

Corrigé
Corrected

CR 2023/21

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2023

Public sitting

held on Thursday 12 October 2023, at 10 a.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 jeudi 12 octobre 2023, à 10 heures, au Palais de la Paix,

sous la présidence de M^{me} 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
 Bennouna
 Yusuf
 Xue
 Sebutinde
 Bhandari
 Salam
 Iwasawa
 Nolte
 Charlesworth
 Brant
Judges *ad hoc* Daudet
 Koroma

 Registrar Gautier

Présents : M^{me} Donoghue, présidente
M. Gevorgian, vice-président
MM. Tomka
Bennouna
Yusuf
M^{mes} Xue
Sebutinde
MM. Bhandari
Salam
Iwasawa
Nolte
M^{me} Charlesworth
M. Brant, juges
MM. Daudet,
Koroma, juges *ad hoc*

M. Gautier, greffier

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as Agent;

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Mr Linos-Alexandre Sicilianos, Professor of Public International Law, Dean of the Faculty of Law of the University of Athens, member of the Institut de droit international, member of the Permanent Court of Arbitration,

Mr Pierre d'Argent, Full Professor, Université catholique de Louvain, member of the Institut de droit international, president of the European Society of International Law, Foley Hoag LLP, member of the Bar of Brussels,

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As Assistant.

M. Elkhan Aliyev, référent, ambassade de la République d'Azerbaïdjan au Royaume des Pays-Bas,
comme assistant.

The PRESIDENT: Please be seated. The sitting is open. For reasons duly made known to me, Judges Abraham and Robinson will not sit with us in these oral proceedings.

The Court meets today, under Article 74, paragraph 3, of the Rules of Court, to hear the oral observations of the Parties on the Request for the indication of provisional measures submitted by the Republic of Armenia on 28 September 2023 in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*. This morning, the Republic of Armenia will present its single round of oral argument.

I shall now recall the principal steps of the procedure in the present case.

On 16 September 2021, Armenia filed in the Registry of the Court an Application instituting proceedings against Azerbaijan concerning alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination; I shall refer to this Convention as “CERD”. To found the jurisdiction of the Court, Armenia invokes Article 36, paragraph 1, of the Statute of the Court and Article 22 of CERD. The Application also contained a Request for the indication of provisional measures, pursuant to Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court. By an Order of 7 December 2021, the Court, having heard the Parties, 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; [and]
 - (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.”

By an Order dated 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.

By a letter dated 16 September 2022, Armenia, referring to Article 76 of the Rules of Court, requested the modification of the first provisional measure set out in the Court's Order of 7 December 2021. 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.

By letters dated 28 December 2022 and 26 January 2023, 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. By an Order of 22 February 2023, the Court, having heard the Parties, indicated 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."

On 21 April 2023, within the time-limit prescribed by Article 79*bis*, paragraph 1, of the Rules of Court, Azerbaijan raised preliminary objections to the jurisdiction of the Court and the admissibility of certain claims contained in the Application. By an Order of 25 April 2023, the Court fixed 21 August 2023 as the time-limit within which Armenia could present a written statement of its observations and submissions on the preliminary objections filed by Azerbaijan. The written statement was filed within the time-limit thus fixed.

By a letter dated 12 May 2023, Armenia, referring to Article 76 of the Rules of Court, requested the modification of the Court's Order of 22 February 2023. By an Order dated 6 July 2023, 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 Order of 22 February 2023 indicating a

provisional measure”. In addition, the Court reaffirmed the provisional measure indicated in its Order of 22 February 2023.

On 28 September 2023, Armenia, referring to Article 41 of the Statute and to Article 73 of the Rules of Court, submitted a new Request for the indication of provisional measures. In its Request, Armenia states:

“On 19 September 2023, Azerbaijan — in manifest violation of the ceasefire agreement included in the 2020 Trilateral Statement and its obligation not to aggravate the dispute reiterated in multiple Orders of the Court — launched a full-scale military assault on the 120,000 ethnic Armenians of Nagorno-Karabakh, indiscriminately shelling the capital, Stepanakert, and other civilian settlements.”

It adds that “credible reports of atrocities against civilians have already begun to appear”. Armenia states that “[a]s of 27 September, eight days after Azerbaijan’s attack, tens of thousands of ethnic Armenians have been forcibly displaced”.

The Registrar will now read out the provisional measures which the Government of Armenia is asking the Court to indicate. You have the floor, Mr Registrar.

Le GREFFIER : Merci, Madame la présidente.

« [L]’Arménie prie respectueusement la Cour d’indiquer les mesures conservatoires suivantes :

- 1) L’Azerbaïdjan doit s’abstenir de prendre toute mesure qui pourrait emporter manquement aux obligations qu’il tient de la CIEDR.
- 2) L’Azerbaïdjan doit s’abstenir de tout acte ayant directement ou indirectement pour but ou pour effet de déplacer du Haut-Karabakh les personnes d’origine arménienne qui s’y trouvent encore, ou d’empêcher le retour sûr et rapide dans leurs foyers des personnes déplacées pendant la récente offensive militaire, notamment celles qui ont fui vers l’Arménie ou des États tiers, tout en permettant à celles qui le souhaitent de quitter le Haut-Karabakh sans entrave.
- 3) L’Azerbaïdjan doit retirer tous les personnels militaires et policiers de tous les établissements civils du Haut-Karabakh occupés depuis son attaque armée du 19 septembre 2023.
- 4) L’Azerbaïdjan doit faciliter, et s’abstenir d’entraver d’une quelconque façon, l’accès de l’Organisation des Nations Unies et de ses institutions spécialisées à la population d’origine arménienne du Haut-Karabakh, et s’abstenir de s’ingérer d’une quelconque façon dans leurs activités.
- 5) L’Azerbaïdjan doit faciliter, et s’abstenir d’entraver d’une quelconque façon, l’intervention du Comité international de la Croix-Rouge pour fournir une aide humanitaire aux personnes d’origine arménienne du Haut-Karabakh, et coopérer avec ce comité pour remédier aux autres conséquences du récent conflit.

- 6) L'Azerbaïdjan doit immédiatement faciliter le rétablissement complet des services publics dans le Haut-Karabakh, notamment l'approvisionnement en gaz et en électricité, et s'abstenir de les suspendre à l'avenir.
- 7) L'Azerbaïdjan doit s'abstenir de prendre des mesures punitives contre toute personne qui est actuellement, ou a été par le passé, un représentant politique ou un membre des forces armées du Haut-Karabakh.
- 8) L'Azerbaïdjan ne doit modifier ni détruire aucun monument à la mémoire du génocide arménien de 1915 ni aucun autre monument ou bien ou site culturel arménien présent dans le Haut-Karabakh.
- 9) L'Azerbaïdjan doit reconnaître les registres d'état civil, documents d'identité, titres de propriété et registres fonciers établis par les autorités du Haut-Karabakh et leur donner effet, et ne doit pas détruire ni confisquer ces registres et documents.
- 10) L'Azerbaïdjan doit soumettre à la Cour un rapport sur l'ensemble des mesures qu'il aura prises pour exécuter l'ordonnance en indication de mesures conservatoires dans un délai d'un mois à compter de la date de celle-ci, puis tous les trois mois jusqu'à ce que la Cour ait statué définitivement en l'affaire.

L'Arménie prie en outre la Cour de réaffirmer les obligations qu'elle a déjà faites à l'Azerbaïdjan dans ses ordonnances antérieures, à savoir “[p]rotéger contre les voies de fait et les sévices toutes les personnes arrêtées en relation avec le conflit de 2020 qui sont toujours en détention et garantir leur sûreté et leur droit à l'égalité devant la loi”, “[p]rendre toutes les mesures nécessaires pour empêcher et punir les actes de dégradation et de profanation du patrimoine culturel arménien, notamment, mais pas seulement, les églises et autres lieux de culte, monuments, sites, cimetières et artefacts”, “[p]rendre toutes les mesures dont [il] dispose afin d'assurer la circulation sans entrave des personnes, des véhicules et des marchandises le long du corridor de Latchine dans les deux sens”, et “s'abstenir de tout acte qui risquerait d'aggraver ou d'étendre le différend dont la Cour est saisie ou d'en rendre le règlement plus difficile”. »

The PRESIDENT: I thank the Registrar.

Immediately after the Request for the indication of provisional measures was filed, the Registrar transmitted an original copy thereof to the Government of Azerbaijan. He also notified the Secretary-General of the United Nations.

According to Article 74, paragraph 1, of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. Paragraph 2 of the same Article states that the Court shall proceed to a decision on the request as a matter of urgency. This imperative must be, however, balanced with the need to fix a date for the oral proceedings in such a way as to afford the parties an opportunity of being represented at the hearings. Consequently, the Parties were informed that the oral proceedings, during which they could present their observations on the Request for the indication of provisional measures filed by Armenia on 28 September 2023, would take place

on Thursday 12 October 2023, starting at 10 a.m. Following a request from Azerbaijan to postpone the hearings, which was opposed by Armenia, the Court, having duly considered the matter, decided to maintain that date, and the Parties were informed accordingly.

I would now like to welcome the delegations of the Parties. I note the presence of the two Agents, accompanied by members of their respective State's delegation. This morning, the Court will hear Armenia, which has submitted the Request for the indication of provisional measures. It will hear Azerbaijan this afternoon at 4 p.m. For the purposes of this single round of oral argument, each of the Parties will have available to it a two-hour sitting.

At this first sitting, Armenia may, if required, avail itself of a short extension beyond 12 noon today, in view of the time taken up by these introductory remarks.

Before I give the floor to the Agent of Armenia, I wish to draw the attention of the Parties to Practice Direction XI, which states as follows:

“In the oral pleadings on requests for the indication of provisional measures parties should limit themselves to what is relevant to the criteria for the indication of provisional measures as stipulated in the Statute, Rules and jurisprudence of the Court. They should not enter into the merits of the case beyond what is strictly necessary for that purpose.”

I now give the floor to the Agent of Armenia, His Excellency Mr Yeghishe Kirakosyan. You have the floor, Excellency.

Mr KIRAKOSYAN:

INTRODUCTION

1. Madam President, distinguished judges of the Court, it is an honour to appear before you today as the Agent of the Republic of Armenia.

2. Less than nine months ago, I stood at this podium and warned that Azerbaijan was putting in motion a plan to ethnically cleanse Nagorno-Karabakh of all ethnic Armenians¹. Madam President, it pains me greatly to say — that has now materialized.

3. After a nine-month blockade, maintained in flagrant violation of the Court's Orders and in the face of widespread international condemnation, on 19 September, Azerbaijan launched a

¹ CR 2023/1, p. 15, para. 5-7 (Kirakosyan).

full-scale attack on Nagorno-Karabakh. It then cynically opened the Lachin Corridor for the first time in nine months only to let out more than 100,000 fleeing ethnic Armenians. Despite comprising for *millennia* the great majority of the population of Nagorno-Karabakh, almost no ethnic Armenians remain in Nagorno-Karabakh today. If this is not ethnic cleansing, Madam President, I do not know what is.

4. I expect my counterpart will tell you, this afternoon, that Azerbaijan is committed to “reconciliation” and a “peaceful future” with ethnic Armenians. But if those words sound familiar to you, it is because he said the exact same words nearly nine months ago², after which Azerbaijan continued to deliberately interrupt vital public utilities and starve the ethnic Armenians of Nagorno-Karabakh for another eight months, before brutally attacking them and causing them to flee their ancestral home.

5. I expect my counterpart will tell you that Azerbaijan will permit those it considers its citizens to return. He promised the same thing in October 2021 when he claimed that, in areas that had been transferred to Azerbaijan in 2020, Azerbaijan was “committed to the return of displaced persons, regardless of their national or ethnic [identity] origin”³. Two years later, not a single ethnic Armenian has been permitted to return to those areas and, instead, virtually all remaining ethnic Armenians of Nagorno-Karabakh have been forced to flee their homes.

6. I expect my counterpart will also tell you that Azerbaijan will treat any ethnic Armenian who returns in accordance with Azerbaijan’s obligations under the CERD. He promised treatment of ethnic Armenians in accordance with the CERD in October 2021 as well⁴. Two provisional measures Orders by the Court did not deter Azerbaijan from escalating its violations of the CERD.

7. Madam President, distinguished judges of the Court, let me be perfectly clear: since September 2020, Azerbaijan has been taking steps to cleanse Nagorno-Karabakh of ethnic Armenians, and it has been doing so while Armenia’s claims are pending at the Court. Political considerations may have prevented the international community stopping it, but the reality of such ethnic cleansing is crystal clear to all.

² CR 2023/2, p. 11, para. 6 (Mammadov).

³ CR 2021/21, p. 14, para. 12 (Mammadov).

⁴ CR 2021/21, p. 13, para. 10 (Mammadov).

8. Azerbaijan's accountability for violations will be determined at the merits stage of this case. But you can still make a meaningful difference on the ground *today*. There is still time to prevent the forced displacement of ethnic Armenians from becoming irreversible, and to protect the very few ethnic Armenians who remain in Nagorno-Karabakh, as well as those who have been abducted and are currently unlawfully detained in Azerbaijan's prisons.

9. Madam President, distinguished judges of the Court, Azerbaijan's cynicism crosses any imaginable boundary. It complains that Armenia's claims before this Court are "contrary to the norms and principles of international law," and asserts that such actions "constitute the main threat to establish peace, security and justice in the region" and alleges that Armenia is "not interested in the process of peace and normalization with Azerbaijan"⁵. Such remarkable stance is in stark conflict with the very foundations of the international legal order, which is based on the premise that disputes should be resolved by peaceful means *only*. And it in fact reflects the way Azerbaijan prefers to resolve its disputes, that is by resorting to illegal threat or use of force. Is this how Azerbaijan understands peace and security?

10. Before I conclude by outlining the presentation of Armenia's case this morning, please allow me one final point. Time and again, Azerbaijan has shown not only that it is willing to mislead the international community, but also that it is willing to misrepresent the Court's Orders in doing so, or even to use them to justify its own violations of the CERD. In these circumstances, nothing other than targeted, unequivocal provisional measures protecting the rights of ethnic Armenians of Nagorno-Karabakh will suffice to prevent the ethnic cleansing Azerbaijan is perpetrating from continuing and becoming irreversible; to safeguard Armenians' millennia-long enduring cultural presence in Nagorno-Karabakh from being eradicated — as was already done in Nakhichevan and is being done elsewhere in Azerbaijan; and to protect the abducted political-military leadership of Nagorno-Karabakh from fabricated criminal charges. If your provisional measures retain any ambiguity whatsoever, Azerbaijan *will* exploit them. And in so doing, it will ensure that the ethnic Armenian presence and history of Nagorno-Karabakh are permanently wiped out. While we do not do so lightly, it is in these circumstances that we approach the Court for the third time.

⁵ Republic of Azerbaijan, Ministry of Foreign Affairs, *No:566/23, Commentary on the statement of the Ministry of Foreign Affairs of Armenia regarding the arrest of the Armenian separatists by Azerbaijan* (4 Oct. 2023), available at <https://mfa.gov.az/en/news/no56623>.

11. The remainder of Armenia's presentation this morning will be structured as follows:

12. First, Mr Martin will set out the facts compelling Armenia's request.

13. Second, Professor Sicilianos will explain why Armenia's requests fall within the jurisdiction of the Court, why the rights for which protection is sought are plausible and how those rights are linked to the provisional measures requested.

14. Third, Ms Macdonald will demonstrate the ongoing irreparable prejudice and urgency necessitating the indication of provisional measures.

15. Fourth, Professor Murphy will explain why each of the first nine provisional measures requested by Armenia is necessary to protect the rights of ethnic Armenians.

16. Fifth, Professor d'Argent will explain why the tenth and final provisional measure requested by Armenia is equally necessary and offer certain concluding remarks about Armenia's third request for provisional measures.

17. Finally, I will return to the podium to read Armenia's final submissions.

18. I thank you, Madam President, distinguished judges of the Court, for your attention and careful consideration of Armenia's request. I now kindly ask that you invite Mr Martin to address the Court.

The PRESIDENT: I thank the Agent of Armenia for his statement and I now invite Mr Lawrence Martin to take the floor. You have the floor, Sir.

Mr MARTIN:

**THE FACTS COMPELLING ARMENIA'S THIRD PROVISIONAL
MEASURES REQUEST**

1. Madam President, distinguished Members of the Court, good morning. It is a privilege to appear before you on behalf of the Republic of Armenia. As our honourable Agent just said, I will be explaining the facts compelling Armenia's request for provisional measures.

I. The background to Azerbaijan's 19 September assault

2. To understand the urgency of the situation before you, to understand the very grave risk of irreparable prejudice resulting from Azerbaijan's 19 September assault on Nagorno-Karabakh, some

context is necessary. None of this is happening in a vacuum. Virtually the entire remaining ethnic Armenian population of Nagorno-Karabakh — more than a hundred thousand people — have been forced to abandon their homes. They did not simply pick up everything and leave everything they have ever known — everything their ancestors have ever known — without good reason. And here, they had very compelling reasons to flee their ancestral homeland rather than risk their lives under Baku’s iron fist.

3. To understand these reasons, we have to look back even beyond the start of the blockade last December. As we explained in Armenia’s Memorial, anti-Armenian hate is engrained in official Azerbaijani State policy. It has created a society where ethnic Armenians hide their identity⁶ and to call someone Armenian is considered an insult⁷. This deep hatred has motivated countless atrocities against ethnic Armenians in Nagorno-Karabakh and elsewhere⁸. To use President Aliyev’s words, the “Armenians of the world” are Azerbaijan’s enemy⁹. They are “dogs” to be chased out of Nagorno-Karabakh¹⁰ and even Armenia itself¹¹. They are “vandals”, “savages”, “barbarians”¹².

4. The ethnic Armenians of Nagorno-Karabakh know only too well that this hatred is fostered and inculcated at every level of Azerbaijani society. Children in Azerbaijan are taught to hate ethnic Armenians from the cradle¹³. Just by way of example, a middle-school textbook, approved by the Azerbaijani Ministry of Education, refers to Armenia as “a nation that pours all kinds of filth from its veins, is of mixed blood, with no future, dead spirituality, maliciousness, [and] hatefulness”, and refers to Armenians “as scoundrels, who have the blood of the devil in their veins”¹⁴.

⁶ See Memorial of the Republic of Armenia (MAr), para. 3.95.

⁷ See MAr, para. 3.31.

⁸ See MAr, III.1.II, III.2.II, III.3.I, IV.1, IV.2.I, IV.2.IV.

⁹ CR 2021/20, p. 25, para. 10 (Salonidis); “Closing Speech by Ilham Aliyev at the conference on the results of the third year into the ‘State Program on the socioeconomic development of districts for 2009-2013’”, *The President of the Republic of Azerbaijan Ilham Aliyev* (28 Feb. 2012), available at <https://president.az/en/articles/view/4423> (cited in MAr, Ann. 292).

¹⁰ CR 2021/20, p. 26, para. 11 (Salonidis).

¹¹ CR 2021/20, p. 26, para. 12 (Salonidis).

¹² See CR 2021/20, pp. 26-27, paras. 12-13 (Salonidis); MAr, paras. 3.7, 3.217, 3.378.

¹³ MAr, III.1.I.C, III.3.II.D, IV.2.II.B.

¹⁴ MAr, para. 3.19.

5. And then there is the notorious case of Ramil Safarov. In 2004, he brutally murdered an Armenian co-participant at a NATO training course with an axe in his sleep¹⁵. He also tried to kill another. President Aliyev pardoned Safarov upon his extradition to Azerbaijan, promoted him to major and gave him eight years of back pay. Today, he is idolized and hailed as a hero of the State¹⁶.

6. Nor can the ethnic Armenians of Nagorno-Karabakh forget the experience of the 44-day war in 2020. The Court will no doubt recall the gruesome videos that were celebrated on Azerbaijani social media showing Azerbaijani troops abusing and executing defenceless Armenians — civilians and servicemen alike — and desecrating their corpses while spewing vile racist language¹⁷. The Court will also recall the so-called Military Trophies Park with its racist and humiliating depictions of Armenian servicemen¹⁸.

7. As a result of the 2020 war, tens of thousands of ethnic Armenians were displaced from their homes in areas of Nagorno-Karabakh that Azerbaijan seized. Under the 2020 Trilateral Statement, Azerbaijan committed to allow them to return¹⁹. But as you just heard our Agent say, not a single person has been able to do so²⁰. To the contrary, Azerbaijan cleansed still more villages in the Lachin Corridor in August 2022²¹.

8. The Court has seen this before but it is worth looking at again. It is all the more troubling now in retrospect. This is the now infamous Azerbaijani stamp issued in the aftermath of the 2020 war depicting — and clearly advocating — the disinfection of Nagorno-Karabakh²². You can see in it a depiction of an ethnic cleansing foretold.

¹⁵ See MAr, III.1.III.A.

¹⁶ See MAr, para. 3.77.

¹⁷ CR 2021/20, pp. 34-35, para. 10, pp. 36-38, paras. 15-23 (Murphy).

¹⁸ CR 2021/20, p. 29, paras. 18 (Salonidis).

¹⁹ Republic of Armenia, Office of the Prime Minister, *Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation* (9 Nov. 2020), available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement> (Armenia's Request for provisional measures of 27 December 2022, Ann. 37).

²⁰ MAr, para. 3.279. See also "Hadrut: A community in exile committed to cultural preservation", *The Armenian Weekly* (16 May 2023), available at <https://armenianweekly.com/2023/05/16/hadrut-a-community-in-exile-committed-to-cultural-preservation>.

²¹ MAr, para. 3.241. See also "Azerbaijan takes control of Lachin as deadline for Armenians to leave passes", *OC Media* (26 Aug. 2022), available at <https://oc-media.org/azerbaijan-takes-control-of-lachin-as-deadline-for-armenians-to-leave-passes>.

²² MAr, Part III, Chap. 3.II.C.

9. Azerbaijan's 19 September attack was thus the culmination of a well-considered plan. But before that there was the blockade. As you well know, on 12 December last year, Azerbaijan orchestrated the blocking of the Lachin Corridor by so-called "eco-protestors"²³. Before the blockade, roughly 900 vehicles, 2,500 people and 400 tonnes of goods passed freely back and forth between Armenia and Nagorno-Karabakh every day²⁴. Afterwards, only a trickle made it through, and then only with the assistance of the Russian Federation peacekeepers and the International Committee of the Red Cross (ICRC)²⁵.

10. Last February, you ordered Azerbaijan to "take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions"²⁶. But nothing happened. Azerbaijan refused to comply, even as it claimed with its usual "up is down" double-speak that it was complying²⁷. Despite widespread condemnation from across the international community and the intense suffering of the ethnic Armenians of Nagorno-Karabakh, Azerbaijan left the so-called "eco-protestors" in place for another two months. Azerbaijan only sent

²³ Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (14 Dec. 2022); Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (6 Apr. 2023) (including Exhibit 1, Letter dated 14 March 2023 from the Minister of Foreign Affairs of the Republic of Armenia to the Secretary-General of the United Nations (14 Mar. 2023)).

²⁴ Human Rights Ombudsman of the Republic of Artsakh, "Report on the Violations of Individual and Collective Human Rights as a Result of Azerbaijan's Blockade of Artsakh (Nagorno-Karabakh) (100 Days)" (21 Mar. 2023), available at <https://artsakhombuds.am/en/document/1004>, pp. 5, 6.

²⁵ Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (14 Dec. 2022); Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (6 Apr. 2023) (including Exhibit 1, Letter dated 14 March 2023 from the Minister of Foreign Affairs of the Republic of Armenia to the Secretary-General of the United Nations (14 Mar. 2023)); Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (25 Apr. 2023); Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (19 June 2023).

²⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, Order of 22 February 2023, para. 67.

²⁷ Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (6 Apr. 2023) attaching Letter from Jeyhun Bayramov, Minister of Foreign Affairs of the Republic of Azerbaijan, to Antonio Guterres, Secretary-General of the United Nations (27 Feb. 2023) (Exhibit 1) and Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (14 Mar. 2023) (Exhibit 2); Letter from Elnur Mammadov, Agent of the Republic of Azerbaijan, to Philippe Gautier, Registrar of the International Court of Justice (17 Apr. 2023); Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (25 Apr. 2023); Letter from Elnur Mammadov, Agent of the Republic of Azerbaijan, to Philippe Gautier, Registrar of the International Court of Justice (4 May 2023); Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (19 June 2023); Letter from Elnur Mammadov, Agent of the Republic of Azerbaijan, to Philippe Gautier, Registrar of the International Court of Justice (25 June 2023).

them home immediately after it installed a government checkpoint at the Hakari border bridge at the entrance to the Lachin Corridor²⁸.

11. In the Court's subsequent Order of 6 July, you made clear that "the measure that the Court imposed in that Order applies without limitation to the cause of the impediment of such movement"²⁹. But again, Azerbaijan did not comply and ethnic Armenians continued to suffer. Azerbaijan even portrayed the Court's Order as a vindication of the checkpoint because you did not expressly order it dismantled³⁰. And again, the international community condemned Azerbaijan³¹. It nevertheless persisted. Between 23 April and 14 June it continued to allow only a trickle of goods carried by the Russian Federation peacekeepers and the ICRC to pass.

12. Then, on 15 June, it stopped allowing *any* goods of *any* kind through. Why? Well, first because Armenia thwarted an Azerbaijani attempt to plant an Azerbaijani flag on the Armenian side of the border³². And then later because Azerbaijan claimed that the drivers hired by the ICRC were trying to smuggle contraband into Nagorno-Karabakh. This "contraband" consisted of a small

²⁸ Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (12 May 2023).

²⁹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 6 July 2023*, para. 28.

³⁰ Letter from Elnur Mammadov, Agent of the Republic of Azerbaijan, to Yeghishe Kirakosyan, Agent of the Republic of Armenia before the International Court of Justice (20 July 2023).

³¹ See e.g. European Union, *Azerbaijan: Statement by High Representative Joseph Borrell on the humanitarian situation on the ground* (26 July 2023), available at https://www.eeas.europa.eu/eeas/azerbaijan-statement-high-representative-josep-borrell-humanitarian-situation-ground_en; Delegation of the European Union to the International Organizations in Vienna, "Statement at the OSCE Special Permanent Council No. 1433 Vienna" (20 July 2023), available at https://www.eeas.europa.eu/delegations/vienna-international-organisations/osce-special-permanent-council-no-1433-vienna-20-july-2023_en; Council of Europe, *Humanitarian Situation in Nagorno-Karabakh: Statement by Council of Europe Secretary General Marija Pejčinović Burić* (28 July 2023), available at <https://www.coe.int/fr/web/portal/-/humanitarian-situation-in-nagorno-karabakh>; United States Embassy in Armenia, @usembarmenia, "We reiterate @SecBlinken's call for an immediate reopening of the corridor to commercial & private traffic" (28 July 2023), available at <https://twitter.com/usembarmenia/status/1684923104005337088>; United States Mission to the Organization for Security and Cooperation in Europe, "Response to the Address by the Minister of Foreign Affairs of Armenia H.E. Mr Ararat Mirzoyan" (20 July 2023), available at <https://osce.usmission.gov/response-to-the-address-by-the-minister-of-foreign-affairs-of-armenia-h-e-mr-ararat-mirzoyan-2>; Ministry for Europe and Foreign Affairs of the French Republic, *Armenia – Azerbaijan – Blocking of the Lachin corridor (July 27, 2023)*, available at <https://www.diplomatie.gouv.fr/fr/dossiers-pays/azerbaïdjan/evenements/article/armenie-azerbaïdjan-blocage-du-corridor-de-latchine-27-07-23>; United Kingdom Delegation to the Organization for Security and Cooperation in Europe, *Address by the Foreign Minister of Armenia: UK response, July 2023* (20 July 2023), available at <https://www.gov.uk/government/speeches/address-by-the-foreign-minister-of-armenia-uk-response-july-2023>; Ministry of Foreign Affairs of the Russian Federation, "Statement of the Russian Foreign Ministry in connection with the situation around Nagorno-Karabakh" (15 July 2023), available at https://mid.ru/ru/foreign_policy/news/1897041; Dutch Ministry of Foreign Affairs, @DutchMFA, "The Netherlands follows the humanitarian situation affecting the population in the former Nagorno-Karabakh Autonomous Oblast with serious concern, and fully supports the statement of @JosepBorrellF" (27 July 2023), available at <https://twitter.com/DutchMFA/status/1684597264000425985>; Amnesty International, @amnesty, "The Azerbaijani authorities must lift the blockade of Nagorno-Karabakh and bring an end to the unfolding humanitarian crisis" (28 June 2023), available at <https://twitter.com/amnesty/status/1674075392708079616>.

³² See Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (19 June 2023).

amount of cigarettes, fuel, mobile phones — and a single screen protector³³. Azerbaijan choked off the ethnic Armenian population of Nagorno-Karabakh — *Armenians it purports to consider its own citizens* — over cigarettes, mobile phones and a single screen protector, all at a time when it was under a binding obligation *not* to impede traffic, including cargo, along the Corridor.

13. The result was that between the middle of June and the middle of September, the ethnic Armenian population of Nagorno-Karabakh did not receive *any* food, *any* medicine, *any* hygiene supplies, or *any* anything³⁴. As observed by a group of United Nations experts in a 7 August 2023 statement:

“The blockade . . . has left the population facing acute shortages of food staples, medication, and hygiene products, impacted the functioning of medical and educational institutions, and placed the lives of the residents — especially children, persons with disabilities, older persons, pregnant women, and the sick — at significant risk”³⁵.

14. That was bad enough, but there was more to the plan to “disinfect” Nagorno-Karabakh of its ethnic Armenian population. Azerbaijan also disrupted the supply of gas and electricity. Those steps, too, significantly increased the suffering of the ethnic Armenians and were widely acknowledged and condemned across the international community³⁶.

³³ Republic of Azerbaijan State Border Service, *Press Release of the Press Center of the State Border Service* (11 July 2023), available at <https://dsx.gov.az/news/1565>.

³⁴ See Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (12 May 2023).

³⁵ United Nations Office of the High Commissioner for Human Rights, *UN experts urge Azerbaijan to lift Lachin corridor blockade and end humanitarian crisis in Nagorno-Karabakh* (7 Aug. 2023), available at <https://www.ohchr.org/en/press-releases/2023/08/un-experts-urge-azerbaijan-lift-lachin-corridor-blockade-and-end>.

³⁶ See e.g. Delegation of the European Union to the United Nations and other international organisations in Geneva, *United Nations Human Rights Council 54th Session — Item 2 — EU Statement* (12 Sept. 2023), available at https://www.eeas.europa.eu/delegations/un-geneva/hrc54-item-2-eu-statement_en (Armenia’s Request for provisional measures of 28 September 2023, Ann. 51); European Council, *Statement by the spokesperson of Charles Michel, President of the European Council, regarding Armenia and Azerbaijan* (1 Sept. 2023), available at <https://www.consilium.europa.eu/en/press/press-releases/2023/09/01/statement-by-the-spokesperson-of-charles-michel-president-of-the-european-council-regarding-armenia-and-azerbaijan> (Armenia’s Request for provisional measures of 28 September 2023, Ann. 47); Ministry for Europe and Foreign Affairs of the French Republic, *Azerbaijan — Lachin corridor* (23 Apr. 2023), available at <https://www.diplomatie.gouv.fr/en/country-files/azerbaijan/news/article/azerbaijan-lachin-corridor-23-april-2023> (Armenia’s Request for provisional measures of 28 September 2023, Ann. 13); Ministry of Foreign Affairs of the Russian Federation, *Statement of the Russian Foreign Ministry in connection; with the situation around Nagorno-Karabakh* (15 July 2023), available at https://mid.ru/ru/foreign_policy/news/1897041 (certified translation from Russian) (Armenia’s Request for provisional measures of 28 September 2023, Ann. 20); Germany in the EU @germanyintheeu, “The situation in #NagornoKarabakh is catastrophic. Medication, food, electricity are lacking. Our appeal to Azerbaijan and also Russia: The Lachin corridor must be open. People must finally get what they need to live. @Abaerbock ahead of #Gymnich in [emoji of flag of Spain] Toledo”, X (31 Aug. 2023), available at <https://twitter.com/germanyintheeu/status/1697184637720670649> (Armenia’s Request for provisional measures of 28 September 2023, Ann. 46); “Azerbaijan: Blockade of Lachin corridor putting thousands of lives in peril must be immediately lifted”, *Amnesty International* (9 Feb. 2023), available at <https://www.amnesty.org/en/latest/news/2023/02/azerbaijan-blockade-of-lachin-corridor-putting-thousands-of-lives-in-peril-must-be-immediately-lifted/>, PDF p.2 (Armenia’s Request for provisional measures of 28 September 2023, Ann. 9).

15. And there was more still. For years, Azerbaijani soldiers had been shooting at, and even killing, farmers trying to work their fields near the line of contact³⁷. In the busy agricultural months leading up to the 19 September attack, and after blocking even the meagre humanitarian aid getting through, Azerbaijani soldiers opened fire at agricultural workers and their equipment dozens of times for no apparent reason other than to intimidate them, and to keep them from harvesting even their own local crops to feed themselves³⁸.

16. As of 18 September, the day before Azerbaijan's attack, the situation was thus grim. Some ethnic Armenians had already starved to death³⁹. The remaining food supply was strictly rationed⁴⁰. People queued for hours for their once-daily bit of bread, often only to find that none was left by the time their turn arrived⁴¹. Medicines and medical treatment were virtually non-existent⁴². Patients died

³⁷ Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (25 Apr. 2022).

³⁸ Illustrative List of Attacks by Azerbaijan on Farmers and Agricultural Equipment in Nagorno-Karabakh (Armenia's Request for provisional measures of 28 September 2023, Ann. 120).

³⁹ "First death from starvation reported in blockade-struck Nagorno-Karabakh", *OC Media* (15 Aug. 2023), available at <https://oc-media.org/first-death-from-starvation-reported-in-blockade-struck-nagorno-karabakh>; "Karabakh mother's search for food results in death of two children", *CivilNet* (11 July 2023), available at <https://www.civilnet.am/en/news/744053/karabakh-mothers-search-for-food-results-in-death-of-two-children>.

⁴⁰ "Blackouts and food rationing as Karabakh blockade enters second month", *Eurasianet* (12 Jan. 2023), available at <https://eurasianet.org/blackouts-and-food-rationing-as-karabakh-blockade-enters-second-month>; "Blockaded Nagorno-Karabakh is running out of food, fuel and hope", *OpenDemocracy* (27 July 2023), available at <https://www.opendemocracy.net/en/odr/nagorno-karabakh-blockade-200-days-azerbaijan-armenia>.

⁴¹ "Nagorno-Karabakh: 'People are fainting queuing up for bread'", BBC (30 Aug. 2023), available at <https://www.bbc.com/news/world-europe-66646677> (Armenia's Request for provisional measures of 28 September 2023, Ann. 45).

⁴² "Nagorno-Karabakh residents say 'disastrous' blockade choking supplies", *Reuters* (16 Aug. 2023), available at <https://www.reuters.com/world/asia-pacific/nagorno-karabakh-residents-say-disastrous-blockade-choking-supplies-2023-08-16>.

without necessary treatment⁴³. Miscarriages were rampant⁴⁴. Public transportation stopped running⁴⁵. Schools and businesses closed⁴⁶.

17. Ironically, on 18 September, after months of negotiations, the ICRC and the Russian Red Cross were allowed to bring in some limited humanitarian goods via both the Lachin Corridor and the Aghdam road⁴⁷. The move was greeted with relief across the world, as it seemed like the crisis might be ebbing⁴⁸. But it was just a ruse.

II. The assault

18. The assault came the next day. Azerbaijan billed its 19 September attack as a “local anti-terrorist operation”, justified in part by the same claims about landmines that it has previously peddled before this Court⁴⁹. We will hear this afternoon that the attack was preceded by a military build-up and other provocations by the local ethnic Armenian population. As reflected in the footnotes of my speech, however, in the two months prior to the 19 September attack, every time the

⁴³ “‘They want us to die in the streets’: inside the Nagorno-Karabakh blockade”, *The Guardian* (22 Aug. 2023), available at <https://www.theguardian.com/world/2023/aug/22/inside-nagorno-karabakh-blockade-armenia-azerbaijan>; “Under siege: Nagorno-Karabakh accuses Azerbaijan of throttling supply lines”, *Politico* (23 Aug. 2023), available at <https://www.politico.eu/article/azerbaijan-armenia-nagorno-karabakh-lachin-corridor-humanitarian-aid>.

⁴⁴ “‘We are starving to death:’ Residents of Nagorno-Karabakh fear for future under blockade”, *CNN* (7 Sept. 2023), available at <https://edition.cnn.com/2023/09/06/europe/nagorno-karabakh-blockade-azerbaijan-armenia-intl-cmd/index.html>, (Armenia’s Request for provisional measures of 28 September 2023, Ann. 49); “Queues for bread and no formula milk: Motherhood in blockaded Nagorno-Karabakh”, *OpenDemocracy* (22 Aug. 2023), available at <https://www.opendemocracy.net/en/5050/mothers-nagorno-karabakh-artsakh-armenia-azerbaijan-children>.

⁴⁵ “Karabakh Halts Public Transport Due To Blockade”, *Azatutyun* (24 July 2023), available at <https://www.azatutyun.am/a/32517216.html>.

⁴⁶ “Nagorno-Karabakh shuts schools amid Azerbaijan blockade”, *The New Arab* (20 Jan. 2023), available at <https://www.newarab.com/news/nagorno-karabakh-shuts-schools-amid-azerbaijan-blockade> (Armenia’s Request for provisional measures of 28 September 2023, Ann. 6); “Start of School in Jeopardy as Nagorny Karabakh Blockade Continues”, *Institute for War and Peace Reporting* (29 Aug. 2023), available at <https://iwpr.net/global-voices/start-school-jeopardy-nagorny-karabakh-blockade-continues>; “Azerbaijan’s Blockade Paralyzes Nagorny Karabakh”, *Institute for War and Peace Reporting* (6 June 2023), available at <https://iwpr.net/global-voices/azerbajjans-blockade-paralyses-nagorny-karabakh>.

⁴⁷ “Karabakh gets Red Cross aid via two routes, in step to ease crisis”, *Reuters* (18 Sept. 2023), available at <https://www.reuters.com/world/asia-pacific/red-cross-sends-humanitarian-convoys-karabakh-first-reopening-since-december-2023-09-18>.

⁴⁸ United States Department of State, *Statement on Humanitarian Assistance to Nagorno-Karabakh* (18 Sept. 2023), available at <https://www.state.gov/statement-on-humanitarian-assistance-to-nagorno-karabakh>; Charles Michel @CharlesMichel, X (18 Sept. 2023), available at <https://twitter.com/CharlesMichel/status/1703736036939997272>.

⁴⁹ Ministry of Defence of the Republic of Azerbaijan, *Military attachés were informed about local anti-terrorist activities conducted in the Karabakh region* (19 Sept. 2023), available at <https://mod.gov.az/en/news/military-attaches-were-informed-about-local-anti-terrorist-activities-conducted-in-the-karabakh-region-49392.html> (Armenia’s Request for provisional measures of 28 September 2023, Ann. 59).

Azerbaijani Ministry of Defence made a claim to that effect, the local authorities quickly refuted it⁵⁰. Armenia's Ministry of Foreign Affairs also knowingly warned against falling for Azerbaijan's disinformation campaign and saw it as laying the groundwork for an attack⁵¹. There also appears to be no mention of any such activities in the Russian Federation peacekeepers' bulletins.

19. The reality is that the attack was a premeditated assault. It was preceded by a weeks-long build-up of troops and heavy military equipment along the line of contact and the border with Armenia⁵². Azerbaijan's claims about it being a limited "anti-terrorist operation" are also belied by the scale and the outcome of the operation. Does an "anti-terrorist operation" necessitate the wholesale invasion and capture of Nagorno-Karabakh? Does it necessitate compelling the dissolution of the local administration? Of course not.

⁵⁰ The Defense Forces of the Republic of Artsakh @karabakh_mod, X (5 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1699140604901437669; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (9 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1700522973789147138; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (10 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1700769725037350989; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (11 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1701090662811066700; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (13 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1702032550242267342; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (14 Aug. 2023), available at https://x.com/Karabakh_MoD/status/1691030470841008128; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (14 Aug. 2023), available at https://x.com/Karabakh_MoD/status/1691067880480067584; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (15 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1702591022339887212; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (16 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1702995599077859352; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (17 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1703276981524021665; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (17 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1703277650138075398; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (17 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1703422056988135858; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (17 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1703422724474019948; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (18 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1703631798444466662; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (18 Aug. 2023), available at https://x.com/Karabakh_MoD/status/1692510486774923433; The Defense Forces of the Republic of Artsakh @karabakh_mod, X (19 Sept. 2023), available at https://x.com/Karabakh_MoD/status/1704022984032194973.

⁵¹ Ministry of Foreign Affairs of the Republic of Armenia, *MFA statement on false narratives of Azerbaijan* (19 Sept. 2023), available at https://www.mfa.am/en/interviews-articles-and-comments/2023/09/19/Mfa_Statement/12202; Ministry of Foreign Affairs of the Republic of Armenia, *MFA Statement* (8 Sept. 2023), available at https://www.mfa.am/en/interviews-articles-and-comments/2023/09/08/Mfa_Statement/12190; Ministry of Foreign Affairs of the Republic of Armenia, *Statement of MFA of Armenia on the actions of Azerbaijan's armed forces in the direction of Gegharkunik region of Armenia* (1 Sept. 2023), available at https://www.mfa.am/en/interviews-articles-and-comments/2023/09/01/MFA_Statement_Sotq/12174.

⁵² "Azerbaijani forces using Russian-style symbols are massing on the border of Armenia", *The Telegraph* (15 Sept. 2023), available at <https://www.telegraph.co.uk/world-news/2023/09/15/azerbaijani-troops-russian-style-symbols-armenia-border> (Armenia's Request for provisional measures of 28 September 2023, Ann. 54); "Chaos and Crisis as Azerbaijan Attacks Nagorno-Karabakh", *Bellingcat* (21 Sept. 2023), available at <https://www.bellingcat.com/news/2023/09/21/chaos-and-crisis-as-azerbaijan-attacks-nagorno-karabakh> (Armenia's Request for provisional measures of 28 September 2023, Ann. 83); "Armenians alarmed by reports of Azerbaijani military buildup", *Eurasianet* (8 Sept. 2023), available at <https://eurasianet.org/armenians-alarmed-by-reports-of-azerbaijani-military-buildup>.

20. The international community swiftly condemned Azerbaijan's renewed resort to force despite its pretexts⁵³.

21. The main attack began around 1 p.m. and quickly overpowered the tired, malnourished people of Nagorno-Karabakh. The next day, Azerbaijan declared victory and imposed its terms on the local population. They had to lay down and surrender all arms⁵⁴. They had to say that, as part of the agreement, non-existent troops from the Republic of Armenia would be withdrawn⁵⁵. And they had to agree to dissolve their democratically elected government and other local institutions by the end of the year⁵⁶.

22. Azerbaijan claims that it targeted only military positions and equipment during the brief offensive. That is not true⁵⁷. Azerbaijan also attacked civilian settlements, including the capital, Stepanakert⁵⁸. Although information is hard to come by, in large part because Azerbaijan had banned independent media on the ground and turned Nagorno-Karabakh into an information vacuum⁵⁹, there are nonetheless numerous images of damage to civilian structures⁶⁰, some of which you can see on your screens now. Moreover, a number of civilians, including children, are reported to have been

⁵³ Armenia's Request for provisional measures of 28 September 2023, notes 50-55.

⁵⁴ "Azerbaijan launches attacks along Armenian border", *OC Media* (13 Sept. 2023), available at <https://oc-media.org/azerbaijan-launches-attacks-along-armenian-border>; "Nagorno-Karabakh: ceasefire agreed after dozens killed in military offensive", *The Guardian* (20 Sept. 2023), available at <https://www.theguardian.com/world/2023/sep/20/nagorno-karabakh-death-toll-azerbaijan-armenia-attack-conflict-russia-us>.

⁵⁵ "Armenia not involved in military operations and doesn't maintain an army in Nagorno-Karabakh — PM Pashinyan", *Armenpress* (19 Sept. 2023), available at <https://armenpress.am/eng/news/1119891.html>.

⁵⁶ "Azerbaijan officially dissolves Nagorno-Karabakh", *Politico* (28 Sept. 2023), available at <https://www.politico.eu/article/nagorno-karabakh-dissolved-azerbaijan-armenia-de-facto-president-samvel-shakhramanyan>; "Nagorno-Karabakh will cease to exist from next year. How did this happen?", *CNN* (28 Sept. 2023), available at <https://edition.cnn.com/2023/09/28/europe/nagorno-karabakh-officially-dissolve-intl/index.html>; "Nagorno-Karabakh Republic to be formally dissolved", *CivilNet* (28 Sept. 2023), available at <https://www.civilnet.am/en/news/752521/nagorno-karabakh-republic-to-be-formally-dissolved>.

⁵⁷ "Azerbaijan Launches Offensive In Breakaway Nagorno-Karabakh, Children Among Casualties", *Radio Free Europe/Radio Liberty* (19 Sept. 2023), available at <https://www.rferl.org/a/azerbaijan-armenia-karabakh-mine-explosions/32599318.html>.

⁵⁸ "'There is no way out': residents of Nagorno-Karabakh fear worst as Azerbaijan's troops take control", *The Guardian* (24 Sept. 2023), available at <https://www.theguardian.com/world/2023/sep/24/fear-rises-food-runs-short-karabakh-azerbaijan>.

⁵⁹ Human Rights Defender of the Republic of Armenia, *Preliminary ad hoc report on results of fact-finding missions conducted from September 24 to September 30, 2023* (10 Oct. 2023), available at <https://www.ombuds.am/images/files/e76a3b67b4a56fad3271705e33eeec5.pdf>, pp. 10-13 (Armenia's Additional Annexes (11 Oct. 2023), Ann. 141).

⁶⁰ See Compendium of Illustrative Images Showing the Civilian Suffering and Forced Displacement Resulting from Azerbaijan's Military Assault on Nagorno-Karabakh and its Targeting of Civilians and Civilian Structures (Confidential) (Armenia's Request for provisional measures of 28 September 2023, Ann. 122).

own creation and entirely under its control⁶⁶. In the days that followed, the Lachin Corridor, referred to by many ethnic Armenians as the “Road of Life”, became an escape route⁶⁷.

26. This afternoon, you will probably hear Azerbaijan make much out of the Armenian Prime Minister’s 21 September statement that “[t]oday, at this moment, our assessment is that there is no direct threat to the civilian population of Nagorno Karabakh”⁶⁸. It is hard to see what Azerbaijan gets from this statement. On its face, it was specific to the moment in time in which it was made: “today”, “at this moment” — a moment when reliable information was virtually impossible to come by. Moreover, it did not purport to speak to everything that has come to light and happened since. Prime Minister Pashinyan subsequently explained the purpose of his statement. Speaking before Armenia’s Parliament on 4 October, Mr Pashinyan stated that the motivation of his statement was to avoid exacerbating the situation and intensifying the threats against ethnic Armenians. He added: “I am happy that maybe thanks to my statement as well, more than 105 thousand people in *difficult, suffering, in a dire psychological state* have come and reached the Republic of Armenia.”⁶⁹

27. The escape was chaotic. Many people left with only what they could carry. At one point, the back up along the Lachin Corridor stretched more than 75 km from the Armenian border back into Nagorno-Karabakh⁷⁰. Some, mostly elderly, died along the route; too weak and exhausted — and undoubtedly heartbroken — to survive the ordeal⁷¹. The preliminary Armenian Human Rights Defender Report tells of the mistreatment many suffered at the hands of Azerbaijanis upon crossing the border. According to the report: “Interviewees unanimously reported that members of the Azerbaijani armed forces directed verbal abuse at displaced persons at the checkpoints, cursing at

⁶⁶ Ministry of Defence of the Republic of Azerbaijan, *Statement by Azerbaijan’s Ministry of Defense* (19 Sept. 2023, 14:25), available at <https://mod.gov.az/en/news/statement-by-azerbaijan-s-ministry-of-defense-49363.html> (emphasis added) (Armenia’s Request for provisional measures of 28 September 2023, Ann. 64).

⁶⁷ “Opinion: Why no one should believe reports of Armenians’ ‘voluntary’ exodus from Artsakh”, *Los Angeles Times* (5 Oct. 2023), available at <https://www.latimes.com/opinion/story/2023-10-05/artsakh-nagorno-karabakh-armenia-azerbaijan-ethnic-cleansing-genocide>.

⁶⁸ “Prime Minister Nikol Pashinyan refers to the created situation”, *The Prime Minister of the Republic of Armenia* (21 Sept. 2023), available at <https://www.primeminister.am/en/statements-and-messages/item/2023/09/21/Nikol-Pashinyan-21-09-Speech>.

⁶⁹ “Armenia premier: Karabakh did not lack anything in terms of self-defense”, *News.am* (4 Oct. 2023), available at <https://news.am/eng/news/784948.html>.

⁷⁰ “Fleeing from Nagorno-Karabakh on the mountain road west”, *Reuters* (28 September 2023), available at <https://www.reuters.com/investigates/special-report/armenia-azerbaijan-picture>.

⁷¹ Human Rights Defender of the Republic of Armenia, *Preliminary ad hoc report on results of fact finding missions conducted from September 24 to September 30, 2023* (10 Oct. 2023), available at <https://www.ombuds.am/images/files/e76a3b67b4a56fadb3271705e33ecec5.pdf>, pp. 33-36 (Armenia’s additional annexes (11 Oct. 2023), Ann. 141).

civilians, and urging them to leave and never come back with such statements as ‘go, get lost, clean our land.’ Azerbaijani soldiers performed the salute of [the ultranationalist group] the Grey Wolves”⁷².

28. On 25 September, amidst the chaos of the exodus, there was a large explosion at a fuel depot as people were desperately queuing up to get some of the remaining supplies of gas⁷³. Reports indicate that at least 170 people were killed in the explosion and hundreds of others injured⁷⁴. Because of the lack of medical supplies at local hospitals as a result of the blockade, the worst of the injured had to be treated either at the hospital of the Russian Federation peacekeepers or evacuated by helicopter to Armenia⁷⁵. Many died before receiving treatment.

29. According to the latest available information, more than 100,500 ethnic Armenians from Nagorno-Karabakh have fled to Armenia⁷⁶. It is unclear how many remain or are currently in Azerbaijan’s custody. Those that have fled face an uncertain future. Armenia itself has a population of less than three million. Caring for, let alone absorbing, another 100,000 souls is a massive challenge. The refugees, many of whom are women, children and elderly who have also been displaced during previous episodes of fighting, now find themselves without a home, struggling to find a place to live, exhausted, scared and apprehensive about their future and the future of their homeland. As UNICEF recently reported, the more than 30,000 children displaced from Nagorno-Karabakh now show “signs of severe psychological distress”⁷⁷. Some “are dealing with intense feelings of sadness, anxiety, fear and anger, manifesting in nightmares, bedwetting, and inconsolable

⁷² Human Rights Defender of the Republic of Armenia, *Preliminary ad hoc report on results of fact finding missions conducted from September 24 to September 30, 2023* (10 Oct. 2023), available at: <https://www.ombuds.am/images/files/e76a3b67b4a56fad3271705e33ecec5.pdf>, para. 98 (Armenia’s additional annexes (11 Oct. 2023), Ann. 141).

⁷³ “Nagorno-Karabakh: dozens feared dead and hundreds injured after fuel depot blast”, *The Guardian* (25 Sept. 2023), available at <https://www.theguardian.com/world/2023/sep/26/nagorno-karabakh-blast-fuel-depot-armenia-azerbaijan>.

⁷⁴ “Death toll in Nagorno-Karabakh fuel depot blast jumps to 170”, *BBC* (29 Sept. 2023), available at <https://www.bbc.com/news/world-europe-66958338>.

⁷⁵ “Armenia sends ambulances to Stepanakert to evacuate victims of fuel depot blast”, *Armenpress* (26 Dec. 2023), available at <https://armenpress.am/eng/news/1120555>.

⁷⁶ United Nations High Commissioner for Refugees, *Armenia Refugee Situation Emergency Response* (2 Oct. 2023), available at <https://data.unhcr.org/en/documents/details/103782> (Armenia’s additional annexes (6 Oct. 2023), Ann. 134).

⁷⁷ UNICEF, *Refugee children arriving in Armenia showing signs of severe psychological distress* (10 Oct. 2023), available at <https://www.unicef.org/armenia/en/press-releases/refugee-children-arriving-armenia-showing-signs-severe-psychological-distress-unicef>.

crying”, while others “have shut down and become detached, leaving them unable to express emotions or connect with the situation around them”⁷⁸.

30. Azerbaijan claims that these 100,000 ethnic Armenians left voluntarily. We will probably be told this afternoon that they did so because they had been indoctrinated to hate and not to trust Azerbaijanis. As always with Azerbaijan, every accusation is a confession. More than a 100,000 people suddenly got up, left everything they had ever known, for which they fought so hard, for decades because they voluntarily chose to? Preposterous.

31. Azerbaijan had spent the better part of a year laying a siege against the ethnic Armenian population of Nagorno-Karabakh trying to strangle them out in flagrant violation of the Court’s orders. Then it invaded. Would any rational person choose to stay to live without meaningful international protections under the rule of a régime that virtually defines itself by its hatred of ethnic Armenians?

32. Azerbaijan is also fond of citing a recent address by President Aliyev — as it did in its 2 October letter to the Court — in which he asserted: “All their rights will be guaranteed: educational rights, cultural rights, religious rights, and municipal electoral rights because Azerbaijan is a free society”⁷⁹. In the same address he also claimed: “We intend to build a life together based on peace, mutual understanding, and mutual respect. *We have no problems with the Armenian people. We have no enmity.*”⁸⁰

33. Madam President, distinguished Members of the Court, I do not use this word lightly but that is just laughable. “We have no problems with the Armenian people”? “We have no enmity”? This is a man who literally called “Armenians of the world” Azerbaijan’s “enemy”. The world could thus be excused for not taking President Aliyev at his word.

34. Events during and since the exodus only show that ethnic Armenians were right to flee Nagorno-Karabakh. Days after the attack, Azerbaijan started illegally rounding up prominent political and military figures in Nagorno-Karabakh on trumped-up charges. To date, eight such

⁷⁸ *Ibid.*

⁷⁹ “Ilham Aliyev addressed the nation”, *The President of the Republic of Azerbaijan Ilham Aliyev* (20 Sept. 2023), available at <https://president.az/en/articles/view/61113>.

⁸⁰ *Ibid.*

figures are known to have been arrested, including three of the former presidents of Nagorno-Karabakh⁸¹. It has also issued a wanted list for some 300 more⁸².

35. Azerbaijan is also moving swiftly to de-Armenianize Nagorno-Karabakh. Among other things, it has already reissued a map that renames the streets of Stepanakert in Azerbaijani. Among the changes is the renaming of a main thoroughfare, formerly named after Armenian playwright Vagharsh Vagharshyan, to Enver Pasha Street⁸³. Enver Pasha, you may recall, was an Ottoman military officer who was one of the main architects of the Armenian genocide in the early twentieth century. You may also recall that Azerbaijani servicemen are fond of wearing this patch of Pasha that reads: “Armenian, don’t run! You’ll die anyway, just exhausted.”⁸⁴ You may hear this afternoon about recent news reports in which organs of the Azerbaijani Government disclaim knowledge of this name change but, as you can see here, the website on which the map appears contains the imprint of Azerbaijan’s Ministry of Culture.

36. Symbols of the Armenian presence are also being destroyed. Until 29 September, Stepanakert was home to the second tallest cross in Europe, a 50-metre structure erected on a hill overlooking the city. You can see it on the screen now. At night it was illuminated and visible for miles around. Then, even as the exodus was ongoing, Azerbaijani forces toppled it to the ground, apparently with explosives⁸⁵. You can see that now.

37. Other Armenian cultural heritage has also been targeted. A video online shows Azerbaijani servicemen firing indiscriminately at the thirteenth-century Charektar Monastery in the Martakert region⁸⁶. These actions, of course, are entirely in keeping with Azerbaijan’s well-documented and

⁸¹ “Azerbaijan arrests more ex-leaders of Nagorno-Karabakh”, *Eurasianet* (4 Oct. 2023), available at <https://eurasianet.org/azerbaijan-arrests-more-ex-leaders-of-nagorno-karabakh>.

⁸² “Prosecutor General: Over 300 Armenian separatists put on int’l wanted list”, *Azernews* (1 Oct. 2023), available at <https://www.azernews.az/nation/215512.html>.

⁸³ Compendium relating to Azerbaijan’s Renaming of Streets of Stepanakert (Armenia’s additional annexes (6 Oct. 2023), Ann. 125).

⁸⁴ MAr, para. 4.118, fig. 140.

⁸⁵ @AnnaATurcotte, X (1 Oct. 2023), available at <https://twitter.com/AnnaATurcotte/status/1708579146056527966> (screenshot, transcript and video) (Armenia’s additional annexes (6 Oct. 2023), Ann. 133).

⁸⁶ Caucasus Heritage Watch @CaucasusHW, X (26 Sept. 2023), available at <https://twitter.com/CaucasusHW/status/1706826914009157724>.

long-standing practice of destroying Armenians' cultural heritage in all areas under its control⁸⁷. And given the dearth of reliable information, these actions are also likely just the tip of the iceberg.

38. Even as it has driven out virtually the entire remaining ethnic Armenian population of Nagorno-Karabakh, Azerbaijan is already moving swiftly to settle Azerbaijanis in the territory. Azerbaijan is aggressively pushing its so-called "Great Return" programme pursuant to which it is "relocating" Azerbaijanis to parts of Nagorno-Karabakh it has captured⁸⁸. As you will hear from Ms Macdonald, it is now getting ready to implement the same plan in the rest of the now largely depopulated Nagorno-Karabakh too.

39. One final point, Madam President. This afternoon we will probably also hear about the so-called "United Nations Mission" that visited parts of Stepanakert and surrounding areas on 1 October to make it seem like everything is just fine. According to Azerbaijan in its 3 October 2023 letter to the Court, the group "confirmed that it received no reports 'of violence against civilians following the latest ceasefire', observed 'no damage to civilian public infrastructure, including hospitals, schools and housing, or to cultural and religious structures' or to 'agricultural infrastructure'"⁸⁹.

40. There is a lot one could say about Azerbaijan's characterization of this "mission". In the first place, to call it a "mission", especially in so far as Nagorno-Karabakh is concerned, rather overstates the point. It was not an inter-agency team charged with conducting any kind of formal investigation. It was also only in Nagorno-Karabakh for less than a day.

41. Moreover, the very limited extent to which they had an opportunity to inspect anything comes clearly through in the text of the initial statement issued in Baku by the UN resident co-ordinator in Azerbaijan. It reads, for example, "[i]n parts of the city that the team visited, they saw no damage to civilian public infrastructure"⁹⁰. But how were those parts of the city chosen? And

⁸⁷ See MAr, III.1.V, III.2.IV, III.3.III, IV.2.III.

⁸⁸ "To the Participants of the 27th Meeting of the Council of Ministers of the Economic Cooperation Organization", *The President of the Republic of Azerbaijan Ilham Aliyev* (10 Oct. 2023), available at: <https://president.az/en/articles/view/61528>.

⁸⁹ Letter from Elnur Mammadov, Agent of the Republic of Azerbaijan, to Philippe Gautier, Registrar of the International Court of Justice (3 Oct. 2023).

⁹⁰ United Nations Country Office in Azerbaijan, *UN team completes mission to Karabakh* (2 Oct. 2023), available at <https://azerbaijan.un.org/en/248051-un-team-completes-mission-karabakh>; emphasis added.

what about other parts? As I showed you earlier there is clear evidence of damage to civilian structures in Stepanakert.

42. Nor does the group appear to have been given meaningful access to places outside Stepanakert. The resident co-ordinator's initial statement explicitly states that they had "limited access to rural areas" and could do no more than observe the situation "from the road"⁹¹. Indeed, a subsequent statement expressly states: "The mission did not visit any rural villages during this first trip"⁹².

43. Finally, on the issue of violence against civilians, the statement says only that the "mission did not come across any reports . . . of incidences of violence against civilians *following the latest ceasefire*"⁹³. But what about before the ceasefire? And in any event, if they did manage to speak to any remaining ethnic Armenians, which is not at all clear, it is impossible to believe that they would have been forthcoming with a team escorted by Azerbaijani soldiers.

44. Tellingly, after this 1 October "mission", international actors have called for a truly independent, long-term mission. On 5 October, for example, the European Parliament called for "the establishment of an international presence in Nagorno-Karabakh under the auspices of the United Nations, in order to monitor the situation on the ground"⁹⁴. The same day, the US Mission to the OSCE called for "an independent, international mission to provide transparency, reassurance, and confidence to the residents of Nagorno-Karabakh"⁹⁵.

45. Madam President, distinguished Members of the Court, in its 5 October resolution, the European Parliament saw this situation for what it is. In the words of the resolution: "there is a pressing need to stop and reverse the ongoing forced exodus of the local Armenian population, which

⁹¹ *Ibid.*

⁹² See UN OCHA, *UN humanitarian team wraps up assessment mission to Armenia, Azerbaijan* (9 Oct. 2023), available at <https://www.unocha.org/publications/report/armenia/un-humanitarian-team-wraps-assessment-mission-armenia-azerbaijan>.

⁹³ United Nations Country Office in Azerbaijan, *UN team completes mission to Karabakh* (2 Oct. 2023), available at <https://azerbaijan.un.org/en/248051-un-team-completes-mission-karabakh>; emphasis added.

⁹⁴ European Parliament, *European Parliament resolution of 5 October 2023 on the situation in Nagorno-Karabakh after Azerbaijan's attack and the continuing threats against Armenia* (5 Oct. 2023), available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0356_EN.pdf.

⁹⁵ US Mission to the OSCE, *On the Situation in Nagorno-Karabakh* (5 Oct. 2023), available at <https://osce.usmission.gov/on-the-situation-in-nagorno-karabakh-3>.

amounts to ethnic cleansing, and to ensure the conditions for their safe return to Nagorno-Karabakh”⁹⁶.

46. We could not agree more on both counts and that is why we are before you today.

47. Thank you, Madam President, distinguished Members of the Court. May I ask that you give the floor to Professor Sicilianos?

The PRESIDENT: I thank Mr Martin for his statement. I now invite Professor Linos-Alexandre Sicilianos to take the floor. You have the floor, Professor.

Mr SICILIANOS:

PRIMA FACIE JURISDICTION, PLAUSIBILITY OF THE RIGHTS WHOSE PROTECTION IS SOUGHT AND LINK OF THOSE RIGHTS WITH THE MEASURES REQUESTED

1. Madam President, distinguished judges, it is an honour to appear before the Court on behalf of the Republic of Armenia.

2. I will be addressing three issues: the prima facie jurisdiction of the Court; the plausibility of the rights whose protection is sought; and the link between those rights and the measures requested.

I. Prima facie jurisdiction of the Court

3. The first point, concerning the jurisdiction of the Court, does not need an extensive analysis.

4. In its Order of 7 December 2021 on the indication of provisional measures in the present case, the Court “conclude[d] that, prima facie, it has jurisdiction . . . to entertain the case”⁹⁷. The Court saw no reason to revisit this conclusion in its Order of 22 February 2023⁹⁸. There is no reason to revisit this conclusion now.

⁹⁶ European Parliament, *European Parliament resolution of 5 October 2023 on the situation in Nagorno-Karabakh after Azerbaijan’s attack and the continuing threats against Armenia* (5 Oct. 2023), available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0356_EN.pdf.

⁹⁷ *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.

⁹⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 22 February 2023*, para. 26.

II. The plausibility of the rights whose protection is sought

5. This brings me to the second issue, the plausibility of the rights whose protection is sought. I need not remind the Court of its jurisprudence concerning that condition for the exercise of its power under Article 41⁹⁹.

6. In the context of the present case, the Court has already found that CERD rights Armenia sought to protect in its previous provisional measures requests were indeed plausible.

7. The Court is asked to do the same today.

8. The present request seeks the preservation and protection of a number of rights under Articles 2, 3, 5, 6 and 7 of CERD for the benefit of the ethnic Armenians of Nagorno-Karabakh, including: (1) the more than one hundred thousand who were forced to flee to Armenia; (2) the few who have remained in Nagorno-Karabakh; and (3) those who have been unlawfully detained by Azerbaijan. The myriad forms of discrimination against all these categories of ethnic Armenians are based, precisely, on their ethnicity. As such, they fall squarely within the scope of application of the Convention as defined in Article 1.

9. Importantly, Armenia seeks to protect the ethnic Armenians of Nagorno-Karabakh from ethnic cleansing, which plausibly implicates every substantive obligation under the CERD. I will thus address the plausible right not to be subjected to ethnic cleansing generally before discussing the particular rights under the CERD for which protection is sought individually.

A. The right not to be subjected to ethnic cleansing is plausible and the practice is prohibited by all provisions of the CERD

10. As recognized by the Court, the term “ethnic cleansing” is used to mean “rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area”¹⁰⁰. The practice of ethnic cleansing encompasses a wide range of underlying acts, including

⁹⁹ *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. 152, para. 60; cf. *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017, p. 135, para. 82. See also *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. 427, para. 54.

¹⁰⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 122, para. 190 (citing *Interim Report by the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, UN doc. S/35374 (10 Feb. 1993), available at <https://digitallibrary.un.org/record/197158?ln=en>, para. 55).

“murder, torture, arbitrary arrest and detention, [and] extra-judicial executions”, as well as the “forcible removal, displacement and deportation of civilian population[s], deliberate military attacks or threats of attacks on civilians and civilian areas, and wanton destruction of property”¹⁰¹. It may also be perpetrated through the destruction of “cultural and religious monuments and symbols”¹⁰² or other acts of “intimidation”, for instance, through the creation of adverse living conditions¹⁰³.

11. The CERD Committee itself has affirmed that practices of ethnic cleansing are “completely contrary to the spirit and the principles of the Convention”¹⁰⁴. They “constitute a grave violation of *all the basic principles* underlying” the CERD¹⁰⁵.

12. As Mr Martin has demonstrated, nearly every ethnic Armenian has been forced out of Nagorno-Karabakh on plainly racial grounds. Before, during and in the wake of Azerbaijan’s most recent attack, it espoused hatred of ethnic Armenians, created adverse living conditions in Nagorno-Karabakh, targeted civilians and civilian infrastructure, destroyed cultural and religious monuments, symbols and graveyards, arbitrarily detained ethnic Armenians and otherwise used force and intimidation to remove them from the area¹⁰⁶. Furthermore, there are currently insufficient protections for ethnic Armenians to return¹⁰⁷ and the CERD rights of those who are still in Nagorno-

¹⁰¹ UN Security Council, *Interim Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992)*, UN doc. S/25274 (10 Feb. 1993), available at <https://digitallibrary.un.org/record/197158?ln=en>, para. 56. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021*, p. 425, para. 53.

¹⁰² UN Security Council, *Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992)*, UN doc. S/1994/674 (27 May 1994), available at <https://undocs.org/Home/Mobile?FinalSymbol=S%2F1994%2F674&Language=E&DeviceType=Desktop&LangRequested=False>, para. 136.

¹⁰³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 122, para. 190 (citing *Interim Report by the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, UN doc. S/35374 (10 Feb. 1993), available at <https://digitallibrary.un.org/record/197158?ln=en>, para. 55).

¹⁰⁴ Committee on the Elimination of Racial Discrimination, *Report of the Committee on the Elimination of Racial Discrimination, 48th Session*, UN doc. A/48/18 (19 Jan. 1994), available at <https://digitallibrary.un.org/record/174619?ln=en>, para. 468.

¹⁰⁵ Committee on the Elimination of Racial Discrimination, *Report of the Committee on the Elimination of Racial Discrimination, Fiftieth Session*, UN doc. A/50/18 (22 Sept. 1995), available at <https://digitallibrary.un.org/record/200198?ln=en>, para. 219; emphasis added.

¹⁰⁶ See e.g. Human Rights Defender of the Republic of Armenia, *Preliminary Ad hoc Report on Results of Fact Finding Missions, conducted from 24 September to 30 September 2023*, available at <https://www.ombuds.am/images/files/e76a3b67b4a56fad3271705e33ecec5.pdf>, pp. 17-21, 24, 25, 27 (Armenia’s Additional Annexes (11 Oct. 2023), Ann. 141). See also generally “Guarantee Right to Return to Nagorno Karabakh”, *Human Rights Watch* (5 Oct. 2023), available at <https://www.hrw.org/news/2023/10/05/guarantee-right-return-nagorno-karabakh> (Armenia’s Additional Annexes (6 Oct. 2023), Ann. 137).

¹⁰⁷ See e.g. UN OCHA, *UN humanitarian team wraps up assessment mission to Armenia, Azerbaijan* (9 Oct. 2023), available at <https://www.unocha.org/publications/report/armenia/un-humanitarian-team-wraps-assessment-mission-armenia-azerbaijan>.

Karabakh — mainly elderly and sick persons — are at imminent risk. This is also true for those of the people who have been detained, especially leading political figures.

13. Because ethnic cleansing constitutes a grave violation of all the principles underlying the CERD, and because Azerbaijan is in the process of consolidating this violation, the CERD rights Armenia seeks to protect are necessarily all plausible.

B. An examination of each right claimed individually confirms that each is plausibly protected by the CERD

14. For the avoidance of doubt, however, I will now individually discuss each of the CERD rights Armenia invokes and briefly explain why they are all plausible.

15. First and foremost, Armenia invokes the general prohibition of discrimination contained in the chapeau of Article 2 (1), together with sub-paragraphs (a), (b) and (e).

16. The violation of the general prohibition of discrimination under Article 2 (1) is obvious. The ongoing forced displacement of more than 100,000 ethnic Armenians from Nagorno-Karabakh, including more than 30,000 children¹⁰⁸, and the lack of sufficient protections for their return is the very negation of the obligation “to engage in no act or practice of racial discrimination against persons, groups of persons or institutions”. Likewise, by perpetrating and consolidating its forced displacement of ethnic Armenians, Azerbaijan continues to “sponsor, defend or support racial discrimination” in violation of Article 2 (1) (b), and strengthens racial division in violation of Article 2 (1) (e).

17. Azerbaijan’s ongoing violation of the obligation under Article 2 (2) to adopt special measures to advance effective equality¹⁰⁹ is equally manifest. Despite the obvious need for special protection, President Aliyev has stated that ethnic Armenians living in Nagorno-Karabakh “will have no status, no independence and no special privilege”¹¹⁰.

¹⁰⁸ “Refugee children arriving in Armenia showing signs of severe psychological distress – UNICEF”, *UNICEF* (10 Oct. 2023), available at <https://www.unicef.org/press-releases/refugee-children-arriving-armenia-showing-signs-severe-psychological-distress-unicef>.

¹⁰⁹ See CERD, General Recommendation 32, “The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination”, UN doc A/64/18 (2009), Ann. VIII, p. 154.

¹¹⁰ President of the Republic of Azerbaijan, Ilham Aliyev, *Azerbaijan Television interviewed Ilham Aliyev in Basgal settlement of Ismayilli district* (12 Aug. 2022), available at <https://president.az/en/articles/view/56906>.

18. Article 3 of the Convention, for its part, prohibits all forms of racial segregation in all countries, as well as “all practices of this nature”¹¹¹. The practice of ethnic cleansing of Nagorno-Karabakh is of the same “nature” as racial segregation¹¹². Because ethnic cleansing is characterized by a level of gravity that is more severe than segregation¹¹³, the right to be protected from ethnic cleansing is therefore *a fortiori* plausible under Article 3.

19. I turn now to the plausible rights of ethnic Armenians under Article 5 of the Convention.

20. Article 5 (a) protects the right to equal treatment before tribunals and other organs administering justice. All ex-presidents, other high-ranking officials, as well as military personnel of Nagorno-Karabakh, remain in detention as we speak¹¹⁴, on the basis of false accusations. Azerbaijan has also identified many other ethnic Armenians it plans on arresting¹¹⁵.

21. Article 5 (b) protects the right to security of person and protection by the State against violence or bodily harm. Yet violence and bodily harm are the trademark of Azerbaijan’s treatment of ethnic Armenians¹¹⁶, sadly attested to by several judgments of the European Court of Human Rights¹¹⁷, the most recent one rendered on 5 October¹¹⁸. In the absence of an independent international monitoring mission¹¹⁹, are they to entrust their fate on the word of the very authorities that have tortured and extrajudicially killed them for decades? There is thus an ongoing risk that

¹¹¹ CERD, General Recommendation 19, “The prevention, prohibition and eradication of racial segregation and apartheid”, UN doc. A/50/18 at 140 (1995), Ann. VII, para. 1.

¹¹² See P. Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (2016), Chapter 10, p. 260.

¹¹³ *Ibid.*

¹¹⁴ See The Human Rights Defender of the Republic of Armenia, *Statement of the Human Rights Defender of Armenia on violation of the rights of Ruben Vardanyan and other ethnic Armenians deprived of their liberty by Azerbaijan* (29 Sept. 2023) (Armenia’s Request for provisional measures of 28 September 2023, Ann. 132); Former Karabakh president Araik Harutyunyan arrested, Azerbaijani media reports”, *News.am* (3 Oct. 2023), available at <https://news.am/eng/news/784785.html>.

¹¹⁵ See “Azerbaijan detains ex-commander of Karabakh Armenian armed forces - TASS”, *Reuters* (29 Sept. 2023), available at <https://www.reuters.com/world/asia-pacific/azerbaijan-detains-ex-commander-karabakh-armenian-armed-forces-tass-2023-09-29/>.

¹¹⁶ See MAr (23 Jan. 2023), Vol. I, Part II; Part III, Chapter 1, Section II; Part III, Chapter 2, Section II; Part III, Chapter 3, Section I; Part IV, Chapter 1; Part IV, Chapter 2, Section I.

¹¹⁷ See e.g. *Khojayan and Vardazaryan v. Azerbaijan*, ECtHR, Application No. 62161/14, Judgment (4 Nov. 2021); *Karen Petrosyan v. Azerbaijan*, ECtHR Application No. 32427/16, Judgment on Merits and Just Satisfaction (4 Nov. 2021); *Badalyan v. Azerbaijan*, ECtHR, Application No. 51295/11, Judgment (22 Jul. 2021); *Saribekyan and Balyan v. Azerbaijan*, ECtHR, Application No. 35746/11, Judgment on Merits and Just Satisfaction (30 Jan. 2020).

¹¹⁸ See *Ghazaryan and Bayramyan v. Azerbaijan*, ECtHR, Application No. 33050/18, Judgment (5 Oct. 2023).

¹¹⁹ The Federation Council of the Federal Assembly of the Russian Federation, *On the use of a military unit of the Armed Forces of the Russian Federation in Nagorno-Karabakh* (18 Nov. 2020), available at <http://council.gov.ru/activity/documents/121580/> (Armenia’s Request for provisional measures of 27 December 2022, Ann. 23) (certified translation from Russian).

ethnic Armenians will be subjected to violence and bodily harm in violation of plausible rights under Article 5 (b).

22. Article 5 (d) (i) protects the equal enjoyment of the right to freedom of movement within the borders of the State. Similarly, Article 5 (d) (ii) protects the equal enjoyment of the “right to leave any country, including one’s own, and to return to one’s country”. Today, as Ms Macdonald will develop, Azerbaijan is also taking active steps to make the right to return meaningless for the displaced. In so doing, Azerbaijan violates plausible rights under Article 5 (d) (i) and 5 (d) (ii).

23. Article 5 (d) (vii) protects the right to freedom of thought, conscience and religion. You heard from Mr Martin about Azerbaijan’s destruction of the large cross on a hill overlooking Stepanakert. Azerbaijan has also prevented Armenians from visiting the graves of their relatives¹²⁰. And as explained in detail in Armenia’s Memorial, Azerbaijan has repeatedly falsified or destroyed Armenian graveyards, churches and other monuments in Nagorno-Karabakh¹²¹. In so doing, Azerbaijan violates plausible rights under Article 5 (d) (vii).

24. I continue now with social rights and more particularly with the right to housing and the right to public health, medical care, social security, and social services, protected in Article 5 (e) of the Convention.

25. Mr Martin referred to immediate effects of Azerbaijan’s attack on Nagorno-Karabakh’s civilian settlements, healthcare system and other social services¹²². As Ms Macdonald will develop, the displaced ethnic Armenians remain in an extremely vulnerable position. The right to housing, in particular, is also infringed by Azerbaijan’s intention to soon begin resettling ethnic Azerbaijanis to areas previously inhabited by ethnic Armenians, as it has already done in other areas acquired during

¹²⁰ See e.g. “Exasperated residents flee Nagorno-Karabakh after Azerbaijan seizes control of breakaway region”, *AP News* (26 Sept. 2023), available at <https://apnews.com/article/armenia-azerbaijan-nagorno-karabakh-refugees-b85baf08adf0dbe64b19a50cc94f81a6>.

¹²¹ See MAr (23 Jan. 2023), Vol. I, Part III, Chapter 1, Section V; Part III, Chapter 2, Section IV; Part III, Chapter 3, Section III; Part IV, Chapter 1; Part IV, Chapter 2, Section III.

¹²² See Human Rights Defender of the Republic of Armenia, *The results of the monitoring and analyzes conducted by the Office of the Human Rights Defender of the RA prove that the humanitarian disaster in Nagorno-Karabakh is deepening hour by hour* (21 Sept. 2023) (Armenia’s Request for provisional measures of 28 September 2023, Ann. 84), p. 3; Human Rights Defender of the Republic of Armenia, *Preliminary Ad hoc Report on Results of Fact Finding Missions, conducted from 24 September to 30 September 2023*, available at <https://www.ombuds.am/images/files/e76a3b67b4a56fadb3271705e33ecec5.pdf>, pp. 16-21, 24-27 (Armenia’s additional annexes (11 Oct. 2023), Ann. 141).

the Second Nagorno-Karabakh War¹²³. Furthermore, in the past, Armenians in Azerbaijan have not had their property rights protected¹²⁴ and there is every reason to believe that the same is true now.

26. Article 6 of the Convention implies the right to a remedy for acts of racial discrimination. As amply documented in the Memorial of Armenia¹²⁵, and recently confirmed by the European Commission against Racism and Intolerance¹²⁶, effective remedies for ethnic Armenians have never been given in the past and there is therefore a virtual certainty that they will not be given now.

27. Finally, Article 7 requires States parties to take immediate and effective measures to combat prejudices which lead to racial discrimination and to promote understanding, tolerance and friendship among nations and racial or ethnic groups. Azerbaijan has made no such efforts. On the contrary, it has continuously promoted hatred and intolerance against ethnic Armenians.

III. The link between the above rights and the measures requested

28. Let me briefly turn now to my final point: the link between all the above rights and the measures requested.

29. The provisional measures requested — to be analysed by Professors Murphy and d'Argent — are obviously linked to the rights whose protection is sought because the measures, if indicated, would safeguard these very rights. Stopping the ongoing forced exodus of ethnic Armenians and creating the conditions for their safe return would end the ethnic cleansing and its consolidation, which are completely contrary to the very object and purpose of the Convention. Refraining from taking punitive actions against the current or former political representatives or military personnel of Nagorno-Karabakh would also put an end to a series of flagrant and ongoing violations of Article 5 (b).

¹²³ See e.g. “Azerbaijan Starts Return of People to Recaptured Areas”, *Voice of America News* (19 Jul. 2022), available at <https://www.voanews.com/a/azerbaijan-starts-return-of-people-to-recaptured-areas-/6665547.html>; Քրիստափոր@ChrisKhach, “The village he’s referring to was called Aghadzor and was inhabited by 113 ethnic Armenians (33 families) before 2020. The Armenians were forced out in October 2020. In July 2022 Azerbaijani authorities resettled ~200 ethnic Azerbaijanis (41 families) here. They’re starving . . .”, *Twitter* (9 November 2022), available at <https://twitter.com/ChrisKhach/status/1590461413608521728?cxt=HHwWgIDQsdSOupIsAAAA>. See also “‘Ghost town with no soul’: Inside Karabakh after ethnic Armenians flee”, *Al Jazeera* (1 Oct. 2023), <https://www.youtube.com/watch?v=axdKnZ4sYhA> (Azerbaijan’s annexes (10 Oct. 2023), Ann. 44).

¹²⁴ See, among others, *Sargsyan v. Azerbaijan*, Grand Chamber Judgment (16 June 2015), paras. 216 *et seq.*

¹²⁵ See MAR (23 Jan. 2023), Vol. I, Part VI, Chapter 5.

¹²⁶ See European Commission against Racism and Intolerance Report on Azerbaijan (sixth monitoring cycle), *Council of Europe* (21 June 2023), available at <https://rm.coe.int/sixth-report-on-azerbaijan/1680ab9e35>, p. 7, para. 2; p. 19, para. 49.

30. In a nutshell, the measures requested are all linked to the plausible rights to be adjudicated on the merits.

31. May I kindly ask you, Madam President, to give the floor now to my colleague Ms Alison Macdonald. I thank you for your kind attention.

The PRESIDENT: I thank Professor Sicilianos. I now invite Ms Alison Macdonald to take the floor. You have the floor, Madam.

Ms MACDONALD:

**THERE IS ONGOING IRREPARABLE PREJUDICE AND URGENCY
REQUIRING THE INDICATION OF PROVISIONAL MEASURES**

1. Madam President, distinguished Members of the Court, it is an honour to appear before you on behalf of the Republic of Armenia. I will explain the ongoing urgency and the risk of irreparable harm faced by the ethnic Armenians of Nagorno-Karabakh.

2. The brutal assault that Azerbaijan launched on 19 September has been described by the European Parliament as a “pre-planned, unjustified military attack”¹²⁷ which “represents a gross violation of human rights and international law, and a clear infringement of the trilateral ceasefire statement of 9 November 2020”¹²⁸. This onslaught, as you have heard, caused hundreds of deaths and injuries to civilians, including to children¹²⁹. As you also heard, over 100,000 frightened people have fled their homes, taking only what they could pack in a few minutes. In the words of one of

¹²⁷ European Parliament, *Resolution 2023/2879 (RSP) on the situation in Nagorno-Karabakh after Azerbaijan’s attack and the continuing threats against Armenia* (4 Oct. 2023), Clause A.

¹²⁸ *Ibid.*, Clause B.

¹²⁹ See e.g. The Human Rights Defender of the Republic of Armenia, *Preliminary Ad Hoc Report on Results of Fact-Finding Missions conducted from Sept. 24 to Sept. 30, 2023* (10 Oct. 2023), para. 69 (Armenia’s Additional Annexes (11 Oct. 2023), Ann. 141); Ministry of Foreign Affairs of the Republic of Armenia, *Statement of Foreign Minister of Armenia Ararat Mirzoyan at the 78th session of the United Nations General Assembly* (23 Sept. 2023), available at https://www.mfa.am/en/speeches/2023/09/23/fm_unga/12236, p. 2 (Armenia’s Request for provisional measures of 28 September 2023, Ann. 97); “Nagorno-Karabakh: ceasefire agreed after dozens killed in military offensive”, *The Guardian* (20 Sept. 2023), available at <https://www.theguardian.com/world/2023/sep/20/nagorno-karabakh-death-toll-azerbaijan-armenia-attack-conflict-russia-us>.

those people: “It was so difficult to leave . . . I packed a handful of soil from my homeland, a photo album and some warm clothes.”¹³⁰

3. The tragedy of this displacement has barely begun to sink in. The harm caused is appalling. But we are here today because further — irreparable — harm is likely to be caused unless the Court takes immediate action. It is still possible to change how this story unfolds. The ethnic cleansing of Nagorno-Karabakh is happening as we speak. It must not be allowed to set in stone.

I. The requirements of urgency and irreparable prejudice

4. Starting with the law, I need not repeat the Court’s well-established case law on the requirements of urgency and irreparable prejudice. I will only note that the Court found those conditions to be met in a previous case of forced displacement, the case of *Georgia v. Russia*, where it held that “individuals forced to leave their own place of residence and deprived of their right of return could, depending on the circumstances, be subject to a serious risk of irreparable prejudice”¹³¹.

5. The Court in that case was “of the opinion that the ethnic Georgian population in the areas affected by the recent conflict remains vulnerable”¹³², words which could just as well refer to the 100,000 recently displaced Armenians.

6. The Court went on to note “the ongoing tension and the absence of an overall settlement to the conflict in this region”, observing that “while the problems of refugees and internally displaced persons in this region are currently being addressed, they have not yet been resolved in their entirety”¹³³. As you have already heard, this would be a considerable understatement in the present case.

¹³⁰ “‘This is a forced migration’: the ethnic Armenians fleeing Nagorno-Karabakh”, *The Guardian* (3 Oct. 2023), available at <https://www.theguardian.com/world/2023/oct/03/this-is-a-forced-migration-the-ethnic-armenians-fleeing-nagorno-karabakh>. See also United Nations Office for the Coordination of Humanitarian Affairs (OCHA), “UN humanitarian team wraps up assessment mission to Armenia, Azerbaijan” (9 Oct. 2023), available at <https://www.unocha.org/publications/report/armenia/un-humanitarian-team-wraps-assessment-mission-armenia-azerbaijan>; The Human Rights Defender of the Republic of Armenia, *Preliminary Ad Hoc Report on Results of Fact-Finding Missions conducted from Sept. 24 to Sept. 30, 2023* (10 Oct. 2023), pp. 29-43 (Armenia’s Additional Annexes (11 Oct. 2023), Ann. 141).

¹³¹ *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 396, para. 142.

¹³² *Ibid.*, para. 143.

¹³³ *Ibid.*

7. And all these factors led the Court in that case to conclude that “there exists an imminent risk that the rights at issue in this case . . . may suffer irreparable prejudice”¹³⁴.

8. The same is true here.

II. Azerbaijan’s conduct entails ongoing and imminent irreparable prejudice to the rights which Armenia’s request seeks to protect

9. Mr Martin has taken you through the facts in detail, leading up to the situation on the ground today. It is truly grim.

10. For generations to leave their historic homeland in the space of days speaks volumes about the desperation that they felt. Heart-rending accounts abound. They have travelled, crowded into cars and trucks, with the few belongings they could pack in the minutes available to them¹³⁵. They have lost their ancestral homes, their land, virtually everything they own. The grief and anguish of their accounts is palpable¹³⁶. And the shock is all the greater because, despite the grinding months of the blockade, the final attack was so swift. The fact that, quite clearly, this was Azerbaijan’s plan all along is no comfort to those who had to leave at a moment’s notice.

11. This afternoon, you may hear the argument that those who have fled are in Armenia now and so their rights are secure. Of course, Armenia and its people will welcome them, will help and support them as far as humanly possible, along with support from the international community.

¹³⁴ *Ibid.*

¹³⁵ See “‘This is a forced migration’: the ethnic Armenians fleeing Nagorno-Karabakh”, *The Guardian* (3 Oct. 2023), available at <https://www.theguardian.com/world/2023/oct/03/this-is-a-forced-migration-the-ethnic-armenians-fleeing-nagorno-karabakh>; ABC News, “Ethnic Armenians fear being wiped off the map as exodus from Nagorno-Karabakh nears end”, *YouTube* (2 Oct. 2023), available at <https://www.youtube.com/watch?v=5qY2absYTS8>, at 0:58-1:40; OCHA, “UN humanitarian team wraps up assessment mission to Armenia, Azerbaijan” (9 Oct. 2023), available at <https://www.unocha.org/publications/report/armenia/un-humanitarian-team-wraps-assessment-mission-armenia-azerbaijan>; The Human Rights Defender of the Republic of Armenia, *Preliminary Ad Hoc Report on Results of Fact-Finding Missions conducted from Sept. 24 to Sept. 30, 2023* (10 Oct. 2023), pp. 29-43 (Armenia’s Additional Annexes (11 Oct. 2023), Ann. 141).

¹³⁶ “‘The shooting was non-stop’: Refugees reflect on fleeing Nagorno-Karabakh”, *CNN* (27 Sept. 2023), available at <https://www.cnn.com/videos/world/2023/09/27/armenian-refugees-fleeing-nagorno-karabakh-lon-orig-mh-ao.cnn> (screenshot and video) (Armenia’s Request for provisional measures of 28 September 2023, Ann. 127); “Nagorno-Karabakh: Voices of Armenians fleeing”, *BBC* (25 Sept. 2023), available at <https://www.bbc.com/news/av/world-europe-66919188>; ABC News, “Ethnic Armenians fear being wiped off the map as exodus from Nagorno-Karabakh nears end”, *YouTube* (2 Oct. 2023), available at <https://www.youtube.com/watch?v=5qY2absYTS8>, at 1:40-1:52; OCHA, “UN humanitarian team wraps up assessment mission to Armenia, Azerbaijan” (9 Oct. 2023), available at <https://www.unocha.org/publications/report/armenia/un-humanitarian-team-wraps-assessment-mission-armenia-azerbaijan>; Human Rights Defender of the Republic of Armenia, *Preliminary Ad Hoc Report on Results of Fact-Finding Missions conducted from Sept. 24 to Sept. 30, 2023* (10 Oct. 2023), pp. 29-43 (Armenia’s Additional Annexes (11 Oct. 2023), Ann. 141); UNICEF, *Refugee children arriving in Armenia showing signs of severe psychological distress* (10 Oct. 2023), available at <https://www.unicef.org/eca/press-releases/refugee-children-arriving-armenia-showing-signs-severe-psychological-distress-unicef>.

12. But the point is that whatever help is given within Armenia to this vulnerable group of people, their CERD rights that are in jeopardy concern Azerbaijan. Those CERD rights depend on their ability to return safely to Nagorno-Karabakh. To live as a community. To enjoy their culture, their language and their religion, in their ancestral homeland. And Azerbaijan is in the process of jeopardizing these rights in every possible way.

13. The process of ethnic cleansing is being consolidated day by day. You heard from Mr Martin how Nagorno-Karabakh is being politically, physically and culturally swallowed up by Azerbaijan. And this poses an imminent risk of irreparable harm to the whole range of CERD rights enjoyed by the ethnic Armenian population native to the region. Quite simply, the Armenian character of Nagorno-Karabakh is being destroyed, with the aim of ensuring that there is no way they can ever return.

14. As part of this process, Azerbaijan has a list of some 300 “wanted persons” whom it seeks to hunt down¹³⁷. It has so far detained at least eight high-ranking persons associated with the institutions of Nagorno-Karabakh, including three former presidents, a former state minister and a former foreign minister¹³⁸. They now, apparently, await trial on whatever criminal charges have been concocted against them, in circumstances where President Aliyev has described the democratically elected officials of Nagorno-Karabakh as a “criminal junta” and a “den of poison”¹³⁹. None of these prisoners, to Armenia’s knowledge, have been allowed access to any independent international observers, including the ICRC. And Armenia has reason to believe that Azerbaijan has detained an unspecified number of others¹⁴⁰.

¹³⁷ “Prosecutor General: Over 300 Armenian separatists put on int’l wanted list”, *Azernews* (1 Oct. 2023), available at <https://www.azernews.az/nation/215512.html>.

¹³⁸ “Azerbaijan arrests several former top separatist leaders of Nagorno-Karabakh”, *AP News* (3 Oct. 2023), available at <https://apnews.com/article/azerbaijan-nagorno-karabakh-armenia-separatist-arrest-dcbb7290c2f3343c5e1c37827fd50533>; “Azerbaijan arrests former presidents and parliamentary speakers of Nagorno-Karabakh”, *OC Media* (4 Oct. 2023), available at <https://oc-media.org/azerbaijan-arrests-former-presidents-and-parliamentary-speaker-of-nagorno-karabakh/>.

¹³⁹ “Azerbaijan Television interviewed Ilham Aliyev in Basgal settlement of Ismayilli district”, *President of the Republic of Azerbaijan* (12 Aug. 2022), available at <https://president.az/en/articles/view/56906> (Armenia’s Request for provisional measures of 28 September 2023, Ann. 37).

¹⁴⁰ See e.g. “Armenia appeals to ECHR demanding to ensure protection of rights of former and current leaders of Karabakh”, *News.am* (5 Oct. 2023), available at <https://news.am/eng/news/785191.html>.

15. The ethnic cleansing also involves a continuing attack on Armenian cultural heritage and religion, as Mr Martin pointed out. Again, this is all part of eradicating Armenian culture from the area — as though the Armenians were, quite simply, never there.

16. The hatred extends to the Armenian language. In a speech to members of the Azerbaijan armed forces in Shushi in 2021, President Aliyev described Armenian as an “alien language”, saying that: “From now on, no songs will be sung here in an alien language . . . From now on, it will be the Azerbaijani language that will dominate this land.”¹⁴¹ And in this spirit, Azerbaijan has already begun to remove Armenian-language signs from the roads¹⁴².

17. Against this background, Azerbaijan vaguely claims that the displaced Armenians — at least some of them, at least on conditions that Azerbaijan would set, at some unspecified future date — are free to come back and live in the multi-ethnic “paradise” that it will create¹⁴³.

18. But are the displaced to believe the claims of a régime that has forced them from their homes, chronically discriminated against them and has one of the worst human rights records in the world¹⁴⁴? The endemic hate speech, from the President down¹⁴⁵, along with widespread murder and torture of ethnic Armenians¹⁴⁶, are notorious. Azerbaijan’s President himself previously boasted, when he ordered the army to attack in 2020, “if they do not leave our lands of their own free will, we will chase them away like dogs”¹⁴⁷. No wonder that, in its resolution last week, the European Parliament referred to Azerbaijan’s “alarming human rights record”, describing it as “a country that

¹⁴¹ “President, Commander-in-Chief of Armed Forces Ilham Aliyev made a speech in front of servicemen in Shusha”, *The President of the Republic of Azerbaijan Ilham Aliyev* (8 Nov. 2021), available at <https://president.az/en/articles/view/54046> (cited in MAr, Ann. 292).

¹⁴² “Azerbaijani soldiers start war against road signs in Nagorno-Karabakh”, *News.am* (6 Oct. 2023), available at <https://news.am/eng/news/785274.html>.

¹⁴³ President of the Republic of Azerbaijan, *Address to the nation by Ilham Aliyev* (20 Sept. 2023), available at <https://president.az/en/articles/view/61113>; “Graphic execution videos emerge as Armenians flee and experts warn of genocide”, *Lemkin Institute for Genocide Prevention* (22 Sept. 2023), available at <https://www.lemkininstitute.com/single-post/graphic-execution-videos-emerge-as-armenians-flee-and-experts-warn-of-genocide>.

¹⁴⁴ See e.g. Freedom House, “Freedom in the World 2023: Azerbaijan” (2023), available at <https://freedomhouse.org/country/azerbaijan/freedom-world/2023>; US Department of State, *2022 Country Reports on Human Rights Practices: Azerbaijan* (2022), available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/azerbaijan/>; “Submission for the Universal Periodic Review of Azerbaijan”, *Human Rights Watch* (5 Oct. 2017), available at <https://www.hrw.org/news/2017/10/05/submission-universal-periodic-review-azerbaijan>.

¹⁴⁵ See MAr, Secs. III.1.I, III.2.I, III.3.II, IV.2.II.

¹⁴⁶ See MAr, Secs. II.2, III.1.II, III.2.II, III.3.I, IV.2.I.

¹⁴⁷ “Chronicles of Victory: President Ilham Aliyev addresses the nation on October 17, 2020”, *AzerNews* (17 Oct. 2020), available at <https://www.azernews.az/nation/184462.html>.

blatantly violates principles of international law as well as its international obligations”¹⁴⁸. Likewise, the European Court of Human Rights yesterday confirmed the interim measures which it indicated on 22 September¹⁴⁹, rejecting a whole range of arguments by Azerbaijan that you will likely hear repeated this afternoon.

19. When you hear those arguments, we ask you to listen also to what is not being said by Azerbaijan.

20. There is no firm commitment to an ongoing presence of international monitors to guarantee the safe return of the displaced persons, even though this is clearly essential to their security¹⁵⁰. You may hear about the heavily stage-managed visit of the United Nations last week — Mr Martin has already addressed its obvious deficiencies. In any event, a one-day visit cannot substitute for the ongoing presence that is so badly needed. As the UN OCHA stated on Monday, “confidence and trust are critical before the conditions for any voluntary returns to Karabakh can meaningfully be achieved”¹⁵¹. And yet Azerbaijan claims that Armenians could simply turn up and register with the Azerbaijani authorities without any credible guarantee of their safety, supposedly trusting the very people who drove them out in the first place.

21. Nor does Azerbaijan mention, let alone acknowledge, the autonomous status which Nagorno-Karabakh has enjoyed for a century, as the Court recorded in its Order of 7 December 2021¹⁵². On the contrary, and directly contrary to what it accepted in the format of the Minsk

¹⁴⁸ European Parliament, *Resolution 2023/2879 (RSP) on the situation in Nagorno-Karabakh after Azerbaijan’s attack and the continuing threats against Armenia* (4 Oct. 2023), para. 11.

¹⁴⁹ Letter from European Court of Human Rights, Head of the Filtering Section to Representative of the Republic of Armenia on International Legal Matters (22 Sept. 2023) (accompanied by letters referred to therein) (confidential) (Armenia’s Additional Annexes (11 Oct. 2023), Ann. 139); Letter from European Court of Human Rights, Head of the Filtering Section to Representative of the Republic of Armenia on International Legal Matters (10 Oct. 2023) (accompanied by letters referred to therein) (confidential) (Armenia’s Additional Annexes (11 Oct. 2023), Ann. 140).

¹⁵⁰ See e.g. “Guarantee Right to Return to Nagorno Karabakh”, *Human Rights Watch* (5 Oct. 2023), available at <https://www.hrw.org/news/2023/10/05/guarantee-right-return-nagorno-karabakh> (Armenia’s Additional Annexes (6 Oct. 2023), Ann. 137); US Department of State, *Secretary Blinken’s Call with Azerbaijani President Aliyev* (26 Sept. 2023), available at <https://www.state.gov/secretary-blinkens-call-with-azerbaijani-president-aliyev-17/>; European Parliament, *Resolution 2023/2879 (RSP) on the situation in Nagorno-Karabakh after Azerbaijan’s attack and the continuing threats against Armenia* (4 Oct. 2023), para. 7.

¹⁵¹ OCHA, “UN humanitarian team wraps up assessment mission to Armenia, Azerbaijan” (9 Oct. 2023), available at <https://www.unocha.org/publications/report/armenia/un-humanitarian-team-wraps-assessment-mission-armenia-azerbaijan>. See also United Nations, *Press Release: Statement by Ms Alice Wairimu, Special Adviser on the Prevention of Genocide, on the situation in Armenia and Azerbaijan* (10 Oct. 2023), available at <https://reliefweb.int/report/armenia/statement-ms-alice-wairimu-nderitu-un-special-adviser-prevention-genocide-situation-armenia-and-azerbaijan>.

¹⁵² *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. 367, para. 13.

Group¹⁵³, Azerbaijan has compelled the total abolition of all of Nagorno-Karabakh's institutions, its very existence as a legal entity, which will take effect on 1 January 2024¹⁵⁴.

22. Nor does Azerbaijan offer any explanation for how ethnic Armenians are supposed to fit into Azerbaijan's so-called "Great Return" programme, by which it intends to resettle the area with Azerbaijanis¹⁵⁵. Just two days ago, President Aliyev affirmed that "[t]he program of the Great Return to the de-occupied territories is among our national priorities", and he announced that the next three years will see the settlement of "nearly 100,000" Azerbaijanis — yes, around the same number as the Armenians who have just been displaced¹⁵⁶.

23. And finally, let us not forget those who remain in Nagorno-Karabakh. The ICRC plays a critical role in assisting such individuals, as well as in locating missing persons and in identifying and retrieving the remains of the deceased. While Azerbaijan has impeded ICRC access in the past, and indeed over the past year, some access has recently occurred and it makes a real difference. For example, earlier this month the ICRC located and assisted in Stepanakert an elderly female cancer patient who was confined to her bed¹⁵⁷. Armenia has no way of knowing how many others there may be, isolated and frightened. Given the obvious urgent threats, as Professor Murphy will explain, Armenia seeks measures which will also protect the rights of those people from irreparable harm.

24. But ultimately, the fundamental need for those people is the same as for the 100,000 who have just been displaced: the need for their CERD rights to be protected by ensuring that they can live lives of dignity, in their homeland, with their community, speaking their language, enjoying their

¹⁵³ Minsk Group proposal ("package deal") (July 1997), Agreement I, Arts. II/B, IV, V-IX; PACE, resolution 1119 (No. 279), para. 5.3, available at <https://www.legal-tools.org/doc/4b2ddb/pdf/>; UN General Assembly, *Annex to the letter dated 16 March 2004 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General and the President of the Security Council*, UN doc. A/59/66-S/2004/219 (17 Mar. 2004).

¹⁵⁴ "Nagorno-Karabakh separatist government says it will dissolve itself by January 2024", *Le Monde* (28 Sept. 2023), available at https://www.lemonde.fr/en/international/article/2023/09/28/nagorno-karabakh-separatist-government-says-it-will-dissolve-itself-by-january-2024_6140487_4.html.

¹⁵⁵ "Azerbaijan Starts Return of People to Recaptured Areas", *Voice of America News* (19 July 2022), available at <https://www.voanews.com/a/azerbaijan-starts-return-of-people-to-recaptured-areas-/6665547.html>; "President Aliyev: Big return program implementation is the number one task for us", *Azetaç* (29 Sept. 2023), available at https://azertag.az/en/xeber/president_ilham_aliyev_big_return_program_implementation_is_the_number_one_task_for_us-2768083.

¹⁵⁶ "To the Participants of the 27th Meeting of the Council of Ministers of Economic Cooperation Organization", *President of the Republic of Azerbaijan* (10 Oct. 2023), available at <https://president.az/en/articles/view/61528>.

¹⁵⁷ "Azerbaijan president snubs EU-hosted talks on Nagorno-Karabakh", *The Guardian* (4 Oct. 2023), available at https://www.theguardian.com/world/2023/oct/04/azerbaijan-president-snubs-eu-hosted-talks-on-nagorno-karabakh?CMP=Share_AndroidApp_Other.

property, exercising their culture. With every day that passes, the risk of irreparable harm to those rights grows greater.

III. Conclusion

25. In conclusion, Madam President, Azerbaijan, whose President boasted of driving ethnic Armenians out of Nagorno-Karabakh “like dogs”, now asks this Court to trust it to protect those very people. People against whom it has committed numerous atrocities, whose cultural heritage it seeks to erase, whose language it says should never be spoken. It has starved these people into submission for the past nine months and now it claims to have their best interests at heart.

26. The Armenians of Nagorno-Karabakh need more than Azerbaijan’s hollow assurances: they need the protection of this Court. They need it today, not in a few years’ time. If events are simply left to unfold, then judging from Azerbaijan’s conduct to date, the right to return, and all that goes with it, will be worthless by the time you decide this case on the merits. By that time, the ethnic cleansing of Nagorno-Karabakh will be set in stone. But that does not need to be how this story ends. The Court’s provisional measures jurisdiction plays a vital role in ensuring that justice does not come too late. We urge you to exercise it.

27. Madam President, this concludes my presentation. I thank the Court for its attention, and respectfully request that you invite Professor Murphy to take the floor.

The PRESIDENT: I thank Ms Macdonald for her statement. I now invite Professor Sean Murphy to take the floor. You have the floor, Professor.

Mr MURPHY:

THE PROVISIONAL MEASURES REQUESTED BY ARMENIA ARE NECESSARY TO PRESERVE THE RIGHTS OF ETHNIC ARMENIANS UNDER THE CERD

1. Thank you, Madam President. It is a great honour to appear again before this Court on behalf of the Republic of Armenia.

2. Madam President, Members of the Court, we have addressed this morning the essential facts underlying Armenia’s Request for provisional measures, and explained why the Court’s legal standard for issuing such measures has been met.

3. My task is to explain why Armenia's first nine requests are all necessary to preserve the rights of ethnic Armenians under the CERD, leaving to my colleague, Professor d'Argent, to explain why the tenth measure is equally necessary. I will conclude by explaining why issuance of these measures would not require the Court to resolve any facts prejudicial to a decision on jurisdiction or on the merits in this case.

I. Each provisional measure requested by Armenia is necessary to preserve the rights of ethnic Armenians under the CERD

4. The Members of the Court may wish to refer to tab 2 in your judges' folder where you will find the ten measures that Armenia requests.

5. The *first measure* is that "Azerbaijan shall refrain from taking any measures which might entail breaches of its obligations under the CERD". This broad measure does not seek to address a specific type of conduct, but it is warranted given the diversity of Azerbaijan's acts, since 19 September 2023, which have severely jeopardized the CERD rights of ethnic Armenians.

6. The *second measure* we request is that Azerbaijan shall refrain from taking any actions aimed at, or having the effect of *first*, displacing the remaining ethnic Armenians from Nagorno-Karabakh; *second*, preventing displaced persons from returning to their homes in Nagorno-Karabakh; or *third*, preventing those who wish to leave Nagorno-Karabakh from doing so.

7. This measure is, in essence, about the freedom of movement of ethnic Armenians in relation to Nagorno-Karabakh. The Court has ordered similar measures in the past, including in the *Georgia v. Russia* CERD case, where it ordered that the government controlling territory must ensure to the local citizens of that State the right "of persons to freedom of movement and residence within the border of the State"¹⁵⁸.

8. As we have noted, Azerbaijan has already taken numerous adverse steps that have promoted the displacement of ethnic Armenians and prevented their return. As Mr Martin explained, following the nine-month-long blockade that caused a humanitarian crisis in Nagorno-Karabakh, Azerbaijan

¹⁵⁸ *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, p. 353, para. 149 (3) (ii).*

attacked the enclave, targeting numerous civilian structures, including homes and schools¹⁵⁹. That attack, combined with the fear of inevitable atrocities that would follow, and with the history of extreme discrimination against ethnic Armenians, forced the displacement of more than 100,000 ethnic Armenians residing in Nagorno-Karabakh at the time of the attack, including more than 30,000 children¹⁶⁰. Azerbaijan must be ordered to refrain from any such conduct in the future.

9. At the same time, Azerbaijan has not taken meaningful steps to allow any possibility of return. Azerbaijan assures us that it will afford ethnic Armenians in Nagorno-Karabakh “all rights and freedoms in line with its Constitution and relevant international human rights mechanisms”¹⁶¹. Yet, in this context, such vague assurances are simply not enough to bring about the necessary conditions for the return of ethnic Armenians, given the long-standing and well-documented hatred towards them¹⁶² and given the lack of any concrete assurances such as that civilians will not be prosecuted if they return; that ethnic Armenians will enjoy meaningful political representation; that homes which were destroyed will be rebuilt or repaired; or that those homes remaining intact will not be reassigned to Azerbaijanis. Moreover, a promise of “reintegration” does not respect Nagorno-Karabakh’s unique historic status, including as an autonomous oblast within the Soviet Union¹⁶³. To the contrary, President Aliyev has promised that “Armenians living in Karabakh will have no status,

¹⁵⁹ See e.g. Compendium of Illustrative Images Showing the Civilian Suffering and Forced Displacement Resulting from Azerbaijan’s Military Assault on Nagorno-Karabakh and its Targeting of Civilians and Civilian Structures (Confidential) (Armenia’s Request for provisional measures of 28 September 2023, Ann. 122); The Human Rights Defender of Armenia, *Preliminary Ad Hoc Report on Results of Fact-Finding Missions conducted from Sept. 24 to Sept. 30, 2023* (10 Oct. 2023), available at <https://www.ombuds.am/images/files/e76a3b67b4a56fad3271705e33eeec5.pdf>, pp. 16-22, 24-27 (Armenia’s Request for provisional measures of 28 September 2023, Ann. 141).

¹⁶⁰ “‘The shooting was non-stop.’ Refugees reflect on fleeing Nagorno-Karabakh”, *YouTube* (27 Sept. 2023), available at <https://www.cnn.com/videos/world/2023/09/27/armenian-refugees-fleeing-nagorno-karabakh-lon-orig-mh-ao.cnn> (screenshot and video) (Armenia’s Request for provisional measures of 28 September 2023, Ann. 127); UNICEF, *Refugee children arriving in Armenia showing signs of severe psychological distress* (10 Oct. 2023), available at <https://www.unicef.org/press-releases/refugee-children-arriving-armenia-showing-signs-severe-psychological-distress-unicef>.

¹⁶¹ Ministry of Foreign Affairs of the Republic of Azerbaijan, *No:533/23, Statement by Jeyhun Bayramov, Minister of Foreign Affairs of the Republic of Azerbaijan, at the 9422nd Meeting of the UN Security Council* (19 Sept. 2023), available at <https://mfa.gov.az/en/news/no53323> (Armenia’s Request for provisional measures of 28 September 2023, Ann. 66).

¹⁶² See “Responding to the Humanitarian Catastrophe in Nagorno-Karabakh”, *International Crisis Group* (29 Sept. 2023), available at <https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-conflict/responding-humanitarian-catastrophe-nagorno>; European Commission against Racism and Intolerance, *ECRI Report On Azerbaijan (sixth monitoring cycle)* (29 Mar. 2023), available at <https://rm.coe.int/sixth-report-on-azerbaijan/1680ab9e35>, pp. 15-23.

¹⁶³ 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. 367, para. 13.

no independence, and no special privilege”¹⁶⁴. Azerbaijan’s vague assurances and unhelpful promises also ring hollow in the face of Azerbaijan’s continuing conduct on the ground, such as threatening Armenian cultural heritage in areas newly under Azerbaijan’s control¹⁶⁵. In short, Azerbaijan also must be ordered to refrain from actions that prevent the safe and expeditious return of those who have been displaced and, of course, future steps by Azerbaijan must also allow any ethnic Armenians in Nagorno-Karabakh to leave if they are able and willing to do so.

10. The *third measure* we request is that “Azerbaijan shall withdraw all military and law-enforcement personnel from all civilian establishments in Nagorno-Karabakh occupied as a result of its armed attack on 19 September 2023”.

11. The Court will note we are *only* requesting that Azerbaijan military and law enforcement personnel withdraw from “civilian establishments” that they have now occupied in Nagorno-Karabakh, meaning withdraw from establishments that are *not* military or that are *not* law enforcement installations. This request is intimately related to the circumstances that led to the massive displacement of ethnic Armenians and any possibility for their return¹⁶⁶. Unless such personnel are withdrawn from civilian establishments of Nagorno-Karabakh — to include its residential communities, civic buildings, schools, medical facilities and places of worship — ethnic Armenian civilians, all too familiar with the past atrocities committed by Azerbaijani Government personnel, will continue to feel afraid of living in or returning to Nagorno-Karabakh.

¹⁶⁴ “Azerbaijan Television interviewed Ilham Aliyev in Basgal settlement of Ismayilli district”, *President of the Republic of Azerbaijan* (12 Aug. 2022), available at <https://president.az/en/articles/view/56906> (Armenia’s Request for provisional measures of 28 September 2023, Ann. 37).

¹⁶⁵ See e.g. “State Service: Armenia carried out illegal repair and restoration works in Ganjasar monastery during occupation”, *Azerbaijan 24* (4 Oct. 2023), available at azerbaycan24.com/en/state-service-armenia-carried-out-illegal-repair-and-restoration-works-in-ganjasar-monastery-during-occupation.

¹⁶⁶ Human Rights Defender of Armenia, *Preliminary Ad Hoc Report on Results of Fact-Finding Missions conducted from Sept 24 to Sept 30, 2023* (10 Oct. 2023), available at <https://www.ombuds.am/images/files/e76a3b67b4a56fadb3271705e33eccc5.pdf>, p. 18 (Armenia’s Request for provisional measures of 28 September 2023, Ann. 141).

12. Indeed, reports and videos have now emerged of Azerbaijani personnel shooting at civilian homes¹⁶⁷, ransacking those homes and looting private belongings¹⁶⁸ — these being the same military personnel previously seen on video and in photographs beheading, torturing and otherwise abusing ethnic Armenians¹⁶⁹. And sadly, these are the same military personnel that, instead of being prosecuted by Azerbaijan¹⁷⁰, are rewarded and their acts glorified¹⁷¹.

13. The *fourth measure* we request is that Azerbaijan refrain from impeding the access of the United Nations to the ethnic Armenians of Nagorno-Karabakh, or otherwise interfering in UN activities.

14. The only way to guarantee that ethnic Armenians will feel safe in returning to and remaining in Nagorno-Karabakh is for a UN monitoring mission to be granted ongoing, unfettered and unimpeded access to the entirety of the region and to the ethnic Armenian community found there. Moreover, such a mission should include representatives from UNESCO, which Azerbaijan has previously blocked from visiting Armenian cultural sites¹⁷². In fact, as you have heard, a proposal for such a UN monitoring mission has received wide support from the international community over the past two weeks¹⁷³ but, as Ms Macdonald has explained, Azerbaijan has failed to commit to it¹⁷⁴.

15. Azerbaijan, this afternoon, will surely make much of its consent since the September attack to a very limited and very brief access to Nagorno-Karabakh by a few UN personnel. But as Mr Martin noted, a limited scope, one-day visit is not the type of UN mission that the international

¹⁶⁷ See e.g. Video showing an Azerbaijani Serviceman Opening Fire on a Civilian Home (Armenia’s Request for provisional measures of 28 September 2023, Ann. 14); The Human Rights Defender of Armenia, *Preliminary Ad Hoc Report on Results of Fact-Finding Missions conducted from Sept 24 to Sept 30, 2023* (10 Oct. 2023), available at <https://www.ombuds.am/images/files/e76a3b67b4a56fadb3271705e33ecec5.pdf>, p. 21 (Armenia’s Request for provisional measures of 28 September 2023, Ann. 141).

¹⁶⁸ See The Human Rights Defender of Armenia, *Preliminary Ad Hoc Report on Results of Fact-Finding Missions conducted from Sept 24 to Sept 30, 2023* (10 Oct. 2023), available at <https://www.ombuds.am/images/files/e76a3b67b4a56fadb3271705e33ecec5.pdf>, p. 17 (Armenia’s Request for provisional measures of 28 September 2023, Ann. 141); Lindsey Snell, *Instagram* (1 Oct. 2023), available at https://www.instagram.com/p/Cx3GubBqE3q/?img_index=1.

¹⁶⁹ See MAr, Part III, Chap. 1.II; Part III, Chap. 2.II; Part III, Chap. 3.I; Part IV, Chap. 1; Part IV, Chap. 2.I.

¹⁷⁰ See e.g. MAr, Part IV, Chap. 3.

¹⁷¹ See e.g. MAr, Part III, Chap. 1.III.

¹⁷² See MAr, Part III, Chap. 3.III.C.

¹⁷³ See e.g. “Guarantee Right to Return to Nagorno Karabakh”, *Human Rights Watch* (5 Oct. 2023), available at <https://www.hrw.org/news/2023/10/05/guarantee-right-return-nagorno-karabakh> (Armenia’s Request for provisional measures of 28 September 2023, Ann. 137); US Mission to the OSCE, *On the Situation in Nagorno-Karabakh* (5 Oct. 2023), available at <https://osce.usmission.gov/on-the-situation-in-nagorno-karabakh-3>.

¹⁷⁴ DW News, “Nagorno-Karabakh: Azerbaijan rejects accusations of ethnic cleansing”, *YouTube* (26 Sept. 2023), available at <https://www.youtube.com/watch?v=uQgCbN1w3AY>.

community insists is required¹⁷⁵. To ensure full protection of the rights of ethnic Armenians under the CERD, what is needed is an ongoing and unhindered UN mission, one that is staffed with human rights experts and that is allowed full transparency as to what is happening in the region.

16. The *fifth measure* that we request is that Azerbaijan likewise refrain from taking any steps that impede humanitarian assistance by the ICRC to ethnic Armenians in Nagorno-Karabakh, and instead that Azerbaijan actively co-operate with the ICRC to that end. As Ms Macdonald indicated, the ICRC plays a pivotal role in three key areas: *first*, ensuring that the few ethnic Armenians remaining in Nagorno-Karabakh are located, provided for and, if needed, transported to Armenia for safety; *second*, the ICRC is critical for finding persons and retrieving the remains of deceased individuals¹⁷⁶; and *third*, the ICRC is essential for visiting detained Armenians in Azerbaijan, which thus far it has not been permitted to do. Indeed, Azerbaijan has a demonstrated practice of impeding the work of the ICRC, including during the aftermath of the 2020 war, when it hindered the ICRC's access to detained civilians and POWs¹⁷⁷ and, more recently, when it impeded the ICRC from transporting humanitarian aid to Nagorno-Karabakh¹⁷⁸. Azerbaijan even kidnapped ethnic Armenians who were being transported by the ICRC to Armenia during the blockade¹⁷⁹. Given this history, while there is some evidence of limited ICRC access to Nagorno-Karabakh today¹⁸⁰, an unequivocal measure from the Court on this issue is essential.

¹⁷⁵ European Parliament, "European Parliament resolution of 5 Oct. 2023 on the situation in Nagorno-Karabakh after Azerbaijan's attack and the continuing threats against Armenia" (5 Oct. 2023), available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0356_EN.pdf; US Mission to the OSCE, "On the Situation in Nagorno-Karabakh" (5 Oct. 2023), available at <https://osce.usmission.gov/on-the-situation-in-nagorno-karabakh-3>.

¹⁷⁶ "ICRC Receives Hundreds of Calls from Karabakh Citizens Searching for Missing Persons", *The Mirror Spectator* (6 Oct. 2023), available at <https://mirrorspectator.com/2023/10/06/icrc-receives-hundreds-of-calls-from-karabakh-citizens-searching-for-missing-persons/>; "ICRC Receives Hundreds of Calls from Karabakh Citizens Searching for Missing Persons", *The Mirror Spectator* (6 Oct. 2023), available at <https://mirrorspectator.com/2023/10/06/icrc-receives-hundreds-of-calls-from-karabakh-citizens-searching-for-missing-persons/>; Human Rights Defender of Armenia, *Preliminary Ad Hoc Report on Results of Fact-Finding Missions conducted from Sept 24 to Sept 30, 2023* (10 Oct. 2023), available at <https://www.ombuds.am/images/files/e76a3b67b4a56fad3271705e33eeec5.pdf>, pp. 49-50 (Armenia's Request for provisional measures of 28 September 2023, Ann. 141).

¹⁷⁷ See MAr, Part III, Chap. 3.I.A.3.

¹⁷⁸ See International Committee of the Red Cross, *Operational update on ICRC's work across the Lachin Corridor* (20 Aug. 2023), available at <https://blogs.icrc.org/ir/en/2023/08/operational-update-on-icrc-s-work-across-the-lachin-corridor> (Armenia's Request for provisional measures of 28 September 2023, Ann. 40).

¹⁷⁹ Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice (31 July 2023) (attaching Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Elnur Mammadov, Deputy Minister of Foreign Affairs of the Republic of Azerbaijan (31 July 2023)).

¹⁸⁰ @ICRC, X (4 Oct. 2023), available at <https://twitter.com/ICRC/status/1709499938227310669> (screenshot and video) (Armenia's Request for provisional measures of 28 September 2023, Ann. 136).

17. The *sixth measure* that we request is that Azerbaijan immediately restore public utilities to Nagorno-Karabakh and refrain from disrupting them in the future.

18. As Mr Martin noted, the ethnic Armenians of Nagorno-Karabakh were exposed to darkness and frigid temperatures for months, as Azerbaijan interrupted and at times completely suspended the provision of gas and electricity from Armenia to the region. While supply of both gas and electricity to the region has begun to be restored, the electricity and the gas pipelines are now supplied from Azerbaijan¹⁸¹ and not from Armenia. Thus, Azerbaijan now has complete control over the provision of these public utilities to Nagorno-Karabakh and yet there is nothing to assure ethnic Armenians that Azerbaijan will not once again arbitrarily cut them off¹⁸². Consequently, this measure is also critical.

19. The *seventh measure* we request is that Azerbaijan refrain from taking punitive actions against the current or former political representatives of Nagorno-Karabakh, as well as its military personnel. By not taking punitive actions, Armenia means that actions that seek to punish such individuals simply because they sought to represent and protect the ethnic Armenians of Nagorno-Karabakh, must be proscribed. We mean, you cannot take actions to punish them through the denial of CERD-protected rights, including the rights under Article 5 (b) discussed by Professor Sicilianos.

20. As we have explained, Azerbaijan has already detained at least eight high-ranking current and former leaders of Nagorno-Karabakh¹⁸³ and Armenia has reason to believe that Azerbaijan has

¹⁸¹ “Khankendi city connected to Azerbaijan's energy grid”, *Azertac* (24 Sept. 2023), available at https://azertag.az/en/xeber/khankendi_city_connected_to_azerbaijan_039s_energy_grid-2760877.

¹⁸² “Ilham Aliyev chaired meeting on results of first quarter of 2022”, *The President of Azerbaijan Ilham Aliyev* (12 Apr. 2022), available at <https://president.az/en/articles/view/55780>.

¹⁸³ Human Rights Defender of the Republic of Armenia, *Statement of the Human Rights Defender of Armenia on violation of the rights of Ruben Vardanyan and other ethnic Armenians deprived of their liberty by Azerbaijan* (29 Sept. 2023) (Armenia's Request for provisional measures of 28 September 2023, Ann. 132); “Azerbaijan arrests several former top separatist leaders of Nagorno-Karabakh”, *AP News* (3 Oct. 2023), available at <https://apnews.com/article/azerbaijan-nagorno-karabakh-armenia-separatist-arrest-dcbb7290c2f3343c5e1c37827fd50533>; “Azerbaijan arrests former presidents and parliamentary speakers of Nagorno-Karabakh”, *OC Media* (4 Oct. 2023), available at <https://oc-media.org/azerbaijan-arrests-former-presidents-and-parliamentary-speaker-of-nagorno-karabakh/>.

detained an unspecified number of others¹⁸⁴. Moreover, Azerbaijan has purportedly identified hundreds of other ethnic Armenians that it plans to arrest¹⁸⁵.

21. There is, as the Court is well aware, a long-standing and well-documented history of mistreatment by Azerbaijan of ethnic Armenian detainees and prisoners of war. Azerbaijan must thus be ordered to refrain from any action that targets these individuals simply based on their role as democratically elected representatives or as persons charged with the maintenance of security, and further must be ordered to respect and protect their fundamental human rights.

22. The *eight measure* we request is that Azerbaijan “shall not alter or destroy any monument commemorating the 1915 Armenian genocide or any other monument or Armenian cultural artefact or site present in Nagorno-Karabakh”.

23. Despite the Court’s December 2021 Order¹⁸⁶, Azerbaijan has continued to vandalize and destroy Armenian cultural sites in areas where Azerbaijan took control after the 2020 war¹⁸⁷. There is every reason to believe that Azerbaijan will proceed in the same way now that it has taken control of the entirety of Nagorno-Karabakh. In fact, as you heard from Mr Martin, just two weeks ago Azerbaijani military forces opened fire on the 13th century Charektar Monastery¹⁸⁸ and dismantled a large Armenian cross overlooking Stepanakert¹⁸⁹. Of particular concern, as Armenia noted in its Memorial¹⁹⁰, Azerbaijan does not consider any of the hundreds of ethnic Armenian cultural sites in Nagorno-Karabakh to be Armenian. As such, there is nothing suggesting that Azerbaijan will refrain

¹⁸⁴ See e.g. “Armenia appeals to ECHR demanding to ensure protection of rights of former and current leaders of Karabakh”, *News.am* (5 Oct. 2023), available at <https://news.am/eng/news/785191.html>.

¹⁸⁵ See “Azerbaijan detains ex-commander of Karabakh Armenian armed forces — TASS”, *Reuters* (29 Sept. 2023), available at <https://www.reuters.com/world/asia-pacific/azerbaijan-detains-ex-commander-karabakh-armenian-armed-forces-tass-2023-09-29/>.

¹⁸⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, *Provisional Measures, Order of 7 December 2021*, para. 98 (1) (c).

¹⁸⁷ See e.g. A. T. Smith, H. Ghulyan, L. Khatchadourian and I. Lindsay, *Caucasus Heritage Watch*, Monitoring Report #5 (June 2023), available at <https://caucasusheritage.cornell.edu/wp-content/uploads/2023/06/CHW-Report-2023-05.pdf> (Armenia’s Request for provisional measures of 28 September 2023, Ann. 126).

¹⁸⁸ Caucasus Heritage Watch @CaucasusHW, “The video below shows two Azerbaijani soldiers firing on the 13th century Charektar Monastery, one from an armored vehicle. Such attacks are in direct violation of the ICJ’s provisional measure concerning Armenian cultural heritage and must be investigated and prosecuted”, *X* (26 Sept. 2023), available at <https://twitter.com/CaucasusHW/status/1706826914009157724> (Armenia’s Request for provisional measures of 28 September 2023, Ann. 116) (including video, Ann. 116V).

¹⁸⁹ @AnnaATurcotte, *X* (1 Oct. 2023), available at <https://twitter.com/AnnaATurcotte/status/1708579146056527966> (screenshot, transcript and video) (Armenia’s Request for provisional measures of 28 September 2023, Ann. 133).

¹⁹⁰ See MAr, para. 3.176.

from altering the character of these sites, or from destroying them altogether. A Court order in this regard is thus imperative to protect the remaining Armenian cultural artefacts and sites in Nagorno-Karabakh.

24. The *ninth measure* that we request is that Azerbaijan give effect to, and not destroy, civil registers, identity documents and property titles and registers established by the authorities of Nagorno-Karabakh.

25. Azerbaijan has made no secret of its “Great Return” plan, which seeks to resettle Azerbaijanis to the parts of Nagorno-Karabakh which are now controlled by Azerbaijan¹⁹¹. This plan is already in motion in the places that Azerbaijan took over after the 2020 war and there is every reason to believe that Azerbaijan will now expand it to the whole region.

26. In pursuing this goal of resettling Azerbaijanis, Azerbaijan must ensure that it does not prevent the return of ethnic Armenians who were forced to flee their homes and businesses¹⁹², yet this would occur if Azerbaijan destroys property records and civil registers, or — as Professor d’Argent will discuss — if Azerbaijan supersedes such records though some new registration process. Armenia has detailed in its Memorial¹⁹³ the difficulties ethnic Armenians have experienced historically throughout Azerbaijan in having their property rights respected, and absent Court action, these same difficulties will now unfold in Nagorno-Karabakh.

27. As previously noted, I leave our presentation on the tenth measure that Armenia requests to Professor d’Argent. But I wish to stress that *all* of the measures we seek — all of them — are necessary notwithstanding the Court’s prior Orders in this case. Virtually all of the measures we now request have no express analogue in the December 2021 Order, such as the measures we request addressing the return of ethnic Armenians to Nagorno-Karabakh or addressing the taking into custody of high-ranking civilian leaders during this past month.

¹⁹¹ “Speech by Ilham Aliyev at the meeting on the results of six months of 2023 year”, *President of the Republic of Azerbaijan Ilham Aliyev* (11 July 2023), available at <https://president.az/en/articles/view/60430>; “To the Participants of the 27th Meeting of the Council of Ministers of the Economic Cooperation Organization”, *President of the Republic of Azerbaijan Ilham Aliyev* (10 Oct. 2023), available at <https://president.az/en/articles/view/61528>.

¹⁹² UN OCHA, *UN humanitarian team wraps up assessment mission to Armenia, Azerbaijan* (9 Oct. 2023), available at <https://www.unocha.org/publications/report/armenia/un-humanitarian-team-wraps-assessment-mission-armenia-azerbaijan>.

¹⁹³ See MAr, Part III, Chap. 1.IV.B.

28. Our present request concerning the protection of cultural heritage does have an express analogue in the 2021 Order, given that that Order required Azerbaijan to “[t]ake all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage”¹⁹⁴. Our eighth request today, admittedly, essentially asks the Court to reaffirm its previous Order, but this is a necessary step given that Azerbaijan has resisted the 2021 Order, claiming that it does not cover any “alteration” or “reconstruction” of Armenian cultural heritage sites¹⁹⁵. They said that in a letter to you. And, for the avoidance of doubt, it is important to stress that in the requested measure we bring to you today that Azerbaijan not “alter or destroy any monument commemorating the 1915 Armenian genocide”, this is critical given the presence of numerous such monuments in the areas now under Azerbaijani control. This is all the more so critical given that Azerbaijan is one of the few countries that denies the Armenian genocide¹⁹⁶ and that previously destroyed Armenian monuments commemorating the genocide when it had the opportunity to do so¹⁹⁷. The new circumstances and the irreversible nature of destroying cultural heritage makes it imperative that the Court issue a provisional measure on this issue.

29. Indeed, the new circumstances that have now unfolded make imperative *all* the measures we request, so as to clearly target and reinforce Azerbaijan’s CERD obligations in the context of the present crisis. The Court has viewed the existence of “new circumstances” to warrant issuance of new or supplementary provisional measures, as you found when issuing further measures in this case to address Azerbaijan’s conduct concerning the Lachin Corridor¹⁹⁸. The context in which Armenia comes before you today is dramatically different from that which existed at the time of the Court’s Orders in 2021 and even earlier this year.

30. Moreover, if Azerbaijan is to be believed when it says that no harm will come to the ethnic Armenians of Nagorno-Karabakh — which this past month some one hundred thousand of them have

¹⁹⁴ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021*, para. 98 (1) (c).

¹⁹⁵ Letter from Elnur Mammadov, Agent of the Republic of Azerbaijan, to Philippe Gautier, Registrar of the International Court of Justice (30 Mar. 2022) (attaching Letter from Jeyhun Bayramov, Minister of Foreign Affairs of the Republic of Azerbaijan, to Ararat Mirzoyan, Minister of Foreign Affairs of the Republic of Armenia (7 Mar. 2023)).

¹⁹⁶ See MAr, paras. 3.380, 4.46, 4.48.

¹⁹⁷ See e.g. MAr, paras. 3.440, 3.445.

¹⁹⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 22 February 2023*, para. 25.

sadly and painfully demonstrated they do not believe — but if Azerbaijan truly intends them no harm, then Azerbaijan should have no concern with the Court’s issuance of these provisional measures. Rather, it is Azerbaijan’s protestations as to such measures that vividly demonstrates why they are so desperately needed.

II. The issuance of the provisional measures requested does not require resolving any facts prejudicial to decisions on jurisdiction or the merits in this case

31. Madam President, Members of the Court, my last point is that the Court’s issuance of these measures would not require the Court to resolve any facts that would be prejudicial to decisions on jurisdiction or on the merits in this case.

32. After you hear from Azerbaijan’s counsel this afternoon — with references no doubt to the many exhibits they produced just two days ago — you may think that there are disputed facts that should not be resolved at this stage in the proceeding. Yet the core facts relevant to the measures that we request are not in dispute. More than one hundred thousand ethnic Armenians have fled Nagorno-Karabakh in fear. They are not on vacation. And there can be no dispute that they would like to be able to return to their homes and to live their lives peacefully, in a land that their ancestors have indigenously occupied for millennia, if —*if*— their rights and security can be assured.

33. Armenia has demonstrated that they fled because they fear for their lives, they fear for their homes and they fear being taken into custody. While Azerbaijan no doubt will dispute the reasons we have advanced for Azerbaijan’s military actions and will deny that its conduct constitutes “ethnic cleansing”, there can be no dispute that more than one hundred thousand ethnic Armenians are currently displaced or that still others remain highly vulnerable and that measures must therefore be put in place to ensure respect for their rights under the CERD.

34. Given those undisputed facts, it matters not how Azerbaijan this afternoon justifies its actions, for today what we are facing is a massive crisis of displaced persons and other tragedies. This is precisely the type of situation where the Court must issue provisional measures so as to protect an ethnic group from any further denial of their CERD rights, pending the Court’s disposition of this case on the merits.

III. Conclusion

35. Madam President, that concludes my presentation. If it pleases the Court, Professor d'Argent will now continue Armenia's presentation.

The PRESIDENT: I thank Professor Murphy and I now invite Professor Pierre d'Argent to address the Court. You have the floor, Professor.

M. D'ARGENT : Merci, Madame la présidente.

REMARQUES CONCLUSIVES

1. Madame la présidente, Mesdames et Messieurs les juges, c'est toujours un honneur de prendre la parole devant la Cour au soutien de l'Arménie.

2. Je voudrais revenir brièvement sur trois réalités factuelles déterminantes en l'espèce, y compris pour l'indication de la dixième et dernière mesure conservatoire sollicitée par l'Arménie.

I. Les réfugiés du Haut-Karabakh sont victimes d'un nettoyage ethnique

3. Madame la présidente, la première réalité factuelle qu'il faut garder à l'esprit est que les réfugiés du Haut-Karabakh sont bel et bien victimes d'un nettoyage ethnique. Alors, que cela plaise ou non à l'Azerbaïdjan, il n'y a pas d'autres mots pour décrire ce qui vient de se passer. L'Azerbaïdjan vous dira que les « résidents »¹⁹⁹ arméniens du Haut-Karabakh sont partis de leur plein gré. Cette fable, Mesdames et Messieurs les juges, est évidemment intenable. Et même le président Aliyev s'en rend compte, ce qui l'amène à inventer une autre fable. Conformément à son habitude consistant à rejeter sa faute sur autrui, il soutient en effet désormais que — je cite un communiqué de la présidence azerbaïdjanaise relatant une conversation avec le président du Conseil européen, le 7 octobre de cette année — « it was the so-called regime that had *forced* Armenians to leave the territory »²⁰⁰. Madame la présidente, Mesdames et Messieurs les juges, dans la fable du bourreau accusant sa victime d'être responsable de ses propres souffrances, il est difficile d'être plus

¹⁹⁹ Voir, par exemple, lettre en date du 2 octobre 2023 adressée à M. Philippe Gautier, greffier de la Cour internationale de Justice par M. Elnur Mammadov, agent de la République d'Azerbaïdjan devant la Cour internationale de Justice, p. 3, 6 ; Nations Unies, lettre datée du 14 août 2023, adressée au Secrétaire général par le Représentant permanent de l'Azerbaïdjan auprès de l'Organisation des Nations Unies, Assemblée générale et Conseil de Sécurité des Nations Unies, 15 août 2023, doc. A/77/995-S/2023/595, accessible à l'adresse suivante : <https://digitallibrary.un.org/record/4019313?ln=en>.

²⁰⁰ Le président de la République d'Azerbaïdjan, Ilham Aliyev, *President of the European Council Charles Michel made a phone call to Ilham Aliyev* (7 octobre 2023), accessible à l'adresse suivante : <https://president.az/en/articles/view/61511> (les italiques sont de nous).

abject — mais il est toutefois probable que vous devrez souffrir à nouveau cette nouvelle fable tout à l'heure. Heureusement, comme le professeur Murphy vient de l'expliquer, vous n'avez pas à statuer maintenant sur le fond à cet égard, mais cette réalité ne peut pour autant pas être ignorée à ce stade conservatoire.

II. L'Azerbaïdjan cherche à consolider son nettoyage ethnique, créant ainsi un risque imminent de préjudice irréparable

4. La deuxième réalité qu'il faut garder à l'esprit saute également aux yeux : l'Azerbaïdjan fait tout pour que la situation actuelle perdure, c'est-à-dire qu'il cherche à consolider son nettoyage ethnique. Le lendemain de l'attaque massive du 19 septembre, le président Aliyev proclama : « Azerbaijan regained its sovereignty »²⁰¹. Et au même moment, le Haut-Karabakh se vidait de ses habitants et le président Aliyev vantait leur prétendue liberté de partir. Depuis, comme en 2020, l'Azerbaïdjan a commencé à mettre en œuvre son plan du « grand retour ».

5. Cela est profondément choquant.

6. Lors d'un premier recensement en 1886, le Haut-Karabakh était peuplé à 85 % d'Arméniens²⁰². À l'époque de la création de l'oblast soviétique, ce pourcentage était de plus de 89 %²⁰³. À la fin de l'époque soviétique, il y avait encore quelque 77 % d'Arméniens au Haut-Karabakh²⁰⁴. Et comme vous le savez, il n'y en a plus que quelques poignées aujourd'hui.

7. Appliqué au Haut-Karabakh, le prétendu « grand retour » des Azerbaïdjanais est, purement et simplement, un projet d'exclusion contraire à la convention. Il consiste à remplacer les Arméniens déracinés de leur terre ancestrale, où ils ont toujours été très largement majoritaires, par des Azerbaïdjanais. L'Azerbaïdjan n'attend qu'une chose, Mesdames et Messieurs les juges : que la Cour ne soit pas un obstacle à la consolidation de son grand projet discriminatoire mené sous couvert de souveraineté territoriale. Ce projet passe non seulement par le nettoyage ethnique auquel le monde

²⁰¹ Le président de la République d'Azerbaïdjan, Ilham Aliyev, *Ilham Aliyev addressed the nation* (20 septembre 2023), accessible à l'adresse suivante : <https://president.az/en/articles/view/61113> (annexes de l'Azerbaïdjan (10 octobre 2023), annexe 37).

²⁰² « Population of Nagorno-Karabakh », *Ethnodemography of the Caucasus* (consulté le 5 octobre 2023), accessible à l'adresse suivante : <http://www.ethno-kavkaz.narod.ru/rnkarabax.html> (annexes additionnelles de l'Arménie (6 octobre 2023), annexe 138).

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

vient d'assister, mais aussi par la négation et l'altération du caractère arménien des villes, des villages, des monuments, des églises et de tous les artefacts culturels arméniens²⁰⁵.

8. Mesdames et Messieurs les juges, pensez-vous que détruire à Chouchi le monument commémorant le génocide arménien de 1915 et le remplacer par le drapeau azerbaïdjanais aussitôt cette ville prétendument « libérée », pensez-vous que cela constitue seulement une faute de goût²⁰⁶ ? Pensez-vous que ce qui a été fait à Chouchi au début de 2021 — et dont je vous avais rapporté les faits lors de la première demande de mesures conservatoires de l'Arménie — est exceptionnel, fortuit ? Pensez-vous que cela ne se répétera pas ailleurs au Haut-Karabakh, alors que le régime de Bakou, on le sait, nie en bloc l'existence du génocide arménien²⁰⁷ ? Pensez-vous que, plus récemment, l'abattage de la grande croix surplombant Stepanakert²⁰⁸, ou le fait de mitrailler un monastère arménien du XIII^e siècle²⁰⁹, relève d'une bien regrettable insensibilité culturelle de la soldatesque enivrée de victoire ? Pensez-vous que lorsque le ministère azerbaïdjanais de la culture soutient ce 4 octobre que le monastère de Gandzasar aurait été fondé par les Albanais caucasiens puis falsifié par les Arméniens durant leur « occupation » du Haut-Karabakh, pensez-vous que cela relève d'une erreur archéologique d'un stagiaire débutant²¹⁰ ? Bien sûr que non ! Tout cela n'est pas fortuit, tout cela n'est pas de la maladresse. Tout cela est calculé, réfléchi, méticuleusement et progressivement mis en œuvre dans le seul but de consolider le nettoyage ethnique du Haut-Karabakh et de faire comprendre aux Arméniens, une fois pour toutes, qu'ils n'y ont plus leur place.

²⁰⁵ Voir mémoire de la République de l'Arménie (23 janvier 2023), vol. I, part. III, chap. 1, sect. V ; part. III, chap. 2, sect. IV ; part. III, chap. 3, sect. III ; part. IV, chap. 1 ; part. IV, chap. 2, sect. III.

²⁰⁶ Zartonk Media (@ZartonkMedia), « Azerbaijanis Demolish Armenian Genocide Monument In Occupied Artsakh's Shushi », *Twitter* (30 mars 2021), accessible à l'adresse suivante : <https://twitter.com/ZartonkMedia/status/1376995152728760321> ; voir aussi CR 2021/20, p. 50, par. 22 (d'Argent).

²⁰⁷ Le président de la République d'Azerbaïdjan, Ilham Aliyev, *Speech by Ilham Aliyev at the opening of Defense Ministry's military unit* (25 juin 2020), accessible à l'adresse suivante : <https://en.president.az/articles/39853>.

²⁰⁸ @AnnaATurcotte, *X* (1^{er} octobre 2023), accessible à l'adresse suivante : <https://twitter.com/AnnaATurcotte/status/1708579146056527966> (capture d'écran, transcription et vidéo) (annexes additionnelles de l'Arménie (6 octobre 2023), annexe 133).

²⁰⁹ Caucasus Heritage Watch @CaucasusHW, « The video below shows two Azerbaijani soldiers firing on the 13th century Charektar Monastery, one from an armored vehicle. Such attacks are in direct violation of the ICJ's provisional measure concerning Armenian cultural heritage and must be investigated and prosecuted », *X* (26 septembre 2023), accessible à l'adresse suivante : <https://twitter.com/CaucasusHW/status/1706826914009157724> (demande en indication de mesures conservatoires de l'Arménie (28 septembre 2023), annexe 116) (y compris vidéo annexe 116V).

²¹⁰ Voir lien originel [supprimé] : <https://en.apa.az/culture-policy/azerbaijani-state-service-armenia-carried-out-illegal-repair-restoration-on-ganjasar-monastery-413397> ; lien archivé : <https://web.archive.org/web/20231004080714/https://en.apa.az/culture-policy/azerbaijani-state-service-armenia-carried-out-illegal-repair-restoration-on-ganjasar-monastery-413397> ; APA News Agency @APA_English, *X* (4 octobre 2023), accessible à l'adresse suivante : https://twitter.com/APA_English/status/1709479180365103598.

9. Le conseiller diplomatique du président Aliyev affirma récemment — je le cite, c'est sur votre écran : « We are deliberately refraining from putting up Azerbaijani flags, we know that there are still civilians and we know their fears. »²¹¹ Quel bel aveu, Mesdames et Messieurs les juges, que l'Azerbaïdjan est, en effet, craint par les Arméniens du Haut-Karabakh, y compris par ceux qui y sont restés. Mais il y a plus : cet aveu contient un mensonge — comme les images qui apparaissent sur votre écran le montrent, depuis le 19 septembre, l'Azerbaïdjan adore planter son drapeau au Haut-Karabakh²¹². Et il y a plus encore : dans une lettre adressée à la Cour européenne des droits de l'homme ce 2 octobre que nous vous avons soumise en tant qu'annexe n° 140, sachant que son conseiller présidentiel racontait à peu près n'importe quoi, l'Azerbaïdjan amenda sa déclaration tout en la citant afin d'en restreindre — d'essayer d'en restreindre la portée à Stepanakert rebaptisée « Xankəndi »²¹³. Non seulement l'Azerbaïdjan a ainsi essayé de tromper la Cour de Strasbourg, mais il a une nouvelle fois menti car, comme l'image à votre écran le montre, le drapeau azerbaïdjanais a même été placé sur le monument le plus symbolique de la capitale du Haut-Karabakh.

10. Mesdames et Messieurs les juges, la protection des droits prévus par la convention exige que le caractère arménien du Haut-Karabakh soit préservé et l'Arménie vous demande d'assurer les conditions juridiques permettant, en toute sécurité, le retour de la population d'origine ethnique arménienne sur ses terres ancestrales. Ces conditions sont énoncées dans les mesures conservatoires que le professeur Murphy a détaillées.

11. Et l'Arménie estime très humblement être particulièrement bien placée pour comprendre le besoin de sécurité des réfugiés traumatisés du Haut-Karabakh et pour savoir quelles mesures sont nécessaires pour assurer effectivement leur retour. À cet égard, les mesures sollicitées entendent aussi

²¹¹ « Baku refutes any abuse against the population », *Time News* (30 septembre 2023), accessible à l'adresse suivante : <https://time.news/baku-refutes-any-abuse-against-the-population/>.

²¹² A Martakert, Ayshan Aslan-Mammadli @AyshanASLAN, X (24 septembre 2023), accessible à l'adresse suivante : <https://twitter.com/AyshanASLAN/status/1705975663155421638> ; à Aghdara, Ayshan Aslan-Mammadli @AyshanASLAN, X (29 septembre 2023), accessible à l'adresse suivante : <https://twitter.com/AyshanASLAN/status/1707804672306667871> ; à Martuni, Ayshan Aslan-Mammadli @AyshanASLAN, X (1^{er} octobre 2023), accessible à l'adresse suivante : <https://twitter.com/AyshanASLAN/status/1708423863472701727> ; à Stepanakert, Ayshan Aslan-Mammadli @AyshanASLAN, X (29 septembre 2023), accessible à l'adresse suivante : <https://twitter.com/AyshanASLAN/status/1707750700430631341> ; à Nor Ghazanchi, Ayshan Aslan-Mammadli @AyshanASLAN, X (26 septembre 2023), accessible à l'adresse suivante : <https://twitter.com/AyshanASLAN/status/1706566594552361000> ; à Ivanyan, Ayshan Aslan-Mammadli @AyshanASLAN, X (5 octobre 2023), accessible à l'adresse suivante : <https://twitter.com/AyshanASLAN/status/1709817377536253955>.

²¹³ Letter from European Court of Human Rights, Head of the Filtering Section to Representative of the Republic of Armenia on International Legal Matters (10 October 2023) (accompanied by letters referred to therein) (confidential) (annexes additionnelles de l'Arménie (11 octobre 2023), annexe 140).

anticiper toutes les fourberies dont l'Azerbaïdjan est bien entendu capable pour empêcher ce retour, y compris en prétextant que les documents d'identité et de propriété des réfugiés sont inexistantes puisqu'ils ont été délivrés par les autorités du « so-called regime » que l'Azerbaïdjan considère illégal, et qu'en conséquence, faute de preuve valable, lesdits réfugiés n'ont aucun titre à retourner chez eux.

12. Je me permets également de rappeler que, comme le passé proche nous l'enseigne, toute mesure sollicitée par l'Arménie que vous n'indiqueriez pas sera triomphalement brandie par l'Azerbaïdjan comme un feu vert de votre part. L'Azerbaïdjan lira votre ordonnance comme un prétendu « rejet » de telle ou telle demande arménienne et, donc, un encouragement à faire ce que la mesure tendait à éviter, et cela alors même que la mesure effectivement ordonnée par la Cour, lue et exécutée de bonne foi, interdit nécessairement mais seulement implicitement ce même comportement²¹⁴. Ainsi, si vous indiquez des mesures ambiguës dont Bakou pourra exploiter les failles, le nettoyage ethnique sera définitivement consolidé.

13. Par ailleurs, Mesdames et Messieurs les juges, si vous attendez de statuer sur le fond pour contrecarrer la consolidation en cours du nettoyage ethnique sous prétexte qu'il s'agirait d'une demande de restitution — ce que nos contradicteurs soutiendront peut-être tout à l'heure par chicanerie juridique —, si vous attendez, il sera trop tard.

III. Les promesses et assurances de l'Azerbaïdjan sont creuses ; y donner crédit reviendrait à consolider le nettoyage ethnique

14. Madame la présidente, j'en viens à la troisième réalité factuelle qu'il y a lieu de garder à l'esprit au moment de statuer. Elle concerne les promesses et assurances présentées par l'Azerbaïdjan pour tenter de vous convaincre qu'il n'est nullement besoin d'indiquer des mesures conservatoires.

15. La première raison pour laquelle l'Azerbaïdjan ne peut être cru sur parole est le fait que sa parole est, à elle seule, bien entendu, incapable d'assurer le retour des réfugiés traumatisés du

²¹⁴ Voir ministère des affaires étrangères de la République d'Azerbaïdjan, *No:083/23, Press Release on the decision of the International Court of Justice on provisional measures* (22 février 2023), accessible à l'adresse suivante : <https://www.mfa.gov.az/en/news/no08323> ; ministère des affaires étrangères de la République d'Azerbaïdjan, *No:389/23, Commentary on Armenia's misinterpretation of the decision of the International Court of Justice of July 6, 2023, on unanimous rejection of Armenia's request* (7 juillet 2023), accessible à l'adresse suivante : <https://www.mfa.gov.az/en/news/no38923>. Voir aussi ministère des affaires étrangères de la République d'Azerbaïdjan, *No:389/23, Commentary on Armenia's misinterpretation of the decision of the International Court of Justice of July 6, 2023, on unanimous rejection of Armenia's request* (7 juillet 2023), accessible à l'adresse suivante : <https://www.mfa.gov.az/en/news/no38923> (demande en indication de mesures conservatoires de l'Arménie (28 septembre 2023), annexe 18).

Haut-Karabakh. Ils ont appris à leurs dépens à ne pas faire confiance à la parole de l'Azerbaïdjan. Si vous pensez que cette parole suffit, vous aurez bien malencontreusement contribué à la grande œuvre du président Aliyev.

16. La deuxième raison pour laquelle l'Azerbaïdjan ne peut pas être cru sur parole est que sa parole est totalement insuffisante et que ce qu'il dit ne l'engage en réalité à rien du tout. Regardons en effet de plus près les prétendus engagements de l'Azerbaïdjan. Concernent-ils la sécurité des prisonniers politiques arméniens et des quelques dizaines d'Arméniens restés au Haut-Karabakh ? Pas un mot à cet égard. Concernent-ils la préservation du caractère arménien du Haut-Karabakh ? Pas un mot à cet égard. L'Azerbaïdjan promet-il de ne pas peupler massivement le Haut-Karabakh d'Azerbaïdjanais ? Pas un mot à cet égard ; bien au contraire, l'accélération du « grand retour » est annoncée²¹⁵. Enfin, s'agissant du retour, cette fois, des réfugiés arméniens, l'Azerbaïdjan a écrit ceci dans la lettre qu'il vous a adressée le 2 octobre, je cite : « Azerbaijan further guarantees that Armenian residents of Garabagh who decide to leave will have *a* right to return to Garabagh. »²¹⁶ Les mots employés et la conjugaison des verbes de cette phrase sont évidemment importants : le 2 octobre, tandis que le Haut-Karabakh avait été presque vidé de ses habitants, l'Azerbaïdjan prétend garantir que les rares résidents arméniens du Karabakh qui s'y trouvent encore et qui décident alors de quitter leur patrie auront *un* droit d'y retourner. Voilà, c'est tout. Est-ce la garantie inconditionnelle et en toute sécurité du droit au retour pour toutes celles et tous ceux qui ont fui dès le 19 septembre ? Absolument pas et l'Azerbaïdjan le sait fort bien, lui qui ne choisit jamais ses mots au hasard.

17. De même, la procédure de « réintégration », dont on vous parlera certainement cet après-midi, ne concerne très explicitement que les résidents arméniens qui habitent encore au Haut-

²¹⁵ Le président de la République d'Azerbaïdjan, Ilham Aliyev, *To the Participants of the 27th Meeting of the Council of Ministers of the Economic Cooperation Organization* (10 octobre 2023), accessible à l'adresse suivante : <https://president.az/en/articles/view/61528>.

²¹⁶ Lettre en date du 2 octobre 2023 adressée à M. Philippe Gautier, greffier de la Cour internationale de Justice par M. Elnur Mammadov, agent de la République d'Azerbaïdjan devant la Cour internationale de Justice, p. 6 (les italiques sont de nous).

Karabakh (« Armenian residents living in the Karabakh region »)²¹⁷. L'Azerbaïdjan soutient que cette procédure d'enregistrement serait purement volontaire, mais les documents qu'il vous a soumis indiquent que cet enregistrement est « *necessary to join the reintegration process* »²¹⁸. Et puis, cela veut dire quoi, la « réintégration » des Arméniens du Haut-Karabakh qui s'y trouvent encore ? Et surtout : en quoi cette procédure d'enregistrement en vue d'une « réintégration » permet-elle le retour des réfugiés désormais en Arménie ou la protection des droits, notamment de propriété, de ceux qui décident de ne pas retourner ? Ainsi, en particulier, la neuvième mesure conservatoire sollicitée par l'Arménie n'est en rien supplantée par cette procédure d'enregistrement. En effet, après avoir présenté l'enregistrement comme volontaire, l'Azerbaïdjan aura beau jeu de considérer les lieux de résidence et les titres de propriété non enregistrés comme volontairement abandonnés, et donc à disposition des Azerbaïdjanais.

18. Quoi qu'il vous dise, quoi qu'il vous dira tout à l'heure, l'Azerbaïdjan ne peut tout simplement pas être cru sur parole. Dans le contexte du présent différend, il suffit de se souvenir des nombreuses déclarations de l'agent de l'Azerbaïdjan faites devant vous et qui ont été contredites par les faits, ainsi que l'agent de l'Arménie l'a rappelé en début d'audience. Par ailleurs, vous avez déjà considéré les déclarations azerbaïdjanaises faites en audience comme insuffisantes pour éliminer complètement le risque de préjudice irréparable²¹⁹. Il en va *a fortiori* de même ici.

IV. La dixième mesure conservatoire sollicitée

19. Madame la présidente, Mesdames et Messieurs les juges, je conclus, tout cela amène donc l'Arménie à devoir vous demander d'ordonner aussi la dixième mesure conservatoire sollicitée, à savoir : imposer à l'Azerbaïdjan de vous faire régulièrement rapport sur l'exécution de votre future ordonnance.

²¹⁷ « Statement by Presidential Administration of the Republic of Azerbaijan », *Reintegration Portal of Armenian Residents Living in the Karabakh Economic Region of the Republic of Azerbaijan* (1^{er} octobre 2023), accessible à l'adresse suivante : <https://reintegration.gov.az/blog-post/14> ; Reintegration Plan, « Statement by the Presidential Administration of the Republic of Azerbaijan », *Azerbaijan State News Agency* (2 octobre 2023), accessible à l'adresse suivante : https://azertag.az/en/xeber/statement_by_the_presidential_administration_of_the_republic_of_azerbaijan-2771617 (annexes de l'Azerbaïdjan (10 octobre 2023), annexes 57 et 58).

²¹⁸ Reintegration portal of Armenian residents living in the Karabakh economic region of the Republic of Azerbaijan, accessible à l'adresse suivante : <https://reintegration.gov.az/> (annexes de l'Azerbaïdjan (10 octobre 2023), annexe 56) (les italiques sont de nous).

²¹⁹ *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*, par. 56.

20. Et bien sûr, l'Arménie est consciente qu'en décembre 2021, vous aviez estimé qu'une telle demande n'était pas justifiée « dans les circonstances particulières de l'espèce »²²⁰. Mais depuis, toutefois, l'Azerbaïdjan, comme vous le savez, a plusieurs fois défié votre autorité²²¹, et je rappelle qu'il considère que votre ordonnance du 6 juillet, la dernière en date, — que cette ordonnance — aurait validé son poste de contrôle fermant le corridor de Latchine²²², ce qui est proprement hallucinant. Et depuis lors, surtout, surtout, les circonstances particulières de l'espèce ont complètement changé.

21. Mesdames et Messieurs les juges, si vous souhaitez rassurer les Arméniennes et les Arméniens qui ont fui leur patrie, vous devez imposer à l'Azerbaïdjan, en application de l'article 78 du Règlement de la Cour, de vous rendre régulièrement des comptes au sujet de l'exécution de votre future ordonnance, de la même manière que vous avez imposé au Myanmar de le faire²²³. La gravité de la situation, l'enjeu de votre prochaine ordonnance et la préservation de votre autorité l'exigent. De plus, l'Arménie, vous le savez, a été obligée d'alerter la Cour chaque fois que l'Azerbaïdjan prenait des initiatives contraires à ses obligations internationales. Et il s'en est suivi, c'est bien regrettable, mais il s'en est suivi, des échanges amers qui ont lassé l'Arménie, et peut-être sans doute aussi la Cour. Eh bien nous pensons qu'une telle mesure contribuera également, à cet égard, à la bonne administration de la justice.

²²⁰ *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Arménie c. Azerbaïdjan), mesures conservatoires, ordonnance du 7 décembre 2021*, p. 392, par. 95.

²²¹ En matière culturelle, voir, par exemple : Khatchadourian *et al.*, « Caucasus Heritage Watch, Monitoring Report #5 (June 2023) », accessible à l'adresse suivante : <https://caucasusheritage.cornell.edu/wp-content/uploads/2023/06/CHW-Report-2023-05.pdf> (annexes additionnelles de l'Arménie (6 octobre 2023), annexe 126) ; en matière humanitaire : voir, par exemple, lettre en date du 16 septembre 2022 adressée à M. Philippe Gautier, greffier de la Cour internationale de Justice par M. Yeghishe Kirakosyan, agent de la République d'Arménie devant la Cour internationale de Justice, exhibits 5-12 ; « Video Shows Azerbaijan Forces Executing Armenian POWs », *Human Rights Watch* (21 septembre 2022), accessible à l'adresse suivante : <https://www.hrw.org/news/2022/10/14/video-shows-azerbaijan-forces-executing-armenian-pows> ; en matière d'incitation à la haine raciale : voir, par exemple, *Demonstrative List of Hate Speech and Racial Hatred by Azerbaijani State Officials, Public Figures and Other Individuals and Groups against Armenians Following the 19 September Military Assault against Nagorno-Karabakh* (demande en indication de mesures conservatoires de l'Arménie (28 septembre 2023), annexe 121).

²²² Voir, par exemple, ministère des affaires étrangères de la République d'Azerbaïdjan, No:389/23, *Commentary on Armenia's misinterpretation of the decision of the International Court of Justice of July 6, 2023, on unanimous rejection of Armenia's request* (7 juillet 2023), accessible à l'adresse suivante : <https://www.mfa.gov.az/en/news/no38923> (demande en indication de mesures conservatoires de l'Arménie (28 septembre 2023), annexe 18).

²²³ *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), mesures conservatoires, ordonnance du 23 janvier 2020, C.I.J. Recueil 2020*, p. 30, par. 86 4).

22. Merci, Madame la présidente, Mesdames et Messieurs les juges pour votre bienveillante attention ; puis-je vous demander, Madame la présidente, de bien vouloir inviter l'agent de l'Arménie à présenter les conclusions finales de son pays ?

The PRESIDENT: I thank Professor d'Argent for his statement and I now invite the Agent of Armenia, His Excellency Mr Yeghishe Kirakosyan, to take the floor. You have the floor, Excellency.

Mr KIRAKOSYAN:

FINAL SUBMISSIONS

1. Madam President, distinguished judges of the Court, it is an honour to appear before you again.

2. I shall now read Armenia's closing submissions.

3. On the basis of the Request for provisional measures dated 28 September 2023 and its oral pleadings, Armenia respectfully requests the Court to indicate the following provisional measures pending its determination of the case on the merits:

- 1) "Azerbaijan shall refrain from taking any measures which might entail breaches of its obligations under the CERD";
- 2) "Azerbaijan shall refrain from taking any actions directly or indirectly aimed at or having the effect of displacing the remaining ethnic Armenians from Nagorno-Karabakh, or preventing the safe and expeditious return to their homes of persons displaced in the course of the recent military attack including those who have fled to Armenia or third States, while permitting those who wish to leave Nagorno-Karabakh to do so without any hindrance";
- 3) "Azerbaijan shall withdraw all military and law-enforcement personnel from all civilian establishments in Nagorno-Karabakh occupied as a result of its armed attack on 19 September 2023";
- 4) "Azerbaijan shall facilitate, and refrain from placing any impediment on, the access of the United Nations and its specialized agencies to the ethnic Armenians of Nagorno-Karabakh, and shall not interfere with their activities in any way";
- 5) "Azerbaijan shall facilitate, and refrain from placing any impediment on, the ability of the International Committee of the Red Cross to provide humanitarian aid to the ethnic Armenians of Nagorno-Karabakh, and shall cooperate with the International Committee of the Red Cross to address the other consequences of the recent conflict";
- 6) "Azerbaijan shall immediately facilitate the full restoration of public utilities, including gas and electricity, to Nagorno-Karabakh, and shall refrain from disrupting them in the future";

- 7) “Azerbaijan shall refrain from taking punitive actions against the current or former political representatives or military personnel of Nagorno-Karabakh”;
- 8) “Azerbaijan shall not alter or destroy any monument commemorating the 1915 Armenian genocide or any other monument or Armenian cultural artefact or site present in Nagorno-Karabakh”;
- 9) “Azerbaijan shall recognize and give effect to civil registers, identity documents and property titles and registers established by the authorities of Nagorno-Karabakh, and shall not destroy or confiscate such registers and documents”;
- 10) “Azerbaijan shall submit a report to the Court on all measures taken to give effect to this Order within one month, as from the date of this Order, and thereafter every three months, until a final decision on the case is rendered by the Court.”

Armenia further requests that the Court reaffirm Azerbaijan’s obligations under the Court’s existing Orders²²⁴.

4. Madam President, distinguished judges of the Court, this concludes Armenia’s oral presentation of its request for provisional measures.

5. I would like to take this opportunity to thank the judges and the Registry for accommodating the Armenian delegation here at the Peace Palace and for promptly organizing this hearing. I would further like to thank, in particular, the Registry’s staff and the interpreters for ensuring the hearing’s smooth conduct.

6. Thank you for your attention and for your consideration of Armenia’s request.

The PRESIDENT: I thank the Agent of Armenia, whose statement brings to an end the single round of oral argument of Armenia, as well as this morning’s sitting. The Court will meet again this afternoon, at 4 p.m., to hear Azerbaijan present its single round of oral argument.

The sitting is adjourned.

The Court rose at 12.20 p.m.

²²⁴ By a letter dated 12 October 2023, the Agent of Armenia informed the Court that “a clerical error led to the inadvertent omission of a sentence” from his reading of the submissions at the end of the hearing and requested the Court to “take as Armenia’s final submissions the submissions as filed today in written form”.