

**22 FÉVRIER 2023**

**ORDONNANCE**

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

**(AZERBAÏDJAN c. ARMÉNIE)**

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

**(AZERBAIJAN v. ARMENIA)**

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**INTERNATIONAL COURT OF JUSTICE**

**YEAR 2023**

**2023  
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General List  
No. 181**

**22 February 2023**

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

**(AZERBAIJAN v. ARMENIA)**

**REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES**

**ORDER**

*Present: President DONOGHUE; Vice-President GEVORGIAN; Judges TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, ROBINSON, SALAM, IWASAWA, NOLTE, CHARLESWORTH, BRANT; Judges ad hoc KEITH, DAUDET; Registrar GAUTIER.*

The International Court of Justice,

Composed as above,

After deliberation,

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

*Makes the following Order:*

1. By an Application filed in the Registry of the Court on 23 September 2021, the Republic of Azerbaijan (hereinafter “Azerbaijan”) instituted proceedings against the Republic of Armenia (hereinafter “Armenia”) concerning alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter “CERD” or the “Convention”).

2. On the same day, Azerbaijan also submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court (the “first Request”).

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

“(1) The Republic of Armenia shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, take all necessary measures to prevent the incitement and promotion of racial hatred, including by organizations and private persons in its territory, targeted at persons of Azerbaijani national or ethnic origin;

(2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.” (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, pp. 430-431, para. 76).

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

5. On 4 January 2023, Azerbaijan, referring to Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court, filed a new Request for the indication of provisional measures (the “second Request”).

6. In its second Request, Azerbaijan states that “new evidence has emerged that Armenia, contradicting representations it made to the Court in 2021, deliberately continued to lay landmines in or after 2021 in civilian zones to which displaced Azerbaijanis are slated to return”. It adds that in October 2022, Azerbaijan also discovered in civilian homes booby traps planted by or whose planting was facilitated by Armenian forces. According to the Applicant, “[t]o date, Armenia has refused to share information in its possession about the location of landmines and booby traps laid in areas over which Azerbaijan has recently regained control”. Azerbaijan contends that Armenia’s conduct is discriminatory both in purpose and effect, and that the ongoing and serious threat of irreparable harm to its rights under CERD renders its second Request urgent.

7. At the end of its second Request for the indication of provisional measures, Azerbaijan requests that the Court indicate the following provisional measures:

- “(a) Armenia shall immediately take all necessary steps to enable Azerbaijan to undertake the prompt, safe and effective demining of the towns, villages, and other areas to which Azerbaijani civilians will return in the Lachin District, Kalbajar District and other formerly occupied districts of Azerbaijan, including by providing information about the location, quantity, type and characteristics of landmines, booby traps and any other explosive devices in these areas, in order to enable Azerbaijani internally displaced persons to return to their homes; and
- (b) Armenia shall immediately cease and desist from any further efforts to plant or to sponsor or support the planting of landmines and booby traps in these areas to which Azerbaijani civilians will return in Azerbaijan’s territory, including, but not limited to, the use of the Lachin Corridor for this purpose.”

8. The Deputy-Registrar immediately communicated a copy of the second Request to the Government of Armenia, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing by Azerbaijan on 4 January 2023 of the second Request for the indication of provisional measures.

9. By letters dated 6 January 2023, the Deputy-Registrar informed the Parties that the Court had fixed 31 January 2023 as the date for the oral proceedings on the second Request for the indication of provisional measures filed by Azerbaijan.

10. At the public hearing, oral observations on the second Request for the indication of provisional measures filed by Azerbaijan were presented by:

*On behalf of Azerbaijan:* H.E. Mr. Elnur Mammadov,  
Mr. Vaughan Lowe,  
Ms Catherine Amirfar,  
Ms Natalie Reid,  
Ms Laurence Boisson de Chazournes.

*On behalf of Armenia:* H.E. Mr. Yeghishe Kirakosyan,  
Mr. Sean Murphy,  
Mr. Robert Kolb,  
Mr. Pierre d’Argent.

11. At the end of its oral observations, Azerbaijan asked the Court to indicate the following provisional measures:

- “(a) Armenia shall immediately take all necessary steps to enable Azerbaijan to undertake the prompt, safe and effective demining of the towns, villages, and other areas to which Azerbaijani civilians will return in the Lachin District, Kalbajar District and other formerly occupied districts of Azerbaijan, including by providing

information about the location, quantity, type and characteristics of landmines, booby traps and other explosive devices in these areas, in order to enable Azerbaijani internally displaced persons to return to their homes, and

- (b) Armenia shall immediately cease and desist from any further efforts to plant or to sponsor or support the planting of landmines and booby traps in these areas to which Azerbaijani civilians will return in Azerbaijan's territory, including, but not limited to, the use of the Lachin Corridor for this purpose."

12. At the end of its oral observations, Armenia requested the Court "to reject Azerbaijan's request for the indication of provisional measures in full".

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## I. PRIMA FACIE JURISDICTION

13. The Court recalls that, in its Order of 7 December 2021 indicating provisional measures in the present case, it concluded that "prima facie, it has jurisdiction pursuant to Article 22 of CERD to entertain the case to the extent that the dispute between the Parties relates to the 'interpretation or application' of the Convention" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 418, para. 40). The Court sees no reason to revisit this conclusion for the purposes of the present Request.

## II. THE PROVISIONAL MEASURES REQUESTED BY AZERBAIJAN

14. The Court recalls that, in its first Request for the indication of provisional measures, Azerbaijan had asked the Court to order, *inter alia*, that:

- "(a) Armenia shall take all necessary steps to enable Azerbaijan to undertake the prompt, safe and effective demining of the landmines laid in Azerbaijan's territory by the Armenian military and/or other groups under the direction, control, or sponsorship of Armenia, including by immediately providing comprehensive and accurate information about the location and characteristics of landmines in Azerbaijan's territory; [and]
- (b) Armenia shall immediately cease and desist from endangering the lives of Azerbaijanis by planting or promoting or facilitating the planting of landmines in Azerbaijan's territory" (*ibid.*, p. 410, para. 11).

In its Order of 7 December 2021, the Court, however, decided not to grant the above-mentioned measures.

15. In its second Request for the indication of provisional measures, Azerbaijan asks the Court to order Armenia to “take all necessary steps to enable Azerbaijan to undertake the prompt, safe and effective demining of the towns, villages, and other areas to which Azerbaijani civilians will return” and to “immediately cease and desist from any further efforts to plant or to sponsor or support the planting of landmines and booby traps in these areas”.

16. Azerbaijan argues that new facts, not available at the time of the first Request for the indication of provisional measures, show that Armenia has been laying landmines and planting booby traps specifically targeting civilians who are “Azerbaijani” (a term that Azerbaijan uses in the course of these proceedings to refer to persons of Azerbaijani national or ethnic origin). The Applicant refers to the alleged discovery in Azerbaijan’s territory, since August 2022, of over 2,700 landmines manufactured in Armenia in 2021. According to Azerbaijan, over half of those landmines were discovered in civilian areas to which Azerbaijani displaced persons and refugees are due to return, in accordance with the Statement by the President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation of 9 November 2020 (the “Trilateral Statement”), in particular in the Lachin District and the Kalbajar District. Additionally, Azerbaijan refers to the alleged discovery, in October 2022, of “newly constructed” booby traps, made of military equipment such as hand grenades and landmines activated by trip wire, purposely hidden in civilian houses to which Azerbaijanis were expected to return.

17. Azerbaijan contends that the placement of landmines and booby traps in civilian areas previously inhabited by Azerbaijanis and to which they are due to return, following the terms of the Trilateral Statement, demonstrates the racially discriminatory nature of Armenia’s conduct. In this regard, Azerbaijan asserts that the placement of landmines and booby traps in those areas poses an ongoing threat of death or injury to Azerbaijani civilians attempting to return to their homes.

18. It further contends that the planting of explosives at those locations could serve no military purpose in light of the distance from the border between Armenia and Azerbaijan and from the old “line of contact” between the armed forces of the Parties. According to Azerbaijan, laying landmines in these circumstances serves no purpose other than to kill, harm and intimidate Azerbaijani civilians.

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19. Armenia, for its part, contends that it has “carried out minelaying exclusively within the sovereign territory of the Republic of Armenia for self-defense purposes only”.

20. Armenia explains that the Trilateral Statement provided that three districts — Kalbajar, Agdam and Lachin — were to be returned to Azerbaijan between November and December 2020 and that they have been under Azerbaijan’s control since then. Armenia contends that the presence of Armenian landmines in these districts, if established, can be explained by the fact that, at the end

of the conflict, there still existed a “contact line” in and around Nagorno-Karabakh and notes that the Trilateral Statement did not preclude armed forces from taking steps to secure their positions. Further, Armenia contends that the locations of the landmines found since August 2022 were not in “unequivocally civilian areas”. Armenia contends, in particular, that certain allegedly recently discovered landmines are in fact located around two kilometres from the villages referred to by Azerbaijan, that photographs show no civilian settlements or activity and thus the minelaying cannot be said to have targeted civilians. Armenia maintains that such laying of landmines along the “contact line” or along an international border for the purposes of military defence, and outside of civilian areas, does not concern any rights under CERD.

21. Regarding the placing of booby traps, Armenia first notes that these have been found solely in settlements “within the old Lachin Corridor”, an area over which Azerbaijan was allowed to take control, after the construction of the new road now connecting Nagorno-Karabakh to Armenia, which is under the control of Russian peacekeeping forces. Armenia further notes that no Armenian armed forces could possibly have been deployed in that area without being detected by the Russian peacekeeping forces, and that there is no evidence showing otherwise. Further, Armenia denies the use of booby traps by its own armed forces but observes that these devices could have been rigged by private individuals forced to leave their homes.

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22. With regard to the plausibility of rights under CERD asserted by Azerbaijan with respect to Armenia’s alleged conduct in relation to landmines, the Court stated the following in its Order of 7 December 2021 in relation to the first Request:

“[T]he Court recalls that Azerbaijan claims that this conduct is part of a longstanding campaign of ethnic cleansing. The Court recognizes that a policy of driving persons of a certain national or ethnic origin from a particular area, as well as preventing their return thereto, can implicate rights under CERD and that such a policy can be effected through a variety of military means. However, the Court does not consider that CERD plausibly imposes any obligation on Armenia to take measures to enable Azerbaijan to undertake demining or to cease and desist from planting landmines. Azerbaijan has not placed before the Court evidence indicating that Armenia’s alleged conduct with respect to landmines has ‘the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing’, of rights of persons of Azerbaijani national or ethnic origin.” (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 425, para. 53.)



23. Having considered the evidence of the Parties in relation to the second Request, the Court finds that the above-quoted conclusion also applies to the present circumstances, including the allegations regarding booby traps.

24. In light of the above, the Court considers that there is no need for it to examine whether the other conditions necessary for the indication of provisional measures are met.

### III. CONCLUSION

25. The Court concludes from the foregoing that the conditions for the indication of provisional measures under Article 41 of the Statute are not met.

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26. The Court notes that the provisional measures indicated in its Order of 7 December 2021 remain in effect. It reaffirms that the decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Azerbaijan and Armenia to submit arguments in respect of those questions.

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27. For these reasons,

THE COURT,

Unanimously,

*Rejects* the Request for the indication of provisional measures submitted by the Republic of Azerbaijan on 4 January 2023.

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

*(Signed)* Joan E. DONOGHUE,  
President.

*(Signed)* Philippe GAUTIER,  
Registrar.

Judge SEBUTINDE appends a declaration to the Order of the Court; Judges CHARLESWORTH and BRANT append a joint declaration to the Order of the Court; Judge *ad hoc* KEITH appends a declaration to the Order of the Court.

*(Initialed)* J.E.D.

*(Initialed)* Ph.G.

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