

DECLARATION OF JUDGE *AD HOC* KEITH

1. I have two main reasons for agreeing with the rejection by the Court of Azerbaijan's requested measures.

2. While it is the case that over 30 civilians in the areas recovered by Azerbaijan in the 44-day war have been killed and over 80 civilians injured, I am unable to see plausible evidence that these were the effects, let alone the purpose, of racially discriminatory acts in terms of Article 1 of CERD. By their very nature, landmines are indiscriminate in their effects.

3. Second, the requested measures would require Armenia to take actions in areas which Azerbaijan has now recovered and which are part of its sovereign territory. How could Armenia undertake those tasks?

4. My final point relates to paragraph 22, which repeats paragraph 53 of the 7 December 2021 Order, and which the Court endorses in paragraph 23 of the current Order. By their very nature, requests for provisional measures have to be dealt with urgently. The texts of such orders are prepared rapidly. That appears from the brief time which elapses between the hearings of such requests and the issuing of the orders. The Court is not able to follow the several very careful steps in which it engages when it prepares judgments and advisory opinions, as provided in its 1976 Resolution concerning the Internal Judicial Practice of the Court. The public manifestation of that practice appears in the much longer period which elapses between the ending of the oral proceedings and the delivery of the judgment or the advisory opinion. It follows that I do not think that the words of an order for provisional measures should be subjected to the kind of close analysis which may be appropriate for a sentence or a paragraph in a judgment or an advisory opinion.

5. In the current context, surely there can be no doubt, if racial discrimination were established on a plausible basis, that those being killed or injured would have been entitled to the benefit of Article 5 (*b*) of CERD to the "right to security of person and protection by the State against violence or bodily harm"?

(Signed) Kenneth KEITH.

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