

INTERNATIONAL COURT OF JUSTICE

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

**ARMENIA
v.
AZERBAIJAN**

**WRITTEN STATEMENT OF OBSERVATIONS AND SUBMISSIONS ON THE
PRELIMINARY OBJECTIONS OF THE REPUBLIC OF AZERBAIJAN**

VOLUME I

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I. Introduction

1. Pursuant to the Court’s Order of 25 April 2023, the Republic of Armenia (“**Armenia**”) submits this Written Statement of Observations and Submissions on the Preliminary Objections of the Republic of Azerbaijan (“**Written Statement**” and “**Azerbaijan**”, respectively). The Written Statement supplements the submissions of law and evidence set out in Armenia’s Memorial of 23 January 2023 (“**Memorial**”) and Application of 16 September 2021 (“**Application**”).

2. Azerbaijan requests that the Court issue a judgment “[d]ismissing Armenia’s Application in its entirety” on the alleged ground that “none of Armenia’s claims is properly before the Court” because Armenia has purportedly “failed to comply with the negotiation precondition required by Article 22” of the Convention on the Elimination of all Forms of Racial Discrimination (the “**CERD**”).¹ In addition, or in the alternative, Azerbaijan requests that the Court dismiss Armenia’s claims concerning Azerbaijan’s acts of murder, torture, inhumane treatment, detention, and enforced disappearances of ethnic Armenians on the ground that the Court allegedly “lacks jurisdiction *ratione materiae*” because those claims purportedly “fall outside the scope of CERD”.² Azerbaijan’s preliminary objections are meritless and must be rejected.

3. Azerbaijan’s first preliminary objection—that Armenia allegedly did not comply with the negotiation precondition required by Article 22—fails for a single reason: after exchanging more than 40 pieces of correspondence and engaging in no fewer than seven rounds of bilateral meetings, the Parties’ basic positions had not evolved at all. In its very first response to Armenia’s notice of dispute,

¹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections of Azerbaijan (21 April 2023) (hereinafter “**Preliminary Objections of Azerbaijan**”), para. 71.

² Preliminary Objections of Azerbaijan, para. 71.

Azerbaijan flatly stated that it “rejects Armenia’s allegations”.³ And in the Parties’ last meeting nearly one year later, Azerbaijan yet again expressed its “categorical rejection of Armenia’s claims”.⁴ In its Order of 7 December 2021 on Armenia’s first request for provisional measures (“7 December 2021 Order”), the Court itself observed that “it seems that [the Parties’] positions on the alleged non-compliance by Azerbaijan with its obligations under CERD remained unchanged and that their negotiations had reached an impasse”.⁵ Azerbaijan’s preliminary objections not only ignore that fact, but provide no reason for the Court to reach a different conclusion now.

4. Azerbaijan nonetheless suggests that Armenia’s efforts to negotiate a resolution to the dispute were not genuine and that it should have continued to negotiate notwithstanding Azerbaijan’s persistent categorical rejection of Armenia’s claims. But the seriousness with which Armenia took the negotiations is apparent from the dozens of exchanges on the record before the Court. Armenia could not be expected to negotiate with Azerbaijan *ad infinitum* when the latter not only continued to deny any and all wrongdoing but also continued to take *additional* measures—such as opening its patently Armenophobic “Military Trophies Park”—that further violated the CERD and aggravated the Parties’ dispute. Much less could Armenia be expected to continue negotiating when, as the Court found in its 7 December 2021 Order, there was “urgency, in the sense that

³ Letter *from* the Minister of Foreign Affairs of the Republic of Azerbaijan *to* the Minister of Foreign Affairs of the Republic of Armenia (8 December 2020) (**Application of Armenia, Annex 14**).

⁴ Note Verbale *from* the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva *to* the Permanent Mission of the Republic of Azerbaijan *to* the United Nations Office and other International Organizations in Geneva, No. 2203/1415/2021 (10 September 2021), p. 1 (**Application of Armenia, Annex 61**).

⁵ *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. 361, paras. 40-41.

there [was] a real and imminent risk” of prejudice to plausible CERD rights.⁶ In such circumstances, Azerbaijan’s claims that Armenia “prematurely” broke off negotiations or sought to use the Court to “wage a public media campaign against Azerbaijan”⁷ fail.

5. Azerbaijan’s second preliminary objection—that the Court lacks jurisdiction *ratione materiae* over Armenia’s claims concerning Azerbaijan’s acts of murder, torture, inhumane treatment, detention, and enforced disappearances of ethnic Armenians—is as baseless as its first. On any view, the acts complained of are “capable of” constituting “racial discrimination”⁸ and “fall within the provisions” of the CERD.⁹

6. Azerbaijan itself acknowledges that acts that violate international humanitarian law (“IHL”) may also violate the CERD but nevertheless asserts 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”.¹⁰ Armenia agrees. Armenia does not agree, however, with Azerbaijan’s assertion that the allegations in question “potentially raise

⁶ *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. 361, paras. 70, 80.

⁷ Preliminary Objections of Azerbaijan, para. 20.

⁸ See *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. 71, para. 112.

⁹ See *Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019*, p. 7, para. 52; *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*, p. 558, para. 57.

¹⁰ Preliminary Objections of Azerbaijan, para. 8.

questions under IHL, but not under CERD”.¹¹ In fact, it is doubtful that *Azerbaijan* believes that assertion itself.

7. To begin with, many of the acts complained of were accompanied by explicit expressions of racial hatred (as opposed to hostility toward persons of a particular nationality), such as “f*** your people”,¹² “they are not human beings”¹³ and “we will eliminate their race”.¹⁴ Perpetrators also repeatedly referred to their victims as “dogs”—a derogatory slur for ethnic Armenians popularized by President Aliyev and which Azerbaijan itself acknowledges has a “possible ethnic dimension”.¹⁵ One Azerbaijani serviceman openly boasted that he committed atrocities against ethnic Armenians, proclaiming: “Armenians of the entire world, today I f***** your mother. F*ggots”.¹⁶ It is impossible to interpret a reference to Armenians “of the entire world” as anything other than a reference to Armenians as an ethnic group. Such statements should not be surprising—the Memorial shows how Azerbaijan has systematically propagated hatred towards ethnic Armenians, who are portrayed in Azerbaijani school textbooks as “genetic enemies”¹⁷ and

¹¹ Preliminary Objections of Azerbaijan, para. 8.

¹² Video showing the execution of an *hors de combat* Armenian serviceman (certified translation from Azerbaijani) [WARNING: GRAPHIC] (**Memorial of Armenia, Annex 131**).

¹³ Video showing an Azerbaijani soldier shooting at a dead Armenian soldier’s body (contains annotations, such as certified subtitles in English) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 169**).

¹⁴ Video 1 showing mutilation of Armenian corpses by Azerbaijani soldiers (certified translation from Azerbaijani) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 134**).

¹⁵ Cf. Preliminary Objections of Azerbaijan, para. 45 (“Even in the limited instances where alleged Azerbaijani servicemembers used derogatory language with a possible ethnic dimension—for example, a reference to ‘Armenian dogs’ alongside other insulting language, this evidences hostility between opposing soldiers at war, not discrimination on the basis of ethnic origin”).

¹⁶ Propaganda video compiling images of Azerbaijani atrocities (September 2022), 00:55-01:01 (certified translation from Russian) (confidential) (**Memorial of Armenia, Annex 148**).

¹⁷ “Armenophobia in the Textbooks Used in Azerbaijan: History, Grade 11”, *Azerichild.info*, available at <https://azerichild.education/en/class-11-tarix.html> (last accessed 1 December 2022), PDF p. 2 (**Memorial of Armenia, Annex 104**).

“scoundrels” with “the blood of the devil in their veins”.¹⁸ There is simply no basis for regarding such statements as directed solely at Armenian nationals, nor has Azerbaijan made any convincing effort to demonstrate as much.

8. Of the more than 100 acts of racial discrimination that were captured on film, some of the victims were depicted being murdered, while others simply disappeared.¹⁹ To this day, Azerbaijan denies ever having detained or killed numerous such victims despite evidence, including in the form of videos and photographs and testimonies of former detainees, that most if not all were once in its custody and that many were then killed on ethnic grounds.²⁰

9. Those ethnic Armenians fortunate enough to survive Azerbaijan’s captivity have testified, *inter alia*, to having been tortured in detention centers, subjected to racist rhetoric, coerced to incriminate themselves, and forced to sign statements they did not understand.²¹ Numerous Armenian detainees were convicted “in trials that lacked due process” by a system in which judicial proceedings opened by ethnic Armenians trying to secure their rights are said to “systematically fail due to the general negative climate against Armenians”.²² In such circumstances, it is unsurprising that the CERD Committee itself has called upon Azerbaijan to “conduct[] effective, thorough and impartial investigations into allegations of violations of human rights against [protected persons] of *Armenian ethnic or*

¹⁸ A. Erogul, “Additional Reading Book for Secondary School Students” in HALA (2011), available at <http://azerichild.info/HALE.pdf>, p. 3 (certified translation from Azerbaijani) (**Memorial of Armenia, Annex 107**).

¹⁹ See Memorial of Armenia, Sections III.2.II, III.3.I, IV.1, IV.2.I.A. See also Illustrative List of Videos and Photographs of War Crimes Committed by the Agents of Azerbaijan During and After the Second Nagorno-Karabakh War (confidential) (**Memorial of Armenia, Annex 290**).

²⁰ See Memorial of Armenia, Section IV.3.

²¹ See Memorial of Armenia, Sections III.2.II, III.3.I.A.2, IV.2.I.A.

²² European Commission against Racism and Intolerance, *Second Report on Azerbaijan (second monitoring cycle)* (24 May 2007), para. 109 (**Memorial of Armenia, Annex 22**).

national origin, which include reports of summary executions, enforced disappearances, torture and other ill-treatment and arbitrary detention”.²³

10. Azerbaijan nonetheless insists that Armenia has “[s]imply assum[ed] that every alleged wrong against any national of Armenia” is based on ethnic origin,²⁴ and argues that its misconduct has been carried out, for example, “against members of the opposing army or even civilians of the enemy State”.²⁵ But many of Azerbaijan’s atrocities were not committed against Armenian servicemen, but against ethnic Armenian civilian residents of Nagorno-Karabakh. That is precisely why the Russian Federation peacekeepers were deployed to “prevent the mass death of the civilian population” in *Nagorno-Karabakh*²⁶ and why Nagorno-Karabakh was depicted on a postage stamp being “disinfect[ed]” by Azerbaijan itself.²⁷ In circumstances in which Azerbaijan considers the ethnic Armenians of Nagorno-Karabakh to be *its own citizens*,²⁸ the acts complained of are all plainly

²³ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of Azerbaijan*, UN Doc. CERD/C/AZE/CO/10-12 (22 September 2022), p. 2 (**Memorial of Armenia, Annex 5**).

²⁴ Preliminary Objections of Azerbaijan, para. 68.

²⁵ Preliminary Objections of Azerbaijan, para. 48.

²⁶ The Federation Council of the Federal Assembly of the Russian Federation, *On the use of a military unit of the Armed Forces of the Russian Federation in Nagorno-Karabakh* (18 November 2020), available at <http://council.gov.ru/activity/documents/121580/> (certified translation from Russian) (**Armenia’s Request for Provisional Measures (27 December 2022), Annex 23**).

²⁷ See Memorial of Armenia, Section III.3.II.C (citing “Postage stamps dedicated to Azerbaijani heroes issued”, *AZTV* (6 January 2023), available at <http://www.aztv.az/en/news/11015/postage-stamps-dedicated-to-azerbaijani-heroes-issued>, PDF p. 2 (**Annex 47**); A. Galitsky, “Azerbaijan’s Dehumanization of Armenians Echoes Horrors of Holocaust”, *The Times of Israel* (30 January 2021), available at <https://blogs.timesofisrael.com/azerbaijans-dehumanization-of-armenians-echoes-horrors-of-holocaust/>, PDF p. 3 (**Memorial of Armenia, Annex 114**) “Azerbaijani postal stamps accused of spreading anti-Armenian propaganda”, *The Calvert Journal* (12 January 2021), available at <https://www.calvertjournal.com/articles/show/12442/azerbaijan-stamps-nagorno-karabakhwar-anti-armenian-propaganda>, PDF p. 1 (**Annex 41**); N. Sahakyan, “The rhetorical face of enmity: the Nagorno-Karabakh conflict and the dehumanization of Armenians in the speeches by Ilham Aliyev”, *SOUTHEAST EUROPEAN AND BLACK SEA STUDIES* (29 November 2022), available at <https://doi.org/10.1080/14683857.2022.2153402>, pp. 2, 13 (**Annex 35**)).

²⁸ “Armenians living in Karabakh will have no status, no independence and no special privilege: President Ilham Aliyev”, *APA* (12 August 2022), available at <https://apa.az/en/official->

“capable of” constituting racial discrimination and thus fall within the provisions of the CERD. There is simply no basis for arguing that Azerbaijan’s abuses involved “only hostility between two States involved in an armed conflict and raise no issues of interpretation or application of CERD”.²⁹

11. Yet even if Azerbaijan’s second preliminary objection could not be rejected now (*quod non*), it would still not possess an exclusively preliminary character and would therefore be unsuitable for determination at this preliminary stage. Despite asserting that the Court “need not weigh evidence or otherwise consider the merits to dismiss this set of Armenia’s claims”,³⁰ Azerbaijan in fact challenges the sufficiency of the evidence³¹ and produces an Annex (Annex 46) that purportedly lists “Armenia’s Evidence in Support of its Claim”.³² Setting aside the fact that Annex 46 selectively omits dozens of relevant exhibits and pages of argumentation Armenia submitted³³—and therefore cannot be relied on to summarize the

news/armenians-living-in-karabakh-will-have-no-status-no-independence-and-no-special-privilege-president-ilham-aliyev-382715, PDF p. 2 (President Aliyev: “Because the Armenians living in Karabakh will have no status, no independence and no special privilege. They are the same as the citizens of Azerbaijan”) (**Annex 44**); “Ilham Aliyev attended the international conference themed ‘South Caucasus: Development and Cooperation’ at ADA University”, *President of the Republic of Azerbaijan Ilham Aliyev* (29 April 2022), available at <https://president.az/en/articles/view/55909>, p. 15 (“I already said that Armenians who live in Karabakh - we consider them our citizens”) (**Annex 16**); Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by Azerbaijan under article 9 of the Convention, due in 2019*, UN Doc. CERD/C/AZE/10-12 (10 October 2019), para. 114 (“Members of all ethnic minority communities residing in the country, including ethnic Armenians, are citizens of Azerbaijan”) (**Annex 10**). See also, e.g., CR 2023/2, paras. 6-7 (Mammadov) (“[E]thnic Armenians are welcome citizens of Azerbaijan”).

²⁹ Preliminary Objections of Azerbaijan, para. 30.

³⁰ Preliminary Objections of Azerbaijan, para. 41.

³¹ See, for example, Preliminary Objections of Azerbaijan, para. 60 (“Armenia’s references to ‘false accusations’ and ‘spurious charges’ are completely unsubstantiated by any facts pled in Armenia’s Memorial”).

³² See “Table of Armenia’s Claims and Factual Allegations That Do Not Fall Within CERD” (**Preliminary Objections of Azerbaijan, Annex 46**).

³³ See *infra* para. 38, n. 80. See also *infra* para. 105.

evidence and arguments supporting Armenia's claims—Azerbaijan's very use of Annex 46 to nit-pick the record disproves its assertion that granting its second preliminary objection would not require the Court to "weigh evidence or otherwise consider the merits" of the case.³⁴ Azerbaijan's preliminary objections must accordingly be dismissed for that reason too.

12. The remainder of this Written Statement proceeds as follows:

13. **Part II** addresses Azerbaijan's first preliminary objection and explains why Armenia has fulfilled the negotiation precondition in Article 22 of the CERD.

14. **Part III** addresses Azerbaijan's second preliminary objection and explains why the Court has jurisdiction *ratione materiae* over all of Armenia's claims. In particular, **Part III.A** explains why Armenia's claims fall under the CERD even if they also implicate IHL; **Part III.B** explains why Armenia's claims concerning Azerbaijan's discriminatory murder, torture, inhumane treatment, detention, and enforced disappearances all fall under the CERD; and **Part III.C** explains why, even if Azerbaijan's second preliminary objection could not be rejected now (which it can), it would not possess an exclusively preliminary character and would therefore not be suitable for determination at the preliminary stage.

15. Finally, **Part IV** sets out Armenia's submissions.

II. Armenia Fulfilled the Negotiation Precondition in Article 22 of the CERD

16. Azerbaijan's first preliminary objection is that Armenia allegedly "failed to comply with the negotiation precondition required by Article 22 of CERD". Azerbaijan is mistaken.

³⁴ Preliminary Objections of Azerbaijan, para. 41.

17. As the Court observed in its 7 December 2021 Order:

“[T]he Parties corresponded through a series of diplomatic Notes over a period running from November 2020 to September 2021 and held several rounds of bilateral meetings covering the procedural modalities, scope and topics of their negotiations concerning alleged violations of obligations arising under CERD”.³⁵

18. Indeed, before Armenia filed its Application, the Parties exchanged more than 40 pieces of correspondence³⁶ and participated in no fewer than seven rounds of bilateral meetings,³⁷ all with a view to amicably settling the present dispute.

19. All of these efforts were in vain, however. The Court itself observed in its 7 December 2021 Order:

“[B]etween the first exchange ... and the last bilateral meeting ..., the positions of the Parties do not appear to have evolved. Although the Parties were able to agree on certain procedural modalities ..., no similar progress was made in terms of substantive matters relating to Armenia’s allegations of Azerbaijan’s non-compliance with its obligations under CERD. The information available to the Court regarding the bilateral sessions held on 15-16 July 2021, 30-31 August 2021 and 14-15 September 2021 shows a lack of progress in reaching common ground on substantive issues. ... Despite the fact that Armenia alleged in bilateral exchanges that Azerbaijan had violated a number of obligations under CERD and that the

³⁵ *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. 361, para. 39.

³⁶ See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Memorial of Armenia (23 January 2023) (hereinafter “**Memorial of Armenia**”), fn. 1791 (citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Application and Request for Provisional Measures of Armenia (16 September 2021) (hereinafter “**Application of Armenia**”), **Annexes 10, 14-15, 18-34, 36-46, 48-50, 52-55, 57-61**).

³⁷ These meeting rounds were held on 2-3 March 2021, 6-7 April 2021, 19-20 April 2021, 31 May-1 June 2021, 15-16 July 2021, 30-31 August 2021, and 14-15 September 2021.

Parties engaged in a significant number of written exchanges and meetings over a period of several months, it seems that their positions on the alleged non-compliance by Azerbaijan with its obligations under CERD remained unchanged and that their negotiations had reached an impasse”.³⁸

20. On that basis, the Court concluded: “It therefore appears ... that the dispute between the Parties regarding the interpretation and application of CERD had not been settled by negotiation as of the date of the filing of the Application”.³⁹

21. Azerbaijan ignores all this in its preliminary objections. Instead, it argues that Armenia did not satisfy the requirement to make “a genuine attempt ... to engage in discussions with the other disputing party, with a view to resolving the dispute” because, it says, Armenia’s attempts were not genuine.⁴⁰ The record shows the exact opposite. Armenia entered the negotiations with the genuine intention of attempting to amicably settle the dispute. It engaged in exchange after exchange with Azerbaijan even as Azerbaijan persisted in its blatant violations of the Convention. While the negotiations were ongoing, for example, Azerbaijan opened its infamous “Military Trophies Park”, thereby sponsoring, defending and supporting acts of racial discrimination in breach of Articles 2(1)(b), 4(c) and 5(b) of the CERD.⁴¹

³⁸ *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. 361, paras. 40-41.

³⁹ *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. 361, para. 41.

⁴⁰ Preliminary Objections of Azerbaijan, paras. 5, 14 (citing *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*, p. 70, para. 157).

⁴¹ See Memorial of Armenia, paras. 3.384-3.393, 6.102-6.103.

22. From the very outset, Azerbaijan categorically rejected Armenia’s claims while pretending to be ready to negotiate. Its position remained unchanged throughout the negotiations. Before Armenia filed its Application, the basic positions of the Parties had plainly not evolved despite many exchanges and meetings—just as the Court recognised in its 7 December 2021 Order.⁴² Armenia stated this position in its Application⁴³ and Memorial,⁴⁴ yet Azerbaijan makes no attempt to grapple with the Court’s longstanding position that a negotiation precondition is satisfied “when the parties’ ‘basic positions ha[ve] not subsequently evolved’ after several exchanges of diplomatic correspondence and/or meetings”.⁴⁵

23. The record makes it crystal clear that the Parties’ positions did not evolve over the course of the negotiations. After Armenia presented its CERD claims in its letter of 11 November 2020,⁴⁶ Azerbaijan flatly replied in its letter of 8 December 2020 that it “rejects Armenia’s allegations as set forth in its 11 November letter”.⁴⁷ Hence, the Parties held “‘clearly opposite views concerning the question of the performance or non-performance of certain’ international

⁴² *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. 361, paras. 40-41.

⁴³ Application of Armenia, para. 18.

⁴⁴ Memorial of Armenia, para. 5.9.

⁴⁵ *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Judgment, I.C.J. Reports 2020*, p. 81, para. 93 (quoting *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, p. 422, para. 59, citing *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018*, p. 292, para. 76).

⁴⁶ Letter from the Minister of Foreign Affairs of the Republic of Armenia to the Minister of Foreign Affairs of the Republic of Azerbaijan (11 November 2020) (**Application of Armenia, Annex 10**).

⁴⁷ Letter from the Minister of Foreign Affairs of the Republic of Azerbaijan to the Minister of Foreign Affairs of the Republic of Armenia (8 December 2020) (**Application of Armenia, Annex 14**).

obligations”.⁴⁸ Then after Armenia reiterated its claims in its 22 December 2020 letter,⁴⁹ Azerbaijan again replied in its letter of 15 January 2021 that it “maintains its rejection of Armenia’s allegations”.⁵⁰

24. The Parties’ positions did not change at all over the following months. For example, in its letter of 5 April 2021, Azerbaijan maintained that it “denies Armenia’s ... allegations of breach of the Convention”.⁵¹ And at the meetings between the Parties on 30-31 August 2021, Azerbaijan again expressed its “categorical rejections of Armenia’s claims”.⁵²

25. Azerbaijan argues that some of the Parties’ exchanges concerned negotiation modalities, rather than the substance of the dispute.⁵³ Naturally, the Parties communicated on procedural issues to try to move the negotiations forward. But, as the record makes abundantly clear, there was no evolution in the Parties’ basic positions from November 2020 to September 2021.

26. Azerbaijan also argues that at the 30-31 August 2021 meetings, it made certain “proposals” that supposedly “mirror some of Armenia’s own demands in

⁴⁸ *Alleged Violations of Sovereign and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgement, I.C.J. Reports 2016*, p. 3, para. 50 (citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74).

⁴⁹ Letter *from* the Minister of Foreign Affairs of the Republic of Armenia *to* the Minister of Foreign Affairs of the Republic of Azerbaijan (22 December 2020) (**Application of Armenia, Annex 15**).

⁵⁰ Letter *from* the Minister of Foreign Affairs of the Republic of Azerbaijan *to* the Minister of Foreign Affairs of the Republic of Armenia (15 January 2021) (**Application of Armenia, Annex 18**), p. 2.

⁵¹ Delegation of the Republic of Azerbaijan, *Proposed Draft Agenda for 6-7 April 2021 Meeting* (5 April 2021) (**Application of Armenia, Annex 31**).

⁵² *Note Verbale from* the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva *to* the Permanent Mission of the Republic of Azerbaijan *to* the United Nations Office and other International Organizations in Geneva, No. 2203/1415/2021 (10 September 2021), p. 1 (**Application of Armenia, Annex 61**).

⁵³ Preliminary Objections of Azerbaijan, para. 16.

its case on the merits”.⁵⁴ Azerbaijan is again mistaken. Armenia’s requests for relief on the merits, as presented at the end of its Memorial, make clear that Armenia seeks declarations that Azerbaijan has breached the CERD, and an order that Azerbaijan shall cease these breaches, offer assurances and guarantees of non-repetition, and make reparation by way of restitution and compensation.⁵⁵ Azerbaijan’s “proposals”, by contrast, denied breaches of the CERD and offered no assurances or guarantees, let alone any kind of reparation.⁵⁶ Indeed, as Azerbaijan itself admits,⁵⁷ all of its “proposals” merely concerned steps that Armenia and Azerbaijan would “jointly take” in the future.⁵⁸ Not a single one of them acknowledged any wrongdoing on Azerbaijan’s part, nor did any of them provide for remedies for Azerbaijan’s many violations of the CERD,⁵⁹ as Azerbaijan itself recognised in its subsequent Note Verbale.⁶⁰

27. Moreover, Azerbaijan’s “proposals” simply did not address some of Armenia’s most important requests for relief. For example, Armenia repeatedly

⁵⁴ Preliminary Objections of Azerbaijan, para. 18.

⁵⁵ Memorial of Armenia, Part IX.

⁵⁶ Letter *from* Vaqif Sadiqov, Head of Delegation of the Republic of Azerbaijan for negotiations under CERD, *to* Elnur Mammadov, Deputy Minister of Foreign Affairs (9 October 2021) (**Preliminary Objections of Azerbaijan, Annex 45**).

⁵⁷ Preliminary Objections of Azerbaijan, para. 17.

⁵⁸ Letter *from* Vaqif Sadiqov, Head of Delegation of the Republic of Azerbaijan for negotiations under CERD, *to* Elnur Mammadov, Deputy Minister of Foreign Affairs (9 October 2021) (**Preliminary Objections of Azerbaijan, Annex 45**).

⁵⁹ Letter *from* Vaqif Sadiqov, Head of Delegation of the Republic of Azerbaijan for negotiations under CERD, *to* Elnur Mammadov, Deputy Minister of Foreign Affairs (9 October 2021) (**Preliminary Objections of Azerbaijan, Annex 45**).

⁶⁰ *Note Verbale from* the Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva *to* the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva, No. 0432/27/21/25 (2 September 2021), p. 1 (**Application of Armenia, Annex 60**) (“Azerbaijan reiterates its statements during the 30-31 August 2021 session that these Counter-proposals are made on a no-prejudice basis as a means of resolving this dispute and are not an admission or concession that any past statement or action constitutes a violation of the CERD”).

requested—throughout the negotiations, in its first request for provisional measures, and in its Memorial—that Azerbaijan release all ethnic Armenian prisoners of war and civilian detainees.⁶¹ Azerbaijan rejected this request; its “proposals” make no mention of this issue. And even where the “proposals” did address matters in dispute between the Parties, Azerbaijan attempted to justify its own unlawful conduct. As an example, one of its “proposals” asserted that “the Military Trophies Park ... commemorates the liberation of Azerbaijan’s territory ... and was never intended to incite anti-Armenian hatred”.⁶² It is thus false for Azerbaijan to suggest that “[a] comparison of Azerbaijan’s proposals to Armenia’s demands shows that agreement remained possible”.⁶³

28. It should also be recalled that, at the 30-31 August 2021 meetings, Azerbaijan reaffirmed its “categorical rejections” of Armenia’s claims.⁶⁴ Accordingly, the Parties’ basic positions remained unchanged during the course of the negotiations.

29. Notably, the Court has found negotiation preconditions satisfied in circumstances where the parties’ exchanges were far less extensive than in this case. In *Obligation to Prosecute or Extradite*, for example, Belgium and Senegal exchanged only a handful of *Notes Verbales*, and yet the Court found that the negotiation precondition had been satisfied because “[t]here [had been] no change

⁶¹ Memorial of Armenia, submission 14(c); Application of Armenia, para. 131.

⁶² Letter *from* Vaqif Sadiqov, Head of Delegation of the Republic of Azerbaijan for negotiations under CERD, *to* Elnur Mammadov, Deputy Minister of Foreign Affairs (9 October 2021) (**Preliminary Objections of Azerbaijan, Annex 45**).

⁶³ Preliminary Objections of Azerbaijan, para. 18.

⁶⁴ *Note Verbale from* the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva *to* the Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva, No. 2203/1415/2021 (10 September 2021), p. 1 (**Application of Armenia, Annex 61**).

in the respective positions of the Parties”.⁶⁵ Similarly, in the *South West Africa* cases, the Court found that the negotiation precondition had been satisfied even though the parties had not engaged in any direct bilateral negotiations, again because “no modification of the [Parties’] respective contentions ha[d] taken place”.⁶⁶ And in the *ICAO Council Appeal* cases, the Court found that Qatar had fulfilled the negotiation precondition despite the minimal direct communication between the Parties because “[t]here [was] no indication that the positions of the Parties ... [had] changed”.⁶⁷ If the negotiation precondition in those cases was satisfied, *a fortiori*, it is satisfied in this case as well.

30. There is thus no question that when Armenia filed its Application in September 2021, “no reasonable probability exist[ed] that further negotiations would lead to a settlement”.⁶⁸ Not only had Azerbaijan refused to change its basic position on Armenia’s claims, but there was also serious urgency in the matter, considering Azerbaijan’s ongoing violations of the CERD. Armenia was thus

⁶⁵ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422, para. 59.

⁶⁶ *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of 21 December 1962: I.C.J. Reports 1962, p. 346.

⁶⁷ *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 81, para. 96; *Appeal relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 172, para. 97.

⁶⁸ *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of 21 December 1962: I.C.J. Reports 1962, p. 345; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422, para. 57; *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 81, para. 93; *Appeal relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 172, para. 94.

compelled to file a request for provisional measures alongside its Application, on the basis of which the Court granted provisional measures.

31. Azerbaijan is plainly wrong that Armenia “sought to use the Court as a platform for advertising its claims”.⁶⁹ Armenia filed its Application and Request for Provisional Measures for one reason only: to seek relief from Azerbaijan’s unlawful conduct, which negotiations had failed to remedy. That relief has already been granted in part by the Court. It is particularly ironic that Azerbaijan alleges that it “remains ready to engage in a meaningful dialogue with Armenia on any issue”⁷⁰ even as it steadfastly refuses to discuss the rights and security of the ethnic Armenians of Nagorno-Karabakh.⁷¹

⁶⁹ Preliminary Objections of Azerbaijan, para. 20.

⁷⁰ Preliminary Objections of Azerbaijan, para. 20.

⁷¹ “Opening Ceremony of Global Media Forum was held in Shusha”, *The President of the Republic of Azerbaijan Ilham Aliyev* (21 July 2023), available at <https://president.az/en/articles/view/60544>, p. 28 (**Annex 23**) (“[T]hey say that this Armenian minority in Karabakh should be incorporated [into the agenda of issues on the negotiating table], which is not possible at all”); A. Osborn & M. Collette-White, “Nagorno-Karabakh: Azerbaijan says extra guarantees for enclave’s ethnic Armenians not possible”, *Reuters* (23 June 2023), available at <https://www.reuters.com/world/azerbaijan-rejects-demand-guarantees-nagorno-karabakhs-ethnic-armenians-2023-06-22/>, PDF p. 1 (**Annex 49**) (“Azerbaijan's foreign minister has rejected a demand from Armenia to provide special security guarantees for some 120,000 ethnic Armenians living in the Nagorno-Karabakh enclave ahead of a new round of peace talks, saying they are sufficiently protected”); “Ilham Aliyev received delegation led by Special Envoy of European Union for Eastern Partnership”, *The President of the Republic of Azerbaijan Ilham Aliyev* (17 November 2022), available at <https://president.az/en/articles/view/57891>, p. 5 (**Annex 21**) (“If they want to talk about rights and security of Armenians in Karabakh, it will not work”); “Speech by Ilham Aliyev at the meeting of CIS’s councils of heads of state in Astana”, *The President of the Republic of Azerbaijan Ilham Aliyev* (14 October 2022), available at <https://president.az/en/articles/view/57748>, p. 5 (**Annex 20**) (“Our position is clear and precise. Karabakh is Azerbaijan. The rights and security of the Armenian population of Karabakh will be ensured in accordance with the Constitution of Azerbaijan. We are not going to discuss our internal issues with anyone”); “Azerbaijan Television interviewed Ilham Aliyev in Basgal settlement of Ismayilli district”, *The President of the Republic of Azerbaijan Ilham Aliyev* (12 August 2022), available at <https://president.az/en/articles/view/56906>, p. 9 (**Annex 19**) (“Today, there is no Karabakh issue on the agenda of the normalization process between Armenia and Azerbaijan. There were such attempts, but I never agreed to that”).

32. At the end of the day, there was no “reasonable probability ... that further negotiations would lead to a settlement”⁷² between the Parties. The situation between Armenia and Azerbaijan remains extremely tenuous⁷³ due, *inter alia*, to Azerbaijan’s eight-month blockade of the 120,000 ethnic Armenians of Nagorno-Karabakh in defiance of the Court’s 22 February 2023 Order on Armenia’s second request for provisional measures, as well as of the Court’s 6 July 2023 Order on Armenia’s request for the modification of that 22 February Order. Under the circumstances, it is just not credible to claim that the Parties would have been able to resolve their disputes under the CERD through further negotiations before Armenia filed its Application. Armenia recognises this same stark reality with regards to Azerbaijan’s claims under the CERD, filed a mere week after Armenia’s, and has therefore made no argument that negotiations were not futile in those proceedings.

III. The Court Has Jurisdiction *Ratione Materiae* over All of Armenia’s Claims

33. Azerbaijan’s second preliminary objection is as unfounded as its first.

34. Under Article 22 of the CERD, any dispute “with respect to the interpretation or application of this Convention” may be referred to the Court. At

⁷² *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of 21 December 1962: I.C.J. Reports 1962, p. 345; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422, para. 57; *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 81, para. 93; *Appeal relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 172, para. 94.

⁷³ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, Order of 12 October 2022, paras. 18, 21; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, Order of 6 July 2023, para. 30.

this stage of the proceedings, and for the purpose of deciding whether it has jurisdiction *ratione materiae* over the dispute, the Court must determine whether the acts complained of “fall within the provisions” of the CERD,⁷⁴ and thus whether they are “capable of” constituting “racial discrimination”⁷⁵ as defined in Article 1(1).⁷⁶

35. In its Memorial, Armenia demonstrated that the acts giving rise to this dispute, for which Azerbaijan bears responsibility, fall within the definition laid out in Article 1(1). In particular, all the acts complained of constitute “distinction[s], exclusion[s], restriction[s], or preference[s] based on race, colour, descent, or national or ethnic origin which ha[ve] 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”.⁷⁷ The Court therefore has jurisdiction *ratione materiae* over all of Armenia’s claims.

36. Azerbaijan’s second preliminary objection notably does not object to the Court’s jurisdiction over the majority of Armenia’s claims. These include Armenia’s claims relating to (1) Azerbaijan’s practices of ethnic cleansing and

⁷⁴ See *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, *I.C.J. Reports 2019*, p. 7, paras. 36, 52; *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*, p. 558, para. 57.

⁷⁵ See *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. 71, para. 112. See also Preliminary Objections of Azerbaijan, para. 28 (“To establish the Court’s jurisdiction over its claims, Armenia must show that the acts it alleges are capable of constituting racial discrimination within the meaning of CERD”).

⁷⁶ See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, *I.C.J. Reports 2021*, p. 71, para. 112.

⁷⁷ International Convention on the Elimination of all Forms of Racial Discrimination (hereinafter “CERD”), Art. 1(1).

persecution of ethnic Armenians; (2) its glorification of racially motivated violence against Armenians; (3) its engagement in, incitement, facilitation and tolerance of hate speech against ethnic Armenians; (4) its failure to guarantee ethnic Armenians freedom of movement, the right to marriage and family life, the right to property, freedom of religion, the right to participate in political life, cultural rights, and economic and social rights; (5) its failure to take effective measures to combat racial discrimination against ethnic Armenians and to encourage other means of eliminating barriers between races; and (6) its failure to provide ethnic Armenians with effective remedies for racial discrimination.⁷⁸

37. Azerbaijan does argue, however, that Armenia’s claims of wartime misconduct and of mistreatment of individuals who allegedly illegally entered Azerbaijan’s territory “are governed by international humanitarian law” and “have nothing to do with CERD”.⁷⁹ The fact that certain claims implicate IHL, however, does not mean that they cannot *also* fall within the provisions of the CERD (**Section A**).

38. Indeed, the overwhelming evidence—including evidence cited in Armenia’s Memorial and simply ignored by Azerbaijan⁸⁰—makes clear that the

⁷⁸ See Memorial of Armenia, Section VI.5.

⁷⁹ Preliminary Objections of Azerbaijan, para. 2, 24, 30, 63. See also *ibid.*, 10, 37, 53, 55, 56.

⁸⁰ Armenia notes in this regard that Azerbaijan’s Preliminary Objections entirely ignore certain arguments (*see infra* para. 64). Moreover, Azerbaijan’s Annex 46—which purportedly lays out “Armenia’s Evidence in Support of its Claim[s]”—is incomplete. For example, both Azerbaijan’s preliminary objections and Annex 46 completely fail to take into account the Declaration by Dr. Rafayel Vardanyan from the Investigative Committee of the Republic of Armenia submitted with Armenia’s Memorial. See Declaration by Dr. Rafayel Vardanyan, Investigative Committee of the Republic of Armenia (13 January 2023) (**Memorial of Armenia, Annex 294**). Azerbaijan also omits, from both Annex 46 and its preliminary objections, reports by the Human Rights Ombudsman of the Republic of Artsakh and the Human Rights Defender of the Republic of Armenia. See, e.g., Memorial of Armenia, Annexes 44, 48, 50, 51, 52, 53, 54, 55, 56, 61, 62, 63, 67, 68, 69, 70. Azerbaijan further fails to account for dozens of other Annexes cited in Armenia’s Memorial. See, e.g., European Commission against Racism and Intolerance, Second Report on Azerbaijan (second monitoring cycle) (15 December 2006), available at https://ec.europa.eu/migrant-integration/library-document/ecri-second-report-azerbaijan_en, para.

acts about which Armenia complains are all capable of constituting racial discrimination under the CERD, and that they therefore fall within the Court’s jurisdiction *ratione materiae* (**Section B**). In the alternative, Azerbaijan’s second objection effectively asks the Court to weigh the evidence and thus prejudge the merits, which renders it unsuitable for determination at this preliminary stage (**Section C**).

A. Armenia’s Claims Fall under the CERD Even If They Also Implicate IHL

39. Azerbaijan argues that “Armenia provides no basis to conclude that its claims of wartime misconduct or of mistreatment of individuals who illegally entered Azerbaijan’s territory during the occupation period” have anything to do with racial discrimination under the CERD.⁸¹ According to Azerbaijan, those claims instead exclusively “allege conduct potentially implicating questions of IHL”.⁸² Azerbaijan makes the same assertion on no fewer than 17 other occasions,⁸³ as if repeating it *ad nauseam* somehow makes it true. It does not.

40. It is of course true that not every violation of IHL is an act of racial discrimination. At the same time, it is equally true that the same acts may implicate *both* the CERD and IHL. As the Court has repeatedly made clear, “certain acts or omissions may give rise to a dispute that falls within the ambit of more than one

109 (**Memorial of Armenia, Annex 22**) (cited in paragraphs 3.108, 6.122 of Armenia’s Memorial); T. Lokshina, “Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes”, *Human Rights Watch* (12 March 2021) (**Memorial of Armenia, Annex 86**) (cited in paragraphs 3.244, 3.261, 3.305, 3.318-3.320, 3.329, 3.337, 6.131 of Armenia’s Memorial). As such, neither Annex 46 nor Azerbaijan’s preliminary objections can be relied on to summarize the evidence and arguments supporting Armenia’s claims.

⁸¹ Preliminary Objections of Azerbaijan, para. 28.

⁸² Preliminary Objections of Azerbaijan, para. 28.

⁸³ See Preliminary Objections of Azerbaijan, paras. 2, 6, 8, 10, 24, 28, 30, 37, 44, 47, 48, 52, 53, 55, 56, 60, 67.

treaty”.⁸⁴ Azerbaijan *itself* cannot help but acknowledge that the “CERD applies in armed conflict as well as in peacetime” and that “acts of war *may implicate CERD*”.⁸⁵ In fact, in the parallel proceedings in *Azerbaijan v. Armenia*, Azerbaijan itself has brought claims that, if proven, might constitute violations of both the CERD and IHL.⁸⁶

41. Azerbaijan alleges that “nothing” other than “bare assertion” connects Armenia’s allegations to racial discrimination.⁸⁷ This is a puzzling submission considering the overwhelming evidence submitted with Armenia’s Memorial and discussed in the following sections. It bears underscoring that Armenia does not argue that, in general, Azerbaijan’s violations of the *jus ad bellum* or of IHL constitute violations of the CERD. Rather, Armenia complains about specific misconduct by Azerbaijan’s armed forces and other organs that had a distinct racially discriminatory character. In fact, much of Azerbaijan’s wartime and war-related conduct was accompanied by *explicit* expressions of racism,⁸⁸ and *all* of Azerbaijan’s impugned conduct must be understood both against that backdrop and in the context of Azerbaijan’s decades-long propagation of Armenophobic hate that permeates every aspect of social life in the country.⁸⁹

42. Azerbaijan also argues that just because “most if not all members of Armenia’s armed forces will be ethnic Armenians ... this does not transform every

⁸⁴ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of 16 March 2022, p. 211, para. 46, with reference to *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. 9, para. 56.

⁸⁵ Preliminary Objections of Azerbaijan, para. 8 (emphasis added). *See also ibid.*, para. 49.

⁸⁶ Preliminary Objections of Azerbaijan, para. 49.

⁸⁷ Preliminary Objections of Azerbaijan, para. 40. *See also ibid.*, para. 44.

⁸⁸ *See, e.g.*, Memorial of Armenia, paras. 3.246-3.248, 3.250-3.260, 4.62.

⁸⁹ *See infra* Section III.B(4).

act taken in a war with Armenia into a CERD violation or every claim of such an act into a question of interpretation or application of CERD”.⁹⁰ However, the Court’s statement in *Qatar v. United Arab Emirates* upon which Azerbaijan relies⁹¹—that “collateral or secondary effects” on persons of a particular ethnic origin, arising in the context of measures based on current nationality, do “not constitute racial discrimination within the meaning of the Convention”⁹²—is inapposite here. The effects of Azerbaijan’s actions on persons of Armenian ethnic origin described in the Memorial are neither “collateral” nor “secondary” effects of measures based on current nationality. As Armenia demonstrated in its Memorial, the actions taken were not taken on the basis of nationality—indeed, Azerbaijan has persecuted the ethnic Armenian residents of Nagorno-Karabakh which it considers its *own* citizens.⁹³ To the contrary, Azerbaijan’s actions were deliberate measures that had the purpose of suppressing, displacing, and in some cases entirely eliminating, ethnic Armenians and their identity, regardless of nationality.

⁹⁰ See Preliminary Objections of Azerbaijan, para. 39.

⁹¹ See Preliminary Objections of Azerbaijan, para. 39.

⁹² *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. 71, para. 112.

⁹³ “Armenians living in Karabakh will have no status, no independence and no special privilege: President Ilham Aliyev”, *APA* (12 August 2022), available at <https://apa.az/en/official-news/armenians-living-in-karabakh-will-have-no-status-no-independence-and-no-special-privilege-president-ilham-aliyev-382715>, PDF p. 2 (President Aliyev: “Because the Armenians living in Karabakh will have no status, no independence and no special privilege. They are the same as the citizens of Azerbaijan”) (**Annex 44**); “Ilham Aliyev attended the international conference themed ‘South Caucasus: Development and Cooperation’ at ADA University”, *President of the Republic of Azerbaijan Ilham Aliyev* (29 April 2022), available at <https://president.az/en/articles/view/55909>, p. 15 (“I already said that Armenians who live in Karabakh - we consider them our citizens”) (**Annex 16**); Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by Azerbaijan under article 9 of the Convention, due in 2019*, UN Doc. CERD/C/AZE/10-12 (10 October 2019), para. 114 (“Members of all ethnic minority communities residing in the country, including ethnic Armenians, are citizens of Azerbaijan”) (**Annex 10**).

43. Azerbaijan finally argues 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 violation of the CERD.⁹⁴ Armenia agrees. But as made clear throughout Armenia’s Memorial and in these Observations, that plainly does not describe the situation in this case. Azerbaijan’s purported concern that allowing Armenia’s claims to proceed would open a Pandora’s box is therefore misplaced.⁹⁵

B. Armenia’s Claims Concerning Azerbaijan’s Discriminatory Murder, Torture and Inhumane Treatment, Discriminatory Arbitrary Detention, and Discriminatory Enforced Disappearances All Fall under the CERD

44. Azerbaijan asserts that “nothing in Armenia’s Application or Memorial, other than bare assertion, connects [its] allegations [relating to unlawful violence, arbitrary detention, and enforced disappearances] to racial discrimination”.⁹⁶ According to Azerbaijan, the acts complained of thus have nothing to do with the CERD, but instead merely concern misconduct in an armed conflict. In order to uphold Azerbaijan’s objections at this preliminary stage, the Court would therefore have to conclude, without “weigh[ing] evidence or otherwise consider[ing] the merits”,⁹⁷ that Azerbaijan’s acts of murder, torture, inhumane treatment, detention, and enforced disappearances of ethnic Armenians were based *solely* on (i) ordinary animosity in the midst of an armed conflict, and were thus not even *capable of*

⁹⁴ Preliminary Objections of Azerbaijan, para. 8.

⁹⁵ *See, e.g.*, Preliminary Objections of Azerbaijan, para. 8. *See also ibid.*, para. 37.

⁹⁶ Preliminary Objections of Azerbaijan, para. 40.

⁹⁷ Preliminary Objections of Azerbaijan, para. 41.

having been based on (ii) ethnicity or (iii) a combination of ethnicity and other considerations.⁹⁸

45. Azerbaijan itself admits that misconduct in armed conflict and racial discrimination are not mutually exclusive,⁹⁹ but claims that in the circumstances of the case, there was no racial discrimination. Azerbaijan’s submission is not just wrong—it is frivolous. As discussed below, Armenia’s claims concerning discriminatory murder, torture and inhumane treatment (**Section 1**), discriminatory arbitrary detention (**Section 2**) and discriminatory enforced disappearances (**Section 3**) all plainly fall within the provisions of the CERD. While the direct evidence is sufficient to prove Armenia’s claims, the general Armenophobia espoused and cultivated by Azerbaijan is, contrary to what Azerbaijan argues, also relevant context in evaluating the particular acts about which Armenia complains (**Section 4**).

1. Armenia’s Claims Concerning Azerbaijan’s Discriminatory Murder, Torture and Inhumane Treatment of Ethnic Armenians Fall within the Scope of the CERD

46. Azerbaijan objects to Armenia’s claims concerning Azerbaijan’s discriminatory violence against ethnic Armenians.¹⁰⁰ In so doing, it artificially divides those claims into three “categories”¹⁰¹—concerning mistreatment of ethnic

⁹⁸ Armenia notes in this regard that “[t]he ‘grounds’ of discrimination are extended in practice by the notion of “intersectionality” whereby the Committee addresses situations of double or multiple discrimination - such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in article 1 of the Convention”. See Committee on the Elimination of Racial Discrimination, *General Recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, UN Doc. CERD/C/GC/32 (24 September 2009), available at <https://digitallibrary.un.org/record/667786>, para. 7 (**Annex 2**).

⁹⁹ Preliminary Objections of Azerbaijan, paras. 8, 49.

¹⁰⁰ Preliminary Objections of Azerbaijan, paras. 42-58.

¹⁰¹ Preliminary Objections of Azerbaijan, para. 42.

Armenian servicemen (both members of the Armed Forces of the Republic of Armenia and of the armed forces of the local authorities in Nagorno-Karabakh¹⁰²), mistreatment of ethnic Armenian civilians, and mistreatment of ethnic Armenians who allegedly illegally crossed the border or line of contact between the First and Second Nagorno-Karabakh Wars.¹⁰³ Azerbaijan thus appears to be trying to isolate and thereby minimise the evidence of racial discrimination with respect to each “category” of claim. Yet no matter how much Azerbaijan seeks to dissect Armenia’s claims, the evidence of racial discrimination is overwhelming with respect to *all* of the “categories” about which it complains.

47. The direct evidence of Azerbaijan’s racially motivated violence and other abuse is too copious to recount in full. Armenia therefore directs the Court to the following sections of its Memorial: III.1.II, III.2.II, III.3.I, IV.1, IV.2.I, and IV.2.IV.A & B. It is important to note, however, that as explained in Section 4 below, the *entirety* of Armenia’s Application, Memorial and accompanying evidence is relevant context in evaluating Armenia’s claims.¹⁰⁴ This context underscores the extent to which hatred of ethnic Armenians permeates Azerbaijani society and corroborates why Azerbaijan’s objection must be rejected.

48. For present purposes, Armenia limits itself to restating a small fraction of the evidence before the Court. That evidence includes more than one hundred videos depicting the murder and mistreatment of persons not because they

¹⁰² Armenia notes that Azerbaijan appears to incorrectly conflate servicemen of the local authorities in Nagorno-Karabakh with servicemen of the Republic of Armenia.

¹⁰³ Preliminary Objections of Azerbaijan, para. 42.

¹⁰⁴ See *infra* Section III.B(4).

possessed Armenian nationality, but because they were ethnic Armenians.¹⁰⁵ Among many other examples, Armenia presented:

- A video capturing Azerbaijani soldiers cutting off the ears of two dead Armenians while claiming that they “will eliminate their race”.¹⁰⁶
- A video showing a group of Azerbaijani servicemen abusing a group of ethnic Armenian prisoners of war (“POWs”). As one of the POWs begs not to be harmed, one of the Azerbaijani servicemen states: “You are going to keep begging us like this a lot. You, the disgraceful people, pimps, faggots”.¹⁰⁷
- A video capturing a soldier shooting a dead ethnic Armenian from behind, saying: “they are not human beings”.¹⁰⁸
- A video showing an ethnic Armenian, [REDACTED], lying wounded and helpless on the ground as an Azerbaijani soldier shoots him multiple times in the head from a distance of 1-2 feet, yelling “f*** your people”.¹⁰⁹
- A video showing a bloodied ethnic Armenian civilian, [REDACTED], with his arms tied behind his back, while an Azerbaijani soldier calls him a

¹⁰⁵ See Memorial, para. 4.150, n. 1758 (citing to, *inter alia*, Illustrative List of Videos and Photographs of War Crimes Committed by the Agents of Azerbaijan During and After the Second Nagorno-Karabakh War (**Annex 290**)).

¹⁰⁶ Video 1 showing mutilation of Armenian corpses by Azerbaijani soldiers (certified translation from Azerbaijani) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 134**).

¹⁰⁷ Video showing inhuman and degrading treatment of [REDACTED] and other Armenian captives (certified translation from Azerbaijani) (confidential) (**Memorial of Armenia, Annex 128**).

¹⁰⁸ Video showing an Azerbaijani soldier shooting at a dead Armenian soldier’s body (contains annotations, such as certified subtitles in English) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 169**).

¹⁰⁹ Video showing the execution of an *hors de combat* Armenian serviceman (certified translation from Azerbaijani) [WARNING: GRAPHIC] (**Memorial of Armenia, Annex 131**).

“mangy jackal” and promises to “persecute [him] like [a] dog[.]”.¹¹⁰ The Azerbaijani soldier adds that Azerbaijanis will “persecute [all of you] like dogs” and claims they are “all jackals, not people”.¹¹¹ (As discussed in Section 4 below, the reference to ethnic Armenians as “dogs” was popularized by President Aliyev during the course of the Second Nagorno-Karabakh War.¹¹²)

- A video capturing an Azerbaijani soldier walking over the dead bodies of Armenians. The soldier says: “they are not human beings ...”.¹¹³
- A video showing an Azerbaijani soldier kicking a dead Armenian in the head, saying: “This is how they are, this is how we destroy Armenians”, and “[w]e do things like this, this is our Azerbaijan. We are capable of this”.¹¹⁴
- A video capturing a large group of Azerbaijani soldiers listening to their commander giving a speech while cutting the ears off of a dead Armenian, and claiming that Armenians are “sons of dogs”, and that “[he] came here ... [to] cut off the seeds of these immoral people”.¹¹⁵

¹¹⁰ Video showing inhuman and degrading treatment of ██████████ (certified translation from Russian) (confidential) (**Memorial of Armenia, Annex 117**).

¹¹¹ Video showing inhuman and degrading treatment of ██████████ (certified translation from Russian) (confidential) (**Memorial of Armenia, Annex 117**).

¹¹² *See infra* para. 94.

¹¹³ Video showing an Azerbaijani soldier shooting at a dead Armenian soldier’s body (contains annotations, such as certified subtitles in English) (**Memorial of Armenia, Annex 169**).

¹¹⁴ Video 2 showing mutilation of Armenian corpses by Azerbaijani soldiers (contains annotations, such as certified subtitles in English) (**Memorial of Armenia, Annex 168**)

¹¹⁵ Video showing an Azerbaijani soldier cutting the ear off of a dead Armenian soldier (certified translation from Azerbaijani) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 124**).

- A video showing a group of Azerbaijani servicemen brutally hitting and punching an ethnic Armenian, [REDACTED], and stating “you son of a dog” and “how is this son of a dog speaking?”¹¹⁶ As [REDACTED] pleads with his captors and refers to them as “brothers”, one of them responds: “[W]hat brother? You immoral son of a dog”.¹¹⁷
- A video capturing an ethnic Armenian POW, [REDACTED], on the verge of losing consciousness, being repeatedly hit on the head and violently shaken as an Azerbaijani soldier yells “*Suka Millet*”, or “nation of bitches”.¹¹⁸
- A video showing the bodies of killed Armenian soldiers being collectively buried by an excavator, while the Azerbaijani soldier filming states: “these are Armenian dogs”.¹¹⁹

49. Yet another video depicts an Azerbaijani serviceman proudly boasting that he committed racially motivated atrocities, stating: “Armenians of the entire world, today I f***** your mother. F*ggots”.¹²⁰ Just like President Aliyev’s declaration that Armenians “of the world” are Azerbaijan’s “main enemies”,¹²¹ this reference

¹¹⁶ Video showing inhuman and degrading treatment of [REDACTED] (contains annotations, such as certified subtitles in English) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 167**).

¹¹⁷ Video showing inhuman and degrading treatment of [REDACTED] (contains annotations, such as certified subtitles in English) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 167**).

¹¹⁸ Video showing inhuman and degrading treatment of [REDACTED] (certified translation from Azerbaijani) (confidential) (**Memorial of Armenia, Annex 132**).

¹¹⁹ Video showing the bodies of killed Armenian soldiers being buried *en masse* by an excavator (certified translation from Azerbaijani) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 137**).

¹²⁰ Propaganda video compiling images of Azerbaijani atrocities (September 2022), 00:55-01:01 (certified translation from Russian) (confidential) (**Memorial of Armenia, Annex 148**).

¹²¹ “Closing Speech by Ilham Aliyev at the conference on the results of the third year into the ‘State Program on the socioeconomic development of districts for 2009-2013’”, *The President of the*

to “Armenians of the entire world” cannot be dismissed as “animus or hostility towards the enemy State, the enemy armed forces, or citizens of the enemy State”.¹²² By any standard, it is a reference to members of the Armenian *ethnic group*, wherever they live, and is thus an unequivocal indication that atrocities were perpetrated on the basis of ethnic origin.

50. All these videos were, moreover, widely circulated by Azerbaijani social media users and openly glorified with impunity.¹²³ The perpetrators have not been punished to this day.¹²⁴

51. Azerbaijan’s official postage stamp showing a person in a hazmat suit “disinfecting” Nagorno-Karabakh¹²⁵ is an equally overt expression of

Republic of Azerbaijan Ilham Aliyev (28 February 2012), available at <https://president.az/en/articles/view/4423>, PDF p. 10 (“First, our main enemies are Armenians of the world and the hypocritical and corrupt politicians under their control”) (cited in **Memorial of Armenia, Annex 292**) (**Annex 7**).

¹²² Preliminary Objections of Azerbaijan, para. 37.

¹²³ See Memorial of Armenia, paras. 3.63, 3.84-3.85, 3.246, 3.317, 3.326, 4.61-4.65. See also A. Geybullayeva & B. Samadov, “How Azerbaijan’s Telegram Channels Fuel Intimidation”, *Institute for War & Peace Reporting* (25 October 2022), available at <https://iwpr.net/global-voices/how-azerbajians-telegram-channels-fuel-intimidation> (**Annex 46**) (describing a channel on the social media app, Telegram, which previously used as its avatar an image of the bloody head of a decapitated Armenian soldier and, later, a still image from a video showing the summary execution of Armenian soldiers, and frequently disseminates videos and photos of dead and mutilated Armenians, often accompanied by explicit expressions of anti-Armenian hate).

¹²⁴ See Memorial of Armenia, Section IV.3.

¹²⁵ See Memorial of Armenia, Section III.3.II.C (citing “Postage stamps dedicated to Azerbaijani heroes issued”, *AZTV* (6 January 2023), available at <http://www.aztv.az/en/news/11015/postage-stamps-dedicated-to-azerbajians-heroes-issued>, PDF p. 2 (**Annex 47**); A. Galitsky, “Azerbaijan’s Dehumanization of Armenians Echoes Horrors of Holocaust”, *The Times of Israel* (30 January 2021), available at <https://blogs.timesofisrael.com/azerbajiansdehumanization-of-armenians-echoes-horrors-of-holocaust/>, PDF p. 3 (**Memorial of Armenia, Annex 114**); “Azerbaijani postal stamps accused of spreading anti-Armenian propaganda”, *The Calvert Journal* (12 January 2021), available at <https://www.calvertjournal.com/articles/show/12442/azerbajian-stamps-nagorno-karabakhwar-anti-armenian-propaganda>, PDF p. 1 (**Annex 41**); N. Sahakyan, “The rhetorical face of enmity: the Nagorno-Karabakh conflict and the dehumanization of Armenians in the speeches by Ilham Aliyev” in *SOUTHEAST EUROPEAN AND BLACK SEA STUDIES* (29 November 2022), available at <https://doi.org/10.1080/14683857.2022.2153402>, pp. 2, 13 (**Annex 35**)).

Armenophobia. The same may be said for the patches worn by Azerbaijani soldiers showing a notorious Ottoman genocidaire with the caption: “Armenian, don’t run! You’ll die anyway, just exhausted”.¹²⁶ Both plainly link violence to ethnic hatred, the latter being the very reason for the extreme and cruel character of the former.

52. The video and photographic evidence Armenia submitted with its Application and Memorial are merely the tip of the iceberg of Azerbaijan’s racially motivated abuse. Azerbaijani servicemen’s willingness to openly commit acts of racial hatred on film does not just show that they were unafraid of being caught and prosecuted for their crimes. It also can only mean that they committed even more such atrocities when no cameras were around.

53. Among many other pieces of evidence submitted with Armenia’s Memorial that prove this point, Annex 291 contains a compilation of testimonies of than sixty former Armenian POWs and civilian detainees. *Each and every one* was abused on racial grounds. For example:

- One recounted being beaten, forced to stand all night, and forced to read a book stating that “Azerbaijan is an ancient nation, and that the Armenians have been nomads and did not have a state, and that they seized [the Azerbaijanis’] historic lands”.¹²⁷

¹²⁶ See Memorial of Armenia, Section IV.2.IV.A.2 (citing Artyom Tonoyan, @ArtyomTonoyan, “As Azerbaijan reverts to type and attacks Armenian positions in Nagorno-Karabakh, here is a an [sic] army uniform patch making rounds on Azeri socials. An image of notorious Ottoman genocidaire Enver Pasha with the inscription ‘Armenian, don’t run! You’ll die anyway, just exhausted’”, *Twitter* (3 August 2022), *available at* <https://twitter.com/ArtyomTonoyan/status/1554843631705591816> (**Annex 43**)).

¹²⁷ Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023) (certified translation from Armenian) (confidential) (**Memorial of Armenia, Annex 291**).

- A second recounted how he was beaten and how his captors underscored that “Armenians should not exist”.¹²⁸
- A third recounted being beaten and forced to say that “Armenians are ‘son[s] of a bitch’ and other similar things”.¹²⁹
- A fourth recounted being electrocuted and otherwise beaten and how “[t]hey hit [him] for being Armenian, without any reasons”.¹³⁰
- And a fifth recounted being beaten, called an “animal”, and otherwise humiliated, including by being forced to “make different loud animal noises”, and forced to “sing some Armenian songs and dance while they videotaped us”.¹³¹

54. Other evidence includes the heinous murder and torture of numerous ethnic Armenian civilians living in Nagorno-Karabakh¹³²—including women and the elderly¹³³—in circumstances in which there can be no explanation other than ethnic hatred. Tellingly, and as noted above, Azerbaijan itself claims that it considers the

¹²⁸ Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), Appendix 2 (certified translation from Armenian) (confidential) (**Memorial of Armenia, Annex 291**).

¹²⁹ Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), p. 1 (certified translation from Armenian) (confidential) (**Memorial of Armenia, Annex 291**).

¹³⁰ Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), p. 12 (certified translation from Armenian) (confidential) (**Memorial of Armenia, Annex 291**).

¹³¹ Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023), p. 5 (certified translation from Armenian) (confidential) (**Memorial of Armenia, Annex 291**).

¹³² See Memorial of Armenia, paras., 3.62-3.67, 3.244-3.275, 3.305, 4.7.

¹³³ See Memorial of Armenia, paras. 3.265-3.268.

residents of Nagorno-Karabakh to be its *own citizens*.¹³⁴ Moreover, in none of these cases does Azerbaijan rely on the pretext it uses in relation to ethnic Armenian servicemen; namely, that the acts complained of evidence nothing more than “hostility between opposing soldiers at war”.¹³⁵

55. As just one example of ethnically motivated murder of ethnic Armenian civilians among many others: upon entering and taking control of the Talish village in Nagorno-Karabakh in 2016, Azerbaijani soldiers “killed at least three elderly civilian residents and then mutilated their bodies by cutting off their ears”.¹³⁶ As another example: in 2020, the mutilated body of Ernest Harutunyan, an 84-year-old ethnic Armenian civilian who suffered from dementia, was found in his home in Nagorno-Karabakh.¹³⁷ The circumstances of his death suggested he had been “deliberate[ly] kill[ed]”.¹³⁸ In addition, Azerbaijan’s Armed Forces beheaded at least two other ethnic Armenians in Nagorno-Karabakh, aged 69 and 82, alive on film.¹³⁹ Once again, there is no plausible explanation for such acts other than racial hate.

¹³⁴ See *supra* para. 42, n. 93.

¹³⁵ Preliminary Objections of Azerbaijan, para. 45.

¹³⁶ Memorial of Armenia, para. 3.62. The Human Rights Ombudsman of Artsakh, *Interim Report, Atrocities Committed by Azerbaijani Military Forces Against the Civilian Population of the Nagorno-Karabakh Republic and Servicemen of the Nagorno Karabakh Defence Army on 2-5 April 2016* (April 2016), available at <https://artsakhombuds.am/en/document/560>, pp. 17-19 [WARNING: graphic pictures included] (**Memorial of Armenia, Annex 45**).

¹³⁷ Amnesty International, *Last To Flee: Older People’s Experience Of War Crimes And Displacement In The Nagorno-Karabakh Conflict* (2022), p. 16 (**Memorial of Armenia, Annex 95**).

¹³⁸ Amnesty International, *Last To Flee: Older People’s Experience Of War Crimes And Displacement In The Nagorno-Karabakh Conflict* (2022), p. 16 (**Memorial of Armenia, Annex 95**).

¹³⁹ See “Two men beheaded in videos from Nagorno-Karabakh war identified”, *The Guardian* (15 December 2020), available at <https://www.theguardian.com/world/2020/dec/15/two-men-beheaded-in-videos-from-nagorno-karabakh-war-identified> (**Annex 40**).

56. Azerbaijan argues that attacks on civilians that are considered indiscriminate for IHL purposes by definition cannot “discriminate on the basis of ethnic origin or anything else”.¹⁴⁰ At the risk of stating the obvious, an attack is “indiscriminate” under IHL because it fails to distinguish between civilian objects and military targets.¹⁴¹ An attack on persons, civilians or otherwise solely because they are ethnically Armenian is absolutely capable of constituting discrimination under the CERD. As such, an attack that is “indiscriminate” under IHL can be discriminatory under the CERD. That is exactly the case here: Azerbaijan killed ethnic Armenians and targeted civilian infrastructure that had no military advantage, including schools and homes,¹⁴² simply because ethnic Armenians would be harmed.¹⁴³

57. The fact that atrocities against civilians have regularly occurred even in periods of *de facto* peace merely serves to underscore that they are not ordinary incidents of war.

58. For example, Mamikon Khojoyan, an elderly Armenian civilian captured in 2014 between the First and Second Nagorno-Karabakh Wars, was “severely beaten in the head, ribs, arms and other parts of the body, burned, and subjected to

¹⁴⁰ Preliminary Objections of Azerbaijan, para. 55.

¹⁴¹ See Additional Protocol I to the Geneva Conventions, Article 51(4)(c) (“Indiscriminate attacks are ... those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction”).

¹⁴² Memorial of Armenia, para. 3.243

¹⁴³ Memorial of Armenia, para. 3.243 (citing B. Cox, *Continuing Impunity: Azerbaijani-Turkish Offensives Against Armenians In Nagorno Karabakh* (24 April 2021), available at <https://www.hart-uk.org/baroness-cox-publishes-report-continuing-impunity-azerbaijani-turkish-offensives-against-armenians-in-nagorno-karabakh/>, p. 4 (**Annex 34**) (noting that Azerbaijan destroyed an estimated 14,000 civilian structures, including “homes, markets and infrastructure vital to the survival of the local population, such as bridges, electricity, telecoms, [and] gas and water supply systems”)).

drug injections that posed a danger to his life”.¹⁴⁴ He later died from his injuries. Azerbaijan presents no evidence for its assertion that Khojoyan, who was 77-years old at the time, was a “member[] of the Armenian Armed Forces” who was “suspected of entering Azerbaijan to engage in espionage or other unlawful activities”.¹⁴⁵ Much less does it address the fact that the European Court of Human Rights (“ECtHR”) noted that the circumstances surrounding Khojoyan’s death called for an investigation as to “whether ethnic hatred had played a role”.¹⁴⁶

59. The ECtHR reached the same conclusion in multiple other cases of murder or mistreatment involving ethnic Armenians who had allegedly illegally crossed the border or line of contact between the First and Second Nagorno-Karabakh Wars.¹⁴⁷ For example,

- *Case of Manvel Saribekyan*—an ethnic Armenian civilian who was captured by Azerbaijan while searching for stray cattle and firewood in the forest and who was later found dead in his jail cell: the ECtHR held that his ill treatment “involved very serious and cruel suffering” that was “carried

¹⁴⁴ *Khojoyan and Vardazaryan v. Azerbaijan*, ECtHR, Application No. 62161/14, Judgment (4 November 2021), paras. 10, 21, 28, 34, 46-49, pp. 3, 6, 8-11, 13-14 (**Annex 26**).

¹⁴⁵ Preliminary Objections of Azerbaijan, para 50.

¹⁴⁶ *Khojoyan and Vardazaryan v. Azerbaijan*, ECtHR, Application No. 62161/14, Judgment (4 November 2021), para. 53, p. 15 (**Annex 26**).

¹⁴⁷ Azerbaijan’s assertion that “[t]he judgments of the European Court of Human Rights on which Armenia relies with respect to four of the detained Armenian individuals did not find a violation of ECHR Article 14, which prohibits discrimination” is misleading. Preliminary Objections of Azerbaijan, para. 50 and note 91. As Azerbaijan must know, the Court found instead that it did not need to adjudicate claims under Article 14 because “the Court has already taken into account the general context of hostility and tension between Azerbaijan and Armenia, and concluded that such context also indicated that an investigation [into whether ethnic hatred had been a contributing factor in violations of Articles 2 and 3 of the Convention] should have been carried out”. See *Saribekyan and Balayan v. Azerbaijan*, ECtHR, Application No. 35746/11, Judgment (30 January 2020), paras. 102-103 (**Annex 24**). See also *Khojoyan and Vardazaryan v. Azerbaijan*, ECtHR, Application No. 62161/14, Judgment (4 November 2021), para. 85 (**Annex 26**); *Petrosyan v. Azerbaijan*, ECtHR, Application No. 32427/16, Judgment (4 November 2021), para. 84 (**Annex 27**).

out intentionally on a detained person under the exclusive control of the authorities”.¹⁴⁸ The ECtHR further noted that such circumstances called for an investigation as to “whether ethnic hatred had been a contributing factor”.¹⁴⁹

- *Case of Karen Petrosyan*—an ethnic Armenian captured by Azerbaijan when he accidentally crossed the border: the ECtHR found that “he was victim of severe physical violence prior to his death” in custody, and questioned “whether ethnic hatred played a role in [his] treatment”.¹⁵⁰

60. These examples again represent a small fraction of the evidence relevant to Armenia’s claims. In such circumstances, it is difficult for Armenia to understand how Azerbaijan can possibly contend that there is “an absence of any facts pled showing that individuals were singled out for different treatment on the basis of ethnic origin”.¹⁵¹ Still less does Armenia understand how Azerbaijan could believe that the acts complained of are not even *capable of* constituting discrimination on the basis of race.¹⁵² Even if Azerbaijan’s selective attacks on individual pieces of evidence presented by Armenia were accurate—and they are not¹⁵³—atrocities

¹⁴⁸ See Memorial of Armenia, paras. 3.39-3.43 (citing *Saribekyan and Balayan v. Azerbaijan*, ECtHR, Application No. 35746/11, Judgment (30 January 2020), para. 87 (**Annex 24**)).

¹⁴⁹ See Memorial of Armenia, paras. 3.39-3.43 (citing *Saribekyan and Balayan v. Azerbaijan*, ECtHR, Application No. 35746/11, Judgment (30 January 2020), paras. 72, 86, 102 (**Annex 24**)).

¹⁵⁰ See Memorial of Armenia, paras. 3.50-3.53 (citing *Petrosyan v. Azerbaijan*, ECtHR, Application No. 32427/16, Judgment (4 November 2021), paras 60, 71 (**Annex 27**)).

¹⁵¹ Preliminary Objections of Azerbaijan, para. 45.

¹⁵² See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Preliminary Objections*, *I.C.J. Reports 2021*, p. 71, para. 112. See also Preliminary Objections of Azerbaijan, para. 28 (“To establish the Court’s jurisdiction over its claims, Armenia must show that the acts it alleges are capable of constituting racial discrimination within the meaning of CERD”).

¹⁵³ Azerbaijan’s misrepresentations of the evidence are too numerous to address in full at this stage. By way of just one example, Azerbaijan implausibly argues, without any explanation, that the above-mentioned video capturing a soldier shooting a dead ethnic Armenian from behind and

accompanied by statements like “we will eliminate their race” are, by their very terms, unequivocally predicated on race.

61. Indeed, Azerbaijan’s own Deputy Military Prosecutor and Office of the Prosecutor General have both implicitly recognised that Azerbaijan’s armed forces committed atrocities on the basis of race.¹⁵⁴ In fact, at paragraph 43 of its preliminary objections, Azerbaijan explicitly accepts that Armenia has provided examples in which “alleged Azerbaijani servicemembers used derogatory language with a *possible ethnic dimension*”, including “a reference to ‘Armenian dogs’”.¹⁵⁵ Azerbaijan provides no explanation, however, for its claim that this reference evidences mere “hostility between opposing soldiers at war, not discrimination on the basis of ethnic origin”.¹⁵⁶ Nor does it explain how acts accompanied by derogatory language with a “possible ethnic dimension” are not even *capable* of constituting discrimination on the basis of race.

62. In sum, the acts Armenia complains of concerning Azerbaijan’s discriminatory murder, torture and inhumane treatment of ethnic Armenians in

stating “these are not human beings” referred only to “members of Armenia’s armed forces”. See Preliminary Objections of Azerbaijan, fn. 71. In Armenia’s view, such language speaks for itself.

¹⁵⁴ See, e.g., Letter *from* Fuad Mammadov, Deputy Military Prosecutor of the Republic of Azerbaijan, to Chingiz Asgarov, Agent of the Republic of Azerbaijan before the European Court of Human Rights, Regarding Criminal Cases Allegedly Investigated by the Military Prosecutor’s Office (27 January 2022), pp. 20 23 (emphasis added) (confidential) (**Memorial of Armenia, Annex 65**) (acknowledging that video footage of atrocities against ethnic Armenian servicemen captured “cruel and inhuman treatment of civilians and servicemen of *Armenian descent* captured during the Patriotic War and mutilation of corpses by the servicemen of the Armed Forces of the Republic of Azerbaijan”, including their “fully beheading one with knife, slitting [the] throat of one person, and shooting three persons dead by automatic guns and pistols”); Office of the Prosecutor General of the Republic of Azerbaijan, *Detained Four Servicemen Accused of Insulting Bodies of Armenian Servicemen and Tombstones Belonging to Armenians* (14 December 2020), available at <https://genprosecutor.gov.az/az/post/3272>, pp. 2-3 (**Annex 11**) (stating that the criminal acts committed by Azerbaijani servicemen “contradict the mentality of the Azerbaijani people, which is tolerant, highly appreciates multicultural values and is historically distinguished by its humanism”).

¹⁵⁵ Preliminary Objections of Azerbaijan, para. 45.

¹⁵⁶ Preliminary Objections of Azerbaijan, para. 45.

violation of Articles 2(1), 4(a) and 5(b) of the CERD are all plainly capable of constituting racial discrimination. They therefore all fall within the scope of the CERD and the Court’s jurisdiction *ratione materiae*. As such, the Court should dismiss Azerbaijan’s objection in this regard.

2. Armenia’s Claims Concerning Azerbaijan’s Discriminatory Detention of Ethnic Armenians Fall within the Scope of the CERD

63. According to Azerbaijan, Armenia “puts forward no evidence that any Armenian was detained on the basis of ethnic origin”.¹⁵⁷ Also according to Azerbaijan, it detained, and in some cases continues to detain, individuals not because of their ethnic Armenian origin, but rather because they were allegedly “either captured during active hostilities or were detained as a result of their suspected illegal activity”.¹⁵⁸

64. Armenia notes at the outset that, notwithstanding Azerbaijan’s suggestion to the contrary, its claims of discriminatory detention extend *beyond* the so-called “two categories” of ethnic Armenians who allegedly “illegally crossed the border into Azerbaijan” or were “prisoners of war captured during the Second Garabagh [Nagorno-Karabakh] War”.¹⁵⁹ As Armenia explained in its Memorial, its claims of discriminatory detention also include the numerous ethnic Armenians who were not Armenian citizens and were detained at Azerbaijan’s ports of entry merely because they had Armenian surnames (*i.e.*, on unequivocally ethnic grounds).¹⁶⁰ It

¹⁵⁷ Preliminary Objections of Azerbaijan, para. 59.

¹⁵⁸ Preliminary Objections of Azerbaijan, para. 64.

¹⁵⁹ Preliminary Objections of Azerbaijan, para. 60.

¹⁶⁰ *See* Memorial of Armenia, paras. 3.118, 6.124. In 2017, the Russian Foreign Ministry demanded an end to discrimination against its citizens with Armenian last names arriving in Azerbaijan. It was reported that many such people were detained for several hours, in a number of cases without food, water and medical attention, and then sent back at their own expenses. In some instances, persons with Russian last names were interrogated to uncover “Armenian ancestors”. *See* Ministry of Foreign Affairs of the Russian Federation, *Comment of the Information and Press Department on*

cannot be said with respect to any such person that they “were, or were perceived to be, fighting for Armenia or engaged in violations of law”.¹⁶¹ Azerbaijan entirely ignored these claims and the evidence in connection therewith, both in its preliminary objections and in its Annex 46. That does not stop it, however, from requesting the dismissal of Armenia’s claims of discriminatory detention in full.¹⁶²

65. With regard to the categories of Armenian detainees that Azerbaijan has singled out, Armenia respectfully submits that it has put forward ample evidence establishing that these claims implicate rights under the CERD.

66. This evidence makes two things clear: (1) that Azerbaijan has arbitrarily detained the individuals in question and (2) that they have been so detained on account of their ethnic origin.

67. With respect to the first point—the arbitrary nature of the detentions—Azerbaijan is mistaken to claim that “on the face of Armenia’s Memorial, the detentions have ... every connection to the fact that the detainees were, or were perceived to be, fighting for Armenia or engaged in violations of law”.¹⁶³ In fact, the opposite is true.

68. Starting with the individuals who allegedly “illegally crossed the border into Azerbaijan”, Azerbaijan does not meaningfully engage with the judgments of the ECtHR in the cases discussed in paragraphs 3.36-3.53 of Armenia’s Memorial, finding Azerbaijan in violation of Article 5 of the European Convention on Human

the ban on Russian citizens entering Azerbaijan (6 July 2017) (certified translation from Russian) (**Memorial of Armenia, Annex 47**).

¹⁶¹ Preliminary Objections of Azerbaijan, para. 65.

¹⁶² See Preliminary Objections of Azerbaijan, para. 66.

¹⁶³ See Preliminary Objections of Azerbaijan, para. 65.

Rights protecting against arbitrary detention.¹⁶⁴ In fact, in some of these cases, Azerbaijan did not even argue that the detention of the individuals in question was in conformity with Article 5¹⁶⁵—contrary to what it is now representing before the Court with respect to these individuals; namely, that “Armenia’s references to ‘false accusations’ and ‘spurious charges’ are completely unsubstantiated ... no matter how many times those words are repeated”.¹⁶⁶

69. With regard to individuals detained during and in the aftermath of the Second Nagorno-Karabakh War, suffice to say that no independent third party believes Azerbaijan’s excuse that these individuals “were detained as a result of their suspected illegal activity”.¹⁶⁷ The CERD Committee itself has stated that it is “deeply concerned” about allegations that “prisoners of war and protected persons

¹⁶⁴ See *Badalyan v. Azerbaijan*, ECtHR, Application No. 51295/11, Judgment (22 July 2021), paras. 56-57, p. 16 (**Annex 25**); *Khojoyan and Vardazaryan v. Azerbaijan*, ECtHR, Application No. 62161/14, Judgment (4 November 2021), paras. 82-83, p. 25 (**Annex 26**). See also Guide on Article 5 of the European Convention on Human Rights (31 August 2022), available at https://www.echr.coe.int/documents/d/echr/guide_art_5_eng, paras. 47, 152, 182 (**Annex 33**).

¹⁶⁵ See *Badalyan v. Azerbaijan*, ECtHR, Application No. 51295/11, Judgment (22 July 2021), para. 57 (**Annex 25**); *Khojoyan and Vardazaryan v. Azerbaijan*, ECtHR, Application No. 62161/14, Judgment (4 November 2021), para. 83 (**Annex 26**).

¹⁶⁶ Preliminary Objections of Azerbaijan, para. 60.

¹⁶⁷ Preliminary Objections of Azerbaijan, para. 64. The European Parliament, for example, has expressed its grave concern “about credible reports, according to which Armenian prisoners of war and other captive persons have been and are being held in degrading conditions, and that they have been subjected to inhuman treatment and torture when captured or during their detention” and “demand[ed] the immediate and unconditional release of all Armenian prisoners ... and that Azerbaijan refrain from making arbitrary detentions in the future”. European Parliament, *Resolution of 20 May 2021 on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan (2021/2693(RSP))* (20 May 2021), available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.pdf (**Memorial of Armenia, Annex 35**). Similarly, the Parliamentary Assembly of the Council of Europe expressed “concern[] about ... Armenians captured after the Trilateral statement, who are still in captivity, most of whom have faced or are facing speedy criminal trials, which may raise fair trial issues under the European Convention on Human Rights”. See Council of Europe, Parliamentary Assembly, *Resolution 2391(2021): Humanitarian consequences of the conflict between Armenia and Azerbaijan/Nagorno-Karabakh conflict* (27 September 2021), para. 6.6 (**Memorial of Armenia, Annex 37**). See also Memorial of Armenia, paras. 3.366, 4.160.

of Armenian ethnic or national origin” were subjected to “arbitrary detention” in Azerbaijan in the context of the 2020 hostilities and beyond.¹⁶⁸ As the U.S. State Department observed, Azerbaijan’s courts issued “predetermined” “verdicts [that are] legally unsupportable and largely unrelated to the evidence presented”.¹⁶⁹ As a result, Azerbaijan prosecuted “Armenian civilians and servicemembers that it took into custody both during the fall 2020 hostilities and following the November 2020 cease-fire in trials that lacked due process”.¹⁷⁰

70. Nowhere in its second preliminary objection does Azerbaijan address these conclusions by independent third parties, including the CERD Committee itself.

71. With respect to the second thing the evidence makes clear—that these arbitrary detentions are based on ethnic origin—Azerbaijan has made a mockery of its obligation to provide detained persons belonging to a racial or ethnic group with “independent, impartial and informed judicial bodies”,¹⁷¹ which ensures that cases against such persons are “assessed consistently with international standards of human rights”¹⁷² and thus acts as a safeguard against abuse and deliberate

¹⁶⁸ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of Azerbaijan*, UN Doc. CERD/C/AZE/CO/10-12 (22 September 2022), *available at* https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/AZE/CERD_C_AZE_CO_10-12_49770_E.pdf, para. C.4-4(a) (**Memorial of Armenia, Annex 5**).

¹⁶⁹ United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan* (2021) (excerpt) (**Memorial of Armenia, Annex 57**).

¹⁷⁰ United States Department of State, *2021 Country Reports on Human Rights Practices: Azerbaijan* (2021) (excerpt) (**Memorial of Armenia, Annex 57**).

¹⁷¹ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 35: Combating Racist Hate Speech*, UN Doc. CERD/C/GC/35 (26 September 2013), *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/471/38/PDF/G1347138.pdf?OpenElement>, para. 18 (**Annex 3**).

¹⁷² Committee on the Elimination of Racial Discrimination, *General Recommendation No. 35: Combating Racist Hate Speech*, UN Doc. CERD/C/GC/35 (26 September 2013), *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/471/38/PDF/G1347138.pdf?OpenElement>, para. 18 (**Annex 3**).

targeting of that ethnic group. The fact that ethnic Armenians are targeted by Azerbaijan's judicial system has been confirmed by numerous independent observers.¹⁷³ The European Commission against Racism and Intolerance (“ECRI”), for example, has observed that “[j]udicial proceedings opened by Armenians trying to secure their rights are said to *systematically fail due to the general negative climate against Armenians*”,¹⁷⁴ that minorities’ “experience of dealing with the judicial system is globally negative”,¹⁷⁵ and that “[a]ccording to many sources, false accusations are made, in particular against persons belonging to minority ethnic or religious groups”.¹⁷⁶ In the context of its reporting on “discrimination towards persons of Armenian origin living in Azerbaijan”, the ECRI has likewise noted that “[m]any sources” “stress the widespread lack of confidence in the justice system”, and that “individuals often perceive the justice system as lacking sufficient safeguards of impartiality and independence”.¹⁷⁷ In its preliminary objections, Azerbaijan did not address these facts at all, let alone why they do not form essential context to understand the detention of the two categories of individuals it has singled out.

¹⁷³ See, e.g., Memorial of Armenia, paras. 6.116-6.117.

¹⁷⁴ European Commission against Racism and Intolerance, *Second Report on Azerbaijan (second monitoring cycle)* (24 May 2007), para. 109 (**Memorial of Armenia, Annex 22**).

¹⁷⁵ European Commission against Racism and Intolerance, *ECRI Report on Azerbaijan (fourth monitoring cycle)* (23 March 2011), available at <https://rm.coe.int/third-report-onazerbaijan/16808b557e>, para. 127 (**Memorial of Armenia, Annex 24**).

¹⁷⁶ European Commission against Racism and Intolerance, *ECRI Report on Azerbaijan (fourth monitoring cycle)* (23 March 2011), available at <https://rm.coe.int/third-report-onazerbaijan/16808b557e>, para. 130 (**Memorial of Armenia, Annex 24**).

¹⁷⁷ European Commission against Racism and Intolerance, *ECRI Report on Azerbaijan (fourth monitoring cycle)* (23 March 2011), available at <https://rm.coe.int/third-report-onazerbaijan/16808b557e>, paras. 27-28 (**Memorial of Armenia, Annex 24**). See also Committee on the Elimination of Racial Discrimination, *Concluding Observations on the combined fifth and sixth periodic reports of Azerbaijan*, UN Doc. CERD/C/AZE/CO/6 (7 September 2009), para. 9 (in which the CERD Committee expressed concern about minorities’ “lack of confidence in the police”) (**Memorial of Armenia, Annex 3**).

72. Moreover, the treatment that these individuals have received, and in many cases continue to receive, confirms the existence of racial animus in the administration and functioning of the Azerbaijani criminal justice system.¹⁷⁸ *Each and every ethnic Armenian detained by Azerbaijan —whether residents of Nagorno-Karabakh whom Azerbaijan considers its own citizens or not, and irrespective of their status as civilians or servicemembers*¹⁷⁹—has been subjected to torture or other abuse while detained, whether during armed hostilities or peacetime, including after the Trilateral Statement was signed.¹⁸⁰ Annex 291 to

¹⁷⁸ In its General Recommendation No. 31, the CERD Committee has pointed to “factual indicators” of the existence of racial motivation in the administration and functioning of the Azerbaijani criminal justice system, which include “[t]he number and percentage of persons belonging to [an ethnic] group ... who are victims of aggression or other offences, especially when they are committed by police officers or other State officials” and “the handing down by the courts of harsher or inappropriate sentences against persons belonging to those groups”. Committee on the Elimination of Racial Discrimination, *General Recommendation No. 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, UN Doc. A/60/18 (2005), available at https://adatabase.ohchr.org/IssueLibrary/CERD_Recommendation%20No31.pdf (**Annex 1**).

¹⁷⁹ See, e.g., Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023) (certified translation from Armenian) (confidential) (**Memorial of Armenia, Annex 291**); The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report on the Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War)* (September 2021), available at https://ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAJ06B%20xmRFaBSrt_XFqvSyXeM3M-5vZRFgPgCRCo4urVPVE2NPL_VO4g, p. 28 (**Memorial of Armenia, Annex 61**); T. Lokshina, “Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes”, *Human Rights Watch* (12 March 2021) (**Memorial of Armenia, Annex 86**). See also *supra* para. 42, n. 93.

¹⁸⁰ See, e.g., Memorial of Armenia, para. 3.270 (citing Human Rights Watch, *Azerbaijan: Armenia POWs Abused in Custody* (19 March 2021), available at <https://www.hrw.org/news/2021/03/19/azerbaijan-armenian-pows-abused-custody> (**Memorial of Armenia, Annex 87**) (reporting “degrading conditions” of detention and “prolonged and repeated beatings”, and individuals being “prodded with a sharp metal rod”, “repeatedly burned with a cigarette lighter”, and repeatedly “tortured with electric shocks”). See also *ibid.*, para. 3.271 (citing The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report on the Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis (The 2020 Nagorno Karabakh War)* (September 2021), available at https://ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf?fbclid=IwAR2OAJ06B%20xmRFaBSrt_XFqvSyXeM3M-5vZRFgPgCRCo4urVPVE2NPL_VO4g, p. 2 (**Memorial of Armenia, Annex 61**) (concluding, based on 50 testimonies of former detainees, that the detained were often “beaten, tortured, and humiliated by the military personnel who had taken

Armenia’s Memorial records excerpts from the transcripts of dozens of such detainees—*every one of which describes egregious abuse*—while Annex 290 documents more than 125 examples of atrocities being committed against ethnic Armenians on film. Unsurprisingly, both Annexes record the abuse of detained ethnic Armenians on blatantly racist grounds.

73. For example, as one former detainee recalled from his time in a detention centre: “They asked us if we were Armenian. When we said ‘yes,’ ... they began to beat us ... with axes”.¹⁸¹ Another detainee reported being subjected to humiliating treatment in detention “for being Armenian, without any reasons”.¹⁸² Others describe their captors as stating that “Armenians are ‘son[s] of a b*tch’”, and that “Armenians should not exist”.¹⁸³ Yet other examples of racist statements

them captive”, that Azerbaijan’s mistreatment “would begin as soon as individuals fell into captivity”, and that “[s]uch treatment continued throughout their time in custody”). *See further* Declaration by Dr. Rafayel Vardanyan, Investigative Committee of the Republic of Armenia (13 January 2023), paras. 15-16 (**Memorial of Armenia, Annex 294**); Amnesty International, *Last To Flee: Older People’s Experience Of War Crimes And Displacement In The Nagorno-Karabakh Conflict* (2022), p. 28 (**Memorial of Armenia, Annex 95**); The Human Rights Ombudsman of the Republic of Artsakh, *Second Ad Hoc Report On Inhuman Treatment Of Members Of Nagorno-Karabakh (Artsakh) Defense Army And Captured Armenians By Azerbaijani Armed Forces (From October 17-25, 2020)* (October 2020), pp. 4-9 (confidential) (**Memorial of Armenia, Annex 50**); The Human Rights Ombudsman of the Republic of Artsakh, *Third Ad Hoc Report On Inhuman Treatment Of Members Of Artsakh Defense Army And Captured Armenians By Azerbaijani Armed Forces (From October 26 To November 3, 2020)* (November 2020), pp. 4-9 (confidential) (**Memorial of Armenia, Annex 53**); The Human Rights Defender of Armenia & The Human Rights Ombudsman of Artsakh, *Fourth Ad Hoc Report on Torture and Inhuman Treatment of Members of Artsakh Defense Army and Captured Armenians by Azerbaijani Armed Forces (from November 4-18, 2020)* (November 2020), pp. 4-10 (**Application of Armenia, Annex 13**); Memorial of Armenia, Sections III.2.III, III.3.I.

¹⁸¹ Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023) (confidential) (**Memorial of Armenia, Annex 291**).

¹⁸² Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023) (confidential) (**Memorial of Armenia, Annex 291**).

¹⁸³ Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023) (confidential) (**Memorial of Armenia, Annex 291**).

against ethnic Armenian detainees have already been set out above.¹⁸⁴ It bears repeating: Azerbaijan’s victims included not only members of the armed forces of Armenia and Artsakh, but also ethnic Armenian civilian residents of Nagorno-Karabakh¹⁸⁵—whom Azerbaijan again purports to consider *Azerbaijani* citizens itself.¹⁸⁶ It also bears noting that, even before the Second Nagorno-Karabakh War, the ECtHR repeatedly concluded that detained Armenians had been abused by Azerbaijan, and also repeatedly noted that the circumstances surrounding their treatment in detention raised the question of whether “ethnic hatred” had “been a contributing factor” or “played a role”.¹⁸⁷

74. In addition to their physical treatment, *each* and *every* ethnic Armenian detained and prosecuted has suffered gross violations of basic due process guarantees and equal treatment before the law. The Human Rights Defender of the Republic of Artsakh concluded on the basis of the testimony of former detainees that many were “humiliated, harassed, tortured, and beaten, before, during, and after interrogations”.¹⁸⁸ Similarly, in its October 2022 report for the UN Special Rapporteur on Torture, the Center for Truth and Justice found that torture was “used as a means of intimidation and coercion to produce false confessions to be used during sham trials”.¹⁸⁹ On this basis, the report emphasised the lack of redress

¹⁸⁴ See *supra* paras. 48, 53.

¹⁸⁵ See *supra* paras. 54, 55, 72.

¹⁸⁶ See *supra* para. 42, n. 93.

¹⁸⁷ *Khojuyan and Vardazaryan v. Azerbaijan*, ECtHR, Application No. 62161/14, Judgment (4 November 2021), para. 53 (**Annex 26**); *Saribekyan and Balayan v. Azerbaijan*, ECtHR, Application No. 35746/11, Judgment (30 January 2020), para. 72 (**Annex 24**).

¹⁸⁸ The Human Rights Defender of the Republic of Artsakh, *Malicious Prosecution by Azerbaijan of Captured Armenian Servicemen and Civilians* (2021), p. 7 (**Memorial of Armenia, Annex 56**).

¹⁸⁹ Center for Truth and Justice, *Submission by the Center for Truth and Justice to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment pertaining to the mistreatment of Armenian POWs by the State of Azerbaijan* (28 October 2022) (excerpt), p. 6 (**Memorial of Armenia, Annex 102**).

and justice for “individuals of Armenian descent” whom Azerbaijan had “put ... through sham trials based on fabricated charges and forced confession”.¹⁹⁰ Detainees were also systematically denied their right to choose legal counsel, to call or examine witnesses, to be provided with relevant documents or evidence, to be able to confer with an attorney, or to be provided with interpretation or translation.¹⁹¹ It is simply not credible to argue that there is no ethnic motivation when every single ethnic Armenian, including ethnic Armenians that Azerbaijan claims as its citizens, is subject to such treatment.

75. Within less than a year of the conclusion of the Second Nagorno-Karabakh War, Azerbaijan had convicted no fewer than 55 ethnic Armenian civilians and prisoners of war of various criminal offences.¹⁹² Ethnic Armenians who served in a military unit and were holding their position in accordance with the Trilateral Statement¹⁹³—to which Azerbaijan had itself agreed—were charged with “illegal crossing of [a] State border with [an] organized group” and “illegal purchase,

¹⁹⁰ Center for Truth and Justice, *Submission by the Center for Truth and Justice to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment pertaining to the mistreatment of Armenian POWs by the State of Azerbaijan* (28 October 2022) (excerpt), p. 6 (**Memorial of Armenia, Annex 102**). See also Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023) (certified translation from Armenian) (confidential) (**Memorial of Armenia, Annex 291**).

¹⁹¹ See, e.g., Memorial of Armenia, Section III.3.I.B; United States Department of State, 2021 Country Reports on Human Rights Practices: Azerbaijan (2021) (excerpt) (**Memorial of Armenia, Annex 57**); The Human Rights Defender of the Republic of Artsakh, *Malicious Prosecution by Azerbaijan of Captured Armenian Servicemen and Civilians* (2021) (**Memorial of Armenia, Annex 56**); Excerpts from Sworn Testimonies of Repatriated Armenians Azerbaijan Captured and Detained in Various Periods from December 2014 until October 2022 (January 2023) (certified translation from Armenian) (confidential) (**Memorial of Armenia, Annex 291**); Center for Truth and Justice, *Submission by the Center for Truth and Justice to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment pertaining to the mistreatment of Armenian POWs by the State of Azerbaijan* (28 October 2022) (excerpt) (**Memorial of Armenia, Annex 102**).

¹⁹² Memorial of Armenia, paras. 3.357, 4.154.

¹⁹³ Memorial of Armenia, para. 3.361.

transfer, selling, storage, transportation and carrying of firearms by an organized group”.¹⁹⁴ Ethnic Armenians who served in a military unit and were abducted from sovereign Armenian territory were charged with similar charges.¹⁹⁵ An ethnic Armenian with dual nationality—including Armenian nationality—was charged with “participation [as] a mercenary in a confrontation or military operations”.¹⁹⁶ In many cases, similarly situated ethnic Armenians were sentenced to between six months to six years for an identical crime they allegedly committed together.¹⁹⁷ Despite their convictions, many of those ethnic Armenian detainees were subsequently released, often in exchange for concessions from Armenia, making clear the bogus nature of their initial detentions and convictions.¹⁹⁸ The remaining captives are serving lengthy prison sentences of between four and 20 years.¹⁹⁹ As

¹⁹⁴ Memorial of Armenia, para. 3.361 (citing Letter *from* Elchin Mammadov, First Deputy Prosecutor General, *to* Elnur Mammadov, Deputy Minister of Foreign Affairs, regarding Armenian detainees, No. 14/cix65-21 (8 October 2021) (with enclosure), entries nos. 1, 3, 14-16, 31, 40-43, 45 (**Azerbaijan’s Response to Armenia’s Request for Provisional Measures (16 September 2021), Annex 21**)).

¹⁹⁵ “Azerbaijani Armed Group Kidnaps 2 Armenian Soldiers; Baku Charges Them with Terrorism”, *Asbarez* (27 May 2023), available at <https://asbarez.com/azerbaijani-armed-group-kidnaps-2-armenian-soldiers-baku-charges-them-with-terrorism/> (**Annex 48**).

¹⁹⁶ Memorial of Armenia, para. 3.362 (citing Letter *from* Elchin Mammadov, First Deputy Prosecutor General, *to* Elnur Mammadov, Deputy Minister of Foreign Affairs, regarding Armenian detainees, No. 14/cix65-21 (8 October 2021) (with enclosure), entry no. 1 (**Azerbaijan’s Response to Armenia’s Request for Provisional Measures (16 September 2021), Annex 21**)).

¹⁹⁷ Memorial, para. 3.361 (citing Letter *from* Yeghishe Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights, *to* Philippe Gautier, Registrar, International Court of Justice (6 October 2021), attaching Table of 45 POWs and Civilians Acknowledged by Azerbaijan as of 6 October 2021) (**Application of Armenia, Annex 68** (submitted prior to the hearing on Armenia’s First Request for Provisional Measures)); Baku Military Court, Judgment on Behalf of the Republic of Azerbaijan, Case No. 1(101)-1204/2021 (2 July 2021) (**Azerbaijan’s Response to Armenia’s Request for Provisional Measures (16 September 2021), Annex 6**); Letter from Elchin Mammadov, First Deputy Prosecutor General, *to* Elnur Mammadov, Deputy Minister of Foreign Affairs, regarding Armenian detainees, No. 14/cix65-21 (8 October 2021) (with enclosure) (**Azerbaijan’s Response to Armenia’s Request for Provisional Measures (16 September 2021), Annex 21**).

¹⁹⁸ Memorial of Armenia, paras. 3.372, 4.36.

¹⁹⁹ Letter *from* Yeghishe Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights *to* Philippe Gautier, Registrar, International Court of Justice

noted above, no independent third party considers these charges and the draconian sentences imposed on the detained as legitimate.

76. Unsurprisingly, of the 40 appeals from convictions by ethnic Armenians about which Armenia is aware, *all* were dismissed by Azerbaijani courts.²⁰⁰

77. It is also telling that Azerbaijan does *not* object to Armenia’s related claim that “Azerbaijan Has Failed to Guarantee Equal Treatment by Its Justice System”.²⁰¹ But if, as Azerbaijan appears to accept, Armenia’s claims of unequal treatment in the justice system fall within the CERD, its claims of discriminatory detention *predicated* on unequal treatment in the justice system must fall within the CERD as well.

78. The “general negative climate against Armenians” that historically prevails in Azerbaijan’s judicial system²⁰² and the specific patterns observed in the treatment of the two categories of detained ethnic Armenians that Azerbaijan has singled out—namely the cruel abuse, racial slurs and unequal treatment before the law and other gross violations of due process—are sufficient to put the lie to Azerbaijan’s assertions. But if there were any lingering doubt as regards the racial

(January 2023), attaching Table of POWs and Civilians Acknowledged by Azerbaijan as of January 2023 (**Memorial of Armenia, Annex 295**).

²⁰⁰ Memorial of Armenia, para. 3.356 (citing Baku Court of Appeal, Appeal Decision No. 1(103)-1768/2021 (30 November 2021), PDF p. 8 (certified translation from Azerbaijani) (**Annex 29**); Baku Court of Appeal, Appeal Decision No. 1(103)-1641/2021 (26 November 2021), PDF p. 9 (certified translation from Azerbaijani) (**Annex 28**); Baku Court of Appeal, Appeal Decision No. 1(103)-1526/2021 (2 December 2021), PDF p. 14 (certified translation from Azerbaijani) (**Annex 31**); Baku Court of Appeal, Appeal Decision No. 1(103)-1656/2021 (1 December 2021), PDF p. 10 (certified translation from Azerbaijani) (**Annex 30**); Baku Court of Appeal, Appeal Decision No. 1(103)-1600/2021 (2 December 2021), PDF p. 10 (certified translation from Azerbaijani) (**Annex 32**).

²⁰¹ See Memorial of Armenia, paras. 6.210-6.214.

²⁰² European Commission against Racism and Intolerance, *Second Report on Azerbaijan (second monitoring cycle)* (24 May 2007), para. 109 (**Memorial of Armenia, Annex 22**).

motivation of Azerbaijan’s conduct, it must surely dissipate before Azerbaijan’s open display of the detention of ethnic Armenians in *racial terms*. This is the notorious case of Azerbaijan’s “Military Trophies Park”, with its mannequins of detained ethnic Armenian prisoners of war,²⁰³ which on the eve of the hearing on Armenia’s first request for provisional measures Azerbaijan represented to the Court will not be shown in the future.²⁰⁴

79. That the mannequins were unmistakably a racist portrayal of Armenians was confirmed by the very people Azerbaijan commissioned to create them, who stated: “[w]e generally try to do something as beautiful as possible. This time it was the opposite. It was a time consuming and difficult process. We prepared them using aquiline nose forms, skull bases absent and other features”.²⁰⁵ The Park, defended by Azerbaijan as “a place for education for the present and future generations”,²⁰⁶ was condemned by the International League against Racism and Anti-Semitism for “teaching hatred to the young generation”, emphasizing that “the policy of hatred with such level of organization can cause new crimes”.²⁰⁷

²⁰³ See Memorial of Armenia, paras. 3.384-3.393 and Figures 66-69.

²⁰⁴ *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. 361, para. 25.

²⁰⁵ Memorial of Armenia, paras. 3.384-3.385, Figure 66.

²⁰⁶ Ministry of Foreign Affairs of the Republic of Azerbaijan, *No:147/21, Commentary of the Press Service Department of the Ministry of Foreign Affairs of the Republic of Azerbaijan to the letter of the Council of Europe Commissioner for human rights, Dunja Mijatović addressed to the President of the Republic of Azerbaijan* (28 April 2021), available at <https://mfa.gov.az/en/news/no14721-commentary-of-the-press-service-department-of-the-ministry-of-foreign-affairs-of-the-republic-of-azerbaijan-to-the-letter-of-the-council-of-europe-commissioner-for-human-rights-dunja-mijatovic-addressed-to-the-president-of-the-republic-of-azerbaijan> (**Annex 12**).

²⁰⁷ “Kristinne Grigoryan held meetings in Paris with representatives of the International Federation for Human Rights (FIDH) and the International League against Racism and Anti-Semitism (LICRA) and the Ambassador of Armenia to France Hasmik Tolmajyan”, *Human Rights Defender of Armenia* (28 April 2022), available at https://ombuds.am/en_us/site/ViewNews/2212 (**Annex 42**).

80. In sum, Azerbaijan’s detention of individuals of ethnic Armenian origin is capable of constituting racial discrimination under Article 1(1) and has breached its obligations, under Articles 2(1) and 5(a) of the CERD, to respect ethnic Armenians’ rights to “equality before the law” and “equal treatment before ... [the] organs administering justice”.²⁰⁸ The Court should therefore dismiss Azerbaijan’s objection and find that it has jurisdiction *ratione materiae* over Armenia’s detention-related claims in full.

3. Armenia’s Claims Concerning Azerbaijan’s Discriminatory Enforced Disappearances of Ethnic Armenians Fall within the Scope of the CERD

81. Azerbaijan finally asserts that Armenia’s claims concerning enforced disappearances of ethnic Armenians also do not involve “different treatment on the basis of ethnic origin”.²⁰⁹ Repeating its now-familiar position, Azerbaijan claims that, “in the context of an almost 30-year occupation and outbreaks of active hostilities between Azerbaijan and Armenia”,²¹⁰ there is “no justification for simply assuming that every alleged wrong against any national of Armenia” is based on ethnic or national origin.²¹¹ This strand of Azerbaijan’s *ratione materiae* objection is as baseless as the others.

82. *First*, Armenia has provided ample evidence that ethnic Armenians in Azerbaijan’s custody—even those Azerbaijan purports to consider Azerbaijani nationals—have been subjected to murder and other abuse on racial grounds.²¹²

²⁰⁸ CERD, Art. 5(5)(a).

²⁰⁹ Preliminary Objections of Azerbaijan, para. 67.

²¹⁰ Preliminary Objections of Azerbaijan, para. 68.

²¹¹ Preliminary Objections of Azerbaijan, para. 68.

²¹² *See supra* paras. 48, 49, 53, 54, 55, 58, 59, 72, 73.

Many such individuals were additionally subjected to enforced disappearances,²¹³ as Azerbaijan denied ever having detained or killed them despite evidence, including in the form of video and photographic evidence and testimonies of former detainees, that most if not all were once in its custody and that many were killed.²¹⁴ In particular, Azerbaijan has refused to acknowledge the detention of at least 57 ethnic Armenians believed to be (or to have been) in Azerbaijan’s custody but whose fates are unknown, as well as the circumstances of the deaths of no fewer than 20 additional ethnic Armenians who are definitively known to have been murdered in detention.²¹⁵ By way of just one example, and as noted above, Artur Manvelyan can be seen in a video lying wounded and helpless on the ground as an Azerbaijani soldier shoots him multiple times in the head, yelling “nation of bitches” and “f*** your people”.²¹⁶ Despite this evidence, Azerbaijan failed to acknowledge his whereabouts or repatriate his body for months and continues to steadfastly refuse to acknowledge the circumstances of his death.

²¹³ See “Hundreds of Armenians Still Missing After 2020 Karabakh War”, *Radio Free Europe/Radio Liberty (Azatutyun)* (30 August 2022), available at <https://www.azatutyun.am/a/32010809.html#:~:text=%E2%80%9CAccording%20to%20data%20presented%20by,International%20Day%20of%20the%20Disappeared> (**Annex 45**) (“According to data presented by the International Committee of the Red Cross in August 2022, 303 persons are still considered missing as a result of the 44-day war in 2020 ... About two dozen local civilians were listed as missing as of September 2021. According to the authorities in Stepanakert, most of them lived in Karabakh towns and villages captured by Azerbaijani forces during the six-week hostilities stopped by a Russian-brokered ceasefire in November 2020”); List of Armenians Detained During and After the Second Nagorno-Karabakh War (as of January 2023) (confidential) (**Memorial of Armenia, Annex 297**); T. Lokshina, “Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes”, *Human Rights Watch* (12 March 2021) (**Memorial of Armenia, Annex 86**).

²¹⁴ See Memorial of Armenia, Sections III.3.I and IV.2.I.A.2.

²¹⁵ Memorial of Armenia, paras. 3.304 (citing to List of Armenians Detained During and After the Second Nagorno-Karabakh War (as of January 2023), Section B (confidential) (**Annex 297**). See also *ibid.*, paras. 6.149-6.151.

²¹⁶ Video showing the execution of an *hors de combat* Armenian serviceman (certified translation from Azerbaijani) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 131**).

83. In light of the overwhelming evidence, the CERD Committee itself called upon Azerbaijan to “conduct[] effective, thorough and impartial investigations into allegations of violations of human rights against ... protected persons of *Armenian ethnic or national origin*, including ... *enforced disappearances* ... perpetrated by the Azerbaijani military forces”.²¹⁷ In such circumstances, Azerbaijan’s assertion that “Armenia does not provide any basis for any allegation that any Armenian was killed, detained, or otherwise subjected to enforced disappearance based on the individual’s ethnic origin”²¹⁸ does not withstand scrutiny. Indeed, Azerbaijan is unable to give any plausible explanation for these enforced disappearances *other than race*.

84. *Second*, Azerbaijan has refused to facilitate searches and the repatriation of remains of ethnic Armenians.²¹⁹ As stated, Azerbaijan itself admits that conduct that violates IHL can implicate CERD and that it has asserted a CERD claim in *Azerbaijan v. Armenia* based on Armenia’s alleged refusal to disclose the location of mass gravesites of ethnic Azerbaijanis.²²⁰ Azerbaijan cannot provide, however, a reasonable explanation as to how its claims are objectively different from Armenia’s claims concerning the hundreds of ethnic Armenians still missing as a result of the Second Nagorno-Karabakh War and its aftermath.²²¹ It is plainly not enough to assert, as Azerbaijan does, that “Armenia’s allegations arise in the context of the Second Garabagh [Nagorno-Karabakh] War, when Azerbaijan exercised its inherent right of self-defense as recognized under international law

²¹⁷ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of Azerbaijan*, UN Doc. CERD/C/AZE/CO/10-12 (22 September 2022) (emphasis added) (**Memorial of Armenia, Annex 5**).

²¹⁸ Preliminary Objections of Azerbaijan, para. 68.

²¹⁹ Memorial of Armenia, paras. 6.152-6.153.

²²⁰ Preliminary Objections of Azerbaijan, para. 69.

²²¹ See Memorial of Armenia, paras. 6.149-6.152.

and liberated territory internationally recognized as Azerbaijan’s own and unlawfully occupied by Armenia”.²²² The acts of which the Parties complain are all alleged to have taken place during armed conflict, are all alleged to have targeted people of an ethnic or national group, and concern a State’s alleged refusal to facilitate searches and the repatriation of the dead and disappeared.²²³ In such circumstances, it is nonsensical to suggest that Azerbaijan’s claims are somehow based on ethnic or national origin while Armenia’s are not.²²⁴

85. In conclusion, Azerbaijan’s enforced disappearances of ethnic Armenians in violation of Articles 2(1) and 5(a) of the CERD are clearly capable of constituting racial discrimination. Therefore, the Court should dismiss Azerbaijan’s objection and find that it has jurisdiction *ratione materiae* over Armenia’s enforced disappearance claims as well.

4. The General Armenophobia Espoused and Cultivated by Azerbaijan is a Relevant Factor in Determining Whether Particular Acts Were Racially Motivated

86. The evidence recounted above, and set out in greater detail in the Memorial, is sufficient to prove that the acts complained of are capable of constituting racial discrimination under the CERD.

87. Armenia nonetheless wishes to make certain observations on Azerbaijan’s argument that “[m]any” of Armenia’s claims allegedly “contain no specific allegations or citations to evidence that the actions alleged by Armenia were taken

²²² Preliminary Objections of Azerbaijan, para. 69.

²²³ See Memorial of Armenia, paras. 6.149-6.152; Preliminary Objections of Azerbaijan, para. 69.

²²⁴ It is, moreover, plainly wrong to raise *jus ad bellum* defences to justify gross violations of the CERD—even if it could be said that the Second Nagorno-Karabakh War was a legitimate exercise of self-defence, *quod non*.

on the basis of ethnic origin”,²²⁵ and that Armenia instead seeks to rely on “generalized references to what [Armenia] terms ‘anti-Armenian sentiment’”.²²⁶

88. *First*, there is no need for the Court to individually adjudicate each and every “alleged action” “claim by claim”²²⁷ to grant the relief Armenia requests in this case. As the Court held in *DRC v. Uganda*, in order to rule on a claim, “it is not necessary for the Court to make findings of fact with regard to each individual incident alleged”.²²⁸ This is all the more so at the current stage of the proceedings.²²⁹ As detailed above and in the Memorial,²³⁰ Armenia has already given numerous examples of Azerbaijan’s wartime misconduct vis-à-vis Armenians that was unequivocally predicated on ethnic origin.

89. *Second*, and equally important, Azerbaijan’s suggestion that the Armenophobia permeating Azerbaijani society is irrelevant²³¹ is simply misplaced, not least because it reveals that the conduct at issue in this case is neither exclusively directed at Armenian nationals nor exclusively related to wartime hostilities. Moreover, Azerbaijan acknowledges that members of its population

²²⁵ Preliminary Objections of Azerbaijan, para. 32.

²²⁶ Preliminary Objections of Azerbaijan, para. 32.

²²⁷ Preliminary Objections of Azerbaijan, para. 32.

²²⁸ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, para. 205.

²²⁹ See *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, p. 558, para. 63 (noting that factual questions are “properly a matter for the merits”).

²³⁰ See *supra* Sections III.B(1-3); Memorial of Armenia, Section VI.3.I (demonstrating that “Azerbaijan Has Violated, and Continues to Violate, the CERD by Engaging in and Failing to Prevent Violence against Ethnic Armenians”); *Ibid.*, Section VI.3.III (demonstrating that “Azerbaijan Has Violated, and Continues to Violate, the CERD by Discriminatorily Subjecting Ethnic Armenians to Arbitrary Detention”); *Ibid.*, Section VI.3.IV (demonstrating that “Azerbaijan Has Violated, and Continues to Violate, the CERD by Subjecting Ethnic Armenians to Enforced Disappearance”).

²³¹ Preliminary Objections of Azerbaijan, Section III.A.

have “deeply negative feelings” and “animosity” towards Armenians.²³² In this case, it is only through the lens of this animosity—systemically cultivated by Azerbaijan’s education system,²³³ media,²³⁴ political leaders and institutions²³⁵—that Azerbaijan’s countless individual acts of mistreatment of ethnic Armenians can be understood.

90. In its Memorial, Armenia provided numerous examples of school textbooks containing overtly racist language referring to ethnic Armenians, and of lessons designed to teach young Azerbaijani children that “the Armenians” are Azerbaijan’s enemies.²³⁶ School textbooks refer to Armenians as, *inter alia*, “infidels in black clothes”²³⁷, “the source of most of the calamities that have befallen Azeris throughout history”,²³⁸ “scoundrels” with “the blood of the devil in

²³² Preliminary Objections of Azerbaijan, para. 34.

²³³ See Memorial of Armenia, Sections III.1.I.C, III.3.II.D, IV.2.II.B.

²³⁴ See Memorial of Armenia, Sections III.1.I.B, III.2.I, III.3.II.D, IV.2.II.B.

²³⁵ See Memorial of Armenia, Sections III.1.I.A, III.2.I, III.3.II.A, IV.2.II.A, VII.2.

²³⁶ “Five Minutes of Hate in Azerbaijani School”, *YouTube* (4 March 2018), available at https://www.youtube.com/watch?v=7g56wAbY-fg&feature=emb_logo (certified translation from Russian) (**Memorial of Armenia, Annex 138**).

²³⁷ International Crisis Group, *Nagorno-Karabakh: Viewing the Conflict from the Ground* (14 September 2005), available at <https://reliefweb.int/report/armenia/nagorno-karabakh-viewingconflict-ground>, p. 27 (citing Motherland (Baku, 2004), a fifth grade textbook approved by the Ministry of Education) (**Memorial of Armenia, Annex 73**).

²³⁸ International Crisis Group, *Nagorno-Karabakh: Viewing the Conflict from the Ground* (14 September 2005), available at <https://reliefweb.int/report/armenia/nagorno-karabakh-viewingconflict-ground>, p. 27 (citing Motherland (Baku, 2004), a fifth grade textbook approved by the Ministry of Education) (**Memorial of Armenia, Annex 73**).

their veins”,²³⁹ and “genetic enemies”.²⁴⁰ Azerbaijan’s media is equally prolific in its propagation of anti-Armenian hate.²⁴¹

91. In its Memorial, Armenia also provided numerous examples of speeches by high-level politicians targeting ethnic Armenians.²⁴² As Armenia explained, President Aliyev himself has repeatedly characterized ethnic Armenians as “bandits and vandals”²⁴³, “fascists”,²⁴⁴ “wild beasts”, “predators”, “jackals”, and a “wild” and “savage tribe”.²⁴⁵ As noted above, in an unequivocal reference to ethnicity, he further declared Armenians “*of the world*” to be Azerbaijan’s “main

²³⁹ A. Eroglu, “Additional Reading Book for Secondary School Students” in HALA (2011), available at <http://azerichild.info/HALE.pdf>, p. 3 (certified translation from Azerbaijani) (**Memorial of Armenia, Annex 107**).

²⁴⁰ “Armenophobia in the Textbooks Used in Azerbaijan: History, Grade 11”, *Azerichild.info*, available at <https://azerichild.education/en/class-11-tarix.html> (last accessed 1 December 2022), PDF p. 2 (**Memorial of Armenia, Annex 104**).

²⁴¹ See, e.g., “The true face of Armenian fascism in cartoons”, *Trend* (13 October 2020), available at <https://www.trend.az/azerbaijan/karabakh/3315938.html> (certified translation from Russian) (**Annex 36**); Memorial of Armenia, Sections III.1.I.B, III.3.II.D, IV.2.II.B.

²⁴² See Memorial of Armenia, Sections III.1.I.A, III.2.I, III.3.II.A, IV.2.II.A; Compilation of Illustrative Racist Hate Speech by Azerbaijani Government Institutions, Government Officials, and High-Level Political Leaders (January 2023) (excerpt) (**Memorial of Armenia, Annex 292**).

²⁴³ “Speech by Ilham Aliyev at the opening of a new block for 1440 IDP families in Mushfigabad”, *The President of the Republic of Azerbaijan Ilham Aliyev* (27 December 2012), available at <https://president.az/en/articles/view/7026> (“As you know, everything on the occupied lands is destroyed. All our historical monuments have been destroyed by *Armenian bandits and vandals*”) (emphasis added) (**Annex 9**). See also “Ilham Aliyev and First Lady Mehriban Aliyeva attended opening of Vagif Poetry Days in Shusha”, *The President of the Republic of Azerbaijan Ilham Aliyev* (30 August 2021), available at <https://president.az/en/articles/view/52881>, PDF p. 2 (**Annex 13**).

²⁴⁴ “Speech by Ilham Aliyev at the opening of the Fuzuli Hydroelectric Power Station”, *The President of the Republic of Azerbaijan Ilham Aliyev* (15 December 2012), available at <https://president.az/en/articles/view/6854> (“We will restore our historical and religious sites, eliminate the consequences of the crimes committed by *Armenian fascists and vandals*”) (emphasis added) (**Annex 8**).

²⁴⁵ “President Ilham Aliyev addresses the nation”, *Azernews* (17 October 2020), available at <https://www.azernews.az/nation/184462.html>, PDF p. 3 (**Annex 37**). See also “Ilham Aliyev chaired meeting on results of first quarter of 2022”, *The President of the Republic of Azerbaijan Ilham Aliyev* (12 April 2022), available at <https://president.az/en/articles/view/55780> (**Annex 14**).

enemies”.²⁴⁶ He has also explicitly demanded that ethnic Armenians “leave”.²⁴⁷ According to President Aliyev, Azerbaijan’s “primary duty was to expel the Armenians from our lands”;²⁴⁸ “no songs will be sung” in the “alien language” of Armenian;²⁴⁹ and “from now on, it will be the Azerbaijani language that will dominate this land”.²⁵⁰

92. Other politicians have followed President Aliyev’s racist lead. By way of just one example, Azerbaijan’s former Deputy Prime Minister and then-mayor of Baku explained to a German delegation that “[o]ur goal is the complete elimination of Armenians. You, Nazis, already eliminated the Jews in the 1930s and 40s, right? You should be able to understand us”.²⁵¹ By no stretch of the imagination can such

²⁴⁶ “Closing Speech by Ilham Aliyev at the conference on the results of the third year into the ‘State Program on the socioeconomic development of districts for 2009-2013’”, *The President of the Republic of Azerbaijan Ilham Aliyev* (28 February 2012), available at <https://president.az/en/articles/view/4423>, PDF p. 10 (“First, our main enemies are Armenians of the world and the hypocritical and corrupt politicians under their control”) (emphasis added) (**Annex 7**).

²⁴⁷ “Azerbaijan Television interviewed Ilham Aliyev in Basgal settlement of Ismayilli district”, *The President of the Republic of Azerbaijan Ilham Aliyev* (12 August 2022), available at <https://president.az/en/articles/view/56906>, PDF pp. 7-10 (**Annex 19**).

²⁴⁸ “Ilham Aliyev and First Lady Mehriban Aliyeva have attended the opening of a new residential complex for families of martyrs and war disabled in the Sabunchu district, Baku”, *The President of the Republic of Azerbaijan Ilham Aliyev* (2 May 2022), available at <https://president.az/en/articles/view/55929>, PDF p. 6 (**Annex 18**).

²⁴⁹ “President, Commander-in-Chief of Armed Forces Ilham Aliyev made a speech in front of servicemen in Shusha”, *The President of the Republic of Azerbaijan Ilham Aliyev* (8 November 2021), available at <https://en.president.az/articles/54047> (cited in **Memorial of Armenia, Annex 292**).

²⁵⁰ “President, Commander-in-Chief of Armed Forces Ilham Aliyev made a speech in front of servicemen in Shusha”, *The President of the Republic of Azerbaijan Ilham Aliyev* (8 November 2021), available at <https://president.az/en/articles/view/54046> (cited in **Memorial of Armenia, Annex 292**).

²⁵¹ Committee on Foreign Affairs, House of Representatives, *The Caucasus: Frozen Conflicts and Closed Borders* (18 June 2008), available at <https://www.govinfo.gov/content/pkg/CHRG110hhrg43066/pdf/CHRG-110hhrg43066.pdf> (cited in **Memorial of Armenia, Annex 292**).

language be dismissed as “directed towards Armenia as an occupying power”,²⁵² or as “[c]riticism of a foreign State”.²⁵³ Indeed, the ECRI has flatly stated that “[p]olitical leaders, educational institutions and media have continued using hate speech against Armenians”, and that “an entire generation of Azerbaijanis has now grown up listening to this hateful rhetoric”.²⁵⁴

93. The Court itself has determined that “propaganda promoting racial hatred and incitement to racial discrimination or to acts of violence against any group of persons based on their national or ethnic origin” can “generate a pervasive racially charged environment within society”.²⁵⁵ The CERD Committee, for its part, has confirmed that racist hate speech plays an important role in “conflict situations” and “processes leading to mass violations of human rights”.²⁵⁶

94. The results of that dynamic could be seen during the Second Nagorno-Karabakh War, when President Aliyev publicly promised that the Azerbaijani army would chase Armenians out of Nagorno-Karabakh like “dogs”.²⁵⁷ Just days later, the Ministry of Defense announced the production of military drones formally emblazoned with the words “*Iti Qovan*”, or “dog chaser” in Azerbaijani,²⁵⁸ and

²⁵² Preliminary Objections of Azerbaijan, para. 35.

²⁵³ Preliminary Objections of Azerbaijan, para. 33.

²⁵⁴ See European Commission against Racism and Intolerance, *ECRI Report on Azerbaijan (fifth monitoring cycle)* (17 March 2016), available at <https://rm.coe.int/fourth-report-onazerbaijan/16808b5581>, pp. 9, 17 (**Memorial of Armenia, Annex 29**).

²⁵⁵ *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. 361, para. 83.

²⁵⁶ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 35: Combating Racist Hate Speech*, UN Doc. CERD/C/GC/35 (26 September 2013), available at <https://www.refworld.org/docid/53f457db4.html>, para. 3 (**Annex 3**).

²⁵⁷ See, e.g., “President Ilham Aliyev addresses the nation”, *Azernews* (17 October 2020), available at <https://www.azernews.az/nation/200905.html> (**Annex 37**).

²⁵⁸ “Azerbaijan starts production of ‘Iti qovan’ UAVs”, *Defence.Az* (22 October 2020), available at <https://defence.az/en/news/147499/azerbaijan-starts-production-of%E2%80%9Citi-qovan%E2%80%9D->

disseminated videos exalting in the destruction of Armenians with the use of drones.²⁵⁹ Over the course of the war—and as made clear in Section II.B(1) above—Azerbaijani soldiers repeatedly committed atrocities against ethnic Armenian victims using the *very same hateful language* first employed by Azerbaijan’s head of State.²⁶⁰

95. It is thus difficult to see how Azerbaijan can reasonably suggest that the perpetrators were not “aware of [such] alleged discriminatory comments, much less influenced by them”.²⁶¹ On the contrary, the Azerbaijani public’s parroting of the

uavsphotos?_cf_chl_jschl_tk__=pmd_Mg2Vf1zmQDNKqhw6edW7KcVkYXV.wFP7p.3IEeYF Ci4-1629830372-0-gqNtZGzNAnujcnBszQh9 (**Annex 38**).

²⁵⁹ R. Dixon, “Azerbaijan’s drones owned the battlefield in Nagorno-Karabakh — and showed future of warfare”, *The Washington Post* (11 November 2020), available at https://www.washingtonpost.com/world/europe/nagorno-karabakh-drones-azerbaijan-aremenia/2020/11/11/441bcb2-193d-11eb-8bda-814ca56e138b_story.html (**Annex 39**).

²⁶⁰ See, e.g., “President Ilham Aliyev addresses the nation”, *Azernews* (17 October 2020), available at <https://www.azernews.az/nation/184462.html> (**Annex 37**) (cited in **Memorial of Armenia, Annex 292**) (promising that the Azerbaijani army would chase Armenians out of Nagorno-Karabakh like “dogs”); Video showing inhuman and degrading treatment of [REDACTED] (certified translation from Russian) (confidential) (**Memorial of Armenia, Annex 117**) (showing a bloodied ethnic Armenian civilian, later identified as [REDACTED], with his arms tied behind his back, while an Azerbaijani soldier states: “We will persecute you like dogs, all of you”); Video showing an Azerbaijani soldier cutting the ear off of a dead Armenian soldier (certified translation from Azerbaijani) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 124**) (showing a large group of Azerbaijani soldiers listening to their commander giving a speech while cutting the ears off of a dead Armenian, and claiming that Armenians are “sons of dogs”, and that “came here to cut off the seeds of these immoral people”); Video showing inhuman and degrading treatment of [REDACTED] (contains annotations, such as certified subtitles in English) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 167**) (showing a group of Azerbaijani servicemen brutally hitting and punching an ethnic Armenian, [REDACTED], and stating “you son of a dog” and “how is this son of a dog speaking?”); Video showing the bodies of killed Armenian soldiers being buried *en masse* by an excavator (certified translation from Azerbaijani) [WARNING: GRAPHIC] (confidential) (**Memorial of Armenia, Annex 137**) (showing the bodies of killed Armenian soldiers being collectively buried by an excavator, while the Azerbaijani soldier filming states: “these are Armenian dogs”). See also *supra* para. 48.

²⁶¹ Preliminary Objections of Azerbaijan, para. 36.

hateful rhetoric espoused by its leaders is a well-known phenomenon that continues to this day.²⁶²

96. The CERD Committee has expressly noted that racist expressions emanating from public authorities and public institutions, especially those attributed to high-ranking officials, are of “particular concern”,²⁶³ and has consistently drawn attention to “the role of politicians and other public opinion-formers in contributing to the creation of a negative climate towards groups protected by the Convention”.²⁶⁴ It has, for example, noted that “the use of racist

²⁶² For example, during the prolonged and devastating blockade by Azerbaijan of Nagorno-Karabakh, Azerbaijani public officials began to use the phrase “Game over” to refer to the desperate situation Azerbaijan forced upon the ethnic Armenians of Nagorno-Karabakh as a result of the closure of the Lachin Corridor. In particular, Hikmet Hajiyev, the Assistant to President Aliyev and Head of the Foreign Policy Affairs Department of the Presidential Administration, claimed that the ethnic Armenians of Nagorno-Karabakh must “reintegrate” into Azerbaijan and accept supplies via another route (and not through the Lachin Corridor). See Hikmet Hajiyev, @HikmetHajiyev, “(5) - International community should send a clear signal about usage of Agdam-Khankandi road and reintegration of armenian inhabitants of Karabakh to Azerbaijan. *There is no other way! Game is over!*”, *Twitter* (26 July 2023), available at <https://twitter.com/HikmetHajiyev/status/1684217028280827908> (emphasis added) (**Annex 50**). Two days later, the Vice Rector of the Azerbaijan Diplomatic Academy University—a State institution—shared a now-deleted Tweet showing a game of Tetris revealing an image of the Azerbaijani flag as the game progresses. See Dr. Fariz Ismailzade @fismailzade, *Twitter* (28 July 2023) (**Annex 52**). As it does, the population of Armenians, listed on the side, drops to zero, while a picture of the notorious genocidaire Enver Pasha can be seen smiling in the corner. *Ibid.* Once completed, the words “Game Over” flash next to the Tetris board displaying the Azerbaijani flag. *Ibid.* Other Azerbaijanis similarly parroted the same “Game Over” phrase across social media. See, e.g., Heydar Naghiyev, @HeydarNaghiyev, “Game over. Go home!”, *Twitter* (27 July 2023), available at <https://twitter.com/HeydarNaghiyev/status/1684663115495903232> (**Annex 51**); Asāsīyūn, @ScourgeOfTengri, “Glory to the sons of #Azerbaijan, that protect #LachinRoad from Armenian terrorist state, which used the road to place mines and deploy terrorists into Azerbaijan. Whole #Azerbaijan is with you. The enemy will be defeated. [emoji of a fist] [emoji of flag of Azerbaijan] [emoji of hashtag] #Karabakh #GameOver #LachinCorridor”, *Twitter* (28 July 2023), available at <https://twitter.com/ScourgeOfTengri/status/1684895581074817024> (**Annex 53**).

²⁶³ Committee on the Elimination of Racial Discrimination, *General recommendation No. 35: Combating racist hate speech*, UN Doc. CERD/C/GC/35 (26 September 2013), available at <https://www.refworld.org/docid/53f457db4.html>, para. 22 (**Annex 3**).

²⁶⁴ Committee on the Elimination of Racial Discrimination, *General recommendation No. 35: Combating racist hate speech*, UN Doc. CERD/C/GC/35 (26 September 2013), available at <https://www.refworld.org/docid/53f457db4.html>, para. 15 (**Annex 3**). See also Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-fifth and twenty-sixth periodic reports of the Russian Federation*, UN Doc. CERD/C/RUS/CO/25-26 (1 June

political discourse by public officials exacerbate[s] discrimination and stereotyping by law enforcement officers”.²⁶⁵ The Court itself has similarly expressed concern with situations in which “rhetoric espousing racial discrimination is employed by high-ranking officials of the State”.²⁶⁶

97. Yet Azerbaijan has not merely incited hatred of Armenians. It has also glorified acts of violence against them, including by pardoning and rewarding convicted murderer Ramil Safarov for his ethnically motivated murder of an ethnic Armenian,²⁶⁷ and by opening its infamous “Military Trophies Park”.²⁶⁸ President Aliyev has expressly acknowledged that Azerbaijan “brought up the young

2023), *available at* https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FCO%2FRUS%2FCO%2F25-26&Lang=en, paras. 4(b), 14(c) (**Annex 6**) (expressing deep concern about, *inter alia*, “[i]ncitement to racial hatred and propagation of racist stereotypes against ethnic Ukrainians, in particular on State-owned radio and television networks, on the Internet and in social media, as well as by public figures and government officials” and “[t]he use of racist hate speech by politicians, including members of the parliament, and public figures, including religious leaders, at the federal and local levels, and the lack of information on investigations, prosecutions and convictions of public figures and politicians for hate speech”); Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twelfth and thirteenth periodic reports of Bosnia and Herzegovina*, UN Doc. CERD/C/BIH/CO/12-13 (10 September 2018), *available at* https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CERD_C_BIH_CO_12_13.pdf, para. 19 (**Annex 4**) (expressing concern about “reports of racist hate speech and discriminatory and disparaging statements in public discourse by public and political figures” and “that racist hate speech has become common in the media, including on the Internet, and is also expressed in the forms of nationalistic and ethno-religious rhetoric against the returnees”).

²⁶⁵ Committee on the Elimination of Racial Discrimination, *General recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials*, UN Doc. CERD/C/GC/36 (17 December 2020), *available at* <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-36-2020-preventing-and>, para. 27 (**Annex 5**).

²⁶⁶ *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. 361, para. 83.

²⁶⁷ See Memorial of Armenia, paras. 3.69-3.83.

²⁶⁸ See Memorial of Armenia, paras. 3.383-3.393.

generation” in the “spirit” of “hatred for the enemy”.²⁶⁹ In such circumstances, for Azerbaijan to frame its countless “acts of murder, torture and other claimed violations of law by Azerbaijan’s forces” as “unrelated”²⁷⁰ to the racist anti-Armenian discourse that it fabricated and which permeates Azerbaijani society is nothing short of absurd. There would have been no need to deploy peacekeepers to “prevent the mass death of the civilian population”²⁷¹ in an ordinary war.

C. In the Alternative, Azerbaijan’s Second Preliminary Objection Prejudges the Merits and as Such Is Not Suitable for Adjudication at the Preliminary Stage

98. Azerbaijan argues, with respect to the aforementioned categories of Armenia’s claims, that “the inapplicability of CERD is apparent on the face of Armenia’s Memorial”, and as such “the Court’s lack of jurisdiction over [such claims] is particularly suitable for resolution on preliminary objections”.²⁷² Azerbaijan also argues that the Court “need not weigh evidence or otherwise consider the merits to dismiss this set of Armenia’s claims”.²⁷³

99. As demonstrated above, this is false. Nothing in the law or the facts of this case supports the notion that Azerbaijan’s acts of murder, torture and inhumane

²⁶⁹ “Ilham Aliyev visited military unit of Defense Ministry’s Special Forces”, *The President of the Republic of Azerbaijan Ilham Aliyev* (30 April 2022), available at <https://president.az/en/articles/view/55917>, PDF p. 3 (**Annex 17**). See also “Ilham Aliyev gave a speech at 5th Congress of World Azerbaijanis in Shusha”, *The President of the Republic of Azerbaijan Ilham Aliyev* (22 April 2022), available at <https://president.az/en/articles/view/55859>, PDF p. 3 (**Annex 15**) (“this is why the young generation was brought up in the spirit of patriotism, hatred of the enemy and loyalty to the Fatherland”).

²⁷⁰ Preliminary Objections of Azerbaijan, para. 32.

²⁷¹ The Federation Council of the Federal Assembly of the Russian Federation, *On the use of a military unit of the Armed Forces of the Russian Federation in Nagorno-Karabakh* (18 November 2020), available at <http://council.gov.ru/activity/documents/121580/> (certified translation from Russian) (**Armenia’s Request for Provisional Measures (27 December 2022), Annex 23**).

²⁷² Preliminary Objections of Azerbaijan, para. 41.

²⁷³ Preliminary Objections of Azerbaijan, para. 41.

treatment, detention, and enforced disappearances of ethnic Armenians are not capable of constituting racial discrimination under Article 1(1) of the CERD. Azerbaijan is aware of all this and that is why, notwithstanding its admonitions to the Court, it *does* take issue with the evidence on the record and the merits of Armenia's claims.²⁷⁴ As such, even if Azerbaijan's second objection could not be rejected now (*quod non*), it would not possess an exclusively preliminary character, and would thus be unsuitable for determination at the preliminary stage.

100. Article 79*ter*(4) of the Rules of Court provides that the Court may declare that a preliminary objection, "in the circumstances of the case, ... does not possess an exclusively preliminary character", such that the Court "must ... reserve its decision [on the objection] for further proceedings".²⁷⁵

101. An objection does not possess an "exclusively preliminary character" if, *inter alia*, "answering the preliminary objection would determine the dispute, or some elements thereof, on the merits".²⁷⁶ While it is possible that the Court, in deciding a preliminary objection "may touch upon certain aspects of the merits of the case",²⁷⁷ such a decision cannot prejudge the dispute.²⁷⁸

²⁷⁴ See, e.g., Preliminary Objections of Azerbaijan, para. 21 ("Armenia then relies on such declarations as 'evidence' before the Court even where there was no serious consideration of the underlying facts or any opportunity for Azerbaijan to present its position"); para. 45 (arguing that Armenia misrepresents the evidence); para. 53 ("To the extent Armenia's evidence suggests a motive for alleged unlawful acts, it shows that those acts, if they occurred, were based on individuals' perceived association with those who had occupied Azerbaijan's territory and who had committed atrocities against Azerbaijanis—not the individuals' ethnic origin").

²⁷⁵ *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objection, Judgment, I.C.J. Reports 2015, p. 592, para. 53.

²⁷⁶ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 832, para. 51.

²⁷⁷ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 832, para. 51; *Certain German Interests in Polish Upper Silesia* (Preliminary Objections), PCIJ, Series A, No. 6, p. 15.

²⁷⁸ See, e.g., *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, pp. 425-26, para. 76;

102. In the *Lockerbie* case, for example, the Court considered that deciding the objection raised by the United Kingdom—namely whether Libya’s claims had become moot as a result of two Security Council resolutions on the incident that gave rise to the dispute—would “constitute, in many respects, the very subject-matter of [the] decision [on Libya’s rights on the merits]”.²⁷⁹ In the Court’s view, such an objection “has the character of a defence on the merits” and does not possess an “exclusively preliminary character”.²⁸⁰

103. In *Certain Iranian Assets*, the Court found that it could not determine, as a preliminary issue, whether the Central Bank of Iran “was carrying out, at the relevant time, activities of the nature of those which permit characterization as a ‘company’ within the meaning of the Treaty of Amity” and thus fall under the treaty’s protection.²⁸¹ In the Court’s words, this issue was “largely of a factual nature” and “closely linked to the merits of the case”, and could therefore only be decided “after the Parties ha[d] presented their arguments in the following stage of the proceedings”.²⁸²

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998, pp. 28-29, para. 50; *Land and Maritime Boundary (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, pp. 324-25, paras. 116-117; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 850, para. 46.

²⁷⁹ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 9, para. 50.

²⁸⁰ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 9, para. 50.

²⁸¹ *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 7, para. 97.

²⁸² *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 7, para. 97.

104. In the present case, taking the facts presented by Armenia as true, the Court has all necessary information to decide, at the preliminary stage, that the acts complained of are capable of constituting racial discrimination and fall within the scope of the CERD. But even if a different standard were to apply, in order to conclude that the acts complained of were *not* capable of constituting racial discrimination at this stage, the Court would need to assess and weigh the evidence before it and effectively make determinations on the merits of each of Armenia's claims. For example:

- The Court would have to determine that there was no hate speech accompanying the mistreatment, detention and enforced disappearances of ethnic Armenians. More generally, the Court would need to decide that the murder and torture of numerous ethnic Armenian civilians—including women and the elderly—could not even *possibly* have been motivated wholly or partly by race.
- The Court would also need to assess Azerbaijan's judicial system and decide that notwithstanding numerous independent third party reports, it is not even *potentially* biased against ethnic Armenians and has therefore not discriminatorily denied them due process guarantees while in detention.
- The Court would finally need to determine that the general Armenophobia espoused and cultivated by Azerbaijan played no role in the acts of which Armenia complains. Reaching that conclusion alone would require the Court to weigh the *entirety* of the evidence supporting each and every one of Armenia's claims, including those not impugned by Azerbaijan's second preliminary objection.

105. Despite claiming that it does not ask the Court “to consider, on the merits, the strength or weakness of Armenia’s case”,²⁸³ Azerbaijan does precisely that through its Annex 46, which lists—incompletely—“Armenia’s Evidence in Support of its Claim[s]”.²⁸⁴ It likewise does so when it asserts, for example, that “Armenia’s references to ‘false accusations’ and ‘spurious charges’ are completely unsubstantiated by any facts pled in Armenia’s Memorial”.²⁸⁵ It is impossible to understand how Azerbaijan can make such an assertion while simultaneously arguing that granting its objection would not require the Court to “weigh evidence or otherwise consider the merits” of the case,²⁸⁶ especially when it cannot help but admit that “acts of war may implicate CERD”.²⁸⁷

106. As the Court is aware, Armenia has also objected to the Court’s jurisdiction *ratione materiae* over Azerbaijan’s claims concerning landmines, booby traps and alleged environmental harm in the parallel proceedings in *Azerbaijan v. Armenia*. However, in those proceedings, Armenia asked the Court to find that the acts complained of do not fall within the scope of the CERD *even accepting Azerbaijan’s factual allegations as true*.²⁸⁸ Application of the very same standard

²⁸³ Preliminary Objections of Azerbaijan, para. 65.

²⁸⁴ “Table of Armenia’s Claims and Factual Allegations That Do Not Fall Within CERD” (**Preliminary Objections of Azerbaijan, Annex 46**). As noted above, Azerbaijan’s Annex 46 is incomplete and cannot be relied on to summarize the evidence and arguments supporting Armenia’s claims. *See supra* para. 38, n. 80. *See also supra* para. 105.

²⁸⁵ Preliminary Objections of Azerbaijan, para. 60.

²⁸⁶ Preliminary Objections of Azerbaijan, para. 41.

²⁸⁷ Preliminary Objections of Azerbaijan, para. 8.

²⁸⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, Preliminary Objections of the Republic of Armenia (23 April 2023), para. 10 (**Annex 22**). *See also Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgement, I.C.J. Reports 2021*, p. 71, para. 112 (“Thus, the Court concludes that, even if the measures of which Qatar complains in support of its ‘indirect discrimination’ claim were to be proven on the facts, they are not capable of constituting racial discrimination within the meaning of the Convention”).

in these proceedings must lead to the rejection of Azerbaijan's second preliminary objection in full.

107. In conclusion, accepting the facts alleged as true, all of the acts of which Armenia complains are capable of constituting racial discrimination and they therefore fall within the scope of the CERD. Even if, however, a different standard were to apply at this stage, finding that the acts complained of were *not* capable of constituting racial discrimination would require the Court to decide the dispute on the merits, and in such circumstances Azerbaijan's objections would not be suitable for determination at this preliminary stage.

IV. Submissions

108. 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.

Respectfully submitted,

Dr. Yeghishe Kirakosyan

AGENT OF THE REPUBLIC OF ARMENIA

21 AUGUST 2023

CERTIFICATION

I certify that the Annexes are true copies of the documents referred to and that the translations provided are accurate.

Dr. Yeghishe Kirakosyan

AGENT OF THE REPUBLIC OF ARMENIA

21 AUGUST 2023

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