes that the alleged disregard of the rights deemed plausible by the Court (see paragraph 39 above) may entail irreparable consequences to those rights and that there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused before the Court makes a final decision in the case.

V. CONCLUSION

58. The Court concludes that the conditions for the indication of provisional measures are met. It is therefore necessary, pending its final decision, for the Court to indicate certain measures in order to protect the rights claimed by Armenia, as identified above (see paragraph 39 above).

59. The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are, in whole or in part, other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power on several occasions in the past (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional*

Measures, Order of 7 December 2021, I.C.J. Reports 2021, p. 391, para. 90).

60. The Court notes that the Trilateral Statement provides, *inter alia*, that the Lachin Corridor, “which will provide a connection between Nagorno-Karabakh and Armenia . . . shall remain under the control of the Russian Federation peacemaking forces”. The Statement further states that “Azerbaijan shall guarantee the security of persons, vehicles and cargo moving along the Lachin Corridor in both directions”.

61. In the present case, having considered the terms of the provisional measures requested by Armenia and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

62. The Court concludes that Azerbaijan shall, pending the final decision in the case and in accordance with its obligations under CERD, take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions.

63. The Court recalls that Armenia has requested it to indicate measures directing Azerbaijan to “cease its orchestration and support of the alleged ‘protests’ blocking uninterrupted free movement along the Lachin Corridor in both directions”. The Court considers that this further measure regarding movement along the Lachin Corridor is not warranted.

64. The Court further recalls that Armenia has requested it to indicate a measure directing Azerbaijan to “immediately fully restore and refrain from disrupting or impeding the provision of natural gas and other public utilities to Nagorno-Karabakh”. The Court considers that Armenia has not placed before it sufficient evidence that Azerbaijan is disrupting the supply of natural gas and other utilities to the residents of Nagorno-Karabakh. Accordingly, such a measure is not warranted.

* * *

65. The Court notes that the provisional measures indicated in its Order of 7 December 2021 remain in effect. It also reaffirms that its “orders on provisional measures under Article 41 [of the Statute] have binding effect” (*LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001, p. 506, para. 109*) and thus create international legal obligations for any party to whom the provisional measures are addressed.

* * *

66. The Court further reaffirms that the decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility

of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Armenia and Azerbaijan to submit arguments in respect of those questions.

* * *

67. For these reasons,

THE COURT,

By thirteen votes to two,

Indicates the following provisional measure:

The Republic of Azerbaijan shall, pending the final decision in the case and in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions.

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Bennouna, Xue, Robinson, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Daudet;

AGAINST: *Judge* Yusuf; *Judge ad hoc* Keith.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-second day of February, two thousand and twenty-three, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Armenia and the Government of the Republic of Azerbaijan, respectively.

(*Signed*) Joan E. DONOGHUE,
President.

(*Signed*) Philippe GAUTIER,
Registrar.

Judge YUSUF appends a declaration to the Order of the Court;
Judge *ad hoc* KEITH appends a declaration to the Order of the Court.

(*Initialled*) J.E.D.

(*Initialled*) Ph.G.
