

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

APPLICATION  
DE LA CONVENTION INTERNATIONALE  
SUR L'ÉLIMINATION DE TOUTES LES FORMES  
DE DISCRIMINATION RACIALE

(AZERBAÏDJAN c. ARMÉNIE)

DEMANDE EN INDICATION  
DE MESURES CONSERVATOIRES

**ORDONNANCE DU 7 DÉCEMBRE 2021**

**2021**

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

APPLICATION  
OF THE INTERNATIONAL CONVENTION  
ON THE ELIMINATION OF ALL FORMS  
OF RACIAL DISCRIMINATION

(AZERBAIJAN v. ARMENIA)

REQUEST FOR THE INDICATION  
OF PROVISIONAL MEASURES

**ORDER OF 7 DECEMBER 2021**

Mode officiel de citation :

*Application de la convention internationale  
sur l'élimination de toutes les formes de discrimination raciale  
(Azerbaïdjan c. Arménie), mesures conservatoires,  
ordonnance du 7 décembre 2021, C.I.J. Recueil 2021, p. 405*

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Official citation:

*Application of the International Convention  
on the Elimination of All Forms of Racial Discrimination  
(Azerbaijan v. Armenia), Provisional Measures,  
Order of 7 December 2021, I.C.J. Reports 2021, p. 405*

ISSN 0074-4441  
ISBN 978-92-1-003893-5

N° de vente: Sales number	<b>1231</b>
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Imprimé en France/Printed in France

7 DÉCEMBRE 2021

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ORDER

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## INTERNATIONAL COURT OF JUSTICE

YEAR 2021

7 December 2021

2021  
7 December  
General List  
No. 181APPLICATION  
OF THE INTERNATIONAL CONVENTION  
ON THE ELIMINATION OF ALL FORMS  
OF RACIAL DISCRIMINATION(AZERBAIJAN *v.* ARMENIA)REQUEST FOR THE INDICATION  
OF PROVISIONAL MEASURES

## ORDER

*Present: President* DONOGHUE; *Vice-President* GEVORGIAN; *Judges* TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, ROBINSON, SALAM, IWASAWA, NOLTE; *Judges ad hoc* KEITH, DAUDET; *Registrar* GAUTIER.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

*Makes the following Order:*

1. On 23 September 2021, the Republic of Azerbaijan (hereinafter “Azerbaijan”) filed in the Registry of the Court an Application instituting proceedings against the Republic of Armenia (hereinafter “Armenia”)

concerning alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter “CERD” or the “Convention”).

2. At the end of its Application, Azerbaijan

“respectfully requests the Court to adjudge and declare:

- A. That Armenia, through its State organs, State agents, and other persons and entities exercising governmental authority or acting on its instructions or under its direction and control, has violated articles 2, 3, 4, 5, 6, and 7 of CERD.
- B. That Armenia, by aiding, assisting, sponsoring and supporting activities inconsistent with CERD conducted by other persons, groups, and organizations has violated Article 2 (1) (b), (d), and (e) of CERD.
- C. That Armenia must take all steps necessary to comply with its obligations under CERD, including to:
  - (a) Immediately cease and desist from any and all policies and practices of ethnic cleansing that have been directed against Azerbaijanis;
  - (b) Immediately co-operate with de-mining operations by Azerbaijan and international agencies in the formerly Occupied Territories, including through the provision of comprehensive and accurate maps and other information on the location of minefields, by ceasing and desisting from the laying of landmines on the territory of Azerbaijan, and by other necessary and appropriate measures;
  - (c) Immediately cease and desist from any acts that detrimentally impact Azerbaijanis’ enjoyment of or access to their environment and natural resources;
  - (d) Immediately cease and desist from the destruction of Azerbaijani heritage sites and other pieces of Azerbaijani ethnic and cultural property, and from the pursuit of the policy of cultural erasure;
  - (e) Immediately cease and desist from disseminating, promoting, or sponsoring anti-Azerbaijani propaganda and hate speech, including via educational institutions, the media, social media disinformation campaigns, and other channels, and from glorifying individuals who have committed ethnically motivated crimes against Azerbaijanis;
  - (f) Immediately cease and desist from any direct or indirect sponsorship or support of persons and organizations that engage in discrimination against Azerbaijanis, including VoMA;
  - (g) Publicly condemn discrimination against Azerbaijanis and adopt immediate and positive measures to prevent and punish

such acts of discrimination, in accordance with CERD Articles 2 (1) *(d)* and *(e)* and Article 4;

- (h)* Ensure the investigation and punishment of acts of discrimination, including but not limited to war crimes committed by Armenian forces, in accordance with CERD Articles 2 and 4, and provide effective protection and remedies to Azerbaijanis for harm caused by such acts;
- (i)* Publicly acknowledge its breaches of CERD and apologize for its conduct at the highest levels of Government;
- (j)* Provide assurances and guarantees of non-repetition of Armenia's illegal conduct under CERD; and
- (k)* Make full reparation to Azerbaijan, including compensation in an amount to be determined in a later phase in these proceedings, for the harm suffered as a result of Armenia's actions in violation of CERD."

3. In its Application, Azerbaijan seeks to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article 22 of CERD.

4. Together with the Application, Azerbaijan submitted a Request for the indication of provisional measures with reference to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

5. At the end of its Request, Azerbaijan asked the Court to indicate the following provisional measures:

- (a)* Armenia shall take all necessary steps to enable Azerbaijan to undertake the prompt, safe and effective demining of the landmines laid in Azerbaijan's territory by the Armenian military and/or other groups under the direction, control, or sponsorship of Armenia, including by immediately providing comprehensive and accurate information about the location and characteristics of landmines in Azerbaijan's territory;
- (b)* Armenia shall immediately cease and desist from endangering the lives of Azerbaijanis by planting or promoting or facilitating the planting of landmines in Azerbaijan's territory;
- (c)* Armenia shall take all necessary steps effectively to prevent organizations operating in Armenian territory, including the VoMA organization, from engaging in the incitement of racial hatred and racially-motivated violence targeted at Azerbaijanis, and immediately shall cease and desist incitement based on the fabrication of public and private hate speech attributed to Azerbaijanis on Twitter and other social media and traditional media channels;

- (d) Armenia shall take effective measures to collect, and to prevent the destruction and ensure the preservation of, evidence related to allegations of ethnically-motivated crimes against Azerbaijanis of which it is aware, including those identified in communications from the Republic of Azerbaijan;
- (e) Armenia shall refrain from any measure that might aggravate, extend, or make more difficult the resolution of this dispute; and
- (f) Armenia shall submit a report to the Court on all measures taken to give effect to its Order indicating provisional measures within three months, as from the date of the Order, and thereafter every six months, until a final decision on the case is rendered by the Court.”

6. The Registrar immediately communicated to the Government of Armenia the Application containing the Request for the indication of provisional measures, in accordance with Article 40, paragraph 2, of the Statute of the Court, and Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing by Azerbaijan of the Application and the Request for the indication of provisional measures.

7. Pending the notification provided for by Article 40, paragraph 3, of the Statute, the Registrar informed all States entitled to appear before the Court of the filing of the Application and the Request for the indication of provisional measures by a letter dated 27 September 2021.

8. Since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case. Azerbaijan chose Mr. Kenneth Keith and Armenia Mr. Yves Daudet.

9. By letters dated 27 September 2021, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of its Rules, the Court had fixed 18 and 19 October 2021 as the dates for the oral proceedings on the Request for the indication of provisional measures.

10. At the public hearings, oral observations on the Request for the indication of provisional measures were presented by:

*On behalf of Azerbaijan:* H.E. Mr. Elnur Mammadov,  
Mr. Vaughan Lowe,  
Ms Catherine Amirfar,  
Ms Laurence Boisson de Chazournes,  
Ms Natalie Reid,  
Mr. Donald Francis Donovan.

*On behalf of Armenia:* H.E. Mr. Yeghishe Kirakosyan,  
Mr. Robert Kolb,  
Mr. Sean Murphy,



Mr. Constantinos Salonidis,  
Mr. Pierre d'Argent,  
Mr. Lawrence H. Martin.

11. At the end of its second round of oral observations, Azerbaijan asked the Court to indicate the following provisional measures:

- “(a) Armenia shall take all necessary steps to enable Azerbaijan to undertake the prompt, safe and effective demining of the landmines laid in Azerbaijan’s territory by the Armenian military and/or other groups under the direction, control, or sponsorship of Armenia, including by immediately providing comprehensive and accurate information about the location and characteristics of landmines in Azerbaijan’s territory;
- (b) Armenia shall immediately cease and desist from endangering the lives of Azerbaijanis by planting or promoting or facilitating the planting of landmines in Azerbaijan’s territory;
- (c) Armenia shall take all necessary steps effectively to prevent organizations operating in Armenian territory, including the VoMA organization, from engaging in the incitement of racial hatred and racially-motivated violence targeted at Azerbaijanis, and immediately shall cease and desist incitement based on the fabrication of public and private hate speech attributed to Azerbaijanis on Twitter and other social media and traditional media channels;
- (d) Armenia shall take effective measures to collect, and to prevent the destruction and ensure the preservation of, evidence related to allegations of ethnically-motivated crimes against Azerbaijanis of which it is aware, including those identified in communications from the Republic of Azerbaijan;
- (e) Armenia shall refrain from any measure that might aggravate, extend, or make more difficult the resolution of this dispute; and
- (f) Armenia shall submit a report to the Court on all measures taken to give effect to its Order indicating provisional measures within three months, as from the date of the Order, and thereafter every six months, until a final decision on the case is rendered by the Court.”

12. At the end of its second round of oral observations, Armenia requested the Court “to reject Azerbaijan’s requests for the indication of provisional measures in full”.

\* \* \*

## I. INTRODUCTION

13. Azerbaijan and Armenia, both of which were Republics of the former Union of Soviet Socialist Republics, declared independence on 18 October 1991 and 21 September 1991, respectively. In the Soviet Union, the Nagorno-Karabakh region had been an autonomous entity (“oblast”) that had a majority Armenian ethnic population, lying within the territory of the Azerbaijani Soviet Socialist Republic. The Parties’ competing claims over that region resulted in hostilities that ended with a ceasefire in May 1994. Further hostilities erupted in September 2020, in what Azerbaijan calls “the Second Garabagh War” and Armenia calls “the Second Nagorno-Karabakh War” (hereinafter the “2020 Conflict”), and lasted 44 days. On 9 November 2020, the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia, and the President of the Russian Federation signed a statement referred to by the Parties as the “Trilateral Statement”. Under the terms of this statement, as of 10 November 2020, “[a] complete ceasefire and termination of all hostilities in the area of the Nagorno-Karabakh conflict [was] declared”.

14. The differences between the Parties are longstanding and wide-ranging. The Applicant has invoked Article 22 of CERD as the title of jurisdiction in the present case, the scope of which is therefore circumscribed by that Convention.

## II. PRIMA FACIE JURISDICTION

### *1. General Observations*

15. The Court may indicate provisional measures only if the provisions relied on by the Applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case (see, for example, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, *Provisional Measures, Order of 23 January 2020*, *I.C.J. Reports 2020*, p. 9, para. 16).

16. In the present case, Azerbaijan seeks to found the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article 22 of CERD (see paragraph 3 above). The Court must therefore first determine whether those provisions prima facie confer upon it jurisdiction to rule on the merits of the case, enabling it — if the other necessary conditions are fulfilled — to indicate provisional measures.

17. Article 22 of CERD reads as follows:

“Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not set-

bled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.”

18. Azerbaijan and Armenia are both parties to CERD; Azerbaijan acceded to CERD on 16 August 1996, Armenia on 23 June 1993. Neither Party made reservations to Article 22 or to any other provision of CERD.

2. *Existence of a Dispute relating to the Interpretation  
or Application of CERD*

19. Article 22 of CERD makes the Court’s jurisdiction conditional on the existence of a dispute relating to the interpretation or application of the Convention. According to the established case law of the Court, a dispute is “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11). In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other” (*South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328). The two sides must “hold clearly opposite views concerning the question of the performance or non-performance of certain’ international obligations” (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 26, para. 50, citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74).

20. In order to determine whether a dispute exists in the present case, the Court cannot limit itself to noting that one of the Parties maintains that the Convention applies, while the other denies it (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 414, para. 18). Since Azerbaijan has invoked as the basis of the Court’s jurisdiction the compromissory clause in an international convention, the Court must ascertain whether the acts and omissions complained of by the Applicant are capable of falling within the provisions of that instrument and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain (see *ibid.*).

\* \*

21. Azerbaijan contends that a dispute has arisen between Azerbaijan and Armenia concerning the interpretation and application of CERD.

According to Azerbaijan, Armenia has engaged and continues to engage in discriminatory acts against persons of Azerbaijani national or ethnic origin. Azerbaijan claims that, taken individually and collectively, Armenia's policies and conduct of ethnic cleansing, cultural erasure and fomenting of hatred against ethnic Azerbaijanis systematically infringe their rights and freedoms in violation of CERD. Azerbaijan specifically alleges that, following the end of the 2020 Conflict, Armenia "actively continues to prevent" the return of displaced ethnic Azerbaijanis to the areas formerly under Armenian control by refusing to share information about the minefields in the area where their former homes were located so as to allow for mine clearance operations, and by "continu[ing] to plant *new* mines on Azerbaijan's territory" (emphasis in the original). Azerbaijan considers that the Applicant's conduct in this regard is "a continuation of Armenia's decades-long ethnic cleansing campaign" against persons of Azerbaijani national or ethnic origin. The Applicant adds that, at present, the Court need only make a *prima facie* finding of jurisdiction and that its Application is premised on a claim of discrimination against "Azerbaijanis as an ethnic origin or national origin group and not in relation to nationality or citizenship".

22. Azerbaijan alleges, in particular, that Armenia has acted in violation of its obligations under Articles 2, 3, 4, 5, 6 and 7 of CERD. Azerbaijan asserts that Armenia bears responsibility, *inter alia*, for engaging in practices of ethnic cleansing and other acts of racial segregation; for inciting hatred and violence against persons of Azerbaijani national or ethnic origin through hate speech and the dissemination of racist propaganda, including at the highest level of its Government; for harbouring "armed ethno-nationalist hate groups", including Voxj Mnalu Arvest, which stands for "Art of Survival" (hereinafter "VoMA"); for engaging in, sponsoring or supporting disinformation operations across social media; and for failing to investigate and preserve evidence related to violations of obligations arising under CERD with regard to ethnic Azerbaijanis. Azerbaijan adds that, in its understanding, both Parties accept "that a dispute under CERD exists".

\*

23. Armenia does not address specifically the existence of a dispute concerning alleged violations of its obligations under CERD. However, Armenia denies that it has violated its obligations and responsibilities under CERD and stresses that it does not endorse or condone racism aimed at ethnic Azerbaijanis. Armenia contends that Azerbaijan's claims have no substance. For example, it disputes the Applicant's allegation that hate speech against ethnic Azerbaijanis has emanated from the high-

est level of the Government of Armenia, pointing out that Azerbaijan has only adduced the “statements of a few individuals or non-governmental organizations engaged in emergency and self-defence trainings”. As to Azerbaijan’s allegation that the Respondent refuses to co-operate in demining, Armenia states that it has already provided minefield maps to Azerbaijan on two separate occasions and that it is willing to provide further information in the context of resolving all outstanding humanitarian issues. Armenia moreover asserts that it is not planting landmines in the territory of Azerbaijan.

24. Armenia contends that the claims of Azerbaijan fall outside the scope of the Court’s jurisdiction *ratione materiae*, because the measures complained of affect all citizens of the Republic of Azerbaijan as opposed to persons of Azerbaijani ethnicity. The Respondent states that, in any event, Azerbaijan’s claims related to the planting of landmines and the alleged refusal by Armenia to provide minefield maps lie outside the parameters of CERD. Armenia argues that the Court lacks *prima facie* jurisdiction over these claims because demining has no connection to CERD. Armenia also questions whether the Court has jurisdiction *ratione temporis* because the mining of the relevant areas allegedly took place during and in the immediate aftermath of the hostilities that ended in 1994, and hence before CERD entered into force as between the Parties.

\* \*

25. The Court recalls that for the purposes of determining whether there was a dispute between the parties at the time of filing an application, it takes into account in particular any statements or documents exchanged between them (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, *Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 12, para. 26). In so doing, it pays special attention to “the author of the statement or document, their intended or actual addressee, and their content” (*ibid.*). The existence of a dispute is a matter for objective determination by the Court; it is a matter of substance, and not a question of form or procedure (*ibid.*).

26. The Court considers that the exchanges between the Parties prior to the filing of the Application indicate that they differ as to whether certain acts or omissions allegedly committed by Armenia gave rise to violations of its obligations under CERD. The Court notes that, according to Azerbaijan, Armenia has violated its obligations under the Convention in various ways (see paragraphs 21 to 22 above). Armenia has denied that it has committed any of the alleged violations set out above and that the acts complained of fall within the scope of CERD (see paragraphs 23 to 24 above). The divergence of views between Azerbaijan and Armenia regarding the latter’s compliance with its commitments under CERD was

already apparent in the first exchange of letters between the Ministers for Foreign Affairs of the Parties, dated 8 December 2020 and 22 December 2020 respectively, in the immediate aftermath of the 2020 Conflict. It is further demonstrated by subsequent exchanges between the Parties.

27. For the purposes of the present proceedings, the Court is not required to ascertain whether any violations of Armenia's obligations under CERD have occurred, a finding that could only be made as part of the examination of the merits of the case. At the stage of making an order on provisional measures, the Court's task is to establish whether the acts and omissions complained of by Azerbaijan are capable of falling within the provisions of CERD. In the Court's view, at least some of the acts and omissions alleged by Azerbaijan to have been committed by Armenia are capable of falling within the provisions of the Convention.

28. The Court finds therefore that there is a sufficient basis at this stage to establish *prima facie* the existence of a dispute between the Parties relating to the interpretation or application of CERD.

### 3. *Procedural Preconditions*

29. Under Article 22 of CERD, a dispute may be referred to the Court only if it is "not settled by negotiation or by the procedures expressly provided for in this Convention". The Court has previously ruled that Article 22 of CERD establishes procedural preconditions to be met before the seisin of the Court (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 128, para. 141).

30. The Court has also held that the above-mentioned preconditions to its jurisdiction are alternative and not cumulative (*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. 113). Since Azerbaijan does not contend that its dispute with Armenia was submitted to "procedures expressly provided for in [the] Convention", which begin with a referral to the Committee on the Elimination of Racial Discrimination under Article 11 of CERD, the Court will only ascertain whether the dispute is one that is "not settled by negotiation", within the meaning of Article 22.

31. In addition, Article 22 of CERD states that a dispute may be referred to the Court at the request of any of the parties to that dispute only if they have not agreed to another mode of settlement. The Court notes that neither Party contends that they have agreed to another mode of settlement.

32. At this stage of the proceedings, the Court will examine whether it appears, *prima facie*, that Azerbaijan genuinely attempted to engage in

negotiations with Armenia, with a view to resolving their dispute concerning the latter's compliance with its substantive obligations under CERD, and whether Azerbaijan pursued these negotiations as far as possible (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 420, para. 36).

\* \*

33. Regarding the procedural preconditions set out in Article 22 of CERD, Azerbaijan states that between December 2020 and September 2021, the Parties have exchanged over 40 pieces of correspondence and held several rounds of meetings in an attempt to settle Azerbaijan's claims concerning Armenia's violations of obligations arising under CERD. In particular, Azerbaijan asserts that the Minister for Foreign Affairs of Azerbaijan, in a letter dated 8 December 2020 addressed to his counterpart in Armenia, specified the actions by which Armenia had violated its obligations under CERD. According to Azerbaijan, further correspondence between the Parties set out the modalities that were to govern their negotiations, and several bilateral meetings took place between March and September 2021. Azerbaijan further asserts that Armenia did not engage in good faith in the negotiations, refusing either to consider properly the requested remedies or to make any proposals or counter-proposals to resolve the issues in dispute. In support of its contention that Azerbaijan genuinely sought to find a solution to the matters in dispute, counsel for the Applicant refers, in particular, to three letters, namely, a letter from the Minister for Foreign Affairs of Armenia, dated 11 November 2020, the above-mentioned letter from the Minister for Foreign Affairs of Azerbaijan, dated 8 December 2020, and a letter, dated 9 October 2021, outlining the proposals made by Azerbaijan to Armenia in the course of negotiations held on 30 and 31 August 2021. According to Azerbaijan, these documents show that Azerbaijan made genuine attempts to find a negotiated solution with Armenia to the dispute, whereas Armenia failed to do so. It contends that to continue negotiations or to resort to the procedures expressly provided for in CERD would be futile in light of Armenia's intransigence. Azerbaijan thus considers that it has pursued the negotiation of its claims "as far as possible" and that the procedural precondition of negotiation under Article 22 CERD is therefore satisfied.

\*

34. Armenia, for its part, states that it recognizes that the requirement for the failure of negotiations is met in the present case, although it argues that this is through no fault of its own. According to Armenia, Azerbai-

jan did not genuinely attempt to engage in meaningful negotiations before instituting proceedings alleging violations by Armenia of its obligations under CERD. In its view, throughout the whole negotiating process, Azerbaijan showed no intention of negotiating and used delaying tactics to postpone the negotiations, for example by repeatedly requesting the Parties to clarify the modalities, topics and selection of representatives for the purposes of the negotiations. Armenia observes in this regard that “[i]t took nearly a year, dozens of exchanges of Notes and numerous encounters before it was finally possible to address the substance of the dispute”. Therefore, Armenia claims that it had a “good reason to think that there was no longer any point in continuing a negotiation that had become futile”. In this context, Armenia submits, “the requirements in terms of negotiation were met”.

\* \*

35. Regarding the precondition of negotiation contained in Article 22 of CERD, the Court observes that negotiations are distinct from mere protests or disputations and require a genuine attempt by one of the parties to engage in discussions with the other party, with a view to resolving the dispute. Where negotiations are attempted or have commenced, the precondition of negotiation is met only when the attempt to negotiate has been unsuccessful or where negotiations have failed, become futile or deadlocked. In order to meet this precondition, “the subject-matter of the negotiations must relate to the subject-matter of the dispute which, in turn, must concern the substantive obligations contained in the treaty in question” (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 419, para. 36, citing *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. 133, para. 161).

36. The Court notes that, as evidenced by the material before it, Azerbaijan raised allegations of violations by Armenia of its obligations under CERD in various bilateral exchanges subsequent to the signing of the Trilateral Statement in November 2020. In particular, the Parties corresponded through a series of diplomatic Notes over a period running from November 2020 to September 2021 and held several rounds of bilateral meetings covering the procedural modalities, scope and topics of their negotiations concerning alleged violations of obligations arising under CERD.

37. The Court observes that, between the first exchange between the Ministers for Foreign Affairs of Azerbaijan and Armenia, by letters dated 8 December 2020 and 22 December 2020 respectively, and the last bilateral meeting held on 14-15 September 2021, the positions of the Parties do not appear to have evolved. Although the Parties were able to agree



on certain procedural modalities, including scheduling timetables and topics of discussion, no similar progress was made in terms of substantive matters relating to Azerbaijan's allegations of Armenia's non-compliance with its obligations under CERD. The information available to the Court regarding the bilateral sessions held on 15-16 July 2021, 30-31 August 2021 and on 14-15 September 2021 shows a lack of progress in reaching common ground on substantive issues. The Court observes moreover that both Parties appear to accept that negotiations between them with a view to addressing the CERD-related complaints levelled by Azerbaijan against Armenia had reached an impasse.

38. Despite the fact that Azerbaijan alleged in bilateral exchanges that Armenia had violated a number of obligations under CERD and that the Parties engaged in a significant number of written exchanges and meetings over a period of several months, it seems that their positions on the alleged non-compliance by Armenia with its obligations under CERD remained unchanged and that their negotiations had reached an impasse. It therefore appears to the Court that the dispute between the Parties regarding the interpretation and application of CERD had not been settled by negotiation as of the date of the filing of the Application.

39. Recalling that, at this stage of the proceedings, the Court need only decide whether, *prima facie*, it has jurisdiction, the Court finds that the procedural preconditions under Article 22 of CERD appear to have been met.

#### 4. Conclusion as to Prima Facie Jurisdiction

40. In light of the foregoing, the Court concludes that, *prima facie*, it has jurisdiction pursuant to Article 22 of CERD to entertain the case to the extent that the dispute between the Parties relates to the "interpretation or application" of the Convention.

### III. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE LINK BETWEEN SUCH RIGHTS AND THE MEASURES REQUESTED

41. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits thereof. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (see, for example, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, *Provisional Measures, Order of 23 January 2020*, *I.C.J. Reports 2020*, p. 18, para. 43).

42. At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which Azerbaijan wishes to see protected exist; it need only decide whether the rights claimed by Azerbaijan on the merits, and for which it is seeking protection, are plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested (*I.C.J. Reports 2020*, p. 18, para. 44).

\* \*

43. In the present proceedings, Azerbaijan asserts rights under Articles 2, 3, 4, 5, 6 and 7 of CERD. In particular, Azerbaijan argues that “Armenia’s policies and practices target Azerbaijanis for discriminatory treatment falling within the scope of Article 1 (1) and in violation of Articles 2, 3, 4, 5, 6, and 7 of CERD”. Azerbaijan thus considers that its rights under these provisions of CERD are plausible and that Armenia’s acts plausibly constitute racial discrimination in violation of its obligations under CERD.

44. Azerbaijan contends more specifically that by laying mines, including in the course of the 2020 Conflict, in civilian areas previously inhabited by ethnic Azerbaijanis, Armenia has deliberately made it impossible for them to return to their homes. Azerbaijan further contends that Armenia continues to plant landmines and intentionally withholds comprehensive and accurate information about mine placement. Azerbaijan asserts that the laying of landmines and the alleged refusal to share information about their location are part of a longstanding campaign of “ethnic cleansing” by Armenia which constitutes “racial discrimination” under the definition set out in Article 1, paragraph 1, of CERD, and violates the rights of ethnic Azerbaijanis under this Convention in so far as it has both the purpose and effect of nullifying or impairing, for example, the right not to be arbitrarily deprived of life, the right to liberty and security of person and the right to liberty of movement and freedom to choose one’s residence. Azerbaijan thus submits that the rights it asserts under CERD with regard to the laying of landmines by Armenia are plausible.

45. Azerbaijan notes that Armenia has neither condemned the activities within its territory of armed ethnonationalist hate groups, such as VoMA, that are said to incite violence against ethnic Azerbaijanis, including through social media, nor punished those involved in such activities. Azerbaijan cites, for example, anti-Azerbaijani propaganda disseminated by VoMA on social media, referring to persons of Azerbaijani national or ethnic origin pejoratively as “Turks” or “Caspian Turks”, and referring to Azerbaijan as the “Caspian Threat”, which should be “liquidat[ed]”. According to Azerbaijan, VoMA claims that its personnel has “work[ed] in close cooperation with [Armenia’s] Armed Forces and received a com-

mentation by the command”. Moreover, Azerbaijan considers that, by failing to condemn or prohibit anti-Azerbaijani paramilitary groups, Armenia has allowed those groups to proliferate. In this regard, it also refers to the group “Statehood as National Value” (hereinafter “POGA”) which apparently began organizing military training programmes in March 2021. In addition, Azerbaijan asserts that the Government of Armenia is responsible for an “ongoing anti-Azerbaijani cyber disinformation campaign”. According to Azerbaijan, by not condemning or prohibiting the operations of VoMA, POGA and similar groups, by glorifying the racist ideology used to target persons of Azerbaijani national or ethnic origin and by engaging, at a governmental level, in a cyber disinformation campaign in an attempt “to stoke ethnic tensions between Azerbaijanis and Armenians”, Armenia is infringing the rights guaranteed by Articles 2, 4, 5 and 7 of CERD.

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46. With respect to Azerbaijan’s claim relating to Armenia’s supposed “policy and practice” of laying landmines, Armenia contends that Azerbaijan has no plausible rights under CERD because “landmines, by their nature, do not engage in ethnic discrimination”. Moreover, according to Armenia, there is no evidence that it ever used mines to target persons of Azerbaijani ethnic origin. It asserts that the laying of mines in areas in and around Nagorno-Karabakh was not for the purpose of racial discrimination but for the purpose of military defence. Armenia states that it has already provided maps to Azerbaijan and its Agent announced that it “stand[s] ready to provide any more maps in [its] possession regarding minefields located behind the lines currently held by Azerbaijani armed forces, which now present solely humanitarian concerns”.

47. Regarding Azerbaijan’s allegations that the Respondent has neither condemned nor punished the activities within its territory of armed ethnonationalist hate groups, Armenia observes that the groups in question are not State entities and that it has not endorsed, nor does it endorse or condone, the rhetoric of these organizations. Armenia asserts that Azerbaijan’s alleged rights in this regard are not plausible in so far as the private speech that Azerbaijan has cited does not constitute speech against which CERD provides protection. Moreover, Armenia refers to the wording of Article 4 of CERD, which requires States parties to take measures to eradicate acts of discrimination “with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of [the] Convention”. Armenia notes that these rights include the right to freedom of expression and freedom of association contained in Article 5 (*d*) of CERD. According to Armenia, the evidence before the Court does not establish that the organizations in

question seek to incite racial hatred in such a way that the Government of Armenia would be required to prevent their speech and, thus, Armenia considers that the rights that Azerbaijan seeks to protect are not plausible.

48. Armenia adds that Azerbaijan has not demonstrated that Armenia is engaging in cyber disinformation operations to incite anti-Azerbaijani hate and concludes that the “rights for which Azerbaijan seeks protection through the second part of its third request are therefore not plausible”.

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49. The Court notes that CERD imposes a number of obligations on States parties with regard to the elimination of racial discrimination in all its forms and manifestations. Article 1, paragraph 1, of CERD defines racial discrimination in the following terms:

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

Articles 2, 3, 4, 5, 6 and 7 of the Convention, invoked by Azerbaijan in its Application and for the purposes of its Request for the indication of provisional measures, read as follows:

*“Article 2*

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
  - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
  - (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
  - (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of

creating or perpetuating racial discrimination wherever it exists;

- (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
  - (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

#### *Article 3*

States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

#### *Article 4*

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite

racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

*Article 5*

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
- (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;
  - (iii) The right to nationality;
  - (iv) The right to marriage and choice of spouse;
  - (v) The right to own property alone as well as in association with others;
  - (vi) The right to inherit;
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;

- (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks.

#### *Article 6*

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

#### *Article 7*

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.”

50. The Court notes that Articles 2, 3, 4, 5, 6 and 7 of CERD are intended to protect individuals from racial discrimination. It recalls, as it did in past cases in which Article 22 of CERD was invoked as the basis of its jurisdiction, that there is a correlation between respect for individual rights enshrined in the Convention, the obligations of States parties under CERD and the right of States parties to seek compliance therewith (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 426, para. 51).

51. A State party to CERD may invoke the rights set out in the above-mentioned articles only to the extent that the acts complained of constitute acts of racial discrimination as defined in Article 1 of the Convention (see *ibid.*, para. 52). In the context of a request for the indication of provisional measures, the Court examines whether the rights claimed by an applicant are at least plausible.

52. The Court considers, on the basis of the information presented to it by the Parties, that at least some of the rights claimed by Azerbaijan are

plausible rights under the Convention. This is the case, with respect to rights allegedly violated through Armenia's failure to condemn the activities within its territory of groups that, according to Azerbaijan, are armed ethnonationalist hate groups that incite violence against ethnic Azerbaijanis, and to punish those responsible for such activities.

53. With regard to rights under CERD asserted by Azerbaijan with respect to Armenia's alleged conduct in relation to landmines, the Court recalls that Azerbaijan claims that this conduct is part of a longstanding campaign of ethnic cleansing. The Court recognizes that a policy of driving persons of a certain national or ethnic origin from a particular area, as well as preventing their return thereto, can implicate rights under CERD and that such a policy can be effected through a variety of military means. However, the Court does not consider that CERD plausibly imposes any obligation on Armenia to take measures to enable Azerbaijan to undertake demining or to cease and desist from planting landmines. Azerbaijan has not placed before the Court evidence indicating that Armenia's alleged conduct with respect to landmines has "the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing", of rights of persons of Azerbaijani national or ethnic origin.

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54. The Court now turns to the condition of the link between the rights claimed by Azerbaijan and the provisional measures requested. In this regard the Court recalls that at this stage of the proceedings only some of the rights claimed by Azerbaijan have been found to be plausible. It will therefore limit itself to considering the existence of the requisite link between these rights and the measures requested by Azerbaijan.

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55. Azerbaijan considers that each of the provisional measures requested is clearly linked to the rights for which it seeks protection. In particular, with regard to the measure requesting that Armenia be ordered to prevent certain groups from engaging in hate speech, and to cease and desist from its alleged ongoing cyber disinformation campaign, Azerbaijan asserts that this is aimed at protecting ethnic Azerbaijanis from racist hate speech and the risk of ethnic violence and therefore are directly linked to the rights asserted by Azerbaijan under CERD.

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56. Armenia maintains, in general, that the measures requested by Azerbaijan have no link to rights of Azerbaijan arising under CERD.

\* \*

57. The Court has already found that at least some of the rights claimed by Azerbaijan under CERD are plausible (see paragraph 52 above). It considers that a link exists between one of the measures requested by Azerbaijan (see paragraphs 5 and 11 above) and the plausible rights it seeks to protect. This is the case for the measure aimed at ensuring that any organizations and private persons in the territory of Armenia do not engage in the incitement and promotion of racial hatred and racially motivated violence targeted at people of Azerbaijani national or ethnic origin. This measure, in the view of the Court, is directed at safeguarding plausible rights invoked by Azerbaijan under CERD.

58. The Court concludes, therefore, that a link exists between some of the rights claimed by Azerbaijan and one of the requested provisional measures.

#### IV. RISK OF IRREPARABLE PREJUDICE AND URGENCY

59. The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences (see, for example, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, *Provisional Measures, Order of 23 January 2020*, *I.C.J. Reports 2020*, p. 24, para. 64, referring to *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Provisional Measures, Order of 3 October 2018*, *I.C.J. Reports 2018 (II)*, p. 645, para. 77).

60. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights claimed before the Court gives its final decision. The condition of urgency is met when the acts susceptible of causing irreparable prejudice can “occur at any moment” before the Court makes a final decision on the case (*ibid.*, p. 24, para. 65). The Court must therefore consider whether such a risk exists at this stage of the proceedings.

61. The Court is not called upon, for the purposes of its decision on the Request for the indication of provisional measures, to establish the existence of breaches of CERD, but to determine whether the circumstances require the indication of provisional measures for the protection

of rights under this instrument. It cannot at this stage make definitive findings of fact, and the right of each Party to submit arguments in respect of the merits remains unaffected by the Court's decision on the Request for the indication of provisional measures.

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62. Azerbaijan submits that Armenia has incited and continues to incite hatred and violence against persons of Azerbaijani national or ethnic origin by permitting armed hate groups to recruit members, raise funds, and operate training centres. It claims in particular that VoMA, whose stated aim is “to create an entirely ethnic Armenian ‘Nation Army’ and to ready the mono-ethnic Armenian State against the perceived ‘threat’ of Azerbaijanis”, uses fear and hatred of persons of Azerbaijani national or ethnic origin as a recruiting tool, regularly disseminates messages of racial superiority, and arms and trains Armenians for an ethnic war against persons of Azerbaijani national or ethnic origin. Azerbaijan adds that the threat of violence is exacerbated by “growing calls to arms” by VoMA, which, in its most recent activity report for September 2021, stated that it had trained dozens of people and instructors across Armenia and had solicited donations for vehicles and “arms for weapons practice and protection in the populated areas along the borders”. Azerbaijan adds that, by not condemning or prohibiting anti-Azerbaijani paramilitary groups, Armenia has allowed groups, such as VoMA and POGA, which apparently began organizing military training programmes in March 2021 to prepare Armenians for war, to proliferate within its territory. Azerbaijan considers that there is an urgent need to protect Azerbaijanis from continued hate speech and violence on account of their national or ethnic origin and that the emotional effects of this constant threat of violence can cause an irreparable prejudice to their rights.

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63. Armenia denies that there exists an imminent risk of irreparable prejudice to the rights of Azerbaijan with respect to its “allegations of incitement of ethnic hatred and violence through an alleged failure to sanction or punish so-called armed hate groups”. Armenia contends that the objectives of these organizations have nothing to do with incitement of racial hatred and racially motivated violence targeted at persons of Azerbaijani national or ethnic origin. In particular, Armenia states that VoMA is a non-governmental organization engaged in emergency and civil-military defence preparedness, education and training, which aims to “raise the spirits of the Armenian people”. Armenia further references the

obligation to respect the right of freedom of opinion and expression when considering the reach of Article 4 of CERD, and observes that statements must be of an “*exceptionally/manifestly* offensive character” (emphasis in the original) to fall outside the protection of the “due regard” clause in Article 4. With respect to the statements made by VoMA, Armenia acknowledges that they could be considered as nationalistic, patriotic, and sometimes offensive and even controversial, but it denies that these statements could be viewed as an incitement to ethnic hatred and violence against an ethnic group. Therefore, the Respondent asserts that Azerbaijan has neither demonstrated that Armenia has allowed militant hate groups — such as, according to Azerbaijan, VoMA and POGA — to proliferate, nor provided evidence of incitement of racial hatred imputable to these or similar organizations. Consequently, Azerbaijan has failed to establish an imminent risk of irreparable prejudice.

\* \*

64. Having previously determined that some of the rights asserted by the Applicant are plausible and that there is a link between those rights and the provisional measures requested, the Court now considers whether irreparable prejudice could be caused to those rights and whether there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to those rights before the Court gives its final decision.

65. The Court recalls that in past cases in which CERD was at issue, it stated that the rights stipulated in Article 5 (a), (b), (c), (d) and (e) are of such a nature that prejudice to them is capable of causing irreparable harm (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 396, para. 142; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 138, para. 96; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, pp. 430-431, para. 67). The Court considers that this statement also holds true in respect of the right of persons not to be subject to racial hatred and discrimination that stems from Article 4 of CERD.

66. In the view of the Court, acts prohibited under Article 4 of CERD — such as propaganda promoting racial hatred and incitement to racial discrimination or to acts of violence against any group of persons based on their national or ethnic origin — can generate a pervasive

racially charged environment within society. Such a situation may have serious damaging effects on individuals belonging to the protected group. Such damaging effects may include, but are not limited to, the risk of bodily harm or psychological harm and distress.

67. In light of the considerations set out above, the Court concludes that the alleged disregard of the rights deemed plausible by the Court (see paragraph 52 above) may entail irreparable prejudice to those rights and that there is urgency, in the sense that there is a real and imminent risk that such prejudice will be caused before the Court makes a final decision in the case.

#### V. CONCLUSION AND MEASURES TO BE ADOPTED

68. The Court concludes from all of the above considerations that the conditions required by its Statute for it to indicate provisional measures are met. It is therefore necessary, pending its final decision, for the Court to indicate certain measures in order to protect the rights claimed by Azerbaijan, as identified above (see paragraph 52).

69. The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are, in whole or in part, other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power on several occasions in the past (see, for example, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, *Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 28, para. 77).

70. In the present case, having considered the terms of the provisional measures requested by Azerbaijan and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

71. The Court considers that, with regard to the situation described above, Armenia must, pending the final decision in the case and in accordance with its obligations under CERD, take all necessary measures to prevent the incitement and promotion of racial hatred, including by organizations and private persons in its territory, targeted at persons of Azerbaijani national or ethnic origin.

72. The Court recalls that Azerbaijan has requested it to indicate measures aimed at ensuring the non-aggravation of the dispute with Armenia. When it is indicating provisional measures for the purpose of preserving specific rights, the Court may also indicate provisional measures with a view to preventing the aggravation or extension of a dispute whenever it considers that the circumstances so require (see, for example, *Application*

of the *International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, pp. 432-433, para. 76). In the present case, having considered all the circumstances, in addition to the specific measure it has decided to order, the Court deems it necessary to indicate an additional measure directed to both Parties and aimed at ensuring the non-aggravation of their dispute.

73. The Court further recalls that Azerbaijan requested it to indicate provisional measures directing Armenia to “take effective measures to collect, to prevent the destruction and ensure the preservation of, evidence related to allegations of ethnically-motivated crimes against Azerbaijanis” and to provide regular reports on the implementation of provisional measures. The Court, however, considers that, in the particular circumstances of the case, these measures are not warranted.

\* \* \*

74. The Court reaffirms that its “orders on provisional measures under Article 41 [of the Statute] have binding effect” (*LaGrand (Germany v. United States of America)*, *Judgment, I.C.J. Reports 2001*, p. 506, para. 109) and thus create international legal obligations for any party to whom the provisional measures are addressed.

\* \* \*

75. The Court further reaffirms that the decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Azerbaijan and Armenia to submit arguments in respect of those questions.

\* \* \*

76. For these reasons,

THE COURT,

*Indicates* the following provisional measures:

(1) Unanimously,

The Republic of Armenia shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of

Racial Discrimination, take all necessary measures to prevent the incitement and promotion of racial hatred, including by organizations and private persons in its territory, targeted at persons of Azerbaijani national or ethnic origin;

(2) Unanimously,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this seventh day of December, two thousand and twenty-one, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Azerbaijan and the Government of the Republic of Armenia, respectively.

*(Signed)* Joan E. DONOGHUE,  
President.

*(Signed)* Philippe GAUTIER,  
Registrar.

Judge IWASAWA appends a declaration to the Order of the Court.

*(Initialed)* J.E.D.

*(Initialed)* Ph.G.

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