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CR 2024/20

International Court  
of Justice

Cour internationale  
de Justice

THE HAGUE

LA HAYE

YEAR 2024

*Public sitting*

*held on Friday 19 April 2024, at 10.05 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)*

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VERBATIM RECORD

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ANNÉE 2024

*Audience publique*

*tenue le vendredi 19 avril 2024, à 10 h 5, 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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COMPTE RENDU

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

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*Présents* : M. Salam, président  
M<sup>me</sup> Sebutinde, vice-présidente  
M. Abraham  
M<sup>me</sup> Xue  
MM. Bhandari  
Iwasawa  
Nolte  
M<sup>me</sup> Charlesworth  
MM. Brant  
Gómez Robledo  
M<sup>me</sup> Cleveland  
MM. Aurescu  
Tladi, juges  
MM. Daudet  
Koroma, juges *ad hoc*  
  
M. Gautier, greffier

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Le PRÉSIDENT : Veuillez vous asseoir. L’audience est ouverte.

Pour des raisons dont ils m’ont dûment fait part, MM. les juges Tomka et Yusuf sont dans l’incapacité de participer à l’audience de ce jour.

La Cour se réunit ce matin pour entendre la République d’Arménie en son second tour de plaidoiries sur les exceptions préliminaires soulevées par le défendeur en l’affaire relative à l’*Application de la convention internationale sur l’élimination de toutes les formes de discrimination raciale (Arménie c. Azerbaïdjan)*. Je donne à présent la parole à Monsieur Constantin Salonidis. Vous avez la parole, Monsieur.

Mr SALONIDIS:

## ARMENIA FULFILLED THE NEGOTIATION PRECONDITION

### I. Introduction

1. Mr President, Madam Vice-President, distinguished Members of the Court, I will begin Armenia’s second round submissions by responding to Azerbaijan’s arguments on Wednesday regarding the negotiation precondition. I will briefly make three points.

### II. “Pre-negotiations” as negotiations

2. Turning to the first point, counsel for Azerbaijan on Wednesday admitted that the Court has *never* excluded what he calls “pre-negotiations” from the concept of negotiations<sup>1</sup>. But he argued that such exclusion should be, in his words, “the logical consequence” of the Court’s definition of negotiations<sup>2</sup>.

3. In support of this argument, counsel stated: “In *Georgia v. Russia*, the Court held that negotiations require that . . . the subject-matter of these discussions must relate to the ‘substantive obligations under CERD’”<sup>3</sup>.

4. But that is not what the Court said. I invite the Court to closely review the Wednesday transcript, which is now on your screens, with the passage I just quoted highlighted in yellow. As the

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<sup>1</sup> CR 2024/19, p. 37, para. 6 (Talmon).

<sup>2</sup> CR 2024/19, p. 37, para. 7 (Talmon).

<sup>3</sup> CR 2024/19, p. 37, para. 7 (Talmon) (emphasis added) (quoting *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. 134, para. 162).

transcript makes clear, only the phrase “substantive obligations under CERD” falls within quotation marks — the remainder is counsel’s own representation of the Court’s views.

5. Now on your screen is the paragraph from *Georgia v. Russia* that counsel cites. It reads in relevant part:

“In the present case, the Court is therefore assessing whether Georgia genuinely attempted to engage in negotiations with the Russian Federation, with a view to resolving their dispute concerning the Russian Federation’s compliance with its substantive obligations under CERD.”<sup>4</sup>

So what matters is *not* that each and every discussion between the parties directly concerned the substantive obligations, but rather that the negotiations were conducted with a view to resolving the dispute concerning the substantive obligations under CERD. And I would be remiss if I did not point out how distant we are from the facts of *Georgia v. Russia* and the questions they posed about whether the CERD had even been the subject of discussions in the first place.

6. The Court’s definition of negotiations that *supports* Armenia’s position that what opposing counsel has referred to as “pre-negotiations” should *not* be excluded from the concept of negotiations, as long as they are conducted with a view to resolving the dispute concerning the substantive obligations under the CERD. And there can be no dispute that all of the Parties’ exchanges that Armenia has put on the record were made with a view to resolving the dispute concerning Azerbaijan’s substantive obligations under the CERD<sup>5</sup>.

7. As I mentioned on Tuesday, the Court’s jurisprudence in fact supports affirmatively Armenia’s position<sup>6</sup>. Azerbaijan had no response to this on Wednesday.

8. As I also mentioned on Tuesday, Azerbaijan’s own pleadings in the *Azerbaijan v. Armenia* case did not distinguish between “pre-negotiations” and “negotiations”<sup>7</sup>. Azerbaijan had no response

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<sup>4</sup> *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. 134, para. 162.

<sup>5</sup> Application of Armenia, Annexes 10, 14-15, 18-34, 36-46, 48-50, 52-55, 57-61.

<sup>6</sup> CR 2024/18, pp. 16-17, para. 6 (Salonidis) (citing *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; *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); see also *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).

<sup>7</sup> CR 2024/18, p. 18, para. 11 (Salonidis) (citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, Application of Azerbaijan, 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).

to this either, instead pointing to alleged “important differences” with an Application filed a mere week after Armenia’s<sup>8</sup>.

9. And as I further mentioned on Tuesday, Azerbaijan’s position would enable any respondent to evade the Court’s jurisdiction under Article 22 by repeatedly raising procedural and technical matters, and delaying agreement in that regard, after having pro forma declared its alleged willingness to negotiate<sup>9</sup>. Azerbaijan once again provided no response to this point on Wednesday.

10. Moreover, as the Court emphasized in *Ukraine v. Russia*, the CERD requires States parties to eliminate racial discrimination “without delay” and emphasizes the need to do so “speedily”<sup>10</sup>. The Court for this reason, among others, found Article 22 to impose alternative rather than cumulative preconditions<sup>11</sup>. For the same reason, Article 22 should be interpreted so as not to exclude “pre-negotiations” when they are made with a view to resolving the dispute — especially when they are being imposed as a condition before any substantive discussion may begin<sup>12</sup>, as was the case here. Otherwise, again, respondents could undermine the speedy elimination of racial discrimination.

11. To conclude on this point, Mr President, *all* of the exchanges between the Parties were made with a view to resolving the dispute. As such they all qualify as negotiations for the purposes of Article 22.

### **III. Context of negotiations**

12. I now turn to my second point regarding the context of negotiations. Azerbaijan asks you to consider as relevant context that the Parties had not been “on speaking terms”<sup>13</sup>. The Parties’ mutual distrust, however, did not preclude their ability to engage in direct negotiations, nor would it have precluded resolving the dispute if Azerbaijan had any genuine interest in doing so. But the negotiations demonstrated ultimately that there was no reasonable probability of a negotiated

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<sup>8</sup> CR 2024/19, p. 39, para. 14 (Talmon).

<sup>9</sup> CR 2024/18, p. 17, para. 7 (Salonidis).

<sup>10</sup> *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. 600, para. 111.

<sup>11</sup> *Ibid.*

<sup>12</sup> Letter *from* the Minister for Foreign Affairs of the Republic of Azerbaijan *to* the Minister for Foreign Affairs of the Republic of Armenia (17 February 2021) (Application and Request for provisional measures of Armenia, Annex 20).

<sup>13</sup> CR 2024/19, p. 38, para. 10 (Talmon).

settlement. And this is even more so, considering the constant aggravation of the dispute by Azerbaijan throughout the course of the negotiations<sup>14</sup>.

13. Azerbaijan argues in that regard that “[u]rgency . . . has no bearing on the jurisdictional requirement under CERD”<sup>15</sup>. But it is very telling that Azerbaijan had no response to the merits of our argument on Wednesday<sup>16</sup>. And since Azerbaijan agrees that the context of the negotiations matters, there is no *a priori* reason to exclude factors such as the urgent risk of irreparable prejudice to rights enshrined in the Convention.

#### IV. Futility of negotiations

14. This brings me to my third and final point, which is that the negotiations had manifestly become futile by the time Armenia filed its Application.

15. Indeed, many of the exchanges that counsel for Azerbaijan labels as “pre-negotiations” were *not*, as Azerbaijan claims, limited to procedural and technical matters. As I mentioned on Tuesday, starting from its very first letter, Armenia repeatedly asserted its substantive claims<sup>17</sup> and Azerbaijan, starting from its very first letter, repeatedly rejected them<sup>18</sup>. Moreover, Armenia did consider Azerbaijan’s proposals for two weeks and explained in the 15 September 2021 meeting why they were not acceptable to it<sup>19</sup>.

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<sup>14</sup> CR 2024/18, pp. 22-23, paras. 26-31 (Salonidis).

<sup>15</sup> CR 2024/19, p. 39, para. 13 (Talmon).

<sup>16</sup> CR 2024/18, p. 23, para. 27 (Salonidis).

<sup>17</sup> CR 2024/18, pp. 18-19, para. 14 (Salonidis) (citing Letter *from* the Minister for Foreign Affairs of the Republic of Armenia *to* the Minister for Foreign Affairs of the Republic of Azerbaijan (22 January 2021) (Application and Request for provisional measures of Armenia, 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, 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, Annex 59)).

<sup>18</sup> CR 2024/18, pp. 18-19, para. 14 (Salonidis) (citing Letter *from* the Minister for Foreign Affairs of the Republic of Azerbaijan *to* the Minister for Foreign Affairs of the Republic of Armenia (8 December 2020) (Application and Request for provisional measures of Armenia, Annex 14); Letter *from* the Minister for Foreign Affairs of the Republic of Azerbaijan *to* the Minister for 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).

<sup>19</sup> CR 2024/18, pp. 19, 21, paras. 14, 21-22 (Salonidis); 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, Annex 61).

16. The negotiations here were thus not unlike those in *Ukraine v. Russia*, where the Court found the precondition satisfied<sup>20</sup>.

17. What matters the most, as the Court noted in the *Qatar ICAO Appeals* cases, is that there is no “reasonable probability” that further negotiations would lead to a settlement<sup>21</sup>. And that was unquestionably the case here.

18. On Wednesday, counsel for Azerbaijan highlighted one specific alleged “proposal” by Azerbaijan: “Acknowledge that the use of mannequins to depict Armenian soldiers in the Military Trophies Park . . . inflamed tensions between the two States”<sup>22</sup>.

19. But I respectfully invite the Court again to review the transcript closely; there are two strategic ellipses in this passage. The relevant text from Azerbaijan’s proposal is as follows: “Acknowledge that the use of mannequins to depict Armenian soldiers in the Military Trophies Park in Baku *and ongoing operations in Armenia by certain hate groups* have inflamed tensions between the two States.”<sup>23</sup> And it goes on; here is the next sentence:

“On this last point, I should note that these two issues are not comparable; the Park memorializes the servicemen who were lost in the war and commemorates the liberation of Azerbaijan’s territory after almost three decades of unlawful occupation and was never intended to incite anti-Armenian hatred.”<sup>24</sup>

Professor Murphy showed you on Tuesday what the Park in fact memorializes.

20. But for my purposes, Mr President and distinguished Members of the Court, this statement by Azerbaijan was decidedly not a “proposal” for the amicable settlement of this dispute. It was yet another assertion by Azerbaijan that it is right and Armenia is wrong.

21. For all those reasons, Azerbaijan cannot reduce to a molehill the mountain of negotiations between the Parties in this case. Armenia respectfully submits that the negotiation precondition was satisfied, such that Azerbaijan’s first preliminary objection must be rejected.

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<sup>20</sup> *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. 121.

<sup>21</sup> *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Judgment, I.C.J. Reports 2020*, p. 112, para. 96.

<sup>22</sup> CR 2024/19, p. 40, para. 17 (Talmon).

<sup>23</sup> Letter from Vaqif Sadiqov, Head of Delegation of the Republic of Azerbaijan for negotiations under CERD, to Elnur Mammadov, Deputy Minister for Foreign Affairs (9 October 2021), No. 0612/04/21/0, PDF p. 4 (emphasis added) (Preliminary Objections of Azerbaijan, Annex 45).

<sup>24</sup> *Ibid.*

22. Mr President, this concludes my remarks. I would kindly ask that you give the floor to Professor d'Argent to continue Armenia's pleadings.

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, Monsieur.

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

**TROIS REMARQUES PRÉLIMINAIRES SUR L'OBJECTION *RATIONE MATERIAE*  
DE L'AZERBAÏDJAN**

1. Mesdames et Messieurs les juges, Monsieur le président, je me bornerai à faire trois brèves remarques en introduction aux exposés de mes collègues.

2. *Première remarque* : les points de convergence. Au terme de ces audiences, les Parties sont d'accord sur le test juridique applicable pour statuer sur l'objection *ratione materiae* soulevée par l'Azerbaïdjan s'agissant des demandes de l'Arménie numérotées 2), 4) et 5) — demandes qui sont formulées dans la IX<sup>e</sup> partie du mémoire, laquelle est consacrée aux « Submissions »<sup>25</sup>. Les Parties sont également d'accord sur le fait que la convention s'applique en temps de conflit armé<sup>26</sup>. Et par ailleurs, l'Azerbaïdjan n'a pas contesté :

- 1) que les Arméniens de souche étaient un groupe protégé au regard de la convention<sup>27</sup> ;
- 2) que les allégations de l'Arménie auxquelles il est objecté concernent des cas de discrimination directe et non de discrimination indirecte par effet<sup>28</sup> ;
- 3) qu'une différence de traitement fondée sur un motif prohibé par la convention continue d'en relever quand bien même d'autres motifs qu'elle ne vise pas s'y combinent<sup>29</sup> ;
- 4) que des mêmes faits peuvent constituer des violations d'obligations contenues dans des instruments juridiques distincts<sup>30</sup> ; et

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<sup>25</sup> MA, p. 750.

<sup>26</sup> CR 2024/18, p. 31, par. 20 (d'Argent) ; CR 2024/18, p. 35-36, par. 6-7 (Murphy) ; CR 2024/17, p. 37, par. 5 (Wordsworth) ; CR 2024/17, p. 53, par. 26 (Boisson de Chazournes).

<sup>27</sup> CR 2024/18, p. 30, par. 15 (d'Argent).

<sup>28</sup> CR 2024/18, p. 33, par. 23 (d'Argent).

<sup>29</sup> *Ibid.*

<sup>30</sup> CR 2024/18, p. 31-32, par. 20 (d'Argent) ; CR 2024/18, p. 35, par. 6 (Murphy).

5) que la convention contient bien les obligations juridiques mises en avant par l'Arménie au soutien de ses demandes<sup>31</sup>.

3. *Deuxième remarque* : bien que l'Azerbaïdjan professe qu'à ce stade il y a lieu de prendre les preuves de l'Arménie telles quelles, pour ce qu'elles sont (« on [their] face »)<sup>32</sup>, sa seconde objection préliminaire vous demande en réalité et à tous égards de soupeser ces preuves, de les analyser jusqu'à devoir les rejeter comme insuffisantes. Insuffisantes maintenant, elles seront forcément insuffisantes au fond, même à l'appui d'autres demandes de l'Arménie qui ne font l'objet d'aucune exception préliminaire. Ce que l'Azerbaïdjan vous demande de faire est totalement inapproprié à ce stade. Et l'Arménie invite la Cour à examiner l'ensemble des preuves pour ce qu'elles sont et à tirer bien sûr ses propres conclusions afin de répondre à la question de savoir si les demandes qui font l'objet de l'exception préliminaire sont susceptibles de constituer des pratiques discriminatoires violant la convention.

4. *Troisième remarque* : comme l'Azerbaïdjan l'a écrit, au stade des exceptions préliminaires, le critère de compétence *ratione materiae* devant être rencontré est bas (« low threshold »)<sup>33</sup>. Par ailleurs, comme l'Azerbaïdjan l'a reconnu — je l'ai rappelé —, la convention est applicable en cas de conflit armé. N'ayant dès lors aucune échappatoire de principe face aux faits avancés par l'Arménie et ne pouvant non plus contester que les obligations mobilisées à l'appui des demandes existent bel et bien au titre de la convention, l'Azerbaïdjan tente de semer la confusion et fait un petit tour de passe-passe en trois temps.

5. *Dans un premier temps*, l'Azerbaïdjan se montre raisonnable : il amende tardivement son exception *ratione materiae*. Voilà donc la deuxième demande de l'Arménie, celle relative aux exactions commises contre des Arméniens de souche, « saucissonnée » en fonction de deux distinctions qui n'ont pas de fondement dans la convention : d'une part, la distinction entre les membres des forces armées et les civils ; d'autre part, la distinction entre les périodes de phases actives des hostilités et les autres. L'exception *ratione materiae* est ainsi constituée d'une couche *ratione personae* et d'une couche *ratione temporis*. Y voit-on plus clair ? Certainement pas, mais,

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<sup>31</sup> CR 2024/18, p. 30, par. 15 (d'Argent) ; CR 2024/18, p. 69, par. 3 (Sicilianos).

<sup>32</sup> CR 2024/18, p. 30, par. 15 (d'Argent) ; CR 2024/19, p. 24, par. 27 (Wordsworth).

<sup>33</sup> 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 (5 avril 2024).



voyez-vous, tel est précisément le but. Par ailleurs, l'exigence supplémentaire de « specific evidence purportedly indicating misconduct “capable” of falling within CERD » appliquée sans justification aucune aux seuls civils permet de manière subliminale de vous donner à penser qu'aucune preuve ne serait nécessaire ou n'existerait s'agissant des forces armées, des détentions arbitraires ou des disparitions forcées, tandis que les preuves qui existent pour les civils seraient d'avance insuffisantes.

6. *Dans un deuxième temps*, à la manière des « talks about talks » qui ne sont pas des négociations, l'Azerbaïdjan soutient que les discours haineux et incitant à la haine ne sont pas ce qu'ils sont. Le président Aliyev sait mieux que ceux qui l'écoutent ce qu'il a voulu dire, c'est évident, la proposition est raisonnable. Au champ de bataille, c'est bien connu, le langage est fait de subtiles distinctions. Dès lors, « your kind » ou « your sort » ou « your type » n'est pas « your race », et ces mots ne dénotent aucune distinction, aucun classement méprisant du pauvre Arménien de souche implorant pour sa vie, c'est évident. Ainsi, il n'est fait aucune distinction susceptible d'être basée sur un motif prohibé par la convention et la violence inouïe qui se déchaîne, pudiquement reconnue comme « horrific, and disgraceful »<sup>34</sup>, est racialement aseptisée. Ou plutôt, « it is not racially motivated violence *in the way* that it is being portrayed by Armenia »<sup>35</sup>. Cette violence n'est pas racialement motivée, du moins pas de la manière dont l'Arménie le suggère. « [I]n the way » : et c'est vrai, dans la violence raciste, tout est dans la manière. Le racisme n'est pas du racisme. Les preuves ne sont pas des preuves. Ou si elles en sont, elles disent ou manifestent autre chose — bien sûr, autre chose — que ce que l'Arménie voit dans ces preuves et qui est visible à tous. Ou bien encore ces preuves sont insuffisantes.

7. Au-delà de la nausée qui monte imperceptiblement, tout cela vise, aussi imperceptiblement, à obtenir déjà de la Cour un jugement négatif ou préorientant les débats sur le fond à propos d'éléments de preuve qui concernent aussi des demandes qui ne font pourtant pas l'objet de l'objection préliminaire. Tout cela est très inadéquat à ce stade et je pense que la Cour sait très bien ce qu'elle doit faire et je n'en dirai pas plus.

8. *Dans un troisième temps*, l'Azerbaïdjan sort un épouvantail de son chapeau de magicien : les demandes de l'Arménie seraient une « unrecognizable and unmanageable series of entirely

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<sup>34</sup> CR 2024/19, p. 27, par. 41 (Wordsworth).

<sup>35</sup> *Ibid.*

open-ended claims covering all allegations of unlawful violence against combatants or civilians in the active hostilities phases of an armed conflict »<sup>36</sup>. Nous y voilà, et en sous-titre l'argument du chausse-pied<sup>37</sup> : accepter de connaître des demandes de l'Arménie, c'est ouvrir sans limites les portes de la Cour, c'est dénaturer la convention, c'est permettre de vous soumettre sous couvert de la convention l'entièreté du conflit armé entre les Parties et aussi toutes les guerres qui déchireront encore l'humanité.

9. Monsieur le président, Mesdames et Messieurs les juges, il est totalement erroné de suggérer que l'Arménie aurait soumis à la Cour tous les aspects du conflit armé ayant opposé les Parties. La plus grande partie des opérations militaires de la guerre des 44 jours ou des autres affrontements postérieurs ne sont en rien — en rien — l'objet de demandes de la part de l'Arménie et ne sont pas décrits dans son mémoire. L'Arménie n'a jamais soutenu que les pertes militaires qui lui ont été infligées par l'Azerbaïdjan lors d'opérations et d'engagements militaires conformes au droit international humanitaire relèveraient de la convention du seul fait de l'origine ethnique des victimes de ces combats loyaux. Cela n'a jamais été et ce n'est pas la demande que l'Arménie vous soumet.

10. Il a aussi beaucoup été question des prisonniers de guerre. Dans cette affaire, l'Arménie ne se plaint pas du fait que l'Azerbaïdjan ait fait des prisonniers de guerre en tant que tels. Ce dont l'Arménie se plaint, c'est que l'Azerbaïdjan n'a *pas* fait de prisonniers de guerre quand il aurait dû en faire et que les membres de ses forces armées ont abattu comme des chiens de pauvres combattants de souche arménienne mis hors de combat, ou qu'après les avoir faits prisonniers, l'Azerbaïdjan les a maltraités durant leur détention, ou les a détenus bien au-delà de la cessation des hostilités, ou encore les a fait disparaître, à nouveau parfois bien longtemps après la phase active des hostilités. Et l'Arménie soutient à ce stade de la procédure, compte tenu de la spécificité unique de cet amer conflit ethnique, compte tenu du discours raciste propagé à tous les échelons du pouvoir et dans la société azerbaïdjanaise, et compte tenu de l'ensemble des éléments de preuve spécifiques mis en avant dans son mémoire et rappelés par mes collègues, l'Arménie soutient à ce stade que ces plaintes-là sont bel et bien susceptibles de constituer des violations de la convention, indifféremment de la question de savoir si ces faits pourraient être illicites à un autre titre aussi.

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<sup>36</sup> CR 2024/19, p. 22, par. 20 (Wordsworth).

<sup>37</sup> CR 2024/17, p. 14-15, par. 7 (Mammadov).

11. J'en viens aux allégations relatives aux bombardements indiscriminés contre des zones d'habitation civile<sup>38</sup>, à l'utilisation de bombes à fragmentation et d'autres armes indiscriminées contre la population civile<sup>39</sup>. L'Azerbaïdjan estime que les demandes relatives à ces faits n'entrent pas dans les prévisions de la convention. L'Arménie pense au contraire que les morts survenues à l'occasion de ces bombardements indiscriminés largement documentés sont parfaitement susceptibles de constituer des différences de traitement discriminatoires prohibées par la convention. Pourquoi ? Parce que les zones visées de manière indiscriminée et dénuées de tout objectif militaire étaient exclusivement peuplées de civils arméniens de souche. Parce que quand l'Azerbaïdjan veut s'en prendre de manière *discriminée* à ce qui fait l'identité arménienne, à savoir son patrimoine culturel, il le fait tout autant sans hésiter et de manière délibérée. Les preuves à cet égard sont connues de la Cour depuis la première audience en indication de mesures conservatoires. Et je rappelle que la déclaration cavalière du président Aliyev faite à la *BBC* selon laquelle le double bombardement de la cathédrale Saint-Ghazanchetsots (Saint-Sauveur) de Shushi aurait pu être accidentel, a été prouvée comme erronée à la suite d'une analyse balistique<sup>40</sup>. Les attaques massives contre la population civile sont susceptibles de violer la convention parce qu'elles ont été annoncées aussi en plus haut lieu<sup>41</sup> — et je vous renvoie, en note de bas de page, à notre mémoire —, faisant ainsi l'objet d'une stratégie délibérée visant à terroriser les Arméniens de souche. Parce que ces attaques, en effet, ont eu lieu sur fond de discours raciste. Tout cela ne serait pas susceptible de constituer de la violence procédant d'une distinction fondée sur un motif prohibé de la convention ? Mesdames et Messieurs les juges, il n'est pire aveugle que celui qui ne veut pas voir et pire sourd que celui qui ne veut entendre.

12. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les juges, je vous remercie pour votre bienveillante attention. Monsieur le président, avec votre permission, le professeur Murphy me succédera à la barre.

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<sup>38</sup> CR 2024/17, p. 42, par. 18 (Wordsworth) citant MA, par. 3.242 et 3.243.

<sup>39</sup> CR 2024/17, p. 42-43, par. 20 (Wordsworth) citant MA, pars. 4.130 et 4.131.

<sup>40</sup> MA, par. 3.282-3.284.

<sup>41</sup> MA, par. 6.49.

Le PRÉSIDENT : Je remercie Monsieur d'Argent pour son intervention. And I now give Professor Sean Murphy the floor. You have the floor, Sir.

Mr MURPHY:

**THE IRRELEVANCE OF INTERNATIONAL HUMANITARIAN LAW FOR THIS JURISDICTIONAL PHASE AND THE RELEVANCE OF THE WIDESPREAD ETHNIC HATRED THAT AZERBAIJAN PROMOTES AND CONDONES**

1. Je vous remercie, Monsieur le président. I will address two points that cut across all the claims that are the subject of Azerbaijan's second objection.

**I. The irrelevance of international humanitarian law for this jurisdictional phase**

2. The first point relates to the irrelevance of international humanitarian law, or IHL, to this phase of the proceedings. As Professor d'Argent has just explained, there remains considerable confusion with respect to the scope of Azerbaijan's second objection. On the one hand, Mr Wordsworth assured us that there is no "cynical ploy" afoot<sup>42</sup> and, he says, "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 humanitarian law"<sup>43</sup>. But, on the other hand, what does Azerbaijan say in its reformulated submissions which appear at the bottom of your screen? It says that any acts of "murder, torture and inhumane treatment of members of Armenia's armed forces during the active hostilities phase of armed conflict" are incapable of violating the CERD<sup>44</sup>. Forgive us for not being able to square that circle.

3. Given that Mr Wordsworth defines "the active hostilities phase of armed conflict" as covering the entire Second Nagorno-Karabakh War, as well as other open-ended dates<sup>45</sup>, then it certainly looks like Azerbaijan wants the Court to find, at least for this case, that "'anything goes' on the battlefield so far as CERD is concerned"<sup>46</sup>.

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<sup>42</sup> CR 2024/19, p. 21, para. 17 (Wordsworth).

<sup>43</sup> CR 2024/19, pp. 19-20, para. 9 (b) (Wordsworth).

<sup>44</sup> CR 2024/19, p. 42, para. 9 (2) (i) (Mustafayev).

<sup>45</sup> CR 2024/17, p. 40, para. 12 (d) (Wordsworth).

<sup>46</sup> CR 2024/19, pp. 19-20, paras. 9 (a)-(b) (Wordsworth).

4. Civilians do not fare much better under Azerbaijan’s reformulated submissions; they too cannot be protected during hostilities by the CERD “unless there is specific evidence” that indicates misconduct capable of falling within the CERD. One might ponder why a difference is even being drawn between soldiers and civilians; they are both protected persons under IHL and under the CERD, and they were both murdered, tortured, detained and disappeared in very similar ways. Why is one group completely off the table for the Court’s jurisdiction, while the other stays on the table so long as the table is properly set?

5. One possible interpretation of Azerbaijan’s position is that they have carefully reviewed every single piece of evidence relating to violence against soldiers and not a single one is capable of demonstrating racial animus, while for civilians there may be such evidence. I will leave it to Ms Macdonald to dispel that argument.

6. But another possible interpretation of Azerbaijan’s position is that there is something about violent acts against soldiers that, at least in this particular conflict, can *only* be explained as “generalized antipathy” between belligerent States<sup>47</sup>, and can *only* be explained as understandable “animosity” between “two States [that] have experienced the tragedy of war”<sup>48</sup>. On this interpretation, the tragedy of war in this particular conflict has displaced the CERD when it comes to acts of violence against soldiers, and moreover displaced the CERD when it comes to all acts of detention and enforced disappearance.

7. Professor Boisson de Chazournes was candid in taking this position when it came to *detention*, citing specifically to the Third and Fourth Geneva Conventions<sup>49</sup>. Yet arguing that IHL displaces the CERD when it comes to detention is problematic, given that IHL itself requires treating prisoners of war and civilian internees “without any adverse distinction founded on race . . . or any other similar criteria”<sup>50</sup>. Indeed, the prohibition on racial discrimination cuts across both fields, such that there is no *lex specialis*. Similar to the relationship between IHL and the International Covenant on Civil and Political Rights, “both spheres of law are complementary, not mutually exclusive”<sup>51</sup>.

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<sup>47</sup> Preliminary Objections of Azerbaijan, para. 33.

<sup>48</sup> *Ibid.*, para. 34.

<sup>49</sup> CR 2024/19, p. 29, para. 7 (Boisson de Chazournes).

<sup>50</sup> Third Geneva Convention of 1949, Art. 3 (1); Fourth Geneva Convention of 1949, Art. 3 (1).

<sup>51</sup> Human Rights Committee, *General Comment No. 36: Article 6 — Right to Life* (3 September 2019), para. 64.

8. In any event, if we are going to get into questions of whether there is a *lex specialis* on particular issues, such as repatriation, that relate to particular facts, such as whether the prosecution of a specific POW is allowed under IHL, then that is clearly an issue for the merits, where both sides can marshal the facts and law as they wish. For present purposes, the *only* issue is whether the alleged conduct concerning detention is capable of violating the CERD, which surely it is.

9. However one might understand Azerbaijan's position, Mr President, Armenia stands by its submissions from Tuesday. It is common ground between the Parties that, in situations of armed conflict, the applicability of IHL does not preclude the application of the CERD, which operates independently. The Court has said this<sup>52</sup> and the CERD Committee has said this<sup>53</sup>. And such reasoning is consistent with the Court's view that "certain acts or omissions may give rise to a dispute that falls within the ambit of more than one treaty"<sup>54</sup>. Given the evidence that we have submitted, the claims to which Azerbaijan objects are capable of violating the CERD, regardless of any connection to IHL.

10. As a final point on this issue, if Azerbaijan's position is that claims concerning soldiers (and civilians) during the so-called "active hostilities phase of armed conflict" fall entirely (or largely) outside the CERD, then that position is certainly in tension with the Court's prior findings on plausibility in its provisional measure Orders in this case. That there were IHL implications to the conduct we allege was well known to the Court right from the start of this case, but the Court did not see IHL as an obstacle when finding it plausible that CERD rights were at issue concerning soldiers and civilians caught up in hostilities<sup>55</sup>.

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<sup>52</sup> *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. 96.

<sup>53</sup> 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).

<sup>54</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 223, para. 46. See also *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 9, para. 56; *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. 70, para. 32.

<sup>55</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 361, para. 98 (1) (a); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Request for the Modification of the Order Indicating Provisional Measures of 7 December 2021, Order of 12 October 2022, I.C.J. Reports 2022 (II)*, p. 578, para. 18.

## **II. The relevance of the widespread ethnic hatred that Azerbaijan promotes and condones**

11. Mr President, Members of the Court, I turn to my second point, which is that Azerbaijan cannot avoid the implications for this jurisdictional phase of the widespread ethnic hatred that it promotes and condones. Azerbaijan's principal gambit on Wednesday seems to have been to pivot away from saying that general Armenophobia is essentially irrelevant for this phase of the proceeding, to saying that it is the *only* evidence that Armenia has<sup>56</sup> and, moreover, such evidence does not demonstrate ethnic or racial animus<sup>57</sup>. As such, according to Azerbaijan, the second objection prevails.

12. The first problem with that argument is that, as I stated on Tuesday, "Armenia has presented abundant direct evidence of the racial motivation behind each and every claim [it has] asserted"<sup>58</sup>. Mr Wordsworth boldly claimed that my statement was "plainly wrong"<sup>59</sup>, but then he did not tell us why it is wrong. Indeed, Azerbaijan has been relatively silent in scrutinizing all the evidence that we have placed before the Court, as the speakers that follow will explain; rather, Azerbaijan seems content to poke at random pieces of evidence, while desperately advancing last-minute translations that do not bear up under scrutiny.

13. A further problem is that Azerbaijan's efforts to discount the evidence of general Armenophobia make little sense. Mr Aughey strained mightily<sup>60</sup> on Wednesday to demonstrate that terms such as "wild beasts", "predators", "jackals" or a "savage tribe" are terms that can *only* be understood as referring to a foreign "occupying force" or to "the leadership directing those operations" or to "the forces of the illegally installed régime"<sup>61</sup>.

14. But, as the Court well knows, that is not how racism works. Racism is an insidious attitude that often manifests through particular types of epithets, phrases, terms and slogans. Racism is also

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<sup>56</sup> CR 2024/19, p. 26, paras. 34-35 (Wordsworth).

<sup>57</sup> CR 2024/19, p. 11, para. 5 (Aughey); pp. 26-27, paras. 36-38 (Wordsworth).

<sup>58</sup> CR 2024/18, p. 39, para. 21 (Murphy).

<sup>59</sup> CR 2024/19, p. 26, para. 35 (Wordsworth).

<sup>60</sup> CR 2024/19, pp. 11-13, paras. 4-8 (Aughey).

<sup>61</sup> CR 2024/19, pp. 12-13, paras. 8 (b), 8 (e), and p. 14, para. 11 (Aughey).

best understood through the context in which it occurs, whether one labels it “background context” or “relevant factor” or something else<sup>62</sup>.

15. And this “background context” is quite ugly. I will not take the Court through all the statements made by President Aliyev that were raised by Mr Aughey on Wednesday which are, after all, a mere fraction of our evidence. But in our view, those statements do demonstrate racial animus or, at a minimum for this jurisdictional phase, are capable of being so read. For example, on Wednesday Azerbaijan argued that President Aliyev’s statement, “our main enemies are *Armenians of the world*”, is not even *capable* of showing racial animus. Azerbaijan insists this phrase refers benignly to Azerbaijan’s “detractors” or those who “don’t like” Azerbaijan<sup>63</sup>. But the phrase “Armenians of the world” certainly is not referring to a particular country or to a particular country’s leadership or to its army; the phrase clearly is referring to an entire ethnic group, wherever in the world that group may be found, which includes in Azerbaijan itself. And the phrase is saying that *those ethnic Armenians are “our main enemies”*.

16. It was equally interesting seeing counsel for Azerbaijan trying to explain away President Aliyev’s references to chasing people like “dogs”. Here, too, the assertion this week is that “dogs” can only be understood as referring to the leaders of Armenia or of Nagorno-Karabakh, even though last year Azerbaijan conceded in its written objections that the term has “a possible ethnic dimension”<sup>64</sup>. In any event, to sustain this week’s explanation, Azerbaijan proudly displayed a BBC interview with President Aliyev. But notice the observation made by the reporter before President Aliyev responds. The BBC reporter observes: “You have very recently said and I am quoting you here: ‘If they do not leave we will chase them like dogs.’ Now, that’s hardly the kind of statement that would make people feel safe.”<sup>65</sup> Clearly, the interviewer did not think that “dogs” was just a clever way of referring to the leaders of Armenia or of Nagorno-Karabakh. Moreover, the reporter then observed: “There is institutionalized messaging against the Armenians which takes place here as part of the state dialogue. People have been primed to have hatred for the other side.

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<sup>62</sup> CR 2024/19, p. 10, para. 2 (Aughey).

<sup>63</sup> CR 2024/19, p. 14, paras. 12-13 (Aughey).

<sup>64</sup> Preliminary Objections of Azerbaijan, para. 45.

<sup>65</sup> “Ilham Aliyev was interviewed by BBC News”, President of the Republic of Azerbaijan Ilham Aliyev (9 November 2020), available at <https://president.az/en/articles/view/45845>.



Are you actually expecting them to be able to co-exist?”<sup>66</sup> So while Azerbaijan has its own peculiar way of interpreting what President Aliyev means when he says “we will chase them like dogs”, that is not what anyone else is hearing.

17. And it is notable the points we raised on Tuesday that even Mr Aughey dared not touch: he dared not touch Azerbaijan’s Parliamentary Committee referring to “Armenia and the Armenian diaspora” as “a cancerous tumour of Europe”<sup>67</sup>; he dared not touch Azerbaijan’s senior official comparing Armenians to the Jews of the Holocaust whom Azerbaijan seeks to “eliminate”<sup>68</sup>; he dared not touch the grotesque mannequins placed in and then hastily removed from Azerbaijan’s Military Trophies Park<sup>69</sup>; he dared not touch Azerbaijan’s “disinfection” stamps<sup>70</sup>, and so on.

18. Azerbaijan’s Co-Agent represented to the Court on Wednesday that the patch we noted on Tuesday, which says “Armenian, don’t run”, is not worn by Azerbaijan soldiers<sup>71</sup>. That is the first time we have heard such a denial, notwithstanding our having raised this patch as being worn by Azerbaijan soldiers in both our January 2023 Memorial<sup>72</sup> and at the October 2023 provisional measures hearing<sup>73</sup>. Azerbaijan’s denial happens to be inconsistent with media reports<sup>74</sup> and think

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<sup>66</sup> *Ibid.*

<sup>67</sup> CR 2024/18, p. 40, para. 22 (Murphy). See also “Statement by the Committee of International and Inter-Parliamentary Relations of the Milli Majlis”, Milli Majlis of the Republic of Azerbaijan (16 March 2023), available at <https://meclis.gov.az/news.php?id=1379&lang=en>.

<sup>68</sup> CR 2024/18, p. 40, para. 22 (Murphy); see *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).

<sup>69</sup> CR 2024/18, pp. 36-37, paras. 12-14 (Murphy). See also “Ilham Aliyev attended opening of Military Trophy Park in Baku”, 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); 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/fec534ae0fe528fe043e41c90cd83b5.pdf> (Memorial of Armenia, Annex 59).

<sup>70</sup> CR 2024/18, p. 38, para. 16 (Murphy). See also 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://calvertjournal.com/articles/show/12442/azerbaijan-stamps-nagorno-karabakh-war-anti-armenian-propaganda>).

<sup>71</sup> CR 2024/19, p. 41, para. 5 (Mustafayev).

<sup>72</sup> Memorial of Armenia, paras. 1.35, 4.118 (figure 140).

<sup>73</sup> CR 2023/21, p. 31, para. 35 (Martin).

<sup>74</sup> See e.g. Guillaume Perrier, “Haut-Karabakh : Enver Pacha, le génocidaire réhabilité par Bakou”, *Le Point* (4 October 2023), available at [https://www.lepoint.fr/monde/haut-karabakh-enver-pacha-le-genocidaire-rehabilite-par-bakou-04-10-2023-2538072\\_24.php#11](https://www.lepoint.fr/monde/haut-karabakh-enver-pacha-le-genocidaire-rehabilite-par-bakou-04-10-2023-2538072_24.php#11).

tank reports<sup>75</sup>, in addition to social media postings<sup>76</sup>, all of which also say it is a patch worn by an Azerbaijani soldier. In any event, if Azerbaijan wants to contest that proposition at the merits stage, it is free to do so, perhaps by telling us who does wear such a patch that so widely and proudly circulates on social media in Azerbaijan.

19. But there is no need to rely solely on Armenia's interpretation of these facts. Indeed, the Court has abundant evidence as to what third parties think about whether Azerbaijan's Government generally promotes and condones widespread ethnic hatred against ethnic Armenians.

20. The Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities does not accept Azerbaijan's interpretations of its Government's statements. Rather, the Advisory Committee has observed "a very persistent public narrative surrounding the Nagorno Karabakh conflict . . . identify[ing] variably 'Armenia' or 'Armenians' as 'the enemy' and openly promulgat[ing] hate messages"<sup>77</sup>. Moreover, it expressed deep concern at the "levels of official involvement in endorsing and disseminating such views", which were directed both "against Azerbaijani citizens of ethnic Armenian origin as well as anybody else who may be seen as affiliated with Armenia"<sup>78</sup>.

21. The European Commission on Racism and Intolerance (ECRI) does not accept Azerbaijan's interpretation of its Government's statements. ECRI has found that "Azerbaijan's leadership, education system and media are very prolific in their denigration of Armenians", so much so that "an entire generation of Azerbaijanis has now grown up listening to this hateful rhetoric"<sup>79</sup>.

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<sup>75</sup> See e.g. Michael Rubin, "If Turkey Attacks American Troops in Syria, How Should the United States Respond?", American Enterprise Institute (5 October 2023), available at <https://www.aei.org/op-eds/if-turkey-attacks-american-troops-in-syria-how-should-the-united-states-respond/>.

<sup>76</sup> Taner Akcam, Facebook (30 September 2023), available at <https://www.facebook.com/100002201837764/posts/6642762072473788/?mibextid=rS40aB7S9Ucbxw6v>.

<sup>77</sup> Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Azerbaijan adopted on 10 October 2012* (3 September 2013), available at <https://www.refworld.org/docid/5229cf374.html>, para. 50, PDF p. 16 (Memorial of Armenia, Annex 25). See also "Red Flag Alert for Genocide – Azerbaijan", Lemkin Institute for Genocide Prevention (3 December 2021) (Memorial of Armenia, Annex 93).

<sup>78</sup> Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Azerbaijan adopted on 10 October 2012* (3 September 2013), available at <https://www.refworld.org/docid/5229cf374.html>, para. 50, PDF p. 16 (Memorial of Armenia, Annex 25).

<sup>79</sup> European Commission against Racism and Intolerance, *ECRI Report on Azerbaijan (fifth monitoring cycle)* (17 March 2016), available at <https://rm.coe.int/fourth-report-onazerbaijan/16808b5581>, pp. 9, 17 (Memorial of Armenia, Annex 29).

22. The CERD Committee does not accept Azerbaijan's interpretation of its Government's statements. Rather, as you will see on the screen and at tab 2 of your judges' folder, at paragraph 27, the Committee has "expresse[d] concern at the repeated and unpunished use of inflammatory language by politicians speaking about the Nagorno-Karabakh conflict and at its adverse impact on the public's view of ethnic Armenians in [Azerbaijan]"<sup>80</sup>.

23. And I will leave the Court with this point. If Azerbaijan is right that everything its Government says, from President Aliyev on down, can *only* be interpreted as having nothing to do with the CERD — if they are right that all these statements are simply directed at the leaders of Armenia or of Nagorno-Karabakh, or at a foreign army — if that was so clear to everyone that these statements were not threats to ethnic Armenians generally — then why, in September of 2023, did more than 100,000 ethnic Armenians, including 30,000 children, within a matter of days, flee from their ancestral homeland as the Azerbaijani army approached<sup>81</sup>? If it was so obvious that the years of threats recounted in our evidence — the years of invective against "Armenians of the world" — only concerned threats to the country of Armenia, then why did so many persons, who Azerbaijan claims to be its own citizens, desperately flee for their lives? Could it possibly be that they did not interpret references to "chasing dogs" as only referencing senior governmental leaders? Could it be that they feared the exterminator/soldier that Azerbaijan so proudly placed on its postage stamps? Could it be that they anticipated not just the destruction of their democratic institutions, and not just the "final cleaning" of those ruins by President Aliyev's bonfire, but of their own "final cleaning" if they did not flee?

24. No, what is abundantly clear is that the words of Azerbaijani officials were rightly understood by the entire population of ethnic Armenians in Nagorno-Karabakh as being aimed not only at government leaders, but at themselves and at their children. It is for this reason that they fled

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<sup>80</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of Azerbaijan*, UN doc. CERD/C/AZE/CO/7-9 (10 June 2016), available at <https://documents-ddsny.un.org/doc/UNDOC/GEN/G16/117/70/PDF/G1611770.pdf?OpenElement>, para. 27, p. 5 (Memorial of Armenia, Annex 4).

<sup>81</sup> See Parliamentary Assembly, Council of Europe, *The humanitarian situation in Nagorno-Karabakh*, Res. 2517 (2023); Commission for Human Rights, Council of Europe, *Observations on the Human Rights Situation of People affected by the Conflict between Armenia and Azerbaijan over the Karabakh region* (5 January 2024), available at <https://rm.coe.int/observations-on-the-human-rights-situation-of-people-affected-by-the-c/1680ae228c>. See also Compendium of Illustrative Images Showing the Forced Displacement and Suffering of Civilians Caused by Azerbaijan's Military Assault on Nagorno-Karabakh (confidential) (Armenia's Request for provisional measures (28 September 2023), Annex 124).

their homes for an uncertain future. This threat, and the perception it created, cultivated over decades by the Government of Azerbaijan, is highly relevant when establishing that the alleged acts of violence, detention and enforced disappearance are “capable of” violating the CERD.

### **III. Conclusion**

25. Mr President, Members of the Court, that concludes my presentation. I thank you for your attention. If it pleases the Court, Ms Macdonald will continue now Armenia’s second round.

The PRESIDENT: I thank Professor Murphy for his statement. 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, a few additional remarks on Armenia’s claims of discriminatory murder, torture and inhumane treatment.

#### **II. Azerbaijan’s objections relating to the treatment of soldiers**

2. Starting with the mistreatment of soldiers, as you have seen, Azerbaijan’s final submissions ask you to hold that those claims fall entirely outside your jurisdiction.

3. Professor Murphy has demonstrated that your supposed blanket lack of jurisdiction over the mistreatment of soldiers cannot be because of the applicability of international humanitarian law. So what does that leave us with? It seems, by process of elimination, that Azerbaijan claims that none of Armenia’s *evidence* is capable of amounting to racial discrimination in the case of a *single soldier*.

4. Although it was put a little more coyly, to adopt a term, we heard as much from Mr Wordsworth on Wednesday:

“As to the objection concerning alleged acts against Armenian military personnel in the course of active hostilities . . . 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.”<sup>82</sup>

5. Trying to grasp Azerbaijan’s overall position here, we recall that Mr Wordsworth made much of the fact that Armenia’s claim involves, as he put it, “multiple acts” of mistreatment<sup>83</sup>. Azerbaijan says that the Court must scrutinize every single one of those allegations on the evidence<sup>84</sup>, asks it to conclude that there is no adequate showing of racial discrimination, but — and here is the yawning gulf in the argument — does not *itself* engage in *any* evidential analysis of the vast bulk of the claims. You are simply asked to dismiss the entirety of Armenia’s claims of the mistreatment of soldiers on the basis of Azerbaijan’s bald assertion that the evidence is not good enough, without, in the vast majority of cases, being told why that might be.

6. Such arguments as Azerbaijan *does* make on the evidence are confined to a few piecemeal, and highly questionable, linguistic skirmishes. You will recall that the first of these was made orally on Monday, with the debate on whether what was to be “eliminate[d]” was the victim’s “race” as opposed to “sort” or “kind”<sup>85</sup>. Azerbaijan followed that up on Wednesday in a letter in which, as you will have seen, it sought to introduce new translations of some of the materials I relied on in my oral submissions.

7. Armenia’s response is at tab 3 of your folders. As we noted, this is a remarkable development given that Azerbaijan has had Armenia’s translations for months, and could have been left in no doubt, from either the Memorial itself or Armenia’s response to the Preliminary Objections, that Armenia relied on them as part of its evidence of racial discrimination. Nevertheless, stung perhaps by these matters being aired in public, it has rushed out some new translations in a last-minute damage limitation exercise.

8. Armenia makes the following points in response to all of this:

(a) Firstly, these linguistic debates, if they are to be engaged in, are entirely for the merits.

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<sup>82</sup> CR 2024/19, pp. 19-20, para. 9 (b) (Wordsworth).

<sup>83</sup> CR 2024/19, pp. 20-21, para. 14 (Wordsworth).

<sup>84</sup> CR 2024/17, p. 42, para. 17 (Wordsworth).

<sup>85</sup> CR 2024/17, p. 44, para. 25 (a) (Wordsworth).

- (b) Secondly, it is said repeatedly that Armenia takes words and phrases out of context<sup>86</sup>. But it is hard to see how that is so, given that both Azerbaijan and the Court have been given the full set of videos and transcripts. The context, horrible as it is, is there for all to see.
- (c) Thirdly, Armenia stands by the accuracy of its existing translations. So for example, you may recall that I referred to a video in which captured ethnic Armenians, begging not to be harmed, are told that they will be begging a lot and referred to as “you, the disgraceful people”<sup>87</sup>. Mr Aughey boldly asserted that “the word ‘people’ is not used and the words that are spoken are insults directed against the Armenian servicemen”<sup>88</sup>. Armenia stands by its translation and the use of the word “people”. And it is no answer, in any event, to say that the words are insults being directed against the Armenian soldiers. Of course they are insults, and of course they are being directed at the captive soldiers. The question is whether, on the evidence, the whole treatment of those people is capable of amounting to racial discrimination. And whatever version of the transcript one reads, that is clearly the position. So this star example of a supposed lack of evidence falls flat.
- (d) And that takes me onto the fourth point, that it is *very* difficult to see how any of the new translations really make the situation better. Armenia’s letter from Wednesday provides a redline version showing the edits that Azerbaijan has made. But, as Armenia points out in its letter, even Azerbaijan’s most creative liberties cannot conceal the racism which leaps off the page, and ironically its “corrections” introduce *additional* racially charged language such as including the familiar trope “son of a dog”<sup>89</sup>. And incidentally, we have still heard nothing from Azerbaijan as to how the frequent use of “dog” and cognates, including “mangy jackal”, is consistent with its blanket jurisdictional objection when Azerbaijan *itself* has acknowledged that the term has a “possible ethnic dimension”<sup>90</sup>.

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<sup>86</sup> CR 2024/19, p. 24, para. 27 (Wordsworth).

<sup>87</sup> 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).

<sup>88</sup> CR 2024/19, p. 15, para. 16 (Aughey).

<sup>89</sup> See Letter *from* Elnur Mammadov, Agent of the Republic of Azerbaijan, *to* Philippe Gautier, Registrar, International Court of Justice (17 April 2024), p. 9 (translation of Annex 134); cf. Letter *from* Yeghishhe Kirakosyan, Agent of the Republic of Armenia, *to* Philippe Gautier, Registrar, International Court of Justice (18 April 2024), p. 4 (comparison of translations of Annex 134).

<sup>90</sup> Preliminary Objections of Azerbaijan, para. 45.

### III. Azerbaijan's objections relating to the treatment of civilians

9. Finally, a brief word on civilians. Azerbaijan's final submissions ask you to declare that you lack jurisdiction over *any* civilian mistreatment "except with respect to any allegations which Armenia has particularised with reference to specific evidence purportedly indicating misconduct 'capable' of falling within CERD"<sup>91</sup>.

10. What does "specific evidence" mean here? Well, you will recall the examples I gave on Tuesday<sup>92</sup> of the elderly people, including the 84-year-old man with dementia, who were killed and mutilated in their homes. It now seems that these are examples of a — wholly undefined — category of civilian cases where Azerbaijan goes as far as to claim that you lack jurisdiction. We saw this from Mr Wordsworth's submissions: he asserted that "as horrific as these instances appear, there is nothing whatsoever to link these acts to racial discrimination"<sup>93</sup>. Two points in response to that:

- (a) Firstly, the theory here seems to be that appalling violence against elderly civilians is not even capable of being racially discriminatory unless there is a video of racist abuse being shouted at the victims at the relevant time. Now again, it is wholly unclear whether this is a blanket evidential proposition, what claims it might relate to or why all this is not a matter for the merits stage. In any event, the proposition, with respect, sets an absurdly high threshold for identifying acts capable of amounting to racial discrimination.
- (b) Secondly, none of Azerbaijan's attempts to explain away the soldier cases could conceivably apply here. The "heat of battle" argument cannot apply to frail elderly people and the many other civilians who were harmed. These people cannot possibly be mistaken for soldiers, let alone for the Nagorno-Karabakh leadership to whom, it is claimed, the hostility of President Aliyev and those below him is confined. Is the Court being asked to rule that pure political or nationalist rivalry between Azerbaijan and Armenia explains — to the exclusion of any possible ethnic motivation — murders such as these? In Armenia's submission, none of Azerbaijan's arguments here come close to addressing the abundant evidence before you.

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<sup>91</sup> CR 2024/19, pp. 42-43, para. 9 (2) (ii) (Mustafayev).

<sup>92</sup> CR 2024/18, pp. 47-48, paras. 16-19 (Macdonald).

<sup>93</sup> CR 2024/19, p. 27, para. 38 (Wordsworth).

11. Mr President, Members of the Court, that concludes my response on why Armenia's claims of violent mistreatment should proceed to the merits. I thank you for your 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, Madam Vice-President, Members of the Court, I will briefly address Azerbaijan's objection to Armenia's claims concerning arbitrary detention once again.

**II. The arguments Azerbaijan did not dispute**

2. I begin by noting six points that Azerbaijan did *not* dispute on Wednesday afternoon.

3. First, Azerbaijan did not dispute that the prohibition of arbitrary detention extends through all stages of the judicial process, from the initial detention through to the trial, judgment and sentencing<sup>94</sup>.

4. Second, Azerbaijan did not dispute that, 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<sup>95</sup>.

5. Third, Azerbaijan did not dispute that a discriminatory measure based on a prohibited ground may simultaneously have other objectives and still be capable of constituting a breach of the CERD<sup>96</sup>.

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<sup>94</sup> CR 2024/18, pp. 55-56, para. 4 (Klingler).

<sup>95</sup> CR 2024/18, p. 56, para. 4 (Klingler).

<sup>96</sup> CR 2024/18, p. 64, para. 21 (Klingler).



6. Fourth, Azerbaijan did not dispute the existence of numerous first-hand testimonies of ethnic Armenian detainees recounting how they were beaten, coerced into making confessions and otherwise deprived of their due process rights<sup>97</sup>.

7. Fifth, Azerbaijan did not dispute the existence of first-hand testimonies that link due process violations with what Armenia submits are unequivocal expressions of racial hatred and other racially motivated abuse, the specific terms of which Azerbaijan did not challenge at all<sup>98</sup>.

8. And finally, Azerbaijan did not dispute that many of those it detained were elderly and disabled civilians from Nagorno-Karabakh who did not participate in the hostilities and whom Azerbaijan considers to have been Azerbaijani citizens itself<sup>99</sup>.

9. We respectfully submit that these facts alone are sufficient to dismiss Azerbaijan's objection. By any standard, first-hand evidence indicating that ethnic Armenians were deprived of their due process rights *because* they are ethnic Armenians is capable of establishing a breach of the CERD.

### **III. The arguments Azerbaijan did address**

10. I turn now to certain points that Azerbaijan *did* address.

11. Much of Azerbaijan's argument on Wednesday appeared to be dedicated to the rather extraordinary proposition that the Court must decide on Armenia's claim of arbitrary detention only by reference to the law applicable in times of armed conflict, and not by reference to the provisions of the CERD<sup>100</sup>. Professor Murphy has already shown why this is wrong. I would only add that Armenia's position is decidedly *not*, as Azerbaijan's counsel suggested, that it is enough to transform an allegation into a claim under the CERD simply because a detained person belongs to a particular ethnic group<sup>101</sup>. But it *is* enough to put forward evidence that is capable of establishing that ethnic Armenians have been deprived of due process on the basis of their ethnicity. And as I have already explained, that is exactly what Armenia has done.

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<sup>97</sup> CR 2024/18, pp. 56, 57, paras. 5, 6 (Klingler).

<sup>98</sup> CR 2024/18, p. 64, para. 20 (Klingler).

<sup>99</sup> CR 2024/18, p. 66, para. 27 (Klingler).

<sup>100</sup> CR 2024/19, p. 31, para. 9 (Boisson de Chazournes).

<sup>101</sup> CR 2024/19, p. 31, para. 12 (Boisson de Chazournes).

12. In response to the overwhelming evidence of due process violations Armenia has presented, on Wednesday, Azerbaijan could largely only repeat its previous arguments, not just from Monday but also from more than two years ago. In particular, Azerbaijan claimed that its judicial system is not discriminatory against ethnic Armenians because it allegedly refused to uphold charges against Armenian detainees, dropped charges against them or commuted their sentences<sup>102</sup>. But while Azerbaijan has occasionally released prisoners who were convicted while refusing to commute the sentences of others who were captured in the same place and convicted of the same crime, if anything, that merely underscores that ethnic Armenians have been arbitrarily detained<sup>103</sup>.

13. Azerbaijan also stated that trials against ethnic Armenian detainees “took place in open court” in the presence of “representatives of the ICRC, the diplomatic corps, the Azerbaijani Ombudsman and the international media”<sup>104</sup>. These factual assertions were recycled from Azerbaijan’s presentation during the oral proceedings on provisional measures in October 2021<sup>105</sup>. Azerbaijan’s October 2021 presentation also referred to the same legal provisions of Azerbaijan’s Criminal Procedure Code that it placed in your folders on Monday to show that it respects due process<sup>106</sup>. But Azerbaijan could not convince the Court at that stage that it was guaranteeing ethnic Armenians fair trials and due process, which is why the Court ordered Azerbaijan to “ensure their security and equality before the law”<sup>107</sup>.

14. Azerbaijan’s counsel also referred to the trial and conviction of Mr Vicken Euljekjian, claiming that Armenia was wrong to assert that he was a civilian<sup>108</sup>. To be clear, at the time of his

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<sup>102</sup> CR 2024/19, p. 32, para. 16 (Boisson de Chazournes).

<sup>103</sup> Baku Military Court, Judgment on Behalf of the Republic of Azerbaijan, Case No. 1(101)-1204/2021 (2 July 2021) (Annexes submitted by Azerbaijan, 12 October 2021, Annex 6); Baku Court on Grave Crimes, Criminal Judgment, Case No. 1(100)-1242/2021 (22 July 2021) (Annexes submitted by Azerbaijan, 12 October 2021, Annex 7); Baku Court on Grave Crimes, Judgment on Behalf of the Republic of Azerbaijan, Case No. 1(101)-1256/2021 (23 July 2021) (Annexes submitted by Azerbaijan, 12 October 2021, Annex 8); Baku Court on Grave Crimes, Judgment on Behalf of the Republic of Azerbaijan, Case No. 1(101)-1258/2021 (29 July 2021) (Annexes submitted by Azerbaijan, 12 October 2021, Annex 10); Baku Military Court, Judgment on Behalf of the Republic of Azerbaijan, Case No. 1-1(093)-104/2021 (2 August 2021) (Annexes submitted by Azerbaijan, 12 October 2021, Annex 11); United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan* (2021) (excerpt) (Memorial of Armenia, Annex 57), p. 22.

<sup>104</sup> CR 2024/19, p. 32, para. 16 (Boisson de Chazournes).

<sup>105</sup> CR 2021/21, p. 29, paras. 16-17 (Goldsmith).

<sup>106</sup> CR 2021/21, pp. 28-29, para. 15 (Goldsmith).

<sup>107</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 393, para. 98 (1) (a).

<sup>108</sup> CR 2024/19, pp. 32-33, para. 17 (Boisson de Chazournes).

detention, Mr Euljekjian *was* a civilian. He was captured after the conclusion of the Trilateral Statement with another civilian while driving in a personal car from Lachin to Shushi to collect his belongings<sup>109</sup>. The fact that he allegedly previously posted undated photos of himself carrying military equipment does not change this<sup>110</sup>. Much less does it change the fact that he was convicted of serving as a *mercenary* despite being an Armenian national<sup>111</sup>. On Wednesday, we heard nothing about this conviction at all. Mr Euljekjian remains behind bars as I speak, convicted of a crime that he confessed to under “apparent duress”<sup>112</sup> and that Azerbaijan has not even *attempted* to defend before this Court.

15. In contrast, we did finally hear from Azerbaijan with respect to Armenia’s claim concerning 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 Members of the Court will recall that Azerbaijan offered no response to this aspect of Armenia’s claim in its Written Observations *or* in its oral submissions on Monday.

16. Azerbaijan’s primary response, when it finally addressed the issue on Wednesday, was to rely on quotes made by its President in a speech after proceedings in this case were instituted<sup>113</sup>, claiming that Azerbaijan allows ethnic Armenians to enter the country.

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<sup>109</sup> United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan* (2021), available at [https://www.state.gov/wpcontent/uploads/2022/03/313615\\_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wpcontent/uploads/2022/03/313615_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf), pp. 21-22 (Memorial of Armenia, Annex 57); Letter *from* Yeghishe Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights, *to* Philippe Gautier, Registrar, International Court of Justice (January 2023), attaching Table of POWs and Civilians Acknowledged by Azerbaijan as of January 2023 (Memorial of Armenia, Annex 295); Armenian Captive Sentenced To 20 Years In Azerbaijan, Radio Free Europe/Radio Liberty (14 June 2021), available at <https://www.azatutyun.am/a/31307451.html>; “Lebanese-Armenian Maral Najarian Freed from Azerbaijani Prison Lands in Beirut”, *The Armenian Mirror Spectator* (18 March 2021), available at <https://mirrorspectator.com/2021/03/18/lebanese-armenian-maral-najarian-freed-from-azerbaijani-prison-lands-in-beirut/> (cited in the Memorial of Armenia, fn. 943).

<sup>110</sup> Photos from Vicken Euljekian’s Facebook account, posted 5 October 2020, cited in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, hearing on preliminary objections, judges’ folder of Azerbaijan (17 April 2024), tab 1, p. 37.

<sup>111</sup> United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan* (2021), available at [https://www.state.gov/wpcontent/uploads/2022/03/313615\\_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wpcontent/uploads/2022/03/313615_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf), pp. 21-22 (cited in Memorial of Armenia, Annex 57); Letter *from* Yeghishe Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights, *to* Philippe Gautier, Registrar, International Court of Justice (January 2023), attaching Table of POWs and Civilians Acknowledged by Azerbaijan as of January 2023 (cited in Memorial of Armenia, Annex 295).

<sup>112</sup> United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan* (2021), available at [https://www.state.gov/wpcontent/uploads/2022/03/313615\\_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wpcontent/uploads/2022/03/313615_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf), p. 21 (Memorial of Armenia, Annex 57).

<sup>113</sup> CR 2024/19, p. 33, para. 18 (Boisson de Chazournes); “Ilham Aliyev met with the heads of Russia’s top mass media outlets at TASS headquarters” (23 February 2022) (<https://president.az/en/articles/view/55507>), cited in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, hearing on preliminary objections, judges’ folder of Azerbaijan (17 April 2024), tab 1, p. 35.

17. Of course, whether or not Azerbaijan has occasionally admitted ethnic Armenians to its territory is not the question. The question is whether Armenia has put forward evidence that is capable of establishing that Azerbaijan has arbitrarily detained ethnic Armenians at its ports of entry in violation of the CERD. And that, we respectfully submit, Armenia has plainly done. We refer the Court to pages 130 to 136 of Armenia’s Memorial. Among the evidence cited there, the Court will see that relating to an Estonian citizen of Armenian origin who arrived in Baku to participate in a conference alongside other Estonian officials. Although she had officially received an electronic visa, she was held in a Baku airport for 12 hours and then sent back to Estonia by the Azerbaijani authorities after they ““noticed [their] mistake”” and her “Armenian background”<sup>114</sup>.

18. Is any of this ethnic discrimination surprising? No, it is not. In the words of the head of the press service of Azerbaijani Railways, “the entry of . . . ethnic Armenians who are nationals of other countries is officially prohibited”<sup>115</sup>.

19. Are these just “routine identity checks carried out by border guards or customs authorities”<sup>116</sup> as Azerbaijan claims? No, they are not. They are, on their face, blatantly racist detentions carried out on the basis of their victims’ ethnicity alone.

20. On Wednesday, Azerbaijan also addressed, for the very first time, the fact that it had *not* objected to Armenia’s separate claim that Azerbaijan has failed to guarantee equal treatment by its justice system. As Armenia explained on Tuesday, if Armenia’s claims of unequal treatment in its justice system fall within the CERD, then Armenia’s claims of discriminatory detention *predicated* on unequal treatment in the justice system must fall within the CERD as well<sup>117</sup>. How did Azerbaijan attempt to circle this square? By claiming, for the first time, that it objects to aspects of the Court’s jurisdiction over Armenia’s separate claim concerning Azerbaijan’s failure to guarantee equal treatment by its justice system as well.

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<sup>114</sup> “EU citizen denied entry to Azerbaijan due to Armenian roots”, *Panorama.am* (28 March 2018), available at [https://www.panarmenian.net/eng/news/253595/EU\\_citizen\\_denied\\_entry\\_to\\_Azerbaijan\\_due\\_to\\_Armenian\\_roots](https://www.panarmenian.net/eng/news/253595/EU_citizen_denied_entry_to_Azerbaijan_due_to_Armenian_roots). See also, UN Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of Azerbaijan*, UN doc. CCPR/C/AZE/CO/4 (16 November 2016), available at e.g. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhshv33kpjIN1yQcFINQGeFnqM5IxR4PQMZWvxmoWXyTsshELrT%2FHJH%2FqsIq16FD8OFwu28r7iZSlAYRm9fDeUVCTGadLoglKdYRd4jrLMRra>, paras. 44-45 (cited in Memorial of Armenia, Annex 9).

<sup>115</sup> A. Elibegova and A. Adibekyan, *Armenophobia in Azerbaijan* (2015), p. 52 (Memorial of Armenia, Annex 108).

<sup>116</sup> CR 2024/19, p. 33, para. 18 (Boisson de Chazournes).

<sup>117</sup> CR 2024/19, pp. 33-34, paras. 19-21 (Boisson de Chazournes); CR 2024/18, p. 67, para. 31 (Klingler).

21. Of course, on Wednesday, Azerbaijan’s counsel made no mention of the fact that her colleague had stated, just minutes before, that Armenia’s claims concerning the “withholding of civil and political rights” are “recognisable as matters capable of falling within CERD”<sup>118</sup>. Nor did Azerbaijan’s counsel mention the fact that Armenia’s claims of unequal treatment of ethnic Armenians by Azerbaijan’s judicial system *include* claims concerning the withholding of civil rights<sup>119</sup>. Can it really be said that Armenia’s claims of unequal treatment of ethnic Armenians by Azerbaijan’s justice system fall within the CERD *except* where they concern ethnic Armenians who have been arbitrarily detained? Once again, Azerbaijan has not offered any reason why the Court should accept such a counter-intuitive point.

22. Azerbaijan’s counsel finally claimed on Wednesday that the Court cannot rely on so-called reports of general content, which do not constitute first-hand evidence<sup>120</sup>. Well, counsel did not identify which reports she meant, but many of the reports I referred to on Tuesday were based on interviews and first-hand testimonies of returned ethnic Armenian detainees<sup>121</sup>. They are very much reliable for that reason alone.

#### IV. Conclusion

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

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

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<sup>118</sup> CR 2024/19, p. 20, paras. 11-12 (Wordsworth).

<sup>119</sup> Memorial of Armenia, pp. 652-656.

<sup>120</sup> CR 2024/19, p. 34, para. 21 (Boisson de Chazournes).

<sup>121</sup> 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); 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://humanrights.network.shorthandstories.com/we-are-no-one/incitement-to-hatred/index.html>; T. Lokshina, “Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes”, *Human Rights Watch* (12 March 2021) (cited in Memorial of Armenia, Annex 86); Amnesty International, *Last To Flee: Older People’s Experience Of War Crimes And Displacement In The Nagorno-Karabakh Conflict* (2022), p. 25 (excerpt) (cited in Memorial of Armenia, Annex 95).

Mr SICILIANOS:

**ARMENIA’S CLAIMS CONCERNING AZERBAIJAN’S DISCRIMINATORY ENFORCED  
DISAPPEARANCES OF ETHNIC ARMENIANS FALL WITHIN THE SCOPE OF  
THE CERD AND THE RELEVANCE OF CERD COMMITTEE AND  
OTHER UN EXPERTS’ FINDINGS**

1. Mr President, Madam Vice-President, distinguished Members of the Court, I shall present Armenia’s rebuttals 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 some comments on the importance and relevance for the present proceedings of the concluding observations of the CERD Committee and of the findings of other United Nations human rights bodies and special rapporteurs, which has been challenged by Azerbaijan’s presentations in the last few days.

**I. Enforced disappearances of ethnic Armenians  
fall under the scope of the CERD**

2. Azerbaijan cannot dispute that the prohibition of enforced disappearance is encompassed within Article 5’s broad and non-exhaustive guarantee of the equal enjoyment of all human rights<sup>122</sup>. The prohibition of enforced disappearance is a rule of customary international law, if not *jus cogens*, and when it involves racial discrimination, it breaches the CERD<sup>123</sup>.

3. Azerbaijan cannot dispute the concrete evidence that Armenia has presented concerning both servicemen and civilians of ethnic Armenian origin who are believed to have been in Azerbaijan’s custody and have either been murdered without the circumstances of their death acknowledged by Azerbaijan or remain missing until today<sup>124</sup>. To be clear, with respect to both categories of enforced disappearances I just mentioned, Armenia refers specifically to those who are known to have been in Azerbaijan’s *custody*, contrary to what Professor Boisson de Chazournes suggested<sup>125</sup>.

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<sup>122</sup> Memorial of Armenia, paras. 6.139-6.146.

<sup>123</sup> United Nations Human Rights Office of the High Commissioner, *30th anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance* (18 December 2022), available at <https://www.ohchr.org/en/press-releases/2022/12/30th-anniversary-declaration-protection-all-persons-enforced-disappearance>.

<sup>124</sup> CR 2024/18, pp. 70-71, para. 10 (Sicilianos).

<sup>125</sup> CR 2024/19, p. 35, para. 25 (Boisson de Chazournes).

4. Moreover, Armenia has also put forward clear evidence that Azerbaijan has repeatedly obstructed searches for and repatriation of the remains of ethnic Armenians in territories under its control<sup>126</sup>. In this regard, Azerbaijan repeatedly relied on its repatriation of more than 1,700 bodies to Armenia following the 44-day war<sup>127</sup>, but does not explain why this is relevant to those ethnic Armenians who were last known to be in Azerbaijan's custody but whose fates remain unknown to date.

5. Finally, Armenia's evidence shows that Azerbaijan has also concealed the fates of ethnic Armenians who were forcibly disappeared following the submission of Armenia's Memorial. Counsel for Azerbaijan did not contest such evidence.

6. Mr President, what is striking is Azerbaijan's complete failure to challenge the palpable ethnic element of discrimination in all the above cases, many of which are documented by video footage<sup>128</sup>. That element is even more visible in numerous cases of completely inoffensive civilians, including elderly people up to 90 years old and persons living with disabilities, who were the last to flee due to their age and yet were subjected to enforced disappearance by Azerbaijan. Again, counsel for Azerbaijan did not give any explanation how the subjection of these individuals to enforced disappearances could be based on any grounds other than ethnic hatred.

7. Yet, Azerbaijan somehow claims that there is no "specific evidence of differential treatment based on ethnic origin"<sup>129</sup> concerning Azerbaijan's practice of enforced disappearance of ethnic Armenians. To be clear, the question whether there is a *practice* or *practices* of enforced disappearances based on existing evidence is an issue to be examined at the merits. This is therefore a transparent attempt to deflect from the weaknesses of Azerbaijan's objection at this stage and the central issue to the Court's consideration — namely the ethnic dimension that Armenia has amply shown.

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<sup>126</sup> CR 2024/18, p. 70, para. 9 (Sicilianos).

<sup>127</sup> CR 2024/17, pp. 54-55, para. 31 (Boisson de Chazournes); CR 2024/19, p. 35, para. 26 (Boisson de Chazournes).

<sup>128</sup> CR 2024/18, p. 71, para. 11 (Sicilianos).

<sup>129</sup> CR 2024/19, p. 35, para. 25 (Boisson de Chazournes).

## **II. The relevance and importance of CERD Committee concluding observations and findings of other prominent UN experts and special rapporteurs**

8. I come now to my second point, namely the relevance and importance of CERD Committee concluding observations and findings of other prominent UN experts and special rapporteurs. Armenia has extensively invoked the findings of the CERD Committee in its concluding observations of 2022 in which the Committee examined almost all claims of Armenia in its Memorial concerning a period including the 44-day war.

9. Yesterday, we heard from Professor Boisson de Chazournes that such concluding observations should be disregarded by the Court: “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*” (emphasis added). This is in stark contrast with the opening statement of Mr Mammadov, the Agent of Azerbaijan in this case, in Geneva in 2022 during those *same* Committee proceedings which resulted in the adoption of the aforementioned concluding observations:

“we highly appreciate the dialogue with the committee, which significantly contributes to our efforts for overcoming existing challenges and making further progress. The Republic of Azerbaijan considers the interactive dialogue with the committee as a significant mechanism for monitoring and reviewing actions taken by the [g]overnment to fulfil its obligations under the convention.”<sup>130</sup>

10. As it is well known, the concluding observations of UN human rights treaty bodies in general and of the CERD Committee in particular, are the corollary of the whole process of examination of States’ reports, which includes a six-hour “constructive dialog” with the State delegation and considers a broad range of contributions by a variety of independent stakeholders, including other international bodies and institutions, as well as NGOs contributing first-hand information and testimonies. It is true that the concluding observations are not judicial decisions. They are adopted in a specific framework and, as Mr Mammadov observed, they aim at helping States to fulfil their commitments under the Convention. However, when a committee expresses “deep concern” about a series of acts or omissions of the State under examination — as the CERD

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<sup>130</sup> 107th Session of the Committee on the Elimination of Racial Discrimination, Opening Statement by HE Mr Elnur Mammadov, Deputy Minister for Foreign Affairs, at the consideration of the combined tenth to twelfth periodic report of the Government of the Republic of Azerbaijan (15-16 August 2022), available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSTA%2FAZE%2F49661&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSTA%2FAZE%2F49661&Lang=en).



Committee did in relation to Azerbaijan in 2022 — this is a very alarming sign addressed to the State in question based on multiple converging sources.

11. The Court places high importance on UN treaty bodies' findings of facts and law in its judgments and advisory opinions<sup>131</sup>. As the Court explained in relation to the *Diallo* case,

“[a]lthough [it] is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant [on Civil and Political Rights] on that of the [Human Rights] Committee, it believes that it should *ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty*”<sup>132</sup>.

12. Similar considerations apply to the other treaty bodies, including the CERD Committee.

Let me recall the main findings of the CERD Committee's concluding observations in relation to the preliminary objections of Azerbaijan, which you can see on your screen:

“[T]he Committee is 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.”<sup>133</sup>

13. The invitation to the Court to simply disregard the findings of the specialized treaty body on issues of racial discrimination, concerning a significant part of the period and context related to Armenia's Application, is most surprising. Azerbaijan is inviting the Court to consider that the findings of the CERD Committee do not even pass the threshold of the preliminary stage of proceedings. This would constitute a serious blow to the authority and credibility of the CERD Committee and to the UN treaty bodies system more generally.

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<sup>131</sup> See, e.g. *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)*, Judgment of 31 January 2024, p. 98, para. 333; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012 (II), pp. 457-458, para. 101; *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. 101, para. 65; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010 (II), pp. 663-664, para. 66; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment, I.C.J. Reports 2022 (I), p. 77, para. 188; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p. 179, para. 109; pp. 179-180, para. 110; p. 180, para. 112; pp. 192-193, para. 136.

<sup>132</sup> *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010 (II), p. 664, para. 66; emphasis added.

<sup>133</sup> United Nations 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), available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FCO%2FAZE%2FCO%2F10-12&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FCO%2FAZE%2FCO%2F10-12&Lang=en), para. 4 (a).

14. All the more so that the above approach by Azerbaijan could be applied *mutatis mutandis* to the statement, at tab 5 of your judges' folder from Tuesday, emanating from two Special Rapporteurs, the Chair Rapporteur and four other members of the Working Group on Enforced or Involuntary Disappearances, all democratically elected by the Human Rights Council, which you can see on your screens<sup>134</sup>. May I recall that "Special Rapporteurs . . . and Working Groups are part of what is known as Special Procedures of the Human Rights Council", that is "the largest body of independent experts in the UN Human Rights system" constituting "independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world"<sup>135</sup>. The above-mentioned statement covers not only "enforced disappearances" but also extrajudicial killings, torture and other ill-treatment against ethnic Armenians during and in the aftermath of the 44-day war, as you can see on your screens<sup>136</sup>. Joint statements of this kind are relatively rare in UN practice and they concern only egregious violations of human rights. Azerbaijan's logic of summarily disregarding such statement would inflict yet another blow to the UN human rights protection system.

15. By way of conclusion, let me reiterate that the enforced disappearances of ethnic Armenians fall within the scope of application of the CERD. This claim is corroborated by the findings of the CERD Committee, as is the case with all of Armenia's claims which have been the subject of Azerbaijan's preliminary objections. The same observation goes *mutatis mutandis* for the findings of the UN Special Rapporteurs and the members of the UN Working Group on Enforced or Involuntary Disappearances.

16. Mr President, Members of the Court, this concludes my presentation. I thank the Court for its kind attention. I kindly ask you, Mr President, to call upon the Agent of Armenia, HE Mr Kirakosyan, to present Armenia's final submissions. Thank you very much.

The PRESIDENT: I thank Professor Sicilianos for his statement. I now call upon the Agent of Armenia, His Excellency Mr Kirakosyan. You have the floor, Excellency.

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<sup>134</sup> UN OHCHR, "Nagorno-Karabakh: Captives Must be Released — UN Experts" (1 February 2021) (Memorial of Armenia, Annex 14).

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*

Mr KIRAKOSYAN:

### FINAL SUBMISSIONS

1. Mr President, Madam Vice-President, Members of the Court, it is an honour to appear before you once again this week. I will be brief.

2. This week, Azerbaijan failed to respect the clearly circumscribed limits of the preliminary objections phase. It disregarded the legal standards clearly established by the Court's jurisprudence, and it distorted Armenia's factual evidence. But Azerbaijan's tactic has failed. Its stance is not conducive to good administration of justice.

3. As Armenia's learned counsel demonstrated this week, Armenia genuinely attempted to negotiate its claims under the CERD, but to no avail. Armenia thus fully complied with the negotiation precondition of Article 22 of the CERD.

4. Moreover, all of Armenia's claims fall squarely within the material scope of the CERD. Azerbaijan's racist violence, arbitrary detention and enforced disappearances perpetrated against ethnic Armenians are plainly capable of falling within the CERD. As you saw this week, these horrific practices are anathema to the promise undertaken by all States parties to the CERD to

“adopt all necessary measures for speedily eliminating racial discrimination in *all* its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination”<sup>137</sup>.

5. The Court has before it all the necessary elements to easily dispense with Azerbaijan's objections. Armenia looks forward to continuing its pursuit of accountability in the proceedings on the merits, and reconfirms its dedication to resolving this dispute peacefully, and in a manner that honours both the letter and spirit of international law.

6. In accordance with Article 60, paragraph 2, of the Rules of Court, I will now read out the Republic of Armenia's final submissions.

“On the basis of its written and oral submissions, the Republic of Armenia respectfully requests that the Court:

- a. Reject the first preliminary objection raised by Azerbaijan; and

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<sup>137</sup> International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965), preamble; emphasis added.

- b. Reject the second preliminary objection raised by Azerbaijan; or in the alternative, decide that Azerbaijan's second preliminary objection does not possess an exclusively preliminary character."

7. Before concluding, I wish to express my gratitude to the Registry and its staff for their kind assistance in these proceedings, to the interpreters for their hard work and, finally, Mr President, Members of the Court, thank you for your attention and serious consideration of the Parties' submissions during this week's hearings.

The PRESIDENT: I thank the Agent of Armenia for his statement. The Court takes note of the final submissions which you have just read on behalf of your Government.

Ainsi s'achève la présente série d'audiences. Je tiens à remercier les agents, conseils et avocats des deux Parties pour leurs interventions. Conformément à la pratique habituelle, je prierai les deux agents de demeurer à la disposition de la Cour pour tous renseignements complémentaires dont celle-ci pourrait avoir besoin. Sous cette réserve, je déclare close la procédure orale sur les exceptions préliminaires soulevées par le défendeur en l'affaire relative à l'*Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Arménie c. Azerbaïdjan)*. La Cour va maintenant se retirer pour délibérer. Les agents des Parties seront avisés en temps utile de la date à laquelle la Cour rendra son arrêt. La Cour n'étant saisie d'aucune autre question aujourd'hui, l'audience est levée.

*L'audience est levée à 11 h 35.*

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