Non corrigé
Uncorrected

CR 2024/21

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Monday 22 April 2024, at 10 a.m., at the Peace Palace,

President Salam presiding,

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

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le lundi 22 avril 2024, à 10 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

***en l'affaire relative à l'*Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie)**

COMPTE RENDU

Present:	President	Salam
	Vice-President	Sebutinde
	Judges	Tomka
		Yusuf
		Xue
		Bhandari
		Iwasawa
		Nolte
		Charlesworth
		Brant
		Gómez Robledo
		Cleveland
		Aurescu
		Tladi
	Judges *ad hoc*	Daudet
		Koroma
	Registrar	Gautier

Présents : M. Salam, président
M^me^ Sebutinde, vice-présidente
MM. Tomka
Yusuf
M^me^ Xue
MM. Bhandari
Iwasawa
Nolte
M^me^ Charlesworth
MM. Brant
Gómez Robledo
M^me^ Cleveland
MM. Aurescu
Tladi, juges
MM. Daudet
Koroma, juges *ad hoc*

M. Gautier, greffier

The Government of the Republic of Azerbaijan is represented by:

HE Mr Elnur Mammadov, Deputy Minister for Foreign Affairs, Republic of Azerbaijan,

as Agent;

HE Mr Rahman Mustafayev, Ambassador of the Republic of Azerbaijan to the Kingdom of the Netherlands,

as Co-Agent;

Mr Vaughan Lowe, KC, Emeritus Chichele Professor of Public International Law, University of Oxford, member of the Institut de droit international, Essex Court Chambers, member of the Bar of England and Wales,

Mr Samuel Wordsworth, KC, Essex Court Chambers, member of the Bar of England and Wales, member of the Paris Bar,

Ms Laurence Boisson de Chazournes, Professor of International Law and International Organization at the University of Geneva, member of the Institut de droit international, member of Matrix Chambers,

Mr Stefan Talmon, Professor of International Law, University of Bonn, Barrister, Twenty Essex Chambers,

as Counsel and Advocates;

Mr Stephen Fietta, KC, Fietta LLP, Solicitor Advocate of the Senior Courts of England and Wales,

Ms Oonagh Sands, Fietta LLP, member of the Bars of the State of New York and the District of Columbia, Solicitor Advocate of the Senior Courts of England and Wales,

Mr Luke Tattersall, Essex Court Chambers, member of the Bar of England and Wales,

Ms Eileen Crowley, Fietta LLP, member of the Bar of the State of New York, solicitor of the Senior Courts of England and Wales,

Mr Gershon Hasin, JSD, Fietta LLP, member of the Bar of the State of New York,

Ms Mercedes Roman, Fietta LLP, member of the Bar of the Bolivarian Republic of Venezuela,

Mr Sean Aughey, Essex Court Chambers, member of the Bar of England and Wales,

Mr Aditya Laddha, PhD candidate and assistant, Faculty of Law, University of Geneva,

Ms Miglena Angelova, Fietta LLP, member of the Paris Bar, Solicitor Advocate of the Senior Courts of England and Wales,

as Counsel;

Mr Nurlan Aliyev, Counsellor, Embassy of the Republic of Azerbaijan in the Kingdom of the Netherlands,

Le Gouvernement de la République d'Azerbaïdjan est représenté par :

S. Exc. M. Elnur Mammadov, ministre adjoint aux affaires étrangères de la République d'Azerbaïdjan,

comme agent ;

S. Exc. M. Rahman Mustafayev, ambassadeur de la République d'Azerbaïdjan auprès du Royaume des Pays-Bas,

comme coagent ;

M. Vaughan Lowe, KC, professeur émérite de droit international public (chaire Chichele) à l'Université d'Oxford, membre de l'Institut de droit international, Essex Court Chambers, membre du barreau d'Angleterre et du pays de Galles,

M. Samuel Wordsworth, KC, Essex Court Chambers, membre du barreau d'Angleterre et du pays de Galles, et du barreau de Paris,

M^me^ Laurence Boisson de Chazournes, professeure de droit international et organisation internationale à l'Université de Genève, membre de l'Institut de droit international, membre de Matrix Chambers,

M. Stefan Talmon, professeur de droit international à l'Université de Bonn, *barrister*, Twenty Essex Chambers,

comme conseils et avocats ;

M. Stephen Fietta, KC, cabinet Fietta LLP, avocat et *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

M^me^ Oonagh Sands, cabinet Fietta LLP, membre des barreaux de l'État de New York et du district de Columbia, avocate et *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

M. Luke Tattersall, Essex Court Chambers, membre du barreau d'Angleterre et du pays de Galles,

M^me^ Eileen Crowley, cabinet Fietta LLP, membre du barreau de l'État de New York, *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

M. Gershon Hasin, JSD, cabinet Fietta LLP, membre du barreau de l'État de New York,

M^me^ Mercedes Roman, cabinet Fietta LLP, membre du barreau de la République bolivarienne du Venezuela,

M. Sean Aughey, Essex Court Chambers, membre du barreau d'Angleterre et du pays de Galles,

M. Aditya Laddha, doctorant et assistant à la faculté de droit de l'Université de Genève,

M^me^ Miglena Angelova, cabinet Fietta LLP, membre du barreau de Paris, avocate et *solicitor* près les juridictions supérieures d'Angleterre et du pays de Galles,

comme conseils ;

M. Nurlan Aliyev, conseiller, ambassade de la République d'Azerbaïdjan au Royaume des Pays-Bas,

Ms Sabina Sadigli, First Secretary, Embassy of the Republic of Azerbaijan in the Kingdom of the Netherlands,

Mr Vusal Ibrahimov, First Secretary, Embassy of the Republic of Azerbaijan in the Kingdom of the Netherlands,

Mr Badir Bayramov, Second Secretary, Ministry of Foreign Affairs of the Republic of Azerbaijan,

Mr Shahriyar Hajiyev, Second Secretary, Ministry of Foreign Affairs of the Republic of Azerbaijan,

*as Adviser*s.

The Government of the Republic of Armenia is represented by:

HE Mr Yeghishe Kirakosyan, Representative of the Republic of Armenia on International Legal Matters,

as Agent;

Mr Lawrence H. Martin, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the Commonwealth of Massachusetts,

Ms Alison Macdonald, KC, Barrister, Essex Court Chambers, London,

Mr Constantinos Salonidis, Attorney at Law, Foley Hoag LLP, member of the Bars of the State of New York and Greece,

Mr Linos-Alexandre Sicilianos, Professor of International Law, Dean of the Faculty of Law of the University of Athens, member of the Institut de droit international, member of the Permanent Court of Arbitration,

Mr Pierre d'Argent, Full Professor, Université catholique de Louvain, member of the Institut de droit international, Foley Hoag LLP, member of the Bar of Brussels,

as Counsel and Advocates;

Mr Sean Murphy, Manatt/Ahn Professor of International Law, The George Washington University Law School, associate member of the Institut de droit international, member of the Bar of Maryland,

Mr Joseph Klingler, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

Mr Peter Tzeng, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

Ms Iulia Padeanu Mellon, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and Illinois,

Mr Amir Ardelan Farhadi, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

Ms Yasmin Al Ameen, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

M^me^ Sabina Sadigli, première secrétaire, ambassade de la République d'Azerbaïdjan au Royaume des Pays-Bas,

M. Vusal Ibrahimov, premier secrétaire, ambassade de la République d'Azerbaïdjan au Royaume des Pays-Bas,

M. Badir Bayramov, deuxième secrétaire, ministère des affaires étrangères de la République d'Azerbaïdjan,

M. Shahriyar Hajiyev, deuxième secrétaire, ministère des affaires étrangères de la République d'Azerbaïdjan,

comme conseillers.

Le Gouvernement de la République d'Arménie est représenté par :

S. Exc. M. Yeghishe Kirakosyan, représentant de la République d'Arménie chargé des affaires juridiques internationales,

comme agent ;

M. Lawrence H. Martin, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et du Commonwealth du Massachusetts,

M^me^ Alison Macdonald, KC, barrister, Essex Court Chambers (Londres),

M. Constantinos Salonidis, avocat au cabinet Foley Hoag LLP, membre des barreaux de l'État de New York et de Grèce,

M. Linos-Alexandre Sicilianos, professeur de droit international, doyen de la faculté de droit de l'Université d'Athènes, membre de l'Institut de droit international, membre de la Cour permanente d'arbitrage,

M. Pierre d'Argent, professeur titulaire à l'Université catholique de Louvain, membre de l'Institut de droit international, cabinet Foley Hoag LLP, membre du barreau de Bruxelles,

comme conseils et avocats ;

M. Sean Murphy, professeur de droit international titulaire de la chaire Manatt/Ahn à la faculté de droit de l'Université George Washington, membre associé de l'Institut de droit international, membre du barreau du Maryland,

M. Joseph Klingler, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'État de New York,

M. Peter Tzeng, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'État de New York,

M^me^ Iulia Padeanu Mellon, avocate au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'Illinois,

M. Amir Ardelan Farhadi, avocat au cabinet Foley Hoag LLP, membre du barreau de l'État de New York,

M^me^ Yasmin Al Ameen, avocate au cabinet Foley Hoag LLP, membre du barreau de l'État de New York,

Ms Diem Huong Ho, Attorney at Law, Foley Hoag LLP, member of the Bars of England and Wales and the State of New York,

Mr Harout Ekmanian, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

Ms María Camila Rincón, Attorney at Law, Foley Hoag LLP, member of the Bar of Colombia,

as Counsel;

HE Mr Viktor Biyagov, Ambassador of the Republic of Armenia to the Kingdom of the Netherlands,

HE Mr Andranik Hovhannisyan, Permanent Representative of the Republic of Armenia to the United Nations Office and other international organizations in Geneva,

Mr Liparit Drmeyan, Head of the Office of the Representative of the Republic of Armenia on International Legal Matters, Office of the Prime Minister of the Republic of Armenia,

Mr Aram Aramyan, Head of the Department of Protection of the Interests of the Republic of Armenia in Interstate Disputes, Office of the Representative of the Republic of Armenia on International Legal Matters, Office of the Prime Minister of the Republic of Armenia,

Ms Kristine Khanazadyan, Head of the Department for Representation of the Interests of the Republic of Armenia before International Arbitral Tribunals and Foreign Courts, Office of the Representative of the Republic of Armenia on International Legal Matters, Office of the Prime Minister of the Republic of Armenia,

Ms Zoya Stepanyan, Head of the International Human Rights Cooperation Division, Department for Human Rights and Humanitarian Issues, Ministry of Foreign Affairs,

Ms Viviana Kalaejian, Third Secretary, Embassy of the Republic of Armenia in the Kingdom of the Netherlands,

Ms Nanami Hirata, Attorney at Law, Foley Hoag LLP,

as Advisers;

Ms Jennifer Schoppmann, Foley Hoag LLP,

Ms Deborah Langley, Foley Hoag LLP,

as Assistants.

M^me^ Diem Huong Ho, avocate au cabinet Foley Hoag LLP, membre du barreau d'Angleterre et du pays de Galles ainsi que du barreau de l'État de New York,

M. Harout Ekmanian, avocat au cabinet Foley Hoag LLP, membre du barreau de l'État de New York,

M^me^ María Camila Rincón, avocate au cabinet Foley Hoag LLP, membre du barreau de Colombie,

comme conseils ;

S. Exc. M. Viktor Biyagov, ambassadeur de la République d'Arménie auprès du Royaume des Pays-Bas,

S. Exc. M. Andranik Hovhannisyan, représentant permanent de la République d'Arménie auprès de l'Office des Nations Unies et des autres organisations internationales à Genève,

M. Liparit Drmeyan, chef du bureau du représentant de la République d'Arménie chargé des affaires juridiques internationales, cabinet du premier ministre de la République d'Arménie,

M. Aram Aramyan, directeur du département de la protection des intérêts de la République d'Arménie dans les différends interétatiques, bureau du représentant de la République d'Arménie chargé des affaires juridiques internationales, cabinet du premier ministre de la République d'Arménie,

M^me^ Kristine Khanazadyan, directrice du département chargé de la représentation des intérêts de la République d'Arménie devant les tribunaux arbitraux internationaux et les juridictions étrangères, bureau du représentant de la République d'Arménie chargé des affaires juridiques internationales, cabinet du premier ministre de la République d'Arménie,

M^me^ Zoya Stepanyan, cheffe de la division de la coopération internationale en matière des droits de l'homme, département des droits de l'homme et des affaires humanitaires, ministère des affaires étrangères,

M^me^ Viviana Kalaejian, troisième secrétaire, ambassade de la République d'Arménie au Royaume des Pays-Bas,

M^me^ Nanami Hirata, avocate au cabinet Foley Hoag LLP,

comme conseillers ;

M^me^ Jennifer Schoppmann, cabinet Foley Hoag LLP,

M^me^ Deborah Langley, cabinet Foley Hoag LLP,

comme assistantes.

The PRESIDENT: Please be seated. The sitting is open.

For reasons duly made known to me, Judge Abraham is unable to sit with us today.

The Court meets today and will meet in the coming days to hear the oral arguments of the Parties on the preliminary objections raised by the Respondent in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan* v. *Armenia)*. This morning, the Court will hear the first round of oral arguments of the Republic of Armenia.

I recall that, since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case. The Republic of Azerbaijan chose Judge Kenneth Keith and the Republic of Armenia chose Professor Yves Daudet, both of whom were duly installed as judges *ad hoc* on 18 October 2021 during the phase of the present case that was devoted to a Request for the indication of provisional measures submitted by Azerbaijan. Following Judge Keith's resignation on 21 April 2023, Azerbaijan chose Judge Koroma, who was duly installed as judge *ad hoc* on 20 June 2023.

I shall now recall the principal steps of the procedure in the present case.

On 23 September 2021, Azerbaijan filed in the Registry of the Court an Application instituting proceedings against Armenia concerning alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (I shall refer to this Convention as "CERD"). To found the jurisdiction of the Court, Azerbaijan invokes Article 36, paragraph 1, of the Statute of the Court and Article 22 of CERD. Together with its Application, 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. By an Order of 7 December 2021, the Court, having heard the Parties, indicated certain provisional measures.

By an Order dated 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.

On 4 January 2023, Azerbaijan submitted a new Request for the indication of provisional measures, referring to Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court. By

an Order dated 22 February 2023, the Court, having heard the Parties, rejected the Request for the indication of provisional measures and noted that the provisional measures indicated in its Order of 7 December 2021 remained in effect.

On 21 April 2023, within the time-limit prescribed by Article 79*bis*, paragraph 1, of the Rules of Court, Armenia raised preliminary objections to jurisdiction of the Court and admissibility of the Application with respect to certain claims contained therein. Consequently, by an Order of 25 April 2023, the Court, noting that, by virtue of Article 79*bis*, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended and, taking account of Practice Direction V, fixed 21 August 2023 as the time-limit within which Azerbaijan could present a written statement of its observations and submissions on the preliminary objections raised by Armenia. The Written Statement was filed within the time-limit thus fixed.

After ascertaining the views of the Parties, the Court decided, pursuant to Article 53, paragraph 2, of its Rules, that copies of the Preliminary Objections of Armenia and the Written Statement of Azerbaijan on those objections, as well as documents annexed thereto with the exception of Annexes 13 and 14 to Armenia's Preliminary Objections, would be made accessible to the public after the opening of the oral proceedings.

I would now like to welcome the delegations of the Parties. I note the presence of the two Agents, accompanied by members of their respective delegations. In accordance with the arrangements for the organization of the proceedings, which have been decided by the Court, the hearings will comprise a first and a second round of oral argument of the Parties. The first round of oral argument will begin with the presentation of Armenia today from 10 a.m. to 1 p.m. Tomorrow, Tuesday 23 April 2024, Azerbaijan will present its first round of oral argument, from 10 a.m. to 1 p.m. The second round of oral argument of Armenia will take place on Wednesday 24 April 2024, from 4.30 p.m. to 6 p.m. and Azerbaijan will present its second round of oral argument on Friday 26 April 2024, from 10 a.m. to 11.30 a.m.

In this first sitting, Armenia may, if required, avail itself of a short extension beyond 1 p.m., in view of the time taken up by my introductory remarks.

I shall now give the floor to the Agent of Armenia, His Excellency Mr Yeghishe Kirakosyan. You have the floor, Excellency.

Mr KIRAKOSYAN:

INTRODUCTION

1. Mr President, Madam Vice President, Members of the Court, it is an honour to appear before you as the Agent of the Republic of Armenia.

2. This is the second week of hearings in the cases brought to the Court by Armenia and Azerbaijan. The Court undoubtedly has by now understood the key differences between the two cases[1]. Azerbaijan is, of course, free to accuse Armenia of whatever it wishes. But what Azerbaijan cannot do is to extend the Court's jurisdiction beyond its limits under the CERD. And it is Azerbaijan's attempt to do so that gives rise to Armenia's objections now before the Court.

3. As Armenia's counsel will explain today, Armenia's objection to the Court's jurisdiction *ratione temporis* and the admissibility of Azerbaijan's claims relates to allegations concerning the First Nagorno-Karabakh War and its immediate aftermath, a period of time that falls entirely outside the Court's jurisdiction because the CERD did not enter into force between the Parties until 15 September 1996.

4. To be clear, the First Nagorno-Karabakh War was an unspeakable tragedy that engulfed the region as the Soviet Union collapsed. After almost a century of divide and rule by the Soviet Union, the peoples of the region sought to exercise their self-determination. The conflict displaced and destroyed the lives of countless innocent Armenians and Azerbaijanis alike.

5. But that is why Armenia, Azerbaijan and the authorities in Nagorno-Karabakh committed, in what is known as the Bishkek Protocol of 5 May 1994[2] followed by the 12 May 1994 trilateral ceasefire agreement[3] and which were further confirmed by the Minsk Group, to ensure both a ceasefire and the reciprocal "return of refugees"[4]. The authorities of Nagorno-Karabakh vigorously observed the ceasefire agreement and would have welcomed the return of refugees. In contrast,

---

[1] CR 2021/25, p. 12, paras. 2-3 (Kirakosyan); CR 2023/4, p. 10, paras. 2-4 (Kirakosyan).

[2] The Bishkek Protocol (5 May 1994), available at https://web.archive.org/web/20140814055406/http:/www.nkr.am/en/document/43/.

[3] See "Regional Issues, Intensification of CSCE action in relation to the Nagorono-Karabakh conflict" in OSCE, *Budapest Document 1994: Towards a Genuine Partnership in a New Era* (21 December 1994), available at https://www.osce.org/files/f/documents/5/1/39554.pdf, PDF, p. 16.

[4] See "OSCE Minsk Group Co-Chairs issue statement", OSCE (30 November 2011), available at https://www.osce.org/mg/85548; see also "Statement by the Co-Chairs of the OSCE Minsk Group on the Twentieth Anniversary of the Ceasefire Agreement", OSCE (11 May 2014), available at https://www.osce.org/mg/118419.

Azerbaijan doubled down on its discrimination against ethnic Armenians[5], refused to permit United Nations access to the region[6] and repeatedly violated the ceasefire agreement[7], including by — in its own President's words — "starting" the Second Nagorno-Karabakh War[8].

6. But let me be equally clear: Armenia also vigorously denies that it has ever endorsed racist ideologies, illegally occupied Azerbaijan's territory, or controlled the authorities in Nagorno-Karabakh, notwithstanding Azerbaijan's Agent's attempts last week to suggest otherwise.

7. It will also not surprise the Members of the Court that Armenia has its own perspective on the origins of the conflict and the First Nagorno-Karabakh War. Armenia set out the basic facts of that conflict on pages 42-63 of its Memorial in the *Armenia* v. *Azerbaijan* case. However, Armenia took care to present those facts as what they are: part of the "Historical Context"[9] and not the "Facts Specific to Armenia's Application"[10]. Nevertheless, there can be no question that Armenia has innumerable grievances against Azerbaijan concerning the period both prior to and during the First Nagorno-Karabakh War[11].

8. It is of course well known that, during the Soviet era, ethnic Armenians in the Azerbaijan Soviet Socialist Republic endured discrimination in many forms, including restricted social services and economic resources, and suppression of their cultural and linguistic rights[12]. Armenian historical monuments also were allowed to decay or were outright destroyed, either through neglect or deliberate vandalism[13]. As a result of these policies, by 1987, dozens of Armenian towns and villages in Nagorno-Karabakh had simply "disappeared"[14]. The population of ethnic Armenians in the

---

[5] 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"), paras. 3.3-3.203.

[6] See *ibid.*, paras. 3.140-3.143.

[7] See *ibid.*, paras. 3.34-3.67.

[8] "President Ilham Aliyev was interviewed by CNN Turk TV channel", State Committee for Affairs of Refugees and Internally Displaced Persons of the Republic of Azerbaijan (15 August 2021), available at https://idp.gov.az/en/news/1254.

[9] Memorial of Armenia, p. i (Table of Contents).

[10] *Ibid.*

[11] See *ibid.*, paras. 2.1-2.85.

[12] See *ibid.*, paras. 2.35-2.44.

[13] See *ibid.*, paras. 2.40-2.44.

[14] See *ibid.*, para. 2.39.

province of Nakhijevan fell from 50,000 in 1917 to only 3,400 in 1979[15]. Likewise, the ethnic Armenian population of Nagorno-Karabakh had fallen from 94.4 per cent of the overall population in 1921 to 75.9 per cent by 1979[16].

9. None of this was a coincidence. On the contrary, it was the intended result of Azerbaijan's deliberate strategy to replace the ethnic Armenian population with Azerbaijanis. In President Aliyev's own words, when referring to his father, the former leader of the Azerbaijan Soviet Socialist Republic and President of Azerbaijan:

> "Under great leader Heydar Aliyev, the percentage of the Azerbaijani population in Nagorno-Karabakh *increased sharply*, it doubled to reach 30 percent. If Heydar Aliyev had not left for Moscow in 1982 and stayed in Azerbaijan, then the Azerbaijani population *could have reached 50 percent within 10 years*."[17]

10. As his father himself admitted: "I tried to increase the number of Azeris there, and reduce the number of the Armenians in Nagorno Karabakh"[18].

11. It is in this context of blatant racist hatred, acknowledged by Azerbaijan's contemporaneous *and* current leadership, that the ethnic Armenians of Nagorno-Karabakh began a peaceful pursuit of their right to self-determination in the late 1980s[19]. But the movement was met with violent ethnic hatred. A series of brutal pogroms of ethnic Armenians was carried out in Sumgait, Baku and Kirovabad between February 1988 and January 1990[20]. During these pogroms, Azerbaijani mobs killed, raped, maimed and burned alive hundreds of ethnic Armenians[21]. In Baku

---

[15] C. Mutafian, "The Years of Suppression: 1923-1987", in Armenia and Karabagh: The Struggle for Unity (C. Walker ed., 1991), p. 113.

[16] See *ibid*., p. 116.

[17] "Speech by Ilham Aliyev at the event marking 70th anniversary of Sumgayit", President of the Republic of Azerbaijan Ilham Aliyev (21 November 2019), available at https://president.az/en/articles/view/34894 (emphasis added).

[18] "Aliyev admits Azerbaijan worked to boost number of Azeris in Artsakh", *Horizon* (22 November 2019), available at https://horizonweekly.ca/en/aliyev-admits-azerbaijan-worked-to-boost-number-of-azeris-in-artsakh/. See also "President: Under great leader Heydar Aliyev, percentage of Azerbaijani population in Karabakh increased sharply", *Azerbaycan 24* (25 November 2019) available at https://www.azerbaycan24.com/en/president-under-great-leader-heydar-aliyev-percentage-of-azerbaijani-population-in-karabakh-increased-sharply-nbsp/.

[19] See Memorial of Armenia, paras. 2.45-2.51.

[20] *Ibid.*, paras. 2.53-2.57.

[21] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan)*, Application of Armenia (16 September 2021) (hereinafter "Application of Armenia"), paras. 29-32.

alone, Azerbaijani nationalists were allowed by local authorities to roam the streets, committing brutal murders, torture and rapes, including of little girls in front of their parents[22].

12. In 1991, Azerbaijani forces carried out "Operation Ring", which violently expelled ethnic Armenians from their homes, emptying 20 villages in the then Nagorno-Karabakh Autonomous Oblast and adjacent regions with indigenous Armenian populations[23]. Operation Ring was, in effect, aimed at the deportation of the ethnic Armenian population of Nagorno-Karabakh and adjacent regions, and was carried out with an unprecedented degree of violence[24].

13. When the Soviet Union officially dissolved, full-scale war broke out. Azerbaijan laid siege to Stepanakert in Nagorno-Karabakh, shelling civilians for six months[25]. Azerbaijani forces also massacred civilians, took hostages, desecrated cultural sites, and ethnically cleansed Azerbaijan of hundreds of thousands of ethnic Armenians[26]. As a result of the violent pogroms and the First Nagorno-Karabakh War, approximately 48,000 ethnic Armenians were displaced to Armenia from Nagorno-Karabakh, approximately 360,000 were displaced to Armenia from the rest of Azerbaijan, and tens of thousands were internally displaced from Armenia's border regions to other parts of Armenia[27].

14. But, Mr President, Members of the Court, Armenia acknowledges that the fact that Azerbaijan did all these things does not bring them within the jurisdiction of the Court. As Armenia's esteemed counsel will explain, the Court's jurisdiction is confined to the period after the CERD entered into force between the Parties in September of 1996, and Armenia has carefully respected the limits of that jurisdiction.

---

[22] Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Armenia*, UN Doc. CEDAW/C/ARM/1/Corr.1 (11 February 1997), available at https://www.un.org/esa/documents/ga/cedaw/17/country/Armenia/cedawc-arm1corr1en.htm, p. 15, para. 61.

[23] Memorial of Armenia, para. 2.68.

[24] See also S. E. Cornell, "The Nagorno-Karabakh Conflict", Report No. 46, Uppsala University, Department of East European Studies (1999), p. 26 (Application of Armenia, Annex 1); "'Operation Ring' Brings Fear, Confusion to Armenian Village", *Washington Post* (12 May 1991), available at https://www.washingtonpost.com/archive/politics/1991/05/12/operation-ring-brings-fear-confusion-to-armenian-village/8bb2d3a3-373a-4eb8-b30a-d66be5cf2f56.

[25] Memorial of Armenia, para. 2.75.

[26] *Ibid.*, paras. 2.78-2.82.

[27] *Ibid.*, para. 2.79.

15. Azerbaijan, in contrast, has not. But it cannot be, as Azerbaijan would have it, that the parties to the CERD would have wished to allow those who *later* acceded to the Convention to gain a procedural advantage by penalizing those who *earlier* acceded to the Convention. It cannot be that Armenia, in the midst of the First Nagorno-Karabakh War, agreed to immediately subject itself to possible claims by Azerbaijan in the future, while limiting itself to bringing claims concerning whatever period *after* which Azerbaijan might later unilaterally decide to accede. And it cannot be that Azerbaijan may bring unfounded allegations relating to the period between July 1993 and September 1996, but that Armenia is without remedy for the numerous acts of racial discrimination that Azerbaijan committed during that period itself.

16. Even if the Court has jurisdiction over Azerbaijan's claims prior to the entry into force of the CERD between the Parties in 1996, Armenia respectfully submits that those claims would still be inadmissible. Azerbaijan cannot be allowed to sit on its alleged grievances under the CERD for nearly *thirty years*, only to finally pursue them after many witnesses are long gone and the evidence has disappeared. And Azerbaijan particularly cannot be allowed to do this after it unilaterally changed the status quo by attacking Nagorno-Karabakh in 2020, and then expelled its remaining ethnic Armenian population in 2023 in violation of the CERD and the Court's Orders, thereby further preventing Armenia from marshalling its defence.

17. Armenia's other objections relate to Azerbaijan's claims concerning the environment and landmines, respectively. In contrast to Armenia's claims to which Azerbaijan objected last week — every one of which was supported by overwhelming evidence of mistreatment of ethnic Armenians on explicitly ethnic grounds — the claims to which Armenia objects are, on their face, incapable of falling within the provisions of the CERD.

18. With respect to landmines, the Court has already found, on two separate occasions and on the basis of a nearly identical body of "evidence", that the CERD does not even *plausibly* impose "any obligation on Armenia to take measures to enable Azerbaijan to undertake demining or to cease and desist from planting landmines"[28]. Azerbaijan has offered no new evidence suggesting that these claims are capable of falling under the CERD now. Indeed, landmines and booby traps are inherently

[28] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan* v. *Armenia), Provisional Measures, Order of 22 February 2023*, para. 22.

indiscriminate, and therefore incapable of distinguishing between members of different national or ethnic groups. Moreover, many of the landmines in question were planted by Azerbaijan, and it was Azerbaijan that vehemently obstructed demining[29] in Nagorno-Karabakh for decades by blacklisting the sole humanitarian demining organization operating in Nagorno-Karabakh, as well as penalizing its activities[30]. And while Azerbaijan is now trying to reformulate its landmine claims in a different way to survive our jurisdictional challenge, the reformulation itself is fatally flawed.

19. Azerbaijan's claims concerning the alleged destruction of the environment likewise fall outside the jurisdiction of the Court. Even if alleged environmental harm were in principle capable of constituting racial discrimination in exceptional circumstances, it could not possibly do so here. Armenia could not have engaged in racial discrimination against ethnic Azerbaijanis who, according to Azerbaijan, no longer even lived there in the relevant territories and were not intended to return. Further, as a legal matter, Azerbaijan cannot show that the alleged environmental harm involved differential treatment of human beings; cannot show that the harms it alleges were based on ethnic or national origin; and cannot show that they had any discriminatory purpose or disparate adverse effect.

20. Mr President, Members of the Court, the remainder of Armenia's presentation will proceed as follows:

21. *First*, Mr Lawrence Martin will explain why the Court lacks jurisdiction *ratione temporis* with respect to Azerbaijan's claims relating to the First Nagorno-Karabakh War and its pre-15 September 1996 aftermath.

22. *Second*, Professor Pierre d'Argent will continue Armenia's submissions on the admissibility of the same claims.

23. *Third*, Dr Constantinos Salonidis will address Armenia's objections to the Court's jurisdiction *ratione materiae* over Azerbaijan's claims regarding landmines and booby traps.

---

[29] 115th Congress First Session, Briefing of the Commission on Security and Cooperation in Europe, *Averting All-Out War in Nagorno-Karabakh: The Role of the U.S. and OSCE* (18 October 2017), available at https://www.csce.gov/wp-content/uploads/2017/12/Nagorno-Karabakh-Official.pdf, p. 12.

[30] "Baku Confiscates Afghanistan-Bound Mine Clearance Equipment", *Eurasianet* (8 July 2011), available at https://eurasianet.org/baku-confiscates-afghanistan-bound-mine-clearance-equipment.

24. *Fourth*, Ms Alison Macdonald will explain why Azerbaijan's allegations concerning the environment fall outside the CERD as well.

25. *Finally*, Professor Linos-Alexandre Sicilianos will explain why Armenia's preliminary objections have an exclusively preliminary character and thus should be decided at this stage.

26. Mr President, Madam Vice-President, Members of the Court, thank you for your kind attention. May I ask now that you invite Mr Martin to the podium.

The PRESIDENT: I thank the Agent of Armenia for his statement. I now invite Mr Lawrence Martin to take the floor. You have the floor, Sir.

Mr MARTIN:

THE COURT LACKS JURISDICTION *RATIONE TEMPORIS* OVER AZERBAIJAN'S CLAIMS RELATING TO THE FIRST NAGORNO-KARABAKH WAR AND ITS PRE-15 SEPTEMBER 1996 AFTERMATH

1. Mr President, distinguished Members of the Court, good morning. It is a privilege to appear before you on behalf of the Republic of Armenia.

2. This morning, I will address Armenia's first preliminary objection and explain why Azerbaijan's claims relating to the First Nagorno-Karabakh War and its immediate aftermath fall outside the Court's jurisdiction *ratione temporis*. In short, they do so because they concern alleged acts and omissions occurring before 15 September 1996, the date the CERD entered into force as between the Parties. Following me, Professor d'Argent will demonstrate why, even if the Court finds that it has jurisdiction over such claims (*quod non*), they would be inadmissible in any event.

3. As our Agent just said, the Court will by now have understood the key differences between this case and the one brought by Armenia that was the subject of last week's hearings. Faced with Armenia's claims, Azerbaijan has resurrected historic grievances reaching back into the 1980s and early 1990s and attempted to shoehorn them into the Court's jurisdiction under the CERD.

4. In its Memorial, Azerbaijan was conspicuously silent on the temporal limits of the Court's jurisdiction. CERD entered into force for Armenia on 23 July 1993. It entered into force for Azerbaijan, and thus between the Parties, more than three years later, on 15 September 1996. Yet

Azerbaijan's Memorial did not offer either of these dates, or any other, as the critical date for assessing the Court's jurisdiction.

5. It was only after we submitted our Preliminary Objections that Azerbaijan accepted some temporal limits on the Court's jurisdiction. The Parties now appear to agree on two basic propositions.

6. *First*, they agree that claims relating to what Azerbaijan calls "Armenia's pre-23 July 1993 conduct"[31] are outside the Court's temporal jurisdiction. Azerbaijan has now made clear that it does not allege breaches of the Convention on the basis of conduct that occurred before that date. It now says that this pre-July 1993 "conduct" is presented simply as "background and context"[32].

7. *Second*, and again to use Azerbaijan's phrase, the Parties agree that the alleged "breaches occurring entirely after 15 September 1996"[33] are within the Court's temporal jurisdiction.

8. The Parties appear still to disagree, however, on two other basic propositions.

9. *First*, what is the "critical date" for defining the Court's jurisdiction under Article 22? Azerbaijan argues that the relevant date is 23 July 1993, when the CERD entered into force for Armenia. We say the critical date is 15 September 1996, the date when the CERD entered into force for Azerbaijan, and therefore the moment from which both States were parties to the Convention.

10. *Second*, assuming the critical date for the Court's jurisdiction is indeed 15 September 1996, do Azerbaijan's claims regarding conduct occurring between 1993 and 1996 nevertheless fall within the scope of the Court's jurisdiction *ratione temporis*? Azerbaijan argues that they do, characterizing such conduct as involving breaches of a continuing or composite nature. We disagree.

11. The Court's answers to these two basic questions will allow the Parties to efficiently argue their cases in the subsequent phase of these proceedings and spare the Parties from debating — and the Court from having to deal with — the merits of claims that are outside the Court's temporal jurisdiction. They will also provide guidance for any counter-claims that Armenia may advance.

12. Let me be clear: Armenia is not asking the Court at this stage to ascertain the timing of each putative breach Azerbaijan alleges. Nor is it asking the Court to decide whether each and every

---

[31] Observations and Submissions of the Republic of Azerbaijan on the Preliminary Objections of the Republic of Armenia (21 August 2023) (hereinafter "Observations of Azerbaijan"), para. 33.

[32] *Ibid.*

[33] *Ibid.*, para. 36.

claim falls within its temporal jurisdiction or not. That exercise would be too intertwined with the merits to be decided definitively at this stage. It will be for Azerbaijan to prove, in the next phase of the proceedings, that each of the breaches it attributes to Armenia actually falls within the temporal jurisdiction of the Court. What we are asking for is jurisdictional guidance for the Parties' presentation of their claims going forward.

13. And with that, Mr President, I will now explain Armenia's position on the two basic questions in dispute between the Parties.

I. Article 22 only affords the Court jurisdiction over events that occurred after CERD's entry into force as between the Parties on 15 September 1996

14. First, does Article 22 only afford the Court jurisdiction over events that occurred after the CERD's entry into force as between the Parties on 15 September 1996? We say the answer is plainly "yes".

15. The Court, of course, is no stranger to Article 22 of CERD, which you see on the screen now. It carefully circumscribes the jurisdiction of the Court to disputes "between two or more States Parties with respect to the interpretation or application" of the CERD. The plain text of the provision makes clear that for there to be jurisdiction, the dispute must concern the application of CERD as between two or more State parties. It therefore does not apply to acts or facts that preceded CERD's entry into force as between the relevant States parties, as there could be no dispute between two States parties regarding the "interpretation or application" of the CERD when one of the States is not, in fact, a party to the treaty.

16. Basic principles of non-retroactivity[34] and reciprocity that animate the law of treaties and the law of State responsibility dictate the same conclusion. To state the obvious, Article 22 of the CERD is not a declaration under Article 36 (2) of the Court's Statute. Nor is it a "general provision for the settlement of disputes"[35], such as those found in treaties concerning the peaceful resolution of disputes[36] like the Pact of Bogotá.

---

[34] Vienna Convention on the Law of Treaties, Art. 28

[35] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 49, para. 93.

[36] See Preliminary Objections of the Republic of Armenia (21 April 2023) (hereinafter "Preliminary Objections of Armenia"), paras. 26-27.

17. Rather, Article 22 is a compromissory clause designed to address disputes concerning the interpretation and application of the CERD as between two or more States parties to it. Under Article 22, only alleged breaches that occur after the entry into force of the CERD as between two parties are justiciable as between them.

18. Azerbaijan, of course, takes a different view. It invokes Professor Rosenne to argue that Armenia confuses the so-called "commencement date" — the date on which a party is entitled to invoke a title of jurisdiction before the Court — with the "critical date" or "exclusion date" — the date defining the temporal scope of the Court's jurisdiction. For Azerbaijan, these two dates can be different under Article 22, just as they can be under an Article 36 (2) declaration as discussed by Professor Rosenne.

19. Azerbaijan relies on the statement in Professor Rosenne's treatise that States filing Article 36 (2) declarations use a specific, so-called "exclusion clause" to "determine whether, and if so to what extent, jurisdiction has been accepted for disputes having to do with . . . the period before the commencement date"[37]. Absent such a clause in either of the Article 36 (2) declarations invoked in a particular case, jurisdiction would extend to the period of time prior to the entry into force of the title of jurisdiction as between the parties.

20. But Professor Rosenne does not, in fact, support Azerbaijan's position as it relates to this case. In the same chapter that Azerbaijan cites, Rosenne also explains that:

> "States have generally drafted unilateral and bilateral titles of jurisdiction in a way which avoids this retroactivity in the jurisdiction of the Court. *This limitation is not commonly found in compromissory clauses of multilateral treaties, but the point is covered by the general non-retroactivity of a treaty* as set out now in Article 28 of the Vienna Convention on the Law of Treaties."[38]

In other words, unlike in unilateral declarations filed under Article 36 (2), in the context of multilateral conventions like the CERD, the "exclusion" is implicit. The title of jurisdiction only vests — both substantively and procedurally — upon entry into force "as between the Parties".

21. Rosenne is not alone. As Armenia underscored in its objections, the International Law Commission (ILC) noted in its commentaries to the Draft Articles on the Law of Treaties, in relation

---

[37] S. Rosenne, "Chapter 9: Jurisdiction and Admissibility: General Concepts", in *The Law and Practice of the International Court, 1920-2005* (M. Shaw, eds., fifth edition, 2016), p. 585.

[38] *Ibid.*, p. 586 (emphasis added).

to what became the Vienna Convention on the Law of Treaties Article 28, that "when a jurisdictional clause is attached to the substantive clauses of a treaty as a means of securing their due application, the non-retroactivity principle may operate to limit *ratione temporis* the application of the jurisdictional clause"[39]. And in *Ambatielos*, the Court's predecessor applied the same principle to hold that a compromissory clause does not have retroactive effect absent "any special clause or any special object necessitating retroactive interpretation"[40].

22. In its Written Observations, Azerbaijan has nothing to say in response to any of these authorities and its own authority — Rosenne — does not support its position.

23. Armenia's interpretation of Article 22 also reflects the intention of States when creating dispute resolution mechanisms in multilateral treaties. The Court does not need me to remind it that, in the words of the *Factory at Chorzów* case, "[w]hen considering whether it has jurisdiction or not, the Court's aim is always to ascertain whether an intention on the part of the Parties exists to confer jurisdiction upon it"[41]. As such, in the interpretation of a compromissory clause, "account must be taken not only of . . . the grammatical and logical meaning of the words used, but also and *more especially of the function which,* in the intention of the contracting Parties, is to be attributed to this provision"[42].

24. There is no indication in the *travaux* that the parties negotiating the CERD intended to create a jurisdictional basis for unknown future parties to invoke its provisions retroactively. Nor is there any evidence that any of the 182 States now party to the CERD ever understood Article 22 to function in this way. There are no reservations stating "exclusion clauses" to Article 22. Nor, for that matter, are there such reservations under any other comparable multilateral treaty.

25. Azerbaijan accepts that no such reservations exist but argues that this somehow supports a finding that States are content with an unpredictable, non-reciprocal and retroactive title of jurisdiction that can be invoked — decades after the fact — by any State in the world[43]. On this view,

---

[39] ILC, Draft Articles on the Law of Treaties with Commentaries, *Yearbook of the International Law Commission (YILC),* 1966, Vol. II, p. 212, para. 2.

[40] *Ambatielos (Greece* v. *United Kingdom), Preliminary Objection, Judgment, I.C.J. Reports 1952*, p. 40.

[41] *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 32.

[42] *Ibid.,* p. 24 (emphasis added).

[43] Observations of Azerbaijan, para. 31.

Article 22 is an open invitation for "surprise attacks" just like the one Azerbaijan is making here, dating back as far as 1969, when the CERD entered into force for the 27 States that had ratified or acceded to it, such as Brazil, Germany and India.

26. This cannot be squared with the widespread practice of States including temporal exclusion clauses in Article 36 (2) declarations. By our count, at least 41 out of 74 States with Article 36 (2) declarations have opted for such an exclusion[44]. Is it really possible that the same States that carefully insulated themselves from retroactive jurisdiction under Article 36 (2) happily welcome it under multilateral treaties? Obviously not. The better explanation is that States understand that compromissory clauses in multilateral treaties *already* incorporate such an exclusion under the law of treaties by operating between parties only in relation to acts or omissions that occurred after the entry into force of the treaty between those parties.

27. Aside from citing to Rosenne, Azerbaijan relies on two main arguments to challenge Armenia's understanding of Article 22: (1) that the issue has somehow already been decided by the Court; and (2) that the "*erga omnes*" character of the obligations at stake is sufficient to override any concerns about non-retroactivity and reciprocity. Both arguments are mistaken.

28. *First*, no conclusive jurisprudence has emerged in the Court's case law concerning the application of compromissory clauses in multilateral conventions to events predating the entry into force of the convention as between the parties. The issue has arguably arisen in four cases in the past three decades. When examined closely, those cases reveal that, contrary to Azerbaijan's assertions, the question before the Court is, at best, undecided.

29. Indeed, in two of those cases — *Georgia* v. *Russian Federation* and *Croatia* v. *Serbia* — the issue was argued by the parties but not decided by the Court[45]. The cases were dismissed on other grounds. But the fact that the issue continues to be raised and debated by States appearing before the Court in recent years dispels Azerbaijan's contention that the question is somehow settled.

---

[44] Declarations recognizing the jurisdiction of the Court as compulsory of Australia, Belgium, Bulgaria, Canada, Cyprus, Egypt, Finland, Germany, Greece, Guinea, Hungary, India, Italy, Japan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Malawi, Malta, Marshall Islands, Mauritius, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Pakistan, Paraguay, Philippines, Poland, Portugal, Romania, Senegal, Slovakia, Somalia, Spain, Sudan, Sweden, United Kingdom, available at https://www.icj-cij.org/declarations.

[45] *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 (I),* p. 70, paras. 22, 185; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I),* p. 3, paras. 119, 442.

30. That leaves just two other cases. The *first* is the *Bosnia Genocide* case, which Azerbaijan cites repeatedly, claiming that "the Court heard, and dismissed, a comparable objection to its jurisdiction *ratione temporis*"[46]. That case is not, in fact, "comparable" to this one. In its 1996 Judgment on preliminary objections, the Court devoted just a single paragraph to issues of jurisdiction *ratione temporis* under the Genocide Convention[47]. For Azerbaijan, this single paragraph establishes a hard and fast rule that compromissory clauses in multilateral treaties can be applied retroactively, so that jurisdiction can be exercised over the conduct of one party but not the other party during the same period of time. This reading ignores the facts of the case and the legal questions at issue.

31. Serbia — then the Federal Republic of Yugoslavia — and Bosnia both succeeded to the Genocide Convention in the same year: 1992. Although questions were raised as to the exact timing of Bosnia's succession that year, it was undisputed that the Convention applied to *both* parties during the conflict that lasted from 1992 to 1995. This temporal equality was confirmed by the Court in its subsequent Order on counter-claims, in which it found Serbia's counter-claims admissible because they pertained to "the same period" of time as Bosnia's claims[48]. Retroactivity was not the central issue.

32. This is a far cry from the situation at hand. Azerbaijan is attempting to introduce a stark imbalance between the Parties, with the Court's jurisdiction over events occurring during the interval between 1993 and 1996 extending only to Armenia, but not Azerbaijan.

33. We think Azerbaijan misreads the *Bosnia* case. In our view, the Court's statement in that case is best read as responding to Serbia's objection to the Court's jurisdiction over acts and omissions before Serbia recognized Bosnia in 1995 when the two States signed the Dayton Accords. This can be seen in the Court's reference to Serbia's lack of recognition in paragraph 26 of the Court's Judgment.

---

[46] Observations of Azerbaijan, para. 25.

[47] *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. 617, para. 34.

[48] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, (Bosnia and Herzegovina* v. *Yugoslavia), Counter-Claims, Order of 17 December 1997, I.C.J. Reports 1997*, p. 243, para. 34.

34. The *second* case is *Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*. There, the Court explicitly stated that its jurisdiction encompassed the parties' compliance with the Convention against Torture as from the date on which the applicant State, Belgium, became a party to the Convention, which was 12 years after its entry into force for Senegal. The Court stated that it

> "considers that Belgium has been entitled, with effect from 25 July 1999, the date when it became party to the Convention, to request the Court to rule on Senegal's compliance with its obligation under Article 7, paragraph 1. In the present case, the Court notes that Belgium invokes Senegal's responsibility for the latter's conduct starting in the year 2000, when a complaint was filed against Mr. Habré in Senegal"[49].

As such, Belgium did not, as Azerbaijan asserts[50], allege a breach occurring prior to the entry into force of the Convention against Torture as between the two parties. There was thus no question of retroactive application of a compromissory clause to cover the period between the respective accessions of two States to a multilateral treaty.

35. Mr President, Members of the Court, that brings me to Azerbaijan's *second* main argument against Armenia's understanding of Article 22. For Azerbaijan, Article 22 cannot be interpreted as incorporating a temporal exclusion for conduct that occurred prior to the entry into force of the CERD as between the Parties because of the "*erga omnes*" character of the Convention's obligations.

36. There is a fundamental flaw in this line of reasoning. Azerbaijan is careful to use the phrase "*erga omnes*" and assiduously avoid the phrase "*erga omnes partes*". But those are not the same thing and Azerbaijan has chosen the wrong one for purposes of this case. *Erga omnes* obligations, of course, are obligations under customary international law that a State owes to the international community as a whole. *Erga omnes partes* obligations, on the other hand, are conventional obligations owed to all parties to a multilateral treaty. The sources of the obligations are distinct, even if they may overlap substantively, such as when States codify an *erga omnes* obligation under customary international law by establishing a corresponding *erga omnes partes* obligation in a human rights treaty[51].

---

[49] See *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 458, para. 104.

[50] Observations of Azerbaijan, para. 20.

[51] L. A. Sicilianos, "The Classification of Obligations and the Multilateral Dimension of the Relations of International Responsibility", *European Journal of International Law*, Vol. 13, No. 5 (2002), pp. 1136-37.

37. As you can see in the examples on the screen, in cases under human rights treaties, the Court has insisted that an applicant's standing be based on the *erga omnes partes* character of the obligations[52]. In other words, conventional obligations. Whether or not these conventional obligations *erga omnes partes* also exist as — and even are identical to — customary obligations *erga omnes* is irrelevant.

38. Obviously, the jurisdiction established under Article 22 of the CERD does not include customary international law obligations owed *erga omnes* not to practise racial discrimination. Article 22 is clearly limited to jurisdiction over the "interpretation or application" of the Convention as such. Put simply, Article 22 limits the jurisdiction of the Court to alleged breaches of obligations *under the Convention* owed to other parties to the treaty.

39. From 1993 to 1996 Armenia owed its obligations *erga omnes partes* only to those States that were in fact *partes* to the CERD during that period of time. Because Azerbaijan was not a party to the Convention during that period of time, Armenia did not owe it any such obligations. Between 1993-1996, Azerbaijan could neither have invoked Armenia's responsibility under the CERD nor, obviously, had recourse to Article 22 of the Convention, just as Azerbaijan itself had no obligations under the CERD.

40. It is only upon entry into force of the CERD as between two parties that each State begins to owe the other *inter partes* obligations under the Convention. As between Armenia and Azerbaijan, those *inter partes* obligations have been owed only since 15 September 1996. This is because Article 22 is a treaty provision for the enforcement of treaty obligations when such obligations exist as a matter of law between the contracting parties.

41. This basic distinction between *erga omnes* and *erga omnes partes* obligations is sufficient to disprove Azerbaijan's arguments that the principle of *pacta tertiis* somehow does not apply[53].

42. To be clear, Armenia accepts that it was bound by the Convention's obligations as from 1993. Armenia also accepts that those obligations were owed *erga omnes partes* and that its obligations could have been enforced under Article 22 by any other State party also bound by the

---

[52] See *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 450, para. 69; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022 (II),* p. 477, para. 107.

[53] Cf. Observations of Azerbaijan, para. 29.

Convention at that time. But that does not mean that Azerbaijan can come in *post hoc* and raise issues with Armenia's alleged compliance with obligations that were not owed to Azerbaijan at the time the alleged conduct occurred.

43. Mr President, distinguished Members of the Court, your answer to the first legal question has wide-ranging implications. As we pointed out in our Preliminary Objections, there is a half-century gap between the entry into force of CERD for its original States parties in 1969 and its newest State party in 2019[54]. Under Azerbaijan's reading of Article 22, a State that only accepted CERD's obligations in 2019 would be free to take any of its original States parties to task for their conduct as far back as the 1970s, and even earlier. It is inconceivable that this was the intention of the parties that drafted and then joined the CERD. For your reference, at tab 2 of your judges' folder you can find a list of the 182 States parties to CERD and their widely varying dates of accession to the Convention.

44. The Court's answer to this first question will also not only affect the application of Article 22 of CERD as between its 182 States parties. It will also affect the operation of compromissory clauses in numerous other multilateral treaties in all fields of international law, and the standing of States to bring disputes before the Court based on *erga omnes partes* obligations.

45. Again, Armenia's position is not that accountability under the CERD should be denied. Rather, such accountability must be reciprocal, must not be subject to abuse, and should not reward States that delay their own acceptance of CERD obligations and the Court's jurisdiction. Accordingly, States that wish to enforce obligations *erga omnes partes* must themselves have accepted the same obligations at the relevant time. Simply put, and to quote Thirlway, "what is sauce for the goose is sauce for the gander"[55].

II. Azerbaijan's theory of "composite breaches straddling 15 September 1996" cannot establish the Court's temporal jurisdiction over its claims based on conduct that occurred prior to 15 September 1996 and after 23 July 1993

46. Mr President, Members of the Court, I now turn to the second legal question before you. In an attempt to preserve its claims relating to the interval between 1993 and 1996 even when the

---

[54] Preliminary Objections of Armenia, para. 30.

[55] H. Thirlway, "Reciprocity in the Jurisdiction of the International Court", *Netherlands Yearbook of International Law*, Vol. XV, 1984, p. 98.

critical date of 15 September 1996 is accepted, Azerbaijan attempts to reframe its case as one concerning continuing or composite breaches of international law that straddle that date.

47. Azerbaijan's reframing of its case is studiously amorphous. It refers both to "continuing" and "composite" breaches, but of course those are very different things. That said, Azerbaijan's actual focus appears to be on a theory of composite breach; in particular, the alleged composite breach consisting of a so-called "discriminatory campaign" of "ethnic cleansing" and "racial segregation". It now says:

> "Azerbaijan has presented evidence that in violation of Articles 2, 3, and 5 of CERD, Armenia carried out a long-standing, brutal, and systematic campaign of ethnic cleansing and racial segregation towards Azerbaijanis based on their ethnic or national origin. Armenia's discriminatory campaign constitutes a composite breach comprised of a series of acts and omissions violating CERD that began before and continued after 15 September 1996, throughout the period of Armenia's unlawful occupation until late 2020 when Azerbaijan liberated its territories and beyond."[56]

48. The idea seems to be that conduct occurring before 1996 can somehow be combined with conduct occurring thereafter to result in a composite breach that only crystallized after 1996. This new reframing of its case is legally misconceived and untenable. It should be rejected *in limine* at this stage of the proceedings.

49. Azerbaijan devotes just a single paragraph of its Written Observations to explaining its inchoate theory as to why all its claims concern so-called "composite breaches". It asserts simply that "the ILC has identified 'systematic acts of racial discrimination'" as an example of "composite breach"[57].

50. But as the ILC makes clear, "[c]omposite acts covered by article 15 are limited to breaches of obligations which concern some aggregate of conduct and not individual acts as such. In other words, their focus is 'a series of acts or omissions defined in aggregate as wrongful'."[58]

51. It is therefore insufficient to establish a repetition of the same acts or omissions, such as individual acts of racial discrimination. As the late Judge Crawford explained,

> "a wrongful act may repeat itself: there are distinct acts which succeed each other and are breaches of the same nature. *These are simple repeated acts*. These could be a series

---

[56] Observations of Azerbaijan, para. 39.

[57] *Ibid.*, para. 38.

[58] ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, *YILC*, 2001, Vol. II, p. 62, para. 2.

> of violations of the rights of a civil population, or of combatants who are refused the status of prisoners of war, etc."[59]

52. It follows that not just any acts of "racial discrimination" will constitute a composite act that breaches the CERD. This is clear from the way in which the CERD is formulated. Article 5 foresees specific rights that are often breached through discrete acts or omissions constituting immediate breaches. Those simple breaches are distinct from a situation in which, in the words of the ILC,

> "the obligation itself is defined in terms of the cumulative character of the conduct, i.e. where the cumulative conduct constitutes the essence of the wrongful act. Thus, apartheid is different in kind from individual acts of racial discrimination, and genocide is different in kind from individual acts even of ethnically or racially motivated killing."[60]

53. In an attempt to sweep all of its claims into the temporal jurisdiction of the Court, Azerbaijan now alleges that *all* of the impugned conduct before the critical date forms part of a single "ethnic cleansing campaign" that continued after the First Nagorno-Karabakh War[61]. But this new gambit does not withstand scrutiny.

54. As a matter of law, Azerbaijan has not even tried to articulate the component elements of the delict of "ethnic cleansing" that constitutes a composite breach of the CERD. Azerbaijan must, as a matter of law, identify the "series of acts or omissions defined in aggregate as wrongful"[62]. It must also indicate at what point in time — and only at that point in time — the aggregation of acts by Armenia crystalized in the alleged breach. Tellingly, it has not done so.

55. And it has not done so because its approach cannot be squared with the widely accepted definition of ethnic cleansing stated by the Court in *Bosnia Genocide*. There, as you well know, the Court stated that ethnic cleansing is the practice of "rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area"[63]. In other words, ethnic cleansing occurs when persons are removed from an area, rendering it ethnically homogenous. It is

---

[59] J. Crawford *et al.* (eds.), *The Law of International Responsibility* (2010), p. 391.

[60] ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, *YILC*, 2001, Vol. II, p. 63, para. 4.

[61] Observations of Azerbaijan, para. 39.

[62] ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, *YILC*, 2001, Vol. II, p. 62, para. 2.

[63] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 122, para. 190.

once a "removal" of a population has occurred that the breach of ethnic cleansing has crystalized. And on Azerbaijan's own case, such removal of persons allegedly occurred in the early 1990s and was purportedly completed by 1994, prior to the critical date[64]. Armenia, of course, strongly rejects Azerbaijan's allegations, but even taking its case at face value, there simply could not have been an ethnic cleansing that crystalized after the critical date.

56. Moreover, the limited facts that Azerbaijan alleges occurred *after* the critical date do not, even prima facie, amount to elements of any possible composite act of ethnic cleansing stretching back to before 1996. They are, at best, simple breaches of discrete obligations. For example, Azerbaijan points to sporadic instances of alleged violence along the line of contact in 2011, 2015 and 2017 as elements of an alleged campaign of ethnic cleansing reaching back to before 1996[65]. Similarly, the purported "erasure of the Azerbaijani character of" a mosque in 2019 cannot, on any view, be seen as an element of the same composite act but rather at most is a discrete breach[66]. None of this conduct has anything to do with "rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area"[67].

57. Put simply, Azerbaijan cannot rely on these other alleged acts of racial discrimination occurring after the critical date to extend the Court's jurisdiction over acts of a different character that occurred before the critical date. In other words, the theory of "composite breaches" — or, more correctly, "composite acts" — put forward by Azerbaijan cannot redefine the jurisdiction *ratione temporis* of the Court in order to include an alleged "ethnic cleansing" campaign that occurred in the early 1990s.

58. Otherwise, it would be sufficient for a State to allege a pattern or "campaign" of racial discrimination in order to defeat any temporal constraints on its claims. In fact, if Azerbaijan were right, that would mean that Armenia would be entitled to present counter-claims in this case. Those counter-claims would concern, among other things, the ethnic cleansing of nearly half a million ethnic Armenians in the First Nagorno-Karabakh War and its prelude. Indeed, if anything, it is ethnic

---

[64] Memorial of the Republic of Azerbaijan (23 January 2023) (hereinafter "Memorial of Azerbaijan"), para. 433.

[65] Observations of Azerbaijan, para. 40.

[66] *Ibid.*, para. 39.

[67] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 122, para. 190.

Armenians who might truly be said to have been the victims of a continuing campaign of ethnic cleansing, as we witnessed in September of last year with the mass expulsion of the remaining population of Nagorno-Karabakh.

59. Mr President, Members of the Court, allow me to conclude my submissions on the Court's jurisdiction *ratione temporis* by restating Armenia's two requests for relief.

60. *First*, Armenia respectfully requests that the Court adjudge and declare that the scope of its temporal jurisdiction is limited to Armenia's alleged acts and omissions occurring *after* the critical date of 15 September 1996, which is when the CERD entered into force as between Armenia and Azerbaijan. *Second*, Armenia respectfully requests that the Court reject Azerbaijan's prima facie untenable theory of a continuing or composite act of "ethnic cleansing", and therefore adjudge and declare that any and all of Armenia's conduct occurring before the critical date falls outside the Court's jurisdiction.

61. I thank the Court for its customarily kind attention. May I ask, Mr President, that you kindly call Professor d'Argent to the podium.

The PRESIDENT: I thank Mr Martin for his statement. J'invite à présent M. le professeur Pierre d'Argent à prendre la parole. Vous avez la parole, Monsieur.

M. D'ARGENT : Merci, Monsieur le président.

LES DEMANDES DE L'AZERBAÏDJAN RELATIVES À LA PREMIÈRE GUERRE DU HAUT-KARABAKH ET SES SÉQUELLES ANTÉRIEURES À 1996 SONT IRRECEVABLES

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs les Membres de la Cour, c'est toujours un honneur de prendre la parole devant vous. Ainsi que mon collègue M[e] Martin vient de le démontrer, les demandes de l'Azerbaïdjan relatives à la première guerre du Haut-Karabakh et à ses séquelles antérieures à 1996 ne relèvent pas de la compétence temporelle de la Cour. Toutefois, si ces demandes devaient relever de votre compétence, elles n'en seraient pas moins irrecevables. Et c'est ce point qu'il me revient d'aborder. Je le fais maintenant car cette question est directement liée — vous l'avez compris — à l'exception d'incompétence *ratione*

temporis. L'exception *ratione materiae* sera traitée ensuite, ce qui ne préjuge bien entendu en rien de l'ordre dans lequel la Cour préférera aborder cette exception préliminaire d'irrecevabilité.

2. Monsieur le président, des considérations de deux ordres convergent en l'espèce et conduisent, séparément mais à plus forte raison cumulativement, à devoir déclarer irrecevables les demandes de l'Azerbaïdjan portant sur les faits de la première guerre du Haut-Karabakh et à ses séquelles antérieures à 1996. D'une part, les demandes de l'Azerbaïdjan sont à ce point tardives qu'elles désavantagent clairement l'Arménie, qui pouvait s'attendre à ce qu'elles ne soient jamais présentées ni poursuivies. D'autre part, ces demandes instaurent une grave inégalité procédurale entre Parties.

I. Le retard excessif mis par l'Azerbaïdjan à faire valoir ses revendications au titre de la convention est hautement préjudiciable à l'Arménie

3. J'aborde le premier motif d'irrecevabilité, lequel est fondamental. Il tient au caractère excessivement tardif des demandes de l'Azerbaïdjan.

4. La séquence des événements est en effet la suivante :

— La première guerre du Haut-Karabakh commence à une période où aucune des deux Parties n'est liée par la convention et elle prend fin en mai 1994[68], soit quelques mois après l'accession de l'Arménie à la convention.

— L'Azerbaïdjan devient partie à la convention en septembre 1996, soit un peu plus de deux ans après la fin de la première guerre.

— L'Azerbaïdjan ne formule vis-à-vis de l'Arménie aucun grief au titre de la convention durant près d'un quart de siècle.

— En septembre 2020, l'Azerbaïdjan décide d'en finir avec la voie diplomatique et lance une attaque massive contre le Haut-Karabakh.

— La deuxième guerre du Haut-Karabakh prend fin 44 jours plus tard par la signature de la déclaration trilatérale du 10 novembre 2020.

— Le lendemain, soit le 11 novembre 2020, l'Arménie notifie à l'Azerbaïdjan ses griefs au titre de la convention, lesquels portent essentiellement sur les faits tragiques qui viennent de se dérouler.

---

[68] Protocole de Bichkek, 5 mai 1994, accessible à l'adresse suivante : https://peacemaker.un.org/armeniaazerbaijan-bishkekprotocol94.

— Un mois plus tard, le 8 décembre 2020, l'Azerbaïdjan rejette les accusations de l'Arménie et formule en retour, pour la première fois sur la base de la convention et à près de 30 ans de distance, des griefs au sujet de la première guerre du Haut-Karabakh.

5. Monsieur le président, Mesdames et Messieurs les juges : le mois prochain, il y aura exactement 30 ans que la première guerre du Haut-Karabakh a pris fin[69]. Trente années se sont écoulées depuis la fin des faits dont l'Azerbaïdjan tire essentiellement grief, tandis que 24 ans et 4 mois séparent l'adhésion de l'Azerbaïdjan à la convention[70] de sa réclamation de décembre 2020 formulée — comme je viens de le rappeler — en réaction à celle de l'Arménie.

6. La demande de l'Azerbaïdjan portant sur ces faits vieux de 30 ans n'a pas été formulée dans un délai raisonnable. En conséquence, elle doit être déclarée irrecevable.

7. Dans l'affaire de *Nauru*, la Cour a dit pour droit que « même en l'absence de disposition conventionnelle applicable, le retard d'un État demandeur peut rendre une requête irrecevable »[71]. L'Azerbaïdjan ne conteste pas cette proposition de principe qui est bien établie[72]. Dès lors, le fait que la convention ne fixe pas de délai[73] pour la présentation de réclamations est sans pertinence : la question doit être réglée au regard des principes du droit international général.

8. Et ces principes sont relativement simples : en l'absence de délai préfixe, l'irrecevabilité d'une demande présentée tardivement doit être déterminée au regard des circonstances de chaque affaire compte tenu des effets du temps sur l'égalité entre parties. En effet, une considération dominante à cet égard est le désavantage subi par le défendeur en cas de réclamation tardive. Ainsi, résumant la jurisprudence internationale sur ce point, y compris celle de la Cour dans l'affaire de *Nauru*, le regretté professeur puis juge Crawford relevait dans son troisième rapport sur la responsabilité internationale des États qu'« [u]ne réclamation ne sera pas déclarée irrecevable en

---

[69] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Arménie c. Azerbaïdjan)*, mémoire de l'Arménie (23 janvier 2023), par. 2.84 ; protocole de Bichkek, 5 mai 1994, accessible à l'adresse suivante : https://peacemaker.un.org/armeniaazerbaijan-bishkekprotocol94.

[70] Convention internationale sur l'élimination de toutes les formes de discrimination raciale, adhésion de l'Azerbaïdjan, 16 août 1996, accessible à l'adresse suivante : https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en.

[71] *Certaines terres à phosphates à Nauru (Nauru c. Australie), exceptions préliminaires, arrêt, C.I.J. Recueil 1992*, p. 253, par. 32.

[72] A. R. Ibrahim, "The Doctrine of Laches in International Law", *Virginia Law Review*, vol. 83, nº 3, 1997, p. 650.

[73] Observations de l'Azerbaïdjan sur les exceptions préliminaires de l'Arménie (21 août 2023) (ci-après « EEA »), par. 47.

raison d'un retard *à moins que l'État défendeur n'ait été clairement désavantagé* »[74]. Il soulignait également dans le même rapport à la Commission du droit international (CDI) : « Le facteur décisif est … de savoir si l'intimé pouvait *raisonnablement* s'attendre à ce que la réclamation ne soit plus poursuivie. »[75]

9. Monsieur le président, Mesdames et Messieurs les juges, il ne fait aucun doute que l'Arménie pouvait raisonnablement s'attendre à ce que l'Azerbaïdjan ne formule aucune réclamation relative à la première guerre du Haut-Karabakh au titre de la convention près de 30 ans après les faits. Et par ailleurs, l'Arménie est clairement désavantagée par le fait que l'Azerbaïdjan a formulé pour la première fois ses griefs au titre de la convention à propos de cette guerre un quart de siècle après y avoir adhéré.

10. Sur le premier point : dès lors que la convention n'était pas en vigueur entre les Parties tout au long de la première guerre du Haut-Karabakh et que l'Arménie n'y accéda que dans les derniers mois de ce conflit, l'Arménie pouvait raisonnablement s'attendre à ce qu'aucune réclamation portant sur les faits de la première guerre et ses séquelles antérieures à 1996 ne soit formulée par l'Azerbaïdjan au titre de la convention, encore moins 26 ans après la fin de cette guerre. Lorsqu'il adhéra à la convention trois ans après l'Arménie, l'Azerbaïdjan demeura totalement silencieux à cet égard et il ne formula jusque décembre 2020 aucun grief au titre de la convention à propos de la première guerre. L'Arménie pouvait donc raisonnablement s'attendre à ce qu'aucune réclamation au titre de la convention ne fût formulée et, *a fortiori*, poursuivie, par l'Azerbaïdjan à propos des événements de la première guerre. Et je relève par ailleurs qu'à aucun moment durant cette longue période l'Azerbaïdjan ne fit état de violations de la convention prétendument constituées par des faits internationalement illicites composites et qui auraient par ailleurs été continus.

11. L'Azerbaïdjan soutient pourtant que l'Arménie ne pouvait ignorer que les faits d'avant son adhésion à la convention allaient faire l'objet de réclamations compte tenu du fait qu'il aurait objecté pendant des décennies au comportement de l'Arménie[76]. L'Azerbaïdjan renvoie à plusieurs

---

[74] Nations Unies, Troisième rapport sur la responsabilité des États, par J. Crawford, doc. A/CN.4/507 et Add. 1 à 4, p. 76, par. 259 (les italiques sont de nous).

[75] *Ibid.* (Les italiques sont dans l'original.)

[76] EEA, par. 48.

documents à l'appui de cette assertion[77]. Aucun d'eux ne permet toutefois de penser que ses prétentions prendraient un jour la forme d'une réclamation au titre de la convention.

12. Parmi tous les documents mis en avant par l'Azerbaïdjan, deux seulement font référence à la convention.

13. Le premier de ces documents date de 1999, soit après l'accession de l'Azerbaïdjan à la convention et 22 ans avant la requête introductive d'instance dans la présente affaire. Il s'agit de la soumission azerbaïdjanaise au Comité de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (ci-après la « CIEDR »), un document qui n'a donc pas été adressé à l'Arménie ; et, dans ce document, il est formulé de nombreux griefs, certains remontant au début du XIX^{e} siècle.

14. Le second document date de 2016, soit 17 ans après la première soumission au Comité dont il vient d'être question. Intitulé « Illegal economic and other activities in the occupied territories of Azerbaijan », ce document fut transmis au Secrétaire général de l'ONU. Il n'a pas été adressé à l'Arménie et ne constitue en rien une réclamation bilatérale, ni l'annonce d'une telle réclamation. La convention y est mentionnée en passant au paragraphe 262, aux côtés d'autres traités protecteurs des droits de l'homme.

15. L'Azerbaïdjan se prévaut encore de trois lettres adressées respectivement en 1994, 2000 et 2020 au Conseil de sécurité. Aucune de ces lettres ne fait référence à la convention, pas plus, à nouveau, qu'à un différend bilatéral avec l'Arménie, actuel ou futur, au titre de celle-ci. S'agissant de la lettre de 1994, cela aurait d'ailleurs été quelque peu étonnant puisque l'Azerbaïdjan n'était alors pas encore lié par la convention. Il est probable que l'Azerbaïdjan comprenait alors qu'il était vain de prétendre s'en prévaloir dans ces circonstances, et alors même que l'Arménie en 1994 y était déjà partie. Par ailleurs, lorsque l'Azerbaïdjan adhéra finalement à la convention, trois ans après l'Arménie, il connaissait déjà bien sûr les faits qu'il dénonce aujourd'hui. Dès son accession à la convention, il aurait donc pu formuler une réclamation au sujet de la première guerre du Haut-Karabakh. S'il ne l'a pas fait, c'est sans doute parce qu'il comprenait que la première guerre

[77] EEA, note 97.

ne relevait pas des prévisions de la convention entre Parties ou que ses prétentions au titre de la convention étaient sans fondement à cet égard.

16. Il est donc clair, Monsieur le président, Mesdames et Messieurs les juges, que les documents mis en avant par l'Azerbaïdjan ne permettent pas de considérer que l'Arménie devait s'attendre à une réclamation, au titre de la convention, portant sur les faits s'étant produits à l'occasion de la première guerre du Haut-Karabakh. Tout au contraire, l'Arménie pouvait raisonnablement s'attendre à ce qu'une telle réclamation ne soit jamais formulée puisque la convention n'était pas en vigueur entre les Parties et à aucun moment durant ce conflit elle ne fut en vigueur entre les Parties. Et l'Arménie pouvait aussi raisonnablement s'attendre à ce qu'aucune réclamation ne soit formulée et poursuivie quelque trois décennies plus tard.

17. La lettre du 8 décembre 2020 par laquelle l'Azerbaïdjan rejeta les demandes de l'Arménie et formula pour la première fois ses griefs au titre de la convention à propos de la première guerre du Haut-Karabakh confirme que jamais auparavant il n'avait soulevé de telles prétentions au titre de la convention. Et j'invite la Cour à lire à tête reposée le dernier paragraphe de la deuxième page de cette lettre que vous trouverez sous l'onglet n° 3 de votre dossier d'audience[78]. L'Azerbaïdjan y confirme qu'aucune réclamation au titre de la convention ne fut formulée tout au long des trois décennies de médiation sous les auspices de l'Organisation pour la sécurité et la coopération en Europe (OSCE), malgré les accessions successives des Parties à la convention.

18. Pour sa part, l'Arménie n'a bien entendu pas tardé à notifier ses griefs à l'Azerbaïdjan puisqu'elle le fit — je l'ai rappelé — le lendemain de la fin de la *seconde* guerre du Haut-Karabakh, et que c'est au cours de celle-ci qu'eurent lieu les violations qui font l'objet de l'affaire dont l'Arménie a saisi la Cour, ainsi que les audiences de la semaine dernière l'ont clairement mis en lumière. D'ailleurs, dans cette première affaire, l'Azerbaïdjan n'a soulevé aucune exception d'irrecevabilité déduite d'une forme de prescription. Le passage de sa lettre du 8 décembre 2020 auquel je viens de renvoyer confirme toutefois qu'à aucun moment depuis son adhésion à la convention, l'Azerbaïdjan n'a soulevé de griefs contre l'Arménie au sujet des faits faisant l'objet de

[78] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Arménie c. Azerbaïdjan)*, requête introductive d'instance et demande en indication de mesures conservatoires (16 septembre 2021), lettre en date du 8 décembre 2020 adressée au ministre des affaires étrangères de la République d'Arménie par le ministre des affaires étrangères de la République d'Azerbaïdjan (annexe 14).

la médiation s'étant déroulée depuis 1992 sous les auspices de l'OSCE et que cette médiation ne pouvait en rien indiquer à l'Arménie que des prétentions au titre de la convention portant sur la première guerre étaient susceptibles d'être présentées un jour — bien au contraire. Par ailleurs, comme l'Azerbaïdjan l'a rappelé la semaine dernière, aucun contact bilatéral entre Parties n'eut lieu durant près de 30 ans[79]. Dans ces conditions, l'Arménie pouvait assurément s'attendre à ce que l'Azerbaïdjan ne soulève pas de différend au titre de la convention 30 ans après les faits.

19. Les faits, Mesdames et Messieurs de la Cour, sont donc très différents de ceux de l'affaire de *Nauru*, où le demandeur adressa directement au défendeur ses griefs à quatre reprises entre 1969 et 1986[80], avant de saisir la Cour en 1989, 20 ans après la première réclamation et trois ans après la dernière. Ici, l'Azerbaïdjan a invoqué la responsabilité de l'Arménie pour la première fois au titre de la convention près de 30 ans après les faits dénoncés, ceux-ci étant de plus antérieurs à sa propre adhésion à la convention. Ce n'est donc pas tant le fait que la requête introductive d'instance de l'Azerbaïdjan date de septembre 2021 qui est déterminant en l'espèce, mais plutôt le fait que, à aucun moment entre son accession à la convention et le 8 décembre 2020, l'Azerbaïdjan n'ait fait part à l'Arménie de griefs au titre de la convention à propos de faits bien antérieurs à son accession.

20. L'Azerbaïdjan soutient pourtant que, faute de contrôle territorial durant 30 ans, il aurait été empêché de formuler ses réclamations avant la fin de la guerre de 2020[81]. Toutefois, si, comme l'Azerbaïdjan le soutient, l'Arménie est coupable d'avoir déplacé en masse des habitants azerbaïdjanais au début des années 1990, on se demande bien de quelles preuves le demandeur n'aurait pas disposé avant décembre 2020. L'Azerbaïdjan pouvait assurément récolter les témoignages de ses ressortissants dès la survenance des faits qu'il dénonce. Il pouvait aussi disposer, bien avant sa requête introductive d'instance, d'images satellitaires comparables à celles jointes à ses écritures. Et en réalité, le mémoire de l'Azerbaïdjan fait fond de documents disponibles depuis des

[79] CR 2024/17, p. 23, par. 27 (Talmon).

[80] *Certaines terres à phosphates à Nauru (Nauru c. Australie), exceptions préliminaires, arrêt, C.I.J. Recueil 1992*, p. 254-255, par. 36.

[81] EEA, par. 50

années[82], ce qui prouve bien qu'il aurait pu faire part de sa réclamation avant décembre 2020. De même, les observations écrites de l'Azerbaïdjan en réponse aux exceptions préliminaires de l'Arménie ne font état d'aucun élément de preuve obtenu après la « libération » de son territoire à la suite de la guerre de 2020[83]. Comme l'Azerbaïdjan l'écrit en citant le rapport de son procureur général réalisé après la prise de contrôle territoriale de 2020, les conclusions de ce rapport ont « confirmé » les constatations factuelles faites antérieurement par des observateurs internationaux et disponibles depuis des années[84].

21. L'Azerbaïdjan était donc parfaitement en mesure de formuler des griefs à propos de la première guerre au titre de la convention dès qu'il y accéda. Ni son absence d'accès au Haut-Karabakh ni l'absence de contacts diplomatiques directs entre les Parties durant toute cette période n'excusent la présentation extrêmement tardive de la réclamation portant sur des faits de la première guerre qui prit fin en 1994.

22. Monsieur le président, j'en arrive à la deuxième considération essentielle devant être prise en compte afin de déclarer irrecevable une réclamation tardive : le fait que l'Arménie est clairement désavantagée par la réclamation extrêmement tardive de l'Azerbaïdjan.

23. Plus d'une génération s'est écoulée depuis la fin de la première guerre du Haut-Karabakh ; de nombreux témoins ne sont plus de ce monde et les preuves documentaires sont parcellaires, quand elles n'ont pas été égarées ou détruites. À cet égard, il est erroné de soutenir que le désavantage dénoncé par l'Arménie existerait aussi pour l'Azerbaïdjan[85]. En effet, comme l'a souligné l'agent de l'Arménie, les quelques preuves dont l'Arménie pouvait espérer disposer pour sa défense sont désormais entre les mains de l'Azerbaïdjan depuis la fin de la guerre de 2020 suivie, en septembre 2023, par sa prise de contrôle total du Haut-Karabakh à la suite de la violation des

---

[82] Mémoire de l'Azerbaïdjan (23 janvier 2023) (ci-après « MA »), par. 120-142. Voir, par exemple, Nations Unies, résolution 853 du Conseil de sécurité, doc. S/RES/853 (29 juillet 1993) ; Helsinki Watch, « Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh » ; Mission d'enquête de l'OSCE de 2005 et 2010 ; Nations Unies, Rapport en date du 27 juillet 1993 présenté au Président du Conseil de sécurité par le Président de la Conférence de Minsk sur le Haut-Karabakh de la Conférence sur la sécurité et la coopération en Europe *et* Déclaration du Président de la Conférence de Minsk de la CSCE [Conférence sur la sécurité et la coopération en Europe] à propos de l'offensive lancée contre la ville azerbaïdjanaise d'Agdam et des informations selon lesquelles la ville aurait été prise, annexe et appendice à Lettre datée du 28 juillet 1993, adressée au président du Conseil de sécurité par le représentant permanent de l'Italie auprès de l'Organisation des Nations Unies, S/26184 (28 juillet 1993).

[83] EEA, par. 39.

[84] MA, par. 143.

[85] EEA, par. 49.

ordonnances de la Cour[86]. Tout donne à penser que l'Azerbaïdjan fera un usage sélectif des preuves qu'il aura ainsi pu illégalement collecter afin d'avantager ses prétentions. Il est impossible, Mesdames et Messieurs les juges, dans ces conditions, de mener un débat judiciaire serein empreint d'égalité entre Parties et débouchant sur une décision faisant effectivement justice aux événements de ce passé lointain. En effet, lorsque, comme en l'espèce, le caractère tardif de la demande emporte de graves difficultés probatoires pour l'une voire pour les deux Parties, « the accomplishment of exact or even approximate justice [is] impossible »[87] et la demande doit être déclarée irrecevable.

24. L'Azerbaïdjan soutient toutefois que, compte tenu du caractère des obligations de la convention, de leur importance et de leur objet, « the balance of considerations weighs in favor of a finding of admissibility »[88]. Trois réponses à ce sujet.

25. D'une part, il est évidemment contre-intuitif de se prévaloir du caractère des obligations de la convention, de leur importance et de leur objet pour soutenir qu'une réclamation à leur propos pourrait être reportée indéfiniment et sans préjudice pour le défendeur. Au contraire, puisque la convention est un instrument protégeant des droits fondamentaux des personnes, si elle est applicable à certains faits, il est difficile de comprendre ce qui justifie le long report d'une réclamation, d'autant que le préambule de la convention rappelle la « nécessité d'éliminer rapidement » toutes formes de discrimination raciale. Ainsi, l'argument laisse songeur sur l'importance que l'Azerbaïdjan accorde aux droits fondamentaux de ses propres ressortissants. *Jura vigilantibus* s'applique donc à plus forte raison ici, et la nature de la convention ne déplace pas les principes bien établis relatifs à l'irrecevabilité des demandes tardives, au contraire, elle renforce ces principes puisque la convention est là pour protéger des personnes vivantes.

26. D'autre part, le caractère *erga omnes partes* des obligations de la convention n'amoindrit pas ces principes car, précisément, ce caractère permettait à tout autre État partie, dès l'accession de

---

[86] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), mesures conservatoires, ordonnance du 22 février 2023* ; *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Arménie c. Azerbaïdjan), demande tendant à la modification de l'ordonnance du 22 février 2023 indiquant une mesure conservatoire, ordonnance du 6 juillet 2023.*

[87] *Affaire concernant Ann Eulogia Garcia Cadiz (Loretta G. Barberie) c. Venezuela*, opinion du commissaire, M. Findlay, *Recueil des sentences arbitrales*, vol. XXIX, p. 298, accessible à l'adresse suivante : https://legal.un.org/riaa/cases/vol_XXIX/293-298.pdf.

[88] EEA, par. 51.

l'Arménie à la convention, d'invoquer sa responsabilité pour d'éventuels manquements à celle-ci. Qu'aucun État ne l'ait fait n'excuse pas la tardiveté de l'Azerbaïdjan, bien au contraire.

27. Enfin, malgré le fait que les obligations de la convention européenne de sauvegarde des droits de l'homme partagent le caractère des obligations de la CIEDR, la Cour de Strasbourg n'a pas hésité à considérer que tout demandeur devait faire diligence dans la formulation de ses demandes. La Cour de Strasbourg a ainsi considéré comme tardives des demandes relatives à de prétendues violations continues, identiques à celles dont l'Azerbaïdjan se plaint en l'espèce, et présentées six ans après l'adhésion de l'Arménie à la convention et 15 ans après les faits[89].

28. Monsieur le président, je conclus sur ce point : l'Arménie pouvait raisonnablement s'attendre à ce que les réclamations du demandeur portant sur les faits relatifs à la première guerre du Haut-Karabakh et ses séquelles antérieures à 1996 ne soient ni formulées ni poursuivies et elle est clairement désavantagée par de telles réclamations.

II. Les demandes de l'Azerbaïdjan créent une inégalité procédurale entre Parties

29. Mesdames et Messieurs les juges, ce clair désavantage résultant pour l'Arménie de la réclamation tardive de l'Azerbaïdjan est encore renforcé par le deuxième motif d'irrecevabilité existant en l'espèce. Et celui-ci tient au fait que les demandes de l'Azerbaïdjan créent une grave inégalité procédurale entre Parties.

30. En effet, selon le scénario que vous propose l'Azerbaïdjan, votre compétence vis-à-vis de l'Arménie commencerait en juillet 1993 et pourrait porter sur tous les faits commençant ou continuant après cette date. En revanche, votre compétence vis-à-vis de l'Azerbaïdjan — dans la présente affaire, comme dans l'affaire dont vous avez eu à connaître la semaine dernière — cette compétence commence trois ans plus tard, en septembre 1996, et ne peut porter que sur des faits postérieurs à cette date, qu'ils soient instantanés ou continus. L'absence de réciprocité et d'égalité entre les Parties est flagrante, et mon collègue M[e] Martin l'a parfaitement mise en lumière.

31. En outre, si la prétention de l'Azerbaïdjan en matière de compétence *ratione temporis* devait être retenue, il en résulterait une autre inégalité procédurale, et celle-ci devrait également

---

[89] *Samadov* v. *Armenia,* CEDH, requête 36606/08, décision (26 janvier 2021), par. 18, accessible à l'adresse suivante : https://hudoc.echr.coe.int/eng?i=001-208277.

conduire à déclarer irrecevables les demandes relatives à la première guerre du Haut-Karabakh et à ses séquelles antérieures à 1996. En effet, tandis que l'Azerbaïdjan pourrait — selon son approche — vous soumettre des demandes portant sur de tels faits, l'Arménie ne pourrait pas vous soumettre des demandes reconventionnelles portant sur des faits antérieurs à la date d'entrée en vigueur de la convention pour l'Azerbaïdjan, soit le 15 septembre 1996. La raison en est simple : selon l'article 80 du Règlement, la « Cour ne peut connaître d'une demande reconventionnelle que si celle-ci relève de [l]a compétence [de la Cour] ». Or, dans les deux affaires — comme je viens de le souligner —, la compétence de la Cour vis-à-vis de l'Azerbaïdjan ne commence qu'en septembre 1996.

32. Monsieur le président, Mesdames et Messieurs les juges, à suivre l'Azerbaïdjan, la présente instance se déroulerait donc en permettant au Règlement de la Cour de ne pas signifier la même chose pour chaque Partie s'agissant du même complexe factuel : l'Azerbaïdjan serait en droit de formuler des griefs au sujet de la première guerre du Haut-Karabakh, mais l'Arménie serait privée de la possibilité de formuler des demandes reconventionnelles au sujet des mêmes faits.

33. Cela heurterait profondément l'égalité des parties et la bonne administration de la justice. L'Azerbaïdjan soutient que l'égalité entre parties doit être réservée au seul champ procédural[90], mais, en admettant même que ce soit le cas — ce que l'Arménie conteste —, nous sommes clairement face à une inégalité procédurale entre Parties, une inégalité criante et inique qui débouche sur une inégalité substantielle et de fond. Ce que l'Azerbaïdjan recherche, c'est de pouvoir blâmer l'Arménie pour la première guerre du Haut-Karabakh, tout en étant à l'abri d'accusations en retour au sujet de son propre comportement lors de celle-ci. Cette stratégie procédurale doit s'arrêter au seuil de la recevabilité.

34. Pour tenter de vous convaincre que la date critique en termes de compétence — 1993 ou 1996 — importerait finalement peu, l'Azerbaïdjan a mis en avant une théorie des faits internationalement illicites, composites et continus. Et comme l'a démontré M^e^ Martin, cette théorie est inapplicable aux faits de la cause, en plus d'être juridiquement déficiente. Même appliquée dans les termes proposés par l'Azerbaïdjan aux faits que l'Arménie pourrait lui reprocher au titre de demandes reconventionnelles, cette théorie n'effacerait pas pour autant l'inégalité procédurale dont

[90] EEA, par. 45.

est marquée la présente instance. En effet, la différence temporelle entre 1993 et 1996 signifiera des choses bien différentes pour l'Arménie et pour l'Azerbaïdjan au moment d'appliquer cette théorie bancale aux faits s'étant produits durant cette période ou avant elle, ou encore aux faits continus ayant pris fin durant cette période.

35. Mesdames et Messieurs de la Cour : est-il acceptable, en termes d'égalité des parties et de bonne administration de la justice, que l'Azerbaïdjan puisse vous soumettre ses griefs au titre de la première guerre, tandis que l'Arménie ne le pourrait pas, et cela alors même que l'Arménie a pris les obligations de la convention au sérieux trois ans avant le demandeur ? Quelle est cette justice à deux vitesses s'agissant des mêmes faits et des mêmes participants à la même guerre ? L'inégalité procédurale est flagrante et elle conduit à une justice historique à sens unique.

36. Mesdames et Messieurs les juges, je conclus : l'ensemble des éléments que je viens de souligner conduisent à devoir déclarer irrecevable la réclamation azerbaïdjanaise portant sur la première guerre du Haut-Karabakh et ses séquelles antérieures à 1996.

37. Je remercie la Cour pour sa bienveillante attention. Monsieur le président, en principe, M[e] Salonidis devrait me succéder à la barre, mais peut-être souhaiterez-vous avant cela, ordonner une brève suspension d'audience ?

Le PRÉSIDENT : Je remercie Monsieur d'Argent de son intervention. Before I invite the next speaker to take the floor, the Court will observe a 10 minutes' break. The sitting is suspended.

L'audience est suspendue de 11 h 30 à 11 h 50.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite Mr Constantinos Salonidis to address the Court. You have the floor, Sir.

Mr SALONIDIS:

THE COURT LACKS JURISDICTION *RATIONE MATERIAE* OVER AZERBAIJAN'S CLAIMS CONCERNING LANDMINES AND BOOBY TRAPS

I. Introduction

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour to appear before you on behalf of the Republic of Armenia. I will address the Court today on

Armenia's objection to the Court's jurisdiction *ratione materiae* over Azerbaijan's claims concerning the alleged placement of landmines and booby traps in violation of the CERD.

2. I will begin by recalling the reasons why these claims do not fall within the Court's jurisdiction *ratione materiae*. I will be brief in that regard because, in its Written Observations, Azerbaijan did not engage with the merits of our arguments. Instead, Azerbaijan attempted to reframe its claims in two distinct ways: first, as purported evidence in support of *other* claims, and second, as alleged claims of breach of the Court's 7 December 2021 non-aggravation Order. Neither of these attempts assists Azerbaijan for reasons that I will explain.

II. Azerbaijan's claims regarding landmines and booby traps do not fall within the Court's jurisdiction *ratione materiae*

3. I now turn to my first point. Professor d'Argent recalled the standard governing the Court's jurisdiction *ratione materiae* last week when he appeared before you in the *Armenia* v. *Azerbaijan* case[91]. The standard is, of course, the same in this case. It has most recently been stated by the Court in the *Ukraine* v. *Russia* (Genocide) case, where the Court observed that, to determine whether it has jurisdiction *ratione materiae*, it must ascertain "whether the facts at issue, if established, are capable of constituting violations of obligations under the treaty"[92].

4. With regard to violations of obligations under the CERD specifically, the Court has also noted that "racial discrimination" under Article 1, paragraph 1, of the CERD

> "consists of two elements. First, a 'distinction, exclusion, restriction or preference' must be 'based on' one of the prohibited grounds, namely, 'race, colour, descent, or national or ethnic origin'. Secondly, such a differentiation of treatment must have the 'purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights'"[93].

5. As we demonstrated in our Preliminary Objections, even if the acts Azerbaijan alleges in its Memorial were established, they would not be capable of constituting racial discrimination under the CERD. This is so for at least two reasons. First, landmines and booby traps are tools of war that are

---

[91] See CR 2024/18, p. 25 *et seq.* (d'Argent).

[92] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation: 32 States intervening), Preliminary Objections, Judgment of 2 February 2024*, para. 136.

[93] *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), Judgment of 31 January 2024*, para. 195.

inherently incapable of making a distinction based on national or ethnic origin[94]. Second, any placement of such weapons, to the extent that it was done by Armenia, was done exclusively for defensive purposes[95].

6. In our Preliminary Objections, we also recalled that the Court has already held — twice — at the provisional measures stage that Azerbaijan's allegations do not even plausibly establish racial discrimination[96]. Indeed, after considering virtually the same evidence Azerbaijan cited in its Memorial in support of its claims, the Court found in its first Order on provisional measures in this case that

> "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"[97].

7. Then, in its second Order on provisional measures, the Court not only reaffirmed this conclusion, but also extended it to Azerbaijan's allegations related to booby traps[98]. We submit that the Court's finding of a lack of plausibility is highly relevant at this jurisdictional stage when considering whether this exact same conduct is capable of violating the CERD.

8. In its Written Observations, Azerbaijan chose not to respond to the merits of our arguments. Instead, it contended that Armenia "misconstrue[d]"[99] the claims set forth in the Memorial. Azerbaijan said that its claims about landmines and booby traps are not being put forward as an "independent violation" of the CERD, but rather as evidence of a "tool" that Armenia used in its alleged "campaign of ethnic cleansing"[100]. As such, Azerbaijan says that Armenia's preliminary objection is "irrelevant"[101]. However, Azerbaijan cannot simply obscure what its claims are truly all

---

[94] Preliminary Objections of Armenia, paras. 84, 86.

[95] *Ibid.*, paras. 85-86, 89, 91, 94-95.

[96] *Ibid.*, paras. 87, 97.

[97] *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.

[98] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan* v. *Armenia), Provisional Measures, Order of 22 February 2023*, para. 23.

[99] Observations of Azerbaijan, para. 61.

[100] *Ibid.*, para. 88. See also *ibid*., para. 89.

[101] *Ibid.*, para. 88.

about; rather, the Court should objectively determine for itself what Azerbaijan is claiming, to which I now turn.

III. Azerbaijan's labelling of its claims as "evidence" is unavailing

9. At the outset, it is worth recalling what Azerbaijan said throughout these proceedings about its claim up until its Written Observations last year.

10. First, in its Application instituting these proceedings, Azerbaijan asks, as you can see on your screens, that "Armenia must take all steps necessary to comply with its obligations under CERD, including" "by ceasing and desisting from the laying of landmines on the territory of Azerbaijan"[102].

11. In its Memorial, Azerbaijan uses the term "landmine" no fewer than 73 times. In its Memorial, Azerbaijan argues that Armenia violated Articles 2 and 5 of the CERD by "placing landmines . . . to prevent Azerbaijanis, for reasons of ethnic and national origin, from returning to the liberated territories"[103].

12. In its first Request for provisional measures, Azerbaijan alleged that Armenia's "ongoing operations to salt Azerbaijan's territory with more landmines" constitute violations which "pose an ongoing threat of irreparable harm to rights asserted by Azerbaijan under CERD"[104].

13. At the hearing on its first Request for provisional measures, Azerbaijan explicitly argued that these "acts [the laying of landmines] constitute acts of racial discrimination as defined in Article 1 (1) of CERD" and "violate[] [Armenia's] obligations, and the rights protected, under Articles 2 and 5 of CERD"[105]. As the Court is aware, Azerbaijan sought an order that Armenia "immediately cease and desist from endangering the lives of Azerbaijanis by planting or promoting or facilitating the planting of landmines in Azerbaijan's territory"[106].

14. In its second Request for provisional measures, Azerbaijan alleged anew that Armenia's alleged placement of landmines and booby traps "has both the purpose and effect of discriminatorily

---

[102] Application of Azerbaijan (23 September 2021), para. 99 *(b)*.

[103] Memorial of Azerbaijan, para. 446.

[104] Request for provisional measures of Azerbaijan (23 September 2021), para. 6.

[105] CR 2021/24, p. 30, para. 4 (Amirfar).

[106] Request for provisional measures of Azerbaijan (23 September 2021), para. 39 *(b)*.

impairing Azerbaijanis' fundamental rights, including rights to life and security of person and rights to return home"[107].

15. And, at the hearing on its second Request for provisional measures, Azerbaijan argued that it "has plausibly shown that Armenia has violated CERD by planting booby traps and landmines in Azerbaijan's territory that have the effect and the purpose of targeting Azerbaijanis on the basis of ethnic or national origin"[108]. Again, Azerbaijan sought from the Court an order on Armenia to "*(b)* . . . 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"[109].

16. In its Written Observations, Azerbaijan changed tack after Armenia raised its preliminary objection. It now purports to abandon all these claims that I have shown you on the screens and asks that the Court considers them as mere "evidence" of *other* claims under the CERD[110]. It further argues that it is "entitled to deference with respect to this framing" of its claims[111]. But as the Court is well aware, there is no basis for any such deference. The Court has repeatedly held that "[i]t is for *the Court itself* to determine on an *objective* basis the subject-matter of the dispute between the parties, by isolating the real issue in the case and identifying the object of the applicant's claim"[112]. The Court has also repeatedly affirmed that it is "entitled to interpret the submissions of the parties, and in fact is *bound* to do so; this is one of the attributes of its judicial functions"[113].

---

[107] Request for provisional measures of Azerbaijan (3 January 2023), para. 2 (emphasis added). See also *ibid*., paras. 7, 35.

[108] CR 2023/3, p. 27, para. 2 (Amirfar).

[109] Request for provisional measures of Azerbaijan (3 January 2023), para. 43.

[110] Observations of Azerbaijan, paras. 61, 88.

[111] Memorial of Azerbaijan, para. 89.

[112] *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. 87, para. 42 (emphasis added). See also *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 292, para. 48; *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. 59; *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 (II)*, p. 558, para. 24.

[113] *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II)*, p. 635, para. 43 (emphasis added); *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. 52; *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (New Zealand *v.* France) *Case (New Zealand* v. *France), Order of 22 September 1995, I.C.J. Reports 1995,* p. 288, para. 56.

17. In doing so, the Court "examines the application as well as the written and oral pleadings of the parties, while giving particular attention to the formulation of the dispute chosen by the applicant"[114]. But the Court has specifically held that it "will *not* confine itself to the formulation by the Applicant when determining the subject of the dispute"[115]. And indeed it has in the past framed disputes before it in a manner different than how the applicant wished to formulate them[116].

18. Critically, these statements of principle apply not just to the dispute as a whole, but also to any specific claim or aspect of the dispute. In *Immunities and Criminal Proceedings*, for example, the Court rejected Equatorial Guinea's framing of one of its claims, and proceeded to hold that it did not have jurisdiction *ratione materiae* to adjudicate its merits[117].

19. Armenia therefore respectfully submits that the Court should assess Azerbaijan's reformulation of claims in its Written Observations against the same claims as advanced in the Memorial, in the Application, written and oral pleadings of Azerbaijan on its two Requests for provisional measures, and as responded to by Armenia's pleadings throughout these proceedings. In our respectful submission, these materials make clear that notwithstanding its representations now, Azerbaijan has claimed that Armenia's alleged use of landmines and booby traps in and of itself violates the CERD. As such, those claims should be rejected for all the reasons I have previously set out.

20. But even if the Court were to accept Azerbaijan's attempt to recharacterize its claims as purported "evidence" of other claims, it is difficult to see how the same factual allegations could not be good enough to stand as distinct claims of breach of CERD, but be good enough as evidence for other claims of breach of CERD. If there is any reason to see them differently at this stage, Azerbaijan has not offered it.

---

[114] See e.g. *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 (II)*, p. 575, para. 24.

[115] *Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 449, para. 30 (emphasis added).

[116] See e.g. *Right of Passage over Indian Territory (Portugal* v. *India), Merits, Judgment, I.C.J. Reports 1960,* pp. 33-34.

[117] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 292, para. 102.

21. Judicial propriety and efficiency thus underscore the disposal of Azerbaijan's claims in this regard at the preliminary phase, however one wishes to label them. An applicant cannot invoke — as Azerbaijan does in this case — irrelevant factual allegations in order to establish jurisdiction over its claims. This is why the Court's test for jurisdiction *ratione materiae* accepts *pro tem* factual allegations as true. If such claims, however formulated, are not capable of breaching the treaty in question, then there is no need for the Court or the parties to waste time and resources proceeding to their merits.

IV. Azerbaijan cannot salvage its claims by labelling them as a breach of the Court's non-aggravation Order

22. Mr President, this brings me to my last point. In a last-ditch attempt to salvage its landmines and booby traps claims, Azerbaijan in its Written Observations argues that it also asserts them as an "independent" breach of the Court's 7 December 2021 Order on provisional measures, which requires the Parties to "refrain from any action which might aggravate or extend the dispute . . . or make it more difficult to resolve"[118].

23. Azerbaijan argues that the source of this obligation — the Court's provisional measures Order and so presumably Article 41 of the Court's Statute — is separate from the CERD. As such, even if the planting of landmines and booby traps in this case does not fall within the scope of the CERD, Azerbaijan can still claim the same conduct as falling within the scope of the Court's non-aggravation order[119].

24. We of course do not dispute that the Court has jurisdiction to adjudicate a breach of a non-aggravation measure indicated pursuant to Article 41 of the Statute[120]. But, unlike the recent *Ukraine* v. *Russia* (Genocide) case, for example, here we have a party that seeks to raise as an "aggravation" the very same alleged conduct that the Court rejected in not one, but two Orders on provisional measures.

---

[118] Observations of Azerbaijan, para. 92.

[119] *Ibid*.

[120] *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), Judgment of 31 January 2024*, paras. 397-398.

25. This is an important distinction because non-aggravation measures are subordinate to the substantive provisional measures indicated by the Court[121]. So Azerbaijan cannot assert a claim for non-aggravation of the dispute by virtue of conduct that did not justify the indication of the substantive measure it twice requested from the Court.

26. Such a claim would also be hopeless on the merits. It would be a claim that would necessarily capture *only* allegations of placement of landmines and booby traps since the date of the Court's Order, 7 December 2021 (and not the "signing of the Trilateral Statement", as Azerbaijan casually asserts in its Written Observations[122]). It would thus also not be a claim over the alleged use of landmines during the alleged occupation[123]. Armenia strongly denies Azerbaijan's claims of placement of landmines and booby traps since 7 December 2021[124], and it is no coincidence that Azerbaijan literally provided no evidence — not a single citation or source — in its Memorial to support them[125].

27. But the overarching point, Mr President, distinguished Members of the Court, is that the Court's jurisdiction over Azerbaijan's claim for landmines and booby traps, asserted as a violation of the non-aggravation Order, is not a response to Armenia's preliminary objection. The Court can very well uphold Armenia's objection to its jurisdiction over Azerbaijan's claims relating to landmines and booby traps, while simultaneously maintaining its jurisdiction over Azerbaijan's non-aggravation claim. The one does not defeat the other and Armenia is content to defeat that latter claim on the merits.

28. These reflections complete my presentation, Mr President and distinguished Members of the Court. I thank you for your kind attention and ask you to call Ms Macdonald to the stand.

---

[121] See e.g. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 14 June 2019, I.C.J. Reports 2019 (I),* para. 28; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I),* para. 62; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006*, p. 16, para. 49.

[122] Observations of Azerbaijan, para. 92.

[123] See e.g. Memorial of Azerbaijan, para. 274.

[124] CR 2023/4, p. 11, para. 7 (Kirakosyan); CR 2023/4, p. 12, para. 3 (Murphy); Letter *from* the Minister of Defence of the Republic of Armenia *to* Mr Yeghishe Kirakosyan, Representative of the Republic of Armenia on International Legal Matters (25 January 2023), p. 1 (certified translation from Armenian) (Supplemental annexes submitted by Armenia (26 January 2023), Annex 1).

[125] See Memorial of Azerbaijan, paras. 567-570.

The PRESIDENT: I thank Mr Salonidis for his statement. I now invite Ms Alison Macdonald to take the floor. You have the floor, Madam.

Ms MACDONALD:

THE COURT LACKS JURISDICTION *RATIONE MATERIAE* OVER AZERBAIJAN'S CLAIMS CONCERNING ALLEGED ENVIRONMENTAL HARM

I. Introduction

1. Mr President, Madam Vice-President, Members of the Court, it is an honour for me to appear before you again on behalf of the Republic of Armenia. I will address you on why Azerbaijan's claims arising out of alleged environmental harm fall outside the Court's jurisdiction *ratione materiae*.

II. The harms alleged by Azerbaijan and the factual context in which they occurred

2. The starting-point is to look closely at the alleged environmental harms that Azerbaijan seeks to portray as racial discrimination. Azerbaijan complains of a multitude of alleged harms which, it says, have occurred in what it calls the "Liberated Territories". To take them in the order in which they appear in the Memorial, Azerbaijan complains of:

(a) destruction and degradation of forests[126];

(b) destruction and degradation of natural monument trees[127];

(c) destruction and pillage of water infrastructure[128];

(d) destruction and degradation of agricultural land and vineyards[129];

(e) degradation of land and water quality through strip mining activities[130]; and

(f) neglecting and mismanaging the water infrastructure, particularly the Sarsang Reservoir, allegedly affecting the Azerbaijani population living downstream[131].

---

[126] Memorial of Azerbaijan, paras. 303-316.

[127] *Ibid.*, paras. 317-318.

[128] *Ibid.*, paras. 319-322.

[129] *Ibid.*, paras. 323-328.

[130] *Ibid.*, paras. 329-331.

[131] *Ibid.*, paras. 332-344.

3. On Azerbaijan's case, all this harm allegedly occurred in the three decades in which it describes Armenia as having occupied the territory. Azerbaijan describes Armenia as conducting an "ethnic cleansing" campaign, through the First Nagorno-Karabakh War, to create "an ethnically 'pure' Armenian settlement" in Nagorno-Karabakh[132]. And its case is that "virtually no Azerbaijanis remain[ed]" in that territory after 1994[133].

4. Time and again in the Memorial, we see Azerbaijan referring to the fact that the alleged environmental damage was done during this period of so-called "occupation". So, for example, it claims that:

(a) "8,900 hectares of forest [were] verified as lost from the then-occupied territories *during the occupation period*"[134].

(b) "Of the registered natural monument trees in the then-occupied territories, at least 38 were *destroyed during Armenia's occupation*"[135].

(c) "'[T]he total amount of agricultural land lost from productivity' *during the occupied period* between 1995 and 2015 [was] 54,544 hectares"[136].

(d) "'[H]undreds of kilometres' of irrigation canals in the liberated territories were abandoned, unmaintained, and blocked *during Armenia's occupation*"[137].

5. Now Armenia would draw your attention to three particular features of this situation. On Azerbaijan's case:

6. *Firstly*, when the alleged racial discrimination took place, Armenia controlled the relevant area, ethnic Armenians lived there, and ethnic Azerbaijanis did not. In other words, the alleged victims of this racially discriminatory environmental harm were not there to experience it. With respect, that is quite a peculiar scenario for racial discrimination.

7. *Secondly*, on Azerbaijan's case, ethnic Azerbaijanis were allegedly excluded from the territory by Armenia, not through any discriminatory harm to the environment, but through sheer

---

[132] *Ibid.*, para. 93.

[133] *Ibid.*, paras. 54, 93.

[134] *Ibid.*, para. 303 (emphasis added).

[135] *Ibid.*, para. 317 (emphasis added).

[136] *Ibid.*, para. 324 (emphasis added).

[137] *Ibid.*, para. 333 (emphasis added).

military force. So for example, Azerbaijan's Memorial speaks of Armenia "violat[ing] CERD by preventing Azerbaijanis from accessing those territories throughout the entire course of its almost thirty-year occupation"[138]. And it goes on to allege that

> "the Armed Forces of Armenia, including its Installed Regime, sealed off the then-occupied territories from the rest of Azerbaijan, using physical barriers, military fortifications, landmines, and snipers, and deploying threats and intimidation along the Line of Contact and beyond to reinforce the message that Azerbaijanis could never return to those territories"[139].

8. And this leads to a *third* element. On Azerbaijan's case, the so-called "occupation" was no mere temporary state of affairs. On the contrary, according to Azerbaijan, Armenia intended this situation to be permanent — as we just saw on screen, the alleged intention was "that Azerbaijanis could never return to those territories". So in other words, on Azerbaijan's case the alleged environmental harm was never intended to be experienced by Azerbaijanis; it was going to be experienced by a permanently settled ethnic Armenian population.

III. The alleged harm, even if true, does not constitute differential treatment of human beings

9. So turning to the law, to survive this jurisdictional phase, Azerbaijan needs to show that the acts and omissions of which it complains are capable of amounting to a distinction, exclusion, restriction or preference — that is, a differential treatment of human beings. Then, it needs to show that any such thing was "based on" ethnic or national origin.

10. The first requirement here is fundamental. CERD is a human rights instrument. It concerns, as the Court has made clear, "a differentiation of treatment"[140] of which human beings are the object. Azerbaijan's submission is that Armenia violated Articles 2-7 of the CERD through the "establishment of an ethnically pure Armenian settlement", notably by "differential destruction and degradation of the natural environment in areas where Azerbaijanis resided *prior to* Armenia's ethnic cleansing and occupation"[141].

---

[138] *Ibid.*, para. 446.

[139] *Ibid.*, para. 449.

[140] *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), Judgment of 31 January 2024*, para. 195.

[141] Memorial of Azerbaijan, para. 591 (1) *(a)* (iii) (emphasis added).

11. But the fact that areas from which Azerbaijanis departed were allegedly the subject of environmental harm does not constitute, Armenia says, any "differentiation of treatment" of human beings since, on Azerbaijan's own case, no Azerbaijanis were living in those areas when the relevant acts allegedly took place. In short, there could be no differential treatment of ethnic Azerbaijanis as compared with others since, on Azerbaijan's case, there were no ethnic Azerbaijanis present to experience such treatment.

IV. The alleged harm, even if true, was not "based on" ethnic or national origin

12. So that is the first way in which Azerbaijan's case, by which the absent Azerbaijanis were subjected to discrimination, runs into trouble under the CERD.

13. The next problem is that, assuming for the sake of argument that there *was* a differentiation of treatment of human beings, it would only be capable of falling under the CERD if Azerbaijan could establish that the acts in question are capable of constituting a "distinction, exclusion, restriction or preference *based on*" one of the grounds prohibited by Article 1 of the CERD.

14. Azerbaijan does not suggest that the harms it complains of were "based on" any of the protected grounds, in the sense that that was their *stated purpose*. We recall that the Court indicated, in its Judgment of January this year in the first *Ukraine* v. *Russia* case, that:

> "A measure whose stated purpose is unrelated to the prohibited grounds contained in Article 1, paragraph 1, does not constitute, in and of itself, racial discrimination by virtue of the fact that it is applied to a group or to a person of a certain race, colour, descent, or national or ethnic origin."[142]

Here, Azerbaijan has not asserted that specific forests were cut, particular mines were exploited or individual farms were degraded for the stated purpose of discriminating against ethnic Azerbaijanis.

15. Instead, Azerbaijan tries to argue that

> "the *purposeful concentration* of such development and resulting environmental harms in areas that were predominantly populated by Azerbaijanis prior to occupation — while areas that had been populated by Armenians remained comparatively unharmed — was 'based on' the fact that the populations of these areas were Azerbaijani"[143].

---

[142] *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), Judgment of 31 January 2024*, para. 196, referring to *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*, pp. 108-109, para. 112.

[143] Observations of Azerbaijan, para. 77.

Indeed, says Azerbaijan, "[t]he *only* credible inference" is that Armenia's conduct was "purposely aimed at Azerbaijanis as an ethnic or national group"[144], even though Azerbaijan's case is of course that Azerbaijanis did not live in the relevant areas at the time.

16. Here, it may be useful to pause and consider the proper approach, at jurisdiction stage, when dealing with such assertions. It is one thing to accept, for this week's purposes, the *facts* alleged by Azerbaijan — that is, their allegations as to what was done and where. That is a necessary part of the exercise. But it is quite another thing to ask the Court to accept completely unsupported characterizations of the purpose behind the acts complained of.

17. As we have seen, Azerbaijan claims that there was a "purposeful concentration" of environmental harm in areas where ethnic Azerbaijanis previously lived. But it provides no evidence to justify its use of the term "purposeful". It simply asks the Court to proceed on the basis that decisions about where to mine, for example, or to log, or to rebuild infrastructure, were not based simply on the location of the resources in question or the existential needs and the right to development of the beleaguered and isolated ethnic Armenian population, rather, in the words we just saw, it claims that these were "'based on' the fact that the populations of those areas were Azerbaijani" *in the past*.

18. Perhaps alive to the problem of showing that acts were "aimed at" people who were allegedly not there to be aimed at, and who Azerbaijan says Armenia was blocking from returning in the future, Azerbaijan also sets great store by its allegations that Armenia mismanaged the water supply from the Sarsang Reservoir[145].

19. Azerbaijan's focus on these allegations is no doubt in part because, unlike the other alleged harms, this is one which, on its case, had effects outside the so-called occupied territories. But it provides yet another example of an allegation where Azerbaijan has provided no evidence at all that the conduct was "based on" ethnic or national origin. Worse than that, Azerbaijan's own evidence *undermines* that proposition. The resolution of the Parliamentary Assembly of the Council of Europe, on which Azerbaijan relies heavily[146], characterizes the alleged mismanagement of the reservoir as

---

[144] Memorial of Azerbaijan, para. 468 (emphasis added).

[145] See Memorial of Azerbaijan, paras. 480-481. See also Observations of Azerbaijan, para. 74.

[146] See Observations of Azerbaijan, para. 74; Memorial of Azerbaijan, paras. 334-336.

a "tool[] of *political* influence" and a "hostile act by *one State* towards *another*"[147]. If that resolution is correct in its characterization — which Armenia would of course not accept — then any such action was taken for political purposes, not for a purpose that relates to ethnic discrimination.

V. The alleged harm, even if true, had no discriminatory purpose or effect

20. The *next* legal hurdle faced by Azerbaijan is the question of whether the acts complained of are capable of having the "purpose or effect" of nullifying or impairing Azerbaijanis' equal enjoyment of human rights and fundamental freedoms. Here, again, Azerbaijan's case collapses under the weight of its logical inconsistencies.

21. We can begin by recalling the Court's careful analysis in its recent decision in the first *Ukraine* v. *Russia* case, which you see on your screens. The Court noted that "racial discrimination may result from a measure which is neutral on its face, but whose *effects show that it is 'based on' a prohibited ground*"[148]. The Court noted that where convincing evidence shows that an apparently neutral measure produces a "disparate adverse effect" on the rights of a protected person or group, then this may amount to racial discrimination "unless such an effect can be explained in a way that does not relate to the prohibited grounds in Article 1, paragraph 1". The Court emphasized that "[m]ere collateral or secondary effects on persons who are distinguished by one of the prohibited grounds do not, in and of themselves, constitute racial discrimination within the meaning of the Convention"[149].

22. In light of the Court's consistent case law on this issue, there are several points which Armenia asks you to bear in mind when considering Azerbaijan's environmental claims alongside the "purpose" or "effect" requirement:

(a) First, the showing of disparate effects must still be directed at establishing that the conduct complained of was "based on" a prohibited ground.

---

[147] Council of Europe, Parliamentary Assembly, resolution 2085(2016), Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water (26 January 2016) (emphasis added).

[148] *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), Judgment of 31 January 2024*, para. 196, referring to *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*, pp. 108-109, para. 112 (emphasis added).

[149] *Ibid.*

(b) Second, the showing of a disparate effect will not suffice if there is an objective and reasonable explanation for the disparity that does not relate to the prohibited grounds.

(c) And third, mere collateral or secondary effects on a particular group are not enough. As counsel for Azerbaijan put it last week:

> "In general terms, unless the allegations and evidence relied on show something other than mere collateral or secondary effects . . . the Court should conclude that it lacks jurisdiction *ratione materiae* over the claims because they are not capable of constituting racial discrimination within the meaning of Article 1 (1)."[150]

23. As to the issue of *discriminatory purpose*, we have already noted that Azerbaijan's own case is that the environmental harm it complains of took place during a three-decade so-called "occupation" by Armenia of territory which it intended permanently to settle with ethnic Armenians, to the exclusion of Azerbaijanis. In these circumstances, it is just as hard for Azerbaijan to show that the alleged harmful acts had a discriminatory *purpose* as it is to show that those acts were "based on" ethnic or national origin.

24. Again, we can take the allegations relating to the Sarsang Reservoir as an example. Relying solely on inferences, Azerbaijan claims that Armenia's alleged mismanagement of the water supply from the reservoir — assuming that Armenia had any control over it — purposely targeted ethnic Azerbaijanis to suffer from a lack of water[151]. But again, such an inference is contradicted by Azerbaijan's own evidence, along with basic logic.

25. The Explanatory Memorandum to the 2016 Parliamentary Assembly of the Council of Europe resolution reports that the Sarsang Reservoir, located in Nagorno-Karabakh, supplied water to "about 138,000 inhabitants of Nagorno-Karabakh and about 400,000 people in other areas of Lower Karabakh in Azerbaijan"[152]. It states that the damage to the reservoir

> "occurred during the war (1992-1994), most likely because of explosives, while fighting took place around the canal. The fact is that after the war the damage was never repaired. In any event, under these circumstances, water from the Sarsang reservoir cannot be used for irrigation *by anyone* until the canal has been repaired."[153]

---

[150] CR 2024/17, pp. 36-37, para. 5 *(b)* (Wordsworth).

[151] See Observations of Azerbaijan, paras. 74, 76. See also Memorial of Azerbaijan, paras. 332-344.

[152] Council of Europe, Parliamentary Assembly, Committee on Social Affairs, Health and Sustainable Development, *Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water*, Doc. 13931 (12 December 2015), available at https://pace.coe.int/en/files/22290, para. 9.

[153] *Ibid.*, para. 19 (emphasis added).

26. In other words, on Azerbaijan's own evidence, the problems with the water supply from this war-damaged reservoir affected, among others, the entire ethnic Armenian population of Nagorno-Karabakh. In those circumstances, it is logically impossible, we say, for Azerbaijan to show that the purpose of the alleged mismanagement of the reservoir was to disadvantage only *ethnic Azerbaijanis* living further downstream. This ignores the inconvenient fact that those living in the immediate vicinity of the reservoir — the entire ethnic Armenian population of the area — suffered just as much, if not more.

27. And so the Sarsang Reservoir example illustrates, we suggest, some key flaws in Azerbaijan's attempts to argue that the acts it complains of had any discriminatory *purpose*.

28. Given this problem, it is not surprising that Azerbaijan falls back on the argument that those harms amount to discrimination because they had a disparate adverse *effect*. This argument also fails, however, for a number of reasons.

29. Most fundamentally, it fails because Azerbaijan cannot actually *show* any disparate adverse effect of the acts it complains of. And here we must turn back to Azerbaijan's contorted case on the facts. I have already addressed you on the illogicality of Azerbaijan's attempt to characterize acts as discriminatory which, on its own case, were done on territory where Azerbaijanis did not live and to which Armenia allegedly sought to prevent them from returning, by military force, in violation of multiple provisions of the CERD. In such circumstances, quite obviously any negative effects of environmental harm in the area fell on the actual *residents* — the ethnic Armenians.

30. Azerbaijan's attempts to address this logical problem, when Armenia pointed it out, are instructive. It argues that "environmental harms were purposely directed at Azerbaijanis and Azerbaijani-populated areas because they were inhabited by persons of Azerbaijani ethnic or national origin" and that "*regardless of purpose*, such harms have had, and continue to have, a disproportionate effect on Azerbaijanis as a distinct group defined by ethnic or national origin"[154].

31. But it is important, we say, to pay close attention to what is actually meant by "Azerbaijanis and Azerbaijani-populated areas". This is a sleight of hand. We have already seen Azerbaijan's

[154] Observations of Azerbaijan, para. 70.

claims that the areas in question had been "ethnically cleansed" of the Azerbaijani population, and remained so during the 30 years of so-called occupation.

32. So Azerbaijan is clinging to the argument that it can found a discrimination claim on the allegation that environmental harm, occurring in various forms across the *entire* "occupied territory", was *worse* in areas in which a particular group used to live, but no longer did, and to which Armenia allegedly did not intend them to return.

33. The stark question for the Court is whether such factual allegations can meaningfully amount to a "disparate adverse effect" on those absent people, to the extent that this can found a discrimination claim under the CERD. Armenia submits that they cannot, and that to conclude otherwise would amount to an unprecedented departure from the careful and structured analysis which the Court has adopted in previous racial discrimination cases. As we saw when we looked at the Court's recent analysis in the *Ukraine* v. *Russia* case, the showing of a disparate effect will not suffice for these purposes if such an effect can be explained in a way that does not relate to the prohibited grounds.

34. Now Azerbaijan's position appears to be that, at the jurisdictional stage, it has free rein to speculate as to the reasons for any disparate effect. But the analysis which Armenia invites the Court to carry out in this case does not trespass in any way on the underlying factual allegations. Armenia's case is simply that, as I explained, on Azerbaijan's *own* factual case there is no logical basis for finding any differential adverse impact on ethnic Azerbaijanis.

VI. The right to health

35. Now Azerbaijan attempts to advance certain types of rights in support of its claims for environmental harm. In this context, it is worth taking a moment to look at Azerbaijan's arguments on the right to health, as this is, Armenia says, illustrative of Azerbaijan's flawed approach to the whole of its discrimination claim. Azerbaijan says much about the right to health, but their case really centres on the assertion that the right to health includes the right "to return to a healthy environment, which is crucial to human health"[155].

[155] Memorial of Azerbaijan, para. 473.

36. Since this is a CERD claim, of course the right to health is not a free-standing right subject to adjudication — Azerbaijan must still show *discrimination*, meeting all the criteria I have just discussed. And it must show, so far as that discrimination is said to have occurred in the field of the right to health, that that claim properly falls within the scope of that right. But there is, evidently, nothing in the right to *health* that includes the right to return to live on particular land in a particular condition.

37. And Azerbaijan's attempts to piece together scraps from cases about indigenous peoples — which it rightly does not claim includes Azerbaijanis — fundamentally miss the mark.

38. The Court will recall that, last week, Azerbaijan argued that the views of the CERD Committee should be disregarded by the Court[156]. Despite its professed scepticism about the Committee's work, however, Azerbaijan relies heavily on, for example, the Committee's decision regarding the Western Shoshone Tribe in the United States[157]. This is said to support the argument that an ethnic group has the right to return to an area where it is not currently "physically resident". Azerbaijan is plainly wrong about this — the decision makes clear that, despite some encroachments on their lands, "the Western Shoshone people have reportedly *continued to use and occupy* the lands and their natural resources in accordance with their traditional land tenure patterns"[158]. In fact, the precise concern, as we see on screen, was that the Western Shoshone people were experiencing "intimidation and harassment by the [US] authorities" in a number of aspects of their life on the territory, as you see listed on screen.

39. And in an even more striking omission, Azerbaijan fails to explain that this case was decided in the context of the rights of *indigenous* communities, which, the Committee noted, possess the "right to own, develop, control and use their communal lands, territories and resources"[159]. Such rights clearly entail a far broader set of obligations on State parties not to infringe on indigenous land. Azerbaijan, rightly, does not argue that the ethnic Azerbaijani population that lived in the so-called "occupied areas" counts as an indigenous community. So the CERD case law referring to such

---

[156] See CR 2024/19, p. 32, para. 15 (Boisson de Chazournes).

[157] Observations of Azerbaijan, paras. 82-83.

[158] Committee on the Elimination of Racial Discrimination, *Decision 1 (68) on the United States of America*, UN doc. CERD/C/USA/DEC/1 (11 April 2006), para. 6 (emphasis added).

[159] *Ibid.*, para. 7.

communities, and their very specific rights and needs, offers it no assistance, let alone helping to establish the right, as it puts it, to "return to a healthy environment".

40. Azerbaijan also attempts to support its case on the right to health with quotes from various CERD recommendations and concluding observations. Thus, Azerbaijan argues that the right to public health protected under Article 5 *(e)* (iv) of the CERD encompasses the right to "the highest attainable standard of physical and mental health"[160]. But again Azerbaijan fails to show that this standard includes the right to *return* to a healthy environment. Indeed, none of the authorities cited by Azerbaijan remotely contemplates such a right.

41. Without a right to return to a healthy environment, Azerbaijan's factual allegations, namely that Armenia's deliberate infliction of environmental harm in "Azerbaijani districts" has "a disproportionate and continuing effect on people of Azerbaijani ethnic or national origin, who continue to be prevent[ed] from exercising their right to return home"[161], are not capable of falling within the scope of the CERD.

VII. The right to property

42. Azerbaijan's arguments on the right to property fare no better. All of the authorities cited by Azerbaijan on the right to property refer to the *collective land rights* of indigenous, tribal or minority peoples living in the relevant region[162]. And again, Azerbaijan rightly refrains from arguing that ethnic Azerbaijanis possess collective rights to land in Nagorno-Karabakh, and Armenia respectfully submits that any contrived claim that the alleged environmental harm violated the right to property should be rejected.

---

[160] Observations of Azerbaijan, para. 82.

[161] Memorial of Azerbaijan, para. 474.

[162] See Committee on the Elimination of Racial Discrimination, Concluding observations on the combined eighteenth to twentieth periodic reports of Brazil, UN doc. CERD/C/BRA/CO/18-20 (19 December 2022), paras. 50-51; Committee on the Elimination of Racial Discrimination, Concluding observations on the combined fourth to eighth reports of Thailand, UN doc. CERD/C/THA/CO/4-8 (10 February 2022), paras. 27, 28 *(a)*. See also Committee on the Elimination of Racial Discrimination, Reports submitted by States parties under Article 9 of the Convention, Seventh to ninth periodic reports of States parties due in 2011, United States of America, UN doc. CERD/C/USA/7-9 (13 June 2013), pp. 47-48, paras. 169, 173-174, 176, 179; Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of the United States of America, UN doc. CERD/C/USA/CO/7-9 (25 September 2014), para. 10; Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: Norway, UN doc. CERD/C/NOR/CO/19-20 (8 April 2011), para. 18.

VIII. Conclusion

43. In conclusion, Mr President, Members of the Court, Armenia submits that Azerbaijan's claims of discrimination arising out of environmental harm fall outside the scope of the CERD, and thus outside the Court's jurisdiction *ratione materiae*.

44. I have sought to demonstrate the flawed logic which underpins them and the multiple ways in which Azerbaijan seeks to contort the law. Azerbaijan's factual allegations, even if taken as true, are simply not capable of amounting to a coherent claim of discrimination against an ethnic group which was, on its own case, not located in the relevant territory and never intended to return there.

45. Azerbaijan cannot show:

(a) that there was any differential treatment of human beings;

(b) that the harms it alleges were based on ethnic or national origin; or

(c) that any such harms had any discriminatory purpose or disparate adverse effect.

46. The whole of Azerbaijan's claims are premised on the illogical idea that those who did not live in the territory at the time suffered more from these alleged widespread environmental harms than those — ethnic Armenians — who did. Armenia respectfully requests the Court to reject these contrived arguments.

47. Mr President, Members of the Court, I thank you for your attention, and I now ask you to call upon Professor Sicilianos.

The PRESIDENT: I thank Ms Macdonald for her statement. I now invite Professor Linos-Alexandre Sicilianos to take the floor. You have the floor, Sir.

Mr SICILIANOS:

ARMENIA'S PRELIMINARY OBJECTIONS POSSESS AN EXCLUSIVELY PRELIMINARY CHARACTER

1. Mr President, Madam Vice-President, Members of the Court, it is an honour to appear before the Court today on behalf of the Republic of Armenia. I shall present the last argument in Armenia's first-round oral pleadings. This argument is very simple. I will be addressing the reasons why Armenia's Preliminary Objections can and should be decided in this preliminary objection phase, and not deferred for decision alongside the merits.

I. The legal standard for assessing whether a preliminary objection possesses an exclusively preliminary character

2. Mr President, it is undisputed that pursuant to Article 79*ter* of the Rules of Court, the Court may declare that a preliminary objection, "in the circumstances of the case, . . . does not possess *an exclusively preliminary character*" and may reserve decision on such an objection for a later phase of the proceedings[163]. Conversely, when an objection *does* possess an exclusively preliminary character, it *has to* be decided by the Court in the preliminary objections phase. As the Court explained in *Military and Paramilitary Activities in and against Nicaragua*, it is "quite clear that when [objections] are exclusively of that character they will have to be decided upon immediately"[164].

3. This requirement is a result of the amendment of the relevant rule in 1972. The history of this process is eloquently explained by Judges Tomka and Crawford in their separate opinion to the Court's 2019 Judgment in *Certain Iranian Assets*[165]. In short, under the prior formulation of the rule, the Court had a discretionary power to "join the objection to the merits"[166]. This unrestricted prerogative to delay decision on objections was being exercised by the Court in a way that prompted criticism. Indeed, one Member of the Court wrote that it amounted to an "easy way out which was represented by the neutral, and in some cases diplomatic answer of joinder but which really constituted a postponement of any decision"[167]. For example, in the 1964 Judgment on preliminary objections in the *Barcelona Traction* case, the Court deferred decision on the applicant's standing to the merits[168]. Six years later, after substantial further litigation between the parties, the Court finally

---

[163] Rules of Court, Art. 79*ter* (4) (emphasis added).

[164] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986,* p. 31, para. 41.

[165] *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, joint separate opinion of Judges Tomka and Crawford.

[166] Rules of Court (1946), Art. 62, para. 5.

[167] Eduardo Jiménez de Aréchaga, "The Amendments to the Rules of Procedure of the International Court of Justice", 67 (1) *American Journal of International Law* (1 January 1973), p. 16.

[168] *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain), Preliminary Objections, Judgment, I.C.J. Reports 1964*, pp. 45-46. See also *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, joint separate opinion of Judges Tomka and Crawford, p. 47, para. 4.

decided that the applicant indeed lacked standing[169]. It is thus inappropriate for Azerbaijan to invoke that case[170], which is an example of the undesirable application of the prior formulation of the rule, and in fact inspired its amendment.

4. Indeed, following *Barcelona Traction*, recommendations were made in the Sixth Committee of the General Assembly that "the Court should be encouraged to take a decision on preliminary objections as quickly as possible and to refrain from joining them to the merits unless it was strictly essential"[171]. This approach was then enshrined in the 1972 reformulation of the rule that remains in force today, although it was slightly rephrased in 2019[172].

5. Accordingly, the Court's power to refrain from deciding a preliminary objection or question is circumscribed to objections or questions that truly *cannot* be decided in this first phase of the proceedings. To cite the Court's Judgment in *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, "[i]n principle, a party raising preliminary objections is entitled to have these objections answered at the preliminary stage of the proceedings"[173]. The only exception is when the Court does not have before it all the necessary facts to decide the question, or ruling on the objection requires a pronouncement on the merits[174].

6. Objections based on strictly legal questions, which are not intertwined with the merits, are prime examples of the type of objections that should be decided at the preliminary objections stage[175]. Armenia respectfully submits that, in this case, the Court should resist the temptation offered by

---

[169] *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 51, para. 102. See also *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, joint separate opinion of Judges Tomka and Crawford, p. 47, para. 4.

[170] See Observations of Azerbaijan, para. 53, *citing Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain), Preliminary Objections, Judgment, I.C.J. Reports 1964,* p. 43.

[171] See *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, joint separate opinion of Judges Tomka and Crawford, p. 47, para. 5, *citing* A/8568, para. 47.

[172] Rules of Court as amended on 21 October 2019, Art. 79*ter* (4).

[173] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 852, para. 51.

[174] *Ibid*.

[175] *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, joint separate opinion of Judges Tomka and Crawford, p. 50, para. 10. Cf. *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America)*, *Judgment of 30 March 2023*, para. 54.

Azerbaijan to defer consideration of Armenia's objections to the merits phase. As I will explain, all preliminary objections of Armenia are of an exclusively preliminary character.

II. Armenia's *ratione temporis* and inadmissibility objections are of an exclusively preliminary character

7. I turn now to Armenia's first objection concerning the Court's jurisdiction *ratione temporis* under the CERD.

8. Mr President, Members of the Court, it is difficult to think of a more exclusively preliminary question than the question posed by Armenia's first objection. As Mr Martin explained this morning, Armenia is respectfully requesting that the Court rule on two questions of principle. The first question is whether the critical date for assessing the Court's jurisdiction *ratione temporis* is 15 September 1996 or 23 July 1993.

9. According to Armenia, Article 22 of the CERD does *not* afford the Court jurisdiction over Azerbaijan's claims pertaining to a time when it was not a party to the Convention. The critical date must therefore be 15 September 1996, the date of entry into force of the Convention for Azerbaijan.

10. On Azerbaijan's case, Article 22 *does* extend the Court's jurisdiction over its claims *erga omnes partes* to a time when it was not a party to the Convention. According to Azerbaijan, the critical date would thus be 23 July 1993, which is the date of entry into force of the Convention for Armenia.

11. Deciding this question simply requires the Court to undertake an exercise of treaty interpretation, in light of the relevant principles of international law. There is no need to assess any factual evidence or trespass on the merits in any way. As explained by Mr Martin, Armenia is not asking the Court to assess whether each and every one of Azerbaijan's allegations falls within or outside the Court's jurisdiction.

12. Instead, Armenia is asking the Court to provide a pronouncement of principle that will allow the Parties to know where they stand, and to plead their cases on the merits efficiently and effectively. This means formulating their allegations, defences, and analysis of the evidence in light of the applicable critical date. If the Parties are required to present alternative cases on the merits depending on which critical date applies, it will create unnecessary confusion and inefficiencies.

13. The same considerations apply equally to the second question that Mr Martin addressed, which concerned whether Azerbaijan's claim of ethnic cleansing falls within the Court's jurisdiction *even if* the critical date is set in 1996. Here, too, the Court need not get into the facts, other than to note their absence. As Mr Martin explained, Azerbaijan does not allege that any populations were displaced after 1994, and its theory of composite breaches cannot extend the Court's jurisdiction to cover facts or events that occurred before the critical date.

14. Azerbaijan invokes in this context the *Croatia* v. *Serbia* genocide case, arguing that it sets a precedent for the Court to join to the merits a preliminary objection concerning acts of violence spanning the critical date[176]. There is, however, a drastic difference between that case and the present one. In *Croatia* v. *Serbia*, an armed conflict straddled the critical date, which fell in the middle of Croatia's allegation of "a pattern of conduct increasing in intensity throughout the course of 1991"[177]. In contrast, in the present case, the critical date falls more than two years *after* the cessation of hostilities and the conclusion of a ceasefire agreement.

15. The considerations of admissibility addressed by Professor d'Argent, whether concerning judicial propriety or extinctive prescription, are also exclusively preliminary. They concern purely legal questions that, by their very nature, have to be addressed in this preliminary stage.

16. Mr President, Members of the Court, ruling on Armenia's first and second objection is not just a matter of efficiency, but also a question of fundamental fairness. Defining the temporal scope of Azerbaijan's claims at this stage will allow Armenia to determine whether or not to bring counter-claims in its Counter-Memorial. As is well established in the Court's jurisprudence, counter-claims must be "sufficiently connected to the principal claim" and must "form part of the same factual complex"[178]. This includes a requirement that the relevant facts "occurred . . . during

---

[176] See Observations of Azerbaijan, para. 54, *citing Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 58, para. 119.

[177] *Ibid.*

[178] *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022 (II)*, pp. 656-657, paras. 135-136.

the same period" of time[179]. In formulating counter-claims, it is critical for Armenia to know the permissible temporal scope of the Court's jurisdiction over Azerbaijan's claims.

III. Armenia's *ratione materiae* objections are of an exclusively preliminary character

17. This brings me to Armenia's objections concerning the Court's jurisdiction *ratione materiae*.

18. Mr President, Members of the Court, Armenia's objections *ratione materiae* also possess an exclusively preliminary character and should be resolved in the present phase of the proceedings. I will explain why this is the case with regard to both Azerbaijan's claims pertaining to land mines and to the environment.

19. *First*, as Mr Salonidis explained, Azerbaijan's claims pertaining to land mines and booby traps can be disposed of very easily. The Court has rejected all of Azerbaijan's corresponding requests for provisional measures, finding that the rights invoked by Azerbaijan were simply not plausible[180]. Despite Azerbaijan's attempts to reformulate its case at the last minute, the Court should regard its claims as remaining the same as they have been all along.

20. The Court has all the necessary elements before it to decide Armenia's objection as it relates to landmines and booby traps. All that the Court needs to do is interpret the CERD and apply it to Azerbaijan's factual allegations, accepted as true *pro tem*. Taking Azerbaijan's case at its highest, Armenia's alleged use of landmines is not capable of amounting to a distinction "based on" national or ethnic origin within the meaning of Article 1 (1) of the CERD. Nor do the facts that Azerbaijan points to show, on their face, that Armenia's alleged use of landmines and booby traps is capable of having a discriminatory purpose or effect. In this context, there is nothing left for the Court to examine at the merits stage.

21. As Mr Salonidis mentioned already, judicial propriety and efficiency supports disposal of Azerbaijan's contentions at the preliminary phase. If an applicant's allegations — even if proven —

---

[179] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Counter-Claim, Order of 10 March 1998, I.C.J. Reports 1998*, p. 205, para. 38. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Counter-Claims, Order of 17 December 1997, I.C.J. Reports 1997*, p. 258, para. 34.

[180] *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; *Provisional Measures, Order of 22 February 2023*, paras. 22-23.

are not capable of breaching the treaty in question, then there is no need for the Court or the parties to devote time and resources proceeding to the merits. This is all the more true in the case at hand, in which the Court has examined the same factual allegations concerning landmines and booby traps under the same Convention, not once, not twice, but three times.

22. *Second*, Armenia's objection concerning Azerbaijan's environmental claims is similarly of an exclusively preliminary character and should be decided in this phase of the proceedings. As Ms Macdonald meticulously demonstrated, the factual context as advanced by Azerbaijan, along with our legal points as to how Azerbaijan's allegations very obviously fall outside the scope of the CERD, should lead the Court to dispose of these environmental claims at this jurisdictional stage.

23. In particular, those facts, even accepted as true, are not capable of establishing racial discrimination. Azerbaijan's allegations are, with respect, illogical. The Court does not need to proceed to the merits to understand that environmental damage occurring in lands inhabited by one ethnic group cannot constitute racial discrimination against *another* ethnic group that did not live there and, on Azerbaijan's case, was not expected to return. Azerbaijan has simply not articulated, on the facts, a claim capable of breaching the CERD. And its legal arguments in this regard interpreting the CERD fare no better.

24. Azerbaijan distorts the underlying substantive obligations of the CERD by inventing new rights that do not exist. This is most obvious with respect of the so-called "right to return to a healthy environment". Azerbaijan has presented no support for the proposition that CERD protects such a right. This is because no such support exists. There is no mention of such a right anywhere in the CERD Committee's dozens of opinions on individual communications and general recommendations, or even in its *hundreds* of concluding observations. Nor is there any support for Azerbaijan's attempt to invoke a collective right to property that has been dealt with only in the specific context of *indigenous* peoples. In this sense, the Court can take comfort in finding, at this preliminary stage, that Azerbaijan's claims fall outside its jurisdiction, and that it needs no additional elements to reach this conclusion.

25. Mr President, Members of the Court, I thank you for your kind attention. This concludes my remarks, and today's submissions on behalf of the Republic of Armenia. Thank you very much.

The PRESIDENT: I thank Mr Sicilianos, whose statement brings this sitting to a close. The oral proceedings in the case will resume at 10 a.m. tomorrow, Tuesday 23 April 2024, when Azerbaijan will present its first round of oral argument.

The sitting is adjourned.

The Court rose at 12.50 p.m.

_____