

**In the Arbitration Under the Energy Charter Treaty and
the Arbitration Rules of the United Nations Commission on International Trade Law**

THE REPUBLIC OF AZERBAIJAN

Claimant

— v. —

THE REPUBLIC OF ARMENIA

Respondent

PCA Case No. 2023-65

AZERBAIJAN’S COUNTER-MEMORIAL ON PRELIMINARY OBJECTIONS

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I. INTRODUCTION

1. Pursuant to Procedural Order No. 1 and the Tribunal's Decision on Bifurcation dated 13 February 2025 ("***Bifurcation Decision***"), Claimant, the Republic of Azerbaijan ("***Azerbaijan***") respectfully submits this Counter-Memorial on Preliminary Objections ("***Counter-Memorial***") in response to the Memorial on Preliminary Objections filed by the Republic of Armenia ("***Armenia***") on 3 April 2025 ("***Memorial***").¹
2. Azerbaijan has brought claims against Armenia under Articles 18 and 7 of the Energy Charter Treaty ("***ECT***" or "***Treaty***") arising from Armenia's decades-long denial of access to, and exploitation and impairment of, Azerbaijan's energy resources. Armenia argues this is a "*clear misuse*" of the Treaty.² This is not correct. Azerbaijan seeks to enforce its sovereign rights over the use and development of its energy resources under a Treaty specifically created and designed to address the use and development of energy resources "[w]ithin the framework of State sovereignty and sovereign rights over energy resources."³ In contending that the Tribunal has no jurisdiction over Azerbaijan's claims, Armenia introduces misconstrued or unrelated legal principles to obfuscate the real issues before the Tribunal.
3. *First*, Armenia purposely misreads the Treaty and mischaracterizes Azerbaijan's claims to argue that Article 18 cannot serve as a basis for the Tribunal's jurisdiction. Armenia claims that Article 18 "*does not itself establish any ECT rights or obligations*,"⁴ and that Azerbaijan "*seizes on Article 18(1)'s reference to 'international law'*" to turn a supposedly toothless "*preambular*" provision into a binding treaty obligation.⁵ Armenia misstates Azerbaijan's position. It is not only Article 18(1)'s reference to international law that imposes an obligation on ECT Contracting Parties to respect all Contracting Parties' sovereign rights over their energy resources, but also the plain language of the Treaty itself. On their face, Articles 18(1) and 18(3) state that Contracting Parties must "*recognise*" these

¹ Capitalized terms not herein defined shall have the meanings ascribed in Azerbaijan's Statement of Claim dated 19 November 2024 ("***Statement of Claim***").

² Memorial, ¶ 2.

³ **CL-1**, The International Energy Charter (Consolidated Energy Charter Treaty) with Related Documents, "European Energy Charter," last updated on 15 January 2016, Title I: Objectives, at 29, as referenced in **CL-1**, ECT, Preamble (referencing "*the establishment of a legal framework in order to promote long-term cooperation in the energy field . . . in accordance with the objectives and principles of the [European Energy Charter]*").

⁴ Memorial, ¶ 6 (emphasis in original).

⁵ *Id.* ¶¶ 9, 39.

- rights,⁶ which include, “*in particular*,” the rights to decide where, how, when, and by whom their energy resources are explored and exploited, consistent with their sovereign rights.⁷ These are precisely the rights which Azerbaijan seeks to enforce in this arbitration.⁸
4. Contrary to Armenia’s arguments,⁹ Azerbaijan’s claims are fully in line with a good-faith interpretation of Article 18. Azerbaijan seeks to enforce Article 18 in accordance with the ordinary meaning of its terms, taken in context and in light of the object and purpose of the ECT. Therefore, there is nothing “*overly expansive*” or “*extraordinary*” about Azerbaijan’s claims, as Armenia suggests.¹⁰ The ECT Contracting Parties understood that without the codification of these fundamental principles into binding obligations applicable between and among the Contracting Parties, the entire treaty framework would not function properly, including its creation of a “*balance*” between host States and energy investors (a concept much vaunted by Armenia in its Memorial).¹¹
5. *Second*, as Azerbaijan explained in its Notice of Arbitration and Statement of Claim, a subset of Armenia’s conduct violated not only the sovereign rights set forth in Article 18, but also the obligations to facilitate the free transit of energy materials and products set forth in Article 7.¹² Armenia’s attempt to characterize Azerbaijan’s Article 7 claims as an entirely separate dispute, manufactured at the “*eleventh-hour*” and left unnegotiated,¹³ is without merit. Azerbaijan did in fact raise its claims under Article 7 in the negotiations with Armenia. Those claims, which relate to the Yevlakh-Nakhchivan Main Gas Pipeline (“*Y-N Pipeline*”), are part and parcel of the same dispute Azerbaijan had been futilely negotiating for well over a year by the time it filed its Notice of Arbitration—a dispute over Armenia’s denial of access to, and exploitation of, Azerbaijan’s energy

⁶ CL-1, ECT, Art. 18(1).

⁷ *Id.* Art. 18(3). See Azerbaijan’s Statement of Claim, dated 19 November 2024 (“*Statement of Claim*”), ¶¶ 183–199.

⁸ See generally Statement of Claim, ¶¶ 183–199.

⁹ Memorial, ¶¶ 75–80.

¹⁰ *Id.* ¶¶ 78, 79.

¹¹ See, e.g., *id.* ¶¶ 36, 68, 74. See also *id.* ¶ 86 (citing RL-138, ECT Travaux, Note from Norway to the Conference Secretariat on Article 21(2) (Sovereignty over Energy Resources) (16 August 1994), at 3; RL-140, ECT Travaux, Letter from Norway to the Conference Secretariat regarding Article 21(2) (1 September 1994), at 2).

¹² Azerbaijan’s Notice of Arbitration, dated 27 February 2023 (“*Notice of Arbitration*”), § IV.B; Statement of Claim, ¶¶ 238–249.

¹³ Memorial, ¶¶ 14–15.

resources.¹⁴ As Armenia is fully aware,¹⁵ the same underlying set of facts can form the basis of claims for multiple different breaches of law.¹⁶ This does not make each claim the subject of a separate dispute. Azerbaijan’s Article 7 claims are well within the jurisdiction of this Tribunal and not excepted by the voluntary conciliation mechanism set forth in Article 7(7). Any failure by Azerbaijan to fulfill the provision in Article 27 for the diplomatic settlement of disputes as a precondition to arbitration would, in any case, impact the admissibility of Azerbaijan’s claims and not the jurisdiction of the Tribunal.¹⁷

6. *Third*, despite the Tribunal’s decision to leave questions that “*would require any inquiry into the facts of this case*” to the merits phase,¹⁸ Armenia has again inappropriately elected to raise inaccurate factual assertions in its Memorial that are highly contested and, in many cases, relate to questions arising from the armed conflict precipitated by Armenia’s illegal occupation. These claims are being litigated in other fora¹⁹ and are irrelevant to the ECT claims before the Tribunal. For example, the accusations in Armenia’s Memorial that Azerbaijan is an aggressor responsible for the “*ethnic cleansing*” of the Armenian population in Garabagh, and is pursuing these proceedings in bad faith to “*distract the international community*” from these alleged “*abuses*,”²⁰ are just wrong. It is Armenia that undertook 30 years of belligerent occupation of a substantial portion

¹⁴ See, e.g., **CE-63.1**, Azerbaijan’s Notice of Dispute under the Energy Charter Treaty dated 8 October 2021, at 1 (notifying Armenia of “[redacted]”).

¹⁵ See **RL-101**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, 12 November 2024, ¶ 26 (noting Armenia’s assertion of breaches of multiple provisions of the CERD based on the same alleged predicate facts).

¹⁶ See, e.g., **RL-30**, *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, I.C.J. Reports 1980, ¶ 76 (finding that a single set of facts “*clearly gave rise to repeated and multiple breaches of the applicable provisions of the Vienna Conventions*”); **CL-121**, *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/01/13, Decision of the Tribunal on Objections to Jurisdiction, 6 August 2003, ¶ 147 (finding that “[a]s a matter of general principle, the same set of facts can give rise to different claims grounded on differing legal orders”).

¹⁷ See *infra* ¶¶ 88–95.

¹⁸ Bifurcation Decision, ¶ 87; see also *id.* ¶¶ 88–90.

¹⁹ See generally, e.g., **RL-101**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, 12 November 2024.

²⁰ See Memorial, ¶¶ 2, 12, 18, 79.

of Azerbaijan's sovereign territory, which was accompanied by the killing or mass expulsion of over 700,000 Azerbaijanis.²¹

7. Further, Armenia is incorrect when it suggests that the Tribunal would need to decide whether the ethnic Armenians in the former “*Nagorno-Karabakh Autonomous Oblast*” (“*NKAO*”) “*lawfully exercised their right to self-determination*.”²² To start, whether or not the energy resources in question were located in the former NKAO or elsewhere in the Occupied Territories is irrelevant to Azerbaijan's ECT claims; what matters for the purposes of those claims is that all the resources were located in what was and remains indisputably Azerbaijan's sovereign territory.²³ Under the ECT it is Azerbaijan that holds the sovereign rights to decide how to use its energy resources for the benefit of its entire population, regardless of their ethnicity, and the Tribunal is charged with deciding whether and to what extent Armenia, as an ECT Contracting Party, violated Azerbaijan's rights. In any event, contrary to what Armenia would have the Tribunal believe,²⁴ Azerbaijan's case under the ECT has always concerned Armenia's misappropriation of Azerbaijan's energy resources throughout the Occupied Territories—resources that are most assuredly not only located within the former NKAO.²⁵

²¹ Statement of Claim, ¶¶ 2–6; *see also* **CE-10**, United Nations Security Council (“*UNSC*”) Resolution 822, S/RES/822 (30 April 1993), at 1 (“[n]oting with alarm . . . the latest invasion of the Kelbadjar district of the Republic of Azerbaijan by local Armenian forces” and “[e]xpressing grave concern at the displacement of a large number of civilians . . . in particular in the Kelbadjar district”); **CE-11**, UNSC Resolution 853, S/RES/853 (29 July 1993), at 1 (“[n]oting with alarm the escalation in armed hostilities and, in particular, the seizure of the district of Agdam in the Azerbaijan Republic” and “[e]xpressing once again its grave concern at the displacement of large numbers of civilians in the Azerbaijani Republic”); **CE-13**, UNSC Resolution 874, S/RES/874 (14 October 1993) (“[r]eaffirming the sovereignty and territorial integrity of the Azerbaijani Republic [and] the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory” and “[e]xpressing once again its grave concern at the human suffering the conflict has caused . . . in particular . . . the displacement of large numbers of civilians in the Azerbaijani Republic”); **CE-15**, UNSC Resolution 884, S/RES/884 (12 November 1993) (“[d]emands . . . the unilateral withdrawal of occupying forces . . . from . . . recently occupied areas of the Azerbaijani Republic” and “[r]equests . . . urgent humanitarian assistance to the affected civilian population”).

²² Memorial, ¶ 12.

²³ Statement of Claim, ¶¶ 5, 33–34.

²⁴ Memorial, ¶ 11.

²⁵ The Khudafarin and Giz Galasi hydropower projects are located in the Jabrayil district of Azerbaijan, which was never a part of the former NKAO. Statement of Claim, ¶¶ 33, 70–71. Twenty-seven of the 34 small hydropower plants (“*HPPs*”) built during Armenia's occupation were located in the Lachin or Kalbajar districts, also not a part of the former NKAO. *Id.* ¶ 33, Annex 1. The interruption and repurposing of the Y-N Pipeline terminated the flow of natural gas to Nakhchivan Autonomous Republic (“*Nakhchivan*”), self-evidently never a part of the former NKAO since it is separated from

8. Likewise, nothing in Azerbaijan’s case would require or even allow the Tribunal to entertain jurisdiction over hypothetical counter-claims on behalf of third parties relating to “*ethnic cleansing and forced displacement*”²⁶ or “*all the components of the right to self-determination as they relate to natural resources*.”²⁷ To state the obvious, the present proceedings are between Azerbaijan and Armenia as Contracting Parties to the ECT, which are participating in this arbitration pursuant to Article 27 of the ECT. Any interests of other entities or individuals are outside the Tribunal’s jurisdiction.
9. Finally, Armenia attempts to rewrite the history relating to its suspension of the Y-N Pipeline,²⁸ even though the Tribunal’s Bifurcation Decision made clear that those facts are of no relevance at this preliminary stage.²⁹ Suffice to say for present purposes that Azerbaijan’s Statement of Claim plainly demonstrates that Armenia was responsible for the initial interruption of gas supply through the Y-N Pipeline—which predated Azerbaijan’s shutdown of valves in Aghdam and Barda by four to five months—and for the subsequent rerouting and repurposing of the Pipeline to supply Russian and Iranian gas to Armenia and the Occupied Territories.³⁰
10. The inaccurate, misleading, and ultimately irrelevant rhetoric employed by Armenia appears to be an exercise in attempted distraction; the reality of Azerbaijan’s claims is that they fall squarely within the Tribunal’s jurisdiction under Article 27 of the ECT.
11. In responding to Armenia’s Memorial, Azerbaijan’s Counter-Memorial will proceed as follows. As set out in **Section II**, the Tribunal has jurisdiction over claims arising under Articles 18(1) and 18(3) of the ECT, which together plainly establish binding legal obligations. Whereas Armenia’s Memorial has attempted to frame Article 18(1) as the entire scope of Article 18, in doing so, it ignores the

the rest of Azerbaijan’s territory by Armenia. *Id.* ¶ 132. Further, while the Chardaghli coal mine is located in the former NKAO, Azerbaijan’s claim for damages arising from the exploitation of the coal mine relates to the export of coal to Armenia, *id.* ¶¶ 274–276, and thus has nothing to do with “*the use of natural resources for the benefit of an indigenous population*” as asserted by Armenia, Memorial, ¶ 11. Indeed, of the US\$ 1.643 billion in damages that Azerbaijan presently estimates it suffered as a result of Armenia’s breaches of the ECT, US\$ 1.232 billion relates to energy resources that are either not located in, or were not used for the benefit of, the former NKAO. *See id.* ¶ 17. This sum does not include damages relating to the small HPPs, which Azerbaijan was unable to quantify at the time of filing the Statement of Claim. *Id.* ¶¶ 271–272.

²⁶ Memorial, ¶ 12.

²⁷ *Id.* ¶ 79.

²⁸ *Id.* ¶¶ 18–20.

²⁹ Bifurcation Decision, ¶¶ 86–92.

³⁰ Statement of Claim, ¶¶ 137–141, 153–156.

Contracting Parties’ expansive and concrete rights set out in Article 18(3). A full understanding of the rights and responsibilities arising under each provision requires reading them together and in context, and in light of the ECT’s object and purpose of addressing the use and development of energy resources. That reading, which is confirmed by the ECT’s *travaux préparatoires*, firmly establishes that Article 18 contains substantive and enforceable legal rights—and not the preambular, “*non-mandatory*” scheme that Armenia touts.

12. **Section III** explains why the Tribunal should reject Armenia’s objections to jurisdiction over Azerbaijan’s claims that Armenia’s conduct also breached Article 7 of the ECT:
- a. **Section III.A** explains that the dispute between the Parties encompasses Azerbaijan’s claims under Article 7 within the meaning of Article 27(1). This is amply proven with reference to the Parties’ extensive negotiations that took place prior to Azerbaijan’s submission of the Notice of Arbitration.
 - b. **Section III.B.1** explains that Armenia has applied the wrong standard to its objection relating to the period of diplomatic consultations provided by Article 27 of the ECT. Properly understood, Armenia’s objection relates at most to the *admissibility* of Azerbaijan’s claims that Armenia breached Article 7, not the jurisdiction of the Tribunal. Azerbaijan explains that, consonant with the requisite factors tribunals must weigh under an admissibility analysis, upholding Armenia’s objection would not advance the proper administration of justice.
 - c. **Section III.B.2** explains that Azerbaijan has in any event duly satisfied any diplomatic consultation precondition set forth by Article 27, regardless of whether the provision is analyzed under the legal standard of jurisdiction or admissibility. Azerbaijan demonstrates that it pursued dispute settlement with Armenia through diplomatic consultations for a “*reasonable period of time*” within the meaning of Article 27. Azerbaijan additionally sets forth evidence proving the futility of continuing with the consultations as to any of Azerbaijan’s claims, by the time of the Notice of Arbitration.
 - d. **Section III.C** explains that, by the ordinary meaning of its terms understood in context and in light of the ECT’s object and purpose, the voluntary conciliation mechanism for transit disputes set forth under Article 7(7) does not preclude this Tribunal from hearing Azerbaijan’s Article 7 claims. As State practice and the *travaux* confirm, the Article 7(7) conciliation procedures are optional and additional to the dispute resolution procedures provided for under Article 27(1), not a

mandatory mechanism that operates to exempt Article 7 claims from the scope of Article 27.

II. THE TRIBUNAL HAS JURISDICTION OVER AZERBAIJAN'S CLAIMS THAT ARMENIA BREACHED ARTICLE 18.

13. The Tribunal should dismiss Armenia's first preliminary objection, which contends that "*Article 18 of the ECT does not contain an obligation giving rise to an independent cause of action, and therefore cannot serve as the basis for the Tribunal's jurisdiction.*"³¹
14. The flaws in this objection are apparent from the outset. Armenia's Article 18 argument focuses almost exclusively on Article 18(1),³² attempting to treat that provision as if it were the entire scope of the Article, without accounting for the litany of concrete rights set out in Article 18(3).³³ As Azerbaijan's Statement of Claim made clear, however, Azerbaijan's claims arise under both Article 18(1) and Article 18(3), which must be read and applied in tandem.³⁴
15. Article 18(1) and Article 18(3) state, in relevant part:

(1) *The Contracting Parties recognise state sovereignty and sovereign rights over energy resources. They reaffirm that these must be exercised in accordance with and subject to the rules of international law.*³⁵

[. . .]

(3) *Each state continues to hold in particular the rights to decide the geographical areas within its Area to be made available for exploration and development of its energy resources, the optimisation of their recovery and the rate at which they may be depleted or otherwise exploited, to specify and enjoy any taxes, royalties or other financial payments payable by virtue of such exploration and exploitation, and to regulate the environmental and safety aspects of such exploration, development and reclamation within its Area, and to participate in such exploration*

³¹ Memorial, ¶ 25.

³² *Id.* ¶¶ 26, 40, 44, 52, 77–80; *see also id.* ¶¶ 9, 34–36, 38–39, 41–42, 45–51, 59–62, 68–70, 86, 89.

³³ *See, e.g., id.* ¶¶ 5–6, 37–38, 44–52 (painting Article 18 as a “broadly worded” “general formulation”), 74, 88–89.

³⁴ Statement of Claim, ¶¶ 181–199.

³⁵ CL-1, ECT, Art. 18(1).

*and exploitation, inter alia, through direct participation by the government or through state enterprises.*³⁶

16. Applying the customary approach to treaty interpretation codified in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (“*VCLT*”), neither the plain language of Articles 18(1) and 18(3) (**Section II.A**) nor their context (**Section II.B**) supports Armenia’s interpretation. The ECT’s object and purpose (**Section II.C**), as well as the *travaux préparatoires* (**Section II.D**), further confirm that Article 18 imposes substantive obligations capable of enforcement by the Tribunal.

A. The Plain Language of Article 18 Imposes Concrete and Enforceable Obligations.

17. On their face, Article 18(1) and Article 18(3) establish binding and enforceable obligations on Armenia. This is clear from the ordinary meaning of the words in the provisions (**Section II.A.1**) and how they are employed for binding effect (**Section II.A.2**). Armenia does not deny that the norms enshrined in Article 18 of the ECT are positive rules of international law with a defined legal content, but argues that these provisions are not enforceable legal obligations because they codify pre-existing customary rights. However, that assertion does not withstand scrutiny (**Section II.A.3**).

1. The ordinary meaning of the words in Article 18 imposes an enforceable legal obligation.

18. Taking the “ordinary meaning”³⁷ of Article 18(1) with reference to the “regular, normal, or customary” definition of its terms,³⁸ the agreement by the ECT Contracting Parties to “*recognise state sovereignty and sovereign rights over energy resources*” imposes an obligation to accept—and act consistent with—the exclusive legal authority of each State over its territory and resources.³⁹ This is

³⁶ *Id.* Art. 18(3).

³⁷ **CL-11**, VCLT, Art. 31(1).

³⁸ **CL-51**, R. K. Gardiner, “Treaty Interpretation” (2015), Chapter 5: The General Rule: (1) The Treaty, its Terms, and their Ordinary Meanings, at 183–184 (internal quotations omitted). *See also* **CL-9**, Draft Articles on the Law of Treaties with Commentaries, International Law Commission (1966), at 221 (“*The second principle [of Article 31] is the very essence of the textual approach: the parties are to be presumed to have that intention which appears from the ordinary meaning of the terms used by them.*”); Statement of Claim, ¶¶ 183–184.

³⁹ *See* **CL-69**, “Recognize,” *Cambridge Dictionary* (online version), <https://dictionary.cambridge.org/dictionary/english/recognize>, accessed 1 November 2024. *See also* **CL-65**, P. Vajda, V. Aleksić & T. Hunter, “Article 18 – Sovereignty Over Energy Resources,” in R. Leal-Arcas (ed.), *Commentary on the Energy Charter Treaty* (2023), ¶¶ 18.12–18.13 (“*The concept of sovereignty has been addressed by numerous scholars and is aptly defined by Jennings and Watts*

- the plain meaning of “*recognise*,” an interpretation that the International Court of Justice (“*ICJ*”) has endorsed in its *Territorial Dispute* judgment.⁴⁰
19. Armenia’s attempt to explain away the ordinary meaning of the treaty language is unconvincing. Armenia selectively quotes from the *Territorial Dispute* judgment to argue that the Court’s interpretation was specific to that case, “*in the context of a bilateral treaty that ‘specifically addressed . . . the question of frontiers’*” and in light of “‘[t]he manifest intention of the parties’ to decide their boundaries.”⁴¹ But nothing in the ICJ’s analysis indicates that the Court’s interpretation of the word “*recognize*” was limited to that specific context; instead, the Court’s conclusion hinges on its interpretation of the word “*recognize*,” standing alone.
 20. Invoking the rules of treaty interpretation codified in Article 31 of the VCLT, the ICJ underscored that “[i]nterpretation must be based above all upon the text of the treaty,” and found that the word “*recognize*” “*indicates that a legal obligation is undertaken.*”⁴² The Court then applied that meaning of “*recognize*” within the context of the treaty at issue, observing that “[t]o recognize a frontier is essentially to ‘*accept*’ that frontier, that is, to draw legal consequences from its existence, to respect it and to renounce the right to contest it in the future.”⁴³
 21. Applied to Article 18(1), “*recognise*” thus means that the ECT Contracting Parties accept State sovereignty and sovereign rights over energy resources, that is, they agree to draw the legal consequences that flow from the existence of those rights.

*as excluding ‘subjection to any other authority, and in particular the authority of another state.’ . . . Therefore, Jennings and Watts define sovereignty as the territorial authority of a state over everything within its territory, including sovereignty over the state’s mineral resources, such as mineral deposits. . . . In accordance with the wording of Article 18(1) the Contracting Parties recognise two fundamental tenets of international law: that of **state sovereignty**, and **sovereign rights over energy resources**. These derive from the fundamental international law principle of permanent sovereignty over natural resources. Therefore, the Article must be read in conjunction with the principle.”* (emphases added).

⁴⁰ **CL-31**, *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I.C.J. Reports 1994 ¶¶ 41–42; see also Statement of Claim, ¶ 187.

⁴¹ Memorial, ¶ 41.

⁴² **CL-31**, *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I.C.J. Reports 1994, ¶¶ 41–42.

⁴³ *Id.* ¶ 42 (emphases added) (citing Treaty of Friendship and Good Neighbourliness concluded by the French Republic and the United Kingdom of Libya on 10 August 1955, Article 3, which provided: “The Two High Contracting Parties recognize that the frontiers between the territories of Tunisia, Algeria, French West Africa and French Equatorial Africa on the one hand, and the territory of Libya on the other, are those that result from the international instruments in force on the date of the constitution of the United Kingdom of Libya as listed in the attached Exchange of Letters” (emphasis added)).

22. Armenia is incorrect to argue that this recognition applies only to the rights of States over their own resources, and “*does not . . . speak about one State’s conduct with regard to another State’s sovereign rights.*”⁴⁴ Nowhere in the Treaty text does it state that each Contracting Party is recognizing only its own rights over its own resources. Rather, the Treaty provides that all Contracting Parties recognize those rights, and for good reason: recognition of rights of State sovereignty cannot and does not exist in a vacuum. As between ECT Contracting Parties, the “*legal consequences*” of such recognition necessarily entail an obligation that each State respects the sovereignty and sovereign rights of all other States. Indeed, the Contracting Parties would hardly need to enter into a multilateral agreement to recognize their own sovereign rights.
23. Further, contrary to Armenia’s contention, the second sentence of Article 18(1)—in which the Contracting Parties “*reaffirm that [sovereignty and sovereign rights over energy resources] must be exercised in accordance with and subject to the rules of international law*”—does not “*narrow[]*” the impact of the recognition in the first sentence.⁴⁵ Instead, as one commentator has observed, the second sentence flows from the first, and is a further affirmation of the Contracting Parties’ “*freedom to develop their energy resources subject to the rights and responsibilities under international law*”⁴⁶—that is, their responsibilities to one another as sovereign States.
24. Any doubt about whether the Contracting Parties intended that there be concrete legal consequences to the recognition of sovereignty and sovereign rights in Article 18(1) is removed by the illustrative, non-exhaustive list of rights set out in Article 18(3). On its face, this provision confirms that “[*e*]ach state continues to hold in particular the rights”—by definition, to the exclusion of any other State’s authority⁴⁷—to decide whether, when, by whom, at what pace, at what cost, and subject to what regulation its energy resources shall be explored, developed, and exploited.⁴⁸
25. Interpreting “*recognise*” in Article 18 to establish a binding legal obligation would also align with the use of that term in another provision of the Treaty. Article 15(1) of the ECT provides that a host State “*shall recognise*” the assignment of rights and claims relating to a covered investment to an

⁴⁴ Memorial, ¶ 42.

⁴⁵ *Id.* ¶¶ 35–36. Compare *id.* ¶ 36 (asserting that Azerbaijan does not address the second sentence of Article 18(1)) with Statement of Claim, ¶ 191 (discussing Claimant’s interpretation of this provision).

⁴⁶ CL-65, P. Vajda, V. Aleksić & T. Hunter, “Article 18 – Sovereignty Over Energy Resources,” in R. Leal-Arcas (ed.), *Commentary on the Energy Charter Treaty* (2023), ¶ 18.08.

⁴⁷ *Id.* ¶ 18.12.

⁴⁸ CL-1, ECT, Art. 18(3); see Statement of Claim, ¶¶ 198–199 (explaining that these are all core components of the bundle of rights inherent to sovereignty).

indemnifying Contracting Party or its designated agency,⁴⁹ such that the indemnifying party “*should be allowed to pursue [] arbitration against the host State of the investment.*”⁵⁰ On its face, then, Article 15 establishes a binding obligation that flows from the ordinary meaning of the term “*recognise.*” The binding obligation to accept and give legal effect to the rights at issue is imposed via use of the term “*recognise,*” just as it is under Article 18.

2. The plain language of Articles 18(1) and 18(3) evidences their binding effect.

26. Armenia’s attempts to avoid the ordinary meaning of the text in Articles 18(1) and 18(3) are unsupported and rely on inapposite comparisons.
27. *First*, Armenia contends that only certain specific words qualify as the kind of “*mandatory language*” that can impose obligations on ECT Contracting Parties.⁵¹ But none of the authorities relied on by Armenia stand for the proposition that terms such as “*shall*” or “*undertake*” are the only words capable of creating binding obligations. Instead, those authorities stand for the unremarkable proposition that such terms are generally interpreted as creating legal obligations.⁵²
28. *Second*, Armenia’s attempt to dismiss Article 18’s terms as “*preambular*” is equally unavailing.⁵³ The term “*recognise*” as used in the Article is not preambular, for the simple reason that it is not in the preamble of the Treaty. As even the article cited by Armenia observes, the reason preambular language does

⁴⁹ **CL-1**, ECT, Art. 15(1); see **CL-143**, A. Mudliar, “Article 15 – Subrogation,” in R. Leal Arcas, (ed.), *Commentary on the Energy Charter Treaty* (2023), ¶ 15.02.

⁵⁰ **CL-143**, A. Mudliar, “Article 15 – Subrogation,” in R. Leal Arcas, (ed.), *Commentary on the Energy Charter Treaty* (2023), ¶ 15.03 (emphasis added).

⁵¹ Memorial, ¶ 38.

⁵² *Id.* (citing **RL-163**, L. Rajamani, “The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations,” *Journal of Environmental Law*, Vol. 28, No. 2 (2016), at 356–357; **RL-44**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, ¶ 162). *But see* **RL-163**, L. Rajamani, “The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations,” *Journal of Environmental Law*, Vol. 28, No. 2 (2016), at 342–343 (citing “*shall*” as an example of “*imperative*” language, while noting that “*defining elements of legal character*” include “*but [are] not limited to*” the listed elements); **RL-44**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, ¶ 162 (discussing the meaning of the word “*undertake*”; saying nothing about any requirement of mandatory language or any distinctions between supposed mandatory and non-mandatory language). Compare also **RL-37**, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, ¶¶ 27–31 (finding a treaty provision using “*shall*” could not, “*taken in isolation,*” create the specific mandatory obligation claimed) (emphasis added).

⁵³ Memorial, ¶ 39.

- not “*itself create rights and obligations for Parties*” is because of its location in the preamble, not because of the specific language used.⁵⁴ Conversely, if a provision is located in the operational part of the treaty—as Article 18 is in the ECT—“*[i]t has the capacity to generate rights and obligations for Parties.*”⁵⁵
29. *Third*, Armenia’s reference to certain provisions in the Paris Agreement is inapt. The lengthy, detailed, and non-exhaustive list of specific sovereign rights which the Contracting Parties are obliged to respect under Articles 18(1) and 18(3) is significantly different from the Paris Agreement provisions on which Armenia relies, in which the Parties “*recognize the importance of*” such general concepts as international cooperation.⁵⁶ No useful corollary can be drawn between what Armenia asserts are the non-binding nature of those Paris Agreement provisions and the concrete obligations imposed by Article 18 of the ECT.
30. *Finally*, Armenia’s reliance on cases in which the ICJ declined to enforce obligations “*‘not germane’ to the treaty’s subject matter*”⁵⁷ is likewise misplaced. In those cases, the claimants were seeking to import obligations unrelated on their face to the treaty provision at issue in order to raise claims that were unrelated to the subject matter of the treaty.⁵⁸ For example, in *Immunities and Criminal*

⁵⁴ **RL-163**, L. Rajamani, “The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations,” *Journal of Environmental Law*, Vol. 28, No. 2 (2016), at 343.

⁵⁵ *Id.* See also *id.* at 352 (also observing that it is “*unusual to find ‘non-obligations’ in operational provisions of treaties*”). Preambular language is also distinguishable because it generally uses the present or past participle form of the verb (“*recognizing*”) as opposed to the active present tense form used in Article 18 (“*recognize*”). See, e.g., Memorial, ¶ 39, n.64 (citing treaties, each of which uses either the present participle “*recognizing*” or the past participle “*recognized*” in their preambles, rather than the active form “*recognize*”). See **RL-132**, Marrakesh Agreement Establishing the World Trade Organization (15 April 1994), Preamble; **RL-159**, United States Model Bilateral Investment Treaty (2012), Preamble; **RL-175**, Stockholm Convention on Persistent Organic Pollutants (2001, as amended 2023), Preamble; **RL-149**, Rome Statute of the International Criminal Court (2002), Preamble. See also **RL-151**, M. M. Mbengue, “Preamble,” *Max Planck Encyclopedia of Public International Law* (2006), ¶ 1 (referring to terms in the present participle form: “*Generally a preamble consists of a sequence of secondary clauses (considérants) that commence with words such as ‘Recognizing’, ‘Recalling’, ‘Mindful’, ‘Emphasizing’, ‘Conscious of’, etc.’*”).

⁵⁶ Memorial, ¶ 40.

⁵⁷ *Id.* ¶¶ 45–52 (quotation at ¶ 45) (citing **RL-170**, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, ¶ 65).

⁵⁸ See **RL-170**, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, ¶¶ 53–58 (rejecting Iran’s argument that a treaty article providing, in part, that “[p]roperty of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law” could be read to incorporate by reference the rules of customary international law on sovereign immunities). Compare also **RL-37**, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, ¶¶ 27–31 with *id.*

Proceedings, the ICJ declined the Claimant’s invitation to import customary sovereign immunity rules wholesale into the Palermo Convention Against Transnational Organized Crime, since the purpose of that Convention—“*the promotion of co-operation to prevent and combat transnational organized crime more effectively*”—was “*unrelated*” to sovereign immunity.⁵⁹ That is a far cry from this Tribunal’s enforcement of an express Treaty obligation—Article 18 of the ECT—which provides for sovereignty over energy resources, in the context of a Treaty whose purpose is to promote long-term cooperation among States in the energy sector.

31. Thus, Armenia’s attempts to dismiss Article 18 as an ancillary or preambular provision are unavailing. The plain language of Articles 18(1) and 18(3) evince that these are concrete rights with the attendant legal consequences.

3. The codification of customary international law in the plain terms of Articles 18(1) and 18(3) creates substantive treaty obligations.

32. It is common ground between the Parties that the references in Article 18(1) to State sovereignty and sovereign rights over energy resources are references to “*pre-existing concepts in international law*,”⁶⁰ and specifically, the customary international legal principle of permanent sovereignty over natural resources.⁶¹ Similarly, Armenia accepts that the listing in Article 18(3) of States’ rights over their energy resources is a “*recognition of pre-existing rights*” that “*reconfirms the contents of sovereignty with respect to energy resources*.”⁶²
33. Even Armenia’s argument that Article 18 strikes a “*reasonable and acceptable balance between the host States and Investors in the energy sector*” reaffirms this

¶¶ 37, 51 (ICJ (1) rejecting Iran’s argument that the language “[t]here shall be firm and enduring peace and sincere friendship between the [United States and Iran],” in a treaty intended to promote economic and consular cooperation, imported the obligations governing the use of force under the UN Charter and customary international law; but (2) finding jurisdiction over Iran’s claims relating to U.S. attacks on its oil platforms based on another article of the same treaty, which provided that “[b]etween the territories of the two High Contracting Parties there shall be freedom of commerce and navigation”).

⁵⁹ **RL-73**, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018, ¶¶ 93–96 (quotation at ¶¶ 94–95).

⁶⁰ Memorial, ¶ 34. *See also* Statement of Claim, ¶¶ 9, 180, 190–193.

⁶¹ **CL-42**, A. Konoplyanik & T. Wälde, *Energy Charter Treaty and its Role in International Energy*, 24 J. Energy & Nat. Resources L. (2006) 523, at 540 (“*The reference to ‘sovereignty over energy resources’ must be understood as confirmation by the ECT of the principle of permanent sovereignty over natural resources.*”).

⁶² Memorial, ¶ 37. *See also* Statement of Claim, ¶¶ 9, 180, 190–193; **CL-2**, United Nations General Assembly Res. 1803 (14 December 1962) [XVII], Art. 2 (providing that the “*exploration*,

consistency between Article 18 and the customary norm.⁶³ The principle of permanent sovereignty over natural resources incorporates this balance “*between the investors and the recipient State*,” as long as “*due care*” is taken to ensure “*that there is no impairment, for any reason, of that State’s sovereignty over its natural wealth and resources*.”⁶⁴

34. As a result, while Azerbaijan is not asserting self-standing claims under customary international law,⁶⁵ that does not render custom irrelevant. Instead, the Tribunal can and should look to how the principle of permanent sovereignty over natural resources has been interpreted under customary international law to inform its interpretation of Article 18 of the ECT.⁶⁶
35. Yet Armenia draws the wrong conclusion from the relationship between the treaty obligation established by the ordinary meaning of Articles 18(1) and 18(3), and these underlying customary principles. Armenia argues that because the provisions codify pre-existing rights, they cannot create enforceable treaty obligations.⁶⁷ But this is a fallacy—treaties routinely codify customary rules, making the rule then enforceable as a treaty obligation, as is the case, for instance,

development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities”).

⁶³ Memorial, ¶ 36 (quoting **CL-59**, K. Hobér, “The Energy Charter Treaty: A Commentary” (2020), at 348).

⁶⁴ **CL-2**, United Nations General Assembly Res. 1803 (14 December 1962) [XVII], Art. 3.

⁶⁵ Bifurcation Decision, ¶ 41. *See also* Azerbaijan’s Observations on Armenia’s Request for Bifurcation of Preliminary Objections, 23 January 2025 (“**Bifurcation Observations**”), ¶ 35.

⁶⁶ *See, e.g.,* **RL-44**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, ¶ 162 (finding the customary international law origins of the Genocide Convention “*significant for the interpretation*” of States’ obligations under the Convention); **CL-112**, *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, I.C.J. Reports 1993, ¶ 46 (finding that Article 6 of the 1958 Convention on the Continental Shelf must be “*interpreted and applied*” with “*reference to customary law on the subject*”); *see also* **CL-128**, *Saipem S.p.A. v. People’s Republic of Bangladesh*, ICSID Case No. ARB/05/07, Award, 30 June 2009, ¶ 99 (“*The Tribunal will also apply the general rules of international law that may be applicable, either because an issue of international law is not directly dealt with in the BIT or, if necessary, to interpret the BIT.*”).

⁶⁷ Memorial, ¶¶ 34–37.

- with the VCLT, which will guide the Tribunal’s analysis in this dispute.⁶⁸ This general principle of treaty law has long been affirmed by the ICJ.⁶⁹
36. Here, the codification of the customary principle in Articles 18(1) and 18(3)’s recognition of State sovereignty and sovereign rights over energy resources results in separate and distinct obligations under the ECT. It is broadly recognized—including by the UN General Assembly and the ICJ—that the principle of permanent sovereignty over natural resources creates concrete and enforceable rights and obligations as a matter of customary law;⁷⁰ this is no less the case when the principle is codified into a treaty provision, as it is by Article 18 of the ECT.
37. In sum, even if Article 18 did “*merely . . . ‘reaffirm[]’*”⁷¹ the pre-existing legal rights of State sovereignty and sovereign rights over energy resources, by the ordinary meaning of its terms it creates binding and enforceable obligations under the ECT. These legal rights of sovereignty over Azerbaijan’s energy resources

⁶⁸ See, e.g., **CL-36**, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, ¶ 46 (“The Court . . . has several times had occasion to hold that some of the rules laid down in [the VCLT] might be considered as a codification of existing customary law.”); **CL-125**, M. E. Villiger, “Formation and Identification of Customary Law,” in *Commentary on the 1969 Vienna Convention on the Law of Treaties* (2008), ¶ 23 (explaining that the effect of such codification in a treaty is “to add to the validity of a customary rule a contractual obligation. There are, then, two rules with binding force: the codificatory treaty rule; and the underlying customary rule. Although they may possess identical contents, each is separate and independent from the other”) (emphasis added).

⁶⁹ See **CL-16**, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, I.C.J. Reports 1986, ¶ 176 (finding that the “‘inherent right’ . . . of individual or collective self-defence” set forth in Article 51 of the UN Charter was a reference to “pre-existing customary international law,” reasoning that “Article 51 of the Charter is only meaningful on the basis that there is a ‘natural’ or ‘inherent’ right of self-defence, and it is hard to see how this can be other than of a customary nature, even if its present content has been confirmed and influenced by the Charter”).

⁷⁰ See, e.g., **CL-109**, United Nations General Assembly Res. 626 (21 December 1952) [VII], which is recalled in and predates **CL-2**, United Nations General Assembly Res. 1803 (14 December 1962) [XVII] (recommending at ¶ 2: “all Member States to refrain from acts, direct or indirect, designed to impede the exercise of sovereign of any State over its natural resources”); **CL-68**, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion, I.C.J. Reports 2024, ¶ 133 (finding that “Israel’s policy of exploitation of natural resources in the Occupied Palestinian Territory is inconsistent with its obligation to respect the Palestinian people’s right to permanent sovereignty over natural resources”) (emphasis added). See also **CL-41**, *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, Judgment, I.C.J. Reports 2005, ¶ 244 (recognizing States’ obligations under the principle of permanent sovereignty over natural resources, but finding it inapplicable to “the specific situation” in that case “of looting, pillage and exploitation of certain natural resources by members of the army of a State militarily intervening in another State”).

⁷¹ Memorial, ¶ 6.

result in a corollary duty on Armenia (as on all ECT Contracting Parties) not to breach those rights.

B. Article 18’s Context Confirms that It Creates Binding Obligations Enforceable Under Article 27.

38. The structure of the ECT and context of Article 18 further support Azerbaijan’s interpretation that disputes “*concerning the application or interpretation*” of Article 18 are within the Tribunal’s jurisdiction under Article 27.
39. *First*, if Article 18 were merely an “*affirmation*” of pre-existing rights with no legal effect—as Armenia contends—the Contracting Parties could have simply so stated in the ECT Preamble, alongside the recital that the Parties were “[*m*]indful of the rights and obligations of certain Contracting Parties which are also members of the World Trade Organization.”⁷² They did not. Instead, the Contracting Parties chose explicitly to impose a treaty obligation to recognize State sovereignty and sovereign rights over energy resources in an operative provision of the ECT.
40. *Second*, the broader textual context in which Article 18 appears confirms that the Contracting Parties intended that the provision impose substantive obligations that are enforceable in arbitration between States. Where the drafters intended the opposite, they said so unequivocally. Article 21(1), for example, provides that the ECT creates no “*rights [and does not] impose obligations with respect to Taxation Measures of the Contracting Parties,*” “*except as otherwise provided in [that] Article.*”⁷³ There is no such language regarding Article 18. Nor is Article 18 explicitly excluded from the broad scope of Article 27,⁷⁴ as are, for example, Article 5 (with respect to trade-related investment measures) and Article 29 (regarding interim provisions on trade-related matters).⁷⁵
41. *Third*, Armenia’s emphasis on the location of Article 18 in Part IV of the ECT, titled “*Miscellaneous Provisions,*” is misplaced. Specifically, Armenia contends that the Treaty’s miscellaneous provisions are “*designed to support the functioning of Parts II and III,*” and therefore cannot “*be the source of*

⁷² See, e.g., CL-1, ECT, Preamble, at 38.

⁷³ *Id.* Art. 21(1).

⁷⁴ See CL-59, K. Hobér, “The Energy Charter Treaty: A Commentary” (2020), at 478 (“[T]he scope of disputes referred to in subparagraph (1) is broad. No limiting language is used, which means that any dispute ‘concerning the application or interpretation’ of the ECT is covered by Article 27.”).

⁷⁵ CL-1, ECT, Art. 28 (providing that disputes “*with respect to the application or interpretation of Article 5 or 29 shall not be settled under Article 27 unless the Contracting Parties parties to the dispute so agree*”) (emphasis added).

freestanding obligations.”⁷⁶ This argument is disproved by the Treaty text—on Armenia’s own case, and in any event on their face, a number of the other provisions in Part IV establish rights and obligations among the Contracting Parties.

42. In fact, seven of the eight Articles located in Part IV employ what Armenia characterized earlier in its Memorial as “*mandatory language*,” including multiple instances in Articles 19 through 24 stating that the Contracting Parties “*shall*” take certain actions.⁷⁷ On Armenia’s own argument, therefore, those provisions establish binding obligations regardless of their location in the “*Miscellaneous*” section of the ECT.
43. Setting aside this simplistic approach, a proper interpretation of these provisions in context confirms the creation of affirmative obligations. For example, Article 20(1) “*imposes an obligation on Contracting Parties to issue energy-trade related laws, regulation and judicial decisions with certain levels of transparency according to GATT.*”⁷⁸ Similarly, Article 22 “*prevents governments from using the controlled enterprises to circumvent the rules of the treaty and ensures that in their sales and procurements those entities act in accordance with the ECT investment protection provisions,*”⁷⁹ and Article 23 “*establishes a criterion of*

⁷⁶ Memorial, ¶¶ 69–70. *See also id.* ¶¶ 5, 26.

⁷⁷ *Id.* ¶ 38 (emphasis in original). *See, e.g., CL-1*, ECT, Art. 19(1) (“*each Contracting Party shall strive to minimise*” harmful environmental impacts and “*shall strive to take precautionary measures to prevent or minimise environmental degradation*”); *id.* Art. 20(2) (“*Laws . . . which affect other matters covered by this Treaty shall also be published promptly . . .*”); *id.* Art. 21(2) (“*Article 7(3) shall apply to Taxation Measures other than those on income or on capital . . .*”); *id.* Art. 22(1–4) (providing that “[e]ach Contracting Party shall ensure” that State enterprises conduct their activities and exercise their authority consistent with the Party’s ECT obligations and “*shall [not] encourage or require*” any entity to act inconsistently with those obligations); *id.* Art. 23(1) (“*Each Contracting Party . . . shall take such reasonable measures as may be available to it to ensure . . . observance*” of the ECT by regional and local authorities); *id.* Art. 24(2)(b)(ii)(B) (providing that any measure “*essential to the acquisition and distribution of Energy Materials and Products in conditions of short supply*” “*that is inconsistent with this treaty shall be discontinued as soon as the conditions giving rise to it have ceased to exist*”) (emphases added throughout); *see also id.* Art. 18(4) (“*The Contracting Parties undertake to facilitate access to energy resources . . .*”) (emphasis added).

⁷⁸ **CL-145**, G. Alvarez, “Article 20 – Transparency,” in R. Leal Arcas (ed.), *Commentary on the Energy Charter Treaty* (2023), ¶ 20.07; *see CL-1*, ECT, Art. 20(1) (“*Laws, regulations, judicial decisions and administrative rulings of general application which affect trade in Energy Materials and Products or Energy Related Equipment are, in accordance with Article 29(2)(a), among the measures subject to the transparency disciplines of the WTO Agreement.*”).

⁷⁹ **CL-146**, C. Grasso & T. Hunter, “Article 22 – State and Privileged Enterprises,” in R. Leal Arcas (ed.), *Commentary on the Energy Charter Treaty* (2023), ¶ 22.01; *see CL-1*, ECT, Arts. 22(1)–(2) (“*Each Contracting Party shall ensure that any state enterprise which it maintains or establishes shall conduct its activities in relation to the sale or provision of goods and services in its Area in a manner consistent with the Contracting Party’s obligations under Part III of this Treaty*”; “*No*

*attribution of liability in relation to regional or sub-regional authorities . . . specifying that each Member State has to ensure that they act in accordance with the treaty.”*⁸⁰

44. The Contracting Parties also contemplated dispute settlement in relation to provisions set out in Part IV, another indication that those provisions must establish binding obligations. For example, Article 23(2) provides that dispute settlement provisions under the Treaty, including in Part V where Article 27 is located, “*may be invoked in respect of measures*” taken by regional and local authorities that “*affect[] the observance*” of the ECT.⁸¹
45. As neither the text nor context of the provisions in Part IV supports Armenia’s argument that these Articles are only “*a grab bag*” of “*clarificatory, procedural, or administrative*” points,⁸² all that can be drawn from the “*Miscellaneous*” label is the ordinary meaning of the term. That is, the title refers to the fact that the section collects a variety of stand-alone provisions outside the scope of Parts II (Commerce) or III (Investment Promotion and Protection). It is not a commentary on—and certainly no expression of intent regarding—their binding or non-binding nature. This also accords with the functions of articles in comparably named parts of other treaties, which establish binding obligations regardless of their placement in “miscellaneous” sections.⁸³

Contracting Party shall encourage or require such a state enterprise to conduct its activities in its Area in a manner inconsistent with the Contracting Party’s obligations under other provisions of this Treaty.”

- ⁸⁰ **CL-147**, C. Grasso, “Article 23 – Observance by Sub-National Authorities,” in R. Leal Arcas (ed.), *Commentary on the Energy Charter Treaty* (2023), ¶¶ 23.01–23.02; see **CL-1**, ECT, Art. 23(1) (“Each Contracting Party is fully responsible under this Treaty for the observance of all provisions of the Treaty, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its Area.”). Contrast **CL-144**, P. Vajda, V. Aleksić & T. Hunter, “Article 19 – Environmental Aspects,” in R. Leal Arcas (ed.), *Commentary on the Energy Charter Treaty* (2023), ¶ 19.19 (suggesting that the wording “*strive to*” in Article 19 “*is rather an expression of goodwill for the Contracting Parties than an obligation*”).
- ⁸¹ **CL-1**, ECT, Art. 23(2); see also *id.*, Art. 19(2) (providing that “*disputes concerning the application or interpretation*” of Article 19 provisions “*shall . . . be reviewed by the Charter Conference,*” unless they may be addressed “*in other appropriate international fora*”).
- ⁸² Memorial, ¶ 69.
- ⁸³ See, e.g., **CL-6**, United Nations. Charter (1945), Chapter XVI: Miscellaneous Provisions, Art. 104 (“*The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.*”); **CL-108**, Treaty of Lausanne, League of Nations Treaty Series, vol. xxviii (24 July 1923), Section II: Miscellaneous Clauses, Art. 58 (binding Turkey to “*reciprocally renounce all pecuniary claims for the loss and damage suffered*”), Art. 62 (“*Turkey recognises the transfer of any claims to payment or repayment.*”).

46. *Fourth*, Armenia’s invocation of subparagraph (2) of Article 18 as support for this preliminary objection is puzzling.⁸⁴ Article 18(2), taken in conjunction with the related “Declaration V” issued by the Contracting Parties, clarifies that the Parties retain their rights to dictate their domestic regimes for property ownership of energy resources as long as those rules are not applied in a manner that circumvents the Parties’ ECT obligations.⁸⁵ Nothing in the text of the provision, or of the related Declaration V or Chairman’s Statement, in any way indicates that Articles 18(1) and 18(3) generate no enforceable rights; they simply do not speak to that question.
47. If anything, as the ECT *travaux* demonstrate, Article 18(2) provides further safeguards to the exercise of State sovereignty by Contracting Parties. ECT negotiators were concerned that Article 18(2), with its link to the rights referenced and enumerated in Articles 18(1) and 18(3),⁸⁶ had the potential to override other provisions of the ECT.⁸⁷ The Chairman of the Legal Subgroup opined that it was not “*possible to predict how conflicts with other provisions of the ECT would be resolved in any given case by the adjudicators, who presumably would be reluctant to construe Article 21(2) [the predecessor to Article 18(2)] as gutting the ECT’s obligations, but who would nonetheless have to give [it] meaning.*”⁸⁸

⁸⁴ Memorial, ¶ 67 (asserting that Article 18(2) is a “‘no prejudice’ clause” that “reflects Article 18’s overall concern with the balancing of individual economic rights with the State’s sovereign prerogatives”).

⁸⁵ **CL-1**, ECT, Art. 18(2); **CL-34**, Conference Secretariat, Text for Adoption – Final Act on the Conference of the Energy Charter Treaty (14 September 1994), Declaration V (“*The representatives declared that Article 18(2) shall not be construed to allow the circumvention of the application of the other provisions of this Treaty.*”).

⁸⁶ **CL-33**, Chairman of Legal Subgroup, Memorandum regarding “Paragraph (2) of Article 21, ‘Sovereignty over Energy Resources’” (12 August 1994), ECT Travaux, at 5 (explaining that there is “no basis for excluding any elements of [Article 18(3)] from a relationship to [Article 18(2)]”). See also **CL-115**, European Energy Charter Conference Secretariat, Note for file regarding “Article 21(2) (Sovereignty over Energy Resources)” (25 August 1994), ECT Travaux, at 1 (recording Norway’s statement that a reordering of current subparagraphs (2) and (3) “would not be acceptable to [it] as paragraph (3) should refer to both paragraphs (1) and (2)”).

⁸⁷ See, e.g., **CL-33**, Chairman of Legal Subgroup, Memorandum regarding “Paragraph (2) of Article 21, ‘Sovereignty over Energy Resources’” (12 August 1994), ECT Travaux, at 7 (identifying an “uncertainty as to the significance of the potential which Article 21(2) holds for overriding other provisions of the ECT”); **CL-115**, European Energy Charter Conference Secretariat, Note for file regarding “Article 21(2) (Sovereignty over Energy Resources)” (25 August 1994), ECT Travaux, at 1 (“Following the Plenary, the Legal Sub-Group Chairman Mr. Bamberger, drew attention to the possible influence this Article might have on other articles of the Treaty . . .”).

⁸⁸ **CL-33**, Chairman of Legal Subgroup, Memorandum regarding “Paragraph (2) of Article 21, ‘Sovereignty over Energy Resources’” (12 August 1994), ECT Travaux, at 7. See also *id.* at 4 (“It would in any event be for the adjudicators of any dispute to decide whether recourse to the travaux préparatoires was warranted.”); *id.* at 7 (indicating that “it is impossible to predict whether or in what kinds of cases” the interpretation of Article 222 of the Treaty of Rome, from which

Had the negotiators considered Article 18(2) to have no substantive legal effect—as would be the case under the arguments Armenia presses before this Tribunal—they would not have been so concerned with its application in a dispute and its potential to “*gut*” other provisions of the Treaty.⁸⁹

48. *Finally*, Armenia argues that no other State has invoked Article 18 as a basis for an international tribunal’s jurisdiction under Article 27.⁹⁰ It is unclear how this is relevant to the interpretation of Article 18 using the customary rules of treaty interpretation. But in any event, this contention ignores the simple fact that no other State has invoked *any* Article of the ECT as a basis for a tribunal’s jurisdiction under Article 27 because this is the *very first* inter-State case to be filed under the ECT.

C. The Object and Purpose of the ECT Confirm Azerbaijan’s Interpretation of Article 18.

49. The recognition that Articles 18(1) and 18(3) generate binding and enforceable obligations is not just consistent with the ECT’s object and purpose. The required recognition and respect for a State’s sovereign rights over its energy resources is an animating principle of the entire Treaty framework.
50. Armenia argues that Azerbaijan focuses on the wrong instrument in explaining the ECT’s object and purpose, by pointing to “*an entirely different instrument: the [European Energy Charter (“EEC”)]*.”⁹¹ But it is the ECT itself—in Article 2, helpfully titled “*Purpose of the Treaty*”—that explicitly ties the object and purpose of the ECT to the “*objectives and principles*” of the EEC.⁹² Armenia cannot therefore avoid, by misreading the Treaty text, the EEC’s emphasis in both

Article 21(2) [the predecessor of the current Article 18(2)] was derived “*would be considered relevant*”).

⁸⁹ See, e.g., *id.* at 7 (identifying an “*uncertainty as to the significance of the potential which Article 21(2) holds for overriding other provisions of the ECT*”); **CL-115**, European Energy Charter Conference Secretariat, Note for file regarding “Article 21(2) (Sovereignty over Energy Resources)” (25 August 1994), ECT Travaux, at 1 (“*Following the Plenary, the Legal Sub-Group Chairman Mr. Bamberger, drew attention to the possible influence this Article might have on other Articles of the Treaty . . .*”).

⁹⁰ Memorial, ¶ 73.

⁹¹ *Id.* ¶ 60.

⁹² **CL-1**, ECT, Art. 2 (“*The Treaty establishes a legal framework in order to promote long-term cooperation in the energy field, based on complementarities and mutual benefits, in accordance with the objectives and principles of the Charter.*”) (emphasis added); *id.* Art. 1(1) (defining “*Charter*” to mean “*the European Energy Charter adopted in the Concluding Document of the Hague Conference on the European Energy Charter signed at The Hague on 17 December 1991*”). See also Statement of Claim, ¶ 194 & n. 392 (collecting cases where arbitral tribunals construed the object and purpose of the ECT in light of its reference to the EEC).

- its “*Objectives*” and “*Implementation*” provisions, on the “*framework of State sovereignty and sovereign rights over energy resources*.”⁹³
51. The ECT’s stated purpose is to establish, “*in accordance with*” this EEC framework, a “*legal framework in order to promote long-term cooperation in the energy field*.”⁹⁴ The ECT takes a broad view of that legal framework, incorporating, *inter alia*, provisions on transit, competition, transfer of technology, access to capital, and environmental regulation.⁹⁵ The purpose of the ECT is accordingly not, as Armenia alleges, solely to “*promote and regulate trade and investment in the energy sector*.”⁹⁶ Instead, it is broad and far reaching in scope, distinguishing it from investment treaties.⁹⁷
 52. The International Energy Charter (“*IEC*”), adopted in 2015 as an update of the EEC and signed by ECT Contracting Parties, including Azerbaijan and Armenia, reaffirms the centrality of the principle of sovereignty over energy resources to the entire Energy Charter framework. The IEC recognizes “*the sovereignty of each State over its energy resources, and its rights to regulate energy transmission and transportation within its territory respecting all its relevant international obligations*.”⁹⁸
 53. Further, similar to the EEC, the IEC reiterates that this framework of State sovereignty over energy resources underlies both the objectives of the agreement and the implementation of its operative provisions.⁹⁹ Importantly, the Commentary prepared by the Energy Charter Secretariat lists “*sovereignty over*

⁹³ CL-1, EEC, Title I: Objectives, at 29; *id.*, Title II: Implementation, at 31.

⁹⁴ CL-1, ECT, Art. 2.

⁹⁵ See *id.* Art. 7 (Transit), Art. 6 (Competition), Art. 8 (Transfer of Technology), Art. 9 (Access to Capital), Art. 19 (Environmental Aspects).

⁹⁶ Memorial, ¶ 43. See also *id.* ¶ 58 (asserting that the ECT has no “*other object and purpose beyond [the] specific goals in the fields of trade and investment*”). See also *id.* ¶¶ 53–57.

⁹⁷ See, e.g., CL-142, *Landesbank and others v. Kingdom of Spain*, ICSID Case No. ARB/15/45, Decision on the “Intra-EU” Jurisdictional Objection, 25 February 2019, ¶ 119 (rejecting the respondent’s argument that the ECT’s scope was to be confined to “*western investment in eastern Europe*”).

⁹⁸ CL-1, IEC, Preamble, at 11.

⁹⁹ *Id.* (“*Recognising the sovereignty of each State over its energy resources, and its rights to regulate energy transmission and transportation within its territory respecting all its relevant international obligations*”); *id.*, Title I: Objectives, at 13 (“*Recognising the sovereignty of each State over its energy resources, and its rights to regulate energy transmission and transportation within its territory respecting all its relevant international obligations, and in a spirit of political and economic cooperation . . .*”); *id.*, Title II: Implementation, at 16 (“*In order to attain the objectives set out above, the signatories will, without prejudice to the sovereignty of each State over its energy resources, and its rights to regulate energy transmission and transportation within its territory respecting all its relevant international obligations, take coordinated action to achieve greater coherence of energy policies . . .*”).

energy resources” second after “political and economic cooperation” as “established principles” to which States are documenting their commitment by signing the IEC.¹⁰⁰

54. Tribunals interpreting the ECT have found that long-term cooperation in the energy field requires respecting States’ sovereignty, as embodied in each State’s particular role, responsibilities, and purview over its own energy resources under international law.¹⁰¹ The recognition of a substantive obligation to recognize and respect State sovereignty over energy resources is integral to these larger purposes and concerns: the ECT framework, including the ultimate goal of long-term cooperation, would be confounded if Contracting Parties could violate with impunity the concrete bundle of sovereign rights set forth in Articles 18(1) and 18(3).
55. Armenia’s argument that the object and purpose of the ECT is “*not to settle sovereignty or territorial claims over natural resources*”¹⁰² is entirely beside the point. Azerbaijan is not asking this Tribunal to resolve a territorial dispute between the Parties. The issue of sovereignty over the formerly Occupied Territories is not a contested point; at all relevant times, the international community recognized that the Occupied Territories formed part of Azerbaijan’s sovereign territory.¹⁰³ No State, not even Armenia, recognized the Installed Regime as a sovereign entity, and Armenia itself has not asserted that it has or had sovereignty over the Occupied Territories.¹⁰⁴ In this arbitration, Azerbaijan seeks to enforce its sovereign rights over the energy resources located in its undisputed territory. Such claims are squarely within this Tribunal’s jurisdiction and fully in line with the Treaty’s object and purpose.

D. The ECT *Travaux Préparatoires* Confirm Azerbaijan’s Interpretation of Article 18.

56. The Parties agree that there is “*no need to have recourse*” to the ECT *travaux préparatoires* as a supplementary means of interpretation where the text is

¹⁰⁰ **CL-135**, The International Energy Charter: Agreed text for adoption in The Hague at the Ministerial Conference of the International Energy Charter (20 May 2015), Frequently Asked Questions, at 19.

¹⁰¹ **CL-61**, *SunReserve Luxco Holdings SRL v. Italy*, SCC Case No. V 2016/32, Award, 25 March 2020, ¶ 681 (“[I]t [is] apparent from Article 2 ECT and the objectives of the International Energy Charter that the ECT is intended to establish a ‘legal framework’ so as to promote long-term cooperation between the ECT Contracting Parties.”); **CL-60**, *AES Solar and others (PV Investors) v. Spain*, PCA Case No. 2012-14, Award, 28 February 2020, ¶¶ 568–570 (“[T]he Parties to the ECT aimed at realizing a balance between the sovereign rights of the State over energy resources and the creation of a climate favorable to the flow of investments on the basis of market principles.”).

¹⁰² Memorial, § II.B.2.

¹⁰³ See Statement of Claim, ¶ 34.

¹⁰⁴ See *id.* ¶ 16, n. 16.

unambiguous¹⁰⁵—though, as discussed in the preceding sections, the Parties offer opposing interpretations of Article 18. Should the Tribunal nevertheless decide to consider the *travaux* in its analysis of the ECT, it will find confirmation that Articles 18(1) and 18(3) create binding legal obligations in respect of State sovereignty over energy resources, which are applicable and enforceable between and among ECT Contracting Parties.

1. The *travaux* affirm that Article 18 creates binding legal obligations between and among States.

57. Early draft protocols for the ECT demonstrate that, from the beginning of the negotiations, the Contracting Parties understood States' binding obligations in respect of sovereignty over natural resources as broadly applicable to inter-State relationships. States promoted this understanding from the first drafts of the ECT, which included operative language that the Contracting Parties "*recognise*" each State's sovereignty over energy resources.¹⁰⁶ As negotiations progressed, the Contracting Parties continued in broad alignment on the importance of including a duty to recognize these binding sovereign rights as an affirmative, operative article.¹⁰⁷

¹⁰⁵ Memorial, ¶¶ 81–82 (citing **CL-11**, VCLT, Art. 32); *see also* Statement of Claim, ¶ 165.

¹⁰⁶ *See, e.g., CL-18*, Draft Treaty, Basic Protocol to the European Energy Charter (20 August 1991), https://www.energycharter.org/fileadmin/DocumentsMedia/ECT_Drafts/1_-_Basic_Protocol.pdf, Art. 7 ("*Article 7: Sovereignty over Natural Resources. The Contracting Parties recognise the principle of national sovereignty over natural resources. In particular, each Contracting Party shall be free to decide within its Territory the areas to be made available for exploration and exploitation of its natural resources and the rate at which they shall be depleted or otherwise exploited. . . .*"); **CL-111**, Explanatory Memorandum of the Draft Basic Protocol from Working Group II of the European Energy Charter (11 September 1991), ECT Travaux, at 3 ("*Article 5(1) reiterates the principle of national sovereignty over natural resources. It makes provision for States to decide which areas of their territory may be made available for exploration and exploitation, the rate of resources depletion, taxation and revenue, and makes States responsible for regulation of environmental and safety matters.*") (emphasis added); **CL-20**, Conference Secretariat, "Note from Chairman of WGII on the Basic Protocol" (11 October 1991), ECT Travaux, at 5 ("*Article 5: Sovereignty over Natural Resources. There was general agreement on the need for an article on the sovereignty over Natural Resources.*").

¹⁰⁷ *See, e.g., CL-23*, Conference Secretariat, Basic Agreement for the European Energy Charter (12 August 1992), ECT Travaux, Art. 4 ("*Article 4: Sovereignty Over Energy Resources. The Contracting Parties recognise state sovereignty and sovereign rights over energy resources. In accordance with and subject to its international legal rights and obligations, each State holds in particular the rights to decide the geographical areas within its Domain to be made available for exploration and development of its energy*"); **CL-34**, Conference Secretariat, Text for Adoption – Final Act on the Conference of the Energy Charter Treaty (14 September 1994), Art. 18 ("*Article 18: Sovereignty Over Energy Resources. (1) The Contracting Parties recognize state sovereignty and sovereign rights over energy resources. They reaffirm that these must be exercised in accordance with and subject to the rules of international law. . . .*").

58. In fact, in each draft of the ECT submitted into the record by either Party,¹⁰⁸ the principle of resource sovereignty consistently appeared in an operative article. The September 1993 draft, for instance, contains a draft Article 21 (now Article 18) affirming that “*The Contracting Parties recognise state sovereignty and sovereign rights over energy resources in accordance with and subject to international legal rights and obligations including the provisions of this Agreement*”¹⁰⁹—i.e., that the legal rights and obligations concerning sovereignty reflected in this draft Article 21 will be balanced against other, equally binding rights and obligations found elsewhere in the ECT.
59. Indeed, the documents to which Armenia itself cites reinforce the binding nature of these sovereign rights in the context of striking this particular balance between States’ Article 18 rights, on the one hand, and investors’ rights under Part III of the ECT, on the other. In its 1994 letter, for example, Norway highlights the importance of a “*balanced approach to the legal relationship between the host state and the investment of investors*,” emphasizing that “[t]he rights of the state as resource owner constitute an important element in this legal relationship.”¹¹⁰ Also in 1994, the Legal Advisor of the Conference described the ECT’s core investment provisions alongside the rights of each State under what is now Article 18 before proceeding to describe “*other substantive rights and obligations*,”¹¹¹ implying a discussion of substantive rights and obligations *additional to* those under Article 18.
60. The *travaux* also confirm that Article 18(3) was intended to provide a concrete elaboration of the rights encompassed by the principle of sovereignty and

¹⁰⁸ See **CL-18**, Draft Treaty, Basic Protocol to the European Energy Charter (20 August 1991), https://www.energycharter.org/fileadmin/DocumentsMedia/ECT_Drafts/1_-_Basic_Protocol.pdf, Art. 7; **RL-117**, ECT Travaux, Note from the Conference Secretariat enclosing the draft Basic Agreement (21 January 1992), Art. 4; **RL-120**, ECT Travaux, Revised draft Basic Agreement for the European Energy Charter (24 June 1992), Art. 4; **CL-23**, Conference Secretariat, Basic Agreement for the European Energy Charter (12 August 1992), ECT Travaux, Art. 4; **RL-127**, ECT Travaux, Revised Draft Basic Agreement for the European Energy Charter Treaty (1 March 1993), Art. 4; **CL-28**, European Energy Charter Conference, Draft Treaty – Version 4 (7 July 1993), https://www.energycharter.org/fileadmin/DocumentsMedia/ECT_Drafts/18_-_ECT_4__07.07.93_.pdf, Art. 21; **CL-34**, Conference Secretariat, Text for Adoption – Final Act on the Conference of the Energy Charter Treaty (14 September 1994), Art. 18 (also in the record as **RL-142**).

¹⁰⁹ **CL-28**, European Energy Charter Conference, Draft Treaty – Version 4 (7 July 1993), https://www.energycharter.org/fileadmin/DocumentsMedia/ECT_Drafts/18_-_ECT_4__07.07.93_.pdf, Art. 21 (emphasis in original).

¹¹⁰ **RL-140**, ECT Travaux, Letter from Norway to the Conference Secretariat regarding Article 21(2) (1 September 1994), at 2 (emphasis added).

¹¹¹ **RL-143**, ECT Travaux, Memorandum from C. Bamberger (Legal Adviser of the Conference) explaining the Final Text of the ECT (26 September 1994), at 7–11 (quotation at 11) (emphasis added).

sovereign rights to energy resources.¹¹² According to the *travaux*, Article 18(3) is intentionally “*far-reaching*” and must be understood as elaborating on and referring to Article 18(1).¹¹³

61. Significantly, throughout the *travaux* there is no reference to any Contracting Party’s intention of interpreting Articles 18(1) and 18(3) as non-binding. This stands in stark contrast to the approach taken to States’ obligations under Article 18(4).¹¹⁴ The Chairman of the Legal Sub-Group, for example, explained to the Chairman of the Energy Charter Conference that Article 18(4) “*seems to be a ‘best efforts’ commitment*” that uses the word “*undertake*” (revised back from “*shall ensure*”) to bring “*it into line with the European Energy Charter’s several non-binding references to undertakings of access to energy resources.*”¹¹⁵ As indicated in the discussion of Article 18(2) above,¹¹⁶ the Contracting Parties considered the other provisions of Article 18 to establish binding obligations; otherwise, there would be no cause for the concern that those provisions might “*override*” other obligations that the Treaty established, and no reason to enter into Declaration V, clarifying the scope of Article 18(2)’s application.¹¹⁷

2. Armenia misreads and misstates the legal and factual significance of the *travaux*.

62. Azerbaijan agrees with Armenia that the *travaux* demonstrate the Contracting Parties’ intention to balance investors’ rights against States’ sovereignty rights over energy resources.¹¹⁸ Armenia’s conclusion, however, that Article 18

¹¹² See CL-59, K. Hobér, “The Energy Charter Treaty, A Commentary” (2020), at 349 (“*Subparagraph (3) constitutes a further elaboration, and affirmation, of the sovereign rights referred to in subparagraphs (1) and (2).*”).

¹¹³ CL-33, Chairman of the Legal Subgroup, Memorandum regarding “Paragraph (2) of Article 21, ‘Sovereignty over Energy Resources’” (12 August 1994), ECT Travaux, at 5. See also *id.* at 6 (describing the potential for inconsistency between States’ exercise of the rights enumerated in Article 18(2) and (3) and “*other provisions of the ECT*” related to investment).

¹¹⁴ CL-1, ECT, Art. 18(4) (“*The Contracting Parties undertake to facilitate access to energy resources, inter alia, by allocating in a non-discriminatory manner on the basis of published criteria authorisations, licences, concessions and contracts to prospect and explore for or to exploit or extract energy resources.*”).

¹¹⁵ CL-33, Chairman of the Legal Subgroup, Memorandum regarding “Paragraph (2) of Article 21, ‘Sovereignty over Energy Resources’” (12 August 1994), ECT Travaux, at 6 (emphasis added).

¹¹⁶ See *supra* ¶¶ 46–47.

¹¹⁷ CL-33, Chairman of the Legal Subgroup, Memorandum regarding “Paragraph (2) of Article 21, ‘Sovereignty over Energy Resources’” (12 August 1994), ECT Travaux, at 1, 4, 7, 9; see *supra* ¶¶ 46–47.

¹¹⁸ Memorial, ¶ 86.

therefore provides no protection in inter-State relations is a fallacy.¹¹⁹ Armenia’s recourse to documents establishing Contracting Parties’ desire to “*counterbalance the protection granted to investors in the investment section of the treaty*” does nothing to further its argument that States conceived of Article 18’s obligations as “*solely . . . concerning investor-State relationships*” and “*affirm[ing] state authority over the disposal of energy resources*” in the investment context.¹²⁰ Instead, as discussed above, there is no “*counterbalance*” to speak of unless Article 18 concretized a binding set of rights potentially conflicting with other provisions of the Treaty.¹²¹

63. In its effort to support its strained reading of the *travaux*, Armenia also misinterprets States’ comments in the negotiations surrounding Article 18, including August and September 1994 letters from Norway. As an initial matter, this correspondence must be understood in its broader context, which is as a response to the legal advice regarding Article 18, and its potential to “*override*” other provisions of the Treaty, issued by the Chairman of the Legal Sub-Group in August 1994.¹²²
64. Article 18 had been extensively negotiated between the European Union and Norway, and responding to the Legal Sub-Group’s concerns, Norway was adamant that it saw “*no reason to introduce any changes in the current text.*”¹²³ While Norway noted that the Contracting Parties intended Article 18 “*to affect the interpretation and application of other articles of the ECT,*”¹²⁴ Armenia reads Norway’s statement to mean that Article 18 did not create its own legal obligations.¹²⁵ But that is not what the *travaux* actually say. In a previous letter on

¹¹⁹ See *id.*

¹²⁰ *Id.* (citing to **RL-128**, ECT Travaux, Memorandum from France commenting on the investment provisions of the Draft Basic Agreement (15 Mar. 1993), at 1 (describing Article 18—then Article 4—as one of the articles that “*directly or indirectly concern investors*”) (emphasis added); **RL-140**, ECT Travaux, Letter from Norway to the Conference Secretariat regarding Article 21(2) (1 September 1994), at 2; **RL-138**, ECT Travaux, Note from Norway to the Conference Secretariat on Article 21(2) (Sovereignty over Energy Resources) (16 August 1994), at 3).

¹²¹ See *supra* ¶¶ 46–47, 61.

¹²² **CL-33**, Chairman of the Legal Subgroup, Memorandum regarding “Paragraph (2) of Article 21, ‘Sovereignty over Energy Resources’” (12 August 1994), ECT Travaux, at 1, 4, 7, 9; see *supra* ¶¶ 46–47, 61.

¹²³ **RL-140**, ECT Travaux, Letter from Norway to the Conference Secretariat regarding Article 21(2) (1 September 1994), at 2. See also **RL-138**, ECT Travaux, Note from Norway to the Conference Secretariat on Article 21(2) (Sovereignty over Energy Resources) (16 August 1994), at 2 (stating that the article that would become Article 18 “*is the outcome of extensive negotiations*”).

¹²⁴ **RL-135**, ECT Travaux, Memorandum from Norway to C. Bamberger (Legal Adviser of the Conference) on Article 21 (2 August 1994), at 1. See also **RL-140**, ECT Travaux, Letter from Norway to the Conference Secretariat regarding Article 21(2) (1 September 1994), at 2.

¹²⁵ Memorial, ¶ 90.

this same topic, Norway expressly stated that: “*Article [18] gives the State a right as resource owner to decide the optimalization of the recovery of its energy resources.*”¹²⁶ Consistent with the longstanding concerns of Contracting Parties negotiating the draft Treaty, Norway’s statements reflect a preoccupation with how to best balance States’ binding obligations under Article 18 with other provisions within the ECT.

65. Equally misleading is Armenia’s argument that Article 18(3) was added “*to describe the kinds of sovereign powers the Contracting Parties would retain in relation to access to resources,*”¹²⁷ which it supports with reference to a 1992 Press Notice.¹²⁸ Unsurprisingly, the Press Notice does not explain the Parties’ underlying motivations to add or remove specific articles in the draft text. Instead, the Notice sets forth a broad-strokes summary of the Treaty text suitable for circulation to a lay audience.¹²⁹ Indeed, the Press Notice does not name specific articles at all, much less elaborate on the objectives behind their inclusion.
66. Finally, Armenia’s focus on Article 18’s placement among the draft Treaty’s various former section headings (including “*Contextual*” and “*Definitions and Principles*”) is misguided.¹³⁰ Notwithstanding its focus on the section titles, Armenia recognizes, as it must, that throughout each iteration of the draft text, Article 18 has remained in the operational part of the Treaty rather than in any preambular section.¹³¹ Accordingly, at all times throughout the drafting process, the Contracting Parties treated Article 18 as a provision capable of generating substantive rights and obligations.¹³² Moreover, even if draft section headers could inform the analysis, they would only confirm the binding nature of Article 18: Armenia fails entirely to account for prior drafts that include the sovereignty provisions under the heading “*Part II: General Obligations*”¹³³—a

¹²⁶ **RL-138**, ECT Travaux, Note from Norway to the Conference Secretariat on Article 21(2) (Sovereignty over Energy Resources) (16 August 1994), at 4 (emphasis added).

¹²⁷ Memorial, ¶ 88.

¹²⁸ See **RL-121**, ECT Travaux, Press Notice on the European Energy Charter Negotiations (14 December 1992), at 3.

¹²⁹ See generally *id.*

¹³⁰ See Memorial, ¶¶ 90–91; see also *supra* ¶¶ 41–45.

¹³¹ Memorial, ¶ 90; see also *supra* ¶ 58.

¹³² See **RL-163**, L. Rajamani, “The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations,” *Journal of Environmental Law*, Vol. 28, No. 2 (2016), at 343 (“[I]f it is located in the operational part of the treaty, it has the capacity to generate rights and obligations for Parties.”); see also *supra* ¶¶ 57–61.

¹³³ **CL-111**, Explanatory Memorandum of the Draft Basic Protocol from Working Group II of the European Energy Charter (11 September 1991), ECT Travaux (emphasis added), at 2–3; **CL-18**, Draft Treaty, Basic Protocol to the European Energy Charter (20 August 1991),

section heading that affirms Article 18’s imposition of binding substantive obligations.

* * *

67. In sum, Article 18 creates binding obligations applicable between and among States that this Tribunal may enforce. Articles 18(1) and 18(3), under which Azerbaijan has brought its claims, have clear and prescriptive terms, reflecting fundamental and uncontroversial principles of international law. Accordingly, the Tribunal may construe and apply the provisions of Articles 18(1) and 18(3) in the present dispute.

III. THE TRIBUNAL HAS JURISDICTION OVER AZERBAIJAN’S CLAIMS THAT ARMENIA’S CONDUCT ALSO BREACHED ARTICLE 7.

68. As Azerbaijan has made clear even before commencing these proceedings, a subset of Armenia’s conduct in denying Azerbaijan access to its energy resources violated Armenia’s obligations under both Article 18 and Article 7 of the ECT.¹³⁴ Specifically, Armenia’s continued interruption of the flow of gas through the Y-N Pipeline and re-routing of the Y-N Pipeline during the occupation period breached Armenia’s obligations both to respect Azerbaijan’s sovereignty and sovereign rights over its energy resources under Article 18 and to facilitate the free transit of energy materials and products under Article 7.¹³⁵
69. Armenia, in its second and third objections, contends that the Tribunal lacks jurisdiction over the Article 7 claims arising from the Y-N Pipeline allegations either because there was no “*dispute*” in relation to those claims, or because Azerbaijan supposedly failed to negotiate any such dispute, before Azerbaijan filed its Notice of Arbitration.¹³⁶ Notably, however, Armenia does not challenge Azerbaijan’s Article 18 claims relating to the Y-N Pipeline on either ground, even though they arise from the same set of facts as the Article 7 claims.¹³⁷

https://www.energycharter.org/fileadmin/DocumentsMedia/EC_T_Drafts/1_-_Basic_Protocol.pdf, at 5, 7; **CL-20**, Conference Secretariat, “Note from Chairman of WGII on the Basic Protocol” (11 October 1991), ECT Travaux, at 3–4.

¹³⁴ See **CE-63.31**, Letter from Azerbaijan to Armenia dated 16 December 2022, at 1; Notice of Arbitration ¶ 53; Statement of Claim, ¶¶ 246–249.

¹³⁵ *Id.*

¹³⁶ See Armenia’s Request for Bifurcation, 23 December 2024 (“*Bifurcation Request*”), § III.B; Memorial § III.

¹³⁷ See Bifurcation Request, § III.A; Memorial § II.

70. This inconsistency underscores not only the lack of merit to Armenia’s arguments, but also the significant inequities and procedural inefficiencies that would result from accepting Armenia’s Article 7 objections. If the Tribunal were to accept Armenia’s Article 7 objections, but reject its Article 18 objection, Azerbaijan’s Y-N Pipeline claims would remain in the case as alleged breaches of Article 18. Azerbaijan would be forced to re-notice or re-negotiate its Article 7 claims, even though they arise from the same conduct, thus unnecessarily delaying resolution of those claims and needlessly multiplying proceedings adjudicating the same set of underlying facts.
71. None of Armenia’s arguments compel such a wasteful result, as its Article 7 objections are easily dismissed on their own terms. The record confirms that there was indeed a dispute between the Parties encompassing Azerbaijan’s Y-N Pipeline claims (**Section III.A**), and that dispute had been subjected to diplomatic consultations to the point of futility by the time Azerbaijan filed its Notice of Arbitration (**Section III.B**). Finally, the voluntary conciliation mechanism for transit disputes set out in ECT Article 7(7) cannot operate to divest this Article 27 Tribunal of jurisdiction over Azerbaijan’s Article 7 claims (**Section III.C**).

A. The “Dispute” Between the Parties Encompassed Azerbaijan’s Article 7 Claims.

72. The Parties’ conduct and interactions unquestionably demonstrate that there was a dispute as to Armenia’s breaches of its ECT obligations when Azerbaijan filed its Notice of Arbitration on 27 February 2023, and that dispute encompassed Azerbaijan’s claims in relation to the Y-N Pipeline.
73. Article 27(1) provides that “*Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Treaty through diplomatic channels.*”¹³⁸ A Party may submit a dispute to arbitration under Article 27 only if the dispute was not settled through diplomatic channels “*within a reasonable period of time.*”¹³⁹
74. Armenia’s first challenge to the Tribunal’s jurisdiction rests on its contention that no “dispute” existed regarding Azerbaijan’s Article 7 claims when Azerbaijan filed its Notice of Arbitration.¹⁴⁰ But the standard Armenia urges for the establishment of a “dispute” is inexplicably high. For instance, Armenia argues that Azerbaijan should have provided, with regard to its Y-N Pipeline claims, “*specific dates, the location of the alleged interruption [of gas supply], information about the specific type of transit, the identity of those alleged to have*

¹³⁸ CL-1, ECT, Art. 27(1).

¹³⁹ *Id.* Art. 27(2).

¹⁴⁰ Memorial, ¶¶ 14–15, 111–133.

- interrupted it, or even how they purportedly did so.*”¹⁴¹ This is the sort of information—much of which would be in Armenia’s exclusive possession and control—that goes to the merits of a claim, not to whether a dispute even exists. Unsurprisingly, Armenia cites no authority for its assertion that Article 27 requires a claimant to particularize each and every detail in respect of the “*dispute*,” with all supporting factual information *before* filing its Notice of Arbitration.
75. As extensive international court and tribunal jurisprudence confirms, the threshold to establish that a dispute exists is not the exacting one that Armenia advances. A dispute is “*a disagreement on a point of law or fact, a conflict of legal views or of interests*” between parties.¹⁴² While there must be evidence of opposing views “*concerning the question of the performance or non-performance of certain international obligations*” for a treaty dispute to exist, the claimant need not expressly invoke, nor the respondent oppose, each and every treaty article potentially breached by the respondent’s conduct.¹⁴³ Indeed, the ICJ has held that a claimant State need not even “*expressly refer to a specific treaty in its exchanges with the other State to enable it later to invoke that instrument*,” as long as the exchanges between the parties refer to the “*subject-matter of the treaty with sufficient clarity*” to put the respondent State on notice that there is a dispute regarding that subject matter.¹⁴⁴
76. Investment tribunals have taken an equally broad view of the “*dispute*” requirement, “*flatly rejecting a formalistic approach toward the notice of dispute, which need not be exhaustive.*”¹⁴⁵ Tribunals have found that a claimant is not

¹⁴¹ *Id.* ¶ 123.

¹⁴² **RL-21**, *Mavrommatis Palestine Concessions*, Judgment No. 2, 30 August 1924, PCIJ Reports Series A No. 2, at 11.

¹⁴³ **RL-67**, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* (*Nicaragua v. Colombia*), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), ¶ 50. *See also* **RL-88**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*The Gambia v. Myanmar*), Preliminary Objections, Judgment, I.C.J. Reports 2022, ¶ 71 (“[T]he conclusion that the parties hold clearly opposite views concerning the performance or non-performance of legal obligations does not require that the respondent must expressly oppose the claims of the applicant.”).

¹⁴⁴ **RL-88**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*The Gambia v. Myanmar*), Preliminary Objections, Judgment, I.C.J. Reports 2022, ¶ 72. *See also* **RL-77**, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Ukraine v. Russian Federation*), Preliminary Objections, Judgment, I.C.J. Reports 2019, ¶ 45.

¹⁴⁵ **CL-141**, *Greentech Energy Systems A/S, NovEnergia II Energy & Environment (SCA) SICAR, and NovEnergia II Italian Portfolio SA v. The Italian Republic*, SCC Case No. V 2015/095, Award, 23 December 2018, ¶ 213. *See also* **CL-148**, *Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania*, ICSID Case No. ARB/15/31, Award, 8 March 2024 [Redacted], ¶ 676 (finding that the

required “at such a preliminary stage of the procedure, when no arbitration has yet been initiated,” to “exhaustively develop all the allegations of violation of [a Treaty,] and the arguments that his future submissions will precisely aim to develop if arbitration is initiated.”¹⁴⁶ Instead, the claimant need only provide “sufficiently detailed” information “to allow [the State party] to become aware of the existence of a dispute in relation to the [treaty] and the facts giving rise to th[e] dispute and to enable it to enter into negotiations with [the claimant] on this subject.”¹⁴⁷ Indeed, in the context of investor-State arbitration under the ECT, tribunals have adopted a “broad understanding of what constitutes sufficient notice” of a dispute under Article 26, as “the ECT does not contain any explicit formal requirements for such purpose.”¹⁴⁸

77. As Armenia concedes, the question of whether a dispute exists is a “matter of objective determination.”¹⁴⁹ The Tribunal must therefore consider the evidence of the interactions between the Parties to identify the existence of a disagreement at the point that proceedings were initiated.

notice of dispute “does not have to state each and every fact constituting a claim that might arise after the filing of the notice of dispute,” as “[s]ubsequent facts or events may be part of or extend the dispute and therefore [are] within the Tribunal’s jurisdiction and admissible if they ‘do not change the general character of the case submitted to the Tribunal’”).

¹⁴⁶ **CL-136**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016 (unofficial translation from French original), ¶ 146; see also **CL-138**, *Vestey Group Limited v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016, ¶ 151 (“A dispute is not the equivalent of a claim. The former is a broader concept than the latter [T]he fact that [the claims] may originate from different sources or emerge at different times does not necessarily mean that the disputes are separate and distinct.”) (internal quotations omitted); **CL-117**, *Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision on Jurisdiction, 25 January 2000, ¶ 97 (“While a dispute may have emerged, it does not necessarily have to coincide with the presentation of a formal claim.”).

¹⁴⁷ **CL-136**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016 (unofficial translation from French original), ¶ 145.

¹⁴⁸ **CL-130**, *Khan Resources Inc., Khan Resources B.V. and CAUC Holding Company Ltd. v. the Government of Mongolia and MonAtom Co., Ltd.*, PCA Case No. 2011-09, Decision on Jurisdiction, 25 July 2012, ¶ 404. See also **CL-141**, *Greentech Energy Systems A/S, NovEnergia II Energy & Environment (SCA) SICAR, and NovEnergia II Italian Portfolio SA v. The Italian Republic*, SCC Case No. V 2015/095, Award, 23 December 2018, ¶ 213 (noting that its approach in “flatly rejecting a formalistic approach toward the notice of dispute” “is consistent with decisions by other tribunals, including under the ECT”); **CL-73**, *Limited Liability Company Amto v. Ukraine*, SCC Case No. 080/2005, Final Award, 26 March 2008, ¶ 57 (broadly defining “[a] dispute” as “a state of affairs involving a failure to agree,” without the need to “identify[] any ECT claims,” and noting that “[s]imilar views have been expressed by other tribunals”).

¹⁴⁹ Memorial, ¶ 100 (referencing **RL-67**, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, ¶ 50; **RL-52**, *Republic of Ecuador v. United States of America*, PCA Case No. 2012-5, Award, 29 September 2012, ¶ 212).

78. Here, the interactions between the Parties plainly establish the existence of a dispute under the ECT encompassing Azerbaijan’s Article 7 claims well before Azerbaijan filed its Notice of Arbitration. The Y-N Pipeline claims related to the same subject matter as the ongoing dispute between the Parties, and when Azerbaijan informed Armenia of the key factual allegations and treaty provisions relating to those claims, it received the same sort of obstructionist response as it had been receiving from Armenia for over a year:
- a. Azerbaijan sent a Notice of Dispute to Armenia on 8 October 2021, more than 16 months before filing its Notice of Arbitration, which explicitly raised “[REDACTED]”
[REDACTED]
[REDACTED]
[REDACTED]¹⁵⁰ The broad reference to the ECT, and the specific reference to exploitation of energy resources and infrastructure, encompasses ECT claims related to the Y-N Pipeline. Before the First Garabagh War, the Y-N Pipeline was the only transmission pipeline that connected and supplied natural gas to two portions of Azerbaijan’s sovereign territory: the Garabagh and East Zangezur regions subsequently occupied by Armenia, and the exclave of Nakhchivan.¹⁵¹
 - b. In the following months, the tone and tenor of Armenia’s correspondence left no doubt that the Parties held opposing views as to whether Armenia’s conduct entailed a breach of substantive ECT obligations. *First*, as Armenia concedes, it argued during the Parties’ 24–25 November 2022 meeting that Azerbaijan’s claims “*suffered from multiple jurisdictional defects*.”¹⁵² *Second*, Armenia’s responses were dilatory and dismissive: for example, continually asking Azerbaijan to “[REDACTED]” its claims despite multiple clear articulations of Azerbaijan’s position,¹⁵³ and dismissing Azerbaijan’s allegations as “[REDACTED]”.¹⁵⁴ *Third*, while

¹⁵⁰ **CE-63.1**, Azerbaijan’s Notice of Dispute under the Energy Charter Treaty dated 8 October 2021, at 2 (emphases added).

¹⁵¹ Statement of Claim, ¶¶ 246–247.

¹⁵² Memorial, ¶ 114.

¹⁵³ See, e.g., **CE-63.3**, Letter from Azerbaijan to Armenia dated 20 December 2021, at 3–4 (providing details as to the specific conduct and energy resources at issue); **CE-63.4**, Letter from Armenia to Azerbaijan dated 4 January 2022, at 3 (conceding that “[REDACTED]” but disparaging Azerbaijan’s offer to negotiate as “*merely a pro forma exercise*”); **CE-63.32**, Letter from Armenia to Azerbaijan dated 16 January 2023, at 1 (claiming, after multiple letters and meetings between the parties in which Azerbaijan’s claims were discussed, that Azerbaijan had still failed to “[REDACTED]”). See also *infra* ¶¶ 100–102.

¹⁵⁴ **CE-63.4**, Letter from Armenia to Azerbaijan dated 4 January 2022, at 3.

paying lip service to the idea of addressing Azerbaijan’s claims in good faith, Armenia sought to frustrate or delay the dispute resolution process, from repeatedly accusing Azerbaijan of operating in bad faith¹⁵⁵ to stalling substantive discussions by raising unfounded and irrelevant accusations of purported misconduct.¹⁵⁶

- c. Further, on 16 December 2022, over two months before filing its Notice of Arbitration, Azerbaijan expressly notified Armenia

[REDACTED]

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- d. Contrary to Armenia’s complaints,¹⁵⁸ these are not unduly vague allegations. They specified the conduct at issue (“[REDACTED]”), the location (“[REDACTED]”),

¹⁵⁵ See, e.g., **CE-63.4**, Letter from Armenia to Azerbaijan dated 4 January 2022, at 3 (impugning Azerbaijan’s offers to negotiate its ECT claims as a “[REDACTED]”); **CE-63.11**, Letter from Armenia to Azerbaijan dated 6 March 2022, at 2 (same); **CE-63.17**, Letter from Armenia to Azerbaijan dated 17 May 2022, at 2 (same); **CE-63.13**, Letter from Armenia to Azerbaijan dated 31 March 2022, at 1 (“[REDACTED]”); **CE-63.15**, Letter from Armenia to Azerbaijan dated 22 April 2022, at 2 (“[REDACTED]”). Cf. **RL-157**, *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction, 2 June 2010, ¶ 320 (considering “the tone and the context” to “manifest a disagreement over rights and obligations”).

¹⁵⁶ See, e.g., **CE-63.6**, Letter from Armenia to Azerbaijan dated 9 February 2022, at 4 (accusing Azerbaijan of making a misrepresentation to the ICJ in an unrelated case); **CE-63.26**, Letter from Armenia to Azerbaijan dated 7 October 2022, at 1 (suspending the ECT negotiations while falsely accusing Azerbaijan of a “[REDACTED]”); **CE-63.29**, Letter from Azerbaijan to Armenia dated 14 November 2022, at 1 (noting “[REDACTED]” and the ICJ’s rejection of Armenia’s request to modify earlier provisional measures in related to the unfounded accusations of Azerbaijan’s purported “[REDACTED]”).

¹⁵⁷ **CE-63.31**, Letter from Azerbaijan to Armenia dated 16 December 2022, at 1.

¹⁵⁸ Memorial, ¶ 123.

and the relevant timeframe (“[REDACTED]
[REDACTED]”).¹⁵⁹

- e. In its letter dated 16 January 2023—sent over a month before Azerbaijan commenced arbitration—Armenia not only acknowledged receipt of Azerbaijan’s notification of claims relating to the Y-N Pipeline under Articles 18 and 7, but also expressly opposed Azerbaijan’s position. Armenia argued that the Y-N Pipeline claims concern “[REDACTED]
[REDACTED]”,¹⁶⁰ in direct opposition to Azerbaijan’s explanation that the claims relate to the “[REDACTED]
[REDACTED]” arising from the same type of unlawful conduct over the same time period by Armenia.¹⁶¹ The tone of Armenia’s letter also makes clear that Armenia disagreed with the legal basis for the Y-N Pipeline claims, disparaging Azerbaijan’s “[REDACTED]
[REDACTED]” that “[REDACTED]
[REDACTED]” a breach of Article 7.¹⁶²

79. As the above demonstrates, Azerbaijan specified the conduct relating to its Y-N Pipeline claims; explicitly alleged that conduct violated Article 7 as well as Article 18 of the ECT; and explained that the allegations arose as a result of Azerbaijan’s further development of its ECT claims. Armenia acknowledged receipt of the Y-N Pipeline claims; contested Azerbaijan’s position that the claims arose from the same set of facts; and questioned the legal basis for those claims. The Parties had by then been engaged in months of fruitless consultations over Azerbaijan’s other ECT claims, which all relate to the same subject matter as the Y-N Pipeline claims: Armenia’s denial of access to and misappropriation of Azerbaijan’s energy resources and infrastructure, beginning during the First Garabagh War and continuing throughout the occupation period.

¹⁵⁹ **CE-63.31**, Letter from Azerbaijan to Armenia dated 16 December 2022, at 1. Armenia’s attempt to take issue with the identified timeframe is irrelevant to the question of a dispute. Azerbaijan’s identification of the “[REDACTED]” in gas supply as well as the “[REDACTED]
[REDACTED]” certainly provides “sufficient clarity” to enable Armenia to identify the existence of a dispute on these points, not least because the Y-N Pipeline was the only transmission pipeline that ran across Armenia to supply two areas of Azerbaijan. Even if relevant, Armenia’s quibble with the timeline is still unavailing: while the initial interruption in supply took place during the First Garabagh War, it is the maintenance of that interruption in the aftermath of the war through the date of the ECT’s entry into force, as well as Armenia’s re-routing and repurposing of the pipeline during that timeframe, that form the basis of Azerbaijan’s claims. *See* Statement of Claim, ¶¶ 206–212, 246–249.

¹⁶⁰ **CE-63.32**, Letter from Armenia to Azerbaijan dated 16 January 2023, at 3.

¹⁶¹ **CE-63.31**, Letter from Azerbaijan to Armenia dated 16 December 2022, at 1; **CE-63.33**, Letter from Azerbaijan to Armenia dated 24 February 2023, at 1–2.

¹⁶² **CE-63.32**, Letter from Armenia to Azerbaijan dated 16 January 2023, at 3.

80. Moreover, the cases on which Armenia relies to deny that a “dispute” existed before Azerbaijan filed for arbitration are easily distinguishable.
- a. In the *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* cases, the statements by the Marshall Islands that the ICJ found insufficient to give rise to a dispute were general statements regarding nuclear States’ disarmament obligations, made in public fora, and were not explicitly aimed at the respondents.¹⁶³ The Court thus found that “it cannot be said that the [respondent] was aware, or could not have been unaware, that the Marshall Islands was making an allegation that the [respondent] was in breach of its obligations.”¹⁶⁴ That is a far cry from the present case, where Azerbaijan was engaged for months in bilateral consultations with Armenia, over a dispute noticed specifically to Armenia, and described to Armenia the particular conduct at issue. There is no question that Armenia was “aware” of Azerbaijan’s allegations of ECT breaches, including specifically the allegations that Armenia’s conduct breached Article 7.¹⁶⁵
 - b. In both the *Belgium v. Senegal* and *Nicaragua v. Colombia* cases, the alleged breach over which the Court found there was no dispute arose under an entirely separate instrument or body of law, entailing different legal obligations that were *never* referenced by the claimant prior to commencing legal proceedings.¹⁶⁶ Further, in *Nicaragua v. Colombia* the

¹⁶³ **RL-70**, *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, ¶ 57; **RL-166**, *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016, ¶ 52; **RL-167**, *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016, ¶ 52.

¹⁶⁴ **RL-70**, *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, ¶ 57; **RL-166**, *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016, ¶ 52; **RL-167**, *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016, ¶ 52.

¹⁶⁵ See **RL-70**, *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, ¶¶ 50, 57 (finding that the statements must “articulate[] an alleged breach” and the “particulars” of the conduct “that gave rise to [it]”).

¹⁶⁶ **RL-51**, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, ¶¶ 54–55 (finding no dispute in regard to Senegal’s obligations to extradite or prosecute Hissène Habré for violations of customary international law, as Belgium never referred to any such obligations in the diplomatic correspondence that preceded the filing of its

Court found that the underlying facts did not even indicate a dispute regarding the use of force, as senior Nicaraguan officials had confirmed the situation between the parties was “*calm and stable*” before Nicaragua filed its Application.¹⁶⁷ Here, the violations alleged by Azerbaijan all relate to Armenia’s breaches of the same instrument (the ECT), arise from the same underlying set of disputed facts, and were all expressly raised in the correspondence that preceded Azerbaijan’s Notice of Arbitration.¹⁶⁸

- c. Armenia’s strained comparisons to *Ecuador v. United States* likewise fail. In that case, the tribunal found that the United States had a plausible alternative explanation for refusing to respond to Ecuador’s note regarding the interpretation of one provision of the US-Ecuador BIT, “*consistent with a principled stance of not wanting to interfere with the decisions of Article VI investor-State tribunals.*”¹⁶⁹ Accordingly, the *Ecuador* tribunal declined to make an inference of “*positive opposition*” signaling a dispute between the parties.¹⁷⁰
- d. The silence of the United States (and absence of an inter-State dispute) in that case bears no resemblance to Armenia’s specious request in its 16 January 2023 letter that Azerbaijan “[REDACTED]” for its Article 7 allegation and “[REDACTED]” to the ongoing dispute between the parties.¹⁷¹ As Azerbaijan explained in its subsequent letter,¹⁷² Azerbaijan had already sufficiently described these particulars in

Application, and “*the issue whether there exists an obligation for a State to prosecute crimes under customary international law that were allegedly committed by a foreign national abroad is clearly distinct from any question of compliance with that State’s obligations under the Convention against Torture and raises quite different legal problems*”); **RL-67**, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, Preliminary Objections, I.C.J. Reports 2016 ¶¶ 67, 76 (finding that “*nothing in the evidence suggest[ed] that Nicaragua had indicated that Colombia had violated its obligations*” under the UN Charter or customary international law to refrain from the threat or use of force, as opposed to its obligations to respect Nicaragua’s sovereign rights and maritime zones, which are “*two distinct claims*” arising from entirely separate and unrelated legal obligations).

¹⁶⁷ **RL-67**, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, Preliminary Objections, I.C.J. Reports 2016, ¶ 76.

¹⁶⁸ See *supra* ¶¶ 78–79.

¹⁶⁹ **RL-52**, *Republic of Ecuador v. United States of America*, PCA Case No. 2012-5, Award, 29 September 2012, ¶ 219.

¹⁷⁰ *Id.* The *Ecuador* case is in any event an outlier, as the tribunal’s own analysis in that case indicates. In each of the other cases examined by the tribunal, the respondent’s failure to directly or adequately respond to the claimant’s allegations *did* lead to an inference of “*positive opposition.*” *Id.* ¶¶ 220–222.

¹⁷¹ **CE-63.32**, Letter from Armenia to Azerbaijan dated 16 January 2023, at 3.

¹⁷² **CE-63.33**, Letter from Azerbaijan to Armenia dated 24 February 2023, at 1.

81. In fact, Armenia does not attempt to contest the existence of a dispute between the Parties in relation to Azerbaijan's Article 18 claims. The Y-N Pipeline claims form part and parcel of that same dispute, as Azerbaijan explained in its 24 February 2023 letter to Armenia.¹⁷⁵ Armenia's attempt to silo the Y-N Pipeline claims as a separate dispute relating to different facts and time periods, and different legal issues, is misleading.¹⁷⁶ The gravamen of Azerbaijan's ECT claims, from the submission of its October 2021 Notice of Dispute to the February 2023 Notice of Arbitration to the November 2024 Statement of Claim, has been Armenia's denial and usurpation of Azerbaijan's rights to access and use its energy resources as a result of actions taken during the First Garabagh War and continued throughout the occupation.

82. The Y-N Pipeline claims fall squarely within this scope. They also concern Armenia's "[redacted]" of gas supply¹⁷⁷ (denial) and "[redacted]" (usurpation) of the Y-N Pipeline and the natural gas within it (Azerbaijan's energy resources). Moreover, they relate to the same time period as Azerbaijan's other claims, "[redacted]",¹⁷⁸ which Armenia well understands as "*the period of the alleged 'occupation' following the cessation of hostilities between Armenia and Azerbaijan in mid-1994.*"¹⁷⁹ Whether the initial conduct underlying the claimed violation occurred in 1991 or 1993, or

179 Memorial, ¶ 130.

took place in Azerbaijan or in Armenia, is hardly relevant for these purposes.¹⁸⁰ As with a number of Azerbaijan's other claims, Armenia's continuing conduct in relation to the Y-N Pipeline crystallized into ECT violations during the occupation period when the ECT entered into force for the Parties in 1998.

83. In any event, it is well established that, in its request for arbitration, a party may bring additional or supplemental claims as long as they relate to the same subject matter as the noticed dispute.¹⁸¹ In the Notice of Dispute and in every letter since sent to Armenia, Azerbaijan expressly reserved all of its rights under international law, including in “[REDACTED],” and including the right to raise additional claims.¹⁸²

¹⁸⁰ See, e.g., **CE-63.18**, Letter from Azerbaijan to Armenia dated 6 June 2022, at 2 (“Armenia . . . extracted or permitted the extraction of coal from the Chardaghli deposit in the Tartar district, and transported it to Armenia for use in generating electricity.”); Notice of Arbitration ¶ 40 (“During the occupation, [Armenia] extracted coal from Azerbaijan’s Chardagly mine in the Tartar district and diverted that coal for use in the Yerevan thermal power plant in Armenia.”); Statement of Claim ¶¶ 222–232 (noting that Armenia’s breaching conduct includes the import of Azerbaijani coal from the Chardaghli coalfield for use in Yerevan).

¹⁸¹ See, e.g., **CL-137**, *Tenaris S.A. and Talta Trading E Marketing Sociedade Unipessoal LDA v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/26, Award, 29 January 2016, ¶¶ 245–246 (finding claims that were “closely related to” and “arise out of substantially the same subject matter” as the noticed claims did not require a separate dispute notice); **CL-141**, *Greentech Energy Systems A/S, NovEnergia II Energy & Environment (SCA) SICAR, and NovEnergia II Italian Portfolio SA v. The Italian Republic*, SCC Case No. V 2015/095, Award, 23 December 2018, ¶ 213 (rejecting respondent’s objection that certain claims not specifically referenced in the dispute notices were outside the scope of the dispute, because “[e]ach measure objected to by Respondent relates to the same subject matter as other measures referred to in the letters, namely, Italy’s treatment of Claimants’ PV investments”); **CL-54**, *Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain*, ICSID Case No. ARB/13/31, Award, 15 June 2018, ¶¶ 354, 357 (finding that claims based on new Spanish laws and regulations enacted the year after claimants sent their dispute notices were part of a “single, on-going dispute between the Parties” because of the “inseparable relationship” between the new laws and the predecessor laws referenced in the dispute notices).

¹⁸² **CE-63.3**, Letter from Azerbaijan to Armenia dated 20 December 2021, at 4; *see also* **CE-63.5**, Letter from Azerbaijan to Armenia dated 24 January 2022, at 4; **CE-63.7**, Letter from Azerbaijan to Armenia dated 18 February 2022, at 3; **CE-63.10**, Letter from Azerbaijan to Armenia dated 1 March 2022, at 3; **CE-63.12**, Letter from Azerbaijan to Armenia dated 12 March 2022, at 2; **CE-63.14**, Letter from Azerbaijan to Armenia dated 13 April 2022, at 2; **CE-63.16**, Letter from Azerbaijan to Armenia dated 28 April 2022, at 1; **CE-63.18**, Letter from Azerbaijan to Armenia dated 6 June 2022, at 1; **CE-63.20**, Letter from Azerbaijan to Armenia dated 20 July 2022, at 1; **CE-63.21**, Letter from Azerbaijan to Armenia dated 26 August 2022, at 1; **CE-63.23**, Letter from Azerbaijan to Armenia dated 7 September 2022, at 1; **CE-63.25**, Letter from Azerbaijan to Armenia dated 29 September 2022, at 1; **CE-63.29**, Letter from Azerbaijan to Armenia dated 14 November 2022, at 1; **CE-63.31**, Letter from Azerbaijan to Armenia dated 16 December 2022, at 2; **CE-63.33**, Letter from Azerbaijan to Armenia dated 24 February 2022, at 3.

84. Although Armenia, in a footnote, argues that Azerbaijan’s reservation of rights is insufficient to establish a “*dispute*” as to the Y-N Pipeline claims, the award it cites actually confirms the opposite. As the language quoted by Armenia indicates, the test is one of relation: “*a reservation of rights ‘can only be understood as comprising the possibility of new claims related to that dispute and not new claims from new (albeit factually older) disputes.*”¹⁸³ The Article 7 claims—which, as noted, overlap in subject matter and time period as Azerbaijan’s earlier noticed Article 18 claims¹⁸⁴—are certainly “*related*” to the Parties’ ongoing dispute over those Article 18 claims.
85. Moreover, Azerbaijan’s reservation of rights is particularly important here, where the scope of the factual evidence available to Azerbaijan increased as it regained access to territories from which it had been blocked for 30 years and progressed its investigation of the damage wrought by Armenia’s occupation. In the Parties’ correspondence, Azerbaijan made explicit reference to its continued investigation into Armenia’s illegal activities, which makes clear that additional heads of claim under the ECT were to be expected.¹⁸⁵ As such, Azerbaijan’s Article 7 claims are—at the very least—closely related or supplemental claims that are properly part of the current proceedings.¹⁸⁶

B. Azerbaijan Has Satisfied Any Precondition To Attempt Amicable Resolution Imposed by Article 27.

86. Armenia next attempts to argue that the Tribunal lacks jurisdiction over Azerbaijan’s Article 7 claims because Azerbaijan “*did not fulfil the requirement*” to engage in “*diplomatic consultations*” concerning those claims before filing its Notice of Arbitration.¹⁸⁷ Properly understood, however, Armenia’s objection relating to the period of diplomatic consultations contemplated by Article 27 of the ECT concerns the admissibility of Azerbaijan’s Article 7 claims, not the jurisdiction of the Tribunal (**Section III.B.1**).

¹⁸³ Memorial ¶ 128 n. 250 (citing **RL-160**, *Guaracachi America, Inc. and Rurelec PLC v. Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014, ¶¶ 398–399 (emphasis added)).

¹⁸⁴ *Supra* ¶¶ 78–79, 81–82.

¹⁸⁵ See, e.g., **CE-63.18**, Letter from Azerbaijan to Armenia dated 6 June 2022, at 3 (notifying Armenia that Azerbaijan was “[REDACTED]”).

¹⁸⁶ See also **RL-29**, UNCITRAL Arbitration Rules (1976), Art. 20 (“*During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.*”).

¹⁸⁷ Memorial, ¶ 134.

87. In any event, regardless of whether the provision is analyzed under the legal standard of jurisdiction or admissibility, Azerbaijan has amply satisfied any precondition imposed by Article 27 (**Section III.B.2**).

1. The diplomatic consultation provision in Article 27 implicates the admissibility of claims, not the tribunal’s jurisdiction.

88. Armenia misstates the legal standard applicable to the diplomatic consultations provision in Article 27 of the ECT, incorrectly arguing that Article 27 requires parties to negotiate a dispute for no less than three months as a precondition to the Tribunal’s jurisdiction.¹⁸⁸ This argument is belied by the actual terms used and the consistent practice of international tribunals in construing similar provisions.
89. Article 27 provides that Contracting Parties may submit a dispute to arbitration if it has not been settled “*through diplomatic channels,*” “*within a reasonable period of time.*”¹⁸⁹ Arbitral tribunals have regularly interpreted such language to establish “*consultation periods*” that impact the admissibility of claims, finding them to be “*directory and procedural rather than mandatory and jurisdictional in nature. Compliance with such a requirement is, accordingly, not seen as amounting to a condition precedent for the vesting of jurisdiction.*”¹⁹⁰
90. Accordingly, when assessing whether to uphold procedural objections regarding the failure to comply with a consultation period, tribunals routinely consider whether doing so will serve the overarching considerations of fairness and procedural economy.¹⁹¹ Eschewing a formalistic approach, tribunals prioritize examination of whether the policy behind the provision—commonly, facilitation of negotiations towards resolution of the dispute—could have been achieved if the

¹⁸⁸ *Id.* ¶¶ 134, 141.

¹⁸⁹ **CL-1**, ECT, Arts. 27(1)–(2). *See also id.*, Art. 27(2) (“If a dispute has not been settled in accordance with paragraph (1) within a reasonable period of time, either party thereto may . . . upon written notice to the other party to the dispute submit the matter to an ad hoc tribunal under this Article.”).

¹⁹⁰ **CL-121**, *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/01/13, Decision of the Tribunal on Objections to Jurisdiction, 6 August 2003, ¶ 184.

¹⁹¹ *See, e.g. id.* (finding that although consultation requirement unmet, “it does not appear consistent with the need for orderly and cost-effective procedure to halt this arbitration at this juncture and require the Claimant first to consult with the Respondent before re-submitting the Claimant’s BIT claims to this Tribunal”); **CL-116**, *Ethyl Corp. v. Canada*, UNCITRAL (NAFTA), Award on Jurisdiction, 24 June 1998, ¶¶ 84–85 (dismissing respondent’s jurisdictional objections regarding non-fulfillment of the consultation period where negotiations were not possible and “[i]t is not doubted that today Claimant could resubmit the very claim advanced here”); **CL-118**, *Ronald S. Lauder v. Czech Republic*, Award (ad hoc UNCITRAL arbitration), 3 September 2001, ¶ 190 (reasoning that insisting on fulfillment of six-month waiting period prior to institution of arbitration would “amount to an unnecessary, overly formalistic approach which would not serve to protect any legitimate interests of the Parties”).

parties complied with the provision. If not, tribunals often assess that non-fulfillment of the procedural condition is not a bar to admissibility.¹⁹²

91. Armenia's reliance on two ICJ cases, where the Court treated negotiation preconditions in a compromissory clause as jurisdictional and accordingly dismissed claims for failure to satisfy those conditions, is misplaced.¹⁹³ It entirely ignores the weight of authority demonstrating how arbitral tribunals have approached negotiations or consultations provisions in treaties¹⁹⁴—the more appropriate analogue to the provision at issue here.
92. Particularly relevant for this analysis is how other tribunals have interpreted the negotiations provision of Article 26 of the ECT, the provision governing investor-State dispute settlement—to which Armenia itself has directed the Tribunal as a

¹⁹² See, e.g., **CL-123**, *Bayindir İnşaat Turizm Ticaret ve Sanayi A.Ş. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, ¶ 102 (agreeing with the *Lauder* tribunal's reasoning that, where Respondent was not "willing to engage in negotiations," "preventing the commencement of arbitration proceedings until [a six month waiting period had passed] would, in the circumstances of th[e] case, amount to an unnecessary, overly formalistic approach which would not serve to protect any legitimate interests of the Parties"); see also **CL-118**, *Ronald S. Lauder v. Czech Republic*, Award (ad hoc UNCITRAL arbitration), 3 September 2001, ¶¶ 187–188 (allowing claims to proceed despite only 17 days passing between Claimant's notification of dispute and its filing of the Notice of Arbitration, which ran contrary to the six-month waiting period required under the relevant treaty, because the "purpose of this rule is to allow the parties to engage in good-faith negotiations before initiating arbitration," and "there is no evidence that the Respondent would have accepted to enter into negotiation with [Claimant] or with any of the entities he controlled and which were involved in the dispute during the waiting period").

¹⁹³ Memorial, ¶ 136 (citing **RL-48**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, ¶ 131; **RL-111**, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, ¶ 88).

¹⁹⁴ See, e.g., **CL-121**, *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/01/13, Decision of the Tribunal on Objections to Jurisdiction, 6 August 2003, ¶ 184; **CL-126**, *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶ 345 (finding that, while "there is an obvious advantage in a provision that specifically encourages parties to attempt to settle their disputes[,] [t]here is no reason, however, why such a direction need be a strict jurisdictional condition"); **CL-118**, *Ronald S. Lauder v. Czech Republic*, Award (ad hoc UNCITRAL arbitration), 3 September 2001, ¶ 187 (holding that the six-month cooling off period for negotiations required under the treaty "is not a jurisdictional provision, i.e. a limit set to the authority of the Arbitral Tribunal to decide on the merits of the dispute, but a procedural rule that must be satisfied by the Claimant"); **CL-123**, *Bayindir İnşaat Turizm Ticaret ve Sanayi A.Ş. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, ¶¶ 99–100 (finding that "tribunals tend to rely on the non-absolute character of notice requirements to conclude that waiting period requirements do not constitute jurisdictional provisions but merely procedural rules that must be satisfied by the Claimant").

point of reference¹⁹⁵—with substantial case law construing its terms. Critically, tribunals interpreting the negotiations provision and three-month cooling off period set forth in Articles 26(1) and 26(2) of the ECT have found these provisions to impose, at most, a procedural directive that can impact the admissibility of claims, not a jurisdictional bar.¹⁹⁶

93. For example, in *Stati v. Kazakhstan*, the respondent State argued that the tribunal lacked jurisdiction because the claimant had failed to pursue amicable settlement of the dispute for three months prior to filing its Request for Arbitration.¹⁹⁷ The tribunal, reading Articles 26(1) and 26(2) together, found the provisions to establish “*a procedural requirement rather than one of jurisdiction*,” in light of their “*obvious intention*” “*to provide an opportunity of three months to the Parties to settle the dispute*.”¹⁹⁸ The tribunal considered that this requirement was met because it had granted a stay of the proceedings to provide a window for settlement negotiations—thus taking a practical approach that prioritized procedural efficiency, rather than finding that the claimant’s commencement of the proceedings without waiting three months created an incurable jurisdictional defect.¹⁹⁹
94. Armenia cannot ignore the compelling authority on Article 26 and its relevance to the Tribunal’s interpretation of Article 27. In subsequent set-aside proceedings in the same case before the Svea Court of Appeal, the court expressly looked to Article 27 of the ECT to inform its conclusion as to the non-jurisdictional nature of Article 26, reasoning “*the fact that the provisions in Articles 26 and 27 ECT have a similar structure indicates that they should be interpreted in the same*

¹⁹⁵ Memorial, ¶ 141.

¹⁹⁶ See, e.g., **CL-133**, *Stati v. Republic of Kazakhstan*, SCC Arbitration V (116/2010), Award, 19 December 2013, ¶ 829; **CL-46**, *Mohammad Ammar Al-Bahloul v. Republic of Tajikistan*, SCC Case No. V (064/2008), Partial Award on Jurisdiction and Liability, 2 September 2009, ¶¶ 155–156 (finding that claimant’s failure to comply with the three-month period for negotiations set forth in ECT Art. 26(2) “*does not affect the Tribunal’s jurisdiction or the admissibility of the claims brought by Claimant*” where it was clear that “*Respondent was not interested in settling the dispute amicably*”); see also **CL-140**, *Stati v. Republic of Kazakhstan*, Svea Court of Appeal Case No. T2675-14, Judgment, 9 December 2016, at 50 (noting that “*no example has been raised of an arbitral tribunal, when applying the ECT, having dismissed an investor’s action on the ground that the investor had failed to comply with the provisions of Art. 26(2) ECT*”).

¹⁹⁷ **CL-133**, *Stati v. Republic of Kazakhstan*, SCC Arbitration V (116/2010), Award, 19 December 2013, ¶ 820.

¹⁹⁸ *Id.* ¶ 829.

¹⁹⁹ *Id.* ¶ 830.

way.”²⁰⁰ Applying classic VCLT analysis to interpret the treaty terms,²⁰¹ the court also concluded that the negotiations and consultations provisions in those Articles are not jurisdictional. The court found that the lack of specificity in the provisions’ plain meaning, including as to what constitutes a “*reasonable time*” for attempting to engage in diplomatic consultations under Article 27(2), as well as the object and purpose of the Articles to provide a final determination of disputes via arbitration, “*militates against*” viewing the negotiation provisions “*as constituting a condition for the arbitral tribunal’s jurisdiction.*”²⁰²

95. Viewed through the proper lens of admissibility, efficiency and equity concerns weigh heavily against granting Armenia’s objections with regard to the purported lack of negotiations—or lack of a “*dispute*”—over Azerbaijan’s Article 7 claims.²⁰³ Both in its Request for Bifurcation and its Memorial on Preliminary Objections, Armenia actively contests the facts underlying Azerbaijan’s Article 7 claims and the legal bases for those claims.²⁰⁴ Plainly, then, Armenia accepts that there is now indeed a live dispute between the Parties with regard to the interpretation or application of Article 7. As with the parties in the *Stati v. Kazakhstan* case,²⁰⁵ Armenia and Azerbaijan have had ample opportunity to negotiate a settlement of the ECT dispute, including as to Azerbaijan’s Article 7 claims, if any such settlement were realistically possible. Armenia’s objections under this head and in Section III.A above are therefore solely concerned with the timing of the Notice of Arbitration insofar as it relates to the Article 7 claims. Suspending the proceedings to force additional futile settlement discussions, or compelling Azerbaijan to refile its Article 7 claims and initiate separate

²⁰⁰ **CL-140**, *Stati v. Republic of Kazakhstan*, Svea Court of Appeal Case No. T2675-14, Judgment, 9 December 2016, at 49.

²⁰¹ *Id.* at 48.

²⁰² *Id.* at 49–53.

²⁰³ See **CL-134**, *HOCHTIEF Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/07/31, Decision on Liability, 29 December 2014, ¶ 206 (“*The Tribunal considers that the principles governing the admissibility of claims are rooted not only in the notion of a claim that is inherently ripe and properly made, but also in the proper administration of justice. Admissibility is concerned both with the claim itself and with the arbitral process.*”); see also Bifurcation Observations, ¶¶ 56–58.

²⁰⁴ Bifurcation Request, ¶¶ 129–135; Memorial, ¶¶ 129–130.

²⁰⁵ **CL-133**, *Stati v. Republic of Kazakhstan*, SCC Arbitration V (116/2010), Award, 19 December 2013, ¶ 830 (explaining that the parties attempted settlement negotiations during a three-month period after the tribunal stayed the proceedings).

proceedings addressing the same underlying set of facts as this case, is neither procedurally efficient nor fair.²⁰⁶

2. In any event, Azerbaijan has fulfilled Any preconditions imposed by Article 27.

96. However the preconditions in Article 27(1) and (2) are characterized, the Tribunal should reject Armenia’s objection because Azerbaijan did in fact “endeavour to settle” its ECT dispute with Armenia for “a reasonable period of time” before submitting its claims to arbitration.²⁰⁷
97. Even when construed as a matter of jurisdiction, the ICJ has found such preconditions to be satisfied if the negotiations “relate to the subject-matter of the treaty containing the compromissory clause” permitting the claimant State to bring the dispute before the Court.²⁰⁸ As noted above, the exchanges between the parties need not even expressly reference the treaty.²⁰⁹ For instance, in the *Case Concerning Military and Paramilitary Activities (Nicaragua v. United States)*, the ICJ found that it had jurisdiction under the treaty in question even though Nicaragua had not even invoked that treaty in its application to the Court, let

²⁰⁶ See, e.g., **CL-46**, *Mohammad Ammar Al-Bahloul v. Republic of Tajikistan*, SCC Case No. V (064/2008), Partial Award on Jurisdiction and Liability, 2 September 2009, ¶¶ 154–155 (finding that “dismissing the claim and asking Claimant to resubmit it would be an unnecessary formality” even though claimant had failed to abide by the three-month cooling-off period, because it was clear that the respondent “was not interested in settling the dispute amicably”).

²⁰⁷ **CL-1**, ECT, Arts. 27(1), 27(2).

²⁰⁸ **RL-77**, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, ¶ 116. See also **CL-131**, *Mr. Franck Charles Arif v. Republic of Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013, ¶ 339 (“The Tribunal considers that the attempt to reach an amicable settlement should essentially include the existence of grounds for complaint and the desire to resolve these matters out-of-court. It need not be complete or detailed.”); **CL-130**, *Khan Resources Inc., Khan Resources B.V. and CAUC Holding Company Ltd. v. the Government of Mongolia and MonAtom Co., Ltd.*, PCA Case No. 2011-09, Decision on Jurisdiction, 25 July 2012, ¶ 404 (finding that Article 26(1) of the ECT “aims at encouraging good faith negotiations between parties, without unduly limiting the recourse to arbitration”); **CL-73**, *Limited Liability Company Amtov. Ukraine*, SCC Case No. 080/2005, Final Award, 26 March 2008, ¶ 57 (“The purpose of Article 26(2)—to provide for settlement discussions—requires the avoidance of legal forms, and the facilitation of open communication.”).

²⁰⁹ **RL-48**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, ¶ 161 (“[T]he absence of an express reference to the treaty in question does not bar the invocation of the compromissory clause to establish jurisdiction.”). See also *supra* ¶¶ 75–76; **CL-73**, *Limited Liability Company Amtov. Ukraine*, SCC Case No. 080/2005, Final Award, 26 March 2008, ¶ 57 (finding that under ECT Art. 26, “[a] party can request amicable settlement of a dispute without identifying any ECT claims, and an Investor may have good reason not to formulate claims at this stage”).

alone in any prior settlement discussions.²¹⁰ Concluding that the facts asserted by Nicaragua established the existence of a dispute under the treaty, the Court reasoned that “[i]t would make no sense to require Nicaragua now to institute fresh proceedings” because “[t]he United States was well aware that Nicaragua alleged that its conduct was a breach of international obligations before the present case was instituted; and it is now aware that specific articles of the 1956 Treaty are alleged to have been violated.”²¹¹

98. Instead of elevating form over substance as Armenia urges, the ICJ has held that fulfillment of a negotiations precondition simply requires “a genuine attempt by one of the disputing parties to engage in discussions with the other disputing party, with a view to resolving the dispute.”²¹² That assessment, in turn, is driven by a common-sense review of the record, on a case-by-case basis.²¹³ If negotiations are “futile or deadlocked” because one party is unwilling to negotiate, or it is evident that negotiations will not succeed, the precondition is met.²¹⁴ Negotiations are considered futile when “basic positions have not subsequently evolved after several exchanges of diplomatic correspondence or

²¹⁰ **CL-110**, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment on Jurisdiction & Admissibility, I.C.J. Reports 1984, ¶ 83 (“[I]t does not necessarily follow that, because a State has not expressly referred in negotiations with another State to a particular treaty as having been violated by conduct of that other State, it is debarred from invoking a compromissory clause in that treaty[.]”). See also *id.* (discussing the terms of the compromissory clause, which were similar to ECT Article 27 in conferring jurisdiction over disputes as to the treaty’s “interpretation or application” that were not “satisfactorily adjusted by diplomacy”).

²¹¹ *Id.*

²¹² **RL-77**, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, ¶ 116.

²¹³ See, e.g., **RL-162**, *Louis Dreyfus Armateurs SAS v. Republic of India*, PCA Case No. 2014-26, Decision on Jurisdiction, 22 December 2015, ¶ 97 (considering whether there is “substantial and credible evidence” of futility in the specific case before it).

²¹⁴ **RL-77**, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, ¶¶ 117–121. See also **RL-51**, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, ¶¶ 58–59; **CL-127**, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Jurisdiction, 9 September 2008, ¶¶ 94–95 (finding that “attempts at reaching a negotiated solution were indeed futile in the circumstances”).

meetings”²¹⁵ or “the Parties have exhausted any meaningful negotiations without result.”²¹⁶

99. Relying on cherry-picked examples, and contrary to the position it has taken in another case,²¹⁷ Armenia argues that negotiations between States should “last for years before recourse to dispute settlement.”²¹⁸ But the actual number or duration of exchanges is not dispositive.²¹⁹ For more than a century, international courts have confirmed that “[n]egotiations do not of necessity always presuppose a more or less lengthy series of notes and despatches; it may suffice that a discussion should have been commenced, and this discussion may have been *very short*.”²²⁰ The requirement is met even when “negotiations could theoretically continue,” for the simple reason that the obligation to negotiate “does not require the Parties to continue with negotiations which in advance show every sign of being unproductive.”²²¹ Tribunals will generally undertake a flexible and pragmatic analysis to assess whether settlement is actually realistic in the circumstances of each case—or whether nominal efforts by the respondent to negotiate are in reality dilatory tactics.²²² In the latter circumstance, a strict negotiation

²¹⁵ **RL-51**, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, ¶ 59; see also **RL-101**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, 12 November 2024, ¶ 58 (same).

²¹⁶ **RL-73**, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018, ¶ 76.

²¹⁷ **RL-101**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, 12 November 2024, ¶ 49 (noting Armenia’s position that “the Court has found preconditions of negotiation to have been satisfied in circumstances where exchanges between the parties had been less extensive than they were in this case,” in which the negotiations continued for only 10 months).

²¹⁸ Memorial, ¶ 140.

²¹⁹ **RL-101**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, 12 November 2024, ¶ 58 (“Moreover, the Court has held that the actual number or duration of exchanges is not dispositive in this regard.”); **RL-21**, *Mavrommatis Palestine Concessions*, Judgment No. 2, 30 August 1924, P.C.I.J. Reports Series A No. 2, at 13.

²²⁰ **RL-21**, *Mavrommatis Palestine Concessions*, Judgment No. 2, 30 August 1924, P.C.I.J. Reports Series A No. 2, at 13 (emphasis added).

²²¹ **RL-164**, *Barbados v. Trinidad and Tobago*, PCA Case No. 2004-02, Award, 11 April 2016, ¶ 199.

²²² See, e.g., **CL-129**, *Abaclat and Others v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, ¶ 564 (“Where one or both Parties [do] not have the good will to resort to consultation as an amicable means of settlement, it would be futile to force the Parties to enter into a consultation exercise which is deemed to fail from the outset. Willingness to settle is the *sine qua non* condition for the success of any amicable settlement talk.”).

requirement would unduly frustrate the ability of claimants to seek just redress in international arbitration.

100. The record in this case is clear. By the time Azerbaijan filed its Notice of Arbitration, further consultations would have been futile with respect to any and all claims by Azerbaijan under the ECT relating to Armenia's misuse of Azerbaijan's energy resources during the occupation period. Armenia refused from the outset to engage in good-faith discussions of Azerbaijan's ECT claims. The Parties exchanged no less than 30 letters and participated in three meetings over a period of over 16 months. Throughout the course of these exchanges, Armenia engaged in dilatory tactics and failed to provide any meaningful substantive response:
- a. Azerbaijan sent its Notice of Dispute on 8 October 2021, notifying Armenia of "[REDACTED]" and specifically highlighting that Armenia had committed "[REDACTED]".²²³ Azerbaijan also invited Armenia to "[REDACTED]".²²⁴ In the remainder of the Notice of Dispute, Azerbaijan shed light on the contours of the dispute; it explained that the dispute arose from Armenia's illegal occupation of Azerbaijani territories and that Armenia's conduct "[REDACTED]".²²⁵ Azerbaijan also noted that Armenia's activities "[REDACTED]".²²⁶ Azerbaijan also reserved all its other rights and remedies under international law.²²⁷
 - b. Armenia responded over a month later on 24 November 2021, disregarding the content of Azerbaijan's detailed Notice of Dispute and instead falsely claiming that the Notice did "[REDACTED]".²²⁸ Ignoring Azerbaijan's invitation to negotiate, Armenia's

²²³ CE-63.1, Azerbaijan's Notice of Dispute under the Energy Charter Treaty dated 8 October 2021, at 2.

²²⁴ *Id.* at 3.

²²⁵ *Id.* at 2.

²²⁶ *Id.*

²²⁷ *Id.* at 3.

²²⁸ CE-63.2, Letter from Armenia to Azerbaijan dated 24 November 2021, at 3.

response simply invited Azerbaijan to “[REDACTED]”²²⁹

- c. Azerbaijan responded to Armenia highlighting that its Notice of Dispute had “[REDACTED]”²³⁰
- Azerbaijan also noted that the information in the Notice “[REDACTED]”²³¹ Despite this, Azerbaijan provided further concrete details regarding Armenia’s violations of the ECT, including Armenia’s denial of access to hydropower facilities in the Tartar and Jabrayil districts; exploitation of hydropower resources in the Kalbajar, Lachin, Gubadli, and Aghdara districts; and exploitation of the Chardaghli coal mine.²³² Azerbaijan also notified Armenia that if the latter did not “[REDACTED]”²³³
- “[REDACTED],” Azerbaijan intended to submit the dispute to arbitration under ECT Article 27.²³³
- d. In the correspondence that followed, Armenia did not engage with the substance of Azerbaijan’s ECT claims. Instead, as Azerbaijan has explained,²³⁴ Armenia continued to argue that Azerbaijan’s Notice of Dispute comprised “[REDACTED]” allegations,²³⁵ and that Azerbaijan’s detailed and illustrative list of Armenia’s violations of the ECT and subsequent correspondence was a “[REDACTED]”²³⁶ This was especially notable given the long, substantive consultations between

²²⁹ *Id.*

²³⁰ **CE-63.3**, Letter from Azerbaijan to Armenia dated 20 December 2021, at 3.

²³¹ *Id.* at 4.

²³² *Id.*

²³³ *Id.*

²³⁴ *See supra* ¶ 78.

²³⁵ **CE-63.4**, Letter from Armenia to Azerbaijan dated 4 January 2022, at 3.

²³⁶ *See, e.g., id.*; **CE-63.6**, Letter from Armenia to Azerbaijan dated 9 February 2022; **CE-63.11**, Letter from Armenia to Azerbaijan dated 6 March 2022, at 2.

the Parties to “ [REDACTED] ”²³⁷ and the ensuing extensive correspondence regarding the procedural modalities.²³⁸

- e. The Parties met on 12 May 2022. At the meeting, Azerbaijan articulated in detail the factual and legal bases for its claims under the ECT,²³⁹ and noted that there was publicly available material which documented Armenia’s exploitation of Azerbaijan’s energy resources.²⁴⁰ Armenia did not engage on these points. Instead, it repeatedly stated that it needed additional time to formulate a position and prepare its substantive response.²⁴¹
- f. Even after the parties met on 12 May 2022, Armenia did not engage with the substance of Azerbaijan’s claims. Instead, Armenia complained that it was “ [REDACTED] ”²⁴² Armenia continued to insist that Azerbaijan “ [REDACTED] ”²⁴³ although Azerbaijan had by that point done so multiple times.²⁴⁴
- g. Only on 20 June 2022 did Armenia commit to “ [REDACTED] ”²⁴⁵ However, on 7 October 2022, Armenia cancelled the Parties’ next meeting scheduled for 13–14 October 2022, falsely alleging

²³⁷ **CE-63.4**, Letter from Armenia to Azerbaijan dated 4 January 2022, at 4; *see also* **CE-63.6**, Letter from Armenia to Azerbaijan dated 9 February 2022, at 4. *See also* **RL-101**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, 12 November 2024, ¶ 54 (finding that even discussions on procedural modalities “formed part of the negotiations between the Parties related to a possible settlement of the present dispute”).

²³⁸ *See, e.g.*, **CE-63.6**, Letter from Armenia to Azerbaijan dated 9 February 2022 at 4; **CE-63.8**, Letter from Armenia to Azerbaijan dated 23 February 2022, at 2–3; **CE-63.11**, Letter from Armenia to Azerbaijan dated 6 March 2022, at 3.

²³⁹ *See* **CE-63.18**, Letter from Azerbaijan to Azerbaijan dated 6 June 2022, at 1–2.

²⁴⁰ *See id.* at 4.

²⁴¹ *See id.* at 3.

²⁴² **CE-63.17**, Letter from Armenia to Azerbaijan dated 17 May 2022, at 1.

²⁴³ *Id.*

²⁴⁴ *See, e.g.*, **CE-63.5**, Letter from Azerbaijan to Azerbaijan dated 24 January 2022, at 3; **CE-63.3**, Letter from Azerbaijan to Azerbaijan dated 20 December 2021, at 3–4. *See also* **CE-63.18**, Letter from Azerbaijan to Azerbaijan dated 6 June 2022, at 1.

²⁴⁵ **CE-63.19**, Letter from Armenia to Azerbaijan dated 20 June 2022, at 2.

that Azerbaijan had launched an armed aggression²⁴⁶ and that accordingly its “[REDACTED]” had shifted.²⁴⁷

- h. The Parties ultimately met again on 24 and 25 November 2022. During and after the meeting, Armenia communicated a list of 17 questions.²⁴⁸ It did not engage with the substance of Azerbaijan’s claims.²⁴⁹ As a result, Azerbaijan expressed “ [REDACTED] ”.²⁵⁰ It was also at this juncture that Azerbaijan, as a result of continuing “ [REDACTED] ”, notified Armenia that the interruption, re-routing, and repurposing of the Y-N Pipeline “ [REDACTED] ” constituted a breach of Armenia’s obligations under Article 18 of the ECT, “ [REDACTED] ”.²⁵¹
- i. On 16 January 2023, Armenia still refused to engage on substance or constructively towards a possible resolution. Instead, it took the position that it had spent 15 months just attempting “ [REDACTED] ” Azerbaijan’s claims and stated—despite all evidence to the contrary and without any reasonable explanation—that it still viewed the claims to be somehow “ [REDACTED] ”.²⁵² And while Armenia acknowledged Azerbaijan’s notification that the dispute also encompassed claims relating to the Y-N Pipeline²⁵³—and even though those claims arose out of the same subject matter and time period, and under the same treaty, as Azerbaijan’s other ECT claims—Armenia contended that Azerbaijan’s claims in relation to the Y-N Pipeline concerned “ [REDACTED] ” under a provision not “ [REDACTED] ”.²⁵⁴
- j. Finally, in its letter dated 24 February 2023, Azerbaijan had no option but to note that “ [REDACTED] ”.

²⁴⁶ **CE-63.27**, Letter from Azerbaijan to Armenia dated 18 October 2022, at 1.

²⁴⁷ **CE-63.26**, Letter from Armenia to Azerbaijan dated 7 October 2022, at 1.

²⁴⁸ **CE-63.32**, Letter from Armenia to Azerbaijan dated 16 January 2023, at 2.

²⁴⁹ See **CE-63.31**, Letter from Azerbaijan to Armenia dated 16 December 2022, at 2.

250 *Id.* (also n
[REDACTED]”).

251 *Id.* at 1.

²⁵² **CE-63.32**, Letter from Armenia to Azerbaijan dated 16 January 2023, at 1.

253 *Id.* at 3.

254 *Id.*

any possible chance of settlement, Azerbaijan waited over two months before filing its Notice of Arbitration. It was only after receiving yet another dilatory response from Armenia on January 16, 2023, falsely accusing Azerbaijan of failing to “██████████” its claims, that Azerbaijan proceeded to file its Notice of Arbitration on February 27, 2023.²⁶³

103. Even if the Tribunal decides to give any weight to the date on which Azerbaijan expressly invoked Article 7, the record is equally clear that those claims were explicitly raised and addressed between 16 December 2022 and 27 February 2023.²⁶⁴ Armenia’s suggestion that negotiations regarding Azerbaijan’s Article 7 claims could have progressed to a point of settlement—when negotiations over the same or analogous conduct underlying the Article 18 claims had by that point irretrievably failed—cannot be credited.
104. Further, as Armenia accepts, the ECT does not set out what a “*reasonable period of time*” for negotiations would be under Article 27.²⁶⁵ Armenia’s reliance on cases where “*negotiations [lasted] years before recourse to dispute settlement*” is thus inapposite.²⁶⁶ It is also directly contrary to the position that Armenia took before the ICJ—that “*preconditions of negotiation*” were satisfied “*in circumstances where exchanges between the parties had been **less extensive** than [the 10 months] were in th[at] case.*”²⁶⁷ The Court agreed that in light of the period of negotiations between Azerbaijan and Armenia in that case—six months fewer than the Parties undertook here—“*the precondition of negotiation . . . is satisfied.*”²⁶⁸
105. The three-month “cooling off” period provided by Article 26(2) of the ECT is also of no help to Armenia here.²⁶⁹ First, even if that three-month period were

_____”); CE-63.33, Letter from Azerbaijan to Armenia dated 24 February 2023, at 1 (noting that “_____”) (emphasis added).

²⁶³ **CE-63.32**, Letter from Armenia to Azerbaijan dated 16 January 2023, at 1.

²⁶⁴ See **CE-63.31**, Letter from Azerbaijan to Armenia dated 16 December 2022, at 1–2; **CE-63.32**, Letter from Armenia to Azerbaijan dated 16 January 2023, at 3; **CE-63.33**, Letter from Azerbaijan to Armenia dated 24 February 2023, at 1–3.

265 Memorial, ¶ 139.

266 *Id.* ¶ 140.

²⁶⁷ **RL-101**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, 12 November 2024, ¶ 49.

268 *Id.* ¶ 58.

²⁶⁹ See Memorial, ¶ 141.

applicable here, which it is not since no time period appears in Article 27, the period between Azerbaijan’s Notice of Dispute and its commencement of arbitration was five times as long, satisfying any such requirement many times over.²⁷⁰ *Second*, as other tribunals construing these provisions have found, the core goal of the negotiations provisions in both Articles 26 and 27 is to encourage time for genuine negotiations.²⁷¹ As indicated by the *Mavromatis* case, what is “reasonable” in diplomatic discussions between States may vary depending upon the facts and circumstances in question.²⁷² As discussed above, the length of such a period requires an objective analysis of whether further negotiations would be futile in each particular case.²⁷³ Even if the clock for the Article 7 claims started in December 2022 rather than October 2021, which it did not, then under either standard—(1) a “three-month” period before the February 2023 Notice of Arbitration, or (2) a “reasonable time” period—would be more than satisfied given the overall context and deadlock in negotiations between the Parties.

C. Article 7(7) of the ECT Does Not Preclude Arbitration of Azerbaijan’s Article 7 Claims.

106. Armenia’s final objection—that “*Transit*” disputes are excluded from Article 27 and from this Tribunal’s jurisdiction due to the voluntary conciliation mechanism set forth in Article 7(7)²⁷⁴—finds no support in the text of the ECT, its negotiating history, or the subsequent practice of Contracting Parties. “*Transit*,” as defined under Article 7(10)(a)(ii) of the ECT and as relevant here, relates to the “*the carriage through the Area of a Contracting Party of Energy Materials and Products originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party.*”²⁷⁵

²⁷⁰ See *supra* ¶¶ 78, 100.

²⁷¹ See *supra* ¶¶ 92–94.

²⁷² **RL-21**, *Mavromatis Palestine Concessions*, Judgment No. 2, 30 August 1924, P.C.I.J. Reports Series A No. 2, at 13.

²⁷³ See, e.g., **RL-51**, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, ¶ 59 (finding that negotiations are futile when “*basic positions have not subsequently evolved*”); **CL-132**, *Luigiterzo Bosca v. Republic of Lithuania*, PCA Case No. 2011-05, Award, 17 May 2013, ¶¶ 117–118 (finding a negotiations precondition to be satisfied, despite the “*somewhat lackadaisical*” settlement efforts of the parties, by the claimant’s notice of intent sent in February 2007 and subsequent exchange of a few letters from April to November 2007); **RL-101**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, 12 November 2024, ¶ 58 (considering negotiations to be futile when there is “*no realistic possibility, at that stage, of a bilateral negotiated settlement of the disagreement between the Parties*”).

²⁷⁴ Memorial, § III.B.

²⁷⁵ **CL-1**, ECT, Art. 7(10)(a)(ii); see also *id.* Art. 1 (Definitions), Annexes EM I, EM II (encompassing natural gas within the definition of “Energy Materials and Products”).

107. Articles 7(6) and 7(7) provide in relevant part:

(6) A Contracting Party through whose Area Energy Materials and Products transit shall not, in the event of a dispute over any matter arising from that Transit, interrupt or reduce, permit any entity subject to its control to interrupt or reduce, or require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products prior to the conclusion of the dispute resolution procedures set out in paragraph (7), except where this is specifically provided for in a contract or other agreement governing such Transit or permitted in accordance with the conciliator's decision.

(7) The following provisions shall apply to a dispute described in paragraph (6), but only following the exhaustion of all relevant contractual or other dispute resolution remedies previously agreed between the Contracting Parties party to the dispute or between any entity referred to in paragraph (6) and an entity of another Contracting Party party to the dispute[.]

A Contracting Party party to the dispute may refer it to the Secretary General by a notification summarising the matters in dispute. The Secretary General shall notify all Contracting Parties of any such referral. . . . [T]he Secretary General, in consultation with the parties to the dispute and the other Contracting Parties concerned, shall appoint a conciliator.²⁷⁶

108. This plain text provides no support for Armenia's contention that Article 7(7) establishes an "*exclusive and mandatory*"²⁷⁷ conciliation mechanism for Transit-related disputes. The provision simply notes that any Contracting Party "*may refer*" the dispute to conciliation, "*following the exhaustion of all relevant contractual or other dispute resolution remedies previously agreed between the Contracting Parties party to the dispute.*"²⁷⁸ Read in context, the "*shall apply*" term simply dictates the order in which various options may be deployed, and the procedural steps for the conciliation option. It in no way mandates that conciliation must be first. On the contrary, Contracting Parties "*may*" resort to conciliation in the event that all other available dispute resolution procedures have failed. As there is no obligation for Contracting Parties to avail themselves of this conciliation procedure, it cannot possibly mandate the exclusion of disputes within its purview from the scope of Article 27.

²⁷⁶ CL-1, ECT, Art. 7(7).

²⁷⁷ Memorial, ¶ 167.

²⁷⁸ CL-1, ECT, Art. 7(7) (emphasis added).

109. Official guidance issued by the Energy Charter Conference (“ECC”) confirms that reading:
- a. In a 2016 commentary, the ECC noted that Contracting Parties may start the conciliation process by making “*voluntary referral[s]*” of a transit dispute “*to the Secretary General.*”²⁷⁹ The ECC emphasized further that “*there is no obligation for any Contracting Party to refer the Transit dispute to the conciliation process under Article 7.7 of the ECT.*”²⁸⁰
 - b. The ECC considered that there are “*three cumulative requirements . . . that have to be ‘exhausted’*” before the Article 7(7) conciliation mechanism can be engaged: “*(i) previously agreed remedies; (ii) relevant for the specific dispute at hand related to transit and (iii) entered into between Contracting Parties or between the entities mentioned in Article 7.6 of the ECT and the entities of another ‘Contracting Party party to the dispute.’*”²⁸¹
 - c. In assessing the second requirement, that of “*relevant for the specific dispute at hand,*” the ECC noted that the

*application of Article 27 of the ECT is explicitly excluded by Article 28 of the ECT for certain disputes arising out of the interpretation or application of the ECT (Articles 5 and 29). Article 7 of the ECT is not expressly excluded. Therefore, Article 27 of the ECT would be considered as “other resolution remedy previously agreed between the Contracting Parties” [if] the specific transit dispute at hand relates to an obligation contained in Article 7 of the ECT. Other transit disputes not directly linked to Article 7 of the ECT (pricing, quantity, quality...) are not covered by Article 27 of the ECT and, in those cases Article 27 is not considered as “other resolution remedy previously agreed between the Contracting Parties.” This was confirmed by the Legal Advisory Committee in 2014.*²⁸²

²⁷⁹ CL-139, Energy Charter Secretariat, *Commentary to the Rules Concerning the Conduct of Conciliation of Transit Disputes*, 20 June 2016, ¶ 12 (emphasis added). See also *id.* at 1 (noting that, in adopting the Commentary, the Conference simply “encouraged Contracting Parties to consider to use, on [a] voluntary basis, the Conciliation mechanism to facilitate a fast and amicable solution of inter-state transit disputes”).

²⁸⁰ *Id.* ¶ 66 (emphasis added).

²⁸¹ *Id.* ¶ 56 (emphases in original).

²⁸² *Id.* ¶ 59 (emphasis added). See also *id.* ¶ 51 (“[I]f the relevant dispute resolution mechanism has resulted in a final, binding decision there is no dispute to be resolved any more and as a consequence, no need to resort to the conciliation proceedings.”).

In other words, the ECC expressly contemplated Article 27 inter-State arbitration *before* referral of the Transit dispute to conciliation when a Transit dispute concerns “*the application or interpretation*” (as Article 27(1) puts it) of Article 7, or any portion thereof.²⁸³

110. Here, Azerbaijan’s arguments squarely fall within and are directly linked to Armenia’s obligations under Article 7—namely Articles 7(1), 7(2)(c), 7(3), and 7(5).²⁸⁴ There can therefore be no question that the dispute resolution mechanism in Article 27 covers Azerbaijan’s claims under Article 7, over which the Tribunal must exercise jurisdiction.
111. This authoritative ECC guidance also refutes Armenia’s contention that submitting Transit disputes arising under Article 7 to Article 27 arbitration would lead to the “*absurd result*” that a party would never be allowed to interrupt or reduce transit as contemplated by Article 7(6).²⁸⁵ As the ECC guidance states, Article 27 arbitration is a “*dispute resolution remed[y] previously agreed between the Contracting Parties party to the dispute,*”²⁸⁶ and thus if the arbitration resolved the Transit dispute in favor of the State through which the transit was occurring, that would constitute a “*conclusion of the dispute resolution procedures set out in*” Article 7(7), allowing for the interruption or reduction of transit.²⁸⁷
112. Unable to succeed on the clear language of Article 7(7), Armenia not only ignores the official ECC guidance, but also cherry picks references to secondary sources in an attempt to bolster its arguments. This attempt cannot survive review of the full text of these sources:
- a. Armenia refers to Professor Hobér in arguing that “*Article 7(7) thus has a broad scope of application* *ratione materiae.*”²⁸⁸ But—in text omitted from Armenia’s Memorial—Professor Hobér expressly concludes that Transit

²⁸³ See also *id.* ¶ 64 (noting that “it would be possible to start conciliation under Art. 7.7 ECT prior to the arbitration provided for in Article 27 of the ECT” only “if there is an express agreement of the ‘Contracting Parties party to the dispute,’” as “Article 27.2 of the ECT states that a Contracting Party may submit the dispute to arbitration except otherwise agreed in writing. Therefore, Contracting Parties could agree to go conciliation instead or prior to arbitration”). There is no such written agreement for conciliation here.

²⁸⁴ Statement of Claim, ¶¶ 246–249.

²⁸⁵ Memorial, ¶ 169.

²⁸⁶ CL-1, ECT, Art. 7(7).

²⁸⁷ *Id.* Art. 7(6); see CL-139, Energy Charter Secretariat, *Commentary to the Rules Concerning the Conduct of Conciliation of Transit Disputes*, 20 June 2016, ¶ 59.

²⁸⁸ Memorial, ¶ 165 (citing CL-59, K. Hobér, “The Energy Charter Treaty: A Commentary” (2020), at 165, 168).

disputes concerning the “*application or interpretation*” of the ECT can indeed fall within the scope of Article 27 such that Article 7(7) conciliation need not be pursued to the exclusion of Article 27 inter-State arbitration:

One Contracting Party can invoke Article 27 against another Contracting Party for settling disputes concerning the application or interpretation of the ECT. Apart from disputes arising from Articles 5 and 29, Article 27 does not limit its scope of applicability to any particular kind of disputes between Contracting Parties, thus—at least indirectly—covering any and all such disputes, including a dispute over transit. From this perspective, Article 27 of the ECT seems to be an alternative to the conciliation procedure set out in [Article 7(7)]. . . .

*[The] state-to-state arbitration pursuant to Article 27 . . . is available to Contracting Parties [after,] before and during a conciliation procedure.*²⁸⁹

Hence even the commentary on which Armenia relies does not support its contention that Azerbaijan has no choice but to submit its dispute to Article 7(7) conciliation before or instead of Article 27 inter-State arbitration. In fact, it states precisely the opposite.

- b. Similarly, the article by Professor Roggenkamp selectively cited by Armenia is inapposite.²⁹⁰ In the sentence immediately preceding the one quoted by Armenia, Professor Roggenkamp states that, in the event of a Transit dispute, the Transit State shall not interrupt or reduce Transit “*prior to the conclusion of one of the dispute settlement procedures of the ECT.*”²⁹¹ This clearly contemplates that Article 7(7) conciliation would not be the only dispute resolution procedure available under the Treaty to

²⁸⁹ **CL-59**, K. Hobér, “The Energy Charter Treaty: A Commentary” (2020), at 169, 174 (emphases added). *See also* **CL-124**, K. Hobér, *The Energy Charter Treaty: An Overview*, 8 J. World Inv. & Trade 323 (2007), at 327 (explaining that ECT Art. 7(7) “sets out the *possibility* of appointing a special conciliator, via the Secretary-General of the ECT, in the case of a dispute regarding the transit of Energy Materials and Products”) (emphasis added).

²⁹⁰ Memorial, ¶ 167 (arguing that Article 7(7) conciliation “is a compulsory dispute-resolution mechanism for transit disputes”) (citing **RL-106**, M. M. Roggenkamp, “Transit of Network-bound Energy: the European Experience,” in T. W. Wälde (ed.), *The Energy Charter Treaty: An East-West Gateway for Investment and Trade* (1996), at 511 (“Unless the contract or other agreement renders special provisions regarding the interruption or reduction of transit, the dispute settlement mechanism of Article 7(7) applies.”)).

²⁹¹ **RL-106**, M. M. Roggenkamp, “Transit of Network-bound Energy: the European Experience,” in T. W. Wälde (ed.), *The Energy Charter Treaty: An East-West Gateway for Investment and Trade* (1996), at 511 (emphasis added).

resolve a Transit dispute. Professor Roggenkamp goes on to observe that Article 7(7) conciliation applies to the “*interruption or reduction of transit*” unless such interruption or reduction is specially provided for in a contract or other agreement governing the Transit.²⁹² But this merely reiterates the text of Articles 7(6) and 7(7), which prioritize other “*previously agreed*” dispute resolution remedies over the Article 7(7) conciliation procedure.²⁹³

- c. Likewise, Dr. Azaria describes Article 7(7) as a “*special*” dispute settlement mechanism for Transit disputes, as opposed to the “*general*” mechanisms in Articles 26 and 27. That straightforward observation that Article 7 is special to Transit has no bearing on the exclusivity of one mechanism vis-à-vis another in circumstances where multiple mechanisms might apply to the same dispute.²⁹⁴ Armenia’s reliance on Dr. Azaria to suggest that conciliation is “*compulsory*” to the exclusion of Article 27 is inapt;²⁹⁵ in context, Dr. Azaria was simply referring to the variety of dispute resolution mechanisms to which the Contracting Parties had agreed, including both arbitration and conciliation.²⁹⁶
 - d. Finally, while Dr. Konoplyanik and Professor Wälde suggest that Article 7 “*derogates*” from the inter-State dispute resolution regime in Article 27, they consider the matter in no more than two sentences, with no elaboration or further reference to other sources.²⁹⁷ That passing reference, with no reasoning or support, cannot possibly outweigh the plain meaning of the text and the official ECC guidance.
113. Nor can Armenia’s *lex specialis* argument, that Article 7(7) must prevail over Article 27 as “*a more specific dispute-resolution mechanism*,”²⁹⁸ rescue this objection. Even if *lex specialis* could be applied to defeat the plain meaning of the text, which it cannot, the total displacement model suggested by Armenia’s

²⁹² *Id.*

²⁹³ **CL-1**, ECT, Arts. 7(6), 7(7).

²⁹⁴ **CL-45**, D. Azaria, *Energy Transit under the Energy Charter Treaty on General Agreement on Tariffs and Trade*, 27 J. Energy & Nat. Resources L. 559 (2009), at 563–564.

²⁹⁵ Memorial, ¶ 161.

²⁹⁶ **CL-45**, D. Azaria, *Energy Transit under the Energy Charter Treaty on General Agreement on Tariffs and Trade*, 27 J. Energy & Nat. Resources L. 559 (2009), at 563–564.

²⁹⁷ **CL-42**, A. Konoplyanik & T. Wälde, *Energy Charter Treaty and its Role in International Energy*, 24 J. Energy & Nat. Resources L. (2006) 523, at 547 (“*Special provisions have been developed in the ECT for the resolution of inter-state disputes in the area of trade (Article 29, Annex D) and transit (Article 7). They derogate from the otherwise applicable general provisions on state-to-state dispute settlement.*”).

²⁹⁸ Memorial, ¶ 167.

argument, in which the more specific norm entirely supplants the general, has been almost universally rejected. Instead, courts and commentators, including the ICJ and the UN International Law Commission, favor an approach that harmonizes simultaneously applicable norms.²⁹⁹ Here, the ECC guidance—that Article 27 inter-State arbitration is an “*other dispute resolution remed[y]*”³⁰⁰ to be exhausted before an Article 7 dispute between Contracting Parties may be referred to Article 7(7) conciliation, unless the parties agree otherwise—is exactly the harmonious reading that should be adopted.

114. The context, object and purpose, subsequent practice of the Contracting Parties, and the *travaux* of Article 7(7)³⁰¹ also all support Azerbaijan’s interpretation.
115. *First*, the structure and context of the ECT support Azerbaijan’s position that Transit claims arising under Article 7 can be arbitrated under Article 27. As Armenia admits,³⁰² Article 27 is broad and applicable to “*disputes concerning the application or interpretation*”³⁰³ of the ECT. The only carve-outs to Article 27 are the “*certain disputes*” specifically listed out in Articles 27(2) and 28 ECT, all of which are irrelevant here.³⁰⁴ Tellingly, Armenia in its Memorial omits any discussion whatsoever of Article 27’s expressly broad scope and the drafters’ deliberate exclusion of certain ECT provisions—but not Article 7, or anything else having to do with “*Transit*”—from the scope of inter-State arbitration. If Article 7(7) conciliation operated to the exclusion of inter-State arbitration, then it would have been easy for the drafters to include Article 7 as an Article 27 exception. They did not.

²⁹⁹ See, e.g., **CL-122**, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, ¶ 106; **RL-36**, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶ 25; **RL-153**, International Law Commission (ILC), *Fragmentation of International Law, Report of the Study Group* (18 July 2006), at 9–10 (“*The application of the special law does not normally extinguish the relevant general law. That general law will remain valid and applicable and will, in accordance with the principle of harmonization . . . continue to give direction for the interpretation and application of the relevant special law and will become fully applicable in situations not provided for by the latter.*”).

³⁰⁰ **CL-1**, ECT, Art. 7(7).

³⁰¹ **CL-11**, VCLT, Arts. 31, 32.

³⁰² Memorial, ¶ 160, n. 314.

³⁰³ **CL-1**, ECT, Art. 27(1).

³⁰⁴ *Id.* Art. 27(2) (“*If a dispute has not been settled in accordance with paragraph (1) . . . , either party thereto may, . . . except as concerns the application or interpretation of Article 6 or Article 19 or, for Contracting Parties listed in Annex IA, the last sentence of Article 10(1), upon written notice to the other party to the dispute submit the matter to an ad hoc tribunal under this Article.*”); *id.* Art. 28 (“*Non-Application of Article 27 to Certain Disputes: A dispute between Contracting Parties with respect to the application or interpretation of Article 5 or 29 shall not be settled under Article 27 unless the Contracting Parties parties to the dispute so agree.*”).

116. *Second*, the object and purpose of Article 7(7)’s conciliation mechanism is to ensure “international energy security with immediate effect rather than finding full answers to the details of contractual and operational arrangements that might be disputed among the parties.”³⁰⁵ If a matter is referred to conciliation, the conciliator’s decision only “has an interim character and seeks to provide an incentive to the Parties to force themselves to reach an agreement during the conciliation.”³⁰⁶
117. This does not mean, as Armenia suggests,³⁰⁷ that the final resolution of the underlying Transit dispute cannot proceed until a conciliation process has been completed. On its face, Article 7(7) permits referral to conciliation under the ECT “only following the exhaustion of all relevant contractual or other dispute resolution remedies,”³⁰⁸ with such “other” remedies including international arbitration, which may “take twelve to eighteen months.”³⁰⁹ The availability of international arbitration as a mechanism satisfying the preconditions to engaging conciliation undermines Armenia’s invocation of speed as a factor in favor of construing Article 7(7) as a mandatory and exclusive mechanism.
118. Instead, it is much more consonant with Article 7(7)’s object and purpose to construe the conciliation mechanism as a *voluntary* process to be engaged when the circumstances call for an expedited interim solution to a transit dispute—for example, in pricing or tariff disputes. Transit disputes concerning the application and interpretation of Article 7 in the non-urgent circumstances of this case do not require the same sort of expeditious intervention of a conciliator.
119. *Third*, the only publicly available record of relevant State practice supports Azerbaijan’s submission of its Article 7 claims to inter-State arbitration under Article 27. In 2002, a dispute arose between Slovenia and Croatia concerning restrictions on the transit of oil and oil products.³¹⁰ During consultations between

³⁰⁵ **CL-139**, Energy Charter Secretariat, *Commentary to the Rules Concerning the Conduct of Conciliation of Transit Disputes*, 20 June 2016, ¶ 7. See also *id.* ¶ 11 (“The aim of the mechanism was to have an immediate, flexible and fast way of leading parties out of an impasse. There is not an intention to interfere or challenge a final resolution reached by the relevant previously agreed dispute resolution remedy.”).

³⁰⁶ *Id.* ¶ 127 (emphasis added). Armenia agrees that Article 7(7) is meant to guarantee “interim dispute resolution.” See Memorial, ¶¶ 170, 172.

³⁰⁷ Memorial, ¶ 171.

³⁰⁸ **CL-1**, ECT, Art. 7(7).

³⁰⁹ **CL-59**, K. Hobér, “The Energy Charter Treaty: A Commentary” (2020), at 169.

³¹⁰ **CL-45**, D. Azaria, *Energy Transit under the Energy Charter Treaty and the General Agreement on Tariffs and Trade*, 27 J. Energy and Nat. Resources L. 559 (2009), at 587; see **CL-119**, Communication from the Republic of Slovenia, Croatian Ban on Road Transit of Crude Oil and Oil Products, G/C/W/346 (5 February 2002).

the parties under the auspices of the ECT's Working Group on Trade, the ECT Secretariat, and the Conference Chairman, Slovenia took the position that the parties' discussions of its transit claim fell within the scope of Article 27(1) ECT (contemplating diplomatic consultations prior to commencing any Article 27 arbitration).³¹¹ None of Slovenia, Croatia, or the ECT facilitators raised Article 7(7)'s conciliation mechanism in the context of this inter-State oil transit dispute, much less argued that the mechanism was exclusive.

120. *Fourth*, contrary to Armenia's arguments, nothing in the ECT *travaux* indicates that the ECT Contracting Parties intended the dispute resolution mechanisms in Articles 7(7) and 27 to be mutually exclusive. In fact, the *travaux* point in the opposite direction:
 - a. A 1992 Memorandum reporting on the European Energy Charter Basic Agreement Negotiations prepared by Craig Bamberger, then-Chair of the Legal Advisory Committee, noted that, excepting disputes between GATT and non-GATT countries when "*pure*" GATT provisions were at issue, "*binding arbitration would apply to every other dispute arising under the Agreement, including disputes based on trade provisions that are not identical with the analogous provisions of the GATT (e.g. [then] Article 11 on 'Transport and Transit')*."³¹²
 - b. In 1994, Bamberger expressed the view that "*nothing in Article 8 [the then-draft Transit provisions] or elsewhere in the ECT insulates paras (6) and (7) [current Articles 7(6) and 7(7)] from the Art. 31 dispute settlement procedures [current Article 27]*."³¹³ He went on to describe

³¹¹ See **CL-120**, Energy Charter Secretariat, Decision of the Energy Charter Conference, CCDEC200201 (20 June 2002), at 4 ("[T]he Trade Group had reviewed, at the request of Slovenia, recent measures introduced by Croatia with regard to road transit of oil products. Slovenia had informed the Group that it had requested bilateral consultations with the Croatian side under Article 27(1) of the Treaty in order to resolve this issue. The Chairman of the Trade Group noted that the Secretariat had offered its good offices to both parties in order to facilitate a settlement. The delegation of Croatia informed the Conference that the Croatian Ministry of Economy was giving consideration to this question and would respond soon. The delegation of Slovenia thanked the Secretariat and the Chairman of the Trade Group for their efforts to resolve this matter, but expressed regret that no response had yet been forthcoming to Slovenia's efforts on a bilateral basis to suggest means of achieving a solution. The Conference Chairman urged both parties to make every effort to resolve the above-mentioned issue on an amicable basis bilaterally, within the framework of the Treaty."); see also **CL-59**, K. Hobér, "The Energy Charter Treaty, A Commentary" (2020), at 478–479; **CL-45**, D. Azaria, *Energy Transit under the Energy Charter Treaty and the General Agreement on Tariffs and Trade*, 27 J. Energy & Nat. Resources L. 559 (2009), at 587–588.

³¹² **CL-25**, C. Bamberger, Memorandum describing ECT Basic Agreement Negotiations 14–19 December 1992 (23 December 1992), ECT Travaux, at 3.

³¹³ **CL-113**, Fax from C. Bamberger to C. L. Jones regarding "Art. 8(6) and (7)" (16 July 1994), ECT Travaux, at 2.

circumstances where inter-State arbitration and conciliation might occur “*simultaneously*,” such as an inter-State arbitration to determine whether a dispute is eligible for conciliation.³¹⁴

- c. Bamberger later corresponded on this score with Sydney Fremantle, then-Chair of the ECT Working Group. Fremantle noted that it was not “*right to suggest that there are no rules governing the marshalling of Article 8(7) [current Article 7(7)] conciliation and Article 31 [current Article 27] arbitration. The question of whether a dispute falls within Article 8(6) must surely be for Article 31 procedures*,” with conciliation “*com[ing] into play only after any claim that a dispute is not covered by para 6 has been resolved under Article 31 [current Article 27]*.”³¹⁵ Fremantle further considered that “*para 7(a) requires Contracting Parties to a dispute referred to in paragraph 6 to exhaust any contractual or other dispute resolution remedies they have previously agreed, which must include Article 31 [current Article 27]*.”³¹⁶
121. In addition to these legal arguments, which prove fatal to Armenia’s contentions, it is worth noting that Armenia is once again urging this Tribunal away from procedural fairness and efficiency. If the Tribunal were to reject jurisdiction over Azerbaijan’s Article 7 claims on this ground, but retain jurisdiction over the Article 18 claims, Azerbaijan would be forced to refer the Article 7 claims to the Article 7(7) conciliation process. This would result in parallel proceedings adjudicating the same overlapping set of facts—including the splintering of the Y- N Pipeline claims, which fall under both Articles—and potentially arriving at inconsistent conclusions. The fundamental unfairness and inefficiency of such a result is particularly acute given the evidence of Armenia’s failure to constructively engage on any of Azerbaijan’s ECT claims.³¹⁷ Moreover, Armenia’s rejection of the premise that Azerbaijan’s Y-N Pipeline claims constitute a Transit-related dispute under Article 7³¹⁸ could even force the threshold question of whether those claims are eligible for conciliation into a separate Article 27 arbitration.³¹⁹
122. In short, accepting Armenia’s arguments here would needlessly delay resolution of Azerbaijan’s claims for years to come. The Contracting Parties cannot possibly

³¹⁴ *Id.* at 4.

³¹⁵ **CL-114**, Letter from S.W. Fremantle to C. Bamberger regarding “Article 8(6) and (7)” (22 July 1994), ECT Travaux, at 2–3.

³¹⁶ *Id.*

³¹⁷ *See supra* ¶¶ 78, 100.

³¹⁸ Bifurcation Request, ¶¶ 127–136.

³¹⁹ *See supra* ¶ 120(c).

have intended an interpretation of the interplay between Article 7(7) and Article 27 that would lead to such fundamentally inequitable and deeply inefficient results.

IV. REQUEST FOR RELIEF

123. For the reasons set out above, Azerbaijan respectfully requests that the Tribunal:

- a. Dismiss with prejudice all of Armenia's objections being heard in this preliminary phase;
- b. Order Armenia to bear all costs incurred by Azerbaijan in opposing Armenia's preliminary objections; and
- c. Order such other relief as the Tribunal deems just and necessary in the circumstances.

Respectfully submitted,



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