

Corrigé  
Corrected

CR 2021/22

**International Court  
of Justice**

**Cour internationale  
de Justice**

**THE HAGUE**

**LA HAYE**

**YEAR 2021**

*Public sitting*

*held on Friday 15 October 2021, at 10 a.m., at the Peace Palace,*

*President Donoghue presiding,*

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

---

**VERBATIM RECORD**

---

**ANNÉE 2021**

*Audience publique*

*tenue le vendredi 15 octobre 2021, à 10 heures, au Palais de la Paix,*

*sous la présidence de Mme Donoghue, présidente,*

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

---

**COMPTE RENDU**

---

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

---

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

---

***The Government of Armenia is represented by:***

H.E. Mr. Yeghishe Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights,

*as Agent;*

Mr. Sean Murphy, Manatt/Ahn Professor of International Law, The George Washington University Law School, member of the International Law Commission, associate member of the Institut de droit international, member of the Bar of Maryland,

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

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

Mr. Lawrence H. Martin, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and of the Commonwealth of Massachusetts,

Mr. Constantinos Salonidis, Attorney at Law, Foley Hoag LLP, member of the Bars of the State of New York and of Greece,

*as Counsel and Advocates;*

Ms Diana Tsutieva, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia, the States of New Jersey and New York, and Paris,

Mr. Joseph Klingler, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and of the State of New York,

Mr. Peter Tzeng, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and of the State of New York,

Ms Natalia Tchoukleva, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and of the State of New York,

Ms Yasmin Al-Ameen, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

Ms Nour Nicolas, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

*as Counsel;*

H.E. Mr. Tigran Balayan, Ambassador of the Republic of Armenia to the Kingdom of the Netherlands,

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

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

***Le Gouvernement de l'Arménie est représenté par :***

S. Exc. M. Yeghishe Kirakosyan, représentant de la République d'Arménie auprès de la Cour européenne des droits de l'homme,

*comme agent ;*

M. Sean Murphy, professeur de droit international titulaire de la chaire Manatt/Ahn à la faculté de droit de l'Université George Washington, membre de la Commission du droit international, membre associé de l'Institut de droit international, avocat inscrit au barreau du Maryland,

M. Robert Kolb, professeur de droit international public à l'Université de Genève,

M. Pierre d'Argent, professeur titulaire à l'Université catholique de Louvain, membre de l'Institut de droit international, président de la Société européenne de droit international, cabinet Foley Hoag LLP, membre du barreau de Bruxelles,

M. Lawrence H. Martin, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et du Commonwealth du Massachusetts,

M. Constantinos Salonidis, avocat au cabinet Foley Hoag LLP, membre des barreaux de l'Etat de New York et de Grèce,

*comme conseils et avocats ;*

Mme Diana Tsutieva, avocate au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia, de l'Etat du New Jersey, de l'Etat de New York et de Paris,

M. Joseph Klingler, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'Etat de New York,

M. Peter Tzeng, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'Etat de New York,

Mme Natalia Tchoukleva, avocate au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'Etat de New York,

Mme Yasmin Al-Ameen, avocate au cabinet Foley Hoag LLP, membre du barreau de l'Etat de New York,

Mme Nour Nicolas, avocate au cabinet Foley Hoag LLP, membre du barreau de l'Etat de New York,

*comme conseils ;*

S. Exc. M. Tigran Balayan, ambassadeur de la République d'Arménie auprès du Royaume des Pays-Bas,

S. Exc. M. Andranik Hovhannisyan, ambassadeur, représentant permanent de la République d'Arménie auprès de l'Organisation des Nations Unies et des autres organisations internationales à Genève,

M. Liparit Drmeyan, chef du bureau du représentant de la République d'Arménie auprès de la Cour européenne des droits de l'homme, cabinet du premier ministre de la République d'Arménie,

Ms Kristine Khanazadyan, Head of the Department for Representation of the Interests of the Republic of Armenia before International Courts and Tribunals, Office of the Prime Minister of the Republic of Armenia,

Ms Marta Ayvazyan, Advisor to the Minister for Foreign Affairs of the Republic of Armenia,

Mr. Igor Mirzakhanyan, Legal Expert at the Office of the Representative of the Republic of Armenia before the European Court of Human Rights, Office of the Prime Minister of the Republic of Armenia,

Mr. Aram Aramyan, Deputy Head of Department of International Legal Cooperation, Ministry of Justice of the Republic of Armenia,

Mr. Levon Gevorgyan, Director of the “International Law and Policy Centre” Foundation, member of the Bar of Armenia,

Ms Zoya Stepanyan, First Secretary, Permanent Mission of Armenia to the United Nations Office and other international organizations in Geneva,

Ms Sheila Paylan, Senior Research Fellow at the “International Law and Policy Center” Foundation, Expert in International Criminal and Human Rights Law,

Mr. Karnig Kerkonian, Attorney at Law, Kerkonian Dajani LLP, Expert in Public International Law, member of the Bar of Illinois,

*as Advisers.*

***The Government of Azerbaijan is represented by:***

H.E. Mr. Elnur Mammadov, Deputy Minister for Foreign Affairs, Republic of Azerbaijan,

*as Agent;*

Mr. Vaughan Lowe, QC, Emeritus Chichele Professor of Public International Law, University of Oxford, member of the Institut de droit international, member of the Bar of England and Wales,

Lord Peter Goldsmith, QC, Debevoise & Plimpton LLP, member of the Bar of England and Wales,

Ms Catherine Amirfar, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Ms Laurence Boisson de Chazournes, Professor of International Law and International Organization at the University of Geneva, member of the Institut de droit international,

Mr. Donald Francis Donovan, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

*as Counsel and Advocates;*

H.E. Mr. Fikrat Akhundov, Ambassador of the Republic of Azerbaijan to the Kingdom of the Netherlands,

Mme Kristine Khanazadyan, directrice du département chargé de la représentation des intérêts de la République d'Arménie devant les juridictions internationales, cabinet du premier ministre de la République d'Arménie,

Mme Marta Ayvazyan, conseillère auprès du ministre des affaires étrangères de la République d'Arménie,

M. Igor Mirzakhanyan, expert juridique rattaché au bureau du représentant de la République d'Arménie auprès de la Cour européenne des droits de l'homme, cabinet du premier ministre de la République d'Arménie,

M. Aram Aramyan, directeur adjoint du département de la coopération juridique internationale, ministère de la justice de la République d'Arménie,

M. Levon Gevorgyan, directeur de la fondation International Law and Policy Center, avocat inscrit au barreau d'Arménie,

Mme Zoya Stepanyan, première secrétaire, mission permanente de l'Arménie auprès de l'Organisation des Nations Unies et des autres organisations internationales à Genève,

Mme Sheila Paylan, chargée de recherche principale à la fondation International Law and Policy Center, experte en droit pénal international et en droit international des droits de l'homme,

M. Karnig Kerkonian, avocat au cabinet Kerkonian Dajani LLP, expert en droit international public, membre du barreau de l'Illinois,

*comme conseillers.*

***Le Gouvernement de l'Azerbaïdjan est représenté par :***

S. Exc. M. Elnur Mammadov, ministre adjoint aux affaires étrangères de la République d'Azerbaïdjan,

*comme agent ;*

M. Vaughan Lowe, QC, professeur émérite de droit international public (chaire Chichele) à l'Université d'Oxford, membre de l'Institut de droit international, membre du barreau d'Angleterre et du pays de Galles,

Lord Peter Goldsmith, QC, cabinet Debevoise & Plimpton LLP, membre du barreau d'Angleterre et du pays de Galles,

Mme Catherine Amirfar, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

Mme Laurence Boisson de Chazournes, professeure au département de droit international et organisation internationale de l'Université de Genève, membre de l'Institut de droit international,

M. Donald Francis Donovan, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

*comme conseils et avocats ;*

S. Exc. M. Fikrat Akhundov, ambassadeur de la République d'Azerbaïdjan auprès du Royaume des Pays-Bas,

H.E. Mr. Vagif Sadigov, Ambassador of the Republic of Azerbaijan to the Kingdom of Belgium,  
Permanent Representative of the Republic of Azerbaijan to the European Union,

H.E. Mr. Rovshan Sadigbayli, Ambassador of the Republic of Azerbaijan to the Republic of Austria,  
Permanent Representative of the Republic of Azerbaijan to the Organization for Security and  
Co-operation in Europe and other international organizations in Vienna,

H.E. Mr. Kamil Khasiyev, Ambassador of the Republic of Azerbaijan to the Republic of Serbia,

Mr. Tofiq Musayev, Deputy Permanent Representative, Permanent Mission of the Republic of  
Azerbaijan to the United Nations,

Mr. Ismayil Asadov, Counselor, Embassy of Azerbaijan in the Russian Federation,

Mr. Chingiz Asgarov, Agent of the Republic of Azerbaijan before the European Court of Human  
Rights,

Mr. Erkin Alikhanov, Director of the International Legal Cooperation Department, Prosecutor  
General's Office of the Republic of Azerbaijan,

Ms Aygun Bashirova, Chief of the Administrative and Military Standards Acts Office of the General  
Department of Legislation, Ministry of Justice of the Republic of Azerbaijan,

*as Advisers;*

Ms Natalie Reid, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Mr. Conway Blake, Debevoise & Plimpton LLP, solicitor advocate of the Senior Courts of England  
and Wales, and member of the Bar of the Eastern Caribbean Supreme Court,

Ms Elizabeth Nielsen, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Ms Ashika Singh, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

Mr. Justin Rassi, Debevoise & Plimpton LLP, member of the Bar of the State of New York and  
lawyer of the Supreme Court of New South Wales,

Ms Rhianna Hoover, Debevoise & Plimpton LLP, member of the Bar of the State of New York,

***Mr. Aditya Laddha, PhD candidate and assistant, University of Geneva,***

***Mr. Luke Tattersall, Essex Court Chambers, member of the Bar of England and Wales,***

*as Counsel;*

Ms Mary Grace McEvoy, Debevoise & Plimpton LLP,

Mr. Nakaba Egawa, Debevoise & Plimpton LLP,

Mr. Badir Bayramov, Ministry of Foreign Affairs,

*as Assistants.*



S. Exc. M. Vagif Sadigov, ambassadeur de la République d'Azerbaïdjan auprès du Royaume de Belgique, représentant permanent de la République d'Azerbaïdjan auprès de l'Union européenne,

S. Exc. M. Rovshan Sadigbayli, ambassadeur de la République d'Azerbaïdjan auprès de la République d'Autriche, représentant permanent de la République d'Azerbaïdjan auprès de l'Organisation pour la sécurité et la coopération en Europe et d'autres organisations internationales sises à Vienne,

S. Exc. M. Kamil Khasiyev, ambassadeur de la République d'Azerbaïdjan auprès de la République de Serbie,

M. Tofiq Musayev, représentant permanent adjoint de la République d'Azerbaïdjan auprès de l'Organisation des Nations Unies,

M. Ismayil Asadov, conseiller à l'ambassade d'Azerbaïdjan en Fédération de Russie,

M. Chingiz Asgarov, agent de la République d'Azerbaïdjan devant la Cour européenne des droits de l'homme,

M. Erkin Alikhanov, directeur du département de coopération juridique internationale du parquet général de la République d'Azerbaïdjan,

Mme Aygun Bashirova, cheffe du bureau des normes administratives et militaires du département général de la législation au ministère de la justice de la République d'Azerbaïdjan,

*comme conseillers ;*

Mme Natalie Reid, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

M. Conway Blake, cabinet Debevoise & Plimpton LLP, *solicitor advocate* près les juridictions supérieures d'Angleterre et du pays de Galles, membre du barreau de la Cour suprême de la Caraïbe orientale,

Mme Elizabeth Nielsen, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

Mme Ashika Singh, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

M. Justin Rassi, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York et avocat près la Cour suprême de la Nouvelle-Galles du Sud,

Mme Rhianna Hoover, cabinet Debevoise & Plimpton LLP, membre du barreau de l'Etat de New York,

***M. Aditya Laddha, doctorant et assistant à l'Université de Genève,***

***M. Luke Tattersall, cabinet Essex Court Chambers, membre du barreau d'Angleterre et du pays de Galles,***

*comme conseils ;*

Mme Mary Grace McEvoy, cabinet Debevoise & Plimpton LLP,

M. Nakaba Egawa, cabinet Debevoise & Plimpton LLP,

M. Badir Bayramov, ministère des affaires étrangères,

*comme assistants.*

The PRESIDENT: Please be seated. The sitting is open. For reasons duly made known to me, Judge Keith is unable to join us for this morning's sitting. The Court meets this morning to hear the second round of oral observations of Armenia on its Request for the indication of provisional measures. I shall now give the floor to Professor Robert Kolb. You have the floor, Professor.

M. KOLB :

### **COMPÉTENCE *PRIMA FACIE***

1. Madame la présidente, Mesdames et Messieurs de la Cour, je ressens du plaisir à vous annoncer qu'il sera, une fois de plus, possible d'être bref et concentré. Je me bornerai à répondre aux aspects qu'a agités mon contradicteur. Il ne semble pas nécessaire de revenir sur d'autres points. Ils sont désormais manifestement acquis et acceptés.

2. L'argument principal sur lequel s'est fondé l'Azerbaïdjan consiste à affirmer que la négociation n'était pas vouée à l'échec. Que l'Arménie l'a interrompue brutalement avec l'arrière-pensée de se frayer un chemin prématuré à la Cour.

3. Mon contradicteur n'a pas mis beaucoup de conviction dans sa présentation sur ce point. Il en est ainsi peut-être parce que l'Azerbaïdjan se prépare à soutenir le contraire dans quelques jours, lorsque ce sera le tour de l'affaire en miroir qu'il a promue. Vous verrez : dans quelques jours, l'échec des négociations sera là et bien là.

4. Je ne reviendrai pas sur tous les éléments de fait que j'ai mentionnés hier. Ils établissent que les Parties n'arrivaient pas à s'entendre parce que leurs relations ont été — qui s'en étonnera ! — très mauvaises. Devant cette toile de fond, les propositions réciproques n'ont pas trouvé de terrain fertile. Mesdames et Messieurs les juges, vous avez entendu les Parties devant votre prétoire. Vous avez entendu vibrer et miroiter la discorde et l'acrimonie. En quelque sorte, la mise en berne des négociations suintait de partout. Et on voudrait vous faire croire qu'elles pouvaient encore prospérer ?

5. J'attire votre attention sur le fait qu'un Etat peut souverainement estimer que le point de saturation des négociations est atteint. Qu'il ne peut plus s'attendre à recevoir ce qu'il cherche en parcourant la voie des pourparlers. En pure théorie, certes, il existerait une chance d'aboutir à une entente à travers des abouchements. Mais cela n'a pas d'incidence, n'a pas de corps, n'a pas de

consistance. Car une telle possibilité existe toujours dans l'abstrait. La compétence de la Cour s'en trouverait repoussée *sine die*, sans date.

6. Le critère *Mavrommatis* que j'ai fugacement évoqué hier, le *non volumus vel non possumus*, renvoie essentiellement à l'appréciation d'une partie. Celle-ci ne peut pas renoncer à négocier. Or, après l'écoulement d'une année, elle peut légitimement estimer que les perspectives de succès sont si minces qu'elle préfère s'orienter dans une autre voie. C'est d'autant plus vrai quand ce ressenti est corroboré par des éléments objectifs. C'est le cas ici. Il a été négocié pied à pied, j'allais dire œil pour œil et dent pour dent. Faut-il demander aux Parties d'aller plus loin ? Mais jusqu'où alors ? Et du point de vue temporel, qu'exiger ? Encore un an ? Encore deux ans ? Encore trois ans ? Je vois mal à quoi cela servirait — sauf à la procrastination et au pourrissement du différend. Nul n'a à y gagner. Et certainement pas la Cour.

7. Selon le précédent *Mavrommatis*, une négociation n'a pas besoin d'être longue et articulée, du moment qu'elle se heurte à un mur de non-entente<sup>1</sup>. Dans l'affaire *Qatar c. Emirats arabes unis*, la Cour a estimé qu'un refus d'une invitation à négocier suffisait à établir l'échec de cette condition<sup>2</sup>.

8. Il n'y a pas de sens de demander aux Parties de continuer à discuter dans des conditions d'aspérité et d'âpreté, de manque de confiance et de tension nerveuse. Les Parties sont littéralement au pied du mur. Elles n'arrivent plus à avancer. Elles ont besoin d'aide et d'assistance pour briser le carcan qui les étreint.

9. Quelle pourrait être la valeur d'une affirmation selon laquelle l'échec des négociations n'est pas prouvé ? Ce constat renverrait les Parties vers l'espace non balisé dans lequel elles se sont égarées et défiées. Sans doute la Cour ne voudra-t-elle pas rester indifférente au risque d'une telle paralysie avec son lot d'évolutions funestes. La responsabilité de la haute juridiction en tant qu'organe judiciaire principal des Nations Unies est de contribuer à désamorcer ce grave différend.

10. Je répondrai désormais à certains aspects qu'a soulevés le professeur Lowe.

---

<sup>1</sup> *Concessions Mavrommatis en Palestine, arrêt n° 2, 1924, C.P.J.I. série A n° 2, p. 13.*

<sup>2</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 23 juillet 2018, C.I.J. Recueil 2018 (II), p. 420, par. 38.*

11. Selon lui, l'Arménie aurait exigé que la note verbale du 2 septembre 2021 ne soit pas rendue publique dans la présente procédure<sup>3</sup>. C'est trompeur. L'Azerbaïdjan, et non l'Arménie, a poussé à la confidentialité de tous les documents de négociation<sup>4</sup>.

12. Mon honorable contradicteur a également souligné que l'annexe 32 de l'Azerbaïdjan, contenant ses contre-propositions, était un document que l'Arménie n'a pas soumis à la Cour<sup>5</sup>. Or cette annexe est une lettre du 9 octobre 2021<sup>6</sup>. Elle a été envoyée par un ambassadeur de l'Azerbaïdjan à son agent. L'Arménie l'a reçue il y a trois jours. Dès lors, il ne lui était pas possible de soumettre ce document à la Cour. De surcroît, si l'Arménie avait présenté les contre-propositions de l'Azerbaïdjan, elle aurait violé les modalités procédurales agréées sur la confidentialité<sup>7</sup>.

---

<sup>3</sup> CR 2021/21, p. 17, par. 8 (Lowe).

<sup>4</sup> Delegation of the Republic of Armenia, *Position of the Delegation of the Republic of Armenia Concerning the Issues Discussed during the Meetings of 2-3 of March 2021* (3 March 2021) (Arménie, annexe 25) ; Delegation of the Republic of Azerbaijan, *Response of the Delegation of the Republic of Azerbaijan Concerning the Issues Discussed during the Meetings of 2-3 March 2021* (23 March 2021) (Arménie, annexe 26) ; Delegation of the Republic of Armenia, *Reply of the Delegation of the Republic of Armenia Concerning the Issues Discussed during the Meetings of 2-3 March 2021* (30 March 2021) (Arménie, annexe 27) ; Delegation of the Republic of Azerbaijan, *Response of the Delegation of the Republic of Azerbaijan Concerning the Issues Discussed during the Meetings of 2-3 March 2021* (2 April 2021) (Arménie, annexe 28) ; Delegation of the Republic of Armenia, *Reply of the Delegation of the Republic of Armenia Concerning the 6-7 April Meeting and the Issues Discussed during the Meetings of 2-3 March 2021* (5 April 2021) (Arménie, annexe 30) ; Delegation of the Republic of Azerbaijan, *Draft Procedural Modalities* (6 April 2021) (Arménie, annexe 32) ; Delegation of the Republic of Armenia, *Reply of the Delegation of Armenia Concerning the Procedural Modalities and Upcoming Meetings* (7 April 2021) (Arménie, annexe 33) ; Delegation of the Republic of Armenia, *Reply of the Delegation of Armenia Concerning the Procedural Modalities and Upcoming Meetings* (9 April 2021) (Arménie, annexe 34) ; Delegation of the Republic of Azerbaijan, *Response of the Delegation of the Republic of Azerbaijan Concerning the Procedural Modalities* (15 April 2021) (Arménie, annexe 36) ; Delegation of the Republic of Armenia, *Reply of the Delegation of the Republic of Armenia to the Republic of Azerbaijan's Response Concerning Procedural Modalities* (16 April 2021) (Arménie, annexe 37) ; Delegation of the Republic of Azerbaijan, *Response of the Delegation of the Republic of Azerbaijan to the Republic of Armenia's 16 April 2021 Reply Concerning Procedural Modalities* (19 April 2021) (Arménie, annexe 38) ; Delegation of the Republic of Armenia, *Reply of the Delegation of the Republic of Armenia Concerning Azerbaijan's Proposal on Procedural Modalities of 19 April 2021* (20 April 2021) (Arménie, annexe 39) ; Delegation of the Republic of Azerbaijan, *Response of the Delegation of the Republic of Azerbaijan to the Republic of Armenia's 20 April 2021 Reply Concerning Procedural Modalities* (23 April 2021) (Arménie, annexe 40) ; Delegation of the Republic of Armenia, *Reply of the Republic of Armenia Concerning the Republic of Azerbaijan's Proposal on Procedural Modalities of 23 April 2021* (26 April 2021) (Arménie, annexe 41) ; Delegation of the Republic of Azerbaijan, *Response of the Delegation of the Republic of Azerbaijan Concerning the Republic of Armenia's Reply of 26 April 2021* (29 April 2021) (Arménie, annexe 42) ; Delegation of the Republic of Armenia, *Reply of the Republic of Armenia to the Republic of Azerbaijan's Letter of 29 April 2021* (30 April 2021) (Arménie, annexe 43) ; *Note Verbale* from the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva to the Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva, No. 2203/0732/2020 (3 May 2021) (Arménie, annexe 44) ; *Note Verbale* from the Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva to the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva, No. 0181/27/21/25 (3 May 2021) (Arménie, annexe 45).

<sup>5</sup> CR 2021/21, p. 17, par. 10 (Lowe).

<sup>6</sup> Lettre de Vaqif Sadiqov à Elnur Mammadov (9 octobre 2021) (Azerbaïdjan, annexe 32).

<sup>7</sup> Voir *Note Verbale* from the Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva to the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva, No. 0181/27/21/25 (3 May 2021) (Arménie, annexe 45).

13. Notre contradicteur demande : «[H]as the position of Azerbaijan in the negotiations remained rigid and inflexible between, for example, 2020 ... and Azerbaijan's proposals of 30-31 August 2021 ... ?»<sup>8</sup> La réponse est affirmative. Comme je l'ai expliqué hier, l'Azerbaïdjan a accompagné ses contre-propositions d'un rejet de toutes les revendications de l'Arménie. Il a insisté, à travers la clause sans préjudice, que ses contre-propositions ne constituaient pas une reconnaissance de violation de la convention. Il a ainsi rendu impossible le règlement du différend.

14. Notre contradicteur poursuit : «[D]id Azerbaijan's detailed proposals address matters that Armenia is now arguing before this Court are matters that require Court intervention as a matter of extreme urgency ?»<sup>9</sup> La réponse est négative. L'Azerbaïdjan a refusé de reconnaître tout acte de violation de la convention. Or, alors que l'Azerbaïdjan prétendait volublement négocier de bonne foi, il se livrait en même temps à un discours de haine<sup>10</sup>, torturait des prisonniers de guerre<sup>11</sup> et détruisait le patrimoine culturel arménien<sup>12</sup>.

15. Encore, mon contradicteur s'interroge : quelle conclusion tirer du fait que l'Arménie a déposé sa requête deux semaines après que l'Azerbaïdjan a présenté ses contre-propositions, et moins de 24 heures après la réunion du 14 au 15 septembre<sup>13</sup> ? C'est que l'Arménie a passé ces deux semaines à examiner sérieusement ces contre-propositions. Elle les a finalement trouvées peu propices et a communiqué cette conclusion à l'Azerbaïdjan lors des réunions des 14 et 15 septembre. Suite à quoi, elle a saisi la Cour. L'Azerbaïdjan a également soumis sa requête à la Cour une semaine après la fin des négociations.

16. Enfin, mon contradicteur a souligné que l'Arménie a abruptement interrompu les négociations. Peut-être. Les raisons ont été indiquées. Or, cela revient simplement à dire que les négociations ont été arrêtées à un certain moment. Selon l'Arménie, les conditions de leur réussite n'étaient pas réunies. L'Azerbaïdjan vous demande d'apprécier à la place de l'Arménie si tel était le cas. Il vous demande de vous substituer à l'une des Parties dans l'appréciation de l'échec des

---

<sup>8</sup> CR 2021/21, p. 17-18, par. 12 *a*) (Lowe).

<sup>9</sup> CR 2021/21, p. 18, par. 12 *b*) (Lowe).

<sup>10</sup> CR 2021/20, p. 26-27, par. 12-13 (Salonidis).

<sup>11</sup> CR 2021/20, p. 35-36, par. 14-15 (Murphy).

<sup>12</sup> CR 2021/20, p. 48-50, par. 15-20 (d'Argent).

<sup>13</sup> CR 2021/21, p. 18, par. 12 *c*) (Lowe).

négociations. Est-ce le rôle de votre Cour ? Je ne le pense pas. L'échec des négociations est un fait que vous ne pouvez que constater.

17. Ces réflexions mettent fin à ma présentation. Je vous remercie de m'avoir prêté courtoise attention et je vous prie, Madame la présidente, d'appeler à la barre M<sup>e</sup> Salonidis.

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

Mr. SALONIDIS:

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

1. Madam President, distinguished Members of the Court, good morning. I will address arguments against Armenia's request relating to Azerbaijan's espousal of ethnic hatred. I will begin with three observations regarding the scope of Armenia's request.

2. The Military Trophies Park — and this is my first point — is *not* the only concrete object of Armenia's request<sup>14</sup>. The concrete object of Armenia's request is reflected in the terms of the request. Armenia respectfully requests that the Court order Azerbaijan to refrain from espousing hatred of people of Armenian ethnic or national origin<sup>15</sup>. The Military Trophies Park is *one* manifestation of this hatred. Official hate speech is another, and one that is even more pernicious, given Azerbaijani leaders' special responsibility under the CERD<sup>16</sup> to refrain from precisely the conduct that is at issue here.

3. Second, a provisional measure that reaffirms Azerbaijan's existing obligations *can* constitute an appropriate provisional measure. In fact, the Court has indicated such measures on

---

<sup>14</sup> CR 2021/21, p. 37, para. 2 (Boisson de Chazournes).

<sup>15</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Application Instituting Proceedings and Request for provisional measures of the Republic of Armenia, para. 131.

<sup>16</sup> Patrick Thornberry, "Article 4: Racist Hate Speech" in *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (Oxford University Press 2016), p. 296.

several occasions in the past<sup>17</sup>. This is perhaps why Azerbaijan failed to cite any authority yesterday for the contrary proposition<sup>18</sup>. And there is, of course, a world of difference between an Order of the Court, which creates a distinct legal obligation, and reaffirming an existing treaty obligation.

4. Third, your provisional measures would cause no irreparable prejudice to Azerbaijan. Whether there is an element of proportionality informing the exercise of your jurisdiction under Article 41 of the Statute is an interesting question, but it does not arise here. There is no reason for concern over the breadth of the measure<sup>19</sup>. It encompasses only racist hate speech. As long as Azerbaijan refrains from employing racist, dehumanizing rhetoric, such as “dogs”, “leeches”, “virus”, and the like, it can critique the Armenian Government as much as it wants.

5. I now turn to the merits of Armenia’s request. *And* I will limit myself to four points.

6. My first point relates to Azerbaijan’s attempt to defend President Aliyev’s hateful rhetoric. Professor Boisson de Chazournes suggested that we misinterpreted the words of the President<sup>20</sup>. Respectfully, we disagree, but we also understand how uncomfortable it must be defending such statements. Armenia trusts that the Court will read the statements and appreciate them for what they are — a number of statements cited in these proceedings can be found under tab 2 of your folders. There are of course many, many more from President Aliyev and other Azerbaijani authorities, but now is not the time to discuss them.

7. But I do want to say a few words about Professor Boisson de Chazournes’ argument that not only has President Aliyev not engaged in hateful rhetoric, but has in fact undertaken positive

---

<sup>17</sup> Compare *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 398, para. 149 (A) (1) and CERD Convention, Art. 2 (1) (a); compare *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 398, para. 149 (A) (2) and CERD Convention, Art. 2 (1) (b); compare *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 398, para. 149 (A) (3) and CERD Convention, Art. 5; compare *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, para. 149 (A) (4) and CERD Convention, Art. 2 (1) (a); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 24, para. 52 (A) (1); see *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Provisional Measures, Order of 15 December 1979*, p. 21, para. 47 (1) (A) (i); *ibid.*, para. 47 (1) (A) (ii); *ibid.*, para. 47 (1) (A) (iii).

<sup>18</sup> CR 2021/21, p. 19, para. 19 (Lowe); CR 2021/21, p. 40, para. 10 (Boisson de Chazournes); CR 2021/21, p. 55, para. 13 (Donovan).

<sup>19</sup> CR 2021/21, p. 55, para. 14 (Donovan).

<sup>20</sup> CR 2021/21, pp. 40-41, para. 11 (Boisson de Chazournes).

measures aimed at combating hate speech. By that, she means President Aliyev's *ex post facto* clarification that his use of the word "dogs" sought to characterize not the Armenian people, but solely its leaders during wartime<sup>21</sup>. But even if that were true, and even if President Aliyev's clarification could somehow amount to a positive measure within the terms of Article 4 of the CERD, the characterization still became a hate-filled rallying cry for ordinary Azerbaijanis<sup>22</sup>. More generally, the CERD Committee and numerous other independent organizations have all made perfectly clear just how prolific hate speech in public discourse in Azerbaijan is<sup>23</sup>. How else could the ethnic cleansing stamp — yesterday on your screens — and the hate park even come to be in the first place? And it is equally shocking that Azerbaijan thought it appropriate to seek the registration of that stamp with the Universal Postal Union and to publicize and promote the park as it did. In such circumstances, to focus on what President Aliyev did or did not mean on one particular occasion misses the broader point.

8. My second point relates to the purpose of the Military Trophies Park. Professor Boisson de Chazournes argued yesterday that the park was built to commemorate the lives lost in the long conflict between Armenia and Azerbaijan<sup>24</sup>. If that was the purpose, it is not stated in President Aliyev's speech at the inauguration of the park — I would kindly invite the Court to read the speech and see this for itself<sup>25</sup>. But I think it will also assist you to see what ordinary Azerbaijanis understood the purpose of the park to be. And for that, I will refer you to the document under tab 2 of the folder distributed to you yesterday, part of which compiles words of praise of the park on

---

<sup>21</sup> CR 2021/21, p. 41, para. 13 (Boisson de Chazournes).

<sup>22</sup> Bahruz Samadov, "Azerbaijan update: From COVID-19 to the New War in Nagorno-Karabakh", *The Heinrich Böll Stiftung* (10 December 2020), available at <https://www.boell.de/en/2020/12/10/azerbaijan-update-covid-19-new-war-nagorno-karabakh>.

<sup>23</sup> CERD Committee, *Concluding observations on the combined seventh to ninth periodic reports of Azerbaijan*, UN doc. CERD/C/AZE/CO/7-9 (10 June 2016), para. 27; Council of Europe, Advisory Committee on the Framework Convention for the protection of national minorities, *Third Opinion on Azerbaijan – adopted on 10 October 2012*, No. ACFC/OP/III(2012)005 (3 September 2013), available at <https://www.refworld.org/docid/5229cf374.html>, para. 50; European Commission against Racism and Intolerance, *ECRI Report on Azerbaijan (fifth monitoring cycle)* (7 June 2016), available at <https://rm.coe.int/fourth-report-on-azerbaijan/16808b5581>, pp. 9 and 17.

<sup>24</sup> CR 2021/21, p. 37, para. 3 (Boisson de Chazournes).

<sup>25</sup> President of the Republic of Azerbaijan, *Ilham Aliyev attended opening of Military Trophy Park in Baku* (12 April 2021), available at <https://en.president.az/articles/51067>.



social media<sup>26</sup>. One post hails the park in the following words: “The future generation must recognize the enemy of the nation and remember it with hatred.”<sup>27</sup>

9. My third point relates to Professor Boisson de Chazournes’ attempt to compare the park to museums in different parts of the world. But the Military Trophies Park does not purport to demonstrate and trace the evolution of weaponry<sup>28</sup>, or display military equipment originating from historically and geographically diverse conflicts<sup>29</sup>, as is the case with some of these museums. Nor does it represent in a neutral, balanced and objective way historical and military operations, as some other museums that were cited, in footnote, by Professor Boisson de Chazournes yesterday do<sup>30</sup>. On the contrary, the Military Trophies Park was created for the purpose of “evidenc[ing]” “[Armenia’s] defeat” in comparison to Azerbaijan’s “strength”<sup>31</sup>. Simply put *none* of these museums is anything like the Military Trophies Park. Nor do they proudly employ tour guides publicly spewing ethnic hate<sup>32</sup>.

10. It is thus plainly inadequate for Azerbaijan to come here and represent that it has removed the racist mannequins and helmets. And this is my *fourth* and final point. It bears noting that neither the Agent of Azerbaijan, nor Azerbaijan’s counsel, nor the Director of the Park in the confidential documents in the record *actually undertook* not to display the mannequins or helmets again. Much less did they undertake to *destroy* them, even though they do not serve any purpose other than spreading anti-Armenian hate.

---

<sup>26</sup> The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report: A Park of Killed Armenian Soldiers and Chained Prisoners of War Opened in Baku: A Museum of Human Sufferings and Promotion of Racism* (2021), available at <https://ombuds.am/images/files/96e6d55d169a784b6424e4d565b29dba.pdf>, pp. 25-38.

<sup>27</sup> The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report: A Park of Killed Armenian Soldiers and Chained Prisoners of War Opened in Baku: A Museum of Human Sufferings and Promotion of Racism* (2021), available at <https://ombuds.am/images/files/96e6d55d169a784b6424e4d565b29dba.pdf>, p. 34.

<sup>28</sup> The U.S. Army Ordnance Museum, available at <http://www.ordmusfound.org/the-us-army-ordnance-museum>.

<sup>29</sup> Canadian War Museum, *Exhibitions*, available at <https://www.warmuseum.ca/exhibitions/>; The Military Museum of The Chinese People’s Revolution, *About us*, available at <http://eng.jb.mil.cn/AU/>; The Military Museum of The Chinese People’s Revolution, *Exhibits*, available at <http://eng.jb.mil.cn/Exhibitions/PE/>; Auckland Museum, *War Memorial galleries*, available at <https://www.aucklandmuseum.com/war-memorial/galleries>; The U.S. Ordnance Museum, available at <http://www.ordmusfound.org/the-us-army-ordnance-museum/>.

<sup>30</sup> Musée National d’Histoire Militaire, *Battle of the Bulge*, available at <http://www.mnhm.net/ng/index.php/explore/battle-of-the-bulge>.

<sup>31</sup> President of the Republic of Azerbaijan Ilham Aliyev, *Ilham Aliyev attended opening of Military Trophy Park in Baku*, available at <https://en.president.az/articles/51067>.

<sup>32</sup> Colin Freeman, “Helmet windchimes and bullet casing in the gift shop: Inside Azerbaijan’s ‘horrible’ new war museum”, *MSN* (10 July 2021), available at <https://www.msn.com/engb/news/world/helmet-windchimes-and-bullet-casing-in-the-gift-shop-inside-azerbajans-horriblenew-war-museum/ar-AAM0IXU>.

11. In the absence of a *formal, public* undertaking from the Agent of Azerbaijan this afternoon, made with the intention that Azerbaijan “should become bound according to its terms”<sup>33</sup>. Azerbaijan’s representations cannot mitigate the imminent risk of irreparable harm created by its hate park. And even if Azerbaijan were to enter into such undertaking, we would submit that continued existence of the park as a whole is such that there would still be an imminent risk of irreparable harm in the present circumstances<sup>34</sup>.

12. For all the foregoing reasons, and the reasons set forth in our opening submissions, Armenia’s request that Azerbaijan be ordered to “refrain from espousing hatred of people of Armenian ethnic or national origin, including by closing or suspending the activities of the Military Trophies Park” satisfies the conditions for the exercise of your jurisdiction to indicate provisional measures. The rights of Armenia this request seeks to protect are plausible and in need of urgent protection.

13. Madam President, distinguished Members of the Court, thank you for your kind attention and I would like to ask you to call Professor Murphy to the podium.

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

Mr. MURPHY:

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

1. Thank you, Madam President. I will be replying to Azerbaijan’s arguments from yesterday with respect to the prisoners of war (POWs) and the civilian detainees of Armenian ethnic origin.

---

<sup>33</sup> *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 267, para. 43. See also *Frontier Dispute, Judgment (Burkina Faso/Republic of Mali)*, I.C.J. Reports 1986, pp. 573-574, paras. 39-40.

<sup>34</sup> *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014, p. 159, para. 48.

### **I. The detainees are prisoners of war or civilian internees under international humanitarian law**

2. In speaking of the 42 POWs yesterday, Lord Goldsmith rather cryptically said “[e]ven if [they were] prisoners of war”<sup>35</sup>, while at the same time never directly arguing that they are not POWs. He and other counsel for Azerbaijan, however, consistently referred to the POWs simply as “detainees”, suggesting a view that these individuals are not protected under the Third Geneva Convention.

3. I feel compelled to address the status of these individuals, as the issue is quite important. The initial two POWs indicated on the list that we have provided to the Court<sup>36</sup> were Armenian soldiers captured in October 2020. Thus, they were captured prior to the entry into force of the Trilateral Statement on 10 November. There is no basis to regard them as anything other than POWs.

4. The next 38 Armenian soldiers on the list were captured one month later, on 13 December. To the extent that Azerbaijan believes that they are not POWs, I note that the ceasefire brought about by the Trilateral Statement is not a final peace agreement ending the armed conflict. A ceasefire simply suspends military operations between the belligerent parties, bringing “about a suspension, but not a definitive termination of hostilities and a restoration of peace”<sup>37</sup>. In principle, the ceasefire is then followed by a definitive peace agreement, and until that happens, international humanitarian law — including protections for POWs and civilians — remains fully applicable<sup>38</sup>.

5. The President of Azerbaijan appears to understand this, in that he has spoken about the need for negotiation of a peace agreement to resolve the conflict<sup>39</sup>. In fact, the provisional nature of the Trilateral Statement is quite clear from its own terms; it establishes a “complete ceasefire”, it stops “hostilities”, and it provides for a peacekeeping force positioned between the belligerents, but it *does not* establish a final peace.

---

<sup>35</sup> CR 2021/21, p. 27, para. 12 (Goldsmith).

<sup>36</sup> ~~*Application and Request for provisional measures of the Republic of Armenia*~~ *Armenia*, Ann. 68, Letter from Yeghishe Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights, to Philippe Gautier, Registrar, International Court of Justice (6 Oct. 2021), attaching table of 45 POWs and Civilians Acknowledged by Azerbaijan as of 6 October 2021.

<sup>37</sup> “Armistices and Other Forms of Suspension of Hostilities”, reprinted in *Humanizing the Laws of War: Selected Writings of Richard Baxter* 359 (2013) (originally in *Collected Course of the Hague Academy of International Law*, Vol. 149 (1976), pp. 355-398).

<sup>38</sup> See *Prosecutor v. Dusko Tadić a/k/a “Dule”*, Case No. IT-94-1, ICTY Appeals Chamber Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (2 Oct. 1995), para. 70.

<sup>39</sup> President of the Republic of Azerbaijan, Ilham Aliyev, “Ilham Aliyev was interviewed by France 24 TV channel” (28 Sept. 2021), available at <https://en.president.az/articles/53255>.

6. As I noted yesterday, the capture on 13 December **2020** of the 38 Armenian soldiers was the result of the Azerbaijani army launching a military operation in an area where the forces of both sides were to remain at their current positions<sup>40</sup>. As such, this was an incident of active hostilities, in breach of the Trilateral Statement. Indeed, the Russian peacekeeping forces confirmed that the ceasefire was breached<sup>41</sup>.

7. Even on Azerbaijan's account of this incident<sup>42</sup>, by which Armenian forces supposedly breached the ceasefire through a use of force, the point is that this was a situation of active hostilities<sup>43</sup>, and the capture of the Armenian soldiers placed them in POW status. Thus, it is no surprise that the European Parliament concluded that "military personnel taken into captivity before *and after* the ceasefire should be recognised as POWs and benefit from protection under the Geneva Conventions"<sup>44</sup>.

8. The two Armenian soldiers captured on 27 May 2021 are also POWs. This incident was an armed confrontation along the border between belligerent parties. Even on Azerbaijan's own account, these were Armenian soldiers who tried to mine the supply routes leading to the positions of the Azerbaijani army on the border, and they were then surrounded, neutralized and detained<sup>45</sup>. Moreover, after their capture, Azerbaijan said that these prisoners were treated in accordance with the rules of international humanitarian law and were informed to the ICRC<sup>46</sup>. It simply is not credible to now claim that they are not POWs.

---

<sup>40</sup> Prime Minister of the Republic of Armenia, Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation (10 Nov. 2020), available at <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>, para. 1.

<sup>41</sup> Associated Press, "Nagorno-Karabakh: both sides blame each other over ceasefire", *The Guardian* (12 Dec. 2020), available at <https://www.theguardian.com/world/2020/dec/12/armenian-officials-and-azerbaijan-accuse-of-breeching-nagorno-karabakh-peace-deal>.

<sup>42</sup> "Armenians carry out armed provocation in Nagorno-Karabakh region", AZ Vision (11 Dec. 2020), available at <https://en.azvision.az/news/136508/armenians-carry-out-armed-provocation-in-nagorno-karabakh-region.html>.

<sup>43</sup> International Committee of the Red Cross, *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field — Commentary of 2016* (2016), available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518>, para. 279.

<sup>44</sup> 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), 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), preamble, para. G; emphasis added.

<sup>45</sup> Letter from Çingiz Əsgərov, Agent of the Republic of Azerbaijan before the European Court of Human Rights, to Johan Callewaert, Deputy Grand Chamber Registrar, European Court of Human Rights, No. 8/2-1401 (4 June 2021), attaching Decisions on the initiation of the criminal case and on charges (Ann. 1 translated from Azerbaijani), p. 1 (*Application and Request for provisional measures of Armenia Armenia*, Ann. 66).

<sup>46</sup> *Ibid.*, p. 3.

9. The same basic reasoning holds true for the three protected civilians who were taken into custody on 10 and 11 November 2020, right at the time that the Trilateral Statement was taking effect. It is likewise not credible to claim that, given the turmoil of that time, such persons were not protected by the Fourth Geneva Convention.

## **II. Azerbaijan cannot refuse to repatriate on the basis of criminal proceedings that were not pending when the obligation to repatriate arose**

10. Madam President, I turn now to the primary argument deployed by Lord Goldsmith, which is that “[e]ven if the detainees were prisoners of war . . . Article 119 (5) of the Third Geneva Convention is clear” in allowing Azerbaijan to prosecute the POWs for crimes<sup>47</sup>. I agree with Lord Goldsmith that Article 119 (5) is clear, but I do wonder — with respect — whether he has actually read the provision.

11. Up on your screen now is Article 119 (5) of the Third Geneva Convention. It reads in the first sentence: “Prisoners of war against whom criminal proceedings *for an indictable offence are pending* may be detained until the end of such proceedings, and, if necessary, until the completion of the punishment.”<sup>48</sup> Of course, this is an exception to Article 118, which is the basic obligation to repatriate; given the importance of that obligation, this exception should be read carefully and narrowly.

12. But the text that I have underlined for you on the slide indicates two important conditions. The first condition is that a belligerent can continue to detain a POW *if* criminal proceedings “are pending”. None of the 45 acknowledged POWs or protected civilians had criminal proceedings pending against them at the time Azerbaijan was obligated to repatriate, so Lord Goldsmith’s principal defence collapses on this basis alone.

13. The first two POWS were captured in October 2020. The obligation to repatriate them clearly arose on 10 November 2020. Yet these two POWs were only indicted before the Baku

---

<sup>47</sup> CR 2021/21, p. 27, para. 12 (Goldsmith).

<sup>48</sup> Geneva Convention Relative to the Treatment of Prisoners of War (opened for signature 12 August 1949, entered into force 21 October 1950), *UNTS*, Vol. 75, Art. 119, para. 5; emphasis added.

military court on 20 May 2021<sup>49</sup>. In no sense were criminal proceedings pending against them at the time *that* they should have been repatriated on or about 10 November.

14. For the POWs captured on 13 December, the obligation arose within a reasonable period of time after their capture, meaning at most within a few weeks. Indeed, the Eritrea-Ethiopia Claims Commission held that a three-month delay in the repatriation of prisoners of war, without providing any explanation, was a violation of Article 118<sup>50</sup>. Yet these POWs also had no criminal proceedings pending against them at the time when the repatriation obligation arose, because their indictments only occurred long after, in June 2021<sup>51</sup>.

15. For the two POWs captured in May 2021, Azerbaijan's evidence says that an investigation is *now* underway, but as of 8 October their case has not yet been sent to court<sup>52</sup>. We submit that this too is insufficient to meet the condition of a "pending" criminal proceeding so as to prevent repatriation.

16. Although Lord Goldsmith said nothing about the Fourth Geneva Convention, the same basic analysis applies under Article 133 of that convention for the three civilians.

### **III. Azerbaijan cannot refuse to repatriate on the basis of criminal proceedings that are not based on an indictable offence**

17. The collapse of Azerbaijan's defence is almost twofold if one considers the second element, the second condition, of Article 119 (5), which is that the proceedings must relate to an "indictable offence". Counsel for Azerbaijan leaned heavily on the assertion that the POWs and protected civilians were convicted of serious offences.

---

<sup>49</sup> ~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 68, Letter from Yeghishe Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights, to Philippe Gautier, Registrar, International Court of Justice (6 Oct. 2021), attaching table of 45 POWs and Civilians Acknowledged by Azerbaijan as of 6 October 2021, at Annex, p. 1.

<sup>50</sup> Eritrea-Ethiopia Claims Commission, Prisoners of War — Eritrea's Claim 17, Partial Award of 1 July 2003, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXVI, para. 163.

<sup>51</sup> ~~*Application and Request for provisional measures of the Republic of Armenia Armenia*~~, Ann. 68, Letter from Yeghishe Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights, to Philippe Gautier, Registrar, International Court of Justice (6 Oct. 2021), attaching table of 45 POWs and Civilians Acknowledged by Azerbaijan as of 6 October 2021, at Annex, p. 1.

<sup>52</sup> ~~*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Application of the Republic of Azerbaijan Azerbaijan*~~, Ann. 21, Letter from Elchin Mammadov, First Deputy Prosecutor General, to Elnur Mammadov, Deputy Minister for Foreign Affairs, regarding Armenian detainees, No. 14/cix65-21 (8 Oct. 2021), with enclosure (certified translation), table, items 44 and 45.

18. Yet the reality is that 38 of the 45 POWs and protected civilians — in other words, 88 per cent of them — were convicted only of the “crimes” of “illegal border crossing” and/or “carrying of firearms”. This is clear from Azerbaijan’s Annex 21. Such acts, which are related to military activity, are not indictable offences under the laws of war. You simply cannot prosecute a combatant for carrying weapons or for crossing borders under military orders: they are immune from any such charge — a point that sometimes even Azerbaijan’s military courts seem to realize<sup>53</sup>.

#### **IV. There is ample evidence that Azerbaijan has in custody an unknown number of additional unacknowledged detainees**

19. Lord Goldsmith claims that we have not provided evidence of other POWs and protected civilians detained but not acknowledged by Azerbaijan<sup>54</sup>.

20. Yet we explained and cited to dozens of Armenians who are believed to be in Azerbaijani custody based on direct evidence of their capture, including testimonies of former POWs and civilian detainees, video footage and photographic images showing them alive and in captivity<sup>55</sup>.

#### **V. There is ample evidence that Azerbaijan has treated inhumanely all 45 acknowledged POWs and civilians and an unknown number of additional unacknowledged detainees**

21. Madam President, I was also struck yesterday when Lord Goldsmith said that I had “mentioned only one allegation concerning a detainee presently in Azerbaijan’s custody”<sup>56</sup>. Well, the

---

<sup>53</sup> See Judgment on Behalf of the Republic of Azerbaijan, Baku Military Court, Case No. 1(101)-1204/2021 (2 July 2021) (certified translation), p. 18 (~~*Application of Azerbaijan Azerbaijan*~~, Ann. 6).

<sup>54</sup> CR 2021/21, pp. 26-27, para. 9 (Goldsmith).

<sup>55</sup> See e.g. Videos Showing Torture and Inhuman and Degrading Treatment of Unacknowledged Captives by Azerbaijan (videos contain annotations, such as subtitles in English of dialogue) [WARNING: GRAPHIC] (~~*Application and Request for provisional measures of Armenia Armenia*~~, Ann. 75); Letter from Yeghishe Kirakosyan, the Representative of the Republic of Armenia before the European Court of Human Rights, to Klaudiusz Rynגיעlewicz, Head of the Filtering Section, European Court of Human Rights (1 July 2021), pp. 1-2 (*ibid.*, Ann. 67); Human Rights Defender of the Republic of Armenia, Ad Hoc Public Report: The Treatment of Armenian Prisoners of War and Civilian Captives in Azerbaijan (With Focus on Their Questionings) (2021), p. 2, available at <https://ombuds.am/images/files/1138b156720bec6ae0fd88dc709eb62c.pdf>; Human Rights Defender of the Republic of Armenia, Ad Hoc Public Report, Responsibility of Azerbaijan For Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War) (Sept. 2021), available at [https://ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAJjo6BxmRFaBSrthXFqySyXeM3M-5vZRFgpgCRCo4urVPVE2NPL\\_VQ4g](https://ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAJjo6BxmRFaBSrthXFqySyXeM3M-5vZRFgpgCRCo4urVPVE2NPL_VQ4g); Tanya Lokshina, “Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes”, Human Rights Watch (12 Mar. 2021), available at <https://www.hrw.org/news/2021/03/12/survivors-unlawful-detention-nagorno-karabakh-speak-out-about-war-crimes>.

<sup>56</sup> CR 2021/21, p. 32, para. 29 (Goldsmith).

Court can go back and review my statement, where I pointed to a rather substantial body of evidence regarding abusive treatment of Armenians detained by Azerbaijan<sup>57</sup>.

22. If I had the time, I could go through every one of the POWs on your list and indicate where in the evidence their abuse can be found. But why stop at the POWs? Perhaps Lord Goldsmith needs me to describe the video you will find at Annex 70, where Azerbaijani soldiers are hitting a civilian, Gevorg Sujyan, on the head as he kneels on the ground before them. And I hope that Lord Goldsmith is not saying that the evidence of executions of Armenian soldiers do not count for much because those individuals are no longer in detention. The fact is that both POWs and civilians in Azerbaijan's custody, some of whom were visited by the ICRC, have died in detention<sup>58</sup>.

23. In any event, I direct the Court's attention to the following sources that clearly document such abuse. *First*, the Parliamentary Assembly of the Council of Europe tasked a rapporteur to investigate such abuses<sup>59</sup>; his investigation resulted in the Parliamentary Assembly expressing concern about "worrying [allegations and] evidence" of a "substantial number of consistent allegations of inhuman and degrading treatment and torture of Armenian prisoners of war by Azerbaijanis"<sup>60</sup>.

24. *Second*, Human Rights Watch in its reports expressed deep concern about the treatment of Armenian POWs, finding that Azerbaijan "subject[ed] them to cruel and degrading treatment and torture either when they were captured, during their transfer, or while in custody at various detention facilities"<sup>61</sup>.

---

<sup>57</sup> CR 2021/20, pp. 35-37, paras. 14-18 (Murphy).

<sup>58</sup> Tanya Lokshina, "Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes", Human Rights Watch (12 Mar. 2021), available at <https://www.hrw.org/news/2021/03/12/survivors-unlawful-detention-nagorno-karabakh-speak-out-about-war-crimes>.

<sup>59</sup> Parliamentary Assembly of the Council of Europe, Report on Humanitarian Consequences of the Conflict between Armenia and Azerbaijan, doc. 15363 (13 Sept. 2021), available at <https://pace.coe.int/pdf/a61ff5e0981ae42e02f02336c51f639d66ae587b74fd95634b36e68c4bcbe7a6/doc.%2015363.pdf>, Section C, Explanatory Memorandum by Mr. Paul Gavan, Rapporteur, paras. 46-54.

<sup>60</sup> Parliamentary Assembly of the Council of Europe, Resolution 2391: Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict (2021), available at <https://pace.coe.int/en/files/29483/html>, paras. 8, 8.2.

<sup>61</sup> Human Rights Watch, "Azerbaijan: Armenian POWs Abused in Custody" (19 Mar. 2021), available at <https://www.hrw.org/news/2021/03/19/azerbaijan-armenian-pows-abused-custody>; see also Human Rights Watch, "Azerbaijan: Armenian Prisoners of War Badly Mistreated" (2 Dec. 2020), available at <https://www.hrw.org/news/2020/12/02/azerbaijan-armenian-prisoners-war-badly-mistreated>.



25. *Third*, the non-governmental organization International Partnership for Human Rights and Truth Hounds completed an in-depth report documenting ill-treatment, violence and abuse of the Armenian POWs<sup>62</sup>.

26. *Fourth*, the non-governmental organization the Center for Truth and Justice interviewed numerous former detainees and concluded that “the interviewees were consistently subjected to beatings, humiliation, solitary confinement, improper hygiene, lack of medical care, [and] psychological torture”<sup>63</sup>.

27. *Fifth*, the Court will wish to consult the reports prepared by the Human Rights Defender of the Republic of Armenia, which interviewed dozens of repatriated captives and concluded that “[e]very POW interviewed experienced abuse and torture”<sup>64</sup>.

28. After reviewing information such as this, the European Parliament expressed this past May “grave concern about credible reports, according to which Armenian prisoners of war and other captive persons have been and are being held in degrading conditions, and that they have been subjected to inhuman treatment and torture when captured [and] during their detention”<sup>65</sup>. None of this is entirely surprising, given that, notwithstanding the existence of its human rights ombudsman, Azerbaijan has previously been found to have a track record of torturing prisoners<sup>66</sup>, and in some instances denying ICRC access to them<sup>67</sup>.

---

<sup>62</sup> International Partnership for Human Rights and Truth Hounds, “When Embers Burst into Flames: International Humanitarian Law and Human Rights Violations During the 2020 Nagorno-Karabakh War” (May 2021), available at [https://www.iphronline.org/wp-content/uploads/2021/06/NK\\_final\\_report\\_2021.pdf](https://www.iphronline.org/wp-content/uploads/2021/06/NK_final_report_2021.pdf), pp. 76-82, 88-90.

<sup>63</sup> Center for Truth and Justice, “Initiating an Investigation: White Paper on Azerbaijan’s Torture and Mistreatment of Armenian Prisoners of War (POWs) During and After the 2020 Nagorno-Karabakh War” (Sept. 2021), available at [https://drive.google.com/file/d/1vPEIIXS9erp6wU8ksO96ZhQxZ5\\_i\\_PiJ/view](https://drive.google.com/file/d/1vPEIIXS9erp6wU8ksO96ZhQxZ5_i_PiJ/view), p. 3.

<sup>64</sup> Human Rights Defender of the Republic of Armenia, Ad Hoc Public Report Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War) (Sept. 2021), available at <https://ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAjo6B%20xmRFaBSrtbXFqvSyXeM3M-5vZRFGpgCRCo4urVPVE2NPL VO4g>, para. 61; see also Human Rights Defender of the Republic of Armenia, Ad Hoc Public Report: The Treatment of Armenian Prisoners of War and Civilian Captives in Azerbaijan (With Focus on Their Questionings) (2021), available at <https://ombuds.am/images/files/1138b156720bec6ae0fd88dc709eb62c.pdf>.

<sup>65</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), p. 4.

<sup>66</sup> Council of Europe, Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 30 October 2017, CPT/Inf (2018) 37 (18 July 2018), available at <https://rm.coe.int/16808c5e46>.

<sup>67</sup> See also *Case of Saribekyan and Balyan v. Azerbaijan*, ECtHR, App. No. 35746/11, Judgment (30 Jan. 2020); *Case of Badalyan v. Azerbaijan*, ECtHR, App. No. 51295/11, Judgment (22 July 2021).

29. Madam President, the evidence of this abuse is directly relevant to why repatriation is urgent. We have 45 individuals who are being denied a right of repatriation to which they are entitled under international humanitarian law, and if that right continues to be denied to them while this Court works its way through the merits of the case, this abusive treatment, and possibly even death, will be the consequence. Sadly, history demonstrates that ICRC visits alone do not prevent such abuse. Azerbaijan says it will be irreparably harmed by not being able to keep these persons in a very vulnerable situation, but the irreparable harm of leaving them in detention is vastly greater.

30. Indeed, on Azerbaijan's reasoning, a court could never order the release of a detainee as an interim measure, as it would irreparably prejudice a detaining State that was seeking to pursue criminal measures. Yet that is exactly what this Court did in the *Tehran Hostages* case, and it did so in a context where Iran threatened to place the US nationals on trial, the United States asked the Court for an interim measure stopping such action<sup>68</sup>, and the Court in fact ordered Iran to accord immunity to the US nationals from any form of criminal jurisdiction<sup>69</sup>.

31. The failure to abide by this undeniable obligation to repatriate, and this abusive treatment, is the inescapable result of a government practice and policy that views Armenians as subhuman. You cannot read the documentary evidence, you cannot watch the abusive treatment and executions on the videos, all of which is accompanied by hateful words and slurs against Armenians — some of which I read out for you yesterday — and not reach a conclusion that this has everything to do with ethnic discrimination. This is not an assumption, these are facts.

**VI. Azerbaijan's "investigations" into the atrocities of its authorities confirms the ethnic discrimination at issue and provides no comfort that inhumane abuse will not continue**

32. Lord Goldsmith mentioned yesterday that "Azerbaijan has opened investigations in cases where there have been credible individual allegations of mistreatment, which continue today"<sup>70</sup>, meaning investigations into Azerbaijani soldiers.

---

<sup>68</sup> *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979*, p. 9, para. 2 (d).

<sup>69</sup> *Ibid.*, p. 21, para. 47 (1) (a) (iii).

<sup>70</sup> CR 2021/21, p. 36, para. 43 (Goldsmith).

33. As time is short, I will just note that Azerbaijan's conduct in this regard essentially confirms its ethnic discrimination. Consider the following contrast: Azerbaijan was capable of charging, prosecuting, convicting and sentencing 45 Armenian POWs and civilians over the course of this past year, without any difficulty, sentencing some to prison for 20 years<sup>71</sup>, and after which I note, apparently not having any appeals of those convictions and sentences. Yet *in this same time frame*, Azerbaijan has not been able to convict *any* Azerbaijani soldiers for *any* inhumane acts, including killing, torturing or beating Armenian soldiers or civilians, even when those acts were caught on video. If you review Azerbaijan's Annex 20<sup>72</sup>, which counsel yesterday proudly pointed to as showing how Azerbaijan polices its own, what do you find? A total of six cases, all of which are supposedly still under investigation or review, and nothing more.

34. And Lord Goldsmith was anxious to report to the Court that the video I described to you yesterday was being "investigated" by Azerbaijan<sup>73</sup>. Well, again, when you look at Azerbaijan's Annex 20<sup>74</sup>, you will find out that, even though the video I described likely dates to shortly after Lyudvig Mkrtychyan was captured on 20 October 2020, this so-called investigation was only "launched" nine months later, on 23 July of this year, and reportedly consists solely of interrogating a few soldiers as "witnesses" — as "witnesses". No charges. No allegations. No trials. No sentences. Ethnic discrimination, pure and simple.

35. For all the foregoing reasons, and for the reasons set forth in our opening submission, Armenia's request that Azerbaijan be ordered to immediately repatriate all Armenian POWs and protected civilians and, pending their release, to treat them humanely, satisfies the conditions for the exercise of your jurisdiction to indicate provisional measures.

---

<sup>71</sup> See Letter from Yeghishe Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights, to Philippe Gautier, Registrar, International Court of Justice (6 Oct. 2021), attaching Table of 45 POWs and Civilians Acknowledged by Azerbaijan as of 6 October 2021 (*Armenia, Ann. 68*).

<sup>72</sup> Letter from Elchin Mammadov, First Deputy Prosecutor General, to Elnur Mammadov, Deputy Minister of Foreign Affairs, regarding criminal cases initiated and investigations conducted by the Prosecutor General's Office, No. 14/cix67-21 (6 Oct. 2021) (with enclosures) (certified translation), pp. 4-8 (~~*Application of Azerbaijan Azerbaijan*~~, Ann. 20).

<sup>73</sup> CR 2021/21, p. 32, para. 29 (Goldsmith).

<sup>74</sup> Letter from Elchin Mammadov, First Deputy Prosecutor General, to Elnur Mammadov, Deputy Minister of Foreign Affairs, regarding criminal cases initiated and investigations conducted by the Prosecutor General's Office, No. 14/cix67-21 (6 Oct. 2021) (with enclosures) (certified translation), p. 16, Reference, No. 6 (~~*Application of Azerbaijan Azerbaijan*~~, Ann. 20).

36. Madam President, that concludes my presentation. I thank you for your attention and I ask that you now call upon Professor d'Argent.

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

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

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

1. Madame la présidente, Mesdames et Messieurs de la Cour, ma tâche ce matin est facilitée par le fait que, vous l'aurez constaté, M<sup>e</sup> Amirfar n'a pas une seule fois contesté la réalité des destructions, profanations ou altérations culturelles dont j'ai fait état hier matin. Vous n'avez rien entendu au sujet des églises, des cimetières, des khachkars, pas plus d'ailleurs qu'au sujet du mémorial de Shushi au génocide arménien. M<sup>e</sup> Amirfar n'a pas non plus contesté les cinq éléments contextuels plus qu'inquiétants que je vous ai exposés et qui, ensemble, établissent le risque imminent de préjudice irréparable justifiant l'indication de mesures conservatoires.

2. M<sup>e</sup> Amirfar a bien parlé de contexte, mais, selon elle, le contexte à prendre en considération serait la guerre de 1991-1994, avant que la convention ne lie les Parties.

3. A cette occasion, M<sup>e</sup> Amirfar s'est appuyée sur le paragraphe 18.1 de la résolution de l'Assemblée parlementaire du Conseil de l'Europe adoptée le 27 septembre dernier. Elle a malheureusement omis de faire état des paragraphes 18.2 à 18.6 qui recourent en tous points — ces paragraphes sont sur votre écran — ma présentation d'hier. Je n'ai pas le temps de lire ces paragraphes aujourd'hui, mais vous trouverez la résolution dans votre dossier d'audience à l'onglet n° 3. Tous les députés arméniens ont voté pour cette résolution, tandis que tous les députés azerbaïdjanais ont voté contre<sup>75</sup>.

---

<sup>75</sup> Assemblée parlementaire du Conseil de l'Europe, *Conséquences humanitaires du conflit entre l'Arménie et l'Azerbaïdjan : Résultat des votes de l'Assemblée*, doc. 15363 (2021), disponible à l'adresse suivante : <https://pace.coe.int/fr/votes/38611>.

4. M<sup>e</sup> Amirfar a pris la restauration de l'église arménienne de Bakou comme exemple de l'attachement de l'Azerbaïdjan au patrimoine culturel arménien. Indiquant que l'église avait été endommagée en 1990, elle a souligné que cet ancien lieu de culte accueillait désormais plus de 5000 manuscrits arméniens.

5. Je me permets de rappeler que l'église de Bakou a été incendiée le jour de Noël 1989 et qu'elle fut abandonnée dans cet état à la suite des pogroms de janvier 1990 avant d'être transformée en bibliothèque présidentielle en 2006, un usage que le ministre azerbaïdjanais de la culture de l'époque avait justifié par le fait qu'il n'y avait plus beaucoup d'Arméniens à Bakou<sup>76</sup>. Sur ce dernier point, il est assurément difficile de donner tort à ce ministre. Et c'est bien parce que l'Azerbaïdjan a, dans le passé, transformé une église en bibliothèque après avoir chassé les habitants arméniens de la ville que nous sommes aujourd'hui devant vous car l'histoire — l'histoire très chargée et douloureuse du Caucase — a une fâcheuse tendance à se répéter. Puisque l'Azerbaïdjan met en avant cet exemple, il me semble que les craintes de l'Arménie sont d'autant plus justifiées.

6. M<sup>e</sup> Amirfar a soutenu que vous deviez rejeter notre demande visant à protéger l'accès au patrimoine culturel arménien parce que, selon elle, si ce patrimoine n'est pas accessible, c'est parce que l'Arménie a placé des mines au Nagorno-Karabakh<sup>77</sup>. En quelque sorte, l'Arménie n'aurait qu'à s'en prendre à elle-même. M<sup>e</sup> Donovan a repris cet argument à son compte en suggérant que faire droit à la demande arménienne créerait un risque irréparable pour l'Azerbaïdjan en exposant des vies à un danger mortel<sup>78</sup>. S'il faut vraiment répondre à ces arguments, il suffit de rappeler que l'Azerbaïdjan fait visiter la cathédrale de Shushi à ses hôtes étrangers<sup>79</sup> tout en n'assurant pas son accès aux fidèles arméniens.

---

<sup>76</sup> "Armenian Church in Baku May Be Converted to Library," *Asbarez* (20 April 2006), available at <https://asbarez.com/armenian-church-in-baku-may-be-converted-to-library/>.

<sup>77</sup> CR 2021/21, p. 45-46, par. 7-9 (Amirfar).

<sup>78</sup> CR 2021/21, p. 49, par. 16 (Donovan).

<sup>79</sup> Nasimi Aghayev (@NasimiAghayev), "Foreign ambassadors visit the Gazanchi Church (1888) in #Shusha, #Azerbaijan which is being beautifully restored to its original form," *Twitter* (9 July 2021), available at <https://twitter.com/NasimiAghayev/status/1413558311732006915?s=20>; "Reps of diplomatic corps accredited in Azerbaijan visit Panah Ali Khan's palace in Shusha," *news.az* (9 July 2021), available at <https://www.news.az/news/reps-of-diplomatic-corps-accredited-in-azerbaijan-visit-panah-ali-khans-palace-in-shusha-photo>; Hikmet Hajiyev (@HikmetHajiyev), "Yet another fake news of myth makers about Gazanchi Church in Shusha were busted. Diplomatic community viewed conservation and restoration site of Church in Shusha and has been provided first hand information on city urban planning and development concept," *Twitter* (10 July 2021), available at <https://twitter.com/HikmetHajiyev/status/1413850003659968512?s=20>.

7. M<sup>e</sup> Amirfar a soutenu que le patrimoine culturel arménien serait à l'abri de tout risque imminent de préjudice irréparable car les autorités azerbaïdjanaises auraient pris des engagements à cet égard, conformément à leur droit interne — ce qui, en soi, n'est pas une garantie du respect d'obligations internationales. Elle a décrit ce droit interne et *elle* a indiqué que trois des lieux de culte décrits dans ma plaidoirie d'hier étaient bien référencés dans le registre du patrimoine, tout en rappelant que l'Azerbaïdjan les désignait par d'autres appellations que leurs noms arméniens<sup>80</sup>. Elle a aussi indiqué qu'une enquête pénale a été engagée contre deux soldats azerbaïdjanais ayant profané des tombes arméniennes.

8. Selon la Partie défenderesse, il n'existerait aucun risque de répétition des destructions passées car elles auraient eu lieu dans un contexte d'hostilités ayant *fondamentalement* ~~*profondément*~~ changé<sup>81</sup>. Par ailleurs, l'Arménie n'établirait pas que des destructions seraient en cours («ongoing»)<sup>82</sup>.

9. Mis à part le bombardement de la cathédrale de Shushi, les destructions que j'ai rapportées hier ont toutes eu lieu après la fin des hostilités, souvent des mois après la fin des hostilités. Se prévaloir du temps de guerre est donc sans pertinence. Par ailleurs, nul ne sait vraiment ce *qu'il y a* se passe aujourd'hui dans les territoires contrôlés par l'Azerbaïdjan, tandis que l'éventuelle absence de destruction au moment où je vous parle est également sans pertinence. Bien sûr, si des violations sont en cours, des mesures conservatoires s'imposent d'autant plus. Mais elles peuvent être ordonnées en l'absence même de violations continues, dès l'instant où un droit en litige sur le fond est exposé à un risque réel et imminent de préjudice irréparable. L'imminence de ce risque, c'est-à-dire l'urgence, est établie selon votre jurisprudence dès que «les actes susceptibles de causer un préjudice irréparable peuvent «intervenir à tout moment» avant que la Cour ne se prononce de manière définitive en l'affaire»<sup>83</sup>.

10. Peut-on sérieusement soutenir qu'aucun élément du riche et séculaire patrimoine culturel arménien du Nagorno-Karabakh n'est exposé à aucun risque de destruction, total ou partiel, d'ici la

---

<sup>80</sup> CR 2021/21, p. 46-48, par. 10-12 (Amirfar).

<sup>81</sup> CR 2021/21, p. 48-49, par. 13 (Amirfar).

<sup>82</sup> CR 2021/21, p. 48-49, par. 13 (Amirfar).

<sup>83</sup> *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), mesures conservatoires, ordonnance du 23 janvier 2020, C.I.J. Recueil 2020, p. 24, par. 65.*

fin de la présente instance quand on sait ce que l'Azerbaïdjan en a fait au Nakhitchevan et au Nagorno-Karabakh ? Peut-on sérieusement penser que le révisionnisme historique du président Aliyev érigé en doctrine d'Etat est de bon augure à cet égard ? Ce révisionnisme fut à l'œuvre devant vous hier, M<sup>e</sup> Amirfar parlant par deux fois de «alleged Armenian heritage sites». Suffit-il que deux soldats azerbaïdjanais soient poursuivis — mais pas encore jugés — pour être sûr que l'Azerbaïdjan lui-même ne procédera pas à de nouvelles destructions ainsi qu'il en est coutumier ?

11. Mesdames et Messieurs les juges : mais pourquoi donc l'Azerbaïdjan s'oppose-t-il à ce point à une demande qui n'entravera en rien sa liberté d'action si, comme il le dit, il prend déjà soin du patrimoine culturel arménien ? Cette résistance farouche à l'exercice de votre pouvoir dans un contexte de relations particulièrement tendues ajoute en réalité à la crainte bien fondée de l'Arménie et à la nécessité d'exercer votre pouvoir. Faut-il qu'une mesure conservatoire soit violée pour justifier *a posteriori* qu'elle ait été ordonnée ? L'Azerbaïdjan accuse l'Arménie de «place CERD on its head»<sup>84</sup>, mais c'est en réalité le défendeur qui détourne le sens même des mesures conservatoires.

12. Sans contester la réalité des faits rapportés hier matin, l'argument de l'Azerbaïdjan au sujet de l'altération du patrimoine culturel arménien est simple : ce patrimoine est situé sur son territoire et il en fait ce qu'il veut<sup>85</sup>. La convention ne viendrait en rien limiter son pouvoir aussi longtemps que les «efforts de restauration» n'empêchent pas les Arméniens de pratiquer leur religion. En d'autres termes, comme à Bakou, l'Azerbaïdjan pourrait transformer la cathédrale de Shushi en une bibliothèque en ~~en~~ changeant profondément l'aspect et la destination, pourvu qu'un petit local soit réservé quelque part en ville pour le culte arménien, et aucune pratique discriminatoire ne pourrait être dénoncée.

13. Mais si l'Azerbaïdjan entend tellement préserver le patrimoine arménien en le respectant, pourquoi ne consulte-t-il pas les représentants de l'église apostolique arménienne ? Par une communication conjointe du 2 février 2021 que vous trouverez à l'onglet n° 4 de votre dossier d'audience, le rapporteur spécial sur les droits culturels et deux de ses collègues ont fait cette

---

<sup>84</sup> CR 2021/21, p. 46, par. 9 (Amirfar).

<sup>85</sup> CR 2021/21, p. 50, par. 17 (Amirfar).

suggestion à l'Azerbaïdjan<sup>86</sup>. Pourtant frappée au coin du bon sens, cette suggestion est restée lettre morte. Au lieu de prétendument consulter des experts au sujet desquels vous n'avez rien appris de plus hier, pourquoi l'Azerbaïdjan ne consulte-t-il pas les premiers intéressés ? La réponse tombe sous le sens : parce qu'ils sont arméniens.

14. M<sup>e</sup> Amirfar a suggéré que se prononcer sur des questions de restauration architecturale sortirait de votre compétence conservatoire car il s'agirait de questions hautement techniques «driven by complex historical, sociological, and ethnographic factors»<sup>87</sup>. L'Azerbaïdjan peut-il expliquer en quoi des facteurs *ethnographiques* doivent entrer en ligne de compte lorsque l'on restaure des bâtiments ? Il me semble, Mesdames et Messieurs *de la Cour les juges*, que la Partie adverse a fait là aveu de motivations que la convention réproouve.

15. Enfin, l'Azerbaïdjan a soutenu que si l'UNESCO n'avait pas encore conduit de mission dans les territoires qu'il contrôle, la faute en revenait à l'Arménie<sup>88</sup>. En réalité, et ainsi que le ministre de la culture azerbaïdjanais l'a indiqué le 22 septembre 2021 devant le Conseil des droits de l'homme, l'Azerbaïdjan est prêt à accueillir l'UNESCO pourvu que l'organisation «assess[es] the damage to the cultural property in the territory of the Republic of Azerbaijan affected by military occupation of the Republic of Armenia»<sup>89</sup>. Cela ne donne pas à penser que l'Azerbaïdjan se soucie grandement et de manière égale du patrimoine arménien.

16. Madame la présidente, Mesdames et Messieurs les juges, je m'arrête ici en vous remerciant pour votre attention et en ayant pleine confiance dans votre discernement et votre sagesse.

17. Puis-je vous demander, Madame la présidente, de bien vouloir inviter M. Yeghishe Kirakosyan, agent de la République d'Arménie, à vous présenter les conclusions finales de son pays ?

---

<sup>86</sup> Republic of Azerbaijan, *Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur in the field of cultural rights; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, No. AL AZE 1/2021 (2 February 2021), available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25857>.

<sup>87</sup> CR 2021/21, p. 50, par. 18 (Amirfar).

<sup>88</sup> CR 2021/21, p. 51-52, par. 22 (Amirfar).

<sup>89</sup> Statement by H.E. Anar Karimov, Minister of Culture of the Republic of Azerbaijan, at the 48th Session of the Human Rights Council (Azerbaïdjan, annexe 29).



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

Mr. KIRAKOSYAN:

#### **AGENT'S CLOSING SUBMISSIONS**

1. Madam President, distinguished Members of the Court, it is an honour and a great privilege to appear before you again to present Armenia's closing submissions in its Request for provisional measures.

2. As our counsels' oral submissions made clear, Armenia's requests are precisely tailored to stay within the four corners of the CERD. They are straightforward and compelling.

3. Yesterday, rather than responding directly to our actual allegations, Azerbaijan presented the Court with a barrage of irrelevancies. It resorted to a series of political statements and false historical narratives that have nothing to do with the issues before you on the Request for provisional measures. There may come a time for that, but it is not here, and not now.

4. Azerbaijan also suggested that the recent war was the only motivation for our Application and Request for provisional measures. While the war saw numerous flagrant manifestations of racial discrimination by Azerbaijan against Armenians, it is by no means the only reason for Armenia's Application and Request for provisional measures. Rather, in its Application, Armenia presents a plethora of evidence on decades-long and systematic violations of the CERD.

5. Armenia has also presented convincing evidence of a pattern and practice of ongoing discriminatory conduct by Azerbaijan that poses an urgent threat of irreparable harm. If left unaddressed, it will most certainly lead to further violations of the CERD.

6. Madam President, distinguished Members of the Court, before turning to our submissions, I wish to thank you and the Court for accommodating the Armenian delegation here at the Peace Palace, and for everything else you have done to ensure the smooth conduct of the hearings. I wish also to thank the Registry and its staff, not to mention the interpreters, for their invaluable contributions as well.

7. I shall now read Armenia's closing submissions:

On the basis of its Application and Request for Provisional Measures, and its oral pleadings, Armenia respectfully requests the Court to indicate the following provisional measures pending its determination of this case on the merits:

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

Madam President, distinguished Members of the Court, this concludes Armenia's presentation on its Request for provisional measures.

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

*The Court rose at 11.20 a.m.*

---