

12 NOVEMBRE 2024

ARRÊT

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

(AZERBAÏDJAN c. ARMÉNIE)

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

(AZERBAIJAN v. ARMENIA)

12 NOVEMBER 2024

JUDGMENT

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INTERNATIONAL COURT OF JUSTICE

YEAR 2024

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**12 November
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12 November 2024

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

(AZERBAIJAN v. ARMENIA)

PRELIMINARY OBJECTIONS

Historical context — Application filed by Azerbaijan on 16 September 2021 — Azerbaijan and Armenia parties to the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) — Article 22 of CERD invoked as basis of jurisdiction — CERD entered into force for Azerbaijan on 15 September 1996 and for Armenia on 23 July 1993 — Armenia raised three preliminary objections to the jurisdiction of the Court.

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First preliminary objection — Jurisdiction ratione temporis.

Objection limited to claims concerning acts that allegedly occurred between 23 July 1993 and 15 September 1996 — No issue of retroactivity of treaties arises in so far as Armenia’s obligations under CERD are concerned — Whether Article 22 of CERD provides jurisdictional basis to entertain Azerbaijan’s claims in respect of acts that took place before Azerbaijan became party to CERD — Temporal scope of Court’s jurisdiction linked to date on which obligations under CERD took effect between the Parties.

Erga omnes partes character of certain obligations under CERD has no effect on temporal scope of the Court's jurisdiction — Between 23 July 1993 and 15 September 1996, Armenia owed its obligations under CERD to all States which are parties to it, but not to States not parties — Difference between inter-State communications procedure established under Articles 11 to 13 of CERD and judicial mechanism provided for in Article 22 of CERD — Consequently, views adopted by CERD Committee not relevant for the interpretation and application of compromissory clause — 15 September 1996 is the date for the determination of the temporal scope of the Court's jurisdiction under Article 22 of CERD.

Continuing or composite wrongful acts — Respondent's responsibility with respect to the Applicant would be engaged for actions or omissions after 15 September 1996 — Relevant facts which occurred before that date to be taken into consideration.

Court lacks jurisdiction ratione temporis for alleged acts that occurred before 15 September 1996 — First preliminary objection upheld.

No need to examine arguments in relation to admissibility of the Application.

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Second preliminary objection — Jurisdiction ratione materiae in respect of alleged laying of landmines and booby traps by Armenia — Azerbaijan not claiming that alleged laying of landmines and booby traps is itself a breach of Armenia's obligations under CERD — Alleged laying of landmines and booby traps as evidence in support of claim of ethnic cleansing — Second preliminary objection rejected as being without object.

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Third preliminary objection — Jurisdiction ratione materiae in respect of alleged environmental harm.

Not excluded that conduct leading to harm to the environment may constitute racial discrimination under CERD — Alleged deforestation and overexploitation of mineral resources would be either commercially motivated or due to neglect and mismanagement of the environment — Alleged destruction and deviation of watercourses would have impacted different ethnic groups — Persons of Azerbaijani national or ethnic origin not present on the territories affected by the alleged environmental harm — Alleged acts causing environmental harm, even if established, not capable of falling under CERD.

Court lacks jurisdiction ratione materiae to entertain Azerbaijan's claims relating to environmental harm — Third preliminary objection upheld.

JUDGMENT

Present: President SALAM; Vice-President SEBUTINDE; Judges TOMKA, ABRAHAM, YUSUF, XUE, BHANDARI, IWASAWA, NOLTE, CHARLESWORTH, BRANT, GÓMEZ ROBLEDO, CLEVELAND, AURESCU, TLADI; Judges ad hoc DAUDET, KOROMA; Registrar GAUTIER.

In the case concerning the application of the International Convention on the Elimination of All Forms of Racial Discrimination,

between

the Republic of Azerbaijan,

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,

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 Advisers,

and

the Republic of Armenia,

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,

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 for the 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 Co-operation 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,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

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

2. In its Application, Azerbaijan seeks to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court in conjunction with Article 22 of CERD.

3. On 23 September 2021, 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.

4. The Registrar immediately communicated to the Government of Armenia the Application and the Request for the indication of provisional measures, in accordance with Article 40, paragraph 2, of the Statute and Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing by Azerbaijan of the Application and the Request for the indication of provisional measures.

5. In addition, by a letter dated 27 September 2021, the Registrar informed all States entitled to appear before the Court of the filing of the above-mentioned Application and Request.

6. Pursuant to Article 40, paragraph 3, of the Statute, the Registrar notified the Member States of the United Nations through the Secretary-General, and any other State entitled to appear before the Court, of the filing of the Application, by transmitting to them the printed bilingual text.

7. 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, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Azerbaijan chose Mr Kenneth Keith and Armenia Mr Yves Daudet.

8. By an Order dated 7 December 2021, the Court, having heard the Parties, indicated the following provisional measures:

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

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

9. In accordance with Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to CERD the notifications provided for in Article 63, paragraph 1, of the Statute. In addition, in accordance with Article 69, paragraph 3, of the Rules of Court, the Registrar addressed to the United Nations, through its Secretary-General, the notification provided for in Article 34, paragraph 3, of the Statute.

10. 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.

11. On 4 January 2023, Azerbaijan, referring to Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court, filed a new Request for the indication of provisional measures. 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 (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Provisional Measures, Order of 22 February 2023, I.C.J. Reports 2023, p. 43, para. 27*).

12. On 21 April 2023, within the time-limit prescribed by Article 79bis, paragraph 1, of the Rules of Court, Armenia raised preliminary objections to the jurisdiction of the Court and the 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 79bis, 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.

13. Following the resignation of Judge *ad hoc* Keith on 21 April 2023, Azerbaijan chose Mr Abdul G. Koroma to replace him as judge *ad hoc* in the case.

14. By a letter dated 25 August 2023, the Registrar, acting pursuant to Article 69, paragraph 3, of the Rules of Court, transmitted to the Secretary-General of the United Nations copies of the written proceedings filed thus far in the case, and asked whether the Organization intended to present observations in writing under that provision in relation to the preliminary objections raised by Armenia. By a letter dated 30 August 2023, the Office of Legal Affairs informed the Court that the United Nations did not intend to submit any observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court.

15. Pursuant to Article 53, paragraph 2, of the Rules of Court, the Court, after ascertaining the views of the Parties, decided to make accessible to the public the preliminary objections of Armenia and the written statement of Azerbaijan on those preliminary objections, as well as the annexes thereto, except Annexes 13 and 14 to the Preliminary Objections.

16. Public hearings on the preliminary objections raised by Armenia were held on 22, 23, 24 and 26 April 2024, at which the Court heard the oral arguments and replies of:

For Armenia: HE Mr Yeghishe Kirakosyan,
Mr Lawrence Martin,
Mr Pierre d'Argent,
Mr Constantinos Saloniidis,
Ms Alison Macdonald,
Mr Linos-Alexandre Sicilianos.

For Azerbaijan: HE Mr Elnur Mammadov,
Mr Stephen Fietta,
Mr Vaughan Lowe,
Mr Stefan Talmon,
Mr Samuel Wordsworth,

Mr Sean Aughey,
Ms Laurence Boisson de Chazournes,
HE Mr Rahman Mustafayev.

*

17. In the Application, the following claims were made by Azerbaijan:

“Azerbaijan, in its own right and as *parens patriae* of its citizens, respectfully requests the Court to adjudge and declare:

- A. That Armenia, through its State organs, State agents, and other persons and entities exercising governmental authority or acting on its instructions or under its direction and control, has violated Articles 2, 3, 4, 5, 6, and 7 of CERD.
- B. That Armenia, by aiding, assisting, sponsoring and supporting activities inconsistent with CERD conducted by other persons, groups, and organizations has violated Article 2 (1) (b), (d), and (e) of CERD.
- C. That Armenia must take all steps necessary to comply with its obligations under CERD, including to:
 - (a) Immediately cease and desist from any and all policies and practices of ethnic cleansing that have been directed against Azerbaijanis;
 - (b) Immediately co-operate with de-mining operations by Azerbaijan and international agencies in the formerly Occupied Territories, including through the provision of comprehensive and accurate maps and other information on the location of minefields, by ceasing and desisting from the laying of landmines on the territory of Azerbaijan, and by other necessary and appropriate measures;
 - (c) Immediately cease and desist from any acts that detrimentally impact Azerbaijanis’ enjoyment of or access to their environment and natural resources;
 - (d) Immediately cease and desist from the destruction of Azerbaijani heritage sites and other pieces of Azerbaijani ethnic and cultural property, and from the pursuit of the policy of cultural erasure;
 - (e) Immediately cease and desist from disseminating, promoting, or sponsoring anti-Azerbaijani propaganda and hate speech, including via educational institutions, the media, social media disinformation campaigns, and other channels, and from glorifying individuals who have committed ethnically motivated crimes against Azerbaijanis;

- (f) Immediately cease and desist from any direct or indirect sponsorship or support of persons and organizations that engage in discrimination against Azerbaijanis, including VoMA;
- (g) Publicly condemn discrimination against Azerbaijanis and adopt immediate and positive measures to prevent and punish such acts of discrimination, in accordance with CERD Articles 2 (1) (d) and (e) and Article 4;
- (h) Ensure the investigation and punishment of acts of discrimination, including but not limited to war crimes committed by Armenian forces, in accordance with CERD Articles 2 and 4, and provide effective protection and remedies to Azerbaijanis for harm caused by such acts;
- (i) Publicly acknowledge its breaches of CERD and apologize for its conduct at the highest levels of Government;
- (j) Provide assurances and guarantees of non-repetition of Armenia's illegal conduct under CERD; and
- (k) Make full reparation to Azerbaijan, including compensation in an amount to be determined in a later phase in these proceedings, for the harm suffered as a result of Armenia's actions in violation of CERD.”

18. In the written proceedings on the merits, the following submissions were presented on behalf of the Government of Azerbaijan in its Memorial:

“On the basis of the facts and legal arguments set out in this Memorial, in its own right and as *parens patriae* of its citizens, Azerbaijan respectfully requests the Court to adjudicate and declare that:

1. Armenia, through its State organs, State agents and other persons and entities exercising governmental authority or acting on its instructions or under its direction or control, or with its support, sponsorship, or defense, is responsible for violations of Articles 2, 3, 4, 5, 6, and 7 of CERD by the following actions:
 - (a) The ethnic cleansing and cultural erasure of Azerbaijanis from the then-occupied territories, and establishment of an ethnically pure Armenian settlement in those territories, including:
 - (i) unlawful killings, violent expulsion, torture and other mistreatment of hundreds of thousands of Azerbaijanis;
 - (ii) wholesale looting and destruction of Azerbaijani towns and other elements of the built environment, including the destruction, vandalism, desecration, and misappropriation of Azerbaijani cultural monuments and other markers of Azerbaijani heritage;

- (iii) differential destruction and degradation of the natural environment in areas where Azerbaijanis resided prior to Armenia's ethnic cleansing and occupation;
 - (iv) barring of Azerbaijanis from access to the then-occupied territories and from Armenia, including frustration of the right of internally displaced Azerbaijanis and Azerbaijani refugees to return home; and
 - (v) institution of policies and practices to dispossess ethnic Azerbaijanis of their lands and other property in the then-occupied territories and promote the settlement of ethnic Armenians in those territories;
- (b) The promotion of hatred and incitement to violence against Azerbaijanis by Armenian public officials and allowing the promotion of hatred, incitement to violence and actual violence against Azerbaijanis by private individuals and armed hate groups operating in Armenia;
- (c) The failure to take immediate and effective measures, particularly in the fields of teaching and education, to promote tolerance and understanding between Armenians and Azerbaijanis and to combat prejudices and racial discrimination against Azerbaijanis;
- (d) Sponsoring, defending, or supporting persons and organizations taking the above racially discriminatory actions against Azerbaijanis; and
- (e) The failure to provide Azerbaijanis with effective protections and remedies against the above racially discriminatory actions;
2. Armenia, through its State organs, State agents and other persons and entities exercising governmental authority or acting on its instructions, or under its direction or control, or with its support, sponsorship, or defense, is responsible for violations of the Court's Order on Provisional Measures of 7 December 2021, including by failure to take any action to prevent the incitement and promotion of racial hatred by armed ethno-nationalist hate groups such as VoMA and POGA operating within its territory;
3. Armenia is under an obligation to cease all actions in breach of its obligations under Articles 2, 3, 4, 5, 6, and 7 of CERD and the Court's Order on Provisional Measures of 7 December 2021, including all acts of discrimination and all sponsoring, defense, or support of such acts, and to provide appropriate assurances and guarantees of non-repetition, including a specific assurance that it will make public statements calling on private groups to end their conduct described herein that is inconsistent with CERD;

4. Armenia is under an obligation to take prompt, immediate and effective measures in the fields of teaching, education, culture and information to combat prejudices and racial discrimination against Azerbaijanis and to promote tolerance and understanding between Armenians and Azerbaijanis;
5. Armenia is under an obligation to acknowledge its responsibility for its violations of CERD, apologize publicly to the victims of those violations, and condemn racial discrimination against Azerbaijanis;
6. Armenia is under an obligation to disclose to the families of missing Azerbaijanis all information it may have about the missing individuals' fates, including the location of remains of the deceased, and to disclose publicly the location of any mass grave sites that have not yet been disclosed;
7. Armenia is under an obligation to restore to Azerbaijanis immovable property in the formerly occupied territories, and movable property wherever located, to the extent such property was taken in violation of Articles 2 and 5 of CERD; to restore to the Republic of Azerbaijan any misappropriated cultural objects from the formerly occupied territories; to recognize and restore properties reflecting Azerbaijani identity and history in Armenia and the formerly occupied territories; and to allow, facilitate and not interfere with the return of Azerbaijani refugees to their homes in Armenia and the return of Azerbaijani internally displaced persons to their homes in the formerly occupied territories;
8. Armenia is under an obligation to compensate Azerbaijan, in its own right and as *parens patriae* for its citizens, for the material and non-material damage caused by its violations of Articles 2, 3, 4, 5, 6, and 7 of CERD and the Court's Order on Provisional Measures of 7 December 2021, with such compensation to be quantified in a separate phase of these proceedings; and
9. Such further or more specific relief pursuant to paragraphs 7 and 8 above that shall be identified in a subsequent phase of these proceedings.

Azerbaijan reserves its rights to amend these submissions in the course of the proceedings.”

19. In the preliminary objections, the following submissions were presented on behalf of the Government of Armenia:

“143. In view of the foregoing, the Republic of Armenia respectfully requests the Court to adjudge and declare that it lacks jurisdiction over the claims and contentions described above and/or that those claims and contentions are inadmissible. Specifically, the Republic of Armenia requests that the Court adjudge and declare:

- (a) That it lacks jurisdiction *ratione temporis* with respect to Azerbaijan’s claims and contentions concerning events that transpired prior to the entry into force of the CERD as between the Parties on 15 September 1996, or that such claims and contentions are inadmissible;

- (b) That it lacks jurisdiction *ratione materiae* with respect to Azerbaijan's claims and contentions concerning the alleged placement of landmines and booby traps; and
- (c) That it lacks jurisdiction *ratione materiae* with respect to Azerbaijan's claims and contentions concerning alleged environmental harm.

144. The Republic of Armenia reserves the right to amend and supplement this submission in accordance with the provisions of the Statute and the Rules of Court. The Republic of Armenia also reserves the right to submit further objections to the jurisdiction of the Court and to the admissibility of Azerbaijan's claims in any subsequent phase."

20. In the written statement of its observations and submissions on the preliminary objections, the following submissions were presented on behalf of the Government of Azerbaijan:

"93. For the foregoing reasons, Azerbaijan requests that the Court dismiss each of the preliminary objections that Armenia sets forth in its submission of 21 April 2023 on the ground that neither of those objections is a valid objection to the Court's jurisdiction or to the admissibility of Azerbaijan's claims.

94. In the alternative, Azerbaijan requests that the Court dismiss each of those preliminary objections on the ground that each raises issues that should be deferred to the hearing on the merits."

21. At the oral proceedings on the preliminary objections, the following submissions were presented by the Parties:

On behalf of the Government of Armenia,

at the hearing of 24 April 2024:

"On the basis of its written and oral submissions, the Republic of Armenia respectfully requests that the Court:

- (a) Uphold the preliminary objection raised by the Republic of Armenia concerning the jurisdiction *ratione temporis* of the Court, and adjudge and declare that it lacks jurisdiction with respect to Azerbaijan's claims and contentions concerning events that transpired prior to the entry into force of the CERD as between the Parties on 15 September 1996;
- (b) In the alternative, uphold the preliminary objection raised by the Republic of Armenia concerning the admissibility of the claims, and adjudge and declare that Azerbaijan's claims and contentions concerning events that transpired prior to the entry into force of the CERD as between the Parties on 15 September 1996 are inadmissible;
- (c) Uphold the preliminary objection raised by the Republic of Armenia concerning the jurisdiction *ratione materiae* of the Court, and adjudge and declare that it lacks jurisdiction with respect to Azerbaijan's claims and contentions concerning the alleged placement of landmines and booby traps; and

(d) Uphold the preliminary objection raised by the Republic of Armenia concerning the jurisdiction *ratione materiae* of the Court, and adjudge and declare that it lacks jurisdiction with respect to Azerbaijan’s claims and contentions concerning alleged environmental harm.”

On behalf of the Government of Azerbaijan,

at the hearing of 26 April 2024:

“The Republic of Azerbaijan requests that the Court:

1. dismiss each of the preliminary objections that Armenia sets forth in its final submission of 24 April 2024 on the ground that none of them is a valid objection to the Court’s jurisdiction or to the admissibility of Azerbaijan’s claims; and
2. in the alternative, dismiss each of those preliminary objections on the ground that each raises issues that should be deferred to the hearing on the merits.”

*

* * *

I. INTRODUCTION

22. Azerbaijan and Armenia, both of which were Republics of the former Union of Soviet Socialist Republics (hereinafter the “Soviet Union”), declared independence on 18 October 1991 and 21 September 1991, respectively.

23. The region which Azerbaijan calls Garabagh and Armenia calls Nagorno-Karabakh was, in the Soviet Union, an autonomous entity (“oblast”) with a majority Armenian ethnic population, lying within the territory of the Azerbaijani Soviet Socialist Republic. The Parties’ competing claims over that region resulted in hostilities, to which Azerbaijan refers as “the First Garabagh War” and Armenia refers as “the First Nagorno-Karabakh War”, that ended with a ceasefire in May 1994. Further hostilities erupted in September 2020, in what Azerbaijan calls “the Second Garabagh War” and Armenia calls “the Second Nagorno-Karabakh War”.

24. On 9 November 2020, the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation signed a statement referred to by the Parties as “the Trilateral Statement”. Under the terms of this statement, as of 10 November 2020, “[a] complete ceasefire and termination of all hostilities in the area of the Nagorno-Karabakh conflict [was] declared”. However, the situation between the Parties remained unstable and hostilities again erupted in September 2022 and again in September 2023.

25. On 23 September 2021, Azerbaijan instituted the present proceedings under CERD. In its Application, Azerbaijan alleges that Armenia has breached several provisions of CERD by virtue of a decades-long State policy of racial discrimination. Specifically, Azerbaijan asserts that “Armenia has engaged and is continuing to engage in a series of discriminatory acts against Azerbaijanis on the basis of their ‘national or ethnic’ origin within the meaning of CERD”.

26. In its Application, Azerbaijan seeks to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court in conjunction with Article 22 of CERD (see paragraph 2 above). Article 22 of CERD provides as follows:

“Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.”

27. Both Azerbaijan and Armenia are parties to CERD. Azerbaijan acceded to it on 16 August 1996 and Armenia on 23 June 1993. The Convention entered into force for each Party on the thirtieth day after the date of the deposit of its instrument of accession, i.e. on 15 September 1996 and 23 July 1993, respectively. Neither Party entered any reservation to the Convention.

28. Armenia raises three preliminary objections. First, Armenia argues that the Court lacks jurisdiction to entertain Azerbaijan’s claims concerning acts that took place prior to the entry into force of CERD as between the Parties on 15 September 1996, or that such claims are inadmissible. Secondly, Armenia contends that the Court lacks jurisdiction *ratione materiae* with respect to Azerbaijan’s claims concerning the alleged placement of landmines and booby traps. Thirdly, it submits that the Court lacks jurisdiction *ratione materiae* with respect to Azerbaijan’s claims concerning alleged environmental harm. The Court will address each of these objections in turn.

II. FIRST PRELIMINARY OBJECTION: JURISDICTION *RATIONE TEMPORIS*

29. In their pleadings, the Parties do not dispute that claims relating to alleged acts that occurred before 23 July 1993 are outside the temporal scope of the Court’s jurisdiction and that claims concerning alleged acts that occurred after 15 September 1996 fall within the scope of the Court’s jurisdiction *ratione temporis*. They differ, however, as to whether the Court has jurisdiction over Azerbaijan’s claims concerning alleged acts that occurred between 23 July 1993 and 15 September 1996, the period during which Armenia was a State party to CERD while Azerbaijan was not. In its first preliminary objection, Armenia contends that the Court lacks jurisdiction *ratione temporis* over those claims or, alternatively, that they are inadmissible. The Court will begin by considering the question of its jurisdiction *ratione temporis*.

30. The Parties present opposing views on a number of issues with regard to the first preliminary objection.

31. According to Armenia, the date by which the temporal scope of the Court’s jurisdiction is to be determined is the date on which CERD entered into force between the Parties, i.e. 15 September 1996, not the date on which Armenia became a party to the Convention, i.e. 23 July 1993. It argues that the plain text of Article 22 makes clear that, for the Court to have jurisdiction, the dispute concerning the interpretation or application of CERD must be between two States parties and therefore only with regard to the alleged acts that occurred after the entry into force of CERD between them.

32. In support of its position, the Respondent contends that Azerbaijan’s claims concerning alleged acts that occurred prior to 15 September 1996 are not in conformity with the principle of non-retroactivity of treaties. In its view, CERD does not, and cannot, apply to acts that preceded its entry into force between the parties concerned, as Article 22 of CERD does not derogate from “the customary international law principle of non-retroactivity of treaties, reflected in Article 28 of the Vienna Convention on the Law of Treaties”. Armenia claims that Azerbaijan’s accession to CERD “did not expand — retroactively — the pool of States to whom Armenia owed the substantive obligations under CERD before that date”.

33. Moreover, Armenia maintains that Article 22 of CERD, as a compromissory clause, is different from a general provision for the pacific settlement of disputes and from a declaration made under Article 36, paragraph 2, of the Statute. In its view, to extend the application of CERD to events that took place prior to the entry into force of CERD as between the Parties would ignore the element of reciprocity inherent in a compromissory clause accepting the Court’s jurisdiction. It argues that the title of jurisdiction under CERD vests both substantively and procedurally only upon entry into force as between the Parties.

34. Armenia contends that obligations under CERD are *erga omnes partes* in character, and must be distinguished from *erga omnes* obligations under customary international law. In the present case, the Court’s jurisdiction under Article 22 extends only to the former. Armenia maintains that it is only upon entry into force of CERD as between two parties that each State begins to owe the other *inter partes* obligations under the Convention. Accordingly, from 23 July 1993 to 15 September 1996, Armenia owed its treaty obligations only to those States that were parties to CERD during that time. Azerbaijan could neither have invoked Armenia’s responsibility under CERD, nor had recourse to Article 22 of the Convention, just as Azerbaijan itself had no obligations under CERD.

35. Lastly, Armenia rejects the Applicant’s alternative assertion that the alleged acts are of a continuing or composite nature and constitute part of a single “ethnic cleansing campaign”. It contends that Azerbaijan’s characterization of such acts as of a continuing or composite nature is an attempt to sweep all of its claims into the temporal scope of the Court’s jurisdiction. It argues that Azerbaijan has not even tried to articulate the component elements of “ethnic cleansing” that constitutes a “composite breach” of CERD. In its view, when an act continues in such a way as to straddle the “critical date”, the elements of the act that occurred before that date are outside of the Court’s jurisdiction. Only the elements that occurred after that date come within the Court’s

jurisdiction *ratione temporis*. Accordingly, Armenia submits that all of its objections are of an exclusively preliminary character.

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36. In response, Azerbaijan maintains that the date on which CERD entered into force for it was the earliest date it could bring claims against Armenia under Article 22 of CERD, which is different from the date on which Armenia became bound by the substantive provisions of CERD. For the purpose of assessing the temporal scope of the Court's jurisdiction over its claims in the present case, Azerbaijan argues that the latter date is decisive. It takes the view that the Court has jurisdiction *ratione temporis* over its claims against Armenia in respect of any acts that occurred on or after 23 July 1993, the date on which the substantive provisions of CERD entered into force for Armenia.

37. Azerbaijan argues that its claims involve no retroactive application of CERD. It asserts that retroactivity is relevant in two distinct contexts: procedurally, where the question is whether the parties to a dispute have consented to the Court's jurisdiction at the time the proceedings are instituted in the Court; and substantively, where the question is whether the State is bound by the substantive provisions of CERD at the time when the alleged acts occurred. In the present case, Azerbaijan argues that the alleged acts underpinning its claims occurred after CERD's entry into force for Armenia. Moreover, both Parties had consented to the Court's jurisdiction by 15 September 1996. Since Azerbaijan instituted the present proceedings on 23 September 2021, there is no element of retroactivity.

38. On the element of reciprocity, the Applicant contends that Article 22 imposes no temporal limitation on the conferral of jurisdiction. It is of the view that the obligations enumerated under CERD are not formulated as mere bilateral or mutual undertakings between two or more States; they are formulated primarily to protect human rights and fundamental freedoms of individuals — the ultimate beneficiaries of CERD. In seeking to protect those rights, Azerbaijan acts as an “injured State” in the interests of its citizens and of itself and also as a “procedural trustee”, safeguarding obligations that Armenia has owed to all States parties, *erga omnes partes*, since it acceded to CERD.

39. Azerbaijan argues that the question of the temporal scope of compensatory clauses in certain human rights treaties has been settled by the Court. Referring to the Judgment of 11 July 1996 on the preliminary objections in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Azerbaijan asserts that the Court found that it had jurisdiction to deal with claims concerning alleged acts which occurred prior to the entry into force of the Genocide Convention between the parties on the ground that neither the compensatory clause of the Genocide Convention nor the parties, by way of reservation, imposed any temporal limitation on the Court's jurisdiction. Moreover, the Court considered that this finding was in accordance with the object and purpose of that Convention. Azerbaijan contends that the Court's reasoning in that case equally applies to CERD and to the Parties in the present case.

40. Azerbaijan finally contends that, even if 15 September 1996 is defined as the critical date by the Court to determine the temporal limit of the Court's jurisdiction, its claims that involve continuing or composite acts that began between 23 July 1993 and 15 September 1996 and continued after the critical date nevertheless fall within the scope of the Court's jurisdiction *ratione temporis*. It asserts that Armenia's continuing failure to take steps to eradicate racial discrimination may have begun years before it ratified CERD, but emphasizes that what matters in the present case is that the breach continues and "lasts for as long as [the wrongful] actions or omissions are repeated". According to Azerbaijan, "[a]cts and omissions fall outside the temporal scope of the Court's jurisdiction only if they were completed before the date of the entry into force of the treaty for the acting State". Moreover, it asserts that, should the Court wish to examine in detail all the facts relating to the continuing or composite acts, Armenia's objection would not have an exclusively preliminary character.

* * *

41. The Court notes that the date identified by each of the Parties as the "critical date" is used to define a decisive point in time for the determination of the temporal scope of the Court's jurisdiction under Article 22 of CERD. The Parties' contentions on the determination of the "critical date", in essence, concern Azerbaijan's entitlement to invoke Armenia's responsibility for the alleged acts that occurred at a time when CERD was not in force between the Parties. In addressing that issue, the Court considers that two questions debated by the Parties with regard to the interpretation and application of Article 22 should be dealt with at the outset: first, whether the principle of non-retroactivity of treaties has an effect on the Court's jurisdiction under Article 22 of CERD; and second, whether the *erga omnes partes* character of certain obligations under CERD may affect the temporal scope of the Court's jurisdiction under CERD.

42. Regarding the first question, the Court recalls that, under Article 22 of CERD, in order for the Court to have jurisdiction, only States parties may submit their dispute to the Court for adjudication and the subject-matter of the dispute must concern the interpretation or application of the Convention. This Article specifies the scope of the Court's jurisdiction *ratione personae* and *ratione materiae*, but it contains no language defining the temporal scope of the Court's jurisdiction.

43. The Court considers that Armenia's reference to the principle of non-retroactivity of treaties raises an issue concerning the relationship between the substantive provisions and the compromissory clause of CERD. According to the principle of non-retroactivity of treaties, as reflected in Article 28 of the Vienna Convention on the Law of Treaties, unless a different intention appears from a treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party (*Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 457, para. 100; *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. 95). This principle defines the temporal application of the substantive provisions of a treaty for a State party and to which acts its treaty obligations apply. It specifies from which point in time the responsibility of a State party may be engaged for its conduct which is not in conformity with its obligations under the treaty.

44. In the present case, there is no disagreement between the Parties that Armenia was bound by CERD during the period between 23 July 1993 and 15 September 1996 and that none of Azerbaijan's claims concerns acts that took place prior to Armenia's accession to CERD. Therefore, in so far as Armenia's obligations under CERD are concerned, no issue of retroactivity arises. The Court observes, however, that the question before it is not whether Armenia was bound by the obligations under CERD during the relevant interval. Rather, the question is whether Article 22, under which Azerbaijan has given its consent to the Court's jurisdiction, provides a jurisdictional basis for the Court to entertain Azerbaijan's claims in respect of alleged acts that took place before Azerbaijan became party to the Convention.

45. The Court considers that, subject to any reservation or express indication to the contrary, the temporal scope of the Court's jurisdiction under a compromissory clause is determined by the scope of the temporal application of the substantive provisions of a treaty between the parties concerned.

46. In the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Senegal disputed Belgium's right to invoke Senegal's responsibility for the breach of its obligation to prosecute alleged acts that occurred before Belgium became a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Senegal contended that Belgium was seeking retroactive application of Article 7, paragraph 1, of this Convention because the alleged acts of torture took place during the period between 1982 and 1990, when Belgium was not a party to it. The Court noted that Senegal was bound by the obligation to prosecute under the Convention against Torture from 26 June 1987, when the Convention entered into force for it, while Belgium was entitled to invoke Senegal's responsibility for breach of its obligation to prosecute after the date on which Belgium became a party to the said Convention, namely 25 July 1999. The Court noted that the complaint against the alleged offender was filed in 2000, the year after the Convention entered into force for Belgium, and concluded that Belgium was entitled to request the Court to rule on Senegal's compliance with its obligation under Article 7, paragraph 1 (*Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 458, paras. 103-104).

47. In light of the above, the Court considers that, in the present case, the temporal scope of the Court's jurisdiction under Article 22 of CERD must be linked to the date on which obligations under CERD took effect between the Parties, 15 September 1996, not the date on which Armenia became bound by the Convention.

48. Notwithstanding the above finding, the Court now turns to the second question, concerning the *erga omnes partes* character of the obligations under CERD and its effect on jurisdiction. The Court observes that this is not the first time that it has been requested to pronounce on the relationship between the nature of obligations and the scope of its jurisdiction. In the case concerning *East Timor (Portugal v. Australia)*, the Court made clear that "the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things" (*East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29). In the case concerning *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, the Court further clarified that

"the mere fact that rights and obligations *erga omnes* may be at issue in a dispute would not give the Court jurisdiction to entertain that dispute."

The same applies to the relationship between peremptory norms of general international law (*jus cogens*) and the establishment of the Court's jurisdiction: the fact that a dispute relates to compliance with a norm having such a character, which is assuredly the case with regard to the prohibition of genocide, cannot of itself provide a basis for the jurisdiction of the Court to entertain that dispute. Under the Court's Statute that jurisdiction is always based on the consent of the parties." (*Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 32, para. 64.)

That position has been consistently upheld by the Court with regard to the question of jurisdiction.

49. The Court notes that, contrary to Azerbaijan's contention, it did not address, in its decision in the *Bosnia and Herzegovina v. Yugoslavia* case, the broader issue of the application *ratione temporis* of compromissory clauses in human rights conventions. Its finding in that case concerned the application of the Genocide Convention in a particular context of State succession in the process of the dissolution of the former Socialist Federal Republic of Yugoslavia. The Genocide Convention remained applicable in the relevant territory at all times of the conflict (*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)*, pp. 610-612, paras. 17, 20 and 23, and p. 617, para. 34). The present case is different. There is no question that the Parties to this case are both parties to CERD. Azerbaijan was not a party to CERD at the relevant time when the alleged acts took place.

50. The Court considers that, although Article 22 of CERD contains no express indication on the temporal scope of its application, the conferral of jurisdiction on the Court by the States parties under this provision is governed by the relevant rules on jurisdiction, namely the principle of consent and the principles of reciprocity and equality of States. Any exception to these principles cannot be admitted unless expressly provided (see *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 22, para. 35; see also *Ambatielos (Greece v. United Kingdom), Preliminary Objection, Judgment, I.C.J. Reports 1952*, pp. 40-41).

51. The Court observes that, during the interval between 23 July 1993 and 15 September 1996, as Azerbaijan was not yet a party to CERD, there were no treaty relations between the Parties under CERD. Procedurally, if Azerbaijan were permitted to make claims against Armenia for the latter's alleged acts that occurred during that period while Armenia could not exercise that right against Azerbaijan for Azerbaijan's conduct during the same period because of its non-party status, there would be no reciprocity and equality between the Parties. Substantively, during the relevant period, Armenia, as a State party, owed its obligations under CERD to all other States parties, but not to States which were not parties to that Convention.

52. According to the customary rules of State responsibility as reflected in Articles 13 and 42 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (hereinafter the "ILC Articles on State Responsibility"), an act of a State does not constitute a breach of an international obligation unless the State is bound by that obligation at the time when the alleged act occurs. When a State seeks to invoke the responsibility of another State, it must show that the responsible State owes the obligation allegedly breached to the claimant State. Accordingly, since between 23 July 1993 and 15 September 1996 Armenia did not owe obligations under CERD to Azerbaijan, Azerbaijan has no right to invoke Armenia's responsibility for the alleged acts that occurred during that period.

53. In this connection, the Court notes that, in support of its position, Azerbaijan refers to the decision rendered by the Committee on the Elimination of Racial Discrimination (hereinafter the “CERD Committee”) in the inter-State communication submitted by the State of Palestine against Israel. According to Azerbaijan, the CERD Committee in that case took the view that Articles 11 to 13 of CERD “do not indicate that the use of the [inter-State] mechanism” is limited to “breaches that have occurred after [CERD’s] ratification by the State party” that initiated the procedure (CERD Committee, “Inter-State communication submitted by the State of Palestine against Israel: preliminary procedural issues and referral to the Committee”, UN doc. CERD/C/100/3 (decision adopted on 12 December 2019), p. 3, para. 14).

54. The Court observes that there is a difference in nature between the inter-State communications procedure established under Articles 11 to 13 of CERD and the judicial mechanism provided for in Article 22. The first aims to monitor compliance by States parties with their obligations under the Convention and can be used “[i]f a State Party considers that another State Party is not giving effect to the provisions of [the] Convention” (Article 11). The latter aims to settle disputes relating to obligations which States, by becoming parties to the Convention, have accepted to undertake vis-à-vis each other, and the judicial settlement may result in the engagement of the respondent’s responsibility towards the applicant. This mechanism can therefore only be used to settle disputes relating to events that occurred at a time when both States concerned were bound by the obligations in question.

Consequently, the views adopted by the CERD Committee with regard to the exercise of its competence in the context of the inter-State compliance mechanism are not relevant for the purposes of the interpretation and application of the compromissory clause invoked in the present case as a basis for the Court’s jurisdiction.

55. Based on the above considerations, the Court concludes that 15 September 1996 is the date for the determination of the temporal scope of the Court’s jurisdiction under Article 22 of CERD in the present case.

56. The Court now turns to address Azerbaijan’s assertion in relation to alleged continuing or composite acts.

57. The notion of continuing wrongful acts has been applied in international judicial and arbitral decisions. The conditions and consequences of such acts in the field of State responsibility are provided for in the ILC Articles on State Responsibility (see Article 14 of the ILC Articles on State Responsibility and the commentary in *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, pp. 59-62, paras. 1-14, and cases referred to therein). According to Article 14, paragraph 2, of the ILC Articles on State Responsibility, the breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.

58. The notion of composite wrongful acts has also been applied in the jurisprudence of international courts and tribunals. Article 15, paragraph 2, of the ILC Articles on State Responsibility provides that the breach of an international obligation in respect of composite acts extends over the entire period starting with the first of the actions or omissions in a series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation. The

essential feature of such acts is that they are “a series of actions or omissions defined in aggregate as wrongful” (see Article 15 of the ILC Articles on State Responsibility and the commentary in *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, pp. 62-64, paras. 1-11, and cases referred to therein).

59. The Court notes that whether an internationally wrongful act has a continuing or composite character will depend on both the content of the obligation concerned and the circumstances of the given case.

60. In the present case, Azerbaijan does not clarify whether its claims are based on continuing acts or composite acts, but nevertheless suggests that the latter category of acts is included in the former. It claims that Armenia’s cumulative or aggregated actions and omissions amount to a practice of ethnic cleansing, which constitutes “a distinct breach” of CERD. It asserts that Armenia has engaged in a long-standing systematic campaign of ethnic cleansing, which began before 15 September 1996 and continued after that date.

61. The Court notes that violations of certain obligations under CERD may be committed through acts of a continuing or composite nature. To decide on Azerbaijan’s claim, the Court needs to determine first whether there is sufficient evidence to establish that there existed a systematic campaign of ethnic cleansing launched by Armenia against Azerbaijan during the relevant period and, if so, whether there were continuing or composite wrongful acts for which Armenia should be held responsible under CERD. These issues are for the merits. At the present stage, all the Court is required to decide is to what extent, *ratione temporis*, the Court has jurisdiction over such alleged conduct.

62. If the Court were to find, at the stage of its examination of the merits, a continuing or composite wrongful act that commenced before the critical date of 15 September 1996 and continued thereafter, it would follow that the Respondent’s responsibility with respect to the Applicant would be engaged for the actions or omissions that took place after that date, which is when the relevant obligations came into force between the Parties. In this regard, the Court would nevertheless not be precluded from taking into consideration facts which occurred before that date, in so far as they are relevant to its examination of the Respondent’s subsequent conduct which falls within its jurisdiction (see Article 13 of the ILC Articles on State Responsibility and the commentary in *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 59, para. 9).

63. In light of the foregoing, the Court concludes that it lacks jurisdiction *ratione temporis* to entertain Azerbaijan’s claims that are based on alleged acts that occurred during the interval between 23 July 1993 and 15 September 1996. The Respondent’s first preliminary objection to the Court’s jurisdiction must therefore be upheld.

64. Since the Court has found that it lacks jurisdiction over Azerbaijan’s claims relating to alleged acts that occurred before 15 September 1996, the proceedings in respect of those claims come to an end. Therefore, there is no need for the Court to consider the arguments of the Parties in relation to the question of admissibility.

**III. SECOND PRELIMINARY OBJECTION: JURISDICTION *RATIONE MATERIAE*
IN RESPECT OF THE ALLEGED LAYING OF LANDMINES
AND BOOBY TRAPS BY ARMENIA**

65. The Court will now examine Armenia's second preliminary objection, according to which the Court lacks jurisdiction *ratione materiae* under CERD "with respect to Azerbaijan's claims and contentions concerning the alleged placement of landmines and booby traps".

* * *

66. Armenia argues that Azerbaijan made a separate claim that the use of landmines and booby traps is a violation of its obligations under CERD, which Armenia contends is clear from the Application instituting proceedings and the arguments developed in the Applicant's Memorial. The Respondent also argues that Azerbaijan presented the laying of landmines and booby traps as an independent violation of CERD as part of its requests for the indication of provisional measures, in which it sought an order from the Court that Armenia cease the laying of landmines on the territory of Azerbaijan.

67. The Respondent submits that the laying of landmines and booby traps cannot constitute racial discrimination within the meaning of Article 1, paragraph 1, of the Convention. It contends that, even if Azerbaijan's factual allegations are established, Armenia's alleged use of landmines and booby traps would not constitute a distinction, exclusion, restriction or preference "based on" national or ethnic origin within the meaning of that Article. According to Armenia, landmines and booby traps are weapons that are indiscriminate by nature in so far as they are incapable of making a distinction based on national or ethnic origin. In addition, Armenia asserts that these weapons were deployed exclusively for defensive military purposes and only along the line of contact between military forces. Armenia further asserts that, even assuming that it did deploy such weapons, the laying of landmines and booby traps did not have the purpose or effect of nullifying or impairing the equal recognition, enjoyment or exercise of the human rights and fundamental freedoms of ethnic Azerbaijanis, as Article 1 of CERD also requires. It argues, moreover, that even if the laying of landmines and booby traps could be said specially to affect members of a particular group, that group could only be Azerbaijani citizens who are members of the armed forces and who are not all of Azerbaijani national or ethnic origin. In this regard, Armenia notes that CERD does not prohibit discrimination "based on" current nationality.

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68. Azerbaijan contends that the second objection to the Court's jurisdiction *ratione materiae* raised by Armenia must be rejected. It submits that it does not assert an independent CERD violation based on the deployment by Armenia of landmines and booby traps on the territory of Azerbaijan. Azerbaijan maintains that it is the long-standing campaign of ethnic cleansing conducted by Armenia through a variety of military means, not the laying of landmines and booby traps as such, that constitutes a violation of CERD. It argues that the targeted deployment of landmines and booby traps is one piece of evidence among others in support of its claim of ethnic cleansing directed towards Azerbaijanis on the basis of their national or ethnic origin. It adds that the laying of landmines and

booby traps in areas to which ethnic Azerbaijanis could be expected to return represents just one element of Armenia's continued attempts to prevent ethnic Azerbaijanis from returning home.

69. Azerbaijan is of the view that an examination of the evidence submitted by each Party, in particular its own evidence that Armenia planted and continues to plant landmines and booby traps in areas to which Azerbaijanis could be expected to return, is a matter for the merits.

* * *

70. In order to rule on its jurisdiction *ratione materiae* under CERD with respect to the alleged laying of landmines and booby traps, the Court must first ascertain whether Azerbaijan, in its Application instituting proceedings and Memorial, requested that the Court find that Armenia violated CERD by the alleged laying of landmines and booby traps, or whether Azerbaijan intended to establish that the use of the weapons in question was evidence supporting its claim regarding the alleged campaign of ethnic cleansing conducted by Armenia.

71. The Court recalls that it is for it

"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 claims. 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." (*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; *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.)

72. The Court notes that, although Azerbaijan requests in its Application that the Court adjudge and declare that Armenia must "[i]mmediately co-operate with de-mining operations" through "the provision of comprehensive and accurate maps . . . on the location of minefields" and by "ceasing and desisting from the laying of landmines on the territory of Azerbaijan", Azerbaijan does not ask the Court to determine that the laying of landmines in itself constitutes a violation of the obligations under CERD.

73. The Court further notes that, in its Memorial, Azerbaijan requests the Court to adjudge and declare that Armenia is responsible for violations of CERD through various acts, including

"(a) [t]he ethnic cleansing and cultural erasure of Azerbaijanis from the then-occupied territories, and establishment of an ethnically pure Armenian settlement in those territories, including by:

.....

(iv) barring of Azerbaijanis from access to the then-occupied territories and from Armenia, including frustration of the right of internally displaced Azerbaijanis and Azerbaijani refugees to return home” (see paragraph 18 above).

74. In support of its claim, Azerbaijan presents the laying of landmines and booby traps as one of the steps through which Armenia allegedly sought to “create, support, and maintain the monoethnic character of the then-occupied territories” and as evidence of Armenia’s alleged attempts to prevent the return of displaced Azerbaijanis.

75. The Court observes that Azerbaijan specifies in its Memorial that evidence relating to the alleged laying of landmines and booby traps has been put forward in support of its claim that Armenia has used military means as part of a policy of ethnic cleansing. In determining the subject-matter of the dispute submitted to it, the Court has previously drawn a distinction between parties’ submissions and certain arguments which were advanced as part of the submissions but that did not constitute “a precise and direct statement of a claim” (*Fisheries (United Kingdom v. Norway), Judgment, I.C.J. Reports 1951*, p. 126; *Fisheries Jurisdiction (Spain v. Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 449, para. 32). The Court further recalls that the Rules of Court do not preclude an applicant “from refining the legal arguments presented in its [a]pplication or advancing new arguments in response to those made by the [respondent]” (*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. 92, para. 63).

76. In the present proceedings, the Court considers that Azerbaijan does not request the Court to find that the laying of landmines and booby traps constitutes in itself a violation of the obligations under CERD, and Armenia does not contest the jurisdiction *ratione materiae* of the Court to entertain Azerbaijan’s submission concerning the alleged policies and practices of ethnic cleansing. Since Azerbaijan is not claiming that the alleged laying of landmines and booby traps is itself a breach of Armenia’s obligations under CERD, Armenia’s second preliminary objection is without object. The Court will consider the arguments and evidence submitted by Azerbaijan in support of its submissions concerning alleged acts of ethnic cleansing at the merits stage.

77. In light of the foregoing, the Court concludes that the second preliminary objection raised by Armenia seeking to exclude from the jurisdiction of the Court the claims relating to the laying of landmines and booby traps is without object and must therefore be rejected.

IV. THIRD PRELIMINARY OBJECTION: JURISDICTION *RATIONE MATERIAE* IN RESPECT OF ALLEGED ENVIRONMENTAL HARM

78. The Court will now examine Armenia’s third preliminary objection, according to which the Court lacks jurisdiction *ratione materiae* under CERD to entertain Azerbaijan’s claims concerning environmental harm. The Court notes that the third preliminary objection is limited to the claims presented in Chapter II, Section D, and Chapter IV, Section D, of Azerbaijan’s Memorial

that Armenia has breached its obligations under Articles 2 and 5 of CERD by causing environmental harm targeted at Azerbaijanis on the basis of their national or ethnic origin.

* * *

79. Armenia argues that the acts of environmental harm complained of by Azerbaijan do not constitute racial discrimination within the meaning of Article 1, paragraph 1, of CERD, because Azerbaijan has not demonstrated the existence of a “distinction, exclusion, restriction or preference” based on national or ethnic origin, within the meaning of that provision.

80. Armenia submits that environmental harm is indiscriminate by nature and thus cannot amount to a distinction based on national or ethnic origin. It further contends that even if the environmental harm alleged by Azerbaijan were attributable to Armenia — which Armenia denies — any such damage would have occurred in areas inhabited by ethnic Armenians who intended to continue living there and which were no longer inhabited by ethnic Azerbaijanis. Thus, the supposed victims of the alleged environmental harm were not present to experience it.

81. Armenia acknowledges that, in some cases, environmental harm can be transboundary in character, simultaneously affecting several geographic areas and populations. However, given the nature of environmental harm, it denies that such harm can constitute a form of differential treatment to target a particular group. In particular, as regards the alleged mismanagement of the Sarsang Reservoir located in Nagorno-Karabakh, which, according to Azerbaijan, deprived more than 400,000 Azerbaijanis living in the downstream regions of water for domestic and agricultural purposes, Armenia contends that the problems with the water supply from this war-damaged reservoir affected the entire ethnic Armenian population of Nagorno-Karabakh. It maintains that it is logically impossible for Azerbaijan to show that the purpose of the alleged mismanagement of the reservoir was to disadvantage only ethnic Azerbaijanis living further downstream.

82. Armenia also argues that the actions and omissions alleged to have caused harm to the environment were not capable of having the “purpose or effect” of nullifying or impairing ethnic Azerbaijanis’ enjoyment, on an equal footing, of human rights and fundamental freedoms, since ethnic Azerbaijanis were no longer living in Nagorno-Karabakh at the time of the alleged acts. It adds that even if environmental harm did affect ethnic Azerbaijanis, it would have affected ethnic Armenians even more since they lived in the areas in which the environmental harm allegedly occurred.

83. Moreover, Armenia considers that the acts complained of by Azerbaijan with respect to environmental harm do not fall within the right to health or the right to property within the meaning of Article 5 of CERD. According to Armenia, the acts alleged to have caused environmental harm are not capable of violating the right to health under CERD, because ethnic Azerbaijanis were no longer living in the areas where the alleged environmental harm occurred, and because that right does

not encompass the “right to return to a healthy environment” invoked by Azerbaijan. Armenia adds that environmental harm is equally incapable of violating the right to property, because that right, in the context of CERD, relates primarily to the relationship between indigenous peoples and their land, which is not at issue in the present case.

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84. Azerbaijan considers that the Court has jurisdiction to entertain its claims concerning alleged environmental harm and asks the Court to reject the third preliminary objection of Armenia. It contends that the definition of racial discrimination in CERD refers to “all distinctions between individuals”, which includes conduct by which environmental harm is directed towards a particular group or concentrated in particular areas on the basis of the predominant race, colour, descent, or national or ethnic origin of those areas’ inhabitants. Azerbaijan emphasizes that CERD does not impose a standard for acts of discrimination relating to the environment that is different from that for any other form of discrimination.

85. According to Azerbaijan, the environmental harm caused by Armenia was the result of a difference in treatment based on national or ethnic origin and has impaired Azerbaijani’s equal exercise and enjoyment of human rights and fundamental freedoms. Azerbaijan considers that Armenia, by its actions and omissions, caused harm to areas populated by ethnic Azerbaijanis prior to Armenia’s occupation, while Armenian-populated areas received different treatment. It alleges that acts of harm to the environment, such as the construction of hydroelectric power plants, deforestation and the abandonment of agricultural land, were disproportionately carried out in areas historically populated by ethnic Azerbaijanis, while Armenian-populated areas were barely affected and even benefited from the destruction and pillaging of Azerbaijani lands through the removal of natural resources.

86. Azerbaijan contends in particular that Armenia deliberately diverted and mismanaged the waters of the Sarsang Reservoir in order to deprive the Azerbaijanis living in the areas adjacent to the “occupied territories” of access to the water needed for human consumption, sanitation and the irrigation of crops.

87. Azerbaijan further contends that the acts of environmental destruction and degradation allegedly committed by Armenia form part of its broader claim that Armenia carried out a campaign of ethnic cleansing against Azerbaijanis, on the basis of their national or ethnic origin. According to the Applicant, Armenia sought to deprive ethnic Azerbaijanis, upon their return, of their right to enjoy their homeland, including the environment and the natural resources that form part of it.

88. Azerbaijan considers that Armenia cannot evade its responsibility under CERD by arguing that Azerbaijanis did not live in the areas in which the alleged environmental damage took place, when Azerbaijanis were forcibly expelled from those areas by Armenia and have an undisputed right to return there. According to Azerbaijan, after the expulsion of Azerbaijanis from their homes, Armenia continued its campaign of ethnic cleansing, notably by deliberately degrading the natural

environment of the territories in question to such an extent that it became unsustainable and unhealthy, making life impossible for Azerbaijanis when they returned. Azerbaijan states that it is in this context of displacement of ethnic Azerbaijanis and the creation of obstacles to their return that Armenia is said to have committed discriminatory acts of environmental harm in breach of CERD.

89. Azerbaijan also maintains that Armenia's environmental destruction disproportionately impacted formerly Azerbaijani-populated areas. Azerbaijan contends that Armenia's acts had the purpose and effect of impairing ethnic Azerbaijanis' equal exercise and enjoyment of human rights and fundamental freedoms, in particular their rights to health and property, two of the rights set out in Article 5 of CERD, as well as other interrelated rights protected under CERD, including the right to return, the right to life, and the rights to food and water. Azerbaijan submits that the right to return is inextricably linked to the right to health.

* * *

90. To determine whether it has jurisdiction *ratione materiae* to entertain Azerbaijan's claims concerning environmental harm, the Court must ascertain whether the actions and omissions of the Respondent complained of by the Applicant fall within the scope of CERD; in other words whether the acts at issue, if established, are capable of constituting racial discrimination (see *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).

91. At this stage, the Court does not need to satisfy itself that the acts of which Azerbaijan complains actually constitute "racial discrimination" within the meaning of Article 1, paragraph 1, of CERD. Such a determination concerns "issues of fact, largely depending on evidence regarding the purpose or effect of the measures alleged by [Azerbaijan], and [is] thus properly a matter for the merits, should the case proceed to that stage" (*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. 595, para. 94). At this stage, the Court must ascertain whether the alleged acts of environmental harm, if established, are capable of constituting violations of CERD and thus fall within the scope of the Convention.

92. As the Court has previously noted,

"'[r]acial discrimination' under Article 1, paragraph 1, of 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'." (*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.)

93. The Court notes that the environmental harm complained of by Azerbaijan consists in the alleged degradation of forests and destruction of trees classified as natural monuments, destruction and pillaging of water infrastructure such as pipes and irrigation systems, destruction and degradation of agricultural land and vineyards, degradation of land and water quality through mining activities, neglect and mismanagement of water infrastructure, including the Sarsang Reservoir, and diversion of water resources.

94. The Court further notes that the alleged environmental harm is said to concern the districts of Aghdam, Fuzuli, Gubadly, Jabrayil, Kalbajar, Lachin and Zangilan, which surround the Nagorno-Karabakh region and had a majority ethnic Azerbaijani population before the hostilities that ended in May 1994. The harm is alleged to have occurred during the period when these territories were Armenian controlled, namely between 1994 and 2020. The Applicant acknowledges that these seven districts remained largely uninhabited during “nearly thirty years of Armenian occupation”, with the exception of persons of Armenian ethnic origin who settled there. It claims, however, that Armenia’s conduct with regard to the environment was based on national or ethnic origin and had the purpose and effect of preventing Azerbaijanis from returning to their homes and enjoying their fundamental rights, including the rights to health and to property.

95. The Court recognizes that it is not to be excluded that conduct leading to harm to the environment may, in some cases, constitute an act of racial discrimination under CERD. In the present case, however, the Court notes that, according to Azerbaijan itself, the alleged degradation of forests and destruction of trees in the districts formerly populated mainly by ethnic Azerbaijanis took place in pursuance of agricultural and industrial activities and a failure to mitigate wildfires. In particular, Azerbaijan submits that forests were cut “to make way for mines, hydropower plants, and associated infrastructure . . . that would allow Armenia to benefit from the then-occupied territories’ abundant natural resources”. It also states that the logging of timber resources was generally not concentrated near inhabited communities and was done “for commercial purposes”. Moreover, the Court observes that Azerbaijan asserts that Armenia supported and facilitated the overexploitation of mineral resources causing devastating environmental harm in districts formerly populated by ethnic Azerbaijanis.

96. The Court is of the view that Armenia’s alleged actions and omissions concerning deforestation and overexploitation of mineral resources would be either commercially motivated or due to neglect and mismanagement of the environment. Thus, even if established and attributable to Armenia, they would not constitute a differentiation of treatment based on a prohibited ground under Article 1, paragraph 1, of CERD.

97. With regard to water infrastructure, Azerbaijan alleges that Armenia neglected and mismanaged such infrastructure in the “then-occupied territories” and redirected important water resources to benefit ethnic Armenians, which contributed to the degradation of agricultural land in districts formerly populated by ethnic Azerbaijanis and resulted in depriving Azerbaijanis living in areas of Azerbaijan adjacent to the “then-occupied territories” of potable water and water for irrigation. The Court is of the view that the alleged destruction and deviation of watercourses would have impacted different ethnic groups, not only ethnic Azerbaijanis. Such conduct, even if

established and attributable to Armenia, could not be based on a prohibited ground under Article 1, paragraph 1, of CERD. With regard to the Sarsang Reservoir in particular, the Court notes that it is not disputed that the reservoir, which was damaged during hostilities, supplied water to ethnic Armenians in Nagorno-Karabakh, as well as to ethnic Azerbaijanis living in downstream regions adjacent to Nagorno-Karabakh. Hence, its alleged mismanagement would have had adverse effects on both populations. Therefore, Armenia's alleged actions or omissions concerning the neglect and mismanagement of water infrastructure, even if established and attributable to Armenia, would not constitute a differentiation of treatment based on a prohibited ground under Article 1, paragraph 1, of CERD.

98. The Court further observes that the Parties agree that persons of Azerbaijani national or ethnic origin were not present on the territories affected by the alleged environmental harm when Armenia controlled those territories. Moreover, nothing indicates that, at the time the alleged harm took place, ethnic Armenians did not intend to continue living there.

99. Accordingly, in the present circumstances, the Court is not convinced that the alleged harm to the environment results from acts capable of constituting racial discrimination against persons of Azerbaijani national or ethnic origin within the meaning of Article 1 of CERD. Even if the alleged acts that caused the environmental harm were established and attributable to Armenia, the Court considers that they fall outside the scope of CERD, since they are neither capable of constituting a differentiation in treatment based on national or ethnic origin, nor capable of nullifying or impairing, by their purpose or by their effect, the enjoyment or exercise, on an equal footing, of the human rights of ethnic Azerbaijanis within the meaning of Article 1, paragraph 1, of the Convention.

100. In light of the foregoing, the Court concludes that it lacks jurisdiction *ratione materiae* to entertain Azerbaijan's claims relating to environmental harm. The third preliminary objection raised by Armenia must therefore be upheld.

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101. For these reasons,

THE COURT,

(1) By fourteen votes to three,

Upholds the first preliminary objection raised by the Republic of Armenia;

IN FAVOUR: *President Salam; Vice-President Sebutinde; Judges Tomka, Abraham, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Aurescu, Tladi; Judge ad hoc Daudet;*

AGAINST: *Judges* Yusuf, Cleveland; *Judge ad hoc* Koroma;

(2) By sixteen votes to one,

Rejects the second preliminary objection raised by the Republic of Armenia;

IN FAVOUR: *President* Salam; *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi; *Judge ad hoc* Daudet;

AGAINST: *Judge ad hoc* Koroma;

(3) By twelve votes to five,

Upholds the third preliminary objection raised by the Republic of Armenia;

IN FAVOUR: *President* Salam; *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Yusuf, Xue, Bhandari, Iwasawa, Brant, Gómez Robledo, Aurescu; *Judge ad hoc* Daudet;

AGAINST: *Judges* Nolte, Charlesworth, Cleveland, Tladi; *Judge ad hoc* Koroma;

(4) Unanimously,

Finds that it has jurisdiction, on the basis of Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination, subject to points 1 and 3 of the present operative clause, to entertain the Application filed by the Republic of Azerbaijan on 23 September 2021.

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

(*Signed*) Nawaf SALAM,
President.

(*Signed*) Philippe GAUTIER,
Registrar.

Judge TOMKA appends a separate opinion to the Judgment of the Court; Judge YUSUF appends a declaration to the Judgment of the Court; Judge IWASAWA appends a separate opinion to the Judgment of the Court; Judges NOLTE, CHARLESWORTH, CLEVELAND and TLADI append a joint dissenting opinion to the Judgment of the Court; Judge CHARLESWORTH appends a separate opinion to the Judgment of the Court; Judge CLEVELAND appends a dissenting opinion to the Judgment of the Court; Judge TLADI appends a dissenting opinion to the Judgment of the Court.

(Initialled) N.S.

(Initialled) Ph.G.
