

**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 REJOINDER ON PRELIMINARY OBJECTIONS

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I. INTRODUCTION

1. Azerbaijan presents this Tribunal with a focused dispute under the Energy Charter Treaty (“*ECT*” or “*Treaty*”): whether Armenia’s conduct concerning specific energy resources breached the obligations that Armenia accepted under the Treaty. That inquiry falls squarely within the Treaty’s scope, which expressly protects Contracting Parties’ sovereign rights over their energy resources, and thus falls well within the Tribunal’s Article 27 jurisdiction.¹
2. To reach this conclusion, the Tribunal need not look beyond the four corners of the Treaty itself.
3. *First*, as to Article 18: A straightforward application of the Vienna Convention on the Law of Treaties (“*VCLT*”) interpretive principles demonstrates that Articles 18(1) and 18(3) are operative provisions that contain inter-State obligations. Article 27 provides that disputes regarding the failure to comply with those obligations can be resolved via arbitration. This operative language, and the placement of Article 18 within the ECT’s substantive obligations, confirm that Articles 18(1) and 18(3) are not merely declaratory or interpretive, but are substantive treaty rights that Contracting Parties can enforce in inter-State arbitration. Article 18 is not excepted from the arbitration procedure set out in Article 27, and nothing in the surrounding provisions—including Article 18(2)—diminishes this ordinary reading of the text.
4. The ECT’s object and purpose reinforce this interpretation. The Treaty establishes a comprehensive framework to ensure long-term cooperation, stability, and predictability in the development, management, and transit of energy resources—an objective that necessarily depends on clear, enforceable commitments among States regarding the exercise of sovereign rights over energy resources. Article 18 plays an integral role in this architecture: it codifies the foundational premise upon which the ECT’s framework rests.
5. Recourse to the *travaux préparatoires* is neither necessary nor determinative; however, the *travaux* corroborate the conclusion reached under the VCLT Article 31 analysis—namely, that Articles 18(1) and 18(3) of the ECT were intended to create binding inter-State commitments, not merely serve as a declaratory statement or interpretive aid.
6. Unlike Azerbaijan’s simple and textually grounded approach, Armenia presents the Tribunal with a series of distractions that are unmoored from the Treaty’s text and unrelated to Azerbaijan’s actual claims. Armenia’s Reply continues to depict this case as an attempt by Azerbaijan to “*shoehorn*” a broader dispute over the decades-

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

long Garabagh conflict into the ECT. That is wrong. This dispute relates solely to Armenia's improper blocking, exploitation, and impairment of energy resources that belong to Azerbaijan. The fact that aspects of this dispute unfolded during periods of armed conflict does not displace the Tribunal's jurisdiction under the ECT over the specific treaty obligations Azerbaijan seeks to enforce.

7. Armenia's misdirection continues throughout the Reply's purported VCLT analysis. For example:
 - a. Instead of engaging with the ordinary meaning of the text as written, Armenia isolates words from their proper context;
 - b. Armenia presents a selective interpretation of International Court of Justice ("*ICJ*") jurisprudence that is irrelevant to the provisions of Article 18 invoked by Azerbaijan;
 - c. Armenia distorts the ECT's object and purpose by recasting the Treaty as concerned almost exclusively with investor-State relations, and ignoring the substantial parts of the Treaty framework and text that cover inter-State relations in other areas such as trade, inter-State transit, competition, the environment, and sovereignty over natural resources;
 - d. Armenia's subsequent practice arguments are divorced from both law and logic—the absence of prior inter-State arbitration asserting claims under Article 18 is not "*subsequent practice*" under VCLT Article 31(3)(b); nor does the lack of such practice indicate agreement among all Contracting Parties that such claims cannot be brought. If that were the standard, no ECT provision could ever be enforced under Article 27, as no State has previously invoked Article 27 to enforce any provision.
 - e. Armenia's strained invocation of good faith strips Articles 18(1) and 18(3) of *effet utile*, essentially asking the Tribunal to make a dead letter of a fundamental provision of the Treaty.
8. Put simply, Azerbaijan's good-faith reading of Article 18 gives effect to the ordinary and contextual meaning of that provision. Armenia's claim that the Tribunal giving effect to the ordinary meaning of Article 18 would open the door to a parade of horrors is not a serious one. The present dispute does not concern, and this Tribunal is not asked to resolve, any contest over territorial sovereignty or any aspect of self-determination. Azerbaijan's sovereignty over the territory where the energy resources at issue are located has never been in dispute. In short, a good-faith reading reinforces, rather than undermines, the conclusion that Articles 18(1) and 18(3) are operative and enforceable.
9. *Second*, as to Article 7, which is the principal focus of Armenia's challenges to Azerbaijan's claims concerning the Y-N Pipeline: these objections, too, are

misconceived. Armenia contends these claims are outside the Tribunal's jurisdiction because (i) there was no "*dispute*" between the Parties over those claims; (ii) Azerbaijan failed to fulfil the "*precondition*" to negotiate those claims; and (iii) Article 7(7) establishes a mandatory conciliation mechanism for transit disputes that displaces Article 27 arbitration.

10. None of those propositions withstands scrutiny. Azerbaijan identified a single, continuing dispute concerning Armenia's interference with Azerbaijan's sovereign rights over its energy resources, which includes natural gas and gas pipelines, and implicates the full length of the Y-N Pipeline from the formerly Occupied Territories through to the exclave of Nakhchivan; the Parties consulted over that dispute for a reasonable period; and nothing in Article 7 displaces Armenia's consent to State-to-State arbitration under Article 27.
11. Armenia's objections to the Y-N Pipeline claims also rest on a strained reading of Article 27's consultation provisions. These provisions are designed to encourage amicable resolution, not to operate as jurisdictional traps. International practice confirms that tribunals refrain from treating negotiation or notice provisions as rigid barriers where further discussions would have been futile or where the dispute, as noticed, already encompassed the issues later presented for arbitration.
12. Finally, Armenia's reliance on Article 7(7) as a mandatory *lex specialis* that entirely displaces Article 27 arbitration in the event of an inter-State transit dispute cannot be reconciled with the text, context, or purpose of either provision. As leading commentators have confirmed, the Treaty gives Contracting Parties a suite of dispute-resolution options; it neither requires conciliation before arbitration, nor carves transit disputes out of Article 27 jurisdiction. Adopting Armenia's reading, and treating Article 7(7) as a mandatory prerequisite, would lead to incoherent bifurcation of claims and undermine the ECT's purpose of facilitating cooperation and predictable dispute settlement between States.
13. In sum, Armenia's preliminary objections do not engage with the claims Azerbaijan has actually advanced or the treaty the Parties actually concluded. Each objection depends either on recasting the dispute as something it is not, or on readings of the ECT that cannot be reconciled with its text, structure, and purpose. When the fundamental principles of treaty interpretation are properly applied, the outcome is clear: both the Article 18 claims and the Y-N Pipeline claims fall within the Tribunal's jurisdiction under Article 27. The Tribunal should therefore dismiss Armenia's objections in full.

II. THE TRIBUNAL HAS JURISDICTION OVER AZERBAIJAN'S CLAIMS UNDER ARTICLE 18.

14. To establish its jurisdiction over Azerbaijan's Article 18 claims, the Tribunal need only answer two questions: *first*, do Articles 18(1) and 18(3) give rise to legally

binding rights and obligations; and *second*, are those rights and obligations enforceable as between Contracting Parties. As Azerbaijan has demonstrated—and confirms below—the answer to both questions is yes. Armenia’s Reply seeks to confuse these inquiries through a series of interpretive moves that detach Articles 18(1) and 18(3) from their text, context, and function within the Treaty. That approach obscures the dispositive issue: whether Articles 18(1) and 18(3) are capable of serving as the basis for inter-State claims under Article 27 of the Treaty.

15. **Section II.A** of this Rejoinder explains why Armenia’s assertion that Articles 18(1) and 18(3) are merely declaratory or interpretive is irreconcilable with the ordinary meaning of the provisions, read in their proper textual and structural context. **Section II.B** responds again to Armenia’s attempt to narrow the ECT’s object and purpose to investor-State relations, explaining why the Treaty’s architecture and drafting history support the position that Article 18 imposes enforceable inter-State obligations. **Section II.C** demonstrates that Armenia’s reliance on the alleged “*absence of subsequent practice*” fundamentally misapplies VCLT Article 31(3)(b) and cannot negate jurisdiction. **Section II.D** confirms that, although not determinative, the *travaux préparatoires* support Azerbaijan’s interpretation. Finally, **Section II.E** explains why Armenia’s approach is inconsistent with the principle of good-faith interpretation and would deprive Article 18 of *effet utile*.

A. Article 18 Establishes Enforceable Obligations by the Ordinary Meaning of Its Terms, Read in Their Proper Context.

16. As Azerbaijan has demonstrated in its Statement of Claim and Counter-Memorial, Article 18 is neither a preambular nor aspirational statement but an operative clause situated in Part IV of the Treaty, containing binding language that requires States to “*recognise*” each other’s sovereign rights over energy resources and providing a concrete enumeration of those rights.² The phrasing of Articles 18(1) and 18(3) reflects an intention to reinforce the obligation of each Contracting Party not to interfere with another Party’s exercise of its sovereign rights over its energy resources:

Article 18: Sovereignty over Energy Resources

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

...

² See Statement of Claim, ¶¶ 187–188, 196, 199; Azerbaijan’s Counter-Memorial on Preliminary Objections dated 4 August 2025 (“*Counter-Memorial*”), ¶¶ 18, 20–22, 24, 27–28, 37.

(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 and exploitation, inter alia, through direct participation by the government or through state enterprises.*³

17. Far from merely restating existing principles without substantive effect, Article 18 serves as a cornerstone of the ECT’s cooperative legal framework, defining how sovereignty and sovereign rights must be exercised under the Treaty and forming a valid basis for inter-State adjudication under Article 27.⁴
18. On Reply, Armenia repackages its Memorial arguments asserting that Article 18 is merely an “*affirmation*” that “*serves to ‘throw light on the interpretation’*” of the ECT’s other provisions.⁵ Rather than repeating arguments already made in response to points Armenia has already raised, Azerbaijan addresses below why Armenia’s position remains untenable: Armenia’s reading of Article 18 is atextual and acontextual (**Section II.A.1**), defies treaty practice (**Section II.A.2**), and is not supported by the selective ICJ jurisprudence it invokes (**Section II.A.3**).

1. Armenia’s Reading of Article 18 Is Atextual and Acontextual.

(a) The Obligation to “Recognise” Set Out in Article 18(1) ECT Entails Inter-State Legal Consequences.

19. As addressed at length in Azerbaijan’s Counter-Memorial,⁶ Armenia’s interpretation of Article 18 fails to engage with the provision’s actual language in accordance with the ordinary meaning of its terms.⁷ Azerbaijan addresses below the principal respects by which Armenia’s Reply seeks to recast its case, and explains why those efforts fail.

³ **CL-1**, Energy Charter Treaty (“*ECT*”), Art. 18(1)–(3).

⁴ See Counter-Memorial, ¶¶ 18, 21–29, 33–37.

⁵ Armenia’s Reply on Preliminary Objections dated 4 November 2025 (“*Reply*”), ¶¶ 8, 47–49, 69, 83, 118; see also Armenia’s Memorial on Preliminary Objections dated 3 April 2025 (“*Memorial*”), ¶¶ 8, 26, 34–35, 37–42.

⁶ See Counter-Memorial, ¶¶ 18–37.

⁷ See Reply, ¶¶ 44–89.

20. Armenia initially argued in its Memorial that Azerbaijan’s reading of the verb “*recognise*” ignored treaty drafting distinctions between “*mandatory*” and “*non-compulsory*” language.⁸ As Azerbaijan demonstrated in its Counter-Memorial, however, there are no magic words capable (or incapable) of generating binding obligations in all instances.⁹ In its Reply, Armenia pivots away from this focus on mandatory versus non-mandatory language, instead arguing that Azerbaijan is ascribing a “*universal and binding meaning*” to “*recognise*” and failing to interpret the term in its proper context.¹⁰ Azerbaijan has never argued, however, that the verb “*recognise*” should be interpreted in isolation.¹¹ Whether “*recognise*” gives rise to a binding obligation necessarily depends on what the parties have agreed to recognize.
21. In the *Territorial Dispute* case, for example, the ICJ made clear that “[t]he word ‘*recognize*’ used in the [Franco-Libyan Treaty of Friendship and Good Neighbourliness of 10 August 1955] indicates that a legal obligation is undertaken.”¹² By agreeing to “*recognize*” a frontier, the parties undertook “*to respect it and to renounce the right to contest it in future.*”¹³ Armenia argues that this interpretation is confined to the specific context of territorial title and boundary delimitation, and therefore cannot be “*neatly transposed*” to inform the interpretation of Article 18.¹⁴ That contention is overly narrow. The Court’s reasoning did not turn on the subject matter of frontiers as such, but on the legal significance of the act of recognition.¹⁵ To “*recognize*” a legal status is to accept it as operative and to “*draw legal consequences from its existence.*”¹⁶
22. This use of “*recognize*” to set forth States’ legal obligations in relation to a frontier is directly analogous to the use of “*recognise*” in Article 18(1) to set forth States’ legal obligations in relation to energy resources. Both carry the same legal weight, requiring a State to accept a sovereign legal status and to act consistently with that

⁸ Memorial, ¶¶ 38, 41.

⁹ Counter-Memorial, ¶¶ 27–28.

¹⁰ Reply, ¶ 67; *see also id.* ¶¶ 52–63.

¹¹ *See* Counter-Memorial, ¶¶ 38–41, 43; *contra* Reply, ¶¶ 22, 23, 31, 35.

¹² **CL-31**, *Territorial Dispute* (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994, ¶ 42.

¹³ *Id.*

¹⁴ Reply, ¶¶ 52–54.

¹⁵ *See CL-31*, *Territorial Dispute* (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994, ¶¶ 43, 45. *See also CL-211*, *Land and Maritime Delimitation and Sovereignty over Islands* (Gabon/Equatorial Guinea), Judgment, I.C.J. Reports 2025, ¶ 77 (“According to Article 3 of the ‘Bata Convention’, the Parties further ‘*recognize*’ (‘*reconnaissent*’) that Mbanié/Mbañe forms an integral part of the territory of Gabon and that the ‘Elobey Islands and Corisco Island’ form an integral part of the territory of Equatorial Guinea. The verb ‘*to recognize*’ suggests that a legal obligation is undertaken.”).

¹⁶ *Id.* ¶ 42; *see also* Counter-Memorial, ¶¶ 18, 20–21.

acceptance.¹⁷ Just as recognizing a frontier entails accepting between the States concerned that boundary as definitive and not subject to challenge,¹⁸ recognizing each State’s sovereignty and sovereign rights over energy resources entails accepting among the Contracting Parties sovereignty over the natural resources within the State’s territory.¹⁹ The fact that one provision concerns territory and the other concerns energy resources present within that territory does not alter the legal function of recognition. In each case, the obligation is to respect and acknowledge a sovereign entitlement.²⁰

23. Armenia’s continued reliance on the Paris Agreement and the ICJ’s *Climate Change Advisory Opinion* only underscores the atextual nature of its reading.²¹ The aspirational provisions relied upon by Armenia from the Paris Agreement are not analogous to ECT Articles 18(1) and 18(3). They are framed in fundamentally different terms and serve a different function.²² As the ICJ explained in its Advisory Opinion, Articles 7(2), (4), (5), and (6) of the Paris Agreement merely acknowledge general scientific and policy realities: that adaptation is a global challenge; that the current need for adaptation is significant and interlinked with mitigation efforts; and that support and international cooperation on adaptation are important.²³
24. These provisions do not regulate conduct or allocate rights and obligations between States. Rather, they “*reflect a common understanding of the parties as to the nature of the problem being addressed*” and therefore operate only as contextual statements to inform the interpretation of other, standard-setting provisions of Article 7.²⁴ The Court was explicit that such clauses “*do not prescribe obligations of a legally binding character,*” but instead frame the background against which

¹⁷ **CL-31**, *Territorial Dispute* (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994, ¶ 42.

¹⁸ *Id.*

¹⁹ Counter-Memorial, ¶ 18 (citing **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).

²⁰ *See* Counter-Memorial, ¶¶ 20–21.

²¹ *See* Reply, ¶¶ 62–63.

²² *See* Reply, ¶¶ 62–63; *see also* **RL-268**, *Obligations of States in Respect of Climate Change*, Advisory Opinion, 23 July 2025, ¶ 255.

²³ **RL-268**, *Obligations of States in Respect of Climate Change*, Advisory Opinion, 23 July 2025, ¶ 255; *see, e.g.,* **RL-161**, Paris Agreement, Art. 7(2) (“Parties *recognize* that adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions . . .”) (emphasis added); *id.*, Art. 7(4) (“Parties *recognize* that the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts . . .”) (emphasis added); *id.*, Art. 7(6) (“Parties *recognize* the importance of support for and international cooperation on adaptation efforts . . .”) (emphasis added).

²⁴ **RL-268**, *Obligations of States in Respect of Climate Change*, Advisory Opinion, 23 July 2025, ¶ 255.

subsequent operative duties are to be understood.²⁵ Indeed, on a plain reading, those provisions of the Paris Agreement do not pertain to any legal status or entitlement that would entail a duty on other States to recognize and, in turn, respect.

25. That analysis has no application here, because the subject matter of the recognition is entirely different. Article 18(1) of the ECT does not merely acknowledge an abstract policy goal or a shared factual understanding. It requires Contracting Parties to “*recognise State sovereignty and sovereign rights over energy resources*”—that is, to accept and respect a concrete legal entitlement vested in other States. Unlike the Paris Agreement provisions, Article 18(1) affirms a specific set of sovereign rights, reinforced by Article 18(3)’s concrete (and non-exhaustive) specification of the sovereign rights that States must respect, including the rights to decide on the exploration, development, and disposal of energy resources, as well as the conditions governing their exploitation.²⁶

(b) The Context of Articles 18(1) and 18(3) Confirm that Those Provisions Create Enforceable Inter-State Treaty Obligations.

26. The structure and placement of Article 18 within the ECT confirm that paragraphs (1) and (3) create binding, enforceable obligations among Contracting Parties.²⁷ Situated in Part IV of the Treaty—alongside other substantive inter-State commitments—Article 18 forms part of the ECT’s operative framework, not merely a contextual or interpretive backdrop.²⁸
27. Armenia’s Reply largely reiterates points from its Memorial that Azerbaijan has already rebutted,²⁹ relying again on misleading and selective readings of Article 18(2) and other provisions in Part IV of the Treaty as purported “*context*” to support its contention that Article 18 has only an “*interpretive effect*.”³⁰ These recycled arguments fail to displace the compelling contextual evidence that Article 18 was drafted and positioned as a source of justiciable obligations under the Treaty.³¹ Azerbaijan therefore limits itself here to clarifying the specific contextual points mischaracterized in Armenia’s Reply.

²⁵ *Id.*

²⁶ **CL-1**, ECT, Art. 18(3); *see* Statement of Claim, ¶¶ 198–199; Counter-Memorial, ¶¶ 24, 29.

²⁷ *See* Counter-Memorial, ¶¶ 38–48.

²⁸ *See id.* ¶¶ 41–43.

²⁹ *Compare* Memorial, ¶¶ 63–70 *with* Counter-Memorial, ¶¶ 38–48.

³⁰ Reply, ¶ 118; *see also id.* ¶¶ 110–131.

³¹ *See generally* Counter-Memorial, ¶¶ 38–48.

28. First, Armenia still misinterprets Article 18(2) and its relevance to the interpretation of Articles 18(1) and 18(3).³² Armenia argues that Article 18(2) must be of “*particular relevance*” to the interpretation of Articles 18(1) and 18(3) because it is “*wedged between*” them.³³ But Azerbaijan has already explained the reason for this placement,³⁴ which has nothing to do with the Articles’ supposed “*interpretive*” nature.³⁵ Certain Contracting Parties, particularly Norway, wanted to make it clear that the rights enumerated in Article 18(3) referred back to both Article 18(1) and Article 18(2).³⁶ As explained in the *travaux*:

[t]he introductory language of paragraph (3), ‘Each state continues to hold in particular...’ is by its own terms a particularization of something that went before, and it is likely to be read as referring back to the ‘rules in Contracting Parties governing the system of property ownership of energy resources [in paragraph (2)]’, even if it is also seen as relevant to paragraph (1).³⁷

29. In other words, the specific rights enumerated in Article 18(3) provide a concrete particularization of the both the “*sovereign rights*” in Article 18(1) and the “*rules in Contracting Parties*” in Article 18(2). The *travaux* further confirm that “[*t*]he matters covered by paragraph [18](3). . . are far-reaching” and include all the rights enumerated in that paragraph.³⁸
30. Armenia’s reliance on the Bamberger commentary to dismiss Article 18(2) as a mere “*without prejudice*” clause is misplaced.³⁹ Bamberger does not characterize Articles 18(1) to 18(3) as solely “*interpretive*” or otherwise as not imposing substantive obligations.⁴⁰ In fact, Bamberger expressed concern that Article 18(2) could “*override*” other provisions of the Treaty, warning that adjudicators would be compelled to give Article 18(2) “*meaning*” even if it risked “*gutting*” the Treaty’s

³² See Reply, ¶¶ 116–117.

³³ *Id.* ¶ 116.

³⁴ See Counter-Memorial, ¶ 47.

³⁵ See CL-33, Chairman of Legal Subgroup, Memorandum regarding “Paragraph (2) of Article 21, ‘Sovereignty over Energy Resources’” (12 August 1994), ECT Travaux, at 5.

³⁶ See Counter-Memorial, ¶ 47 & n. 86.

³⁷ CL-33, Chairman of Legal Subgroup, Memorandum regarding “Paragraph (2) of Article 21, ‘Sovereignty over Energy Resources’” (12 August 1994), ECT Travaux, at 4–5.

³⁸ *Id.* at 5.

³⁹ Reply, ¶ 115 & n. 224.

⁴⁰ See RL-108, C. S. Bamberger, *The Energy Charter Treaty: A Description of Its Provisions* (1994), at 23.

other obligations.⁴¹ Such warnings underscore that Article 18(2) was understood to carry independent normative force, and that it interacts with enforceable treaty provisions—including Articles 18(1) and 18(3).⁴²

31. Further, even if Article 18(2) were best understood as simply a “*without prejudice*” clause, that would not detract from the binding obligations imposed by Articles 18(1) and 18(3). Indeed, the inclusion of a without-prejudice clause generally indicates that both the without-prejudice clause and the clauses it references impose substantive legal consequences; otherwise, there would be no need for the without prejudice clause.⁴³
32. Next, Armenia rehashes arguments already made in its Memorial, and rebutted by Azerbaijan in its Counter-Memorial, as to the location of Article 18 in Part IV of the Treaty.⁴⁴ Armenia again asserts that Article 18 cannot create binding obligations because it appears in a section titled “*Miscellaneous Provisions*,” which it characterizes as a set of clarificatory or background clauses designed only to support the investment protections in Part III.⁴⁵ This structural claim has no textual basis. The provisions of Part IV—including Articles 19 through 24—contain numerous operative and enforceable obligations, many of which use binding language and directly affect inter-State conduct.⁴⁶ There is no reason to treat Article 18 differently.
33. Armenia’s remaining arguments regarding the supposed context of Articles 18(1) and 18(3) are equally unavailing. Armenia’s reliance on the Contracting Parties’

⁴¹ **CL-33**, Chairman of Legal Subgroup, Memorandum regarding “Paragraph (2) of Article 21, ‘Sovereignty over Energy Resources’” (12 August 1994), ECT Travaux, at 7 (opining 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”).

⁴² See *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[]”).

⁴³ **CL-152**, *Beagle Channel Arbitration between the Republic of Argentina and the Republic of Chile*, Report and Decision of the Court of Arbitration, 18 February 1977, ¶ 42 (noting that “the addition of the ‘without prejudice’ clause” in the Argentina-Chile Boundary Treaty was “required” “because of the danger” of conflict between two provisions of the treaty); **CL-155**, *Asian Agricultural Products Ltd. (AAPL) v. Sri Lanka*, ICSID Case No. ARB/87/3, Final Award, 27 June 1990, ¶¶ 43–44 (noting that different provisions of the Sri Lanka-UK BIT, including a without-prejudice clause, “envisaged different situations . . . , and different remedies are provided for in order to meet the particularity of each situation.”); see also **RL-32**, United Nations Convention on the Law of the Seas (“UNCLOS”), Art. 52 (providing that the right of innocent passage through archipelagic waters is “without prejudice” to the right of archipelagic States to delimit their internal waters).

⁴⁴ See Reply, ¶¶ 122–126; Memorial, ¶¶ 69–70; Counter-Memorial, ¶¶ 41–45.

⁴⁵ Reply, ¶¶ 122–126.

⁴⁶ See Counter-Memorial, ¶¶ 41–45 (noting obligations imposed by Art. 20(1), to issue certain energy-trade related laws and regulations with certain levels of transparency according to the WTO Agreement,

“understanding” that the ECT “cannot be construed to constitute a precedent in the context of other international negotiations”⁴⁷ is irrelevant to the interpretation of Article 18. Lacking any new textual or contextual argument to support its position, Armenia now turns to this general “understanding” appended to the Treaty’s final act, as if it were determinative. But by the plain meaning of its terms, the passage Armenia cites merely reflects that the ECT was tailored to the energy sector and not intended to bind Contracting Parties in future treaty negotiations.⁴⁸ It says nothing about the legal effect of Article 18 within the ECT framework itself, or the way that framework interacts with other, pre-existing international law principles.⁴⁹

34. Moreover, there is no question here of “spill over” into other international obligations outside the ECT’s scope.⁵⁰ Azerbaijan’s claims are based squarely on obligations set out in the ECT, not on extraneous legal principles. The obligation of States to recognize and respect one another’s sovereign rights over energy resources is not imported from other instruments or sources of law; it is expressly embedded in the text of Article 18. Armenia’s suggestion that enforcing this obligation would somehow distort the ECT’s framework or lead to unintended consequences in other contexts is a diversion that has no bearing on the proper interpretation of the Treaty’s terms.⁵¹
35. Finally, Armenia’s attempt to create a parallel with the *Oil Platforms* case, by asserting that in both cases the treaty lacked a jurisdictional carve-out for the

by Art. 22, to ensure State-controlled enterprises act in accordance with Contracting Parties’ ECT obligations, and by Art. 23, to ensure regional and sub-regional authorities act in accordance with the ECT).

⁴⁷ Reply, ¶ 112; **CL-1**, ECT, Annex 1 to the Final Act of the European Energy Charter Conference, “Understanding (a),” at 37.

⁴⁸ **CL-1**, ECT, Annex 1 to the Final Act of the European Energy Charter Conference, “Understanding (a),” at 37 (“*The representatives underline that the provisions of the Treaty have been agreed upon bearing in mind the specific nature of the Treaty aiming at a legal framework to promote long-term cooperation in a particular sector and as a result cannot be construed to constitute a precedent in the context of other international negotiations.*”).

⁴⁹ See, e.g., **CL-207**, A. Morelli, “Preamble,” in R. Leal-Arcas (ed.), *Commentary on the Energy Charter Treaty* (2023), ¶¶ P.09–P.12 (noting that the ECT Preamble’s reference to other international treaties, such as the Treaty on the Non-Proliferation of Nuclear Weapons, the United Nations Framework Convention on Climate Change, and the Convention on Long-Range Transboundary Air Pollution, form a framework that requires the ECT to be interpreted “following endogenous and exogenous elements of the energy sector” and that the ECT “seeks to secure energy requirements between its Contracting Parties, in line with the goals and priorities of the international agenda, both in the UN and EU context.”). See also *id.* ¶ P.01 (noting that the ECT is “a sector-specific treaty that harmonizes different fields in international law, including international economic law – covered by legal standards of GATT and WTO provisions – international investment law, and international environmental law”).

⁵⁰ *Contra* Reply, ¶ 113.

⁵¹ See *id.*

challenged claims, is misplaced.⁵² Unlike the United States-Iran Treaty of Amity (“*Treaty of Amity*”), the ECT does contain explicit jurisdictional carve-outs in Articles 27(2) and 28,⁵³ and Article 18 is conspicuously not among them.

36. Armenia’s fallback argument—that Article 18 need not be expressly excluded from Article 27 because it is merely interpretive—is unconvincing.⁵⁴ *First*, for the reasons set out in this Rejoinder and Azerbaijan’s earlier submissions, Article 18 is not merely an interpretative provision.⁵⁵ *Second*, the Contracting Parties did expressly exclude disputes concerning Article 19—another provision in Part IV that Armenia similarly labels as “*aspirational*.”⁵⁶ The exclusion of Article 19 and other specific exclusions in the Treaty text show that any provisions the drafters viewed as unsuited to Article 27 arbitration were expressly carved out; Article 18 was not.⁵⁷

2. Armenia’s Reading of Articles 18(1) and 18(3) Defies Treaty Practice.

37. Armenia’s Reply still contends that Articles 18(1) and 18(3) cannot impose enforceable obligations because they only “*reaffirm*” pre-existing rights.⁵⁸ This argument rests on a false premise. Under international law, the reaffirmation of an existing right in a treaty does not deprive that provision of legal effect.⁵⁹ Nor does the fact that a treaty provision reflects or incorporates a pre-existing customary rule diminish its binding character.⁶⁰ Armenia’s attempt to draw a sharp distinction

⁵² See *id.* ¶ 131. See *infra* ¶¶ 45–47.

⁵³ **C-1**, ECT, Arts. 27, 28. Specifically, Article 27(2) states “*If a dispute has not been settled in accordance with paragraph (1) within a reasonable period of time, either party thereto may, except as otherwise provided in this Treaty or agreed in writing by the Contracting Parties, and 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.*” Article 28 states “*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.*” (emphases added).

⁵⁴ See Reply, ¶ 131; Memorial, ¶¶ 8, 25–26, 29, 61.

⁵⁵ See, e.g., Counter-Memorial, § II.A–B; Statement of Claim, ¶¶ 187, 199.

⁵⁶ See Reply, ¶¶ 124–125 (“By way of reminder, those provisions concern: *environmental and sustainable development aspirations to guide States . . . (Article 19).*”).

⁵⁷ See Counter-Memorial, ¶¶ 40, 115 (citing **CL-1**, ECT, Arts. 27(2) and 28).

⁵⁸ Reply, ¶¶ 77–79, 82. Compare Memorial, ¶¶ 35–38.

⁵⁹ **CL-125**, M.E. Villiger, “Formation and Identification of Customary Law,” in *Commentary of the 1969 Vienna Convention on the Law of Treaties* (2008), ¶ 23 (“To accomplish codification by means of 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.”).

⁶⁰ 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, ¶ 178 (“There are a number of

between “reaffirming” and “codifying” rights is a distraction irrelevant to the VCLT interpretive exercise at hand.⁶¹

38. Where a customary rule is incorporated into a treaty, the legal consequence is not the dilution of that rule, but the addition of a distinct contractual obligation binding the treaty parties.⁶² As the ICJ explained 40 years ago, “*even if two norms belonging to two sources of international law appear identical in content, and even if the States in question are bound by these rules both on the level of treaty-law and on that of customary law, these norms retain a separate existence.*”⁶³ Consistent with this approach, Azerbaijan has never asserted freestanding claims under customary international law.⁶⁴ Rather, it has explained that customary international law—including the principle of permanent sovereignty over natural resources—properly informs the interpretation of Article 18, which focuses on “energy resources” as a subset of natural resources.⁶⁵

reasons for considering that, even if two norms belonging to two sources of international law appear identical in content, and even if the States in question are bound by these rules both on the level of treaty-law and on that of customary law, these norms retain a separate existence. This is so from a standpoint of their applicability . . . A State may accept a rule contained in a treaty not simply because it favours the application of the rule itself, but also because the treaty establishes what that State regards as desirable institutions or mechanisms to ensure implementation of the rule. Thus, if that rule parallels a rule of customary international law, two rules of the same content are subject to separate treatment as regards the organs competent to verify their implementation, depending on whether they are customary rules or treaty rules.”).

⁶¹ See Reply, ¶¶ 76–89.

⁶² See, e.g., **CL-125**, M.E. Villiger, “Formation and Identification of Customary Law,” in *Commentary of the 1969 Vienna Convention on the Law of Treaties* (2008), ¶ 23.

⁶³ **CL-16**, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, I.C.J. Reports 1986, ¶ 178. See also **CL-125**, M.E. Villiger, “Formation and Identification of Customary Law,” in *Commentary of the 1969 Vienna Convention on the Law of Treaties* (2008), ¶ 23 (noting that although the treaty and the customary rule “may possess identical contents, each is separate and independent from the other. As a result, treaty texts may offer evidence of a customary rule.”).

⁶⁴ See Counter-Memorial, ¶ 34 (“[W]hile Azerbaijan is not asserting self-standing claims under customary international law, that does not render custom irrelevant.”). See also Decision on Bifurcation dated 13 February 2025 (“**Bifurcation Decision**”), ¶ 91 (“Armenia’s second Article 18 Objection, appears to be moot in light of Azerbaijan’s observation that it is not raising any self-standing claims under customary international law, but is simply invoking international law as an interpretive tool in support of its claims under Article 18.”).

⁶⁵ See Counter-Memorial, ¶ 34 (“[T]he Tribunal can and should look to how the principle of permanent sovereignty over natural resources has been interpreted under customary international law to inform the interpretation of Article 18 of the ECT.”). See also Azerbaijan’s Observations on Armenia’s Request for Bifurcation dated 23 January 2025 (“**Bifurcation Observations**”), ¶¶ 35–36 (“Azerbaijan’s uncontroversial position—consistent with Article 31(3)(c) of the Vienna Convention on the Law of Treaties—is therefore not only that the text of Article 18 codifies the customary rule, but also that the Tribunal’s interpretation of Article 18 of the ECT should take this principle ‘into account’ as a ‘relevant rule[] of international law applicable in the relations between the parties.’ . . . [C]ourts and

39. That is precisely how Article 18 was drafted. The ECT *travaux* confirm that the Contracting Parties deliberately anchored Article 18 in the well-established principle of permanent sovereignty over natural resources, while embedding that principle within a treaty framework governed by international law.⁶⁶ As one leading commentary explains:

*Article 18 is a declaration of the well-established international law principle of permanent sovereignty over natural resources. 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.*⁶⁷

40. Armenia also maintains that because Article 18 concerns “*pre-existing rights*,” it cannot itself impose legal obligations and is therefore “*purely confirmatory*.”⁶⁸ Armenia cites no authority for the proposition that a treaty provision that concerns pre-existing rights is incapable of creating binding obligations.⁶⁹ This lack of support is unsurprising: international courts and tribunals routinely enforce treaty provisions understood to reflect pre-existing customary obligations.⁷⁰ The passage

tribunals may take account of customary principles to aid their treaty interpretation when deciding the merits of a claim.”).

⁶⁶ See, e.g., **CL-19**, “U.S. Comments on Basic Protocol Draft of Article 5” (11 September 1991), ECT Travaux, at 1 (“Anything on this topic [Sovereignty over Natural Resources] should be qualified by express reference to the requirements of international law.”); **CL-30**, J. Pierson, Memorandum describing European Energy Charter Treaty Negotiations 14–18 December 1993 (20 December 1993), ECT Travaux, at 10–11 (“The US, perhaps over-reacting, expressed ‘profound disagreement that state sovereignty is somehow independent of international law.’ The Conf. 72 version is thus preferable because it links sovereignty to international law This discussion produced a Rutten text (Room Document No. 13) clarifying that sovereign rights are exercised in accordance with the rules of international law.”); **CL-29**, Conference Secretariat, Room Document 13, “Article 21 – Sovereignty over Energy Resources: Chairman’s Proposal for compromise text” (16 December 1993), ECT Travaux, at 2 (“The Contracting Parties recognise state sovereignty and sovereign rights over energy resources. They recognise that these are exercised in accordance with and subject to the rules of international law.”); **CL-32**, C. Bamberger, “Chairman’s Compromise Text” Ministerial Declaration to the Energy Charter Treaty” (9 May 1994), ECT Travaux, at 15 (“They reaffirm that these [state sovereignty and sovereign rights over energy resources] must be exercised in accordance with and subject to the rules of international law.”).

⁶⁷ **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), ¶ 18.13 (emphasis added).

⁶⁸ Reply, ¶ 77.

⁶⁹ See *id.*

⁷⁰ 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, ¶¶ 62–63, 67 (finding that Iran had breached obligations under the

from Professor Hobér on which Armenia relies merely notes that Article 18 reconfirms the content of sovereignty over energy resources; it does not suggest—let alone state—that Article 18 lacks legal force or is merely interpretive.⁷¹

41. Armenia’s reliance on the “*non-exhaustive*” nature of Article 18(3) fares no better.⁷² Non-exhaustive treaty provisions routinely give rise to enforceable obligations.⁷³ Armenia’s own practice is illustrative. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (“*CERD*”)

Vienna Conventions on Diplomatic and Consular Relations that were “*not merely contractual obligations established [by those treaties], but also obligations under general international law*”); **RL-11**, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment, I.C.J. Reports 2010, ¶ 87 (finding that prohibitions on inhuman and degrading treatment in Article 7 of the International Covenant on Civil and Political Rights (“*ICCPR*”) was “*no doubt [] among the rules of general international law which are binding on States in all circumstances, even apart from any treaty commitments,*” although not implicated in that dispute on factual grounds); **CL-181**, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber)*, ITLOS Case No. 17, 1 February 2011, Advisory Opinion, ¶ 145 and p. 75 (finding that all States party to the UNCLOS were under a “*direct*” “*obligation to conduct environmental impact assessment [of planned activities under their jurisdiction or control which is] a general obligation under customary international law and is set out as a direct obligation for all States in article 206*” of UNCLOS) (emphasis added); **CL-186**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, ¶ 87 (assessing the merits of Croatia’s and Serbia’s claims regarding the States’ obligations under the Genocide Convention which “*embodies*” and “*enshrines principles that also form part of customary international law.*”).

- ⁷¹ **RL-17**, K. Hobér, *The Energy Charter Treaty: A Commentary* (2020), at 347–348 (“*As the title of Article 18 suggests, it is a distant echo of the debates generated by the movement for permanent sovereignty over Natural Resources during the 1960’s and 1970’s.*”); see also *id.* at 348 (“*It emphasizes, albeit indirectly, both the sovereignty over natural resources and the contractual rights and legitimate expectations of investors.*”); see also *id.* (“*In the first sentence of subparagraph (1) the Contracting Parties recognize state sovereignty and sovereign rights over energy resources. [] Today this is an uncontroversial statement. No one disputes a State’s sovereign rights to natural resources, including energy resources, located within its territory. This introductory statement is probably to be seen against the sometimes fierce debates during the movement for Permanent Sovereignty over Natural Resources referred to above.*”).

- ⁷² Reply, ¶ 79.

- ⁷³ See **CL-197**, Committee on the Rights of Persons with Disabilities, General Comment No. 6 on Equality and Nondiscrimination (2018), ¶ 36 (observing that in the Convention on the Rights of Persons with Disabilities, “[A]rticle 6, like article 7, must be regarded as illustrative, rather than exhaustive, setting out obligations in respect of the two prominent examples of multiple and intersectional discrimination.”); **CL-171**, Human Rights Committee, General Comment No. 29: Article 4: Derogations During a State of Emergency (2001), ¶ 13 (considering the list of rights which are non-derogable under paragraph 4(2) to be “*illustrative,*” and non-exhaustive); **CL-191**, African Commission on Human and Peoples’ Rights, General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5) (2017), ¶ 20 (adopting a “*non-exhaustive list of grounds of discrimination.*”); **CL-162**, Human Rights Committee, General Comment No 22 – Article 18 (Freedom of Thought, Conscience or Religion) (1993), ¶ 4 (asserting, regarding ICCPR Article 18, that “[t]he freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts”).

guarantees equal enjoyment of a non-exhaustive list of pre-existing rights,⁷⁴ yet Armenia has relied on that provision before the ICJ as creating binding, enforceable obligations.⁷⁵ Armenia itself has argued that rules not expressly mentioned in that treaty—such as the prohibition of enforced disappearance—fall within Article 5’s broad and non-exhaustive scope when racial discrimination is alleged.⁷⁶ The non-exhaustive character of Article 18(3) thus has no bearing on the provision’s enforceability.

3. Armenia’s Misapplication of Selective ICJ Jurisprudence Cannot Override the Proper Interpretation of Article 18.

42. As Azerbaijan has consistently maintained, its claims rest on the specific treaty obligations set forth in Articles 18(1) and 18(3) understood in accordance with the ordinary meaning of their terms, not on any attempt to invoke unrelated principles of customary international law through vague or ancillary language.⁷⁷
43. Armenia’s Reply does not engage meaningfully with this argument. Instead, it reiterates the same arguments raised in its Request for Bifurcation⁷⁸ and Memorial⁷⁹ relying on inapposite ICJ case law—such as *Oil Platforms*,⁸⁰ *Certain Iranian Assets*,⁸¹ *Equatorial Guinea v. France*,⁸² and *Allegations of Genocide*⁸³—

⁷⁴ **CL-165**, CERD Committee, General Recommendation No. 20 on Article 5, Doc. No. CERD/48/Misc.6/Rev.2 (1996), ¶ 1 (“[T]he rights and freedoms mentioned in Article 5 do not constitute an exhaustive list.”); see also **CL-187**, P. Thornberry, “Article 5: Comment and Conclusions” in *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (2016), at 393 (same).

⁷⁵ **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, ¶¶ 25–26.

⁷⁶ *Id.* ¶ 26(5) (reproducing Armenia’s request that the Court declare that “Azerbaijan has violated its obligations under Articles 2 and 5 (a) of the CERD by engaging in practices of discriminatory enforced disappearance of ethnic Armenians”); *id.* ¶ 101 (“Armenia thus concludes that its claims regarding the . . . enforced disappearance of ethnic Armenians are capable of constituting racial discrimination under CERD.”).

⁷⁷ See Azerbaijan’s Notice of Arbitration, dated 27 February 2023 ¶¶ 50–52, 53; Statement of Claim, ¶¶ 180–182; Bifurcation Observations, ¶¶ 33–34, 64; Counter-Memorial, § II.

⁷⁸ See Armenia’s Request for Bifurcation, 23 December 2024 (“*Bifurcation Request*”), ¶¶ 43–45.

⁷⁹ See Memorial, ¶¶ 45–52.

⁸⁰ **RL-37**, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996.

⁸¹ **RL-170**, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019.

⁸² **RL-73**, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018.

⁸³ **RL-97**, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, 2 February 2024.

to suggest that Azerbaijan is impermissibly invoking a “*general formulation*” in a treaty to “*bootstrap*” jurisdiction over a customary rule outside the scope of that treaty.⁸⁴ That comparison is misplaced: unlike the general provisions at issue in those cases, Article 18 sets out concrete obligations directly linked to the ECT’s object and purpose.

44. *First*, Armenia selectively cites from the *Oil Platforms* decision and focuses exclusively on the Court’s rejection of jurisdiction under Article I of the Treaty of Amity—a general peace and friendship clause.
45. In *Oil Platforms*, Iran alleged breaches of Articles I, IV(1), and X(1) of the Treaty of Amity arising from the United States’ attacks on and destruction of three offshore oil production complexes owned and operated by Iran.⁸⁵ Article I of the Treaty of Amity provided that “[t]here shall be enduring peace and sincere friendship” between the contracting States. The Court found that while Article I could assist in interpreting other substantive provisions of the Treaty of Amity—such as Articles IV and X—it could not, standing alone, serve as an independent basis for jurisdiction over Iran’s claims.⁸⁶ In reaching this conclusion, the Court also emphasized that the general language in Article I must be interpreted in light of the object and purpose of the Treaty of Amity, which was economic and consular cooperation.⁸⁷
46. Armenia’s attempted analogy between Article I of the Treaty of Amity and Article 18 of the ECT is inapt. Article I was derived from a preambular formulation found in earlier United States’ friendship treaties and was relocated into the operative section of the Treaty of Amity with no intent to create new binding obligations.⁸⁸ In its pleadings before the ICJ, the United States explained that this drafting change was not understood to “*reflect any change in the legal obligations of the parties.*”⁸⁹ Regardless of its placement, Article I thus retained its character, serving solely as a contextual clause and not as a source of enforceable obligations.

⁸⁴ Reply, ¶¶ 16–42.

⁸⁵ **RL-37**, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, ¶ 10.

⁸⁶ *Id.* ¶¶ 27–28.

⁸⁷ *Id.* ¶¶ 27, 31.

⁸⁸ **CL-163**, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection Submitted by the United States of America, 16 December 1993, ¶ 3.26.

⁸⁹ *Id.* ¶¶ 3.26, 3.27.

47. By contrast, Article 18 of the ECT was deliberately drafted and maintained as a freestanding operative provision.⁹⁰ Its language, structure, and placement in Part IV of the ECT confirm that it is not merely interpretive or aspirational.⁹¹ Armenia would once again have the Tribunal read Article 18(3) out of the Treaty; there is no resemblance between the general exhortation of “*peace and sincere friendship*” in Article I of the Treaty of Amity, and the concrete rights to develop, exploit, and regulate energy resources that Contracting Parties “*continue[] to hold*” under Article 18(3) of the ECT.⁹²
48. Moreover, Armenia conveniently omits that the ICJ ultimately rejected the United States’ preliminary objection and accepted jurisdiction over Iran’s claims based on Article X(1) of the Treaty of Amity, which protected “*freedom of commerce and navigation*” as between the Parties.⁹³ The Court recognized that this provision created specific, justiciable obligations capable of grounding jurisdiction under the compromissory clause. Iran’s claims that the United States had unlawfully attacked and destroyed its oil platforms were therefore cognizable under Article X(1). The Court held that:

*[it] should not in any event overlook that Article X, paragraph 1, of the Treaty of 1955 does not strictly speaking protect ‘commerce’ but ‘freedom of commerce’. Any act which would impede that ‘freedom’ is thereby prohibited. Unless such freedom is to be rendered illusory, the possibility must be entertained that it could actually be impeded as a result of acts entailing the destruction of goods destined to be exported, or capable of affecting their transport and their storage with a view to export.*⁹⁴

49. If anything, Azerbaijan’s claims regarding Armenia’s exploitation of Azerbaijan’s energy resources present an even clearer case for justiciability. They are grounded in the specific and concrete obligations in Articles 18(1) and 18(3) of the ECT to

⁹⁰ See **CL-33**, Chairman of Legal Subgroup, Memorandum regarding “Paragraph (2) of Article 21, ‘Sovereignty over Energy Resources’” (12 August 1994), ECT Travaux, at 4 (identifying that “Article 222 is accorded weight on a case-by-case basis in relation to other provisions of the Treaty of Rome,” and noting a concern that “a potential exists for Article 21(2) to conflict with and possibly to override other provisions of the ECT”).

⁹¹ See *supra* ¶ 32 .

⁹² **CL-1**, ECT, Art. 18(3).

⁹³ **RL-37**, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, ¶ 53 (“[T]he Court concludes that there exists between the Parties a dispute as to the interpretation and the application of Article X, paragraph 1, of the Treaty of 1955; that this dispute falls within the scope of the compromissory clause . . . and that as a consequence the Court has jurisdiction to entertain this dispute.”); see also *id.* ¶ 55(2).

⁹⁴ **RL-37**, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, ¶ 50 (emphasis added).

respect each Contracting Party's sovereign right to explore and develop its own resources, in contrast to the more general and abstract commitment to "*freedom of commerce*" found in Article X(1) of the Treaty of Amity. Unless the sovereign rights over energy resources set forth in Articles 18(1) and 18(3) are to be "*rendered illusory*," the Tribunal must accept and exercise its jurisdiction to resolve Azerbaijan's claims that Armenia's conduct in blocking, impairing, and exploiting Azerbaijan's energy resources for its own benefit breached the ECT.

50. *Second*, unlike the claimants in *Certain Iranian Assets* and *Immunities and Criminal Proceedings*, Azerbaijan does not rely on Article 18 to "*import*" external rules of customary international law that are neither expressed in, nor integral to, the treaty provisions invoked.⁹⁵ In those cases, the ICJ rejected attempts to ground jurisdiction on treaty clauses that referred in general terms to international law or sovereign principles, where the obligations the claimants sought to enforce were neither expressed in the treaty text nor connected to its object and purpose.
51. In *Certain Iranian Assets*, the ICJ dismissed the United States' objections and accepted jurisdiction under the Treaty of Amity, except insofar as Iran's claims were, in substance, claims concerning sovereign immunity.⁹⁶ Iran sought to bring those claims within the Treaty of Amity by characterizing alleged immunity violations as breaches of provisions protecting property, access to courts, and freedom of commerce, on the theory that those provisions incorporated by reference customary law on sovereign immunities.⁹⁷ The Court rejected that approach, noting that the provisions invoked contained general references to international law—or none at all—and did not set out the immunity rules Iran sought to enforce.⁹⁸ Because the immunity rules on which Iran relied were extrinsic to the Treaty and unrelated to its regulatory focus, the Court concluded that claims predicated on those rules fell outside the compromissory clause.⁹⁹
52. The Court adopted the same analytical approach in *Immunities and Criminal Proceedings*. In that case, the ICJ rejected Equatorial Guinea's argument that the reference to "*sovereign equality and [] non-intervention*" in the Palermo Convention incorporated the customary international rules on sovereign immunity into the treaty.¹⁰⁰ The ICJ found that the reference to sovereign equality did not impose an obligation to comply with "*the many rules of international law which*

⁹⁵ See Counter-Memorial, ¶ 30; see also Statement of Claim, ¶¶ 181–192; cf. Reply, ¶¶ 24–40.

⁹⁶ **RL-170**, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, ¶ 126.

⁹⁷ *Id.* ¶¶ 50–52.

⁹⁸ *Id.* ¶ 80.

⁹⁹ *Id.*

¹⁰⁰ **RL-73**, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018, ¶¶ 89–90, 102.

protect sovereignty in general.”¹⁰¹ The ICJ also reasoned that the customary rules of sovereign immunity were unrelated to the stated object and purpose of the Palermo Convention, which is to prevent and combat transnational organized crime.¹⁰²

53. Azerbaijan’s claims bear no resemblance to the claims rejected in these cases. Azerbaijan does not invoke vague references to international law or general principles as a conduit for importing external customary rules into the ECT. Nor does it seek to enforce obligations that are unrelated to the Treaty’s subject matter.¹⁰³ To the contrary, Articles 18(1) and 18(3) expressly regulate sovereignty and sovereign rights over energy resources—the very subject matter of the ECT—and do so in operative, obligation-creating terms.¹⁰⁴ Azerbaijan merely asks the Tribunal to give effect to those treaty commitments as written.
54. *Third*, the ICJ’s judgment in *Allegations of Genocide* is equally inapposite.¹⁰⁵ There, the Court rejected jurisdiction over two of Ukraine’s claims concerning the legality of Russia’s use of force and its recognition of separatist regions, which Ukraine had brought under Articles I and IV of the Genocide Convention. Ukraine argued that Russia’s actions violated the Genocide Convention because they breached other rules of international law on the pretext of fulfilling Russia’s obligation under the Convention to prevent genocide. The Court rejected that framing, holding that:

*it does not follow . . . that, if a State seeks to fulfil its obligation of prevention under the Convention through an act that is in breach of international law, such action by itself constitutes a violation of the Convention. The Court did not . . . interpret the Convention as incorporating rules of international law that are extrinsic to it, in particular those governing the use of force.*¹⁰⁶

55. Hence, Armenia again relies on a mismatch between the treaty obligation and the alleged violation that is not present in this case. Azerbaijan’s claims do not rest on the extrinsic application of unrelated legal norms; they are based on the specific,

¹⁰¹ *Id.* ¶ 93.

¹⁰² *Id.* ¶ 95.

¹⁰³ See Counter-Memorial, ¶¶ 30–31 (citing **RL-170**, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, ¶ 65 (declining to enforce obligations “‘not germane’ to the treaty’s subject matter”)).

¹⁰⁴ See Counter-Memorial, ¶¶ 30–31 (citing Memorial, ¶¶ 45–52).

¹⁰⁵ **RL-97**, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, 2 February 2024.

¹⁰⁶ *Id.* ¶ 146 .

operative language of Articles 18(1) and 18(3) of the ECT, which regulate the Contracting Parties' sovereign rights over their energy resources.

56. *Finally*, Armenia urges the Tribunal to apply a heightened jurisdictional standard due to the inter-State nature of this dispute, arguing that the Tribunal should emulate the “*general tendency of international tribunals to circumscribe strictly the scope of jurisdiction under inter-State compromissory clauses.*”¹⁰⁷ Citing the uncontroversial requirement of State consent in inter-State disputes, Armenia argues that without a restrictive reading of jurisdiction, State consent risks being circumvented.¹⁰⁸ As it did when Armenia urged a heightened standard for bifurcation, the Tribunal should reject this argument.¹⁰⁹ The principles of treaty interpretation do not shift based on the nature of the claimants.¹¹⁰

B. The ECT's Object and Purpose Support Azerbaijan's Interpretation of Articles 18(1) and 18(3) as Enforceable Inter-State Obligations.

57. The recognition and respect of each Contracting Party's sovereign rights over its energy resources is a foundational element of the ECT framework and fully consistent with the Treaty's object and purpose.¹¹¹ Armenia's Reply proceeds from two incorrect premises: *first*, that Azerbaijan is attempting to “*shoehorn*” its claims into a treaty allegedly confined to trade and investor protection;¹¹² and *second*, that

¹⁰⁷ Reply, ¶ 42.

¹⁰⁸ *Id.*; see also *id.* ¶ 16 & n. 32.

¹⁰⁹ Bifurcation Decision, ¶ 81 (“*In ruling on a bifurcation request, the Tribunal naturally should take into account the presumption in favor of bifurcation, but also is free to consider whatever circumstances it considers appropriate in determining how justice would best be served in a given case. These circumstances are not appreciably different as between an investor-State arbitration and an inter-State arbitration in which the Parties agreed (as under the ECT) to arbitrate pursuant to the 1976 UNCITRAL Rules.*”).

¹¹⁰ See **CL-153**, *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Decision on Jurisdiction, 14 April 1988, ¶ 63 (holding that there is no “*presumption against the conferment of jurisdiction with respect to a sovereign State or that instruments purporting to confer jurisdiction should be interpreted restrictively [and] . . . jurisdictional instruments are to be interpreted neither restrictively nor expansively, but rather objectively and in good faith, and jurisdiction will be found to exist if—but only if—the force of the arguments militating in favor of it is preponderant.*”).

¹¹¹ See Statement of Claim, ¶ 180 (citing **CL-1**, ECT, Preamble and Objectives – Title; **CL-24**, Conference Secretariat, “European Energy Charter Negotiations,” (20 October 1992), ECT Travaux, at 1–2; **CL-20**, Conference Secretariat, “Note from Chairman of WGII on the Basic Protocol” (11 October 1991), ECT Travaux; **CL-22**, European Parliament, “Extract of Meeting Minutes” (13 December 1991), at 5–6; **CL-35**, T. Walde (ed), “The Energy Charter Treaty: An East-West Gateway for Investment and Trade” (Kluwer Law International 1996), J. Dore, “Chapter 5: Negotiating the Energy Charter Treaty,” at 146; **CL-58**, *InfraRed v. Spain*, ICSID Case No. ARB/14/12, Award, 2 August 2019, ¶ 317); Counter-Memorial, ¶ 51 (“*The ECT's stated purpose is to establish . . . a legal framework in order to promote long-term cooperation in the energy field.*”) (citing **CL-1**, ECT, Art. 2 (internal quotation marks omitted)).

¹¹² Reply, ¶ 91.

Azerbaijan contends sovereignty *itself* constitutes the ECT’s object and purpose.¹¹³ Azerbaijan advances no such position.¹¹⁴ Rather, Armenia’s Reply reflects an unduly narrow and selective reading of the Treaty that cannot be reconciled with the ECT’s stated objectives, as set out in its Article 2.

58. As Azerbaijan demonstrated in its Counter-Memorial, the ECT is a broad-ranging treaty whose object and purpose extend beyond trade and investor protection.¹¹⁵ The Bamberger commentary cited by Armenia explains, “[t]he ECT is unique as a multilateral sectoral treaty broadly covering trade, investment and a range of other matters in the energy field.”¹¹⁶ Its aim is to establish stable, predictable, and cooperative conditions for the development, management, trade, and transit of energy resources.¹¹⁷ That objective necessarily entails enforceable commitments as between Contracting Parties themselves. Article 18 sits at the core of this framework by providing for Contracting Parties’ exercise of their sovereign rights over energy resources in a manner consistent with the Treaty’s cooperative design.¹¹⁸
59. Article 2 of the ECT confirms this breadth. It provides that 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 [European Energy] Charter*.”¹¹⁹ Notably, Article 2 does not confine the Treaty’s purpose to investment protection or trade liberalization. Nor does it limit the “*legal framework*” to Parts II and III of the Treaty, as Armenia suggests.¹²⁰ The legal framework referenced in Article 2 necessarily encompasses all operative Parts of the ECT, including Part IV. The reference to “*complementarities and mutual benefits*” further underscores that the Treaty’s object and purpose are incompatible with unilateral interference in another Contracting Party’s energy resources without its consent or benefit.
60. Armenia’s attempt to marginalize the provisions in Part IV as irrelevant to the Treaty’s object and purpose is therefore misplaced.¹²¹ Part IV collects certain

¹¹³ *Id.* ¶ 101.

¹¹⁴ See Counter-Memorial, ¶¶ 49–55.

¹¹⁵ See *id.*; **RL-105**, L. Reins, “Article 2 – Purpose of the Treaty,” in R. Leal-Arcas (ed.), *Commentary on the Energy Charter Treaty* (2023), at 59 (“*The ECT is a multilateral treaty which is ‘broad and far reaching in scope’.*”)

¹¹⁶ **RL-108**, C. S. Bamberger, *The Energy Charter Treaty: A Description of Its Provisions* (1994), at 8 (emphasis added).

¹¹⁷ **CL-1**, ECT, Art. 2; see also *id.*, Preamble.

¹¹⁸ *Id.*, Art. 18.

¹¹⁹ *Id.*, Art. 2.

¹²⁰ Reply, ¶ 92.

¹²¹ *Id.*

substantive obligations that fall outside the specific subject matter of trade (Part II) and investment protection (Part III).¹²² The label “*Miscellaneous Provisions*” reflects only the Treaty’s structure, not any intention to deprive those provisions of binding force.¹²³ Indeed, contrary to Armenia’s attempt to dismiss Article 19, on “*Environmental Aspects*,” as similarly “*interpretive*,”¹²⁴ Article 19(1) imposes obligations of conduct¹²⁵ on Contracting Parties in relation to environmental protection,¹²⁶ and contains its own inter-State dispute settlement mechanism for disputes “*concerning the application or interpretation of provisions of this Article*.”¹²⁷ This confirms that the drafters must have viewed Article 19 as creating enforceable obligations as between the Contracting Parties. It would make no sense to provide for the settlement of disputes regarding the application or interpretation of a provision intended to have only an interpretive or contextual function.

61. The Preamble likewise supports a broad understanding of the ECT’s object and purpose. While it unsurprisingly references trade and investment—given the subject matter of Parts II and III—it also emphasizes broader goals, including the desire to “*establish the structural framework required to implement the principles enunciated in the European Energy Charter*” and the recognition of the need for “*the most efficient exploration, production, conversion, storage, transport, distribution and use of energy*.”¹²⁸ Armenia’s assertion that the Preamble contains

¹²² See, e.g., **RL-108**, C. S. Bamberger, *The Energy Charter Treaty: A Description of Its Provisions*, International Energy Agency (1994), at 5 (dividing its analysis into sections entitled, *inter alia*, “Principal Trade Provisions,” “Principal Investment Provisions,” and “Other Substantive Rights and Obligations,” the last of which includes provisions relating to Competition (Article 6), Transfer of Technology (Article 8), and Environmental Aspects (Article 19, located in Part IV of the Treaty)).

¹²³ See Counter-Memorial, ¶¶ 41, 45.

¹²⁴ Reply, ¶ 93.

¹²⁵ See **CL-52**, D. Azaria, “Treaties on Transit of Energy Via Pipelines and Countermeasures” (2015), at 61 (“*Obligations of conduct are breached if the state has not taken the necessary steps to prevent or protect the situation prohibited by the primary rule and that situation occurs.*”).

¹²⁶ **CL-1**, ECT, Art. 19(1) (providing, for example, that “*Contracting Parties shall accordingly: (a) take account of environmental considerations throughout the formulation and implementation of their energy policies; (b) promote market-oriented price formation and a fuller reflection of environmental costs and benefits throughout the Energy Cycle; (c) having regard to Article 34(4), encourage cooperation in the attainment of the environmental objectives of the Charter and cooperation in the field of international environmental standards for the Energy Cycle, taking into account differences in adverse effects and abatement costs between Contracting Parties*”).

¹²⁷ *Id.*, Art. 19(2) (“*At the request of one or more Contracting Parties, disputes concerning the application or interpretation of provisions of this Article shall, to the extent that arrangements for the consideration of such disputes do not exist in other appropriate international fora, be reviewed by the Charter Conference aiming at a solution.*”).

¹²⁸ *Id.*, Preamble.

no language relevant to inter-State obligations concerning energy resources ignores these express statements.¹²⁹

62. In this regard, Article 2's explicit reference to the "*objectives and principles*" of the European Energy Charter ("*EEC*") is particularly significant.¹³⁰ Title I of the EEC makes clear that energy cooperation is to occur "[w]ithin the framework of State sovereignty and sovereign rights over energy resources."¹³¹ Sovereignty is not posited as an abstract political value, but as a structural premise of the Energy Charter framework, within which market development, investment flows, and energy security are to be promoted. This is not surprising; sovereignty over natural resources is a core element of international energy law.¹³²
63. *EBL v. Spain*, a case Armenia cites, supports that proposition.¹³³ In interpreting the ECT's object and purpose, the tribunal held that:

the express terms of the [European Energy] Charter—whose 'objectives and principles' are expressly said to reflect the purpose of the ECT—reference both 'the framework of State sovereignty and sovereign rights over energy resources,' and the creation of a favorable climate for cross-border investment. Each objective must be seen within the context of

¹²⁹ Reply, ¶¶ 94–96.

¹³⁰ See Counter-Memorial, ¶ 50; 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); see also **RL-266**, *EBL and Tubo Sol v. Kingdom of Spain*, ICSID Case No. ARB/18/42, Award, 11 January 2024, ¶ 683.

¹³¹ **CL-1**, EEC, Title I: Objectives, at 29.

¹³² **CL-195**, D. Azaria, "Community Interest Obligations in International Energy Law," in E. Benvenisti & G. Nolte (eds.), *Community Interest Across International Law* (2018), at 299 (noting that "[t]he cornerstone rule of permanent sovereignty over natural resources" is one of the obligations that "international energy law includes"); **CL-194**, R. J. Heffron, et al., *A treatise for energy law*, 11 J. World Energy L. & Bus. 34 (2018), at 39–40 (describing national resource sovereignty as a "principle[] of energy law" and noting that the "principle of permanent sovereignty over natural resources is closely connected with energy resources"); **CL-185**, S. Bruce, "International Energy Law," in *Max Planck Encyclopedia of Public International Law* (October 2014), ¶ 20 ("Doctrinally, international energy law has been established through traditional notions of permanent sovereignty over natural resources, State jurisdiction, and State responsibility."). See also **CL-204**, United Nations General Assembly Res. 76/210 (6 January 2022), at 3 ("Reaffirming the sovereign rights of countries over their energy resources and their right to define appropriate policies for the production and use of energy.").

¹³³ See Reply, ¶¶ 108–109 & nn. 212–213 (invoking case in support of argument that "numerous tribunals have acknowledged the commonsense point that the ECT's object and purpose is, in fact, the promotion of trade and investment in the energy field.").

*the other, and neither objective can be said to dominate the other.*¹³⁴

Article 18 gives treaty expression to that premise.

64. Armenia's repeated emphasis on the non-binding character of the EEC does not alter this conclusion.¹³⁵ The relevance of the EEC flows not from its binding force, but from the fact that the ECT expressly incorporates its objectives and principles.¹³⁶ The Contracting Parties thereby anchored the Treaty's purpose in a framework that places sovereign rights over energy resources at its core.¹³⁷ Armenia cannot invoke Article 2 while disregarding the content of the very instrument to which it refers.
65. Should resort to drafting history be needed, the *travaux préparatoires* further confirm that the Treaty's object and purpose were never confined to trade and investor protection. Earlier drafts of Article 2 expressly referred to the establishment of a legal framework "*based on market principles and state sovereignty over energy resources.*"¹³⁸ Although the final text streamlined this language by express cross-reference to the Charter, the substance remained unchanged. The *travaux* thus reflect a deliberate effort to balance market-oriented cooperation with the preservation of sovereign authority over energy resources.¹³⁹

¹³⁴ **RL-266**, *EBL and Tubo Sol v. Kingdom of Spain*, ICSID Case No. ARB/18/42, Award, 11 January 2024, ¶ 683.

¹³⁵ Reply, ¶¶ 100, 102; *see also* Bifurcation Request, ¶ 62; Memorial, ¶¶ 54, 60.

¹³⁶ **CL-1**, ECT, Art. 2.

¹³⁷ *See* Counter-Memorial, ¶¶ 52–53 (explaining that the International Energy Charter adopted in 2015, while also not binding, confirms the continuing centrality of sovereignty to the Energy Charter system by expressly recognizing "*the sovereignty of each State over its energy resources, and its rights to regulate energy transmission and transportation within its territory respecting all its international obligations*").

¹³⁸ **CL-157**, European Energy Charter Conference, Note from the Secretariat enclosing the draft Basic Agreement (21 January 1992), ECT Travaux, https://www.energychartertreaty.org/fileadmin/DocumentsMedia/Travaux_different_languages/English_Travaux/4_-_BA_6__21.01.93_.pdf, Art. 2 (the draft of Article 2 then read as: "*(1) The objective of this Agreement is to promote overall cooperation and develop the benefits and complementarities in the energy field in Europe and globally between Contracting Parties, based on mutual interest and confidence, in accordance with the principles expressed in the Charter. (2) This Agreement shall realize this objective by establishing in the energy sector the principles for the development and implementation of an economic and legal framework based on market principles and state sovereignty over energy resources, so as to encourage investment and joint actions which contribute to the development of trade and security of supply, ensure optimum management and more efficient use of energy resources, protecting the environment and enhancing safety.*") (emphases added).

¹³⁹ *See id.*, Art. 2; *see also* **CL-23**, Conference Secretariat, Basic Agreement for the European Energy Charter (12 August 1992), ECT Travaux, at 8 ("*The objective of this Agreement is to establish a legal framework in order to promote long-term cooperation in the energy field, based on mutual benefits and*

66. Armenia also misunderstands Azerbaijan’s reliance on *SunReserve v. Italy* and *AES v. Spain*.¹⁴⁰ Azerbaijan cited these cases for the limited and accurate proposition that tribunals interpreting the ECT have recognized that long-term cooperation in the energy field presupposes respect for State sovereignty, including each State’s distinct role, responsibilities, and authority over its own energy resources under international law.¹⁴¹
67. Nothing in Armenia’s Reply undermines that proposition.¹⁴² The fact that *SunReserve* and *AES* arose in the investor-State context does not negate their recognition that the ECT framework is premised on a balance between market-based cooperation and the preservation of sovereign authority over energy policy and resources. Nothing in those decisions suggests that Article 18 is addressed exclusively to investors, or that it lacks opposability as between Contracting Parties. To the contrary, the sovereign rights defined in Article 18 necessarily operate horizontally, as between States, as well as vertically, in shaping the limits of investor protection.
68. Overall, Armenia’s attempt to reduce the ECT’s object and purpose to the promotion of trade and investment alone—detached from the sovereign framework

complementarities, in accordance with the objectives and principles of the Charter.”); 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.”); CL-20, Conference Secretariat, “Note from Chairman of WGII on the Basic Protocol” (11 October 1991), ECT Travaux, at 5 (“There was general agreement on the need for an article on the sovereignty over Natural Resources. It was felt that the relation between Article 5 and private rights, territory, environment and subnational status should be further defined.”); CL-21, Conference Secretariat, “Summary Note of the Second Plenary Session of the Conference” (31 October 1991), ECT Travaux, at 4 (“For the negotiations on the Charter, key items for the USSR were State sovereignty over energy resources, the concept of nondiscrimination, access to export markets, transit, and access to sources of capital.”).

¹⁴⁰ Counter-Memorial, ¶ 54; *contra* Reply, ¶¶ 106–108.

¹⁴¹ Counter-Memorial, ¶ 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.”); 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, ¶ 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.”).

¹⁴² See Reply, ¶¶ 107–108; see also *id.* ¶ 92 (“Armenia does not dispute that the starting point for ascertaining the ECT’s object and purpose is Article 2, which defines the ‘Purpose of the Treaty’ as ‘establish[ing] a legal framework in order to promote long-term cooperation in the energy field.’”) (emphasis in original).

within which energy cooperation operates—is incompatible with the Treaty’s text, structure, and drafting history.¹⁴³ Properly understood, the ECT establishes a comprehensive legal framework for energy cooperation among States, within which Article 18 plays a central role. Interpreting Articles 18(1) and 18(3) as enforceable inter-State obligations is consistent with the Treaty’s object and purpose.

C. No Relevant Subsequent Practice Negates Jurisdiction Over Azerbaijan’s Article 18 Claims.

69. Armenia’s Reply misconstrues the standard for “subsequent practice” under VCLT Article 31(3)(b). As Azerbaijan has explained, the absence of prior inter-State claims under Article 18 does not constitute subsequent practice evidencing agreement among the Contracting Parties that Articles 18(1) and 18(3) lack enforceable effect.¹⁴⁴ Armenia’s attempt to turn the novelty of a claim invoking a treaty provision into a consensus understanding among the treaty parties that the provision *cannot* be invoked in arbitration defies established principles of treaty interpretation, international jurisprudence, and logic.
70. In its Reply, Armenia reiterates the argument that no ECT Contracting Party has previously invoked Article 18 in an inter-State arbitration under Article 27—and that this “*absence*” is proof of a shared understanding that the provision is not justiciable.¹⁴⁵ But this approach fundamentally misapplies VCLT Article 31(3)(b), which recognizes as relevant to the interpretive exercise only “*subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.*”¹⁴⁶ As the International Law Commission (“*ILC*”) explained, such practice must reflect a “*common understanding*” of “*the parties as a whole,*”¹⁴⁷ which the parties “*are aware of and accept*”¹⁴⁸—something that

¹⁴³ See Counter-Memorial, ¶¶ 51, 54–55.

¹⁴⁴ See *id.* ¶ 48.

¹⁴⁵ Reply, ¶¶ 141–143.

¹⁴⁶ **CL-11**, VCLT Art. 31(3)(b) (emphasis added); see also **RL-224**, O. Dörr & K. Schmalenbach, “Article 31: General Rule of Interpretation,” in *Vienna Convention on the Law of Treaties – A Commentary* (2012), at 559 (“*Subsequent practice of parties is only relevant for treaty interpretation if it ‘establishes the agreement of the parties.’*”) (emphasis in original).

¹⁴⁷ **CL-9**, Draft Articles on the Law of Treaties with Commentaries, International Law Commission (1966), at 221–222.

¹⁴⁸ **CL-196**, International Law Commission, Draft Conclusions on Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties, *Report of the ILC on the Work of Its Seventieth Session*, UN Doc. A/73/10 (2018), Conclusion 10(1) (“*An agreement under Article 31, paragraph 3 (a) and (b), requires a common understanding regarding the interpretation of a treaty which the parties are aware of and accept.*”).

generally cannot be derived from silence or inaction, particularly in the context of multilateral treaties like the ECT.¹⁴⁹

71. Armenia's argument turns the interpretive exercise on its head: there are no useful conclusions that can be drawn from the *lack of* subsequent practice in this context, as Armenia attempts to argue.¹⁵⁰ Rather, as Armenia's own authorities demonstrate, there must be some practice on the part of States parties that establishes an interpretive consensus regarding the treaty provision at issue.¹⁵¹
72. In the *Nuclear Weapons* Advisory Opinion Armenia cites, for example, the ICJ examined whether the prohibitions on poisoned weapons under international humanitarian law applied to nuclear weapons. The Court found that they did not, because States had a consistent practice of applying those prohibitions to "*weapons whose prime, or even exclusive, effect is to poison or asphyxiate. This practice is clear, and the parties to those instruments have not treated them as referring to nuclear weapons.*"¹⁵² That conclusion reflected an express and consistent understanding of the treaty parties over a 70-year period, derived from actual interpretive engagement with the relevant provisions, and bears no analogy to the complete absence of practice that Armenia alleges here.¹⁵³
73. Commentators cited by Armenia likewise acknowledge that the Court's analysis in *Nuclear Weapons* was grounded not in the *absence* of practice, but in subsequent

¹⁴⁹ *Id.*, Conclusion 10(2) ("Silence on the part of one or more parties may constitute acceptance of the subsequent practice when the circumstances call for some reaction.") (emphasis added); *id.* at 80 ("The relevance of silence or inaction for the establishment of an agreement regarding interpretation depends to a large extent on the circumstances of the specific case. Decisions of international courts and tribunals demonstrate that acceptance of a practice by one or more parties by way of silence or inaction is not easily established.") (emphasis added). See also **CL-208**, D. Azaria, *State Silence as Acceptance: A Presumption and an Exception*, British Yearbook of International Law (2024), at 13 ("Today, the 'exceptionality' of acquiescence from State silence is achieved through the conditions required for silence to entail acceptance," namely "(1) a State is silent in circumstances that call for that State's positive reaction; (2) the silent State must be 'in a position to react'; (a) it must have actual or constructive knowledge of the circumstances that call for its reaction; (b) its position to react must not be otherwise impaired; [and] (3) reasonable time has passed from when the silent State is in a position to react.").

¹⁵⁰ See Reply, ¶ 141–143.

¹⁵¹ **RL-237**, R. K. Gardiner, "The General Rule: (2) Agreements as Context, Subsequent Agreements, and Subsequent Practice," in *Treaty Interpretation*, 2nd ed. (2015), at 263 (discussing consistent patterns of State practice, including subsequent treaty practice, in the context of the Nuclear Weapons Advisory Opinion and Bankovic decision, "*as practice indicative of interpretive agreement*"); **RL-148**, *Banković et al. v. Belgium et al.*, ECtHR Application No. 52207/99, Decision on Admissibility, 12 December 2001, ¶ 62 (finding that, despite numerous extraterritorial military operations executed by Contracting Parties to the European Convention on Human Rights since the Convention's ratification, the lack of any derogations made under Article 15 in relation to those operations evidenced an agreement among the parties that the Convention did not apply extraterritorially to such operations).

¹⁵² **RL-36**, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, ¶ 55.

¹⁵³ *Id.*

affirmative treaty practice confirming the exclusion of nuclear weapons.¹⁵⁴ This further treaty practice “*included the negotiation, conclusion, and ratification of the 1977 Protocol I to the 1949 Geneva Conventions, in the course of which it was made clear that the new rules did not regulate or prohibit nuclear weapons. Express statements to this effect were not challenged or contradicted.*”¹⁵⁵

74. In contrast, Armenia identifies no comparable interpretive practice as to Article 18 of the ECT.¹⁵⁶ It cites no formal statements, subsequent treaty practice, or coordinated conduct by the Contracting Parties evidencing a shared understanding that Articles 18(1) and 18(3) are non-justiciable.
75. Nor, as Azerbaijan has explained, does *Oil Platforms* assist Armenia’s case.¹⁵⁷ There, the ICJ looked to prior actions filed between the United States and Iran, and noted that neither of the two parties to that bilateral treaty had ever previously invoked Article I of the Treaty of Amity to ground jurisdiction in those prior proceedings.¹⁵⁸ That example has no application in the context of the multilateral ECT, where there are no such prior proceedings to compare—not only as between Azerbaijan and Armenia, but as between any ECT Contracting Parties, since this is the very first inter-State case to be filed under the ECT. A more proper analogy would show that the Contracting Parties routinely bring inter-State ECT claims but have never invoked Article 18 in such proceedings. Armenia has made no such showing—because there is none to be made.
76. In its Reply, Armenia also discusses unrelated inter-State disputes where Article 18 was not invoked, claiming that this supports the absence of any practice confirming Azerbaijan’s position.¹⁵⁹ But nothing can be usefully gleaned from the lack of any prior inter-State proceedings invoking Article 18. As an initial point, no one can know what treaty provisions may have been invoked in confidential negotiations, in the disputes raised by Armenia or any others. Judicial enforcement of inter-State obligations is the exception, not the rule.¹⁶⁰ Just because a dispute did not progress

¹⁵⁴ See Reply, ¶ 141 & n. 286; **RL-237**, R. K. Gardiner, “The General Rule: (2) Agreements as Context, Subsequent Agreements, and Subsequent Practice,” in *Treaty Interpretation*, 2nd ed. (2015), at 263 (“[I]t would have been more difficult to pin the absence of a bar on nuclear weapons on practice in this sense had the ban on poisoned weapons . . . not been accompanied by . . . further treaty practice.”).

¹⁵⁵ **RL-237**, R. K. Gardiner, “The General Rule: (2) Agreements as Context, Subsequent Agreements, and Subsequent Practice,” in *Treaty Interpretation*, 2nd ed. (2015), at 263.

¹⁵⁶ See Reply, ¶¶ 141–145.

¹⁵⁷ See *supra* ¶¶ 44–49; see Reply, ¶ 141.

¹⁵⁸ **RL-37**, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, ¶ 30.

¹⁵⁹ See Reply, ¶¶ 144–145.

¹⁶⁰ See, e.g., **CL-149**, *Free Zones of Upper Savoy and the District of Gex*, Order of 19 August 1929, P.C.I.J. Series A, No. 22, at 13 (noting that “the judicial settlement of international disputes . . . is simply an alternative to the direct and friendly settlement of such disputes”).

to arbitration, does not mean that the States involved do not believe that there are judicially enforceable obligations at issue. Indeed, there are innumerable treaty obligations that have never been enforced by tribunals, but that does not make them any less binding or enforceable.¹⁶¹

77. To be relevant to an assessment of subsequent practice, Armenia would need to show that the disputes raised constitute practice “*in the application of the treaty*”¹⁶² that establishes the interpretive agreement of all the parties to the treaty.¹⁶³ Armenia does not and cannot show that these disputes involved the ECT in any way, let alone that they established some sort of common understanding among Contracting Parties as to the operative effects of Article 18.
78. In any event, the present case bears no resemblance to the sovereignty disputes identified by Armenia, because this is not a dispute over territorial sovereignty or even over energy resources located in a contested region. The areas in question are part of Azerbaijan’s internationally recognized territory,¹⁶⁴ and Armenia itself has not contested that sovereignty in this proceeding.¹⁶⁵ As a result, the Tribunal need not resolve any territorial questions to adjudicate Azerbaijan’s claims under Article 18.
79. Finally, Armenia mischaracterizes recent discussion on Article 18 during the ECT modernization process. Nothing in these documents reflect “*the limited and contextual function of Article 18.*”¹⁶⁶ To the contrary, in June 2020, Azerbaijan proposed that the ECT should reflect respect for each State’s sovereignty over its energy resources.¹⁶⁷ Separately, and as an “[a]dditional[]” point, Azerbaijan noted that “*the proper balance between the rights of investors and state’s regulatory*

¹⁶¹ See, e.g., **RL-32**, UNCLOS, Art. 125 (providing land-locked States the right to access the sea and freedom of transit to do so, which has not been previously been applied by a tribunal); **CL-160**, Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1992) (containing binding obligations on States regarding chemical weapons which have not been applied or enforced under the treaty’s dispute resolution mechanism despite publicly known instances of breach).

¹⁶² **CL-11**, VCLT, Art. 31(3)(b).

¹⁶³ **RL-224**, O. Dörr & K. Schmalenbach, “Article 31: General Rule of Interpretation,” in *Vienna Convention on the Law of Treaties - A Commentary* (2012), at 556 (“*The interpretative value of that practice will always depend on the extent to which it is concordant, common and consistent and thus sufficient to establish a discernable pattern of behavior.*”).

¹⁶⁴ **CE-11**, UNSC Resolution 853, S/RES/853 (29 July 1993); **CE-13**, UNSC Resolution 874, S/RES/874 (14 October 1993); **CE-15**, UNSC Resolution 884, S/RES/884 (12 November 1993).

¹⁶⁵ See Counter-Memorial, ¶ 55.

¹⁶⁶ Reply, ¶ 146.

¹⁶⁷ **RL-173**, ECT Modernisation Travaux, First Negotiation Round of 6–9 July 2020, Negotiation Draft (26 June 2020), at 74.

function will play an important role.”¹⁶⁸ In later modernization discussions, Azerbaijan raised the broad scope of Article 18(1) during the ECT modernization process, noting that the provision was “*very general*” and required clarity.¹⁶⁹ It proposed to clarify the provision by “*explicitly mentioning*” certain phases of the energy sector.¹⁷⁰ Neither of these statements suggest that Article 18 is or should be limited in scope to the investor-State context, or that it serves a solely interpretive function.

D. The *Travaux* Confirm that Articles 18(1) and 18(3) Impose Substantive, Enforceable Obligations.

80. Having previously accepted that recourse to the *travaux* is neither necessary nor determinative here,¹⁷¹ Armenia’s Reply reverses course, and spends nearly a dozen pages repackaging arguments to urge that the Tribunal look to the *travaux* to confirm or determine Article 18’s meaning.¹⁷² As Azerbaijan has explained,¹⁷³ however, the Tribunal does not need to peer past the text of Articles 18(1) and 18(3) to their negotiating history, because the provisions plainly impose enforceable obligations between Contracting Parties.¹⁷⁴ Armenia’s assertion that Azerbaijan’s interpretation produces a “*manifestly unreasonable result*”¹⁷⁵ is conclusory and falls far short of the “*extremely high*” threshold required to displace the straightforward VCLT Article 31 analysis.¹⁷⁶

¹⁶⁸ *Id.*

¹⁶⁹ **RL-174**, ECT Modernisation Travaux, Fifth Negotiation Round, Summary Record of the Modernisation Group Meeting of 1–4 June 2021 (11 June 2021), ¶ 35.

¹⁷⁰ *Id.*

¹⁷¹ *See Memorial*, ¶¶ 81–82 (arguing that “[s]trictly speaking, there is therefore no need to have recourse to the Treaty’s travaux préparatoires”).

¹⁷² Reply, ¶¶ 148–172.

¹⁷³ Counter-Memorial, ¶ 56.

¹⁷⁴ **CL-150**, *Competence of the General Assembly for the Admission of a State to the United Nations*, Advisory Opinion, I.C.J. Reports 1950, at 8 (finding that “[i]f the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court [] resort to other methods of interpretation.” The Court found that it was “not permissible” for it to “resort to the travaux préparatoires” because it found “no difficulty in ascertaining the natural and ordinary meaning of the words in question [before it] and no difficulty in giving effect to them.”) (emphases added); 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, ¶ 90 (concluding that, where ordinary meaning of provision in context was clear, “there [was] no need to resort to supplementary means of interpretation, such as the travaux préparatoires”).

¹⁷⁵ Reply, ¶ 148.

¹⁷⁶ **RL-225**, O. Dörr & K. Schmalenbach, “Article 32: Supplementary means of interpretation,” in *Vienna Convention on the Law of Treaties – A Commentary* (2012), ¶ 35.

81. That alone disposes of Armenia’s *travaux* argument. But even if the Tribunal were to consider to *travaux* as a supplementary means of interpretation, they confirm Azerbaijan’s position—not Armenia’s. In the alternative, if the Tribunal were to decide that *travaux* are inconclusive, that simply means that they cannot assist with the interpretation of Article 18.

1. The *travaux* confirm that Articles 18(1) and 18(3) were always intended to have operative effect.

82. First, the *travaux* show that, from its earliest drafts, the ECT required the Contracting Parties affirmatively to “recognise” sovereignty over resources—initially “natural” resources, later changed to “energy” resources—and identified concrete sovereign rights that the Contracting Parties would “hold[]” or “be free to” exercise in relation to those resources.¹⁷⁷ These provisions were formulated pursuant to a “*general agreement on the need for an article on the sovereignty over Natural Resources.*”¹⁷⁸ An Explanatory Memorandum accompanying an early working draft of the Treaty described the provision that became Article 18 in operative language, as “mak[ing] provision for States to decide” how to explore and exploit their natural resources.¹⁷⁹ The *travaux* confirm that the Contracting Parties understood that a treaty establishing a legal framework for cooperation in the energy sector necessarily had to give treaty expression to the principle of permanent sovereignty over natural resources, which underpins any regulation of energy exploration, development, and use.¹⁸⁰

¹⁷⁷ 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; **RL-189**, Draft Treaty, Basic Protocol to the European Energy Charter (12 September 1991), Art. 5; **RL-190**, Draft Treaty, Basic Protocol to the European Energy Charter (31 October 1991), Art. 5; **CL-23**, Conference Secretariat, Basic Agreement for the European Energy Charter (12 August 1992), ECT Travaux, Art. 4; **RL-117**, ECT Travaux, Note from the Conference Secretariat enclosing the draft Basic Agreement (21 January 1992), Art. 4; **RL-195**, Draft Basic Agreement for the European Energy Charter (21 December 1992), Art. 4; **RL-196**, Draft Basic Agreement for the European Energy Charter (9 February 1993), Art. 4; **RL-127**, Draft Basic Agreement for the European Energy Charter (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.

¹⁷⁸ **CL-20**, Conference Secretariat, “Note from Chairman of WGII on the Basic Protocol” (11 October 1991), ECT Travaux, at 4 (emphases added). See also **CL-21**, Conference Secretariat, “Summary Note of the Second Plenary Session of the Conference” (31 October 1991), ECT Travaux, at 3, 5 (“With respect to the concept of ‘national (or state) sovereignty’—which was an “important question[]”—“the right of States to control the exploitation of resources on their territory was generally accepted”).

¹⁷⁹ **RL-189**, Draft Treaty, Basic Protocol to the European Energy Charter (12 September 1991), at 39.

¹⁸⁰ See, e.g., **CL-42**, A. Konoplyanik & T. Wälde, *Energy Charter Treaty and its Role in International Energy*, 24 J. Energy & Nat. Resources L. 523 (2006), at 540 (“The reference to ‘sovereignty over energy resources’ must be understood as confirmation by the ECT of the principle of permanent

83. On Reply, Armenia offers no response to Azerbaijan’s explanation of this drafting history,¹⁸¹ other than to dismiss it in conclusory fashion as mere “*reaffirm[ations] [of] an existing principle of international law.*”¹⁸² Armenia’s argument ignores the drafters’ deliberate choice of obligation-bearing language and the absence of any textual limitation on whom those sovereign rights would bind. Nothing in these *travaux* suggests that recognition of sovereignty was intended to operate only internally or only vis-à-vis investors.¹⁸³
84. *Second*, during discussions on Article 18(2), Article 18(3) was characterized as a “*far-reaching*” provision that included numerous concrete rights held by Contracting Parties.¹⁸⁴ Armenia’s attempts to downplay that statement, suggesting it was limited to the context of investor-State relationships,¹⁸⁵ misread the record. The Chairman’s Memorandum went on to discuss the interaction between Article 18(3) and the investment provisions of the ECT because the Memorandum was drafted in the context of discussions over Article 18(2) (then Article 21(2)), which does explicitly address the balance between sovereign rights, on one hand, and commercial objectives, on the other.¹⁸⁶ But nothing in the document limits the “*far-reaching*” consequences of Article 18(3) to investor-State relationships, or suggests that the operative effect of Articles 18(1) and 18(3) was confined to investor-State disputes.¹⁸⁷
85. *Finally*, Armenia’s analysis places undue weight on the section headers in prior drafts of the treaty, as opposed to the text of the provision, to support its characterization of the provision as merely interpretive.¹⁸⁸ In response to Azerbaijan’s argument that the sovereignty provision consistently remained in the

sovereignty over natural resources.”); **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), ¶ 18.13 (“*Article 18 is a declaration of the well-established international law principle of permanent sovereignty over natural resources.*”). See also **CL-184**, Energy Charter Secretariat, *Report on WTO Public Forum Session 40: International governance of energy trade: WTO and Energy Charter Treaty (ECT)* (21 September 2011), at 3 (the then Secretary General of the Energy Charter Secretariat noting that “[t]he principle of sovereignty over energy resources is enshrined in the ECT”).

¹⁸¹ See Counter-Memorial, ¶¶ 57–60.

¹⁸² Reply, ¶ 166.

¹⁸³ *Contra* Reply ¶¶ 151, 154, 157; Memorial, ¶¶ 86–88.

¹⁸⁴ **CL-33**, Chairman of Legal Subgroup, Memorandum regarding Paragraph (2) of Article 21, “Sovereignty over Energy Resources” (12 August 1994), ECT Travaux, at 5.

¹⁸⁵ Reply, ¶ 170.

¹⁸⁶ **CL-33**, Chairman of Legal Subgroup, Memorandum regarding Paragraph (2) of Article 21, “Sovereignty over Energy Resources” (12 August 1994), ECT Travaux; **CL-1**, ECT, Art. 18(2).

¹⁸⁷ **CL-33**, Chairman of Legal Subgroup, Memorandum regarding Paragraph (2) of Article 21, “Sovereignty over Energy Resources” (12 August 1994), ECT Travaux.

¹⁸⁸ Reply, ¶ 163.

operational part of the Treaty and not the Preamble,¹⁸⁹ Armenia points to Article 18's prior inclusion in sections labeled "*Definitions and Principles*" or "*Contextual*."¹⁹⁰ But the Tribunal could equally draw conclusions from the provision's prior inclusion in a section titled "*General Obligations*," alongside numerous other provisions plainly intended to establish binding and enforceable obligations among the Contracting Parties.¹⁹¹ Either way, there are no conclusions to be drawn from prior section headings that can override the ordinary meaning of the final provision, interpreted in accordance with VCLT Article 31.

2. Armenia continues to misread and misstate the significance of the *travaux*.

86. Armenia's argument that the *travaux* show Article 18 is purely interpretive and designed only "*as a counterbalance to investor rights*"¹⁹² conflates the later debates—surrounding the insertion of Article 18(2)—with principles that had already been agreed years earlier and settled in Articles 18(1) and 18(3).¹⁹³
87. First, Armenia claims to have produced *travaux* confirming that "*the reference to 'sovereignty over energy resources'*" in Article 18 was conceived of as a means to "*'affirm state authority over the disposal of energy resources' in the context of investor-State relationships.*"¹⁹⁴ But the document Armenia cites for this proposition is a June 1994 Memorandum addressing the adoption of Article 18(2); it does not address "*the reference to 'sovereignty over energy resources'*" in Articles 18(1) or 18(3) at all.¹⁹⁵ For that matter, the Memorandum does not even say anything about Article 18(2) serving as a "*counterbalance*" to

¹⁸⁹ Counter-Memorial, ¶ 66.

¹⁹⁰ Reply, ¶¶ 161, 163.

¹⁹¹ Counter-Memorial, ¶ 66; *see, e.g.*, **RL-189**, Draft Treaty, Basic Protocol to the European Energy Charter (12 September 1991), Art. 7 ("*Energy Markets*"); *id.*, Art. 8 ("*Standards*") ("*Contracting Parties shall ensure that energy standards or specifications, and operating procedures required to be met by Investors, are objectively justifiable and non-discriminatory and that they are published and readily available to Investors.*"); *id.*, Art. 9 ("*Procurement Policies*"); *id.*, Art. 10 ("*Non-Discrimination*"); *id.*, Art. 11 ("*Freedom of Movement*"); *id.*, Art. 13 ("*State Aid*"); *id.*, Art. 14 ("*Unfair Trade*"); *id.*, Art. 19 ("*Intellectual Property*").

¹⁹² Reply, ¶ 154.

¹⁹³ *See* **RL-133**, ECT Travaux, Memorandum on the Final Plenary Session of the Energy Charter Treaty Negotiations of 7–11 June 1994 (13 June 1994), at 3 (reporting on the adoption of the amendment that became Article 18(2): "*Without prejudice to the objectives of promoting access to energy resources, and exploration and development thereof on a commercial basis, the Treaty does not affect the rules in Contracting Parties governing the system of property ownership in energy resources.*"); *see also supra* ¶¶ 28–31, 82; **RL-121**, ECT Travaux, Press Notice on the European Energy Charter Negotiations (14 December 1992), at 3.

¹⁹⁴ Reply, ¶ 151

¹⁹⁵ *Id.* ¶ 151 & n. 303.

investor-protections or operating solely in the context of investor-State relationships.¹⁹⁶

88. The other documents Armenia offers in support of this argument provide little assistance.¹⁹⁷ As Azerbaijan has previously explained, the August and September 1994 letters from Norway were also sent in the context of the debate surrounding Article 18(2), in response to concerns that 18(2) could “*override*” or “*gut*” other provisions of the Treaty.¹⁹⁸ Nowhere in its letters did Norway state, as Armenia now argues, that the sovereignty provision “*was only intended*” to have interpretive effect, or that Articles 18(1) and 18(3) did not “*create legal obligations of [their] own*.”¹⁹⁹ And Armenia still fails to explain how Article 18 could serve as an effective “*counterbalance to investor rights*,” let alone raise concerns that it could override other treaty provisions, if it did not impose legal obligations.²⁰⁰
89. Further, each of the documents Armenia cites as supposed support fails to show that Article 18 is solely concerned with investor-State relations:
- a. The 1993 French Memorandum groups the sovereignty article with other articles that “*directly or indirectly concern investors*,”²⁰¹ hardly conclusive evidence that it cannot be applied between States.

¹⁹⁶ **RL-133**, ECT Travaux, Memorandum on the Final Plenary Session of the Energy Charter Treaty Negotiations of 7–11 June 1994 (13 June 1994), at 3; *contra* Reply, ¶ 151.

¹⁹⁷ See Reply, ¶ 151 & n. 302 (citing **RL-140**, ECT Travaux, Letter from Norway to the Conference Secretariat regarding Article 21(2) (1 September 1994)); **RL-138**, ECT Travaux, Note from Norway to the Conference Secretariat on Article 21(2) (Sovereignty over Energy Resources) (16 August 1994); **RL-143**, ECT Travaux, Memorandum from C. Bamberger (Legal Adviser of the Conference) explaining the Final Text of the ECT (26 September 1994); **RL-128**, ECT Travaux, Memorandum from France commenting on the investment provisions of the Draft Basic Agreement (15 March 1993); **RL-121**, ECT Travaux, Press Notice on the European Energy Charter Negotiations (14 December 1992).

¹⁹⁸ Counter-Memorial, ¶¶ 59, 63–64.

¹⁹⁹ Compare Reply, ¶ 154 with **RL-135**, ECT Travaux, Memorandum from Norway to C. Bamberger (Legal Adviser of the Conference) on Article 21 (2 August 1994), at 1 (“*It should be clearly stated that article 21(2) is intended to affect the interpretation and application of other articles of the ECT.*”); **RL-138**, ECT Travaux, Note from Norway to the Conference Secretariat on Article 21(2) (Sovereignty over Energy Resources) (16 August 1994), at 3 (“*Article 21 is intended to affect the interpretation and application of the rest of the ECT, including provisions of Part III. It is not intended to undermine or to gut the application of any provision of the ECT.*”); **RL-140**, ECT Travaux, Letter from Norway to the Conference Secretariat regarding Article 21(2) (1 September 1994), at 2 (Norway proposed that any declaration that may “*for political reasons be desirable to include*” would state that “*Article 21 is intended to affect the interpretation and application of the rest of the ECT, including provisions of Part III. It is not intended to undermine the application of any provision of the ECT.*”).

²⁰⁰ Reply, ¶ 154; see Counter-Memorial, ¶¶ 59, 63–64.

²⁰¹ **RL-128**, ECT Travaux, Memorandum from France commenting on the investment provisions of the Draft Basic Agreement (15 March 1993), at 1 (emphasis added).

- b. The Press Notice does not specify that the sovereign rights that the Contracting Parties will “*retain*” under the Treaty are solely “*in relation to access to resources by ‘companies.’*”²⁰² Those two points are addressed in two separate sentences; the first appears directed towards the assertion of sovereign rights maintained in Articles 18(1) and 18(3),²⁰³ while the second describes the commitment to non-discriminatory investor access to resources articulated in Article 18(4).²⁰⁴
 - c. The Bamberger Memorandum—describing Article 18 as “*pertain[ing] especially to investment issues*”—does not characterize Articles 18(1) to 18(3) as solely “*interpretive*” or otherwise suggest it does not impose substantive obligations between and among the Contracting Parties.²⁰⁵
90. Article 18 can at once be relevant to the interpretation of the Treaty’s investor protections while also imposing binding obligations to respect each Contracting Party’s sovereign rights over their own energy resources. Indeed, the provision must do both of these things for the Treaty to operate effectively.²⁰⁶ Notably, the drafters did not limit the scope of the sovereignty provision. As Armenia itself states, to the extent the drafters felt that Article 18 needed to address investment issues in particular, they did so by the addition of Article 18(4).²⁰⁷
91. The Reply’s complaint that Azerbaijan did not engage with a couple of documents authored by individual States, which allegedly demonstrate the purely interpretive character of Article 18,²⁰⁸ is misconceived. Isolated statements by two individual States do not illuminate the Contracting Parties’ “*common understanding as to the meaning*” of Article 18.²⁰⁹ Australia and the United Kingdom drafted those notes

²⁰² Reply, ¶¶ 151, 160.

²⁰³ **RL-121**, ECT Travaux, Press Notice on the European Energy Charter Negotiations (14 December 1992), at 3 (“*The Sovereign Rights of governments will be maintained in the Basic Agreement, for instance in decisions on whether or when to license areas for oil and gas exploration and on what environmental and safety rules to apply.*”).

²⁰⁴ *Id.* (“*The signatory countries will however commit themselves to allowing Charter companies Access to Energy Resources, such as oil and gas reserves, under transparent and non-discriminatory rules.*”).

²⁰⁵ **RL-143**, ECT Travaux, Memorandum from C. Bamberger (Legal Adviser of the Conference) explaining the Final Text of the ECT (26 September 1994), at 10; *see also* **RL-108**, C. S. Bamberger, *The Energy Charter Treaty: A Description of Its Provisions* (1994), at 23.

²⁰⁶ *See supra* ¶ 58.

²⁰⁷ *See* Memorial, ¶ 88 & n. 167 (citing **RL-118**, ECT Travaux, Note from the Conference Secretariat to C. Jones (Secretary-General of the Conference) enclosing a proposal on Article 4 (Sovereignty over and access to energy resources) (5 February 1992), at 3, ¶ 10 (where it was proposed that language similar to current Article 18(4) be added to “*match[]*” “*the reference to sovereignty over resources*”).

²⁰⁸ Reply, ¶¶ 150, 155.

²⁰⁹ *See* **CL-175**, *The Iron Rhine (Ijzeren Rijn) Railway Arbitration (The Kingdom of Belgium v The Kingdom of the Netherlands)*, PCA Case No. 2003-02, Award, 24 May 2005, ¶ 48 (noting that the

in the context of debate over Article 18(2), and their comments must be understood within that context—not as broad statements regarding the enforceability of Articles 18(1) or 18(3), but rather as attempts to cabin Article 18(2)’s reach to ensure it did not “*undermine or ‘gut’ the Treaty.*”²¹⁰

92. *Finally*, although Armenia is unable to produce any *travaux* conclusively demonstrating that the drafters intended Article 18 to be non-binding, Armenia argues that Azerbaijan’s alleged failure to produce *travaux* explicitly stating that Article 18 is binding and enforceable is “*fatal*” to Azerbaijan’s claims under Article 18.²¹¹ Even if Armenia’s characterization of the *travaux* were correct—which it is not—this argument misunderstands the weight given to *travaux* in interpreting a treaty provision.²¹² While the ECT’s drafters discussed in depth the function of Article 18(2) vis-à-vis foreign investors, they did not specifically engage with the terms “*recognise*” or “*continue to hold*” in Articles 18(1) or 18(3). The *travaux* thus do not reflect any “*common understanding as to the meaning*” of Articles 18(1) and 18(3) propounded by Armenia, such that the Tribunal “*may safely rely*” on the *travaux* to support that interpretation under VCLT Article 32.²¹³

extracts of prolonged diplomatic negotiations produced by the States in that case, while capable of showing “*the desire or understanding of one or other of the Parties at particular moments,*” did “*not serve the purpose of illuminating a common understanding as to the meaning of*” the provision involved). See also **RL-225**, O. Dörr & K. Schmalenbach, “Article 32: Supplementary means of interpretation,” in *Vienna Convention on the Law of Treaties – A Commentary* (2012), ¶ 13 (“*[T]he material considered must be apt to illuminate a common understanding of the negotiating parties as to the meaning of the treaty provisions.*”) (emphasis in original).

²¹⁰ **RL-139**, ECT Travaux, Letter from Australia to C. Bamberger (Legal Adviser of the Conference) on Article 21 (22 August 1994); see also **RL-134**, ECT Travaux, Fax from the UK to C. Bamberger (Legal Adviser of the Conference) regarding various articles (17 June 1994), at 2 (noting that Article 21(1) “*states the obvious and, although otiose, is harmless*”); **RL-141**, ECT Travaux, Fax from the UK to Norway on Article 21 (1 September 1994), at 2 (asserting the U.K.’s view that the provision that became Article 18(4), not Articles 18(1) or 18(3), is “*purely declaratory*”—a view with which Norway evidently disagreed in **RL-138**, ECT Travaux, Note from Norway to the Conference Secretariat on Article 21(2) (Sovereignty over Energy Resources) (16 August 1994), at 3).

²¹¹ Reply, ¶¶ 148, 172.

²¹² See **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, ¶ 147 (considering the usefulness of travaux to be “*limited*” when there was “*very little discussion*” of the relevant terms, and instead reverted to the interpretation the Court had reached “*through the main method of ordinary meaning interpretation*”); see also **CL-203**, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Judgment, I.C.J. Reports 2020, ¶ 70 (noting that “*the preparatory work of the Vienna Convention provides no clear indication of the circumstances in which a property may acquire the status of ‘premises of the mission’*” and therefore resorting to the interpretation it arrived at pursuant to Article 31 of the VCLT).

²¹³ **CL-175**, *The Iron Rhine (Ijzeren Rijn) Railway Arbitration (The Kingdom of Belgium v The Kingdom of the Netherlands)*, PCA Case No. 2003-02, Award, 24 May 2005, ¶ 48; see also **RL-225**, O. Dörr & K. Schmalenbach, “Article 32: Supplementary means of interpretation,” in *Vienna Convention on the Law of Treaties – A Commentary* (2012), ¶ 13.

93. As such, and contrary to Armenia’s urging, there is not a point in the Tribunal’s treaty interpretation where its analysis would turn on any burden of proof regarding the *travaux*. If the Tribunal finds the *travaux* are inconclusive, the consequence is simply that they do not assist its interpretation of Article 18. None of the ICJ cases that Armenia cites is to the contrary. In each of those cases, it was not a lacuna in the *travaux* that by itself proved “*fatal*” to a party’s interpretation.²¹⁴ Instead, it was the totality of the ICJ’s analysis under Articles 31 and 32 of the VCLT that determined the Court’s decision.²¹⁵

E. Good-Faith Interpretation Supports Azerbaijan’s Reading of Article 18, Not Armenia’s.

94. As previously addressed in Azerbaijan’s Counter-Memorial, a good-faith reading of Articles 18(1) and 18(3) supports Azerbaijan’s interpretation that the provisions are enforceable.²¹⁶ A good-faith interpretation necessarily incorporates the principle of effectiveness, giving “*meaning and effect to all the terms of the treaty*.”²¹⁷ It cannot reduce operative treaty language to surplusage or render one of its central provisions legally inert.²¹⁸ But Armenia’s approach does exactly that, by

²¹⁴ Reply, ¶ 172.

²¹⁵ **RL-37**, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, ¶¶ 27–31 (rejecting Iran’s interpretation of the Article I of the Treaty of Amity not based solely on the lack of supporting *travaux* but also because the contrary interpretation was supported by the object and purpose of the treaty, the *travaux* of comparable treaties, and the subsequent practice of Iran and the United States); **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, ¶¶ 36–48 (rejecting Colombia’s interpretation of Article LVI of the Pact of Bogota not based solely on the lack of supporting *travaux* but also because the express terms of the provision and its context, and the object and purpose of the Pact of Bogota, did not support Colombia’s interpretation); **RL-168**, *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, I.C.J. Reports 2017, ¶¶ 65, 70, 99, 106 (rejecting Kenya’s interpretation of a Memorandum of Understanding (“*MoU*”), based not solely on the lack of supporting *travaux* but also because the context of the MoU, its text, and a good faith interpretation of the relevant provision did not support Kenya’s position). Armenia’s reference to **RL-176**, *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2023 is irrelevant as it did not involve treaty interpretation at all; rather, the Court looked to the UNCLOS *travaux* as part of its assessment of State practice in order to determine the applicable customary rule. *See id.* ¶¶ 76–79.

²¹⁶ *See* Counter-Memorial, ¶ 4; *id.* § II.A.

²¹⁷ **CL-51**, R. K. Gardiner, “Treaty Interpretation” (2015), Chapter 5: The General Rule: (1) The Treaty, its Terms, and their Ordinary Meanings, at 180 (internal quotations omitted).

²¹⁸ *See* **RL-224**, O. Dörr & K. Schmalenbach, “Article 31: General Rule of Interpretation,” in *Vienna Convention on the Law of Treaties - A Commentary* (2012) at 539–540 (“*Another unwritten topos of interpretation that figures rather prominently in international practice is the rule of effectiveness. . . . It says that treaty provisions are to be interpreted so as to give them their fullest weight and effect and in such a way that a reason and a meaning can be attributed to every part of the text. [T]he principle of effectiveness is in reality no more than a particular application of the object and purpose test and the good faith rule and, therefore, an integral part of the general rule of interpretation laid down in Art 31.*”) (emphases in original).

casting Articles 18(1) and 18(3) as merely “*declaratory*” or “*interpretive*,” and thus denying them any independent legal effect.²¹⁹ Armenia’s effort to nullify the legal content of the provisions is incompatible with the requirement of *effet utile* and undermines the coherence of the Treaty as a whole.²²⁰

95. On Reply, Armenia insists again that Azerbaijan’s reading of Article 18 is not in good faith because it is an “*overly broad interpretation*[.]” that goes beyond “*the intention of the parties*.”²²¹ In support, Armenia rehashes its argument that Azerbaijan is attempting to “*shoehorn*” “*extrinsic legal rules*” into the Treaty.²²² As Azerbaijan has repeatedly demonstrated, that is not the case.²²³ Azerbaijan simply seeks to enforce Articles 18(1) and 18(3) in accordance with the ordinary meaning of the provisions’ terms,²²⁴ read in context²²⁵ and in light of the ECT’s object and purpose.²²⁶ Armenia’s argument also focuses once again on Article 18(1) while largely disregarding Article 18(3), which expressly enumerates the concrete sovereign rights that Article 18(1) requires Contracting Parties to recognize.²²⁷ An interpretive approach that isolates one paragraph of Article 18, while disregarding another to which it is expressly linked, is hardly a good-faith interpretation, particularly where Azerbaijan has invoked both paragraphs as the basis for its claims.
96. Armenia also raises a parade of horrors to dissuade the Tribunal from executing its role as contemplated by the ECT. Armenia argues that accepting jurisdiction over Azerbaijan’s Article 18 claims would draw the Tribunal into matters allegedly beyond the ECT’s scope, including questions of self-determination,²²⁸ or would entail adverse systemic consequences, such as the circumvention of State consent

²¹⁹ Reply, ¶¶ 118, 140, 152.

²²⁰ See **RL-224**, O. Dörr & K. Schmalenbach, “Article 31: General Rule of Interpretation,” in *Vienna Convention on the Law of Treaties - A Commentary* (2012), at 539–540; **CL-51**, R. K. Gardiner, “Treaty Interpretation” (2015), Chapter 5: The General Rule: (1) The Treaty, its Terms, and their Ordinary Meanings, at 168 (“*The concept [of good faith] is also used in the Vienna rules as an umbrella for the specific principle that an interpretation of a term should be preferred which gives it some meaning and role rather than one which does not.*”).

²²¹ Reply, ¶ 134.

²²² *Id.* ¶¶ 134–136.

²²³ See Counter-Memorial, ¶ 30; *supra* ¶¶ 43–55.

²²⁴ See Counter-Memorial, ¶¶ 17–31; *supra* § II.A.1(a).

²²⁵ See Counter-Memorial, ¶¶ 38–48; *supra* § II.A.1(b).

²²⁶ See Counter-Memorial, ¶¶ 49–55; *supra* § II.B.

²²⁷ Reply, ¶¶ 134–136.

²²⁸ *Id.* ¶¶ 138–139.

and the creation of compulsory jurisdiction over disputes involving customary international law.²²⁹

97. Armenia's contentions are speculative and do not undermine the Tribunal's jurisdiction. Inter-State relations are complex; States may at any given time be embroiled in a broader dispute, or a series of disputes arising from the same set of circumstances. That wider context, however, has no bearing on the Tribunal's remit to determine whether this particular dispute, as pleaded by Azerbaijan, falls within the scope of the ECT. Because it does, for all the reasons set out in Azerbaijan's submissions, the Tribunal must exercise the jurisdiction conferred by the Treaty. Tribunals have repeatedly declined to forgo jurisdiction on the basis of conjectural consequences or external circumstances where the treaty requirements for jurisdiction are otherwise met.²³⁰ For example, the ECT Tribunal in *Eskosol v. Italy* held that it had a "duty to exercise the jurisdiction it ha[d] found to exist" and that it "should not decline to exercise that jurisdiction simply because there are certain scenarios" resulting from such exercise of jurisdiction.²³¹ Further, upholding Armenia's objection would close the doors to the only forum capable of adjudicating Armenia's breaches of Article 18.²³²
98. The *South China Sea* arbitration between the Philippines and China also illustrates this point.²³³ There, China objected to jurisdiction on the grounds that the dispute

²²⁹ *Id.* ¶ 42.

²³⁰ See, e.g., **RL-250**, *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50, Decision on Termination Request and Intra-EU Objection, 7 May 2019, ¶¶ 233–235; **CL-190**, *Arbitral Tribunal Constituted Under Annex VII to the 1982 United Convention on the Law of the Sea between the Republic of the Philippines and the People's Republic of China ("South China Sea Award")*, PCA Case No. 2013-19, Award, 12 July 2016, ¶¶ 154–155; **RL-30**, *Case Concerning United States Diplomatic and Consular Staff in Tehran*, Judgment, I.C.J. Reports 1980, ¶ 36 (observing that "no provision of the Statute or Rules contemplates that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects, however important.").

²³¹ **RL-250**, *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50, Decision on Termination Request and Intra-EU Objection, 7 May 2019, ¶¶ 233–235 (holding that "a tribunal finding that it has jurisdiction under . . . the ECT should not decline to exercise that jurisdiction, simply because there are certain scenarios under which one or the other Party might face challenges in" enforcing an award in certain jurisdictions). See also **RL-244**, *Vattenfall AB and others v. Federal Republic of Germany*, ICSID Case No. ARB/12/12, Decision on the Achmea Issue, 31 August 2018, ¶ 230 (holding that the "enforceability of [its] decision [was] a separate matter which d[id] not impinge on [its] jurisdiction" which it had a "duty to perform" under the "mandate granted under the ECT"); see also *id.* ¶ 231 (holding that the Tribunal was not concerned with other consequences of the arbitration continuing, such as Germany's potential breach of EU law, and that it was "unnecessary and inappropriate" to consider the question).

²³² Cf. **CL-199**, *A.M.F. Aircraftleasing Meier & Fischer GmbH & Co. KG v. Czech Republic*, PCA Case No. 2017-15, Final Award, 11 May 2020, ¶ 412 (relying on the exclusivity of the tribunal's jurisdiction to redress investment disputes to reject the Czech Republic's request to decline jurisdiction on comity grounds, noting that there "exist no other forum that could adjudicate the Parties' dispute that arose under the Germany-Czech Republic BIT.").

²³³ **CL-190**, *South China Sea Award*.

concerned questions of territorial sovereignty and maritime delimitation—matters it argued fell outside the scope of dispute settlement under the United Nations Convention on the Law of the Seas (“*UNCLOS*”).²³⁴ The tribunal acknowledged the existence of underlying sovereignty disagreements but carefully distinguished those issues from the claims actually submitted, which concerned the interpretation and application of *UNCLOS*.²³⁵ Emphasizing that it was “*fully conscious of the limits on the claims submitted to it*,” the tribunal explained that it would ensure its decision “*neither advances nor detracts from either Party’s claims to sovereignty*.”²³⁶ It accordingly rejected China’s objections and confirmed that the Philippines’ claims could proceed to the merits.²³⁷

99. The same reasoning applies *a fortiori* here. Azerbaijan’s claims arise squarely under Articles 18(1) and 18(3) of the ECT. As Azerbaijan has already explained, its sovereignty over the territories in question is not at issue in these proceedings.²³⁸ There is thus no need or scope for the Tribunal to adjudicate rights purportedly held by other peoples; the only relevant rights and obligations at issue are the rights and obligations conferred by the ECT on the parties to this case.
100. To the extent Armenia contends that ancillary issues, such as the right of self-determination, may somehow provide a defense to Azerbaijan’s claims,²³⁹ that argument in any event goes to the merits—not to the Tribunal’s jurisdiction. The Tribunal need only determine, at this stage, whether Azerbaijan has invoked a treaty obligation capable of being adjudicated under Article 27.
101. In short, a good-faith reading of the ECT reinforces—rather than undermines—the conclusion that Articles 18(1) and 18(3) impose substantive, enforceable obligations among Contracting Parties, and that disputes concerning their interpretation or application fall within the scope of Article 27.

²³⁴ *Id.* ¶ 153.

²³⁵ *Id.* ¶¶ 154–155. Compare **CL-198**, *An Arbitral Tribunal Constituted Under Annex VII to the 1982 United Nations Convention on the Law of the Sea between Ukraine and the Russian Federation (“Sea of Azov Award”)*, PCA Case No. 2017-06, Award Concerning the Preliminary Objections of the Russian Federation, 21 February 2020, ¶ 195 (“*The Arbitral Tribunal is of the view that, in the present case, the Parties’ dispute regarding sovereignty over Crimea is not a minor issue ancillary to the dispute concerning the interpretation or application of the Convention. On the contrary, the question of sovereignty is a prerequisite Those claims simply cannot be addressed without deciding which State is sovereign over Crimea*”).

²³⁶ **CL-190**, *South China Sea Award*, ¶ 154.

²³⁷ *Id.* ¶¶ 156, 164 (finding, in preliminary phase, that the tribunal had jurisdiction to rule on merits of seven claims, while reserving to merits phase its consideration of jurisdiction for seven other claims).

²³⁸ See Counter-Memorial, ¶ 55; Statement of Claim, ¶ 34.

²³⁹ Reply, ¶ 138.

III. THE TRIBUNAL HAS JURISDICTION OVER AZERBAIJAN'S Y-N PIPELINE CLAIMS UNDER ARTICLES 18 AND 7.

102. Armenia's objections to Azerbaijan's Y-N Pipeline claims should likewise be dismissed.
103. As an initial point, the Reply narrowly defines Azerbaijan's "*Pipeline Transit Claims*"²⁴⁰ to focus on the portion of the Pipeline, and the subset of Armenia's unlawful conduct, that occurred in Armenia's territory.²⁴¹ While Armenia acknowledges that Azerbaijan's Y-N Pipeline claims also invoke Article 18, it contends that the Tribunal can discount that part of Azerbaijan's case because the allegation "*that the interruption of the Pipeline transit breached Article 18 was made only . . . in a single paragraph in Azerbaijan's Statement of Claim.*"²⁴²
104. But that narrow focus is not Azerbaijan's case. Its claims regarding the Y-N Pipeline concern the entire length from Yevlakh, Azerbaijan, in and through the formerly Occupied Territories, through Armenia, and into Nakhchivan.²⁴³ As to that entire length and the natural gas it provided to the formerly Occupied Territories and Nakhchivan, Azerbaijan has asserted claims arising under Article 18.²⁴⁴ As to the portion traversing Armenia's territory, Azerbaijan has also asserted claims arising under Article 7.²⁴⁵ In short, contrary to Armenia's submission, the Article 18 dimension of Azerbaijan's Y-N Pipeline case is far from a "*fractional portion*" of its claims.²⁴⁶ Rather, the reverse is true: it is Article 18 that is implicated by the entire factual context and the entirety of Armenia's wrongful conduct set out in the Statement of Claim; the "*Pipeline Transit Claims*" are one chapter in that story, and the Article 7 claims on which Armenia focuses its objections are one of the two kinds of breaches occurring in that chapter.
105. To the extent Armenia now acknowledges the broader scope of Azerbaijan's Y-N Pipeline claims in a footnote,²⁴⁷ that footnote only underscores Armenia's

²⁴⁰ See, e.g., Reply, ¶¶ 178–181; see also Memorial, ¶ 131 (asserting these claims "*are different in nature and . . . arise from different time periods and different factual contexts*" than claims asserting breaches occurring in the former Occupied Territories in Azerbaijan).

²⁴¹ See Reply, ¶¶ 178–181. See also Memorial, ¶ 96 (arguing only that "*no dispute as to Article 7 existed when Azerbaijan instituted these proceedings*").

²⁴² Reply, ¶ 181 (citing Statement of Claim, ¶ 212).

²⁴³ See Statement of Claim, ¶¶ 137–144, 153–161, 206–212, 246–249.

²⁴⁴ See *id.* ¶¶ 206–211.

²⁴⁵ See *id.* ¶¶ 212, 246–249.

²⁴⁶ Reply, ¶ 181.

²⁴⁷ *Id.* ¶ 181 & n. 368 ("*Armenia notes that Azerbaijan also makes allegations about access to and use of the Pipeline infrastructure in Nagorno-Karabakh. . . . These allegations do not appear to concern the interruption of the Pipeline transit through the territory of Armenia to Nakhijevan [sic].*").

artificial splintering of those claims. As Armenia now appears to concede,²⁴⁸ granting its objections to the “*Pipeline Transit Claims*” would still leave the bulk of Azerbaijan’s Y-N Pipeline claims, concerning the breach of Azerbaijan’s Article 18 rights over the Y-N Pipeline and related infrastructure in its own sovereign territory,²⁴⁹ in the case. Tribunals routinely reject this sort of unnecessary fragmentation.²⁵⁰

106. At bottom, Armenia’s objections posit that a portion of the Y-N Pipeline claims—specifically, the claim that Armenia’s interruption of the Pipeline in its territory breached Articles 18 and 7—should be carved out of the arbitration because they were improperly noticed and negotiated, or because they should (first) be conciliated. All of those objections are without merit.
107. *First*, Armenia’s arguments fail on their own terms as a matter of law. As in its Memorial, Armenia relies on invented or irrelevant distinctions to argue that the Y-N Pipeline claims are a separate “dispute” that must be separately noticed and negotiated. In fact, a dispute encompassing the Y-N Pipeline claims existed between the Parties (**Section III.A**), and the Parties engaged in diplomatic consultations concerning that dispute for a “reasonable time” (**Section III.B**), before Azerbaijan commenced this arbitration.
108. *Second*, Armenia is also mistaken about the consequences of an alleged failure to notice or negotiate a dispute (**Section III.C**). Armenia’s insistence that the Tribunal must decline jurisdiction—and Azerbaijan must re-notice, re-negotiate, and re-submit the Y-N Pipeline claims in a new arbitration—is both unfounded and unreasonable.

²⁴⁸ *Id.* ¶ 181 (“Armenia’s objections relating to Azerbaijan’s Article 7 claims apply equally to its allegation that the interruption of the Pipeline transit breached Article 18.”) (emphasis added); see also *id.* ¶ 181 & n. 368; *id.* ¶ 181 & n. 369 (“For the avoidance of doubt, all Article 18 claims relating to the Pipeline would also suffer from the same jurisdictional defects as the remaining Article 18 claims, including as set forth above. See *supra* Section II; Memorial, Section II. See also Request for Bifurcation, Section III.A.”).

²⁴⁹ Compare, e.g., Statement of Claim, ¶¶ 141–144, 153–161, 206–211 (Article 18 Y-N Pipeline claims arising from Armenia’s conduct in Azerbaijan’s territory), with *id.* ¶¶ 137–140, 212, 246–249 (Article 18 & Article 7 Y-N Pipeline claims arising from Armenia’s conduct in Armenia’s territory).

²⁵⁰ See, e.g., **CL-209**, *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, 7 June 2024, ¶ 463 (“Lastly, as to whether the facts and claims included in the Request of Arbitration submitted were more in number and detail than those expressed in the Notice of Intent, the Tribunal deems that it is not relevant, since the claims arose from the same facts, and the claims were, in any case, related. It would be unjustified for a notice of intent submitted to specify in detail all the legal and factual elements that comprise its claim.”); **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).

109. *Finally*, Armenia’s argument that the Y-N Pipeline claims must be sent to conciliation again misreads the Treaty and mischaracterizes Azerbaijan’s arguments (**Section III.D**). Nothing in the ECT text, subsequent practice, *travaux*, or commentary prescribes a hierarchy of dispute resolution mechanisms where Article 7(7) conciliation must precede Article 27 arbitration for inter-State transit disputes. To the contrary, these sources confirm that these provisions simply set out the treaty mechanisms available to disputing States to engage at their option.
110. Crediting any of Armenia’s Y-N Pipeline objections would transform treaty provisions aimed at facilitating inter-State dispute resolution into hair-trigger traps that the Parties must navigate at their peril—contrary to the plain language and the object and purpose of the Treaty. The Tribunal should dismiss the objections and exercise the jurisdiction it properly enjoys over the Y-N Pipeline claims.

A. A “Dispute” Existed Between the Parties that Encompassed the Y-N Pipeline Claims.

111. Armenia’s objection that the Tribunal should decline jurisdiction for a lack of a dispute encompassing the Y-N Pipeline claims should be dismissed. “Disputes” are broadly construed by inter-State and investor-State courts and tribunals alike, and all reject the exacting, claim-by-claim, breach-by-breach analysis that Armenia applies (**Section III.A.1**). The resource sovereignty dispute Azerbaijan noticed encompasses the Y-N Pipeline claims, and Armenia’s attempted attenuation of those claims is unavailing (**Section III.A.2**). In the alternative, even if the Tribunal were to take a claim-specific approach, a dispute existed between the Parties as to the Y-N Pipeline claims before Azerbaijan commenced the arbitration (**Section III.A.3**).

1. The Jurisdictional Inquiry Focuses on the Existence of a “Dispute,” Not the Assertion of Different Claims.

112. As Azerbaijan established in the Counter-Memorial,²⁵¹ and Armenia concedes on Reply,²⁵² international courts and tribunals apply a liberal standard when determining whether a “dispute” exists, rejecting a “formalistic” or “exhaustive” approach and asking simply whether there is a “conflict of legal views or of interests” on a particular subject matter.²⁵³ A claimant need not even “expressly

²⁵¹ Counter-Memorial, ¶¶ 74–76; *see also id.* nn. 142–148 (collecting cases exhibited at **CL-141**, **CL-148**, **CL-136**, **CL-138**, **CL-117**, **CL-136**, **CL-130**, **CL-141**, **CL-73** and **RL-21**, **RL-67**, **RL-88**, **RL-77**).

²⁵² Reply, ¶ 186 (conceding that the claimant need not “particularize each and every detail in respect of the ‘dispute’”).

²⁵³ **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 (first quotation); **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 (second quotation); *see also* **CL-188**, *Joseph Houben v. Republic of*

refer to a specific treaty” to put the respondent on notice of the existence of a dispute,²⁵⁴ and the respondent’s opposition need not be expressly communicated, and instead can be inferred from “the particular circumstances” of the case.²⁵⁵

113. Armenia concedes—as it must under these broad standards—that in October 2021, Azerbaijan duly noticed, and Armenia subsequently opposed, “[REDACTED]

[REDACTED]”²⁵⁶ Armenia contends, however, that the Y-N Pipeline claims—which also arise from Armenia’s breaches of Azerbaijan’s sovereign rights regarding its energy resources and infrastructure during the period at issue in this case, and were in any event specifically discussed in exchanges in December 2022 and January 2023 during the Parties’ negotiations—are somehow not part of that dispute.

114. Yet Armenia has submitted no authority for the proposition that each claim must independently satisfy the conditions for a “dispute.” In fact, tribunals have consistently rejected that piecemeal approach. As the *Vestey v. Venezuela* tribunal explained, for example:

*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. . . . While the factual matrix of the dispute has evolved and the formulation of the claims has followed this evolution, the essence of the dispute is unchanged.*²⁵⁷

Burundi, ICSID Case No. ARB/13/7, Award, 12 January 2016 (unofficial translation of cited excerpt from French original), ¶ 146 (claimant need not “exhaustively develop” its arguments and allegations).

²⁵⁴ **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; accord **RL-229**, *Tulip Real Estate Investment and Development Netherlands B.V. v. Republic of Turkey*, ICSID Case No. ARB/11/28, Decision on Bifurcated Jurisdictional Issue, 5 March 2013, ¶ 87 (“It is not necessary for the parties to make express reference to the treaty in their consultations or negotiations.”).

²⁵⁵ **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, 72, 75 (“[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.”).

²⁵⁶ **CE-63.1**, Azerbaijan’s Notice of Dispute under the Energy Charter Treaty dated 8 October 2021, at 2.

²⁵⁷ **CL-138**, *Vestey Group Limited v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016, ¶ 151 (internal quotations omitted). See also Counter-Memorial, nn. 146–148

115. Armenia’s response to this line of jurisprudence is (once again) to mischaracterize the parties’ arguments and denigrate the decisions of investor-State tribunals.²⁵⁸ But investor-State decisions are no less persuasive or rigorous than inter-State decisions; a tribunal’s task in interpreting a treaty is the same regardless of the parties before it. In any event, Azerbaijan has not culled a “*lower standard of specificity*” for statements giving rise to a dispute from investor-State case law—no such lower standard exists²⁵⁹—and Armenia’s “*dispute*” objection is really no different in kind than the objections in those cases.²⁶⁰
116. Although Armenia now claims to focus on the purported absence of a dispute,²⁶¹ its real objection is that the Y-N Pipeline claims were insufficiently noticed, without the requisite detail, so the Tribunal should decline jurisdiction over them.²⁶² Indeed, an alleged failure of notice—and not the purported non-existence of a dispute—was precisely how the Tribunal framed Armenia’s objection in its

(citing, *inter alia*, **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.”); **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”)).

²⁵⁸ Reply, ¶ 187 (“Azerbaijan has not explained why investor-State arbitration cases would be more apposite to this inter-State dispute than the jurisprudence constante of the ICJ and other inter-State tribunals.”); see also *id.* ¶ 3 (arguing that “investor-State cases . . . are of no assistance to Azerbaijan’s case on jurisdiction in this inter-State case”); *id.* ¶ 106 (in its arguments on Article 18, denigrating Azerbaijan’s “attempts to invoke investor-State case law in support of its position on the ECT’s object and purpose”).

²⁵⁹ *Id.* ¶ 187. Compare, e.g., Counter-Memorial, ¶ 75 & nn. 142–144 (describing the liberal “dispute” standard of the ICJ), with *id.* ¶ 76 & nn. 145–148 (describing the “equally broad view” of investment tribunals).

²⁶⁰ Cf., e.g., **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, ¶ 208 (“Respondent contends that the Request for Arbitration and Statement of Claim asserted new ECT claims . . . which, Respondent contends, must be considered to fall outside the scope of the [dispute notice] letters[.]”); *id.* ¶ 210 (“According to Claimants, the measures that Italy objects to on this basis concern the same subject matter as the dispute submitted. Claimants argue that one must distinguish a ‘measure’ from a ‘dispute’ and that the requirement is only to submit the ‘dispute’ to the counterparty rather than to identify every measure.”).

²⁶¹ Reply, ¶ 202 (arguing that investor-State cases cited in Counter-Memorial “do not concern the existence of a dispute” but rather “the fulfilment of notice or waiting period requirements and the admissibility of new claims not notified in the original notice of dispute”).

²⁶² See Memorial, ¶¶ 123–124 (alleging that Azerbaijan did not “describe . . . its claims with sufficient clarity”; “failed to provide the particulars”; did not “provid[e] specific dates, the location of the alleged interruption, information about the specific type of transit”; and “did not identify or attempt to explain which of Article 7’s provisions Armenia had allegedly breached”); Request for Bifurcation, ¶ 112 (same); Reply, ¶ 187 (arguing that “a notice of dispute must be ‘sufficiently detailed,’” with “clearly identified issues” that “go beyond general grievances”) (internal quotation marks omitted); *id.* ¶ 209 (complaining of Azerbaijan’s alleged “belated and inchoate notification of its Pipeline Transit Claims”).

Decision on Bifurcation.²⁶³ This framing is consistent with the jurisprudence broadly construing a dispute—the existence of a dispute is assessed at a global level, and the sufficiency of notice at a more granular level.

117. Tribunals therefore typically treat “no dispute” objections over later-noticed claims as “improper notice” objections.

- a. For example, in *AIYY v. Czech Republic*, the claimant noticed, and the parties subsequently negotiated for four months, a dispute arising under the Czech-British BIT.²⁶⁴ When the claimant’s notice of arbitration invoked treaty articles that were not listed in the notice of dispute, the respondent argued that “*disputes concerning an obligation under [those] Articles*” must be separately noticed; that it was “*never notified . . . of a dispute under [those] articles*” such that the “*cooling-off period*” for that dispute could be triggered; and hence that the tribunal lacked jurisdiction over those claims.²⁶⁵ The tribunal rejected that formalistic approach, finding that “*as of the date of the Notice of Dispute, the Respondent was clearly aware of the existence of a dispute, the facts from which it arose, [and] the legal basis of the dispute (to wit the Treaty),*” and that, because the parties met but could not resolve that dispute amicably, “*it would be futile to decline jurisdiction*” and order further settlement efforts.²⁶⁶ Similarly, here, Armenia was “*clearly aware*” of the existence of a dispute, the facts from which it arose—as set out in the Notice of Dispute and subsequent exchanges—and the dispute’s legal basis. In fact, Armenia’s objection stands on even weaker ground because it is undisputed that Azerbaijan did expressly invoke both ECT Articles at issue before filing its Notice of Arbitration.²⁶⁷
- b. Similarly, in *Orascom v. Algeria*, the respondent contended that there was “*no dispute*” between the parties as to certain government measures and a sales transaction because the events in question were not mentioned by the claimant until “*the eve of the filing of the Request for Arbitration.*”²⁶⁸ The respondent argued alternatively that the lack of dispute “*deprives the*

²⁶³ Decision on Bifurcation, ¶ 92 (describing Armenia’s first Y-N Pipeline objection as an “*alleged failure to (i) properly notify Armenia of a dispute under Article 7 of the ECT prior to [Azerbaijan’s] Notice of Arbitration*”); *id.* (“*The Parties also may need to brief legal issues regarding the admissibility of additional claims following an initial notice of dispute raising other claims[.]*”) (emphases added).

²⁶⁴ **CL-192**, *AIYY Ltd. v. Czech Republic*, ICSID Case No. UNCT/15/1, Decision on Jurisdiction, 9 February 2017, ¶¶ 141–142.

²⁶⁵ *Id.* ¶¶ 145–146.

²⁶⁶ *Id.* ¶¶ 148–149.

²⁶⁷ Reply, n. 384 (“*[T]here is no question that Azerbaijan expressly invoked the ECT and a specific provision (Article 18) from the beginning of the negotiations, and Article 7 from 16 December 2022.*”).

²⁶⁸ **CL-193**, *Orascom v. Algeria*, ICSID Case No. ARB/12/35, Award, 31 May 2017, ¶¶ 405–406.

Tribunal of jurisdiction” over later-raised claims, or the later-raised claims were “*not notified in accordance with [the Treaty]*,” rendering them “*inadmissible*.”²⁶⁹ While it did not expressly decide whether the objection went to jurisdiction or admissibility, the tribunal treated the challenge as a notice objection, comparing the notices of dispute with the notice of arbitration and concluding that “*the dispute being notified in the three notices is effectively one and the same*.”²⁷⁰

118. Moreover, to fall within the Tribunal’s jurisdiction, it does not matter whether the later-noticed claims arose before or after the initial notice of dispute. *Orascom*, for example, concerned the alleged failure to include government measures occurring in 2008–2010, and a share sale that took place in 2010, in a 2012 Notice of Dispute; the tribunal nevertheless considered these events to be part of the same overarching dispute.²⁷¹
119. Citing *Rurelec v. Bolivia*, Armenia suggests that the Y-N Pipeline claims—which concern facts and conduct first arising years before Azerbaijan’s October 2021 notice—are barred because a claimant must include in its notice of dispute any “*previous potential claims*” that “*were already in existence*.”²⁷² But that was not what the *Rurelec* tribunal decided; instead, it compared the dispute as noticed to the claims ultimately advanced to see if the claims fell within the ambit of the dispute.²⁷³
120. In short, *Rurelec* and the other cases cited by the Parties stand for the unremarkable proposition that “*the scope of the dispute and its subject-matter*” are defined by the pre-arbitration exchanges between the parties.²⁷⁴ In this case, for 16 months before

²⁶⁹ *Id.* ¶ 410.

²⁷⁰ *Id.* ¶¶ 487–489.

²⁷¹ *Id.* ¶¶ 405–406, 441, 488. See also **CL-209**, *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, 7 June 2024, ¶¶ 442–443, 463–467 (finding “*not relevant*” the fact that Claimant, for the first time in its Request for Arbitration, included measures predating its Notice of Intent, “*since the claims arose from the same facts, and the claims were, in any case, related*.”).

²⁷² Reply, ¶¶ 204, 205 (describing case where later-noticed regulatory claims were deemed a separate dispute because they arose “*years before*” the dispute as noticed—a dispute concerning a “*nationalisation decree and its consequences*”) (citing **RL-160**, *Guaracachi America, Inc. and Rurelec PLC v. Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014, ¶¶ 341–346, 399).

²⁷³ See **RL-160**, *Guaracachi America, Inc. and Rurelec PLC v. Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014, ¶¶ 341–346.

²⁷⁴ **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; accord Reply, ¶ 198 (citing *id.*).

Azerbaijan filed its Notice of Arbitration, the Parties engaged in negotiations over the broad ECT dispute that Azerbaijan had noticed in October 2021.²⁷⁵

2. Armenia's Attempt to Distinguish the Y-N Pipeline Claims as a Separate "Dispute" Is Unavailing.

121. Armenia's continued attempts to repackage the Y-N Pipeline claims as a separate dispute do not withstand scrutiny.²⁷⁶
122. *First*, Armenia contends that natural gas and natural gas pipelines were not specifically mentioned until December 2022.²⁷⁷ But Azerbaijan's Notice of Dispute was expressly non-exhaustive on this score, identifying energy resources "[REDACTED]" and reserving the right to supplement claims.²⁷⁸ Tribunals will not require notices of dispute "*to state each and every fact constituting a claim*" so long as "*the general character of the case submitted to the Tribunal*" is the same, as is the case here.²⁷⁹ As negotiations in respect of a dispute develop, the details of the claims falling within a broader dispute are naturally noticed. This does not, as Armenia suggests, amount to a recognition that later-noticed claims form a separate dispute.²⁸⁰
123. *Second*, Armenia tries to draw geographic and temporal distinctions, arguing that the pipeline interruption occurred during the First Garabagh War, and in Armenia's

²⁷⁵ Counter-Memorial, ¶ 100.

²⁷⁶ Memorial, ¶¶ 129–132; Reply, ¶¶ 191–210.

²⁷⁷ Reply, ¶¶ 194, 197.

²⁷⁸ **CE-63.1**, Azerbaijan's Notice of Dispute under the Energy Charter Treaty dated 8 October 2021, at 2–3 (emphasis added). *See also* **CE-63.3**, Letter from Azerbaijan to Armenia dated 20 December 2021, at 4; **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 (reiterating reservation of rights, and specifying it included right to supplement claims).

²⁷⁹ **CL-148**, *Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania*, ICSID Case No. ARB/15/31, Award, 8 March 2024 [Redacted], ¶ 676. *See supra* ¶ 112.

²⁸⁰ Reply, ¶ 196 ("If Azerbaijan considered that these claims were part of the same dispute that had been negotiated for over a year, it would not have felt compelled to 'notif[y]' them in a belated attempt to satisfy the requirements of Article 27."). *But see supra* n. 257 (citing *Vestey* and other cases).

territory.²⁸¹ In doing so, however, Armenia misleadingly reduces the Y-N Pipeline claims to a single act at a single point in time: the initial severing of the pipeline in Armenia during the First Garabagh War. But as Azerbaijan has repeatedly made clear, the ECT violation is premised not on that initial break but on the continued interference with gas flows and pipeline infrastructure that lasted from the First Garabagh War to the end of Armenia's occupation.²⁸²

124. Armenia ignores the actual substance of Azerbaijan's claims, which posit that from the initial interruption and throughout the Occupation period, Armenia denied Azerbaijan access to the section of the pipeline traversing the Occupied Territories and the natural gas flowing therein; damaged the pipeline and related infrastructure, or allowed it to deteriorate; redirected the pipeline to its benefit and to the detriment of Nakhchivan residents; and caused Azerbaijan to conclude costly gas swap mechanisms to supply Nakhchivan residents with natural gas through other means.²⁸³ Indeed, due to Armenia's illegal occupation, Azerbaijan was denied access to (and the ability to exploit or develop) the Y-N Pipeline and the natural gas flowing within it, just the same as it was denied access to (and the ability to exploit or develop) the Tartar Plant, the Khudafarin and Giz Galasi projects, and the Chardaghli coalfield.²⁸⁴
125. In short, the Y-N Pipeline claims have the same temporal and geographic scope as Azerbaijan's other claims: the First Garabagh War and ensuing Occupation period, and a swath of territory encompassing the Occupied Territories and Nakhchivan (that is, the "*sovereign territory of Azerbaijan*"),²⁸⁵ as well as Armenia.²⁸⁶ What matters is that throughout this sustained period, Armenia breached Azerbaijan's resource sovereignty—not the time, place, and manner of each specific breach.

²⁸¹ Reply, ¶¶ 197–198.

²⁸² See, e.g., **CE-63.31**, Letter from Azerbaijan to Armenia dated 16 December 2022, at 1 (Y-N Pipeline claims "[redacted]"); Statement of Claim, ¶ 144 (describing "*Armenia's diversion of and subsequent failure to reinstate the supply of gas to Nakhchivan . . . throughout the occupation period*"); *id.* ¶¶ 145–152 (describing the swap arrangements that Azerbaijan undertook during the occupation period to supply Nakhchivan with natural gas); *id.* ¶¶ 153–156 (describing Armenia's exploitation of the Y-N Pipeline and related infrastructure during the occupation period); *id.* ¶¶ 157–161 (describing the damage and deterioration inflicted on the Y-N Pipeline and related infrastructure during the occupation period); Counter-Memorial, ¶ 79 (noting that the Y-N Pipeline claims equally concern "*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*").

²⁸³ Statement of Claim, ¶¶ 12, 144–161.

²⁸⁴ *Id.* ¶ 10.

²⁸⁵ See Reply, ¶ 193; **CE-63.1**, Azerbaijan's Notice of Dispute under the Energy Charter Treaty dated 8 October 2021, at 1.

²⁸⁶ See, e.g., Statement of Claim, ¶¶ 110–124 (describing breaches of Azerbaijan's sovereign rights over its coal resources taking place in Armenia, including at the Yerevan Thermal Power Plant).

126. In any event, there is no rule confining “disputes” to claims arising from a single time period and location. A “dispute” may properly encompass claims that “originate from different sources or emerge at different times.”²⁸⁷ As the Tribunal is aware, factual nuances between and among different claims are not unusual in complex disputes. In this case, for instance, Azerbaijan’s Tartar HPP claim concerns Armenia’s 1993 capture of the Tartar HPP and subsequent events,²⁸⁸ whereas Azerbaijan’s Chardaghli coalfield claim concerns a separate site and events concentrated in the 2010s and thereafter, including in Armenia.²⁸⁹ But these are not separate “disputes” any more than the Y-N Pipeline claims, because all of them fall under the dispute as noticed: a legal dispute under the ECT arising from Armenia’s exploitation of Azerbaijan’s sovereign energy resources.
127. *Third*, Armenia makes much of the fact that the Y-N Pipeline claims implicate Article 7 of the ECT. According to Armenia, this is “a separate body of law than the Original Claims” that is “very different” from Article 18.²⁹⁰ As explained above, however, this stance continues to ignore that Article 7 is one of the two Articles implicated by Armenia’s wrongful conduct regarding the Y-N Pipeline.²⁹¹ Armenia’s reliance on *Nicaragua v. Colombia* is thus misplaced. There, the Court considered there were “two distinct claims” arising under separate bodies of law—one alleging violation of the ICJ’s earlier judgment establishing maritime boundaries, and another alleging violation of the UN Charter and international customary law on the use of force.²⁹² Here, however, Azerbaijan’s assertion of its Y-N Pipeline claims is the posture Armenia concedes is plainly permissible: “the addition of other alleged violations of the treaty based on the same underlying conduct.”²⁹³
128. *Fourth*, Armenia argues that the Y-N Pipeline claims must constitute a separate dispute because they raise “different legal problems.”²⁹⁴ Armenia argues, for

²⁸⁷ **CL-138**, *Vestey Group Limited v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016, ¶ 151 (“[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 citations omitted).

²⁸⁸ Statement of Claim, ¶¶ 43–44 & Fig. 4.

²⁸⁹ *Id.* ¶¶ 110–124 & Fig. 17.

²⁹⁰ Reply, ¶ 200.

²⁹¹ *Supra* ¶¶ 103–106.

²⁹² **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), ¶¶ 11, 67 (deciding *sua sponte* to “separately” assess the “two distinct claims” arising under separate bodies of law for the existence of a “dispute” as to each, with no indication that either party urged the Court to treat the claims as a single dispute).

²⁹³ Reply, ¶ 203 (citing **CL-136**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶¶ 146, 212–215).

²⁹⁴ Reply, ¶ 199.

example, that the Y-N Pipeline claims involve “*distinct legal issues*” such as “*the application of international humanitarian law and the ECT’s essential security interests exception*” or “*different issues of attribution . . . and of jurisdiction ratione temporis.*”²⁹⁵ But this contention is belied by Armenia’s own submissions, which invoke these same legal issues in relation to all of Azerbaijan’s claims.²⁹⁶ In any event, that certain claims may raise distinct legal issues is no reason to decline jurisdiction over those claims, as long as they relate to the same underlying dispute, as the Y-N Pipeline claims do here.²⁹⁷

129. Finally, Armenia urges the Tribunal to adopt a high standard for whether claims are “*similar*” enough to be encompassed in the same “*dispute.*” But the line of jurisprudence it invokes addressed an entirely different question: the admissibility of counterclaims before the ICJ. Armenia asserts that such case law is “*instructive by analogy here, since it considers whether counter-claims are ‘directly connected’ to the principal claims.*”²⁹⁸ But Armenia elides that “*directly connected*” is a standard applying specifically to counterclaims under Article 80 of the ICJ’s Rules of Court.²⁹⁹ There is no requirement that only “*directly connected*” claims may fall within the broad ambit of a “*dispute.*”
130. Even if the ICJ’s “*direct connection*” test for counterclaims were relevant here, the Y-N Pipeline claims would readily satisfy that test, which is not as strict as Armenia describes. Instead, the Court considers “*a range of factors*” to see if a

²⁹⁵ *Id.*

²⁹⁶ Request for Bifurcation ¶ 92 (arguing that the customary international law principle of permanent resource sovereignty—which informs all of Azerbaijan’s claims—“*does not operate in situations governed by international humanitarian law and the law of occupation*”); *id.* ¶ 160 (arguing that the essential security interests exception of the ECT would exclude all of Azerbaijan’s claims); *id.* ¶ 139 (“*All of Azerbaijan’s claims . . . are outside of the Treaty’s temporal scope of application.*”) (emphasis added); *id.* ¶ 162 (sub-heading E) (submitting that all of “*Azerbaijan’s Claims Appear to Be Predicated on a Flawed Theory of Attribution*”).

²⁹⁷ See, e.g., **CL-172**, *CMS Gas Transmission Co. v. Republic of Argentina*, ICSID Case No. ARB/01/8, Decision of the Tribunal on Objections to Jurisdiction, 17 July 2003, ¶¶ 101–115 (declining to treat as two separate disputes claims arising in different time periods, involving different government entities, and raising distinct legal issues—the first with “*an alleged inconsistency*” between various laws and the second “*the impossibility of maintaining a certain . . . policy*” in light of “*a general crisis*”) (quotations at ¶ 103); *id.* ¶ 114 (reasoning that both so-called “*disputes*” are in reality a single dispute because they both “*concern[] in essence the breach of various rights [claimant] alleges to have under the BIT.*”).

²⁹⁸ Reply, ¶ 206.

²⁹⁹ See, e.g., **RL-243**, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Counter-Claims, Order of 15 November 2017, I.C.J. Reports 2017, ¶ 17 (quoting Article 80 of the ICJ Rules of Court: “*1. The Court may entertain a counter-claim only if it . . . is directly connected with the subject-matter of the claim of the other party*”).

claim and counterclaim share “*in a general sense, a geographical link*” and “[a]n *approximate temporal connection*.”³⁰⁰

131. As Azerbaijan has demonstrated,³⁰¹ the Y-N Pipeline claims would amply satisfy any “*direct connection*” test. They pertain to the same “*factual complex, including the same geographical area or the same time period*”³⁰² as Azerbaijan’s other claims (loss of access to energy resources during the Occupation),³⁰³ and they rely on the same “*legal principles or instruments*”³⁰⁴ as Azerbaijan’s other claims (the ECT, including Article 18 and as informed by the customary law principle of permanent sovereignty over natural resources).³⁰⁵
132. For all these reasons, the Tribunal should conclude that prior to the commencement of this arbitration, a “*dispute*” existed between the Parties encompassing the Y-N Pipeline claims. Azerbaijan noticed the dispute in October 2021 and

³⁰⁰ **RL-243**, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Counter-Claims, Order of 15 November 2017, I.C.J. Reports 2017, ¶ 23 (explaining that the Court will typically consider “*a range of factors that could establish a direct connection*” between claims and counterclaims) (emphasis added); **RL-209**, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 29 November 2001, I.C.J. Reports 2001, ¶ 38 (finding that, although a “*counterclaim ranges over a longer period*” than the principal claim, “*both claims nonetheless concern a conflict in existence between two neighboring States, in various forms and of variable intensity since 1994*” and therefore “*form part of the same factual context*”) (emphases added); **RL-230**, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Counter-Claims, Order of 18 April 2013, I.C.J. Reports 2013, ¶ 36 (satisfied that, as between claim and counterclaim, there were “*in a general sense, a geographical link*” and “[a]n *approximate temporal connection*”) (emphases added).

³⁰¹ *Supra* ¶¶ 121–125; Counter-Memorial, ¶¶ 79–82.

³⁰² **RL-243**, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Counter-Claims, Order of 15 November 2017, I.C.J. Reports 2017, ¶ 24.

³⁰³ *See* Statement of Claim, ¶¶ 10, 26, 42 (arguing that Armenia’s forceful exclusion of Azerbaijan from the Occupied Territories breached Azerbaijan’s rights to access and exploit many types of energy resources, including the Y-N Pipeline and associated natural gas); *id.* ¶ 17 (describing similar heads of damages for Azerbaijan’s various claims, including the Y-N Pipeline claims).

³⁰⁴ **RL-243**, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Counter-Claims, Order of 15 November 2017, I.C.J. Reports 2017, ¶ 25.

³⁰⁵ Statement of Claim, ¶¶ 206–212 (describing how the Y-N Pipeline claims constitute a breach of ECT Article 18). *See, e.g.*, **CL-166**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Counter-Claims, Order of 17 December 1997, I.C.J. Reports 1997, ¶ 35 (finding the claims and counterclaims to be directly connected because they pursue “*the same legal aim, namely the establishment of legal responsibility for violations of the Genocide Convention*”) (emphasis added); **CL-167**, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Counter-Claim, Order of 10 March 1998, I.C.J. Reports 1998, ¶ 38 (likewise finding that claims and counterclaims are sufficiently related because they “*pursue the same legal aim, namely the establishment of legal responsibility for violations*” of the relevant treaty) (emphasis added).

Armenia’s opposition to it was made clear in the 16 months of diplomatic consultations that followed.

3. In the Alternative, a “Dispute” Existed Specifically as to the “Pipeline Transit Claims.”

133. In the alternative, and at a minimum, Azerbaijan’s December 2022 letter specifically notified Armenia about the portion of the Y-N Pipeline claims that it calls the “Pipeline Transit Claims,” and the record shows that Armenia’s opposition to those claims was apparent in the circumstances.³⁰⁶ Thus, even if the Tribunal concludes that a separate “Pipeline Transit Claims” dispute must exist for it to exercise jurisdiction over those claims, that requirement is satisfied here.
134. Armenia concedes, as it must, that the December 2022 letter expressly “*refer[red] to . . . the interruption of the supply of natural gas from Azerbaijan to the Nakhchivan exclave.*”³⁰⁷ But it insists that the letter should have further specified the exact date and location of pipeline interruption, and explained exactly how the breach violated Articles 7 and 18.³⁰⁸ Not even the cases submitted by Armenia support that demand for precision.
135. For example, in *Nicaragua v. Colombia* and *Gambia v. Myanmar*, no formal dispute notices were exchanged, and treaty provisions were not expressly identified, but the ICJ nevertheless inferred the existence of a dispute from public statements of the parties.³⁰⁹ What matters is not whether the details Armenia now demands are present, but rather whether “*the subject-matter of the treaty*” is identified “*with sufficient clarity*” such that the respondent can “*identify that there is, or may be, a dispute.*”³¹⁰

³⁰⁶ See also Counter-Memorial, ¶ 78(c)-(e).

³⁰⁷ Reply, ¶ 213.

³⁰⁸ *Id.* ¶¶ 213–214.

³⁰⁹ **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), ¶¶ 72–74; **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 **CL-201**, *Iskander Safa & Akram Safa v. Hellenic Republic of Greece*, ICSID Case No. ARB/16/20, Decision on Jurisdiction and Liability, 24 July 2020, ¶ 284 (“*In the circumstances, even if a formal notice of dispute under the Treaty was never served, it would be unduly formalistic for the Tribunal to conclude that the requirements of Article 9(1) and (2) of the BIT have not been met.*”).

³¹⁰ **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.

136. Azerbaijan’s October 2021 notice of dispute, and certainly the December 2022 letter, both satisfy that test with respect to the “Pipeline Transit Claims.”³¹¹ The December 2022 letter specified the key factual predicates of the claims, including the resource in question (“[REDACTED]” and the “[REDACTED]”), an overview of Armenia’s unlawful conduct (“[REDACTED]” of gas and “[REDACTED] [REDACTED]”) and the relevant timeframe (“[REDACTED] [REDACTED]”).³¹² This is far more than the law requires, and certainly enough to enable Armenia “*to become aware of the existence of . . . the facts giving rise to the dispute and to enable it to enter into negotiations with [Azerbaijan] on this subject.*”³¹³
137. Moreover, the December 2022 letter was sent in circumstances when Armenia’s opposition to the dispute was plain. As detailed in Azerbaijan’s Counter-Memorial, by that date, the Parties had been engaged in 14 months of fruitless exchanges, with Armenia repeatedly stalling the discussions with dilatory demands for more information and refusing at any point to accept responsibility for its breaches of the ECT.³¹⁴ The Tribunal can fairly infer Armenia’s opposition to the “Pipeline Transit Claims” from this record—and from Armenia’s refusal to do anything more (other than to again demand more information) in the two months between Azerbaijan’s December 2022 letter and the February 2023 Notice of Arbitration. In doing so, the Tribunal would not be “*inferring*” Armenia’s opposition by “*silence,*”³¹⁵ but rather drawing the appropriate conclusions from Armenia’s conduct and statements.³¹⁶ If tribunals were unable to infer opposition without an

³¹¹ Cf. **CL-201**, *Iskander Safa & Akram Safa v. Hellenic Republic of Greece*, ICSID Case No. ARB/16/20, Decision on Jurisdiction and Liability, 24 July 2020, ¶ 285 (“While the Claimants also raise in this arbitration complaints that they did not make in the ICC1 Arbitration, such complaints cannot be considered to fall outside the Tribunal’s jurisdiction on that basis alone. They form part of the dispute between the Parties, as it has developed since its inception[.]”).

³¹² **CE-63.31**, Letter from Azerbaijan to Armenia dated 16 December 2022, at 1 (“[REDACTED]”).

³¹³ Reply, ¶ 212 (citing **CL-188**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016 (unofficial translation from French original), ¶ 145).

314 Counter-Memorial, ¶ 78.

³¹⁵ Reply, ¶¶ 217–218 (citing **RL-52**, *Republic of Ecuador v. United States of America*, PCA Case No. 2012-5, Award, 29 September 2012, even while conceding that the case is factually inapposite as it concerns the United States’ “*explicit[] indicat[i]on[] that it would not respond to Ecuador’s claims*”).

316 See, e.g., **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, ¶ 64 (in “determining the existence of a dispute,” Court may consider “conduct of the parties subsequent to the application” and “any statements or documents exchanged between the parties” or “in multilateral settings”); *id.* ¶¶ 65–77 (inferring the existence of a dispute from a Note Verbale and statements made

express statement to that effect, then States like Armenia could defeat jurisdiction and undermine international justice simply by remaining “*tactically silent*” when presented with claims.³¹⁷

138. Finally, Armenia’s contention that Azerbaijan’s December 2022 letter was motivated by developments in other proceedings between the Parties is spurious and, in any event, immaterial. Specifically, Armenia now suggests that Azerbaijan’s December 2022 letter was “*raised in reaction*” to Armenia’s contemporaneous letter to the ICJ about gas supply to the Liberated Territories.³¹⁸ The Tribunal need not credit Armenia’s latest attempt at distraction.³¹⁹ As Azerbaijan has established,³²⁰ the addition of claims in accordance with a reservation of rights is unsurprising when Azerbaijan continues to uncover evidence of Armenia’s breaches of the ECT as it regains access to the Liberated Territories.³²¹ Armenia dismisses these difficulties by arguing that Azerbaijan’s Y-N Pipeline evidence was available to it during the occupation.³²² But that is once more premised on a false characterization of the Y-N Pipeline claims as relating only to the initial severing of the Pipeline between Armenia and Nakhchivan, and not the full set of claims as noticed or pleaded, which concern

before the U.N. General Assembly); **RL-85**, *Dispute Concerning Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, ITLOS Case No. 28, Preliminary Objections, Judgment, 28 January 2021, ¶¶ 326–332 (inferring the existence of a maritime boundary dispute from “*national legislation adopted by the Parties*” showing “*that their respective claims to an exclusive economic zone in the relevant area overlap*,” and from the parties’ respective submissions to the Commission on the Limits of the Continental Shelf and to the U.N. Secretary-General); **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, ¶¶ 106–113 (finding that a dispute exists based on presidential decrees, statements to the press, and statements made in a U.N. Security Council meeting, all of which were made over the course of four days in the aftermath of an armed conflict).

³¹⁷ See **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 (requiring express opposition would allow “*a respondent [to] prevent a finding that a dispute exists by remaining silent in the face of an applicant’s legal claims*”; “[s]uch a consequence would be unacceptable”); **CL-210**, D. Azaria, *Inferring a ‘Dispute’ from State Silence*, 38 Leiden J. of Int’l L. (2025), at 188, 212.

³¹⁸ Reply, ¶ 209 (“*Azerbaijan’s new claims seem to have been raised in reaction to Armenia’s December 2022 letter to the ICJ pointing out that Azerbaijan had cut off the supply of gas to Nagorno-Karabakh in the middle of winter.*”).

³¹⁹ Compare generally Memorial (no such contention).

³²⁰ Statement of Claim, ¶ 262; Counter-Memorial, ¶¶ 83–85.

³²¹ See, e.g., Statement of Claim, ¶¶ 155–159 (describing discovery of evidence of Armenia’s destruction and other wrongful conduct regarding the Y-N Pipeline in the formerly Occupied Territories in 2023); *id.* ¶¶ 160, 162, 278 (continuing reservation of rights, including as Azerbaijan clears landmines and regains access).

³²² Reply, ¶ 208.

Armenia's blocking of access, exploitation, and destruction of the Y-N Pipeline and related infrastructure in the Occupied Territories.³²³

139. In any event, the political motives (real or imagined) of a State in bringing a claim are irrelevant to the legal question of whether the tribunal has jurisdiction to hear it.³²⁴ Armenia's insistence on treating the "Pipeline Transit Claims" as a separate dispute over which the Tribunal must separately establish its jurisdiction reflects an unduly rigid approach that international tribunals have consistently rejected.

B. The Parties Engaged in a "Reasonable Period" of Consultations Before Azerbaijan Initiated Arbitration.

140. Armenia's objection that Azerbaijan failed to satisfy a "*negotiations requirement*"³²⁵ purportedly imposed by Article 27 likewise elevates form over substance. As Azerbaijan established in its Counter-Memorial,³²⁶ and Armenia fails to rebut on Reply, the extensive negotiations between the Parties (including as to the "Pipeline Transit Claims," should they be treated separately)—and their demonstrated futility by the time the Notice of Arbitration was filed—fully discharged the consultations contemplated by Article 27.
141. To defeat jurisdiction, Armenia asserts that Article 27 imposes, as a "*mandatory precondition*" to arbitration, that the parties undergo "*multiple exchanges and meetings . . . spanning an extended period of months or often years.*"³²⁷ But that exacting requirement finds no basis in the Treaty's plain text, its object and purpose, or its *travaux*.
142. First, Armenia's reading of the Treaty is unfounded. Article 27(1) provides only that before commencing inter-State arbitration, "*Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Treaty through diplomatic channels.*"³²⁸ Under Article 27(2), "*if a dispute has not*

³²³ See *supra* ¶¶ 123–125.

³²⁴ See, e.g., **CL-154**, *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988, ¶ 52 ("[T]he Court is aware that political aspects may be present in any legal dispute brought before it. The Court, as a judicial organ, is however only concerned to establish, first, that the dispute before it is a legal dispute, in the sense of a dispute capable of being settled by the application of principles and rules of international law, and secondly, that the Court has jurisdiction to deal with it[.]"); **CL-173**, *Legality of Use of Force (Serbia and Montenegro v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2004, ¶ 39 ("In the view of the Court, it cannot decline to entertain a case simply because of a suggestion as to the motives of one of the parties or because its judgment may have implications in another case.").

³²⁵ Reply, ¶ 220.

³²⁶ Counter-Memorial, ¶¶ 96–105.

³²⁷ Reply, ¶¶ 220, 241.

³²⁸ **CL-1**, ECT, Art. 27(1).

been settled” after a “reasonable period of time,” either of the disputing States may submit the dispute to arbitration.³²⁹

143. Armenia emphasizes the words “shall” and “if,” calling this “*unequivocally mandatory language*.”³³⁰ But in context, those words simply refer to the procedure that “shall” apply to States invoking Article 27, and “if” indicates that settlement efforts should precede arbitration. Considered as a whole, the language is exhortative and non-prescriptive: Parties should simply “endeavour” to settle any dispute between them through the “*diplomatic channels*” that are customarily available. At most, this is an obligation of conduct that does not require Contracting States to reach a particular result, only employ their best efforts to do so.³³¹ There are no strictures on the contours of such consultations—for example, the manner, number or formality of exchanges, or any specified minimum duration. By allowing disputing States to submit their Treaty disputes to arbitration without undue hurdles, these flexible terms cohere with the ECT’s object and purpose of promoting long-term energy cooperation between and among the Contracting States.
144. *Second*, though resort to the *travaux* is unnecessary given the clarity of the text, they confirm that Article 27 was deliberately drafted with this object in mind. Article 26, which governs investor-State arbitration, indicates an amicable settlement period of “*three months*.”³³² For Article 27, the drafters were deliberately silent on a prescribed period of diplomatic consultations, no doubt recognizing that what constitutes a “reasonable” period of consultations in the inter-State context will vary widely from case to case. In fact, the *travaux* reveal that express diplomatic consultations periods of (in turn) “*six months*,” “*180 days*,” and “*60 days*” were considered but ultimately rejected.³³³ Thus, Armenia’s

³²⁹ *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 . . . submit the matter to an ad hoc tribunal under this Article.”).

³³⁰ Reply, ¶ 224.

³³¹ See CL-52, D. Azaria, “Treaties on Transit of Energy via Pipelines and Countermeasures” (2015), at 61.

³³² CL-1, ECT, Art. 26(2) (“If such disputes cannot be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution . . .”).

³³³ CL-158, Telefax from the Delegation of Switzerland to the Secretariat of the European Energy Charter Conference regarding “Basic Agreement for the European Energy Charter (Document 4/92, Annex 1 BA 6)” (16 March 1992), ECT Travaux, at 10 (proposing a settlement period of six months before resort to inter-State arbitration); CL-159, European Energy Charter Conference Secretariat, “Basic Agreement – Article 24: Latest compromise version” (18 June 1992), ECT Travaux, at 2 (contemplating resort to arbitration if an inter-State dispute cannot be settled by diplomatic consultations “within 180 days”); CL-161, European Energy Charter Conference Secretariat, “Basic Agreement – Article 24” (17 December 1992), ECT Travaux, at 11 (considering, in turn, language about resort to arbitration if, “within a reasonable time” or “within 60 days,” settlement endeavors are unsuccessful).

argument that “*the three-month period*” in Article 26 should be “*an absolute floor*” for what constitutes a “*reasonable period of time*”³³⁴ is unpersuasive; the treaty drafters considered longer and shorter periods than three months, and ultimately declined to set a definitive length.

145. Because the Treaty does not specify the length of time, what constitutes a “*reasonable period*” in this case is for the Tribunal to assess based on the circumstances.³³⁵ Contrary to Armenia’s insistence that a “*reasonable*” period must span “*months or often years*,”³³⁶ the “*actual number or duration of exchanges is not dispositive*,”³³⁷ and negotiations need not continue indefinitely when they “*show every sign of being unproductive*.”³³⁸
146. As Azerbaijan established in the Counter-Memorial,³³⁹ the 16 months of diplomatic consultations in which the Parties engaged were amply “*reasonable*” in the circumstances. Notwithstanding the more than 30 letters exchanged and three *inter partes* meetings, Armenia’s opposition to Azerbaijan’s positions remained the same. Whether at the first or the final exchange, Armenia consistently dismissed Azerbaijan’s claims as “██████” or “██████████,” and made no indication that it was willing to acknowledge (much less settle) its breaches of the ECT.³⁴⁰ Because

³³⁴ Reply, ¶ 247.

³³⁵ **RL-21**, *Mavrommatis Palestine Concessions*, Judgment No. 2, 30 August 1924, P.C.I.J. Reports Series A No. 2, at 13 (observing, with respect to the question of sufficiency of negotiations: “*No general and absolute rule can be laid down in this respect. It is a matter for consideration in each case*”).

³³⁶ Reply, ¶ 241.

³³⁷ **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. *Accord, e.g., R-21*, *Mavrommatis Palestine Concessions*, Judgment No. 2, 30 August 1924, P.C.I.J. Reports Series A No. 2, at 13 (“*Negotiations 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.*”); **CL-151**, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, ¶ 85 (“*The actual length of negotiations is no test of whether the possibilities of agreement have been exhausted; it may be sufficient to show that an early deadlock was reached and that one side adamantly refused compromise.*”).

³³⁸ **RL-164**, *Barbados v. Trinidad and Tobago*, PCA Case No. 2004-02, Award, 11 April 2016, ¶ 199.

³³⁹ Counter-Memorial, ¶¶ 100–105.

³⁴⁰ *Id.* ¶¶ 100–101. *Compare, e.g., CE-63.2*, Letter from Armenia to Azerbaijan dated 24 November 2021, at 3 (asserting that Azerbaijan’s Notice of Dispute “██████████”) with *CE-63.32*, Letter from Armenia to Azerbaijan dated 16 January 2023, at 3 (demanding “██████████” for the Y-N Pipeline claims); *compare also CE-63.4*, Letter from Armenia to Azerbaijan dated 4 January 2022, at 3 (calling Azerbaijan’s allegations “██████████”) with *CE-63.32*, Letter from Armenia to Azerbaijan dated 16 January 2023, at 1 (asserting that Azerbaijan’s claims “██████████”). *See RL-51*, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, ¶ 59 (negotiations are futile when “*as results from the pleadings of the Parties,*

the diplomatic consultations provision applies to disputes as a whole, and not their constituent claims,³⁴¹ the Tribunal's assessment of "*reasonableness*" ends here.³⁴²

147. Even viewing the "Pipeline Transit Claim"-specific exchanges in isolation, as Armenia insists on doing, the length of diplomatic consultations remains "*reasonable*," since the futility of further consultations was by then apparent.³⁴³ Armenia's apples-to-oranges comparison of the December 2022 to March 2023 period to lengthier negotiations in other cases is inapt.³⁴⁴ None of those cases adopted Armenia's piecemeal, claim-by-claim analysis; in fact, they expressly rejected it and instead assessed the parties' entire negotiating history as to the dispute as a whole.³⁴⁵

their basic positions have not subsequently evolved [after several exchanges of diplomatic correspondence or meetings]"); **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 (finding further negotiations futile where "*basic positions have not subsequently evolved*" after several exchanges of diplomatic correspondence or meetings").

³⁴¹ **CL-1**, ECT, Art. 27(1) ("Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Treaty through diplomatic channels.") (emphasis added); *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 . . . submit the matter to an ad hoc tribunal under this Article.") (emphasis added).

³⁴² See, e.g., **CL-201**, *Iskander Safa & Akram Safa v. Hellenic Republic of Greece*, ICSID Case No. ARB/16/20, Decision on Jurisdiction and Liability, 24 July 2020, ¶ 285 ("While the Claimants also raise in this arbitration complaints that they did not make in the ICCI Arbitration, . . . it would be unreasonable and inefficient to require that the Parties seek to negotiate and arbitrate these aspects of the overall dispute separately. The Tribunal notes that other investment treaty tribunals have reached similar conclusions in similar circumstances."); **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 (finding negotiations period to be satisfactory even where the specific treaty was not invoked until legal proceedings were well underway).

³⁴³ See *supra* ¶ 133; Counter-Memorial, ¶ 100–102.

³⁴⁴ Reply, ¶¶ 241–243.

³⁴⁵ *Id.* ¶¶ 241–242 (describing the total length of negotiations in each of the cited cases). Compare, e.g., **RL-164**, *Barbados v. Trinidad and Tobago*, PCA Case No. 2004-02, Award, 11 April 2016 (cited in Reply, ¶ 242 n. 526), ¶ 53 ("The Parties differ as to whether the maritime boundary and fisheries negotiations were part of a single negotiating process or separate negotiations.") with *id.* ¶¶ 194–195 ("[The Parties] held a total of nine rounds of negotiations, some devoted to questions of delimitation and others to associated problems of fisheries[.] . . . In the Tribunal's view the Parties had negotiated for a reasonable period of time."). See also **RL-83**, *Appeal relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020 (cited in Reply, ¶ 241 & n. 521), ¶ 93 (in assessing the sufficiency of negotiations, broadly "*find[ing]* it appropriate to take into account [the parties'] interactions" in parallel proceedings arising under a different treaty and involving another non-party State).

148. Moreover, these cherry-picked cases are not “*jurisprudence constante*,” as Armenia claims.³⁴⁶ In cases dealing with circumstances of apparent futility, courts and tribunals have been satisfied with limited or even no exchanges at all.³⁴⁷ Armenia claims that Azerbaijan is unable to “*point to a single case*” where “*short and limited exchanges*” were found to satisfy a negotiations requirement,³⁴⁸ but has itself submitted cases where courts and tribunals were content with negotiation periods of only two,³⁴⁹ four,³⁵⁰ or five months.³⁵¹ In the cases Azerbaijan cited,

³⁴⁶ Reply, ¶ 243.

³⁴⁷ Counter-Memorial, ¶ 99 & nn. 219–222.

³⁴⁸ Reply, ¶ 245.

³⁴⁹ **RL-169**, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order, I.C.J. Reports 2018, ¶¶ 1, 30, 36–38 (finding negotiations provision in compromissory clause satisfied where respondent failed to respond to claimant’s 25 April 2018 letter seeking to open negotiations, and claimant initiated proceedings less than two months later, on 11 June 2018).

³⁵⁰ **RL-162**, *Louis Dreyfus Armateurs SAS v. Republic of India*, PCA Case No. 2014-26, Decision on Jurisdiction, 22 December 2015, ¶ 29 (just over four months between dispute notice of 11 November 2013 and notice of arbitration on 31 March 2014); *id.* ¶ 99 (finding that claimant did not “rush to arbitrate” and properly waited an appropriate amount of time given the respondent’s “conspicuous[] silen[ce]”). Accord **CL-126**, *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶¶ 341–350 (tribunal satisfied with three-month cooling off period between dispute arising in May 2005 and request for arbitration in August 2005; declining to require BIT’s six-month period given futility and lack of prejudice).

³⁵¹ **RL-21**, *Mavrommatis Palestine Concessions*, Judgment No. 2, 30 August 1924, P.C.I.J. Reports Series A No. 2, at 7, 13–15 (finding negotiations requirement satisfied by intergovernmental exchanges of less than five months between 26 January and 13 May 1924, including in light of earlier failed exchanges between the respondent and private entities involved); see *id.* at 13 (“[T]he question of the importance and chances of success of diplomatic negotiations is essentially a relative one. Negotiations 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[.]”).

negotiation or cooling-off periods of just two,³⁵² eleven,³⁵³ or seventeen days sufficed,³⁵⁴ or none was required at all.³⁵⁵

149. Thus, no hard-and-fast rule as to what period of time is “*reasonable*” can be derived from Armenia’s selective presentation of case law; no bright-line rule should be inferred given the Treaty drafters’ deliberate choice not to prescribe a time period; and even if any rule were inferred, it should be applied to the entire 16-month period of the Parties’ consultations.
150. On Reply, Armenia claims that Y-N Pipeline-specific consultations would not have been futile because those claims had a “*narrower scope*” than Azerbaijan’s other claims and could have been “*narrowed by Armenia’s observations*” had diplomatic exchanges continued.³⁵⁶ Armenia’s careful choice of words—conceding only that it might have made “*observations*” to “*narrow*” and not endeavor to “*settle*” the pipeline claims—belies any actual intent to settle and underscores the futility of further exchanges.
151. Rather than crediting Armenia’s conjectures of what further exchanges might have accomplished, the Tribunal should look instead to the substantive positions Armenia has taken in this arbitration.³⁵⁷ At every turn, whether during the diplomatic consultations or this arbitration, Armenia has contested the factual and

³⁵² **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, ¶¶ 183–184 (in light of futility, tribunal satisfied with two-day period between notice of dispute and request for arbitration notwithstanding treaty’s 12-month consultations period); *see* Counter-Memorial, nn. 192, 194.

³⁵³ **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, ¶¶ 38, 89, 97–103 (finding 11-day period between notice letter of 4 April 2002 and request of arbitration of 15 April 2002 and request of arbitration of 15 April 2002 to be sufficient notwithstanding six-month waiting period under BIT); *see* Counter-Memorial, nn. 192, 194.

³⁵⁴ **CL-118**, *Lauder v. Czech Republic*, ad hoc UNCITRAL Arbitration, Award, 3 September 2001, ¶¶ 188–189 (tribunal satisfied with 17-day “cooling-off period” between notice letter of 2 August 1999 and notice of arbitration of 19 August 1999, considering further negotiations to be futile); *see* Counter-Memorial, nn. 192, 194.

³⁵⁵ **CL-116**, *Ethyl Corp. v. Canada*, UNCITRAL (NAFTA), Award on Jurisdiction, 24 June 1998, ¶¶ 81–88 (declining to require six-month cooling off period for claims arising after notice of arbitration in light of futility and the effective passage of six months’ time by the date of its award on jurisdiction); *see* Counter-Memorial, nn. 192, 194.

³⁵⁶ Reply, ¶ 257.

³⁵⁷ *See, e.g., RL-164, Barbados v. Trinidad and Tobago*, PCA Case No. 2004-02, Award, 11 April 2016, ¶ 199 (“*The existence of a dispute is similarly not precluded by the fact that negotiations could theoretically continue. Where there is an obligation to negotiate it is well established as a matter of general international law that that obligation does not require the Parties to continue with negotiations which in advance show every sign of being unproductive.*”).

legal bases for the Y-N Pipeline claims.³⁵⁸ Contrary to Armenia’s assertion,³⁵⁹ the Tribunal is entitled to treat Armenia’s subsequent conduct—including its position that this entire dispute is a “*poorly disguised attempt*” by Azerbaijan to “*shoehorn*” unrelated claims into the ECT³⁶⁰—as further evidence that any diplomatic consultation requirement has been met, and that further consultations would have been futile.³⁶¹

152. If Armenia genuinely wished to resolve the “Pipeline Transit Claims,” it is free to reengage in diplomatic consultations at any time, including while the arbitration is pending.³⁶² The Tribunal need not decline jurisdiction over that specific portion of Y-N Pipeline claims, and thereby force the Parties to reconvene diplomatic consultations over them, for genuine settlement efforts to proceed. That outcome would result in the senseless splintering of Azerbaijan’s claims into one dispute and arbitration over Pipeline “Transit,” and another dispute and arbitration over everything else concerning the Pipeline.

C. Any Alleged Failure to Notice a Dispute or Satisfy the Consultations Provision Is Not a Jurisdictional Bar.

153. Even if the Tribunal considered that Azerbaijan failed to sufficiently notice or negotiate the “Pipeline Transit Claims,” it would still have jurisdiction, and should exercise its procedural discretion to hear and resolve the claims. As Azerbaijan

³⁵⁸ See Counter-Memorial, ¶ 95 (citing Bifurcation Request, ¶¶ 129–135; Memorial, ¶¶ 129–130).

³⁵⁹ Reply, ¶ 189.

³⁶⁰ *Id.* ¶ 4.

³⁶¹ See, e.g., **CL-8**, *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, I.C.J. Reports 1962, ¶ 159 (“*The fact that a deadlock was reached in the collective negotiations in the past and the further fact that both the written pleadings and oral arguments of the Parties in the present proceedings have clearly confirmed the continuance of this deadlock, compel a conclusion that no reasonable probability exists that further negotiations would lead to a settlement.*”) (emphasis added); **RL-51**, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, ¶ 59 (“*The fact that, as results from the pleadings of the Parties, their basic positions have not subsequently evolved confirms that negotiations did not and could not lead to the settlement of the dispute.*”) (emphasis added).

³⁶² See, e.g., **CL-118**, *Lauder v. Czech Republic*, ad hoc UNCITRAL Arbitration, Award, 3 September 2001, ¶ 189 (“*Had the Respondent been willing to engage in negotiations with the Claimant in the spirit of Article VI(3)(a) of the Treaty, it would have had plenty of opportunities to do so during the six months after the 19 August 1999 Notice of Arbitration.*”); **CL-178**, C. Schreuer, “Ch. 21 Consent to Arbitration,” in P. Muchlinski (ed.), *The Oxford Handbook of International Investment Law*, 1st ed. (26 June 2008), at 846 (“*There would be little point in declining jurisdiction and sending the parties back to the negotiating table if these negotiations are obviously futile. Negotiations remain possible while the arbitration proceedings are pending. Even if the institution of arbitration was premature, compelling the claimant to start the proceedings anew would be a highly uneconomical solution.*”); **CL-182**, *Alps Finance and Trade AG v. The Slovak Republic*, ad hoc UNCITRAL Arbitration, Award, 5 March 2011, ¶ 204 (favorably quoting *id.*).

demonstrated in the Counter-Memorial,³⁶³ international courts and tribunals—including notably those interpreting Article 26 of the ECT³⁶⁴—routinely treat objections based on the alleged non-fulfillment of pre-arbitral procedures as a matter of admissibility, not jurisdiction.³⁶⁵ Treaty tribunals routinely consider that a dismissal on such procedural grounds, when the alleged defect can be “*easily rectified*,” is disfavored because it would have “*little practical effect other than to delay the proceedings*.”³⁶⁶

154. The Reply suggests incorrectly that investor-State cases reflect a “*consistent majority view*” that “*preconditions to arbitration in investment treaties*” invariably operate as mandatory jurisdictional bars.³⁶⁷ Armenia conflates all manner of different “*preconditions*,” including provisions on negotiation, exhaustion of local remedies, and conciliation.³⁶⁸ While some tribunals have treated such provisions as conditions to consent—depending on treaty text—many tribunals have characterized negotiation provisions in particular as matters of admissibility, applying them flexibly by reference to their object and purpose of facilitating

³⁶³ Counter-Memorial, ¶¶ 88–95.

³⁶⁴ *Id.* ¶¶ 92–94 & n. 196.

³⁶⁵ *Id.* ¶¶ 89–90 & nn. 190–192, 194 (collecting cases). See also **RL-231**, *Kılıç İnşaat İthalat İhracat Sanayi ve Ticaret Anonim Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/1, Award, 2 July 2013, ¶ 6.3.6 & n. 122 (“*Proper notice of the present claim was not given. This conclusion does not, in and of itself, affect the Tribunal’s jurisdiction. The Claimant should be given an opportunity to remedy the deficient notice. On the other hand, the proceedings should not be indefinitely suspended.*”); **CL-182**, *Alps Finance and Trade AG v. The Slovak Republic*, ad hoc UNCITRAL, Award, 5 March 2011, ¶ 200 (“*It is quite possible that the Claimant did not employ the most perfect forms when it firstly notified the State of the outbreak of the dispute and proposed an attempt of pre-arbitral settlement. However, the Tribunal does not see these perfectible defects as a deficiency which renders the State’s consent to arbitral jurisdiction ineffective, as alleged by the Respondent, whose objection is excessively severe.*”); **CL-179**, *Victor Pey Casado et Fondation Président Allende c. La République du Chili*, ICSID Case No. ARB/98/2, Award, 8 May 2008, ¶ 573 (unofficial translation of cited excerpt from French original) (“*[T]he requirement for prior amicable consultations or attempts at conciliation . . . is generally not, and in the present dispute, mandatory or binding, but rather merely a procedural recommendation, or even a diplomatic clause.*”); **CL-174**, *Republic of Italy v. Republic of Cuba*, Preliminary Award (ad hoc arbitration), 15 March 2005, ¶ 68 (unofficial translation of French original) (issue of whether amicable settlement provision was satisfied “*is not actually one of standing, that is, of the right or interest to bring an action. It is an issue of the admissibility of the arbitration request submitted by the Republic of Italy.*”).

³⁶⁶ **CL-169**, *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Decision on Jurisdiction, 29 June 1999, ¶ 59. See also **CL-168**, *Mr. Franz Sedelmayer v. The Russian Federation*, SCC Arbitration, Award, 7 July 1998, at 82 (despite both parties framing pre-arbitral procedures as jurisdictional issues affecting the tribunal’s competence, the tribunal decided *sua sponte* to treat them rather as admissibility issues: “*Even if the said provisions have not been properly complied with, the consequence would, in the Tribunal’s opinion, be too far-reaching if, solely on this ground, the Tribunal would be prevented from examining the case.*”).

³⁶⁷ Reply, ¶ 230.

³⁶⁸ *Id.*, nn. 490–492.

dispute resolution, including considerations of futility and practical satisfaction.³⁶⁹ The cases Armenia cites do not hold otherwise, as they either (i) do not actually rule that a negotiation provision is a jurisdictional bar,³⁷⁰ or (ii) turn on inapposite treaty language, including (a) a specified waiting period before arbitration of six months to a year;³⁷¹ (b) a requirement that claimant exhaust local remedies for

³⁶⁹ See Counter-Memorial, ¶¶ 89–94; **CL-140**, *Stati v. Republic of Kazakhstan*, Svea Court of Appeal Case No. T2675-14, Judgment, 9 December 2016, at 51 (finding, after considering expert testimony surveying cases, that “there appears to be a certain preponderance in favour of the view that such provisions are not to be deemed to constitute conditions for the arbitral tribunal’s jurisdiction”).

³⁷⁰ **RL-217**, *Noble Energy, Inc. and MachalaPower Cia. Ltda. v. The Republic of Ecuador and Consejo Nacional de Electricidad*, ICSID Case No. ARB/05/12, Decision on Jurisdiction, 5 March 2008 (cited in Reply, n. 490), ¶ 212 (merely describing the treaty; making no finding on jurisdiction versus admissibility: “Under the BIT, investment disputes must first be sought to be resolved through consultation and negotiation. Failing such a resolution within six months from the date on which the dispute arose, the investor can invoke the ICSID arbitration clause.”); *id.* ¶ 61 (expressly noting that its analysis does not “distinguish[] between objections to the jurisdiction of the Tribunal and objections to the admissibility of the claims”); **RL-212**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003 (cited in Reply, n. 490), ¶ 14.4 (“The Tribunal need not rule upon the status of the requirement to consult and negotiat[e]”—i.e., whether the requirement is “procedural” or not—“because the Claimant has quite clearly discharged its obligation to do so.”); **RL-162**, *Louis Dreyfus Armateurs SAS v. Republic of India*, PCA Case No. 2014-26, Decision on Jurisdiction, 22 December 2015 (cited in Reply, n. 490), ¶ 94 (tribunal’s consideration of jurisdictional or procedural nature of waiting period is *obiter dicta* since the treaty imposes no such requirement); **RL-256**, *Itisaluna Iraq LLC and Others v. Republic of Iraq*, ICSID Case No. ARB/17/10, Award, 3 April 2020 (cited in Reply, n. 490), ¶ 184 (similarly noting that its view on the conditional nature of pre-arbitration conciliation is *obiter dicta*).

³⁷¹ **RL-157**, *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction, 2 June 2010 (cited in Reply, n. 490), ¶ 103 (six-month waiting period); **RL-160**, *Guaracachi America, Inc. and Rurelec PLC v. Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014 (cited in Reply, n. 490), ¶ 389 (same); **RL-212**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003 (cited in Reply, nn. 490, 492), ¶ 14.2 (same); **RL-216**, *Merrill & Ring Forestry L.P. v. The Government of Canada*, ICSID Administered Case, Decision on a Motion to Add a New Party, 31 January 2008 (cited in Reply, nn. 490, 492), ¶¶ 5, 29 (same); **RL-220**, *Murphy Exploration and Production Company International v. Republic of Ecuador*, ICSID Case No. ARB/08/4, Award on Jurisdiction, 15 December 2010 (cited in Reply, nn. 490, 492), ¶ 151 (same); **RL-251**, *Almasryia For Operating & Maintaining Touristic Construction Co., LLC v. State of Kuwait*, ICSID Case No. ARB/18/2, Award on the Respondent’s Application under Rule 41(5) of the ICSID Arbitration Rules, 1 November 2019 (cited in Reply, nn. 490, 492), ¶ 34 (same); **RL-213**, *Enron Corporation and Ponderosa Assets, L.P. v. The Argentine Republic*, ICSID Case No. ARB/01/3, Decision on Jurisdiction, 14 January 2004 (cited in Reply, n. 490), ¶ 87 (six-month consultation period); **RL-259**, *Mr. Nasib Hasanov v. Georgia*, ICSID Case No. ARB/20/44, Decision on Respondent’s Inter-State Negotiation Objection, 19 April 2022 (cited in Reply, n. 490), ¶¶ 98, 104 (six-month negotiations period); **RL-229**, *Tulip Real Estate Investment and Development Netherlands B.V. v. Republic of Turkey*, ICSID Case No. ARB/11/28, Decision on Bifurcated Jurisdictional Issue, 5 March 2013 (cited in Reply, n. 490), ¶ 72 (one-year cooling off period); **RL-211**, *Methanex Corporation v. United States of America*, Partial Award (ad hoc arbitration), 7 August 2002 (cited in Reply, n. 490), ¶ 120 (90-day notice and six-month cooling off period).

at least twelve to eighteen months;³⁷² (c) a three-month consultation period to determine compensation for lawful expropriation;³⁷³ and (d) a pre-arbitral conciliation process.³⁷⁴

155. In short, contrary to Armenia’s attempt to lump these various kinds of clauses together as jurisdictional “*preconditions to arbitration*,”³⁷⁵ tribunals have unsurprisingly reached different outcomes based on different treaty text in different cases. Even Armenia’s cases acknowledge that whether a negotiations provision, in particular, can qualify as a “*jurisdictional requirement . . . depend[s] on the language and the context.*”³⁷⁶ As the tribunal in *Wintershall v. Argentina* observed, “[a] waiting period for amicable settlement . . . is definitely not the same as a requirement to invoke the jurisdiction of domestic Courts for a given period of time.”³⁷⁷ It also matters whether “*the [purportedly required] period has in any*

³⁷² **RL-218**, *Wintershall Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/04/14, Award, 8 November 2008 (cited in Reply, nn. 490, 491), ¶¶ 108, 160 (18-month local exhaustion requirement (and a further three-month waiting period)); **RL-223**, *Impregilo S.p.A. v. Argentine Republic*, ICSID Case No. ARB/07/17, Award, 21 June 2011 (cited in Reply, n. 490), ¶¶ 90, 94 (18-month local exhaustion requirement); **RL-226**, *ICS Inspection and Control Services Limited (United Kingdom) v. The Argentine Republic*, PCA Case No. 2010-9, Award on Jurisdiction, 10 February 2012 (cited in Reply, n. 490), ¶¶ 60, 248 (same); **RL-227**, *Daimler Financial Services AG v. Argentine Republic*, ICSID Case No. ARB/05/1, Award, 22 August 2012 (cited in Reply, n. 490), ¶ 194 (same); **RL-228**, *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, ICSID Case No. ARB/07/26, Decision on Jurisdiction, 19 December 2012 (cited in Reply, n. 490), ¶ 135 (same); **RL-233**, *Ömer Dede and Serdar Elhüseyni v. Romania*, ICSID Case No. ARB/10/22, Award, 30 August 2013 (cited in Reply, n. 490), ¶¶ 224–225 (one-year local exhaustion requirement); **RL-231**, *Kılıç İnşaat İthalat İhracat Sanayi ve Ticaret Anonim Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/1, Award, 2 July 2013 (cited in Reply, nn. 490, 492), ¶ 3.2.3 (six-month settlement period followed by one-year local exhaustion requirement).

³⁷³ **RL-232**, *ST-AD GmbH (Germany) v. The Republic of Bulgaria*, PCA Case No. 2011-06 (ST-BG), Award on Jurisdiction, 18 July 2013 (cited in Reply, n. 490), ¶ 145.

³⁷⁴ **RL-256**, *Itisaluna Iraq LLC and Others v. Republic of Iraq*, ICSID Case No. ARB/17/10, Award, 3 April 2020 (cited in Reply, nn. 490–491), ¶ 91 (rather than any amicable settlement or negotiations period, treaty allowed resort to arbitration only if the parties “do not reach an agreement as a result of their resort to conciliation, or if the conciliator is unable to issue his report within the prescribed period, or if the two parties do not accept the solutions proposed therein”); *id.* ¶ 183 (concluding, in light of specific treaty language, that “failure of the conciliation process” is a “gateway to arbitration”).

³⁷⁵ See Reply, ¶ 230.

³⁷⁶ **RL-218**, *Wintershall Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/04/14, Award, 8 November 2008, ¶ 142; see also **RL-259**, *Mr. Nasib Hasanov v. Georgia*, ICSID Case No. ARB/20/44, Decision on Respondent’s Inter-State Negotiation Objection, 19 April 2022, ¶ 93 (noting that the jurisdiction v. admissibility issue should “tak[e] into account the underlying context of the relevant BIT”); *id.* ¶ 98 (“A mandatory precedent step connected to a time frame indicates that the Contracting Parties have established a condition precedent to arbitration.”) (emphasis added).

³⁷⁷ **RL-218**, *Wintershall Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/04/14, Award, 8 November 2008, ¶ 145 (“A waiting period for amicable settlement (or for ‘negotiation’) is definitely not the same as a requirement to invoke the jurisdiction of domestic Courts for a given period of time.”) (emphases added). See also **RL-226**, *ICS Inspection and Control Services Limited (United Kingdom) v.*

event passed” in the interim, so continued negotiations would plainly be “*futil[e]* . . . in the circumstances.”³⁷⁸ This consistent application by international tribunals of nuanced, case- and treaty-specific analysis belies any effort by Armenia to draw inapt parallels between this proceeding and other proceedings between the Parties before different courts under separate treaties with distinguishable provisions.³⁷⁹

156. Nor do Armenia’s cases reflect a “*more recent*” trend in favor of the formalistic “*jurisdictional*” view, as Armenia incorrectly suggests.³⁸⁰ Almost all of Armenia’s cases are from the same time period as Azerbaijan’s;³⁸¹ Azerbaijan’s cases are no less persuasive because of their vintage; and, in any event, the different results stem from the difference in treaty text and context³⁸²—not the passage of time.
157. Even if recency were relevant, cases in the last few years have continued to favor Azerbaijan’s “*admissibility*” approach. For example, in the 2022 *Okuashvili v.*

The Argentine Republic, PCA Case No. 2010-9, Award on Jurisdiction, 10 February 2012, ¶ 249 (favorably quoting *id.*); **RL-227**, *Daimler Financial Services AG v. Argentine Republic*, ICSID Case No. ARB/05/1, Award, 22 August 2012, ¶ 189 (similarly distinguishing 18-month local exhaustion requirement from “*mere waiting period[s]*”); **RL-228**, *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, ICSID Case No. ARB/07/26, Decision on Jurisdiction, 19 December 2012, ¶ 135 (same).

³⁷⁸ **RL-227**, *Daimler Financial Services AG v. Argentine Republic*, ICSID Case No. ARB/05/1, Award, 22 August 2012, ¶ 188. See also **CL-180**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Preliminary Objections, Judgment, I.C.J. Reports 2008, ¶ 87 (“[I]t is of no importance which condition was unmet at the date the proceedings were instituted, and thereby prevented the Court at that time from exercising its jurisdiction, once it has been fulfilled subsequently.”); **CL-183**, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, ad hoc UNCITRAL Arbitration, Award on Jurisdiction and Liability, 28 April 2011, ¶ 220 (“*Arguendo, even if they had failed to abide by the negotiating period, this would not go to jurisdiction, as that delay has long expired.*”); **CL-189**, *Olin Holdings Limited v. State of Libya*, ICC Case No. 20355/MCP, Partial Award on Jurisdiction, 28 June 2016, ¶ 217 (“*In circumstances where negotiations appear to be futile and the cooling-off period has in any event passed by the time that an award on jurisdiction is rendered, international tribunals have consistently held that noncompliance with such period is not considered as a valid ground for challenging the jurisdiction of an arbitral tribunal or the admissibility of a request for arbitration.*”).

³⁷⁹ Reply, ¶ 222 (arguing that Azerbaijan took the position before the ICJ that the Court lacked jurisdiction over Armenia’s CERD claims due to failure to satisfy the negotiations precondition in Article 22 of CERD); see **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, ¶ 20 (quoting Art. 22 of the CERD) (“*Any dispute between two or more States parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.*”) (emphasis added).

³⁸⁰ Reply, ¶ 229 (noting that “*the most recent of*” Azerbaijan’s cases “*dates back 12 years*”).

³⁸¹ See *supra* nn. 370–374 (18 of 21 cases are over a decade old).

³⁸² See *supra* ¶ 155.

Georgia award, the respondent objected that the claimant’s notice of dispute “*does not cover [certain] alleged breaches*” asserted in the arbitration, was not “*sufficiently detailed,*” and was not followed by a “*six-month waiting period.*”³⁸³ The tribunal agreed that:

[T]he Respondent’s objection is in the nature of an objection to the admissibility of the Claimant’s claims. Unlike the Respondent’s other objections, this does not contest the Claimant’s entitlement to resort to arbitration under the SCC Rules but rather that the Tribunal has been properly seised of the claims articulated in the Claimant’s RfA and SoC. This is therefore not an objection to the Tribunal’s jurisdiction
...³⁸⁴

158. Contrary to Armenia’s arguments, treating its objections as admissibility issues would not “*deny the State an opportunity to settle the dispute amicably, and encourage claimants to ignore procedural requirements at their discretion.*”³⁸⁵ Nowhere did Azerbaijan assert that a claimant could “*ignore[]*” consultations provisions “*at will*” or view them as “*virtually optional.*”³⁸⁶ Rather, Azerbaijan observed that many tribunals will take a pragmatic approach, applying an admissibility lens to assess whether strict adherence to the purported requirement would have achieved the provision’s goal of facilitating settlement.³⁸⁷ In cases where the disputing parties genuinely stand to lose an opportunity to settle a dispute due to a claimant’s failure to engage in adequate consultations, tribunals can consider that risk when deciding whether to admit the claims.
159. There is no such risk here. Far from “*ignoring*” Article 27, Azerbaijan did precisely what it prescribed, engaging in diplomatic consultations over its noticed dispute for a “*reasonable period of time*” before commencing the arbitration. Over the course of the Parties’ 16-month consultations period—and, indeed, throughout the two-year arbitration that followed—Armenia remained and remains free to amicably settle the “Pipeline Transit Claims” (and indeed, any aspect of the dispute) should it wish.³⁸⁸
160. Ultimately, declining jurisdiction over the “Pipeline Transit Claims” on the grounds that Azerbaijan failed to sufficiently notice or negotiate that specific subset of

³⁸³ **CL-206**, *Zaza Okuashvili v. Georgia*, SCC Case No. V 2019/058, Partial Final Award on Jurisdiction and Admissibility, 31 August 2022, ¶¶ 253, 257 (quotations at ¶ 253) (internal quotations omitted).

³⁸⁴ *Id.* ¶ 257 (emphasis added).

³⁸⁵ Reply, ¶ 231.

³⁸⁶ *Id.* ¶¶ 221, 224.

³⁸⁷ Counter-Memorial, ¶ 90.

³⁸⁸ *See supra* ¶ 152

claims would be inefficient and inequitable. Azerbaijan would be forced to re-notice the same “Pipeline Transit Claims” of which Armenia is by now well aware and plainly opposes; the Parties would be forced to engage in weeks or months of further futile consultations over those claims; and Azerbaijan would have to re-file an additional, separate arbitration, before a separate tribunal, when those consultations inevitably fail.³⁸⁹ Those proceedings would consider the same or significantly overlapping facts as the remaining claims in this case, needlessly multiplying costs and risking conflicting or even irreconcilable decisions. The purpose of the consultation provisions in Articles 27(1)–(2) is to facilitate amicable settlement, not to create a procedural trap that indefinitely delays resolution of inter-State disputes.

161. This pragmatic approach is fully aligned with the “*realism and flexibility*” the ICJ has shown in inter-State cases when “*the conditions governing the Court’s jurisdiction were not fully satisfied when proceedings were initiated but were subsequently satisfied, before the Court ruled on its jurisdiction.*”³⁹⁰ Contrary to Armenia’s contention that the ICJ invariably treats the failure to fulfil procedural “*preconditions*” before an application is filed as a strict jurisdictional bar,³⁹¹ the Court has explained:

*What matters is that, at the latest by the date when the Court decides on its jurisdiction, the applicant must be entitled, if it so wishes, to bring fresh proceedings in which the initially unmet condition would be fulfilled. In such a situation, it is not in the interests of the sound administration of justice to compel the applicant to begin the proceedings anew—or to initiate fresh proceedings—and it is preferable, except in special circumstances, to conclude that the condition has, from that point on, been fulfilled.*³⁹²

³⁸⁹ See **CL-182**, *Alps Finance and Trade AG v. The Slovak Republic*, ad hoc UNCITRAL, Award, 5 March 2011, ¶ 204 (favorably quoting commentary) (“*There would be little point in declining jurisdiction and sending the parties back to the negotiating table if these negotiations are obviously futile. . . . Even if the institution of arbitration was premature, compelling the claimant to start the proceedings anew would be a highly uneconomical solution.*”).

³⁹⁰ **CL-180**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Preliminary Objections, Judgment, I.C.J. Reports 2008, ¶¶ 81, 82 (collecting cases).

³⁹¹ See Reply, ¶¶ 225–226.

³⁹² **CL-180**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Preliminary Objections, Judgment, I.C.J. Reports 2008, ¶ 85. See *id.* ¶ 89 (distinguishing a previous case—*i.e.*, a “*particular circumstance*[],” where it did not make sense to deem procedural requirements satisfied in the interests of judicial economy: where applicant became a party to the ICJ Statute (and gained access to the Court) only after the application, but had already indicated that it would not reinstitute proceedings because it considered itself not to be bound by the

162. Accordingly, even if the Tribunal were to conclude that Azerbaijan failed to satisfy the alleged “*preconditions*” of notice and consultations prior to filing its Notice of Arbitration, it would not be fatal to the Tribunal’s jurisdiction over the “Pipeline Transit Claims.”

D. Azerbaijan Is Not Obligated to Submit the “Pipeline Transit Claims” to Article 7(7) Conciliation.

163. Armenia’s final Y-N Pipeline objection also aims to carve out the same portion of Azerbaijan’s Pipeline claims and frustrate their resolution based on an untenable reading of the ECT. As Azerbaijan demonstrated in the Counter-Memorial,³⁹³ the conciliation procedure described in Articles 7(6) and 7(7) does not preclude submission of the Y-N Pipeline claims to inter-State arbitration under Article 27.
164. On Reply, Armenia attacks a straw man. It insists that “*Azerbaijan’s argument [is] that Article 27(2) arbitration must be exhausted before a dispute can be referred to conciliation.*”³⁹⁴ That is not, in fact, Azerbaijan’s argument. In its Counter-Memorial, Azerbaijan cited favorably to Energy Charter Conference (“*ECC*”) commentary—commentary which was endorsed by all ECT Contracting Parties, through the ECC³⁹⁵—construing inter-State arbitration as preceding conciliation in certain circumstances.³⁹⁶ Azerbaijan nevertheless maintained that disputing parties may ultimately decide where to direct their disputes.³⁹⁷ The point of the citation was to demonstrate that—unlike Armenia—commentators do not construe conciliation as preceding or displacing arbitration as *lex specialis* for all transit disputes.

Genocide Convention, it made sense to allow the case to be dismissed on procedural grounds of applicant’s then-lack of access); *compare supra* ¶ 160 (indicating that Azerbaijan would re-notice and re-file the “Pipeline Transit Claims” if these were carved out from the present case).

³⁹³ Counter-Memorial, § III.C.

³⁹⁴ Reply, ¶ 296; *see also id.* ¶ 293 (“*Azerbaijan’s interpretation of Article 7(7) as requiring parties to first exhaust the arbitration mechanism of Article 27(2) is untenable.*”).

³⁹⁵ **CL-139**, Energy Charter Secretariat, *Commentary to the Rules Concerning the Conduct of Conciliation of Transit Disputes*, 20 June 2016, at 1 (reflecting decision of the ECC “*endorses[ing] the Commentary to the Rules Concerning the Conduct of Conciliation of Transit Disputes (the Conciliation Rules) as a helpful, non-binding explanatory tool to facilitate understanding and uniform application of the Conciliation Rules*”).

³⁹⁶ Counter-Memorial, ¶ 108 (arguing that conciliation is non-mandatory and does not exclude Article 27); *id.* ¶ 109 (citing **CL-139**, Energy Charter Secretariat, *Commentary to the Rules Concerning the Conduct of Conciliation of Transit Disputes*, 20 June 2016, ¶ 59 (construing Article 27 arbitration as an “*other resolution remedy*” that must be exhausted before Article 7 conciliation when “*the specific transit dispute at hand relates to an obligation contained in Article 7*”)).

³⁹⁷ Counter-Memorial, ¶ 113 (in rebutting Armenia’s argument that conciliation is *lex specialis* for transit disputes, urging “*an approach that harmonizes simultaneously applicable norms,*” such as the ECC’s view that Article 27 would precede Article 7 for certain disputes “*unless the parties agree otherwise*”).

165. To confirm, Azerbaijan’s position is that Articles 7 and 27 establish complementary dispute resolution procedures that States parties can invoke at their option.³⁹⁸ Where there are exigent circumstances calling for a fast-track, interim decision, conciliation may be appropriate; absent such urgency, or where (as here) the case seeks a final and binding resolution to a dispute between Contracting States about the application or interpretation of the ECT, the claimant State may opt instead for arbitration.³⁹⁹
166. Proper interpretation of the Treaty confirms this reading. The ordinary meaning of Articles 7 and 27, read in good faith (**Section III.D.1**) and in light of the ECT’s object and purpose (**Section III.D.2**), compel the conclusion that the Tribunal may properly exercise jurisdiction here.⁴⁰⁰ And, although recourse to them is not required in light of the Treaty’s plain meaning, the *travaux* and legal commentary also affirm that finding (**Section III.D.3**).

1. The Ordinary Meaning of the Text Establishes Article 7(7) Conciliation and Article 27 Arbitration as Complementary Tracks for Transit Claims.

167. The plain language of Articles 7 and 27 in their ordinary meaning do not mandate one form of dispute resolution over the other for transit disputes. For ease of reference, Article 7 provides 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*

³⁹⁸ See, e.g., *id.* ¶ 115 (articulating “Azerbaijan’s position that Transit claims arising under Article 7 can”—not must—“be arbitrated under Article 27”); *id.* ¶ 120 (“[N]othing 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.”).

³⁹⁹ See, e.g., *id.* ¶ 118 (“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.”); *id.* ¶ 120 (describing circumstances where there is an Article 27 arbitration about the scope of Article 7 conciliation); compare Reply, ¶ 307 (acknowledging “the possibility that an arbitral tribunal would have jurisdiction to decide whether an alleged dispute falls within the scope of . . . the conciliation mechanism”).

⁴⁰⁰ **CL-11**, VCLT, Arts. 31(1), 31(3)(b).

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) *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. [. . .]*⁴⁰¹

168. As Azerbaijan observed in its Counter-Memorial,⁴⁰² the operative verb is permissive: “*a dispute over any matter arising from . . . Transit*” “*may [be] refer[red]*” for conciliation,⁴⁰³ just like inter-State “*disputes concerning the application or interpretation of this Treaty*” “*may . . . [be] submit[ted]* . . . *to an ad hoc tribunal.*”⁴⁰⁴ If the wholesale displacement of one mechanism over another had instead been the intent, language to that effect could easily have been inserted. But the two articles do not even refer to each other. Instead, Article 27 expressly excludes Articles 6, 19, and (for certain parties) 10(1) from its scope, saying nothing about Article 7.
169. Armenia nevertheless tries to read its displacement theory into the Treaty in five ways; none withstands scrutiny.
170. *First*, Armenia puts undue weight on the word “*shall*” in Article 7. It contends that the requirement that transit disputes be conciliated, rather than arbitrated, comes from reading Articles 7(6) and (7) together to provide that “[*t*]he following provisions shall apply” to “*a dispute over any matter arising from . . . Transit.*”⁴⁰⁵ But Article 7(7)’s chapeau (indicating the procedure that “shall apply”) no more displaces inter-State arbitration than Article 27’s similar procedural exhortation (parties “shall endeavour to settle disputes . . . through diplomatic channels”)

⁴⁰¹ **CL-1**, ECT, Arts. 7(6), 7(7), 7(7)(a).

⁴⁰² Counter-Memorial, ¶¶ 107–108.

⁴⁰³ **CL-1**, ECT, Arts. 7(6), 7(7)(a) (emphasis added).

⁴⁰⁴ *Id.*, Arts. 27(1)–(2) (emphasis added).

⁴⁰⁵ *Id.*, Arts. 7(6), 7(7) (emphasis added).

displaces conciliation.⁴⁰⁶ “*Shall*” in each of these contexts simply refers to the dispute resolution procedure that “*shall*” apply to parties electing to resolve their disputes in such a manner.

171. As Armenia concedes, “*parties have no obligation to refer a [transit] dispute to any dispute resolution mechanism.*”⁴⁰⁷ By the same logic, and—absent express Treaty language providing otherwise—inter-State disputes eligible both for Article 7 conciliation (because they arise from transit) and for Article 27 arbitration (because they concern the ECT’s interpretation or application) enjoy both of these mechanisms among the suite of other options that may be available. Treaty language saying that a procedure “*shall apply*” when one of the options is selected does not in itself elevate that procedure over any other as a mandatory first option.
172. *Second*, Armenia’s reliance on a generic catch-all phrase in Article 27(2) for its wholesale displacement theory is misplaced.⁴⁰⁸ Specifically, Armenia points to language providing that inter-State arbitration is permitted “*except as otherwise provided in this Treaty*” to argue that Article 7 “*provides otherwise*” for transit disputes by specifying the conciliation procedure that “*shall apply.*”⁴⁰⁹ But that reading only prevails if the Tribunal accepts Armenia’s first premise that conciliation is mutually exclusive with inter-State arbitration, *i.e.*, that the ECT actually does—definitively and exclusively—provide otherwise for transit disputes.
173. Armenia cannot make that showing. For the settlement of trade disputes, the Treaty “*provides otherwise*” in Article 28, but no such language exists as to transit.⁴¹⁰ If, instead, the Tribunal concludes that transit conciliation and inter-State

⁴⁰⁶ *Id.*, Arts. 7(7), 27(1) (emphases added). See also *id.* Art. 27(3) (“Such an *ad hoc* arbitral tribunal shall be constituted as follows . . .”) (emphasis added); *id.* Art. 26(1) (investor-State disputes “shall, if possible, be settled amicably”) (emphasis added).

⁴⁰⁷ Reply, ¶ 279 (emphasis in original). See also CL-6, United Nations Charter (1945), Art. 33 (“*The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.*”).

⁴⁰⁸ CL-1, ECT, 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, except as otherwise provided in this Treaty or agreed in writing by the Contracting Parties, and 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.”) (emphasis added).

⁴⁰⁹ Reply, ¶ 266.

⁴¹⁰ Compare CL-1, ECT, Art. 28 (providing that disputes “with respect to the application or interpretation of Article 5 [‘Trade-Related Investment Measures’] or 29 [‘Interim Provisions on Trade-Related Measures’] shall not be settled under Article 27 unless the [disputants] so agree”) with *id.* generally (no exception for transit disputes not to be settled under Article 27, whether under Art. 7, Art. 27 (which excepts Arts. 6, 19, and 10(1) for certain parties), or Art. 28 (which excepts Arts. 5 and 29)). See RL-195, Draft Basic Agreement for the European Energy Charter (21 December 1992), at 88 (comment

arbitration are complementary, then Article 7 cannot be said to displace Article 27 under Article 27(2)'s catchall language. That is precisely the view that Craig Bamberger, Chairman of the Legal Advisory Committee during the ECT negotiations, has since propounded.⁴¹¹

174. *Third*, Armenia reads Article 7(6)—specifically, the requirement that parties maintain existing flows of energy while a conciliation is pending—to mean that conciliation is the mandatory mechanism for resolving transit disputes.⁴¹² Armenia contends that conciliation must be construed as mandatory; otherwise, you get the “*absurd result*” where, if conciliation never happens, the parties must indefinitely maintain energy flows even if the dispute is resolved in an inter-State arbitration.⁴¹³
175. A good faith reading of Article 7(6) resolves any purported conflict. By its own terms, Article 7(6) only applies when there is a “*dispute*” over transit. An inter-State arbitration award would resolve the dispute, rendering Article 7(6) inapplicable. Moreover, Article 7(6) does not refer exclusively to conciliation but rather to the “*conclusion of the dispute resolution procedures set out in paragraph (7),*” and Article 7(7) refers, in turn, not only to conciliation but also to any “*contractual or other dispute resolution remedies previously agreed*” between the disputing parties.⁴¹⁴ If one of those “*contractual or other dispute resolution remedies*” (such as arbitration) resolves the dispute, then disputing States are relieved of their Article 7(6) obligations.
176. *Fourth*, the coexistence of conciliation and arbitration does not, as Armenia contends, deprive Article 7(7) of any *effet utile* or improperly discount conciliation. Armenia complains that because “*all Contracting Parties that can be party to a transit dispute*” have also agreed to Article 27, “*a transit dispute could never be*

under draft Article 27 explaining that the Article is intended to “*except Article 5 which goes to GATT . . . with the following additional language . . . ‘except as otherwise provided in this Agreement’*”).

⁴¹¹ **CL-176**, C. Bamberger, *Adjudicatory Aspects of Transit Dispute Conciliation Under the Energy Charter Treaty*, 3 Transnational Dispute Management (April 2006), at 14 (“*A transit dispute that is potentially subject to conciliation under Article 7(6)-(7) may also be a dispute over the application or interpretation of an ECT-provision Although Article 27(2) disallows a submittal to binding arbitration under Article 27 where the ECT has ‘otherwise provided,’ Article 7 does not seem to ‘provide otherwise.’*”) (emphasis added).

⁴¹² **CL-1**, ECT, Art. 7(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.*”) (emphasis added).

⁴¹³ Reply, ¶ 274.

⁴¹⁴ **CL-1**, ECT, Art. 7(7).

referred” to conciliation if inter-State arbitration precedes conciliation.⁴¹⁵ But that is simply untrue: Conciliation remains the only Treaty-based option for transit disputes that (i) are not between two States (including, as Article 7 expressly contemplates, transit disputes involving non-State entities);⁴¹⁶ or (ii) do not call for the interpretation or application of any ECT provision (*e.g.*, contractual pricing or tariff disputes). Article 7(7) retains *effet utile* in all of these contexts—and also where an inter-State dispute is eligible for both conciliation and arbitration, and the parties opt for conciliation.

177. Moreover, Article 7(7) calls, on its own terms, for the exhaustion of other agreed remedies (for example, commercial arbitration) before resort to conciliation. Thus, Armenia’s complaint about conciliation being demoted is simply a consequence of the way Article 7 is drafted—not a result of Azerbaijan’s position about the parallel availability of inter-State arbitration under Article 27.
178. Finally, Armenia’s *lex specialis* argument is meritless. Armenia contends that “Article 7(7) is more specific” than Article 27 “because it only applies to transit disputes,” and therefore “Article 7(7) must prevail as *lex specialis* over Article 27(2), the *lex generalis*.”⁴¹⁷ At bottom, however, this argument fails because the two provisions provide different remedies for different types of disputes: the Article 7(7) conciliation mechanism is not designed to provide binding resolution to inter-State disputes concerning the interpretation or application of the ECT. Nor—unlike inter-State arbitration—does it require the application of law; conciliation can result in a solution *contra legem*, which can nevertheless be perfectly acceptable to the conciliating parties.⁴¹⁸
179. *Lex specialis* applies only where the two rules address the same “*subject matter*” but there is an “*actual inconsistency*” between them “*or else a discernible intention that one provision is to exclude the other.*”⁴¹⁹ The cases Armenia cites confirm this principle. In *Rudolf Gabriel*, for instance, the issue was non-domiciliary

⁴¹⁵ Reply, ¶ 281 (emphasis in original); see Counter-Memorial, ¶ 109 (citing ECC guidance construing Art. 27 arbitration as an “*other resolution remedy previously agreed between the Contracting Parties*” to be exhausted before conciliation).

⁴¹⁶ CL-1, ECT, Art. 7(6) (extending *status quo* obligation to “any entity subject to” a Contracting Party’s “jurisdiction”); *id.*, Art. 7(7) (requiring, before conciliation, the exhaustion of any “*relevant contractual or other dispute resolution remedies*” between non-State entities of different Contracting Parties).

⁴¹⁷ Reply, ¶ 286.

⁴¹⁸ See CL-52, D. Azaria, “Treaties on Transit of Energy Via Pipelines and Countermeasures” (2015), at 179 (“*Since conciliation is a process of compromise and bargain between the disputing parties, [it] calls for a package deal incorporating elements of equity, contra legem, if necessary; reference to international law may well hinder the solution of the conflict.*”) (internal quotation marks omitted).

⁴¹⁹ CL-37, Draft ILC Articles on State Responsibility – Commentary, Art. 55, cmt. (4) (“*For the lex specialis principle to apply it is not enough that the same subject matter is dealt with by two provisions; there must be some actual inconsistency between them, or else a discernible intention that one provision is to exclude the other.*”).

jurisdiction, and the treaty prescribed one rule for contracts in general (the *lex generalis*) and a different rule for consumer contracts in particular (the *lex specialis*).⁴²⁰ Because those rules conflicted when applied, the *lex specialis* displaced the *lex generalis*. In both *Nikolava v. Bulgaria* and *Murray v. United Kingdom*, the *lex generalis* provided that everyone should be afforded “an effective remedy,” while the *lex specialis* required prompt proceedings for those arrested or detained; in each case, the Court declined to consider the *lex generalis* because it found a breach of the *lex specialis* on the same facts.⁴²¹

180. In this case, however, there is neither inconsistency nor exclusivity. Article 7 conciliation is available for transit disputes of any kind⁴²²—whether contractual or treaty-based—and whether between States, between private or public entities, or between States and such entities.⁴²³ Further, an Article 7(7) conciliator can only facilitate agreement between the parties and provide interim relief; they cannot order a binding resolution. Article 27(2), on the other hand, provides for binding relief in an inter-State dispute concerning the interpretation or application of the Treaty, including (for transit disputes) the interpretation of Article 7. Far from Article 7 constituting a specialized system to be carved out of Article 27, then, it is clear that Article 7 was intended to provide a different form of relief that could also be available for different kinds of transit disputes.
181. Tribunals are reluctant to read treaty provisions as displacing each other in the absence of clear language to that effect, and they will reject “mechanical” and “invariable” applications of *lex specialis* tending to that result.⁴²⁴ Here, there is no “discernible intention” in the Treaty text to treat conciliation as *lex specialis* for transit disputes.⁴²⁵ In contrast, the World Trade Organization Dispute Settlement

⁴²⁰ **RL-210**, *Case C-96/00, Rudolf Gabriel*, CJEU Case No. ECR (2002) I-06367, Judgment, 11 July 2002, ¶¶ 7, 9, 36.

⁴²¹ **RL-205**, *Nikolova v. Bulgaria*, ECtHR Application No. 31195/96, Judgment, 25 March 1999, ¶¶ 54, 67–69; **RL-198**, *Murray v. United Kingdom*, ECtHR Application No. 14310/88, Judgment, 28 October 1994, ¶¶ 97–99.

⁴²² **CL-1**, ECT, Art. 7(6) (covering “dispute[s] over any matter arising from” the transit of “Energy Materials and Products” through the Territory of a Contracting Party).

⁴²³ *Id.*, Art. 7(7) (providing for the exhaustion of contractual or other remedies between contracting States or between entities subject to Contracting States’ jurisdiction).

⁴²⁴ **CL-202**, *Güriş and others v. Syria*, ICC Case No. 21845/ZF/AYZ, Final Award, 31 August 2020, ¶ 261; *id.* ¶ 231 (“If the States Parties’ intent were that Article IV(3) would operate as an exclusion, exemption, or derogation clause, one would certainly expect them to have spelt out such a far-reaching result expressly.”); see also **CL-200**, *Strabag SE v. Libya*, ICSID Case No. ARB(AF)/15/1, Award, 29 June 2020, ¶ 226 (maxims like *lex specialis* “need to be used with special care” and “might well produce the wrong results if followed slavishly”).

⁴²⁵ **CL-37**, Draft ILC Articles on State Responsibility – Commentary, Art. 55, cmt. (4) (“For the *lex specialis* principle to apply it is not enough that the same subject matter is dealt with by two provisions; there must be some actual inconsistency between them, or else a discernible intention that one provision is to exclude the other.”).

Understanding (“*WTO DSU*”)—a treaty negotiated concurrently with the ECT—does contain language broadly considered to “discernibl[y]” indicate a *lex specialis* dispute resolution procedure. There, Member States seeking “redress of a violation of obligation” under certain enumerated trade agreements “shall have recourse to, and abide by” the WTO DSU rules, and Member States “shall not make a determination to the effect that a violation has occurred . . . except through recourse to dispute settlement in accordance with the rules and procedure of [the *WTO DSU*].”⁴²⁶ No such language appears in Article 7. Nor is there anything suggesting exclusivity in Article 27, which expressly excludes other Treaty provisions (but not Article 7) from its scope.

182. In any event, Armenia undermines its own *lex specialis* argument by treating conciliation as an “interim” procedure, with the parties proceeding to arbitration if conciliation fails.⁴²⁷ Under Armenia’s theory of *lex specialis*, Article 7(7) conciliation should entirely displace Article 27 arbitration, not allow for their coexistence in turns.⁴²⁸

2. The ECT’s Object and Purpose Also Support Azerbaijan’s Interpretation.

183. Azerbaijan’s reading of conciliation and arbitration as complementary also coheres with the object and purpose of the Treaty, and with its context.
184. Azerbaijan agrees with Armenia that one of the goals of Article 7(7) is “to establish a ‘fast-track’ dispute-resolution mechanism for transit disputes.”⁴²⁹ But achieving

⁴²⁶ **CL-164**, World Trade Organization Agreement Dispute Settlement Understanding (Annex 2 to World Trade Organization Agreement), Art. 23. See **CL-205**, D. Azaria, *Trade Countermeasures for Breaches of International Law Outside the WTO*, 71 Int’l and Comparative L. Quarterly 389 (April 2022), at 396 (“The established view in WTO practice and literature is that unilateral responses to breaches of WTO law, such as countermeasures, and responses under the CIL on the law of treaties have been displaced by WTO lex specialis: the DSU.”) (emphases added); **CL-177**, B. Simma and D. Pulkowski, *Of Planets and the Universe: Self-Contained Regimes in International Law*, 17 European J. of Int’l L. 483 (2006), at 520 (“It is clear that the DSU contains a *lex specialis* on cessation of the breach and on continued performance of the obligation.”); **CL-170**, WTO DSU, Panel Report, *United States—Sections 301-310 of the Trade Act of 1974*, WT/DS152/R, 22 December 1999 (adopted 27 January 2000), ¶ 7.43 (“Members have to have recourse to the DSU dispute settlement system to the exclusion of any other system, in particular a system of unilateral enforcement of WTO rights and obligations. This, what one could call ‘exclusive dispute resolution clause’, is an important new element of Members’ rights and obligations under the DSU.”).

⁴²⁷ Reply, ¶¶ 295–296, 269 & n. 596 (describing conciliation as a “fast-track,” “interim” procedure).

⁴²⁸ Compare *id.* ¶ 301 (arguing that “arbitration under Article 27(2) is displaced by Article 7(7)” for transit disputes) (emphasis added); see also **CL-37**, Draft ILC Articles on State Responsibility, Art. 55 (*lex specialis* operates by displacement: general rules “do not apply where and to the extent” there are “special rules”).

⁴²⁹ Reply, ¶ 295; see Counter-Memorial, ¶ 116 (“[T]he object and purpose of Article 7(7)’s conciliation mechanism is to ensure international energy security with immediate effect[.]”) (internal quotation

that purpose does not require Armenia's sweeping, mechanical rule that every "transit" dispute, no matter its character, must be conciliated rather than arbitrated. Not all "transit" disputes require a fast-track option; there may be disputes arising, for example, out of obligations related to new transit capacity under Article 7(4) or new transit under existing transport facilities under Article 7(5)(b).

185. Azerbaijan's interpretation—which allows disputing parties to pick the dispute resolution mechanism best suited to their needs⁴³⁰—is far more coherent with Article 7(7)'s object and purpose.⁴³¹ Under Azerbaijan's reading, the parties needing a "fast-track" interim option, or an option that can address contractual or other transit-specific matters unrelated to any ECT provision, may opt for conciliation of their transit disputes.⁴³² Parties with a longer lead time, or who are looking for final and binding dispute resolution—or who have multiple claims, only some of which relate to transit—can instead refer their disputes to inter-State arbitration.⁴³³
186. Considering the Treaty as a whole, Azerbaijan's reading better coheres with the broader object and purpose of facilitating inter-State energy cooperation. Instead of mandating conciliation for any manner of Transit dispute, this flexible and pragmatic approach recognizes that the parties involved are best positioned to ascertain, in real time, their dispute resolution needs.
187. Azerbaijan's position is further supported by the single publicly available instance in which these provisions have been applied by the Contracting Parties. As Azerbaijan noted in its Counter-Memorial, the 2002 Slovenia-Croatia transit dispute was marked by Article 27(1) consultations under the auspices of the ECT Working Group on Trade, with none of the participants raising Article 7 conciliation even as an alternative option (much less a mandatory one, as Armenia insists).⁴³⁴ Armenia's only answer to this illustration of certain Contracting Parties' understanding of the Treaty is to say that these were Article 27(1) consultations rather than Article 27(2) arbitration.⁴³⁵ But that does not change the fact that the disputing parties were expressly engaging with each other, on a transit dispute, with

marks omitted); **CL-139**, Energy Charter Secretariat, *Commentary to the Rules Concerning the Conduct of Conciliation of Transit Disputes*, 20 June 2016, ¶ 11 ("The aim of the [conciliation] mechanism was to have an immediate, flexible and fast way of leading parties out of an impasse.").

⁴³⁰ See Counter-Memorial, ¶¶ 116–117.

⁴³¹ See *id.* ¶¶ 116–118.

⁴³² See *id.* ¶ 116–118.

⁴³³ See, e.g., **CL-176**, C. Bamberger, *Adjudicatory Aspects of Transit Dispute Conciliation Under the Energy Charter Treaty*, 3 Transnational Dispute Management (April 2006), at 15 ("[T]he conciliation procedures may be viewed as offering an intermediate solution to a dispute while the arbitration mechanisms are vehicles for a permanent decision.").

⁴³⁴ Counter-Memorial, ¶ 119.

⁴³⁵ Reply, ¶¶ 300–301.

an eye toward initiating inter-State arbitration (not conciliation) if those consultations failed.

3. The *Travaux* and Leading Commentaries Likewise Support Azerbaijan.

188. While the Tribunal need not consider “*supplementary means of interpretation*” in light of the clear Treaty language,⁴³⁶ the ECT *travaux* also support Azerbaijan’s position that conciliation and arbitration are not mutually exclusive.
189. Notably, nothing in the *travaux* supports Armenia’s view that Article 7 conciliation must precede Article 27 arbitration. Armenia cites only two documents, and neither stands for that proposition: a memorandum explaining that the parties favored conciliation for Article 7 instead of arbitration, but not addressing any hierarchy or order of operations as between the two options;⁴³⁷ and a letter positing that a “*fast track procedure could*” be characterized by conciliation followed by arbitration⁴³⁸—a hypothetical at best, and in any event consistent with Azerbaijan’s position that conciliation (followed by arbitration as necessary) makes sense for emergent disputes where a fast-track approach is desired.⁴³⁹
190. Instead, the *travaux* support Azerbaijan’s view that there is no express hierarchy as between conciliation and arbitration. In the Counter-Memorial, for example, Azerbaijan cited *travaux* describing the broad remit of Article 27,⁴⁴⁰ and contemplating the scenario where an inter-State arbitration is conducted to determine the scope of conciliation.⁴⁴¹ Other *travaux* documents corroborate Azerbaijan’s view that Article 7 conciliation is especially appropriate for emergent circumstances that are simply not present in this case⁴⁴²—demonstrating a nuanced,

⁴³⁶ CL-11, VCLT, Art. 32.

⁴³⁷ RL-124, ECT Travaux, Memorandum from C. Bamberger (Legal Adviser of the Conference) about ECT Negotiations of 1–6 February 1993 (9 February 1993), at 7; *see also id.* at 6 (noting agreement that “*this article and GATT Article V on transit were to coexist without derogation in either direction*”—showing that special attention was paid to ensuring the compatibility of Article 7 with other bodies of law).

⁴³⁸ RL-126, ECT Travaux, Fax from S. Fremantle (Chairman of Working Group II) to C. Jones (Secretary-General of the Conference) attaching a redraft of Article 11 on Transit (18 February 1993), at 9.

⁴³⁹ Counter-Memorial, ¶ 118.

⁴⁴⁰ *Id.* ¶ 120(a) (citing CL-25, C. Bamberger, Memorandum describing ECT Basic Agreement Negotiations 14–19 December 1992 (23 December 1992), ECT Travaux, at 3).

⁴⁴¹ Counter-Memorial, ¶¶ 120(b)–(c) (citing CL-113, Fax from C. Bamberger to C. L. Jones regarding “Art. 8(6) and (7)” (16 July 1994), ECT Travaux, at 2–4; CL-114, Letter from S.W. Fremantle to C. Bamberger regarding “Article 8(6) and (7)” (22 July 1994), ECT Travaux, at 2–3).

⁴⁴² *See, e.g.,* CL-156, Letter from S. W. Fremantle to C. Miguens regarding “European Energy Charter: Basic Agreement Transport and Transit” (20 December 1991), ECT Travaux, at 4 (“*Para 7 . . . provides machinery for conciliation should a dispute over transit threaten to interrupt the flow of oil or gas and*

contextual approach to the dispute resolution options, not the rigid bright-line rule Armenia urges. Armenia's claim that *travaux* dating from 1992 are irrelevant because they predate the conciliation option is incorrect;⁴⁴³ conciliation had in fact been on the table since 1991.⁴⁴⁴

191. Commentaries from leading scholars likewise support Azerbaijan's position. As Azerbaijan already demonstrated in its Counter-Memorial, none of the commentaries Armenia cites engaged in more than a surface-level analysis of the issue at hand—the hierarchy (if any) between conciliation and inter-State arbitration when a dispute qualifies for both.⁴⁴⁵ When knowledgeable commentators did engage in a deep analysis, they agreed with Azerbaijan's approach. Notably, Craig Bamberger, former Chairman of the Legal Advisory Committee during the ECT negotiations, explained:⁴⁴⁶

Where [inter-State arbitration] procedures are not intended to govern, Article 27 so specifies: in addition to the exclusions set out in Article 28, Article 27(2) stipulates the inapplicability of these procedures to disputes under Articles 6 ("Competition") and 19 ("Environmental Aspects") and, for Contracting Parties identified in a related annex, to a specified provision of Article 10(1) ("Promotion, Protection and Treatment of Investments"). But Article 27 makes no exception for disputes concerning Article 7 on "Transit."

...

A transit dispute that is potentially subject to conciliation under Article 7(6)–(7) may also be a dispute over the application or interpretation of an ECT-provision, such as the Article 7, paragraph (1) obligation of a Contracting Party to "facilitate" and not to unreasonably delay, restrict or charge the transit of energy goods, or the nondiscrimination requirements of paragraphs (1) and (3) of Article 7. Although

thus threaten the security of the Community's gas supplies."); **RL-126**, ECT Travaux, Fax from S. Fremantle (Chairman of Working Group II) to C. Jones (Secretary-General of the Conference) attaching a redraft of Article 11 on Transit (18 February 1993), at 2 (draft Art. 7(7) "*is essentially an interim, time-buying process*").

⁴⁴³ Reply, ¶ 304 (arguing that Azerbaijan's December 1992 travaux document, **CL-25**, precedes the "first developed version of the conciliation mechanism" in March 1993).

⁴⁴⁴ *Supra* n. 442 (citing to travaux from December 1991 discussing the conciliation option).

⁴⁴⁵ See Counter-Memorial, ¶ 112(a)–(d) (rebutting arguments at Memorial, ¶¶ 161, 165, 167); Reply, ¶¶ 270–273 (reprising same rebutted arguments).

⁴⁴⁶ **CL-176**, C. Bamberger, *Adjudicatory Aspects of Transit Dispute Conciliation Under the Energy Charter Treaty*, 3 Transnational Dispute Management (April 2006), at 8, 14–15.

Article 27(2) disallows a submittal to binding arbitration under Article 27 where the ECT has “otherwise provided,” Article 7 does not seem to “provide otherwise.”

...

It appears, then, that Article 7(6)–(7) conciliation and Article 26/27 arbitration can be available in parallel or sequentially with regard to the same energy transit dispute. Even if conciliation and arbitration do occur in parallel, the conciliation procedures may be viewed as offering an intermediate solution to a dispute while the arbitration mechanisms are vehicles for a permanent decision, should that prove necessary in spite of the conciliator’s efforts; a decision by an arbitration panel could constitute a “resolution” of the dispute in the sense of Article 7(7), subparagraphs (c) and (d).

192. Azerbaijan is under no obligation to submit the “Pipeline Transit Claims” to conciliation.

IV. REQUEST FOR RELIEF

193. 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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