



INTERNATIONAL COURT OF JUSTICE

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Summary

Unofficial

Summary 2023/7

17 November 2023

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)

Request for the indication of provisional measures

The Court begins by recalling the history of the proceedings in the case, which can be summarized as follows:

- Following the filing by Armenia, on 16 September 2021, of an Application instituting proceedings against Azerbaijan concerning alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter “CERD”), which was accompanied by a Request for the indication of provisional measures (the “first Request”), the Court indicated the following provisional measures in its Order of 7 December 2021:

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

- (a) Protect from violence and bodily harm all persons captured in relation to the 2020 Conflict who remain in detention, and ensure their security and equality before the law;
- (b) Take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin;
- (c) Take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts;

(2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”

- By a letter dated 16 September 2022, Armenia requested the modification of the Court’s Order of 7 December 2021 (the “second Request”). By an Order dated 12 October 2022, the Court found that “the circumstances, as they [then] present[ed] themselves to the Court, [were] not such as to require the exercise of its power to modify the measures indicated in the Order of 7 December 2021”. In addition, the Court reaffirmed the provisional measures indicated in that

Order, in particular the requirement that both Parties refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

- On 28 December 2022, Armenia filed a new Request for the indication of provisional measures (the “third Request”). By an Order of 22 February 2023, the Court indicated the following provisional measure:

“The Republic of Azerbaijan shall, pending the final decision in the case and in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions.”

- By a letter dated 12 May 2023, Armenia requested the modification of the Court’s Order of 22 February 2023 (the “fourth Request”). By an Order dated 6 July 2023, the Court found that the circumstances, as they presented themselves to the Court at the time, were “not such as to require the exercise of its power to modify the Order of 22 February 2023 indicating a provisional measure” and reaffirmed the provisional measure indicated in that Order.
- On 28 September 2023, Armenia filed a new Request for the indication of provisional measures (the “fifth Request”), which is the subject of the present Order. In that Request, Armenia states that, on 19 September 2023, Azerbaijan “launched a full-scale military assault on the 120,000 ethnic Armenians of Nagorno-Karabakh, indiscriminately shelling the capital, Stepanakert, and other civilian settlements”. It adds that the attack killed and wounded hundreds of people, including civilians, and that tens of thousands of ethnic Armenians have been forcibly displaced from Nagorno-Karabakh to Armenia.

In its Request, Armenia asks the Court to indicate the following provisional measures:

- “1) ‘Azerbaijan shall refrain from taking any measures which might entail breaches of its obligations under the CERD’;
- 2) ‘Azerbaijan shall refrain from taking any actions directly or indirectly aimed at or having the effect of displacing the remaining ethnic Armenians from Nagorno-Karabakh, or preventing the safe and expeditious return to their homes of persons displaced in the course of the recent military attack including those who have fled to Armenia or third States, while permitting those who wish to leave Nagorno-Karabakh to do so without any hindrance’;
- 3) ‘Azerbaijan shall withdraw all military and law-enforcement personnel from all civilian establishments in Nagorno-Karabakh occupied as a result of its armed attack on 19 September 2023’;
- 4) ‘Azerbaijan shall facilitate, and refrain from placing any impediment on, the access of the United Nations and its specialized agencies to the ethnic Armenians of Nagorno-Karabakh, and shall not interfere with their activities in any way’;
- 5) ‘Azerbaijan shall facilitate, and refrain from placing any impediment on, the ability of the International Committee of the Red Cross to provide humanitarian aid to the ethnic Armenians of Nagorno-Karabakh, and shall cooperate with the International Committee of the Red Cross to address the other consequences of the recent conflict’;

- 6) ‘Azerbaijan shall immediately facilitate the full restoration of public utilities, including gas and electricity, to Nagorno-Karabakh, and shall refrain from disrupting them in the future’;
- 7) ‘Azerbaijan shall refrain from taking punitive actions against the current or former political representatives or military personnel of Nagorno-Karabakh’;
- 8) ‘Azerbaijan shall not alter or destroy any monument commemorating the 1915 Armenian genocide or any other monument or Armenian cultural artefact or site present in Nagorno-Karabakh’;
- 9) ‘Azerbaijan shall recognize and give effect to civil registers, identity documents and property titles and registers established by the authorities of Nagorno-Karabakh, and shall not destroy or confiscate such registers and documents’;
- 10) ‘Azerbaijan shall submit a report to the Court on all measures taken to give effect to this Order within one month, as from the date of this Order, and thereafter every three months, until a final decision on the case is rendered by the Court.’”

Armenia further requests that the Court “reaffirm Azerbaijan’s obligations under the Court’s existing Orders”.

I. GENERAL OBSERVATIONS (PARAS. 27-29)

The Court begins by observing that, pursuant to Article 76, paragraph 1, of the Rules of Court, a decision concerning provisional measures may be modified if, in the Court’s opinion, “some change in the situation justifies” doing so. According to Article 75, paragraph 3, of the Rules of Court, “[t]he rejection of a request for the indication of provisional measures shall not prevent the party which made it from making a fresh request in the same case based on new facts”. The same applies when additional provisional measures are requested. It is therefore for the Court to satisfy itself that the fifth Request by Armenia is based upon “new circumstances such as to justify [it] being examined”.

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

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

II. PRIMA FACIE JURISDICTION (PARA. 30)

The Court recalls that, in its Order of 7 December 2021 indicating provisional measures in the present case, it concluded that “prima facie, it has jurisdiction pursuant to Article 22 of CERD to entertain the case to the extent that the dispute between the Parties relates to the ‘interpretation or application’ of the Convention”. It reiterated this conclusion in its Order of 22 February 2023 and sees no reason to revisit it for the purposes of the present Request.

III. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE LINK BETWEEN SUCH RIGHTS AND THE MEASURES REQUESTED (PARAS. 31-46)

The Court reiterates that its power to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible.

At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which Armenia wishes to see protected exist; it need only decide whether the rights claimed by Armenia on the merits, and for which it is seeking protection, are plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested.

The Court notes that CERD imposes a number of obligations on States parties with regard to the elimination of racial discrimination in all its forms and manifestations. Article 1, paragraph 1, of the Convention provides a definition of racial discrimination. In accordance with Article 2 of CERD, States parties “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms”. Under Article 5, they undertake to guarantee the right of everyone to equality before the law in the enjoyment of a non-exhaustive list of rights.

The Court observes that Articles 2 and 5 of CERD are intended to protect individuals from racial discrimination. It recalls, as it did in past cases in which Article 22 of the Convention was invoked as the basis of its jurisdiction, that there is a correlation between respect for individual rights enshrined in CERD, the obligations of States parties under the Convention and the right of States parties to seek compliance with those obligations.

A State party to CERD may invoke the rights set out in the above-mentioned articles only to the extent that the acts complained of constitute acts of racial discrimination as defined in Article 1 of the Convention. In the context of a request for the indication of provisional measures, the Court examines whether the rights claimed by an applicant are at least plausible.

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

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

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

The Court considers that a link exists between the rights claimed by Armenia that are plausible under CERD and certain measures requested by Armenia. In particular, a link exists between those

rights and the measure directing Azerbaijan to prevent the displacement of the remaining persons of Armenian national or ethnic origin from Nagorno-Karabakh, to ensure the right of those persons displaced to a safe return to their homes, and to permit those who wish to leave Nagorno-Karabakh to do so without any hindrance. The Court also considers that a link exists between those rights and the requested measure with respect to civil registers, identity documents and property titles and registers.

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

IV. RISK OF IRREPARABLE PREJUDICE AND URGENCY (PARAS. 47-65)

The Court recalls that, pursuant to Article 41 of its Statute, it has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences. However, this power will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights claimed before the Court gives its final decision. The condition of urgency is met when the acts susceptible of causing irreparable prejudice can “occur at any moment” before the Court makes a final decision on the case. The Court therefore considers whether such a risk exists at this stage of the proceedings.

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

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

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

With respect to the persons of Armenian national or ethnic origin who are still residing in Nagorno-Karabakh, the Court recalls its previous statement that irreparable prejudice can be caused to the right to equality before the law in the enjoyment of the right to freedom of movement and residence within a State’s borders when the persons concerned are exposed to privation, hardship, anguish and even danger to life and health. The Court has also considered that a prejudice can be considered as irreparable when individuals are subject to temporary or potentially ongoing separation from their families and suffer from psychological distress, or when students are prevented from pursuing their studies.

The Court has recognized that individuals forced to leave their own place of residence without the possibility of return could be subject to a serious risk of irreparable prejudice. It is of the view that similar considerations apply to the persons of Armenian national or ethnic origin who found themselves compelled to flee their place of residence for fear that they will be targeted because they belong to a protected group under CERD.

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

In light of the considerations set out above, the Court concludes that disregard for the rights deemed plausible by the Court could cause irreparable prejudice to those rights and that there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused before the Court makes a final decision in the case.

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

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

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

(i) the provision of food, medicines and other essential supplies to Garabagh;

(ii) providing access to available medical treatment; and

(iii) maintaining the supply of public utilities, including gas and electricity;

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

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

(b) Azerbaijan also undertakes to facilitate:

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

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

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

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

The Court recalls that unilateral declarations can give rise to legal obligations and that interested States may take cognizance of unilateral declarations and place confidence in them, and

are entitled to require that the obligation thus created be respected. It also recalls that once a State has made such a commitment concerning its conduct, its good faith in complying with that commitment is to be presumed. The Court notes that the undertakings of the Agent of Azerbaijan, which were made publicly before the Court and formulated in a detailed manner, are aimed at addressing the situation of persons of Armenian national or ethnic origin in Nagorno-Karabakh following the operation commenced by Azerbaijan in this region on 19 September 2023. It is of the view that the undertakings made by the Agent of Azerbaijan on behalf of his Government are binding and create legal obligations for Azerbaijan.

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

In the view of the Court, the undertakings made by the Agent of Azerbaijan at the public hearing on the afternoon of 12 October 2023 contribute towards mitigating the imminent risk of irreparable prejudice resulting from the operation commenced by Azerbaijan in Nagorno-Karabakh on 19 September 2023 but do not remove the risk entirely.

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

V. CONCLUSION AND MEASURES TO BE ADOPTED (PARAS. 66-73)

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

The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are, in whole or in part, other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power on several occasions in the past.

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

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

The Court also recalls Azerbaijan's undertaking "to protect and not to destroy registration, identity and/or private property documents and records found in Garabagh". In this regard, the Court

considers it necessary for Azerbaijan also to have due regard in its administrative and legislative practices to such documents and records that concern the persons who left Nagorno-Karabakh after 19 September 2023 and those who remained there.

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

The Court reaffirms the provisional measures indicated in its Orders of 7 December 2021 and 22 February 2023.

VI. OPERATIVE CLAUSE (PARA. 74)

The full text of the operative clause of the Order reads as follows:

“For these reasons,

THE COURT,

Indicates the following provisional measures:

(1) By thirteen votes to two,

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

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

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

(2) By thirteen votes to two,

The Republic of Azerbaijan shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, protect and preserve registration, identity and private property documents and records that concern the persons identified under subparagraph (1) and have due regard to such documents and records in its administrative and legislative practices;

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

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

(3) By thirteen votes to two,

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

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

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

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

Dissenting opinion of Judge Yusuf

Judge Yusuf appends a dissenting opinion to express his view that the power to indicate provisional measures should not have been exercised by the Court in light of Azerbaijan's undertakings.

According to Judge Yusuf, the majority erred in departing from the Court's jurisprudence in *Belgium v. Senegal* and in the *Passage through the Great Belt* and *Interhandel* cases, where the Court had concluded that no irreparable risk of harm to plausible rights existed when adequate assurances had been given by the respondent. Judge Yusuf distinguishes those cases and the present one from *Certain Documents and Data*, where the undertakings of Australia fell short of removing the imminent risk of irreparable prejudice because it was qualified and contained an exception. His view is that the majority's decision to repeat and amend elements of Azerbaijan's assurances in the *dispositif* adds nothing to the preservation of plausible rights or to the undertakings by Azerbaijan which adequately address those rights.

Judge Yusuf disagrees with the Court's statement that the undertakings do not correspond in all respects to the measures requested by Armenia. He finds it legally untenable to demand that the undertakings by Azerbaijan should correspond "in all respects" to the measures requested by Armenia, most of which have not been recognized as corresponding to plausible rights under CERD. The Court itself does not indicate in the Order most of the measures requested by Armenia.

Judge Yusuf finds it odd that the Court should recall its dictum that the good faith of a State making a commitment concerning its conduct should be presumed, while it imposes a reporting requirement on Azerbaijan with respect to this State's own undertakings. In this connection, Judge Yusuf expresses the opinion that the Court's requirement that Azerbaijan report on the implementation of its own undertakings appears to be a presumption that the undertakings were not made in good faith, especially in light of the Court's finding that the undertakings create binding legal obligations for Azerbaijan. For Judge Yusuf, such an appearance should have been avoided.

Dissenting opinion of Judge *ad hoc* Koroma

Judge Koroma in his dissenting opinion regrets that he was unable to support the Order indicating provisional measures, given the humanitarian dimension of the fifth Request to indicate provisional measures.

In his view, provisional measures should serve a purpose in not only preserving and protecting the rights of the respective parties but the Court should remain interested in their legitimacy and compliance, if imposed.

Moreover, given the role of the Court as an organ of the United Nations, one of whose primary objectives is the peaceful settlement of disputes, measures indicated by the Court should facilitate that objective.

Judge Koroma takes the view that if the majority had applied Article 41 (1) of the Court's Statute meaningfully, taking into consideration the "circumstances" stipulated in the provision, the legal criteria for indicating measures would not have been met.

He also takes the view that the majority should have given the unilateral undertakings made by Azerbaijan *urbi et orbi* and before the Court in the current proceedings as reasons not to indicate measures, especially as the Court itself recognized in the Order that those undertakings are binding and create legal obligations for Azerbaijan.

He recalled that in a case of unilateral undertaking, it is the intent of the State giving the undertaking that is dispositive and not the doubt or reservations of the recipient.

In summary, the Court should have recalled its previous provisional measures regarding this dispute and attached the binding undertakings given by Azerbaijan. This would have been compatible with the Court's function. The Court's focus should have been to ensure compliance with and the legitimacy of the undertakings by the Respondent.

Judge Koroma does not agree with the reporting requirements of the Order as it calls into question the good faith of Azerbaijan in making its undertakings. It is not the role of the Court to contemplate that a party to a dispute will not implement its undertakings when what is required is trust.

Moreover, he expressed the view that Azerbaijan should not be regarded as Carthage and that the circumstances are not susceptible to a Carthaginian peace, especially when Azerbaijan's sovereignty over its territory has been generally recognized and Azerbaijan has declared its responsibility and ability to carry out its own obligations within its own territory.

It was in view of the foregoing reasons, among others, that Judge Koroma could not support the decision to indicate measures.
