

PCA Case No. 2023-60

**IN THE MATTER OF AN ARBITRATION UNDER
THE CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS OF 19 SEPTEMBER 1979**

- between -

THE REPUBLIC OF AZERBAIJAN

- and -

THE REPUBLIC OF ARMENIA

DECISION ON BIFURCATION

Arbitral Tribunal

Dr. Václav Mikulka (Presiding Arbitrator)
Judge Bruno Simma
Judge Nicolas Michel

Registry

Mr. Bryce Williams
Mr. Martin Doe
Permanent Court of Arbitration

23 December 2025

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TABLE OF DEFINED TERMS

Area or Affected Area or “Affected Area”¹	Xankəndi (Khankandi) city, Ağdam (Aghdam), Füzuli (Fuzuli), Xocalı (Khojaly), Xocavənd (Khojavand), Şuşa (Shusha), Ağdərə (Aghdara) and Tərtər (Tartar) districts of the Garabagh economic region, and the Kəlbəcər (Kalbajar), Qubadlı (Gubadly), Cəbrayıl (Jabrayil), Laçın (Lachin), and Zəngilan (Zangilan) districts of the Eastern Zangezur economic region.
Armenia	The Republic of Armenia
Armenia’s Objections	Armenia’s objections to the Tribunal’s jurisdiction as advanced in its Memorial on Preliminary Objections
Article 18 Objections	Armenia’s objections that the Tribunal lacks jurisdiction as Azerbaijan failed to comply with the mandatory preconditions to arbitration set out in the Bern Convention’s dispute settlement provision, including the Standing Committee Objection and the Negotiations Objection
Articles 4(4) and 11 Objections	Armenia’s objections that the Tribunal lacks jurisdiction over Azerbaijan’s claims under Articles 4(4) and 11(1)(a) of the Bern Convention, as the conduct alleged by Azerbaijan is not capable of constituting a breach of those provisions
Attribution Objection	Armenia’s objection that the Tribunal lacks jurisdiction over Azerbaijan’s “Affected Area” claims as Azerbaijan has failed to establish even a <i>prima facie</i> case on attribution
Azerbaijan	The Republic of Azerbaijan
Bern Convention	Convention on the Conservation of European Wildlife and Natural Habitats of 19 September 1979
ECtHR	European Court of Human Rights
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
Law-of-Armed-Conflict Objection	Armenia’s objection that the dispute in relation to alleged breaches of Articles 2, 3, 4, 6, and 7 of the Bern Convention in the “Affected Area” would be governed by the law of armed conflict, not the Bern Convention
Memorial on Preliminary Objections	Armenia’s Memorial on Preliminary Objections dated 12 June 2025
Negotiations Objection	Armenia’s Article 18 Objection that Azerbaijan failed to genuinely pursue negotiations as far as possible, before commencing arbitration

¹ See, fns. 50 and 173 below.

Notice of Arbitration	Azerbaijan's Notice of Arbitration dated 18 January 2023
Opposition to Bifurcation	Azerbaijan's Opposition to Bifurcation of Preliminary Objections dated 24 July 2025
Parties	Azerbaijan and Armenia
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
Procedural Timetable	The initial procedural timetable for these proceedings, established by the Tribunal in Procedural Order No. 2 dated 15 May 2024
Rules of Procedure	The rules of procedure for these proceedings, established by the Tribunal in Procedural Order No. 1 dated 29 March 2024
Standing Committee Objection	Armenia's Article 18 Objection that Azerbaijan failed to refer the matter to the Bern Convention Standing Committee
Territorial Objection	Armenia's objection that the obligations imposed by Articles 2, 3, 4, 6, and 7 of the Bern Convention are not extraterritorial in nature

I. INTRODUCTION

1. The parties to these proceedings are the Republic of Azerbaijan (“**Azerbaijan**”) and the Republic of Armenia (“**Armenia**”) (collectively, the “**Parties**”).
2. According to Azerbaijan, a dispute has arisen between the Parties under the Convention on the Conservation of European Wildlife and Natural Habitats of 19 September 1979 (the “**Bern Convention**”). In its Notice of Arbitration dated 18 January 2023 (“**Notice of Arbitration**”), Azerbaijan alleges, amongst other things, that Armenia has breached its obligations under Articles 2, 3, 4, 5, 6, 7, 10, and 11 of the Bern Convention.²
3. Armenia raised objections to the jurisdiction of the Tribunal in its Memorial on Preliminary Objections dated 12 June 2025 (“**Memorial on Preliminary Objections**”) and requested the bifurcation of the proceedings for the purpose of hearing its jurisdictional objections in a separate, preliminary phase. On 24 July 2025, Azerbaijan opposed the bifurcation of the proceedings. Following further written submissions from the Parties, and the Hearing on Bifurcation held on 16 October 2025, this Decision determines whether Armenia’s objections shall be heard in a separate, preliminary phase of the proceedings.

*

² Azerbaijan’s Notice of Arbitration dated 18 January 2023 (“**Notice of Arbitration**”), paras. 48–90. In its Statement of Claim dated 12 February 2025 (“**Statement of Claim**”), Azerbaijan does not seek relief in respect of its claims relating to Articles 5 and 10 of the Bern Convention (*see*, Statement of Claim, paras. 417(a)–(b)).

II. RELEVANT PROCEDURAL HISTORY

A. COMMENCEMENT OF THE ARBITRATION AND CONSTITUTION OF THE TRIBUNAL

4. On 18 January 2023, Azerbaijan commenced these proceedings against Armenia pursuant to Article 18(2) of the Bern Convention, by way of its Notice of Arbitration.³
5. In its Notice of Arbitration, Azerbaijan requested that the Tribunal:⁴
 - a. DECLARE that Armenia has breached its obligations under the Bern Convention;
 - b. ORDER Armenia to cease any and all ongoing violations of the Bern Convention;
 - c. ORDER Armenia to pay to Azerbaijan monetary compensation representing full reparation for Armenia's breaches of the Bern Convention, in an amount to be quantified during the course of this proceeding;
 - d. ORDER Armenia to pay to Azerbaijan all of the costs that Azerbaijan has and will incur in pursuing this action, including, without limitation, all legal and other professional fees and expenses associated with any and all proceedings undertaken in connection with this arbitration;
 - e. ORDER Armenia to pay interest (pre- and post-Award) on the sums ordered to be paid above, at a rate to be determined during the course of this proceeding and applied at the Tribunal-determined rate until full and final payment; and
 - f. ORDER any such other and further relief as may be available and appropriate in the circumstances.
6. In its Notice of Arbitration, Azerbaijan appointed Judge Bruno E. Simma, a national of Germany and Austria, as arbitrator.⁵
7. On 18 April 2023, Armenia appointed Judge Nicolas Michel, a national of Switzerland, as arbitrator.
8. On 5 July 2023, the Tribunal was fully constituted with the appointment by the co-arbitrators of Dr. Václav Mikulka, a national of the Czech Republic, as the presiding arbitrator.

B. ADOPTION OF THE RULES OF PROCEDURE AND PROCEDURAL TIMETABLE

9. On 29 March 2024, following written submissions from the Parties, the Tribunal issued Procedural Order No. 1, establishing the rules of procedure for these proceedings ("**Rules of**

³ Notice of Arbitration, para. 1.

⁴ Notice of Arbitration, para. 106.

⁵ Notice of Arbitration, para. 104.

Procedure”), pursuant to Article 18(4) of the Bern Convention.⁶ Relevantly, Article 14 of the Rules of Procedure addresses objections to jurisdiction or admissibility, as follows:

Objections to Jurisdiction or Admissibility

Article 14

1. The Tribunal shall have the power to rule on objections to its jurisdiction or to the admissibility of any claim (including a counter-claim) made in the proceedings.
 2. Any such objection shall be raised in writing no later than in the Counter-Memorial or, with respect to a counter-claim, no later than in the reply to the counter-claim. Any objection shall set out the facts and the law on which it is based, as well as the submissions made in support of the objection.
 3. Notwithstanding Article 14(2), any objection the decision on which is requested before any further proceedings on the merits (a “**Preliminary Objection**”) shall be raised in writing by the deadline fixed by the Tribunal.
 4. 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.
 5. In the event that a Preliminary Objection submitted by a Party is addressed in a preliminary phase, the proceedings on the merits shall be suspended and the Tribunal shall fix a deadline within which the other Party may present its written observations and submissions.
 6. Unless the Tribunal decides otherwise after inviting the views of the Parties, the further proceedings shall be oral, and the hearing shall be held as expeditiously as is practicable.
 7. The written observations and submissions referred to in Article 14(5), and the statements and evidence presented at the hearings contemplated by Article 14(6), shall be confined to those matters which are relevant to the Preliminary Objection. Whenever necessary, however, the Tribunal may request the Parties to argue all questions of law and fact and to adduce all evidence bearing on certain matters.
 8. The Tribunal may render its decision on any Preliminary Objection in the form of an award.
 9. If the Tribunal rejects a Party’s Preliminary Objections or declares that such an objection shall only be ruled upon in conjunction with the merits, the Tribunal shall fix deadlines for the further proceedings.
10. On 15 May 2024, following written and oral submissions from the Parties, the Tribunal issued Procedural Order No. 2, establishing the procedural timetable for the proceedings (“**Procedural Timetable**”). The Procedural Timetable envisaged the submission of Azerbaijan’s Statement of Claim, followed, in the event that Armenia submitted preliminary objections and Azerbaijan opposed bifurcation of the proceedings, by a response from Armenia on the question of bifurcation and then a Hearing on Bifurcation, in accordance with section C of the Procedural Timetable, as follows:

⁶ **AZL-0001**, Bern Convention, Article 18(4) (“The arbitration tribunal shall draw up its own Rules of Procedure. Its decisions shall be taken by majority vote. Its award shall be final and binding”).

STEP	PARTY	INTERVAL (DAYS)	DEADLINE
First Procedural Conference	All		12 April 2024 (Fri)
Memorial (Statement of Claim)	Azerbaijan	306	12 February 2025 (Wed)
Memorial on Preliminary Objections (if any)	Armenia	-	12 June 2025 (Thu)
Opposition to Bifurcation of Preliminary Objections (if any)	Azerbaijan	42	24 July 2025 (Thu)
Response to Opposition to Bifurcation	Armenia	42	4 September 2025 (Thu)
Hearing on Bifurcation (~1.5 days)	All	42	16 October 2025 (Thu) – 17 October 2025 (Fri)

11. The Procedural Timetable provided that following the Hearing, the Tribunal would determine further steps in the proceedings after inviting the views of the Parties.

C. WRITTEN SUBMISSIONS

12. On 12 February 2025, Azerbaijan submitted its Statement of Claim, accompanied by the expert reports of Professor Resit Akçakaya, Professor Mark Burgman, Mr. John S. L. Morgan and Mr. Robert E. Unsworth, as well as factual exhibits and legal authorities.
13. On 12 June 2025, Armenia submitted its Memorial on Preliminary Objections, accompanied by factual exhibits and legal authorities.
14. On 24 July 2025, Azerbaijan submitted its Opposition to Bifurcation of Preliminary Objections (“**Opposition to Bifurcation**”), accompanied by legal authorities.
15. On 4 September 2025, Armenia submitted its Response to Opposition to Bifurcation, accompanied by factual exhibits and legal authorities.

D. HEARING ON BIFURCATION

16. On 15 September 2025, the Parties confirmed their agreement to The Hague as the venue for the Hearing on Bifurcation.

17. On 26 September 2025, the Tribunal adopted the schedule for the Hearing on Bifurcation as jointly proposed by the Parties.⁷
18. On 16 October 2025, the Hearing on Bifurcation was held at the Peace Palace in The Hague, the Netherlands. The following individuals attended the Hearing on Bifurcation:

Arbitral Tribunal

Dr. Václav Mikulka (Presiding Arbitrator)
Judge Bruno E. Simma
Judge Nicolas Michel

The Republic of Azerbaijan

H.E. Mr. Elnur Mammadov
Agent for Azerbaijan
Deputy Minister of Foreign Affairs
Ambassador Extraordinary and Plenipotentiary
Republic of Azerbaijan

H.E. Mr. Mammad Ahmadzada
Ambassador Extraordinary and Plenipotentiary
of the Republic of Azerbaijan
to the Kingdom of the Netherlands

Mr. Nurlan Aliyev
Counsellor of the Embassy of the Republic of
Azerbaijan to the Kingdom of the Netherlands

Mr. Badir Bayramov
Head of the International Litigation and
Arbitration Issues Division, Legal Support
Department, Ministry of Foreign Affairs of the
Republic of Azerbaijan

Ms. Catherine Amirfar
Ms. Ina Popova
Ms. Julianne Marley
Ms. Rhianna Hoover
Ms. Emma Macfarlane
Ms. Iben Vagle
Ms. Mary Grace McEvoy
Counsel, Debevoise & Plimpton LLP

Prof. Laurence Boisson de Chazournes
Counsel, Professor of International Law and
International Organizations, University of
Geneva

Mr. Aditya Laddha
Counsel, Doctoral Candidate and Researcher,
University of Geneva

The Republic of Armenia

H.E. Mr. Karen Andreasyan
Agent for Armenia
Representative of the Republic of Armenia on
International Legal Matters

Ms. Mariam Virabyan
Third Secretary of the Embassy of
the Republic of Armenia to the Kingdom of the
Netherlands

Mr. Artyom Sujyan
Deputy Representative of the Republic of Armenia
on International Legal Matters

Mr. Marc Azdaridis
Office of the Representative of the
Republic of Armenia on International Legal
Matters

Dr. Constantinos Salonidis
Prof. Pierre d'Argent
Ms. Diem Huong Ho
Ms. Charlotte Verdon
Counsel, Foley Hoag LLP

Prof. Sean D. Murphy
Counsel, Manatt/Ahn Professor of
International Law, George Washington
University Law School

Ms. Alison Macdonald KC
Counsel, Essex Court Chambers

Prof. Linos-Alexander Sicilianos
Counsel, Professor of International Law
University of Athens

Ms. Jennifer Schoppmann
Ms. Deborah Langley
Foley Hoag LLP

⁷ The schedule jointly proposed by the Parties and adopted by the Tribunal envisaged the completion of the Hearing on Bifurcation in one sitting day (16 October 2025), in lieu of the one-and-a-half-day period reserved in the Procedural Timetable.

Permanent Court of Arbitration

Mr. Bryce D. Williams, Registrar; Legal Counsel
Mr. Martin Doe, Deputy Secretary-General and Principal Legal Counsel
Ms. Denise Wohlwend, Assistant Legal Counsel
Mr. Benjamin Craddock, Senior Case Manager

Court Reporter

Ms. Anne-Marie Stallard

19. On 30 October 2025, as foreshadowed at the Hearing on Bifurcation, the Parties submitted a joint proposal for procedural steps following the Decision on Bifurcation.

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III. PARTIES' POSITIONS

A. REQUESTS FOR RELIEF

20. In its Opposition to Bifurcation, Azerbaijan seeks an order:⁸
- (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.
21. In its Response to Opposition to Bifurcation, Armenia requests that the Tribunal:⁹
- (a) Rule on all of Armenia's objections (except its seventh objection) in a preliminary phase; and
 - (b) Order Azerbaijan to bear all costs incurred by Armenia in the preparation of this Response to Opposition to Bifurcation.

B. APPLICABLE STANDARD

22. To recall, Article 14(4) of the Rules of Procedure provides that:

[t]he 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.

(a) *Azerbaijan's Position on the Applicable Standard*

23. Azerbaijan contends that Article 14(4) grants the Tribunal broad discretion to determine whether objections to jurisdiction and admissibility should be heard in a preliminary phase. In exercising this discretion, considerations of fairness and efficiency are of paramount importance, and should be decisive.¹⁰
24. Azerbaijan first recalls that, under Article 14(4), the Tribunal may join an objection to the merits (i) if the objection "does not possess an exclusively preliminary character"; or (ii) if the Tribunal "otherwise" concludes that the objection should be joined to the merits – that is, for *any* other

⁸ Opposition to Bifurcation, para. 77.

⁹ Response to Opposition to Bifurcation, para. 210.

¹⁰ Opposition to Bifurcation, paras. 12–13. *See also*, Hearing Tr., 8:14–19, *citing* Rules of Procedure, Article 9(2) ("in exercising its discretion, [the Tribunal] shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the Parties' dispute" (brackets in the original)); Hearing Tr., 46:13–19.

reason.¹¹ As such, in Azerbaijan’s view, the standard in Article 14(4) is broader than the standards used in other inter-State cases (which have concerned the first aspect alone).¹²

25. Azerbaijan highlights that tribunals in both inter-State and investor-State disputes have affirmed fairness and efficiency as the key principles governing whether bifurcation is appropriate,¹³ and that tribunals considering bifurcation must weigh the “benefits of procedural fairness and efficiency against the risks of delay, wasted expense and prejudice”.¹⁴
26. In Azerbaijan’s view, there are a number of relevant factors to be considered in that regard.¹⁵
27. *First*, tribunals have repeatedly recognised that bifurcation is inappropriate when an objection is not “*exclusively* preliminary in character”.¹⁶ This condition is satisfied when an objection is “intertwined with” or “intimately linked to” the merits (for example, where there are overlapping issues of fact or law, where an objection requires a “detailed examination of the Convention’s substantive provisions and the factual matrix”,¹⁷ or where an objection “has the character of a

¹¹ Opposition to Bifurcation, para. 14, *citing* Rules of Procedure, Article 14(4). To that end, Azerbaijan contends that the Tribunal “rejected Armenia’s more restrictive proposal” (Hearing Tr., 10:9–10). *See also*, Hearing Tr., 46:10–12 (“The plain meaning of “otherwise” is simply: for other reasons beside the preliminary character of the objection”); Hearing Tr., 126:5–10 (“Azerbaijan is not saying that the Tribunal can bifurcate for any reason at all, the implication being: for any arbitrary reason. Rather, it must exercise its discretion for reasons that would serve fairness and efficiency, and avoid unnecessary cost and delay”).

¹² Opposition to Bifurcation, para. 14, *citing, 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, Article 10(4); **AZL-0010**, *Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. The Russian Federation)*, PCA Case No. 2019-28, Rules of Procedure, 22 November 2019, Article 11(1); **AZL-0005**, *The Arctic Sunrise Arbitration (The Kingdom of the Netherlands v. The Russian Federation)*, PCA Case No. 2014-02, Procedural Order No. 2, 17 March 2014, Article 20(3); **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, Article 20(3).

¹³ Opposition to Bifurcation, para. 15, *citing, 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, para. 2.1; **AZL-0259**, *Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Decision on Bifurcation, 21 January 2015, para. 66; **AZL-0264**, *Glencore Finance (Bermuda) Limited. v. The Plurinational State of Bolivia*, PCA Case No. 2016-39, UNCITRAL, Procedural Order No. 2 (Decision on Bifurcation), 31 January 2018, para. 56.

¹⁴ Opposition to Bifurcation, para. 15, *citing* **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, para. 10.

¹⁵ Opposition to Bifurcation, para. 16.

¹⁶ Opposition to Bifurcation, para. 17, *citing* Memorial on Preliminary Objections, para. 28 (emphasis added by Azerbaijan).

¹⁷ Hearing Tr., 11:18–20, *citing* Memorial on Preliminary Objections, para. 25.

defence on the merits”¹⁸).¹⁹ In these cases, addressing the objection in a preliminary phase risks prejudgment of the merits of the dispute, and is less efficient overall.²⁰

28. *Secondly*, tribunals have found bifurcation to be inappropriate where upholding the objection would not result in a material reduction of the scope of the proceedings (for example, if it would not dispose of “all or at least an essential part of the claims”).²¹
29. *Thirdly*, tribunals have refused to bifurcate preliminary objections where the objections are not, on their face, sufficiently serious and substantial to warrant bifurcation.²² An objection that is “frivolous” clearly does not meet this threshold; nevertheless, objections that have “no reasonable chance of success” or that are “clearly without merit” are also unsuitable for bifurcation.²³
30. *Finally*, tribunals have considered bifurcation to be inappropriate where the majority of preliminary objections will be joined to the merits. In such cases, considerations of fairness and

¹⁸ Hearing Tr., 12:4–7, *citing* Response to Opposition to Bifurcation, para. 35.

¹⁹ Opposition to Bifurcation, para. 17, *citing, e.g., AZL-0249, Delimitation of Maritime Boundary (Guyana v. Suriname)*, PCA Case No. 2004-04, Procedural Order No. 2, 18 July 2005, para. 2; **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, para. 16; **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, para. 109; **AZL-0264**, *Glencore Finance (Bermuda) Limited v. The Plurinational State of Bolivia*, PCA Case No. 2016-39, UNCITRAL, Procedural Order No. 2 (Decision on Bifurcation), 31 January 2018, paras. 53 and 56.

²⁰ Opposition to Bifurcation, para. 17.

²¹ Opposition to Bifurcation, para. 18, *citing 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, para. 83; **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, para. 109; **AZL-0248**, *Glamis Gold Ltd. v. The United States of America*, UNCITRAL, Procedural Order No. 2 (Revised), 31 May 2005, para. 21.

²² Opposition to Bifurcation, para. 19, *citing, e.g., AZL-0264, Glencore Finance (Bermuda) Limited v. The Plurinational State of Bolivia*, PCA Case No. 2016-39, UNCITRAL, Procedural Order No. 2 (Decision on Bifurcation), 31 January 2018, paras. 42, 50–51; **AZL-0278**, *Access Business Group LLC v. United Mexican States*, ICSID Case No. ARB/23/15, Procedural Order No. 3 (Bifurcation), 29 August 2024, para. 36; **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, para. 27.

²³ Opposition to Bifurcation, para. 19, *citing 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, para. 27; **AZL-0264**, *Glencore Finance (Bermuda) Limited v. The Plurinational State of Bolivia*, PCA Case No. 2016-39, UNCITRAL, Procedural Order No. 2 (Decision on Bifurcation), 31 January 2018, paras. 42, 50–51; **AZL-0271**, *Red Eagle Exploration Limited v. Republic of Colombia*, ICSID Case No. ARB/18/12, Decision on Bifurcation, 3 August 2020, para. 42; **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, para. 41.

efficiency “dictate joining *all* preliminary objections to the merits, even if a specific objection might otherwise warrant bifurcation if considered in isolation”.²⁴

(b) Armenia’s Position on the Applicable Standard

31. According to Armenia, Article 14(4) of the Rules of Procedure provides for the preliminary treatment of objections to jurisdiction or admissibility as the *default* position.²⁵ The strong presumption in favour of bifurcation reflected in the Rules may only be rebutted in very limited circumstances.²⁶
32. Armenia first recalls the procedural history leading to the adoption of Article 14(4), in which Armenia claims that the Tribunal rejected the formula advanced by Azerbaijan (which granted the Tribunal broad discretion as to whether to bifurcate), in favour of Armenia’s proposal (which established bifurcation as the default position).²⁷ The Procedural Timetable, which requires Azerbaijan to *oppose* the bifurcation of preliminary objections, affirms that the preliminary treatment of objections is the default position.²⁸ According to Armenia, this position is consistent with the international law rule that “a party should not have to give account of itself on issues of merits before a tribunal which lacks jurisdiction in the matter, or whose jurisdiction has not yet been established”,²⁹ and increases the efficiency of the proceedings overall.
33. In light of the position under Article 14(4), Armenia asserts that the majority of decisions upon which Azerbaijan relies are inapposite, given that the applicable standard in those cases involved

²⁴ Opposition to Bifurcation, para. 20 (emphasis added by Azerbaijan), *citing, e.g., AZL-0264, Glencore Finance (Bermuda) Limited v. The Plurinational State of Bolivia*, PCA Case No. 2016-39, UNCITRAL, Procedural Order No. 2 (Decision on Bifurcation), 31 January 2018, para. 56; **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, para. 110. *See also*, Hearing Tr., 47:17–48:5; *cf.* Hearing Tr., 135:32–136:5 (“what should the Tribunal do if it determines that some objections should be bifurcated but others should not? We submit that the Tribunal must analyse each objection individually and determine whether, taken on its own terms, it would serve the interests of fairness and efficiency, and avoid unnecessary cost and delay, to bifurcate it. That is what Article 14(4) says, and that is how the Tribunal can comply with its duty under Article 9(2) of Procedural Order No. 1”).

²⁵ Response to Opposition to Bifurcation, para. 3.

²⁶ Namely, “for an exceptional reason that *compels* [the Tribunal] (and not just leaves it to the Tribunal’s discretion) to rule on the objection in conjunction with the merits”. Response to Opposition to Bifurcation, para. 42 (emphasis added by Armenia).

²⁷ Response to Opposition to Bifurcation, paras. 19, 21. *See also*, Hearing Tr., 65:21–66:21.

²⁸ Response to Opposition to Bifurcation, para. 23.

²⁹ Response to Opposition to Bifurcation, para. 22, *citing ARL-0013, Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, ICJ, Judgment, 18 August 1972, para. 18. *See also*, Hearing Tr., 67:17–68:3.

no presumption in favour of bifurcation,³⁰ or only a significantly weaker presumption (as in the case between the Parties under the Energy Charter Treaty).³¹

34. Armenia submits that the Tribunal may depart from the default position under Article 14(4) only if an objection “does not possess an exclusively preliminary character” or it “otherwise shall be ruled [upon] in conjunction with the merits”.³² These exceptions must be construed strictly.³³
35. *First*, according to Armenia, the question of whether an objection possesses an exclusively preliminary character is the primary enquiry for the Tribunal under Article 14(4).³⁴ Armenia contends that an objection only lacks an exclusively preliminary character if a tribunal does not have before it all facts necessary to decide the preliminary objection,³⁵ or if by “answering the preliminary objection [it] would determine the dispute or some elements thereof, on the merits”.³⁶ In Armenia’s view, the mere fact that the determination of an objection “touch[es] upon certain aspects of the merits of the case”, that an objection has the “potential for overlap” with merits

³⁰ Response to Opposition to Bifurcation, paras. 24–26.

³¹ Response to Opposition to Bifurcation, para. 27. *See also*, Hearing Tr., 69:10–16.

³² Response to Opposition to Bifurcation, para. 3.

³³ Response to Opposition to Bifurcation, para. 29, *citing* **ARL-0143**, *The Indus Waters Western Rivers Arbitration (The Islamic Republic of Pakistan v. The Republic of India)*, PCA Case No. 2023-01, Award on Issues of General Interpretation of the Indus Waters Treaty, 8 August 2025, para. 440.

³⁴ Response to Opposition to Bifurcation, paras. 31–32, *citing* **ARL-0134**, *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, ICJ, Preliminary Objection, Judgment, 24 September 2015, para. 53; **AZL-0004**, *The ARA Libertad Arbitration (The Argentine Republic v. The Republic of Ghana)*, PCA Case No. 2013-11, Procedural Order No. 1, 31 July 2013, Article 13; **AZL-0005**, *The Arctic Sunrise Arbitration (The Kingdom of the Netherlands v. The Russian Federation)*, PCA Case No. 2014-02, Procedural Order No. 2, 17 March 2014, Article 20; **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, Article 20; **ARL-0145**, *Arbitration under the Timor Sea Treaty (The Democratic Republic of Timor-Leste v. The Commonwealth of Australia)*, PCA Case No. 2015-42, Rules of Procedure, 9 September 2025, Article 18; **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, Article 10; **AZL-0010**, *Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. The Russian Federation)*, PCA Case No. 2019-28, Rules of Procedure, 22 November 2019, Article 11.

³⁵ Response to Opposition to Bifurcation, para. 33, *citing* **AZL-0252**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, ICJ, Preliminary Objections, Judgment, 18 November 2008, para. 129.

³⁶ Response to Opposition to Bifurcation, para. 33, *citing* **AZL-0251**, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, ICJ, Preliminary Objections, Judgment, 13 December 2007, para. 51 (brackets added by Armenia).

issues, or that an objection involves “overlapping arguments or issues of fact or law”, is not sufficient to deprive an objection of its exclusively preliminary character.³⁷

36. *Secondly*, Armenia contends that, in accordance with the interpretative canon of *ejusdem generis*, the second exception (“or otherwise”) must refer to “reasons of the same class as the [first exception]”, namely those which call “for an assessment of the *character* of the objection” (for example, whether an objection “is only capable of disposing of an immaterial portion of the case”).³⁸ Armenia rejects Azerbaijan’s “broad interpretation” of the second exception on the basis that it would render the first part of the provision meaningless,³⁹ that it would grant the Tribunal unfettered discretion to deny preliminary treatment (notwithstanding the Tribunal’s rejection of that position, as advanced by Azerbaijan),⁴⁰ and that it ignores the rest of the provision, including the expression “shall only”, which suggests that preliminary treatment of an objection may only be refused for an exceptional reason that *compels* the Tribunal to join the objection to the merits.⁴¹
37. *Thirdly*, in Armenia’s view, the “seriousness” or “substantiality” of the objections has no role to play in the Tribunal’s assessment under Article 14(4).⁴² Such an assessment “would effectively prejudge [the objections] under the guise of bifurcation”.⁴³ Even if the substantive strength of an objection could be considered as part of the second exception (*quod non*), the burden would lie on Azerbaijan to demonstrate “highly exceptional” circumstances to override the default position in favour of bifurcation under Article 14(4).⁴⁴
38. According to Armenia, the view advanced by Azerbaijan (that an international tribunal may refuse to bifurcate an objection because it is not “serious”, even if the objection is not “frivolous”), is only a *minority* view.⁴⁵ The *majority* view is that bifurcation may be denied only if an objection

³⁷ Response to Opposition to Bifurcation, paras. 34, 36, citing **AZL-0251**, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, ICJ, Preliminary Objections, Judgment, 13 December 2007, para. 51 (brackets added by Armenia); Opposition to Bifurcation, para. 17, fns. 20–21. *See also*, Hearing Tr., 71:7–15.

³⁸ Response to Opposition to Bifurcation, para. 43 (emphasis added by Armenia). *See also*, Hearing Tr., 73:13–74:6.

³⁹ Response to Opposition to Bifurcation, para. 40.

⁴⁰ Response to Opposition to Bifurcation, para. 41.

⁴¹ Response to Opposition to Bifurcation, para. 42. Armenia also rejects the relevance of Article 9 of the Rules of Procedure to the question of bifurcation (“the Tribunal’s discretion to conduct the proceedings is expressly subject to the Rules of Procedure, including Article 14(4), which is the only provision relevant to your task today” (Hearing Tr., 65:10–14)).

⁴² Response to Opposition to Bifurcation, para. 44.

⁴³ Hearing Tr., 61:17–19.

⁴⁴ Response to Opposition to Bifurcation, para. 45.

⁴⁵ Response to Opposition to Bifurcation, para. 46.

has “no reasonable chance of success”, is “frivolous, vexatious, or clearly without merit”, is not “arguable”, or not “advanced in good faith”.⁴⁶ Armenia highlights that bifurcation has only been denied on these bases “in extreme scenarios”, namely where (i) the objection relied on an interpretation of the treaty without any textual support; (ii) the respondent provided no evidence in support of an objection that turned on a simple factual issue; or (iii) the respondent failed to particularise its objection.⁴⁷ As such, the Tribunal must apply a “high threshold of frivolousness” if it is to consider the matter at all.⁴⁸

C. ARMENIA’S OBJECTIONS TO JURISDICTION

1. Armenia’s Objections

39. In its Memorial on Preliminary Objections, Armenia advances seven objections to the Tribunal’s jurisdiction (collectively, “**Armenia’s Objections**”). Armenia groups its Objections into four categories:

- (a) *First*, the Tribunal lacks jurisdiction as Azerbaijan failed to comply with the mandatory preconditions to arbitration set out in the Bern Convention’s dispute settlement provision (Article 18), including the requirement (i) to refer the matter to the Bern Convention

⁴⁶ Response to Opposition to Bifurcation, para.47, citing **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, paras. 100(a), 102; **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, paras. 42, 56; **AZL-0248**, *Glamis Gold Ltd. v. The United States of America*, UNCITRAL, Procedural Order No. 2 (Revised), 31 May 2005, para. 12(c); **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, para. 41; **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, para. 67; **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, para. 43; **AZL-0278**, *Access Business Group LLC v. United Mexican States*, ICSID Case No. ARB/23/15, Procedural Order No. 3 (Bifurcation), 29 August 2024, para. 36; **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, para. 66.

⁴⁷ Response to Opposition to Bifurcation, para. 48, citing **AZL-0264**, *Glencore Finance (Bermuda) Limited v. The Plurinational State of Bolivia*, PCA Case No. 2016-39, UNCITRAL, Procedural Order No. 2 (Decision on Bifurcation), 31 January 2018, para. 42; **AZL-0271**, *Red Eagle Exploration Limited v. Republic of Colombia*, ICSID Case No. ARB/18/12, Decision on Bifurcation, 3 August 2020, paras. 62–64; **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, paras. 55–56; **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, para. 43.

⁴⁸ Hearing Tr., 76:11–18.

Standing Committee; and (ii) to genuinely pursue negotiations as far as possible, before commencing arbitration (collectively, the “**Article 18 Objections**”);⁴⁹

- (b) *Secondly*, the Tribunal lacks jurisdiction over Azerbaijan’s claims under Articles 2, 3, 4, 6, and 7 of the Bern Convention insofar as they relate to the “Affected Area”,⁵⁰ as (i) the obligations imposed by these provisions are not extraterritorial in nature” (the “**Territorial Objection**”); and (ii) in the alternative, the dispute at issue would be governed by the law of armed conflict, not the Bern Convention (the “**Law-of-Armed-Conflict Objection**”);⁵¹
- (c) *Thirdly*, the Tribunal lacks jurisdiction over Azerbaijan’s claims under Articles 4(4) and 11(1)(a) of the Bern Convention, as the conduct alleged by Azerbaijan is not capable of constituting a breach of those provisions (collectively, the “**Articles 4(4) and 11 Objections**”);⁵² and
- (d) *Finally*, the Tribunal lacks jurisdiction over Azerbaijan’s “Affected Area” claims as Azerbaijan has failed to establish even a *prima facie* case on attribution (the “**Attribution Objection**”).⁵³

40. In its Response to Opposition to Bifurcation, Armenia clarified that it no longer seeks preliminary determination of its Attribution Objection, “solely as a measure of procedural economy”.⁵⁴ Accordingly, this Decision does not address the Attribution Objection.

⁴⁹ Memorial on Preliminary Objections, Section II. *See also*, Response to Opposition to Bifurcation, Section III.A.

⁵⁰ The Tribunal notes that in their respective submissions, Azerbaijan uses the term Affected Area without quotation marks, whereas Armenia uses the term in quotation marks (for example, “...within the so-called ‘Affected Area,’ i.e. Nagorno-Karabakh and surrounding districts” (Memorial on Preliminary Objections, para. 3)). For present purposes, where quoting or summarising the arguments of the Parties, the Tribunal uses the terms adopted by each Party in the statements quoted or summarised. In its own analysis, the Tribunal simply refers to the “Area”, which should be understood to have the same geographic scope as the Affected Area / “Affected Area”.

⁵¹ Memorial on Preliminary Objections, Section III. *See also*, Response to Opposition to Bifurcation, Sections III.B and III.C.

⁵² Memorial on Preliminary Objections, Section IV. *See also*, Response to Opposition to Bifurcation, Section III.D.

⁵³ Memorial on Preliminary Objections, Section V.

⁵⁴ Response to Opposition to Bifurcation, para. 9.

41. The Parties' specific observations on bifurcation in relation to the remaining objections of Armenia are elaborated further in sub-sections C2 to C5 below.⁵⁵

2. Armenia's Article 18 Objections

42. Armenia submits that the Tribunal lacks jurisdiction over all of Azerbaijan's claims because Azerbaijan failed to comply with the mandatory preconditions to arbitration under Article 18 of the Bern Convention.⁵⁶ To recall, Articles 18(1) and (2) of the Bern Convention provide, in relevant part:

1. The 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.
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.
[...]

43. Armenia argues that Article 18 establishes a "three-tiered dispute resolution procedure",⁵⁷ in which (i) in the event of any difficulty in the execution of the Bern Convention, the Standing Committee shall endeavour to facilitate an amicable settlement, according to Article 18(1); (ii) if a dispute is not resolved pursuant to Article 18(1), then Article 18(2) foresees the pursuit of "negotiation between the parties concerned"; and (iii) if the parties' dispute "has not been settled" by the Standing Committee, nor by negotiation, a party may then (and only then) submit the dispute to arbitration.⁵⁸

44. Armenia advances two separate objections with respect to Azerbaijan's compliance with Article 18 (the "**Standing Committee Objection**" and the "**Negotiations Objection**", respectively):

- (a) *First*, in Armenia's view, recourse to the Standing Committee is a mandatory precondition to arbitration, and must occur before the dispute is referred to negotiation.⁵⁹ According to

⁵⁵ The summaries of Armenia's Objections in this Section C are included for the purpose of contextualising the Tribunal's decision on bifurcation only; the Tribunal makes no substantive findings in this Decision in relation to the Objections.

⁵⁶ Memorial on Preliminary Objections, para. 34.

⁵⁷ Memorial on Preliminary Objections, para. 36.

⁵⁸ Memorial on Preliminary Objections, para. 36.

⁵⁹ Memorial on Preliminary Objections, para. 40; Hearing Tr., 161:9–12 ("we are not saying that bilateral negotiations must wait for the end of the Article 18(1) process. What comes out of the Standing Committee, however, would certainly facilitate negotiations").

Armenia, this position is supported by the ordinary meaning of Article 18, the context of the provision, the subsequent practice of the Parties, as well as the Bern Convention's object and purpose.⁶⁰ Armenia submits that because Azerbaijan did not refer its claims against Armenia to the Standing Committee, the Tribunal lacks jurisdiction to hear the present case, and it must dismiss all of Azerbaijan's claims.⁶¹

(b) *Secondly*, Armenia submits that Article 18(2) of the Bern Convention mandates negotiations before a State may have recourse to arbitration.⁶² In Armenia's view, two criteria must be met for this requirement to be fulfilled – namely, that (i) there must have been a “genuine attempt” to resolve the dispute amicably; and (ii) negotiations must be pursued “as far as possible” (that is, until the negotiations “have become futile or deadlocked”).⁶³ According to Armenia, Azerbaijan failed to fulfil either of these requirements:⁶⁴

(i) As to the first requirement, Azerbaijan's attempt to settle the alleged dispute was not “genuine”, as it treated the talks with Armenia as a *pro forma* exercise, categorically refused to involve the Standing Committee in any capacity, and acted with intransigence and impatience throughout the Parties' exchanges.⁶⁵

(ii) As to the second requirement, even if the attempt could be qualified as “genuine” (*quod non*), Azerbaijan did not pursue negotiations “as far as possible” until they became futile or deadlocked. In Armenia's view, when Azerbaijan commenced arbitration, there was still a “reasonable probability [...] that further negotiations would lead to a settlement”.⁶⁶ In particular, given that no “dispute” under international law had arisen until 28 June 2022, the Parties had only had a few

⁶⁰ Memorial on Preliminary Objections, paras. 41, 42–47, 48–63, 64–69.

⁶¹ Memorial on Preliminary Objections, para. 71.

⁶² Memorial on Preliminary Objections, para. 72, *citing* Statement of Claim, para. 137.

⁶³ Memorial on Preliminary Objections, para. 74, *citing* **ARL-0059**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, ICJ, Preliminary Objections, Judgment, 1 April 2011, paras. 157–159, 162–163; **ARL-0105**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, ICJ, Preliminary Objections, Judgment, 12 November 2024, para. 52.

⁶⁴ Memorial on Preliminary Objections, para. 75.

⁶⁵ Memorial on Preliminary Objections, paras. 76, 78, 79–83, 84–85, 86–92.

⁶⁶ Memorial on Preliminary Objections, para. 96, *citing* **ARL-0063**, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, ICJ, Judgment, 20 July 2012, para. 57 (brackets added by Armenia).

opportunities to discuss the dispute before Azerbaijan unjustifiably ended negotiations.⁶⁷

(a) *Azerbaijan’s Position on the Bifurcation of the Article 18 Objections*

45. Azerbaijan asserts that the Article 18 Objections are “not serious or substantial enough to warrant bifurcation”, since they are based on “misstatements of fact and law”, and are premised on an interpretation of Article 18 “that would make the right to arbitration illusory”.⁶⁸ In the circumstances, the significant delays and the additional costs a separate preliminary phase would entail are not justifiable.⁶⁹
46. Azerbaijan argues that the Standing Committee Objection is “on its face not sufficiently serious or substantial to warrant bifurcation”. In this regard:⁷⁰
- (a) In Azerbaijan’s view, Armenia’s argument that Article 18(2) “establishes two cumulative preconditions to arbitration” is not supported by the text, context, or object and purpose of the Convention,⁷¹ and is contradicted by the only case on which Armenia relies (namely, the judgment of the International Court of Justice (“**ICJ**”) on preliminary objections in *Application of the ICSFT and CERD (Ukraine v. Russian Federation)*).⁷² Azerbaijan disputes that this judgment supports Armenia’s argument that the conjunction “or” in Article 18 can be read conjunctively as “and”.⁷³ In Azerbaijan’s view, there is also no

⁶⁷ Memorial on Preliminary Objections, paras. 97–113.

⁶⁸ Opposition to Bifurcation, para. 58, citing **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, para. 41; Hearing Tr., 58:8–16. *See also*, Hearing Tr., 14:17–20 (“[these objections] amount to a non-serious dispute effectively about procedural sequencing”).

⁶⁹ Opposition to Bifurcation, para. 58. In that regard, Azerbaijan notes that the Tribunal in the dispute between the Parties under the Energy Charter Treaty considered “analogous objections that Armenia had raised in that case, relating to the sufficiency of a notice of dispute and the sufficiency of diplomatic negotiations. And it observed...that it does not consider those two objections so substantive that it necessarily would have bifurcated proceedings to address them on their own” (Hearing Tr., 47:17–24).

⁷⁰ Opposition to Bifurcation, paras. 59, 60–67.

⁷¹ *See*, Hearing Tr., 49:1–5.

⁷² Opposition to Bifurcation, paras. 60, 61, citing Memorial on Preliminary Objections, para. 43; **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)*, ICJ, Preliminary Objections, Judgment, 8 November 2019.

⁷³ Opposition to Bifurcation, paras. 61–62. *See also*, Hearing Tr., 51:7–14 (“the ICJ has already resolved this interpretive question of whether ‘or negotiations’ means ‘and negotiations’ under the similarly worded provisions of CERD in *Ukraine v. Russia*...the ICJ held that the ordinary language is that negotiations are an ‘alternative’ avenue, not a cumulative one”).

textual support in the Bern Convention for Armenia’s argument that Article 18(1) provides for a “mandatory obligation” on the Contracting Parties to refer disputes to the Standing Committee, the provision rather being directed to the Standing Committee itself.⁷⁴

- (b) Azerbaijan asserts that Armenia’s objection is premised upon characterisations of the Standing Committee’s role in inter-State disputes that are unsupported by Armenia’s own evidence.⁷⁵ According to Azerbaijan, only five inter-State cases have been brought to the Standing Committee by a Contracting Party since its “case-file system” was established over 40 years ago, and the Standing Committee regularly takes decades to address complaints (if complaints are resolved at all).⁷⁶ Azerbaijan argues that under these conditions, it would make no sense for “resolution” by the Standing Committee to be a “mandatory precondition” to arbitration, let alone to bilateral negotiations.⁷⁷ Further, the processes under the Standing Committee and in bilateral negotiations would be duplicative.⁷⁸
- (c) Azerbaijan contends that Armenia’s objection is internally inconsistent, because Armenia argues, on the one hand, that “the Standing Committee Procedure and negotiations are *not redundant* preconditions” as they “fulfil *different functions*”, and, on the other hand, that

⁷⁴ Opposition to Bifurcation, para. 63.

⁷⁵ Opposition to Bifurcation, para. 64.

⁷⁶ Opposition to Bifurcation, para. 65, *citing* **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 and 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; **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). Azerbaijan further contends that given the Standing Committee’s limited budget, it “cannot possibly carry out the role of resolving inter-state disputes in the way that Armenia seems to suggest” (Hearing Tr., 53:10–18).

⁷⁷ Opposition to Bifurcation, para. 65.

⁷⁸ *See*, Hearing Tr., 52:16–22 (“a friendly settlement [in the Standing Committee] based on the willingness of the parties to resolve the complaint is exactly the same exercise as bilateral negotiations between the states involved. It would make no sense to require the parties to first go through this friendly settlement dialogue process with the Standing Committee and then do it twice in bilateral negotiations”).

the involvement of the Standing Committee is a necessary component of *bilateral negotiations*.⁷⁹

47. Azerbaijan argues that the Negotiations Objection is likewise “based on misstatements of both law and fact and rife with internal inconsistencies” and is thus similarly “unserious and unsuitable for bifurcation”.⁸⁰ In particular:⁸¹
- (a) According to Azerbaijan, there is no support for the “artificial approach” to the negotiations presented by Armenia. In particular, Armenia’s claim that there was no “dispute” between the Parties until almost ten months *after* Azerbaijan issued its Notice of Dispute, and that “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”, is without foundation.⁸²
 - (b) Azerbaijan disputes Armenia’s allegation that Azerbaijan approached the negotiations as a “*pro forma* exercise”.⁸³ In Azerbaijan’s view, the factual record establishes that Azerbaijan attempted to resolve the dispute in good faith.⁸⁴
 - (c) In Azerbaijan’s view, Armenia’s suggestion that it can present counter-claims in these proceedings, without having notified or attempted any resolution of such counter-claims, reinforces the fact that the Negotiations Objection is not sufficiently serious to warrant bifurcation.⁸⁵

⁷⁹ Opposition to Bifurcation, para. 66, *citing* Memorial on Preliminary Objections, paras. 57, 58, 59, 60, 62 (emphasis added by Azerbaijan).

⁸⁰ Opposition to Bifurcation, para. 68.

⁸¹ Opposition to Bifurcation, paras. 69–76.

⁸² Opposition to Bifurcation, paras. 69–70 (emphasis added by Azerbaijan), *citing* **ARL-0059**, *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)*, ICJ, Preliminary Objections, Judgment, 1 April 2011, para. 180. Azerbaijan notes that “the facts of that case bear no resemblance to this one” (Hearing Tr., 54:18–19).

⁸³ Opposition to Bifurcation, para. 71.

⁸⁴ Opposition to Bifurcation, para. 74. Azerbaijan adds that, in any event, “the Tribunal cannot and should not form an opinion on the sincerity of state negotiators and the conduct of bilateral negotiations” (Hearing Tr., 135:15–17).

⁸⁵ Opposition to Bifurcation, para. 75.

(b) *Armenia's Position on the Bifurcation of its Article 18 Objections*

48. Armenia argues that its Article 18 Objections are of an exclusively preliminary character, given that they turn on “discrete and undisputed facts that are unrelated to the merits”.⁸⁶ Further, the Article 18 Objections would dispose of the entirety of Azerbaijan’s case, if upheld.⁸⁷ According to Armenia, Azerbaijan does not dispute either of these points.⁸⁸ In Armenia’s view, the Tribunal’s enquiry should end here, given that Azerbaijan has not demonstrated any reason why the Article 18 Objections must be ruled upon in conjunction with the merits.⁸⁹
49. Armenia contends that even if the “seriousness” of the Article 18 Objections was a relevant factor (*quod non*), Azerbaijan has failed to show that the Article 18 Objections meet the “high threshold of frivolousness” required to refuse bifurcation.⁹⁰
50. In relation to its Standing Committee Objection, Armenia recalls that, in its Memorial on Preliminary Objections, it “put forward voluminous legal and factual support of its position”. Armenia contends that its Objection is supported by the text of Article 18, its context, the subsequent practice of the Contracting Parties, and the object and purpose of the Bern Convention.⁹¹ In particular:
- (a) Armenia reiterates that there is clear textual support for its cumulative approach to Article 18,⁹² and highlights that the ICJ affirmed the possibility of such an approach in the *Application of the ICSFT and CERD* case.⁹³ In that regard, the *outcome* in that case is not dispositive in this case, given the Court was interpreting “a different treaty with a different

⁸⁶ Hearing Tr., 78:14–18 (“that this matter was not referred by Azerbaijan to the Standing Committee is an undisputed fact; and further, the diplomatic exchanges between the parties prior to Azerbaijan’s Notice of Arbitration are also undisputed facts”).

⁸⁷ Response to Opposition to Bifurcation, para. 50.

⁸⁸ Response to Opposition to Bifurcation, para. 50. *See also*, Hearing Tr., 78:24–79:7; *contra* Hearing Tr., 127:23–25 (“Azerbaijan does not concede, as we heard several times this morning, that the Article 18 objections are preliminary or dispositive”).

⁸⁹ Response to Opposition to Bifurcation, para. 50.

⁹⁰ Response to Opposition to Bifurcation, para. 51.

⁹¹ Response to Opposition to Bifurcation, para. 55.

⁹² Response to Opposition to Bifurcation, para. 56. *See also*, Hearing Tr., 80:1–81:4.

⁹³ Response to Opposition to Bifurcation, para. 56, 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)*, ICJ, Preliminary Objections, Judgment, 8 November 2019, para. 107.

text, a different context, and a different object and purpose”, as well as differing subsequent practice.⁹⁴

- (b) Armenia contends that the subsequent practice of the Contracting Parties vis-à-vis the Standing Committee supports its position.⁹⁵ In that regard, Armenia notes that the five inter-State Standing Committee cases it highlighted “is a larger sample than the unprecedented arbitration that Azerbaijan has chosen to initiate”, and that there is no evidence that there were any other inter-State cases which were *not* brought to the Standing Committee.⁹⁶ In Armenia’s view, the success or speed of the Standing Committee in resolving inter-State complaints is not relevant to the interpretation of the provision.⁹⁷
- (c) Armenia rejects Azerbaijan’s contention that the Standing Committee Objection is “plagued by internal inconsistencies”.⁹⁸ In that regard, Armenia clarifies that it is not arguing that the Standing Committee was an “integral part of [bilateral] negotiations”,⁹⁹ but that Azerbaijan’s repeated refusal to rely on the Committee’s expertise demonstrates that Azerbaijan did not genuinely intend to settle the dispute through negotiations.¹⁰⁰

51. According to Armenia, Azerbaijan’s arguments with respect to the Negotiations Objection are “premised on misstatements of law and fact”.¹⁰¹ In particular:

- (a) Armenia clarifies that exchanges between the Parties on “procedural modalities” should not be considered “because they occurred *before the alleged dispute arose*”, and are thus irrelevant to whether Azerbaijan made “a genuine attempt to settle the *dispute* through negotiations”.¹⁰²

⁹⁴ See, Response to Opposition to Bifurcation, paras. 57–71; Hearing Tr., 84:9–86:21.

⁹⁵ Hearing Tr., 82:22–83:9.

⁹⁶ Response to Opposition to Bifurcation, para. 72, citing **AZL-0160**, International Law Commission, Draft Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties, With Commentaries, Yearbook of the International Law Commission (2018), Volume II, Part II, Conclusion 10(2), Commentary of Conclusion 10, para. 12.

⁹⁷ Response to Opposition to Bifurcation, paras. 73–74; Hearing Tr., 161:13–17 (“the issue of timing and practicability that you have heard a lot about; well, two concerns that you do not see appearing in Article 31 and Article 32 of the Vienna Convention on the Law of Treaties”).

⁹⁸ Response to Opposition to Bifurcation, para. 75.

⁹⁹ Response to Opposition to Bifurcation, para. 75.

¹⁰⁰ Response to Opposition to Bifurcation, para. 75.

¹⁰¹ Response to Opposition to Bifurcation, paras. 78–79.

¹⁰² Response to Opposition to Bifurcation, para. 80 (emphasis added by Armenia).

- (b) In Armenia’s view, Azerbaijan conflates the negotiation requirement under Article 18 with the requirement that a “dispute” between the Parties exists, and fails to engage with Armenia’s argument that there could be no “dispute” between the Parties under the Bern Convention until 28 June 2022.¹⁰³
- (c) Armenia argues that it has presented substantial arguments and factual evidence in support of its position that Azerbaijan’s attempt to negotiate was not genuine,¹⁰⁴ and that the Parties had made significant progress in the negotiations.¹⁰⁵
- (d) Armenia disputes that it suggested that a “different standard” would apply with regard to the negotiation requirement for its own counter-claims. In Armenia’s view, its statement merely implied that “if the Tribunal found that it had jurisdiction *ratione materiae* over Azerbaijan’s claims, it would also have jurisdiction *ratione materiae* over Armenia’s counterclaims with regard to Azerbaijan’s environmental misconduct”.¹⁰⁶

3. Armenia’s Territorial Objection

52. Armenia contends that the Tribunal lacks jurisdiction over Azerbaijan’s claims that Armenia breached Articles 2, 3, 4, 6, and 7 of the Bern Convention with respect to actions and omissions in the “Affected Area”.¹⁰⁷ In this regard, Armenia advances two separate objections (the Territorial Objection and, in the alternative,¹⁰⁸ the Law-of-Armed-Conflict Objection). This sub-section deals with the Territorial Objection and sub-section C4 below deals with the Law-of-Armed-Conflict Objection.
53. Armenia submits that the provisions invoked by Azerbaijan “impose *territorial* obligations that do not extend to conduct and events occurring in an area...outside of [a Contracting Party’s] [sovereign] territory”.¹⁰⁹ As it is undisputed that the “Affected Area” is not part of Armenia’s sovereign territory, the relevant obligations “do not bind Armenia in respect of alleged conduct occurring in the ‘Affected Area,’ even if (*quod non*), Armenia could be characterized as having

¹⁰³ Response to Opposition to Bifurcation, para. 82.

¹⁰⁴ Response to Opposition to Bifurcation, paras. 83–86. *See*, Hearing Tr., 88:7–89:10.

¹⁰⁵ Response to Opposition to Bifurcation, para. 87.

¹⁰⁶ Response to Opposition to Bifurcation, para. 88.

¹⁰⁷ Memorial on Preliminary Objections, paras. 115–117.

¹⁰⁸ Memorial on Preliminary Objections, Section III.B.

¹⁰⁹ Memorial on Preliminary Objections, para. 120 (emphasis added by Armenia).

‘occupied’ that area’.¹¹⁰ Further, in Armenia’s view, Azerbaijan’s assertion that Armenia had obligations in respect of the “Affected Area” “by virtue of its purported ‘effective control’ of the ‘Affected Area’” is “extraordinary”,¹¹¹ “wholly unsupported”, and “fundamentally illogical”.¹¹²

(a) Azerbaijan’s Position on the Bifurcation of the Territorial Objection

54. Azerbaijan argues that Armenia’s Territorial Objection does not warrant bifurcation, as the Objection (i) mischaracterises Azerbaijan’s claims; (ii) is not exclusively preliminary in character; (iii) would not result in a material reduction in the scope and complexity of the proceedings; and/or (iv) is insufficiently serious and substantial.¹¹³

55. *First*, the Territorial Objection mischaracterises Azerbaijan’s claims by suggesting that they “require broad extraterritorial application of the Bern Convention”.¹¹⁴ Azerbaijan reiterates that Armenia’s obligations with respect to the Affected Area have three main aspects, namely:¹¹⁵

(i) Armenia was obliged ‘to observe and implement the Bern Convention obligations within the Affected Area’ because it exercised ‘effective control and jurisdiction’ over that area; (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’; 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’.

According to Azerbaijan, the Territorial Objection purports to address only the first of these arguments.¹¹⁶

56. *Secondly*, the Territorial Objection is not exclusively preliminary in character. In Azerbaijan’s view, the Objection directly concerns the “substantive scope and content” of Articles 2, 3, 4, 6, and 7 of the Bern Convention, and the extent to which these provisions impose obligations on Armenia in respect of the Affected Area, in light of “Armenia’s jurisdiction and control” over the

¹¹⁰ Memorial on Preliminary Objections, para. 120. Armenia observes that it “in no way accepts that it occupied the ‘Affected Area’” (Memorial on Preliminary Objections, para. 119).

¹¹¹ Memorial on Preliminary Objections, para. 167 (emphasis added by the Tribunal).

¹¹² Memorial on Preliminary Objections, para. 176.

¹¹³ Opposition to Bifurcation, paras. 22, 23–31.

¹¹⁴ Opposition to Bifurcation, para. 23.

¹¹⁵ Opposition to Bifurcation, para. 23 (footnotes omitted), *citing, e.g.*, Statement of Claim, paras. 159–162.

¹¹⁶ Opposition to Bifurcation, para. 23.

Area.¹¹⁷ According to Azerbaijan, this is not “an abstract legal question”,¹¹⁸ but “an intensely factual [question], pertaining to the character and nature of Armenia’s conduct in the territory outside its sovereign territory, and one which overlaps significantly with the ultimate question of breach”.¹¹⁹ In particular, “the facts underpinning Armenia’s effective control over the Affected Area overlaps with the merits around whether Armenia failed to take the appropriate and necessary measures under the relevant articles that go to the reach of Armenia’s administration and enforcement, the nature of [the] governmental functions [it] exercised and the nature of its relationship to the so-called NKR”.¹²⁰ In response to Armenia’s suggestion that the Tribunal simply assume the facts as pleaded by Azerbaijan for the purpose of a preliminary phase, Azerbaijan asserts that this would “risk prejudging the question of breach”.¹²¹ According to Azerbaijan, international tribunals have repeatedly held that similar objections requiring “in-depth assessments of the scope and content of treaty obligations and related facts” are not exclusively preliminary in character and should thus be joined to the merits.¹²²

¹¹⁷ Opposition to Bifurcation, para. 24.

¹¹⁸ Hearing Tr., 16:11–17:1. Azerbaijan highlights that “[t]he Tribunal is not charged with interpreting the Convention in the abstract; it is charged with resolving the dispute between the parties. It is charged with interpreting the specific provisions with respect to Armenia’s argument that a territorial limit should be implied into each of those articles invoked by Azerbaijan that are directed at the obligation on Armenia to exercise the prescriptive, legislative and executive measures specifically in the Affected Area. And contrary to what Armenia argues, this interpretive question is not addressed by the operation of some default legal rule against extraterritorial application” (Hearing Tr., 138:1–12).

¹¹⁹ Hearing Tr., 18:17–22. For example, Azerbaijan explains that “the obligations under Article 4 and the facts of effective control travel together with respect to the Affected Area. The same evidence bears on Armenia’s failure to comply with the relevant articles; that is, whether and how it exercised authority through governmental conduct, environmental agencies and/or the so-called NKR” (Hearing Tr., 20:21–21:2). On that basis, Azerbaijan also contends that the Objection has the character of a “defence[] on the merits as to what is ‘appropriate’, or ‘required’ under Article 4, again in the specific circumstances of the Affected Area” (Hearing Tr., 20:17–20).

¹²⁰ Hearing Tr., 140:16–23.

¹²¹ Hearing Tr., 21:23–22:6.

¹²² Opposition to Bifurcation, paras. 25–28, citing **AZL-0249**, *Delimitation of Maritime Boundary (Guyana v. Suriname)*, PCA Case No. 2004-04, Procedural Order No. 2, 18 July 2005, para. 2; **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, paras. 293, 296–297; **AZL-0242**, *Case concerning Right of Passage over Indian Territory (Portugal v. India)*, ICJ, Preliminary Objections, Judgment, 26 November 1957, pp. 28–29; **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, para. 88. See also, Hearing Tr., 22:19–24:10.

57. *Thirdly*, Azerbaijan argues that the Objection, even if upheld by the Tribunal, would not result in a material reduction in the scope and complexity of the proceedings, given that it only addresses one of the three legal bases of Azerbaijan’s case.¹²³
58. *Finally*, the fact that the Objection does not address Azerbaijan’s principal arguments renders the Objection insufficiently serious or substantial to warrant bifurcation.¹²⁴

(b) Armenia’s Position on the Bifurcation of its Territorial Objection

59. According to Armenia, its Territorial Objection warrants bifurcation as it (i) possesses an exclusively preliminary character; and (ii) would result in a material reduction in the scope and complexity of the proceedings.¹²⁵ Further, Azerbaijan has not demonstrated that the Objection is frivolous, to the extent that is a relevant consideration.¹²⁶
60. *First*, the Territorial Objection possesses an exclusively preliminary character. In Armenia’s view, the Objection involves a “pure question of law”, which can be answered at a preliminary stage on the basis of established rules of treaty interpretation.¹²⁷ Contrary to Azerbaijan’s suggestion, the Objection does not require the Tribunal to determine the “substantive scope or content” of any of the Bern Convention’s provisions beyond their territorial scope of application,¹²⁸ and the “spectre of a factual dispute...simply does not arise”.¹²⁹
61. According to Armenia, Azerbaijan conflates two distinct exercises:
- (a) “the interpretation of treaty obligations solely to ascertain their potential applicability to the alleged facts (which are assumed to be true *pro tem*)”, which does not require any prejudgment of the merits; and

¹²³ Opposition to Bifurcation, para. 30. *See also*, Hearing Tr., 26:8–27:15.

¹²⁴ Opposition to Bifurcation, para. 31.

¹²⁵ Response to Opposition to Bifurcation, paras. 90–136.

¹²⁶ Response to Opposition to Bifurcation, paras. 137–140.

¹²⁷ Response to Opposition to Bifurcation, paras. 90, 94, 118.

¹²⁸ Response to Opposition to Bifurcation, para. 95.

¹²⁹ Hearing Tr., 94:19–20.

- (b) “the interpretation of treaty obligations for the purpose of applying them to the facts of the case (rather than the facts as pleaded by the claimant) to determine whether the obligations have been breached”, which *does* require a determination on the merits.¹³⁰
62. Armenia asserts that the Objection is “confined strictly” to the first exercise – it only requires the Tribunal to determine whether Articles 2, 3, 4, 6, and 7 are applicable, in principle, to Armenia in respect of the “Affected Area”, assuming Azerbaijan’s allegations with respect to Armenia’s jurisdiction and control over the Area are true.¹³¹
63. Armenia argues that the position advanced by Azerbaijan in respect of the bifurcation of this Objection is contradicted by established ICJ case law,¹³² as well as the practice of investor-State tribunals.¹³³ Further, the four cases invoked by Azerbaijan “offer it no assistance” given that the objections concerned bear “no resemblance” to the Objection.¹³⁴ In any event, the outcomes of those cases “were fact and issue-dependent”.¹³⁵
64. *Secondly*, upholding the Objection would result in a material reduction in the scope and complexity of the proceedings.¹³⁶ According to Armenia, its Objection deals with two out of three purported legal bases for Azerbaijan’s claims in the “Affected Area”, given that “[h]owever the legal basis for Azerbaijan’s second argument [regarding persons or entities under Armenia’s jurisdiction, control, or influence] might be interpreted, it undoubtedly involves the application of the Convention to a territory allegedly under the ‘effective control’ of Contracting Party”.¹³⁷

¹³⁰ Response to Opposition to Bifurcation, para. 96.

¹³¹ Response to Opposition to Bifurcation, para. 97.

¹³² Response to Opposition to Bifurcation, paras. 98–101, *citing* **ARL-0029**, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, ICJ, Preliminary Objection, Judgment, 12 December 1996, paras. 29–31, 35–36, 41–49; **AZL-0267**, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, ICJ, Preliminary Objections, Judgment, 13 February 2019, paras. 48, 52, 53–58, 66–70, 71–74, 75–80; **ARL-0137**, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, ICJ, Preliminary Objections, Judgment, 6 June 2018, paras. 90–102, 115–116, 117.

¹³³ Response to Opposition to Bifurcation, paras. 102–104, *citing* **ARL-0135**, *PJSC CB PrivatBank & Finance Company Finilon LLC v. The Russian Federation*, PCA Case No. 2015-21, Interim Award (Corrected), 27 March 2017, paras. 3, 141–142, 162–163, 166–187, 250; **ARL-0136**, *Stabil LLC et al. v. The Russian Federation*, PCA Case No. 2015-35, Award on Jurisdiction, 26 June 2017, paras. 131–174.

¹³⁴ Response to Opposition to Bifurcation, paras. 106–122; Hearing Tr., 98:11–15.

¹³⁵ Response to Opposition to Bifurcation, para. 106.

¹³⁶ Response to Opposition to Bifurcation, para. 126, *citing* Opposition to Bifurcation, para. 30.

¹³⁷ Response to Opposition to Bifurcation, paras. 132–133. In that regard, Armenia argues that “if Armenia’s case...is that it did not have Bern Convention obligations in respect of its own alleged acts and omissions in relation to the ‘Affected Area’, a fortiori it had no obligations in respect of the acts and omissions of third parties” (Hearing Tr., 102:10–16). Armenia further notes that “the Statement of Claim refers to such

As such, were the Objection to be upheld, Azerbaijan’s claims would be limited to its claims of transboundary pollution, which represent less than 8% of Azerbaijan’s total compensation claim (and only 15 pages of its 200-page Statement of Claim).¹³⁸

65. *Thirdly*, Azerbaijan has failed to show that the Objection is frivolous, given that Azerbaijan “latches on to a single argument...to mischaracterize Armenia’s objection in its entirety”, and “fails to challenge the strength of Armenia’s objection”, including its “comprehensive analysis of the ordinary meaning of the treaty text, its context, the object and purpose of the Convention, and the Parties’ adherence to and subsequent practice under the Convention”.¹³⁹ In Armenia’s view, the Objection raises “a substantial legal issue that has been seriously advanced, and will in due course deserve careful consideration by the Tribunal”.¹⁴⁰

4. Armenia’s Law-of-Armed-Conflict Objection

66. In the alternative to its Territorial Objection, Armenia contends that the “real nature of the dispute” before the Tribunal in relation to the alleged breaches of Articles 2, 3, 4, 6, and 7 of the Bern Convention in the “Affected Area” does not concern the interpretation or application of the Convention,¹⁴¹ but rather “Armenia’s purported status as an Occupying Power and its obligations in respect of the environment resulting from such status”.¹⁴² The latter issues would properly be governed by the law of armed conflict, not the Bern Convention.¹⁴³ According to Armenia, the issue of occupation is not merely a “minor or ancillary” aspect of the dispute, but forms “the very basis of Azerbaijan’s ‘Affected Area’ Claims”.¹⁴⁴ To that end, Armenia argues that Azerbaijan’s “Affected Area” claims “cannot be addressed” without the Tribunal “first deciding that Armenia was in fact an Occupying Power within the meaning of the law of armed conflict”.¹⁴⁵ Since this

persons or entities in only very general and unparticularised terms in only four paragraphs, three of which relate to the transboundary harm issue” (Hearing Tr., 101:18–21).

¹³⁸ Response to Opposition to Bifurcation, para. 134. *See also*, Hearing Tr., 100:16–101:8.

¹³⁹ Response to Opposition to Bifurcation, paras. 137, 140.

¹⁴⁰ Hearing Tr., 103:18–20.

¹⁴¹ Memorial on Preliminary Objections, para. 179.

¹⁴² Memorial on Preliminary Objections, para. 190.

¹⁴³ Memorial on Preliminary Objections, para. 192.

¹⁴⁴ Memorial on Preliminary Objections, para. 192.

¹⁴⁵ Memorial on Preliminary Objections, para. 202 (emphasis added by the Tribunal).

determination is beyond the scope of the Tribunal’s jurisdiction under the Bern Convention, the Tribunal must decline jurisdiction over Azerbaijan’s “Affected Area” claims.¹⁴⁶

(a) *Azerbaijan’s Position on the Bifurcation of the Law-of-Armed-Conflict Objection*

67. Azerbaijan contends that Armenia’s Law-of-Armed-Conflict Objection does not warrant bifurcation, given the Objection (i) is not serious and substantial; (ii) is not exclusively preliminary in character, and (iii) would not significantly narrow Azerbaijan’s claims or the issues in dispute, even if upheld.¹⁴⁷

68. *First*, according to Azerbaijan, the Law-of-Armed-Conflict 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”.¹⁴⁸ In particular:

- (a) Azerbaijan’s claims are based exclusively on the Bern Convention and are not dependent on whether Armenia is an “Occupying Power” under the law of armed conflict.¹⁴⁹ Azerbaijan’s merely descriptive references to an occupation in its submissions cannot have the effect of “depriv[ing] the Tribunal of jurisdiction over Azerbaijan’s claims”.¹⁵⁰ Indeed, according to Azerbaijan, “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”.¹⁵¹
- (b) Azerbaijan contends that Armenia applies the wrong legal standard. The ICJ has consistently determined its jurisdiction under a treaty’s compromissory clause by ascertaining “whether the actions or omissions of the respondent complained of by the

¹⁴⁶ Memorial on Preliminary Objections, para. 203.

¹⁴⁷ Opposition to Bifurcation, para. 39.

¹⁴⁸ Opposition to Bifurcation, para. 40.

¹⁴⁹ Opposition to Bifurcation, paras. 40–41. *See also*, Hearing Tr., 32:7–33:3.

¹⁵⁰ Opposition to Bifurcation, para. 42.

¹⁵¹ Opposition to Bifurcation, para. 43, *citing AZL-0260, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, ICJ, Merits, Judgment, 3 February 2015, para. 85. Azerbaijan further highlights the observations of the ICJ in *AZL-0273, Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, ICJ, Preliminary Objections, Judgment, 3 February 2021, para. 56 that “[c]ertain acts may fall within the ambit of more than one instrument and a dispute relating to those acts may relate to the ‘interpretation or application’ of more than one treaty or other instrument[s]” (Hearing Tr., 33:19–34:4).

applicant fall within the scope of the treaty allegedly violated”,¹⁵² and has rejected attempts to “modify the object of the [Applicant’s] submissions, especially when they have been clearly and precisely formulated”.¹⁵³

- (c) Further, the analogy sought to be drawn by Armenia to law of the sea cases implicating issues of territorial sovereignty is inapposite. In Azerbaijan’s view, there is no “precursor” legal question or “prerequisite” issue under the law of armed conflict to be determined by the Tribunal in this case – the Tribunal “need only determine effective control as a factual matter” (a “completely separate determination from [the question of] occupation”).¹⁵⁴
- (d) Finally, the proposition impliedly advanced by Armenia – that a State’s obligations under a multilateral instrument like the Bern Convention are “wholly displaced by the existence of an armed conflict such that a tribunal would be deprived of jurisdiction” – is “untenable” and has not been endorsed by a “single court or tribunal”.¹⁵⁵

69. *Secondly*, Azerbaijan argues that the Objection is not exclusively preliminary in character, as it is intertwined with the merits, and is “at most, a merits defence”.¹⁵⁶ To determine the Objection, the Tribunal would need to “delv[e] into the scope of each of the relevant Bern Convention obligations and the evidence and arguments underlying Azerbaijan’s claims” to assess whether the “real issue in dispute” is Armenia’s status and obligations as an Occupying Power, and/or whether issues governed by the law of armed conflict (if relevant at all) are “ancillary” or are a

¹⁵² Opposition to Bifurcation, para. 44, citing **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)*, ICJ, Preliminary Objections, Judgment, 2 February 2024, paras. 135–136.

¹⁵³ Opposition to Bifurcation, para. 45, citing **AZL-0273**, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, ICJ, Preliminary Objections, Judgment, 3 February 2021, para. 59 (brackets added by Azerbaijan).

¹⁵⁴ Opposition to Bifurcation, para. 46; Hearing Tr., 150:24–25, 152:6–8. *See also*, Hearing Tr., 36:8–10 (“The Tribunal can evaluate compliance [with the Bern Convention in the Affected Area] without deciding whether Armenia was an occupying power or not”).

¹⁵⁵ Opposition to Bifurcation, para. 47, citing, e.g., **ARL-0041**, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, Advisory Opinion, 9 July 2004, paras. 112–113; **ARL-0104**, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, ICJ, Advisory Opinion, 19 July 2019, para. 99; **AZL-0253**, *Al-Skeini and Others v. The United Kingdom*, App. No. 55721/07, ECtHR, Judgment, 7 July 2011, para. 142; **ARL-0058**, *International Law Commission, Draft Articles on the Effects of Armed Conflict on Treaties*, Yearbook of the International Law Commission (2011), Volume II, Part II, Articles 3, 7, Annex. *See also*, Hearing Tr., 41:4–17 (“[Armenia’s] true theory is displacement. For Armenia, once an armed conflict context appears, the Bern Convention drops out. But that is not the law, and not an issue that can be decided on a preliminary basis...Armenia does not explain why the two regimes could not be applied in parallel or complementarily”).

¹⁵⁶ Opposition to Bifurcation, paras. 48–49; Hearing Tr., 152:3–4.

“prerequisite” for the determination of Azerbaijan’s claims.¹⁵⁷ Azerbaijan observes that a “subject-matter determination at the stage of preliminary objections is [exclusively preliminary] only in situations where an express carve-out or reservation can be tested upfront”,¹⁵⁸ which is not the case here. As such, in the interests of efficiency and avoiding prejudgment of the issues in dispute, the Objection should be joined to the merits.¹⁵⁹

70. *Thirdly*, the Objection would not dispose of a significant portion of Azerbaijan’s claims, given it concerns only one of the three legal bases of Azerbaijan’s claims. Further, it would not dispose of Azerbaijan’s claims under Articles 4(4) and 11.¹⁶⁰

(b) Armenia’s Position on the Bifurcation of its Law-of-Armed-Conflict Objection

71. In Armenia’s view, its Law-of-Armed-Conflict Objection warrants bifurcation, given that Azerbaijan has failed to establish that the Objection (i) does not possess an exclusively preliminary character; (ii) would not result in a material reduction in the scope and complexity of Azerbaijan’s claims; or (iii) is frivolous.¹⁶¹

72. *First*, Azerbaijan has failed to demonstrate that the Objection does not possess an exclusively preliminary character.¹⁶² In Armenia’s view, the Objection “presents a threshold and overarching legal issue for the Tribunal to address”.¹⁶³ The Tribunal would only need to consider the pleaded facts and evidence to determine “whether Azerbaijan’s claims relating to the Affected Area necessarily entail application of a subject matter area (the law of armed conflict) that falls outside the Tribunal’s jurisdiction”.¹⁶⁴ Such an exercise “contains *no* ‘aspects related to the merits’ and

¹⁵⁷ Opposition to Bifurcation, paras. 48–49. *See also*, Hearing Tr., 41:22–42:6 (“Whether any consideration of the Law of Armed Conflict modifies how a particular obligation under the Bern Convention applies to a particular measure depends on what happened, where, when and with what effects. These factual considerations are, in significant measure, the same as the facts and arguments on which the merits of the case depend. A treaty-wide abstract ruling now would be advisory and unstable once the full record is before the Tribunal”).

¹⁵⁸ Hearing Tr., 37:16–40:25.

¹⁵⁹ Opposition to Bifurcation, para. 48. *See also*, Hearing Tr., 43:19–44:2 (“Armenia suggests that severing now promotes procedural economy. Respectfully, the opposite is true in this case. There is no single clean question of treaty applicability to be answered in the abstract...A separate phase [also] risks prejudgment and fragmentation”).

¹⁶⁰ Opposition to Bifurcation, para. 50.

¹⁶¹ Response to Opposition to Bifurcation, paras. 142–188.

¹⁶² Response to Opposition to Bifurcation, paras. 143, 161.

¹⁶³ Hearing Tr., 174:10–11.

¹⁶⁴ Response to Opposition to Bifurcation, para. 148.

does not ‘delve[] into the disputed facts’”.¹⁶⁵ Indeed, Armenia accepts, for the purposes of this Objection, all of the facts advanced by Azerbaijan in the factual background of its Statement of Claim.¹⁶⁶ In Armenia’s view, the ICJ and arbitral tribunals have regularly considered the determination of the “real subject matter” of claims as possessing an exclusively preliminary character.¹⁶⁷ The one case relied upon by Azerbaijan in support of its position (the *Chagos Marine Protected Area* arbitration¹⁶⁸) says little about the exclusively preliminary character of the relevant objection, given a different standard applied and the tribunal did not explain its reasoning.¹⁶⁹

73. *Secondly*, Azerbaijan has failed to show that upholding the Objection would not result in a material reduction in scope and complexity of Azerbaijan’s claims. According to Armenia, the Objection addresses two out of the three legal bases for Azerbaijan’s claims, and would thus reduce Azerbaijan’s case to its claims concerning transboundary harm.¹⁷⁰ While Azerbaijan’s claims under Articles 4(4) and 11 of the Convention would also remain, these claims are of “limited scope”.¹⁷¹

74. *Thirdly*, assuming that it is a relevant factor (*quod non*), Azerbaijan has not demonstrated that the Objection is frivolous. According to Armenia:¹⁷²

(a) The issue of occupation, a matter outside the Tribunal’s jurisdiction, is central to the determination of Azerbaijan’s “Affected Area” claims. Azerbaijan’s exclusion of alleged

¹⁶⁵ Response to Opposition to Bifurcation, paras. 155–157 (emphasis and brackets added by Armenia).

¹⁶⁶ Hearing Tr., 114:6–12.

¹⁶⁷ Response to Opposition to Bifurcation, paras. 149–154, citing **AZL-0088**, *Fisheries Jurisdiction (Spain v. Canada)*, ICJ, Jurisdiction of the Court, Judgment, 4 December 1998, paras. 23, 29, 30, 31, 33, 34, 61; **AZL-0273**, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, ICJ, Preliminary Objections, Judgment, 3 February 2021, paras. 42, 53; **ARL-0069**, *The South China Sea Arbitration (The Republic of Philippines v. The People’s Republic of China)*, PCA Case No. 2013-19, Award on Jurisdiction and Admissibility, 29 October 2015, paras. 4–5, 6, 14, 68, 150–153; **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, paras. 22, 162–190, 151–154, 191–195.

¹⁶⁸ **ARL-0068**, *Chagos Marine Protected Area (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015.

¹⁶⁹ Response to Opposition to Bifurcation, paras. 159–160.

¹⁷⁰ Response to Opposition to Bifurcation, para. 162.

¹⁷¹ Response to Opposition to Bifurcation, para. 163.

¹⁷² Response to Opposition to Bifurcation, para. 164.

conduct relating to the “invasion” and the Second Nagorno-Karabagh¹⁷³ War “does not mean that Azerbaijan excludes Armenia’s alleged conduct as a purported Occupying Power in relation to the environment” – whether Armenia had obligations as an Occupying Power, and what those obligations were, are questions to be resolved by the law of armed conflict and not by Azerbaijan.¹⁷⁴ With respect to Azerbaijan’s affirmative claims, in Armenia’s view there is “no daylight between Azerbaijan’s theories of ‘effective control’ and ‘occupation’ for [the] purposes of establishing Armenia’s obligations with respect to the ‘Affected Area’”.¹⁷⁵ Whether labelled “occupation” or “effective control”, the factual predicate and the legal consequences Azerbaijan advances are identical.¹⁷⁶

- (b) Armenia does not claim that the Tribunal lacks jurisdiction because the “dispute is embedded in a broader political or military context”,¹⁷⁷ but because the applicability of the Bern Convention is premised on Armenia’s alleged occupation of the “Affected Area”, a prerequisite issue “which inescapably requires the application of the law of armed conflict”.¹⁷⁸
- (c) Armenia does not articulate the wrong legal standard for determining the Tribunal’s jurisdiction,¹⁷⁹ and “has not attempted to recast Azerbaijan’s pleadings”.¹⁸⁰ Contrary to what Azerbaijan asserts, there *are* “precursor” legal questions in the present case, concerning the application of “all the rules of the law of armed conflict related to the environment that shape and may displace obligations under the Bern Convention”.¹⁸¹

¹⁷³ The Tribunal notes that the Parties use different anglicisations (and in some instances different nomenclature entirely) for the same place names, such as “Garabagh” (Azerbaijan’s term) versus “Nagorno-Karabakh” (Armenia’s term), or “Okhchuchay River” (Azerbaijan’s term) versus “Voghji River” (Armenia’s term). For present purposes, where quoting or summarising the arguments of the Parties, the Tribunal uses the terms adopted by each Party in the statements quoted or summarised. The Tribunal makes no findings regarding the appropriate name (or best anglicisation) for place names, and no inferences should be drawn from the use of one name versus another in this Decision.

¹⁷⁴ Response to Opposition to Bifurcation, para. 166.

¹⁷⁵ Response to Opposition to Bifurcation, para. 167.

¹⁷⁶ Response to Opposition to Bifurcation, para. 167. *See also*, Hearing Tr., 109:24–110:2 (“the law of belligerent occupation is literally -- literally -- triggered based on a belligerent exercise of ‘effective control’ over an enemy’s territory”).

¹⁷⁷ Response to Opposition to Bifurcation, para. 170.

¹⁷⁸ Response to Opposition to Bifurcation, para. 170.

¹⁷⁹ Response to Opposition to Bifurcation, para. 174.

¹⁸⁰ Response to Opposition to Bifurcation, para. 177.

¹⁸¹ Response to Opposition to Bifurcation, paras. 180–182.

Instead of engaging with these questions, Azerbaijan seeks to rely on an artificial distinction between “occupation” and “effective control”.¹⁸²

- (d) Armenia’s arguments do not imply the complete displacement of international environmental law by the law of armed conflict, contrary to Azerbaijan’s suggestion.¹⁸³ As Armenia has articulated in its Objection, “what is ‘governed by the law of armed conflict’ are both the prerequisite questions of whether Armenia was an Occupying Power and what obligations it has in respect of the environment in an allegedly occupied territory”.¹⁸⁴ With respect to the latter, Armenia contends that:¹⁸⁵

[t]he Tribunal lacks jurisdiction, first, over those aspects of environmental protection in a situation of occupation that are regulated exclusively by the law of armed conflict, and second, over the question of how that body of law shapes the application of the residual environmental obligations that are *not* displaced.

5. Armenia’s Articles 4(4) and 11 Objections

75. Armenia contends that the Tribunal lacks jurisdiction over Azerbaijan’s claims under Articles 4(4) and 11 of the Bern Convention, because the alleged conduct (even if accepted as true—*quod non*) is not capable of constituting a breach of those provisions, in light of the circumstances of the case.¹⁸⁶ Armenia advances two objections in this regard:

- (a) *First*, Azerbaijan claims that Armenia was obliged to “cooperate and coordinate with Azerbaijan to protect and conserve the Okhchuchay [Voghji] River”, pursuant to Articles 4(4) and 11 of the Bern Convention. However, Articles 4(4) and 11 of the Convention qualify the Parties’ obligations to cooperate and coordinate: these obligations only apply “as appropriate” or “whenever appropriate”.¹⁸⁷ In Armenia’s view, the existence of “intense and continuing hostilities between the two countries”,¹⁸⁸ as well as the absence of diplomatic relations (and in turn, “an avenue of communication and general

¹⁸² Response to Opposition to Bifurcation, para. 183.

¹⁸³ Response to Opposition to Bifurcation, para. 184.

¹⁸⁴ Response to Opposition to Bifurcation, para. 185.

¹⁸⁵ Response to Opposition to Bifurcation, para. 185 (emphasis added by Armenia).

¹⁸⁶ Memorial on Preliminary Objections, paras. 204–205, citing **ARL-0106**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, ICJ, Preliminary Objections, Judgment, 12 November 2024, paras. 91 and 99; **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)*, ICJ, Preliminary Objections, Judgment, 2 February 2024, para. 136.

¹⁸⁷ Memorial on Preliminary Objections, para. 208.

¹⁸⁸ Memorial on Preliminary Objections, para. 215.

goodwill”)¹⁸⁹ must mean that it was not “appropriate” for the Parties to coordinate or cooperate under the Bern Convention, and as a result there could be no breach of these provisions.¹⁹⁰

- (b) *Secondly*, Azerbaijan claims that Armenia was under a duty to cooperate with Azerbaijan to “enhance the effectiveness” of conservation measures taken by Azerbaijan, pursuant to Article 11(1)(a) of the Convention.¹⁹¹ However, Armenia argues that Article 11(1)(a) only creates an obligation to cooperate “to enhance the effectiveness” of conservation measures taken under the Bern Convention.¹⁹² Accordingly, “Azerbaijan must therefore 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”.¹⁹³ Given that Azerbaijan “cannot point to a single conservation measure it has taken under the Convention that necessitated cooperation”,¹⁹⁴ the conduct complained of by Azerbaijan is not capable of breaching Article 11(1)(a) of the Bern Convention.¹⁹⁵

(a) *Azerbaijan’s Position on the Bifurcation of the Articles 4(4) and 11 Objections*

76. Azerbaijan contends that the Articles 4(4) and 11 Objections do not warrant treatment in a preliminary phase, as they: (i) are not preliminary in character; (ii) would not meaningfully reduce the scope or complexity of the proceedings, even if upheld; and (iii) are not sufficiently serious.¹⁹⁶
77. *First*, Azerbaijan argues that the Objections are intertwined with the merits and are not preliminary in character.¹⁹⁷ In Azerbaijan’s view, Armenia’s arguments “contort[] the obligations under Articles 4(4) and 11 to the point that they are almost meaningless”, and ignore the broader scope of conduct complained of by Azerbaijan.¹⁹⁸ In any event, Armenia’s arguments directly concern the scope and “substantive content” of the relevant obligations, which is at “the heart of

¹⁸⁹ Memorial on Preliminary Objections, para. 218.

¹⁹⁰ Memorial on Preliminary Objections, para. 208.

¹⁹¹ Memorial on Preliminary Objections, para. 207, *citing* Statement of Claim, paras. 316, 352, 353, 354.

¹⁹² Memorial on Preliminary Objections, para. 226.

¹⁹³ Memorial on Preliminary Objections, para. 226.

¹⁹⁴ Memorial on Preliminary Objections, para. 228.

¹⁹⁵ Memorial on Preliminary Objections, para. 227; Response to Opposition to Bifurcation, para. 192.

¹⁹⁶ Opposition to Bifurcation, paras. 51, 52–57.

¹⁹⁷ Opposition to Bifurcation, para. 52.

¹⁹⁸ Opposition to Bifurcation, para. 52.

the merits assessment”.¹⁹⁹ Likewise, the Objections put in issue facts and evidence relevant to Armenia’s compliance with its obligations, the analysis of which is a task for the Tribunal on the merits.²⁰⁰ Ultimately, the Objections have “the character of [an affirmative] defence on the merits” (rather than the character of a preliminary objection), and so should not be bifurcated.²⁰¹

78. *Secondly*, Azerbaijan contends that the Objections are unsuitable for bifurcation as even if they were upheld, the scope and complexity of the proceedings would not be meaningfully reduced. According to Azerbaijan, upholding the Objections would only address Azerbaijan’s claims under Articles 4(4) and 11 of the Convention, but leave its claims under Articles 2, 3, 4, 6, and 7 intact. Azerbaijan further notes that upholding the Objections would not affect the amount of compensation it seeks in the proceedings.²⁰²
79. *Thirdly*, Azerbaijan submits that the Objections are “clearly without merit” and insufficiently serious to warrant bifurcation. In particular:
- (a) Azerbaijan argues that the Objections reflect “inherent inconsistencies” in Armenia’s position.²⁰³ In the context of these Objections, Armenia submits that it could not cooperate with Azerbaijan given the “intense and continuing hostilities between the two countries” and the absence of diplomatic relations, yet in the context of its Negotiations Objection, Armenia submits that when Azerbaijan decided to commence arbitration “there was still a

¹⁹⁹ Opposition to Bifurcation, paras. 52–53.

²⁰⁰ Opposition to Bifurcation, para. 53, citing **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, paras. 40, 88; **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, para. 14; **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, para. 11. *See also*, Hearing Tr., 29:10–30:5 (“In its fifth objection, Armenia is effectively lodging additional facts, specifically the existence of an armed conflict, the absence of diplomatic relations, to argue that its cooperation would not be ‘appropriate’ under the Convention.... Armenia’s own framing of its sixth objection also makes clear that it is explicitly challenging the sufficiency of Azerbaijan’s evidence on the issue of conservation measures taken,... Again, that is a classic merits argument”).

²⁰¹ Opposition to Bifurcation, para. 54, citing **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)*, ICJ, Preliminary Objections, Judgment, 27 February 1998, para. 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)*, ICJ, Preliminary Objections, Judgment, 27 February 1998, para. 49. *See also*, Hearing Tr., 29:21–25 (“Armenia’s sixth objection in respect of Article 11 can best be characterised as a defence under the doctrine of futility, due to what Armenia says is Azerbaijan’s alleged failure to take conservation measures”); Hearing Tr., 146:6–22.

²⁰² Opposition to Bifurcation, para. 55.

²⁰³ Opposition to Bifurcation, para. 56.

‘reasonable probability...that further negotiations would lead to a settlement.’²⁰⁴
According to Azerbaijan, “[b]oth cannot be true”.²⁰⁵

- (b) Further, according to Azerbaijan, these Objections are premised on an “unreasonably narrow reading of [Armenia’s] obligations”,²⁰⁶ a position for which Armenia has “fail[ed] to provide any legal support”.²⁰⁷ In particular, the authorities cited by Armenia concern treaty provisions relating to friendship or harmony between nations, and have no application in the context of the conservation of wild flora and fauna and their habitats.²⁰⁸

(b) Armenia’s Position on the Bifurcation of its Articles 4(4) and 11 Objections

80. Armenia contends that the Articles 4(4) and 11 Objections “involve purely legal questions that are exclusively preliminary in character” and that there is no other compelling reason to reverse the default position in favour of bifurcation.²⁰⁹
81. *First*, the Objections possess an exclusively preliminary character. Contrary to what Azerbaijan claims, the Tribunal “would *not* ‘be drawn into [any] nuanced debates about the actual character of the conduct alleged,’”²¹⁰ but would only have to tackle the question of whether “as a matter of law, the obligations in question apply in the circumstances alleged”,²¹¹ a matter of treaty interpretation “in the abstract”.²¹² Indeed, Armenia states that “[f]or [the purpose of the Tribunal’s enquiry into the Objections], the Tribunal could regard as proven the facts as presented by Azerbaijan”.²¹³
82. In the present case, the first Objection requires a determination of whether provisions requiring the Parties to coordinate and cooperate “as appropriate” or “whenever appropriate” are capable of being breached in the context of an armed conflict and where no diplomatic relations exist

²⁰⁴ Opposition to Bifurcation, para. 56, *citing* Memorial on Preliminary Objections, paras. 113, 215.

²⁰⁵ Opposition to Bifurcation, para. 56.

²⁰⁶ Opposition to Bifurcation, para. 57.

²⁰⁷ Opposition to Bifurcation, para. 57.

²⁰⁸ Opposition to Bifurcation, para. 57.

²⁰⁹ Response to Opposition to Bifurcation, paras. 193, 209.

²¹⁰ Response to Opposition to Bifurcation, para. 194 (emphasis and brackets added by Armenia).

²¹¹ Response to Opposition to Bifurcation, para. 194.

²¹² Hearing Tr., 116:15–17.

²¹³ Hearing Tr., 116:23–25.

between the parties concerned. According to Armenia, this is a “straightforward legal question of treaty interpretation”, and does not require the Tribunal to delve into the merits of this claim.²¹⁴

83. As for the second Objection, given that Azerbaijan has not even claimed that it actually undertook conservation measures pursuant to the Bern Convention, a condition necessary for the duty of cooperation under Article 11(1)(a) to be triggered, “even accepting the facts as alleged by Azerbaijan as true, they are not capable of showing the existence of a duty to cooperate under Article 11(1)(a)”.²¹⁵
84. Armenia observes that in addressing similar jurisdictional objections (where it has been asserted that particular conduct is not “capable” of constituting a treaty breach), the ICJ has found that the objections have had an exclusively preliminary character, and has examined the objections at a preliminary stage.²¹⁶ Armenia contends that the contrary approach of the tribunal in the case between the Parties under the Energy Charter Treaty is inapposite, as that tribunal “did not apply an exclusively preliminary character test and because the objection being considered was different in nature”.²¹⁷
85. *Secondly*, while the Articles 4(4) and 11 Objections concern only some of Azerbaijan’s claims, Armenia reiterates that “a State should not have to defend the merits of a claim if jurisdiction over that claim is not established”.²¹⁸

²¹⁴ Response to Opposition to Bifurcation, para. 197. Armenia notes that to the extent the Objection requires consideration of additional factual material, this evidence “is either undisputed or originates from Azerbaijan itself” (Response to Opposition to Bifurcation, para. 198). As such, the Tribunal “can take judicial notice” of these facts (Hearing Tr., 118:7–12).

²¹⁵ Response to Opposition to Bifurcation, paras. 200–201. Armenia observes that “according to Article 16(3) of the Rules [of Procedure], Azerbaijan may not [now] add new facts, except under limited circumstances and by leave of the Tribunal” (Hearing Tr., 180:5–8).

²¹⁶ Response to Opposition to Bifurcation, para. 195, 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)*, ICJ, Preliminary Objections, Judgment, 8 November 2019, paras. 95–97; **ARL-0139**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, ICJ, Preliminary Objections, Judgment, 4 February 2021, paras. 111–112; **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)*, ICJ, Preliminary Objections, Judgment, 2 February 2024, para. 136; **ARL-0106**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, ICJ, Preliminary Objections, Judgment, 12 November 2024, para. 90. *See also*, Hearing Tr., 117:1–11.

²¹⁷ Hearing Tr., 117:22–118:3. *See also*, Response to Opposition to Bifurcation, para. 194.

²¹⁸ Response to Opposition to Bifurcation, para. 202. Armenia notes that “[t]aken together with the other objections which also warrant bifurcation, they would dispose of the majority of Azerbaijan’s case” (Hearing Tr., 119:7–9).

86. *Thirdly*, Armenia contends that even if “seriousness” was a relevant factor (*quod non*), Azerbaijan has not established that the Objections are frivolous.²¹⁹ In particular:²²⁰
- (a) The Objections have clear textual support in the Bern Convention, and Armenia has provided ample legal support and substantial evidence for its arguments.²²¹
 - (b) The Objections do not contradict the position put forward by Armenia in its Negotiations Objection. The positions taken by Armenia with respect to each Objection can be true simultaneously, and concern “entirely different inquir[ies]”: “an obligation to cooperate or coordinate actions ‘*as appropriate*’ [...] cannot be equated to a strict and unqualified obligation to ‘genuine[ly] attempt’ to negotiate with a view to settling a particular dispute until negotiations become futile”.²²²
 - (c) The alleged failure to provide a 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” does not establish that the Objections are without merit, given the lack of any inter-State case law under the Bern Convention.²²³

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²¹⁹ Response to Opposition to Bifurcation, para. 203.

²²⁰ Response to Opposition to Bifurcation, paras. 203–208.

²²¹ Response to Opposition to Bifurcation, paras. 204–205, *citing* Memorial on Preliminary Objections, paras. 209–211, 212–225.

²²² Response to Opposition to Bifurcation, para. 207, *citing* Memorial on Preliminary Objections, para. 74 (emphasis and third bracket added by Armenia).

²²³ Response to Opposition to Bifurcation, para. 208, *citing* Opposition to Bifurcation, para. 57 (emphasis added by Armenia).

IV. TRIBUNAL'S ANALYSIS

87. Before turning to its substantive analysis, the Tribunal recalls that this Decision relates exclusively to the issue of bifurcation, and is without prejudice to the Tribunal's eventual decision on the substance of Armenia's Objections.

88. Further, the Tribunal notes that it has carefully considered all of the arguments raised in the Parties' written and oral submissions on bifurcation, but will refer in its analysis only to those points the Tribunal considers most pertinent to its decision.

A. APPLICABLE STANDARD

89. The question of whether the Tribunal shall hear (some or all of) Armenia's objections in a separate, preliminary phase of the proceedings is governed by Article 14(4) of the Rules of Procedure. Article 14(4) provides that:

[t]he 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.

90. Article 14(4) establishes a rule in favour of the bifurcation of objections to jurisdiction or admissibility (“[t]he Tribunal *shall* rule...”). This rule reflects the view that, in principle, a State “should not have to give an account of itself on issues of merits before a tribunal which lacks jurisdiction in the matter, or whose jurisdiction has not yet been established”.²²⁴

91. However, that rule has exceptions. These exceptions are engaged (i) where an objection “does not possess an exclusively preliminary character”; or (ii) where other factors justify a determination that the objection shall only be ruled upon in conjunction with the merits.

92. As to the first factor, the Tribunal must rule upon an objection in conjunction with the merits where the objection does not possess an “exclusively preliminary character”. The focus of the Tribunal's enquiry here is the likelihood of overlap between the factual and legal issues that may need to be determined to address the objection, and the factual and legal issues that may form part of the merits phase.²²⁵ At the present procedural stage (where a response on the substance of the

²²⁴ **ARL-0013**, *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, ICJ, Judgment, 18 August 1972, para. 18.

²²⁵ *See, e.g., AZL-0249, Delimitation of Maritime Boundary (Guyana v. Suriname)*, PCA Case No. 2004-04, Procedural Order No. 2, 18 July 2005, para. 2 (“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”).

objections and a response on the merits of the claims have not yet been filed), the issues that may need to be determined to address both the objections and the merits cannot be definitively ascertained. As such, a degree of caution is required in the Tribunal’s assessment of the overlap between the issues that may ultimately arise.

93. The threshold at which the overlap becomes of concern has been variously described as where the issues raised by an objection (or at least some of them)²²⁶ are “closely interconnected”, “intertwined”, or “intimately linked” with the merits.²²⁷ The Tribunal must, in this respect, be conscious of the underlying concern the principle addresses – in particular, the risk of prejudging the merits without the benefit of the full factual record and all of the Parties’ arguments, and the concomitant risk of unfairness to the Parties.²²⁸
94. As the Parties acknowledge, the assessment of whether an objection is of an exclusively preliminary character is specific to the circumstances of the case. Here, the Tribunal must consider the overlap between the objections raised by Armenia, and the claims advanced by Azerbaijan to be determined on the merits. As such, decisions taken by other international courts and tribunals on this question provide a point of reference, but may be of limited relevance given

²²⁶ The question is whether the objection is of an *exclusively* preliminary character. As such, where objections “contain both preliminary aspects and other aspects relating to the merits, they will have to be dealt with at the stage of the merits” (**ARL-0023**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, ICJ, Merits, Judgment, 21 June 1986, para. 41).

²²⁷ **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, para. 16; **AZL-0241**, *Pajzs, Czáky, Esterházy*, PCIJ, Preliminary Objection, Order, 23 May 1936, PCIJ Series A/B, No. 66, p. 9 (“Whereas the questions raised by the first of these objections and those...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”); **ARL-0069**, *The South China Sea Arbitration (The Republic of Philippines v. The People’s Republic of China)*, PCA Case No. 2013-19, Award on Jurisdiction and Admissibility, 29 October 2015, para. 16 (“If it finds that any of the jurisdictional issues are so closely intertwined with the merits that they cannot be decided as ‘preliminary questions’, the Tribunal will defer those jurisdictional issues”). The objection must nevertheless go further than simply “touching upon” certain aspects of the merits (**AZL-0251**, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, ICJ, Preliminary Objections, Judgment, 13 December 2007, para. 51).

²²⁸ See, e.g., **AZL-0243**, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, ICJ, Preliminary Objections, Judgment, 24 July 1964, pp. 41–44; see also, Merits, Separate Opinion of Judge Sir Gerald Fitzmaurice, 5 February 1970, para. 84 (“this objection...was intimately connected with the ultimate issues of substance involved by the claim, and could not even be considered except in relation to these,-and so could not be pronounced upon without in large measure prejudging the merits-a situation that has generally been viewed as eminently calling for a joinder [to the merits]”). While the primary concern is one of fairness, it is apparent that the principle has implications for the efficient conduct of the proceedings as well. See, e.g., **ARL-0023**, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, ICJ, Merits, Judgment, 21 June 1986, paras. 37–41 (“this approach [of joining an objection to the merits] also tends to discourage the unnecessary prolongation of proceedings at the jurisdictional stage”).

the specific nature of the enquiry that is required, and the different procedural contexts in which the analysis has been undertaken.²²⁹

95. In addition to the question of whether an objection possesses an “exclusively preliminary character”, the Tribunal retains a degree of discretion to consider “other” factors that may justify an exception to the general rule. In its consideration of these factors, the Tribunal must be guided by its overarching duty 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”, as reflected in Article 9(2) of the Rules of Procedure, which applies to the proceedings in general and reflects the interests of the sound administration of justice.²³⁰
96. In that regard, the Tribunal agrees with the Parties²³¹ that the impact of upholding an objection on the further conduct of the proceedings (including the scope of the factual and legal issues that remain to be determined), is a relevant factor. Indeed, ordering a separate, preliminary phase for the determination of an objection that has a limited impact on the remainder of the proceedings may significantly increase the length and cost of those proceedings, without any commensurate procedural benefit.
97. Concerning the other basis to be considered in the Tribunal’s analysis, on which the Parties differ, namely the factor of the “seriousness” or “substantiality” of an objection,²³² the Tribunal, in light of its decision below, need not finally resolve the question of the relevance of the “seriousness” or “substantiality” of an objection as a factor in its analysis, nor the applicable threshold, were it to be relevant.

²²⁹ In particular, in the context of preliminary objections before the International Court of Justice, objections are bifurcated automatically, and the question of whether an objection has an “exclusively preliminary character” is assessed only after the substance of the objection has been fully briefed (International Court of Justice, Rules of Court, 1978 (as amended 24 October 2023), Articles 79bis (3), 79ter (4)). As such, the Court is in a better position to assess, for example, whether it has before it “all facts necessary to decide the questions raised” (**AZL-0251**, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, ICJ, Preliminary Objections, Judgment, 13 December 2007, para. 51). Having already been fully briefed on the objection, the impact on the efficient conduct of the proceedings of a decision by the Court to join an objection to the merits also differs from the present context.

²³⁰ Rules of Procedure, Article 9(2).

²³¹ Opposition to Bifurcation, para. 18; Response to Opposition to Bifurcation, para. 43.

²³² See, paras. 29, 37–38 above, summarising Azerbaijan and Armenia’s views on these issues.

B. APPLICATION OF THE STANDARD TO ARMENIA’S OBJECTIONS

98. The Tribunal will now turn to the application of this standard to each of Armenia’s Objections, followed by an overall assessment in light of the Tribunal’s individual conclusions.

1. Article 18 Objections

99. Armenia’s Article 18 Objections allege that Azerbaijan has failed to comply with mandatory preconditions to arbitration set out in Article 18 of the Bern Convention, and as a result, the Tribunal lacks jurisdiction over the dispute.

100. The Tribunal is not convinced that (i) the Article 18 Objections do not possess an exclusively preliminary character; or (ii) other factors justify a determination that the Article 18 Objections shall only be ruled upon in conjunction with the merits.

101. *First*, the Tribunal considers that the Article 18 Objections are of an exclusively preliminary character. While at the Hearing on Bifurcation, Azerbaijan indicated that it “[did] not concede...that the Article 18 objections are preliminary”,²³³ it has not positively explained how the Objections are intertwined with the merits. Indeed, it is difficult for the Tribunal to see how there is an overlap between the issues raised by the Objections and the claims advanced on the merits.

102. The Standing Committee Objection appears to turn principally on questions of interpretation of Articles 18(1) and (2) of the Convention (concerning the “Settlement of disputes”). These provisions do not appear to be at issue in the claims advanced by Azerbaijan. While certain facts may be relevant to the Tribunal’s interpretative exercise (for example, facts relating to the subsequent practice of the Contracting Parties to the Bern Convention), these facts likewise do not appear to overlap with the facts at issue on the merits.

103. Similarly, the Negotiations Objection appears to concern, at least in part, a question of interpretation of Article 18(2) of the Convention. The factual matters that are put in issue by the Objection (for example, the genuineness of the efforts to negotiate in advance of the Notice of Arbitration, or the status of the negotiations at the time the Notice of Arbitration was filed), appear to be discrete from the substance of Azerbaijan’s claims.²³⁴

²³³ Hearing Tr., 127:23–25.

²³⁴ The Tribunal notes that Azerbaijan has asserted that the position advanced by Armenia with respect to its Negotiations Objection is “inherently inconsistent” with the position Armenia advances with respect to its Articles 4(4) and 11 Objections (concerning the feasibility of cooperation under Articles 4(4) and 11 of the Convention in circumstances of armed conflict and in the absence of diplomatic relations). To the extent

104. *Secondly*, regardless of whether the “seriousness” or “substantiality” of an objection is a relevant consideration, and regardless of the applicable threshold (that is, whether Azerbaijan needs to demonstrate that the Objections exceed a “high threshold of frivolousness”,²³⁵ or merely that the Objections are not “serious”²³⁶), the Tribunal considers that the threshold to justify joining the Objections to the merits has not been reached in this instance.
105. In that regard, the Tribunal wishes to emphasise the novelty of the questions of interpretation at stake: as these are the first arbitral proceedings under the Convention, there is no direct precedent for the Parties to rely upon, or from which the Tribunal could straightforwardly determine that the interpretation advanced by Armenia lacks “seriousness” on a *prima facie* basis. The Parties have advanced competing positions, ostensibly supported by reference to relevant interpretive principles, legal authorities, and factual materials, in order to address these novel questions. The Tribunal considers that the issues raised warrant proper consideration and resolution, including, as necessary, in a preliminary phase of the proceedings.
106. *Thirdly*, the Article 18 Objections impugn the Tribunal’s jurisdiction to hear all of Azerbaijan’s claims. As such, to the extent the Objections are upheld, they have the potential to dispose of the entire case and bring an end to the proceedings.²³⁷ In turn, this would avoid the delay and expense associated with hearing the merits of Azerbaijan’s claims, consistent with the Tribunal’s duty under Article 9(2) of the Rules of Procedure.²³⁸
107. For these reasons, the Tribunal considers that the Article 18 Objections should be heard in a preliminary phase of the proceedings.

2. Territorial Objection

108. Armenia argues in the context of its Territorial Objection that its obligations under Articles 2, 3, 4, 6, and 7 of the Bern Convention do not extend to areas beyond territory under its sovereignty,

that there is any overlap between these issues, the Tribunal does not consider it sufficiently material to deprive the objection of its exclusively preliminary character or to justify an exception to the rule in favour of bifurcation.

²³⁵ Hearing Tr., 76:11–18.

²³⁶ Opposition to Bifurcation, para. 19.

²³⁷ At the Hearing on Bifurcation (Hearing Tr., 127:23–25), Azerbaijan indicated that it “[did] not concede” that the Article 18 Objections are dispositive of its case, but did not advance a positive explanation in support of its position.

²³⁸ Rules of Procedure, Article 9(2).

including the Area, even if Armenia is determined to have had jurisdiction and/or control over the Area (a matter Armenia denies on the merits).

109. The Tribunal does not consider that the Territorial Objection possesses an exclusively preliminary character. In particular, the Tribunal cannot exclude the possibility that to resolve the question of the territorial scope of Articles 2, 3, 4, 6 and 7, it will need to enquire into and determine matters that are properly a part of an analysis of the merits of Azerbaijan’s claims, including the substantive content of the obligations imposed by these provisions, the ways in which the obligations may be breached, and the nature of Armenia’s jurisdiction and/or control over the Area (if any).
110. In particular, the Tribunal observes that Armenia’s case against extraterritorial application is not confined to the interpretation of provisions or terms that are discrete from the provisions alleged to have been breached on the merits (for example, the definition of “territory” in a treaty²³⁹) – rather, it relies on, amongst other things, the interpretation of the very same provisions.
111. In that regard, Armenia claims that the Tribunal need not determine the substantive scope or content of any of these provisions *beyond their territorial scope of application* in order to determine the Objection.²⁴⁰ However, in its Memorial on Preliminary Objections, Armenia argues, for example, that an extraterritorial interpretation of Article 2 “would *impose an impossible obligation* on Contracting Parties”, and so such an interpretation should be rejected.²⁴¹ In respect of Article 3, Armenia contends that the obligations “relate to a State’s *national policies*”²⁴² and that “[w]hile in *some specific circumstances*, a State can have national policies that govern extraterritorial conduct”, reading Article 3 in this way “would potentially put the Bern Convention in conflict with [at least five other international legal] regimes”, including the United Nations Convention on the Law of the Sea.²⁴³ To address these arguments, amongst others, the Tribunal cannot exclude the possibility that it will be required to determine the substantive content of the obligations imposed by the provisions at issue,²⁴⁴ a matter properly reserved for the merits phase.

²³⁹ See, e.g., **ARL-0136**, *Stabil LLC et al. v. The Russian Federation*, PCA Case No. 2015-35, Award on Jurisdiction, 26 June 2017, paras. 138–148.

²⁴⁰ Response to Opposition to Bifurcation, para. 95.

²⁴¹ Memorial on Preliminary Objections, para. 123 (emphasis added by the Tribunal).

²⁴² Memorial on Preliminary Objections, para. 124 (emphasis added by Armenia).

²⁴³ Memorial on Preliminary Objections, para. 125 (emphasis added by the Tribunal).

²⁴⁴ Including, if relevant, their interaction, if any, with other international legal regimes.

112. The concern with prejudging the substantive content of the obligations is particularly acute where at least some of the same obligations are at issue in claims that are unaffected by the Objection and will otherwise fall to be determined on their merits. In the present case, it is undisputed that Azerbaijan’s claims with respect to transboundary harm are not affected by the Objection.²⁴⁵ But these transboundary claims are premised on the same obligations that may need to be examined by the Tribunal to determine the Territorial Objection.²⁴⁶
113. This point highlights a further issue. Azerbaijan alleges breaches of Bern Convention obligations to, amongst other things, “take requisite measures”, as a result of a range of Armenia’s “actions and failures to act”.²⁴⁷ The Tribunal cannot exclude the possibility that an abstract analysis of the Convention, absent an examination of the *specific* ways in which the obligations are alleged to have been breached, yields an inconclusive answer to the question of the territorial scope of the obligations. To render decisions on that issue at a preliminary stage risks prejudging questions of liability, given the close relationship between that step and the examination that the Tribunal will need to undertake on the merits (including whether the alleged acts or failures to act fall within the material scope of the obligation to take “requisite measures” at all).
114. Similarly, the Tribunal cannot exclude the possibility that whether and how obligations under the Bern Convention apply to Armenia is affected by the nature of Armenia’s jurisdiction and/or control over the Area (if any). While Armenia proposes that the Tribunal proceed, for the purposes of the Objection, on the assumption that Azerbaijan’s “effective control” case has been established,²⁴⁸ these facts are disputed by Armenia on the merits. To that extent that the Objection

²⁴⁵ Opposition to Bifurcation, para. 30; Response to Opposition to Bifurcation, para. 134.

²⁴⁶ For example, with respect to Article 2 (“Armenia’s continuing failure to prevent transboundary harms to the Okhchuchay freshwater ecosystem that impact the conservation status of fish species in the Affected Area likewise constitutes a continuing breach of Article 2”, Statement of Claim, para. 212), Article 3 (“Armenia’s ongoing transboundary contamination of the Okhchuchay River demonstrates that it is in violation of its obligations under Article 3 to this day”, Statement of Claim, para. 233), Article 4 (“Armenia’s conduct violated each of Article 4’s provisions relating to habitats, as evidenced by...the continuing habitat harms occurring as a result of Armenia’s transboundary pollution”, Statement of Claim, para. 241), Article 6 (“These are exactly the type of harms that Article 6 seeks to prevent, and make clear that Armenia failed to comply with its obligations to take ‘appropriate and necessary’ measures to do so...these harms also included transboundary harms that continue to this day and continue to affect Appendix II species”, Statement of Claim, para. 336) and Article 7 (“Armenia breached its obligations under Article 7, since these harms, including transboundary harms, likewise impacted ‘protected’ species under Appendix III”, Statement of Claim, para. 347).

²⁴⁷ Statement of Claim, paras. 8, 201–212.

²⁴⁸ Response to Opposition to Bifurcation, para. 114; Hearing Tr., 94:8–20. Nonetheless, it appears to the Tribunal that there are elements of Armenia’s arguments that are not clearly premised on undisputed factual matters. For example, in paras. 136–137 of the Memorial on Preliminary Objections, Armenia contends that Azerbaijan’s interpretation of the territorial scope of the Convention is “inherently contradictory” given it “consistently refuse[d] to recognize the very ability of the ‘Installed Regime’ (or any Occupying Power)

is not upheld in full, there is a clear risk that the Tribunal’s hypothetical analysis at a preliminary stage may prejudice the Tribunal’s assessment at the merits stage. In any event, having to undertake this exercise both at a preliminary stage and on the merits is likely to be duplicative and inefficient.

115. For these reasons, the Tribunal considers that the Territorial Objection should only be ruled upon in conjunction with the merits.

3. Law-of-Armed-Conflict Objection

116. Armenia argues in the context of its Law-of-Armed-Conflict Objection that the real issue in dispute between the Parties is Armenia’s purported status as an Occupying Power in the Area and the obligations upon Armenia that flow therefrom, matters which fall outside the scope of this Tribunal’s jurisdiction under the Bern Convention.²⁴⁹
117. To determine this Objection, Armenia argues that the Tribunal will need to ascertain the “real issues in dispute”,²⁵⁰ and to the extent that these issues fall outside the Tribunal’s jurisdiction, determine whether the issues are merely ancillary to Azerbaijan’s claims under the Bern Convention, or amount to essential prerequisites to the claims.²⁵¹ In doing so, the Tribunal must have regard to the Parties’ positions as framed in their submissions (and in particular, how Azerbaijan as the Claimant has framed its claims), but may also have regard to extrinsic factual material, according to Armenia.²⁵²
118. In the circumstances of the present case, the Tribunal is not convinced that it can undertake that assessment at a preliminary stage without potentially prejudging elements of the merits of the case. As such, the Tribunal considers that the Law-of-Armed-Conflict Objection lacks an exclusively preliminary character.

to adopt and enforce laws to comply with what Azerbaijan argues the Bern Convention requires”, including by “reject[ing] presidential, parliamentary, and local government election results” and “prevent[ing] access...of virtually all international environmental agencies that could have assisted”.

²⁴⁹ Memorial on Preliminary Objections, para. 190.

²⁵⁰ Memorial on Preliminary Objections, paras. 186, 190.

²⁵¹ Memorial on Preliminary Objections, para. 191.

²⁵² **AZL-0273**, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, ICJ, Preliminary Objections, Judgment, 3 February 2021, paras. 52–53, 59; **AZL-0088**, *Fisheries Jurisdiction (Spain v. Canada)*, ICJ, Jurisdiction of the Court, Judgment, 4 December 1998, paras. 29–31. *See*, Memorial on Preliminary Objections, para. 186; Opposition to Bifurcation, para. 48.

119. In particular, at the present stage, Armenia has not yet articulated on record its position in response to Azerbaijan’s claims. In the absence of such articulation, it may be difficult for the Tribunal to reach a concluded view on what issues lie for its determination on the face of the Parties’ submissions, let alone looking behind the Parties’ pleaded positions to ascertain what the “real issues in dispute” may be, or where the “relative weight of the dispute” as a whole may lie.²⁵³
120. In that regard, Armenia stresses that the Tribunal can “determine [what is] the central issue based on *Azerbaijan’s own formulation* that ‘[its] case is that the Bern Convention requires – indeed, it demands – that Armenia fairly compensate Azerbaijan for the damage *caused by its three decades of illegal occupation...*’.”²⁵⁴ However, according to Azerbaijan, the term “occupation” “is used descriptively [in its submissions] – not, as Armenia argues, to advance legal claims or ask the Tribunal to adjudicate questions under [the law of armed conflict]”.²⁵⁵ In turn, Armenia contends that Azerbaijan makes an “artificial distinction between ‘occupation’ and ‘effective control’” given that “[w]hether labelled ‘occupation’ or ‘effective control,’ the factual predicate and the legal consequences Azerbaijan put forward are identical” and that there is “no daylight between Azerbaijan’s theories of ‘effective control’ and ‘occupation’ for purposes of establishing Armenia’s obligations with respect to the ‘Affected Area’”.²⁵⁶
121. What this discussion highlights is that, in order to ascertain whether the question of occupation is the “real issue in dispute”, and if so, what impact that may have on the Tribunal’s jurisdiction, the Tribunal will need to come to a concluded view on the relevance (if any) of the law of armed conflict (including in the context of the claim that Armenia had “effective control” over the Area), and, if relevant, the contours of the relationship between the law of armed conflict and the Bern Convention, both at an abstract level, as well as in the specific circumstances of the present case.²⁵⁷ This analysis significantly overlaps with the analysis the Tribunal may need to undertake on the merits. Indeed, Armenia concedes that its arguments on the interaction between the law

²⁵³ **ARL-0068**, *Chagos Marine Protected Area (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015, para. 211.

²⁵⁴ Response to Opposition to Bifurcation, para. 178 (emphasis added by the Tribunal), *citing* First Procedural Conference Tr., 5:24–6:5 (emphasis added by Armenia).

²⁵⁵ Opposition to Bifurcation, para. 42.

²⁵⁶ Response to Opposition to Bifurcation, paras. 167, 183.

²⁵⁷ Namely, in the context of the obligations invoked by Azerbaijan, and the factual situation that existed between the Parties at the relevant time.

of armed conflict and the Bern Convention will be relevant at the merits stage, if that stage is ultimately reached.²⁵⁸

122. Armenia contends that this is an issue that can be addressed “well before the Tribunal is confronted with specific, substantive conflicts between the Law of Armed Conflict and the Bern Convention”.²⁵⁹ The Tribunal does not agree. The Tribunal is not convinced that it can come to a concluded (and correct) view on the jurisdictional issue raised without addressing the apparent complexities of the alleged substantive conflict that underpins it,²⁶⁰ not least without potentially prejudicing the Tribunal’s assessment of that conflict at the merits stage.
123. Finally, the Tribunal notes that the Law-of-Armed-Conflict Objection is raised by Armenia only in the alternative to its Territorial Objection,²⁶¹ which the Tribunal considers should only be ruled upon in conjunction with the merits phase of these proceedings.²⁶²
124. For these reasons, the Tribunal considers that the Law-of-Armed-Conflict Objection should only be ruled upon in conjunction with the merits.

4. Articles 4(4) and 11 Objections

125. Armenia argues in the context of its Articles 4(4) and 11 Objections that the conduct alleged by Azerbaijan is not capable of constituting a breach of Articles 4(4) and 11 of the Convention, given it could not have been “appropriate” for Armenia to coordinate or cooperate with Azerbaijan in the context of armed hostilities and in the absence of diplomatic relations, and because Azerbaijan has not alleged any conservation measures taken pursuant to the Bern Convention that Armenia could have been obligated to “enhance the effectiveness” of.²⁶³

²⁵⁸ Hearing Tr., 174:24–175:7.

²⁵⁹ Hearing Tr., 175:9–14.

²⁶⁰ On Armenia’s case, the law of armed conflict and the Bern Convention “can conflict in a number of potential respects”, with the consequence that some aspects of environmental protection may be “displaced” and “regulated exclusively by the law of armed conflict”. Further, the law of armed conflict may “shape[] the application of the residual environmental obligations that are *not* displaced” (Response to Opposition to Bifurcation, paras. 172, 181, 185 (emphasis added by Armenia); Memorial on Preliminary Objections, para. 202).

²⁶¹ Memorial on Preliminary Objections, Section III.B; Response to Opposition to Bifurcation, para. 2; Hearing Tr., 105:6–9.

²⁶² *See*, para. 115 above.

²⁶³ Memorial on Preliminary Objections, paras. 208, 226–228.

126. The Tribunal is of the view that (i) the Articles 4(4) and 11 Objections do not possess an exclusively preliminary character; and/or (ii) other factors justify a determination that the Articles 4(4) and 11 Objections shall only be ruled upon in conjunction with the merits.
127. *First*, the Tribunal does not consider that the Articles 4(4) and 11 Objections possess an exclusively preliminary character. To resolve the Objections, the Tribunal will be required to undertake what is, in many respects, the same analysis as will be required on the merits – namely, whether the acts and/or failures to act alleged by Azerbaijan, if established,²⁶⁴ amount to a breach of the relevant obligation under the Bern Convention. The Tribunal does not consider that conducting that analysis at a preliminary stage would be fair or efficient in the present circumstances. In particular, the Tribunal is disinclined to proceed on the premise of two abstract factual elements in isolation (namely, the existence of “armed hostilities” and the absence of formal diplomatic relations), as Armenia proposes in relation to Azerbaijan’s Article 4(4) claim. The Tribunal is equally disinclined to make a jurisdictional determination at a preliminary stage on the basis of a disputed characterisation of the allegations made by Azerbaijan on the merits (namely, that Azerbaijan has failed to allege any conservation measures that could be the basis for an Article 11(1)(a) claim).
128. *Secondly*, the Tribunal is of the view that any reduction in the scope or complexity of the proceedings if the Objections were to be upheld is likely to be limited, given the considerable overlap between the factual matters relevant to Azerbaijan’s claims under Articles 4(4) and 11 and its other claims. For example, Azerbaijan alleges that “[i]n direct contravention of its obligations under Article 4(4)...Armenia permitted and facilitated the pollution of the Okhchuchay [River] by failing to enforce environmental best practices at mining facilities in Armenia”.²⁶⁵ The alleged contamination of the Okhchuchay River nevertheless also forms part

²⁶⁴ In the context of the analysis at the merits stage.

²⁶⁵ Statement of Claim, para. 317.

of Azerbaijan’s claims under Article 2,²⁶⁶ Article 3,²⁶⁷ Article 4(1),²⁶⁸ and Article 7²⁶⁹ of the Convention, which are unaffected by the Articles 4(4) and 11 Objections.

129. For these reasons, the Tribunal considers that the Articles 4(4) and 11 Objections should only be ruled upon in conjunction with the merits.

C. OVERALL ASSESSMENT

130. The Tribunal has concluded above, on the basis of an assessment of the individual objections raised by Armenia, that the Article 18 Objections should be heard in a preliminary phase of the proceedings, whereas the other Objections should only be ruled upon in conjunction with the merits, in accordance with Article 14(4) of the Rules of Procedure.

131. An overall assessment, in light of the Tribunal’s overarching duty to “provide a fair and efficient process for resolving the Parties’ dispute” and to “avoid unnecessary delay and expense”, reinforces this conclusion. In particular, the Tribunal considers that the legal and factual issues raised by the Article 18 Objections, which are limited in scope and distinct from both from the merits and from the issues raised by the other Objections, can be resolved fairly, promptly, and efficiently in a preliminary phase, as long as such a phase is appropriately designed to meet those objectives. In that regard, given that the Parties’ joint proposal for procedural steps following the Decision on Bifurcation was submitted before the Parties were aware of the scope of the Objections to be determined in a preliminary phase,²⁷⁰ the Parties may wish either to confirm or to reconsider their joint proposal for such phase.

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²⁶⁶ See, e.g., Statement of Claim, paras. 205, 208 (“instead of restoring these harms to ‘adapt’ the species population to the objective ‘level’ required by Article 2, Armenia instead facilitated additional habitat harms, including...continuing transboundary pollution of the Okhchuchay River”), 211, 212.

²⁶⁷ See, e.g., Statement of Claim, para. 233 (“Armenia’s ongoing transboundary contamination of the Okhchuchay River demonstrates that it is in violation of its obligations under Article 3 to this day”).

²⁶⁸ See, e.g., Statement of Claim, para. 289 (“the Okhchuchay freshwater ecosystem was clearly not at ‘favourable conservation’ status as required under Article 4(1) at the time of testing”).

²⁶⁹ See, e.g., Statement of Claim, paras. 348–349 (“the significant harms to the habitats of Appendix III species...demonstrate that any such framework was insufficient to meet Armenia’s obligation under Article 7...Armenia also failed to take effective measures to prevent further harms within [the Sociable Lapwing’s] habitat after 2008, including the...pollution of the Okhchuchay River”).

²⁷⁰ See, para. 19 above.

V. ORDER

132. For the reasons stated above, the Tribunal:

- (a) decides to rule on Armenia's Article 18 Objections in a preliminary phase of the proceedings;
- (b) suspends the proceedings on the merits, in accordance with Article 14(5) of the Rules of Procedure;
- (c) decides that the remainder of Armenia's Objections shall only be ruled upon in conjunction with the merits;
- (d) reserves its decision with respect to the costs of the determination of the question of bifurcation.

On behalf of the Tribunal



Dr. Václav Mikulka
Presiding Arbitrator

Date: 23 December 2025