



**REPRESENTATIVE OF THE REPUBLIC OF ARMENIA  
ON INTERNATIONAL LEGAL MATTERS**

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Republic of Armenia, Yerevan, 0010, Republic square, Government House 1

3 October 2023

**Via e-mail**

**Ms. Ashwita Ambast**  
Permanent Court of Arbitration  
Peace Palace, Carnegieplein 2  
2517KJ The Hague  
The Netherlands  
E-mail: aambast@pca-cpa.org

**Re: PCA Case No. 2023-65 – The Republic of Azerbaijan v. The Republic of Armenia**

Dear Ms. Ambast,

I write on behalf of the Republic of Armenia (“Armenia”) to bring to the Tribunal’s attention deeply concerning developments which significantly alter the *status quo* of the Parties’ dispute under the Energy Charter Treaty and threaten to interfere with Armenia’s evidentiary and procedural rights in this arbitration.

As is known, on 19 September 2023, Azerbaijan launched a full-scale military assault on Nagorno-Karabakh.<sup>1</sup> In its aftermath, more than 100,000 ethnic Armenians were compelled to flee their ancestral homes in a matter of weeks.<sup>2</sup> Moreover, on 28 September 2023, “based on the priority of securing the physical security and vital interests of the people of [Nagorno-Karabakh]”, the local authorities issued a decree announcing their dissolution from 1 January 2024.<sup>3</sup> That is to say, after more than a century of autonomous rule and millennia of Armenian

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<sup>1</sup> For an overview of recent developments, see “More than half of Nagorno-Karabakh’s population flees after Azerbaijan takeover of region”, *PBS* (28 September 2023), available at <https://www.pbs.org/newshour/show/more-than-half-of-nagorno-karabakhs-population-flees-after-azerbaijan-takeover-of-region>.

<sup>2</sup> “Almost all ethnic Armenians have left Nagorno-Karabakh”, *The Guardian* (30 September 2023), available at <https://www.theguardian.com/world/2023/sep/30/almost-all-ethnic-armenians-have-left-nagorno-karabakh-azerbaijan>.

<sup>3</sup> “Nagorno-Karabakh separatist government says it will dissolve itself by January 2024”, *Le Monde* (28 September 2023), available at <https://www.lemonde.fr/en/international/article/2023/09/28/nagorno-karabakh-separatist->

presence in the region, Nagorno-Karabakh is being ethnically cleansed and forcibly abolished by Azerbaijan.

Azerbaijan's attack not only shocks the conscience, it violates numerous rules of international law, including the ceasefire agreement contained in the Trilateral Statement concluded following Azerbaijan's aggressive onslaught in 2020.<sup>4</sup> That prior act of aggression itself shattered 30 years of relative peace and was a blatant repudiation of the relevant international negotiation framework.<sup>5</sup>

As the Tribunal is also likely aware, Azerbaijan's recent attack came as the brutal culmination of its nine-month blockade of the Lachin corridor, *i.e.* the only road connecting Nagorno-Karabakh with Armenia. Azerbaijan maintained its blockade—which obstructed the movement of, and international humanitarian assistance for, the ethnic Armenian population—

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government-says-it-will-dissolve-itself-by-january-2024\_6140487\_4.html. *See also* “Nagorno-Karabakh republic will ‘cease to exist’ from January, says its leader”, *Financial Times* (28 September 2023), available at <https://www.ft.com/content/ed4f7b35-af91-4ac7-b0b3-55604a2edb7a>.

<sup>4</sup> *See, e.g.*, US Department of State Press Releases, *Call for End of Hostilities in Nagorno-Karabakh* (19 September 2023), available at <https://www.state.gov/call-for-end-of-hostilities-in-nagorno-karabakh/> (“The United States is deeply concerned by Azerbaijan’s military actions in Nagorno-Karabakh and calls on Azerbaijan to cease these actions immediately. These actions are worsening an already dire humanitarian situation in Nagorno-Karabakh and undermine prospects for peace. As we have previously made clear to Azerbaijan, the use of force to resolve disputes is unacceptable and runs counter to efforts to create conditions for a just and dignified peace in the region. We call for an immediate end to hostilities and for respectful dialogue between Baku and representatives of the population of Nagorno-Karabakh”); Minister of Foreign and European Affairs of France, *Opération militaire azerbaïdjanaise au Haut-Karabagh* (19 September 2023), available at <https://www.diplomatie.gouv.fr/fr/dossiers-pays/armenie/evenements/article/operation-militaire-azerbaïdjanaise-au-haut-karabagh-19-09-23> (« La France condamne avec la plus grande fermeté le lancement par l’Azerbaïdjan d’une opération militaire au Haut-Karabakh, avec l’utilisation d’armements lourds, y compris contre des zones habitées. Aucun prétexte ne peut justifier une telle action unilatérale, qui menace des milliers de civils déjà affectés par des mois de blocus illégal et va à l’encontre des efforts déployés par la communauté internationale pour parvenir à un règlement négocié. La France appelle l’Azerbaïdjan à cesser immédiatement son offensive et à revenir au respect du droit international. Elle tiendra l’Azerbaïdjan pour seul responsable du sort des populations civiles du Haut-Karabakh »); Global Affairs Canada, *Canada calls for cessation of hostilities in the Nagorno-Karabakh Region* (19 September 2023), available at <https://www.canada.ca/en/global-affairs/news/2023/09/canada-calls-for-cessation-of-hostilities-in-the-nagorno-karabakh-region.html> (“Canada is gravely concerned with the military escalation and deteriorating humanitarian situation in Nagorno-Karabakh resulting from the military intervention announced by Azerbaijan’s Defence Ministry ... We call on the Azerbaijan government to refrain from any actions and activities that pose a risk to the safety and welfare of the civilian population of Nagorno-Karabakh”); European Parliament Delegations, *Joint statement on Azerbaijan’s attack on Nagorno-Karabakh* (19 September 2023), available at <https://www.europarl.europa.eu/delegations/en/dsca/documents/communiques> (“The clearly pre-planned attack, reported along the entire line of contact, coming just hours after the blasts and following weeks of observed Azerbaijani military build-up and aggressive rhetoric, is totally unacceptable. We call for the immediate halt of all military actions ... We are seriously concerned about the consequences of Azerbaijan’s actions on the civilian population and urge Azerbaijan to refrain from using military escalation as a pretext to force the exodus of the local population”).

<sup>5</sup> *See, e.g.*, “Nagorno-Karabakh: the fall of an enclave born of the disintegration of the USSR”, *Le Monde* (29 September 2023), available at [https://www.lemonde.fr/en/international/article/2023/09/29/nagorno-karabakh-the-end-of-an-enclave-born-of-the-disintegration-of-the-ussr\\_6140604\\_4.html](https://www.lemonde.fr/en/international/article/2023/09/29/nagorno-karabakh-the-end-of-an-enclave-born-of-the-disintegration-of-the-ussr_6140604_4.html). In this regard, Armenia rejects Azerbaijan’s presentation of the historical background in its Notice of Arbitration dated 27 February 2023 and will correct the record at the appropriate juncture.

in blatant disregard of a binding order of the International Court of Justice.<sup>6</sup> During the blockade, Azerbaijan not only put the entire population on the brink of starvation,<sup>7</sup> it also interrupted the supply of gas and electricity to them.<sup>8</sup>

Azerbaijan's claims in its Notice of Arbitration dated 27 February 2023 pertain to the very same region, Nagorno-Karabakh, of which Azerbaijan completed its conquest in recent days.<sup>9</sup> While Armenia considers that Azerbaijan's claims are completely without merit and will present its defense at the appropriate juncture, such defense will naturally involve mustering evidence relevant to Azerbaijan's allegations. Azerbaijan's recent actions, however, not only violate its obligation not to aggravate the Parties' dispute under international law, they also threaten serious consequences on the availability of reliable evidence relevant to this arbitration and, accordingly, the Tribunal's ability to fulfil its dispute-settlement function.

*First*, the displacement and imminent dissolution of the Nagorno-Karabakh authorities raise serious concerns about the preservation and integrity of key documentary and other evidence. During the 30-year period to which Azerbaijan's claims relate, it was the Nagorno-Karabakh authorities and private enterprises that were concerned with the management and use of the region's energy resources. These institutional custodians of documents have now been forcibly abolished with their offices vacated overnight and their archives abandoned. Moreover,

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<sup>6</sup> *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 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.

<sup>7</sup> See, e.g., “‘We are starving to death:’ Residents of Nagorno-Karabakh fear for future under blockade”, *CNN* (7 September 2023), available at <https://www.cnn.com/2023/09/06/europe/nagorno-karabakh-blockade-azerbaijan-armenia-intl-cmd/index.html>; “Nagorno-Karabakh: ‘People are fainting queuing up for bread’”, *BBC* (30 August 2023), available at <https://www.bbc.com/news/world-europe-66646677>. See also International Committee of the Red Cross, *Operational update on ICRC's work across the Lachin Corridor* (20 August 2023), available at <https://blogs.icrc.org/ir/en/2023/08/operational-update-on-icrc-s-work-across-the-lachin-corridor> (“The latest deliveries of medical supplies occurred July 7, while the latest delivery of food occurred June 14. The ICRC is urging decision-makers to find a compromise and make it possible to resume urgently needed humanitarian deliveries.”).

<sup>8</sup> See, e.g., Delegation of the European Union to the UN and other international organisations in Geneva, *United Nations Human Rights Council 54<sup>th</sup> Session – Item 2 – EU Statement* (12 September 2023), available at [https://www.eeas.europa.eu/delegations/un-geneva/hrc54-item-2-eu-statement\\_en](https://www.eeas.europa.eu/delegations/un-geneva/hrc54-item-2-eu-statement_en) (following with “great concern the serious humanitarian situation affecting the local population ... due to continued restrictions on free movement along the Lachin corridor, as well as the cessation of electricity and gas supplies”); “Azerbaijan: Blockade of Lachin corridor putting thousands of lives in peril must be immediately lifted”, *Amnesty International* (9 February 2023), available at <https://www.amnesty.org/en/latest/news/2023/02/azerbaijan-blockade-of-lachin-corridor-putting-thousands-of-lives-in-peril-must-be-immediately-lifted/> (“Disruptions to the supply of electricity, natural gas and vehicle fuel add up to extreme hardship, especially for groups who are vulnerable to discrimination and marginalization. This must end now”).

<sup>9</sup> See Azerbaijan's Notice of Arbitration (27 Feb. 2023), para. 2, note 1 (“The region that has been referred to as ‘Nagorno-Karabakh’”). See also, para. 29 (“Even now, Azerbaijan has yet to regain full access to the Tartar HEP, as it is located in an area where Russian peacekeeping forces are temporarily deployed pursuant to the Trilateral Statement signed by Azerbaijan, Armenia, and Russia on 10 November 2020”).

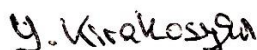
with Azerbaijan having taken total control over Nagorno-Karabakh, Armenia is concerned that access to the sites of resources that are the subject of Azerbaijan's claims will become extremely limited, if not impossible, for Armenia or even the Tribunal.<sup>10</sup>

*Second*, as part of what is almost certain to be a large-scale punitive program,<sup>11</sup> Azerbaijan has arrested or is seeking to arrest high-ranking Nagorno-Karabakh officials who would likely serve as important witnesses in this arbitration. One such individual is Mr. David Babayan<sup>12</sup>—former foreign minister of Nagorno-Karabakh and a leading authority on hydro-electric resources in the region. He is now imprisoned and facing unfounded criminal charges in Azerbaijan.<sup>13</sup>

For these reasons, Armenia recalls Azerbaijan's obligations not to destroy, tamper with or render inaccessible any evidence relating to the matters at issue in this arbitration, to take all necessary steps to preserve all relevant documents and other evidentiary materials, and to protect and refrain from intimidating relevant witnesses. Armenia trusts that the implications of the foregoing will also be the subject of the consultations of the Parties' counsel on the draft Rules of Procedure for these proceedings.

Armenia reserves all rights, including to seek any necessary directions and orders from the Tribunal in this regard.

Respectfully submitted,



Dr. Yeghishe Kirakosyan  
Agent of the Republic of Armenia

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<sup>10</sup> For example, Azerbaijan has taken control of the Tartar Hydro-Electric Plant and the Sarsang Reservoir, both of which figure centrally in Azerbaijan's claims. See Azerbaijan's Notice of Arbitration (27 Feb. 2023), paras. 20-22, 46.

<sup>11</sup> See, e.g., "Ilham Aliyev addressed the nation" *President of the Republic of Azerbaijan Ilham Aliyev* (20 September 2023), available at <https://president.az/en/articles/view/61113> ("We accused the elements and leaders of the criminal regime, and we will bring them to justice. Some have already received their deserved punishment, and others will follow suit"); "Azerbaijan's intent to prosecute NKR leadership outrages Yerevan", *JAM News* (20 February 2022), available at <https://jam-news.net/azerbaijans-intent-to-prosecute-nkr-leadership-outrages-yerevan/>.

<sup>12</sup> "Artsakh's former FM David Babayan detained by Azerbaijan", *Public Radio of Armenia* (30 September 2023), available at <https://en.armradio.am/2023/09/30/artsakhs-former-fm-david-babayan-detained-by-azerbaijani-authorities/>.

<sup>13</sup> *Ibid.*