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YEAR 2024

Public sitting

held on Wednesday 17 April 2024, at 4.30 p.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 mercredi 17 avril 2024, à 16 h 30, 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)*

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

 Registrar Gautier

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M^{me} Sebutinde, vice-présidente
M. Tomka
M^{me} Xue
MM. Bhandari
Iwasawa
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
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The PRESIDENT: Please be seated. The sitting is open.

For reasons duly made known to me, Judges Abraham and Yusuf are unable to sit with us today.

The Court meets this afternoon to hear the second round of oral argument of the Republic of Azerbaijan on the preliminary objections raised 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 Mr Sean Aughey. You have the floor, Sir.

Mr AUGHEY:

THE EVIDENCE OF SO-CALLED “ARMENOPHOBIA”

A. Introduction

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of Azerbaijan. I will be responding to the evidence of so-called Armenophobia, about which you heard a great deal yesterday.

2. Armenia confirmed yesterday that the general backdrop of so-called Armenophobia provides the “critical context” for assessing whether its free-standing claims are capable of amounting to racial discrimination¹. While Professor Murphy agreed that this is a “relevant factor” only², he disagreed that its relevance is as “background context” only³. Rather, Armenia says that this “overall racial animus . . . inescapably led to the specific atrocities”, that is, each and every one of what Armenia itself calls the “myriad”⁴ individual specific acts of violence occurring during the active hostilities phases of the armed conflict that comprise its free-standing claim for breach of the CERD.

3. In an attempt to tie back the specific alleged killings and mistreatment to evidence of racial discrimination, Armenia argued that there is a “clear continuity” between “official racial animus toward ethnic Armenians [specifically] by Azerbaijani officials at the highest level”⁵ and the “racist

¹ CR 2024/18, p. 14, para. 16 (Kirakosyan).

² CR 2024/18, p. 34, para. 2, and p. 38, para. 20 (Murphy). Cf. CR 2024/17, p. 39, paras. 11-12 (Wordsworth).

³ CR 2024/18, p. 41, para. 25 (Murphy).

⁴ Memorial of Armenia, para. 6.82.

⁵ CR 2024/18, p. 39, para. 22 (Murphy).

actions of the soldiers who *directly* committed the violence against ethnic Armenians”⁶. The top part of the “seamless tapestry” that Armenia seeks to weave is said to show President Aliyev’s racial animus toward ethnic Armenians.

B. Armenia’s evidence of so-called Armenophobia

4. You were shown a number of slides highlighting a list of specific words and phrases plucked from various speeches of President Aliyev⁷. One of these is now on the screen. The use of selective quotations, without the surrounding context, does not assist the Court when it comes to assessing whether the underlying documentary evidence is capable of amounting to racial discrimination, and particularly so when the relevant speeches themselves have not been included in Armenia’s judges’ folders.

5. Azerbaijan has now included each of the speeches in your judges’ folders at tab 2 and asks that you read them. You will see that, taking the words on their face, the statements relied on are not capable of showing a racial animus toward ethnic Armenians.

6. I turn to the statements themselves. First, Armenia asserts that in two speeches President Aliyev referred to all ethnic Armenians as “bandits and vandals”. As you can see from the context on the screen, the statements were used to refer specifically to persons who have destroyed Azerbaijan’s historical monuments:

“[E]verything on the occupied lands is destroyed. All of our historical monuments have been destroyed by Armenian bandits and vandals.”⁸

“Vagif’s mausoleum, like all other historical monuments in the occupied territories, was vandalized by the Armenians.”⁹

7. Second, Armenia asserted that in another speech President Aliyev referred to all ethnic Armenians as “fascists”. The relevant speech, in fact, again, refers specifically to “the crimes committed by Armenian fascists and vandals” in destroying Azerbaijan’s historical and religious

⁶ CR 2024/18, p. 49, para. 23 (Macdonald).

⁷ CR 2024/18, pp. 39-40, paras. 22-23 (Murphy).

⁸ “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), referred to at CR 2024/18, p. 39, para. 22 (Murphy).

⁹ “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), referred to at CR 2024/18, p. 39, para. 22 (Murphy).

sites, and this was in the context of comments concerning “Armenian occupying forces”¹⁰. In another speech that Armenia relies upon, President Aliyev referred specifically to the “fascist leadership of Armenia”¹¹.

8. Third, Armenia also claims that President Aliyev referred to all ethnic Armenians as “wild beasts”, “predators”, “jackals”, and a “wild” and “savage tribe”. When you read these two speeches you will see that:

- (a) President Aliyev called on “the predatory Armenian state” specifically to “vacate our lands”¹².
- (b) Further, in specific reference to the destruction of an Azerbaijani city in the formerly occupied territories by the forces of the illegally installed régime in Garabagh, President Aliyev stated — and this context is on your screen:

“When we talk about the city of Fuzuli, of course, we should all know that *there is nothing left of the city, no monuments, not a single safe building. For 30 years, it was in the hands of wild beasts, in the hands of predators, in the hands of jackals. All the buildings have been demolished, our religious sites have been demolished, everything has been looted, the roofs of the houses, the windows, the belongings — everything. It was as if a wild tribe had taken over the city. The remains of the city of Fuzuli are a manifestation of Armenian fascism and a witness to Armenian fascism.*”¹³

- (c) And please note, by way of further immediate context, the image now on the screen showing the scene of devastation in the city of Fuzuli to which President Aliyev was specifically referring.
- (d) Returning to the same speech, as you can see on the screen now, President Aliyev also stated:

“We are avenging and will continue to avenge the deaths of our martyrs, of innocent civilians on the battlefield. *We have never fought or will ever wage a war against the civilian population. . . . The victorious Azerbaijani Army is driving and will continue to drive the enemies away from our lands in the ongoing battles. I said if they do not leave our lands of their own free will, we will chase them away like dogs and we are doing that.*”¹⁴

- (e) Armenia not only ignored the immediate context that I have just shown. It also failed to draw attention to another passage in the same speech which shows the relevant context of the

¹⁰ “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), referred to at CR 2024/18, p. 39, para. 22 (Murphy).

¹¹ “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), referred to at CR 2024/18, p. 39, para. 22 (Murphy).

¹² *Ibid.*

¹³ *Ibid.* See to the same effect “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), referred to at CR 2024/18, p. 39, para. 22 (Murphy).

¹⁴ *Ibid.*

description of the “enemies” as “dogs” — an insult which you will recall Armenia placed particular reliance upon, as you can see from its slide now on the screen¹⁵ — it shows that this is plainly not a reference to ethnic Armenians but to the Armenian occupying forces waging war and the leadership directing those operations. The statements were in reaction to the shelling of the Azerbaijani cities of Ganja and Mingachevir earlier the same day and the context for this, taken also from President Aliyev’s speech, is now on the screen:

“Despite the fact that *the cowardly, treacherous and vile enemy commits war crimes, fires on the civilian population and kills children* as a result of today’s shooting, I want to say again that we must not take revenge on civilians. We are taking revenge on the battlefield. . . . *I warn the fascist leadership of Armenia again — leave the remaining lands of your own accord. We will throw you out of there anyway. There will be no trace of them left on those lands. We will drive them out of our lands to the end. Let them leave of their own accord!*”¹⁶

9. You were also not told that in a publicly available interview with the BBC on 9 November 2020, around three weeks after President Aliyev made these statements, and around one year before Armenia filed its Application in the present case, President Aliyev specifically addressed the meaning of the phrase “we will chase them away like dogs”. A transcript of that interview is included at tab 2 of your judges’ folders and the relevant extract is now on the screen:

“With respect to the Armenian population of Nagorno-Karabakh, they will continue to live there. They are our citizens, and I on many occasions expressed this position.”

The interviewer then says:

“Well, with respect President Aliyev, you are saying that the Armenians will consider to live there as your citizens. You have very recently said and I am quoting you here: ‘If they do not leave we will chase them like dogs’. Now, that is hardly the kind of statement that would make people feel safe.”

“*No. Please be accurate with my statements. What I said, I meant those who continue to occupy our territories. I meant Armenian military-political leadership, I meant the so-called ‘authorities of Nagorno-Karabakh’, this criminal junta . . . So, I meant them, I didn’t mean the Armenian people.*”¹⁷

¹⁵ See CR 2024/18, p. 39, para. 22 (Murphy); p. 49, paras. 24-26 (Macdonald).

¹⁶ “President Ilham Aliyev addresses the nation”, Aznews (17 October 2020), available at <https://www.azernews.az/nation/184462.html>, PDF p. 3 (Observations of Armenia, Annex 37), referred to at CR 2024/18, p. 39, para. 22 (Murphy).

¹⁷ “Ilham Aliyev was interviewed by BBC News”, 9 November 2020, available at <https://president.az/en/articles/view/45845>. For the video see “President Ilham Aliyev was interviewed by BBC News”, Azertac English, available at <https://www.youtube.com/watch?app=desktop&v=eP98bXyWBdc>, at 3:55-4:40.

10. Later that month, Azerbaijan's Foreign Minister provided the same explanation in another publicly available interview, this time with the French magazine *Le Point*, which is also in your judges' folder at tab 2 and on the screen, and to which again your attention was not drawn¹⁸.

11. Fourth, Armenia's Agent also highlighted the following statement by President Aliyev in another speech: "What was driving us forward? Our patriotism, love of country and hatred for the enemy!"¹⁹. But the Agent did not mention that the "enemy" referred to is said to be the "occupying enemy" that was "forced to sign an act of capitulation" with its own hands, and that is plainly a specific reference to the forces of the illegally installed régime. And nor did Armenia refer to President Aliyev's statement in the same speech: "We have never fought and will never fight against civilians."

12. Fifth, Armenia also claimed that President Aliyev has "declared Armenians 'of the world' to be Azerbaijan's 'main enemies'"²⁰. Again, this statement needs to be read in its context, which is now on the screen:

"Our political influence and economic power are growing. This is seen by those who like us and those who don't. There are quite a lot of those who rejoice in our successes. But *there are forces that don't like us, our detractors*. They can be divided into several groups. First, *our main enemies are Armenians of the world and the hypocritical and corrupt politicians under their control. The politicians who don't wish to see the truth and are engaged in denigrating Azerbaijan in different parts of the world.*"

13. Here, the word "enemies" is being used to mean nothing more than "detractors", that is, various groups that denigrate Azerbaijan. One of those groups, "Armenians of the world" is being identified, not on the basis of their shared ethnic origin, but on the basis of their support for and association with certain politicians who disparage Azerbaijan.

14. Sixth, and lastly so far as concerns President Aliyev's statements, Professor Murphy stated that "just this last month, . . . President Aliyev referred to the lighting of a bonfire in what he called

¹⁸ "Chef du ministère des affaires étrangères de l'Azerbaïdjan: 'Notre conflit avec l'Arménie n'est pas religieux', 25 November 2020, available at <https://caucasefrance.com/2020/11/chef-du-ministere-des-affaires-etrangeres-de-lazerbaïdjan-notre-conflit-avec-larmenie-nest-pas-religieux/>.

¹⁹ CR 2024/18, p. 10, para. 3 (Kirakosyan), referring to "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>.

²⁰ *Ibid.* See to the same effect "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), referred to at CR 2024/18, pp. 39-40, paras. 22-23 (Murphy).

‘the liberated lands’ of Nagorno-Karabakh as ‘also doing the final cleaning’²¹. But you were not provided with a transcript of the relevant video in Armenia’s judges’ folders, and this is now included at tab 3, and the context is also on the screen. President Aliyev used the term “final cleaning” in specific reference not to ethnic Armenians, but to the demolition of the parliament of the illegally installed régime and other government buildings of that régime in the formerly occupied territories.

15. It is also to be noted that some of the insulting language in the transcripts upon which Armenia has relied have likewise been taken out of its context²². For example, at paragraph 48 of its Observations, and again yesterday²³, Armenia refers to a video purporting to show Azerbaijani soldiers mutilating the body of dead Armenian soldiers and claiming that Armenians are “sons of dogs” and that “[he] came here . . . [to] cut off the seeds of these immoral people”²⁴. But the transcript shows the immorality not to concern Armenian ethnicity but rather previous acts of Armenian soldiers in the course of active hostilities. Armenia’s own transcript reads: “you are now answering with your ears for the immorality you did yesterday . . . I came here for one purpose, for cutting off the seeds of these immoral people, to take revenge.”²⁵

16. It is also curious that some of the derogatory language in Armenia’s description of its video evidence in Annex 290 to its Memorial and tab 3 of Armenia’s judges’ folders, in fact, does not appear in the video. To take one example, Armenia describes one video as recording the shocking mistreatment of Armenian prisoners of war by Azerbaijani soldiers who use the words “you, the disgraceful people”²⁶. But the word “people” is not used and the words that are spoken are insults directed against the Armenian servicemen.

17. As a final matter to address on the way Azerbaijan puts this objection, it was said by Armenia that it makes little sense for Azerbaijan to accept that the claim in respect of hate speech is capable of falling within CERD but that the same speech, when used in connection with violence,

²¹ CR 2024/18, p. 40, para. 22 (Murphy), referring to “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>.

²² See Preliminary Objections of Azerbaijan, p. 31, fn. 72.

²³ See CR 2024/18, p. 50, para. 37 (d) (Macdonald).

²⁴ Observations of Armenia, para. 48, referring to Memorial of Armenia, Annex 124.

²⁵ Memorial of Armenia, Annex 124.

²⁶ Memorial of Armenia, Annex 290, describing item 11 in Annex 128.

did not provide the necessary racist animus²⁷. Two points. First, this has no bearing on the broader concern, which Mr Wordsworth explained on Monday and to which he will shortly revert.

18. Second, Armenia has put forward a claim concerning “systemic” hate speech²⁸. Azerbaijan understands the claim to be one concerning an alleged existence of an unlawful policy or practice of hate speech, with the multitude of statements being put forward as illustrative examples. Since, as Mr Wordsworth explained on Monday²⁹, the Court’s jurisdiction over a claim of that nature does not depend upon showing that each and every statement is capable of amounting to racial discrimination, Azerbaijan made no preliminary objection to this claim, which it is confident of defeating at the merits stage.

19. This in no way entails that Azerbaijan has accepted that each and every such statement that has been characterized by Armenia as hate speech — including the statements of President Aliyev — is capable of amounting to racial discrimination. Everything depends on the context, including the immediate context in which the given term was used, which may simply have been to refer in a derogatory way to the members of the enemy armed forces or to the illegally installed régime. As I have just shown, the immediate context in which the various statements of President Aliyev were made plainly shows that these were not capable of demonstrating a racist animus on his part towards ethnic Armenians.

20. A final point. Yesterday, Armenia’s Agent asserted that Azerbaijani public officials continue to call for the “complete elimination” of ethnic Armenians³⁰. He did not footnote to any particular statement and that is because Azerbaijani public officials have in fact been calling for peace, mutual understanding and mutual respect between the Azerbaijani and Armenian populations of Garabagh.

21. An example of this, taken from a speech by President Aliyev on 20 September 2023 using that language, is on your screens³¹.

²⁷ CR 2024/18, p. 36, para. 11 (Murphy).

²⁸ Memorial of Armenia, para. 6.173. See also Observations of Armenia, para. 89.

²⁹ CR 2024/17, p. 41, para. 16 (Wordsworth).

³⁰ CR 2024/18, p. 10, para. 2 (Kirakosyan).

³¹ President of the Republic of Azerbaijan Ilham Aliyev, “Ilham Aliyev Addressed the Nation”, 20 September 2023, available at <https://president.az/en/articles/view/61113>.

22. And this was just one of many such statements from senior Azerbaijani officials over recent months³².

23. Mr President, Members of the Court, I thank you for your attention and ask that you call Mr Wordsworth to the podium.

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

Mr WORDSWORTH:

**ARMENIA’S CLAIM THAT AZERBAIJAN HAS VIOLATED ITS OBLIGATIONS UNDER
ARTICLES 2 (1), 4 (A) AND 5 (B) OF THE CERD BY ENGAGING IN THE
DISCRIMINATORY MURDER, TORTURE AND INHUMANE
TREATMENT OF ETHNIC ARMENIANS**

A. Introduction

1. Thank you. Mr President, Members of the Court, I will be responding on the issues of law and fact raised by Armenia on Azerbaijan’s jurisdictional objection to Armenia’s free-standing claim for breach of CERD through alleged discriminatory murder, torture and inhumane treatment of ethnic Armenians³³.

2. It is important to identify up front what Armenia is asking this Court to assert its jurisdiction over and rule upon at the merits phase, that is each one of the multiple alleged but not yet particularized instances of mistreatment of Armenian military personnel and civilians in the Second Garabagh War and in all other phases of the active hostilities.

3. Yesterday, Armenia did not seek to confine or clarify its claim in any way. The two examples I gave you on Monday of what is alleged by Armenia to be in breach of CERD were just ignored, that is the allegedly deliberate use in the military operations of “weapons causing extensive and indiscriminate harm to civilians”³⁴ and the alleged use in September 2022 of “heavy artillery and drones to target not only military units and installations, but also towns and villages on the Armenian

³² See, for example, President of the Republic of Azerbaijan Ilham Aliyev, Ilham Aliyev attended Forum titled “Karabakh: Back Home After 30 Years. Accomplishments and Challenges” (6 December 2023), <https://president.az/en/articles/view/62400>; and Ministry of Foreign Affairs of the Republic of Azerbaijan, No: 571/23, Commentary on the statement issued by the OSCE Chairman-in-Office on the latest situation in the region (6 October 2023), <https://mfa.gov.az/en/news/no57123>.

³³ Memorial of Armenia, section VI.3.I.

³⁴ Memorial of Armenia, paras. 3.242 and 3.243, footnotes omitted.

side of the international border between Armenia and Azerbaijan”³⁵. Plainly such conduct is indeed included within the free-standing claim of breach of CERD.

4. There was no attempt to address Azerbaijan’s concern, which, to recall,

“is that, through the allegation of use of a certain type of weapon or of indiscriminate harm more generally — that is, matters plainly governed by international humanitarian law — Armenia is seeking to bring within CERD the entirety of a period of active hostilities, thus establishing a wholly open-ended jurisdiction with respect to, for example, alleged violence caused to civilians of Armenian ethnicity”³⁶.

5. And it is plain that this concern was not, and could not be, addressed yesterday because this is exactly what Armenia is seeking to do.

6. The Court heard countless times yesterday that all Armenia’s allegations of fact must be accepted as true at this stage, and hence, in effect, the Court must accept at this stage that there is Armenophobia, that this operates and prevails from the top to the bottom of Azerbaijan’s Government and military, such that all actions of Azerbaijani soldiers that result in allegedly indiscriminate or targeted violence against Armenian civilians or the mistreatment of Armenian military personnel are motivated by racial discrimination. Any closer inspection, it is said, must await the merits. On the basis of what you have just heard from Mr Aughey, it is easy enough to see why the Court is being asked to assume that absolutely everything that Armenia alleges is true, but that does not mean that this is the correct approach.

7. I will address the issues in the following order:

(a) First, it is important to identify the various mischaracterizations of Azerbaijan’s jurisdictional objection that you heard yesterday and to recall how Azerbaijan in fact puts its case, dealing along the way with the somewhat bizarre contention that Azerbaijan has not put forward genuine jurisdictional objections and in light of Armenia’s objections, “is simply hoping that the two sets of objections will cancel each other out”³⁷;

(b) Second, it is necessary to revisit briefly the applicable legal test and identify how Armenia is seeking to pull back from the position it adopted in its written pleadings; and

³⁵ Memorial of Armenia, paras. 4.130-4.131; see also Observations of Armenia, para. 47, referring to Memorial IV.2.IV.B (*inter alia*).

³⁶ CR 2024/17, p. 42, para. 19 (Wordsworth).

³⁷ CR 2024/18, p. 12, para. 8 (Kirakosyan).

(c) Finally, I will explain how Armenia's free-standing claim does not satisfy the applicable legal test.

B. Armenia's mischaracterization of Azerbaijan's objection to the killings and mistreatment claims

8. Turning then to the mischaracterization of Azerbaijan's objection, it was said by Professor Murphy yesterday that "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"³⁸. To similar effect, he implicitly recognized the force of Azerbaijan's concern that the very low jurisdictional threshold for which Armenia advocates would facilitate CERD claims with respect to all apparent breaches of international humanitarian law in an armed conflict involving two States that are primarily of different ethnic origins. However, he stated: "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."³⁹

9. That is not, of course, a remotely fair reflection of the way Azerbaijan frames its jurisdictional objection, which has two limbs.

(a) So far as concerns Armenian civilians, the objection is to the free-standing claim of breach of CERD concerning the 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. Azerbaijan is simply saying that a claimant has to tie back alleged mistreatment to some specific evidence of racial discrimination. That follows very naturally from the wording of Article 1 (1) CERD.

(b) As to the objection concerning alleged acts against Armenian military personnel in the course of active hostilities, Azerbaijan is not of course saying that "anything goes" on the battlefield so far as CERD is concerned or that CERD is somehow displaced by the rules of international

³⁸ CR 2024/18, p. 36, para. 10 (Murphy).

³⁹ CR 2024/18, p. 43, para. 30 (Murphy).

humanitarian law⁴⁰, and it is curious that Armenia — both through Professor Murphy and later through Ms Macdonald⁴¹ — is seeking to suggest otherwise. Azerbaijan’s position is merely that, so far as concerns the particular allegations made by Armenia in this case, it has not made an adequate showing of mistreatment based on racial discrimination so as to engage jurisdiction under CERD.

10. The point was made yesterday, as if it were a point in Armenia’s favour, that Azerbaijan does not object to most of the claims made by Armenia, and a slide to that effect was briefly put up on the screen, and it can usefully be shown with a little more time now to consider it.

11. Certainly, Azerbaijan’s objection has been carefully confined, and a brief review of Armenia’s slide shows that Azerbaijan is not objecting to what amount to a series of claims concerning alleged policies and State practices with respect to ethnic cleansing, supporting violence, inciting hatred, the withholding of civil and political rights, the State’s failure to meet its positive obligations and to provide effective remedies.

12. These are recognisable as matters capable of falling within CERD, and although Azerbaijan is certain of defeating these claims in due course, these are claims that are manageable, both in terms of Azerbaijan knowing the case that it has to meet and also for the Court in terms of making its ultimate determinations.

13. By contrast, Armenia’s claim on discriminatory killings and mistreatment is not — and is quite deliberately not — a claim with respect to an unlawful campaign or practice, as to which the Court could seek to identify at the merits phase whether there was some racial animus driving an alleged practice together with sufficient evidence of implementation of that practice on the ground.

14. Instead, the claim that has been put before you by Armenia has no filter. As Armenia put it yesterday: “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.”⁴² And as the Court will know from having looked at Armenia’s Memorial, by “multiple acts”, Armenia does not mean a dozen or several dozen, it means many, many more,

⁴⁰ Cf. CR 2024/18, p. 35, para. 6 (Murphy).

⁴¹ CR 2024/18, p. 36, para. 10, and p. 43, para. 30 (Murphy); CR 2024/16, p. 48, para. 21 (Macdonald).

⁴² CR 2024/18, p. 43, para. 32 (Murphy).

because the Court is being asked to examine the *entire* conduct of the Second Garabagh War and other periods of active hostilities and to rule on an unstated but very high number of what are apparent breaches of international humanitarian law or human rights norms, all on the basis that these are said to be generated by racial discrimination.

15. To make this point good, it is useful to look at paragraph 6.82 of Armenia's Memorial, where it starts to plead out its case on breach concerning alleged discriminatory killings and mistreatment. It says:

“For the sake of brevity, Armenia does not repeat below *the myriad acts of violence against ethnic Armenians*, of which *detailed descriptions are set forth in Parts III-IV of this Memorial*.” (Emphasis added.)

Some 480 pages, by the way.

“Instead, Armenia explains how different categories of violent acts against ethnic Armenians constitute breaches of the CERD during three distinct periods”.

And then you see the different categories in respect of each of which there are then multiple references back to Parts III and IV of the Memorial.

16. The same basic point follows from paragraph 47 of Armenia's Written Observations, where it says:

“The direct evidence of Azerbaijan's racially motivated violence and other abuse is too copious to recount in full. Armenia therefore directs the Court to the following sections of its Memorial: III.1.II, III.2.II, III.3.I, . . . It is important to note, however, that as explained in Section 4 below, the entirety of Armenia's Application, Memorial and accompanying evidence is relevant context in evaluating Armenia's claims.”

17. And this “direct evidence” includes the multiple allegations of indiscriminate shelling and other apparent breaches of international humanitarian law said to be racially motivated and hence within the Court's CERD jurisdiction, even though in a very great many of the individual instances there is no specific evidence of racial discrimination: but it is said any alleged episode of indiscriminate shelling is an individual breach of CERD, every alleged use of cluster munitions, and so on. That is why Azerbaijan makes this objection, not as part of some cynical ploy as was, regrettably, suggested yesterday⁴³.

18. Notably, yesterday, Armenia also sought to have it both ways, and suggested that “one can certainly look at our evidence and reach a conclusion that the conduct of which we complain was

⁴³ Cf. CR 2024/18, p. 12, para. 7 (Kirakosyan).

widespread or systematic in nature”⁴⁴. But that is not the claim that Armenia has pleaded, unlike, for example, in *Ukraine v. Russia*. And as we pointed out on Monday, that would be a more difficult claim for Armenia to make out at the merits phase⁴⁵. If this is at all serious, and if Armenia is intending to seek to amend its claim, Azerbaijan looks forward to that being made clear on Friday.

19. It should be noted here that the claim that Azerbaijan has put before you, which the Court will be focusing on next week, is by contrast a manageable claim that concerns so far as is relevant a campaign of ethnic cleansing. And it is to be emphasized that although you heard from Armenia yesterday multiple allegations of horrific mistreatment, the allegations that Azerbaijan makes are not less horrific.

20. Rather oddly, it was asserted by Armenia that “the challenge for Azerbaijan is that it has no videos of racist atrocities to show and no pervasive hate speech by public officials to quote”⁴⁶, as if that were either correct or could be relevant at this stage. As the Court will be aware, and for what it is worth, Azerbaijan has also submitted multiple videos of atrocities against Azerbaijanis by the Armenian military that show what it considers to be evidence of racial discrimination, alongside evidence of hate speech⁴⁷. There are very serious allegations of atrocities from both sides that could be reflected in alleged widespread breaches of international humanitarian law or human rights, but the important question for now is whether these have been put before you as recognizable and manageable CERD claims or, instead, as an unrecognizable and unmanageable series of entirely open-ended claims covering all allegations of unlawful violence against combatants or civilians in the active hostilities phases of an armed conflict.

21. No doubt alive to this very real issue, Professor Murphy also contended that 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 issue”⁴⁸. For support, Armenia relied on the Court’s finding in *Democratic Republic*

⁴⁴ CR 2024/18, p. 43, para. 32 (Murphy).

⁴⁵ CR 2024/17, p. 41, para. 16 (Wordsworth).

⁴⁶ CR 2024/18, p. 12, para. 7 (Kirakosyan).

⁴⁷ See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, Application of Azerbaijan, para. 80; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, Memorial of Azerbaijan, paras. 6-7 and 345 *et seq.*

⁴⁸ CR 2024/18, p. 44, para. 33 (Murphy).

of the *Congo v. Uganda* that, in that case, “it is not necessary for the Court to make findings of fact with regard to each individual incident alleged”⁴⁹. Yet this statement was of course case-specific, and it has been taken out of context.

22. The claim in *Democratic Republic of the Congo v. Uganda*, which had been brought before the Court pursuant to Article 36 (2) of the Statute, was specifically pleaded as one for “massive human rights violations”⁵⁰, and the Court found “the coincidence of reports from credible sources sufficient to convince it that massive human rights violations and grave breaches of international humanitarian law were committed”⁵¹. Thus, there is no appropriate analogy to this aspect of Armenia’s claim — the claim in the *Democratic Republic of the Congo* case would be equivalent to a claim of a practice of racial discrimination, where the Court finds that the practice is made out without having to decide on each individual instance relied on. That is precisely in line with the distinction that I was seeking to draw out on Monday, and does not assist Armenia with respect to its case on killings and inhuman treatment, as to which it is expressly putting forward a very lengthy series of individual allegations.

23. Finally, on how Azerbaijan actually puts its objection, there were various non-serious assertions as to a lack of clarity including as to Azerbaijan’s letter of 5 April 2024⁵². We do not accept those, and in so far as there was any real doubt, when Azerbaijan refers to the combatants in the active hostilities phase of the armed conflict, it of course includes the combatants in the so-called “NKR Defense Army”⁵³. Indeed, it has been found as a fact by the European Court of Human Rights that “the Armenian armed forces and the ‘NKR’ are highly integrated”⁵⁴.

C. The “capable of falling within the scope of the Convention” legal test and how it is to be applied

24. I turn to the applicable legal test, as to which there is much common ground. There are two points to be made.

⁴⁹ *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.

⁵⁰ *Ibid.*, p. 181, para. 23 (b).

⁵¹ *Ibid.*, p. 239, para. 207.

⁵² CR 2024/18, p. 26, para. 3 (d’Argent).

⁵³ Referred to e.g. at Memorial of Armenia para. 3.55.

⁵⁴ *Chiragov v. Armenia*, Case 13216/05, Judgment of 16 June 2015, para. 180.

25. First, as Ms Macdonald stated, the Court’s task at this stage is “to look at Armenia’s claims, look at the evidence, and say, is this *capable* of amounting to racial discrimination”⁵⁵. That is a fair description of the Court’s task. At the same time, however, Armenia’s counsel repeated again and again that the facts pleaded by Armenia should be assumed to be true, and Professor d’Argent stated that “it is therefore totally unnecessary at this stage to delve into linguistic exegesis or to assess the meaning of certain remarks”, and that it is “equally erroneous to argue that Armenia has not ‘provided sufficient evidence’ at this stage” because that requires an assessment of the evidence, which can only be done at the merits stage⁵⁶. If this is seeking to erect a “no entry” sign, and that does appear to be the case, it is both notably defensive and inappropriate.

26. A key question at this stage is whether the evidence presented by Armenia of the use of certain statements in connection with specific conduct shows that the conduct is capable of being based on racial discrimination. Thus, the Court *must* look at the underlying documents and assess for itself whether the relevant statements relied on, on the face of the specific language used in its context, is capable of amounting to racial discrimination within the meaning of Article 1 (1) CERD. This should be self-evident, and in no sense cuts across the Court’s established jurisprudence that it is not appropriate at the jurisdictional stage to weigh the evidence against any other evidence or argument, or otherwise to assess its plausibility.

27. If it were otherwise, a claim for breach of CERD could be brought into existence by a combination of pleading and assertion that documents relied on show racial discrimination. Indeed, Armenia must accept this as the basic approach because it included some of the underlying evidence in its judges’ folders and invited the Court to read these. Azerbaijan is not asking the Court to dive into “linguistic exegesis” or a critical examination of Armenia’s evidence. It is merely relying on what it understands to be a common ground position that the Court must look at a document for the limited purpose of identifying what it in fact says on its face. And that exercise is all the more important where, as here, one party has picked out particular phrases from the underlying documents and presented those statements without the surrounding context.

⁵⁵ CR 2024/18, p. 52, para. 29 (Macdonald).

⁵⁶ CR 2024/18, p. 30, para. 13 (d’Argent) (informal translation).

28. The second point on application of the legal test concerns the current specific context of an armed conflict where the peoples of the two States are primarily of different ethnic origins. Here again, there is significant common ground.

29. Paragraph 6 of Armenia's Written Observations reads as follows:

“Azerbaijan itself acknowledges that acts that violate international humanitarian law (‘IHL’) may also violate the CERD but nevertheless *asserts that ‘the mere fact that the peoples of two States at war often are primarily of different ethnic origins does not, without more, transform every act of war into a distinction “based on” ethnic origin’.* Armenia agrees. Armenia does not agree, however, with Azerbaijan's assertion that the allegations in question ‘potentially raise questions under IHL, but not under CERD’.” (Emphasis added.)

30. Hence, which should be common ground, the need for the something “more”.

31. Yet it appeared to be suggested at various stages yesterday that it was sufficient for the purposes of CERD that there be allegations of mistreatment within the context of an armed conflict where the two sides are primarily of different ethnic origin. Curiously, Professor d'Argent appeared to criticize Azerbaijan for refusing for three decades to recognize the self-determination of Armenians living in Garabagh, although that refusal was of course shared by the entire international community other than Armenia⁵⁷. He alleged that there had been numerous discriminatory violations and ethnic cleansing, and then suggested — perhaps rather colourfully — that he could end his speech there⁵⁸. Such an argument might have been a starting-point for a response to a jurisdictional objection to a claim for ethnic cleansing, but that is not an objection that has been brought by Azerbaijan.

32. It was also suggested that Azerbaijan is seeking to reverse the burden of proof because it is saying that it is necessary for Armenia to show the something more⁵⁹. Yet all Azerbaijan is doing is refer to what has been agreed between the Parties.

D. Armenia's claim does not meet the applicable legal test

33. I turn finally to application of the legal test to Armenia's free-standing claim of alleged killings and mistreatment.

⁵⁷ See Memorial of Armenia, para. 2, and the Security Council resolutions referred to there.

⁵⁸ CR 2024/18, pp. 28-29, paras. 7-9 (d'Argent).

⁵⁹ CR 2024/18, p. 31, para. 18 (d'Argent).

34. Armenia's principal answer, on which Professor Murphy spent considerable time yesterday, is its case on the so-called general Armenophobia, which Mr Aughey has already focused on. This is the critical pivot for its argument that its free-standing claim for killings and mistreatment is a CERD claim. And to be clear, it is absolutely reliant on the so-called Armenophobia — without this, what is there to say that the alleged indiscriminate shelling of a certain village in the course of active hostilities⁶⁰, or likewise the alleged murder of civilians, falls within CERD as opposed to the rules of international humanitarian law or other human rights norms?

35. It was asserted by Armenia yesterday that: "Armenia has presented abundant direct evidence of the racial motivation behind each and every claim [it has] asserted."⁶¹ With respect, that is plainly wrong. Indeed, it was contradicted shortly afterwards when it was stated that Armenophobia "helps [to] 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 [entirely] appropriate."⁶² Thus Armenia accepted what is obvious — it is using the alleged Armenophobia to "imply racial animus" or, to put the matter a little less coyly, to fill a large gap in its pleading.

36. Yet, the evidence that is being relied on to support the existence of the so-called Armenophobia fails on its face to show racial discrimination, and an allegation of Armenophobia is inadequate to fill the evidentiary gap or, as it was put yesterday, again with some colour, to constitute "overwhelming evidence of [the] racial hatred underpinning the atrocities committed by Azerbaijan"⁶³. And, to recall, that ambitious description was very important in Armenia's attempt to address the question that has to be asked — if Armenia's allegations covering *all* allegations of mistreatment in the armed conflict fall within the Court's jurisdiction under CERD as a free-standing claim of killings and violence, which equivalent claims in any other given armed conflict will not?

37. The inadequate answer, other than the mischaracterizations of Azerbaijan's case to which I have already referred⁶⁴, was "that Azerbaijan's conduct constitutes racial discrimination of a kind

⁶⁰ See e.g. Memorial of Armenia, para. 6.88, referring to Memorial sections IV.1 and IV.2.IV.A.1.

⁶¹ CR 2024/18, p. 39, para. 21 (Murphy).

⁶² *Ibid.*

⁶³ CR 2024/18, p. 43, para. 30 (Murphy).

⁶⁴ E.g. *ibid.*

rarely seen in recent human memory”⁶⁵. Hence a great deal hangs on the evidence of the so-called Armenophobia, that is why Armenia spent so much time on it yesterday, and why Azerbaijan has just spent some time actually examining the underlying evidence.

38. Azerbaijan was also invited to accept that the alleged deliberate killing of elderly ethnic Armenians by Azerbaijani soldiers in the course of the Second Garabagh War and in the active hostilities of April 2016 were capable of falling within CERD but, as horrific as these instances appear, there is nothing whatsoever to link these acts to racial discrimination⁶⁶.

39. Armenia’s second line of argument is to say that in certain specific instances it has tied individual allegations of mistreatment back to evidence of racial discrimination, although again great weight is placed on the alleged Armenophobia as supposedly having a top to bottom pervasive effect⁶⁷. Various words and phrases were shown on the Court’s screen while, at tab 3 of its judges’ folders, Armenia presented its self-serving descriptions of Armenia’s videos⁶⁸.

40. To recall one example, which was presumably seen as Armenia’s best example because it is the first example in paragraph 48 of its Written Observations, is the one of the Azerbaijani soldier allegedly saying: “We will eliminate your race as well.”⁶⁹

41. We ask you in due course to read the certified translation that Azerbaijan has just submitted to the Registry, from which the impression is very different as there is plainly a discussion of revenge for having “killed our strong guys”, and the words that Armenia relies on are correctly translated as “We will destroy their type”. The scene is horrific, and disgraceful, but it is not racially motivated violence in the way that it is being portrayed by Armenia, and it is not a matter that suggests that everything needs to await closer inspection on the merits⁷⁰.

42. The transcripts of the videos are not long⁷¹, it is not necessary to read them all, and the Court will be able to see for itself in short order whether they appear as evidence of racial

⁶⁵ *Ibid.*

⁶⁶ CR 2024/18, pp. 47-48, paras. 16-19 (Macdonald).

⁶⁷ CR 2024/18, p. 49, paras. 23-26 (Macdonald).

⁶⁸ CR 2024/18, pp. 50-52, paras. 27-28 (Macdonald).

⁶⁹ Armenia’s judges’ folder, 16 April 2024, tab 3, p. 18, item 101.

⁷⁰ Cf. CR 2024/18, pp. 50-51, para. 27 (g) (Macdonald).

⁷¹ Memorial of Armenia, from Annex 117.

discrimination or rather of derogatory language and insults that could be expected in active hostilities between bitterly opposed foes. The same applies to the witness evidence in Annex 291 that is at tab 4 of Armenia's judges' folder, which we also ask you to read with care.

43. What Armenia is not able to do is to tie the alleged killings and mistreatment back to the racist language that it would wish to rely on, such as "we will eliminate your race".

44. Mr President, Members of the Court, I thank you for your attention and ask you to call on Professor Boisson de Chazournes.

The PRESIDENT: I thank Mr Wordsworth for his statement. Je donne la parole à M^{me} la professeure Laurence Boisson de Chazournes. Madame, la parole est à vous.

M^{me} BOISSON DE CHAZOURNES :

ALLÉGATIONS DE L'ARMÉNIE SELON LAQUELLE L'AZERBAÏDJAN A VIOLÉ LES OBLIGATIONS QUI LUI INCOMBENT EN VERTU DES ARTICLES 2 1), 4 A) ET 5 B) DE LA CIEDR EN SE LIVRANT AU MEURTRE DISCRIMINATOIRE, À LA TORTURE ET AU TRAITEMENT INHUMAIN DE PERSONNES D'ORIGINE ARMÉNIENNE

I. Introduction

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs de la Cour, c'est un honneur de me présenter à nouveau devant vous au nom de l'Azerbaïdjan.

2. Lors de ce second tour de plaidoiries, je me limiterai à aborder quelques points afin de rectifier certains propos tenus par les conseils de l'Arménie concernant la compétence *ratione materiae* de votre juridiction en vertu de la CIEDR, pour ce qui est de la détention arbitraire pour des motifs de discrimination ethnique et la disparition forcée pour des motifs de discrimination ethnique.

II. Pratique alléguée de détentions arbitraires exercées pour des motifs de discrimination ethnique

3. Je traiterai en premier lieu des affirmations de l'Arménie selon lesquelles l'Azerbaïdjan a détenu arbitrairement des personnes d'origine arménienne.

4. Mais revenons tout d'abord sur la distinction entre les comportements qui donnent lieu à une violation relevant du droit international humanitaire et les comportements qui sont susceptibles

de relever de la CIEDR. Il y a lieu d'établir cette distinction lorsque l'on fait face à des situations d'hostilités armées et de conflits armés.

5. L'Arménie a soutenu hier que le droit international humanitaire est « completely irrelevant »⁷² lorsqu'il s'agit d'évaluer si les actes de détention arbitraire et de disparition forcée sont « susceptibles d'entrer dans » les dispositions de la CIEDR. L'Arménie semble suggérer que, si un prisonnier de guerre est détenu pendant un conflit armé, les règles du droit international humanitaire n'ont pas d'implication. De même, l'Arménie semble suggérer que, si un civil est détenu pendant un conflit armé, les règles du droit international humanitaire n'ont pas d'implication.

6. Toutefois, les allégations de l'Arménie concernant la détention arbitraire portent sur des individus qui ont été détenus en tant que prisonniers de guerre ou en raison de leurs activités illégales présumées. Et en grande majorité, elles concernent des individus détenus pendant et à la suite de la seconde guerre du Garabagh. Il est dans ce contexte pour le moins difficile d'accepter l'affirmation de l'Arménie selon laquelle le droit international humanitaire serait sans pertinence. L'Azerbaïdjan soutient au contraire que le droit international humanitaire a tout à voir avec les allégations de l'Arménie selon lesquelles l'Azerbaïdjan se serait engagé dans une « practice[] of discriminatory arbitrary detention »⁷³.

7. Si la CIEDR peut trouver application dans le contexte d'un conflit armé, le droit international humanitaire le peut également. Et ce qui doit être souligné, c'est qu'en cas de conflit armé et d'hostilités armées, le droit international humanitaire trouvera *forcément* application⁷⁴. Qui plus est, le droit international humanitaire est dense et peut contenir des dispositions plus spécifiques qui trouveront alors application en lieu et place d'autres normes⁷⁵. Tel est le cas en matière de détention. Les troisième et quatrième conventions de Genève régissent en détail les questions ayant trait à la détention, la première pour ce qui est du traitement et du rapatriement des prisonniers de

⁷² CR 2024/18, p. 35, par. 5 (Murphy).

⁷³ MA, p. 750, Submission 4).

⁷⁴ Art. 2, convention (I) de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne, 12 août 1949 ; art. 2, convention (II) de Genève pour l'amélioration du sort des blessés, des malades et des naufragés des forces armées sur mer, 12 août 1949 ; art. 2, convention (III) de Genève relative au traitement des prisonniers de guerre, 12 août 1949 ; art. 2, convention (IV) de Genève relative à la protection des personnes civiles en temps de guerre, 12 août 1949.

⁷⁵ Cf. *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif*, C.I.J. Recueil 2004 (I), p. 178, par. 106.

guerre, et la seconde pour ce qui est de l'internement ou de la détention des « personnes protégées ». Je me limiterai à évoquer les articles 4, 5, 12, 16, 21 et 118 de la troisième convention de Genève et les articles 13, 27, 42, 43, 78, 132 et 133 de la quatrième convention de Genève. Les allégations de détention illégale doivent être tranchées par référence à ces dispositions.

8. Dans son avis consultatif sur les armes nucléaires, votre juridiction a souligné qu'

« [e]n principe, le droit de ne pas être arbitrairement privé de la vie vaut aussi pendant des hostilités. C'est toutefois, en pareil cas, à la *lex specialis* applicable, à savoir le droit applicable dans les conflits armés, conçu pour régir la conduite des hostilités, qu'il appartient de déterminer ce qui constitue une privation arbitraire de la vie. Ainsi, c'est uniquement au regard du droit applicable dans les conflits armés, et non au regard des dispositions du pacte lui-même, que l'on pourra dire si tel cas de décès provoqué par l'emploi d'un certain type d'armes au cours d'un conflit armé doit être considéré comme une privation arbitraire de la vie contraire à l'article 6 du pacte. »⁷⁶

9. Une situation similaire se présente en l'espèce. Empruntant les mots de la Cour, le test de ce qui constitue une détention arbitraire doit être déterminé par la *lex specialis* applicable, à savoir le droit applicable en temps de conflits armés. La Cour doit donc décider de l'allégation de « practice[] of discriminatory arbitrary detention » en se référant au droit applicable en temps de conflits armés, et non au regard des dispositions de la CIEDR.

10. Par souci de complétude, l'Azerbaïdjan précise qu'il ne suggère en aucun cas que la Cour ne peut pas se référer aux règles du droit international humanitaire à des fins d'interprétation. En outre, il est incontestable que, si la compétence de la Cour découle de l'article 22 de la CIEDR, la haute juridiction ne pourra pas se prononcer sur d'éventuelles violations de droit international humanitaire. Votre juridiction a clairement souligné cela dans son récent arrêt en l'affaire *Ukraine c. Russie*⁷⁷.

11. Et donc, la question est celle de savoir : au cas où les allégations de l'Arménie étaient considérées comme fondées — ce que l'Azerbaïdjan conteste —, quel *corpus* de normes impliqueraient-elles ? La réponse de l'Azerbaïdjan à cette question est que les allégations de

⁷⁶ *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996 (I)*, p. 240, par. 25 ; cf. *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)*, p. 178, par. 106 ; International Law Commission, *The Analytical Study of the Study Group on the same topic*, dated 13 April 2006 (A/CN.4/L.682), par. 104.

⁷⁷ *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. 201.

l'Arménie — si elles étaient considérées comme fondées — soulèvent des questions relatives à des violations de droit international humanitaire.

12. Lorsque l'Azerbaïdjan, dont la très grande majorité de la population est composée de personnes d'origine ethnique azerbaïdjanaise, est engagé dans un conflit armé avec l'Arménie, dont presque toute la population est composée de personnes d'origine ethnique arménienne, les prisonniers de guerre des deux côtés sont des prisonniers de guerre ayant des origines ethniques. De ce fait, il ne suffit pas de transformer une allégation en une revendication sous la CIEDR simplement parce qu'un prisonnier de guerre en question appartient à un groupe ethnique.

13. Le droit international humanitaire trouvant application dans les situations couvertes par les allégations de l'Arménie et non la CIEDR, la Cour doit distinguer les demandes régies par le droit international humanitaire de celles qui seraient couvertes par la CIEDR. Pour ce qui est des allégations de violations du droit international humanitaire, la compétence *ratione materiae* de la Cour n'est pas susceptible d'être établie. Or, les preuves produites par l'Arménie montrent clairement que tous les détenus ont été capturés au cours d'hostilités actives, ou en raison de leurs activités illégales présumées. La deuxième objection à la compétence *ratione materiae* de la Cour doit donc être retenue.

14. Revenant sur la « résolution du Parlement européen du 20 mai 2021 sur les prisonniers de guerre à la suite du dernier conflit entre l'Arménie et l'Azerbaïdjan »⁷⁸ et la résolution 2391 (2021) de l'Assemblée parlementaire du Conseil de l'Europe sur les « conséquences humanitaires du conflit entre l'Arménie et l'Azerbaïdjan/le conflit du [Garabagh] »⁷⁹, l'Arménie a demandé à la Cour de jeter a « cursory glimpse »⁸⁰ sur ces résolutions, lesquelles montreraient clairement, selon l'Arménie, que ses allégations sont susceptibles d'entrer dans le cadre de la CIEDR. Comme vous pouvez le voir sur la diapositive, ces résolutions avaient pour destinataires les deux parties impliquées dans le conflit armé. Et elles rappellent aux États la nécessité du respect des conventions de Genève, mais ne se réfèrent pas à la CIEDR.

⁷⁸ European Parliament, Resolution of 20 May 2021 on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan (2021/2693(RSP)) (20 mai 2021), accessible à l'adresse suivante : https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.pdf (MA, annexe 35).

⁷⁹ Council of Europe, Parliamentary Assembly, Resolution 2391(2021): Humanitarian consequences of the conflict between Armenia and Azerbaijan/Nagorno-Karabakh conflict (27 septembre 2021) (MA, annexe 37).

⁸⁰ CR 2024/18, p. 59, par. 8 (Klingler).

15. L'Arménie a cité à plusieurs reprises aussi les observations finales du Comité CIEDR de 2022, arguant qu'elles sont hautement pertinentes pour déterminer si un comportement viole la CIEDR⁸¹. L'Azerbaïdjan ne partage pas cette opinion. Comme il a été mentionné lundi dernier, les observations dudit Comité ne sont pas d'assistance à la Cour afin d'établir sa compétence en vertu de la CIEDR. Ainsi que la Cour l'a noté, le Comité CIEDR prend appui sur des allégations, mais il ne vérifie pas leur véracité. La Cour ne peut donc pas accepter des preuves telles les observations du Comité CIEDR pour déterminer si les allégations relèvent de la CIEDR. Il existerait sinon des risques d'utilisation abusive des possibilités offertes par le Comité, voire de manipulation, pour tenter de satisfaire aux exigences du seuil de compétence de la Cour en vertu de la CIEDR. En d'autres mots, l'Arménie ne peut pas utiliser les observations du Comité CIEDR pour contourner les exigences de l'article premier, paragraphe 1, de la CIEDR ou pour transformer ses allégations en revendications relevant de la CIEDR.

16. L'Arménie a également soutenu que le système judiciaire de l'Azerbaïdjan discrimine les Arméniens en raison de leur origine ethnique. Mais comme il en a été fait état lundi dernier, c'est ce même système judiciaire qui a refusé de maintenir des charges contre des détenus arméniens faute de preuves, qui a abandonné les accusations portées contre des détenus arméniens ou encore qui a commué les peines de détenus arméniens⁸². Les procès se sont déroulés en audience publique. Les audiences ont en effet été retransmises par flux vidéo, accessibles au public, et des représentants du CICR, du corps diplomatique, du médiateur azerbaïdjanais et des médias internationaux étaient présents⁸³.

17. L'Arménie a également fait référence au procès et à la condamnation de M. Vicken Euljekjian comme étant « illustrative of Azerbaijan's discriminatory subjection of ethnic Armenians to arbitrary detention ». En ce qui concerne l'affirmation selon laquelle M. Vicken Euljekjian est un détenu civil, je vous réfère à l'onglet n° 4 du dossier des juges et à la diapositive à l'écran. Il y a des photographies de M. Vicken Euljekjian provenant d'une page publique du réseau social *Facebook*.

⁸¹ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined tenth to twelfth reports of Azerbaijan, Nations Unies, doc. CERD/C/AZE/CO/10-12 (22 septembre 2022), accessible à l'adresse suivante : <https://documents.un.org/api/symbol/access?j=G2249930&t=pdf>, par. C.4 a) (MA, annexe 5).

⁸² CR 2024/17, p. 51-52 (Boisson de Chazournes).

⁸³ CR 2021/21, p. 29, par. 17 (Goldsmith).

Ce dernier porte un treillis militaire et un armement de qualité militaire. Est-ce que ces photos sont celles d'un civil ? Ce monsieur a pourtant été décrit ainsi par le conseil de l'Arménie⁸⁴.

18. En outre, l'Arménie a soutenu que ses allégations de détention pour des motifs de discrimination ethnique dépassent les deux catégories de détenus mentionnées par l'Azerbaïdjan dans ses objections préliminaires et incluraient des allégations infondées concernant la prétendue détention de personnes qui n'étaient pas des citoyens arméniens, telles que des « Russes » portant des « noms de famille arméniens » ou d'autres citoyens étrangers lors de leur arrivée en Azerbaïdjan. Pour étayer ses allégations, l'Arménie s'est appuyée sur un communiqué de presse publié par le ministère russe des affaires étrangères de 2017, qui concerne une prétendue discrimination à l'égard de « citoyens russes »⁸⁵. L'Arménie s'est également appuyée sur des cas de prétendue discrimination de citoyens étrangers, venant de Turquie, des États-Unis, d'Estonie ou de Russie, que l'Azerbaïdjan aurait prétendument détenus. Cependant, ces exemples ne montrent pas que ces personnes ont été détenues en raison de leur origine ethnique arménienne. Au contraire, ces cas exposent la stratégie de l'Arménie dans cette affaire, c'est-à-dire de se fier à des éléments de preuve éloignés et détachés pour construire un récit selon lequel des ressortissants arméniens auraient été détenus « de manière arbitraire et discriminatoire » par l'Azerbaïdjan et cela en raison de leurs « origines ethniques ». Mais l'Arménie ne peut pas transformer les contrôles d'identité de routine effectués par les gardes-frontières ou les autorités douanières aux ports d'entrée ou aux aéroports en Azerbaïdjan en allégations concernant l'interprétation ou l'application de la CIEDR. L'Arménie ne fournit dans son mémoire aucun contexte sur la détention des soi-disant individus portant des noms de famille arméniens pour étayer son affirmation selon laquelle les détentions étaient basées sur des origines ethniques. Le président de l'Azerbaïdjan a clarifié et souligné que l'Azerbaïdjan n'a pas de restriction d'entrée sur une base ethnique. La Cour devrait donc à ce stade rejeter sommairement ces allégations infondées car elles ne sont pas susceptibles de relever de la CIEDR.

19. Monsieur le président, je voudrais maintenant aborder un autre point soulevé par l'Arménie. L'Arménie a en effet soutenu que l'Azerbaïdjan n'avait pas contesté son affirmation selon laquelle

⁸⁴ CR 2024/18, p. 66 (Klingler).

⁸⁵ MA, p. 130-135.

« Azerbaijan has failed to guarantee equal treatment by its justice system [and that] if Armenia's claims of unequal treatment in the justice system fall within the CERD, [Armenia's] claims of discriminatory detention predicated on unequal treatment in the justice system must fall within the CERD as well »⁸⁶.

20. J'observerai en réponse que les allégations de l'Arménie concernant un traitement égal et le système judiciaire font partie de la soumission n° 7, c'est-à-dire « Azerbaijan has violated ... the CERD by failing to guarantee, without discrimination, the civil, political, economic, social, and cultural rights of ethnic Armenians ». Comme il est évident, cette soumission inclut plusieurs allégations et l'Azerbaïdjan les examinera ultérieurement, lors de la procédure au fond. Dans tous les cas, dans la mesure où les allégations concernant les droits procéduraux des détenus arméniens sont concernées, ces allégations sont sujettes aux objections préliminaires de l'Azerbaïdjan.

21. L'argument de l'Arménie révèle également que la Cour ne peut pas se fier à des rapports au contenu général, lesquels ne constituent pas des preuves de première main, et cela, l'utilisation de ces documents pour évaluer le système judiciaire azerbaïdjanais et considérer si chacun des détenus arméniens a ou non bénéficié de droits fondamentaux et d'une procédure régulière.

III. Pratique alléguée de disparitions forcées fondées sur des motifs de discrimination ethnique

22. Monsieur le président, j'en viens maintenant à la question des disparitions forcées, laquelle constitue la troisième exception d'incompétence *ratione materiae* de votre juridiction. Pour rappel, la CIEDR n'est susceptible d'être invoquée que s'il est démontré que les disparitions forcées ont trait à des pratiques de discrimination ethnique. Or, ainsi que l'Azerbaïdjan l'a indiqué, il existe des preuves qui démontrent que les allégations de l'Arménie de discrimination ethnique concernant les disparitions forcées ne sont pas fondées. L'Arménie n'apporte pas de preuves dans le sens contraire.

23. L'Arménie a soutenu que ses preuves montrent que « dozens of ethnic Armenians, including both servicemen and civilians » ont disparu entre le début de la seconde guerre de Garabagh et la soumission de son mémoire. Elle a également affirmé qu'au moins 20 Arméniens d'origine ethnique ont été assassinés depuis la seconde guerre de Garabagh, mais que l'Azerbaïdjan n'a pas reconnu les circonstances de leur mort. L'Arménie pousse les limites de la CIEDR très loin. En substance, l'Arménie affirme que toute personne malheureusement disparue après ou pendant la

⁸⁶ CR 2024/18, p. 67, par. 31 (Klingler).

guerre est une disparition forcée. Outre le fait que l'identité de toute personne affectée dans un conflit entre l'Arménie et l'Azerbaïdjan est soit arménienne, soit azerbaïdjanaise, il n'existe aucune preuve spécifique indiquant que l'Azerbaïdjan a refusé de reconnaître la privation de liberté et a dissimulé le sort ou le lieu des personnes disparues en fonction de leurs origines ethniques. Mais si tel était le cas, pourquoi l'Azerbaïdjan retournerait-il les corps ainsi que je le rappellerai très bientôt ? L'Azerbaïdjan a toujours coopéré avec les représentants du CICR pour faciliter les opérations de recherche et de rapatriement.

24. Pour étayer ses allégations, l'Arménie a également fait référence à la vidéo d'un Arménien « hors de combat ». Une fois de plus, l'Arménie se trompe. Le bureau du procureur militaire de l'Azerbaïdjan a ouvert une enquête pénale et une procédure est en cours⁸⁷.

25. Demander à votre Cour de considérer qu'elle a compétence à l'égard d'une dite pratique de disparitions forcées, sans preuve spécifique mettant en évidence une différence de traitement fondée sur l'origine ethnique, ne peut pas permettre d'arguer que le comportement dénoncé est susceptible d'entrer dans les dispositions de la CIEDR.

26. J'ai rappelé lundi que l'Azerbaïdjan avait remis des corps remis à l'Arménie à la suite des hostilités armées entre les deux États⁸⁸. En outre, l'Azerbaïdjan est prêt à coopérer avec l'Arménie en matière de recherche des personnes disparues dans les deux pays, quel que soit leur statut⁸⁹. Je vous réfère au document qui figure à l'onglet n° 5 du dossier des juges. Ce document rappelle également que près de 4 000 citoyens azerbaïdjanaïses ont disparu pendant la première guerre du Garabagh et, à ce jour, seules 25 personnes ont été identifiées.

27. Les faits que je viens d'évoquer montrent bien qu'il n'y a pas de pratique de discrimination fondée sur l'origine ethnique en matière de disparitions.

⁸⁷ CR 2024/18, p. 73, par. 18 (Sicilianos).

⁸⁸ "State Commission: We deem it necessary to involve individuals who served as field commanders from the Armenian side until 1994 in search process for burial sites of our missing compatriots", *AZERTAG* (14 février 2024), accessible à l'adresse suivante : https://azertag.az/en/xeber/state_commission_we_deem_it_necessary_to_involve_individuals_who_served_as_field_commanders_from_the_armenian_side_until_1994_in_search_process_for_burial_sites_of_our_missing_compatriots-2921674.

⁸⁹ *Ibid.*

28. Les allégations de l'Arménie ayant trait aux deuxième et troisième objections de la compétence *ratione materiae* de votre juridiction ne mettent donc pas en cause la CIEDR. Ces objections doivent donc être retenues.

29. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, ceci conclut ma présentation. Je vous remercie de votre attention bienveillante. Monsieur le président, puis-je vous demander de donner la parole au professeur Talmon ?

Le PRÉSIDENT : Je remercie Madame Boisson de Chazournes pour son intervention. I will now invite Professor Talmon to take the floor. You have the floor, Sir.

Mr TALMON:

**FIRST OBJECTION: FAILURE TO MEET THE NEGOTIATION
PRECONDITION IN ARTICLE 22 OF CERD**

1. Monsieur le président, Madam Vice-President, distinguished Members of the Court, my task today is to respond to Armenia's observations made in response to Azerbaijan's first preliminary objection — Armenia's non-fulfilment of the negotiation precondition.

2. Yesterday, you were told by Armenia that this objection was "simply not serious"⁹⁰. This is far from wrong. This objection is not just serious; it is fatal to Armenia's Application.

3. I do not need to go over the history of the exchanges between the Parties again — the facts speak for themselves. There is no question of Azerbaijan "distort[ing] reality"⁹¹. I would invite the Court to revisit the timeline provided at tab 1 of Monday's judges' folder and study the actual contents of the Parties' correspondence and the subject-matter of their meetings⁹².

4. Fact is, whatever Armenia may claim now, it only agreed to an abridged schedule of two days of presentation for each Party without mention of any further meetings⁹³. It is also important to note that Armenia did not dispute the fact that the actual presentations of both Parties' positions

⁹⁰ CR 2024/18, p. 12, para. 10 (Kirakosyan).

⁹¹ CR 2024/18, p. 12, para. 10 (Kirakosyan).

⁹² Preliminary Objections of Azerbaijan, Vol. II, Annexes 3-42.

⁹³ *Ibid.*, Annex 42.

lasted less than seven hours — the Parties’ presentations on preliminary objections over the last three days have already lasted longer.

5. Armenia once again referred to “more than forty pieces of correspondence” and “seven rounds of bilateral meetings over a period of ten months”⁹⁴ — but that alone does not prove any negotiations. Armenia is trying to make a mountain out of a molehill. And in Armenia’s imagination, the mountain seems to be growing. Thus, Armenia’s Agent yesterday spoke of “one year of negotiations”⁹⁵.

6. Armenia took issue with the exclusion of pre-negotiations from the concept of negotiations, claiming that this had no grounding in the jurisprudence of the Court. It is correct that the Court has never expressly addressed the question of pre-negotiations. The reason is simple. This is the first case in which the question arises.

7. The Court has, however, defined what it means by “negotiations”⁹⁶. In *Georgia v. Russia*, the Court held that negotiations require that the Parties “engage in discussions . . . , with a view to resolving the dispute”⁹⁷ and that the subject-matter of these discussions must relate to the “substantive obligations under CERD”⁹⁸. Procedural and technical exchanges clearly do not relate to the substantive obligations under CERD. While the Court thus has not expressly excluded pre-negotiations from the concept of negotiation, this is the logical consequence of applying the Court’s definition of negotiations.

8. Armenia’s suggestion to treat exchanges relating to procedural and technical matters as negotiations “as long as they are made ‘with a view to resolving the dispute’” does not make any sense. The whole purpose of negotiations is to resolve the dispute — procedural exchanges cannot

⁹⁴ CR 2024/18, p. 16, para. 4 (Salonidis).

⁹⁵ CR 2024/18, p. 13, para. 10 (Kirakosyan).

⁹⁶ See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 132, para. 157; *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.

⁹⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 132, para. 157.

⁹⁸ *Ibid.*, p. 134, para. 162; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 419, para. 36.

achieve that. If pre-negotiations were enough to satisfy the negotiation precondition, the Parties would not have to engage in any substantive discussion at all.

9. Armenia also questioned the need for seven months of pre-negotiations.

10. Mr President, Members of the Court, let me remind you of the circumstances in which these pre-negotiations were held. Since the break-up of the former Soviet Union in the early 1990s and Armenia's attempt to seize large parts of Azerbaijan by force, the Parties had not been on speaking terms. There were — and still are — no diplomatic, cultural or other relations between the two States. The Parties had fought two bloody wars and engaged in countless military skirmishes. Armenia had illegally occupied about one fifth of Azerbaijan's internationally recognized territory and had expelled more than one million Azerbaijanis from their homes. For almost thirty years, the Parties had not talked to each other directly without a mediator. There was nothing to build on, no trust, no common ground. The Parties basically started from scratch. These technical talks were much more than pre-negotiations; they were an exercise in confidence-building and tentative rapprochement. The situation between the Parties is different from any other CERD case that has ever been before the Court. Against this background it becomes clear that the Parties could not and did not immediately engage in discussion on the substantive obligations under CERD but that they had to prepare the ground first.

11. These pre-negotiations were by no means “diktats” imposed by Azerbaijan, as now claimed by Armenia⁹⁹. The Procedural Modalities, as well as the schedule for the presentation of the Parties' positions, were agreed upon by the Parties after several months of exchanges. As I explained on Monday, Azerbaijan on several occasions requested more time for the substantive discussions, but Armenia only agreed to an abridged schedule that allocated just two days each for the presentation of the Parties' positions. Azerbaijan has also accepted Armenia's suggested modifications to the schedule for the talks¹⁰⁰. There can thus be no question of “diktats” by Azerbaijan on when, where and how the negotiations would proceed.

12. Armenia faults Azerbaijan for offering to “facilitate” the return of the forcibly displaced, rather than to “allow” their return; to “take steps” to provide, rather than to “guarantee” equality

⁹⁹ CR 2024/18, p. 17, para. 9 (Salonidis).

¹⁰⁰ Preliminary Objections of Azerbaijan, Vol. II, Annex 41, p. 2.

before the law; to “assess” educational material, rather than to adopt “immediate . . . measures” to change them¹⁰¹. Armenia, however, deliberately overlooks that these were just first counter-proposals, accompanied by an express offer to discuss and consider other reasonable proposals. Armenia is correct in that it “was not obliged to accept proposals that it did not consider adequate”¹⁰² — however, it was obliged to engage with them and not simply walk away.

13. Contrary to Armenia’s claims¹⁰³, urgency and an imminent risk of prejudice to plausible CERD rights does not absolve a party from fulfilling the negotiation precondition¹⁰⁴. Urgency may give rise to provisional measures but has no bearing on the jurisdictional requirement under CERD.

14. Let me conclude by addressing the elephant in the room: Azerbaijan’s own case against Armenia. Can Azerbaijan’s Application go ahead while Armenia’s Application is dismissed for lack of jurisdiction, because it does not fulfil the negotiation precondition? The short answer is: yes. The reason is simple: there are several important differences between the two Applications.

15. *First*, Armenia has not objected to the Court’s jurisdiction on the ground that the negotiation precondition is not fulfilled. Azerbaijan has.

16. *Second*, unlike Armenia, Azerbaijan engaged in substantive discussions by making specific counter-proposals to Armenia’s requested remedies¹⁰⁵. Although Azerbaijan rejected Armenia’s claims it nevertheless made specific counter-proposals for remedies in order “to resolve Armenia’s alleged claims”¹⁰⁶. Azerbaijan also confirmed its willingness to discuss these counter-proposals and to consider any other reasonable proposals put forward by Armenia¹⁰⁷. There was thus clearly evolution with regard to Azerbaijan’s position.

17. Azerbaijan also not just proposed possible remedies to Armenia’s claims, it also addressed Armenia’s concerns regarding the Military Trophies Park. At the session on 30-31 August 2021, Azerbaijan’s delegation made the following proposal:

¹⁰¹ CR 2024/18, p. 22, para. 24 (Salonidis).

¹⁰² CR 2024/18, p. 24, para. 33 (Salonidis).

¹⁰³ CR 2024/18, p. 23, paras. 27-31 (Salonidis).

¹⁰⁴ See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 138, para. 178; and p. 136, para. 171.

¹⁰⁵ Preliminary Objections of Azerbaijan, Vol. II, Annex 45.

¹⁰⁶ *Ibid.*, Annex 43.

¹⁰⁷ *Ibid.*

“Acknowledge that the use of mannequins to depict Armenian soldiers in the Military Trophies Park . . . inflamed tensions between the two States . . . in the interests of moving forward towards a sustainable peace, Azerbaijan could consider removing some mannequins depicting Armenian soldiers and ensure that the Park tour guides do not use inflammatory language inciting discrimination against Armenians.”¹⁰⁸

18. It is thus misleading to say — as Armenia did — that only the threat of provisional measures by the Court made Azerbaijan remove the mannequins from the park¹⁰⁹. A continuation of the discussions would probably have achieved the same result.

19. *Third*, Armenia rejected Azerbaijan’s claims outright and at the meeting of 14-15 September 2021 declared that it was not willing to provide any remedies to Azerbaijan. There is thus no question that the negotiations on Azerbaijan’s claims had become futile. As the Permanent Court held in *Mavrommatis Palestine Concessions*, negotiations become fruitless when “one of the Parties definitely declares himself unable, or refuses, to give way”¹¹⁰. That is exactly what Armenia did.

20. The two cases are thus not the same. While Azerbaijan engaged in good-faith negotiations, Armenia did not. The difference is between the one ready at the negotiating table, and the other walking away. It is for that *serious* reason that Armenia’s Application must be dismissed for lack of fulfilling the negotiation precondition.

21. I thank the Court for its kind attention and, Mr President, may I now ask you to call on the Co-Agent to present Azerbaijan’s final submissions.

The PRESIDENT: I thank Mr Talmon for his statement. I now invite the Co-Agent of Azerbaijan, His Excellency Mr Rahman Mustafayev, to take the floor. And allow me, Mr Mustafayev, to draw your attention to the fact that Azerbaijan has already exhausted all the time allocated to it, so if you can be as brief as possible.

¹⁰⁸ *Ibid.*, Annex 45.

¹⁰⁹ CR 2024/18, p. 24, para. 32 (Salonidis); p. 37, para. 13 (Murphy).

¹¹⁰ *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 13.

Mr MUSTAFAYEV:

FINAL SUBMISSIONS

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les membres de la Cour, j'ai l'honneur de me présenter devant vous en tant que co-agent au nom de mon pays, la République d'Azerbaïdjan, afin de présenter ses conclusions finales.

2. Azerbaijan has appeared before you this week as a good-faith litigant with the sole objective of explaining to the Court why, in its submission, Armenia's Application misuses the CERD and tries to escape its obligation to make a genuine attempt to settle its dispute with Azerbaijan by way of negotiation. I trust that we have achieved that objective.

3. By contrast, as you have heard this evening, the Armenian side yesterday devoted a substantial portion of its speeches to presenting a highly misleading and unreliable factual narrative, which grossly distorted the evidentiary record and had little or nothing to do with Azerbaijan's specific preliminary objections. If anything, when viewed carefully and in its context, much of the evidence cited yesterday on the slides presented by Armenia positively demonstrates that the claims that are the subject of Azerbaijan's *ratione materiae* objection have nothing to do with racial discrimination, and thus are not capable of falling within CERD.

4. In my capacity as Co-Agent, I have one further distortion to add to the list of the evidentiary distortions by Armenia that were identified by Mr Aughey earlier this evening.

5. It relates to the so-called Azerbaijani military "patch" displayed by Armenia's counsel at its slide SM-5. Yesterday, Armenia's counsel posed the question: "[D]o 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.'" Azerbaijan's answer to that question is a categorical "no"¹¹¹. I can reassure the Court that no such military badge has ever been displayed or used by Azerbaijan's armed forces. Armenia's source for this image is a Facebook page with no link to Azerbaijan or its military. Mr President, this evidence, emphasized by Armenia's counsel at this hearing, is yet another fake. It is not worthy of this Court.

¹¹¹ CR 2024/18, p. 37, para. 15 (Murphy).

6. Mr President, Azerbaijan was appalled by the repeated use by Armenia yesterday of mistranslations and mischaracterizations of the evidence in an attempt to demonstrate that the relevant parts of its Application are capable of falling within CERD. As we have heard today, these have included the highlighting of racist language that is absent from the evidence, and misrepresentations of the speeches of President Ilham Aliyev to assert slurs against Armenian people that he never made. Azerbaijan is confident that, whether at this preliminary objection stage or in any merits stage to come, the Court will view the evidence carefully before drawing any conclusions, and will not be misled by Armenia's attempts to cherry-pick single words or images, often from opaque social media sources, and to present them completely out of context.

7. You also heard Armenia's Agent assert yesterday that Azerbaijan is serially in breach of the Court's provisional measures Orders. Again, this is both irrelevant to the preliminary objections before you this week and highly misleading. The Court has never found Azerbaijan to be in breach of any provisional measures prescribed.

8. On the contrary, in connection with the return of Armenians to Garabagh — referred to by the Agent of Armenia yesterday — Azerbaijan's report to the Court dated 12 January 2024 reiterated its commitment to the right of ethnic Armenian residents to return to the Garabagh region of Azerbaijan.

9. Mr President, Members of the Court, it falls to me now to present Azerbaijan's final submissions, which are as follows:

“The Republic of Azerbaijan requests that the Court issues a Judgment:

1. dismissing Armenia's Application in its entirety on the ground that none of Armenia's claims is properly before the Court because Armenia has failed to comply with the negotiation precondition required by Article 22 of CERD;
2. in addition, or in the alternative, declaring that the Court lacks jurisdiction *ratione materiae* with respect to Armenia's claims concerning alleged violations by Azerbaijan of its obligations under:
 - i. Articles 2 (1), 4 (a) and 5 (b) of the CERD by engaging in the discriminatory murder, torture and inhumane treatment of members of Armenia's armed forces during the active hostilities phase of armed conflict;
 - ii. Articles 2 (1), 4 (a) and 5 (b) of the CERD by engaging in discriminatory murder, torture and inhumane treatment of Armenian civilians during the active hostilities phase of armed conflict, except with respect to any allegations

which Armenia has particularised with reference to specific evidence purportedly indicating misconduct ‘capable’ of falling within CERD;

- iii. Articles 2 and 5 (a) of the CERD by engaging in practices of discriminatory arbitrary detention of ethnic Armenians; and
- iv. Articles 2 and 5 (a) of the CERD by engaging in practices of discriminatory enforced disappearance of ethnic Armenians.”

10. Enfin, Monsieur le président, je voudrais remercier le greffier et son personnel pour leurs services avant et pendant cette procédure. Je voudrais également remercier les interprètes pour leur professionnalisme au cours des trois derniers jours. Et, bien sûr, nous vous remercions, distingués membres de la Cour, pour votre attention bienveillante. Je vous remercie, Monsieur le président.

The PRESIDENT: I thank His Excellency Mr Mustafayev. The Court takes note of the final submissions which you have just read on behalf of your Government. The Court will meet again on Friday 19 April 2024, at 10 a.m., to hear the second round of oral argument of Armenia.

The sitting is adjourned.

The Court rose at 6.10 p.m.
