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*CR 2023/4*

**International Court  
of Justice**

**Cour internationale  
de Justice**

**THE HAGUE**

**LA HAYE**

**YEAR 2023**

*Public sitting*

*held on Tuesday 31 January, at 4 p.m., at the Peace Palace,*

*President Donoghue presiding,*

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

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**VERBATIM RECORD**

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**ANNÉE 2023**

*Audience publique*

*tenue le mardi 31 janvier 2023, à 16 heures, au Palais de la Paix,*

*sous la présidence de Mme Donoghue, présidente,*

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

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**COMPTE RENDU**

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

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

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*comme assistantes.*

The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon to hear Armenia present its single round of oral argument on the Request for the indication of provisional measures submitted by the Republic of Azerbaijan on 4 January 2023 in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*. I shall now give the floor to the Agent of Armenia, His Excellency Mr. Yeghishe Kirakosyan. You have the floor, Excellency.

Mr. KIRAKOSYAN:

### INTRODUCTION

1. Madam President, judges of the Court, good afternoon. It is an honour to appear before you again as the Agent of the Republic of Armenia.

2. As I stand before you today, I hope you will see Azerbaijan's request for what it truly is: yet another transparent attempt to deflect attention from its own wrongdoing. We have seen this mirroring tactic at every step of the parallel proceedings now before this Court.

3. After Armenia sent Azerbaijan a notice of dispute requesting negotiations under the CERD, Azerbaijan sent Armenia a notice of dispute calling for negotiations as well. After Armenia filed its Application and Request for provisional measures back in September 2021, Azerbaijan filed an Application and Request for provisional measures too. After Armenia raised concerns about Azerbaijan's non-compliance with the Court's first Order on provisional measures, Azerbaijan reactively raised alleged concerns of its own. The same pattern can be seen before the European Court of Human Rights.

4. And now, after Armenia requested provisional measures concerning the ongoing humanitarian crisis precipitated by Azerbaijan's continuing effort to strangle the ethnic Armenian population of Nagorno-Karabakh, Azerbaijan has again sought to create a false sense of equivalence. Notably, this request for provisional measures by Azerbaijan is not in any way meaningfully different from the one rejected by this Court over a year ago. Furthermore, Azerbaijan submitted its request only six days following Armenia's request, despite the fact that it has been in possession of much of its alleged evidence for months.

5. In fact, the European Court of Human Rights — which was also requested by Azerbaijan to reconsider its earlier decision — rejected the request for interim measures in connection with Armenia's alleged laying of landmines.

6. Judges of the Court, allow me to be perfectly clear: Armenia has laid mines on its own sovereign territory for purely defensive purposes. Armenia has done so in the light of Azerbaijan's repeated acts of aggression, including most recently in September 2022. Azerbaijan's appetite for territory and concessions it seeks from Armenians have been increasing on a daily basis. And it has used every opportunity to occupy new Armenian lands by force. This is a State that still holds ethnic Armenian prisoners of war and civilians as captives, targets civilians, encroaches on lands populated by Armenians and ethnically cleanses such lands. And this is a State that is seeking to justify its own ongoing efforts to ethnically cleanse Nagorno-Karabakh by blaming peacekeeping forces for merely doing their job by keeping opposing sides apart.

7. But let me be equally clear: Armenia does not lay mines outside its sovereign territory, let alone in civilian areas in a counter-intuitive and implausible attempt to target Azerbaijani civilians on the basis of race. Armenia has not, and does not set boobytraps ever, anywhere at all. Azerbaijan has raised such accusations repeatedly, and they have been repeatedly refuted.

8. The reality is that, as Armenia's counsel will explain, Azerbaijan collected the landmines about which it complains from Armenian sovereign territories occupied by its own armed forces in 2021 and 2022. Azerbaijan is therefore seeking to use mines it collected following its own unlawful acts of aggression to manufacture a false evidentiary basis to support its request.

9. The request is therefore as cynical as it is unfounded, and I hope that the Court will not permit Azerbaijan to abuse the Court's process in an effort to benefit from its own wrongful acts.

10 Madam President, judges of the Court, I had not planned on mentioning the meeting scheduled to be held on 23 December 2022 between Armenia, Azerbaijan and Russia, but this morning the Agent of Azerbaijan once again accused Armenia of refusing to engage in negotiations and of failing to show up at that meeting without prior notice. But as Armenia's Foreign Minister stated publicly on 24 December 2022, Armenia *did* notify its inability to attend the meeting in advance, and it *also* requested that it be postponed. Moreover, the issue of mines was not even on the agenda of that meeting, and it is therefore entirely irrelevant to these proceedings.

11. Armenia's presentation this afternoon will proceed as follows:

12. *First*, Professor Sean Murphy will illustrate why the allegedly new facts relevant to Azerbaijan's Request are either false or unproven.

13. *Second*, Professor Robert Kolb will explain why the rights for which protection is being sought by Azerbaijan are not plausible.

14. *Third*, Professor Pierre d'Argent will discuss the provisional measures requested by Azerbaijan and summarize why those measures should not be granted.

15. *Finally*, I will briefly return to the floor to read Armenia's final submissions.

16. I thank you, Madam President, judges of the Court, for your attention. I ask now that you call Professor Murphy to the floor.

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

Mr. MURPHY:

**THE ALLEGEDLY NEW FACTS RELEVANT TO AZERBAIJAN'S REQUEST  
ARE FALSE AND UNPROVEN**

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

2. As indicated by our Agent, I will address the facts concerning the alleged laying of landmines and setting of booby traps in Azerbaijan that purportedly call for the Court to issue provisional measures of protection.

**I. Azerbaijan uncovered landmines in Armenia  
and transported them to Azerbaijan**

3. Madam President, allow me to start with Armenia's basic position regarding landmines, which is that "since the end of the 44-Day War, [Armenia] has carried out minelaying *exclusively* within the sovereign territory of [Armenia] for self-defense purposes only"<sup>1</sup>. This has been necessary

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<sup>1</sup> Letter from the Minister of Defence of the Republic of Armenia to Mr. Yeghishe Kirakosyan, Representative of the Republic of Armenia on International Legal Matters (25 Jan. 2023) (certified translation from Armenian) (Armenia's Observations (26 Jan. 2023), Ann. 1, p. 1), emphasis added.

because in May 2021, November 2021 and September 2022, Azerbaijan forcibly crossed the border into Armenia and seized Armenian territory<sup>2</sup>. The map on your screen illustrates the territories of Armenia that were occupied by Azerbaijan and that remain occupied today<sup>3</sup>. Along the border between the two countries, you see various places coloured in purple, orange and pink where Azerbaijan's armed forces have crossed the border and seized pockets of Armenian territory.

4. These attacks and their condemnation by the international community are well documented. For example, the European Parliament in May 2021 adopted a resolution saying that troops from Azerbaijan had "entered the territory of Armenia, which amounts to a violation of the territorial integrity of Armenia and of international law"<sup>4</sup>. French President Macron said that "Azerbaijani armed forces have crossed into Armenian territory. They must withdraw immediately."<sup>5</sup> The list goes on<sup>6</sup>.

5. At the outset of such attacks, Armenia deemed it necessary to lay landmines within its territory for military defence purposes. Further, as you will see at paragraph 2 of tab 2 of your judges' folder, the Armenian Minister of Defence has concluded that the "landmines displayed in the photographs provided to the [Court] by the Azerbaijani government were taken by Azerbaijan from the sovereign territories of [Armenia] in the course of the aggression in 2021-2022"<sup>7</sup>.

6. Likewise, the Armenian Minister for Foreign Affairs stated last November, before Azerbaijan filed this request, the following – it is on your screen:

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<sup>2</sup> Letter from Minister of Defence of the Republic of Armenia, to Mr. Yeghishe Kirakosyan, Representative on International Legal Matters of the Republic of Armenia (25 Jan. 2023) (certified translation from Armenian) (Armenia's Observations (26 Jan. 2023), Ann. 1), p. 1.

<sup>3</sup> *Ibid.*, Map 1.

<sup>4</sup> European Parliament, European Parliament resolution of 20 May 2021 on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan, No. 2021/2693(RSP) (20 May 2021), available at [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.pdf), para. Q.

<sup>5</sup> Emmanuel Macron, @EmmanuelMacron, *Twitter* (14 May 2021), available at <https://twitter.com/EmmanuelMacron/status/1392965873187659778>.

<sup>6</sup> See e.g. European Parliament Delegation for Relations with the South Caucasus, Joint statement on the escalation on the border between Armenia and Azerbaijan and the Nagorno-Karabakh conflict (17 Nov. 2021); European Parliament, DSCA: Statement by the Chair on the military aggression of Azerbaijan against the Republic of Armenia (13 Sept. 2022), available at [https://www.europarl.europa.eu/cmsdata/253919/20220913\\_Azerbaijani%20military%20aggression\\_statement.pdf](https://www.europarl.europa.eu/cmsdata/253919/20220913_Azerbaijani%20military%20aggression_statement.pdf); United States Department of State, Department Press Briefing – 13 September 2022 (13 Sept. 2022), available at <https://www.state.gov/briefings/department-press-briefing-september-13-2022/>.

<sup>7</sup> Letter from Minister of Defence of the Republic of Armenia, to Mr. Yeghishe Kirakosyan, Representative on International Legal Matters of the Republic of Armenia (25 Jan. 2023) (certified translation from Armenian) (Armenia's Observations (26 Jan. 2023), Ann. 1), p. 1).

“Regarding Azerbaijan’s declarations that the Armenian side has placed Armenian-made mines in Nagorno-Karabakh, I must underline that the mines displayed by Azerbaijan were found not in Nagorno-Karabakh, but in the sovereign territories of Armenia occupied in 2021-22 and they now are trying to use these mines for propaganda purposes.”<sup>8</sup>

7. It is indeed notable that the photographs Azerbaijan has presented to the Court typically show either a close-up of a landmine, or landmines laid out in neat columns and rows. There are just three photographs that purport to show the clearing of a minefield, the location of which is not specified<sup>9</sup>. Further, there is no statement from, for example, a combat engineer addressing how the landmines were removed without detonating them, or where exactly they were located when he or she removed them. There is nothing explaining how and why the landmines were transported by Azerbaijan from the alleged minefield to another location, so as to be laid out in those neat columns and rows.

8. It is, of course, difficult for Armenia to prove to the Court that Azerbaijan removed these landmines from Armenian territory. Armenia does not control the territory from which the landmines were taken, nor does it have access to information held only by Azerbaijan. And it is difficult for the Ministry of Defence to provide you with information beyond what you find at tab 2, given the sensitivities of such information in a situation involving armed conflict and occupation.

9. At the same time, and to be candid, Madam President, it may be difficult for the Court to agree with Armenia that the landmines in Azerbaijan’s photographs were taken from Armenia, given the lack of evidence before you on that point beyond the clear and unequivocal position of the Armenian Government, expressed well before Azerbaijan submitted the Request.

10. So, allow me to turn instead to the story that Azerbaijan tells the Court, which under close scrutiny simply falls apart. And because it falls apart, I respectfully submit that the Court should once again, as it did in December 2021, feel compelled to reject Azerbaijan’s request<sup>10</sup>.

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<sup>8</sup> Ministry of Foreign Affairs of the Republic of Armenia, *Interview of the Foreign Minister of Armenia Ararat Mirzoyan to “Armenpress” news agency* (28 Nov. 2022), available at [https://www.mfa.am/en/interviews-articles-and-comments/2022/11/28/am\\_int/11743](https://www.mfa.am/en/interviews-articles-and-comments/2022/11/28/am_int/11743). See also Armenia Ministry of Foreign Affairs, *The interview of Foreign Minister of Armenia Ararat Mirzoyan to “Armenpress” news agency* (20 Jan. 2023), available at [https://www.mfa.am/en/interviews-articles-and-comments/2023/01/20/fm\\_mirzoyan\\_armenpress/11834](https://www.mfa.am/en/interviews-articles-and-comments/2023/01/20/fm_mirzoyan_armenpress/11834).

<sup>9</sup> Letter from Mr. Jeyhun Bayramov, Minister of Foreign Affairs of the Republic of Azerbaijan, to H.E. Mr. Antonio Guterres, Secretary-General of the United Nations (28 Nov. 2022) (Azerbaijan’s Request for provisional measures (3 Jan. 2023), Ann. 8, photos 6-8).

<sup>10</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 425, para. 53.

## **II. The November 2020 Trilateral Statement called for the return of certain districts to Azerbaijan, but otherwise allowed armed forces to hold their positions along the “contact line”**

11. Madam President, Azerbaijan’s story begins with a broad and vague assertion that Armenian armed forces “deliberately continued to lay landmines in or after 2021 in civilian zones” and, indeed, planted such landmines “for no conceivable military purpose” and in “unequivocally civilian areas”<sup>11</sup>. When exactly this happened, by what exact means, and by who exactly, are all left very unclear.

12. The overall geographic context is important when scrutinizing Azerbaijan’s story. To understand the context, perhaps a good place to start is the end of the 44-Day War, the Trilateral Statement, and the map<sup>12</sup> on your screen.

13. The Trilateral Statement of November 2020 provided that three districts formerly under the control of the Republic of Artsakh be returned to Azerbaijan<sup>13</sup>. The Kalbajar District, referred to on this map as the “Kalbajar Region”, was to be returned by 15 November 2020; the deadline for doing so was extended to 25 November and it was returned to Azerbaijan’s control by that date<sup>14</sup>.

14. The Agdam District, shown on this map as the “Agdam Region,” was to be returned by 20 November 2020, and it was returned to Azerbaijan’s control by that date<sup>15</sup>.

15. The Lachin District, shown on this map as the “Lachin Region,” was to be returned by 1 December 2020, and it was returned to Azerbaijan’s control by that date<sup>16</sup>.

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<sup>11</sup> Azerbaijan’s Request for provisional measures (3 Jan. 2023), paras. 2, 5.

<sup>12</sup> See France 24, “Azerbaijan rolls into Lachin district, the last area ceded by Armenia”, Daily Motion (1 Dec. 2020), available at <https://www.dailymotion.com/video/x7xtauu>, at 0:37 (Armenia’s Observations (26 Jan. 2023), Ann. 8).

<sup>13</sup> Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation (10 Nov. 2020) (Azerbaijan’s Request for provisional measures (3 Jan. 2023), Ann. 1, paras. 2 and 6).

<sup>14</sup> “Ilham Aliyev addressed the nation”, President of the Republic of Azerbaijan Ilham Aliyev (25 Nov. 2020), available at <https://president.az/en/articles/view/47778>.

<sup>15</sup> Ilham Aliyev, @presidentaz, Twitter (20 Nov. 2020), available at <https://twitter.com/presidentaz/status/1329747094773624833?s=20&t=Dw5p8xVEhD3WZldk49Jifg>; “Armenia hands over Aghdam to Azerbaijan as part of Nagorno-Karabakh ceasefire”, France24 (20 Nov. 2020), available at <https://www.france24.com/en/europe/20201120-armenia-hands-over-aghdam-to-azerbaijan-as-part-of-nagorno-karabakh-ceasefire>.

<sup>16</sup> Ministry of Defense of the Russian Federation, Information Bulletin of the Ministry of Defense of the Russian Federation on the activities of the Russian peacekeeping contingent in the zone of the Nagorno-Karabakh conflict (as of December 1, 2020), 1 Dec. 2020, (certified translation from Russian) (Armenia’s Observations (26 Jan. 2023), Ann. 3).

16. There is no evidence before the Court to the contrary. Rather, all relevant sources indicate that these districts were returned to Azerbaijan in late 2020<sup>17</sup>. The only caveat is that the Russian peacekeepers were deployed into a relatively small portion of the Lachin District that we refer to as the Lachin Corridor.

17. So, when Azerbaijan says to the Court — in broad terms — that, starting five months ago, it discovered more than approximately 2,700 landmines in the Kalbajar and Lachin Districts<sup>18</sup> — which is its central claim in this request — it is saying that it has discovered landmines in districts *over which it has had control since the end of 2020*. Yet how anyone — including Armenian armed forces — were somehow able to surreptitiously enter such districts, so as to transport and lay landmines on such a scale in supposedly civilian areas, right under the nose of Azerbaijan, is quite the mystery. That alone casts grave doubt upon the overall story that Azerbaijan is spinning before you.

18. Another fact that does not sit well with Azerbaijan’s story is the following. Other than withdrawing from these three districts by those specific dates, the Trilateral Statement did not require Armenian armed forces to withdraw from their locations on 10 November 2020; rather, the parties to the conflict agreed to “stop in their current positions”<sup>19</sup>, with the withdrawal of Armenian armed forces only occurring later. Nor did the Trilateral Statement say anything about a withdrawal or demobilization of the Nagorno-Karabakh Defence Army. Thus, after the 44-day war, there remained armed forces in Nagorno-Karabakh and Azerbaijan armed forces on the perimeter of Nagorno-Karabakh. Indeed, under the Trilateral Statement, the Russian peacekeeping contingent was

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<sup>17</sup> See Ilham Aliyev, @presidentaz, Twitter (20 Nov. 2020), available at <https://twitter.com/presidentaz/status/1329747094773624833?s=20&t=Dw5p8xVEhD3WZldk49Jifg>; “Armenia hands over Aghdam to Azerbaijan as part of Nagorno-Karabakh ceasefire”, France24 (20 Nov. 2020), available at <https://www.france24.com/en/europe/20201120-armenia-hands-over-aghdam-to-azerbaijan-as-part-of-nagorno-karabakh-ceasefire>; “Ilham Aliyev addressed the nation”, President of the Republic of Azerbaijan Ilham Aliyev (25 Nov. 2020), available at <https://president.az/en/articles/view/47778>; Ministry of Defense of the Russian Federation, Information Bulletin of the Ministry of Defense of the Russian Federation on the activities of the Russian peacekeeping contingent in the zone of the Nagorno-Karabakh conflict (as of December 1, 2020), 1 Dec. 2020, (certified translation from Russian) (Armenia’s Observations (26 Jan. 2023), Ann. 3); “President of the Republic of Azerbaijan Ilham Aliyev has addressed the nation”, President of the Republic of Azerbaijan Ilham Aliyev (1 Dec. 2020), available at <https://president.az/en/articles/view/48205>; “Azerbaijan fully reclaims lands around Nagorno-Karabakh”, Al Jazeera (1 Dec. 2020), available at <https://www.aljazeera.com/news/2020/12/1/azeri-forces-raise-flag-in-last-district-handed-back-by-armenia>.

<sup>18</sup> Azerbaijan’s Request for provisional measures, 3 Jan. 2023, paras. 4 and 12.

<sup>19</sup> Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation, 10 Nov. 2020; Azerbaijan’s Request for provisional measures, 3 Jan. 2023, Ann. 1, para. 1.



to be deployed not just in the Lachin Corridor, but also “along the line of contact in Nagorno-Karabakh” between these armed forces<sup>20</sup>.

19. So, what we had after the end of the 44-day war was a “contact line” along the perimeter of Nagorno-Karabakh at which were positioned opposing military forces. Further, the Trilateral Statement called for a ceasefire and termination of hostilities, but it did not preclude armed forces from taking whatever other steps they deemed necessary to hold their positions.

### **III. Any landmines laid along the “contact line” would have been for defensive purposes and not laid in civilian areas**

20. Madam President, if any landmines were laid along the “contact line”, those landmines were laid for defensive purposes, just as they had been so laid along the line of contact resulting after the First Nagorno-Karabakh War. Such landmines would have nothing to do with an effort to harm civilians.

21. As I previously noted, Azerbaijan claims that, starting in August 2022, it found more than approximately 2,700 landmines<sup>21</sup>. Of those, it claims that over half of these landmines, specifically 1,614 landmines<sup>22</sup>, were found “near” three villages, which Azerbaijan says are “unequivocally civilian areas”<sup>23</sup>. So right at the start we have an interesting concession from Azerbaijan, which is that some 40 per cent of the approximately 2,700 landmines supposedly found in Azerbaijan since last August were *not* in “unequivocally civilian areas”.

22. In assessing the claim that approximately 2,700 landmines have been found since August 2022, of which only 60 per cent were purportedly found in “unequivocally civilian areas”, the timing, the circumstances and the location of these alleged discoveries merit close scrutiny.

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<sup>20</sup> Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation, 10 Nov. 2020; Azerbaijan’s Request for provisional measures, 3 Jan. 2023, Ann. 1, paras. 3 and 6.

<sup>21</sup> Letter from Major General Anar Karimov, Head of the General Department of Engineering Troops, Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 30 Dec. 2022 (certified translation); Azerbaijan’s Request for provisional measures, 3 Jan. 2023, Ann. 7, p. 3.

<sup>22</sup> *Ibid.*, p. 4. See also Letter from Robert E. Unsworth, Principal of Industrial Economics, Incorporated, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 23 Jan. 2023, with enclosures; Azerbaijan’s Letter, 24 Jan. 2023, Ann. 28, Appendix B.

<sup>23</sup> Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation, 10 Nov. 2020; Azerbaijan’s Request for provisional measures, 3 Jan. 2023, Ann. 1, para. 4.

23. I start with the issue of timing: August 2022 is not just a random month. Rather, it is a month when Azerbaijan launched what it called “Operation Revenge”. In that operation, Azerbaijan violated the Trilateral Statement by using its armed forces to breach the “contact line” so as to seize partial control of Nagorno-Karabakh. Specifically, Azerbaijan seized control of certain strategic military positions, including those on and around Saribaba mountain or ridge, which you can find now on your screen<sup>24</sup>. The left side of the screen shows a map of the entire region. The grey-toned area in the centre of that map is the area under the control of Nagorno-Karabakh. If you trace the line along the western edge of Nagorno-Karabakh heading southward, the first annotation you find is “Saribaba”. This is where Saribaba mountain or ridge is located. We have provided a close-up of this portion of the map on the right side of the screen.

24. The Saribaba ridge is one of a number of dominant heights along the Karabakh ridge of the Little Caucasus mountain range. If you turn to tab 3 of your judges’ folder, you will find the 3 August 2022 information bulletin issued by the Russian Ministry of Defence regarding its peacekeeping activities. Azerbaijan’s unlawful seizure of the Saribaba ridge is readily apparent from this information bulletin, which says, at paragraph 3, that “[i]n the area of the height of SARYBABA . . . the ceasefire regime was violated by the armed forces of Azerbaijan”<sup>25</sup>.

25. At tab 4 of your judges’ folder, you will find the information bulletin for the next day, 4 August, which refers to the “line of contact” — that is at paragraph 3 — and reports that as a result of Azerbaijan’s operation, there were at least two deaths and fourteen injured of the Nagorno-Karabakh armed forces<sup>26</sup>. Madam President, counsel for Azerbaijan this morning attempted to pretend that there no longer exists a contact line separating armed forces and that the contact line somehow disappeared in late 2022, but the peacekeepers bulletins tell a very different story. Further,

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<sup>24</sup> Letter from Minister of Defence of the Republic of Armenia to Mr. Yeghishe Kirakosyan, Representative on International Legal Matters of the Republic of Armenia, 25 Jan. 2023; Armenia’s Observations, 26 Jan. 2023, Ann. 1, map 2.

<sup>25</sup> Ministry of Defence of the Russian Federation, 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 3, 2022), 3 Aug. 2022 (certified translation from Russian); Armenia’s Observations, 26 Jan. 2023, Ann. 4. See also Ministry of Defence of the Russian Federation, 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 4, 2022), 4 Aug. 2022; Armenia’s Observations, 26 Jan. 2023, Ann. 5.

<sup>26</sup> Ministry of Defence of the Russian Federation, 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 4, 2022), 4 Aug. 2022; Armenia’s Observations, 26 Jan. 2023, Ann. 5.

the situation of 3 August 2022 was reported at the time by Azerbaijan as a *military* operation. I invite you to turn to tab 5 of your judges' folder, which contains the statement issued on 3 August by the Azerbaijan Ministry of Defence. Here, the Azerbaijan Ministry of Defence stated that "Armenian armed groups" tried to seize certain heights so as to "establish new combat positions" — combat positions — but, "[a]s a result of the retaliatory operation 'Revenge'", units of the Azerbaijan army seized control of "Saribaba and a number of other important commanding heights along the Karabakh ridge of the Little Caucasus mountain system"<sup>27</sup>. Moreover, the Ministry said that the Azerbaijan army destroyed "several combat positions of illegal Armenian armed elements", even carrying out an airstrike — an airstrike — killing "Armenian militants" and destroying their howitzers, their military vehicles, their ammunition<sup>28</sup>. Azerbaijani President Aliyev himself later said the operation was in the exercise of his role as Commander-in-Chief<sup>29</sup>.

26. And it is in the days after *this* Azerbaijani *military* operation, which seized "important commanding heights along the Karabakh ridge", that Azerbaijan announced it had discovered landmines. Indeed, the Azerbaijani Ministry of Defence on 16 August 2022 issued a press release stating that the Azerbaijan Army had discovered an "anti-personnel minefield . . . in the north western direction of Saribaba hill"<sup>30</sup>. Yet, there is no mention — no mention at all — in that press release of these landmines being located in or near a civilian settlement.

27. Azerbaijan's assertion that it was provoked by enemy forces into exacting "revenge" convinced no one, most notably the Russian peacekeepers. But the key point is — on any account — in August 2022, there were *military* operations by *military* forces to seize strategic heights from other

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<sup>27</sup> Ministry of Defence of the Republic of Azerbaijan, "The Azerbaijani Army conducted the 'Revenge' operation – VIDEO", 3 Aug. 2022, available at <https://mod.gov.az/az/news/azerbaycan-ordusu-qisas-emeliyyati-kecirib-video-41224.html> (certified translation from Azerbaijani); Armenia's Observations, 26 Jan. 2023, Ann. 6. See also "Gyrkhgyz, Saribaba and several other important commanding heights taken under control", APA, 3 Aug. 2022, available at <https://apa.az/en/military/gyrkghyz-saribaba-and-several-other-important-commanding-heights-taken-under-control-382182>; N. Bagirova, "Azerbaijan says it crushed Armenia attack near enclave, EU wants end to fighting", Reuters, 3 Aug. 2022, available at <https://www.reuters.com/world/europe/karabakh-separatists-declare-partial-mobilisation-amid-skirmishes-with-2022-08-03/>.

<sup>28</sup> Ministry of Defence of the Republic of Azerbaijan, "The Azerbaijani Army conducted the 'Revenge' operation – VIDEO", 3 Aug. 2022, available at <https://mod.gov.az/az/news/azerbaycan-ordusu-qisas-emeliyyati-kecirib-video-41224.html> (certified translation from Azerbaijani); Armenia's Observations, 26 Jan. 2023, Ann. 6.

<sup>29</sup> See "Operation Revenge showed Armenia again that no-one and nothing can stop us — President Ilham Aliyev", Trend News Agency, 12 Aug. 2022, available at <https://en.trend.az/azerbaijan/politics/3632232.html>.

<sup>30</sup> Ministry of Defence of the Republic of Azerbaijan, "More than 900 anti-personnel mines were discovered in the direction of Lachin", 16 Aug. 2022, available at <https://mod.gov.az/az/news/lacin-istiqametinde-900-den-artiq-piyada-eleyhine-mina-askar-edilib-41394.html> (certified translation from Azerbaijani); Armenia's Observations, 26 Jan. 2023, Ann. 7.

*military* forces along the mountainous ridges that included Saribaba mountain. And having seized these strategic heights, this is the point in time when suddenly Azerbaijan says it has found lots of landmines. In fact, of the 1,614 landmines supposedly found in “unequivocally civilian areas,” *80 per cent were found in August*, just after Azerbaijan crossed the line of contact and seized territory<sup>31</sup>.

28. In its Request, Azerbaijan presents to you photographs of landmines laid out in neat rows and columns. Those photographs are inescapably associated with Azerbaijan’s seizure of the Saribaba ridge. Indeed, the press release the Azerbaijani Ministry of Defence issued on 16 August 2022 about the seizure at Saribaba included the photograph that you now see on your screen<sup>32</sup>.

29. If that photograph looks familiar, it is because Azerbaijan presents it to you now, at page 9 of its Annex 10, as evidence of alleged laying of landmines by Armenia *in civilian areas*<sup>33</sup>. In other words, back in August 2022 these mines are the spoils of a successful military operation; today they are evidence of the laying of landmines in “unequivocally civilian areas”.

30. All evidence contemporaneous to August 2022 points to landmines in this location being a consequence of military operations. The Caspian News on 17 August 2022 published virtually the exact same photograph as appears at figure 2 on page 12 of Azerbaijan’s Request. The relevant figure 2 photograph from that Request now appears on the screen. When describing this scene, the Caspian News reported that: “The Armed Forces of Azerbaijan discovered a minefield in the northwestern direction of the recently liberated Saribaba high ground”<sup>34</sup>. Moreover, the Caspian News reported that “the mined area was within the perimeter of the temporary monitoring zone of

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<sup>31</sup> Letter from Major General Anar Karimov, Head of the General Department of Engineering Troops, Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 30 Dec. 2022 (certified translation); Azerbaijan’s Request for provisional measures, 3 Jan. 2023, Ann. 7, p. 4.

<sup>32</sup> Ministry of Defence of the Republic of Azerbaijan, “More than 900 anti-personnel mines were discovered in the direction of Lachin”, 16 Aug. 2022, available at <https://mod.gov.az/az/news/lacin-istiqametinde-900-den-artiq-piyada-eleyhine-mina-askar-edilib-41394.html> (certified translation from Azerbaijani); Armenia’s Observations, 26 Jan. 2023, Ann. 7.

<sup>33</sup> United Nations Security Council, Letter dated 4 Nov. 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, doc. A/77/597, 18 Nov. 2022; Azerbaijan’s Request for provisional measures, 3 Jan. 2023, Ann. 10, p. 9.

<sup>34</sup> G. Hajiyeva, “Azerbaijani Army Discovers New Minefield Laid by Illegal Armenian Armed Detachments After 2020 War”, Caspian News, 17 Aug. 2022, available at <https://caspiannews.com/news-detail/azerbaijani-army-discovers-new-minefield-laid-by-illegal-armenian-armed-detachments-after-2020-war-2022-8-17-0/>.

the Russian peacekeepers in Azerbaijan”<sup>35</sup>. In other words, these landmines were purportedly discovered *along the contact line* between military forces<sup>36</sup>.

31. As such, these landmines have nothing — absolutely nothing — to do with targeting of civilians. Indeed, the August 2022 Caspian News report says nothing about laying landmines in a civilian area, and that is true of other August 2022 news reports relating to the alleged finding of landmines. The lack of any reference in August 2022 to the laying of landmines in civilian areas makes sense when you look at all the related photographs of these landmines. Let’s start with the photograph from figure 2 of Azerbaijan’s Request, which is still on your screen. Notice the countryside in the background; it is clearly showing an open and barren area, with no civilian structures of any kind in the background.

32. Let’s take a look at a different photograph found in an article published by an Azerbaijani news agency called News.Az from this past November, which is entitled “Foreign military attachés in Azerbaijan to inspect minefield set up by Armenia in Saribaba high ground”<sup>37</sup>. This same photograph, in black and white, appears in Azerbaijan’s evidence at Annex 8<sup>38</sup>. As you can see, it is a mountainous area with no civilian activity in sight.

33. A different angle of this same scene appeared in an article by the Azerbaijani news agency AzerNews from November 2022, which is entitled “Russian, Turkish military observers inspect minefield in Saribaba peak”<sup>39</sup>. From this angle, we get a pretty good look at the overall terrain, which is quite mountainous — as one would expect — and completely devoid of civilians or civilian structures.

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<sup>35</sup> G. Hajiyeva, “Azerbaijani Army Discovers New Minefield Laid by Illegal Armenian Armed Detachments After 2020 War”, Caspian News, 17 Aug. 2022, available at <https://caspiannews.com/news-detail/azerbaijani-army-discovers-new-minefield-laid-by-illegal-armenian-armed-detachments-after-2020-war-2022-8-17-0/>.

<sup>36</sup> *Ibid.*

<sup>37</sup> “Foreign military attachés in Azerbaijan to inspect minefield set up by Armenia in Saribaba high ground”, News.Az, 24 Nov. 2022, available at <https://news.az/news/foreign-military-attaches-in-azerbaijan-to-inspect-minefield-set-up-by-armenia-in-saribaba-high-ground>.

<sup>38</sup> Letter from Mr. Jeyhun Bayramov, Minister for Foreign Affairs of the Republic of Azerbaijan, to H.E. Mr. Antonio Guterres, Secretary-General of the United Nations, 28 Nov. 2022; Azerbaijan’s Request for provisional measures, 3 Jan. 2023, Ann. 8, photo 1.

<sup>39</sup> S. Mammadli, “Russian, Turkish military observers inspect minefield in Saribaba peak”, AzerNews, 25 Nov. 2022, available at <https://www.azernews.az/nation/202667.html>.

34. Actually, all of the photographs presented by Azerbaijan relating to landmines show locations that are devoid of villages or structures of any kind<sup>40</sup>. How Azerbaijan can regard these photographs as demonstrating the laying of landmines in civilian areas is yet another mystery.

35. Needless to say, if there are no civilians around in the places where landmines are laid, then it is rather hard to argue that any such landmines are targeting civilians, let alone civilians of a particular ethnicity. If this is “ethnic cleansing”, it is of a type never seen before.

36. Azerbaijan’s map evidence, when you look closely, tells the same story. Rather than minefields to be found scattered across Kalbajar and Lachin Districts, the minefields identified are all at, or proximate to, lines of contact. On your screen now is the map contained in Annex 9 of Azerbaijan’s Request<sup>41</sup>, with a small annotation by us at the lower right indicating the location of the old Lachin Corridor. Counsel for Azerbaijan this morning assiduously avoided showing you this map, perhaps because they belatedly realized how damaging it is to their Request. In any event Azerbaijan presented this map supposedly to show seven “locations of minefields laid by Armenian Armed Forces in the Republic of Azerbaijan’s territory”<sup>42</sup>. None of these locations, as you can see, are located in the Lachin Corridor.

37. This slide is rather crowded to read, so let me take you to the portion of the slide identifying minefields at locations number 2, 3, 4 and 5. Now this part of the map is similar to the map Azerbaijan showed you this morning from its Annex 28, Appendix A, although that map strips out the annotations that you find on this map. You see here four locations of alleged minefields. They are all along the “contact line” between the Azerbaijani forces and the forces of Nagorno-Karabakh, the latter area shown in the darker tone on the right of your screen.

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<sup>40</sup> See e.g. Letter from Mr. Jeyhun Bayramov, Minister for Foreign Affairs of the Republic of Azerbaijan, to H.E. Mr. Antonio Guterres, Secretary-General of the United Nations, 28 Nov. 2022; Azerbaijan’s Request for provisional measures, 3 Jan. 2023, Ann. 8, photos 5-8.

<sup>41</sup> Letter from Azer Aliyev, Head of the Main Operations Department of the Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, regarding the Ministry of Defence’s investigation and review of newly discovered landmines, 20 Sept. 2022, with enclosures (certified translation); Azerbaijan’s Request for provisional measures, 3 Jan. 2023, Ann. 9, p. 12. See also Letter from Robert E. Unsworth, Principal of Industrial Economics, Incorporated, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 23 Jan. 2023, with enclosures; Azerbaijan’s Letter, 24 Jan. 2023, Ann. 28, Appendix A.

<sup>42</sup> Letter from Azer Aliyev, Head of the Main Operations Department of the Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, regarding the Ministry of Defence’s investigation and review of newly discovered landmines, 20 Sept. 2022, with enclosures (certified translation); Azerbaijan’s Request for provisional measures, 3 Jan. 2023, Ann. 9, p. 12.

38. Let's start with the bottom location. We are told from the annotation that the minefield associated with Number 4 was supposedly found in August 2022. If you follow the arrow across the map, it lands you at a location labelled as "Saribaba m". This is the same Saribaba mountain or ridge that I mentioned before — the one that Azerbaijan seized in combat in August 2022. Who are we told by this annotation was harmed by a landmine there? A military serviceman, not a civilian. Indeed, the annotations on this map refer exclusively to servicemen, not civilians.

39. Notice that the map depicts also in this vicinity a village named Ikinji Ipak, which the annotation for Number 4 says is found in the Lachin District — in other words, in an area that was returned to Azerbaijan as of December 2020. This is one of the three villages that Azerbaijan highlights in its Request, saying that 1,614 landmines were found "near" the three villages and thus in "unequivocally civilian areas". Yet when Azerbaijan says that landmines were laid "near" Ikinji Ipak<sup>43</sup>, it is referring to this area near Saribaba mountain, which is along the line of contact. Indeed, Azerbaijan never says in its Request that it found a minefield *in* one of three villages or even *around* one of the three villages; rather, it consistently says "near" a village. And when you read Azerbaijan's evidence closely, in this instance, Azerbaijan says it found the minefield *1.8 km* to the east of Ikinji Ipak village<sup>44</sup>. Indeed, notice on this map the geographic co-ordinates for the minefield indicated at the Number 4 annotation are completely different from the geographic co-ordinates appearing just below Ikinji Ipak village. As an aside, I note that this method of geographic co-ordinates dates back to the era of the Soviet Union<sup>45</sup>.

40. In essence, prior to Azerbaijan's "Operation Revenge", Azerbaijan's evidence essentially indicates that there were armed forces on the Saribaba ridge protecting Nagorno-Karabakh, there was a minefield somewhere on the slope of the ridge for defensive purposes, the Azerbaijan army was

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<sup>43</sup> Azerbaijan's Request for provisional measures (3 Jan. 2023), para. 4; Letter from Azer Aliyev, Head of the Main Operations Department of the Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, regarding the Ministry of Defence's investigation and review of newly discovered landmines (20 Sept. 2022), with enclosures (certified translation) (Azerbaijan's Request for provisional measures (3 Jan. 2023), Ann. 9, p. 2).

<sup>44</sup> Letter from Mr. Elnur Mammadov, Agent of Azerbaijan to Mr. Yeghishe Kirakosyan, Agent of Armenia (15 Sept. 2022) (Azerbaijan's Request for provisional measures (3 Jan. 2023), Ann. 3, p. 2); Letters from Lieutenant General Azer Aliyev, Head of the Investigation Department of the Ministry of Defence of the Republic of Azerbaijan, to Major General Andrey Volkov Alexandrovich, Commander of the Russian Peacekeeping Forces (2022) (certified translation) (Azerbaijan's Request for provisional measures (3 Jan. 2023), Ann. 5, p. 2).

<sup>45</sup> See also Letter from Robert E. Unsworth, Principal of Industrial Economics, Incorporated, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 23 January 2023, with enclosures (Azerbaijan's Letter (24 Jan. 2023), Ann. 28, p. 1).

controlling the base of the ridge at the edge of the Lachin District, and behind the Azerbaijan army there was the Ikinji Ipak village. Once the Azerbaijan army in August 2022 seized the ridge, it dug up the landmines located on the slope.

41. Moreover, if you look at a table that Azerbaijan presents at Annex 7 of its Request, and specifically at page 4 of that table, you see an interesting fact. Of the 1,614 landmines that Azerbaijan says were found “near” three villages, all but five — *all but five of those landmines* were found in this location, in the so-called “area” of this village<sup>46</sup>. In other words, of the landmines supposedly laid in “unequivocally civilian areas”, 99 per cent of them are located here. Thus, the heart of Azerbaijan’s entire Request relating to landmines relates to this single location, at and along the Saribaba ridge, and to the discovery of landmines after Azerbaijan’s military forcefully seized the ridge in August of 2022.

42. Now let us turn to the minefield associated with Number 3 on the map, which is immediately to the north of the minefield I just discussed, and which was also, according to the annotation, found in August 2022. The annotation for this Number 3 says the minefield was discovered by the Azerbaijan military; the annotation makes no reference to civilian harm. Further, it says the minefield is “in the direction” of Birinji Ipak village which, again, the annotation says is in the Lachin District, and thus in an area that has been under Azerbaijan’s control since December 2020. This is the second village that Azerbaijan highlights in its Request, and Azerbaijan asserts that just 50 persons used to live in these two villages<sup>47</sup>. For this village of Birinji Ipak, again notice that the geographic co-ordinates given for the minefield are completely different from those given for the village. We estimate that this village is 2.4 km from the minefield that Azerbaijan asserts that it found.

43. Moreover, while the annotation on this map for Number 3 indicates that mines were found “in the direction” of Birinji Ipak village, the table that Azerbaijan presents in Annex 7 contains no

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<sup>46</sup> See Letter from Major General Anar Karimov, Head of the General Department of Engineering Troops, Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan (30 December 2022) (certified translation) (Azerbaijan’s Request for provisional measures (3 Jan. 2023), Ann. 7, p. 4).

<sup>47</sup> See Azerbaijan’s Request for provisional measures (3 Jan. 2023), para. 15. See also Letter from Fuad Huseynov, Deputy Chairman of the State Committee for Affairs of Refugees and Internally Displaced Persons of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 20 Sept. 2022, No. 02/2327 (submitted as Exhibit 8 to Azerbaijan’s 22 Sept. 2022 letter) (certified translation) (Azerbaijan’s Letter (24 Jan. 2023), Ann. 27).



listing for landmines found in the “area” of this village<sup>48</sup>. This further demonstrates that the alleged minefield is not actually associated with a village; on this map, the minefield is in the “direction of” Birinji Ipak village, but on Azerbaijan’s Annex 7 table, there are no mines in the “area” of this village.

44. Now please turn to the minefield associated with Number 5 on Azerbaijan’s map. This minefield apparently was also found in August 2022, and is described as being southeast of a mountain; there is no reference to a civilian settlement in the annotation. Who found these landmines? Military servicemen. What types of mines were they? They included *anti-tank* mines. As the Court is no doubt aware, anti-tank mines do not detonate when stepped on by a person; they only detonate when something heavy — like a tank — weighs down on the landmine. So, one might ask: why would armed forces go to the trouble of laying *anti-tank* mines for the purpose of harming villagers?

45. Now consider the minefield purportedly associated with Number 2, which we are told by the annotation was also found in August 2022. It is described as being on “nameless heights” — *nameless heights*, which certainly does not sound like a civilian settlement. The only harm indicated was to a military person, not a civilian. From the table at Azerbaijan’s Annex 7, we learn that a total of 5 mines make up this minefield<sup>49</sup>. Although it is not shown on this map, Azerbaijan’s other evidence places the third village that Azerbaijan highlights, the Baghlipaya village, to the south of these “nameless heights”<sup>50</sup>. We estimate that this village is 2.5 km from the minefield that Azerbaijan asserts it found.

46. So, these four minefields and the three villages “near” some of them were all found along the line of contact on a series of mountainous ridges separating opposing military forces.

47. Madam President, Azerbaijan does not emphasize the final locations from this Annex 9 map of minefields, but it may be helpful for the Court briefly to consider those other locations, as this map is definitely showing minefields along lines of contact between opposing military forces.

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<sup>48</sup> See Letter from Major General Anar Karimov, Head of the General Department of Engineering Troops, Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan (30 Dec. 2022) (certified translation) (Azerbaijan’s Request for provisional measures (3 Jan. 2023), Ann. 7, p. 4).

<sup>49</sup> *Ibid.*

<sup>50</sup> Letter from Robert E. Unsworth, Principal of Industrial Economics, Incorporated, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 23 Jan. 2023, with enclosures (Azerbaijan’s Letter (24 Jan. 2023), Ann. 28), Appendix A.

Here, again, is an enlarged portion of Azerbaijan's Annex 9 map, this time showing alleged minefields at locations Number 1, Number 6, and Number 7. All these locations are at or near the border between Armenia and Azerbaijan. Numbers 6 and 7 are places where there have been active hostilities between Armenia and Azerbaijan since the end of the 44-Day War, while Number 1 is a place where only four mines were found<sup>51</sup>.

48. In short, all the evidence before you — whether it be in the form of reports, photographs, maps, or otherwise — demonstrates that if any landmines were laid in the areas as claimed by Azerbaijan, they were laid between opposing forces, for defensive purposes, along the strategic heights of the “contact line” or along an international border, and were not laid in civilian areas. Thus, they were not laid for any reason related to the Convention on the Elimination of Racial Discrimination.

#### **IV. If Azerbaijan's position is that the Nagorno-Karabakh Defence Army laid landmines, the Republic of Armenia exercises no control over the NKR or its army**

49. Madam President, aside from the fact that laying landmines for purposes of military defence is not unlawful, we note the lack of any attribution of conduct here to Armenia. If Azerbaijan's position is that the Republic of Nagorno-Karabakh (known as “NKR”) or its army laid these landmines, we respond that, with respect to the time period at issue in this Request, Armenia does not exercise control over either the NKR or its army<sup>52</sup>, and there is no evidence before the Court to suggest otherwise. Further, there is no evidence that the Republic of Armenia in this time period instructed or directed the NKR or its army to lay the particular minefields asserted by Azerbaijan. Moreover, “since the end of the 44-Day War [Armenia] has not provided any armaments or ammunition to Nagorno-Karabakh”<sup>53</sup>. The *Chiragov* case referred to this morning, which was issued in 2015 and which was applying a jurisdictional standard, not a standard of attribution, says nothing to the contrary. As such, any NKR conduct in this regard cannot be attributed to Armenia.

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<sup>51</sup> See Letter from Major General Anar Karimov, Head of the General Department of Engineering Troops, Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan (30 Dec. 2022) (certified translation) (Azerbaijan's Request for provisional measures (3 Jan. 2023), Ann. 7, p. 2).

<sup>52</sup> Letter from Minister of Defence of the Republic of Armenia, to Mr. Yeghishe Kirakosyan, Representative on International Legal Matters of the Republic of Armenia (25 Jan. 2023) (Armenia's Observations (26 Jan. 2023), Ann. 1, p. 1).

<sup>53</sup> *Ibid.*

50. To conclude on the issue of landmines, no doubt there are incidents of civilians, on all sides, who have been hurt by landmines, as suggested by the injuries to the telecommunications workers recounted in Azerbaijan's Annex 25<sup>54</sup>. Of course, everyone, including the Government of Armenia, regrets such incidental harm. But those accounts of harm are endemic across the region, a product of mines laid by many actors, including the Government of Azerbaijan, in many places, for defensive purposes over a period of 30 years.

**V. Azerbaijan alleges that Armenian armed forces set booby traps in villages where such forces were not present but Russian peacekeepers were**

51. Madam President, Members of the Court, allow me to turn to the issue of booby traps.

52. First, the location of these alleged booby traps is very different than that of the alleged minefields. Azerbaijan's counsel this morning tended to conflate the issue of minefields and booby traps. But these two matters are occurring in entirely different places. The alleged minefields are located exclusively outside the Lachin Corridor, while the alleged booby traps were supposedly found solely *within* the old Lachin Corridor. As the Court knows, the Trilateral Statement provided that a new road would be built connecting Nagorno-Karabakh to Armenia. Once completed, the Russian peacekeepers relocated from the old Lachin Corridor to the new road, and Azerbaijan was allowed to take control of certain settlements that were within the old Lachin Corridor, notably the town of Berdzor (or Lachin) and the villages of Aghavno (or Zabux) and Sus.

53. Yesterday, multiple counsel for Azerbaijan insisted strenuously that the Lachin Corridor is under the exclusive control of the Russian peacekeeping contingent. But today, Azerbaijan's claim is that the Armenian armed forces somehow deployed into the Lachin Corridor to set booby traps without any detection by the Russian peacekeeping contingent. There is simply no evidence of this happening; certainly, there is nothing in the bulletins issued by the peacekeeping contingent indicating anything of that nature. And equally certain, this is not Armenian territory, such that any reference to the *Corfu Channel* case is quite misplaced.

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<sup>54</sup> Letter from Khanlar Valiyev, Lieutenant General of Justice of the Deputy Prosecutor General of the Republic of Azerbaijan Military Prosecutor of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, dated 19 January 2023, No. HP-06/40, with enclosures (certified translation) (Azerbaijan's Letter (24 Jan. 2023), Ann. 25).

54. Second, and to be absolutely clear, Armenia denies setting any booby traps in civilian homes or settlements<sup>55</sup>. The armed forces of Armenia do not use booby traps. As you can see at tab 2 of your folder, in the final paragraph, the Armenian Minister of Defence confirms that “such devices are too unpredictable and ineffective for military operations and depending on their use may not be consistent with international humanitarian law”<sup>56</sup>. A position fully consistent with that taken by the ICRC.

55. Third, there is simply no evidence before the Court that the armed forces of Armenia somehow, despite the presence of the Russian peacekeepers, trained or otherwise controlled others in the Lachin Corridor so as to set booby traps. As such, any reference to the *Nicaragua v. United States* case is misguided. Nor is there any evidence that the armed forces of Armenia supplied others in this regard; indeed, the munitions shown in Azerbaijan’s photographs are mostly not of the type used by Armenian armed forces. So, to answer my good friend Mr. Lowe’s simple question of this morning as to why the Government of Armenia does not tell Azerbaijan where any booby traps are located, our simple answer is that we did not have anything to do with such booby traps.

56. Fourth, booby traps can be set by anyone with munitions experience. Most males in this region have military experience, even if they are not on active duty. Moreover, persons forced to flee from their homes might well set a booby trap, particularly if motivated by anger and nothing else. Recall that Azerbaijan’s President Aliyev explicitly demanded that Armenians leave these settlements<sup>57</sup>. We know that at least a few such persons set fire to their homes before fleeing, as

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<sup>55</sup> Letter from Minister of Defence of the Republic of Armenia, to Mr. Yeghishe Kirakosyan, Representative on International Legal Matters of the Republic of Armenia (25 Jan. 2023) (Armenia’s Observations (26 Jan. 2023), Ann. 1, p. 2).

<sup>56</sup> *Ibid.*

<sup>57</sup> “Azerbaijan Television interviewed Ilham Aliyev in Basgal settlement of Ismayilli district”, The President of the Republic of Azerbaijan Ilham Aliyev (12 Aug. 2022), available at <https://president.az/en/articles/view/56906>.

Azerbaijan's own evidence demonstrates<sup>58</sup>. At the same time, these acts of destruction to homes were actively discouraged by Armenian and Nagorno-Karabakh authorities<sup>59</sup>.

57. Fifth, the very few photographs presented by Azerbaijan of these booby traps tell their own story. These booby traps clearly are not professionally done: they are crude, *ad hoc*, irregular, unsophisticated and jerry-rigged contraptions of what appear to be rusty and dated parts. Any professional army seeking to set explosives would certainly not do it in this way. Rather, these contraptions have all the hallmarks of angry lone wolves concocting self-made devices. In terms of the number of booby traps other than what is in its few photographs, Azerbaijan never actually provides a number of booby traps allegedly found instead preferring, particularly in its Annex 22, to conflate the issue with the finding of unexploded remnants of war whether in the form of ordnance or otherwise.

58. Finally, even Azerbaijan does not know who set the booby traps of which it complains. Its position is that “[b]ecause these traps were constructed with military equipment, they must have been planted by or with the cooperation of Armenia’s armed forces”<sup>60</sup>. Well, actually, in a region that has experienced numerous armed conflicts over some three decades, there is quite a bit of military equipment lying around and plenty of persons who know how to use it, such that it does not make sense to say that *only* Armenia is able to do this — and it is certainly not a sufficient basis for attributing responsibility to a State for a very serious charge.

59. In short, Azerbaijan’s accusations in this respect consist simply of fragments of evidence augmented by conjecture, piled on top of supposition and should therefore not be accepted by the Court.

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<sup>58</sup> See @herbixeber, Telegram (18 August 2022), available at <https://t.me/herbixeber/17101>, @herbixeber, Telegram (18 Aug. 2022), available at <https://t.me/herbixeber/17108>, @reartsakh, Telegram (26 Aug. 2022), available at <https://t.me/reartsakh/14414> (certified translation) (Azerbaijan’s Request for provisional measures (3 Jan. 2023), Ann. 16); Caliber.az English, @CaliberEnglish, Twitter (14 August 2022), available at <https://twitter.com/CaliberEnglish/status/1558825016510353410?s=20&t=49wje8wlv7MveAYFPdV1SQ> (certified translation) (Azerbaijan’s Request for provisional measures (3 Jan. 2023), Ann. 18); AzadliqRadosu, “Concerns of Sus village’s displaced residents: is there work, a safe house in the village?”, YouTube (29 Aug. 2022), available at <https://www.youtube.com/watch?v=7MDtFQWNff0> (certified translation) (Azerbaijan’s Request for provisional measures (3 Jan. 2023), Ann. 21).

<sup>59</sup> See Letter from Mr. Yeghishe Kirakosyan, Agent of the Republic of Armenia, to Mr. Philippe Gautier, Registrar of the International Court of Justice (27 Sept. 2022) (Azerbaijan’s Request for provisional measures (3 Jan. 2023), Ann. 6, PDF, p. 3); Letter from the Prosecutor General of the Republic of Artsakh to Yeghishe Kirakosyan, Representative of the Republic of Armenia on International Legal Matters (20 Jan. 2023) (certified translation from Armenian) (inadvertently dated 20 January 2022) (Armenia’s Observations (26 Jan. 2023), Ann. 2).

<sup>60</sup> See Azerbaijan’s Request for provisional measures, 3 Jan. 2023, para. 18.

## VI. The “newness” of Azerbaijan’s facts

60. Before concluding, Madam President, I wish to make a last observation about whether the facts Azerbaijan has placed before you are really new, as insisted this morning by counsel for Azerbaijan and as required under your Rules<sup>61</sup>.

61. While Azerbaijan represents to the Court that it “recently” located minefields, Azerbaijan’s own evidence reflects that, out of the approximately 2,700 landmines that were allegedly discovered since August 2022, approximately 86 per cent of them were in fact discovered in August and September<sup>62</sup>, meaning more than four months ago. In short, not so recent.

62. Moreover, Azerbaijan’s letter to Armenia of 15 September 2022 and Azerbaijan’s letter to the Court of 22 September 2022 characterized the discovery of these minefields as a violation of the Court’s *December 2021 Order*. In other words, Azerbaijan maintained that the laying of these alleged minefields, purportedly of landmines manufactured in 2021, was *already* a matter addressed in your December 2021 Order, which means that they are not “new facts” that allow for a “fresh request” for provisional measures of protection. And in saying that last September, Azerbaijan did not reserve any rights to pursue a new request. To the same effect, in its recent Memorial<sup>63</sup> — which counsel referred to this morning and even placed evidence from it on the screen — in that Memorial, Azerbaijan extensively discusses the alleged laying of these landmines starting in August 2022 and continuing to this day as a breach of your existing Order and as pertinent to the merits phase, not as new facts meriting attention by this Court on a preliminary basis. Azerbaijan cannot have it both ways.

63. And much of the evidence that Azerbaijan places before you today relates to matters long past. Many of the faces that you see in Azerbaijan’s Annex 23 are the same faces that you saw in Annex 37 of Azerbaijan’s first Request for provisional measures filed in September 2021<sup>64</sup>. Those

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<sup>61</sup> Rules of Court (1978), Article 75(3).

<sup>62</sup> Letter from Major General Anar Karimov, Head of the General Department of Engineering Troops, Ministry of Defence of the Republic of Azerbaijan, to Mr. Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 30 Dec. 2022 (certified translation); Azerbaijan’s Request for provisional measures, 3 Jan. 2023, Ann. 7, pp. 2-3.

<sup>63</sup> See Memorial of Azerbaijan, paras. 246, 273, 278-283, 567-570 and 574.

<sup>64</sup> Cf. Letter from Elchin Mammadov, First Deputy Prosecutor General of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 23 Jan. 2023, No. 14/cix 9-23, with enclosures (certified translation; enclosures originally in English) (Azerbaijan’s Letter, 24 Jan. 2023, Ann. 23); Letter from Elchin Mammadov, First Deputy Prosecutor General, to Elnur Mammadov, Deputy Minister of Foreign Affairs regarding civilians killed or injured by landmines, 6 Oct. 2021, No. 14/cix66-21, with enclosures (certified translation) (Azerbaijan’s Request for provisional measures, 23 Sept. 2021, Ann. 37).

photos at Azerbaijan's Annex 24 of this Request of property damage in the Lachin Corridor appear to be mostly war-related damage from significant military operations long past, not from recent booby traps or even mines<sup>65</sup>. In short, Azerbaijan is, to some extent, repackaging old information for this request.

## VII. Conclusion

64. Madam President, Members of the Court, I close by noting that on Azerbaijan's own evidence, Armenia supposedly engaged in "[i]ndiscriminate use of mines"<sup>66</sup> and "indiscriminately planted" landmines<sup>67</sup> and "[i]ndiscriminately deployed mines"<sup>68</sup>. If so, then it would suggest that Armenia did not engage in an act of discrimination within the meaning of the CERD.

65. But importantly, Armenia did nothing of this kind. Armenia only planted landmines in its own territory for self-defence. But even if landmines were laid as Azerbaijan would have it, any such conduct, by whoever did it, from all the evidence before you, would only have been done as a defensive measure, undertaken along borders or lines of contact, and without any purpose of harming persons of a particular ethnic origin. And who laid crude booby traps within the Lachin Corridor is a question that even Azerbaijan cannot answer. All told, these facts simply provide no basis for the request Azerbaijan has placed before you.

66. Finally, and for the sake of completeness, I recall that, in the aftermath of the 44-day war, Armenia handed over to Azerbaijan any maps in its possession relating to minefields that were not in Armenia<sup>69</sup>. And because Armenia is not withholding maps, and because it is only laying mines for

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<sup>65</sup> See Letter from Elchin Mammadov, First Deputy Prosecutor General of the Republic of Azerbaijan, to Elnur Mammadov, Deputy Foreign Minister of the Republic of Azerbaijan, 19 Jan. 2023, No. 03/222006229, with enclosures (certified translation) (Azerbaijan's Letter, 24 Jan. 2023, Ann. 24).

<sup>66</sup> See United Nations Security Council, Letter dated 4 Nov. 2022 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/77/597, 18 Nov. 2022; Azerbaijan's Request for provisional measures, 3 Jan. 2023, Ann. 10, p. 4.

<sup>67</sup> See *ibid.*, p. 3.

<sup>68</sup> See United Nations Security Council, Letter dated 24 Aug. 2022 from the Chargé d'affaires *ad interim* of the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General, UN doc. A/76/930-S/2022/642; Azerbaijan's Request for provisional measures, 3 Jan. 2023, Ann. 11, p. 3.

<sup>69</sup> The Prime Minister of the Republic of Armenia, "If anyone thinks that the peace agenda is the 'peaceful annihilation' of the Republic of Armenia or Armenians of Nagorno-Karabakh, they are seriously mistaken", Prime Minister's speech at the Cabinet meeting, 10 Nov. 2022, available at <https://www.primeminister.am/en/statements-and-messages/item/2022/11/10/Cabinet-meeting-Speech/>.

defensive purposes, and because it has no connection to booby traps, Azerbaijan's request is clearly moot and presents no issue of urgency.

67. Madam President, I thank you for your attention. I ask that you now call upon Professor Kolb to continue Armenia's presentation.

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

M. KOLB :

**LES DROITS DONT LA PROTECTION EST SOLLICITÉE  
NE SONT PAS PLAUSIBLES**

1. Madame la présidente, Mesdames et Messieurs les juges, je vous parlerai cet après-midi de plausibilité des droits en tant que condition pour l'indication de mesures conservatoires. Pour ne rien vous cacher, je me suis demandé sur quoi vous éclairer — tant la question dont nous avons à traiter est limpide. Y a-t-il un doute sur la non-plausibilité des droits qu'invoque l'Azerbaïdjan ? Assurément non. Peut-on se défier quant à savoir si les droits qu'avance l'Azerbaïdjan sont liés au domaine de compétence de la Cour ? Certainement pas. Vous en avez déjà jugé ainsi<sup>70</sup>. Malgré cela, l'Azerbaïdjan s'entête dans sa stratégie éperdue de réactions en miroir. Je pourrais m'arrêter là. Mais vous attendez de moi une démonstration. Je vais vous l'offrir.

2. Les faits entourant la pose des mines terrestres arméniennes et des pièges ont été rappelés par le professeur Sean Murphy. Je peux m'appuyer sur sa démonstration sans avoir besoin d'y revenir.

3. L'analyse juridique nous confrontera dans les minutes à venir à une opiniâtre dualité. D'un côté, les droits invoqués n'existent pas dans le droit international applicable à l'espèce. C'est même plus qu'un manque de plausibilité : c'est une inexistence. De l'autre côté, à supposer par élan gratuit que ces droits existent, ils ne découlent manifestement pas de la CERD. C'est dire qu'ils sortent de

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<sup>70</sup> Voir *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), mesures conservatoires, ordonnance du 7 décembre 2021, C.I.J. Recueil 2021*, p. 419, par. 43 et suiv.



l'assiette de compétence de notre affaire<sup>71</sup>. Chacun de ces motifs est suffisant pour rejeter la demande de mesures conservatoires relative aux mines terrestres.

4. Quelles sont les conclusions de nos contradicteurs ? On peut les résumer à deux propositions. Premièrement : la pose de mines terrestres est contraire à la CERD parce qu'elle vise essentiellement les ressortissants azerbaïdjanais. Deuxièmement : vu les dangers causés par ces mines terrestres, l'Arménie doit s'abstenir d'en placer et doit informer l'Azerbaïdjan sur leur localisation.

### I. L'utilisation de mines terrestres

5. Le droit international ne contient pas d'interdiction d'utiliser des mines terrestres. En ce sens, le droit prétendu n'existe pas. A plus forte raison, il n'est pas plausible. Telle est la ligne de base juridique à travers laquelle nous devons considérer les aspects suivants.

6. J'en viens d'abord à l'accusation de discrimination volontaire et assumée.

7. Dois-je apprendre à la Cour que l'aire géographique dont nous nous occupons est sujette à des actions de belligérance d'inégale ampleur et gravité ? Ai-je davantage besoin d'insister sur le fait que l'Azerbaïdjan a pris l'initiative d'opérations militaires offensives d'envergure ? Dans un tel contexte, la partie accusée à se défendre recourt souvent à la pose de mines terrestres. Celles-ci servent *ictu oculi* à ralentir la progression ennemie.

8. L'inférence immédiatement raisonnable est que la pose des mines terrestres a été pratiquée en fonction des besoins militaires. Toute autre allégation n'est pas contextuellement plausible.

9. Les mines terrestres ont été retrouvées dans des aires d'opérations militaires dont l'Azerbaïdjan se glorifie. Je vous demande : est-il étonnant de trouver des mines dans des zones que l'Etat défendeur sait être en danger ? Où ailleurs aurait-il dû poser ces mines, à supposer qu'il s'en promît une efficacité militaire ? A Erevan ? La balance me paraît ainsi clairement étalonnée à une utilité militaire et non à une persécution civile.

10. L'Azerbaïdjan avance néanmoins que l'Arménie aurait placé ces mines terrestres après son départ des territoires en cause. Elle les aurait posées à des seules fins de discrimination — par animosité, par hostilité, par rancœur.

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<sup>71</sup> Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), mesures conservatoires, ordonnance du 7 décembre 2021, C.I.J. Recueil 2021, p. 424, par. 51.

11. Mon collègue Sean Murphy vous a révélé que ces engins provenaient au contraire de zones de contact et étaient placés à des fins défensives.

12. A supposer gratuitement qu'il subsiste le moindre doute, la preuve devrait répondre à une rigueur inévitable. Même au stade conservatoire, les allégations touchant à des actes illicites infamants ou à des actes de malveillance graves doivent reposer sur des preuves suffisamment strictes et certaines. Où les voyez-vous en l'espèce ? L'Azerbaïdjan s'est borné à prétendre et à insinuer. Je n'ai trouvé que des affirmations désavouées par l'emplacement des mines terrestres concernées. Par emplacement, je veux dire que les mines ont été trouvées hors des villages et des centres peuplés. Elles ont été placées entre les lignes de contact hostile. Pour cette raison, elles ont frappé surtout des militaires. Au total, cela nous donne bien moins qu'une plausibilité.

13. Occupons-nous maintenant du caractère propre des mines terrestres. Une mine est une arme à effet intrinsèquement indiscriminé. Elle éclate en fonction d'une pression exercée et non pas en vue d'une caractéristique raciale. Ce simple fait est *prima facie* opposé à l'idée d'une discrimination. Nous sommes dans le domaine quasiment archétypique de l'«indiscrimination».

14. Ce n'est pas une surprise que les victimes des mines terrestres sur le théâtre du conflit entre l'Arménie et l'Azerbaïdjan ont été régulièrement des personnes de différentes nationalités et ethnies<sup>72</sup>. Il faut l'admettre : c'est très ardu de faire de mines terrestres des engins de discrimination ciblée.

15. Changeons de lorgnette. Songez désormais à ce que cela signifierait si vous commenciez à entrer dans des appréciations issues de la CERD à propos de toute opération militaire dans un conflit armé.

16. Tel bombardement vise l'ennemi et frappe collatéralement ses civils. Ne touche-t-il pas seulement le camp hostile ? Mais alors, n'est-il pas discriminatoire ? La CERD le transforme-t-elle potentiellement en un fait internationalement illicite ?

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<sup>72</sup> Voir, par exemple, «Land Mine Kills Officer as Search Continues for Armenian, Azerbaijani Missing», *Radio Free Europe/Radio Liberty (Azatutyun)* (23 novembre 2020), accessible à l'adresse suivante : <https://www.rferl.org/a/land-mine-kills-officer-search-for-armenian-azerbaijani-missing/30965287.html>. Voir aussi lettre avec pièces jointes datée du 10 août 2022 adressée à M. John Callewaert, greffier adjoint à la Cour européenne des droits de l'homme, par M. Yeghishe Kirakosyan, représentant de la République de l'Arménie pour les affaires juridiques internationales (Armenia's Observations (26 January 2023), Annex 9).

17. Des mines terrestres sont posées dans des zones où l'on s'attend à une percée de l'ennemi. N'atteignent-elles pas principalement l'adversaire ? Mais alors, leur pose n'est-elle pas discriminatoire ? La CERD opère-t-elle plausiblement une conversion en délit international ?

18. Presque toutes les opérations militaires et leurs actes annexes sont en ce sens «discriminatoires». Entrent-ils *prima facie* dans le champ matériel de la CERD ? Je ne crois pas que les Etats toléreraient une telle interprétation du droit. Et je suis sûr qu'elle n'est pas non plus la vôtre. Il faut des éléments additionnels précis pour rendre crédible la discrimination au sens de la CERD.

19. Ce que je viens de dire dispose aussi de l'argument de nos contradicteurs sur les «effets». Je me réfère au paragraphe 35 de la requête, où il est dit que, même si le but des actes n'est pas discriminatoire, leur seul effet discriminatoire suffit.

20. Cette interprétation méconnaît le texte de l'article 1, paragraphe 1, de la CERD. Ce dernier exige non seulement un effet discriminatoire, mais aussi une distinction fondée sur la race, la couleur, l'ascendance ou l'origine nationale ou ethnique. Or, une telle distinction n'existe pas en l'espèce. Si un effet discriminatoire suffisait, les mots que je viens de mentionner seraient entièrement superflus. Je ne crois pas qu'il serait juridiquement correct de les priver de tout effet utile. De plus, si la version de nos contradicteurs était correcte, l'affaire *Qatar c. Emirats arabes unis* aurait procédé au fond<sup>73</sup>.

21. La doctrine des effets n'est certainement pas applicable quand une mesure est fondée sur un but et sur un effet reconnu en droit international. C'est le cas de l'avantage militaire dans un conflit armé.

22. S'il en était autrement, à peu près tout acte lié à des opérations militaires constituerait une violation potentielle ou actuelle de la CERD. On aboutirait à un résultat manifestement absurde et déraisonnable. Il n'est pas admissible de donner à la doctrine des effets une portée aussi incommensurablement large. J'ai plutôt l'impression que nos contradicteurs l'utilisent au mieux comme une panacée et au pire comme une *tabula in naufragio*.

23. Comme mon collègue Sean Murphy l'a montré, il n'y a aucun fait nouveau et aucun fait de discrimination raciale. Il y a eu des opérations militaires offensives d'un côté et défensives de

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<sup>73</sup> Voir *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Emirats arabes unis), exceptions préliminaires, arrêt, C.I.J. Recueil 2021*, p. 108-109, par. 112.

l'autre. Tenter de faire entrer les avatars de ces opérations dans le domaine de la CERD est un exercice artificiel et vain.

24. Les mêmes arguments sont encore et encore embrigadés aux mêmes fins. Mais ils ne sont pas plus crédibles ce jour qu'ils ne l'étaient hier. Il n'y a aucune raison de vous départir de ce que vous avez indiqué dans l'ordonnance du 7 décembre 2021<sup>74</sup>.

25. Les conclusions à tirer sont évidentes. Les droits invoqués sont à la fois inexistantes — le droit international n'interdisant pas la pose de mines terrestres — et non liés à la CERD — mais aux opérations militaires —, ce qui signifie qu'ils ne sont pas plausibles.

## **II. Les mesures demandées**

26. Les deux mesures conservatoires demandées ne reposent sur aucune source de droit international porteuse d'obligations à la charge de l'Arménie dans les domaines en cause.

27. J'ai déjà dit que le droit international ne connaît aucune règle générale interdisant le recours à des mines terrestres. Une telle obligation d'abstention n'est évidemment pas statuée dans la CERD. La demande qu'on vous adresse revient ainsi à exiger que la Cour légifère en créant une obligation nouvelle pesant sur l'Arménie. Cette demande, jointe à celle des premières mesures conservatoires, présume de surcroît plus ou moins subrepticement que toute pose de mines terrestres future serait un fait de discrimination raciale. Comment la Cour pourrait-elle se fonder sur une supposition aussi malveillante ? Dès lors, le droit invoqué n'est pas plausible. Il n'a aucune base dans le droit applicable.

28. L'Azerbaïdjan demande encore à ce que l'Arménie l'informe sur l'emplacement des mines terrestres déjà installées. Le droit international général ne connaît pas une telle obligation. S'il fallait signaler l'emplacement des mines terrestres, elles perdraient une partie significative de leur utilité militaire. La CERD ne contient pas davantage une telle obligation, ni les textes de droit international sur les mines.

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<sup>74</sup> *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), mesures conservatoires, ordonnance du 7 décembre 2021, C.I.J. Recueil 2021, p. 425, par. 53.*

29. Qui plus est, l'Arménie a fourni à l'Azerbaïdjan les informations en sa possession sur des localisations de mines terrestres<sup>75</sup>. Elle est allée ainsi au-delà du domaine de ses obligations juridiques.

30. Une fois encore, nous aboutissons au constat que le droit d'information invoqué n'est pas fondé dans le droit international applicable à l'espèce ; que la Partie adverse demande à la Cour de créer de nouvelles obligations à la charge de l'Arménie ; et que, dès lors, le droit avancé n'est pas plausible.

31. En plus, tant la pose des mines terrestres que l'information sur leur emplacement ne sont pas des questions liées à la CERD. Elles relèvent de la conduite des hostilités et du *jus post bellum*. On revient toujours à la même double lame : droit inexistant ; droit putatif non lié à la CERD.

32. Le constat final est d'une netteté inébranlable. Aucun des droits invoqués n'est minimalement plausible. De plus, il n'y a aucun lien entre les mesures demandées et un quelconque droit prétendument plausible en vertu de la CERD. Les mesures conservatoires demandées doivent être refusées, ne fût-ce que pour ce motif.

33. J'en viens à un aspect final. La Partie adverse a prétendu ce matin que les considérations élémentaires d'humanité obligent l'Arménie à révéler l'emplacement des mines terrestres. Elle s'est appuyée sur les affaires du *Détroit de Corfou* de 1949 et *Nicaragua* de 1986. J'attire votre attention sur les différences juridiques décisives qui distinguent ces précédents du cas présent. Premièrement, ces affaires ont été tranchées sur la base du droit international coutumier ; la compétence de la Cour ne s'y étend pas dans la présente espèce. Deuxièmement, les considérants de la Cour sur l'information visaient dans ces affaires principalement à protéger les droits de navigation ; ce n'est pas le cas ici. Troisièmement, les précédents étaient basés sur le fait que l'Etat concerné savait où se trouvaient les mines ; ce n'est pas démontré ici. Quatrièmement, le protocole II de 1996 à la convention sur certaines armes classiques, à son article 9, paragraphe 2, dispose que le devoir d'informer n'existe pas quand les zones concernées sont sous le contrôle de l'adversaire. Le droit positif spécial dément ainsi une obligation générale d'informer et le droit général n'a pas la portée que mon contradicteur a tenté de lui conférer.

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<sup>75</sup> «Ilham Aliyev: We've received maps of minefields of Agdam district», *abc.az* (16 juin 2021), accessible à l'adresse suivante : <http://abc.az/mobile/view.php?id=74781&lng=en>.

34. Ces réflexions achèvent ma présentation. Je vous remercie de m'avoir prêté votre précieuse et bienveillante attention. Je vous prie, Madame la présidente, d'appeler à la barre M. Pierre d'Argent.

The PRESIDENT: I thank Prof. Kolb, and I now invite Prof. Pierre d'Argent to address the Court. You have the floor, Professor.

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

### REMARQUES FINALES

1. Madame la présidente, Mesdames et Messieurs les juges, la demande de mesures conservatoires de l'Azerbaïdjan — vous l'avez entendu — manque en fait et en droit, mais elle est encore hautement problématique à un double égard. D'une part, cette demande est fondée sur une lecture fondamentalement erronée du paragraphe 53 de votre deuxième ordonnance du 7 décembre 2021<sup>76</sup>. D'autre part, les mesures sollicitées par l'Azerbaïdjan présentent de tels défauts qu'elles ne peuvent être ordonnées.

#### **I. Le paragraphe 53 de l'ordonnance du 7 décembre 2021 est un obstacle à la demande de l'Azerbaïdjan**

2. Prolongeant les réflexions de mon collègue le professeur Kolb au sujet de la plausibilité des droits dont la protection est sollicitée, je commence par mon premier point : l'Azerbaïdjan n'a réussi à vous présenter une nouvelle demande de mesures conservatoires qu'en faisant violence aux termes de l'ordonnance de 2021 dans cette affaire par laquelle vous aviez rejeté sa demande similaire en matière de mines terrestres. En effet, sa nouvelle demande est entièrement fondée sur une lecture biaisée du paragraphe 53 de votre deuxième ordonnance du 7 décembre 2021.

3. Et pour rappel, ce paragraphe est constitué de quatre phrases.

4. La première phrase apparaît à l'écran. La Cour y résume la thèse de l'Azerbaïdjan, selon laquelle le «comportement présumé de l'Arménie s'agissant des mines terrestres ... s'inscrit dans le cadre d'une politique de nettoyage ethnique menée de longue date».

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<sup>76</sup> *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), mesures conservatoires, ordonnance du 7 décembre 2021, C.I.J. Recueil 2021, p. 425, par. 53.*

5. Les deuxième et troisième phrases énoncent ensuite la position juridique de la Cour sur cette question. Deuxième phrase :

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

Troisième phrase :

«Cependant, elle [c'est toujours la Cour qui parle] ne considère pas que la CIEDR impose de manière plausible à l'Arménie une quelconque obligation de prendre des mesures pour permettre à l'Azerbaïdjan de procéder au déminage, ou de cesser définitivement ses opérations de minage.»

6. Vous constaterez, Mesdames et Messieurs les juges, que ces deux phrases au contenu purement juridique forment un tout. Elles sont liées entre elles par «cependant», utilisé ici comme conjonction, et non comme adverbe temporel. Cette conjonction indique que la troisième phrase apporte une précision par rapport à la position de principe exprimée par la deuxième phrase. Bien qu'elle ne fasse pas foi, la version anglaise de l'ordonnance exprime exactement la même articulation en recourant à «however». Ainsi, l'affirmation de la troisième phrase est une position de principe également : la convention n'impose pas de manière plausible à l'Arménie une quelconque obligation en matière de minage ou de déminage. Les deux phrases signifient donc ensemble que, quand bien même

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

il n'en demeure pas moins que la convention n'impose pas «de manière plausible à l'Arménie une quelconque obligation de prendre des mesures pour permettre à l'Azerbaïdjan de procéder au déminage, ou de cesser définitivement ses opérations de minage».

7. La quatrième phrase du paragraphe 53 constitue ensuite une constatation factuelle venant s'ajouter à la position juridique exprimée par la Cour dans les deux phrases précédentes :

«L'Azerbaïdjan n'a pas produit devant la Cour d'éléments de preuve démontrant que le comportement allégué de l'Arménie s'agissant des mines terrestres ait «pour but ou pour effet de détruire ou de compromettre la reconnaissance, la jouissance ou l'exercice, dans des conditions d'égalité», des droits des personnes d'origine nationale ou ethnique azerbaïdjanaise.»

Cette constatation, faite par la Cour, est donc faite de manière surabondante. Ainsi, la quatrième phrase aurait pu être introduite par «quoi qu'il en soit», «en toute hypothèse» ou encore «par ailleurs». La constatation factuelle de la déficience probatoire de l'Azerbaïdjan ne vient donc en rien modifier la position juridique très clairement énoncée par les deuxième et troisième phrases.

8. Ensemble, les quatre phrases du paragraphe 53 signifient donc que, même s'il devait être établi — ce qui n'avait pas été le cas en 2021, et ne l'est pas plus aujourd'hui — que des opérations de minage ont été menées en vue d'éloigner des personnes sur la base de leur origine nationale ou ethnique d'une région donnée ou de les empêcher d'y revenir, et qu'ainsi des droits garantis par la CIEDR pourraient être en cause, on ne peut cependant pas déduire de la convention une quelconque obligation à charge de l'Arménie de cesser définitivement des opérations de minage ou d'aider l'Azerbaïdjan à déminer.

9. Madame la présidente, Mesdames et Messieurs les juges, l'Azerbaïdjan semble avoir accepté l'enseignement du paragraphe 53 de l'ordonnance de 2021 — ainsi que je l'ai expliqué — jusqu'à très récemment. En effet, dans sa lettre à l'Arménie du 15 septembre 2022<sup>77</sup> et dans sa lettre adressée à la Cour une semaine plus tard, le 22 septembre 2022<sup>78</sup>, s'appuyant sur exactement les mêmes faits que ceux rapportés au soutien de sa nouvelle demande de mesures conservatoires, l'Azerbaïdjan en a déduit un prétendu manquement à l'obligation de ne pas aggraver le différend — obligation prescrite par votre seconde ordonnance du 7 décembre 2021. L'Azerbaïdjan aurait pu, comme il le fait désormais, prétendre qu'il y avait matière à reconsidérer la troisième phrase du paragraphe 53 de cette ordonnance compte tenu des nouveaux éléments probatoires prétendument rapportés. Pourtant, ce n'est pas ce qu'il fit. L'Azerbaïdjan formula ses griefs uniquement en termes d'aggravation du différend, c'est-à-dire de violation de l'ordonnance existante, et c'est ce qu'il soutient encore dans son mémoire déposé la semaine dernière<sup>79</sup>.

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<sup>77</sup> Lettre datée du 15 septembre 2022 adressée à M. Yeghishe Kirakosyan, représentant de la République de l'Arménie devant la Cour internationale de Justice, par M. Elnur Mamamdov, vice-ministre des affaires étrangères et représentant de la République de l'Azerbaïdjan devant la Cour internationale de Justice.

<sup>78</sup> Lettre datée du 22 septembre 2022 adressée à M. Philippe Gautier, greffier de la Cour internationale de Justice, par M. Elnur Mamamdov, vice-ministre des affaires étrangères et représentant de la République de l'Azerbaïdjan devant la Cour internationale de Justice.

<sup>79</sup> Mémoire de la République de l'Azerbaïdjan (23 janvier 2023), par. 567-570.



10. Mesdames et Messieurs les juges, cette configuration n'est pas sans rappeler celle qui se présenta dans l'affaire *Qatar c. Emirats arabes unis*. Dans cette affaire, la Cour avait d'abord indiqué des mesures conservatoires à la demande du Qatar. Les Emirats arabes unis tentèrent ensuite d'obtenir à leur tour des mesures conservatoires à leur profit. Une des mesures sollicitées par les Emirats se rapportait aux entraves prétendument opposées par le Qatar à la mise en œuvre par les Emirats des mesures conservatoires antérieurement indiquées. La Cour rejeta la mesure sollicitée par les Emirats pour le motif que, portant sur le respect de mesures conservatoires antérieurement indiquées, elle «ne concern[ait] pas des droits plausibles des Emirats arabes unis en vertu de la CIEDR qui nécessiteraient une protection dans l'attente de l'arrêt définitif de la Cour»<sup>80</sup>.

11. Ce précédent est évidemment très ennuyeux pour l'Azerbaïdjan. En effet, si les prétendues nouvelles opérations de minage de l'Arménie violent l'obligation de non-aggravation créée par l'ordonnance du 7 décembre 2021, alors, *mutatis mutandis*, le respect de cette obligation ne concerne pas un droit plausible *en vertu* de la CIEDR qui nécessiterait une protection dans l'attente de l'arrêt définitif de la Cour.

12. Dès lors, de manière fort opportune, l'Azerbaïdjan comprend désormais les choses de manière très différente. L'abandon de sa position antérieure était bien sûr rendu nécessaire par son désir de neutraliser la demande de mesures conservatoires de l'Arménie par l'introduction, en réaction, de sa propre demande. Il n'est donc plus du tout question d'aggravation du différend couverte par l'ordonnance de décembre 2021, puisque l'obligation de non-aggravation n'est pas un droit plausible en vertu de la convention, mais il est question de prétendus faits nouveaux justifiant la révision du rejet que l'Azerbaïdjan avait alors essuyé.

13. Au paragraphe 32 de sa nouvelle demande du 3 janvier de cette année, l'Azerbaïdjan affirme que si votre précédente ordonnance considéra que la convention n'imposait pas de manière plausible à l'Arménie l'obligation de ne pas poser des mines terrestres ou d'aider à déminer, c'est parce que la Cour avait considéré («because the Court considered») que l'Azerbaïdjan ne s'était pas acquitté du fardeau de la preuve pesant sur lui. L'Azerbaïdjan soutient donc que la troisième phrase du paragraphe 53 serait subordonnée à la constatation factuelle formulée par la quatrième.

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<sup>80</sup> *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Emirats arabes unis), mesures conservatoires, ordonnance du 14 juin 2019, C.I.J. Recueil 2019 (I), p. 370, par. 26.*

M<sup>e</sup> Amirfar a dit la même chose ce matin : selon elle, «the Court found that the plausibility requirement had not been met at that time *because of lack of evidence* indicating that Armenia's alleged conduct impaired the equal enjoyment of the rights of Azerbaijanis on the basis of ethnic or national origin»<sup>81</sup>. Well, with all due respect, that is not correct. Ce n'est pas ce que la Cour décida en 2021.

14. Cette nouvelle lecture du paragraphe 53 de votre ordonnance de 2021 constitue, je l'ai dit, non seulement un changement assez radical et très opportun par rapport à ce que soutenait antérieurement l'Azerbaïdjan, mais elle est en effet surtout erronée pour les raisons que je vous ai exposées il y a un instant.

15. J'ajouterai que la troisième phrase de ce paragraphe 53 énonce catégoriquement, vous vous en souvenez, que la convention n'impose pas «de manière plausible à l'Arménie une *quelconque* obligation de prendre des mesures pour permettre à l'Azerbaïdjan de procéder au déminage, ou de cesser définitivement ses opérations de minage». L'absence d'une *quelconque* obligation [“*any* obligation”] plausible au titre de la convention d'aider à déminer ou de cesser de miner n'est donc pas une affaire de circonstance factuelle et de preuve, mais une considération juridique qui tient au texte de la convention bien sûr, mais aussi aux caractéristiques propres des mines terrestres dont le déclenchement n'est pas fonction de l'un des facteurs prohibés par la convention.

16. Et pourtant, l'Azerbaïdjan vous demande à nouveau d'ordonner à l'Arménie de lui livrer tous renseignements sur les mines qu'elle aurait prétendument posées et de ne plus en poser dans les zones dont l'Arménie est par ailleurs absente<sup>82</sup>. Selon l'Azerbaïdjan, il suffirait d'établir que ses ressortissants sont potentiellement affectés par des mines trouvées dans les territoires qu'il contrôle désormais pour transformer la convention en instrument de déminage.

17. Non seulement les affirmations factuelles de l'Azerbaïdjan sont totalement erronées, ainsi que M. Murphy l'a démontré, mais la nouvelle prétention juridique du demandeur procède d'une lecture erronée de l'ordonnance par laquelle vous aviez très justement décliné, pour des raisons non seulement factuelles mais aussi juridiques, de faire droit à sa demande. Alors que la convention ne

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<sup>81</sup> CR 2023/3, p. 27-28, par. 4. (Amirfar).

<sup>82</sup> Demande de mesures provisoires de l'Azerbaïdjan (3 janvier 2023), par. 43 a).

contient aucune obligation plausible de déminer ou de ne pas poser des mines, l'Azerbaïdjan vous demande d'ordonner un tel comportement.

## **II. Les mesures sollicitées par l'Azerbaïdjan présentent de tels défauts qu'elles ne peuvent être ordonnées**

18. Qui plus est — et j'en viens à mon deuxième point — les mesures sollicitées par l'Azerbaïdjan présentent de tels défauts qu'elles ne peuvent être ordonnées.

19. Tout d'abord, ces mesures sont formulées dans des termes particulièrement problématiques. En effet, l'Azerbaïdjan vous demande en premier lieu d'ordonner à l'Arménie de «prendre immédiatement toutes les mesures nécessaires pour permettre à l'Azerbaïdjan d'entreprendre le déminage rapide, sûr et efficace»<sup>83</sup> des zones où il entend établir des Azerbaïdjanaïes. Ce que cette obligation recouvre précisément n'est absolument pas clair, même si, de manière non exhaustive, l'Azerbaïdjan indique un peu plus loin qu'il s'agirait «notamment [de] fournir des informations sur l'emplacement, la quantité, le type et les caractéristiques des mines terrestres, des pièges et de tout autre engin explosif dans ces zones»<sup>84</sup>.

20. Madame la présidente, Mesdames et Messieurs les juges, vous l'avez déjà entendu, mais je me vois contraint de le répéter : l'Arménie a livré tous les plans relatifs à l'emplacement de mines concernant les territoires dont elle a été expulsée à la suite de la guerre de 2020 et elle n'en a plus d'autre. Par ailleurs, ainsi que M. Murphy l'a déjà souligné, comment voulez-vous que l'Arménie puisse savoir, alors qu'elle n'est plus présente dans ces zones, où seraient dissimulés d'éventuels pièges qui auraient pu être placés par des civils chassés de chez eux alors que l'Arménie n'a rien à voir avec une telle activité ? Enfin, de la même manière que lors de sa précédente demande de mesures conservatoires — l'Azerbaïdjan vous avait alors demandé qu'il puisse être en mesure d'exiger de l'Arménie qu'elle récolte, vous vous en souvenez, des preuves pénales sur sa dénonciation<sup>85</sup> —, l'Azerbaïdjan s'obstine à vouloir obtenir de la Cour une mesure conservatoire lui permettant, selon son bon vouloir, d'exiger ceci ou cela de l'Arménie. Encore une fois, vous avez entendu Mme Boisson de Chazournes ce matin : l'Azerbaïdjan vous présente des mesures

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<sup>83</sup> Demande de mesures provisoires de l'Azerbaïdjan (3 janvier 2023), par. 43 a).

<sup>84</sup> *Ibid.*

<sup>85</sup> CR 2021/27, p. 23, par. 8 (d'Argent).

conservatoires, a-t-elle dit, afin de «bénéficier[] ... de la coopération de l'Arménie»<sup>86</sup>. Mais de quelle coopération s'agit-il et comment l'Azerbaïdjan va-t-il en bénéficier ? L'Azerbaïdjan voudrait que vous ordonniez à l'Arménie de «prendre immédiatement toutes les mesures nécessaires pour permettre à l'Azerbaïdjan d'entreprendre le déminage». Qu'est-ce à dire précisément ? Ce que cela signifie sans doute dans l'esprit de l'Azerbaïdjan, c'est qu'il devrait être en droit d'exiger un peu tout et n'importe quoi de l'Arménie dès l'instant où le comportement attendu serait, selon lui, nécessaire à ses opérations de déminage. Bref, l'Azerbaïdjan vous invite à ordonner une mesure conservatoire visant prétendument à établir une «coopération» entre les Parties, mais qui, en réalité, ne manquerait pas de se transformer assez rapidement en un véritable champ de mines juridique entre elles.

21. Par ailleurs, la première mesure sollicitée par l'Azerbaïdjan n'est pas conservatoire ; elle cherche en réalité à obtenir de manière anticipée ce que l'Azerbaïdjan sollicite sur le fond.

22. L'une des demandes de réparation de l'Azerbaïdjan formulée dans son mémoire récemment déposé est que la Cour juge et déclare que «l'Arménie est dans l'obligation ... de permettre, faciliter et ne pas entraver ... le retour des personnes déplacées azerbaïdjanaises dans leurs foyers dans les territoires anciennement occupés»<sup>87</sup>. Vous constaterez par ailleurs que la première mesure provisoire sollicitée a également pour but «de permettre aux personnes déplacées azerbaïdjanaises de retourner dans leurs foyers»<sup>88</sup>. Cette mesure cherche donc à anticiper la condamnation sollicitée sur le fond.

23. De même, dans la partie de son mémoire consacrée aux remèdes qu'il sollicite, l'Azerbaïdjan soutient que l'Arménie aurait «porté atteinte au droit des Azerbaïdjanais déplacés de rentrer chez eux dans les territoires libérés, notamment en ne fournissant pas d'informations exactes ... et en posant de nouvelles mines terrestres»<sup>89</sup>. En d'autres mots, le grief avancé par l'Azerbaïdjan sur le fond est également ce qui justifie et constitue sa première mesure sollicitée.

24. Ainsi, l'Azerbaïdjan ne cherche pas à protéger des droits plausibles dans l'attente de votre arrêt sur le fond, il cherche plutôt à anticiper le résultat qu'il attend de ce même arrêt. Toutefois, et

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<sup>86</sup> CR 2023/3, p. 54, par. 8 (Boisson de Chazournes).

<sup>87</sup> Mémoire de l'Azerbaïdjan (23 janvier 2023), par. 591 7).

<sup>88</sup> Demande de mesures provisoires de l'Azerbaïdjan (3 janvier 2023), par. 43 a).

<sup>89</sup> Mémoire de l'Azerbaïdjan (23 janvier 2023), par. 574. Voir demande de mesures provisoires de l'Azerbaïdjan (3 janvier 2023), par. 43 a)- b).

comme cela est bien établi, l'objet d'une demande en indication de mesures conservatoires n'est pas évidemment «d'obtenir un jugement, provisionnel ou définitif, sur le fond des réclamations mais de protéger *pendente lite* la substance des droits invoqués»<sup>90</sup>.

25. J'ajouterai, Mesdames et Messieurs les juges, et c'est plus troublant, qu'il est question, selon les mots de l'agent de l'Azerbaïdjan, du retour des «Azerbaijanis as an ethnic-origin or national-origin group, and not in relation to nationality or citizenship»<sup>91</sup>, car ce seraient eux, en cette qualité, qui en seraient empêchés par les mines et les pièges prétendument plantés par l'Arménie ou avec son aide. La mesure sollicitée vise donc à privilégier le retour des seules personnes d'origine nationale ou ethnique azerbaïdjanaise, dévoilant à nouveau les préférences discriminatoires du gouvernement de Bakou.

26. La deuxième mesure sollicitée par l'Azerbaïdjan n'est pas moins problématique. En effet, l'Azerbaïdjan vous demande d'ordonner à l'Arménie de

«cesser immédiatement et s'abstenir de tout nouvel effort visant à poser, à parrainer ou à soutenir la pose de mines terrestres ou de pièges dans les zones où retourneront les civils azerbaïdjanaïses sur le territoire de l'Azerbaïdjan, y compris mais pas uniquement l'utilisation du corridor de Lachin à cette fin»<sup>92</sup>.

Cette mesure vous demande de prendre acte que les «zones où retourneront les civils azerbaïdjanaïses sur le territoire de l'Azerbaïdjan» sont celles que l'Azerbaïdjan lui-même désigne dès à présent, alors que cette question relève essentiellement de votre jugement éventuel sur le fond — la mesure reflète encore une fois la politique discriminatoire de l'Azerbaïdjan, selon lequel seuls les civils azerbaïdjanaïses de cette origine ethnique, et non des civils d'origine arménienne, sont appelés à vivre sur ce qu'il considère être son territoire.

27. De plus, qu'est-ce que cela veut dire précisément — et je cite la formule dans la langue anglaise — «in these areas to which Azerbaijani civilians will return in Azerbaijan's territory, including, but not limited to, the use of the Lachin Corridor»? Mon collègue M. Murphy a rappelé que, conformément à ce qu'elle a déclaré en 2021, l'Arménie ne plante aucune mine hors de son

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<sup>90</sup> *Personnel diplomatique et consulaire des Etats-Unis à Téhéran (Etats-Unis d'Amérique c. Iran), mesures conservatoires, ordonnance du 15 décembre 1979, C.I.J. Recueil 1979*, p. 16, par. 28. Voir aussi K. Oellers-Frahm & A. Zimmermann, «Article 41», in A. Zimmermann & C. J. Tams (eds.), *The Statute of International Court of Justice: A Commentary* (Troisième édition), p. 1149-1150, par. 26.

<sup>91</sup> CR 2023/3, p. 13, par. 3 (Mammadov).

<sup>92</sup> Demande de mesures provisoires de l'Azerbaïdjan (3 janvier 2023), par. 43 b).

territoire et ne parraine pas une telle activité. La demande cherche donc à interdire une activité inexistante. Toutefois, comme l'Azerbaïdjan considère que ce qu'il reste du Nagorno-Karabakh habité par des Arméniens est son territoire, mais que les Arméniens n'y sont pas les bienvenus, n'y ont pas leur place, la deuxième mesure sollicitée par l'Azerbaïdjan est, vous le voyez, extrêmement problématique. Elle vise en réalité à obtenir dès à présent de la Cour une garantie juridique afin de faciliter son objectif politique et militaire ultime contraire à la convention, à savoir la conquête de ce qu'il reste du Nagorno-Karabakh arménien.

28. Madame la présidente, Mesdames et Messieurs les juges, les mesures sollicitées par l'Azerbaïdjan sont donc profondément problématiques, tant au regard de leur formulation que de leur objet substantiel, et elles sont fondées sur une compréhension de la convention que votre ordonnance de 2021 a rejetée. Pour l'ensemble des raisons qui vous ont été exposées cet après-midi, elles doivent donc être rejetées.

29. Madame la présidente, conformément à l'instruction de procédure XI que vous avez rappelée à l'entame des audiences, je ne répondrai pas — je n'en ai d'ailleurs pas le temps — aux arguments longuement présentés, images à l'appui, par nos contradicteurs qui étaient entièrement relatifs au fond de cette affaire. En consacrant une partie considérable de l'audience de ce matin au fond de l'affaire, l'Azerbaïdjan vous a en réalité indiqué qu'il ne préférerait pas trop s'attarder en détail sur son dossier de prétendues nouvelles preuves. Lequel, comme l'a montré chirurgicalement M. Murphy, est aussi indigent aujourd'hui qu'il ne l'était en 2021. Par ailleurs, en consacrant autant de temps au fond de l'affaire, l'Azerbaïdjan a confirmé que sa demande vise en réalité à anticiper votre éventuel jugement sur le fond.

30. Je remercie la Cour pour sa bienveillante attention ; puis-je vous demander, Madame la présidente, de bien vouloir appeler à la barre l'agent de l'Arménie pour qu'il présente les conclusions finales de son pays ? Je vous remercie.

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

Mr. KIRAKOSYAN:

**FINAL SUBMISSIONS**

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

2. As our learned counsel have amply demonstrated, Azerbaijan's requests for provisional measures do not represent sincere, let alone actionable, claims under the CERD. They are engineered to create a false parity.

3. I will now read the final submissions of the Republic of Armenia: "On the basis of its oral pleadings, Armenia respectfully requests the Court to reject Azerbaijan's request for the indication of provisional measures in full."

4. Madam President, I thank the Court for hosting our entire delegation here at the Peace Palace for the proceedings in both cases. We genuinely appreciate the Court's willingness to sit for two successive provisional measures hearings.

5. I would also like to express my gratitude to the Registry for its meticulousness and expediency, as well as to the interpreters and other Court personnel, whose efforts contributed to the seamlessness of these hearings.

6. Madam President, distinguished judges of the Court, thank you for your kind attention. This concludes Armenia's presentation.

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 the present series of sittings. In accordance with the usual practice, I shall request both Agents to remain at the Court's disposal to provide any additional information the Court may require. The Court will render its Order on the Request for the indication of provisional measures submitted by Azerbaijan as soon as possible. The Agents of the Parties will be advised in due course as to the date on which the Court will deliver the Order at a public sitting. Since the Court has no other business before it today, the sitting is declared closed.

*The Court rose at 6.05 p.m.*

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