

Corrigé  
Corrected

CR 2021/26

**International Court  
of Justice**

**Cour internationale  
de Justice**

**THE HAGUE**

**LA HAYE**

**YEAR 2021**

*Public sitting*

*held on Tuesday 19 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  
(Azerbaijan v. Armenia)**

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**VERBATIM RECORD**

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**ANNÉE 2021**

*Audience publique*

*tenue le mardi 19 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  
(Azerbaïdjan c. Arménie)**

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**COMPTE RENDU**

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*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

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*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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The PRESIDENT: Please be seated. The sitting is open. The Court meets this morning to hear the second round of oral observations of Azerbaijan on its Request for the indication of provisional measures. I shall now give the floor to Ms Catherine Amirfar. You have the floor.

Ms AMIRFAR: Thank you, Madam President.

**I. PROVISIONAL MEASURES ARE NECESSARY TO ADDRESS ARMENIA'S ONGOING CAMPAIGN OF ETHNIC CLEANSING AND INCITEMENT TO HATRED AND VIOLENCE AGAINST AZERBAIJANIS**

1. Madam President, honourable Members of the Court, it is a privilege to appear before you again, and on behalf of the Republic of Azerbaijan.

2. Today I will start by addressing Azerbaijan's first and second provisional measures requests. *First*, I will address Armenia's argument that Azerbaijan's requests do not make out a plausible claim of discrimination under CERD. *Second*, I will turn to Armenia's jurisdictional objections regarding the temporal and substantive scope of Azerbaijan's requests. *Finally*, I will address Azerbaijan's request aimed at restraining Armenia's continued mining of Azerbaijan's territory.

**A. Armenia's discriminatory conduct violates plausible rights under CERD**

3. Armenia argued yesterday that there is no plausible violation of rights under CERD with respect to Azerbaijan's first request because "landmines are defensive weapons" and "by their nature, do not engage in ethnic discrimination"<sup>1</sup>. We do not dispute that landmines themselves, once placed, do not discriminate, whether between the footfall of a journalist reporting on a story or a child playing in a field.

4. The discriminatory purpose of Armenia's landmines is clear, however, in *where* and *when* Armenia laid the landmines, and in Armenia's *ongoing refusal* to provide accurate information about their locations. Indeed, the CERD Committee's urgent action procedures specifically reference discrimination involving landmines<sup>2</sup> and State reports contemplate specific discriminatory

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<sup>1</sup> CR 2021/25, p. 20, para. 4 (Murphy); CR 2021/25, p. 27, para. 21 (Murphy).

<sup>2</sup> See e.g. CERD Committee, Guidelines for the Early Warning and Urgent Action Procedures, Annual Report A/62/18, Annexes, Chap. III, para. 7.

circumstances where landmines impact the ability of displaced ethnic communities from returning home<sup>3</sup>.

5. *First*, Armenia cannot refute the fact that landmines contaminate civilian areas of the formerly Occupied Territories. When Professor Murphy described the prior removal of purportedly “defensive” landmines, he referenced mines “along the line of contact” or along the Azerbaijan-Armenia border<sup>4</sup>. To start, this seems to be a concession that any military purpose would only have existed, *at most*, along the line of contact or along the border, which address only a small fraction of the contaminated territory.

6. Even more revealing is the fact that Armenia’s submission yesterday did not address the landmines laid in civilian areas, except to argue that “it is not certain they exist”<sup>5</sup> or that, even in civilian areas, they “may have been laid for defensive purposes”<sup>6</sup>. With respect, this is just sheer speculation. As to whether they exist, Professor Murphy cited to the ANAMA Report, which does refer to the “suspected minefields” in these areas<sup>7</sup>. Precisely. This is how mine detection works in the absence of accurate information: If Azerbaijan knew with certainty where all of the landmines are, it would not need Armenia’s landmine maps.

7. And there is no evidence from Armenia that mines it placed in areas away from the line of contact were indeed defensive. Professor Murphy suggested based on the ANAMA map that the minefields in these areas “fall along lines, a classic indication that these were further ‘lines of contact’”<sup>8</sup>. But to the contrary, the key to the map indicates that these minefields run in lines alongside roads and “[t]owns, settlements and villages”<sup>9</sup>. Where is the evidence from Armenia’s

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<sup>3</sup> CERD Committee, Concluding observations on the tenth to seventeenth periodic reports of Sri Lanka, doc. CERD/C/LKA/CO/10-17, 26 Aug. 2016, para. 25, available at [https://srilankabrief.org/wp-content/uploads/2016/08/CERD\\_C\\_LKA\\_CO\\_10-17\\_24983\\_E-1.pdf](https://srilankabrief.org/wp-content/uploads/2016/08/CERD_C_LKA_CO_10-17_24983_E-1.pdf).

<sup>4</sup> CR 2021/25, p. 22, para. 7 (Murphy).

<sup>5</sup> CR 2021/25, p. 30, para. 32 (Murphy).

<sup>6</sup> CR 2021/25, p. 31, para. 33 (Murphy).

<sup>7</sup> CR 2021/25, p. 30, para. 32 (Murphy); Ann. 32, Mine Action Agency of the Republic of Azerbaijan, *Assistance Required for the Republic of Azerbaijan in Humanitarian Mine Action for Safe Reconstruction and Return of IDPs to the Conflict Affected Territories of Azerbaijan* (2021), p. 5.

<sup>8</sup> CR 2021/25, p. 30, para. 32 (Murphy).

<sup>9</sup> Ann. 32, Mine Action Agency of the Republic of Azerbaijan, *Assistance Required for the Republic of Azerbaijan in Humanitarian Mine Action for Safe Reconstruction and Return of IDPs to the Conflict Affected Territories of Azerbaijan* (2021), p. 5.

relevant ministries demonstrating that its landmines in these civilian areas had a defensive purpose? Armenia's silence on this point of evidence is deafening.

8. But this silence is also understandable. Armenia's specific placement of landmines in civilian areas that had been home to vast majorities of ethnic Azerbaijanis has no conceivable military objective and is clearly discriminatory. There is no legitimate "defensive" reason, for example, for Armenia to plant landmines in villages in the Zangilan district, which is approximately 60 km away from the line of contact<sup>10</sup> and had a population of over 30,000 ethnic Azerbaijanis<sup>11</sup>. There is no legitimate "defensive" reason for Armenia to plant landmines under gravestones in the Aghdam region<sup>12</sup>, which had a population of over 100,000 ethnic Azerbaijanis<sup>13</sup>. And there is no legitimate "defensive" reason for Armenia to bury landmines in agricultural fields away from the line of contact that, until recently, were in active use<sup>14</sup>. The only purpose of Armenia's actions is to prevent the ethnic Azerbaijanis who had been displaced from those areas from returning home.

9. Equally, the timing of Armenia's placement of landmines confirms its discriminatory purpose. As part of its scorched earth policy<sup>15</sup>, Armenia planted landmines even as it withdrew from the formerly Occupied Territories<sup>16</sup>. In the same way that Armenian forces burned homes and schools and destroyed infrastructure, even removing telephone wires, rather than allow Azerbaijanis to step

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<sup>10</sup> See Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Fuad Alasgarov, Head of the Department for Work with Law Enforcement Bodies of the Presidential Administration of the Republic of Azerbaijan, dated 11 June 2021, No. 414/M (certified translation), p. 5.

<sup>11</sup> See Ann. 4, USSR State Committee for Statistics, Results of the 1989 All-Union Population Census, Population Structure by Ethnicity, Native Language and Second Language of the USSR Peoples, Moscow 1989 (certified translation).

<sup>12</sup> Ann. 36, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Fuad Alasgarov, Head of the Department for Work with Law Enforcement Bodies of the Presidential Administration of the Republic of Azerbaijan, dated 11 June 2021, No. 414/M (certified translation), pp. 5-6, 8.

<sup>13</sup> See Ann. 4, USSR State Committee for Statistics, Results of the 1989 All-Union Population Census, Population Structure by Ethnicity, Native Language and Second Language of the USSR Peoples, Moscow 1989 (certified translation).

<sup>14</sup> Ann. 36, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Fuad Alasgarov, Head of the Department for Work with Law Enforcement Bodies of the Presidential Administration of the Republic of Azerbaijan, dated 11 June 2021, No. 414/M (certified translation), p. 3.

<sup>15</sup> See e.g. T. Kuzio, "Mines, Karabakh and Armenia's crisis", *New Eastern Europe* (16 April 2021), available at <https://neweasterneurope.eu/2021/04/16/mines-karabakh-andarmenias-ccrisis/>.

<sup>16</sup> Ann. 36, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Fuad Alasgarov, Head of the Department for Work with Law Enforcement Bodies of the Presidential Administration of the Republic of Azerbaijan, dated 11 June 2021, No. 414/M (certified translation), p. 3.

foot inside<sup>17</sup>, Armenian forces salted the earth with landmines to ensure that Azerbaijanis could not safely return to their homes<sup>18</sup>.

10. *Second*, even if the discriminatory purpose of the landmines were not clear, there is no argument about *the effect* of Armenia's conduct, which suffices for purposes of plausibility<sup>19</sup>.

11. In this posture, coming after the cessation of active hostilities last November, the question is not Armenia's purpose in planting mines in ~~its~~ *Azerbaijan's* territory along the border as a defensive measure, but rather its obligation *now* to facilitate the clearance of landmines it planted *in Azerbaijan's territory* because of the discriminatory *effect* on ethnic Azerbaijanis seeking to return home. Armenia's failure to provide critical information that could safeguard civilian lives in Azerbaijan's territory could have no possible defensive purpose for Armenia in the posture in which these provisional measures requests arise.

12. And the effect on ethnic Azerbaijanis is clear: those that attempt to return home remain at constant risk of landmines<sup>20</sup>. Their deaths, injuries, and continued exclusion from the territories they call home represent the ongoing effects of Armenia's landmines and its refusal to provide information about their locations.

13. The international community recognizes the devastating and discriminatory effects of Armenia's refusal to provide Azerbaijan with landmine maps. The European Parliament, for example, noted in May 2021 that "up-to-date maps of minefields" would "permit civilians to return to former conflict regions"<sup>21</sup>. Other international actors recognize the continuing "civilian

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<sup>17</sup> See "Scorched Earth: Ethnic Armenians Destroy Homes, Infrastructure Before Fleeing Azerbaijani Regions", *Radio Free Europe/Radio Liberty* (16 Nov. 2020), available at <https://www.rferl.org/a/scorched-earth-as-ethnic-armenians-burn-homes-before-handover-of-territory-to-azerbaijancontrol/30952511.html>.

<sup>18</sup> J. Aliyev, "Azerbaijan clears mines from areas freed in Karabakh", *Andalou Agency* (29 Nov. 2020), available at <https://www.aa.com.tr/en/azerbaijan-front-line/azerbaijan-clears-mines-from-areas-freed-in-karabakh/2059833>.

<sup>19</sup> See CERD, Art. 1 (1).

<sup>20</sup> See CR 2021/25, p. 27, para. 22 (Murphy).

<sup>21</sup> European Parliament, *Prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan*, document P9\_TA(2021)0251 (20 May 2021), available at [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.html).

casualties”<sup>22</sup>, “ongoing death and injury”<sup>23</sup> and “horrific injuries and incidents” that result<sup>24</sup>. Between March and October this year, international organizations and States reiterated the call for Armenia to urgently disclose its landmine maps to Azerbaijan over 15 times.

14. Further, while Armenia appeared to argue yesterday that its placement of landmines is a separate matter governed by other international legal régimes, citing to the Ottawa Treaty to which Armenia is not even party<sup>25</sup>, this misses the point. In its order on provisional measures in *Georgia v. Russia*, the Court accepted that acts may contravene CERD “even if [they] might also be covered by other rules of international law, including humanitarian law”<sup>26</sup>. The key test is whether the acts fall within the definition of racial discrimination under Article 1 of the CERD.

15. *Third*, Armenia also argues that Azerbaijan’s request must fail because landmines have been a “long-standing” problem in this area and include unexploded ordnances, and therefore engages in the speculation that a civilian death today may be a consequence of a landmine laid in the First Garabagh War<sup>27</sup>.

16. I need not tarry on this point, since it is clear that attribution for planting the landmines is not appropriate for a determination on provisional measures. As the Court held in *Georgia v. Russia*, “it cannot at this stage make definitive findings of fact, nor a finding of attribution”<sup>28</sup>.

17. In any event, however much it tries now to suggest that it is “unclear” that Armenia laid mines during the Second Garabagh War<sup>29</sup>, Armenia cannot deny that it holds vital information about

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<sup>22</sup> Tweet, @ExtSpoxEU, Peter Stano (4 June 2021, 8:23pm), available at <https://twitter.com/ExtSpoxEU/status/1400896078401183747?s=20>; European Union, *Armenia/Azerbaijan: Statement by High Representative Josep Borrell on the latest developments* (13 June 2021), available at [https://eeas.europa.eu/delegations/angola/99984/armeniaazerbaijan-statement-high-representative-josepborrell-latest-developments\\_en](https://eeas.europa.eu/delegations/angola/99984/armeniaazerbaijan-statement-high-representative-josepborrell-latest-developments_en); *Answer given by High Representative/Vice-President Borrell on behalf of the European Commission*, document E-003523/2021 (7 Oct. 2021), available at [https://www.europarl.europa.eu/doceo/document/E-9-2021-003523-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2021-003523-ASW_EN.html).

<sup>23</sup> Parliamentary Assembly of the Council of Europe, “Migration Committee Chair expresses deep concern over the fate of alleged captives and missing persons from the recent conflict between Armenia and Azerbaijan”, (12 Apr. 2021), available at <https://pace.coe.int/en/news/8246/migrationcommittee-chair-expresses-deep-concern-over-thefate-of-alleged-captives-and-missing-persons-fromthe-recent-conflict-between-armenia-and-azerbaijan>.

<sup>24</sup> J. Kucera, “Azerbaijan demands ‘mine maps’ from Armenia”, *Eurasianet* (11 June 2021), available at <https://eurasianet.org/azerbaijan-demands-mine-mapsfrom-armenia>.

<sup>25</sup> CR 2021/25, p. 21, para. 6 (Murphy).

<sup>26</sup> *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. 387, para. 112.

<sup>27</sup> CR 2021/25, p. 20, para. 5 (Murphy).

<sup>28</sup> *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. 141.

<sup>29</sup> CR 2021/25, p. 22, para. 8 (Murphy).

the locations of the landmines. Just a few months ago, Armenia provided maps purportedly outlining the location of 189,000 mines<sup>30</sup>. Armenia also cannot deny that it has provided what Armenia's Prime Minister openly admits is only a "tiny part"<sup>31</sup> of the information it holds<sup>32</sup>, and it does not deny that the information it has provided has been woefully inadequate<sup>33</sup>. Armenia's ongoing refusal to provide accurate information about the location of the landmines, independently of its original placement of the mines, continues to prevent displaced ethnic Azerbaijanis from returning home.

18. Armenia also cannot make its CERD obligations conditional by taking refuge in its offer to provide its landmine maps *only if* Azerbaijan grants blanket immunity to Armenians who are being tried for, *or* have been convicted of, serious crimes<sup>34</sup>. Yesterday, Armenia's Agent stated that Armenia would "stand ready" to provide more maps, but with an important caveat, that is, "[i]n the context of resolving all outstanding humanitarian issues"<sup>35</sup>. This is very much the same as prior so-called "offers": Armenia's position has been consistent that it will not provide landmine maps and the "humanitarian issue" referenced is how Armenia's Prime Minister has referred to the release of Armenian detainees<sup>36</sup>, not, as suggested yesterday, that Armenia stands willing to provide "maps that have a humanitarian significance"<sup>37</sup>. Likewise, Armenia's suggestion that it "is fully willing to

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<sup>30</sup> "In exchange for providing Azerbaijan with maps of mines in Aghdam region, 15 detained Armenians handed over to Armenia", APA (12 June 2021), available at <https://apa.az/en/xeber/foreign-news/in-exchange-for-providing-azerbaijan-with-maps-of-mines-in-aghdam-region-15-detained-armenians-handed-over-to-armenia-351548>; "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>.

<sup>31</sup> Ann. 33, Speech by Nikol Pashinyan, posted on YouTube channel of NEWS AM (13 June 2021), available at <https://www.youtube.com/watch?v=7lbPymz14zQ> (certified translation).

<sup>32</sup> See Prime Minister of the Republic of Armenia, "Sovereignty of Armenia, protection of the rights of the Armenians of Nagorno-Karabakh, including right to self-determination are among our priorities" (3 Oct. 2021), available at <https://www.primeminister.am/en/press-release/item/2021/10/03/Nikol-Pashinyan-visit-to-Lithuania/>.

<sup>33</sup> Annex to the Letter dated 9 August 2021 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/75/986-S/2021/721 (12 Aug. 2021), p. 2, available at <https://undocs.org/en/A/75/986>.

<sup>34</sup> See e.g. Prime Minister of the Republic of Armenia, "Sovereignty of Armenia, protection of the rights of the Armenians of Nagorno-Karabakh, including right to self-determination are among our priorities" (3 Oct. 2021), available at <https://www.primeminister.am/en/press-release/item/2021/10/03/Nikol-Pashinyan-visit-to-Lithuania/>; "Armenian colonel admits availability of maps of minefields in Azerbaijani territories (VIDEO)", Trend (7 June 2021), available at <https://en.trend.az/azerbaijan/politics/3435847.html>.

<sup>35</sup> CR 2021/25, p. 13, para. 9 (Kirakosyan); emphasis added.

<sup>36</sup> See e.g. Prime Minister of the Republic of Armenia, "Prime Minister Pashinyan proposes strengthening trilateral mechanisms to investigate incidents and adhere to ceasefire" (15 Oct. 2021), available at <https://www.primeminister.am/en/statements-and-messages/item/2021/10/15/Nikol-Pashinyan-Speech/>; "I am ready to take with me all mine field maps and I call on Aliyev to bring all captives" — Pashinyan", ArmenPress (3 Oct. 2021), available at <https://armenpress.am/eng/news/1064673/>; "Pashinyan: Armenia ready to hand over minefield maps to Azerbaijan in exchange for captives", news.am (15 Oct. 2021), available at <https://news.am/eng/news/667663.html>.

<sup>37</sup> CR 2021/25, p. 25, para. 13 (Murphy).

cooperate with United Nations and regional systems, with non-governmental organizations” notably does not include Azerbaijan<sup>38</sup>.

19. Such a conditional offer is illusory. As Lord Goldsmith explained last week, Azerbaijan has a sovereign right and, in some instances, an obligation under CERD to pursue such cases<sup>39</sup>. It is extraordinary for Armenia to trumpet its demand that Azerbaijan let convicted torturers walk free before Armenia will provide urgently required, lifesaving information.

20. In sum, it is clear that Azerbaijan has established breaches of plausible rights under CERD, and an imminent risk of irreparable prejudice to those rights.

### **B. Jurisdictional objections *are a red herring***

21. I turn now to Armenia’s two arguments with respect to the Court’s prima facie jurisdiction.

#### **(a) Jurisdiction *rationae materiae***

22. Armenia’s argument on jurisdiction *ratione materiae* cannot withstand scrutiny. Armenia suggested that Azerbaijan’s request is flawed because the “request concerning demining is . . . based on alleged harmful effects to Azerbaijan *nationals* as a whole, not to persons of any particular ethnic origin”<sup>40</sup>. First, the hearing before the Court is a request for provisional measures in which only a prima facie finding of jurisdiction need to be made. The Court is not in a position to make determinations on contested jurisdictional grounds, as these are matters to be properly resolved at the merits phase<sup>41</sup>.

23. But in addition, by focusing on irrelevant issues of nationality, Armenia also has sought to recast Azerbaijan’s claims for its own purposes, and in so doing misstates them. Azerbaijan’s Application is premised on a claim of discrimination against “Azerbaijanis as an ethnic origin or national origin group and not in relation to nationality or citizenship”<sup>42</sup>. It does *not* rest on a complaint

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<sup>38</sup> CR 2021/25, p. 25, para. 13 (Murphy)

<sup>39</sup> CR 2021/23, p. 22, para. 33 (Goldsmith); CR 2021/21, p. 28, para. 13 (Goldsmith); CR 2021/21 p. 31, para. 26 (Goldsmith).

<sup>40</sup> CR 2021/25, p. 26, para. 16 (Murphy).

<sup>41</sup> See e.g. *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Provisional Measures, Order of 13 December 2013, I.C.J. Reports 2013, p. 404, para. 21; *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014, p. 160, para. 54.

<sup>42</sup> Azerbaijan’s Application, para. 5, fn. 4.

about adverse effects caused to nationals. The crux of Azerbaijan's claim is that Armenia's extensive landmining activities, and its continued refusal to assist with Azerbaijan's demining programme, has kept displaced *ethnic Azerbaijanis* from returning to their homes in the formerly Occupied Territories<sup>43</sup>. These acts and omissions have both the *purpose* and the *effect* of impairing the fundamental rights of Azerbaijanis, to quote the Court, "as a distinct social group [based on] their national [or ethnic] origin"<sup>44</sup>. It is clear even at this stage that Armenia's purported *rationae materiae* objection lacks merit.

**(b) Jurisdiction *rationae temporis***

24. Armenia also suggested yesterday that the Court lacked jurisdiction *ratione temporis*<sup>45</sup>. Again, this argument can be dealt with swiftly as these are matters to be properly resolved at the merits phase. While ~~the~~ CERD entered into force between the Parties in August 1996, the planting of landmines which preceded it formed part of Armenia's ongoing and systematic policy of ethnic cleansing towards ethnic Azerbaijanis living in the formerly Occupied Territories. Armenia's conduct constituted an act whose *continuing character* violated Azerbaijan's rights under ~~the~~ CERD once it entered into force between the States parties and which continues until such time as the landmines are removed<sup>46</sup>. International courts and tribunals have been clear that a court is permitted to take account of facts arising prior to the entry into force in order to understand violations which occurred thereafter if the breach manifests a continuing character<sup>47</sup>. The planting of individual landmines may have been instantaneous acts, but by restricting ethnic Azerbaijanis from returning to their homes and villages, Armenia's violation of CERD persists to the present day.

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<sup>43</sup> Azerbaijan's Request, paras. 4 and 8-9.

<sup>44</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment of 4 February 2021, para. 112.

<sup>45</sup> CR 2021/25, p. 26, para. 18 (Murphy).

<sup>46</sup> International Law Commission, Articles on State Responsibility, Art. 14, Extension in time of the breach of an international obligation.

<sup>47</sup> *The Renco Group, Inc. v. The Republic of Peru (II)*, PCA Case No. 2019-46, Decision on Expedited Preliminary Objections, 30 June 2020 (Horacio A. Grigera Naón, J. Christopher Thomas, Bruno Simma (President)), paras. 139-148; *Varnava v. Turkey*, ECHR No. 16064-73/90, 18 Sept. 2009, paras. 148-149; *Durmic v. Serbia and Montenegro*, CERD Committee, No. 29/2003, UN doc A/61/18 (2006), para. 6.4; *Hoti v. Croatia*, ECHR No. 63311/14, 26 Apr. 2018, paras. 84-85.

**C. Armenia's denial of continued unlawful mining activities is inaccurate and in any event irrelevant at the provisional measures stage**

25. Finally, I turn to Armenia's argument that the second request should fail because Azerbaijan cannot establish that Armenia has *continued* to plant landmines in Azerbaijan's territory. This argument is misconceived and should be rejected.

26. For the avoidance of doubt, Azerbaijan does not accept this unsubstantiated assertion that recent mining activity is limited to Armenian territory<sup>48</sup>. The evidence submitted to the Court confirms that Armenian soldiers continue to plant deadly landmines on Azerbaijan's territory, to the detriment of Azerbaijanis<sup>49</sup>. The only evidence to the contrary is Armenia's say-so. Mr. Donovan will address the nature of the representation made by Armenia yesterday, but suffice it to say, the Court is not required to determine these contested issues at the provisional measures stage. Of course, as both the Parties have publicly acknowledged, the border between Azerbaijan and Armenia is still in the process of being demarcated<sup>50</sup>. So even on Armenia's case, for as long as Armenia continues to plant deadly landmines in disputed border regions, Armenia's actions are likely to cause significant and irreparable prejudice to the rights of Azerbaijanis, including under Articles 2 and 5 of CERD, and there is *plausible* prejudice to those rights.

**D. Incitement to racial hatred and violence**

27. Madam President, honourable Members of the Court, I now turn to Azerbaijan's request that Armenia prevent organizations within its territory from engaging in incitement to violence

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<sup>48</sup> "Azerbaijan Captures Six Armenian Soldiers in Latest Border Incident", RFE/RL (27 May 2021), available at <https://www.rferl.org/a/azerbaijan-captures-armenia-soldiers/31276052.html>.

<sup>49</sup> Ministry of Foreign Affairs of the Republic of Azerbaijan, 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-servicedepartment-of-the-ministry-of-foreign-affairs-of-the-republic-ofazerbaijan-on-the-next-provocation-of-the-armed-forces-of-armeniaalong-the-border-in-the-direction-of-the-kalbajar-region-enru>; Ministry of Defence of the Republic of Azerbaijan, "Armenia committed a provocation in the direction of the Kalbajar region of the state border" (27 May 2021), available at <https://mod.gov.az/en/news/armeniacommitted-a-provocation-in-the-direction-of-the-kalbajar-region-ofthe-state-border-36046.html>. See also Azerbaijan's Request, para. 15.

<sup>50</sup> Ministry of Foreign Affairs of the Republic of Azerbaijan, No. 285/21, Information of the Press Service Department of the Ministry of Foreign Affairs of the Republic of Azerbaijan on the telephone conversation of Minister Jeyhun Bayramov with Philip Reeker, Acting US Assistant Secretary of State for European and Eurasian Affairs (2021), available at <https://mfa.gov.az/en/news/no28521>; "Pashinyan reaffirms Armenia's readiness for demarcation of border with Azerbaijan", Belta (15 Oct. 2021), available at <https://eng.belta.by/politics/view/pashinyan-reaffirms-armenias-readiness-for-demarcation-of-border-with-azerbaijan-144187-2021/>.

against Azerbaijanis and cease its cyber-disinformation operations that also incite and promote ethnic hatred.

**(a) Armed hate groups operating in Armenia**

28. With respect to Azerbaijan’s claims of incitement to violence, I will make three points.

29. *First*, with respect to armed hate groups such as VoMA and POGA, Armenia argued yesterday that these groups are “non-governmental actors”<sup>51</sup> engaged in “purely private”<sup>52</sup> speech. Armenia seems to suggest that armed hate groups can operate openly, notoriously and with impunity from its territory as long as they are not governmental actors — but that is not what CERD requires. To the contrary, Armenia is obliged under CERD Article 4 to “condemn . . . all organizations which are based on ideas or theories of superiority of one race or . . . ethnic origin”, “prohibit organizations . . . which promote and incite racial discrimination” and “recognize participation in such organizations . . . as an offence punishable by law”<sup>53</sup>. And in any case, Azerbaijan has provided the Court with evidence that Armenia is not just turning a blind eye to these groups; its armed forces have worked “in close cooperation” with VoMA fighters and granted them a commendation by the command, and the Armenian Ministry of Emergency Situations has conducted joint exercises with a local branch<sup>54</sup>. This conduct also violates Armenia’s obligation under Article 2 (1) (b) “not to sponsor, defend or support racial discrimination by any persons or organizations”<sup>55</sup>.

30. *Second*, Armenia suggests that its CERD obligations are not triggered because VoMA and POGA are not engaged in prohibited hate speech. But this ignores entirely the record of evidence demonstrating that VoMA intentionally stokes ethnic hatred of Azerbaijanis by demonizing them as, for example, a people that pose an existential “threat” to Armenians<sup>56</sup>, while simultaneously dehumanizing them by denying their very existence as a distinct ethnic group, repeatedly referring

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<sup>51</sup> CR 2021/25, p. 37, para. 17 (Salonidis).

<sup>52</sup> *Ibid.*, para. 18 (Salonidis).

<sup>53</sup> CERD, Art. 4.

<sup>54</sup> Ann. 35, VoMA social media posts, p. 18 (certified translation); Ann. 61, Compendium of social media posts, VoMA, p. 19 (certified translation).

<sup>55</sup> CERD, Art. 2.

<sup>56</sup> See judges’ folder tab 5, “Threats”, VoMA, available at <https://www.voma.center/en/threats>.

to them as a people “with a nomad mentality”<sup>57</sup> or “Caspian Turks”<sup>58</sup>. Both VoMA and POGA also explicitly advocate and broadcast the teachings of Garegin Nzhdeh, who was a Nazi collaborator and founder of the racist “Tseghakron” ideology<sup>59</sup> that contravenes Article 4’s prohibition on “ideas or theories of superiority of one race”<sup>60</sup>. VoMA and POGA invoke Nzhdeh as part of their campaigns to use violence against Azerbaijanis to claim Azerbaijani’s territories for Armenia<sup>61</sup>.

31. Armenia also argues that VoMA and POGA are not “armed hate groups” that incite racial violence, but that their focus is, instead, to borrow emphasis from Dr. Salonidis, “*clearly* self-defence and emergency response”<sup>62</sup>. Azerbaijan also thinks the focus of these groups is clear and we have collected their own words on the subject at tabs 5 and 6 of your folders. I invite the Court to review them, and note that they include calls for “liquidating [Azerbaijan]”, conducting “99% of the wargames” “on land resembling Azerbaijani territory”, engaging in “acts of sabotage” and ensuring that the army will not just “be a defensive force but one that fights on all fronts”<sup>63</sup>. This is not self-defence.

32. Tabs 5 and 6 of your folders also collate some of the racial slurs and veneration of Nzhdeh employed by VoMA and POGA across their platforms, while tab 7 provides a selection of the teachings of Nzhdeh. We invite the Court to review these materials as a whole. This is not “[n]ationalistic and patriotic talk” that is merely “controversial”<sup>64</sup> as suggested yesterday, but rather statements of ethnic hate and cultural erasure directed at denigrating Azerbaijanis. Coupled with the

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<sup>57</sup> “Vova Vartanov: ‘give me all your weapons, we can return some territory’”, HyeTert (18 Feb. 2019), available at <https://hyetert.org/2019/02/18/vova-vartanov-give-me-all-your-weapons-we-can-return-some-territory/>.

<sup>58</sup> See Ann. 35, VoMA social media posts, p. 18 (certified translation). See also “Threats”, VoMA, available at <https://www.voma.center/en/threats>.

<sup>59</sup> See judges’ folder tabs 5, 6 and 7, Ann. 35, VoMA social media posts, p. 18 (certified translation); Ann. 61, Compendium of social media posts, VoMA, p. 19 (certified translation); Ann. 62, Compendium of social media posts, POGA (certified translation); Ann. 3, G. Nzhdeh, Tribal Religion Movement, p. 5, available at [http://www.hhk.am/files/library\\_pdfs/24.pdf](http://www.hhk.am/files/library_pdfs/24.pdf) (certified translation).

<sup>60</sup> CERD, Art. 4.

<sup>61</sup> See judges’ folder tabs 5, 6 and 7, Ann. 35, VoMA social media posts, p. 18 (certified translation); Ann. 61, Compendium of social media posts, VoMA, p. 19 (certified translation); Ann. 62, Compendium of social media posts, POGA (certified translation); Ann. 3, G. Nzhdeh, Tribal Religion Movement, pp. 4 and 6, available at [http://www.hhk.am/files/library\\_pdfs/24.pdf](http://www.hhk.am/files/library_pdfs/24.pdf) (certified translation).

<sup>62</sup> CR 2021/25, p. 38, para. 23 (Salonidis).

<sup>63</sup> Judges’ folder tabs 5 and 6, Ann. 35, VoMA social media posts, pp. 2, 13 and 5 (certified translation); Ann. 62, Compendium of social media posts, POGA, p. 2 (certified translation); “Threats”, VoMA, available at <https://www.voma.center/en/threats>.

<sup>64</sup> CR 2021/25, p. 39, para. 28 (Salonidis).

racist ideology that animates these calls to arms, this is incitement to racially-motivated violence targeting Azerbaijanis and more than plausibly engages rights under Article 4 of CERD. Not only does Armenia fail to condemn this racist ideology; but as Professor Boisson de Chazournes noted yesterday, it glorifies it<sup>65</sup>.

33. *Third*, this is a continuing, urgent threat. VoMA and POGA are actively fundraising and training recruits in pursuit of their violent and racist goals<sup>66</sup>. The CERD Committee lists the “[d]evelopment and organization of militia groups and/or extreme political groups based on a racist platform”<sup>67</sup> as a key factor for the activation of its early warning and urgent action procedures, which are meant to prevent serious violations of CERD, and “in particular those that could lead to ethnic conflict and violence”<sup>68</sup>. There is good reason for this: such groups are made up of armed civilians with little or no training in rules of combat or international humanitarian law, with no clear command structure or oversight. In these conditions, the risks posed by speech inciting violence more than meet the threshold for imminence and urgency.

**(b) Cyber disinformation campaign**

34. I turn now to Azerbaijan’s request for an order related to Armenia’s cyber disinformation campaign. Armenia’s responsive arguments boil down to three points.

35. *First*, yesterday afternoon, Armenia tried to sow doubt about the extent of its involvement in the disinformation campaign, claiming that “Twitter is not so sure” that “Armenia has direct ties to these accounts”<sup>69</sup>. There is no such doubt. At tab 16 in your judges’ folders, you will find statements from Twitter describing its methodology. Twitter only discloses datasets of removed tweets, as it did for Armenia, where they are “associated with coordinated malicious activity that

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<sup>65</sup> CR 2021/24, p. 46, para. 17 (Boisson de Chazournes).

<sup>66</sup> See e.g., judges’ folder, tabs 5 and 6, Ann. 35, VoMA social media posts, pp. 5, 10 and 17–22 (certified translation); “About Us”, VoMA, available at <https://www.voma.center/en/who-we-are>; Ann. 61, Compendium of social media posts, VoMA, pp. 12, 19, 22, 25, 31, 40 and 41 (certified translation); Ann. 62, Compendium of social media posts, POGA, pp. 3, 5 and 8 (certified translation).

<sup>67</sup> CERD Committee, Guidelines for the Early Warning and Urgent Action Procedures, Annual Report A/62/18, Annexes, Chapter III, para. 12 (*f*).

<sup>68</sup> *Ibid.*, para. 1.

<sup>69</sup> CR 2021/25, p. 35, para. 8 (Salonidis).

[Twitter is] able to reliably associate with state-affiliated actors”<sup>70</sup>. Twitter explains that it requires “clear, verifiable associations between accounts we identify and state-affiliated actors”, and that “disclosure of datasets requires additional evidence of coordinated, state-backed activity”<sup>71</sup>. Thus, contrary to Armenia’s argument, Twitter makes clear that when it identifies a network as State-linked, it is, in fact, sure that is the case.

36. *Second*, in arguing that the Twitter campaign does not invoke plausible rights under CERD, Armenia focuses exclusively on three sample tweets Azerbaijan provided from the dataset, and attempts to dismiss them as failing to qualify as hate speech<sup>72</sup>. But the first two fake tweets spread blatantly anti-Azerbaijani messages<sup>73</sup>. And while Dr. Salonidis characterized the third tweet as “clearly satirical”<sup>74</sup>, it is unclear how a fake anti-Armenian message that appeared to emanate from an Azerbaijani account would be perceived as remotely “satirical”, as opposed to designed to foment hatred. Armenia ignores entirely numerous other examples — including those at pages 6, 10 and 13 of the Stanford report<sup>75</sup> — as well as the evidence of a co-ordinated government effort to spread disinformation about Azerbaijanis consisting *of*, on the Twitter platform alone, ~~of~~ more than 70,000 tweets and spanning at least 7 years, including over 1,000 tweets from 2019 and 2020<sup>76</sup>.

37. *Third*, Armenia attempts to minimize the ongoing harm of its campaign, arguing that the network of 35 accounts has now been removed<sup>77</sup>. But State-backed disinformation campaigns are so insidious precisely because they are pervasive and nearly impossible to detect without the assistance of a third party with access to the relevant data — such as Twitter<sup>78</sup>. This one network of 35 accounts

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<sup>70</sup> Yoel Roth, “Information operations on Twitter: principles, process, and disclosure”, Twitter, Inc. (13 June 2019), available at [https://blog.twitter.com/en\\_us/topics/company/2019/information-ops-on-twitter](https://blog.twitter.com/en_us/topics/company/2019/information-ops-on-twitter).

<sup>71</sup> *Ibid.*

<sup>72</sup> CR 2021/25, pp. 35-36, para. 10 (Salonidis).

<sup>73</sup> Ann. 34, Extract from Twitter, Inc., Information Operations Report Archive (2021), available at <https://transparency.twitter.com/en/reports/information-operations.html> (certified translation); CR 2021/25, pp. 35-36, para. 10 (Salonidis).

<sup>74</sup> CR 2021/25, pp. 35-36, para. 10 (Salonidis).

<sup>75</sup> Judges’ folder, tab 8, E. Cryst & S. Grossman, “Sockpuppets Target Nagorno-Karabakh”, Stanford Internet Observatory, Cyber Policy Center (23 Feb. 2021), available at <https://cyber.fsi.stanford.edu/io/publication/sockpuppets-target-nagorno-karabakh-takedown>.

<sup>76</sup> *Ibid.*; Twitter, Inc., Information Operations Report Archive (2021), available at <https://transparency.twitter.com/en/reports/information-operations.html>.

<sup>77</sup> CR 2021/25, p. 36, paras. 11 and 13 (Salonidis).

<sup>78</sup> Yoel Roth, “Information operations on Twitter: principles, process, and disclosure”, Twitter, Inc. (13 June 2019), available at [https://blog.twitter.com/en\\_us/topics/company/2019/information-ops-on-twitter](https://blog.twitter.com/en_us/topics/company/2019/information-ops-on-twitter).

must be understood as the tip of a very deep iceberg; State disinformation operations are “churned out at scale, injected in a coordinated and systematic manner, often across multiple platforms” “over a sustained period of time”<sup>79</sup>. And the harm caused by such campaigns is severe; according to an April 2021 study by the European Parliament, online “[d]isinformation is associated with a rise in more dramatic and grave digital violence . . . [c]oordinated online hate speech against racial and ethnic minorities has led to violence in different places”<sup>80</sup>.

38. Notably, yesterday the Court did not hear an outward denial that Armenia was responsible for the Twitter disinformation campaign — just deflection saying there is “no need” for Armenia to engage in such conduct<sup>81</sup>. Due to the irreparable harm that these campaigns can cause and the difficulty inherent in identifying, removing and remedying such campaigns, provisional measures are warranted.

39. Thank you, Madam President, honourable Members of the Court, for the privilege of appearing before you. I now respectfully request you to invite Ms Natalie Reid to address the Court.

The PRESIDENT: I thank Ms Amirfar for her statement. I now invite the next speaker, Ms Nathalie Reid, to take the floor.

Ms REID: Thank you, Madam President.

## **II. PROVISIONAL MEASURES ARE NEEDED TO PRESERVE EVIDENCE**

1. Madam President, honourable Members of the Court, in my remarks this morning, I will explain why Armenia has failed to defeat Azerbaijan’s showing of the urgent need for an order to preserve evidence of CERD violations.

2. Armenia argued yesterday that Azerbaijan’s request is not linked to plausible rights under CERD, and that provisional measures are neither required nor appropriate. Professor d’Argent

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<sup>79</sup> A. de Liedekerke & M. Zinkanell, *Deceive and Disrupt: Disinformation as an Emerging Cybersecurity Challenge*, Austrian Institute for European and Security Policy (June 2020), p. 4, available at <https://www.aies.at/download/2020/AIES-Studies-2020-13.pdf>.

<sup>80</sup> European Parliament, *The Impact of Disinformation on Democratic Processes and Human Rights in the World* (April 2021), pp. 15–16, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653635/EXPO\\_STU\(2021\)653635\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653635/EXPO_STU(2021)653635_EN.pdf).

<sup>81</sup> CR 2021/25, p. 34, paras. 3 and 4 (Salonidis).

described those arguments as a series of “obstacles” that supposedly imperilled Azerbaijan’s request. None of those arguments, however, withstands scrutiny.

### **A. Existence of plausible rights under CERD**

3. *First*, Azerbaijan’s request seeks to protect the well-established right under Article 6 of CERD to effective protection and remedies against acts of racial discrimination.

4. Armenia did not dispute that this right exists. It did not dispute that Article 6 requires a prompt and effective investigation of credible allegations of ethnically motivated offences<sup>82</sup>, including the hate crimes I described yesterday. And Armenia did not dispute — in fact, it agreed — that it is on notice of precisely such credible, substantiated allegations of crimes committed by its servicemen against Azerbaijanis<sup>83</sup>.

5. Instead, Armenia tried to change the subject. It complained that Azerbaijan is attempting to turn CERD into a mutual legal assistance treaty and argued that Azerbaijan had not explained which State would ultimately be prosecuting these crimes.

6. Let us be clear. Azerbaijan’s request is not a squabble over jurisdiction. It is squarely aimed at one thing: ensuring that the evidence of CERD violations is preserved. As I explained yesterday, the only way to assure preservation of evidence of crimes that will otherwise disappear or degrade is to conduct a prompt and effective investigation. Armenia is currently subject to an undisputed duty to carry out such investigations. And it is currently breaching that duty, and thereby prejudicing the right of Azerbaijanis to the protection and remedies to which they are entitled under CERD. Azerbaijan’s fourth requested measure simply seeks to protect that right. So much for the first obstacle.

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<sup>82</sup> See e.g. *L.K. v. The Netherlands*, Comm. No. 4/1991, Opinion, doc. CERD/C/42/D/4/1991 (1993), para. 6.6; *Kashif Ahmad v. Denmark*, Comm. No. 16/1999, Opinion, doc. CERD/C/56/D/16/1999 (2000), paras. 6.4, 9; *Durmic v. Serbia and Montenegro*, Comm. No. 29/2003, Opinion, doc. CERD/C/68/D/29/2003 (2006), para. 10; *Habassi v. Denmark*, Comm. No. 10/1997, Opinion, doc. CERD/C/54/D/10/1997, CERD Committee (1999), para. 9.3; *Adan v. Denmark*, Comm. No. 43/2008, Opinion, doc. CERD/C/77/D/43/2008 (2010), para. 7.7; *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, Comm. No. 48/2010, Opinion, doc. CERD/C/82/D/48/2010 (2013), paras. 12.8-12.9.

<sup>83</sup> CR 2021/25, p. 49, para. 33 (d’Argent); Letter dated 2 February 2021 from the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; the Special Rapporteur in the Field of Cultural Rights; and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Azerbaijan, UN doc. AL AZE 1/2021 (2 Feb. 2021), available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25857>; Letter dated 2 April 2021 from the Permanent Mission of the Republic of Armenia to the United Nations Office and other international Organizations in Geneva to the Office of the United Nations High Commissioner for Human Rights (2 Apr. 2021), available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36114>.

7. Armenia also argued that Azerbaijan’s request for an evidence preservation order should be rejected because it is independent of the other provisional measures Azerbaijan seeks, and does not “complement [or] support” them<sup>84</sup>. But there is no requirement that a requested measure be linked to other measures sought. What must be shown, and what Azerbaijan has demonstrated, is a link to plausible rights<sup>85</sup>. The fact that the legal and factual bases for this request are distinct from those underlying Azerbaijan’s other requests highlights the breadth and variety of Armenia’s conduct that threatens rights protected by CERD. It is no obstacle to granting the order sought.

**B. Absent the provisional measure sought, Armenia will not preserve evidence of CERD violations**

8. *Second*, the measure requested is necessary to ensure preservation of evidence of CERD violations *as such* — namely evidence of the *purpose or effect* of an act or omission that renders that conduct a breach of the Convention<sup>86</sup>. Armenia’s arguments and evidentiary submissions yesterday did not alter that conclusion. Instead, they reinforced the serious concerns animating Azerbaijan’s request.

9. Armenia has argued that there is no need for provisional measures because it is already investigating allegations of crimes committed by its servicemen against Azerbaijanis<sup>87</sup>. I explained yesterday that Armenia had not offered this Court any indication that it was conducting investigations that are — and I quote from the May 2021 report discussed yesterday — “independent, prompt, public and effective”<sup>88</sup>. I noted that the single page Armenia had submitted to this Court was not nearly enough.

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<sup>84</sup> CR 2021/25, p. 44, para. 7 (d’Argent); see also *ibid.* p. 53, para. 43 (d’Argent).

<sup>85</sup> *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 126, para. 63. 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)*, pp. 421-422, para. 43; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 18, para. 43.

<sup>86</sup> See CERD, Art. 1.

<sup>87</sup> CR 2021/25, p. 51, para. 39 (d’Argent).

<sup>88</sup> 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), p. 96, available at [https://www.iphronline.org/wp-content/uploads/2021/06/NK\\_final\\_report\\_2021.pdf](https://www.iphronline.org/wp-content/uploads/2021/06/NK_final_report_2021.pdf) (quoted in Azerbaijan’s judges’ folder, tab 15, slide presentation accompanying Republic of Azerbaijan’s oral observations).

10. In response, Armenia submitted, for the first time, a communication it sent to three United Nations Special Rapporteurs in April 2021, in which it stated that it had opened six cases regarding videos of crimes committed by Armenian servicemen in December 2020. That document is at tab 4 of Armenia’s judges’ folder from yesterday<sup>89</sup>. As you will see, the relevant portion of the communication — the response to Question 2 from the Special Rapporteurs — is two pages long.

11. *Now*, you might be forgiven for thinking that we now have twice as much information as we did yesterday about Armenia’s compliance with its evidence preservation obligation. We do not. In fact, once you take away the description of each video — that is, the summary of what is apparent on the face of the recording itself — all that is left is the statement that “a criminal case was initiated”, and a reference to the relevant provision of the Armenian Criminal Code. In short, when it comes to the actual investigative steps that Armenia has taken — or failed to take — in these cases, we know nothing more than we did yesterday. And in any event, we all know that there are far more than six allegations, or even six videos<sup>90</sup>.

12. Armenia has provided no information about interrogation of any witnesses; no information about any forensic analysis, such as examinations of mobile phones, social media, or the video evidence itself; no information about any requests for records or co-operation sent to other agencies in Armenia. If those steps sound familiar, it is because they are what one would expect from an effective investigation. Indeed, those are the steps that Azerbaijan has taken when investigating its own servicemen<sup>91</sup>.

13. They are also the steps that Armenia *itself* follows when, to use the phrase employed by Professor d’Argent yesterday, it “takes its prosecution obligations seriously”<sup>92</sup>.

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<sup>89</sup> Letter dated 2 February 2021 from the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva to the Office of the United Nations High Commissioner for Human Rights (2 Apr. 2021), available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36114>.

<sup>90</sup> Parliamentary Assembly of the Council of Europe, Committee on Migration, Refugees and Displaced Persons, Humanitarian consequences of the conflict between Armenia and Azerbaijan, doc. 15363, (13 Sept. 2021), paras. 48-56, 130-131, available at <https://pace.coe.int/en/files/29401/html>; *Azerbaijan v. Armenia* (No. 47319/20), European Court of Human Rights, 15 Jan. 2021 Application, paras. 612-625.

<sup>91</sup> Azerbaijan’s judges’ folder, tab 12, Ann. 56, Letter from Elchin Mammadov, First Deputy Prosecutor General, to Elnur Mammadov, Deputy Minister for Foreign Affairs, regarding criminal cases initiated and investigations conducted by the Prosecutor General’s Office, dated 6 Oct. 2021, No. 14/çix67–21 (with enclosures).

<sup>92</sup> CR 2021/25, p. 53, para. 43 (d’Argent) (“Bien au contraire, il est clairement établi que l’Arménie prend ses obligations répressives au sérieux”).

14. In stark contrast to its apparent recalcitrance in investigating crimes against Azerbaijanis, Armenia's Prosecutor General has recently trumpeted the "unprecedented volume" of cases that it is pursuing against Armenian citizens *for crimes against the State*, including more than 2,000 criminal cases for offenses such as treason, avoiding conscription and theft of military equipment<sup>93</sup>.

15. That press release, from the end of September 2021, is at tab 17 of your folders. You will see that Armenia reports remarkable progress in these cases, stating that it has already carried out "large-scale judicial, operative investigative measures", including conducting over 20 searches and seizures; questioning over 150 people, including the Armenian President and the Commander of Defense Army; and undertaking other "proper investigative and procedural actions"<sup>94</sup>. As of September 2021, the Armenian prosecutors had reached decisions on the involvement of over 800 accused, including high-ranking officers, and sent 48 criminal cases implicating 55 defendants to court<sup>95</sup>.

16. So it is clear that Armenia *can* take such steps against its own servicemen when it wants to. It is equally clear, from the record before the Court, that it has not taken similar steps when it comes to the vicious crimes committed against Azerbaijanis. Armenia's record speaks for itself, as does the contrasting record of the Azerbaijani prosecutors. And Armenia cannot distract from its failures by misquoting or misstating what the Azerbaijani authorities have said or done, as Armenia's counsel tried to do yesterday.

17. But it is not just the lack of information and apparent lack of progress that underscore the need for the provisional measure sought. Closer review of the little information Armenia has provided indicates that it is not conducting investigations under provisions of its own laws, that expressly recognize certain offences as hate crimes — and that punish such crimes with harsher sanctions. In other words, there is evidence that unless ordered by this Court, Armenia will not pursue charges — and thus will not preserve evidence — relating specifically to ethnically motivated crimes.

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<sup>93</sup> Azerbaijan's judges' folder, tab 17, Prosecutor General's Office of Armenia, "28.09.2021. More than 800 accused, 55 people sued in the result of crimes committed during the war 2020 in the Armed Forces of the Republic of Armenia and Republic of Artsakh" (28 Sept. 2021), <https://www.prosecutor.am/en/mo/8289/>.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

18. To explain: as I outlined yesterday, several of the most serious allegations against Armenian servicemen involve desecration of the corpses of Azerbaijani servicemen, including conduct intended to humiliate and violate their dignity, committed with ethnic animus<sup>96</sup>.

19. These are especially heinous crimes, and Armenian law recognizes them as such. We see that from two provisions of the Armenian Criminal Code, which we will show on the screen now, and which are in your folders at tabs 13 and 19. (The English-language text that we will show is taken directly from the website of the Armenian Parliament<sup>97</sup>.) Article 265 of the Armenian Criminal Code expressly recognizes that the crime of “outrageous treatment of a dead body” should be punished more seriously — given what is called a “hate crime enhancement” in some national jurisdictions — when committed due to “motives of national, *racial* or religious hatred”<sup>98</sup>. Article 390, paragraph 4, likewise specifically recognizes and proscribes “other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination”<sup>99</sup>.

20. Investigating crimes under these provisions would require specific attention to these distinctive features, including the identification, collection and preservation of evidence of the perpetrator’s motives — precisely the kind of evidence that would characterize a CERD breach. But the little information provided confirms that Armenia is not conducting any investigations under those provisions. Instead, according to both the single page submitted to this Court and the two pages submitted to the Special Rapporteurs, Armenia is only investigating crimes under Article 390, subparagraphs (1) (1) and (1) (2), of the Code<sup>100</sup>.

21. As the CERD Committee has explained, a State cannot meet its duty under Article 6 unless it conducts “a thorough investigation by public authorities of the *possible racist* nature of the attack”,

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<sup>96</sup> CR 2021/24, p. 54, paras. 9-10 (Reid); Azerbaijan’s judges’ folder, tab 15, slide presentation accompanying Republic of Azerbaijan’s oral observations.

<sup>97</sup> See <http://www.parliament.am/legislation.php?sel=alpha&ltype=3&lang=eng#2>.

<sup>98</sup> Azerbaijan’s judges’ folder, tab 19, Armenian Criminal Code, Art. 265, <http://parliament.am/legislation.php?sel=alpha&ltype=3&lang=eng#2> (emphasis added).

<sup>99</sup> Enclosure to Armenia’s Ann. 42, Letter from Gevorg Baghdasaryan, Deputy Prosecutor General, Third Class State Counsellor of Justice, Prosecutor General’s Office of the Republic of Armenia, dated 7 Oct. 2021, Art. 390 (4).

<sup>100</sup> Armenia’s Ann. 42, Letter from Gevorg Baghdasaryan, Deputy Prosecutor General, Third Class State Counsellor of Justice, Prosecutor General’s Office of the Republic of Armenia, dated 7 October 2021; Armenia’s judges’ folder, tab 4, Letter dated 2 Apr. 2021 from the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva to the Office of the United Nations High Commissioner for Human Rights (2 Apr. 2021), available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36114>.

because if “the possibility [is] set aside at the level of the criminal investigation”, it will “thereby prevent[] the issue from even being adjudicated at the criminal trial”<sup>101</sup>.

22. In short, Armenia’s own submissions confirm that, without an order from this Court, Armenia will not comply with its specific CERD obligation to preserve, through investigations, evidence of *racial discrimination* as such. Without provisional measures in this case, such critical evidence of the defining feature of CERD violations will be lost.

### **C. Armenia’s remaining arguments do not survive scrutiny**

23. As to the remaining supposed “obstacles” for Azerbaijan’s request, I can be brief.

24. *First*, no professed confidentiality concerns can excuse Armenia’s failure to provide the Court with information on its investigations — either now, or if ordered to do so at regular intervals. As Armenia well knows, it can seek confidential treatment under the Rules of Court, and the provision of its own laws it invokes. Article 201, subparagraph 1, of the Criminal Procedure Code does not in fact prevent disclosure by prosecution authorities. In fact, as confirmed by the text of that law available from the Armenian Parliament — at tab 18 in your folders — the provision empowers the competent officials to authorize disclosure.

25. *Finally*, Armenia suggested yesterday that the Court would somehow be departing from its existing jurisprudence if it granted Azerbaijan’s request<sup>102</sup>. That is incorrect.

26. Although the precise language used may vary, the Court’s orders on preservation of evidence all address the same fundamental concern: that critical evidence of CERD violations would be lost. For instance, in *Cameroon v. Nigeria*, the Court noted that “armed actions within the territory in dispute could jeopardize the existence of evidence relevant to the present case”<sup>103</sup>, and ordered the parties to “take all necessary steps to conserve evidence relevant to the present case within the disputed area”, even though there was no specific evidence that either side’s armed forces were seeking to actively destroy relevant evidence<sup>104</sup>.

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<sup>101</sup> *Dawas and Shava v. Denmark*, Comm. No. 46/2009, Opinion, doc. CERD/C/80/D/46/2009 (2012), para. 7.4.

<sup>102</sup> CR 2021/25, p. 43, para. 5 (d’Argent).

<sup>103</sup> *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. 23, para. 42.

<sup>104</sup> *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Request for the indication of provisional measures submitted by the Republic of Cameroon, dated 10 Feb. 1996, para. 7.

27. The same real and imminent risk exists in this case. Critical evidence of acts of racial discrimination will be lost if Armenia does not take urgent steps to preserve it. The provisional measures Azerbaijan seeks can prevent that loss.

28. Madam President, distinguished Members of the Court, it has been an honour to appear before you. I thank you for your kind attention, and I invite you to call Mr. Donovan.

The PRESIDENT: I thank Ms Reid, and I now give the floor to Mr. Donald *Francis* Donovan.

Mr. DONOVAN:

### III. CONCLUDING OBSERVATIONS

1. Madam President, Members of the Court, it is my honour to address you once again on behalf of the Republic of Azerbaijan.

2. Over the last few days, we have recalled the discipline the Court exercises when determining a provisional measures request<sup>105</sup>. The specific criteria a requesting party must satisfy to justify an Article 41 request provide the foundation of that discipline<sup>106</sup>. Those criteria are well settled and the Parties do not dispute them.

3. But while yesterday Armenia purported to address the provisional measures criteria, it actually raised a host of matters with no relevance to the actual issues.

4. *First*, matters of procedure. Which Party filed its Application and Request first with the Court is utterly irrelevant to the strength of either Party's claims on the merits or submissions on provisional measures<sup>107</sup>. Likewise, grievances that Armenia may have against Azerbaijan, whether encompassed by its Application or not, are another distraction that is irrelevant to determining Azerbaijan's request here.

5. Let us turn to Armenia's submissions on landmines. The historical use of landmines in unrelated settings<sup>108</sup> is irrelevant to whether, on the facts here, there is a plausible basis to find that

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<sup>105</sup> CR 2021/21, pp. 52-53, paras. 2-3 (Donovan); CR 2021/23, p. 30, para. 3 (Donovan); CR 2021/24, p. 61, para. 4 (Donovan).

<sup>106</sup> CR 2021/21, pp. 52-53, para. 2 (Donovan).

<sup>107</sup> See e.g. CR 2021/25, p. 12, paras. 2 and 3 (Kirakosyan).

<sup>108</sup> CR 2021/25, p. 20, para. 4 (Murphy).

Armenia is using landmines, or failing to assist in removing them, as part of a long-standing ethnic cleansing campaign. Likewise, the non-accession status of the Parties to international mechanisms for regulating landmines<sup>109</sup> is irrelevant to whether Armenia's acts threaten irreparable prejudice to Azerbaijan's CERD rights.

6. On hate speech, whether the violent and racist anti-Azerbaijani hate speech from organizations like VoMA and POGA is private or public speech<sup>110</sup> is irrelevant to Armenia's obligation under CERD Article 4 (b) to prohibit organizations, including *private* organizations, from promoting and inciting racial discrimination.

7. As to preservation of evidence, whether there are international mechanisms for obtaining mutual legal assistance<sup>111</sup> is irrelevant to whether Armenia's failure to investigate, and thereby collect and preserve evidence of, ethnically motivated crimes implicates plausible CERD rights. Likewise, whether the order sought by Azerbaijan is similar to or different than the broad preservation order requested by Armenia last week is irrelevant to the determination whether the order sought by Azerbaijan, standing on its own, meets the settled criteria.

8. In short, none of these matters, and others like them, has *any* bearing on whether Azerbaijan has plausible CERD rights that are at imminent risk of irreparable prejudice from Armenia's acts and failures to act.

9. When we turn to the issues that matter in satisfying the Court's criteria, Azerbaijan's case is clear-cut. Yesterday morning, and again today, my colleagues have walked the Court through the evidence and demonstrated, measure-by-measure, why Azerbaijan's request must be granted.

10. But there is one remaining point that I wish to address. Madam President, Members of the Court, I put the issue to you this way: especially considering the extremely serious threats to human life, safety, and the administration of justice raised by Azerbaijan's request, could there be any possible prejudice to Armenia in issuing the measures requested? The answer, we submit, is no. I will take Azerbaijan's four specific requested measures in reverse order.

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<sup>109</sup> CR 2021/25, p. 21, para. 6 (Murphy).

<sup>110</sup> CR 2021/25, p. 37, para. 18 (Salonidis).

<sup>111</sup> CR 2021/25, pp. 46-47, para. 18 (d'Argent).

11. *First*, Azerbaijan requests that Armenia take effective measures to collect and preserve evidence related to allegations of ethnically motivated ~~hate~~ crimes against Azerbaijanis *of which it is aware*. That final qualifier is key. The evidence shows that Armenia is on notice of *multiple credible and substantiated allegations* of ethnically motivated crimes against Azerbaijanis. As it stands, Armenia is currently in breach of its obligation under CERD Article 6 to effectively investigate, which Azerbaijan's requested measure seeks to safeguard.

12. Let there be no doubt: unless Armenia is ordered to collect and preserve evidence, it is at risk of being lost or destroyed at any time, which would permanently impair, if not deprive, Azerbaijani victims of effective remedies as required by CERD. With actual knowledge of credible allegations of ethnically motivated crimes, it is hard to understand how Armenia could object to an obligation that it collect and preserve evidence of those allegations.

13. *Second*, Azerbaijan requests that organizations operating in Armenia, such as VoMA and POGA, be prevented from inciting racial hatred and racially motivated violence targeted at Azerbaijanis. The evidence shows that these are militant, ethno-nationalist groups, operating with impunity in Armenia, who spew a racist, violent ideology targeting Azerbaijanis. They are recruiting and training for deadly warfare with Azerbaijanis, which Armenia ~~tries~~ to dismiss as "self-defence and emergency response"<sup>112</sup>.

14. In addition, Azerbaijan requests that Armenia cease and desist its ongoing anti-Azerbaijani cyber disinformation campaign. While Armenia yesterday tried to minimize the evidentiary record to just three tweets, let's be clear: the evidence amassed includes thousands upon thousands of tweets, from fake accounts all tied to Armenia.

15. As to both these requests, there is no conceivable basis on which Armenia might contend that it would be prejudiced. Armenia's own laws *envisage* it will clamp down on virulent hate groups like VoMA, and it is difficult to conceive of any legitimate interest Armenia has in fomenting racial animosity either in its own territory or online.

16. *Third*, Azerbaijan requests that Armenia provide comprehensive and accurate information on the location and characteristics of landmines in Azerbaijan. These are *lethal objects*, deposited by

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<sup>112</sup> CR 2021/25, p. 38, paras. 23 (Salonidis).

Armenia, with the purpose and effect of cleansing Azerbaijani territory of ethnic Azerbaijanis and preventing them from returning to their homeland. Ethnic cleansing surely implicates CERD rights<sup>113</sup>, and more than meets the plausibility standard. Irreparable prejudice is plain: people may die at any minute.

17. Armenia's resistance to this request is truly puzzling. It does not deny that it has more maps than it has given Azerbaijan — indeed, it has offered these maps in exchange for concessions from Azerbaijan. Those maps would have the virtually immediate effect of saving lives — and at this juncture, it should not matter to Armenia whether those lives are those of ethnic Azerbaijanis, ethnic Armenians, or members of other ethnic groups. Again, at this juncture, the Court should not indulge an argument that Armenia can continue to withhold the maps because the mines that they would identify kill and maim indiscriminately.

18. *Finally*, Azerbaijan requests that Armenia cease and desist planting landmines in Azerbaijan's territory. The measure would facilitate the return of displaced Azerbaijanis to their homeland and safeguard the rights Azerbaijan asserts under Articles 2 and 5.

19. Yesterday afternoon, the Agent of Armenia represented that “Armenia is *not* planting landmines in the territory of the Republic of Azerbaijan” and that “Armenia respects and abides by its obligation to refrain from the threat or use of force under Article 2, paragraph 4, of the Charter of the United Nations”<sup>114</sup>. Professor Murphy then repeated those two statements to argue that Azerbaijan's request is now moot<sup>115</sup>.

20. With respect, it is not. On behalf of Armenia, the Agent has not undertaken, plainly and simply, that Armenia will not lay any landmines in Azerbaijan's territory *in the future*. If that is what Armenia means, Armenia should just say it, so that the Court may take note of that public, formal, unequivocal undertaking, and bind Armenia in accord with its terms. Since that is the impression Armenia appears to be trying to convey, it cannot suggest that its own legitimate interests would be harmed by such an undertaking. But again, if Armenia is unwilling to give that unequivocal assurance, the Court should incorporate the obligation in a provisional measure.

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<sup>113</sup> CR 2021/24, pp. 26-28, paras. 20-30 (Lowe); CR 2021/24, pp. 34-36, paras. 15-22 (Amirfar).

<sup>114</sup> CR 2021/25, p. 13, para. 10 (Kirakosyan).

<sup>115</sup> CR 2021/25, pp. 32-33, paras. 39-40 (Murphy).

21. Madam President, I thank you for your kind attention. I ask that you now invite the Agent for the Republic of Azerbaijan, Mr. Mammadov, to the podium.

The PRESIDENT: I thank Mr. Donovan, and I now give the floor to the Agent of Azerbaijan, H.E. Mr. Elnur Mammadov. You have the floor, Your Excellency.

Mr. MAMMADOV:

#### IV. FINAL SUBMISSIONS

1. Madam President, honourable Members of the Court, it is my privilege to address you once again and to close the submissions by the Republic of Azerbaijan.

2. The Agent of Armenia suggested yesterday that Azerbaijan has come before the Court solely to “mirror” Armenia’s claims<sup>116</sup>, and seems to attach great import to being the first past the courtroom door. But Azerbaijan believes it is better to be right than to be first. Azerbaijan negotiated in good faith and turned to the Court only after Armenia walked away without engaging on Azerbaijan’s proposals. Azerbaijan has provided clear, credible evidence of actions and omissions by Armenia that more than plausibly engage rights under CERD and explained the real risk of irreparable harm that ensues from each. And Azerbaijan has identified specific, concrete measures the Court could order to protect against these threats, pending a decision on the merits.

3. Madam President, Azerbaijan is here to request the Court’s urgent assistance in safeguarding its rights and the rights of Azerbaijanis under CERD. As demonstrated by our written and oral submissions, certain of those rights are under imminent, ongoing threat of irreparable harm: from the ever-present threat of landmines that Armenia continues to leverage to threaten Azerbaijanis and prevent them from returning home; from armed hate groups actively inciting violence against Azerbaijanis with the blessing and support of the Armenian State; from pervasive disinformation cyber operations designed to perpetuate the cycle of anti-Azerbaijani hatred; and from Armenia’s abject failure to effectively investigate and preserve evidence related to these and numerous other credible allegations of ethnic crimes targeting Azerbaijanis.

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<sup>116</sup> CR 2021/25 p. 12, paras. 2-3 (Kirakosyan).

4. I shall now read out the Republic of Azerbaijan's final submissions. In accordance with Article 60(2) of the Rules of Court, on the basis of the facts and law set out in the Republic of Azerbaijan's Request for the Indication of Provisional Measures of Protection dated 23 September 2021, and for the reasons explained during these hearings, the Republic of Azerbaijan respectfully asks the Court to indicate the following provisional measures:

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

5. Madam President, honourable Members of the Court, I thank you for your kind attention to this urgent matter. I would also like to thank all members of the Registry and the interpreters for their dedicated work throughout the hearings. Thank you.

The PRESIDENT: I thank the Agent of Azerbaijan, whose statement brings to an end the second round of oral argument of Azerbaijan, as well as this morning's sitting. The Court will meet again this afternoon, at 5 p.m., to hear the second round of oral argument of the Republic of Armenia. The sitting is adjourned.

*The Court rose at 11 a.m.*

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