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**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2023

Public sitting

held on Tuesday 31 January, 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)**

VERBATIM RECORD

ANNÉE 2023

Audience publique

tenue le mardi 31 janvier 2023, 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)**

COMPTE RENDU

Present: President Donoghue
 Vice-President Gevorgian
 Judges Tomka
 Abraham
 Bennouna
 Yusuf
 Xue
 Sebutinde
 Robinson
 Salam
 Iwasawa
 Nolte
 Charlesworth
 Brant
Judges *ad hoc* Keith
 Daudet

 Registrar Gautier

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

M. Gautier, greffier

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The PRESIDENT: Please be seated. The sitting is open. For reasons duly made known to me, Judge Bhandari will not sit with us in these oral proceedings.

The Court meets today, 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 Azerbaijan in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*. This morning, the Republic of Azerbaijan will present its single round of oral argument.

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In line with the approach adopted by the Court in respect of its public sittings, the present hearings will take place in person. However, taking into account the current public health situation in relation to the COVID-19 pandemic, a limited number of seats have been made available for members of the diplomatic corps and guests, as well as for members of the public. In addition, all those present in the Great Hall of Justice will be required to wear face masks at all times, except when taking the floor.

*

I shall now recall the principal steps of the procedure in the present case.

On 23 September 2021, Azerbaijan filed in the Registry of the Court an Application instituting proceedings against Armenia 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, Azerbaijan invokes Article 36, paragraph 1, of the Statute of the Court and Article 22 of CERD. Together with its Application, Azerbaijan also submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court. By an Order of 7 December 2021, the Court, having heard the Parties, indicated the following provisional measures:

“(1) The Republic of Armenia shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, take all necessary measures to prevent the incitement and promotion of racial hatred,

including by organizations and private persons in its territory, targeted at persons of Azerbaijani national or ethnic origin; [and]

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

By an Order dated 21 January 2022, the Court fixed 23 January 2023 and 23 January 2024 as the respective time-limits for the filing of a Memorial by Azerbaijan and a Counter-Memorial by Armenia.

On 4 January 2023, Azerbaijan submitted a new Request for the indication of provisional measures, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court. In its Request, Azerbaijan states that “new evidence has emerged that Armenia, contradicting representations it made to the Court in 2021, deliberately continued to lay landmines in or after 2021 in civilian zones to which displaced Azerbaijanis are slated to return”. It adds that “[i]n October 2022, Azerbaijan also discovered booby traps in civilian homes that were planted or facilitated by Armenia’s forces”. According to Azerbaijan, “[t]o date, Armenia has refused to share information in its possession about the location of landmines and booby traps laid in areas over which Azerbaijan has recently regained control”. Referring to CERD, Azerbaijan contends that Armenia’s conduct is discriminatory both in purpose and effect, and that the ongoing and serious threat of further irreparable harm to certain rights enshrined in CERD render its Request urgent.

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

The REGISTRAR: Thank you Madam President:

“Azerbaijan, in its own right and as *parens patriae* of its citizens, respectfully requests the Court as a matter of urgency to indicate the following provisional measures, which are directly linked to the rights that form the subject matter of this dispute, pending its determination of this case on the merits:

- (a) Armenia shall immediately take all necessary steps to enable Azerbaijan to undertake the prompt, safe and effective demining of the towns, villages, and other areas to which Azerbaijani civilians will return in the Lachin District, Kalbajar District and other formerly occupied districts of Azerbaijan, including by providing information about the location, quantity, type and characteristics of landmines, booby traps and any other explosive devices in these areas, in order to enable Azerbaijani internally displaced persons to return to their homes; and

(b) Armenia shall immediately cease and desist from any further efforts to plant or to sponsor or support the planting of landmines and booby traps in these areas to which Azerbaijani civilians will return in Azerbaijan's territory, including, but not limited to, the use of the Lachin Corridor for this purpose.”

Thank you, Madam President.

The PRESIDENT: I thank the Registrar. Immediately after the Request for the indication of provisional measures of 4 January 2023 was filed, the Deputy-Registrar transmitted a certified copy thereof to the Government of Armenia. 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 Article 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 the 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 oral proceedings, during which they could present their observations on the Request for the indication of provisional measures, would be held on Tuesday 31 January 2023, starting at 10 a.m.

I would now like to welcome the delegations of the Parties. I note the presence of the two Agents, accompanied by members of their respective State's delegation. This morning, the Court will hear Azerbaijan, which has submitted the Request for the indication of provisional measures. It will hear Armenia this afternoon at 4 p.m. For the purposes of this single round of oral argument, each of the Parties will have available to it a two-hour sitting.

In this first sitting, Azerbaijan 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 I give the floor to the Agent of Azerbaijan, 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 Azerbaijan, His Excellency Mr. Elnur Mammadov. You have the floor, Excellency.

Mr. MAMMADOV:

I. INTRODUCTORY STATEMENT

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

2. Azerbaijan appeals to the Court today for one reason and one reason only: to stop the continued murder and maiming of Azerbaijanis, on the basis of their ethnic and national origin, by explosive devices recently planted by the Republic of Armenia, after the signing of the Trilateral Statement in November 2020. Just over a year ago, Armenia told the Court that it “is *not* planting landmines in the territory of the Republic of Azerbaijan”¹. This was false. Azerbaijan has uncovered new facts regarding Armenia’s ongoing planting of landmines and other explosive devices that warrant this fresh request for provisional measures: since the Court’s 7 December 2021 Order, Azerbaijan has discovered over 2,700 *new* landmines, manufactured in Armenia in 2021, laid in Azerbaijan’s territory — including over 1,600 mines planted in or near civilian areas far from the Azerbaijan–Armenia border, to which displaced Azerbaijanis are returning. Azerbaijan also found booby traps, hidden in houses belonging to Azerbaijanis prior to Armenia’s occupation and built with trip wires to kill or maim any Azerbaijanis returning home.

3. These explosive devices pose an urgent threat of death and serious injury to Azerbaijanis. I note at the outset that I and Azerbaijan’s legal counsel that follow will refer to Azerbaijanis as an ethnic-origin or national-origin group, and not in relation to nationality or citizenship.

4. *First: This threat is real.* Since 10 November 2020, when the Trilateral Statement signed by Azerbaijan, Armenia and the Russian Federation agreeing to the cessation of hostilities came into effect, 282 Azerbaijanis have been either injured or killed by explosive devices planted in or around the territories that Azerbaijan liberated from Armenia’s occupation². This includes 33 civilians who

¹ CR 2021/25, p. 13, para. 10 (Kirakosyan).

² Ann. 22, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 17 January 2023, No. 11-4/2-87/2023, with enclosures (certified translation); Ministry of Foreign Affairs of the Republic of Azerbaijan, No:017/23, *Commentary on the statement of the President of the Council of Europe’s Committee of Ministers regarding the situation around Lachin road* (19 Jan. 2023), <https://mfa.gov.az/en/news/no01723>.

have been killed and a further 86 civilians injured by landmines³. Among the victims are Azerbaijanis violently expelled by Armenia 30 years ago seeking to return home, as well as Azerbaijani workers engaged in demining and rebuilding the territories devastated by Armenia's occupation. The victims are women and men, young and old — from an 11-year-old boy tending cattle, to a 64-year-old man visiting a family member's grave⁴. The trait that these now hundreds of victims share is that they are all of Azerbaijani ethnic and/or national origin. In your folder at tab 4 are the photographs and information of these victims, from 10 November 2020 to 14 December 2022.

5. *Second: This threat is ongoing.* Forty-five of these Azerbaijani civilian casualties occurred after the Court's 7 December 2021 provisional measures Order⁵. And the casualty count only continues to rise: as recently as this past December, seven Azerbaijanis were injured and one killed as a result of landmine blasts in Chirag Village, in the formerly occupied Kalbajar District⁶. This village sits 25 km away from the Azerbaijan–Armenia border and no defensive lines passed through the village during either the First or Second Garabagh Wars⁷. Four of the Azerbaijanis injured by the blasts were civilian employees of a telecommunications company⁸. They were engaged in vital reconstruction work; work that must be completed before the over 700,000 Azerbaijanis internally displaced by Armenia's campaign of ethnic cleansing can return home. If Azerbaijanis preparing the liberated territories for the return of those displaced cannot do so safely, how can displaced

³ Ann. 23, Letter from Elchin Mammadov, First Deputy Prosecutor General of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 23 January 2023, No. 14/cix 9-23, with enclosures (certified translation).

⁴ *Ibid.*; Ann. 22, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 17 January 2023, No. 11-4/2-87/2023, with enclosures (certified translation).

⁵ Ann. 23, Letter from Elchin Mammadov, First Deputy Prosecutor General of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 23 January 2023, No. 14/cix 9-23, with enclosures (certified translation).

⁶ "Azerbaijani MoD: Mines in Kalbajar's Chirag village were likely buried in December 2020", *APA* (15 Dec. 2022), <https://apa.az/en/military/azerbaijani-mod-mines-in-kalbajars-chirag-village-were-likely-buried-in-december-2020-391779>; Ann. 25, Letter from Khanlar Valiyev, Lieutenant General of Justice of the Deputy Prosecutor General of the Republic of Azerbaijan Military Prosecutor of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 19 January 2023, No. HP-06/40, with enclosures (certified translation).

⁷ "Azerbaijani MoD: Mines in Kalbajar's Chirag village were likely buried in December 2020", *APA* (15 Dec. 2022), <https://apa.az/en/military/azerbaijani-mod-mines-in-kalbajars-chirag-village-were-likely-buried-in-december-2020-391779>.

⁸ Ann. 25, Letter from Khanlar Valiyev, Lieutenant General of Justice of the Deputy Prosecutor General of the Republic of Azerbaijan Military Prosecutor of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 19 January 2023, No. HP-06/40, with enclosures (certified translation).

Azerbaijanis safely exercise their right to return? The purpose and effect of Armenia's conduct are clear: Azerbaijanis are not meant to.

6. The crux of the matter is this: Azerbaijanis are continuing to suffer serious injury and die because Armenia refuses to share the information that could save them. As the Court is aware, international organizations and foreign States have expressed grave concerns about the rising death toll from landmines in the liberated territories and the obstacle this poses to IDP return⁹. Azerbaijan has raised this issue in every conceivable forum to no avail: first raising it in August 2022 with the Russian peacekeeping forces shortly after the initial set of 2021 mines was discovered¹⁰, and then with the United Nations Secretary-General on 24 August 2022¹¹; then through bilateral correspondence with Armenia on 15 September 2022¹² and, receiving no response, in correspondence before the Court on 22 September 2022¹³; before the United Nations Secretary-General again in November and December 2022¹⁴; and most recently with the Russian Federation on 23 December 2022¹⁵. But Armenia has repeatedly and categorically refused to engage on this issue, and — as you heard yesterday — pulled out of what were supposed to be trilateral negotiations on 23 December, with no prior notice or justifiable excuse¹⁶. With no other recourse,

⁹ See e.g. Parliamentary Assembly of the Council of Europe, *Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict*, resolution 2391 (2021), <https://pace.coe.int/pdf/7ec6e96b54134e95cad9686e43ee33520a8a81f83fe6891990a95ff8391c2b5b/resolution%202391.pdf>; J. Kucera, "Azerbaijan demands 'mine maps' from Armenia", Eurasianet (11 June 2021), <https://eurasianet.org/azerbaijan-demands-mine-maps-from-armenia>.

¹⁰ Ann. 5, Letters from Lieutenant General Azer Aliyev, Head of the Investigation Department of the Ministry of Defence of the Republic of Azerbaijan, to Major General Andrey Volkov Alexandrovich, Commander of the Russian Peacekeeping Forces (2022) (certified translation).

¹¹ Ann. 11, Letter dated 24 August 2022 from the Chargé d'affaires ad interim of the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/76/930-S/2022/642.

¹² Ann. 3, Letter dated 15 September 2022 from Mr. Elnur Mammadov, Agent of the Republic of Azerbaijan, to Dr. Yeghishe Kirakosyan, Agent of the Republic of Armenia.

¹³ Ann. 4, Letter dated 22 September 2022 from Mr. Elnur Mammadov, Agent of the Republic of Azerbaijan, to Mr. Philippe Gautier, Registrar of the International Court of Justice.

¹⁴ Ann. 10, Letter dated 4 November 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/77/597; Letter dated 28 November 2022 from the Minister of Foreign Affairs of the Republic of Azerbaijan addressed to the Secretary-General, No. 6/42-97/01/22; Ann. 2, Letter dated 19 December 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. S/2022/979.

¹⁵ Ministry of Foreign Affairs of the Russian Federation, *Foreign Minister Sergey Lavrov's statement and answers to media questions at a joint news conference with Foreign Minister of the Republic of Azerbaijan Jeyhun Bayramov following talks, Moscow, December 23, 2022*, https://mid.ru/en/press_service/minister_speeches/1845369/.

¹⁶ Ministry of Foreign Affairs of the Russian Federation, *Foreign Minister Sergey Lavrov's opening remarks during a meeting with Foreign Minister of Azerbaijan Jeyhun Bayramov, Moscow (23 Dec. 2022)*, https://mid.ru/en/foreign_policy/news/1845285/.

Azerbaijan now turns to the Court, seeking provisional measures to prevent further irreparable harm to the rights of Azerbaijanis under CERD.

7. Armenia's planting of landmines and booby traps in or near areas where Azerbaijanis once lived and are expected to return, specifically to terrorize Azerbaijanis, must be understood in the broad context of its over three-decade long campaign of ethnic cleansing and anti-Azerbaijani incitement. During this time, Armenia invaded and occupied a significant part of Azerbaijan's territory in order to create a unified, monoethnic, Armenian State. In that pursuit, any trace of the existence of Azerbaijanis was systematically erased from Armenia and the formerly occupied territories of Azerbaijan. All of this, for one reason: these people, these buildings, these cultural sites, this land, were Azerbaijani and therefore their coexistence alongside Armenians was, in the words of Armenian government officials, "impossible"¹⁷, "not compatible"¹⁸, "a tragedy in itself"¹⁹.

8. When Azerbaijan liberated its territories from occupation after the Second Garabagh War, Armenia agreed, under the Trilateral Statement, to a number of binding commitments, including, *one*: "[a] complete ceasefire and termination of all hostilities"; *two*: the return of the Aghdam, Kalbajar and Lachin Districts to Azerbaijan; *three*: withdrawal of Armenia's forces from Azerbaijan's territory alongside the deployment of the Russian peacekeepers; and *four*: the return of displaced persons to the liberated territories²⁰.

9. As discussed yesterday, the Trilateral Statement also provided for a new road through the Lachin District, within the 5 km-wide Lachin Corridor that would remain under the control of the Russian peacekeeping forces, to connect Armenia to Khankandi and the surrounding areas where the Russian peacekeepers are temporarily deployed²¹. The new road was to bypass towns formerly

¹⁷ Selection of anti-Azerbaijani posts by Armenian officials (certified translation), Memorial of Azerbaijan, Ann. 9, p. 12.

¹⁸ *Black Garden: Armenia and Azerbaijan Through Peace and War* (New York University Press, 2013), Memorial of Azerbaijan, Ann. 91, p. 310 (citing author's interview with Serzh Sargsyan, 15 Dec. 2000).

¹⁹ Memorial of Azerbaijan, Ann. 9, p. 2.

²⁰ Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation, Annex to the letter dated 10 November 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, UN doc. S/2020/1104, paras. 1-2, 4 and 6-7.

²¹ Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation, Annex to the letter dated 10 November 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, UN doc. S/2020/1104, para. 6.

populated by Azerbaijanis, to allow displaced Azerbaijanis to begin their return to those areas²². This new Lachin Road was completed in August 2022, and Azerbaijan regained control of the town of Lachin and the villages of Zabukh and Sus at that time. Since Azerbaijan regained control of these areas and began demining and reconstruction work in preparation for welcoming displaced Azerbaijanis home, it has discovered *newly constructed* booby traps and *newly laid* Armenian-made landmines, planted in or near Azerbaijani villages.

10. In October 2022, in the villages of Zabukh and Sus, Azerbaijan discovered explosive booby traps carefully hidden in civilian structures and set with military precision. Madam President, honourable Members of the Court, you have in your folders excerpts from a report submitted by Azerbaijan's Mine Action Agency, known as "ANAMA", which contains detailed information about these booby traps. As the ANAMA report demonstrates, and as Azerbaijan's distinguished counsel will further explain, these traps were set in the very homes and other structures that had belonged to the Azerbaijanis violently expelled from these villages in the early 1990s²³.

11. In addition, since August 2022, Azerbaijan's Ministry of Defence, which is conducting mine clearance operations in the Lachin and Kalbajar Districts, has discovered *over 2,700 new landmines* in those districts that were manufactured *in Armenia in 2021*²⁴. More than half of those landmines were found near villages that had been returned to Azerbaijan under the Trilateral Statement in 2020, which were formerly inhabited only by Azerbaijanis and to which Azerbaijanis are due to return²⁵. And the mines were necessarily transported to these areas, which are far from the

²² Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation, Annex to the letter dated 10 November 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, UN doc. S/2020/1104, para. 6.

²³ Letter dated 4 November 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/77/597; Ann. 22; Ann. 26, Letter from Matin Eynullayev, Chairman of the State Service on Property Issues under the Ministry of Economy of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 19 January 2023, No. 3-21-3/2- 643/2023, with enclosures (certified translation).

²⁴ Ann. 7, Letter from Major General Anar Karimov, Head of the General Department of Engineering Troops, Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan (30 Dec. 2022) (certified translation).

²⁵ Ann. 7; Ann. 28, Letter from Robert E. Unsworth, Principal of Industrial Economics, Incorporated, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 23 January 2023, with enclosures.

Azerbaijan–Armenia border, via what should be the exclusively humanitarian Lachin Corridor, as that is the only route from Armenia to these areas of Azerbaijan²⁶.

12. Since Azerbaijan began raising the issue of the new mines and traps last August, Armenia has responded only with blanket denials, including in correspondence before the Court on 27 September 2022²⁷. But more recently, including last week through its Foreign Minister and in Armenia’s Annex 1 submitted to the Court, Armenia has come forward with the allegation that these Armenian-made landmines actually were taken by Azerbaijan *from Armenia* in 2021-2022²⁸ and then somehow transported to the interior of Azerbaijan where they were found in order to display them for “propaganda purposes”²⁹. To start, Azerbaijan has never occupied Armenia’s territory; the clashes Armenia appears to be referring to occurred along the non-demarcated Azerbaijan-Armenia border, not in Armenia, and were provoked by Armenia’s military, as documented via contemporaneous releases from Azerbaijan’s Ministry of Defence³⁰. More fundamentally, Azerbaijan has never taken Armenia’s landmines and transported them for propaganda purposes. This accusation is a blatant fabrication by Armenia, and it is no surprise that nowhere in any public statements or their annexes does Armenia point to any evidence in support of it. Let me assure the Court that Azerbaijan is not putting its people’s lives at risk to take thousands of highly dangerous anti-personnel mines and move them into Azerbaijan. This is absurd.

13. Another fiction that Armenia seems to be propounding in its annexes, which you may hear this afternoon, is that these new mines were laid along a new “line of contact” between Azerbaijan’s forces and the self-styled “Nagorno-Karabakh Defence Army”. But there is no such entity separate

²⁶ Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation, Annex to the letter dated 10 November 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, UN doc. S/2020/1104, para. 6.

²⁷ Ann. 6, Letter dated 27 Sept. 2022 from Mr. Yeghishhe Kirakosyan, Agent of the Republic of Armenia, to Mr. Philippe Gautier, Registrar of the International Court of Justice.

²⁸ Ministry of Foreign Affairs of the Republic of Armenia, “The interview of Foreign Minister of Armenia Ararat Mirzoyan to ‘Armenpress’ news agency”, 20 Jan. 2023, available at https://www.mfa.am/en/interviews-articles-and-comments/2023/01/20/fm_mirzoyan_armenpress/11834.

²⁹ *Ibid.*

³⁰ Ann. 4, Azerbaijan’s 22 Sept. 2022 Letter to the Court, Exhibit 6, Compendium of press releases by the Ministry of Defence of the Republic of Azerbaijan, Ministry of Defence of the Republic of Azerbaijan, “Information of the Ministry of Defence”, 26 Mar. 2022, p. 1; *ibid.*, “Azerbaijan Army positions were subjected to fire”, 31 July 2022, p. 2; *ibid.*, “Information of the Ministry of Defence”, 3 Aug. 2022, p. 3; *ibid.*, “Azerbaijan Army positions were subjected to fire”, 5 Aug. 2022, p. 4; *ibid.*, “Armenian armed forces committed large-scale provocations in Dashkasan, Kalbajar and Lachin directions”, 13 Sept. 2022, p. 5.

and apart from the Armed Forces of Armenia³¹; these are simply the military forces of Armenia's illegally installed régime in Garabagh, which Azerbaijan will refer to as the "installed régime". There is also no new line of contact contemplated by the Trilateral Statement — quite the opposite. The prior line of contact separated Armenia's forces in the then-occupied territories from the rest of Azerbaijan. But the Trilateral Statement mandated "the withdrawal of the Armenian troops" concurrently with the deployment of the Russian peacekeeping forces. And that was the whole idea of the deployment of the Russian peacekeeping forces in the area. The reference to a "contact line" in paragraph 3, as the Court can see on the slide, is only to define the area where the peacekeepers would deploy. There is thus no world under the Trilateral Statement where Azerbaijan's forces and Armenia's forces could now be facing each other across a new line of contact located within the sovereign territory of Azerbaijan, as asserted by Armenia in its Annex 1. This is a deliberate misrepresentation of the Trilateral Statement, conjured by Armenia to cobble together some kind of justification for landmines not on the international border, but within Azerbaijan's territory.

14. To close, in October 2021, we informed the Court that absent urgent intervention, it would take up to a decade to complete clearance operations sufficiently to allow the majority of displaced Azerbaijanis to return home. Now, based on Armenia's ongoing conduct and the discovery of thousands of new mines and explosive devices, updated estimates place this number at closer to 30 years³². And all the while, the number of Azerbaijani deaths and injuries from Armenia's explosive devices continues to tick higher and higher.

15. Azerbaijan urgently needs the requested measures in order to protect against these ongoing violations of CERD.

16. Madam President, honourable Members of the Court, Azerbaijan's distinguished counsel will now address our request for provisional measures to explain why an order indicating each measure is warranted and urgently needed.

17. *First*, Mr. Vaughan Lowe will discuss the framework of Azerbaijan's provisional measures request.

³¹ Memorial of Azerbaijan, paras. 93-94.

³² President of the Republic of Azerbaijan Ilham Aliyev, "Ilham Aliyev takes part in plenary session of 6th Summit of Conference on Interaction and Confidence Building Measures in Asia in Astana", 13 Oct. 2022, available at <https://president.az/en/articles/view/57553>.

18. *Second*, Ms Catherine Amirfar will explain the new evidence underpinning Azerbaijan's request and why Azerbaijan's claims concern plausible rights under CERD, because Armenia's actions have the *effect* of discriminating against Azerbaijanis.

19. *Third*, Ms Natalie Reid will explain why Azerbaijan's claims concern plausible rights under CERD, for the additional reason that Armenia's actions have the *purpose* of discriminating against Azerbaijanis.

20. *Fourth*, Professor Laurence Boisson de Chazournes will address the link between the requested measures and the rights Azerbaijan seeks to protect under CERD, as well as further explain the urgency of Azerbaijan's request.

21. *Finally*, I will return to close with Azerbaijan's submissions.

22. Thank you, Madam President, honourable Members of the Court, for the privilege of appearing before you. I now kindly ask you, Madam President, to invite Mr. Vaughan Lowe to address the Court.

The PRESIDENT: I thank the Agent of Azerbaijan for his statement. I now invite Mr. Vaughan Lowe to take the floor. You have the floor.

Mr. LOWE: Thank you, Madam President.

II. THE FRAMEWORK OF AZERBAIJAN'S PROVISIONAL MEASURES REQUEST

1. Madam President, Members of the Court: my task this morning is to describe the framework of Azerbaijan's request for provisional measures, and incidentally to explain its differences from Armenia's request.

2. Those differences are important to Azerbaijan not only because they distinguish sharply between the respective merits of the two requests, but also because Azerbaijan wishes to put to rest any thought that its request is a tit-for-tat reaction to Armenia's request. It is not.

3. Azerbaijan's request concerns the danger posed by landmines and booby traps that were recently planted, by or under the eyes of Armenian forces, in particular areas of Azerbaijan where

internally displaced Azerbaijanis are known to be returning to their homes, pursuant to the agreement between Armenia and Azerbaijan³³.

4. This slide shows such a device, wired to explode when anyone opens the door to go into the house. This was found in an area formerly occupied by Armenia from which the Azerbaijani population had been displaced. There are no Armenian soldiers in the Azerbaijani house, defending themselves with the device. There is no apparent reason for supposing that the first person to open the door will be an Azerbaijani soldier. The device could be triggered by a returning houseowner, or a builder sent in to repair the damage to the house, or by a child. The same is true of the landmines hidden in the ground.

5. These devices are intended to kill people who trigger them accidentally; and that is what they are doing. So far, 282 people have been injured or killed since the signing of the Trilateral Statement in November 2020³⁴. If one person were killed, we would call it murder: but there are literally thousands of these devices, planted in Azerbaijani areas with the intention of maiming or killing those who stumble across them.

6. These latest Armenian devices cannot be brushed aside as unfortunate remnants of the hostilities. As Ms Amirfar will explain, these landmines were certainly planted during or *after* 2021: that is, after the agreed ceasefire imposed by the Trilateral Statement of November 2020. And they were planted in and around specifically Azerbaijani civilian communities, in areas previously controlled by Armenia but from which regular Armenian troops have now been withdrawn³⁵. New minefields are still being discovered, most recently, last November.

7. These hidden devices are killing innocent civilians. The deaths and the maimings can be stopped, or at least greatly reduced, by Armenia telling us where they are hidden. There is one simple

³³ Ann. 1, Trilateral Statement, para. 7.

³⁴ Ann. 22, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 17 Jan. 2023, No. 11-4/2-87/2023, with enclosures (certified translation); Ministry of Foreign Affairs of the Republic of Azerbaijan, No. 017/23, "Commentary on the statement of the President of the Council of Europe's Committee of Ministers regarding the situation around Lachin road", 19 Jan. 2023, available at <https://mfa.gov.az/en/news/no01723>.

³⁵ See Ann. 28, Letter from Robert E. Unsworth, Principal of Industrial Economics, Incorporated, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 23 Jan. 2023, with enclosures, p. 2; Ann. 7, Letter from Major General Anar Karimov, Head of the General Department of Engineering Troops, Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 30 Dec. 2022 (certified translation); Ann. 1, Trilateral Statement, paras. 4, 6.

question for Armenia to answer this afternoon: why won't you tell us where these hidden devices are and save lives? What is Armenia's reason for letting the deaths and the maimings continue?

8. The continuing danger posed by the landmines and booby traps is a matter that Azerbaijan has tried hard to resolve in negotiations. It is a matter that could and should have been resolved before now, in talks between Azerbaijan and Armenia. But as you have heard, just last month, on 23 December, Armenia failed to attend the scheduled talks that had been arranged in Moscow, without giving any warning or explanation to Russia or to Azerbaijan³⁶. It became apparent that there is no realistic possibility of negotiations producing a solution. So, on 4 January 2023, Azerbaijan filed its Request.

9. There is new evidence, of new mines, and in a new situation³⁷. That is why this Request was filed, why it was filed when it was filed; and why it is urgent. One step, the handing over of information on the locations of these explosive devices, will save lives in the coming weeks and months. For reasons it will have the opportunity to explain to you this afternoon, Armenia will not take that step and so Azerbaijan is seeking the assistance of the Court.

10. Its Request is an appeal to the Court to prevent yet more racially motivated deaths and maiming of Azerbaijanis before the merits of the case against Armenia's campaign of ethnic cleansing can be decided.

11. If the Court has any hesitation, we ask it to bear in mind two things. First, these devices can have no defensive purpose. They are not protecting any Armenian troops or any Armenian territory. Certainly, the booby traps in the homes of Azerbaijanis who had been violently expelled can have no conceivable purpose which is defensive — no purpose whatsoever, other than preventing people returning to their homes.

12. Second, the devices are planted specifically in areas of Azerbaijan from which Azerbaijani residents were driven out by Armenia, and they have the specific effect of preventing those Azerbaijani citizens from returning to their homes.

³⁶ See Ministry of Foreign Affairs of the Russian Federation, Foreign Minister Sergey Lavrov's statement and answers to media questions at a joint news conference with Foreign Minister of the Republic of Azerbaijan Jeyhun Bayramov following talks, Moscow, 23 Dec. 2022, available at https://mid.ru/en/press_service/minister_speeches/1845369/.

³⁷ Rules of Court, 1978, Article 75, para. 3.

13. It is the second point that engages rights and duties under the CERD. The Court has recognized that the use of hidden explosives with the object or effect of driving persons of a certain national or ethnic origin from a particular area, as well as preventing their return thereto, can implicate rights under the Convention³⁸.

14. Armenia should disclose the locations of the devices. The Court has long recognized this. It addressed the point in the very first case to come before it. As it said in its Judgment in the *Corfu Channel* case, speaking of mines laid in Albanian territorial waters:

“The obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations are based, not on the Hague Convention of 1907, No. VIII, which is applicable in time of war, but on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war”³⁹.

15. Similarly, the Court in the *Military and Paramilitary Activities* case held that the United States had breached its obligations under customary international law by “failing to make known the existence and location of the mines laid by it” to Nicaragua⁴⁰. It is upon the CERD and those “elementary considerations of humanity, even more exacting in peace than in war”⁴¹, that Azerbaijan bases the present Request.

16. As my colleague Ms Reid will show, and Armenia has not denied, the markings on the landmines indicate that they were manufactured in Armenia, by an Armenian company, Hayk-Meg LLC, which made landmines for the Armenian Government. The mines were transported from Armenia into Azerbaijan’s territory, where Armenia has admitted that members of the armed forces of Armenia remained deployed as recently as September 2022⁴².

17. Armenia might try to argue that there is no proof that its forces actually laid the mines. But that is irrelevant. The mine-laying (to use the Court’s words in *Corfu Channel*) surely “could not

³⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 425, para. 53.

³⁹ *Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22.

⁴⁰ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment. I.C.J. Reports 1986*, p. 146, para. 292. See also *ibid.*, p. 112, para. 215.

⁴¹ *Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22.

⁴² “Armenia military returns from NK after wartime support deployment”, ArmenPress, 19 July 2022, available at <https://armenpress.am/eng/news/1088539/>.

have been accomplished without the knowledge” of the Armenian forces — they must have been aware of the location of the minefields, not least to prevent the Armenian forces themselves from stumbling into them⁴³.

18. More particularly, CERD Article 2 prohibits *sponsoring or supporting* discriminatory acts⁴⁴. Armenia obviously continued to supply or to allow the supply of the mines, regardless of who actually laid the minefields. Armenia’s argument that they were not the ones who actually wielded the spade and concealed the mines and booby traps is factually doubtful and legally immaterial to their obligations under CERD Article 2.

19. The booby traps, as distinct from the mines, were constructed from hand grenades and other explosives. They used military materials, and their construction necessarily involved some prior knowledge of how those material behave and operate. Whether those explosive traps were placed by Armenian soldiers or by departing Armenian civilian settlers, the people placing the devices must have obtained the equipment somewhere. Civilians don’t keep hand grenades and explosives in their homes or buy them in local shops. And as Ms Reid will explain, the way these particular booby traps are devised, packed with nails around explosives, makes clear not only the underlying military expertise in their manufacture, but also the intent to inflict as much physical injury as possible on Azerbaijanis attempting to access the homes and civilian structures in which they were found.

20. Moreover, Armenia had control of the areas where these explosives were hidden up and until August 2022; and in addition it had under CERD Article 2 the obligation actively to take steps to prevent discriminatory acts. Article 2 requires States not to *sponsor, defend or support* racial discrimination by any persons or organizations: Armenia was and is under an obligation to take action.

21. It is important to remember that for *three decades* Armenia illegally occupied and had effective control over this part of Azerbaijan’s territory. Armenia exercised control by the extensive use of military force (and indeed by refusing to withdraw its forces despite repeated demands from

⁴³ *Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949, p. 22.*

⁴⁴ CERD, Article 2 (1) (b).

the international community); as well as by installing and controlling an illegal régime within Azerbaijan's territory.

22. In 2015, the Grand Chamber of the European Court of Human Rights confirmed Armenia's effective control over significant parts of Azerbaijan's territory in its *Chiragov* decision. It held that Armenia and its installed régime were "highly integrated in virtually all important matters", and that the installed régime was completely dependent upon Armenia⁴⁵, including in the military, law enforcement and local government sectors.

23. That control exercised by Armenia over these areas continued after the *Chiragov* decision. Throughout the Second Garabagh War in 2020, Armenia controlled and directed all military forces operating in Garabagh⁴⁶. And in the aftermath, as the Trilateral Statement makes plain, Armenia remained in control of sizeable parts of Azerbaijan's territory. Armenia then signed the 2020 Trilateral Statement, which required it to withdraw its forces and to hand over Lachin, Aghdam and Kalbajar districts⁴⁷.

24. Armenia controlled the handover of the towns and villages in the Lachin District, where the booby traps were found. During this process, Armenian troops either directly participated in, or at the very least permitted and failed to prevent the installation of booby traps and explosives, and actively participated in the destruction of property during their withdrawal⁴⁸. Determination of actual responsibility is, of course, a matter for the merits stage.

25. It also needs to be remembered that Armenia was responsible for the illegal placement of settlers in these areas of the formerly occupied Azerbaijani territories in the first place. Armenia orchestrated their settlement and offered financial incentives and even citizenship to those who would

⁴⁵ *Chiragov and Others v. Armenia*, App. No. 13216/05, European Court of Human Rights, Judgment, Merits, 16 June 2015, para. 186.

⁴⁶ Ann. 33 to Memorial of Azerbaijan, Letter from Hilal Najafov, Major-General of the Ministry of Defence of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 9 Jan. 2023, No. 15/38 (certified translation), Exhibit B, Karen Shakaryan, Major General of the "Defence Army", Instructions of the Commander of the 10th mountain-shooting division, Directive N 0671, 25 Sept. 2020 (certified translation).

⁴⁷ Ann. 1, Trilateral Statement, paras. 2, 4, 6.

⁴⁸ See Memorial of Azerbaijan, pp. 229-237, paras. 284-290. See Ann. 6 to Memorial of Azerbaijan, Photographs of the scorched earth tactics of departing Armenian soldiers and civilians; Letter dated 18 Dec. 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General, doc. A/75/660-S/2020/1267, 22 Dec. 2020.

stay⁴⁹. These settlers included Armenians from Syria and elsewhere, whose desperation Armenia seized upon in placing them in the territories⁵⁰.

26. Moreover, when the new Lachin road provided for in the Trilateral Statement⁵¹ was completed, it was Armenia's installed régime which told the settlers to leave and when to do so⁵². Armenia organized relocation of the settlers⁵³, and during the handover, the local "village head" directed the illegal settlers to turn to "Pashinyan" — the Armenian Prime Minister — with any complaints⁵⁴.

27. The Court has already ruled, in its 7 December 2021 Order, that prima facie jurisdiction exists and that there are plausible links to plausible CERD rights⁵⁵. Urgency, I have addressed above: it is literally a matter of acting now to save civilian lives.

28. It really is as simple as that. The mines and booby traps are having the effect of preventing Azerbaijanis from returning to their homes. Armenia knows where they are and ought to have stopped or prevented their deployment. In any event, elementary considerations of humanity require it to pass on information on the location and characteristics of these explosives before more people are killed by them and before the breaches of the CERD are further compounded.

29. That, in broad terms, is Azerbaijan's case. My colleagues will now address the request in more detail. Madam President, Members of the Court, I thank you for your attention and ask that you now invite Ms Catherine Amirfar to the lectern.

The PRESIDENT: I thank Mr. Lowe. I now invite Ms Catherine Amirfar to address the Court. You have the floor.

⁴⁹ See Memorial of Azerbaijan, pp. 197-198, para. 243.

⁵⁰ *Ibid.*

⁵¹ Ann. 1, Trilateral Statement, para. 6.

⁵² See "Yerevan Signals More Concessions to Baku while Fate of Artsakh Villages Hangs in Balance", 28 June 2022, available at <https://asbarez.com/yerevan-signals-more-concessions-to-baku-while-fate-of-artsakh-villages-hangs-in-balance/>; see "Artsakh authorities order residents of Berdzor and Aghavo to leave their homes by August 25", News.am, 5 Aug. 2022, available at <https://news.am/eng/news/715066.html>.

⁵³ *Ibid.*

⁵⁴ See "Artsakh authorities order residents of Berdzor and Aghavo to leave their homes by August 25", News.am, 5 Aug. 2022, available at <https://news.am/eng/news/715066.html>.

⁵⁵ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021*, para. 53.

Ms AMIRFAR:

III. THE RIGHTS INVOKED BY AZERBAIJAN UNDER CERD ARE PLAUSIBLE DUE TO THE DISCRIMINATORY EFFECT OF ARMENIA'S UNLAWFUL CONDUCT

1. Madam President, honourable Members of the Court: it is a privilege to appear before you and an honour to have been entrusted with the presentation of this part of Azerbaijan's case.

2. I will focus today on the plausibility of the rights invoked by Azerbaijan in its request, in accordance with the Court's settled jurisprudence regarding the indication of provisional measures⁵⁶. Specifically, Azerbaijan has plausibly shown that Armenia has violated CERD by planting booby traps and landmines in Azerbaijan's territory that have the effect and the purpose of targeting Azerbaijanis on the basis of ethnic or national origin.

A. What is new

3. I start with the circumstances that have made it necessary for Azerbaijan to renew its request for provisional measures, consistent with Article 75 of the Rules of Court⁵⁷. As explained by the Agent, Azerbaijan did not take returning to the Court lightly. Azerbaijan requests provisional measures at this time because of new urgency in the face of recent deaths and injuries, and because of new facts demonstrating the racially discriminatory purpose and the racially discriminatory effect of Armenia's actions.

4. In its Order of 7 December 2021 addressing Azerbaijan's previous request for provisional measures, the Court recognized that "a policy of driving persons of a certain national or ethnic origin from a particular area, as well as preventing their return thereto, can implicate rights under CERD"⁵⁸. It furthermore recognized "that such a policy can be effected through a variety of military means"⁵⁹. But the Court found that the plausibility requirement had not been met at that time because of lack

⁵⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 14 June 2019, I.C.J. Reports 2019 (I), p. 370, para. 26.*

⁵⁷ Rules of Court, 1978, Article 75, para. 3.

⁵⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021, para. 53.*

⁵⁹ *Ibid.*

of evidence indicating that Armenia's alleged conduct impaired the equal enjoyment of the rights of Azerbaijanis on the basis of ethnic or national origin⁶⁰.

5. The Court will recall that during the oral proceedings on that request, Armenia repeatedly argued that any landmines had been laid for defensive military purposes only⁶¹. First and foremost, Armenia represented to the Court that "Armenia is *not* planting landmines in the territory of the Republic of Azerbaijan"⁶². It also represented that any landmines had been laid "for *defensive* purposes along the 'line of contact' in the eastern and northern part of Nagorno-Karabakh", and therefore should be "left in place given the military purpose that they served"⁶³.

6. Madam President, honourable Members of the Court, new facts have come to light since the Court last addressed the issue of Armenia's conduct during the pendency of these proceedings. These facts make clear that Armenia's positions cannot be credited and that the indication of provisional measures is warranted. This is for three main reasons that I will touch upon briefly here, which Ms Reid will then detail in the context of addressing how Armenia's purpose supports the indication of the requested measures.

7. *First*, Azerbaijan has not just found new minefields; it has found explosive booby traps planted in civilian structures in the villages of Zabukh and Sus, which returned to Azerbaijani control in August 2022. These booby traps were planted in places where Azerbaijanis lived and worked before Armenia's occupation, and where displaced Azerbaijanis are returning. As I will return to, in these circumstances, the booby traps could serve no military purpose, defensive or otherwise, under international law, and in fact, Armenia denies that its armed forces deployed these booby traps, explicitly acknowledging that their placement in civilian structures could not be justified by some legitimate military aim⁶⁴. As to Armenia's denial of the involvement of its armed forces, Armenia cannot hide behind feigned ignorance of those responsible. As Ms Reid will detail shortly, the traps were made from military equipment, and their construction clearly demonstrates military expertise.

⁶⁰ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021*, para. 53.

⁶¹ CR 2021/25, pp. 20-25, 27-33 (Murphy).

⁶² CR 2021/25, p. 13, para. 10 (Kirakosyan).

⁶³ CR 2021/25, p. 22, para. 7 (Murphy); emphasis in original.

⁶⁴ Armenia's Ann. 1.

So, what must that mean? Either the booby traps were laid by the armed forces of Armenia, which the Secretary of the Security Council of Armenia has admitted remained in the formerly occupied territories at least up to September 2022⁶⁵, or by Armenia's forces operating with its installed régime, or by third parties with the assistance or support of such forces, which possess the necessary military expertise. Under any scenario, Armenia's conduct implicates plausible rights under Article 2 of CERD, which as Mr. Lowe went through, sweeps broadly to include the "sponsor[ing], defend[ing] or support[ing]" acts of racial discrimination⁶⁶.

8. *Second*, Azerbaijan has found and continues to find thousands of recently laid landmines since the time of Azerbaijan's last provisional measures request, most recently in November 2022⁶⁷. Contradicting what Armenia previously told the Court, more than half of the landmines found thus far — that is over 1,600, out of over 2,700 landmines — were nowhere near the former "line of contact" that separated Armenia's and Azerbaijan's troops at the north and east of the formerly occupied territories, and nowhere near the international border between Armenia and Azerbaijan⁶⁸. These new landmines were instead laid near villages where Azerbaijanis made up nearly all of the population before the occupation, and where Azerbaijani internally displaced persons are returning following the signing of the Trilateral Statement⁶⁹. Based on their markings, all of these mines were manufactured in Armenia and nearly all of them were manufactured in 2021, after the Trilateral Statement had already required the cessation of all hostilities and required all Armenian troops to leave Azerbaijan's territory. They thus cannot be justified by Armenia's prior argument that they were laid in the heat of armed conflict.

⁶⁵ "Armenia military returns from NK after wartime support deployment", *ArmenPress*, 19 July 2022, available at <https://armenpress.am/eng/news/1088539/>.

⁶⁶ CERD, Article 2 (1) (b).

⁶⁷ See Ann. 7 to Azerbaijan's second Request for provisional measures, 4 Jan. 2023, Letter from Major General Anar Karimov, Head of the General Department of Engineering Troops, Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 30 Dec. 2022 (certified translation), p. 3.

⁶⁸ Armenia's Ann. 1.

⁶⁹ Ann. 1 to Azerbaijan's Request for the indication of provisional measures, 4 Jan. 2023, Trilateral Statement, paras. 4, 6; Ann. 28, Letter from Robert E. Unsworth, Principal of Industrial Economics, Incorporated, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 23 Jan. 2023, with enclosures, p. 2; Ann. 7 to Azerbaijan's second Request for provisional measures, 4 Jan. 2023, Letter from Major General Anar Karimov, Head of the General Department of Engineering Troops, Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 30 Dec. 2022 (certified translation).

9. *Third*, new statements by departing Armenian settlers make clear that these explosive devices were placed as part of a broader campaign to make the territories returned to Azerbaijan simply unliveable and to prevent Azerbaijani civilians, on the basis of their ethnic and national origin, from returning to areas where they had once lived.

10. Armenia will no doubt assert this afternoon, despite this compelling evidence, that the planting of booby traps and landmines did not have the *purpose* of killing, maiming and intimidating Azerbaijanis, and otherwise deterring them from exercising fundamental rights, because of their ethnic origin and national origin. As I will explain, however, regardless of how Armenia tries to argue its “actual” purpose, the new evidence still demonstrates that Armenia’s planting of booby traps and mines has the *effect* of depriving Azerbaijanis of their equal enjoyment of fundamental rights by reason of ethnic and national origin. That discriminatory *effect* alone is sufficient to breach CERD regardless of purpose.

B. The role of “effect” under CERD

11. The discriminatory effect of Armenia’s planting of booby traps and landmines in or near Azerbaijani civilian areas amounts to a breach of CERD. The Court needs no reminder that on account of the plain text of Article 1, which defines “racial discrimination”, CERD prohibits States from engaging in conduct that has the “purpose *or* effect” of impairing the equal enjoyment of human rights and fundamental freedoms on the basis of ethnic or national origin. The use of the disjunctive “or” here means that it is only necessary to demonstrate *either* purpose *or* effect, not both. Therefore, in order to satisfy itself that Azerbaijan’s Request relates to plausible rights under CERD, the Court need only find that Azerbaijan has a plausible case *either* as to Armenia’s discriminatory purpose *or* as to the discriminatory effects of Armenia’s actions. It need not find both.

12. This much the Court has already observed. In the case of *Qatar v. United Arab Emirates*, the Court explained that “the Convention prohibits all forms and manifestations of racial discrimination, whether arising from the purpose of a given restriction or from its effect”⁷⁰. The Committee established by CERD also has emphasized that

⁷⁰ *Application of the International Convention for the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, ICJ Reports 2021*, p. 109, para. 112.

“the definition of racial discrimination . . . expressly extends beyond measures which are explicitly discriminatory, to encompass measures which are not discriminatory at face value but [which] are discriminatory in fact and effect, that is, if they amount to indirect discrimination”⁷¹.

This means that, in the words of the Committee, CERD is violated not only where measures are discriminatory on their face, but also where an “action has an *unjustifiable disparate impact* upon a group distinguished by race, colour, descent, or national or ethnic origin”⁷².

13. The reason that CERD prohibits actions with discriminatory effects is not just because a discriminatory purpose can be hard to prove. Rather, CERD is concerned with the *impact* of laws, policies and practices on the potential victim of discrimination. In other words, CERD recognizes that someone can be disadvantaged in the enjoyment of their human rights based on race, ethnic origin or national origin, even if no one acted with a discriminatory purpose. This point is critical when it comes to rooting out and eliminating all forms of racial discrimination — the animating object and purpose of CERD. As we are all well aware, racism only sometimes manifests directly with an express declaration of “purpose”. Indeed, many forms of racial discrimination are especially harmful precisely because discriminatory policies and practices operate in the shadows, and their infringement on fundamental rights is measured and proven only by whether and how a group of people are defined by their ethnic or national origin feels their negative effects.

C. The rights in issue

14. Before I continue with the discriminatory effect of Armenia’s conduct, I will turn briefly to the nature of the rights implicated here. CERD addresses racial discrimination affecting the recognition, exercise and enjoyment of human rights and fundamental freedoms. Here, there can be no doubt that Armenia’s placement of booby traps and landmines implicates fundamental rights recognized under CERD. Most obviously, Article 5, which provides a non-exhaustive list of such fundamental rights, recognizes the “right to security of person and protection by the State against violence or bodily harm”⁷³. Placing individuals at risk of death or dismemberment undoubtedly impairs their exercise and enjoyment of the rights to security of person and protection from violence.

⁷¹ *Ms. L.R. v. Slovakia*, Communication No. 31/2003, Opinion, doc. CERD/C/66/D/31/2003 (2005), para. 10.4.

⁷² CERD Committee, General Recommendation XIV on Article 1, para. 1, of the Convention, UN doc. A/48/18 (1993), para. 2; emphasis added.

⁷³ CERD, Art. 5 (b).

It follows that placing members of one ethnic or national-origin group *selectively* at risk of death or dismemberment impairs their *equal* exercise or enjoyment of those rights.

15. Furthermore, displaced persons have a fundamental right to return home after the conclusion of armed conflict. Article 5 of CERD specifically recognizes both the right to “freedom of movement and residence within the border of the State”⁷⁴ and the right “to return to one’s country”⁷⁵. Within this framework, the CERD Committee has emphasized the rights of displaced persons to “freely . . . return to their homes of origin under conditions of safety”⁷⁶ following conflicts of an ethnic character. International law also recognizes the right for displaced civilians to return⁷⁷, which underscores that the right to return is a human right and fundamental freedom within the meaning of Article 5 of CERD. By creating fear of death or injury, the presence of booby traps and landmines prevents Azerbaijanis from exercising their right to return on an equal basis.

16. Whatever Armenia’s reasons, motivations, or purpose for planting booby traps and mines in the first place, the evidence confirms that the tragic *effect* of these dangerous explosive devices is to deprive Azerbaijanis of the equal enjoyment of their fundamental rights. I say this because it is only Azerbaijanis as an ethnic or national origin group who suffer the disparate impact of Armenia’s conduct on their CERD-protected rights, as I will now explain as a matter of plausibility.

D. The discriminatory effect of Armenia’s booby traps and landmines

17. In explaining this effect, I want to return to the Court’s 7 December 2021 Order in this case, and in particular to the Court’s reference in the context of plausibility to “military means” that can be used to effectuate “a policy of driving persons of a certain national or ethnic origin from a particular area, as well as preventing their return thereto”⁷⁸.

⁷⁴ CERD, Article 5 (d) (i).

⁷⁵ CERD, Article 5 (d) (ii).

⁷⁶ CERD Committee, *General Recommendation No. XXII: Article 5 and Refugees and Displaced Persons*, doc. 24/08/96 (1996), para. 2 (a).

⁷⁷ International Committee of the Red Cross, *List of customary rules of international humanitarian law*, 31 Mar. 2005, Rule 132.

⁷⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, *Provisional Measures, Order of 7 December 2021*, I.C.J. Reports 2021, p. 425, para. 53 (emphasis added).

18. In Azerbaijan's present request, Azerbaijan points the Court to recent, unconscionable conduct on the part of Armenia in planting landmines and booby traps in civilian areas of Azerbaijan's territory after Armenia committed in the Trilateral Statement to "cease all hostilities"⁷⁹. The question then becomes: do these military means effectuate a racially discriminatory policy by Armenia of preventing the return of Azerbaijanis to their homes in the formerly occupied territories?

19. The answer lies in understanding the roots of Armenia's highly organized, State-sponsored campaign of ethnic cleansing targeting Azerbaijanis, as well as the effect that the booby traps and landmines have on the *present rights* of Azerbaijanis to return to their homes in safety. In other words, what I will go through in the next few minutes explains how Armenia's use of "military means" *here and today* fits into a long-standing, racially discriminatory policy such that they raise plausible rights under CERD.

E. The history of Armenia's ethnic cleansing campaign

20. Last week, Azerbaijan submitted its Memorial demonstrating that, among other things, Armenia's conduct through its invasion and occupation of Azerbaijan's territory has both discriminatory purpose and effect⁸⁰. Today we do not seek to delve into the merits of the evidence submitted. For today's purposes, I focus only on the evidence of the continuing effect of Armenia's campaign of ethnic cleansing, on the rights of Azerbaijanis to return home, that are relevant to demonstrating the plausibility of Azerbaijan's request. In the early 1990s, Armenia invaded Azerbaijan's territory and killed or expelled ethnic Azerbaijanis, while allowing ethnic Armenians who were living in the area to remain. For almost four years, between 1991 and 1994, Armenia would go on to defy four Security Council resolutions demanding the complete withdrawal of the occupying

⁷⁹ Azerbaijan's second Request for provisional measures, p. 13, para. 16.

⁸⁰ Memorial of Azerbaijan, Chapter II.B-D, pp. 90-274.

troops⁸¹. By the time a ceasefire was established in 1994, Armenia illegally occupied approximately one fifth of Azerbaijan's internationally recognized territory⁸².

21. All in all, in its campaign, Armenia violently expelled more than one million Azerbaijanis from their homes: more than 700,000 Azerbaijanis from the occupied territories, more than 200,000 Azerbaijanis from Armenia, and more than 100,000 from border areas⁸³.

22. On the map before you, the formerly occupied territories of Azerbaijan are outlined with a dotted line, with the districts marked in blue being overwhelmingly populated by Azerbaijanis prior to Armenia's occupation⁸⁴. You can see the previous Azerbaijani population figures on the screen as well. By 1994, not a single Azerbaijani remained in any of the occupied territories as a result of Armenia's acts of ethnic cleansing.

23. The *effect* of Armenia's conduct on the rights of Azerbaijanis is open, notorious and well-documented, including by international bodies, and especially with respect to the rights of Azerbaijanis's internally displaced persons or "IDPs", which is at issue in this request. For example, each of the Security Council resolutions condemning the occupation expressed, in similar terms: the "grave concern at the human suffering the conflict has caused and at the serious humanitarian emergency in the region" and the "grave concern at the displacement of large numbers of civilians in the Azerbaijani Republic"⁸⁵. In 1994, the United Nations General Assembly recognized that "the number of refugees and displaced persons in Azerbaijan has recently exceeded one million"⁸⁶, and in its September 2003 report, the United Nations High Commissioner for Refugees confirmed that,

⁸¹ United Nations Security Council, resolution 822, doc. S/RES/822, 30 Apr. 1993; United Nations Security Council, resolution 853, doc. S/RES/853, 29 July 1993; United Nations Security Council, resolution 874, doc. S/RES/874, 14 Oct. 1993; United Nations Security Council, resolution 884, doc. S/RES/884, 12 Nov. 1993. See also United Nations Security Council, Decision of 6 April 1993 (3194th meeting): statement by the President, doc. S/25539; United Nations Security Council, Decision of 18 August 1993 (3264th meeting): statement by the President, doc. S/26326; United Nations Security Council, Decision of 26 April 1995 (3525th meeting): statement by the President, doc. S/PRST/1995/21.

⁸² Ministry of Foreign Affairs of the Republic of Azerbaijan, *Consequences of the Aggression of Armenia Against Azerbaijan* (2019), available at <https://www.mfa.gov.az/files/mapreflecting-consequences-of-the-aggression-of-armenia-against-azerbaijan.jpg>; Ministry of Foreign Affairs of the Republic of Azerbaijan, *Occupation of the territories of Azerbaijan*, available at <https://mfa.gov.az/en/category/consequences-of-the-aggression-by-armenia-against-azerbaijan/occupation-of-the-territories-of-azerbaijan>.

⁸³ See Memorial of Azerbaijan, pp. 28–29, para. 51.

⁸⁴ Ministry of Foreign Affairs of the Republic of Azerbaijan, *Consequences of the Aggression of Armenia Against Azerbaijan* (2019), available at <https://www.mfa.gov.az/files/mapreflecting-consequences-of-the-aggression-of-armenia-against-azerbaijan.jpg>. Population data from Application of Azerbaijan, Ann. 4; Memorial of Azerbaijan, Ann. 57.

⁸⁵ See e.g. United Nations Security Council, resolution 853, doc. S/RES/853, 29 July 1993, para. 3.

⁸⁶ United Nations General Assembly, resolution 48/144, 23 Mar. 1994.

“[a]s a result of Armenian aggression and ethnic cleansing of Azerbaijanis, both from the territory of Armenia itself and from occupied Azerbaijani lands, there are now some 1 million refugees and displaced persons in Azerbaijan”⁸⁷. As a result of these actions, according to the United Nations High Commissioner for Refugees, Azerbaijan retains one of the highest per capita concentrations of IDPs in the world⁸⁸.

24. During its occupation, Armenia also settled ethnic Armenians from Armenia and third countries in the occupied territories, in violation of international law, which prohibits such settlement during occupation⁸⁹. As an OSCE Fact-Finding Mission found in a 2005 report, Armenia intended through the settlements to transform the occupied territories into a monoethnic Armenian area — and by making this a *fait accompli*, “sought to prevent Azerbaijanis from ever returning”⁹⁰.

25. On re-entering the formerly occupied territories in 2020, Azerbaijan discovered that Armenia had completely devastated the areas where Azerbaijanis had lived. Azerbaijani homes, businesses, towns, cities and heritage sites had been entirely obliterated. For example, you can see on the screen, a still from a video taken by drone in the city of Aghdam after the occupation. It confirms that today, all that remains of the once-bustling city with a population of approximately 39,000 Azerbaijanis⁹¹ are the bare foundations of looted and destroyed buildings. The same is true for Jabrayil⁹² and Fuzuli⁹³, two of the largest cities with Azerbaijani populations prior to the occupation. This devastation is not the result of bombardment during war. Rather, Armenia systematically dismantled these cities during occupation, to prevent Azerbaijanis from ever returning

⁸⁷ United Nations High Commissioner for Refugees, *International Protection Considerations Regarding Azerbaijani Asylum-Seekers and Refugees*, Sept. 2003, para. 52.

⁸⁸ United Nations High Commissioner for Refugees, *Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced Persons*, Oct. 2009, p. 7; Human Rights Council, *Report of the Representative of the Secretary General on the human rights of internally displaced persons, Walter Kalin: Mission to Azerbaijan*, UN doc. A/HRC/8/6/Add.2, 15 Apr. 2008.

⁸⁹ Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 Aug. 1949, Art. 49, para. 6.

⁹⁰ Letter of the OSCE Minsk Group Co-Chairs to the OSCE Permanent Council on the OSCE Minsk Group Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (NK), p. 3, available at https://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/dsca20050413_11/dsca20050413_11en.pdf.

⁹¹ See Memorial of Azerbaijan, Ann. 25, Exhibit A-1-d-1, Azerbaijan PGO, *Report on inspection of the scene* (Aghdam city) (26 Nov. 2020) (certified translation), p. 31; Memorial of Azerbaijan, pp. 127–129, para. 170.

⁹² See Memorial of Azerbaijan, pp. 144–148, paras. 184–188; *ibid.*, pp. 150–151, para. 190.

⁹³ See Memorial of Azerbaijan, pp. 136–144, paras. 175–183.

and to wipe out any evidence that they had been present⁹⁴. An OSCE mission that visited the area in 2010 confirmed that the districts where Azerbaijanis had lived prior to the occupation were “generally in ruins”⁹⁵ and “do not offer conditions suitable for return”⁹⁶.

26. This takes me to my final point with respect to the rights implicated by this discriminatory policy: how do we know the policy was discriminatory against Azerbaijanis as a matter of their ethnic or national origin? Precisely because of the differential impact on Azerbaijanis: areas and districts where ethnic Armenians had resided and continued to reside did not suffer such devastation during Armenia’s occupation. Since 2020, Azerbaijan has been building the Karabagh Digital Geoinformation System (KDGS), which is a database comprised of verified digital maps, drone and satellite images, archival Soviet-era information, and information collected by relevant Azerbaijani government agencies⁹⁷. The KDGS catalogues the post-occupation destruction and substantial damage to tens of thousands of Azerbaijani homes, public buildings, and cultural and religious sites and objects. Through this online tool, the Court is able to compare the before and after effects of the occupation⁹⁸. For example, on the left side of the screen you see a digital map of the city of Aghdam depicting the existing structures before occupation. As you can see, the city was well developed; it had a population of 39,000 Azerbaijanis prior to the occupation⁹⁹. As the slider comes across . . . The slider does not appear to be working, but we will provide subsequently some stills of what it looks like. You will see the exact same digital map, but post-occupation, which demonstrates the staggering scope of destruction of the homes and structures of Azerbaijanis; what few buildings remained after the occupation are marked in red. In contrast, on the right is the digital map of the small town of Hadrut, populated by around 1,500 ethnic Armenians prior to occupation. As you can see, pre-existing homes and structures remain. Again, we will provide you a still of the after. Not only was

⁹⁴ Memorial of Azerbaijan, pp. 120–136, paras. 120–174.

⁹⁵ Memorial of Azerbaijan, Ann. 64: OSCE Minsk Group, *Report of the OSCE Minsk Group Co-Chairs’ Field Assessment Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh* (2011), p. 3.

⁹⁶ *Ibid.*, p. 7.

⁹⁷ See Karabakh Digital Geoinformation System, available at <https://qrqs.emlak.gov.az/>.

⁹⁸ See Azerbaijan’s Request for provisional measures, 4 Jan. 2023, Ann. 26: letter from Matin Eynullayev, Chairman of the State Service on Property Issues under the Ministry of Economy of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 19 Jan. 2023, No. 3-21-3/2- 643/2023, with enclosures (certified translation).

⁹⁹ See Memorial of Azerbaijan, Ann. 25, Exhibit A-1-d-1, Azerbaijan PGO, Report on inspection of the scene (Aghdam city), 26 Nov. 2020 (certified translation), p. 3.

Hadrut not destroyed during occupation; it was substantially built up over the course of Armenia's occupation. This is what disparate impact based on ethnic or national origin looks like. This is what the effects of a racially discriminatory policy look like.

27. The tragic effects of Armenia's ethnic cleansing campaign continue to be felt today, even after Armenia signed the Trilateral Statement in November 2020. These effects did not end when Armenia acknowledged, in signing that statement, the right of Azerbaijani IDPs to return home, which was made explicit in paragraph 7. We know it did not end because when Azerbaijan entered those territories to start reconstruction works and otherwise prepare for the long-awaited return home of Azerbaijani IDPs, it was met with booby traps and landmines placed in precisely those civilian areas where Azerbaijanis are to return. We also know it did not end because the already too long list of Azerbaijanis injured or killed by these devices continues to grow, and the risk of adding further to that list is ever present.

F. The effect of booby traps and landmines placed in civilian areas

28. I turn now to my final point: that is, addressing the military means that *today* continue to effectuate this racially discriminatory policy by preventing the return of Azerbaijanis to their homes in the formerly occupied territories. As the Court has heard, the Trilateral Statement required Armenia to immediately cease hostilities; to return to Azerbaijani control the districts of Aghdam, Kalbajar and most of Lachin; and to withdraw its armed forces from all other parts of Azerbaijan's territory in parallel with the deployment of peacekeeping forces from the Russian Federation¹⁰⁰. In 2022, the Lachin Road was relocated under the terms of the Trilateral Statement so that the town of Lachin and the villages of Zabukh and Sus could be returned to Azerbaijan's control, in order to facilitate the return of Azerbaijani IDPs to those settlements. But before returning those settlements to Azerbaijan in August 2022, a campaign of deliberate destruction, burning and vandalization of houses and other civilian structures ensued, leaving the area desolate¹⁰¹. Annex 24 details the devastation documented by the Azerbaijan Prosecutor General's Office in these settlements,

¹⁰⁰ Azerbaijan's Request for the indication of provisional measures, 4 Jan. 2023, Ann. 1: Trilateral Statement, paras. 1, 4 and 6.

¹⁰¹ "Azerbaijan slams Armenian for setting fire to woodlands in Lachin, Khojaly districts, calls it ecocide", AzerNews, 16 Aug. 2022, available at <https://www.azernews.az/nation/198093.html>.

including, for example, 502 residential houses with identified prior Azerbaijani owners that were damaged or destroyed in the town of Lachin alone¹⁰².

29. In addition, in October 2022, after Azerbaijan began preparing these settlements for the return of IDPs, Azerbaijan found the booby traps, hidden and rigged to be triggered by trip wire. The cumulative effect of the deployment of these booby traps is the interference of the fundamental rights of Azerbaijanis as an ethnic and national origin group. Why do I say that? Because each of Armenia's booby traps was found in a civilian structure, including four in residential homes, one in a sewing factory and one in an agricultural stable. Azerbaijan has been able to identify the Azerbaijani individual or family who lived in the homes in which these traps were found, using aerial footage from the Soviet era and property information collected from the Azerbaijanis who lived in these areas prior to Armenia's occupation¹⁰³. On the screen before you is a photo of one of the booby traps in Zabukh, along with the property record for the home where it was found, showing that it was an "individual residential house" owned by an Azerbaijani¹⁰⁴. On this map, the satellite imagery reflects the post-occupation landscape and the blue box marks where the booby trap were found. This booby trap was likewise found in an "individual residential house" where an Azerbaijani lived in Sus¹⁰⁵. The booby traps were placed *only* in houses or other civilian structures that belonged to ethnic Azerbaijanis before Armenia's occupation, and to which the original owners are to return after Armenia's troops departed.

30. Likewise, as Ms Reid will detail, the landmines manufactured in 2021 were laid near settlements where ethnic Azerbaijanis were expected to return. To state the obvious, they were not placed in settlements where ethnic Armenians were expected to remain.

¹⁰² Azerbaijan's Request for provisional measures, 4 Jan. 2023, Ann. 24: letter from Elchin Mammadov, First Deputy Prosecutor General of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 19 Jan. 2023, No. 03/222006229, with enclosures (certified translation), p. 2.

¹⁰³ See Ann. 26 to Azerbaijan's second Request for provisional measures, 4 Jan. 2023, Letter from Matin Eynullayev, Chairman of the State Service on Property Issues under the Ministry of Economy of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 19 Jan. 2023, No. 3-21-3/2-643/2023, with enclosures (certified translation).

¹⁰⁴ See Ann. 26 to Azerbaijan's second Request for provisional measures, 4 Jan. 2023, Letter from Matin Eynullayev, Chairman of the State Service on Property Issues under the Ministry of Economy of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 19 Jan. 2023, No. 3-21-3/2-643/2023, with enclosures (certified translation).

¹⁰⁵ See *ibid.*, p. 7.

31. The discriminatory effect of these explosive devices on Azerbaijanis is clear. Azerbaijanis and only Azerbaijanis were to return to these towns, villages and homes. Azerbaijanis, and only Azerbaijanis, are experiencing the continuing disparate impact as a group distinguished by national or ethnic origin. The *effect* of Armenia's mining and booby-trapping falls upon Azerbaijanis alone.

32. In 2021, on the previous provisional measures request, Armenia argued that landmines don't discriminate: they can be detonated by people of all ethnic groups¹⁰⁶. We expect that Armenia may make a similar argument again today. But with respect, it could be said that a gun doesn't discriminate either, but the person aiming the gun can. It is self-evident that it is the *deployment* of dangerous explosive weapons, not the devices themselves, that can in fact discriminate against a group on the basis of ethnic or national origin, based on their use and placement.

33. Armenia may also attempt to argue this afternoon that the Court should disregard the indisputable negative impact of its actions on the equal enjoyment of the rights of Azerbaijanis, because Armenia feels justified by some legitimate aim, likely a "defensive" military aim. Here, however, Armenia cannot find or resort to an argument that the disparate impact on Azerbaijanis could somehow be justified on the basis of legitimate aims where indiscriminate booby traps were planted in Azerbaijani homes and other civilian structures in areas Armenia agreed to and was to leave per the Trilateral Statement. That Armenia lacks a legitimate purpose with respect to its conduct is true under international humanitarian law, which as even Armenia acknowledges in its Annex 1¹⁰⁷, is violated by the placement of booby traps in these circumstances¹⁰⁸. This is the case even as CERD imposes separate and distinct obligations, such that a breach of one is not necessarily a breach of the other¹⁰⁹.

34. In this way, the impermissible effect of Armenia's conduct on Azerbaijanis is what breaches CERD, regardless of Armenia's purpose in planting the booby traps and landmines. Further, Article 2 of CERD specifically requires States to "bring to an end" existing racial discrimination¹¹⁰,

¹⁰⁶ CR 2021/25, pp. 27–28, paras. 21–22 (Murphy).

¹⁰⁷ Armenia's Ann. 1.

¹⁰⁸ See International Committee of the Red Cross, List of customary rules of international humanitarian law, 31 Mar. 2005, Rule 80.

¹⁰⁹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, Provisional Measures, Order of 7 December 2021, para. 53.

¹¹⁰ CERD, Article 2 (1) (d).

and in the words of the CERD Committee, States must adopt “all appropriate measures” to remedy the disparate impact of their discriminatory actions¹¹¹. For that reason, Armenia’s ongoing refusal to take the steps necessary to stop further deaths and injuries is a further breach of CERD.

35. To conclude, the new evidence of Armenia’s use of booby traps and landmines in this fashion constitutes the “military means” of a discriminatory policy, the clear effect of which is to subject Azerbaijanis, as an ethnic or national origin group, to the risk of bodily injury and death, and to prevent their return home, which implicates rights under CERD¹¹². Under the definition of “racial discrimination” in Article 1 of CERD, this showing of discriminatory effect is itself sufficient to find for Azerbaijan on the plausibility of the rights claimed.

36. I thank the Court for its kind attention and ask, Madam President, that you call Ms Natalie Reid to the lectern.

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

Ms REID:

IV. THE RIGHTS INVOKED BY AZERBAIJAN UNDER CERD ARE PLAUSIBLE DUE TO THE DISCRIMINATORY PURPOSE OF ARMENIA’S UNLAWFUL CONDUCT

1. Madam President, honourable Members of the Court, it is an honour to appear before you on behalf of the Republic of Azerbaijan.

2. The evidence in this case shows that Armenia’s campaign of booby-trapping Azerbaijani homes and laying landmines in or near Azerbaijani villages has not just the *effect*, but also the *purpose*, of reinforcing Armenia’s project of maintaining a monoethnic Armenian settlement in the formerly occupied territories. Azerbaijan’s request thus raises plausible rights under CERD.

A. The purpose of Armenia’s ethnic cleansing campaign

3. I begin with the evidence of Armenia’s policy of discrimination against Azerbaijanis. Last week, Azerbaijan submitted its Memorial demonstrating that Armenia acted with discriminatory

¹¹¹ Concluding observations of the United States of America, para. 27.

¹¹² *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021*, para. 53.

purpose throughout its armed aggression and occupation of Azerbaijan's sovereign territory, including the violent expulsion of every single Azerbaijani living in the occupied territories¹¹³. The evidence that Azerbaijan has submitted to the Court in its Memorial and the accompanying annexes sets out in great detail the brutal nature and devastating consequences of Armenia's ethnic cleansing campaign, including the steps it took to prevent and deter those displaced Azerbaijani civilians from exercising their right to return to their homes. Given the limited time available this morning, I respectfully refer the Court to last week's submission for the full discussion of Armenia's breaches in this regard¹¹⁴. For purposes of today's argument, it suffices to highlight a few points that demonstrate the continuity of purpose and of plan in Armenia's deliberate use of explosive devices targeted at the displaced Azerbaijani civilians who plan to return to their homes in the liberated territories.

4. *First*, Armenia has made no secret of its intentions. In an interview he gave in 2000, former President and Prime Minister Sargsyan explained Armenia's massacre of Azerbaijani civilians at Khojaly in 1992, by stating: "Before Khojaly . . . Azerbaijanis thought that Armenians cannot raise hand at innocent civilians. It was necessary to break all this . . . so it happened."¹¹⁵ And in case there was doubt about the reason for Armenia's aggression and occupation of Azerbaijan's territory, and the integration of the occupied territories into a greater Armenia, he stated bluntly: "The most important thing is not the territory. It's that one ethnic group is left in Armenia."¹¹⁶

5. Mr. Sargsyan was not alone in those views. To this day, his political party — the Republican Party of Armenia (RPA), which ruled Armenia for 20 of the 30 years of the occupation — still proudly calls itself "the ideological and political successor of Nzhdeh Tseghakron" with "Garegin Nzhdeh's teaching" as its ideological basis¹¹⁷. Why is that meaningful in a CERD context? These are just some of the teachings of Nzhdeh: that Azerbaijanis have "for centuries had more dog traits . . .

¹¹³ Memorial of Azerbaijan, Chap. II.B-D, pp. 90-274.

¹¹⁴ *Ibid.*

¹¹⁵ Memorial of Azerbaijan, Ann. 71: T. de Waal interview with S. Sargsyan, 15 Dec. 2000, available at https://Carnegieendowment.org/files/DeVaalinterview_r1.pdf (certified translation).

¹¹⁶ Memorial of Azerbaijan, Ann. 91: T. de Waal, *Black Garden: Armenia and Azerbaijan Through Peace and War* (New York University Press, 2013), p. 310.

¹¹⁷ Republican Party of Armenia, "History of the Party", available at <http://www.hhk.am/en/history/>.

than human ones”¹¹⁸; that “[b]eing a Tsegakhron” — the very thing celebrated on the RPA website — “requires worshipping the blood of the race” and “defeat[ing] the enemy of my race . . . the Turks”¹¹⁹, where “Turks” is a term widely used in Armenia to refer to Azerbaijanis.

6. *Second*, Armenia’s ethnic cleansing campaign was merciless, and its racially motivated nature was evidenced by the deliberate targeting of symbols of Azerbaijani culture and identity¹²⁰. These attacks on cultural objects are compelling evidence of ethnic animus: as the Court acknowledged in the *Bosnia Genocide* case, “deliberate destruction of the historical, cultural and religious heritage of [a] protected group . . . may be highly significant inasmuch as it is directed to the elimination of all traces of the [group’s] cultural or religious presence”¹²¹.

7. That deliberate destruction is what Azerbaijan found upon liberation. On headstones across the formerly occupied territories — in Aghdam, Fuzuli, Gubadly, Jabrayil, Kalbajar, Lachin and Zangilan — the faces of deceased Azerbaijanis on headstones were shot at, scratched out or obliterated in a blatant display of hatred. These photographs show the remnants of the famous mosaic of the Aghdam Bread Museum, which before Armenia’s occupation showed men, women and children in traditional dress, carrying symbols of Aghdam and musical instruments¹²². Now, as you can see, the remaining mosaic tiles are scarred with bullet holes targeting the faces, breasts and genitals of the Azerbaijani women, and the child one of them holds in her arms.

8. *Third*, Armenia did not end its scorched-earth campaign when it agreed to the Trilateral Statement. On the contrary, it continued the campaign in the areas that it had explicitly agreed to return to Azerbaijan, including the district of Kalbajar and most of the district of Lachin¹²³. The purpose was clear: for example, one Armenian soldier in the Kalbajar District was recorded as saying — in reference to the returning Azerbaijanis — “let them live here, if they can”, as he burned

¹¹⁸ Ann. 106, G. Nzhdeh, *Unpreachable Nation*, p. 144.

¹¹⁹ Application of the Republic of Azerbaijan, Ann. 3, G. Nzhdeh, *Tribal Religion Movement* (certified translation).

¹²⁰ Memorial of Azerbaijan, Ann. 25, Exhibit A-1-a; Memorial of Azerbaijan, pp. 112-13, para. 158.

¹²¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro, Judgment, I.C.J. Reports 2007 (I))*, p. 43, para. 344. See also Memorial of Azerbaijan, Ann. 98; S. Brammertz, et. al., “Attacks against Cultural Heritage as a Weapon of War: Prosecutions at the ICTY”, 14 *J. Int’l Crim. Just.* 1143 (2016), p. 1162; Memorial of Azerbaijan, pp. 341-343, paras. 439-442.

¹²² ICESCO, Post-Conflict Condition Assessment of the Cultural Heritage in the Karabakh and East Zangezur Regions, Azerbaijan — International Technical Mission Report, 15 June 2022, available at <https://culture.gov.az/medias/report.pdf>; Ann. 1, p. 112. See also Memorial of Azerbaijan, Ann. 1, p. 6.

¹²³ Memorial of Azerbaijan, pp. 220–237, paras. 273–292.

an Azerbaijani house to the ground¹²⁴. When the former route of the Lachin Corridor was returned to Azerbaijan's control just a few months ago, some of the departing settlers destroyed and defiled the houses they had occupied, rather than see those homes peacefully returned to their rightful owners. We see this in a video clip of an Armenian settler — submitted in Annex 4 to Azerbaijan's Request — who did not want “the Turk to benefit of this house” and used lighter fluid, a broom and a match to burn it to the ground¹²⁵; we see it in the photographs — also submitted in Annex 4 — of the deliberate ethnically motivated insults left for returning Azerbaijanis to find in their home: a severed pig's foot hanging from a light fixture, its blood splashed on the walls — and to drive it home, the words “pig's blood” smeared on the wall, in that blood, in Cyrillic Azerbaijani¹²⁶.

9. *This* is what ethnic hatred looks like, targeted at a population driven from their homes, and returning decades later to be greeted by this devastation and desecration. To Azerbaijan's knowledge, none of these acts of deliberate, cruel vandalism and destruction have been properly investigated or punished by Armenia; instead, Armenia has welcomed and compensated the settlers who sought to leave behind a ruin to which no Azerbaijani could or would return¹²⁷. Armenia's Supplemental Annex 2, filed last week, does not change this picture. On the contrary, it confirms that neither Armenia nor its installed régime is serious about actually deterring these kinds of hate crimes, because any criminal charges brought were dropped on spurious grounds¹²⁸.

10. Armenia's planting of booby traps and laying of landmines manufactured in 2021 — in areas it agreed to return to Azerbaijan specifically to effect the return of Azerbaijani IDPs — likewise reflects Armenia's ongoing purpose to make the formerly occupied territories uninhabitable by Azerbaijanis. Deterring Azerbaijanis from ever returning to their homes is an essential element of Armenia's goal to make and keep the formerly occupied territories a permanently monoethnic Armenian area, ethnically cleansed of Azerbaijanis.

¹²⁴ “Armenians set fire to homes before handing village over to Azerbaijan”, *Reuters*, 14 Nov. 2020, <https://www.reuters.com/article/us-armenia-azerbaijan-village/armenians-set-fire-to-homes-before-handing-village-over-to-azerbaijan-idUSKBN27U0FQ>.

¹²⁵ Ann. 4, Exhibit 5, p. 40; Ann. 4, Exhibit 11, video 1.

¹²⁶ Ann. 4, Exhibit 12; Ann. 4, Exhibit 11.

¹²⁷ See Memorial of Azerbaijan, pp. 197-198, para. 243.

¹²⁸ Armenia's Ann. 2.

B. The purpose of Armenia's deployment of booby traps

11. As noted, Azerbaijan has found booby traps in civilian homes and other civilian buildings that had belonged to Azerbaijanis before the occupation. Armenia does not dispute that the booby traps were found in these locations. Nor does it dispute that it is *never* permissible under international law to place booby traps in these civilian areas. That is self-evident outside the context of armed hostilities, but even in times of war, as the ICRC explained, “[t]he use of booby-traps which are in any way attached to or associated with objects or persons entitled to special protection under international humanitarian law or with objects that are likely to attract civilians is prohibited”¹²⁹. International law likewise obliges Armenia not to impede the safe return of IDPs to their homes¹³⁰. In short, there is no acceptable excuse: whatever reason Armenia could offer for laying landmines *cannot* apply to booby-trapping civilians’ homes in areas where Armenia *knew* Azerbaijani IDPs would be returning. As Armenia itself admits — in its Annex 1, where it tries to distance itself from these horrific devices — booby traps are “too unpredictable and ineffective for military operations”¹³¹. Too ineffective for war, but very effective at inflicting terror.

12. This afternoon, Armenia will undoubtedly contend that it bears no responsibility for these booby traps. That is the only argument it has left. But just consider what is shown by the photographs now on the screen, of the devices discovered by Azerbaijan. On the left, the booby trap — attached to a stable door in Sus — is a hand grenade, rigged so that the action of opening the door pulls the pin¹³². Packed around the grenade are sharp metal nails that would become deadly shrapnel in the ensuing explosion, radiating out to hit anyone within reach¹³³. In the middle, the booby trap — discovered in a sewing factory in Zabukh — is comprised of a hand grenade hidden under an

¹²⁹ International Committee of the Red Cross, List of customary rules of international humanitarian law, 31 Mar. 2005, Rule 80.

¹³⁰ *Ibid.*, 31 Mar. 2005, Rule 132; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 Aug. 1949, Art. 49, para. 2.

¹³¹ Armenia’s Ann. 1, p. 2.

¹³² Ann. 22, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 17 Jan. 2023, No. 11-4/2-87/2023, with enclosures (certified translation), fig. 6.

¹³³ *Ibid.*, pp. 4 and 12

anti-personnel mine¹³⁴, so that lifting the mine after it is deactivated will detonate the grenade¹³⁵. On the right, the device consists of not one, not two, but *three* anti-personnel explosive wave mines stacked on top of each other¹³⁶.

13. To be clear, this is not the work of an angry settler destroying a home with household items rather than see it go back to an Azerbaijani. These and the devices shown on previous slides were constructed with military equipment — hand grenades, detonators, rifle grenades, land mines and mortar shells¹³⁷ — carefully rigged to explode when someone opens a door, steps across a threshold or lifts a mine they believe they have safely deactivated. Moreover, constructing and placing these kinds of booby traps without inadvertently detonating them requires specific training and expertise; it reflects specialized knowledge of explosives, and specialized knowledge of mine clearance practices, to have the kind of targeting reflected in the grenade hidden under the mine. It is implausible, to put it mildly, that these devices could have been designed, constructed and laid without the involvement of the Armenian military. And in any event, as Mr. Lowe explained, Article 2 of CERD requires Armenia “not to sponsor, defend or support racial discrimination”, and Armenia cannot evade responsibility by arguing that someone else planted the booby traps if they were acting with Armenia’s sponsorship or support.

14. Finally, it will not escape the Court, in considering both the technical expertise demonstrated and the purpose that motivated it, that in each one of these instances the booby traps are carefully and intentionally designed to maximize the harm inflicted, to delay or prevent their safe removal, to target the people engaged in clearing mines and to ensure deaths, not just injuries.

15. Azerbaijan does not know how many more booby traps it will find or where they may be hidden, but that is precisely the point. Keeping secret and unknowable the location and number of traps, and the degree of risk that Azerbaijanis face in returning to their homes, serves Armenia’s

¹³⁴ Ann. 10, Letter dated 4 Nov. 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/77/597, 18 Nov. 2022, p. 14.

¹³⁵ Ann. 22, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 17 Jan. 2023, No. 11-4/2-87/2023, with enclosures (certified translation), pp. 4 and 12.

¹³⁶ *Ibid.*

¹³⁷ Ann. 10, Letter dated 4 Nov. 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/77/597, 18 Nov. 2022, pp. 15-16 and 18.

purpose of terrorizing Azerbaijani civilians into staying away from their homes in the formerly occupied territories.

16. This evidence amply satisfies the requirement of a plausible showing of a CERD breach. There is no conceivable military purpose and no possible justification for Armenia's use of booby traps to target returning Azerbaijani civilians and those engaged in the mine clearance work that will make it safe for those IDPs to return home. In these circumstances, the racially discriminatory purpose of the booby traps is undeniable.

C. The purpose of Armenia's placement of landmines near civilian settlements after the Trilateral Statement mandated the cessation of active hostilities

17. New evidence also shows that Armenia laid *new* landmines in Azerbaijan's territory *after* the ceasefire went into effect in November 2020, not in the heat of combat or chaos of retreat as Armenia previously claimed¹³⁸.

18. As Azerbaijan has sought to bring these landmines to the attention of the international community, Armenia has repeatedly disclaimed any responsibility. But as its denials are refuted by evidence, as its representations to the Court are belied by the facts, Armenia keeps changing its story. And as the evidence has mounted of Armenia's continued practice of planting landmines in Azerbaijan's territory *after* the Trilateral Statement, its excuses have grown ever more fanciful.

19. In the last hearing, in October 2021, Armenia's Agent and counsel assured the Court that it "is *not* planting landmines in the territory of the Republic of Azerbaijan", specifically including in the territory where Russian peacekeepers are now temporarily deployed¹³⁹. The landmines in these territories, Armenia argued, were "*defensive*" landmines that had been "left in place" "along the 'line of contact' in the eastern and northern part of Nagorno-Karabakh", "given the military purpose that they served"¹⁴⁰.

¹³⁸ CR 2021/25, p. 29, para. 27 (Murphy).

¹³⁹ CR 2021/25, p. 13, para. 10 (Kirakosyan).

¹⁴⁰ CR 2021/25, p. 22, para. 7 (emphasis in original).

20. The true facts began to come to light last summer. In August 2022, Azerbaijan found 1,259 Armenian mines — all of them manufactured in 2021 — near the villages of Ikinji Ipak and Birinji Ipak . . .¹⁴¹

The PRESIDENT: Excuse me, Ms Reid. Could you slow down the pace of your remarks please, for the benefit of the interpreters. Thank you.

Ms REID: Yes, Madam President.

Azerbaijan then found an additional minefield, consisting of 350 mines, near Ikinji Ipak in November 2022 — again consisting entirely of mines manufactured in Armenia in 2021¹⁴². Azerbaijan also found Armenian-made mines near the village of Baghlipaya in Kalbajar District in August 2022. All three villages were inhabited by ethnic Azerbaijanis before Armenia's occupation and are areas to which those expelled from their homes will be returning.

21. In response to these alarming discoveries, Azerbaijan immediately raised the issue with Russian peacekeepers, since Armenia had to be using the Lachin Road — the only route connecting Armenia with the formerly occupied territories, and which as you heard yesterday is under Russian peacekeeper control — to transport those mines into Azerbaijan¹⁴³. Azerbaijan also alerted the United Nations in August¹⁴⁴, November¹⁴⁵ and December¹⁴⁶, and the Court in September 2022¹⁴⁷.

22. Armenia denied that it had anything to do with these mines. In October 2022, for example, Armenia told the OSCE that it does not even *manufacture* landmines — a claim it has repeated for

¹⁴¹ Ann. 7, Letter from Major General Anar Karimov, Head of the General Department of Engineering Troops, Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan (30 Dec. 2022) (certified translation).

¹⁴² *Ibid.*

¹⁴³ Ann. 5, Letters from Lieutenant General Azer Aliyev, Head of the Investigation Department of the Ministry of Defense of the Republic of Azerbaijan, to Major General Andrey Volkov Alexandrovich, Commander of the Russian Peacekeeping Forces (2022) (certified translation).

¹⁴⁴ See Ann. 11, Letter dated 24 August 2022 from the Chargé d'affaires ad interim of the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/76/930- S/2022/642.

¹⁴⁵ Ann. 10, Letter dated 4 November 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/77/597 (18 Nov. 2022); Ann. 8, Letter from Mr. Jeyhun Bayramov, Minister of Foreign Affairs of the Republic of Azerbaijan, to H.E. Mr. Antonio Guterres, Secretary-General of the United Nations (28 Nov. 2022).

¹⁴⁶ Ann. 2, Letter dated 19 December 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. S/2022/979.

¹⁴⁷ Ann. 4, Letter of 22 September 2022 from Mr. Elnur Mammadov, Agent of Azerbaijan, to Mr. Philippe Gautier, Registrar of the International Court of Justice.

many years¹⁴⁸ — so the unearthed mines that Azerbaijan has been documenting could not be Armenian¹⁴⁹. Armenia went even further and alleged that Azerbaijan *itself* must have planted *its own* mines in “areas that came under its control as a result of . . . incursion into the territory of Armenia”¹⁵⁰. Armenia made similar denials in its responses to Azerbaijan’s letters to the Court, including its letter of 27 September 2022¹⁵¹.

23. We now know that Armenia’s claim that it does not make landmines was false. As the evidence submitted by Azerbaijan shows, an Armenian company headquartered in Yerevan — Hayk-Mek — has made weapons and ordnance for the armed forces of Armenia, including landmines, under licence from Armenia, for the *last 19 years*¹⁵². Annexes 29 through 31 to Azerbaijan’s Request show the decisions of the Armenian Government to issue that license to Hayk Mek in 2004, and to renew it at regular intervals in the following years. The mines Hayk Mek manufactures are the *same mines* that Azerbaijan discovered in its territory starting in August 2022¹⁵³.

24. The Court will also recall that, back in October 2021, Armenia’s counsel assured the Court that any “fresh set of explosive remnants of war” was spawned by “the 2020 conflict”¹⁵⁴, and argued that it would be implausible to think that such mines — which it described as having been laid “in

¹⁴⁸ See Landmine & Cluster Munition Monitor, “Armenia: Mine Ban Policy”, (12 Nov. 2019), <http://www.the-monitor.org/en-gb/reports/2020/armenia/mine-ban-policy.aspx#ftn10>; *Landmine Monitor Report 2009: Toward a Mine-Free World, Special Ten-Year Review of the Mine Ban Treaty* (2009), http://www.the-monitor.org/media/1641881/Landmines_Report_2009.pdf p. 873.

¹⁴⁹ Statement as delivered by the Delegation of the Republic of Armenia at the 1024th Plenary Meeting of the Forum for Security Co-operation Security Dialogue on Explosive Hazards in the OSCE region: The Iron Harvest (5 Oct. 2022), <https://www.osce.org/files/f/documents/6/1/534005.pdf>.

¹⁵⁰ *Ibid.*, p. 2.

¹⁵¹ Ann. 6, Letter dated 27 September 2022 from Mr. Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Mr. Philippe Gautier, Registrar of the International Court of Justice.

¹⁵² Ann. 10, Letter dated 4 November 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/77/597 (18 Nov. 2022), p. 4; see also Ann. 29, Government of the Republic of Armenia, Decision No. 596-A “On the Issuance of Arms Production License to ‘Hayk Mek’ Limited Liability Company” (29 Apr. 2004) (certified translation); Ann. 30, Government of the Republic of Armenia, Decision No. 615-A “On the Extension of the Weapons Manufacture License Given to ‘Haik Mek’ Limited Liability Company (17 May 2012); Ann. 31, Government of the Republic of Armenia, Decision No. 584-A “On the Extension of the Weapons Manufacture License Given to ‘Haik Mek’ Limited Liability Company” (1 June 2017) (certified translation); Ann. 32, G. Harutyunyan, “‘Hayk Mek’ company will continue the production of weapons”, *Razminfo* (1 June 2017), <https://razm.info/103472> (certified translation).

¹⁵³ Ann. 10, Letter dated 4 November 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/77/597 (18 Nov. 2022), p. 4.

¹⁵⁴ CR 2021/25., p. 22, para. 8 (Murphy).

the heat of a sudden military attack” — were for the purpose of “anything other than defensive manoeuvres”¹⁵⁵.

25. We now know that this is not true. The mines Azerbaijan has unearthed have markings — required by the Convention on Certain Conventional Weapons — that identify their origin and date of manufacture. In this photograph, the red box on left indicates the location where the mines were manufactured, in Yerevan¹⁵⁶. And, critically, the box on the right indicates the year each of these mines were manufactured: “21”, for 2021. So, the *thousands* of these *new* landmines that Azerbaijan has so far discovered in its territory were *manufactured in 2021* — and thus could only have been laid well after Armenia agreed, in the Trilateral Statement, to “a complete ceasefire and termination of all military activities” and the withdrawal of its armed forces from Azerbaijan’s territory¹⁵⁷.

26. Faced with this evidence, Armenia’s latest annex submission no longer denies that the mines are in fact Armenian, or that they were in fact manufactured in 2021.

27. But even as it concedes these facts, Armenia refuses to admit the final fact that would doom its defence: that these 2021 mines were transported into Azerbaijan and planted by Armenia exactly where Azerbaijan discovered them, in locations close to civilians’ homes. Instead, it insists in its Annex 1 that the landmines “were taken by Azerbaijan from the sovereign territories of the Republic of Armenia”¹⁵⁸. But this claim does not withstand scrutiny. In November 2022, as shown on the screen, Azerbaijan invited several foreign military attachés to inspect the landmines that it discovered in Lachin in that month; members of the press corps were also invited to document this newsworthy event in Azerbaijan’s territory¹⁵⁹. In other words, Azerbaijan did not just tell the world that it had found these landmines where it said it did; it showed them.

28. To understand exactly what Armenia is now claiming, the screen shows a map with the areas in question. On that map, the places Armenia now claims Azerbaijan dug up the mines are

¹⁵⁵ CR 2021/25, p. 29, para. 27 (Murphy).

¹⁵⁶ Ann. 22, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 17 January 2023, No. 11-4/2-87/2023, with enclosures (certified translation), p. 3.

¹⁵⁷ Ann. 1, Trilateral Statement, paras. 1 and 4.

¹⁵⁸ Armenia’s Ann. 1, p. 1.

¹⁵⁹ Ministry of Defence of the Republic of Azerbaijan, “Military attachés and media representatives inspected a minefield in the direction of the Saribaba high ground” (24 Nov. 2022), <https://mod.gov.az/en/news/military-attaches-and-media-representatives-inspected-a-minefield-in-the-direction-of-the-saribaba-high-ground-45235.html>.

located to the left of the dotted red line denoting the border between the two States¹⁶⁰. So Armenia's latest story is that Azerbaijan entered these areas; dug up thousands of these deadly devices, without accidentally detonating any of them; then either disarmed all of them immediately or transported thousands of armed devices across the entire breadth of Lachin District — all to set up a staged photo shoot. Madam President, honourable Members of the Court, that is not a plausible explanation. It is fantasy, unsupported by a shred of evidence.

29. Now, this afternoon, Armenia may try to change its story yet again, and claim that even if Azerbaijan *did* in fact discover the mines in its territory, there is a legitimate defensive purpose for laying these landmines. But again, consider the evidence: more than 1,600 of the newly discovered mines were planted in or near civilian areas in Lachin and Kalbajar Districts, shown by the orange triangles on the map. There is no apparent military purpose to lay mines in these areas: they are far from the border between Armenia and Azerbaijan, and far from the old “line of contact” between the Parties’ armed forces in the northern and eastern parts of the formerly occupied territories, shown by the thick red line along the top of the map on the screen.

30. In its quest for a viable defence, Armenia's new annexes suggest that it may claim that there is yet another, newer “line of contact between the [so-called] Defense Army and [Azerbaijan] according to the Trilateral Statement”¹⁶¹. As Azerbaijan's Agent has explained, however, there is no such thing. The Trilateral Statement does not contemplate, much less condone, the creation of a new “line of contact” deep in Azerbaijan's territory; it mandates “the withdrawal of Armenian troops” and the return of these areas to Azerbaijan¹⁶². Active hostilities had ended; Russian peacekeepers had been deployed to a specific area in the liberated territories; and Armenia *knew* that Azerbaijani IDPs would be returning to the very areas it was handing over, which had been populated exclusively by ethnic Azerbaijanis prior to the occupation. Laying landmines in these circumstances serves no purpose except to kill, harm and intimidate Azerbaijani civilians.

31. Unable now to disclaim production of the mines or to offer any legitimate justification for laying them, Armenia may try two last lines of defence, both equally unavailing. *First*, Armenia

¹⁶⁰ Compare Armenia's Ann. 1, p. 3, with Ann. 28.

¹⁶¹ Armenia's Ann. 1, p. 2.

¹⁶² Ann. 1, Trilateral Statement, paras. 4, 6.

suggests in its Annex 1 that the areas “on and around Saribaba heights”, where the over-1,600 mines near the villages of Ikinji Ipak and Birinji Ipak were found, were “not civilian settlements, but open, uninhabited areas”. But the Azerbaijanis who lived and will live again in these villages are, of course, not confined to their homes — they include farmers, shepherds, cattle herders, who have every right to use the surrounding lands without stumbling into minefields. This is no hypothetical danger: several Azerbaijanis have been killed or injured by landmines while farming or tending to livestock since the Trilateral Statement was signed¹⁶³. *Next*, Armenia has submitted evidence from the HALO Trust depicting casualties from landmines and unexploded ordnance in Garabagh between 1995 and 2021. No one is disputing that mine contamination has been a long-standing problem across the liberated territories — indeed, the total number of Azerbaijani casualties from mines and ordnance dating back to 1991 is 3,361 persons¹⁶⁴. But that does not change the urgent situation that brings Azerbaijan to the Court today: Armenia’s continued laying of *new* mines, *after* the Trilateral Statement, in areas targeting Azerbaijani civilians.

32. To summarize, then: Armenia’s claim that it does not make landmines? False. Its representation to the Court that any new mines were laid only in the context of active military operations in late 2020? False. Its explanations for the discovery of these Armenian-made landmines in or near civilian areas, far away from any border or former line of contact? Sheer fantasy, supported only by a deliberate misreading of the Trilateral Statement.

33. Most importantly, regardless of any asserted military purpose, CERD forbids the use of mines if either their purpose or effect is to prevent Azerbaijani civilians from returning to their homes or otherwise nullify or impair their human rights on the basis of ethnic origin or national origin. In the absence of *any* recognizable, non-discriminatory military purpose, the inference of a racially discriminatory purpose becomes unavoidable. And Armenia’s refusal to disclose information about

¹⁶³ Ann. 23, Letter from Elchin Mammadov, First Deputy Prosecutor General of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 23 January 2023, No. 14/cix 9-23, with enclosures (certified translation) (enclosures originally in English).

¹⁶⁴ Ann. 22, Letter from Vugar Suleymanov, Chairman of the Board of the Mine Action Agency of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 17 Jan. 2023, No. 11-4/2-87/2023, with enclosures (certified translation).

its minefields that will save civilian lives is inexcusable, whether under customary or conventional international law¹⁶⁵, or under the “elementary considerations of humanity” discussed by Mr. Lowe.

34. The evidence Azerbaijan has submitted makes clear that Armenia’s booby traps and landmines were planted for the *purpose*, and have the *effect*, of placing Azerbaijanis as an ethnic or national-origin group *selectively* at risk of death or dismemberment and of deterring the exercise of their right to return home. Either the purpose or the effect of Armenia’s conduct is a sufficient and independent ground to grant the requested measures; both undeniably implicate plausible rights under CERD.

35. I thank the Court for its kind attention and ask that you call Professor Boisson de Chazournes to address the link between the requested measures and the rights that are in issue, as well as the urgent need for the Court’s intervention.

The PRESIDENT: I thank Ms Reid. I now invite Professor Laurence Boisson de Chazournes to address the Court. You have the floor, Professor.

Mme BOISSON DE CHAZOURNES :

V. URGENCE ET LIEN AVEC LES MESURES SOLLICITÉES

1. Madame la présidente, Mesdames et Messieurs les juges, c’est pour moi un grand honneur de me présenter devant votre Cour au nom de la République d’Azerbaïdjan.

2. J’aborderai tout d’abord le lien entre les droits invoqués et les mesures sollicitées par la République d’Azerbaïdjan et ensuite le risque réel et imminent du préjudice irréparable aux droits en cause.

A. Lien avec les mesures sollicitées

3. Mes collègues, Mmes Amirfar et Reid, ont démontré que les droits revendiqués par l’Azerbaïdjan sont plausibles. Il me revient à ce stade de démontrer qu’une autre condition requise pour les mesures conservatoires est satisfaite, à savoir qu’«il doit exister un lien entre les droits dont

¹⁶⁵ See e.g. International Committee of the Red Cross, List of customary rules of international humanitarian law, 31 Mar. 2005, Rules 82, 83.

la protection est recherchée et les mesures conservatoires demandées»¹⁶⁶. Sur ce point, je peux être brève.

4. Il existe, en effet, un lien clair entre les droits plausibles que l'Azerbaïdjan cherche à préserver dans la convention internationale sur l'élimination de toutes les formes de discrimination raciale, aussi dénommée CERD, et les mesures conservatoires sollicitées.

5. Chacune des mesures demandées par l'Azerbaïdjan vise à empêcher l'Arménie de nier les droits fondamentaux à la sûreté, à la sécurité et au retour dans leurs foyers des civils azerbaïdjanais, y compris les Azerbaïdjanais déplacés. A ce jour, l'Azerbaïdjan n'a aucune certitude que l'Arménie ne continuera pas à poser des mines terrestres et objets piégés dans les zones civiles du territoire azerbaïdjanais. Au contraire, l'Azerbaïdjan continue de découvrir un nombre alarmant de mines arméniennes : depuis août 2022, l'Azerbaïdjan a découvert plus de 2700 mines fabriquées en Arménie en 2021¹⁶⁷. Je souhaite insister sur cette date, «2021» : l'Arménie a tout simplement continué à installer des mines en Azerbaïdjan au mépris de ses obligations en vertu de la CERD et d'autres instruments internationaux, y compris la déclaration trilatérale.

6. A cet égard, je souhaiterais rappeler à l'attention de la Cour les propos tenus par l'Arménie devant votre haute juridiction en 2021, à savoir qu'elle «has never used mines to target persons of Azerbaijani ethnic origin: not before the armed conflict in 2020, not during that armed conflict and not thereafter»¹⁶⁸.

7. Or, comme vous l'avez entendu aujourd'hui, en octobre 2022, l'Azerbaïdjan a trouvé des objets piégés dans des habitations civiles des villages de Zabukh et Sus, dans la région de Lachin. Ces objets piégés se trouvaient dans des halls d'entrée, derrière des portes d'entrée, et dans les cours de certaines habitations¹⁶⁹.

¹⁶⁶ *Violations alléguées du traité d'amitié, de commerce et de droits consulaires de 1955 (République islamique d'Iran c. Etats-Unis d'Amérique), mesures conservatoires, ordonnance du 3 octobre 2018, C.I.J. Recueil 2018 (II)*, p. 639, par. 54.

¹⁶⁷ Lettre datée du 28 novembre 2022 adressée à M. António Guterres, Secrétaire général des Nations Unies, par M. Jeyhun Beyramov, ministre des affaires étrangères de la République d'Azerbaïdjan, p. 2 (annexe 8).

¹⁶⁸ CR 2021/25, p. 29, par. 25 (Murphy).

¹⁶⁹ Lettre datée du 4 novembre 2022, adressée au Secrétaire général par le représentant permanent de l'Azerbaïdjan auprès de l'Organisation des Nations Unies, doc. A/77/597-S/2022/835 (18 novembre 2022), p. 14-18 (annexe 10) ; ministère des affaires étrangères de la République d'Azerbaïdjan, *Communiqué de presse n° 493/22 sur les menaces en cours au vu de la pose de mines terrestres sur les territoires de l'Azerbaïdjan par l'Arménie* (25 octobre 2022), accessible à l'adresse suivante : <https://www.mfa.gov.az/en/news/no49322> ; lettre datée du 28 novembre 2022 adressée à M. António Guterres, Secrétaire général des Nations Unies, par M. Jeyhun Beyramov, ministre des affaires étrangères de la République d'Azerbaïdjan, p. 2 (annexe 8).

8. Les mesures conservatoires sollicitées sont destinées à protéger les droits des Azerbaïdjanais en vertu de la CERD contre ces menaces imminentes et réelles : tant que l’Azerbaïdjan ne bénéficiera pas de la coopération de l’Arménie au moyen des mesures conservatoires ordonnées par la Cour, il ne pourra pas éliminer de manière rapide et efficace les engins explosifs se trouvant sur son territoire, et sa population demeurera en danger de mort. Les mesures sollicitées visent précisément les menaces existantes à l’encontre des Azerbaïdjanais se trouvant, ou souhaitant revenir, dans les zones civiles des territoires désormais libérés.

9. Le but des mesures conservatoires sollicitées est de mettre un terme aux actions illégales de l’Arménie dirigées à l’encontre des Azerbaïdjanais sur la base de leur origine ethnique ou nationale. Ces mesures sont essentielles pour assurer la sécurité des Azerbaïdjanais, et pour veiller à ce que les Azerbaïdjanais, y compris ceux qui travaillent à reconstruire les territoires libérés, puissent y revenir sans la menace constante de mort ou de blessures graves. Ces mesures visent donc à préserver les droits spécifiques prévus aux articles 2 et 5 de la CERD.

B. Risque de préjudice irréparable et urgence

10. La Cour a «le pouvoir d’indiquer des mesures conservatoires lorsqu’il existe un risque qu’un préjudice irréparable soit causé aux droits en litige dans une procédure judiciaire ou lorsque la méconnaissance alléguée de ces droits risque d’entraîner des conséquences irréparables»¹⁷⁰. En outre, la Cour a également déclaré qu’elle n’exercera ce pouvoir «que s’il y a urgence, c’est-à-dire s’il existe un risque réel et imminent qu’un préjudice irréparable soit causé aux droits revendiqués avant que la Cour ne rende sa décision définitive»¹⁷¹.

11. Le préjudice irréparable dont l’Azerbaïdjan cherche à se protéger par le biais de mesures conservatoires est simple : ce n’est rien d’autre qu’une question de vie ou de mort. Depuis la signature de la déclaration trilatérale, les engins explosifs déployés par l’Arménie, tels des mines terrestres et

¹⁷⁰ *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), mesures conservatoires, ordonnance du 23 janvier 2020, C.I.J. Recueil 2020, p. 24, par. 64, cité dans Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 16 mars 2022, p. 14, par. 65.*

¹⁷¹ *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 16 mars 2022, par. 66.*

objets piégés, ont fait 282 victimes azerbaïdjanaises¹⁷² — parmi lesquelles 33 civils¹⁷³ ont été tués et 86 autres blessés par des mines terrestres¹⁷⁴. Depuis que la Cour a rendu son ordonnance le 7 décembre 2021, les mines terrestres ont fait 45 victimes civiles, y compris des ouvriers travaillant sur des chantiers de reconstruction et des individus engagés dans des opérations de déminage. Par ailleurs, le nombre de victimes que je viens de mentionner n'est pas un nombre statique — il est au contraire susceptible d'évoluer de manière significative. En effet, tant la découverte de divers engins explosifs que la collecte de la documentation des décès causés par ces engins explosifs nécessitent un processus d'enquête long et très fastidieux.

12. La population civile touchée par le conflit actuel est «extrêmement vulnérable»¹⁷⁵. Les explosions, qui se produisent de manière récurrente, rendent les conditions de retour de la population azerbaïdjanaise dans leurs territoires de plus en plus difficiles.

13. A ce jour, de nombreuses incertitudes demeurent quant au nombre et à l'emplacement exact des mines et objets piégés déployés par l'Arménie sur le territoire azerbaïdjanais, dans les régions autrefois peuplées de civils azerbaïdjanais. De ce fait, un véritable choix cornélien s'impose aux Azerbaïdjanais : ne plus pouvoir retourner sur les terres dont ils ont été séparés durant les 30 années de l'occupation arménienne ou retrouver ces territoires au péril de leur vie. L'Azerbaïdjan demande dès lors à la Cour de bien vouloir ordonner les mesures conservatoires sollicitées afin de préserver les droits protégés par la CERD du risque réel et imminent qui les menace.

i) La nature des droits en cause

14. A plusieurs reprises, la Cour a indiqué des mesures conservatoires visant la protection des droits fondamentaux consacrés par la CERD. Dans son ordonnance du 7 décembre 2021, la Cour avait reconnu que les articles 5 *b*) et 5 *d*), qui font l'objet de la requête de l'Azerbaïdjan, ainsi que

¹⁷² Lettre datée du 17 janvier 2023 adressée à M. Elnur Mammadov, vice-ministre des affaires étrangères de la République d'Azerbaïdjan, par M. Vugar Suleymanov, président du conseil d'administration de l'agence d'action contre les mines de la République d'Azerbaïdjan, n° 11-4/2-87/2023 (annexe 22).

¹⁷³ Lettre datée du 23 janvier 2023 adressée à M. Elnur Mammadov, vice-ministre des affaires étrangères de la République d'Azerbaïdjan, par M. Elchin Mammadov, premier procureur général adjoint de la République d'Azerbaïdjan, n° 14/cix 9-23, avec pièces jointes (traduction certifiée) (annexe 23).

¹⁷⁴ *Ibid.*

¹⁷⁵ *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 16 mars 2022, par. 75.*

d'autres dispositions de la CERD, «sont d'une nature telle que le préjudice qui leur serait porté pourrait se révéler irréparable».

15. Dans l'affaire *Géorgie c. Fédération de Russie*, la Cour a considéré que

«des violations du droit à la sûreté des personnes et du droit à la protection de l'Etat contre les voies de fait ou les sévices (article 5, alinéa *b*)) pourraient notamment se traduire par des pertes en vies humaines ou des atteintes à l'intégrité physique et donc causer un préjudice irréparable»¹⁷⁶.

Votre Cour a également indiqué que

«des violations du droit de circuler librement et de choisir sa résidence à l'intérieur d'un Etat (*ibid.*, alinéa *d*) i)) pourraient également causer un préjudice irréparable lorsque les personnes concernées sont exposées à des privations, à un sort pénible et angoissant et même à des dangers pour leur vie et leur santé»¹⁷⁷.

La Cour en conclut que «les personnes contraintes de quitter leur domicile et privées de leur droit de retour pourraient, en fonction des circonstances, courir un risque grave de préjudice irréparable»¹⁷⁸.

16. En exposant les Azerbaïdjanais à des menaces constantes de mort ou de blessures graves, dans (ou à proximité) des villes et villages des territoires désormais libérés, l'Arménie soumet les Azerbaïdjanais à un sort pénible et angoissant et les expose à des risques graves pour leur vie.

17. Comme l'ont expliqué mes collègues Mmes Amirfar et Reid, les actions entreprises par l'Arménie ont pour but et effet de cibler les Azerbaïdjanais du fait de leur origine ethnique et nationale. Les droits protégés par la CERD, y compris les droits à la sécurité de la personne, à pouvoir circuler librement et choisir sa résidence à l'intérieur d'un Etat, sont dès lors mis à mal et susceptibles de subir un préjudice irréparable comme la Cour l'a déjà observé.

ii) Il y a un risque réel et imminent de préjudice irréparable des droits en cause

18. Il existe un risque réel et imminent que ce préjudice irréparable se produise avant que la Cour ne statue sur le fond. En outre, l'installation par l'Arménie de mines terrestres et d'objets piégés au sein (ou à proximité) de zones civiles azerbaïdjanaises — et ce, depuis novembre 2020 —, ainsi que le refus de l'Arménie de fournir des informations sur l'emplacement, la quantité, le type ou les

¹⁷⁶ *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), mesures conservatoires, ordonnance du 15 octobre 2008, C.I.J. Recueil 2008, p. 396, par. 142.*

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

caractéristiques de ces engins présentent une menace imminente. Sans les mesures demandées, les actions de l'Arménie continueront de menacer, de blesser, de tuer et d'anéantir les vies de nombreux Azerbaïdjanais. Il en résulterait des conséquences irréparables en violation de l'article 5 de la CERD. Ainsi que votre juridiction l'a indiqué «la condition d'urgence est remplie dès lors que les actes susceptibles de causer un préjudice irréparable peuvent «intervenir à tout moment» avant que la Cour ne se prononce de manière définitive en l'affaire»¹⁷⁹.

19. Votre Cour a également observé que le risque de préjudice irréparable est réel et imminent lorsque le groupe affecté apparaît «se trouver toujours dans une situation de vulnérabilité pour ce qui est des droits qu'il[] tien[t] de l'article 5 de la convention»¹⁸⁰. De même, elle a considéré qu'il y a un tel risque lorsqu'il existe des preuves que ces violations sont en cours ou que des actes préalables sont tels que «les conséquences dont les effets, pour les personnes concernées, paraissent persister jusqu'à ce jour»¹⁸¹.

20. En l'espèce, des violations sont en cours et risquent de perdurer à moins que la Cour n'intervienne. Chaque fois que des familles azerbaïdjanaises ont souhaité retrouver leurs terres d'origine, leurs vies ont été mises en danger. L'Azerbaïdjan a fait tout ce qui était en son pouvoir pour atténuer ce danger, et ce notamment en limitant les déplacements de sa population dans les zones qui n'ont pas encore été déminées. Malgré ces mesures de protection, certains Azerbaïdjanais n'ont pas pu résister au désir de retrouver ces territoires dont ils ont été privés pendant près de 30 ans. Le danger est néanmoins omniprésent : l'Arménie ne s'est pas seulement contentée de déployer des engins explosifs dans des régions autrefois habitées par la population civile ; elle en a aussi déployé dans des lieux sacrés tels des cimetières. Par exemple, le 21 octobre 2022, l'explosion d'une mine terrestre dans le cimetière du village de Suarasi, à Lachin, a tué une personne et en a blessé une

¹⁷⁹ *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), mesures conservatoires, ordonnance du 23 janvier 2020, C.I.J. Recueil 2020, p. 24, par. 65 ; Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), mesures conservatoires, ordonnance du 7 décembre 2021, C.I.J. Recueil 2021, p. 429, par. 70.*

¹⁸⁰ *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Emirats arabes unis), mesures conservatoires, ordonnance du 23 juillet 2018, C.I.J. Recueil 2018 (II), p. 431, par. 67.*

¹⁸¹ *Ibid.*, par. 68. Voir aussi *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), mesures conservatoires, ordonnance du 23 janvier 2020, C.I.J. Recueil 2020, p. 27-28, par. 73-74.*

autre¹⁸². Ainsi, il ne fait aucun doute que les mines terrestres et objets piégés déployés par l'Arménie sont une entrave au droit des déplacés internes azerbaïdjanais de revenir chez eux.

21. C'est une vraie tragédie qui se déroule sous les yeux de tous. Le déploiement continu et ciblé de mines par l'Arménie dans les zones civiles constitue une menace sérieuse pour les efforts de déminage et de reconstruction entrepris par l'Azerbaïdjan au sein des territoires azerbaïdjanais dévastés par 30 ans d'occupation.

22. Depuis la libération des territoires, l'Azerbaïdjan fait tout ce qui est en son pouvoir pour faire revivre ces terres, les reconstruire et faciliter le retour des déplacés internes azerbaïdjanais, le plus rapidement possible. Certains déplacés internes n'ont qu'un désir : retrouver leurs terres. Pour ne citer qu'un exemple, je mentionnerai le témoignage de Mme Zabila Mammadova, déplacée interne azerbaïdjanaise, autrefois enseignante dans la ville de Choucha (Shusha). En février 2021, elle déclarait : «We've been waiting almost 30 years for Susa to be liberated so we can return — or how should I say it? — to run back there.»¹⁸³

23. A cet effet, l'Azerbaïdjan a adopté un programme d'Etat — connu sous le nom de «Great Return» (le «grand retour» en français) — visant à faciliter le retour des déplacés internes chez eux¹⁸⁴. De nombreux ouvriers travaillent actuellement sur ces chantiers de reconstruction dans les régions de Lachin et Kalbajar. Des centaines d'autres Azerbaïdjanais travaillent également au déminage de ces territoires¹⁸⁵. Chaque jour qui passe présente une nouvelle menace pour ces personnes : rentreront-ils vivants de ces chantiers ou bien périront-ils sur le terrain, du fait de l'explosion de mines ?

24. L'atteinte irréparable au droit au retour des personnes déplacées azerbaïdjanaises est bien imminente et réelle. Dans son ordonnance de décembre 2021, la Cour a convenu

¹⁸² Lettre datée du 17 janvier 2023 adressée à M. Elnur Mammadov, vice-ministre des affaires étrangères de la République d'Azerbaïdjan, par M. Vugar Suleymanov, président du conseil d'administration de l'agence d'action contre les mines de la République d'Azerbaïdjan, n° 11-4/2-87/2023 (annexe 22).

¹⁸³ R. Synovitz, "Dying to Go Home: Displaced Azerbaijanis Risk Mines, Munitions To See Homeland", *RFE/RL* (18 février 2021), accessible à l'adresse suivante : <https://www.rferl.org/a/azerbaijan-idps-karabakh-return-home-mines-munitions-risks/31110165.html>.

¹⁸⁴ Lettre datée du 22 septembre 2022 adressée à M. Philippe Gautier, greffier de la Cour internationale de Justice, par M. Elnur Mammadov, agent de la République d'Azerbaïdjan (annexe 4).

¹⁸⁵ Lettre datée du 17 janvier 2023 adressée à M. Elnur Mammadov, vice-ministre des affaires étrangères de la République d'Azerbaïdjan, par M. Vugar Suleymanov, président du conseil d'administration de l'agence d'action contre les mines de la République d'Azerbaïdjan, n° 11-4/2-87/2023 (annexe 22).

«qu'une politique consistant à éloigner des personnes sur la base de leur origine nationale ou ethnique d'une région donnée, et à les empêcher d'y revenir, peut faire intervenir des droits garantis par la CIEDR, et qu'une telle politique peut être exécutée par divers moyens militaires»¹⁸⁶.

L'existence de mines terrestres et d'objets piégés vise précisément à empêcher le retour des personnes déplacées azerbaïdjanaises. Le droit d'un individu à retourner dans son foyer est un droit fondamental qui ne devrait pas être suspendu. En fait, votre Cour devrait encourager l'Arménie à aider l'Azerbaïdjan à faciliter ce retour. Ce qui est en jeu ici ce n'est pas seulement la vie des individus, mais aussi leur dignité et leurs libertés.

25. Sans les mesures sollicitées, les actions de l'Arménie continueront d'infliger aux Azerbaïdjanais en quête de retour, y compris aux civils travaillant dans ces régions, un dommage irréparable. Ainsi, le déploiement par l'Arménie de mines terrestres et d'objets piégés sur le territoire azerbaïdjanais présente un risque réel et imminent qu'un préjudice irréparable soit causé aux droits protégés en vertu de l'article 5 de la CERD.

iii) La condition d'urgence est satisfaite

26. Je souhaiterais également attirer l'attention de la Cour sur l'urgence de la situation, cela en raison des découvertes renouvelées faites par l'Azerbaïdjan au cours de ces derniers mois, de mines terrestres et d'objets piégés, vraisemblablement déployés dans les territoires azerbaïdjanais entre 2021 et 2022. Ces découvertes coïncident par ailleurs avec le refus de l'Arménie de prendre part à des négociations visant à mettre fin à ces actes dangereux et discriminatoires. Comme l'a indiqué l'agent de l'Azerbaïdjan, l'Azerbaïdjan a essayé à maintes reprises d'initier des négociations bilatérales et multilatérales avec l'Arménie mais celles-ci sont demeurées vaines. Elles ont commencé en septembre 2022 jusqu'en décembre 2022 quand l'Arménie décida sans préavis de ne pas prendre part aux discussions qui devaient se tenir à Moscou en vue de discuter de ces préoccupations, ainsi que d'autres sujets. Mis au pied du mur, l'Azerbaïdjan a décidé de se tourner une nouvelle fois vers votre Cour et de solliciter des mesures conservatoires sans lesquelles des milliers de vies demeureront sous la menace des mines et objets piégés arméniens.

¹⁸⁶ *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), mesures conservatoires, ordonnance du 7 décembre 2021, C.I.J. Recueil 2021, p. 425, par. 53.*

27. Pour toutes ces raisons, un risque grave de préjudice irréparable subsistera tant que l'Arménie ne recevra pas l'ordre de cesser de poser des mines terrestres et objets piégés en Azerbaïdjan, de cesser d'aider d'autres à le faire, et de cesser d'utiliser le corridor de Lachin pour transporter ces engins explosifs.

28. Le refus de l'Arménie de fournir des informations sur l'emplacement de ces mines et objets piégés crée le risque réel et continu que des civils azerbaïdjanais travaillant ou souhaitant retourner dans leurs foyers situés dans les régions de Lachin et Kalbajar, ou dans les autres régions autrefois occupées, continueront de périr ou de subir de graves blessures corporelles. Ces risques sont imminents et ne cesseront pas d'exister tant que la Cour n'ordonnera pas les mesures demandées.

C. Conclusion

29. Mesdames et Messieurs les juges, j'en arrive à la fin de ma plaidoirie.

30. Il me reste à remercier la Cour de son attention. Je vous saurais gré, Madame la présidente, de bien vouloir donner la parole à M. Elnur Mammadov, agent de la République d'Azerbaïdjan.

The PRESIDENT: I thank Professor Boisson de Chazournes. I now invite the Agent of Azerbaijan, His Excellency Mr. Elnur Mammadov, to address the Court. You have the floor, Excellency.

M. MAMMADOV :

VI. CONCLUSIONS FINALES

1. Madame la présidente, Mesdames et Messieurs les juges, j'ai le privilège de m'adresser à vous une nouvelle fois et de présenter les conclusions finales de la République d'Azerbaïdjan.

2. L'Azerbaïdjan est aujourd'hui devant la Cour pour demander une assistance urgente afin de sauvegarder ses droits ainsi que les droits des Azerbaïdjanais en vertu de la CERD. Comme l'ont expliqué les conseils de l'Azerbaïdjan, le but et les effets de la pose par l'Arménie de mines terrestres et d'objets piégés dans les zones civiles azerbaïdjanaises sont d'empêcher les Azerbaïdjanais de retourner dans les territoires anciennement occupés. L'Arménie a continué à poser des mines et objets piégés après avoir accepté de mettre fin aux hostilités et de restituer ces zones à l'Azerbaïdjan. Quelle autre raison l'Arménie pouvait-elle avoir d'installer en 2021 des mines terrestres loin dans le

territoire azerbaïdjanais ? Quelle autre raison l'Arménie pouvait-elle avoir lorsque des pièges mortels ont été posés dans des habitations ?

3. Je vais à présent donner lecture des conclusions finales de la République d'Azerbaïdjan en langue anglaise.

4. "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 3 January 2023, 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 immediately take all necessary steps to enable Azerbaijan to undertake the prompt, safe and effective demining of the towns, villages, and other areas to which Azerbaijani civilians will return in the Lachin District, Kalbajar District and other formerly occupied districts of Azerbaijan, including by providing information about the location, quantity, type and characteristics of landmines, booby traps and other explosive devices in these areas, in order to enable Azerbaijani internally displaced persons to return to their homes; and
- b) Armenia shall immediately cease and desist from any further efforts to plant or to sponsor or support the planting of landmines and booby traps in these areas to which Azerbaijani civilians will return in Azerbaijan's territory, including, but not limited to, the use of the Lachin Corridor for this purpose."

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.

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

The sitting is adjourned.

The Court rose at 12.10 p.m.
