

JOINT DECLARATION OF JUDGES CHARLESWORTH
AND BRANT

1. We join the Court in rejecting Azerbaijan’s Request for provisional measures. Today (Order, para. 22), the Court recalls its reasoning in its Order of 7 December 2021. The Court had stated there that it “does not consider that CERD plausibly imposes any obligation on Armenia to take measures to enable Azerbaijan to undertake demining or to cease and desist from planting landmines”¹. Armenia relied on this sentence in the present proceedings to resist Azerbaijan’s Request.

2. This sentence catches the eye. At first sight it may be read as a shift of focus from an enquiry concerning the plausibility of rights, which is accepted in the Court’s jurisprudence on provisional measures, to one concerning the plausibility of obligations, which would be unique. Even where situations such as the present case reach the merits phase, the Court does not merely enquire whether a specific obligation exists under a treaty, but also examines whether a given conduct engages the State’s international responsibility under that treaty. This is because an obligation can be breached through various forms of conduct, any of which engages the international responsibility of the State².

3. It is important, therefore, to read the sentence of the Order of 7 December 2021 in the context of the paragraph in which it appears. The following sentence addresses the evidence put before the Court in that Request and finds it inadequate for the conclusion that the Respondent’s alleged conduct with respect to landmines had the purpose or effect of nullifying or impairing plausible rights under CERD.

4. The Court’s reasoning in 2021, then, in our view, should not be seen as an unsuccessful search in CERD for a plausible obligation that expressly

¹ *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.

² *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 811, para. 21; see also Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 55, para. 2 (Commentary to Article 12).

regulates the use of landmines. Rather, it was an enquiry whether it was plausible that Armenia jeopardized rights protected under CERD by failing to undertake demining or to cease and desist from planting landmines.

(Signed) Hilary CHARLESWORTH.

(Signed) Leonardo BRANT.
