

Non corrigé
Uncorrected

CR 2024/18

International Court
of Justice

THE HAGUE

Cour internationale
de Justice

LA HAYE

YEAR 2024

Public sitting

held on Tuesday 16 April 2024, at 10 a.m., at the Peace Palace,

President Salam 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 2024

Audience publique

tenue le mardi 16 avril 2024, à 10 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

*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 Salam
 Vice-President Sebutinde
 Judges Tomka
 Abraham
 Yusuf
 Xue
 Bhandari
 Iwasawa
 Nolte
 Charlesworth
 Brant
 Gómez Robledo
 Cleveland
 Aurescu
 Tladi
Judges *ad hoc* Daudet
 Koroma

 Registrar Gautier

Présents : M. Salam, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Abraham
Yusuf
M^{me} Xue
MM. Bhandari
Iwasawa
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
Tladi, juges
MM. Daudet
Koroma, juges *ad hoc*

M. Gautier, greffier

The Government of the Republic 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 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,

Ms Alison Macdonald, KC, Barrister, Essex Court Chambers, London,

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

Mr Constantinos Salonidis, Attorney at Law, Foley Hoag LLP, member of the Bars of the State of New York and Greece,

Mr Joseph Klingler, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

as Counsel and Advocates;

Mr Lawrence H. Martin, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the Commonwealth of Massachusetts,

Mr Peter Tzeng, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

Ms Iulia Padeanu Mellon, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and Illinois,

Mr Amir Ardelan Farhadi, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

Ms Yasmin Al Ameen, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

Ms Diem Huong Ho, Attorney at Law, Foley Hoag LLP, member of the Bars of England and Wales and the State of New York,

Mr Harout Ekmanian, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

Ms María Camila Rincón, Attorney at Law, Foley Hoag LLP, member of the Bar of Colombia,

as Counsel;

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

Le Gouvernement de la République d'Arménie est représenté par :

S. Exc. M. Yeghishe Kirakosyan, représentant de la République d'Arménie chargé des affaires juridiques internationales,

comme agent ;

M. Sean Murphy, professeur de droit international titulaire de la chaire Manatt/Ahn à la faculté de droit de l'Université George Washington, membre associé de l'Institut de droit international, membre du barreau du Maryland,

M. Linos-Alexandre Sicilianos, professeur de droit international, doyen de la faculté de droit de l'Université d'Athènes, membre de l'Institut de droit international, membre de la Cour permanente d'arbitrage,

M^{me} Alison Macdonald, KC, *barrister*, Essex Court Chambers (Londres),

M. Pierre d'Argent, professeur titulaire à l'Université catholique de Louvain, membre de l'Institut de droit international, cabinet Foley Hoag LLP, membre du barreau de Bruxelles,

M. Constantinos Salonidis, avocat au cabinet Foley Hoag LLP, membre des barreaux de l'État de New York et de Grèce,

M. Joseph Klingler, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'État de New York,

comme conseils et avocats ;

M. Lawrence H. Martin, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et du Commonwealth du Massachusetts,

M. Peter Tzeng, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'État de New York,

M^{me} Iulia Padeanu Mellon, avocate au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'Illinois,

M. Amir Ardelan Farhadi, avocat au cabinet Foley Hoag LLP, membre du barreau de l'État de New York,

M^{me} Yasmin Al Ameen, avocate au cabinet Foley Hoag LLP, membre du barreau de l'État de New York,

M^{me} Diem Huong Ho, avocate au cabinet Foley Hoag LLP, membre du barreau d'Angleterre et du pays de Galles ainsi que du barreau de l'État de New York,

M. Harout Ekmanian, avocat au cabinet Foley Hoag LLP, membre du barreau de l'État de New York,

M^{me} María Camila Rincón, avocate au cabinet Foley Hoag LLP, membre du barreau de Colombie,

comme conseils ;

S. Exc. M. Viktor Biyagov, ambassadeur de la République d'Arménie auprès du Royaume des Pays-Bas,

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

Mr Liparit Drmeyan, Head of the Office of the Representative of the Republic of Armenia on International Legal Matters, Office of the Prime Minister of the Republic of Armenia,

Mr Aram Aramyan, Head of the Department of Protection of the Interests of the Republic of Armenia in Interstate Disputes, Office of the Representative of the Republic of Armenia on International Legal Matters, Office of the Prime Minister of the Republic of Armenia,

Ms Kristine Khanazadyan, Head of the Department for Representation of the Interests of the Republic of Armenia before International Arbitral Tribunals and Foreign Courts, Office of the Representative of the Republic of Armenia on International Legal Matters, Office of the Prime Minister of the Republic of Armenia,

Ms Zoya Stepanyan, Head of the International Human Rights Cooperation Division, Department for Human Rights and Humanitarian Issues, Ministry of Foreign Affairs,

Ms Viviana Kalaejian, Third Secretary, Embassy of the Republic of Armenia in the Kingdom of the Netherlands,

Ms Nanami Hirata, Attorney at Law, Foley Hoag LLP,

Mr Levon Gevorgyan, Director of the International Law and Policy Centre Foundation, expert in international criminal and human rights law,

Mr Karnig Kerkonian, Attorney at Law, Kerkonian Dajani LLP, expert in public international law, member of the Bar of Illinois,

as Advisers;

Ms Jennifer Schoppmann, Foley Hoag LLP,

Ms Deborah Langlely, Foley Hoag LLP,

as Assistants.

The Government of the Republic of Azerbaijan is represented by:

HE Mr Elnur Mammadov, Deputy Minister for Foreign Affairs, Republic of Azerbaijan,

as Agent;

HE Mr Rahman Mustafayev, Ambassador of the Republic of Azerbaijan to the Kingdom of the Netherlands,

as Co-Agent;

Mr Samuel Wordsworth, KC, Essex Court Chambers, member of the Bar of England and Wales, member of the Paris Bar,

- S. Exc. M. Andranik Hovhannisyan, représentant permanent de la République d'Arménie auprès de l'Office des Nations Unies et des autres organisations internationales à Genève,
- M. Liparit Drmeyan, chef du bureau du représentant de la République d'Arménie chargé des affaires juridiques internationales, cabinet du premier ministre de la République d'Arménie,
- M. Aram Aramyan, directeur du département de la protection des intérêts de la République d'Arménie dans les différends interétatiques, bureau du représentant de la République d'Arménie chargé des affaires juridiques internationales, cabinet du premier ministre de la République d'Arménie,
- M^{me} Kristine Khanazadyan, directrice du département chargé de la représentation des intérêts de la République d'Arménie devant les tribunaux arbitraux internationaux et les juridictions étrangères, bureau du représentant de la République d'Arménie chargé des affaires juridiques internationales, cabinet du premier ministre de la République d'Arménie,
- M^{me} Zoya Stepanyan, cheffe de la division de la coopération internationale en matière des droits de l'homme, département des droits de l'homme et des affaires humanitaires, ministère des affaires étrangères,
- M^{me} Viviana Kalaejian, troisième secrétaire, ambassade de la République d'Arménie au Royaume des Pays-Bas,
- M^{me} Nanami Hirata, avocate au cabinet Foley Hoag LLP,
- M. Levon Gevorgyan, directeur de la fondation International Law and Policy Centre, expert en droit pénal international et en droit international des droits de l'homme,
- M. Karnig Kerkonian, avocat au cabinet Kerkonian Dajani LLP, expert en droit international public, membre du barreau de l'Illinois,

comme conseillers ;

M^{me} Jennifer Schoppmann, cabinet Foley Hoag LLP,

M^{me} Deborah Langley, cabinet Foley Hoag LLP,

comme assistantes.

Le Gouvernement de la République d'Azerbaïdjan est représenté par :

S. Exc. M. Elnur Mammadov, ministre adjoint aux affaires étrangères de la République d'Azerbaïdjan,

comme agent ;

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

comme coagent ;

M. Samuel Wordsworth, KC, Essex Court Chambers, membre du barreau d'Angleterre et du pays de Galles, et du barreau de Paris,

Ms Laurence Boisson de Chazournes, Professor of International Law and International Organization at the University of Geneva, member of the Institut de droit international, member of Matrix Chambers,

Mr Stefan Talmon, Professor of International Law, University of Bonn, Barrister, Twenty Essex Chambers,

as Counsel and Advocates;

Mr Stephen Fietta, KC, Fietta LLP, Solicitor Advocate of the Senior Courts of England and Wales,

Ms Oonagh Sands, Fietta LLP, member of the Bars of the State of New York and the District of Columbia, Solicitor Advocate of the Senior Courts of England and Wales,

Ms Eileen Crowley, Fietta LLP, member of the Bar of the State of New York, Solicitor of the Senior Courts of England and Wales,

Mr Gershon Hasin, JSD, Fietta LLP, member of the Bar of the State of New York,

Ms Mercedes Roman, Fietta LLP, member of the Bar of the Bolivarian Republic of Venezuela,

Mr Sean Aughey, Essex Court Chambers, member of the Bar of England and Wales,

Mr Aditya Laddha, PhD candidate and assistant, Faculty of Law, University of Geneva,

as Counsel;

Mr Nurlan Aliyev, Counsellor, Embassy of the Republic of Azerbaijan in the Kingdom of the Netherlands,

Ms Sabina Sadigli, First Secretary, Embassy of the Republic of Azerbaijan in the Kingdom of the Netherlands,

Mr Vusal Ibrahimov, First Secretary, Embassy of the Republic of Azerbaijan in the Kingdom of the Netherlands,

Mr Badir Bayramov, Second Secretary, Ministry of Foreign Affairs of the Republic of Azerbaijan,

Mr Shahriyar Hajiyevev, Second Secretary, Ministry of Foreign Affairs of the Republic of Azerbaijan,

as Advisers.

M^{me} Laurence Boisson de Chazournes, professeure de droit international et organisation internationale à l'Université de Genève, membre de l'Institut de droit international, membre de Matrix Chambers,

M. Stefan Talmon, professeur de droit international à l'Université de Bonn, *barrister*, Twenty Essex Chambers,

comme conseils et avocats ;

M. Stephen Fietta, KC, cabinet Fietta LLP, avocat et *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

M^{me} Oonagh Sands, cabinet Fietta LLP, membre des barreaux de l'État de New York et du district de Columbia, avocate et *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

M^{me} Eileen Crowley, cabinet Fietta LLP, membre du barreau de l'État de New York, *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

M. Gershon Hasin, JSD, cabinet Fietta LLP, membre du barreau de l'État de New York,

M^{me} Mercedes Roman, cabinet Fietta LLP, membre du barreau de la République bolivarienne du Venezuela,

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

M. Aditya Laddha, doctorant et assistant à la faculté de droit de l'Université de Genève,

comme conseils ;

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

M^{me} Sabina Sadigli, première secrétaire, 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,

M. Shahriyar Hajiyeu, deuxième secrétaire, ministère des affaires étrangères de la République d'Azerbaïdjan,

comme conseillers.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets this morning to hear the first round of oral argument of the Republic of Armenia on the preliminary objections raised by the Respondent 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 Armenia, His Excellency Mr Kirakosyan. You have the floor, Excellency.

Mr KIRAKOSYAN:

INTRODUCTION

1. Mr President, Members of the Court, it is an honour to appear before you once again as the Agent of the Republic of Armenia.

2. On 16 September 2021, Armenia instituted these proceedings against Azerbaijan because of that State's egregious policies and practices of racial discrimination against ethnic Armenians. As Armenia explained in its Memorial, Azerbaijan's Government has for decades cultivated an echo chamber of racist hatred against ethnic Armenians. The children of Azerbaijan are taught to hate and kill Armenians in their school textbooks. The State media spews vile hate speech. Public officials dehumanize ethnic Armenians and call for their complete elimination. This is the pervasive State-sanctioned racism that Azerbaijan's counsel dismissed yesterday as "so-called"¹ Armenophobia. A climate in which literal axe murderers are awarded, promoted and glorified as national heroes for killing Armenians in peacetime.

3. This long-standing State policy of racial hatred came to a violent head in September 2020 when Azerbaijan launched a war of aggression against the ethnic Armenians of Nagorno-Karabakh. The stated goal was to eliminate and expel ethnic Armenians from their homeland. As President Aliyev later revealed: "Hatred for the enemy . . . was driving us forward."² For 44 days, Azerbaijani soldiers systematically murdered, tortured and abused ethnic Armenians. They gleefully filmed themselves carrying out unspeakable acts of violence against ethnic Armenian civilians and

¹ CR 2024/17, p. 39, para. 12 (Wordsworth); *ibid.*, p. 45, para. 28 (Wordsworth).

² "Ilham Aliyev visited military unit of Defense Ministry's Special Forces", President of the Republic of Azerbaijan Ilham Aliyev (30 April 2022), available at <https://president.az/en/articles/view/55917>. See also Memorial of Armenia, para. 3.276.

prisoners of war, all while shouting racial slurs and insults. Through this violence and intimidation, Azerbaijan ethnically cleansed large swathes of Nagorno-Karabakh in 2020, expelling at least 30,000 people from their homeland. President Aliyev declared victory, proclaiming that no songs would be sung in Armenian in those lands ever again.

4. In the aftermath of these shocking atrocities, which were the culmination of decades of racial discrimination against ethnic Armenians, Armenia sought accountability under the CERD. Importantly, Armenia also sought the Court's urgent protection for those vulnerable ethnic Armenians who, at that time, had not yet been killed or expelled from their homeland.

5. Mr President, Members of the Court, we all know what has happened since then. To the deep regret of Armenia and the international community, not even the Court was able to stop the tide of Azerbaijan's racist campaign of ethnic cleansing. In September 2023, after starving the ethnic Armenians of Nagorno-Karabakh for nine months by blocking the Lachin Corridor, in flagrant violation of the Court's first two Orders on provisional measures, Azerbaijan launched an unprovoked attack, killing hundreds and forcing over 100,000 ethnic Armenians to flee their ancestral homes. To this day almost 200 remain missing, and their families suffer without knowing the fate of their loved ones. Just as with the Court's previous Orders, Azerbaijan remains in defiance of the Court's third Order of 17 November 2023. It has done nothing to "ensure that persons who have left Nagorno-Karabakh after 19 September 2023 and who wish to return to Nagorno-Karabakh are able to do so in a safe, unimpeded and expeditious manner"³. After threatening to do so for years, Azerbaijan has completed the ethnic cleansing of the region and is now consolidating it by systematically erasing all traces of ethnic Armenians' presence, including Armenian cultural and religious heritage⁴. All this is happening while this case is pending before you. Just last month, President Aliyev lit a bonfire in Stepanakert, Nagorno-Karabakh, and tweeted that the bonfire was "doing the final cleaning"⁵.

³ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 17 November 2023*, para. 74 (1).

⁴ Letter from the UN Special Rapporteur in the Field of Cultural Rights to the Republic of Azerbaijan (22 September 2023), available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28351>.

⁵ Ilham Aliyev @presidentaz, "The Novruz bonfire is also doing the final cleaning", X (19 March 2024), available at <https://twitter.com/presidentaz/status/1769998494196965516>.

6. Mr President, Members of the Court, this is the context in which Armenia is pursuing claims against Azerbaijan under the CERD.

7. Faced with Armenia's claims and the overwhelming evidence against it, Azerbaijan has desperately sought to introduce a false sense of parity between the Parties by instituting its own case against Armenia. But the challenge for Azerbaijan is that it has no videos of racist atrocities to show or no pervasive hate speech by public officials to quote. So, what has Azerbaijan done? It has resurrected three-decades-old historical grievances that clearly fall outside the temporal scope of the Court's jurisdiction. Just yesterday we heard Azerbaijan misrepresenting an early twentieth century national ideology as racist, which has nothing to do with the mainstream political realities in Armenia today. Azerbaijan has also introduced outlandish claims about alleged environmental damage that have nothing to do with racial discrimination. And it is even attempting, for a third time, to convince the Court that its allegations about landmines fall within the scope of the CERD.

8. As Armenia will explain during the hearings that begin next week, the vast majority of Azerbaijan's claims fall squarely outside the Court's jurisdiction. Yet again, however, Azerbaijan is pursuing its same tired strategy of mirroring and whataboutism. It is undoubtedly aware of the jurisdictional challenges faced by the case it has brought against Armenia. It is now desperately attempting to convince the Court that Armenia's case *also* faces jurisdictional hurdles. But nothing could be further from the truth. In light of the manifest weakness of its objections, Azerbaijan is simply hoping that the two sets of objections will cancel each other out.

9. Mr President, Members of the Court, this is a cynical strategy of last resort. As Armenia will explain today, neither of Azerbaijan's objections stands up to even cursory scrutiny, and its tactic must fail.

10. Azerbaijan's first objection is simply not serious. Not only does Azerbaijan's understanding of the negotiation requirement of Article 22 turn the Court's jurisprudence on its head, Azerbaijan's presentation of the facts also distorts reality. What Azerbaijan refers to as "negotiations about negotiations"⁶ was in fact an agenda imposed by Azerbaijan with the sole purpose of prolonging negotiations for as long as possible. What Azerbaijan refers to as a

⁶ CR 2024/17, p. 21, para. 18 (Talmon).

“confidence-building”⁷ exercise was happening at a time when the Azerbaijani army was still expelling ethnic Armenians from their homes. When Azerbaijan was making a so-called “proposal for joint action”⁸, it was also torturing ethnic Armenian detainees and destroying Armenian cultural heritage. While Azerbaijan, as it claims, was making “progress”⁹ in negotiations it was opening its Military Trophies Park and ridiculing ethnic Armenians with racist mannequins. Mr President, Members of the Court, in such a context, one year of negotiations was one year too many. Armenia nevertheless negotiated with Azerbaijan in good faith and pursued discussions far beyond the point of futility. Armenia has fulfilled the requirements of Article 22 in letter and spirit, and Azerbaijan’s first objection fails.

11. Azerbaijan’s second objection is also without merit. Unable to even argue that the vast majority of Armenia’s claims fall outside the Court’s jurisdiction, Azerbaijan attempts to convince the Court that a subset of Armenia’s claims concerning violence, detention and enforced disappearances have nothing to do with the CERD. To do so, Azerbaijan relies on at least two fictions. First, it tells the Court that Armenia simply does not have enough “particularized” evidence of racial animus. Apparently, according to Azerbaijan, for the Court to enjoy jurisdiction, Armenia should prove that each and every instance of violence, detention or disappearance was sufficiently racist. And to do so, it is not enough that Armenia point to a general climate of hate speech, or to the most hateful atrocities, or even to the racist words of the perpetrators themselves. For Azerbaijan, Armenia must prove an elusive “something more”¹⁰.

12. Azerbaijan’s other fiction is that Armenia’s grievances fall outside the scope of the CERD because they implicate international humanitarian law. For Azerbaijan, Armenia is unduly attempting to litigate an ordinary armed conflict between two warring States. As I explained, Armenia’s claims concern far more than the 44-day war of 2020. To borrow Azerbaijan’s metaphor, the war itself was only the tip of the iceberg of decades of racist policies and practices. That said, the CERD is not displaced by the existence of armed conflict. How could it be? History has shown us that the most

⁷ CR 2024/17, p. 23, para. 27 (Talmon).

⁸ CR 2024/17, p. 31, para. 62 (Talmon).

⁹ CR 2024/17, p. 31, para. 63 (Talmon).

¹⁰ CR 2024/17, p. 45, para. 28 (Wordsworth).

extreme forms of racial discrimination — including persecution, ethnic cleansing, genocide — most often occur in the context of armed conflict. Indeed, as set out in the Convention’s preamble,

“discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State”.

Unfortunately, there is no better example of racial discrimination upsetting peace and security than Azerbaijan’s recent armed aggressions, which resulted in the ethnic cleansing of all of Nagorno-Karabakh. In this context, as Armenia will demonstrate today, Azerbaijan’s arguments come nowhere near establishing that Armenia’s claims are not capable of falling within the scope of the CERD.

13. Mr President, Members of the Court, Armenia will organize its presentation today as follows.

14. *First*, Mr Constantinos Salonidis will explain why Azerbaijan’s first objection that Armenia failed to comply with the negotiation precondition of Article 22 of the CERD is plainly without merit.

15. *Second*, Professor Pierre d’Argent will begin Armenia’s submissions on Azerbaijan’s objection *ratione materiae* by setting forth the well-established legal standard applied by the Court.

16. *Third*, Professor Sean Murphy will provide an overview of the pervasive Armenophobia espoused by Azerbaijan, which provides critical context for assessing its objections *ratione materiae*. He will also explain why the existence of an armed conflict and the application of international humanitarian law does not preclude the jurisdiction of the Court.

17. *Fourth*, Ms Alison Macdonald will then explain why there can be no question that Azerbaijan’s racist violence against ethnic Armenians is, at minimum, capable of violating the CERD.

18. *Fifth*, Mr Joseph Klingler will make the same demonstration with regard to Azerbaijan’s discriminatory subjection of ethnic Armenians to arbitrary detention.

19. *Sixth*, Professor Linos-Alexandre Sicilianos will conclude by showing why discriminatory enforced disappearances carried out by Azerbaijan also undoubtedly fall within the scope of the CERD.

20. Before giving the floor to my colleagues, however, I would like to underscore the importance that the Republic of Armenia attaches to the present proceedings.

21. Mr President, Members of the Court, these proceedings concern fundamental human rights, and the dignity and equality of all peoples, regardless of their race and ethnicity. They are about justice for victims, accountability for perpetrators and truth-telling for posterity. Yet Azerbaijan has been increasingly characterizing Armenia's human rights claims, whether before the Court or in Strasbourg, as some sort of challenge to Azerbaijan's sovereignty or territorial integrity. It further claims that these proceedings are an obstacle to peace between the two States.

22. Azerbaijan is profoundly mistaken. Armenia has no claims to Azerbaijan's territory and is also committed to establishing the conditions for a genuine and enduring peace. But it cannot be the case that, to quote President Aliyev, "might is right"¹¹ and "international law does not work"¹². A State that has carried out gross breaches of human rights cannot simply declare that it has completed its atrocities and that it is ready to move on. History tells us that lasting peace is built upon justice, accountability, truth, and yes, reconciliation.

23. Thank you for your attention, Mr President. May I ask that you please call Mr Salonidis to the podium.

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

Mr SALONIDIS:

ARMENIA FULFILLED THE NEGOTIATION PRECONDITION

I. Introduction

1. Mr President, Madam Vice-President, distinguished Members of the Court, good morning. It is an honour to appear before you on behalf of the Republic of Armenia.

¹¹ "Speech by Ilham Aliyev at the First Session of the Azerbaijani Parliament's Fifth Convocation", President of the Republic of Azerbaijan Ilham Aliyev (24 November 2015), available at <https://en.president.az/articles/17279>. See also Memorial of Armenia, para. 3.60.

¹² "President Ilham Aliyev: Azerbaijan Completely Dispelled Myth About Armenian Army", *Defence.Az* (16 June 2018), available at <http://defence.az/az/news/128345/president-ilhamaliyev-azerbaijan-completely-dispelled-mythabout-armenian-army--%C2%A0>. See also Memorial of Armenia, para. 3.206.

2. As our honourable Agent just said, my task today is to explain why Azerbaijan's first preliminary objection must be rejected.

3. Azerbaijan puts forth three arguments in support of its objection. It claims, first, that the Parties never engaged in negotiations¹³. It claims, second, that Armenia "never made a *genuine* attempt at . . . negotiations"¹⁴. And it claims, last, and in the alternative, that Armenia "did not pursue these negotiations as far as possible"¹⁵. I will address each of these arguments in turn.

II. The Parties conducted negotiations

4. I start with the first, the argument that the Parties never engaged in negotiations. It is undisputed that before Armenia filed its Application, the Parties exchanged more than forty pieces of correspondence and participated in seven rounds of bilateral meetings over a period of ten months, from November 2020 to September 2021¹⁶.

5. Azerbaijan argues that during seven of those months, the Parties engaged in so-called "pre-negotiations"¹⁷ and such "pre-negotiations" are excluded from the concept of negotiations under Article 22 of the CERD. This is because they are, according to Azerbaijan, "not about the substance of the dispute"¹⁸. But this slicing and dicing of the overall engagement of the Parties has no grounding in the jurisprudence of the Court.

6. Azerbaijan says that "procedural and technical exchanges, according to the Court's own definition, do not qualify as negotiations"¹⁹. But Azerbaijan cites nothing for this proposition. In fact, the Court has never excluded from its assessment of negotiations procedural and technical exchanges as long as they are made "with a view to resolving the dispute"²⁰. Indeed, in the Court's first

¹³ CR 2024/17, p. 33, para. 73 (Talmon).

¹⁴ CR 2024/17, p. 33, para. 73 (Talmon); emphasis added.

¹⁵ CR 2024/17, p. 33, para. 74 (Talmon).

¹⁶ Application and Request for provisional measures of Armenia (16 September 2021), para. 19; Memorial of Armenia, para. 5.10; Written Statement of Observations and Submissions on the Preliminary Objections of the Republic of Azerbaijan (21 August 2023) (hereinafter "Observations of Armenia"), para. 18.

¹⁷ CR 2024/17, p. 45, para. 26 (Talmon).

¹⁸ CR 2024/17, p. 21, para. 18 (Talmon).

¹⁹ CR 2024/17, p. 22, para. 19 (Talmon).

²⁰ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 602, para. 116.

provisional measures Order of 7 December 2021, the Court assessed the evolution of the Parties' positions from the very "first exchange between the Ministers for Foreign Affairs of Armenia and Azerbaijan", until "the last bilateral meeting"²¹. The Court has of course done the same in other cases as well²².

7. Of course, the Court's approach makes very good sense. If the Court were to accept Azerbaijan's premise here, then that would mean that any respondent State could indefinitely lock the applicant State into interminable discussions of procedural and technical matters — and thus evade the submission of the dispute to the Court's jurisdiction. It is thus Azerbaijan's position, not Armenia's, that would deprive Article 22 of its significance and meaning.

8. Counsel for Azerbaijan stated yesterday that seven months of discussion on procedural and technical matters "may seem a long time"²³. This is because it *is* a long time. And it would have been a much, much longer time had it not been for Armenia accommodating Azerbaijan's requests at each and every turn.

9. From Azerbaijan's very first letter²⁴, it became evident to Armenia that it would have to accept negotiating Azerbaijan's mirroring claims alongside its own. It also became evident that if Armenia wanted the negotiations to advance, it would have to accept Azerbaijan's diktats as to when, where and how the negotiations would proceed.

10. Already three months in, Azerbaijan insisted that before proceeding to further discussions, it was first necessary to reach agreement on modalities and then it was necessary to agree on the scope of the negotiations²⁵. And then began a three-and-a-half-month-long discussion of procedural modalities and scope of negotiations, to which I will return.

²¹ *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. 374, para. 40.

²² See e.g. *Application of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), Provisional Measures, Order of 16 November 2023*, paras. 38, 41.

²³ CR 2024/17, p. 23, para. 27 (Talmon).

²⁴ Letter *from* the Minister of Foreign Affairs of the Republic of Azerbaijan *to* the Minister of Foreign Affairs of the Republic of Armenia (8 December 2020) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 14).

²⁵ Letter *from* the Minister of Foreign Affairs of the Republic of Azerbaijan *to* the Minister of Foreign Affairs of the Republic of Armenia (17 February 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 20).

11. I should also point out that Azerbaijan's objection is inconsistent with its position in the case it brought to the Court. There, Azerbaijan has expressly referred to the very same exchanges and meetings between the parties concerning procedural matters as a part of the "negotiations" — not "pre-negotiations"²⁶. There is simply no basis for Azerbaijan to qualify them as negotiations in the *Azerbaijan v. Armenia* case but only as so-called "pre-negotiations" in this case. As the Court is aware, in contrast with Azerbaijan, Armenia does not dispute that the negotiation precondition has been fulfilled in that case.

12. In short, there is no principled reason to exclude from negotiations exchanges between the Parties relating to procedural and technical matters as long as they are made "with a view to resolving the dispute". This is even more so here considering Azerbaijan's dilatory tactics.

13. Azerbaijan's second reason for arguing that negotiations in the present case did not take place is that the Parties supposedly did not "engage in [a] discussion with a view to resolving the dispute"²⁷. This is also wrong.

14. The discussion began when Armenia sent its letter of 11 November 2020 asserting its claims under the Convention²⁸. Azerbaijan in its letter of 8 December 2020 rejected those claims²⁹. Thereafter, Armenia repeatedly asserted its claims³⁰ and Azerbaijan repeatedly rejected them³¹. This

²⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, Application of Azerbaijan (23 September 2021), paras. 24, 25; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, Memorial of Azerbaijan, para. 379.

²⁷ CR 2024/17, p. 26, para. 37 (Talmon).

²⁸ Letter *from* the Minister of Foreign Affairs of the Republic of Armenia *to* the Minister of Foreign Affairs of the Republic of Azerbaijan (11 November 2020) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 10).

²⁹ Letter *from* the Minister of Foreign Affairs of the Republic of Azerbaijan *to* the Minister of Foreign Affairs of the Republic of Armenia (8 December 2020) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 14).

³⁰ Letter *from* the Minister of Foreign Affairs of the Republic of Armenia *to* the Minister of Foreign Affairs of the Republic of Azerbaijan (22 January 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 19); Delegation of the Republic of Armenia, Presentation of the Delegation of the Republic of Armenia on the Scope of the Negotiations (31 May 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 50); Delegation of the Republic of Armenia, Reply of the Delegation of the Republic of Armenia to the Response of the Delegation of the Republic of Azerbaijan Dated 13 July 2021 (14 July 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 59).

³¹ Letter *from* the Minister of Foreign Affairs of the Republic of Azerbaijan *to* the Minister of Foreign Affairs of the Republic of Armenia (8 December 2020) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 14); Letter *from* the Minister of Foreign Affairs of the Republic of Azerbaijan *to* the Minister of Foreign Affairs of the Republic of Armenia (15 January 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 18); Delegation of the Republic of Azerbaijan, Proposed Draft Agenda for 6-7 April 2021 Meeting (5 April 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 31).

back-and-forth went on for months. At the meeting on 31 May 2021, Armenia once again presented its claims³², and then again at the 15-16 July 2021 meetings, alongside the remedies it sought³³. Azerbaijan addressed them at the 30-31 August meetings³⁴, after which Armenia considered that it had pursued negotiations as far as possible. It is thus false to assert that by 15 September 2021, all the Parties had done was to exchange “a series of accusations and rebuttals”³⁵. The reality is that Azerbaijan fully considered Armenia’s claims and remedies sought and repeatedly rejected them. Armenia fully considered Azerbaijan’s positions and rejected them as well. That really is the end for Azerbaijan’s first argument.

III. Armenia made a genuine attempt to negotiate

15. Azerbaijan’s second argument is that Armenia allegedly never made a genuine attempt at negotiations³⁶. Four observations are in order in this regard.

16. First, we heard yesterday Azerbaijan argue that much discussion between the Parties “solely concerned . . . Armenia’s wish to include in the Agreed Procedural Modalities a passage that would allow Armenia to prove as a matter of fact that negotiations had in fact failed”, and that somehow, according to Azerbaijan, detracts from the genuine character of Armenia’s attempt to negotiate³⁷. This is false. Armenia did not make its proposals because it had the proceedings before the Court “at the forefront of [its] mind”, as Azerbaijan argues³⁸. Rather, Armenia made its proposal, which Azerbaijan resisted strongly, because Azerbaijan sought to *limit* the Parties’ ability to rely on their diplomatic exchanges before the Court. As Armenia wrote on 16 April 2021, already five months into the negotiations, Azerbaijan’s proposals “would gravely impair the ability of the Parties to establish that . . . there has been a failure of negotiations . . . Such consequence would contradict

³² Delegation of the Republic of Armenia, Presentation of the Delegation of the Republic of Armenia on the Scope of the Negotiations (31 May 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 50).

³³ Delegation of the Republic of Azerbaijan, Response of the Delegation of the Republic of Azerbaijan Concerning the Republic of Armenia’s Reply of 26 April 2021 (29 April 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 42).

³⁴ *Ibid.*

³⁵ CR 2024/17, p. 25, para. 37 (Talmon).

³⁶ CR 2024/17, p. 26, para. 39 (Talmon).

³⁷ CR 2024/17, p. 27, para. 43 (Talmon).

³⁸ CR 2024/17, p. 27, para. 43 (Talmon).

the States Parties' aim to eradicate all forms of racial discrimination effectively and promptly"³⁹. And as Armenia noted in its letter four days after that, "Azerbaijan[']s insist[ence] that the only manner in which these substantive negotiations can commence is at the expense of Armenia's rights under Article 22 speaks volumes about Azerbaijan's preoccupations at this stage"⁴⁰.

17. It is equally false for Azerbaijan to argue that Armenia did not genuinely negotiate the dispute because it did not allocate enough time for doing so. Counsel for Azerbaijan surmised that negotiations over "such a substantial dispute" should probably take "months, if not years"⁴¹. By contrast, he argued, "Armenia . . . initially suggested just *one* day, with a second day held in reserve for possible further discussion"⁴².

18. Counsel for Azerbaijan cites here to Annex 5 to Azerbaijan's Preliminary Objections, which is a letter from Armenia dated 22 January 2021. The letter, however, makes clear that Armenia was proposing one day with a second day in reserve for a *first* meeting. Armenia by no means assumed that the entire dispute would be settled within those two days. In fact, Armenia's proposed agenda — as an annex to the same letter — expressly provided for an "[e]xchange of views on whether the dispute can be amicably resolved through *further* discussions"⁴³.

19. Counsel for Azerbaijan yesterday went on to say that "Armenia in the end only agreed to a schedule that allocated two days for the presentation of its claims and requested remedies, and gave Azerbaijan another two days to present its replies — four days in all"⁴⁴.

20. But this too is misleading. Here, counsel cites to Annex 42 to Azerbaijan's Preliminary Objections, which is a letter from Armenia dated 14 July 2021. But once again, Armenia proposed these four days for meetings without assuming that negotiations would end thereafter. In its prior

³⁹ Delegation of the Republic of Armenia, Reply of the Delegation of the Republic of Armenia to the Republic of Azerbaijan's Response Concerning Procedural Modalities (16 April 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 37).

⁴⁰ Delegation of the Republic of Armenia, Reply of the Delegation of the Republic of Armenia Concerning Azerbaijan's Proposal on Procedural Modalities of 19 April 2021 (20 April 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 39).

⁴¹ CR 2024/17, p. 27, para. 46 (Talmon).

⁴² CR 2024/17, p. 27, para. 46 (Talmon).

⁴³ Letter *from* Ara Aivazian, Minister of Foreign Affairs of the Republic of Armenia, *to* Jeyhun Bayramov, Minister of Foreign Affairs of the Republic of Azerbaijan (22 January 2021) (Preliminary Objections of Azerbaijan, Annex 5) (emphasis added).

⁴⁴ CR 2024/17, p. 27, para. 47 (Talmon).

letter of 9 July 2021, Armenia expressly stated that “it was open to *additional* discussions” beyond those days of meetings⁴⁵.

21. I move now to my third observation. Neither Article 22 nor international law requires Armenia to jointly with Azerbaijan declare the negotiations to have become futile. Armenia was happy to suggest that the Parties “jointly assess whether further negotiations are constructive in resolving the dispute” in April 2021⁴⁶. It was not so happy to do so by June 2021 after seeing yet another two months being squandered away on Azerbaijan’s dilatory tactics⁴⁷.

22. Finally, it is false to assert that Armenia rejected Azerbaijan’s proposals “outright without engaging with them”⁴⁸. Armenia carefully considered these proposals for two weeks⁴⁹, and explained at the 15 September 2021 meeting that they failed to address the claims it had presented to Azerbaijan and the remedies it had requested.

IV. Armenia filed its Application after negotiations became futile

23. This brings me to Azerbaijan’s last ground for its first preliminary objection, which is being asserted in the alternative, namely, that Armenia, after ten whole months, allegedly did not pursue negotiations as far as possible⁵⁰. Azerbaijan’s argument is basically that Armenia did not allow Azerbaijan’s position to evolve⁵¹.

⁴⁵ Letter *from* the Delegation of the Republic of Armenia *to* the Delegation of the Republic of Azerbaijan (9 July 2021).

⁴⁶ Delegation of the Republic of Armenia, Reply of the Delegation of Armenia Concerning the Procedural Modalities and Upcoming Meetings (7 April 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 33); Committee on Foreign Affairs, House of Representatives, 110th Congress, Second Session, *The Caucasus: Frozen Conflicts and Closed Borders*, Serial No.110-200 (18 June 2008) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 2).

⁴⁷ Delegation of the Republic of Armenia, Reply of the Delegation of the Republic of Armenia to the Response of the Delegation of the Republic of Azerbaijan Dated 11 June 2021 (22 June 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 54), p. 3.

⁴⁸ CR 2024/17, p. 29, para. 51 (Talmon).

⁴⁹ Note Verbale *from* the Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva *to* the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva, No. 0432/27/21/25 (2 September 2021), p. 1 (Application and Request for provisional measures of Armenia (16 September 2021), Annex 60); Note Verbale *from* the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva *to* the Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva, No. 2203/1415/2021 (10 September 2021) (Application and Request for provisional measures of Armenia (16 September 2021), Annex 61).

⁵⁰ CR 2024/17, p. 30, para. 57 (Talmon).

⁵¹ CR 2024/17, p. 31, para. 60 (Talmon).

24. But Armenia did afford Azerbaijan an adequate chance to reconsider its repeated rejection of Armenia's claims⁵². Azerbaijan's proposals of August 2021 merely concerned proposed steps that Azerbaijan would take only if Armenia took them as well⁵³. Even then, the proposed actions were couched in tentative terms. Azerbaijan proposed to "facilitate" the return of the forcibly displaced, but did not allow it as Armenia was asking. Azerbaijan proposed to "take steps" to provide equality before the law⁵⁴, but did not guarantee it, as Armenia was asking. Azerbaijan proposed to "assess" educational materials⁵⁵, but refused to adopt immediate and effective educational measures, as Armenia was asking. Azerbaijan proposed to "consider" the removal of racist depictions at the Military Trophies Park, but did not remove them as Armenia was asking.

25. Armenia's Memorial submissions make clear that Armenia seeks from the Court declarations that Azerbaijan has breached the CERD, and an order that Azerbaijan shall cease these breaches, offer assurances and guarantees of non-repetition, and make reparation by way of restitution and compensation⁵⁶. Azerbaijan's proposals, on the other hand, contained no acknowledgement of any wrongdoing; and of course, no provision of remedies. As I noted earlier, Azerbaijan's proposals merely called for *joint* steps to be taken without any particular further indication as to the time frame of implementation or anything else.

26. But concrete steps needed to be taken *immediately* — and steps that were in Azerbaijan's sole power to take. Throughout its supposed genuine engagement in amicable settlement, Azerbaijan was in fact aggravating the dispute, thereby compounding the harm and Armenia's necessity to act. As early as 22 December 2020, referring to the "scale and severity of Azerbaijan's ongoing violations", Armenia asked that "negotiations . . . be conducted promptly and in good faith"⁵⁷.

⁵² Letter *from* the Minister of Foreign Affairs of the Republic of Azerbaijan *to* the Minister of Foreign Affairs of the Republic of Armenia (8 December 2020) (Application and Request for provisional measures of Armenia, Annex 14); Letter *from* the Minister of Foreign Affairs of the Republic of Azerbaijan *to* the Minister of Foreign Affairs of the Republic of Armenia (15 January 2021) (Application and Request for provisional measures of Armenia, Annex 18); Delegation of the Republic of Azerbaijan, Proposed Draft Agenda for 6-7 April 2021 Meeting (5 April 2021) (Application and Request for provisional measures of Armenia, Annex 31).

⁵³ Letter *from* Vaqif Sadiqov, Head of Delegation of the Republic of Azerbaijan for negotiations under CERD, *to* Elnur Mammadov, Deputy Minister of Foreign Affairs (9 October 2021) (Preliminary Objections of Azerbaijan, Annex 45).

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Memorial of Armenia, Part IX.

⁵⁷ Letter *from* the Minister of Foreign Affairs of the Republic of Armenia *to* the Minister of Foreign Affairs of the Republic of Azerbaijan (22 December 2020), pp. 1-2 (Application and Request for provisional measures of Armenia, Annex 15).

27. On 22 January 2021, Armenia reiterated the “urgent need to protect . . . ethnic Armenians from Azerbaijan’s ongoing discrimination — including the torture and murder of civilians and hate speech emanating from the highest levels of government” and expressed its regret that the Parties had not yet been able to meet two months after the commencement of the negotiations⁵⁸.

28. On 2 April 2021, Armenia recalled the “seriousness and ongoing nature of Azerbaijan’s breaches of the Convention and the imperative need to bring them to an immediate end”, expressing the hope that Azerbaijan “will confirm the agreed scope of negotiations so that substantive discussions can proceed”⁵⁹. And that did not happen until two months later⁶⁰.

29. On 20 April 2021, Armenia specifically referred to Azerbaijan’s decision to open the Military Trophies Park, recalling the need to maintain a constructive atmosphere in the negotiations⁶¹.

30. At the meeting of 31 May 2021, Armenia reiterated once again its great concern that the “‘Military Trophies Park’, as well as Azerbaijan’s recent widely condemned incursion onto Armenian territory, negatively affect the atmosphere of negotiations and risk undermining their progress”⁶².

31. And on 22 June 2021, Armenia noted that “while within the framework of these negotiations Azerbaijan professes an intent to ‘maximize the prospect of resolving this dispute’, outside that framework it has acted to exacerbate its violations . . . including by opening [the] ‘Military Trophies Park’”⁶³.

⁵⁸ Letter *from* the Minister of Foreign Affairs of the Republic of Armenia *to* the Minister of Foreign Affairs of the Republic of Azerbaijan (22 January 2021) (Application and Request for provisional measures of Armenia, Annex 19).

⁵⁹ Delegation of the Republic of Armenia, Proposed Draft Agenda for 6-7 April 2021 Meeting (2 April 2021) (Application and Request for provisional measures of Armenia, Annex 29).

⁶⁰ Delegation of the Republic of Armenia, Presentation of the Delegation of the Republic of Armenia on the Scope of the Negotiations (31 May 2021) (Application and Request for provisional measures of Armenia, Annex 50).

⁶¹ Delegation of the Republic of Armenia, Reply of the Delegation of the Republic of Armenia Concerning Azerbaijan’s Proposal on Procedural Modalities of 19 April 2021 (20 April 2021) (Application and Request for provisional measures of Armenia, Annex 39).

⁶² Delegation of the Republic of Armenia, Presentation of the Delegation of the Republic of Armenia on the Scope of the Negotiations (31 May 2021) (Application and Request for provisional measures of Armenia, Annex 50).

⁶³ Delegation of the Republic of Armenia, Reply of the Delegation of the Republic of Armenia to the Response of the Delegation of the Republic of Azerbaijan Dated 11 June 2021 (22 June 2021) (Application and Request for provisional measures of Armenia, Annex 54).

32. What was Azerbaijan's response, you may wonder? To deny and double down on its claims⁶⁴. And what made it finally remove the racist mannequins of the Military Trophies Park? The threat of provisional measures by the Court⁶⁵.

33. Azerbaijan argues that “[n]egotiations . . . do not mean that one party simply submits to the demands of the other”⁶⁶. We agree. Armenia was not obliged to accept proposals that it did not consider adequate, in the same way that Azerbaijan was not obliged to accept Armenia's claims and requested remedies⁶⁷. But this is why Article 22 vests the Court with jurisdiction over this dispute.

34. Mr President, distinguished Members of the Court, Armenia of course acknowledges that the Court has not yet ruled on the merits of its claims, but it is a fact that Azerbaijan has been the subject of three provisional measures Orders and two affirmations of provisional measures⁶⁸, setting a most notorious record in the jurisprudence of the Court. The fact that the Court has indicated so many provisional measures against Azerbaijan in less than two and a half years makes indisputably clear that Armenia's wish in resolving this dispute without undue delay was entirely warranted. Again, we recognize that the Court has not yet ruled on the merits. But to call Armenia's conduct in bringing this case premature is very unfortunate and disrespectful to the thousands of victims of Azerbaijan's conduct, some of whom it purports to consider its citizens.

V. Conclusion

35. The upshot of all this should be clear by now. Armenia genuinely engaged with Azerbaijan throughout the entire negotiations. Armenia accommodated Azerbaijan's request to discuss its claims

⁶⁴ Letter *from* the Minister of Foreign Affairs of the Republic of Azerbaijan *to* the Minister of Foreign Affairs of the Republic of Armenia (15 January 2021) (Application and Request for provisional measures of Armenia, Annex 18); Delegation of the Republic of Azerbaijan, Proposed Draft Agenda for 6-7 April 2021 Meeting (5 April 2021) (Application and Request for provisional measures of Armenia, Annex 31); Delegation of the Republic of Azerbaijan, Response of the Delegation of the Republic of Azerbaijan to the Republic of Armenia's 20 April 2021 Reply Concerning Procedural Modalities (23 April 2021) (Application and Request for provisional measures of Armenia, Annex 40); Delegation of the Republic of Azerbaijan, Response of the Delegation of the Republic of Azerbaijan to the Republic of Armenia's Reply Dated 22 June 2021 (2 July 2021) (Application and Request for provisional measures of Armenia, Annex 55).

⁶⁵ Letter *from* Azerbaijan's Agent *to* Registrar of the Court (13 October 2021).

⁶⁶ CR 2024/17, p. 33, para. 70 (Talmon).

⁶⁷ *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J. Series A, No. 2*, pp. 13, 15.

⁶⁸ *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; Request for the Modification of the Order Indicating Provisional Measures of 7 December 2021, Order of 12 October 2022, I.C.J. Reports 2022 (II); Provisional Measures, Order of 22 February 2023; Request for the Modification of the Order Indicating Provisional Measures of 22 February 2023, Order of 6 July 2023; Provisional Measures, Order of 17 November 2023.*

alongside Armenia's; Armenia accommodated Azerbaijan's request to first discuss modalities; Armenia accommodated Azerbaijan's request to then discuss the scope of the negotiations. And Armenia yielded to Azerbaijan's proposals on the schedule and format of presentation of claims.

36. But all this was met with rejection upon rejection, mirroring, dilatory tactics and aggravation. Still, Armenia put an end to the negotiations only when it became evident that Azerbaijan would never acknowledge any wrongdoing or remedy its violations — that is, after more than forty pieces of correspondence, seven rounds of bilateral meetings and ten months of negotiation.

37. There can thus be no question that Armenia fulfilled the negotiation precondition in Article 22 of the Convention, and therefore Azerbaijan's first objection to jurisdiction must be rejected.

38. I thank the Court for its time and attention, and I would kindly ask, Mr President, that you give the floor to my colleague Professor Pierre d'Argent.

The PRESIDENT: I thank Mr Salonidis for his statement. J'appelle maintenant à la barre M. le professeur Pierre d'Argent. Vous avez la parole.

M. D'ARGENT : Merci, Monsieur le président.

**LA COMPÉTENCE *RATIONE MATERIAE* DE LA COUR :
PRINCIPES ET APPLICATION**

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les juges, c'est un honneur de prendre à nouveau la parole devant vous au soutien de l'Arménie.

2. Et je vais tenter de circonscrire l'objet de la seconde exception préliminaire de l'Azerbaïdjan car elle ne concerne pas toutes les soumissions de l'Arménie et, comme vous le savez, elle a été récemment modifiée. Dans un second temps, je reviendrai sur le contexte des réclamations qui vous sont soumises car ce contexte est déterminant pour bien appréhender cette exception. Enfin, en introduction aux plaidoiries de mes collègues, j'exposerai brièvement les principes régissant la compétence matérielle de la Cour et j'examinerai leur application au regard de la convention.

I. Les contours de la seconde exception préliminaire et les réclamations n'en relevant pas

3. Monsieur le président, telle que modifiée, la seconde exception préliminaire de l'Azerbaïdjan ne vise à écarter du débat sur le fond que certaines allégations de violation de la convention présentées par l'Arménie, à savoir :

- 1) d'une part, les allégations relatives aux détentions arbitraires d'Arméniens de souche⁶⁹ ;
- 2) d'autre part, les allégations relatives aux disparitions forcées d'Arméniens de souche⁷⁰ ;
- 3) et enfin les demandes de l'Arménie relatives à différentes exactions commises contre des Arméniens de souche⁷¹. Et à cet égard, la position de l'Azerbaïdjan a, comme vous le savez, apparemment évolué en cours d'instance. La question est toutefois de savoir si elle a vraiment évolué tant il est difficile de savoir ce qui a changé.

Dans un premier temps, l'Azerbaïdjan a soutenu que les actes de violence physique dirigés contre des Arméniens de souche, qu'ils aient été des membres des forces armées ou des civils, étaient exclus du champ d'application matériel de la convention, en particulier lorsque ces actes avaient été commis par des membres de ses forces armées⁷². Le 5 avril, l'Azerbaïdjan a indiqué qu'il n'objectait plus à la compétence de la Cour au sujet des réclamations de l'Arménie portant sur le « mistreatment of ethnic Armenian civilians during armed conflict », tout en ajoutant maintenir son objection au sujet du

« remainder of Armenia's CERD claims related to alleged mistreatment of civilians during the active hostilities phase of armed conflict, in relation to which Armenia has presented no specific evidence of purported misconduct on the basis of ethnic or national origin ».

Et par ailleurs, l'Azerbaïdjan a maintenu son objection s'agissant des « claims related to alleged mistreatment of Armenia's armed forces during the active hostilities phase of armed conflict »⁷³.

Les contours précis de ce qu'il reste de l'objection préliminaire de l'Azerbaïdjan à cet égard sont toutefois très flous. La lettre de l'Azerbaïdjan du 5 avril dernier donne à penser qu'une distinction

⁶⁹ MA, part. VI, chap. 3, sect. III.

⁷⁰ *Ibid.*, sect. IV.

⁷¹ *Ibid.*, sect. I.

⁷² *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Arménie c. Azerbaïdjan)*, exceptions préliminaires de l'Azerbaïdjan (21 avril 2023) (ci-après « EPA »), par. 42 et suiv.

⁷³ Lettre en date du 5 avril 2024 adressée à M. Philippe Gautier, greffier de la Cour internationale de Justice, par M. Elnur Mammadov, agent de la République d'Azerbaïdjan.

— vous l’avez entendu — devrait être faite entre les exactions dont furent victimes les civils arméniens de souche « during armed conflict » et celles qui eurent lieu « during the active hostilities phase of armed conflict », mais les plaidoiries d’hier n’ont pas apporté de lumière à cet égard. L’Azerbaïdjan a certes fourni quelques précisions temporelles au sujet de ce qu’il estime être les différentes phases actives des hostilités ayant opposé les Parties⁷⁴. Toutefois, si ce critère est pertinent, on comprend mal pourquoi il maintient son objection s’agissant des détentions arbitraires et des disparitions forcées ayant eu lieu en dehors des phases actives d’hostilités. Par ailleurs, que faut-il entendre par « Armenia’s armed forces » ? Y a-t-il une différence avec « Armenian military personnel »⁷⁵ ou encore avec le personnel des forces armées de l’Arménie (« Armenia’s Armed Forces personnel »⁷⁶) sachant qu’il y a du personnel civil dans toutes les forces armées ? L’Azerbaïdjan vise encore les « combatants in the active hostilities phase of an armed conflict »⁷⁷. Alors cette formule inclut sans doute les membres des forces armées de la République d’Arménie, mais concerne-t-elle aussi les civils du Haut-Karabakh ayant rejoint les rangs de l’armée des autorités indépendantistes ?

4. Quoi qu’il en soit, Monsieur le président, l’objection *ratione materiae* de l’Azerbaïdjan n’a jamais concerné un nombre considérable de demandes arméniennes. Et celles-ci sont reprises dans la liste apparaissant sur votre écran, que vous pourrez trouver sous le premier onglet de votre dossier d’audience et qui reprend en substance le paragraphe 36 des observations écrites de l’Arménie.

5. Bien que la seconde exception préliminaire de l’Azerbaïdjan concerne un ensemble de faits s’étant produits à l’occasion ou à la suite d’hostilités ayant opposé les Parties, ou durant leur « phase active », l’applicabilité de principe de la convention en temps de conflit armé n’est pas contestée par le défendeur⁷⁸. Il s’agit d’un élément important sur lequel le professeur Murphy reviendra.

6. Aussitôt après avoir formulé cette concession de principe, l’Azerbaïdjan soutient néanmoins que certains faits survenus à l’occasion ou à la suite des hostilités, ou durant leur « phase active », ne seraient en rien susceptibles d’engager sa responsabilité au titre de la convention. Selon

⁷⁴ CR 2024/17, p. 40-41, par. 12 d) (Wordsworth).

⁷⁵ *Ibid.*, p. 35, par. 3 a) (Wordsworth).

⁷⁶ *Ibid.*, p. 41, par. 14 (Wordsworth).

⁷⁷ *Ibid.*, p. 45, par. 27 (Wordsworth).

⁷⁸ EPA, par. 8.

l'Azerbaïdjan, certains actes liés aux hostilités dont l'Arménie se plaint et au sujet desquels l'exception préliminaire n'est pas retirée ne seraient pas susceptibles d'être discriminatoires au regard de la convention, essentiellement, mais pas uniquement, compte tenu du moment où ils ont eu lieu — phase active ou non active des hostilités — ou du statut des victimes — civils ou militaires. Selon l'Azerbaïdjan, en décider autrement reviendrait à transformer tout conflit armé entre États en conflit relevant de la convention car il n'est pas inhabituel que les guerres opposent des peuples d'origines ethniques différentes.

II. Un conflit aux origines et dimensions ethniques très marquées

7. Monsieur le président, Mesdames et Messieurs les juges, les distinguos dans lesquels l'Azerbaïdjan se perd n'ont aucune pertinence et aucun sens au regard de la convention, et ils ont d'autant moins de sens que le conflit ayant opposé l'Azerbaïdjan aux Arméniens de souche lorsqu'ils vivaient au Haut-Karabakh a des origines et des dimensions ethniques très marquées. L'Azerbaïdjan a reconnu hier que le conflit dont la Cour est saisie est un « conflit ethnique »⁷⁹. Ainsi, ce conflit n'est pas une guerre interétatique ordinaire, contrairement à ce que, de manière parfaitement contradictoire et décontextualisée, l'Azerbaïdjan soutient en prétendant qu'au sein de ce conflit il y aurait des actes de violence particulièrement cruels et choquants, des différences de traitement attentatoires à la jouissance dans des conditions d'égalité de droits fondamentaux, qui n'auraient pourtant rien à voir avec l'origine ethnique de leurs victimes.

8. Ce conflit est un conflit ethnique car, sous couvert d'intégrité territoriale, l'Azerbaïdjan a refusé durant trois décennies l'autodétermination des Arméniens vivant sur leurs terres ancestrales et y a mis fin de manière brutale. Ce que l'Azerbaïdjan appelle par la voix de son président sa « guerre de libération »⁸⁰, ou encore sa « guerre patriotique »⁸¹, a procédé de nombreuses violations discriminatoires des droits fondamentaux des Arméniens de souche, y compris lorsqu'ils ont pris part

⁷⁹ CR 2024/17, p. 45, par. 28 (Wordsworth).

⁸⁰ Voir, par exemple, « President Ilham Aliyev: Our war was a war of liberation, we have put an end to the occupation », *Azertag* (5 mars 2022), accessible à l'adresse suivante : https://azertag.az/en/xeber/president_ilham_aliyev_our_war_was_a_war_of_liberation_we_have_put_an_end_to_the_occupation-2041832 ; « Azerbaijani President: Our war was a war of liberation », *Azertag* (19 février 2023), accessible à l'adresse suivante : https://azertag.az/en/xeber/azerbaijani_president_our_war_was_a_war_of_liberation-2496851.

⁸¹ Voir, par exemple, le président de la République d'Azerbaïdjan, Ilham Aliyev, « Ilham Aliyev viewed conditions created at one of commando military units of Ministry of Defense, and presented battle flag to military unit » (23 juin 2023), accessible à l'adresse suivante : <https://president.az/en/articles/view/60327>.

aux hostilités. Par ailleurs, cette guerre a résulté dans le nettoyage ethnique du Haut-Karabakh au mépris des ordonnances de la Cour. Selon son propre récit national, l'Azerbaïdjan s'est donc « libéré » en livrant sa guerre fin 2020, puis en poursuivant ses objectifs par l'étranglement progressif du Haut-Karabakh, et cela jusqu'au dernier coup de force de septembre 2023 par lequel furent chassés les habitants de souche arménienne. Voilà, Mesdames et Messieurs de la Cour, voilà l'objectif et le fruit de la « guerre patriotique » de l'Azerbaïdjan : une patrie sans Arméniens de souche.

9. Faut-il en dire plus ? Faut-il en dire plus, non seulement au sujet du contexte du différend que l'Arménie a soumis à la Cour, mais à propos de son objet même, lequel relève clairement de la convention et cela sous l'angle de toutes les demandes arméniennes ? En effet, toutes les demandes arméniennes concernent des violations de droits humains fondamentaux visant spécifiquement des individus *à cause* de leur origine nationale ou ethnique arménienne, et non à cause de leur nationalité ou d'un autre motif non prévu par la convention.

10. Monsieur le président, je pourrais sans doute arrêter là ma plaidoirie — non sans ajouter toutefois que c'est le même refus obstiné de l'Azerbaïdjan de voir l'évidence discriminatoire au cœur de son projet politico-militaire et de ses actes qui a forcément précipité l'échec des négociations précontentieuses entre Parties. En ce sens, il suffit de bien prendre la mesure de la seconde exception préliminaire de l'Azerbaïdjan pour rejeter la première si l'on n'était pas déjà convaincu de son absence totale de fondement comme l'a démontré M^e Salonidis.

III. Les conditions présidant à la compétence *ratione materiae* de la Cour et leur application au regard de la convention

11. Monsieur le président, la seconde exception préliminaire de l'Azerbaïdjan est non seulement absurde au regard du contexte général dans lequel eurent lieu l'ensemble des faits dénoncés par l'Arménie et de l'objet du différend dont la Cour est saisie, mais elle est également erronée au regard des conditions présidant à la compétence *ratione materiae* de la Cour.

12. Ces conditions sont bien connues :

« Il s'agit de rechercher si les actions ou les omissions dont le demandeur fait grief au défendeur entrent dans le champ d'application du traité dont la violation est

alléguée, c'est-à-dire si les faits en cause, à les supposer établis, sont susceptibles de constituer des violations des obligations découlant du traité. »⁸²

13. À ce stade, deux choses sont donc essentielles :

- D'une part, il n'est « pas besoin de s'assurer que les mesures dont l[e demandeur] tire grief constituent *effectivement* une “discrimination raciale” au sens du paragraphe 1 de l'article premier de la [convention] »⁸³.
- D'autre part, il y a lieu de prendre les faits de la cause comme tels, en les supposant établis. Il n'est donc pas question, à ce stade, d'évaluer les preuves qui vous sont soumises ou d'exiger des preuves supplémentaires. Il est donc inadéquat à ce stade de s'aventurer dans des exégèses linguistiques ou d'évaluer la signification de certains propos, ainsi que M^e Wordsworth l'a fait hier⁸⁴. Il est tout autant erroné de soutenir que l'Arménie n'aurait pas « fourni de preuves suffisantes »⁸⁵ à ce stade car il est impossible de conclure en ce sens sans évaluer ces preuves, ce qui ne peut se faire que lors de l'examen du fond. Toute affirmation au sujet de ce que permettent ou ne permettent pas d'établir les preuves déposées par l'Arménie est ainsi déplacée à ce stade⁸⁶. Par ailleurs, comme mes collègues le démontreront, les preuves abondent.

14. L'Azerbaïdjan soutient que les éventuelles différences de traitement dénoncées par l'Arménie et faisant l'objet de sa seconde exception préliminaire ne seraient pas susceptibles d'être « fondée[s] sur » « l'origine nationale ou ethnique ».

15. Il n'est pourtant pas contesté que les Arméniens de souche constituent un groupe protégé au titre de la convention. Par ailleurs, il est clair que parmi les « obligations spécifiques s'agissant du traitement des personnes sur le fondement de “la race, la couleur, l'ascendance ou l'origine nationale ou ethnique” »⁸⁷ figure notamment, à l'article 5 de la convention, l'obligation d'assurer sans discrimination prohibée la jouissance du « [d]roit à la sûreté de la personne et à la protection de

⁸² *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie ; 32 États intervenants), exceptions préliminaires, arrêt du 2 février 2024, par. 136.*

⁸³ *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2019 (II), p. 595, par. 94 (les italiques sont de nous).*

⁸⁴ CR 2024/17, p. 44-45, par. 25 (Wordsworth).

⁸⁵ *Ibid.*, p. 47, par. 12 (Boisson de Chazournes).

⁸⁶ *Ibid.*, p. 47-48, par. 12 ; p. 52-53, par. 23 (Boisson de Chazournes).

⁸⁷ *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2019 (II), p. 595, par. 95.*

l'État contre les voies de fait ou les sévices de la part, soit de fonctionnaires du gouvernement, soit de tout individu, groupe ou institution »⁸⁸ et aussi l'obligation d'assurer sans discrimination prohibée la jouissance du « [d]roit à un traitement égal devant les tribunaux et tout autre organe administrant la justice »⁸⁹.

16. Ainsi que mes collègues le montreront, les exactions que l'Azerbaïdjan voudrait exclure du débat sur le fond sont relatives au traitement qu'il a infligé à des personnes d'origine nationale ou ethnique arménienne en violation de ces obligations, y compris lorsque les victimes ont pris part aux hostilités.

17. En application du même raisonnement que celui de la Cour dans l'arrêt du 8 novembre 2019 dans l'affaire *Ukraine c. Fédération Russie*, il y a donc lieu de conclure que les mesures dénoncées par l'Arménie « sont susceptibles de porter atteinte à la jouissance de certains droits protégés par la CIEDR » et, dès lors, qu'elles « entrent ... dans les prévisions de cet instrument »⁹⁰.

18. L'Azerbaïdjan soutient pourtant que les circonstances d'hostilités armées impliqueraient nécessairement que les différences de traitement en question ne pourraient en rien être fondées sur l'origine ethnique arménienne des victimes, de telle manière à sortir du champ d'application de la convention. Selon l'Azerbaïdjan, dès l'instant où les violations dénoncées eurent lieu durant la phase active d'un conflit armé, une forme de renversement de la preuve s'opérerait puisqu'il faudrait alors démontrer que les exactions ne s'expliquent pas par ces circonstances, de telle manière à devoir prouver « something more »⁹¹.

19. La position de l'Azerbaïdjan est erronée pour trois raisons.

20. Tout d'abord, cette position part du principe que, puisque le droit international humanitaire s'applique en temps de conflit armé, les violations de la convention ne pourraient être qu'additionnelles⁹², en quelque sorte secondaires, par rapport à celles du droit des conflits armés.

⁸⁸ Convention internationale sur l'élimination de toutes les formes de discrimination raciale (ouverte à la signature le 7 mars 1966 et entrée en vigueur le 4 janvier 1969), Nations Unies, *Recueil des traités (RTNU)*, vol. 660, art. 5 b).

⁸⁹ *Ibid.*, art. 5 a).

⁹⁰ *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2019 (II)*, p. 595, par. 96.

⁹¹ CR 2024/17, p. 44, par. 25 ; p. 45, par. 28 (Wordsworth).

⁹² *Ibid.*, p. 38, par. 9 (Wordsworth).

Cette conception est erronée car ces deux corps de règles s'appliquent simultanément lorsque leurs conditions d'applications respectives sont rencontrées. Contrairement à ce qui a été soutenu hier, l'Arménie ne formule d'ailleurs pas de « demandes ... concern[a]nt le droit international humanitaire »⁹³ auxquelles viendraient s'ajouter des demandes au titre de la convention. Et les demandes de l'Arménie au titre de la convention ne viennent en rien remplacer des demandes qu'elle aurait plutôt dû faire au titre du droit international humanitaire, comme l'Azerbaïdjan le laisse entendre. Par ailleurs, je rappelle que, à ce stade, il s'agit seulement d'examiner si les demandes de l'Arménie sont susceptibles de violer les obligations de la convention, de telle manière à entrer dans ses prévisions en relevant de son champ d'application, tel que défini par son article premier, et non de conclure définitivement à l'existence ou non de discrimination raciale.

21. Ensuite, même si, *quod non*, les différences de traitement dénoncées par l'Arménie pourraient, en outre, également s'expliquer par des motifs non prévus par la convention ou par certaines circonstances, elles ne sortiraient pas pour autant de son champ d'application. En effet, rien dans le texte de l'article premier, paragraphe 1, n'indique que, pour qu'une discrimination puisse être fondée sur un motif prohibé, il faudrait que ce motif soit le seul l'ayant motivée ou susceptible de l'expliquer. Une telle conception réduirait considérablement la portée de la convention, contredisant ainsi son objet et son but consistant à « éliminer rapidement toutes les formes et toutes les manifestations de discrimination raciale »⁹⁴. Certes, ainsi que la Cour l'a souligné⁹⁵ et que les Parties en conviennent⁹⁶, la convention ne prohibe aucun autre motif discriminatoire que « la race, la couleur, l'ascendance ou l'origine nationale ou ethnique », mais ce n'est en rien ériger un motif supplémentaire de discrimination au titre de la convention que de considérer que des motifs qu'elle ne prévoit pas peuvent, à l'occasion d'une même différence de traitement, coexister avec des motifs qu'elle prohibe. Et d'ailleurs, bien souvent, une mesure discriminatoire fondée sur un motif prohibé poursuivra également d'autres motifs, ce qui ne la fait pas pour autant sortir du champ d'application de la convention. Le Comité ne dit rien d'autre dans sa recommandation générale n° 32 en soulignant

⁹³ *Ibid.*, p. 53, par. 25 (Boisson de Chazournes).

⁹⁴ Convention internationale sur l'élimination de toutes les formes de discrimination raciale (ouverte à la signature le 7 mars 1966 et entrée en vigueur le 4 janvier 1969), Nations Unies, *RTNU*, vol. 660, préambule, considérant n° 5.

⁹⁵ *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Émirats arabes unis), exceptions préliminaires, arrêt, C.I.J. Recueil 2021*, p. 105, par. 104.

⁹⁶ EPA, par. 27.

qu'il peut exister des « situations de discrimination double ou multiple »⁹⁷. L'Arménie ne lit pas la recommandation générale du Comité comme élargissant les motifs prohibés de discrimination au titre de la convention.

22. La jurisprudence la plus récente de la Cour confirme ce point, me semble-t-il. Par l'arrêt du 31 janvier, la Cour a rappelé que « [t]oute mesure visant à opérer une différence de traitement fondée sur un motif prohibé ... est constitutive de discrimination raciale au sens de la convention »⁹⁸. Ainsi, sur le fond, la Cour n'a en rien exigé que la différence de traitement recherchée soit *exclusivement* fondée sur un motif prohibé. En l'espèce, il est indéniable que le but des différences de traitement dénoncées est parfaitement susceptible de ne pas être « sans rapport »⁹⁹ avec un motif prohibé par la convention.

23. Enfin, et précisément à ce sujet, l'Azerbaïdjan fait erreur en soutenant qu'un fardeau probatoire particulier et supplémentaire s'imposerait à l'Arménie, et qu'elle ne l'aurait pas rencontré, car il serait tout au plus question en l'espèce de « simples effets collatéraux ou secondaires sur des personnes distinguées sur le fondement d'un des motifs prohibés » et qu'il est bien établi que de tels effets « n'emportent pas en eux-mêmes discrimination raciale au sens de la convention »¹⁰⁰. L'Azerbaïdjan fait erreur car cette question ne se pose qu'en cas de discrimination indirecte, c'est-à-dire de discrimination prohibée par la convention compte tenu de ses effets. Mais les demandes de l'Arménie qui font l'objet de l'exception préliminaire relèvent d'une discrimination directe. Les faits présentés par l'Arménie — faits que la Cour doit à ce stade supposer établis — entrent dans les prévisions de la convention et, cela, sous l'angle de la discrimination directe, c'est-à-dire d'une discrimination découlant d'une mesure opérant une différence de traitement fondée sur un motif

⁹⁷ Comité pour l'élimination de la discrimination raciale, recommandation générale n° 32, Signification et portée des mesures spéciales dans la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, 29 septembre 2009, Nations Unies, doc. CERD/C/GC/32, p. 3, par. 7, accessible à l'adresse suivante : <https://documents.un.org/api/symbol/access?j=G0945148&t=pdf>.

⁹⁸ *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie)*, arrêt du 31 janvier 2024, par. 196.

⁹⁹ *Ibid.*

¹⁰⁰ CR 2024/17, p. 36, par. 5 b) (Wordsworth) citant *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie)*, arrêt du 31 janvier 2024, par. 196.

prohibé dont le but est de priver ses victimes de la jouissance, dans des conditions d'égalité, de leurs droits humains fondamentaux.

24. Mesdames et Messieurs les juges, les critères de votre compétence *ratione materiae* sont clairs et ils sont parfaitement rencontrés.

25. Monsieur le président pour votre attention, je remercie la Cour pour son attention et, puis-je vous demander, Monsieur le président, de bien vouloir inviter le professeur Sean Murphy à prendre la parole.

Le PRÉSIDENT : Je remercie M. d'Argent pour son intervention. I now invite Professor Sean Murphy to take the floor. You have the floor, Sir.

Mr MURPHY:

**CONSIDERATIONS APPLICABLE TO ALL OF AZERBAIJAN'S
OBJECTIONS *RATIONE MATERIAE***

1. Thank you, Mr President. It is a great honour to appear again before the Court on behalf of Armenia. I will be addressing two considerations that are applicable to all of Azerbaijan's objections *ratione materiae*.

2. First, I will explain why our claims, to which Azerbaijan objects, fall under the CERD even if they may also implicate international humanitarian law, which I will refer to as "IHL". Second, I will address why the general Armenophobia that has been espoused and cultivated by the Government of Azerbaijan is a relevant factor for the Court at this jurisdictional stage, specifically for determining whether particular acts at issue are capable of violating the CERD.

**I. Armenia's claims fall under the CERD even if they also
implicate international humanitarian law**

3. Turning to my first point: Azerbaijan says that the claims to which it objects have nothing to do with the CERD, but only involve alleged misconduct during armed conflict.

4. As Professor d'Argent just noted, the exact scope of Azerbaijan's second objection has become quite unclear. But, whatever the precise contours of that objection, the heart of it seems to

be the following: Azerbaijan insists that the claims to which it objects are governed by IHL and only by IHL¹⁰¹.

5. The central problem with this argument is that, when assessing the acts of violence, arbitrary detention or enforced disappearance at issue, whether they are capable of falling within the CERD¹⁰², it is *completely* irrelevant if, or when, or how, IHL applies to those acts. Indeed, Azerbaijan attempts to draw IHL-based distinctions — such as between soldiers and civilians, or between periods that do or do not involve active hostilities — but those distinctions are entirely meaningless for purposes of the CERD. The Court simply need not address such issues.

6. Rather, the Court’s jurisprudence makes clear that, *even if* IHL applies, that source of law does not *displace* the CERD. In the *Nuclear Weapons*¹⁰³ and *Israeli Wall*¹⁰⁴ Advisory Opinions, the Court found that the protection offered by human rights conventions does not cease in case of armed conflict¹⁰⁵. And this remains true in the specific context of the simultaneous application of IHL and the CERD. Indeed, despite Russia’s argument that a considerable part of Ukraine’s claims in the *Financing of Terrorism/CERD* case were really claims arising under IHL¹⁰⁶, the Court had no difficulty at the jurisdictional stage in finding “that the measures of which Ukraine complains . . . are capable of having an adverse effect on the enjoyment of certain rights protected under CERD” and therefore that the “measures thus fall within the provisions of the Convention”¹⁰⁷.

7. Azerbaijan, as it must, concedes that these two areas of international law operate in tandem. Azerbaijan says: “CERD applies in armed conflict as well as in peacetime, and acts of war may implicate CERD if they impair the fundamental rights of individuals or groups of individuals based

¹⁰¹ See CR 2024/17, p. 34, para. 1 (Wordsworth); *ibid.*, pp. 35-36, para. 4 (Wordsworth); *ibid.*, p. 41, para. 14 (Wordsworth); *ibid.*, p. 46, para. 6 (Boisson de Chazournes); *ibid.*, p. 53, paras. 25-26 (Boisson de Chazournes); see also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections of Azerbaijan, para. 30.

¹⁰² See CR 2024/17, p. 36, para. 5 (a) (Wordsworth); see also CR 2024/17, p. 46, para. 5 (Boisson de Chazournes).

¹⁰³ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 226, para. 25.

¹⁰⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 136, para. 106. See also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 168, para. 216.

¹⁰⁵ See also International Covenant on Civil and Political Rights, Human Rights Committee, *General Comment No. 36: Article 6 — Right to Life* (3 September 2019), para. 64.

¹⁰⁶ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 558, para. 86.

¹⁰⁷ *Ibid.*, p. 595, para. 96.

on their ethnic origin or other grounds enumerated in Article 1 (1) of CERD”¹⁰⁸. Mr Wordsworth reaffirmed this yesterday when he said the “CERD can apply in an armed conflict as well as in peacetime”¹⁰⁹.

8. Azerbaijan’s position, therefore, is *not* that acts relating to armed conflict are incapable of violating the CERD. Rather, Azerbaijan’s position is that the particular facts that we have placed before you in this case, even if accepted as true, are incapable — incapable — of violating the CERD. Thus, the *only* issue before you at present is whether the acts underlying Armenia’s claims are *capable* of violating the CERD, even if they also separately violate other sources of law. As my colleagues in the following presentations will demonstrate, they clearly are capable of doing so.

9. Mr President, allow me to make two additional comments on this point.

10. *First*, it is worth pausing on what Azerbaijan appears to be asking of the Court. As Ms Macdonald will discuss further, Azerbaijan apparently is seeking from you a ruling that *any violent abuse* by Azerbaijan of ethnic Armenian soldiers connected to hostilities, even if undertaken in conjunction with *extraordinarily hateful and vile racial rhetoric*, is utterly incapable of violating the CERD. That cannot be right. It cannot be right that the CERD has nothing to say about an ethnic Armenian serviceman, lying wounded on the ground, being shot in the head, multiple times, by an Azerbaijani soldier, who is yelling an expletive against what he refers to as “your people”¹¹⁰. In the face of such evidence, the notion that this violent abuse of ethnic Armenian soldiers is *not even capable* of violating the CERD makes no sense.

11. Indeed, it is a curious thing for Azerbaijan to take the position that our claims for hate speech *are* capable of falling within the scope of the CERD, but when that same speech is used in the midst of violent attacks against defenceless persons, or torture of them in prison, or disappearing of them, then suddenly the speech has nothing to do with racial animus.

12. *Second*, the assertion that the violence inflicted on Armenian soldiers, captured so well in the horrific videos that we have placed on the record¹¹¹, can *only* be understood as the natural product

¹⁰⁸ Preliminary Objections of Azerbaijan, para. 8.

¹⁰⁹ CR 2024/17, p. 37, para. 5 (c) (Wordsworth); *ibid.*, p. 53, para. 26 (Boisson de Chazournes).

¹¹⁰ See Illustrative List of Videos and Photographs of War Crimes Committed by the Agents of Azerbaijan During and After the Second Nagorno-Karabakh War, p. 2, item 4 (Memorial of Armenia, Annex 290).

¹¹¹ See e.g. Memorial of Armenia, Annexes 118-119, 124-125, 127-131, 133, 137, 148, 155-156, 159-166, 169, 173, 203, 213, 215-226, 228-233, 235-245, 247-275, 277-278, 280-285, 287, 290.

of their combatant status¹¹² equally makes no sense. Yesterday, Mr Talmon referred to Azerbaijan's "Military Trophies Park"¹¹³. Well, we should ask, do belligerents normally construct such a public park, depicting enemy soldiers in humiliating positions and with exaggerated facial features, which clearly play to racial tropes? No, they do not, but Azerbaijan did.

13. The Court will recall that this park was opened by President Aliyev himself¹¹⁴, but then, as Mr Salonidis noted, these racist mannequins were quickly withdrawn by Azerbaijan in the midst of the Court's first provisional measures hearing in this case. In doing so, what better admission could there be, on the part of the Respondent, that its attitude toward Armenian soldiers was not motivated by typical animosity towards a belligerent but, rather, was motivated by racial animosity prohibited by the Convention?

14. And do normal belligerents seek to educate their children to believe in these racial tropes? No, they do not, but Azerbaijan did. The creators of these racist caricatures of ethnic Armenian soldiers, seen on the right of the screen, proudly proclaimed, "We tried to create the ugliest images. We usually try to do something beautiful. But now it was the other way around. It was a long and difficult process. We gave them hooked noses, flat heads and other features."¹¹⁵

15. And do normal belligerents, as part of an armed conflict, have soldiers who wear patches that say: "Armenian, don't run. You'll die anyway, just exhausted."¹¹⁶ No, they do not, but Azerbaijan did.

¹¹² CR 2024/17, p. 44, para. 25 (Wordsworth); *ibid.*, pp. 52-53, para. 23 (Boisson de Chazournes).

¹¹³ CR 2024/17, p. 32, para. 67 (Talmon).

¹¹⁴ "Ilham Aliyev attended opening of Military Trophy Park in Baku", *The President of the Republic of Azerbaijan Ilham Aliyev* (12 April 2021), available at <https://president.az/en/articles/view/51067> (cited in Memorial of Armenia, Annex 292).

¹¹⁵ The Human Rights Defender of the Republic of Armenia, *A Park Of Killed Armenian Soldiers And Chained Prisoners Of War Opened In Baku: A Museum Of Human Sufferings And Promotion Of Racism* (2021), available at <https://www.ombuds.am/images/files/fec534aee0fe528fe043e41c90cd83b5.pdf>, p. 24 (Memorial of Armenia, Annex 59).

¹¹⁶ Memorial of Armenia, para. 4.118 (citing to Artyom Tonoyan, @ArtyomTonoyan, "As Azerbaijan reverts to type and attacks Armenian positions in Nagorno-Karabakh, here is an [sic] army uniform patch making rounds on Azeri socials. An image of notorious Ottoman genocidaire Enver Pasha with the inscription 'Armenian, don't run! You'll die anyway, just exhausted'", Twitter (3 August 2022), available at <https://twitter.com/ArtyomTonoyan/status/1554843631705591816> (certified translation from Azerbaijani). See also Fuad Salahov, Facebook (3 August 2022), available at <https://www.facebook.com/photo.php?fbid=3294376740819909> (Request for provisional measures of Armenia (27 December 2022), Annex 49).

16. And finally, do normal belligerents, after the armed conflict, adopt postage stamps depicting a soldier/exterator cleansing a people from the region where the conflict occurred¹¹⁷? No, they do not, but Azerbaijan did. And these stamps were so egregious that the Universal Postal Union declined to register them¹¹⁸.

17. Acts and attitudes like this are not the natural product of a belligerency. But the important point is that, given the circumstances, *these* acts against *these* soldiers cannot *only* be understood as the natural by-product of war; but they *can* be understood, quite easily, as acts capable of violating the CERD.

18. To sum up on this first point, Mr President, all of Armenia's claims concern conduct capable of breaching rights protected under the CERD, thereby falling within its scope, even if the conduct at issue also implicates IHL.

II. The general Armenophobia espoused and cultivated by the Government of Azerbaijan is a relevant factor in determining whether particular acts were racially motivated

19. Mr President, Members of the Court, I turn now to my second point, which is that the general Armenophobia espoused and cultivated by the Government of Azerbaijan is a relevant factor in determining whether the conduct at issue in this phase is capable of breaching rights protected by the CERD, and thereby falls within its scope.

20. Azerbaijan seeks to dismiss the general Armenophobia as mere “background context”¹¹⁹ when considering whether violent acts, inhumane detention and enforced disappearance of ethnic Armenians — many of whom are still missing as of today — are capable of violating the CERD. Instead, Azerbaijan insists that evidence of racial animus expressed in conjunction with each individual act is required¹²⁰.

¹¹⁷ Memorial of Armenia, paras. 3.394-3.395 (citing to “Azerbaijani postal stamps accused of spreading anti-Armenian propaganda”, *The Calvert Journal* (12 January 2021), available at <https://www.calvertjournal.com/articles/show/12442/azerbaijan-stamps-nagorno-karabakh-war-anti-armenian-propaganda>).

¹¹⁸ Letter *from* Ricardo Guilherme Filho, Director of Legal Affairs of the Universal Postal Union, *to* Hakob Arshakyan, Minister of High-Tech Industry of the Republic of Armenia, No. 4700(DL.PHIL)01.21 (1 June 2021) (Application and Request for provisional measures of Armenia, Annex 51).

¹¹⁹ CR 2024/17, p. 39, para. 12 (Wordsworth).

¹²⁰ See Preliminary Objections of Azerbaijan, para. 32.

21. Now, as it happens, Armenia has presented abundant direct evidence of the racial motivation behind each and every claim we have asserted. But here is why the general Armenophobia espoused and cultivated by the Government of Azerbaijan is also relevant. Such Armenophobia is part of a seamless tapestry that trickles down to the facts of violence, inhumane detention and enforced disappearances upon which Armenia's claims are based. As such, this general Armenophobia further helps to explain why the facts we have presented, if taken as true, are capable of violating the CERD. It helps explain why racial animus was expressly articulated when much of the conduct occurred. It helps to explain why implying racial animus to other comparable conduct is appropriate. And it helps to explain why such racial animus happened on a widespread basis.

22. As a prelude to the presentations to come by Ms Macdonald, Mr Klingler and Professor Sicilianos, consider the following sampling of the facts in the record, which demonstrate official racial animus toward ethnic Armenians by Azerbaijani officials at the highest level:

- President Aliyev has repeatedly characterized ethnic Armenians as “bandits and vandals”¹²¹, “fascists”¹²², “wild beasts”, “predators”, “jackals” and a “wild” and “savage tribe”¹²³.
- President Aliyev has also declared Armenians “of the world” to be Azerbaijan’s “main enemies”¹²⁴.
- In fact, President Aliyev promised that the Azerbaijani army would chase Armenians out of Nagorno-Karabakh like “dogs”¹²⁵, a phrase that, as you will hear later from Ms Macdonald, was

¹²¹ “Speech by Ilham Aliyev at the opening of a new block for 1440 IDP families in Mushfigabad”, President of the Republic of Azerbaijan Ilham Aliyev (27 December 2012), available at <https://president.az/en/articles/view/7026> (Observations of Armenia, Annex 9); see also “Ilham Aliyev and First Lady Mehriban Aliyeva attended opening of Vagif Poetry Days in Shusha”, President of the Republic of Azerbaijan Ilham Aliyev (30 August 2021), available at <https://president.az/en/articles/view/52881>, PDF pp. 3-4 (Observations of Armenia, Annex 13).

¹²² “Speech by Ilham Aliyev at the opening of the Fuzuli Hydroelectric Power Station”, President of the Republic of Azerbaijan Ilham Aliyev (15 December 2012), available at <https://president.az/en/articles/view/6854>, PDF p. 5 (Observations of Armenia, Annex 8).

¹²³ “President Ilham Aliyev addresses the nation”, Azernews (17 October 2020), available at <https://www.azernews.az/nation/184462.html>, PDF p. 3 (Observations of Armenia, Annex 37); see also “Ilham Aliyev chaired meeting on results of first quarter of 2022”, President of the Republic of Azerbaijan Ilham Aliyev (12 April 2022), available at <https://president.az/en/articles/view/55780>, PDF p. 20 (Observations of Armenia, Annex 14).

¹²⁴ “Closing Speech by Ilham Aliyev at the conference on the results of the third year into the ‘State Program on the socioeconomic development of districts for 2009-2013’”, President of the Republic of Azerbaijan Ilham Aliyev (28 February 2012), available at <https://president.az/en/articles/view/4423>, PDF p. 10 (Observations of Armenia, Annex 7).

¹²⁵ “President Ilham Aliyev addresses the nation”, Azernews (17 October 2020), available at <https://www.azernews.az/nation/184462.html> (cited in Memorial of Armenia, Annex 292).

adopted by the Ministry of Defence¹²⁶ who then used this derogatory term through servicemen while committing atrocities against ethnic Armenians¹²⁷.

- Azerbaijan’s former Deputy Prime Minister and then mayor of Baku explained to a German delegation: “Our goal is the complete elimination of Armenians. You, Nazis, already eliminated the Jews in the 1930s and 40s, right? You should be able to understand us.”¹²⁸
- The Committee of International and Inter-Parliamentary Relations of the Parliament of Azerbaijan has also referred to “Armenia and the Armenian diaspora” as “a cancerous tumour of Europe”¹²⁹.
- And just this last month, as our Agent previously noted, President Aliyev referred to the lighting of a bonfire in what he called “the liberated lands” of Nagorno-Karabakh as “also doing the final cleaning”¹³⁰.

23. Such statements by Azerbaijan’s highest-level officials, including those explicitly directed at Armenians “of the world”, are clearly ethnic in nature; they are not directed against a specific country or against the nationals of a specific country. And Azerbaijan cannot hide behind such statements as mere private speech¹³¹.

24. The extensive facts in the record reveal that this ethnic hatred is State policy, instilled in ordinary Azerbaijanis through Azerbaijan’s media¹³² and its education system¹³³. Freedom House —

¹²⁶ “Azerbaijan starts production of ‘Iti qovan’ UAVs”, Defence.Az (22 October 2020), available at https://defence.az/en/news/147499/azerbaijan-starts-production-of%E2%80%9Citi-qovan%E2%80%9D-uavsphtos?_c_f_chl_jschl_tk__=pmd_Mg2Vf1zmQDNKqhw6edW7KcVkYXV.wFP7p.3IEeYFCi4-1629830372-0-gqNtZGzNAnujcnBszQh9 (Observations of Armenia, Annex 38).

¹²⁷ Illustrative list of videos and photographs of war crimes committed by the agents of Azerbaijan during and after the Second Nagorno-Karabakh War, p. 5, item 24, pp. 18-19, item 106, p. 21, item 121 (Memorial of Armenia, Annex 290).

¹²⁸ Committee on Foreign Affairs, House of Representatives, *The Caucasus: Frozen Conflicts and Closed Borders* (18 June 2008), available at <https://www.govinfo.gov/content/pkg/CHRG110hhrg43066/pdf/CHRG-110hhrg43066.pdf> (cited in Memorial of Armenia, Annex 292).

¹²⁹ “Statement by the Committee of International and Inter-Parliamentary Relations of the Milli Majlis”, The Milli Majlis of the Republic of Azerbaijan (16 March 2023), available at <https://meclis.gov.az/news.php?id=1379&lang=en>.

¹³⁰ See “Ilham Aliyev lit Novruz bonfire in the city of Khankendi”, President of the Republic of Azerbaijan Ilham Aliyev (18 March 2024), available at <https://president.az/en/articles/view/65376>; Ilham Aliyev @presidentaz, “The Novruz bonfire is also doing the final cleaning”, X (19 March 2024), available at <https://twitter.com/presidentaz/status/1769998494196965516>.

¹³¹ Preliminary Objections of Azerbaijan, para. 33.

¹³² See e.g. Freedom House, Azerbaijan: Country Profile 2024, available at <https://freedomhouse.org/country/azerbaijan/freedom-world/2024>.

¹³³ A. Erogul, “Additional Reading Book for Secondary School Students” in HALA (2011), p. 3 (certified translation from Azerbaijani) (Memorial of Armenia, Annex 107); “Five Minutes of Hate in Azerbaijani School”, YouTube (4 March 2018), available at https://www.youtube.com/watch?v=7g56wAbY-fg&feature=emb_logo (certified translation from Russian) (Memorial of Armenia, Annex 138).

which ranks Azerbaijan as “not free” — has noted how the Azerbaijani Government “has cultivated a policy of extreme hostility toward ethnic Armenians — with educational, cultural, political, and military components”, but it goes on including the Azerbaijani school curriculum, which is “known to include negative and discriminatory references to Armenians”¹³⁴.

25. This overall racial animus, which includes glorifying violence against ethnic Armenians, inescapably led to the atrocities that lie at the heart of these proceedings. Indeed, the facts show that Azerbaijan’s murder, torture and other brutality, arbitrary detention and disappearance of persons was *not* uniquely directed at Armenian soldiers, nor uniquely directed at Armenian nationals; it was also directed at persons that Azerbaijan regards as its own nationals, no matter their age or whether they took part in the hostilities¹³⁵. As such, the facts show that Armenian ethnicity was not simply a “collateral or secondary” aspect¹³⁶ of harms directed at soldiers of Armenia or at nationals of Armenia¹³⁷. Rather, if the facts are taken as true for purposes of this phase — as they must — our facts demonstrate systematic and relentless policies of racial hatred *against ethnic Armenians regardless of their nationality*, which were unleashed at highest levels of the Azerbaijani Government, and then worked their way down into the conduct of the average Azerbaijani soldier and citizen, leading to the atrocities against ethnic Armenians.

26. That such animosity was directed against *all persons* of Armenian ethnic or national origin, and not just at Armenian soldiers or nationals, is clear from the concluding observations on Azerbaijan reached by the CERD Committee in 2022 which are found at tab 2 of your judges’ folder. In its presentation yesterday, Azerbaijan portrayed the Committee’s observations as “irrelevant”¹³⁸, no doubt because they are quite damaging to its position. Yet the Committee is the body specifically tasked with monitoring the compliance of States with the CERD, taking into account information received from a variety of sources, which in this instance included Azerbaijan’s own reports and presentations. After doing so, the Committee reached important conclusions and recommendations

¹³⁴ Freedom House, Azerbaijan: Country Profile 2024, available at <https://freedomhouse.org/country/azerbaijan/freedom-world/2024>.

¹³⁵ See e.g. Memorial of Armenia, paras. 3.54-3.56, 3.62-3.67, 3.84-3.86, 3.318-3.320, 3.355-3.356, 3.370, 4.7.

¹³⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 109, para. 112.

¹³⁷ Observations of Armenia, para. 42.

¹³⁸ CR 2024/17, p. 50, para. 19 (Boisson de Chazournes).

which, though not legally binding, are nevertheless highly relevant for understanding if the conduct at issue in this case is *capable* of violating the CERD. Thus at paragraph 4, you will see that the Committee said that it was “deeply concerned about”:

“(a) Allegations of severe and grave human rights violations committed during the 2020 hostilities and beyond by Azerbaijani military forces against prisoners of war and other protected persons of Armenian ethnic or national origin — including extrajudicial killings, torture and other ill-treatment and arbitrary detention . . . ;

.....

(c) Incitement to racial hatred and the propagation of racist stereotypes against persons of Armenian national or ethnic origin;”¹³⁹

27. Such deep concerns are *not* referring to acts directed against the country of Armenia, or against Armenian nationals; you can see quite clearly from subparagraphs (a) and (c) that the CERD Committee is concerned about racial animus against “protected persons of Armenian ethnic or national origin”, whether related to armed conflict or not.

28. Accordingly, the Committee in 2022 issued a series of recommendations to Azerbaijan, two of which are now on your screen. Notice how recommendation (a) is directly speaking to the need for Azerbaijan to do better to investigate violations of the rights of POWs and other protected persons of “Armenian ethnic or national origin”, including as it relates to “enforced disappearances, torture and other ill-treatment and arbitrary detention as well as the destruction of houses, schools and other civilian facilities, perpetrated by Azerbaijani military forces in the context of the 2020 hostilities and beyond”¹⁴⁰. Notice further how recommendation (d) speaks to “hate speech, incitement and promotion of racial hatred and discrimination, including . . . by its officials and public institutions, targeted at persons of Armenian national or ethnic origin”. There is no sense in which these recommendations are limited to the country of Armenia or to Armenian nationals, and every sense in which they express deep concern about conduct against ethnic Armenians that is capable of violating CERD rights, whether related to armed conflict or not.

29. In short, as my colleagues this morning proceed to discuss specific categories of wrongful conduct — whether it be murder, torture, arbitrary detention or enforced disappearance — this

¹³⁹ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth periodic reports of Azerbaijan*, UN doc. CERD/C/AZE/CO/10-12 (22 September 2022), para. 4 (Memorial of Armenia, Annex 5).

¹⁴⁰ *Ibid.*, para. 5.

backdrop of general Armenophobia that I have described must be kept in mind, as it informs whether Azerbaijan's acts were capable of being racially motivated and thus fall under the CERD.

30. Mr President, in the face of this overwhelming evidence of racial hatred underpinning the atrocities committed by Azerbaijan, Azerbaijan insists that our approach would prompt parties to other armed conflicts to bring their claims before the Court under the CERD “despite the lack of any real connection to racial discrimination”¹⁴¹. We disagree, given that Azerbaijan's conduct constitutes racial discrimination of a kind rarely seen in recent human memory. But consider as well the result of Azerbaijan's preferred approach: any party to an armed conflict could commit unspeakable, racially motivated abuse against soldiers and civilians alike, and yet not be held accountable under the CERD.

31. Azerbaijan also insists that every incident of harm — the detainee who is murdered; the internee who is beaten; the civilian who is disappeared — must be associated with specific evidence of racial animus relating to that incident¹⁴². Relatedly, Mr Wordsworth went on at some length yesterday about our claims not involving a “systematic campaign or practice”¹⁴³.

32. Well, as I have already noted, and as my colleagues will recall in their presentations, Armenia has presented extensive evidence of racial animus related to specific incidents, which is clear from the record. At the same time, one can certainly look at our evidence and reach a conclusion that the conduct of which we complain was widespread or systematic in nature. In either event, I would just make two points. First, the plain language of Article 2 of the CERD makes clear that Azerbaijan may engage in “*no act or practice of racial discrimination*”, which clearly contemplates that even a *single act* of racial discrimination is capable of violating the CERD. Here, Armenia has alleged multiple acts that, taken as true at this preliminary stage, each independently violate the CERD, and at a minimum, are certainly capable of constituting violations of the CERD. As such, the second objection fails.

¹⁴¹ Preliminary Objections of Azerbaijan, para. 37; see also CR 2024/17, p. 38, para. 9 (Wordsworth).

¹⁴² Preliminary Objections of Azerbaijan, para. 32.

¹⁴³ CR 2024/17, p. 41, paras. 15-16 (Wordsworth); *ibid.*, p. 45, para. 26 (Wordsworth).

33. Second, there is no need for the Court, even at the merits stage let alone at this stage, to adjudicate each and every underlying act at issue¹⁴⁴. As the Court held at the merits stage in *DRC v. Uganda*, in order to rule on a claim, “it is not necessary for the Court to make findings of fact with regard to each individual incident alleged”¹⁴⁵. That is no less true in this case.

III. Conclusion

Mr President, that concludes my presentation. If it pleases the Court, this may be the appropriate time for the break. In any event, it is Ms Macdonald who will continue Armenia’s response.

The PRESIDENT: I thank Professor Murphy for his statement. Before I invite the next speaker to take the floor, the Court will observe a 10-minute break. The sitting is suspended.

The Court adjourned from 11.30 a.m. to 11.50 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite Ms Alison Macdonald to address the Court. You have the floor, Madam.

Ms MACDONALD:

ARMENIA’S CLAIMS CONCERNING AZERBAIJAN’S DISCRIMINATORY MURDER, TORTURE AND INHUMANE TREATMENT OF ETHNIC ARMENIANS FALL WITHIN THE SCOPE OF THE CERD

I. Introduction

1. Mr President, Madam Vice-President, Members of the Court, it is an honour to appear before you on behalf of the Republic of Armenia. I will address Armenia’s claims relating to the discriminatory murder, torture and inhumane treatment of ethnic Armenians.

2. Armenia’s Memorial sets out detailed allegations of widespread violence by Azerbaijan, in particular its armed forces, against people of Armenian ethnic origin. It also explains that the

¹⁴⁴ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 239, para. 205.

¹⁴⁵ *Ibid.*

perpetrators of this violence have enjoyed impunity — a further part of Armenia’s claim, and one to which there is no jurisdictional objection.

3. Armenia adduces a wide range of evidence in support of these claims. This includes first-hand accounts from those who survived their experiences, graphic and distressing videos and photographs, and assessments of the CERD Committee, United Nations mandate holders and the European Court of Human Rights¹⁴⁶.

4. Now Azerbaijan’s position in relation to these claims has, it is fair to say, evolved. In its written statement of preliminary objections, it boldly argues, in relation to the entirety of Armenia’s claims of mistreatment, that “nothing in Armenia’s Application or Memorial, other than bare assertion, connects these allegations to racial discrimination”¹⁴⁷.

5. But as Professor d’Argent has explained, it seems that Azerbaijan now *accepts* the Court’s jurisdiction over Armenia’s claims where the victims were civilians. However, it maintains its objections in the case of the mistreatment of soldiers.

6. According to Azerbaijan — and you heard this argument yesterday — the mistreatment of soldiers is really just the unfortunate reality of armed conflict. Never mind the abundant evidence of vile racist abuse. Never mind the fact that the victims included large numbers of civilians, including the elderly, who had nothing to do with any armed conflict. And, rather inconveniently for Azerbaijan’s theory that this is all just to do with current nationality, never mind the fact that the victims are largely not Armenian nationals at all.

7. On that last point, the Court will have seen that Azerbaijan consistently elides any distinction between two different things: (a) Armenian *current nationality*, which it asserts that our claims are based upon, and (b) Armenian *ethnic or national origin*, which, it says, is not capable of playing any part in the mistreatment.

8. But it is important to bear in mind that, while some of the ethnic Armenian victims of Azerbaijan’s violence — soldiers and civilians — happened to have Armenian nationality, very many, if not most, of those victims are *ethnic* Armenians who resided in Nagorno-Karabakh. Indeed,

¹⁴⁶ See Memorial of Armenia, Sections III.1.II, III.2.II, III.3.I.A, IV.1, IV.2.I.A.

¹⁴⁷ Preliminary Objections of Azerbaijan, para. 40.

on Azerbaijan's own case, the residents of Nagorno-Karabakh were of *Azerbaijani* nationality, a point which rather undermines its position¹⁴⁸.

9. But despite all of this, Azerbaijan takes on the task of persuading you that, taking the facts as presented by Armenia as true, the alleged acts of violence, torture and murder against ethnic Armenians were not even *capable* of constituting racial discrimination.

II. Claims of racist violence concern rights which are protected by the CERD

10. Starting with the legal framework, it does not appear to be in dispute that Armenia's claims of violence fall within the scope of, at a minimum, Article 5 (b) of the CERD, which protects "The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution"¹⁴⁹.

11. And indeed, as Professor Murphy noted, the Court will recall that it has granted provisional measures in this case, to protect the right to security of person and protection against bodily harm. And it has done so without drawing any distinction as between prisoners of war and civilian detainees¹⁵⁰.

12. So this is not a *ratione materiae* case in which the *type* of conduct in issue falls, as a matter of principle, outside the scope of the CERD. Far from it. In a legal framework concerned with racial discrimination, there could hardly be a clearer example than incidents of racist violence, torture and killing, perpetrated by those acting on behalf of the State.

¹⁴⁸ "Armenians living in Karabakh will have no status, no independence and no special privilege: President Ilham Aliyev", *APA* (12 August 2022), available at <https://apa.az/en/official-news/armenians-living-in-karabakh-will-haveno-status-no-independence-and-no-special-privilege-president-ilham-aliyev-382715>, PDF p. 2 (Observations of Armenia, Annex 44); "Ilham Aliyev attended the international conference themed 'South Caucasus: Development and Cooperation' at ADA University", President of the Republic of Azerbaijan Ilham Aliyev (29 April 2022), available at <https://president.az/en/articles/view/55909>, p. 15 (Observations of Armenia, Annex 16); Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by Azerbaijan under article 9 of the Convention, due in 2019*, UN doc. CERD/C/AZE/10-12 (10 October 2019), para. 114 (Observations of Armenia, Annex 10).

¹⁴⁹ International Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 5 (b). See also P. Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (OUP, 2016), pp. 322-323.

¹⁵⁰ 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. 361, para. 67.

III. The evidence adduced by Armenia shows that the alleged acts are capable of constituting “racial discrimination” as defined in Article 1 (1)

13. The disagreement between the Parties on this issue isn't about whether racist violence falls in principle within the scope of the CERD. It's about whether these *particular* claims of racist violence are capable of amounting to racial discrimination.

14. Now Azerbaijan's argument here has several strands. Professor Murphy has addressed the arguments relating to international humanitarian law, so I now turn to the argument that:

“Armenia's allegations of brutality towards members of Armenia's armed forces may be evidence of hostility and tension between the armies of Azerbaijan and Armenia during armed conflict, but they have nothing to do with discrimination based on ethnic origin”¹⁵¹.

Or as Azerbaijan put it yesterday, if the examples given by Armenia are the tip of an iceberg, “the iceberg appears to be one of alleged mistreatment and insult of prisoners of war based on their status as combatants in the active hostilities phase of an armed conflict, and not matters for CERD”¹⁵².

15. Let us test that argument against some of the evidence. To respect the privacy and dignity of the victims, I will not use any names that are not already in the public domain or show any images of their suffering.

16. We can begin with the abuse of civilians. Let us look at what Azerbaijan belatedly accepts that the Court *does* have jurisdiction over. We assume that this includes, for example, the many troubling cases recorded in a detailed Amnesty International report into older people's experiences of the Second Nagorno-Karabakh War. One such case was that of Ernest Harutunyan, an 84-year-old ethnic Armenian civilian with dementia, whose mutilated body was found in his home in Nagorno-Karabakh¹⁵³. The circumstances of his death, Amnesty International states, suggested he had been “deliberate[ly] kill[ed]”¹⁵⁴.

17. Azerbaijan presumably also accepts that the Court has jurisdiction over the murders analysed in a detailed piece of investigative journalism in *The Guardian*, published in December 2020. As you can see on screen, this records that:

¹⁵¹ Preliminary Objections of Azerbaijan, para. 43.

¹⁵² CR 2024/17, p. 45, para. 27 (Wordsworth).

¹⁵³ Amnesty International, *Last To Flee: Older People's Experience Of War Crimes And Displacement In The Nagorno-Karabakh Conflict* (2022), p. 16 (Memorial of Armenia, Annex 95).

¹⁵⁴ *Ibid.*

“Two elderly men who were beheaded by Azerbaijani forces in videos widely shared on messaging apps have been identified, conforming two of the bloodiest atrocities of the recent war in Nagorno-Karabakh. The ethnic Armenian men were non-combatants, people in their respective villages said. Both were beheaded by men in the uniforms of the Azerbaijani armed forces. The short, gruesome videos of the killings are among the worst of a torrent of footage portraying abuse, torture and murder.”¹⁵⁵

18. And such abuse is not just a feature of the Second Nagorno-Karabakh War — so for example, the record contains a report by the Human Rights Defender of Nagorno-Karabakh, which records that, upon entering and taking control of the Talish village in 2016, Azerbaijani soldiers killed elderly civilian residents and then mutilated their bodies by cutting off their ears¹⁵⁶. This includes, as you see on screen, the killing and mutilation of an elderly couple in their home.

19. It seems that Azerbaijan now feels compelled to accept that such acts are capable of amounting to racial discrimination. It hopes, perhaps, to deflect attention from evidence such as that which we just considered. But this manoeuvring does rather raise the question — if the only animus which drove the mistreatment of ethnic Armenian *soldiers* was nationalist hostility between opposing armed forces, why were ethnic Armenian *civilians* also subjected to such widespread abuse?

20. Azerbaijan has no answer to that question. Instead, yesterday we saw it do two things. Firstly, it steadfastly ignored the evidence relating to civilians. Secondly, having stripped the soldier cases of their context, it then tried to argue that evidence of violence and abuse in those cases is not even *capable* of amounting to racial discrimination.

21. But we need only look at some of Armenia’s evidence of mistreatment of soldiers to see how extraordinary it would be if the CERD did not apply to the openly racist violence recorded there, simply because the victims had at some time borne arms.

22. We can start with the evidence as to the treatment of ethnic Armenians in detention — in other words, unarmed and defenceless people under the complete control of Azerbaijan. The Court has the interviews at Annex 291 to Armenia’s Memorial, in which *every single one* of the ethnic Armenian detainees who was eventually released describes how, during their time in detention, they

¹⁵⁵ See “Two men beheaded in videos from Nagorno-Karabakh war identified”, *The Guardian* (15 December 2020), available at <https://www.theguardian.com/world/2020/dec/15/two-men-beheaded-in-videos-from-nagorno-karabakh-war-identified> (Observations of Armenia, Annex 40).

¹⁵⁶ Memorial of Armenia, para. 3.62. The Human Rights Ombudsman of Artsakh, *Interim Report, Atrocities Committed by Azerbaijani Military Forces Against the Civilian Population of the Nagorno-Karabakh Republic and Servicemen of the Nagorno Karabakh Defence Army on 2-5 April 2016* (April 2016), available at <https://artsakhombuds.am/en/document/560>, pp. 17-19 [WARNING: graphic pictures included] (Memorial of Armenia, Annex 45).

were physically mistreated and abused. That document is at tab 4 of your folders, and we invite the Court to read in due course the harrowing accounts which it contains¹⁵⁷.

23. Now Professor Murphy has addressed you on the Armenophobia which pervades all levels of society in Azerbaijan, from the President down, and the overall relevance of this to the issues before you. For my purposes, the point is a simple one: we can see a clear continuity between the top-level ethnic hatred and the racist actions of the soldiers who *directly* committed the violence against ethnic Armenians.

24. To take an example, as Professor Murphy has already discussed, President Aliyev has repeatedly used rhetoric which dehumanizes Armenians, referring to them as animals, and, in a favourite trope, dogs — a derogatory slur which Azerbaijan itself *acknowledges* in its written pleadings has a “possible ethnic dimension”¹⁵⁸.

25. That rhetoric, in turn, is used by its Ministry of Defence, which announced the production of military drones emblazoned with the words “Iti Qovan”, or “dog chaser” in Azerbaijani¹⁵⁹.

26. And we then see the racist rhetoric of Armenians as “dogs” or animals, along with similarly dehumanizing language, being used by Azerbaijani servicemen as they commit atrocities against ethnic Armenians. The racism is overtly expressed, and in many cases proudly captured on film and broadcast to the world on social media (incidentally also shining a light on the sense of impunity enjoyed by the perpetrators — and rightly so, given Azerbaijan’s dismal record of prosecuting such atrocities)¹⁶⁰.

¹⁵⁷ See also Center for Truth and Justice, *Azerbaijan’s Serious and Persistent Breaches of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (7 March 2024), available at <https://www.cftjjustice.org/azerbajjans-serious-and-persistent-breaches-of-the-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment/>, pp. 16-17.

¹⁵⁸ Preliminary Objections of Azerbaijan, para. 45.

¹⁵⁹ “Azerbaijan starts production of ‘Iti qovan’ UAVs”, Defence.Az (22 October 2020), available at https://defence.az/en/news/147499/azerbaijan-starts-production-of%E2%80%99Citi-qovan%E2%80%9D-uavphotos?_cf_chl_jschl_tk__=pmd_Mg2Vf1zmQDNKqhw6edW7KcVkyXV.wFP7p.3IEeYFCi4-1629830372-0-gqNtZGzNAnujcnBszQh9 (Annex 38).

¹⁶⁰ See e.g. Memorial of Armenia, paras. 3.69-383; *Makuchyan and Minasyan v. Azerbaijan and Hungary*, ECtHR, Application No. 17247/13, Judgment (26 May 2020), para. 25, p. 6 (Memorial of Armenia, Annex 32); European Parliament, *Resolution of 13 September 2012 on Azerbaijan: the Ramil Safarov case*. 2012/2785(RSP) (13 September 2012), available at https://www.europarl.europa.eu/doceo/document/TA-7-2012-0356_EN.html (Memorial of Armenia, Annex 26); “Prisoner without conscience pardoned and promoted”, *Amnesty USA* (7 September 2012), available at <https://www.amnestyusa.org/prisoner-withoutconscience-pardoned-and-promoted/>; “Row Erupts After Azerbaijan Pardons Armenian Officer’s Repatriated Killer”, Radio Free Europe/Radio Liberty (31 August 2012), available at <https://www.rferl.org/a/azerbajjani-officer-who-killed-armenian-officerpardoned/24694081.html>; “Azeri killer Ramil Safarov: Concern over Armenian Anger”, BBC (3 September 2012), available at <https://www.bbc.com/news/world-europe-19463968>, PDF p. 1; “Baku Promotes Ax-Murderer Safarov”, *Asbarez* (11 December 2017), available at <https://asbarez.com/baku-promotes-ax-murder-safarov/>, PDF p. 1.

27. So we have in the record, for example:

- (a) A video capturing a soldier shooting a dead ethnic Armenian from behind, saying: “they are not human beings”¹⁶¹.
- (b) A video capturing an Azerbaijani soldier walking over the dead bodies of ethnic Armenians. Again, the soldier saying: “they are not human beings”¹⁶².
- (c) A video showing a bloodied ethnic Armenian civilian, with his arms tied behind his back, while an Azerbaijani soldier calls him a “mangy jackal” and says “we will persecute you like dogs, all of you”¹⁶³ and claims they are “jackals, not people”¹⁶⁴.
- (d) A video capturing a large group of Azerbaijani soldiers listening to their commander giving a speech while cutting the ears off a dead ethnic Armenian, and claiming that Armenians are “sons of dogs” and that “I came here for one purpose, for cutting off the seeds of these immoral people, to take revenge”¹⁶⁵.
- (e) A video showing a group of Azerbaijani servicemen hitting and punching an ethnic Armenian and stating, “you son of a dog” and “how is this son of a dog speaking?”¹⁶⁶ As the ethnic Armenian pleads with his captors and refers to them as “brothers”, one of them responds: “[W]hat brother? You immoral son of a dog. Since when did I become your brother?”¹⁶⁷
- (f) A video showing the bodies of killed ethnic Armenian soldiers being collectively buried by an excavator, while the Azerbaijani soldier filming states: “See these are Armenian dogs”¹⁶⁸.
- (g) We also have a video showing Azerbaijani soldiers cutting off the ears of two dead ethnic Armenians while claiming that they “will eliminate their race”¹⁶⁹. It takes some imagination not to see that as a racist incident, but Azerbaijan yesterday attempted that feat, arguing that “the word that is being translated as ‘race’ . . . is a Russian word ‘copr’, the word for ‘sort’ or

¹⁶¹ Illustrative list of videos and photographs of war crimes committed by the agents of Azerbaijan during and after the Second Nagorno-Karabakh War, p. 18, item 103 (Memorial of Armenia, Annex 290).

¹⁶² *Ibid.*

¹⁶³ *Ibid.*, p. 5, item 24.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*, pp. 18-19, item 106.

¹⁶⁶ *Ibid.*, p. 3, item 12.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*, p. 21, item 121.

¹⁶⁹ *Ibid.*, p. 18, item 101.

‘kind’¹⁷⁰. Two points in response. Firstly, it is not clear how threatening to eliminate somebody’s “sort” or “kind” is different to, or better than, threatening to eliminate their race. But secondly, such a submission is a perfect example of an argument for the merits. If Azerbaijan wants to argue the semantics of racial insults, it is free to do so at that stage, but that misses the point of why we are here *this* week. This week is for Azerbaijan to establish, where it takes a *ratione materiae* point, that Armenia’s claims are not *capable* of amounting to racial discrimination. And in Armenia’s submission, mutilating bodies while threatening to eliminate a race, or sort, or kind, is more than capable of that.

(h) And likewise, when we consider the video showing a group of Azerbaijani servicemen abusing a group of ethnic Armenians. As one of them begs not to be harmed, one of the Azerbaijani servicemen states: “You are going to keep begging us like this a lot. You, the disgraceful people”¹⁷¹. And again, the term “the disgraceful people” is, we say, more than Azerbaijan can explain away at the jurisdiction stage.

28. Now, these examples and others can be found at Annex 290 to Armenia’s Memorial, which is at tab 3 of your folders. And if we go back to the testimony of released ethnic Armenian prisoners of war, the types of abuse we have just seen are entirely consistent with their accounts, which include:

(a) One person who recounted how he was beaten, called an “animal” and humiliated, including by being forced to “make different loud animal noises” and forced to “sing some Armenian songs and dance while they videotaped us”¹⁷².

(b) One person who recounts how the guards would bang his head on the wall, while he was handcuffed and blindfolded, calling him “a dog, all along mocking and laughing at me”¹⁷³.

(c) Another former detainee who states that his legs had been injured during the war and that for seven days he had been crawling, dehydrated and starving, when he was captured by Azerbaijani

¹⁷⁰ CR 2024/17, p. 44, para. 25 (a) (Wordsworth).

¹⁷¹ Illustrative list of videos and photographs of war crimes committed by the agents of Azerbaijan during and after the Second Nagorno-Karabakh War, p. 3, item 11 (Memorial of Armenia, Annex 290).

¹⁷² Excerpts from sworn testimonies of repatriated Armenians Azerbaijan captured and detained in various periods from December 2014 until October 2022 (January 2023), p. 5 (certified translation from Armenian) (confidential) (Memorial of Armenia, Annex 291).

¹⁷³ Center for Truth and Justice, *Azerbaijan’s Serious and Persistent Breaches of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (7 March 2024), available at <https://www.cftjustice.org/azerbaijans-serious-and-persistent-breaches-of-the-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment/>, p. 8.

soldiers. Upon capture, they took him to a makeshift medical unit where he was beaten by the interrogation committee and then ordered to walk to a vehicle. When he told them he could not walk, one of the Azerbaijani soldiers “told me to crawl like a dog and bark on the way”¹⁷⁴.

29. Shocking as this evidence is, we do not cite it in order to shock. We cite it because it is being said against Armenia that all this was merely “evidence of hostility and tension between the armies of Azerbaijan and Armenia during armed conflict”¹⁷⁵ or “the hostile rhetoric common in times of war”¹⁷⁶. Now, Azerbaijan can make those arguments at the merits stage if it chooses — but the Court’s task for now is to look at Armenia’s claims, look at the evidence, and say, is this *capable* of amounting to racial discrimination? Can Azerbaijan really draw a bright line between the abuse of civilians, where it concedes your jurisdiction, and the same things being said and done to soldiers? Not soldiers in combat, but unarmed, wounded, frightened, and under the complete control of Azerbaijan? Can it really, on the one hand, concede that a term like “dogs” has a “possible ethnic dimension”¹⁷⁷ and still say that you have no jurisdiction where people are tortured by Azerbaijani soldiers using that very term?

IV. Azerbaijan’s case is further undermined by the views of the CERD Committee and the European Court of Human Rights

30. Azerbaijan’s attempts to say that none of this is even *capable* of breaching the CERD are further undermined by the scrutiny of several international actors. The CERD Committee itself, as you have seen, has stated that it is

“deeply concerned about . . . [a]llegations of severe and grave human rights violations committed during the 2020 hostilities and beyond by Azerbaijani military forces against prisoners of war and other protected persons of Armenian ethnic or national origin — including extrajudicial killings, torture and other ill-treatment and arbitrary detention”¹⁷⁸.

This is in your folders at tab 2. This strongly worded assessment, of course, seriously undermines Azerbaijan’s claim that any animosity was based on purely national grounds. And, as

¹⁷⁴ *Ibid.*, p. 20.

¹⁷⁵ Preliminary Objections of Azerbaijan, para. 43.

¹⁷⁶ CR 2024/17, p. 40, para. 12 (Wordsworth).

¹⁷⁷ Preliminary Objections of Azerbaijan, para. 45.

¹⁷⁸ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of Azerbaijan*, UN Doc. CERD/C/ZE/CO/10-12 (22 September 2022), para. 4 (Memorial of Armenia, Annex 5).

Professor Murphy has explained, the CERD Committee cannot be dismissed as “irrelevant”, as Azerbaijan seeks to do.

31. Nor can the European Court of Human Rights, which shares the CERD Committee’s concerns. In a series of cases against Azerbaijan it has called for investigations into whether “ethnic hatred” had contributed to the abuse of ethnic Armenians¹⁷⁹.

32. Azerbaijan yesterday gave the example of a person detained for an unauthorized border crossing as a case where Armenia would have to show “something other than mere collateral or secondary effects on ethnic Armenians”¹⁸⁰. Sadly, just such an example is the case of Manvel Saribekyan, a 20-year-old ethnic Armenian civilian who was captured by Azerbaijan while searching for stray cattle and firewood in the forest and who was later found dead in his jail cell. The court held that his treatment “involved very serious and cruel suffering and that it was carried out intentionally on a detained person under the exclusive control of the authorities”¹⁸¹. Again, the court further noted that such circumstances called for an investigation as to “whether ethnic hatred had been a contributing factor”¹⁸².

33. Now, in its written observations, Azerbaijan misleadingly tries to minimize the impact of this type of observation in multiple cases by the European Court of Human Rights by arguing that the court “did not find a violation of ECHR Article 14, which prohibits discrimination”¹⁸³. Consistent with the European Court’s common practice¹⁸⁴, in none of these cases did the court find it necessary to rule on Article 14, precisely *because* it had already found violations of Articles 2, 3 and 5 of the Convention. Far from ruling out discrimination, as Azerbaijan tries to imply, these remarks by the

¹⁷⁹ See *Khojayan and Vardazaryan v. Azerbaijan*, European Court of Human Rights, Application No. 62161/14, Judgment (4 November 2021), para. 53, p. 15 (Observations of Armenia, Annex 26); *Saribekyan and Balayan v. Azerbaijan*, European Court of Human Rights, Application No. 35746/11, Judgment (30 January 2020); *Petrosyan v. Azerbaijan*, European Court of Human Rights, Application No. 32427/16, Judgment (4 November 2021), paras. 60, 71 (Observations of Armenia, Annex 27).

¹⁸⁰ CR 2024/17, p. 36, para. 5 (Wordsworth).

¹⁸¹ See Memorial of Armenia, paras. 3.39-3.43 (citing *Saribekyan and Balayan v. Azerbaijan*, ECtHR, Application No. 35746/11, Judgment (30 January 2020), para. 87 (Observations of Armenia, Annex 24)).

¹⁸² See Memorial of Armenia, paras. 3.39-3.43 (citing *Saribekyan and Balayan v. Azerbaijan*, ECtHR, Application No. 35746/11, Judgment (30 January 2020), paras. 72, 86, 102 (Observations of Armenia, Annex 24)).

¹⁸³ Preliminary Objections of Azerbaijan, para. 50.

¹⁸⁴ See W. A. Schabas, *The European Convention on Human Rights. A Commentary* (OUP, 2015), p. 563.

European Court constitute a serious expression of concern, and further undermine Azerbaijan's case that none of this violence is capable of amounting to racial discrimination.

34. And indeed the European Court of Human Rights *did* find a violation of Article 14 in the case of *Makuchyan and Minasyan v. Azerbaijan and Hungary*¹⁸⁵, a case in which an Azerbaijani soldier decapitated a sleeping Armenian soldier during an English language course in Hungary. He returned to Azerbaijan to a pardon, a hero's welcome, and statements from the Government which expressed, as the court put it, "particular support for the fact that [the perpetrator's] crimes had been directed against Armenian soldiers, congratulated him on his actions and called him a patriot, a role model and a hero"¹⁸⁶. Finding that Azerbaijan had violated Article 14 along with Article 2, the court referred to "the overwhelming body of evidence submitted by the applicants indicating that the various measures leading to [the perpetrator's] virtual impunity, coupled with the glorification of his extremely cruel hate crime, had a causal link to the Armenian ethnicity of his victims"¹⁸⁷. Again, you heard nothing from Azerbaijan yesterday about these findings, even though they go to its shockingly discriminatory conduct when it comes to violence against ethnic Armenians.

V. Conclusion

35. In conclusion, Mr President, Members of the Court, Azerbaijan faces the impossible task of persuading you that Armenia's claims cannot amount to racial discrimination, despite the vast range of evidence showing the mistreatment, torture, killing and mutilation of ethnic Armenians, accompanied by shameless expressions of racist abuse.

36. Azerbaijan's case now rests on the proposition that such treatment, when directed at defenceless, unarmed soldiers under the control of Azerbaijan's armed forces, does not engage the CERD, although the same treatment *does* engage the CERD when the victim is a civilian. Armenia urges the Court not to draw such an unprincipled distinction.

37. Taking Armenia's facts as true, there can simply be no doubt that *all* of Armenia's claims relating to violence inflicted by Azerbaijan on ethnic Armenians are — at the very least — capable

¹⁸⁵ *Makuchyan and Minasyan v. Azerbaijan and Hungary*, European Court of Human Rights, Application No. 17247/13, Judgment (26 May 2020) (Memorial of Armenia, Annex 32).

¹⁸⁶ *Ibid.*, para. 216.

¹⁸⁷ *Ibid.*, para. 220.

of constituting racial discrimination under the CERD. Indeed, if proven, it is hard to imagine more flagrant breaches of the Convention, and of the values which it enshrines. So Armenia respectfully submits that these claims can and must proceed to the merits.

38. Mr President, that concludes my submissions: I thank the Court for its attention, and invite you to call upon Mr Klingler.

The PRESIDENT: I thank Ms Alison Macdonald for her statement. I now invite Mr Joseph Klingler to take the floor. You have the floor, Sir.

Mr KLINGLER:

**ARMENIA’S CLAIMS CONCERNING AZERBAIJAN’S DISCRIMINATORY SUBJECTION
OF ETHNIC ARMENIANS TO ARBITRARY DETENTION
FALL WITHIN THE SCOPE OF THE CERD**

I. Introduction

1. Mr President, Madame Vice-President, Members of the Court, it is an honour to appear before the Court and to do so on behalf of the Republic of Armenia. It is my task to address Azerbaijan’s objection concerning Armenia’s claims of arbitrary detention.

2. As explained by Professor d’Argent, at this stage of the proceedings, in order to find jurisdiction over Armenia’s claims, the Court need only determine whether the acts complained of are capable of constituting breaches of the CERD. In so doing, the Court does not weigh the evidence, but instead accepts the acts complained of as true.

**II. Armenia’s evidence of Azerbaijan’s arbitrary detention of ethnic Armenians,
if taken as true, concerns acts that are capable of violating the CERD**

3. Azerbaijan does not dispute that arbitrary detention, when carried out on the basis of ethnicity, is prohibited under Articles 2 and 5 (*a*) of the CERD¹⁸⁸.

4. While Azerbaijan has focused on the alleged initial grounds for detention, it also does not dispute that the protection against arbitrary detention extends beyond those initial grounds. Such protection covers “all stages” of the judicial process, from the “initiation of judicial proceedings,

¹⁸⁸ See Preliminary Objections of Azerbaijan, Section III.B.2; CERD, Arts. 2 (1) and 5 (*a*). See also P. Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (2016), Chapter 5, p. 307.

arrest and detention, through to trial and judgment, sentencing and punishment”¹⁸⁹. Moreover, the notion of arbitrary detention must be construed “broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law”¹⁹⁰ connected to the continued detention of the relevant individual. As such, if ethnic Armenians have, on the basis of their ethnicity, been deprived of due process or other fair treatment linked to their detention *at any point during their detention*, then they have been arbitrarily detained in violation of the CERD.

5. Rather than disputing these points, Azerbaijan’s counsel suggested yesterday that Azerbaijan respects due process, that charges were dropped where the evidence was insufficient, and that those ethnic Armenians who remain have been convicted or accused of serious crimes¹⁹¹. Of course, Azerbaijan makes no mention of the many ethnic Armenians who were arbitrarily detained and then killed on ethnic grounds — a subject to which I will return shortly. In any event, the testimony of those who were lucky enough to make it out of Azerbaijan alive, which must be accepted as true at this stage, confirms that both they and those who remain in Azerbaijan’s prisons have been arbitrarily detained on ethnic grounds.

6. Released ethnic Armenians have reported being beaten, electrocuted, and otherwise tortured by interrogators seeking to gather information that would be used to convict them¹⁹². They have been

¹⁸⁹ P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (2016), Chapter 13, p. 318. See also Committee on the Elimination of Racial Discrimination, *General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, UN doc. A/60/18 (2005), available at https://adsdatabase.ohchr.org/IssueLibrary/CERD_Recommendation%20No31.pdf.

¹⁹⁰ See e.g. UN Human Rights Committee, *General Comment No. 35 — Article 9 (Liberty and Security of Person)*, UN doc. CCPR/C/GC/35 (16 December 2014), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/244/51/PDF/G1424451.pdf?OpenElement>, para. 12.

¹⁹¹ CR 2024/17, pp. 51-52, paras. 20-22 (Boisson de Chazournes).

¹⁹² Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 5, p. 4 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), p. 10, testimony no. 19 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 27, p. 13 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 45, p. 21 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 24, p. 12 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 18, p. 10 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Center for Truth and Justice, *Submission by the Center for Truth and Justice to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment pertaining to the mistreatment of Armenian POWs by the State of Azerbaijan* (28 October 2022) (excerpt), Testimony of Witness 21LC-0043, pp. 5-6 (Memorial of Armenia, Annex 102).

coerced into making false confessions¹⁹³. They have been assaulted in courthouses, in front of judges, and even by their own appointed attorneys¹⁹⁴. They have been forced to sign documents or participate in proceedings they did not understand¹⁹⁵. They have been deprived of their right to legal counsel of

¹⁹³ Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 24, fourth bullet, p. 12 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 16, first bullet, p. 9 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 11, first bullet, p. 7 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 18, third bullet, p. 10 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 45, fourth bullet, p. 21 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 21, third bullet, p. 11 (certified translation from Armenian) (Memorial of Armenia, Annex 291). See also Center for Truth and Justice, *Initiating an Investigation: White Paper on Azerbaijan's Torture and Mistreatment of Armenian Prisoners of War (POWs) During and After the 2020 Nagorno-Karabakh War* (September 2021), available at <https://www.cftjustice.org/wp-content/uploads/2022/07/White-Paper-On-Azerbaijani-Torture-of-Armenian.pdf>, pp. 10-11 (Memorial of Armenia, Annex 90); United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan* (2021), available at https://www.state.gov/wp-content/uploads/2022/03/313615_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf, p. 22 (Memorial of Armenia, Annex 57); The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report: The Treatment of Armenian Prisoners of War and Civilian Captives in Azerbaijan (With Focus on Their Questionings)* (2021), available at <https://ombuds.am/images/files/1138b156720bec6ae0fd88dc709eb62c.pdf>, pp. 15-16 (Memorial of Armenia, Annex 55); European Commission against Racism and Intolerance, *ECRI Report on Azerbaijan (fourth monitoring cycle)* (23 March 2011), available at <https://rm.coe.int/third-report-on-azerbaijan/16808b557e>, para. 130 (Memorial of Armenia, Annex 24); Video showing inhuman and degrading treatment of an Armenian prisoner of war by Azerbaijani soldiers (confidential) (Memorial of Armenia, Annex 252); "The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report on the Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War)* (September 2021), available at <https://ombuds.am/images/files/5c7485fd8a35d583830dcd17.pdf?fbclid=IwAR2OAJ06B%20xmRFa>, paras. 39, 42 (Memorial of Armenia, Annex 61); The Human Rights Defender of the Republic of Artsakh, *Malicious Prosecution by Azerbaijan of Captured Armenian Servicemen and Civilians* (2021), pp. 7-8 (Memorial of Armenia, Annex 56); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 37, sixth bullet, p. 18 (certified translation from Armenian) (Memorial of Armenia, Annex 291).

¹⁹⁴ Center for Truth and Justice, Submission by the Center for Truth and Justice to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment pertaining to the mistreatment of Armenian POWs by the State of Azerbaijan (28 October 2022) (excerpt) (Memorial of Armenia, Annex 102), Testimony of Witness 21LC-0043, p. 17; Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (4 July 2021), testimony no. 16, fourth bullet, p. 9 (certified translation from Armenian) (Memorial of Armenia, Annex 291). See also Center for Truth and Justice, *Azerbaijan's Serious and Persistent Breaches of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Shadow Report to the Fifth Periodic Report of Azerbaijan Submitted by the Center for Truth and Justice* (79th session of the United Nations Committee against Torture, Geneva) (7 March 2024), available at https://www.cftjustice.org/wp-content/uploads/2024/03/2024_CAT_Report.pdf, para. 38.

¹⁹⁵ Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 9, third bullet, p. 6 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 27, sixth bullet, p. 14 (certified translation from Armenian) (Memorial of Armenia, Annex 291).

their own choosing¹⁹⁶. They have been deprived of their right to call or examine witnesses, of their right to be provided with relevant documents or evidence, and of their right to be provided with interpretation or translation¹⁹⁷. Consistent with the arbitrary nature of their detention, detainees have also been handed down radically different sentences despite being captured in the same conditions, at the same place, and at the same time¹⁹⁸.

7. In its concluding observations of September 2022, which can be found under tab 2 of your folders, the CERD Committee itself has stated that it is “deeply concerned” about allegations that “prisoners of war and other protected persons of Armenian ethnic or national origin” have been subjected to “arbitrary detention” in Azerbaijan in the context of the 2020 hostilities and beyond¹⁹⁹. A group of UN Special Rapporteurs²⁰⁰, the European Parliament²⁰¹, the Parliamentary Assembly of

¹⁹⁶ United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan* (2021), available at https://www.state.gov/wp-content/uploads/2022/03/313615_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf, pp. 21-22 (Memorial of Armenia, Annex 57); Center for Truth and Justice, *Initiating an Investigation: White Paper on Azerbaijan’s Torture and Mistreatment of Armenian Prisoners of War (POWs) During and After the 2020 Nagorno-Karabakh War* (September 2021), available at <https://www.cftjustice.org/wp-content/uploads/2022/07/White-Paper-On-Azerbaijani-Torture-of-Armenian.pdf>, p. 11 (Memorial of Armenia, Annex 90).

¹⁹⁷ Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 38, third bullet, p. 19 (certified translation from Armenian) (Memorial of Armenia, Annex 291); Memorial of Armenia, Section III.3.1.B; United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan* (2021), p. 12 (excerpt) (Memorial of Armenia, Annex 57); Center for Truth and Justice, Submission by the Center for Truth and Justice to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment pertaining to the mistreatment of Armenian POWs by the State of Azerbaijan (28 October 2022), testimony of witness 21LC-0082, p. 9 (excerpt) (Memorial of Armenia, Annex 102); The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report on the Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War)* (September 2021), available at https://ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAjo6B%20xmRFaBSrt%20XFqvSyXeM3M-5vZRFgpgCRCo4urVPVE2NPL_VO4g, para. 38 (Memorial of Armenia, Annex 61).

¹⁹⁸ Center for Truth and Justice, Submission by the Center for Truth and Justice to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment pertaining to the mistreatment of Armenian POWs by the State of Azerbaijan (28 October 2022), testimony of witness 21LC-0082, p. 8 (excerpt) (Memorial of Armenia, Annex 102). See also United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan* (2021), p. 22 (excerpt) (Memorial of Armenia, Annex 57); Center for Truth and Justice, *Amplifying the Voices of Victim of War Crimes*, available at <https://www.cftjustice.org/wp-content/uploads/2024/03/CFTJ-POW-Quotes.pdf>, PDF p. 18.

¹⁹⁹ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of Azerbaijan*, UN doc. CERD/C/AZE/CO/10-12 (22 September 2022), available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FAZE%2FCO%2F10-12&Lang=en, para. 4 (a) (Memorial of Armenia, Annex 5).

²⁰⁰ See e.g. UN OHCHR, *Nagorno-Karabakh: Captives Must be Released — UN Experts* (1 February 2021), available at <https://www.ohchr.org/en/press-releases/2021/02/nagorno-karabakh-captives-must-be-released-un-experts> (Memorial of Armenia, Annex 14).

²⁰¹ European Parliament, Resolution of 20 May 2021 on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan, No. 2021/2693(RSP) (20 May 2021), available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.pdf, PDF p. 4, para. 1 (Memorial of Armenia, Annex 35).

the Council of Europe²⁰² and numerous third States have expressed similar concerns²⁰³. The same is true for human rights organizations, including Human Rights Watch²⁰⁴, Freedom House²⁰⁵ and the Institute for Peace and Democracy²⁰⁶, a Netherlands-based organization led by two leading Azerbaijani activists who fled Azerbaijan following their persecution²⁰⁷.

8. Yesterday morning, Azerbaijan's counsel sought to disregard the concerns raised by a fraction of these entities, namely the CERD Committee, the European Parliament and the Parliamentary Assembly of the Council of Europe. Professor Murphy has already explained what should be common sense: that concerns expressed by the CERD Committee about the arbitrary detention of ethnic Armenians support the proposition that Armenia's claims concerning arbitrary detention are at very least *capable* of establishing breaches under the CERD. And even the most cursory glimpse at the position of the European Parliament and Parliamentary Assembly makes clear that they do too²⁰⁸.

9. Despite the extraordinary mistreatment and deprivation of due process faced by virtually every detained ethnic Armenian — no matter their nationality, age or status as a non-combatant —

²⁰² Council of Europe, Parliamentary Assembly, Resolution 2391 (2021): Humanitarian consequences of the conflict between Armenia and Azerbaijan/Nagorno-Karabakh conflict (27 September 2021), available at <https://pace.coe.int/en/files/29483/html>, para. 6.7 (Memorial of Armenia, Annex 37).

²⁰³ See e.g. United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan* (2021) (excerpt) (Memorial of Armenia, Annex 57); “France Presses For Release of Armenian POWs”, *Asbarez* (30 April 2021), available at <https://asbarez.com/france-presses-for-release-of-armenian-pows/>; “Luxembourg calls for immediate release of Armenian POWs”, *Public Radio of Armenia* (28 May 2021), available at <https://en.armradio.am/2021/05/28/luxembourg-calls-for-immediate-release-of-armenian-pows/>; “New Dutch parliament resolution calls for immediate release of Armenian prisoners of war”, *Factor* (17 June 2021), available at <https://factor.am/en/1511.html>; Foreign Policy CAN, @CanadaFP, “Canada welcomes Azerbaijan’s release of Armenian detainees, a key step in a comprehensive solution to the #NagornoKarabakh conflict. Canada continues to call for the release of all detainees”, *X* (6 May 2021), available at <https://twitter.com/canadafp/status/1390401047496101891>.

²⁰⁴ T. Lokshina, “Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes”, *Human Rights Watch* (12 March 2021) (Memorial of Armenia, Annex 86).

²⁰⁵ Freedom House, Press Release: Azerbaijan: Allow Human Rights Court to Investigate Reports of Detainee Torture (11 May 2021) (Memorial of Armenia, Annex 88).

²⁰⁶ Institute for Peace and Democracy, *The Trials of Armenian Prisoners of War are Held Behind Closed Doors*, available at <https://www.ipd-az.org/the-trials-over-the-armenian-prisoners-of-war-are-held-behind-closed-doors/>; Institute for Peace and Democracy, *The Court Violated Both the Norms of Azerbaijani Legislation as Well as Those of International Law in Relation to the Armenian Prisoner of War*, available at <https://www.ipd-az.org/the-court-violated-both-the-norms/>.

²⁰⁷ Memorial of Armenia, paras. 3.179-3.187.

²⁰⁸ European Parliament, Resolution of 20 May 2021 on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan, No. 2021/2693(RSP) (20 May 2021), available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.pdf, PDF p. 4, para. 1 (Memorial of Armenia, Annex 35); Council of Europe, Parliamentary Assembly, Resolution 2391 (2021): Humanitarian consequences of the conflict between Armenia and Azerbaijan/Nagorno-Karabakh conflict (27 September 2021), available at <https://pace.coe.int/en/files/29483/html>, para. 6.7 (Memorial of Armenia, Annex 37).

Azerbaijan insists that its detentions of ethnic Armenians “have no discernible connection to ethnic origin”²⁰⁹.

10. This claim does not withstand scrutiny. Is Azerbaijan’s position that it deprives *everyone* of due process, regardless of their ethnicity? Is it standard practice in Azerbaijan for your own lawyer to beat you? Or for interrogators to electrocute you until you confess? Or to be assaulted in front of the judge hearing your case? Or for the authorities to systematically violate many of the very legal provisions Azerbaijan placed in your folders to show that it *protects* due process²¹⁰? Of course not. And the evidence — including that independently gathered by multiple NGOs through hundreds of interviews of released prisoners — is plainly capable of establishing racial discrimination if it is accepted as true.

11. Indeed, the evidence before the Court makes clear that ethnic Armenians — including those Azerbaijan considers its own nationals — have not only been systematically deprived of the most basic due process rights, but that these deprivations have also often been accompanied by racist hate speech and other racially motivated abuse.

12. For example, one released detainee recounted how “racial slurs and demeaning comments were constantly used by jailers and interrogators”²¹¹. Referring specifically to his interrogators, he

²⁰⁹ Preliminary Objections of Azerbaijan, para. 65.

²¹⁰ Criminal Procedure Code of the Republic of Azerbaijan (certified translation from Azerbaijani) cited in *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. 361. Hearing on preliminary objections, judges’ folder of Azerbaijan (15 April 2024), tab 7. Cf. Excerpts from sworn testimonies of repatriated Armenians Azerbaijan captured and detained in various periods from December 2014 until October 2022 (January 2023) (Memorial of Armenia, Annex 291), testimony no. 7, first bullet, p. 5; *ibid.*, testimony no. 9, third bullet, p. 6; *ibid.*, testimony no. 11, first bullet, p. 7; *ibid.*, testimony no. 16, first to third bullets, p. 9; *ibid.*, testimony no. 18, third bullet, p. 10; *ibid.*, testimony no. 21, third bullet, p. 11; *ibid.*, testimony no. 24, fourth bullet, p. 12; *ibid.*, testimony no. 27, seventh and eighth bullet, p. 14; *ibid.*, testimony no. 29, second bullet, p. 15; *ibid.*, testimony no. 38, third to fifth bullet, p. 19; *ibid.*, testimony no. 45, fourth bullet, p. 21; Center for Truth and Justice, *Submission by the Center for Truth and Justice to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment pertaining to the mistreatment of Armenian POWs by the State of Azerbaijan* (28 October 2022) (excerpt), Testimony of Witness 21LC-0043, p. 6 (Memorial of Armenia, Annex 102); The Human Rights Defender of the Republic of Artsakh, *Malicious Prosecution by Azerbaijan of Captured Armenian Servicemen and Civilians* (2021), pp. 7-8 (Memorial of Armenia, Annex 56); The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report on the Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War)* (September 2021), available at <https://ombuds.am/images/files/5c7485fde225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAJ06B%20xmRFa>, paras. 39, 42 (Memorial of Armenia, Annex 61), paras. 87-88.

²¹¹ Center for Truth and Justice, *Azerbaijan’s Serious and Persistent Breaches of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Shadow Report to the Fifth Periodic Report of Azerbaijan Submitted by the Center for Truth and Justice* (79th Session of the United Nations Committee against Torture, Geneva) (7 March 2024), para. 48 (Testimony of Witness AUA0700). See also Center for Truth and Justice, *Amplifying the Voices of Victim of War Crimes*, available at <https://www.cftjustice.org/wp-content/uploads/2024/03/CFTJ-POW-Quotes.pdf>, PDF pp. 11, 12.

testified that “we, to their eyes, were subhuman”²¹². He, too, was forced to sign documents he did not understand and was once severely beaten for asking what he was signing²¹³.

13. A second released detainee reported that he and other Armenian captives were given a book stating that Azerbaijan is an ancient nation and that Armenians had been nomads without a State. He further reported being told by their captors that they would “ask us questions about this book and that, if we did not answer correctly, they would not allow us to return home”²¹⁴. In other words, his continued detention was explicitly linked by Azerbaijani agents to his ability to “correctly” answer questions about a book that propagated ethnic hate.

14. A third released detainee recounted being “cussed out for being Armenian” and being told that “our nation will disappear”²¹⁵. The same declarant testified how he was beaten in the interrogation room and forced to sign documents he did not understand²¹⁶. His court-appointed lawyer “neither spoke in the court nor with [him]”²¹⁷. In his words, the “entire Azerbaijani judicial system . . . mentally and physically tortured me”²¹⁸.

15. A fourth detainee reported being hit during interrogations for “being Armenian, without any reasons”²¹⁹. Yet another victim reported being called an “animal” by his interrogator, and told that “if you do not answer my questions clearly, I will tell the soldiers who are standing behind you to kill you”²²⁰.

²¹² Center for Truth and Justice, Azerbaijan’s Serious and Persistent Breaches of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Shadow Report to the Fifth Periodic Report of Azerbaijan Submitted by the Center for Truth and Justice (79th Session of the United Nations Committee against Torture, Geneva) (7 March 2024), para. 48 (Testimony of Witness AUA0700).

²¹³ *Ibid.*, para. 44.

²¹⁴ Excerpts from sworn testimonies of repatriated Armenians Azerbaijan Captured and detained in various periods from December 2014 until October 2022 (January 2023), testimony no. 3, first bullet, pp. 2-3 (Memorial of Armenia, Annex 291).

²¹⁵ Center for Truth and Justice, Azerbaijan’s Serious and Persistent Breaches of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Shadow Report to the Fifth Periodic Report of Azerbaijan Submitted by the Center for Truth and Justice (79th Session of the United Nations Committee against Torture, Geneva) (7 March 2024), para. 34 (Testimony of Witness AUA0033).

²¹⁶ *Ibid.*, para. 41.

²¹⁷ *Ibid.*, para. 43.

²¹⁸ *Ibid.*, para. 34.

²¹⁹ Excerpts from sworn testimonies of repatriated Armenians Azerbaijan captured and detained in various periods from December 2014 until October 2022 (January 2023), testimony no. 5, first bullet, p. 4 (Memorial of Armenia, Annex 291).

²²⁰ *Ibid.*, testimony no. 7, second bullet, p. 5.

16. It is difficult to see how Azerbaijan can claim that such allegations could only possibly involve international humanitarian law, and are not even *capable* of constituting racial discrimination under the CERD²²¹. It is even more difficult to see how it can do so where it has *itself* referred to the “low threshold applicable to find the Court’s jurisdiction at the preliminary objections stage”²²². The reality is that, as one independent United States-based organization has concluded on the basis of interviews of victims and other evidence, there is an “overarching pattern of ethnic discrimination that characterizes” Azerbaijan’s arbitrary detention of ethnic Armenians²²³, and “deep-seated anti-Armenian sentiment combined with severe shortcomings in Azerbaijan’s judicial system” have “led Armenian captives in Azerbaijani custody to suffer rampant due process violations”²²⁴.

17. In the words of another independent NGO that has conducted its own interviews of former detainees,

“[a]ll POWs described in this report testify that the Azeri military, prison employees as well as the actors in the legal and judicial system inflicted both physical and mental torture against them as a means of punishment *for simply being Armenian*. The POWs all indicate that they had to repeat phrases and words specifically aimed at humiliating Armenians. Torture was also used as a means of intimidation and coercion to produce false confessions to be used during sham trials”²²⁵.

18. Azerbaijan’s discriminatory arbitrary detention of ethnic Armenians is not limited to the context of the Second Nagorno-Karabakh War. As explained by Ms Macdonald, even before 2020, the European Court of Human Rights not only found Azerbaijan to have arbitrarily detained ethnic Armenians in violation of Article 5 of the European Convention on Human Rights, which protects the right to liberty and security of persons²²⁶, but also raised concerns about whether, with respect to

²²¹ CR 2024/17, p. 48, para. 12 (Boisson de Chazournes).

²²² Letter *from* Elnur Mammadov, Deputy Minister of Foreign Affairs, *to* Philippe Gautier, Registrar of the International Court of Justice (5 April 2024).

²²³ University Network for Human Rights, “*We Are No One: How Three Years of Atrocities Against Ethnic Armenians Led to Ethnic Cleansing*” (2023), Chapter 5: Incitement to Hatred, available at <https://humanrightsnetwork.shorthandstories.com/we-are-no-one/incitement-to-hatred/index.html>.

²²⁴ *Ibid.*, Chapter 1: Arbitrary Detention, available at <https://humanrightsnetwork.shorthandstories.com/we-are-no-one/incitement-to-hatred/index.html>.

²²⁵ See Center for Truth and Justice, Submission by the Center for Truth and Justice to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment pertaining to the mistreatment of Armenian POWs by the State of Azerbaijan (28 October 2022) (excerpt) (Memorial of Armenia, Annex 102), Testimony of Witness AUA0068, p. 6. See also, e.g., *ibid.*, Testimony of Witness AUA0068, pp. 5-6.

²²⁶ See also *Khojovan and Vardazaryan v. Azerbaijan*, ECtHR, Application No. 62161/14, Judgment (4 November 2021), para. 83 (Observations of Armenia, Annex 26); *Badalyan v. Azerbaijan*, ECtHR, Application No. 51295/11, Judgment (22 July 2021), para. 57 (Observations of Armenia, Annex 25).

mistreatment of such Armenians, “ethnic hatred had been a contributing factor”²²⁷ or “played a role”²²⁸. It is therefore misleading for Azerbaijan’s counsel to suggest, as it did yesterday, that the European Court did not “consider whether the detentions were based on the ethnic origins of the persons concerned”²²⁹. And it was simply false for Azerbaijan’s counsel to claim as it did that the detainees in question — all of whom were civilians²³⁰ — were somehow nonetheless “prisoners of war”²³¹. Indeed, the European Court *itself* found that Azerbaijan had not met its burden in that regard²³².

19. In any case, the European Court of Human Rights is far from the only entity to have raised concerns about due process violations faced by ethnic Armenians before the Second Nagorno-Karabakh War. The European Commission against Racism and Intolerance, for example, has observed that “[j]udicial proceedings opened by Armenians trying to secure their rights are said to systematically fail due to the general negative climate against Armenians”²³³. The Commission has also observed that, “[a]ccording to many sources, false accusations are made, in particular against persons belonging to minority ethnic or religious groups” and “[a]busive methods, including ill-treatment, are reportedly used to extort evidence, and in particular to force confessions from persons charged with offences”²³⁴.

²²⁷ *Saribekyan and Balyan v. Azerbaijan*, ECtHR, Application No. 35746/11, Judgment on Merits and Just Satisfaction (30 January 2020), paras. 72, 86 (Observations of Armenia, Annex 24).

²²⁸ *Khojayan and Vardazaryan v. Azerbaijan*, ECtHR, Application No. 62161/14, Judgment (4 November 2021), para. 53 (Observations of Armenia, Annex 26); *Karen Petrosyan v. Azerbaijan*, ECtHR, Application No. 32427/16, Judgment on Merits and Just Satisfaction (4 November 2021), para. 60 (Observations of Armenia, Annex 27).

²²⁹ CR 2024/17, p. 48, para. 14 (Boisson de Chazournes).

²³⁰ See *Khojayan and Vardazaryan v. Azerbaijan*, ECtHR, Application No. 62161/14, Judgment (4 November 2021), paras. 8; *Saribekyan and Balyan v. Azerbaijan*, ECtHR, Application No. 35746/11, Judgment on Merits and Just Satisfaction (30 January 2020), para. 33; *Badalyan v. Azerbaijan*, ECtHR, Application No. 51295/11, Judgment (22 July 2021), para. 5 (Observations of Armenia, Annex 25); *Petrosyan v. Azerbaijan*, ECtHR, Application No. 32427/16, Judgment on Merits and Just Satisfaction (4 November 2021), para. 13 (Observations of Armenia, Annex 27).

²³¹ CR 2024/17, pp. 51-52, paras. 20-22 (Boisson de Chazournes).

²³² See *Khojayan and Vardazaryan v. Azerbaijan*, ECtHR, Application No. 62161/14, Judgment (4 November 2021), para. 83; *Saribekyan and Balyan v. Azerbaijan*, ECtHR, Application No. 35746/11, Judgment on Merits and Just Satisfaction (30 January 2020), paras. 40; *Badalyan v. Azerbaijan*, ECtHR, Application No. 51295/11, Judgment (22 July 2021), para. 57 (Observations of Armenia, Annex 25).

²³³ European Commission against Racism and Intolerance, *Second Report on Azerbaijan* (15 December 2006), para. 109 (excerpt) (Memorial of Armenia, Annex 22).

²³⁴ European Commission against Racism and Intolerance, ECRI Report on Azerbaijan (fourth monitoring cycle) (23 March 2011), available at <https://rm.coe.int/third-report-on-azerbaijan/16808b557e>, para. 130 (Memorial of Armenia, Annex 24).

20. In such circumstances, it is impossible to see how, in Azerbaijan’s words, there could be “no evidence that any Armenian was detained on the basis of ethnic origin”²³⁵. On the contrary, the evidence, if accepted as true, indicates that ethnic Armenians were tortured into making false confessions and convicted without due process precisely *because* they are Armenian. Such conduct is plainly capable of breaching the CERD.

21. Moreover, even if Azerbaijan *also* arbitrarily detained ethnic Armenians for reasons other than race — such as hatred for an enemy belligerent, or to use them as political bargaining chips — Azerbaijan’s argument still fails. As my colleague Professor d’Argent explained, a discriminatory measure based on a prohibited ground may simultaneously have other objectives and still be capable of constituting a breach of the CERD. The evidence before you, if taken as true, demonstrates due process violations carried out on the basis of the victims’ Armenian ethnicity, regardless of whatever other motives might be present. As such, they are capable of constituting breaches of the CERD.

22. In the alternative, Azerbaijan’s assertion that the detained ethnic Armenians in question were “either captured during active hostilities or were detained as a result of their suspected illegal activity”²³⁶ presents a dispute over the facts that cannot be resolved at this preliminary stage. I have two observations in this regard.

23. *First*, anyone “captured during active hostilities” should have been released upon the conclusion of those hostilities, consistent with the Trilateral Statement between Armenia, Azerbaijan and the Russian Federation²³⁷, and with Azerbaijan’s obligations under international humanitarian law²³⁸. But it is well known that Azerbaijan has continued to arbitrarily detain ethnic Armenians long after the conclusion of the Second Nagorno-Karabakh War.

24. *Second*, there is no legitimate basis for believing that *any* of the detained ethnic Armenians actually violated Azerbaijani law. As explained by one expert on such law with respect to the

²³⁵ Preliminary Objections of Azerbaijan, para. 59.

²³⁶ Preliminary Objections of Azerbaijan, para. 64.

²³⁷ See Prime Minister of the Republic of Armenia, Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation (10 November 2020), available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>, point 8.

²³⁸ See e.g. Geneva Convention Relative to the Treatment of Prisoners of War (opened for signature 12 August 1949, entered into force 21 October 1950), 75 UNTS 135, Art. 118; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (opened for signature 12 August 1949, entered into force 21 October 1950), 75 UNTS 287, Arts. 133-134.

convictions of 14 Armenian prisoners of war, the “evidentiary foundation stated in the verdict is insufficient and incomplete”, the “defendants’ guilt was not proven”, “the doubts were not used in their favour at the trial”, and the “court verdict is unlawful and unjustified”²³⁹.

25. The shameful trial and conviction of Vicken Euljekjian is illustrative of Azerbaijan’s discriminatory subjection of ethnic Armenians to arbitrary detention.

26. Mr Euljekjian, a civilian, was arrested on 10 November 2020 while he was driving from Lachin to Shushi to gather his belongings²⁴⁰. He was later charged with a number of crimes, including participating as a mercenary in a military conflict or military operation²⁴¹. Pursuant to Note 2 of Article 114 of Azerbaijan’s Criminal Code, a person may qualify as a “mercenary” only if he or she is not a national of a State participating in the armed conflict²⁴². Yet even though Mr Euljekjian was a dual Armenian-Lebanese national, and even though Azerbaijan has repeatedly been made aware that he has Armenian nationality — including before this Court²⁴³ — Mr Euljekjian was convicted of serving as a mercenary and remains in prison today. The only plausible explanation is that Mr Euljekjian — who was tortured into falsely confessing²⁴⁴ to a crime that requires him *not* to have been an Armenian national — was in reality detained and convicted because of his Armenian *ethnicity*. Again in the words of a legal expert on Azerbaijani law, “[n]ot a single document contains the accused’s evidence of [] guilt”, and yet Euljekjian was convicted even though constitutional

²³⁹ Institute for Peace and Democracy, *The Trials of Armenian Prisoners of War are Held Behind Closed Doors*, available at <https://www.ipd-az.org/the-trials-over-the-armenian-prisoners-of-war-are-held-behind-closed-doors/>.

²⁴⁰ See “Lebanese-Armenian PoW Vicken Euljekjian hospitalized in Azerbaijan”, *Panarmenian.net* (3 June 2021), available at https://www.panarmenian.net/eng/news/293336/LebaneseArmenian_PoW_Vicken_Euljekjian_hospitalized_in_Azerbaijan.

²⁴¹ Letter *from* Elchin Mammadov, First Deputy Prosecutor General, *to* Elnur Mammadov, Deputy Minister of Foreign Affairs, regarding Armenian detainees, No. 14/cix65-21 (8 October 2021) (with enclosure), entry no. 1 (Hearings on Provisional Measures (14-15 October 2021), Azerbaijan’s Annex 21). See also Baku Military Court, Judgment on Behalf of the Republic of Azerbaijan, Case No. 1-1(093)-94/2021 (14 June 2021) (Hearings on Provisional Measures (14-15 October 2021), Azerbaijan’s Annex 5).

²⁴² The Criminal Code of the Republic of Azerbaijan, UNHCR (unofficial translation), available at https://adatabase.ohchr.org/IssueLibrary/AZERBAIJAN_Criminal%20Code.pdf, Art. 114.

²⁴³ CR 2021/20 (Murphy) (14 October 2021), p. 34, para. 9.

²⁴⁴ United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan (2021)*, pp. 21-22 (excerpt) (Memorial of Armenia, Annex 57). See also Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 21, second and third bullets, p. 11 (certified translation from Armenian) (Memorial of Armenia, Annex 291).

provisions “mandate the state to guarantee equality of rights and freedoms for all before the law and courts”²⁴⁵.

27. Azerbaijan’s ethnic motivations are particularly apparent from its detention and mistreatment of elderly and disabled ethnic Armenians who could not possibly have posed a threat or illegally crossed the border into Azerbaijan’s territory. According to Amnesty International, “older people who stayed behind in towns or villages were arbitrarily detained”²⁴⁶, and “[m]any faced torture or other ill-treatment in detention”²⁴⁷.

28. Human Rights Watch has similarly reported on what it describes as “credible allegations regarding the unlawful detention” of elderly civilians by Azerbaijan²⁴⁸. Mr Eduard Shahkeldyan, for example, was a 79-year-old ethnic Armenian who was detained by Azerbaijani forces in his home in October 2022 and taken to a prison in Baku where he died due to “injuries to the head”²⁴⁹. As an ethnic Armenian who resided in Nagorno-Karabakh, Azerbaijan purports to have considered Mr Shahkeldyan an Azerbaijani citizen²⁵⁰.

29. Yet as explained by Human Rights Watch, even though there was “no evidence” that he “posed any security threat” and he “did not participate in the hostilities”, Mr Shahkeldyan was not only arbitrarily detained, but murdered in detention²⁵¹. It is impossible to see how Mr Shahkeldyan could be said to have fallen into either of the two categories that Azerbaijan claims describe the ethnic Armenian detainees of which Armenia complains, namely “Armenian nationals who illegally

²⁴⁵ Institute for Peace and Democracy, *The Court Violated Both the Norms of Azerbaijani Legislation as Well as Those of International Law in Relation to the Armenian Prisoner of War*, available at <https://www.ipd-az.org/the-court-violated-both-the-norms/>.

²⁴⁶ Amnesty International, *Last To Flee: Older People’s Experience Of War Crimes And Displacement In The Nagorno-Karabakh Conflict (2022)*, p. 6 (excerpt) (Memorial of Armenia, Annex 95).

²⁴⁷ *Ibid.*, p. 5.

²⁴⁸ T. Lokshina, “Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes”, *Human Rights Watch* (12 March 2021), p. 3 (Memorial of Armenia, Annex 86).

²⁴⁹ Amnesty International, *Last To Flee: Older People’s Experience Of War Crimes And Displacement In The Nagorno-Karabakh Conflict (2022)*, p. 25 (excerpt) (Memorial of Armenia, Annex 95).

²⁵⁰ “Ilham Aliyev attended the international conference themed ‘South Caucasus: Development and Cooperation’ at ADA University”, *President of the Republic of Azerbaijan Ilham Aliyev* (29 April 2022), available at <https://president.az/en/articles/view/55909>, p. 15 (Observations of Armenia, Annex 16). See also e.g. Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by Azerbaijan under article 9 of the Convention, due in 2019*, UN doc. CERD/C/AZE/10-12 (10 October 2019), para. 114 (Observations of Armenia, Annex 10).

²⁵¹ T. Lokshina, “Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes”, *Human Rights Watch* (12 March 2021), available at <https://www.hrw.org/news/2021/03/12/survivors-unlawful-detention-nagorno-karabakh-speak-out-about-war-crimes>, p. 2 (Memorial of Armenia, Annex 86). See also Memorial of Armenia, para. 6.131.

crossed the border into Azerbaijan and prisoners of war captured during the Second Garabagh War”²⁵². On the contrary, as a resident of Nagorno-Karabakh, whom by Azerbaijan’s own admission it considered a citizen, Mr Shakheldyan could not have “illegally crossed the border into Azerbaijan”²⁵³. And as a 79-year-old non-combatant, he was most certainly not a “prisoner of war”²⁵⁴.

30. Numerous other elderly ethnic Armenians suffered similar fates²⁵⁵. One such victim reported that Azerbaijan “interrogated me for three times in the prison, which was accompanied by beating as they made me confess as if I was a spy, but I told them that I was only an elderly man”²⁵⁶. The same man appears in a video being abused by Azerbaijani soldiers. When asked where he was from and whether he is a spy, he replies that he is from a village in Nagorno-Karabakh and denies that he is a spy. His interrogator then replies that he will be punished anyway, employing patently racist invective too foul to repeat in this Great Hall²⁵⁷.

31. But there is still more. Yesterday morning, Azerbaijan’s Agent acknowledged that Azerbaijan “has raised no objection at this preliminary stage with respect to a number of Armenia’s CERD complaints”²⁵⁸. These include Armenia’s claim that “Azerbaijan Has Failed to Guarantee Equal Treatment by Its Justice System”²⁵⁹. But if Armenia’s claims of unequal treatment in the justice system fall within the CERD, its claims of discriminatory detention *predicated* on unequal treatment in the justice system must fall within the CERD as well. Armenia made this exact point in its

²⁵² Preliminary Objections of Azerbaijan, para. 60.

²⁵³ Preliminary Objections of Azerbaijan, para. 60.

²⁵⁴ Preliminary Objections of Azerbaijan, paras. 60; Memorial of Armenia, 3.319 and 6.131.

²⁵⁵ Memorial of Armenia, paras. 3.62, 3.265, 3.337, 3.341, 3.370, 4.7; Letter *from* Fuad Mammadov, Deputy Military Prosecutor of the Republic of Azerbaijan, *to* Chingiz Asgarov, Agent of the Republic of Azerbaijan before the European Court of Human Rights, regarding criminal cases investigated by the Military Prosecutor’s Office (27 January 2022) (excerpt) (confidential) (Memorial of Armenia, Annex 65); T. Lokshina, “Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes”, *Human Rights Watch* (12 March 2021) (Memorial of Armenia, Annex 86); Video showing an Azerbaijani soldier cutting off the ear of a living Armenian captive (contains annotations, such as certified subtitles in English) [WARNING: GRAPHIC] (confidential) (Memorial of Armenia, Annex 170); Video showing Azerbaijani soldiers dragging and beating elderly civilian Jonik Tevosyan by Azerbaijani soldiers (confidential) (Memorial of Armenia, Annex 214); Video showing degrading treatment of an elderly Armenian civilian by Azerbaijani soldiers (confidential) (Memorial of Armenia, Annex 234).

²⁵⁶ Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), testimony no. 18, third bullet, p. 10 (certified translation from Armenian) (Memorial of Armenia, Annex 291).

²⁵⁷ Video showing inhuman and degrading treatment of [an ethnic Armenian] (certified translation from Russian) (confidential) (Memorial of Armenia, Annex 117).

²⁵⁸ CR. 2024/17, p. 17, para. 15 (Mammadov).

²⁵⁹ See Memorial of Armenia, paras. 6.210-6.214.

Observations on Azerbaijan's Preliminary Objections. But Azerbaijan said nothing about it yesterday at all.

32. Armenia's claim of discriminatory subjection of ethnic Armenians to arbitrary detention extends far beyond those whose release Armenia sought at the provisional measures stage. It also includes those who have already been released or who were murdered while in detention, as well as individuals who were subsequently detained. As Armenia explained in its Written Statement of Observations and Submissions on Azerbaijan's Preliminary Objections, it likewise includes the numerous ethnic Armenians who were not Armenian citizens and were detained at Azerbaijan's ports of entry merely because they had Armenian surnames. The CERD Committee has made clear that the obligation to guarantee protection against discriminatory detention based on ethnic origin extends to the conduct of the State's "customs authorities, and persons working in airports"²⁶⁰. Yet in its Preliminary Objections, Azerbaijan did not address such discriminatory detentions despite requesting the dismissal of Armenia's claim in full. And even though Armenia pointed this out in its Observations on Azerbaijan's Preliminary Objections as well, yet again, yesterday morning, we heard nothing about it. After two rounds of pleadings, Azerbaijan has therefore not even provided an *argument* in relation to this aspect of Armenia's claims of arbitrary detention.

III. Conclusion

33. In sum, the evidence before the Court, if accepted as true as it must be at this stage, amply demonstrates that Armenia's claims of discriminatory arbitrary detention are capable of constituting breaches and therefore fall within the CERD.

34. In light of these points, Armenia respectfully requests that the Court reject Azerbaijan's objection and find that it has jurisdiction *ratione materiae* over Armenia's claims concerning Azerbaijan's discriminatory subjection of ethnic Armenians to arbitrary detention.

This concludes my presentation. I thank you, Mr President and Members of the Court, for your kind attention, and ask that you call Professor Sicilianos to the podium.

²⁶⁰ Committee on the Elimination of Racial Discrimination, General Recommendation XXXI: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, UN Doc. A/60/18 (2005), available at https://adsdatabase.ohchr.org/IssueLibrary/CERD_Recommendation%20No31.pdf, para. 21.

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

Mr SICILIANOS:

**ARMENIA’S CLAIMS CONCERNING AZERBAIJAN’S DISCRIMINATORY ENFORCED
DISAPPEARANCES OF ETHNIC ARMENIANS FALL WITHIN THE SCOPE
OF THE CERD**

1. Mr President, distinguished Members of the Court, it is an honour to appear before the Court today and to do so on behalf of the Republic of Armenia.

2. I shall present Armenia’s submissions on the third and last strand of Azerbaijan’s *ratione materiae* objection, namely, Azerbaijan’s objection to Armenia’s claims concerning Azerbaijan’s enforced disappearances of ethnic Armenians. I shall also offer a few brief remarks summarizing our responses to Azerbaijan’s preliminary objections.

3. At the outset, in its Preliminary Objections Azerbaijan did not dispute that the prohibition of enforced disappearances falls within the broad and non-exhaustive guarantee of equal enjoyment of all human rights under Article 5 of the CERD²⁶¹. Nor did Azerbaijan dispute that, when undertaken against an individual protected by the CERD’s prohibition of racial discrimination, enforced disappearances also breach Article 2 (1)’s obligation that States parties “engage in no act or practice of racial discrimination”²⁶². In her presentation yesterday, however, Professor Boisson de Chazournes seemed to depart from this approach. She said that the issue of enforced disappearance is the object of a specific UN instrument and, thus, it does not fall within the scope of the Convention. With all due respect, may I observe that enforced disappearance is an important aspect of the right to life, which is a fundamental right under Article 5 of CERD. Many other rights and prohibitions mentioned explicitly in Article 5 of the Convention are the object of different UN instruments, especially the two Covenants of 1966 and the Convention against Torture. This does not mean at all that they are *ipso facto* outside the scope of application of CERD.

²⁶¹ Memorial of Armenia, para. 6.416. See Preliminary Objections of Azerbaijan, paras. 67-69.

²⁶² Memorial of Armenia, para. 6.416; International Convention on the Elimination of All Forms of Racial Discrimination (1965), Art. 2 (1). See Preliminary Objections of Azerbaijan, paras. 67-69.

4. Azerbaijan nonetheless claims that “Armenia does not provide any basis for any allegation that any Armenian was . . . subjected to enforced disappearance *based on the individual’s ethnic origin*”²⁶³.

5. Armenia disagrees, and respectfully submits that the facts alleged, which must be accepted as true at this stage, are once again plainly capable of constituting racial discrimination under the Convention.

6. The fact of enforced disappearances of ethnic Armenians is established in our evidence. As explained in Armenia’s Memorial, Azerbaijan has subjected ethnic Armenians to enforced disappearances in at least three ways.

7. First, Armenia’s evidence shows that dozens of ethnic Armenians, including both servicemen and civilians who went missing between the commencement of the Second Nagorno-Karabakh War and the submission of Armenia’s Memorial, are believed to have been in Azerbaijan’s custody, and yet Azerbaijan has neither acknowledged their captivity nor revealed their fates²⁶⁴.

8. Second, our evidence shows that at least twenty ethnic Armenian servicemen and civilians are definitively *known* to have been murdered in Azerbaijan’s custody since the Second Nagorno-Karabakh War, and yet Azerbaijan has not acknowledged the *circumstances* of their deaths²⁶⁵.

9. Finally, our evidence shows that Azerbaijan has consistently obstructed searches for and repatriation of the remains of ethnic Armenians in territories under its control²⁶⁶.

10. Azerbaijan has also concealed the fates of ethnic Armenians who were forcibly disappeared *following* the submission of Armenia’s Memorial; no fewer than 11 ethnic Armenian

²⁶³ Preliminary Objections of Azerbaijan, para. 68; emphasis added.

²⁶⁴ Memorial of Armenia, Section III.3.I.

²⁶⁵ Memorial of Armenia, Sections III.3.I and IV.2.I.A.2.

²⁶⁶ Memorial of Armenia, para. 6.153 *citing* “Azerbaijan Bans Search and Rescue Operations in Artsakh”, Asbarez (4 February 2021), available at <https://asbarez.com/azerbaijan-bans-search-and-rescue-operations-in-artsakh/> (“Artsakh search and rescue teams have been unable to resume their operations to find casualties of the 2020 war because Azerbaijani authorities continue to impose bans on those operations for unknown reasons”); “Azerbaijan creating obstacles for search for the bodies of the dead – Armenian PM”, Public Radio of Armenia (25 October 2022), available at <https://en.armradio.am/2022/10/25/azerbaijan-creating-obstacles-for-search-for-the-bodies-of-the-dead-armenian-pm>. See also Memorial of Armenia, Section VI.2.I.B.

servicemen remain missing as a result of Azerbaijan's attack on Nagorno-Karabakh in September 2023²⁶⁷.

11. Numerous independent bodies have expressed serious concerns in this respect. The CERD Committee, for example, has called upon Azerbaijan to conduct investigations into allegations of enforced disappearances of protected persons of Armenian ethnic or national origin²⁶⁸. Similarly, the UN Working Group on Enforced or Involuntary Disappearances, the UN Special Rapporteur on Torture and the UN Special Rapporteur on extrajudicial executions have expressed their alarm at allegations that “prisoners of war and other protected persons have been subject to extrajudicial killing, enforced disappearances, [and] torture”²⁶⁹. And the European Parliament has found that there are “credible reports, including video footage, that Armenian [prisoners of war] and other detainees have been subjected to . . . enforced disappearances” and that the fate and whereabouts of hundreds of Armenians, including civilians, remain unknown²⁷⁰. Many other independent observers have expressed similar concerns²⁷¹.

12. Armenia's evidence amply demonstrates that Azerbaijan's enforced disappearances of ethnic Armenians are based on ethnic origin and therefore capable of constituting breaches of the CERD.

13. To begin with, Azerbaijan has forcibly disappeared ethnic Armenians whom it considers to be *Azerbaijani citizens*.

²⁶⁷ “181 Armenian soldiers declared dead, 11 others considered missing due to September fighting Karabakh”, News.am (26 February 2024), available at <https://news.am/eng/news/809353.html#:~:text=181%20Armenian%20soldiers%20declared%20dead,to%20September%20fighting%20in%20Karabakh&text=A%20total%20of%20181%20Armenian,September%2019%2D20%2C%202023>.

²⁶⁸ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined tenth to twelfth reports of Azerbaijan, UN doc. CERD/C/AZE/CO/10-12 (22 September 2022), emphasis added (Memorial of Armenia, Annex 5).

²⁶⁹ See UN OHCHR, “Nagorno-Karabakh: Captives Must be Released—UN Experts” (1 February 2021), available at <https://www.ohchr.org/en/press-releases/2021/02/nagorno-karabakh-captives-must-be-released-un-experts>, PDF p. 1 (Memorial of Armenia, Annex 14).

²⁷⁰ European Parliament, Resolution on EU-Armenia relations (15 March 2023), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC_202300404.

²⁷¹ See e.g. University Network for Human Rights, “Chapter 3: Enforced Disappearance” in *We Are No One: How Three Years of Atrocities Against Ethnic Armenians Led to Ethnic Cleansing* (2023), available at <https://humanrightsnetwork.shorthandstories.com/we-are-no-one/we-are-no-one-all-chapters/chapter-3-enforced-disappearance/index.html>; The International Committee of the Red Cross, Armenia: Facts and Figures – January to December 2022 (22 March 2023) available at <https://www.icrc.org/en/document/armenia-facts-and-figures-january-december-2022>.

14. Human Rights Watch, for example, has reported on the enforced disappearance and eventual murder of a 44-year-old ethnic Armenian civilian in Hadrut — Arsen Gharakhanyan — who was once in Azerbaijan’s custody²⁷². In a video that appeared on social media, Azerbaijani soldiers can be seen mocking Mr Gharakhanyan and ordering him to “say hello to Shusha”, the Azerbaijani term for the city ethnic Armenians refer to as “Shushi”²⁷³. Forcing an ethnic Armenian to “say hello to Shusha” — a city that has a near-mythical status for the Armenian people and is considered to be their cradle — is racially motivated. It is notable that Mr Gharakhanyan was a resident of Nagorno-Karabakh²⁷⁴, and therefore an Azerbaijani citizen according to Azerbaijan itself²⁷⁵.

15. In addition, the age of many of Azerbaijan’s victims of enforced disappearances again makes unequivocally clear that their treatment was tied to their ethnicity. Amnesty International, for example, has reported that many ethnic Armenian civilians who are still missing after the Second Nagorno-Karabakh War are older people, including one who was 90 years old and several living with disabilities²⁷⁶. Those victims were completely inoffensive: they were stranded in Nagorno-Karabakh because of their age, “physical or intellectual disabilities”²⁷⁷ or because they simply had “nowhere to go” and “did not want to leave their homes”²⁷⁸. Their enforced disappearance can thus only be viewed as an act of hatred based on ethnic grounds.

16. Take the example of 81-year-old Vladimir Lalayan, who worked as a doctor in a local hospital and went missing during the fighting in 2020²⁷⁹; or 65-year-old Maxim Grigoryan, who was

²⁷² Memorial of Armenia, para. 3.337 *citing* T. Lokshina, “Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes”, Human Rights Watch (12 March 2021) (Memorial of Armenia, Annex 86).

²⁷³ T. Lokshina, “Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes”, Human Rights Watch (12 March 2021) (Memorial of Armenia, Annex 86).

²⁷⁴ *Ibid.*

²⁷⁵ “Ilham Aliyev attended the international conference themed ‘South Caucasus: Development and Cooperation’ at ADA University”, President of the Republic of Azerbaijan Ilham Aliyev (29 April 2022), available at <https://president.az/en/articles/view/55909>, p. 15 (Observations of Armenia, Annex 16). See also e.g. Committee on the Elimination of Racial Discrimination, Combined tenth to twelfth periodic reports submitted by Azerbaijan under article 9 of the Convention, due in 2019, UN doc. CERD/C/AZE/10-12 (10 October 2019) (Observations of Armenia, Annex 10).

²⁷⁶ Amnesty International, *Armenia: Last to Flee: Older people’s experience of war crimes and displacement in the Nagorno-Karabakh conflict* (2022), available at <https://www.amnesty.org/en/documents/eur54/5214/2022/en/>, p. 7 (Memorial of Armenia, Annex 95).

²⁷⁷ *Ibid.*, p. 15.

²⁷⁸ *Ibid.*, p. 16.

²⁷⁹ *Ibid.*, Chapter 3: Enforced Disappearance, p. 26.

taken into Azerbaijan's custody in October 2020 when Azerbaijan took over his village, was subjected to severe beatings, and has not been seen or heard from since²⁸⁰; or 66-year-old Seryoja Sahakyan, who could not walk and did not have a wheelchair, and who went missing during the fighting in 2020, but whose body was not found in the village after the ceasefire²⁸¹.

17. These individuals are certainly not prisoners of war, they did not violate Azerbaijani law, nor are they mere citizens of an "enemy State" because Azerbaijan itself claims that residents of Nagorno-Karabakh are its own citizens²⁸². There is no explanation for their enforced disappearances other than hatred based on their ethnic Armenian origin, and they are therefore plainly capable of establishing breaches of the CERD.

18. Armenia submits that this evidence is more than sufficient to reject Azerbaijan's objection. But there is much more.

19. In its Memorial, for example, Armenia produced a video that shows an ethnic Armenian soldier lying wounded and helpless on the ground as an Azerbaijani soldier shoots him multiple times in the head while using plainly racist language that is too foul to repeat in this Great Hall²⁸³. Despite this evidence, Azerbaijan failed to acknowledge the victim's whereabouts or repatriate his body for months, and continues to refuse to acknowledge the circumstances of his death.

20. Armenia also discussed in its Memorial the example of an ethnic Armenian man²⁸⁴ whom Azerbaijan explicitly denied holding to the European Court of Human Rights. Yet one of the

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*, p. 27.

²⁸² "Ilham Aliyev attended the international conference themed 'South Caucasus: Development and Cooperation' at ADA University", President of the Republic of Azerbaijan Ilham Aliyev (29 April 2022), available at <https://president.az/en/articles/view/55909>, p. 15 (Observations of Armenia, Annex 16); Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by Azerbaijan under article 9 of the Convention, due in 2019*, UN doc. CERD/C/AZE/10-12 (10 October 2019), para. 114 ("Members of all ethnic minority communities residing in the country, including ethnic Armenians, are citizens of Azerbaijan") (Observations of Armenia, Annex 10).

²⁸³ Video showing the execution of an *hors de combat* Armenian serviceman [WARNING: GRAPHIC] (confidential) (Memorial of Armenia, Annex 131).

²⁸⁴ Azerbaijan's table with details on detention and repatriation of Armenians in respect of whom rule 39 requests were made (16 March 2022) (confidential), PDF p. 5 (entry no. 140) (Memorial of Armenia, Annex 66).

videos²⁸⁵ that Azerbaijan itself claims to be investigating reveals that it captured and abused him²⁸⁶. In fact, Azerbaijan's own alleged investigation specifically mentions him by name, and indicates that during interrogation, he was coerced into saying that Karabakh is a part of Azerbaijan after he provided his clearly ethnically Armenian name²⁸⁷. To this day, Azerbaijan has failed to release or even acknowledge him and his fate is therefore unknown²⁸⁸.

21. These are just a few of the many other examples of Azerbaijan's enforced disappearances of individuals who were recorded on video before they disappeared²⁸⁹. But the available evidence is by no means limited to what has been captured on film. On the contrary, numerous testimonies of released civilians and other detainees demonstrate Azerbaijan's enforced disappearances of ethnic Armenians as well.

22. The Human Rights Defender of Armenia, for example, describes the testimony of an ethnic Armenian who was captured with his son. In the Human Rights Defender's words, they were "beaten,

²⁸⁵ Video showing inhuman and degrading treatment of [an ethnic Armenian man] (confidential) (Memorial of Armenia, Annex 120).

²⁸⁶ Letter from Fuad Mammadov, Deputy Military Prosecutor of the Republic of Azerbaijan to Chingiz Asgarov, Agent of the Republic of Azerbaijan before the European Court of Human Rights, regarding criminal cases allegedly investigated by the military prosecutor's office (27 January 2022) (Criminal Case No. 05D/45029), p. 29 (confidential) (Memorial of Armenia, Annex 65).

²⁸⁷ Letter from Fuad Mammadov, Deputy Military Prosecutor of the Republic of Azerbaijan to Chingiz Asgarov, Agent of the Republic of Azerbaijan before the European Court of Human Rights, regarding criminal cases allegedly investigated by the military prosecutor's office (27 January 2022) (Criminal Case No. 05D/45029), p. 30 (confidential) (Memorial of Armenia, Annex 65).

²⁸⁸ See also illustrative list of videos and photographs of war crimes committed by the agents of Azerbaijan during and after the Second Nagorno-Karabakh War, p. 9, item 46 (Memorial of Armenia, Annex 290); Azerbaijan's table with details on detention and repatriation of Armenians in respect of whom rule 39 requests were made (16 March 2022), PDF p. 6 (entry no. 141) (confidential) (Memorial of Armenia, Annex 66).

²⁸⁹ See e.g. video showing the execution of Messrs [two ethnic Armenians] in Hadrut (contains annotations, such as certified subtitles in English) [WARNING: GRAPHIC] (confidential) (Memorial of Armenia, Annex 204); Human Rights Ombudsman of Artsakh, *Interim Report: On the Cases of the Killing of Civilians in Artsakh by the Armed Forces of Azerbaijan (Updated on September 27, 2021)* (27 September 2021), available at <https://artsakhombuds.am/en/document/785>, PDF p. 15 (Memorial of Armenia, Annex 62); Letter from Fuad Mammadov, Deputy Military Prosecutor of the Republic of Azerbaijan to Chingiz Asgarov, Agent of the Republic of Azerbaijan before the European Court of Human Rights, regarding criminal cases allegedly investigated by the military prosecutor's office (27 January 2022) (Criminal case No. 05D/45024), PDF p. 24 (confidential) (Memorial of Armenia, Annex 65). See also University Network for Human Rights, "Chapter 3: Enforced Disappearance" in *We Are No One: How Three Years of Atrocities Against Ethnic Armenians Led to Ethnic Cleansing* (2023), available at <https://humanrightsnetwork.shorthandstories.com/we-are-no-one/we-are-no-one-all-chapters/chapter-3-enforced-disappearance/index.html>.

abused, and made fun of based on their Armenian identity”²⁹⁰. After the two were separated, the father never saw or heard from his son again²⁹¹.

23. In light of such evidence, an independent organization has observed that there are “numerous cases of missing individuals who were last known to be alive while being held by Azerbaijani forces”²⁹². It further concluded that “the government of Azerbaijan is engaging in a pattern of behavior that condones, facilitates and directly perpetrates enforced disappearances”²⁹³ and that there is a “overarching pattern of ethnic discrimination that characterizes” Azerbaijan’s enforced disappearances of ethnic Armenians²⁹⁴.

24. Yesterday, we heard from Professor Boisson de Chazournes that Azerbaijan repatriated around two thousand bodies to Armenia²⁹⁵. Assuming, *arguendo*, that this number is accurate, the fact remains that the fate of many individuals who were last known to be in Azerbaijan’s custody is unknown to date.

25. For these reasons, Armenia respectfully requests that the Court reject Azerbaijan’s objection and find that it has jurisdiction *ratione materiae* over Armenia’s claims concerning Azerbaijan’s discriminatory subjection of ethnic Armenians to enforced disappearance.

26. Mr President, Members of the Court, I will conclude with a few words summarizing our overarching responses to Azerbaijan’s preliminary objections.

27. *First*, as we explained, Azerbaijan’s first objection — that Armenia failed to comply with the negotiation precondition of Article 22 of the CERD — is plainly without merit. Armenia genuinely engaged with Azerbaijan, only to be met with rejection, mirroring, dilatory tactics and

²⁹⁰ The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report on the Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War)* (September 2021), available at https://ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAJ06B%20xmRFaBSrt_XFqvSyXeM3M-5vZRFgpgCRCo4urVPVE2NPL_VO4g, para. 88 (Memorial of Armenia, Annex 61).

²⁹¹ *Ibid.*

²⁹² See University Network for Human Rights, “Chapter 3: Enforced Disappearance” in *We Are No One: How Three Years of Atrocities Against Ethnic Armenians Led to Ethnic Cleansing* (2023), available at <https://humanrightsnetwork.shorthandstories.com/we-are-no-one/we-are-no-one-all-chapters/chapter-3-enforced-disappearance/index.html>.

²⁹³ *Ibid.*, p. 9.

²⁹⁴ University Network for Human Rights, “Chapter 5: Incitement to Hatred” in *We Are No One: How Three Years of Atrocities Against Ethnic Armenians Led to Ethnic Cleansing* (2023), available at <https://humanrightsnetwork.shorthandstories.com/we-are-no-one/incitement-to-hatred/index.html>.

²⁹⁵ CR 2024/17, pp. 54-55, para. 31 (Boisson de Chazournes).

aggravation. Armenia's decision to consider that negotiations had become deadlocked and to file its Application when it did is unassailable under Article 22 of the Convention.

28. *Second*, concerning Azerbaijan's second objection, Azerbaijan itself recognized in its letter of 5 April to the Court that the "threshold applicable to find the Court's jurisdiction at the preliminary objections stage" is "low". Armenia submits that this threshold is entirely and clearly met, as all of Armenia's claims are capable of constituting breaches of obligations under the CERD. Indeed, Armenia's evidence, if accepted as true as it must be at this stage, would undoubtedly establish that Azerbaijan has subjected ethnic Armenians to violence, arbitrary detention and enforced disappearances on the basis of race. The fact that many of Azerbaijan's actions are capable of having violated international humanitarian law does not change the fact that they are capable of violating the CERD as well.

29. Honourable judges, upholding Azerbaijan's objection at this stage would effectively allow Azerbaijan to claim, that all the ill-treatment it inflicted on ethnic Armenians in recent years had "nothing to do"²⁹⁶ with their ethnic origin — as it claimed no fewer than eight times in its Preliminary Objections. In light of "the tenuous situation between the Parties"²⁹⁷, of which the Court took note even before the terrible events of September last year unfolded, and which continues to exist, upholding Azerbaijan's second preliminary objection would also have the very unfortunate effect of emboldening Azerbaijan's actions. I therefore very respectfully invite the Court to consider the possible consequences of a judgment finding that the murder, torture and mistreatment, detention or enforced disappearances of ethnic Armenians are incapable of falling within the scope of the Convention.

30. I thank the Court for its kind attention. This concludes the first round of arguments by Armenia on Azerbaijan's preliminary objections. Thank you very much, Mr President.

The PRESIDENT: I thank Professor Sicilianos, whose statement brings this sitting to a close. The oral proceedings in this case will resume tomorrow, Wednesday 17 April, at 4.30 p.m., when

²⁹⁶ Preliminary Objections of Azerbaijan, paras. 9, 24, 25, 30, 43, 47, 61, 63.

²⁹⁷ *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 a Provisional Measure of 22 February 2023, Order of 6 July 2023*, para. 30.

Azerbaijan will present its second round of oral argument. At the end of that sitting, Azerbaijan will present its final submissions. Armenia will present its second round of oral argument at a sitting on Friday 19 April, at 10 a.m., at the end of which it will also present its final submissions. Each Party will have a maximum of one and a half hours to present its arguments for the second round.

I would like to recall that in accordance with Article 60, paragraph 1, of the Rules of Court, the oral statements of the second round are to be as succinct as possible. The purpose of the second round is to enable each of the Parties to reply to the arguments put forward orally by the opposing Party. The second round must therefore not be a repetition of the statements already set forth by the Parties, which, moreover, are not obliged to use all the time allotted to them.

The sitting is adjourned.

The Court rose at 12.55 p.m.
