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**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2023

Public sitting

held on Monday 30 January 2023, at 10 a.m., at the Peace Palace,

President Donoghue presiding,

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

VERBATIM RECORD

ANNÉE 2023

Audience publique

tenue le lundi 30 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
(Arménie c. Azerbaïdjan)**

COMPTE RENDU

Present: President Donoghue
 Vice-President Gevorgian
 Judges Tomka
 Abraham
 Bennouna
 Yusuf
 Xue
 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
Mme Xue
MM. Robinson
Salam
Iwasawa
Nolte
Mme Charlesworth
M. Brant, juges
MM. Keith
Daudet, juges *ad hoc*

M. Gautier, greffier

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- M. Arman Ghukasyan, responsable de service au département général des opérations des forces armées de la République d'Arménie,
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The PRESIDENT: Please be seated. The sitting is open. For reasons duly made known to me, Judge Sebutinde and 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 Armenia in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*. This morning, the Republic of Armenia will present its single round of oral argument.

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In line with the approach adopted by the Court with respect to its public sittings, the present hearing will take place in person. However, taking into account the current public health situation in relation to COVID-19, a 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 are required to wear face masks at all times, except when speaking.

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

On 16 September 2021, Armenia filed in the Registry of the Court an Application instituting proceedings against Azerbaijan concerning alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (which I shall refer to as the “CERD”). To found the jurisdiction of the Court, Armenia invokes Article 36, paragraph 1, of the Statute of the Court and Article 22 of CERD. The Application also contained a Request for the indication of provisional measures, pursuant to Article 41 of the Statute and 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 Azerbaijan shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

- (a) Protect from violence and bodily harm all persons captured in relation to the 2020 Conflict who remain in detention, and ensure their security and equality before the law;
- (b) Take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin; [and]
- (c) Take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts;

(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 Armenia and a Counter-Memorial by Azerbaijan.

By a letter dated 16 September 2022, Armenia, referring to Article 76 of the Rules of Court, requested the modification of the first provisional measure set out in the Order of 7 December 2021. By an Order dated 12 October 2022, the Court found that “the circumstances, as they [then] present[ed] themselves to the Court, [were] not such as to require the exercise of its power to modify the measures indicated in the Order of 7 December 2021”. In addition, the Court reaffirmed the provisional measures indicated in its Order of 7 December 2021, in particular the requirement that both Parties refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

On 28 December 2022, Armenia submitted a new Request for the indication of provisional measures, referring to Article 41 of the Statute and to Article 73 of the Rules of Court. In its Request, Armenia states that, on 12 December 2022, Azerbaijan “orchestrated a blockade of the only road connecting the 120,000 ethnic Armenians in Nagorno-Karabakh with the outside world, thereby preventing anyone and anything from entering or exiting”. It adds that this blockade “is ongoing as of the date of the present Request”. Armenia states that the blockade has “rendered . . . impossible” the transfer of “critically ill ethnic Armenians hospitalised in Nagorno-Karabakh . . . to medical facilities in Armenia for urgent medical care”, as well as “preventing the import of food, medical and medicine supplies, and other humanitarian assistance into Nagorno-Karabakh” and causing “ethnic

Armenian families” to be “forcibly separated”. According to Armenia, provisional measures are necessary in order to preserve and protect rights enshrined in CERD.

By a letter of 26 January 2023, the Agent of Armenia transmitted to the Court the text of a further provisional measure sought by the Applicant with regard to “the provision of natural gas and other public utilities to Nagorno-Karabakh”.

By a letter dated 27 January 2023, Azerbaijan stated that Armenia did not have a sufficient reason for waiting until one business day before the hearing to introduce a new topic and that it would be unable to respond to the substance of the new request during the oral proceedings scheduled for 30 January 2023.

In view of the short period between the filing of Armenia’s request for the indication of a new provisional measure on 26 January 2023 and today’s hearing, the Registrar has informed the Parties that Azerbaijan may offer any initial response to the new request during today’s oral proceedings and that Azerbaijan would be also authorized to submit written comments limited to the new provisional measure requested no later than 3 p.m. on Wednesday 1 February 2023. The Parties have also been informed that no further additional written materials related to the pending request for the indication of provisional measures may be filed without prior authorization.

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

The REGISTRAR: Thank you, Madam President.

“Armenia respectfully requests that the Court indicate the following provisional measures:

- Azerbaijan shall cease its orchestration and support of the alleged ‘protests’ blocking uninterrupted free movement along the Lachin Corridor in both directions;
- Azerbaijan shall ensure uninterrupted free movement of all persons, vehicles, and cargo along the Lachin Corridor in both directions”; and
- “Azerbaijan shall immediately fully restore and refrain from disrupting or impeding the provision of natural gas and other public utilities to Nagorno-Karabakh”.

Thank you, Madam President.

The PRESIDENT: I thank the Registrar. Immediately after the Request for the indication of provisional measures of 28 December 2022 was filed, the Deputy-Registrar transmitted an original copy thereof to the Government of Azerbaijan. He also notified the Secretary-General of the United Nations.

According to Article 74, paragraph 1, of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. Paragraph 2 of the same Article states that the Court shall proceed to a decision on the request as a matter of urgency. This imperative must be, however, balanced with the need to fix the date of oral proceedings in such a way as to afford the parties an opportunity of being 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 Monday 30 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 Armenia, which has submitted the Request for the indication of provisional measures. It will hear Azerbaijan this afternoon at 4 p.m. For purposes of this single round of oral argument, each of the Parties will have available a two-hour sitting.

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

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

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

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

Mr. KIRAKOSYAN:

INTRODUCTION

1. Madam President, distinguished judges of the Court, it is an honour to appear before you today to speak on behalf of the Republic of Armenia, which obviously has an interest in the fate of ethnic Armenians of Nagorno-Karabakh.

2. We do not come to you lightly and had hoped that the matters addressed in our Request would be resolved long ago, through the intervention by the United Nations Security Council on 20 December 2022 as well as bilateral exchanges and letters to the Court since then. But Azerbaijan appears intent on strangling the ethnic Armenians of Nagorno-Karabakh, no matter the human cost.

3. One person has already died from lack of medical care and numerous others are at risk of a similar fate. Grocery store shelves are empty and food is being rationed. There are shortages in essential medicines and medical supplies. Trade and businesses have completely stopped. Gas has been repeatedly shut off entirely and the demand on the electrical grid has led to recurring and prolonged blackouts. The schools and kindergartens remain completely shut down. Children have been separated from their families for 50 days now.

4. Despite the mounting cost of this humanitarian disaster of its own making, Azerbaijan has sought to justify and perpetuate its blockade on the basis of an environmental fiction that no one believes. It does so despite its unequivocal commitment under the Trilateral Statement of November 2020 to “guarantee safe movement of citizens, vehicles and cargo in both directions along the Lachin corridor”. And it does so in the face of near-unanimous international condemnation, including from the European Union, the Council of Europe, the United States of America, France and numerous other States, as well as Amnesty International, Human Rights Watch and countless other independent observers and organizations. Over a month ago, the European Court of Human Rights ordered Azerbaijan to take all necessary measures to ensure safe passage of seriously ill persons in need of medical treatment in Armenia and those stranded on the road. And yet Azerbaijan ignored the Strasbourg Court as well, prompting it to take the extraordinary step of notifying Azerbaijan’s non-compliance to the Committee of Ministers of the Council of Europe.

5. I therefore appear before you in this Great Hall of Justice as a last resort. If the Court does not act quickly, the ethnic Armenians of Nagorno-Karabakh will be faced with an impossible choice: to leave their ancestral homes, or to stay there and starve. President Aliyev has made that plainly clear. He has explicitly demanded that ethnic Armenians in Nagorno-Karabakh “leave”. He has stated that Azerbaijan’s “main duty was to expel the Armenians from our lands”. He has stated that “no songs will be sung” in the “alien language” of Armenian and that “from now on, it will be the Azerbaijani language that will dominate this land”.

6. The blockade and the gas and electricity shutdowns and disruptions are specifically designed to make that happen. In President Aliyev’s words just days ago: “if someone does not want to become our citizen, then the road is not closed, but opened. They can go, or they can leave by themselves, no one will stop them, or they can leave under the awning of peacekeepers’ trucks, or they can go by bus.”

7. In other words, ethnic Armenians may not enter Nagorno-Karabakh, but they may leave. Judges of the Court, such blatant acts of ethnic cleansing have no place in the modern era. And this Court is the last hope for the ethnic Armenians of Nagorno-Karabakh.

8. Madam President, judges of the Court, with your permission, Armenia’s distinguished counsel will now take the floor to present the remainder of Armenia’s case.

9. *First*, Mr. Lawrence Martin will address the facts justifying Armenia’s Request.

10. *Second*, Professor Linos-Alexandre Sicilianos will address the prima facie jurisdiction of the Court, the rights for which protection is sought and the link between such rights and the measures requested.

11. *Third*, Dr. Constantinos Salonidis will address the irreparable prejudice and urgency requiring the indication of provisional measures.

12. *Fourth*, Professor Pierre d’Argent will discuss the provisional measures requested.

13. *Finally*, I will briefly return to the floor to read Armenia’s submissions.

14. I thank you, Madam President, distinguished Members of the Court, for your attention and careful consideration of Armenia’s Request. I now ask that you call Mr. Martin to the floor. Thank you.

The PRESIDENT: I thank the Agent of Armenia for his statement. I now invite Mr. Lawrence Martin to take the floor.

Mr. MARTIN:

THE FACTS JUSTIFYING ARMENIA'S REQUEST

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

2. As the honourable Agent just said, we come before you today to request your urgent intervention to end to an ongoing humanitarian catastrophe. Since 12 December last year, the ethnic Armenian population of Nagorno-Karabakh has been almost entirely cut off from the outside world. They have been and they continue to be deprived of access to food, medicine and all the other necessities of life. Without swift action by the Court, their lives are in danger.

3. My intervention this morning will focus on the facts justifying Armenia's Request for provisional measures. It will be divided into three parts. First, I will describe the essential facts of the blockade and the context in which it is occurring. Second, I will discuss the dire humanitarian consequences that Azerbaijan's actions are having. Third, I will address Azerbaijan's excuses about why it is not responsible for this situation and show why none of them is credible.

I. The blockade targets ethnic Armenians because they are Armenian

4. So, to the blockade and the relevant context. The Court will recall that tens of thousands of ethnic Armenians were forcibly displaced from territories conquered by Azerbaijan during the 44-day war in 2020. Not a single person has been able to return to their home. When the war ended, the Russian Federation sent peacekeepers to the region to — and these are the words of the Federation Council decree authorizing the deployment — “prevent the mass death of the civilian population of Nagorno-Karabakh”¹.

¹ The Federation Council of the Federal Assembly of the Russian Federation, *On the use of a military unit of the Armed Forces of the Russian Federation in Nagorno-Karabakh*, 18 Nov. 2020, available at <http://council.gov.ru/activity/documents/121580/> (certified translation from Russian); Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 23.

5. Even so, Azerbaijan has been doing its best to make the lives of the remaining ethnic Armenians in the region intolerable. It has attacked Armenian villages in violation of the ceasefire agreement². It has forcibly displaced residents, including *all* Armenians from the villages of Parukh, Berdzor, Aghavno and Sus³. It has intimidated and killed Armenians who just happened to be going about their lives near its armed forces⁴. And it has repeatedly cut off access to gas, mobile communications and internet⁵.

6. Azerbaijan has always been blunt about its objective. Speaking at the opening of a new residential complex for veterans and their families in Baku in May 2022, for instance,

² See e.g. Russian Federation, Ministry of Defence, *Information Bulletin of the Ministry of Defence of the Russian Federation on the activities of the Russian peacekeeping contingent in the zone of the Nagorno-Karabakh conflict (as of August 12, 2021)*, 12 Aug. 2021 (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 24); Russian Federation, Ministry of Defence, *News bulletin of the Ministry of Defense of the Russian Federation on the operations of the Russian peacekeeping forces in the area of the Nagorno-Karabakh conflict (as of November 9, 2021)*, 9 Nov. 2021 (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 25); Russian Federation, Ministry of Defence, *News bulletin of the Ministry of Defense of the Russian Federation on the operations of the Russian peacekeeping forces in the area of the Nagorno-Karabakh conflict (as of January 28, 2022)*, 28 Jan. 2022 (Memorial of Armenia, Ann. 26); Human Rights Watch, *2022 Annual Report*, available at <https://www.hrw.org/world-report/2022/country-chapters/azerbaijan>; "Civilian car parked outside kindergarten in Artsakh set ablaze by Azeri gunfire", *Armenpress*, 10 Jan. 2022, available at <https://armenpress.am/eng/news/1072582>; "On-duty firefighters in Artsakh attacked by Azerbaijani military", *Armenpress*, 10 Jan. 2022, available at <https://armenpress.am/eng/news/1072585.html>; "Azeri Mortar Fire Reported In Karabakh (updated)", *Radio Free Europe/Radio Liberty (Azatutyun)*, 9 Mar. 2022, available at <https://www.azatutyun.am/a/31744640.html>; Human Rights Ombudsman of the Republic of Artsakh, *Interim Report on Violations of the Rights of Artsakh People by Azerbaijan in February-March 2022*, 18 Mar. 2022, available at <https://artsakhombuds.am/en/document/910>.

³ M. Vanyan, "Nagorno-Karabakh: What does the future hold?", *Open Democracy*, 15 Apr. 2022, available at <https://www.opendemocracy.net/en/odr/nagorno-karabakh-what-does-the-future-hold/> (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 27); T. Oundjian *et al.*, "Armenians forced to evacuate Nagorno-Karabakh face uncertain future", *France 24*, 12 Sept. 2022, available at <https://www.france24.com/en/tv-shows/focus/20220912-armenians-forced-toevacuate-nagorno-karabakh-face-uncertain-future> (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 28).

⁴ See e.g. "Ani Avetisyan, "Nagorno-Karabakh civilian shot dead in apparent ceasefire violation", *OC Media*, 11 Oct. 2021, available at <https://oc-media.org/nagorno-karabakh-civilian-shot-dead-in-apparent-ceasefireviolation/> (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 29); "Another Karabakh Civilian Killed In Truce Violation", *Radio Free Europe/Radio Liberty*, 8 Nov. 2021, available at <https://www.azatutyun.am/a/31551472.html> (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 30); "Another Karabakh Armenian Civilian Killed", *Radio Free Europe/Radio Liberty*, 3 Dec. 2021, available at <https://www.azatutyun.am/a/31592697.html> (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 31).

⁵ See e.g. A. Grigoryan, "Nagorno-Karabakh authorities blame Azerbaijani networks for mobile telephony interruptions", *Caucasian Knot*, 29 Aug. 2021, available at <https://eng.kavkaz-uzel.eu/articles/56580/> (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 34); T. Grigoryan, "The new escalation in Nagorno-Karabakh is part of Azerbaijan's long-term strategy", *Civilnet*, 11 Mar. 2022, available at <https://www.civilnet.am/en/news/653296/the-new-escalation-in-nagornokarabakh-is-part-of-azerbaijans-long-term-strategy/> (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 35); "In deep freeze, Nagorno-Karabakh finds itself without gas again", *OC Media*, 22 Mar. 2022, available at <https://oc-media.org/in-deep-freeze-nagorno-karabakh-finds-itself-without-gas-again>; "Gas Supply Resumes, Says Artsakh Government", *Hetq*, 29 Mar. 2022, available at <https://hetq.am/en/article/142818>; "Nagorno-Karabakh left out in the cold", *OC Media*, 9 Mar. 2022, available at <https://oc-media.org/nagorno-karabakh-left-in-the-cold-after-gas-pipeline-damaged-in-azerbaijan-controlled-territory>; Human Rights Ombudsman of the Republic of Artsakh, *Interim Report on Violations of the Rights of Artsakh People by Azerbaijan in February-March 2022*, 18 Mar. 2022, available at <https://artsakhombuds.am/en/document/910> (Memorial of Armenia, Ann. 67).

President Aliyev said: “Our primary duty was to expel the Armenians from our lands.”⁶ This is a man, you will recall, who is fond of calling Armenians “dogs”⁷, “vandals”⁸, “savages”⁹ and “barbarians”¹⁰.

7. Even more chilling is the postage stamp issued in late 2020 by Azerbaijan’s State-owned stamp company¹¹. It is on the screen now. We showed this to you during the previous hearing on provisional measures. You see the image at the top. It depicts a person in a hazmat suit “disinfecting” Nagorno-Karabakh. Evidently, Azerbaijan considers Armenians in the region as in need of eradication.

8. After the war, around 120,000 ethnic Armenians are left in Nagorno-Karabakh. They are connected to Armenia, and thus to the outside world, by a single tenuous thread: the Goris-Stepanakert highway running through the Lachin Corridor. You can see that on the map on the screen now, which we show for illustrative purposes. There are no roads open to Armenian civilians

⁶ “Ilham Aliyev and First Lady Mehriban Aliyeva have attended the opening of a new residential complex for families of martyrs and war disabled in the Sabunchu district, Baku”, *The President of the Republic of Azerbaijan Ilham Aliyev*, 2 May 2022, available at <https://president.az/en/articles/view/55929>.

⁷ See e.g. “President Ilham Aliyev addresses the nation”, *Azernews*, 17 Oct. 2020, available at <https://www.azernews.az/nation/184462.html> (cited in Memorial of Armenia, Ann. 292); “Azerbaijan’s war crimes in Nagorno-Karabakh”, *T-online*, 3 Dec. 2020, available at https://www.t-online.de/nachrichten/ausland/krisen/id_89055086/videos-show-azerbaijan-s-war-crimes-in-nagorno-karabakh.html; “Chronicles of Victory: President Ilham Aliyev addresses the nation on October 17, 2020”, *Azernews*, 17 Oct. 2021, available at <https://www.azernews.az/nation/184462.html> (cited in Memorial of Armenia, Ann. 292).

⁸ See e.g. “Azerbaijani, Lithuanian presidents made press statements”, *The President of the Republic of Azerbaijan Ilham Aliyev*, 18 May 2022, available at <https://president.az/en/articles/view/56056> (cited in Memorial of Armenia, Ann. 292).

⁹ See “Ilham Aliyev chaired meeting on results of first quarter of 2022”, *The President of the Republic of Azerbaijan Ilham Aliyev*, 12 Apr. 2022, available at <https://president.az/en/articles/view/55780> (cited in Memorial of Armenia, Ann. 292). See also “Ilham Aliyev attended Youth Forum of 25th anniversary of Day of Azerbaijani Youth”, *The President of the Republic of Azerbaijan Ilham Aliyev*, 2 Feb. 2022, available at <https://president.az/en/articles/view/55348> (cited in Memorial of Armenia, Ann. 292); “President Ilham Aliyev was interviewed by AZERTAC VIDEO”, *Azertac*, 31 Jan. 2022, available at https://azertag.az/en/xeber/President_Ilham_Aliyev_was_interviewed_by_AZERTAC_VIDEO-1994012 (cited in Memorial of Armenia, Ann. 292); “Ilham Aliyev attended the opening of a military unit in Hadrut settlement”, *The President of the Republic of Azerbaijan Ilham Aliyev*, 24 Dec. 2021, available at <https://president.az/en/articles/view/54888>; “Azerbaijani President Ilham Aliyev addresses nation on TV”, *Defence.Az*, 20 Oct. 2020, available at <https://defence.az/en/news/147408/azerbaijani-president-ilham-aliyev-addresses-nation-on-tv-%C2%A0live> (cited in Memorial of Armenia, Ann. 292).

¹⁰ See e.g. “Azerbaijani, Lithuanian presidents made press statements”, *The President of the Republic of Azerbaijan Ilham Aliyev*, 18 May 2022, available at <https://president.az/en/articles/view/56056> (cited in Memorial of Armenia, Ann. 292). See also “Ilham Aliyev received Executive Director of UN Human Settlements Programme”, *The President of the Republic of Azerbaijan Ilham Aliyev*, 5 Mar. 2022, pp. 2-3, available at <https://president.az/en/articles/view/55578>; “Aggressor must also be punished at international level, we demand compensation – President Ilham Aliyev”, *Trend*, 5 Mar. 2022, available at <https://en.trend.az/azerbaijan/politics/3564795.html>.

¹¹ See “Azerbaijani postal stamps accused of spreading anti-Armenian propaganda”, *The Calvert Journal*, 12 Jan. 2021, available at <https://www.calvertjournal.com/articles/show/12442/azerbaijan-stamps-nagorno-karabakh-war-anti-armenian-propaganda>; A. Galitsky, “Azerbaijan’s Dehumanization of Armenians Echoes Horrors of Holocaust”, *The Times of Israel*, 30 Jan. 2021, available at <https://blogs.timesofisrael.com/azerbaijans-dehumanization-of-armenians-echoes-horrors-of-holocaust/>.

connecting Nagorno-Karabakh with Azerbaijan. It is also impossible to fly there, because Azerbaijan has threatened to shoot down any aircraft that attempt to use the Stepanakert airport¹². The highway is thus the only means of transporting anything and anyone into and out of Nagorno-Karabakh.

9. Under the Trilateral Statement brokered by the Russian Federation that ended the 2020 war, Azerbaijan is specifically required to “guarantee safe movement of citizens, vehicles and cargo in both directions along the Lachin corridor”¹³.

10. Before the blockade, Nagorno-Karabakh imported some 400 tonnes of essential goods *every day*¹⁴. Likewise, residents needing medical treatment elsewhere, or wishing to travel outside Nagorno-Karabakh for any reason, had to take this road.

11. Then, 50 days ago, on the morning of 12 December, a group of Azerbaijanis dressed in civilian clothes and claiming to be “eco-activists” occupied a segment of the Goris-Stepanakert highway near the city of Shushi¹⁵, which has been under the control of Azerbaijan since the end of

¹² “Azerbaijan warns will down Armenian flights if Karabakh separatists reopen airport”, *AzerNews*, 17 Mar. 2011, available at <https://www.azernews.az/nation/30885.html>.

¹³ Republic of Armenia, Office of the Prime Minister, *Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation*, 9 Nov. 2020, point 6, available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>; Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 37.

¹⁴ Human Rights Defender of Armenia & Human Rights Defender of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022, available at <https://artsakhombuds.am/en/document/976> (cited in Memorial of Armenia, Ann. 5); Human Rights Defender of Armenia & Human Rights Defender of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World (December 12-25)*, 26 Dec. 2022, available at <https://artsakhombuds.am/en/document/980> (Armenia’s Observations, 24 Jan. 2023, Ann. 76); Human Rights Defender of Armenia & Human Rights Defender of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World (December 12-January 13)*, 13 Jan. 2023, available at <https://artsakhombuds.am/en/document/985> (Armenia’s Observations, 24 Jan. 2023, Ann. 77).

¹⁵ Russian Federation, Ministry of Defence, *News bulletin of the Ministry of Defense of the Russian Federation on the operations of the Russian peacekeeping forces in the area of the Nagorno-Karabakh conflict (as of December 13, 2022)*, 13 Dec. 2022; Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 1.

the Second Nagorno-Karabakh War¹⁶. These ostensible activists claimed to be protesting allegedly harmful mining activities in Nagorno-Karabakh¹⁷ and prevented vehicles from passing¹⁸.

12. It was a poor cover story from the beginning. Nobody really believes the protestors are genuinely concerned about the environment in Nagorno-Karabakh. One *real* Azerbaijani environmental activist posted on Facebook the very day the blockade started that

“[i]t is clear as the sky that the protest of the ‘environmental activists in Karabakh is a made-up story . . . Until today, I have not seen a single person there caring at all about environmental issues . . . These guys are just executives of a custom-tailored spectacle.”¹⁹

13. An independent Azerbaijani news source interviewed a number of the protestors. Only a tiny fraction represented environmental organizations²⁰. In point of fact, many represent non-governmental organizations (NGOs) funded either by the Azerbaijani Government or the Heydar Aliyev Foundation²¹. Social media also abounds with photos of so-called “protestors” wearing

¹⁶ Republic of Armenia, Office of the Prime Minister, *Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation*, 9 Nov. 2020, point 6, available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>; Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 37.

¹⁷ G. Gavin, “Azerbaijani environmental protests could start a war”, *UnHerd*, 23 Dec. 2022, available at <https://unherd.com/the-post/azerbaijans-environmental-protests-could-start-a-war/>.

¹⁸ Russian Federation, Ministry of Defence, *News bulletin of the Ministry of Defense of the Russian Federation on the operations of the Russian peacekeeping forces in the area of the Nagorno-Karabakh conflict (as of December 13, 2022)*, 13 Dec. 2022 (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 1); Human Rights Defender of the Republic of Armenia & Human Rights Ombudsman of the Republic of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022, available at <https://artsakhombuds.am/en/document/976> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 5).

¹⁹ Cavid Qara, *Facebook*, 12 Dec. 2022, available at <https://www.facebook.com/cavidqara1918/posts/pfbid03ZUxMbZs7dch1Q8t5ccVZjfncewiEwYhTJ1uZWLnSwcA6X8TkuLU94WZeDJT2UxJl>; Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 41.

²⁰ “How much grant did ‘eco-activists’ at the Lachin corridor receive from Azerbaijani government?”, *Mikroskop*, 19 Jan. 2023, available at <https://mikroskopmedia.com/en/2023/01/19/how-much-grant-did-eco-activists-at-the-lachin-corridor-receive-from-azerbaijani-government>. See also “Who really are Azerbaijan’s ‘environmental activists’ blockading Karabakh?”, *CivilNet*, 14 Dec. 2022, available at <https://www.civilnet.am/en/news/686152/> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 39); L. Musayelien, “Who Are The Azerbaijani EcoActivists?”, *Radio Free Europe/Radio Liberty*, 14 Dec. 2022, available at <https://www.azatutyun.am/a/32176325.html> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 40).

²¹ See CivilNet, “In the Footsteps of Azerbaijani ‘Environmentalists’. ‘Fake News of the week’”, *YouTube*, 17 Dec. 2022, available at https://www.youtube.com/watch?v=zIK--NXj_9Q, at 2:41-2:55; Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 38.

military uniforms²². In fact, one of the alleged leaders of the so-called “protesters”, Mr. Telman Qasimov, is reported to be an officer of Azerbaijan’s military special intelligence service²³.

14. The wholly fictitious nature of the protestors’ environmental concerns is also shown by other facts. Just two days after the blockade started, the authorities in Nagorno-Karabakh relented to the protestors’ demand that international observers be allowed to monitor the two mines allegedly at the centre of the protests. They adopted a resolution specifically authorizing Russian and Azerbaijani observers²⁴. Azerbaijan did not accept. And a couple of weeks later, the authorities ceased mining operations in the two mines altogether²⁵. The blockade continues nevertheless with no end in sight.

15. Azerbaijanis also have far worse environmental problems much closer to home to worry about. Oil and gas exploitation in the country has had devastating environmental consequences, including in the Caspian Sea²⁶. But somehow, the Goris-Stepanakert highway is the only place these alleged activists choose to protest.

16. Moreover, shortly after the blockade began, the protestors started adding demands that had nothing to do with their putative environmental concerns and had a distinctly more sovereign character. They insisted, for instance, that border and customs control posts be established on the roadway²⁷. They also spend far more time chanting slogans praising the Azerbaijani military than

²² See e.g. Lindsey Snell, @LindseySnell, *Twitter*, 8 Jan. 2023, available at <https://twitter.com/lindseysnell/status/161222531632771072>; *ibid.*, 6 Jan. 2023, available at <https://twitter.com/LindseySnell/status/1611525386570956800>; *ibid.*, 5 Jan. 2023, available at <https://twitter.com/LindseySnell/status/1611002568297295872>; *ibid.*, 5 Jan. 2023, available at <https://twitter.com/LindseySnell/status/1611004000039493636>; *ibid.*, 5 Jan. 2023, available at <https://twitter.com/LindseySnell/status/1610944790723436545>.

²³ Human Rights Defender of the Republic of Armenia and Human Rights Ombudsman of the Republic of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022 (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 5); Telman Qasimov, *Facebook*, 8 Nov. 2021, available at <https://www.facebook.com/photo.php?fbid=2933295810263936> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 56).

²⁴ Resolution No. 13 of the Security Council of the Republic of Nagorno-Karabakh, 14 Dec. 2022; Armenia’s Observations, 24 Jan. 2023, Ann. 97.

²⁵ “Karabakh Suspends Mining Operations Amid Azeri Blockade”, *Radio Free Europe/Radio Liberty (Azatutyun)*, 28 Dec. 2022, available at <https://www.azatutyun.am/a/32197635.html>.

²⁶ “Azerbaijan: Report shows devastating impact of oil and gas development on health of local communities & environment”, *BHR Resource Center*, 8 Feb. 2022, available at <https://www.business-humanrights.org/en/latest-news/report-flames-of-toxicity-environmental-and-social-impacts-of-azerbajians-oil-and-gas-development/>; A. Palasciano, “Seals, caviar and oil: Caspian Sea faces pollution threat”, *Phys.org*, 16 Apr. 2019, available at <https://phys.org/news/2019-04-caviar-oil-caspian-sea-pollution.html>.

²⁷ K. Khatamzadeh, “Azerbaijani peaceful protestors on Lachin road change demands (VIDEO)”, *Trend News Agency*, 15 Dec. 2022, available at <https://en.trend.az/azerbaijan/politics/3682209.html>; Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 42.

raising their voices about environmental issues. The chant “the Azerbaijani soldier is the greatest soldier” is one of their favourites²⁸.

17. So, what is really going on here? It is obvious. Azerbaijan is trying to fulfil what President Aliyev called its “primary duty” to expel Armenians from its lands. How do we know that? Well, President Aliyev himself said so. Speaking about the situation on the highway in a 10 January 2023 interview, he told the assembled press:

“[W]hoever does not want to become our citizen, the road is not closed; it is open. They can leave whenever they want; no one would stop them. They can travel in the back of peacekeepers’ trucks or take a bus. The road is open.”²⁹

18. “The road is open” for those who want to *leave*. Azerbaijan’s purpose could not be clearer.

19. The racial animus of the protestors themselves is equally evident. There are numerous photos and videos on social media of the protestors displaying the hand gesture of the notorious pan-Turkic ultranationalist group the Grey Wolves³⁰, which is widely condemned for anti-Armenian violence and hate speech³¹. On the screen now is just one such photo.

20. Another video on Twitter shows protestors enjoying what is obviously a chartered bus ride to the site merrily singing a song. The lyrics include: “Let those mountains see Grey Wolves again; leave the land of Oghuz [Turks] and run away.”³² At the end of the video, one grinning passenger proudly makes the same Grey Wolves hand gesture, as you can see on the screen now³³.

²⁸ See e.g. Lindsey Snell @LindseySnell, *Twitter*, 3 Jan. 2023, available at <https://twitter.com/LindseySnell/status/1610368003933179910>; *ibid.*, 7 Jan. 2023, available at <https://twitter.com/LindseySnell/status/1611664145535107073>; *ibid.*, 3 Jan. 2023, available at <https://twitter.com/LindseySnell/status/1612050487737458691>.

²⁹ “Ilham Aliyev was interviewed by local TV channels”, *President of the Republic of Azerbaijan Ilham Aliyev*, 10 Jan. 2023, available at <https://president.az/en/articles/view/58555>.

³⁰ See e.g. Ararat Petrosyan, @araratpetrosian, *Twitter*, 15 Dec. 2022, available at <https://twitter.com/araratpetrosian/status/1603380459571912704> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 45); Karabakh Records, @KarabakhRecords, *Twitter*, 12 Dec. 2022, available at <https://twitter.com/KarabakhRecords/status/1602428822913261576> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 46).

³¹ See Letter from the Armenian Bar Association to Ms E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 23 Feb. 2021, available at <https://armenianbar.org/wp-content/uploads/2021/03/Armenian-Bar-Association-Grey-Wolves-Report-Combating-Glorification-of-Nazism-FINAL.pdf>, p. 2; “France has banned the ‘Grey Wolves’ – but who are they?”, *Al Jazeera*, 24 Nov. 2020, available at <https://www.aljazeera.com/features/2020/11/24/france-has-banned-the-grey-wolves-but-who-are-they>.

³² Lindsey Snell, @LindseySnell, *Twitter* (11 Jan. 2023), available at <https://twitter.com/LindseySnell/status/1613240600224231426> (Armenia’s Observations (24 Jan. 2023), Ann. 90).

³³ Lindsey Snell, @LindseySnell, *Twitter* (11 Jan. 2023), available at <https://twitter.com/LindseySnell/status/1613240600224231426> (Armenia’s Observations (24 Jan. 2023), Ann. 90). See also Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World (December 12-January 13)* (13 Jan. 2023), available at <https://artsakhombuds.am/en/document/985> (Armenia’s Observations (24 Jan. 2023), Ann. 77), pp. 39-40.

21. Protestors' social media accounts also frequently contain the vilest forms of hate speech. Our provisional measures Request contains many of these examples³⁴. For now, I will cite just one to illustrate the point. This image is from the Facebook account of one so-called protestor³⁵. It shows a patch depicting the notorious Ottoman genocidaire Enver Pasha with the inscription "Armenian, don't run! You'll die anyway, just exhausted."³⁶

22. The steps Azerbaijan has taken to expel Armenians from their homeland are not limited to blockading the Goris-Stepanakert highway. It is making their lives intolerable in other ways too. It has cut the supply of natural gas, essential to heat homes and businesses, during the coldest months of the year³⁷. The Court may recall that last year, Azerbaijan twice cut off the supply of gas, only to restore it as soon as Armenia brought the matter to the urgent attention of the Court³⁸.

23. Now, just since the start of the blockade, Azerbaijan has interrupted the gas supply on *five* different occasions: on 13 December (for three days); on 17 January (for one day); on 18 January (for three days); and again on 21 January (for three and a half days)³⁹. On 25 January, there was a brief respite. At around 11 a.m., a 48 per cent increase in the flow of gas was reported, providing some measure of relief but not nearly enough to meet the needs of the population⁴⁰. After the gas

³⁴ Armenia's Request for provisional measures (27 Dec. 2022), pp. 11-14.

³⁵ Fuad Salahov, *Facebook* (3 Aug. 2022), available at <https://www.facebook.com/photo.php?fbid=3294376740819909> (Armenia's Request for provisional measures (27 Dec. 2022), Ann. 49).

³⁶ *Ibid.*

³⁷ See Letters relating to the supply of utilities to Nagorno-Karabakh (Armenia's Observations (24 Jan. 2023), Ann. 74).

³⁸ See Letter from Dr. Yeghishe Kirakosyan, Agent of the Republic of Armenia before the International Court of Justice, to Mr. Philippe Gautier, Registrar of the International Court of Justice (25 Mar. 2022); Letter from Dr. Yeghishe Kirakosyan, Agent of the Republic of Armenia before the International Court of Justice, to Mr. Philippe Gautier, Registrar of the International Court of Justice (25 Apr. 2022); "In deep freeze, Nagorno-Karabakh finds itself without gas again", *OC Media* (22 Mar. 2022), available at <https://oc-media.org/in-deep-freeze-nagorno-karabakh-finds-itself-without-gas-again>; "Gas Supply Resumes, Says Artsakh Government", *Hetq* (29 Mar. 2022), available at <https://hetq.am/en/article/142818>.

³⁹ Human Rights Defender of Artsakh, *Interim Report on the Violations of Human Rights of Artsakh People as a Result of the Deliberate Disruption of Critical Infrastructure in the Midst of the Blockade of Artsakh by Azerbaijan since 12 December 2022* (23 Jan. 2023), available at <https://artsakhombuds.am/en/document/987> (Armenia's Observations (24 Jan. 2023), Ann. 78), p. 6. See also Letter from Gurgen Nersisyan, Prosecutor General of the Republic of Artsakh, to Yeghishe Kirakosyan, Representative of the Republic of Armenia on International Legal Matters (26 Jan. 2023) (certified translation from Armenian), with enclosure (Armenia's Supplemental Observations (27 Jan. 2023), Ann. 98); Letter from S. Mikayelyan, Executive Director of Artsakhgaz, to Gurgen Nersisyan, Prosecutor General of the Republic of Artsakh (18 Jan. 2023) (certified translation from Armenian) (Armenia's Supplemental Observations (27 Jan. 2023), Ann. 99); Letters relating to the supply of utilities to Nagorno-Karabakh (Armenia's Observations (24 Jan. 2023), Ann. 74).

⁴⁰ Letter from Gurgen Nersisyan, Prosecutor General of the Republic of Artsakh, to Yeghishe Kirakosyan, Representative of the Republic of Armenia on International Legal Matters (26 Jan. 2023) (certified translation from Armenian), with enclosure (Armenia's Supplemental Observations (27 Jan. 2023), Ann. 98).

was fully restored on 26 January⁴¹, it was, once again, cut on 29 January⁴². Bear in mind that all of this is happening during winter, when temperatures regularly fall below 0 °C.

24. That is not all. On 9 January, Azerbaijan appears to have damaged the only high-voltage power line connecting Goris and Stepanakert, leaving the population of Nagorno-Karabakh without a steady electricity supply⁴³. Azerbaijan again is not allowing Armenian technicians to repair the damage⁴⁴. Currently, the only available electricity comes from the limited local sources, including from the Sarsang reservoir, which has been placed under great stress⁴⁵. This has entailed six-hour rolling blackouts per day⁴⁶. As things stand, even longer daily blackouts seem likely to be imposed in the future⁴⁷.

II. Azerbaijan's actions are causing very serious humanitarian consequences

25. I come then to the second part of my intervention, the humanitarian consequences of Azerbaijan's actions. These are not hard to imagine. The Armenian population of Nagorno-Karabakh is, as I said, approximately 120,000 people. This includes 30,000 children and 20,000 elderly. The population is essentially the same as the city of Leiden, with students. What would happen to the people there, if it were essentially walled off from the outside world for 50 days, with only the most minimal trickle of goods allowed in, and gas and electricity supplies cut? No great leap of imagination is required to answer that question.

⁴¹ Արցախի Տեղեկատվական շտաբ / NKR InfoCenter / НКР ИнфоЦентр, *Facebook* (26 Jan. 2023), available at <https://www.facebook.com/ArtsakhInformation/posts/pfbid0WDNkKXfMCrEsqkGgKcKifAMMiprCPhoPFdkN4VhSaZ2efiuWowHZr3v8JAT3q6Sl>.

⁴² Արցախի Տեղեկատվական շտաբ / NKR InfoCenter / НКР ИнфоЦентр, *Facebook* (29 Jan. 2023), available at <https://www.facebook.com/ArtsakhInformation/posts/pfbid0Dqo593AGYjRxyPAnQqb6jgYCAS9wHqRfnfbDj1T5gXvB11mC4Y3nAynKzjvuikXl>.

⁴³ Human Rights Defender of Artsakh, *Interim Report on the Violations of Human Rights of Artsakh People as a Result of the Deliberate Disruption of Critical Infrastructure in the Midst of the Blockade of Artsakh by Azerbaijan Since 12 December 2022* (23 Jan. 2023), available at <https://artsakhombuds.am/en/document/987>, p. 7 (Armenia's Observations (24 Jan. 2023), Ann. 78).

⁴⁴ See Letters relating to the supply of utilities to Nagorno-Karabakh (Armenia's Observations (24 Jan. 2023), Ann. 74).

⁴⁵ Human Rights Defender of Artsakh, *Interim Report on the Violations of Human Rights of Artsakh People as a Result of the Deliberate Disruption of Critical Infrastructure in the Midst of the Blockade of Artsakh by Azerbaijan Since December 12, 2022* (23 Jan. 2023), available at <https://artsakhombuds.am/en/document/987> (Armenia's Observations (24 Jan. 2023), Ann. 78), p. 7.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

26. In our written request filed at the end of last month, we focused significant attention on critically ill Armenians in Nagorno-Karabakh who required treatment in Armenia but were trapped in Nagorno-Karabakh. Since then, thanks only to the urgent intervention of the International Committee of the Red Cross (ICRC), around 50 patients have been transferred to Armenia⁴⁸. Nevertheless, as the Agent said, one person has already died⁴⁹. More than ten children remain in the neonatal and intensive care units of the children's hospital, and a similar number of adults are in the intensive care unit⁵⁰. Their lives thus continue to be at risk without needed medical care.

27. The blockade has also separated many families. More than 1,000 civilians from Nagorno-Karabakh were either in Armenia or en route to Armenia when the blockade began⁵¹. About 50 children were left without parental care when their parents were stranded in Armenia⁵². One mother was separated from her eight-month-old baby for weeks⁵³. Of those trapped in Armenia, 270 were children attending the Junior Eurovision Song Contest, about 70 without their parents⁵⁴. Many still have not been able to get home, and are living temporarily in Goris or Yerevan⁵⁵. Those that have been able to go home have only been able to do so with the intervention of the ICRC.

⁴⁸ Artsakh Info Centre, *Artsakh Government Update: Day 44 Under Blockade* (24 Jan. 2023) (Armenia's Observations (24 Jan. 2023), Ann. 81).

⁴⁹ "Artsakh blockade continues for nine days: patient dies in hospital", *News.am* (19 Dec. 2022), <https://news.am/eng/news/735939.html> (Armenia's Request for Provisional Measures (27 Dec. 2022), Ann. 3).

⁵⁰ Artsakh Info Centre, *Artsakh Government Update: Day 47 Under Blockade* (27 Jan. 2023) (Armenia's Supplemental Observations (27 Jan. 2023), Ann. 102).

⁵¹ See Human Rights Defender of the Republic of Armenia and Human Rights Ombudsman of the Republic of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World* (15 Dec. 2022) (Armenia's Request for provisional measures (27 Dec. 2022), Ann. 5), p. 8; "Nagorno Karabakh remains blockaded by Azerbaijan over 48 hours, children separated from families", *Armenpress* (14 Dec. 2022), available at <https://armenpress.am/eng/news/1099584.html> (Armenia's Request for provisional measures (27 Dec. 2022), Ann. 61); "Tatoyan Foundation Urges Immediate Steps to Unblock Artsakh-Armenia Road", *The Armenian Mirror-Spectator* (15 Dec. 2022), available at <https://mirrorspectator.com/2022/12/15/tatoyan-foundation-urges-immediate-steps-to-unblock-artsakh-armenia-road/> (Armenia's Request for Provisional Measures (27 Dec. 2022), Ann. 62).

⁵² Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World (December 12-January 13)* (13 Jan. 2023), available at <https://artsakhombuds.am/en/document/985> (Armenia's Observations (24 Jan. 2023), Ann. 77), p. 21.

⁵³ *Ibid.*

⁵⁴ *Ibid.*, p. 28.

⁵⁵ *Ibid.*

28. As I said, before the blockade, some 400 tonnes of essential goods, including food and medicine, were imported to Nagorno-Karabakh from Armenia *on a daily basis*. Only a small fraction of that is now getting through, either on Russian peacekeeping trucks or with the ICRC⁵⁶.

29. Now, 50 days on, the situation is critical. Grocery store shelves are empty and pharmacies are running out of medicines. On the screen now, you can see a photo from an international press report of the situation — and this was taken more than two weeks ago⁵⁷. Things are so dire that the authorities have had to institute a rationing system. As of 20 January, residents must use vouchers for limited supplies of essential products, like sunflower oil, eggs, dairy, rice, sugar, buckwheat and pasta⁵⁸. The authorities have also had to tap into their wartime reserves to meet the needs of their population⁵⁹.

30. In addition, the lack of gas and electricity means that people have been left without heat and the ability to prepare food⁶⁰. It has also impacted healthcare, with many urgent treatments, planned surgeries, laboratory tests and physical examinations having to be cancelled or postponed⁶¹.

31. As goods and fuel run out, economic life is also grinding to a halt. As of 20 January, hundreds of businesses are closed and thousands of people are out of work⁶². All 117 schools in the region have been closed since 20 January.

⁵⁶ A. Troianovski, “Renewed Armenia-Azerbaijan Conflict Underlines Russia’s Waning Influence”, *The New York Times* (17 Jan. 2023), available at <https://www.nytimes.com/2023/01/17/world/europe/armenia-azerbaijan-russia-nagorno.html>.

⁵⁷ AFP News Agency, “Karabakh runs out of essentials as Azerbaijani blockade drags on | AFP”, *YouTube* (14 Jan. 2023), available at <https://www.youtube.com/watch?v=6t-T6xfdXdM>; T. Qiblawi, “‘Potatoes are a luxury’: Vital supplies dwindle as ‘eco-activists’ blockade a breakaway region guarded by Russia”, *CNN* (12 Jan. 2022), available at <https://www.cnn.com/2023/01/12/europe/armenia-azerbaijan-nagorno-karabakh-lachin-intl/index.html>; A. Avetisyan, “Nagorno-Karabakh introduces rationing and blackouts as blockade continues”, *OC Media* (10 Jan. 2023), available at <https://oc-media.org/nagorno-karabakh-introduces-rationing-and-blackouts-as-blockade-continues>.

⁵⁸ Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World (December 12-January 13)* (13 Jan. 2023), available at <https://artsakhombuds.am/en/document/985> (Armenia’s Observations (24 Jan. 2023), Ann. 77), p. 25.

⁵⁹ *Ibid.*, p. 26.

⁶⁰ Human Rights Defender of Artsakh, *Interim Report on the Violations of Human Rights of Artsakh People as a Result of the Deliberate Disruption of Critical Infrastructure in the Midst of the Blockade of Artsakh by Azerbaijan Since 12 December 2022* (23 Jan. 2023), available at <https://artsakhombuds.am/en/document/987> (Armenia’s Observations (24 Jan. 2023), Ann. 78), p. 9.

⁶¹ *Ibid.*, p. 13.

⁶² Artsakh Info Center, *Artsakh Government Update: Day 40 Under Blockade* (20 Jan. 2023) (Armenia’s Observations (24 Jan. 2023), Ann. 80).

32. In light of the unfolding humanitarian catastrophe, calls for Azerbaijan to lift the blockade have come from all across the international community⁶³. By way of example only, on 19 January, the European Parliament overwhelmingly passed a resolution expressly taking note of the danger the people of Nagorno-Karabakh are facing and calling on Azerbaijan to end the blockade. Specifically, the resolution states, among other things:

“[T]he blockade has led to a severe humanitarian crisis, significantly affecting the most vulnerable populations; . . . the transfer of critically ill patients is nearly impossible, with one death resulting from this situation; . . . hundreds of families remain separated; [and]

[T]his humanitarian crisis was further aggravated by Azerbaijan’s disruption of the natural gas supply to Nagorno-Karabakh, which left houses, hospitals and schools without heating”.⁶⁴

33. Accordingly, the resolution:

“Deplores the tragic humanitarian consequences of the blockade of the Lachin corridor and the Nagorno-Karabakh conflict; [and]

Urges Azerbaijan to respect and implement the trilateral statement of 9 November 2020 and immediately reopen the Lachin corridor to enable free movement and ensure access to essential goods and services, thus guaranteeing security in the region and safeguarding residents’ livelihoods”.⁶⁵

34. The European Union Parliament’s call fell on deaf ears in Azerbaijan.

III. Azerbaijan’s excuses are not credible

35. That brings me, Madam President, to the last part of my presentation this morning. Faced with these stark and widely condemned facts, what does Azerbaijan say? Not much actually. We look forward to hearing what it has to say later today, though we expect it will be much of the same. For now, I will address what little we have to work with.

⁶³ See e.g. US Secretary of State Antony Blinken, @SecBlinken, *Twitter* (23 Jan. 2023), available at <https://twitter.com/secblinken/status/1617565934750928899>; Ministry of Foreign Affairs of the Russian Federation, *On the telephone conversation between the Minister of Foreign Affairs of the Russian Federation S.V. Lavrov and the Minister of Foreign Affairs of the Republic of Azerbaijan D.A. Bayramov* (17 Jan. 2023), available at https://mid.ru/ru/foreign_policy/news/1848312/; Palais de l’Élysée, *Entretien téléphonique avec le Président de la République d’Azerbaïdjan, Ilham Aliiev* (23 Dec. 2022), available at <https://www.elysee.fr/emmanuel-macron/2022/12/23/entretien-telephonique-avec-m-ilham-aliev-president-de-la-republique-dazerbaïdjan-1>; UN High Commissioner for Human Rights, @UNHumanRights, *Twitter* (18 Jan. 2023), available at <https://twitter.com/UNHumanRights/status/1615740942618615808>; Freedom House, @FreedomHouse, *Twitter* (13 Jan. 2023), available at <https://twitter.com/freedomhouse/status/1614004984214966301>; Amnesty International, @AmnestyPress, *Twitter* (11 Jan. 2023), available at <https://twitter.com/amnestypress/status/1613202615076020224>.

⁶⁴ European Parliament, *European Parliament resolution of 19 January 2023 on the humanitarian consequences of the blockade in Nagorno-Karabakh (2023/2504(RSP))* (19 Jan. 2023), available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0012_EN.html (Armenia’s Observations (24 Jan. 2023), Ann. 82).

⁶⁵ *Ibid.*

36. I will start with what it has said to this Court. In its first letter to the Court dated 3 January, Azerbaijan presented what it called its “initial response” and promised to provide more information later⁶⁶. Azerbaijan first asserted that the road “is controlled by Russian Federation peacekeepers in application of the Trilateral Statement . . . not Azerbaijan”⁶⁷. This assertion, of course, entirely overlooks the fact that in paragraph 6 of the Trilateral Statement Azerbaijan specifically undertook to “guarantee safe movement of citizens, vehicles and cargo in both directions along the Lachin corridor”.⁶⁸

37. Azerbaijan’s assertion also overlooks the fact that the alleged protestors are its own citizens who can only be there — because it was only recently conquered by Azerbaijan — with the express permission of the Government⁶⁹. Indeed, Azerbaijan’s own evidence proves the point. Annex 14 to its letter submitted last Tuesday is a collection of NGO requests for authorization from the office of the President to protest at the site⁷⁰. Having given the protestors permission to be where they are, President Aliyev can just as easily take it away.

38. Azerbaijan next claimed that “protesters are not blocking the road and that the Russian Federation peacekeepers are allowing the passage of residents, essential medical services, and humanitarian supplies on the Lachin Road”⁷¹. Orwell’s line about rejecting the evidence of your eyes and ears seems apposite here. Literally no one in the world outside of Azerbaijan actually believes that protestors are not blocking the road. On 13 December, the Russian peacekeepers reported that

⁶⁶ See Letter from Mr. Elnur Mammadov, Agent of the Republic of Azerbaijan before the International Court of Justice, to Philippe Gautier, Registrar of the International Court of Justice (3 Jan. 2023).

⁶⁷ Letter from Mr. Elnur Mammadov, Agent of the Republic of Azerbaijan before the International Court of Justice, to Philippe Gautier, Registrar of the International Court of Justice (3 Jan. 2023).

⁶⁸ Republic of Armenia, Office of the Prime Minister, *Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation* (9 November 2020), available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/> (Armenia’s Request for Provisional Measures (27 Dec. 2022), Ann. 37), point 6.

⁶⁹ Sample of non-governmental organizations’ requests for access to the liberated territories (certified translation) (Azerbaijan’s Letter (24 Jan. 2023), Ann. 14).

⁷⁰ *Ibid.*

⁷¹ Letter from Mr. Elnur Mammadov, Agent of the Republic of Azerbaijan before the International Court of Justice, to Philippe Gautier, Registrar of the International Court of Justice (3 Jan. 2023).

“[o]n 12 December, the Azerbaijani side blocked the Stepanakert-Goris road”⁷². On the screen now is another picture taken from the site. If this is not blocking the road, I do not know what it is.

39. Nor does anyone believe that vehicles are getting through freely. Just recently, the United Nations Human Rights Chief, Volker Turk, called “for free & safe movement through Lachin corridor to be immediately & fully enabled”, saying “[u]nrestricted access to food, medicine & other basic goods and services is essential to the enjoyment of human rights by the affected population”⁷³.

40. If vehicles were truly passing freely, why would the ICRC or the Russian peacekeepers each time have to negotiate with the Azerbaijanis blocking the road in order to get critically ill patients out of Nagorno-Karabakh to get the medical care they need? And why would it be necessary for the ICRC and the Russian peacekeepers to be the ones to deliver the few meagre supplies that are getting through?

41. The evidence Azerbaijan cited to support its assertion about the road not being blocked is contained in a single footnote that lists three sources. The first is an article from Azerbaijani State media reporting on the passage of just three ICRC vehicles. The text of the article is revealing in a way that is not helpful to Azerbaijan. Remember, this is from Azerbaijani State media. It says: “Today, conditions were created for the passage of 3 vehicles belonging to the International Committee of the Red Cross (ICRC) on the Khankendi-Lachin road. The participants of the action pulled out of the road and opened a corridor for the passage of cars.”⁷⁴ “*The participants of the action pulled out of the road and opened a corridor*”: for the passage of cars. In other words, they temporarily lifted the blockade just so the three ICRC vehicles could pass.

42. The 3 January letter also referred to a tweet from a senior government official with an embedded video showing protestors “stand[ing] aside” — so again, lifting the blockade — to let

⁷² Russian Federation, Ministry of Defence, *News bulletin of the Ministry of Defense of the Russian Federation on the operations of the Russian peacekeeping forces in the area of the Nagorno-Karabakh conflict (as of December 13, 2022)* (13 Dec. 2022) (Armenia’s Request for Provisional Measures (27 Dec. 2022), Ann. 1).

⁷³ UN Human Rights, @UNHumanRights, *Twitter* (18 Jan. 2023), available at <https://mobile.twitter.com/UNHumanRights/status/1615740942618615808>.

⁷⁴ “ICRC vehicles unimpededly moved on Lachin road where protest action is held-UPDATED”, *Apa.az* (30 Dec. 2022), available at <https://apa.az/en/domestic-policy/icrc-vehicles-passed-unimpededly-from-the-khankendi-lachin-road-where-protest-action-is-held-392816>.

three ICRC vehicles pass⁷⁵. The only other so-called “evidence” is a self-serving statement to the Security Council by Azerbaijan’s Permanent Representative to the United Nations⁷⁶.

43. In its 3 January letter, Azerbaijan also alleges that “Armenia willfully and unlawfully has been using the Lachin Road to traffic weapons — including recently-laid landmines and booby traps that continue to kill and maim Azerbaijanis — and illegally mined minerals between Armenia and Azerbaijan’s sovereign territory”⁷⁷. We will have a lot more to say about that claim tomorrow. Today, let me simply say that there is not even a shred of evidence to support it. Nothing. It is also worth recalling that the road has been under the supervision of the Russian peacekeepers since November 2020 and that not a single one of their daily bulletins has reported the alleged transport of weapons, landmines or minerals.

44. In its second letter to the Court dated 12 January, Azerbaijan did not really offer any more information as it said it would. It does little more than repeat the contents of its first letter, saying that “the Lachin Road is controlled by the Russian peacekeepers and Azerbaijan does not exercise control over who is using the road in either direction”, and that “[v]ehicles continue to pass next to the protest site unimpeded”⁷⁸. As I have largely dealt with these assertions, I will not repeat myself.

45. I just note that whereas its first letter contained only a single evidentiary footnote about the passage of vehicles, its second letter contains eight. Still, they add nothing. The eight footnotes are *all* references to Azerbaijani State media reports, *all* of which mention only Russian peacekeeping or ICRC vehicles passing the site, after negotiations with the Azerbaijanis. I am sure we will hear more of the same this afternoon, but the point is these special exceptions for outside parties with special responsibilities only serve to prove the rule that the road is not open as usual.

⁷⁵ Letter from Mr. Elnur Mammadov, Agent of the Republic of Azerbaijan before the International Court of Justice, to Philippe Gautier, Registrar of the International Court of Justice (3 Jan.2023) (citing Twitter, @HikmetHajiyev (24 Dec. 2022), available at https://twitter.com/HikmetHajiyev/status/1606521998548557824?s=20&t=1m1iyfs_C1nZWdfrTtWV_Q).

⁷⁶ Letter from Mr. Elnur Mammadov, Agent of the Republic of Azerbaijan before the International Court of Justice, to Philippe Gautier, Registrar of the International Court of Justice (3 Jan. 2023) (citing Statement by H.E. Mr. Yashar Aliyev, Permanent Representative of the Republic of Azerbaijan to the United Nations, at the 9228th meeting of the United Nations Security Council (20 Dec. 2022), available at <https://un.mfa.gov.az/files/shares/Statements/2022/Statement%20at%20UNSC%2020.12.2022.pdf>, p. 2).

⁷⁷ Letter from Mr. Elnur Mammadov, Agent of the Republic of Azerbaijan before the International Court of Justice, to Philippe Gautier, Registrar of the International Court of Justice (3 Jan. 2023).

⁷⁸ Letter from Mr. Elnur Mammadov, Agent of the Republic of Azerbaijan before the International Court of Justice, to Philippe Gautier, Registrar of the International Court of Justice (12 Jan. 2023), p. 1.

46. Outside the Court, Azerbaijan has sometimes tried a different approach, claiming the protests are simple manifestations of its people's right to protest. In a 23 December 2022 statement, for example, the Azerbaijani Ministry of Foreign Affairs referred to the "the peaceful protests on the Lachin road with the demand to prevent the illegal exploitation of Azerbaijan's natural resources, the transportation of these resources from Azerbaijan to Armenia and the abuse of the Lachin road, the use of which is intended only for humanitarian purposes"⁷⁹.

47. There are a number of problems with this pretence. First, even if it were true that the protestors really were private individuals who were genuinely concerned about the environment — which, as I explained, it distinctly is not — that would not justify their actions or Azerbaijan's failure to disperse them. Any right to protest would be outweighed by the grievous harm inflicted on the Armenian population of Nagorno-Karabakh. The Azerbaijani Government could not be justified in leaving the protestors alone given that very real harm.

48. The claim that these are just spontaneous manifestations of private discontent is also put to the lie by the fact that Azerbaijan is not a free country in which public protests are tolerated. Freedom House, for one, has ranked Azerbaijan as "Not Free" in part because of a lack of freedom of assembly⁸⁰. In a 2022 report, it wrote: "Unsanctioned assemblies can draw a harsh police response and fines for participants"⁸¹. This assembly, in contrast, is plainly sanctioned — indeed staged — by the Government.

49. Azerbaijan's excuses regarding the interruptions of gas and electricity are equally unconvincing, indeed entirely contradictory. According to documents Azerbaijan submitted last Tuesday, on 15 December, the Azerbaijani Minister for Foreign Affairs claimed that Azerbaijan had *no control* over the gas supply, saying "the gas supply in the said areas is carried out by Armenia and that those areas are not integrated into the gas supply system of our country"⁸². Only four days later,

⁷⁹ Republic of Azerbaijan, Ministry of Foreign Affairs, *No:603/22, Commentary on the statement of Dunja Mijatović, Commissioner for Human Rights of the Council of Europe, regarding the situation around Lachin road* (23 Dec. 2022), available at <https://www.mfa.gov.az/en/news/no60322>.

⁸⁰ "Freedom in the World 2022: Azerbaijan", *Freedom House* (2022), available at <https://freedomhouse.org/country/azerbaijan/freedom-world/2022>.

⁸¹ *Ibid.*

⁸² Ministry of Foreign Affairs of the Republic of Azerbaijan, *No: 587/22 Press Release on the briefing held for representatives of the diplomatic corps* (15 December 2022) (certified translation) (Azerbaijan's Observations (24 Jan. 2023), Ann. 7).

on 19 December 2022, in a letter from the Permanent Representative of Azerbaijan to the United Nations, Azerbaijan tried a different excuse for the disruptions, blaming “technical reasons, including bad weather conditions currently observed in certain mountainous regions of Azerbaijan”⁸³. It then said, “due to immediate steps taken by Azerbaijani authorities, technical problems have now been fixed and, as of now, gas supply in the area is resumed”⁸⁴. It said much the same thing in a letter to the Court last year about earlier disruptions, writing that “employees of Azerigaz . . . worked onsite to restore service, which was fully restored by 28 March”⁸⁵. So does Azerbaijan have control over the gas supply or does it not? Azerbaijan cannot seem to get its story straight.

50. In truth, there really can be no doubt that Azerbaijan does have full control over the gas supply. How do we know? President Aliyev himself said so. Speaking in the aftermath of gas disruptions in the spring of 2022, President Aliyev boasted: “If we didn’t want to, we wouldn’t restore [the gas supply]. Who can tell us anything? Did we owe them to restore it? No!”⁸⁶

51. At the end of the day, the reality of what is happening is painfully simple and brutally clear. The ethnic Armenians of Nagorno-Karabakh are under siege. For those who choose to stay, their only access to the outside world is blocked. Everything else they need to continue living where they have for millennia is rationed or gone already. This includes food, medicine, heat and electricity.

52. The cover story Azerbaijan came up with to mask its actions is pure fiction. The alleged “eco-activists” conducting the blockade are nothing of the sort. They have no genuine environmental pedigree, and are a mixture of government-funded private citizens and government and military personnel, all united by a deep, long-taught hatred of Armenians. They are there with the

⁸³ 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 (19 December 2022) (Azerbaijan’s Observations (24 Jan. 2023), Ann. 8).

⁸⁴ *Ibid.*

⁸⁵ Letter from Mr. Elnur Mammadov, Agent of the Republic of Azerbaijan before the International Court of Justice, to Philippe Gautier, Registrar of the International Court of Justice (7 Apr. 2022).

⁸⁶ Letter from Dr. Yeghishe Kirakosyan, Agent of the Republic of Armenia before the International Court of Justice to Mr. Philippe Gautier, Registrar of the International Court of Justice – Exhibit 10 (25 April 2022) (citing “A briefing meeting dedicated to the results of the first annual quarter was held under Ilham Aliyev’s chairmanship,” *The Official Internet Page of the President of Azerbaijan Republic* (12 April 2022), available at <https://president.az/az/articles/view/55780> (certified translation of relevant excerpts from Azerbaijani)).

Government's support and approval to advance the Government's agenda: to make life unbearable for the ethnic Armenians in Nagorno-Karabakh.

53. The Government of Azerbaijan could put an end to the blockade before I finish this speech if it wanted to, but it has no interest in doing so. An Order of the Court is therefore required as a matter of urgency.

54. Thank you, Madam President, distinguished Members of the Court. May I ask that you invite Professor Sicilianos to the podium?

The PRESIDENT: I thank Mr. Martin, and I now invite the next speaker, Professor Linos-Alexandre Sicilianos to address the Court. You have the floor, Professor.

Mr. SICILIANOS:

**THE PRIMA FACIE JURISDICTION OF THE COURT, THE RIGHTS FOR WHICH
PROTECTION IS SOUGHT AND THE LINK BETWEEN SUCH RIGHTS
AND THE MEASURES REQUESTED**

1. Madam President, distinguished judges, it is an honour to appear before the Court, and to do so on behalf of the Republic of Armenia.

2. I will be addressing three issues: the prima facie jurisdiction of the Court; the plausibility of the rights whose protection is sought; and the link of those rights with the measures requested.

I. Prima facie jurisdiction of the Court

3. The first point, concerning the jurisdiction of the Court, does not need an extensive analysis.

4. In its Order of 7 December 2021 on the indication of provisional measures in the present case, the Court "conclude[d] that, prima facie, it has jurisdiction pursuant to Article 22 of CERD to entertain the case to the extent that the dispute between the Parties relates to the 'interpretation or application' of the Convention"⁸⁷. This conclusion applies as well to the present Request.

⁸⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021*, p. 375, para. 43.

II. The plausibility of the rights whose protection is sought

5. The Court at this stage of the proceedings “is not called upon to determine definitively whether the rights which Armenia wishes to see protected exist”⁸⁸. Rather, it need only decide whether the rights claimed by Armenia on the merits, and for which it is seeking protection, are “plausible” and whether the provisional measures requested are linked to these plausible rights⁸⁹.

6. The Court has found the plausibility condition to be met when the asserted rights are “grounded in a possible interpretation” of the treaty in question⁹⁰. In other cases, under the Convention, the Court has also examined whether “it is plausible that the acts complained of constitute acts of racial discrimination”⁹¹.

7. The present Request seeks the preservation and protection of a number of rights under Articles 2 and 5 of CERD for the benefit of the ethnic Armenians of Nagorno-Karabakh. As it was amply demonstrated by my colleague, Mr. Martin, those rights are being infringed by Azerbaijan’s *blockade and related measures, which target ethnic Armenians because they are Armenians*. The CERD-prohibited discriminatory purpose of Azerbaijan’s conduct is obvious from the simple fact that the only human beings benefiting from the Lachin Corridor or the public utilities in question are ethnic Armenians. It is moreover indisputable that the disastrous effects of the blockade and related measures are inflicted entirely on ethnic Armenians. In other words, the blockade and related measures are patently discriminatory acts on *ethnic grounds*. As such, they fall squarely within the scope of application of the Convention as defined in Article 1, para. 1.

8. I shall refer first to the plausibility of the rights Armenia invokes under Article 2 of the Convention and then to the plausibility of rights under Article 5 of the Convention.

⁸⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021*, p. 375, para. 45.

⁸⁹ *Ibid.*

⁹⁰ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 152, para. 60.

⁹¹ Cf. *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 135, para. 82. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 427, para. 54.

A. Rights under Article 2 of the Convention

9. According to the CERD Committee, “Article 2 is a comprehensive provision addressing all aspects of States parties’ obligation to pursue a policy of eliminating discrimination”⁹².

10. The provisional measures Request of Armenia invokes particularly the general prohibition of discrimination contained in the *chapeau* of Article 2 (1), together with subparagraphs (a), (b) and (e).

11. The *chapeau* of Article 2 (1) provides that “States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races”. The specific contribution of this provision is “to lend a heightened sense of urgency to the Convention”⁹³. Subparagraph (a) prohibits discrimination by the State itself, including public authorities and public institutions. According to this provision, “[e]ach State Party undertakes to engage in no act or practice of racial discrimination”. As the Court has observed, Article 2 (1) accordingly contains “an obligation to engage in no act or practice of racial discrimination *against persons, groups of persons or institutions*”⁹⁴.

12. There is no doubt that the *blockade of the Lachin Corridor and related measures contradict the general prohibition of discrimination contained in Article 2 (1)*. As already underlined, the blockade is *discriminatory in nature*. It has both the purpose and effect of impairing the enjoyment and exercise by *ethnic Armenians* of their human rights on an equal footing with other ethnic groups.

13. This blockade must be also seen against the background of Azerbaijan’s conduct since its commencement of the 44-day war, which has been unequivocally designed to force Armenians to leave. In this context, the CERD Committee has most recently expressed concern about “[a]llegations of severe and grave human rights violations committed during the 2020 hostilities and beyond”. The Committee also highlighted last August its concern in relation to “[i]ncitement to racial hatred and

⁹² *Views of the CERD on the Implementation of the Convention on the Elimination of All Forms of Racial Discrimination and its Effectiveness: addendum*, UN doc. E/CN.4/2004/WG.21/10/Add.1, 17 Sep. 2004, available at <https://digitallibrary.un.org/record/531815?ln=en>, p. 13.

⁹³ P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (2016), p. 178.

⁹⁴ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019*, p. 595, para. 95 (emphasis added).

the propagation of racist stereotypes against persons of Armenian national or ethnic origin, including . . . by public figures and government officials”⁹⁵. This racial hatred and the propagation of racist stereotypes has a distinct purpose: to ethnically cleanse all ethnic Armenians from Nagorno-Karabakh. No ethnic Armenians remain in any of the territories of Nagorno-Karabakh conquered by Azerbaijan during the 44-day war. No ethnic Armenians remain in territories returned to Azerbaijan after the conclusion of the 44-day war. I recall the statement of President Aliyev, referring to Armenians in the Lachin Corridor: “When did you come here? In 1994. Who lived here before then? Azerbaijanis did, *so leave*.”⁹⁶ The Armenians *did* leave after this threatening statement.

14. The blockade is yet another important step fitting squarely in this policy of intimidation. It is aimed at creating living conditions so unbearable for ethnic Armenians that they are forced to leave the area. I recall the statement by President Aliyev, dated 10 January 2023: “Whoever does not want to become our citizen, the road is not closed, it is open. They can leave, they can go by themselves. No one will hinder them . . . The road is open”⁹⁷. The road is thus open only into one direction. This is the quintessence of the presidential statement.

15. In its Memorial, Armenia fully substantiates the myriad wrongful acts constituting ethnic cleansing. In the present context it suffices to stress that the blockade and its clear and overt purpose, as recently stated by President Aliyev himself, are fully integrated into this long-standing policy of ethnic cleansing.

16. As recognized by the Court, the term “ethnic cleansing” is used to mean “rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area”⁹⁸. The practice of ethnic cleansing encompasses a wide range of underlying acts, including acts

⁹⁵ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of Azerbaijan*, UN doc. CERD/C/AZE/CO/10-12, 22 Sep. 2022, available at <https://www.undocs.org/CERD/C/AZE/CO/10-12>, para. 4; Memorial of Armenia, Ann. 5.

⁹⁶ “Armenians living in Karabakh will have no status, no independence and no special privilege - President Ilham Aliyev”, *Trend News Agency*, 12 Aug. 2022, available at <https://en.trend.az/azerbaijan/politics/3632251.html>; Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 36 (emphasis added).

⁹⁷ “Ilham Aliyev was interviewed by local TV channels”, *The President of the Republic of Azerbaijan Ilham Aliyev*, 10 Jan. 2023, available at <https://president.az/en/articles/view/58555>; Armenia’s Observations, 24 Jan. 2023, Ann. 84 (emphasis added).

⁹⁸ *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, p. 122, para. 190, citing *Interim Report by the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, UN doc. S/35374, 10 Feb. 1993, available at <https://digitallibrary.un.org/record/197158?ln=en>, para. 55.

of “intimidation”, for instance through the creation of adverse living conditions⁹⁹. The CERD Committee itself has affirmed that practices of ethnic cleansing “constitute a grave violation of *all the basic principles* underlying” the CERD¹⁰⁰.

17. This is especially true in relation to the general prohibition of racial discrimination enshrined in Article 2 (1) of the Convention. Seen in its context and against its background, the blockade is the very negation of the obligation “to engage in no act or practice of racial discrimination against persons, groups of persons or institutions”, in our case, against ethnic Armenians.

18. Article 2 (1) (b) shifts the emphasis from discrimination by the State itself towards discrimination by actors backed by the State¹⁰¹. Under this provision, States parties undertake the obligation “not to sponsor, defend or support racial discrimination by any persons or organizations”. Regarding the verbs in the subparagraph, “sponsor” overlaps with “support” and may be understood in terms of taking responsibility for the acts of another. “Support” has a wider meaning and may include encouragement, assistance, or approval¹⁰².

19. In the above-mentioned interview of 10 January 2023, President Aliyev explicitly supported and even defended the blockade and the so-called “eco-activists” by declaring:

“First of all, I salute those young people! They are a source of our pride. . . . [T]hey have been there day and night in freezing and snowy weather, demanding their rights and once again showing the whole world the high moral qualities of Azerbaijani youth”¹⁰³.

As my colleague Mr. Martin has amply demonstrated, many of the so-called “eco-activists” are not private individuals and all such “eco-activists” are supported by the Government. Such support is

⁹⁹ *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, p. 122, para. 190, citing *Interim Report by the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, UN doc. S/35374, 10 Feb. 1993, available at <https://digitallibrary.un.org/record/197158?ln=en>, para. 55.

¹⁰⁰ Committee on the Elimination of Racial Discrimination, *Report of the Committee on the Elimination of Racial Discrimination, Fiftieth Session*, UN doc. A/50/18, 22 Sep. 1995, available at <https://digitallibrary.un.org/record/200198?ln=en>, para. 219 (emphasis added).

¹⁰¹ P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (2016), p. 184.

¹⁰² *Ibid.*, p. 185.

¹⁰³ “Ilham Aliyev was interviewed by local TV channels”, *The President of the Republic of Azerbaijan Ilham Aliyev*, 10 Jan. 2023, available at <https://president.az/en/articles/view/58555>; Armenia’s Observations, 24 Jan. 2023, Ann. 84. See also the 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>.

clearly incompatible with the obligation of States parties under Article 2 (1) (b) of CERD “not to sponsor, defend or support racial discrimination by any persons or organizations”.

20. Article 2 (1) (e) insists on the obligation of States parties to encourage integration, to eliminate barriers between races and ethnic groups and to discourage racial division.

21. However, the above statements of approval and support of the blockade and the so-called “eco-activists” are the negation of the obligation “to discourage anything which tends to strengthen racial division” under Article 2 (1) (e) of CERD. It is indeed more than plausible that the encouragement of the blockade of a whole ethnic community perpetuates segregation, thereby strengthening division along ethnic lines.

22. In conclusion on this point, the blockade and its support and encouragement constitute plausible and even manifest breaches of the obligations and the corresponding rights under Article 2 (1), subparagraphs (a), (b) and (e), of CERD.

B. Rights under Article 5 of the Convention

23. I turn now to Article 5 of the Convention. This provision is expressly linked to Article 2. It tends to ensure the effective implementation of the general prohibition of discrimination.

24. Among the rights named in Article 5, the provisional measures Request of Armenia, as supplemented on 26 January 2023, invokes particularly: subparagraph (d) (i) on the freedom of movement; subparagraph (d) (ii) on the right to leave and return, including family reunification; and subparagraph (e) (iv) on the right to public health, medical care, social security and social services. I shall examine the plausibility of those rights one by one.

25. Article 5 (d) (i) protects the equal enjoyment of the right to freedom of movement. This provision is inspired by Article 13 (1) of the Universal Declaration of Human Rights. This right should be enjoyed without discrimination based, *inter alia*, on ethnic or national origin.

26. It is evident that the blockade of the Lachin Corridor precludes *ethnic Armenians* living in Nagorno-Karabakh from moving freely. They are confined in a very limited space, which is the only space in Nagorno-Karabakh where they are allowed to live.

27. Article 5 (d) (ii) protects the equal enjoyment of the “right to leave any country, including one’s own, and to return to one’s country”. This right draws upon Article 13 (2) of the Universal

Declaration and is found in other international instruments, including Article 12 of the International Covenant on Civil and Political Rights. Both aspects of this right — the right to leave and, more importantly in this context, the right to return — are the subject of an extensive General Comment by the Human Rights Committee¹⁰⁴.

28. According to this authoritative interpretation, the “[f]reedom to leave the [country] may not be made dependent on any specific purpose”¹⁰⁵. Furthermore, restrictions to the right to leave must be provided by law, must serve a legitimate aim and must be necessary in a democratic society for the protection of this aim¹⁰⁶.

29. As explained by the Human Rights Committee, the right of an individual to enter his or her own country “recognizes the special relationship of a person to that country” and includes the right to remain and the right to return¹⁰⁷, as well as the right to be reunited with family¹⁰⁸. The right also implies prohibition of enforced population transfers or mass expulsions to other countries¹⁰⁹. *A fortiori*, the right to return implies the prohibition of practices of ethnic cleansing.

30. *The persons entitled to exercise the right to return* to his or her own country can be identified by interpreting the meaning of the phrase “his own country”. According to the Human Rights Committee again, the scope of “his own country” is broader than the scope “country of his nationality”. It embraces the individual who has special ties to or claims in relation to a given country¹¹⁰. In other words, what matters is the factual relationship with the country, irrespective of any question related to nationality or citizenship.

¹⁰⁴ Human Rights Committee, *General Comments Adopted by the Human Rights Committee Under Article 40, paragraph 4, of the International Covenant on Civil And Political Rights*, Addendum: General Comment No. 27 (67) Freedom of movement (Article 12), UN doc. CCPR/C/21/Rev.1/Add.9, 1 Nov. 1999, para. 20, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/459/25/PDF/G9945925.pdf?OpenElement>.

¹⁰⁵ *Ibid.*, para. 8.

¹⁰⁶ *Ibid.*, para. 11.

¹⁰⁷ *Ibid.*, para. 19.

¹⁰⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018*, p. 431, para. 69.

¹⁰⁹ Human Rights Committee, *General Comments Adopted by the Human Rights Committee Under Article 40, paragraph 4, of the International Covenant on Civil And Political Rights*, Addendum: General Comment No. 27 (67) Freedom of movement (Article 12), UN doc. CCPR/C/21/Rev.1/Add.9, 1 Nov. 1999, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/459/25/PDF/G9945925.pdf?OpenElement>, para. 19.

¹¹⁰ Human Rights Committee, *General Comments Adopted by the Human Rights Committee Under Article 40, paragraph 4, of the International Covenant on Civil And Political Rights*, Addendum: General Comment No. 27 (67) Freedom of movement (Article 12), UN doc. CCPR/C/21/Rev.1/Add.9, 1 Nov. 1999, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/459/25/PDF/G9945925.pdf?OpenElement>, para. 20.

31. The blockade of the Lachin Corridor creates a situation which blatantly violates the freedom of movement implied in the right to leave and the right to return to one's country. This blockade is not provided in any law. It is arbitrary. It does not serve any legitimate purpose and, of course, is not "necessary in a democratic society". As Mr. Martin has amply demonstrated, families remain separated, given that the blockade was imposed when more than a thousand civilians of Nagorno-Karabakh were either already in Armenia or en route to Armenia¹¹¹. Among other things, when the blockade was imposed, a large number of ethnic Armenian children living in Nagorno-Karabakh had been attending a contest in Armenia¹¹². Some of them were able to return on 19 January 2023, escorted by the Russian peacekeepers. But Azerbaijanis stopped the vehicle and intimidated the children. This grave incident has been largely documented¹¹³. It clearly demonstrates the obstacles to the right to return even when escorted by the Russian peacekeepers. Without them it is simply impossible to return.

32. In conclusion on this point, the blockade of the Lachin Corridor, whose purpose is discriminatory, is a clear — and in any case a plausible — violation of the provisions of the CERD related to the freedom of movement, namely Article 5 (*d*), subparagraphs (i) and (ii).

33. I continue now with social rights and more particularly with the right to public health, medical care, social security and social services, protected in Article 5 (*e*) (iv) of the Convention.

¹¹¹ Human Rights Defender of the Republic of Armenia and Human Rights Ombudsman of the Republic of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022, p. 8 (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 5); "Nagorno Karabakh remains blockaded by Azerbaijan over 48 hours, children separated from families", *Armenpress*, 14 Dec. 2022, available at <https://armenpress.am/eng/news/1099584.html> (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 61); "Tatoyan Foundation Urges Immediate Steps to Unblock Artsakh-Armenia Road", *The Armenian Mirror-Spectator*, 15 Dec. 2022, available at <https://mirrorspectator.com/2022/12/15/tatoyan-foundation-urges-immediate-steps-to-unblock-artsakh-armenia-road/> (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 62).

¹¹² Human Rights Defender of the Republic of Armenia and Human Rights Ombudsman of the Republic of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022, p. 8; Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 5.

¹¹³ See "The comment of the Press Secretary of the MFA of Armenia on the psychological terror and violation of rights of Armenian children by Azerbaijan", Ministry of Foreign Affairs of the Republic of Armenia, 19 Jan. 2023, available at https://www.mfa.am/en/interviews-articles-and-comments/2023/01/19/spox_comment_children/11831; Armenia's Observations, 24 Jan. 2023, Ann. 86. See also G. G. Stepanyan, "Due to the siege, 19 children, separated from their parents and family for more than a month, returned home via the Goris-Stepanakert road", *Facebook*, 17 Jan. 2023, available at <https://www.facebook.com/gegham.stepanian/posts/pfbid02wBVj46WdiVKA33ZtUqyMgdJ3stoLGVPGEv2twnD7z3X8Fy4bn5XUKBM8uafRytaCl> (Armenia's Observations (24 Jan. 2023), Ann. 87); "They started shouting, then they got into the car", *Radio Free Europe/Radio Liberty (Azatutyun)*, 18 Jan. 2023, available at <https://www.azatutyun.am/a/32229280.html> (certified translation from Armenian) (Armenia's Observations, 24 Jan. 2023, Ann. 88); "'We Thought That They Wanted to Take Us Captive,' The Return of the Children to Artsakh", *Mediamax*, 21 Jan. 2023, available at <https://mediamax.am/am/news/special-report/50070/?mibextid=Zxz2cZ> (certified translation from Armenian) (Armenia's Observations, 24 Jan. 2023, Ann. 95).

The statement of protected rights in this subparagraph incorporates rights listed separately in other United Nations documents, especially in Articles 9 and 12 of the International Covenant on Economic, Social and Cultural Rights, concerning the right to health and the right to social security, respectively.

34. According to the Committee on Economic, Social and Cultural Rights, the right to health is visualized as “related to and dependent upon the realization” of a range of other human rights and is understood as “a right to the enjoyment of a variety of facilities, goods [and] services”¹¹⁴. The CERD Committee has not adopted a General Recommendation on Article 5 (e) (iv). However, a broad understanding of this provision clearly results from different group-related General Recommendations and numerous concluding observations¹¹⁵.

35. The rights protected in Article 5 (e) (iv) have been clearly violated because of the blockade. For 50 days now, the people of Nagorno-Karabakh remain under siege. The daily newsletters issued by local authorities report the increasing number of critically ill ethnic Armenians hospitalized in Nagorno-Karabakh, who have been slated to be transferred to medical facilities in Armenia for urgent medical care, but for whom the blockade has rendered their free and timely transfer impossible¹¹⁶. One of them has already died¹¹⁷. Another patient suffering from brain cancer was prevented from undergoing a scheduled surgery last December. When he was finally allowed to exit Nagorno-Karabakh, it was too late for the treatment¹¹⁸.

¹¹⁴ Committee on Economic, Social and Cultural Rights, *General Comment No. 14, The Right to the Highest Attainable Standard of Health*, UN doc. E/C.12/2000/4, 11 Aug. 2000, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/439/34/PDF/G0043934.pdf?OpenElement>, paras. 3 and 9.

¹¹⁵ See P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (2016), pp. 374-378.

¹¹⁶ See e.g. Letter from “Republican Medical Centre” CJSC of the Republic of Artsakh to Office of the Representative of Armenia before the European Court of Human Rights (15 Dec. 2022) (Armenia’s Request for provisional measures (27 Dec. 2022), Ann. 2); Artsakh Info Centre, Artsakh Government Update: Day 30 Under Blockade (10 Jan. 2023) (Armenia’s Supplemental Observations (27 Jan. 2023), Ann. 79); Artsakh Info Centre, Artsakh Government Update: Day 40 Under Blockade (20 Jan. 2023) (Armenia’s Supplemental Observations (27 Jan. 2023), Ann. 80); Artsakh Info Centre, Artsakh Government Update: Day 44 Under Blockade (24 Jan. 2023) (Armenia’s Supplemental Observations (27 Jan. 2023), Ann. 81); Artsakh Info Centre, Artsakh Government Update: Day 45 Under Blockade (25 Jan. 2023) (Armenia’s Supplemental Observations (27 Jan. 2023), Ann. 100); Artsakh Info Centre, Artsakh Government Update: Day 46 Under Blockade (26 Jan. 2023) (Armenia’s Supplemental Observations (27 Jan. 2023), Ann. 101); Artsakh Info Centre, Artsakh Government Update: Day 47 Under Blockade (27 Jan. 2023) (Armenia’s Supplemental Observations (27 Jan. 2023), Ann. 102).

¹¹⁷ “Artsakh blockade continues for nine days: patient dies in hospital”, *News.am*, 19 Dec. 2022, available at <https://news.am/eng/news/735939.html>; Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 3.

¹¹⁸ “Artsakh resident: ‘His life would have been extended by 3-4 years if we could bring him over sooner and they could perform the surgery’”, *Radio Free Europe/Radio Liberty (Azatutyun)*, 17 Jan. 2023, available at <https://www.azatutyun.am/a/32227486.html> (certified translation from Armenian); Armenia’s Observations, 24 Jan. 2023, Ann. 85.

36. Any medicine coming in requires negotiations upon negotiations for Azerbaijan to approve their delivery by the ICRC or the Russian peacekeepers¹¹⁹. The Ministry of Health of the Republic of Artsakh has warned that local hospitals could soon face a shortage of medicine and other life-saving medical supplies¹²⁰. Hundreds of ethnic Armenians have been deprived of the right to receive necessary medical treatment due to the suspensions of planned surgeries in medical facilities across Nagorno-Karabakh¹²¹.

37. The blockade is also preventing the import of food and other humanitarian assistance into Nagorno-Karabakh¹²². As Mr. Martin explained, prior to the blockade, approximately 400 tonnes of essential goods — including grain, flour, vegetables and fruits — were imported into Nagorno-Karabakh from Armenia on a daily basis¹²³. Now, due to the discriminatory blockade, there are critical shortages in these essential goods. The authorities were forced to introduce the rationing of food and essential goods through a coupon programme¹²⁴. Supermarkets and grocery stores are left with empty shelves¹²⁵. Again, any food coming in requires negotiations upon negotiations for

¹¹⁹ See The Human Rights Defender of Armenia and The Human Rights Ombudsman of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 13 Jan. 2023, paras. 7, 96, available at <https://ombuds.am/images/files/8015e970b4e618c7e518be045acd382b.pdf>; Armenia's Observations, 24 Jan. 2023, Ann. 77.

¹²⁰ S. Badalian et al., "Armenia Decries Azeri Blockade of Karabakh (UPDATED)", *Radio Free Europe/Radio Liberty (Azatutyun)*, 13 Dec. 2022, available at <https://www.azatutyun.am/a/32174346.html>; Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 60.

¹²¹ Artsakh Info Centre, *Artsakh Government Update: Day 46 Under Blockade*, 26 Jan. 2023; Armenia's Supplemental Observations, 27 Jan. 2023, Ann. 101.

¹²² Human Rights Defender of Armenia and Human Rights Ombudsman of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World: December 12-January 13*, 13 Jan. 2023, paras. 7, 60, 93, available at <https://ombuds.am/images/files/8015e970b4e618c7e518be045acd382b.pdf> (Armenia's Observations (24 Jan. 2023), Ann. 77).

¹²³ Human Rights Defender of the Republic of Armenia and Human Rights Ombudsman of the Republic of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022, p. 2 (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 5). See also Human Rights Defender of Armenia and Human Rights Ombudsman of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World: December 12-January 13*, 13 Jan. 2023, para. 7, available at <https://ombuds.am/images/files/8015e970b4e618c7e518be045acd382b.pdf> (Armenia's Observations, 24 Jan. 2023, Ann. 77).

¹²⁴ See Human Rights Defender of Armenia and Human Rights Ombudsman of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World: December 12-January 13*, 13 Jan. 2023, para. 85, available at <https://ombuds.am/images/files/8015e970b4e618c7e518be045acd382b.pdf>; Armenia's Observations, 24 Jan. 2023, Ann. 77.

¹²⁵ S. Badalian, "Karabakh Faces Shortage of Basic Goods", *Radio Free Europe/Radio Liberty (Azatutyun)*, 15 Dec. 2022, available at <https://www.azatutyun.am/a/32178505.html> (Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 4). See also Human Rights Defender of Armenia and Human Rights Ombudsman of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World: December 12-January 13*, 13 Jan. 2023, paras. 78-82, available at <https://ombuds.am/images/files/8015e970b4e618c7e518be045acd382b.pdf> (Armenia's Observations, 24 Jan. 2023, Ann. 77).

Azerbaijan to approve their delivery by the ICRC or the Russian peacekeepers. With the dearth of food currently in Nagorno-Karabakh, it is truly disheartening to see tonnes upon tonnes of goods stored in Armenian border towns awaiting a window of opportunity to be sent to their beneficiaries¹²⁶.

38. In a resolution on “the humanitarian consequences of the blockade in Nagorno Karabakh”, the European Parliament has qualified this situation as a “severe humanitarian crisis”¹²⁷.

39. Timed to coincide with the blockade, on 13 December 2022, Azerbaijan — once again¹²⁸ — cut off the supply of natural gas to Nagorno-Karabakh without any advance warning, leaving homes, businesses, hospitals and schools without heat in the midst of a freezing winter¹²⁹. Medical facilities were forced to suspend scheduled surgeries to save energy and medicine¹³⁰. All schools in Nagorno-Karabakh that use natural gas for heating were shut down¹³¹. The streets of ethnic Armenian settlements emptied, with local gas stations supplying fuel only to ambulances, public buses and other authorized vehicles¹³². As Mr. Martin explained earlier, the supply of natural gas was restored on 16 December, but since mid-January 2023, it was repeatedly interrupted again and

¹²⁶ “More than 250 tons of humanitarian aid donated to Artsakh still remain in Goris. Artsakh InfoCenter”, *Artsakh Press*, 27 Jan. 2023, available at <https://artsakhpress.am/eng/news/176212/more-than-250-tons-of-humanitarian-aid-donated-to-artsakh-still-remain-in-goris-artsakh-infocenter.html>.

¹²⁷ European Parliament, *Resolution on the humanitarian consequences of the blockade in Nagorno-Karabakh*, No. 2023/2504(RSP), 19 Jan. 2023, para. B, available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0012_EN.html; Armenia’s Observations, 24 Jan. 2023, Ann. 82.

¹²⁸ S. Maghakyan, “Putin’s Isn’t the Only Regime Leveraging Fossil Fuels for Aggression”, *Time*, 4 April 2022, available at <https://time.com/6163908/nagorno-karabakh-gas-crisis/> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 32); E. L. Cricchio, “For second time this winter, Azerbaijan cuts off supply of heating gas in Karabakh”, *Civilnet*, 23 March 2022, available at <https://www.civilnet.am/en/news/654604/for-second-time-this-winter-azerbaijan-cuts-off-supply-of-heating-gas-in-karabakh/> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 33).

¹²⁹ K. Krivosheev, “Russian Peacekeepers Find Themselves Sidelined in Nagorno-Karabakh”, *Carnegie Endowment for International Peace*, 15 Dec. 2022, available at <https://carnegieendowment.org/politika/88651> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 63); M. Dovich, “Azerbaijan cuts gas to Karabakh following two-day blockade of region”, *Civilnet*, 13 Dec. 2022, available at <https://www.civilnet.am/en/news/685926/azerbaijan-cuts-gas-to-karabakh-following-two-day-blockade-of-region/> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 64).

¹³⁰ Human Rights Defender of the Republic of Armenia and Human Rights Ombudsman of the Republic of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022, p. 7 (Armenia’s Request for provisional measures, Ann. 5); S. Badalian, “Karabakh Faces Shortage of Basic Goods”, *Radio Free Europe/Radio Liberty (Azatutyun)*, 15 Dec. 2022, available at <https://www.azatutyun.am/a/32178505.html> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 4).

¹³¹ Human Rights Defender of the Republic of Armenia and Human Rights Ombudsman of the Republic of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022, p. 8 (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 5); S. Badalian, “Karabakh Faces Shortage of Basic Goods”, *Radio Free Europe/Radio Liberty (Azatutyun)*, 15 Dec. 2022, available at <https://www.azatutyun.am/a/32178505.html> (Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 4).

¹³² S. Badalian, “Karabakh Faces Shortage of Basic Goods”, *Radio Free Europe/Radio Liberty (Azatutyun)*, 15 Dec. 2022, available at <https://www.azatutyun.am/a/32178505.html>; Armenia’s Request for provisional measures, 27 Dec. 2022, Ann. 4.

again. As stressed by the European Parliament, this humanitarian crisis has been “further aggravated by Azerbaijan’s disruption of the natural gas supply to Nagorno-Karabakh, which left houses, hospitals and schools without heating”¹³³.

40. Furthermore, the deliberate and repeated interruption of the gas supply in freezing winter conditions is combined with the ongoing disruptions of the electrical grid and telecommunication lines in the entire territory of Nagorno-Karabakh. This severely impacts the daily life of the people and leads to a number of adverse humanitarian consequences, such as lack of electricity, disruption of the educational process in schools, disruption of the heating of vitally important institutions such as hospitals and disruption of businesses. People are deprived of heating and hot water. The authorities were forced to introduce the rationing of fuel. In an effort to save electricity, rolling blackouts were implemented for each household for six hours per day¹³⁴.

41. In a report released on 23 January 2023, the Human Rights Ombudsman of Artsakh presents facts regarding the widespread and large-scale violations of the rights of the people of Artsakh due to the deliberate disruption of the normal functioning of Artsakh’s vital infrastructures. Such disruption put the civilian population in front of a “humanitarian disaster”¹³⁵.

42. In conclusion on this point, the blockade and related measures entail a series of more than plausible violations of social rights protected under Article 5 (e) (iv). In this connection, may I observe, Madam President, distinguished judges, that the CERD contains a much broader spectrum of rights than the European Convention of Human Rights, which constituted the basis of the provisional measures ordered last December by the European Court in Strasbourg.

III. The link between the above rights and the measures requested

43. Let me briefly turn now to my final point: the link between all the above rights under Articles 2 and 5 of CERD and the measures requested.

¹³³ European Parliament, *Resolution on the humanitarian consequences of the blockade in Nagorno-Karabakh*, No. 2023/2504(RSP), 19 Jan. 2023, para. C, available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0012_EN.html; Armenia’s Observations, 24 Jan. 2023, Ann. 82.

¹³⁴ “Azerbaijan again cuts off gas supply to blockaded Nagorno Karabakh”, *Armenpress*, 21 Jan. 2023, available at <https://www.armenpress.am/eng/news/1102279/>; Armenia’s Observations, 24 Jan. 2023, Ann. 89.

¹³⁵ See Human Rights Defender of the Republic of Artsakh, *Interim Report on the Violations of Human Rights of Artsakh People as a Result of the Deliberate Disruption of Critical Infrastructure in the Midst of the Blockade of Artsakh by Azerbaijan Since December 12, 2022* (23 Jan. 2023), available at <https://artsakhombuds.am/en/document/987?fbclid=IwAR1jy38rCKr12cIATJfjQyPLV5kAPvKpKwgYm4QQCi4UEz-q38II4EXRwCs>; Armenia’s Observations, 24 Jan. 2023, Ann. 78.

44. The provisional measures requested are obviously linked to the rights whose protection is sought because the measures, if indicated, would safeguard these very rights. Indeed, lifting the blockade of the Lachin Corridor and ensuring uninterrupted free movement of all persons, vehicles and cargo along the Corridor in both directions would mean the end of the siege of Nagorno-Karabakh; the end of the unbearable living conditions of ethnic Armenians in violation of Article 2 (1) of the Convention.

45. Lifting the blockade, ensuring free movement along the Lachin Corridor, as well as restoring and refraining from disrupting or impeding the provision of natural gas and other public utilities to Nagorno-Karabakh would also put an end to a series of discriminatory measures in violation of Article 5 of the Convention. More particularly:

- it would put an end to the intimidating measures against ethnic Armenians related to the blockade;
- it would permit the enjoyment of the various aspects of their right to free movement;
- it would also ensure access of those in need to hospitals and medical care; access to basic goods, food, electricity and natural gas.

In a nutshell, the measures requested, if indicated, would permit 120,000 ethnic Armenians in Nagorno-Karabakh to live again in decency. Otherwise, there is an urgent risk of irreparable damage.

46. May I kindly ask you, Madam President, to give the floor to my colleague Dr. Constantinos Salonidis, who will be addressing this issue. I thank you for your kind attention.

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

Mr. SALONIDIS:

**THE IRREPARABLE PREJUDICE AND URGENCY REQUIRING THE INDICATION
OF PROVISIONAL MEASURES**

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

2. It falls to me today to address the circumstances underlying the ongoing irreparable harm that Azerbaijan's actions have been inflicting on the ethnic Armenian population of Nagorno-Karabakh for the last 50 days.

I. Azerbaijan's conduct is capable of causing irreparable prejudice to the rights Armenia's Request seeks to protect

3. I turn first to the existence of "irreparable prejudice" in the present case. "The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences"¹³⁶. In all prior cases concerning possible violations of the CERD, the Court has found rights under Article 5 of the CERD to be "of such a nature that prejudice to them is capable of causing irreparable harm"¹³⁷.

4. For example, in the case brought by Georgia against Russia under the CERD, the Court held that "violations of the right to freedom of movement . . . could . . . cause irreparable prejudice in situations where the persons concerned are exposed to privation, hardship, anguish and even danger to life and health"¹³⁸. In the case brought by Qatar against the United Arab Emirates under the CERD, the Court found that prejudice can also be considered as irreparable when, *inter alia*, "individuals are subject to temporary or potentially ongoing separation from their families and suffer from psychological distress [and] when students are prevented from taking their exams due to enforced absence"¹³⁹.

5. Through the present Request for provisional measures, Armenia is seeking to protect rights of ethnic Armenians under Article 5 (b), 5 (d) and 5 (e) (iv), together with those rights arising from the general prohibition of racial discrimination under Article 2¹⁴⁰. In circumstances where Azerbaijan has put into jeopardy the security of 120,000 people, deprived them of freedom of movement and

¹³⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 385, para. 69.

¹³⁷ *Ibid.*, p. 389, para. 81.

¹³⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 396, para. 142. See also *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018*, p. 650, para. 91.

¹³⁹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018*, p. 431, para. 69.

¹⁴⁰ Armenia's Request for provisional measures, 27 Dec. 2022, para. 28.

their rights to be with their families and loved ones, their rights to receive food, medical care, education, heat and electricity amidst a freezing winter, there is no reason for the Court to revisit its established approach to the nature of the rights under Article 5 of the CERD, or that of the potential prejudice to them.

II. Azerbaijan's conduct entails ongoing and imminent irreparable prejudice to the rights Armenia's Request seeks to protect

6. I turn to the final condition for the indication of provisional measures, namely, urgency. The Court has made clear that it will indicate provisional measures “only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused before the Court gives its final decision”¹⁴¹.

7. So what has happened in these 50 days of blockade, and does it meet the requisite urgency for the exercise of the Court's power?

8. Let us recall the essential facts. As the blockade took shape on 12 December 2022, hundreds of people were stranded on the blockaded road in cold winter conditions¹⁴². Over a thousand who had been visiting family, attending school or events, or conducting business away from Nagorno-Karabakh, were instantly cut off from their homes and families¹⁴³. This included approximately 270 children¹⁴⁴. At the same time, as Mr. Martin recalled earlier, the daily flow of 400 tonnes of essential goods into Nagorno-Karabakh immediately came to a halt¹⁴⁵, as did the

¹⁴¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 24, para. 65.

¹⁴² Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022, p. 2, available at <https://artsakhombuds.am/en/document/976>; Armenia's Observations, 24 Jan. 2023, Ann. 75.

¹⁴³ *Ibid.*, p. 8; European Parliament, *European Parliament resolution of 19 January 2023 on the humanitarian consequences of the blockade in Nagorno-Karabakh (2023/2504(RSP))*, 19 Jan. 2023, available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0012_EN.html; Armenia's Observations, 24 Jan. 2023, Ann. 82.

¹⁴⁴ Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022, p. 2, available at <https://artsakhombuds.am/en/document/976>; Armenia's Observations, 24 Jan. 2023, Ann. 75.

¹⁴⁵ Human Rights Watch, *Azerbaijan: Nagorno-Karabakh Lifeline Road Blocked*, 21 Dec. 2022, p. 2, available at <https://www.hrw.org/news/2022/12/21/azerbaijan-nagorno-karabakh-lifeline-road-blocked>; Armenia's Observations, 24 Jan. 2023, Ann. 94.

transfer of the critically ill to Armenia for urgent medical treatment¹⁴⁶ and scheduled medical examinations.

9. On day two, amidst freezing winter temperatures, the gas supply was interrupted¹⁴⁷. As it did last March, Azerbaijan did not allow emergency crews to investigate and make necessary repairs¹⁴⁸. The interruption persisted for three days until, under mounting international pressure, the flow of gas was restored¹⁴⁹.

10. On day eight, the blockade claimed its first life when a 44-year old haemodialysis patient in serious condition was not permitted to seek treatment outside Nagorno-Karabakh¹⁵⁰. On the same day, all non-emergency surgeries in all hospitals in Nagorno-Karabakh were suspended due to the anticipated shortages in medical supplies¹⁵¹.

11. By day 10, grocery store shelves had been emptied of fresh food staples¹⁵². Bakeries were running out of ingredients to make bread¹⁵³.

¹⁴⁶ European Parliament, *European Parliament resolution of 19 January 2023 on the humanitarian consequences of the blockade in Nagorno-Karabakh (2023/2504(RSP))*, 19 Jan. 2023, available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0012_EN.html (Armenia's Observations (24 Jan. 2023), Ann. 82); Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022, p. 2, available at <https://artsakhombuds.am/en/document/976>; Armenia's Observations, 24 Jan. 2023, Ann. 75.

¹⁴⁷ Human Rights Watch, *Azerbaijan: Nagorno-Karabakh Lifeline Road Blocked*, 21 Dec. 2022, p. 2, available at <https://www.hrw.org/news/2022/12/21/azerbaijan-nagorno-karabakh-lifeline-road-blocked> (Armenia's Observations, 24 Jan. 2023, Ann. 94); European Parliament, *European Parliament resolution of 19 January 2023 on the humanitarian consequences of the blockade in Nagorno-Karabakh (2023/2504(RSP))*, 19 Jan. 2023, available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0012_EN.html (Armenia's Observations, 24 Jan. 2023, Ann. 82).

¹⁴⁸ Letter from S. Mikayelyan, Executive Director of Artsakhgaz, to Gurgen Nersisyan, Prosecutor General of the Republic of Artsakh, 18 Jan. 2023 (certified translation from Armenian); Armenia's Supplemental Observations, 27 Jan. 2023, Ann. 99. Cf. Letter from Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Philippe Gautier, Registrar of the International Court of Justice, 25 Apr. 2022, p. 4.

¹⁴⁹ Human Rights Watch, *Azerbaijan: Nagorno-Karabakh Lifeline Road Blocked*, 21 Dec. 2022, available at <https://www.hrw.org/news/2022/12/21/azerbaijan-nagorno-karabakh-lifeline-road-blocked>; Armenia's Observations, 24 Jan. 2023, Ann. 94, p. 2.

¹⁵⁰ "Artsakh blockade continues for nine days: patient dies in hospital", *News.am*, 19 Dec. 2022, available at <https://news.am/eng/news/735939.html>; Armenia's Request for provisional measures, 27 Dec. 2022, Ann. 3.

¹⁵¹ Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World*, 15 Dec. 2022, p. 7, available at <https://artsakhombuds.am/en/document/976>; Armenia's Observations, 24 Jan. 2023, Ann. 75. See also Human Rights Defender of Artsakh, *Interim Report on the Violations of Human Rights of Artsakh People as a Result of the Deliberate Disruption of Critical Infrastructure in the Midst of the Blockade of Artsakh by Azerbaijan since 12 December 2022*, 23 Jan. 2023, p. 13, available at <https://artsakhombuds.am/en/document/987>; Armenia's Observations, 24 Jan. 2023, Ann. 78.

¹⁵² Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World: December 12-25*, 26 Dec. 2022, p. 14, para. 47, available at <https://artsakhombuds.am/en/document/980>; Armenia's Observations, 24 Jan. 2023, Ann. 76.

¹⁵³ *Ibid.*, para. 48.

12. By day 11, pharmacies were running out of antibiotics, blood pressure medication, insulin, and other essential medicines and medical supplies¹⁵⁴.

13. By day 15, cash shortages led to the imposition of withdrawal limits at banks¹⁵⁵.

14. On day 23, local authorities decided that, due to the impossibility of importing food and essential goods with regularity, State wartime reserves would need to be distributed¹⁵⁶.

15. On day 28, food shortages led preschools and kindergartens across Nagorno-Karabakh to close their doors¹⁵⁷. It has now been more than three weeks since the youngest children have been out of school.

16. On the same day, the only high-voltage power line connecting Nagorno-Karabakh to Armenia was damaged in an apparent act of sabotage¹⁵⁸. As a result of the blockade, Nagorno-Karabakh technicians were denied access to the site¹⁵⁹. The electricity supply has not been stable since.

17. By day 36, the transmission of natural gas had fallen to a fraction of its normal flow. According to Nagorno-Karabakh engineers, this suggested that Azerbaijan had intentionally adjusted the valve to reduce supply¹⁶⁰.

18. On day 37, for the second time during these 50 days, the supply of natural gas was completely cut off around noon local time, only to be restored at 5 p.m., and then cut off again at 9 p.m.¹⁶¹. That same day, four hours of rolling blackouts per day were introduced in order to cope

¹⁵⁴ Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World: December 12-25*, 26 Dec. 2022, p. 16, available at <https://artsakhombuds.am/en/document/980>; Armenia's Observations, 24 Jan. 2023, Ann. 76.

¹⁵⁵ *Ibid.*, p. 14, para. 49.

¹⁵⁶ Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World: December 12-January 13*, 13 Jan. 2023, p. 25, available at <https://artsakhombuds.am/en/document/985>; Armenia's Observations, 24 Jan. 2023, Ann. 77.

¹⁵⁷ Artsakh Info Centre, *Artsakh Government Update: Day 30 Under Blockade*, 10 Jan. 2023; Armenia's Observations, 24 Jan. 2023, Ann. 79.

¹⁵⁸ Letters relating to the supply of utilities to Nagorno-Karabakh; Armenia's Observations, 24 Jan. 2023, Ann. 74.

¹⁵⁹ *Ibid.*

¹⁶⁰ Letter from S. Mikayelyan, Executive Director of Artsakhgaz, to Gurgen Nersisyan, Prosecutor General of the Republic of Artsakh, 18 Jan. 2023 (certified translation from Armenian); Armenia's Supplemental Observations, 27 Jan. 2023, Ann. 99.

¹⁶¹ *Ibid.*

with the dwindling supply of electricity¹⁶². The electrical grid was already at reduced capacity due to the downing of the main electrical power line on day 29. Naturally, in the absence of a consistent flow of natural gas, the electrical grid is even more overwhelmed as people turn to electrical heating sources to cope with the lack of gas.

19. On day 39, all 117 schools in Nagorno-Karabakh were closed indefinitely due to the shortage of gas and electricity supplies, which affected, naturally, tens of thousands of children¹⁶³. The supply of natural gas remained cut off¹⁶⁴.

20. On day 40, the gas supply was resumed. To alleviate the pressure on the electricity grid, it was, however, decided to increase rolling blackouts across Nagorno-Karabakh from four to six hours a day¹⁶⁵. The same day, a coupon rationing system for essential foodstuffs came into effect¹⁶⁶.

21. On day 41, at around 8 p.m. local time, the gas supply that was cut off once again, marking the fourth time in a little over a month¹⁶⁷. For the next three and a half days the supply of gas was never more than 11 per cent of the usual supply¹⁶⁸. This trickle of gas was barely enough to fuel ovens in bakeries and provide minimum heat in hospitals¹⁶⁹.

¹⁶² Human Rights Defender of Artsakh, *Interim Report on the Violations of Human Rights of Artsakh People as a Result of the Deliberate Disruption of Critical Infrastructure in the Midst of the Blockade of Artsakh by Azerbaijan since 12 December 2022*, 23 Jan. 2023, p. 7, available at <https://artsakhombuds.am/en/document/987>; Armenia's Observations, 24 Jan. 2023, Ann. 78.

¹⁶³ Artsakh Info Centre, Artsakh Government Update: Day 40 Under Blockade, 20 Jan. 2023; Armenia's Observations, 24 Jan. 2023, Ann. 80.

¹⁶⁴ Letter from S. Mikayelyan, Executive Director of Artsakhgaz, to Gurgen Nersisyan, Prosecutor General of the Republic of Artsakh, 18 Jan. 2023 (certified translation from Armenian); Armenia's Supplemental Observations, 27 Jan. 2023, Ann. 99.

¹⁶⁵ Artsakh Info Centre, Artsakh Government Update: Day 40 Under Blockade, 20 Jan. 2023; Armenia's Observations, 24 Jan. 2023, Ann. 80.

¹⁶⁶ Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World: December 12-January 13*, 13 Jan. 2023, p. 25, available at <https://artsakhombuds.am/en/document/985>; Armenia's Observations, 24 Jan. 2023, Ann. 77.

¹⁶⁷ Letter from Gurgen Nersisyan, Prosecutor General of the Republic of Artsakh, to Yeghishe Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, 26 Jan. 2023 (certified translation from Armenian), with enclosure; Armenia's Supplemental Observations, 24 Jan. 2023, Ann. 98.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

22. By day 44, grocery stores in Nagorno-Karabakh had been emptied of almost all products¹⁷⁰. Baby formula became a scarce commodity¹⁷¹.

23. By day 45, commercial gas stations across Nagorno-Karabakh had shut down as the dwindling gas was diverted to healthcare institutions and bread production facilities¹⁷².

24. On day 46, over 250 tonnes of humanitarian aid destined for Stepanakert remained in warehouses in Goris, unable to be transported across the blockade¹⁷³. Appeals to the residents of Stepanakert started to appear on social media, calling on them to evacuate, which were dismissed by local authorities as an attempt by the intelligence service of Azerbaijan to spread panic among the population¹⁷⁴.

25. On day 47, local authorities began distributing firewood and wood-burning stoves to residents¹⁷⁵. The gas supply was partially restored on that day — but supplied only to the residents of Stepanakert, given the demands on the impaired energy system¹⁷⁶.

26. On day 48, the gas supply was once again cut off¹⁷⁷. The gas supply appears to have been restored on the eve of this hearing.

27. Madam President, distinguished Members of the Court, this is where we stood as of 24 hours ago. The situation remains precarious as we enter today day 50. To see this first hand, you may find, at tab 2 of your judges' folder, the English versions of some of the very bulletins that residents of Nagorno-Karabakh receive daily from the local authorities. These bulletins update them on what new cruelty Azerbaijan's actions are inflicting upon them that day, and convey information on a daily basis how best they can cope with the consequences.

¹⁷⁰ Artsakh Info Centre, Artsakh Government Update: Day 44 Under Blockade, 24 Jan. 2023; Armenia's Observations, 24 Jan. 2023, Ann. 81.

¹⁷¹ "'Potatoes are a luxury': Vital supplies dwindle as 'eco-activists' blockade a breakaway region guarded by Russia", *CNN*, 12 Jan. 2023, available at <https://www.cnn.com/2023/01/12/europe/armenia-azerbaijan-nagorno-karabakh-lachin-intl/index.html>; Armenia's Observations, 24 Jan. 2023, Ann. 92, p. 3.

¹⁷² Artsakh Info Centre, Artsakh Government Update: Day 45 Under Blockade, 25 Jan. 2023; Armenia's Supplemental Observations, 27 Jan. 2023, Ann. 100.

¹⁷³ "Humanitarian Assistance Destined for Artsakh Grounded in Goris", *Hetq*, 27 Jan. 2023, available at <https://hetq.am/en/article/152545>.

¹⁷⁴ Artsakh Info Centre, Artsakh Government Update: Day 46 Under Blockade, 26 Jan. 2023; Armenia's Supplemental Observations, 27 Jan. 2023, Ann. 101.

¹⁷⁵ *Ibid.*, Ann. 102.

¹⁷⁶ *Ibid.*

¹⁷⁷ "Azerbaijan completely cuts gas supply to Artsakh", *Public Radio of Armenia*, 28 Jan. 2023, available at <https://en.armradio.am/2023/01/28/azerbaijan-completely-cuts-gas-supply-to-artsakh/>.

28. As I speak today, over a thousand people remain separated from their families and friends, including hundreds of children. Imagine how every minute of the past 50 days has felt for the parents of these children and the children themselves.

29. In the past 50 days, a dozen residents of Nagorno-Karabakh have passed away, either abroad or in Armenia¹⁷⁸. Families and friends have been unable to mourn them, since their bodies cannot be transported across the blockade.

30. The transfer of the critically ill to Armenia still takes place only after negotiations with the Azerbaijani so-called protestors, conducted by the peacekeepers or the ICRC. The so-called protestors truly hold power over the life or death of these individuals.

31. Chemotherapy provided in cancer clinics across the border has become impossible to obtain, meaning that patients have been without treatment for seven weeks now, their chances of recovering from cancer slowly dissipating¹⁷⁹. By now, hundreds of planned surgeries have been indefinitely suspended¹⁸⁰. Hospital wards cannot be heated sufficiently to meet the bare minimum safe temperature of 14 °C¹⁸¹.

32. There are serious shortages in essential food stuff and medicine, with the small quantities allowed to pass being distributed to the most vulnerable and not even coming close to the needs of the broader population¹⁸². And it is the same with baby formula.

33. The flow of gas was restored on the eve of this hearing — it remains to be seen for how long. Rolling electricity blackouts remain necessary to sustain the viability of the electricity network.

¹⁷⁸ Human Rights Defender of Armenia and Human Rights Defender of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World: December 12-January 13* (13 Jan. 2023), available at <https://artsakhombuds.am/en/document/985> (Armenia's Observations (24 Jan. 2023), Ann. 77), p. 28.

¹⁷⁹ *Ibid.*, pp. 26-27.

¹⁸⁰ *Ibid.*, p. 27.

¹⁸¹ Human Rights Defender of Artsakh, *Interim Report on the Violations of Human Rights of Artsakh People as a Result of the Deliberate Disruption of Critical Infrastructure in the Midst of the Blockade of Artsakh by Azerbaijan since 12 December 2022* (23 Jan. 2023), available at <https://artsakhombuds.am/en/document/987> (Armenia's Observations (24 Jan. 2023), Ann. 78), p. 17.

¹⁸² Artsakh Info Centre, *Artsakh Government Update: Day 45 Under Blockade* (25 Jan. 2023) (Armenia's Supplemental Observations (27 Jan. 2023), Ann. 100).

34. Instead of attending school, thousands of children sit at home, without electricity for six hours a day, with an empty pantry, some with the heat of only a wood-burning stove¹⁸³. The impact of all of this on their development is too obvious to state.

35. Virtually all economic activity has been suspended. The closure of the highway has made the import and export of products and materials impossible, causing the shutdown of commercial and manufacturing businesses. At least 5,000 have lost their jobs¹⁸⁴. Despite the national calls, humanitarian organizations and United Nations agencies still cannot reach the ethnic Armenian population of Nagorno-Karabakh.

36. Madam President, distinguished Members of the Court, any suggestion that this situation can be addressed through the trickle of supplies that is allowed to go in is cynical. The same is true of any suggestion that emergency and routine medical care of 120,000 people should be contingent on negotiated ICRC transfers, as if in a time of war. Nothing short of a full lifting of the blockade and unhindered resumption of the provision of public utilities will bring relief to the victims of this unnecessary and cruel blockade. In this conclusion, Armenia is not alone. This conclusion is shared by the international community at large. As you see on your screens, calls abound for Azerbaijan to “immediately”¹⁸⁵ and “fully”¹⁸⁶ end the blockade and to urgently guarantee unimpeded access¹⁸⁷.

¹⁸³ *Ibid.*, Ann. 102.

¹⁸⁴ *Ibid.*, Ann. 102.

¹⁸⁵ European Parliament, *European Parliament resolution of 19 January 2023 on the humanitarian consequences of the blockade in Nagorno-Karabakh (2023/2504(RSP))* (19 Jan. 2023), available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0012_EN.html (Armenia’s Observations (24 Jan. 2023), Ann. 82); Freedom House, @FreedomHouse, *Twitter* (13 Jan. 2023), available at <https://twitter.com/freedomhouse/status/1614004985603280901>; US Secretary of State Antony Blinken, @SecBlinken, *Twitter* (23 Jan. 2023), available at <https://twitter.com/secblinken/status/1617565934750928899>.

¹⁸⁶ UN High Commissioner for Human Rights, @UNHumanRights, *Twitter* (18 Jan. 2023), available at <https://twitter.com/UNHumanRights/status/1615740942618615808>.

¹⁸⁷ “Entretien téléphonique avec le Président de la République d’Azerbaïdjan, Ilham Aliiev”, *Palais de l’Élysée* (23 Dec. 2022), available at <https://www.elysee.fr/emmanuel-macron/2022/12/23/entretien-telephonique-avec-m-ilham-aliev-president-de-la-republique-d-azerbaïdjan-1>. See also “On the telephone conversation between the Minister of Foreign Affairs of the Russian Federation S.V. Lavrov and the Minister of Foreign Affairs of the Republic of Azerbaijan D. A. Bayramov”, *Ministry of Foreign Affairs of the Russian Federation* (17 Jan. 2023), available at https://mid.ru/ru/foreign_policy/news/1848312/; US Secretary of State Antony Blinken, @SecBlinken, *Twitter* (23 Jan. 2023), available at <https://twitter.com/secblinken/status/1617565934750928899>; Freedom House, @freedomhouse, *Twitter* (13 Jan. 2023), available at <https://twitter.com/freedomhouse/status/1614004984214966301>; Fernand de Varennes, UN Special Rapporteur on Minority Issues, @fernanddev, *Twitter* (20 Jan. 2023), available at <https://twitter.com/fernanddev/status/1616366999743127552>; amnestypress @amnestypress, *Twitter* (11 Jan. 2023), available at <https://twitter.com/amnestypress/status/1613202615076020224>; Republic of Lithuania, Ministry of Foreign Affairs, @LithuaniaMFA, *Twitter* (16 Dec. 2022), available at <https://twitter.com/LithuaniaMFA/status/1603745059626573826>; UN Human Rights, @UNHumanRights, *Twitter* (18 Jan. 2023), available at <https://twitter.com/UNHumanRights/status/1615740942618615808>; Hellenic Republic, Ministry of Foreign Affairs, @GreeceMFA, *Twitter* (15 Dec. 2022), available at <https://twitter.com/GreeceMFA/status/1603315921380163585>; La France à l’OSCE, @RP_France_OSCE, *Twitter* (17 Jan. 2023), available at https://twitter.com/RP_France_OSCE/status/1615288150590373888.

This is necessary in order to “avert humanitarian catastrophe”¹⁸⁸, the risk of which grows “each day”¹⁸⁹.

37. Following Azerbaijan’s failure to respect the interim measure ordered by the European Court of Human Rights, the President of the Committee of Ministers of the Council of Europe similarly expressed her “concern[] about the increasingly precarious humanitarian situation” of the ethnic Armenian population of Nagorno-Karabakh and “call[ed] on the relevant authorities to quickly restore freedom of movement along the corridor [in order] to avoid further deterioration of the situation”¹⁹⁰.

38. Yet, as we heard from Mr. Martin, such calls fall on wilfully deaf ears. Azerbaijan brags openly about how it cannot be stopped, not by the international community, and not even by a binding order of the Court in Strasbourg.

39. Madam President, distinguished Members of the Court, the progressive deterioration of the situation is obvious, as is the collective trauma already inflicted on the ethnic Armenian population of Nagorno-Karabakh. With respect, these circumstances do not just entail an imminent *risk* of irreparable harm, they are causing such irreparable harm in real time, with the scope, scale and gravity of the harm compounding with each passing hour. The Court has previously granted provisional measures to protect rights under the CERD after finding that the affected populations “remain vulnerable”¹⁹¹. The people of Nagorno-Karabakh are not just vulnerable, they are enduring for 50 days now a humanitarian crisis and I am afraid they will continue to without the Court’s urgent intervention.

40. This concludes my presentation. I thank the Court for its attention and respectfully request, Madam President, that you ask Professor d’Argent to take the floor.

¹⁸⁸ Fernand de Varennes, UN Special Rapporteur on Minority Issues, @fernanddev, *Twitter* (20 Jan. 2023), available at <https://twitter.com/fernanddev/status/1616366999743127552>.

¹⁸⁹ US Secretary of State Antony Blinken, @SecBlinken, *Twitter* (23 Jan. 2023), available at <https://twitter.com/secblinken/status/1617565934750928899>.

¹⁹⁰ Council of Europe, Committee of Ministers, President of the Committee of Ministers, *Statement by the President of the Committee of Ministers calls for reopening of the Lachin corridor* (19 Jan. 2023), available at <https://www.coe.int/en/web/portal/-/president-of-the-committee-of-ministers-calls-for-reopening-of-the-lachin-corridor>.

¹⁹¹ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 138, para. 96. See also *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 396, para. 143.

The PRESIDENT: I thank Mr. Salonidis, and I now invite the next speaker, Professor Pierre d'Argent to address the Court. You have the floor, Professor.

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

LES MESURES CONSERVATOIRES SOLLICITÉES

1. Madame la présidente, Mesdames et Messieurs les juges, c'est un honneur de prendre la parole devant vous en cette fin de matinée au soutien de l'Arménie.

2. Mes collègues vous ont présenté les raisons de fait et de droit qui justifient l'exercice de votre pouvoir au titre de l'article 41 du Statut. J'aborderai les mesures concrètes que l'Arménie sollicite de la Cour en soulignant pourquoi celles-ci sont requises telles que formulées.

3. Les faits dont vous êtes saisis — vous l'avez entendu — sont de la plus extrême gravité : il s'agit, ni plus ni moins, de prendre en otage 120 000 personnes, de rendre leur vie impossible, intenable, de les mettre à genoux en les privant en plein hiver de tous les biens essentiels, pour la seule raison qu'elles sont du groupe national et ethnique arménien. Le but manifeste de cette opération orchestrée et soutenue par le régime azerbaïdjanais est de notifier aux Arméniens du Nagorno-Karabakh qu'ils sont à sa merci, de les décourager, de les dégoûter de vivre là où ils sont nés et où leurs aïeux ont vécu pendant des siècles. Précipiter l'exode massif de celles et ceux qui n'ont pas déjà dû fuir à la suite de la guerre de 2020 est une perspective que le président Aliyev assume ouvertement. Vous l'avez entendu, vous l'avez lu : il l'a déclaré il n'y a pas moins de vingt jours, le 10 janvier 2023, si les Arméniens encerclés et assiégés veulent partir, qu'ils le fassent, pour cela la route leur est ouverte¹⁹².

4. Madame la présidente, Mesdames et Messieurs les juges, comme vous avez pu le constater depuis le dépôt de la requête introductive d'instance arménienne, la réaction habituelle de l'Azerbaïdjan à toute accusation portée à son encontre est de s'en offusquer, de nier en bloc les faits, et puis bien sûr d'accuser en retour¹⁹³.

¹⁹² “Ilham Aliyev was interviewed by local TV channels”, *The President of the Republic of Azerbaijan Ilham Aliyev* (10 janvier 2023), accessible à l'adresse suivante : <https://president.az/en/articles/view/58555> (Armenia's Observations (24 January 2023), Annex 84).

¹⁹³ Voir notamment la déclaration du représentant permanent de l'Azerbaïdjan : UN Security Council 9228th Meeting, *Letter dated 13 September 2022 from the Permanent Representative of Armenia to the United Nations addressed to the President of the Security Council (S/2022/688)* (20 décembre 2023), UN Doc. S/PV.9228, accessible à l'adresse suivante : <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N22/762/99/PDF/N2276299.pdf?OpenElement>, p. 13-15.

5. Mesdames et Messieurs les juges, l'Azerbaïdjan a beau vitupérer, personne ne croit à son conte environnemental ; personne ne croit en la prétendue initiative activiste de la société civile d'un pays notoirement autocratique ; personne ne croit que tout ceci serait de la faute de la Fédération de Russie ; personne ne croit que les Arméniens du Haut-Karabakh seraient libres d'aller et de venir, que des vivres leur parviendraient en suffisance comme avant, que les familles pourraient librement se réunir et que les malades seraient transportés sans encombre. La presse libre ne le croit pas¹⁹⁴. Les gouvernements étrangers ne le croient pas¹⁹⁵. La Cour européenne des droits de l'homme ne l'a pas cru¹⁹⁶. A sa suite, le Comité des ministres du Conseil de l'Europe ne l'a pas cru non plus¹⁹⁷, pas plus d'ailleurs que l'Assemblée parlementaire de la même organisation internationale¹⁹⁸ ou le Parlement

¹⁹⁴ Voir notamment "The Armenians of Nagorno-Karabakh have been blockaded by Azerbaijan", *The Economist* (12 janvier 2023), accessible à l'adresse suivante : <https://www.economist.com/europe/2023/01/12/the-armenians-of-nagorno-karabakh-have-been-blockaded-by-azerbaijan> (Armenia's Observations (24 janvier 2023), Annex 91) ; "‘Potatoes are a luxury’: Vital supplies dwindle as ‘eco-activists’ blockade a breakaway region guarded by Russia", *CNN* (12 janvier 2023), accessible à l'adresse suivante : <https://www.cnn.com/2023/01/12/europe/armenia-azerbaijan-nagorno-karabakh-lachin-intl/index.html> (Armenia's Observations (24 janvier 2023), Annex 92) ; "Renewed Armenia-Azerbaijan Conflict Underlines Russias Waning Influence", *The New York Times* (17 janvier 2023), accessible à l'adresse suivante : <https://www.nytimes.com/2023/01/17/world/europe/armenia-azerbaijan-russia-nagorno.html> (Armenia's Observations (24 janvier 2023), Annex 93) ; E. Pierson, «Le corridor reliant l'Arménie au Haut-Karabakh bloqué par des activistes azéris», *Le Figaro* (13 décembre 2023), accessible à l'adresse suivante : <https://www.lefigaro.fr/international/le-corridor-reliant-l-armenie-au-haut-karabakh-bloque-par-des-activistes-azeris-20221213> ; Bashir Kitachayev, "What's next for the Azerbaijani blockade of Nagorno-Karabakh?", *Open Democracy* (25 janvier 2023), accessible à l'adresse suivante : <https://www.opendemocracy.net/en/odr/nagorno-karabakh-blockade-azerbaijan-armenia-citizenship/> (Armenia's Observations (24 janvier 2023), Annex 103).

¹⁹⁵ Voir, par exemple, D. Watkins, "Pope expresses concern over humanitarian situation in South Caucasus", *Vatican News* (18 décembre 2023), accessible à l'adresse suivante : <https://www.vaticannews.va/en/pope/news/2022-12/pope-francis-armenia-azerbaijan-lachin-corridor.html> ; La France à l'OSCE, @RP_France_OSCE, «Au conseil permanent spécial de l'OSCE en présence du ministre AM@AraratMirzoyan, FR a réitéré son appel au rétablissement immédiat & sans conditions de la liberté & la sécurité de circulation à travers le corridor de #Latchine dans le respect des droits de la population locale», *Twitter* (17 janvier 2023), accessible à l'adresse suivante : https://twitter.com/RP_France_OSCE/status/1615288150590373888 ; «Secretary Blinken's Call with Azerbaijani President Aliyev», *US Department of State* (23 janvier 2023), accessible à l'adresse suivante : <https://www.state.gov/secretary-blinkens-call-with-azerbaijani-president-aliyev-10/> ; «Telephone conversation between the Minister of Foreign Affairs of the Russian Federation S.V. Lavrov and the Minister of Foreign Affairs of the Republic of Azerbaijan D.A. Bayramov», *Ministry of Foreign Affairs of the Russian Federation* (17 janvier 2023), accessible à l'adresse suivante : https://mid.ru/ru/foreign_policy/news/1848312/ ; «Entretien téléphonique avec le Président de la République d'Azerbaïdjan, Ilham Aliyev», *Palais de l'Élysée* (23 décembre 2022), accessible à l'adresse suivante : <https://www.elysee.fr/emmanuel-macron/2022/12/23/entretien-telephonique-avec-m-ilham-aliev-president-de-la-republique-dazerbaïdjan-1>.

¹⁹⁶ Cour européenne des droits de l'homme, *Arménie c. Azerbaïdjan (n° 4)*, lettre adressée à M. Yeghishe Kirakosyan par le greffier de section V. Soloveytschik (21 décembre 2022) (Armenia's Observations (24 janvier 2023), Annex 71) ; Cour européenne des droits de l'homme, *Arménie c. Azerbaïdjan (n° 4)*, lettre adressée à M. Yeghishe Kirakosyan par le greffier de section V. Soloveytschik (16 janvier 2023) (Armenia's Observations (24 janvier 2023), Annex 72).

¹⁹⁷ Council of Europe, Committee of Ministers, *President of the Committee of Ministers calls for reopening of the Lachin corridor* (19 janvier 2023), accessible à l'adresse suivante : <https://www.coe.int/en/web/portal/-/president-of-the-committee-of-ministers-calls-for-reopening-of-the-lachin-corridor>.

¹⁹⁸ Parliamentary Assembly of the Council of Europe, Resolution 2483 (26 janvier 2023), accessible à l'adresse suivante : <https://pace.coe.int/en/files/31624/html> (Armenia's Supplemental Observations (27 janvier 2023), Annex 104).

européen¹⁹⁹. Et ces importants documents sont dans votre dossier d'audience, aux onglets n^{os} 3 à 7. Le haut-commissaire des droits de l'homme des Nations Unies a appelé au rétablissement complet de la libre circulation dans le corridor de Lachin, seule manière d'assurer le respect des droits élémentaires de la population affectée, c'est-à-dire la population arménienne du Nagorno-Karabakh²⁰⁰. Enfin, les grandes ONG ont également dénoncé l'urgence humanitaire²⁰¹. Le corridor est prétendument ouvert dans les deux sens, mais rendez-vous compte, Mesdames et Messieurs les juges : il faut désormais organiser un convoi du CICR ou des forces de maintien de la paix russes pour, avec leur accord, transporter vers Erevan les malades les plus graves dont les soins ne peuvent plus être assurés par l'hôpital de Stepanakert²⁰². Et il en est de même pour acheminer au compte-gouttes de la nourriture ou n'importe quel bien de consommation courante, ou encore pour permettre à des enfants d'être réunis avec leurs familles. Tout cela, bien sûr, en espérant que les prétendus manifestants daignent s'écarter de la route lorsque le maigre convoi s'en approche. Selon leur humeur, c'est-à-dire en fonction des instructions de Bakou.

6. Mesdames et Messieurs les juges, l'Azerbaïdjan fait le siège du Nagorno-Karabakh tout simplement parce que des Arméniens veulent continuer à y vivre et que ce désir lui est insupportable. Le Nagorno-Karabakh doit changer de nom, il doit changer de culture et toute trace de présence arménienne séculaire y est niée²⁰³. En un mot, le Nagorno-Karabakh doit changer de peuple :

¹⁹⁹ European Parliament, *European Parliament resolution of 19 January 2023 on the humanitarian consequences of the blockade in Nagorno-Karabakh (2023/2504(RSP))* (19 January 2023), accessible à l'adresse suivante : https://www.europarl.europa.eu/doceo/document/TA-9-2023-0012_EN.html (Armenia's Observations (24 January 2023), Annex 82).

²⁰⁰ Voir UN Human Rights @UNHumanRights, *Twitter* (18 janvier 2023), accessible à l'adresse suivante : <https://twitter.com/UNHumanRights/status/1615740942618615808>.

²⁰¹ Human Rights Watch, *Azerbaijan: Nagorno-Karabakh Lifeline Road Blocked* (21 décembre 2022), accessible à l'adresse suivante : <https://www.hrw.org/news/2022/12/21/azerbaijan-nagorno-karabakh-lifeline-road-blocked> (Armenia's Observations (24 January 2023), Annex 94) ; Freedom House, @FreedomHouse, *Twitter* (13 janvier 2023), accessible à l'adresse suivante : <https://twitter.com/freedomhouse/status/1614004984214966301> ; Amnesty International, @AmnestyPress, *Twitter* (11 janvier 2023), accessible à l'adresse suivante : <https://twitter.com/amnestypress/status/1613202615076020224>.

²⁰² Voir "Artsakh blockade continues for nine days: patient dies in hospital", *News.am* (19 décembre 2022), accessible à l'adresse suivante : <https://news.am/eng/news/735939.html> (Armenia's Request for Provisional Measures (27 December 2022), Annex 3) ; Human Rights Defender of Armenia et Human Rights Ombudsman of Artsakh, *Updated Joint Ad Hoc Public Report: The Humanitarian Consequences of Blocking the Only Road Connecting Artsakh with Armenia and the World: December 12-January 13* (13 janvier 2023), accessible à l'adresse suivante : <https://artsakhombuds.am/en/document/985> (Armenia's Observations (24 January 2023), Annex 77), par. 9, 94 et 99 ; "Artsakh resident: 'His life would have been extended by 3-4 years if we could bring him over sooner and they could perform the surgery'", *Radio Free Europe/Radio Liberty (Azatutyun)* (17 janvier 2023), accessible à l'adresse suivante : <https://www.azatutyun.am/a/32227486.html> (certified translation from Armenian) (Armenia's Observations (24 January 2023), Annex 85).

²⁰³ Voir mémoire de la République d'Arménie, par. III.1.V, III.2.IV, III.3.III, IV.1 et IV.2.III.

«Qarabağ Azərbaycandır» «Garabagh is Azerbaijan!» comme le scandent les prétendus éco-manifestants, reprenant en cœur le slogan très officiel²⁰⁴ lancé par une dignitaire en fourrure qui secouant dans ses mains une blanche colombe la fait retomber aussitôt inanimée sur le sol, le cou brisé²⁰⁵. «Qarabağ Azərbaycandır» n'est pas un slogan territorial, Mesdames et Messieurs les juges ; c'est un slogan territorial *et* ethnique, il signifie que les Arméniens n'ont pas leur place au Nagorno-Karabakh. Les faits parlent d'eux-mêmes et les efforts de l'Azerbaïdjan pour les nier ou les travestir sont aussi indignes que vains.

7. Votre Cour est la gardienne ultime de la convention sur l'élimination de *toutes* les formes de discrimination raciale. L'Azerbaïdjan s'y est engagé, mais il fait tout le contraire. Même si le prétexte environnemental était vrai — mais on sait qu'il n'a aucun fondement —, encore devrait-il céder devant les impératifs de la convention. En effet, on ne sauve pas la nature et des ressources naturelles en empêchant 120 000 personnes de manger à leur faim ou d'être soignées selon leurs besoins, et cela d'autant moins lorsque cette violation des droits humains élémentaires vise, à la fois à dessein et par son effet, des individus ciblés comme tels pour un motif prohibé par la convention. La route bloquée depuis le 12 décembre, vous le savez, ne dessert que les populations arméniennes du Nagorno-Karabakh ; cette route fut sanctuarisée par l'accord de novembre 2020 précisément pour cette raison²⁰⁶, mais l'Azerbaïdjan voudrait néanmoins vous faire croire que son blocus n'aurait rien de discriminatoire. Mesdames et Messieurs les juges, pour percer les desseins de l'Azerbaïdjan, il suffit de se poser deux questions élémentaires : pourquoi faut-il prétendument manifester à cet endroit-là et pourquoi faut-il le faire en plein hiver, depuis 50 jours déjà et sans aucune intention d'arrêter ?

8. Mesdames et Messieurs de la Cour, vous le savez désormais : l'Azerbaïdjan est demeuré sourd aux très nombreux appels lancés par la communauté internationale pour que cesse son blocus

²⁰⁴ Voir, par exemple, Karabakh Center, *Karabakh Is Azerbaijan!*, accessible à l'adresse suivante : <https://story.karabakh.center/en/karabakh-is-azerbaijan> ; "Virtual Karabakh", Information – Communication Technologies Centre, accessible à l'adresse suivante : <https://www.virtualkarabakh.az/en.html>.

²⁰⁵ RP Artsakh Under Blockade, @REPUBLICPRESS_, *Twitter* (14 December 2022), accessible à l'adresse suivante : https://twitter.com/REPUBLICPRESS_/status/1603117739853238273.

²⁰⁶ The Federation Council of the Federal Assembly of the Russian Federation, *On the use of a military unit of the Armed Forces of the Russian Federation in Nagorno-Karabakh* (18 novembre 2020), accessible à l'adresse suivante : <http://council.gov.ru/activity/documents/121580/> (Armenia's Request for Provisional Measures (27 December 2022), Annex 23) (certified translation from Russian).

et que l'usage de la route soit à nouveau libre, comme avant le 12 décembre²⁰⁷. L'Azerbaïdjan a rejeté les mesures provisoires ordonnées par la Cour européenne des droits de l'homme, et il n'a pas plus obtempéré lorsque, chose exceptionnelle, le Comité des ministres l'a enjoint d'y donner suite²⁰⁸.

9. Votre Cour doit donc agir, et elle doit agir vite. Si vous n'indiquez pas des mesures conservatoires, il n'y aura bientôt plus d'Arméniennes ni d'Arméniens au Nagorno-Karabakh. Ils auront fui leurs montagnes pour sauver leur vie, comme le président Aliyev les y invite. Si vous n'indiquez pas des mesures parfaitement claires et dénuées d'ambiguïté, l'Azerbaïdjan exploitera la moindre petite faille pour parvenir à ses sinistres fins par un autre subterfuge. Enfin, si vous n'indiquez pas des mesures concernant le présent mais aussi l'avenir, tout indique que l'Arménie sera, un jour ou l'autre, contrainte de vous solliciter à nouveau d'urgence.

10. Madame la présidente, la première mesure conservatoire que l'Arménie sollicite se lit comme suit : «L'Azerbaïdjan doit cesser d'orchestrer et de soutenir les prétendues «manifestations» bloquant la libre circulation ininterrompue le long du corridor de Lachin dans les deux sens.» L'Arménie ne vous demande pas d'ordonner à l'Azerbaïdjan de disperser de force les prétendus manifestants car, compte tenu de l'accord trilatéral de novembre 2020, il n'appartient pas à l'Azerbaïdjan de déployer ses forces de sécurité sur la route, le long du corridor. En revanche, il importe que l'Azerbaïdjan cesse immédiatement d'orchestrer et de soutenir, financièrement, de manière logistique ou de toute autre manière, toute manifestation bloquant ou filtrant la libre circulation, dans un sens ou dans l'autre, tout le long du corridor.

11. L'Arménie vous demande également d'ordonner que l'Azerbaïdjan soit obligé d'«assurer la libre circulation ininterrompue de toutes les personnes, véhicules et des marchandises le long du corridor de Lachin, dans les deux sens». Cette deuxième mesure est complémentaire à la première et elle est tout autant nécessaire. Il importe en effet d'imposer à l'Azerbaïdjan une obligation positive donnant effet à l'engagement qu'il a accepté par l'accord trilatéral de novembre 2020, dont mon collègue M. Martin vous a rappelé les termes, et auquel l'Azerbaïdjan a manqué de manière nécessairement discriminatoire. L'Azerbaïdjan n'aurait pas pris un tel engagement s'il n'était capable, en fait, de l'assumer. L'Arménie ne vous demande donc pas l'impossible. Elle vous

²⁰⁷ Voir ci-dessus notes 4, 6, 7, 8 et 9, ainsi que la plaidoirie de M. Martin.

²⁰⁸ Voir ci-dessus notes 5 et 6.

demande ce qui tombe sous le sens. C'est en effet la seule manière de préserver les droits gravement menacés, en violation de la convention, des habitants arméniens du Nagorno-Karabakh. En l'absence d'une telle mesure, ils demeureront à tout instant à la merci du gouvernement de Bakou. Lever le blocus actuel ne suffit donc pas ; il faut également assurer qu'à l'avenir l'Azerbaïdjan ne puisse pas refermer la route ou en rendre l'usage impraticable, en prétextant ceci ou cela.

12. Mesdames et Messieurs de la Cour, vous constaterez que la mesure sollicitée concerne «la libre circulation ininterrompue de toutes personnes et véhicules» ainsi que la libre circulation «des marchandises». Il n'y a pas lieu de limiter cette deuxième mesure aux personnes, véhicules et marchandises humanitaires car la jouissance des droits reconnus par la convention n'est pas subordonnée ni limitée aux exigences humanitaires. Par ailleurs, les besoins ordinaires d'une population civile dépassent, à l'évidence et de loin, les simples nécessités humanitaires. Enfin, viser les seuls convois humanitaires encouragerait l'Azerbaïdjan à pinailler, à utiliser la limitation humanitaire de l'obligation que vous lui imposeriez pour soutenir, incident après incident, qu'aucun besoin de ce type n'existe, ou que le convoi ne remplit pas cette condition.

13. Madame la présidente, la troisième et dernière mesure que l'Arménie vous demande d'ordonner concerne le flux ininterrompu des énergies indispensables à une vie digne. L'Arménie a été obligée d'ajouter cette demande jeudi dernier car l'approvisionnement en gaz fut à nouveau abruptement interrompu après notre demande du 28 décembre alors qu'il avait été rétabli juste avant. Mes collègues MM. Salonidis et Martin vous ont détaillé la chronologie des faits à cet égard et les prétendues excuses de l'Azerbaïdjan. Cela doit cesser.

14. Bien sûr, l'Azerbaïdjan a réagi au quart de tour, comme à son habitude, à la troisième mesure conservatoire sollicitée par l'Arménie. Celle-ci a toutefois été soumise plus de quatre jours avant cette audience. Et cela n'a rien d'inhabituel. En effet, des mesures conservatoires supplémentaires ont pu être sollicitées dans d'autres affaires jusqu'à la veille des audiences, et débattues durant celles-ci²⁰⁹. Quoi qu'il en soit, nous savons en réalité ce que l'Azerbaïdjan répondra ; il l'a déjà écrit — avec certaines confusions et contradictions, mais il l'a déjà écrit. Et ce qu'il pourrait ajouter sera invérifiable puisqu'il refuse de donner accès à tout tiers aux zones

²⁰⁹ *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. 7, par. 10.*

concernées. Mais, Mesdames et Messieurs de la Cour, je voudrais m'arrêter un instant à sa lettre du 27 janvier par laquelle l'Azerbaïdjan réagit à notre demande supplémentaire. En effet, il me semble que cette lettre révèle les desseins discriminatoires du gouvernement de Bakou une fois encore. Un gouvernement soucieux du sort des personnes vivant sur ce qu'il considère être son territoire n'aurait pas manqué de comprendre que sa responsabilité est d'assurer un approvisionnement régulier aux habitants du Nagorno-Karabakh, avec la même célérité et la même prévenance qu'ailleurs. Mais il n'y a aucune phrase en ce sens dans cette lettre, pas plus qu'il n'y a d'engagement solennel à faire ses meilleurs efforts pour empêcher que se reproduisent ce qu'il considère comme étant des coupures accidentelles. Par sa lettre, l'Azerbaïdjan ne cherche pas à régler un vrai problème concret alors qu'il ne conteste pas la réalité des interruptions de gaz. En admettant même que ces interruptions soient accidentelles et non pas volontaires, l'Azerbaïdjan n'entend pas lever le petit doigt pour que des conditions d'approvisionnement normales et régulières des Arméniens du Nagorno-Karabakh soient assurées. Par sa lettre, l'Azerbaïdjan cherche tout simplement à retarder votre délibéré pour que les Arméniens du Nagorno-Karabakh souffrent un peu plus longtemps. L'Arménie espère toutefois que votre décision sera prise sans atermoiement.

15. Mesdames et Messieurs les juges, les mesures sollicitées concernent l'Azerbaïdjan et lui seul car seul son comportement est ici en cause. C'est l'Azerbaïdjan qui organise, encourage et soutient les prétendus manifestants écologistes ; c'est l'Azerbaïdjan qui manque de manière discriminatoire à l'obligation qu'il a assumée par l'accord trilatéral, créant ainsi un préjudice irréparable aux droits reconnus par la convention ; c'est l'Azerbaïdjan qui est responsable, depuis les zones sous son contrôle, de l'approvisionnement en gaz et électricité, et donc des interruptions de service qui surviennent.

16. Madame la présidente, pour la deuxième fois en l'espace d'une petite année, les preuves convergent à nouveau incontestablement. Elles indiquent que l'Azerbaïdjan non seulement tolère, mais aussi encourage et poursuit une politique discriminatoire contre les habitants arméniens du Nagorno-Karabakh, les privant de tous les biens essentiels à leur survie dans le but de les inciter à quitter leurs terres ancestrales afin d'échapper à la misère qui leur est ainsi infligée. Dans la lettre qu'il vous a adressée le 12 janvier de cette année, l'Azerbaïdjan désigna les victimes de son blocus

comme «its Armenian citizens»²¹⁰. Pourtant, l'Azerbaïdjan refuse obstinément à ses prétendus citoyens arméniens ce qu'il accorde à tous ses autres citoyens, à savoir le droit d'aller et de venir, le droit de se nourrir, de se chauffer et celui de se faire soigner. Alors qu'il cherche prétendument à normaliser ses relations avec l'Arménie, est-ce trop demander à l'Azerbaïdjan d'assurer aux habitants du Nagorno-Karabakh la sécurité de leur existence et des conditions de vie décente ? Quel Etat traite ses prétendus citoyens de cette manière ? Quel Etat met le siège à 120 000 personnes d'une autre origine ethnique et nationale sous prétexte que des ressources minières ont été détournées et que cela est insupportable à sa souveraineté ? Mesdames et Messieurs les juges, ce que les prétendues manifestations environnementales organisées, soutenues et encouragées par l'Azerbaïdjan manifestent de manière flagrante, c'est que le sous-sol azerbaïdjanais a plus de valeur à ses yeux que les femmes, les hommes, les enfants et les vieillards arméniens vivant au-dessus.

17. Dans ce contexte aussi fragile et délétère, la résistance farouche opposée par l'Azerbaïdjan aux demandes élémentaires de l'Arménie fait craindre le pire, et cette résistance farouche devrait en réalité suffire pour vous convaincre d'agir. En effet, par les mesures conservatoires qu'elle sollicite, l'Arménie ne vous demande rien de plus que d'assurer que la situation qui existait la veille du 12 décembre soit réinstituée. Et cela est non seulement nécessaire à la survie de 120 000 personnes d'origine arménienne désormais enfermées et lentement étranglées dans leurs montagnes, mais l'utilité de votre futur jugement sur le fond l'exige également et dès maintenant.

18. L'Arménie s'en remet à la sagesse de la Cour avec confiance, avec espoir, certaine que vous pourrez discerner à travers l'écran de fumée que nos adversaires ne manqueront pas de dresser cet après-midi et demain matin.

19. Je remercie la Cour pour sa bienveillante attention. Puis-je vous demander, Madame la présidente, de bien vouloir appeler M. Yeghishe Kirakosyan à la barre afin que, en sa qualité d'agent de l'Arménie, il vous présente les conclusions finales de son pays ?

The PRESIDENT: I thank Professor d'Argent for his statement. I now invite the Agent of Armenia, His Excellency Mr. Yeghishe Kirakosyan, to take the floor. You have the floor, Excellency.

²¹⁰ Lettre en date du 12 janvier 2023 adressée à M. Philippe Gautier, greffier de la Cour internationale de Justice, par M. Yeghishe Kirakosyan, représentant de la République de l'Arménie devant la Cour internationale de Justice.

Mr. KIRAKOSYAN:

1. Madam President, distinguished judges of the Court, it is an honour to appear before you again.

2. I shall now read Armenia's closing submissions.

3. On the basis of its Request for provisional measures dated 27 December 2022, its letter dated 26 January 2023 and its oral pleadings, Armenia respectfully requests the Court to indicate the following provisional measures pending its determination of this case on the merits:

- “Azerbaijan shall cease its orchestration and support of the alleged ‘protests’ blocking uninterrupted free movement along the Lachin Corridor in both directions.”
- “Azerbaijan shall ensure uninterrupted free movement of all persons, vehicles, and cargo along the Lachin Corridor in both directions.”
- “Azerbaijan shall immediately fully restore and refrain from disrupting or impeding the provision of natural gas and other public utilities to Nagorno-Karabakh.”

4. Madam President, distinguished judges of the Court, this concludes Armenia's oral presentation of its request for provisional measures. Thank you for your attention and consideration of Armenia's request.

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

The sitting is adjourned.

The Court rose at 12 noon.
