INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

(ARMENIA *v.* AZERBAIJAN)

REQUEST FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER OF 17 NOVEMBER 2023

2023

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

APPLICATION DE LA CONVENTION INTERNATIONALE SUR L'ÉLIMINATION DE TOUTES LES FORMES DE DISCRIMINATION RACIALE

(ARMÉNIE c. AZERBAÏDJAN)

DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES

ORDONNANCE DU 17 NOVEMBRE 2023

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ORDONNANCE

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APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

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REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

Present: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judges* ad hoc Daudet, Koroma, *Registrar* Gautier.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74, 75 and 76 of the Rules of Court,

Makes the following Order:

1. By an Application filed in the Registry of the Court on 16 September 2021, the Republic of Armenia (hereinafter "Armenia") instituted proceedings against the Republic of Azerbaijan (hereinafter "Azerbaijan") concerning alleged violations of the International Convention on the Elim-

ination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter "CERD").

2. The Application contained a Request for the indication of provisional measures submitted with reference to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court (the "first Request").

3. Since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case. Armenia chose Mr Yves Daudet and Azerbaijan Mr Kenneth Keith. Following the resignation of Judge *ad hoc* Keith, Azerbaijan chose Mr Abdul G. Koroma to replace him as judge *ad hoc* in the case.

4. After hearing the Parties, the Court, by an Order of 7 December 2021, indicated the following provisional measures:

> "(1) The Republic of Azerbaijan shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,
>
> *(a)* Protect from violence and bodily harm all persons captured in relation to the 2020 Conflict who remain in detention, and ensure their security and equality before the law;
>
> *(b)* Take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin;
>
> *(c)* Take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts;
>
> (2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve." (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 393, para. 98.)

5. By an Order of 21 January 2022, the Court fixed 23 January 2023 and 23 January 2024 as the respective time-limits for the filing of a Memorial by Armenia and a Counter-Memorial by Azerbaijan. The Memorial was filed within the time-limit thus prescribed.

6. By a letter dated 16 September 2022, Armenia, referring to Article 76 of the Rules of Court, requested the modification of the Court's Order of 7 December 2021 (the "second Request").

7. By an Order dated 12 October 2022, the Court found that "the circumstances, as they [then] present[ed] themselves to the Court, [were] not such as to require the exercise of its power to modify the measures indicated in

the Order of 7 December 2021". The Court reaffirmed the provisional measures indicated in its Order of 7 December 2021, in particular the requirement that both Parties refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Request for the Modification of the Order Indicating Provisional Measures of 7 December 2021, Order of 12 October 2022*, *I.C.J. Reports 2022 (II)*, pp. 583-584, para. 23).

8. By a letter dated 28 December 2022, Armenia, referring to Article 41 of the Statute and Article 73 of the Rules of Court, filed a new Request for the indication of provisional measures and, by a letter dated 26 January 2023, it communicated to the Court the text of a further provisional measure sought (the "third Request").

9. After hearing the Parties, the Court, by an Order of 22 February 2023, indicated the following provisional measure:

> "The Republic of Azerbaijan shall, pending the final decision in the case and in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions." (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 22 February 2023, I.C.J. Reports 2023 (I)*, p. 30, para. 67.)

10. On 21 April 2023, within the time-limit prescribed by Article 79*bis*, paragraph 1, of the Rules of Court, Azerbaijan raised preliminary objections to the jurisdiction of the Court and the admissibility of certain claims contained in the Application. By an Order of 25 April 2023, the Court, noting that the proceedings on the merits were suspended by virtue of Article 79*bis*, paragraph 3, of the Rules of Court, and taking account of Practice Direction V, fixed 21 August 2023 as the time-limit within which Armenia may present a written statement of its observations and submissions on the preliminary objections raised by Azerbaijan. The written statement of Armenia was filed within the time-limit thus fixed.

11. By a letter dated 12 May 2023 and received in the Registry on 15 May 2023, Armenia, referring to Article 76 of the Rules of Court, requested the modification of the Court's Order of 22 February 2023 (the "fourth Request").

12. By an Order dated 6 July 2023, the Court found that the circumstances, as they presented themselves to the Court at the time, were "not such as to require the exercise of its power to modify the Order of 22 February 2023 indicating a provisional measure" and reaffirmed the provisional measure indicated in its Order of 22 February 2023.

13. On 28 September 2023, Armenia, referring to Article 41 of the Statute and Article 73 of the Rules of Court, filed a new Request for the indication of provisional measures (the "fifth Request"), which is the subject of the present Order.

14. In this Request, Armenia states that, on 19 September 2023, Azerbaijan "launched a full-scale military assault on the 120,000 ethnic Armenians of Nagorno-Karabakh, indiscriminately shelling the capital, Stepanakert, and other civilian settlements". It adds that the attack killed and wounded hundreds of people, including civilians, and that tens of thousands of ethnic Armenians have been forcibly displaced from Nagorno-Karabakh to Armenia.

15. At the end of the fifth Request, Armenia asks the Court to indicate the following provisional measures:

"(1) 'Azerbaijan shall refrain from taking any measures which might entail breaches of its obligations under the CERD';

(2) 'Azerbaijan shall refrain from taking any actions directly or indirectly aimed at or having the effect of displacing the remaining ethnic Armenians from Nagorno-Karabakh, or preventing the safe and expeditious return to their homes of persons displaced in the course of the recent military attack including those who have fled to Armenia or third States, while permitting those who wish to leave Nagorno-Karabakh to do so without any hindrance';

(3) 'Azerbaijan shall withdraw all military and law-enforcement personnel from all civilian establishments in Nagorno-Karabakh occupied as a result of its armed attack on 19 September 2023';

(4) 'Azerbaijan shall facilitate, and refrain from placing any impediment on, the access of the United Nations and its specialized agencies to the ethnic Armenians of Nagorno-Karabakh, and shall not interfere with their activities in any way';

(5) 'Azerbaijan shall facilitate, and refrain from placing any impediment on, the ability of the International Committee of the Red Cross to provide humanitarian aid to the ethnic Armenians of Nagorno-Karabakh, and shall cooperate with the International Committee of the Red Cross to address the other consequences of the recent conflict';

(6) 'Azerbaijan shall immediately facilitate the full restoration of public utilities, including gas and electricity, to Nagorno-Karabakh, and shall refrain from disrupting them in the future';

(7) 'Azerbaijan shall refrain from taking punitive actions against the current or former political representatives or military personnel of Nagorno-Karabakh';

(8) 'Azerbaijan shall not alter or destroy any monument commemorating the 1915 Armenian genocide or any other monument or Armenian cultural artefact or site present in Nagorno-Karabakh';

(9) 'Azerbaijan shall recognize and give effect to civil registers, identity documents and property titles and registers established by the authorities of Nagorno-Karabakh, and shall not destroy or confiscate such registers and documents';

(10) 'Azerbaijan shall submit a report to the Court on all measures taken to give effect to this Order within one month, as from the date of this Order, and thereafter every three months, until a final decision on the case is rendered by the Court.'"

16. Armenia further requested that

> "the Court reaffirm Azerbaijan's obligations under the Court's existing Orders, including its obligations to '[p]rotect from violence and bodily harm all persons captured in relation to the 2020 Conflict who remain in detention, and ensure their security and equality before the law'; to '[t]ake all measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks cemeteries and artefacts'; to 'take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions'; and to 'refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve'".

17. The Registrar immediately communicated a copy of the fifth Request to the Government of Azerbaijan, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing of that Request by Armenia.

18. By letters dated 2 October 2023, the Registrar informed the Parties that the Court had fixed 12 October 2023 as the date for the oral proceedings on the fifth Request.

19. By a letter dated 2 October 2023, Azerbaijan provided an "initial response" with respect to the fifth Request. It stated in particular that, on 19 September 2023, Azerbaijan had "commenced local counter-terrorism measures in its sovereign territory to respond to an acute security threat in Garabagh" and that these measures were aimed exclusively at Armenian military targets and ended a day later, with the assurance of a complete ceasefire when Armenian military formations agreed to disband and disarm. It added that, shortly after the operation, the President of Azerbaijan made clear that the residents of Garabagh of Armenian ethnic origin were welcome in Azerbaijan and enjoyed the same rights as other Azerbaijani citizens.

20. At the public hearing on 12 October 2023, oral observations on the fifth Request were presented by:

On behalf of Armenia:	HE Mr Yeghishe Kirakosyan, Mr Lawrence H. Martin, Mr Linos-Alexandre Sicilianos, Ms Alison Macdonald, Mr Sean Murphy, Mr Pierre d'Argent.
On behalf of Azerbaijan:	HE Mr Elnur Mammadov, Mr Rodney Dixon, Mr Samuel Wordsworth, Mr Stefan Talmon.

21. Following its oral observations, Armenia asked the Court to indicate the provisional measures as set out below:

"(1) 'Azerbaijan shall refrain from taking any measures which might entail breaches of its obligations under the CERD';

(2) 'Azerbaijan shall refrain from taking any actions directly or indirectly aimed at or having the effect of displacing the remaining ethnic Armenians from Nagorno-Karabakh, or preventing the safe and expeditious return to their homes of persons displaced in the course of the recent military attack including those who have fled to Armenia or third States, while permitting those who wish to leave Nagorno-Karabakh to do so without any hindrance';

(3) 'Azerbaijan shall withdraw all military and law-enforcement personnel from all civilian establishments in Nagorno-Karabakh occupied as a result of its armed attack on 19 September 2023';

(4) 'Azerbaijan shall facilitate, and refrain from placing any impediment on, the access of the United Nations and its specialized agencies to the ethnic Armenians of Nagorno-Karabakh, and shall not interfere with their activities in any way';

(5) 'Azerbaijan shall facilitate, and refrain from placing any impediment on, the ability of the International Committee of the Red Cross to provide humanitarian aid to the ethnic Armenians of Nagorno-Karabakh, and shall cooperate with the International Committee of the Red Cross to address the other consequences of the recent conflict';

(6) 'Azerbaijan shall immediately facilitate the full restoration of public utilities, including gas and electricity, to Nagorno-Karabakh, and shall refrain from disrupting them in the future';

(7) 'Azerbaijan shall refrain from taking punitive actions against the current or former political representatives or military personnel of Nagorno-Karabakh';

(8) 'Azerbaijan shall not alter or destroy any monument commemorating the 1915 Armenian genocide or any other monument or Armenian cultural artefact or site present in Nagorno-Karabakh';

(9) 'Azerbaijan shall recognize and give effect to civil registers, identity documents and property titles and registers established by the authorities of Nagorno-Karabakh, and shall not destroy or confiscate such registers and documents';

(10) 'Azerbaijan shall submit a report to the Court on all measures taken to give effect to this Order within one month, as from the date of this Order, and thereafter every three months, until a final decision on the case is rendered by the Court'.

Armenia further requests that the Court reaffirm Azerbaijan's obligations under the Court's existing Orders."

22. At the end of its oral observations, Azerbaijan made the following request:

"In accordance with Article 60 (2) of the Rules of Court, for the reasons explained during these hearings, the Republic of Azerbaijan respectfully asks the Court to reject the request for the indication of provisional measures submitted by the Republic of Armenia."

* * *

I. Introduction

23. The Court has set out, in its previous Orders on Armenia's requests for the indication of provisional measures, the general background and context of the dispute. Armenia and Azerbaijan, both of which were Republics of the former Union of Soviet Socialist Republics, declared independence on 21 September 1991 and 18 October 1991, respectively. In the Soviet Union, the Nagorno-Karabakh region had been an autonomous entity ("oblast") that had a majority Armenian ethnic population, lying within the territory of the Azerbaijani Soviet Socialist Republic. The Parties' competing claims over that region resulted in hostilities that ended with a ceasefire in May 1994. Further hostilities erupted in September 2020. On 9 November 2020, the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia, and the President of the Russian Federation signed a statement referred to by the Parties as the "Trilateral Statement". Under the terms of this statement, as of 10 November 2020, "[a] complete ceasefire and termination of all hostilities in the area of the Nagorno-Karabakh conflict [was]

declared" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 367, para. 13).

24. Notwithstanding the ceasefire declared in the "Trilateral Statement", the situation between the Parties remained unstable and hostilities again erupted in September 2022, leading to the detention of persons whom Armenia described as its service members (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Request for the Modification of the Order Indicating Provisional Measures of 7 December 2021, Order of 12 October 2022, I.C.J. Reports 2022 (II)*, pp. 582-583 para. 18).

25. Beginning on 12 December 2022, the connection between the area that Armenia calls Nagorno-Karabakh and Azerbaijan calls Garabagh, and Armenia via the Lachin Corridor (the route connecting Nagorno-Karabakh and Armenia) was disrupted. As the Court found in its Order of 22 February 2023, information available to it at that time indicated that the disruption caused impediments to the transfer of persons of Armenian national or ethnic origin hospitalized in Nagorno-Karabakh to medical facilities in Armenia for urgent medical care, as well as hindrances to the importation into Nagorno-Karabakh of essential goods, leading to shortages of food, medicine and other life-saving medical supplies (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 22 February 2023, I.C.J. Reports 2023 (I)*, p. 27, para. 54; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Request for the Modification of the Order of 22 February 2023 Indicating a Provisional Measure, Order of 6 July 2023, I.C.J. Reports 2023 (II)*, pp. 409-410, paras. 26 and 28).

26. On 19 September 2023, Azerbaijan commenced what it calls "local counter-terrorism measures in its sovereign territory to respond to an acute security threat in Garabagh". In the ensuing days, according to United Nations reports, more than 100,000 persons of Armenian national or ethnic origin fled Nagorno-Karabakh for Armenia.

II. General Observations

27. Pursuant to Article 76, paragraph 1, of the Rules of Court, a decision concerning provisional measures may be modified if, in the Court's opinion, "some change in the situation justifies" doing so. According to Article 75,

paragraph 3, of the Rules of Court, "[t]he rejection of a request for the indication of provisional measures shall not prevent the party which made it from making a fresh request in the same case based on new facts". The same applies when additional provisional measures are requested (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 337, para. 22). It is therefore for the Court to satisfy itself that the fifth Request by Armenia is based upon "new circumstances such as to justify [it] being examined" (*ibid.*).

28. The Court notes that, in its fifth Request, Armenia makes allegations of a forced displacement of persons of Armenian national or ethnic origin following a military assault against them by Azerbaijan (see paragraph 14 above). The Court recalls that Armenia's first Request related to the treatment by Azerbaijan of Armenian prisoners of war, hostages and other detainees in its custody who were taken captive during the September-November 2020 hostilities and in their aftermath; to the alleged incitement and promotion by Azerbaijan of racial hatred and discrimination targeted at persons of Armenian national or ethnic origin; and to the alleged harm caused by Azerbaijan to Armenian historic, cultural and religious heritage. In its third Request, Armenia referred to the alleged blockade by Azerbaijan, as of 12 December 2022, of the Lachin Corridor.

29. In light of the foregoing, the Court considers that the circumstances underlying Armenia's present Request differ from those on the basis of which the Court indicated provisional measures on 7 December 2021 and 22 February 2023. It follows that there are new circumstances that justify the examination of Armenia's fifth Request.

III. Prima Facie Jurisdiction

30. The Court recalls that, in its Order of 7 December 2021 indicating provisional measures in the present case, it concluded that "prima facie, it has jurisdiction pursuant to Article 22 of CERD to entertain the case to the extent that the dispute between the Parties relates to the 'interpretation or application' of the Convention" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 375, para. 43). It reiterated this conclusion in its Order of 22 February 2023 (*ibid., Order of 22 February 2023, I.C.J. Reports 2023 (I)*, p. 20, para. 26). The Court sees no reason to revisit this conclusion for the purposes of the present Request.

IV. The Rights whose Protection Is Sought and the Link between Such Rights and the Measures Requested

31. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (see, for example, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, pp. 223-224, para. 50).

32. At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which Armenia wishes to see protected exist; it need only decide whether the rights claimed by Armenia on the merits, and for which it is seeking protection, are plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, pp. 223-224, para. 50).

* *

33. Armenia asserts that, by its fifth Request, it seeks the preservation and protection of a number of rights under Articles 2, 3, 5, 6 and 7 of CERD for the benefit of the ethnic Armenians of Nagorno-Karabakh, including those who have been forced to flee to Armenia; the few who have remained in Nagorno-Karabakh; and those who have been unlawfully detained by Azerbaijan, in particular leading political figures. Armenia contends that Azerbaijan's large-scale military assault on 19 September 2023, which followed the "nine-month blockade" of the Lachin Corridor, has resulted in hundreds of ethnic Armenians being killed; more than 100,000 being forcibly displaced and continuing to fear for their lives; homes and other civilian infrastructure being destroyed; cultural sites and monuments being under direct threat of destruction or desecration; the collapse of the education system; a complete paralysis of an already severely weakened healthcare system; and dire shortages of basic necessities. Armenia also asserts that hate speech is proliferating, with Azerbaijani soldiers being encouraged to perpetrate violence against Armenians.

34. Armenia contends that the measures taken by Azerbaijan before, during and after the military assault constitute "ethnic cleansing", from which

it seeks to protect the ethnic Armenians of Nagorno-Karabakh who, it argues, have been forced out of the area on plainly racial grounds. With reference to the Court's observations about "ethnic cleansing" in paragraph 190 of its Judgment on the merits in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, Armenia understands that term to mean "rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area" (*Judgment, I.C.J. Reports 2007 (I)*, p. 122, para. 190). According to Armenia, "ethnic cleansing" plausibly implicates every substantive obligation under CERD. Armenia asserts a "right not to be subjected to ethnic cleansing generally", as well as "particular rights under the CERD for which protection is sought individually" and considers that the rights under CERD which it seeks to protect are necessarily all plausible. In this respect, it refers to Article 2, paragraph 1, subparagraphs *(a)*, *(b)* and *(e)*, Article 2, paragraph 2, Article 3, Article 5 *(a)*, Article 5 *(b)*, Article 5 *(d)*, subparagraphs (i), (ii) and (vii), Article 5 *(e)*, Article 6 and Article 7 of CERD.

*

35. Azerbaijan states that it is mindful of the Court's past conclusions in the present case on plausible rights and fully accepts that — to the extent that any obligations under CERD might be engaged — "it has the responsibility, and now the ability, to ensure protection on its territory" of any applicable and plausible rights. It contends that it is against this backdrop that the Agent of Azerbaijan made a series of formal undertakings at the public hearing that took place on the afternoon of 12 October 2023 which, it considers, were comprehensive in their protection of the alleged rights (see paragraph 61 below).

* *

36. The Court notes that CERD imposes a number of obligations on States parties with regard to the elimination of racial discrimination in all its forms and manifestations. Article 1, paragraph 1, of CERD defines racial discrimination in the following terms:

> "[A]ny distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

37. In accordance with Article 2, paragraph 1, of the Convention, States parties "condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms". Under Article 5, States parties undertake to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of rights listed in that Article, in particular the "right to security of person and protection by the State against violence or bodily harm", the "right to freedom of movement and residence within the border of the State", the "right to leave any country, including one's own, and to return to one's country", the "right to housing", the "right to public health, medical care, social security and social services" and the "right to education".

38. The Court notes that Articles 2 and 5 of CERD are intended to protect individuals from racial discrimination. It recalls, as it did in past cases in which Article 22 of CERD was invoked as the basis of its jurisdiction, that there is a correlation between respect for individual rights enshrined in the Convention, the obligations of States parties under CERD and the right of States parties to seek compliance with those obligations (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 382, para. 57).

39. A State party to CERD may invoke the rights set out in the abovementioned articles only to the extent that the acts complained of constitute acts of racial discrimination as defined in Article 1 of the Convention (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 382, para. 58). In the context of a request for the indication of provisional measures, the Court examines whether the rights claimed by an applicant are at least plausible.

40. In the fifth Request, Armenia claims that an attack by Azerbaijani forces on 120,000 persons of Armenian ethnic origin led to a forcible displacement of tens of thousands of such persons from Nagorno-Karabakh to Armenia (see paragraph 14 above). Articles 2 and 5 of CERD protect rights including the right to be free from racial discrimination and the right to equality before the law in the enjoyment of the right to security of person and protection by the State against violence or bodily harm, of the right to freedom of movement and residence within the border of the State, and of the right to leave any country, including one's own, and to return to one's country. In light of these rights, the Court finds plausible the right of persons not to find themselves compelled to flee their place of residence for fear that they will be targeted because they belong to a protected group under CERD, and the right of those persons to be guaranteed a safe return.

41. On the basis of the information presented to it, the Court considers plausible at least some of the rights asserted by Armenia that it claims to have been violated in the aftermath of the operation commenced by Azerbaijan in Nagorno-Karabakh on 19 September 2023.

* *

42. The Court now turns to the condition of the link between the rights claimed by Armenia and the provisional measures requested.

* *

43. Armenia considers that the provisional measures requested are linked to the rights whose protection is sought because the measures, if indicated, would safeguard these very rights. It argues, in particular, that "[s]topping the ongoing forced exodus of ethnic Armenians and creating the conditions for their safe return would end the ethnic cleansing and its consolidation", which are contrary to the very object and purpose of CERD. It further notes that refraining from taking punitive actions against the current or former political representatives or military personnel of Nagorno-Karabakh would also put an end to a series of flagrant and ongoing breaches of obligations under Article 5 *(b)* of CERD relating to the right to security of person and protection by the State against violence or bodily harm.

*

44. Azerbaijan considers that Armenia has not established any link between the rights for which it seeks protection and some of the provisional measures requested. With respect to the requested measure concerning public utilities, Azerbaijan explains that Armenia has not provided any evidence for the allegation that Azerbaijan intentionally deprived Garabagh of its gas supply. Azerbaijan adds that, having restored its sovereignty over the entire territory of Garabagh, it is in its own interest to secure a continuous flow of gas and electricity to the region. With regard to the requested measure concerning punitive actions against political representatives or military personnel of Garabagh, Azerbaijan contends that Armenia has not placed before the Court evidence indicating that the so-called political representatives and military personnel of Garabagh referred to by Armenia have been arrested and detained by Azerbaijan by reason of their national or ethnic origin. With respect to the requested measure concerning civil registers, identity documents and property titles, Azerbaijan states that these documents are not at imminent risk of confiscation as they have automatically passed into the custody of Azerbaijan when it regained full control over Garabagh. In addition, these documents are not at imminent risk of destruction, according to Azerbaijan, because it is in its own interest to

protect and preserve them, "including potentially as evidence for proceedings establishing title to property, criminal prosecutions, or to establish Armenia's responsibility for its violations of international law with regard to Garabagh". With respect to Armenia's request that Azerbaijan recognize and give effect to these documents, Azerbaijan contends that such an order would "run counter to the well-established rule of international law that a returning sovereign is not bound in any way by the acts of the occupant".

* *

45. The Court considers that a link exists between the rights claimed by Armenia that are plausible under CERD (see paragraph 41 above) and certain measures requested by Armenia. In particular, a link exists between those rights and the measure directing Azerbaijan to prevent the displacement of the remaining persons of Armenian national or ethnic origin from Nagorno-Karabakh, to ensure the right of those persons displaced to a safe return to their homes, and to permit those who wish to leave Nagorno-Karabakh to do so without any hindrance. The Court also considers that a link exists between those rights and the requested measure with respect to civil registers, identity documents and property titles and registers (see paragraphs 15 and 21 above).

46. The Court concludes, therefore, that a link exists between certain rights claimed by Armenia and some of the requested provisional measures.

V. Risk of Irreparable Prejudice and Urgency

47. The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences (see, for example, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 226, para. 65).

48. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights claimed before the Court gives its final decision. The condition of urgency is met when the acts susceptible of causing irreparable prejudice can "occur at any moment" before the Court makes a final decision on the case (*Allegations of Genocide under the Convention on the Prevention and Punishment of the*

Crime of Genocide (Ukraine v. *Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 227, para. 66). The Court must therefore consider whether such a risk exists at this stage of the proceedings.

49. The Court is not called upon, for the purposes of its decision on the fifth Request, to establish the existence of breaches of obligations under CERD, but to determine whether the circumstances require the indication of provisional measures for the protection of rights under this instrument. It cannot at this stage make definitive findings of fact, and the right of each Party to submit arguments in respect of the merits remains unaffected by the Court's decision on the fifth Request.

* *

50. Armenia submits that Azerbaijan's conduct has already caused irreparable prejudice to the rights that it seeks to protect under Articles 2, 3, 5, 6 and 7 of CERD. In this regard, it observes that, immediately after Azerbaijan's military assault on 19 September 2023, hundreds of ethnic Armenians were killed or injured; tens of thousands of ethnic Armenians were internally displaced within Nagorno-Karabakh and separated from their families; thousands of ethnic Armenians were forced to sleep in basements, on the streets or in makeshift shelters, without access to food, medicine, gas or other basic necessities; homes and other civilian infrastructure were damaged or destroyed; schools and other education facilities were forced to close as a result of disruptions to the supply of gas and electricity; and there have been dire shortages of food and other basic necessities, including medical care.

51. Armenia further submits that the irreparable prejudice to the rights of the ethnic Armenians of Nagorno-Karabakh is ongoing. It notes in this regard that more than 100,000 ethnic Armenians from Nagorno-Karabakh have fled to Armenia and now find themselves without a home, struggling to find a place to live, exhausted, scared and apprehensive about their future and the future of their homeland. Armenia contends that they have remained separated from their families and show signs of severe psychological distress. According to Armenia, for the remaining ethnic Armenian population of Nagorno-Karabakh, "the threat of further atrocities remains high" due, in particular, to the proliferation of hate speech towards ethnic Armenians and to the impossibility to ensure their safety and to prevent them from being killed, detained or displaced, in violation of CERD. Armenia contends, in addition, that cultural sites and monuments have fallen under Azerbaijan's control and are thus under direct threat of destruction or desecration. Armenia maintains that the process of ethnic cleansing is being consolidated day by day and that this poses an imminent risk of irreparable harm to the full range of CERD rights to which the ethnic Armenian population of Nagorno-Karabakh is entitled.

*

52. Azerbaijan maintains that there is no direct threat to the civilian population of Garabagh. In particular, it asserts that the Lachin Corridor and the Hakari Bridge border checkpoint are now fully open for both humanitarian deliveries and civilian traffic and that food, hygiene products, bedding and fuel have already been delivered. Azerbaijan further maintains that it has encouraged Armenian residents to stay in Garabagh. It makes clear that it has respected the choice of those who have decided to leave and has created all the necessary conditions for "an orderly transit for those choosing to leave" and has begun to "prepare for the return of those who wish to return". It also asserts that it has guaranteed that Armenian residents of Garabagh who decided to leave would have a right to return. According to Azerbaijan, the invocation by the Armenian Prime Minister of what he characterized as a risk of ethnic cleansing in a speech given two days after the operation on 19 September 2023 led Armenian residents to leave Garabagh en masse. Azerbaijan states that it has also opened communication channels with the local representatives of the ethnic Armenian residents of Garabagh and has met with them on three occasions to address the humanitarian situation, including the provision of food, fuel, medical emergency and firefighting services, family reunification, and other humanitarian support.

53. Azerbaijan contends that the series of undertakings that its Agent has made at the hearings are sufficient to address the alleged risk of irreparable prejudice (see paragraph 61 below).

* *

54. Having previously determined that at least some of the rights asserted by Armenia are plausible and that there is a link between those rights and some of the provisional measures requested, the Court turns to the questions of whether irreparable prejudice could be caused to those rights and whether there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to those rights before the Court gives its final decision.

55. In this regard, the Court observes that the operation commenced by Azerbaijan in Nagorno-Karabakh on 19 September 2023 took place in the context of the long-standing exposure of the population of Nagorno-Karabakh to a situation of vulnerability and social precariousness. As the Court has already noted, the residents of this region have been severely impacted by the long-lasting disruption of the connection between Nagorno-Karabakh and Armenia via the Lachin Corridor, which has impeded the transfer of persons of Armenian national or ethnic origin hospitalized in Nagorno-Karabakh to medical facilities in Armenia for urgent medical care. There have also been hindrances to the importation into Nagorno-Karabakh of essential goods, causing shortages of food, medicine and other life-saving

medical supplies (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 22 February 2023, I.C.J. Reports 2023 (I)*, p. 27, para. 54).

56. The Court further observes that, according to United Nations reports, more than 100,000 persons of Armenian national or ethnic origin have found themselves compelled to leave their place of residence and reach the Armenian border since the operation commenced by Azerbaijan in Nagorno-Karabakh on 19 September 2023, after which Azerbaijan regained full control over Nagorno-Karabakh. The Court considers that persons of Armenian national or ethnic origin who are present in Nagorno-Karabakh and those who have left the region remain vulnerable.

57. With respect to the persons of Armenian national or ethnic origin who are still residing in Nagorno-Karabakh, the Court recalls its previous statement that irreparable prejudice can be caused to the right to equality before the law in the enjoyment of the right to freedom of movement and residence within a State's borders when the persons concerned are exposed to privation, hardship, anguish and even danger to life and health (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Provisional Measures, Order of 15 October 2008*, *I.C.J. Reports 2008*, p. 396, para. 142). The Court has also considered that "a prejudice can be considered as irreparable when individuals are subject to temporary or potentially ongoing separation from their families and suffer from psychological distress"; or when students are prevented from pursuing their studies (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 431, para. 69).

58. The Court has recognized that individuals forced to leave their own place of residence without the possibility of return could be subject to a serious risk of irreparable prejudice (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 431, para. 69). The Court is of the view that similar considerations apply to the persons of Armenian national or ethnic origin who found themselves compelled to flee their place of residence for fear that they will be targeted because they belong to a protected group under CERD.

59. In view of the relationship between the rights of individuals identified above and the rights of States parties to the Convention (see paragraph 38 above), it follows that there is also a risk of irreparable prejudice to the rights asserted by the Applicant.

60. In light of the considerations set out above, the Court concludes that disregard for the rights deemed plausible by the Court (see paragraph 41

above) could cause irreparable prejudice to those rights and that there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused before the Court makes a final decision in the case.

61. The above conclusions regarding the risk of irreparable prejudice and urgency must be considered in light of the formal undertakings made by the Agent of Azerbaijan on behalf of his Government at the public hearing that took place on the afternoon of 12 October 2023:

"*(a)* Azerbaijan undertakes to do all in its power to ensure, without distinction as to national or ethnic origin:

(a) The security of residents in Garabagh including their safety and humanitarian needs, including through:

(i) the provision of food, medicines and other essential supplies to Garabagh;
(ii) providing access to available medical treatment; and
(iii) maintaining the supply of public utilities, including gas and electricity;

(b) The right of the residents of Garabagh to freedom of movement and residence, including the safe and prompt return of those residents that choose to return to their homes, and the safe and unimpeded departure of any resident wishing to leave Garabagh; and

(c) The protection of the property of persons who have left Garabagh.

(b) Azerbaijan also undertakes to facilitate:

(a) the access and activities of the ICRC, with whom Azerbaijan undertakes to co-operate in order to ensure the provision of humanitarian aid in Garabagh; and

(b) inspections of the United Nations such that it is able to make visits to Garabagh to advise on measures to address humanitarian, socio-economic, and other needs in Garabagh;

(c) Azerbaijan undertakes to protect, and not to damage or destroy, cultural monuments, artefacts and sites in Garabagh; and finally

(d) Azerbaijan undertakes to protect and not to destroy registration, identity and/or private property documents and records found in Garabagh."

62. The Court recalls that unilateral declarations can give rise to legal obligations and that interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected (see *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 268, para. 46; *Nuclear Tests (New*

Zealand v. *France), Judgment, I.C.J Reports 1974*, p. 473, para. 49). The Court further recalls that, "[o]nce a State has made such a commitment concerning its conduct, its good faith in complying with that commitment is to be presumed" (*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. 158, para. 44). The Court notes that the undertakings of the Agent of Azerbaijan, which were made publicly before the Court and formulated in a detailed manner, are aimed at addressing the situation of persons of Armenian national or ethnic origin in Nagorno-Karabakh following the operation commenced by Azerbaijan in this region on 19 September 2023. The Court is of the view that the undertakings made by the Agent of Azerbaijan on behalf of his Government are binding and create legal obligations for Azerbaijan.

63. The Court observes that many of Azerbaijan's undertakings address the concerns expressed by Armenia in the fifth Request, although the undertakings do not correspond in all respects to the measures requested by Armenia. This is the case in particular for Armenia's requested measure regarding the situation of persons of Armenian national or ethnic origin in Nagorno-Karabakh who do not wish to leave Nagorno-Karabakh but may feel compelled to do so if "actions directly or indirectly aimed at or having the effect of displacing the remaining ethnic Armenians from Nagorno-Karabakh" were to be taken.

64. In the view of the Court, the undertakings made by the Agent of Azerbaijan at the public hearing on the afternoon of 12 October 2023 contribute towards mitigating the imminent risk of irreparable prejudice resulting from the operation commenced by Azerbaijan in Nagorno-Karabakh on 19 September 2023 but do not remove the risk entirely (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 22 February 2023, I.C.J. Reports 2023 (I)*, p. 28, para. 56).

65. In light of the above, the Court finds that, even taking into account the undertakings made by the Agent of Azerbaijan on behalf of his Government at the public hearing on the afternoon of 12 October 2023, irreparable prejudice could be caused to the rights invoked by Armenia and there is still urgency, in the sense that there is a real and imminent risk of irreparable prejudice to those rights before the Court gives its final decision.

VI. Conclusion and Measures to Be Adopted

66. The Court concludes from all of the above considerations that the conditions for the indication of provisional measures are met. It is therefore necessary, pending its final decision, for the Court to indicate certain measures in order to protect the rights claimed by Armenia, as identified above (see paragraph 41).

67. The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are, in whole or in part, other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power on several occasions in the past (see *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 229, para. 79).

68. In the present case, having considered the terms of the provisional measures requested by Armenia and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

69. The Court concludes that, with regard to the situation described above, pending the final decision in the case, Azerbaijan must, in accordance with its obligations under CERD, (i) ensure that persons who have left Nagorno-Karabakh after 19 September 2023 and who wish to return to Nagorno-Karabakh are able to do so in a safe, unimpeded and expeditious manner; (ii) ensure that persons who remained in Nagorno-Karabakh after 19 September 2023 and who wish to depart are able to do so in a safe, unimpeded and expeditious manner; and (iii) ensure that persons who remained in Nagorno-Karabakh after 19 September 2023 or returned to Nagorno-Karabakh and who wish to stay are free from the use of force or intimidation that may cause them to flee.

70. The Court also recalls Azerbaijan's undertaking "to protect and not to destroy registration, identity and/or private property documents and records found in Garabagh". In this regard, the Court considers it necessary for Azerbaijan also to have due regard in its administrative and legislative practices to such documents and records that concern the persons identified in paragraph 69 above.

71. In view of the specific provisional measures it has decided to indicate, and in light of the undertakings made by the Agent of Azerbaijan at the public hearing that took place on the afternoon of 12 October 2023 (see paragraph 61 above), the Court considers that Azerbaijan must submit a report to the Court on the steps taken to give effect to the provisional measures indicated and to the undertakings made by the Agent of Azerbaijan within eight weeks, as from the date of this Order. The report so provided shall then be communicated to Armenia, which shall be given the opportunity to submit to the Court its comments thereon.

* * *

72. The Court reaffirms the provisional measures indicated in its Orders of 7 December 2021 and 22 February 2023. It also reaffirms its statements in those Orders that its orders on provisional measures under Article 41 of the

Statute have binding effect and thus create international legal obligations for any party to whom the provisional measures are addressed.

* * *

73. The Court further reaffirms that the decision given in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Armenia and Azerbaijan to submit arguments in respect of those questions.

* * *

74. For these reasons,

THE COURT,

Indicates the following provisional measures:

(1) By thirteen votes to two,

The Republic of Azerbaijan shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, (i) ensure that persons who have left Nagorno-Karabakh after 19 September 2023 and who wish to return to Nagorno-Karabakh are able to do so in a safe, unimpeded and expeditious manner; (ii) ensure that persons who remained in Nagorno-Karabakh after 19 September 2023 and who wish to depart are able to do so in a safe, unimpeded and expeditious manner; and (iii) ensure that persons who remained in Nagorno-Karabakh after 19 September 2023 or returned to Nagorno-Karabakh and who wish to stay are free from the use of force or intimidation that may cause them to flee;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Bennouna, Xue, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge* ad hoc Daudet;

AGAINST: *Judge* Yusuf; *Judge* ad hoc Koroma;

(2) By thirteen votes to two,

The Republic of Azerbaijan shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, protect and preserve registration, identity and private property documents and records that concern the persons identified under subpara-

graph (1) and have due regard to such documents and records in its administrative and legislative practices;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Bennouna, Xue, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge* ad hoc Daudet;

AGAINST: *Judge* Yusuf; *Judge* ad hoc Koroma;

(3) By thirteen votes to two,

The Republic of Azerbaijan shall submit a report to the Court on the steps taken to give effect to the provisional measures indicated and to the undertakings made by the Agent of the Republic of Azerbaijan, on behalf of his Government, at the public hearing that took place on the afternoon of 12 October 2023, within eight weeks, as from the date of this Order.

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Bennouna, Xue, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge* ad hoc Daudet;

AGAINST: *Judge* Yusuf; *Judge* ad hoc Koroma.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this seventeenth day of November, two thousand and twenty-three, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Armenia and the Government of the Republic of Azerbaijan, respectively.

(Signed) Joan E. DONOGHUE,
President.

(Signed) Philippe GAUTIER,
Registrar.

Judge YUSUF appends a dissenting opinion to the Order of the Court; Judge *ad hoc* KOROMA appends a dissenting opinion to the Order of the Court.

(Initialled) J.E.D.

(Initialled) Ph.G.