

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)

PRELIMINARY OBJECTIONS

JUDGMENT OF 12 NOVEMBER 2024

2024

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)

EXCEPTIONS PRÉLIMINAIRES

ARRÊT DU 12 NOVEMBRE 2024

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12 NOVEMBER 2024

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ARRÊT

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INTERNATIONAL COURT OF JUSTICE

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

(ARMENIA v. AZERBAIJAN)

PRELIMINARY OBJECTIONS

Historical context — Application filed by Armenia on 16 September 2021 — Armenia and Azerbaijan parties to the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) — Article 22 of CERD invoked as basis of jurisdiction — Azerbaijan raises two preliminary objections to the jurisdiction of the Court.

*

First preliminary objection — Precondition of negotiation under Article 22 of CERD.

Meaning of the term “negotiation” — Precondition of negotiation met when there has been a failure of negotiations, or when negotiations have become futile or deadlocked — Genuine attempt at negotiation made by Armenia — Negotiations between the Parties futile or deadlocked by time Armenia filed Application — Precondition of negotiation satisfied — First preliminary objection rejected.

*

*Second preliminary objection — Jurisdiction *ratione materiae*.*

Objection limited to Armenia’s claims concerning murder, torture and inhuman treatment, and claims concerning arbitrary detention and

enforced disappearance — Requirement that alleged actions or omissions fall within the scope of CERD and that facts, if established, are capable of constituting violations of CERD — Definition of racial discrimination in Article 1 (1) of CERD.

Applicability of CERD in situations of armed conflict — Applicability of international humanitarian law does not preclude applicability of CERD in armed conflict — CERD and international humanitarian law are complementary — No distinction in CERD between members of armed forces and civilians — Armenia's claims concerning both groups fall within scope of CERD.

Allegations of murder, torture and inhuman treatment — Acts are capable of constituting discrimination “based on” Armenian national or ethnic origin carried out with purpose or effect of interfering with rights protected under Articles 2 (1), 4 (a) and 5 (b) of CERD — Court need only determine whether alleged acts are capable of constituting violations of CERD and thus fall within its scope — Contextual nature of racial discrimination — Pervasive atmosphere of racially discriminatory speech and sentiment is relevant to Court's assessment of whether acts capable of violating CERD — Whether alleged acts actually constituted racial discrimination a matter for the merits — Claims of alleged racially motivated murder, torture and inhuman treatment of ethnic Armenians fall within the scope of Articles 2 (1), 4 (a) and 5 (b) of CERD.

Allegations of arbitrary detention and enforced disappearance — To decide on these claims, reasoning with respect to murder, torture and inhuman treatment taken into account — Acts are capable of constituting discrimination “based on” Armenian national or ethnic origin carried out with purpose or effect of interfering with rights protected under Articles 2 and 5 (a) of CERD — Claims regarding the alleged racially motivated arbitrary detention and enforced disappearance of ethnic Armenians fall within the scope of Articles 2 and 5 (a) of CERD.

Second preliminary objection rejected.

JUDGMENT

Present: President SALAM; Vice-President SEBUTINDE; Judges TOMKA, ABRAHAM, YUSUF, XUE, BHANDARI, IWASAWA, NOLTE, CHARLESWORTH, BRANT, GÓMEZ ROBLEDÓ, CLEVELAND, AURESCU, TLADI; Judges ad hoc DAUDET, KOROMA; Registrar GAUTIER.

In the case concerning the application of the International Convention on the Elimination of All Forms of Racial Discrimination,

between

the Republic of Armenia,

represented by

HE Mr Yeghishe Kirakosyan, Representative of the Republic of Armenia on International Legal Matters,

as Agent;

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

Mr Linos-Alexandre Sicilianos, Professor of International Law, Dean of the Faculty of Law of the University of Athens, member of the Institut de droit international, Member of the Permanent Court of Arbitration,

Ms Alison Macdonald, KC, Barrister, Essex Court Chambers, London,

Mr Pierre d'Argent, Full Professor, Université catholique de Louvain, member of the Institut de droit international, Foley Hoag LLP, member of the Bar of Brussels,

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

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

as Counsel and Advocates;

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

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

Ms Iulia Padeanu Mellon, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and Illinois,

Mr Amir Ardelan Farhadi, Attorney at Law, Foley Hoag LLP, member of the Bar 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 Diem Huong Ho, Attorney at Law, Foley Hoag LLP, member of the Bars of England and Wales and the State of New York,

Mr Harout Ekmanian, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

Ms María Camila Rincón, Attorney at Law, Foley Hoag LLP, member of the Bar of Colombia,

as Counsel;

HE Mr Viktor Biyagov, Ambassador of the Republic of Armenia to the Kingdom of the Netherlands,

HE Mr Andranik Hovhannisyan, 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 on International Legal Matters, Office of the Prime Minister of the Republic of Armenia,

Mr Aram Aramyan, Head of the Department of the Protection of the Interests of the Republic of Armenia in Interstate Disputes, Office of the Representative of the Republic of Armenia on International Legal Matters, Office of the Prime Minister of the Republic of Armenia,

Ms Kristine Khanazadyan, Head of the Department for Representation of the Interests of the Republic of Armenia before International Arbitral Tribunals and Foreign Courts, Office of the Representative of the Republic of Armenia on International Legal Matters, Office of the Prime Minister of the Republic of Armenia,

Ms Zoya Stepanyan, Head of the International Human Rights Co-operation Division, Department for Human Rights and Humanitarian Issues, Ministry of Foreign Affairs,

Ms Viviana Kalaejian, Third Secretary, Embassy of the Republic of Armenia in the Kingdom of the Netherlands,

Ms Nanami Hirata, Attorney at Law, Foley Hoag LLP,

Mr Levon Gevorgyan, Director of the International Law and Policy Centre Foundation, expert in international criminal and human rights law,

as Advisers;

Ms Jennifer Schoppmann, Foley Hoag LLP,

Ms Deborah Langley, Foley Hoag LLP,

as Assistants,

and

the Republic of Azerbaijan,

represented by

HE Mr Elnur Mammadov, Deputy Minister for Foreign Affairs, Republic of Azerbaijan,

as Agent;

HE Mr Rahman Mustafayev, Ambassador of the Republic of Azerbaijan to the Kingdom of the Netherlands,

as Co-Agent;

Mr Samuel Wordsworth, KC, Essex Court Chambers, member of the Bar of England and Wales, member of the Paris Bar,

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

Mr Stefan Talmon, Professor of International Law, University of Bonn, Barrister, Twenty Essex Chambers,

as Counsel and Advocates;

Mr Stephen Fietta, KC, Fietta LLP, Solicitor Advocate of the Senior Courts of England and Wales,

Ms Oonagh Sands, Fietta LLP, member of the Bars of the State of New York and the District of Columbia, Solicitor Advocate of the Senior Courts of England and Wales,

Ms Eileen Crowley, Fietta LLP, member of the Bar of the State of New York, Solicitor of the Senior Courts of England and Wales,

Mr Gershon Hasin, JSD, Fietta LLP, member of the Bar of the State of New York,

Ms Mercedes Roman, Fietta LLP, member of the Bar of the Bolivarian Republic of Venezuela,

Mr Sean Aughey, Essex Court Chambers, member of the Bar of England and Wales,

Mr Aditya Laddha, PhD candidate and assistant, Faculty of Law, University of Geneva,

as Counsel;

Mr Nurlan Aliyev, Counsellor, Embassy of the Republic of Azerbaijan in the Kingdom of the Netherlands,

Ms Sabina Sadigli, First Secretary, Embassy of the Republic of Azerbaijan in the Kingdom of the Netherlands,

Mr Vusal Ibrahimov, First Secretary, Embassy of the Republic of Azerbaijan in the Kingdom of the Netherlands,

Mr Badir Bayramov, Second Secretary, Ministry of Foreign Affairs of the Republic of Azerbaijan,
Mr Shahriyar Hajiyeu, Second Secretary, Ministry of Foreign Affairs of the Republic of Azerbaijan,

as Advisers,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 16 September 2021, the Republic of Armenia (hereinafter “Armenia”) filed in the Registry of the Court an Application instituting proceedings against the Republic of Azerbaijan (hereinafter “Azerbaijan”) concerning alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter “CERD” or the “Convention”).

2. In its Application, Armenia seeks to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court in conjunction with Article 22 of CERD.

3. 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.

4. The Registrar immediately communicated to the Government of Azerbaijan the Application containing the Request for the indication of provisional measures, in accordance with Article 40, paragraph 2, of the Statute and Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing by Armenia of the Application and the Request for the indication of provisional measures.

5. In addition, by a letter dated 22 September 2021, the Registrar informed all States entitled to appear before the Court of the filing of the above-mentioned Application and Request.

6. Pursuant to Article 40, paragraph 3, of the Statute, the Registrar notified the Member States of the United Nations through the Secretary-General, and any other State entitled to appear before the Court, of the filing of the Application, by transmitting to them the printed bilingual text.

7. 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, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Armenia chose Mr Yves Daudet and Azerbaijan Mr Kenneth Keith.

8. By an Order dated 7 December 2021, the Court, having heard the Parties, indicated the following provisional measures:

“(1) The Republic of Azerbaijan shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

- (a) Protect from violence and bodily harm all persons captured in relation to the 2020 Conflict who remain in detention, and ensure their security and equality before the law;
- (b) Take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin;
- (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.*)

9. In accordance with Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to CERD the notifications provided for in Article 63, paragraph 1, of the Statute. In addition, in accordance with Article 69, paragraph 3, of the Rules of Court, the Registrar addressed to the United Nations, through its Secretary-General, the notification provided for in Article 34, paragraph 3, of the Statute.

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

11. By letters dated 16 and 19 September 2022, both received in the Registry on 19 September 2022, Armenia, referring to Article 76 of the Rules of Court, requested the modification of the Court’s Order of 7 December 2021. By a communication dated 27 September 2023, Azerbaijan filed its written observations on this Request within the time-limit fixed for that purpose.

12. 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 also 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).

13. On 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.

14. By an Order dated 22 February 2023, the Court, having heard the Parties, 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.*)

15. 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 with respect to certain claims contained in the Application. Consequently, 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 could present a written statement of its observations and submissions on the preliminary objections raised by Azerbaijan. The written statement was filed within the time-limit thus fixed.

16. Following the resignation of Judge *ad hoc* Keith on 21 April 2023, Azerbaijan chose Mr Abdul G. Koroma to replace him as judge *ad hoc* in the case.

17. 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. By a communication dated 25 May 2023, Azerbaijan filed its written observations on this request within the time-limit fixed for that purpose.

18. By an Order dated 6 July 2023, 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 Order of 22 February 2023 indicating a provisional measure”. The Court reaffirmed the provi-

sional measure indicated in its Order of 22 February 2023 (*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. 410-411, para. 33).

19. By a letter dated 25 August 2023, the Registrar, acting pursuant to Article 69, paragraph 3, of the Rules of Court, transmitted to the Secretary-General of the United Nations copies of the written proceedings filed thus far in the case, and asked whether the Organization intended to present observations in writing under that provision in relation to the preliminary objections raised by Azerbaijan. By a letter dated 30 August 2023, the Office of Legal Affairs informed the Court that the United Nations did not intend to submit any observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court.

20. 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.

21. By an Order dated 17 November 2023, the Court, having heard the Parties, indicated the following provisional measures:

“(1) The Republic of Azerbaijan shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, (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;

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

(3) 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.” (*Application of the International Convention on the*

Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 17 November 2023, I.C.J. Reports 2023 (II), pp. 640-641, para. 74.)

22. Pursuant to subparagraph 3 of the operative clause of the Order of 17 November 2023, Azerbaijan submitted a report on the steps taken to give effect to that Order on 12 January 2024. Armenia provided comments on that report on 26 January 2024, within the time-limit fixed for that purpose. By a letter dated 4 March 2024, Azerbaijan sent a communication regarding those comments.

23. Pursuant to Article 53, paragraph 2, of the Rules of Court, the Court, after ascertaining the views of the Parties, decided to make accessible to the public the preliminary objections of Azerbaijan and the written statement of Armenia on those preliminary objections, as well as the annexes thereto, as redacted by the Parties for the protection of personal and sensitive information.

24. Public hearings on the preliminary objections raised by Azerbaijan were held on 15, 16, 17 and 19 April 2024, at which the Court heard the oral arguments and replies of:

For Azerbaijan: HE Mr Elnur Mammadov,
Mr Stefan Talmon,
Mr Samuel Wordsworth,
Ms Laurence Boisson de Chazournes,
Mr Sean Aughey,
HE Mr Rahman Mustafayev.

For Armenia: HE Mr Yeghishe Kirakosyan,
Mr Constantinos Salonidis,
Mr Pierre d'Argent,
Mr Sean Murphy,
Ms Alison Macdonald,
Mr Joseph Klingler,
Mr Linos-Alexandre Sicilianos.

*

25. In the Application, the following claims were made by Armenia:

“Armenia respectfully requests the Court to adjudge and declare:

1. That Azerbaijan is responsible for violating the CERD, including Articles 2, 3, 4, 5, 6 and 7.
2. That, as a consequence of its international responsibility for these breaches of the Convention, Azerbaijan must:
 - A. Cease forthwith any such ongoing internationally wrongful act and fully comply with its obligations under Articles 2, 3, 4, 5, 6 and 7 of the CERD, including by:

- refraining from practices of ethnic cleansing against Armenians;
 - refraining from engaging in, glorifying, rewarding or condoning acts of racism against Armenians, including Armenian prisoners of war, hostages and other detained persons;
 - refraining from engaging in or tolerating hate speech against Armenians, including in educational materials;
 - refraining from suppressing the Armenian language, destroying Armenian cultural heritage or otherwise eliminating the existence of the historical Armenian cultural presence or inhibiting Armenians' access and enjoyment thereof;
 - punishing all acts of racial discrimination, both public and private, against Armenians, including those taken by public officials;
 - ensuring that the rights of Armenians, including Armenian prisoners of war, hostages and other detained persons are upheld on an equal basis;
 - adopting the laws necessary to uphold its obligations under the CERD;
 - providing Armenians with equal treatment before the tribunals and all other organs administering justice, and providing effective protection and remedies against acts of racial discrimination;
 - refraining from hindering the registration and operation of NGOs and arresting, detaining and sentencing human rights activists or other individuals working towards reconciliation with Armenia and Armenians; and
 - taking effective measures with a view to combatting prejudices against Armenians, and special measures for the purpose of securing their adequate advancement.
- B. Make reparations for the injury caused by any such internationally wrongful act, including:
- by way of restitution, allowing the safe and dignified return of displaced Armenians to their homes, and restoring or returning any Armenian cultural and religious buildings and sites, artefacts or objects;
 - providing additional forms of reparation for any harm, loss or injury suffered by Armenians that is not capable of full reparation by restitution, including by providing compensation to displaced Armenians until such time as it becomes safe for them to return to their homes.

- C. Acknowledge its violations of the CERD and provide an apology to Armenia and Armenian victims of Azerbaijan's racial discrimination.
- D. Offer assurances and guarantees of non-repetition of violations of its obligations under Articles 2, 3, 4, 5, 6 and 7 of the CERD."

26. In the written proceedings on the merits, the following submissions were presented on behalf of the Government of Armenia in its Memorial:

"For the reasons given in this Memorial, Armenia respectfully requests the International Court of Justice to adjudge and declare that:

DECLARATIONS OF BREACHES

- (1) Azerbaijan has violated its obligations under Articles 2 to 7 of the CERD by engaging in numerous grave and pervasive acts of racial discrimination against ethnic Armenians;
- (2) Azerbaijan has further violated its obligations under Articles 2 (1), 4 (a) and 5 (b) of the CERD by engaging in the discriminatory murder, torture and inhumane treatment of ethnic Armenians;
- (3) Azerbaijan has violated its obligations under Articles 2 (1), 4 (c) and 5 (b) of the CERD by glorifying, rewarding and condoning the above acts under (2);
- (4) Azerbaijan has violated its obligations under Articles 2 and 5 (a) of the CERD by engaging in practices of discriminatory arbitrary detention of ethnic Armenians;
- (5) Azerbaijan has violated its obligations under Articles 2 and 5 (a) of the CERD by engaging in practices of discriminatory enforced disappearance of ethnic Armenians;
- (6) Azerbaijan has violated its obligations under Articles 2 (1), 4, 6 and 7 of the CERD by facilitating, tolerating, inciting and failing to punish and prevent hate speech targeting ethnic Armenians;
- (7) Azerbaijan has violated its obligations under Articles 2 (1) and 5 of the CERD by failing to guarantee, without discrimination, the civil, political, economic, social and cultural rights of ethnic Armenians, including through the destruction of their cultural heritage;

- (8) Azerbaijan has violated its obligations under Articles 2 (1), 2 (2) and 7 of the CERD by failing to take necessary and effective measures to eliminate racial discrimination against ethnic Armenians and to combat prejudices which lead to racial discrimination against them;
- (9) Azerbaijan has violated its obligations under Articles 2 (1) (c) and 2 (1) (e) of the CERD by suppressing individuals and organisations combatting racial discrimination against ethnic Armenians, and anyone presenting ethnic Armenians in a favourable light;
- (10) Azerbaijan has violated its obligations under Articles 2 and 6 of the CERD by failing to provide ethnic Armenians with effective protection and remedies and to uphold the right to seek just and adequate reparation or satisfaction for damage caused by acts of racial discrimination;
- (11) Azerbaijan has violated its obligations under paragraph 98 of the Order of 7 December 2021, as affirmed by the Order of 12 October 2022, by:
 - (a) Failing to protect from violence and bodily harm all persons captured and detained in relation to the 2020 Conflict and hostilities that constitute a renewed flare-up of the 2020 Conflict, including in September 2022, who were detained or remain in detention, and by failing to ensure their security and equality before the law;
 - (b) Failing to take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, against persons of Armenian national or ethnic origin;
 - (c) Failing to take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage;
 - (d) Aggravating and extending the present dispute, and by making it more difficult to resolve;

CESSATION

- (12) Azerbaijan shall cease forthwith all of its ongoing violations of the CERD set out under paragraphs 1 to 10 above;

ASSURANCES AND GUARANTEES OF NON-REPETITION

- (13) Azerbaijan shall offer to Armenia and ethnic Armenians assurances and guarantees of non-repetition of its past and ongoing violations of the CERD, in the form deemed appropriate by the Court;

RESTITUTION

- (14) Azerbaijan shall make reparation by way of restitution to Armenia and all ethnic Armenian victims of its violations of the CERD, and of the Order of 7 December 2021. In particular, Azerbaijan shall:

- (a) Allow the safe and dignified return of displaced ethnic Armenians to their homes and places of origin;
- (b) Return to ethnic Armenians their farmland, fields, houses and other property, as well as their places of worship;
- (c) Release all ethnic Armenian prisoners of war and civilian detainees;
- (d) Guarantee the right of ethnic Armenians within its jurisdiction to equality before the law, notably in the enjoyment of the human rights and fundamental freedoms protected by the CERD, including effective protection and remedies against acts of racial discrimination;
- (e) Adopt immediate and effective measures in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination against ethnic Armenians;
- (f) Facilitate the search for the disappeared and assist in the recovery, identification and reburial of the bodies of those killed in accordance with Armenian religious rites;
- (g) Return any Armenian cultural artefacts or objects seized;
- (h) Restore to their original form and status, under the guidance of UNESCO experts, any Armenian cultural and religious buildings or other elements of Armenian heritage, including churches, cemeteries, khachkars and other monuments;
- (i) Exonerate anyone punished for directly or indirectly combatting racial discrimination against ethnic Armenians, and anyone else punished for presenting ethnic Armenians in a favourable light;

COMPENSATION

- (15) Azerbaijan shall make reparation by way of compensation to Armenia and all ethnic Armenian victims of its violations of the

CERD, and of the Order of 7 December 2021, in so far as their harm, loss or injury is not capable of redress by restitution; and

- (16) Failing agreement between the Parties on the amount of compensation within nine months from the issuance of the Judgment, the question shall be decided by the Court in a subsequent phase of the proceedings in this case.

The Republic of Armenia reserves the right to supplement or amend these submissions in light of further pleadings and as necessary.”

27. In the preliminary objections, the following submissions were presented on behalf of the Government of Azerbaijan:

“71. For these reasons, Azerbaijan respectfully requests that the Court issue a judgment:

- (a) Dismissing Armenia’s Application in its entirety on the ground that none of Armenia’s claims is properly before the Court because Armenia has failed to comply with the negotiation precondition required by Article 22 of CERD; and
- (b) In addition or in the alternative, dismissing the claims as follows and as set forth in Annex 46 on the ground that the Court lacks jurisdiction *ratione materiae* because those claims fall outside the scope of CERD:
 - (i) Each of the claims asserted in Part VI, Chapter 3, Section I, of Armenia’s Memorial;
 - (ii) Each of the claims asserted in Part VI, Chapter 3, Section III of Armenia’s Memorial; and
 - (iii) Each of the claims asserted in Part VI, Chapter 3, Section IV of Armenia’s Memorial.

72. Azerbaijan reserves all its rights under the Court’s Statute and Rules, including the right to amend and supplement these Submissions and right to contest jurisdiction and admissibility on the above and other grounds should the case proceed to the merits.”

28. By a letter dated 5 April 2024, the Agent of Azerbaijan informed the Court that

“Azerbaijan has decided not to maintain certain of its objections at subparagraph 71 (b) (i) relating to alleged violation of Articles 2 (1), 4 (a) and 5 (b) of the CERD by means of mistreatment of ethnic Armenian *civilians* during armed conflict. Specifically, Azerbaijan will not maintain its objections with respect to allegations which Armenia has with reference to specific evidence purportedly indicating miscon-

duct ‘capable’ of falling within CERD. Azerbaijan’s decision not to maintain this aspect of its preliminary objections is without prejudice to its intention to resist the claims concerned at the merits phase of this proceeding.

Azerbaijan maintains the remainder of its objections at subparagraph 71 (b) (i). In particular, Azerbaijan maintains its position that:

- (i) Armenia’s CERD claims related to alleged mistreatment of Armenia’s *armed forces* during the active hostilities phase of armed conflict; and
- (ii) the remainder of Armenia’s CERD claims related to alleged mistreatment of *civilians* during the active hostilities phase of armed conflict, in relation to which Armenia has presented no specific evidence of purported misconduct on the basis of ethnic or national origin

are not ‘capable’ of falling within CERD.”

29. In the written statement of its observations and submissions on the preliminary objections, the following submissions were presented on behalf of the Government of Armenia:

“For the reasons stated above, Armenia respectfully requests that the Court:

- (a) Reject the first preliminary objection raised by Azerbaijan;
- (b) Reject the second preliminary objection raised by Azerbaijan; in the alternative, decide that Azerbaijan’s second preliminary objection does not possess an exclusively preliminary character.”

30. At the oral proceedings on the preliminary objections, the following submissions were presented by the Parties:

On behalf of the Government of Azerbaijan,

at the hearing of 17 April 2024:

“The Republic of Azerbaijan requests that the Court issues a Judgment:

- 1. dismissing Armenia’s Application in its entirety on the ground that none of Armenia’s claims is properly before the Court because Armenia has failed to comply with the negotiation precondition required by Article 22 of CERD;

2. in addition, or in the alternative, declaring that the Court lacks jurisdiction *ratione materiae* with respect to Armenia's claims concerning alleged violations by Azerbaijan of its obligations under:
 - (i) Articles 2 (1), 4 (a) and 5 (b) of the CERD by engaging in the discriminatory murder, torture and inhumane treatment of members of Armenia's armed forces during the active hostilities phase of armed conflict;
 - (ii) Articles 2 (1), 4 (a) and 5 (b) of the CERD by engaging in discriminatory murder, torture and inhumane treatment of Armenian civilians during the active hostilities phase of armed conflict, except with respect to any allegations which Armenia has particularised with reference to specific evidence purportedly indicating misconduct 'capable' of falling within CERD;
 - (iii) Articles 2 and 5 (a) of the CERD by engaging in practices of discriminatory arbitrary detention of ethnic Armenians; and
 - (iv) Articles 2 and 5 (a) of the CERD by engaging in practices of discriminatory enforced disappearance of ethnic Armenians."

On behalf of the Government of Armenia,

at the hearing of 19 April 2024:

"On the basis of its written and oral submissions, the Republic of Armenia respectfully requests that the Court:

- (a) Reject the first preliminary objection raised by Azerbaijan; and
- (b) Reject the second preliminary objection raised by Azerbaijan; or in the alternative, decide that Azerbaijan's second preliminary objection does not possess an exclusively preliminary character."

* * *

I. INTRODUCTION

31. Armenia and Azerbaijan, both of which were Republics of the former Union of Soviet Socialist Republics (hereinafter the "Soviet Union"), declared independence on 21 September 1991 and 18 October 1991, respectively.

32. The region which Armenia calls Nagorno-Karabakh and Azerbaijan calls Garabagh was, in the Soviet Union, an autonomous entity (“oblast”) with 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, to which Armenia refers as “the First Nagorno-Karabakh War” and Azerbaijan refers as “the First Garabagh War”, that ended with a ceasefire in May 1994. Further hostilities erupted in September 2020, in what Armenia calls “the Second Nagorno-Karabakh War” and Azerbaijan calls “the Second Garabagh War” (hereinafter the “2020 Conflict”).

33. 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”. However, the situation between the Parties remained unstable and hostilities again erupted in September 2022, and again in September 2023.

34. On 16 September 2021, Armenia instituted the present proceedings under CERD, following the 2020 Conflict. In its Application, Armenia alleges that Azerbaijan has breached several provisions of CERD by virtue of a decades-long State policy of racial discrimination. Specifically, Armenia asserts that, “[a]s a result of this State-sponsored policy of Armenian hatred, Armenians have been subjected to systemic discrimination, mass killings, torture and other abuse”.

35. In its Application, Armenia seeks to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court in conjunction with Article 22 of CERD (see paragraph 2 above). Article 22 of CERD provides as follows:

“Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.”

36. Both Armenia and Azerbaijan are parties to CERD. Armenia acceded to it on 23 June 1993 and Azerbaijan on 16 August 1996. The Convention entered into force for each Party on the thirtieth day after the date of the deposit of its instrument of accession, i.e. on 23 July 1993 and 15 September 1996, respectively. Neither Party entered any reservation to the Convention.

37. Azerbaijan raises two preliminary objections to the jurisdiction of the Court. First, it argues that the Court lacks jurisdiction under Article 22 of CERD because the precondition of negotiation has not been satisfied. Second, Azerbaijan contends that some of Armenia's claims are not within the Court's jurisdiction *ratione materiae* under Article 22 of CERD. The Court will address each of these objections in turn.

II. FIRST PRELIMINARY OBJECTION: THE PRECONDITION OF NEGOTIATION UNDER ARTICLE 22 OF CERD

38. The Court will first consider whether the precondition of negotiation under Article 22 of CERD has been satisfied in this case.

* *

39. Azerbaijan argues that the Court has no jurisdiction over Armenia's claims because the precondition of negotiation under Article 22 of CERD has not been satisfied. In Azerbaijan's view, Armenia has failed to satisfy this precondition because it did not seriously seek to engage with Azerbaijan to resolve the dispute.

40. Azerbaijan states that the Parties exchanged positions on the procedural modalities, scope and timing of their future negotiations on the substance of Armenia's claims under CERD for over six months. Such "pre-negotiations" are, it submits, not negotiations within the meaning of Article 22 of CERD.

41. Azerbaijan contends that Armenia discontinued negotiations after only two rounds of meetings dedicated to the substance of claims: the first on 15-16 and 27-28 July 2021, and the second on 30-31 August and 14-15 September 2021. According to Azerbaijan, Armenia thus did not allow the negotiations on substantive matters to progress. It recalls that Armenia presented its claims and requests for remedies at the meeting on 15-16 July 2021, and that Azerbaijan provided its responses at the meeting on 30-31 August 2021. At the August meeting, Azerbaijan also submitted a list of 13 actions that it proposed the Parties could jointly take to resolve the dispute. According to Azerbaijan, rather than engage with these proposals, Armenia rejected them outright at the meeting on 14-15 September 2021.

42. Azerbaijan states that Armenia at that point unilaterally declared that the negotiations had failed. Further, Azerbaijan notes that Armenia filed its Application and first Request for the indication of provisional measures less than 24 hours after the meeting had ended. Azerbaijan argues, however, that negotiations on the substantive matters were not at an impasse but had barely begun, given that only little time had been devoted to substantive negotiations. According to Azerbaijan, the Parties had not previously met

bilaterally, without a mediator, for almost 30 years, and any expectation that the claims would be resolved in two rounds of meetings was therefore unrealistic.

43. Azerbaijan submits that many of its 13 proposed actions, all of which Armenia rejected, corresponded to remedies that Armenia had sought and now requests before the Court. It further contends that other proposals mirrored some of Armenia's claims on the merits. On this basis, Azerbaijan argues that a settlement of Armenia's claims remained possible.

44. Azerbaijan states that allowing Armenia's claims to proceed to the merits in these circumstances would render the negotiation requirement under Article 22 of CERD essentially meaningless.

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45. Armenia, for its part, argues that, by the time it filed its Application on 16 September 2021, the Parties had exchanged more than 40 pieces of correspondence and participated in seven rounds of bilateral meetings, all with a view to settling the present dispute amicably.

46. Armenia contends that it commenced these negotiations with the genuine intention of settling the dispute amicably. It states that it engaged in numerous exchanges with Azerbaijan, even as Azerbaijan continued to violate CERD. Armenia argues that Azerbaijan categorically rejected Armenia's claims from the outset, despite Azerbaijan's assertion that it was prepared to negotiate a possible settlement of those claims, and that Azerbaijan's position remained unchanged throughout the negotiations.

47. According to Armenia, there is no basis for excluding exchanges concerning procedural or technical matters from the concept of negotiations under Article 22 of CERD, provided that these exchanges are made with a view to resolving the dispute. Armenia recalls that, after it had articulated its claims under CERD in a letter dated 11 November 2020, Azerbaijan replied, by a letter dated 8 December 2020, that it rejected Armenia's claims. Armenia reiterated its claims in a letter dated 22 December 2020, and Azerbaijan maintained its rejection of those claims by a letter dated 15 January 2021. Armenia states that the Parties' positions did not change over the following months. It asserts, in particular, that Azerbaijan rejected Armenia's claims at the meeting between the Parties on 30-31 August 2021. In Armenia's view, Azerbaijan sought to "prolong[] negotiations for as long as possible".

48. Armenia argues that it considered the 13 proposed joint steps that Azerbaijan presented at the 30-31 August 2021 meeting for two weeks. Further, Armenia states that Azerbaijan's proposals were formulated in tentative terms and did not mirror any of Armenia's requests on the merits. Armenia contends that the proposals denied any breaches of CERD by Azerbaijan, offered no assurances or guarantees of non-repetition and no reparation, and failed to address some of Armenia's most important requests

for relief. Armenia also contends that Azerbaijan's proposals were based on reciprocity of action between the Parties. Armenia rejects Azerbaijan's suggestion that these proposals show that an agreement remained possible.

49. Armenia notes that the Court has found preconditions of negotiation to have been satisfied in circumstances where exchanges between the parties had been less extensive than they were in this case.

* *

50. The Court has held that "the terms of Article 22 of CERD, namely '[a]ny dispute . . . which is not settled by negotiation or by the procedures expressly provided for in this Convention', establish preconditions to be fulfilled before the seisin of the Court" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 128, para. 141; see also *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 598, para. 106).

51. The Court has also previously examined the meaning of the term "negotiation" in Article 22 of CERD. In the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, the Court stated that

"negotiations are distinct from mere protests or disputations. Negotiations entail more than the plain opposition of legal views or interests between two parties, or the existence of a series of accusations and rebuttals, or even the exchange of claims and directly opposed counter-claims. As such, the concept of 'negotiations' differs from the concept of 'dispute', and requires — at the very least — a genuine attempt by one of the disputing parties to engage in discussions with the other disputing party, with a view to resolving the dispute." (*Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 132, para. 157; see also *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, pp. 601-602, para. 116.)

52. In order to meet the precondition of negotiation in the compromissory clause of a treaty, "the subject-matter of the negotiations must relate to the subject-matter of the dispute which, in turn, must concern the substantive

obligations contained in the treaty in question” (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 133, para. 161). Further, where negotiations are attempted or have commenced, the precondition of negotiation is satisfied only when negotiations have failed, or when they have become futile or deadlocked (*ibid.*, para. 159; see also *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 446, paras. 58-59).

53. Whether negotiations have taken place, or whether they have failed or become futile or deadlocked, depends on the facts and circumstances of each particular case. The Court notes that the Parties began exchanging written correspondence related to the present dispute under CERD in November 2020. Armenia initiated correspondence with Azerbaijan by a letter dated 11 November 2020, in which Armenia alleged ongoing violations of multiple provisions of CERD. In its response, dated 8 December 2020, Azerbaijan “reject[ed] Armenia’s allegations as set forth in its 11 November Letter”. Azerbaijan also stated that it “remain[ed] open to negotiating this matter”. Armenia reiterated its claims under CERD in a letter to Azerbaijan dated 22 December 2020, and Azerbaijan maintained its rejection of Armenia’s allegations in its response, dated 15 January 2021. In the Court’s view, these specific references to CERD show that the subject-matter of these exchanges related to the subject-matter of that Convention.

54. The Court observes that, over the subsequent months, the Parties engaged in multiple written exchanges and two rounds of virtual meetings concerning the modalities, scope and timing of negotiations regarding the substance of alleged violations of CERD. Correspondence on procedural modalities continued until the Parties reached agreement on these points through an exchange of Notes Verbales on 3 May 2021. Exchanges on the scope of the negotiations continued and, at a meeting on 31 May 2021, each Party presented a list of topics to be discussed at later meetings. The Parties engaged in further exchanges about the format in which claims would be presented and the schedule for doing so. In the Court’s opinion, all these exchanges formed part of the negotiations between the Parties related to a possible settlement of the present dispute.

55. Negotiations dedicated to the substance of alleged violations of CERD began with the face-to-face meeting on 15-16 July 2021, during which Armenia presented its claims and requested remedies. The Parties held two rounds of in-person meetings to negotiate claims and remedies: the first on 15-16 and 27-28 July 2021, and the second on 30-31 August and 14-15 September 2021. The Court observes that the Parties’ respective positions remained substantially unchanged from Azerbaijan’s initial rejection

of Armenia's claims in December 2020 until its renewed rejection of those claims at the Parties' second substantive meeting in September 2021.

56. The Court further notes the proposals Azerbaijan presented to Armenia at the 30-31 August 2021 meeting and communicated again by letter to Armenia dated 9 October 2021. These proposals were for certain joint actions that Azerbaijan and Armenia might take, rather than proposals capable of resolving the present dispute under CERD. Against this background, the Court is not persuaded by Azerbaijan's argument that such proposals provide a basis for concluding that the negotiations had only just begun and that further negotiations could still have led to a settlement.

57. The Court is of the opinion that Armenia made a genuine attempt to engage in discussions with Azerbaijan with a view to resolving the dispute, as required by Article 22 of CERD.

58. Further, the Court is of the view that these negotiations had become futile by the date on which Armenia filed its Application. The Court recalls that evidence of a genuine attempt to negotiate or of the conduct of negotiations does not require that the parties to a dispute have in fact reached an agreement (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2011 (I), pp. 132-133, para. 158; see also *Railway Traffic between Lithuania and Poland, Advisory Opinion, 1931, P.C.I.J., Series A/B, No. 42*, p. 116). In past cases, the Court has found that a precondition of negotiation was satisfied when the parties' "basic positions ha[d] not subsequently evolved" after several exchanges of diplomatic correspondence or meetings (*Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, *Judgment*, I.C.J. Reports 2012 (II), p. 446, para. 59; see also *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2018 (I), p. 317, para. 76). Moreover, the Court has held that the actual number or duration of exchanges is not dispositive in this regard (see *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 13). In the present case, the Parties' respective positions remained substantially unaltered between the end of 2020 and September 2021. In light of these circumstances, the Court considers that negotiations had become futile because there was no realistic possibility, at that stage, of a bilateral negotiated settlement of the disagreement between the Parties.

59. For these reasons, the Court concludes that the precondition of negotiation under Article 22 of CERD is satisfied in the circumstances of the present case. As a result, the Court concludes that the first preliminary objection raised by Azerbaijan must be rejected.

III. SECOND PRELIMINARY OBJECTION:
JURISDICTION *RATIONE MATERIAE*

A. Introduction

60. The Court will now examine Azerbaijan's second preliminary objection, which concerns the Court's jurisdiction *ratione materiae*. The Court recalls that, in accordance with Article 22 of CERD, its jurisdiction *ratione materiae* covers "[a]ny dispute between two or more States Parties with respect to the interpretation or application of this Convention".

61. The Court notes that Azerbaijan does not object to the Court's jurisdiction *ratione materiae* over most of Armenia's claims under CERD. The second preliminary objection is limited to the claims presented in Part VI, Chapter 3, Section I, of Armenia's Memorial that Azerbaijan has breached its obligations under Articles 2 (1), 4 (a) and 5 (b) of CERD by engaging in the murder, torture and inhumane treatment of ethnic Armenians, and the claims presented in Part VI, Chapter 3, Sections III and IV, of Armenia's Memorial that Azerbaijan has breached its obligations under Articles 2 and 5 (a) of CERD by engaging in practices of arbitrary detention and enforced disappearance of ethnic Armenians, respectively, during the 2020 Conflict and subsequent hostilities.

* *

62. According to Azerbaijan, the claims made by Armenia that are the subject of its second preliminary objection are not "based on" one of the prohibited grounds enumerated in Article 1, paragraph 1, of CERD. It submits that these claims thus fall outside the scope of CERD and, therefore, the Court's jurisdiction *ratione materiae*.

63. Azerbaijan contends that, even if proven, the conduct Armenia complains of, if anything, constitutes violations of international humanitarian law and reflects the general animosity between nationals of two States involved in an armed conflict, rather than hostility based on the ethnic origin of the victims. It argues, therefore, that "the claims in question are not capable of falling within the provisions of CERD". Azerbaijan observes that "the mere fact that the peoples of two States at war often are primarily of different ethnic origins does not, without more, transform every act of war into a distinction 'based on' ethnic origin". In its view, to invoke a violation of CERD, Armenia must show "something 'more'" than international humanitarian law violations, in order to connect the "alleged mistreatment to some specific evidence of racial discrimination". In this regard, Azerbaijan

points out that discrimination on the basis of current nationality falls outside the scope of CERD.

64. Azerbaijan further underscores that Armenia cannot establish the ethnic animus necessary for its claims to fall within Article 1 of CERD solely with reference to an alleged generalized “anti-Armenian sentiment” emanating from high-level government officials and other members of society.

65. As a result, the Respondent submits that the claims it identifies in its second preliminary objection do not fall within the scope of CERD, and that the Court should find that these claims fall outside the Court’s jurisdiction *ratione materiae*.

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66. Armenia claims that all acts of which it complains fall within the definition of racial discrimination under Article 1, paragraph 1, of CERD. It submits that it has provided “overwhelming evidence” that the acts in question are capable of constituting racial discrimination and, therefore, fall within the Court’s jurisdiction *ratione materiae*.

67. Armenia contends that, while not every act that violates international humanitarian law in the context of an armed conflict constitutes racial discrimination, it is possible for the same act to implicate both CERD and international humanitarian law. According to Armenia, much of Azerbaijan’s wartime and war-related conduct was accompanied by “*explicit* expressions of racism”, and Armenia’s claims must be understood against the backdrop of “Azerbaijan’s decades-long propagation of Armenophobic hate”.

68. Armenia therefore concludes that Azerbaijan’s second preliminary objection should be rejected. In the alternative, and to the extent that Azerbaijan takes issue with the evidence presented by Armenia, Armenia submits that Azerbaijan’s second preliminary objection is not of an exclusively preliminary character and cannot be decided at this stage of the proceedings.

B. The Scope of CERD and Its Applicability in Armed Conflict

69. When the Court is seised on the basis of a treaty’s compromissory clause by a State invoking the international responsibility of another State party for the breach of obligations under the treaty,

“it must be ascertained whether the actions or omissions of the respondent complained of by the applicant fall within the scope of the treaty allegedly violated, in other words whether the facts at issue, if estab-

lished, are capable of constituting violations of obligations under the treaty” (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening), Preliminary Objections, Judgment, I.C.J. Reports 2024 (I)*, p. 418, para. 136).

70. In determining whether it has jurisdiction *ratione materiae*, the Court does not need to satisfy itself that the acts of which Armenia complains actually constitute “racial discrimination” within the meaning of Article 1, paragraph 1, of CERD. Such a determination concerns “issues of fact, largely depending on evidence regarding the purpose or effect of the measures alleged by [Armenia], and [is] thus properly a matter for the merits, should the case proceed to that stage” (*Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 595, para. 94). At this stage, the Court must ascertain merely whether the alleged acts of murder, torture, inhuman treatment, arbitrary detention and enforced disappearance, if established, are capable of constituting violations of CERD, and thus fall within the scope of the Convention.

71. Article I, paragraph 1, of CERD provides that

“the term ‘racial discrimination’ shall mean any 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”.

72. Accordingly, in order for claims to come within the Court’s jurisdiction *ratione materiae* under CERD, the applicant must allege acts that, if established, are capable of amounting to a differentiation of treatment based on one of the prohibited grounds under Article 1, paragraph 1, with the purpose or effect of nullifying or impairing the enjoyment of rights on an equal footing by members of the protected group. The Court recalls that, pursuant to Article 1, paragraph 2, of CERD, distinctions based on citizenship or current nationality, as opposed to national or ethnic origin, do not fall within the scope of the Convention (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 106, para. 105). However, in the present case, the Parties concur that Armenian national or ethnic origin constitutes a prohibited ground for discrimination under the Convention, and the Court agrees with this characterization.

73. The Court now turns to the applicability of CERD in situations of armed conflict. It is common ground between the Parties that CERD applies in situations of armed conflict, and that the applicability of international humanitarian law to conduct in an armed conflict does not preclude the applicability of CERD. In particular, both Parties acknowledge that conduct that may be incompatible with international humanitarian law can simultaneously implicate obligations under CERD, provided that such conduct conforms to the requirements for establishing a claim under that Convention.

74. The Court notes that the prohibition of racial discrimination, an essential part of international human rights law, is also a fundamental element of international humanitarian law. Article 16 of the Third Geneva Convention of 1949, for example, provides that all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based, *inter alia*, on race “or any other distinction founded on similar criteria”. Article 27, paragraph 3, of the Fourth Geneva Convention prohibits any adverse distinction based, *inter alia*, on race in relation to the treatment of protected persons (see also Article 13 of the Fourth Geneva Convention).

75. The Court has previously acknowledged that allegedly discriminatory acts taking place in the context of armed conflict “appear to be capable of contravening rights provided for by CERD, even if certain of these alleged acts might also be covered by other rules of international law, including humanitarian law” (*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. 387, para. 112; see also *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 592, para. 86 and p. 595, para. 96).

76. The Court recalls that “the protection offered by human rights conventions does not cease in case of armed conflict” (*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, I.C.J. Reports 2024 (III)*, p. 792, para. 99; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, pp. 242-243, paras. 215-216; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 178, para. 106; see also *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 240, para. 25). The Court further observes that the object and purpose of CERD is to eliminate racial discrimination “in all its forms and manifestations” (fifth and tenth preambular paragraphs; see also *Application of the Inter-*

national Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Judgment, I.C.J. Reports 2024 (I), pp. 158-159, para. 194). The definition of racial discrimination in Article 1, paragraph 1, accordingly prohibits “any distinction, exclusion, restriction or preference” based on a prohibited ground, and States parties commit “to prohibit and to eliminate racial discrimination in all its forms” (Art. 5; see also Article 2, paragraph 1). The Convention contains no general restrictions relating to its applicability in situations of armed conflict, nor does it provide for derogation in such circumstances. Indeed, some of the most extreme forms of racial discrimination occur in the context of armed conflict.

77. Accordingly, the Court concludes that the protection against racial discrimination provided by CERD continues to apply in armed conflict. In that sense, CERD and international humanitarian law are complementary. It is well established that “[c]ertain acts may fall within the ambit of more than one instrument and a dispute relating to those acts may relate to the ‘interpretation or application’ of more than one treaty or other instrument” (*Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 27, para. 56*). The Court emphasizes, however, that its jurisdiction in the present case is limited by Article 22 of CERD to Armenia’s claims under that Convention.

78. For these reasons, in the Court’s view, acts of murder, torture, inhuman treatment, arbitrary detention and enforced disappearance allegedly carried out on the basis of the national or ethnic origin of the victim are capable of constituting violations of obligations under CERD, including in an armed conflict. In light of this, the Court must ascertain whether the specific acts complained of by Armenia are capable of establishing discriminatory treatment based on the victims’ Armenian national or ethnic origin.

C. Alleged Violations of CERD

1. Murder, torture and inhuman treatment

79. The Court will now consider the arguments put forward by Azerbaijan against Armenia’s claims that Azerbaijan has subjected ethnic Armenians to acts of murder, torture and inhuman treatment on the basis of their Armenian national or ethnic origin, in violation of Article 2, paragraph 1, as well as Articles 4 (a) and 5 (b) of CERD.

80. Azerbaijan contends that the claims involving members of Armenia's armed forces in the context of "active hostilities" are not capable of constituting racial discrimination within the meaning of CERD, and that only the claims involving civilians in active hostilities that are "particularised" by specific evidence of racial discrimination are "'capable' of falling within CERD", and thus within the Court's jurisdiction *ratione materiae* (see paragraph 28 above).

81. Azerbaijan asserts that Armenia has presented no facts that are capable of demonstrating that the disputed conduct was based on the national or ethnic origin of the alleged victims. Instead, Azerbaijan suggests that these acts may have been motivated by individuals' status as nationals of an enemy State or members of its armed forces, or by their perceived responsibility for "past war crimes committed by Armenia's armed forces" or association with "those who had occupied Azerbaijan's territory and who had committed atrocities against Azerbaijanis".

82. Azerbaijan additionally asserts that for many incidents, Armenia relies exclusively on the existence of an alleged general "anti-Armenian sentiment" or "overall racial animus", which it contends cannot establish that a particular incident was racially motivated. The Respondent maintains that such "generalized antipathy" is insufficient to place Armenia's specific claims into the ambit of CERD. It further insists that "the great majority" of the statements relied upon by Armenia to illustrate alleged general anti-Armenian sentiment reflect criticism of the Armenian State and military, not of ethnic Armenians.

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83. Armenia, for its part, objects to Azerbaijan's effort to differentiate between soldiers and civilians, as well as between periods that do or do not involve active hostilities, which are distinctions under international humanitarian law that have no basis in CERD. Armenia contends that it has presented ample evidence regarding acts of violence committed by Azerbaijani forces against ethnic Armenian service members and civilians that are capable of constituting violations of CERD. It relies on more than 100 videos, as well as photographs and other information which, in its view, demonstrate that acts of murder, torture and inhumane treatment were carried out based on animus towards ethnic Armenians. Armenia also maintains that it has submitted testimony of more than 60 former Armenian prisoners of war and civilian detainees, each of whom claimed they were abused on racial grounds.

84. Armenia further points to specific alleged acts, such as the killing of elderly ethnic Armenian civilians in Nagorno-Karabakh. Armenia contends that they were Azerbaijani nationals who were targeted due to their

Armenian ethnic origin and that these cases demonstrate that the alleged mistreatment cannot be explained by reference to hatred against Armenian nationals.

85. With respect to the mistreatment of Armenian civilians alleged to have illegally crossed the border or “line of contact”, a term used by the Parties to refer to the boundary dividing territory controlled by their respective armed forces, Armenia points to several decisions of the European Court of Human Rights, which found that Azerbaijan had failed to investigate “whether ethnic hatred had played a role” in the individuals’ severe abuse and resulting deaths in detention.

86. Armenia also asserts that Azerbaijan’s “countless” individual acts of mistreatment can be fully understood only in light of the systematic propagation of hatred towards ethnic Armenians throughout Azerbaijani society. This “longstanding State policy of racial hatred” is, according to Armenia, reflected in statements by high-ranking Azerbaijani government officials and textbooks used in schools, as well as racist postal stamps and the so-called “Military Trophies Park”. Armenia further notes that the Committee on the Elimination of Racial Discrimination (hereinafter the “CERD Committee”) and numerous independent reports have expressed concern regarding anti-Armenian sentiment in Azerbaijan.

87. Armenia maintains that Azerbaijani soldiers repeatedly committed atrocities against ethnic Armenians using language such as “dogs” popularized by Azerbaijan’s Head of State, and that “the Azerbaijani public’s parroting of the hateful rhetoric espoused by its leaders is a well-known phenomenon”. It contends that such language cannot be dismissed as directed toward Armenia as an occupying Power or as criticism of a foreign State. Armenia further contends that the countless violations it alleges against ethnic Armenians cannot be considered “unrelated” to the racist anti-Armenian discourse that permeates Azerbaijani society. Armenia maintains that it does not rely solely on generalized anti-Armenian bias permeating Azerbaijan’s society as the basis for its claims under CERD, and that Azerbaijan is incorrect that such animus is irrelevant to Armenia’s specific claims.

* *

88. The Court recalls that, unlike international humanitarian law, CERD does not distinguish between members of armed forces and civilians. In light of this, the Court considers that Armenia’s claims concerning the discriminatory treatment on the basis of national or ethnic origin of both members of armed forces and civilians fall within the scope of CERD.

89. The Court is of the view that the acts alleged by Armenia are capable of constituting discrimination against members of armed forces and civilians “based on” their Armenian national or ethnic origin carried out with the purpose or effect of interfering with rights protected under Articles 2 (1), 4 (a) and 5 (b) of CERD. This includes the treatment of ethnic Armenians who reside in Nagorno-Karabakh.

90. The Court observes that the consequence of Azerbaijan’s submissions would be the exclusion of a claim from the Court’s jurisdiction *ratione materiae* under CERD if some alternative explanation or interpretation of the harm alleged by Armenia is available. At the jurisdictional stage, however, the Court need only determine whether the acts alleged are capable of constituting violations of CERD, and thus fall within the scope of the Convention.

91. The Court observes that racial discrimination can be a highly contextual phenomenon, and identifying racial discrimination may require careful assessment of the facts and their implications. Whether the material submitted by Armenia in support of its claims is sufficient to demonstrate that the alleged acts of discrimination in question were in fact based on the national or ethnic origin of the victims is a matter for the merits and cannot be determined at this stage of the proceedings.

92. Similarly, the Court is not required at this stage to review specific statements or evidence submitted by Armenia to determine whether the language used by Azerbaijani nationals in a particular context establishes hostility toward Armenians on the basis of ethnic origin or another prohibited ground. It is for Armenia to prove at the merits stage by convincing evidence that the acts in question constitute racial discrimination under Article 1, paragraph 1, of CERD, and Azerbaijan will be entitled to dispute this contention at that time (*Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment, I.C.J. Reports 2024 (I), p. 152, para. 171).

93. With respect to Armenia’s claimed evidence regarding generalized anti-Armenian animus, the Court has previously acknowledged that rhetoric “promoting racial hatred and incitement to racial discrimination . . . can generate a pervasive racially charged environment . . . particularly . . . when . . . employed by high-ranking officials of the State” and increase the risk of bodily harm to members of the protected group (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. 389, para. 83).

94. The Court notes that Azerbaijan has not objected to the Court's jurisdiction in respect of Armenia's claims relating to its alleged glorification of racially motivated violence or hate speech against ethnic Armenians. The Court considers that the alleged pervasive atmosphere of racially discriminatory speech and sentiment is relevant to its assessment of Armenia's assertion that certain acts complained of are capable of violating obligations under CERD. The extent to which such generalized "anti-Armenian sentiment", if proven, can be invoked to demonstrate that specific acts were "based on" prohibited grounds under Article 1, paragraph 1, of CERD, is not a question that the Court needs to determine at this stage of the proceedings.

95. Accordingly, the Court concludes that Armenia's claims of alleged racially motivated murder, torture and inhuman treatment of ethnic Armenians fall within the scope of Article 2, paragraph 1, Article 4 (a) and Article 5 (b) of CERD.

2. Arbitrary detention and enforced disappearance

96. With respect to Armenia's claims regarding the alleged arbitrary detention of ethnic Armenians, Azerbaijan states that Armenian nationals who crossed the line of contact were detained solely because they were nationals of a "hostile occupying State" who "illegally crossed" into territory controlled by Azerbaijan. Azerbaijan contends that these claims therefore fall outside the Court's jurisdiction *ratione materiae* under CERD. With respect to prisoners of war allegedly detained on the basis of their ethnic origin, Azerbaijan submits that their detention and release is governed by international humanitarian law, and that the prisoners who remain in Azerbaijani custody have been convicted for serious crimes, including torture and murder. Azerbaijan maintains that persons of Armenian ethnic origin have been tried in its courts in accordance with due process requirements. Consequently, in Azerbaijan's view, Armenia has failed to present facts capable of establishing arbitrary detention that is "based on" Armenian ethnic origin, and these claims are beyond the Court's jurisdiction under Article 22 of CERD.

97. Azerbaijan likewise submits that Armenia's claims regarding the alleged enforced disappearance of ethnic Armenians during the 2020 Conflict and subsequent hostilities fall outside the scope of CERD and, therefore, outside the Court's jurisdiction *ratione materiae*. According to Azerbaijan, Armenia's sole argument is that these claims must be viewed "in the context of Azerbaijan's incessant hateful rhetoric against ethnic

Armenians”. Azerbaijan submits that such “rhetoric” cannot be used to transform Armenia’s otherwise unrelated claims into CERD violations. It maintains that CERD does not regulate enforced disappearance in the absence of specific evidence showing a difference in treatment on the basis of ethnic origin.

*

98. For its part, Armenia states that its claims regarding arbitrary detention of ethnic Armenians are supported by the extensive evidence relating to cases involving the abuse of ethnic Armenians in detention. According to the Applicant, deprivation of due process or any other unfair treatment that is linked to detention, and that is based on Armenian national or ethnic origin at any point during detention, constitutes arbitrary detention in violation of CERD. Armenia argues that its claims include cases of ethnic Armenians who were not Armenian citizens, and who were detained at Azerbaijan’s ports of entry merely on the basis of Armenian surnames. For Armenia, this disproves Azerbaijan’s argument that any misconduct was based only on current nationality and general hostility between two States engaged in armed conflict. Armenia also points to the testimony of detained ethnic Armenians to contend that “[e]ach and every ethnic Armenian detained by Azerbaijan . . . has been subjected to torture or other abuse while detained, whether during armed hostilities or peacetime”.

99. Armenia maintains that its claims of arbitrary detention are related to the claim in its Memorial regarding unequal treatment of ethnic Armenians in the Azerbaijani justice system, which Azerbaijan does not challenge in its preliminary objections. In Armenia’s view, individuals of Armenian descent are systematically and discriminatorily denied fair trial rights and subjected to “sham trials” and a “general negative climate against Armenians” prevails in Azerbaijan’s judicial system. Armenia points in this regard to decisions of the European Court of Human Rights and reports of the European Commission against Racism and Intolerance, the United States Department of State, and others.

100. With respect to its claims regarding enforced disappearance, Armenia argues that much of its evidence relating to discriminatory violence and arbitrary detention is also relevant to its claim of enforced disappearance. Pointing to specific cases, it contends that many ethnic Armenians subject to

abuse in Azerbaijan's custody were also subjected to enforced disappearance, since Azerbaijan has refused to acknowledge having detained or killed them. This includes ethnic Armenians whom Azerbaijan considers to be Azerbaijani citizens.

101. In support of its contentions, Armenia invokes concerns articulated in reports by United Nations entities as well as statements by the CERD Committee, which expressed "deep concern" over allegations that "prisoners of war and other protected persons" were subjected to "arbitrary detention" in Azerbaijan. The Committee also called upon Azerbaijan to, *inter alia*, conduct effective investigations into "enforced disappearances" of protected persons perpetrated "by the Azerbaijani military forces" (CERD Committee, Concluding observations on the combined tenth to twelfth periodic reports of Azerbaijan, UN doc. CERD/C/AZE/CO/10-12 (22 September 2022), paras. 4 (a) and 5 (a)). Armenia thus concludes that its claims regarding the arbitrary detention and enforced disappearance of ethnic Armenians are capable of constituting racial discrimination under CERD.

* *

102. Based on the above, and taking into account in particular the reasons set forth in paragraphs 90-94, the Court is of the view that the acts alleged by Armenia in relation to arbitrary detention and enforced disappearance of ethnic Armenian civilians are capable of constituting discriminatory treatment "based on" Armenian national or ethnic origin carried out with the purpose or effect of interfering with rights protected under Article 2 and Article 5 (a) of CERD. This includes the treatment of ethnic Armenians who reside in Nagorno-Karabakh.

103. Accordingly, the Court concludes that Armenia's claims regarding the alleged racially motivated arbitrary detention and enforced disappearance of ethnic Armenians fall within the scope of Article 2 and Article 5 (a) of CERD.

*

104. In light of all of the above, the Court finds that the claims advanced by Armenia in Part VI, Chapter 3, Sections I, III and IV, of its Memorial (see paragraph 27 above) fall within the scope of CERD. Accordingly, the Court concludes that Azerbaijan's second preliminary objection to the Court's jurisdiction must be rejected.

* * *

105. For these reasons,

THE COURT,

(1) By sixteen votes to one,

Rejects the first preliminary objection raised by the Republic of Azerbaijan;

IN FAVOUR: *President* Salam; *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi; *Judge ad hoc* Daudet;

AGAINST: *Judge ad hoc* Koroma;

(2) By fifteen votes to two,

Rejects the second preliminary objection raised by the Republic of Azerbaijan;

IN FAVOUR: *President* Salam; *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi; *Judge ad hoc* Daudet;

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

(3) By fifteen votes to two,

Finds that it has jurisdiction, on the basis of Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination, to entertain the Application filed by the Republic of Armenia on 16 September 2021.

IN FAVOUR: *President* Salam; *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi; *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 twelfth day of November, two thousand and twenty-four, 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) Nawaf SALAM,
President.

(Signed) Philippe GAUTIER,
Registrar.

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

(Initialed) N.S.

(Initialed) Ph.G.

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