SEPARATE OPINION OF JUDGE ABRAHAM

[Translation]

Agreement with the operative part of the Judgment in its rejection of the first preliminary objection — Disagreement with the Court's reasoning in finding the existence of a dispute between the Parties — Conception of "dispute" alien to that accepted in the Court's prior jurisprudence — Mistaken failure to be at all realistic in identifying a dispute — Failure to determine whether dispute exists as of the date the Court decides — Pointlessness of seeking to ascertain the date on which the dispute arose — Incorrect requirement of prior notice of claims by the applicant as a condition for the existence of a dispute — In the present case, existence of a dispute over questions within the scope of CERD well before August 2008.

1. I have voted in favour of rejecting — as subparagraph (1) *(a)* of the operative part does — Russia's first preliminary objection, based on the alleged absence when Georgia filed its Application of a dispute between the two States with respect to the interpretation or application of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

I have on the other hand voted against subparagraph (1) *(b)* of the operative part, in which the Judgment upholds the second preliminary objection, based on the assertion that the Application was preceded neither by an attempt to settle the dispute by negotiation nor by resort to the special procedures established by CERD.

2. My reasons for believing that the Court should also have rejected the second preliminary objection, and should ultimately have found jurisdiction to adjudicate the case, are set out in detail in the joint dissenting opinion appended to the present Judgment, which it has been my honour to sign together with a number of my colleagues.

In the present separate opinion, my purpose is to explain why, notwithstanding my concurrence in rejecting the first preliminary objection, I have serious reservations about the Court's reasoning in arriving at this conclusion.

3. First of all, I am struck by the fact that the greater part of the 40-page long discussion in the Judgment is devoted to the first preliminary objection (from page 81, paragraph 23, to page 120, paragraph 114), whereas the second is dealt with in 20 pages (from page 120, paragraph 115, to page 140, paragraph 184).

4. While no more than a hint, this suggests at first glance that a certain bias most likely crept into the Court's approach.

Of the four preliminary objections raised by the Russian Federation with a view to convincing the Court that it lacked jurisdiction to entertain Georgia's Application on the merits, the second alone, in my opinion,

raised a difficulty — indeed a number of them. This was the objection to the effect that the procedural conditions laid down in Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) were not satisfied at the date the Court was seised, thereby rendering the clause — the only basis of jurisdiction relied on by Georgia — inoperative in the present case. I can well understand that this objection may have warranted extensive consideration by the Court — even though my conclusion upon completion of that discussion was not the same as the majority's.

5. By contrast, none of the other three objections (initially) presented to the Court justified lengthy treatment in the Judgment, since for various reasons none of the three should have retained the Court's attention for very long.

6. This is obviously the case for the third and fourth preliminary objections.

The Judgment simply states (in paragraph 185) that the Court has no need to consider them, since it is upholding the second objection. This is logical and by itself calls for no comment.

But, even if the Court had rejected the first two preliminary objections (not just the first), which I think it should have done, there would have been no need for it to give much consideration to the third and fourth objections. This is because Russia in the oral proceedings abandoned its third objection (lack of jurisdiction *ratione loci*) as a preliminary objection, arguing itself that it was not of an exclusively preliminary character and therefore should not be considered at this stage, and because the fourth objection (lack of jurisdiction *ratione temporis*) was of no practical significance, since Georgia's claims against the Respondent related to events occurring after 2 July 1999, when CERD entered into force between the Parties.

7. In my view, the Court should have similarly disposed of the first preliminary objection without needing to dwell upon it, since this objection, based on the alleged lack of any dispute between the Parties concerning the interpretation or application of CERD, did not stand up to any scrutiny whatsoever, not even the most cursory. The Court ultimately arrived at the conclusion that this objection was baseless and should be rejected — a conclusion which I cannot help but share — but only after long, laboured reasoning, which I can support only to a very limited extent. It is not only that the reasoning is needlessly long, whereas the right response was simple. Prolixity is a venial sin, one which this writer would be careful not to condemn too severely, out of fear that he himself may be judged just as harshly. More serious to my mind is that the approach taken in the Judgment in the discussion on pages 81 to 120 is open to substantive criticism on several grounds, including most importantly that it reflects — more or less implicitly — a conception of the meaning of "dispute" far too removed from what I believe to be

the more correct conception to be seen in the Court's jurisprudence to date.

8. I shall first observe that until the present case the Court, whenever required to decide on a preliminary objection based on the respondent's contention that there was no dispute, has made its decision — rejecting the objection — in a few short paragraphs, and has made the determination as of the date on which it was ruling, finding that the parties held clearly conflicting views at that date on the matters constituting the subject of the application and consequently that a dispute existed between them.

9. Three relatively recent precedents are significant in this regard: the cases concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia)*, the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)*, and *Certain Property (Liechtenstein* v. *Germany)*.

10. In the first of those cases, the Court dealt with the respondent's objection founded on the lack of a dispute between the parties in paragraphs 27 to 29 of its Judgment of 11 July 1996 on the preliminary objections. After summarizing Bosnia and Herzegovina's submissions as made at the end of the proceedings, in essence requesting the Court to adjudge that Yugoslavia had variously violated the Genocide Convention and to order the respondent to make reparation for the consequences of the violations committed, the Court stated:

> "While Yugoslavia has refrained from filing a Counter-Memorial on the merits and has raised preliminary objections, it has nevertheless wholly denied all of Bosnia and Herzegovina's allegations, whether at the stage of proceedings relating to the requests for the indication of provisional measures, or at the stage of the present proceedings relating to those objections." (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 614, para. 28.)

The Court then immediately added:

> "In conformity with well-established jurisprudence, the Court accordingly notes that there persists 'a situation in which the two sides hold clearly opposite views' . . . and that, by reason of the rejection by Yugoslavia of the complaints formulated against it by Bosnia and Herzegovina, 'there is a legal dispute' between them." (*Ibid.*, pp. 614-615, para. 29.)

11. In the second case, the Court responded to a similar objection by Nigeria in paragraphs 87 to 93 of its Judgment of 11 June 1998 on the preliminary objections.

After recalling the criteria for a "dispute" enunciated in the *Mavrommatis Palestine Concessions* Judgment and in the Judgment on preliminary objections in the *South West Africa* case, as the present Judgment does in paragraph 30, the Court observed that there could be "no doubt about the existence of disputes" between the Parties over part of the course of their land boundary, adding at the same time:

> "a disagreement on a point of law or fact, a conflict of legal views . . . need not necessarily be stated *expressis verbis*. In the determination of the existence of a dispute, as in other matters, the position or the attitude of a party can be established by inference, whatever the professed view of that party." (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 315, para. 89.)

The Court then noted that: although Nigeria maintained that there was no dispute between it and Cameroon concerning the boundary delimitation "as such", it had "constantly been reserved in the manner in which it . . . presented its own position" (*ibid.*, para. 91); but that Nigeria in any event had "not indicated its agreement with Cameroon on the course of that boundary . . . and [had] not informed the Court of the position which it [would] take in the future on Cameroon's claims" (*ibid.*, p. 317, para. 93). The Court concluded its reasoning thus:

> "Nigeria is entitled not to advance arguments that it considers are for the merits at the present stage of the proceedings; in the circumstances however, the Court finds itself in a situation in which it cannot decline to examine the submission of Cameroon on the ground that there is no dispute between the two States." *(Ibid.)*

12. In the third case, the Court considered Germany's objection founded on the lack of a dispute in paragraphs 24 to 27 of its 10 February 2005 Judgment on the preliminary objections and dealt with it with dispatch. It first repeated the time-honoured pronouncements from the *Mavrommatis* and *South West Africa* cases (*Certain Property (Liechtenstein* v. *Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005*, p. 18, para. 24). It then observed: "Germany . . . for its part denies altogether the existence of a dispute with Liechtenstein" (*ibid.*, p. 18, para. 25). But it also noted that: "Germany considers . . . that, in the case of Liechtenstein, German courts simply applied their consistent case law to what were deemed German external assets under the . . . Convention" (on the Settlement of Matters Arising out of the War and the Occupation, signed at Bonn in 1952) (*ibid.*, p. 19, para. 25). For the Court, this provided a sufficient basis on which to find that "in the present proceedings complaints of fact and law formulated by Liechtenstein against Germany are denied by the latter" and to conclude that, "[i]n conformity with well-established jurisprudence . . ., '[b]y virtue of this denial, there is a legal dispute' between Liechtenstein and Germany" *(ibid.)*.

13. Three characteristics of the Court's past approach in responding to an objection alleging the absence of a dispute between the Parties may be drawn from these three precedents, which accord so strongly with one another (and the cases concerning *East Timor (Portugal* v. *Australia)*, (*Judgment, I.C.J. Reports 1995*, pp. 99-100, paras. 21-22) and *Northern Cameroons (Cameroon* v. *United Kingdom)* (*Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 27) may be cited in further support).

14. First, in determining whether there is a "dispute", the Court takes a strictly realistic and practical view, free of all hints of formalism. It is enough for the Court to find that the two parties hold opposing views on the matters referred to the Court, and this difference may be evidenced in any manner. Before the proceedings were initiated, the parties may have engaged in an official exchange, in the form of a protest or claim made by one and rejected by the other; that can help to establish the existence of a dispute and define its subject, but it is never an absolute requirement in the eyes of the Court. Thus, the Court in the *Liechtenstein* v. *Germany* case referred to bilateral consultations between the Parties before the Court was seised. In them Germany had let it be known that it did not agree with Liechtenstein, but the Court did not consider this to be conclusive: according to the Court, these consultations had "evidentiary value" in support of the conclusion it had otherwise come to, namely that a dispute existed between the Parties (*Certain Property (Liechtenstein* v. *Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005*, p. 19, para. 25). A State's position on a given matter may be inferred simply from its conduct, even if that position has not been stated *expressis verbis* (*Cameroon* v. *Nigeria*, cited above). All that matters is that the Court must find that the parties hold conflicting positions on the questions forming the subject of the application — this finding being strictly one of substance, not form — and that these questions fall *ratione materiae* within the scope of the compromissory clause or whatever other provision the applicant is relying on as the basis for the Court's jurisdiction.

15. Secondly, in determining whether a dispute exists, the Court does so as of the date on which it decides (i.e., generally, the date of its judgment on the preliminary objections). Obviously, the dispute, by definition, concerns facts and situations predating the seisin of the Court; thus, it can be stated that as a rule the dispute already exists when the proceedings are instituted. But for the Court what must matter is that the dispute exists at the date when it determines whether it has jurisdiction; more importantly, in making that determination the Court takes into account all elements — even those arising after the case was commenced — liable to show that the dispute exists and endures. That is why the Court in the cited precedents places the greatest importance on the respondent's positions on the merits of the case as expressed in the course of the judicial proceedings, including in the arguments on the preliminary objections. It

is often by reference to these stated positions that it is possible to conclude that a dispute exists. Even where a respondent remains cautious or ambiguous in the preliminary objections stage as to its final positions, this is not sufficient to convince the Court that there is no dispute (*Cameroon* v. *Nigeria*, cited above).

16. Thirdly, it has never been a concern of the Court in any of the precedents examined to ascertain the exact date on which a dispute came into being. And it is easy to see why: as a general rule, it does not matter whether the dispute first arose between the parties long or shortly before the application was filed. It is necessary and sufficient if the dispute exists when the Court is seised (which can be shown by subsequently occurring facts) and subsists on the date on which the Court determines whether the conditions for the exercise of its jurisdiction have been met.

17. True, there is one situation in which the Court concerns itself with determining the exact date on which the dispute between the parties crystallized. That is in the context of territorial disputes. But this is because in such cases the date has a significant impact in the judicial examination of the arguments: the date the dispute crystallized is the "critical date", after which actions taken by a State party to the dispute will generally be regarded as carrying no weight in establishing or proving its claim of territorial sovereignty (for example, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, pp. 697-698, para. 117).

In all other situations the notion of "crystallization of the dispute" is inoperative and there is therefore no need to determine the date on which it occurred, because — and this is self-evident — judicial reasoning is not an exercise in historical research. The only questions to be decided are those which have legal significance.

18. It might be thought that the Court departed from the rule described above in the *Liechtenstein* v. *Germany* case: in its Judgment of 10 February 2005, the Court stated that the dispute did not have its source or real cause in decisions given by German courts in the 1990s but in legal acts from the more distant past, specifically from before 1980 (*Certain Property (Liechtenstein* v. *Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005*, p. 26, paras. 51-52).

But when it made this statement the Court was not seeking to determine the date the dispute arose, or "crystallized" — and it would have served no purpose to do so. The Court was endeavouring to define the date of the "facts" or "situations" causing the dispute for purposes of applying Article 27 *(a)* of the European Convention for the Peaceful Settlement of Disputes, the basis of jurisdiction relied on. Under that provision, "disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute", i.e., prior

to 1980 in that case, are excluded from the jurisdiction of the Court. Thus, what the Court had to determine was not the date on which the dispute arose, but the date of the facts or situations to which the dispute "related". It was careful to distinguish the two issues (*Certain Property (Liechtenstein* v. *Germany), Preliminary Objections, Judgment, I.C.J Reports 2005*, p. 25, para. 48) before going on to decide the second alone, in a way favourable to the respondent's objection to jurisdiction *ratione temporis*.

19. The present Judgment, specifically that part of it dealing with the first preliminary objection, stands in stark contrast to the precedents cited above, which built up a clear, coherent, continuous and, in my opinion, convincing case law.

20. The unusually long discussion of the issue of the existence of the dispute is merely the visible evidence of a two-fold departure from the existing jurisprudence.

21. First, if the Court needed so many pages to arrive at the conclusion that there was a dispute between Georgia and Russia concerning the application of CERD, it was because it was absolutely determined to ascertain the date on which that dispute arose. In fact, much more space is devoted in the Judgment to showing — unconvincingly, I think — that no such dispute arose before August 2008 (this is the purpose served by paragraphs 23 to 105), than to establishing that it arose in August 2008, just before the case was referred to the Court (this is dealt with in just eight paragraphs (Judgment, paras. 106-113)).

22. I am still trying to identify the legal reasons for which the Court devoted so much space to deciding a pointless question, in a way counter to all the precedents. Indeed, no inference is drawn in the Judgment — nor could any be — from the intermediate conclusion set out in paragraph 105, namely, that no legal dispute arose between the Parties between 1999 and July 2008 with respect to the Russian Federation's compliance with its obligations under CERD. It is enough for such a dispute to have arisen afterwards, that is to say, not later than in August 2008, for the case to have been referred to the Court under conditions entitling it to exercise jurisdiction — provided that the other conditions on exercise were met, and this relates to other preliminary objections raised by the Respondent. Thus, strictly speaking, paragraph 105 has no legal bearing and nor do the dozens of paragraphs leading up to it (at least from paragraph 50 onwards). I would add that, even if it were to be conceded that the dispute only arose — in other words, emerged — in August 2008, which I do not think to be the case, this would not mean that Georgia was precluded, for this reason alone, from bringing claims before the Court concerning pre-August 2008 acts attributable to Russia: the date on which a dispute arises is one thing, the subject of the dispute, i.e., the facts and situations that the dispute concerns, is another, as noted in the Judgment in the *Liechtenstein* v. *Germany* case (see paragraph 18 above). Accordingly, the discussion leading up to paragraph 105 in the Judgment,

which has no actual impact on the issue of the existence of a dispute, is equally without consequence in delineating the subject *ratione temporis*.

23. The only purpose served in this case by the Court's unusual approach in examining the first preliminary objection is a purely practical one and has to do exclusively with the second preliminary objection. Since the Court is going to conclude much later (Judgment, para. 147) that Article 22 of CERD lays down conditions at least one of which must be met for it to have jurisdiction, and since this is going to lead it to consider whether Georgia, before seising the Court, attempted to settle its dispute with Russia by diplomatic negotiation, the intermediate conclusion in paragraph 105 will save the Court time in its consideration of this issue by circumscribing its examination to any actions taken by the Applicant in August 2008.

In brief, the second part of the Judgment has been shortened in proportion to the needless and overlong passages included in the first. Let it be assumed that pragmatism is well served here; the same cannot be said of legal rigour or of the requisite clarity that proscribes conflating separate issues.

24. And the second departure from the case law precedents which I regret in the part of the Judgment on the first objection is caused precisely by the confusion which the Judgment establishes to some extent between the two preliminary objections it addresses.

As I said above, the approach taken by the Court whenever it has been called upon to decide whether a dispute existed has without fail been a strictly realistic, not formalistic, one. Earlier exchanges between the parties, consultations, demands and protests may sometimes be helpful in establishing or confirming the existence of a dispute: they have never been considered an absolute requirement. A dispute exists if the parties, when they appear before the Court, hold opposing views on the questions the applicant (correctly or not) seeks to submit for judicial determination. That suffices. Whether or not the parties debated these questions beforehand does not matter, although this takes on obvious relevance where it must be determined whether the prior-negotiations requirement — if there is one — has been met. It has none where it is merely a matter of ascertaining whether a dispute exists. For example, if a State performs an act deemed by another State to be a violation of the first State's international obligations and that act is also liable to harm the second State's own rights and interests, then there is a dispute. In my view, it is not necessary for the allegedly injured State to have formally protested to the State which it considers responsible for the wrongful act. A protest may be the first step in a process to settle a dispute diplomatically; it is not a *sine qua non* for the existence itself of the dispute. When a State acts in a certain way, it is presumed to consider its action to be in compliance with its international legal obligations. If another State holds a conflicting view, there is then and there a "disagreement on a point of law or fact, a conflict of legal views", in the words of the celebrated dictum from the

Mavrommatis Judgment (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11). A State that considers itself to have been injured may therefore seise the Court without as a general rule being required first to give notice of its claims to the State having acted in a way it deems unlawful.

25. Yet the Judgment rather clearly departs from this approach to a "dispute", which I would call a "substantive" approach, in favour of one more of "form", which appears to require the applicant State before commencing proceedings to inform the respondent which of its actions are deemed wrongful by the applicant and why. Plainly, the Judgment does not require the prior notice of grievances to be given in any specific form. It is also clearly accepted (in paragraph 30) that the State asserting the claim need not specify the treaty the respondent State is accused of having breached, provided that the applicant sets out in substance the subject of the rule alleged to have been violated. Paragraphs 30 and 31 nevertheless appear to make the existence of a dispute subject to satisfaction of a two-pronged condition: one State must have asserted a claim against another, and the other must have rejected it. Even though no specific form is required for either the claim or its rejection, I think that this involves an unfortunate confusion of the question of whether a dispute exists, which the Court must answer in the affirmative if it is to be able to perform its judicial role in contentious proceedings, with the question of prior negotiations, which constitute a condition for the Court's exercise of jurisdiction only in those exceptional cases where the applicable jurisdictional clause so provides.

I fear that the Court has conflated the two questions in the present case, perhaps in part because it was intent on determining the exact date on which the dispute arose by seeking the manifestation of it in the exchanges between the Parties and by laying the groundwork, in responding to the first objection, for its response to the second.

26. Last but not least, I shall add that, if we agree to make the effort — a pointless one, in my opinion — of determining when the dispute first emerged, and regardless of the broader or narrower definition of dispute we might apply, we end up at a date well before August 2008 anyway.

The 26 July 2004 letter from the Georgian President to his Russian counterpart already clearly alleged that Russia's peacekeeping military forces in South Ossetia were not impartial and were (deliberately) failing to protect the ethnic Georgian population from attacks by Ossetian illegal armed formations. In his response of 14 August 2004, the President of the Russian Federation rejected these accusations, calling Tbilisi's accusations against the Russian peacekeeping forces "propaganda".

The statement made on 26 January 2006 by the Special Envoy of the President of Georgia to the United Nations Security Council, which is

quoted in paragraph 84 of the Judgment, is even clearer. After explicitly accusing Russia of having distanced itself from supporting the principle of Georgia's territorial integrity, the Special Envoy added that this "change of position" meant an "endorsement of ethnic cleansing of more than 300,000 citizens of Georgia". After quoting the statement, the Court observes: "the reference to 'ethnic cleansing' does not include an allegation that the Russian Federation participated in, or facilitated, that action". Granted, but great insight is hardly needed to see that the allegation that Russia was "endorsing" ethnic cleansing of "more than 300,000 citizens of Georgia" was an accusation that could be linked with Article 2 of CERD, which is not limited to prohibiting States from engaging in or sponsoring racial discrimination but also places them under an obligation to "prohibit" and "bring to an end" racial discrimination by any group or organization (Art. 2, para. 1 *(d)*).

Similarly, the statement made by Georgia's Permanent Representative to the United Nations at a press conference on 3 October 2006, which is quoted in paragraph 92, accuses the Russian peacekeeping force of lacking impartiality and draws a direct correlation between this lack of impartiality and the impossibility for "ethnically cleansed hundreds of thousands of Georgian citizens" to return to their homes. Nothing is made of this in the Judgment, in which this too is apparently not seen as an allegation relating to CERD.

This is also the case of the 26 September 2007 address by the President of Georgia to the United Nations General Assembly, in which he asserted that Abkhazia had suffered "one of the more abhorrent, horrible . . . ethnic cleansings of the twentieth century", immediately adding: "In the time since Russian peacekeepers were deployed there, more than 2,000 Georgians have perished and a climate of fear has persisted" (see paragraph 94 of the Judgment).

It is equally surprising that the Judgment accords no importance to an official statement made by the Georgian Foreign Ministry on 22 December 2006 that is referred to, but not quoted, in paragraph 93. In that statement Russia is accused of offering "an open support and armaments to the separatist regimes [which] . . . have conducted an ethnic cleansing of Georgians" and of subjecting Georgians living in Russian territory to "ethnic harassment". The accompanying comment can only be described as puzzling: the reference to "ethnic cleansing by the Russian Federation [was] with respect to events which took place in the early 1990s". But there is nothing in the statement itself to support this interpretation.

One cannot help but be equally astonished by the treatment given in the Judgment to two press releases from the Georgian Foreign Ministry, dated 19 April 2008 and 17 July 2008 and quoted in paragraphs 97 and 104, respectively, of the Judgment. The first challenged Russia's policy in regions said to have been the subject of "*de facto* annexation"; Georgia

describes that policy as one of "neglect of human rights of an absolute majority of the regions' population — victims of ethnic cleansing". The second accused Russia of seeking "to legalize results of the ethnic cleansing . . . conducted through Russian citizens in order to make easier annexation of the integral part of Georgia's . . . territory". In both cases the Court considers that the documents cited contain "no claim" of a breach by Russia of its obligations in respect of eliminating racial discrimination. It is difficult to see how the cited statements can be thought unrelated to the obligations of the State accused of violating CERD, unless "legalizing" ethnic cleansing, that is to say, taking action to ensure that its consequences continue, is to be considered outside the scope of a convention aimed at combating racial discrimination. That is not my view.

27. There is no need to point out that from the start of this series of increasingly intense accusations, i.e., beginning with President Putin's response to President Saakashvili on 14 August 2004, Russia constantly rejected the allegations and continues to do so today more than ever. Russia's position, which its Agent confirmed before the Court at the hearings, specifically on 13 September 2010, is that for some 15 years it acted in the region as facilitator of negotiations and peacekeeper between Georgia and the separatist provinces of Abkhazia and South Ossetia, that in doing so it acted with complete impartiality and without taking part, directly or indirectly, in acts of "ethnic cleansing" carried out against the Georgian population, and that furthermore, had it not so acted, Georgia would have asked the Russian forces to leave long before 1 September 2008.

28. The stage in the proceedings in which the Court's jurisdiction is examined involves no determination whatsoever of the truth or error in the arguments presented. But the dispute manifestly exists and incontrovertibly relates to "the interpretation or application" of CERD, since it is more than plausible to maintain that "ethnic cleansing" is among the types of conduct prohibited by CERD and that the obligation on the States parties is not merely to refrain from such conduct themselves but to do everything possible to put an end to it. If the date on which the dispute arose had to be ascertained — which I think is completely pointless from the legal perspective — it may possibly have been as early as in 2004, but certainly in 2006.

29. However, I cannot but agree with the Court's ultimate conclusion, namely, that on the date on which the Application was filed there was indeed a dispute between the Parties with respect to the interpretation or application of CERD, and that is why I voted, despite all the reservations expressed above, on this point in favour of the operative part of the Judgment.

(*Signed*) Ronny ABRAHAM.