INTERNATIONAL COURT OF JUSTICE

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

AZERBAIJAN
v.
ARMENIA

PRELIMINARY OBJECTIONS OF THE REPUBLIC OF ARMENIA

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Annex 1

Committee on the Elimination of Racial Discrimination,
General Recommendation No. 23: Indigenous Peoples (1997)

OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS

General Recommendation No. 23: Indigenous Peoples : . 08/18/1997. Gen. Rec. No. 23. (General Comments)

Convention Abbreviation: CERD

General Recommendation XXIII

Indigenous Peoples

(Fifty-first session, 1997) *

1. In the practice of the Committee on the Elimination of Racial Discrimination, in particular in the examination of reports of States parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the situation of indigenous peoples has always been a matter of close attention and concern. In this respect, the Committee has consistently affirmed that discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination.

2. The Committee, noting that the General Assembly proclaimed the International Decade of the World's Indigenous Peoples commencing on 10 December 1994, reaffirms that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination apply to indigenous peoples.

3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized.

4. The Committee calls in particular upon States parties to:

(a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

(b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development

compatible with their cultural characteristics;

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

(e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.

5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

6. The Committee further calls upon States parties with indigenous peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention.

* Contained in document A/52/18, annex V.

Annex 2

Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Slovakia*, UN Doc. CERD/C/304/Add.110 (1 May 2001)
(excerpt)

the State party ensure that the National Employment Plan contains adequate job-training initiatives, and implement affirmative action programmes to improve the employment situation among the Roma in various levels of employment.

14. The Committee is concerned that a disproportionately large number of Roma suffer higher mortality rates, have poorer nutrition levels, and low levels of awareness of maternal and child health. Moreover, the Committee is concerned about poor access to clean drinking water, adequate sanitation, and high exposure to environmental pollution in Roma settlements. The Committee recommends that the State party take all necessary measures to ensure that the Roma enjoy the full right to health and health care. The Committee recommends that the State party prioritize and target social services for persons belonging to the most vulnerable groups.

15. With respect to the various initiatives undertaken pursuant to the United Nations Decade for Human Rights Education, such as inclusion of human rights teaching in the school curricula, police academies and in detention facilities, the Committee would welcome information in subsequent reports on the effectiveness of these measures and public awareness-raising campaigns to prevent racial discrimination.

16. The State party is also invited, in its next report, to provide further information on the following issues: (a) the implementation of resolution No. 110 of the National Council on Human Rights and National Minorities, which calls for, inter alia, cooperation with NGOs to combat racial crimes and ongoing training at all levels for professionals working within the criminal justice system; and (b) comprehensive statistics on the number of racist offences that are reported, including against the police, the number of cases prosecuted, the reasons for not prosecuting, and the eventual outcome.

17. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention.

18. The Committee recommends that the State party ensure the wide dissemination of the text of the Convention and make its periodic reports readily available to the public from the time they are submitted, and that the Committee's concluding observations on them be similarly publicized.

19. The Committee recommends that the State party's next periodic report be an updating report, and that it addresses the points raised in the present observations.

Annex 3

Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America*, UN Doc. CERD/C/USA/CO/6 (8 May 2008)
(excerpt)

The Committee recommends that the State party take all appropriate measures, including increasing the use of "pattern and practice" investigations, to combat de facto discrimination in the workplace and ensure the equal and effective enjoyment by persons belonging to racial, ethnic and national minorities of their rights under article 5 (e) of the Convention. The Committee further recommends that the State party take effective measures, including the enactment of legislation, such as the proposed Civil Rights Act of 2008,– to ensure the right of workers belonging to racial, ethnic and national minorities, including undocumented migrant workers, to obtain effective protection and remedies in case of violation of their human rights by their employer.

29. The Committee is concerned about reports relating to activities, such as nuclear testing, toxic and dangerous waste storage, mining or logging, carried out or planned in areas of spiritual and cultural significance to Native Americans, and about the negative impact that such activities allegedly have on the enjoyment by the affected indigenous peoples of their rights under the Convention (arts. 5 (d) (v), 5 (e) (iv) and 5 (e) (vi)).

The Committee recommends that the State party take all appropriate measures, in consultation with indigenous peoples concerned and their representatives chosen in accordance with their own procedure, – to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention.

The Committee further recommends that the State party recognize the right of Native Americans to participate in decisions affecting them, and consult and cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans. While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples.

30. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the right to land, health, living environment and the way of life of indigenous peoples living in these regions (arts. 2 (1) (d) and 5 (e)).

In light of article 2, paragraph 1 (d), and 5 (e) of the Convention and of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In

particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in the United States accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in the United States on indigenous peoples abroad and on any measures taken in this regard.

31. The Committee, while noting the efforts undertaken by the State party and civil society organizations to assist the persons displaced by Hurricane Katrina of 2005, remains concerned about the disparate impact that this natural disaster continues to have on low-income African American residents, many of whom continue to be displaced after more than two years after the hurricane (art. 5 (e) (iii)).

The Committee recommends that the State party increase its efforts in order to facilitate the return of persons displaced by Hurricane Katrina to their homes, if feasible, or to guarantee access to adequate and affordable housing, where possible in their place of habitual residence. In particular, the Committee calls upon the State party to ensure that every effort is made to ensure genuine consultation and participation of persons displaced by Hurricane Katrina in the design and implementation of all decisions affecting them.

32. While noting the wide range of measures and policies adopted by the State party to improve access to health insurance and adequate health-care and services, the Committee is concerned that a large number of persons belonging to racial, ethnic and national minorities still remain without health insurance and face numerous obstacles to access to adequate health care and services (art. 5 (e) (iv)).

The Committee recommends that the State party continue its efforts to address the persistent health disparities affecting persons belonging to racial, ethnic and national minorities, in particular by eliminating the obstacles that currently prevent or limit their access to adequate health care, such as lack of health insurance, unequal distribution of health-care resources, persistent racial discrimination in the provision of health care and poor quality of public health-care services. The Committee requests the State party to collect statistical data on health disparities affecting persons belonging to racial, ethnic and national minorities, disaggregated by age, gender, race, ethnic or national origin, and to include it in its next periodic report.

33. The Committee regrets that despite the efforts of the State party, wide racial disparities continue to exist in the field of sexual and reproductive health, particularly with regard to the high maternal and infant mortality rates among women and children belonging to racial, ethnic and national minorities, especially African Americans, the high incidence of unintended pregnancies and greater abortion rates affecting African American women, and the growing disparities in HIV infection rates for minority women (art. 5 (e) (iv)).

Annex 4

Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined thirteenth to fifteenth periodic reports of Suriname*, UN Doc. CERD/C/SUR/CO/13-15 (25 September 2015)
(excerpt)

Akwé: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. Noting that indigenous and tribal peoples have the right to continue their traditional ways of living on natural reserves, the Committee recommends that the State party adopt all measures to guarantee that national reserves established on ancestral territories of indigenous and tribal peoples allow for sustainable economic and social development compatible with the cultural characteristics and living conditions of those indigenous communities.

Health and environmental contamination

27. While noting all the efforts made by the State party to reform and regulate the gold-mining sector and the use of mercury, the Committee remains concerned about reports of the high level of use and dispersion of mercury and its negative impact on the environment and on the means of subsistence and the health of indigenous and tribal peoples (art. 5).

28. **The Committee recommends that State party take specific measures to ensure that no mercury is used or dispersed on territories occupied by indigenous and tribal peoples, that contaminated areas are cleaned and that the indigenous and tribal peoples affected are given access to clean, drinkable water and health care and are entitled to effective remedies and adequate compensation for the territories contaminated by mercury.**

Decisions of the Inter-American Court of Human Rights

29. While noting that the State party has already implemented some of the elements of the judgements of the Inter-American Court of Human Rights in the cases of *Moiwana Village v. Suriname* (2005) and *Saramaka People v. Suriname* (2007), the Committee expresses serious concern about the delay, and the lack of any concrete information indicating real progress made, in implementing these decisions. The Committee is especially concerned about the granting of a mining concession in 2013, in contravention of the decision made by the Court in the *Saramaka* case (art. 6).

30. **The Committee urges the State party to comply with legally binding rulings of the Inter-American Court of Human Rights and, in particular, to take steps to expedite the demarcation and titling of territories, the granting of legal recognition of collective juridical capacity and the punishment of the perpetrators of the Moiwana Village massacre in 1986. The Committee also recommends that the State party suspend the granting of any new concessions until the State party has put in place the measures ordered by the Court .**

Participation in public life and decision-making processes

31. While noting that a small number of Maroons and indigenous people hold positions in ministries, councils and the National Assembly, the Committee remains concerned about the limited participation of members of tribal and indigenous peoples in public life and governmental bodies, and in the development and approval of public standards and policies, including those directly affecting their rights. The Committee is particularly concerned by the absence of consultation of indigenous and tribal peoples as part of the process of drafting the law on traditional authorities or the negotiation of the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries in Suriname (arts. 2 and 5).

32. **The Committee recommends that the State party take special measures to increase the number of representatives of indigenous and tribal peoples, in particular**

Annex 5

Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of Azerbaijan*,
UN Doc. CERD/C/AZE/CO/10-12
(22 September 2022)
(excerpt)

statelessness cases, including by developing and adopting a legislative framework for a statelessness determination procedure to enable all stateless persons, without discrimination, to have their status ascertained and to obtain identity documents. It further recommends that the State party adopt measures to ensure that refugees, asylum seekers and stateless persons can enjoy their economic and social rights without discrimination, in particular their access to education and health-care services.

Migrant workers

32. The Committee is concerned about reports that migrant workers face harsh working conditions, abuse and exploitation, are subjected to discrimination, including with regard to remuneration, and are vulnerable to trafficking. The Committee is also concerned about the barriers to migrant workers – particularly undocumented migrants – accessing justice and remedies (art. 5).

33. **Recalling the relevant recommendation in its previous concluding observations,**[10] **the Committee recommends that the State party adopt measures to combat abuse and exploitation of migrant workers, including by assessing and reviewing the employment framework on migrant workers to reduce their vulnerability to exploitation and abuse, particularly by their employers. It also recommends that the State party adopt measures to ensure the access of migrant workers to justice, irrespective of their status, including to free legal aid, and that it conduct awareness-raising campaigns among migrant workers on their rights and on existing remedies. The Committee recommends that the State party provide, in its next report, information on the number of investigations into trafficking, and the number of prosecutions and convictions of perpetrators, particularly in cases affecting migrant workers.**

Training, education and other measures to combat prejudice and intolerance

34. The Committee notes the information from the delegation during the dialogue that the Ministry of Education and Science reviews school textbooks every four years, with the aim of addressing human rights issues and increasing the knowledge of teachers and children. Nevertheless, the Committee is concerned about reports that school textbooks promote prejudice and incite racial hatred, particularly against ethnic Armenians, and that ethnic minorities are marginalized in history education in the State party. It is also concerned about the lack of detailed information on measures taken by the State party to combat prejudice and intolerance and to incorporate human rights principles into school curricula and university programmes (art. 7).

35. **In light of the multi-ethnic, multicultural and religiously diverse nature of the population of the State party, and its different historical experiences, the Committee recommends that the State party increase its efforts to raise public awareness of the importance of ethnic and cultural diversity and the fight against racial discrimination. It also recommends that the State party adopt measures to strengthen the school textbooks review process in order to integrate the concepts of ethnic and cultural diversity and the fight against racial hatred and discrimination at all levels of education. The Committee further recommends that the State party adopt measures to ensure that history is taught in such a way as to prevent a dominant historical narrative and ethnic hierarchizing, while ensuring the effective and meaningful participation of the ethnic minorities.**

D. Other recommendations

Ratification of other treaties

36. **Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International**

[10] CERD/C/AZE/CO/7-9, para. 34.

Annex 6

Third Report on the Law of Treaties, by Sir Humphrey Waldock, Special Rapporteur,
UN Doc. A/CN.4/167 and Add.1-3 (1964)
(excerpt)

Palestine Concessions case.[28] The United Kingdom contested the Court's jurisdiction on the ground, *inter alia,* that the acts complained of had taken place before Protocol XII to the Treaty of Lausanne had come into force, but the Court said:

> " Protocol XII was drawn up in order to fix the conditions governing the recognition and treatment by the Contracting Parties of certain concessions granted by the Ottoman authorities before the conclusion of the Protocol. An essential characteristic therefore of Protocol XII is that its effects extend to legal situations dating from a time previous to its own existence. If provision were not made in the clauses of the Protocol for the protection of the rights recognized therein as against infringements before the coming into force of that instrument, the Protocol would be ineffective as regards the very period at which the rights in question are most in need of protection. The Court therefore considers that the Protocol guarantees the rights recognized in it against any violation regardless of the date at which it may have taken place."

(3) The non-retroactivity principle has come under consideration in international tribunals most frequently in connexion with jurisdictional clauses. When the treaty is purely and simply a treaty of arbitration or judicial settlement, the jurisdictional clause will normally provide for the submission to an international tribunal of "disputes", or specified categories of " disputes ", between the parties. Then the word " disputes " according to its natural meaning is apt to cover any dispute which *exists* between the parties after the coming into force of the treaty. It matters not either that the dispute concerns events which took place prior to that date or that the dispute itself arose prior to it; for the parties have agreed to submit to arbitration or judicial settlement all their *existing* disputes without qualification. Thus, being called upon to determine the effect of Article 26 of the Palestine Mandate, the Permanent Court said in the *Mavrommatis Palestine Concessions case:*[29]

> " The Court is of opinion that in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment. In the present case, this interpretation appears to be indicated by the terms of Article 26 itself, where it is laid down that " any dispute whatsoever ... which may arise " shall be submitted to the Court. The reservation made in many arbitration treaties regarding disputes arising out of events previous to the conclusion of the treaty seems to prove the necessity for an explicit limitation of jurisdiction and, consequently, the correctness of the rule of interpretation enunciated above."

The reservations and limitations of jurisdiction to which the Court there referred are clauses restricting the acceptance of jurisdiction to disputes " arising after the entry into force of the instrument and with regard to situations or facts subsequent to that date ". In a later case — the *Phosphates in Morocco* case[30] the Permanent Court referred to these clauses as having been " inserted [in arbitration treaties] *with the object of depriving the acceptance of the compulsory jurisdiction of any retroactive effects,* in order both to avoid, in general, a revival of old disputes, and to preclude the possibility of the submission to the Court ... of situations or facts dating from a period when the State whose action was impugned was not in a position to foresee the legal proceedings to which these facts and situations might give rise ". In substance this statement is, of course, true. But in the present connexion it needs to be emphasized that the Court was not, strictly speaking, correct in implying that a treaty which provides for acceptance of jurisdiction with respect to " disputes " between the parties is one which has " retroactive effects "; because the treaty, for the very reason that it cannot have retroactive effects, applies only to *disputes* arising or *continuing to exist* after its entry into force. What the limitation clauses really do is to limit the scope of the acceptance of jurisdiction to " new " disputes rather than to deprive the treaty of "retroactive effects".[31]

(4) On the other hand, when a jurisdictional clause is found not in a treaty of arbitration or judicial settlement but attached to the substantive clauses of a treaty as a means of securing their due application, the non-retroactivity principle does operate indirectly to limit *ratione temporis* the application of the jurisdictional clause. The reason is that the "disputes" with which the clause is concerned are *ex hypothesi* limited to " disputes " regarding the interpretation and application of the substantive provisions of the treaty which, as has been seen, do not normally extend to matters occurring before the treaty came into force. In short, the disputes clause will only cover pre-treaty occurrences in exceptional cases, like Protocol XII to the Treaty of Lausanne,[32] where the parties have expressly or by clear implication indicated their intention that the substantive provisions of the treaty are to have retroactive effects. Thus no such intention is to be found in the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Commission of Human Rights has accordingly held in numerous cases that it is incompetent to entertain complaints regarding alleged violations of human rights said to have occurred prior to the entry into force of the Convention with respect to the State in question.[33]

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[28] *P.C.I.J.* (1924) Series A, No. 2, p. 34.

[29] *Ibid.*, p. 35.

[30] *P.C.I.J.* (1938) Series A/B, No. 74, p. 24.

[31] The application of the different forms of clause limiting *ratione temporis* the acceptance of the jurisdiction of international tribunals has not been free from difficulty and the case-law of the two World Courts now contains a quite extensive jurisprudence on the matter. Important although this jurisprudence is in regard to the Court's jurisdiction, it concerns the application of particular treaty clauses, and the Special Rapporteur does not consider that it calls for detailed examination in the context of the general law of treaties.

[32] See paragraph (2) of this commentary.

[33] See *Yearbook of the European Convention of Human Rights* (1955-1957), pp. 153-159; (1958-1959), pp. 214, 376, 382, 407, 412, 492-494; (1960), pp. 222, 280, 444; and (1961), pp. 128, 132-145, 240, 325.

Annex 7

International Law Commission, Draft Articles on the Law of Treaties with Commentaries,
Yearbook of the International Law Commission 1966
(excerpt)

Recognizing that its argument ran counter to the general principle that a treaty does not have retroactive effects, that Government sought to justify its contention as a special case by arguing that during the years 1922 and 1923 an earlier treaty of 1886 had been in force between the parties containing provisions similar to those of the 1926 treaty. This argument was rejected by the Court, which said:

> "To accept this theory would mean giving retroactive effect to Article 29 of the Treaty of 1926, whereas Article 32 of this Treaty states that the Treaty, which must mean all the provisions of the Treaty, shall come into force immediately upon ratification. Such a conclusion might have been rebutted if there had been any special clause or any special object necessitating retroactive interpretation. There is no such clause or object in the present case. It is therefore impossible to hold that any of its provisions must be deemed to have been in force earlier".

A good example of a treaty having such a "special clause" or "special object" necessitating retroactive interpretation is to be found in the *Mavrommatis Palestine Concessions* case.[96] The United Kingdom contested the Court's jurisdiction on the ground, *inter alia*, that the acts complained of had taken place before Protocol XII to the Treaty of Lausanne had come into force, but the Court said:

> "Protocol XII was drawn up in order to fix the conditions governing the recognition and treatment by the contracting Parties of certain concessions granted by the Ottoman authorities before the conclusion of the Protocol. An essential characteristic therefore of Protocol XII is that its effects extend to legal situations dating from a time previous to its own existence. If provision were not made in the clauses of the Protocol for the protection of the rights recognized therein as against infringements before the coming into force of that instrument, the Protocol would be ineffective as regards the very period at which the rights in question are most in need of protection. The Court therefore considers that the Protocol guarantees the rights recognized in it against any violation regardless of the date at which it may have taken place."

(2) The question has come under consideration in international tribunals in connexion with jurisdictional clauses providing for the submission to an international tribunal of "disputes", or specified categories of "disputes", between the parties. The Permanent Court said in the *Mavrommatis Palestine Concessions* case:

> "The Court is of opinion that, in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment.... The reservation made in many arbitration treaties regarding disputes arising out of events previous to the conclusion of the treaty seems to prove the necessity for an explicit limitation of jurisdiction and, consequently, the correctness of the rule of interpretation enunciated above."[97]

This is not to give retroactive effect to the agreement because, by using the word "disputes" without any qualification, the parties are to be understood as accepting jurisdiction with respect to all disputes *existing* after the entry into force of the agreement. On the other hand, 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. Thus in numerous cases under the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Commission of Human Rights has held that it is incompetent to entertain complaints regarding alleged violations of human rights said to have occurred prior to the entry into force of the Convention with respect to the State in question.[98]

(3) If, however, an act or fact or situation which took place or arose prior to the entry into force of a treaty continues to occur or exist after the treaty has come into force, it will be caught by the provisions of the treaty. The non-retroactivity principle cannot be infringed by applying a treaty to matters that occur or exist when the treaty is in force, even if they first began at an earlier date. Thus, while the European Commission of Human Rights has not considered itself competent to inquire into the propriety of legislative, administrative or judicial acts completed and made final before the entry into force of the European Convention, it has assumed jurisdiction where there were fresh proceedings or recurring applications of those acts after the Convention was in force.[99]

(4) The article accordingly states that unless it otherwise appears from the treaty, its provisions do not apply to a party in relation to any act or fact which took place or any situation which ceased to exist before the date of entry into force of the treaty with respect to that party. In other words, the treaty will not apply to acts or facts which are *completed* or to situations which have ceased to exist before the treaty comes into force. The general phrase "unless a different intention appears from the treaty or is otherwise established" is used in preference to "unless the treaty otherwise provides" in order to allow for cases where the very nature of the

[96] *P.C.I.J.* (1924) Series A, No. 2, p. 34.

[97] *Ibid.*, p. 35; cf. the *Phosphates in Morocco* case, *P.C.I.J.* (1938) Series A/B, No. 74, p. 24. The application of the different forms of clause limiting *ratione temporis* the acceptance of the jurisdiction of international tribunals has not been free from difficulty, and the case law of the Permanent Court of International Justice and the International Court of Justice now contains a quite extensive jurisprudence on the matter. Important though this jurisprudence is in regard to the Court's jurisdiction, it concerns the application of particular treaty clauses, and the Commission does not consider that it calls for detailed examination in the context of the general law of treaties.

[98] See *Yearbook of the European Convention of Human Rights*, (1955-57) pp. 153-159; *ibid.* (1958-59) pp. 214, 376, 382, 407, 412, 492-494; *ibid.* (1960) pp. 222, 280, 444; and *ibid.* (1961) pp. 128, 132-145, 240, 325.

[99] Case of De Becker, see *Yearbook of the European Convention of Human Rights* (1958-59), pp. 230-235; Application No. 655/59; *Yearbook of the European Convention of Human Rights* (1960), p. 284.

pretation in the case of an ambiguity in plurilingual texts.

(9) The Commission considered whether there were any further principles which it might be appropriate to codify as general rules for the interpretation of plurilingual treaties. For example, it examined whether it should be specified that there is a legal presumption in favour of the text with a clear meaning or of the language version in which the treaty was drafted. It felt, however, that this might be going too far, since much might depend on the circumstances of each case and the evidence of the intention of the parties. Nor did it think that it would be appropriate to formulate any general rule regarding recourse to non-authentic versions, though these are sometimes referred to for such light as they may throw on the matter.

Section 4: Treaties and third States

Article 30.[157] General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

Commentary

(1) A third State, as defined in article 2(1)(*h*), is any State not a party to the treaty, and there appears to be almost universal agreement that in principle a treaty creates neither obligations nor rights for third States without their consent. The rule underlying the present article appears originally to have been derived from Roman law in the form of the well-known maxim *pacta tertiis nec nocent nec prosunt*—agreements neither impose obligations nor confer rights upon third parties. In international law, however, the justification for the rule does not rest simply on this general concept of the law of contract but on the sovereignty and independence of States. There is abundant evidence of the recognition of the rule in State practice and in the decisions of international tribunals, as well as in the writings of jurists.

(2) *Obligations.* International tribunals have been firm in laying down that in principle treaties, whether bilateral or multilateral, neither impose any obligation on States which are not parties to them nor modify in any way their legal rights without their consent. In the *Island of Palmas* case,[158] for example, dealing with a supposed recognition of Spain's title to the island in treaties concluded by that country with other States, Judge Huber said: "It appears further to be evident that Treaties concluded by Spain with third Powers recognizing her sovereignty over the 'Philippines' could not be binding upon the Netherlands...".[159] In another passage he said:[160] "...whatever may be the right construction of a treaty, it cannot be interpreted as disposing of the rights of independent third Powers"; and in a third passage[161] he emphasized that "...the inchoate title of the Netherlands could not have been modified by a treaty concluded between third Powers". In short, treaties concluded by Spain with other States were *res inter alios acta* which could not, as treaties, be in any way binding upon the Netherlands. In the case of the *Free Zones of Upper Savoy and the District of Gex*[162] it was a major multilateral treaty—the Versailles Peace Treaty—which was in question, and the Permanent Court held that article 435 of the Treaty was "not binding upon Switzerland, who is not a Party to that Treaty, except to the extent to which that country accepted it". Similarly, in the *Territorial Jurisdiction of the International Commission of the River Oder* case[163] the Permanent Court declined to regard a general multilateral treaty—the Barcelona Convention of 1921 on the Régime of Navigable Waterways of International Concern—as binding upon Poland, who was not a party to the treaty. Nor in the *Status of Eastern Carelia* case[164] did the Permanent Court take any different position with regard to the Covenant of the League of Nations.

(3) *Rights.* Examples of the application of the underlying rule to rights can also be found in the decisions of arbitral tribunals, which show that a right cannot arise for a third State from a treaty which makes no provision for such a right; and that in these cases only parties may invoke a right under the treaty. In the *Clipperton Island*[165] arbitration the arbitrator held that Mexico was not entitled to invoke against France the provision of the Act of Berlin of 1885 requiring notification of occupations of territory, *inter alia*, on the ground that Mexico was not a signatory to that Act. In the *Forests of Central Rhodopia* case[166] the arbitrator, whilst upholding Greece's claim on the basis of a provision in the Treaty of Neuilly, went on to say:"... until the entry into force of the Treaty of Neuilly, the Greek Government, not being a signatory of the Treaty of Constantinople, had no legal grounds to set up a claim based upon the relevant stipulations of that Treaty".[167]

(4) The question whether the rule *pacta tertiis nec nocent nec prosunt* admits of any actual exceptions in international law is a controversial one which divided the Commission. There was complete agreement amongst the members that there is no exception in the case of obligations; a treaty never by its own force alone creates obligations for non-parties. The division of opinion related to the question whether a treaty may of its own force confer rights upon a non-party. One group of members considered that, if the parties so intend, a treaty may have this effect, although the non-party is not, of course, obliged to accept or exercise the right. Another group of members considered that no actual right exists in favour of the

[157] 1964 draft, article 58.

[158] (1928) *Reports of International Arbitral Awards*, vol. II, p. 831.

[159] *Ibid.*, p. 850.

[160] *Ibid.*, p. 842.

[161] *Ibid.*, p. 870.

[162] *P.C.I.J.* (1932), Series A/B, No. 46, p. 141; and *ibid.* (1929), Series A, No. 22, p. 17.

[163] *Ibid.* (1929), Series A, No. 23, pp. 19-22.

[164] *Ibid.* (1923), Series B, No. 5, pp. 27 and 28; cf. the somewhat special case of the *Aerial Incident of 27 July 1955*, *I.C.J. Reports 1959*, p. 138.

[165] *Reports of International Arbitral Awards*, vol. II, p. 1105.

[166] *Ibid.*, vol. III, p. 1405.

[167] English translation from *Annual Digest and Reports of International Law Cases*, 1933-34, case No. 39, p. 92.

non-party unless and until it is accepted by the non-party. This matter is discussed more fully in the commentary to article 32.

(5) The title of the article, as provisionally adopted in 1964, was "General rule limiting the effects of treaties to the parties". As this title gave rise to a misconception on the part of at least one Government that the article purports to deal generally with the question of the "effects of treaties on third States", the Commission decided to change it to "General rule regarding third States". For the same reason and in order not to appear to prejudge in any way the question of the application of treaties with respect to individuals, it deleted the first limb of the article "A treaty *applies only between the parties and*" etc. It thus confined the article to the short and simple statement: "A treaty does not create either obligations or rights for a third State without its consent". The formulation of both the title and the text were designed to be as neutral as possible so as to maintain a certain equilibrium between the respective doctrinal points of view of members of the Commission.

Article 31.[168] Treaties providing for obligations for third States

An obligation arises for a State from a provision of a treaty to which it is not a party if the parties intend the provision to be a means of establishing the obligation and the third State has expressly accepted that obligation.

Commentary

(1) The primary rule, formulated in the previous article, is that the parties to a treaty cannot impose an obligation on a third State without its consent. That rule is one of the bulwarks of the independence and equality of States. The present article also underlines that the consent of a State is always necessary if it is to be bound by a provision contained in a treaty to which it is not a party. Under it two conditions have to be fulfilled before a non-party can become bound: first, the parties to the treaty must have intended the provision in question to be the means of establishing an obligation for the State not a party to the treaty; and secondly, the third State must have expressly agreed to be bound by the obligation. The Commission appreciated that when these conditions are fulfilled there is, in effect, a second collateral agreement between the parties to the treaty, on the one hand, and the third State on the other; and that the juridical basis of the latter's obligation is not the treaty itself but the collateral agreement. However, even if the matter is viewed in this way, the case remains one where a provision of a treaty concluded between certain States becomes directly binding upon another State which is not and does not become a party to the treaty.

(2) The operation of the rule in this article is illustrated by the Permanent Court's approach to article 435 of the Treaty of Versailles in the *Free Zones* case.[169] Switzerland was not a party to the Treaty of Versailles, but the text of the article had been referred to her prior to the conclusion of the treaty. The Swiss Federal Council had further addressed a note[170] to the French Government informing it that Switzerland found it possible to "acquiesce" in article 435, but only on certain conditions. One of those conditions was that the Federal Council made the most express reservations as to the statement that the provisions of the old treaties, conventions, etc., were no longer consistent with present conditions, and said that it would not wish its acceptance of the article to lead to the conclusion that it would agree to the suppression of the régime of the free zones. France contended before the Court that the provisions of the old treaties, conventions, etc., concerning the free zones had been abrogated by article 435. In rejecting this contention, the Court pointed out that Switzerland had not accepted that part of article 435 which asserted the obsolescence and abrogation of the free zones:

> "Whereas, in any event, Article 435 of the Treaty of Versailles is not binding on Switzerland, which is not a Party to this Treaty, except to the extent to which that country has itself accepted it; as this extent is determined by the note of the Swiss Federal Council of May 5th, 1919, an extract from which constitutes Annex I to this article; as it is by this action and by this action alone that the Swiss Government has 'acquiesced' in the 'provisions of Article 435', namely 'under the conditions and reservations' which are set out in the said note."

(3) Some Governments in their comments referred to treaty provisions imposed upon an aggressor State and raised the question of the application of the present article to such provisions. The Commission recognized that such cases would fall outside the principle laid down in this article, provided that the action taken was in conformity with the Charter. At the same time, it noted that article 49, which provides for the nullity of any treaty procured by the threat or use of force, is confined to cases where the threat or use of force is "in violation of the principles of the Charter of the United Nations". A treaty provision imposed upon an aggressor State in conformity with the Charter would not run counter to the principle in article 49 of the present articles. The Commission decided by a majority vote to include in the draft a separate article containing a general reservation in regard to any obligation in relation to a treaty which arises for an aggressor State in consequence of measures taken in conformity with the Charter. The text of this reservation is in article 70.

Article 32.[171] Treaties providing for rights for third States

1. A right arises for a State from a provision of a treaty to which it is not a party if the parties intend the provision to accord that right either to the State in question, or to a group of States to which it belongs, or to all States, and

[168] 1964 draft, article 59.

[169] *P.C.I.J.* (1929), Series A, No. 22, pp. 17 and 18; *ibid.* (1932), Series A/B, No. 46, p. 141.

[170] The text of the relevant part of this note was annexed to article 435 of the Treaty of Versailles.

[171] 1964 draft, article 60.

the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Commentary

(1) This article deals with the conditions under which a State may be entitled to invoke a right under a treaty to which it is not a party. The case of rights is more controversial than that of obligations, because the question of the need for the consent of the third State presents itself in a somewhat different light. The parties to a treaty cannot, in the nature of things, effectively *impose* a right on a third State because a right may always be disclaimed or waived. Consequently, under the present article the question is simply whether the third State's "acceptance" of the provision is or is not legally necessary for the creation of the right, or whether the treaty of its own force creates the right.

(2) The Commission noted that treaty practice shows a not inconsiderable number of treaties containing stipulations in favour of third States. In some instances, the stipulation is in favour of individual States as, for example, provisions in the Treaty of Versailles in favour of Denmark[172] and Switzerland.[173] In some instances, it is in favour of a group of States, as in the case of the provisions in the Peace Treaties after the two world wars which stipulated that the defeated States should waive any claims arising out of the war in favour of certain States not parties to the treaties. A further case is Article 35 of the Charter, which stipulates that non-members have a right to bring disputes before the Security Council or General Assembly. Again, the Mandate and Trusteeship Agreements contain provisions stipulating for certain rights in favour respectively of members of the League and of the United Nations, though in these cases the stipulations are of a special character as being by one member of an international organization in favour of the rest.[174] In other instances, the stipulation is in favour of States generally, as in the case of provisions concerning freedom of navigation in certain international rivers, and through certain maritime canals and straits.

(3) Some jurists maintain that, while a treaty may certainly confer, either by design or by its incidental effects, a *benefit* on a third State, the latter can only acquire an actual right through some form of collateral agreement between it and the parties to the treaty. In other words, as with the case of an obligation they hold that a right will be created only when the treaty provision is intended to constitute an offer of a right to the third State which the latter has accepted. They take the position that neither State practice nor the pronouncements of the Permanent Court in the *Free Zones* case[175] furnish any clear evidence of the recognition of the institution of *stipulation pour autrui* in international law.

(4) Other jurists,[176] who include all the four Special Rapporteurs on the law of treaties, take a different position. Broadly, their view is that there is nothing in international law to prevent two or more States from effectively creating a right in favour of another State by treaty, if they so intend; and that it is always a question of the intention of the parties in concluding the particular treaty. According to them, a distinction has to be drawn between a treaty in which the intention of the parties is merely to confer a benefit on the other State and one in which their intention is to invest it with an actual right. In the latter case they hold that the other State acquires a legal right to invoke directly and on its own account the provision conferring the benefit, and does not need to enlist the aid of one of the parties to the treaty in order to obtain the execution of the provision. This right is not, in their opinion, conditional upon any specific act of acceptance by the other State or any collateral agreement between it and the parties to the treaty. These writers maintain that State practice confirms this view and that authority for it is also to be found in the report of the Committee of Jurists to the Council of the League on the Aaland Islands question,[177] and more especially in the judgment of the Permanent Court in 1932 in the *Free Zones* case where it said:

> "It cannot be lightly presumed that stipulations favourable to a third State have been adopted with the object of creating an actual right in its favour. There is however nothing to prevent the will of sovereign States from having this object and this effect. The question of the existence of a right acquired under an instrument drawn between other States is therefore one to be decided in each particular case: it must be ascertained whether the States which have stipulated in favour of a third State meant to create for that State an actual right which the latter has accepted as such."[178]

(5) In 1964, some members of the Commission shared the view of the first group of jurists set out in paragraph (3) above, while other members in general shared the view of the second group set out in paragraph (4). The Commission, however, concluded that this division of opinion amongst its members was primarily of a doctrinal character and that the two opposing doctrines did not differ very substantially in their practical effects. Both groups considered that a treaty provision may be a means of establishing a right in favour of a third State, and that the third State is free to accept or reject the right as it

[172] Article 109 of the Treaty of Versailles.

[173] Articles 358 and 374 of the Treaty of Versailles.

[174] See the *South-West Africa* cases, *I.C.J. Reports 1962*, pp. 329-331 and p. 410; the *Northern Cameroons* case, *I.C.J. Reports 1963*, p. 29.

[175] *P.C.I.J.* (1932), Series A/B, No. 46, p. 147.

[176] E.g., Sir G. Fitzmaurice, fifth report on the law of treaties, *Yearbook of the International Law Commission, 1960*, vol. II, pp. 81 and 102-104.

[177] League of Nations, *Official Journal*, Special Supplement No. 3 (October 1920), p. 18.

[178] *P.C.I.J.* (1932), Series A/B, No. 46, pp. 147 and 148; in the course of that case, however, three judges expressly dissented from the view that a stipulation in favour of a State not a party to the treaty may of itself confer an actual right upon that State.

Annex 8

United Nations Treaty Collection, *List of States Parties, Declarations and Reservations to the International Convention on the Elimination of All Forms of Racial Discrimination* (entered into force 4 January 1969), *available at* https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-2.en.pdf (excerpt)

2. International Convention on the Elimination of All Forms of Racial Discrimination

New York, 7 March 1966

ENTRY INTO FORCE: 4 January 1969, in accordance with article 19.[1]

REGISTRATION: 12 March 1969, No. 9464.

STATUS: Signatories: 88. Parties: 182.

TEXT: United Nations, *Treaty Series* , vol. 660, p. 195.

Note: The Convention was adopted by the General Assembly of the United Nations in resolution 2106 (XX)[2] of 21 December 1965.

Participant[3]	*Signature*	*Accession(a), Succession(d), Ratification*
Afghanistan		6 Jul 1983 a
Albania		11 May 1994 a
Algeria	9 Dec 1966	14 Feb 1972
Andorra	5 Aug 2002	22 Sep 2006
Angola	24 Sep 2013	2 Oct 2019
Antigua and Barbuda		25 Oct 1988 d
Argentina	13 Jul 1967	2 Oct 1968
Armenia		23 Jun 1993 a
Australia	13 Oct 1966	30 Sep 1975
Austria	22 Jul 1969	9 May 1972
Azerbaijan		16 Aug 1996 a
Bahamas		5 Aug 1975 d
Bahrain		27 Mar 1990 a
Bangladesh		11 Jun 1979 a
Barbados		8 Nov 1972 a
Belarus	7 Mar 1966	8 Apr 1969
Belgium	17 Aug 1967	7 Aug 1975
Belize	6 Sep 2000	14 Nov 2001
Benin	2 Feb 1967	30 Nov 2001
Bhutan	26 Mar 1973	
Bolivia (Plurinational State of)	7 Jun 1966	22 Sep 1970
Bosnia and Herzegovina[4]		16 Jul 1993 d
Botswana		20 Feb 1974 a
Brazil	7 Mar 1966	27 Mar 1968
Bulgaria	1 Jun 1966	8 Aug 1966
Burkina Faso		18 Jul 1974 a
Burundi	1 Feb 1967	27 Oct 1977
Cabo Verde		3 Oct 1979 a
Cambodia	12 Apr 1966	28 Nov 1983
Cameroon	12 Dec 1966	24 Jun 1971
Canada	24 Aug 1966	14 Oct 1970
Central African Republic	7 Mar 1966	16 Mar 1971
Chad		17 Aug 1977 a
Chile	3 Oct 1966	20 Oct 1971
China[5,6,7,8]		29 Dec 1981 a
Colombia	23 Mar 1967	2 Sep 1981
Comoros	22 Sep 2000	27 Sep 2004
Congo		11 Jul 1988 a
Costa Rica	14 Mar 1966	16 Jan 1967
Côte d'Ivoire		4 Jan 1973 a
Croatia[4]		12 Oct 1992 d
Cuba	7 Jun 1966	15 Feb 1972
Cyprus	12 Dec 1966	21 Apr 1967
Czech Republic[9]		22 Feb 1993 d
Democratic Republic of the Congo		21 Apr 1976 a
Denmark[10]	21 Jun 1966	9 Dec 1971
Djibouti	14 Jun 2006	30 Sep 2011
Dominica		13 May 2019 a
Dominican Republic		25 May 1983 a
Ecuador		22 Sep 1966 a
Egypt	28 Sep 1966	1 May 1967
El Salvador		30 Nov 1979 a
Equatorial Guinea		8 Oct 2002 a
Eritrea		31 Jul 2001 a
Estonia		21 Oct 1991 a
Eswatini		7 Apr 1969 a
Ethiopia		23 Jun 1976 a
Fiji		11 Jan 1973 d

Participant[3]	*Signature*	*Accession(a), Succession(d), Ratification*
Finland	6 Oct 1966	14 Jul 1970
France		28 Jul 1971 a
Gabon	20 Sep 1966	29 Feb 1980
Gambia		29 Dec 1978 a
Georgia		2 Jun 1999 a
Germany[11]	10 Feb 1967	16 May 1969
Ghana	8 Sep 1966	8 Sep 1966
Greece	7 Mar 1966	18 Jun 1970
Grenada	17 Dec 1981	10 May 2013
Guatemala	8 Sep 1967	18 Jan 1983
Guinea	24 Mar 1966	14 Mar 1977
Guinea-Bissau	12 Sep 2000	1 Nov 2010
Guyana	11 Dec 1968	15 Feb 1977
Haiti	30 Oct 1972	19 Dec 1972
Holy See	21 Nov 1966	1 May 1969
Honduras		10 Oct 2002 a
Hungary	15 Sep 1966	4 May 1967
Iceland	14 Nov 1966	13 Mar 1967
India	2 Mar 1967	3 Dec 1968
Indonesia		25 Jun 1999 a
Iran (Islamic Republic of)	8 Mar 1967	29 Aug 1968
Iraq	18 Feb 1969	13 Feb 1970
Ireland	21 Mar 1968	29 Dec 2000
Israel	7 Mar 1966	3 Jan 1979
Italy	13 Mar 1968	5 Jan 1976
Jamaica	14 Aug 1966	4 Jun 1971
Japan		15 Dec 1995 a
Jordan		30 May 1974 a
Kazakhstan		26 Aug 1998 a
Kenya		13 Sep 2001 a
Kuwait		15 Oct 1968 a
Kyrgyzstan		5 Sep 1997 a
Lao People's Democratic Republic		22 Feb 1974 a
Latvia		14 Apr 1992 a
Lebanon		12 Nov 1971 a
Lesotho		4 Nov 1971 a
Liberia		5 Nov 1976 a
Libya		3 Jul 1968 a
Liechtenstein		1 Mar 2000 a
Lithuania	8 Jun 1998	10 Dec 1998
Luxembourg	12 Dec 1967	1 May 1978
Madagascar	18 Dec 1967	7 Feb 1969
Malawi		11 Jun 1996 a
Maldives		24 Apr 1984 a
Mali		16 Jul 1974 a
Malta	5 Sep 1968	27 May 1971
Marshall Islands		11 Apr 2019 a
Mauritania	21 Dec 1966	13 Dec 1988
Mauritius		30 May 1972 a
Mexico	1 Nov 1966	20 Feb 1975
Monaco		27 Sep 1995 a
Mongolia	3 May 1966	6 Aug 1969
Montenegro[12]		23 Oct 2006 d
Morocco	18 Sep 1967	18 Dec 1970
Mozambique		18 Apr 1983 a
Namibia[13]		11 Nov 1982 a
Nauru	12 Nov 2001	
Nepal		30 Jan 1971 a
Netherlands (Kingdom of the)	24 Oct 1966	10 Dec 1971
New Zealand[14]	25 Oct 1966	22 Nov 1972
Nicaragua		15 Feb 1978 a
Niger	14 Mar 1966	27 Apr 1967
Nigeria		16 Oct 1967 a
North Macedonia[4]		18 Jan 1994 d
Norway	21 Nov 1966	6 Aug 1970
Oman		2 Jan 2003 a
Pakistan	19 Sep 1966	21 Sep 1966
Palau	20 Sep 2011	
Panama	8 Dec 1966	16 Aug 1967
Papua New Guinea		27 Jan 1982 a
Paraguay	13 Sep 2000	18 Aug 2003
Peru	22 Jul 1966	29 Sep 1971
Philippines	7 Mar 1966	15 Sep 1967
Poland	7 Mar 1966	5 Dec 1968
Portugal[7]		24 Aug 1982 a
Qatar		22 Jul 1976 a
Republic of Korea	8 Aug 1978	5 Dec 1978
Republic of Moldova		26 Jan 1993 a
Romania		15 Sep 1970 a
Russian Federation	7 Mar 1966	4 Feb 1969
Rwanda		16 Apr 1975 a
San Marino	11 Dec 2001	12 Mar 2002
Sao Tome and Principe	6 Sep 2000	10 Jan 2017
Saudi Arabia		23 Sep 1997 a
Senegal	22 Jul 1968	19 Apr 1972

Participant[3]	*Signature*	*Accession(a), Succession(d), Ratification*
Serbia[4]		12 Mar 2001 d
Seychelles		7 Mar 1978 a
Sierra Leone	17 Nov 1966	2 Aug 1967
Singapore	19 Oct 2015	27 Nov 2017
Slovakia[9]		28 May 1993 d
Slovenia[4]		6 Jul 1992 d
Solomon Islands		17 Mar 1982 d
Somalia	26 Jan 1967	26 Aug 1975
South Africa	3 Oct 1994	10 Dec 1998
Spain		13 Sep 1968 a
Sri Lanka		18 Feb 1982 a
St. Kitts and Nevis		13 Oct 2006 a
St. Lucia		14 Feb 1990 d
St. Vincent and the Grenadines		9 Nov 1981 a
State of Palestine		2 Apr 2014 a
Sudan		21 Mar 1977 a
Suriname		15 Mar 1984 d
Sweden	5 May 1966	6 Dec 1971
Switzerland		29 Nov 1994 a
Syrian Arab Republic		21 Apr 1969 a
Tajikistan		11 Jan 1995 a
Thailand[15]		28 Jan 2003 a
Timor-Leste		16 Apr 2003 a
Togo		1 Sep 1972 a
Tonga		16 Feb 1972 a
Trinidad and Tobago	9 Jun 1967	4 Oct 1973
Tunisia	12 Apr 1966	13 Jan 1967
Türkiye	13 Oct 1972	16 Sep 2002
Turkmenistan		29 Sep 1994 a
Uganda		21 Nov 1980 a
Ukraine	7 Mar 1966	7 Mar 1969
United Arab Emirates		20 Jun 1974 a
United Kingdom of Great Britain and Northern Ireland[5,16]	11 Oct 1966	7 Mar 1969
United Republic of Tanzania		27 Oct 1972 a
United States of America	28 Sep 1966	21 Oct 1994
Uruguay	21 Feb 1967	30 Aug 1968
Uzbekistan		28 Sep 1995 a
Venezuela (Bolivarian Republic of)	21 Apr 1967	10 Oct 1967
Viet Nam		9 Jun 1982 a
Yemen[17,18]		18 Oct 1972 a
Zambia	11 Oct 1968	4 Feb 1972
Zimbabwe		13 May 1991 a

Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.

For objections thereto and declarations recognizing the competence of the Committee on the Elimination of Racial Discrimination, see hereinafter.)

AFGHANISTAN

While acceding to the International Convention on the Elimination of All Forms of Racial Discrimination, the Democratic Republic of Afghanistan does not consider itself bound by the provisions of article 22 of the Convention since according to this article, in the event of disagreement between two or several States Parties to the Convention on the interpretation and implementation of provisions of the Convention, the matters could be referred to the International Court of Justice upon the request of only one side.

The Democratic Republic of Afghanistan, therefore, states that should any disagreement emerge on the interpretation and implementation of the Convention, the matter will be referred to the International Court of Justice only if all concerned parties agree with that procedure.

Furthermore, the Democratic Republic of Afghanistan states that the provisions of articles 17 and 18 of the International Convention on the Elimination of All Forms of Racial Discrimination have a discriminatory nature against some states and therefore are not in conformity with the principle of universality of international treaties.

ANTIGUA AND BARBUDA

"The Constitution of Antigua and Barbuda entrenches and guarantees to every person in Antigua and Barbuda the fundamental rights and freedoms of the individual irrespective of race or place of origin. The Constitution prescribes judicial processes to be observed in the event of the violation of any of these rights, whether by the state or by a private individual. Acceptance of the Convention by the Government of Antigua and Barbuda does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligations to introduce judicial processes beyond those provided in the Constitution.

The Government of Antigua and Barbuda interprets article 4 of the Convention as requiring a Party to enact measures in the fields covered by subparagraphs (a), (b) and (c) of that article only where it is considered that the need arises to enact such legislation."

AUSTRALIA

"The Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 (a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4 (a)."

AUSTRIA

"Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the measures specifically described in sub-paragraphs (a), (b) and (c) shall be undertaken with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention. The Republic of Austria therefore considers that through such measures the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association may not be jeopardized. These rights are laid down in articles 19 and 20 of the Universal Declaration of Human Rights; they were reaffirmed by the General Assembly of the United Nations when it adopted articles 19 and 21 of the International Covenant on Civil and Political Rights and are referred to in article 5 (d) (viii) and (ix) of the present Convention."

BAHAMAS

"Firstly the Government of the Commonwealth of the Bahamas wishes to state its understanding of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by subparagraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration set out in article 5 of the Convention (in particular to freedom of opinion and expression and the right of freedom of peaceful assembly and association) that some legislative addition to, or variation of existing law and practice in these fields is necessary for the attainment of the ends specified in article 4. Lastly, the Constitution of the Commonwealth of the Bahamas entrenches and guarantees to every person in the Commonwealth of the Bahamas the fundamental rights and freedoms of the individual irrespective of his race or place of origin. The Constitution prescribes judicial process to be observed in the event of the violation of any of these rights whether by the State or by a private individual. Acceptance of this Convention by the Commonwealth of the Bahamas does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligations to introduce judicial process beyond these prescribed under the Constitution."

BAHRAIN[18,19]

"With reference to article 22 of the Convention, the Government of the State of Bahrain declares that, for the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the express consent of all the parties to the dispute is required in each case.

..."

BARBADOS

"The Constitution of Barbados entrenches and guarantees to every person in Barbados the fundamental rights and freedoms of the individual irrespective of his race or place of origin. The Constitution prescribes judicial processes to be observed in the event of the violation of any of these rights whether by the State or by a private individual. Accession to the Convention does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligations to introduce judicial processes beyond those provided in the Constitution.

The Government of Barbados interprets article 4 of the said Convention as requiring a Party to the Convention to enact measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only where it is considered that the need arises to enact such legislation."

BELARUS[20]

The Byelorussian Soviet Socialist Republic states that the provision in article 17, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination whereby a number of States are deprived of the opportunity to become Parties to the Convention is of a discriminatory nature, and hold that, in accordance with the principle of the sovereign equality of States, the Convention should be open to participation by all interested States without discrimination or restriction of any kind.

BELGIUM

In order to meet the requirements of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, the Kingdom of Belgium will take care to adapt its legislation to the obligations it has assumed in becoming a party to the said Convention.

The Kingdom of Belgium nevertheless wishes to emphasize the importance which it attaches to the fact that article 4 of the Convention provides that the measures laid down in subparagraphs (a), (b), and (c) should be adopted with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention. The Kingdom of Belgium therefore considers that the obligations imposed by article 4 must be reconciled with the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association. Those rights are proclaimed in articles 19 and 20 of the Universal Declaration of Human Rights and have been reaffirmed in articles 19 and 21 of the International Covenant on Civil and Political Rights. They have also been stated in article 5, subparagraph (d) (viii) and (ix) of the said Convention.

The Kingdom of Belgium also wishes to emphasize the importance which it attaches to respect for the rights set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms, especially in articles 10 and 11 dealing respectively with freedom of opinion and expression and freedom of peaceful assembly and association.

BULGARIA[21]

The Government of the People's Republic of Bulgaria considers that the provisions of article 17, paragraph 1, and article 18, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the effect of which is to prevent sovereign States from becoming Parties to the Convention, are of a discriminatory nature. The Convention, in accordance with the principle of the sovereign equality of States, should be open for accession by all States without any discrimination whatsoever.

CHINA[22]

The People's Republic of China has reservations on the provisions of article 22 of the Convention and will not be bound by it. *(The reservation was circulated by the Secretary-General on 13 January 1982.)*

The signing and ratification of the said Convention by the Taiwan authorities in the name of China are illegal and null and void.

CUBA

The Government of the Republic of Cuba will make such reservations as it may deem appropriate if and when the Convention is ratified.

The Revolutionary Government of the Republic of Cuba does not accept the provision in article 22 of the Convention to the effect that disputes between two or more States Parties shall be referred to the International Court of Justice, since it considers that such disputes should be settled exclusively by the procedures expressly provided for in the Convention or by negotiation through the diplomatic channel between the disputants.

This Convention, intended to eliminate all forms of racial discrimination, should not, as it expressly does in articles 17 and 18, exclude States not Members of the United Nations, members of the specialized agencies or Parties to the Statute of the International Court of Justice from making an effective contribution under the Convention, since these articles constitute in themselves a form of discrimination that is at variance with the principles set out in the Convention; the Revolutionary Government of the Republic of Cuba accordingly ratifies the Convention, but with the qualification just indicated.

CZECH REPUBLIC[9]

DENMARK[10]

EGYPT[18,23]

"The United Arab Republic does not consider itself bound by the provisions of article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the parties to the dispute, to be referred to the International Court of Justice for decision, and it states that, in each individual case, the consent of all parties to such a dispute is necessary for referring the dispute to the International Court of Justice."

EQUATORIAL GUINEA

The Republic of Equatorial Guinea does not consider itself bound by the provisions of article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the parties to the dispute, to be referred to the International Court of Justice for decision. The Republic of Equatorial Guinea considers that, in each individual case, the consent of all parties is necessary for referring the dispute to the International Court of Justice.

FIJI[24]

FRANCE[25]

With regard to article 4, France wishes to make it clear that it interprets the reference made therein to the principles of the Universal Declaration of Human Rights and to the rights set forth in article 5 of the Convention as releasing the States Parties from the obligation to enact anti-discrimination legislation which is incompatible with the freedoms of opinion and expression and of peaceful assembly and association guaranteed by those texts.

With regard to article 6, France declares that the question of remedy through tribunals is, as far as France is concerned, governed by the rules of ordinary law.

With regard to article 15, France's accession to the Convention may not be interpreted as implying any change in its position regarding the resolution mentioned in that provision.

GRENADA[26]

"The Constitution of Grenada entrenches and guarantees to every person in the State of Grenada the fundamental rights and freedoms of the individual irrespective of his race or place of origin. The Constitution prescribes judicial processes to be observed in the event of the violation of any of these rights whether by the State or by a private individual. Ratification of the Convention by Grenada does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligations to introduce judicial processes beyond those provided in the Constitution.

The Government of Grenada interprets article 4 of the said Convention as requiring a Party to the Convention to enact measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only where it considers that the need arises to enact such legislation."

GUYANA

"The Government of the Republic of Guyana do not interpret the provisions of this Convention as imposing upon them any obligation going beyond the limits set by the Constitution of Guyana or imposing upon them any obligation requiring the introduction of judicial processes going beyond those provided under the same Constitution."

HUNGARY[27]

"The Hungarian People's Republic considers that the provisions of article 17, paragraph 1, and of article 18, paragraph 1, of the Convention, barring accession to the Convention by all States, are of a discriminating nature and contrary to international law. The Hungarian People's Republic maintains its general position that multilateral treaties of a universal character should, in conformity with the principles of sovereign equality of States, be open for accession by all States without any discrimination whatever."

INDIA[28]

"The Government of India declare that for reference of any dispute to the International Court of Justice for decision in terms of Article 22 of the International Convention on the Elimination of all Forms of Racial Discrimination, the consent of all parties to the dispute is necessary in each individual case."

INDONESIA

"The Government of the Republic of Indonesia does not consider itself bound by the provision of Article 22 and takes the position that disputes relating to the interpretation and application of the [Convention] which cannot be settled through the channel provided for in the said article, may be referred to the International Court of Justice only with the consent of all the parties to the dispute."

IRAQ[18]

"The Ministry for Foreign Affairs of the Republic of Iraq hereby declares that signature for and on behalf of the Republic of Iraq of the Convention on the Elimination

of All Forms of Racial Discrimination, which was adopted by the General Assembly of the United Nations on 21 December 1965, as well as approval by the Arab States of the said Convention and entry into it by their respective governments, shall in no way signify recognition of Israel or lead to entry by the Arab States into such dealings with Israel as may be regulated by the said Convention.

"Furthermore, the Government of the Republic of Iraq does not consider itself bound by the provisions of article twenty-two of the Convention afore-mentioned and affirms its reservation that it does not accept the compulsory jurisdiction of the International Court of Justice provided for in the said article."

1. The acceptance and ratification of the Convention by Iraq shall in no way signify recognition of Israel or be conducive to entry by Iraq into such dealings with Israel as are regulated by the Convention;

2. Iraq does not accept the provisions of article 22 of the Convention, concerning the compulsory jurisdiction of the International Court of Justice. The Republic of Iraq does not consider itself to be bound by the provisions of article 22 of the Convention and deems it necessary that in all cases the approval of all parties to the dispute be secured before the case is referred to the International Court of Justice.

IRELAND

"Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the measures specifically described in sub-paragraphs (a), (b) and (c) shall be undertaken with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention. Ireland threfore considers that through such measures, the right to freedom of opinion and expression and the right to peaceful assembly and association may not be jeopardised. These rights are laid down in Articles 19 and 20 of the Universal Declaration of Human Rights; they were reaffirmed by the General Assembly of the United Nations when it adopted Articles 19 and 21 of the International Covenant on Civil and Political Rights and are referred to in Article 5 (d)(viii) and (ix) of the present Convention."

ISRAEL

"The State of Israel does not consider itself bound by the provisions of article 22 of the said Convention."

ITALY

(a) The positive measures, provided for in article 4 of the Convention and specifically described in sub-paragraphs (a) and (b) of that article, designed to eradicate all incitement to, or acts of, discrimination, are to be interpreted, as that article provides, "with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5" of the Convention. Consequently, the obligations deriving from the aforementioned article 4 are not to jeopardize the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association which are laid down in articles 19 and 20 of the Universal Declaration of Human Rights, were reaffirmed by the General Assembly of the United Nations when it adopted articles 19 and 21 of the International Covenant on Civil and Political Rights, and are referred to in articles 5 (d) (viii) and (ix) of the Convention. In fact, the Italian Government, in conformity with the obligations resulting from Articles 55 (c) and 56 of the Charter of the United Nations, remains faithful to the principle laid down in article 29 (2) of the Universal Declaration, which provides that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

(b) Effective remedies against acts of racial discrimination which violate his individual rights and fundamental freedoms will be assured to everyone, in conformity with article 6 ofthe Convention, by the ordinary courts within the framework of their respective jurisdiction. Claims for reparation for any damage suffered as a result of acts of racial discrimination must be brought against the persons responsible for the malicious or criminal acts which caused such damage.

JAMAICA

"The Constitution of Jamaica entrenches and guarantees to every person in Jamaica the fundamental rights and freedoms of the individual irrespective of his race or place of origin. The Constitution prescribes judicial processes to be observed in the event of the violation of any of these rights whether by the State or by a private individual. Ratification of the Convention by Jamaica does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligation to introduce judicial processes beyond those prescribed under the Constitution."

JAPAN

"In applying the provisions of paragraphs (a) and (b) of article 4 of the [said Convention] Japan fulfills the obligations under those provisions to the extent that fulfillment of the obligations is compatible with the guarantee of the rights to freedom of assembly, association and expression and other rights under the Constitution of Japan, noting the phrase `with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention' referred to in article 4."

KUWAIT[18]

"In acceding to the said Convention, the Government of the State of Kuwait takes the view that its accession does not in any way imply recognition of Israel, nor does it oblige it to apply the provisions of the Convention in respect of the said country.

"The Government of the State of Kuwait does not consider itself bound by the provisions of article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any party to the dispute, to be referred to the International Court of Justice for decision, and it states that, in each individual case, the consent of all parties to such a dispute is necessary for referring the dispute to the International Court of Justice."

LEBANON

The Republic of Lebanon does not consider itself bound by the provisions of article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any party to the dispute, to be referred to the International Court of Justice for decision, and it states that, in each individual case, the consent of all States parties to such a dispute is necessary for referring the dispute to the International Court of Justice.

LIBYA[18]

"(a) The Kingdom of Libya does not consider itself bound by the provisions of article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the parties to the dispute, to be referred to the International Court of Justice for decision, and it states that, in each individual case, the consent of all parties to such a dispute is necessary for referring the dispute to the International Court of Justice.

"(b) It is understood that the accession to this Convention does not mean in any way a recognition of Israel by the Government of the Kingdom of Libya. Furthermore, no treaty relations will arise between the Kingdom of Libya and Israel."

MADAGASCAR

The Government of the Malagasy Republic does not consider itself bound by the provisions of article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the parties to the dispute, to be referred to the International Court of Justice for decision, and states that, in each individual case, the consent of all parties to such a dispute is necessary for referral of the dispute to the International Court.

MALTA

"The Government of Malta wishes to state its understanding of certain articles in the Convention.

"It interprets article 4 as requiring a party to the Convention to adopt further measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article should it consider, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights set forth in article 5 of the Convention, that the need arises to enact ' *ad hoc* ' legislation, in addition to or variation of existing law and practice to bring to an end any act of racial discrimination.

"Further, the Government of Malta interprets the requirements in article 6 concerning `reparation or satisfaction' as being fulfilled if one or other of these forms of redress is made available and interprets `satisfaction' as including any form of redress effective to bring the discriminatory conduct to an end."

MONACO

Monaco reserves the right to apply its own legal provisions concerning the admission of foreigners to the labour market of the Principality.

Monaco interprets the reference in that article to the principles of the Universal Declaration of Human Rights, and to the rights enumerated in article 5 of the Convention as releasing States Parties from the obligation to promulgate repressive laws which are incompatible with freedom of opinion and expression and freedom of peaceful assembly and association, which are guaranteed by those instruments.

MONGOLIA[29]

The Mongolian People's Republic states that the provision in article 17, paragraph 1, of the Convention whereby a number of States are deprived of the opportunity to become Parties to the Convention is of a discriminatory nature, and it holds that, in accordance with the principle of the sovereign equality of States, the Convention on the Elimination of All Forms of Racial Discrimination should be open to participation by all interested States without discrimination or restriction of any kind.

MOROCCO

The Kingdom of Morocco does not consider itself bound by the provisions of article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the parties to the dispute, to be referred to the International Court of Justice for decision. The Kingdom of Morocco states that, in each individual case, the consent of all parties to such a dispute is necessary for referring the dispute to the International Court of Justice.

MOZAMBIQUE

"The People's Republic of Mozambique does not consider to be bound by the provision of article 22 and wishes to restate that for the submission of any dispute to the International Court of Justice for decision in terms of the said article, the consent of all parties to such a dispute is necessary in each individual case."

NEPAL

"The Constitution of Nepal contains provisions for the protection of individual rights, including the right to freedom of speech and expression, the right to form unions and associations not motivated by party politics and the right to freedom of professing his/her own religion; and nothing in the Convention shall be deemed to require or to authorize legislation or other action by Nepal incompatible with the provisions of the Constitution of Nepal.

"His Majesty's Government interprets article 4 of the said Convention as requiring a Party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only insofar as His Majesty's Government may consider, with due regard to the principles embodied in the Universal Declaration of Human Rights, that some legislative addition to, or variation of, existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of article 4. His Majesty's Government interprets the requirement in article 6 concerning `reparation or satisfaction' as being fulfilled if one or other of these forms of redress is made available; and further interprets `satisfaction' as including any form of redress effective to bring the discriminatory conduct to an end.

"His Majesty's Government does not consider itself bound by the provision of article 22 of the Convention under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the parties to the dispute, to be referred to the International Court of Justice for decision."

PAPUA NEW GUINEA[22]

"The Government of Papua New Guinea interprets article 4 of the Convention as requiring a party to the Convention to adopt further legislative measures in the areas covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles contained in the Universal Declaration set out in Article 5 of the Convention that some legislative addition to, or variation of existing law and practice, is necessary to give effect to the provisions of article 4. In addition, the Constitution of Papua New Guinea guarantees certain fundamental rights and freedoms to all persons irrespective of their race or place of origin. The Constitution also provides for judicial protection of these rights and freedoms. Acceptance of this Convention does

not therefore indicate the acceptance of obligations by the Government of Papua New Guinea which go beyond those provided by the Constitution, nor does it indicate the acceptance of any obligation to introduce judicial process beyond that provided by the Constitution". *(The reservation was circulated by the Secretary-General on 22 February 1982.)*

POLAND[30]

The Polish People's Republic considers that the provisions of article 17, paragraph 1, and article18, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, which make it impossible for many States to become parties to the said Convention, are of a discriminatory nature and are incompatible with the object and purpose of that Convention.

The Polish People's Republic considers that, in accordance with the principle of the sovereign equality of States, the said Convention should be open for participation by all States without any discrimination or restrictions whatsoever.

REPUBLIC OF KOREA

"The Government of the Republic of Korea recognizes the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within the jurisdiction of the Republic of Korea claiming to be victims of a violation by the Republic of Korea of any of the rights set forth in the said Convention."

ROMANIA[31]

...

The Council of State of the Socialist Republic of Romania declares that the provisions of articles 17 and 18 of the International Convention on the Elimination of All Forms of Racial Discrimination are not in accordance with the principle that multilateral treaties, the aims and objectives of which concern the world community as a whole, should be open to participation by all States.

RUSSIAN FEDERATION[20]

The Union of Soviet Socialist Republics states that the provision in article 17, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination whereby a number of States are deprived of the opportunity to become Parties to the Convention is of a discriminatory nature, and hold that, in accordance with the principle of the sovereign equality of States, the Convention should be open to participation by all interested States without discrimination or restriction of any kind.

RWANDA[32]

SAUDI ARABIA

[The Government of Saudi Arabia declares that it will] implement the provisions [of the above Convention], providing these do not conflict with the precepts of the Islamic *Shariah* .

The Kingdom of Saudi Arabia shall not be bound by the provisions of article (22) of this Convention, since it considers that any dispute should be referred to the International Court of Justice only with the approval of the States Parties to the dispute.

SINGAPORE

"The Government of the Republic of Singapore makes the following reservations and declarations in relation to articles 2, 6 and 22 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the "Convention") adopted by the General Assembly of the United Nations in New York on the 21st day of December 1965 and signed on behalf of the Republic of Singapore today:

(1) The Republic of Singapore reserves the right to apply its policies concerning the admission and regulation of foreign work pass holders, with a view to promoting integration and maintaining cohesion within its racially diverse society.

(2) The Republic of Singapore understands that the obligation imposed by Article 2, paragraph 1 (d) of the Convention may be implemented by means other than legislation if such means are appropriate, and if legislation is not required by circumstances.

(3) The Republic of Singapore interprets the requirement in Article 6 of the Convention concerning "reparation or satisfaction" as being fulfilled if one or other of these forms of redress is made available and interprets "satisfaction" as including any form of redress effective to bring the discriminatory conduct to an end.

(4) With reference to Article 22 of the Convention, the Republic of Singapore states that before any dispute to which the Republic of Singapore is a party may be submitted to the jurisdiction of the International Court of Justice under this Article, the specific consent of the Republic of Singapore is required in each case."

SLOVAKIA[9]

SPAIN[33]

SWITZERLAND

Switzerland reserves the right to take the legislative measures necessary for the implementation of article 4, taking due account of freedom of opinion and freedom of association, provided for *inter alia* in the Universal Declaration of Human Rights.

Switzerland reserves the right to apply its legal provisions concerning the admission of foreigners to the Swiss market.

SYRIAN ARAB REPUBLIC[18]

1. The accession of the Syrian Arab Republic to this Convention shall in no way signify recognition of Israel or entry into a relationship with it regarding any matter regulated by the said Convention.

2. The Syrian Arab Republic does not consider itself bound by the provisions of article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the Parties to the dispute, to be referred to the International Court of Justice for decision. The Syrian Arab Republic states that, in each individual case, the consent of all parties to such a dispute is necessary for referring the dispute to the International Court of Justice.

THAILAND

"General Interpretative Declaration

The Kingdom of Thailand does not interpret and apply the provisions of this Convention as imposing upon the Kingdom of Thailand any obligation beyond the confines of the Constitution and the laws of the Kingdom of Thailand. In addition, such interpretation and application shall be limited to or consistent with the obligations under other international human rights instruments to which the Kingdom of Thailand is party.

Reservations

1. The Kingdom of Thailand does not consider itself bound by the provisions of Article 22 of the Convention."

TONGA[34]

"To the extent, [...], that any law relating to land in Tonga which prohibits or restricts the alienation of land by the indigenous inhabitants may not fulfil the obligations referred to in article 5 (d) (v), [...], the Kingdom of Tonga reserves the right not to apply the Convention to Tonga.

"Secondly, the Kingdom of Tonga wishes to state its understanding of certain articles in the Convention. It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association) that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of article 4. Further, the Kingdom of Tonga interprets the requirement in article 6 concerning `reparation or satisfaction' as being fulfilled if one or other of these forms of redress is made available and interprets `satisfaction' as including any form of redress effective to bring the discriminatory conduct to an end. In addition it interprets article 20 and the other related provisions of Part III of the Convention as meaning that if a reservation is not accepted the State making the reservation does not become a Party to the Convention.

"Lastly, the Kingdom of Tonga maintains its position in regard to article 15. In its view this article is discriminatory in that it establishes a procedure for the receipt of petitions relating to dependent territories while making no comparable provision for States without such territories. Moreover, the article purports to establish arocedure applicable to the dependent territories of States whether or not those States have become parties to the Convention. His Majesty's Government have decided that the Kingdom of Tonga should accede to the Convention, these objections notwithstanding because of the importance they attach to the Convention as a whole."

TÜRKIYE

"The Republic of Turkey declares that it will implement the provisions of this Convention only to the States Parties with which it has diplomatic relations.

The Republic of Turkey declares that this Convention is ratified exclusively with regard to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied.

The Republic of Turkey does not consider itself bound by Article 22 of this Convention. The explicit consent of the Republic of Turkey is necessary in each individual case before any dispute to which the Republic of Turkey is party concerning the interpretation or application of this Convention may be referred to the International Court of Justice."

UKRAINE[20]

The Ukrainian Soviet Socialist Republic states that the provision in article 17, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination whereby a number of States are deprived of the opportunity to become Parties to the Convention is of a discriminatory nature, and hold that, in accordance with the principle of the sovereign equality of States, the Convention should be open to participation by all interested States without discrimination or restriction of any kind.

UNITED ARAB EMIRATES[18]

"The accession of the United Arab Emirates to this Convention shall in no way amount to recognition of nor the establishment of any treaty relations with Israel."

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Subject to the following reservation and interpretative statements:

"First, in the present circumstances deriving from the usurpation of power in Rhodesia by the illegal régime, the United Kingdom must sign subject to a reservation of the right not to apply the Convention to Rhodesia unless and until the United Kingdom informs the Secretary-General of the United Nations that it is in a position to ensure that the obligations imposed by the Convention in respect of that territory can be fully implemented.

"Secondly, the United Kingdom wishes to state its under- standing of certain articles in the Convention. It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association) that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of article 4. Further, the United Kingdom interprets the requirement in article 6 concerning `reparation or satisfaction' as being fulfilled if one or other of these forms of redress is made available and interprets `satisfaction' as including any form of redress effective to bring the discriminatory conduct to an end. In addition it interprets article 20 and the other related provisions of Part III of the Convention as meaning that if a reservation is not accepted the State making the reservation does not become a Party to the Convention.

"Lastly, the United Kingdom maintains its position in regard to article 15. In its view this article is discriminatory in that it establishes arocedure for the receipt of petitions relating to dependent territories while making no comparable provision for States without such territories. Moreover, the article purports to establish a procedure applicable to the dependent territories of States whether or not those States have become parties to the Convention. Her Majesty's Government have decided that the United Kingdom should sign the Convention, these objections notwithstanding, because of the importance they attach to the Convention as a whole."

"First, the reservation and interpretative statements made by the United Kingdom at the time of signature of the Convention are maintained.

"Secondly, the United Kingdom does not regard the Commonwealth Immigrants Acts, 1962 and 1968, or their application, as involving any racial discrimination within the meaning of paragraph 1 of article 1, or any other provision of the Convention, and fully reserves its right to continue to apply those Acts.

"Lastly, to the extent if any, that any law relating to election in Fiji may not fulfil the obligations referred to in article 5 (c), that any law relating to land in Fiji which prohibits or restricts the alienation of land by the indigenous inhabitants may not fulfil the obligations referred to in article 5 (d) (v), or that the school system of Fiji may not fulfil the obligations referred to in articles 2, 3 or 5 (e) (v), the United Kingdom reserves the right not to apply the Convention to Fiji."

UNITED STATES OF AMERICA

"The Constitution of the United States contains provisions for the protection of individual rights, such as the right of free speech, and nothing in the Convention shall be deemed to require or to authorize legislation or other action by the United States of America incompatible with the provisions of the Constitution of the United States of America."

"I. The Senate's advice and consent is subject to the following reservations:

(1) That the Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.

(2) That the Constitution and laws of the United States establish extensive protections against discrimination, reaching significant areas of non-governmental activity. Individual privacy and freedom from governmental interference in private conduct, however, are also recognized as among the fundamental values which shape our free and democratic society. The United States understands that the identification of the rights protected under the Convention by reference in article 1 to fields of `public life' reflects a similar distinction between spheres of public conduct that are customarily the subject of governmental regulation, and spheres of private conduct that are not. To the extent, however, that the Convention calls for a broader regulation of private conduct, the United States does not accept any obligation under this Convention to enact legislation or take other measures under paragraph (1) of article 2, subparagraphs (1) (c) and (d) of article 2, article 3 and article 5 with respect to private conduct except as mandated by the Constitution and laws of the United States.

(3) That with reference to article 22 of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.

II. The Senate's advice and consent is subject to the following understanding, which shall apply to the obligations of the United States under this Convention:

That the United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfilment of this Convention.

III. The Senate's advice and consent is subject to the following declaration:

That the United States declares that the provisions of the Convention are not self-executing."

VIET NAM[22]

(1) The Government of the Socialist Republic of Viet Nam declares that the provisions of article 17 (1) and of article 18 (1) of the Convention whereby a number of States are deprived of the opportunity of becoming Parties to the said Convention are of a discriminatory nature and it considers that, in accordance with the principle of the sovereign equality of States, the Convention should be open to participation by all States without discrimination or restriction of any kind.

(2) The Government of the Socialist Republic of Viet Nam does not consider itself bound by the provisions of article 22 of the Convention and holds that, for any dispute with regard to the interpretation or application of the Convention to be brought before the International Court of Justice, the consent of all parties to the dispute is necessary. *(The reservation was circulated by the Secretary-General on 10 August 1982.)*

YEMEN[17,18]

"The accession of the People's Democratic Republic of Yemen to this Convention shall in no way signify recognition of Israel or entry into a relationship with it regarding any matter regulated by the said Convention.

"The People's Democratic Republic of Yemen does not consider itself bound by the provisions of Article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the parties to the dispute, to be referred to the International Court of Justice for decision, and states that, in each individual case, the consent of all parties to such a dispute is necessary for referral of the dispute to the International Court of Justice.

"The People's Democratic Republic of Yemen states that the provisions of Article 17, paragraph 1, and Article 18, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination whereby a number of States are deprived of the opportunity to become Parties to the Convention is of a discriminatory nature, and holds that, in accordance with the principle of the sovereign equality of States, the Convention should be opened to participation by all interested States without discrimination or restriction of any kind."

Objections
(Unless otherwise indicated, the objections were made upon ratification, accession or succession.)

AUSTRALIA

"In accordance with article 20 (2), Australia objects to [the reservations made by Yemen] which it considers impermissible as being incompatible with the object and purpose of the Convention."

AUSTRIA

"Austria is of the view that a reservation by which a State limits its responsibilities under the Convention in a general and unspecified manner creates doubts as to the commitment of the Kingdom of Saudi Arabia with its obligations under the Convention, essential for the fulfilment of its objection and purpose. According to paragraph 2 of article 20 a reservation incompatible with the object and purpose of this Convention shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become Parties are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

Austria is further of the view that a general reservation of the kind made by the Government of the Kingdom of

individuals and groups that claim to be victims of violations of any rights set forth in the Convention."

SWEDEN

"Sweden recognizes the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within the jurisdiction of Sweden claiming to be victims of a violation by Sweden of any of the rights set forth in the Convention, with the reservation that the Committee shall not consider any communication from an individual or a group of individuals unless the Committee has ascertained that the same matter is not being examined or has not been examined under another procedure of international investigation or settlement."

SWITZERLAND

... .Switzerland recognizes, pursuant to article 14, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, concluded at New York on 21 December 1965, the competence of the Committee on the Elimination of Racial Discrimination (CERD) to receive and consider communications under the above-mentioned provision, with the reservation that the Committee shall not consider any communication from an individual or group of individuals unless the Committee has ascertained that the same matter is not being examined or has not been examined under another procedure of international investigation or settlement.

TOGO

Expressing its determination to maintain the rule of law, to defend and protect human rights and in accordance with Article 14, the Government the Republic of Togo declares that it recognizes the competence of the Committee on the Elimination of Discrimination to receive and consider communications from individuals within its jurisdiction claiming to be victims of a violation by the Republic of Togo, of any of the rights set forth in the Convention on the Elimination of All Forms of Racial Discrimination.

UKRAINE

In accordance with the article 14 of the International Convention on the Elimination of All forms of Racial Discrimination, Ukraine declares that it recognizes the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals [within its jurisdiction] claiming to be victims of a violation by [it] of any of the rights set forth in the Convention.

URUGUAY

The Government of Uruguay recognizes the competence of the Committee on the Elimination of Racial Discrimination, under article 14 of the Convention.

VENEZUELA (BOLIVARIAN REPUBLIC OF)

Pursuant to the provisions of article 14, paragraph 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, the Government of the Bolivarian Republic of Venezuela recognizes the competence of the Committee on the Elimination of Racial Discrimination established under article 8 of the Convention to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of violations by the Bolivarian Republic of Venezuela of any of the rights set forth in the Convention.

Notes:

[1] Article 19 of the Convention provides that the Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession. On 5 December 1968, the Government of Poland deposited the twenty-seventh instrument. However, among those instruments there were some which contained a reservation and therefore were subject to the provisions of article 20 of the Convention allowing States to notify objections within ninety days from the date of circulation by the Secretary-General of the reservations. In respect of two such instruments, namely those of Kuwait and Spain, the ninety-day period had not yet expired on the date of deposit of the twenty-seventh instrument. The reservation contained in one further instrument, that of India, had not yet been circulated on that date, and the twenty-seventh instrument itself, that of Poland, contained a reservation; in respect of these two instruments the ninety-day period would only begin to run on the date of the Secretary-General's notification of their deposit. Therefore, in that notification, which was dated 13 December 1968, the Secretary-General called the attention of the interested States to the situation and stated the following:

"It appears from the provisions of article 20 of the Convention that it would not be possible to determine the legal effect of the four instruments in question pending the expiry of the respective periods of time mentioned in the preceding paragraph.

Having regard to the above-mentioned consideration, the Secretary-General is not at the present time in a position to ascertain the date of entry into force of the Convention."

Subsequently, in a notification dated 17 March 1969, the Secretary-General informed the interested States; (a) that within the period of ninety days from the date of his previous notification he had received an objection from one State to the reservation contained in the instrument of ratification by the Government of India; and (b) that the Convention, in accordance with paragraph 1 of article 19, had entered into force on 4 January 1969, i.e., on the thirtieth day after the date of deposit of the instrument of ratification of the Convention by the Government of Poland, which was the twenty-seventh instrument of ratification or instrument of accession deposited with the Secretary-General.

[2] *Official Records of the General Assembly, Twentieth Session, Supplement No. 14* (A/6014),p. 47.

[3] The German Democratic Republic had acceded to the Convention on 23 March 1973 with a reservation and a declaration. For the text of the reservation and declaration, see United Nations, *Treaty Series* , vol. 883, p. 190.

Moreover, on 26 April 1984, the Government of the German Democratic Republic had made an objection with regard to the ratification made by the Government of the Democratic

Kampuchea. For the text of the objection, see United Nations, *Treaty Series* , vol. 1355, p. 327.

See also note 2 under “Germany” in the “Historical Information” section in the front matter of this volume.

[4] The former Yugoslavia had signed and ratified the Convention on 15 April 1966 and 2 October 1967, respectively. See also note 1 under "Bosnia and Herzegovina", "Croatia", "former Yugoslavia", "Slovenia", "The Former Yugoslav Republic of Macedonia" and "Yugoslavia" in the "Historical Information" section (click on the tab "Status of Treaties" and then on "Historical Information").

[5] On 10 June 1997, the Secretary-General received communications concerning the status of Hong Kong from the Governments of the United Kingdom and China (see also note 2 under “China” and note 2 under “United Kingdom of Great Britain and Northern Ireland” regarding Hong Kong in the “Historical Information” section (click on the tab "Status of Treaties" and then on "Historical Information"). Upon resuming the exercise of sovereignty over Hong Kong, China notified the Secretary-General that the Convention with the reservation made by China will also apply to the Hong Kong special Administrative Region.

In addition, the notification made by the Government of China contained the following declarations:

1. ...

2. The reservation of the People's Republic of China on behalf of the the Hong Kong Special Administrative Region interprets the requirement in article 6 concerning "reparation and satisfaction" as being fulfilled if one or other of these forms of redress is made available and interprets "satisfaction" as including any form of redress effective to bring the discriminatory conduct to an end.

[6] The Convention had previously been signed and ratified on behalf of the Republic of China on 31 March 1966 and 10 December 1970, respectively. See also note 1 under "China" in the "Historical Information" (click on the tab "Status of Treaties" and then on "Historical Information").

With reference to the above-mentioned signature and/or ratification, communications have been received by the Secretary-General from the Governments of Bulgaria (12 March 1971), Mongolia (11 January 1971), the Byelorussian Soviet Socialist Republic (9 June 1971), the Ukrainian Soviet Socialist Republic (21 April 1971) and the Union of Soviet Socialist Republics (18 January 1971) stating that they considered the said signature and/or ratification as null and void, since the so-called "Government of China" had no right to speak or assume obligations on behalf of China, there being only one Chinese State, the People's Republic of China, and one Government entitled to represent it, the Government of the People's Republic of China.

In letters addressed to the Secretary-General in regard to the above-mentioned communications, the Permanent Representative of China to the United Nations stated that the Republic of China, a sovereign State and Member of the United Nations, had attended the twentieth regular session of the United Nations General Assembly, contributed to the formulation of the Convention concerned, signed the Convention and duly deposited the instrument of ratification thereof, and that "any statements and reservations relating to the above-mentioned Convention that are incompatible with or derogatory to the legitimate position of the Government of the Republic of China shall in no way affect the rights and obligations of the Republic of China under this Convention".

Finally, upon depositing its instrument of accession, the Government of the People's Republic of China made the following declaration: The signing and ratification of the said Convention by the Taiwan authorities in the name of China are illegal and null and void.

[7] On 27 April 1999, the Government of Portugal informed the Secretary-General that the Convention would apply to Macao.

Subsequently, the Secretary-General received communications concerning the status of Macao from Portugal and China (see note 3 under “China” and note 1 under “Portgual” in the Historical Information section in the front matter of this volume). Upon resuming the exercise of sovereignty over Macao, China notified the Secretary-General that the Convention with the reservation made by China will also apply to the Macao Special Administrative Region.

[8] The Convention had previously been signed and ratified on behalf of the Republic of China on 31 March 1966 and 10 December 1970, respectively. See also note 1 under "China" in the "Historical Information" section in the front matter of this volume.

With reference to the above-mentioned signature and/or ratification, communications have been received by the Secretary-General from the Governments of Bulgaria (12 march 1971), Mongolia (11 January 1971), the Byelorussian Soviet Socialist Republic (9 June 1971), the Ukrainian Soviet Socialist Republic (21 April 1971) and the Union of Soviet Socialist Republics (18 January 1971) stating that they considered the said signature and/or ratification as null and void, since the so-called "Government of China" had no right to speak or assume obligations on behalf of China, there being only one Chinese State, the People's Republic of China, and one Government entitled to represent it, the Government of the People's Republic of China.

In letters addressed to teh Secretary-General in regard to the above-mentioned communications, the Permanent Representative of China to the United Nations stated that the Republic of China, a sovereign State and Member of the United Nations, had attended the twentieth regular session of hte United Nations General Assembly, contributed to the formulation of the Convention concerned, signed the Convention and duly deposited the instrument of ratification thereof, and that "any statements and reservations relating to the abocve-mentioned Convention that are incmopatible with or derogatory to the legitimate position of the Government of the Republic of China shall in no wa affect the rights and obligations of the Republic of China under this Convention".

Finally, upon depositing its instrument of accession, the Government of the People's Republic of China made the following declaration: The signing and ratification of the said Convention by the Taiwan authorities in the name of China are illegal and null and void.

[9] Czechoslovakia had signed and ratified the Convention on 7 October 1966 and 29 December 1966, respectively, with reservations. Subsequently, on 12 March 1984, the Government of Czechoslovakia made an objection to the ratification by Democratic Kampuchea. Further, by a notification received on 26 April 1991, the Government of Czechoslovakia notified the Secretary-General of its decision to withdraw the reservation to article 22 made upon signature and confirmed upon ratification. For the text of the reservations and the objection, see United Nations, *Treaty Series* , vol. 660, p. 276 and vol. 1350, p. 386, respectively. See also note 14 in this chapter and note 1 under “Czech Republic” and note 1 under “Slovakia” in the “Historical Information” section in the front matter of this volume.

[10] In a communication received on 4 October 1972, the Government of Denmark notified the Secretary-General that it withdrew the reservation made with regard to the implementation on the Faroe Islands of the Convention. For the text of the reservation see United Nations, *Treaty Series* , vol. 820, p. 457.

The legislation by which the Convention has been implemented on the Faroe Islands entered into force by 1 November 1972, from which date the withdrawal of the above reservation became effective.

[11] See note 1 under “Germany” regarding Berlin (West) in the “Historical Information” section (click on the tab "Status of Treaties" and then on "Historical Information").

[12] See note 1 under "Montenegro" in the "Historical Information" section (click on the tab "Status of Treaties" and then on "Historical Information").

[13] See note 1 under “Namibia” in the “Historical Information” section (click on the tab "Status of Treaties" and then on "Historical Information").

[14] See note 1 under "New Zealand" regarding Tokelau in the "Historical Information" section in the preliminary pages in the front matter of this volume.

[15] On 7 October 2016, the Government of Thailand notified the Secretary-General of the withdrawal of the reservation to article 4 made upon accession to the Convention. The text of the reservation read as follows:

"The Kingdom of Thailand interprets Article 4 of the Convention as requiring a party to the Convention to adopt measures in the fields covered by subparagraphs (a), (b) and (c) of that article only where it is considered that the need arises to enact such legislation."

[16] In its instrument of ratification, the Government of the United Kingdom specified that the ratification also applied to the following territories: Associated States (Antigua, Dominica, Grenada, Saint Christopher Nevis Anguilla and Saint Lucia) and Territories under the territorial sovereignty of the United Kingdom, as well as the State of Brunei, the Kingdom of Tonga and the British Solomon Islands Protectorate.

[17] The Yemen Arab Republic had acceded to the Convention on 6 April 1989 with the following reservation:

Reservations in respect of article 5 (c) and article 5 (d) (iv), (vi) and (vii).

In this regard, the Secretary-General received on 30 April 1990, from the Government of Czechoslovakia the following objection:

"The Czech and Slovak Federal Republic considers the reservations of the Government of Yemen with respect to article 5 (c) and articles 5 (d) (iv), (vi), and (vii) of [the Convention], as incompatible with the object and purpose of this Convention."

See also note 1 under “Yemen” in the “Historical Information” (click on the tab "Status of Treaties" and then on "Historical Information").

[18] In a communication received by the Secretary-General on 10 July 1969, the Government of Israel declared:

"[The Government of Israel] has noted the political character of the declaration made by the Government of Iraq on signing the above Convention.

In the view of the Government of Israel, the Convention is not the proper place for making such political pronouncements. The Government of Israel will, in so far as concerns the substance of the matter, adopt towards the Government of Iraq an attitude of complete reciprocity. Moreover, it is the view of the Government of Israel that no legal relevance can be attached to those Iraqi statements which purport to represent the views of the other States".

Except for the omission of the last sentence, identical communica- tions in essence, *mutatis mutandis* , were received by the Secretary-General from the Government of Israel as follows: on 29 December 1966 in respect of the declaration made by the Government of the United Arab Republic upon signature (see also note 17); on 16 August 1968 in respect of the declaration made by the Government of Libya upon accession; on 12 December 1968 in respect of the declaration made by the Government of Kuwait upon accession; on 9 July 1969 in respect of the declaration made by the Government of Syria upon accession; on 21 April 1970 made in respect of the declaration made by Government of Iraq upon ratification with the following statement: "With regard to the political declaration in the guise of a reservation made on the occasion of the ratification of the above Treaty, the Government of Israel wishes to refer to its objection circulated by the Secretary-General in his letter [. . .] and to maintain that objection."; on 12 February 1973 in respect of the declaration made by the Government of the People's Democratic Republic of Yemen upon accession; on 25 September 1974 in respect of the declaration made by the United Arab Emirates upon accession and on 25 June 1990 in rthe reservation made by Bahrain upon accession.

[19] On 8 July 2021, the Government of Bahrain notified the Secretary-General of its withdrawal of the following reservation made upon accession:

"[T]he accession by the State of Bahrain to the said Convention shall in no way constitute recognition of Israel or be a cause for the establishment of any relations of any kind therewith."

[20] In communications received on 8 March, 19 and 20 April 1989, the Governments of the Union of Soviet Socialist

Republics, the Byelorussian Soviet Socialist Republic and the Ukrainian Soviet Socialist Republic, respectively, notified the Secretary-General that they had decided to withdraw the reservations relating to article 22. For the texts of the reservations, see United Nations, *Treaty Series* , vol. 676, p. 397, vol. 81, p. 392 and vol.77, p. 435.

[21] On 24 June 1992, the Government of Bulgaria notified the Secretary-General its decision to withdraw the reservation to article 22 made upon signature and confirmed upon ratification. For the text of the reservation, see United Nations, *Treaty Series* , vol. 60, p. 270.

[22] None of the States concerned having objected to the reservation by the end of a period of ninety days after the date when it was circulated by the Secretary-General, the said reservation is deemed to have been permitted in accordance with the provisions of article 20 (1).

[23] In a notification received on 18 January 1980, the Government of Egypt informed the Secretary-General that it had decided to withdraw the declaration it had made in respect of Israel. For the text of the declaration see United Nations, *Treaty Series* , vol. 60, p. 318. The notification indicates 25 January 1980 as the effective date of the withdrawal.

[24] In a communication received in 10 August 2012, the Government of Fiji notified the Secretary-General of the withdrawal of the reservations and declarations made upon sucession to the Convention. The text of the reservations and declarations read as follows:

The reservation and declarations formulated by the Government of the United Kingdom on behalf of Fiji are affirmed but have been redrafted in the following terms:

"To the extent, if any, that any law relating to elections in Fiji may not fulfil the obligations referred to in article 5 (c), that any law relating to land in Fiji which prohibits or restricts the alienation of land by the indigenous inhabitants may not fulfil the obligations referred to in article 5 (d) (v), or that the school system of Fiji may not fulfil the obligations referred to in articles 2, 3, or 5 (e) (v), the Government of Fiji reserves the right not to implement the aforementioned provisions of the Convention.

"The Government of Fiji wishes to state its understanding of certain articles in the Convention. It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association) that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of Article 4.

Further, the Government of Fiji interprets the requirement in article 6 concerning `reparation or satisfaction' as being fulfilled if one or other of these forms of redress is made available and interprets `satisfaction' as including any form of redress effective to bring the discriminatory conduct to an and. In addition it interprets article 20 and the other related provisions of Part III of the Convention as meaning that if a reservation is not accepted the State making the reservation does not become a Party to the Convention.

"The Government of Fiji maintains the view that Article 15 is discriminatory in that it establishes a procedure for the receipt of petitions relating to dependent territories whilst making no comparable provision for States without such territories."

[25] In a communication received subsequently, the Government of France indicated that the first paragraph of the declaration did not purport to limit the obligations under the Convention in respect of the French Government, but only to record the latter's interpretation of article 4 of the Convention.

[26] The Secretary-General received on 7 August 2013 the following communication from the Government of the French Republic:

The Government of the French Republic has examined the declaration formulated by the Government of Grenada at the time of the deposit of its instrument of ratification of the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966. The Government of the French Republic takes note of this ratification. It regrets, however, that the declaration made by Grenada, which constitutes a reservation, gives rise to a restriction on the international obligations accepted by Grenada under the Convention and to legal uncertainty. The reservation has indeed a general and indeterminate scope, since its aim is to subordinate the implementation of Grenada’s obligations under the Convention to respect for its domestic law, with no indication of which provisions are concerned. The States Parties to the Convention cannot, therefore, assess the scope of the reservation. By the present declaration, however, the Government of the French Republic does not oppose Grenada becoming a party to the Convention.

[27] In a communication received on 13 September 1989, the Government of Hungary notified the Secretary-General that it had decided to withdraw the reservation in respect to article 22 of the Convention made upon ratification. For the text of the reservation, see United Nations, *Treaty Series* , vol. 60, p. 310.

[28] In a communication received on 24 February 1969, the Government of Pakistan notified the Secretary-General that it "has decided not to accept the reservation made by the Government of India in her instrument of ratification".

[29] In a communication received on 19 July 1990, the Government of Mongolia notified the Secretary-General of its decision to withdraw the reservation concerning article 22 made upon ratification. For the text of the reservation see United Nations, *Treaty Series* , vol. 60, p. 289.

[30] On 16 October 1997, the Government of Poland notified the Secretary-General that it had decided to withdraw its reservation with regard to article 22 of the Convention made

upon ratification. For the text of the reservation see United Nations, *Treaty Series* , vol. 660, p. 195.

[31] On 19 August 1998, the Government of Romania notified the Secretary-General that it had decided to withdraw its reservation made with regard to article 22 of the Convention made upon accession. For the text of the reservation, see United Nations, *Treaty Series* , vol. 763, p. 362.

[32] In a communication received in 15 December 2008, the Government of Rwanda notified the Secretary-General of the withdrawal of the reservation made upon accession to the Convention. The text of the reservation reads as follows:

The Rwandese Republic does not consider itself as bound by article 22 of the Convention.

[33] On 22 October 1999, the Government of Spain informed the Secretary-General that it had decided to withdraw its reservation in respect of article XXII made upon accession. For the texte of the reservation, see United Nations, *Treaty Series* , vol. 660, p. 316.

[34] By a notification received on 28 October 1977, the Government of Tonga informed the Secretary-General that it has decided to withdraw only those reservations made upon accession relating to article 5 (c) in so far as it relates to elections, and reservations relating to articles 2, 3 and 5 (e) (v), in so far as these articles relate to education and training. For the text of the original reservation see United Nations, *Treaty Series* , vol. 829, p. 371.

[35] The first ten declarations recognizing the competence of the Committee on the Elimination of Racial Discrimination took effect on 3 December 1982, date of the deposit of the tenth declaration, according to article 14, paragraph 1 of the Convention.

Annex 9

International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, *Yearbook of the International Law Commission 2001* (excerpt)

He claimed that he had not had a fair hearing, contrary to article 6, paragraph 1, of the European Convention on Human Rights. The Court noted that:

> The Contracting States enjoy a wide discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of article 6 § 1 in this field. The Court's task is not to indicate those means to the States, but to determine whether the result called for by the Convention has been achieved ... For this to be so, the resources available under domestic law must be shown to be effective and a person "charged with a criminal offence" ... must not be left with the burden of proving that he was not seeking to evade justice or that his absence was due to *force majeure*.[210]

The Court thus considered that article 6, paragraph 1, imposed an obligation of result.[211] But, in order to decide whether there had been a breach of the Convention in the circumstances of the case, it did not simply compare the result required (the opportunity for a trial in the accused's presence) with the result practically achieved (the lack of that opportunity in the particular case). Rather, it examined what more Italy could have done to make the applicant's right "effective".[212] The distinction between obligations of conduct and result was not determinative of the actual decision that there had been a breach of article 6, paragraph 1.[213]

(12) The question often arises whether an obligation is breached by the enactment of legislation by a State, in cases where the content of the legislation *prima facie* conflicts with what is required by the international obligation, or whether the legislation has to be implemented in the given case before the breach can be said to have occurred. Again, no general rule can be laid down that is applicable to all cases.[214] Certain obligations may be breached by the mere passage of incompatible legislation.[215] Where this is so, the passage of the legislation without more entails the international responsibility of the enacting State, the legislature itself being an organ of the State for the purposes of the attribution of responsibility.[216] In other circumstances, the enactment of legislation may not in and of itself amount to a breach,[217] especially if it is open to the State concerned to give effect to the legislation in a way which would not violate the international obligation in question. In such cases, whether there is a breach will depend on whether and how the legislation is given effect.[218]

Article 13. International obligation in force for a State

An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.

Commentary

(1) Article 13 states the basic principle that, for responsibility to exist, the breach must occur at a time when the State is bound by the obligation. This is but the application in the field of State responsibility of the general principle of intertemporal law, as stated by Judge Huber in another context in the *Island of Palmas* case:

> [A] juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled.[219]

Article 13 provides an important guarantee for States in terms of claims of responsibility. Its formulation ("does not constitute … unless …") is in keeping with the idea of a guarantee against the retrospective application of international law in matters of State responsibility.

(2) International tribunals have applied the principle stated in article 13 in many cases. An instructive example is provided by the decision of Umpire Bates of the United States-Great Britain Mixed Commission concerning the

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[210] *Colozza* v. *Italy, Eur. Court H.R., Series A, No. 89* (1985), pp. 15–16, para. 30, citing *De Cubber* v. *Belgium, ibid., No. 86* (1984), p. 20, para. 35.

[211] Cf. *Plattform "Ärzte für das Leben"* v. *Austria*, in which the Court gave the following interpretation of article 11:

> "While it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used … In this area the obligation they enter into under article 11 of the Convention is an obligation as to measures to be taken and not as to results to be achieved" (*Eur. Court H.R., Series A, No. 139*, p. 12, para. 34 (1988)).

In the *Colozza* case (see footnote 210 above), the Court used similar language but concluded that the obligation was an obligation of result. Cf. C. Tomuschat, "What is a 'breach' of the European Convention on Human Rights?", *The Dynamics of the Protection of Human Rights in Europe: Essays in Honour of Henry G. Schermers*, Lawson and de Blois, eds. (Dordrecht, Martinus Nijhoff, 1994), vol. 3, p. 315, at p. 328.

[212] *Colozza* case (see footnote 210 above), para. 28.

[213] See also *The Islamic Republic of Iran* v. *The United States of America*, cases A15 (IV) and A24, Iran-U.S. C.T.R., vol. 32, p. 115 (1996).

[214] Cf. *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947* (footnote 83 above), p. 30, para. 42.

[215] A uniform law treaty will generally be construed as requiring immediate implementation, i.e. as embodying an obligation to make the provisions of the uniform law a part of the law of each State party: see, e.g., B. Conforti, "Obblighi di mezzi e obblighi di risultato nelle convenzioni di diritto uniforme", *Rivista di diritto internazionale privato e processuale*, vol. 24 (1988), p. 233.

[216] See article 4 and commentary. For illustrations, see, e.g., the findings of the European Court of Human Rights in *Norris* v. *Ireland*, *Eur. Court H.R., Series A, No. 142*, para. 31 (1988), citing *Klass and Others* v. *Germany, ibid., No. 28*, para. 33 (1978); *Marckx* v. *Belgium, ibid., No. 31*, para. 27 (1979); *Johnston and Others* v. *Ireland, ibid., No. 112*, para. 42 (1986); *Dudgeon* v. *the United Kingdom, ibid., No. 45*, para. 41 (1981); and *Modinos* v. *Cyprus, ibid., No. 259*, para. 24 (1993). See also *International responsibility for the promulgation and enforcement of laws in violation of the Convention (arts. 1 and 2 American Convention on Human Rights)*, Advisory Opinion OC–14/94, Inter-American Court of Human Rights, Series A, No. 14 (1994). The Inter-American Court also considered it possible to determine whether draft legislation was compatible with the provisions of human rights treaties: *Restrictions to the Death Penalty (arts. 4(2) and 4(4) American Convention on Human Rights)*, Advisory Opinion OC–3/83, Series A, No. 3 (1983).

[217] As ICJ held in *LaGrand*, *Judgment* (see footnote 119 above), p. 497, paras. 90–91.

[218] See, e.g., WTO, Report of the Panel (footnote 73 above), paras. 7.34–7.57.

[219] *Island of Palmas* (Netherlands/United States of America), UNRIAA, vol. II (Sales No. 1949.V.1), p. 829, at p. 845 (1928). Generally on intertemporal law, see resolution I adopted in 1975 by the Institute of International Law at its Wiesbaden session, *Annuaire de l'Institut de droit international*, vol. 56 (1975), pp. 536–540; for the debate, *ibid.*, pp. 339–374; for M. Sørensen's reports, *ibid.*, vol. 55 (1973), pp. 1–116. See further W. Karl, "The time factor in the law of State responsibility", Spinedi and Simma, eds., *op. cit*. (footnote 175 above), p. 95.

Annex 10

UN General Assembly, *United Nations Declaration on the Rights of Indigenous People*, UN Doc. A/RES/61/295 (13 September 2007) (excerpt)

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights[2] and the International Covenant on Civil and Political Rights,[2] as well as the Vienna Declaration and Programme of

[2] See resolution 2200 A (XXI), annex.

Annex 11

International Law Commission, Draft Articles on Prevention and Punishment of Crimes against Humanity, *Yearbook of the International Law Commission 2019* (excerpt)

(b) taking evidence or statements from persons, including by video conference;

(c) effecting service of judicial documents;

(d) executing searches and seizures;

(e) examining objects and sites, including obtaining forensic evidence;

(f) providing information, evidentiary items and expert evaluations;

(g) providing originals or certified copies of relevant documents and records;

(h) identifying, tracing or freezing proceeds of crime, property, instrumentalities or other things for evidentiary or other purposes;

(i) facilitating the voluntary appearance of persons in the requesting State; or

(j) any other type of assistance that is not contrary to the national law of the requested State.

4. States shall not decline to render mutual legal assistance pursuant to this draft article on the ground of bank secrecy.

5. States shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this draft article.

6. Without prejudice to its national law, the competent authorities of a State may, without prior request, transmit information relating to crimes against humanity to a competent authority in another State where they believe that such information could assist the authority in undertaking or successfully concluding investigations, prosecutions and judicial proceedings or could result in a request formulated by the latter State pursuant to the present draft articles.

7. The provisions of this draft article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance between the States in question.

8. The draft annex to the present draft articles shall apply to requests made pursuant to this draft article if the States in question are not bound by a treaty of mutual legal assistance. If those States are bound by such a treaty, the corresponding provisions of that treaty shall apply, unless the States agree to apply the provisions of the draft annex in lieu thereof. States are encouraged to apply the draft annex if it facilitates cooperation.

9. States shall consider, as appropriate, entering into agreements or arrangements with international mechanisms that are established by the United Nations or by other international organizations and that have a mandate to collect evidence with respect to crimes against humanity.

Article 15
Settlement of disputes

1. States shall endeavour to settle disputes concerning the interpretation or application of the present draft articles through negotiations.

2. Any dispute between two or more States concerning the interpretation or application of the present draft articles that is not settled through negotiation shall, at the request of one of those States, be submitted to the International Court of Justice, unless those States agree to submit the dispute to arbitration.

3. Each State may declare that it does not consider itself bound by paragraph 2 of this draft article. The other States shall not be bound by paragraph 2 of this draft article with respect to any State that has made such a declaration.

4. Any State that has made a declaration in accordance with paragraph 3 of this draft article may at any time withdraw that declaration.

Annex

1. This draft annex applies in accordance with draft article 14, paragraph 8.

Designation of a central authority

2. Each State shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified by each State of the central authority designated for this purpose. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States. This requirement shall be without prejudice to the right of a State to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States agree, through the International Criminal Police Organization, if possible.

Procedures for making a request

3. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State, under conditions allowing that State to establish authenticity. The Secretary-General of the United Nations shall be notified by each State of the language or languages acceptable to that State. In urgent circumstances and where agreed by the States, requests may be made orally, but shall be confirmed in writing forthwith.

4. A request for mutual legal assistance shall contain:

(a) the identity of the authority making the request;

(b) the subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) a summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) a description of the assistance sought and details of any particular procedure that the requesting State wishes to be followed;

(e) where possible, the identity, location and nationality of any person concerned; and

(f) the purpose for which the evidence, information or action is sought.

5. The requested State may request additional information when it appears necessary for the execution of the request in accordance with its national law or when it can facilitate such execution.

Annex 12

Ad Hoc Report of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, *Mine Problem in the Liberated Areas* (June 2021), *available at* https://www.ombudsman.az/upload/editor/files/Ad%20Hoc%20Report%20of%20the%20Ombudsman%20on%20landmine%20problem.pdf (excerpt)

ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle, and "remotely delivered mine" means any mine so defined delivered by artillery, rocket, mortar or similar means or dropped from an aircraft.[1]

By the way, in accordance with the General and Complete Disarmament Policy, Azerbaijan, which attaches great importance to the establishment of mine action legislation and standards and is constantly working on it, on December 5, 2007, voted in favor of the UN General Assembly Resolution 62/41 dated 5 December 2007, requiring the universalization and full implementation of the UN Mine Action Policy.

According to some information, more than 110 million landmines are buried in 60 countries. In 2015 alone, around the world, more than 6,500 people were killed or injured in mine explosions. The mine clearance process in itself is a difficult and long-term process. For instance, in Mozambique, this process lasted more than 22 years and ended in 2015.[2]

According to UNICEF, about 1 million people have been killed by landmines since 1975, one-third of them were children under the age of 15. In addition, according to ICRC statistics, about 2,000 people are killed by landmines every month, three-quarters of them were civilians.[3]

It is generally agreed that Afghanistan, Cambodia, Laos, Bosnia and Herzegovina, and Angola are the areas most heavily deployed with mines in the world.[4] Considering the current situation, it is safe to say that the liberated territories of Azerbaijan occupy one of the leading places on this list.

In practice, there are different types of mines, which include AP mines and AT mines. The use of AP mines as weapons of war is a real humanitarian tragedy on a global scale. Mines are indiscriminate by nature, that is, landmines are unable to distinguish between a civilian and a combatant. The practice shows that in many cases, the victims of landmines are civilians. AP mines explosions take the lives or health of human beings and making them disabled, leading to long-term severe psychological trauma.

The placement of landmines, especially during and after prolonged armed conflicts, impede the return of those who have been forced to flee their homes as a result of the conflict, as well as settlement in general.

[1] Protocol II to the CCW, (1980), Article 2 (1)
[2] https://www.bbc.com/russian/vert-fut-39492388
[3] slovar-gumanitarnoqo-prava.org
[4] https://www.bbc.com/russian/vert-fut-39492388

for all, including affected and non-affected communities, cities and other development sectors (SDG 7).[18]

So, clearance of these areas from the weapon contamination would facilitate the rapid accomplishment of the goal "no one left behind" in the context of the landmine action and to attain a Zero Victim Target.

VIOLATIONS OF THE NORMS AND PRINCIPLES OF IHL BY ARMENIA

Under IHL, more precisely according to the Rule 149 about the Responsibility for violations of IHL, a State is responsible for violations of international humanitarian law attributable to it, including:(a) violations committed by its organs, including its armed forces; (b) violations committed by persons or entities it empowered to exercise elements of governmental authority;(c) violations committed by persons or groups acting in fact on its instructions, or under its direction or control; and(d) violations committed by private persons or groups which it acknowledges and adopts as its own conduct.[19]

The above-mentioned show that Armenia, which is waging an aggressive war against our country by seizing the territories of Azerbaijan, recognized by the world community, has a direct international legal responsibility.

Principle of Distinction

As already mentioned, Armenia violated and continues to violate its international obligations under the 1949 Geneva Conventions and its Additional Protocols, more precisely, the principle of distinction, which is one of the core principles of IHL, by putting at risk the lives of civilians- the protected persons under the IHL.

This obligatory principle must be considered by all Parties to the conflict as provided in Article 48 of the AP I of 1977. So, Armenia as a State that consented to be bound by this treaty, blatantly broke this norm.

Given that mines are blind to differentiate between a civilian and a combatant, and therefore, have indiscriminate effects,[20] and that AP mines may be used intentionally to cause the loss of civilian lives, civilian damages, and injuries, Armenia violated this principle. Because the enemy State used Anti-vehicle mines and AP mines not only for military purposes but also targeted civilians by placing them in residential areas and

[18] file:///C:/Users/HP/Desktop/AdHoc%20Report/UNDP%20GICHD%20Mine%20Action-SDG%20Study%20-%20web.pdf
[19] https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule149
[20] Article 3 (5), Protocol II to the Convention on Certain Conventional Weapons (1980)

Annex 13

Annex not reproduced

Annex 14

Annex not reproduced

Annex 15

Azerbaijan's Allegations Concerning Landmines and Booby Traps (April 2023)

Allegations Concerning Landmines and Booby Traps That Were Made in Previous Submissions and Are Merely Restated in Azerbaijan's Memorial

Allegations Regarding Landmines and/or Booby Traps in Azerbaijan's Memorial that Had Already Been Made in Previous Submissions	"Evidence" Recycled from Previous Submissions	Additional "Evidence" Cited in the Memorial in Support of Allegations
Armenia planted mines in Xanlıq, Şatarız, and Güləbird (**Memorial, para. 277**)	• **Annex 32** to Azerbaijan's First PM Request • **Annex 36** to Azerbaijan's First PM Request	**NONE**
Armenia planted landmines after the 2020 Trilateral Statement (**Memorial, para. 278**)	--	**NONE**
Armenia planted landmines in the town of Lachin and adjacent villages in August 2022 (**Memorial, para. 278**)	• **Annex 7** to Azerbaijan's Second PM Request • **Annex 9** to Azerbaijan's Second PM Request • **Annex 5** to Azerbaijan's Second PM Request • **Annex 10** to Azerbaijan's Second PM Request • **Annex 11** to Azerbaijan's Second PM Request	**NONE**
Armenia planted landmines from August to November 2022 in the villages of Ikinji Ipak, Birinji Ipak and Baghlipaya (**Memorial, para. 279**)	• **Annex 7** to Azerbaijan's Second PM Request • **Annex 9** to Azerbaijan's Second PM Request • **Annex 13** to Azerbaijan's Second PM Request • **Annex 14** of Azerbaijan's Second PM Request	**NONE**
Azerbaijan discovered Armenian-produced landmines manufactured in 2021 in parts of Kalbajar and Lachin (**Memorial, para. 280**)	• **Annex 7** to Azerbaijan's Second PM Request • **Annex 8** to Azerbaijan's Second PM Request • **Annex 10** to Azerbaijan's Second PM Request	**NONE**

Allegations Regarding Landmines and/or Booby Traps in Azerbaijan's Memorial that Had Already Been Made in Previous Submissions	**"Evidence" Recycled from Previous Submissions**	**Additional "Evidence" Cited in the Memorial in Support of Allegations**
	• **Annex 11** to Azerbaijan's Second PM Request	
Armenian forces and departing settlers planted booby traps in Lachin town, Zabukh and Sus (**Memorial, para. 281**)	• **Annex 10** to Azerbaijan's Second PM Request • **Annex 8** to Azerbaijan's Second PM Request • Ministry of Foreign Affairs of the Republic of Azerbaijan, *Press release No: 493/22 on ongoing threats as a result of planting of landmines in the territories of Azerbaijan by Armenia* (25 October 2022) (**Not submitted as an Annex; also cited in fn. 35 of Azerbaijan's Second PM Request**)	**NONE**
Azerbaijan's planned return of IDPs and the cost of doing so (**Memorial para. 274)**	• **Exhibit 8** to Letter dated 22 September 2022 from Elnur Mammadov, Deputy Minister of Foreign Affairs of the Republic of Azerbaijan, to H.E. Mr. Philippe Gautier, Registrar of the International Court of Justice (**identical to Annex 13 to Azerbaijan's Second PM Request**)	• President of the Republic of Azerbaijan Ilham Aliyev, *Ilham Aliyev takes part in plenary session of 6th Summit of Conference on Interaction and Confidence Building Measures in Asia in Astana* (13 October 2022) (**Not submitted as an Annex**)
Armenia hindered demining efforts by refusing to provide complete maps (**Memorial, para. 275**)	• Letter dated 9 August 2021 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General (**Not submitted as an Annex; also cited in fn. 12 of Azerbaijan's First PM Request**)	• **Annex 45** to Azerbaijan's Memorial (nearly identical to **Annex 33** to Azerbaijan's First PM Request) • Ministry of Foreign Affairs of the Republic of Azerbaijan, *Press Release No: 217/21, Information of the*

Allegations Regarding Landmines and/or Booby Traps in Azerbaijan's Memorial that Had Already Been Made in Previous Submissions	"Evidence" Recycled from Previous Submissions	Additional "Evidence" Cited in the Memorial in Support of Allegations
		Press Service Department of the Ministry of Foreign Affairs of the Republic of Azerbaijan (12 June 2021) (**Not submitted as an Annex**) • "Yerevan transfers only a fraction of minefield maps to Baku, says Pashinyan", *Tass* (13 June 2021) (**Not submitted as an Annex**)
Armenia's landmines and booby traps prevent Azerbaijanis from returning to the liberated territories (**Memorial, para. 282**)	--	• **Annex 8** to Azerbaijan's Memorial • PACE Committee on Migration, Refugees and Displaced Persons, *Explanatory memorandum by Mr. Paul Gavan, rapporteur* (13 September 2021) (**Not submitted as an Annex**)
Armenia's landmines have impacted civilians (**Memorial, para. 283**)	• **Annex 8** to Azerbaijan's Second PM Request • **Annex 11** to Azerbaijan's Second PM Request	• **Annex 22** to Azerbaijan's Memorial • **Annex 25** to Azerbaijan's Memorial

Allegations Concerning Landmines and Booby Traps That Were Made for the First Time in Azerbaijan's Memorial

New Allegations Regarding Landmines and/or Booby Traps in Azerbaijan's Memorial	Evidence Recycled from Previous Submissions	"Evidence" Cited in the Memorial in Support of Allegations
Armenia planted landmines and booby traps in Kalbajar district in 1993 (**Memorial, paras. 116, 276**)	--	• **Annex 113** to Azerbaijan's Memorial
Armenia seeded the line of contact with landmines (**Memorial, para. 223**)	• **Annex 32** to Azerbaijan's Application	• Independent Permanent Human Rights Commission (IPHRC) of The Organisation of Islamic Cooperation (OIC), *Report* of *the OIC-PHRC Fact Finding Visit to the Territories Previously Occupied by Armenia top Assess Human Rights & Humanitarian Situation, 22-26 September* 2021 (14 November 2021) (**Not submitted as an Annex**)
Armenia provided inaccurate maps (**Memorial, para. 275**)	--	• **Annex 22** to Azerbaijan's Memorial • **Annex 34** to Azerbaijan's Memorial

Annex 16

"Water Politics Anger Armenia", *Institute for War & Peace Reporting* (22 February 2016), *available at* https://iwpr.net/global-voices/water-politics-angers-armenia

Water Politics Angers Armenia

iwpr.net/global-voices/water-politics-angers-armenia

Yerevan accuses the Parliamentary Assembly of the Council of Europe of taking a pro-Baku stance.

The Sarsang reservoir lies inside Nagorny Karabakh and is controlled by Armenia. (Photo: Norayr Chilingarian/Flickr)

Armenia has reacted angrily to accusations by a European body that it is “deliberately” depriving border regions of Azerbaijan of water.

The January 26 resolution issued by the Parliamentary Assembly of the Council of Europe (PACE) said that more than 20 years of neglect of the key Sarsang reservoir posed “a danger to the whole border region.”

The state of disrepair of the reservoir, which lies inside Nagorny Karabakh and is controlled by Armenians, could lead to a “major disaster with great loss of human life and possibly a fresh humanitarian crisis,” PACE said.

However, critics in Armenia and Nagorny Karabakh accused PACE of supporting Azerbaijan’s viewpoint rather than looking at the situation objectively.

“We should no longer allow that PACE regulations are used to confirm such one-sided reports,” said Tevan Poghosyan, a member of the Heritage faction of Armenia´s parliament and part of the parliamentary committee on foreign relations. “In reality, Azerbaijan wanted to receive an official document, which can then be used in other institutions, quoting the language of the report.”

Nagorny Karabakh´s deputy foreign minister Armine Alexanyan also expressed regret “that PACE did not demonstrate political maturity” over the resolution.

PACE had called for the immediate withdrawal of Armenian forces from the region as well as an independent survey and international supervision of the reservoir.

Its report was prepared by Bosnian lawmaker Milica Markovic , who came under fire from Yerevan for failing to visit Nagorny Karabakh and Armenia during the preparation of the report, despite having been invited. However, she visited Azerbaijan twice.

In her report, Markovic said that she had been unable to visit Armenia due to “the lack of co-operation of the Armenian delegation”.

Built in 1976 on the Tartar River at an altitude of 726 metres above sea level, the Sarsang reservoir used to provide water for drinking and irrigation to the territory of Nagorny Karabakh as well as six adjoining regions of Azerbaijan. It had the capacity to hold 560 million cubic metres of water.

After the 1994 ceasefire following the Nagorny Karabakh war, Azerbaijan could not longer use the reservoir.

The co-chairs of the Minsk Group, the tripartite body set up by the Organisation for Security and Co-operation in Europe to support peace talks in Karabakh, had advised PACE against steps that might harm negotiations.

But Markovic told the Assembly that she had not been concerned with the political context.

“My task was to deal with social questions and humanitarian, social and environmental issues,” she said.

A second PACE resolution on the “escalation of violence in Nagorno-Karabakh and the other occupied territories of Azerbaijan,” raised on the same day was not adopted.

Nonetheless, Elkhan Suleymanov, the author of both resolutions and a member of Azerbaijan ´s parliament and PACE delegation, welcomed the outcome.

“This was a historical victory for the people of Azerbaijan,”Suleymanov told the news agency APA. “Although one of the reports was rejected, the main goal was to put Armenia´s aggressive policy on the agenda, and we have achieved that.”

The chairman of Azerbaijan´s opposition party Musavat, Isa Gambar, also said that the PACE resolution on Sarsang was a small but important move forward.

“I assess this PACE resolution as positive,” he told IWPR. “It reflects reality. Humanitarian and environmental issues have always been a priority for PACE. But the conflict has so deepened and involves so many external forces that the adoption of some new document can hardly affect the promotion of a peaceful solution. But it is after all a small step in a positive direction,” said Gambar.

MUTUAL RECRIMINATIONS

The Sarsang water supplies affect about 138,000 people living in Nagorny Karabakh and 400,000 people in other areas of the Lower Karabakh region in Azerbaijan, according to the PACE report.

Nagorny Karabakh´s prime minister Arayik Harutyunyan said Karabakh had offered to come to an agreement with Azerbaijan over sharing the reservoir in 2013.

“We sent messages saying we agree to cooperate in terms of using the water of the Sarsang reservoir on one condition, that we have access to the water, since the reservoir junction and some pipelines are under their control,” Harutyunyan said.

However, Baku rejects even negotiations over any such move. It regards Nagorny Karabakh as a separatist regime and will therefore not cooperate while what they deem to be an occupation is ongoing.

Currently, the Karabakh authorities use the reservoir only for energy purposes. The Sarsang hydroelectric power plant produces about 140 million kW per hour of electricity annually, according to Slava Gabrielyan, managing director of the Karabakh power distribution company Artsakhenergo.

Since the reservoir junction of the main canal of the Terter River is located on Azerbaijani territory, the Azeris can get water from the reservoir throughout the year, apart from the summer months.

Karabakh residents cannot access irrigation water at all, according to its deputy agriculture minister Gevorg Veranyan.

“While the Azerbaijanis may complain that they do not have the water, our residents are not only partially but fully left without water. This stems from the lack of cooperation on the part of Azerbaijan,” Veranyan told IWPR.

In turn, Azerbaijan claims that the Armenian side frequently stops the water in the summer when it is most needed.

Then in winter, the water from the Sarsang reservoir is released, flooding roads and agricultural lands and damaging Azerbaijani agriculture.

Farmers on both sides continue to suffer the consequences.

Artur Ghukasyan, a resident of the Martakert region in Nagorny Karabakh, 15 km from Sarsang, has been a farmer for 40 years. He told IWPR that before the war, water for irrigation came from the Tartar River.

“I basically grew grapes and produced a high quality crop. Today, due to the fact that Azerbaijan has blocked the water spout that pumps the water coming to the territory, drought and desolation prevail in my once great vineyards. Without irrigation in these areas, it is impossible to engage in agriculture,” said the farmer.

Ghukasyan said that local residents still hope that it will be possible to reach an agreement that will allow them to use the Tartar river waters.

For now, he can only cultivate a small vegetable garden in his courtyard.

On the Azerbaijani side, farmers are no better off.

Muraz Djafarov, a resident of the border village of Qizilhacili in Goranboi district, cannot irrigate his three hectare plot. In the past, water did reach his land from the Sarsang reservoir, but not any more.

“About five years ago, the water came from there, though with interruptions,” he said. “Now, the water flows only in winter when farm work is not carried out, and in the summer it is blocked… Our only [other] source is the Goranboi River, and the level of water in it decreases every year. We earn our living only from the land, which has to be irrigated. Now our situation is critical,” Djafarov concluded.

Vernayan said that PACE should have taken a different approach if it really wanted to improve the environmental and humanitarian situation.

“It would be more correct if PACE helped Nagorny Karabakh, for example, join the International Commission on Large Dams (ICOLD) to attract high-calibre European specialists to re-evaluate the safety of the dam, re-simulate breaking waves, calculate the area prone to flooding, develop recommendations for a joint response and so on,” Veranyan said.

“It would be better if international credits and other assistance were granted for the modernisation of the dam and the training of specialists and for the restoration of the canals which have not been operated for more than 25 years. That would be real help, both for Azerbaijan and for the people of Nagorny Karabakh.”

Veranyan said that sharing the resources of the reservoir could be advantageous for both sides. At the moment, 44,000 hectares of the territory adjoining Sarsang belong to Nagorny Karabakh and 100,000 hectares to Azerbaijan.

“We are better off having 44,000 hectares of irrigated land than a hydroelectric power station with a capacity of 50 MWt [the capacity of the Sarsang hydroelectric power plant],” he said.

The dam reservoir is expensive both to use and maintain, so the income generated by the hydroelectric power station is mainly dedicated to its upkeep.

Veranyan said that Karabakh cannot simply wait for the day when Azerbaijan may agree to a joint use of the reservoir.

The Karabakh government is now planning to divert the Terter River so as to supply water to the 40,000 hectares of land left without irrigation, at a cost of more than 10 million US dollars.

“Construction will start in the near future because it makes no sense to wait,” Veranyan said.

ABSENCE OF GOODWILL

Richard Giragosian, director of the Regional Studies Centre (RSC) in Yerevan said that Markovic's resolution represented a "missed opportunity" for PACE.

"At the same time, the adoption of this resolution is also a strategic mistake, for two reasons," he continued. "First, given the complete absence of any gestures of goodwill or confidence-building mechanisms, this resolution dismisses and denies the chance for building an environment more conducive to restoring communication and regaining confidence on all sides.

"Second, the strategic mistake was also demonstrated by the willful disrespect and disdain for the OSCE Minsk Group mediators, who legally hold the sole diplomatic jurisdiction for the Karabakh peace process," Giragosian continued.

The PACE decision underscored the need to establish new ways of building confidence, he added, suggesting that one priority would be to again offer Azerbaijan the opportunity to share Sarsang's resources.

Political scientist Stepan Grigoryan, head of the Analytical Centre on Globalisation and Regional Cooperation (ACGRC) in Yerevan, also suggested that the Armenians take the initiative to institute its own resolution aimed at a joint, peaceful solution to the Sarsang reservoir.

"This will obviously be a positive step that will unite and not divide the parties. You can unite Armenian, Karabakh and Azerbaijani engineers and conduct a rehabilitation programme," he said.

Christine Poghosyan is an independent journalist in Armenia and Nurgul Novruz is a freelance journalist in Azerbaijan. Oksana Musaelyan is a freelance reporter from Armenia, who contributed from Strasbourg, France.

Annex 17

"Nagorno-Karabakh conflict: Landmines, a disturbing reminder of war", *ICRC* (31 May 2019), *available at* https://www.icrc.org/en/document/nagorno-karabakh-conflict-landmines-disturbing-reminder-war

Nagorno-Karabakh conflict: Landmines, a disturbing reminder of war

icrc.org/en/document/nagorno-karabakh-conflict-landmines-disturbing-reminder-war

May 30, 2019

It has been 25 years since the Nagorno-Karabakh conflict first disrupted the lives of the people living in the region. The years may have sped by, but the people continue to be haunted by the ghosts of the time gone past. The most traumatic of those reminders are the landmines which continue to lay buried and undiscovered beneath the rural arable lands in the area.

Article 31 May 2019 Armenia Azerbaijan
Landmines are indiscriminate. They do not choose if the victim is from the military or a civilian. The ICRC mission in Nagorno-Karabakh has registered 747 cases of landmine victims, of which 59% are civilians. With a population of about 140,000, this number is striking given that most of the landmine survivors now live with some form of a permanent physical disability. The bitter reality is that these unfortunate people need life-long physical rehabilitation and care is hard to come by.

Despite all odds, many people still manage to find courage to get back on their feet and aspire for a better future. Robert Sarkisyan is one of these brave souls.

Robert was a 36-year-old officer serving in the military, when he stepped on a landmine, while attempting to save a friend's life. The friend did not survive, and Robert lost him alongwith the use of his left leg.

Struggling through the gloom of despair, Robert improved his health and found hope in support provided at a physical rehabilitation centre. Combined with his extraordinary willpower, Robert attained independence in just six months. What had started as hesitant steps soon turned into walking without an aide. The process, however, was challenging.

As part of his ongoing therapy, Robert exercises in the gym, rides a bike and swims in the pool. Swimming is his favorite form of physical activity, reminisce of his past life as a navy officer.

> One should never give up. Staying alive is the most important. All the rest is easy.

Some injuries can never truly be healed. Armen Avetisyan is a young and strong man, but a landmine blast left him without the use of his lower limbs. During the Nagorno-Karabakh conflict in the 1990s, he was a commander of a demining platoon.

Known for his careful disposition, and for being a stickler for details, he quickly gained the reputation of a person who was never mistaken. He said he was able to find and neutralize 60 landmines on an average per night.

> A deminer can fail only once. I could be dead a long time ago. Even now I don't know how I was able to do the job. It's like catching a snake: you never know whether it will bite or not.

Ironically, in 1995, Armen's car exploded in a landmine incident leaving him with major spinal cord injuries. After losing his house in a landslide and spending all his money on treatment, he approached the ICRC for a loan to set up a small income-generating activity.

He bought a cattle feed grinding machine, adjusted it to his wheelchair and started offering the service to the villagers. Thanks to his work and family – especially his two-year-old daughter – the daily hardship seems manageable to him.

Out of the total number of landmine victims registered by the ICRC mission in Nagorno-Karabakh, 523 are still the main breadwinners of their families, while 316 became pensioners after the incidents. Gnel Ghulyan's case proves that losing two limbs can't stop one from aspiring to live an active life. To earn a livelihood and provide for his four kids, he had to start from scratch.

Growing vegetables, caring for a big garden, travelling across cities for trading – these are a few activities that kept Gnel's persistence alive. While still 22 years old, his individual potential as a young man was hindered from developing by the conflict in the 1990s. He decided that this was not going to be the case with his four children. Together with his wife, they devoted most of their lives to ensuring quality education for their children.

CC BY-NC-ND / ICRC / Gohar Ter-Hakobyan

Now it is time for Gnel to pay attention to himself and get a more advanced prosthesis. Getting a new artificial limb for him means having a chance to go outside, meet people and regain confidence.

> I often move my wheelchair to the main road and spend hours staring at cars passing by. It's nerve-wrecking not to be able to do anything. I can't talk to the villagers, work in our garden or help my wife. It's not easy.

Landmine blasts affect everyone - men and women, young and old, civilians and military personnel.

Five years ago, Gayane Abalyan's husband died in an anti-tank landmine explosion while grazing cows. He was aware of the existence of the explosive remnants of war – landmines – in the area, yet he somehow got used to risking his life for the sake of earning a living for his family.

Incidents like these are among the top reasons for civilian casualties, along with the negligent behavior displayed during farming and travelling. The sad reality is that that more people have suffered from landmine explosions in the aftermath of the conflict than during it.

Gayane's life completely changed after she lost her husband. She became the family's sole breadwinner, moving to a town where she worked two jobs. She was barely making enough to take care of her daughter's education.

To supplement her monthly income, the ICRC supported her daughter Anna in buying a sewing machine – an essential equipment for her studies in textile design. They are hopeful that this investment will contribute to building a better future for the family.

Gayane's husband is not the only one in the family who suffered due to a landmine explosion. The conflict was coming to an end when Ishkhan Movsisyan, her then 20-year-old brother, dropped an unknown object sustaining fragment injuries in his hand and chest, and an eye trauma.

If not for the explosion, Ishkhan believes his life would have taken another turn. He had to learn how to navigate his new life from scratch.

From building a greenhouse to working at a school and then in a gas company, he became known in the village as someone who had a hand in everything, earning himself the name Master Ishkhan.

It's not easy to earn a living in a small village and, given his limitations, Movsisyan became more creative as the years went by. Now he is a welder and produces homemade wood stoves.

CC BY-NC-ND / ICRC / Gohar Ter-Hakobyan
These people have made significant progress in overcoming physical, psychological and socio-economic challenges. However, the problem of unexploded ordnances persists. This poses a daily threat to people, hampering their agricultural work, movement and development, even decades after the conflict.

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Annex 18

"Water Security and the Nagorno-Karabakh Conflict", *Planetary Security Initiative* (4 October 2022), *available at* https://www.planetarysecurityinitiative.org/news/water-security-and-nagorno-karabakh-conflict

Water security and the Nagorno-Karabakh conflict

planetarysecurityinitiative.org/news/water-security-and-nagorno-karabakh-conflict

The South Caucasus, Azerbaijan in particular, is facing water shortages as precipitation levels are decreasing and the levels of the region's rivers are dropping. Water tensions are also linked to the Nagorno-Karabakh conflict between Armenia and Azerbaijan. As Azerbaijan faced a severe water shortage in the months leading up to the 2020 war, Nagorno-Karabakh became even more relevant for Azerbaijan in terms of its drinking water, irrigation and hydropower.

Roughly three-quarters of Azerbaijan's water supplies originate outside the country, with the Kura and Aras rivers being the main sources. Although Azerbaijan managed to capture dams along the Aras and reservoirs in Nagorno-Karabakh in the 2020 war, its water problems remain prevalent due to poor domestic water management, climate change and upstream dams. Both the Kura and the Aras originate in Turkey, which has increased construction of water infrastructure on both rivers in recent years.

Dispute over Nagorno-Karabakh

Armenia and Azerbaijan have a long-standing dispute over the Nagorno-Karabakh region. The Soviet Union placed Nagorno-Karabakh under the control of the Azerbaijan Soviet Republic, even though a large part of the population at the time was Armenian. The conflict escalated in February 1988, when the Karabakh Armenians first tried to join the Armenian Soviet Republic and later pushed for their own state. The so-called First Nagorno-Karabakh war ended in May 1994, when a ceasefire was brokered by Russia, leaving Nagorno-Karabakh under Armenian control.

In the fall of 2020, the war between Azerbaijan and Armenia escalated again. In the decade preceding the war, Azerbaijan spent five times more on its military than Armenia ($24bn vs. $4.7bn), financed mainly through its oil and gas exports. This shifted the military balance of power in the conflict in favour of Azerbaijan. This process was further supported by Turkey, which has cooperated militarily with Azerbaijan since independence and supplied it with

military drones prior to the war. The 2020 war ended in a trilateral agreement to end the second war that was again brokered by Russia. This agreement benefitted Azerbaijan by letting Baku keep control over the areas it captured during the war plus several adjacent areas, from which Armenia agreed to withdraw.

The role of water in the 2020 war

Nagorno-Karabakh is home to three tributaries of the Lower Kura and five tributaries of the Lower Aras, which Azerbaijan uses to irrigate important agricultural areas bordering Nagorno-Karabakh where no other rivers flow. In Soviet times, various dams were built on these rivers which left these dams under Armenian control after the 1994 ceasefire agreement. Joint water management has been limited because of recurrent hostilities between both states.

The Conflict and Environment Observatory (CEOBS) documented the environmental dimensions of the 2020 war when both sides accused the other of causing environmental harm both in official statements and online (dis)information campaigns. With regards to water, this included claims about either deliberately cutting off or polluting water flows.

Azerbaijan often cites a 2016 report by the Parliamentary Assembly of the Council of Europe (PACE), which found that Azerbaijani frontier regions were deliberately deprived of water by Armenia controlling the dams upstream in Nagorno-Karabakh. Many of the water-related Azerbaijani accusations against Armenia focused on the Sarsang dam. Located on the Tartar River, which flows through climate-vulnerable agricultural regions in Azerbaijan, the Sarsang dam accounts for roughly half of the hydropower production of Nagorno-Karabakh. Whereas Armenia normally releases the water from the Sarsang reservoir during winter to generate hydropower, Azerbaijan needs it in summer to irrigate its agricultural lands. Azerbaijan accused Armenia of what they called ‘eco-terrorism’, arguing that the Sarsang dam was the 'the biggest threat to regional ecological and national security', as it could breach at any time due to technical failure or deliberate action.

The Armenians, in turn, argue that before 1994, the Sarsang dam was used by Azerbaijan to divert water away from the Karabakh region to lower areas in Azerbaijan. The Armenian Defense Ministry further accused Azerbaijan of targeting water infrastructure during the war, which it claimed could lead to an environmental disaster.

Water sharing on the Aras

Azerbaijan’s main offensive took place along the Aras River and was meant to give Azerbaijan access to the city of Shusha and the strategically important Lachin corridor, in which the only road connecting Armenia and Nagorno-Karabakh is located. But it also resulted in the capture of water infrastructure when Azerbaijan captured the Khudafarin and Qiz Qalasi dams. This allowed for the construction of the new power plants, together with Iran – on

which Azerbaijan and Iran had already agreed in 2016. The dams gave Azerbaijan some control over the flow of the lower part of the Aras. However, they do not ease its worries about water shortages.

The capture of Khudafarin and Qiz Qalasi does not give Azerbaijan access to new water resources as the flow of the Aras towards the Khudafarin reservoir depends on the water inflow from upstream areas in Turkey, Armenia and Iran. There is no overarching agreement over the water management for both the Kura and Aras, and cooperation often remains based on outdated Soviet-era agreements. Azerbaijan itself also draws water from the Aras River through the Aras Dam, located on the border of Azerbaijan's Nakhchivan enclave and Iran. Turkey's upstream dams further determine the flow towards Khudafarin and Qiz Qalasi.

Azerbaijani environmentalists have already pointed to the risks that the construction of the Turkish Beşikkaya dam on the Kura poses to the water flow to Georgia and Azerbaijan. The Turkish Soylemez dam similarly threatens the flow of the Aras, according to Iran's foreign minister. Turkey argues to have the right to utilise transboundary rivers flowing through its territory, if this causes no significant harm and water is shared equitably.

Captured water infrastructure in Nagorno-Karabakh

Although Azerbaijan captured 30 out of 36 of the dams in Nagorno-Karabakh during the war, this helped minimally in alleviating its water problems. Azerbaijan did not capture the Sarsang dam, leaving Armenia largely in control over the region's most significant water source. The Artsakh Information Center reported that officials from Nagorno-Karabakh have been in contact with the Azerbaijani authorities regarding the management of the Sarsang dam since 2021. But Azerbaijan and the *de facto* authorities of Nagorno-Karabakh reached only an informal agreement in June 2022, in which 18.000 cubic metres of water is to be released to Azerbaijan per day during the summer, allowing Azerbaijan to use the water for irrigation.

Furthermore, water from water reservoirs in Nagorno-Karabakh to farms in Azerbaijan runs through earthen canals, causing water to seep into the ground before reaching its destination. The problem is exacerbated by an increase in water-intensive cotton farming, which decreases the amount of water available for drinking and food production. Azerbaijani President Ilham Aliyev publicly acknowledged the problems with water loss and pledged to invest in their water infrastructures.

Azerbaijan is undertaking a large-scale modernization scheme of its newly recaptured territories. Companies from Turkey and Israel have been awarded contracts to modernise water infrastructure in the region. Azerbaijan furthermore signed a contract with Israel's national water company Mekorot in April 2022, which included the design of a so-called 'master plan' for the Azerbaijani water sector. Turkey's State Hydraulic Works (Devlet Su

İşleri – DSI), the Turkish state agency responsible for water management, is actively involved in the construction of new water infrastructure in captured areas of Nagorno-Karabakh and other areas of Azerbaijan.

Climate change and the way forward

Climate change exacerbates the water problems in all countries on the Kura and Aras. The region has been facing declining precipitation and water levels of both the Kura and Aras have been dropping in recent years. This makes shared management of the two rivers even more important. Azerbaijan could capture more water infrastructure following a recent escalation of the conflict, but this is unlikely to help it solve its water problems in a structural manner.

Turkey's DSI helps Azerbaijan to tackle its domestic water management issues, but Turkey's water policy on the Kura and Aras reduces the flows of both rivers. While it was politically convenient for the Azerbaijani leadership to blame Armenia to some extent for its water problems, Turkey's water policy has so far not led to tensions between Azerbaijan and its main ally. For the future, Azerbaijan will somehow need to cooperate with Turkey on the Kura and Aras to increase its water supplies structurally.

By Douwe van der Meer

Photo credit: Koorosh Nozad Tehrani/Flickr

Annex 19

"Azerbaijan: Blockade of Lachin corridor putting thousands of lives in peril must be immediately lifted", *Amnesty International* (9 February 2023), *available at* https://www.amnesty.org/en/latest/news/2023/02/azerbaijan-blockade-of-lachin-corridor-putting-thousands-of-lives-in-peril-must-be-immediately-lifted/

February 9, 2023

Azerbaijan: Blockade of Lachin corridor putting thousands of lives in peril must be immediately lifted

- *Blockade is a serious blow to access to healthcare in Nagorno-Karabakh*
- *Food and fuel shortages exacerbate the human rights costs of blockade*
- *Azerbaijan fails its human rights obligations by taking no action to lift the blockade*

The ongoing blockade of the Lachin corridor is endangering the lives of thousands of people in the breakaway region of Nagorno-Karabakh, Amnesty International said today. The human rights organization called on Azerbaijan's authorities and Russian peacekeepers to immediately unblock the route and bring an end to the unfolding humanitarian crisis.

The road, which connects Nagorno-Karabakh to Armenia, has been inaccessible to all civilian and commercial traffic since 12 December 2022 after being blockaded by dozens of Azerbaijani protesters, widely believed

to be backed by the country's authorities. The situation has left some 120,000 ethnic Armenian residents in Nagorno-Karabakh without access to essential goods and services, including life-saving medication and health care.

Interviews conducted with health workers and residents in the region revealed the blockade's particularly harsh impact on at-risk groups including women, older people, and people with disabilities.

Photo by TOFIK BABAYEV/AFP via Getty Images

"The blockade has resulted in severe shortages of food and medical supplies, as humanitarian aid delivered by the International Committee of the Red Cross and Russian peacekeepers has been insufficient to meet demand. Disruptions to the supply of electricity, natural gas and vehicle fuel add up to extreme hardship, especially for groups who are vulnerable to discrimination and marginalization. This must end now," said Marie Struthers, Amnesty International's Director for Eastern Europe and Central Asia.

"The Azerbaijani authorities have internationally recognized sovereignty over these territories and exercise control over the territory from which the blockade is being carried out. It is Azerbaijan's obligation to undertake to ensure that the population in Nagorno-Karabakh is not denied access to food and other essential goods and medications. For its part, the Russian peacekeeping mission is mandated to ensure the safety of the Lachin

corridor. However, both parties are manifestly failing to fulfil their obligations."

> **"It is Azerbaijan's obligation to undertake to ensure that the population in Nagorno-Karabakh is not denied access to food and other essential goods and medications**
>
> **Marie Struthers, Amnesty International's Director for Eastern Europe and Central Asia**

According to Nagorno-Karabakh de-facto officials, since the blockade began the number of vehicles arriving in the region has decreased from 1,200 a day to five to six trucks belonging to the Russian peacekeeping mission and the ICRC.

Lack of medicines and access to health care

Access to healthcare has become the most pressing issue in the blockaded region, with a deficit of medicines and medical supplies as well as insufficient fuel to enable outpatient care. The situation is particularly acute for older people and people with disabilities, many with chronic health conditions, whose access to healthcare services is severely limited or in some cases completely disrupted.

Vardan Lalayan, a cardiologist at a hospital in Stepanakert (Khankendi), saw 30 to 40 patients – almost all of them older people – per month before the blockade. Now he only sees five or six patients per month, usually those requiring acute care after a heart attack. He told Amnesty International that most patients in need of stenting checks are largely unable to get the care they need because of insufficient supply of stents and other medical supplies.

"We are doing 10% of the procedures now. We simply do not have enough stents [...] We will have a very big [number of] heart attacks at home. Every

day we lose many people, many patients," he told Amnesty International.

> **"We are doing 10% of the procedures now. We simply do not have enough stents […] We will have a very big [number of] heart attacks at home. Every day we lose many people, many patients**
>
> **Vardan Lalayan, a cardiologist at a hospital in Stepanakert (Khankendi)**

Biayna Sukhudyan, a neurologist, told Amnesty International: "A week ago, we had a child [with epilepsy] who needed an urgent medication, and we did not have it, and no one had it, stock was empty. […] After one week, after negotiations with the Red Cross, they managed to send the child for treatment to Yerevan."

According to Vardan Lalayan, the ICRC transfers only those in "stable condition" to facilities outside the region, where care might be available. Patients in a critical condition at his hospital had to remain in a health facility where appropriate care was not available, resulting in several preventable deaths. Many patients are also reluctant to use the transfer as it often means separation from their families for a prolonged, uncertain period of time, without the guarantee of return.

© David Ghahramanyan/Amnesty International

Women's health and maternal health are also under serious threat due to shortages of medical supplies.

Meline Petrosyan, an eight-months pregnant woman from Martakert (Aghdere) town, told Amnesty International: "The maternity ward was full, while medicines, hygiene products and baby essentials, diapers, formula milk were in short supply. The hospital room was often cold because of the electricity shortage. They could only operate one incubator and three premature babies had to take turns using it. When I think about all the uncertainties of giving birth in these conditions, I feel terrified."

> **"The hospital room was often cold because of the electricity shortage. They could only operate one incubator and three premature babies had to take turns using it**
>
> **Meline Petrosyan, an eight-months pregnant woman from Martakert (Aghdere)**

Health workers, older people and people with disabilities said that medication for chronic conditions, including those to manage blood pressure; heart conditions; epilepsy, and asthma as well as pain medication and antibiotics had become much more difficult or impossible to access, with many pharmacies in Nagorno-Karabakh closed completely. When they were able to find medication, it was significantly more expensive due to the blockade, forcing people to reduce their use.

Food and fuel shortages

The blockade has caused a food shortage, which led the de-facto authorities to introduce a rationing system in early January. According to one resident: "each individual can get half a kilo of rice, pasta and one litre of oil and little sugar," limiting products by one kilo or litre per month per person, regardless of age. Interviewees said that while those efforts had helped prevent spiking prices for essential food products, fresh vegetables and fruits have completely disappeared from store shelves, while long queues form for milk and eggs when they become available.

Based on Amnesty International's interviews with residents, it appeared that women typically prioritized giving food to other family members over themselves. Healthcare professionals interviewed by Amnesty International noted a significant increase in cases of immunodeficiency, anaemia, thyroid disease, and worsened diabetes conditions among women and children, as a direct result of food shortages.

Nara Karapetyan, a mother of two, told Amnesty International: "We have not had any fruits or vegetables for over a month now. Whatever food I find I make sure my children get fed first, I simply do with what is left over."

"

We have not had any fruits or vegetables for over a month now. Whatever food I find I make sure my children get fed first, I simply do with what is left over

Nara Karapetyan, a mother of two, resident of Nagorno-Karabakh

Several healthcare workers in Nagorno-Karabakh told Amnesty International that pregnant women were showing increased complications, and the numbers of miscarriages and premature births have grown, as expectant mothers were unable to access vital medication and the nutrients required during pregnancy.

People with disabilities, including those with limited mobility, said they were suffering more from isolation during the blockade, as they were unable to use either public or private transportation due to the lack of fuel. Yakov Altunyan, who uses a wheelchair since both of his legs were amputated after stepping on a mine in the 1990s, is effectively stuck in his apartment. "Even since I was injured, I always try to be outside and socialize, because for me being in these four walls means being in a prison. [...] Not being able to drive, to communicate and socialize with others, makes my life very hard," he told Amnesty International.

Worsening humanitarian crisis

Among other dire consequences inflicted by the blockade is the violation of the right to education. All schools and kindergartens, attended by around 27,000 children, were temporarily closed due to the lack of heating and electricity shortages. Although schools partially reopened on 30 January 2023, school time is limited to four hours a day.

1,100 residents of Nagorno-Karabakh have been left stranded outside of the region and unable to return home since the beginning of the blockade, including at least 270 children. They are accommodated in hotels or in the homes of relatives and volunteers in Armenia.

The shortage of gas and petrol is further exacerbated by frequent cuts to the supply of gas from Azerbaijan and electricity cuts that last an average of six hours a day.

“With the blockade now in its ninth week, all eyes are on the Azerbaijani authorities and Russian peacekeepers. We call on both parties to immediately take effective measures, in line with international human rights standards, to lift the blockade of the Lachin corridor without any further delay and end the unfolding humanitarian crisis,” said Marie Struthers.

> **“**
>
> **With the blockade now in its ninth week, all eyes are on the Azerbaijani authorities and Russian peacekeepers. We call on both parties to immediately take effective measures, in line with international human rights standards, to lift the blockade of the Lachin corridor without any further delay and end the unfolding humanitarian crisis**
>
> **Marie Struthers, Amnesty International’s Director for Eastern Europe and Central Asia**

Background

Amnesty International has conducted 16 phone interviews with de-facto officials, healthcare professionals and residents, including older persons and people with disabilities, of Nagorno-Karabakh, a breakaway region of Azerbaijan inhabited mostly by ethnic Armenians that proclaimed its independence as the Republic of Artsakh in 1991.

In September 2020, a full-scale war broke out between Azerbaijan and Armenia over the territory of Nagorno-Karabakh, during which both sides committed violations of international humanitarian law, including war crimes. Following a 10 November 2020 tripartite agreement backed by Russia, Azerbaijan regained control over large parts of the self-proclaimed republic, successfully cutting its ties with Armenia. According to the terms of the ceasefire agreement, the so-called Lachin corridor remained the only road connecting Nagorno-Karabakh with Armenia, the security of which was to be provided by the Russian peacekeeping contingent.

Topics

NEWS ARMENIA AZERBAIJAN RUSSIA ARTICLE PRESS RELEASE

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RIGHT TO EDUCATION RIGHT TO FOOD RIGHT TO HEALTH

Related Content

Annex 20

R. Kolb, "The Compromissory Clause of the Convention" in THE UN GENOCIDE CONVENTION: A COMMENTARY (P. Gaeta ed., 2009)
(excerpt)

6. The Jurisdiction of the Court and the *Tempus Regit Actum* Principle

Problems may exist with regard to the compulsory jurisdiction of the Court over facts arising before the critical date of the entry into force of the Convention for the parties to the dispute. In principle, the jurisdictional titles under the optional clause system of Article 36(2) of the ICJ Statute are not temporally limited: it is considered that the parties wish a full adjudication of all their disputes, with no regard as to when the facts of the dispute originated. Thus, many optional declarations under Article 36(2) of the Statute contain explicit reservations limiting the competence of the Court to disputes arising after a certain date or excluding the competence as to disputes arising from facts, reasons or causes prior to the date of deposit of the declaration.[53]

As far as compromissory clauses are concerned, the general rule as to the non-retroactivity of treaties enshrined in Articles 4 and 28 of the 1969 Vienna Convention on the Law of Treaties, and specially recalled in certain conventions,[54] may be held to limit the temporal reach of jurisdiction without any necessity to invoke a specific reservation. Here too, then, the optional clause system appears to impose a closer knit of obligations (the presumption being against time limitation) than the compulsory clauses system (the presumption being in favor of time limitation). Thus, a retroactive application of the compromissory clause was not presumed in the *Ambatielos* case.[55] Article 32 of the applicable treaty stated that it shall come into force immediately upon ratification. The Court held that this must encompass all the clauses of the treaty, including the compromissory clause contained in Article 29—unless there is a 'special clause or any special object necessitating retroactive interpretation'.[56] However, that jurisprudence has not been confirmed in the

[53] See J.G. Merrills, 'The Optional Clause Today', 50 *British Year Book of Int'l Law* (1979) 96; J.G. Merrills, 'The Optional Clause Revisited', 64 *British Year Book of Int'l Law* (1993) 213; Tomuschat, *supra* note 50, at 634–6. The quite extensive case law is discussed, including the often subtle distinctions made by the Court.

[54] See e.g. the European Convention on the Pacific Settlement of Disputes (1957), containing a compromissory clause in Article 1, but recalling in Article 27 that it will not apply to disputes concerning facts or situations prior to the entry into force of the Convention. The ICJ gave a contrived application to that clause in Judgment (Preliminary Objections), *Certain Property* (*Liechtenstein v. Germany*), 10 February 2005, ICJ Reports (2005), §§ 28ff.

[55] ICJ, Judgment (Preliminary Objections), *Ambatielos (Greece v. United Kingdom)*, 1 July 1952, ICJ Reports (1952), at 40–1.

[56] *Ibid.*

Annex 21

E. David, "Treaties and Third States, Art. 34 1969 Vienna Convention"
in The Vienna Convetion on the Law of Treaties (O. Corten & P. Klein, eds., 2011)
(excerpt)

(p. 887) 1969 Vienna Convention

Article 34
General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

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A. General characteristics[1]

Object

1. Article 34 of the Vienna Convention enunciates the classic principle of the relative effect of treaties, namely, that a treaty only creates rights and obligations for the States that are parties to it. However, according to the principle *pacta tertiis nec nocent nec prosunt*, third States still maintain a *res inter alios acta.* [2] Although within municipal legal orders[3] the rule expresses a classic principle of the law of contracts, in international (p. 888) law it is based on the sovereignty and independence of States,[4] as remarked by the Permanent Court of International Justice (PCIJ) in the case *Status of Eastern Carelia*.[5] In that case, it was decided that Russia did not have to submit to the dispute resolution regime of the Covenant of the League of Nations unless it had accepted it. For the Court:

> This rule, moreover, only accept[ed] and applie[d] a principle which [was] a fundamental principle of international law, namely, the principle of the independence of States.[6]

In other words, the relativity of treaties is only an expression of voluntarism in international law, and more specifically, of the fact that 'The rules of law binding upon States…emanante from their own free will'.[7] The application of the principle of the relative effect of treaties is also an expression of the overall relativity of international law, notably of custom[8] or judicial

decisions (relative binding force of *res judicata*) (Statute of the Internationa Court of Justice (ICJ), Art. 59).[9]

2. The Vienna Convention refers to the principle of relativity in various parts of the text, notably regarding acceptance of reservations (Art. 20, para. 4), successive treaties (Art. 30, para. 4), and amendment and modification of treaties (Art. 40, para. 4; Art. 41). Obviously, such relativity does not create an obstacle to the enforcement of a treaty rule against a third State as a customary rule, which in any case does not constitute an exception to the principle of relativity of treaties.[10]

3. States parties to a treaty may 'reinforce' its relativity; for example, the Convention (IV) of The Hague of 18 October 1907 on the laws and customs of war on land contains a *si omnes* clause in its second Article, according to which the Convention does not apply 'except between Contracting powers, and then *only* if all the belligerents are parties to the Convention'.[11]

Customary status

4. The customary character of the rule is not in doubt. International jurisprudence often refers to it. Some examples, among many others, are:[12]

- The arbitral award rendered in the *Island of Palmas* case (4 April 1928): 'It is evident that whatever may be the right construction of a treaty, it cannot be interpreted as disposing of the rights of independent third Powers'. [13]
- The arbitral award of the France/Mexico Claims Commission in the *Pablo Nájera* case (19 October 1928): 'There is no doubt that Article 18 [of the Covenant of the League (p. 889) of Nations] is irrelevant for conventions concluded between two States not members of the League…'. [14]
- The judgment of the PCIJ in the case *Certain German Interests in Polish Upper Silesia* (25 May 1926): 'A treaty only creates law as between the States which are parties to it; in case of doubt, no rights can be deduced from it in favour of third States'. [15]
- The judgment of the PCIJ in the case *Free Zones of Upper Savoy and the District of Gex* (7 June 1932). For the Court, Article 435 of the Treaty of Versailles of 1919 'is not binding upon Switzerland, who is not a Party to that Treaty, except to the extent to which that country accepted it'. [16]
- The judgment of the ICJ in the *Anglo-Iranian Oil Company* case (22 July 1952): 'A third-party treaty, independent of and isolated from the basic treaty, cannot produce any legal effect as between the United Kingdom and Iran: it is *res inter alios acta*'. [17]
- The judgment of the European Court of Justice (ECJ) in the *Brita* case (25 February 2010), which relied on Article 34, observed that:

> even though the Vienna Convention does not bind either the Community or all its Member States, a series of provisions in that convention reflect the rules of customary international law which, as such, are binding upon the Community institutions and form part of the Community legal order…

- In its commentary, the ILC declared: 'There is abundant evidence of the recognition of the rule in State practice and in the decisions of international tribunals, as well as in the writings of jurists'. [18]

Annex 22

M. Shaw, Rosenne's Law and Pratice of the International Court:
1920-2015 (2016)
(excerpt)

agreement as to the method of seising the Court, is expressed by the phrase *consensual basis of jurisdiction*.

The Court distinguished between questions of jurisdiction and admissibility in the *Application of the Genocide Convention* (Croatia *v* Serbia) holding that:

> If the objection is a jurisdictional objection, then since the jurisdiction of the Court derives from the consent of the parties, this will most usually be because it has been shown that no such consent has been given by the objecting State to the settlement by the Court of the particular dispute. A preliminary objection to admissibility covers a more disparate range of possibilities. … Essentially such an objection consists in the contention that there exists a legal reason, even when there is jurisdiction, why the Court should decline to hear the case, or more usually, a specific claim therein. Such a reason is often of such a nature that the matter should be resolved in *limine litis*, for example where without examination of the merits it may be seen that there has been a failure to comply with the rules as to nationality of claims; failure to exhaust local remedies; the agreement of the parties to use another method of pacific settlement; or mootness of the claim.[63]

II.150. Mutuality and Reciprocity as Elements of Jurisdiction. Of what does this consensual basis consist?

Aside from the broad and conceptual differentiation between the conditions *ratione personae* and *ratione materiae* – including for this purpose limitations, conditions or reservations *ratione temporis* as a factor determining the scope of the jurisdiction (see § II.156 below) – necessary for the exercise of jurisdiction, the principle of the consensual basis of jurisdiction means that it is not sufficient to establish that the Court has a general jurisdiction to decide, between the parties, a dispute of the generic class that has been brought before it.[64] It is necessary to go further and establish that the parties have conferred jurisdiction on the Court both *ratione personae* and *ratione materiae* to decide the particular dispute which is referred to it – that there is complete

[63] (Prel. Objs.) [2008] 412, 456 (para. 120).

[64] Mutuality includes in this sense the equality before the Court of the parties to the judicial proceedings. Cf. *ILOAT* (UNESCO) adv. op. [1956] 77. 85; *Right of Passage* (Prel. Objs.) case, *passim*. On the equality of the parties, see ch. 16, § III.258.

and individualized reciprocity of obligation to adjudicate.[65] Both the personal and the material aspects of jurisdiction are each composed of two elements, one general and one particular, and before the Court can decide a particular case, all four elements – general and particular mutuality, and general and particular reciprocity – have to be present.[66] In this context, mutuality refers to the ability of both parties to the case to invoke the title of jurisdiction (for instance by the respondent introducing a counter-claim), and reciprocity relates to the substance of the jurisdiction in the principal case.

This can be illustrated by reference to the situation which arises where a multilateral treaty is the title of jurisdiction. The factor of mutuality exists when each of the litigating States is a party to the treaty and is qualified to be a party in the case before the Court.[67] The factor of reciprocity exists when both have agreed or are otherwise entitled (for instance under third-party rights)[68] that the Court should decide any dispute coming within the scope of the treaty arising between those States, regardless of whether each has the equal right to initiate judicial proceedings under the treaty. An established reservation to the compromissory clause (assuming that reservations to that clause are permitted) will pare down the factor of mutuality. Where necessary, the factor of mutuality will be completed (when a State is not a party to the Statute) in accordance with Article 35, paragraph 2, of the Statute: and the factor of reciprocity will depend on

[65] Cf. the *Mavrommatis Palestine Concessions* case, A2 (1924) 10.

[66] See on this, G. Fitzmaurice, II *The Law and Procedure of the International Court of Justice* 440, originally published in 34 BYIL 1, 8 (1958). Reciprocity is a general feature of international law and international relations, and to say that reciprocity is an element of jurisdiction is no more than to say that in matters of jurisdiction, as in matters of substance, the function of applying the law between parties is the function of establishing the rules of law reciprocally binding the parties.

[67] There are several treaties which provide that the Court shall have jurisdiction by virtue of the declarations accepting the compulsory jurisdiction made by the parties to the treaties. In the *Border and Transborder Armed Actions* (Jurisdiction and Admissibility) case the Court held that this was limited to the declarations in force at the time the treaty was concluded, unless the treaty in question allowed for changes in those declarations. [1988] 69. Such jurisdiction clearly comes under Art. 36 (1) and not Art. 36 (2) of the Statute. See also *Whaling in the Antarctic* [2014] 226, 242 (paras. 3–32).

[68] Cf. *Mavrommatis Jerusalem Concessions*, *Northern Cameroons*, and *South West Africa* cases. In none of those cases was the applicant formally a party to the treaty containing the jurisdictional clause. However those cases were *sui generis*, since the respondent and an international organization were the parties to the treaties, a League of Nations Mandate or a United Nations Trusteeship agreement, and the applicants were exercising rights conferred by the treaty on them in their capacity of members of that organization.

the extent to which both have accepted provisions, inherent in the treaty or collateral to it, conferring on the Court jurisdiction over the particular dispute. This aspect of a collateral instrument was brought into sharp relief following the innovation of the First United Nations Conference on the Law of the Sea (1958) of conferring jurisdiction on the Court through an optional protocol instead of by a compromissory clause as part of the treaty, as had previously been usual, a procedure followed in the Vienna Conferences of 1961 and 1963 on Diplomatic Relations and on Consular Relations respectively, and the New York Convention of 1969 on Special Missions.[69]

However, it is true that generally speaking, where the jurisdiction rests on a treaty or convention in force (Statute, Article 36, paragraph 1) the elements of mutuality and reciprocity are largely absorbed into the treaty. It is especially in the so-called compulsory jurisdiction (Statute, Article 36, paragraphs 2 and 5) that their independence asserts itself, reciprocity being specifically mentioned as a condition in paragraph 3 (see ch. 12, § II.199).

While the Court may not in any single case have specified in detail the four-fold elements which together constitute jurisdiction in the full and unitary sense by ensuring the essential identification of the consent to the exercise of the jurisdiction with the object of the proceedings, there is nothing to show that in principle the Court's attitude over the years has been any different.[70] The Court is flexible in its handling of jurisdictional issues and although, as will be seen (chapter 13), it has established a fairly regular pattern of priorities for treating different types of objections to the jurisdiction and pleas in bar that are not formal preliminary objections, an irreparable defect in any one of the elements of the title of jurisdiction invoked will be sufficient for the Court to decline jurisdiction on that ground. As the Court has said, when its competence is challenged on

[69] On this see J.H.W. Verzijl, 'La clause d'acceptation bilatérale ou multilatéral de la juridiction obligatoire de la Cour internationale de Justice', *Mélanges Gidel* 585 (1961); H. Briggs, 'The Optional Protocols of Geneva (1958) and Vienna (1961, 1963) concerning the Compulsory Settlement of Disputes', *Recueil d'études de droit international en homage à Paul Guggenheim* 628 (1968). Five cases have been brought on the basis of an Optional Protocol of this nature, the *U.S. Diplomatic and Consular Staff in Tehran*, the *Passage through the Great Belt*, the *Vienna Convention on Consular Relations* (Prov. Meas.) case, [1998] 248, subsequently withdrawn, [1998] 426, the *LaGrand* and *Avena* cases. In the *East Timor* case, the 1958 Optional Protocol was mentioned as a possible title of jurisdiction in the Application, para. 17. The judgment makes no reference to this.

[70] Cf. § II.154 below.

more than one ground, the Court is free to base its decision declining jurisdiction on the ground which in its judgment is more direct and conclusive.[71]

The existence of these four-fold constituent elements of the basis of jurisdiction was well demonstrated by Judge ad hoc Daxner in the *Corfu Channel* (Preliminary Objection) case. Distinguishing between (1) ability to appear before the Court and (2) the competence of the Court, he thought that, concerning the first, two conditions must be fulfilled, namely: (*a*) only States may appear before the Court; and (*b*) such States must be parties to the Statute, that is must accept the jurisdiction of the Court.[72] For every State which is not a party to the Statute, the acceptance of the jurisdiction of the Court in the sense of formal recognition of the Court as the organ *jus dicere* is a preliminary condition for that State to be able to appear before the Court, whether as applicant or as respondent, or in any other capacity. As to jurisdiction (in the narrow sense), Judge ad hoc Daxner correctly distinguished between recognition of the Court as an organ instituted for the purpose *jus dicere* and in order that the State accepting its jurisdiction should have the ability to appear before it, and determination of the competence of the Court, that is its being vested with the right to resolve particular cases.[73]

In that judgment the Court found that after the application had been filed its jurisdiction had been perfected – *ratione personae* and *ratione materiae* – in the course of the proceedings, and did not discuss the matter further. In the *Peace Treaties* advisory opinion the Court, in a careful process of reasoning, established first the existence of a 'dispute' and second, that it was a dispute subject to defined settlement procedures for which the Peace Treaties made provision.[74] The question of principle was clearly brought out in the joint dissenting opinion of Judges McNair,

[71] *Norwegian Loans* case [1957] 9, 25; *Aerial Incident of 10 August 1999* case, [2000] 12, 23 (para. 26); *Legality of Use of Force* (Prel. Objs.) cases, case against Belgium, [2004] 15 December (para. 46) and equivalent paragraph in the other seven judgments, and in other cases.

[72] The expression 'accept the jurisdiction of the Court' is used by Judge ad hoc Daxner in a special meaning and refers to acceptance of the jurisdiction in very general terms such as appear in the Security Council's Res. 9 (1946), 15 October 1946. His argument would have been clearer had he said: 'Such States must be parties to the Statute or have accepted the jurisdiction of the Court.'

[73] [1948] 15, 38 ff.

[74] [1950] 65, 75; similarly in the *Headquarters Agreement* adv. op. regarding the application of the compromissory clause in the United Nations Headquarters Agreement. [1988] 12, 27 (para. 34).

Basdevant, Klaestad and Read in the *Ambatielos* (Merits: Obligation to Arbitrate) case. They said:

> When the Permanent Court and the present Court have had to ascertain whether a dispute fell within the scope of an arbitration clause or a compulsory jurisdiction clause, these Courts have always considered that it was their duty first to determine the categories of disputes to which the clause in question was applicable and then to enquire whether the dispute in question fell within one of these categories.
>
> This is the consequence of a principle of international law which forms the basis of Article 36 of the Statute of the Court … [I]t is our opinion … that the United Kingdom can only be held to be under an obligation to accept the arbitral procedure by application of the Declaration of 1926 if it can be established to the satisfaction of the Court that the difference as to the validity of the Ambatielos claim falls within the category of differences in respect of which the United Kingdom consented to arbitration in the Declaration of 1926.[75]

Another example of strict adherence to what the parties had agreed in their reference to the Court appears in the *Minquiers and Ecrehos* case, which was introduced by special agreement. By that agreement the Court was asked to declare whether the sovereignty over the islets and rocks of the two groups respectively belonged to the United Kingdom or to the French Republic. The Court interpreted this formulation as excluding 'the status of *res nullius* as well as that of condominium': the jurisdiction conferred in the Court did not extend so far as to permit it to reach any conclusion other than that the sovereignty belonged either to one or the other party exclusively.[76]

The conclusion from this is that the Court will be competent or will have jurisdiction to decide a case, with binding force on the parties, whenever two or more States, parties to the Statute or having accepted the jurisdiction of the Court, are or may be inferred to be under an obligation to each other by which the particular case is to be decided by the Court. That agreement will define what the Court has to decide and by implication what it may not decide. On the other hand, if one at least of those States is not a party to the Statute and has not conformed to the conditions of the Statute regarding access to the Court by a State

[75] [1953] 10, 28.
[76] [1953] 47, 59.

which is not a party, or if the existence of express or implied general or specific obligation that the Court should decide the particular case is not established, the Court will have to decline to entertain the case.[77]

II.151. Jurisdiction and Propriety. The ability of the Court to decide a case has to be distinguished from the question whether in the circumstances it would be compatible with the Court's status of principal judicial organ of the United Nations, with its judicial function or with its judicial character for it to decide the particular case. The use of the unusual expression the *matter* (for which there is no equivalent in the French text) in Article 36, paragraph 6, of the Statute, and not the *dispute* which is used in the beginning of the paragraph, suggests that more is involved in a decision of the Court to hear a case than merely settling a dispute as to whether the Court has jurisdiction over that case. It carries an implication, common in fact to all superior courts, that the Court possesses an element of discretion whether to entertain the case. That discretion must be exercised judicially and not capriciously. The decision must be properly reasoned and in the International Court would normally be in the form of a judgment. The Court has enunciated the basic principle in categorical terms in the *Northern Cameroons* case:

> There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore. There may thus be an incompatibility between the desires of an applicant, or, indeed, of both parties to a case, on the one hand, and on the other hand the duty of the Court to maintain its judicial character. The Court itself, and not the parties, must be the guardian of the Court's judicial integrity ...
>
> That [judicial] function is circumscribed by inherent limitations which are none the less imperative because they may be difficult to catalogue, and may not frequently present themselves as a conclusive bar to adjudication in a particular case. Nevertheless, it is always a matter for the determination of the Court whether its judicial functions are involved.

Even if the Court finds that it has jurisdiction, 'the Court is not compelled in every case to exercise that jurisdiction'.[78] The use of the *word* can in

[77] Applied for the first time in the *Treatment of U.S. Aircraft and Crews in Hungary* cases, [1954] 101, 105.

[78] [1963] 15, 29, cited by the Chamber in the *Frontier Dispute* (Burkina Faso/Mali) case, [1986] 554, 577 (para. 45).

circulated by the Secretariat, usually shortly after the deposit although occasionally a longer interval will elapse, especially if the Secretariat has to seek clarifications from the State making the declaration.

A public announcement of the deposit of a declaration is included immediately in the *Journal of the United Nations* issued on each weekday in New York and is available on the United Nations website. This announcement, which is made for information purposes, is accompanied by a footnote specifying that the date indicated is the date of receipt of the relevant documents, meaning that the declaration will have to be reviewed for determination of its formal compliance with the requirements for such a declaration. Given the Court's interpretation of Article 36, paragraph 4, this announcement is not an adequate method of bringing the deposit of a declaration to the immediate notice of the parties to the Statute, since the *Journal of the United Nations* is not a document of general distribution but rather the day's work programme in United Nations Headquarters in New York.[72] Many Permanent Missions in New York are unlikely to appreciate the possible significance of announcements of this character appearing in the *Journal*. On the completion of the deposit the Secretariat circulates a formal Depositary Notification (commonly known as a CN [circular note]) which officially transmits the necessary information about the deposit to all concerned.

II.199. Reciprocity: Statute, Article 36 (3). The place of reciprocity in the system of the compulsory jurisdiction became obscured during the period of the Permanent Court owing to confusion in State practice, in pronouncements of that Court and in the literature. Early on States began including in their acceptances of the compulsory jurisdiction a specific reference to a condition of reciprocity, using different formulations.[73] The Permanent Court did not clarify the basis on which reciprocity was required. On one occasion it referred to 'the condition of reciprocity

with art. 1 (2) of the Regulations to give effect to Art. 102 of the Charter, General Assembly Res. 97 (I), 14 December 1946.

[72] For the Court's view of the *Journal of the United Nations*, see *Land and Maritime Boundary between Cameroon and Nigeria* (Prel. Objs.) case, [1998] 275, 297 (para. 40); and regarding a CN, *Legality of Use of Force* cases, case against Belgium, [2004] 15 December (para. 72). The CNs are sent to every Foreign Ministry and international organizations concerned, marked for the attention of the appropriate Treaty Services, usually a unit of the Ministry for Foreign Affairs.

[73] Hudson, *Permanent Court* 465. See also Kolb, 474; Tomuschat, 'Article 36', Zimmermann *et al*, 636, 653–654 and 681.

stipulated in paragraph 2 of Article 36'.[74] On another it alluded to 'the condition of reciprocity laid down in paragraph 2 of Article 36 of the Court's Statute and repeated in the Bulgarian declaration'.[75] As for the writers, many theories were advanced. Hudson, for instance, seems to find reciprocity implied in the words 'in relation to any other ... State accepting the same obligation' in Article 36, paragraph 2.[76] On the other hand, it has been suggested that Article 36, paragraph 3 of the present Statute, with its reference to 'unconditionally', makes it possible for a State to exclude a condition of reciprocity if it so wills – an unlikely eventuality: the implication of this view is that reciprocity is not inherent but has to be specifically mentioned.[77]

This confusion has not diminished since 1945. The practice of States continues to follow the earlier patterns in relation to the jurisdiction of the Permanent Court. The Court itself has used different formulations. On one occasion it referred to 'the condition of reciprocity to which acceptance of the compulsory jurisdiction is made subject in both Declarations and which is provided for in Article 36, paragraph 3, of the Statute'.[78] In the *Right of Passage* (Preliminary Objections) case it referred to the 'reciprocal rights of the Parties in accordance with their respective Declarations', which could be ascertained by enquiry of the Secretary-

[74] *Phosphates in Morocco* case, A/B74 (1938) 22. In the Statute of the Permanent Court, the expression *on condition of reciprocity* appeared in Art. 36 (2). In the present Statute it has been made into a separate para. 3 of Art. 36. Mention of reciprocity is frequently included in declarations.

[75] *Electricity Company of Sofia* case, A/B77 (1939) 81.

[76] Hudson, *Permanent Court* 465. This view is the one adopted by most writers. But as seen (§ II.194 above), that phrase is now to be interpreted in a different sense.

[77] E. Hambro, 'Some Observations on the Compulsory Jurisdiction of the International Court of Justice', 25 BYIL 133, 136 (1948); Id., 'The Jurisdiction of the International Court of Justice', 76 RADI 125, 185 (1950-I). For some other instances, see H. Briggs, 'Reservations to the Acceptance of the Compulsory Jurisdiction of the International Court of Justice', 93 RADI 223, 240 (1958-I); A. Farmanfarma, *The Declarations of the Members accepting the Compulsory Jurisdiction of the International Court of Justice* 67 (1952); B. Maus, *Les Réserves dans les déclarations d'acceptation de la juridiction obligatoire de la Cour internationale de Justice* 62 (1959); R. Szafarz, *The Compulsory Jurisdiction of the International Court of Justice* 42 (1993); S. Alexandrov, *Reservations in Unilateral Declarations Accepting the Compulsory Jurisdiction of the International Court of Justice* 33 (1995).

[78] *Norwegian Loans* case, [1957] 9, 24. But on p. 33 the Court referred to para. 2. The origin of this reference to para. 3, which does not appear in the pleadings, is not clear. Note also the dissenting opinion of Judge Basdevant at 71. In the *Anglo-Iranian Oil Co.* case the Court referred to declarations which themselves were expressly subject to reciprocity. [1952] 93, 103.

General with whom the declarations are deposited.[79] In withdrawing a case from the Court, the United States recognized 'the rule of reciprocity applied by the Court' in the *Norwegian Loans* case as a ground for not proceeding with a case.[80]

This confusion is due to several causes, including the complete novelty introduced into international practice by the system of the compulsory jurisdiction set out in the 1920 Statute, doubts over the relation between paragraphs 2 and 3, the uncertainties of early State practice in that regard, followed by a natural inertia which causes time-honoured formulations to be perpetuated and transcribed, and, as far as the Court is concerned, its natural tendency to formulate its decisions using language employed by the parties if it can conscientiously do so.

But the difficulties in pinning down precisely the point of attachment of the principle of reciprocity to the language of the Statute are to a large extent artificial. The Court's later case law shows the matter up more clearly. The real problem which the Court has faced was never whether or why reciprocity exists within the framework of the compulsory jurisdiction, but how it affects the acceptance of the jurisdiction in the particular case. This approach is consistent with the view expressed in chapter 9, § II. 150, to the effect that reciprocity is an element of jurisdiction of the Court as such, and not merely a peculiarity of the compulsory jurisdiction. It is for this reason that, in Hudson's words, the compulsory jurisdiction 'has this characteristic impressed upon it'.[81]

It remains to see how reciprocity manifests itself in the system of the compulsory jurisdiction. The point of departure for this examination is the characteristic feature of the system of Article 36, paragraph 2 – that the declarations are unilateral acts of the individual States, the product of unilateral drafting.[82] Whatever may have been the intention when the Statute was first drafted in 1920, these declarations do not coincide in

[79] [1957] 125, 143. Elsewhere in that case the Court referred simply and generally to 'reciprocity' and the 'principle of reciprocity' without relating it to any specific provision, p. 144.

[80] *Aerial Incident of 27 July 1955* case, Pleadings 677.

[81] Hudson, *Permanent Court* 465.

[82] Cf. *Phosphates in Morocco* case, A/B74 (1938) 23; *Anglo-Iranian Oil Co.* case, [1952] 93, 123; *Norwegian Loans* case, [1957] 9, 23; *Barcelona Traction* (New Application) (Prel. Objs.) case, [1964] 6, 29; *Military and Paramilitary Activities in and against Nicaragua* (Jurisdiction and Admissibility) case, [1984] 392, 418 (para. 59); *Fisheries Jurisdiction* (Spain *v* Canada) case, [1998] 432, 453 (para. 46).

practice. Accordingly, it is obviously necessary to find their common element, for that is the joint definition of the scope of the jurisdiction in the particular case. The function of reciprocity is to do this. Thus, in the *Phosphates in Morocco* case the Permanent Court recognized that by virtue of the principle of reciprocity, a reservation appearing in the acceptance of the respondent State 'holds good as between the Parties'.[83] Conversely, in the *Electricity Company of Sofia* case the Court applied what was common ground between the parties that the respondent Government was entitled to rely on a limitation appearing in the acceptance by the applicant Government.[84] Taken together, these cases establish as the substance of reciprocity, that when recourse is had to the compulsory jurisdiction as the title of jurisdiction, the reservations of each declaration will be applicable to each party, in the sense that each party is entitled to invoke to its benefit any relevant reservation appearing not only in its own declaration but also in that of the other party.

The present Court has developed this further. In the *Anglo-Iranian Oil Co.* case, dicta from the two previous cases (which were not cited) were combined with the principle that 'jurisdiction is conferred on the Court only to the extent to which the two Declarations coincide in conferring it'.[85] After determining which of the two declarations was the more limited in scope, the Court held that it must base its jurisdiction on that declaration. In the *Norwegian Loans* case the Court, citing all three previous cases, gave a more articulate description of its approach to this problem:

> [S]ince two unilateral declarations are involved, such [compulsory] jurisdiction is conferred upon the Court only to the extent to which the Declarations coincide in conferring it. A comparison between the two Declarations shows that the French Declaration accepts the Court's jurisdiction within narrower limits than the Norwegian Declaration; consequently, the common will of the Parties, which is the basis of the Court's jurisdiction, exists within these narrower limits indicated by the French reservation …

[83] A/B74 (1938) 22.

[84] A/B77 (1939) 81.

[85] [1952] 93, 103; reiterated in *Land and Maritime Boundary between Cameroon and Nigeria* (Prel. Objs.) case, [1998] 298, 298 (para. 43); *Legality of Use of Force* (Prov. Meas.) cases, [1999] 124, 135 (Belgium, para. 30); 259, 269 (Canada, para. 29); 542, 552 (Netherlands, para. 30); 761; 770 (Spain, para. 25), 826, 835 (U.K., para. 25).

> France has limited her acceptance ... by excluding ... disputes "relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic" ... Norway, equally with France, is entitled [sc. in a dispute with France] to except from the compulsory jurisdiction of the Court disputes understood by Norway to be essentially within its national jurisdiction.[86]

The interest of this statement is that the principle of reciprocity operated to enable Norway to invoke the substance of the French reservation and apply it to itself. This, for the Court, was the 'common will of the parties relating to the competence of the Court'.[87]

In the *Right of Passage* (Preliminary Objections) case the Court, in dismissing the first, third and fourth preliminary objections established the following general propositions as regards the compulsory jurisdiction: (*a*) reciprocity in the compulsory jurisdiction must not be confused with the concepts of equality, mutuality and reciprocity as elements in the jurisdiction of the Court (*b*) the notions of reciprocity and equality are not abstract conceptions: they must be related to some provision of the Statute or of the two declarations; and (*c*) the principle of reciprocity does not have to do with the initial seisin of the Court, and does not operate as an equalizing factor for the seisin, but for determining the quite different matter of the scope of the jurisdiction. The Court explained that as a result of the operation of reciprocity any jurisdictional rights which a State could claim for itself could be invoked against it.[88] Later the Court stated that the 'principle of reciprocity' forms part of the system by virtue of the express terms of both Article 36 of the Statute and of most declarations.[89]

This indication is sufficient to clarify the position for the future, and it is not surprising, therefore, that the Court's views were further elaborated in the following vigorous passage in the *Interhandel* case:

> Reciprocity in the case of Declarations accepting the compulsory jurisdiction of the Court enables a Party to invoke a reservation to that acceptance which it has not expressed in its own Declaration but which the other Party has expressed in its Declaration. For example, Switzerland, which has not

[86] [1957] 9, 23, 24.
[87] Ibid. 27.
[88] [1957] 125, 144.
[89] Ibid. 145.

> expressed in its Declaration any reservation *ratione temporis*, while the United States has accepted the compulsory jurisdiction of the Court only in respect of disputes subsequent to August 26th, 1946, might, if in the position of Respondent, invoke by virtue of reciprocity against the United States the American reservation if the United States attempted to refer to the Court a dispute with Switzerland which had arisen before August 26th, 1946. This is the effect of reciprocity in this connection. Reciprocity enables the State which has made the wider acceptance of the jurisdiction of the Court to rely upon the reservations to the acceptance laid down by the other Party. There the effect of reciprocity ends. It cannot justify a State … in relying upon a restriction which the other Party … has not included in its own Declaration.[90]

This passage shows that despite the broad wording previously used, reciprocity is not automatic and that the reservations should be invoked.

In the *Military and Paramilitary Activities in and against Nicaragua* (Jurisdiction and Admissibility) case, the Court indicated that reciprocity does not relate to matters of form, including the duration of a declaration and the reservation of a power to cancel a declaration. It said:

> The notion of reciprocity is concerned with the scope and substance of the commitments entered into, including reservations, and not with the formal conditions of their creation, duration or extinction. It appears clearly that reciprocity cannot be invoked in order to excuse departure from the terms of a State's own declaration, whatever its scope, limitations or conditions … The maintenance in force of the United States declaration for six months after notice of termination is a positive undertaking, flowing from the time-limit clause, but the Nicaraguan declaration contains … no express restriction at all. It is therefore clear that the United States is not in a position to invoke reciprocity as a basis for its action in making the 1984 notification which purported to modify the content of the 1946 declaration. On the contrary, it is Nicaragua that can invoke the six months' notice against the United States … not of course on the basis of reciprocity, but because it is an undertaking which is an integral part of the instrument that contains it.[91]

[90] [1959] 6, 23.

[91] [1984] 392, 419 (para. 62). The Court quoted its earlier statement in the *Interhandel* case.

And:

> [The] jurisprudence supports the view that a determination of the existence of the "same obligation" requires the presence of two parties to a case, and a defined issue between them, which conditions can only be satisfied when proceedings have been instituted ... The coincidence or interrelation of those obligations thus remains in a state of flux until the moment of the filing of an application instituting proceedings. The Court has then to ascertain whether, at that moment, the two States accepted "the same obligation" in relation to the subject-matter of the proceedings; the possibility that, prior to that moment, the one enjoyed a wider right to modify its obligation than did the other, is without incidence on the question.[92]

The Court reiterated its jurisprudence on reciprocity in *the Land and Maritime Boundary between Cameroon and Nigeria* (Preliminary Objections) case[93] and in its orders in the *Legality of the Use of Force* cases.[94]

This survey, which demonstrates the Court's consistency over a long period of time, permits the following conclusions. The starting point is that reciprocity is inherent in the very notion of the jurisdiction of the Court. In the compulsory jurisdiction, the scope of the acceptance of jurisdiction is defined initially by each State individually. It is therefore in the nature of things of variable content. When the compulsory jurisdiction is invoked reciprocity operates to crystallize and determine the scope of the jurisdiction in the particular case. The corollary is that the jurisdiction, when challenged, is confined within the narrower of the two declarations, as determined by the Court for the purpose of the case. Although in theory the question could arise which is the narrower of the two declarations, in practice, as examination of all the declarations that have been made[95] shows, the answer will be self-evident, at least so long as only two

[92] *Military and Paramilitary Activities in and against Nicaragua* (Jurisdiction and Admissibility) case, [1984] 392, 420 (para. 64).

[93] [1998] 275, 298 (para. 43).

[94] [1999-I] 124, 135 (Belgium, para. 30) and corresponding passage in the other orders (except the order in the U.S. case in which it was not necessary).

[95] For all the declarations made accepting the jurisdiction of the Permanent Court, see Hudson, *Permanent Court* 681. For those accepting the jurisdiction of the present Court up to 1991, see Sh. Rosenne, *Documents* 601. For additions, see later issues of ICJYB. The current 72 declarations as of December 2015 are available on the Court's website, the most recent being those by Greece on 14 January 2015, by Romania on 23 June 2015 and by Japan on 6 October 2015.

declarations are involved. As it is theoretically possible for there to be more than two parties in litigation, it may be assumed that the general principles evolved by the two Courts to define the application of the principle of reciprocity in litigation between two parties will also apply, *mutatis mutandis*, in litigation involving more than two States, if the jurisdiction is based on declarations made in virtue of Article 36, paragraph 2, of the Statute.

Since it is now well established in the Court's case law that reciprocity is inherent in the system of the compulsory jurisdiction, one might infer that the inclusion of a specific reference to reciprocity or to the principle of reciprocity in an acceptance of the compulsory jurisdiction is not necessary. However, this practice is now well-established, and is unobjectionable in itself (except, perhaps, from the aspect of *elegantia juris*). Nevertheless, where the condition of reciprocity is specifically defined, the Court will probably give effect to that definition in preference to the less precise general principle.

II.200. Reservations and Conditions: Statute, Article 36 (3). Before discussing what are commonly designated as 'reservations' in declarations made under Article 36, paragraph 2, of the Statute, it is necessary to draw attention to the fact that these reservations have nothing in common with reservations encountered in multilateral treaties and which are today regulated by Articles 19 to 23 of the Vienna Convention on the Law of Treaties of 1969.[96] The most authoritative meaning of the term 'reservation' in the law of treaties is in article 2, paragraph 1 (*d*), of that Convention. It reads: '"reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it [the State] purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.'[97] Since the whole transaction of accepting the compulsory jurisdiction is *ex definitione* unilateral and individualized and devoid of any bilateral or multilateral element or element of negotiation, the function of reservations in a declaration

[96] 1155 UNTS 331. And see n. 69 above. Technically this meaning is limited for the purposes of that Convention. However, the Convention is recognized as codifying customary law.

[97] See also the International Law Commission's Guide to Practice on Reservations to Treaties, A/66/10/Add.1 (2011), annexed to UN General Assembly resolution 68/111 (2013), Guideline 1. This added international organizations to the definition. See also the Commentary.

Annex 23

C. Tomuschat, "Article 36" in The Statute of the International Court of Justice: A Commentary (A. Zimmermann & C. Tams, eds., 2019)
(excerpt)

automatically flow from the breach of a *jus cogens* rule.[104] On the other hand, in the genocide case brought by Croatia against Serbia the ICJ confirmed explicitly that neither the invocation of an *erga omnes* obligation nor of a *jus cogens* rule could affect its jurisdiction.[105] Unfortunately, the Court is absolutely right in this finding. If any infringement of *jus cogens* or *erga omnes* rules provided access to the Court, any armed conflict could be submitted to adjudication inasmuch as the principle of non-use of force is deemed to belong to that class of legal norms. This would overstretch the capacities of the Court. To date, the 'constitutionalisation' of public international law has not reached a point where it is generally acknowledged that at least the most basic principles upon which the legal order is found would be automatically enforceable by judicial means.[106]

(p. 734) **27** Hence it is also perfectly permissible to enter a reservation to a compromissory clause or to restrict the scope of a unilateral declaration of acceptance of the jurisdiction of the Court with regard to activities which openly contradict, or in any event are susceptible of contradicting, *jus cogens* or *erga omnes* rules.[107] Excluding a judicial remedy does not, in principle, affect the substantive rule as such. The special authority of *jus cogens* norms does not also encompass secondary rules relating to procedure.[108] It is precisely with regard to such eventualities that States wish to be free to choose the best-suited method of peaceful settlement. The legitimacy of this concern cannot be denied. Indeed, it would be difficult to argue that, with regard to instances of armed conflict, settlement by judicial pronouncement is the most appropriate course. Generally, judges are unable to deal successfully with entire periods of history, given the procedural meticulousness they are required to apply in identifying and appraising the relevant facts. It is significant in this regard that the relevant instruments of international humanitarian law do not contain any compromissory clauses.

XI. Reciprocity

28 The term 'reciprocity' appears solely in Article 36, para. 3, but it permeates the provision on the jurisdiction of the Court in its entirety.[109] Whenever a compromissory clause is contained in an international agreement ('treaties and conventions in force') in accordance with Article 36, para. 1, it applies obviously to all the parties concerned in a like manner, provided that the parties have not opted for a different formula. Thus, compromissory clauses ensure equality with regard to access to the Court (principle of 'mutuality'). Alternatively, if States make a unilateral declaration pursuant to Article 36, para. 2, that declaration extends its effects to 'any other state accepting the same obligation'. In other words, such declarations may only be invoked by States that on their part have accepted the jurisdiction of the Court ('consensual bond'). If it were otherwise, if any State could *ad hoc* institute proceedings against States subject to the jurisdiction of the Court, the so-called sitting duck phenomenon would be produced: those States having made a declaration under Article 36, para. 2 would remain unprotected. They would not reap any benefit from their willingness to support the rule of law in international relations. Reciprocity is a device suitable to entice them to make use of the optional clause. By submitting to the jurisdiction of the Court, they not only become possible targets of applications directed against them but also they acquire at the same time the right to sue all of those States which have also chosen to entrust their legal disputes to judicial settlement by the Court.[110]

29 Reciprocity governs not only the relationship *ratione personae* between the different States concerned ('mutuality'), but determines also the scope *ratione materiae* of the (p. 735) jurisdiction of the Court. This is self-evident in that under Article 36, para. 1 States subscribe to the same compromissory clause. As far as unilateral declarations according to Article 36, para. 2 are concerned, there is of course no guarantee that they all cover the same ground, given that Article 36, para. 3 explicitly permits reservations. To submit to the jurisdiction of the Court, to keep aloof from it, or to embark on a middle course by modifying the declaration through reservations belongs to the sovereign rights of every

State. However, in order to maintain a condition of equality among all of the parties having accepted the optional clause, it is necessary also to apply the principle of reciprocity as regards subject-matter. The jurisdiction of the Court exists only to the extent that the commitments of the two sides coincide.[111] This means that the lowest common denominator is the determining parameter. On the other hand, the exact wording of the relevant declarations does not matter; they only need to match one another regarding their substantive scope. Reciprocity furthermore entails an entitlement for each of the litigant parties to invoke not only its own reservations but also the reservations entered by its opponent. Thus, in the *Norwegian Loans* case,[112] Norway relied on the French declaration of acceptance of the jurisdiction of the Court which, following the US declaration with the famous *Connally* Reservation, read as follows: 'The declaration does not apply to differences relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic.'[113] On that ground, the Court had to dismiss the French application.

Another famous example is provided by the time clause Yugoslavia inserted in its declaration of acceptance of the jurisdiction of the Court of 26 April 1999. By excluding all disputes that had arisen before that date, it forwent the right to bring to the cognizance of the Court the air attacks by NATO States on its territory in the Kosovo conflict, since those bombings had started on 24 March 1999 and were considered by the Court to constitute a unity that could not be dissected into different conflicts on a daily basis.[114] In the *Whaling in the Antarctic* case, Japan denied the jurisdiction of the ICJ on the basis of the reservation Australia had appended to its declaration under Article 36, para. 2, eventually without success as Australia's reservation was related to delimitation issues and whaling was considered a matter of a different nature.[115] In other words, reciprocity pervades Article 36 as a whole, although with some limitations.[116] It is not relevant only for para. 3. Indeed, reciprocity ensures fairness relating to the conditions of access and subjection to the Court. It may thus be viewed as a particularization of Article 2, para. 1 UN Charter, reflecting also the requirement of good faith which is enshrined in Article 2, para. 2 UN Charter.

(p. 736) XII. Issues to be Raised *ex officio* or *proprio motu* by the Court

30 Jurisdiction belongs to the issues which the Court must examine *ex officio* or *proprio motu*. It cannot entertain the merits of a case brought before it without having determined that it is entitled to do so.[117] Certainly, a respondent State is free implicitly to accept the jurisdiction of the Court, even if the relevant application has not been able to identify any title of jurisdiction, by answering the application and the supporting memorial without raising any preliminary objections (*forum prorogatum*, Article 38, para. 5 of the Rules). Moreover, if a State deliberately refrains from asserting a jurisdictional defence, as did the United States in the *Nicaragua* case, where it deliberately abstained from invoking the *Connally* reservation in order not to suffer a severe defeat (as it is hardly a plausible argument that the violation of Nicaraguan territory would come under the domestic jurisdiction of the United States),[118] there is no ground for the Court to step in as 'guardian' of the respondent. However, as soon as the respondent party objects to its jurisdiction, the Court must ascertain whether it is in fact entitled to rule on the substance of the requests before it.[119] Thus, for instance, in the *Tehran Hostages* case, the Court examined on its own initiative whether the fact that the United States had referred its dispute with Iran to the Security Council affected in any manner its right to discharge its judicial functions[120]—which it found not to be the case.[121] In the *Legality of Use of Force* cases, the Court originally made the time clause in the Yugoslav declaration of acceptance the pivotal issue, concluding that it lacked jurisdiction to indicate provisional measures,[122] although at least one of the respondents (Belgium)[123] had not invoked that clause as an obstacle barring Yugoslavia's request.[124] Furthermore, in the same case the Court has clarified that in a given proceeding the parties are not entitled retroactively to make determinations on the

Annex 24

J. Kucera, "For Armenians, they're not occupied territories – they're the homeland", *Eurasianet* (6 August 2018), *available at* https://eurasianet.org/for-armenians-theyre-not-occupied-territories-theyre-the-homeland (excerpt)

For Armenians, they're not occupied territories – they're the homeland

eurasianet.org/for-armenians-theyre-not-occupied-territories-theyre-the-homeland

Ruined houses, Kalbajar (the population was 23,000 before the war, mostly Kurds, now it's 600 Armenians). All photos by Joshua Kucera.

When Alexander Kananyan moved to Kelbajar in 2000, it was "completely destroyed," he recalls. There was no electricity or telephone service, and he had to walk up to 40 kilometers to catch any sort of transportation.

But the hardships were worth it for the sense of meaning it gave him. In the early 1990s, Armenian armed forces had captured this territory from Azerbaijan. At that time, Kananyan – an ethnic Armenian who grew up in Georgia speaking no Armenian – was studying theology in Rome.

"There was a certain sense of guilt that others were fighting and dying while I was studying," he said. "And I felt that the settlers, who were returning an Armenian presence to these liberated

Annex 25

"Land Mine Kills Officer as Search Continues for Armenian, Azerbaijani Missing", *Radio Free Europe/Radio Liberty* (23 November 2020), *available at* https://www.rferl.org/a/land-mine-kills-officer-search-for-armenian-azerbaijanimissing/30965287.html

Land Mine Kills Officer As Search Continues For Armenian, Azerbaijani Missing

rferl.org/a/land-mine-kills-officer-search-for-armenian-azerbaijani-missing/30965287.html

November 23, 2020

By RFE/RL

Members of a mine-clearing survey team examine unexploded items of ordnance in the war-torn Nagorno-Karabakh region earlier this month.

A land mine reportedly killed an Azerbaijani officer and wounded several ethnic Armenian officials and a Russian peacekeeper in Nagorno-Karabakh on November 23, in the latest reminder of lingering obstacles to identifying the dead two weeks after a cease-fire between archfoes Armenia and Azerbaijan.

Around 2,000 Russian troops moved into areas in and around Nagorno-Karabakh earlier this month as part of the Moscow-brokered truce that ended six weeks of heavy fighting in the 30-year-old conflict that is thought to have killed thousands.

Russian Peacekeepers Guard Key Nagorno-Karabakh Road

The Russian Defense Ministry announced the land-mine incident.

It said a group of its peacekeepers, Azerbaijani troops, ethnic Armenians from the area's de facto leadership, and International Committee of the Red Cross representatives were searching for the bodies of missing soldiers in the Tartar district northeast of Nagorno-Karabakh when the mine exploded.

An Azerbaijani officer died in the blast, near the community of Madagiz, four emergency-situations officials from the breakaway ethnic Armenian side were lightly injured, and the Russian peacekeeper taken to a Baku hospital for treatment.

There was no initial confirmation from the Azerbaijani or Armenian side.

Azerbaijan has consistently refused to report military casualties since the fighting flared up on September 27 and quickly escalated into an Azerbaijani offensive.

Baku's forces retook swaths of territory controlled by ethnic Armenians for decades but internationally recognized as part of Azerbaijan.

The cease-fire that went into effect on November 10 left most of those gains under Baku's control and mandated that ethnic Armenian forces withdraw from all seven districts around Nagorno-Karabakh in what was seen by many Armenians as a national defeat.

Yerevan announced on November 23 that it continued the handover of around 120 towns, villages, and settlements in the area.

Families on both sides of the conflict have complained of a lack of information about soldiers missing and in many cases believed to have been killed in combat.

Yerevan has announced the discovery or handover of the bodies of around 350 soldiers in the last several days.

But in the Armenian capital, Yerevan, family members gathered outside the Defense Ministry on November 23 to **demand information** about the whereabouts of dozens of troops still missing.

"We come here so a representative of a state body -- whether a minister or a military man -- comes and gives us an answer so we learn at least some information -- what's happening," said one of the women seeking information about her son. "We understand that there was a war, but they ignore us -- all of us parents."

Azerbaijani families have also complained of similar official failures, exacerbated by a culture of state secrecy in the tightly controlled country of around 10 million people, with some families appealing on social media for answers.

The district of Agdam was handed over on November 20.

Azerbaijani Army Rolls Into Agdam, A Day After Armenians Move Out

Ethnic Armenian forces are slated to hand over two more districts in the next week, with thousands more residents likely to flee, in many cases taking all their belongings and torching buildings in the process.

Karvachar (which Azeris call Kelbacar), wedged between Nagorno-Karabakh and Armenia, was slated for handover after a weeklong delay on November 25. The district of Kashatagh (which Azeris call Lachin), west of Nagorno-Karabakh, is scheduled for handover by December 1.

As the withdrawal continues by ethnic Armenians who have in many cases lived for decades or generations in the lands, a path to a permanent peace still appears fraught.

Photo Gallery:

Scorched Earth: Ethnic Armenians Destroy Homes, Infrastructure Before Fleeing Azerbaijani Regions

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Two of the most influential regional powers in the Caucasus, Russia and Turkey, are said to be quietly disagreeing over the possible role of Turkish peacekeepers as part of the cease-fire.

Russia has extensive relations with both countries but provides security guarantees to Armenia, while Turkey is a staunch Azerbaijani ally with longtime animosities with Yerevan.

Many analysts suggested Moscow won a major concession in the cease-fire through the insertion of peacekeeping troops that give it boots on the ground in the strategic and volatile South Caucasus.

Previous Russian "peacekeeping" missions in breakaway regions of Georgia and Moldova have remained despite local opposition.

Reuters quoted an unnamed Turkish source as saying on November 23 that Ankara and Moscow are now in disagreement over monitoring the Armenian-Azerbaijani cease-fire.

In addition to Russia's peacekeepers on the ground, the truce called for a remote monitoring center staffed by Turkey and Russia in the region.

But Turkish authorities are reportedly pushing for their own, independent peacekeeping presence to project influence.

Their Russian counterparts, including senior officials who visited Yerevan and Baku over the weekend, are said to oppose such a Turkish presence.

With reporting by RFE/RL's Armenian Service, TASS, and Reuters

Annex 26

"Sarsang Reservoir resources reduced, Azerbaijan farmers will have no irrigation water", *News.am* (27 February 2023), *available at* https://news.am/eng/news/747156.html

Sarsang Reservoir resources reduced, Azerbaijan farmers will have no irrigation water

news.am/eng/news/747156.html

Due to Azerbaijan's ongoing blockade of Artsakh (Nagorno-Karabakh), 96 thousand hectares of land in Azerbaijan will not receive enough water. Artak Beglaryan, adviser to the Minister of State of Artsakh, wrote about this on Telegram.

"The President of Artsakh, Arayik Harutyunyan, in his address on February 23, opened some brackets regarding the energy crisis prevailing in Artsakh and the water resources of Sarsang [Reservoir]. A few facts and emphasis on them.

1. By completely interrupting the supply of electricity from Armenia [to Artsakh] since January 9, as well as periodically interrupting the supply of [natural] gas [from Armenia to Artsakh] throughout the blockade, the Azerbaijani side deliberately provoked the energy crisis as the main means of pressure.
2. Since then, we have switched to crisis management of the energy system—using local hydropower plants at full capacity and limiting consumption as much as possible, including through suspension and shutdowns of the operation of large economic enterprises.
3. During this time, the water resources of Sarsang Reservoir have been severely depleted, as we have released much more water resources—of 50 megawatts—than what is entering Sarsang for the operation of our main hydroelectric power plant.
4. Now the situation is already critical, which means that in a short time we will have an extreme shortage of water resources necessary for the production of electricity, with all the consequences arising from it.
5. The water resources of the Sarsang Reservoir, with a capacity of almost 600 million cubic meters, have been reduced by the vast majority, which will create a serious crisis in the spring and summer; first of all, for Azerbaijani farmers, as the water resources will not be sufficient to irrigate about 96,000 hectares in Tartar, Aghdam, Bardi, Goranboy, Yevlakh, and Akhjabad regions of Azerbaijan.
6. Therefore, the residents of these regions of Azerbaijan should be aware that thanks to their authorities and self-proclaimed fake [Azerbaijani] activists, they will not have irrigation water this year and will be deprived of the possibility of food and income.

P.S. The press secretary of the Artsakh president informed that, through the mediation of the Russian side, an agreement was reached with the Azerbaijani side to repair the damaged [power] grid and restore electricity supply from Armenia [to Artsakh] in the coming days. Simple logic suggests that the sooner the electricity supply to Artsakh is restored, the sooner irrigation water will be accessible to Azerbaijani farmers," wrote the adviser to the Minister of State of Artsakh.

Annex 27

"Sarsang water levels drop at alarming rate amid blockade, farmers in both Nagorno Karabakh and Azerbaijan to be affected", *Artsakh News* (17 March 2023), *available at* https://artsakh.news/en/news/262005

Sarsang water levels drop at alarming rate amid blockade, farmers in both Nagorno Karabakh and Azerbaijan to be affected

artsakh.news/en/news/262005

March 17, 2023

Friday, 17 March, 2023, 11:54

Nagorno Karabakh authorities are sounding the alarm that the Sarsang Reservoir water levels keep dropping 50cm every day amid the Azeri blockade. Since January 9 Azerbaijan has been barring Nagorno Karabakh authorities from accessing and repairing the damaged power transmission line which supplies Nagorno Karabakh with electricity from Armenia. “The only source of electrical energy we have now is the Sarsang Reservoir,” Ararat Khachatryan, the acting chairman of the Water Committee of Artsakh told Armenpress. “The water levels are over 8 meters lower compared to the same period of last year. Today the inflow is 4 cumecs, which is a very low indicator. The Tartar flow can reach up to thirty, forty or fifty cumecs. The [consumption] is a lot higher now. When water levels are high, less water is actually consumed for obtaining electricity, but when the water levels drop, pressure also drops and it takes more water to get the same amount of electricity,” Khachatryan explained. The official expressed hope that the reservoir’s levels would increase in springtime, but even if that were to happen the result won’t be satisfactory. “Since January 9, Azerbaijan has been impeding and barring us from carrying out repair works in the territory under its control where the high-voltage electricity transmission line supplying Artsakh from Armenia passes. Before the blockade, especially in winters, when the electricity supplied from Armenia was insufficient, we were using the Sarsang Reservoir. After the war we are left with only five small HPPs in Artsakh, which work only under 20% capacity,” Khachatryan said, warning that if the power line doesn’t get fixed soon there will be insufficient water levels in Sarsang.

Annex 28

Artak Beglaryan, *Facebook* (4 April 2023), *available at*
https://www.facebook.com/Artak.A.Beglaryan/posts/6344191602285690

Artak Beglaryan

facebook.com/Artak.A.Beglaryan/posts/6344191602285690

ENG ⬇ РУС ⬇
ԱԴՐԲԵՋԱՆԻ ՏԵՂԱԴՐԱԾ ԱԿԱՆՆԵՐԻ ՊԱՏՃԱՌՈՎ ԱՐՑԱԽԸ ՊԱՏԱՀԱՐՆԵՐԻ ԹՎՈՎ ԱՇԽԱՐՀՈՒՄ ԱՌԱՋԻՆՆ Է ՄԵԿ ՇՆՉԻ ՀԱՇՎՈՎ

Այսօր նշվում է Ականների վերաբերյալ իրազեկման և ականազերծման գործում աջակցության միջազգային օրը: Ստորև մի քանի փաստ Արցախում ականների և այլ չպայթած զինամթերքի մասին.

1. 1990-ականներին Ադրբեջանը միլիոնավոր ականներ դրեց և նաև կասետային զինամթերքով ռմբակոծեց քաղաքացիական տարածքները՝ տասնյակ տարիներով տառապանք պատճառելով Արցախի ժողովրդին:

2. «Halo Trust» մասնագիտացված միջազգային կազմակերպության տվյալներով՝ Արցախը աշխարհում առաջինն է մեկ շնչի հաշվով ականների պատահարների թվով:

3. Արցախի հազարավոր քաղաքացիներ, այդ թվում՝ առնվազն 1,076 քաղաքացիական անձ (որոնցից շատերը երեխաներ և կանայք), զոհվել կամ վիրավորվել են ականների և այլ չպայթած զինամթերքի պայթյունների հետևանքով: Ես նույնպես այդ դժբախտ պատահարներից տուժած երեխաներից մեկն եմ:

4. Ադրբեջանը Արցախին և Հայաստանին ոչ մի ականադաշտի քարտեզ չի տրամադրել, մինչդեռ 2021 թվականին Հայաստանը Ադրբեջանին է տրամադրել ականադաշտերի բոլոր եղած քարտեզները:

5. Տեղի ականազերծողները և «Halo Trust» ականազերծող միջազգային ոչ կառավարական կազմակերպությունը 30 տարվա ընթացքում մաքրել են մի քանի հարյուր հազար հեկտար տարածք:

6. Արցախը չի ստացել էական միջազգային աջակցություն ականազերծման համար, և ՄԱԿ-ի Ականազերծման ծառայությունն այստեղ չի աշխատել ադրբեջանական խոչընդոտների պատճառով:

7. Ներկայումս Արցախի վերահսկողության տակ գտնվող տարածքներում 1990-ական թվականներից ի վեր դեռևս չմաքրված են մնում առնվազն 700 հեկտար ականապատ դաշտեր:

8. 2020 թվականի Ադրբեջանի ագրեսիան Արցախում հանգեցրել է լրացուցիչ տասնյակ հազարավոր հեկտար տարածքների ախտոտման՝ նոր չպայթած զինամթերքով, այդ թվում՝ կասետային բնույթի:

9. 2020 թվականի պատերազմի ավարտից ի վեր տեղի ականազերծողները, ռուս խաղաղապահները և «Halo Trust»-ի աշխատակիցները վնասազերծել են ավելի քան 220,000 չպայթած մնացորդներ՝ ի հավելումն մինչև 2020 թվականը ոչնչացված զինամթերքի:

Ընդհանուր առմամբ, ականների և այլ չպայթած զինամթերքի առկայությունը Արցախում լրջագույն խնդիր է, որը պահանջում է միջազգային հանրության անհապաղ ուշադրությունն ու գործողությունները, իսկ մենք դեռ սպասում ենք 1990-ականներից Արցախում դրված ականների դաշտերի ադրբեջանական քարտեզներին:

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DUE TO THE AZERBAIJANI LANDMINES NAGORNO-KARABAKH IS THE FIRST IN THE WORLD FOR LANDMINE ACCIDENTS PER CAPITA

Today marks International Day for Mine Awareness and Assistance in Mine Action. Here are a few facts on landmines and other unexploded ordnance in Artsakh (Nagorno-Karabakh):

1. In the 1990s, Azerbaijan put millions of landmines and bombarded civilian areas with cluster munitions, causing suffering for the people for decades.

2. Nagorno-Karabakh is the first country in the world for landmine accidents per capita, according to the specialized international organization “Halo Trust.”

3. Thousands of Nagorno-Karabakh citizens, including at least 1,076 civilian persons (many of them children and women), have been killed or injured as a result of landmine and other unexploded ordnance explosions. I’m also one of the victims of those accidents.

4. Azerbaijan has not provided any landmine maps to Nagorno-Karabakh and Armenia, while in 2021, Armenia provided all existing landmine maps to Azerbaijan.

5. Local agencies and the "Halo Trust" demining international non-governmental organization have cleared several hundred thousands of hectares of territories over 30 years.

6. Nagorno-Karabakh has not received substantial international support for demining, and the UN Mine Action Service has not worked here due to Azerbaijani blockage.

7. In the territories currently under Nagorno-Karabakh's control, there are at least 700 hectares of minefields still left uncleared since the 1990s.

8. The 2020 aggression by Azerbaijan resulted in additional ten thousands of hectares of territories in Nagorno-Karabakh with new unexploded ordnance, including cluster munitions.

9. Since the end of the 2020 war, local deminers, Russian peacekeepers, and "Halo Trust" employees have neutralized more than 220,000 unexploded remnants, in addition to those cleared before 2020.

Overall, the presence of landmines and other unexploded ordnance in Artsakh is a serious problem that requires immediate attention and action from the international community, and we are still waiting for Azerbaijani maps of landmines put in Artsakh since the 1990s.

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ИЗ-ЗА АЗЕРБАЙДЖАНСКИХ МИН НАГОРНЫЙ КАРАБАХ ЯВЛЯЕТСЯ ПЕРВОЙ СТРАНОЙ В МИРЕ ПО КОЛИЧЕСТВУ НЕСЧАСТНЫХ СЛУЧАЕВ ОТ НАЗЕМНЫХ МИН НА ДУШУ НАСЕЛЕНИЯ

Сегодня отмечается Международный день просвещения по вопросам минной опасности и помощи в деятельности, связанной с разминированием. Вот несколько фактов о минах и других неразорвавшихся боеприпасах в Арцахе (Нагорном Карабахе):

1. В 1990-х годах Азербайджан заложил миллионы наземных мин и обстрелял жилые районы кассетными боеприпасами, причинив людям страдания на десятилетия.

2. Нагорный Карабах является первой страной в мире по количеству несчастных случаев от наземных мин на душу населения, по данным специализированной международной организации «Halo Trust».

3. Тысячи граждан Нагорного Карабаха, в том числе не менее 1076 гражданских лиц (многие из них дети и женщины), погибли или получили ранения в результате подрыва наземных мин и других неразорвавшихся боеприпасов. Я тоже являюсь одним из пострадавших от таких несчастных случаев.

4. Азербайджан не предоставил ни одну минную карту Нагорному Карабаху и Армении, в то время как в 2021 году Армения предоставила Азербайджану все имеющиеся карты минных полей.

5. Местные агентства и международная неправительственная организация по разминированию "Halo Trust" за 30 лет очистили несколько сотен тысяч гектаров территорий.

6. Нагорный Карабах не получил существенной международной поддержки по разминированию, а служба разминирования ООН здесь не работала из-за азербайджанской блокады.

7. На территориях, находящихся в настоящее время под контролем Нагорного Карабаха, с 1990-х годов остаётся неразминированным как минимум 700 гектаров минных полей.

8. В результате агрессии Азербайджана в 2020 году в Нагорном Карабахе появились дополнительные десятки тысячи гектаров новых неразорвавшихся боеприпасов, в том числе кассетных боеприпасов.

9. С момента окончания войны 2020 года местными сапёрами, российскими миротворцами и сотрудниками «Halo Trust» обезврежено более 220 000 неразорвавшихся боеприпасов вдобавок к обезвреженным до 2020 года.

В целом наличие наземных мин и других неразорвавшихся боеприпасов в Арцахе является серьёзной проблемой, которая требует немедленного внимания и действий со стороны международного сообщества, и мы всё ещё ждём азербайджанские карты наземных мин, установленных в Арцахе с 1990-х годов.

Annex 29

Council of Europe, Parliamentary Assembly, *Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water* (12 December 2015), *available at* https://pace.coe.int/en/files/22290
(excerpt)

B. Explanatory memorandum by Ms Marković, rapporteur

1. Introduction

1. Water unites, water divides – but remains central to human development. Water is part of humanity's common heritage and a resource which is essential to human survival. Yet water remains a limited and vulnerable resource.

2. By recognising, in 2010, the right to clean drinking water and sanitation as a human right, the United Nations emphasised the role of water in the full enjoyment of life and other human rights. It also reaffirmed a series of obligations on key stakeholders, notably States. These are required to secure their population's access to sufficient, safe and affordable water resources[3].

3. Despite continued improvements in local water supply, the situation remains critical in certain regions of Europe. Problems are more often than not caused by mismanagement of water resources, affecting the daily needs of hundreds of thousands of people. One in every six inhabitants of the world still does not have consistent access to water. Water can therefore also be a source of conflict.

4. Intensive farming, industrial activities, climate change and consumer habits, but also policy mistakes and politics can all lead to conflict situations. Our Parliamentary Assembly's attention has been drawn to the serious difficulties the local population is confronted with in the non-occupied frontier regions of Azerbaijan depending on the Sarsang water reservoir located in Nagorno-Karabakh.

5. This report deals with the problems affecting the above-mentioned regions and seeks to propose pragmatic solutions that the authorities of the two neighbouring countries concerned could adopt in order to optimise water management in their border regions.

6. As rapporteur, I am obliged to inform the Assembly that, in the preparation of the report, I only made two fact-finding visits, both to Azerbaijan: in December 2014, during the winter, and in August 2015, during the summer, in order to take account of the changes in living conditions from one season to another. Unfortunately, I did not have the opportunity to undertake a visit to Armenia, owing to the lack of co-operation of the Armenian delegation, which did not accede to the successive requests that were submitted to it: official letter from the Secretary General of the Assembly, requests from the Committee on Social Affairs, Health and Sustainable Development and my own requests. Because of the limited time for the preparation of this report, I was obliged to press ahead with my work without being able to undertake a visit to Armenia.

2. The Sarsang reservoir: what is the status quo?

2.1. Key facts about the reservoir

7. Sarsang is a large water reservoir located in the Nagorno-Karabakh area of Azerbaijan but controlled *de facto* by Armenia since 1993. The reservoir was formed in 1976 when a dam was built on the Tartar/Terter River by the Soviet Socialist Republic of Azerbaijan, as it was at the time. The installation is located in a mountain valley at an altitude of 726 metres above sea level, with a dam 125 metres in height and a capacity to hold up to 575 million m^3 of water. The reservoir's shoreline is about 50.25 kilometres long.

8. The system also comprises a regulating reservoir with an earth dam (about 6 million cubic meters) at Madagiz, situated about 20 km downstream from the main reservoir. Madagiz plays an important role in the operation of the Sarsang reservoir/irrigation system, because the irrigation canals (the main canal plus the northern and southern branches) start downstream from this dam. Up until 1994, water released from the upper spillways was directed to the canals for irrigation use.

9. The main purpose of the Sarsang reservoir was to supply the local population with drinking water and irrigation water for the fertile areas of this region. It is also the main source of energy (some 40% to 60% of supply). The Sarsang hydropower plant was designed to supply energy for the country and water for household and domestic use. Sarsang water supplies concern about 138 000 inhabitants of Nagorno-Karabakh and about 400 000 people in other areas of Lower Karabakh in Azerbaijan.

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3. The 1992 United Nations Convention on the Protection and Use of Transboundary Watercourses and International Lakes ("Water Convention") and the report "The global opening of the 1992 UNECE Water Convention" by the United Nations Economic Commission for Europe, presented on the occasion of the summit "Two decades of successful co-operation", New York and Geneva, 2013.

10. As a result of the Armenian occupation of the area in which the Sarsang reservoir is located, hundreds of thousands of people living in this area have been deprived of quality drinking water. Before the invasion of Azerbaijani territory, the Sarsang dam provided irrigation water for more than a hundred thousand hectares of fertile land in six regions of the country (Terter, Aghdam, Barda, Goranboy, Yevlakh and Aghjabedi).

11. The use of the reservoir should therefore not be viewed as a stand-alone issue in isolation from its geographical and geopolitical context. Improvements in water supply to the population can and should be achieved through a broad range of measures conducive to more sustainable management of all water resources in the region.

2.2. Problematic aspects regarding Sarsang

2.2.1. Environmental considerations

12. As freshwater resources are very unevenly spread across the South Caucasus,[4] there are many arid areas that are not viable without human intervention. Droughts are frequent and irrigation is indispensable for subsistence farming during the dry months, particularly in summer. Irrigation needs around Sarsang are particularly high in spring and summer, whereas abundant rainfall in winter months can even cause floods. The Azerbaijani authorities estimate that about 100 000 hectares of agricultural land in the border regions under Azerbaijan's control close to Sarsang are subject to severe water stress which may lead to desertification in the most deprived areas.

13. The Sarsang dam was built on the Tartar River, a tributary of the Kura. The dam spillway overflows into the Tartar, which joins the Kura River in the Barda region, before flowing to the Caspian Sea. Thus any release of water from Sarsang has impacts in the lower Kura region in Azerbaijan and cannot be considered independently of the overall flooding issues in the area. This is one of the technical reasons why water management in Sarsang cannot be considered exclusively for this reservoir alone.

14. In terms of annual water use, it is estimated that 700 to 800 million cubic meters were used for irrigation in the six regions (Agdam, Barda, Tartar, Yevlakh, Goranboy and Aghjabedi) before the 1992-1994 conflict.

15. Following the Nagorno-Karabakh conflict, the Armenian authorities took control of the reservoir and the upstream parts of the irrigation canal (the whole of the southern branch and a large part of the northern branch). The Tartar River flows out of the disputed territories towards the Kura and the lower Azerbaijani plains. Moroever, a large number of Azeri inhabitants fled from the occupied parts to other regions of Azerbaijan and are now internally displaced persons.

16. The reservoir has been under the exclusive control of the Armenian authorities since the conflict; there is no evidence of any effective communication between Armenia and Azerbaijan regarding the operational management of the reservoir and/or mutual co-operation to meet water demand in the area since 1993. This situation, which has caused problems in the six border regions of Azerbaijan, raises the concerns outlined below.

– Loss of use of existing irrigation infrastructure for the border regions of Azerbaijan

17. As previously stated, the irrigation canal downstream of Sarsang (total length about 240 km) divides into a northern and southern branch. The southern branch passes through occupied territories in the border regions under the control of the *de facto* authorities. Consequently, there is no possibility of using this canal for the irrigation of the remaining parts of the border regions in Azerbaijan, even if there is water flowing in it. The northern branch of the canal initially passes through territory controlled by the *de facto* authorities. Only the last 22 km of this northern branch pass through border regions under Azerbaijani control. Consequently, over 90% of the canal cannot currently be used to irrigate the six border regions. Another source of concern is the state of the canal, which has apparently been out of use for many years and has not undergone technical inspections or maintenance work for over 20 years.

4. Estimates from various sources indicate that about 62% of the region's freshwater is in Georgia, 28% in Armenia and 10% in Azerbaijan. See notably a study on "Water management in South Caucasus" by Mariam Ubilava: www.feem-web.it/transcat conf/conf papers/Ubilava.pdf.

Annex 30

Office of the Nagorno Karabakh Republic, *Declaration on State Independence of the Nagorno Karabakh Republic* (6 January 1992), *available at* http://www.nkrusa.org/nk_conflict/declaration_independence.shtml

Declaration of Independence

Establishment of the Nagorno Karabakh Republic	(September 2, 1991)
Independence Referendum	(December 10, 1991)
Declaration of State Independence	(January 6, 1992)

Proclamation of the Nagorno Karabakh Republic (adopted at a joint session of legislative bodies)

- With the participation of delegates from all levels of councils in a joint session of peoples deputies of the Nagomo Karabakh (NK) regional and Shahumian district councils, by the expression of the popular will supported by a documented referendum, and by the decision taken by the authorities of the NK autonomous region and the Shahimian district between 1988-91 concerning its freedom, independence, equal rights, and neighborly relations;

- Noting specifically the Azerbijani Republic's declaration of restoring its national independence according to its 1918-20 boundaries;

- Recognizing that Azerbaijan's policies of apartheid and discrimination have created an atmosphere of hatred and intolerance toward the Republic's Armenian population, and led to armed clashes, casualties, and the deportation of Armenian civilians from peaceful villages;

- Establishing itself on the basis of the current constitution and the laws of the Union of the Soviet Socialist Republic (USSR), which, upon the secession of a union republic from the USSR, allow the peoples of autonomous formations and coexisting ethnic groups the right to self-determination of its national-legal status;

- Noting that the territory of the Shahumian district was forcibly detached from Nagorno Karabakh, and recognizing the intentions of the Armenian population to reunify as commensurate with the norms of natural and international law;

- Intending that neighborly relations between the peoples of Armenia and Azerbaijan will be restored based on mutual respect for each other's rights;

- Taking into consideration both the complexity and controversial nature of the situation in the country, the future of the [Soviet] Union, and the uncertain future of the [Soviet] Union structures of ruling authority and government;

- Respecting and abiding by the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the principles of the International Covenant on Civil and Political Rights, and trusting in the understanding and support of the international community;

Declares

The Nagorno Karabakh Republic within the current boundaries of the NK autonomous region and the adjacent Shahumian district, the NKR

The Nagorno Karabakh Republic, basing itself on the authority given to republics by the constitution and legislation of the USSR, reserves the right to decide independently its legal status as a state on the basis of political consultations and negotiations with the leadership of other countries and republics.

Prior to the acceptance of the constitution and laws of the NKR, the constitution and legislation of the USSR, as well as other existing laws shall be in effect on the territory of the NKR unless they contradict the purposes and

principles of this declaration and the specific nature of the republic.

/Signed/

Delegates of all levels participating in the joint session of the NK regional and Shahumian district councils' peoples delegation

September 2, 1991

Act on Referendum Conducted in the Nagorno Karabakh Republic on December 10, 1991

The Central Election Committee on conducting the referendum notes that in accordance with the November 27, 1991 decision of the session of the NKR Soviet of people's deputies and the Temporary Provision on Referendum in the NKR, confirmed by the same session, on December 10, 1991 a referendum was held on the whole territory of Nagorno Karabakh in order to finally determine its status, the forms of state structure and interrelation with other states and commonwealths.

On the day of the referendum the whole territory of the Nagorno Karabakh Republic, especially its capital - Stepanakert - was the subject of heavy artillery and rocket shelling by Azerbaijani band formations trying to suppress the voice of the Artsakh people striving for freedom from national oppression. A great number of houses and administrative buildings were destroyed in towns and regions of the republic. 10 people deceased only on the day of the referendum.

However, the population of the republic, having overcame the incredible hardships, as a single unity participated in the elections in order to unite voices against the centuries-old tyranny.

108,736 or 82.2 per cent of the total number of 132,328 registered voters participated in the elections.

Voters of Azerbaijani nationality - 22,747 persons - did not take part in the referendum, although the CEC (Central Election Committee) made attempts to get in contact with them in order to reach consensus on those issues. The corresponding documents as well as the Temporary Provision on referendum and parliamentary elections in NKR were sent to them in due time.

The servicemen of the military base, allocated in Stepanakert, did not participate in the referendum because of political motives.

The referendum took place in 70 of the total number of 81 constituencies. In the 10 of 11 constituencies, where the referendum did not take place, Azerbaijani population lived.

"Do you agree that the proclaimed Nagorno Karabakh republic be an independent state acting on its own authority to decide forms of co-operation with other states and communities?"

108,615 persons or 99.9 per cent of the total number of voters answered "Yes" and 24 persons or 0.02 per cent answered "No" to the aforementioned question. 95 ballots or 0.09 per cent were recognised invalid.

The referendum was conducted in accordance with the international norms as well as the Temporary Provision on Referendum in the NKR. The Central Election Committee has not received any complaints or statements about any breaches.

Deputies of the Supreme Soviet of the USSR, Russia and Moscow as well as representatives of different international organisations and foreign states were present at the referendum as observers and made positive comments.

Thus, the will of the people of the Nagorno Karabakh Republic to build an independent state became an objective reality.

E. Petrossian
Chairman of the Central Election Committee

Declaration on State Independence of the Nagorno Karabakh Republic

- Proceeding from the peoples' inherent right for self-determination, as well as the will of the people of Nagorno Karabakh expressed in December 10, 1991 republic referendum;

- understanding the responsibility for the fate of the historical Motherland;
- confirming adherence to the principles of the September 2, 1991 Declaration on the Proclamation of the Nagorno Karabakh Republic;
- striving for normalization of relations between the Armenian and Azerbaijani peoples;
- willing to protect the NKR population from aggression and threat of physical extermination;
- developing on the experience of people's self-government in Nagorno Karabakh in 1918-1920;
- expressing readiness to establish equal and mutually beneficial relations with all the states and commonwealths;
- respecting and following the principles of the Universal Declaration of Human Rights and International Pact on Economic, Social and Cultural Rights, final document of the Vienna meeting between the European Conference on Security and Cooperation member-states, other universally recognized norms of international law.

The Supreme Soviet of the Nagorno Karabakh Republic
Ratifies the NKR State Independence

The NKR is an independent state. It has its own national flag, emblem and anthem. The NKR Constitution and laws, as well as international and legal acts regulating respect of human rights and freedoms are in force in the NKR territory.

Whole power in the NKR belongs to the people of the Nagorno Karabakh Republic, which realizes its power and will through nationwide referendum or via representative bodies.

All the residents of Nagorno Karabakh are citizens of the NKR. The NKR allows double citizenship. The NKR protects its citizens. The NKR guarantees rights and freedoms of all its citizens regardless of their nationality, race and creed.

Armed forces, law enforcement and state security bodies are established in the NKR subordinate to supreme authorities to ensure the protection of its citizens and the security the population. The NKR citizens serve in the military on the territory of the NKR. The NKR citizens' military service in other states, as well as presence of foreign armed forces in the NKR territory is realized on the basis of interstate agreements and arrangements.

As a subject of international law, the NKR conducts an independent foreign policy, establishes direct relations with other states, and participates in the activities of international organizations.

Land, depths, air space, natural, material and spiritual wealth of the NKR is the property of its people. The NKR laws regulate their usage and ownership.

The NKR economy is based on the principle of equality of all forms of property. It ensures equal opportunities of full and free participation in the economic life for all citizens of the NKR.

The NKR recognizes the priority of human rights, ensures the freedom of speech, conscience, political and social activity and all the other universally recognized civil rights and freedoms. National minorities are under protection by the state. The NKR state structure ensures for national minorities the possibility of a full-fledged participation in political, economic and spiritual life of the Republic. The law prosecutes any national discrimination.

The NKR state language is Armenian. The NKR recognizes the national minorities' right for using, without any restrictions, their native language in economic, cultural and educational spheres.

This Declaration and General Declaration on Human Rights form the basis of the NKR Constitution and legislation.

January 6, 1992

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734 15th Street, Suite 500, Washington, DC 20005
tel: (202) 481-3341, e-mail: info@nkrusa.org

Annex 31

Republic of Nagorno-Karabakh, *De Jure Population (Urban, Rural) by Age and Ethnicity* (2002), *available at* http://census.stat-nkr.am/nkr/5-1.pdf (excerpt)

Աղյուսակ 5.1 **Մշտական բնակչությունը (քաղաքային, գյուղական) ըստ տարիքի և ազգության**
Tabel 5.1 ***De Jure Population (Urban, Rural) by Age and Ethnicity***
Таблица 5.1 **Постоянное н аселение (городское, сельское) по возрасту и национальности**

Լեռնային Ղարաբաղի Հանրապետություն — Աղյուսակ 5.1
Republic of Nagorno-Karabakh — *Table 5.1*
Нагорно-Карабахская Республика — Таблица 5.1

Տարիքը *Age* Возраст	Ընդամենը *Total* Всего	Ազգությունը *Ethncity* Национальность						
		Հայեր *Armenians* Армяне	Ռուսներ *Russians* Русские	Ուկրաինացիներ *Ukrainians* Украинцы	Հույներ *Greeks* Греки	Վրացիներ Georgians Грузины	Ադրբեջանցիներ Azerbaijanians Азербайджанцы	Այլ *Others* Другие
ԼՂՀ NKR НКР	137737	137380	171	21	22	12	6	125
0 - 9	22299	22261	22	0	1	2	0	13
10 - 19	23756	23717	16	4	4	2	0	13
20 - 29	23310	23253	28	3	4	2	0	20
30 - 39	16046	16014	10	3	1	1	1	16
40 - 49	18580	18520	25	3	2	3	1	26
50 - 59	12686	12631	27	3	4	1	1	19
60 և ավելի	21060	20984	43	5	6	1	3	18
60 and older								
60 и старше								
Քաղաքային	70512	70318	94	16	13	10	3	58
Urban								
Городское								
0 - 9	10606	10588	12	0	1	2	0	3
10 - 19	12664	12640	10	3	4	2	0	5
20 - 29	13157	13126	15	1	3	2	0	10
30 - 39	8503	8485	4	3	1	0	0	10
40 - 49	9950	9917	16	2	1	3	0	11
50 - 59	7025	6992	17	3	1	1	1	10
60 և ավելի	8607	8570	20	4	2	0	2	9
60 and older								
60 и старше								
Գյուղական	67225	67062	77	5	9	2	3	67
Rural								
Сельское								
0 - 9	11693	11673	10	0	0	0	0	10
10 - 19	11092	11077	6	1	0	0	0	8
20 - 29	10153	10127	13	2	1	0	0	10
30 - 39	7543	7529	6	0	0	1	1	6
40 - 49	8630	8603	9	1	1	0	1	15
50 - 59	5661	5639	10	0	3	0	0	9
60 և ավելի	12453	12414	23	1	4	1	1	9
60 and older								
60 и старше								

Annex 32

Constitution of the Nagorno Karabakh Republic (2006), *available at* http://www.nkrusa.org/country_profile/constitution.shtml (excerpt)

Washington DC

NKR OFFICE IN THE USA
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Constitution of the Nagorno Karabakh Republic

Contents

We, the people of Artsakh:

- filled with the spirit of freedom;
- realizing the dream of our ancestors and the natural right of people to lead a free and secure life in the Homeland and to create;
- showing a firm will to develop and defend the Republic of Nagorno Karabakh formed on September 2, 1991 on the basis of the right of self-determination and proclaimed independent by a referendum conducted on December 10, 1991;

  as a free, sovereign state of citizens with equal rights, where a human being, his life and security, rights and freedoms are of supreme value,
- affirming faithfulness to the principles of the Declaration of Independence of the Republic of the Nagorno Karabakh Republic adopted on January 06, 1992;
- recalling with gratitude the heroic struggle of our ancestors and present generations for the restoration of freedom, bowing to the memory of the perished in a war forced upon us;
- fulfilled with the power of unity of all Armenians of the world;
- reviving the historic traditions of statehood in Artsakh;
- aspiring to establish good-neighborly relations with all peoples, first of all with our neighbors, on the basis of equality, mutual respect and peaceful co-existence;
- staying faithful to the just world order in conformity with universal values of the International law

- recognizing our own responsibility for the fate of our historic Homeland before present and future generations;
- exercising our sovereign right,
- for us, for generations to come and for those that will wish to live in Artsakh, adopt and proclaim this Constitution.

Chapter I: The Foundations of Constitutional Order

Article 1

1. The Nagorno Karabakh Republic, Artsakh, is a sovereign, democratic state based on social justice and the rule of law.
2. The Nagorno Karabakh Republic and Artsakh Republic designations are the same.

Article 2

The Nagorno Karabakh Republic recognizes the fundamental human rights and freedoms as inalienable and supreme value, for freedom, justice and peace.

Article 3

1. In the Nagorno Karabakh Republic power lies with the people.
2. The people exercise their power through free elections and referenda as well as through state and local self-governing bodies and public officials as provided by the Constitution.
3. The usurpation of power by any organization or individual constitutes a crime.

Article 4

The election of the President, the National Assembly and local self-governing bodies as well as the referenda is held based on the rights to universal, equal and direct suffrage by secret ballot.

Article 5

The state guarantees the protection of individual and citizen's rights and freedoms in accordance with the international human rights principles and norms. The state is sanctioned by those rights and freedoms directly in effect.

Article 6

1. State power shall be exercised in accordance with the Constitution and the laws based on the principle of the separation of the legislative, executive and judicial powers of the government and their checks and balances.
2. The State and local self-government bodies and officials are only to execute activities for which they have been authorized by the Constitution and the laws.

Article 7

1. The Nagorno Karabakh Republic Constitution has the supreme judicial power and its norms are applicable directly.
2. The laws of the Nagorno Karabakh Republic must correspond with the Constitution. Other inter-state legal acts are adopted in accordance with the Constitution and the laws to guarantee their realization. They must correspond to the Constitution, laws and the international agreements ratified by the Nagorno Karabakh Republic.
3. The Laws and other inter-state normative legal acts shall take effect only upon their official publication.
4. Laws found to contradict the Constitution as well as other inter-state legal acts shall have no legal force.
5. International treaties ratified by the Nagorno Karabakh Republic, are constituent part of the legal system of the Nagorno Karabakh Republic.
6. Laws and other legal acts of the Nagorno Karabakh Republic shall correspond with the principles and norms of the international law.
7. International treaties made in the name of the Nagorno Karabakh Republic take effect only upon their ratification or confirmation. If there are other norms ratified in the international treaties than those provided by the laws of the Republic then the norms provided in the treaty shall prevail.

Annex 33

Constitution of the Republic of Artsakh (2017), *available at* http://president.nkr.am/media/documents/constitution/Constitution-eng2017.pdf (excerpt)

THE CONSTITUTION

OF

THE REPUBLIC OF ARTSAKH

The People of Artsakh

- demonstrating a strong will to develop and defend the Republic of Nagorno Karabakh established on September 2, 1991 on the basis of the right to self-determination, and proclaimed independent through a referendum conducted on December 10, 1991;
- affirming faithfulness to the principles of the Declaration of State Independence of the Republic of Nagorno Karabakh adopted on January 6, 1992;
- highlighting the role of the Constitution adopted in 2006 in the formation and strengthening of independent statehood;
- developing the historic traditions of national statehood;
- inspired by the firm determination of the Motherland Armenia and Armenians worldwide in supporting the people of Artsakh;
- staying faithful to the dream of their ancestors to freely live and create in their homeland, and keeping the memory of the perished in the struggle for freedom alive;
- exercising their sovereign and inalienable right

adopt the Constitution of the Republic of Artsakh.