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**International Court
of Justice**

THE HAGUE

**Cour internationale
de Justice**

LA HAYE

YEAR 2023

Public sitting

held on Thursday 12 October 2023, at 4 p.m., at the Peace Palace,

President Donoghue presiding,

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

VERBATIM RECORD

ANNÉE 2023

Audience publique

tenue le jeudi 12 octobre 2023, à 16 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
 Judges Tomka
 Yusuf
 Xue
 Sebutinde
 Bhandari
 Salam
 Iwasawa
 Nolte
 Charlesworth
 Brant
Judges *ad hoc* Daudet
 Koroma

Registrar Gautier

Présents : M^{me} Donoghue, présidente
MM. Tomka
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

The Government of Armenia is represented by:

HE Mr Yeghishe Kirakosyan, Representative of the Republic of Armenia on International Legal Matters,

as Agent;

Mr Sean Murphy, Manatt/Ahn Professor of International Law, The George Washington University Law School, associate member of the Institut de droit international, member of the Bar of Maryland,

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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HE Mr Viktor Biyagov, Ambassador of the Republic of Armenia to the Kingdom of the Netherlands,

HE Mr Andranik Hovhannisyan, Permanent Representative of the Republic of Armenia to the United Nations Office and other international organizations in Geneva,

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M. Sean Aughey, Essex Court Chambers, membre du barreau d'Angleterre et du pays de Galles,

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S. Exc. M. Rahman Mustafayev, ambassadeur de la République d'Azerbaïdjan auprès du Royaume des Pays-Bas,

M^{me} Sabina Sadigli, première secrétaire, ambassade de la République d'Azerbaïdjan au Royaume des Pays-Bas,

M. Nurlan Aliyev, conseiller, ambassade de la République d'Azerbaïdjan au Royaume des Pays-Bas,

M. Vusal Ibrahimov, premier secrétaire, ambassade de la République d'Azerbaïdjan au Royaume des Pays-Bas,

M. Badir Bayramov, deuxième secrétaire, ministère des affaires étrangères de la République d'Azerbaïdjan,

comme conseillers ;

Mr Elkhan Aliyev, Referent of the Embassy of the Republic of Azerbaijan in the Kingdom of the Netherlands,

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, Vice-President Gevorgian and Judge Bennouna are unable to join us for this afternoon's sitting.

The Court meets this afternoon to hear Azerbaijan present its single round of oral argument on the Request for the indication of provisional measures submitted by the Republic of Armenia on 28 September 2023 in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*.

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

HE Mr MAMMADOV:

I. INTRODUCTORY STATEMENT

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

2. On 20 September 2023 — after over three decades of Armenia's unlawful, military occupation — Azerbaijan finally restored full sovereignty over its internationally recognized territories. Today, Azerbaijan is in a position — for the first time since it has been before the Court — to ensure full application of and compliance with CERD in the entirety of its territory.

3. Armenia has repeated its unfounded accusations of ethnic cleansing, and other atrocities against civilians by Azerbaijan on and since 19 September so frequently that its accusations have taken on a life of their own. Those accusations do not reflect the reality of what has been happening in Garabagh Economic Region of Azerbaijan, which I will refer to as Garabagh throughout the speech. Importantly, they do not reflect the observations and findings of the now two United Nations missions that Azerbaijan has allowed to access Garabagh — the first time there has been international access to the region in over 30 years. They do not reflect the reports of the members of independent international media who have actually been there and seen it.

4. Let me start with the most fundamental point: Azerbaijan has not engaged, and will not engage, in ethnic cleansing or any form of attack on the civilian population of Garabagh. Azerbaijan

has given firm assurances after 19 September¹, at the highest level of Azerbaijan's Government through the President's official statements, and will make certain specific undertakings before the Court today: the Armenian residents of Garabagh are citizens of Azerbaijan and their human rights are protected and upheld on an equal basis with those of Azerbaijan's other citizens. Azerbaijan encourages them to return to their homes in Garabagh and will continue to work to create conditions in which they feel safe to return.

5. Azerbaijan wants to preserve its multi-ethnic community where more than 50 ethnicities and religions are represented and ethnic Armenians and ethnic Azerbaijanis live side by side in peace², as we did before the dissolution of the Soviet Union put us on this current, tragic path. Azerbaijan is committed to negotiations to bring peace to its country and the next meeting is now planned to take place in Brussels later on this month, under the auspices of the European Union, to discuss the need for mutual respect of the countries' territorial integrity and sovereignty, as well as the conditions for return of both Armenians and Azerbaijanis displaced since the start of the conflict³. We regret that Armenia refused to attend a meeting planned for today between the leaders and the Foreign Ministers of Armenia and Azerbaijan in Kyrgyz Republic.

6. I turn to the facts underpinning Armenia's request for provisional measures, which have been distorted. The events of 19 September took place in the face of critical developments in the severe security threat posed by Armenian military formations illegally operating in Garabagh. There is no dispute that, under the clear terms of the 10 November 2020 Trilateral Statement, Armenia was required to withdraw its troops from Garabagh region of Azerbaijan⁴. But nearly three years later, Armenia continued to engage in and support illegal military activities on Azerbaijan's sovereign

¹ See President of the Republic of Azerbaijan, *Ilham Aliyev addressed the nation* (20 Sept. 2023), available at <https://president.az/en/articles/view/61113> (judges' folder, tab 2, Ann. 37); President of the Republic of Azerbaijan, *Ilham Aliyev received U.S. President's special representative, Principal Deputy Assistant US Secretary of State and US State Department's Senior Advisor for Caucasus Negotiations* (27 Sept. 2023), available at <https://president.az/en/articles/view/61312> (judges' folder, tab 2, Ann. 38); President of the Republic of Azerbaijan, *Ilham Aliyev participated in 2nd Azerbaijan National Urban Forum in Zangilan* (29 Sept. 2023), (judges' folder, tab 2, Ann. 39) <https://president.az/en/articles/view/61358>.

² See State Statistical Committee of the Republic of Azerbaijan, *Population of Azerbaijan* (2022), <https://www.stat.gov.az/source/demography/ap/?lang=en>, p. 21; CERD Committee, *Summary record of the 2903th meeting*, document CERD/C/SR.2903 (26 Aug. 2022), para. 4.

³ X post, Charles Michel, @CharlesMichel (7 Oct. 2023), <https://twitter.com/CharlesMichel/status/1710697479337881611>.

⁴ Annex 1, Annex to the Letter dated 10 November 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, UN doc. S/2020/1104 (11 Nov. 2020), para. 4.

territory⁵. In fact, in July 2022, the Secretary of the Security Council of Armenia admitted that Armenia's troops were still operating in Garabagh, and announced that they would be withdrawn a few months later — which in fact never happened⁶. In the weeks leading up to 19 September, the activities of Armenia's forces in Garabagh intensified at an alarming rate as those forces went to battle readiness — specifically building new battle fortifications and trenches, planting landmines close to Azerbaijan's military positions, and replanting landmines in civilian areas that Azerbaijan had already cleared⁷. On that very day, two Azerbaijani civilians and four Azerbaijani policemen died within the span of a single hour in two separate landmine explosions in previously de-mined areas, which had been recently re-mined by Armenia's forces⁸. In addition, two civilian workers were killed in Aghdam and Shusha as a result of further attacks by Armenia's forces in Garabagh⁹.

7. In response to that, Azerbaijan's local counter-terrorism measures, and I will be referring to that as operation throughout my speech, started shortly after midday on 19 September and ended less than 24 hours later, at 1 p.m. on 20 September 2023 when Armenia's military detachments agreed to disarm¹⁰. It was conducted entirely within Azerbaijan's sovereign territory, and it was aimed exclusively at Armenia's military targets, not the civilian population¹¹.

⁵ See e.g. “Armenia military returns from NK after wartime support deployment”, *Armenpress* (19 July 2022), <https://armenpress.am/eng/news/1088539/>; Annexes 2-13, Reports of military activity in Garabagh (Aug.-Sept. 2023); Annexes 14-23, Video surveillance of transportation of military cargo in the territory of Azerbaijan (Mar.-Sept. 2023).

⁶ “Armenia military returns from NK after wartime support deployment”, *Armenpress* (19 July 2022), <https://armenpress.am/eng/news/1088539/>.

⁷ Annexes 2-13, Reports of military activity in Garabagh (Aug.-Sept. 2023); Annex 25, 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* (22 Sept. 2023), <https://mfa.gov.az/en/news/no53323>.

⁸ Annex 24, Ministry of Foreign Affairs of the Republic of Azerbaijan, *No:504/23, Press release on the death of civilians and the personnel of the Ministry of Internal Affairs as a result of landmine terror in Khojavend* (19 Sept. 2023), available at <https://mfa.gov.az/en/news/no50423>; Annex 25, 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* (22 Sept. 2023), available at <https://mfa.gov.az/en/news/no53323>; Annex 31, Ministry of Defense of the Republic of Azerbaijan, *Statement by Azerbaijan's Ministry of Defense* (19 Sept. 2023, 13:22), available at <https://mod.gov.az/en/news/statement-by-azerbaijan-s-ministry-of-defense-49350.html>.

⁹ Annex 36, Ministry of Foreign Affairs of the Republic of Azerbaijan, *No:515/23, Press release on briefing re latest developments in the region for the diplomatic corps accredited in Azerbaijan* (20 Sept. 2023), available at <https://mfa.gov.az/en/news/no51523>.

¹⁰ *Ibid.*

¹¹ Annex 31, Ministry of Defense of the Republic of Azerbaijan, *Statement by Azerbaijan's Ministry of Defense* (19 Sept. 2023, 13:22), available at <https://mod.gov.az/en/news/statement-by-azerbaijan-s-ministry-of-defense-49350.html>; Annex 33, Ministry of Defense of the Republic of Azerbaijan, *Colonel Anar Eyvazov: “Only legitimate military targets are being incapacitated by the Azerbaijan Army Units”* (19 Sept. 2023), available at <https://mod.gov.az/en/news/colonel-anar-eyvazov-only-legitimate-military-targets-are-being-incapacitated-by-the-azerbaijan-army-units-49398.html>.

8. The clearest measure of the security threat posed by Armenia's forces in Garabagh is the sheer volume of ammunition and technologically advanced military equipment captured or destroyed during the operation or discovered across Garabagh since. As you can see on the screen, during the operation, Azerbaijan neutralized more than 90 military outposts, 20 combat vehicles, 40 artillery pieces, 30 mortars, 6 electromagnetic warfare systems, and 2 anti-aircraft missile systems¹². Since then, Azerbaijan has collected hundreds of heavy artillery systems, hundreds of military vehicles, hundreds of thousands of rounds of ammunition, more than 20,000 grenades, shells and rockets, and over 2,600 small arms, anti-tank weapons and surface-to-air missiles¹³. Russian sources have documented even higher numbers of weaponry being stockpiled in Garabagh¹⁴. Armenia's attempt to portray these military personnel as local militias or civilians with rifles is belied by the level of organization and sophistication of the weaponry. Azerbaijan has invited the United Nations to document this military presence, assist in the disarmament process and document for the world the extent of Armenia's unlawful activities¹⁵. Azerbaijan has also invited the military attachés of countries accredited in Azerbaijan to witness first-hand the military equipment recovered following the operation¹⁶.

¹² Annex 25, 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 (22 Sept. 2023)*, available at <https://mfa.gov.az/en/news/no53323>.

¹³ Annex 26, Ministry of Defense of the Republic of Azerbaijan, *Abandoned combat position near the Garakend settlement of the Khojavend region — VIDEO (23 Sept. 2023)*, available at <https://mod.gov.az/en/news/abandoned-combat-position-near-the-garakend-settlement-of-the-khojavend-region-video-49481.html>; Annex 27, Ministry of Defense of the Republic of Azerbaijan, *A large amount of ammunition detected at civilian facilities in the Karabakh region was seized — VIDEO (29 Sept. 2023)*, available at <https://mod.gov.az/en/news/a-large-amount-of-ammunition-detected-at-civilian-facilities-in-the-karabakh-region-was-seized-video-49601.html>; Annex 28, Ministry of Defense of the Republic of Azerbaijan, *Memorial complex erected in Karabakh to memory of the Great Patriotic War participants was used for military purposes — VIDEO (29 Sept. 2023)*, available at <https://mod.gov.az/en/news/memorial-complex-erected-in-karabakh-to-memory-of-the-great-patriotic-war-participants-was-used-for-military-purposes-vi-49610.html>; Annex 29, Ministry of Defense of the Republic of Azerbaijan, *Military equipment, weapons and ammunition seized in the Karabakh region (2 Oct. 2023)*, available at <https://mod.gov.az/en/news/military-equipment-weapons-and-ammunition-seized-in-the-karabakh-region-list-49652.html>.

¹⁴ Annex 30, Ministry of Defense of the Russian Federation, *Information bulletin of the Ministry of Defense of the Russian Federation regarding the activities of the Russian peacekeeping contingent in the Nagorno-Karabakh conflict (as of 7 October 2023) (7 Oct. 2023)*, available at https://mil.ru/russian_peacekeeping_forces/bulletins/more.htm?id=12481346@egNews (certified translation).

¹⁵ Ministry of Foreign Affairs of the Republic of Azerbaijan, *No. 558/23, Response by Aykhan Hajizada, Spokesperson of the Ministry of Foreign Affairs to the question regarding the dispatch of the UN mission to the Garabagh region of Azerbaijan (29 Sept. 2023)*, available at [https://mfa.gov.az/en/news/no55823\(judges' folder, tab 3, Ann. 46\)](https://mfa.gov.az/en/news/no55823(judges' folder, tab 3, Ann. 46)).

¹⁶ Ministry of Defense of the Republic of Azerbaijan, *Azerbaijan Defense Ministry organizes visit of military attachés to Shusha — VIDEO (24 Sept. 2023)*, available at <https://mod.gov.az/en/news/azerbaijan-defense-ministry-organizes-visit-of-military-attaches-to-shusha-video-49511.html>.

of the Red Cross and committed to facilitate the ICRC's provision of assistance²¹. The next day, on 23 September, the ICRC confirmed delivery of nearly 70 metric tonnes of humanitarian supplies to Garabagh²². The ICRC confirmed that it increased its presence in the region and added specialist personnel in order to

“ensure the protection of people leaving and those who choose to stay; ensure access to food, healthcare and other essential services such as water, energy and heat; assist the population with maintaining and restoring contact between separated family members; and to continue the transport of the wounded for medical treatment and the dignified treatment of the dead”²³.

12. Azerbaijan also worked to urgently connect Garabagh to its electricity grid, as electric power was previously supplied from Armenia. Energy supplies from Azerbaijan started four days later, on 24 September²⁴. All of these steps were taken in conjunction with the ICRC and other international assistance, with complete transparency. Contrary to Armenia's invocations this morning, Azerbaijan has never imposed a “blockade”, nor has it violated the Court's Order of 22 February 2023. What Armenia deliberately omits is that Armenia launched an armed attack against an up-and-running checkpoint on 15 June 2023, while the ICRC was operating a convoy nearby, causing serious injury to an Azerbaijani border guard²⁵. Azerbaijan was forced to close the checkpoint temporarily to secure the safety of its personnel and third parties²⁶. Armenia then refused

²¹ Ann. 59, “Assistant to Azerbaijani president, ICRC Baku Office discuss humanitarian issues,” *Trend News Agency* (22 Sept. 2023), <https://en.trend.az/azerbaijan/politics/3801416.html>; Ann. 60, X post, Hikmet Hajiyev, @HikmetHajiyev (22 Sept. 2023), <https://twitter.com/HikmetHajiyev/status/1705146417768026364?s=20>. See also Ann. 44, “‘Ghost town with no soul’: Inside Karabakh after ethnic Armenians flee”, *Al Jazeera* (1 Oct. 2023) (12:40-17:26), <https://www.youtube.com/watch?v=axdKnZ4sYhA>; judges' folder, tab 4.

²² Ann. 62, X post, ICRC, @ICRC (23 Sept. 2023), <https://x.com/ICRC/status/1705633759519773034?s=20>; see also Ann. 63, X post, ICRC Armenia, @ICRC_am (9 Oct. 2023), https://twitter.com/ICRC_am/status/1711281923207664082; Ann. 61, Compilation of the humanitarian aid delivered by Azerbaijan; judges' folder, tab 5.

²³ International Committee of the Red Cross, *Armenia/Azerbaijan Operational Update: 70 metric tons of humanitarian supplies cross the Lachin road; medical evacuations carried out* (23 Sept. 2023), <https://www.icrc.org/en/document/armenia-azerbaijan-operational-update-70-metric-tons-humanitarian-supplies-cross-lachin-road-and-medical-evacuation>; International Committee of the Red Cross, *Armenia/Azerbaijan: Civilian population, whether leaving or staying, must be protected* (26 Sept. 2023), <https://www.icrc.org/en/document/armenia-azerbaijan-civilian-population-whether-leaving-or-staying-must-be-protected>.

²⁴ Ann. 65, “Karabakh's Khankendi connected to Azerbaijan's power grid”, *TASS* (24 Sept. 2023), <https://tass.com/world/1679731>; judges' folder, tab 6.

²⁵ Ministry of Foreign Affairs of the Republic of Azerbaijan, No. 328/23, *Statement on the military provocation of Armenia against the Lachin state border checkpoint* (15 June 2023), <https://www.mfa.gov.az/en/news/no32823>; Annex to the Letter dated 20 July 2023 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the Security Council, UN doc. S/2023/542 (21 July 2023), p. 2.

²⁶ Ministry of Foreign Affairs of the Republic of Azerbaijan, No.352/23, *Press release on the meeting of Jeyhun Bayramov, Minister of Foreign Affairs of the Republic of Azerbaijan with the head of the International Committee of the Red Cross (ICRC) Delegation in Azerbaijan Dragana Kojic* (24 June 2023), <https://www.mfa.gov.az/en/news/no35223>.

to provide assurances of non-repetition of an armed attack on the checkpoint²⁷, which would have allowed traffic to resume, and Armenia repeatedly rejected the delivery of humanitarian supplies to Garabagh from an alternate, secure humanitarian route on the sole basis that it came from Azerbaijan²⁸. With that, ICRC medical evacuations and people freely passing through the checkpoint continued. In accordance with the Court's Order of 7 December 2021, Azerbaijan is protecting the few remaining Armenian detainees from any mistreatment and taking measures to prevent and punish acts of vandalism affecting cultural heritage, including, for example, the convictions of perpetrators for desecration of graves. Azerbaijan's law enforcement personnel currently are in Garabagh to keep the public order and ensure that buildings and infrastructure are protected. Azerbaijan is also taking measures to protect cultural monuments in Garabagh by stationing police to ensure they are preserved²⁹.

13. Despite these facts, Armenia makes the grave accusation that Azerbaijan, "launched a full-scale military assault on the 120,000 ethnic Armenians of [Garabagh], indiscriminately shelling the capital . . . and other civilian settlements"³⁰. There were images shown this morning that depict the hardships suffered by the Armenian residents of Garabagh, who have been caught in the middle of the territorial claims made by Armenia against Azerbaijan. But Azerbaijan asks the Court to look at the objective evidence. There were no mass casualties of the kind that would have occurred if there had been military attacks targeting civilian populations. Armenia has no evidence of alleged mass killings of civilians in Garabagh, as this is simply untrue. There was no large-scale damage to buildings and environment, as would have occurred if there had been military attacks on cities and

²⁷ Annex to the Letter dated 20 July 2023 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the Security Council, UN doc. S/2023/542 (21 July 2023), p. 2

²⁸ Ministry of Foreign Affairs of the Republic of Azerbaijan, *No:472/23, Press release on the briefing for the diplomatic corps accredited in the Republic of Azerbaijan on the latest situation in the region* (8 Sept. 2023), <https://mfa.gov.az/en/news/no47223>; "Despite impending famine, Nagorno-Karabakh residents decry aid show from Azerbaijan, insist on opening of Lachin Corridor", *Armenpress* (30 Aug. 2023), <https://armenpress.am/eng/news/1118355.html>; "Artsakh Says Lachin Only Viable Road, Rejects Azerbaijan's Aid Delivery via Aghdam Road", *Asbarez* (29 Aug. 2023), <https://asbarez.com/artsakh-says-lachin-only-viable-road-rejects-azerbaijans-aid-delivery-via-aghdam-road/>; "Armenians in Karabakh refuse to accept help from Baku — 'starvation' show continues", *Trend News Agency* (29 Aug. 2023), <https://en.trend.az/azerbaijan/politics/3790202.html>.

²⁹ See *X* post, Nasimi Aghayev, @NasimiAghayev (5 Oct. 2023), <https://twitter.com/NasimiAghayev/status/1709998169444978914>; President of the Republic of Azerbaijan, "Ilham Aliyev received WHO Regional Director for Europe" (6 Oct. 2023), <https://president.az/en/articles/view/61493>.

³⁰ Armenia's Request for provisional measures of 28 September 2023, para. 2.

towns. Armenia was able to show this morning only two photographs from one single place of collateral damage — because that was it.

14. Armenia’s selection of public reports of statements accusing Azerbaijan of mistreatment³¹ is also contradicted by other reports of Armenians confirming their fair treatment³². The resolution of the European Parliament relied upon this morning was not based on any actual knowledge or understanding of the situation in Garabagh. Likewise, the photographs selected by Armenia this morning of damage to individual buildings are not representative of the conditions currently in Garabagh.

15. The Court need not rely on Armenia’s selective and unreliable evidence because United Nations representatives have been present on the ground. As you see on the screen, the UNHCR representative in Armenia confirmed on Friday 29 September that “UNHCR teams have been on the ground and at the border since day one . . . There are no recorded incidences of mistreatment . . . Nobody shared instances of being harassed.”³³

16. This was also confirmed by the UN mission that accessed Garabagh with Azerbaijan’s permission. This was the first UN mission to Garabagh in 30 years³⁴ because, as the Court will recall, the United Nations and Azerbaijan repeatedly sought access to Garabagh to document the aftermath of the ethnic cleansing of Azerbaijanis in the early 1990s, but Armenia repeatedly refused to allow the United Nations or any other country to enter³⁵. The recent UN mission consisted of representatives from the UNHCR, UNICEF, the World Health Organization and the Food and

³¹ See e.g. Armenia’s Annexes 94, 98, 104, 127, 128.

³² See e.g. Ann. 64, X post, Janissar Hun, @janissar_hun (3 Oct. 2023), https://twitter.com/janissar_hun/status/1709121793271697601 (certified translation).

³³ Ann. 48, “UN refugee agency says it has no reports of mistreatment of Armenians fleeing Karabakh”, *Anadolu Agency* (30 Sept. 2023), <https://www.aa.com.tr/en/europe/un-refugee-agency-says-it-has-no-reports-of-mistreatment-of-armenians-fleeing-karabakh/3004385> (judges’ folder, tab 7); see also Ann. 47, United Nations, *Bi-weekly press briefing — 29 September 2023: Statement by Kavita Belani, United Nations Refugee Agency (UNHCR) Representative in Armenia* (29 Sept. 2023) (26:25–27:31), <https://www.unognewsroom.org/story/en/2020/bi-weekly-press-briefing-29-september-2023> (judges’ folder, tab 8). See also Ann. 67, Extract from United States of America Department of State, *Department Press Briefing — October 2, 2023*, <https://www.state.gov/briefings/department-press-briefing-october-2-2023/#post-487380-armen-azer>.

³⁴ *Ibid.*

³⁵ See e.g. United Nations, *Official Records of the General Assembly, 60th Session: 98th Plenary Meeting, Thursday, 7 September 2006, New York*, document A/60/PV.98, p. 26; UNESCO Committee for the Protection of Cultural Property in the Event of Armed Conflict, *Seventh Meeting Report, Item 8 of the Provisional Agenda: Protection of cultural property in occupied territory (prepared by Azerbaijan)*, (2012), p. 6, <https://unesdoc.unesco.org/ark:/48223/pf0000231238.locale=en>; UNESCO, *Report of the Implementation of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Two 1954 and 1999 Protocols, Report on the Activities from 1995 to 2004* (2005), p. 7, https://en.unesco.org/sites/default/files/2005-National-Reports-EN_0.pdf.

Agriculture Organization, as well as a technical team from the UN Office for the Coordination of Humanitarian Affairs, called OCHA, and the Director of its Coordination Division from Geneva³⁶.

17. The mission confirmed that, it “did not come across any reports — neither from the local population interviewed nor from the interlocutors — of incidences of violence against civilians following the latest ceasefire”³⁷. The mission also stated that it “saw no damage to civilian public infrastructure, including hospitals, schools and housing, or to cultural and religious structures”³⁸. The second UN technical mission visited Garabagh on 9 and 10 October³⁹, that is just two days ago, and consisted of representatives from the World Health Organization, again UNHCR, again OCHA and the UN Department of Safety and Security. The mission visited rural areas, health and education facilities, cultural sites, the registration centre and other social services, and spoke with Garabagh residents and ICRC representatives. Azerbaijan expects further findings from the mission, again based on first-hand observations by experienced experts.

18. Armenia’s Prime Minister Pashinyan made a televised address to the Armenian people on 21 September, two days after the operation. As you see on the screen, he said: “In general, the ceasefire regime is maintained. . . . I have to say it again, because it is understandably one of the issues of our biggest attention. [R]eports of mass casualties among the civilian population simply do not correspond to reality”⁴⁰. Later in the speech, Prime Minister Pashinyan stated: “our assessment is that there is no direct threat to the civilian population of Nagorno-Karabakh”⁴¹. This was simultaneously posted on the Prime Minister’s official website in both English and Armenian. He repeated the same message the next day, when he said: “that assessment has improved slightly, very

³⁶ Ann. 49, United Nations: Azerbaijan, *UN team completes mission to Karabakh* (2 Oct. 2023), <https://azerbaijan.un.org/en/248051-un-team-completes-mission-karabakh>; judges’ folder, tab 9.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ “UN mission makes next visit to Azerbaijan’s Garabagh-PHOTO-VIDEO”, *APA* (9 Oct. 2023), <https://en.apa.az/foreign-policy/un-mission-makes-next-visit-to-azerbaijans-garabagh-photo-video-413747>.

⁴⁰ Judges’ folder, tab 10, Ann. 40, Prime Minister of the Republic of Armenia, *Prime Minister Nikol Pashinyan refers to the created situation* (21 Sept. 2023), <https://www.primeminister.am/en/statements-and-messages/item/2023/09/21/Nikol-Pashinyan-21-09-Speech/>.

⁴¹ *Ibid.*

slightly, that there is no direct threat to the life of the civilian population at this time”⁴². You can find this text from both days in your judges’ folder at tabs 10 and 11.

19. But *just hours* after Prime Minister Pashinyan’s speech on 21 September, Armenia’s Minister of Foreign Affairs took the position before the United Nations Security Council that the operation was “to finalize the ethnic cleansing of the Armenian population of Nagorno-Karabakh” and that civilians “are in danger of being forcefully deported from their homeland”⁴³. Three days later, on 24 September, Prime Minister Pashinyan reversed himself and took up the false accusation of ethnic cleansing, stating publicly that Armenians are “facing the threat of ethnic cleansing”⁴⁴ and later that ethnic cleansing was “underway” in Garabagh⁴⁵. Public reports of interviews with Armenian residents leaving Garabagh reflect that leaders of Armenia’s installed régime told them, in language that was designed to inspire fear and hatred, that they needed to leave⁴⁶. After crossing into Armenia, some residents reported that entire villages had been urged to leave by village leaders who used ethnic slurs to refer to Azerbaijanis⁴⁷. Armenians also reported being told that the Azerbaijanis might “massacre” them if they tried to return⁴⁸.

20. After Prime Minister Pashinyan’s invocation of a supposed risk of ethnic cleansing on 24 September, Armenian residents started to leave Garabagh en masse. The first small group of

⁴² Judges’ folder, tab 1, Ann. 41, Prime Minister of the Republic of Armenia, *The Prime Minister refers to the humanitarian and military-political situation established in Nagorno-Karabakh* (22 Sept. 2023), <https://www.primeminister.am/en/statements-and-messages/item/2023/09/22/Cabinet-meeting-Speech/>.

⁴³ Judges’ folder, tab 12, Ann. 66, United Nations Security Council, Meeting Record, document S/PV.9422 (21 Sept. 2023), <https://undocs.org/en/S/PV.9422>, pp. 12, 13.

⁴⁴ Judges’ folder, tab 13, Ann. 42, Prime Minister of the Republic of Armenia, *Prime Minister Nikol Pashinyan’s message about Independence* (24 Sept. 2023), <https://www.primeminister.am/en/statements-and-messages/item/2023/09/24/Nikol-Pashinyan-messages/>.

⁴⁵ “Armenia Says ‘Ethnic Cleansing’ Happening in Karabakh Region”, *Bloomberg* (26 Sept. 2023), https://www.bloomberg.com/news/articles/2023-09-26/armenia-warns-us-of-ethnic-cleansing-in-flashpoint-region?lead_source=verify%20wall; Ann. 43, Prime Minister of the Republic of Armenia, *Prime Minister Pashinyan hosts the delegation led by USAID Administrator Samantha Power* (25 Sept. 2023), <https://www.primeminister.am/en/press-release/item/2023/09/25/Nikol-Pashinyan-Samantha-Power/?fbclid=IwAR0XnjxvOmkM6u1pK4jS-WpMl8nVDIN3MCqphOxZ0JRfoJ5b20R52MZt7d8>.

⁴⁶ “A Stunningly Sudden End to a Long, Bloody Conflict in the Caucasus”, *New York Times* (27 Sept. 2023), <https://www.nytimes.com/2023/09/27/world/europe/nagorno-karabakh-armenia-azerbaijan.html>. See also “Nearly Half of Karabakh Population Flees Azerbaijan’s Control”, *France24* (27 Sept. 2023), <https://www.france24.com/en/live-news/20230927-nearly-half-of-karabakh-population-flees-azerbaijan-s-control>; “Nagorno-Karabakh refugees speak after evacuation | AFP”, *AFP News Agency* (27 Sept. 2023) (1:45-2:05), <https://www.youtube.com/watch?v=IQyv2kKyO4s>.

⁴⁷ “A Stunningly Sudden End to a Long, Bloody Conflict in the Caucasus”, *New York Times* (27 Sept. 2023), <https://www.nytimes.com/2023/09/27/world/europe/nagorno-karabakh-armenia-azerbaijan.html>.

⁴⁸ “Nagorno-Karabakh refugees speak after evacuation | AFP”, *AFP News Agency* (27 Sept. 2023) (1:45-2:05), <https://www.youtube.com/watch?v=IQyv2kKyO4s>.

approximately 30 people arrived in Armenia through the Lachin road on Sunday 24 September⁴⁹, and by the end of Monday 25 September, the number was around 7,000⁵⁰. By 29 September, according to Armenian sources, more than 90,000 Armenians left Garabagh⁵¹. The departures created a cycle: as more and more Armenians left, it became increasingly difficult for others to choose to stay behind, as the rapid departure of much of the population undermined the social and economic basis for normal day-to-day life, and especially in the midst of the atmosphere of fear that had been created by baseless invocations of ethnic cleansing.

21. These departures are not something that Azerbaijan wished for or encouraged. President Aliyev affirmed in his speech on 20 September, on the day the operation ended, that Azerbaijan “intend[s] to build a life together based on peace, mutual understanding, and mutual respect” and that all the rights of the Armenian residents of Garabagh “will be guaranteed”, including “educational rights, cultural rights, religious rights, and municipal electoral rights”⁵². On 28 September, Azerbaijan’s Ministry of Foreign Affairs issued a statement encouraging Armenians not to leave their places of residence and instead to choose to stay in safety and as part of a multi-ethnic Azerbaijani society⁵³.

22. But once the mass departures started, there was little Azerbaijan could do to stop the effect of the campaign to create fear based on disinformation, and to overcome the decades of distrust built up in the Armenian residents of Garabagh. In this atmosphere, all Azerbaijan could do was try immediately to ensure an orderly transit for those choosing to leave and begin to prepare for the return of those who wish to return. Despite long lines on some days at the Lachin checkpoint, those

⁴⁹ “First refugees from Nagorno-Karabakh arrive to Armenia”, *Armenpress* (24 Sept. 2023), <https://armenpress.am/eng/news/1120387.html>.

⁵⁰ “6,650 forcibly displaced persons enter Armenia from Nagorno-Karabakh”, *Armenpress* (25 Sept. 2023), <https://armenpress.am/eng/news/1120469.html>.

⁵¹ “Some 88,780 forcibly displaced persons arrived in Armenia from Nagorno-Karabakh”, *Arka News Agency* (29 Sept. 2023), https://arka.am/en/news/society/some_88_780_forcibly_displaced_persons_arrived_in_armenia_from_nagorno_karabakh/; “Armenian Exodus From Nagorno-Karabakh Tops 100,000; UN Readies For Visit”, *Radio Free Europe/Radio Liberty* (30 Sept. 2023), <https://www.rferl.org/a/karabakh-armenian-exodus-100000-un-visit-azerbaijan/32616962.html>; X post, Nagorno Karabakh Observer, @NKObserver (29 Sept. 2023), <https://twitter.com/NKObserver/status/1707753711567606236>.

⁵² Judges’ folder, tab 2, Ann. 37, President of the Republic of Azerbaijan, *Ilham Aliyev addressed the nation* (20 Sept. 2023), <https://president.az/en/articles/view/61113>.

⁵³ Ministry of Foreign Affairs of the Republic of Azerbaijan, *No:556/23, Commentary on the allegations made by Nikol Pashinyan, Prime Minister of Armenia, during his speech at the government meeting dated September 28* (28 Sept. 2023), <https://mfa.gov.az/en/news/no55623>.

Armenian residents who chose to leave were able to do so without impediments, subject only to routine identity checks by Azerbaijan's border guards⁵⁴.

23. Azerbaijan has publicly guaranteed that residents who decided to leave have a right to return to Garabagh⁵⁵. And Azerbaijan not only guarantees a right to return, it genuinely hopes that Armenian residents *will* return once they see that life in Garabagh can be different from the distorted images painted by Armenia.

24. Azerbaijan had official meetings with the local representatives of Armenians on 21, 25 and 29 September, and continue to meet to address immediate humanitarian needs as well as longer-term co-operation on social, economic and infrastructure development projects⁵⁶. For instance, we agreed with the local representatives to set up a field hospital, mobile medical teams and mobile food delivery units staffed jointly by Azerbaijanis and Armenians⁵⁷. We began discussing initiatives to promote inter-community dialogue, and other confidence-building measures⁵⁸. For those Armenians that wish to obtain documentation of Azerbaijani citizenship, Azerbaijan has set up a process to do so in the Armenian and Russian languages, which can be completed online from abroad⁵⁹. Some Armenians have already registered⁶⁰.

⁵⁴ “French press reps observe passage of Armenian residents of Karabakh through Lachin border checkpoint”, *Azerbaijan24* (27 Sept. 2023), <https://www.azerbaycan24.com/en/french-press-reps-observe-passage-of-armenian-residents-of-karabakh-through-lachin-border-checkpoint/>.

⁵⁵ See e.g. judges' folder, tab 14, Ann. 45, “Nearly all the ethnic Armenians have left the Karabakh region and crossed into Armenia”, *Al Jazeera* (3 Oct. 2023), <https://www.youtube.com/watch?v=yVfgFmsLeSk>.

⁵⁶ Judges' folder, tab 16, Ann. 52, “Statement by the Presidential Administration of the Republic of Azerbaijan”, *Azerbaijan State News Agency* (21 Sept. 2023), https://azertag.az/en/xeber/statement_by_the_presidential_administration_of_the_republic_of_azerbaijan-2757385; judges' folder, tab 17, Ann. 53, “Statement by Presidential Administration of the Republic of Azerbaijan”, *Azerbaijan State News Agency* (25 Sept. 2023), https://azertag.az/en/xeber/statement_by_presidential_administration_of_the_republic_of_azerbaijan-2762284; judges' folder, tab 18, Ann. 54, “Another meeting with representatives of Armenian residents living in Karabakh region wraps up in Yevlakh”, *Azerbaijan State News Agency* (29 Sept. 2023), https://azertag.az/en/xeber/another_meeting_with_representatives_of_armenian_residents_living_in_karabakh_region_wraps_up_in_yevlakh_video-2768461.

⁵⁷ Judges' folder, tab 17, Ann. 53, “Statement by Presidential Administration of the Republic of Azerbaijan”, *Azerbaijan State News Agency* (25 Sept. 2023), https://azertag.az/en/xeber/statement_by_presidential_administration_of_the_republic_of_azerbaijan-2762284.

⁵⁸ *Ibid.*

⁵⁹ Ann. 56, Reintegration portal of Armenian residents living in the Karabakh economic region of the Republic of Azerbaijan, <https://reintegration.gov.az/>. See also Ann. 55, “Information from the Administration of the President of the Republic of Azerbaijan VIDEO”, *Azerbaijan State News Agency* (28 Sept. 2023), https://azertag.az/xeber/azerbaycan_respublikasi_prezidentinin_administrasiyasinin_melumati-2766757 (certified translation).

⁶⁰ “Some 98 applications registered via portal in order to join reintegration process”, *AzerNews* (4 Oct. 2023), <https://www.azernews.az/nation/215674.html>; Ann. 57, “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 Oct. 2023), <https://reintegration.gov.az/blog-post/14>.

25. On 2 October, President Aliyev issued a blueprint for a comprehensive reintegration plan, outlining steps in the social, economic, security, governance and other spheres in order to fully integrate Garabagh and its residents into Azerbaijan with a guarantee of their rights on an equal basis with other citizens of Azerbaijan. I invite you to go through the terms of this plan in due course. You heard from Armenia this morning a reference to Azerbaijan's Great Return programme as meaning that Azerbaijanis are moving into homes in Garabagh as we speak, in apparent justification for the supposed "urgency" of Armenia's proposed measures. That is absolutely false. The Great Return programme is not about taking over Armenian homes in Garabagh. It was initiated in late 2020 to conduct de-mining activities, undertake rebuilding and otherwise restore the land ravaged by Armenia's invasion and 30-year occupation in order to allow for over one million Azerbaijanis displaced by Armenia in the 1990s to return to their own homes. Also this morning, Armenia showed images of a map that allegedly includes "new Azerbaijani" names on "renamed" streets in Khankandi⁶¹. Let me be clear on that. No streets in Khankandi have been renamed. The social media post on which Armenia relies was originally posted in August 2021 — more than two years before the events giving rise to Armenia's present request.

26. The United Nations has already confirmed that it plans to make regular visits to Garabagh⁶² and the last mission just concluded two days ago. Azerbaijan has also invited the Commissioner for Human Rights of the Council of Europe to visit Garabagh from 16 to 24 October. Azerbaijan hopes that these measures will give confidence to the Armenian residents who stayed in Garabagh, and those who may wish to return, that they can live peaceful lives as Azerbaijan's equal citizens.

27. Madam President, honourable Members of the Court, Azerbaijan is grateful for this opportunity to address you and the world. The Republic of Azerbaijan formally makes the following representations:

(a) Azerbaijan undertakes to do all in its power to ensure, without distinction as to national or ethnic origin:

⁶¹ Armenia's judges' folder, tab 1; Armenia's Ann. 125.

⁶² Annex 50, United Nations, *Daily Press Briefing by the Office of the Spokesperson for the Secretary-General* (2 Oct. 2023), <https://press.un.org/en/2023/db231002.doc.htm>; judges' folder, tab 20.

- (a) The security of residents in Garabagh including their safety and humanitarian needs, including through:
 - (i) the provision of food, medicines and other essential supplies to Garabagh;
 - (ii) providing access to available medical treatment; and
 - (iii) maintaining the supply of public utilities, including gas and electricity;
 - (b) The right of the residents of Garabagh to freedom of movement and residence, including the safe and prompt return of those residents that choose to return to their homes, and the safe and unimpeded departure of any resident wishing to leave Garabagh; and
 - (c) The protection of the property of persons who have left Garabagh.
- (b) Azerbaijan also undertakes to facilitate:
- (a) the access and activities of the ICRC, with whom Azerbaijan undertakes to co-operate in order to ensure the provision of humanitarian aid in Garabagh; and
 - (b) inspections of the United Nations such that it is able to make visits to Garabagh to advise on measures to address humanitarian, socio-economic, and other needs in Garabagh;
- (c) Azerbaijan undertakes to protect, and not to damage or destroy, cultural monuments, artefacts and sites in Garabagh; and finally
- (d) Azerbaijan undertakes to protect and not to destroy registration, identity and/or private property documents and records found in Garabagh.

28. Azerbaijan's counsel will address you on the legal points related to Armenia's request.

29. *First*, Mr Rodney Dixon, KC, will address why Armenia's irresponsible allegation of ethnic cleansing is completely without merit.

30. *Second*, Mr Samuel Wordsworth, KC, will address why the legal requirements for the issuance of provisional measures have not been met with respect to the first five measures requested by Armenia.

31. And *third*, Professor Stefan Talmon will explain the same with respect to the remaining five measures.

32. I will then return briefly for concluding submissions.

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

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

Mr DIXON:

II. FACTUAL ALLEGATIONS AND CONTEXT

1. Madam President, Members of the Court, it is a privilege to appear before you.

2. I will address key legal and factual allegations made by Armenia in support of its request. It is, of course, vital for the Court to assess these in light of independent and reliable evidence about the actual situation on the ground.

3. Armenia's overarching claim is a very grave one. Armenia says that Azerbaijan is targeting civilians in order to ethnically cleanse the Garabagh region of Azerbaijan. Armenia's case is that this has taken place: *first*, through an alleged nine-month blockade of the region that included closure of the Lachin Road; and, *second*, as part of security measures taken by Azerbaijan on its territory on 19 and 20 September 2023 and Azerbaijan's conduct thereafter.

4. Under scrutiny, Armenia's assertions are shown to be unsubstantiated and incorrect. They are contradicted, we submit, by the independent and reliable evidence that I will draw to the Court's attention. They thus provide no proper basis to support Armenia's request. Let me begin with the alleged blockade.

A. There has been no blockade by Azerbaijan

5. Armenia's request refers to an alleged "nine-month blockade" or "siege"⁶³. The request alleges that Azerbaijan has "defied the Court's Order"⁶⁴ of 22 February 2023 to "take all measures

⁶³ Armenia's Request for provisional measures of 28 September 2023, paras. 2, 8, 12, 27, 39.

⁶⁴ *Ibid.*, para. 9.

at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions”⁶⁵.

6. Madam President, Members of the Court, putting to one side, for now, the important point that this is not the appropriate juncture for the Court to determine whether Azerbaijan has complied with the Order of 22 February⁶⁶, it is simply erroneous to claim that there has been a “blockade” or “siege” lasting several months. This is borne out by the independent and impartial evidence of the International Committee of the Red Cross (or “ICRC”) as well as other reliable sources.

7. As the Court is aware, Azerbaijan established a checkpoint on its border with Armenia, at the beginning of the Lachin Road, in April 2023⁶⁷. The Court has already taken note of Azerbaijan’s position that this checkpoint’s purpose is “to stop the illegal flow of weapons, military equipment, and soldiers into [its] sovereign territory” and “that the checkpoint is not a military checkpoint, that it is staffed with members of Azerbaijan’s State Border Service, that it operates under Azerbaijan’s Law on the State Border and that it performs routine checks of identity documents and cargo”⁶⁸.

8. In this connection, it is clear that smuggling has taken place along the Lachin Road. The ICRC has expressly confirmed that such activity has occurred in vehicles that were bearing the Red Cross emblem — and the sources for that are in the footnotes⁶⁹.

⁶⁵ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Order of 22 February 2023, para. 67; emphasis added.

⁶⁶ As the Court has explained in the past, “[t]he judgment on the merits is the appropriate place for the Court to assess compliance with the provisional measures” (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 14 June 2019, I.C.J. Reports 2019 (I), p. 370, para. 26 (quoting *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015 (II), p. 713, para. 126)).

⁶⁷ Ministry of Foreign Affairs of the Republic of Azerbaijan, No: 472/23, Press release on the briefing for the diplomatic corps accredited in the Republic of Azerbaijan on the latest situation in the region (8 Sept. 2023), available at <https://www.mfa.gov.az/en/news/no47223>.

⁶⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Request for the Modification of the Order of 22 February 2022 Indicating a Provisional Measure, Order of 6 July 2023, para. 22.

⁶⁹ International Committee of the Red Cross, *ICRC statement on transport of unauthorised goods across the Lachin corridor* (11 July 2023), available at <https://www.icrc.org/en/document/icrc-statement-transport-unauthorised-goods-across-lachin-corridor>.

9. Armenia requested that this Court modify its February Order following the establishment of the checkpoint⁷⁰, but the Court rejected that request by its Order of 6 July⁷¹. In doing so, the Court noted factual inconsistencies in Armenia's case⁷². In accordance with its jurisprudence, the Court made no finding as to Azerbaijan's compliance with the earlier Order⁷³.

10. That jurisprudence means that it is inappropriate for me to address in any detail at this stage whether the presence of the checkpoint is consistent with the Court's Orders. As such, I note only that there would seem to be nothing inconsistent between a legal obligation like that imposed by the Court as to the Lachin Road and the exercise of what this Court has called the "power of regulation and control" in its Judgment on the merits in the *Right of Passage* case⁷⁴.

11. In any event, as acknowledged in the United Nations Security Council⁷⁵ and by the President of the European Council⁷⁶, as well as the Red Cross⁷⁷, Azerbaijan has long been willing to facilitate the use of other routes, such as the Aghdam Road, for the delivery of supplies to Garabagh. It was the illegal régime installed by Armenia on the sovereign territory of Azerbaijan that obstructed efforts to transport humanitarian supplies by alternative routes for the benefit of the region's ethnic Armenian population. That illegal régime consistently hindered contact between the population and the central authorities of Azerbaijan and the latter's efforts to reintegrate the population with their fellow Azerbaijanis. Significant efforts were made by Azerbaijan to overcome these obstacles. For example, the Red Crescent Society of Azerbaijan sent 40 tonnes of flour to the population on

⁷⁰ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Request for the Modification of the Order of 22 February 2022 Indicating a Provisional Measure, Order of 6 July 2023*, para. 11.

⁷¹ *Ibid.*, paras. 29, 33.

⁷² *Ibid.*, para. 26.

⁷³ *Ibid.*, para. 32.

⁷⁴ *Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment, I.C.J. Reports 1960*, p. 45; see also *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009*, pp. 249-250, para. 87; and *Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999 (II)*, pp. 1107-1108, para. 103.

⁷⁵ United Nations, Security Council, provisional meeting record, 9397th meeting, 16 Aug. 2023, doc. S/PV.9397, pp. 3 (Brazil), 6 (Albania), 7 (Malta), 11 (Russian Federation), 12 (United States of America), 18 (Türkiye), 19 (European Union).

⁷⁶ European Council, *Press remarks by President Charles Michel following trilateral meeting with President Aliyev of Azerbaijan and Prime Minister Pashinyan of Armenia*, 15 July 2023, available at <https://www.consilium.europa.eu/en/press/press-releases/2023/07/15/press-remarks-by-president-charles-michel-following-trilateral-meeting-with-president-aliyev-of-azerbaijan-and-prime-minister-pashinyan-of-armenia/>.

⁷⁷ International Committee of the Red Cross (ICRC), *Azerbaijan/Armenia: Sides must reach "humanitarian consensus" to ease suffering*, 25 July 2023, available at <https://www.icrc.org/en/document/azerbaijan-armenia-sides-must-reach-humanitarian-consensus-to-ease-suffering>.

29 August 2023, but the trucks were prevented from entering⁷⁸. Even a truck despatched through Azerbaijan by the Russian Red Cross with supplies was barred from entering for days, until the illegal régime finally permitted it to proceed, apparently on the basis that it was Russian, not Azerbaijani, aid⁷⁹. These factual circumstances are regrettably not reflected anywhere in the United Nations experts' short statement that Armenia placed great emphasis on this morning. It should also be noted that they did not visit the area to ascertain what was actually happening along these routes, including the Aghdam Road.

12. So far as the Lachin road is concerned, it should be remembered that supplies were coming in by this route and there was passage for inhabitants. For example, the Red Cross made clear in August that it had been able to transport "41 people" to Armenia by this route in that month alone⁸⁰. Those were only the latest of "[m]ore than 700 people" whom the Red Cross had conveyed in this way. Moreover, "600 people, including 230 minors", had been given safe passage "in order to reunite separated families". These are the figures, on the ground, of the Red Cross. The Red Cross also noted that, since December 2022 — and I underline *December 2022* — it had arranged for significant deliveries of food, medical supplies, fuel and other goods.

13. On 18 September 2023, the ICRC announced that it was able to bring shipments of aid and supplies via the Lachin Road as well as the Aghdam Road⁸¹. As the security response of 19 and 20 September 2023 subsequently unfolded — I will turn to this shortly — ICRC teams were in place and freely permitted to distribute food, medical supplies and humanitarian aid⁸². As the honourable Agent for Azerbaijan noted earlier, on 22 September 2023 the Red Cross was distributing aid and

⁷⁸ Parliamentary Assembly of Turkic States, *Diplomatic corps visited the location of food cargo of Red Crescent Society of Azerbaijan on Aghdam-Khankendi road*, 31 Aug. 2023, available at <https://turkpa.org/news/635-diplomatic-corps-visited-the-location-of-food-cargo-of-red-crescent-society-of-azerbaijan-on-aghdam-khankendi-road>.

⁷⁹ Felix Light and Nailia Bagirova, *Russian aid truck arrives in Karabakh from Azerbaijan*, Reuters, 12 Sept. 2023, available at <https://www.reuters.com/world/europe/russia-truck-sets-off-with-food-aid-armenians-khankendi-reuters-witness-2023-09-12/>.

⁸⁰ ICRC, *Operational update on the ICRC's work across the Lachin Corridor*, 18 Aug. 2023, available at <https://www.icrc.org/en/document/operational-update-icrcs-work-across-lachin-corridor>.

⁸¹ ICRC, *Azerbaijan/Armenia: Humanitarian consensus allows ICRC to deliver humanitarian relief*, 18 Sept. 2023, available at <https://www.icrc.org/en/document/azerbaijan-armenia-humanitarian-consensus-relief>.

⁸² ICRC, *Azerbaijan/Armenia: ICRC calls for civilians to be protected*, 19 Sept. 2023, available at <https://www.icrc.org/en/document/azerbaijanarmenia-icrc-calls-civilians-be-protected>.

supplies⁸³, and on 23 September, “[n]early 70 metric tons of humanitarian supplies crossed the Lachin road”⁸⁴. Furthermore, on 25 September 2023, the Russian Federation explained that its peacekeepers on the ground had “brought 125 tonnes of humanitarian goods and 65 tonnes of fuel into the region”, with “regular delivery of food and essential goods along the Lachin and Aghdam routes” planned⁸⁵.

14. These are independent and impartial statements of fact that should be set against Armenia’s claims, as we submit today: they dispel any suggestion that Azerbaijan has cut off the Garabagh region in order to ethnically cleanse it of all ethnic Armenians.

B. The security measures of 19 and 20 September 2023, and Azerbaijan’s subsequent conduct, do not amount to either racial discrimination or ethnic cleansing

15. I turn now to the security measures themselves of 19 and 20 September 2023. Armenia alleges that these measures were “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”⁸⁶.

16. Again, this twofold allegation is incorrect.

17. It is also inappropriate, in so far as the allegation concerns the Trilateral Statement of 2020, the Court has no jurisdiction with regard to that statement. In respect of the Court’s indications that *both Azerbaijan and Armenia* are to refrain from aggravating or extending the dispute before the Court⁸⁷, I remind the Court again that this is not the correct stage for consideration of compliance with provisional measures.

⁸³ ICRC, *Operational update on Armenia/Azerbaijan: Evacuations of people wounded by weapons bolster humanitarian response*, 22 Sept. 2023, available at <https://www.icrc.org/en/document/operational-update-armenia-azerbaijan-evacuations-people-wounded-weapons-bolster-humanitarian-response>.

⁸⁴ ICRC, *Armenia/Azerbaijan Operational Update: 70 metric tons of humanitarian supplies cross the Lachin road; medical evacuations carried out*, 23 Sept. 2023, available at <https://www.icrc.org/en/document/armenia-azerbaijan-operational-update-70-metric-tons-humanitarian-supplies-cross-lachin-road-and-medical-evacuation>.

⁸⁵ Ministry of Foreign Affairs of the Russian Federation, *Press release on Russia’s efforts to stabilise the situation in Nagorno-Karabakh*, 25 Sept. 2023, available at https://mid.ru/en/foreign_policy/news/1906307/.

⁸⁶ Armenia’s Request for provisional measures of 28 September 2023, para. 2.

⁸⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Request for the Modification of the Order Indicating Provisional Measures of 7 December 2021, Order of 12 October 2022, para. 23 (2); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021, p. 393, para. 98 (2).

18. But the twofold allegation is erroneous because, so far as the Trilateral Statement is concerned, it takes no account of the ongoing presence of Armenia's forces on Azerbaijan's territory, which itself clearly violated paragraph 4 of the statement and its provision for "the withdrawal of the Armenian troops"⁸⁸. The slide was put up earlier showing that paragraph. That defiance of the statement has been confirmed by the Russian Federation, whose peacekeepers are on the ground⁸⁹.

19. Armenia's military presence on Azerbaijan's territory, and the use of the Lachin road "to supply and sustain" it⁹⁰, was drawn to the attention of the United Nations by the Permanent Representative of Azerbaijan to the Organization⁹¹. In a letter of 13 September 2023, the number of Armenian troops was said by the Permanent Representative to be "nearly 10,000". In this respect, it is also important to recall the finding of the Grand Chamber of the European Court of Human Rights in the *Chiragov and Others* case, "that Armenia, through its military presence and the provision of military equipment and expertise, has been significantly involved in the Nagorno-Karabakh conflict from an early date" and "[t]his military support has been — and continues to be — decisive for the conquest of and continued control over the territories in issue"; the Grand Chamber added that "the evidence . . . convincingly shows that the Armenian . . . forces [the local forces] and the 'NKR' are highly integrated"⁹². Another quote directly from the Chamber.

20. Azerbaijan's position is that nothing has changed so far as concerns the origin and nature of the Armenian armed forces in the Garabagh region. While any final determination of this would be a matter for the merits, I have already taken the Court to the position of the Russian peacekeeping forces — who were of course on the ground in September 2023 — that Armenian armed forces remained on the territory of Azerbaijan, with the support of "heavy equipment and weaponry" — that is their quote — with Armenia failing to acknowledge what was obvious, just as Armenia

⁸⁸ President of Russia, *Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation*, 10 Nov. 2020, available at <http://en.kremlin.ru/events/president/news/64384>.

⁸⁹ Ministry of Foreign Affairs of the Russian Federation, *Foreign Ministry statement regarding an address by the Prime Minister of the Republic of Armenia, Nikol Pashinyan, and the situation around Nagorno-Karabakh*, 25 Sept. 2023, available at https://mid.ru/en/foreign_policy/news/1906229/.

⁹⁰ Letter dated 14 August 2023 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, doc. A/77/995-S/2023/595.

⁹¹ Letter dated 13 September 2023 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, doc. A/78/352-S/2023/668.

⁹² *Chiragov and Others v. Armenia*, application No. 13216/05, Judgment of 16 June 2015, *ECHR Reports* 2015, para. 180.

continues to do before you today⁹³. Armenia have even overlooked the reports of the Russian peacekeepers and maintained in their submissions this morning that there was no mention of such activities, which is not correct. And we are not talking here — without being flippant about it — about a “single screen protector”, this is a substantial amount of weaponry and equipment that has made its way in.

21. In terms of the Court’s Orders, the relevant dispute concerns the application of CERD⁹⁴. The security measures, we submit, did not aggravate that dispute because the measures did not involve any racial discrimination.

22. In this regard, Armenia refers to civilian casualties and to “reports of atrocities against civilians”⁹⁵, but provides no credible and reliable evidence to validate such serious allegations. Instead, Armenia cites a post by an unverified and anonymous account on the X platform; another post on the X platform by a recently established, Armenia-linked, Pennsylvanian-based institution that does not even purport to have proper first-hand knowledge of the region and presents a slanted account of it; and a report by a group of university students in Connecticut⁹⁶. Armenia has also cited public reporting that, on examination, is clearly based on accounts given by members of the illegal régime that it installed in Garabagh⁹⁷. Such material is not, in Azerbaijan’s submission, “capable of proving facts” on which Armenia relies to make its request⁹⁸.

23. By contrast, I draw your attention to two important illustrative statements that are verifiable and that are reliable.

⁹³ Ministry of Foreign Affairs of the Russian Federation, *Foreign Ministry statement regarding an address by the Prime Minister of the Republic of Armenia, Nikol Pashinyan, and the situation around Nagorno-Karabakh*, 25 Sept. 2023, available at https://mid.ru/en/foreign_policy/news/1906229/.

⁹⁴ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, Order of 7 December 2021, *I.C.J. Reports 2021*, p. 375, para. 44.

⁹⁵ Armenia’s Request for provisional measures of 28 September 2023, paras. 2, 23, 38.

⁹⁶ *Ibid.*, para. 2.

⁹⁷ *Ibid.*, para. 17.

⁹⁸ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, *I.C.J. Reports 1986*, pp. 40-41, paras. 62-63; see also *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, *I.C.J. Reports 2003*, p. 190, para. 60.

24. *First* is the address by the Prime Minister of Armenia himself on 21 September, to which the Court has been referred⁹⁹, when the Prime Minister expressly stated that not only were the reports of mass casualties among the civilian population simply inaccurate, but also that there is no direct threat to the civilian population. Statements that were repeated — not changed, repeated — the following day by the Prime Minister.

25. *Second* is a press release from the United Nations mission that visited the Garabagh region on 1 October, about which the Court has already heard. The visit of that mission itself demonstrates, as do the “continued assessment missions into Karabakh which are already underway”¹⁰⁰, that Armenia is wrong to accuse Azerbaijan of rejecting transparency before the international community¹⁰¹. Such visits were hardly facilitated by the illegal régime installed by Armenia¹⁰². This is not a “so-called” United Nations mission as counsel for Armenia now contends — it is indeed “the UN” led by the United Nations co-ordinator in country with an inter-organizational team including representatives from the Food and Agriculture Organization, the UN Refugee Agency, UNICEF, the World Health Organization, the list goes on. Yes, this first mission — and we know there has been a second, but this first one — lasted a day, but it travelled from Aghdam to Khankendi and inspected the Lachin road. “[T]he team met with the local population”, as it said in its report, “and interlocutors and saw first-hand the situation regarding health and education facilities”¹⁰³.

26. The United Nations mission’s observations have already been highlighted. It is clear, we submit, that the mission, having had direct access to the Garabagh region, observed no destruction consistent with the case advanced before you by Armenia. Set against the claims made by Armenia, the evidence of the mission dispels the suggestion that the local population and their property were targeted during the security measures or thereafter.

⁹⁹ Prime Minister of the Republic of Armenia, *Prime Minister Nikol Pashinyan refers to the created situation*, 21 Sept. 2023, available at <https://www.primeminister.am/en/statements-and-messages/item/2023/09/21/Nikol-Pashinyan-21-09-Speech/>; judges’ folder, tab 10, Ann. 40.

¹⁰⁰ United Nations, Office for the Coordination of Humanitarian Affairs, *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>.

¹⁰¹ Armenia’s Request for provisional measures of 28 September 2023, paras. 4, 26.

¹⁰² *Chiragov and Others v. Armenia*, Application No. 13216/05, Judgment of 16 June 2015, *ECHR Reports 2015*, para. 30.

¹⁰³ United Nations: Azerbaijan, *UN team completes mission to Karabakh* (2 Oct. 2023), <https://azerbaijan.un.org/en/248051-un-team-completes-mission-karabakh>; judges’ folder, tab 9, Ann. 49.

27. Armenia, which at first welcomed the mission as “much overdue”¹⁰⁴, has since sought to discredit it¹⁰⁵. Now suddenly it is “heavily staged”. You may think this is because Armenia just does not like what the United Nations found when it went on to the ground. But Madam President, Members of the Court, the Court’s approach has been to “give weight to . . . evidence obtained by examination of persons directly involved” by officials or independent bodies¹⁰⁶. Accordingly, the evidence from the mission should be accorded considerable weight as to the factual situation that the mission was well placed to ascertain — particularly in Khankendi, to which Armenia’s request repeatedly refers¹⁰⁷. From the factual situation, the Court can safely infer that Azerbaijan’s security measures of 19 and 20 September were not directed against civilians and civilian objects, hence the infrastructure seen by the mission was undamaged.

28. In its request, Armenia contends that the ethnic Armenian inhabitants of Garabagh have been put by Azerbaijan to a choice “between being deprived of the equal enjoyment of their CERD rights . . . [or] leaving their ancestral homes”¹⁰⁸. Armenia suggests that Azerbaijan is plotting “a large-scale punitive programme”¹⁰⁹.

29. However, three brief factual points, by way of example, show this to be unfounded.

30. *First*, on 20 September, as the Agent noted earlier, the President of Azerbaijan made perfectly clear that the Armenian population of Garabagh are citizens of Azerbaijan and that the intention is to build a life together¹¹⁰.

¹⁰⁴ Ministry of Foreign Affairs of the Republic of Armenia, *Meeting with heads of diplomatic missions and representatives of international organizations accredited in Armenia*, 2 Oct. 2023, available at https://www.mfa.am/en/press-releases/2023/10/02/meeting_ambs/12250.

¹⁰⁵ Ministry of Foreign Affairs of the Republic of Armenia, *Comment by the Ministry of Foreign Affairs of Armenia on the visit of the delegation led by the UN Resident Coordinator in Azerbaijan to Nagorno-Karabakh*, 5 Oct. 2023, available at https://www.mfa.am/en/interviews-articles-and-comments/2023/10/05/mfa_comment/12260.

¹⁰⁶ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, pp. 201 and 249, paras. 61 and 237; see also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment, I.C.J. Reports 2022, pp. 56-57, para. 125; and *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), pp. 135-137, paras. 227-230.

¹⁰⁷ Armenia’s Request for provisional measures of 28 September 2023, paras. 2-3, 17.

¹⁰⁸ *Ibid.*, para. 5.

¹⁰⁹ *Ibid.*, para. 5.

¹¹⁰ President of the Republic of Azerbaijan, *Ilham Aliyev addressed the nation*, 20 Sept. 2023, available at <https://president.az/en/articles/view/61113>.

31. *Second*, as I submitted, on 21 and 22 September, the Prime Minister of Armenia expressly stated that there was no direct threat to the life of the civilian population in Garabagh¹¹¹. It is said to you today that you cannot place any weight on these statements as it was hard to get information at that time. Well, why not just say that then, why specifically say on two consecutive days, at a critical time, as a prime minister, that there is no threat to life? That was the truth and that is why it was confirmed by the Prime Minister himself. Surely, if there were mass atrocities being committed — as Armenia now claims — it would not have “exacerbated” the situation to say that, to say the atrocities were being committed and to call for them to be halted. This “after the fact explanation”, we submit, simply does not stack up.

32. *Third*, in the same vein, the United Nations mission “did not come across any reports of incidences of violence against civilians”¹¹². On the contrary, “[t]he mission saw that the Government of the Republic of Azerbaijan was preparing for the resumption of health services and some utilities in” Khankendi and recorded “the reconstruction efforts that are being made by the Government” in Aghdam. The substance of the United Nations observations, as well as other evidence that I have referred to, has been entirely overlooked in the recent, regrettably one-sided, resolution of the European Parliament¹¹³. One read through it shows the obvious lack of balance and oversight of all relevant facts by members of parliament who have not been on the ground to see and hear for themselves.

C. Conclusion

33. Madam President, Members of the Court, the evidence confirms in our submission that the ethnic Armenian civilian population of Garabagh was not targeted by the security measures; there is accordingly not a plausible case that they were discriminated against as Armenia contends.

34. The same is true of what happened in the days that followed, until the present day.

¹¹¹Ann. 37 Prime Minister of the Republic of Armenia, *The Prime Minister refers to the humanitarian and military-political situation established in Nagorno-Karabakh*, 22 Sept. 2023, available at <https://www.primeminister.am/en/statements-and-messages/item/2023/09/22/Cabinet-meeting-Speech/>; judges’ folder, tab 2.

¹¹²Ann. 49, United Nations, Country Team in Azerbaijan, *UN team completes mission to Karabakh*, 2 Oct. 2023, available at <https://azerbaijan.un.org/en/248051-un-team-completes-mission-karabakh>; judges’ folder, tab 9.

¹¹³European Parliament resolution of 5 October 2023 on the situation in Nagorno-Karabakh after Azerbaijan’s attack and the continuing threats against Armenia, available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0356_EN.html.

35. It would be remiss of me to fail to point out that, conversely, Armenia and the illegal régime mined the occupied territories, creating the “mine action needs” identified in Aghdam by the United Nations mission when it visited there at the beginning of October¹¹⁴.

36. In conclusion, we submit the Court should not accept factual and legal allegations when they are incorrect. Unsubstantiated claims of atrocity, such as those in Armenia’s request should not be encouraged, particularly when they undermine real prospects of achieving peace and stability. The Court is thus respectfully invited by Azerbaijan not to place reliance on the factual and legal allegations in Armenia’s request.

37. Thank you, Madam President, I would ask you to invite Mr Samuel Wordsworth to address the Court now.

The PRESIDENT: I thank Mr Dixon for his statement and I now invite Mr Samuel Wordsworth to take the floor. You have the floor, Sir.

Mr WORDSWORTH:

III. THE REQUESTED PROVISIONAL MEASURES, NUMBERS ONE TO FIVE

A. Introduction

1. Madam President, Members of the Court, it is a privilege to appear before you and to have been asked by Azerbaijan to develop its position that no order should be made in respect of measures one to five sought by Armenia.

2. The Court is faced with two very conflicting accounts of the events of 19-20 September and the risks faced by civilians in light of those events. There is nothing unusual in that, or in the observation that inevitably follows that much of what was said in Armenia’s Request and in the submissions of this morning goes to the merits of Armenia’s claim and cannot be resolved at this stage. What is undeniable, however, is that there has been a mass exodus from Azerbaijan which engages the acute concern of both Parties in light of the imperative need to protect the civilians who have left from further suffering, and likewise to protect those who remain.

¹¹⁴ United Nations, Country Team in Azerbaijan, *UN team completes mission to Karabakh* (2 Oct. 2023), available at <https://azerbaijan.un.org/en/248051-un-team-completes-mission-karabakh>; judges’ folder, tab 9, Ann. 49.

3. There are serious points to be made as to whether the current dispute engages CERD even prima facie and as to whether Armenia has plausible rights in respect of CERD, and Azerbaijan maintains its past submissions in this respect¹¹⁵, reiterating its concern that, on Armenia's argument, any case involving armed incursions and responsive military operations involving parties that do not share the same ethnic origin can now be brought before the Court as a CERD matter. However, Azerbaijan is mindful of the Court's past conclusions in the present case on prima facie jurisdiction and plausible rights¹¹⁶, and anyway fully accepts that — to the extent that any obligations under CERD might be engaged — it has the responsibility, and now the ability, to ensure protection on its territory of any applicable and plausible rights. It is against this backdrop that the Agent for Azerbaijan has just made the series of formal undertakings that you have seen.

B. Significance of undertakings voluntarily made by Azerbaijan

4. As to the legal significance of these undertakings, there are three important points to make before I turn to measures one to five.

5. First, as the Court will recall from its well-known decision in the *Nuclear Tests* cases, unilateral declarations such as made by the Agent for Azerbaijan generate legal obligations and “interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected”¹¹⁷.

6. As Judge Greenwood explained in the *Certain Documents and Data* case, specifically in the context of provisional measures:

7. “It is implicit in paragraph 44 of the Order and in the approach taken by the Court in *Belgium v. Senegal* that a formal undertaking of the kind given by Australia in proceedings before

¹¹⁵ See e.g. as recorded at *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, pp. 369-370, paras. 23-24, and pp. 378-379, paras. 53-55.

¹¹⁶ See e.g. *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. 371, paras. 28-29, p. 375, para. 43, and pp. 382-383, paras. 59-61; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 22 February 2023*, paras. 26 and 36-39.

¹¹⁷ *Nuclear Tests (Australia v. France), Judgment*, I.C.J. Reports 1974, pp. 267-268, para. 46; *Nuclear Tests (New Zealand v. France), Judgment*, I.C.J. Reports 1974, p. 473, para. 49. See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 1984, p. 418, para. 60; ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto (2006), principle 1.

the Court is legally binding as a matter of international law and creates legal obligations for the State that makes it.”¹¹⁸

8. Second, and consistent with this, an appropriately worded undertaking may remove altogether a risk of irreparable prejudice. As to *Belgium v. Senegal*, in its Order of 28 May 2009 the Court stated:

9. “Whereas, as the Court has recalled above, the indication of provisional measures is only justified if there is urgency; *whereas the Court, taking note of the assurances given by Senegal, finds that, the risk of irreparable prejudice to the rights claimed by Belgium is not apparent on the date of this Order*”¹¹⁹.

10. Of course, the *Great Belt* case is another well-known example of the impact of assurances¹²⁰, and that is just one in a long line of equivalent decisions dating back to *Interhandel*¹²¹ and also to the jurisprudence of the Permanent Court¹²².

11. The terms of the undertaking will naturally be critical, and the Court will recall that in *Certain Documents and Data* the undertaking was considered insufficient because it still allowed for some use of the materials that had been seized by Australia’s intelligence services¹²³. However, the Court emphasized that it had no reason to believe that the undertaking would not be implemented, stating: “Once a State has made such a commitment concerning its conduct, its good faith in complying with that commitment is to be presumed.”¹²⁴

12. The Court has heard Armenia this morning use various formulations to assert bad faith on Azerbaijan’s part, but it does not come close to approaching the threshold that would have to be met

¹¹⁸ *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia), Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014, p. 203, para. 21.*

¹¹⁹ *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. 155, paras. 71-72; emphasis added.*

¹²⁰ *Passage through the Great Belt (Finland v. Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991, p. 18, para. 27.*

¹²¹ *Interhandel (Switzerland v. United States of America), Interim Protection, Order of 24 October 1957, I.C.J. Reports 1957, pp. 108-109, 112.*

¹²² *Prince von Pless Administration, Order of 11 May 1933, P.C.I.J., Series A/B, No. 54, pp. 152-153.*

¹²³ *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia), Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014, pp. 158-159, paras. 45-47 (cf. dissenting opinion of Judge Greenwood, p. 203, para. 20).*

¹²⁴ *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia), Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014, p. 158, para. 44.*

for the Court to come and approach the alleged irreparable prejudice on the basis of any provisional conclusion of bad faith, which is in effect what Armenia seeks. And I recall the general rule that bad faith must be “supported ‘not by disputable inferences but by clear and convincing evidence’”¹²⁵.

13. As to alleged breach of past orders, the Court has just heard Mr Dixon on the Lachin road, and the absence of a compelling case on non-compliance applies equally with respect to the assurance that Azerbaijan gave in that context¹²⁶. The issues on responsibility for past restrictions on access are plainly very complex, but it was notably not suggested in the Court’s Order of 6 July 2023 that Azerbaijan’s establishment of a checkpoint on the road constituted a failure to comply with its assurances.

14. And as to this, it is critical to see the bright line that must be drawn between (i) a dispute as to racial discrimination and (ii) a State’s right to react to an unlawful and building military presence on its territory that is resulting in loss of civilian and military life through widespread and illegal mining of that State’s territory.

15. A point was taken this morning on the timing of the agreement on access of 18 September, it being said by Mr Martin that this agreement was “just a ruse”. But it was the Armenian-installed régime that was preventing reaching an agreement on access via the Aghdam and Lachin roads, and but for its obduracy with respect to Aghdam, an agreement on access would have been secured long ago. It would perhaps have been helpful if, this morning, Armenia had explained to you the key role of the illegal régime in creating the so-called “blockade” because of its refusal to allow supplies from Azerbaijan. As to the contention that the military operation was part of a long-term plan, this takes no account of the fast-moving nature of events on the ground caused by the build-up of arms by the illegal régime and its mining operations, and it might be thought that any carefully and long-planned operation would have avoided the day of opening of the General Assembly.

16. Third, as follows from my first two points, it would be inconsistent with the Court’s jurisprudence for it to indicate provisional measures although appropriate undertakings have been

¹²⁵ *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment, I.C.J. Reports 2011 (II), p. 685, citing *Tacna Arica question (Chile, Peru)* dated 4 March 1925, II RIAA, p. 930.

¹²⁶ *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. 56.

given that address the alleged real and immediate risk of irreparable prejudice, and this is all the more so in circumstances where Armenia attempts to, but cannot, evidence failure by Azerbaijan to comply with assurances previously given to the Court.

17. No doubt an applicant will always say that only an order from the Court will suffice, but the correct answer to that is found in the Court's approach in cases like *Belgium v. Senegal* or in the Judgments in *Nuclear Tests*, where the Court expressly rejected the argument that a judgment would be needed to "reinforce the position of the Applicant by affirming the obligation of the Respondent" created through its unilateral declaration¹²⁷. And, even more so than in *Nuclear Tests*, the formal undertakings made here have legal effect and value because they include the facilitation of independent monitoring by the United Nations, so that the conformity of actions to words can be verified.

18. It should also be emphasized:

19. *First*, as follows from what the Agent has explained, Azerbaijan is in a position to make and also to implement these comprehensive undertakings because it is finally able to exercise its undisputed full sovereignty over this part of its territory.

20. *Second*, Azerbaijan's undertakings are unqualified— this is a key distinction with the *Certain Documents and Data* case¹²⁸.

21. *Third*, Azerbaijan's undertakings are precise and detailed in their formulation. They are very far from "vague assurances and unhelpful promises" as criticized by Mr Murphy this morning¹²⁹. Indeed, Azerbaijan has drawn from the Court's own language of protection in a CERD case, that is the Court's 2008 Order in *Georgia v. Russia*. This is an Order that, we learnt this morning, appears to be approved by Armenia. You were not, however, directed to two important points. First, that Order was made in circumstances where *no* undertakings had been given. Second,

¹²⁷ *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 271, para. 56; *Nuclear Tests (New Zealand v. France)*, Judgment, I.C.J. Reports 1974, p. 476, para. 59.

¹²⁸ *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014, p. 159, paras. 47-48.

¹²⁹ CR 2023/21, p. 50, para. 9 (Murphy).

and no less important, given the complexity and the conflicting claims in the current litigation before you, that Order was made against both Parties¹³⁰.

22. On the Court's established test, the grant of provisional measures notwithstanding these undertakings would necessarily imply that Azerbaijan has not made the undertakings in good faith and/or entail a failure to afford to Azerbaijan the necessary presumption that it will comply with its undertakings in good faith. On either view, this would cause serious and unwarranted prejudice to Azerbaijan.

C. Requested measures one to five

23. So, it is against the backdrop of the position that *no* order of measures is appropriate in light of the undertakings that Azerbaijan has made that I turn to look in closer detail at the first five measures sought by Armenia.

24. Armenia's measure 1 is the order that "Azerbaijan shall refrain from taking any measures *which might entail breaches* of its obligations under the CERD". I make two short points.

25. First, the measure is indeed "broad", as Professor Murphy noted this morning. It asks the Court to restrain Azerbaijan from any conduct which "might" entail breaches of any of its obligations under CERD. So far as Azerbaijan is aware, in no decision on provisional measures has the Court ever adopted a measure of equivalent breadth.

26. Second, any such generalized order could not be made against Azerbaijan alone, as if Armenia, and compliance by Armenia, were somehow of lesser importance. If ordered, the measure would have to be made against Armenia also, in particular given the evidence that the Court has seen of the very substantial impact that the words of Armenia's Prime Minister have on whether citizens feel safe within the Garabagh region.

27. I turn to Armenia's measure 2 which, correctly understood, can only concern the protection of plausible rights under CERD to remain or to return, or to leave without hindrance.

28. The undertaking that Azerbaijan has made in this respect — you see it on the screen and it is also at tab 20 of your judges' folder — is comprehensive in its protection of these alleged rights.

¹³⁰ *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*, pp. 398-399, para. 149.

As you can see at paragraph (a) of the undertaking on your screens, the wording is drawn from the Court's Order in *Georgia v. Russia*, and specifically encompasses security: at subparagraph (i) you see the further and specific precision in respect of food, medical treatment at subparagraph (b) and public utilities at subparagraph (c). At subparagraph (ii) you see how the undertaking covers safe and prompt return and, at subparagraph (iii) there is the undertaking with regard to protection of property.

29. It is also important to emphasize that this comprehensive undertaking does not stand alone.

30. First, there is the important evidence of the United Nations and other international organizations that is inconsistent with Azerbaijan attacking or threatening civilians, or failing to protect and provide for those who remain¹³¹. Against this, you have seen an ill-informed attack on the UN mission, and a very curious attempt to suggest that Armenia's Prime Minister should be misleading Armenian citizens, and also there is the photo evidence in the form of the two photos from someone's Twitter account, that were at Mr Martin's slide 2, and which Armenia evidently considers best support its allegations. Of course, as with all the evidence that is put forward to Armenia at this hearing, we do invite a very close inspection by the Court. These photos appear to show damage to a residential building and to some cars, but who knows where or, indeed, what the context is — completely unclear.

31. Second, the President of Azerbaijan has made a series of statements — of 20, 27 and 29 September 2023 — on the protection and reintegration of Armenian residents of the Garabagh region to which the Agent has already referred¹³². The Court has also been referred to the meetings between Azerbaijan officials and representatives of the Garabagh community¹³³, and the statement of Azerbaijan's Presidential Administration of 2 October 2023 on the reintegration of Armenian

¹³¹ United Nations, *Daily Press Briefing by the Office of the Spokesperson for the Secretary-General* (29 Sept. 2023), <https://press.un.org/en/2023/db230929.doc.htm>. Judges' folder, tab 10, Ann. 48, "UN refugee agency says it has no reports of mistreatment of Armenians fleeing Karabakh", Anadolu Agency (30 Sept. 2023), <https://www.aa.com.tr/en/europe/un-refugee-agency-says-it-has-no-reports-of-mistreatment-of-armenians-fleeing-karabakh/3004385>; see also judges' folder, tab 9, Ann. 47, United Nations, Bi-weekly press briefing — 29 Sept. 2023: Statement by Kavita Belani, United Nations Refugee Agency (UNHCR) Representative in Armenia (29 Sept. 2023) (26:25-27:31), <https://www.unognewsroom.org/story/en/2020/bi-weekly-press-briefing-29-september-2023>.

¹³² Judges' folder, tab 2, Ann. 37, President of the Republic of Azerbaijan, *Ilham Aliyev addressed the nation* (20 Sept. 2023), <https://president.az/en/articles/view/61113>; Ann. 38, President of the Republic of Azerbaijan, *Ilham Aliyev received US President's special representative, Principal Deputy Assistant US Secretary of State and US State Department's Senior Advisor for Caucasus Negotiations* (27 Sept. 2023), <https://president.az/en/articles/view/61312>; Ann. 39, President of the Republic of Azerbaijan, *Ilham Aliyev participated in 2nd Azerbaijan National Urban Forum in Zangilan* (29 Sept. 2023), <https://president.az/en/articles/view/61358>.

¹³³ See Annexes 52-54.

residents living in the Garabagh region¹³⁴. This expressly guarantees the “equality of rights and freedoms, including security . . . to everyone regardless of their ethnic, religious or linguistic affiliation” and it states that “reintegration is carried out on the basis of the Constitution, laws and international obligations”. Those international obligations, of course, include Azerbaijan’s obligations under CERD.

32. Armenia strongly criticized all these statements this morning, saying in effect “believe nothing”. But the making of such repeated statements by a Head of State is simply not consistent with the actions expected of a State intent on ethnic cleansing, and this is all the more so in circumstances where that State is inviting and facilitating independent monitoring by the United Nations.

33. Further, the reintegration statement of 2 October expressly states that “[c]itizenship issues of residents are addressed based on relevant procedures and in accordance with the Constitution and legislation of the Republic of Azerbaijan”. In this respect, the Constitution — relevant extracts of which are at tab 21 of your judges’ folders — guarantees equal rights irrespective of origin, and it is clear from the extracts from the Law on Citizenship at tab 22 that the residents of the Garabagh region are already entitled to Azerbaijani citizenship.

34. In this respect the online portal has already been set up, as noted by the Agent¹³⁵. Mr Murphy plainly thought there should be more, but the obvious point is that the situation with respect to the exodus is entirely new, and it could scarcely be expected that some whole new legal régime would have been drafted and enacted by now.

35. Ms MacDonald’s position was that you should accord weight to a rule 39 measure of the President of a section of the European Court of Human Rights. It is to be emphasized that this measure was put in place on 22 September on the basis of Armenia’s submissions alone, and regardless of the limited to and fro in the following days of which Ms MacDonald sought to make

¹³⁴ Annex 58, Reintegration Plan, “Statement by the Presidential Administration of the Republic of Azerbaijan”, *Azerbaijan State News Agency* (2 Oct. 2023), https://azertag.az/en/xeber/statement_by_the_presidential_administration_of_the_republic_of_azerbaijan-2771617.

¹³⁵ Judges’ folder, Ann. 56, Reintegration portal of Armenian residents living in the Karabakh economic region of the Republic of Azerbaijan, <https://reintegration.gov.az/>. See also Ann. 55, “Information from the Administration of the President of the Republic of Azerbaijan VIDEO”, *Azerbaijan State News Agency* (28 Sept. 2023), https://azertag.az/xeber/azerbaycan_respublikasi_prezidentinin_administrasiyasinin_melumatı-2766757 (certified translation).

something, the simple point is that there has been no hearing and there is not even a reasoned decision¹³⁶.

36. I turn to Armenia's measure three: "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".

37. As a starting-point, it is to be emphasized that such a measure would have to be considered necessary in circumstances where a specific undertaking has been made in respect of the issues of protection and return. The Court would need to be convinced that there is some separate risk of racial discrimination that must be addressed.

38. In this respect, the Court's jurisdiction is of course confined to plausible rights that *prima facie* fall within CERD. As appears from its past Orders in the cases between the Parties, the Court has no broader jurisdiction with respect to military activities¹³⁷, and of course has no jurisdiction with respect to the 2020 Trilateral Statement.

39. Until this morning it was quite unclear what Armenia meant by the term "civilian establishments". We now know that it means essentially everything that is neither military nor a law enforcement installation. The obvious point is that there is nothing remotely exceptional in law enforcement personnel or indeed, as needed, military personnel being placed in civic buildings housing governmental departments or administrative offices and the like. Such may exceptionally be required, for example, in hospitals such as where a detainee is being treated. It is part of any functioning society that there will be some law enforcement personnel in certain civilian establishments, and there is no evidence that the presence of which Armenia complains is for any purpose of racial discrimination as opposed to maintaining security.

40. As the Agent has explained, on the latest information there are no military forces deployed in civilian settlements. That is a complete answer, although we do note that Mr Murphy was repeating past allegations as the videos of alleged mistreatment and saying that mistreatment is glorified by the Azerbaijani military. He referred you to various exhibits from Armenia's Memorial — that is

¹³⁶ See Armenia's Annexes 139 and 140.

¹³⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 378, para. 53.

historical allegations — and in fairness, he might also have referred you to Azerbaijan’s response when this issue was last raised and the evidence that Azerbaijan is prosecuting any wrongdoers. I refer you to CR 2021/21, page 32, paragraph 29. On the video said to show shooting at civilian homes, we do ask the Court also to look very carefully at this video, Annex 14 to Armenia’s request, and ask itself how it could conceivably be assisted. Nothing is known of context. You cannot even identify whether the person shooting is a member of the military, let alone Azerbaijani military. And for good measure, the person appears to be shooting at the ground close to a vehicle. And this, I recall, is put before you as evidence of ethnic cleansing.

41. It is also to be noted that Armenia’s use of the term “occupied” in the measure it seeks is plainly inappropriate in so far as it is intended to conjure up any idea of belligerent occupation. As already emphasized by the Agent, the Court is concerned *solely* with the undisputed sovereign territory of Azerbaijan.

42. As follows from a case as early as *Free Zones of Upper Savoy and the District of Gex*, it is for a State to position its military and law enforcement personnel within its own territory as it sees fit¹³⁸.

43. Of course, the specific location of military and law enforcement personnel within a State’s territory could depend in a given case on compliance with any applicable international obligations over which the Court has jurisdiction, but there is nothing in CERD that comes close to the language that would be needed to conclude that States have even plausibly agreed to restrict particularly important sovereign rights in the onerous way that Armenia contends for.

44. I turn finally to measures four and five, which I can deal with together. These concern facilitation of the access and activities of the United Nations and its specialized agencies, and the ICRC. The key point is that the evidence before you shows that — unlike during the period of occupation by the illegal régime — Azerbaijan has invited, and will continue to invite, missions from the United Nations and specialized agencies, and it also continues to welcome the presence of the ICRC in the Garabagh region. The Commissioner for Human Rights of the Council of Europe will also be conducting a mission from 16 to 24 October. The formal undertaking Azerbaijan has made

¹³⁸ *Free Zones of Upper Savoy and the District of Gex, Judgment, 1932, P.C.I.J., Series A/B, No. 46, p. 166.*

is now on the screen, and you can see at paragraph (b) (ii) with respect to the United Nations. Plainly, no further order, or no order at all, is warranted.

45. And to recall, as regards the United Nations, the mission report of 2 October of the United Nations and specialized agencies demonstrates that unimpeded access was afforded to the United Nations mission, and it was confirmed in a press briefing that Azerbaijan imposed no restriction on the visit¹³⁹. And a further mission has already just taken place over 9 and 10 October. It now appears from this morning that only a permanent mission would satisfy Mr Murphy, but Armenia has not sought that in its order as the measure it says is necessary to remove the risk of irreparable prejudice. Elaboration of measures during the hearing, without warning and without reasoned basis, is not attractive.

46. As regards the ICRC, the Court can see Azerbaijan's undertaking before you at paragraph (b) (i), and you have heard from both the Agent and Mr Dixon on the continued presence of the ICRC and its activities, including in the delivery of humanitarian aid.

47. The undertakings that have been made in respect of the United Nations and the ICRC are appropriately worded and can be relied upon. Of course, the point is not just that this marks a radical departure from the approach of Armenia's installed régime to independent monitoring missions. Rather, these two undertakings strongly reinforce Azerbaijan's other undertakings, including as to the return of civilians, as there will be independent missions that will inevitably report on any issues of concern.

48. Madam President, Members of the Court, that concludes Azerbaijan's submissions on the requested measures one to five. I thank you for your attention and I ask you to call on Professor Talmon.

The PRESIDENT: I thank Mr Wordsworth for his statement. I now invite Professor Stefan Talmon to take the floor. You have the floor, Professor.

¹³⁹ Judges' folder, tab 11, Ann. 49, United Nations: Azerbaijan, *UN team completes mission to Karabakh* (2 Oct. 2023), <https://azerbaijan.un.org/en/248051-un-team-completes-mission-karabakh>; judges' folder, tab 19, Ann. 50, United Nations, *Daily Press Briefing by the Office of the Spokesperson for the Secretary-General* (2 Oct. 2023), <https://press.un.org/en/2023/db231002.doc.htm>.

Mr TALMON:

IV. THE REQUESTED PROVISIONAL MEASURES, NUMBERS SIX TO TEN

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

2. My task today is to present Azerbaijan's observations on Armenia's Request for provisional measures six through ten and to show that *no* order should be made.

3. I will deal with the requested measures one by one.

A. Requested measure number six

4. In its sixth request, Armenia asks the Court to order that "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".

5. Let me note at the outset that despite what has been said this morning, Armenia does not establish any link between the rights under the CERD, whose protection it seeks on the merits, and the availability of public utilities in the Garabagh region of Azerbaijan.

6. More importantly, however, there is no need to order the restoration of public utilities. Azerbaijan's energy company, Azerenergy, has been providing electricity to Garabagh since 24 September 2023¹⁴⁰. Armenia itself admits this fact. In its Request for provisional measures, it writes: "As of the date of filing, Azerbaijan appears to have restored electricity to Stepanakert through its own electrical grid, but not through the electrical line running through Armenia."¹⁴¹

7. Work is under way to connect the region to Azerbaijan's gas network and the Agent has given an undertaking that Azerbaijan does all in its power to maintain the supply of public utilities, including gas.

8. As a result of Armenia's 30-year occupation, Garabagh is currently not yet integrated into Azerbaijan's gas supply system. It receives its gas through Armenia. Azerbaijan's gas company, AzeriGas, is only able to maintain the gas pipelines and to carry out pipeline repairs on the territory

¹⁴⁰ Trend, "Khankendi now officially connected to Azerbaijani energy grid (VIDEO)" (24 Sept. 2023), <https://en.trend.az/azerbaijan/politics/3802226.html>; Judges' folder tab 6, Ann. 65, TASS, "Karabakh's Khankendi connected to Azerbaijan's power grid" (24 Sept. 2023), <https://tass.com/world/1679731>.

¹⁴¹ Request for provisional measures of 28 September 2023, p. 24, fn. 75.

of Azerbaijan. If anyone were to be responsible now for any disruption of the supply of gas, it would be Armenia, rather than Azerbaijan.

9. In the past, Armenia made similar allegations of Azerbaijan disrupting the supply of natural gas and other utilities to the residents of Garabagh, without providing any evidence. In its Order of 22 February 2023, the Court therefore stated that “such a measure is not warranted”¹⁴².

10. The measure was not warranted then, and it is not warranted now. Armenia has not provided a single piece of evidence for the allegation that Azerbaijan “intentionally deprived Nagorno-Karabakh of gas”¹⁴³.

11. With Azerbaijan having restored its sovereignty over its entire territory, it is in Azerbaijan’s very own interest to secure a continuous flow of gas and electricity to the region. Any disruption now would affect ethnic Azerbaijanis and ethnic Armenians alike. There is thus no question of any racial discrimination and, consequently, no “real and imminent risk” that irreparable harm will be caused to the rights claimed before the Court gives its final decision.

12. Madam President, Members of the Court, what Armenia is really aiming to achieve with this request is not the uninterrupted provision of public utilities in Garabagh but that electricity and gas must continue to be routed via Armenia in order to exercise control over the region. CERD, however, does not guarantee gas and electricity supply of ethnic groups from a particular foreign country.

B. Requested measure number seven

13. Let me now turn to Armenia’s seventh request. Armenia petitions the Court to order that “Azerbaijan shall refrain from taking punitive actions against the current or former political representatives or military personnel of Nagorno-Karabakh”.

14. Since 20 September 2023, eight persons who may be considered so-called “political representatives or military personnel of Nagorno-Karabakh”, including three former so-called “presidents”, one “interim president”, one former “foreign minister” and one former “defence minister” have been arrested on charges, *inter alia*, of war crimes, violations of international

¹⁴² *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. 64.

¹⁴³ See Request for provisional measures of 28 September 2023, Vol. I, paras. 7, 12 and 13.

humanitarian law during war, and terrorist acts resulting in the death of people¹⁴⁴. The eight accused have been taken into pre-trial detention on the basis of court orders¹⁴⁵.

15. Madam President, Armenia has not established any link between the measures it seeks and rights and obligations under the CERD. Armenia is alleging that Azerbaijan is prosecuting people just because they are ethnic Armenians. However, this is not the case. Not everything can be brought under or shoehorned into the CERD. People are prosecuted because they are suspected of having committed criminal offences. When Armenia requested that Azerbaijan release immediately all Armenian prisoners of war and detainees the Court stated in its Order of 7 December 2021:

“The Court does not consider that CERD plausibly requires Azerbaijan to repatriate all persons identified by Armenia as prisoners of war and civilian detainees. Armenia has not placed before the Court evidence indicating that these persons continue to be detained by reason of their national or ethnic origin.”¹⁴⁶

16. There was no real evidence with regard to the prisoners of war, and there is no evidence with regard to the eight persons currently detained. In the main proceedings, Armenia is asking for a declaration that Azerbaijan has violated its obligations under Articles 2 and 5 (a) of the CERD by engaging in practices of discriminatory arbitrary detention of ethnic Armenians¹⁴⁷.

17. The present request, on the other hand, covers all future cases of the application of Azerbaijani criminal law to the so-called “former political representative or military personnel of Nagorno-Karabakh” and it would in fact provide immunity to these persons until judgment on the merits has been pronounced.

18. As the Permanent Court of International Justice held in the *Polish Agrarian Reform and German Minority* case, the interim measures asked for would result in a “general suspension” of the law in so far as it concerns so-called “former political representative or military personnel of

¹⁴⁴ See Azerbaijan, State Security Service, “Armenian citizen R. Vardanyan was detained as an accused person and brought to justice” (28 Sept. 2023), <https://www.dtx.gov.az/en/news/1788.html>; the same, “Armenian citizen D. Manukyan was arrested on charges of committing terrorist crimes in Karabakh” (29 Sept. 2023), <https://www.dtx.gov.az/en/news/1789.html>; Turan, “David Babayan and Levon Mnatsakanyan were arrested and charged with serious crimes” (30 Sept. 2023), https://www.turan.az/ext/news/2023/9/free/politics_news/en/9286.htm; Prosecutor General’s Office of the Republic of Azerbaijan, “Arayik Harutyunyan has been charged with criminal responsibility” (5 Oct. 2023), <https://genprosecutor.gov.az/en/post/6868>; apa, “Azerbaijan’s Security Service releases information on arrest of Bako Saakyan, Arkady Ghukasyan and David Ishkhanyan — VIDEO” (5 Oct. 2023), <https://en.apa.az/social/azerbaijans-security-service-releases-information-on-arrest-of-bako-saakyan-arkady-ghukasyan-and-david-ishkhanyan-video-413512>.

¹⁴⁵ *Ibid.*

¹⁴⁶ *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. 383, para. 60.

¹⁴⁷ MAr, 23 Jan. 2023, Vol. I, 750 (submission No. 4).

Nagorno-Karabakh”, and so the Court therefore “cannot . . . be regarded as solely designed to protect the subject of the dispute and the actual object of the principal claim”¹⁴⁸.

19. There is no legal basis in the CERD that allows political representatives or military personnel of a separatist entity belonging to a certain ethnic group to act with impunity. Criminal liability is not a question of ethnicity.

20. The situation in Garabagh prior to 20 September 2023 is similar to the situation in Ukraine today. No one could seriously argue that Ukraine cannot prosecute separatist leaders and fighters for treason, war crimes or human rights violations just because the accused would belong to a certain ethnic group.

21. Madam President, Members of the Court, the measure requested would also be contrary to Azerbaijan’s obligations under international law.

22. In the armed conflicts over Garabagh, indiscriminate and disproportionate attacks by the Armenian forces resulted in hundreds of civilians being killed, injured, detained or missing; thousands of civilians having had their property and homes destroyed; and over 700,000 people being forced to leave the occupied areas.

23. Rule 158 of the International Committee of the Red Cross’s study of customary international humanitarian law provides “States must investigate war crimes allegedly committed . . . on their territory, and, if appropriate, prosecute the suspects”¹⁴⁹.

24. In addition, as a party to the European Convention on Human Rights, Azerbaijan is under an obligation to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for punishment of breaches of such provisions¹⁵⁰. Azerbaijan must thus investigate and prosecute

¹⁴⁸ *Polish Agrarian Reform and German Minority, Order of 29 July 1933, P.C.I.J., Series A/B, No. 58*, p. 178.

¹⁴⁹ ICRC, Customary International Humanitarian Law, Vol I: Rules (2005) 607 (Rule 158). See also Arts. 1, 49 and 50 of the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Arts. 1, 129 and 130 of the Third Geneva Convention on the Treatment of Prisoners of War, Arts. 1, 146 and 147 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, Arts. 85, 86, 87 and 88 of Additional Protocol (I) relating to the Protection of Victims of International Armed Conflicts, and Art. 6 of Additional Protocol (II) relating to the Protection of Victims of Non-International Armed Conflicts.

¹⁵⁰ See e.g. *Mustafa Tunç and Fecire Tunç v. Turkey, No. 24014/05 (GC), Judgment of 14 April 2015*, para. 171.

life-threatening injuries, death or disappearances in violent circumstances. This obligation also extends to offences that are committed during an active phase of hostilities¹⁵¹.

25. With Azerbaijan now able to exercise its sovereignty over Garabagh, it must meet its obligation to investigate and prosecute suspects present in the territory.

26. Madam President, Members of the Court, persons involved in serious breaches of international humanitarian law and human rights law should not be shielded from such investigation and prosecution by an order of this Court.

C. Requested measure number eight

27. I turn to requested measure number eight, which reads: “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.”

28. In its Order of 7 December 2021, the Court already indicated that

“Azerbaijan must, in accordance with its obligations under CERD . . . 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”¹⁵².

29. This existing Order protects all Armenian cultural heritage and remains in effect¹⁵³.

30. There is no need to follow-up existing orders with ever more specific and sectoral orders. Counsel for Armenia this morning admitted that this measure “has an express analogue in the 7 December 2021 Order” and that its only purpose is to reaffirm the earlier Order. This comes on top of the general request that the Court “reaffirm Azerbaijan’s obligations under the Court’s existing Orders”¹⁵⁴.

31. Azerbaijan has acknowledged publicly its international obligations to protect and uphold historical, cultural and religious heritage in the liberated territories. Most recently, on 2 October

¹⁵¹ See *Georgia v. Russia (II)*, No. 38263/08 (GC), Judgment of 21 January 2021, paras. 328-337.

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. 391, para. 92, p. 393, para. 98 (1) (c).

¹⁵³ See *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. 65; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, Order of 6 July 2023, paras. 7, 30.

¹⁵⁴ Armenia’s Request for provisional measures of 28 September 2023, Vol. I, para. 41.

2023, the Presidential Administration of Azerbaijan issued a statement guaranteeing the protection of cultural and religious monuments in the Garabagh region¹⁵⁵.

32. On the ground, Azerbaijani police is protecting Christian sites, including the Amaras and Ganjasar monasteries and the cathedral in Khankendi¹⁵⁶.

33. The United Nations mission visiting Garabagh on 1 October 2023 reported that in the areas it visited, it saw no damage to cultural and religious structures¹⁵⁷.

34. Armenia sees things differently. It presents an unverified and undated video posted on the platform X by a pro-Armenian group calling itself “A World United Against Terrorism” with some 480 followers worldwide. The caption to the video says, “Terrorists from Azerbaijan shooting at a Christian Church in #Artsak using rifles and tanks”¹⁵⁸. Madam President, Members of the Court, if you take a look at the video, all you will see is two soldiers firing their rifle, and then in a different sequence you see a building on a hill in the far distance while there is constant gunfire in the background. After firing, the first soldier takes cover. So it is by no means clear whether the soldiers were firing at the building, at the distance or at enemy fighters. The video cannot be evidence of vandalism, desecration or destruction of Armenian cultural heritage.

35. Armenia also points to the dismantling of a 50-metre-tall steel structure in the form of a cross overlooking Khankendi¹⁵⁹. It is Azerbaijan’s view that the structure was not a “religious monument” but a symbol of power and domination. It was erected during the Armenian occupation in order to symbolize the defeat of Azerbaijani Muslims, who were all cleansed from the area. The structure was no more a religious or cultural monument than the Armenian tanks with white crosses painted on them which were placed at the entrance of the city of Shusha.

36. There has been no destruction or vandalism of Armenian cultural or religious monuments. Azerbaijan has done everything to comply with the Court’s Order of 7 December 2021, and the Agent

¹⁵⁵ Azertag, “Statement by the Presidential Administration of the Republic of Azerbaijan” (2 Oct. 2023), https://azertag.az/en/xeber/statement_by_the_presidential_administration_of_the_republic_of_azerbaijan-2771617.

¹⁵⁶ Nasimi AghayevAZ, @NasimiAghayev [Ambassador of Azerbaijan to Germany] [X post with Video] (5 Oct. 2023), <https://twitter.com/NasimiAghayev/status/1709998169444978914>; Ruslan Rehimov, “Azerbaijani police guarantee protection of churches in Karabakh region” (5 Oct. 2023), <https://www.aa.com.tr/en/world/azerbaijani-police-guarantee-protection-of-churches-in-karabakh-region/3008855>.

¹⁵⁷ United Nations Azerbaijan, “UN team completes mission to Karabakh” (2 Oct. 2023), <https://azerbaijan.un.org/en/248051-un-team-completes-mission-karabakh>; judges’ folder, tab 9, Ann. 49.

¹⁵⁸ Armenia’s Request for provisional measures of 28 September 2023, Vol. II, Anns. 116 and 116V.

¹⁵⁹ Armenia, Additional Annexes, 6 Oct. 2023, Anns. 133 and 133V.

has given a binding undertaking that Azerbaijan will continue to protect cultural monuments, artefacts and sites in Garabagh.

37. Let me briefly also address the question of “monuments commemorating the 1915 Armenian genocide”. This morning we heard assertions that there are “numerous such monuments” in Garabagh. However, Armenia does not identify a single such monument in its request for provisional measures. There is thus no evidence of a real and imminent risk that irreparable prejudice will be caused to rights under the CERD.

38. An order not to alter or destroy such monuments would go well beyond the rights under the CERD whose protection is sought in the main proceedings. Not every removal of a monument necessarily constitutes an act of racial discrimination within the meaning of Article 1 (1) of the CERD.

39. These monuments do not only have an ethnic connotation but also a historical, legal and political one. CERD does not provide for an obligation to preserve controversial monuments, especially monuments erected by separatists or a foreign occupier during military occupation. For example, there cannot be an obligation under CERD to preserve statues commemorating persons responsible for war crimes or crimes against humanity, even if these persons are revered as war heroes by a certain ethnic group.

D. Requested measure number nine

40. Let me now address measure number nine, namely that “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”.

41. Here again, there is no link between the rights under the CERD claimed by Armenia in the main proceedings and the general and sweeping measures requested.

42. I start with the second aspect: the destruction and confiscation of registers and documents.

43. There is no question of Azerbaijan “confiscating” these documents. As public records within Azerbaijan’s sovereign territory, these documents have automatically passed into the custody of the Government of Azerbaijan upon the liberation of the Garabagh region¹⁶⁰.

¹⁶⁰ See Armenia, Additional Annexes, 6 Oct. 2023, Ann. 131.

44. There is also no evidence at all of these documents being at imminent risk of destruction. Quite the contrary, it is in Azerbaijan's self-interest to protect and preserve these important documents, including potentially as evidence for proceedings establishing title to property, criminal prosecutions, or to establish Armenia's responsibility for its violations of international law with regard to Garabagh.

45. Madam President, Members of the Court, you have also just heard the Agent give an undertaking that Azerbaijan will protect, and not destroy, documents and records found in Garabagh.

46. Let me now turn to the first aspect; namely that Azerbaijan shall recognize and give effect to the documents, including property titles, established by the so-called "authorities of Nagorno-Karabakh".

47. There is no legal basis in the CERD for the proposition that a returning sovereign must recognize and give effect to the acts of a foreign occupying power and its subordinate local administration, even if they belong to another ethnic group.

48. On the contrary, such an order would run counter to the well-established rule of international law that a returning sovereign is not bound in any way by the acts of the occupant¹⁶¹; and the same is true for the constitutional government and the acts of a separatist local *de facto* authority¹⁶².

49. In this context, it should be recalled that many of the property titles of Armenians are based on the expropriation of Azerbaijani Muslims who were driven from the region in the earlier Garabagh wars.

50. An order to give effect to property titles of the so-called "authorities of Nagorno-Karabakh" would run directly counter to the judgment of the European Court of Human Rights in *Chiragov and others v. Armenia* in which the Court found that displaced Azerbaijanis continued to enjoy property rights in occupied Garabagh region protected by Article 1 of Protocol 1 of the European Convention on Human Rights¹⁶³.

¹⁶¹ See Stefan Talmon, *Recognition of Governments in International Law With Particular Reference to Governments in Exile* (1998), p. 219.

¹⁶² *Ibid.*, p. 231.

¹⁶³ *Chiragov and Others v. Armenia*, No. 13216/05, Decision of 12 February 2012, para. 102; *Chiragov and Others v. Armenia*, No. 13216/05 (GC), Judgment of 16 June 2015, para. 142.

51. An order by the Court directing Azerbaijan to “recognize” the civil registers, identity documents and property titles of the so-called “authorities of Nagorno-Karabakh” would in fact validate these acts of the occupant and its subordinate local administration for several years to come and thus perpetuate the occupation.

E. Requested measure number ten

52. Madam President, this brings me to the last requested measure that “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”.

53. The Court has only once before ordered a party to periodically report “*on all measures taken to give effect*” to a provisional measures order. As Members of the Court will recall, this was done “in view of the specific provisional measures” indicated in that case¹⁶⁴. The specific provisional measures in that case concerned measures to prevent alleged ongoing breaches of the Genocide Convention.

54. Considering the measures requested in the present case, while relating to serious allegations Armenia has provided no convincing reason why a special reporting requirement should be imposed on Azerbaijan.

55. Statements made by counsel opposite that reporting was necessary because “Azerbaijan cannot be taken by its words” and because of “all the tricks Azerbaijan is pulling” are mere allegation but no reasons. The same is true for the statements that you have to indicate such a reporting requirement to preserve your authority and because such a requirement serves the “proper administration of justice”. I wonder whether in all the other cases where the Court indicated provisional measures without a reporting requirement justice was not properly served. I do not think so.

¹⁶⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 29, para. 82.*

56. The Court did not consider such a measure warranted when Armenia requested it before¹⁶⁵. Armenia has not explained why such a reporting requirement should be necessary now. It is Azerbaijan's view that with international observers from the United Nations, the ICRC and the Council of Europe on the ground in Garabagh now, there is even less need for a reporting requirement than there would have been before.

57. Madam President, Members of the Court, as demonstrated by my colleague, Mr Wordsworth, no order should be made in respect of measures one to five and the same is true for measures six to ten.

58. This concludes my presentation. I thank the Court for your kind attention.

59. Madam President, may I ask you to give the floor to the Agent of Azerbaijan for the concluding remarks and submissions.

The PRESIDENT: I thank Professor Talmon for his statement and I now invite the Agent of Azerbaijan, His Excellency Mr Elnur Mammadov, to address the Court. You have the floor, Excellency.

Mr MAMMADOV:

V. FINAL SUBMISSIONS

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

2. My country emphasizes its great respect for the Court and its commitment to fulfil its obligations under CERD.

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

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

4. I want to take this opportunity to thank the Office of the Registrar and the interpreters for their tremendous work during these proceedings.

¹⁶⁵ *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. 392, para. 95.

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

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

The Court rose at 6.05 p.m.
