

**In an Arbitration Under the Convention on the Conservation of European Wildlife and
Natural Habitats of 19 September 1979**

THE REPUBLIC OF AZERBAIJAN

Claimant

— v. —

THE REPUBLIC OF ARMENIA

Respondent

PCA Case No. 2023-60

CLAIMANT'S OPPOSITION TO BIFURCATION OF PRELIMINARY OBJECTIONS

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TABLE OF ABBREVIATIONS AND DEFINED TERMS

Affected Area	The areas of the internationally recognized sovereign territory of Azerbaijan that Armenia occupied and controlled from the early 1990s through to the liberation of the majority of those areas in November 2020 and the remaining areas in September 2023
Armenia	The Republic of Armenia
Azerbaijan	The Republic of Azerbaijan
Bern Convention or Convention	Convention on the Conservation of European Wildlife and Natural Habitats of 19 September 1979
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
Contracting Parties	Contracting Parties to the Bern Convention
ECT Arbitration	Energy Charter Treaty Arbitration between the Republic of Azerbaijan and the Republic of Armenia
Installed Regime	The regime that Armenia illegally installed in the Affected Area
LOAC	Law of Armed Conflict
Notice of Arbitration	The Notice of Arbitration submitted by the Republic of Azerbaijan on 18 January 2023
PACE	Parliamentary Assembly of the Council of Europe
Preliminary Objections	The Preliminary Objections submitted by the Republic of Armenia in its Memorial dated 12 June 2025
Procedural Timetable	Timetable decided by the Tribunal in Procedural Order No. 2 on 15 May 2024
Standing Committee	The plenary body established by Article 13 of the Bern Convention
Statement of Claim	The Statement of Claim submitted by the Republic of Azerbaijan on 12 February 2025
The Court	The International Court of Justice
UNCLOS	United Nations Convention on the Law of the Sea
VCLT	Vienna Convention on the Law of Treaties

I. INTRODUCTION

1. The Republic of Azerbaijan (“Azerbaijan”) respectfully submits this Opposition to Bifurcation of the Preliminary Objections submitted by the Republic of Armenia (“Armenia”) in its Memorial dated 12 June 2025 (the “Preliminary Objections” or “Objections”).

2. Armenia sets out six wide-ranging Preliminary Objections, each of which is not only meritless, but also based on mischaracterizations of the nature of Azerbaijan’s claims and the facts underlying the dispute. Four Objections, which relate in various ways to the scope of Armenia’s obligations under the Bern Convention, are intertwined with the merits and would not materially reduce the scope of the dispute even if granted. The remaining two Objections, which relate to Article 18 of the Convention, are on their face not sufficiently serious or substantial to justify the considerable delay and additional expense of a separate initial phase of this arbitration. Thus, hearing any of Armenia’s Objections in a preliminary phase would be neither fair nor efficient under the circumstances.

3. Armenia’s Objections are heavy on rhetoric but spend little time addressing the actual substance of Azerbaijan’s claims as presented. Armenia repeatedly, and sometimes inconsistently, mischaracterizes the scope of Azerbaijan’s claims in the Affected Area, arguing, *inter alia*, that “Azerbaijan’s only basis for its assertion that Armenia is bound by the Bern Convention in respect of alleged conduct occurring in the ‘Affected Area’ is its sweeping ‘effective control’ theory,” that “Azerbaijan does not claim that conduct in Armenian territory has transboundary effects in the ‘Affected Area,’” and that Azerbaijan’s claims are premised on finding that “Armenia was in fact an Occupying Power within the meaning of the law of armed conflict.”¹ Each of these assertions is wrong and clearly inconsistent with Azerbaijan’s actual case presented in its Notice of Arbitration and Statement of Claim.

4. Further, sections of Armenia’s Objections appear devoted to bombast, designed to obfuscate rather than illuminate the issues before the Tribunal. For example, Armenia begins its submission with a 10-page litany of attacks on Azerbaijan, in which Armenia makes a series of unfounded mischaracterizations about the history between the States since Armenia invaded Azerbaijan’s sovereign territory in 1991—only to then concede that the Tribunal “need not reach

¹ Armenia’s Memorial on Preliminary Objections, ¶¶ 135, 166–67, 202.

any of these issues” to decide Azerbaijan’s Bern Convention claims.² Armenia also suggests—in a footnote—that Azerbaijan’s claims are “unmeritorious, abusive, and offensive to such a degree that the Tribunal would be entirely justified to find these proceedings an abuse of process and dismiss them as inadmissible.”³ Armenia does not raise an abuse of process claim, and could not substantiate one, but rather appears content to cast the specter of abuse in the hopes that it will land. Armenia further asserts that the evidence presented by Azerbaijan, including that of its highly credentialed and independent international experts, is “fundamentally unreliable,” simply because Azerbaijan has submitted it.⁴ This type of inflammatory, unsupported, and undisciplined rhetoric does nothing to assist the Tribunal to fairly and efficiently conduct the proceedings and resolve the issues before it.

5. Contrary to Armenia’s attempts to distort the underlying facts, this case is not about Armenia’s decades-long occupation of the Affected Area or armed conflict between Armenia and Azerbaijan. It is about Armenia’s persistent failure to comply with its obligations under the Bern Convention in all areas under its jurisdiction and control, and the widespread harms to habitats and species in Azerbaijan that resulted from that failure. Azerbaijan’s claims thus involve Armenia’s conduct in its own sovereign territory that has resulted in transboundary harm to Azerbaijan’s territory, as well as its conduct in the Affected Area, where Armenia exercised jurisdiction and control in the relevant time period. In attempting to evade that basic point, Armenia demonstrates the extent to which its objections relating to the scope of the Convention are intertwined with issues that the Tribunal will need to assess on the merits.

6. The majority of Armenia’s Objections are not exclusively preliminary in character but create a serious risk that the Tribunal will be forced to prejudge the merits of the Parties’ claims and defenses, and the remaining Article 18 Objections are neither serious nor substantial and thus cannot alone justify the cost and delay of a preliminary phase. Accordingly, both fairness and efficiency warrant joining all of Armenia’s Objections to the merits to be considered with the benefit of the full record. These considerations are particularly important given that this is a complex case of first impression, involving both novel issues of interpretation of the Bern

² *Id.*, ¶ 28.

³ *Id.*, ¶ 4, n. 3.

⁴ *Id.*, ¶ 26.

Convention and detailed scientific and expert evidence relating to environmental harm occurring over decades.

7. Moreover, even if some subset of Armenia’s Objections could justify bifurcation, the overarching principles that have guided tribunals in bifurcation determinations are fairness and efficiency of the process as a whole. Here, it is fairer and more efficient to deal with *all* of Armenia’s Objections together with the merits, and to avoid further delay. This is especially so in light of Armenia’s statements that it plans to advance counterclaims and potentially additional jurisdictional objections in its counter-memorial,⁵ leaving those issues to be dealt with in the merits phase regardless.

8. Azerbaijan’s submissions are organized as follows.

9. **Section II** describes the standard governing bifurcation in this case under Article 14(4) of the Rules of Procedure.

10. **Section III** then explains why each of Armenia’s Objections is inappropriate for bifurcation when evaluated according to this standard:

(a) **Section III.A** addresses each of Armenia’s Objections to the scope of application of the Convention, namely, its Objections based on the so-called “extraterritorial” application of the Convention’s obligations (**III.A.1.i**), the purported lack of a *prima facie* case on attribution (**III.A.1.ii**), the alleged application of the Law of Armed Conflict (**III.A.2**), and relating to Armenia’s obligations to coordinate and cooperate under Articles 4(4) and 11 of the Convention (**III.A.3**). Each of these Objections is intertwined with the merits of Azerbaijan’s claims and not exclusively preliminary in character. These Objections also are not suitable for bifurcation since they would resolve only a subset of Azerbaijan’s claims, and further are not serious or substantial since they are based on mischaracterizations of Azerbaijan’s claims.

(b) **Section III.B** addresses Armenia’s two Objections relating to Article 18 of the Convention, namely relating to pursuing settlement before the Standing Committee (**III.B.1**) and negotiations (**III.B.2**). It would be neither fair nor efficient to bifurcate these Objections, because they are insufficiently serious or substantial to

⁵ *Id.*, ¶ 19. Azerbaijan reserves all rights should Armenia advance counterclaims.

warrant bifurcation, since both Objections are lacking in any legal support and unsupported by the very evidence on which Armenia relies.

11. **Section IV** concludes with Azerbaijan’s request for relief.

II. THE STANDARD FOR BIFURCATION

12. Article 14(4) of the Rules of Procedure, which governs bifurcation in this proceeding, provides that:

the Tribunal shall rule on any Preliminary Objection in a preliminary phase of the proceedings, unless the Tribunal determines, after inviting the views of the Parties, that such objection does not possess an exclusively preliminary character or otherwise shall only be ruled upon in conjunction with the merits.⁶

13. Article 14(4) reflects the general practice of international courts and tribunals, which have repeatedly affirmed that they have broad discretion to determine whether objections to jurisdiction and admissibility should be joined to the merits or heard in a preliminary phase, and that in exercising such discretion, considerations of fairness and efficiency are paramount.

14. *First*, Article 14(4) grants the Tribunal broad discretion to join objections to the merits. It states that the Tribunal may join an objection to the merits (*i*) if it determines the objection “does not possess an exclusively preliminary character,” or (*ii*) if the Tribunal “otherwise” concludes the objection should be joined to the merits—*i.e.*, for any other reason.⁷ Article 14(4) is accordingly broader than the standard set out in other inter-state cases where the relevant rule of procedure provides for bifurcation solely where an objection “does not possess an exclusively preliminary character.”⁸ The Tribunal will recall that while Armenia had proposed adopting such

⁶ Procedural Order No. 1, Rules of Procedure, Art. 14(4).

⁷ *Id.*

⁸ See, e.g., **AZL-0008**, *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation)*, PCA Case No. 2017-06, Rules of Procedure, 18 May 2017, Art. 10(4) and **AZL-0010**, *Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. Russia)*, PCA Case No. 2019-28, Rules of Procedure, 22 November 2019 Art. 11(1) (“The Arbitral Tribunal shall rule on any Preliminary Objection in a preliminary phase of the proceedings, unless the Arbitral Tribunal determines, after ascertaining the views of the Parties, that such Objection does not possess an exclusively preliminary character and should be ruled upon in conjunction with the merits.”); **AZL-0005**, *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Procedural Order No. 2 (implementing Rules of Procedure), 17 March 2014, Art. 20(3) (“The Arbitral Tribunal shall rule on any plea concerning its jurisdiction as a preliminary question, unless the Arbitral Tribunal determines, after seeking the views of the Parties, that the

limited language, the Tribunal specifically modified Armenia’s proposal to add “or otherwise.”⁹ As modified, Article 14(4) is consistent with other provisions of the Rules of Procedure, which grant the Tribunal discretion to conduct the arbitration “in such a manner as it considers appropriate.”¹⁰

15. *Second*, in exercising this broad discretion, overall considerations of fairness and efficiency are paramount. Tribunals in both inter-state and investor-state disputes have affirmed that these are the key principles governing whether bifurcation is appropriate,¹¹ and thus that tribunals considering bifurcation must weigh the “benefits of procedural fairness and efficiency against the risks of delay, wasted expense and prejudice.”¹² Consistent with that jurisprudence, the Tribunal similarly stressed “the need . . . to conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the Parties’ dispute.”¹³

objection to its jurisdiction does not possess an exclusively preliminary character, in which case it shall rule on such plea in conjunction with the merits.”); **AZL-0258**, *The South China Sea Arbitration (The Republic of Philippines v. The People’s Republic of China)*, PCA Case No. 2013-19, Rules of Procedure, 27 August 2013, Art. 20(3) (“The Arbitral Tribunal shall rule on any plea concerning its jurisdiction as a preliminary question, unless the Arbitral Tribunal determines, after seeking the views of the Parties, that the objection to its jurisdiction does not possess an exclusively preliminary character, in which case it shall rule on such a plea in conjunction with the merits.”).

⁹ See Email from Catherine Amirfar, Debevoise & Plimpton LLP, to Bryce Williams, Permanent Court of Arbitration, dated 29 November 2023; Letter from Dr. Yegishe Kirakosyan, Former Agent of the Republic of Armenia, to Bryce Williams, Permanent Court of Arbitration, dated 22 December 2023; Letter from Catherine Amirfar, Debevoise & Plimpton LLP, to Bryce Williams, Permanent Court of Arbitration, dated 22 December 2023; Letter from the Tribunal to the Parties, dated 15 February 2024 (attaching revised Rules of Procedure “reflecting the Tribunal’s intended disposition of the procedural issues where the Parties have been unable to reach agreement,” which includes the final language of Article 14(4)).

¹⁰ See, e.g., Procedural Order No. 1, Rules of Procedure, Art. 9 (“[t]he Tribunal may conduct the arbitration in such a manner as it considers appropriate”). See also **AZL-0279**, *Energy Charter Treaty Arbitration (The Republic of Azerbaijan v. The Republic of Armenia)*, PCA Case No. 2023-65, Decision on Bifurcation, 13 February 2025 (“**Energy Charter Treaty Arbitration**”), ¶ 81 (The Tribunal “is free to consider whatever circumstances it considers appropriate in determining how justice would best be served in a given case.”).

¹¹ See, e.g., **AZL-0261**, *The South China Sea Arbitration (The Republic of Philippines v. The People’s Republic of China)*, PCA Case No. 2013-19, Procedural Order No. 4, 21 April 2015, ¶ 2.1 (tribunal affirming in the context of bifurcation that it is “conscious of its duty to ensure the fair and efficient administration of justice.”); **AZL-0259**, *Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Decision on Bifurcation, 21 January 2015 (“**Gavrilović v. Croatia**”), ¶ 66 (rejecting bifurcation and noting that the tribunal “must have regard to the fairness of the procedure to be invoked and the efficiency of the Tribunal’s proceeding.”); **AZL-0264**, *Glencore Finance (Bermuda) Ltd. v. Plurinational State of Bolivia*, PCA Case No. 2016-39, UNCITRAL, Procedural Order No. 2, 31 January 2018 (“**Glencore v. Bolivia**”), ¶ 56 (“the overarching principle [applicable to procedural decisions regarding preliminary objections] is the fairness and efficiency of this process as a whole.”).

¹² **AZL-0257**, *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Procedural Order No. 3 (Decision on Bifurcation and Non-Bifurcation), 25 January 2013, ¶ 10.

¹³ Procedural Order No. 2 (Procedural Timetable), ¶ 1.1.

16. *Third*, international courts and tribunals have consistently found certain factors to be relevant in considering whether an objection should be joined to the merits, reflecting the fairness and efficiency concerns that underlie the inquiry.

17. When an objection is not “*exclusively* preliminary in character,”¹⁴ tribunals have repeatedly recognized that bifurcation is inappropriate, as Article 14(4) explicitly reflects. Tribunals have found this standard met when an objection is “intertwined with” or “intimately linked to” the merits—for example, because “the facts and arguments” relevant to the preliminary objection are “in significant measure the same as the facts and arguments on which the merits of the case depend.”¹⁵ Similarly, the International Court of Justice (“the Court”), although differently situated because cases before it have a mandatory preliminary phase if objections are made, joins to the merits phase objections that are not “exclusively preliminary.”¹⁶ The Court has described such objections as “contain[ing] both preliminary aspects and other aspects relating to the merits,”¹⁷ or involving issues that are “interconnected” or “interwoven” with the merits.¹⁸ The

¹⁴ See Armenia’s Memorial on Preliminary Objections, ¶ 28 (emphasis added).

¹⁵ See, e.g., **AZL-0249**, *Delimitation of Maritime Boundary (Guyana v. Suriname)*, PCA Case No. 2004-04, Procedural Order No. 2, 18 July 2005 (“**Delimitation of Maritime Boundary**”), ¶ 2 (“because the facts and arguments in support of Suriname’s submissions in its Preliminary Objections are in significant measure the same as the facts and arguments on which the merits of the case depend, and the objections are not of an exclusively preliminary character, the Tribunal does not consider it appropriate to rule on the Preliminary Objections at this stage”); **AZL-0245**, *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic*, Ad hoc Arbitration, Decision, 14 March 1978, ¶ 16 (“The submissions of the Parties have only to be stated for it to become apparent that the issue of admissibility raised by the present objection is intimately linked to the merits of the claim which is the subject of the United Kingdom’s Application. . . . It follows, in the opinion of the Court of Arbitration, that the present objection does not, in the light of the circumstances of this case, possess an exclusively preliminary character; and that it must accordingly be examined within the framework of the merits.”).

¹⁶ Procedural Order No. 1, Rules of Procedure, Art. 14(4).

¹⁷ **AZL-0252**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment on Preliminary Objections, I.C.J. Reports 2008 (“**Croatia v. Serbia, Preliminary Objections**”), ¶ 128 (citing **ARL-0023**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment on Merits, I.C.J. Reports 1986, ¶ 41).

¹⁸ See, e.g., **AZL-0243**, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment on Preliminary Objections, I.C.J. Reports 1964, p. 44 (“The third Objection involves a number of closely interwoven strands of mixed law, fact and status, to a degree such that the Court could not pronounce upon it at this stage in full confidence that it was in possession of all the elements that might have a bearing on its decision. . . . The Court will therefore content itself by saying that it decides to join this objection to the merits . . . As regards the fourth Preliminary Objection, . . . [i]t is inextricably interwoven with the issues of denial of justice which constitute the major part of the merits.”); **AZL-0247**, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*, Judgment on Preliminary Objections, I.C.J. Reports 1998, ¶¶ 49–50 (“If the Court were to rule on that objection, it would therefore inevitably be ruling on the merits . . . The Court concludes

Court has found that objections are not exclusively preliminary where, for example, the preliminary objection “involve[s] enquiry into disputed matters of fact” and “would thus be impossible to determine the questions raised by the objection without to some degree determining issues properly pertaining to the merits.”¹⁹ Where there is a “considerable potential for overlap, and the issues appear . . . to be intertwined with the merits,” fairness concerns make bifurcation inappropriate, since “addressing [the objection] could touch on and prejudice the merits of the dispute.”²⁰ Further, where an objection is not “exclusively preliminary” due to overlapping arguments or issues of fact or law, it is more efficient to hear the objection alongside the merits.²¹

18. Tribunals also typically deny bifurcation if upholding the objection would not result in a material reduction of the scope of the proceedings.²² If an objection is not capable of disposing

from the foregoing that the objection . . . does not have ‘an exclusively preliminary character’ . . . the Court will be able to consider this objection when it reaches the merits of the case.”); **AZL-0241**, *Pajzs, Csáky, Esterházy*, Order on Preliminary Objection, PCIJ Series A/B. No 66, 23 May 1936, p. 9 (“Whereas the questions raised by the first of these objections and those arising out of the appeal as set forth in the Hungarian Government’s submissions on the merits are too intimately related and too closely interconnected for the Court to be able to adjudicate upon the former without prejudging the latter . . . Whereas both objections should therefore be joined to the merits, so that the Court will give its decision upon them and, if need be, upon the merits in one and the same judgment”).

¹⁹ **AZL-0252**, *Croatia v. Serbia*, Preliminary Objections, ¶ 127. See also **ARL-0023**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, I.C.J. Reports 1986, ¶ 41 (“especially when the character of the objections is not exclusively preliminary because they contain both preliminary aspects and other aspects relating to the merits, they will have to be dealt with at the stage of the merits.”); **AZL-0251**, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment on Preliminary Objections, I.C.J. Reports 2007, ¶ 51 (“In principle, a party raising preliminary objections is entitled to have these objections answered at the preliminary stage of the proceedings unless the Court does not have before it all facts necessary to decide the questions raised or if answering the preliminary objection would determine the dispute, or some elements thereof, on the merits.”).

²⁰ See, e.g., **AZL-0263**, *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 2 (Decision on Respondent’s Request for Bifurcation), 14 December 2017 (“**Global Telecom v. Canada**”), ¶ 109 (“While the factual questions raised by these jurisdictional and admissibility objections may to a certain extent be narrower than the facts relevant to the merits of the case, there is nevertheless a considerable potential for overlap, and the issues appear to the Tribunal to be intertwined with the merits. This gives rise to the risk that the Tribunal may be required to decide on issues of fact prematurely.”); **AZL-0264**, *Glencore v. Bolivia*, ¶ 53 (“even accepting that the objection is serious and substantial, the Tribunal believes that the facts related to this objection are too intertwined with the merits of the case and addressing this claim could touch on and prejudice the merits of the dispute.”).

²¹ **AZL-0264**, *Glencore v. Bolivia*, ¶ 56 (“[T]he Tribunal recalls that the overarching principle is the fairness and efficiency of this process as a whole. With this principle in mind, the Tribunal considers that it would be more efficient to deal with all preliminary objections together with liability in a first phase.”).

²² **AZL-0279**, *Energy Charter Treaty Arbitration*, ¶ 83 (agreeing that “whether the objection has the potential to dispose of the entire case, or at least to result in a material reduction of scope in the next phase of proceedings” is a “relevant consideration” to bifurcation). See also **AZL-0254**, *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Preliminary Objections to Jurisdiction Submitted by the United Kingdom, 31 October 2012, ¶ 6.6 (“A further important factor must be whether determination of the

of all or at least an essential part of the claims, it is unlikely to sufficiently reduce the cost and complexity of the merits phase to justify the added cost and delay of a preliminary phase.²³ Tribunals have thus found that where the objection presented does not “eliminate” the applicant’s other “bas[e]s for its claim[s],” bifurcation is less likely to be warranted.²⁴ Further, bifurcation should be denied where “even if the Tribunal were to grant respondent’s objection, the cost and time of that proceeding would not be justified in terms of the reduction in costs at the subsequent phase of [the] proceedings.”²⁵

19. Tribunals also consider whether the objections are *prima facie* sufficiently serious and substantial to warrant bifurcation.²⁶ When an objection is not sufficiently serious or substantial, “bifurcating its consideration would be counterproductive in terms of efficiency, as the arbitration is likely to continue after the preliminary phase.”²⁷ While ‘frivolous’ objections plainly do not meet the required threshold, that does “not mean that every jurisdictional objection that surpasses that low threshold presumptively warrants bifurcation.”²⁸ An objection may be non-frivolous but still not be “sufficiently serious and substantial as to justify bifurcation.”²⁹ Put another way, “between frivolous and serious there may be degrees of seriousness that do not carry

given objection or objections in favour of the respondent State would, if upheld by the court or tribunal, either dispose of the case entirely and thus eliminate the need to proceed to the merits, or at least significantly reduce the scope of the case.”).

²³ See **AZL-0263**, *Global Telecom v. Canada*, ¶ 109 (“the inevitable cost of multiple hearings therefore needs to actually produce real opportunities for gains in efficiency in order for bifurcation to be warranted, especially where the objections to be considered in the preliminary phase end up not to be dispositive of the case.”).

²⁴ **AZL-0248**, *Glamis Gold Ltd. v. United States of America*, UNCITRAL, Procedural Order No. 2 (Revised), 31 May 2005, ¶ 21.

²⁵ *Id.* See also **AZL-0263**, *Global Telecom. v Canada*, ¶ 109.

²⁶ See, e.g., **AZL-0264**, *Glencore v. Bolivia*, ¶¶ 42, 50–51 (the objection must be “sufficiently serious and substantial as to justify bifurcation.”). See also **AZL-0256**, *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Bifurcation Hearing Transcript, 11 January 2013, p. 11, lines 18–21 (UK: “we invited Mauritius to recognize that our Preliminary Objections were serious and substantial, and were manifestly well suited to being addressed as a preliminary matter.”).

²⁷ See **AZL-0278**, *Access Business Group LLC v. United Mexican States*, ICSID Case No. ARB/23/15, Procedural Order No. 3 (Bifurcation), 29 August 2024, ¶ 36.

²⁸ **AZL-0269**, *Gran Colombia Gold Corp. v. Republic of Colombia*, ICSID Case No. ARB/18/23, Procedural Order No. 3 (Decision on the Respondent’s Request for Bifurcation), 17 January 2020, ¶ 27.

²⁹ **AZL-0264**, *Glencore v. Bolivia*, ¶¶ 42, 50–51 (an objection may be found to be non-frivolous but not “sufficiently serious and substantial to justify bifurcation.”).

the weight to justify bifurcation.”³⁰ Tribunals have found, for example, that an objection with “no reasonable chance of success” or that is “clearly without merit” is not serious, and therefore unsuitable for bifurcation.³¹

20. *Finally*, Tribunals have also found that where, based on the considerations above, the majority of preliminary objections will be joined to the merits, overall considerations of fairness and efficiency may dictate joining *all* preliminary objections to the merits, even if a specific objection might otherwise warrant bifurcation if considered in isolation.³²

III. THE TRIBUNAL SHOULD JOIN ARMENIA’S PRELIMINARY OBJECTIONS TO THE MERITS

21. All of Armenia’s Preliminary Objections should be joined to the merits. Four of Armenia’s Objections relate to the scope of the Bern Convention and of Armenia’s obligations thereunder: (I) its objection in relation to the so-called “extraterritorial” application of the

³⁰ **AZL-0271**, *Red Eagle Exploration Limited v. Republic of Colombia*, ICSID Case No. ARB/18/12, Decision on Bifurcation, 3 August 2020 (“**Red Eagle v. Colombia**”), ¶ 42. *See also* **AZL-0265**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2 (Decision on Bifurcation), 28 June 2018, ¶ 51 (“[F]or an objection to be held to be ‘serious and substantial’ a higher threshold must be applied than merely requiring that the objection is not frivolous or vexatious.”); **AZL-0266**, *Mr. Edmond Khudyan and Arin Capital & Investment Corp. v. Republic of Armenia*, ICSID Case No. ARB/17/36, Procedural Order No. 3 (Decision on the Respondent’s Request for Bifurcation), 5 December 2018 (“**Edmond Khudyan v. Armenia**”), ¶ 41 (“This Tribunal finds that mere assertions are not sufficient to satisfy the required threshold and that, in order for this factor to weigh in favor of bifurcation, the Respondent’s jurisdictional objections must be supported by concrete factual allegations and the Respondent must make a prima facie showing of their potential success on their merits.”).

³¹ *See, e.g.*, **AZL-0276**, *RTI Rotalin Gas Trading AG and Rotalin Gaz Trading S.R.L. v. Republic of Moldova*, ICSID Case No. ARB(AF)/22/4, Procedural Order No. 2, 11 October 2023 (“**Rotalin v. Moldova**”), ¶ 41 (rejecting bifurcation and explaining that “the first criterion to consider in determining whether bifurcation is warranted is whether the Objections are *prima facie* serious. The rationale behind this criterion is to ensure that bifurcation is not ordered to consider objections that have no reasonable chance of success or are otherwise frivolous, vexatious or clearly without merit; bifurcation in such circumstances would almost certainly result in a loss rather than a gain of procedural efficiency.”).

³² *See, e.g.*, **AZL-0264**, *Glencore v. Bolivia*, ¶ 56 (“the Tribunal recalls that the overarching principle is the fairness and efficiency of this process as a whole. With this principle in mind, the Tribunal considers that it would be more efficient to deal with all preliminary objections together with liability in a first phase, and leave issues of damages, if any, for determination in a second phase. This approach seems to the Tribunal more efficient in terms of time and costs than the alternative, which is to bifurcate just one issue but leave all other objections to a merits phase.”); **AZL-0263**, *Global Telecom v. Canada*, ¶ 110 (declining to bifurcate even where, had the respondent succeeded “on one or more of its non-dispositive objections in a preliminary jurisdictional phase, the subsequent merits phase would be somewhat reduced in scope [but the Tribunal] is not convinced that this would warrant the additional costs and time delays associated with a complete two-phase proceeding”).

Convention,³³ (2) the objection based on the purported lack of “attribution,”³⁴ (3) the objection based on the law of occupation,³⁵ and (4) the objection regarding Armenia’s obligations to coordinate and cooperate under Articles 4(4) and 11.³⁶ None of these Objections is exclusively preliminary in character. None can be decided without delving into, and risking prejudging, the merits of the dispute, and thus they cannot be resolved in a preliminary phase. Moreover, none of these Objections would dispose of the entire case or meaningfully reduce Azerbaijan’s claims, or the issues in dispute. Even if Armenia’s two remaining Objections, both arising under Article 18, could address the entirety of Azerbaijan’s claims, they are not on their own sufficiently serious or substantial to warrant bifurcation. Accordingly, both fairness and efficiency support joining all of Armenia’s Preliminary Objections to the merits phase of these proceedings.

A. ARMENIA’S VARIOUS OBJECTIONS CONCERNING THE SCOPE OF THE BERN CONVENTION

1. Armenia’s Objections in Relation to the Application of Articles 2, 3, 4, 6, and 7 in the Affected Area.

22. Armenia’s assertion that its obligations under the Bern Convention “do not apply . . . in respect of the alleged conduct in the ‘Affected Area’ because they are not extraterritorial obligations”³⁷ does not warrant bifurcation.

23. *First*, Armenia’s objection hinges on a mischaracterization of Azerbaijan’s claims and arguments. Azerbaijan’s claims do not assert or require broad extraterritorial application of the Bern Convention, but instead application of the Convention within Armenia’s own territory (in relation to transboundary harm) and other territory under Armenia’s jurisdiction and control (*i.e.*, the Affected Area). Azerbaijan’s Statement of Claim expressly states that “Armenia’s obligations under the Convention included obligations with respect to the Affected Area in three main respects”;³⁸ namely that: (*i*) Armenia was obliged “to observe and implement the Bern Convention obligations within the Affected Area” because it exercised “effective control and jurisdiction” over

³³ See Armenia’s Memorial on Preliminary Objections, § III.A.

³⁴ See *id.*, § V.

³⁵ See *id.*, § III.B.

³⁶ See *id.*, § IV.

³⁷ *Id.*, ¶ 116.

³⁸ Azerbaijan’s Statement of Claim, ¶ 159.

that area;³⁹ (ii) certain Bern Convention obligations required Armenia to “take affirmative steps to control the activities of persons or entities under its jurisdiction, control, or influence, that could result in harms to species and habitats . . . in the Affected Area”;⁴⁰ and (iii) Armenia was obliged to “observe the Bern Convention’s obligations with respect to conduct that occurs within Armenia but has a transboundary effect in Azerbaijan.”⁴¹ Armenia’s objection purports to address only the first of these three arguments, and in doing so, mischaracterizes it as a general question of the extraterritorial application of the Bern Convention, rather than the specific question of Armenia’s effective control and jurisdiction over the Affected Area and its obligations under the Convention as a result of control of that territory.

24. *Second*, Armenia’s objection does not possess an exclusively preliminary character, but is inextricably linked to the merits. Armenia argues that “even if (*quod non*) Armenia could be characterized as having ‘occupied’” the Affected Area, “the obligations which Azerbaijan invokes do not bind Armenia in respect of alleged conduct occurring in the ‘Affected Area.’”⁴² Armenia’s objection thus directly concerns the substantive scope and content of each of “Articles 2, 3, 4, 6, and 7,” and the extent to which each of those Articles confers obligations on Armenia in relation to “conduct occurring in the ‘Affected Area’”⁴³—exactly the determination that the Tribunal will need to make in relation to Azerbaijan’s relevant claims on the merits.

25. International tribunals have repeatedly found that similar objections requiring in-depth assessments of the scope and content of treaty obligations and related facts do not possess an exclusively preliminary character and should be joined to the merits. For example, in *Guyana v. Suriname*, the tribunal rejected Suriname’s request to bifurcate an objection related to whether the dispute fell within the scope of the United Nations Convention on the Law of the Sea (“UNCLOS”)’s dispute resolution provision, finding that:

because the facts and arguments in support of Suriname’s submissions in its Preliminary Objections are in significant measure the same as the facts and arguments on which the merits of the case depend, and the objections are not of an exclusively preliminary

³⁹ *Id.*, ¶ 160.

⁴⁰ *Id.*, ¶ 161. *See also, e.g., id.*, ¶¶ 153, 161, 245, 326, 342.

⁴¹ *Id.*, ¶ 162. *See also, e.g., id.*, ¶¶ 75–78, 109–17, 162.

⁴² Armenia’s Memorial on Preliminary Objections, ¶ 120.

⁴³ *Id.*

character, the Tribunal does not consider it appropriate to rule on the Preliminary Objections at this stage.⁴⁴

26. Similarly, in the *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait*, although the tribunal initially bifurcated Russia’s jurisdictional objection that the Sea of Azov and the Kerch Strait are “internal waters” not regulated by UNCLOS, it subsequently found that the objection “d[id] not possess an exclusively preliminary character” and reserved it for the merits.⁴⁵ In particular, the tribunal found that the objection was “interwoven with the merits of the present dispute” since it could not be “adequately addressed without touching upon the questions of the merits, which [the tribunal] should not do at this stage of the proceedings.”⁴⁶

27. The Court has similarly held that objections relating to the scope of specific treaty obligations should be joined to the merits. For example, in *Right of Passage over Indian Territory (Portugal v. India)*, the Court found that India’s objection to its jurisdiction based on a treaty reservation would require it to consider issues related to the scope of the reservation that overlapped with the merits, including the parties’ practice and the legal relevance of such practice to interpretation.⁴⁷ It thus found that it could not rule on the objection “without prejudging the merits,” and joined it to the merits phase.⁴⁸

28. Likewise, in the pending case between the Parties under the Energy Charter Treaty (the “ECT Arbitration”), the tribunal deferred to the merits Armenia’s objections “that the conduct Azerbaijan alleges is not capable of violating” Articles 18 and 7 of the Energy Charter Treaty, reasoning that:

⁴⁴ **AZL-0249**, *Delimitation of Maritime Boundary*, ¶ 2.

⁴⁵ **ARL-0080**, *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation)*, Award Concerning the Preliminary Objections of the Russian Federation, 21 February 2020, ¶¶ 296–97.

⁴⁶ *Id.*, ¶ 293.

⁴⁷ **AZL-0242**, *Right of Passage over Indian Territory (Portugal v. India)*, Judgment on Preliminary Objections, I.C.J. Reports 1957, pp. 28–29.

⁴⁸ *Id.*, p. 29. See also **AZL-0267**, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Judgment on Preliminary Objections, I.C.J. Reports 2019, ¶ 97 (“In the present case, the Court takes the view that it does not have before it all the facts necessary to determine whether Bank Markazi was carrying out, at the relevant time, activities of the nature of those which permit characterization as a ‘company’ within the meaning of the Treaty of Amity . . . Since those elements are largely of a factual nature and are, moreover, closely linked to the merits of the case, the Court considers that it will be able to rule on the third objection only after the Parties have presented their arguments in the following stage of the proceedings”).

These objections necessarily would require the Tribunal to interpret the *substantive content* of the Articles, and then apply that content to a range of *specific conduct* alleged. While in principle this analysis could be undertaken on a *prima facie* basis, on the basis of pleadings rather than fact-finding, the Tribunal is not persuaded that such a distinction would be straightforward in the circumstances of this case. Unless the briefing could be boiled down to abstract principles –*i.e.*, “do the obligations apply in times of armed conflict?”—it is more likely that the Tribunal would be drawn into nuanced debates about the actual character of the conduct alleged, and the degree to which those allegations are (or are not) supported by persuasive evidence.⁴⁹

29. Similarly here, the Tribunal cannot rule on Armenia’s objection without addressing issues that relate to the merits of Azerbaijan’s claims. For example, even to answer an abstract legal question of whether each of Articles 2, 3, 4, 6, and 7 could apply to all areas under a Contracting Party’s jurisdiction and control, the scope and content of each of these obligations would need to be analyzed, taking into account the text of the Convention, its object and purpose, subsequent agreement and practice, including as reflected in the work of the Standing Committee, and the negotiating history of the Convention. In addition, to determine whether Armenia’s obligations under Articles 2, 3, 4, 6 and 7 applied in the Affected Area, the Tribunal would need to consider the *nature* of each obligation and whether it is applicable based on Armenia’s jurisdiction and control over the Affected Area, including through its Installed Regime. As part of that analysis, the Tribunal would need to consider the question of Armenia’s exercise of effective control over the Affected Area. Each of these questions involves points contested by the parties and relies on evidence, arguments, and issues that form part of the merits of the dispute, and which should be decided with the benefit of the full record. Bifurcation would likely result in pre-judgment of these issues and should be denied.

30. *Third*, Armenia’s objection should also not be bifurcated because, even if successful, it would not result in a material reduction in the scope and complexity of the proceeding. Armenia’s argument that its “extraterritorial” objection would dispose of Azerbaijan’s claims under Articles 2, 3, 4, 6, and 7⁵⁰ is incorrect, since it addresses only one of the three legal

⁴⁹ **AZL-0279**, *Energy Charter Treaty Arbitration*, ¶ 88.

⁵⁰ *Id.*, ¶ 30 (“Section A of Chapter III shows that the Tribunal lacks jurisdiction over Azerbaijan’s claims under Articles 2, 3, 4, 6, and 7 because the obligations Azerbaijan invokes under those articles do not apply to Armenia in respect of alleged conduct occurring in the ‘Affected Area.’”).

bases for Azerbaijan’s claims that Armenia’s obligations under the Convention included obligations in the Affected Area, as discussed above. Armenia only briefly acknowledges its obligations in respect of persons or entities under its jurisdiction, control, or influence, but incorrectly conflates these obligations with those arising out of its effective control of the Affected Area.⁵¹ Armenia then inexplicably states that “[t]o be clear, Azerbaijan does not claim that conduct in Armenian territory has transboundary effects in the ‘Affected Area,’”⁵² notwithstanding the fact that this is exactly what Azerbaijan claims, as its Statement of Claim makes abundantly clear.⁵³ Azerbaijan dedicates an entire section of its Statement of Claim to describing “Ongoing transboundary pollution of the Okhchuchay River”⁵⁴ and further explains that such transboundary harm constitutes a violation of each of Articles 2, 3, 4, 6, and 7.⁵⁵ Thus, contrary to Armenia’s argument, its objection would not dispose of Azerbaijan’s claims under Articles 2, 3, 4, 6, and 7 even if successful, and further would not affect Azerbaijan’s claims under Articles 4(4) and 11, as even Armenia acknowledges.⁵⁶

31. *Finally*, while Azerbaijan will respond to the substance of Armenia’s argument at the appropriate stage, the fact that Armenia’s objection fails to address Azerbaijan’s principal arguments also renders it insufficiently serious or substantial to warrant bifurcation. Armenia’s insistence that the relevant question is one of broad extraterritorial application means that it devotes its submission to attacking a strawman, arguing that Azerbaijan’s interpretation of the Convention would “impose an impossible obligation on Contracting Parties . . . to be responsible for wild flora and fauna *everywhere*”⁵⁷ and would “give license to States to extend jurisdiction

⁵¹ Armenia’s Memorial on Preliminary Objections, ¶ 167.

⁵² Armenia’s Memorial on Preliminary Objections, ¶ 167. *But see id.*, ¶ 3 (“According to Azerbaijan, Armenia breached these provisions both by virtue of its purported conduct within the so-called ‘Affected Area,’ *i.e.* Nagorno-Karabakh and surrounding districts (the ‘Affected Area’ Claims), as well as through alleged conduct in Armenia’s territory with transboundary effect.”). *See also id.*, ¶¶ 207, 218, 225, 227 (referring to Azerbaijan’s claims in respect of the Okhchuchay River).

⁵³ *See* Azerbaijan’s Statement of Claim, ¶¶ 162, 165, 193, 201, 205, 208, 211–12, 226, 233, 241–42, 274, 282, 288, 290, 310–11, 317, 332, 336, 347, 350; Armenia’s Memorial on Preliminary Objections, ¶ 167 (quoting from Azerbaijan’s Statement of Claim, ¶¶ 160-161).

⁵⁴ Azerbaijan’s Statement of Claim, § II.E.4.

⁵⁵ *Id.*, ¶¶ 201, 205, 226, 233, 282, 288, 290, 310–11, 332, 336, 347.

⁵⁶ Armenia’s Memorial on Preliminary Objections, § III.A (omitting any mention of Azerbaijan’s claims under Articles 4 and 11 of the Bern Convention in its argument regarding extraterritorial obligations).

⁵⁷ *Id.*, ¶ 123.

over wildlife in areas beyond national jurisdiction which is subject to other legal regimes.”⁵⁸ In so doing, Armenia seeks to sidestep Azerbaijan’s actual argument that the Convention applies “to all areas within the *effective control* of a Contracting Party,”⁵⁹ and as discussed above,⁶⁰ also ignores the other bases on which Azerbaijan argues Armenia had obligations in the Affected Area. This basic lack of connection to Azerbaijan’s claims is a further reason why Armenia’s objection should not be bifurcated.

2. Armenia’s Objection Based on a Purported *Prima Facie* Lack of Attribution of Conduct to Armenia.

32. Armenia’s objection that “Azerbaijan has failed to substantiate its assertion, even on a *prima facie* basis, that the conduct that allegedly occurred in the ‘Affected Area’ is attributable to Armenia”⁶¹ is similarly unsuitable for bifurcation.

33. *First*, Armenia’s objection does not possess an exclusively preliminary character. It is not just intertwined with the merits—it is itself a merits argument because it turns on an evaluation of the sufficiency and content of Azerbaijan’s evidence. Armenia argues that to rule on the question of attribution, “[t]he Tribunal must independently assess the relevance and probative value of the evidence proffered by the Parties” on the question of Armenia’s responsibility for acts and omissions in the Affected Area.⁶² Sticking the label of *prima facie* on this argument does not turn what is essentially a merits defense into a jurisdictional objection, let alone one suitable for consideration on a preliminary basis.

34. Tribunals that have considered similar objections have found that they are not appropriate for preliminary determination. This includes the tribunal in the ECT Arbitration, which considered a similar objection by Armenia concerning a purported lack of evidence on attribution. The ECT Arbitration tribunal found Armenia’s attribution objection “inappropriate for bifurcation, because [it] appear[s] to require a deeper understanding of the underlying facts, and of the relationship between various events and measures, than is suitable for determination in advance of

⁵⁸ *Id.*, ¶ 125.

⁵⁹ Azerbaijan’s Statement of Claim, ¶ 159 (emphasis added).

⁶⁰ *See supra* ¶¶ 23, 30.

⁶¹ Armenia’s Memorial on Preliminary Objections, ¶ 231.

⁶² *Id.*, ¶ 236.

the merits phase,” including specifically “a deeper understanding not only of the ‘Nagorno-Karabakh Authorities’ but also of the basis on which they acted on various occasions.”⁶³ Similarly, in *Application of the Genocide Convention (Croatia v. Serbia)*, the Court concluded that Serbia’s objection regarding the temporal scope of the Convention, which included an admissibility objection relating to the attribution of certain conduct to Serbia if found to be in scope, “does not possess, in the circumstances of the case, an exclusively preliminary character.”⁶⁴

35. Here too, assessing Armenia’s objection that Azerbaijan has not “substantiated”⁶⁵ its case for the attribution of relevant conduct to Armenia “does not possess . . . an exclusively preliminary character” because it requires evaluation of the very evidence and issues relevant to the merits, as discussed above.⁶⁶ As the ECT Arbitration tribunal found, this inquiry is best done at the merits phase and with the benefit of a full record.

36. *Second*, Armenia’s objection would not meaningfully reduce the scope of Azerbaijan’s claims. As discussed above, this is a key factor tribunals consider in exercising their discretion to deny bifurcation when appropriate.⁶⁷

37. The crux of Armenia’s objection is that Azerbaijan has not “establish[ed] that the conduct of the Nagorno-Karabakh Authorities in the so-called ‘Affected Area’ is attributable to Armenia by any standard.”⁶⁸ Yet as discussed above, Azerbaijan argues that by virtue of its effective control of the Affected Area, Armenia itself had *affirmative* obligations under Articles 2, 3, 4, 6, and 7 of the Convention—and that Armenia’s failure to meet those obligations is a breach

⁶³ **AZL-0279**, *Energy Charter Treaty Arbitration*, ¶ 89.

⁶⁴ **AZL-0252**, *Croatia v. Serbia*, Preliminary Objections, ¶ 130; *id.* ¶ 129 (noting that “[t]he second issue, . . . involving questions of attribution, concerns the consequences to be drawn with regard to the responsibility of the FRY for those same facts [*i.e.*, those relevant to determining the temporal scope of obligations] under the general rules of State responsibility. In order to be in a position to make any findings on each of these issues, the Court will need to have more elements before it.”) *See also* **AZL-0270**, *The Carlyle Group L.P., Carlyle Investment Management L.L.C., Carlyle Commodity Management L.L.C. and others v. Kingdom of Morocco*, ICSID Case No. ARB/18/29, Procedural Order No. 4 (Decision on Bifurcation), 20 January 2020, ¶ 79 (finding that, where resolving the Respondent’s objection “requires a full review of the facts,” the “more appropriate approach . . . would be to adjudicate it jointly with the merits of the case.”).

⁶⁵ *See* Armenia’s Memorial on Preliminary Objections, ¶ 231.

⁶⁶ *See* **AZL-0252**, *Croatia v. Serbia*, Preliminary Objections, ¶ 130.

⁶⁷ *See supra* ¶¶ 2–5, 18.

⁶⁸ Armenia’s Memorial on Preliminary Objections, ¶ 231.

attributable to Armenia under international law.⁶⁹ Contrary to Armenia’s suggestion,⁷⁰ this claim does not require attributing the conduct of the Installed Regime to Armenia: it is Armenia’s own conduct, and in particular its failures to comply with affirmative obligations, that are at issue. As the Court found in its Advisory Opinion in *Obligations of States in Respect of Climate Change*, where attribution involves “attaching to a State its own actions or omissions that constitute a failure to exercise regulatory due diligence,” the “question of attributing the conduct of private actors to a State does not arise,” but rather, a State “may be held responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures.”⁷¹ Moreover, Azerbaijan does not rely solely on a theory of Armenia’s effective control to establish Armenia’s obligations under the Bern Convention in respect of the Affected Area, as discussed above.⁷² Armenia also bears responsibility in relation to the Affected Area based on, among other things, its failure to take steps—including within Armenia—to control the activities of persons or entities under Armenia’s jurisdiction, control, or influence who were acting in the Affected Area.⁷³ In addition, Armenia’s objection, even if successful, would not dispose of Azerbaijan’s claims under Articles 2, 3, 4, 6, and 7 related to ongoing transboundary harm of the Okhchuchay River in the Affected Area, since such harms originate from Armenia’s acts and omissions *within Armenia*, and not to the attribution of conduct by the Installed Regime, nor Azerbaijan’s claims under Articles 4(4) and 11.⁷⁴

⁶⁹ See, e.g., Azerbaijan’s Statement of Claim, ¶ 12 (The Convention “obliges Contracting Parties to take affirmative steps to implement and enforce measures to obtain the Convention’s conservation goals within all areas under their jurisdiction and control.”); *id.*, ¶ 20 (The obligations under Articles 2, 3, 4, 6, 7, and 11 of the Bern Convention “reflect binding and affirmative obligations on each of the Contracting Parties.”); *id.*, ¶¶ 140–41.

⁷⁰ See Armenia’s Memorial on Preliminary Objections, § V.

⁷¹ **AZL-0282**, *Obligations of States in Respect of Climate Change*, Advisory Opinion, International Court of Justice (23 July 2025), ¶ 428. See also Azerbaijan’s Statement of Claim, ¶ 355 (“Armenia bears responsibility for the environmental harms in the Affected Area that resulted from the acts and omission . . . which are attributable to Armenia under international law. These include Armenia’s failures to observe its affirmative obligations set out under Articles 2, 3, 4, 6 and 7 to implement and enforce the Convention’s protective framework in the Affected Area from 1 August 2008 until the end of its occupation in 2020. . . Armenia’s international responsibility is also engaged by its failure to exercise due diligence in taking all necessary measures to ensure the conservation and protection of species as required under these Articles of the Convention.”).

⁷² See *supra* ¶¶ 23, 30.

⁷³ Azerbaijan’s Statement of Claim, § V.

⁷⁴ *Id.*

38. *Finally*, Armenia’s argument that Azerbaijan’s claims should be dismissed at the jurisdictional stage for an alleged lack of evidence of attribution is not serious or substantial, since it disregards not only Azerbaijan’s principal argument that Armenia itself had affirmative obligations under the Convention due to its effective control of the territory, but also the evidence supporting that argument. While Armenia attempts to dismiss Azerbaijan’s arguments as a “mere citation to *Chiragov*” that is inapposite to the question of attribution,⁷⁵ Azerbaijan’s claims relate to the scope of Armenia’s affirmative obligations under the Convention in the Affected Area—and the European Court of Human Rights conclusion in *Chiragov* that Armenia had effective control of the Affected Area is centrally relevant.⁷⁶ Further, Azerbaijan has more than sufficiently pleaded a *prima facie* case on attribution on these principal claims, including by virtue of its reliance on *Chiragov*.⁷⁷ Azerbaijan’s Statement of Claim also includes evidence that Armenia blocked access to the Affected Area from multiple independent sources, including from the United Nations Educational, Scientific and Cultural Organization and other specialized United Nations agencies, the Organization for Security and Co-operation in Europe, and the Rapporteur of the Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly of the Council of Europe.⁷⁸ Armenia may dispute the scope of its affirmative obligations and the sufficiency of Azerbaijan’s evidence, but this is properly a merits issue. Armenia’s position that its Objection should be considered at a preliminary stage, and as a basis to deny jurisdiction, is not sufficiently serious and substantial to justify bifurcation.

⁷⁵ Armenia’s Memorial on Preliminary Objections, ¶ 231.

⁷⁶ See **AZL-0002**, *Chiragov and Others v. Armenia*, no. 13216/05, Judgment, 16 June 2015 (Eur. Ct. H.R.), Grand Chamber, ¶ 186.

⁷⁷ In addition to its ultimate conclusion that Armenia had effective control of the Affected Area, the European Court of Human Rights in *Chiragov* made detailed factual findings and considered extensive evidence regarding Armenia’s effective control of the Affected Area and reaffirmed those findings in multiple other cases. Azerbaijan’s Statement of Claim, ¶¶ 51–52; see also *id.*, ¶ 52 (“[T]he number of politicians who have assumed the highest offices in Armenia after previously holding similar positions in the ‘NKR’; the general political support given to the ‘NKR’ by Armenia; the ‘NKR’s’ political dependence on Armenia, including evidence that its residents have acquired Armenian passports for travel abroad; and Armenia’s substantial financial support to ‘NKR,’ including a loan that one year made up more than two-thirds of the ‘NKR’ budget.”) (internal citations omitted).

⁷⁸ See, e.g., Azerbaijan’s Statement of Claim, ¶¶ 53, 70.

3. Armenia's Objection That Its Obligations Under the Bern Convention Do Not Apply in the Context of Occupation.

39. Armenia's objection that Azerbaijan's claims fall outside the Tribunal's jurisdiction because they "concern Armenia's status as an Occupying Power in the 'Affected Area' and its alleged violations of obligations under the law of armed conflict as such" again mischaracterizes Azerbaijan's claims, and amounts to a theory of displacement that is not serious on its face.⁷⁹ Moreover, this objection is not "exclusively preliminary"⁸⁰ and would not significantly narrow Azerbaijan's claims or the issues in dispute.

40. *First*, Armenia's objection is not sufficiently serious or substantial to warrant bifurcation because its central premise is divorced from both Azerbaijan's actual claims and from the relevant law. Contrary to Armenia's arguments, Azerbaijan's claims are not based on whether Armenia is an "Occupying Power" for purposes of the Law of Armed Conflict ("LOAC"). Instead, Azerbaijan expressly confirms in its Statement of Claim that it:

does not seek to place Armenia's conduct in respect of the invasion at issue in this case and sets out only the facts and circumstances relevant to Armenia's violations of the Bern Convention, including Armenia's effective control over Azerbaijan's sovereign territory in the Affected Area in the relevant period from 1 August 2008 to at least late 2020.⁸¹

41. Azerbaijan's submissions bear this out: as both Azerbaijan's Notice of Arbitration and Statement of Claim make clear, Azerbaijan's claims are based exclusively on the Bern Convention, namely on Armenia's violations of Articles 2, 3, 4(1), 4(2), 4(3), 4(4), 6, 7, and 11, and Azerbaijan seeks relief solely on those bases.⁸² At no point in its submissions does Azerbaijan rely upon or even cite to the law of occupation or armed conflict. Further, Azerbaijan's claims are limited to Armenia's conduct from 2008 onwards—*i.e.*, from the date Armenia acceded to its obligations under the Bern Convention—even though Armenia's occupation and control of the

⁷⁹ Armenia's Memorial on Preliminary Objections, ¶ 180.

⁸⁰ *See supra* ¶¶ 25–29.

⁸¹ Azerbaijan's Statement of Claim, ¶ 49.

⁸² Armenia's Memorial on Preliminary Objections, ¶ 179; Azerbaijan's Notice of Arbitration, ¶ 106; Azerbaijan's Statement of Claim, ¶¶ 367–68, 417.

Affected Area began much earlier.⁸³ Azerbaijan’s claims also expressly *exclude* environmental harms that resulted from the Second Garabagh War in 2020, even though the Convention was in force at that time.⁸⁴

42. Armenia’s focus in its Objection on a point of semantics—that Azerbaijan references Armenia’s “occupation” of the Affected Area—likewise is unavailing.⁸⁵ As is apparent from Azerbaijan’s submissions, this term is used descriptively—not, as Armenia argues, to advance legal claims or ask the Tribunal to adjudicate questions under LOAC.⁸⁶ Indeed, the United Nations Security Council, the General Assembly, and other international bodies have also repeatedly and consistently described Armenia’s conduct in Azerbaijan’s territory since the early 1990s as an “occupation.”⁸⁷ Such use of the term simply does not and cannot deprive the Tribunal of jurisdiction over Azerbaijan’s claims under the Convention.

⁸³ See, e.g., Azerbaijan’s Statement of Claim, ¶ 1 (referencing “Armenia’s failure to implement the Bern Convention’s protective framework and comply with its obligations in those regions *from 1 August 2008 (when the Convention entered into force for Armenia) to late 2020*”) (emphasis added); *id.*, ¶ 8 (“By both its actions and failures to act, Armenia violated multiple Convention obligations aimed at conserving and protecting species and habitats during the period of its effective control between 1 August 2008 and the end of its occupation in 2020. Moreover, from 1 August 2008 until today, Armenia continues to violate multiple obligations under the Convention by permitting transboundary pollution that has caused the Okhchuchay freshwater ecosystem to collapse.”). See also Armenia’s Memorial on Preliminary Objections, ¶ 24 (acknowledging that “Azerbaijan’s case appears not to be directed at any conduct of Armenia that occurred prior to 2008”).

⁸⁴ See, e.g., **AZER-004**, Expert Report of Robert Unsworth, dated 12 February 2025, ¶ 157(b) (explaining that the calculated harm to forests “does not include forest harm due to fires that occurred during the 2020 conflict period.”).

⁸⁵ See, e.g., Armenia’s Memorial on Preliminary Objections, ¶¶ 180, 188–89.

⁸⁶ See, e.g., Azerbaijan’s Statement of Claim, ¶ 25 (describing “steps taken by Azerbaijan to protect wild species and their habitats prior to Armenia’s illegal occupation”); ¶ 59 (noting that “[t]he full scale of the environmental devastation in the Affected Area during Armenia’s occupation began to come to light starting only in 2020”); ¶ 62 (referring to “activities that were ongoing during the period of Armenia’s occupation between 2008 and 2020.”). See generally Azerbaijan’s Statement of Claim, § V (advancing claims solely under the Bern Convention).

⁸⁷ See, e.g., **AZ-0008**, UN Security Council, Resolution No. 822, document S/RES/822 (30 April 1993) (demanding “withdrawal of all occupying forces from the Kalbadjar district and other recently occupied areas of Azerbaijan”); **AZ-0118**, UNESCO, *Report on the Implementation of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Two 1954 and 1999 Protocols: Report on the Activities from 1995 to 2004*, document CLT.2005/WS/6 (2005), ¶ 54 (noting that “agencies of the United Nations have not been able to enter these territories since their occupation by Armenian military forces.”); **AZ-0023**, OSCE Minsk Group, *Report of the OSCE Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (NK)* (16 March 2005), at 1 (“The mandate of the OSCE Fact-Finding Mission . . . was to visit the occupied territories surrounding Nagorno-Karabakh . . .”). See also **AZ-0025**, UN General Assembly, *The situation in the occupied territories of Azerbaijan*, document A/RES/60/285 (15 September 2006).

43. Further, even where a tribunal finds that a dispute is embedded in a broader political or military context, that fact does not oust the jurisdiction of the tribunal under the compromissory clause. In *Croatia v Serbia*, for example, the Court accepted that it had no power *per se* to rule on breaches of obligations outside of the Genocide Convention, yet held that this “does not prevent the Court from considering, in its reasoning, whether a violation of international humanitarian law or international human rights law has occurred to the extent that this is relevant for the Court’s determination of whether or not there has been a breach of an obligation under the Genocide Convention.”⁸⁸ The mere fact that LOAC may have a nexus with the broader dispute between the Parties does not convert the specific dispute submitted by Azerbaijan under the Bern Convention into one of exclusively LOAC, with the result of depriving the Tribunal of jurisdiction under the Convention.⁸⁹

44. Moreover, Armenia’s argument that the Tribunal should be deprived of jurisdiction because “[t]he real issue in dispute is . . . the legal question of Armenia’s purported status as an Occupying Power and its obligations in respect of the environment resulting from such status”⁹⁰ also applies the wrong legal standard. While Azerbaijan will respond to Armenia’s arguments in full at the appropriate stage, it notes Armenia’s proposed “real issue”⁹¹ test is inconsistent with the approach the Court has consistently applied to determine jurisdiction under the compromissory clause of a treaty, namely:

when the Court is seised on the basis of a treaty’s compromissory clause by a State invoking the international responsibility of another State party for the breach [...] it must be ascertained whether the actions or omissions of the respondent complained of by the applicant fall within the scope of the treaty allegedly violated, in

⁸⁸ **AZL-0260**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment on Merits, I.C.J Reports 2015, ¶ 85.

⁸⁹ See Procedural Order No. 1 (Rules of Procedure), Art. 24 (the Tribunal “shall decide the dispute in accordance with the Bern Convention, as well as applicable rules and principles of international law”); Azerbaijan’s Statement of Claim, ¶¶ 139, 147–57.

⁹⁰ Armenia’s Memorial on Preliminary Objections, ¶ 190.

⁹¹ See *id.* ¶¶ 182–83, 186.

other words whether the facts at issue, if established, are capable of constituting violations of obligations under the treaty.⁹²

45. Contrary to this well-established test to determine jurisdiction under a compromissory clause, Armenia invites the Tribunal to step outside and to embark on an exercise to re-characterize the dispute pleaded by Azerbaijan. But the Court has repeatedly rejected attempts to recast a claimant’s pleadings in the manner advanced by Armenia. For example, in *Alleged Violations of the 1955 Treaty*, the United States argued that Iran’s claim was “really” about the Joint Comprehensive Plan of Action and not the 1955 Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran.⁹³ The Court categorically rejected this approach, holding:

[t]he Court does not see how it could support [the United States’ argument] without misrepresenting Iran’s claims as formulated by [Iran]. The Court’s ‘duty to isolate the real issue in the case and to identify the object of the claim’ does not permit it to modify the object of the [Applicant’s] submissions, especially when they have been clearly and precisely formulated.⁹⁴

46. Armenia’s attempt to shoehorn this case into the analysis applied in *Chagos, Coastal State Rights*, and *South China Sea* is thus inapposite. While Azerbaijan will respond to

⁹² See, e.g., **ARL-0100**, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, Judgment on Preliminary Objections, I.C.J. Reports 2024, ¶¶ 135–36.

⁹³ **AZL-0273**, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Judgment on Preliminary Objections, I.C.J. Reports 2021, ¶ 42 (according to the United States, “[t]he dispute thus exclusively pertains to the United States’ decisions relating to the JCPOA; the case is inextricably bound up in the latter and has no real relationship to the Treaty of Amity”).

⁹⁴ *Id.*, ¶ 59 (emphasis added). See also **ARL-0077**, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment on Preliminary Objections, I.C.J. Reports 2019, ¶¶ 27, 29 (rejecting Russia’s objection that the “real issue” in dispute was the “status of Crimea,” on the basis that “Ukraine is not requesting that [the Court should] rule on issues concerning the Russian Federation’s purported ‘aggression’ or its alleged ‘unlawful occupation’ of Ukrainian territory. Nor is [it] seeking a pronouncement from the Court on the status of Crimea or on any violations of rules of international law other than those contained in the ICSFT and CERD.”); **ARL-0082**, *Appeal relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, ¶¶ 24, 48 (rejecting Appellants’ argument that the “real issue” centered on whether the aviation restrictions in question could constitute lawful countermeasures under international law, noting “[t]he mere fact that this disagreement has arisen in a broader context does not deprive the ICAO Council of its jurisdiction,” and further observing, “legal disputes between sovereign States by their very nature are likely to occur in political contexts, and often form only one element in a wider and long-standing political dispute between the States concerned”).

Armenia’s arguments in full at the appropriate stage, it bears noting that each of these cases essentially dealt with the same issue: whether a UNCLOS Annex VII tribunal could assess a claim that allegedly required it to determine territorial sovereignty.⁹⁵ There is no such issue here, as it is undisputed that the Affected Area has at all times been part of Azerbaijan’s sovereign territory.⁹⁶ Nor is there any similar “precursor” legal question: Azerbaijan has not requested that the Tribunal determine Armenia’s status as an “Occupying Power” under LOAC to resolve any issue before it,⁹⁷ nor does the Tribunal need to do so. Rather, the Tribunal need only determine effective control as a factual matter for the claims that are based on Armenia’s jurisdiction and control of the Affected Area—which is unquestionably an issue inextricably intertwined with the merits.⁹⁸

⁹⁵ **ARL-0068**, *Chagos Marine Protected Area (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015, ¶ 212 (“The Parties’ differing views on the ‘coastal State’ for the purposes of the Convention are simply one aspect of [the sovereignty] dispute.”); **ARL-0080**, *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation)*, PCA Case No. 2017-06, Award Concerning the Preliminary Objections of the Russian Federation, 21 February 2020, ¶¶ 197–98 (declining jurisdiction only “to the extent that a ruling of the Arbitral Tribunal on the merits of Ukraine’s claims necessarily requires it to decide, expressly or implicitly, on the sovereignty of either Party over Crimea.”); **AZL-0157**, *The South China Sea Arbitration (The Republic of Philippines v. The People’s Republic of China)*, PCA Case No. 2013-19, Award, 12 July 2016, ¶ 96 (noting China’s argument that “the essence of the subject-matter of the arbitration is territorial sovereignty over several maritime features in the South China Sea, which is beyond the scope of the UNCLOS” and does not “concern[] . . . the interpretation or application of the Convention”). See also **ARL-0048**, *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks, and South Ledge (Malaysia v. Singapore)*, Judgment, I.C.J. Reports 2008, ¶ 298 (noting that “in the Special Agreement and in the final submissions it has been specifically asked to decide the matter of sovereignty separately for each of the three maritime features” and that “the Court has not been mandated by the Parties to draw the line of delimitation with respect to the territorial waters of Malaysia and Singapore in the area in question.”).

⁹⁶ Azerbaijan’s Notice of Arbitration, 18 January 2023, ¶¶ 3–5, § III.C; Azerbaijan’s Statement of Claim, ¶¶ 16, 49–51.

⁹⁷ *Contra* Armenia’s Memorial on Preliminary Objections, § III.B.

⁹⁸ See, e.g., Azerbaijan’s Statement of Claim, ¶ 1 (“This dispute between the Republic of Azerbaijan and the Republic of Armenia under the [Bern Convention] arises from the significant harms to species and habitats in Azerbaijan’s Garabagh and Eastern Zangezur economic regions, which were under Armenia’s occupation and effective control for nearly three decades.”) (emphasis added); *id.*, ¶ 5 (“The importance of protecting this region’s rich biodiversity was already well-established at the time Armenia assumed effective control of the Affected Area.”) (emphasis added); *id.*, ¶ 8 (“By both its actions and failures to act, Armenia violated multiple Convention obligations aimed at conserving and protecting species and habitats during the period of its effective control between 1 August 2008 and the end of its occupation in 2020.”) (emphasis added); *id.*, ¶ 16 (“experts documented significant harms to species and natural habitats in the Affected Area while it was under Armenia’s effective control, and as a result of transboundary pollution.”) (emphasis added); *id.*, ¶ 49 (“From the early 1990s to at least the end of September 2020, Armenia effectively controlled the Affected Area. The facts underlying Armenia’s invasion and effective control of Azerbaijan’s sovereign territory are a matter of public record, as documented by multiple Resolutions of the United Nations Security Council and a judgment of the European Court of Human Rights.”) (emphasis added); *id.*, ¶ 51 (“From the early 1990s until late 2020, Armenia maintained effective control over the Affected Area through its Installed Regime. The ECtHR concluded that the Affected Area was under Armenia’s jurisdiction and effective control during this period,

47. Further, none of these decisions articulate, still less endorse, the sweeping proposition Armenia seemingly advances—that once occupation forms part of the factual matrix, a competent tribunal specifically empowered to adjudicate disputes concerning interpretation or application of the Bern Convention must stand aside. While Armenia tries to deny that it is arguing “that the law of armed conflict entirely displaces international environmental law,”⁹⁹ that is precisely the implication of Armenia’s arguments that the Tribunal *lacks jurisdiction* to consider if the Convention applies and if Armenia breached it, and that any and all environmental obligations existing in the Affected Area are “governed by the law of armed conflict, not the Bern Convention.”¹⁰⁰ Armenia’s denial is telling, as it recognizes that this position is untenable. Armenia’s position would exclude not only the application of the Bern Convention, but also the application of a host of human rights, investment, and other obligations flowing from treaty and custom. Not a single court or tribunal has endorsed the view that such obligations, whether they arise under a multilateral instrument like the Bern Convention, custom, or otherwise, are wholly displaced by the existence of an armed conflict such that a tribunal would be deprived of jurisdiction to hear such claims.¹⁰¹ Armenia’s position is further inconsistent with the international

including due to its ‘decisive influence’ over the Installed Regime.’) (emphasis added); *id.*, ¶ 160 (“Armenia’s obligations included implementation of the Bern Convention within the Affected Area, which, as described above, was under Armenia’s effective control and jurisdiction from the early 1990s until the liberation in 2020.”); *id.*, ¶ 64 (“Yet when Armenia acceded to the Bern Convention in 2008—and despite the fact that it had already effectively controlled the Affected Area for over a decade—Armenia did nothing to improve, maintain, or even assess the conservation status of species or habitats therein, despite the fact that it is located within an internationally-recognized biodiversity hotspot.”).

⁹⁹ Armenia’s Memorial on Preliminary Objections, ¶ 199.

¹⁰⁰ *See, e.g.*, Armenia’s Memorial, ¶192 (“Addressing Azerbaijan’s claims regarding Armenia’s environmental obligations in territory which it allegedly occupied is dependent on answers to the legal issues identified above: Armenia’s purported status as an Occupying Power and its resulting obligations with respect to natural resources within that allegedly occupied territory. These are matters *properly governed by the law of armed conflict*, not the Bern Convention.”) (emphasis added); ¶ 199 (“to the extent that some environmental obligations apply in a situation of occupation, their precise application is centrally *determined by the law of armed conflict* . . . any specific aspects in this regard that are regulated by the law of armed conflict do displace international environmental law”) (emphasis added); ¶¶ 202–03 (arguing that the extent of Armenia’s environmental obligations in the Affected Area are “issues governed by the law of armed conflict.”).

¹⁰¹ *See, e.g.*, **ARL-0041**, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, ¶¶ 112–13; **ARL-0104**, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion, I.C.J. Reports 2024, ¶ 99; **AZL-0253**, *Al-Skeini and Others v. The United Kingdom*, App. No. 55721/07, Judgment, 7 July 2011 (Eur. Ct. H.R.), ¶ 142; **ARL-0058**, *International Law Commission, Draft Articles on the Effects of Armed Conflict on Treaties*, Yearbook of the International Law Commission, Volume II, Part II (2011), Arts. 3, 7, Annex (listing “treaties the subject matter of which involves an implication that they continue in operation, in whole or in part, during armed conflict,” including “treaties for the international protection of human rights” and “treaties relating to the international protection of the environment”).

community’s increasing recognition of the importance of ensuring the environment is fully protected even during armed conflict, including within the Council of Europe and the Standing Committee itself.¹⁰² Armenia’s objection is thus neither serious nor substantial.

48. *Second*, in any event, Armenia’s objection does not have an exclusively preliminary character—it is intertwined with the merits. As discussed above, courts and tribunals have repeatedly found that bifurcation is inappropriate where an objection relates to the scope of obligations and to the underlying facts relevant to assessing the nature and substance of the applicant’s claims.¹⁰³ That reasoning is especially apposite for this objection, where Armenia insists that the Tribunal must assess the “real issue in dispute” by looking beyond the face of the parties’ pleadings to consider the totality of evidence.¹⁰⁴ Further, in Armenia’s own words, assessing Armenia’s objection requires the Tribunal to conduct a “detailed analysis”¹⁰⁵ of the substance of Azerbaijan’s claims under Articles 2, 3, 4, 6, and 7 of the Convention. For example, Armenia requests that the Tribunal assess Azerbaijan’s submissions and its underlying evidence relating to the merits of the case, as well as additional evidence submitted by Armenia, to determine whether “the real issue in dispute is therefore the legal question of Armenia’s purported status as an Occupying Power and its obligations in respect of the environment resulting from such status,”¹⁰⁶ and that the Tribunal determine whether issues under LOAC are “ancillary” to Azerbaijan’s claims.¹⁰⁷ These inquiries necessarily require delving into the scope of each of the

¹⁰² See, e.g., **AZL-0268**, International Committee of the Red Cross, Guidelines on Protection of Natural Environment in Armed Conflict (2020); **AZL-0274**, International Law Commission, Draft principles on protection of the environment in relation to armed conflicts, Yearbook of the International Law Commission, Volume II, Part Two (2022); **ARL-0092**, PACE, Explanatory Memorandum by Rapporteur John Howell on the environmental impact of armed conflicts (5 January 2023); **ARL-0094**, PACE, Recommendation 2246, Environmental impact of armed conflicts (2023); **ARL-0093**, PACE, Resolution 2477 on Environmental impact of armed conflicts (2023); **AZL-0191**, Bern Convention Standing Committee, 43rd Meeting Report, T-PVS(2023)07 (13 April 2023), pp. 2–3. See also **AZL-0282**, *Obligations of States in Respect of Climate Change*, Advisory Opinion, International Court of Justice (23 July 2025) (recognizing broad and interconnected obligations of States to ensure the protection of the environment).

¹⁰³ See *supra* §§ II, III.A.1.

¹⁰⁴ Armenia’s Memorial on Preliminary Objections, ¶ 186 (arguing that the tribunal must consider “the position of both parties” based on “the Application and final submissions . . . diplomatic exchanges, public statements, and other pertinent evidence.”).

¹⁰⁵ Armenia’s Memorial on Preliminary Objections, ¶¶ 205–06.

¹⁰⁶ Armenia’s Memorial on Preliminary Objections, ¶ 187–90.

¹⁰⁷ Armenia’s Memorial on Preliminary Objections, ¶ 191.

relevant Bern Convention obligations and the evidence and arguments underlying Azerbaijan’s claims, which are inextricably intertwined with the merits.

49. As discussed above, these types of objections, which “contain both preliminary aspects and other aspects relating to the merits” and involve “facts and arguments on which the merits of the case depend,” are not exclusively preliminary in character, and therefore should be joined to the merits both for efficiency and to avoid prejudging the issues in dispute.¹⁰⁸ Indeed, one of the main cases Armenia relies on in support of its “occupation” objection—the *Chagos* arbitration—only confirms this point. There, the UK sought to bifurcate its objection that the UNCLOS tribunal did not have jurisdiction over Mauritius’ claims because that would require the tribunal to determine the issue of sovereignty over the Chagos archipelago.¹⁰⁹ However, the *Chagos* tribunal denied the United Kingdom’s request, and instead joined the objection to the merits phase of the proceeding.¹¹⁰ Further, the extent to which Armenia delves into the disputed facts and substantive issues relating to the scope of its obligations in its Objections demonstrates that this objection is not “exclusively preliminary”: in the *Lockerbie* cases, the Court noted that “the [respondent] itself broached many substantive problems in its written and oral pleadings in this phase . . . [the] Government thus implicitly acknowledged that the objection raised and the merits of the case were ‘closely interconnected.’”¹¹¹

50. Finally, even if Armenia’s objection were successful, it would not dispose of a significant portion of Azerbaijan’s claims—since like Armenia’s so-called “extraterritoriality” objection, discussed above, the “occupation” objection concerns only Armenia’s obligations flowing from its effective control of the Affected Area and ignores the other bases for Azerbaijan’s

¹⁰⁸ See *supra* § III.A.1; **AZL-0252**, *Croatia v. Serbia*, Preliminary Objections, ¶ 128; **AZL-0249**, *Delimitation of Maritime Boundary*, p. 2.

¹⁰⁹ **AZL-0254**, *Chagos Marine Protected Area (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Preliminary Objections to Jurisdiction Submitted by the United Kingdom, 31 October 2012, ¶ 3.10.

¹¹⁰ **ARL-0068**, *Chagos Marine Protected Area (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015, ¶¶ 29–31.

¹¹¹ See **ARL-0033** *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Judgment on Preliminary Objections, I.C.J. Reports 1998, ¶¶ 49, 50; **AZL-0247**, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States)*, Judgment on Preliminary Objections, I.C.J. Reports 1998, ¶ 49.

claims. It similarly would not dispose of the claims under Articles 4(4) and 11. This likewise counsels against bifurcation of the objection for the reasons discussed above.¹¹²

4. Armenia's Objection Relating to Articles 4(4) and 11 of the Convention.

51. Like the objections discussed in the preceding sections, Armenia's objection that its conduct is "not capable of"¹¹³ constituting a breach of Articles 4(4) and 11 because the absence of diplomatic relations between the Parties and the existence of an armed conflict absolved it of any duty to coordinate or cooperate with Azerbaijan does not warrant bifurcation.

52. *First*, even on Armenia's own misguided arguments, its objection is intertwined with the merits and not preliminary in character. The entirety of Armenia's objection rises and falls on an excessively narrow reading of the scope of Articles 4(4) and 11—an issue of treaty interpretation that the Tribunal will need to address on the merits. For example, Armenia argues that in order for its refusal to grant access to or share information from the Affected Area to constitute a violation, Azerbaijan must demonstrate "that it undertook conservation measures pursuant to the Convention and that Armenia refused to cooperate with it to enhance the effectiveness of those measures."¹¹⁴ Armenia also repeatedly seeks to categorize the obligations under Articles 4(4) and 11 as including only the bilateral "communication and exchange of information between the relevant States,"¹¹⁵ ignoring the fact that Azerbaijan's claims under these Articles encompass a broader set of conduct, including Armenia's refusal to take action to cease pollution of the Okhchuchay River—which it could have done unilaterally—and its refusal to share information with international observers.¹¹⁶ Armenia's objection also relies on its unsupported assertion that "Armenia's alleged blocking of access to the 'Affected Area' . . . does not in itself

¹¹² See *supra* § III.A.1.

¹¹³ Armenia's Memorial on Preliminary Objections, ¶¶ 31, 204, 229.

¹¹⁴ Armenia's Memorial on Preliminary Objections, ¶ 226.

¹¹⁵ Armenia's Memorial on Preliminary Objections, ¶ 217.

¹¹⁶ Azerbaijan's Statement of Claim, ¶ 355 ("Armenia's international responsibility is engaged by its refusal to cooperate in furtherance of the Convention's goals, as evidenced by, among others, its blocking of access to the Affected Area, its failures to gather or share information, and its refusal to cooperate in respect of transboundary harm, which forms part of Armenia's violations of each of the Articles referenced above as well as a self-standing violation of Articles 4(4) and 11."); *id.*, ¶ 317 ("Nor did Armenia respond in any meaningful way to Azerbaijan's many requests, publicly over the past few years and prior to the commencement of this arbitration, to cease pollution of the Okhchuchay River."); *id.*, ¶ 354 ("Armenia deprived the entire international community of information and access . . .").

trigger the application of the duty to cooperate under Article 11.”¹¹⁷ In addition to contorting the obligations under Articles 4(4) and 11 to the point that they are almost meaningless, each of these arguments goes directly to the scope of what the relevant obligations entail, which is the heart of the merits assessment. As discussed above, such objections are not “exclusively preliminary.”¹¹⁸

53. Armenia’s objection also puts in issue facts and evidence relevant to its compliance with its obligations. For example, Armenia explicitly invites the Tribunal to “analyz[e] and adopt[] its own characterization of [the] facts [alleged by Azerbaijan]”¹¹⁹—again, exactly the task set for the Tribunal on the merits, and one that clearly risks prejudgment on the merits should the Tribunal accept Armenia’s invitation. As noted above, in the ECT Arbitration between the parties, the tribunal declined to bifurcate Armenia’s similar objections that “the conduct Azerbaijan alleges is *not capable of violating* whatever obligations the respective Articles impose.”¹²⁰ In so doing, the tribunal found that these objections “necessarily would require the Tribunal to interpret the *substantive content* of the Articles, and then apply that content to a range of *specific conduct* alleged.”¹²¹ Similarly, in *Apotex Holdings*, the tribunal considered the Respondent’s objection that the relevant measures were incapable, as a matter of law, of constituting a breach of the applicable treaty to be too intertwined with issues of liability, such that a separate phase risked delay and duplication.¹²² The same is true here, where Armenia’s objection solicits the Tribunal’s determination of both the “substantive content” of its obligations under Articles 4(4) and 11, and an assessment of the “specific conduct” at issue to determine if a violation occurred.¹²³

¹¹⁷ Armenia’s Memorial on Preliminary Objections, ¶ 226.

¹¹⁸ *See supra* §§ II, III.A.1.

¹¹⁹ Armenia’s Memorial on Preliminary Objections, ¶ 206.

¹²⁰ **AZL-0279**, *Energy Charter Treaty Arbitration*, ¶ 40.

¹²¹ *Id.*, ¶ 88 (emphasis in original).

¹²² **AZL-0255**, *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Counter-Memorial on Merits and Objections to Jurisdiction of Respondent United States of America, 14 December 2012, ¶ 14 (arguing that “Apotex has failed to establish that [it] made or sought to make any investments in the United States within the meaning of NAFTA”); **AZL-0257**, *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Procedural Order No. 3 (Decision on Bifurcation and Non-Bifurcation), 25 January 2013, ¶ 11.

¹²³ **AZL-0279**, *Energy Charter Treaty Arbitration*, ¶ 88 (emphasis in original). *See also* Armenia’s Memorial on Preliminary Objections, § IV.

54. Further, the basic premise of Armenia’s argument that Azerbaijan’s allegations are not “capable of”¹²⁴ constituting a treaty breach is that the existence of an armed conflict, and the lack of diplomatic relations between the parties, effectively extinguished Armenia’s obligations under the relevant provisions.¹²⁵ Based on this premise, Armenia devotes pages of its own Objections to making *additional* factual allegations based on newly introduced sources, which Armenia claims establish a factual context that absolved Armenia of any obligations under Articles 4(4) and 11.¹²⁶ This has the character of a defense on the merits, not a preliminary objection, and thus should not be bifurcated. In the *Lockerbie* cases, for example, the Court joined to the merits an objection that “has the character of a defence on the merits,” and as such was “‘inextricably interwoven’ with the merits” and not “exclusively preliminary” in character.¹²⁷

55. *Second*, Armenia’s objection is unsuitable for bifurcation because it would not meaningfully reduce the scope or complexity of the proceedings. Even if Armenia’s objection were to prevail, it would resolve only Azerbaijan’s claims under two Articles: Articles 4(4) and 11. It would not address the majority of Azerbaijan’s claims under Articles 2, 3, 4, 6, and 7, and also would not affect the amount of compensation that Azerbaijan seeks in the proceedings. As discussed above, this small potential reduction in merits issues cannot possibly justify the “cost and time” of a separate preliminary phase.¹²⁸

56. *Third*, Armenia’s objection is not sufficiently serious to warrant bifurcation, including because it contradicts positions that Armenia advances elsewhere in its Objections regarding the record of the Parties’ negotiations under Article 18(2) of the Convention. Specifically, Armenia argues on the one hand that it could not cooperate with Azerbaijan in the

¹²⁴ Armenia’s Memorial on Preliminary Objections, ¶¶ 31, 204, 229.

¹²⁵ Armenia’s Memorial on Preliminary Objections, ¶ 211 (“[A] ‘cooperation’ treaty provision, like Articles 4(4) and 11 of the Bern Convention, is precisely the type of provision that cannot survive in an armed conflict”); *id.*, ¶ 216 (“Article 63 of the VCLT, which reflects customary international law, makes clear that the absence of diplomatic or consular relations may affect the legal relations established under a treaty, insofar as the existence of diplomatic or consular relations ‘is indispensable for the application of the treaty.’”).

¹²⁶ *See, e.g., id.*, ¶¶ 212–15, 219–25.

¹²⁷ *See ARL-0033, Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Judgement on Preliminary Objections, I.C.J. Reports 1998, ¶ 50; *AZL-0247, Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*, Judgement on Preliminary Objections, I.C.J. Reports 1998, ¶ 49.

¹²⁸ *See supra* ¶ 18 (quoting *AZL-0248, Glamis Gold Ltd. v. United States of America*, UNCITRAL, Procedural Order No. 2 (Revised), 31 May 2005, ¶ 21).

context of: “intense and continuing hostilities between the two countries”;¹²⁹ the absence of “diplomatic relations” between the Parties and the fact that “their borders have remained closed”;¹³⁰ the failure of “[m]ultiple international mediation efforts” to produce a peace agreement;¹³¹ the continuing “volatile security environment in the South Caucasus”;¹³² and “the depth of mutual distrust between the two States,” which contributes to the “inability of Armenia and Azerbaijan to engage in bilateral exchanges to achieve peace,”¹³³ but on the other hand, insists that when Azerbaijan decided to commence arbitration “there was still a ‘reasonable probability . . . that further negotiations would lead to a settlement.’”¹³⁴ Both cannot be true. The inherent inconsistencies in Armenia’s arguments demonstrate that the claims it makes in support of its objections are not advanced seriously.

57. Moreover, even beyond the contradictions in Armenia’s arguments, its objection regarding Articles 4(4) and 11 is, on its own terms, not serious or substantial. As noted above, Armenia’s objection is based on an unreasonably narrow reading of its obligations to cooperate under the Convention.¹³⁵ Armenia does not cite to a *single* source suggesting that either Article 4(4) or Article 11, specifically, might not apply between Contracting Parties engaged in armed conflict or strained diplomatic relations. Instead, Armenia refers generally to the effect of armed conflict on treaty “provisions relating to ‘friendship’” or provisions “the object and purpose of which ‘is to promote relations of harmony between nation and nation.’”¹³⁶ Those are inapposite here: the purpose of Articles 4(4) and 11, and of the Bern Convention as a whole, is conservation of wild flora and fauna and their habitats, not harmony between nations. That Armenia fails to provide any legal support for its interpretation of the duty to cooperate *under the Bern Convention*

¹²⁹ Armenia’s Memorial on Preliminary Objections, ¶ 215.

¹³⁰ *Id.*, ¶ 219.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*, ¶ 220.

¹³⁴ *Id.*, ¶ 113.

¹³⁵ See **AZL-0282**, *Obligations of States in Respect of Climate Change*, Advisory Opinion, International Court of Justice (23 July 2025), ¶ 140 (“the duty of States to co-operate for the protection of the environment is a rule whose customary character has been established.”).

¹³⁶ Armenia’s Memorial on Preliminary Objections, ¶ 210.

speaks to the superficial nature of its argument, and demonstrates that it is “clearly without merit,” and therefore not sufficiently serious to warrant bifurcation.¹³⁷

B. ARMENIA’S ARTICLE 18 OBJECTIONS

58. Armenia’s Article 18 objections are not serious or substantial enough to warrant bifurcation because they are based on misstatements of fact and law, and thus unlikely to succeed on the merits.¹³⁸ As a result, they cannot justify the significant delays and the additional costs associated with a separate preliminary phase, and bifurcation would be procedurally inefficient. The case against bifurcation is also particularly strong where, as here, all other objections should also be joined to the merits. As other arbitration tribunals have found, even objections that “could be determined discretely” in a preliminary phase—including objections presenting “limited questions of treaty interpretation related to procedural requirements”—may be joined to the merits when they are not serious or substantial enough to justify bifurcation on their own.¹³⁹

1. Armenia’s Objection Relating to an Alleged Requirement to Pursue Settlement Before the Standing Committee of the Bern Convention.

59. Armenia’s first Article 18 objection, that the Tribunal lacks jurisdiction because Azerbaijan did not refer the Parties’ dispute to the Standing Committee before commencing arbitration, is on its face not sufficiently serious or substantial to warrant bifurcation.

¹³⁷ See, e.g., **AZL-0276**, *Rotalin v. Moldova*, ¶ 41 (rejecting bifurcation and explaining that “the first criterion to consider in determining whether bifurcation is warranted is whether the Objections are *prima facie* serious. The rationale behind this criterion is to ensure that bifurcation is not ordered to consider objections that have no reasonable chance of success or are otherwise frivolous, vexatious or clearly without merit; bifurcation in such circumstances would almost certainly result in a loss rather than a gain of procedural efficiency”).

¹³⁸ **AZL-0266**, *Edmond Khudyan v. Armenia*, ¶ 41 (“[I]n order for [the factor concerning whether the objection raised is serious] to weigh in favor of bifurcation . . . Respondent must make a *prima facie* showing of their potential success on the merits.”). See also **AZL-0276**, *Rotalin v. Moldova*, ¶ 41.

¹³⁹ See **AZL-0259**, *Gavrilović v. Croatia*, ¶ 83 (rejecting bifurcation of Respondent’s fourth objection and explaining: “in light of the conclusions in relation to the First, Second and Third Objections, the bifurcation of the Fourth Objection alone would be causative of unnecessary delay, in circumstances where the proceeding would be divided into two phases for very little procedural, or other, advantage. If it were appropriate to bifurcate the First, Second and Third Objections, the Tribunal would be persuaded to determine the Fourth Objection at the same time but, in and of itself, it does not warrant the bifurcation sought”); **AZL-0279**, *Energy Charter Treaty Arbitration*, ¶¶ 92–93 (bifurcating Armenia’s objections concerning Azerbaijan’s alleged failure to properly notify Armenia of a dispute and to engage in negotiations, and explaining that “[t]he Tribunal does not consider these two objections so substantive that it necessarily would have bifurcated proceedings simply to address them on their own. However, given its decision to bifurcate two other more substantive objections . . . the Tribunal considers it appropriate for the Parties to address [these objections] also as part of the preliminary bifurcated stage”).

60. *First*, Armenia’s argument that Article 18(2) “establishes two cumulative preconditions to arbitration”¹⁴⁰ finds no support in the text of that provision and is contradicted by the only case on which Armenia relies. Azerbaijan will respond to Armenia’s arguments in full at the appropriate stage, but for present purposes notes that, on its face, Article 18 includes *no* express requirement for Contracting Parties to refer a dispute to the Standing Committee at all—let alone to do so as the first of two mandatory, cumulative, and sequential preconditions to arbitration.¹⁴¹ To recall, Article 18 provides that “[t]he Standing Committee shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise” and that “[a]ny dispute between Contracting Parties concerning the interpretation or application of this Convention which has not been settled on the basis of the provisions of the preceding paragraph *or* by negotiation between the parties concerned shall” be submitted to arbitration.¹⁴²

61. Armenia’s objection hinges entirely on the propositions that Article 18 imposes two procedural preconditions, and that such preconditions are cumulative because the term “or” should be read conjunctively as “and.”¹⁴³ Armenia’s only claimed legal support for the latter proposition is that “[t]he ICJ has explained that the ‘conjunction “or” . . .’ can be read to establish cumulative conditions” in its decision on preliminary objections in *Ukraine v. Russia*.¹⁴⁴ In that case, however, the Court further considered nearly identical language in the compromissory clause of the

¹⁴⁰ Armenia’s Memorial on Preliminary Objections, ¶ 43.

¹⁴¹ **AZL-0001**, Bern Convention, Art.18(2) (emphasis added).

¹⁴² *Id.*

¹⁴³ Armenia’s Memorial on Preliminary Objections, ¶¶ 43–44, 56.

¹⁴⁴ *Id.*, ¶ 44 (citing **ARL-0077**, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment on Preliminary Objections, I.C.J. Reports 2019, ¶ 107). In a footnote, Armenia cites as a “see also” a passage in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)* in which the Court notes only that “even if the DRC had demonstrated the existence of a question or dispute falling within the scope of Article 75 of the WHO Constitution, it has in any event not proved that the other preconditions for seisin of the Court established by that provision have been satisfied, namely that it attempted to settle the question or dispute by negotiation with Rwanda or that the World Health Assembly had been unable to settle it.” **ARL-0043**, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Judgment on Jurisdiction and Admissibility, I.C.J. Reports 2006, ¶ 100. The Court does not broach whether the use of “or” is disjunctive in this context, much less support Armenia’s reading that “or” creates cumulative preconditions.

Convention on the Elimination of Racial Discrimination (“CERD”),¹⁴⁵ and ultimately concluded that it “imposes *alternative* preconditions to the Court’s jurisdiction.”¹⁴⁶

62. Armenia’s attempt to distinguish this conclusion only reinforces the lack of support for its objection. Armenia argues that “[i]n analyzing whether preconditions to adjudication are cumulative or alternative, the ICJ has considered whether they are redundant,” and that unlike the conditions considered in *Ukraine v. Russia*, the Standing Committee procedure and negotiations are not “redundant” because “their nature and functions differ.”¹⁴⁷ Specifically, Armenia argues that “unlike negotiations, the Standing Committee Procedure is non-confrontational”¹⁴⁸ and “typically involves technical expertise and a fact-finding process”¹⁴⁹ and that the Standing Committee “is institutional and multilateral” rather than bilateral.¹⁵⁰ This argument ignores the fact that in *Ukraine v. Russia*, the Court considered whether negotiations and the “procedures expressly provided for” in CERD were redundant based on their *purpose*, not their “nature and functions,” concluding that they are “two means to *achieve the same objective, namely to settle a dispute by agreement*,” and therefore it would not be “reasonable” for these requirements to be

¹⁴⁵ Compare **AZL-0244**, International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 95 (12 March 1969), Art. 22 (“Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention” shall be referred to the Court), with **AZL-0001**, Bern Convention, Art. 18(2) (“Any dispute between Contracting Parties concerning the interpretation or application of this Convention which has not been settled on the basis of the provisions of the preceding paragraph or by negotiation between the parties concerned shall, unless the said parties agree otherwise, be submitted, at the request of one of them, to arbitration.”).

¹⁴⁶ **ARL-0077**, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment on Preliminary Objections, I.C.J. Reports 2019, ¶ 113 (emphasis added); **ARL-0105**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Judgment on Preliminary Objections, I.C.J. General List No. 181 (12 November 2024), ¶ 59, 105 (finding jurisdiction where only “the precondition of negotiation under Article 22” had been satisfied). See also **ARL-0074**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (“*Qatar v. United Arab Emirates*”), ¶¶ 36–40 (finding “the procedural preconditions under Article 22 of CERD for its seisin appear, at this stage, to have been complied with” where Qatar attempted genuine negotiations with the United Arab Emirates “as far as possible” and did not rely on its communication with the CERD Committee to establish prima facie jurisdiction).

¹⁴⁷ Armenia’s Memorial on Preliminary Objections, ¶ 56.

¹⁴⁸ *Id.*, ¶ 58.

¹⁴⁹ *Id.*, ¶ 59.

¹⁵⁰ *Id.*, ¶ 57.

cumulative.¹⁵¹ The same is true here: on Armenia’s own case, both “endeavours” by the Standing Committee and negotiations serve this same ultimate purpose of attempting to settle a dispute by agreement.¹⁵²

63. There is also no textual support in the Convention for Armenia’s assertion that Article 18(1) imposes a “mandatory obligation”¹⁵³ on Contracting Parties, rather than the Committee itself. Indeed, as the plain text makes clear—and as Armenia itself recognizes¹⁵⁴—it is the *Committee* that “shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise.”¹⁵⁵ No “corresponding obligation,” in Armenia’s words,¹⁵⁶ exists for Contracting Parties; instead, Article 18(2) provides that they may submit “any dispute” that has not been settled by the Standing Committee “or” negotiation to arbitration.¹⁵⁷

64. *Second*, Armenia’s objection is premised upon characterizations of the Standing Committee’s role in inter-state disputes that are unsupported by Armenia’s own evidence, further confirming that this objection is not serious or substantial enough to warrant bifurcation.

65. For example, Armenia argues that the “subsequent practice of the Bern Convention’s Contracting Parties” demonstrates “that referral to the Standing Committee is mandatory and must precede negotiations,” pointing to the existence of the Committee’s complaint procedure.¹⁵⁸ But Armenia fails to mention that only *five* inter-state cases have purportedly been brought to the Committee by a Contracting Party since its “case-file system” was established over

¹⁵¹ **ARL-0077**, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment on Preliminary Objections, I.C.J. Reports 2019, ¶ 110 (emphasis added); *id.* ¶ 106–07.

¹⁵² See Armenia’s Memorial on Preliminary Objections, ¶ 47 (arguing that if a dispute crystallizes, it can only be referred to negotiations if “the Standing Committee ultimately fails to settle it”); *id.*, ¶ 74 (“For the requirement of negotiations to be fulfilled under international law . . . there must have been a ‘genuine attempt’ aimed at resolving the dispute amicably.”).

¹⁵³ *Id.*, ¶ 43 (arguing that “Article 18(1) provides that ‘[t]he Standing Committee shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise’ and arguing that “[t]he word ‘shall’ denotes a mandatory obligation””) (emphasis in original).

¹⁵⁴ Armenia’s Memorial on Preliminary Objections, ¶ 43.

¹⁵⁵ **AZL-0001**, Bern Convention, Art. 18(1).

¹⁵⁶ Armenia’s Memorial on Preliminary Objections, ¶ 43.

¹⁵⁷ **AZL-0001**, Bern Convention, Art. 18(2).

¹⁵⁸ Armenia’s Memorial on Preliminary Objections, § II.A.1.

40 years ago,¹⁵⁹ and the Standing Committee also regularly takes *decades* to address complaints, even outside of the inter-state context. As just one example, almost *forty years* after the Standing Committee opened its case file *On the protection of Caretta caretta in Laganas Bay, Zakynthos* in 1986, the complainants and Greek government are still submitting yearly reports to the Committee in connection with this complaint.¹⁶⁰ Further, notwithstanding Armenia’s argument that in each of the purported inter-state cases the Standing Committee “resolved the matter,”¹⁶¹ Armenia’s own exhibit raises questions as to whether a dispute was actually resolved or, if it *was* resolved, whether the Standing Committee played more than a limited role.¹⁶² For example, with respect to *Lesser white-fronted goose in Sweden (Norway v. Sweden)*, during the same meeting in which Norway first “expressed concerns on re-introductions” of the Lesser white-fronted goose in Sweden, Sweden informed the Standing Committee that the behavior at issue “had already been stopped,”

¹⁵⁹ See **ARL-0045**, Maria Isabel Rodriguez Valero, *Analysis of the Rules of Procedure for the Case File System*, 27th meeting of the Bern Convention Standing Committee, document T-PVS (2007) 6 (29 March 2007), pp. 22–45 (listing 92 cases submitted by non-governmental organizations or individuals). Moreover, three of these five cases were not purely “inter-State” disputes, but included international organizations and NGOs as complainants alongside the involved State entities. *Id.*, pp. 8, 22, 25, 36, 45; **ARL-0087**, 12 stakeholders, *New Complaint 2022/05, Fence Construction on the Polish-Belarusian Border (Poland)*, *Complaint Form*, 42nd meeting of the Bern Convention Standing Committee, document T-PVS/Files (2022) 65 (6 September 2022), pp. 1, 29 (Complaint submitted by 11 NGO stakeholders in addition to the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus).

¹⁶⁰ See, e.g., **AZL-0037**, Bern Convention Standing Committee, Recommendation No. 9 (1987) on the protection of *Caretta caretta* in Laganas Bay, Zakynthos; **AZL-0281**, Mediterranean Association to Save the Sea Turtles, *Recommendation No. 9 (1987) on the protection of Caretta caretta in Laganas Bay, Zakynthos (Greece): Report by the Complainant*, document TPVS/Files (2025)1986-8_comp (27 February 2025); **AZL-0280**, Hellenic Republic Ministry of Environment & Energy, *Recommendation No. 9 (1987) on the protection of Caretta caretta in Laganas Bay, Zakynthos (Greece): Report by the Government*, document TPVS/Files(2025)1986-8_gov (13 February 2025).

¹⁶¹ Armenia’s Memorial on Preliminary Objections, ¶ 53.

¹⁶² See **ARL-0045**, Bern Convention Standing Committee, 27th meeting, *Analysis of the Rules of Procedure for the Case File System*, T-PVS (2007) 6 (29 Mar. 2007), p. 22, row 4 (reporting on *Hainburg Alluvial Forest* (1983/2), submitted by the Netherlands and the European Communities Commission against Austria, and noting only that during the “[r]est of meetings situation improved and halted project,” but not indicating what role, if any, the Committee played); **AZL-0246**, Bern Convention Standing Committee, 16th Meeting Report, document T-PVS (96) 102 (6 December 1996), p. 27 (the Standing Committee closed the case file for *Introduction of exotic bees in Portugal* (1995/5), submitted by Spain against Portugal, noting only: “that the task of monitoring th[e] case . . . should be entrusted to the Group of Experts on the Legal Aspects of the Introduction and the Reintroduction of Wildlife Species”); **AZL-0275**, Bern Convention Standing Committee, 42nd Meeting Report, document T-PVS (2022) 20 (7 October 2022), p. 20 (the Bureau summarily dismissed a Complaint submitted by Belarus against Poland (2022/05) the same year it was filed after “acknowledging that the information presented by the Polish authorities” covered the issues raised by the complainant).

and a case file was never even opened.¹⁶³ Similarly, in *Caretta caretta in Dalyan Beach (Netherlands v. Turkey)*, the Standing Committee’s commentary states: “*We can’t say the case was solved*” and notes that at the 17th meeting of the Committee, the issue “appeared again but [was] not opened.”¹⁶⁴ It would thus make no sense for “resolution” by the Standing Committee to be a “mandatory precondition” to arbitration,¹⁶⁵ let alone a precondition to bilateral negotiations, with arbitration as a possible third step.

66. *Third*, Armenia’s objection is plagued by internal inconsistencies that further demonstrate it is not serious or substantial. For example, as noted above, Armenia argues that “the Standing Committee Procedure and negotiations are *not redundant* preconditions” because they “fulfil *different functions*”—specifically because according to Armenia, the “Standing Committee Procedure” is “institutional and multilateral,” “non-confrontational,” and typically involves “technical expertise and a fact-finding process” and the possibility of “on-the-spot appraisals by independent experts.”¹⁶⁶ But elsewhere in its submission, Armenia relies on those *very same descriptions* of the Standing Committee to argue that its involvement is a necessary component of *bilateral negotiations*. For example, Armenia asserts that Azerbaijan’s purported “refusal” to involve the Standing Committee in bilateral negotiations is evidence that it did not approach those negotiations in good faith, and recalls the Committee’s “power to recommend on-the-spot appraisals by independent experts to ascertain facts, which may facilitate the resolution of issues between Contracting Parties” and that “[i]ts institutional and non-confrontational nature makes it ideally placed to defuse disputes.”¹⁶⁷ These positions are inherently contradictory: it cannot be the

¹⁶³ **ARL-0045**, Maria Isabel Rodriguez Valero, *Analysis of the Rules of Procedure for the Case File System*, 27th meeting of the Bern Convention Standing Committee, document T-PVS (2007) 6 (29 March 2007), p. 45, row 93. The extent of the Standing Committee’s involvement in this matter is encapsulated in the statement from its Meeting Report that “[t]he Committee took note of the information presented and wished that concerned states develop a better co-ordination on this issue, taking into account its Recommendation No. 48 (1996) which invited states to draft and implement national actions plans on the Lesser white-fronted goose.” See also **AZL-0250**, Bern Convention Standing Committee, 25th Meeting Report, T-PVS (2005) 20 (3 January 2006), p. 18.

¹⁶⁴ **ARL-0045**, Maria Isabel Rodriguez Valero, *Analysis of the Rules of Procedure for the Case File System*, 27th meeting of the Bern Convention Standing Committee, document T-PVS (2007) 6 (29 March 2007), p. 25, row 19 (emphasis added).

¹⁶⁵ *Contra* Armenia’s Memorial on Preliminary Objections, § II.

¹⁶⁶ Armenia’s Memorial on Preliminary Objections, ¶¶ 57, 58, 59, 60, 62 (emphases added).

¹⁶⁷ *Id.*, ¶ 85.

case that referral of a dispute to the Standing Committee both “must precede negotiations”¹⁶⁸ as a separate mandatory precondition to arbitration serving a “different function” from negotiations *and* constitutes an integral part of those negotiations. Armenia’s attempt to argue otherwise with reference to the *exact same factors* exposes the artificiality of its claims and confirms that its objection is not serious or substantial enough to justify the additional costs and delays associated with a separate preliminary phase.

67. Tribunals in other arbitrations have found that objections lacking sufficient factual or legal support—for example, where the objection has “no clear textual support” in the relevant instrument,¹⁶⁹ or is not supported by “concrete factual allegations”¹⁷⁰—are unserious and insubstantial, and therefore unsuitable for bifurcation.¹⁷¹ This is the case even where the objection is “not merits related and, if successful, would actually dispose of the entire case.”¹⁷² As the tribunal in *Edmond Khudyan v. Armenia* explained, in order for the factor concerning whether the objection raised is serious to weigh in favor of bifurcation, “the Respondent must make a *prima facie* showing of [the objection’s] potential success on [the] merits.”¹⁷³

2. Armenia’s Objection Relating to the Negotiation Precondition.

68. Armenia’s second Article 18 objection, that the Tribunal lacks jurisdiction because the negotiation requirement in Article 18(2) of the Bern Convention has not been met, is similarly

¹⁶⁸ *Id.*, § II.A.

¹⁶⁹ **AZL-0264**, *Glencore v. Bolivia*, ¶ 42 (“[A]lthough the Tribunal recognizes that the objection is not frivolous, and the contextual arguments posed by the Respondent in this regard are capable of being argued and worth exploring in depth, it is not convinced that this objection is sufficiently serious and substantial as to justify bifurcation.”).

¹⁷⁰ **AZL-0266**, *Edmond Khudyan v. Armenia*, ¶ 41.

¹⁷¹ See, e.g., **AZL-0272**, *Canepa Green Energy Opportunities I, S.á r.l. and Canepa Green Energy Opportunities II, S.á r.l. v. Kingdom of Spain*, ICSID Case No. ARB/19/4, Procedural Order No. 3 (Decision on Bifurcation), 28 August 2020, ¶¶ 75–76 (rejecting bifurcation of an objection for which there was no textual support in the relevant instrument, and noting that the lack of legal support provided for the objection “cast doubt on whether the Respondent’s [] objection is *prima facie* serious and substantial”); **AZL-0277**, *Naftiran Intertrade Co. (NICO) Limited v. Kingdom of Bahrain*, ICSID Case No. ARB/22/34, Procedural Order No 4 (Decision on Respondent’s Request for Bifurcation), 12 August 2024 (“*Naftiran v. Bahrain*”), ¶ 50 (rejecting bifurcation where Respondent had “not provided legal support” for aspects of its objection).

¹⁷² **AZL-0271**, *Red Eagle v. Colombia*, ¶ 65 (rejecting bifurcation of an objection “in view of the lack of evidence in support of the contentions of the Respondent”). See also **AZL-0277**, *Naftiran v. Bahrain*, ¶ 50 (concluding that even though “the determination of Respondent’s *ratione materiae* jurisdictional Objection as a preliminary matter would dispose of the entire case, the Tribunal [was] not persuaded that bifurcating the proceeding to determine this Objection on a preliminary basis is justified”).

¹⁷³ **AZL-0266**, *Edmond Khudyan v. Armenia*, ¶ 41.

unserious and unsuitable for bifurcation, because it is likewise based on misstatements of both law and fact and rife with internal inconsistencies.

69. *First*, like Armenia’s first Article 18 objection, Armenia’s objection regarding negotiations lacks sufficient legal support to be considered serious or substantial. Armenia does not and cannot dispute that, as set out in Azerbaijan’s Statement of Claim, Azerbaijan “initiated talks with Armenia on 1 July 2021”¹⁷⁴ when it sent its Notice of Dispute, and that the Parties subsequently exchanged 37 letters and met virtually on nine separate dates over a period of almost 20 months.¹⁷⁵ Nevertheless, Armenia takes the position that there was not a “dispute” between the Parties until Azerbaijan provided an indeterminate amount of “information on facts, law, and remedies” to Armenia, which it allegedly did not do until 26 April 2022, and Armenia presented “detailed questions and comments” in response.¹⁷⁶ In other words, according to Armenia, there was no “dispute” between the parties until almost ten months *after* Azerbaijan issued its Notice of Dispute, and as a consequence, 20 exchanges specifically referencing the Bern Convention and Armenia’s alleged violations thereof, as well as exchanges concerning procedural modalities that took place from December 2021 to March 2022, must be *excluded* from the Tribunal’s consideration of whether negotiations took place.

70. There is simply no support for the artificial approach to negotiations Armenia presents; the weight of jurisprudence is to the contrary. Armenia notably bases the entire framework of its argument on the Court’s decision in *Georgia v. Russia*, where the Court found that because a “dispute” did not crystallize until a relatively late date, prior interactions between the parties could not be considered for purposes of a negotiation requirement.¹⁷⁷ Yet that case is inapposite here, where it is undisputed that Azerbaijan presented Armenia with a Notice of Dispute specifically referencing the Bern Convention and Armenia’s violations thereof.¹⁷⁸ It is well established in the Court’s jurisprudence that “specific references” to the relevant instrument are

¹⁷⁴ Armenia’s Memorial on Preliminary Objections, ¶ 101.

¹⁷⁵ Azerbaijan’s Statement of Claim, ¶ 137.

¹⁷⁶ Armenia’s Memorial on Preliminary Objections, ¶¶ 104, 106.

¹⁷⁷ *See id.*, ¶ 97 (citing **ARL-0059**, *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)*, Judgment on Preliminary Objections, I.C.J. Reports 2011 (“*Georgia v. Russia*”), ¶¶ 157, 167–168).

¹⁷⁸ *See ARL-0059, Georgia v. Russia*, ¶ 180 (considering statements made during press conferences and meetings of the UN Security Council, which the Court concluded “did not pertain to CERD-related matters”).

sufficient to show that an exchange “relate[s] to the subject-matter of the treaty containing the compromissory clause” and thus forms part of negotiations.¹⁷⁹ The Court has further held that “[c]orrespondence on procedural modalities” and “exchanges about the format in which claims would be presented and the schedule for doing so” also form part of negotiations.¹⁸⁰ In fact, Armenia *itself* argued in the case between the Parties before the Court that “there is no basis for excluding exchanges concerning procedural or technical matters from the concept of negotiations” under CERD.¹⁸¹ Armenia’s position therefore is without legal support and contradicted by the Court’s well-established case law on negotiations, making it insufficiently serious to warrant bifurcation. As explained above, similarly unserious objections premised on flawed legal arguments have been joined to the merits in other cases.¹⁸²

71. *Second*, Armenia’s objection is neither serious nor substantial because it mischaracterizes the record of negotiations before the parties in an attempt to prove that

¹⁷⁹ **ARL-0077**, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment on Preliminary Objections, I.C.J. Reports 2019, ¶¶ 116, 119. *See id.*, ¶ 119 (“There are specific references to CERD in the Notes Verbales exchanged between the Parties, which also refer to the rights and obligations arising under that Convention. In those Notes, Ukraine set out its views concerning the alleged violations of the Convention, and the Russian Federation accordingly had a full opportunity to reply to such allegations. The Court is satisfied that the subject-matter of such diplomatic exchanges related to the subject-matter of the dispute currently before the Court.”). *See also* **ARL-0105**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Judgment on Preliminary Objections, I.C.J. General List No. 181 (12 November 2024), ¶ 53 (“The Court notes that the Parties began exchanging written correspondence related to the present dispute under CERD in November 2020 . . . In the Court’s view, [] specific references to CERD [in four letters exchanged between the parties] show that the subject-matter of these exchanges related to the subject-matter of the Convention.”); **ARL-0074**, *Qatar v. United Arab Emirates*, ¶ 38 (“[T]he Minister of State for Foreign Affairs of Qatar referred to the alleged violations of CERD arising from the measures taken by the UAE . . . The Court considers that the letter contained an offer by Qatar to negotiate with the UAE with regard to the latter’s compliance with its substantive obligations under CERD.”). *See also* **AZL-0262**, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment on Preliminary Objections, I.C.J. Reports 2016, ¶ 69 (“Nicaragua, for its part, insisted that the maritime zones declared by the Court in the 2012 Judgment must be respected. [...] It is apparent from these statements that the Parties held opposing views on the question of their respective rights in the maritime areas covered by the 2012 Judgment.”).

¹⁸⁰ **ARL-0105**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Judgment on Preliminary Objections, I.C.J. General List No. 181 (12 November 2024), ¶ 54. *See also* **ARL-0074**, *Qatar v. United Arab Emirates*, ¶ 38 (making clear that negotiations do not even need to involve positive exchanges between the parties, but that “given the fact that the UAE did not respond to that formal invitation to negotiate, the Court is of the view that the issues raised in the present case had not been resolved by negotiations at the time of the filing of the Application.”).

¹⁸¹ **ARL-0105**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Judgment on Preliminary Objections, I.C.J. General List No. 181 (12 November 2024), ¶ 47.

¹⁸² *See supra* ¶¶ 60–67.

Azerbaijan’s efforts to settle the dispute were not “genuine.”¹⁸³ Again, Armenia does not dispute that the Parties exchanged written correspondence and attended multiple virtual meetings over the course of nearly 20 months—but it argues that these exchanges did not qualify as “negotiations” because Azerbaijan allegedly approached them as a “*pro forma* exercise.”¹⁸⁴ Even a cursory review of the factual record proves that allegation wrong. In fact, as Armenia itself recognizes, Azerbaijan “initiated discussions” after decades of tensions and the “absence of diplomatic relations between the Parties.”¹⁸⁵ Azerbaijan assembled a serious and actively engaged delegation to participate in those discussions, which included, among others, its Permanent Representative to the United Nations and the Head of the Department for International Cooperation at the Ministry of Ecology and Natural Resources. It continued to exchange written correspondence with Armenia and to request virtual meetings, despite Armenia’s refusal to even commit to participate in negotiations for five months or—as Armenia concedes in its Objections—to “express[] [its] views on Azerbaijan’s claims” until late June 2022.¹⁸⁶ Azerbaijan also provided Armenia with evidence of specific environmental harms, including as shown in satellite imagery,¹⁸⁷ as well as an 11-page list of 442 species affected by such harms—which Armenia bafflingly refers to in its Objections as “a far cry from the alleged ‘479 species’ allegedly harmed by Armenia’s purported conduct according to Azerbaijan’s Statement of Claim.”¹⁸⁸ In an effort to find a resolution to its claims, Azerbaijan also invited Armenia to “establish a remediation fund to restore affected habitats and species” through a program “established by independent technical experts in consultation with both Parties.”¹⁸⁹

¹⁸³ Armenia’s Memorial on Preliminary Objections, § II.B.1.

¹⁸⁴ *Id.*, ¶ 78.

¹⁸⁵ *Id.*, ¶¶ 78, 208.

¹⁸⁶ *Id.*, ¶ 106.

¹⁸⁷ **AZ-0081**, Republic of Azerbaijan, *Response to Armenian Foreign Ministry’s Letter under the Bern Convention*, dated 26 April 2022, pp. 3–4; **AZ-0090**, Republic of Armenia, *Response to the Azerbaijani Foreign Ministry’s Letter under the Bern Convention*, dated 29 June 2022, p. 4; **AZ-0093**, Republic of Azerbaijan, *Response to Armenian Foreign Ministry’s Letter under the Bern Convention*, dated 13 July 2022, p. 1 n. 1.

¹⁸⁸ Armenia’s Memorial on Preliminary Objections, ¶ 104 n. 211.

¹⁸⁹ **AZ-0096**, Republic of Azerbaijan, *Response to the Armenian Foreign Ministry’s Letter under the Bern Convention*, dated 13 September 2022, p. 2.

72. Against that factual record, Armenia’s attempts to characterize Azerbaijan as “lack[ing] genuine engagement”¹⁹⁰ border on the absurd. Armenia argues, for example, that Azerbaijan “refused” to negotiate procedural modalities.¹⁹¹ Beyond the fact that the Parties exchanged ten letters concerning procedural modalities between December 2021 and March 2022, Armenia’s claim misleadingly seeks to characterize as evidence of Azerbaijan’s “insincerity”¹⁹² the fact that Azerbaijan proposed the use of modalities that *both Parties agreed to* in a different case (the CERD disputes between the Parties before the Court).¹⁹³ Armenia also claims that Azerbaijan imposed “unreasonable deadlines” and “constant pressure on Armenia” and “threatened to initiate arbitration”¹⁹⁴—but asking Armenia to provide responses by a certain date and reserving Azerbaijan’s rights to file arbitration cannot reasonably be understood as evidence of bad faith, particularly where Armenia was refusing to even commit to participate in negotiations or to provide any substantive response to Azerbaijan’s claims.¹⁹⁵

73. Neither can statements made outside of bilateral negotiations and not even referencing the Bern Convention evidence an “unconditional intent”¹⁹⁶ by Azerbaijan to commence arbitration. Armenia’s arguments are simply not serious; Armenia does not cite a single case supporting its argument that these kinds of statements would render negotiations not “genuine.” In addition, Armenia’s claim that “the Parties had made significant progress in the negotiations”¹⁹⁷ and that negotiations were not yet futile when Azerbaijan commenced arbitration lacks any factual support. As Azerbaijan explained to Armenia in the Parties’ final communication prior to arbitration:

¹⁹⁰ Armenia’s Memorial on Preliminary Objections, ¶ 78.

¹⁹¹ *Id.*, ¶ 89.

¹⁹² *Id.*, ¶ 86.

¹⁹³ **AZ-0067**, Republic of Azerbaijan, *Response to the Armenian Foreign Ministry’s Letter concerning the Republic of Azerbaijan’s Claims under the Bern Convention, dated 15 December 2021* (annexing “procedural modalities based on the provisions agreed by the parties in the context of another dispute”).

¹⁹⁴ Armenia’s Memorial on Preliminary Objections, ¶¶ 87, 93.

¹⁹⁵ *See id.*, ¶ 88 (referring to **AZ-0065**, Republic of Azerbaijan, *Response to the Armenian Foreign Ministry’s Letter concerning the Republic of Azerbaijan’s Claims under the Bern Convention, dated 9 December 2021*, p. 4, which in fact provided that “[s]hould Armenia continue to decline to accept the offer to negotiate or otherwise seek even further delay past the end of 2021 in the timetable for negotiations, Azerbaijan intends to submit the dispute to binding arbitration”).

¹⁹⁶ *Id.*, ¶ 79.

¹⁹⁷ *Id.*, ¶ 113.

the Parties' last Bern Convention delegation meetings were held over six weeks ago. Azerbaijan's letter was sent over three weeks ago. Armenia has provided no substantive response, and no indication of when it intends to do so. More than 15 months and counting have elapsed since Azerbaijan's 1 July 2021 Notice of Dispute, without meaningful engagement, let alone progress, on the substance of the disputed issues.¹⁹⁸

74. In addition and as explained above, arbitration tribunals in other cases have declined to bifurcate objections that have no factual basis and are *prima facie* unsupported.¹⁹⁹ Likewise, in this case, Armenia has not provided sufficient evidence to demonstrate that its objection is serious and substantial, since the facts it *has* provided are contradicted by the evidence and show that Azerbaijan was attempting to resolve the dispute in good faith.

75. *Third*, it is telling that while Armenia argues that nearly 20 months of discussions involving 37 letters and multiple virtual meetings was not enough to show that Azerbaijan attempted to resolve this dispute through negotiations,²⁰⁰ it suggests that a different standard would apply for its own counterclaims. Indeed, Armenia states that “if the Tribunal were to find that it has jurisdiction over Azerbaijan’s claims,” Armenia will “present counter-claims in respect of Azerbaijan’s environmental misconduct as concerns both Nagorno-Karabakh and Armenian territory”²⁰¹—despite never having noticed or attempted *any* resolution of such counterclaims. However, as Azerbaijan previously observed in its 25 February 2022 letter to Armenia during the negotiations when Armenia first raised the possibility of counterclaims, “any affirmative claims that Armenia wishes to advance against Azerbaijan under the Bern Convention (or any other agreement) must be separately notified and pursued through the appropriate processes.”²⁰² Armenia’s suggestion to the contrary reinforces the fact that its Article 18 objection is not sufficiently serious to warrant bifurcation.

¹⁹⁸ **AZ-0098**, Republic of Azerbaijan, *Letter to the Armenian Foreign Ministry regarding the Republic of Azerbaijan’s Claims under the Bern Convention*, dated 11 October 2022.

¹⁹⁹ See, e.g., **AZL-0266**, *Edmond Khudyan v. Armenia*; ¶ 41; **AZL-0271**, *Red Eagle v. Colombia*, ¶ 65.

²⁰⁰ See Armenia’s Memorial on Preliminary Objections, § II.B.

²⁰¹ Armenia’s Memorial on Preliminary Objections, ¶ 19.

²⁰² **AZ-0075**, Republic of Azerbaijan, *Response to the Armenian Foreign Ministry’s Letter under the Bern Convention*, dated 25 February 2022, p. 2.

76. Considerations of both fairness and efficiency weigh toward joining all of Armenia's preliminary objections to the merits. As explained above, the majority of these objections do not possess an exclusively preliminary character, but instead would require the Tribunal to prejudge the merits of the Parties' claims and defenses, and therefore would only duplicate costs and increase delays across both preliminary and merits phases. In addition, Armenia's remaining Article 18 objections lack sufficient legal and factual support and are therefore not serious and substantial enough to justify bifurcation on their own. Accordingly, all of Armenia's objections should be joined to the merits.

IV. REQUEST FOR RELIEF

77. For the reasons set out above, Azerbaijan respectfully seeks an order:

- (a) Joining Armenia's Preliminary Objections to the merits;
- (b) Adopting a timetable for the continuation of proceedings beginning with Step A4 of the Procedural Timetable in Procedural Order No. 2;
- (c) Ordering Armenia to bear all costs incurred by Azerbaijan in the preparation of this Opposition to Bifurcation of Preliminary Objections; and
- (d) Ordering such other relief as the Tribunal deems just and necessary in the circumstances.

Respectfully submitted,



H.E. Elnur Mammadov
Deputy Minister of Foreign Affairs
Ambassador Extraordinary and Plenipotentiary

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