

CR 2021/20

**International Court
of Justice**

THE HAGUE

**Cour internationale
de Justice**

LA HAYE

YEAR 2021

Public sitting

held on Thursday 14 October 2021, at 10 a.m., at the Peace Palace,

President Donoghue presiding,

in the case concerning **Application of the International Convention on the Elimination
of All Forms of Racial Discrimination**
(Armenia v. Azerbaijan)

VERBATIM RECORD

ANNÉE 2021

Audience publique

tenue le jeudi 14 octobre 2021, à 10 heures, au Palais de la Paix,

sous la présidence de Mme Donoghue, présidente,

*en l'affaire relative à l'***Application de la convention internationale sur l'élimination
de toutes les formes de discrimination raciale**
(Arménie c. Azerbaïdjan)

COMPTE RENDU

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

Présents: Mme Donoghue, présidente
M. Gevorgian, vice-président
MM. Tomka
Abraham
Bennouna
Yusuf
Mmes Xue
Sebutinde
MM. Bhandari
Robinson
Salam
Iwasawa
Nolte, juges
MM. Keith
Daudet, juges *ad hoc*
M. Gautier, greffier

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as Agent;

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Mr. Robert Kolb, Professor of Public International Law, University of Geneva,

Mr. Pierre d'Argent, Full Professor, Université catholique de Louvain, member of the Institut de droit international, president of the European Society of International Law, Foley Hoag LLP, member of the Bar of Brussels,

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as Counsel;

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H.E. Mr. Andranik Hovhannisyan, Ambassador, Permanent Representative of the Republic of Armenia to the United Nations Office and other international organizations in Geneva,

Mr. Liparit Drmeyan, Head of the Office of the Representative of the Republic of Armenia before the European Court of Human Rights, Office of the Prime Minister of the Republic of Armenia,

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- S. Exc. M. Kamil Khasiyev, ambassadeur de la République d'Azerbaïdjan auprès de la République de Serbie,
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- Mme Ashika Singh, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,
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- Mme Rhianna Hoover, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

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- M. Nakaba Egawa, cabinet Debevoise & Plimpton LLP,
- M. Badir Bayramov, ministère des affaires étrangères,

comme assistants.

The PRESIDENT: Please be seated. The sitting is open. The Court meets today and will meet tomorrow under Article 74, paragraph 3, of the Rules of Court, to hear the oral observations of the Parties on the Request for the indication of provisional measures submitted by the Republic of Armenia in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*. This morning, the Court will hear Armenia's first round of oral argument.

Owing to the ongoing concerns and restrictions related to the COVID-19 pandemic, the Court has decided to hold these oral proceedings in a hybrid format, under Article 59, paragraph 2, of its Rules. The Court will continue to fulfil its mission through all means at its disposal, pending the normalization of the health situation.

The Court has taken great care to ensure the smooth conduct of this hybrid hearing. The Parties participated in technical tests prior to the opening of the hearings. The tests were comprehensive and included, for example, tests of the interpretation system and the process for displaying exhibits. However, while these tests reduce the risk of technical difficulties, they cannot eliminate them. In the event that we experience any such difficulty, such as a loss of audio input from a remote participant, I may have to interrupt the hearing briefly to allow the technical team to solve the problem.

In a hybrid hearing such as this one, all judges are able to view the speaker and any exhibits, regardless of whether they are in the Great Hall of Justice or joining via video link. I would like to note that the following judges are present with me in the Great Hall of Justice: Vice-President Gevorgian and Judges Tomka, Yusuf, Sebutinde, Iwasawa and Nolte and Judge *ad hoc* Daudet; while Judges Abraham, Bennouna, Xue, Bhandari, Robinson and Salam and Judge *ad hoc* Keith are participating by video link. For reasons duly made known to me, Judge Cançado Trindade is unable to sit with us in these oral proceedings, either in person or by video link.

For this set of hybrid hearings, the Parties were informed that they could each have up to four representatives present in the Great Hall of Justice at any one time and that the Court would make available, should a Party so desire, an additional room in the Peace Palace from which other members of each delegation could follow the proceedings via video link. The Parties were also informed that

participation by video link would be available to members of each delegation who would not be present in the Peace Palace.

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The Court does not include upon the Bench a judge of the nationality of either of the Parties. Accordingly, both Parties have availed themselves of the right, under Article 31, paragraph 3, of the Statute, to choose a judge *ad hoc* to sit in the case. Armenia has chosen Professor Yves Daudet, and Azerbaijan, Judge Kenneth Keith.

Article 20 of the Statute provides that “[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously”. Pursuant to Article 31, paragraph 6, of the Statute, this same provision applies to judges *ad hoc*.

In accordance with custom, I shall first say a few words about the career and qualifications of each judge *ad hoc* before inviting them to make their solemn declarations.

Judge Kenneth Keith, who is a national of New Zealand, studied law at the University of Auckland, Victoria University of Wellington and the University of Harvard. He was a Member of this Court for nine years, from 2006 to 2015. His wide-ranging and illustrious career in the legal field includes vast experience as an academic, government lawyer and judge. Judge Keith is a Professor Emeritus at the Victoria University of Wellington, where he taught for more than 20 years, and a member of the Institut de droit international. He was a member of the New Zealand legal team in the *Nuclear Tests* cases before the International Court of Justice in 1973, 1974 and 1995, and was leader of the New Zealand delegation to the Diplomatic Conference which prepared the additional Protocols to the Geneva Conventions in 1977. He served in the New Zealand Department of External Affairs, as Director of the New Zealand Institute of International Affairs and as President of the New Zealand Law Commission. Judge Keith also served as Judge of the New Zealand Court of Appeal, of the newly established Supreme Court of New Zealand, and at various times as Judge of Appeal in Samoa, the Cook Islands, Niue and Fiji. He was also a member of the Judicial Committee of the Privy Council, London.

I shall now say a few words about the career and qualifications of Professor Daudet.

Professor Daudet, who is of French nationality, is a Doctor of Law and Professor (“agrégé”) in Public Law and Political Science. He is currently President of the Curatorium of the Hague Academy of International Law and Emeritus Professor at the University of Paris I (Panthéon-Sorbonne), where he served as First Vice-President. Professor Daudet is an arbitrator in the Court of Conciliation and Arbitration within the Organization for Security and Co-operation in Europe. He has held a number of academic and research posts in France, Mauritius, Morocco and Côte d’Ivoire. He was a member of the French delegation to the United Nations Conference on an International Code of Conduct on the Transfer of Technology. He has been chosen as a judge *ad hoc* on numerous occasions and is currently sitting in the cases concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* and *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*. He also recently served as a judge *ad hoc* in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)* and in the two cases concerning *Appeal[s] Relating to the Jurisdiction of the ICAO Council*, among others. Professor Daudet is a member of the Editorial Board of the *Annuaire français de droit international* and is a member of the French Society of International Law and the French branch of the International Law Association. He has published numerous books and articles in different areas of international law.

In accordance with the order of precedence fixed by Article 7, paragraph 3, of the Rules of Court, I shall first invite Judge Keith to make the solemn declaration prescribed by the Statute, and I would request all those present to rise. Judge Keith, you have the floor.

Judge *ad hoc* KEITH: Thank you, Madam President.

“I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously.”

The PRESIDENT: I thank you, Judge Keith. I now invite Professor Daudet to make the solemn declaration prescribed by the Statute. Professor Daudet, you have the floor.

Judge *ad hoc* DAUDET: Merci, Madame la Présidente.

«Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

The PRESIDENT: I thank you, Professor Daudet. Please be seated. I take note of the solemn declarations made by Judge *ad hoc* Keith and Judge *ad hoc* Daudet and declare them duly installed as judges *ad hoc* 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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I shall now recall the principal steps of procedure in the present case.

On 16 September 2021, the Republic of Armenia filed in the Registry of the Court an Application instituting proceedings against the Republic of Azerbaijan concerning alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (I shall refer to this Convention as “CERD”). To found the jurisdiction of the Court, Armenia invokes Article 36, paragraph 1, of the Statute of the Court and Article 22 of CERD.

In its Application, Armenia contends that for decades Azerbaijan has subjected individuals of Armenian ethnic or national origin to racial discrimination in furtherance of “its policy of cleansing Azerbaijan and Nagorno-Karabakh of Armenians and Armenian influence”. Armenia claims that Azerbaijan has committed serious violations of Articles 2, 3, 4, 5, 6 and 7 of CERD, including but not limited to what it describes as “engaging in practices of ethnic cleansing”, “glorifying, rewarding and condoning acts of racism”, “facilitating, tolerating and failing to punish and prevent hate speech”, “depriving Armenians . . . of the equal enjoyment of their individual rights” and “systematically destroying and falsifying Armenian cultural sites and heritage”. Armenia alleges that all good faith efforts on its part to put an end to these violations through other means have failed, and thus requests the Court to hold Azerbaijan responsible for its violations of CERD, to prevent future harm, and to redress the harm that has already been caused.

~~**Together with its Application**~~ Together with its Application, Armenia also submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and

Articles 73, 74 and 75 of the Rules of Court. According to Armenia, the purpose of its Request is to “protect and preserve Armenia’s rights and the rights of Armenians from further harm, and to prevent the aggravation or extension of this dispute, pending the determination of the merits of the issues raised in the Application”.

The Registrar will now read out the passage from the Request specifying the provisional measures which the Government of Armenia is asking the Court to indicate. You have the floor, Mr. Registrar.

The REGISTRAR: Thank you, Madam President. I quote:

- “Azerbaijan shall release immediately all Armenian prisoners of war, hostages and other detainees in its custody who were made captive during the September-November 2020 armed hostilities or their aftermath;
- Pending their release, Azerbaijan shall treat all Armenian prisoners of war, hostages and other detainees in its custody in accordance with its obligations under the CERD, including with respect to their right to security of person and protection by the State against all bodily harm, and permit independent medical and psychological evaluations for that purpose;
- Azerbaijan shall refrain from espousing hatred of people of Armenian ethnic or national origin, including by closing or suspending the activities of the Military Trophies Park;
- Azerbaijan shall protect the right to access and enjoy Armenian historic, cultural and religious heritage, including but not limited to, churches, cathedrals, places of worship, monuments, landmarks, cemeteries and other buildings and artefacts, by *inter alia* terminating, preventing, prohibiting and punishing their vandalization, destruction or alteration, and allowing Armenians to visit places of worship;
- Azerbaijan shall facilitate, and refrain from placing any impediment on, efforts to protect and preserve Armenian historic, cultural and religious heritage, including but not limited to churches, cathedrals, places of worship, monuments, landmarks, cemeteries and other buildings and artefacts, relevant to the exercise of rights under the CERD;
- Azerbaijan shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of the CERD;
- Azerbaijan shall not take any action and shall assure that no action is taken which may aggravate or extend the existing dispute that is the subject of the Application, or render it more difficult to resolve; and
- Azerbaijan shall provide a report to the Court on all measures taken to give effect to its Order indicating provisional measures, no later than three months from its issuance and shall report thereafter to the Court every six months.”

Thank you, Madam President.

The PRESIDENT: I thank the Registrar. Immediately after the Application and the Request for the indication of provisional measures were filed, the Registrar transmitted certified copies thereof to the Government of Azerbaijan. He also notified the Secretary-General of the United Nations.

According to Article 74, paragraph 1, of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. Paragraph 2 of the same provision states that the Court shall proceed to a decision on the request as a matter of urgency. This imperative must, however, be balanced with the need to fix the date of oral proceedings in such a way as to afford the parties an opportunity to be represented at the hearings. Consequently, the Parties were informed that the date for the opening of the oral proceedings, during which they could present their observations on the Request for the indication of provisional measures, had been fixed for Thursday 14 October 2021, at 10 a.m.

I would now like to welcome the delegations of the Parties. The Agent of Armenia is present in the Great Hall of Justice and the Agent of Azerbaijan joins us by video link. The Agents are accompanied by members of their respective State's delegations, some of whom are physically present in the Great Hall of Justice while others are participating in the hearings remotely.

For the purposes of this first round of oral argument, each of the Parties will have available to it a two-hour sitting. The Court will hear the oral argument of Armenia, which has submitted the Request, this morning until 12 noon. It will then hear the first round of oral argument of Azerbaijan this afternoon between 4 p.m. and 6 p.m. The Parties will then have a possibility to reply. Armenia will have the floor again tomorrow, Friday 15 October at 10 a.m., and Azerbaijan will take the floor in turn on the same day at 5 p.m. Each of the Parties will have a maximum time of one hour in which to present its reply.

In this first sitting, Armenia may, if required, avail itself of a short extension beyond 12 noon today, in view of the time taken up by these introductory remarks.

Before giving the floor to the Agent of Armenia, I wish to draw the attention of the Parties to Practice Direction XI, which states as follows:

“In the oral pleadings on requests for the indication of provisional measures parties should limit themselves to what is relevant to the criteria for the indication of provisional measures as stipulated in the Statute, Rules and jurisprudence of the Court. They should not enter into the merits of the case beyond what is strictly necessary for that purpose.”

I now give the floor to the Agent of Armenia, His Excellency Mr. Yeghishe Kirakosyan. You have the floor, Sir.

Mr. KIRAKOSYAN:

INTRODUCTION

1. Madam President, distinguished Members of the Court, it is a great privilege to appear before you today as the Agent of the Republic of Armenia.

2. In these proceedings instituted before the Court on 16 September 2021, Armenia does not ask that the Court resolve all of the many issues that have long divided the Parties to this case. Much less does it ask the Court to reverse all of the many consequences of the most recent armed conflict. With its Application, Armenia instead seeks to prevent and remedy the cycle of violence and hatred perpetrated against ethnic Armenians. And with its Request for provisional measures, Armenia urgently seeks to protect the rights of ethnic Armenians from imminent and irreparable harm.

3. Both Armenia’s Application and Request for provisional measures are grounded in the International Convention on the Elimination of All Forms of Racial Discrimination. The Convention reaffirms in its seventh preambular paragraph that “discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side”. These proceedings have been motivated by these words, and they are of utmost importance to my country.

4. It is uncontroversial that Armenians are a distinct ethnic group, and as such are protected by the Convention. Armenians have historically inhabited a region in the Near East bounded by the Mediterranean and the Black Seas and the Caucasus. Armenian history can be traced back thousands of years — more precisely, to the second millennium BC.

5. Almost all Armenians are Christians, and the Armenian Apostolic Church is the oldest Christian church in the world. The Armenian language is an independent branch of the Indo-European language family and uses its own unique alphabet since 405 AD.

6. Because of their distinct ethnic identity, Armenians have experienced ethnic hatred and countless persecutions. They have also been subjected to genocidal massacres and pogroms. Sadly, the experience continues to this day.

7. The international armed conflict, which President Aliyev has openly admitted Azerbaijan started in September 2020¹, is the most recent link *in-to* this chain of ethnic violence and hate. We fear that it will not be the last unless the roots of this conflict are addressed. The ethnic hatred that Azerbaijan's authorities spew almost on a daily basis is so pervasive that nearly all of the Azerbaijani society is affected. Generations upon generations are indoctrinated into this culture of fear and hate of anything and everything Armenian. Murder, torture and other inhumane or degrading treatment of ethnic Armenians who find themselves under the authority of Azerbaijan are systematic, as is the reward and even glorification of the culprits, and prosecution of anyone who dares to contradict the official dogma. Every trace of Armenian presence in the region must be destroyed or otherwise erased, or falsified.

8. This is clear from the fact that not even the conclusion of the Trilateral Statement of November 2020 has prevented Azerbaijan from violating the Convention. Azerbaijan continues to espouse, and actively promote, ethnic hatred against Armenians. The so-called "Military Trophies Park" erected in April this year, while Azerbaijan was professing to negotiate its violations of the Convention in good faith has stood as a grotesque monument to this ideology of hate. Azerbaijan has captured, tortured and arbitrarily detained numerous members of the Armenian armed forces and civilians of ethnic Armenian origin. Azerbaijan moreover continues to destroy Armenian cultural heritage and religious sites or negate their Armenian character in the territories it now controls. All those grave violations were perpetrated, and continue to be perpetrated *as we speak, precisely* because their perpetrators have been enabled, encouraged and often times rewarded, even glorified by Azerbaijan through systematic discrimination against Armenians.

¹ See "President Ilham Aliyev was interviewed by CNN Turk TV channel", MENA FN, 14 Aug. 2021, available at <https://menafn.com/1102624347/President-Ilham-Aliyev-was-interviewed-by-CNN-Turk-TV-channel-PHOTO&source=21>.

9. Madam President, distinguished Members of the Court, I do not intend to burden you with political statements about how the events that have ravaged my region of the world for more than a century now came to bear. Such statements have little relevance in a Court of law, especially under the current urgent circumstances. But I do wish to underscore that the case Armenia brought to the Court after nearly *one year* of failed negotiations, notwithstanding the urgent circumstances motivating the present request, falls squarely within your jurisdiction under the CERD. The plausibility of the CERD rights at issue, and the urgent need for you to order measures to protect those rights from irreparable harm pending a judgment on the merits, are also obvious, as our counsels will explain in detail.

10. First, Professor Kolb will explain why the Court has *prima facie* jurisdiction to entertain Armenia's request.

11. Second, Dr. Salonidis will demonstrate the plausibility of rights under the CERD for persons of Armenian ethnic origin to be free from hate speech by Azerbaijan, including their physical manifestation in the so-called "Military Trophies Park".

12. Third, Professor Murphy will then demonstrate the plausibility of rights under the CERD for prisoners of war and civilian detainees of Armenian origin to be repatriated and to be protected from inhumane treatment.

13. Fourth, Professor d'Argent will demonstrate the plausibility of rights under the CERD for persons of Armenian origin to access and enjoy their cultural heritage, and Azerbaijan's corresponding obligations not to destroy, erase or falsify it.

14. Mr. Martin will conclude Armenia's presentation by explaining why there is a real and imminent risk of irreparable prejudice to the rights whose protection is sought, as well as the link to the specific measures requested.

15. The importance of your decision on the provisional measures sought, and the impact that such decision will have, cannot be emphasized enough. Azerbaijan's systematic and continued violations of the CERD, by exhortation of ethnic hatred in all the aforementioned forms, stand as an insurmountable obstacle in the way of ensuring peace and security in the region.

16. I thank you, Madam President, distinguished Members of the Court, for your attention and careful consideration of Armenia's request. I now kindly ask that you invite Professor Kolb to address the Court.

The PRESIDENT: I thank the Agent of Armenia for his statement, and I now invite Professor Robert Kolb to take the floor. You have the floor, Professor.

M. KOLB : Je m'exprimerai en français.

COMPÉTENCE *PRIMA FACIE*

1. Madame la présidente, Mesdames et Messieurs de la Cour, je suis chargé de m'entretenir avec vous de votre compétence en matière conservatoire. Je suis bien aise à ne pas avoir à alourdir votre esprit avec des explications alambiquées ni à allonger nos débats par des répétitions, redites et rappels pleins de complaisante dévotion. Ma présentation sera brève parce que votre compétence est aisément démontrable et qu'il en est ainsi à plus forte raison de son épure *prima facie*. Par ailleurs, ce stade préliminaire sollicite des réponses claires et linéaires, brèves et incisives. Nous pouvons donc l'aborder en tout repos.

2. La Cour a maintes fois affirmé qu'elle n'a «pas besoin de s'assurer de manière définitive qu'elle a compétence quant au fond de l'affaire»². Il lui suffit de conclure que «les dispositions invoquées par le demandeur semblent *prima facie* constituer une base sur laquelle sa compétence pourrait être fondée»³.

3. Le titre de compétence invoqué par l'Arménie est la clause compromissaire contenue dans l'article 22 de la convention contre la discrimination raciale de 1965. Chacune des Parties a accédé à la convention sans réserve. Les conditions auxquelles l'article 22 subordonne votre compétence sont remplies. Voyons de plus près.

4. Un différend au sujet de l'application de la convention ? Bien entendu. La correspondance des Parties, dont la Cour est en possession, l'atteste et le confirme. L'Arménie a allégué par sa lettre

² *Jadhav (Inde c. Pakistan), mesures conservatoires, ordonnance du 18 mai 2017, C.I.J. Recueil 2017, p. 236, par. 15 ; voir également Immunités et procédures pénales (Guinée équatoriale c. France), mesures conservatoires, ordonnance du 7 décembre 2016, C.I.J. Recueil 2016 (II), p. 1155, par. 31.*

³ *Jadhav (Inde c. Pakistan), mesures conservatoires, ordonnance du 18 mai 2017, C.I.J. Recueil 2017, p. 236, par. 15 ; voir également Immunités et procédures pénales (Guinée équatoriale c. France), mesures conservatoires, ordonnance du 7 décembre 2016, C.I.J. Recueil 2016 (II), p. 1155, par. 31.*

du 11 novembre 2020 que l'Azerbaïdjan avait violé et continuait de violer différentes obligations de la convention⁴. Dans sa réponse du 8 décembre 2020, l'Azerbaïdjan a contesté être responsable de telles violations⁵. Les lettres respectives des Parties se trouvent dans les annexes à la requête arménienne. Leur échange manifeste incontestablement l'existence du différend.

5. L'échec des négociations ? Assurément. Votre haute juridiction a estimé qu'«une condition préalable de négociation était remplie lorsque «les positions [des parties] n'[avaie]nt, pour l'essentiel, pas évolué» à la suite de plusieurs échanges de correspondance diplomatique ou de réunions»⁶. Dans la présente affaire, les Parties ont échangé quarante pièces de correspondance⁷. Elles se sont abouchées à travers huit rencontres⁸. Elles ont échangé leurs vues par de multiples moyens. Aucune entente n'a pu s'installer.

6. Les positions de l'Azerbaïdjan sur les demandes de l'Arménie n'ont pas varié. Elles sont restées négatives.

7. La position de l'Arménie n'a pas changé pendant ces longs échanges. Dans sa lettre du 11 novembre 2020⁹, puis dans sa prise de position du 31 mai 2021 relative à l'objet des négociations¹⁰, encore dans les rencontres du 15 au 16 juillet 2021, et non moins dans les entrevues du 14 au 15 septembre 2021, l'Arménie a fait valoir une et une seule chose. Laquelle ? Que l'Azerbaïdjan a violé et continue de violer les articles 2 à 7 de la convention de 1965. Qu'a fait

⁴ Lettre du ministre des affaires étrangères de la République d'Arménie au ministre des affaires étrangères de la République d'Azerbaïdjan (11 novembre 2020) (requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie, annexe 10).

⁵ Lettre du ministre des affaires étrangères de la République d'Azerbaïdjan au ministre des affaires étrangères de la République d'Arménie (8 décembre 2020) (requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie, annexe 14).

⁶ *Appel concernant la compétence du conseil de l'OACI en vertu de l'article 84 de la convention relative à l'aviation civile internationale (Arabie saoudite, Bahreïn, Egypte et Emirats arabes unis c. Qatar)*, arrêt, C.I.J. Recueil 2020, p. 111, par. 93.

⁷ Voir requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie (16 septembre 2021), par. 19, note 17.

⁸ Voir *ibid.*, note 18.

⁹ Lettre du ministre des affaires étrangères de la République d'Arménie au ministre des affaires étrangères de la République d'Azerbaïdjan (11 novembre 2020) (requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie, annexe 10).

¹⁰ Déléation de la République d'Arménie, *Presentation of the Delegation of the Republic of Armenia on the Scope of the Negotiations* (31 mai 2021) (requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie, annexe 50).

l'Azerbaïdjan ? Il a constamment nié ces violations. Sa lettre du 8 décembre 2020¹¹, puis ses réponses lors des négociations du 30 au 31 août 2021¹², enfin les allégations dans plusieurs de ses lettres¹³ en portent un très éloquent témoignage. Suite à ces entrefaites, les positions des Parties n'ont plus évolué.

8. En faut-il une preuve supplémentaire ? La voici. L'Arménie a réclamé certains remèdes relatifs aux violations de la convention de 1965. L'Azerbaïdjan les a rejetés en bloc lors des rencontres du 30 au 31 août. Il a préféré formuler une série de contre-propositions¹⁴. En même temps, il s'est défendu d'avoir commis des actes contraires à la convention. Tel était l'objet de la clause «sans préjudice» insérée dans sa correspondance¹⁵. Comment ces négociations auraient-elles pu aboutir ? Comment négocier avec la perspective d'un résultat favorable quand la Partie adverse refuse obstinément d'admettre toute violation de la convention ? Et que dire de l'aspect temporel de ces contre-propositions ? Elles ne visaient que l'avenir mais refusaient toute responsabilité pour les torts passés. Je crois qu'ici le *non possumus* et le *non volumus* du vénérable précédent *Mavrommatis* doit trouver application. L'Arménie ne peut pas être contrainte de négocier sur un *aliud*. Elle a le droit de s'en tenir à la convention de 1965. Et à ce propos, le mur du son était infranchissable.

9. En somme, il n'est pas contestable que les positions des Parties n'ont pas changé sur ces points capitaux depuis les premiers échanges de la fin 2020. J'en tire la conclusion que l'exigence de l'échec d'une négociation préalable est remplie.

¹¹ Lettre du ministre des affaires étrangères de la République d'Azerbaïdjan au ministre des affaires étrangères de la République d'Arménie (8 décembre 2020) (requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie, annexe 14).

¹² Lettre de Vaqif Sadiqov à Elnur Mammadov (9 octobre 2021) (***Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), requête, Azerbaïdjan***, annexe 32).

¹³ Voir, par exemple, lettre du ministre des affaires étrangères de la République d'Azerbaïdjan au ministre des affaires étrangères de la République d'Arménie (15 janvier 2021) (requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie, annexe 18) ; Délégation de la République d'Azerbaïdjan, *Proposed Draft Agenda for 6-7 April Meeting* (5 avril 2021) (requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie, annexe 31).

¹⁴ Lettre de Vaqif Sadiqov à Elnur Mammadov (9 octobre 2021) (***Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), requête, Azerbaïdjan***, annexe 32).

¹⁵ Note verbale de la mission permanente de la République d'Azerbaïdjan auprès de l'Office des Nations Unies et des autres organisations internationales à Genève à la mission permanente de la République d'Arménie auprès de l'Office des Nations Unies et des autres organisations internationales à Genève (2 septembre 2021) (requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie, annexe 60).

10. Venons-en aux procédures expressément prévues par la convention. Suivant votre précédent *Ukraine c. Russie*¹⁶, les conditions procédurales préalables de l'article 22 sont alternatives. Dès lors, le fait que le Comité CERD n'a pas été saisi par l'Arménie ne constitue pas un obstacle à votre compétence.

11. Enfin : l'Arménie peut-elle se plaindre de ces mesures de discrimination raciale ? Je n'aperçois aucun obstacle. Le demandeur s'appuie sur ses droits en vertu de la convention et n'agit pas en protection diplomatique. La condition de l'épuisement des voies de recours internes ne s'applique donc pas.

12. Le fait que les personnes en cause soient d'origine ethnique arménienne établit un intérêt direct du demandeur. Or celui-ci n'est pas déterminant. L'Arménie est aussi fondée à se plaindre du traitement étant imparti à ces personnes parce que la convention ouvre l'accès à la Cour *erga omnes partes*. Il n'en va pas autrement dans nos débats actuels que dans l'affaire *Belgique c. Sénégal* de 2012 relativement à la convention contre la torture de 1984¹⁷. Ainsi que vous l'aurez constaté en lisant la requête arménienne¹⁸, l'Arménie estime être en droit d'invoquer la responsabilité de l'Azerbaïdjan au titre de la convention en tant qu'Etat lésé et en tant qu'Etat non lésé au sens des articles 42 et 48 des Articles de la Commission du droit international sur la responsabilité internationale des Etats de 2001.

13. Je souligne que l'Arménie se plaint de mesures prises contre des personnes d'*origine* ethnique ou nationale arménienne. Elle ne s'appuie pas sur leur nationalité formelle. Ainsi, nous ne nous situons pas dans le cadre factuel de l'affaire *Qatar c. Emirats arabes unis* de 2021.

14. J'en conclus que la Cour est compétente pour connaître de la requête arménienne. A plus forte raison est-elle compétente *prima facie* pour connaître de la demande de mesures conservatoires. En somme, le titre juridique auquel l'Arménie vous a saisi est irréprochable et son action est recevable.

¹⁶ *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J Recueil 2019 (II), p. 600, par. 113.*

¹⁷ *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), arrêt, C.I.J. Recueil 2012 (II), p. 449, par. 68.*

¹⁸ *Requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie (16 septembre 2021), par. 2.*

15. A la fin de ma présentation, je souhaite mettre l'accent sur le fait que la Cour ne devra pas se laisser impressionner par les arguments tortueux que nos contradicteurs tenteront peut-être de soulever pour troubler les eaux tranquilles du domaine conservatoire. La procédure conservatoire ne doit pas être alourdie. Elle doit garder son autonomie afin de pouvoir remplir sa fonction protectrice. L'attirer vers des arguties et des subtilités équivaudrait à l'adultérer et à l'anesthésier. Je suis sûr que la Cour sera vigilante à ne pas se laisser entraîner dans ces sables mouvants.

16. Mesdames et Messieurs les juges, cette remarque met fin à ma brève présentation. Je vous remercie pour votre bienveillante attention. Madame la présidente, puis-je vous demander d'appeler M^e Constantinos Salonidis à la barre ?

The PRESIDENT: I thank Professor Kolb for his statement. I now invite Mr. Constantinos Salonidis to take the floor. You have the floor, Sir.

Mr. SALONIDIS:

**THE REQUESTED PROVISIONAL MEASURES RELATING TO AZERBAIJAN'S ESPOUSAL
OF ETHNIC HATRED CONCERN PLAUSIBLE RIGHTS UNDER ARTICLES 2, 4 AND 7
OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS
OF RACIAL DISCRIMINATION**

1. Madam President, distinguished Members of the Court, good morning. It is an honour to appear before you and a privilege to do so on behalf of the Republic of Armenia. Armenia respectfully requests that you order Azerbaijan to "refrain from espousing hatred of people of Armenian ethnic or national origin, including by closing or suspending the activities" of the so-called "Military Trophies Park". My task this morning is to explain the plausibility of the rights Armenia seeks to protect through this request.

2. I will start by briefly recalling Azerbaijan's fundamental obligation under the *International Convention on the Elimination of All Forms of Racial Discrimination* (hereinafter the "*Convention*") to combat racist hate speech. I will then turn to the plausibility of Armenia's rights in that regard and the evidence that sustains it.

I. Hate speech and the Convention

3. The Convention's third preambular paragraph proclaims that "all human beings . . . are entitled to equal protection of the law against any discrimination and against any incitement to discrimination"¹⁹. Racist hate speech was naturally an object of concern for the drafters of the CERD, and it has been no different for the body entrusted with monitoring its implementation. Indeed, according to the CERD Committee, "[t]he identification and combating of hate speech practices is *integral* to the achievement of the objectives of the Convention"²⁰.

4. The principal vehicle for combating hate speech²¹ in the Convention is Article 4. Article 4 establishes in subparagraph (c) Azerbaijan's obligation to "not permit public authorities or public institutions, national or local, to promote or incite racial discrimination"²². The obligation encompasses "racist expressions emanating from [public] authorities or institutions," which, the CERD Committee considers "as of *particular* concern, especially statements attributed to high-ranking officials"²³.

5. Other provisions in the Convention also contribute to combating racist hate speech. For example, Article 2, paragraph 1 (a), obligates Azerbaijan to "engage in no act or practice of racial discrimination . . . and to ensure that all public authorities and public institutions shall act in conformity with this obligation"²⁴. For its part, Article 7 requires Azerbaijan 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"²⁵.

6. Armenia's request seeks to protect precisely rights arising under these provisions from a real and imminent risk of irreparable prejudice.

¹⁹ International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter the "CERD Convention"), opened for signature 7 March 1966, entered into force 4 January 1969, United Nations, *Treaty Series (UNTS)*, Vol. 660, p. 214, preamble, para. 3.

²⁰ CERD Committee, General Recommendation No. 35: Combating racist hate speech, UN doc. CERD/C/GC/35 (26 Sept. 2013), para. 8; emphasis added.

²¹ CERD Committee, General Recommendation No. 35: Combating racist hate speech, UN doc. CERD/C/GC/35 (26 September 2013), para. 8.

²² CERD Convention, Art. 4 (c).

²³ CERD Committee, General Recommendation No. 35: Combating racist hate speech, UN doc. CERD/C/GC/35 (26 September 2013), para. 22; emphasis added.

²⁴ CERD Convention, Art. 2 (1) (a), (d).

²⁵ CERD Convention, Art. 7.

II. Armenia's rights under Articles 2, 4 and 7 of the Convention are plausible

7. At this stage of the proceedings, the Court is not called upon to determine whether these rights definitively exist²⁶. Rather, the Court need only satisfy itself that such rights are “plausible”²⁷ under the Convention. The Court has found previously the plausibility condition to be met when the asserted rights are “grounded in a possible interpretation” of the treaty in question²⁸. In other cases, under the Convention, the Court has also examined whether “it is plausible that the acts complained of constitute acts of racial discrimination”²⁹.

8. Armenia's rights under Articles 2, 4 and 7 of the Convention are not just “plausible”, they are explicitly stated in the Convention. Instead of respecting those rights, corresponding to some of its most fundamental obligations under the Convention, Azerbaijan is flagrantly violating them on a daily basis through a constant rhetoric of hate, espoused by the highest echelons of the Azerbaijani establishment, openly and with complete impunity.

9. The CERD Committee itself has criticized the “*repeated and unpunished* use of inflammatory language by [Azerbaijani] politicians speaking about the Nagorno-Karabakh conflict” and noted “its adverse impact on the public's view of ethnic Armenians”³⁰.

10. Other international institutions have expressed similar concerns. The Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities has referred to the “very persistent public narrative surrounding the Nagorno Karabakh conflict that identifies variably ‘Armenia’ or ‘Armenians’ as ‘the enemy’ *and openly promulgates hate*

²⁶ See e.g. *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. 422, para. 44; *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. 44.

²⁷ 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), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 126, para. 64.

²⁸ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 152, para. 60.

²⁹ Cf. *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. 135, para. 82. See also *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. 406, para. 54.

³⁰ CERD Committee, Concluding observations on the combined seventh to ninth periodic reports of Azerbaijan, UN doc. CERD/C/AZE/CO/7-9 (10 June 2016), para. 27; emphasis added.

messages”³¹. And the European Commission against Racism and Intolerance has noted that “an entire generation of Azerbaijanis has now grown up listening to this hateful rhetoric”³².

11. This rhetoric escalated before and during the September-November 2020 armed conflict. Regrettably, it was Azerbaijan’s highest-ranking official, President Ilham Aliyev, who set the tone. His dehumanizing metaphors equating Armenians to dogs³³ became a rallying cry during the conflict, showing, in the words of a commentator, “the degree of hostility and hate speech within Azeri society”³⁴.

12. **But** the presidential hate speech did not stop with the end of Azerbaijan’s aggression in November 2020; month after month, it continues to this day. For example, in December 2020, President Aliyev characterized Armenians as the “despised and savage enemy”, and as “aliens” to the region³⁵. In January this year, he claimed that Armenians “have no moral values” and cautioned his compatriots to “not be likened to them”³⁶. In February, he stated that Armenians “cling to other countries like a leech”³⁷. In March, he declared that Armenians are “sick”, ravaged by a “virus more dangerous [than] the coronavirus”³⁸. In April, while proudly inaugurating the “Military Trophies

³¹ Council of Europe, Advisory Committee on the Framework Convention for the protection of national minorities, *Third Opinion on Azerbaijan — adopted on 10 October 2012*, No. ACFC/OP/III(2012)005 (3 September 2013), available at <https://www.refworld.org/docid/5229cf374.html>, para. 50; emphasis added.

³² European Commission against Racism and Intolerance, ECRI Report on Azerbaijan (fifth monitoring cycle) (7 June 2016), available at <https://rm.coe.int/fourth-report-on-azerbaijan/16808b5581>, pp. 9 and 17. See also US State Department, *2019 Country Reports on Human Rights Practices: Azerbaijan* (11 March 2020), available at <https://www.state.gov/wp-content/uploads/2020/02/AZERBAIJAN-2019-HUMAN-RIGHTS-REPORT.pdf>, p. 38; The Office of Ombudsman of the Republic of Artsakh, *Armenophobia in Azerbaijan: Organized Hate Speech & Animosity towards Armenians* (25 September 2018), available at <https://artsakhombuds.am/hy/document/570>.

³³ President of the Republic of Azerbaijan Ilham Aliyev, “Ilham Aliyev addressed the nation” (17 October 2020), available at <https://en.president.az/articles/43334>. See also “Azerbaijan’s war crimes in Nagorno-Karabakh”, *T-online* (3 December 2020), available at https://www.t-online.de/nachrichten/ausland/krisen/id_89055086/videos-show-azerbaijan-s-war-crimes-in-nagorno-karabakh.html.

³⁴ Bahruz Samadov, “Azerbaijan update: From COVID-19 to the New War in Nagorno-Karabakh”, *The Heinrich Böll Stiftung* (10 December 2020), available at <https://www.boell.de/en/2020/12/10/azerbaijan-update-covid-19-new-war-nagorno-karabakh>. See also e.g. The Human Rights Defender of Armenia & The Human Rights Ombudsman of Artsakh, *Ad Hoc Public Report Organized Hate Speech and Animosity Towards Ethnic Armenians in Azerbaijan as Root Causes of Ethnically-Based Torture and Inhuman Treatment by Azerbaijani Armed Forces* (September-November 2020) (7 December 2020), available at <https://artsakhombuds.am/en/document/780>.

³⁵ President of the Republic of Azerbaijan Ilham Aliyev, “Ilham Aliyev addressed the nation” (1 December 2020), available at <https://en.president.az/articles/48205>.

³⁶ President of the Republic of Azerbaijan Ilham Aliyev, “Opening speech by Ilham Aliyev at the meeting in a video format on results of 2020” (7 January 2021), available at <https://en.president.az/articles/49937>.

³⁷ President of the Republic of Azerbaijan, Ilham Aliyev, “Ilham Aliyev attended the ceremony to give out apartments to families of martyrs and war disabled was held in Baku” (25 February 2021), available at <https://en.president.az/articles/50726>.

³⁸ President of the Republic of Azerbaijan, Ilham Aliyev, “Speech by Ilham Aliyev at the 7th Congress of New Azerbaijan Party” (5 March 2021), available at <https://en.president.az/articles/50805>.

Park”, he suggested that “[s]avage is perhaps too soft of a word to describe [Armenians]”³⁹. Later that same month, he called the United States Government’s recognition of the Armenian genocide “unacceptable” and a “historic mistake”⁴⁰.

13. In May, he referred to Armenians as “barbarian[s]”, who destroyed and plundered the land like a “wild tribe”, and declared that “this people cannot build a state . . . this people can only live within other large states”⁴¹. In June, he claimed that “[t]he whole world knows” that “[t]he first Armenian state was established on [Azerbaijan’s] historical lands”⁴². In July, he reiterated that Armenians “have no historical basis for living there”, meaning Nagorno-Karabakh⁴³. In August, he found “vandalism” to be “inherent” in Armenians⁴⁴. In September, he once again proclaimed that Armenians have a “mental illness”, and are a “depraved” and “impertinent” “tribe”⁴⁵. A mere ten days ago, he stated that the “Armenian nation has nothing to do with the Caucasus”, and that Armenians “are . . . settlers here and everyone knows where they came from”⁴⁶.

14. Madam President, Members of the Court, it is said that “hate speech is in the ear of the beholder”. You will read President Aliyev’s speeches in their entirety, and you will appreciate for yourself the context in which these statements were made. You will also discover the obvious answer: these are not mere expressions of controversial ideas or opinions. These are “incitement to hatred,

³⁹ President of the Republic of Azerbaijan, “Ilham Aliyev attended opening of Military Trophy Park in Baku” (12 April 2021), available at <https://en.president.az/articles/51067>.

⁴⁰ President of the Republic of Azerbaijan, Ilham Aliyev, “Ilham Aliyev has held a phone conversation with President of the Republic of Turkey Recep Tayyip Erdogan” (24 April 2021), available at <https://en.president.az/articles/51284>.

⁴¹ State Committee for Affairs of Refugees and Internally Displaced Persons of the Republic of Azerbaijan, President Ilham Aliyev attended ceremony to lay foundation stone for restoration of Aghdam city met with members of general public (28 May 2021), available at <http://idp.gov.az/en/news/1205>.

⁴² President of the Republic of Azerbaijan Ilham Aliyev, “Ilham Aliyev met with leadership and a group of military personnel of Azerbaijani Army on Armed Forces Day” (26 June 2021), available at <https://en.president.az/articles/52331>.

⁴³ “Aliyev on Armenian-Azerbaijan border, Nagorno-Karabakh status: We are in our territory”, *JAM News* (23 July 2021), available at <https://jam-news.net/aliyev-on-armenian-azerbaijan-border-nagorno-karabakh-status-we-are-in-our-territory/>.

⁴⁴ President of the Republic of Azerbaijan, Ilham Aliyev, “Ilham Aliyev and First Lady Mehriban Aliyeva attended opening of Vagif Poetry Days in Shusha” (30 August 2021), available at <https://en.president.az/articles/52881>.

⁴⁵ President of the Republic of Azerbaijan, Ilham Aliyev, “Victorious Commander-in-Chief, President Ilham Aliyev addressed the nation on the occasion of the Remembrance Day” (27 September 2021), available at <https://en.president.az/articles/53224>.

⁴⁶ President of the Republic of Azerbaijan, Ilham Aliyev, “It was the likes of Serzhik Sarkisyan who lost the war, he now wants to blame defeat on Pashinyan — Azerbaijan President” (4 October 2021), available at <https://en.trend.az/azerbaijan/politics/3493480.html>.

contempt, violence or discrimination”⁴⁷, plain and simple. They are the continuation of a hateful rhetoric, that has been ongoing for years.

15. The problem of course is not just President Aliyev’s rhetoric — anti-Armenian hate speech is by no means limited to him. The problem is that it is this official discourse that shapes the viewpoints of Armenians of generations upon generations of Azerbaijanis. Why? Because President Aliyev’s grip on Azerbaijan is absolute — and this is putting it mildly. Freedom House ranks Azerbaijan as “not free” and among the lowest scoring countries in the world in terms of its citizens’ civil liberties and political rights⁴⁸. Human Rights Watch has noted that all mainstream media are under “tight government control”⁴⁹. As a result, there is no counter-point to anti-Armenian hate: activists working on promoting dialogue between the Armenian and Azerbaijani societies are routinely arrested and sentenced on false charges of high treason, as the European Court of Human Rights has recently found⁵⁰.

16. This discourse shapes and feeds upon an environment that openly glorifies and rewards abhorrent crimes against Armenians. The image on your screens is from a stamp proudly issued by Azerbaijan to commemorate the major events of 2020, namely, its fight against the coronavirus and war of aggression against Nagorno-Karabakh. The image depicts a disinfection specialist, standing over a map of Azerbaijan and fumigating an area in dark green colour. That area is Nagorno-Karabakh as well as the southern parts of Armenia. The message is clear: ethnic Armenians are a virus in need of eradication. The references to ethnic cleansing are so blatant that the Universal Postal Union declined to register the stamp, and invited Azerbaijan to withdraw it⁵¹.

⁴⁷ CERD Committee, General Recommendation No. 35: Combating racist hate speech, UN doc. CERD/C/GC/35 (26 Sept. 2013), para. 25.

⁴⁸ “Freedom in the World 2021: Azerbaijan”, *Freedom House*, available at <https://freedomhouse.org/country/azerbaijan/freedom-world/2021>. See also “Nations in Transit 2021, Azerbaijan: Executive Summary”, *Freedom House* (2021), available at <https://freedomhouse.org/country/azerbaijan/nations-transit/2021>.

⁴⁹ Human Rights Watch, Azerbaijan events of 2019 (2019), available at <https://www.hrw.org/world-report/2020/country-chapters/azerbaijan>.

⁵⁰ See e.g. *Yunusova and Yunusov v. Azerbaijan* (No. 2), ECtHR, App. No. 68817/14, Judgment (16 July 2020), paras. 103-113. See also *Mirgadirov v. Azerbaijan and Turkey*, ECtHR, App. No. 62775/14, Judgment (17 Sept. 2020), paras. 92-93.

⁵¹ Letter from Ricardo Guilherme Filho, Director of Legal Affairs, Universal Postal Union, to Hakob Arshakyan, Minister of High-Tech Industry, Republic of Armenia, No. 4700 (DL.PHIL) 01.21 (1 June 2021), Application and Request for provisional measures of the Republic of Armenia, Ann. 51).

17. Another notorious example of glorification of anti-Armenian hate is the case of Lieutenant Ramil Safarov⁵². Instead of serving the life sentence he was originally given in Hungary for the brutal murder of his Armenian colleague attending the same NATO English language course in Budapest in 2004, upon his extradition to Azerbaijan, Safarov was pardoned, promoted to the rank of major, and given a flat and all of his wages lost since his arrest. He was labelled as an “exemplary model of patriotism for the Azerbaijani youth” by no less than the human rights defender of Azerbaijan⁵³. Recently, the European Court of Human Rights found all these actions to be racially motivated by an animus against ethnic Armenians⁵⁴. The CERD Committee, for its part, noted that “by welcoming a citizen of [Azerbaijan] convicted of murdering an Armenian as a national hero and by pardoning and releasing that person upon transfer, [Azerbaijan] condones racial hatred and hate crimes and denies redress to victims”⁵⁵.

18. In this environment of hate and glorification, is it then a surprise that the atrocious sights of the so-called “Military Trophies Park” came to be. On your screens, you can see some of the racist depictions of Armenian soldiers in denigrating and dehumanizing scenes. Several European institutions deplored this park of hate, and you can find these reactions in footnote⁵⁶. You can also find under tab 2 of your folders the Armenian Human Rights Defender’s report on the park⁵⁷. The images from that gruesome park *alone* are sufficient to establish the plausibility of Armenia’s rights that this request seeks to protect.

⁵² Application and Request for provisional measures of the Republic of Armenia, paras. 58-62.

⁵³ *Makuchyan and Minasyan v. Azerbaijan and Hungary*, ECtHR, App. No. 17247/13, Judgment (26 May 2020), para. 25.

⁵⁴ *Makuchyan and Minasyan v. Azerbaijan and Hungary*, ECtHR, App. No. 17247/13, Judgment (26 May 2020), para. 218.

⁵⁵ CERD Committee, Concluding observations on the combined seventh to ninth periodic reports of Azerbaijan, UN doc. CERD/C/AZE/CO/7-9 (10 June 2016), para. 15.

⁵⁶ Letter from Dunja Mijatović, Council of Europe Commissioner for Human Rights, to Ilham Aliyev, President of the Republic of Azerbaijan (20 Apr. 2021), available at <https://rm.coe.int/letter-to-mr-ilham-aliyev-president-of-the-republic-of-azerbaijan-bym/1680a2364c>; European Parliament, European Parliament resolution of 20 May 2021 on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan, No. 2021/2693 (RSP) (20 May 2021), available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.pdf; Parliamentary Assembly of the Council of Europe, Resolution 2391: Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict (27 Sept. 2021), available at <https://pace.coe.int/en/files/29483/html>, para. 19.2.

⁵⁷ The Human Rights Defender of the Republic of Armenia, Ad Hoc Public Report: 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://ombuds.am/images/files/96e6d55d169a784b6424e4d565b29dba.pdf>.

19. And this is so, Madam President, Members of the Court, notwithstanding the documents that Azerbaijan produced on the eve of this hearing. The documents in question purport to represent that the park's racist mannequins and bullet-torn helmets of Armenian soldiers were removed on 1 and 8 October, respectively⁵⁸. Mr. Martin after me will explain why this manoeuvre — even if taken at face value — cannot spare Azerbaijan from the exercise of your jurisdiction to indicate provisional measures. For my purposes, I would like to recall that a few months ago, Azerbaijan defended the park against appeals to remove its racist displays, calling it a symbol of “the *triumph of international law and justice*”, “a place for *education* for the present and future generations” and even a venue “for seeking the *truth*”⁵⁹. What changed such as to force Azerbaijan to reconsider this position? President Aliyev's hateful rhetoric certainly did not change. It has been going on, and on, and on, as I have explained earlier. I am afraid that it will continue, even after this hearing. No, what changed is Armenia's Application instituting these proceedings and the prospect of your provisional measures. This is what has motivated Azerbaijan to represent, on the eve of this hearing, that it has removed some of the park's racist displays. This conduct can only underscore the plausibility of Armenia's rights under Articles 2, 4 and 7 of the Convention.

20. Madam President, Members of the Court, the CERD Committee has underscored the “special responsibility of public figures to provide anti-racist and pro-tolerance leadership”⁶⁰. Yet despite his special responsibility, rather than using his voice to *combat* expressions of ***anti-Armenian hate hatred***, President Aliyev has orchestrated a chorus of anti-Armenian hate. Like many ordinary Azerbaijanis, government institutions and other high-ranking officials have followed suit. The humanitarian consequences that my colleagues after me will address stand as a testament to this sad fact. There can be no doubt that, if left unchecked, this rhetoric of hate will continue. Armenia's

⁵⁸ Letter from Orujali Abbaszade, Director of the Military Trophies Park, to Elnur Mammadov, Deputy Minister for Foreign Affairs, Republic of Azerbaijan (6 Oct. 2021) (certified translation), ***Application of the Republic of Azerbaijan in the case Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia) Azerbaijan***, Ann. 24; Letter from Orujali Abbaszade, Director of the Military Trophy Park, to Elnur Mammadov Deputy Minister for Foreign Affairs, Republic of Azerbaijan (13 Oct. 2021) (certified translation), p. 2 (*ibid.*, Ann. 33).

⁵⁹ Letter from Fakhraddin Ismayilov, Permanent Representative of the Republic of Azerbaijan, to Dunja Mijatović, Council of Europe Commissioner for Human Rights (26 April 2021), available at <https://rm.coe.int/reply-of-the-azerbaijani-authorities-to-the-letter-of-the-council-of-e/1680a24413>; emphasis added.

⁶⁰ Patrick Thornberry, “Article 4: Racist Hate Speech” in *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, Oxford, Oxford University Press 2016, p. 296.

rights under Articles 2, 4 and 7 of the Convention meet any threshold of plausibility for purposes of this phase of the proceedings.

Madam President, Members of the Court, I thank you for your attention and would kindly ask you to invite Professor Murphy to address you next.

The PRESIDENT: I thank Mr. Salonidis for his statement and I now invite Professor Sean Murphy to take the floor. You have the floor, Professor.

Mr. MURPHY:

**THE REQUESTED PROVISIONAL MEASURES RELATING TO POWS AND CIVILIAN DETAINEES
CONCERN PLAUSIBLE RIGHTS UNDER ARTICLES 2 AND 5 OF THE CONVENTION
ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

1. Thank you, Madam President. It is a great honour to appear before the Court, and to do so on behalf of the Republic of Armenia.

2. I will be addressing the facts relating to the inhuman and degrading treatment of, and the failure to repatriate, the prisoners of war (POWs) and civilian detainees of Armenian ethnic origin. Thereafter, I will demonstrate the plausibility that such conduct is a denial of rights and obligations arising under the CERD.

**I. Azerbaijan has acknowledged the detention of, but has failed to repatriate,
42 POWs and 3 protected civilians**

3. As noted by Armenia's Agent, on 27 September 2020 an international armed conflict broke out in Nagorno-Karabakh. Most of the fighting occurred over the next 44 days, at which point a ceasefire was reached on 10 November, brought about by the Trilateral Statement of Armenia, Azerbaijan and Russia⁶¹. Yet sporadic troop movements, encounters and armed incidents continued thereafter, including during a period when Russian peacekeeping troops were being deployed.

4. Azerbaijan is obligated to repatriate all POWs and protected civilians under international humanitarian law, human rights law and the Trilateral Statement, which provides that the Parties

⁶¹ See Prime Minister of the Republic of Armenia, Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation (10 November 2020), available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>.

shall exchange prisoners of war, hostages and other detained persons, and bodies of the dead⁶². Yet Azerbaijan continues to detain 42 Armenian POWs and three Armenian civilians, in violation of their rights under the CERD, including to equality before the law. And to be clear, the fact that Azerbaijan is detaining these 45 individuals is *not* in dispute. A list of their names and other information is in your judges' folder at tab 3⁶³. These are specific people; they have names, they have faces, and they have families.

5. The first two POWs are Armenian members of the mobilization reserve of the Armenian army. The first of these two, named Alyosha Khos[r]ovyan, was captured in early October 2020 in Artsakh. The second POW, *named* Lyudvig Mkrtchyan, was captured on 20 October 2020 in Fuzuli district of Artsakh⁶⁴.

6. Thereafter, the list contains 38 POWs, who appear as numbers 3 to 40 on the list. These POWs are Armenian soldiers captured on 13 December 2020 by Azerbaijani special armed forces near the villages of Hin Tagher and Khtsaber, which are in the Hadrout region of the Republic of Artsakh. The two villages and surrounding territories were not among the territories from which Armenian troops were required to withdraw under the Trilateral Statement⁶⁵. Rather, this ~~is~~ *was* an area where the forces of both sides were to remain at their current positions⁶⁶ and then, along the

⁶² Prime Minister of the Republic of Armenia, Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation (10 Nov. 2020), available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>, para. 8.

⁶³ 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 (6 Oct. 2021), attaching table of 45 POWs and Civilians Acknowledged by Azerbaijan as of 6 October 2021, *Application and Request for provisional measures of the Republic of Armenia Armenia*, Ann. 68.

⁶⁴ See "Baku court sentences two Armenian POWs to 20 years in prison," *Panorama* (2 August 2021), available at <https://www.panorama.am/en/news/2021/08/02/Baku-court-Armenian-POWs/2544440>.

⁶⁵ Prime Minister of the Republic of Armenia, Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation (10 Nov. 2020), available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>, paras. 2, 6.

⁶⁶ Prime Minister of the Republic of Armenia, Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation (10 Nov. 2020), available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>, para. 1.

“line of contact”, there was to be deployed Russian peacekeepers⁶⁷. As of 12 December, Russian peacekeepers had not yet fully deployed along this part of the line of contact⁶⁸.

7. However, after this incident occurred ~~on 13 December~~, Russian peacekeepers raced down to this area of Nagorno-Karabakh. On your screen is a Russian map, dated 13 December 2020, with Armenia’s translations into English⁶⁹. From this map, you can see the Russian peacekeeping zone, encircled by a thick blue line, which includes at the very bottom of the zone the village of Hin Tagher. The village of Khtsaberd is not visible on this map, but it is less than 10 km north-west from Hin Tagher, and hence, it is also in the zone. Thus, in the aftermath of the ceasefire, and while the peacekeeping forces were being deployed along the “line of contact” between the two belligerents’ military forces, Azerbaijan launched a military operation that captured 62 Armenian soldiers — known as “the Khtsaberd group”. Of those 62 POWs, 24 have been repatriated, but 38 remain detained by Azerbaijan.

8. Two further POWs, who appear as numbers 41 and 42 on the list, are Armenian soldiers captured on 27 May 2021. On that day, Azerbaijan surrounded and captured six Armenian soldiers near Kut village in the Gegharkunik region of Armenia, where they were engaged in engineering work⁷⁰. Although these soldiers were not in Azerbaijan, Azerbaijan alleges that they had “tried to carry out a sabotage and reconnaissance operation and sabotage terrorist activities in [Azerbaijan]

⁶⁷ Prime Minister of the Republic of Armenia, Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation (10 Nov. 2020), available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>, para. 3.

⁶⁸ See Russian Ministry of Defense, Situation in the area of the peacekeeping operation (as at December 12, 2020) (certified translation from Russian), ~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 63.

⁶⁹ See Russian Ministry of Defense, Situation in the area of the peacekeeping operation (as at December 13, 2020) (certified translation from Russian), ~~*Application and Request for provisional measures of the Republic of the Republic of Armenia Armenia*~~, Ann. 64.

⁷⁰ United Nations, General Assembly & Security Council, Letter dated 27 May 2021 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary General, UN doc. A/75/897-S/2021/508 (28 May 2021); Representative of Armenia before the European Court of Human Rights, Request to the European Court of Human Rights on Applying Interim Measures against the Republic of Azerbaijan under Rule 39 of the Rules of Court (27 May 2021), para. 11, ~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 65); 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 (6 October 2021), attaching table of 45 POWs and Civilians Acknowledged by Azerbaijan as of 6 October 2021, ~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 68.

aimed at planting landmines in the roads”⁷¹. Four of the six soldiers were part of a group of fifteen POWs repatriated to Armenia on 12 June 2021⁷². But two less fortunate ~~soldiers~~ *servicemen* from this same group, Ishkhan Sargsyan and Vladimir Rafaelyan, remain POWs.

9. Finally, Azerbaijan has acknowledged that it continues to detain three Armenian civilians, who appear on page 9 of your list. These civilians are protected under the Fourth Geneva Convention. The first civilian, an Armenian-Lebanese dual national, named Vicken Euljekjian, was detained on 10 November 2020 by Azerbaijani armed forces, while he was driving to collect personal belongings in Shushi before returning to Armenia⁷³. The other two civilians, named Gevorg Sujyan and Davit Davtyan, were detained on 11 November 2020⁷⁴. They are employed by a non-governmental charitable organization that conducts humanitarian activities for the civilian population *who are* affected by the conflict. These two civilians were detained during a humanitarian mission while driving along the Goris-Stepanakert highway⁷⁵.

II. Azerbaijan has not acknowledged the detention of but has failed to repatriate, and failed to provide information on, an unknown number of additional POWs and civilians

10. Madam President, separate from these 45 POWs and protected civilians, there are dozens of Armenians believed to be in Azerbaijan’s custody, but Azerbaijan has failed to acknowledge them, despite direct evidence of their capture. Such evidence includes testimonies of former POWs and

⁷¹ Republic of Azerbaijan, Ministry of Foreign Affairs, No:191/21, Information of the Press Service Department of the Ministry of Foreign Affairs of the Republic of Azerbaijan on the next provocation of the armed forces of Armenia along the border in the direction of the Kalbajar region (2021), available at <https://mfa.gov.az/en/news/no19121-information-of-the-press-service-department-of-the-ministry-of-foreign-affairs-of-the-republic-of-azerbaijan-on-the-next-provocation-of-the-armed-forces-of-armenia-along-the-border-in-the-direction-of-the-kalbajar-region-enru>.

⁷² Letter from Yeghishe Kirakosyan, the Representative of the Republic of Armenia before the European Court of Human Rights, to Klaudiusz Rynגיעlewicz, Head of the Filtering Section, European Court of Human Rights (1 July 2021), p. 1, *Application and Request for provisional measures of the Republic of Armenia Armenia*, Ann. 67.

⁷³ See “Lebanese-Armenian PoW Vicken Euljekjian hospitalized in Azerbaijan”, *PanArmenian* (3 June 2021), available at https://www.panarmenian.net/eng/news/293336/LebaneseArmenian_PoW_Vicken_Euljekjian_hospitalized_in_Azerbaijan.

⁷⁴ “Baku court sentences two Armenian captives to 15 years in prison,” *Panorama* (28 July 2021) available at <https://www.panorama.am/en/news/2021/07/28/Baku-court-Armenian-captives/2542458>.

⁷⁵ See “Baku court sentences two Armenian captives to 15 years in prison,” *Panorama* (28 July 2021) available at <https://www.panorama.am/en/news/2021/07/28/Baku-court-Armenian-captives/2542458>; 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 (6 October 2021), attaching Table of 45 POWs and Civilians Acknowledged by Azerbaijan as of 6 October 2021 (*Application and Request for provisional measures of Armenia Armenia*, Ann. 68).

civilian detainees, as well as videos and photographic images showing them being held captive⁷⁶. As far as Armenia is aware, neither their families nor the *International Committee of the Red Cross* (ICRC) have information on their whereabouts or whether they are still alive.

11. Efforts before the European Court of Human Rights to obtain information and release of such persons have resulted in a series of interim measure decisions of protection by that court, which *inter alia* called upon Azerbaijan to provide information on these individuals⁷⁷. But, as that court noted in December 2020, “[t]he Azerbaijani Government [has] frequently failed to provide the information requested by the Court”⁷⁸, prompting a referral of the matter in March 2021 to the Council of Europe’s Committee of Ministers⁷⁹.

12. *Ultimately Unfortunately*, whether the persons have been acknowledged or not, the Strasbourg Court as a rule does not issue interim measures ordering the release of detainees in such circumstances⁸⁰.

III. Azerbaijan has treated inhumanely all 45 acknowledged POWs and civilians and an unknown number of additional unacknowledged detainees

13. Madam President, there is an overwhelming body of evidence indicating that every one of the 45 acknowledged detainees, and a large number of other detainees, have been subjected to torture, degrading treatment and other abuse by Azerbaijan.

⁷⁶ See e.g. Letter from Yeghishe Kirakosyan, the Representative of the Republic of Armenia before the European Court of Human Rights, to Klaudiusz Ryngielewicz, Head of the Filtering Section, European Court of Human Rights (1 July 2021), pp. 1-2, *Application and Request for provisional measures of the Republic of Armenia Armenia*, Ann. 67; Human Rights Watch, “Azerbaijan: Armenian POWs Abused in Custody” (19 Mar. 2021), available at <https://www.hrw.org/news/2021/03/19/azerbaijan-armenian-pows-abused-custody>; The Human Rights Defender of the Republic of Armenia, Ad Hoc Public Report Responsibility of Azerbaijan For Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War) (September 2021), available at https://ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAJ06BxmRFaBSrtbXFqvSyXeM3M-5vZRFGpgCRC04urVPVE2NPL_VO4g.

⁷⁷ European Court of Human Rights, “The interim measure indicated in the case of *Armenia v. Azerbaijan* and Rule 39 proceedings with regard to alleged captives to remain in force” (16 Dec. 2021), available at <http://hudoc.echr.coe.int/eng-press?i=003-6889210-9244085>.

⁷⁸ European Court of Human Rights, “The interim measure indicated in the case of *Armenia v. Azerbaijan* and Rule 39 proceedings with regard to alleged captives to remain in force” (16 Dec. 2021), available at <http://hudoc.echr.coe.int/eng-press?i=003-6889210-9244085>, p. 1.

⁷⁹ European Court of Human Rights, “*Armenia v. Azerbaijan* and alleged captives: notification to the Committee of Ministers of interim measures indicated” (16 Mar. 2021), available at <http://hudoc.echr.coe.int/eng-press?i=003-6965126-9374600>.

⁸⁰ See European Court of Human Rights, Factsheet— interim measures (Apr. 2021), available at https://www.echr.coe.int/documents/fs_interim_measures_eng.pdf, p. 2 (scope of interim measures).

14. Indeed, there are numerous, corroborated reports by independent organizations that the POWs and civilian detainees have been exposed to stabbings, beatings, burnings and electric shocks⁸¹. Such treatment is often accompanied by ethnic slurs and other hate speech. While Azerbaijan has sought to hide such treatment, it is readily apparent from the consistent and credible reports by POWs and civilian detainees who have been allowed to return to Armenia⁸².

15. Members of the Court, the documentary evidence is shocking enough. But there is also among this body of evidence a large number of videos that we have submitted to you, where the Court can see with its own eyes the horrific abuse⁸³. You will find the reference pages for those videos in your judges' folder at tab 4.

16. These videos were posted on social media by Azerbaijani servicemen or others, and were then picked up by news sources. For some of these videos, we added English subtitles so that the Court may understand what is being said. I anticipate that you will find these videos deeply disturbing, not only from the atrocious acts being committed, but in the clear hatred being shown to persons of Armenian origin.

⁸¹ Parliamentary Assembly of the Council of Europe, Report on Humanitarian Consequences of the Conflict between Armenia and Azerbaijan, doc. 15363 (13 Sept. 2021), available at <https://pace.coe.int/pdf/a61ff5e0981ae42e02f02336c51f639d66ae587b74fd95634b36e68c4bcbe7a6/doc.%2015363.pdf>, Section C, Explanatory Memorandum by Mr. Paul Gavan, Rapporteur, paras. 46-54; Parliamentary Assembly of the Council of Europe, Resolution 2391: Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict (2021), available at <https://pace.coe.int/en/files/29483/html>, paras. 8, 8.2; Human Rights Watch, "Azerbaijan: Armenian POWs Abused in Custody" (19 Mar. 2021), available at <https://www.hrw.org/news/2021/03/19/azerbaijan-armenian-pows-abused-custody>; see also Human Rights Watch, "Azerbaijan: Armenian Prisoners of War Badly Mistreated" (2 Dec. 2020), available at <https://www.hrw.org/news/2020/12/02/azerbaijan-armenian-prisoners-war-badly-mistreated>; International Partnership for Human Rights and Truth Hounds, When Embers Burst into Flames: International Humanitarian Law and Human Rights Violations During the 2020 Nagorno-Karabakh War (May 2021), available at https://www.iphonline.org/wp-content/uploads/2021/06/NK_final_report_2021.pdf, pp. 76-82, 88-90; The Human Rights Defender of the Republic of Armenia, Ad Hoc Public Report Responsibility of Azerbaijan For Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War) (Sept. 2021), available at https://ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAjo6BxmRFaBSrtbXFqySyXeM3M-5vZRFgpgCRCo4urVPVE2NPL_VO4g; The Human Rights Defender of the Republic of Armenia, Ad Hoc Public Report: The Treatment of Armenian Prisoners of War and Civilian Captives in Azerbaijan (With Focus on Their Questionings) (2021), available at <https://ombuds.am/images/files/1138b156720bec6ae0fd88dc709eb62c.pdf>.

⁸² The Human Rights Defender of the Republic of Armenia, Ad Hoc Public Report: Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War) (2021), available at https://ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAjo6B%20xmRFaBSrtbXFqySyXeM3M-5vZRFgpgCRCo4urVPVE2NPL_VO4g; The Human Rights Defender of the Republic of Armenia, Ad Hoc Public Report: The Treatment of Armenian Prisoners of War and Civilian Captives in Azerbaijan (With Focus on Their Questionings) (2021), available at <https://ombuds.am/images/files/1138b156720bec6ae0fd88dc709eb62c.pdf>.

⁸³ Videos Showing Inhuman and Degrading Treatment of Repatriated Individuals by Azerbaijan (videos contain annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC], *Application and Request for provisional measures of the Republic of Armenia Armenia*, Ann. 73; Video of Inhuman and Degrading Treatment of Mr. Gevorg Sujyan (video contains annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC], *ibid.*, Ann. 70; Videos Showing Torture and Inhuman and Degrading Treatment of Unacknowledged Captives by Azerbaijan (videos contain annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC], *ibid.*, Ann. 75).

17. Tragically, it is well known that a number of military and civilian detainees of Armenian origin have not just been inhumanely treated — they have also been executed. These executions are also evidenced by witness accounts and other information⁸⁴. And these executions are also evidenced by videos that we have submitted to the Court⁸⁵. Here, too, the Court will find these execution videos shocking, graphic, reprehensible and riddled with hate speech.

18. *And* sadly, even in death, the abuse continues, as there are also numerous videos of the bodies of deceased Armenian soldiers being mutilated by Azerbaijani soldiers, done in conjunction with hateful slurs against the Armenian people⁸⁶.

19. We urge you to review these videos as you consider the fate of the 45 acknowledged detainees and of those detainees who have not been acknowledged. But to highlight how the suffering seen in these videos directly connects to the current detainees, I wish to describe one of the videos, which is found at Armenia's Annex 69⁸⁷. This video demonstrates the suffering of one of the acknowledged POWs, Lyudvig Mkrtchyan, who is the second POW listed in tab 3 of your folders.

20. In the video, which may have been taken shortly after Mkrtchyan and other Armenian soldiers were taken captive, you will see Mkrtchyan lying on the ground along with the other POWs.

⁸⁴ See Ulkar Natiqqizi & Joshua Kucera, "Evidence of widespread atrocities emerges following Karabakh war", *Eurasianet* (9 Dec. 2020), available at <https://eurasianet.org/evidence-of-widespread-atrocities-emerges-following-karabakh-war>; Grigor Atanesian & Benjamin Strick, "Nagorno-Karabakh conflict: 'Execution' video prompts war crime probe", BBC (24 Oct. 2020), available at <https://www.bbc.com/news/world-europe-54645254>. Tanya Lokshina, "Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes", Human Rights Watch (12 Mar. 2021), available at <https://www.hrw.org/news/2021/03/12/survivors-unlawful-detention-nagorno-karabakh-speak-out-about-war-crimes>; The Human Rights Ombudsman of the Republic of Artsakh, Second Interim Report (Updated Edition) on the Azerbaijani Atrocities against the Artsakh Population in September-October 2020, 18 Oct. 2020, available at <https://artsakhombuds.am/en/document/735>, p. 27, fig. 29; The Human Rights Defender of Armenia & The Human Rights Ombudsman of Artsakh, Fourth Ad Hoc Report on Torture and Inhuman Treatment of Members of Artsakh Defense Army and Captured Armenians by Azerbaijani Armed Forces (from November 4-18, 2020), Nov. 2020, pp. 4 and 6, Application and Request for provisional measures of the Republic of Armenia, Ann. 13; The Human Rights Defender of Armenia & The Human Rights Ombudsman of Artsakh, Sixth Ad Hoc Report on Torture and Inhuman Treatment of Members of Artsakh Defense Army and Captured Armenians by Azerbaijani Armed Forces (from December 2-16, 2020), Dec. 2020, pp. 3, 5-10, *ibid.*, Ann. 16).

⁸⁵ Videos Showing Executions of Armenians by Azerbaijan (videos may contain annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC], ~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 72.

⁸⁶ Videos Showing Mutilation of Armenian Corpses by Azerbaijan (videos contain annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC], ~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 74.

⁸⁷ Video of Inhuman and Degrading Treatment of Mr. Lyudvig Mkrtchyan and Other Armenian Captives [WARNING: GRAPHIC], ~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 69. See also Human Rights Watch, "Azerbaijan: Armenian Prisoners of War Badly Mistreated", 2 Dec. 2020, available at <https://www.hrw.org/news/2020/12/02/azerbaijan-armenian-prisoners-war-badly-mistreated>.

Mkrtchyan has a bullet wound in his left hip and tailbone. Despite that wound, he is blindfolded and ~~he is~~ restrained.

21. He is clearly *hors de combat*. Yet his Azerbaijani captors kick him in the back; they step on his head and they poke him with a sharp rod. One of his captors asks: “Where is his finger? Shall I cut it?” Mkrtchyan begs not to be harmed. He says: “Don’t shoot, please don’t kill me.”

22. In the video, the other Armenian POWs fare no better with such treatment. The Azerbaijani soldiers also step on them, kick them, **and** poke them with the sharp rod. These POWs, as you will see, are clearly afraid. One of the POWs begs not to be harmed. One of the captors responds with hateful language. He says: “You are going to keep ~~on~~ begging us like this a lot. You, the disgraceful people, pimps, faggots.”

23. Towards the end of the video, one of the captors says about one of the POWs: “Cut it, cut the finger.” Another captor approaches that POW with a sharp metal rod, as the POW — blindfolded, bound and prostrate — begs not to be touched. The captor then places the sharp rod against the POW’s fingers, and then pulls back, just before the video ends. I note that the corroboration of this abuse, and specifically of Mkrtchyan, can be found in other videos that we have provided to the Court⁸⁸.

24. Members of the Court, we submit that there is ample basis for the Court to conclude in this proceeding, as it did in the *Tehran Hostages* case, that “continuance of the situation the subject of the present request exposes the human beings concerned to privation, hardship, anguish and even danger to life and health and thus to a serious possibility of irreparable harm”⁸⁹.

25. Another form of this abusive treatment bears noting. Azerbaijan has subjected these detainees to sham criminal proceedings, in which individuals are charged long after they should have been repatriated, and then tried and convicted in a matter of days, often in a language they do not understand⁹⁰. These convictions were typically based on charges that are not triable under the laws

⁸⁸ See e.g. Second Video of Inhuman and Degrading Treatment of Mr. Lyudvig Mkrtchyan (annotated version contains annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC], ~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 71.

⁸⁹ *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, *Provisional Measures, Order of 15 December 1979*, I.C.J. Reports 1979, p. 20, para. 42.

⁹⁰ See Center for Truth and Justice, “Initiating an Investigation: White Paper on Azerbaijan’s Torture and Mistreatment of Armenian Prisoners of War (POWs) During and After the 2020 Nagorno-Karabakh War”, Sept. 2021, available at https://drive.google.com/file/d/1vPEIIXS9erp6wU8ksO96ZhQxZ5_i_PiJ/view, p. 11.

of war; for example, it makes no sense in the context of a ceasefire agreement that leaves armed forces positioned in places opposite each other, for one side to charge the soldiers of the other side with “illegal border crossing” and illegal “carrying of firearms”⁹¹. Likewise, it makes no sense to convict someone as a mercenary when he is a national of one of the belligerents. The two POWs captured in October 2020 were convicted for acts that allegedly occurred three decades ago⁹², which at the time were never pursued by Azerbaijani authorities, and in any event were overtaken by the obligation to repatriate. Moreover, some of these convictions apparently were based on confessions, yet there is ample evidence of Azerbaijan coercing confessions through torture⁹³. The Court simply cannot countenance a justification for detaining POWs and civilians that is tainted by such conduct.

26. That these criminal proceedings are a sham is also demonstrated by the fact that Azerbaijan blithely releases some of these so-called “criminals” whenever it is able to extract something from Armenia in exchange. As I previously noted, six POWs were captured on 27 May of this year. Azerbaijan rushed to charge them with crimes on 28 and 29 May⁹⁴. Then, just two weeks later, on 12 June, four of those POWs were released as part of a group of 15 Armenian POWs⁹⁵. Why release **POWs persons** who are allegedly “criminals”? Well, they were released by Azerbaijan so long as Armenia provided a map detailing the location of mines in Agdam⁹⁶. Such conduct is arbitrary, and it speaks volumes about the nature of Azerbaijan’s so-called “criminal” proceedings.

⁹¹ See e.g. “Azerbaijani court sentences 2 Armenian POWs to 4 years and 12 POWs to 6 months in prison”, *ArmenPress* (2 July 2021), available at <https://armenpress.am/eng/news/1057286.html>.

⁹² See Armen Mirzoyan, “Azerbaijan Charges Two Armenian Captives with Torture: Accusations Date to 1990s Karabakh War”, *Hetq* (2 June 2021), available at <https://hetq.am/en/article/131629>.

⁹³ See Center for Truth and Justice, “Initiating an Investigation: White Paper on Azerbaijan’s Torture and Mistreatment of Armenian Prisoners of War (POWs) During and After the 2020 Nagorno-Karabakh War”, Sept. 2021, available at https://drive.google.com/file/d/1vPEIIXS9erp6wU8ksO96ZhQxZ5_i_PiJ/view, pp. 10-11. See also *Case of Saribekyan and Balyan v. Azerbaijan*, ECtHR, App. No. 35746/11, Judgment (30 Jan. 2020); *Case of Badalyan v. Azerbaijan*, ECtHR, App. No. 51295/11, Judgment (22 July 2021); *Armen Ghazaryan and Astghik Bayramyan v. Azerbaijan*, ECtHR, App. No. 33050/18, Judgment (17 July 2018).

⁹⁴ See Letter from Çingiz Əsgərov, Agent of the Republic of Azerbaijan before the European Court of Human Rights, to Johan Callewaert, Deputy Grand Chamber Registrar, European Court of Human Rights, No. 8/2-1401 (4 June 2021), attaching Decisions on the initiation of the criminal case and on charges (Ann. 1 translated from Azerbaijani), p. 3 (***Application and Request for provisional measures of the Republic of Armenia Armenia***, Ann. 66).

⁹⁵ “Russia Rescues Three Armenian Prisoners, Some 185 Remain in Azerbaijan”, USC Dornsife Institute of Armenian Studies (5 May 2021), available at <https://armenian.usc.edu/russia-secures-release-of-3-armenian-prisoners-some-185-remain/>.

⁹⁶ “Azerbaijan swaps 15 Armenian PoWs for map of landmines”, *The Guardian* (12 June 2021), available at <https://www.theguardian.com/world/2021/jun/13/azerbaijan-swaps-15-armenian-pows-for-map-of-landmines>; “Azerbaijan swaps 15 Armenian prisoners for map showing landmines”, Reuters (12 June 2021), available at <https://www.reuters.com/world/azerbaijan-swaps-15-armenian-prisoners-map-showing-landmines-2021-06-12/>.

27. Indeed, similarly, Azerbaijan charged a group of Armenian POWs with the crime of illegally crossing the border and, on 2 July 2021, sentenced them to prison⁹⁷. Yet the *very next day*, on 3 July, Azerbaijan released 12 of them, as part of a group of 15 POWs, this time in exchange for maps of mines in the Fuzuli and Zangelan regions⁹⁸. The three others in this group still had their trials pending, yet they too were repatriated.

28. The arbitrariness of Azerbaijan's so-called criminal proceedings continues in that all fifteen of those released POWs were from the Khatsaberd group, yet many others from that same group remain detained. Hence, the fact that the continued detention of the POWs has nothing to do with actual criminality is readily apparent from Azerbaijan's willingness to repatriate *some* POWs on *some* occasions whenever Azerbaijan believes it has extracted something from Armenia, while refusing to repatriate other POWs who were captured for the *same acts* and at the *same time* and in the *same place*. This is not a situation of applying criminal law fairly and judiciously; it is using criminal law arbitrarily as a subterfuge for prohibited, discriminatory conduct.

29. Finally, on the factual ~~discussion~~ *assertion*, while it is reported that Azerbaijan is allowing the ICRC to visit these 45 detainees, there is also evidence that Azerbaijan is seeking to hide ~~the~~ other detainees, and to hide its abuse of all the detainees⁹⁹, from the ICRC and from others, making their repatriation all the more urgent. For example, the rapporteur for the Parliamentary Assembly of the Council of Europe was repeatedly denied permission to visit these detainees¹⁰⁰.

IV. The rights claimed by Armenia are plausible

30. I turn now to the plausibility of the rights at issue.

⁹⁷ "Azerbaijani court sentences 2 Armenian POWs to 4 years and 12 POWs to 6 months in prison," *ArmenPress* (2 July 2021), available at <https://armenpress.am/eng/news/1057286.html>.

⁹⁸ "Azerbaijan hands over Armenian soldiers in swap for land mine maps", Radio Free Europe/Radio Liberty (3 July 2021), available at <https://www.rferl.org/a/azerbaijan-armenia-prisoners-russia-land-mines/31339591.html>.

⁹⁹ The Human Rights Defender of the Republic of Armenia, Ad Hoc Public Report Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War) (September 2021), available at https://ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAJoj6B%20xmRFaBSrtbXFqvSyXeM3M-5vZRFgpgCRCo4urVPVE2NPL_VO4g, paras. 36, 96.

¹⁰⁰ Parliamentary Assembly of the Council of Europe, Report on Humanitarian Consequences of the Conflict between Armenia and Azerbaijan, doc. 15363, 13 September 2021, available at <https://pace.coe.int/pdf/a61ff5e0981ae42e02f02336c51f639d66ae587b74fd95634b36e68c4bcebe7a6/doc.%2015363.pdf>, Section C, Explanatory Memorandum by Mr. Paul Gavan, Rapporteur, para. 30.

A. CERD rights of the 42 acknowledged POWs

31. Azerbaijan has an obligation to repatriate the POWs; indeed, this is one of the most important obligations of international humanitarian law. Azerbaijan's disregard of that obligation is ethnic discrimination, pure and simple. Whereas virtually every other country in the world takes quite seriously the general obligation to repatriate all POWs after the cessation of hostilities, Azerbaijan has not, because of its policy of hatred toward persons of Armenian ethnicity. As was apparent from the presentation of Mr. Salonidis, persons of Armenian ethnicity are viewed by the Azerbaijan Government as sub-human — as meriting a disgraceful and demeaning “Trophy Park” — but as not meriting the fundamental right of repatriation. For Azerbaijan, the POWs' value is not to be found in human dignity. Rather, their value is as a bargaining chip; they are pawns for Azerbaijan to advance its political interests, an especially pernicious exercise of ethnic discrimination.

32. Article 1 (1) of the CERD defines “racial discrimination” in broad terms, to include “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin”¹⁰¹. Thus, restrictions based on ethnic origin are a form of racial discrimination. Article 2 then obligates States Parties not to engage in any act or practice of racial discrimination against persons or groups of persons. Article 5 furthers the fundamental obligation set out in Article 2 by making clear that “States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right to everyone, without distinction as to . . . ethnic origin, to equality before the law”¹⁰² — “equality before the law”. Moreover, Article 5, subparagraph (d) (ii), specifically protects “[t]he right to leave any country . . . and to return to one's country”¹⁰³.

33. We submit that it is much more — much more — than just plausible that these rights under the CERD are being denied to the POWs. The Government of Azerbaijan has directly ordered their continued detention; there is no issue of private action here. This failure to repatriate is a denial to persons of Armenian origin of their rights under the CERD to equality before the law, in this instance before or under international humanitarian law. Azerbaijan may not, under the Third Geneva

¹⁰¹ International Convention on the Elimination of All Forms of Racial Discrimination (opened for signature 7 March 1966, entered into force 4 January 1969), 660 *UNTS* 195, Art. 1 (1).

¹⁰² *Ibid.*, Art. 2.

¹⁰³ *Ibid.*, Art. 5.

Convention, refuse to repatriate these POWs¹⁰⁴; many organizations and observers have already reached that conclusion on the merits. Indeed, the Third Geneva Convention itself prohibits racial discrimination against POWs¹⁰⁵. When one considers the general background of Azerbaijan's hateful views regarding persons of Armenian origin, along with the inhuman and degrading treatment of these POWs, and along with the occasional use of the POWs as bargaining chips — all such circumstances strongly demonstrate that this failure to repatriate is not just *plausibly* racial discrimination — it *is* racial discrimination — in the form of a denial of equality under international humanitarian law.

34. Now, you may hear from Azerbaijan this afternoon that all these POWs are criminals, and that their detention has nothing to do with ethnic discrimination. Yet all the evidence points towards ethnic discrimination, and *no one* is accepting Azerbaijan's claim of criminality. United Nations human rights experts do not accept it¹⁰⁶. The European Parliament does not accept it¹⁰⁷. The Parliamentary Assembly of the Council of Europe¹⁰⁸, and its rapporteur¹⁰⁹, do not accept it. Rather, all of them have called for the expeditious repatriation of these POWs, as have many governments¹¹⁰.

35. Time does not allow me to describe in depth the plausibility of the POW's rights under the CERD not to be beaten, tortured or otherwise physically or mentally abused. But here, too, we submit

¹⁰⁴ Geneva Convention Relative to the Treatment of Prisoners of War (opened for signature 12 August 1949, entered into force 21 October 1950), 75 *UNTS* 135, Art. 118.

¹⁰⁵ *Ibid.*, Arts. 3, 16.

¹⁰⁶ United Nations Office of the High Commissioner for Human Rights, "Nagorno-Karabakh: Captives Must be Released – UN Experts" (1 February 2021), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26702&LangID=E>.

¹⁰⁷ European Parliament, European Parliament resolution of 20 May 2021 on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan, No. 2021/2693(RSP) (20 May 2021), available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.pdf.

¹⁰⁸ Parliamentary Assembly of the Council of Europe, Report on Humanitarian Consequences of the Conflict between Armenia and Azerbaijan, doc. 15363 (13 September 2021), available at <https://pace.coe.int/pdf/a61ff5e0981ae42e02f02336c51f639d66ae587b74fd95634b36e68c4bcbe7a6/doc.%2015363.pdf>, Section A, Draft resolution, para. 6.7.

¹⁰⁹ Parliamentary Assembly of the Council of Europe, Report on Humanitarian Consequences of the Conflict between Armenia and Azerbaijan, doc. 15363 (13 September 2021), available at <https://pace.coe.int/pdf/a61ff5e0981ae42e02f02336c51f639d66ae587b74fd95634b36e68c4bcbe7a6/doc.%2015363.pdf>, Section C, Explanatory Memorandum by Mr. Paul Gavan, Rapporteur, para. 28.

¹¹⁰ See e.g. "France Presses For Release of Armenian POWs", *Asbarez* (30 April 2021), available at <https://asbarez.com/france-presses-for-release-of-armenian-pows/>; European Parliament, European Parliament resolution of 20 May 2021 on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan, No. 2021/2693(RSP) (20 May 2021), available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.pdf; "Luxembourg calls for immediate release of Armenian POWs", Public Radio of Armenia (28 May 2021), available at <https://en.armradio.am/2021/05/28/luxembourg-calls-for-immediate-release-of-armenian-pows/>; "New Dutch parliament resolution calls for immediate release of Armenian prisoners of war", Actor (17 June 2021), available at <https://factor.am/en/1511.html>.

that it is much more than just plausible that such treatment violates CERD Articles 2 and 5, and in particular Article 5 (b), which protects the “right to security of person and protection by the States against violence or bodily harm”¹¹¹. The POWs’ treatment before Azerbaijani courts also clearly implicates CERD Article 5 (a), which recognizes “[t]he right to equal treatment before the tribunals and all other organs administering justice”¹¹². And the overarching Article 5 right to equality before the law is further implicated given that Azerbaijan’s inhuman and degrading treatment is a denial to an ethnic group of their rights under international humanitarian law¹¹³ and also under international human rights law, including prohibitions on arbitrary detention, on torture, on inhuman and degrading treatment, and as well as the freedom to leave any country, and the right to a fair trial¹¹⁴.

B. CERD rights of the three acknowledged protected civilians

36. As is the case with the POWs, it is more than plausible to maintain that the Government of Azerbaijan’s refusal to repatriate the three acknowledged civilians is a denial to persons of Armenian origin of their rights under CERD Articles 2 and 5 to equality under the law, including the security of their person and to the right to return to their country.

37. And with respect to equality under the law, Azerbaijan simply has no basis, under either the Fourth Geneva Convention or human rights law, to refuse to repatriate these civilians, or to treat them inhumanely. Again, many organizations and observers have already reached that conclusion on the merits. Under the Fourth Geneva Convention, civilians are “protected persons”. And, if interned during the conflict, they must be released after cessation of hostilities¹¹⁵. They must be treated humanely, “without any . . . distinction founded on race”¹¹⁶; they must be protected from murder,

¹¹¹ International Convention on the Elimination of All Forms of Racial Discrimination (opened for signature 7 March 1966, entered into force 4 January 1969), 660 *UNTS* 195, Art. 5 (b).

¹¹² *Ibid.*, Art. 5 (a).

¹¹³ See e.g., Geneva Convention Relative to the Treatment of Prisoners of War (opened for signature 12 August 1949, entered into force 21 October 1950), 75 *UNTS* 135, Arts. 3, 12-16, 23, 130.

¹¹⁴ International Covenant on Civil and Political Rights (opened for signature 16 December 1966, entered into force 23 March 1976), 999 *UNTS* 171, Arts. 7, 9, 12, 14; Convention for the Protection of Human Rights and Fundamental Freedoms (opened for signature 4 November 1950, entered into force 3 September 1953), 213 *UNTS* 222, Arts. 1-3, 5-6, 14; Convention for the Protection of Human Rights and Fundamental Freedoms (opened for signature 4 November 1950, entered into force 3 September 1953), 213 *UNTS* 222, Protocol 4, Art. 2. See also generally CERD Committee, General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System (2005).

¹¹⁵ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (opened for signature 12 August 1949, entered into force 21 October 1950), 75 *UNTS* 287, Arts. 133-134.

¹¹⁶ *Ibid.*, Art. 3 (1).

torture or brutality¹¹⁷; the taking of civilians as hostages is forbidden¹¹⁸; and they “shall not be deprived of the rights of a fair and regular trial” as prescribed by the Convention¹¹⁹. And similar protections for these civilians arise under the previously-noted human rights law.

C. CERD rights of the unacknowledged additional POWs and civilians

38. Madam President, the plausibility of the rights claimed under the CERD with respect to POWs and *protected* civilians that Azerbaijan has *not* acknowledged, but has also treated inhumanely and has not repatriated, also flows from what I have just said. Although these persons are not acknowledged by Azerbaijan, there is ample evidence that they were taken into captivity, that they have been abused, and obviously that they have not yet been repatriated. For the reasons previously indicated, it is more than plausible to regard their treatment as a denial to persons of Armenian origin of their rights under Articles 2 and 5 of the CERD, notably their rights to equality under the law, to return to their country, and to the security of their person.

39. Madam President, that concludes my presentation. I ask that you now call on Professor d’Argent.

The PRESIDENT: I thank Professor Murphy for his statement. I now invite Professor Pierre d’Argent to take the floor. You have the floor, Professor.

M. D’ARGENT : Merci, Madame la présidente.

LES MESURES CONSERVATOIRES SOLLICITÉES RELATIVES AU PATRIMOINE CULTUREL ET RELIGIEUX ARMÉNIEN CONCERNANT DES DROITS PLAUSIBLES AU REGARD DES ARTICLES 2 ET 5 DE LA CONVENTION SUR L’ÉLIMINATION DE TOUTES LES FORMES DE DISCRIMINATION RACIALE

1. Madame la présidente, Mesdames et Messieurs les juges, c’est toujours un honneur de prendre la parole devant la Cour et c’est un honneur particulier de le faire aujourd’hui, dans les présentes circonstances, au soutien de l’Arménie.

¹¹⁷ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (opened for signature 12 August 1949, entered into force 21 October 1950), 75 *UNTS* 287, Arts. 13, 32.

¹¹⁸ *Ibid.*, Art. 34.

¹¹⁹ *Ibid.*, Art. 5, 71-72.

2. Ma présentation sera consacrée à la nécessité de protéger le droit de l'Arménie et des Arméniens de jouir, sans discrimination prohibée, de leur patrimoine culturel et religieux.

I. Des droits plausibles

3. L'article 2 de la convention sur l'élimination de *toutes* les formes de discrimination raciale oblige les Etats parties, je le rappelle, à «ne se livrer à *aucun acte ou pratique de discrimination raciale*»¹²⁰. Par ailleurs, l'article 5 de la convention impose d'assurer sans discrimination prohibée la jouissance des droits qu'il énonce. Parmi ces droits figurent le droit à la liberté de religion¹²¹ ainsi que le «[d]roit de prendre part, dans des conditions d'égalité, aux activités culturelles»¹²².

4. Il est indéniable que le droit à la liberté de religion emporte le droit de pratiquer sa religion dans les lieux de cultes habituels, et donc le droit de voir ces lieux respectés et préservés. De même, le droit de prendre part aux activités culturelles implique que le patrimoine servant à de telles activités soit respecté et préservé. Par ailleurs, bien sûr, de nombreux lieux de culte font partie du patrimoine culturel. Ainsi, le patrimoine religieux et culturel est susceptible d'être protégé au titre de la convention lorsqu'il est établi qu'il y est porté atteinte pour un motif qu'elle prohibe¹²³.

5. Les droits que l'Arménie vous demande de protéger en matière culturelle sont donc plausibles, non seulement *ratione materiae* au regard de la convention, mais également, et j'y viens, au regard des faits.

II. Des destructions avérées

6. Madame la présidente, le 8 octobre 2020, la cathédrale Saint-Sauveur de Shushi a, par deux fois, été bombardée. La première attaque eut lieu vers midi, la seconde, vers 17 heures alors qu'il n'y

¹²⁰ Convention internationale sur l'élimination de toutes les formes de discrimination raciale (ouverte à la signature le 7 mars 1966, entrée en vigueur le 4 janvier 1969), Nations Unies, *Recueil des traités*, vol. 660, p. 195, art. 2 (les italiques sont de nous).

¹²¹ *Ibid.*, art. 5 d) vii).

¹²² *Ibid.*, art. 5 e) vi).

¹²³ *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 19 avril 2017, C.I.J. Recueil 2017, p. 135, par. 82.*

avait pas de combats ni d'autres bombardements aux alentours ce jour-là. Ces faits sont bien documentés¹²⁴.

7. Et à la suite d'une enquête menée sur place, Human Rights Watch a conclu que la cathédrale avait bien été intentionnellement bombardée par deux salves précisément ajustées et que tout donnait à penser que ces attaques étaient le fait de l'Azerbaïdjan qui assiégeait la ville¹²⁵. A ce jour, la Partie défenderesse n'a apporté aucune autre explication crédible à ces faits.

8. La cathédrale de Shushi fut donc froidement et délibérément pilonnée deux fois la même journée pour que le message mortel ainsi envoyé soit parfaitement clair : les Arméniens n'ont pas leur place au Nagorno-Karabakh et ils n'y seront jamais en sécurité, pas même dans leurs lieux les plus sacrés.

9. Le bombardement de la cathédrale n'était en réalité que le prélude guerrier d'une politique qui allait se manifester immédiatement après le cessez-le-feu et se prolonger jusqu'aujourd'hui.

10. Madame la présidente, les preuves des destructions culturelles que je vais rapporter sont très nombreuses ; la requête arménienne contient à cet égard de nombreuses références à des documents disponibles sur Internet, dont certains ont été reproduits dans nos annexes. Photos ou vidéos à l'appui, ces preuves sont apparues dans les médias et sur les réseaux sociaux. En plus de se recouper, ces preuves ont été collectées et vérifiées grâce à des images satellites par Caucasus Heritage Watch, une initiative de recherche menée par des archéologues des universités de Cornell et Purdue aux Etats-Unis¹²⁶. Les rapports complets de ces archéologues sont dans votre dossier d'audience, aux onglets n^{os} 13 et 14.

11. Quelques jours à peine après le 10 novembre, la cathédrale fut de nouveau l'objet d'attaques racistes au cours desquelles ses murs ont été recouverts de graffitis¹²⁷ tandis que les statues

¹²⁴ *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 29, par. 74 ; voir aussi Letter from Masis Mayilian, Minister of Foreign Affairs of the Republic of Artsakh, to Audrey Azoulay, Director-General of UNESCO, No. 04/1249/2020 (19 November 2020) (requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie, annexe 11).

¹²⁵ Human Rights Watch, *Azerbaijan: Attack on Church Possible War Crime* (16 December 2020), consultable à l'adresse suivante : <https://www.hrw.org/news/2020/12/16/azerbaijan-attack-church-possible-war-crime>.

¹²⁶ Caucasus Heritage Watch, consultable à l'adresse suivante : <https://caucasusheritage.cornell.edu/>.

¹²⁷ *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 48, para. 115, p. 4 ; Letter from Masis Mayilian, Minister of Foreign Affairs of the Republic of Artsakh, to Audrey Azoulay, Director-General of UNESCO, No. 04/1249/2020 (19 November 2020) (requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie, annexe 11).

des anges ornant la grille qui entourait la cathédrale ont été délibérément endommagées¹²⁸ avant de disparaître¹²⁹.

12. Depuis lors, l'Azerbaïdjan a entrepris ce qu'il appelle des travaux de restauration de la cathédrale : il a enlevé la flèche surmontant la tour du ~~chaeur~~ *cœur* pour, prétendument, lui rendre son style architectural d'origine et rétablir ce qu'il appelle «l'image historique» de la ville¹³⁰.

13. Regardons toutefois cela de plus près : construite entre 1868 et 1887 lorsque la région faisait partie de l'empire russe, voici à votre écran la cathédrale dans son apparence d'origine, avec sa flèche, avant les pogroms anti-arméniens de mars 1920. A la suite de la recomposition ethnique de la ville engendrée par ces événements dramatiques, la pointe de la cathédrale fut enlevée et l'édifice religieux cessa d'être entretenu durant la période soviétique. La cathédrale retrouva son aspect d'origine en 1998 avant d'être bombardée le 8 octobre 2020. Depuis, l'Azerbaïdjan prétend donc «restaurer» la cathédrale en lui enlevant sa flèche¹³¹.

14. Mesdames et Messieurs les juges, en décapitant la cathédrale de Shushi, l'Azerbaïdjan entend la rendre invisible depuis Stepanakert et, en rétablissant la situation dans laquelle elle fut abandonnée à la suite des pogroms de 1920, il en ravive indirectement le souvenir. Prétendant rétablir «l'image historique» de la ville, l'Azerbaïdjan révèle en réalité sa politique de discrimination raciale : après avoir volontairement détruit le patrimoine culturel arménien en le bombardant, l'Azerbaïdjan altère, modifie, ce qu'il en reste afin d'en amoindrir la présence. Par une lettre de vendredi dernier transmise il y a moins de deux jours, le vice-ministre azerbaïdjanais de la culture affirme que les

¹²⁸ Svante E. Cornell, "The Nagorno-Karabakh Conflict," Report No. 46, Uppsala University, Department of East European Studies (1999), p. 26 (requête introductive d'instance et demande en indication de mesures conservatoires de l'Arménie, annexe 1).

¹²⁹ Karabakh Records (@KarabakhRecords), "A video posted by Azerbaijani sources showcases another act of #AzerbaijaniVandalism. Statues of angels on the gates of Ghazanchetsots Cathedral of Shushi were destroyed. The fence around it was taken down as well. Reminder!! Azerbaijan hinders @UNESCO mission's visit," *Twitter* (26 April 2021), consultable à l'adresse suivante : <https://twitter.com/KarabakhRecords/status/1386609875816484864>.

¹³⁰ Joshua Kucera, "Azerbaijan begins controversial renovation of Armenian church," *EurasiaNet* (7 May 2021), consultable à l'adresse suivante : <https://eurasianet.org/azerbaijan-begins-controversial-renovation-of-armenian-church>.

¹³¹ Lori Khatchadourian et al., "Monitoring Report #1," *Caucasus Heritage Watch* (June 2021), available at <https://caucasusheritage.cornell.edu/index.php/report#>, p. 27-28 ; Ian Lindsay et al., "Monitoring Report #2," *Caucasus Heritage Watch* (September 2021) consultable à l'adresse suivante : <https://caucasusheritage.cornell.edu/index.php/report#>, p. 41-42 ; voir aussi *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 29, par. 74, notes 130, 206.

travaux de restauration seraient entrepris en concertation avec des experts internationaux¹³². Toutefois, cette lettre interne au gouvernement de la Partie défenderesse ne prouve rien, si ce n'est sa turpitude. Cette lettre, qu'on vous demande de tenir confidentielle alors même qu'elle concerne un monument, a manifestement été écrite et très prudemment formulée pour les besoins de la présente instance et, vous l'aurez remarqué, elle est d'ailleurs adressée à la personne qui est l'agent de l'Azerbaïdjan dans les affaires soumises à votre examen. Par ailleurs, cette lettre affirme que des experts seraient consultés, sans toutefois les nommer, ni faire état de leurs visites ou rapports et, surtout, elle n'indique pas, cette lettre, que l'Azerbaïdjan entend rétablir la flèche de la cathédrale que son double bombardement n'avait pourtant pas réussi à abattre. La position officielle du défendeur est donc que la cathédrale, dans sa forme originelle, n'aurait pas eu de flèche¹³³. Comme vous l'avez vu, et comme vous pouvez le voir à nouveau à l'écran, rien n'est plus éloigné de la vérité historique.

15. Toujours à Shushi, l'église arménienne de Saint-Jean-Baptiste, aussi appelée la chapelle verte, a également été décapitée après la déclaration trilatérale de cessez-le-feu¹³⁴.

16. Dans le village de Mekhakavan, que la Partie défenderesse nomme Jebayil, la BBC a rapporté la destruction complète de l'église, après qu'elle fut vandalisée par des soldats azerbaïdjanais¹³⁵.

¹³² Letter from Sevda Mammadaliyeva, Deputy Minister of Culture, to Elnur Mammadov, Deputy Minister of Foreign Affairs regarding restoration and reconstruction works (8 October 2021) (~~*Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), requête Azerbaïdjan*~~, annexe 25).

¹³³ Nasimi Aghayev (@NasimiAghayev), Consul General of Azerbaijan to the Western United States, "Foreign ambassadors visit the Gazanchi Church (1888) in #Shusha, #Azerbaijan which is being beautifully restored to its original form," *Twitter* (9 July 2021), consultable à l'adresse suivante : <https://twitter.com/NasimiAghayev/status/1413558311732006915>.

¹³⁴ Lori Khatchadourian et al., "Monitoring Report #1," *Caucasus Heritage Watch* (June 2021), consultable à l'adresse suivante : <https://caucasusheritage.cornell.edu/index.php/report#>, p. 27-28 ; Ian Lindsay et al., "Monitoring Report #2," *Caucasus Heritage Watch* (September 2021) consultable à l'adresse suivante : <https://caucasusheritage.cornell.edu/index.php/report#>, p. 41-42 ; *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 29, par. 74 ; *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 48, par. 115.

¹³⁵ "Nagorno-Karabakh: The mystery of the missing church," *BBC* (25 March 2021), consultable à l'adresse suivante : <https://www.bbc.com/news/av/world-europe-56517835>.

17. Le 27 mars de cette année, des soldats azerbaïdjanais moqueurs ont profané l'église de Saint-Yeghishe du village de Mataghis ainsi que vous pourrez le constater en visionnant la vidéo référencée à l'onglet n° 5 de votre dossier d'audience¹³⁶.

18. Très rapidement après la déclaration du 10 novembre, les soldats azerbaïdjanais sont également descendus dans les cimetières arméniens, pour renverser les tombes, les briser et les profaner. De tels incidents ont été rapportés le 26 novembre 2020¹³⁷, puis, le printemps revenu, en mai 2021, dans cinq localités au moins : à Hadrout¹³⁸, au nord de Shushi¹³⁹, à Mets Tagher¹⁴⁰, à Taghavard¹⁴¹ et à Sghnakh où le vieux cimetière arménien qui remontait au XVIII^e siècle a été complètement rasé¹⁴². Les preuves de ces destructions sont reprises dans votre dossier d'audience aux onglets n^{os} 6 à 10.

19. L'acharnement destructeur de l'Azerbaïdjan s'est également abattu sur les khachkars, caractéristiques de l'art religieux arménien et dont l'origine remonte au IV^e siècle. Un khachkar est, littéralement une «pierre à croix», soit une stèle d'environ 1,5 m de forme rectangulaire sculptée en bas-relief d'une ou de plusieurs croix, accompagnées d'un décor ornemental, de figures humaines ou

¹³⁶ *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 50, par. 116, note 208. Voir aussi Siranush Ghazanchyan, "Azerbaijani soldiers vandalize 19th century Armenian church," *Public Radio of Armenia* (27 March 2021), consultable à l'adresse suivante : <https://en.armradio.am/2021/03/27/azerbaijani-soldiers-vandalize-19th-century-armenian-church/>.

¹³⁷ *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 29, par. 75, note 131.

¹³⁸ *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 30, par. 75, note 132.

¹³⁹ Lori Khatchadourian et al., "Monitoring Report #1," *Caucasus Heritage Watch* (June 2021), available at <https://caucasusheritage.cornell.edu/index.php/report#>, p. 31-32; Ian Lindsay et al., "Monitoring Report #2," *Caucasus Heritage Watch* (September 2021) consultable à l'adresse suivante : <https://caucasusheritage.cornell.edu/index.php/report#>, p. 45-46 ; voir aussi *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 49, par. 116, note 202.

¹⁴⁰ Lori Khatchadourian et al., "Monitoring Report #1," *Caucasus Heritage Watch* (June 2021), available at <https://caucasusheritage.cornell.edu/index.php/report#>, p. 21-22 ; voir aussi *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 48, par. 115, note 199.

¹⁴¹ *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 49, par. 116, note 203.

¹⁴² Ian Lindsay et al., "Monitoring Report #2," *Caucasus Heritage Watch* (September 2021) consultable à l'adresse suivante : <https://caucasusheritage.cornell.edu/index.php/report#>, p. 23-24 ; voir aussi *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 49, par. 116, note 201.

d'inscriptions en arménien. Et depuis 2010, les khachkars arméniens sont inscrits sur la liste représentative du patrimoine culturel immatériel de l'humanité¹⁴³.

20. A Shushi, le khachkar de la cathédrale bombardée puis défigurée a été détruit fin avril de cette année¹⁴⁴. Ailleurs, dans les territoires que l'Azerbaïdjan prétend avoir libérés, les khachkars sont abattus. Tel fut le cas, notamment le 12 janvier de cette année à Arakel, où les forces armées azerbaïdjanaises ont abattu un khachkar à l'aide d'un camion militaire, ainsi que vous pourrez le visionner grâce au lien repris à l'onglet n° 11 de votre dossier d'audience¹⁴⁵. Le cimetière situé au nord de Shushi, qui a été très largement détruit, accueillait quant à lui deux khachkars des XII^e et XIII^e siècles¹⁴⁶.

21. Madame la présidente, Mesdames et Messieurs les juges, ces destructions gratuites et discriminatoires visent à effacer la présence culturelle arménienne au Nagorno-Karabakh. S'y ajoutent d'autres destructions dirigées contre la mémoire arménienne.

22. En effet, fin mars de cette année, à Shushi, l'Azerbaïdjan a détruit le monument commémorant le génocide des Arméniens perpétré par l'empire ottoman, à gauche sur votre écran. Niant l'existence du génocide¹⁴⁷, la Partie défenderesse estime sans doute être en droit de détruire ce monument puisqu'il commémore un événement qui, selon elle, ne se serait pas produit¹⁴⁸. A droite de votre écran, vous pouvez voir l'emplacement du monument sans ce dernier et sans les inscriptions en arménien sur le mur l'entourant. Cette photo a été prise lors de la visite présidentielle de juin 2021.

¹⁴³ UNESCO, *L'art des croix de pierre arméniennes. Symbolisme et savoir-faire des Khachkars*, consultable à l'adresse suivante : <https://ich.unesco.org/fr/RL/lart-des-croix-de-pierre-armniennes-symbolisme-et-savoir-faire-des-khachkars-00434>.

¹⁴⁴ Lori Khatchadourian et al., "Monitoring Report #1," *Caucasus Heritage Watch* (June 2021), consultable à l'adresse suivante : <https://caucasusheritage.cornell.edu/index.php/report#>, p. 25.

¹⁴⁵ *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 29, par. 75, note 131 ; *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 48, par. 115 ; Siranush Ghazanchyan, "Azerbaijanis destroy Armenian cross-stone in occupied Artsakh village," *Public Radio of Armenia* (12 January 2021), consultable à l'adresse suivante : <https://en.armradio.am/2021/01/12/azerbaijanis-destroy-armenian-cross-stone-in-occupied-artsakh-village/>.

¹⁴⁶ Lori Khatchadourian et al., "Monitoring Report #1," *Caucasus Heritage Watch* (June 2021), consultable à l'adresse suivante : <https://caucasusheritage.cornell.edu/index.php/report#>, p. 31-32 ; Ian Lindsay et al., "Monitoring Report #2," *Caucasus Heritage Watch* (September 2021) consultable à l'adresse suivante : <https://caucasusheritage.cornell.edu/index.php/report#>, p. 45-46.

¹⁴⁷ President of the Republic of Azerbaijan, Ilham Aliyev, *Speech by Ilham Aliyev at the opening of Defense Ministry's military unit* (25 June 2020), consultable à l'adresse suivante : <https://en.president.az/articles/39853>.

¹⁴⁸ *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 50, par. 116, note 205.

Comme vous le voyez, un mât, au bout duquel flotte le drapeau de l'Azerbaïdjan a remplacé le monument au génocide arménien. La symbolique ne pourrait être plus forte, le président Aliyev faisant de la réécriture de l'histoire un point central de sa politique ethno-nationaliste et discriminatoire¹⁴⁹.

23. Il n'y a, Mesdames et Messieurs de la Cour, décidément pas de place, dans les territoires contrôlés par l'Azerbaïdjan, pour ce qui fait et symbolise l'identité arménienne.

III. Un contexte plus qu'inquiétant

24. Madame la présidente, lors de son discours à l'Assemblée générale le 23 septembre dernier — une semaine donc après votre saisine par l'Arménie et le jour même où l'Azerbaïdjan déposa en réponse sa propre requête introductive d'instance —, le président Aliyev a déclaré ceci : «In Azerbaijan, we cherish and support multiculturalism as a way of life. Azerbaijan is considered as an example of tolerance and peaceful coexistence of representatives of various religious and ethnic groups living in our country.»¹⁵⁰ Nul doute que votre saisine a poussé le défendeur à se présenter devant vous de la manière la plus flatteuse.

25. Toutefois, ces discours officiels de tolérance et d'inclusion, de même que les très récentes pièces établies pour les besoins de la présente instance, sonnent évidemment creux lorsqu'ils sont confrontés, comme ils doivent l'être, à la réalité des faits que mes collègues et moi-même venons de rapporter. Au-delà des discours de façade, ces faits sont révélateurs de la vraie nature du régime politique azerbaïdjanais et de ses pratiques haineuses contraires à la convention.

26. Madame la présidente, Mesdames et Messieurs les juges, le discours officiel de l'Azerbaïdjan est d'autant plus trompeur et les destructions du patrimoine arménien du Nagorno-Karabakh sont d'autant plus prévisibles qu'elles surviennent dans un contexte particulièrement inquiétant.

27. Je voudrais, à cet égard, mettre en avant cinq éléments contextuels ***incontestables*** ***indicutables***.

¹⁴⁹ President of the Republic of Azerbaijan, Ilham Aliyev, *Speech by Ilham Aliyev at the opening of Defense Ministry's military unit* (25 June 2020), consultable à l'adresse suivante : <https://en.president.az/articles/39853>.

¹⁵⁰ "Speech of President of Azerbaijan Ilham Aliyev in video format was presented at the annual General Debate of the 76th session of the UN General Assembly," APA (24 September 2021), consultable à l'adresse suivante : <https://apa.az/en/xeber/official-news/speech-of-president-of-azerbaijan-ilham-aliyev-in-video-format-was-presented-at-the-annual-general-debate-of-the-76th-session-of-the-un-general-assembly-358478>.

28. D'une part, et vous l'aurez constaté par la chronologie des événements, l'Azerbaïdjan s'est livré aux destructions culturelles et aux autres violations rapportées par mes collègues alors même qu'il était engagé dans les négociations initiées par l'Arménie conformément à l'article 22 de la convention. Bakou déclara à maintes reprises conduire ces négociations de bonne foi, tout en accusant l'Arménie de ne pas le faire. La duplicité du défendeur ne vous aura pas échappé.

29. D'autre part, autre duplicité flagrante, le discours officiel du défendeur à destination des chancelleries est bien différent de celui destiné à son opinion publique nationale. Ainsi que mon collègue M^e Salonidis vous l'a rappelé, quatre jours à peine après son discours à l'Assemblée générale, le président Aliyev s'adressa à son peuple en attisant la haine anti-arménienne, utilisant des termes particulièrement choquants et discriminatoires¹⁵¹.

30. De plus, troisième élément contextuel particulièrement inquiétant, les destructions et profanations au Nagorno-Karabakh ont été et sont encore perpétrées à huis clos : l'UNESCO n'a toujours pas pu accéder aux sites culturels arméniens alors que le directeur-général adjoint de l'organisation déclara le 21 décembre 2020 : «Only the response of Azerbaijan is still awaited for UNESCO to proceed with the sending of a mission to the field.»¹⁵² A l'occasion de son message du nouvel an, soit dix jours après l'appel solennel de l'UNESCO, le président Aliyev accusa l'organisation internationale de mentir et de pratiquer une politique de deux poids-deux mesures¹⁵³. Et puis nous savons depuis moins de deux jours ~~que, en~~ nous savons qu'en août de cette année¹⁵⁴, l'Azerbaïdjan a repoussé ~~une fois encore~~ une visite de l'UNESCO car, notamment, ses termes de référence mentionnaient *encore* le Nagorno-Karabakh, une appellation désormais honnie par le défendeur alors même que la déclaration trilatérale du 10 novembre qui le lie utilise ces mots pas

¹⁵¹ Speech of Dr. Salonidis, par. 13, (referring to President of the Republic of Azerbaijan, Ilham Aliyev, *Victorious Commander-in-Chief, President Ilham Aliyev addressed the nation on the occasion of the Remembrance Day* (27 September 2021), consultable à l'adresse suivante : <https://en.president.az/articles/53224>).

¹⁵² UNESCO, *UNESCO is awaiting Azerbaijan's Response regarding Nagorno-Karabakh mission* (21 December 2020), consultable à l'adresse suivante : <https://en.unesco.org/news/unesco-awaiting-azerbajians-response-regarding-nagorno-karabakh-mission>.

¹⁵³ President of the Republic of Azerbaijan, Ilham Aliyev, *Address by the President of the Republic of Azerbaijan Ilham Aliyev* (1 January 2021), consultable à l'adresse suivante : <https://en.president.az/articles/49798>.

¹⁵⁴ Letter from Permanent Delegation of the Republic of Azerbaijan to UNESCO to the Secretariat of UNESCO, No. AZ.410.21 (19 August 2021) (with enclosure) (Azerbaïdjan, annexe 13).

moins de cinq fois en neuf paragraphes¹⁵⁵. Voilà donc, Mesdames et Messieurs les juges, l'état d'esprit dans lequel le défendeur aborde la préservation du patrimoine culturel : il s'en sert pour pousser son agenda politique et forcer la main à l'organisation internationale.

31. Ensuite, le quatrième élément contextuel devant être rappelé, tient au fait que l'Azerbaïdjan est hélas coutumier des destructions culturelles lorsqu'il s'agit de s'attaquer au patrimoine historique arménien. Dans la République autonome de Nakhitchevan, située au sud-ouest de l'Arménie, l'Azerbaïdjan a commis d'innombrables destructions culturelles depuis son indépendance. En particulier, en 2005, Bakou a rasé le vieux cimetière de Jugha qui abritait jadis par milliers la plus grande collection de khachkars au monde. Ces faits, et d'autres encore, ont été dûment documentés. Nous y reviendrons lors du fond de cette affaire¹⁵⁶. Le Conseil international des monuments et des sites¹⁵⁷ ainsi que le Parlement européen¹⁵⁸ ont déploré et dénoncé ce que la presse a qualifié de «pire génocide culturel du XXI^e siècle»¹⁵⁹.

32. Face à ces condamnations légitimes, la réponse des autorités de Bakou fut de tenter de changer la réalité. Du révisionnisme historique au négationnisme, il n'y a en effet qu'un pas que l'Azerbaïdjan franchit allègrement par la voix de son ambassadeur à Londres :

«First and foremost, we need to make it clear that there is no such thing as «Armenian heritage» in the Nakhchivan Autonomous Republic simply because Armenians never lived there. ... Non-existing sites or cemeteries cannot be destroyed.»¹⁶⁰

¹⁵⁵ Prime Minister of the Republic of Armenia, *Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation* (10 November 2020), consultable à l'adresse suivante : <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>, par. 1, 3, 6, 7.

¹⁵⁶ Simon Maghakyan & Sarah Pickman, "A Regime Conceals Its Erasure of Indigenous Armenian Culture," *Hyperallergic* (18 February 2019), consultable à l'adresse suivante : <https://hyperallergic.com/482353/a-regime-conceals-its-erasure-of-indigenous-armenian-culture/>.

¹⁵⁷ International Council on Monuments and Sites, *Resolutions of the General Assembly* (October 2008), consultable à l'adresse suivante : https://www.icomos.org/quebec2008/resolutions/pdf/GA16_Resolutions_final_EN.pdf, Part A(5).

¹⁵⁸ European Parliament, *Resolution on the destruction of cultural heritage in Azerbaijan*, No. B6-0126-06 (13 February 2006), consultable à l'adresse suivante : https://www.europarl.europa.eu/doceo/document/B-6-2006-0126_EN.html.

¹⁵⁹ *Application of the International Convention on the Elimination of All Forms of Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for Provisional Measures (16 September 2021), p. 28, par. 71, note 123.

¹⁶⁰ Simon Maghakyan, "Special investigation: Declassified satellite images show erasure of Armenian churches," *The Art Newspaper* (1 June 2021), consultable à l'adresse suivante : <https://www.theartnewspaper.com/feature/agulis>.

33. Enfin, et c'est le cinquième élément contextuel renforçant la nécessité de protéger d'urgence le patrimoine arménien : Bakou déploie le même révisionnisme historique s'agissant du Nagorno-Karabakh.

34. En effet, les destructions et profanations visant les sites religieux et culturels arméniens s'accompagnent d'un discours officiel cherchant à faire croire que le patrimoine arménien du Nagorno-Karabakh serait usurpé car les églises arméniennes seraient des monuments ayant appartenu au peuple udi, un peuple albano-caucasien dont on trouve la trace dans l'Antiquité et que la propagande de Bakou considère comme proto-azerbaïdjanais.

35. Posant en tenue de camouflage devant l'église de Saint-Astvatsatsin dans le village de Tsakuri en mars de cette année, le président Aliyev s'est lancé dans une diatribe propageant une telle théorie, prétendant que l'église serait une ancienne église albanaise sur laquelle des inscriptions arméniennes auraient été apposées postérieurement. Le site Internet de la présidence a traduit les propos du chef d'Etat filmé dans une vidéo accessible sur YouTube ; le tout est à l'onglet n° 12 de votre dossier d'audience¹⁶¹.

36. Madame la présidente, Mesdames et Messieurs les juges, changeant de narratif historique pour justifier ses destructions culturelles et pour amoindrir la présence séculaire arménienne au Nagorno-Karabakh, l'Azerbaïdjan change aussi sa langue administrative.

37. Faisant référence à deux de ses décrets récents, le président Aliyev a déclaré lors de son discours du 23 septembre dernier devant l'Assemblée générale que «There is no administrative territorial unit called Nagorno-Karabakh in Azerbaijan.»¹⁶²

38. Mesdames et Messieurs de la Cour, ce dont participe ce changement apparemment anodin parce que bureaucratique, et ce qu'il cache, c'est, fondamentalement, l'attitude discriminatoire,

¹⁶¹ President of the Republic of Azerbaijan, Ilham Aliyev, *Ilham Aliyev visited Fuzuli and Khojavand districts* (15 March 2021), consultable à l'adresse suivante : <https://en.president.az/articles/50893> ; Report AZ, "Qədim Alban məbədinə saxta tarix [Fake history in the ancient Albanian temple]," *YouTube* (16 March 2021), consultable à l'adresse suivante : <https://www.youtube.com/watch?v=R4nsAN1yOoc> (translation from Azerbaijani) (at 1:11) ; voir aussi "Culture Ministry condemns removal of Azerbaijan's cultural property [PHOTO]," *MENA FN* (12 December 2020), consultable à l'adresse suivante : <https://menafn.com/1101114568/Culture-Ministry-condemns-removal-of-Azerbaijans-cultural-property-PHOTO>.

¹⁶² UN Web TV, *Azerbaijan – President Addresses General Debate, 76th Session* (23 September 2021), consultable à l'adresse suivante : <https://media.un.org/en/asset/k1c/k1c19sluov> ; "Speech of President of Azerbaijan Ilham Aliyev in video format was presented at the annual General Debate of the 76th session of the UN General Assembly," *APA* (24 September 2021), consultable à l'adresse suivante : <https://apa.az/en/xeber/official-news/speech-of-president-of-azerbaijan-ilham-aliyev-in-video-format-was-presented-at-the-annual-general-debate-of-the-76th-session-of-the-un-general-assembly-358478>.

destructrice et révisionniste de Bakou vis-à-vis de tout ce qui est le témoignage réel de la présence arménienne séculaire dans les territoires sous son contrôle, à savoir les églises arméniennes, les cimetières arméniens, les khachkars et tout monument rappelant cette présence.

39. Le comportement de l'Azerbaïdjan est manifestement contraire aux articles 2 et 5 de la convention car il est clair que la *seule* raison, l'unique raison pour laquelle l'Azerbaïdjan s'acharne comme il le fait sur le patrimoine culturel arménien est, précisément, parce qu'il est arménien.

40. Mesdames et Messieurs de la Cour, je vous remercie pour votre bienveillante attention. Puis-je vous demander, Madame la présidente, de bien vouloir appeler M^e Martin à la barre ?

The PRESIDENT: I thank Prof. d'Argent for his statement. I now invite Mr. *Lawrence* Martin to take the floor. You have the floor, Mr. Martin.

Mr. MARTIN:

THERE IS AN URGENT RISK OF IRREPARABLE PREJUDICE AND THE MEASURES REQUESTED ARE LINKED TO THE RIGHTS ARMENIA SEEKS TO PROTECT

1. Madam President, distinguished Members of the Court, good morning. It is an honour and a privilege to appear before you on behalf of Armenia.

2. It falls to me today to address the issues of urgency and irreparability, and of the link between the rights for which Armenia seeks protection and the provisional measures we request. Fortunately, I can be brief. Nothing about what I am about to say should be controversial. In fact, it all flows directly, inescapably, from my colleagues' presentations before me. The urgent need to protect Armenians from continued hate speech, to repatriate and protect Armenian POWs and detainees from further mistreatment, and to protect Armenian cultural heritage from erasure all follows from the evidence as unavoidably as night follows day.

I. There is an urgent risk of irreparable prejudice to Armenia's rights in dispute

3. The Court has made clear that it will exercise its power to indicate provisional measures "only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice

will be caused before the Court gives its final decision”¹⁶³. That condition 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”¹⁶⁴.

4. To be sure, not just any irreparable prejudice counts. What matters is that “irreparable prejudice could be caused to [the] rights which are the subject of judicial proceedings *or* . . . the alleged disregard of such rights may entail irreparable consequences”¹⁶⁵.

5. At this preliminary stage of proceedings, the Court is not required to “make definitive findings of fact” or determine that CERD has, in fact, been violated¹⁶⁶. To the contrary, the Court need only determine that it is “not inconceivable” that a violation might occur¹⁶⁷, or that information before the Court “d[oes] not exclude the possibility” that irreparable harm might be caused¹⁶⁸.

6. All of these elements are plainly present here.

7. On the issue of hate speech, as Dr. Salonidis showed, Armenians have the right under CERD to be free of racial discrimination by Azerbaijan in all its forms, including racist hate speech¹⁶⁹. CERD specifically requires Azerbaijan “not [to] permit public authorities or public institutions, national or local, to promote or incite racial discrimination”¹⁷⁰. Yet, even so, President Aliyev, who inherited the job from his father and has held the highest office in the land for 18 years, continues to spew racist hatred to this day. As recently as last month, he said Armenians have a “mental illness”, and called them worse than animals and a “depraved” “tribe”¹⁷¹.

¹⁶³ *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. 65.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*, para. 64; emphasis added.

¹⁶⁶ *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*, pp. 395-396, para. 141.

¹⁶⁷ *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016*, p. 1169, para. 89.

¹⁶⁸ *Nuclear Tests (Australia v. France), Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973*, p. 101, para. 29.

¹⁶⁹ CR 2021/20 (Salonidis).

¹⁷⁰ CERD Convention, Art. 4 (c).

¹⁷¹ President of the Republic of Azerbaijan, Ilham Aliyev, “Victorious Commander-in-Chief, President Ilham Aliyev addressed the nation on the occasion of the Remembrance Day” (27 Sept. 2021), available at <https://en.president.az/articles/53224>.

8. How does such hate speech threaten irreparable harm? Simple. Hate begets hate. And hate emanating from a State's highest authority begets more hate still. Dr. Salonidis recalled that the CERD Committee has observed that "[r]acist expressions emanating from public authorities or institutions are . . . of *particular* concern, *especially* statements attributed to high-ranking officials"¹⁷². As some of us have learned from our own recent national experience, hatred from the top, even in a nominally free country, operates as a kind of licence that opens the floodgates allowing other elements of society to follow suit.

9. The obsessive, and continuing, expressions of hatred for Armenians coming from President Aliyev and other senior government officials thus constitute a disregard for the rights of Armenians that may easily entail irreparable consequences. They fan the flames of open racism that immediately imperil the rights of all Armenians, including those living in Nagorno-Karabakh and those still held in captivity. Indeed, such speech places them in even greater physical jeopardy than they already are. By actively fomenting an atmosphere of hate, President Aliyev and other senior government officials are making their physical and mental abuse even more likely.

10. The ghoulish "Military Trophies Park" is a perfect demonstration of the point. Open six days a week to anyone over the age of six, the displays at the park teach Azeris young and old that it is not only permissible, but actually desirable, to mock, degrade and abuse Armenians. The park serves as an obvious signal that such mistreatment is condoned at the highest levels. Does anyone really think that the Azerbaijani soldiers responsible for guarding Armenian POWs and civilian detainees will miss the message? In short, the park badly exacerbates the already real and present threat to the detainees.

11. Late Tuesday, less than 48 hours ago, Azerbaijan submitted an unsworn — and strangely confidential — document stating that the mannequins had allegedly been removed from the park, albeit two weeks *after* Armenia filed its Request¹⁷³. And last night, it submitted yet another unsworn confidential document claiming that the bullet-torn helmets had also been removed another week

¹⁷² CERD Committee, General Recommendation No. 35: Combating racist hate speech, UN doc. CERD/C/GC/35 (26 Sept. 2013), para. 22; emphasis added.

¹⁷³ Letter from Orujali Abbaszade, Director of the Military Trophies Park, to Elnur Mammadov, Deputy Minister for Foreign Affairs, Republic of Azerbaijan (6 Oct. 2021) (certified translation from Azerbaijani), ~~*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia, Application of Azerbaijan Azerbaijan*~~, Ann. 24.

after that¹⁷⁴. Even accepting that this extraordinarily belated “evidence” is properly before the Court and can be credited, which we do not accept, none of it affects the urgency of the need to order the park closed. In the first place, some images of the mannequins from President Aliyev’s visit remain on the park’s website, as you can see now¹⁷⁵. In the absence of a formal, public undertaking made by Azerbaijan’s Agent before this Court, there is no guarantee they will not be returned the moment these hearings are over. Even then, the park remains as a conspicuous symbol of hate. A celebration of Armenia’s defeat, what other message could it possibly convey?

12. The urgent threat of irreparable prejudice resulting from Azerbaijan’s continuing wrongful detention of Armenian nationals is more obvious still. Professor Murphy explained that the rights in dispute in this case include the right of Armenian POWs and civilian detainees to the equal enjoyment of their individual rights, including but not limited to repatriation, and the right to security of person and protection by the State against violence or bodily harm¹⁷⁶.

13. Unlawful detention is inherently a form of irreparable prejudice. Those detained for months or years before you reach a decision on the merits in this case will never get that time back. This is not an exaggeration. As Professor Murphy explained, Azerbaijan has already sentenced many of the detainees to serve years in Azerbaijani prisons. The only way to avoid such irreparable harm is a provisional measure from the Court ordering repatriation.

14. Professor Murphy also explained that the evidence shows a clear record and practice of Azerbaijani authorities abusing Armenian detainees, soldiers and civilians alike¹⁷⁷. The gruesome videos that Armenia has presented to the Court will haunt the nightmares of those of us who have

¹⁷⁴ Letter from Orujali Abbaszade, Director of the Military Trophy Park, to Elnur Mammadov Deputy Minister for Foreign Affairs, Republic of Azerbaijan (13 Oct. 2021) (certified translation to Azerbaijani), p. 2, ~~*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia, Application of Azerbaijan Azerbaijan*~~, Ann. 33).

¹⁷⁵ “Prezident İlham Əliyev Bakıda Hərbi Qənimətlər Parkının açılışında iştirak edib [President Ilham Aliyev attended the opening of the Military Trophy Park in Baku]”, Hərbi Qənimətlər Parkı [Military Trophy Park], available at <https://herbiqenimetlerparki.az/az/foto/87> (translation from Azerbaijani).

¹⁷⁶ CR 2021/20 (Murphy).

¹⁷⁷ CR 2021/20 (Murphy).

watched them for a very long time¹⁷⁸. Given the lengthy prison sentences that Azerbaijan has issued, there is no doubt that the detainees are extremely vulnerable, for an extended period of time, to continued abuse by Azerbaijani guards. The need for the urgent intervention of this Court to prevent further irreversible harm is almost too obvious to say.

15. If the clear and present threat of imminent psychological trauma, bodily harm and even death does not warrant the indication of provisional measures, it would be hard to imagine what would. Indeed, the Court has repeatedly found the requirements of urgency and irreparability met in situations where there were serious threats to human life and safety.

16. In *Georgia v. Russia*, the Court indicated provisional measures where “violations of the right to security of persons and of the right to protection by the State against violence or bodily harm” could “involve potential loss of life and bodily injury”¹⁷⁹. Also relevant was the fact that the circumstances were, as they are here, “unstable and could rapidly change” due to “ongoing tension and the absence of an overall settlement to [~~a~~ *the*] conflict”¹⁸⁰.

17. And, of course, in the *Hostages* case, the Court ordered the “immediate release, without any exception, of all persons of United States nationality” who had been held hostage¹⁸¹. It did so in light of the “privation, hardship, anguish and even danger to life and health” to which they were exposed¹⁸².

¹⁷⁸ CR 2021/20 (Murphy), citing Video of Inhuman and Degrading Treatment of Mr. Lyudvig Mkrtchyan and Other Armenian Captives [WARNING: GRAPHIC] (~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 69); CR 2021/20 (Murphy), citing Second Video of Inhuman and Degrading Treatment of Mr. Lyudvig Mkrtchyan (annotated version contains annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC] (~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 71). See also Videos Showing Executions of Armenians by Azerbaijan (videos may contain annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC] (~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 72); Videos Showing Mutilation of Armenian Corpses by Azerbaijan (videos contain annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC] (~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 74); Videos Showing Inhuman and Degrading Treatment of Repatriated Individuals by Azerbaijan (videos contain annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC] (~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 73); Video of Inhuman and Degrading Treatment of Mr. Gevorg Sujyan (video contains annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC] (~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 70); Videos Showing Torture and Inhuman and Degrading Treatment of Unacknowledged Captives by Azerbaijan (videos contain annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC] (~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 75).

¹⁷⁹ *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.

¹⁸⁰ *Ibid.*, para. 143.

¹⁸¹ *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979, p. 21, para. 47 (1) (A) (ii).

¹⁸² *Ibid.*, p. 20, para. 42.

18. These are just examples. But they are enough to show that the Court has long recognized that protecting individuals from harm is the quintessential circumstance warranting the indication of provisional measures. Armenia respectfully suggests that the Court should do exactly that here to protect the remaining detainees in Azerbaijani custody.

19. The urgent need for interim measures to protect Armenian cultural heritage is equally clear. Professor d'Argent showed that Armenia's rights in dispute include the right to access and enjoy cultural heritage¹⁸³. That right includes the right to have that heritage protected, not destroyed, vandalized or have its character altered. Yet, as Professor d'Argent also showed, that is exactly what Azerbaijan is doing, in conducting an ongoing campaign to erase the evidence of Armenia's presence from its territory. Just by way of example, revolting as it is, satellite photos make clear that between 12 April and 18 June 2021, a historic Armenian cemetery in the village of Sghnakh was razed to make way for the construction of *a* road¹⁸⁴. Azerbaijan is literally paving over Armenian history.

20. The risk here is real and ongoing for the reasons Professor d'Argent explained. But the extent of the risk also cannot be understood without some mention of the historical context. As set out in our Application and Request for provisional measures, the relationship between Armenia and Azerbaijan has long been complicated, to say the least. As also set out in our Application, even before the most recent armed conflict, Azerbaijan was prolific in its effort to erase any vestige of the Armenian presence from its territory. We refer to a number of examples in footnote¹⁸⁵.

¹⁸³ CR 2021/20 (d'Argent).

¹⁸⁴ Application and Request for provisional measures of Armenia, para. 116.

¹⁸⁵ See e.g. Application and Request for provisional measures of Armenia, para. 71 (citing Simon Maghakyian & Sarah Pickman, "A Regime Conceals Its Erasure of Indigenous Armenian Culture", *Hyperallergic* (18 Feb. 2019), available at <https://hyperallergic.com/482353/a-regime-conceals-its-erasure-of-indigenous-armenian-culture>; "Azerbaijan must be held accountable for the destruction of Armenian cultural heritage", *Horizon Weekly* (8 Dec. 2018), available at <https://horizonweekly.ca/en/azerbaijan-must-be-held-accountable-for-the-destruction-of-armenian-cultural-heritage>; Armen Haghazarian & Dieter Wickmann, "Azerbaijan, destruction of the Armenian Cemetery at Djulfa — Continued", *Heritage at Risk* (June 2007), p. 37, available at https://www.icomos.org/risk/world_report/2006-2007/pdf/H@R_2006-2007_09_National_Report_Azerbaijan.pdf; Kat Zambon, "Satellite Images Show Disappearance of Armenian Artifacts in Azerbaijan", *American Association for the Advancement of Science* (7 Dec. 2010), available at <https://www.aaas.org/news/satellite-images-show-disappearance-armenian-artifacts-azerbaijan>). See also Application and Request for provisional measures of Armenia, para. 72, citing Simon Maghakyian, "Special investigation: Declassified satellite images show erasure of Armenian churches", *The Art Newspaper* (1 June 2021), available at <https://www.theartnewspaper.com/feature/agulis>; Application and Request for provisional measures of Armenia, para. 73 (citing UN General Assembly & Security Council, Letter dated 18 May 2018 from the Chargé d'affaires a.i. of the Permanent Mission of Armenia to the United Nations addressed to the Secretary-General, UN doc. A/72/876-S/2018/486 (25 May 2018); Samvel Karapetian, Gayane Movsisian & Armen Gevorgian, "The state of Armenian historical monuments in Azerbaijan and Artsakh", *Research on Armenian Architecture (RAA) Foundation* (2011), available at <https://www.mfa.am/filemanager/nkr/monuments.pdf>; Simon Maghakyian, "Special investigation: Declassified satellite images show erasure of Armenian churches", *The Art Newspaper* (1 June 2021), available at <https://www.theartnewspaper.com/feature/agulis>).

21. The continued spewing of racist hate speech by President Aliyev and other senior officials only exacerbates this real and present risk. Indeed, by refusing even to acknowledge the existence of Armenian cultural heritage, President Aliyev is directly promoting a climate that is even more conducive to the hate-filled destruction of that heritage.

22. In concluding on this point, I note that the Court has in the past ordered provisional measures to protect property and other tangible items from destruction. In the recent *Cambodia v. Thailand* case, it ordered measures to ensure that “no irreparable damage is caused to . . . property”, including a UNESCO World Heritage site¹⁸⁶. And in *Democratic Republic of the Congo v. Uganda*, it did so in circumstances where “assets and resources” in the area of conflict remained vulnerable¹⁸⁷. We respectfully submit that the Court should follow these examples and similarly order provisional measures to protect Armenia’s cultural heritage from the very real and very urgent risk of irreparable prejudice.

II. The provisional measures Armenia requests are linked to the rights the protection of which is sought

23. That brings me, Madam President, to the second and last part of my presentation this morning: the requirement that the provisional measures we seek be linked to the rights whose protection we seek. On this subject, I can be even more brief. The requisite link between the relevant rights and measures is even more obvious than is the urgent threat of irreparable harm.

24. I will not burden the Court by reciting the full text of the provisional measures we request. They are set out in our Request and the distinguished Agent will return to them at the end of tomorrow’s session. Suffice it now to note that they fall into four broad categories that precisely dovetail with the rights whose protection we seek.

25. The first category of measures we request relates to the Armenian POWs and other detainees¹⁸⁸. To put it simply, we ask the Court to order Azerbaijan to release them and, pending that, to treat them humanely. As Professor Murphy explained, and I underscored a few moments ago, the

¹⁸⁶ *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II), p. 552, para. 61.*

¹⁸⁷ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2000, p. 128, para. 43.*

¹⁸⁸ See Application and Request for provisional measures of the Republic of Armenia, para. 131.

rights whose protection we seek include, among others, the rights of the detainees under Article 2 to be free of racial discrimination in all of its forms, and under Article 5 to be secure in their person and to be protected by the State from violence and bodily harm. As in the *Hostages* case, the only genuine way to protect that right is to order the detainees' immediate release. The widely confirmed reports of Armenian detainees being tortured and even executed in captivity — and Azerbaijan's wholesale denial of the same — leave no other option. Requesting that they be treated humanely in the interim is asking nothing more than that the rights in dispute be respected.

26. The second category of measures we request relates to the hate speech coming from the very top of the Azerbaijani Government and the disturbing “Military Trophies Park”¹⁸⁹. In short, we ask that the Court order that the hate speech be stopped and the park closed. Those measures are directly linked to Armenians' rights under Articles 2, 4 and 7 of CERD.

27. The third category of measures relates to the protection of cultural heritage¹⁹⁰. We ask that the Court order Azerbaijan to protect Armenians' right under Article 5 to equal participation in cultural activities, including the right of access to and enjoyment of their cultural heritage, and to take measures to stop its destruction, vandalization and alteration. The connection between those requests and the rights to enjoy one's cultural heritage as outlined by Professor d'Argent is, again, almost too obvious to state.

28. The fourth category of measures we request is more general. We ask that the Court order Azerbaijan to (1) take measures to protect relevant evidence; (2) take no action that will aggravate or extend this dispute and (3) submit regular reports on the steps it has taken to comply with the Court's ultimate order¹⁹¹.

29. The first of these — the order to preserve evidence — is linked to the rights whose protection is sought in the sense that it is necessary to ensure that Armenia has a full and fair opportunity to present its case that Azerbaijan has violated those very rights. Without it, there is a genuine risk that Armenia's ability to vindicate those rights will be compromised, all the more since Azerbaijan has control of most of the first-hand evidence.

¹⁸⁹ See Application and Request for provisional measures of the Republic of Armenia, para. 131.

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

30. The second and third of these general requests are largely de rigueur in circumstances like these. An order not to aggravate or extend the dispute is entirely customary¹⁹² and an order for regular reporting is essential to ensure that Azerbaijan is genuinely implementing the Court's Order and respecting the rights of Armenians that are the subject of that Order (and our Request)¹⁹³.

31. Madam President, for all these reasons, there is a very urgent risk of irreparable prejudice warranting the Court's exercise of its extraordinary power to indicate provisional measures. The measures we seek, moreover, are linked to the very same rights whose protection we seek.

32. Thank you for your kind and patient attention. That concludes Armenia's first-round presentations this morning.

The PRESIDENT: I thank Mr. Martin, whose statement brings to an end the first round of oral argument of Armenia, as well as this morning's sitting. The Court will meet again this afternoon, at 4 p.m., to hear the first round of oral argument of Azerbaijan.

The sitting is adjourned.

The Court rose at 12.25 p.m.

¹⁹² See e.g. *Nuclear Tests (Australia v. France)*, Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973, p. 105, para. 35; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996 (I), p. 24, para. 49; *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. 398, para. 149.

¹⁹³ See e.g. *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. 30, para. 86.