

DECLARATION OF JUDGE SEBUTINDE

Agreement that Azerbaijan's present Request should be rejected in toto — Agreement also with the reasoning and conclusion of the Court in relation to Azerbaijan's allegations relating to the laying of landmines — Disagreement, however, that the Court's reasoning in relation to the landmines applies equally to the booby traps — Azerbaijan's assertion regarding the presence of booby traps in civilian areas is based on new facts pursuant to Article 75, paragraph 3, of the Rules of Court — The reason why the Court should reject the Applicant's Request for provisional measures in relation to booby traps is because Azerbaijan has not placed before the Court sufficient evidence indicating that the planting of the booby traps is attributable to the conduct of Armenia.

1. I have voted in favour of paragraph 27 of the present Order, rejecting Azerbaijan's renewed Request for the indication of provisional measures *in toto*. Whilst I concur with the reasoning and conclusion of the Court in relation to Azerbaijan's allegations regarding landmines, I do not agree with the conclusion of the Court in paragraph 23 of the Order that the same reasoning "also applies to the present circumstances, including the allegations regarding booby traps". I state my reasons in this short declaration.

2. It will be recalled that in 2021, Azerbaijan requested the indication of similar provisional measures, which earlier request the Court rejected, *inter alia*, for the reasons quoted in paragraph 22 of the present Order (*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. 425, para. 53*).

3. Azerbaijan's present Request is brought pursuant to Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court. Article 75, paragraph 3, of the Rules of Court states that "[t]he rejection of a request for the indication of provisional measures shall not prevent the party which made it from making a fresh request in the same case *based on new facts*" (emphasis added). It is therefore for the Court to satisfy itself that Azerbaijan's present Request is "based on new facts" such as to justify its examination.

4. Paragraphs 16, 17 and 18 of the present Order rehearse Azerbaijan's evidence in support of its Request. I agree that the evidence that Azerbaijan

relies upon in relation to the alleged laying of landmines by Armenian forces in civilian areas does not substantially differ from that which the Court previously assessed in 2021 and does not plausibly demonstrate racial discrimination under CERD. In particular, most (if not all) of the landmines allegedly laid by Armenian forces appear to have been laid in areas that were the site of continued hostilities between the Parties in 2022. Therefore, those landmines continue to be linked to a military purpose and do not appear to plausibly fall within the ambit of CERD.

5. Azerbaijan alleges that in addition to the laying of landmines, there have also been several booby traps found within civilian houses and other civilian buildings in villages to which Azerbaijani civilians are returning. This is an assertion pursuant to Article 75, paragraph 3, of the Rules of Court based on new facts that were not part of the 2021 Request and is arguably a more plausible case for racial discrimination than the laying of landmines, given that the military purpose of such booby traps is less evident. At the same time, however, it is far from clear who was responsible for the planting of such booby traps, how many of such traps have been planted, and for what purpose. Azerbaijan's evidence in this regard is neither convincing nor unequivocal. Thus, unlike in the case of the landmines, Azerbaijan has not placed before the Court sufficient evidence indicating that the planting of the booby traps is attributable to the conduct of Armenia. It is for this reason that Azerbaijan's renewed Request, in as far as it relates to the booby traps, should be rejected.

(Signed) Julia SEBUTINDE.
