PCA Case No. 2022-49

In the Matter of an *Ad Hoc* Arbitration pursuant to the

AGREEMENT BETWEEN THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN AND THE GOVERNMENT OF THE AZERBAIJAN REPUBLIC ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

Between

MOHAMMAD REZA KHALILPOUR BAHARI

Claimant

and

THE REPUBLIC OF AZERBAIJAN

Respondent

CLAIMANT'S STATEMENT OF REPLY

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21 June 2024

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1. Claimant Mr. Mohammad Reza Khalilpour Bahari ("**Mr. Bahari**," "**Claimant**"), by his undersigned Counsel, respectfully submits this Statement of Reply in support of his claim against the Republic of Azerbaijan ("**Azerbaijan**"), pursuant to the Agreement Between the Government of the Islamic Republic of Iran and the Government of the Republic of Azerbaijan on the Reciprocal Promotion and Protection of Investments, signed 28 October 1996, with entry into force on 20 June 2002 ("**Treaty**," the "**BIT**").[1]

2. This Statement of Claim is accompanied by the following documents in support:

3. Witness Statements:

   - Mohammad Reza Khalilpour Bahari dated 21 June 2024
   - Naser Tabesh Moghaddam dated 21 June 2024
   - Yusuf Allahyarov dated 13 June 2024
   - Dieter Klaus dated 17 May 2024
   - Konul Ramazanova dated 19 June 2024
   - Timur Abdulmajidov dated 19 June 2024
   - Elchin Suleymanov dated 30 May 2024
   - Chin Kwee Hay dated 26 May 2024

4. Expert Reports:

   - Kiran Sequeira and Alexander Messmer, Secretariat Advisors dated 21 June 2024 (Supplemental Quantum Report)
   - William Iselin, Iselin Art Advisory Ltd dated 20 June 2024 (Supplemental Persian Carpet Valuation)
   - Prof. Stephen Schill dated 14 June 2024 (Legal Opinion on Article 9 of the Treaty)
   - Tamara Makarenko and Duncan Allen (Political Economy of Azerbaijan)
   - Robert Alan Steer, FRP Advisory Trading Limited dated 19 June 2024 (Digital Forensics)

[1] Treaty (**CLA-001**), signed 28 October 1996, entered into force 20 June 2002.

- Angela Morrissey, FRP Advisory Trading Limited dated 19 June 2024 (Forensic Document Examination)

5. Factual Exhibits set out in Appendix A – Fact Exhibit Index

6. Legal Authorities set out in Appendix B – Legal Authority Index

PART I: INTRODUCTION

I. AZERBAIJAN'S SYSTEM OF INFORMAL GOVERNANCE EXPLAINS WHY AZERBAIJAN BOTH PROMISED A STABLE INVESTMENT ENVIRONMENT AND ILLEGALLY SEIZED MR. BAHARI'S INVESTMENTS.

7. When Mr. Bahari first arrived in the 1990's as a foreign investor, Azerbaijan welcomed him with open arms, and its own President, Heydar Aliyev, personally gave a speech to tout Mr. Bahari's largest investment, Caspian Fish, as a shining example of what was possible with foreign investment, and a crowning achievement of Azerbaijan's post-Soviet economic progress.[2]

8. Mr. Bahari held up his end of the bargain and with his entrepreneurial vigor, set up multiple investments, including his passion project,[3] Caspian Fish. As soon as he delivered Caspian Fish – indeed, on the very day of its grand opening – Azerbaijan deemed Mr. Bahari no longer useful, and summarily expelled him, forcing him to leave his investments behind. Subsequently, Azerbaijan engaged in a years-long campaign to deter and deny Mr. Bahari's multiple efforts to access his investments and press his rights to those investments.

9. Today, facing a claim for the outright theft of Mr. Bahari's investments, Azerbaijan engages in an abrupt narrative *volte face*. No longer is Mr. Bahari a welcome foreign investor, nor his investments state-of-the-art for their time; positive contemporaneous press reports on Caspan Fish's quality and capabilities are downplayed, and President Heydar Aliyev's explicit recognition of Caspian Fish's $56 million investment cost is reduced to "only… a figure that the President had been told and repeated."[4] Indeed, if Azerbaijan's narrative is to be believed, Mr. Bahari was a failed entrepreneur and a mere mid-level manager, hired by a mystery investor who is never fully identified; his investments were underfunded and of poor quality; every single witness and associate of his is an untrustworthy liar; and every

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2 **C-014** President Heydar Aliyev's Opening Speech for Caspian Fish Co. Inc., 10 February 2001.

3 Bahari WS1 ¶ 40.

4 SoD ¶ 241.

single effort Mr. Bahari subsequently took to pursue and access his investments is a lie and never happened. Conversely, Azerbaijan has been, at all times, a paragon of transparency and rule of law, and Mr. Bahari has been free this entire time to return to Azerbaijan without risk to life and limb, to return to his investments.

10. The schizophrenic contradictions in Azerbaijan's treatment of Mr. Bahari as an investor is not an exceptional, one-off event. Rather, it is a consequence of a core feature of Azerbaijan's entire system of governance. Azerbaijan is known as a "Limited Access Order," in which governance through formal State actions and institutions exists alongside – and indeed is far outweighed by – governance executed through an informal, neo-patrimonial network of patron-client relationships, kept largely out of public sight, and led at the top by President Aliyev.[5] These are respectively known as the formal and informal orders within Azerbaijan's system of governance. This form of governance explains how, on the one hand, Azerbaijan can point to a set of formal laws and institutions that appear transparent, democratic, and seemingly meet rule of law principles; while on the other hand, its ruling elites leverage the informal networks of patron-client relationships that have colonized Azerbaijan's formal institutions, exploiting the State's administrative resources and coercive powers for personal enrichment. In other words, Azerbaijan gives with one hand, but takes away with the other.

11. The duality inherent in Limited Access Orders will be instantly familiar to anyone who has operated in many parts of the world, including many post-Soviet States; indeed, Limited Access Orders are the predominant form of political governance throughout the world, with "Open Access Orders" (those where formal State institutions and rule of law outweigh any informal order) being in the relative minority.

12. Limited Access Order States such as Azerbaijan flaunt their formal institutions and laws while concealing the true manner in which the country is run, in order to attract foreign direct investment and gain favorable status abroad. In these proceedings, Azerbaijan undertakes a particular version of this by insisting that only formal State actions are attributable to Azerbaijan, while any other action taken by its officials are mere "private acts" not attributable to the State and thus outside the purview of this Tribunal. This myopic construction ignores the obvious reality that President Aliyev and those in his orbit are, at

[5] The Expert Report of Duncan Allan, M.B.E., and Dr. Tamara Makarenko ("**Allan & Makarenko Expert Report**") explains Azerbaijan's Limited Access Order and why and how it informs Azerbaijan's seizure of Mr. Bahari's investments. *Infra*, Part Three.

all times, clothed with the immense powers of the State, and that every action they take – including so-called "private" action for commercial profit – is ineluctably enmeshed with, and thus inseparable from, the full weight of the formal order and the coercive capabilities of the State.

13. By narrowing the aperture and scope of State attribution to only formal State actions, Azerbaijan seeks to avoid liability for the regular malfeasance of its seniormost officials, cynically discounting them as "private acts" taken in a "private capacity." If accepted, Azerbaijan's view would give *carte blanche* to President Aliyev and other officials to continue pillaging foreign investments without repercussion, benefiting from the legal fig leaf of "private action" even as their misconduct, combined with their status, implicate the full regalian powers of the State, either through passive inaction, or active execution of illicit actions. This, in turn, would allow Azerbaijan to circumvent the entire Investor-State Dispute Settlement system and Azerbaijan's obligations under the forty-four-odd investment treaties it has signed and that are currently in force. However, this intentionally narrow view ignores the reality that Azerbaijan President Aliyev and his associates have completely erased the distinction between the formal and informal orders, the political and commercial spheres, and their actions as State officials and those they take in pursuit of personal profit.

14. While this key insight is not strictly necessary in order to find Azerbaijan liable under the Iran-Azerbaijan Bilateral Investment Treaty, it is critical to fully understand how Azerbaijan's most influential politicians were able to openly take Mr. Bahari's investments for themselves without repercussions. As discussed below, it also further explains Azerbaijan's conduct in these proceedings.

II. AZERBAIJAN'S CONDUCT OF IMPUNITY PERMEATES BOTH ITS FACTUAL DEFENSE ON THE MERITS AND ITS CONDUCT IN THESE PROCEEDINGS.

15. For the past thirty years, the Aliyev dynasty and those in his orbit have leveraged their powerful positions to engage in illicit commercial gain, free from repercussion. This immense power has led to a culture of impunity, allowing President Aliyev and Minister Heydarov to brazenly seize Caspian Fish, expel Mr. Bahari, then further prevent him from accessing or defending his investments, without being held accountable.

16. This attitude has carried across into these proceedings. Azerbaijan's defense and its conduct in these proceedings reveal a State apparatus prepared to go to great lengths to protect its President and one of its seniormost Ministers. This includes:

a. Advancing a spurious defense theory of an alleged 2001 sale of Caspian Fish based on a clearly fraudulent record in the BVI register (A);

b. Knowingly presenting grossly defective if not corrupt court proceedings as evidence of a fair judicial process for Mr. Bahari vis-à-vis his investments in Coolak Baku and Ayna Sultan (B);

c. Obstructing the document production process in order to starve the claim of evidence (C);

d. Withholding key witnesses as empty chairs in order to conceal evidence, while presenting witnesses who are highly unreliable (D); and

e. Engaging in shocking conduct vis-à-vis Ms. Ramazanova and Mr. Abdulmajidov, which amounts to witness and claim tampering, and reveals Azerbaijan's true nature as State able and willing to engage in brutal physical violence against its own citizens in order to manipulate the arbitration proceedings to its advantage (E); and

f. In consideration of the above, Claimant is entitled to adverse inferences due to Azerbaijan's various obstructive acts (F).

17. Taken together, Azerbaijan's defense posture and its conduct in these proceedings ought to give the Tribunal pause. This conduct damages Azerbaijan's credibility in these proceedings and should be taken into account when evaluating the balance of proof between the Parties.

A. AZERBAIJAN DOUBLES DOWN ON THE BVI FRAUD AND ADVANCES A PATENTLY FALSE NARRATIVE OF A 2001 SALE OF CASPIAN FISH.

18. Azerbaijan advances a demonstrably false theory of a 20 September 2001 sale of Mr. Bahari's shares in Caspian Fish. This defense theory is particularly discreditable because it posits a false assertion of a sale atop of yet another prior fraudulent maneuver to strip Mr. Bahari's shareholding in Caspian Fish – it amounts to malfeasance upon malfeasance.

a. A close inspection of the Caspian Fish BVI corporate records show that the prior fraudulent transfer of Mr. Bahari's shareholding (set out in detail in the Statement of Claim)[6] could only have happened on 5 March 1999 (the date of incorporation), or else 8 December 2006. The uncertainty between the two dates is likely caused by a fraudulent backdating of the Purported Instrument of Transfer ("**Purported IOT**"). Under either scenario, there is no evidence of a 2001 sale.

b. To this prior malfeasance (which Azerbaijan completely ignored) is added a new layer of malfeasance, because Azerbaijan currently attempts to assert an alleged sale of 20 September 2001, in order to fit its narrative to Azerbaijan's purposes in this arbitration. However, as stated, the BVI records do not support or record a 2001 sale at all. Under applicable BVI law and Caspian Fish BVI's Memorandum and Articles of Association, those records are the legal proof of a transaction; the one-page document [7] purporting to evidence a sale is, legally speaking, insignificant.

c. As a consequence, the alleged sale agreement and other supporting documents put forward[8] – already intrinsically flimsy evidence – are necessarily forgeries, likely prepared for the purposes of this arbitration.

19. Azerbaijan's other main defense relating to Caspian Fish is that Mr. Bahari was not the investor. There is, of course, an immediate tension between this argument, which downplays Mr. Bahari's role as an investor, while Azerbaijan's theory of a share sale must necessarily acknowledge his significant shareholding in the Company.

20. In any event, Azerbaijan's narrative that Mr. Bahari wasn't the investor in Caspian Fish is a perplexing allegation, given that Azerbaijan is unable to identify an alternative investor. The best it can muster are tepid, vague witness statements suggesting that Mr. Heydarov or his holding company Gilan Holding was the ultimate investor. No evidence is given in support. This milquetoast and unsupported conjecture is all the more unconvincing considering that Azerbaijan has refused to make Mr. Heydarov available as a witness; his silence on this and many other issues is deafening.

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6 SoC Sections III.F, G and H.

7 **R-50** Buyer and Seller Agreement between Mr Khanghah and Mr Bahari, 20 September 2001.

8 **R-50** Buyer and Seller Agreement between Mr Khanghah and Mr Bahari, 20 September 2001; **R-51** Receipt for payment of USD 1.5 million signed by Mr Bahari ; **R-52** Receipt for payment of USD 2 million signed by Mr Bahari, undated.

21. Finally, the BVI records also establish that the local Caspian Fish LLC entity was fraudulently established without Mr. Bahari's knowledge – thus directly disproving Azerbaijan's defense that the LLC was set up by and with the full knowledge of Mr. Bahari.[9]

a. Azerbaijan produced Caspian Fish BVI's "Minutes of a Meeting of the Board of Directors" held on 15 August 2000 in Bristol, UK.[10] According to the Minutes, it was resolved that Caspian Fish BVI would register and open a "Branch Enterprise" within Azerbaijan and that Mr. Bahari would be Branch director.

b. The Minutes record that this 15 August 2000 meeting was attended by Mr. Khanghah, as Chairman and one of the Directors of Caspian Fish BVI, and a Ms. Anne Salder (Secretary) as "Present."[11] Mr. Bahari, as the only other Director of Caspian Fish BVI at that time, is not listed as attending, appointing an alternate, or having any notice of the Meeting.

c. Because Mr. Bahari was still a Director in Caspian Fish BVI at the time, there was no quorum for this meeting, and the resolution was unauthorized (and unknown to Mr. Bahari). Yet, on the basis of this fraudulent resolution, Caspian Fish BVI applied to the Ministry of Justice to register the LLC.

B. AZERBAIJAN KNOWINGLY EXHIBITS DEFECTIVE OR CORRUPT COURT DECISIONS TO SUPPORT ITS DEFENSE RELATING TO COOLAK BAKU AND AYNA SULTAN.

22. **Coolak Baku Litigation**. Azerbaijan's defense for Coolak Baku consists in arguing that Mr. Bahari caused various delays and underinvested, thus straining the partnership with ASFAN. Azerbaijan exhibits records of a claim brought by ASFAN against Mr. Bahari at the Baku Economic Court as proof that Coolak Baku was a failed joint venture due to Mr. Bahari's alleged underinvestment.

23. In fact, the litigation at the Economic Court reveals a fraudulent scheme by Mr. Zeynalov to strip Coolak Baku's assets in Mr. Bahari's forced absence:

a. Mr. Zeynalov knowingly used an expired power of attorney to represent himself as Mr. Bahari's "authorized representative" during this forced absence;

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9 SoD ¶¶ 245-248.

10 **C-290** Minutes of the Meeting of the Board of Directors of Caspian Fish Co Inc, 15 August 2000.

11 **C-290** Minutes of the Meeting of the Board of Directors of Caspian Fish Co Inc, 15 August 2000.

b. He and ASFAN fabricated a narrative of underinvestment and other deficiencies to push forward a scheme to strip Coolak Baku's assets through sham court proceedings, capitalizing on Mr. Bahari's forced absence and inability to defend against this scheme, much less learn about it;

c. Mr. Zeynalov and ASFAN consummated their scheme at the Economic Court. The available documents – exhibited by Azerbaijan itself – demonstrate gross procedural defects that allowed the claim to move forward without Mr. Bahari's participation as defendant. This includes facially defective proof of service of process. The Economic Court allowed the *in absentia* proceedings even though it itself referred to Mr. Bahari's "[redacted]."[12]

d. At best, the Economic Court's handling of ASFAN's claim was incompetent to the point of manifest injustice that failed to give any meaningful justice to Mr. Bahari and fell far short of any reasonable expectations of a fair and stable legal and judicial environment, as was promised to Mr. Bahari as a foreign investor. At worst, the Economic Court litigation's actions confirm public reports of its corruptibility, and it was a willing participant in ASFAN and Mr. Zeynalov's scheme to defraud Mr. Bahari.

e. The evidence of Mr. Zeynalov's clear fraudulent conduct should give the Tribunal serious pause as to his credibility as the key witness for Azerbaijan.

24. Azerbaijan's audacity in exhibiting the patently defective Economic Court litigation as part of its defense is matched only by its equally stunning conclusion that "it appears that Mr. Bahari invested no more than USD 1.4 million (if that) into Coolak Baku, but even then whether Mr. Bahari himself was the source of these funds remains unclear, as well as where and how such funds were invested (if at all)."[13] This grossly overreaching statement is directly contradicted by:

a. Mr. Bahari's documented proof of US$ 21,383,415 out of the US$ 28 million that all parties commonly agreed it would cost to build Coolak Baku;

b. The common agreement that Mr. Bahari was the sole investor in Coolak Baku;

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12 **R-30** Minutes of Meeting of ASFAN's founders, 27 April 2004, p. 1.

13 SoD ¶ 207(h) (emphasis added).

c. And most of all, proof Coolak Baku was indeed completed and operational, thus providing physical proof that the $28 million was indeed spent; and

d. The impossibility of the facility having cost only $1.4 million to build.

25. **Ayna Sutan Litigations**. Next, Azerbaijan submits a number of court cases which it relies upon for the allegation that Mr. Bahari sold his interest in Ayna Sultan in or around 1999 and therefore has no investment to claim in this arbitration. In addition, Azerbaijan further claims Mr. Bahari participated in the proceedings in 2009 and therefore was fully able to defend his interests in-country.

a. The Ayna Sultan Litigations reveal a sprawling, chaotic litigation between multiple individuals, each attempting to fraudulently misappropriate Mr. Bahari's investment for himself or herself. As with the Coolak Baku litigation, the cases all proceeded without Mr. Bahari's participation even though he was a named defendant, and the case file (as produced by Respondent in response to Claimant's Document Request No. 181) shows zero record of proper service of process or notifications of decisions, as is required by Azerbaijan's Code of Civil Procedure.

b. In two parallel litigations, two different claimants asserted that Mr. Bahari had sold Ayna Sultan to him. Incredibly, the same court issued two separate judgments within four days of each other, granting each plaintiff title to the same property.

c. Once again, Mr. Zeynalov appears to be a key player in one of the litigants' scheme to defraud Mr. Bahari, and utilized the same terminated power of attorney to attempt to convey Mr. Bahari's property to one of the plaintiffs. Notably, the competing litigant specifically alleged that Mr. Zeynalov had colluded with the relevant plaintiff and the judge to misappropriate Ayna Sultan.[14]

26. Azerbaijan then alleges that in 2009, Mr. Bahari appeared to appeal the outcome of the Ayna Sultan litigations. This, Azerbaijan argues, is proof that Mr. Bahari was able to access its court system and defend his interests. Nothing could be further from the truth, and in fact the evidence submitted by Azerbaijan itself shows fraud so palpably clear that the inevitable conclusion is that Azerbaijan has knowingly advanced a false argument.

[14] **C-301** [Respondent Document Production - 182_05] Appeal Complaint by E. Gambarov (on behalf of A. Gambarov), 6 September 2004, pp. 1-2.

a. Azerbaijan exhibits a power of attorney purporting to be from Mr. Bahari to an acquaintance, Prof. Hooshang Amirahmadi, which, it is further asserted, was then delegated to the lawyer who filed the appeal on behalf of Mr. Bahari. In fact, the most cursory review shows no such delegation.

b. Azerbaijan further exhibits two Applications filed to the Baku Court of Appeal that purport to show Mr. Bahari's signature – once again allegedly demonstrating Mr. Bahari's participation in the litigation.[15] Those documents, however, are manifest forgeries.[16] It is evident to the naked eye that the signatures were created in separate digital files that were then cropped and superimposed (copy-pasted) on the court applications; this becomes even more obvious when the tonal values are adjusted. For example, **R-172** clearly reveals the different boxed background indicating a cut-and-paste job:

(**R-172**, original and with tonal value adjustment)[17]

c. Thus, the signatures are not wet-ink originals and Mr. Bahari did not sign those documents, thoroughly dismissing Azerbaijan's defense theory that Mr. Bahari had free access to its courts – and instead proving the opposite: that he was once again the victim of a patently defective, if not wholly corrupt, court proceeding.

15 **R-172** Application to the Baku Appeal Court, 2009; **R-173** Mr Bahari's Cassation Appeal, 11 August 2009.

16 Claimant's digital forensic expert discusses this and other anomalous Respondent documents in the Expert Report of Robert Alan Steer dated 17 June 2024 ("**Steer Report**")

17 Steer Report, ¶ 5.50.4.

C. AZERBAIJAN ENGAGES IN A DELIBERATE STRATEGY OF OBSTRUCTION AND DELAY MEANT TO DEPRIVE CLAIMANT OF EVIDENCE.

27. Over the course of these proceedings, Azerbaijan has demonstrated a deliberate pattern of obstruction and delay meant to deprive Mr. Bahari of evidence. Azerbaijan is well aware that nearly all of the relevant documents relating to Mr. Bahari's investments remain entirely within Azerbaijan.[18] Mr. Bahari was forced out of Azerbaijan in early 2001 and had to leave the near totality of his business records and other documents relating to his investments behind.[19] Azerbaijan's deficient document production and other obstructionist behavior furthers its overall defense strategy to exploit the evidentiary imbalance between Azerbaijan and Mr. Bahari.

28. This conduct contravenes the IBA Rules which guide this process,[20] and breaches Azerbaijan's duty of good faith,[21] which includes the duty to use best efforts in producing Documents responsive to Claimant's Requests.[22]

1. Azerbaijan's Document Production is Facially Deficient.

29. Azerbaijan's document production has been deplorably lacking. It fails to comply with the Tribunal's Procedural Order No. 6 dated 9 April 2024 ("**PO6**"). Azerbaijan's bad faith conduct with the document production has harmed Claimant's right to present his case fully and fairly:

    a. In PO6, the Tribunal granted 50 of Claimant's requests, with Azerbaijan agreeing to conduct a search for documents in respect of 23 additional requests, for a total of 73 requests.[23]

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18 SoD ¶ 27.

19 Bahari WS ¶¶ 29, 47.

20 Procedural Order No. 1, Art. 6.8.

21 IBA Rules on the Taking of Evidence in International Arbitration (2020), Preamble, ¶ 3. Should the Tribunal agree that Respondent has breached its obligations of good faith, it may take measures available under the IBA Rules and take this into account in its decision on Costs. IBA Rules Art. 9(8).

22 IBA Rules Art. 3(10); see *Vito G. Gallo v. The Government of Canada*, UNCITRAL, PCA Case No. 55798, 10 February 2009, Procedural Order No. 2 (Amended) (**CLA-231**), ¶ 8 (duty of good faith imposes a duty of best efforts to obtain documents, including documents that are in the possession of entities or persons with whom or with which the producing party has a relevant relationship).

23 Annex 1 of Procedural Order No. 6, 9 April 2024, Claimant's Document Request Nos. 2, 17, 18, 20, 22, 25, 26, 28, 29, 44, 45, 46, 55, 58, 59, 60, 61, 62, 63, 64, 68, 69, 71, 75, 76, 77, 78, 79, 86, 106, 107, 127, 128, 129, 130, 136, 137, 138, 140, 141, 154, 159, 161, 162, 177, 192, 193, 200, 201, 206.

b. The deadline for production was 26 April 2024. On that date, Azerbaijan produced 3 documents, not including 76 documents it had voluntarily produced on 1 March 2024, prior to PO6.

c. To date, Azerbaijan has produced a grand total of 162 documents responsive to 33 requests, i.e., only slightly more than a third of all relevant requests. Azerbaijan has failed to produce anything for the remaining two thirds of the requests. By way of example, Respondent has failed to produce a single document relating to: (i) the cost of Caspian Fish[24], (ii) the production capacity of Caspian Fish[25] or (iii) the amount invested in Coolak Baku.[26] Of the 162 documents and the 211 pictures of carpets disclosed by Respondent, 93 concern only two Requests (Nos. 60 and 181), and 20 are letters stating that Respondent has nothing to produce.

d. Azerbaijan has largely failed to adhere to PO6 para. 4(iii) for the majority of the document requests, stating whether documents have been produced or whether no such documents were identified. In other words, Claimant is uncertain whether to expect any future production.

e. Azerbaijan's last (or latest) document production was submitted on 15 June 2024, less than a week before Claimant's 21 June 2024 deadline to file its Statement of Reply.

f. Separately, as part of the document exchange process set out at Annex 3 of the Tribunal's letter of 28 May 2024, Azerbaijan has failed to make available for Claimant's inspection at least 11 documents, without good reason beyond the usual excuses of bureaucratic delay. These include **R-62**, **R-63**, **R-89**, **R-90**, **R-91**, **R-92**, **R-93**, **R-94**, **R-95**, **R-172**, and **R-173**. The Tribunal will note that the latter two documents are the forged Applications (with digital copy-pastes of Mr. Bahari's signature) to the Baku Court of Appeal in the Ayna Sultan litigation discussed above.

30. Claimant provides as **C-379** a table which lists all outstanding requests and the associated documents produced (or not produced) to date. Of note, the limited document production

[24] Annex 1 of Procedural Order No. 6, 9 April 2024, Claimant's Document Request Nos. 29, 31, 60, 106 and 124.

[25] Annex 1 of Procedural Order No. 6, 9 April 2024, Claimant's Document Request Nos. 25, 26, 29, 60, 69, 90, 91, 117, 118 and 120.

[26] Annex 1 of Procedural Order No. 6, 9 April 2024, Claimant's Document Request Nos. 141 and 143.

for Caspian Fish (BVI and LLC) is concentrated from the late 1990's and very early 2000's. After about 2002, there is a notable lack of documents produced, creating an evidentiary gap for the timeframe following Mr. Bahari's ouster from Azerbaijan.

2. Azerbaijan's Supplemental Document Production for the Provisional Measures Application Was Equally Deficient.

31. As discussed below at Part II, Section VI.H.VIII.D.3.e, Azerbaijan's document production efforts ahead of the Provisional Measures Hearing were equally deficient.

32. Claimant submitted Supplemental Document Production Requests,[27] which the Tribunal granted on 3 April 2024.[28] The Tribunal directed Azerbaijan to provide a "[redacted]" if it was unable to locate responsive documents. By letter correspondence dated 8 April 2024,[29] Counsel for Azerbaijan noted that it had found no responsive documents for any of the 6 Supplemental Document Requests.

33. However, as Claimant established at the Evidentiary Hearing that Mr. Mammadov himself led the search efforts into his own conduct – a blatant conflict of interest. Per his Witness Statement, Mr. Mammadov's search was limited to the Investigations Department of the Office of the Prosecutor General.[30] Thus, Azerbaijan failed to conduct searches at the higher echelon of the Ministry of Justice, the Office of the President and Mr. Mammadov's own files[31] – all of which were named custodians in the approved Supplemental Document Request. Azerbaijan has never bothered to explain this lacuna, nor has it produced any responsive documents or explained whether or why it was unable to locate responsive documents.

3. Azerbaijan Has Deliberately Concealed the Custodians/Sources of Documents in Its Possession, Custody, and/or Control.

34. Azerbaijan adopted this obstructionist behavior starting with its Statement of Defense, which was drafted by design to systematically conceal the sources of its R-Exhibits and document custodians.[32] This bad faith was most palpable with regards to its clear access

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27 **C-398** Claimant's Letter to Tribunal Enclosing Supplemental Document Request, 28 March 2024.

28 **C-399** Tribunal's Email to the Parties, 3 April 2024.

29 **C-400** Respondent's Second Letter to Claimant, 8 April 2024.

30 **C-392** Witness Statement of Qesim Mammadov (English), 5 April 2024, ¶¶ 28-37.

31 **C-398** Claimant's Letter to Tribunal Enclosing Supplemental Document Request, 28 March 2024.

32 Bahari WS ¶¶ 29, 47.

to Caspian Fish LLC (Azerbaijan) and its files. The Statement of Defense exhibited a number of documents ostensibly obtained directly from Caspian Fish LLC (Azerbaijan), while purposely concealing the source of these documents.

35. The Statement of Defense is replete with awkward passive voice sentence structures that conceal the custodians/sources of documents. This is most evident in relation to Azerbaijan's clear access (possession, custody, or control) to Caspian Fish's files:

> "In fact, it is apparent from the documents Azerbaijan has been provided from Caspian Fish's archives that…"[33]
>
> "Azerbaijan has been provided from Caspian Fish's archives a copy of…"[34]
>
> "These statements are also consistent with a document dated October 2000 Azerbaijan has been provided from Caspian Fish's archive…"[35]

36. Respondent thus obtained and exhibited selected Caspian Fish documents, but purposely concealed the identity of the custodians who provided the same, and equally made it difficult to identify the exact scope and extent of the "files" or "archives," including whether the Documents came, in part, from official agencies (and if so, which ones specifically), or from third parties (and if so, who). Respondent's obfuscation was purposely intended to make it difficult for Mr. Bahari to identify the source and custodians of Azerbaijan's Caspian Fish-related Documents for the purpose of crafting his Document Requests.

37. When Claimant requested on 13 January 2024[36] that Azerbaijan identify the custodians of these documents, Azerbaijan flatly refused, without providing a satisfactory reason other than the assertion that Mr. Bahari could not make requests of third parties. Yet, it is readily apparent that Azerbaijan has possession, custody, and/or control of the Caspian Fish "files" or "archives" – which means Caspian Fish as a custodian properly falls within the ambit of a document request made to Azerbaijan under Article 3 of the IBA Rules. As noted above, Azerbaijan also clearly has possession, custody, and/or control of Caspian Fish's files through Mr. Zeynalov, who explicitly confirmed that he handed over certain

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33 SoD ¶ 95

34 SoD ¶ 109, fn. 274.

35 SoD ¶ 213.

36 **C-387** Letter from Claimant's Counsel to Quinn Emanuel regarding sources of exhibits, 13 January 2024.

documents that he "[redacted]" at Caspian Fish.[37] Clearly, when it suits Azerbaijan, its witnesses have been able to procure helpful documents from Caspian Fish.

38. Without the identity of the custodians, Claimant naturally had difficulty in crafting narrowly tailored document requests. This includes, most notably, Claimant's Request no. 72, which sought "[redacted]."[38] The request was necessarily directed to a broad number of possible custodians, since Azerbaijan refused to identify the actual custodians. Ultimately, the Tribunal denied Claimant's Request no. 72 as "[redacted]."[39]

4. Caspian Fish's Document Production Is Incomplete and Contains Contradictory Income Data, Indicating Fraud.

39. Azerbaijan's document production No. 60 produced documents from Caspian Fish LLC. As noted above, Azerbaijan has been able to procure helpful documents from Caspian Fish when it suits.

40. Yet, Caspian Fish LLC's initial document production on 2 May 2024 has been conspicuously incomplete. For starters, Caspian Fish LLC's production did not include any audited financials, when its Charter clearly requires this.[40] Generally, the document production was incomplete and appeared to be selective and cherry-picked in a way to diminish Caspian Fish LLC's true financial position and valuation.[41]

41. The 2 May 2024 document production also contained incomplete records of (i) profit tax declarations; (ii) loan documents; (iii) monthly value added tax filings; (iv) a summary of caviar exports; and (v) a summary of exports of fish products.[42]

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37 Witness Statement of Rasim Zeynalov dated 21 December 2023 at ¶ 7 and at FN 2.

38 Claimant's Document Request no. 72, p. 117. The request referenced the specific paragraph numbers in the Statement of Defense containing references to "Caspian Fish's files" or "Caspian Fish's archives."

39 Annex 1 to PO6 at Request no. 72, p. 123.

40 **R-57** Charter of the LLC, 11 September 2000.

41 **C-424** Claimant Letter to Tribunal, 3 May 2024, p. 2.

42 It is not clear what level or review or oversight Counsel for Azerbaijan conducted over this disclosure because in its cover email dated 2 May 2024 (after document production was due by both Parties) Counsel stated that: "[redacted]"

42. Moreover, many of the documents contain anomalies, which are detailed in the Steer Report. For example, a significant number of the documents contain anomalies such as signatures which appear to have different backgrounds to the rest of the page, or inked stamp graphics which also appear to have different backgrounds.[43] These are the same types of digitally superimposed[44] signatures or images as were found at **R-172** and **R-173**, discussed above, indicating fraud, and very likely incorrectly reported substantive data in the financial documents.

43. A number of the documents contain digitally superimposed images of local tax authority stamps ("[redacted]"), indicating that Caspian Fish LLC sought to make these documents look as if they had been officially submitted to and stamped by Ministry of Tax officials – again, a heavy indicator of fraud:

(**C-461** [060_31], **C-462** [060_32]; Steer Report ¶¶ 5.20, 5.21)

44. As explained at PART VI, Section II.B, the additional tranche of documents produced by the State Tax Service ("**STS**") showed significantly different income declaration figures – again indicating fraud. By way of example, the 2014 declaration produced by the State Tax Service shows revenues and profits for Caspian Fish that are AZN 3,224,580 (US$ 1,896,811.75) and AZN 2,324,490 (US$ 1,896,811.75) *greater* than the 2014 declaration produced from Caspian Fish.[45] In other words, Azerbaijan has produced inauthentic and forged declarations in this Arbitration, to underreport the Revenues and Taxable Profits/Losses of Caspian Fish LLC.

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43 Steer Expert Report, ¶¶ 2.2.12-2.2.13, 5.12, 5.14, 5.17 to 5.31, listing Document numbers 060_21, 060_23, 060_28 through to 060_42 (**C-451**, **C-453**, **C-458** to **C-472**).

44 Steer Expert Report, ¶ 2.2.13.

45 For a complete analysis of the discrepancies between the 2 May and 15 June 2024 document productions, see Secretariat Second Report, Appendix H.1.

5. Azerbaijan's Document Production on the Carpets Conspicuously Fails to Produce Photos for the High-Value Carpets.

45. Amongst the 451 Persian Carpets which Mr. Bahari owned according to Azerbaijan's calculation,[46] the Azerbaijan Ministry of Culture concluded that 211 were deemed not sufficiently historically, artistically or scientifically significant to be granted an export permit.[47] As noted by Mr. Iselin, this leaves at least 264 carpets, following Azerbaijan's counting, which Azerbaijan deemed so important that they forbid their export on the grounds they were considered part of Azerbaijan's cultural patrimony.[48] This strongly suggests a higher value for these carpets.

46. Azerbaijan's Document Production for Claimant's Request no. 75 produces photographs for the 211 lower-value carpets – but conspicuously fails to produce similar photographs for exactly the 240 higher-value ones. Based on the gaps in the numbering of the 211 photographs that were produced, it appears this was purposeful and the higher value carpets were purposely omitted. This very specific omission indicates obstruction in order to prevent Mr. Bahari from properly evaluating the carpets.

6. In light of Azerbaijan's Campaign of Obstruction, Claimant is Entitled to Adverse Inferences.

47. For the reasons set out in this section, Claimant is entitled to adverse inferences. Adverse inferences are appropriate and necessary, because Azerbaijan must be made to bear the evidentiary consequences of its disclosure failures and obstructive behavior. As of the date of filing of this Submission, Claimant is unable to formulate appropriate and reasonable adverse inferences for the Tribunal's consideration, because it is unclear whether Azerbaijan has completed its document disclosure, or whether it intends to produce more documents. Claimant reserves all of his rights in this regard; once Respondent or the Tribunal confirms that the document production phase is complete, Claimant intends to apply for appropriate adverse inferences.

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46 SoD ¶ 122.

47 SoD ¶ 348; Zeynalov WS ¶ 49; **R-37** Export Declaration for 211 Carpets, 3 October 2002.

48 Second Iselin Report, ¶¶ 2-3.

D. AZERBAIJAN WITHHOLDS WITNESSES AS EMPTY CHAIRS TO CONCEAL EVIDENCE, WHILE IT PRESENTS WITNESSES WITH SIGNIFICANT CREDIBILITY ISSUES OR CONFLICTS OF INTEREST.

1. Azerbaijan's Statement of Defense Is As Notable For What It Does not Say As What It Does Say.

48. As noted above, Azerbaijan repeats, *ad nauseam*, that it has "no knowledge" of various facts pleaded in Mr. Bahari's Statement of Claim.[49] But, in fact, Azerbaijan does have the knowledge; simply, it has made a conscious choice to conceal this knowledge.

49. Messrs. Aliyev and Heydarov are conspicuous empty chairs in this arbitration. Both were shareholders in Caspian Fish BVI; Mr. Heydarov, at the very least, was involved in Coolak Baku as well. Both could speak extensively about the creation and (mis)management of the BVI entity; both could speak to the creation and management of the Caspian Fish LLC entity; both could speak to the circumstances of Mr. Bahari's expulsion; both could speak to subsequent events that took place over the years, including, for example, the 2013 meeting between Minister Heydarov and Mr. Bahari; both could speak to Caspian Fish's value as a company; and both could speak to their current ownership of Caspian Fish.

50. Critically, Messrs. Aliyev and Heydarov could further confirm or deny various elements of Azerbaijan's defense, including whether Mr. Bahari sold his shares in 2001; whether Mr. Bahari was the sole investor in Caspian Fish; or whether Gilan Fish or Mr. Heydarov were the investors. It is especially their unavailability to corroborate key defense theories which renders their absence so palpable – and which puts serious doubt into those theories. As it is, Mr. Bahari is unable to put them to proof on a number of fact issues asserted by Azerbaijan.

51. As a matter of witness availability, it is irrelevant whether Azerbaijan takes the position that their past actions were ostensibly taken in a "private capacity." For the purposes of the arbitration, Messrs. Aliyev and Heydarov are employees of the State and may be directed to testify. Azerbaijan will no doubt say that President Aliyev is too busy to attend these hearings. That may be so, but in that case, Azerbaijan must accept the consequences of his absence. Furthermore, the same argument holds much less weight with Mr. Heydarov.

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[49] SoD ¶¶ 187, 229, 258, 278 (fn. 774), 301, 307; *Supra*, Part 3, Section V.I, 315, 336, 345, 359, 363, 364.

2. Rasim Zeynalov Is an Unreliable Witness Because He Defrauded Mr. Bahari Multiple Times, and He Has Concealed His Current Conflicts of Interests as a Witness.

52. Rasim Zeynalov deserves special mention. As noted, he is shown to have defrauded Mr. Bahari at least twice using the same expired power of attorney: once in the Coolak Baku litigation, and once in the Ayna Sultan litigation. Both times, he specifically took advantage of Mr. Bahari's trust, and his forced absence, in order to misappropriate Mr. Bahari's investments without his knowledge. His confidence scheme against Mr. Bahari in the Coolak Baku litigation is particularly contemptible, as he pretended to act in Mr. Bahari's interests even as he plotted to defraud him. In short, Mr. Zeynalov is a repugnant con artist with no scruples, and his testimony should be given appropriate weight – which is to say, none at all.

53. Under normal circumstances, Azerbaijan should be chided for failing to undertake its proper due diligence before seeking Mr. Zeynalov's witness testimony. But in fact, it appears Azerbaijan's choice was no accident. Elchin Suleymanov, a senior welder for Mr. Bahari and a Claimant witness, testifies that Mr. Zeynalov contacted him in 2023, and convinced Mr. Suleymanov to attend a meeting with lawyers; Mr. Zeynalov misled Mr. Suleymanov to believe these were Mr. Bahari's lawyers, when in fact, the lawyers turned out to represent Azerbaijan. It appears Mr. Zeynalov convinced other former workers of Mr. Bahari's to meet with the lawyers to say negative things about Mr. Bahari.[50]

54. It is unclear whether these lawyers were Counsel for Azerbaijan in this arbitration, but in any event, Azerbaijan will have to explain Mr. Zeynalov's actions, particularly if its Counsel did not make clear which party they represented.

55. What is more, Mr. Suleymanov testified that Mr. Zeynalov told him that powerful people in Azerbaijan had promised Mr. Zeynalov a good job in a ministry or company if Mr. Zeynalov helped with the dispute and it went well.[51] Given Mr. Zeynalov's known history of defrauding Mr. Bahari, Mr. Suleymanov's testimony raises very serious red flags about Mr. Zeynalov's credibility as a witness. Indeed, it would appear that Mr. Zeynalov is continuing his campaign to defraud Mr. Bahari.

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50 Suleymanov WS ¶¶ 49-64.

51 Suleymanov WS ¶ 49.

56. A final concerning data point is Mr. Zeynalov's Directorship in EcoTech,[52] which tax registry information[53] reveals is located in Aghdam District, Khindiristan. This area forms part of the recently contested Nagorno-Karabakh region which Azerbaijan took by military force in late 2023. Numerous press reports have documented that the development of the region appears firmly under the control of President Aliyev and other senior members of Azerbaijan's Government; in particular, companies connected to the Aliyev family and other senior government officials obtained state contracts or were able to acquire agricultural land without going through standard competitive procedures.[54] EcoTech's presence in Aghdam District suggests possible connections to President Aliyev, or possibly access to no-bid contracts as reported in the press.

3. Mr. Hasanov Has Ties to Minister Heydarov Through His Directorship at Az Varvara LLC.

57. Mr. Hasanov states in his Witness Statement that he is currently the Deputy General Director of Az Varvara LLC. Az Varvara is a company owned by Kamaladdin Heydarov.[55]

58. Both Mr. Hasanov and Azerbaijan failed to disclose this relevant relationship, which is a significant ethical lapse. The undisclosed relationship indicates concealed bias or motive; Mr. Hasanov's testimony should therefore be viewed with appropriate caution and given little, if any weight.

4. Tahir Kerimov Has Deep Ties to Minister Heydarov and His Family Has Enjoyed the Patronage of the Azerbaijani Government.

59. Mr. Kerimov states in his Witness Statement that Minister Heydarov invited him to attend the grand opening of Caspian Fish. Shortly thereafter, again at the invitation of Minister Heydarov, Mr. Kerimov became the Director of Caspian Fish in or around late February 2001.[56] Thus, Mr. Kerimov replaced Mr. Bahari as Director in less than two or three weeks

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52 Zeynalov WS ¶ 3.

53 **C-495** Azerbaijan Tax Registry - Ecotech Service MMC.

54 **C-496** Radio Free Europe – After Victory in Nagorno-Karabakh, Azerbaijani Government Takes Aim at Journalists -- And the U.S., 6 December 2023; **C-497** Eurasianet - Farmland in Karabakh being given to powerful Azerbaijanis, 28 June 2022; **C-498** AbzasMedia - The company owned by the president's family members is building a house in Aghdam, 31 January 2024.

55 **C-036** Meydan TV, The extraordinary businessman Kamaladdin Heydarov, 4 March 2018, p. 13 (PDF).

56 Kerimov WS1 ¶¶ 8-9.

after Mr. Bahari was removed from Caspian Fish. On that basis alone, Mr. Kerimov greatly benefited from the unlawful treatment and disposal of Mr. Bahari.

60. In the years since, Mr. Kerimov has continued to benefit from close ties to Minister Heydarov.[57] In 2011, Mr. Kerimov was appointed to the political role of executive head of the Salyan District, a senior administrative position in a region in the east of Azerbaijan which sits on the country's Caspian coast.[58] This appointment has been characterized as "[redacted]."[59] That same press report claimed that Minister Heydarov needed an ally as head of the region for political cover because he had caused flooding in the region to protect his fish farming interests in the Caspian Sea.

61. Mr. Kerimov and his family appear to have also enjoyed significant political favor from the Aliyev family which has resulted in the award of lucrative jobs and contracts:

    a. In 2007, Hamza Kerimov ("**Hamza**"), Mr. Kerimov's son, was named the inaugural CEO of SOCAR Petroleum SA, the Romania-based subsidiary of SOCAR, Azerbaijan's state-owned oil company. At the time of his appointment, Hamza was 23 years old.[60] Hamza's lack of experience suggests that his appointment was attributable to his political connections, possibly through his father, who is reportedly known as an important political figure in Azerbaijan.

    b. Seventy-four companies owned by Alirza Kerimov, Mr. Kerimov's brother, won a total of 563 Government contracts for AZN 9 million (US$ 5.3 million) between 2010 and 2013, according to reporting by Turan, an Azerbaijani news agency. Turan published the report following a decision in early 2014 by Azerbaijan's Ministry of Taxes to dissolve hundreds of companies which, Turan claimed, had only been set up to win state contracts.[61]

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57 **C-499** azadliq.info - A plan has been developed to overthrow Kamaladdin Heydarov, 30 July 2014. This article further discusses the persecution, via trumped up charges, of a whistleblower who accused Minister Heydarov of corruption and that Mr. Kerimov was appointed to provide Minister Heydarov cover.

58 **C-500** Order of the President of the Republic of Azerbaijan on appointment of T.A. Karimov as the Head of Salyan District Executive Power, 18 February 2011.

59 **C-501** cumhuriyyet.net - Tahir Karimov factor in the fish business of "Fovkalnazir", 30 July 2014.

60 **C-502** Rise Project - SOCAR gas stations: money laundered in the family, 19 August 2016.

61 **C-503** Turan - Flight of "Budget Plunderer", 28 March 2015. The article says there is not much known about Alirza, except that: [redacted]

62. In view of the patronage Mr. Kerimov and his family have enjoyed from Minister Heydarov, the Aliyev family, and the Azerbaijan Government more broadly, his testimony in this Arbitration is likely influenced, if not directed, by those connections. As with Mr. Hasanov, Mr. Kerimov and Azerbaijan failed to disclose the significant relevant relationships to the Aliyev and Heydarov families, which is a significant ethical lapse. The undisclosed relationships indicate concealed bias or motive; Mr. Kerimov's testimony should therefore be viewed with appropriate caution and given little, if any weight.

E. AZERBAIJAN LEADS A CAMPAIGN OF COERCION AGAINST MR. ABDULMAJIDOV AND MS. RAMAZANOVA IN ORDER TO INTERFERE WITH THESE PROCEEDINGS.

63. Azerbaijan's culture of impunity is regrettably on full display in its treatment of Mr. Abdulmajidov and Ms. Ramazanova.[62] It cannot be stressed enough that Azerbaijan's conduct was an overt attempt to prevent Mr. Abdulmajidov and Ms. Ramazanova from assisting Mr. Bahari with his claim. The persecution against Mr. Abdulmajidov and Ms. Ramazanova only began after the couple assisted Mr. Bahari by taking photographs of Caspian Fish and when the authorities thought that the couple had a copy of the Caspian Fish Shareholders Agreement.

64. The gravity of Azerbaijan's actions cannot be overstated: they have upended and destroyed the lives of two peaceful, law-abiding citizens and their families. These actions not only affect Mr. Bahari and the very integrity of these proceedings, but are clearly a continuation of Azerbaijan's broad intimidation and harassment against Mr. Bahari and those associated with him and his investments over the past 20-plus years.

65. Mr. Abdulmajidov and Ms. Ramazanova's troubles are relevant to this dispute for a number of reasons:

a. First, they provide robust corroborating evidence of Azerbaijan's motives, means, and opportunities to coercively interfere with Mr. Bahari's efforts to access his investments and, in this case, prepare for his claim. In other words, Azerbaijan's recent actions against Mr. Abdulmajidov and Ms. Ramazanova – undertaken specifically because they assisted Mr. Bahari – make it significantly more likely that the prior acts of interference and violence also occurred.

[62] *Supra*, Section V.H (Harassment of Ms. Ramazanova and Mr. Abdulmajidov).

b. As a separate but related point, Azerbaijan's comportment amounts to witness and claim tampering, and demonstrates a bad faith effort to interfere with these proceedings. This bad faith behavior contaminates Azerbaijan's entire defense and seriously degrades its credibility on the remainder of its evidentiary assertions.

c. As described in the legal discussion, Azerbaijan's conduct taken against Mr. Abdulmajidov and Ms. Ramazanova also form a factual basis for Mr. Bahari's claim and evidence of Azerbaijan's continuing breach of the Treaty.

66. Azerbaijan's campaign appears to continue, as evidenced by its repeated harassment of Mr. Abdulmajidov's father just last month.

III. MR. BAHARI HAS ESTABLISHED HIS CASE-IN-CHIEF

67. Mr. Bahari has met his burden of proof of proving that he was the investor and made the investments for Coolak Baku, Shuvalan Sugar, Caspian Fish, Ayna Sultan, and the Persian Carpets. Mr. Bahari's quantum expert, Secretariat, has performed a meticulous analysis and tabulation of over 200 pieces of documents that corroborate amounts invested in all of the projects. This includes an analysis of the percentage of documents that specifically mention Mr. Bahari. Azerbaijan's defense never addresses this evidence head on.

68. Mr. Bahari's Prior Entrepreneurial Experience. Mr. Bahari's prior experience in Iran is relevant not because it proves he had financial means (although he did), but rather because it shows a logical evolution and progression of his investment activities, where he developed very specific expertise in bottling, packaging, and line-processing technology applied to consumables such as food, beverage, and pharmaceutical products. Kaveh Tabriz leveraged such packaging technology; [63] Coolak Shargh developed the same PET bottling packaging technology, as well as high-end processing lines,[64] that were later used at both Coolak Baku and Caspian Fish.

69. Coolak Baku. Mr. Bahari invested $28 million in Coolak Baku. This figure is is largely corroborated by the documentary evidence of Mr. Bahari's Amounts Invested, which Secretariat has tabulated at $21,383,415. [65] The documentation of these Amounts

63 SoC ¶¶ 25-27.

64 SoC ¶¶ 28-31.

65 Secretariat Second Report, Table 2.

Invested shows that Mr. Bahari was the sole investor in Coolak Baku and Shuvalan Sugar. This is also confirmed by Azerbaijan's document production, which shows that the Government of Azerbaijan performed extensive due diligence on Mr. Bahari prior to his entry into Azerbaijan as a foreign investor.[66] Azerbaijan does not address this documentation.

70. By contrast, Azerbaijan relies on 5 purported correspondences between ASFAN and Mr. Bahari to advance the impossible conclusion that "Mr. Bahari invested no more than USD 1.4 million (if that) into Coolak Baku, but even then whether Mr. Bahari himself was the source of these funds remains unclear, as well as where and how such funds were invested (if at all)."[67] This figure flies in the face of the evidence and basic common sense, given that Coolak Baku was completed and operational, and that by common agreement of the Parties, there was no other investor.

71. Shuvalan Sugar. Mr. Bahari provides both the Chartabi Contract for Shuvalan Sugar as well as a Certificate of Purchase from a contractor, Ahan Sanat, for installation of sugar-making equipment with related molds and centrifuges, in the amount of $2,736,910.[68] Mr. Bahari's Second Witness Statement expands upon the sugar refining process. These elements all demonstrate that Mr. Bahari built (and operated) Shuvalan Sugar. Indeed, even Azerbaijan's own witnesses, Messrs. Zeynalov and Aliyev, confirm that sugar processing and storage did take place a Shuvalan Sugar, although they downplay its size. Regardless, acknowledgment is not the same thing as Azerbaijan's conclusion that Shuvalan Sugar was "a project that never materialized."

72. Caspian Fish. Secretariat analyzes and tabulates documentary evidence to establish at least US$ 44.4 out of the reported US$ 56 million spent on Caspian Fish. In addition to this documentary evidence, Mr. Bahari further provided:

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66 Claimant's Document Request No. 127 sought [redacted]." See e.g. **C-275** [Respondent Document Production - 127_01] Confirmation from the Iranian Embassy in the Republic of Azerbaijan that Mr. Bahari is working in Coolak Shargh, 13 July 1995 (certifying that Mr. Bahari was the Chairman and Managing Director of Coolak Shargh); **C-276** [Respondent Document Production - 127_02] Letter from Bank Refah Kargaran to the Embassy of Republic of Azerbaijan, 27 February 1996 (confirming that Coolak Shargh had a turnover of more than 12 billion rials in the past year).

67 SoD ¶ 207(h). (Emphasis added.)

68 **C-376** Ahan Sanat Certificate of Purchase for Works Performed, 10 September 1998.

a. A letter dated 31 March 2024 from Ahad Ghazaei, the former Iranian Ambassador to Azerbaijan at the relevant time, who confirms that Mr. Bahari implemented, launched, performed, and personally invested in Caspian Fish.[69]

b. A letter dated 9 April 2024 from Chartabi Contracting confirming that Chartabi Contracting carried out the construction for Caspian Fish. He also confirms that Mr. Bahari implemented Caspian Fish with his own capital.[70]

c. Critically, Mr. Bahari produces a check dated 30 September 2000 from Iran Melli Bank, from Mr. Bahari's company, Coolak Shargh, to Ahad Chartabi for "[redacted]"[71]

d. The Witness statement of Elchin Suleymanov testifying that Mr. Bahari engaged Chartabi as the general contractor for Caspian Fish.[72]

e. Multiple press reports publicly discussing the $56 million in foreign investment that was spent on Caspian Fish.

73. Ayna Sultan. Azerbaijan concedes that Mr. Bahari purchased the Ayna Sultan property (located at 62 Karl Marx Street, which became Bunyadov Street, in the Narimanov District of Baku) in or around 1998.

74. Notably, in the Ayna Sultan litigations produced by Azerbaijan, there is confirmation that on 6 October 2004, the property was sold for AZM 1,151,500,000, which at the time was US$ 235,000 (as confirmed in the contemporaneous court documents).[73] This provides an appropriate indication of the property's value at the time.

75. The Carpets. Azerbaijan's Statement of Defense confirms (1) the existence of the 451 carpets, and (2) the Azerbaijan Ministry of Culture concluded that 240 of the carpets were not granted an expert permit, thus indicating their historical or artistic value.

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69 **C-279** Letter from Ambassador Ahad Ghazaei to Diamond McCarthy LLP, 31 March 2024.

70 Mr. Samad Chartabi also states that his brother, Ahad Chartabi and his company, performed the construction for Mr. Bahari's "[redacted]" and "[redacted]" and Kaveh Tabriz and Coolak Shargh, and others, in Iran; and that Mr. Bahari implemented these projects with his own capital.

71 **C-281** Iran Melli Bank Check from Coolak Shargh to Ahad Chartabi, 30 September 2000.

72 Suleymanov WS ¶¶ 10, 29-30.

73 **C-302** [Respondent Document Production - 182_18] Contract for Sale of Immovable Property, 6 October 2004, p. 1; See also **C-303** [Respondent Document Production - 182_20] Appeal Complaint by S. Pashayev to Narimanov District Court, 28 April 2005, p. 1.

IV. AZERBAIJAN BREACHED ITS OBLIGATIONS UNDER THE TREATY.

76. Given that Mr. Bahari has met the burden of proof to prove his claims, and conversely, Azerbaijan has failed to discharge its burden of proof to prove the facts it relies on for its Defense, Azerbaijan is responsible for its failure to afford Mr. Bahari and his investments the protections guaranteed by the Treaty.

A. AZERBAIJAN CANNOT ARTIFICIALLY CURTAIL ITS RESPONSIBILITY UNDER INTERNATIONAL LAW OR THE TREATY.

77. Azerbaijan's case on attribution, jurisdiction, and merits concentrates on manufacturing a singular theme of narrowing and curtailing State responsibility and the protections afforded to Mr. Bahari and his investments under the Treaty. This artificial and opportunistic limiting is neither supported by tenets of public international law, the plain language of Treaty, nor the genuine facts at hand.

78. It is absurd for the Statement of Defense to repeatedly assert that it was only "private acts of third parties" that resulted in the seizure of Mr. Bahari's investments in Azerbaijan and subjected Mr. Bahari and those associated with him to a campaign of intimidation and harassment. The extremity of Azerbaijan's position establishes its fallacy.

79. Mr. Bahari demonstrated in the Statement of Claim, and now in this Reply, that Azerbaijan was intimately involved in the taking of his investments at every step. Whether that was through the acknowledgement and adoption of these "private acts of third parties," or the active role of the judiciary, police, prosecutor general, and numerous other State organs. In any event, Azerbaijan has a responsibility to protect Mr. Bahari, as a foreign investor, and his foreign investments, from these "third parties." That is what Azerbaijan committed to by entering into the Treaty.

80. While this Arbitration has allowed Mr. Bahari to unearth additional evidence of Azerbaijan's involvement that eviscerates a false narrative of non-attribution, it is readily apparent that Azerbaijan is not being forthcoming with Mr. Bahari or this Tribunal. The substantial failure of Azerbaijan to adhere to its document production obligations can only be attributed to a calculated risk. Azerbaijan believes that the repercussions from holding back documents, which will further establish attribution and breach, are more favorable than the adverse inference that this Tribunal should adopt in light of this brazen noncompliance

81. As discussed in the Allan & Makarenko Report, this systemic and strategic obfuscation is akin to an iceberg: we are not allowed to see the submerged limited order State action that lies beneath. What happened to Mr. Bahari and his investments could not have taken place without Azerbaijan's actions and omissions. Alternatively, if it is determined that Azerbaijan is not responsible, this would effectively endorse Azerbaijan's kleptocratic approach to foreign investment, including Mr. Bahari's investments in particular.

82. Likewise, Azerbaijan's attempt to deny the Tribunal's jurisdiction *ratione temporis* by confining these "private acts of third parties" to the period before 20 June 2002 is disproven by nearly every aspect of this dispute. Notwithstanding this tacit admission of pre-in force bad acts, which the Tribunal can and should take into consideration, Azerbaijan's breach of its commitments under the Treaty was not the result of a singular event or measure that is frequently the subject of investment treaty claims.

83. For example, the expulsion of Mr. Bahari from Azerbaijan, and the measures to ensure he could not access information or legal remedies to recover his investments, were carried out as part of an uninterrupted, continuous, and active campaign. Any doubts about the endurance and malice of those State acts were dispelled when Mr. Bahari discovered earlier this year that Azerbaijan had subjected Ms. Ramazanov and Mr. Abdulmajidov to a violent campaign of intimidation based simply on their association with Mr. Bahari and his efforts to support this claim.

84. Azerbaijan's strained efforts to curtail its responsibility to Mr. Bahari and his investments heavily relies on an artificial reduction of the scope of protection under the Treaty, in particular under its Article 9 (Applicability of the Agreement). The legal opinion of Professor Stephen Schill, submitted in support of this Reply, addresses this specific issue. In sum, Professor Schill concludes that, in this particular case, there are multiple reasons why the language and circumstances of Article 9 and the Treaty do not deprive Mr. Bahari's investments of protection under the Treaty or the Tribunal's jurisdiction.

85. Professor Schill highlights that the ultimate aim and purpose of investment treaties is to safeguard the rule of law for foreign investment. Which is a point echoed by Azerbaijan's legal expert in almost all his publications except for his report in this Arbitration. A hallmark of this Arbitration is the stark absence and complete disregard for the rule of law by Azerbaijan vis-à-vis Mr. Bahari and his investments. This absence of rule of law considerations renders Azerbaijan's arguments about Article 9 arbitrary and capricious

86. Overall, and as examined in **Part IV** of this Reply, the unlawful measures at issue in this Arbitration are attributable to Azerbaijan and the Tribunal has jurisdiction over all of Mr. Bahari's claims.

B. AZERBAIJAN HAS BREACHED ITS OBLIGATIONS UNDER THE TREATY.

87. The Statement of Defense's approach to the legal merits of Mr. Bahari's claims mirrors its stance on attribution and jurisdiction. Azerbaijan relies on a selective and truncated presentation of the applicable law and facts to evade accountability. This includes the *ad nauseum* refrain that Azerbaijan cannot be in breach because what happened to Mr. Bahari and his investments were "private acts of third parties," namely, Messrs. Aliyev, Heydarov, and Pashayev.

88. For example, the Statement of Defense argues that any promises or assurances Mr. Bahari obtained before the Treaty entered into force cannot support a breach of Azerbaijan's obligation to provide fair and equitable treatment. If Azerbaijan were correct, this would defeat the very purpose of Article 12(1) of the Treaty, which expressly covers pre-existing investments. Despite various arguments, Azerbaijan cannot find a way to avoid the fact that Mr. Bahari relied on a reasonable and legitimate expectation that Azerbaijan would not treat him and his investments unfairly and inequitably, much less carry out an unlawful expropriation.

89. Mr. Bahari's reasonable and legitimate expectations arose directly from Azerbaijan's (superficially) robust legal regime for the protection of foreign investment, which is glaringly absent from any mention, or even analysis, in the Statement of Defense. The protection of Mr. Bahari's foreign investments was touted at every turn, from the administrative processes and due diligence to register the Coolak Baku Azerbaijani-Iranian Joint Venture, to the Charter of Caspian Fish BVI making express reference to the Law of the Azerbaijan Republic on protection of foreign investments, and even former-President Heydar Aliyev placing the plaque at Caspian Fish's entrance stating that Foreign Investors and Investments Are Welcome in Azerbaijan.

90. But what the right hand gives, the left hand takes. And the Statement of Defense does not and cannot avoid acknowledging the taking and unlawful treatment of Mr. Bahari's investments. It merely says it happened too soon and was done purely by the aforementioned "private acts of third parties." But the taking of Mr. Bahari's investment in Caspian Fish was not a singular act, not least because his investments in Caspian Fish

are comprised of the physical facility, as well as *inter alia* his shareholder rights via Caspian Fish BVI and in the Caspian Fish Shareholder Agreement, which expressly entitles Mr. Bahari to 40% of the revenues of Caspian Fish. Those rights were abrogated through sovereign acts of Azerbaijan, not his commercial partners and not solely because Mr. Bahari was expelled from Azerbaijan in 2001. Mr. Bahari's ownership and interests in Caspian Fish were taken through composite and continuous acts of the State which, in all likelihood, crystallized by 1 January 2003. And that is only one category of Mr. Bahari's investments that Azerbaijan has failed to protect.

91. With the Statement of Defense and document production, Mr. Bahari was, for the first time, able to know and understand some of what happened to his investments in Coolak Baku and the Ayna Sultan property. While the narrative in the Statement of Defense about these two investments is incomplete and incorrect, and contains highly questionable evidence that Azerbaijan will need to explain, what can be sees are broad failures by the Azerbaijani courts to provide Mr. Bahari and his investments any semblance of due process or proper notice that his investments were being taken from him. At least one Azeri court decision conspicuously noted that Mr. Bahari left the republic and mysteriously disappeared at the beginning of 2001, and again that he disappeared under unknown circumstances.[74] Despite that express acknowledgement, the court proceeded with Mr. Bahari *in absentia*, in violation of Azerbaijani law. The conduct of the Azerbaijani courts and Ministry of Justice gives rise to vigorous denial of justice claims under the Treaty.

92. Azerbaijan's failure to afford Mr. Bahari and his investments both physical and legal protections is also manifest breach of the Treaty. In addition to forcibly detaining and then expelling Mr. Bahari from Azerbaijan, with the sole purpose of separating him from his investments and the ability to seek their return and assert his rights, Azerbaijan has, since then, made every effort to prevent Mr. Bahari from re-entering Azerbaijan safely. In parallel, Azerbaijan facilitated and adopted the actions of Government and private parties to ultimately seize physical and legal control of Mr. Bahari's investments. Azerbaijan is under a positive obligation to address the physical and legal seizure of Mr. Bahari's investments, including "private acts of third parties." Azerbaijan chose not to afford

[74] **R-105** Judgment of the Economic Court, 4 April 2005, pp. 1-2.

Mr. Bahari and his investments protection for the benefit of politicians and the ruling families.

93. As more fully examined in **Part V** of this Reply, Azerbaijan has failed to afford Mr. Bahari and his investment the required standards of protection under the Treaty.

V. MR. BAHARI IS ENTITLED TO FULL COMPENSATION DUE TO AZERBAIJAN'S BREACHES OF THE TREATY.

94. Azerbaijan's breaches of the Treaty, and its morally corrupt treatment of Mr. Bahari and those who have sought to assist him in regaining his investments, demand that Azerbaijan make full reparation.

95. In his Statement of Claim and this Reply, Mr. Bahari has made every effort to put forward as much information and evidence as possible to support a verified and fulsome accounting of the quantum of damages he has suffered. This has included over 200 documents establishing his physical investments in Azerbaijan, as well as numerous other documents and witness evidence addressing all of his investments and their value and rights.

96. The two reports now produced by Secretariat International provide verified and fulsome analysis that establishes the quantum of damages that Mr. Bahari has suffered. Although specific in nature, Mr. Bahari also retained Mr. Will Iselin to prepare two reports on his collection of Persian carpets, not only because of their monetary value, but because of the value that Mr. Bahari places on the carpets and what they represented to him in terms of what he was doing in Azerbaijan before he was expelled. Mr. Bahari is not only an entrepreneur, but he is also an investor and builder. Had Azerbaijan not decided that it no longer valued Mr. Bahari's contributions to its economy and culture, he would have most likely achieved even greater things than what are the subject of this dispute.

97. Azerbaijan contends that damages awarded to Mr. Bahari should not accrue any interest because he allegedly delayed bringing his claim, and this would create some type of windfall. The irony of this position is that the genuine facts of this dispute demonstrate that it was Azerbaijan, not Mr. Bahari, who frustrated and inhibited this claim being brought forward years ago. In that circumstance, any deduction in the duration that interest is applied would be a direct windfall for Azerbaijan, who has enjoyed the fruits of Mr. Bahari's investment and labor for decades without any repercussions.

98. Finally, the Reply Statement maintains that an additional award of moral damages is entirely appropriate to address Azerbaijan's malicious treatment and harm to Mr. Bahari and his family. If this Tribunal were empowered to do so, it would also be entirely appropriate to also award moral damages to Mr. Bahari's associates who have suffered emotional and physical harm simply because they sought to assist Mr. Bahari with the recovery of his investments in Azerbaijan.

99. Mr. Bahari's entitlement to damages, and the quantum of those damages is addressed **Part VI** of this Reply, as well as the Secretariate Second Report and the Iselin Second Report.

PART II: REPLY STATEMENT OF FACTS

100. This **Part II** reaffirms the facts and evidence that support Mr. Bahari's claim against Azerbaijan and responds to factual allegations in the Statement of Defense. In light of the Parties' divergent views, and Azerbaijan's opaque and unreliable presentation of evidence, the assessment of dispositive facts in dispute requires, at times, a forensic investigation and elongated narrative to capture the full and genuine picture of what has transpired over the past two decades and in this Arbitration more recently.

I. MR. BAHARI WAS A SUCCESSFUL ENTREPRENEUR BEFORE INVESTING IN AZERBAIJAN

101. Mr. Bahari's prior investments in Iran demonstrate that he is a serial entrepreneur and corroborate his follow-on investments in Azerbaijan. The Statement of Defense attempts to denigrate Mr. Bahari's prior Iranian investment projects to conclude that he did not have the financial means to invest in Azerbaijan.[75] However, Azerbaijan misses Claimant's point and advances an irrelevant, red-herring argument.

102. Mr. Bahari did not list his prior investments to prove specific prior financial means; such proof is not a required element to prove investor status, nor a prerequisite under the Treaty. Rather, Mr. Bahari's prior investments demonstrate his specific expertise as a serial entrepreneur and investor. Specifically, Mr. Bahari founded both Coolak Shargh and Coolak Baku, which essentially have the same business plan.[76]

103. Furthermore, Mr. Bahari's prior Iranian investments show that he developed very specific expertise in bottling, packaging, and line-processing technology applied to consumables such as food, beverage, and pharmaceutical products. Kaveh Tabriz leveraged such packaging technology;[77] Coolak Shargh developed the same PET bottling packaging technology, as well as high-end processing lines that were later used at both Coolak Baku

75 SoD ¶ 186.

76 SoC ¶¶ 28-36.

77 SoC ¶¶ 25-27.

and Caspian Fish.[78] This again demonstrates that Mr. Bahari had the experience and know-how going into Azerbaijan, demonstrating his capability and aptitude as an investor.

104. Notably, no one else in Azerbaijan had the specific expertise and financial means that Mr. Bahari brought in these areas, and only he could have designed and built Coolak Baku, Shuvalan Sugar, and Caspian Fish. Azerbaijan fails to identify any other person or company who had the resources and depth of experience to carry out the investment and execution of these projects.

105. As discussed in the Statement of Claim, Mr. Bahari founded, managed, and owned Kaveh Tabriz, which was an extremely successful pharmaceutical company that incorporated modern packaging machinery from foreign manufacturers.[79] Mr. Bahari was majority owner and at all times managed and controlled Kaveh Tabriz.[80]

106. With his statement, Mr. Bahari has produced a recent letter from Saderat Bank confirming that, for the 10-year period between 1988 and 1998, Kaveh Tabriz maintained a letter of credit at the bank totaling 487,000,000 Deutch Marks (US$ 312,179,487).[81]

107. Mr. Bahari has also produced a 28 April 1991 letter from Bank Mellat in Tabriz to the Ministry of Commerce of Iran relating to the banking activities of Mr. Bahari and Kaveh Tabriz. The letter states that:

    a. the turnover for the Kaveh Tabriz account at Bank Mellat from 21 March 1990 to 20 March 1991 (1-year) was a positive balance of 152,581,694 Iranian Rials (US$ 2,260,470);

    b. there were no returned checks on the account and the account status was "[redacted]"; and

    c. five letters of credit at the bank were opened during that one-year time period totaling 132,000,000 Iranian Rials (US$ 1,955,555).[82]

78 SoC ¶¶ 28-31.

79 SoC ¶¶ 25-27.

80 Bahari WS2 ¶ 4.

81 Bahari WS2 ¶ 5; **C-287** Letter from Bank Saaderat regarding Mr. Bahari's Letters of Credit, 23 April 2024.

82 Bahari WS2 ¶ 6; **C-286** Letter from Bank Mellat to the Ministry of Commerce of Iran, 28 April 1991.

108. Accordingly, the foregoing further demonstrates the resources Mr. Bahari had throughout the 1990s via the success of his Kaveh Tabriz company.

109. The Statement of Claim also explained how Mr. Bahari created, managed, and owned Coolak Shargh, which was an extremely successful Iranian soft drinks company.[83]

110. Mr. Bahari has produced with his most recent witness statement a collection of photographs that show that the Vice President of the Islamic Republic of Iran, Mr. Habibi, attended the grand open ceremony of Coolak Shargh and took a tour of the plant, as shown in a contemporaneous newspaper.[84] Personal pictures of Mr. Bahari providing a tour to Vice-President Habibi of Coolak Shargh are also available.[85]

111. As with Kaveh Tabriz, Mr. Bahari imported into Iran modern machinery and equipment for Coolak Shargh from such places as Japan, Germany, and New Zealand.[86] As an example, Mr. Bahari includes with his statement an invoice from HAM in Hamburg, Germany, to Coolak Shargh in Tabriz. This invoice shows a shipment from Antwerp to Bandar Abbas of "[redacted]" that were sourced from Switzerland. The shipment had an FOB Value of US$ 353,535 and Freight Charges of US$ 4,245. These charges were paid by an irrevocable letter of credit from Bank Mellat in Tabriz."[87]

112. As discussed in the Statement of Claim, Coolak Shargh's success and production capacity provided Mr. Bahari with his entry into the Azerbaijani soft drink market, including the creation of Coolak Baku.[88]

113. Contrary to the incorrect and unreliable information Azerbaijan sourced from an Official Gazette of the Islamic Republic of Iran, Refah Chain Stores did not purchase a 50% shareholding in Coolak Shargh in June 1997 for approximately US$ 4,200, as Azerbaijan

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83 SoC ¶¶ 28-36.

84 Bahari WS2 ¶ 8; **C-289** Newspaper pictures of the Coolak Shargh grand opening, showing the Vice President of the Islamic Republic of Iran, Mr. Habibi, attending the ceremony.

85 Bahari WS 2 ¶ 8; **C-422** Pictures of Coolak Shargh Grand Opening, 1991.

86 Bahari WS2 ¶ 8; **C-386** Certificate of Managerial Ability and Business Cooperation from Manafi Trading, 26 March 2024.

87 Bahari WS2 ¶ 7; **C-385** Invoice from HAM Chemie to Coolak Shargh, 3 March 1993.

88 SoC ¶¶ 31-32.

alleges.[89] In fact, that alleged sale was never finalized, and the potential sale price was more than US$ 6,500,000.[90] Mr. Bahari denies that he exited Coolak Shargh in December 1999 or that he currently owes any debt to the company.[91]

114. In reality, Coolak Shargh maintained significant deposits and lines of credit in various Iranian banks with branches in Tabriz, Iran. This included Bank Refah Kargaran, which Coolak Shargh issued a check to in January 1996 to establish a letter of credit of 10,271,285,523 Iranian Rials (US$ 5,865,317.60).[92]

115. Despite its stated position in the Defense, Azerbaijan was fully aware that Mr. Bahari was a successful entrepreneur in Iran and, in particular, that Coolak Shargh was a substantial company. As part of document production in the Arbitration, Azerbaijan produced the following documents that were in its possession, custody, and control when it filed the Statement of Defense:[93]

a. A 13 July 1995 letter from Coolak Shargh certifying that Mr. Bahari was the Chairman of the Board and Managing Director of the company.[94]

b. A 27 February 1996 letter from Bank Refah Kargaran to the Embassy of Republic of Azerbaijan confirming that Coolak Shargh is one its "[redacted]" and that it held a current account of more than 12,000,000,000 Iranian Rials (US$ 6,849,700); and that it opened letters of credit amounting to US$ 9,823,762 for the import of machinery and raw materials from Germany, Japan, and Singapore.[95] (Notably, this document, from Azerbaijan's production, independently confirms the January 1996 letter Mr. Bahari produced from Bank Refah Kargaran showing that

89 SoD ¶ 185(b); **R-83** Extract from Official Gazette of the Islamic Republic of Iran, Notice of Decisions on 9 June 1997, 23 June 1997.

90 **C-273** Cancelation of Coolak Shargh sale, 1997.

91 Bahari WS2 ¶¶ 9-10.

92 **C-274** Letter of Credit of Coolak Shargh, 23 January 1996.

93 Azerbaijan produced these documents pursuant to Claimant's Document Request No. 127 "[redacted]"

94 **C-275** Confirmation from the Iranian Embassy in the Republic of Azerbaijan that Mr. Bahari is working in Coolak Shargh, 13 July 1995; see also **C-329** [Respondent Document Production - 127_03] Letter from Iranian Government for presentation to the Embassy of Azerbaijan in Iran re soft drink production, 19 February 1995.

95 **C-276** Letter from Bank Refah Kargaran to the Embassy of Republic of Azerbaijan, 27 February 1996.

he had a credit of 10,271,285,523 Iranian Rials (US$ 5,865,317.60),[96] as explained above).

c. A document, translated on 20 February 1998, from the Iranian Ministry of Commerce establishing that Mr. Bahari is the Managing Director of Coolak Shargh.[97]

116. Azerbaijan's attempt to disparage Mr. Bahari and his success in Iran is not only factually inaccurate, but also disingenuous.

117. While Mr. Bahari need not demonstrate his success in Iran to establish that he was an investor in Azerbaijan under the Treaty, he clearly had the experience, drive, and financial means to establish and build the investments in Azerbaijan that are the subject of his claims.

II. MR. BAHARI INVESTED $28 MILLION IN COOLAK BAKU AND SHUVALAN SUGAR

118. Mr. Bahari was the sole investor who brought the capital and know-how in Coolak Baku – which Azerbaijan must and does concede. Mr. Bahari is adamant that he invested $28 million in constructing Coolak Baku and Shuvalan Sugar. This is largely corroborated by the documentary evidence of Mr. Bahari's Amounts Invested, which Secretariat has tabulated at $21,383,415.[98]

119. Azerbaijan advances a narrative of a failed joint venture with ASFAN, with Mr. Bahari allegedly underinvesting and causing delays. This narrative concludes with a stunning assertion that "[f]rom the documentary record, it appears that Mr. Bahari invested no more than USD 1.4 million (if that) into Coolak Baku."[99] This assertion flies in the face of the evidence and all common sense.

120. In fact, as will be demonstrated, ASFAN's allegations of delays and underinvestment were part of an overall scheme to strip Coolak Baku of its assets, via sham proceedings in

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96 **C-274** Letter of Credit of Coolak Shargh, 23 January 1996.

97 **C-277** Data related to Coolak Shargh from the Ministry of Commerce of Islamic Republic of Iran, 20 February 1998.

98 Secretariat Second Report, Table 2.

99 SoD ¶ 207(h).

Azerbaijan's Economic Court, taking advantage of Mr. Bahari's forced absence following his expulsion.

A. MR. BAHARI'S DOCUMENTATION OF HIS $28 MILLION INVESTMENT STANDS IN CONTRAST TO AZERBAIJAN'S IMPLAUSIBLE ASSERTION THAT HE ONLY SPENT $1.4 MILLION ON COOLAK BAKU.

1. Mr. Bahari Invested $28 Million in a Quality Production Facility That Was Fully Completed and Operational.

121. Mr. Bahari invested $28 million to construct Coolak Baku and Shuvalan Sugar.[100] Azerbaijan also produces documentation that repeatedly reference this $28 million cost.[101] In short, everyone is agreed that this was the cost for the completed facilities. As confirmed below, Coolak Baku was indeed completed and operational, thus corroborating the $28 million was invested.

122. Claimant's Quantum Expert, Secretariat, has tabulated Mr. Bahari's Amounts Invested in Coolak Baku and Shuvalan Sugar for a total of $21,383,415. This total includes:

a. $14,994,505 for Coolak Baku, with 86.1% of the amounts tabulated noting Mr. Bahari's name on the underlying documents; and

b. $6,386,910 for Shuvalan Sugar, with Mr. Bahari identified on 100% of the underlying documents.[102] This includes (1) a construction contract from Chartabi dated 10 July 1997 in the amount of $3,650,000,[103] and (2) a Certificate of Purchase from Ahan Sanat for works as of 10 September 1998 relating to "[redacted]" in the amount of $2,736,910.[104]

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100 Bahari WS1 ¶ 25 ("[redacted]")

101 SoD ¶ 196; **R-024** Letter from ASFAN Ltd to Mr Bahari, 8 January 1997, **R-025** Letter from ASFAN to Mr Bahari, 22 December 1997, **R-026** Letter from ASFAN to Mr Bahari, 22 December 1997.

102 Secretariat Second Report, Table 2, p. 9; *Supra*, Section 7.B.

103 **C-085** Chartabi Contracting Shuvalan Sugar Construction Contract, 10 July 1997; see also **C-086** Letter from Chartabi Contracting confirming cost of construction works, confirming payment of construction works for Caspian Fish, Coolak Baku, and Shuvalan Sugar; **C-280** Letter from Samad Chartabi, the CEO of Chartabi Metalworking Industries, 9 April 2024.

104 **C-376** Ahan Sanat Certificate of Purchase for Works Performed, 1 July 2019.

123. Secretariat's meticulous analysis of over two hundred individual documents, including documents, for all investments, confirm over 75% of the $28 million construction cost figure.

124. The above documentation of Amounts Invested shows that Mr. Bahari was the sole investor in Coolak Baku and Shuvalan Sugar. This is also confirmed by Azerbaijan's document production, which shows that the Government of Azerbaijan performed extensive due diligence on Mr. Bahari prior to his entry into Azerbaijan as a foreign investor.[105] Finally, Mr. Bahari has requested and obtained an official (notarized) letter from Ahad Gazai, Iran's former Ambassador to Azerbaijan during the relevant period, who confirms that Mr. Bahari invested in Coolak Baku, Shuvalan Sugar, and Caspian Fish, "[redacted]"[106] Ambassador Gazai had visibility into all Iranian investments into Azerbaijan and was thus well aware of Mr. Bahari's investments.

125. Importantly, Azerbaijan's evidence also corroborates that Mr. Bahari was the sole investor who brought the capital and that no one else provided any investments: under the various alleged versions of the Joint Venture Agreement ("**JVA**"), ASFAN's main contribution were the land plots only.[107] In the subsequent litigation between Coolak Baku and ASFAN cited by Azerbaijan (the "**Economic Court Litigation**," discussed below), the Economic Court also noted that ASFAN's contribution to the JVA was the 4,030 m^2 production site with the existing buildings.[108] Thus, it is clear Mr. Bahari paid for and constructed the rest – as per the terms of the JVA.

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105 Claimant's Document Request No. 127 sought "[redacted]" See e.g. **C-275** [Respondent Document Production - 127_01] Confirmation from the Iranian Embassy in the Republic of Azerbaijan that Mr. Bahari is working in Coolak Shargh, 13 July 1995 (certifying that Mr. Bahari was the Chairman and Managing Director of Coolak Shargh); **C-276** [Respondent Document Production - 127_02] Letter from Bank Refah Kargaran to the Embassy of Republic of Azerbaijan, 27 February 1996 (confirming that Coolak Shargh had a turnover of more than 12 billion rials in the past year).

106 **C-376** Ahan Sanat Certificate of Purchase for Works Performed, 1 July 2019.

107 SoD ¶¶ 190, 193-194, 202-203.

108 **R-105** Judgment of the Economic Court, 4 April 2005, p. 1; **R-098** Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company, 29 February 1996, Clause 3.1.

126. Equally, Mr. Bahari confirms that he paid not only $1,500,000 of the authorized share capital under the 1998 JVA, but also paid ASFAN's $500,000 share, for a $2,000,000 total.[109] Respondent claims there is no evidence that Mr. Bahari paid ASFAN's $500,000 share. However, in the Economic Court Litigation discussed below, the Court held that ASFAN could withdraw from the JVA and take back the property and assets it had invested; notably, there was no mention of a return of any capital share contribution, nor did ASFAN request this.[110] Azerbaijan has not produced evidence of payment of the $500,000 by ASFAN.

127. Mr. Elchin Suleymanov, a senior argon-gas welder employed by Mr. Bahari and who worked on Coolak Baku and Shuvalan Sugar, attests to the quality of the facilities and the product:

a. Coolak Baku was a "[redacted]" Coolak Baku had a polyethylene terephthalate (PET) bottling line for soft drinks, and an aluminum canning line.[111]

b. Mr. Bahari engaged a number of foreign companies to work on Coolak Baku. This included the general contractor, Chartabi Contracting Services ("**Chartabi Contracting**"), headed by Mr. Ahad Chartabi, along with a lead manager called Siavoush.[112]

c. Soft drink production began in 1997 and once up was continuous. Beer production began in 1998.[113]

d. All of the equipment at Coolak Baku was high quality and used the latest technology.[114]

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109 Bahari WS1 ¶ 21; **C-001** Coolak Baku Joint Venture Agreement, 23 January 1998, Clause 5.2.

110 **R-105** Judgment of the Economic Court, 4 April 2005, pp. 1, 3.

111 Suleymanov WS ¶ 11.

112 Suleymanov WS ¶ 10.

113 Suleymanov WS ¶¶ 12-13.

114 Suleymanov WS ¶ 15.

e. Mr. Bahari purchased and installed quality equipment from Germany and elsewhere and brought three German craftsmen to install the equipment and develop the beer production capabilities.[115]

f. Coolak Baku beer was extremely high quality and there was significant demand because it was brewed in the Bavarian style, which was new to Azerbaijan. In the summer months, when demand was high, Coolak Baku produced beer at capacity.[116]

128. Mr. Suleymanov provided two contemporaneous videos of the Coolak Baku facilities and in which he narrates. The Tribunal is encouraged to view these: the videos demonstrate the scale and quality of the facility and machinery.[117] Some screenshots of from the videos are reproduced below:

115 Suleymanov WS ¶ 15(h).

116 Suleymanov WS ¶ 15(j).

117 Suleymanov WS ¶ 12; **C-377** Coolak Baku Video 1, undated; **C-378** Coolak Baku Video 2, undated.

129. The completed facility stands as a testament to Mr. Bahari's efforts; equally important, it is physical proof that Mr. Bahari invested the $28 million as agreed.

2. Azerbaijan's Assertion of a $1.4 Million Total Investment on Coolak Baku Is Implausible.

130. Against Mr. Bahari's extensive documentation supporting over $21 million of the $28 million figure, and proof of a completed facility and operating business, Azerbaijan produces five alleged letters between ASFAN and Mr. Bahari to assert various alleged delays and underinvestment in Coolak Baku.[118] Azerbaijan also submits the Witness

[118] SoD ¶ 196; **R-24** Letter from ASFAN Ltd to Mr Bahari, 8 January 1997; SoD ¶ 199; **R-25** Letter from ASFAN to Mr Bahari, 22 December 1997; SoD ¶ 207(c); **R-26** Letter from ASFAN to Mr Bahari, 22 December 1997;

Statements of Messrs. Rasim Zeynalov and Habib Aliyev, who allege that Coolak Baku and its soft drink and beer products were of poor quality.[119]

131. On the basis of this thin record, Azerbaijan comes to the stunning conclusion that "it appears that Mr. Bahari invested no more than USD 1.4 million (if that) into Coolak Baku, but even then whether Mr. Bahari himself was the source of these funds remains unclear, as well as where and how such funds were invested (if at all)."[120]

132. This astonishing assertion flies in the face of the evidence, and basic common sense:

a. Azerbaijan's assertion completely ignores Mr. Bahari's detailed documentation of over $21 million in Amounts Invested, as analyzed and tabulated by Secretariat.

b. ASFAN – and consequently Azerbaijan – does not and cannot deny that Coolak Baku was a completed, fully operational facility and business that produced soft drinks and beers. As noted below, ASFAN eventually took over Coolak Baku's facilities and produced its own beer brand; this is admitted by Mr. Habib Aliyev himself.[121]

c. Notably, Azerbaijan's submitted evidence of various correspondence complaining of delays and underinvestment are contradicted by the fact that Coolak Baku was indeed completed and operational. At most, the correspondences show possible delays, as sometimes occurs in complex construction projects. Even if true (which is not admitted), this is not proof that the $28 million was not ultimately invested. Again, the completed production facility stands as physical proof that Mr. Bahari made the investments.

d. It is impossible that only $1.4 million was invested to construct and complete Coolak Baku (and Shuvalan Sugar). This would not pay for even a fraction of the equipment Mr. Bahari purchased and installed – again, as documented and tabulated by Secretariat.

e. ASFAN – and consequently, Azerbaijan – does not assert that there was any alternate investor. As already noted above, it was commonly agreed that

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SoD ¶ 208; **R-27** Letter from ASFAN Ltd to Mr Bahari, 22 July 1998; SoD ¶ 198; **R-28** Letter from ASFAN Ltd to Mr Bahari, 20 September 1999.

119 Zeynalov WS ¶¶ 15, 17; Aliyev WS ¶¶ 11-13, 20.

120 SoD ¶ 207(h). (Emphasis added.)

121 Aliyev WS ¶ 28.

Mr. Bahari was the sole investor bringing capital, while ASFAN contributed the land plots. Thus, there could be no alternate source of capital. Azerbaijan's assertion that "whether Mr. Bahari himself was the source of these funds remains unclear" is an unfounded and careless statement.

133. On the balance of the evidence, Mr. Bahari has amply proven his $21+ million investment in Coolak Baku, while Azerbaijan's defense theory that he invested no more than $1.4 million is implausible and a logical absurdity.

3. Azerbaijan's Allegations of Delays Fail to Prove Mr. Bahari Did Not Make the Appropriate Investments.

134. Azerbaijan's Statement of Defense fails to rebut (1) Mr. Bahari's documented proof that he was the sole investor in Coolak Baku; and (2) the documented proof of over $21 million that he invested in Coolak Baku. As such, Azerbaijan has failed to meet its burden of proof to prove its defense allegation that Mr. Bahari did not invest (or invest sufficiently) in Coolak Baku.

135. As a preliminary point, the Tribunal granted (or Azerbaijan affirmatively agreed to produce) 12 of Claimant's document requests relating to Coolak Baku.[122] Azerbaijan produced just one document. A number of these document requests were expected to shed light capital expenditures, operations, and revenues.[123] Azerbaijan's conduct means that it further fails to meet its burden of proof in rebutting Mr. Bahari's evidence of Amounts Invested.

136. What Azerbaijan does submit is evidence of the early versions of the Joint Venture Agreement, along with a handful of correspondence in which ASFAN complains about alleged delays. However, these are largely irrelevant to Mr. Bahari's claim for Coolak Baku, which relates to Amounts Invested.

137. This evidence (in particular the correspondence) does not rebut or even discuss Mr. Bahari's documentation of the construction works and the purchase and installation of the machinery. Because the alleged ASFAN letters are a series of snapshots in time, they do not address the fact that Mr. Bahari did ultimately construct and install a complete and

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122 Claimant's Document Request Nos. 128; 129; 130; 136; 137; 138; 140; 141; 143; 159; 161; 162.

123 For example, Claimant's Document Requests No. 141 sought [redacted]. This would have been expected to show details of capital investments and other expenditures; revenue sources; and so on.

operational facility. As noted above, at most they show delays or dissatisfaction at a specific given time, often on issues unrelated to Amounts Invested. By way of example:

a. The alleged ASFAN letter dated 8 January 1997 complains of delays and that it "[redacted]" [124] However, this is contradicted by Mr. Suleymanov's testimony that soft drink production began in 1997 and beer production began in 1998.[125] In any event, the 1996 JVA (and its 1996 Addendum) produced by Azerbaijan does not obligate Mr. Bahari to complete the project within any specific timeframe.[126]

b. Similarly, the 22 December 1997 letter alleges vague complaints of delays in investing the full $28 million and unhappiness at the idea of beer production.[127] Again, it is unclear what ASFAN's complaints can be, given that the 1996 JVA put no specific timeframe to complete the project. As for beer production, the parties ultimately amended the JVA and agreed to such production, thus demonstrating the temporary nature of the business disagreement.[128]

c. The 20 September 1999 correspondence makes the implausible allegation that Mr. Bahari's investment in Coolak Baku "[redacted]"[129] It is apparently on the basis of this statement that Azerbaijan advances its improbable defense that Mr. Bahari only spent $1.4 million on Coolak Baku and Shuvalan Sugar.

138. Notwithstanding the foregoing, the authenticity of both the early versions of the JVA and the correspondences are not admitted:

a. Mr. Bahari no longer has a copy of the 1996 version of the JVA but insists that the partnership did not involve Coolak Shargh; rather it was always directly between

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124 **R-24** Letter from ASFAN Ltd to Mr Bahari, 8 January 1997.

125 Suleymanov WS ¶¶ 12-13.

126 **R-98** Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company, 29 February 1996.

127 **R-25** Letter from ASFAN to Mr Bahari, 22 December 1997.

128 **C-001** Coolak Baku Joint Venture Agreement, 23 January 1998, Art. 2.1 ("[redacted]")

129 **R-028** Letter from ASFAN Ltd to Mr Bahari, 20 September 1999.

him and ASFAN.[130] On this point, Azerbaijan has failed to produce any documents responsive to Claimant's Document Request no. 129, which sought documents relating to Mr. Bahari's replacement for Coolak Shargh as a shareholder in Coolak Baku in or around 1998.[131]

b. Mr. Bahari does not recognize the original copy of the 1996 version of the JVA or the Addendum signed later that same year. Mr. Bahari does not read Cyrillic and as such would not have signed such documents.[132]

c. Mr. Bahari does not recall or recognize the alleged ASFAN correspondences at **R-24**, **R-25**, **R-26**, **R-27**, and **R-28**. Again, he does not read Cyrillic. To the extent the letters allege that he did not make the investments in Coolak Baku, he categorically rejects their content.[133]

d. Mr. Tabesh Moghaddam also does not recall the correspondences at **R-24**, **R-25**, **R-26**, **R-27**, and **R-28**.[134]

139. Thus, while Mr. Bahari has amply met his burden of proof to prove his investments in Coolak Baku, Azerbaijan has failed to meet its burden of proof, given both the paucity and irrelevance of the documentation it puts forward, and given its apparent refusal to produce responsive documents relating to Coolak Baku.

4. Chartabi Contracting Was the General Contractor on Coolak Baku, Shuvalan Sugar, and Caspian Fish.

140. Azerbaijan has called into question the Chartabi Contracts.[135] However, Mr. Bahari did contract with Chartabi Contracting and the work was performed and completed to satisfaction. Once again, the completed projects are a testament that the work was done. Furthermore, as discussed below, Mr. Bahari can substantiate payment of approximately $24,761,170 out of the $36,605,000 total (over 67%) paid to Chartabi Contracting for the Coolak Baku, Shuvalan Sugar, and Caspian Fish construction contracts. All three construction contracts are discussed below.

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130 Bahari WS2 ¶ 11.

131 **C-379** Table of Respondent's Document Production Deficiencies, undated.

132 Bahari WS2 ¶ 12(a).

133 Bahari WS2 ¶ 12(c).

134 Moghaddam WS2 ¶ 12.

135 SoD ¶¶ 88-92.

141. As a preliminary matter, the Chartabi Contracts for Coolak Baku, Shuvalan Sugar, and Caspian Fish are reissued and re-signed copies of the originals,[136] as neither Mr. Bahari nor Chartabi Contracting retained the original signed copies. At Mr. Bahari's request, Chartabi Contracting reissued printed copies, which both parties subsequently re-signed.[137] Also at Mr. Bahari's request, Chartabi Contracting sent a letter dated 7 January 2019 confirming that Mr. Bahari had paid in full for the works under all three contracts.[138] That letter is an original signed document from Chartabi Contracting.[139]

142. Mr. Bahari obtained another letter from Chartabi Contracting dated 9 April 2024 that reconfirms that Mr. Bahari contracted Chartabi Contracting for projects both in Azerbaijan and in Iran, and that Mr. Bahari paid for the projects himself.[140] The letter is signed by Samad Chartabi, who is the current CEO of Chartabi Contracting. Samad is the brother of Ahad, who passed away in late 2021 (during early preparation of the Statement of Claim).[141]

143. Importantly, Mr. Bahari can substantiate payment to Chartabi Contracting for all three Contracts:

    a. Mr. Bahari has obtained a copy of a check dated 30 September 2000 from Iran Melli Bank, which confirms payment of $24,761,170.86 to Ahad Chartabi for the projects in Azerbaijan.[142] The check is issued by Mr. Bahari's company, Coolak Shargh, to Ahad Chartabi for "[redacted]" for 43,700,000,000 Iranian Rials (US$ 24,761,170.86).

136 **C-084** Chartabi Contracting Coolak Baku Construction Contract, 16 May 1996; **C-085** Chartabi Contracting Shuvalan Sugar Construction Contract, 10 July 1997; **C-92** Chartabi Contracting Caspian Fish Construction Contract, 10 May 1999.

137 **C-380** Earnest Statement, 24 May 2024; Bahari WS2 ¶ 21(b).

138 **C-086** Letter from Chartabi Contracting confirming cost of construction works, 7 January 2019.

139 **C-380** Earnest Statement, 24 May 2024; Bahari WS2 ¶ 21(b).

140 **C-280** Letter from Samad Chartabi, the CEO of Chartabi Metalworking Industries, 9 April 2024.

141 **C-380** Earnest Statement, 24 May 2024; Bahari WS2 ¶ 21(b).

142 **C-281** Iran Melli Bank Check from Coolak Shargh to Ahad Chartabi, 30 September 2000.

b. As a reminder, the total for the three Chartabi Contracts was $36,605,000 ($4,155,000 for Coolak Baku; $3,650,000 for Shuvalan Sugar; and $28,800,000 for Caspian Fish).[143]

c. The Melli Bank proof of payment therefore substantiates over 67% of the $36,605,000 total for the three Chartabi Contracts.

144. Elchin Suleymanov, who was present and worked extensively on the construction of Coolak Baku, Shuvalan Sugar, and Caspian Fish, recalls that the general contractor on Coolak Baku was Chartabi Contracting, and recalls Mr. Ahad Chartabi, as well as a lead manager called Siavoush.[144] Chartabi Contracting's work on Shuvalan Sugar and Caspian Fish is discussed in detail below.

5. Mr. Bahari Invested in Shuvalan Sugar and Habib Aliyev Committed Fraud Upon Mr. Bahari By Building a Residence on the Shuvalan Property.

a. Mr. Bahari Invested in Shuvalan Sugar and Constructed a Sugar Refinery There.

145. Azerbaijan alleges, without evidence, that this was "merely a potential business activity under Coolak Baku that never materialised."[145] This assertion goes against the weight of the evidence.

146. The Chartabi Contract for Shuvalan Sugar is *prima facie* evidence that Mr. Bahari constructed a sugar refinery there.[146] As discussed above, Mr. Bahari can substantiate a large portion of the overall $36,605,000 total price for all three Chartabi Contracts, including the Shuvulan Sugar contract. The Chartabi contract shows the scope and size of the Shuvalan Sugar site: a 1,130 m^2 factory was built on the land plot, which involved 1,800 m^2 of tiling; reroofing; building a 300 m^2 dining hall with complete facilities; building 4.5 hectares of green space; and full renovation of pipes and electricity cables.[147] Again, Chartabi Contracting was paid in full for this work.

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143 **C-084** Chartabi Contracting Coolak Baku Construction Contract, 16 May 1996; **C-085** Chartabi Contracting Shuvalan Sugar Construction Contract, 10 July 1997; **C-92** Chartabi Contracting Caspian Fish Construction Contract, 10 May 1999.

144 Suleymanov WS ¶ 10.

145 SoD ¶ 226.

146 **C-085** Chartabi Contracting Shuvalan Sugar Construction Contract, 10 July 1997.

147 SoC ¶ 63; **C-085** Chartabi Contracting Shuvalan Sugar Construction Contract, 10 July 1997.

147. In addition, Mr. Bahari has produced a Certificate of Purchase from Ahan Sanat for works as of 10 September 1998 relating to "[redacted]" in the amount of $2,736,910.[148] Ahan Sanat manufactured various machines and machinery parts (carpentry machines, vehicle engine parts, etc.) and was present at Shuvalan Sugar to help install the equipment. Mr. Moghaddam also remembers an Iranian contractor installing the equipment at Shuvalan Sugar.[149]

148. Mr. Bahari expands upon the sugar refining process in his Second Witness Statement:

a. White sugar and raw sugar is mixed with pectin-glucose into a stainless steel heating tank. In Shuvalan Sugar's case, the tank had a 5-ton capacity.[150]

b. Water is mixed in to dissolve the sugar. The water is boiled using steam pipes as heating elements.[151]

c. Once the sugary water is boiled and evaporated, the contents inside turn into a syrup with the rough consistency of honey.[152]

d. This syrup is transferred through pipes by vacuum into another chamber, where it is then fed into molds. Once the molds are filled they are then transferred into a separator (centrifuge) which spins and removes trapped air pockets inside the syrup, and further molds and binds the syrup.[153]

e. Once cooled, the product is transferred while still in the mold into a drying machine. The result is a "sugar loaf," which is then further pressed and shaped into cubed sugar.[154]

f. Leftover sugar from the process was made into rock candy. The leftover sugar in its syrupy state would be heated; then small sticks were inserted into the syrup vessels and cooled. The resulting rock candy sticks are used to sweeten and stir hot tea. Shuvalan Sugar made plain rock candy sticks, but also made more

148 **C-376** Ahan Sanat Certificate of Purchase for Works Performed, 1 July 2019.

149 Moghaddam WS2 ¶ 13.

150 Bahari WS2 ¶ 24.

151 Bahari WS2 ¶ 24.

152 Bahari WS2 ¶ 24.

153 Bahari WS2 ¶ 24.

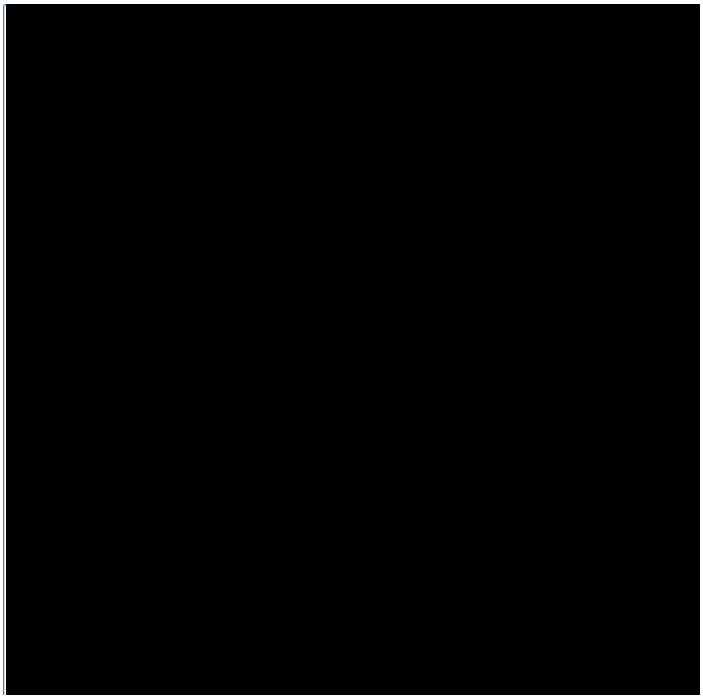
154 Bahari WS2 ¶ 24.

expensive and luxurious versions of these, which were colored using authentic saffron from Iran, giving the candy the distinctive gold color of the precious spice.[155]

g. The entire process took approximately 3 hours from start to finish. This process was constant; as soon as the contents were cooked and transferred, a new batch would be prepared to cook.[156]

h. The final products were sold in Azerbaijan as well as in neighboring countries such as Georgia and Russia. When the rock candy was introduced they were very popular in Azerbaijan, as consumers loved to have one with their tea.[157]

149. An online image of rock candy sticks is reproduced below for reference:



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150. Azerbaijan's statement that the Shuvalan Sugar project never materialized is directly contradicted by its own witnesses. Mr. Zeynalov states that "[redacted]"[158] although he grossly diminishes

155 Bahari WS2 ¶ 25.

156 Bahari WS2 ¶ 25.

157 Bahari WS2 ¶ 26.

158 Zeynalov WS ¶ 22.

the size and importance of the operation. Likewise, Mr. Habib Aliyev confirms that sugar processing and storage did take place at Shuvalan Sugar, although he too downplays the operation as "[redacted]."[159] Although both Messrs. Zeynalov and Aliyev belittle the size and importance of Shuvalan Sugar, that is not the same thing as calling it "a project that never materialized." Azerbaijan's exaggerated statement should thus be given no weight.

151. Mr. Suleymanov refutes Messrs. Zeynalov and Aliyev's Witness Statements. Mr. Suleymanov confirms that he performed welding at Shuvalan Sugar along with German workers and would go back and forth between Coolak Baku and Shuvalan Sugar to work on what was needed on a particular day.[160] Mr. Suleymanov describes the conversion of an old building and construction of a new one. He describes sugar processing as requiring professional machinery, which Mr. Bahari purchased and installed. More importantly, the sugar being processed was sold to the public, including stores and restaurants. This implicated a certain production quantity and a level of quality sufficient to be sold to the public. Mr. Suleymanov further states that the sugar had to be properly stored or a fungus would grow and ruin it. This testimony contradicts Mr. Aliyev's assertion that no sugar was stored at Coolak Baku.[161]

152. Azerbaijan also refutes Mr. Bahari's statement that Shuvalan Sugar maintained an inventory of at least 2,000 tons of raw imported sugar.[162] This is based wholly on Mr. Aliyev's Witness Statement, which is contradicted by Mr. Suleymanov. Mr. Bahari has produced a freight forwarding document from Shahriar Corp. which shows an invoice for sugar freight for 20 lots of raw sugar, at 20 tons per lot (400 tons total). The shipment origin is Sahlan, Iran, and destination is Baku.[163]

    a. This is a significant tonnage of raw sugar. Azerbaijan states that "nothing in this document, nor any of the evidence, connects this import to any alleged interest in Shuvalan Sugar."[164] However, Azerbaijan fails to explain what other purpose Mr. Bahari would have had to import such a significant quantity of raw

159 Aliyev WS ¶ 20.

160 Suleymanov WS ¶ 22.

161 Suleymanov WS ¶ 25; Aliyev WS ¶ 21.

162 SoD ¶ 226; Aliyev WS ¶ 30; SoC ¶ 65.

163 SoC ¶ 65.

164 SoD ¶ 227.

(unprocessed) sugar, if not to refine it at Shuvalan Sugar. Raw sugar would not have been used at Coolak Baku, as the soft drinks required granulated (processed) sugar. Mr. Aliyev does not discuss the Shahriar Corp. document.

b. Azerbaijan's only explanation for the 400 tons of raw sugar is that there is no connection to Shuvalan Sugar, because "Mr Bahari's quantum experts consider that the only amount invested by Mr Bahari into Shuvalan Sugar is the Chartabi Contract."[165] Azerbaijan seems to fundamentally misunderstand Mr. Bahari's claim for Coolak Baku, which rests on an Amounts Invested approach and only looks at capital contributions, construction services, equipment and machinery, and expenses. Inputs like sugar would not be counted in an Amounts Invested Approach. The fact that Secretariat does not include sugar purchases in its tabulation has no bearing on whether Mr. Bahari did or did not have a functioning sugar refinery at Shuvalan Sugar.

b. Habib Aliyev, as a Shareholder in ASFAN, Failed to Transfer the Shuvalan Land Plot to Mr. Bahari As Per the 1998 JVA, Then Proceeded To Build a Residence on That Same Land Plot.

153. ASFAN and Habib Aliyev breached their obligation to Mr. Bahari under the 1998 JVA to transfer a 4 hectare land plot to Mr. Bahari. Worse, Mr. Aliyev later built himself a residence on that same land plot, while fully aware that that land should have been conveyed to Mr. Bahari.

154. As stated in the Statement of Claim, the Coolak Baku 1998 JVA required ASFAN to transfer a four-hectare land plot in Shuvalan directly to Mr. Bahari.[166] Azerbaijan takes the position that the 1998 JVA could not be read to grant Mr. Bahari the Shuvalan land, because it had to be granted by ARHAD LTD., who never became a shareholder.[167] This assertion ignores the plain text of the JVA:

165 SoD ¶ 227.

166 SoC ¶ 43.

167 SoD ¶ 203.

[redacted][168]

155. On its plain terms, Clause 3.1 puts the legal obligation ("shall") on the "[redacted]" which is a defined term for ASFAN.[169] ASFAN, therefore, had to ensure that the land plot, which belonged to ARHAD, would be conveyed to Mr. Bahari. It is irrelevant that the land plot did not belong to ASFAN. It is also irrelevant that the land had not yet been privatized in ARHAD's name[170] – that would have been part of ASFAN's overall undertakings in order to meet its contractual obligation under Clause 3.1 of the 1998 JVA. Practically speaking, Arif Pashayev had a shareholding interest in both ASFAN and ARHAD – as admitted by Azerbaijan[171] – and thus there should have been no issues coordinating the property transfer. Adil Aliyev, who was active in Coolak Baku, was also a founding member of both ASFAN and ARHAD and should also have coordinated.[172]

156. Thus, ASFAN failed to convey the land plot to Mr. Bahari. Crucially, Mr. Habib Alieyv, who by his own admission was active in Coolak Baku, ASFAN (as a shareholder), and ARHAD, knew very well that ASFAN and ARHAD had to work together to convey the Shuvalan land plot to Mr. Bahari per the 1998 JVA – as did his father Adil Aliyev. In a remarkably candid admission, Habib Aliyev confirms that he purchased a 0.72 hectare land plot on the Shuvalan Sugar site from ARHAD and built a property there. Since he was active in ARHAD, it is very likely that his "purchase" of the land amounted to self-dealing. In any event, as a shareholder of ASFAN, he failed to meet the obligation to transfer the Shuvalan land plot to Mr. Bahari, and knowingly bought himself property on that very land. This almost certainly formed part of an overall scheme of fraud perpetrated by ASFAN on Mr. Bahari, and which will be discussed below.

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168 **C-001** Coolak Baku Joint Venture Agreement, 23 January 1998, Clause 3.1 (emphasis added).

169 **C-001** Coolak Baku Joint Venture Agreement, 23 January 1998, p. 2 (PDF) ("[redacted]")

170 Aliyev WS ¶ 23.

171 SoD ¶ 203.

172 Aliyev WS ¶ 3.

B. AZERBAIJAN'S COURTS ENABLED THE STRIPPING OF COOLAK BAKU'S ASSETS THROUGH SHAM PROCEEDINGS.

1. Introduction and Roadmap to the Economic Court Litigation.

157. Azerbaijan puts forward alleged evidence to support its defense that "Coolak Baku was never a commercial success,"[173] which, Azerbaijan further asserts, led to ASFAN's exit from the joint venture in 2005, via application to Azerbaijan's Economic Court.[174] Azerbaijan refers to a number of documents alleging that Mr. Bahari was given proper service of process and notification of the proceedings.[175]

158. Until Azerbaijan exhibited the court case files in its Statement of Defense, Mr. Bahari had never heard of these litigations. He never received official service of process or notifications of the resulting judgment; never participated in the proceedings; and never had any opportunities to meaningfully defend his interests in Coolak Baku in these proceedings.[176]

159. In fact, on Azerbaijan's own submitted evidence, it is now apparent that ASFAN stripped Coolak Baku of its assets via sham proceedings enabled by Azerbaijan's Economic Court, which were concealed from Mr. Bahari. Indeed, the evidence shows that Mr. Bahari lost his investment in Coolak Baku as a direct result of these sham proceedings, whose gross procedural and substantive defects are described below in detail. Taken together, the Economic Court's flagrant due process violations resulted in denial of justice to Mr. Bahari.[177] The Economic Court's participation in the stripping of Coolak Baku's assets should be understood in the broader context of Azerbaijan's expulsion of Mr. Bahari and its actions over the years to prevent Mr. Bahari from protecting his interests and asserting his rights.

160. The due process defects in the Coolak Baku Litigation are numerous and require a methodical account. This section is organized as follows:

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173 SoD Part 3, Section III(D).

174 SoD ¶¶ 220-224.

175 SoD ¶ 224; **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005; **R-108** Judge's notification of Judgment to Mr Bahari, 12 May 2005.

176 Bahari WS2 ¶ 17.

177 *Infra*, Part V, Section I.D (Azerbaijan Denied Mr. Bahari Justice and Failed to Provide Effective Means).

a. Subsection 2 below places the Coolak Baku litigation within the broader context of Azerbaijan's corrupt judiciary.

b. Subsection 3 shows that the Coolak Baku litigation originated as a fraudulent scheme by ASAN through Mr. Zeynalov, who abused his terminated power of attorney from Mr. Bahari.

c. Subsection 4 addresses the extensive due process error throughout the Economic Court proceedings, which consistently failed to provide effective service of process and notifications to Mr. Bahari, such that he remained in the dark about the entire litigation.

d. Subsection 5 addresses the Economic Court's violation of a number of Civil Procedure Code articles relating to due process, and in particular procedures on when and how a court may proceed *in absentia* without the participation of one of the parties.

e. Subsection 6 discusses the Economic Court's confusing and ambiguous decision which fails to identify exactly which assets could be returned to ASFAN.

f. Subsection 7 discusses the defective notification of the Economic Court's decision to Mr. Bahari, which prevented him from appealing the same.

g. Subsection 8 demonstrates how ASFAN relied on the Economic Court proceedings to illegally strip the production facility and business from Coolak Baku and transfer them to itself, leaving Coolak Baku as an empty corporate shell.

h. Subsection 9 notes that sometime following ASFAN's exit, Habib Aliyev took some of the beer equipment and machinery for himself.

i. Subsection 10 concludes that the Economic Court, by gross incompetence or outright corruption, directly enabled ASFAN's scheme to defraud Coolak Baku of all of its assets. The Court failed to give any meaningful justice to Mr. Bahari and fell far short of any reasonable expectations of a fair and stable legal and judicial environment, as was promised to Mr. Bahari as a foreign investor.

161. Of note, Claimant tasked Mr. Allahyarov to obtain a copy of the Economic Court case file.[178] On 11 June 2024, the Economic Court declined to provide the case file, alleging that Mr. Allahyarov had not provided the appropriate client authorization.[179]

2. Azerbaijan's Judiciary Is Widely Reported to be Corrupt.

162. The due process irregularities of the Economic Court litigation represent a case study of the well-reported dysfunction and corruption in the Azerbaijani courts. In 2005 (the year the Economic Court issued the decision at issue), the U.S. Department of State's Country Report on Human Rights Practices noted Azerbaijan's corrupt and inefficient judiciary.[180] The United States Agency for International Development (USAID) published an extensive report in 2005 titled "Analytical Paper on Corruption in the Judicial Sector – Azerbaijan Anti-Corruption Strategy Study," in which the Agency stated:

178 Allahyarov WS2 ¶ 8.

179 **C-364** Baku Economic Court refusal to provide case file, 11 June 2024.

180 **C-294** US Department of State, Azerbaijan page of 8 March 2006, accessed via US Department of State Archived Content, *available at:* https://2009-2017.state.gov/j/drl/rls/hrrpt/2005/61637.htm.

[redacted][181]

163. The State Department's Investment Climate Statement for Azerbaijan (2005) specifically singled out Azerbaijan's Economic Court: [redacted]"[182]

164. The *in absentia* proceedings against Mr. Bahari should be understood in this wider context of Azerbaijan's deeply flawed judiciary. The proceedings should also be viewed in conjunction with the equally defective and highly irregular litigations over the Ayna Sultan property, discussed at Part II, Section IV.E (Ayna Sultan Taken through Courts) below.

3. As Early as 2002, ASFAN and Rasim Zeynalov Fraudulently Plotted to Strip Coolak Baku's Assets Without Mr. Bahari's Knowledge.

165. Azerbaijan's own evidence shows that Mr. Zeynalov himself orchestrated the stripping of Coolak Baku's assets, by (1) taking advantage of Mr. Bahari's expulsion and forced absence from Azerbaijan; and (2) fraudulently using an expired Power of Attorney (POA) to represent himself as Mr. Bahari's "authorized representative" during this forced absence; before (3) consummating the plot by means of sham proceedings at the Economic Court (as further discussed below). The evidence of Mr. Zeynalov's fraudulent

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181 **C-295** *Analytical Paper on Corruption in the Judicial Sector – Azerbaijan Anti-Corruption Strategy Study*, Mary Noel Pepys, United States Agency for International Development, November 2005 (emphasis added). See also Allen & Makarenko Report, Section II.

182 **C-296** US Department of State, *2005 Investment Climate Statement- Azerbaijan*, accessed via US Department of State Archived Content, 2005.

conduct should give the Tribunal serious pause as to his credibility as the key witness for Azerbaijan.

166. Azerbaijan exhibits the alleged Minutes of Coolak Baku's Staff Meeting dated 30 November 2002,[183] citing it for various assertions that Mr. Bahari failed to meet his obligations to the Coolak Baku joint venture.[184] For avoidance of doubt, these allegations are not admitted. But more to the point, the Minutes of Meeting reveal a glaring fraud, which Azerbaijan simply ignores.

167. At this meeting purportedly held on 30 November 2002, Mr. Zeynalov is listed as the "[redacted]" of Mr. Bahari, and participates in this capacity.[185] However, as at that date, Mr. Zeynalov had no authority to represent Mr. Bahari. While Mr. Bahari had previously given Mr. Zeynalov a 3-year power of attorney on 17 December 1999,[186] that power of attorney was explicitly revoked in writing on 19 December 2000.[187] Mr. Zeynalov himself confirms this revocation in his witness statement.[188] Mr. Bahari never granted Mr. Zeynalov any other power of attorney or other authority to act on his behalf.[189]

168. Thus, as at the 30 November 2002 meeting, Mr. Zeynalov had no authority to act on Mr. Bahari's behalf and fraudulently presented himself as his representative at that meeting. This highlights a glaring falsehood in Mr. Zeynalov's Witness Statement, in which he states that notwithstanding the revocation of his POA in December 2000, he "[redacted]"[190] This statement blithely acknowledges and at the same time papers over Mr. Zeynalov's clear excess of authority and fraudulent behavior.

169. To the extent Mr. Zeynalov's testimony alleges that Mr. Bahari gave him some other unofficial or unwritten authority to represent him after explicitly terminating the 1999 POA,

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183 **R-29** Minutes of Coolak Baku Co Joint Venture Staff Meeting, 30 November 2002.

184 SoD ¶¶ 215-216.

185 **R-29** Minutes of Coolak Baku Co Joint Venture Staff Meeting, 30 November 2002, p. 1.

186 Zeynalov WS ¶ 13; **R-38** Power of Attorney issued by Mr Bahari to Mr Zeynalov, 17 December 1999.

187 **C-297** Revocation of Rasim Zeynalov Power of Attorney, 19 December 2000.

188 Zeynalov WS ¶ 31.

189 Bahari WS2 ¶¶ 15-18. In fact, although Mr. Bahari made the poor judgment to grant Mr. Zeynalov a broad power of attorney, he never intended for Mr. Zeynalov to use it for anything other than to undertake day-to-day transactions, such as customs clearances.

190 Zeynalov WS ¶ 31.

Mr. Bahari categorically denies this.[191] This contention (assuming this is Mr. Zeynalov's position) is as false as it is preposterous: it is clear from the evidence that Mr. Zeynalov acted not on the basis of some unwritten authority, but explicitly on the basis of a (terminated) 1999 POA. For example, Mr. Zeynalov explicitly relied on the terminated POA to fraudulently nominate himself as Director General of Coolak Baku in June 2002: the 18 June 2002 Minutes of Meeting of Coolak Baku's shareholders clearly states, at page 1, that Mr. Zeynalov appeared as the "[redacted]" of Mr. Bahari, "[redacted]"[192] Again, as of that date, the POA had long been terminated. On this fraudulent basis, that June meeting appointed Mr. Zeynalov as General Director of Coolak Baku. The only other person in attendance who voted on this nomination was Adil Aliyev.[193]

170. The upshot of this fraudulent excess of authority is that ASFAN (including Mr. Adil Aliyev, the Director of ASFAN), with Mr. Zeynalov's active participation, initiated a plot to strip Coolak Baku of all of its assets. On the pretext of satisfying alleged debts, Mr. Adil Aliyev proposes that "[redacted]"[194] It should be noted that at this time, Mr. Pashayev still held a 20% stake in ASFAN, and was its Chairman of the Board.[195] The presumption is that Mr. Pashayev was aware of this scheme.

171. The Minutes go on to record that Mr. Zeynalov offered to "[redacted]"[196] Mr. Zeynalov alleges that he spoke with Mr. Bahari after he left Azerbaijan, but the Statement of Defense and his Witness Statement do not specify whether he specifically spoke about the upcoming plan to strip Coolak Baku of its valuable assets.[197] This is because he did not. Mr. Zeynalov's statement that he told Mr. Bahari about ASFAN's exit (after the fact) is also a plain lie.[198]

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191 Bahari WS2 ¶ 16.

192 **R-104** Minutes of the Meeting of the Shareholders of Coolak Baku, 18 June 2002, p. 1 (emphasis added.)

193 Mr. Zeynalov fraudulently relied on the expired 1999 POA in at least one other context, in the sham proceedings that stripped Ayna Sultan from Mr. Bahari.

194 **R-029** Minutes of Coolak Baku Co Joint Venture Staff Meeting, 30 November 2002, p. 2. It should be noted that this statement directly acknowledges that Mr. Bahari was the one who had brought and installed the equipment.

195 SoD ¶¶ 189, 222, fn. 562; **R-028** Letter from ASFAN to Mr Bahari, 20 September 1999.

196 **R-029** Minutes of Coolak Baku Co Joint Venture Staff Meeting, 30 November 2002, p. 3.

197 SoD ¶ 216(h); Zeynalov WS ¶ 26.

198 Zeynalov WS ¶ 52.

He never told Mr. Bahari about the litigation at the Economic Court and Mr. Bahari remained entirely unaware of this obviously critical event.[199] Mr. Zeynalov's plainly fraudulent appearance at the meeting as Mr. Bahari's representative supports that he and others at ASFAN deliberately kept Mr. Bahari in the dark as to the status of his investment and the decisions taken without his knowledge – thus capitalizing on his forced absence. Mr. Zeynalov's apparent non-attendance during the course of the Economic Court proceedings themselves also support that he deliberately kept Mr. Bahari in the dark. If, as Mr. Zeynalov asserts, he acted as Mr. Bahari's "[redacted]" at Coolak Baku, he would have been expected to participate in the ensuing litigation on Mr. Bahari's behalf, or at least object to the litigation proceeding *in absentia*. His complete absence during the litigation speaks volumes.

172. Thus, the 30 November 2002 Minutes of Meeting reveal a fraud perpetrated on Mr. Bahari in his absence, resulting in a corporate decision taken without his authorization (or knowledge) as a majority 75% owner of Coolak Baku.

173. The subsequent sham proceedings at the Economic Court, described below, consummated this fraudulent plan to strip Mr. Bahari of his investments.

4. Mr. Bahari Was Not Given Proper Service of Process for ASFAN's Application to the Economic Court to Withdraw from the JVA.

174. According to Azerbaijan, on 19 January 2005 ASFAN applied to the Economic Court to (1) invalidate the Coolak Baku JVA certificate; (2) withdraw from the joint venture; and (3) exempt itself from Coolak Baku's purported debts (Case No. 1-96/03-45/2005).[200] Azerbaijan claims that proper service of process was made, and Mr. Bahari was duly notified in advance of the application.[201] In fact, Azerbaijan's own evidence shows the exact opposite: the entire court proceeding was riddled with serious defects, enabling ASFAN's plan to strip Coolak Baku of its assets.

175. As an initial point, Azerbaijan conflates (purposefully or not) the application for a claim and the court's decision to accept that application.[202] The document dated 19 January 2005

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199 Bahari WS2 ¶ 17.

200 SoD ¶ 220; **R-168** Decision on the acceptance of ASFAN's Statement of Claim, 19 January 2005, p. 1.

201 SoD ¶ 224.

202 SoD ¶ 224 ("Indeed, as is apparent from the Court file, Mr Bahari was notified at an address in Iran with ASFAN's application of 19 January 2005, as well as the Court's ruling of 4 April 2005") (emphasis added).

and exhibited as **R-168** is the Economic Court's decision to accept ASFAN's application and initiate proceedings; it is not ASFAN's application. Pursuant to Article 149 of Azerbaijan's Code of Civil Procedure (**CPC**),[203] a claimant must first file an application (also termed a petition) to a court to bring a claim.[204] Pursuant to Article 150 CPC, there is a separate service of process requirement for such an application.[205] Azerbaijan incorrectly states that Mr. Bahari was given proper service of process of the application, but cites only to the decision to accept the application on 19 January 2005. In fact, Azerbaijan fails to produce both the application and any proof of service of process of that application to Mr. Bahari. Mr. Bahari never received any notice of the application, and therefore had no knowledge of the proceedings from its earliest phase.[206]

176. As for the Economic Court's 19 January 2005 decision to accept the application, Azerbaijan exhibits **R-107** as purported proof of service of process of the same.[207] Page 4 of **R-107** (PDF pagination) shows the three original writs of summons notifying the parties of the Decision to accept the application and the upcoming court hearing date: one is addressed to the Department of Registration of Legal Entities at the Ministry of Justice (which was joined as a third party to the proceedings); one is addressed to ASFAN at Coolak Baku (as plaintiff/claimant); and the third summons is addressed to Mr. Bahari (as defendant/respondent). The summons to Mr. Bahari and its translation, as exhibited at **R-107**, is reproduced here (highlighted for emphasis):

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203 **C-298** Civil Procedure Code of the Azerbaijan Republic ("149.1 Claim petition shall be filed in written form. Claim petition shall be signed by a claimant or by a duly authorised representative.")

204 The CPC utilizes the term "Petition" in lieu of "Application."

205 **C-298** Civil Procedure Code of the Azerbaijan Republic, art. 150.0.4 ("in economical [sic] disputes – document certifying delivery of copies of claim petition and attachments thereto to other persons participating in case.")

206 Bahari WS2 ¶ 17.

207 SoD ¶ 224, fn. 570; **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005.

177. Page 5 (PDF) of **R-107** shows the corresponding delivery receipts for each of the three parties. The delivery receipt addressed to Mr. Bahari, and its translation (at p. 2), are reproduced here (highlighted for emphasis):[208]

208 **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005, pp. 2, 5 (PDF).

178. Azerbaijan's own evidence proffered as proof of service of process shows, on its face, blatant due process defects:

a. **First Defect: Service of Process was incorrectly sent to Coolak Baku.** First and foremost, the writ of summons is addressed to Mr. Bahari at Coolak Baku's address.[209] However, the Court had actual or constructive knowledge that Mr. Bahari would obviously not be reachable at this address, since the application

209 **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005, pp. 2, 5 (PDF).

and entire litigation was premised on Mr. Bahari's absence and his alleged non-participation in Coolak Baku. Indeed, the eventual court decision conspicuously noted that Mr. Bahari "[redacted]" at the beginning of 2001,[210] and again that he "[redacted]"[211]

b. **Second Defect: ASFAN and Mr. Zeynalov's Failure to Cure.** Pursuant to CPC Article 238.4, in cases where the respondent does not appear, the claimant must submit a written consent for the hearing to proceed *in absentia*.[212] Per CPC Article 239, if the claimant does not give consent to proceed without the participation of the respondent, the court must adjourn the hearing and send a new notification of new hearing dates to the respondent. Here, Mr. Zeynalov and ASFAN (as claimant) must have known from the case file that Mr. Bahari had been served at Coolak Baku and, importantly, were in a position to cure the defective service of process and either alert the Economic Court as to Mr. Bahari's whereabouts or notify Mr. Bahari directly of the litigation. It appears ASFAN did not object and allowed the defect to persist. Mr. Zeynalov, as the putative "[redacted]" of Mr. Bahari, failed to inform him of the proceedings, even though he allegedly "[redacted]" and sent "[redacted]"[213] Yet, Mr. Zeynalov is nowhere to be found during the entire litigation process. He fails to provide the correct address for service of process (which he would have known); he fails to contest the defective service of process; he fails to contest the hearings proceeding *in absentia*; he fails to appear at the hearings; and as noted above, he fails to personally notify Mr. Bahari about the resulting judgment. This is no accident, because Mr. Zeynalov was a full participant in ASFAN's plot to strip Coolak Baku of its assets.

c. **Third Defect: Insufficient Time Between Notice and Hearing.** Pursuant to CPC Article 140.5, a writ of summons must be delivered to a party "at least 10 days prior

210 **R-105** Judgment of the Economic Court, 4 April 2005, p. 1.

211 **R-105** Judgment of the Economic Court, 4 April 2005, p. 2.

212 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000.

213 Zeynalov WS ¶ 26.

to the date of a court session."[214] This is granted explicitly to provide a "sufficient amount of time for proper preparation of the defence at any stage of the case and for ensuring timely appearance before the court." [215] According to the carbon copy of the summons sheet, the court date was set for 10 February 2005.[216] Yet, the delivery date of the summons is purported to have occurred on 4 February 2005[217] – less than the required 10 days. Thus, service of process was defective. Of note, the 4 April 2005 Judgment of the Economic Court explicitly states that Mr. Bahari was given "[redacted]"[218] – a misleading statement or a downright falsehood.

d. **Fourth Defect: Mr. Bahari Never Signed the Summons.** Pursuant to CPC Article 143, a writ of summons "shall be presented to a recipient, such presentation being confirmed by signing a portion of the writ to be returned to the court." [219] However, Mr. Bahari signed neither the carbon copy of the summons sheet nor the receipt.[220] The signature line in the carbon copy of the summons sheet is conspicuously blank, while the recipient signature in the receipt is clearly not Mr. Bahari's signature (and could not be, since he had long been expelled from Azerbaijan at that time).[221] Without Mr. Bahari's signature, there was no effective service of process; Azerbaijan, who produced **R-107**, must be aware that Mr. Bahari never signed the summons and receipt; it is unclear how it can presume to say that **R-107** is proof of proper service of process.

179. As a result of the above defects, Mr. Bahari was never notified of the proceedings at the Economic Court and never received a copy of ASFAN's statement of claim.[222] The litigation, in which he was the named Defendant, proceeded entirely without his

214 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000.

215 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000.

216 **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005, p. 1.

217 **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005, p. 2.

218 **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005, p. 1.

219 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 143, p. 38.

220 **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005, pp. 4, 5 (PDF) (compare with English translations at pp. 1, 2).

221 **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005, pp. 4, 5 (PDF) (compare with English translations at pp. 1, 2).

222 **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005, p. 1 ("[redacted]")

participation. Indeed, given the glaring procedural irregularities, Azerbaijan's proffer of the *in absentia* Economic Court proceedings, to suggest Mr. Bahari did in fact have control and visibility into Coolak Baku following his expulsion, is simply astounding.[223]

5. The Economic Court Proceeded *In Absentia* Without Regard to Specific Due Process Safeguards in the Civil Procedure Code.

180. As a preliminary point, because Mr. Bahari did not receive notice of the application (which Azerbaijan fails to produce), he was unable to respond to it, as is his right under CPC Article 154.[224] He was also unable to assert any counterclaims he may have had against ASFAN.[225]

181. The Economic Court held its hearing on or about 10 February 2005, without Mr. Bahari's participation. In its 4 April 2005 Judgment ("**4 April 2005 Judgment**"), the Court notes:

[redacted][226]

182. CPC Article 185.5 states that an Azerbaijani court may proceed with a hearing "where there is no information on reasons for failure of respondent who has been duly notified of place and time of court session to appear before court or where court deems reasons for failure to be invalid, or where court establishes deliberate delay of proceedings by respondent."[227] But, as noted above, the service of process was entirely defective and Mr. Bahari was not duly notified.

183. The CPC contains an entire Chapter on *in absentia* proceedings, which set out – at least on paper – due process rights for the absent party. In the present case, the Economic Court ignored these fundamental due process protections.

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223 SoD ¶ 224.

224 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 154.1, p. 42 ("Objection or response to claim petition…Person participating in a case shall within the term allocated for submission of explanations on claim have the right to present to court his objection and response along with the accompanying documents, and with respect to economic disputes evidence of sending the appropriate response to the opposite party.")

225 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 155, p. 43.

226 **R-105** Judgment of the Economic Court, 4 April 2005, p. 2.

227 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 185.5, p. 51.

a. Pursuant to CPC Article 240.1.1, *in absentia* proceedings are not permitted where a party failing to appear "has not been duly notified in accordance with the provisions of this Code."[228] As detailed above, Mr. Bahari was never given proper notification of ASFAN's application, the decision accepting the application, or, as will be described below, the Judgment and the follow-on Writ of Execution.

b. CPC Article 238 sets out very specific procedures before a court can proceed *in absentia*. Per Article 238.3, "the case file shall contain evidence of due notification of respondent."[229] As noted above, the case file contains no such evidence of proper notification.

c. Per Article 238.4, "Claimant shall submit written consent for hearing of case in absentia."[230] There is no indication in the 4 April 2005 Judgment that any such consent was provided by ASFAN. Azerbaijan has failed to provide any such evidence in its Statement of Defense.

d. Per Article 238.5, "the Court shall render a ruling on hearing of case in absentia."[231] Aside from the a pro forma reference to CPC Article 185.5,[232] there is no mention of any such hearing in the 4 April 2005 Judgment, and Azerbaijan fails to provide any such evidence.

e. Pursuant to Article 239, a claimant may refuse to give consent to hear a case *in absentia*, which will result in an adjournment and renewed service of process.[233] As noted above, ASFAN did not do so, and allowed the litigation to proceed *in absentia* – even though it had actual knowledge of the defective service of process on Mr. Bahari at the Coolak Baku address.

184. The hearing, which was held on or around 10 February 2005, proceeded without Mr. Bahari's participation. The judgment is plainly one-sided; incredibly, the Economic Court accepts the argument that Mr. Bahari "[redacted]"[234] even

228 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 240.1, p. 63.

229 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 238.3, p. 63 (emphasis added).

230 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 238.4, p. 63.

231 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 238.5, p. 63.

232 **R-105** Judgment of the Economic Court, 4 April 2005, p. 2.

233 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 239, p. 63.

234 **R-105** Judgment of the Economic Court, 4 April 2005, p. 2.

as it noted his absence. In a turn of phrase that fairly leaps off the page, the Economic Court judgment noted that [redacted]" and that [redacted]"[235] No reflection whatsoever is given as to the reason for this absence (in all likelihood because Mr. Bahari's expulsion by Azerbaijan was an open and notorious fact), or, more importantly, its due process implications.

185. Indeed, CPC Article 240.1.2 prohibits *in absentia* proceedings "where it is established in court that a party fails to appear before the court due to valid reasons or such failure has been caused by a natural disaster or an event of force majeure."[236] Clearly, Mr. Bahari's expulsion from Azerbaijan would meet the "valid reasons" or *force majeure* element. The Economic Court's unusual reference to Mr. Bahari's "mysterious" disappearance strongly suggests knowledge of Mr. Bahari's circumstances – or, at the very least, some significant event that prevented his appearance. However, the Economic Court made no inquiries; did not double check the address listed in the various service of process and notifications and proceeded to judgment.

6. The 4 April 2005 Judgment of the Economic Court Contains Flagrant Substantive Defects.

186. Substantively, the Economic Court's decision is muddled and full of contradictions. First, the Court only makes reference to the purported original 29 February 1996 Joint Venture Agreement.[237] However, by 2005, the 23 January 1998 Amendment to the Joint Venture Agreement was in force.[238]

187. The Economic Court admits ASFAN's claim to withdraw from the joint venture, and as such returns "[redacted]"[239] Under the 1996 JVA (as well as the 1999 JVA Amendment), ASFAN's main contribution was the 4,030 m2 production site at 25 Safar Aliyev Street in Baku, along with

235 **R-105** Judgment of the Economic Court, 4 April 2005, pp. 1, 2.

236 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 240.1.2, p. 63.

237 **R-105** Judgment of the Economic Court, 4 April 2005, p. 1.

238 **C-001** Coolak Baku Joint Venture Agreement, 23 January 1998.

239 **R-105** Judgment of the Economic Court, 4 April 2005, p. 3. The Economic Court further states that [redacted]

existing buildings and infrastructure on the site.[240] Furthermore, the Economic Court rejects ASFAN's claim to be exempted from Coolak Baku's debts, noting that no information about the debts was presented by ASFAN.

188. Beyond this, however, the Economic Court's decision does not itemize or calculate exactly what property and assets should be returned to ASFAN as part of its Capital Contributions, and what property should remain with Coolak Baku as property contributed by Mr. Bahari – which, in this case, was the considerable beer and soft drink production equipment and facility at 25 Safar Aliyev Street. This omission is perplexing, given the obvious complexity of splitting the production facility from the underlying land plot. In fact, CPC Article 222.1 requires a reasoned dispositive section of the judgment setting out title of property, valuation of the same, and other pertinent information:

> [i]n the event of issue of court resolution on recovery of property in-kind, resolutive section of resolution shall refer to title of property, value of property, which shall be recovered from claimant in the event of absence of the property at the time of execution of resolution, as well as place of location of property or a bank account of respondent to be debited in favour of claimant in the amount of award.[241]

189. For monetary judgments, Article 222.2 requires the dispositive section of the judgment to "separately set principal, losses and penalty (fine, financial penalty) and shall further refer to the total amount to be recovered under the resolution."[242]

190. The upshot is that the 4 April 2005 Judgment is entirely – and possibly purposely – unclear about what assets, exactly, were to be returned to ASFAN, and what would be left with Coolak Baku/Mr. Bahari. In any event, as explained below, ASFAN proceeded to rely on this judgment to strip Coolak Baku's assets and completely take over the production facility and business.

7. Mr. Bahari Was Never Properly Notified of the 4 April 2005 Judgment of the Economic Court, Which Prevented Him From Appealing.

191. As with the service of process, the notification of *in absentia* 4 April 2005 Judgment contains obvious defects. Inexplicably, notification of the Judgment was not sent to Coolak Baku (as was the case with service of process) but to a different address at "[redacted]

240 **R-105** Judgment of the Economic Court, 4 April 2005, p. 1.

241 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 222.1, p. 59.

242 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 222.2, p. 59.

[redacted]"[243] The purported delivery receipt and its English translation are reproduced here (highlighted for emphasis):

192. This, too, was an incorrect address: it is the address of Coolak Shargh; however, Mr. Bahari did not reside in Iran at that time, had never used that address as his personal domicile, and thus never received notification of the Writ.[244] The fact that the Economic

243 **R-108** Judge's notification of Judgment to Mr Bahari, 12 May 2005.

244 Bahari WS2 ¶ 17.

Court utilized two separate addresses for notifications to Mr. Bahari – both of them incorrect – in the course of a single proceeding points to a serious – and possibly purposeful – due process defect. No explanation is provided for this: indeed, Azerbaijan's Statement of Defense completely elides the point, by misstating that the earlier service of process for the 19 January 2005 "application"[245] was addressed to Mr. Bahari's address in Iran,[246] rather than Coolak Baku. Purposeful or not, this misstatement has the effect of obscuring the fact that service of process was sent to two different, incorrect addresses throughout the litigation – even as ASFAN had knowledge of Mr. Bahari's location in Dubai.[247]

193. The failure to give Mr. Bahari proper notification of the *in absentia* Judgment further robbed him of important due process rights. Pursuant to CPC Articles 244 and 250, a Defendant has the right to apply to a court to quash an *in absentia* decision within 10 days from the date of receipt of the same, where the respondent's absence was due to valid reasons or did not have an opportunity to duly notify the court of his non-appearance.[248] However, Mr. Bahari was never able to exercise this right, since he never properly received notice of the *in absentia* Judgment. Mr. Bahari was therefore deprived of his due process right to obtain a ruling on the matter, per CPC Article 249.[249]

194. In a further gross due process error, the notification was sent over a month after the 4 April 2005 Judgment: the date of delivery by courier in Iran is dated 12 May 2005.[250] Curiously, the judge's cover letter enclosing the decision is undated.[251] Pursuant to CPC Article 233, "where a resolution has not been appealed it shall become effective 1 month upon its

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245 As noted above, **R-107** relates to the 19 January 2005 decision, not ASFAN's initial application.

246 SoD ¶ 224, fn. 570; **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005.

247 SoD ¶ 224, fn. 570; **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005.

248 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, pp. 64, 65.

> "Article 244. Filing of complaint from resolution in absentia. Respondent shall have the right to apply to court, which has issued resolution [Judgment] in absentia with request to quash such resolution within 10 days from the date of receipt of resolution.
>
> "Article 250. Grounds for quashing resolution in absentia. Resolution in absentia shall be quashed where court determines that failure of a respondent to appear before court was due to valid reasons or that respondent was not in possession of an opportunity for due notification of court on his non-appearance in court."

249 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 249, p. 65.

250 **R-108** Judge's notification of Judgment to Mr Bahari, 12 May 2005, p. 1.

251 **R-108** Judge's notification of Judgment to Mr Bahari, 12 May 2005, p. 1.

issue." [252] This inexplicable month-long delay in the notification of the Judgment (in addition to being sent to the wrong address) resulted in the loss of a fundamental appeal right.

8. ASFAN Knowingly Used the Sham Proceedings to Strip the Safar Aliyev Production Facility and Business from Coolak Baku and Mr. Bahari.

195. A Writ of Execution was issued on 12 April 2006, over a year following the 4 April 2005 Judgment.[253] The writ is as vague and incomplete as the text of the 4 April 2005 Judgment, as it only states that '[redacted]"; "[redacted]"; and "[redacted]"[254]

196. It is on the basis of the defective Economic Court Judgment and the accompanying Writ of Execution that ASFAN stripped the beer and soft drink production equipment and facilities, and indeed, the business enterprise itself.

197. Incredibly, Azerbaijan freely admits this, citing specifically to the Economic Court's reasoning that [redacted][255]

198. In doing so, Azerbaijan further highlights the sham nature of the proceedings. Article 96.1 and 96.2 of Azerbaijan's Civil Code state as follows:

> 96.1. A participant withdrawing from limited liability company shall receive the value of a property corresponding to the share of such participant in the charter capital of the company, except otherwise provided by the charter of the company. Pursuant to an agreement between the withdrawing participant and the company, payment of the value of the property may be substituted by giving the property in-kind. A part of the property or the value thereof due to withdrawing participant shall be determined on the basis of the balance sheets compiled as of the date of the withdrawal.
>
> 96.2. Where a right of property use was contributed into the charter capital of the limited liability company, the relevant property shall be

252 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, art. 233, 62.

253 **R-106** Writ of Execution in case No 1-96/03-45/2005, 12 April 2006, p. 1.

254 **R-106** Writ of Execution in case No 1-96/03-45/2005, 12 April 2006, p. 1.

255 SoD ¶ 222; **R-105** Judgment of the Economic Court, 4 April 2005, p. 3.

returned to a withdrawing participant. Reduction of the value of such property as a result of ordinary regular wear and tear shall not be compensated.[256]

199. Read together, the Civil Code makes clear that withdrawing parties from a joint venture can only receive the value of the property each put into the Charter Capital and that an appropriate valuation must take place. The Civil Code says nothing about a withdrawing party's ability to take the contributions of the other joint venture party, which is entirely logical. ASFAN could therefore only receive back the Safar Aliyev land plot it had contributed to the joint venture as per Clause 3.1 of the 1999 Coolak Baku JVA (or even the purported 1996 JVA); under Article 96 of the Civil Code, ASFAN could not receive the entire production facility that Mr. Bahari invested in and built as a result of its withdrawal from the JVA.

200. Yet, in a remarkably candid – or obtuse – statement, Azerbaijan confirms that "[t]he Safaraliyeva Production Facilities were accordingly returned to ASFAN and it was removed as a founder in Coolak Baku, effective 14 July 2005."[257] This statement lays bare that ASFAN used the sham proceedings at the Economic Court to consummate its fraudulent ploy to strip Coolak Baku of all of its assets. What is more, this statement reveals two serious irregularities:

201. *First*, ASFAN undertook the sham proceedings knowingly. As noted above, under the clear terms of Article 96 of the Civil Code, ASFAN was only entitled to the return of the property it had contributed to Coolak Baku; it was not further entitled to the entire production facility, which, as is commonly agreed, Mr. Bahari contributed under the terms of the JVA.[258] Indeed, ASFAN was well aware of this. In a purported Minutes of Meeting of ASFAN dated 27 April 2004, the attendees, including, *inter alia*, Mr. Adil Aliyev, Mr. Habib Aliyev (Mr. Adil's son and a witness for Azerbaijan), and Mr. Zeynalov, stated the following:

[redacted]

256 **C-299** Civil Code of the Azerbaijan Republic, as of 26 May 2000, art. 96, pp. 39-40.

257 SoD ¶ 222. The date is incorrect, as the Writ of Execution is dated 12 April 2006 **R-105** Judgment of the Economic Court, 4 April 2005, p. 3.

258 **C-001** Coolak Baku Joint Venture Agreement, 23 January 1998, Clause 3.2.

[redacted][259]

202. The above statement makes clear that ASFAN understood that it could only withdraw those assets it had contributed to the joint venture and that any alleged compensation owed by Mr. Bahari was treated as a separate matter. Indeed, even before the litigation at the Economic Court was initiated, ASFAN had already taken back its contributed assets – without Mr. Bahari's input or a court judgment. Thus, all that could possibly be left to litigate at the Economic Court was Mr. Bahari's contribution – the production facility itself. This shows that ASFAN applied to the Economic Court fully aware that it sought to defraud Mr. Bahari.

203. *Second*, it is now apparent that even before receiving a proper Writ of Execution, ASFAN had already moved to strip and take for itself Coolak Baku's entire production facility. Mr. Habib Aliyev confirms this in his Witness Statement, where he states that "[redacted]"[260] The Statement of Defense confirms the takeover of the facilities "effective 14 July 2005."[261] As with the return of its land plot, it appears that ASFAN did not even bother waiting for the proper completion of the litigation process before it took over the production facility.

204. ASFAN utilized the misappropriated equipment and facilities to run its own business and brand of beer, called Attila. Attila marketed itself as "German specialists," "at a brewery "equipped with Bavarian technology" – thus touting the specific know-how and technology that Mr. Bahari had labored to bring and install at Coolak Baku:

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259 **R-030** Minutes of Meeting of ASFAN's founders, 27 April 2004 (emphasis added.)

260 Aliyev WS ¶ 28 (emphasis added.)

261 SoD ¶ 222 (emphasis added.) Azerbaijan cites to the Writ of Execution (**R-106**) in support of this statement, but as noted below, the Writ is dated 12 April 2006.

C-176.

9. Following the Sale of Coolak Baku, Habib Aliyev Took Equipment and Machinery for Himself.

205. In a sad coda to the Coolak Baku saga, Mr. Suleymanov states that sometime following ASFAN's exit from Coolak Baku, an apartment complex was built on 25 Safar Aliyev Street. Further, a number of Coolak Baku's tanks were brought to a beer factory in the city of Xaçmaz, Azerbaijan.[262]

206. Mr. Suleymanov goes on to state that Mr. Habib Aliyev took some of the production machinery and equipment to his own residence at Shuvalan (presumably the same one Mr. Aliyev states he purchased from ARHAD). This included two copper stills and the can filling line. Later, a buyer offered to purchase the equipment from Mr. Aliyev, but the latter

262 Suleymanov WS ¶¶ 19-20.

refused, stating his intention to open a beer factory in the future where he would use the equipment himself.[263]

10. In Conclusion, the Economic Court Directly Enabled ASFAN and Mr. Zeynalov to Consummate Their Scheme to Strip Coolak Baku of All of its Assets.

207. The sequence of events – from its inception with the fraudulent meetings held without Mr. Bahari's knowledge, through the sham court proceedings that were deliberately concealed from Mr. Bahari, concluding with ASFAN's clearly illegal stripping of Coolak Baku's production facility and business – demonstrate a concerted strategy to defraud Mr. Bahari by utilizing Azerbaijan's corrupt court system.

208. At best, the Economic Court's handling of ASFAN's claim was incompetent to the point of manifest injustice. From start to finish, the Court failed to give any meaningful justice to Mr. Bahari and fell far short of any reasonable expectations of a fair and stable legal and judicial environment, as was promised to Mr. Bahari as a foreign investor.

209. At worst, the Economic Court litigation's actions confirm public reports of its corruptibility, and it was a willing participant in ASFAN and Mr. Zeynalov's scheme to defraud Mr. Bahari, directly enabling the taking of the latter's investment through a sham Judgment. The Court's repeated due process errors that consistently favored and enabled ASFAN's scheme while curtailing Mr. Bahari's due process rights strongly suggests unlawful bias and corruption.

210. Either way, ASFAN and Mr. Zeynalov's scheme could not have happened without the involvement and actions of Azerbaijan's Economic Court, executed by and through the defective 4 April 2005 Judgment. As admitted by Azerbaijan itself, the Judgment allowed ASFAN to effectively substitute itself for Coolak Baku, by taking over not only its production facility, but the overall business as well.[264] (This, perhaps not coincidentally, closely echoes the scheme of substitution that occurred with Caspian Fish, with the LLC substituting itself for the BVI company and taking over the physical assets and business.)

211. It is exceptionally cynical for Azerbaijan to argue that the takeover of Coolak Baku's facility was permissible because they occurred after ASFAN's court-sanctioned exit, and

263 Suleymanov WS ¶ 21.

264 SoD ¶ 222.

because, after all, Mr. Bahari "remains a shareholder in [Coolak Baku] to this day."[265] The fact of the matter is that ASFAN's illegal scheme left Mr. Bahari with an empty corporate shell with no assets whatsoever.

212. It is equally cynical for Azerbaijan to argue that ASFAN's scheme was legitimate because Mr. Bahari "chose not to participate in the joint venture," and never took "steps to exercise any control over Coolak Baku," including the court litigation.[266] The reality is that ASFAN, collectively, and through Mr. Zeynalov, was well aware of Mr. Bahari's expulsion and forced absence from Azerbaijan. The ASFAN meeting notes that refer to Mr. Bahari's "[redacted]" speak volumes.[267] As noted, Mr. Zeynalov, who was involved in Caspian Fish until at least 2002,[268] must have been fully aware that Mr. Bahari was expelled from Azerbaijan. While he may refute this, Mr. Zeynalov's testimony has zero credibility, given his clear participation in ASFAN's fraud.

III. CASPIAN FISH WAS UNLAWFULLY SEIZED BY AZERBAIJAN

A. MR. BAHARI WAS THE INVESTOR IN CASPIAN FISH

213. The Statement of Claim established that Mr. Bahari was the investor in Caspian Fish and that he invested at least US$ 56 million of his own capital to build the Caspian Fish facility.[269] The Statement of Defense seeks to challenge this through witness evidence that is unsubstantiated and documents that cannot withstand even a *prima facie* examination.

1. Evidence Establishes Mr. Bahari Invested US$ 56 million in Caspian Fish

214. In stark contrast to the questionable evidence Azerbaijan relies on in its Defense, Mr. Bahari's evidence establishing that he was the investor in Caspian Fish, both in the Statement of Claim and this Reply, is credible and comprehensive.

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265 SoD Part 2, Section III.

266 SoD ¶ 224.

267 **R-030** Minutes of Meeting of ASFAN's founders, 27 April 2004, p. 1.

268 Zeynalov WS ¶ 37.

269 SoC ¶¶ 79-83.

215. In his Statement of Claim,[270] and as considered in the Secretariat First Report,[271] Mr. Bahari established through documentary evidence that he personally invested at least in the Caspian Fish facility. This was established through a collection of documents that Mr. Bahari had been able to retain and locate after he was expelled from Azerbaijan, including: (i) invoices; (ii) agreements and contracts with third-parties; (iii) payment confirmations; (iv) bank receipts and statements; and (v) various shipping documents (e.g., airway bills, bills of lading, certificates of origin, packing lists, etc.).

216. Secretariat concluded that the US$ 44.418 million established by these documents alone was potentially understated because:

a. It was widely reported that the total foreign investment in Caspian Fish was US$56 million; and

b. The documents that were available and reviewed indicated that other supplies, equipment, and materials were likely purchased, shipped, and/or delivered to Azerbaijan for are not available.[272]

217. Notwithstanding the fact that the Statement of Claim met Mr. Bahari's burden to establish the quantum of his investment in Caspian Fish, Mr. Bahari considers it important to rebut the baseless allegations by Azerbaijan that he did not invest US$ 56 million in Caspian Fish. Accordingly, with this Reply Statement, Mr. Bahari produces the following evidence in further support of his personal investment in Caspian Fish:

a. A letter dated 31 March 2024 from Ahad Ghazaei, the former Iranian Ambassador to Azerbaijan during the time period when Mr. Bahari was investing in Azerbaijan.[273] Ambassador Ghazaei confirms that Mr. Bahari implemented, launched, performed, and personally invested in Caspian Fish. Ambassador Ghazaei also confirms that he visited and approved and certified the investment on behalf of the Iranian Government.[274]

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270 SoC ¶¶ 68-89.

271 Secretariat First Report, Section 2.C.

272 Secretariat First Report, Sections 3.B and 5.C.

273 **C-279** Letter from Ambassador Ahad Ghazaei to Diamond McCarthy LLP, 31 March 2024.

274 Ambassador Ghazaei also confirms that Mr. Bahari implemented, launched, performed, and personally invested in Coolak Baku and Shuvalan Sugar in Azerbaijan, and Kaveh Tabriz and Coolak Shargh, and other projects, in Iran, which Ambassador Ghazaei also visited, approved, and certified.

b. The previously discussed letter dated 9 April 2024 from Samad Chartabi, the CEO of Chartabi Metalworking Industries and the brother of Ahad Chartabi, the CEO of Chartabi Contracting, the general contractor for Mr. Bahari on Caspian Fish.[275] Mr. Samad Chartabi confirms that Ahad Charabi and his company carried out the construction for Caspian Fish. He also confirms that Mr. Bahari implemented Caspian Fish with his own capital.[276]

c. An Iran Melli Bank check dated 30 September 2000 drawing funds from the account of Mr. Bahari's company, Coolak Shargh, and made out to Ahad Chartabi for "[redacted]" for 43,700,000,000 Iranian Rials (US$ 24,761,170.86).[277]

d. Witness statement of Elchin Suleymanov testifying that Mr. Bahari engaged Chartabi as the general contractor for Caspian Fish.[278]

218. In view of the foregoing, Mr. Bahari has more than met his burden to establish that he personally invested the US$ 56 million that was the cost to build Caspian Fish.

219. Secretariat's Second Report revisits the underlying documentary evidence for Mr. Bahari's investment in Caspian Fish. *First*, applying a bottom-up tabulation of the amounts invested in Caspian Fish based on a thorough analysis of the documents that Mr. Bahari has produced in evidence, Secretariat concludes that:

a. Mr. Bahari was an identified party on a significant majority of the supporting documents and amounts transacted (89.6%);

b. that payment by Mr. Bahari can be confirmed for a majority of the amount tabulated (65.6%); and

c. that payment by Claimant can be confirmed or reasonably inferred for a significant majority of the amount tabulated (89.5%).

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275 **C-280** Letter from Samad Chartaby, the CEO of Chartabi Metalworking Industries, 9 April 2024.

276 Mr. Samad Chartabi also states that his brother, Ahad Chartabi and his company, performed the construction for Mr. Bahari's "Coolak Baku factories in Azerbaijan" and "Shuvalan Sugar in Baku" and Kaveh Tabriz and Coolak Shargh, and others, in Iran; and that Mr. Bahari implemented these projects with his own capital.

277 **C-281** Iran Melli Bank Check from Coolak Shargh to Ahad Chartabi, 30 September 2000.

278 Suleymanov WS ¶¶ 10, 29-30.

220. It is significant that the overwhelming majority of documentation (85%) for Caspian Fish confirms or it can be reasonably inferred that Mr. Bahari made payment. On this basis, Mr. Bahari has met his burden to establish that he invested at least US$ 44.418 million in Caspian Fish.

221. *Second*, Secretariat considers it more likely than not that Mr. Bahari invested the full US$ 56 million in Caspian Fish.

222. The Secretariat Second Report states that it has been "[redacted]"[279] In support, Secretariat catalogues a number of those sources in the table below,[280] which includes affirmative statements by Azerbaijan's witness, Mr. Kerimov.

[redacted]

279 Secretariat Second Report, ¶ 3.24.

280 Secretariat Second Report, Table 5, pp. 18-19 (internal citations omitted).

[redacted]

223. As to the position in the Statement of Defense that US$ 56 million was not spent or is excessive, Secretariat comments that:

[redacted]

224. The Secretariat Second Report provides specific underlying research and findings for this statement.[282]

225. For the sake of completeness, the Statement of Defense does not allege, and Azerbaijan has provided no evidence, that Mr. Bahari was not the investor in Coolak Baku and Shuvalan Sugar, or that Mr. Bahari was not the investor in Anya Sultan or the Carpets.

2. Chartabi Contracting was the General Contractor on Caspian Fish

226. As discussed above, Mr. Bahari contracted with Chartabi Contracting for each of Coolak Baku, Shuvalan Sugar, and Caspian Fish (Chartabi Contracting also carried out Mr. Bahari's projects in Iran[283]).

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281 Secretariat Second Report, ¶¶ 3.25-3.26.

282 Secretariat Second Report, ¶¶ 3.26-3.27.

283 **C-280** Letter from Samad Chartaby, the CEO of Chartabi Metalworking Industries, 9 April 2024.

227. One of Mr. Bahari's project managers, Mr. Elchin Suleymanov, confirms that Chartabi Contracting was the general contractor for Caspian Fish. He also recalls that Chartabi Contracting undertook the considerable earthworks and excavation for the Caspian Fish site. As the site contained a large depression, Chartabi had to grade and level out the area, which required intensive manual labor and machinery.[284]

228. Mr. Bahari expands on this and describes the massive civil works that Chartabi Contracting had to undertake on the Caspian Fish land plot:

a. Caspian Fish's land plot in Khirdalan sat on a large depression that covered 70% of the land, with soft clay soil. This posed a significant engineering problem in terms of grading and leveling.[285]

b. Bringing in construction grade sand and gravel would have been very expensive and would have involved a lot of trucks and travel time to and from the sites.[286]

c. Chartabi Contracting suggested the idea of prospecting in the immediate area to find suitable fill material. Chartabi Contracting undertook this task and found suitable sand and gravel in the hills near the construction site.[287]

d. Chartabi Contracting brought in a large number of Kamaz trucks to take the fill material from the discovered deposit and bring it to the construction site.[288]

e. The process involved layering the fill material onsite around 20 cm at a time; Chartabi Contracting would then use loader graders to even it out; then use rollers to compact and press the fill material. The layered process was repeated many times until the construction site was leveled.[289]

f. Chartabi Contracting brought in all of the bulldozers, loader graders, road rollers, trucks, and other equipment necessary for the civil works.[290]

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284 Suleymanov WS ¶ 29.

285 Bahari WS2 ¶ 23(a).

286 Bahari WS2 ¶ 23(b).

287 Bahari WS2 ¶ 23(b).

288 Bahari WS2 ¶ 23(c).

289 Bahari WS2 ¶ 23(d).

290 Bahari WS2 ¶ 23(d).

g. Coolak Baku and Shuvalan Sugar did not require this intensive filling, leveling, and compacting process, as both were located on firmer, leveled ground. However, Chartabi was present in both places to perform other necessary construction works.[291]

h. Of note, Mr. Bahari recalls that when Mr. Heydarov learned about the favorable sand and gravel deposit nearby, he took over the area and established a concrete materials factory, which, to Mr. Bahari's knowledge, became a monopoly. This allowed Mr. Heydarov to charge high prices on construction materials for projects in Azerbaijan.[292]

229. Additionally, Mr. Suleymanov explicitly rejects Mr. Zeynalov's assertion that Ahad Chartabi was a welder and did not operate a construction company.[293] Mr. Zeynalov's description of the construction works and manner of hiring at Caspian Fish is particularly unconvincing. Mr. Zeynalov states that:

[redacted][294]

230. Azerbaijan accepts this statement at face value, and in fact goes a step further to state that "[t]here was no "construction company" working on the Caspian Fish building site at any time, nor was one required."[295] Azerbaijan's defense on this point is unsound.

231. It is inconceivable that a major construction project could be completed by informally hiring local workers, without the need for a general contractor. For a project of Caspian Fish's size and complexity, a general contractor would be required to: (1) draft the required civil and mechanical engineering plans; (2) engage in complex project management, including scheduling, management of building materials, equipment, fuel, vehicles, manpower, and other resources; (3) subcontract (as needed) for heavy machinery for earthworks, as well

291 Bahari WS2 ¶ 23(e).

292 Bahari WS2 ¶ 23(b).

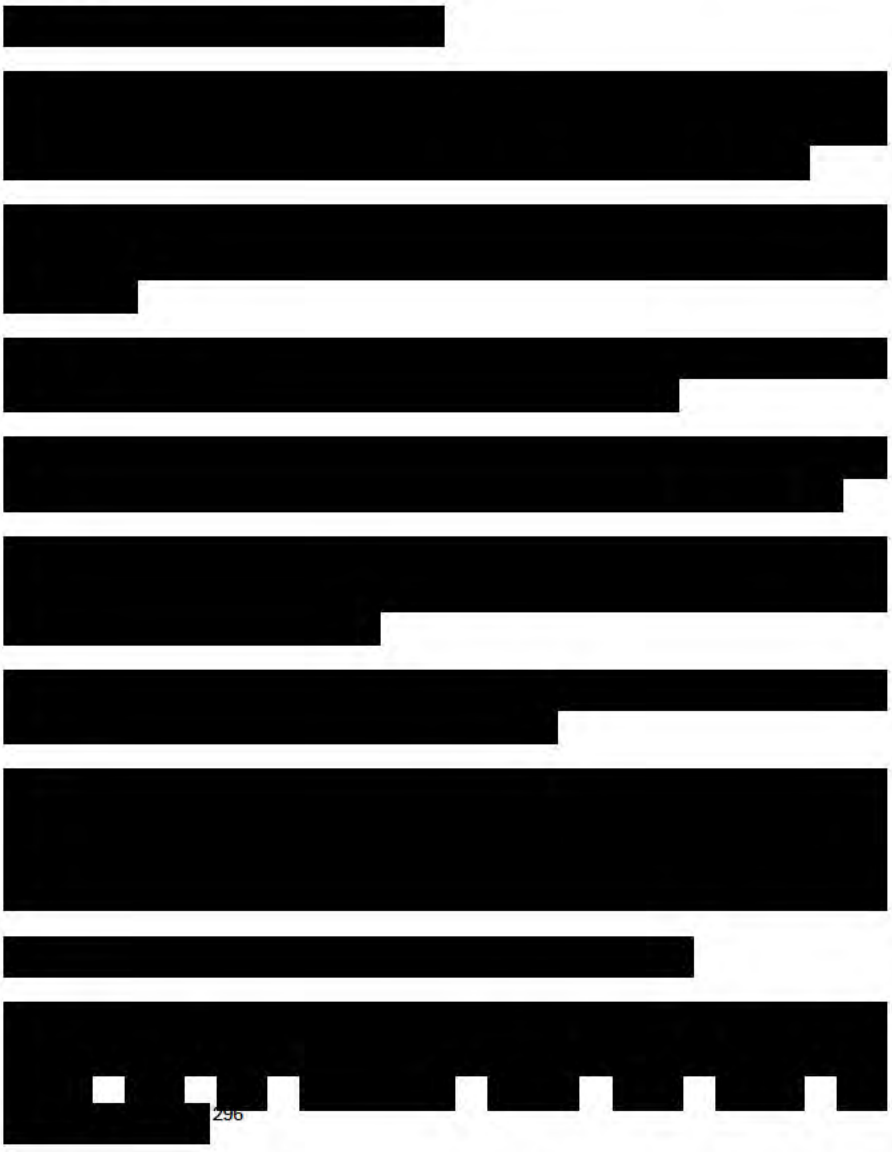
293 Suleymanov WS ¶ 30; Zeynalov WS ¶ 28.

294 Zeynalov WS ¶ 28 (emphasis added).

295 SoD ¶ 89.

as more specialized works such as water, sewage, and electrical works; and (4) maintain sufficient cash flow to pay labor and equipment costs as the project progressed to completion. In addition, coordinating the various placement of utilities to match the layout of the forthcoming machinery would have required skilled project management.

232. The scope of works in the Chartabi Contract for Caspian Fish gives a sense of the scale of work to be performed:


[redacted][296]

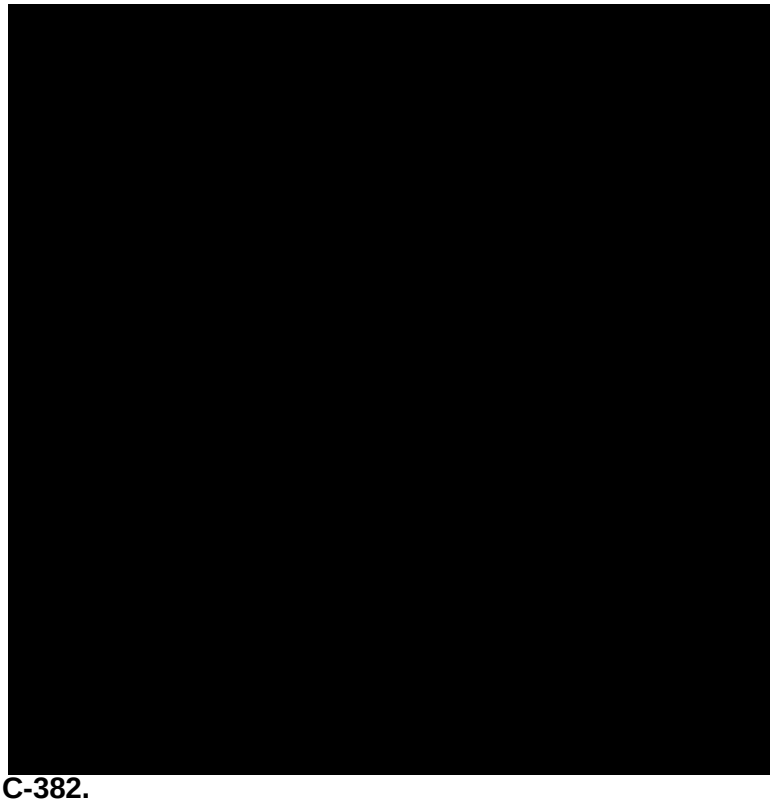
233. The idea that the Caspian Fish project could be constructed entirely with an *ad hoc*, unspecialized labor force, with no planning, and no project management oversight by a

296 **C-092** Chartabi Contracting Caspian Fish Construction Contract, 10 May 1999, p. 1.

general contractor is, simply put, absurd. Claimant provides images of the completed Caspian Fish facilities as a reminder of its scale, complexity, and sophistication:

C-382.

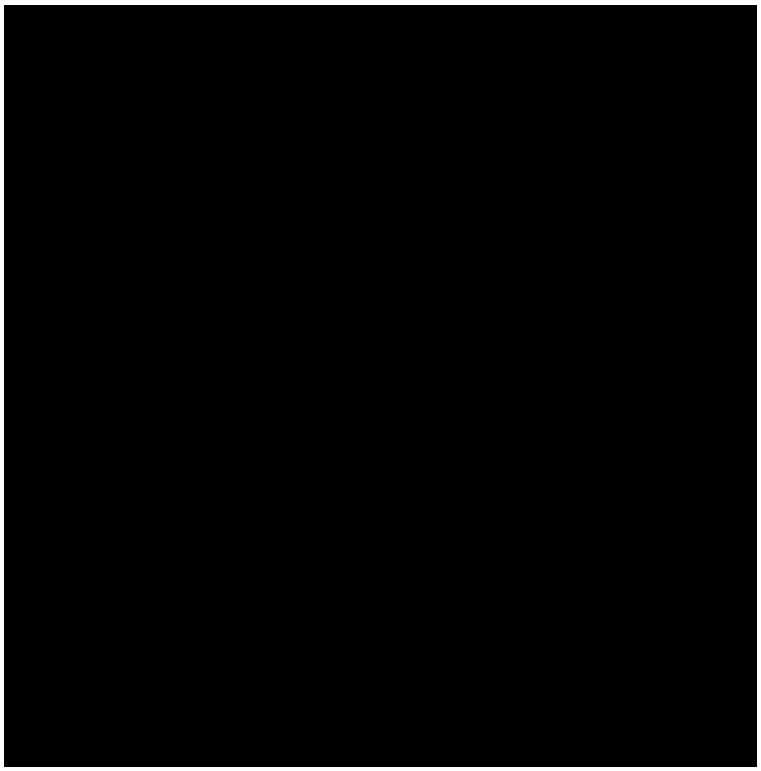
C-382.



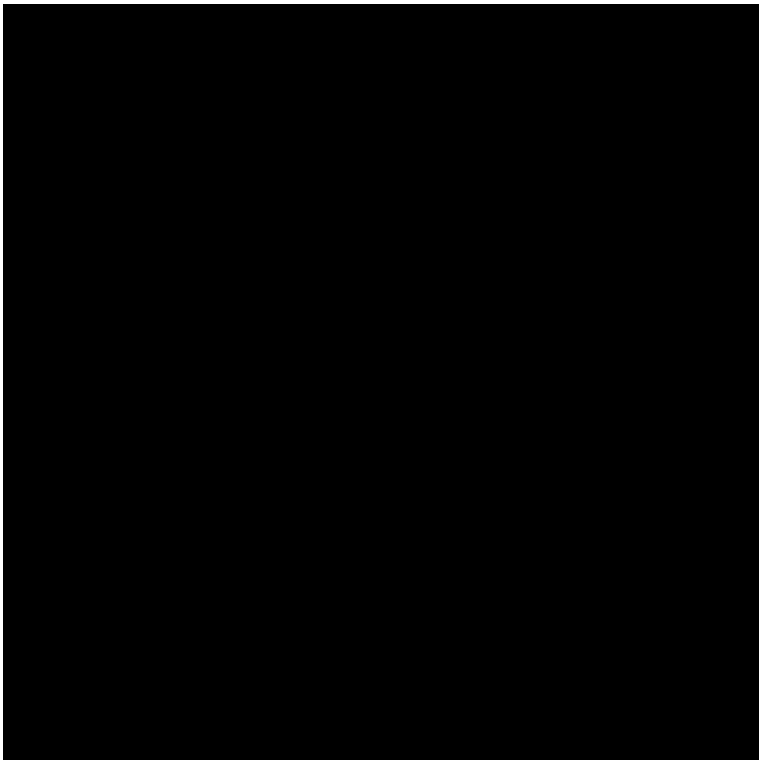
C-382.

C-382.

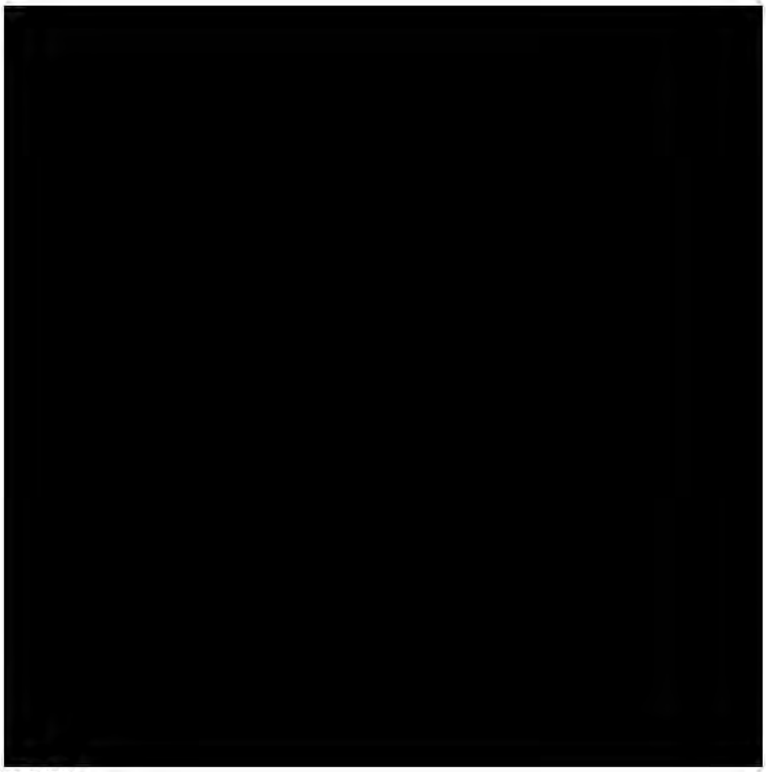
C-382.



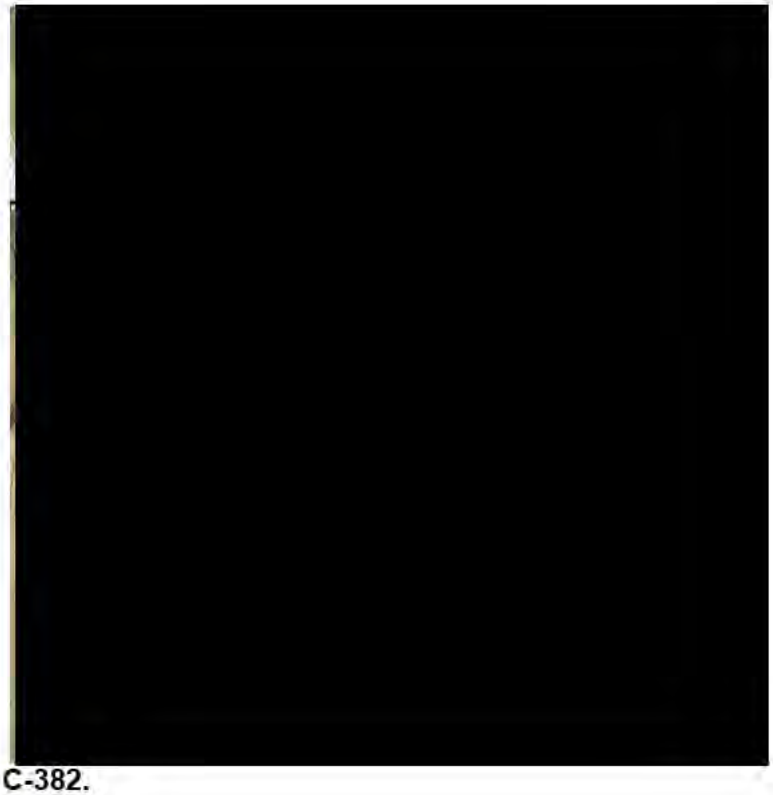
C-382.



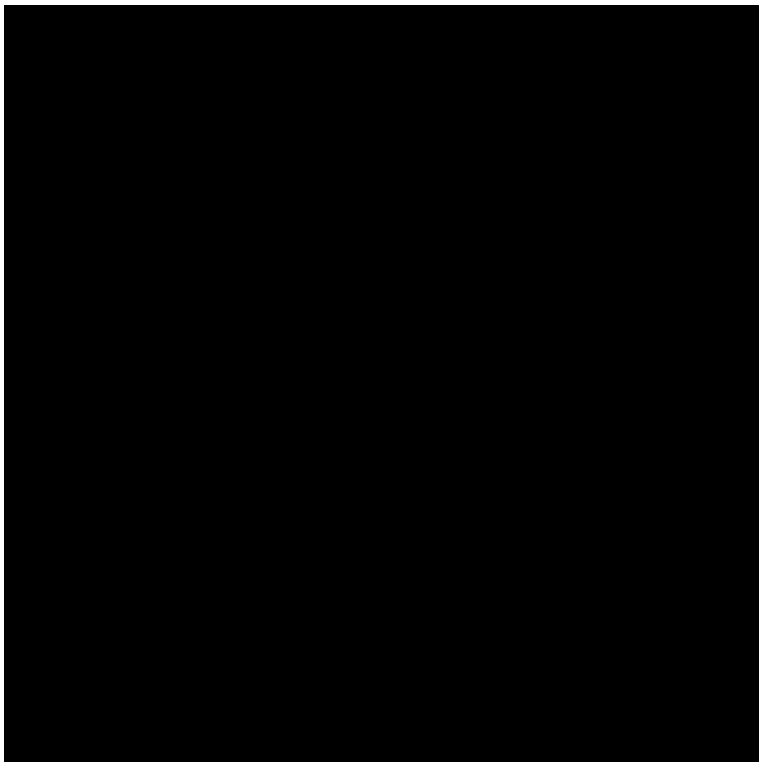
C-382.



C-382.



C-382.



C-382.

234. Elsewhere, Azerbaijan's allegation that there could be no Chartabi Contracts because only the Caspian Fish LLC entity held a license to carry out construction works is a *non sequitur*.[297] *First*, merely because the LLC entity received a license does not prove that Chartabi Contracting did not perform the works.

235. *Second*, and more importantly, that license was granted on 21 December 2000.[298] By that time, Caspian Fish was nearly complete – and less than 2 months away from its 10 February 2001 Grand Opening.[299] Presumably, Azerbaijan does not take the position that the entire construction occurred within a two month time frame; assuming so, this necessarily means that a contractor performed the works well before the LLC entity was even incorporated (in September 2000) – which was Chartabi Contracting. For the same

297 SoD ¶ 89; **R-123** Licence granted to the LLC by the State Committee for Construction and Architecture, 21 December 2000.

298 Of note, Claimant's Document Request no. 106 requested production of documents relating to this alleged license. Respondent failed to produce any responsive documents.

299 SoC ¶¶ 123-143; Suleymanov WS ¶ 40.

reason, merely because Azerbaijan finds (or chooses to produce) no records of Chartabi Contracting registration in Azerbaijan does not mean it did not perform the works.[300]

236. *Finally*, Secretariat assessed the reasonableness of the $56 million investment amount for Caspian Fish by reviewing 19 fish/seafood facilities in order to identify a median construction cost/capacity ratio.[301] Caspian Fish's reported $56 million investment amount – which includes $28.8 million for the Chartabi Contract –fits squarely within the range of the other plants, thus indicating that the $56 million Amount Invested figure is reasonable. In other words, a fish processing facility of Caspian Fish's size and production capacity carries a significant construction cost, which in turn implicates a significant spend for general contracting services.

237. Thus, on balance, Mr. Bahari has met his burden of proving that he hired Chartabi Contracting on all three projects (Coolak Baku, Shuvalan Sugar, Caspian Fish) and has equally proved payment for a large portion of the total combined price. Conversely, Azerbaijan's theory that a general contractor was "not required" on such a large, combined set of projects is implausible, and unconvincing.

3. Azerbaijan Cannot Establish that Mr. Bahari Was Not the Investor in Caspian Fish

238. The Statement of Defense halfheartedly submits that Mr. Bahari did not actually spend his own money to build Caspian Fish, but that he was somehow provided money to pay for the substantial construction and equipment required.[302] Azerbaijan's evidence not only fails to support this allegation, but it raises serious concerns about the credibility of Azerbaijan's evidence overall.

239. Azerbaijan relies on witness statements of Messrs. Kerimov and Hasanov who "confirm their understanding that Mr Heydarov or his holding company Gilan was the ultimate investor behind the project."[303] Neither Azerbaijan nor these two witnesses submit any documentary evidence to support this "understanding." In fact, on their own testimony,

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300 SoD ¶ 90.

301 Secretariat Second Report, ¶¶ 3.27-3.28; Table 6.

302 SoD ¶¶ 97, 243(c).

303 SoD ¶ 97 (emphasis added).

Messrs. Kerimov and Hasanov were not present during the construction and development of Caspian Fish.[304]

240. Mr. Zeynalov appears to recall Mr. Bahari was "[redacted]" [305] But Mr. Zeynalov, who claims he was involved with Caspian Fish, does not, and cannot, actually state that Minister Heydarov or Gilan were the investor(s). He merely suggests that money used to construct Caspian Fish was provided by Mr. Masoudi, who is represented to have received money from "[redacted]" [306] Thus, Mr. Zeynalov proffers no affirmative, substantiated statement that Mr. Bahari was not the investor in Caspian Fish – this is because Mr. Zeynalov knows that is not the truth.

241. Faced with unreliable and unsubstantiated witness testimony, Azerbaijan produces various documents that were "provided from Caspian Fish's archives."[307] The first group of these documents, exhibited as **R-89** to **R-95**, are said to be "payments [ ] made for equipment from a Caspian Fish account at 'Atabank'" and that "these include[ ] direct payments to suppliers under the very contracts that Mr Bahari asserts were paid by him personally…."[308] These alleged payment documents are, at best, unreliable; at worst, they are fabricated for the purpose of this Arbitration. In any event, the documents do not support Azerbaijan's argument that Mr. Bahari was not the investor in Caspian Fish.

242. The corporate records of Caspian Fish BVI do not corroborate the company ever having an "Atabank" account in 2000 (which is when the alleged payments in R-89 to R-95 took place) or at any point before at least 2011 (which is the last date available for such corporate information). Pursuant to the NPOs obtained by Mr. Bahari from the BVI courts, former registrars of Caspian Fish BVI produced a:

a. "Caspian Fish Co. Inc. Registers and Datasheet" dated 3 May 2007;[309] and

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304 Hasanov WS ¶ 7 ([redacted])

305 Zeynalov WS ¶ 31.

306 Zeynalov WS ¶ 11.

307 SoD ¶ 95.

308 SoD ¶ 95.

309 **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007, p. 3.

b. "Caspian Fish Co. Inc. Registers and Datasheet" dated 1 February 2011.[310]

243. Both of these Datasheets list Caspian Fish BVI as having a bank account at "Barclay's Bank (Suisse) SA" as of 23 May 1999. An "Atabank" account is not listed on either Datasheet. Therefore, any alleged payment by Caspian Fish BVI from an Atabank account is unsupported by these corporate records.[311]

244. Mr. Bahari confirms that he is not aware of a Caspian Fish BVI account at Atabank and he never received any payments from such an account.[312]

245. Mr. Chin Kwee (C.K.) Hay, the founder and director of MSSR. Victroplex House of Machinery SDN. BHD ("**Victroplex**") has reviewed the two alleged payment orders to Victroplex (**R-92** and **R-93**) and states that he does not recall ever receiving payment from a bank account at Atabank; he only received payment from Mr. Bahari's bank account at Commerzbank.[313]

246. Additionally, the alleged payment by Atabank to "NISSEI ASB GMBH" (**R-90**) is false for at least two reasons. (i) The Nissei Tehran Branch Office handled the orders;[314] and (ii) all payments went directly to Nissei Japan; the German office, Nissei ASB GmbH, was never involved and did not receive any payments.

247. Mr. Bahari has identified Mr. Zeynalov's signature on each of **R-89** to **R-95**, specifically, Mr. Zeynalov's signature is next to the word(s) "Chief"[315] or the "General Manager."[316]

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310 **C-107** Caspian Fish Co. Inc. Registers and Datasheet, 1 February 2011, p. 4.

311 In response to Claimant's Document Production Request No. 44 ([redacted]"), Azerbaijan produced a "Letter from Atabank to the Ministry of Justice of the Republic of Azerbaijan dated 18 September 2000" discussing Caspian Fish Co. Azerbaijan opening a temporary Atabank account on 8 September 2000 (**C-278** [Respondent Document Production - 044_03] Letter from Atabank to the Ministry of Justice of the Republic of Azerbaijan, 18 September 2000). That is not the "Caspian Fish Co. Inc." (Caspian Fish BVI) account that **R-89** to **R-95** are allegedly associated with each of **R-89** to **R-95**, it is a Caspian Fish LLC account.

312 Bahari WS2 ¶ 21(a).

313 Hay WS ¶¶ 11-12.

314 Secretariat First Report, **SEC-71**.

315 **R-90** Atabank payment order from Caspian Fish Co Inc to Nissei ASB, 10 August 2000; **R-92** Atabank payment orders from Caspian Fish Co Inc to Victorplex, 10 August 2000; **R-94** Atabank payment order from Caspian Fish Co Inc to RFC Electronic, 10 August 2000.

316 **R091** Atabank payment order from Caspian Fish Co Inc to Mr Bahari's account at Commerzbank, 18 August 2000; **R-93** Atabank payment orders from Caspian Fish Co Inc to Victorplex, 1 September 2000; **R-95** Atabank payment order from Caspian Fish Co Inc to Schiller and Mayer, 1 September 2000.

Mr. Zeynalov did not, and would not, have had any authority to issue payments from a Caspian Fish BVI bank account (even if such an account existed). Further, Azerbaijan has refused to identify who specifically provided it with **R-89** to **R-95**,[317] but the signatures point to Mr. Zeynalov; he will need to explain the provenance and irregularities of these documents under oath at the merits hearing.

248. Finally, in light of the various anomalies apparent from **R-89** to **R-95**, Claimant requested that Azerbaijan produce the originals for inspection by Claimant's forensic expert.[318] Despite undertaking to seek to obtain the originals, Azerbaijan failed to produce any of them and did not provide a detailed description of its efforts, as directed by the Tribunal.[319]

249. In view of the above, **R-89** to **R-95** are not reliable evidence, and they raise significant questions about the propriety of Azerbaijan's broader allegation that Mr. Bahari did not personally pay for equipment he purchased for Caspian Fish.

250. In any event, **R-89** to **R-95** do not actually offer any support that Mr. Bahari was not the investor in Caspian Fish: these documents allegedly show payments to vendors from an unproven bank account of Caspian Fish BVI, a company which Mr. Bahari was the majority owner and Director. Mr. Bahari also had exclusive authority to enter into contracts via the Caspian Fish BVI representative office in Azerbaijan.[320]

251. Azerbaijan also takes an unintelligible, and unbelievable, position in relation to the alleged significance and involvement of International N.A.T Limited (BVI) ("**INL**") in the construction of Caspian Fish.

252. *First*, Azerbaijan admits that it has "*very little information on the provenance of*" 41 invoices from INL.[321] Nonetheless, it then submits these invoices and a related summary as its evidence in support of its Defense, as **R-31** and **R-48**.

253. Due to the unknown provenance of the INL invoices, Azerbaijan asserts that:

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317 **C-387** Letter from Claimant's Counsel to Quinn Emanuel regarding sources of exhibits, 13 January 2024; **C-388** Letter from Quinn Emanuel to Claimant's Counsel, 26 January 2024.

318 Claimant's Document Inspection Requests, Annex 1 to the Tribunal's Letter of 28 May 2024, Request Nos. 13 to 19.

319 **C-418** Annex 3 to the Tribunal's Letter of 28 May 2024 – Protocol for Document Inspection, 28 May 2024.

320 **R-110** Power of Attorney from Caspian Fish Co Inc to Mr Bahari, 14 April 1999.

321 SoD ¶ 243(b).

> It is unlikely that INL was in fact carrying out the construction services set out in the invoices, given the documentary record does not otherwise support the participation of INL in the construction of Caspian Fish; nor does Mr Zeynalov recall INL as a company involved in the construction at the time.[322]

254. Despite these significant critiques as to the reliability and provenance of the INL invoices, and specifically the statement that "[i]*ts highly unlikely INL was in fact carrying out the construction services*," Azerbaijan sees fit to conclude that:

> it appears that these [INL] documents, which describe the "performed work" as including the "construction of the Fish Plant", as well as the "Assembling of equipment", total USD 24.5 million, <u>are contemporaneous records of the total amount invested in Caspian Fish</u>.[323]

255. Thus, even on its own case, Azerbaijan's conclusion that the INL invoices "*are contemporaneous records of the total amount invested in Caspian Fish*" is extremely dubious.

256. Amazingly, Azerbaijan then doubles down on the alleged significance of INL, stating that:

> Evidently, Mr Bahari did not pay the INL invoices: he relies on the purported Chartabi Contract and fails to mention INL at all. While it is sufficient to establish that Mr Bahari did not contribute to the costs of these invoices, it is also apparent that the only other party who would have paid these costs is Mr Heydarov, or Gilan. Azerbaijan notes in this connection that INL appears to have been registered at the same time as ICCI.[324]

257. It is correct that Mr. Bahari has never heard of INL, he was never aware of any INL invoices, and he never made any related payments.[325] Mr. Bahari denies that INL ever carried out work on the Caspian Fish facility.

258. Azerbaijan makes the tenuous contention that it must be Mr. Heydarov or his company, Gilan, that paid the INL invoices. This is because "*INL appears to have been registered at the same time as ICCI*," and "*the company number of INL is 264391 and the company*

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322 SoD ¶ 243(c); Mr. Zeynalov states this more affirmatively: "[redacted] (Zeynalov WS ¶ 7).

323 SoD ¶ 243(c) (emphasis added).

324 SoD ¶ 243(c) (internal citations omitted).

325 Bahari WS2 ¶ 21(c).

number of ICCI Limited is 264392."[326] This is a flimsy submission, and even more peculiar considering the Statement of Defense asserts that Azerbaijan "*has no direct knowledge of the ownership or control of ICCI*"[327] and appears to otherwise take the position that Minister Heydarov does not own ICCI (which is demonstrably false[328]).

259. Notwithstanding Azerbaijan's astounding leaps in logic and baseless reliance on the INL invoices, Azerbaijan asks the Tribunal to conclude that the INL invoices demonstrate both "*the total amount invested in Caspian Fish*" and that Mr. Heydarov or his company, Gilan, were the investors. The paucity of support for these conclusions speaks for itself.

260. *Second*, even if Azerbaijan's porous logic about the significance of the INL invoices was not grounded in contradictions, an actual review of the INL invoices further establishes that they are unreliable and disconnected from reality.

261. The first INL invoice dated 9 February 1999 ("09/02/1999") is said to "[redacted]" "[redacted]" (BVI) and "[redacted]" "[redacted]" (Azerbaijan).[329]

[redacted]

(**R-31**, p. 1)

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326 SoD ¶ 243(c), fn. 634.

327 SoD ¶ 232.

328 Messrs. Heydarov and Khanghah are listed as Directors of ICCI in the Register of Transfers dated 6 January 2005 (**C-115** ICCI Limited Register of Transfers, 6 January 2004, pp. 6-7). That same Register notes that Messrs. Heydarov and Khanghah are also Directors of International N.A.T Limited (BVI). *Id*.

329 **R-31** Invoices from International N.A.T Limited to Caspian Fish Co. Inc (BVI), 1999-2000, p. 1.

262. However, this 9 February 1999 INL invoice pre-dates the existence of Caspian Fish BVI ("Caspian Fish Co. Inc."), which was incorporated on 5 March 1999;[330] *and* Caspian Fish BVI's representative office ("Caspian Fish Co. Azerbaijan"), which was established on 27 April 1999. Thus, the invoices are addressed to entities that do not exist.

263. The second and third INL invoices – dated 10 March 1999 ("10/03/1999") and 8 April 1999 ("08/04/1999")[331] – are again marked "[redacted]" "[redacted]" (BVI) and "[redacted]" "[redacted]" (Azerbaijan), when the representative office had not yet been established.[332]

264. Thus, at least the first three INL invoices are issued to corporate entities that do not even exist.

265. The INL invoices also do not track or accurately represent the project schedule and construction of Caspian Fish.

266. Civil works for Caspian Fish began in 1998, with construction of major structural elements of the buildings in the Spring of 1999, completion of the major construction by the start of 2000, and a final construction payment by Mr. Bahari to Chartabi in September 2000.[333]

    a. The first, second, third, fourth, and fifth INL invoices, from February to June 1999, are all said to be for "[redacted]" for a total of US$ 2 million.[334] Thus, according to the INL invoices, US$ 2 million was spent by June 1999 *before* any mobilization, civil works, or construction was carried out. This is not correct, these activities took place in at least 1998.

    b. The INL invoices from July to October 1999 were issued for "[redacted]" for a total of US$ 1.5 million.[335] In November and December 1999, another two invoices are issued for "[redacted]

330 **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007.

331 **R-31** Invoices from International N.A.T Limited to Caspian Fish Co. Inc (BVI), 1999-2000, pp. 2-3.

332 **C-003** Charter of the Representative Office of Caspian Fish Co. Inc (BVI), 27 April 1999.

333 Suleymanov WS ¶¶ 28-33; Bahari WS2 ¶¶ 21(b), 22-23; Ramazanova WS ¶ 8; **C-281** Iran Melli Bank Check from Coolak Shargh to Ahad Chartabi dated 30 September 2000.

334 **R-31** Invoices from International N.A.T Limited to Caspian Fish Co. Inc (BVI), 1999-2000, pp. 1-5.

335 **R-31** Invoices from International N.A.T Limited to Caspian Fish Co. Inc (BVI), 1999-2000, pp. 6-9.

[redacted]" for a total of US$ 1.2 million.[336] Again, these invoices are inconsistent with the actual project, namely because major construction was complete by the start of 2000.

c. An INL invoice dated 27 December 1999 is the first mention of "[redacted]" for US$ 3 million.[337] Although, that is an advance payment, so apparently construction had not actually begun.

d. It is only the 31 January 2000 INL invoice where we see "[redacted]" first mentioned, for US$ 1 million.[338] However, major construction was already done by January 2000.

e. The final INL invoice is dated 29 December 2000 and is for "[redacted]" for US$ 1 million.[339] As previously stated, a final construction payment by Mr. Bahari to Chartabi was made in September 2000.[340]

267. Additionally, Secretariat's Second Report notes that "[redacted]"[341]

268. According to the INL invoices that Azerbaijan has produced as **R-31** (and the summary as **R-48**), the construction of the Caspian Fish facility began in January 2000 and concluded in December 2000, which is approximately one year.[342] One need not be a construction scheduling specialist to conclude that it is not plausible that the entire planning, civil works, and construction of Caspian Fish, and the installation of all the equipment, took only one year. Caspian Fish was a substantial and complex manufacturing facility, as demonstrated by the additional photographs that have been provided with Mr. Elchin Suleymanov's witness statement.[343]

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336 **R-31** Invoices from International N.A.T Limited to Caspian Fish Co. Inc (BVI), 1999-2000, pp. 10-11.

337 **R-31** Invoices from International N.A.T Limited to Caspian Fish Co. Inc (BVI), 1999-2000, p. 12.

338 **R-31** Invoices from International N.A.T Limited to Caspian Fish Co. Inc (BVI), 1999-2000, p. 15.

339 **R-31** Invoices from International N.A.T Limited to Caspian Fish Co. Inc (BVI), 1999-2000, p. 41.

340 **C-281** Iran Melli Bank Check from Coolak Shargh to Ahad Chartabi, 30 September 2000.

341 Secretariat Second Report, ¶ 7.27.

342 **R-48** Summary of Invoices from International N.A.T. Limited to Caspian Fish Co. Inc (BVI).

343 Suleymanov WS ¶ 45; **C-382** Pictures of Caspian Fish, undated.

269. Whoever produced the INL invoices was unfamiliar with the actual planning and construction of Caspian Fish. If that is Mr. Heydarov or Gilan, as Azerbaijan submits, or Mr. Khanghah, whose signature appears at the bottom of each of the INL invoices,[344] then the INL invoices themselves demonstrate that these individuals and Gilan were not involved in the construction of the Caspian Fish facility in any meaningful way.

270. *Third*, Azerbaijan's statement that the '[redacted]' in the INL invoices '[redacted]'[345] is unreliable in light of the numerous issues discussed above.

271. As a starting point, not a single INL invoice refers to any costs for the purchase of equipment for Caspian Fish. Rather, the INL invoices only refer to '[redacted]'[346] Equipment for the Caspian Fish facility was a substantial cost, comprising more than US$ 11.118 million of the money Mr. Bahari invested.[347]

272. At the very least, the exclusion of any equipment costs from the total US$ 24.5 million in INL invoices establishes that this figure cannot represent the total amount invested in Caspian Fish.

273. Similarly, Mr. Kerimov's (unsubstantiated) recollection also contradicts the INL documents, since his personal assessment of the total costs to build the Caspian Fish plant is '[redacted]'[348] In fact, Mr. Kerimov states that Caspian Fish '[redacted]' meaning that in his view, construction should have cost between US$ 8-10 million,[349] which again contradicts the INL invoices.

274. Indeed, it is Azerbaijan's own case that Mr. Bahari was given extremely broad and exclusive powers and decision-making capability under a power of attorney from Caspian

344 **R-31** Invoices from International N.A.T Limited to Caspian Fish Co. Inc (BVI), 1999-2000.

345 SoD ¶ 243(c); **R-48** Summary of Invoices from International N.A.T. Limited to Caspian Fish Co. Inc (BVI).

346 **R-31** Invoices from International N.A.T Limited to Caspian Fish Co. Inc (BVI), 1999-2000, pp. 14, 32, 33, 38, 40.

347 Secretariat Second Report, Table 16 and Table 18.

348 Kerimov WS ¶ 19.

349 Kerimov WS ¶ 19.

Fish BVI in relation to activities in Azerbaijan.[350] This exclusive control and power is consistent with Mr. Bahari being the investor for Caspian Fish.

275. *Finally*, as part of document production in the Arbitration, Azerbaijan volunteered or was directed to produce documents about Caspian Fish.[351] However, Azerbaijan did not produce any documents to support its position that another person or company, other than Mr. Bahari, paid for all of the costs to build the Caspian Fish facility. This is because no such documents exist and Azerbaijan's position on this issue is false.

276. Overall, Mr. Bahari has substantively established that he invested at least US$ 44.418 million for Caspian Fish, and that on a balance of probabilities, that amount is US$ 56 million. Secretariat's meticulous analysis of over two hundred individual documents, and multiple contemporaneous press reports, corroborate Mr. Bahari's investment of these sums.

277. By comparison, Azerbaijan has not produced any evidence, or presented credible facts, which would support its allegation that there was any other investor in Caspian Fish.

B. PRESIDENT ALIYEV AND MINISTER HEYDAROV WERE SHAREHOLDERS IN CASPIAN FISH BVI AND THE REPRESENTATIVE OFFICE

278. Evidence produced by both Parties in this Arbitration establishes that President Aliyev and Minister Heydarov were shareholders in Caspian Fish BVI and its representative office in Azerbaijan. It is not credible for the Statement of Defense to suggest otherwise.

279. The Statement of Defense admits that Caspian Fish BVI was established on 5 March 1999; that the Directors at the time of incorporation were Mr. Bahari and Mr. Khanghah; and that the shareholders were Mr. Bahari (40%), Mr. Khanghah (10%), and ICCI (50%).[352] It is also admitted that on 27 April 1999, Caspian Fish BVI registered a representative office in Azerbaijan.[353]

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350 SoD ¶¶ 237(a); **R-110** Power of Attorney from Caspian Fish Co Inc to Mr Bahari, 14 April 1999.

351 See Claimant's Document Request No. 079.

352 SoD ¶ 231; **C-002** Memorandum and Articles of Association for Caspian Fish Co. Inc., 5 March 1999; **C-107** Caspian Fish Co. Inc. Registers and Datasheet, 1 February 2011.

353 SoD ¶ 235; **R-85** Application to the Ministry of Justice for the registration of the Representative Office, 19 April 1999; **C-003** Charter of the Representative Office of Caspian Fish Co. Inc., 27 April 1999.

280. The Caspian Fish BVI Shareholders Agreement was signed on the same day Caspian Fish BVI registered a representative office in Azerbaijan.[354] Although Azerbaijan does not accept the authenticity of the Caspian Fish BVI Shareholders Agreement, it does accept that according to the terms of that Agreement, there was an agreement that:

[redacted][355]

281. Under those same terms, [redacted]"[356] These terms are consistent with the breakdown of shareholding in Caspian Fish BVI: ICCI (Aliyev / Heydarov) 50%; Bahari 40%; Khanghah 10%.

282. Azerbaijan neither confirms nor denies that President Aliyev and Minister Heydarov were shareholders in Caspian Fish BVI via ICCI; instead Azerbaijan avers that it has no direct knowledge of the ownership or control of ICCI.[357] Even if Azerbaijan had no direct knowledge (which is denied), documentary evidence establishes that President Aliyev and Minister Heydarov owned and/or controlled Caspian Fish BVI from its incorporation until at least 2022, likely later. The Statement of Claim established that:

a. The Caspian Fish BVI Shareholders Agreement was signed by Messrs. Ilham Aliyev, Heydarov, Khanghah, and Bahari.[358] This clearly demonstrates that President Aliyev and Minister Heydarov were 50% shareholders in Caspian Fish BVI, otherwise there is no reason they would be entitled to "[redacted]"[359]

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354 SoC ¶ 75; **C-004** Shareholders Agreement between Messrs Aliyev, Heydarov, Bahari and Khanghah, 27 April 1999.

355 SoD ¶ 236 citing **C-004** Shareholders Agreement between Messrs Aliyev, Heydarov, Bahari and Khanghah, 27 April 1999.

356 SoD ¶ 236 citing **C-004** Shareholders Agreement between Messrs Aliyev, Heydarov, Bahari and Khanghah, 27 April 1999.

357 SoD ¶ 232.

358 SoC ¶¶ 75-78.

359 **C-004** Shareholders Agreement between Messrs Aliyev, Heydarov, Bahari and Khanghah, 27 April 1999.

b. Messrs. Ilham Aliyev, Heydarov, Khanghah, and Bahari opened a bank account with Vereinsbank in the name of Caspian Fish on 13 November 2000.[360] The fact that this Vereinsbank account was not fully established until 13 November 2000, in no way detracts from its relevance or makes is "suspect," as Azerbaijan contends.[361] The Vereinsbank document is signed by Messrs. Ilham Aliyev, Heydarov, Khanghah, and Bahari, which is not contested by Azerbaijan, and it clearly reflects the 27 April 1999 date the Caspian Fish BVI representative office was registered in Azerbaijan.

c. Minister Heydarov was a Director of ICCI when it was incorporated on 16 January 1998.[362]

d. Ms. Arzu Aliyeva and Ms. Leyla Aliyeva, who are the daughters of President Aliyev (and the daughters of Vice-President Mehriban Aliyeva and granddaughters of Mr. Pashayev), held a controlling 51 percent of the shares in Caspian Fish BVI through the AHL Companies from 17 August 2006 until at least 20 March 2019.[363] The AHL Companies acquired their shares in Caspian Fish BVI from none other than ICCI.[364]

e. Nijat Heydarov and Tale Heydarov, who are the sons of Minister Heydarov, were UBOs of Caspian Fish BVI from at least 2017 to when the company was struck off the BVI registry on or about 25 July 2022.[365]

f. Minister Heydarov's English lawyer, Mr. David Pow, who also acts on behalf of Nijat Heydarov and Tale Heydarov,[366] filed an Application for bearer shares in relation to ICCI's incorporation on 16 January 1998,[367] approximately one year before ICCI acquired 500,000 shares in Caspian Fish BVI. Mr. Pow also held various oversight or Director positions in companies that owned shares in Caspian

360 SoC ¶ 77.

361 SoD ¶ 233.

362 **C-115** ICCI Limited Register of Transfer, 6 January 2004, p. 6.

363 SoC ¶¶ 231-240; see also SoC ¶¶ 265-270.

364 SoC ¶¶ 226, 231.

365 SoC ¶¶ 241-244; see also **C-147** FHCS Caspian Fish Co. Inc. Draft Register of Ultimate Beneficiary Owners, 30 June 2017; **C-148** FHCS Communication regarding Caspian Fish UBOs, 16 March 2022.

366 **C-149** KYC bundle on Tale and Nijat Heydarov, 2019-2021, pp. 2-3.

367 **C-260** ICCI Limited BVI Application for Bearer Shares, April 1998.

Fish BVI;[368] and Mr. Pow was the sole Director of Caspian Fish BVI from 18 February 2021 until it was struck off the BVI registry at his instruction.[369]

283. Additionally, if the Statement of Defense is taken at face value, Azerbaijan repeatedly insists that it was Minister Heydarov, and his company Gilan, that were the investors in Caspian Fish (which Claimant rejects), which would only logically occur if Minister Heydarov had an interest in ICCI and Caspian Fish BVI.[370]

284. In response to Claimant's Document Production Request No. 2, Azerbaijan produced a collection of documents that were in its possession, custody, and control '[redacted]" Azerbaijan's documents demonstrate that Mr. David Pow, Minister Heydarov's English lawyer, was directly involved in the incorporation of Caspian Fish BVI in March 1999 and the establishment of the representative office in April 1999.[371] In fact, Mr. Pow acted as Chairman of Caspian Fish BVI when the company resolved to establish a representative office in Azerbaijan.[372]

285. Mr. Pow therefore had oversight over Caspian Fish BVI from its inception to when it was struck off the BVI register and dissolved (+24 years). Yet, when Mr. Bahari sought to interview and obtain documents from Mr. Pow about Caspian Fish BVI, Mr. Pow adamantly refused to cooperate and stated that he had no relevant information,[373] and Azerbaijan robustly objected to his participation as a third-party witness.[374]

286. Finally, in response to Claimant's Document Production Request No. 33,[375] Azerbaijan produced a letter from Khazri Solutions LLC to Quinn Emanuel dated 10 May 2024 that

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368 SoC ¶¶ 225 (Southmead), 228 (Carnivore).

369 SoC ¶¶ 225, 245-252.

370 SoD ¶¶ 97.

371 **C-282** Certificate of Incorporation of Caspian Fish Co Inc in the BVI; **C-283** Memorandum and Articles of Association of Caspian Fish Co Inc (BVI), pp. 42-43.

372 **C-284** Minutes of the Meeting of the Board of Directors of Caspian Fish Co Inc, 11 November 1998.

373 **C-419** Letter from Rosenblatt to Claimant's Counsel, 29 December 2023.

374 Respondent's Response to the Claimant's Application for Permission to Seek Third Party Production, 26 April 2024.

375 Claimant's Document Production Request No. 33 asked for [redacted]

was said to respond to that Request and others[376] (Gilan Holding LLC changed its name to Khazri Solutions LLC as of 16 May 2023[377]). In that letter, Minister Heydarov "[redacted]" but, based on an incoherent rationale, "[redacted]"[378]

287. In view of the foregoing, it is not credible for Azerbaijan to suggest that President Aliyev and Minister Heydarov neither owned nor controlled Caspian Fish BVI.

C. AZERBAIJAN FACILITATED AND MAINTAINED THE SEIZURE OF CASPIAN FISH

1. Caspian Fish LLC Was Fraudulently Established Without Mr. Bahari's Knowledge

288. The Statement of Claim identifies "Caspian Fish Co. Azerbaijan MMC" (previously defined as "Caspian Fish MMC" or "Caspian Fish LLC") as the company that took over the assets and operations of Caspian Fish (BVI), and was therefore involved in the taking of Caspian Fish from Mr. Bahari.[379] In fact, much of the Statement of Claim is centered on establishing a connection between Mr. Bahari's investment in Caspian Fish and this unknown Caspian Fish LCC entity.[380] This was because "Mr. Bahari has no prior knowledge, ownership, or control of this MMC entity."[381]

289. Until the Statement of Defense, Caspian Fish LLC was largely a mystery. As demonstrated below, Mr. Bahari's lack of knowledge about Caspian Fish LLC is not a result of his lapse in memory, or because his unfamiliarity is "patently untrue,"[382] but because Azerbaijan and Mr. Bahari's business partners in Caspian Fish BVI colluded to conceal the creation of Caspian Fish LLC from him.

[redacted]"

376 **C-319** [Respondent Document Production - 033_01] Letter from Khazri Solutions, 10 May 2024.

377 **C-318** [Respondent Document Production - 075_01] Letter from Khazri Solutions, 10 May 2024.

378 **C-319** [Respondent Document Production - 033_01] Letter from Khazri Solutions, 10 May 2024.

379 SoC ¶¶ 257, 284-291.

380 SoC ¶¶ 254-291.

381 SoC ¶¶ 254-255.

382 SoD ¶ 245.

290. As part of its document production,[383] Azerbaijan produced Caspian Fish BVI's "Minutes of a Meeting of the Board of Directors" held on 15 August 2000 in Bristol, UK.[384] At some point these Minutes were translated into Azerbaijani and a Azerbaijani Government seal was placed in the lower right corner.

291. According to the Minutes, it was resolved that Caspian Fish BVI would register and open a "Branch Enterprise" within Azerbaijan and that Mr. Bahari would be Branch director.

292. The Minutes record that this 15 August 2000 meeting was attended by Mr. Khanghah, as Chairman and one of the Directors of Caspian Fish BVI, and a Ms. Anne Salder (Secretary) as "Present."[385] Mr. Bahari, as the only other Director of Caspian Fish BVI at that time, is not listed as attending, appointing an alternate, or having any notice of the Meeting.

293. Section 106 of Caspian Fish BVI's Articles of Association provides that:

[redacted][386]

294. Since only Mr. Khanghah attended, this means there were less than 2 Directors present, and there was no quorum, and all resolutions arising from that meeting were unauthorized and ineffective. Thus, Caspian Fish BVI did not have the authority to establish and register Caspian Fish LLC in Azerbaijan in 2000. This position has been confirmed by Mr. Bahari's BVI counsel in the Applebys Legal Opinion.[387]

295. Based on this unauthorized resolution, Azerbaijan submits **R-56** as a Caspian Fish BVI Application to the Ministry of Justice dated 29 August 2000 requesting that an LLC be registered in Azerbaijan.[388] Azerbaijan alleges that Mr. Bahari signed this application in the presence of notary. However, Mr. Bahari has no recollection of signing this document,

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383 Claimant's Document Request No. 44 "relating to the registration of Caspian Fish LLC on 19 September 2000 under Certificate No. 893."

384 **C-290** Minutes of the Meeting of the Board of Directors of Caspian Fish Co Inc, 15 August 2000.

385 **C-290** Minutes of the Meeting of the Board of Directors of Caspian Fish Co Inc, 15 August 2000.

386 **C-002** Caspian Fish Co. Inc. Memorandum and Articles of Association, 5 March 1999, p. 27 (PDF).

387 **C-389** Applebys Legal Opinion, 18 June 2024, ¶¶ 52-53.

388 SoD ¶ 245; **R-56** Application to the Ministry of Justice for the registration of the LLC, 29 August 2000.

and his name written in manuscript is misspelled, as is his name where it is typewritten in the document.[389] According to Claimant's independent forensic expert, the "[redacted]" she has examined.[390]

296. Additionally, the document states it is for the registration of "[redacted]"[391] Thus, even if Mr. Bahari had signed this document (which is denied), he would not have known this was to register an LLC in Azerbaijan. Azerbaijan is well aware of this, but is unable to explain away this glaring and purposeful irregularity.[392]

297. Azerbaijan also submits **R-57** as the Charter of Caspian Fish LLC dated 11 September 2000,[393] which it asserts is also signed by Mr. Bahari. Again, Mr. Bahari has no recollection of signing this document, and his name in manuscript under his alleged signature is misspelled.[394] According to Claimant's independent forensic expert, "[redacted]"[395] The independent forensic expert also notes that "[redacted]"[396] While Ms. Morrissey is unable to form a conclusion on the significance of this from a forensic perspective, it would be highly unusual to have a signature line for one person but not another in a document.

298. The Charter itself contains a significant error: it states that the "[redacted]" of Caspian Fish LLC is "[redacted]" That is not the correct name, in any form, of Caspian Fish BVI.

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389 Bahari WS2 ¶ 21(h).

390 Morrissey Report, ¶ 3.4.11(i).

391 **R-056** Application to the Ministry of Justice for the registration of the LLC, 29 August 2000.

392 SoD ¶ 245, fn. 640.

393 SoD ¶ 246; **R-057** Charter of the LLC, 11 September 2000.

394 Bahari WS2 ¶ 21(i).

395 Morrissey Report, ¶ 3.5.8.

396 Morrissey Report, ¶ 3.5.3.

299. Equally unusual is a handwritten document, which is said to be from and signed by the "[redacted]" purporting to approve Caspian Fish LLC's registration.[397] The approval, which notes the LLC is "[redacted]" relies on the unauthorized and ineffective decision taken at "[redacted]" which is a reference to the "Minutes of a Meeting of the Board of Directors" discussed above.[398] It also seems highly unusual for a State organ, i.e. the Ministry of Justice, to confirm compliance with requirements of legislation in a manuscript document. In fact, there is no letterhead or other indication that this document was not simply written on a blank piece of paper at some point in time.

300. Moreover, the 18 September 2000 signed receipt form the Ministry of Justice (**R-56**) that Azerbaijan further relies on, which is said to confirm a duty payment on behalf of the LLC,[399] does not appear to contain any signature, much less Mr. Bahari's signature, and again, the manuscript spelling of Mr. Bahari's name is misspelled.

301. The Statement of Defense contends that after Caspian Fish LLC was registered on 19 September 2000, "a number of letters were sent to various State authorities on behalf of the LLC, with Mr. Bahari's name and title as General Director appearing in the signature block" (**R-116** to **R-121**).[400] Whether this description is a purposeful sleight of hand, Azerbaijan's reference to the "signature block" in these letters is misleading. None of these letters contain Mr. Bahari's signature. These letters do not support Azerbaijan's deteriorating narrative that Mr. Bahari was aware of and involved with the incorporation of Caspian Fish LLC.

302. Finally, Azerbaijan produces a document entitled "Protocol of LLC Meeting on addendum to Charter dated 6 October 2000," which allegedly records "a meeting of the LLC at which Mr. Bahari was present" and that Mr. Zeynalov was acting as "Chairman."[401]

303. A review of this "Protocol of LLC Meeting" shows that Mr. Bahari was an "Invited Person" – there is no indication that he attended. By comparison, Mr. Zeynalov is recorded as the

397 **C-291** Opinion on foundation documents of Caspian Fish Co Azerbaijan, undated.

398 **C-290** Minutes of the Meeting of the Board of Directors of Caspian Fish Co Inc, 15 August 2000.

399 SoD ¶ 247; **R-56** Application to the Ministry of Justice for the registration of the LLC, 29 August 2000, p. 1.

400 SoD ¶ 248; **R-116** to **R-121**.

401 SoD ¶ 249; **R-122** Protocol of LLC Meeting on Addendum to the Charter, 9 October 2000.

Chairman. In circumstances where Azerbaijan's own case is that Mr. Bahari was the only person authorized to conduct the affairs of Caspian Fish LLC, why would Mr. Bahari be simply "invited"? Moreover, according to the "Protocol of LLC Meeting," at this meeting it was resolved to amend article 8.2 of the Charter of the LLC. As the General Director of the LLC, Mr. Bahari should have been present.[402] After that meeting, on 28 October 2000, Mr. Zeynalov wrote to the Ministry of Justice to request that the Caspian Fish LLC Charter be amended.[403] This change to the Charter was acknowledged and applied by the Ministry of Justice, via a handwritten note.[404] Subsequently, the amendment to the Charter was applied by the Ministry of Justice, with Mr. Zeynalov, not Mr. Bahari, signing on behalf of Caspian Fish LLC.[405] Reviewing these documents, there is zero evidence that Mr. Bahari was aware of and involved with the incorporation and activities of Caspian Fish LLC.

304. Overall, on Azerbaijan's own evidence and documents, Caspian Fish LLC was incorporated and operated without Mr. Bahari's knowledge or involvement. The timing of these activities, in the months leading up to the Caspian Fish facility being completed, and a few months before the grand opening in February 2001, demonstrate that the incorporation of the LLC was an initial phase of the broader plan to take Caspian Fish from Mr. Bahari and ensure he could do nothing about it.

2. Mr. Bahari Was Expelled From Caspian Fish and Azerbaijan Against His Will

305. In its Statement of Defense, Azerbaijan asserts that it "has no direct knowledge of Mr. Bahari's personal movements" on the day of the Caspian Fish opening ceremony.[406] This is not a credible statement. President Heydar Aliyev and other heads of the Azerbaijani government and other foreign governments participated in the opening ceremony. With such high profile officials in attendance, the Azerbaijani State security most certainly took precautions to know who was attending and where they were during

402 **R-57** Charter of the LLC, 11 September 2000, pp. 4-5 (PDF).

403 **C-402** [Respondent Document Production - 049_01] Letter from Mr. Zeynalov, Deputy Director for General Operations, to F. Mammadov, 28 October 2000.

404 **C-403** [Respondent Document Production - 049_02] Handwritten Amendment to the Articles of Association of Caspian Fish Co Limited Liability Company, undated.

405 **C-404** [Respondent Document Production - 049_03] Certificate of Registration and Approval of Modification of Charter of Incorporation of Caspian Fish Co Limited Liability Company, 11 April 1999.

406 SoD ¶ 257.

the ceremony.[407] This would have included Mr. Bahari, as the founder of Caspian Fish and a high-profile Iranian businessman.

306. In a failed attempt to absolve Azerbaijan from any involvement, and cast doubt on what actually happened to Mr. Bahari, the Statement of Defense submits a contrived narrative about the events that occurred on the day of the opening ceremony and in the weeks and months thereafter. In doing so, Azerbaijan asks the Tribunal to accept a counterfactual that not only has zero evidential support, but is *prima facie* implausible.

307. Azerbaijan's position is that Mr. Bahari was the principal and duly authorized person to interact with the Government on behalf of both Caspian Fish BVI and Caspian Fish LLC.[408] It is also Azerbaijan's position that Mr. Bahari was responsible for the development and construction of the Caspian Fish facility.[409] Thus, despite being the most influential and intimately involved person in the creation of Caspian Fish, it is also Azerbaijan's case that (i) Mr. Bahari did not bother to come to the Caspian Fish facility to attend the opening ceremony; (ii) he came to the facility but did not interact with anyone or attend the ceremony; or (iii) he voluntarily left the facility before the opening ceremony started for unexplained reasons. To lend a semblance of support to these outlandish scenarios, Azerbaijan relies on Mr. Zeynalov's testimony that "[redacted]"[410] and the statement that "Azerbaijan does not know the reason for his absence."[411] Azerbaijan also asserts that Mr. Bahari knew and approved of Mr. Janke Hansen (a complete outsider and person unknown to Mr. Bahari and not ever involved with Caspian Fish) taking Mr. Bahari's place at the opening ceremony.[412] This is the extent of Azerbaijan's position as to why Mr. Bahari did not attend the opening ceremony. It is implausible and it is a lie.

308. Azerbaijan's takes a similar unsubstantiated, but highly accusatory, tact when questioning whether Mr. Ilham Aliyev threatened Mr. Bahari on their telephone call while Mr. Bahari

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407 **C-063** Dieter Klaus Photograph – Azerbaijan security agents, 10 February 2001; **C-064** Dieter Klaus Photograph – Heydar Aliyev departure 1, 10 February 2001; **C-065** Dieter Klaus Photograph – Heydar Aliyev departure 2, 10 February 2001; **C-066** Dieter Klaus Photograph – Heydar Aliyev departure 3, 10 February 2001; **C-067** Dieter Klaus Photograph – Heydar Aliyev departure 4, 10 February 2001.

408 SoD ¶¶ 13, 85, 236, 247-248, 239, 268, 647, 648.

409 SoD ¶¶ 237-244.

410 Zeynalov WS ¶ 36; SoD ¶ 257(a).

411 SoD ¶ 257(a).

412 SoD ¶ 257(b).

was being taken in a car by State security agents away from the opening ceremony.[413] Notably, Azerbaijan asserts that it "has no knowledge of" this because it was "a conversation between private individuals acting in their private capacities."[414] In that case, and without Mr. Ilham Aliyev being made available to provide his recollection of that conversation, Mr. Bahari's testimony is the only evidence on this issue.[415] In those circumstances, it is highly likely that Mr. Bahari and Mr. Ilham Aliyev had a heated conversation.

309. Mr. Bahari was hospitalized after the trauma of being removed from the opening ceremony and threatened by Mr. Ilham Aliyev. Azerbaijan says this is a fabrication by each of Mr. Bahari, Mr. Moghaddam, and Mr. Kousedghi.[416] The thin basis for Azerbaijan's position is that: (i) Mr. Bahari never mentioned being hospitalized before in public interviews or his prior Notice of Arbitration; and (ii) Mr. Zeynalov and Mr. Junke Hansen claim to have seen Mr. Bahari shortly after the opening ceremony.[417] As to the latter, the only documentary evidence Azerbaijan puts forward in support is Mr. Junke Hansen's hotel invoice, showing he checked out of the hotel three days after the opening ceremony, on 13 February 2001. This document lends no actual support. Mr. Hansen's recollection cannot be verified because he was only willing to produce an affidavit for this Arbitration. In reality, Mr. Hansen is unwilling to engage as a witness because he knows what he has said in his affidavit is untrue.

310. Mr. Zeynalov's propensity and motivation to lie in this Arbitration is already established and troubling. Nonetheless, Mr. Zeynalov testifies that [redacted]"[418] This is an unusual admission. In response to Claimant's Document Production Request No. 206 for documents "[redacted]" Azerbaijan produced a letter stating that Mr. Bahari did not receive outpatient or inpatient treatment in January or

413 SoD ¶ 258.

414 SoD ¶ 258.

415 Bahari WS1 ¶ 71.

416 SoD ¶ 259(a).

417 SoD ¶ 259(b) and (d).

418 Zeynalov WS ¶ 36.

February 2001.[419] Azerbaijan has also produced a letter from Republic Hospital stating that no information was found about Mr. Bahari being admitted to the Hospital for the years 2000-2001.[420] There is an obvious contradiction between Mr. Zeynalov and the two hospital letters that Azerbaijan procured. Either way, Mr. Bahari affirms that he was hospitalized after the opening ceremony as a result of the trauma he experienced.[421]

311. Azerbaijan's denial that there was a plot to kill Mr. Bahari is to be expected,[422] as is the letter from Mr. Abbasov to Quinn Emanuel denying that any such plot ever occurred.[423] This is not the first time that Mr. Abbasov has changed his official position at the behest of the ruling families of Azerbaijan. In 2002, the Ministry of National Security ("MNS"), an Azeri intelligence agency that Mr. Abbasov led, investigated Caspian Fish and found that Caspian Fish had entered into "a clandestine agreement" and purchased 38,500 kgs of fish and other products, but officially registered only 68.4 kgs.[424] The MNS investigation concluded that Caspian Fish (and other local participants in the scheme) "[redacted]"[425] However, Mr. Kerimov, on behalf of Caspian Fish, disputed the agency's findings, and the MNS issued a correction.[426] Mr. Abbasov later publicly denied the MNS's official statements that Caspian Fish was importing illegal caviar.[427] Following that Caspian Fish investigation, Mr. Abbasov was stripped of power,[428] and was replaced at the MNS by a police officer with unrelated experience, at least in part due to the "[redacted]"[429] In a 2003 interview (that was published in 2018), it was further reported that the 2002 MNS correction was politically coerced.[430] Taken together, it appears that Mr. Heydarov (or people acting on behalf of Messrs. Heydarov and/or current

419 **C-292** Letter from Neftchilar Hospital, 22 May 2024.

420 **R-176** Letter from the Republican Clinical Hospital to SSPI, 22 December 2023.

421 Bahari WS2 ¶¶ 28-29.

422 SoD ¶¶ 260-263.

423 **R-065** Letter from Mr Namig Abbasov to Quinn Emanuel Urquhart and Sullivan UK LLP, 14 December 2023.

424 **C-405** News Bank, Azeri Fishing Firm Urges Security Ministry to Drop, 18 June 2002.

425 **C-406** Echo Newspaper, Ministry of National Security Accuses Caspian Fish Azerbaijan, 2002. As already discussed, Caspian Fish has likely underreported its profit and other financial statements in this Arbitration and/or to the Azerbaijan tax authorities.

426 **C-407** Department of Economics, MNB Clarifies, 20 June 2002.

427 **C-408** Dia AZ, Garib Mammadov May be Arrested, 27 January 2012.

428 **C-409** Dia AZ, Who is Targeting Namig Abbasov and Why, 23 November 2012.

429 **C-408** Dia AZ, Garib Mammadov May be Arrested, 27 January 2012; **C-410** Azadliq, A Result of the Cheerful and Optimistic Personnel Reform, 29 October 2015.

430 **C-411** Igbal Aga Zada, My Word, Volume 3 Extract (pp. 60 to 62), 2018.

President Aliyev, both being shareholders in Caspian Fish), retaliated against Mr. Abbasov for the MNS investigation. It is likely Mr. Abbasov learned his lesson and adjusted his recollection of what he said to Mr. Kousedghi about Mr. Bahari.

312. Additionally, Azerbaijan relies on alleged "inconsistencies" in Mr. Kousedghi's testimony.[431] These contrived "inconsistences" do not support Azerbaijan's denial of the plot to kill Mr. Bahari. For example, Azerbaijan alleges there is an "inconsistency" because neither Mr. Kousedghi nor Mr. Bahari discuss in their first witness statements whether Mr. Kousedghi expressly told Mr. Bahari that he had been informed that there was a Government plot to kill him. There is no inconsistency: Mr. Kousedghi expressly states that Mr. Abbasov informed him in confidence that Mr. Bahari's life was in danger, and there was a plan to assassinate Mr. Bahari and make his death look natural.[432] Even if Mr. Kousedghi did not tell Mr. Bahari exactly what Mr. Abbasov told him in confidence, Mr. Kousedghi testifies that he told Mr. Bahari the Iranian Embassy could not guarantee his safety and he advised Mr. Bahari to leave Azerbaijan as soon as possible.

313. Seeking documentary support for its counterfactual, Azerbaijan exhibits a "number of documents provided to Azerbaijan from Caspian Fish's files post-dating the opening ceremony" which allegedly were signed by Mr. Bahari personally or addressed to him "in circumstances where it was clear he continued to work at Caspian Fish in Azerbaijan."[433]

314. As with much of Azerbaijan's evidence, a review of the actual documents it relies on demonstrates they are unreliable or do not stand for the proposition asserted:

    a. Mr. Bahari does not recall speaking with Mr. Klawitter of Kuehne & Nagel on 13 February 2001.[434] In any event, Mr. Bahari confirms he was in Azerbaijan on this date, and it is possible he spoke with Mr. Klawitter by telephone from the hospital.[435]

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431 SoD ¶ 261.

432 Kousedghi WS1 ¶ 19.

433 SoD ¶ 264(d).

434 Bahari WS2 ¶ 29.

435 SoD ¶ 264(d); **R-64** Letter from Mr Rolf Klawitter of Kühne and Nagel (AG and Co) KG to Caspian Fish, 14 February 2001.

b. The 26 March 2001 letter that is said to be from Caspian Fish to DFT. GmbH does not contain Mr. Bahari's authentic signature.[436]

c. The 26 March 2001 letter from Caspian Fish to Mr. Marc Valluet of Caviar House does not contain Mr. Bahari's authentic signature.[437] Moreover, the letter refers to Mr. Bahari in the third person, it is not his letter.[438]

d. The 29 March 2001 letter from Caspian Fish to Baadar GmbH does not contain Mr. Bahari's authentic signature.[439]

e. The 30 March 2001 letter from Mr. Marc Valluet of Caviar House is in response to an undated fax allegedly from Mr. Bahari.[440]

f. The 7 April 2001 "memorandum of understanding" with Mr. March Valluet of Caviar House does not contain Mr. Bahari's authentic signature.[441] In fact, the document reads: "On 07.04.2001, The following understandings was made between Mr Marc Valluet from Caviar House, and Mr M. A. Khaneghah from Caspian Fish Co Baku / Azerbaijan."[442] There is no mention of Mr. Bahari because he did not attend that meeting and he did not sign this memorandum.

315. Mr. Bahari does not know why these letters and documents were allegedly sent out in his name in late March and early April 2001.[443] Potentially, whoever had expelled Mr. Bahari from Caspian Fish was keen to maintain the illusion to equipment suppliers and contracting partners that Mr. Bahari was still physically at the company.

316. Mr. Kerimov's allegation that he saw Mr. Bahari at Caspian Fish in February 2001, and that Mr. Bahari continued to work there is untrue and unsubstantiated. [444] However, if

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436 SoD ¶ 264(d); **R-60** Letter from Caspian Fish Co Azerbaijan to "DFT GmbH", 26 March 2001; Morrissey Report, ¶¶ 3.7.1-.3.7.5.

437 Morrissey Report, ¶¶ 3.6.1-.3.6.6.

438 SoD ¶ 264(d); **R-59** Letter from Caspian Fish to Caviar House, 26 March 2001.

439 SoD ¶ 264(d); **R-61** Letter from Caspian Fish Co Azerbaijan to Baader, 29 March 2001; Morrissey Report, ¶¶ 3.8.1-3.8.9.

440 SoD ¶ 264(d); **R-127** Letter from Mr Marc Valluet of Luxal France to Caspian Fish Co, 30 March 2001.

441 SoD ¶ 264(d); **R-157** Contract between Caspian Fish Co Azerbaijan and Caviar House, 7 April 2001; Morrissey Report, ¶¶ 3.11.1-3.11.7.

442 **R-157** Contract between Caspian Fish Co Azerbaijan and Caviar House, 7 April 2001, p. 1.

443 Bahari WS2 ¶ 30.

444 Bahari WS2 ¶ 29; SoD ¶ 265(b); Kerimov WS ¶ 11.

Mr. Kerimov is to be believed (which is denied), it is relevant that he states he never saw Mr. Bahari at Caspian Fish again after that. Equally relevant is that Mr. Kerimov states that "[redacted]"[445] This is a clear admission that Minister Heydarov wasted no time in-between expelling Mr. Bahari from Caspian Fish and finding someone to replace him.

317. Likewise, Mr. Zeynalov states that he accompanied Mr. Bahari and his family to the airport when they left Baku.[446] Mr. Zeynalov conspicuously provides no time frame for when that happened, but clearly it was such a memorable event that Mr. Zeynalov recalls it more than 20 years later and he does not state that Mr. Bahari and his family ever returned to Azerbaijan.

318. Azerbaijan places significant weight on a letter it procured from its own State Border Services for the Statement of Defense which allegedly shows that Mr. Bahari exited and entered Azerbaijan at various times from mid-2000 to December 2001.[447] Azerbaijan acknowledges that there is no substantiating records for these alleged entries and exits, and there are gaps in the records due to human error when manual input was required before an automated system was implemented in September 2001 or because passport data could not be collected.[448]

319. This State Border Services letter also shows that after December 2001, Mr. Bahari did not enter Azerbaijan again until October 2013,[449] which is when Minister Heydarov granted Mr. Bahari safe passage to return to Azerbaijan to discuss the return of his investments.[450] This entry period is demonstrated by the 30-day visa Minister Heydarov issued Mr. Bahari on 7 October 2013.[451] If the State Border Services letter is accurate (which is denied), this verifies, on Azerbaijan's own evidence, that Mr. Bahari was not welcome and could not

445 Kerimov WS ¶ 9.

446 Zeynalov WS ¶ 42.

447 **R-58** Letter from the State Border Service of the Republic of Azerbaijan to the SSPI, 2 November 2023.

448 SoD ¶ 264(a), fn. 720. For example, for Mr. Bahari's daughter, listed as "Gloria Khalelpour Bahari," there is no departure date from Azerbaijan listed. Considering her death in Dubai on 21 May 2009, this is clearly incorrect (**R-58** Letter from the State Border Service of the Republic of Azerbaijan to the SSPI, p. 3).

449 **R-58** Letter from the State Border Service of the Republic of Azerbaijan to the SSPI, p. 3.

450 SoC ¶¶ 312-318.

451 **C-183** Azerbaijan visa for Mr. Bahari, 7 October 2013.

return to Azerbaijan unless he was given safe passage by the Government after December 2001.

3. Azerbaijan's State Apparatus Enabled and Is Complicit in an Illicit Takeover of Caspian Fish LLC

320. Azerbaijan's manifest and strategic decision to suppress documentation and information about Caspian Fish LLC in this Arbitration is staggering. Denying Mr. Bahari and the Tribunal the ability to know who owned and controlled Caspian Fish LLC, and how the Azerbaijani Government treated the company and its shareholders after Mr. Bahari was expelled, ensures that Azerbaijan's veil of uncertainty and deniability remains an intractable obstacle to the truth. While Azerbaijan's domestic laws are crafted to ensure there is no sunlight on these issues,[452] in the context of the Arbitration, maintaining this opacity is unjust, unacceptable, and must have consequences.

321. The Statement of Defense contains almost no discussion of the corporate activity, governance, or ownership of Caspian Fish LLC, beyond what is discussed about Mr. Bahari's alleged involvement incorporating the LLC in 2000. The Defense is equally vacuous when it comes to Caspian Fish BVI, which Azerbaijan continually claims it has no knowledge of.[453] Clearly those who owned and/or controlled Caspian Fish BVI, have full and intimate knowledge of Caspian Fish LLC. The glaring absence of any input from President Aliyev and Minister Heydarov in this Arbitration speaks for itself. It is indisputable that President Aliyev and Minister Heydarov and their families are both the catalysts and beneficiaries of the unlawful treatment of Mr. Bahari and his investments.

322. Given an opportunity to disclose documents to support its position that it has done nothing wrong vis-à-vis Caspian Fish, Azerbaijan opted to maintain its veil of uncertainty and deniability. With the exception of a handful of document production requests, Azerbaijan either produced nothing and provided no explanation for its silence, or Azerbaijan

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452 See e.g. Respondent's objections under Claimant's Document Request Nos. 29, 55, 56.

453 SOD ¶ 315. Azerbaijan's Part 3,V.I (p. 146) is entitled "Azerbaijan has no knowledge of corporate actions in relation to Caspian Fish that took place outside its jurisdiction or corporate structures which may relate to Caspian Fish." The manner in which Azerbaijan approaches this Arbitration, it would also have the Tribunal believe that it has no knowledge of corporate actions in relation to Caspian Fish that took place inside its jurisdiction. But that is untrue.

produced correspondence from State organs alleging that they do not have responsive documents.[454]

323. While Azerbaijan will predictably say that the significant duration of time resulted in this alleged absence of responsive documents, this is not supported by or consistent with the documents it has chosen to produce to date. For Caspian Fish LLC and Caspian Fish BVI, Azerbaijan produced a limited number of documents in its possession, custody, and control from the late 1990s and early 2000s. As a consequence, any alleged lacuna of responsive documents after those time periods is highly suspect and, as discussed below, supports numerous adverse inferences available to the Tribunal.

324. In reality, Azerbaijan's belligerent concealment in this Arbitration of information and documentation about Caspian Fish, and all of Mr. Bahari's investments, is a continuation of what Azerbaijan has done for the past 23 years. Fortunately for Mr. Bahari and those who have sought to assist him in recovering his investments, in this Arbitration Azerbaijan cannot unlawfully intimidate, jail, or otherwise prohibit them from standing up for the truth and rule of law.

325. Relatedly, and as discussed at various points in this Reply, where Azerbaijan did produce evidence or disclose documents, this has enabled Mr. Bahari to demonstrate Azerbaijan's broad malfeasance and unlawful activity vis-à-vis his investments. This is seen *inter alia* with the illegitimate and fraudulent registration of Caspian Fish LLC, the forged sale documents alleging Mr. Bahari's interests in Caspian Fish, a denial of justice in the proceedings involving both Coolak Baku and Anya Sultan, and a multitude of unsubstantiated falsehoods from Azerbaijan's fact witnesses.

326. Notwithstanding Azerbaijan's extensive efforts to hide how it enabled and engaged in the illicit takeover of Caspian Fish, Mr. Bahari has been able to establish the following.

a. Caspian Fish LLC Was Illegitimately Established Behind Mr. Bahari's Back

327. As already discussed, documentary evidence proves that Caspian Fish LLC was illegitimately established because the Caspian Fish BVI resolution that was relied on was

[454] See e.g. **C-311** Letter from the Ministry of Economy, 17 May 2024; **C-312** Letter from the Ministry of Finance, 22 May 2024; **C-313** Letter from the State Statistical Committee to the State Property Service, 19 April 2024; **C-314** Letter from Ministry of Justice, 24 April 2024; **C-315** Letter from SSPI, 23 May 2024; **C-316** Letter from Ministry of Emergency Situations, 8 May 2024.

ineffective pursuant to Caspian Fish BVI's Articles of Association and BVI law.[455] Azerbaijan relied on that resolution to incorporate Caspian Fish LLC.[456]

328. Moreover, the administrative process of establishing Caspian Fish LLC was fraudulent because Mr. Bahari was ostensibly the only person that had the authority to incorporate Caspian Fish LLC,[457] but the entire process was purposefully hidden from him while at the same time Mr. Bahari's forged signature is alleged to be on various incorporating documents.

b. Azerbaijan Affirmed Mr. Bahari's Removal from Caspian Fish LLC

329. Subsequent to Mr. Bahari being expelled from the Caspian Fish facility and from Azerbaijan, we now know that on 11 April 2002, Mr. Karimov, acting as the General Director of Caspian Fish LLC, applied to the "[redacted]" for a new Certificate of State Registration No. 893 for Caspian Fish LLC.[458] That application was expressly premised on the original Certificate having been lost. On its face, this application demonstrates the following:

a. Mr. Kerimov was then acting as the General Director of Caspian Fish LLC. Thus, by at least this point, Mr. Bahari's business partners had replaced Mr. Bahari as the General Director of Caspian Fish, and Azerbaijan recognized Mr. Kerimov's authority.[459] This is confirmed by Mr. Kerimov's witness statement.[460]

b. On 12 April 2002, the day after the application, the "AZERBAIJAN" newspaper published a notice stating that:

[redacted]

455 **C-290** [Respondent Document Production - 044_01] Minutes of the Meeting of the Board of Directors of Caspian Fish Co Inc., 15 August 2000; **C-389** Applebys Legal Opinion, 18 June 2024, ¶¶ 49-53.

456 **C-291** [Respondent Document Production - 044_02] Opinion on foundation documents of Caspian Fish Co Azerbaijan, undated.

457 **C-290** [Respondent Document Production - 044_01] Minutes of the Meeting of the Board of Directors of Caspian Fish Co Inc., 15 August 2000.

458 **C-293** Letter from Caspian Fish Co Azerbaijan to Ministry of Justice of the Republic of Azerbaijan (with attachments), 11 April 2002.

459 **C-293** Letter from Caspian Fish Co Azerbaijan to Ministry of Justice of the Republic of Azerbaijan (with attachments), 11 April 2002, p. 1.

460 Kerimov WS1 ¶ 8.

[redacted][461]

c. Notably, the headline of the "AZERBAIJAN" newspaper that same day is "[redacted]".[462]

d. The alleged loss of the original Certificate was affirmed by the Baku City Head Police Department on 15 April 2002.[463]

e. A Certificate of State Registration No. 893 for Caspian Fish LLC dated 17 May 2002 was issued by the Ministry of Justice of the Republic of Azerbaijan. That Certificate lists the legal form of investment as "[redacted]"[464]

330. The timing of this April 2002 application is consistent with the timeline of the concerted effort to take the Caspian Fish facility and its ownership from Mr. Bahari. It was only two months later, on 15 June 2002, that Mr. Khanghah presented Mr. Bahari with the forced sale document from Messrs. Aliyev and Heydarov, which improperly pressured Mr. Bahari into selling Caspian Fish.

331. Additionally, it cannot be a coincidence that the application was filed in conjunction with President Heydar Aliyev's meeting with the Iranian Foreign Minister. If Azerbaijan was going to strengthen its relations with Iran, it presumably had to address what had happened to Mr. Bahari. As Mr. Kousedghi testified, the taking of Caspian Fish and treatment of Mr. Bahari by the Azerbaijan Government "[redacted]"[465] Additionally, it has now been confirmed by Iranian Ambassador Ghazaei that Mr. Bahari's

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461 **C-293** Letter from Caspian Fish Co Azerbaijan to Ministry of Justice of the Republic of Azerbaijan (with attachments), 11 April 2002, p. 6.

462 **C-293** Letter from Caspian Fish Co Azerbaijan to Ministry of Justice of the Republic of Azerbaijan (with attachments), 11 April 2002, p. 5.

463 **C-293** Letter from Caspian Fish Co Azerbaijan to Ministry of Justice of the Republic of Azerbaijan (with attachments), 11 April 2002, p. 2.

464 **C-317** Duplicate of the state registration certificate of Caspian Fish Co Azerbaijan, 17 May 2002.

465 Kousedghi WS1 ¶ 26.

investments in Azerbaijan were approved and certified investments by the Iranian Government.[466]

332. A larger unanswered question exists: the Statement of Defense produced **R-116**, which is the original Certificate of Registration No. 893 for Caspian Fish LLC dated 19 September 2000.[467] This original Certificate was in the possession, custody, and control of the State; there is no mention of this being from the Caspian Fish archives like so many other dubious documents that Azerbaijan relies on. On Azerbaijan's own case, this original Certificate issued on 19 September 2000 was associated with Mr. Bahari in his role as General Director of Caspian Fish LLC.[468] Conversely, the new "replacement" Certificate is associated with Mr. Kerimov, as General Director of Caspian Fish LLC in April 2002, thereby demonstrating an attempt to expunge Mr. Bahari from the corporate record and Azerbaijan's complicity in the same.

c. The BVI Provides Transparency that Azerbaijan Strenuously Seeks to Frustrate

333. Through the NPOs that Mr. Bahari received from the BVI Courts, Mr. Bahari and the Tribunal are able to see the various corporate machinations of Caspian Fish BVI, which according to Azerbaijan, is the parent company of Caspian Fish LLC.[469] Information about Caspian Fish BVI is an important and indeed singular lens by which Mr. Bahari and the Tribunal are actually afforded an ability to see and understand who owns and controls Caspian Fish BVI, and potentially Caspian Fish LLC. Without this insight through the BVI, Azerbaijan would have more robustly denied that that President Aliyev and Minister Heydarov held any interest in Caspian Fish BVI, and therefore Caspian Fish LLC, beyond what is demonstrated by the 1999 Caspian Fish Shareholding Agreement that Mr. Bahari has been able to keep in his possession.

334. Contrary to how Azerbaijan seeks to frame this dispute, Mr. Bahari's claim in this Arbitration is not, and has never been, premised on the legality of what occurred in the BVI. (Although, we now see that there are numerous instances of fraud and other corporate illegality). Rather, what occurred with Caspian Fish BVI mirrors what was

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466 **C-279** Letter from Ambassador Ahad Ghazaei to Diamond McCarthy LLP, 31 March 2024.

467 SoD ¶ 248; **R-116** Certificate of Registration no. 893 for the LLC, 19 September 2000.

468 SoD ¶ 248.

469 SoD ¶ 246; **R-57** Charter of the LLC, 11 September 2000.

happening in Azerbaijan. Namely, the ownership of Caspian Fish BVI, and therefore Caspian Fish LLC, was systematically stripped from Mr. Bahari over a number of years through numerous fraudulent transactions.[470] On this basis, it is more probable than not that analogous Azerbaijani Government malfeasance was carried out in terms of Caspian Fish LLC's corporate administration and governance for the benefit of President Aliyev and Minister Heydarov and their respective families.

335. The prism of transparency that the BVI provides is unique and important to this dispute since Azerbaijan has assured that Caspian Fish related information and documents demonstrating Government malfeasance have never been available to Mr. Bahari and are not disclosed in the Arbitration.[471] For example, Azerbaijan has not produced a single responsive document to the following positive document production obligations:

a. Request 055: [redacted].

b. Request 058: [redacted].

c. Request 062: [redacted].

d. Request 071: [redacted].

470 SoC Part III, Sections F, G and H.

471 By strenuously opposing Mr. Bahari's Third-Party Document Production Application, Azerbaijan equally (and successfully) sought to ensure that any additional material and relevant information about what had happened in the BVI was also not disclosed.

336. Azerbaijan's failure to produce these documents, which necessarily must exist to some extent, directly contravenes the Tribunal's Procedural Order No. 6.

d. Incorporation of Caspian Fish LLC Put Azerbaijan In Control

337. The incorporation of Caspian Fish LLC in September 2000 and the actions subsequent are not as innocuous as Azerbaijan would like this Tribunal to believe. Azerbaijan contends that "[i]t is nonsense for Mr Bahari to suggest that the LLC 'took over the assets' of BVI Co. As Mr Bahari is well aware, the LLC was an asset of BVI Co, and it was the LLC that was established to own and develop the local business."[472] As discussed, Mr. Bahari was not well aware.

338. More importantly, the incorporation of Caspian Fish LLC, without Mr. Bahari's approval or knowledge as a Director of Caspian Fish BVI, much less as the person who expended years of his life and US$ 56 million to build the facility, was plainly done to bring this extremely valuable "asset" under the control of Azerbaijan and its kleptocratic system of governance. As a result, if Mr. Bahari had an issue with how his "asset" was treated, he had to contend with a Government that acts with fealty to enrich its ruling politicians and their families. And once he was expelled, Azerbaijan ensured Mr. Bahari had no ability to obtain legal or other recourse to recover his investments, much less obtain information of what was actually happening to them.

e. The Ownership of Caspian Fish LLC is Unclear, Even Today

339. Azerbaijan asserts that "[Caspian Fish LLC] was an asset of [Caspian Fish BVI], and it was [Caspian Fish LLC] that was established to own and develop the local business."[473] As discussed above, Azerbaijan spends considerable time and submits various documents to support its position that Caspian Fish BVI was the sole owner of Caspian Fish LLC. This appears to be consistent with Mr. David Pow's statement in September 2021 that:

[redacted]

472 SoD ¶ 246 (internal citations omitted).

473 SoD ¶ 246.

[redacted][474]

340. Yet, the Statement of Defense otherwise contains no discussion whatsoever about the ownership of Caspian Fish LLC after Mr. Bahari is expelled from the company and Azerbaijan in 2001. This is a glaring, yet purposeful, omission by Azerbaijan.

341. Accordingly, Mr. Bahari and the Tribunal can only guess that Caspian Fish BVI remained the sole shareholder of Caspian Fish LLC from 2000 to around 2022, which is when Mr. Pow confirmed to the company's BVI register that "[redacted]"[475] because the shares it held in Caspian Fish LLC were transferred "[redacted]"[476]

342. Azerbaijan was directed, but chose not to produce documents about the new owner of Caspian Fish LLC.[477]

343. Pasha Holding, which is one of the two giant holding companies concentrating the economic interests of the Pashayev family,[478] has written stating that its "Head of Group & Legal Compliance Department" has reviewed their corporate charts and there "[redacted]"[479] There is also apparently no "[redacted]

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474 **C-102** Email communications between D. Pow and FHCS, Re: 2021 compliance review Part 2, 23 September 2021, p. 11.

475 **C-103** FHCS email communications Re: 2021 compliance review Part 3, 15 March 2022, p. 2 (PDF).

476 **C-102** Email communications between D. Pow and FHCS, Re: 2021 compliance review Part 2, 23 September 2021, p. 11.

477 Claimant's Document Request No. 58 "[redacted]" The decision of the Tribunal: "[redacted]"

Claimant Document Request No. 71 "[redacted]" The decision by the Tribunal: "[redacted]".

478 Allen & Makarenko Report, ¶ 107.

479 **C-412** [Respondent Document Production - 076_01] Letter from Aytaj Gasimova, Head of Group Legal & Compliance Department / PASHA Holding LLC, to Anthony Sinclair, Quinn Emanuel Urquhart & Sullivan, 10 May 2024.

[redacted]."[480] It is difficult to decipher from the way this letter is crafted whether Pasha Holding has any current indirect interest in Caspian Fish, but in any event, it will not be providing any elucidating documents.

344. Likewise, Minister Heydarov's new company Khazri Solutions LLC, which became the new corporate form of Gilan Holding on 16 May 2023 for unexplained reasons,[481] responded to Claimant's Document Production Request Nos. 33 and 41,[482] stating that "[redacted]"[483]

345. The Statement of Claim established that, at some point, Minister Heydarov's Gilan Holding took over and owned Caspian Fish LLC. For example:

a. An archived version of a Gilan Holding website (currently no longer functioning), www.gilanfood.az, openly listed Caspian Fish as part of its portfolio of companies;[484]

b. A separate archived Gilan Holding website, http://azfpco.az, also lists Caspian Fish as part of its portfolio;[485] and

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480 **C-412** [Respondent Document Production - 076_01] Letter from Aytaj Gasimova, Head of Group Legal & Compliance Department / PASHA Holding LLC, to Anthony Sinclair, Quinn Emanuel Urquhart & Sullivan, 10 May 2024.

481 **C-318** Letter from Khazri Solutions, 10 May 2024.

482 Claimant's Document Request No. 33 "[redacted] Respondent stated in their objections: [redacted]"

Claimant's Document Request No. 41 "[redacted] Respondent stated in their objections: [redacted]

483 **C-319** Letter from Khazri Solutions, 10 May 2024.

484 **C-156** Gilan (gilanfood.az) archived website listing Caspian Fish accessed via 4 December 2020 snapshot through Google WayBack Machine.

485 **C-157** Gilan (azfco.az) archived website listing Caspian Fish, accessed via 21 June 2022, snapshot through Google WayBack Machine. The current version of the website does not mention Gilan Holding or Caspian Fish, and lists food products belonging to a brand called Milla.

c. Part of Gilan Holding's assets have been disclosed through investigative reporting, listing Caspian Fish LLC as one of over 350 companies owned by Minister Heydarov, his family members, and companies he established.[486]

346. In light of this evidence, and most certainly because the Statement of Defense strains to suggest that Minister Heydarov and Gilan paid for the Caspian Fish facility (which is entirely unsupported), the aforementioned Khazri Solutions LLC sent a 10 May 2024 letter to Quinn Emanuel in response to Claimant's Document Production Request No. 75, confirming that:

[redacted][487]

347. In the usual manner, even where a bit of information is disclosed to Mr. Bahari, it is incomplete, and purposefully opaque.

348. Who are these "[redacted]" that have held the shares in Caspian Fish LLC from 2000 to present? Is it Minister Heydarov? The Statement of Defense says Azerbaijan does not know.[488] Is it Minister Heydarov's sons, Nijat and Tale Heydarov, who Mr. Pow previously represented in May 2022 were the UBOs of Caspian Fish BVI?[489] In June 2017, they were understood to be the UBOs under Caspian Fish BVI's "Register of Ultimate Beneficial Owners."[490] However, Nijat and Tale Heydarov are unlikely to have held an interest in Caspian Fish LLC since 2000, as the Khazri Solutions letter contemplates, since they would have been 14 and 15 years old, respectively.[491]

349. Thus, by the Khazri Solutions letter, it may be concluded that it is not actually Caspian Fish BVI who owned the shares in Caspian Fish LLC since 2000, it was Gilan Holding or another related company or individual. This is, of course, contrary to Azerbaijan's whole position in the Statement of Defense, but it is consistent with the various investigative press reports discussed above. But both of these scenarios cannot be simultaneously

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486 **C-036** Meydan TV, The extraordinary businessman Kamaladdin Heydarov, 4 March 2018, pp. 3, 8 of PDF.

487 **C-318** [Respondent Document Production - 075_01] Letter from Khazri Solutions, 10 May 2024.

488 SoD ¶ 319.

489 **C-148** FHCS Communication regarding Caspian Fish UBOs, 16 March 2022.

490 **C-147** FHCS Caspian Fish Co. Inc. Draft Register of Ultimate Beneficiary Owners, 30 June 2017.

491 **C-149** KYC bundle on Tale and Nijat Heydarov, 2019-2021, pp. 5, 10.

true: Caspian Fish LLC cannot be 100% owned by Caspian Fish BVI for the past 20+ years, while also being owned 100% (or otherwise) by Gilan Holding or others during this same period. That is, unless Azerbaijan permitted this to take place.

350. In this respect, a review of the status of companies known to be associated with Caspian Fish LLC provides more questions than it does answers.

351. Caspian Fish BVI was dissolved in the BVI on 4 July 2023,[492] following Mr. David Pow's direction,[493] with the LLC shares held by the BVI company allegedly transferred to a new (still unknown) Azerbaijani entity.[494]

   a. Azerbaijani law requires that a legal entity provide an update within 40 days from the date of a change of inter alia its constituent documents or registered facts, including a change of the shareholder(s).[495] Once received, this registration update must be made within 5 days of the change.[496]

   b. If Caspian Fish BVI was a shareholder in Caspian Fish LLC at the time it was dissolved, Caspian Fish LLC was required under Azerbaijani law update and inform the State of this change within 40 days, i.e. by 13 August 2023.

   c. As of 24 March 2024, there is no indication on the State Registry of Legal Entities that there has been a change to Caspian Fish LLC's registration.[497]

352. Either Caspian Fish LLC has not complied with Azerbaijani law or the dissolution of Caspian Fish BVI did not need to be reported because it no longer held shares in Caspian Fish LLC at the time it was dissolved, contrary to Mr. Pow's statements to the company's BVI register.

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492 **C-413** Caspian Fish Co. Inc. – Company Search Report, 13 March 2024.

493 **C-103**, FHCS email communications Re: 2021 compliance review Part 3, 15 March 2022, p. 2 (PDF).

494 **C-102** Email communications between D. Pow and FHCS, Re: 2021 compliance review Part 2, 23 September 2021, p. 11.

495 **C-221** Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities, 12 December 2023, Art. 9.2.

496 **C-221** Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities, 12 December 2023, Art. 9.2.

497 This is still true as of the date of this submission.

353. Either way, Mr. Bahari and the Tribunal are kept in the dark and unable to understand who has historically owned and currently owns Caspian Fish LLC – which is the same situation that Azerbaijan has strenuously and repeatedly sought to maintain for the past 23 years.

354. Similar to the above, Claimant notes that during the document production phase of these proceedings, Azerbaijan's Objections to Claimant's Document Production Requests, filed on 1 March 2024, asserted that "[redacted]"[498] Azerbaijan never produced that promised letter.

355. It is a legal impossibility under Azerbaijani law for "the Representative Office of Caspian Fish BVI" to still be on the State Registry as of 1 March 2024 if Caspian Fish BVI was dissolved on 4 July 2023.

a. Under Article 17 of the Law on Enterprises, a representative office is a special department that represents and protects the interests of the enterprise, concludes contracts, and performs other legal acts on behalf of the enterprise, and is located outside the location of the enterprise.[499]

b. A representative office cannot exist and act on behalf of its parent company if that parent company was dissolved. The Caspian Fish BVI representative office should have been removed, but it was not.

356. The totality of the events described above, combined with Azerbaijan's strident efforts to maintain the veil of uncertainty and deniability, strongly supports a finding that Azerbaijan enabled, and was and remains complicit, in the taking of Caspian Fish from Mr. Bahari.

f. There is a Recent Coordinated Effort to Wipe Away the Corporate History and Information about Caspian Fish

357. Notwithstanding the unexplained and questionable legal status of Caspian Fish LLC and Caspian Fish BVI's representative office on the State Registry of Legal Entities, there is an equally concerning and ongoing effort to wipe away the corporate history and information about Caspian Fish.

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498 Annex 1 to Procedural Order No. 6, Request 10, p. 18 (emphasis added).

499 **C-214** Law of the Republic of Azerbaijan about Enterprises, 1 July 1994, Art. 18; **C-215** Law of the Republic of Azerbaijan on State Registration Legal Entities, 6 February 1996, Art. 18.

358. The State Registry of Legal Entities maintained by the Ministry of Taxes currently shows that as of 4 September 2023 Khazri Solutions LLC (TIN 1400725191) is "[redacted]"[500] This is also reflected in Azerbaijani press reports.[501]

359. The liquidation of Khazri Solutions appears to be the culmination of an extended period of asset stripping at Gilan Holding. For example, on 23 September 2022, Gilan Holding reported that it had reduced its authorized share capital from AZN 98.5 million (US$ 57.9 million) to AZN 100 (US$ 59).[502]

360. What this means is that, within a little more than a year of Mr. Bahari filing his Notice of Arbitration on 11 July 2022:

a. someone began to strip Gilan Holding of its assets in or around September 2022 and then changed the company's name to Khazri Solutions LLC on 16 May 2023;[503]

b. Caspian Fish BVI was dissolved on 4 July 2023 at Mr. David Pow's direction,[504] and the LLC shares held by the BVI company have been transferred to a new (still unknown) Azerbaijani entity;[505] and

c. Khazri Solutions entered liquidation on 4 September 2023.[506]

361. We are also advised that equipment from the Caspian Fish facility is now being sold off at bargain prices, presumably to shed physical evidence of malfeasance and/or the quality of the equipment.

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500 **C-416** State Register Data of Commercial Entities, Result for TIN Search #1400725191.

501 **C-414** oxu.az, The company created by changing the name of "Gilan Holding" is liquidated, 30 August 2023.

502 **C-415** abc.az, What's going on at Gilan Holding?, 23 September 2022.

503 **C-318** Letter from Khazri Solutions, 10 May 2024.

504 **C-413** Caspian Fish Co. Inc. – Company Search Report, 13 March 2024; **C-103** FHCS email communications Re: 2021 compliance review Part 3, 15 March 2022, p. 2 (PDF).

505 Equally unusual and unexplained is that during document production, Azerbaijan's Objections asserted that "[redacted]" (Annex 1 to Procedural Order No. 6, Request 10, p. 18). The promised letter has never been produced. More importantly, it is not clear how "the Representative Office of Caspian Fish BVI" could still be on the State Registry as of 1 March 2024 (when the ROA filed its objection) if Caspian Fish BVI was dissolved on 4 July 2023.

506 **C-416** State Register Data of Commercial Entities, Result for TIN Search #1400725191.

D. MR. BAHARI DID NOT SELL CASPIAN FISH.

362. Azerbaijan's central defense to Mr. Bahari's claim relating to Caspian Fish is that Mr. Bahari sold it on 20 September 2001 (the "**Alleged 2001 Sale Agreement**").[507] Azerbaijan's proof of the alleged sale of Mr. Bahari's multi-million-dollar crown jewel investment is a single page document whose provenance Azerbaijan refuses to reveal.[508]

363. Mr. Bahari never agreed to sell Caspian Fish and certainly not for such a risible sum. The Alleged 2001 Sale Agreement document is a fabricated document with a forged signature.[509] Not surprisingly, no corporate documentation of any such sale exists, which is necessary to legally close such a transaction. What is more, the narrative of a September 2001 sale is entirely at odds with the existing (and already demonstrated) evidence of Messrs. Aliyev, Heydarov, and Khanghah's prior fraudulent stripping of Mr. Bahari's interests in Caspian Fish BVI. This internal inconsistency shows that the Alleged 2001 Sale Agreement is, in all evidence, a recent fabrication created for the purpose of this Arbitration: it is a fraud which compounds the prior fraud committed against Mr. Bahari.

1. Mr. Bahari Never Sold His Interest in Caspian Fish and the Alleged 2001 Sale Agreement Document Is A Forged Document.

364. Mr. Bahari categorically denies ever selling Caspian Fish in 2001, or at any time.[510] He has never seen the alleged sale document at **R-50** and did not sign it.[511] Mr. Bahari rejects the idea that he would have sold his interest in Caspian Fish for US$4.5 million, when he had just recently invested US$56 million constructing what was a passion project for him.[512] As such, Mr. Bahari refutes the Alleged 2001 Sale Agreement document as a fake document with a forged signature.[513]

365. The Alleged 2001 Sale Agreement is a single page, typewritten document. It is drafted in English language only. There is a witness signature line which is empty. Payment is to be

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507 SoC ¶¶ 13(a), 101.

508 **R-50** Buyer and Seller Agreement between Mr Bahari and Mr Khanghah, 20 September 2001.

509 **R-50** Buyer and Seller Agreement between Mr Bahari and Mr Khanghah, 20 September 2001.

510 Bahari WS2 ¶ 21(e), 21(g).

511 Bahari WS2 ¶ 21(d).

512 Bahari WS1 ¶ 40 ("[redacted]")

513 Bahari WS2 ¶ 21(d).

made in installments – which, as shown below, is not permissible under Caspian Fish BVI's Articles of Association. Claimant's Expert Witness in document and handwriting analysis, Ms. Angela Morrissey, has analyzed **R-50** and cannot confirm the authenticity of Mr. Bahari's signature on that document.[514] Critically, the signature is not notarized.

366. It is unclear how Azerbaijan came into possession of the Alleged 2001 Sale Agreement document. Despite multiple requests, Azerbaijan has conspicuously refused to identify the custodian or provenance of this document, asserting that "[redacted]"[515] This position is perplexing, given that this is Azerbaijan's chief exhibit to its central defense theory; under normal circumstances, one would expect that Azerbaijan would not only reveal the provenance of the document, but even present a witness to attest to its authenticity and to the fact that the sale did, in fact, happen.

367. Azerbaijan has done none of this, opting instead to affirmatively obfuscate the origin of the document (as well as its version of the Purported Instrument of Transfer, as discussed below).[516] What is left is a single page document whose origin and the circumstances under which it came into Azerbaijan's possession are entirely unknown. This refusal to establish any foundation for **R-50** further calls its authenticity into question and significantly undermines, if not nullifies, any probative value it might have, that is, its tendency or ability to prove, as a piece of proffered evidence, that a sale did occur.

368. In any event, the Tribunal need not specifically find that **R-50** is a forged document in order to conclude that the 2001 sale never took place. The overwhelming evidence shows that no such sale legally took place. This includes the fact that there is no proof of any 2001 sale in the BVI corporate records.

514 Morrissey Report, ¶¶ 3.5.1-3.5.8.

515 **C-387** Letter from Claimant's Counsel to Quinn Emanuel regarding sources of exhibits, 13 January 2024; **C-388** Letter from Quinn Emanuel to Claimant's Counsel, 26 January 2024.

516 **R-129** Stock Transfer Form, undated.

2. The Caspian Fish BVI Corporate Records Reveal Messrs. Aliyev, Heydarov, and Khanghah's Scheme to Strip Mr. Bahari's Interest in Caspian Fish.

369. By way of recall, the two Norwich Pharmacal Orders[517] (NPO) Mr. Bahari obtained from the BVI courts revealed a multi-stage scheme to strip Mr. Bahari from his shareholding rights in Caspian Fish BVI.[518] Caspian Fish's corporate records show that the ultimate beneficial owners ("**UBO**") of Caspian Fish were Ms. Arzu and Ms. Leyla Aliyeva, the daughters of President Aliyev and Vice-President Aliyeva. There are also indications that Messrs. Tale and Nijat Heydarov, the sons of Minister Heydarov, were UBOs of Caspian Fish BVI when it was ultimately dissolved in July 2023.[519] Taken together, the Caspian Fish BVI records provide a critical piece of the story, revealing clear fraud committed by Messrs. Aliyev, Heydarov, and Khanghah, and demonstrating that Caspian Fish BVI remains in the hands of the Aliyev and Heydarov families.

370. Azerbaijan, however, completely ignores the Statement of Claim's detailed 21-page account of the BVI fraud: the Statement of Defense fails to address the facts at all, giving the off-hand excuse that Azerbaijan has "no knowledge of these matters, which concern the actions of third parties acting in their private capacities."[520] This stance is as flippant as it is incorrect.

371. *First*, Azerbaijan's statement that it "has no knowledge" of the BVI events is plainly wrong. Azerbaijan, through its sitting President and one of its most senior Ministers, possesses complete knowledge of what happened with Caspian Fish BVI; they have simply elected to make these critical fact witnesses empty chairs in this Arbitration. *Second*, as will be discussed, President Aliyev and Minister Heydarov were not acting in their private capacities, but in fact deployed the coercive powers of the State apparatus in order to complete their seizure of Caspian Fish.

372. Putting this aside, Caspian Fish BVI's internal corporate actions are highly relevant because they reveal the overall ploy to strip Mr. Bahari's interest in the company and place

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517 **C-105** BVI Order granting First NPO, 15 February 2023; **C-106** BVI Order granting Second NPO, 9 March 2023.

518 SoC ¶¶ 190-259.

519 SoC ¶¶ 235-244.

520 SoD ¶ 315.

them into the hands of the Aliyev and Heydarov families. This is critical information that goes to attribution and liability.

373. Equally, the corporate actions in relation to Caspian Fish BVI are critical to evaluate Azerbaijan's defense theory of a September 2001 Sale of Mr. Bahari's shares in the company. Simply put, the single-page paper produced as evidence of a sale has zero value as a legal instrument. What records and legally executes a valid transfer of shares are the formal corporate actions taken by Caspian Fish BVI.

374. Because the central Alleged 2001 Sale Agreement has no evidentiary value, Azerbaijan's other supporting documents evidencing an alleged 2001 sale become equally unconvincing. What is more, these supporting documents will be shown to be disparate, unrelated documents cobbled together to reverse-engineer the 2001 sale narrative.

375. As much as Azerbaijan would like to ignore the inconvenient BVI corporate actions and their revelation of fraud by its sitting President, it is absolutely essential to examine Caspian Fish BVI's corporate records for purposes of Mr. Bahari's claim, as well as for the purposes of evaluating whether a 2001 sale did in fact happen. The clear evidence shows that it did not.

3. There Is No Evidence of a Sale in the Caspian Fish BVI Corporate Records.

376. There is zero evidence of the Alleged 2001 Sale Agreement in Caspian Fish BVI's corporate documents. This evidentiary gap is important for two reasons: *First*, it corroborates that **R-50** is a forgery and that Mr. Bahari never sold his interest in Caspian Fish. *Second*, from a BVI law point of view, there is no valid, legal sale: the purported one-page document dated 20 September 2001 is not sufficient on its own to legally transact a transfer of shares in a BVI company.

377. Under BVI law applicable at the time, and pursuant to Caspian Fish's Memorandum and Articles of Association, a valid transfer of shares required (1) a valid stock transfer form; (2) a valid Director's Resolution; and (3) an update to the Register of Members.[521] Absent these steps, there can be no valid transfer of shares, and any purported transferee would

[521] **C-389** Applebys Legal Opinion, 17 June 2024, ¶¶ 14-20.

not be considered a shareholder.[522] As discussed below, there is no evidence that a valid transfer of shares occurred in 2001 or in years subsequent.

378. The discussion below is aided by the Legal Opinion of Andrew Willins of Applebys, a BVI law firm. Mr. Willins's opinion confirms the lack of a valid transfer of shares.[523]

a. There Was No Valid Stock Transfer Form and the Purported IOT Is a Forgery.

379. Pursuant to Section 30(1) the BVI International Business Companies Act (1984) ("**IBCA 1984**")[524] in vigor at the time,[525] "[s]ubject to any limitations in the Memorandum or Articles, registered shares of a company incorporated under this Act may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee."[526]

380. Article 48 of Caspian Fish BVI's Articles of Association tracked the Act and required the following formalities for a valid stock transfer form:

[redacted][527]

381. As part of the document production from the two NPOs,[528] Caspian Fish BVI's Registered Agents produced an undated Instrument of Transfer ("**Purported IOT**"), which purported

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522 **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 23.

523 **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 23.

524 **C-120** BVI International Business Companies Act (Cap. 291), 1984, Part III, Division III. A complete copy of the IBCA 1984 is provided as **C-390** BVI International Business Companies Act, 1984 (as amended). **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 11.

525 The IBCA was replaced in 2004 by the BVI Business Companies Act 2004 (as further amended) ("**BCA 2004**"), **C-391** BVI Business Companies Act – Revised Edition, 1 January 2020; **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 12.

526 **C-390** BVI International Business Companies Act, 1984 (as amended), §30(1); **C-389** Applebys Legal Opinion, 17 June 2024, ¶¶ 11-12. The same requirement exists in the currently applicable BCA 2004, Part III, Division 3, §54, See **C-391** BVI Business Companies Act – Revised Edition, 1 January 2020, §54(1); **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 13.

527 **C-002 *bis*** Memorandum and Articles of Association for Caspian Fish Co. Inc., 5 March 1999, Art. 48, p. 16; **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 17.

528 **C-105** BVI Order granting First NPO, 15 February 2023; **C-106** BVI Order granting Second NPO, 9 March 2023.

to effect the transfer of Mr. Bahari's 400,000 shares on the date of incorporation, 5 March 1999.[529] This document is a forgery and contains multiple anomalies:

a. The 5 March 1999 entry date of the transfer is not accidental (as Azerbaijan suggests[530]), as it is consistently dated as such in various documents, including the List of Directors Shareholdings, the Register of Members, and the Register of Transfers.[531] However, it is commercially illogical that Mr. Bahari would incorporate Caspian Fish and issue himself 400,000 shares, only to sell them to Mr. Khanghah on the very same day.[532] The low sale price of $4.5 million USD listed on the Purported IOT is equally nonsensical, given that Mr. Bahari invested $56 million to construct Caspian Fish.[533] This, combined with the inexplicable absence of a date in the Purported IOT itself, calls into question the validity of the purported transfer. As will be discussed below, the actual fraudulent transfer likely occurred on 8 December 2006 – not in March 1999, or 2001.

b. Mr. Bahari has never seen the Purported IOT. The signature and handwriting are not his. The name, "[redacted]" is misspelled: it is missing an extra "m," and should be spelled "Mohammad," as it appears on Mr. Bahari's official passport.[534] Mr. Bahari would not have misspelled his own name.[535] Mr. Bahari also does not recognize the alleged copy of the Purported IOT provided by Azerbaijan at **R-129**.[536] Notably, Azerbaijan refuses to disclose the provenance of **R-129**, nor how it came into possession of the document. As with the Purported 2001 Sale Agreement document,[537] Azerbaijan's recalcitrance creates doubt as to the authenticity of **R-129** and significantly affects its materiality and probative value.

529 **C-121** Caspian Fish Co Purported Instrument of Transfer, undated.

530 SoD ¶ 278 ("Azerbaijan does not know the reason for back-dating this entry, including whether it was done as agreed, in error, or otherwise...").

531 SoD ¶¶ 207-217; **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007, pp. 5, 6, 12, 13, 19.

532 **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 25.

533 **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 25.

534 **C-072** Iranian Passport of Moghaddam Reza Khalilpour Bahari, 26 May 2014.

535 Bahari WS1 ¶ 89.

536 Bahari WS2 ¶ 21(g).

537 **R-50** Buyer and Seller Agreement between Mr Bahari and Mr Khanghah, 20 September 2001.

c. The Purported IOT fails to list Mr. Bahari's address, as required per the stock transfer form instructions.

d. The Purported IOT lists the transferee as "[redacted]" This is also misspelled: Mr. Khanghah's name is spelled "[redacted]" in his official passport.[538]

e. The Purported IOT fails to comply with the statutory requirements set out at Section 30 of the IBCA 1984, as well as those set out at Art. 48 of the Caspian Fish BVI Articles of Association, as it does not provide Mr. Khanghah's address.[539]

f. Claimant's handwriting expert, Mrs. Morrissey, cannot confirm the authenticity of the alleged Bahari signature at **R-129**.[540]

g. In short, the Purported IOT is a forgery and bears the hallmarks of having been produced *ex post facto*, as a fraudulent attempt to regularize (or "mop up," in corporate parlance) the corporate records of Caspian Fish BVI.[541]

b. There Was No Valid Director's Resolution Approving a Transfer of Mr. Bahari's Shares in 2001.

382. Pursuant to IBCA 1984 Section 12(1)(h), the Memorandum of Association of a BVI company must include an "express grant of such authority as may be desired to grant to the directors to fix by a resolution any such designations, powers, preferences, rights, qualifications, limitations and restrictions that have not been fixed by the Memorandum."[542]

383. Article 13 of Caspian Fish BVI's Memorandum of Association requires a Director's Resolution:

[redacted]

538 **C-010** Copy of Passport of Ahadpour Khanghah, 31 October 1998.

539 **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 17.

540 Morrissey Report, ¶¶ 3.10.1-3.10.12.

541 SoC ¶¶ 211-217.

542 **C-390** BVI International Business Companies Act, 1984 (as amended).

[redacted][543]

384. Yet, there is no record of any Director's Resolution approving the Purported IOT at any time in 2001 (or even in the years prior or subsequent). The record only shows copies of Resolutions on 5 March 1999 relating to an increase in the authorized share capital.[544] There are no other Director's Resolutions until 2006.

385. **C-109** is a Caspian Fish BVI Registers and Data Sheet dated 3 May 2007 ("**Data Sheet**"). It provides documentation of various corporate data and actions taken from incorporation up until that date.[545] It is the earliest such set of documents providing a backward look at the company since its incorporation in 1999. As can be seen from that document, the only record of a shares transfer of Mr. Bahari's 400,000 shares is listed at several places as occurring on 5 March 1999.[546] As noted above, a transfer on this date is nonsensical.

386. Thus, not only is there no evidence of a Director's Resolution approving the Alleged 2001 Sale Agreement, but even assuming, *arguendo*, that such an agreement had been signed (which is denied), there was not a legally binding share transfer under BVI law, due to the lack of a valid Director's Resolution.

387. Additionally, Article 21 of Caspian Fish BVI's Articles of Association provides that [redacted]"[547] Thus, under Azerbaijan's theory that the Purported IOT was "signed in or around November 2001, following the receipt of the first instalment under the 2001 Sale Agreement,"[548] a transfer of Mr. Bahari's shares without full payment for the same would have been prohibited under the corporate bylaws.[549] This also underscores the

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543 **C-002 *bis*** Memorandum and Articles of Association for Caspian Fish Co. Inc., 5 March 1999, Art. 48, p. 9 PDF; **C-389** Applebys Legal Opinion, 17 June 2024, ¶¶ 41-48.

544 **C-110** Caspian Fish Co. Inc. Directors Resolution, 5 March 1999; **C-113** Extract of Directors Resolution Adopted by the Directors on 5 March 1999, 27 November 2006.

545 **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007.

546 **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007.

547 **C-002 *bis*** Memorandum and Articles of Association for Caspian Fish Co. Inc., 5 March 1999, Art. 21, p. 16 (PDF).

548 SoD ¶ 278.

549 **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 44.

nonsensical idea that Mr. Bahari would have agreed to fully transfer his shares prior to payment in full.

c. There Was No Update to the Register of Members in 2001 and Mr. Bahari Held on to His Physical Share Certificate, Which Was *Prima Facie* Evidence of Share Ownership.

388. IBCA 1984 Section 28(1) requires a share register (later called a Register of Members in the BCA 2004).[550]

389. Similarly, Article 50 of Caspian Fish BVI's Articles of Association states that:


[redacted][551]

390. The record of the Register of Members which appears at **C-109** shows no update to the Register of Members in 2001. It only shows the purported transfer of Mr. Bahari's 400,000 shares to Mr. Khanghah on 5 March 1999.[552]

391. Moreover, Azerbaijan makes a misleading statement of BVI law when it states that, regardless of the date it happened (thus avoiding the problematic 5 March 1999 entry date), entry of Mr. Khanghah's name into the Register of Members is *prima facie* evidence of his legal title to Mr. Bahari's 400,000 shares:

> Under BVI law, the entry of the name of a person in the register of members as a holder of a share in the Company is *prima facie* evidence that legal title in the shares vests in that person, subject to any application to rectify the register to the BVI Court. Thus, under BVI law it is clear that Mr Bahari sold his shares and cased to be a shareholder in [Caspian Fish] BVI Co

550 **C-391** BVI Business Companies Act – Revised Edition, 1 January 2020, § 28(1).

551 **C-002 *bis*** Memorandum and Articles of Association for Caspian Fish Co. Inc., 5 March 1999, Art. 50, p. 20 (PDF); **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 19.

552 **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007, pp. 12, 13 (PDF).

> well before the Treaty even entered into force. That should be the end of his claims in respect of Caspian Fish.[553]

392. Purposefully or not, Azerbaijan cites to BCA 2004 Section 42.[554] However, as of 1999 (the date the Purported IOT is fraudulently entered into the corporate records) or 2001 (the date Azerbaijan now alleges the transfer of shares took place) the ICBA 1984 was in force,[555] not the BCA 2004, which came into force 1 January 2005.

393. While ICBA 1984 Section 28(5) also states that the share register is *prima facie* evidence of any matters directed or authorized by the Act to be contained therein,[556] Section 27(3) equally states that the physical share is considered the *prima facie* evidence of title to that share:

> A certificate issued in accordance with subsection (2) specifying a share held by a member of the company is prima facie evidence of the title of the member to the share specified therein.[557]

394. Azerbaijan's omission of this Section avoids the fact that Mr. Bahari never relinquished his original Share Certificate no. 2 dated 5 March 1999, and still possesses it to this day. It was exhibited in this Arbitration.[558] Thus, per the correct application of ICBA 1984 Section 27(3), that physical share represented the *prima facie* evidence of share ownership at all times. The original Share Certificated no. 2 proves that Mr. Bahari never sold his shares to Mr. Khanghah, either on 5 March 1999, or 20 September 2001, or at any other time.[559]

395. Furthermore, and as discussed further below, as of December 2006, Mr. Bahari still held 400,000 shares.[560] Thus, Azerbaijan's citation to the Register of Members as *prima facie* evidence of title applies equally to Mr. Bahari.

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553 SoD ¶ 278, fn. 775 (citing to BCA 2004 Sections 42 and 43).

554 **C-391** BVI Business Companies Act – Revised Edition, 1 January 2020, § 42.

555 **C-390** BVI International Business Companies Act, 1984 (as amended).

556 **C-390** BVI International Business Companies Act, 1984 (as amended), § 28(5), p. 16 (PDF) (emphasis in original); **C-389** Applebys Legal Opinion, 17 June 2024, ¶¶ 38-40.

557 **C-390** BVI International Business Companies Act, 1984 (as amended), § 27(3), p. 16 (PDF) (emphasis in original); **C-389** Applebys Legal Opinion, 17 June 2024, ¶¶ 38-40.

558 **C-006** Mr. Bahari's Share Certificate in Caspian Fish Co. Inc., 5 March 1999.

559 **C-006** Mr. Bahari's Share Certificate in Caspian Fish Co. Inc., 5 March 1999.

560 **C-122** Caspian Fish Co Inc, Director's Resolution in writing, undated.

d. The 8 December 2006 Director's Resolution Shows That No Share Transfer Occurred Prior To That Date.

396. Azerbaijan claims that:

> it is likely that the [undated Purported IOT] was signed in or around November 2001, following the receipt of the first instalment under the [Alleged] 2001 Sale Agreement. It is true that the Register of Members records the "Entry Date" of the share transfer as 5 March 1999 (the same date of incorporation). Azerbaijan does not know the reason for back-dating this entry, including whether it was done as agreed, in error, or otherwise, but it is plain that the transfer reflected the terms of the 2001 Sale Agreement pursuant to which Mr Bahari's shares would be transferred following receipt of the first instalment payment.[561]

397. As noted above, Caspian Fish BVI's corporate records do not show any evidence of a transfer of shares in 2001. In fact, a closer inspection of the company's corporate registry shows that:

a. As at 8 December 2006, Mr. Bahari still held his 400,000 shares – directly contradicting Azerbaijan's allegation of a 2001 share transfer;

b. Mr. Khanghah illegally transferred those 400,000 shares to himself via a Director's Resolution dated 8 December 2006 (again contradicting a transfer occurring in 2001);

c. The Purported IOT was therefore either: (i) fraudulently dated on 5 March 1999, which would predate the alleged 2001 sale; or (ii) created to accompany an equally fraudulent 2006 transfer, which would post-date a 2001 sale;

d. Thus, there was no sale in September 2001, no Director's Resolution dated around that time, and no entry into the Register of Members in or around November 2001 as Azerbaijan claims.

398. The above conclusions are apparent from a close inspection of **C-122**, an undated Director's Resolution. As a preliminary matter, it is possible to date it as of 8 December 2006 ("**2006 Resolution**"), as it contains references to transactions dated 8 December 2006, so its date can be no earlier than that. The Caspian Fish BVI Registers and Data Sheet dated 3 May 2007, shows that there were no further transactions between

[561] SoD ¶ 278 (emphasis added).

8 December 2006 and 3 May 2007.[562] The next recorded set of corporate changes is the inclusion of Lanisten and the AHL Companies in the Register of Members on 15 October 2007;[563] those transactions do not appear in the 2006 Resolution. From this, it can be inferred that the 2006 Resolution at **C-122** is dated 8 December 2006.

399. The 2006 Resolution undertakes several complex resolutions; these must be carefully unpacked in order to understand how the document further disproves the existence of a 2001 sale of Mr. Bahari's shares.

400. *First*, the 2006 Resolution had to fix an oversubscription of shares relative to the initial authorized share capital. This is important because it shows that as of 8 December 2006, Mr. Bahari was still a shareholder in Caspian Fish BVI, with 400,000 shares to his name:

a. At the date of 5 March 1999 date of incorporation, Caspian Fish BVI had an authorized share capital of US$50,000, at $1 per share.[564]

b. However, on the same day, one million shares were issued: (i) 100,000 to Mr. Khanghah; (2) 400,000 to Mr. Bahari; and (3) 500,000 to ICCI.[565] This reflected in the Shareholders Agreement terms of 10% to Mr. Khanghah, 40% to Mr. Bahari, and 25% to each of Messrs. Aliyev and Heydarov.[566]

c. Separately, the 2006 Director's Resolution noted that on 5 March 1999, a resolution was passed to increase the authorized share capital from $50,000 to $1,000,000. However, because that resolution was only filed with the BVI Companies Registry on 27 November 2006, it took effect as of 27 November 2006. Similarly, another share capital increase on 3 September 2002 to $56 million was not filed until 8 December 2006 and therefore took effect as of that date.[567]

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562 **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007.

563 SoC ¶¶ 231-240; **C-136** Caspian Fish Co. Inc. Register of Members, 17 August 2009.

564 **C-122** Caspian Fish Co Inc, Director's Resolution in writing, undated, Clause 3.1; **C-002 *bis*** Memorandum and Articles of Association for Caspian Fish Co. Inc., 5 March 1999, Art. 7 p. 8 PDF; **C-389** Applebys Legal Opinion, 17 June 2024, ¶¶ 29-30, 32(c)(i).

565 **C-122** Caspian Fish Co Inc, Director's Resolution in writing, undated, Clause 4.1; **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007; **C-389** Applebys Legal Opinion, 17 June 2024, ¶¶ 30-31.

566 **C-004** Shareholders Agreement for Caspian Fish Co. Inc., 27 April 1999.

567 **C-122** Caspian Fish Co Inc, Director's Resolution in writing, undated, Clauses 3.2, 3.3; **C-113** Extract of Directors Resolution Adopted by the Directors on 5 March 1999, 27 November 2006; **C-125** Caspian Fish Co. Inc. Extract of Director's Resolution, 8 December 2006; **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007; **C-389** Applebys Legal Opinion, 17 June 2024, ¶¶ 30-31.

d. Thus, because the $50,000 authorized share capital was insufficient to cover the 1 million issued shares at $1/share (and because the share capital increases had not been filed in time), the 2006 Director's Resolution had to reissue the shares on a *pro rata* basis reflecting each shareholder's percentage stake: (i) 5,000 shares to Mr. Khanghah; (ii) 20,000 shares to Mr. Bahari; and (iii) 25,000 shares to ICCI.[568]

e. The balance of the subscribed shares appear to have been held in trust for each shareholder until such time that the authorized share capital could cover the $1/share for the full 1 million shares issued. Thus, the following shares were held in trust: (i) 95,000 shares for Mr. Khanghah; (ii) 380,000 shares for Mr. Bahari; and (iii) 475,000 shares for ICCI.[569]

f. The original share certificates were accordingly cancelled, and new ones reissued reflecting the *pro rata* shares; the secretary was instructed to ask for the return of the old shares, issue the new ones, and amend the Register of Members to reflect the new situation.[570]

g. Of note, the entire reissue of shares due to this oversubscription issue was also backdated to 5 March 1999.[571]

401. The resolutions taken to "mop up" the share oversubscription demonstrate an important fact: <u>as at 8 December 2006, Mr. Bahari was still listed as a Shareholder</u>:

a. The 2006 Resolution very clearly notes that Mr. Bahari still holds 400,000 shares as of that date, albeit with 380,000 shares held in trust.

b. If there had been a sale and transfer of his shares in 2001 (or in 1999, for that matter), the 2006 Resolution would have captured this in the reallocation of shares. Mr. Bahari would have been entirely absent from this reallocation, while Mr. Khanghah would have already been transferred Mr. Bahari's 400,000 shares, for a total of 500,000 shares. In that case, Mr. Khanghah would have been issued

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568 **C-122** Caspian Fish Co Inc, Director's Resolution in writing, undated, Clause 4.3; **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007.

569 **C-122** Caspian Fish Co Inc, Director's Resolution in writing, undated, Clause 4.4; **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007; **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 27(d)-(e).

570 **C-122** Caspian Fish Co Inc, Director's Resolution in writing, undated, Clauses 4.5, 4.6, 4.7; **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007; **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 27(f)-(g).

571 Because of the confusion caused with this backdating, the Statement of Claim did not fully capture this sequence of events (SoC ¶¶ 200-201).

a *pro rata* of 25,000 shares, with 475,000 held in trust. However, that is not what was recorded.

c. Therefore, the 2006 Resolution categorically confirms that there was no sale and transfer of Mr. Bahari's shares at any time in 2001 – or 1999.

402. The 2006 Resolution next shows that Mr. Khanghagh, acting as Sole Director, resolved to transfer to himself Mr. Bahari's 20,000 shares plus his 380,000 shares held in trust:

[redacted][572]

403. This purported share transfer was both fraudulent and invalid under BVI law:

a. *First* and foremost, Mr. Khanghah's position as Sole Director was fraudulent because he had falsified Mr. Bahari's alleged resignation as Director on 15 November 2001.[573] Article 86 of Caspian Fish BVI's Articles of Association require a Director's Resolution in order to remove a director. Alternatively, a director may resign by written notice.[574] However, there is zero record of either a resolution or a letter of resignation in the records. Mr. Bahari's fraudulent removal paved the way for all of the subsequent fraudulent actions taken by Mr. Khanghah as putative Sole Director.[575]

b. *Second*, there is no evidence that Mr. Bahari consented to any transfer of his shares in 2006. Following the placement of shares in trust, Clause 4.4 of the 2006 Resolution stated that "[redacted]"[576]

This means that once the share capital authorization to $1 million became effective (on or after 27 November 2006), Mr. Bahari could request to have his 380,000 allotment held in trust to be reissued to him, bringing him back to a full 400,000 shares. Thus, on the terms of the 2006 Resolution itself, it was expected that:

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572 **C-122** Caspian Fish Co Inc, Director's Resolution in writing, undated, Clause 5.1(a); **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 27(h).

573 Compare **C-108** Caspian Fish Co. Inc. Appointment of First Directors, 5 March 1999 with **C-118** BVI Financial Services Commission Caspian Fish Co. Inc. Register of Directors, 26 February 2021. See SoC ¶¶ 204-206.

574 **C-002 *bis*** Memorandum and Articles of Association for Caspian Fish Co. Inc., 5 March 1999.

575 **C-389** Applebys Legal Opinion, 17 June 2024, ¶¶ 45-48. Of note, Mr. Bahari's purported resignation as Director as at 15 November 2001 post-dates the 20 September 2001 alleged sale.

576 **C-122** Caspian Fish Co Inc, Director's Resolution in writing, undated, Clause 4.4.

(1) per Clause 4.4, Caspian Fish would inform Mr. Bahari that he could request the issuance of the 380,000 share allotment held in trust; upon such request, Caspian Fish BVI would issue those shares back to Mr. Bahari, at which time he could further consent to transfer his full 400,000 shares; alternatively, (2) Caspian Fish BVI would have sought Mr. Bahari's consent to issue the 380,000 shares while they were still held in trust.[577] There is no evidence that Mr. Bahari did either of those things.[578] Because neither step happened, Mr. Khanghah's 2006 Resolution transferring to himself Mr. Bahari's 380,000 shares that were still held in trust was fraudulent.

c. *Third*, Mr. Khanghah's actions taken in the 2006 Resolution further breached his fiduciary duties to Caspian Fish BVI by failing to (i) act honestly and in good faith and in what he believed to be in the best interests of the Company; and (ii) exercise his powers in executing the 2006 Resolution for a proper purpose. Applebys' legal opinion confirms that Mr. Khanghah's actions are in breach of his fiduciary duties and that a BVI court would deem the resolutions invalid and set them aside.[579]

d. *Fourth* and in any event, this 2006 purported transfer of Mr. Bahari's 20,000 shares and 380,000 shares held in trust (for a total of 400,000 shares) again shows that there was no sale of these shares in 2001.[580]

e. Messrs. Aliyev, Heydarov, and Khanghah Advance Two Separate and Contradictory Narratives of Mr. Bahari's Sale of His Shares.

404. The Purported IOT fails to confirm the alleged 20 September 2001 sale of Mr. Bahari's 400,000 shares. As a result, there are two conflicting possibilities:

a. The Purported IOT was transacted on 5 March 1999, as recorded in the various corporate records.[581] Such a transaction would clearly be fraudulent, as Mr. Bahari would not have sold his shares on the same day he acquired them; furthermore, there is no evidence of any Director's Resolution confirming a sale on this date.

577 **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 32(c)(iv).

578 **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 32(c)(iv).

579 **C-389** Applebys Legal Opinion, 17 June 2024, ¶¶ 33-35.

580 **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 32(c)(v).

581 **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007.

Under this scenario, there could be no alleged 2001 sale, since that would obviously post-date 5 March 1999; or

b. The Purported IOT was transacted on 8 December 2006, accompanying the Director's Resolution of that same date. However, there is no indication Mr. Bahari consented to such a transfer at that date and Mr. Khanghah's transfer was fraudulent. Under this scenario as well, there could be no alleged 2001 sale. Indeed, the entire 2006 Director's Resolution confirms that as of that date, Mr. Bahari was still listed in the Register of Members as a shareholder.

405. Applebys confirms and summarizes this contradictory state of affairs:

.[582]

406. These conflicting scenarios show that Messrs. Aliyev, Heydarov, and Khanghah's fraud upon Mr. Bahari is a hopelessly muddled, ham-fisted effort. Moreover, it reveals two layers of fraud: an initial fraudulent transfer of Mr. Bahari's shares in either 1999 or 2006; and a current attempt to date the alleged sale to September 2001. The two scenarios are in total contradiction with each other, and the BVI registry records flatly disprove Azerbaijan's current narrative of a 2001 sale. In all evidence – and by its own admission – Azerbaijan did not pay sufficient attention to the BVI records when preparing its Statement of Defense.

4. Because There Was No 2001 Sale, the Authenticity of Azerbaijan's Supporting Evidence of Such a Sale Is Unconvincing.

407. Beyond the Alleged 2001 Sale Agreement Itself, Azerbaijan presents a number of documents that, it asserts, provide proof of payment under the terms of the Agreement. However, because the discussion above shows that there was no sale of Mr. Bahari's shares in 2001, the authenticity of Azerbaijan's other supporting documents evidencing such a sale become equally unconvincing.

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582 **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 42.

408. Moreover, the supporting documents are a patchwork of evidence cobbled together to shoehorn into its narrative of a 2001 sale. In fact, many of these documents actually confirm that Mr. Bahari did not sell his shares in Caspian Fish at all, and in fact was continuing to fight to regain his investments or be compensated for his losses.

a. The Authenticity of R-51 and R-52 Are In Doubt Because There Was No 2001 Sale.

409. Azerbaijan produces **R-51** as proof of payment of the first installment of the Alleged 2001 Agreement, purportedly on 5 November 2001.[583] However, as noted above, no such sale occurred in 2001. It is important to note that **R-51** purports to be a receipt confirming the first alleged payment installment under the Alleged 2001 Sale Agreement. Since there was no such sale agreement in 2001, the authenticity of this alleged receipt is seriously called into question. Mr. Bahari denies ever having signed such a document.[584] As such, it is Claimant's position that the document is fraudulent and Mr. Bahari's signature is a forgery.

410. As with the Alleged 2001 Sale Agreement and the typewritten portion of the **R-52** (discussed below),[585] **R-51** is a single-page English language-only document.[586] Once again, Mr. Bahari's name is misspelled. Critically, as with **R-50** (and **R-52** below), there is no notarization that could confirm Mr. Bahari's signature. The Morrissey Report also cannot confirm the authenticity of Mr. Bahari's signature.[587] Simply put, there is no evidence intrinsic to the document that can authenticate it. As with **R-50** and **R-52**, Claimant requested Azerbaijan to provide information as to the source and/or provenance of **R-51**, but Azerbaijan declined.[588] Thus, Azerbaijan fails to explain: (i) who drafted the document; (ii) why it was not notarized (and in the case of **R-52**, why there is no signature for Mr. Bahari); (ii) why a Farsi or Azeri language version was not made available; (iv) who is the current custodian of the document; (v) how it came into the possession of Azerbaijan; and (vi) what due diligence, if any, Counsel for Azerbaijan undertook to

583 **R-51** Receipt for payment of USD 1.5 million signed by Mr Bahari, 5 November 2001; SoD ¶ 276.

584 Bahari WS2 ¶ 21(e).

585 **R-50** Buyer and Seller Agreement between Mr Khanghah and Mr Bahari, 20 September 2001; **R-52** Receipt for payment of USD 2 million signed by Mr Bahari, undated.

586 **R-51** Receipt for payment of USD 1.5 million signed by Mr Bahari, 5 November 2001; SoD ¶ 276.

587 Morrissey Report, ¶ 3.6.1-3.6.9.

588 **C-387** Letter from Claimant's Counsel to Quinn Emanuel regarding sources of exhibits, 13 January 2024; **C-388** Letter from Quinn Emanuel to Claimant's Counsel, 26 January 2024.

determine its authenticity. There is no available extrinsic evidence (via, for example, witness evidence) to confirm the authenticity of this document. To the contrary, the available evidence in the BVI corporate records show that there was no 2001 sale, thus casting serious doubt on **R-51** as an authentic document, as well as any value it might have from a probative and material point of view.

411. Azerbaijan also produces **R-52**, an unsigned, English-only language document purportedly dated 14 June 2002, and asserts that this document proves that Mr. Bahari was paid $2 million out of the alleged $4.5 million sale price for his 400,000 shares of Caspian Fish BVI.[589] The back of the document contains a handwritten Farsi statement of receipt signed by Mr. Bahari.

412. The document is a merger of a handwritten receipt that has nothing to do with any sale of shares, combined with a fraudulent typewritten receipt, made to fit Azerbaijan's theory of a 2001 sale. It appears that Azerbaijan came into possession of a valid handwritten receipt signed by Mr. Bahari acknowledging a $2 million repayment of debt, and that someone combined this with a fraudulent typewritten receipt relating to the non-existent 2001 sale of Mr. Bahari's shares in Caspian Fish BVI.[590] Indeed, the Morrissey Report notes that it is impossible to determine whether the handwritten portion was made after the fact on a typewritten printout, or whether the handwritten section came first, then was placed in a printer to print the text of the typewritten receipt.[591]

413. Starting with the typewritten portion, that document, like the Alleged 2001 Sale Agreement, is a single-page typewritten document in English that is not signed by Mr. Bahari and is not notarized. Once again, Azerbaijan has refused to provide the provenance of the document or explain how it came into possession of this document.[592] Mr. Bahari has never seen this typewritten document and, consistent with his statement that he never sold his shares or saw the Alleged 2001 Sale Agreement, confirms that he never received $2 million as payment for any sale of his shares.[593]

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589 SoC ¶¶ 7, 280.

590 Bahari WS2 ¶ 21(f).

591 Morrissey Report, ¶¶ 2.1.4-2.1.5; 4.1.1-4.1.3; **R-52** Receipt for payment of USD 2 million signed by Mr Bahari, undated.

592 **C-387** Letter from Claimant's Counsel to Quinn Emanuel regarding sources of exhibits, 13 January 2024; **C-388** Letter from Quinn Emanuel to Claimant's Counsel, 26 January 2024.

593 Bahari WS2 ¶ 21(f).

414. Mr. Bahari does acknowledge that the Farsi note written on the back of **R-52** is his handwriting and his signature.[594] However, Mr. Bahari recalls that that receipt relates to a $2 million cash advance he had previously made to Heydarov.[595] The receipt acknowledged that Mr. Bahari had been repaid this amount, which he used to directly set off unrelated Caspian Fish debts.[596] On its plain terms, this handwritten receipt makes no mention whatsoever about payment for the sale of any shares, and it is clear that it addresses a completely unrelated matter:

[597]

415. The $2 million sum also does not correspond to any of the terms of the Alleged 2001 Sale Agreement, which lists payment schedules in the amount of $1.5 million by 5 November 2001; $1.4 million by 1 December 2001; and $1.6 million by 1 December 2001, to be paid in monthly installments of $100k.[598] Further, **R-52** purports to pay Mr. Bahari on 14 June 2002, which is one day head of the 15 June 2002 meeting.[599] If that were true, the $2 million payment would surely have been mentioned in the terms of the 2002 Forced Sale Agreement – but there is no such acknowledgment.[600]

416. The subject matter of the handwritten receipt is plainly unrelated to the contents of the typewritten receipt alleged to be on the other side of the document. To this complete *non sequitur* between the two side of **R-52**, the following considerations extinguish any material or probative value the document might have: (1) the lack of provenance and/or authorship of **R-52**; (2) the same lack of provenance and/or authorship of the Alleged 2001 Sale Agreement at **R-50**; (3) the lack of any notarizations on the typewritten faces of both

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594 Bahari WS2 ¶ 21(f).

595 Bahari WS2 ¶ 21(f).

596 Bahari WS2 ¶ 21(f).

597 **R-52** Receipt for payment of USD 2 million signed by Mr Bahari, undated (emphasis added).

598 **R-50** Buyer and Seller Agreement between Mr Bahari and Mr Khanghah, 20 September 2001.

599 Bahari WS2 ¶ 21(f).

600 **C-017** Settlement Proposal, 15 June 2002.

R-50 and **R-52**; and (4) the lack of any evidence of a properly recorded and transacted transfer of shares in the BVI record (as discussed above).

417. As proof of an alleged partial payment for Mr. Bahari's sale of his interest in Caspian Fish BVI, **R-52** is exceptionally unconvincing. It is hardly a document that could be called "astonishing in the face of the Claims Mr Bahari makes in the Statement of Claim," and that would support the sensationalist conclusion that Mr. Bahari "unashamedly lied to his counsel and his funder, and he is lying to this Tribunal, too."[601]

b. On Azerbaijan's Own Theory, the 2002 Forced Sale Agreement Shows There Was No Transfer of Mr. Bahari's Shares As of June 2002.

418. Next, Azerbaijan interprets the 2002 Forced Sale Agreement[602] as a proposal for a new payment schedule of the Alleged 2001 Sale Agreement. This reading of the 2002 Forced Sale Agreement is nonsensical.

419. In fact, the terms of the 2002 Forced Sale Agreement plainly confirm that as at June 2002, Mr. Bahari still had rights over all of his investments, including Caspian Fish, and Minister Heydarov wanted to reach a possible global deal. As such, there could have been no prior valid sale of his shareholding interest in Caspian Fish BVI in 2001.

a. If, as Azerbaijan alleges, Mr. Bahari had transferred his 400,000 shares in November 2001,[603] there would be no need to negotiate anything in June 2002. The plain subject matter of the 2002 Forced Sale Agreement is a negotiation for the 40% shareholding,[604] which are clearly still in Mr. Bahari's control. Again, why negotiate the sale of the shares if there was already a consummated sale in November 2001?

b. As of this date, Mr. Bahari held the physical share certificate, which, as noted above, is *prima facie* evidence of title. As also discussed above, there was no evidence of any sale (Director's Resolution, entry in the Register of Members, instrument of transfer) in the corporate record in 2001. This corroborates that the

601 SoD ¶ 281.

602 **C-017** Settlement Proposal, 15 June 2002.

603 SoD ¶ 278.

604 **C-017** Settlement Proposal, 15 June 2002, p. 2 (PDF) ("I Mohamad reza Khalilpour Bahari, have made an agreement, with Mr. Manoucher Ahadpour Khaneghah, a final settlement for the sale of my shares of 40% forty percent in Caspian Fish co. B.V.I. and Caspian fish co factory, in Baku Azerbaijan, as set below.")

2002 Forced Sale Agreement cannot be read as a purported new proposed schedule of payments for such a sale.

c. As noted above, Article 21 of Caspian Fish BVI's Articles of Association prohibits issuance of shares until consideration is fully paid.[605] Thus, a sale involving a transfer of shares followed by installment payments is prohibited under the corporate bylaws.[606] This underlines an important point: it is nonsensical that Mr. Bahari would have ever agreed to fully transfer his shares prior to payment in full – certainly not after the events leading to his ouster, when he learned the hard lesson that his business partners were not to be trusted.

d. Ultimately, the 2002 Forced Sale Agreement document is unsigned. In short, there was no deal.[607]

420. Azerbaijan concedes, as it must, that the 2002 Forced Sale Agreement is unsigned, yet insists that "it is likely that it was signed by Mr Bahari."[608] The sole evidence Azerbaijan provides in support of this is a 2017 interview in which Mr. Bahari described his claim against Azerbaijan.[609] Azerbaijan selectively quotes from the interview in a highly misleading fashion to make it appear that there was an agreement and meeting of the minds on the 2002 Forced Sale Agreement. In fact, the interview proves the exact opposite: Mr. Bahari describes in detail that the 2002 Forced Sale Agreement did not end in a deal, and that as a result, he explicitly retained his shares in Caspian Fish:

605 **C-002 *bis*** Memorandum and Articles of Association for Caspian Fish Co. Inc., 5 March 1999, Art. 21, p. 16 (PDF).

606 **C-389** Applebys Legal Opinion, 17 June 2024, ¶ 44.

607 **C-017** Settlement Proposal, 15 June 2002; SoC ¶ 184.

608 SoD ¶ 285.

609 SoD ¶ 285; **R-68** Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live on 6 March 2017.

[610]

421. Azerbaijan's concludes from this that "at no point during this interview did Mr Bahari suggest that he had not signed the documents presented to him at the meeting."[611] This assertion is logically meaningless; neither did Mr. Bahari suggest in his interview that he signed the documents. More importantly, Azerbaijan's conclusion is clearly contradicted by Mr. Bahari's description in his interview that there was no agreement on the matter and both parties walked away, and of course it is contradicted by the clear absence of a signature in the 2002 Forced Sale Agreement.

422. More generally, the entire interview makes clear that Mr. Bahari wanted to publicize the fact that President Aliyev and Minister Heydarov had seized Caspian Fish and his other investments and that he sought proper compensation for the same. It is clear from the overall context of the interview that Mr. Bahari's position is that he still has a shareholding interest in Caspian Fish – and thus never sold it.

423. Elsewhere, Azerbaijan alleges that under the terms of the 2002 Forced Sale Agreement, only $1 million remained to be paid out of $4.5 million.[612] This reading rests entirely on the terms of the Alleged 2001 Sale Agreement, which, as discussed above, is a fraudulent document with zero supporting evidence of its existence in the BVI registry. There is no independent proof that Mr. Bahari ever received $3.5 million, $4.5 million, or any other sum.

424. Finally, Azerbaijan spends several pages detailing Mr. Bahari's alleged difficulties in his other ventures (which are not admitted).[613] It is unclear what this has to do with Azerbaijan's allegation of a 2001 sale of shares; the entire section reads as a gratuitous character assassination against Mr. Bahari. In a later section, Azerbaijan states that Mr. Bahari's alleged financial difficulties must be read to "infer[] that [Mr. Bahari] attempt[ed] to pressure improperly Mr. Heydarov to provide Mr. Bahari with funds, by

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610 **R-68** Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live on 6 March 2017, p. 3 (emphasis added).

611 SoD ¶ 285.

612 SoD ¶ 286(b); **C-017** Settlement Proposal, 15 June 2002, Art. 1, p. 2 (PDF).

613 SoD ¶¶ 289-296.

threatening to suggest publicly that the State was involved (when it was not)."[614] This insinuation of extortion is entirely speculative and unconvincing.

c. The 2013 Emails Prove Mr. Bahari Did Not Sell His Interest in Caspian Fish.

425. Azerbaijan provides two further exhibits to support its allegation that Mr. Bahari sold his shares in 2001. Both actually show the opposite.

426. *First*, Azerbaijan produces an email dated 28 June 2013, purporting to be from Mr. Bahari to ANS Press.[615] It is difficult to understand why Azerbaijan cites to this document; the entire document corroborates Mr. Bahari's overall Claim and confirms that Mr. Bahari seeks compensation for the illegal seizure of his investments, including Caspian Fish. This directly contradicts any theory that Mr. Bahari sold his shares in Caspian Fish in 2001:

[616]

427. Azerbaijan claims that Mr. Bahari's interview "[n]o doubt seek[s] to pre-empt any response that he had sold and been paid for his interest in Caspian Fish."[617] This is an unsupported speculation. The entire tenor of that email makes clear that Mr. Bahari believes he is the true owner of Caspian Fish and seeks redress. As alleged proof of the 2001 sale of his shares, this email is markedly implausible.

428. *Second*, Azerbaijan puts forward an email dated 4 December 2013 (roughly two months after his meeting with Mr. Heydarov in Baku).[618]

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614 SoD ¶ 300.

615 SoD ¶¶ 298-299; **R-145** Email from Mr Bahari to ANS Press, 28 June 2013. It appears that this email made its way to Mr. Sabutay Hasanov at Caspian Fish, who evidently forwarded it on to Azerbaijan. The email header appears to have been redacted. Given the onward transmission, it is not possible to fully confirm the authenticity of the text, although it generally follows Mr. Bahari's claim.

616 **R-145** Email from Mr Bahari to ANS Press, 28 June 2013; SoD ¶ 298.

617 SoD ¶ 298.

618 **R-053** Email from Mr Bahari to A Kalantarli, copied to President's Office, 4 December 2013; SoD ¶ 298.

429. This email provides yet another example of Mr. Bahari's efforts to regain his investments or seek redress for their loss. It shows that Mr. Bahari was constantly seeking to assert his rights from outside Azerbaijan.[619]

430. Mr. Bahari confirms the email address ([redacted]) is his and that he generally recalls sending this email.[620] However, Mr. Bahari no longer has access to this email account and cannot verify whether the email is accurate or has been altered.[621] As with other documents, Azerbaijan refused to provide the provenance of this document.[622] Claimant's Document Request sought production of documents relating to this email, but while Respondent agreed to produce "[redacted]" searches, it has failed to provide any results or response at all.[623]

431. According to Azerbaijan, this email "is consistent with and express confirmation that Mr Bahari was paid for his shares under the [Alleged] 2001 Sale Agreement and 2002 [Forced Sale] Agreement."[624]

432. The contents of this email state no such thing and there is no "express confirmation" or indeed any mention of an Alleged 2001 Sale Agreement or of the 2002 Forced Sale Agreement.[625] To the contrary, the email confirms every point in Mr. Bahari's claim and shows remarkable consistency in his story. The entire content is worth repeating here:

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619 Bahari WS2 ¶¶ 37-38.

620 Bahari WS2 ¶ 37.

621 Bahari WS2 ¶ 37.

622 **C-387** Letter from Claimant's Counsel to Quinn Emanuel regarding sources of exhibits, 13 January 2024; **C-388** Letter from Quinn Emanuel to Claimant's Counsel, 26 January 2024.

623 Procedural Order No. 6, Annex 1, Claimant's Document Request No. 99.

624 SoD ¶ 306.

625 **R-053** Email from Mr Bahari to A Kalantarli, copied to President's Office, 4 December 2013.

[redacted]

[redacted][626]

433. Mr. Bahari's email confirms all the major details of his Claim in this Arbitration:

a. Mr. Bahari constructed Caspian Fish;

b. Mr. Bahari met "[redacted]" with Minister Heydarov and was in Baku for 16 days (October 2013). This contemporaneous statement, in an R-Exhibit produced by Azerbaijan and upon which it relies, thus contradicts Azerbaijan's speculation that Mr. Bahari did not meet Minister Heydarov.[627] Azerbaijan separately concedes that their own witness, Mr. Zeynalov, recalls that Mr. Bahari told him he was in Baku to meet Minister Heydarov.[628] Finally, Azerbaijan further concedes that Mr. Bahari entered Azerbaijan on 10 October 2013 and left on 22 October 2013.[629] Thus, multiple sources, many of them contemporaneous, corroborate Mr. Bahari's

626 **R-053** Email from Mr Bahari to A Kalantarli, copied to President's Office, 4 December 2013.

627 SoD ¶ 302 ("Whether such a meeting took place is in considerable doubt.")

628 SoD ¶ 302; Zeynalov WS ¶ 52. However, Mr. Zeynalov falsely states that he was to accompany Mr. Bahari, that the meeting was to occur at a hotel and not the Ministry, and that Mr. Heydarov did not show up (Zeynalov WS ¶ 53). This testimony conveniently refutes specific points of Mr. Bahari's witness statement. Mr. Bahari rejects Mr. Zeynalov's testimony as false. See Bahari WS2 ¶ 36.

629 SoD ¶ 301; **R-058** Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues, 2 November 2023, p. 3.

witness statement about meeting Minister Heydarov and contradict the Ministry of Emergency Situation's letter dated 8 May 2024 that "[redacted]"[630]

c. The reference to the sale and construction of a building likely refers to Coolak Baku. As discussed above, ASFAN illegally stripped Coolak Baku of its assets and used it to run its own separate beer production business. Eventually, a residential building was built on top of the Coolak Baku premises at 25 Safar Aliyev Street in Baku.[631]

d. Mr. Bahari confirms he was a 75% owner in Coolak Baku but has lost his investment.

e. Mr. Bahari confirms he has lost Caspian Fish.

f. "[redacted]" is a reference to Minister Heydarov ("he"), who handed off the dispute to his driver/assistant, Mr. Arguj, to bring to another staff member, Rafael (Mr. Bahari no longer recalls the last name).[632]

g. "[redacted]." This is a reference to Mr. Bahari's witness testimony that Minister Heydarov told Mr. Bahari to sue the President and that Minister Heydarov would support this.[633]

h. "[redacted]." Mr. Bahari recalls this statement refers to a portion of certain Coolak Baku debts being repaid to him. However, he cannot confirm the very specific reference to $5,361,000.[634]

434. Thus, this 4 December 2013 email at **R-53** is a contemporaneous document that largely confirms the main details of Mr. Bahari's Claim. As with the 28 June 2013 email at **R-145**

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630 **C-316** [Respondent Document Production - 201_01] Letter from Ministry of Emergency Situations, 8 May 2024.

631 Aliyev WS ¶ 28 ([redacted].") Although this occurred after Mr. Bahari's 2013 visit, it is possible he gained knowledge of the impending sale.

632 Bahari WS2 ¶ 36.

633 SoC ¶ 313; Bahari WS1 ¶ 95.

634 Bahari WS2 ¶ 38.

and the 2017 interview at **R-68**, Mr. Bahari's overall position is that his investments have been illegally taken away from him, and that he seeks fair compensation for their loss. This directly contradicts any narrative that he had agreed to a deal and willingly sold Caspian Fish in 2001.

435. To the question "why would Mr. Bahari continue to assert his rights and seek compensation for Caspian Fish if he had already sold it in 2001?," Azerbaijan's only response is to insinuate ("infer"), without any evidence, that due to some alleged financial difficulties, Mr. Bahari attempted "to pressure improperly Mr. Heydarov to provide Mr. Bahari with funds, by threatening to suggest publicly that the State was involved (when it was not)."[635] According to Azerbaijan, the 4 December 2013 "email appears to be a last-ditch attempt to wrangle something more from his former business partners following an unproductive visit to Azerbaijan."[636] As noted above, this explanation is wholly speculative and unconvincing.

436. Similarly, the contents of the 4 December 2014 email make no explicit statement that the $5,361,000 relates specifically to an alleged prior sale of Mr. Bahari's 400,000 shares in Caspian Fish BVI. It could not since, as demonstrated above, there is no record of such a sale in the BVI corporate registry. Moreover, the sum does not match the terms of the Alleged 2001 Sale Agreement. Azerbaijan's attempts to tie this sum to a non-existent sale (both factually and legally speaking) is unpersuasive and certainly does not qualify as "express confirmation that Mr Bahari was paid for his shares under the 2001 Sale Agreement and 2002 Agreement."[637]

5. The Overwhelming Evidence Shows That Mr. Bahari Did Not Sell Caspian Fish In 2001, Or At Anytime.

437. In conclusion, Azerbaijan's theory of an Alleged 2001 Agreement fails. The overwhelming evidence shows that no such sale occurred:

a. The central exhibit, **R-50**, is an unsigned, unnotarized document. Its provenance is unknown.

b. Caspian Fish BVI's corporate records show no evidence of a transfer of shares in 2001. The Purported IOT is a fraudulent, backdated document. There is no

635 SoD ¶ 300.

636 SoD ¶ 306.

637 SoD ¶ 306 (emphasis added).

Director's Resolution or update to the Register of Members in 2001 evidencing such a sale, as required under BVI law for a valid share transfer.

c. A close examination of Caspian Fish BVI's corporate records shows two separate, contradictory narratives of fraudulent share transfers: (1) either a 1999 transfer, which would be illogical and fraudulent; or (2) a 2006 transfer, which would be equally fraudulent. Critically, both scenarios conflict with Azerbaijan's current narrative of an alleged 2001 share transfer.

d. Azerbaijan's alleged proof that Mr. Bahari received payment is unconvincing. **R-50** is a single-page document that purports to confirm part payment of a non-existent 2001 sale, is not notarized, and whose authenticity cannot be confirmed. **R-52** is an unsigned document with a handwritten portion that, on its face, says nothing about a share sale and references to an entirely different issue. The 2002 Forced Sale Agreement confirms, on its face, that as at June 2002, Mr. Bahari was still negotiating his 40% shareholding – and therefore, there could have been no sale in 2001. Likewise, the two 2013 emails (**R-145** and **R-53**) actually confirm that Mr. Bahari was still fighting to be compensated for his losses, contradicting the narrative of a 2001 sale.

438. In sum, Azerbaijan's defense cobbles together disparate, unrelated documents in order to reverse-engineer its narrative. The fragmented and unsubstantiated evidence that is presented is unpersuasive. More importantly, Azerbaijan entirely failed to examine the BVI records, which do not show any 2001 sale, and which are decisive on the issue as a matter of law. Ultimately, Claimant's position is that the Alleged 2001 Sale Agreement (and the supporting documents at **R-51** and **R-52**) is a fake document fabricated after the fact for the purposes of the Arbitration.

439. As a closing remark, Claimant also notes that Azerbaijan's defense relies on an alleged fact pattern which, if true, would amount to an extraordinary case of coercion and duress.

440. If Mr. Bahari had agreed to sell his shares in 2001 (or 2002) for $4.5 Million (which he denies), when he had just spent $56 million to construct Caspian Fish, this would be *prima facie* evidence of coercion and/or duress. A true arms-length negotiation would never have yielded such a low price ($4.5M) for Caspian Fish. The circumstances of Mr. Bahari's expulsion from Azerbaijan, combined with various threats directed to him by incredibly powerful members of Azerbaijan's political elite, would further corroborate coercion and/or

duress, and render any such sale null and void as a matter of law. Indeed, Azerbaijan's Civil Code, at its Article 339, posits the well-recognized contract principle that agreements concluded as a result of abuse of power, fraud, coercion, threat, bad faith, or duress, are considered invalid.[638] It should also be noted that any such sale would relate only to Caspian Fish, not Coolak Baku/Shuvalan Sugar, Ayna Sultan, or the carpets. At most, Azerbaijan's defense would operate as a discount on Caspian Fish's quantum.[639]

441. As it is, however, Mr. Bahari categorically did not sell his interest in Caspian Fish, and to this day, still holds his physical share certificate. As demonstrated by Azerbaijan's own evidence, he has been constant in his efforts to recoup his investments or obtain fair redress for their loss.

E. CASPIAN FISH WAS HIGHLY VALUABLE AND PRODUCTIVE.

442. The Statement of Defense attempts to downplay the sophistication and scale of the Caspian Fish facility and the company's monopolistic control over fish processing and sales in Azerbaijan, arguing that "Caspian Fish was not the success story Mr Bahari would have the Tribunal believe."[640] The unsurmountable issue for Azerbaijan is that contemporaneous statements by its own fact witnesses, the Azerbaijani Government, and a multitude of independent international organizations and media, all repeatedly confirm that Caspian Fish was in fact a "success story."

443. As discussed above in Part II, Section II.A, and in Secretariat's First and Second Reports, documentary evidence establishes that Mr. Bahari invested at least US$ 44.418 million in Caspian Fish, and that his overall investment was actually US$ 56 million, as repeatedly reported by Azerbaijan and its own witnesses in this Arbitration. As Secretariat discusses in its Second Report, that sum is roughly equivalent to amounts invested in other comparable fish processing facilities.[641]

444. Mr. Bahari had experience and significant success in the production of consumer products in his Iranian businesses Coolak Shargh and Kaveh Tabriz pharmaceuticals. He had a similar vision for Caspian Fish: not only to be the leading domestic production facility in

638 **C-222** Civil Code of the Republic of Azerbaijan, 26 May 2000, Art. 339, p. 91 (PDF).

639 Indeed, it appears that Azerbaijan's ultimate objective is to seek such a discount, see SoD ¶¶ 429-430.

640 SoD ¶ 308.

641 Secretariat Second Report, Section 2.C.

Azerbaijan, but to harness the riches of the Caspian Sea that Azerbaijan enjoyed and to export related products abroad. Caspian Fish achieved this by *inter alia* its CITES certification and the ISO 22000 food safety certification.[642] Neither of these certifications happen without Mr. Bahari ensuring that the Caspian Fish facility had the necessary equipment and production design to achieve compliance with European and international standards.

445. Azerbaijan submits statements from Messrs. Hasanov and Kerimov offering a critique of alleged deficiencies in the Caspian Fish facility. Neither Mr. Hasanov nor Mr. Kerimov produce any documentation to support their recollections. In particular, Mr. Hasanov provides a broad discussion about Caspian Fish's business in 2001, the very first year Caspian Fish was in business and started operations.[643] This myopic focus on 2001 deserves very little, if any, credit. Mr. Hasanov, who is said to be an accountant by training, also opines on what he says were "[redacted]," and singles out an issue with the facility's refrigerators – apparently this issue was not so drastic since Mr. Hasanov also says the issue was not fully resolved until 2005 at the "[redacted]"[644]

446. Mr. Kerimov's witness statement is equally derisory to Mr. Bahari and Caspian Fish, based solely on Mr. Kerimov's fuzzy recollections and impressions. This includes his critiques of the facility's distance from the sea and the airport; the location of the caviar production in relation to fish smoking facilities; and that the production capacity of Caspian Fish was allegedly too large.[645] He also asserts that he '[redacted]" and that he found a piece of "[redacted]"[646]

447. In light of these unfounded allegations by Messrs. Hasanov and Kerimov, as well as Mr. Zeynalov,[647] Mr. Bahari contacted Mr. Elchin Suleymanov, who was a project manager on the Caspian Fish project. As explained in his witness statement submitted with this

642 **C-175** Certificate of Conformity by the State Committee for Standardization, Metrology and Patent of Azerbaijan, pp. 4-5.

643 Hasanov WS Section V.

644 Hasanov WS Section VI.

645 Kerimov WS Section III.

646 Kerimov WS ¶ 16.

647 Zeynalov WS Section III.

Reply, Mr. Suleymanov built the Caspian Fish facility starting in the summer of 1998 until its completion and the opening ceremony in February 2001.[648] Notably, Mr. Suleymanov testifies that, "[redacted]"[649] He also testifies that a "[redacted]" and that he met "[redacted]"[650] Additionally, the "[redacted]"[651]

448. Mr. Suleymanov reviewed the statements of Messrs. Hasanov, Kerimov, and Zeynalov, and considers them to be "[redacted]" and that such statements "[redacted]"[652]

449. Notably, Mr. Suleymanov is unable to attest to anything that happened with the Caspian Fish facility after he attended the grand opening ceremony on 10 February 2001. This is because on his return to work at Caspian Fish on the morning of 11 February 2001, he was "[redacted]."[653] Despite having spent almost three years building the Caspian Fish facility to completion, Mr. Suleymanov was never allowed back onto the premises because of his association with Mr. Bahari.

450. Considering the above, it is clear that Azerbaijan has, yet again, put forward a fabricated counterfactual about the quality and productivity of the Caspian Fish facility. On this issue (and with others), the Tribunal need not solely rely on Mr. Bahari's evidence; the Tribunal can also rely on contemporaneous statements of Azerbaijan's own witnesses, as well as statements by the Azerbaijani Government itself, and independent organizations and media.

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648 Suleymanov WS ¶¶ 28-36.

649 Suleymanov WS ¶ 35.

650 Suleymanov WS ¶ 36.

651 Suleymanov WS ¶ 38.

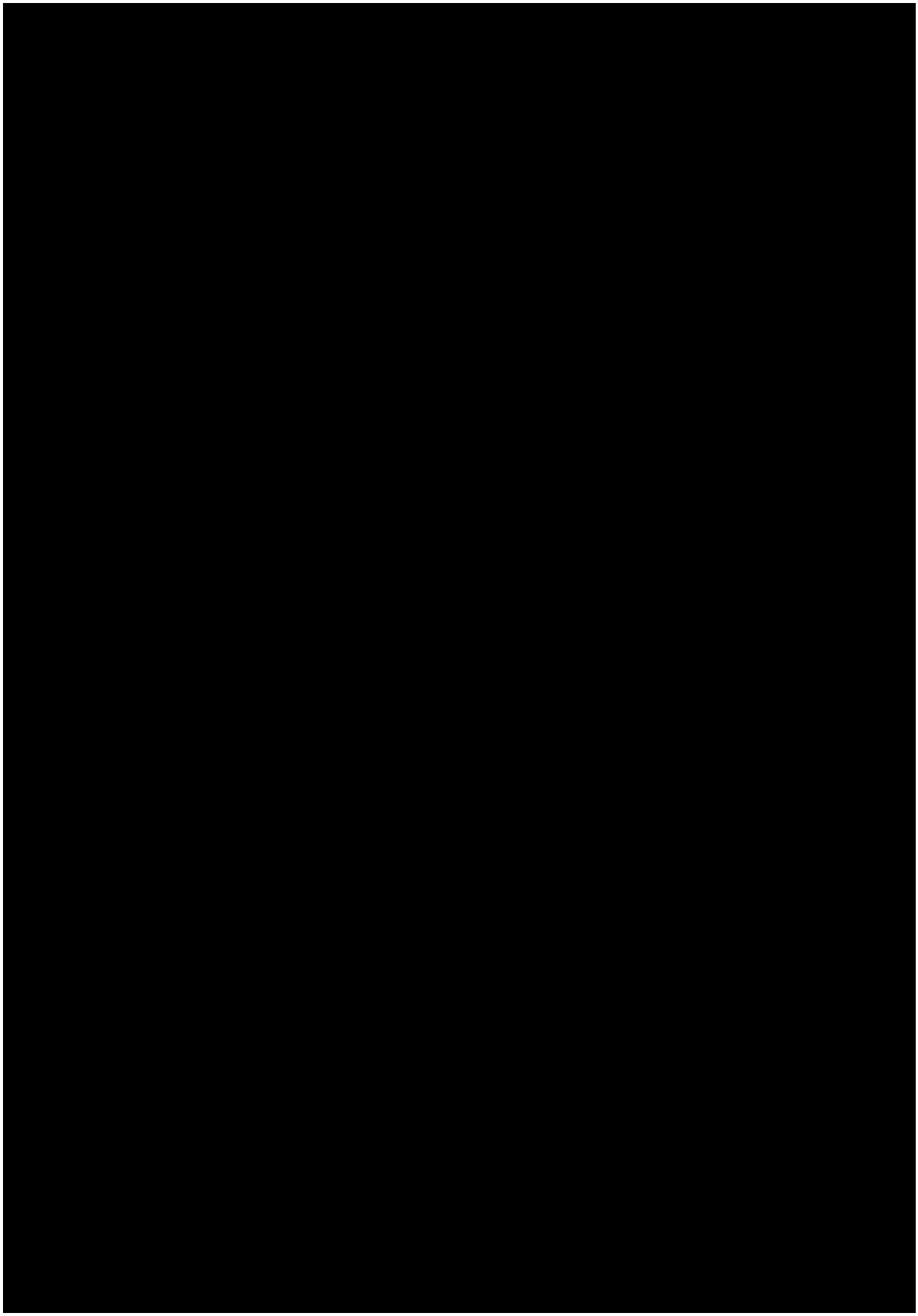
652 Suleymanov WS ¶¶ 37, 46-48.

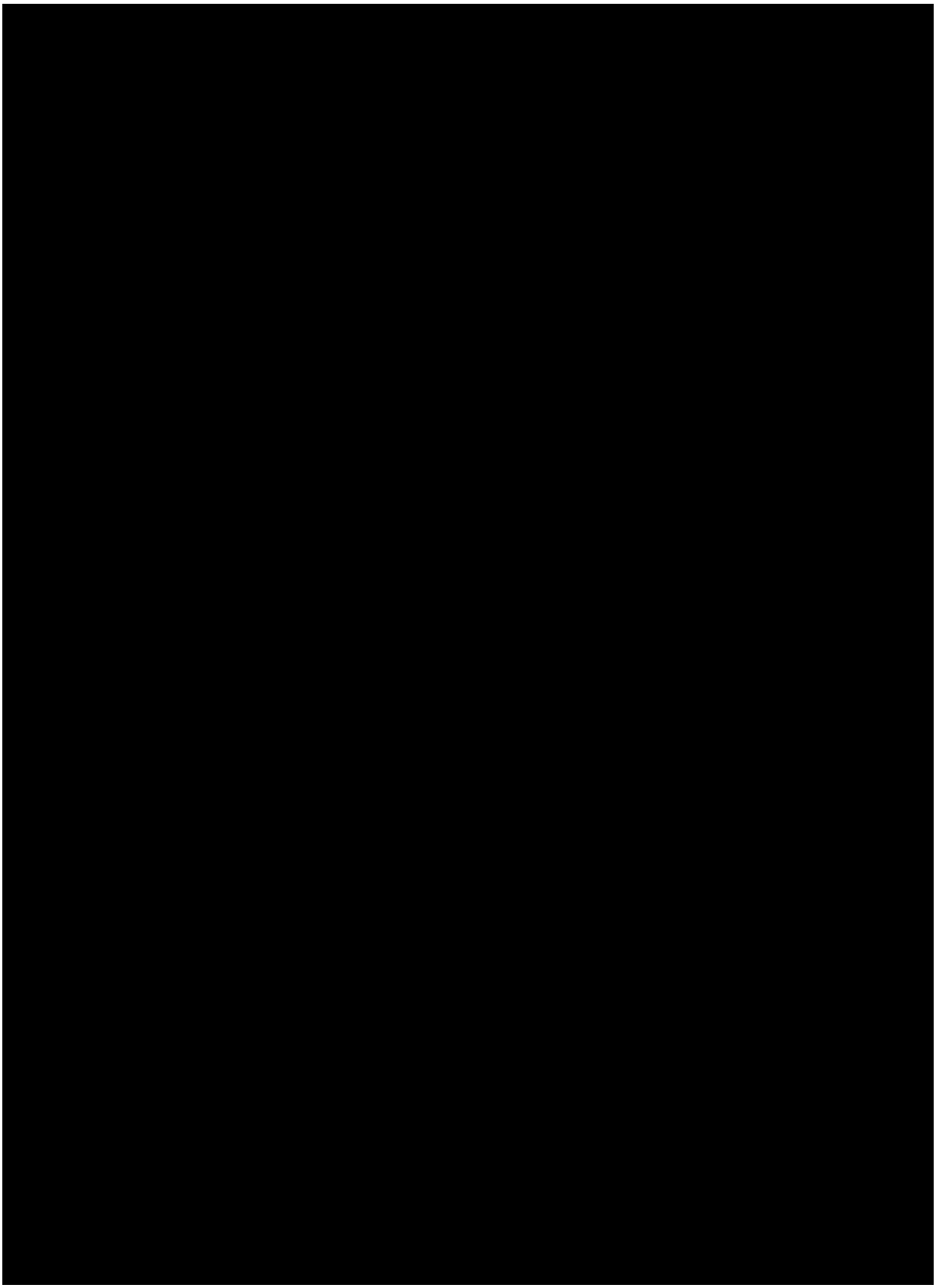
653 Suleymanov WS ¶ 42.

451. Secretariat's Second Report provides the following table to summarize various press articles or other documents which reported on Caspian Fish's development, noting that "[redacted]"[654]

[redacted]

654 Secretariat Second Report, ¶ 3.30. See Table 7, p. 22 (emphasis in original) (internal citations omitted).





[redacted]

452. In reviewing the materials that underly the table above, Secretariat opines that:

[redacted][655]

655 Secretariat Second Report, ¶ 3.31.

453. Secretariat's Second Report provides a highly detailed discussion and analysis of the underlying facts that support its view.[656]

454. In view of the foregoing, Azerbaijan's position on the value and quality of the Caspian Fish facility that Mr. Bahari designed and built is false and disconnected from reality.

455. Of additional note, Secretariat's table above includes Mr. Kerimov's June 2002 comments at a press conference that [redacted]" and that Caspian Fish had "[redacted]."[657]

456. First, it is notable that by June 2002 Caspian Fish had already received a license to sell products in the Asian markets and was soon entering Europe. Thus, Caspian Fish's business in 2002 and onwards was already markedly different than what it achieved in 2001, which, as discussed above, was the extent of Mr. Hasanov's myopic statements.

457. Mr. Kerimov's press conference also supports the Statement of Claim's conclusion that it appeared Neftchala Fish Factory (**"NFF**") was owned by Caspian Fish LLC.[658] This conclusion was because NFF was established at the same legal address as Pasha Holding (Neftchilar, 153, Nasimi District, Baku),[659] and the head of NFF was Mr. Nariman Sardarly, the CEO of Pasha Investments.[660]

458. Although the Statement of Defense considers this to be "wholly unsupported," it does not affirmatively say NFF is not owned by Caspian Fish LLC.[661] Instead, it states that "NFF and indeed the LLC are not owned or controlled by Azerbaijan." But that is not what the Statement of Claim asserts, and is yet another subtle non-answer.

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656 Secretariat Second Report, Section 3.B.iii.

657 Secretariat Second Report, Table 7, p. 23.

658 SoC ¶¶ 280-283.

659 **C-171** Pasha Holding started another business of Kamaladdin Heydarov, az24saat.org, 29 November 2017, p. 2 (PDF).

660 **C-171** Pasha Holding started another business of Kamaladdin Heydarov, az24saat.org, 29 November 2017, p. 3 (PDF).

661 SoD ¶¶ 318-319.

459. Continuing the theme of non-answers, as part of document production, Azerbaijan produced a 10 May 2024 letter from "Azerbaijan Fish Farm" LLC ("**AFF**") in response to a Request No. 61,[662] which is for:

[redacted]

460. To date, Azerbaijan has not produced any responsive documents to this request.

461. In any event, the AFF letter dated 10 May 2024 raises more questions than it answers:

a. AFF says it was previously known as "[redacted]" LLC. Mr. Bahari's document request asked for information relating to "[redacted]." These may be the same, but again, it is not clear.

b. AFF says it "[redacted]." Again, the focus is not on AFF, it is on "[redacted]" or "[redacted]" This is a non-answer.

c. AFF further says that it "[redacted]" and that this facility was previously "[redacted]" Thus, before 2018, any fishing done in Neftchala was coordinated and authorized by the State.

d. Prior to this 2018 privatization, Azerbaijani media reported in 2017 that, "[redacted]"[663] It is clear that Caspian Fish and the State were cooperating on Neftchala and other fish farms for years.

462. The AFF Letter states that "[redacted]" As will be recalled, this issue arose because the Statement of Claim sought clarity about the corporate nexus between

662 **C-322** Letter from Azerbaijan Fish Farm to Quinn Emanuel, 10 May 2024.

663 **C-323** az24saat, [redacted]

Caspian Fish LLC, NFF, and Pasha Holding.[664] While Azerbaijan has not produced any documents to enable that clarity, it is highly likely that Pasha Holding is the owner of LU-MUN Holding, and by extension AFF.[665]

463. LU-MUN Holding has reported significant financial success since it was founded in 2017.[666] Its rapid financial performance and growth immediately after incorporation suggests patronage or ownership by politically connected elites in Azerbaijan. If Caspian Fish LLC is no longer in full operation, as the Statement of Defense submits,[667] it is logical to conclude that LU-Mun Holding and AFF have stepped in and acquired Caspian Fish LLC's business, and are now the "face" of Azerbaijan's fish and caviar industry,[668] again to the benefit of President Aliyev and his family.

464. Finally, as part of the document production in this Arbitration, Azerbaijan was to produce various financial information about Caspian Fish LLC, including audited financials or other financial statements for Caspian Fish LLC, as well as Caspian Fish LLC's compliance with financial reporting requirements.[669]

465. To date, Azerbaijan has either (a) produced documents that are highly questionable or (b) produced no documents at all, in circumstances where such documents must exist.

466. Azerbaijan produced documents that appear to relate to Caspian Fish LLC's historical financial and/or operating performance. However, as thoroughly discussed in Secretariat's Second Report, the documents produced are an incomplete view into the financial and/or operating performance of Caspian Fish, do not reflect the entire period since Caspian Fish

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664 SoC ¶ 283.

665 For example, Pavel Ryzhenkov, a marketing manager at LMH since August 2018, states on his LinkedIn profile that LU-MUN Holding is "[redacted]" (**C-324** LinkedIn profile of Mr. Pavel Ryzhenkov, 23 May 2024); LU-MUN Holding "[redacted]" to Pasha, according to an Armenian-language article published in April 2023 by Factor, a Yerevan-based media publication founded by Factor Information Center (**C-325** factor.am, *Aliyev continues to visit his own business facilities with his wife, hiding their true ownership from the public*, 19 April 2023); and since 2017, at least 13 current and former LU-MUN Holding employees have transitioned from roles at Pasha or SOCAR, the state-owned oil company which is reportedly controlled by President Aliyev.

666 **C-326** Independent Auditors' Reports to the Shareholders and Management of Lu-Mun Holding LLC, 2020-2023.

667 SoD ¶ 313.

668 **C-327** BSU and LU-MUN HOLDING sign a cooperation agreement, Baku Universiteti (excerpts of page 6), 28 February 2023; **C-328** report.az, *Lu-Mun Holding and SOCAR Trading unite to release 25,000 endangered endemic sturgeons into Caspian Sea*, 16 August 2023 (LU-MUN Holding collaborated with SOCAR on a project to release 25,000 sturgeons into the sea in August 2023).

669 Annex 1 to Procedural Order No. 6, Claimant's Document Production Request Nos. 60, 69.

started operations, and are conflicted by numerous contemporary documents and even statements by persons directly associated with Caspian Fish LLC.[670]

467. Secretariat concludes that:

[redacted][671]

468. As discussed below in Part VII, Sections II.B and II.C, the financial statement of Caspian Fish LLC that Azerbaijan has produced has are highly unreliable and present very serious questions about the veracity of Azerbaijan's evidence and overall good faith in this Arbitration.

469. Unsurprisingly, Azerbaijan also failed or refused to produce documents that are highly likely to exist.

a. According to Article 9.4 of the Charter of Caspian Fish LLC, the company is to engage "[redacted]"[672] It is therefore unclear why Caspian Fish LLC or Azerbaijan did not produce these annual external audits as part of their document production responsibilities.

b. Relatedly, Azerbaijan produced a letter dated 3 May 2024 from the Ministry of Economy stating that "[redacted]

670 Secretariat Second Report, Section 3.C.

671 Secretariat Second Report, ¶¶ 2.8 and 3.103.

672 **R-57** Charter of the LLC, 11 September 2000, Art. 9.4.

[redacted]."[673] Considering that Request No. 60 asked for documents "[redacted]" this letter is either a refusal to produce such documents or an incomplete response by Azerbaijan.

470. As with all things related to Caspian Fish, Azerbaijan ensures that a veil of uncertainty and deniability remains an intractable obstacle to Mr. Bahari and the Tribunal knowing the truth.

IV. AZERBAIJAN'S JUDICIARY ENABLED THE ILLEGAL TRANSFER OF AYNA SULTAN THROUGH PATENTLY DEFECTIVE COURT PROCEEDINGS.

A. AZERBAIJAN CONCEDES THAT MR. BAHARI PURCHASED AYNA SULTAN AND HAD A QUALIFYING INVESTMENT.

471. As a preliminary point, Azerbaijan appears to agree that Mr. Bahari purchased the Ayna Sultan property (located at 62 Karl Marx Street, which became Bunyadov Street, in the Narimanov District of Baku) in or around 1998. As conceded by Azerbaijan, the registration voucher "evidences ownership of property under Azerbaijani law."[674] In his Statement of Claim, Mr. Bahari produced Registration Voucher no. 109228.[675] Azerbaijan does not contest this proof of ownership, and confirms that Mr. Bahari properly purchased the property in 1996.[676]

472. Thus, it is commonly agreed between the Parties that Mr. Bahari was an investor and made a qualifying investment in Ayna Sultan.

673 **C-417** Letter from Ministry of Economy Regarding Caspian Fish LLC Financials, 3 May 2024.

674 SoD ¶ 321.

675 **C-016** Ayna Sultan Registration Voucher and Technical Passport, 29 May 1996.

676 SoD ¶ 323(b); **R-79** Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Guliyev and Mr Bahari, 28 September 1996.

B. THE AYNA SULTAN LITIGATIONS REVEAL FRAUDULENT AND COLLUSIVE PROCEEDINGS.

473. Azerbaijan submits a number of court cases which it relies upon for the allegation that Mr. Bahari sold his interest in Ayna Sultan in or around 1999 and therefore has no investment to claim in this arbitration (collectively, the "**Ayna Sultan Litigations**").[677] In addition, Azerbaijan further claims Mr. Bahari participated in the proceedings in 2009 and therefore was fully able to defend his interests in-country.[678]

474. Azerbaijan's depiction of the Ayna Sultan Litigations is misleading to the extreme, and the evidence of Mr. Bahari's supposed participation includes a palpably obvious forgery in official court documents.

475. The Ayna Sultan Litigations actually reveal a sprawling, chaotic court fight between multiple individuals, each attempting to fraudulently misappropriate Mr. Bahari's investment for himself or herself. The Ayna Sultan Litigations are anarchic, nonsensical, and bizarre to the extreme: the ultimate victor whose claim is affirmed by the Consolidated Appeal Judgment is a man who died nearly a year prior, as explicitly acknowledged by the Court of Appeal, with no legal successor-in-interest ever identified. Putting aside that aberration, the entirety of the proceedings were purposely carried out *in absentia*, without Mr. Bahari's knowledge or participation.

476. Claimant's Document Request no. 181 requested the full case files from the Ayna Sultan Litigations, including any ancillary proceedings. Azerbaijan has now produced these documents.[679] As will be discussed below, the case files show no record of service of

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677 SoD Part III, Section VI.A.

678 SoD Part III, Section VI.B.

679 Azerbaijan's full production is exhibited as **C-300** to **C-308**, **C-310**, and **C-332** to **C-350**. An index of the documents is provided by Respondent and is produced as **C-359**, Index of documents produced by Respondent, undated. Of note, Azerbaijan erroneously labeled its production as responsive to Request no. 182 (which was denied) rather than no. 181. See Id. at p. 15, FN1.

Request No.181 reads as follows: "[redacted]"

Respondent agreed to produce the files (Procedural Order No. 6 Annex 1, 287).

process or notifications to Mr. Bahari. There also appear to be certain court decisions that are not included. For ease of reference, Claimant produces at **C-359** a table which lists all documents produced or exhibited (**R-Exhibits**), organized chronologically and by litigation/procedure. This table may be useful as a rough index of the various procedures described below.

477. The chronology of the proceedings that follow are complex and not always logical, due to irregularities internal to the procedures themselves. Nonetheless, a methodical account is necessary to expose the pervasive irregularities in Ayna Sultan Litigations that, taken together, robbed Mr. Bahari of his due process rights.

1. The Competing Gambarov and Pashayev Litigations Reveal Various Individuals Trying to Misappropriate Mr. Bahari's Investment via Sham Court Proceedings.

478. The Ayna Sultan Litigations reveal that various individuals (including Mr. Rasim Zeynalov) circled in on Mr. Bahari's investments and took advantage of his expulsion and forced absence from Azerbaijan to fraudulently misappropriate Ayna Sultan through patently defective court proceedings. Two individuals, Messrs. Azad Gambarov and Samadaga Pashayev, each initiated a claim in 2004 against Mr. Bahari alleging that Mr. Bahari had sold Ayna Sultan property (at 62 Bunyadov Street in Baku) to him. These are respectively referred to as the "**Gambarov Litigation**" and the "**Pashayev Litigation**."

479. In both litigations, Mr. Bahari was not properly served or notified and was unable to participate; indeed, Mr. Bahari had no knowledge of these litigations until they were revealed in the Statement of Defense.[680] Azerbaijan's document production of the court case files contains no record of any proper service of process, no copies of writs of summons, no receipts evidencing delivery of the same, and no record of any follow-on notifications of party filings, court decisions, etc. Moreover, the various court decisions reveal a complete disregard for Mr. Bahari's due process rights; tellingly, this papering over of Mr. Bahari's rights is not a one-off, but is systematic across the entirety of the Ayna Sultan Litigations.

480. Incredibly, the same court – the Narimanov District Court – issued two separate judgments within four days of each other granting Messrs. Azad Gambarov and Pashayev title to the same Ayna Sultan property (the "**First 2004 Judgment**" dated 16 August 2004 and the

680 Bahari WS2 ¶ 17.

"**Second 2004 Judgment**" dated 20 August 2004).[681] Shortly thereafter, on 23 August 2004, Mr. Azad Gambarov died in a car accident. [682]

2. Mr. Azad Gambarov's Appeal of the Second 2004 Judgment Identified Collusion Between Mr. Pashayev, Mr. Zeynalov, and the Narimanov District Court Judge.

481. On 6 September 2004, even though Mr. Azad Gambarov was deceased, an appeal against the Second 2004 Judgment (in favor of Mr. Pashayev) was filed in his name.[683] This was done by Elchin Gambarov acting as attorney of Mr. Azad Gambarov. Elchin Gambarov was Azad Gambarov's nephew,[684] who, in all evidence, sought to acquire Ayna Sultan for himself.[685] This was highly irregular since Mr. Elchin Gambarov filed all court documents directly in the deceased's name, rather than in his own name as an heir, successor, or assignee. In other words, the Gambarov Litigation proceeded in the courts (and with the courts' explicit acknowledgment) with a dead claimant and no identified heir, successor, or assign.

482. Putting that aberration to the side, the appeal of the Second 2004 Judgment pointed out clear fabrications and defects in the Pashayev Litigation, including that Rasim Zeynalov had claimed to have a power of attorney to sell Ayna Sultan to Mr. Pashayev on Mr. Bahari's behalf. Mr. Bahari never gave Mr. Zeynalov authority to do so.[686] In his statement of appeal, Mr. Elchin Gambarov argued specifically that Messrs. Pashayev and Zeynalov had colluded to misappropriate Mr. Bahari's property – and that the judge in Mr. Pashayev's case, Judge M.G. Aliyev, also participated in this fraud.[687]

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681 For ease of reference, Claimant retains the defined term used by Respondent. See SoD Part III Section VI.

682 **C-300** [Respondent Document Production - 182_09] Appellate Court Decision, 14 June 2005, p. 1.

683 **C-301** [Respondent Document Production - 182_05] Appeal Complaint by E. Gambarov (on behalf of A. Gambarov), 6 September 2004.

684 There is a reference to Mr. Elchin Gambarov being Azad Gambarov's nephew in a later appeal document. See **C-347** [Respondent Document Production - 182_24] Cassation Complaint by S. Pashayev to the Supreme Court, 21 September 2005, p. 2.

685 **C-301** [Respondent Document Production - 182_05] Appeal Complaint by E. Gambarov (on behalf of A. Gambarov), 6 September 2004, pp. 1-2.

686 Bahari WS2 ¶¶ 15-18.

687 **C-301** [Respondent Document Production - 182_05] Appeal Complaint by E. Gambarov (on behalf of A. Gambarov), 6 September 2004, pp. 1-2.

3. Elchin Gambarov Sold Ayna Sultan on Behalf of the Deceased Azad Gambarov for US$235,000.

483. Subsequent to the appeal of the Second 2004 Judgment, on 6 October 2004, Mr. Elchin Gambarov, "[redacted]" the deceased Azad Gambarov, sold Ayna Sultan to a certain Rasim Sanvaliyev, for the sum of AZM 1,151,500,000, which at the time was approximately US$235,000.[688] This was a plainly fraudulent act by Mr. Elchin Gambarov. The wide gap between that sale price, and Mr. Azad Gambarov's original claim that Mr. Bahari had sold Ayna Sultan for US$70,000,[689] undermines the credibility of that latter sum.

4. Mrs. G.A. Gambarova Appealed the Second 2004 Judgment on the Basis of Her Status as Legal Heir and Successor of the Deceased Azad Gambarov.

484. On 15 April 2005, Mr. Azad Gamborov's wife, Mrs. Gulshan Abbas (G.A.) Gambarova, as legal heir and successor to the deceased Mr. Gambarov, also appealed the Second 2004 Judgment in favor of Mr. Pashayev.[690] ("**G.A. Gambora Appeal**.") It appears that Ms. Gambarova and Mr. Elchin Gambarov were competing against each other to receive Ayna Sultan from Mr. Azad Gambarov's estate.

5. Mr. Pashayev Appealed the First 2004 Judgment on the basis that There Was No Proof of an Actual Sale.

485. Mr. Pashayev appealed the First 2004 Judgment in favor of Mr. Azad Gambarov, although that appeal is not in the file.[691] Mr. Pashayev also pointed out deficiencies in the Gambarov Litigation; notably, that there was no proof of an actual sale and purchase agreement, but rather, that Mr. Bahari allegedly mortgaged Ayna Sultan as security for a debt owed to Mr. Gambarov in the amount of US$70,000.

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688 **C-302** [Respondent Document Production - 182_18] Contract for Sale of Immovable Property, 6 October 2004, p. 1; See also **C-303** [Respondent Document Production - 182_20] Appeal Complaint by S. Pashayev to Narimanov District Court, 28 April 2005, p. 1.

689 **C-304** [Respondent Document Production - 182_10] Claim by Azad Gambarov against Mr Bahari (concerning the conclusion of the sales contract, loss of legal rights and removal from passport registration), 4 August 2004, p. 1.

690 **C-305** [Respondent Document Production - 182_06] Appeal Complaint by V.N. Khasayev (on behalf of G. Gambarova),15 April 2005, p. 1.

691 The Pashayev Statement of Appeal dated 18 April 2005 is cited in 14 June 2005 Decision of Court of Appeal, see **C-306** [Respondent Document Production - 182_21] Decision of the Appeal Court of the Republic of Azerbaijan, 14 June 2005, p. 1.

486. Mr. Pashayev's appeal was apparently rejected by the Narimanov District Court on or around 18-20 April 2005 (that decision is also not in the case file).[692]

6. Mrs. Gambarova's Appeal is Inexplicably Rejected by the Narimanov District Court, But The Court of Appeal Reverses the Decision.

487. On 18 April 2005, Judge M.G. Aliyev (the same judge who rendered the Second 2004 Judgment in favor of Mr. Pashayev and who Mr. Elchin Gambarov had accused of fraudulent collusion) rejected Mrs. Gambarova's appeal, giving the profoundly glib reason that his decision in the Second 2004 Judgment "[redacted]"[693] Judge Aliyev elided the fact that Mr. Azad Gambarov was by now long dead, and characterized his attorney, Mr. Elchin Gambarov, as an "[redacted]" without elaborating this further.[694]

488. Perhaps even more remarkably, Judge Aliyev further noted that the dispute was settled between Mr. Azad Gambarov and Mr. Pashayev, and that accordingly, Mr. Elchin Gambarov had asked to withdraw Azad Gambarov's appeal against the Second 2004 Judgment.[695] In all evidence, it appears that Mr. Elchin Gambarov and Mr. Pashayev had come to some sort of arrangement between themselves, while cutting out Mrs. Gambarova, who was, *prima facie*, the correct heir and successor to Mr. Azad Gambarov's estate.

489. However, on 14 June 2005, the Court of Appeal reversed this decision, and allowed Mrs. Gambarova's appeal to proceed, acknowledging her status as "[redacted]" to Mr. Azad Gambarov. Oddly, however, the Court of Appeal appears to have allowed her appeal to move forward based on her status as an interested party, rather than as the successor to the Azad Gambarov Litigation and First 2004 Judgment.[696]

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692 **C-306** [Respondent Document Production - 182_21] Decision of the Appeal Court of the Republic of Azerbaijan, 14 June 2005, pp. 1-2.

693 **C-307** [Respondent Document Production - 182_07] Narimanov District Court Decision, 18 April 2005, p. 1.

694 **C-307** [Respondent Document Production - 182_07] Narimanov District Court Decision, 18 April 2005, p. 1.

695 **C-307** [Respondent Document Production - 182_07] Narimanov District Court Decision, 18 April 2005, p. 1.

696 **C-300** [Respondent Document Production - 182_09] Appellate Court Decision, 14 June 2005, pp. 1-2.

7. Mr. Pashayev Moves to Annul the First 2004 Judgment Based on Elchin Gambarov's Use of a Fraudulent POA.

490. Apparently, this arrangement between Elchin Gambarov and Mr. Pashayev was short-lived, as barely 10 days later, in an about-face, Mr. Pashayev moved to annul the First 2004 Judgment in favor of Mr. Azad Gambarov. Mr. Pashayev did so in a cassation appeal dated 28 April 2005.[697] In this appeal, Mr. Pashayev acknowledged having previously come to an arrangement with Elchin Gambarov, whereby Mr. Pashayev agreed to do the necessary to enforce the First 2004 Judgment, in exchange for US$50,000. However, Mr. Pashayev then discovered that Mr. Elchin Gambarov had sold the flat for US$235,000. Apparently displeased that Mr. Elchin Gambarov walked away with a much larger sum, Mr. Pashayev revealed to the court that following Azad Gambarov's death, Elchin Gambarov had procured a fake identification card in order to procure a new, false power of attorney for himself on behalf of Azad Gambarov. This allowed Elchin Gambarov to sell Ayna Sultan on 6 October 2004.[698] Mr. Pashayev thus sought the annulment of the First 2004 Judgment on the basis of Mr. Elchin Gambarov's fraudulent power of attorney.[699]

8. The Court of Appeal Restores Mr. Pashayev's Original Appeal of the First 2004 Judgment.

491. It appears that on 14 June 2005, the Court of Appeal granted Mr. Pashayev's cassation appeal dated 28 April 2005.[700] This effectively restored Mr. Pashayev's original 18 April 2005 appeal of the First 2004 Judgment in favor of Azad Gambarov. Astoundingly, the Court stated that [redacted]

697 **C-303** [Respondent Document Production - 182_20] Appeal Complaint by S. Pashayev to Narimanov District Court, 28 April 2005. Although the contents of the appeal seek to annul the First 2004 Judgment, the cassation application appears, procedurally, to appeal the 20 April 2005 Narimanov District Court rejection of Mr. Pashayev's 18 April 2005 Appeal of the First 2004 Judgment. See supra, ¶ 179.

698 **C-303** [Respondent Document Production - 182_20] Appeal Complaint by S. Pashayev to Narimanov District Court, 28 April 2005, p. 1.

699 **C-303** [Respondent Document Production - 182_20] Appeal Complaint by S. Pashayev to Narimanov District Court, 28 April 2005, p. 2.

700 **C-306** [Respondent Document Production - 182_21] Decision of the Appeal Court of the Republic of Azerbaijan, 14 June 2005.

[redacted]"[701] In other words, the Court of Appeal completely ignored the fact that one of the underlying cases had, for some time, been proceeding in the name of a long-dead claimant, Azad Gambarov – and shockingly, resolved that defect by stating that Mr. Azad Gambarov had been duly notified of the court hearing, but had failed to attend without a good excuse. For obvious reasons, the case file contains no record of any notifications sent to the deceased Azad Gambarov. The absurdity of the situation highlights the manner in which the Azerbaijani courts make false assertions of proper notifications to parties in their decisions, when clearly no such notifications have been issued. In this specific decision, the case file also contains no record of any notification to Mr. Bahari.

9. The Court of Appeal Appears to Consolidates the Azad Gambarov and Pashayev Appeals, but not the Gambarova Appeal.

492. On the same day that Mr. Pashayev's appeal was granted (14 June 2005), the Court of Appeal consolidated the Gambarov Litigation and the Pashayev Litigation.[702] Inexplicably, the Court of Appeal notes that the First 2004 Judgment was appealed by Mr. Pashayev, while the Second 2004 Judgment was appealed by Mrs. Gambarova, "[redacted]" [703] There is no mention of Elchin Gambarov (or his 6 September 2004 appeal of the Second 2004 Judgment on behalf of the deceased Azad Gambarov).[704]

10. The Consolidated Appeal Judgment Attempts to Reconcile the Lower Court Decisions, But is Rife with Irregularities.

493. On 24 June 2005, the Court of Appeal rendered a decision on the consolidated appeals.[705] The decision ultimately rejects Mr. Pashayev's appeal and gives "[redacted]" to

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701 **C-306** [Respondent Document Production - 182_21] Decision of the Appeal Court of the Republic of Azerbaijan, 14 June 2005, p. 1.

702 **C-308** [Respondent Document Production - 182_22] Decision of the Appeal Court of the Republic of Azerbaijan, 14 June 2005, pp. 1-2.

703 **C-308** [Respondent Document Production - 182_22] Decision of the Appeal Court of the Republic of Azerbaijan, 14 June 2005, p. 1.

704 **C-301** [Respondent Document Production - 182_05] Appeal Complaint by E. Gambarov (on behalf of A. Gambarov), 6 September 2004.

705 **R-149** Judgment of the Baku Appellate Court in Case No 1mk-4123/2005 [English translation and Azerbaijani original], 24 June 2005. The translation at **R-149** contains unexplained omissions that suggest translation bias. Claimant provides an alternative translation at **C-309** Claimant's Translation of the Baku Appellate Court Decision, 24 June 2005.

the First 2004 Judgment dated 16 August 2004, in favor of the long-deceased Azad Gambarov:

a. The decision acknowledged that Azad Gambarov died in August 2004.[706] The Court of Appeal equally acknowledged Mrs. Gambarova's appeal of the Second 2004 Judgment in her status as the "[redacted]" of Mr. Azad Gambarov.[707] Again, there is no mention of the 6 September 2004 appeal of the Second 2004 Judgment by Elchin Gambarov;[708] that appeal appears to fall by the wayside.

b. The Court noted that Notary Office No. 42 confirmed that Mr. Bahari's power of attorney to Rasim Zeynalov issued on 17 December 1999 was terminated on 19 December 2000 in the presence of Mr. Zeynalov – as confirmed by Mr. Zeynalov himself.[709] The Court of Appeal therefore rejected Mr. Pashayev's appeal, on the basis that [redacted]." A such, the deed was not duly notarized and therefore invalid.[710]

c. In affirming Azad Gambarov's claim (and the First 2004 Judgment), the Court of Appeal accepts wholesale the argument of the Narimanov District Court that Mr. Gambarov paid US$70,000 to Mr. Bahari.[711] Because of this, [redacted]

706 **C-309** Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, p. 2 ("Claimant Azad Gambarov passed away on 24 August 2004"), p. 6 ("It was defined that Gambarov, Azad Zaki oglu passed away on 23 August 2004.")

707 **C-309** Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, p. 3 ("The appeal [is] filed by Gambarov, Azad Zaki's wife and legal heir G.A. Gambarova…")

708 **C-309** Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, p. 3 ("The appeal [is] filed by Gambarov, Azad Zaki's wife and legal heir G.A. Gambarova…")

709 **C-309** Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, pp. 4-5 ("Thus, as it is clear from the copy of the POA verified by the notary office No 42 and included in the case materials, on 17 December 1999 Mahammad Rza Khalilpurbahari issued a power of attorney to Zeynalov Rasim Maharram oglu with the validity period of 3 years and the right to delegate the authority to a third party.

It is indicated in the Response letter of Notarial office No 42 to Legal consultancy firm No 15 dated 30.03.2004 that the POA was terminated on 19.12.2000 in the presence of Zeynalov. In his statement left in the notary, Zeynalov confirms that he is aware of termination of the power of attorney and has no objections in that regard.")

710 **C-309** Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, p. 5.

711 **R-147** Decision of the Narimanov District Court in Case No 2-1467/2004 [English translation and Azerbaijani original], 16 August 2004, p. 2; **C-351** Claimant's Translation of R-147, Decision of the Narimanov District Court, 16 August 2004, p. 2.

[redacted]" [713] That reasoning and citation to the Civil Code is nonsensical. Article 43 of the old Civil Code relates to legal entities and does not support the Court's legal conclusion.[714] (Of note, both the Narimanov District Court and the Court of Appeal consistently cite to Article 43, so the reference was intentional and not a miscitation.)[715]

d. The Court of Appeal noted that Mr. Elchin Gambarov sold Ayna Sultan in October 2004 on the basis of a power of attorney from Mr. Azad Gambarov – after the latter was already dead. On this basis, the Court noted that a criminal case had been

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712 This was the prior version of the Civil Code until a new Code was issued in 2000. See **C-299** Civil Code of the Azerbaijan Republic, as of 26 May 2000.

713 **C-309** Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, p. 6.

714 **C-299** Civil Code of the Azerbaijan Republic, as of 26 May 2000. Article 43 of the 1999 Civil Code reads as follows:

"LEGAL ENTITIES

§1. Basic provisions

Article 4 3. Concept of legal entity and its types

43.1. A legal entity is a state-registered, specially created entity that is separate in its ownership has property, is responsible for his obligations with this property, to acquire and exercise property and personal non-property rights on his own behalf, duties has the right to carry, to be a plaintiff or a defendant in court. A legal entity must have an independent balance sheet.

43.2. Legal entities can be created by one individual or legal entity, or by a group of individuals and legal entities, based on membership, may or may not depend on the presence of members, may or may not be engaged in entrepreneurial activity.

43.3. The Republic of Azerbaijan participates in civil law relations just like other legal entities. In these cases, the Republic of Azerbaijan its powers are exercised by its bodies that are not legal entities.

43.4. Municipalities participate in civil law relations just like other legal entities. In these cases, the authority of the municipality they implement bodies that are not legal entities.

43.5. The main purpose of the activity of legal entities is to make a profit (commercial legal entities) or the main purpose is profit. There may be institutions that do not consist of taking and do not distribute the taken profit among its participants (non-commercial legal entities).

43.6. Legal entities that are non-commercial institutions in the form of public associations, foundations, unions of legal entities, as well as in legislation can be created in other forms. Non-commercial legal entities can engage in entrepreneurial activity only in those cases the activity should serve to achieve the goals set at the time of their creation and be consistent with these goals. Carry out entrepreneurial activities non-commercial legal entities may create or participate in economic societies to conduct."

715 **R-147** Decision of the Narimanov District Court in Case No 2-1467/2004 [English translation and Azerbaijani original], 16 August 2004, p. 2; **C-351** Claimant's Translation of R-147, Decision of the Narimanov District Court, 16 August 2004, p. 2.

initiated by Mr. Pashayev.[716] Thus, the Court of Appeal recognized that the proceedings brought by Elchin Gambarov were fraudulent (but again, did not address Elchin Gambarov's appeal).

e. The Court of Appeal further notes that Mrs. Gambarova initiated a claim against Mr. Sarivaliyev, the buyer who purchased Ayna Sultan from Elchin Gambarova in October 2004. The Court of Appeal acknowledges Mrs. Gambarova's appeal against the Second 2004 Judgment and rejects the latter Judgment because it "[redacted]"[717] Inexplicably, however, the Court of Appeal affirms the First 2004 Judgment in favor of Mrs. Gambarova's deceased husband, Azad Gambarov, and the First 2004 Judgment is "[redacted]."[718] It is entirely unclear what this means for Mrs. Gambarova, who, procedurally speaking, appeared as an interested third party. It is equally unclear what the Court of Appeal means when it decides that her appeal is only "[redacted]."[719]

f. In conclusion, the First 2004 Judgment was affirmed by the Court of Appeal in favor of a dead man, with no clear successor-in-interest. Indeed, it is entirely unclear who represented Mr. Azad Gambarov at the consolidated appeal hearing. Per CPC Article 58, in the case of death of one of the parties, "the court shall permit substitution of such party by its legal successor."[720] Per CPC 72.3, "heirs of a deceased person…and where [an] estate has not been accepted by any person[,] a person appointed for maintenance and management of the estate or trustee shall act in court as representative of a[n] heir."[721] No legal successor, heir, or Executor was ever identified and none is named in the consolidated appeal hearings (or at any point after Azad Gambarov's death). While Mrs. Gambarova's status is

716 **C-309** Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, pp. 6-7.

717 **C-309** Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, p. 7.

718 **C-309** Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, p. 8.

719 **C-309** Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, p. 8.

720 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, p. 16.

721 **C-298** Civil Procedure Code of the Azerbaijan Republic 1 September 2000, p. 19. Furthermore, pursuant to CPC Article 254.1.1, a judge is obliged to suspend proceedings "upon death of a person, or reorganisation of a legal entity, one of the parties to a case, where disputed legal relationship permits legal succession or termination of a legal entity participating in case…" Pursuant to CPC Article 261.0.7, "where disputed legal relationship does not permit legal succession following death of a person being one of the parties to the case," the judge shall cancel the case proceedings (pp. 65 and 68).

referenced in the Consolidated Appeal Judgment, procedurally speaking she has not, at any point, stepped into the shoes of her late husband, Azad Gambarov. In other words, the claim prevailed without any living claimant. It is entirely unclear who finally took possession of Ayna Sultan. Azerbaijan's Statement of Defense elides this rather critical deficiency in the proceedings and does not reveal or discuss who, exactly, Ayna Sultan belongs to today.

494. Of note, the digital copy of the Consolidated Appeal Judgment contains a number of anomalies discussed by Claimant's digital forensics expert, Mr. Robert Alan Steer.[722]

a. The digital file of **R-149** was created on a Xerox multi-function device. The digital file was created on 21 December 2023 and was digitally amended twice on 28 December 2023.[723]

b. At page 13, the ink and stamp signature appear to have a different background. It appears that the wet-ink signature and stamp were originally part of a separate unknown document. That separate document appears to have been scanned. In the process, the background of that document took on an off-white tonal value. That scan then further appears to have been cropped and digitally superimposed at p. 13 of **R-149**.[724]

c. The superimposition is apparent in the marked difference in tonal values between the cropped digital superimposition of the signature and stamp, and the background of **R-149**. The Steer Expert Report highlights this by adjusting the tonal value of the overall document. From this, Mr. Steer infers that the signature and stamp at **R-149** do not appear to be an actual wet signature and stamp that were directly affixed to that document and then scanned:[725]

722 Expert Report of Robert Alan Steer dated 17 June 2024 ("**Steer Expert Report**").

723 Steer Expert Report, ¶¶ 5.46.1-5.46.3.

724 Steer Expert Report, ¶¶ 5.46.4-5.46.6.

725 Steer Expert Report, ¶¶ 5.46.5-5.46.6.

R-149 (detail of anomaly at p. 13)

R-149 (tonal adjustment)

495. It is unclear why an official court document (which appears to be a scan of a hard copy) has affixed a digital superimposition of an official government stamp and signature.

496. Following the 24 June 2005 Consolidated Appeals Judgment, Mr. Pashayev filed a cassation appeal on 21 September 2009.[726] In that appeal, Mr. Pashayev noted the various incongruities in the Consolidated Appeals judgment, including that Ayna Sultan had been sold after Azad Gambarov's death. On 29 November 2005, Mr. Pashayev withdrew this Cassation Appeal and stated he would no longer have any claims against Mrs. Gambarova.[727] On 1 December 2005, the Supreme Court reviewed Mr. Pashayev's cassation appeal and, taking note of his withdrawal of the same, terminated the cassation proceeding.[728]

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726 **C-347** [Respondent Document Production - 182_24] Cassation Complaint by S. Pashayev to the Supreme Court, 21 September 2005.

727 **C-348** [Respondent Document Production - 182_25] Application by S. Pashayev to the Supreme Court of the Republic of Azerbaijan to withdraw cassation appeal and Decision of the Supreme Court, 29 November 2005.

728 **C-349** [Respondent Document Production - 182_25] Decision of the Supreme Court (termination Mr. Pashayev's cassation appeal), 1 December 2005.

11. The Ayna Sultan Litigations Were Severely Defective and Violated Mr. Bahari's Fundamental Due Process Rights.

497. The various litigations and appeals show that the Azeri courts failed to undertake effective service of process and notifications of decisions at every step of the proceedings. Significantly, these failures are not occasional one-offs: they are systematic and appear across the various parallel litigations and appeals in which Mr. Bahari was named as a Defendant.

498. As with the Coolak Baku litigation discussed above, the various Ayna Sultan litigations and appeals proceeded *in absentia*, without Mr. Bahari's participation. Mr. Bahari never received proper service of process and notifications and had no knowledge of the litigations until he learned about them for the first time in these arbitration proceedings.

499. Significantly, by the time the Ayna Sultan Litigations are consolidated on appeal, there is no longer even a pretense of trying to notify and include Mr. Bahari. There is no record of notifying the consolidated appeal to Mr. Bahari, and in its discussion, the Court of Appeal never mentions him as a necessary party to be joined to the proceedings, or even as a potential interested party. This is despite the fact that Mr. Bahari was the named Defendant/Respondent in both underlying competing litigations. By this point, the only focus is on the various fraudulent pretendants to Ayna Sultan.

500. CPC Article 238 specifically mandates that for cases that proceed *in absentia*, the "case shall be examined," and the "[c]ase file shall contain evidence of due notification of respondent."[729] This article forms part of the CPC Chapter (Chapter 17) on *in absentia* proceedings, which are meant to protect fundamental due process rights in circumstances where a party does not appear in the proceedings. However, the case files contain no records that any of the Azerbaijani courts involved undertook any such examinations; the case files contain no copies or records of service of process, writs of summons, or associated delivery receipts of the same;[730] and the case files contain no copies or records of any notifications of any court decisions or other issued documents.[731] Failure to

729 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Articles 238.1 and 238. 3, p. 63.

730 These would be similar to the documents exhibited in the Coolak Baku litigation at **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005 (although, to be clear, Claimant maintains that **R-107** is a defective service of process).

731 These would be similar to the documents exhibited in the Coolak Baku litigation at **R-108** Judge's notification of Judgment to Mr Bahari, 12 May 2005 (again, to be clear, Claimant maintains that **R-108** is a defective notification).

maintain such evidence in the case file of *in absentia* proceedings, in and of itself, is a breach of CPC Article 238. The extensive failures of service of process and notification to Mr. Bahari implicate a number of other CPC articles:

a. CPC Article 134 lists the documents that the court must officially submit to parties in a case. These include, *inter alia*, the claim petition (Article 134.1.1); copies of documents prepared by the parties "with respect to acknowledgment of, or refusal from, claims" (Article 134.1.3); court summons (Article 134.1.4); acts of courts (at all levels) (Article 134.1.5); court orders (Article 134.1.7); and copies of appellate and cassation complaints (Articles 134.1.8, 134.1.9).[732] The case files contain no record of transmission of any such documents to Mr. Bahari and he has never received any.[733]

b. Per CPC Article 150, each claimant's application in the Ayna Sultan litigations had to be served on Mr. Bahari.[734] The case files contain no records of service of process for any of the various applications in the case files. Thus, from the very start, Mr. Bahari was unaware of the litigations.

c. Because Mr. Bahari did not receive notice of the applications, he was unable to respond to them, as is his right under CPC Article 154.[735] He was also unable to assert any counterclaims he may have had against the various claimants.

d. Per CPC Article 143.1, a writ of summons "shall be presented to a recipient, such presentation being confirmed by signing a portion of the writ to be returned to the court."[736] There is no record of any writs signed by Mr. Bahari, nor receipts confirming delivery of the same, for any of the litigations.

e. Pursuant to CPC Article 240.1.1, *in absentia* proceedings are not permitted where a party failing to appear "has not been duly notified in accordance with the provisions of this Code."[737] There is no record of such notifications and Mr. Bahari did not receive any such notifications.

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732 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Article 134, pp. 35-36.

733 Bahari WS2 ¶ 17.

734 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Article 150, pp. 40-41.

735 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Article 154, pp. 42-43.

736 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Article 143.1, p. 38.

737 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Article 240.1.1, p. 63.

f. Per CPC Article 238.4, "Claimant shall submit written consent for hearing of case in absentia."[738] There is no record that any of the claimants involved in the Ayna Sultan litigations submitted any such consent. Furthermore, Pursuant to Article 239, a claimant may refuse to give consent to hear a case *in absentia*, which will result in an adjournment and renewed service of process.[739] There is no record of this.

g. Per CPC Article 238.5, "the Court shall render a ruling on hearing of case in absentia."[740] There is no record of any court rulings in any of the Ayna Sultan proceedings, at any stage.[741]

h. CPC Article 240.1.2 prohibits *in absentia* proceedings "where it is established in court that a party fails to appear before the court due to valid reasons or such failure has been caused by a natural disaster or an event of force majeure."[742] Clearly, Mr. Bahari's expulsion from Azerbaijan would meet the *force majeure* element. As with the Coolak Baku litigation, it was common knowledge that Mr. Bahari [redacted]."[743]

i. Per CPC Articles 244 and 250, a respondent has the right to apply to a court to quash an *in absentia* decision within 10 days from the date of receipt of the same, where the respondent's absence was due to valid reasons or did not have an opportunity to duly notify the court of his non-appearance.[744] However, Mr. Bahari

738 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Article 238.4, p. 63.

739 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Article 239, p. 63.

740 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Article 238.5, p. 63.

741 However, see section 6 below for a discussion of the purported Minutes of the Proceedings in the Pashayev Litigation.

742 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Article 240.1.2, p. 63.

743 **R-147** Decision of the Narimanov District Court in Case No 2-1467/2004 [English translation and Azerbaijani original], 16 August 2004, p. 1; **C-351** Claimant's Translation of R-147, Decision of the Narimanov District Court, 16 August 2004, p. 1.

744 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Articles 244 and 250, pp. 64-65:

"Article 244. Filing of complaint from resolution in absentia. Respondent shall have the right to apply to court, which has issued resolution [Judgment] in absentia with request to quash such resolution within 10 days from the date of receipt of resolution."

"Article 250. Grounds for quashing resolution in absentia. Resolution in absentia shall be quashed where court determines that failure of a respondent to appear before court was due to valid reasons or that respondent was not in possession of an opportunity for due notification of court on his non-appearance in court."

was never able to exercise this right, since he never properly received notice of the various *in absentia* judgments or other court documents.

j. Finally, pursuant to CPC Article 233.1, "where a resolution has not been appealed it shall become effective 1 month upon its issue."[745] Mr. Bahari never received proper notification of any of the resolutions (judgments) and was unable to exercise his fundamental appeal rights.

C. THE ALLEGED 2009 BAHARI APPEAL IS MANIFESTLY FRAUDULENT.

501. Azerbaijan's evidence that Mr. Bahari filed an appeal in 2009 (the "**Alleged 2009 Bahari Appeal**") against the Consolidated Appeals Judgment is fraudulent from start to finish.[746] This is readily apparent on Azerbaijan's own submitted R-Exhibits. Here, the Tribunal's attention is drawn to the fact that Azerbaijan failed to provide the full case file from the Alleged 2009 Appeal responsive to Claimant's Request No. 181.[747]

1. Mr. Bahari Never Authorized Mr. Amirahmadi or Mr. Kazimov to Initiate Proceedings in the Azeri Courts and He Was Unaware of the Proceedings.

502. First, Azerbaijan's own evidence shows, on its face, that no power of attorney was ever given to Mr. Abulfaz Kazimov, the attorney purporting to act on behalf of Mr. Bahari.[748] This demonstrates that the entire Alleged 2009 Appeal was fraudulent and undertaken without Mr. Bahari's authorization (or his knowledge).

503. As a preliminary point, Mr. Bahari did provide a power of attorney to Professor Hooshang Amirahmadi, an American-Iranian professor at Rutgers University in New Jersey, to

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745 **C-298** Civil Procedure Code of the Azerbaijan Republic, 1 September 2000, Article 233.1, p. 62.

746 SoD ¶¶ 333-335.

747 Claimant's Document Request No. 181:

"[redacted]."

748 SoD ¶ 334(a).

negotiate on his behalf in Azerbaijan.[749] However, that power of attorney was given for Prof. Amirahmadi to negotiate a settlement with the Azerbaijani Government in 2009; it was not given to file the Alleged 2009 Appeal (which Mr. Bahari did not know about), as Azerbaijan alleges. [750]

504. Mr. Bahari executed the power of attorney in Dubai on or around 20 April 2009 (the "**Dubai POA**"); it was drafted in English and Arabic only and notarized by a notary public of the Dubai Courts. [751] Ultimately, Dr. Amirahmadi's negotiations with the Azerbaijani Government were not fruitful.[752] It appears, however, that Azerbaijan kept a copy of the Dubai POA from those negotiations with Prof. Amirahmadi, and for some reason has exhibited it as part of **R-152** in these proceedings. This is evident because the Alleged 2009 Appeal version of the POA (disclosed as part of Azerbaijan's document production) *only* contains the Azeri-language version of the Dubai POA (the "**Azeri Version POA**").[753] What was submitted with the Statement of Defense, **R-152**, combines both the Dubai POA version and the Azeri Version POA (starting at p. 5 of PDF).[754] This means that **R-152**, as exhibited by Azerbaijan, is not the same document than what is contained in the Ayna Sultan Litigations case file.

505. Moreover, Azerbaijan falsely states that on 1 May 2009, Mr. Amirahmadi delegated his powers to an attorney, a certain Abdulfaz Kazimov, to represent Mr. Bahari in the Azeri courts.[755] There is no document to demonstrate or support that alleged delegation. This is because Mr. Bahari did no such thing: he has never met Mr. Kazimov, does not know him, and was entirely unaware of the 2009 proceedings.[756]

506. Purposefully or not, Azerbaijan did not translate the Azeri Version POA included with the Statement of Defense (**R-152**), so on its face, it is difficult to easily verify its claim that this document was a delegation of powers. Claimant provides a translation, from which it is

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749 Professor Amirahmadi is professor of the Edward J. Bloustein School of Planning and Public Policy, at Rutgers University. He is also the former director of the Rutgers' Center for Middle Eastern Studies and has been a candidate for President in the presidential elections in Iran on three different occasions.

750 Bahari WS2 ¶ 33; SoD ¶ 333.

751 **R-152** Power of Attorney issued by Mr Bahari to Mr Amirahmadi, 20 April 2009, pp. 1-4.

752 Bahari WS2 ¶¶ 33-34.

753 **C-310** [Respondent Document Production - 182_28] Power of Attorney given by Mr Bahari, 1 May 2009.

754 **R-152** Power of Attorney issued by Mr Bahari to Mr Amirahmadi, 20 April 2009.

755 SoD ¶ 334(a).

756 Bahari WS2 ¶ 33.

crystal clear that the document provides for no such delegation to Mr. Kazimov.[757] In fact, this Azeri Version POA is merely a translation of the Dubai POA from Mr. Bahari to Prof. Amirahmadi. There is no mention of Mr. Kazimov anywhere. The Azeri Version POA is not even signed by Mr. Bahari or Prof. Amirahmadi – as a mere translation, it possesses no legal significance of its own. The document only mentions that a certain Elchin Heydarov translated the document from English into Azerbaijani, with his signature,[758] and a notarization from Notary Office no. 24 in Baku.[759]

507. It appears Counsel for Azerbaijan only cites to the purported Decision of the Supreme Court of Azerbaijan dated 21 January 2010 to support its assertion of a delegation of power.[760] The Supreme Court decision specifically relied on the Azeri translation of the POA, as it referred to the delegation occurring on 1 May 2009, which is the date that the translation was notarized.[761] However, as noted above, even the most cursory review of the Azeri Version POA would reveal that it was not a delegation of powers to Mr. Kazimov.

508. It is astounding that Azerbaijan's Supreme Court specifically relied on the Azeri Version POA to support its assertion that Mr. Bahari had delegated authority to Mr. Kazimov and allow the proceedings to go on, when the document clearly and obviously says nothing of the sort. Counsel for Azerbaijan should be chided for advancing this clearly fallacious line of argument without making an even basic due diligence of the facts. In any event, the inevitable conclusion is that the entire Alleged 2009 Bahari Appeal was fraudulent, as it was initiated and proceeded in Mr. Bahari's name without his knowledge or authorization. This fraud was once again enabled by Mr. Bahari's forced absence from Azerbaijan and consummated through a defective, if not collusive, court procedure lacking the most elemental due process checks.

509. As discussed below, other serious irregularities in the record – exhibited by Azerbaijan in the Statement of Defense – reinforce that the entire Alleged 2009 Appeal was fraudulent.

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757 **C-310** [Respondent Document Production - 182_28] Power of Attorney given by Mr Bahari, 1 May 2009.

758 **C-310** [Respondent Document Production - 182_28] Power of Attorney given by Mr Bahari, 1 May 2009, p. 2.

759 **C-310** [Respondent Document Production - 182_28] Power of Attorney given by Mr Bahari, 1 May 2009, p. 3.

760 SoD ¶ 334(a), fn. 925; **R-153** Decision of Supreme Court of Azerbaijan, 21 January 2010, p. 5 ("[redacted]").

761 Compare **C-310** [Respondent Document Production - 182_28] Power of Attorney given by Mr Bahari, 1 May 2009, p. 3 with **R-153** Decision of Supreme Court of Azerbaijan, 21 January 2010, p. 5 (referring to the delegation occurring on "01.05.2009.")

2. The Alleged Application for Extension (R-172) and Cassation Appeal (R-173) Contain Forged Signatures.

510. Azerbaijan exhibits **R-172** (Mr. Bahari's alleged Application to the Baku Court of Appeal for an extension of time to submit a cassation appeal (undated)[762]) and **R-173** (Mr. Bahari's alleged Cassation Appeal dated 11 August 2009[763]), to support its argument that Mr. Bahari fully participated in the Alleged 2009 Bahari Appeal and that "Mr. Bahari can have no complaint about the Ayna Sultan Sale… He was given access to the Azerbaijani Courts, where he belatedly sought to challenge the transaction…but he ultimately abandoned the attempt to do so."[764]

511. In fact, **R-172** and **R-173** contain manifest digital forgeries of Mr. Baharis signature and prove the exact opposite of Azerbaijan's position: Mr. Bahari did not participate in the Alleged 2009 Bahari Appeal and was defrauded with the likely participation of Azerbaijan's courts.

512. A cursory review establishes that the signatures appear very similar to each other; this high degree of similarity suggests each signature may be a traced simulation of a genuine signature of Mr. Bahari:[765]

R-172

R-173

762 Due to possible bias in Azerbaijan's translations, Claimant provides its own translation of **R-172**, exhibited as **C-320** Claimant's Translation of R-172 Application to the Baku Appellate Court, 11 August 2009.

763 Claimant provides its own translation of **R-173**, exhibited as **C-321** Claimant's Translation of R-173 Cassation Appeal to the Supreme Court, 11 August 2009.

764 SoD ¶ 335.

765 See Morrissey Report, ¶¶ 3.22, 3.22.1-3.22.2.

513. When viewing **R-172**, the signature appears in a pale blue, boxed background – a fact that is noted by both Mrs. Angela Morrissey, Claimant's handwriting expert witness,[766] and Mr. Robert Steer, Claimant's expert witness in digital forensics:[767]

(**R-172** detail)

514. When the tonal values of the signatures are altered, the boxed background becomes even more evident:

[766] Morrissey Report, ¶¶ 3.22, 3.22.1-3.22.2.

[767] Steer Report, ¶¶ 5.32 *et seq*.

(**R-172** with tonal value adjustment)[768]

515. Mr. Steer concludes that these appear to be wet-ink signatures that were originally part of a separate unknown document. That separate document appears to have been scanned. In the process, the background of that document took on an off-white tonal value. That scan then further appears to have been cropped, and digitally superimposed at page 4 of **R-172**. The superimposition is apparent in the marked difference in tonal values between the cropped digital superimposition of the signature, and the background of **R-172**. Again, this is highlighted when the tonal value of the overall document is adjusted in Adobe Photoshop. From this, it can be inferred that the signatures at **R-172** appear not to be actual wet signatures that were directly affixed to that document and then scanned.[769]

516. Mr. Steer further notes that the PDF file of **R-172** has a creation date of 5 December 2023 (at 15:14:43), with further alterations/additions generated on 22 December 2023 and on 28 December 2023. The document was initially generated with a PDF editor called "iLovePDF," with further alterations using Microsoft Word for Microsoft 365 on later dates.[770] Mr. Steer additionally notes that the combination of the English and Azeri

768 Steer Report, ¶ 5.50.4.

769 Steer Report, ¶ 5.50.6.

770 Steer Report, ¶¶ 5.50.1-5.50.2.

language documents into a single file may explain some of the digital alterations, but this still leaves a third edit unanswered.[771]

517. The same issue appears with **R-173** at p. 8: the signatures (including Mr. Bahari's) in that document also appear to be part of a pale blue boxed background, as once again noted by both Mrs. Morrissey[772] and Mr. Steer.[773] **R-173** was created on 22 December, with further alterations/additions generated on 28 December 2023.

518. In addition, the top left corner of page 5 of the **R-173** contains a signature [redacted] and date (11 August 2009) which also appear to be part of a pale blue boxed background:

(**R-173** detail)

519. Again, when the tonal values of the signature and date are altered, the background becomes more evident:

771 Steer Report, ¶¶ 5.50.2

772 Morrissey Report, ¶¶ 3.22, 3.22.1-3.22.2.

773 Steer Report, ¶¶ 5.51.5-5.51.7.

(**R-173** with tonal value adjustment)[774]

520. Both the signature and date at p. 1, and Mr. Bahari's signature at p. 8 of **R-173** appear to be wet-ink signatures (and date) that were each originally part of a separate unknown document. That separate document appears to have been scanned. In the process, the background of that document took on an off-white tonal value. That scan then further appears to have been cropped, and digitally superimposed at pages 1 and 8 of **R-173**. The superimposition is apparent in the marked difference in tonal values between the cropped digital superimposition of the signatures, and the background of **R-173**. Again, this is highlighted when the tonal value of the overall document is adjusted in Adobe Photoshop. From this, it can be inferred that the signatures at **R-173** appear not to be actual wet signatures that were directly affixed to that document and then scanned.

521. Thus, as with **R-172**, the signatures at **R-173** are not wet-ink signatures signed on the Application to the Baku Court of Appeal document and then scanned. Rather, the signatures have been digitally copy-pasted onto the PDF after the fact. It is unclear at what point this digital addition of the signatures took place; however, one of the possibilities is that this happened on 22 December 2023, or 28 December 2023. These two dates are the dates of Azerbaijan's filing of its Statement of Defense and the filing of its R-Exhibits and RLAs. Counsel for Azerbaijan, who created **R-173**, will have to explain to the Tribunal the chronology and circumstances of this highly irregular state of affairs.

522. The conclusions are that Mr. Bahari never signed **R-172** and **R-173**; that the signatures are obvious forgeries digitally added after the fact; and were meant to make it look like Mr. Bahari participated in the Alleged 2009 Procedure, when he did not. This is further corroborated by the lack of any delegation of authority to Mr. Kazimov, as described above. Thus, the very documents Azerbaijan relies on to prove that Mr. Bahari actively participated in the Ayna Sultan Litigation are fakes, and lead to the very opposite conclusion: Mr. Bahari was defrauded as a result of his forced absence and inability to defend his interests in Azerbaijan.

523. The follow-on procedure reveals that both the Supreme Court and Court of Appeal recognized that Mr. Kazimov had no authority to file the claim on behalf of Mr. Bahari.

[774] Steer Report, ¶¶ 5.51.3-5.51.4.

D. THE SUPREME COURT OF AZERBAIJAN AND THE BAKU COURT OF APPEAL RECOGNIZED THAT MR. KAZIMOV HAD NO AUTHORITY TO FILE THE CLAIM ON BEHALF OF MR. BAHARI.

524. Following the Cassation Appeal allegedly filed by Mr. Bahari, the following procedural events occurred:

a. On 30 September 2009, the Baku Court of Appeal granted the Application for extension of time to file a Cassation Appeal of the Consolidated Appeal Judgment.[775] ("**Decision Granting the Extension**.")

b. On 9 November 2009, Mrs. Gambarova then made a renewed appearance and appealed the Decision Granting the Extension ("**Gambarova Appeal of Alleged Bahari Cassation Appeal**"). On 21 January 2010, the Supreme Court granted Mrs. Gambarova's appeal.[776] ("**Decision Granting the Gambarova Appeal**".) The case was remanded back to the Court of Appeal for further consideration.

c. On 26 May 2010, the Court of Appeal remanded the Alleged Bahari Cassation Appeal and gave leave for Mr. Bahari to appeal within 10 days.[777] ("**Decision Returning the Cassation Appeal.**")

525. The Statement of Defense provides a cursory and incomplete description of these three decisions, concluding only that the Decision Granting the Gambarova Appeal was "a decision in fact seemingly protecting Mr. Bahari's interests from a potential fraud against him," and that Mr. Bahari never bothered to appeal the Court of Appeal's Decision Returning the Cassation Appeal.[778]

526. Azerbaijan's superficial treatment avoids two inconvenient truths fatal to its Defense argument, namely, that (1) the Court of Appeal agreed that the Ayna Sultan Litigations case files showed no evidence that any writs of summons or notifications of hearings and court resolutions had ever been sent to Mr. Bahari; and (2) the Supreme Court and Baku Court of Appeal (on remand) identified the irregularities in Mr. Bahari's alleged signatures

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775 **R-174** Decision of the Baku Appellate Court on Mr Bahari's Cassation Appeal, 30 September 2009. Claimant provides a translation of the decision at **C-356** Claimant's Translation of R-174, Decision of the Baku Appellate Court on Mr. Bahari's Cassation Appeal, 30 September 2009.

776 **R-153** Decision of the Supreme Court of Azerbaijan, 21 January 2010. Claimant provides a translation of the decision at **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010.

777 **R-159** Decision of the Baku Appellate Court, 26 May 2010. Claimant provides a translation of the decision at **C-358** Claimant's Translation of R-159, Decision of the Baku Appellate Court, 26 May 2010.

778 SoD ¶ 334(f)-(g).

in the Application for Extension (**R-172**) and the Cassation Appeal (**R-173**), and concluded that "[redacted]"[779]

527. In the 30 September 2009 Decision Granting the Extension, the Court of Appeal granted Mr. Kazimov's petition to extend the time to appeal on the basis that "[redacted]" and that "[redacted]."[780] A later decision, referencing back to the 30 September 2009 Decision, provides that the Court of Appeal specifically considered the following facts:

[redacted][781]

528. In other words, the Court of Appeal was well aware of Mr. Bahari's absence from Azerbaijan and noted that the lower courts had not properly taken this into account in their execution of service of process and notifications.

529. Thus, even though Mr. Bahari did not authorize Mr. Kazimov to represent him and was unaware of these proceedings, the Court of Appeal did correctly point out the lack of any record that Mr. Bahari received proper service of process or notifications and it granted the extension of time to file an appeal on this basis.

530. Subsequently, Mrs. Gambarova appealed the Court of Appeal's 30 September 2009 Decision Granting the Extension. The Supreme Court's 21 January 2010 Decision

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779 **C-358** Claimant's Translation of R-159, Decision of the Baku Appellate Court, 26 May 2010, p. 3 (emphasis added).

780 **C-356**, Claimant's Translation of R-174, Decision of the Baku Appellate Court on Mr. Bahari's Cassation Appeal, 30 September 2009, p. 2; see also **R-174** Decision of the Baku Appellate Court on Mr Bahari's Cassation Appeal, 30 September 2009, p. 2.

781 **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010, p. 4.

Granting the Gambarova Appeal contains a number of critical facts that Azerbaijan conceals:

a. First, the appeal was brought by Mrs. Gambarova, but in a puzzling move, she was represented by Elchin Gambarov, whom she had previously opposed.[782] Of note, this appeal apparently moved ahead without Mr. Kazimov's participation (allegedly on behalf of Mr. Bahari).[783]

b. The Supreme Court rejected the Court of Appeal's reasoning in its 30 September 2009 Decision Granting the Extension, namely, that Mr. Bahari did not receive proper service of process and notifications. However, the Supreme Court arrived at this result by arguing a procedural technicality that the reasons provided did not give a sufficient excuse to miss the deadline to appeal, rather than rejecting the underlying fact that Mr. Bahari had never been afforded proper due process.[784]

c. Instead, the Supreme Court held that the Court of Appeal had failed to clarify "[redacted]"[785] Given the clear discrepancies with Mr. Bahari's signatures at **R-172** and **R-173**, it is actually unclear what signatures (if any) the Supreme Court was referring to.

782 **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010, p. 1.

783 **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010, p. 2 ("[redacted]")

784 **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010, pp. 4 and 5 (stating that the Court of Appeal's reference to various due process defects were not "[redacted]"; and that "[redacted]" after the deadline to submit appeals.

785 **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010, p. 6. Of note, there is no record of any acknowledgment of receipt (signed by Mr. Bahari or anyone else) in Azerbaijan's production of the Ayna Sultan Litigations case file responsive to Claimant's Document Request No. 181.

d. Notwithstanding this, the Supreme Court accepted without scrutiny that '[redacted]"[786]

e. For the above reasons, the Supreme Court annulled the 30 September 2009 Decision Granting the Extension and remanded the matter back to the Court of Appeal for reconsideration.

531. On remand, the Court of Appeal found, in its Decision dated 26 May 2010, that there was a discrepancy between the name in the certificate of registration of private property, listed as "[redacted]" and the name in the power of attorney issued to Mr. Amirahmadi (the Dubai POA), listed as '[redacted]"[787] On this basis, the Court of Appeal held that "[redacted]" and thus rejected Mr. Kazimov's original request for an extension to appeal.[788]

532. In this way, the Court of Appeal eventually came to the right solution – that Mr. Bahari had not authorized the Alleged 2009 Appeal – but completely sidestepped a number of important issues in the process:

a. As with the Supreme Court, the Court of Appeal simply accepted, without scrutiny, that Mr. Bahari had delegated authority to Mr. Kazimov, when the Azeri Version POA could not possibly have done so.

b. The Court of Appeal also left unanswered the clear implication of fraud upon Mr. Bahari – this is especially the case since the Court of Appeal had previously noted that Mr. Bahari had never been properly served and had no knowledge of the various litigation proceedings.

c. Relatedly, the Court of Appeal failed to address who had hired Mr. Kazimov and initiated the fraudulent Alleged 2009 Appeal, if it wasn't Mr. Bahari.

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786 **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010, p. 6.

787 **C-358** Claimant's Translation of R-159, Decision of the Baku Appellate Court, 26 May 2010, pp. 1-2 ('[redacted]")

788 **C-358** Claimant's Translation of R-159, Decision of the Baku Appellate Court, 26 May 2010, p. 2.

533. In any event, Mr. Kazimov, clearly defeated at the Supreme Court and on remand at the Court of Appeal, did not bother appealing this decision.

E. AZERBAIJAN'S REFERENCE TO MR. ALLAHYAROV'S CONVICTION IS IRRELEVANT AND DISTRACTS FROM THE REAL FRAUD AND THE COURTS' ENABLING OF THAT FRAUD.

534. As part of its discussion of the Ayna Sultan Litigations, Azerbaijan puts forth a discussion of Mr. Allahyarov's conviction in 2007.[789] Without stating so directly, Azerbaijan clearly seeks to imply that Mr. Allahyarov was behind one or more of the various fraudulent claims brought by Messrs. Azad Gambarov, Elchin Gambarov, Pashayev, and Mrs. Gambarova. This is a red herring meant to discredit Mr. Allahyarov and distract from the patently defective court proceedings.

535. Mr. Allahyarov was hired by Mr. Pashayev in 2004. More than 13 years later, Mr. Allahyarov first represented Mr. Bahari in 2017, but even then, he did not meet Mr. Bahari (having been instructed by Mr. Moghaddam).[790] Mr. Allahyarov only met Mr. Bahari in preparation for the Statement of Claim in 2023. As stated in his Second Witness Statement, Mr. Allahyarov's prosecution was politically motivated, due to his speaking out against Government interests. The investigator who investigated him was himself later convicted of fraudulently investigating dozens of people to pressure them to pay him money.[791] He received a 5-year sentence and was prohibited from holding an official position.[792]

536. None of the Ayna Sultan Litigations or the Alleged 2009 Bahari Appeal make any findings that Mr. Allahyarov was a knowing participant in Mr. Pashayev's fraudulent actions, beyond representing him in court. The competing claimants for Ayna Sultan, Azad Gambarov, Elchin Gambarov, and Mrs. Gambarova, also never allege that Mr. Allahyarov knowingly participated in Mr. Pashayev's fraudulent claim for Ayna Sultan.

537. By contrast, Mr. Rasim Zeynalov is explicitly called out in the Ayna Sultan Litigations. The appeal of the Second 2004 Judgment specifically argued that Messrs. Pashayev and Zeynalov had colluded to misappropriate Mr. Bahari's property – and that the judge in

789 SoD ¶¶ 330-331.

790 Allahyarov WS1 ¶ 7.

791 Allahyarov WS2 ¶ 6.

792 Allahyarov WS2 ¶ 6.

Mr. Pashayev's case, Judge M.G. Aliyev, also participated in this fraud.[793] In its 24 June 2005 Consolidated Appeals Judgment, the Court of Appeal rejected Mr. Pashayev's appeal, not on the basis of any wrongdoing by Mr. Allahyarov, but rather because '[redacted]'[794] Mr. Zeynalov's repeated pattern of misusing his revoked December 1999 POA from Mr. Bahari is highly problematic for him. It reveals multiple attempts to defraud Mr. Bahari by leveraging his forced absence and utilizing sham court proceedings to do so.

538. Equally, Mr. Gambarov's use of a fake POA from the deceased Azad Gambarov resulted in a criminal case against him, brought by Mr. Pashayev. Thus, at various points in the Ayna Sultan Litigations, each of the two main actors who sought to misappropriate Mr. Bahari's investments exposed the other's fraud, which both relied on false or expired POAs.

F. AYNA SULTAN WAS SOLD FOR $235,000, ESTABLISHING ITS TRUE VALUE AS AT 2004.

539. Because Mr. Bahari cannot access Ayna Sultan, it is difficult to perform a valuation of the property. However, the Ayna Sultan Litigations provide a concrete sale price as at 6 October 2004, when Elchin Gambarov sold the property for AZM 1,151,500,000, which at the time was US$235,000 (as confirmed in the contemporaneous court documents).[795] The Contract for the sale is exhibited as an official court document and was accepted as such by the courts. Thus, the $235,000 sale price represents a confirmed fair market value as of the sale date.

540. Azerbaijan's discussion of the Ayna Sultan Litigations does not mention this $235,000 sale price and instead focuses on the false allegation of a sale by Mr. Bahari to Mr. Azad Gambarov for US$70,000. However, that alleged sale is part of the fraudulent scheme to misappropriate Mr. Bahari's property and never happened. The wide gap between the

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793 **C-301** [Respondent Document Production - 182_05] Appeal Complaint by E. Gambarov (on behalf of A. Gambarov), 6 September 2004, pp. 1-2.

794 **C-309** Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, p. 4

795 **C-302** [Respondent Document Production - 182_18] Contract for Sale of Immovable Property, 6 October 2004, p. 1; See also **C-303** [Respondent Document Production - 182_20] Appeal Complaint by S. Pashayev to Narimanov District Court, 28 April 2005, p. 1.

alleged US$70,000[796] sale price and the documented contract sale price of $US235,000 seriously undermines the credibility of the former figure.

G. IN CONCLUSION, THE AYNA SULTAN LITIGATIONS, INCLUDING THE ALLEGED 2009 BAHARI APPEAL, REVEAL FRAUDULENT AND COLLUSIVE PROCEEDINGS THAT RESULTED IN MR. BAHARI'S LOSS OF AYNA SULTAN.

541. The Ayna Sultan Litigations and the Alleged 2009 Bahari Appeal reveal an astonishingly shambolic judicial process that deprived Mr. Bahari of any opportunity to defend his interests in his investment. The Ayna Sultan Litigations strongly implicate court corruption and involvement in the fraudulent misappropriation of Mr. Bahari's investments by the various claimants and appellants. Indeed, one of the judges, M.G. Aliyev, is even specifically called out as participating in Mr. Pashayev's fraudulent claim.[797]

542. The Alleged 2009 Bahari Appeal is even more egregious, having proceeded entirely on a non-existent delegation of authority and involving clear forgeries of Mr. Bahari's signatures. Troublingly, the digital additions of the forged signatures may have been added onto the documents when Azerbaijan's R-Exhibits were prepared for the Statement of Defense. On Azerbaijan's own submitted evidence, it is indisputable that Mr. Bahari did not authorize or know about the appeal. Azerbaijan's reliance on these fraudulent proceedings to support its assertion that Mr. Bahari was an active participant and able to defend his interests in an Azerbaijani court is a staggering exercise in chutzpah.

543. These proceedings bear an obvious resemblance to the fraudulent Coolak Baku Litigation. In both cases, various parties exploited Mr. Bahari's forced absence from Azerbaijan to force through fraudulent proceedings without Mr. Bahari's knowledge or participation. In both cases, the courts failed to provide any service of process or notifications, which ensured that Mr. Bahari would not be able to appear to defend his investments and get a fair trial. In both cases, Rasim Zeynalov misused his 1999 POA from Mr. Bahari in order to carry out the fraudulent schemes to misappropriate Mr. Bahari's investments.

544. The astounding level of bias and partiality, ignorance of clear evidence, illogic, and systematic pattern of due process defects in the proceedings all point to the courts' role

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796 **C-304** [Respondent Document Production - 182_10] Claim by Azad Gambarov against Mr Bahari (concerning the conclusion of the sales contract, loss of legal rights and removal from passport registration), 4 August 2004, p. 1.

797 **C-301** [Respondent Document Production - 182_05] Appeal Complaint by E. Gambarov (on behalf of A. Gambarov), 6 September 2004, pp. 1-2.

as active agents in enabling the fraudulent schemes against Mr. Bahari. The overwhelming body of evidence proves court collusion. However, even if the Tribunal does not find such collusion by the courts, it is still indisputable that the court proceedings contained systematic and persistent due process defects that, taken together, administered justice in a seriously inadequate way and resulted in manifest injustice to Mr. Bahari, who was unable to defend his interests and lost his investments as a direct result.

V. MR. BAHARI'S CARPETS WERE NEVER RETURNED

545. As explained in the Statement of Claim, as part of his plan to develop and build the world's largest Persian carpet museum in Baku, Mr. Bahari accumulated a collection of over hundreds of antique Persian Carpets.[798] Mr. Bahari and his family are from Tabriz, Iran's historical and today principal urban center for Persian carpet weaving and trade.[799] Mr. Bahari has always been keenly interested in collecting Persian carpets and has accumulated considerable knowledge on the subject.[800] As such, he methodically accumulated a sizable and valuable collection of carpets to be showcased in his projected Museum.[801] Mr. Bahari spoke of this project with Ilham Aliyev, who was very encouraging and even suggested that he could provide the land where the Museum could be built.[802] Mr. Bahari's collection of Persian Carpets was stored in the Nasimi District Warehouse, under security which Mr. Bahari paid for.[803] Mr. Moghaddam was entrusted with a key to that warehouse.[804]

546. Following his detention on the day of the Caspian Fish opening ceremony and his expulsion from Azerbaijan, Mr. Bahari was unable to ensure the safeguard of his precious collection.

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798 SoC ¶¶ 101-122. As noted at the outset of the First Iselin Report, 'oriental' carpets are commonly referred to as Persian, whether they come from Iran or other countries in the region (First Iselin Report ¶ 16). Despite Respondent's derogatory comment on Claimant's use of the term in the Statement of Claim (SoD ¶ 50), the use of the 'Persian Carpets' terminology is accurate, in addition to being more convenient for the reader.

799 Bahari WS1 ¶ 50.

800 SoC ¶¶ 102-105; Bahari WS1 ¶¶ 50-54.

801 SoC ¶¶ 101-122; Bahari WS1 ¶¶ 52-54.

802 Bahari WS1 ¶ 54.

803 Bahari WS1 ¶ 66; Moghaddam WS1 ¶ 69.

804 Moghaddam WS ¶ 69.

547. Other than disputing the value of the Persian Carpets collection and the fact that they were never returned to Mr. Bahari, Azerbaijan does not seriously dispute Mr. Bahari's account of events. Crucially, the Statement of Defense admits that:

a. Mr. Bahari "[redacted]" purchasing carpets "[redacted]."[805] Respondent's expert, Mr. Hasanov, of course qualifies this admission by stating that Mr. Bahari "[redacted]" but this is highly improbable: more than 20 years after the events, the fact that carpet tradesmen still remember Mr. Bahari is clear evidence that he purchased valuable carpets. It is difficult to understand how these tradesmen would remember Mr. Bahari otherwise, especially since a significant portion of his purchases were not made by him directly but by Messrs. Adil and Mostafa Sharabiani on his behalf.[806]

b. Mr. Bahari had accumulated a collection of hundreds of Persian Carpets: Mr. Zeynalov "[redacted]"[807]

c. Mr. Zeynalov also testifies that Mr. Bahari's carpet collection was stored in a warehouse,[808] which is consistent with Mr. Moghaddam's testimony that they were stored in the Nasimi District Warehouse.[809] According to Mr. Zeynalov, the lease on that warehouse allegedly expired in "[redacted]" because "[redacted]."[810] Falling behind on rent for the warehouse is unsurprising considering Mr. Bahari had been expelled from Azerbaijan in 2001.

d. Despite Mr. Bahari owning a collection of more than 450 valuable carpets that had to be stored in warehouse, Mr. Zeynalov apparently moved all of them to his mother's empty apartment, although he did not tell Mr. Bahari about this.[811]

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805 Hasanov Report, ¶¶ 19 and 31(a); SoD ¶339.

806 Bahari WS1 ¶ 57.

807 Zeynalov WS1 ¶ 44 (emphasis added).

808 Zeynalov WS1 ¶ 45.

809 Moghaddam WS1 ¶ 54.

810 Zeynalov WS1 ¶ 45.

811 Zeynalov WS1 ¶ 45.

e. Mr. Zeynalov then moved the carpet collection to "[redacted]"[812] This "[redacted]" is Coolak Baku. This is consistent with Mr. Moghaddam's testimony of what happened, except that Mr. Moghaddam testifies that the carpets were taken from the Nasimi District Warehouse to Coolak Baku without permission from him or Mr. Bahari.[813] And when Mr. Moghaddam asked people at Coolak Baku about the carpets, he was told to mind his own business if he knew what was good for him.[814]

548. According to the Statement of Defense, when Mr. Bahari allegedly asked Mr. Zeynalov to move the carpets this was "to a location which Mr Zeynalov later understood to be connected to Mr Khanmadov."[815] The Statement of Defense conveniently glosses over Mr. Zeynalov's testimony (discussed above) that the carpets first went to Coolak Baku and then to Mr. Khanmadov.[816]

549. Notably, when Mr. Bahari allegedly asked for his carpet collection to be moved, they first ended up at Coolak Baku (as Mr. Moghaddam testified) and then in the hands of someone who worked at the Baku Prosecutor's Office, Mr. Khanmadov, an organ of the State.[817] But the State's awareness and involvement in Mr Bahari's carpet collection did not end there. Individuals from the Azerbaijan Ministry of Culture also came to inspect Mr. Bahari's carpet collection.[818] Again, the State was aware of and involved with Mr. Bahari's carpet collection.

550. Amongst the 451 Persian Carpets which Mr. Bahari owned according to Azerbaijan's calculation,[819] the Azerbaijan Ministry of Culture concluded that 211 were deemed not sufficiently historically, artistically or scientifically significant to be granted an export

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812 Zeynalov WS1 ¶ 47.

813 Moghaddam WS1 ¶¶ 70-71.

814 Moghaddam WS1 ¶ 71.

815 SoD ¶ 348.

816 In this respect, Counsel for Azerbaijan states that it is "professionally irresponsible" for the Statement of Claim to refer to Mr. Khanmadov as "Baku's head of police and a senior member of the Baku courts" when in reality Mr. Khanmadov "was an employee of the Baku Prosecutor's Office" (SoD ¶ 346). Counsel for Azerbaijan might want to reconsider setting the bar so low for professional irresponsibility.

817 Counsel for Azerbaijan also aggressively critiques Mr. Kousedghi for mis-rembering Mr. Khanmadov's exact title and describing him as "[redacted]"(SoD ¶ 351, quoting Kousedghi WS1 ¶ 31).

818 SoD ¶ 348; Zeynalov WS ¶ 48.

819 SoD ¶ 122.

permit.[820] As noted by Mr. Iselin, this leaves at least 264 carpets, following Azerbaijan's counting, which Azerbaijan deemed so important that they forbid their export on the grounds they were national treasures.[821] This speaks volumes about the value of these carpets. Even on Azerbaijan's own evidence, all of Mr. Bahari's carpets in the collection exited, and more than half of them were so valuable to Azerbaijan that they could not leave the country.

551. Against these admissions, Azerbaijan's allegations that the Persian Carpets are not as valuable as alleged by Mr. Bahari (and confirmed by Mr. Iselin) and were returned to him simply lack credibility.

552. Azerbaijan denies that there is evidence that Mr. Bahari had "a valuable carpet collection."[822] As discussed above, Azerbaijan has itself confirmed that Mr Bahari had a valuable carpet collection.

a. Azerbaijan's witnesses admit that Mr. Bahari's collection was constituted of "[redacted]".[823]

b. Azerbaijan's Ministry of Culture deemed more than half of Mr. Bahari's collection to be national treasures that could not leave the country.

553. The report prepared by Mr. Rza Hasanov states that he had a carpet business in Baku for a few years and now works as Head of Sales at Azerkhalcha OJSC.[824] According to Mr. Hasanov's testimony, this is a "[redacted]," [825] which raises obvious questions about his qualifications as an independent expert. Notwithstanding this issue, Mr. Hasanov's report should be given very little weight, if any, because:

a. Whilst Mr. Hasanov may be very knowledgeable about the Baku carpet market, there is no indication that he has any experience pricing carpets with international interest and appeal, such as the ones purchased by Mr. Bahari. As noted by Mr. Iselin, these carpets "[redacted]."[826] For instance, Mr.

820 SoD ¶ 348; Zeynalov WS ¶ 49; **R-37** Export Declaration for 211 Carpets, 3 October 2002.

821 Second Iselin Report, ¶¶ 2-3.

822 SoD ¶ 336-345.

823 Zeynalov WS ¶ 44.

824 Hasanov Report, ¶¶ 7-8.

825 Hasanov Report, ¶ 17.

826 Second Iselin Report, ¶ 6.

Hasanov does not know that carpets produced in countries like Afghanistan, Georgia or Armenia may be of significant value on the international market.[827]

b. Mr. Hasanov makes a number of assertions that call into question his credibility, for instance:

i. Mr. Hasanov suggests that "[redacted]" be conducted to identify the age of a carpet.[828] This process is unknown and not used by any of the international auction houses.[829]

ii. Mr. Hasanov widely overstates the conditions for carpet storage.[830] Mr. Iselin does not know about the use of naphthalene of tobacco leaves to prevent moth damage. During his many years at Christie's, Mr. Iselin has witnessed the auction house storing hundreds of carpets, including carpets dating to the 17th century, on racks in large warehouses.[831]

554. In fact, Mr. Iselin's revised calculation gives a value of more than $2.6 million in a median scenario with a 200% auction price.[832]

555. Azerbaijan also asserts that the carpets were, in fact, returned to Mr. Bahari.[833] This is false. Azerbaijan's narrative rests on Mr. Zeynalov's highly doubtful evidence, which is untrue. Mr. Zeynalov's credibility is, by his own admission, not very good. According to Mr. Zeynalov:

[redacted][834]

556. This is an impressive set of admissions by Mr. Zeynalov. Not only did he put the "[redacted]" into the alleged

827 Second Iselin Report, ¶ 16.

828 Hasanov Report, ¶¶ 20 and 47.

829 Second Iselin Report, ¶ 22.

830 Hasanov Report, ¶ 32.

831 Second Iselin Report, ¶ 14.

832 Second Iselin Report, p. 9.

833 SoD ¶¶ 346-351.

834 Zeynalov WS ¶ 50.

container, he then brags that he got away with breaking Azerbaijani law and stealing national treasures since the container was not checked by customs, so he "[redacted]."

557. Mr. Bahari denies that he ever commissioned or requested Mr. Zeynalov to ship the carpets, or that he ever received any of the carpets he so patiently collected. If he had received his carpet collection, he would not have included it in his claim in this Arbitration.

VI. AZERBAIJAN SYSTEMATICALLY PREVENTED MR. BAHARI FROM PURSUING AND ACCESSING HIS INVESTMENTS AND PREPARING FOR HIS CLAIM

A. INTRODUCTION: THE EVIDENCE REVEALS A CONSISTENT THROUGH-LINE OF OBSTRUCTIVE AND EVEN VIOLENT ACTION TAKEN AGAINST MR. BAHARI.

558. Azerbaijan advances a factual defense that it has "never taken steps to prevent Mr. Bahari from pursuing or accessing his alleged interests in Azerbaijan."[835] If Azerbaijan is to be believed, every single instance of Mr. Bahari's efforts over the years is a lie and never happened, and conversely, Azerbaijan has been a model of transparency and rule of law, readily willing to admit Mr. Bahari into the country at any time to look into his investments.

559. Azerbaijan's narrative runs headlong against the evidence.

560. In fact, Azerbaijan has engaged in a systematic and continuing campaign of harassment, obstruction, and even physical violence against Mr. Bahari, his investments, and especially against a number of individuals who have assisted Mr. Bahari within Azerbaijan. The evidence shows a systematic and coherent through-line of affirmative State action over the years, starting with Mr. Bahari's forcible ouster from Caspian Fish and his expulsion from Azerbaijan, continuing through the sustained and even physically violent obstruction of Mr. Bahari's subsequent efforts to pursue and access his investments from abroad, and culminating in recent interference with these very arbitration proceedings, to include witness and claim tampering, again through violent and unlawful means. As described below, this has included:

a. Harassment of two lawyers, Messrs. Kilic and Allahyarov who, on different occasions, were instructed by Mr. Bahari to investigate the status of his investments and the

835 SoD PART III, Section VIII.

possibility to bring a claim before Azerbaijani courts, thereby ensuring that Mr. Bahari would never obtain justice in Azerbaijan (Sections C and F below);

b. A campaign of violence and imprisonment on false drug charges against Mr. Moghaddam, which occurred after he inquired into Mr. Bahari's investments. The actions taken against Mr. Moghaddam interfered with and in fact totally prevented Mr. Bahari from accessing his investments, taking steps to protect them, and obtaining evidence for use in domestic or arbitration proceedings. (Section B below);

c. A fruitless attempt at negotiations, where Mr. Bahari's representative was rebuffed by Mehriban Pashayeva's staff (Section D below);

d. A similarly fruitless negotiation with Minister Heydarov around October 2013 (Section E below); and

e. The recent campaign of harassment, intimidation, and violence against Mr. Abdulmajidov and Ms. Ramazanova, including life-threatening injuries to Mr. Abdulmajidov, as well as the issuance of a Criminal Summons accusing Mr. Abdulmajidov (and Mr. Bahari) of illegal drug manufacturing at Caspian Fish (Section G below).

561. Through these affirmative actions, Azerbaijan sent an unmistakable message that Mr. Bahari was not welcome in Azerbaijan. Even if Mr. Bahari did not officially have *persona non grata* status (which is not admitted), Azerbaijan's actions against Mr. Bahari amounted to the same thing: he could not return to Azerbaijan without a very real risk to his safety and welfare. Given the treatment of Mr. Moghaddam, Mr. Abdulmajidov, and Ms. Ramazanova, this is not a subjective, imagined threat, but rather, a near certainty. This said, Mr. Bahari has an intense and reasonable fear of reprisals, including possible physical violence as some of his associates have suffered, or via false criminal charges – a fear which has been realized through the issuance of the Criminal Summons against Mr. Abdulmajidov and which accuses Mr. Bahari of manufacturing illegal drugs at Caspian Fish. This ever-present threat of violence or imprisonment is a direct result of Azerbaijan's deployment of its coercive powers over the years.

562. The affirmative actions of Azerbaijan should also be read in the context of the country's particular system of governance as a "limited access order," and the obvious political reality that for the past three decades, the Aliyev dynasty and its followers (including the Pashayev and Heydarov families) have leveraged their powerful positions within the State

apparatus to engage in illicit commercial gain, and conversely, have used the wealth generated from their illicit commercial gains to consolidate their political power atop of Azerbaijan's formal institutions. This system of governance is described in further detail at Part III below, and provides a key insight to understand how Messrs. Aliyev and Heydarov have been able to deploy the full coercive powers of the State in order to advance their personal commercial interests – which, in Mr. Bahari's case, has led to the various actions described below to frustrate any efforts to access or protect his investments.

563. Critically, Azerbaijan's affirmative actions further inform why and how various individuals – including Mr. Zeynalov – were able to circle in on Mr. Bahari's investments during his forced absence and embezzle or otherwise misappropriate these investments. Indeed, in the case of Coolak Baku and Ayna Sultan, Azerbaijan has played a twin role, by (1) obstructing Mr. Bahari's efforts to pursue his investments, in particular by keeping him out of the country, thus denying him access to the courts, while allowing these individuals to freely seize his investments; and (2) by directly enabling through palpably fraudulent court proceedings.

B. IN 2009, AZERBAIJAN BEAT AND UNLAWFULLY IMPRISONED MR. MOGHADDAM IN ORDER TO DETER MR. BAHARI FROM PURSUING HIS INVESTMENTS.

564. Azerbaijan's treatment of Mr. Moghaddam is a textbook example of how the State apparatus deals with people who get in the way of the ruling elite. In Mr. Bahari's case, this treatment is consistent with Azerbaijan's overall pattern of retaliation against those individuals who have assisted Mr. Bahari in pursuing and accessing his investments.

565. As explained in the Statement of Claim, Mr. Moghaddam was Mr. Bahari's right-hand man for almost two decades and worked extensively on his investments.[836] Mr. Moghaddam has described the repeated physical violence perpetrated against him because of his association with Mr. Bahari:

a. In late April 2001, in the immediate aftermath of Mr. Bahari's expulsion, four men assaulted Mr. Moghaddam at dusk, in a street close to his home. Mr. Moghaddam immediately understood their statements to him as referring to his work with Mr. Bahari.[837]

836 Moghaddam WS1 ¶¶ 1-62.

837 SoC ¶ 158; Moghaddam WS1 ¶ 64.

b. In June 2001, Mr. Moghaddam was again assaulted by a similar group of men who repeatedly hit him in the face and head, demanding what he was still doing in Azerbaijan. Given the proximity in time to Mr. Bahari's expulsion and common knowledge that Mr. Moghaddam worked for Mr. Bahari, Mr. Moghaddam understood that he was still being targeted because of his association with Mr. Bahari.[838]

c. In late June 2002 (just a few days after Mr. Bahari rejected the terms of the 2002 Forced Sale Agreement), Mr. Moghaddam suffered another, even more alarming encounter with Government security agents: this time, three men got out of a car, put him in the car with a blindfold, and took him to a building with a windowless room, and detained him for over a week. Mr. Moghaddam slept in chairs and on the floor; he was interrogated repeatedly about what Mr. Bahari planned to do about recovering his business in Azerbaijan, whether he planned to return to Azerbaijan, where Mr. Bahari was located, and who he was talking to about being expelled from Azerbaijan. The men also asked if Mr. Moghaddam was still involved with Mr. Bahari's businesses. After a week of interrogations, the men eventually released Mr. Moghaddam. Mr. Moghaddam testifies that the episode was terrifying and caused him significant psychological issues for some time after.[839]

d. In late 2008 to early 2009, Mr. Bahari again asked Mr. Moghaddam to look into the status of his investments. Mr. Moghaddam began speaking with several people who still worked at Caspian Fish, who told him that he was not welcome there.[840] Suddenly, in February 2009, Mr. Moghaddam was arrested at his home on narcotics charges. Mr. Moghaddam, at that time a 52-year-old businessman and father of two, with no prior criminal record,[841] was accused of being a dangerous drug dealer. Mr. Moghaddam was convicted and sentenced to nine years in jail. Mr. Moghaddam was only released in May 2014 as part of a Presidential pardon

838 SoC ¶ 158; Moghaddam WS1 ¶ 65.

839 SoC ¶ 185; Moghaddam WS1 ¶¶ 72-77.

840 SoC ¶¶ 305-306; Moghaddam WS1 ¶¶ 82-88.

841 As recognized by the criminal court itself when it sentenced Mr. Moghaddam to jail. See; **R-097** Decision of the Baku Court on Grave Crimes, 17 July 2009, p. 7 ("[redacted]").")

and promptly deported to Tehran, Iran.[842] As he cannot now return to Azerbaijan, Mr. Moghaddam can no longer assist Mr. Bahari with his in-country investments.[843]

566. As Mr. Moghaddam's testimony shows, his repeated persecution and maltreatment were direct results of his association with Mr. Bahari and, specifically, the two most serious events (his 2002 abduction and his 2009 criminal conviction) occurred immediately after he made inquiries about the investments on Mr. Bahari's behalf. While shocking, these actions are, in fact, wholly in line with Azerbaijan's well-reported actions against dissidents, political opponents, and anyone seen to act against the interests of the State and/or its ruling elite.

567. Azerbaijan's defense largely consists of cynical character assassination. Beyond this, Azerbaijan offers little in the way of concrete evidence to rebut Mr. Moghaddam's testimony of repeated interference and physical violence.

568. Azerbaijan produces State border records which intend to show that Mr. Moghaddam was allegedly not present in Azerbaijan between late April 2001 to May 2001, and was also not present in late June 2002, as he was allegedly in Dubai between 23 May 2002 and 20 September 2002.[844] Claimant submits that Azerbaijan's self-produced and self-serving records are not reliable; in any event, the difference of a month or so in Mr. Moghaddam's recollections of events that took place over twenty years ago hold little dispositive weight. Mr. Moghaddam stands by his testimony and confirms in his second statement that he was subjected to assaults and forced detention around the times mentioned in his first statement.[845]

569. Azerbaijan produces a statement from Ms. Izmaylova, Mr. Moghaddam's wife (although they are separated), who claims that Mr. Moghaddam frequently used drugs while they lived together.[846] Ms. Izmaylova also claims that she does not remember that Mr. Moghaddam was ever beaten up or kidnapped.[847] Azerbaijan's proffer of this testimony is cynical to the extreme. Mr. Moghaddam and Ms. Izmaylova are not formally divorced but they have been estranged from each other for over fifteen years, and no

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842 SoC ¶ 307; Moghaddam WS1 ¶ 88.

843 Moghaddam WS1 ¶ 90.

844 SoC ¶¶ 353(b) and 353(d); **R-058** Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues.

845 Moghaddam WS2 ¶¶ 21-23.

846 Izmaylova WS ¶ 7.

847 Izmaylova WS ¶ 8.

longer have any contact. Despite this, Mr. Moghaddam cannot understand why she would speak out against him and make false statements in support of Azerbaijan's defense.[848] It should be noted, however, that Ms. Izmaylova has Azeri citizenship and maintains her domicile and a continuous presence in Azerbaijan. Further, Ms. Izmaylova's written testimony is especially weak and equivocal: she alleges that Mr. Moghaddam, with whom she lived for more than 10 years, was a drug user and concludes that it would not "[redacted]" her that he would be accused of selling drugs.[849] Yet, she concedes at the same time that she has never seen Mr. Moghaddam selling drugs.[850] Her testimony will be put to proof at the hearings. In any event, Mr. Moghaddam confirms that he has never used drugs and that the contents of his first statement in respect of the police assaults and detention he suffered are true.[851]

570. Azerbaijan's defense largely rests on the argument that, due to his criminal conviction, Mr. Moghaddam's testimony is not credible. This *ad hominem* attack is a typical rhetorical device that Azerbaijan regularly deploys against opposition activists and others. There is a convenient circular logic in Azerbaijan's ability to both arbitrarily arrest and convict its opponents, then use the very convictions to further attack the opponents' credibility, thus justifying the conviction.

571. Azerbaijan produces the judgment whereby Mr. Moghaddam was sentenced to jail.[852] This judgment shows that Mr. Moghaddam has maintained a consistent account of his arrest and conviction, as well as his innocence. In brief, Mr. Moghaddam's account of the events at the time track his First Witness Statement, to wit, that the drugs were planted in his home. Significantly, the co-defendant, an acquaintance of Mr. Moghaddam's who was arrested at the same time, recounted that he was entrapped by police and forced to testify that he had obtained drugs from Mr. Moghaddam. [853] This is a further indicator of the falsified nature of the drug charges.

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848 Moghaddam WS2 ¶ 27.

849 Izmaylova WS ¶ 7 ("[redacted]")

850 Izmaylova WS ¶ 7 ([redacted]")

851 Moghaddam WS2 ¶¶ 21-30.

852 SoD ¶ 183; **R-97** Decision of the Baku Court on Grave Crimes, 17 July 2009.

853 See **R-97** Decision of the Baku Court on Grave Crimes, 17 July 2009, p. 2.

572. Regardless, the court found Mr. Moghaddam guilty under Articles 234.4.3 and 602.2 of the Criminal Code, each of which carried a sentence of 4 years. Inexplicably, in ruling that the sentences would be carried out consecutively, the court combined the amount for a total of 9 years.[854] Moghaddam concludes by stating that he was represented by a lawyer who "[redacted]"[855]

573. It should be noted that Azerbaijan's defense that Mr. Moghaddam's criminal conviction was appropriate, even if true (which is not admitted), still fails to address his earlier violent encounters with State security agents in 2001 and 2002.

574. The accusations against Mr. Moghaddam must be seen in the broad context of the lack of rule of law in Azerbaijan. As explained in the Statement of Claim, the tool of repression is often the use of the State's coercive powers, the police and the judiciary, to charge and convict the targeted people on falsified charges.[856] As reported by Amnesty International in 2022-23: [redacted]"[857] As noted by the UN Special Rapporteur on the situation of human rights defenders quoted by the European Court of Human Rights:

[redacted]"[858]

575. The Allan & Makarenko (discussed below in greater detail) reports how Azerbaijan's official institutions (which include the judiciary) are weaponized by the powerful, turning rule *of* law into rule *by* law:

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854 **R-97** Decision of the Baku Court on Grave Crimes, 17 July 2009, p. 8.

855 Moghaddam WS1 ¶ 85.

856 SoC ¶¶ 339-340.

857 **C-200** Amnesty International Report 2022-23, Human Rights in Azerbaijan, at 82-83, available at: https://www.amnesty.org/en/location/europe-and-central-asia/azerbaijan/report-azerbaijan/.

858 **C-372** *Case of Aliyev v. Azerbaijan*, Applications nos. 68762/14 and 71200/14, European Court of Human Rights, 4 February 2019, ¶ 80, p. 15. See e.g. the case of the Aliyev brothers (not related to President Aliyev), as discussed in Allan & Makarenko Report, ¶¶ 32-33.

"[redacted]"[859]

576. The Allan & Makarenko Report's remarks are consistent with the findings of the European Court of Human Rights:

"[redacted]"[860]

577. As a concluding remark, Mr. Moghaddam's troubles with Azerbaijan's criminal justice system should be viewed in light of the overall actions taken against the individuals who assist Mr. Bahari. This includes Mr. Kilic, a Turkish lawyer, Mr. Allahyarov, an Azerbaijani lawyer, and Mr. Allahyarov. Most significantly, Azerbaijan's recent campaign of coercion against Ms. Ramazanova and Mr. Abdulmajidov, culminating in a patently bogus Criminal Summons, corroborates that Azerbaijan freely deploys the coercive State apparatus – including its prosecutorial services – against those who assist Mr. Bahari. Mr. Moghaddam's appalling story finds a disturbingly similar echo in Ms. Ramazanova and Mr. Abdulmajidov's recent experiences – in particular, with the recurrence of baseless drug-related accusations. Ms. Ramazanova and Mr. Abdulmajidov's

859 Allan & Makarenko Report, ¶ 58 (emphasis in original).

860 **C-372** *Case of Aliyev v. Azerbaijan*, Applications nos. 68762/14 and 71200/14, European Court of Human Rights, 4 February 2019, ¶ 223.

C. AZERBAIJAN OBSTRUCTED MR. BAHARI'S 2004 ATTEMPT TO INVESTIGATE POSSIBLE LEGAL ACTION AGAINST MESSRS. ALIYEV, HEYDAROV, AND PASHAYEV.

578. As explained in the Statement of Claim, in 2004 Mr. Bahari hired a Turkish lawyer, Mr. Serhat Kilic, to investigate possible legal proceedings against Messrs. Aliyev, Heydarov, and Pashayev in the Azeri courts. Mr. Kilic undertook initial due diligence work, including, critically, speaking with various organizations in Azerbaijan.[861] Two months into his inquiries, Mr. Kilic abruptly declined to continue with the case, saying he could no longer represent Mr. Bahari in the matter. Mr. Bahari recalls that Mr. Kilic was nervous and shaken and understood that he had been pressured by Government officials.[862]

579. In preparation for the Statement of Claim, and again for the Statement of Reply, Counsel for Claimant attempted to locate Mr. Kilic and obtain a witness statement from him, including inquiries with local Turkish counsel, the Istanbul Bar Association, and a trip to Turkey to search for and interview Mr. Kilic. Counsel for Claimant identified and met with a Turkish lawyer who shared the same name but who was not Mr. Bahari's lawyer. Given Mr. Kilic's already advanced age at the time and the lack of any other lawyer with the same name in the current bar rolls, Counsel for Claimant concluded that Mr. Kilic had either retired or, more likely, passed away.

580. Azerbaijan denies Mr. Bahari's recounting on the basis that information is lacking. Claimant readily admits that, due to evidentiary decay over time, there is little information available. However, Counsel for Azerbaijan has also not explained what due diligence it has undertaken to verify the asserted facts – nor how it can now support its claim that "[t]he most likely explanation of these allegations is that they have been fabricated by Mr Bahari to counter the narrative that he did not pursue recovery of his alleged investments for several decades."[863]

581. Mr. Bahari stands by his testimony, which is proffered as evidence. The evidence of threats to Mr. Kilic is consistent with other acts of intimidation and outright physical violence taken by Azerbaijan against Mr. Bahari and those who assist him. To date, Azerbaijan has offered no evidence to rebut Mr. Bahari's testimony besides its conclusory assertion that Mr. Bahari must be lying.

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861 SoC ¶ 188; Bahari WS1 ¶¶ 86-87.

862 SoC ¶ 188; Bahari WS1 ¶¶ 86-87.

863 SoD ¶ 363.

D. IN 2009, MR. BAHARI SENT PROF. AMIRAHMADI TO NEGOTIATE WITH THE PASHAYEV FAMILY.

582. In 2009, Mr. Bahari made an additional attempt to negotiate a settlement for his investments in Azerbaijan. This settlement push was part of Mr. Bahari's renewed efforts around the end of 2008 and into 2009 to regain his investments in Azerbaijan.[864] Mr. Bahari provided a power of attorney to Professor Hooshang Amirahmadi, an American-Iranian professor at Rutgers University in New Jersey, to negotiate on his behalf in Azerbaijan. As stated above,[865] Prof. Amirahmadi is a senior political figure in Iran and has been a past candidate for the presidential elections in Iran; he thus had the connections and gravitas to negotiate directly with the Pashayev family on behalf of Mr. Bahari. The power of attorney was drawn up in Dubai; Prof. Amirahmadi duly went to Azerbaijan and undertook negotiations but was ultimately unsuccessful. Nevertheless, the episode demonstrates that Mr. Bahari continued to try and press his rights in Azerbaijan, albeit without success.

E. IN 2013, MINISTER HEYDAROV EXCEPTIONALLY ALLOWED MR. BAHARI TO ENTER AZERBAIJAN FOR PURPOSES OF ENCOURAGING MR. BAHARI TO BRING A LITIGATION CLAIM AGAINST PRESIDENT ALIYEV.

583. Mr. Bahari has set out the details of his October 2013 meeting with Minister Heydarov. By way of recall, Mr. Bahari's testimony included the following facts:

a. Mr. Bahari obtained a 30-day visa on 7 October 2013;[866]

b. He met Minister Heydarov over a three day period at the Ministry of Emergency Situations;[867]

c. On the third and last day, Minister Heydarov told Mr. Bahari that the only option was to sue President Aliyev, and that Minister Heydarov was willing to support him financially by backing such a claim. This frightened Mr. Bahari and he ultimately declined this offer;[868]

d. During this trip, Mr. Bahari ran into Rasim Zeynalov. When Mr. Bahari saw that Rasim Zeynalov was working at Coolak Baku, he understood that Mr. Zeynalov

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864 SoC ¶ 305; Bahari WS1 ¶ 92.

865 *Supra*, PART II, Section IV.C.

866 SoC ¶ 312; Bahari WS1 ¶¶ 95-98; **C-183** Azerbaijan visa for Mr. Bahari, 7 October 2013.

867 SoC ¶ 313; Bahari WS1 ¶ 96.

868 SoC ¶ 313; Bahari WS1 ¶ 96.

was working for the people who had illegally seized his investment. Mr. Bahari was extremely angry at Mr. Zeynalov.[869]

584. As stated, the 2013 meeting is remarkable in a number of ways:

a. It amounted to a direct negotiation with the Government of Azerbaijan, as Mr. Bahari met Minister Heydarov at the Ministry of Emergency Situations, in his official capacity. Minister Heydarov provided specific safe passage to Mr. Bahari, which amounted to an affirmative State act.

b. By encouraging a litigation against President Aliyev and expressing support, Minister Heydarov's position amounted to an extraordinary admission of liability.

585. Azerbaijan denies that Mr. Bahari's October 2013 meeting with Minister Heydarov took place, and states that it has "no direct knowledge of this contact, which (if true, which is not admitted) took place in Mr. Heydarov's private capacity."[870]

586. Azerbaijan's equivocation notwithstanding, it is incorrect that it does not have "direct knowledge" of this contact. Minister Heydarov can speak to the meeting and as a State official and organ of the State, Azerbaijan has the ability to request his participation as a witness to speak to the events – whether or not he said them in an official or personal capacity. Instead, Azerbaijan has deliberately chosen to make Minister Heydarov an empty chair. By choosing not to put Minister Heydarov forward as a witness, Azerbaijan fails to rebut Mr. Bahari's testimony and fails to meet its burden of proof to prove its general – and unconvincing – denial that the meeting took place.

587. Furthermore, Azerbaijan's own submitted evidence corroborates that Mr. Bahari's meeting took place:

588. First, Azerbaijan's State border records confirm Mr. Bahari's entry into Azerbaijan in October 2013.[871]

589. Second, Rasim Zeynalov confirms Mr. Bahari's presence in Baku at that time and that they met. Mr. Zeynalov further confirms that Mr. Bahari told him "[redacted]"[872] However, Mr. Zeynalov goes on to falsely

869 SoC ¶ 317; Bahari WS1 ¶ 97.

870 SoD ¶ 197.

871 SoD ¶ 301;**R-58** Letter from the State Border Service of the Republic of Azerbaijan to the SSPI, 2 November 2023.

872 SoC ¶ 302; Zeynalov WS ¶ 52.

state that he "[redacted]"[873] Mr. Zeynalov's claim is not credible. There is no reason whatsoever why Mr. Bahari would bring Mr. Zeynalov along to negotiate his claim with Minister Heydarov.[874] This was to be a high-level meeting between Mr. Bahari, a serious entrepreneur, and a high official of Azerbaijan: Mr. Zeynalov cannot seriously assert that, as Mr. Bahari's former driver, he had the requisite stature and any role to play in such a meeting. Furthermore, Mr. Zeynalov's account of Mr. Bahari's movements accord neither with Mr. Bahari's account, nor State border records. Mr. Bahari's 4 December 2013 email (described below in more detail) states that he was in Baku for 16 days.[875] Azerbaijan's own State border records show that he was in country for 12 days.[876] Mr. Zeynalov's account, however, seems to suggest Mr. Bahari was in town for barely two days before he left. Mr. Zeynalov, who is shown above as having illegally used a terminated power of attorney to defraud Mr. Bahari of both Coolak Baku and Ayna Sultan, has little to zero credibility as a witness.[877] Mr Suleymanov's further witness testimony about Mr. Zeynalov – notably, that he is assisting Azerbaijan in return for a promise of remuneration – puts serious doubts as to Mr. Zeynalov's motives in this arbitration.[878]

590. Third, Azerbaijan produces a 4 December 2013 email which is a contemporaneous email that directly references the meeting and corroborates a key part of the meeting. The email is sent by Mr. Bahari and addressed to President Aliyev (via, *inter alia*, an official email of the Office of the President). The date of that email is approximately two months after the October 2013 meeting with Minister Heydarov. In that email, Mr. Bahari specifically references the meeting with Minister Heydarov:

[redacted]

873 Zeynalov WS ¶ 52.

874 Bahari WS2 ¶ 36.

875 **R-53** Email from Mr Bahari to A Kalantarli, copied to President's Office, 4 December 2013.

876 **R-58** Letter from the State Border Service of the Republic of Azerbaijan to the SSPI, 2 November 2023.

877 *Supra*, PART II Section III.B (Coolak Baku Litigation) and Part V (Ayna Sultan Litigation).

878 Suleymanov WS ¶ 50.

[redacted][879]

591. "[redacted]" is a reference to Minister Heydarov ("he"), who handed off the dispute to his driver/assistant, Mr. Arguj, to bring to another staff member, Rafael (Mr. Bahari no longer recalls the last name).[880]

592. "[redacted]" This is a reference to Mr. Bahari's witness testimony that Minister Heydarov told Mr. Bahari to sue the President and that Minister Heydarov would support this.[881]

593. Thus, the contemporaneous evidence produced by Azerbaijan itself corroborates that Mr. Bahari held a meeting with Minister Heydarov and that they discussed that Minister Heydarov would help Mr. Bahari in a court litigation – which would have been against President Aliyev as the only other logical Caspian Fish shareholder to sue.

594. On balance, Mr. Bahari has met his burden of proof to prove that the meeting took place. By contrast, Azerbaijan's denial is equivocal ("[i]f any such meeting took place (which is denied), it plainly took place in Mr Heydarov's private capacity.")[882] and given its refusal to make Minister Heydarov available to testify, unconvincing.

F. IN 2014, MINISTER HEYDAROV THREATENED MR. BAHARI TO STOP CONTACTING HIM.

595. Mr. Bahari's First Witness Statement recounts an incident following his 2013 meeting with Minister Heydarov, when he was given safe passage to Baku:

[redacted]

879 **R-53** Email from Mr Bahari to A Kalantarli, copied to President's Office, 4 December 2013 (emphasis added).

880 Bahari WS2 ¶ 38.

881 SoC ¶ 313; Bahari WS1 ¶ 95.

882 SoD ¶ 303.

[redacted][883]

596. Minister Heydarov's threat, communicated by and through an assistant, continued the series of threats, intimidation, and physical violence against Mr. Bahari and his associates anytime Mr. Bahari pursued his investment. It is entirely in line with Azerbaijan's overall pattern of behavior against Mr. Bahari, and should be evaluated in that context.

597. Azerbaijan's response to this testimony is that it "has no knowledge of the matters pleaded…"; and that "**even if such a discussion occurred (which is not admitted) however, it was not said in any official capacity**."[884]

598. Once again, Azerbaijan's defense is incorrect. Mr. Heydarov is in a position to testify to Mr. Bahari's statement; as an organ of the State, Azerbaijan has the ability to request his participation as a witness to speak to the events – whether or not he said them in an official or personal capacity. Azerbaijan has deliberately chosen to make Minister Heydarov an empty chair.

599. Mr. Bahari's confirms his written testimony and is willing to be tested on its veracity at the upcoming hearings. Azerbaijan has produced no evidence to rebut this beyond its general denial, even though it has access to Minister Heydarov. By choosing not to put Minister Heydarov forward as a witness, Azerbaijan fails to rebut Mr. Bahari's testimony and fails to meet its burden of proof to prove its general denial that the threat was not made.

G. IN 2019, THE STATE COMMITTEE FOR PROPERTY ISSUES BLOCKED MR. BAHARI'S ATTEMPTS TO DETERMINE THE DISPOSITION OF HIS INVESTMENTS AND THREATENED HIS LAWYER.

600. The Statement of Claim recounts that in 2017, Mr. Bahari instructed (through Mr. Moghaddam) Mr. Allahyarov, an Azeri lawyer, to investigate and determine the status and value of the properties for Shuvalan Sugar and Coolak Baku. On or around 14 January 2019, Mr. Allahyarov delivered a letter to the Chairman of the State Committee for Property Issues inquiring into the status of the various properties. Four days later, Mr. Allahyarov received a phone call with directions to come to the State Committee of Property Issues to discuss further. Once here, a woman introduced herself as the Deputy Head of Legal

883 Bahari WS1 ¶ 98.

884 SoD ¶ 307.

Department of State Properties Committee and told him to stop inquiring about the properties at issue; that these were restricted and "[redacted]"; and that Mr. Allahyarov should not stick his head out or he would "[redacted]."[885]

601. Azerbaijan denies that Mr. Allahyarov had the meeting in question.[886] Faced with evidence of the 14 January 2019 letter, Azerbaijan splits hairs by arguing that there is no evidence the letter was delivered.[887] For avoidance of doubt, Mr. Allahyarov confirms he hand delivered the letter.[888] Azerbaijan further asserts that there is no record of the letter in the agency's records, and that there was no woman with the title of Deputy Head of Legal at the agency at the time.[889] Nevertheless, Mr. Allahyarov stands by his recollections and reconfirms the facts as asserted.[890]

602. Mr. Allahyarov's should be considered in the context of the ongoing pattern of interference and coercion against all of the individuals who have assisted Mr. Bahari within Azerbaijan.

H. AZERBAIJAN HAS ENGAGED IN WITNESS AND CLAIM TAMPERING THROUGH ITS CAMPAIGN OF COERCION AND PRESSURE AGAINST MS. RAMAZANOVA, MR. ABDULMAJIDOV, AND MR. BAHARI.

603. Azerbaijan's campaign of intimidation and attacks on Konul Ramazanova and (Ms. Ramazanova) and her husband, Timur Abdulmajidov (Mr. Abdulmajidov), were extensively discussed in Claimant's *Ex Parte* Application for Provisional Measures, which was resubmitted as an *Inter Partes* Application (with necessary redactions) on 12 March 2024 ("**Provisional Measures Application**"), as well as the hearing via videoconference on the Provisional Measures Application held on 9 and 10 April 2024.

604. The facts in the Provisional Measures Application are relevant for a number of reasons:

a. They provide robust corroborating evidence of Azerbaijan's motives, means, and opportunities to coercively interfere with Mr. Bahari's efforts to access his investments and, in this case, prepare for his claim. In other words, Azerbaijan's recent actions against Mr. Abdulmajidov and Ms. Ramazanova – undertaken

885 SoC ¶¶ 319-24; Allahyarov WS1 ¶¶ 7-13.

886 SoD ¶¶ 364-68.

887 SoD ¶ 365.

888 Allahyarov WS2 ¶ 3.

889 SoD ¶ 365; Balakishiyeva WS ¶¶ 13, 15-16.

890 Allahyarov WS2 ¶¶ 3-4; **C-068** Letter from Yusuf Allahyarov to Chaiman of the State Committee for Property Issues, 14 January 2019.

specifically because they assisted Mr. Bahari – make it significantly more likely that the prior acts of interference and violence also occurred.

b. As a separate but related point, Azerbaijan's comportment amounts to witness and claim tampering, and demonstrates a bad faith effort to interfere with these Mr. Bahari's claim. This bad faith behavior contaminates Azerbaijan's entire Defense and seriously degrades its credibility on the remainder of its evidentiary assertions.

c. As described in the legal discussion, Azerbaijan's conduct taken against Mr. Abdulmajidov and Ms. Ramazanova is not only corroborating evidence, but it can also form a factual basis for Mr. Bahari's claim and evidence of Azerbaijan's continuous breach of the Treaty.

605. Claimant incorporates by reference the facts and pleadings set forth in the Provisional Measures Application, including the hearings held on 9 and 10 April 2024. Claimant further summarizes the history of these events below, which are also supported by the witness statements of Ms. Ramazanova and Mr. Abdulmajidov submitted with this Reply Statement. Both Ms. Ramazanova and Mr. Abdulmajidov have indicated their availability to testify at the hearing in January 2025.[891]

606. As Ms. Ramazanova and Mr. Abdulmajidov are taking in part in the Arbitration, Azerbaijan is reminded that it must strictly adhere to the Tribunal's 27 April 2024 Order on Provisional Measures, directing Azerbaijan to refrain any action that may threaten the life or integrity or otherwise cause harm or prejudice to Ms. Ramazanova and Mr. Abdulmajidov. This includes any action by Azerbaijan that may impair or otherwise hinder the presentation of evidence and information from Ms. Ramazanova and Mr. Abdulmajidov, and any action that may intimidate them. Indeed, Azerbaijan is expected to strictly adhere to this with respect to Mr. Bahari, all of his witnesses and experts, and "[redacted]."[892]

607. It is also expected that Azerbaijan will strictly adhere the Tribunal's 31 May 2024 amendment to the Provisional Order, directing Azerbaijan to promptly inform the Tribunal

891 See Witness Statement of Ramazanova Konul Mahmud dated 19 June 2024 ("**Ramazanova WS**"); and Witness Statement of Abdulmajidov Timur dated 19 June 2024 ("**Abdulmajidov WS**").

892 Tribunal's Order on Provisional Measures, 29 April 2024, ¶ 3.3(i)(a).

and the Claimant, through Azerbaijan's Counsel, of any anticipated contact or actions towards Mr. Abdulmajidov and Ms. Ramazanova's family members.[893]

1. Background of Mr. Bahari's Involvement with Ms. Ramazanova and Mr. Abdulmajidov.

608. In January 2024, while preparing this Reply Statement, Mr. Bahari contacted Ms. Ramazanova, who is a former employee of Mr. Bahari's at Caspian Fish, to enquire if she had any information that would be helpful to respond to Azerbaijan's Defense and potentially act as a witness in the Arbitration.[894]

609. Mr. Bahari was shocked to discover that since he last spoke with her in July 2021, Azerbaijan had been carrying out a violent and sustained campaign of persecution against Ms. Ramazanova and Mr. Abdulmajidov because of their assistance to Mr. Bahari in preparing his Claim against Azerbaijan.[895]

610. Counsel to Mr. Bahari interviewed Ms. Ramazanova and Mr. Abdulmajidov, reviewed documents made available by them, and liaised with their asylum counsel, to perform all necessary due diligence before submitting the Provisional Measures Application, which was originally submitted *ex parte* due to serious concerns about the safety of Ms. Ramazanova and Mr. Abdulmajidov and their families from potential retribution by Azerbaijan.

2. Azerbaijan's Sustained Violent Campaign Against Persons Who Were Perceived to be Assisting Mr. Bahari with his Investment Claim.

611. Azerbaijan's violent campaign against Ms. Ramazanova and Mr. Abdulmajidov included, but was not limited to, the following:

a. On 23 July 2021, initial questioning and harassment by State security agents during Ms. Ramazanova and Mr. Abdulmajidov's visit to the exterior of Caspian Fish to simply take photographs of the facility at Mr. Bahari's request and for the preparation of his claim in this Arbitration.[896]

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893 Tribunal's Letter to Parties, 21 May 2024 amending the Order on Provisional Measures.

894 Bahari Provisional Measures WS ¶ 10.

895 Bahari Provisional Measures WS ¶ 17.

896 Ramazanova WS ¶ 24; Abdulmajidov WS ¶¶ 12-19.

b. On 2 August 2021, harassing phone calls from an unknown person – likely a State security agent – aggressively interrogating Mr. Abdulmajidov about where Mr. Bahari was and what he planned to do, and demanding that Mr. Abdulmajidov hand over the Caspian Fish Shareholders Agreement.[897]

c. On 12 September 2021, a break-in and search of the office of Ms. Ramazanova's and Mr. Abdulmajidov's travel agency. The perpetrator was looking for a specific document and likely intended to intimidate Ms. Ramazanova and Mr. Abdulmajidov. The Azerbaijani police took no action to investigate or bring any charges about this incident despite available evidence.[898]

d. On 18 September 2021, at Police Station no. 22 in Baku, three State security agents interrogated Mr. Abdulmajidov, physically beat him, and threatened his family, referencing the break-in at the travel agency office. The agents asked about the Caspian Fish Shareholders Agreement, where Mr. Bahari was located, and what he was doing.[899]

e. On or about 21 September 2021, Mr. Abdulmajidov received a call from an unknown person who further threatened Mr. Abdulmajidov by stating that he could get to Mr. Abdulmajidov's family anytime he wanted. Such a threat could only be made by a State agent acting with impunity.[900]

f. On 2 October 2021, Mr. Abdulmajidov and Ms. Ramazanova were driving in their car when they were deliberately rammed by a large truck, injuring Ms. Ramazanova (who was pregnant at the time). The Azerbaijani police took no action to investigate or bring any charges about this incident despite available evidence.[901]

g. On 8 October 2021, Mr. Abdulmajidov was summoned to the headquarters of the road police, where he was handcuffed by three plainclothes State security agents, who explicitly asked him if he liked what they did to him and his wife, stating that it would only get worse. Mr. Abdulmajidov understood this as a reference to the truck

897 Ramazanova WS ¶¶ 29-30; Abdulmajidov WS ¶¶ 20-21.

898 Ramazanova WS ¶ 31; Abdulmajidov WS ¶¶ 22-23.

899 Ramazanova WS ¶¶ 32-34; Abdulmajidov WS ¶¶ 24-28.

900 Abdulmajidov WS ¶ 29.

901 Ramazanova WS ¶ 35; Abdulmajidov WS ¶¶ 30-32.

hitting their car a few days earlier. The agents again questioned Mr. Abdulmajidov about Mr. Bahari, and again violently beat Mr. Abdulmajidov, and detained him at the police station for approximately 15-16 hours before releasing him. Mr. Abdulmajidov sustained serious injuries as a result.[902]

h. On 14 December 2021, a black Mercedes deliberately ran over Mr. Abdulmajidov while he was crossing the street in Baku. Four State security agents got out of the Mercedes and violently assaulted Mr. Abdulmajidov. The Azerbaijani police who arrived on the scene took no action to detain the State agents who were assaulting Mr. Abdulmajidov, and in fact, the police took orders from those same agents to take Mr. Abdulmajidov to the police station. The Azerbaijani police took no action to investigate or bring any charges about this incident. Mr. Abdulmajidov was put in the hospital with severe injuries.[903]

i. On 13 January 2022, Mr. Abdulmajidov and Ms. Ramazanova sought the assistance of an Azerbaijani lawyer to file a claim against the Azerbaijani police and Government, and whoever else was behind what happened to them. The lawyer advised that their claim was not normal, and what had happened was serious, but they could never do anything about it, except to stay quiet and give the authorities what they were asking for. The lawyer also advised them that asserting this claim would only make their situation worse and they would never win in the Azerbaijani courts.[904]

j. On 6 and 8 February 2022, Mr. Abdulmajidov and Ms. Ramazanova, respectively, were instructed to attend the police station for serious criminal offenses, and were accused of illegally trafficking foreign persons into Azerbaijan. Azerbaijan presented no evidence whatsoever or any documents accusing them of these crimes. No charges were filed and no restrictions were officially placed on their ability to leave Azerbaijan. Despite this, they were repeatedly threatened by the

902 Ramazanova WS ¶¶ 36-38; Abdulmajidov WS ¶¶ 33-38.

903 Ramazanova WS ¶¶ 39-44; Abdulmajidov WS ¶¶ 39-47; **C-238** Mr. Timur General Diagnostic, Forensic Expertise Center, 20 December 2021; **C-239** Caspian International Hospital X-ray order, 16 December 2021.

904 Ramazanova WS ¶¶ 46-48; Abdulmajidov WS ¶¶ 48-51; **C-240** Advocate Statement for Mr. Timur, 13 January 2022.

police that they were under investigation and were told they could not leave Azerbaijan.[905]

k. On 8 April 2022, an unknown person contacted Mr. Abdulmajidov and Ms. Ramazanova by telephone asking where they were. Upon learning they were outside of Azerbaijan, they were threatened and instructed to return to Azerbaijan immediately. Certain individuals also surveilled their homes to determine they were out of the country. Only State officials would be aware of Mr. Abdulmajidov and Ms. Ramazanova leaving Azerbaijan.[906]

l. On 26 April 2022, a criminal summons ("**Criminal Summons**") from the Prosecutor General of the Office of the Prosecutor General of the Republic of Azerbaijan was issued to Mr. Abdulmajidov directing him to attend a pre-trial interrogation at the office of the Prosecutor General on 28 April 2022. The Summons accused Mr. Abdulmajidov of having a business relationship with Mr. Bahari; the Summons further accused Mr. Bahari of being a foreigner who produced drugs at Caspian Fish and that Mr. Bahari is wanted in Azerbaijan.[907] This is despite Mr. Abdulmajidov never having met Mr. Bahari in person, and if the events in question actually occurred, Mr. Abdulmajidov would have been 6 or 7 years old.[908] (The Criminal Summons is discussed in greater detail below.)

m. The families of Mr. Abdulmajidov and Ms. Ramazanova have continued to receive threats and repeated inquiries throughout 2022 and 2023 about the whereabouts of Mr. Abdulmajidov and Ms. Ramazanova.[909]

n. Indeed, even after the Tribunal issued its Order on Provisional Measures, Azerbaijan repeatedly harassed and intimidated Mr. Abdulmajidov's father to ascertain his whereabouts, eventually issuing a Summons to force Mr. Abdulmajidov's father to be "[redacted]" in person.[910]

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905 Ramazanova WS ¶¶ 49-55; Abdulmajidov WS ¶¶ 52-57.

906 Ramazanova WS ¶¶ 56-62; Abdulmajidov WS ¶¶ 60-61; **C-241** Prosecutor General Summons for Mr. Timur, 26 April 2022.

907 Abdulmajidov WS ¶¶ 64-68. The Summons and its contents were extremely distressing to Mr. Abdulmajidov and Ms. Ramazanova. It confirmed to them that their personal freedom and safety, and the safety of their families, were in danger from the Azerbaijani authorities due to a perceived connection to Mr. Bahari.

908 Ramazanova WS ¶ 62; Abdulmajidov WS ¶¶ 69-71; Bahari Provisional Measures WS ¶¶ 18-22.

909 Abdulmajidov WS ¶ 72.

910 Abdulmajidov WS ¶¶ 73-78.

612. As a result of Azerbaijan's sustained intimidation, harassment, and even physical assault of Mr. Abdulmajidov and Ms. Ramazanova, they were left no choice but to flee Azerbaijan and seek asylum in a third country in April 2022. In doing so, they had to leave their families, including their four-month old daughter that they had been trying to conceive for more than five years, as well as their business and livelihood – and may never be able to safely return to their country and community.

613. In response to these events, Azerbaijan cynically contends that Mr. Abdulmajidov and Ms. Ramazanova are not telling the truth and that the documents the couple has put forward evidencing these tragic events are forgeries. As discussed below, Azerbaijan's basis for alleging the documents are forgeries is illogical and dishonest. This flat denial and dismissal of these very serious charges is representative of how Azerbaijan and its officials assume they can take these types of unlawful acts with impunity.

614. Azerbaijan engaged in a sustained campaign of witness intimidation, life-threatening physical assaults, arbitrary detention, and false criminal charges. The gravity of Azerbaijan's actions cannot be overstated: they have upended and destroyed the lives of two peaceful, law-abiding citizens and their families. These actions not only affect Mr. Bahari and the very integrity of these proceedings, but are clearly a continuation of Azerbaijan's broad intimidation and harassment against Mr. Bahari and those associated with him and his investments over the past 20-plus years.

615. Azerbaijan's conduct was an overt attempt to prevent Mr. Abdulmajidov and Ms. Ramazanova from assisting Mr. Bahari with his claim. The persecution against Mr. Abdulmajidov and Ms. Ramazanova only began after the couple assisted Mr. Bahari by taking photographs of Caspian Fish and when the authorities thought that the couple had a copy of the Caspian Fish Shareholders Agreement.

616. What Azerbaijan has done to Mr. Abdulmajidov and Ms. Ramazanova is tragic. It is also yet another occurrence of Azerbaijan's continuous, hostile persecution of Mr. Bahari and those associated with him and his investments. Azerbaijan's actions taken against Mr. Abdulmajidov and Ms. Ramazanova in and of themselves amount to a separate breach of the Treaty. They also amount to direct evidence corroborating Azerbaijan's other actions taken against him and his investments for the past 20-plus years, starting with his expulsion from Caspian Fish and Azerbaijan.

3. Azerbaijan Directly Interfered with the Arbitration by Issuing the Criminal Summons Against Mr. Bahari.

617. With the 26 April 2022 Criminal Summons, Azerbaijan, through its Office of the Prosecutor General ("**OPG**"), appears to be applying the same illegal intimidation on Mr. Bahari. Having been caught red-handed issuing this Criminal Summons, Azerbaijan's defense consists of disparaging Mr. Abdulmajidov and Ms. Ramazanova as opportunists, and calling the Criminal Summons a forgery. This defense is unsupported and unavailing.

a. The Allegations in the Criminal Summons Are Absurd on Their Face.

618. The Criminal Summons directed Mr. Abdulmajidov, as the subject of a criminal investigation, to attend a pre-trial interrogation at the Office of the Prosecutor General on 28 April 2022. The Summons noted that if Mr. Abdulmajidov did not attend voluntarily or attempted to evade the appointment, he would be forcibly detained and brought to the interrogation proceedings.[911]

619. The Criminal Summons specifically alleged that:

[redacted][912]

620. The Summons and its contents were extremely distressing to Mr. Abdulmajidov and Ms. Ramazanova. It confirmed to them that their personal freedom and safety, and the safety of their families, were in danger from the Azerbaijani authorities due to a perceived connection to Mr. Bahari.[913] When Mr. Bahari learned of the Criminal Summons and its contents, it confirmed his existing fears and his inability to return to Azerbaijan to try and regain his investments.[914]

621. The Criminal Summons' accusations are patently false; they are, on their face, absurd, and reveal carelessness in its details:

a. Apart from the 26 April 2022 Summons, Azerbaijan has never alleged (either in these proceedings or prior to 2024) that Mr. Bahari used Caspian Fish as a front

911 **C-241** Prosecutor General Summons for Mr. Timur, 26 April 2022, p. 3.

912 **C-241** Prosecutor General Summons for Mr. Timur, 26 April 2022, p. 3.

913 Ramazanova WS ¶ 62; Abdulmajidov WS ¶¶ 65-71.

914 Bahari WS2 ¶¶ 32-35.

for illicit drug manufacturing. Were there any truth to these criminal allegations, one would have expected Azerbaijan to bring charges back in 2001, rather than waiting over twenty years.

b. If there were any truth to the allegations, one would have further expected Azerbaijan to further present its alleged evidence of such criminal activity in in its Statement of Defense (which was filed well after the 2022 date of the Criminal Summons). This discrepancy strongly suggests the extemporized and fabricated nature of the charges.

c. The charges, if true, would also mean that President Aliyev and Minister Heydarov (and their families), as shareholders of Caspian Fish, were implicated in such an illicit activity.

d. As noted below, the involvement of Mr. Gasim Mammadov, the author of the 26 April 2022 Criminal Summons, immediately renders the Summons suspect and confirms the falsehood of the charges.

e. Also as noted below, the Criminal Summons is consistent with Azerbaijan's track record of harassment, intimidation, bogus arrests, and even attempts on the life of journalists, lawyers, human right activists, and generally any person who would get in the way of the Government and its ruling families. It is also consistent with the Azerbaijani Government's record of repression using State law enforcement and judicial apparatus to charge and convict dissidents on falsified drug charges.[915]

622. Thus, the contents and context of the Criminal Summons demonstrates a direct causal nexus between Mr. Abdulmajidov and Ms. Ramanazova, Mr. Bahari, and Azerbaijan's continuing actions to prevent Mr. Bahari from regaining his investments. Its issuance can only be read as a continuing campaign of coercion and pressure against Mr. Abdulmajidov and Ms. Ramanazova, for the sole reason that they were assisting Mr. Bahari – and thus seen as acting against the interests of President Aliyev. Because the Criminal Summons also names Mr. Bahari, it must also be understood as a direct coercive measure against him.

[915] Application for a Preliminary Order and Interim Measures, 12 March 2024, ¶ 80.

b. Gasim Mammadov is a Government Agent Specifically Tasked with the Political Persecution of Anyone with Interests Adverse to Azerbaijan.

623. The Criminal Summons directed at Messrs. Bahari and Abdulmajidov is particularly alarming because it was issued and signed by a Mr. Gasim Mammadov, who is listed on the Summons as a "[redacted]" [916] Gasim Mammadov held this position until December 2022, when he was made Deputy Head of the Investigations Department.[917]

624. Numerous publicly reported investigations and media reports cite to Gasim Mammadov as an agent of the Azerbaijani Government specially tasked with the targeting and political persecution of independent journalists, human rights activists, lawyers, and non-governmental organizations who have been critical of President Aliyev's Government. Below are but a few examples that we have thus far identified in the public domain:

a. In September 2015, the European Parliament passed a non-binding resolution (the "**2015 EP Resolution**") that requested the European Council to consider visa bans and other sanctions against Azerbaijani politicians, judges and officials involved in political persecutions.[918] The 2015 EP Resolution did not name any Azerbaijani officials by name, although earlier reporting by opposition political parties claimed that Gasim Mammadov was on the preliminary list of those to be sanctioned (see below).

b. In January 2015, Musavat, an opposition political party that had been banned from competing in parliamentary elections in Azerbaijan, alleged that the US State Department had included Gasim Mammadov on a preliminary list of 31 Azerbaijani officials to be sanctioned for their involvement in violating human rights.[919]

c. Azerbaijani-language and local media reported that Gasim Mammadov was involved in the investigations of journalists, lawyers, human rights activists and

916 **C-241** Prosecutor General Summons for Mr. Timur, 26 April 2022, p. 4.

917 **C-242** *Appointment of Vasif Talibov to replace his dismissed prosecutor brother*, Read, 30 December 2022.

918 **C-243** European Parliament resolution on Azerbaijan (2015/2840(RSP)), 10 September 2015.

919 **C-244** Meydan, *These judges and prosecutors who violate human rights can be sanctioned - a shocking list*, Musavat.

NGOs. While Mammadov is explicitly mentioned, reports about these cases (set out below) do not always explain Mammadov's specific involvement.

d. Intigam Aliyev ("**Intigam**"), a lawyer and human rights activist was sentenced to seven and a half years in jail in April 2015 by the Baku Serious Crimes Court.[920] Human rights organization Netherlands Helsinki Committee reported that Gasim Mammadov was "[redacted]" against Intigam.[921] Amnesty International described Intigam as a prisoner of conscience.[922] The persecution of Intigam is discussed in the 2015 EP Resolution referenced above.[923]

e. Nida Civic Movement ("**Nida**") is a youth activist group formed in 2011 to promote human rights. Between March 2013 and December 2013, eight members of Nida were convicted on reportedly bogus charges, to include false drug charges.[924] Shahin Novruzov ("**Novruzov**"), a member of Nida, told the Baku Court of Serious Crimes on 13 December 2013, in comments reported by independent Azerbaijani-language media, that Mammadov "[redacted]" during the investigation.[925] Novruzov states that interrogators beat him and broke four of his teeth. He did not explicitly state whether Mammadov participated in that attack.

f. In February 2022, Mammadov was appointed head of a team responsible for purportedly investigating the use of torture by Azerbaijan's military in interrogations of 250 of its own soldiers accused of spying for Armenia in 2017. The mother of an Azerbaijani soldier who died during torture in 2017, told the independent Azerbaijani-language media that in July 2023 Mammadov had "[redacted]" on her lawyer Solmaz Kazimova ("**Kazimova**"). Mammadov called Kazimova and

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920 Mr. Intigam Aliyev (no relation to President Aliyev) filed more than 200 applications to the European Court of Human Rights against Azerbaijan in cases of election rigging and abuses of free speech.

921 **C-245** Complaint by the Netherlands Helsinki Committee to the International Association of Prosecutors regarding the prosecution service of Azerbaijan, March 2018, p. 54.

922 **C-246** *Guilty of Defending Rights Azerbaijan's Human Rights Defenders And Activists Behind Bars*, Amnesty International, 2015, p. 16.

923 **C-243** European Parliament resolution on Azerbaijan (2015/2840(RSP)), 10 September 2015, pp. 2-3.

924 The Members of Nida were charged with possession of drugs and incendiary devices after organizing demonstrations to protest the death of military conscripts from hazing and bullying. All were sentenced to jail and have since been released.

925 **C-247** Parvana Bayramova, *NIDA youth: They psychologically pressured me, beat me, broke 4 of my teeth [Video],* VOA, 18 December 2013; see also **C-248** *Medals were awarded to the investigators who conducted the scandalous cases,* Azadliq Radiosu, 9 February 2024.

accused her of breaching court confidentiality rules by passing details of the behind-closed-doors hearing to the press. On 7 August 2023, a group of unmarked police detained Kazimova at her house and confiscated her computer, telephone and documents.[926]

g. Mr. Mammadov or his office prosecuted Mr. Mammadli, another human rights activist who was also convicted on bogus criminal charges. The European Court of Human Rights ruled that there were no reasonable grounds for those charges and that Mr. Mammadli's human rights were violated.[927]

h. In Emin Huseynov v. Azerbaijan, a European Court of Human Rights case, Mr. Huseynov, a human rights activist, was brought to a police station and severely beat. As with Mr. Abdulmajidov, Azerbaijan simply flatly denied that any such beating took place. The ECtHR found otherwise and issued a decision against Azerbaijan.[928]

i. Mr. Rufat Safarov a whistleblower prosecutor who critiqued Azerbaijan's prosecution services, who was criminally investigated the very next day after he published his critiques.[929]

j. The overwhelming international reporting on Azerbaijan's judicial and police functions, including the OPG, shows widespread use of falsified, politically-motivated arrests and prosecutions against individuals who are seen to act against the Government or the political elites' interests.[930]

625. In light of the above, Mr. Mammadov is not a credible witness; nor is the entire OPG as a body. As discussed below, Azerbaijan denies the plain evidence that Mr. Mammadov and the OPG issued a false Criminal Summons against Mr. Abdulmajidov because he and his wife are seen as acting against the interests of President Aliyev. Azerbaijan sets out a

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926 **C-249** *The victim of the 'Tarter case': 'My son's killers are not punished, moreover...'*, Azadliq Radiosu, 12 February 2024.

927 **C-258** ECHR Mammladi v. Azerbaijan, 19 July 2019.

928 **C-257** ECHR Emin Huseynov v Azerbaijan, 7 August 2015.

929 **C-245** Complaint by the Netherlands Helsinki Committee to the International Association of Prosecutors regarding the prosecution service of Azerbaijan, March 2018, ¶¶ 205-212.

930 See e.g. **C-420** hrw.org, Azerbaijan Reporter Sentenced on Spurious Charges, 12 June 2012, *available at* https://www.hrw.org/news/2012/06/12/azerbaijan-reporter-sentenced-spurious-charges, accessed on 20 June 2024 (noting falsified drug charges); **C-421** nhc.nl, Azerbaijan: Crackdown on Free Expression Accelerates With Conviction of Prominent Blogger, 3 March 2017, *available at* https://www.nhc.nl/azerbaijan-crackdown-free-expression-accelerates-conviction-prominent-blogger/, accessed on 20 June 2024.

theory of forgery that heavily relies on Mr. Mammadov's evidence and testimony, and the credibility of the OPG itself. In order to believe Mr. Mammadov and Azerbaijan's version of the events, the Tribunal would have to discount an overwhelming amount of evidence pointing to the fact that OPG (and Mr. Mammadov) regularly issue criminal summons based on trumped-up charges against individuals who are seen as acting against the interests of the ruling elite. This evidence is painstakingly assembled and published by highly respected and credible international institutions and media sources. Azerbaijan ignores a significant body of human rights reports, the whole weight of the evidence contained in those reports, and carefully considered decisions issued against Azerbaijan by scores of learned judges sitting at the European Court of Human Rights.

c. Azerbaijan's Allegations of Forgery Are Based on a Deliberate Misreading of the Asylum Decision.

626. Faced with the highly problematic Criminal Summons, Azerbaijan has advanced a theory that this document was forged by Mr. Abdulmajidov and Ms. Ramazanova.[931] This argument attempts to misdirect the Tribunal's attention away from *prima facie* evidence that the Criminal Summons was issued by the OPG, as well as extrinsic evidence showing the OPG's publicly reported pattern of issuing similar bogus, politically-motivated summonses. It is also a textbook example of gaslighting: cynically manipulating the facts to turn victims – Mr. Abdulmajidov and Ms. Ramazanova – into supposed offenders.

627. It is worth recalling here that Azerbaijan pinned its theory on a gross misreading of the Asylum Decision dated 12 April 2023.[932] Relying solely on the Asylum Decision, Azerbaijan attempts a huge logical leap to conclude that [redacted]"[933]

628. Azerbaijan conveniently omits, of course, that Mr. Abdulmajidov has already openly addressed the Asylum Decision's inaccuracies (accuracies which were not of his making) in his asylum witness statement.[934] Now that Mr. Abdulmajidov and Ms. Ramazanova are represented by an Asylum legal counsel, he has corrected these inaccuracies in the

931 **C-428** Quinn Emanuel Letter to the Tribunal, 19 March 2024.

932 **C-250 *bis*** Asylum Decision [REDACTED], 12 April 2023.

933 **C-428** Quinn Emanuel Letter to the Tribunal, 19 March 2024**,** ¶ 2.

934 **C-237** Witness Statement of Timur Abdulmajidov in support of Asylum Appeal, 26 February 2024, ¶ 62.a-k.

course of applying for an Appeal. That process is still pending, and no final determination has been made yet.

629. More importantly, Azerbaijan's narrative would have the Tribunal believe that almost two years ago, Mr. Abdulmajidov and Ms. Ramazanova voluntarily left behind their family, infant daughter, and their lives in Baku, to undergo a life-altering and uncertain asylum process in a foreign country, where they made false sworn statements to asylum government officials that Azerbaijan is threatening their lives – all to aid Mr. Bahari in his dispute with Azerbaijan (despite Mr. Bahari having no knowledge of this and putting none of these facts forward in his Statement of Claim, which he would have done had he been aware of these shocking circumstances). Azerbaijan would further have the Tribunal believe that Mr. Abdulmajidov and Ms. Ramazanova were able to fabricate original, stamped documents from three different Azerbaijani custodians: the Ministry of Justice, the OPG, and a member of the Azerbaijani Bar Association.

630. More broadly, of course, applying initial findings of an administrative asylum process to an investment treaty arbitration procedure is inapt. Putting aside that the Asylum Decision is not final, the entire asylum process proceeds under vastly different resourcing, evidentiary rules, and policy imperatives. Mr. Abdulmajidov and Ms. Ramazanova did not initially have counsel, had an inept translator, and were far from being on an equal footing vis-à-vis the asylum State and its immigration services. Critically, the State's asylum process deals with substantial backlogs and its policies are aimed at deterring people from seeking and gaining asylum. Indeed, at the Provisional Measures Hearing, the Tribunal expressed unease with the idea that its provisional order might infringe upon the sovereign jurisdiction of the asylum courts. For the same reasons, the Tribunal should not allow the initial findings of an administrative asylum process to bind or encroach on in any way the Tribunal's jurisdiction as fact-finder.

d. Azerbaijan's Evidence of Forgery is Tenuous and Misleading.

631. In its Responses to Provisional Measures brief dated 5 April 2024, Azerbaijan continued to push its theory of forgery. Azerbaijan's evidence included the following:

a. An allegation that the signature on the stamp of the Criminal Summons bears no resemblance to Mr. Mammadov's true signature. On this point, Azerbaijan

exhibited Mr. Mammadov's signature on an anonymized witness summons dated 2002 at **R-216**.[935]

b. An allegation that the seal used to stamp the Criminal Summons is not the true seal of the OPG. Azerbaijan exhibited alleged specimens of the true seal at **R-214**.[936]

c. The last paragraph of the Criminal Summons is "[redacted]"[937]

632. At the Provisional Measures Hearing on 10 April 2024, the Presiding Arbitrator asked Claimant's Counsel to explain the disparities presented between the Criminal Summons and the above evidence presented by Respondent and Mr. Mammadov.[938]

633. <u>The short answer, then and now, is that Azerbaijan purposely misled the Tribunal with a limited, biased sample</u>.

634. First, by way of visual recall, the Criminal Summons at **C-241** contained a seal with a star crest in the middle:

[redacted]

935 **C-299** Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, ¶ 60(a); **C-392** Witness Statement of Qesim Mammadov (English), 5 April 2024, ¶ 16.

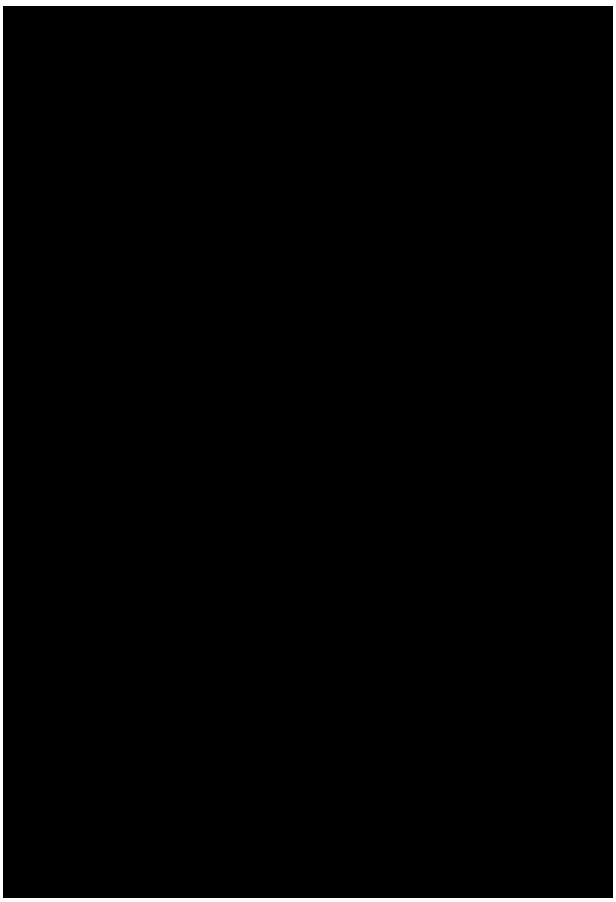
936 **C-299** Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, ¶ 60(b).

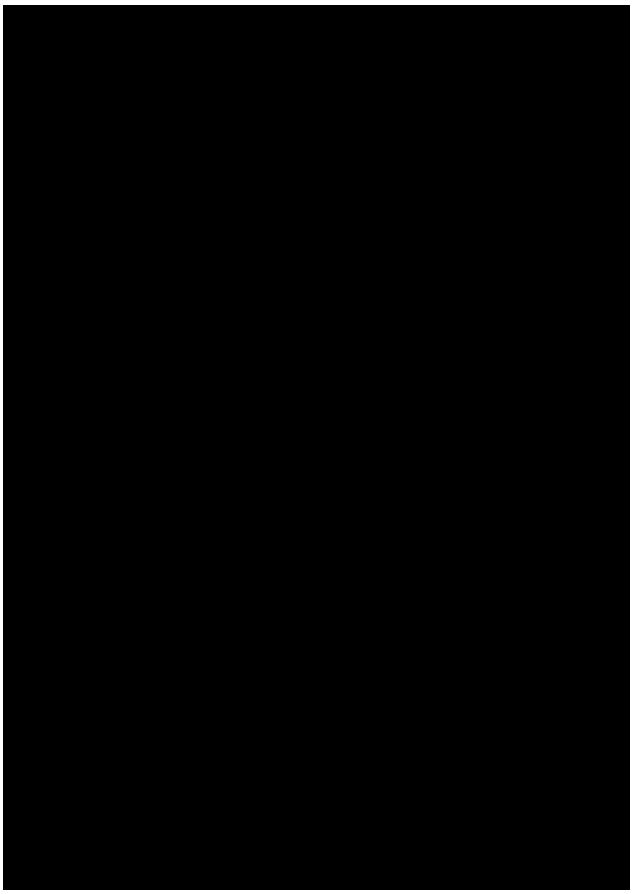
937 **C-299** Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, ¶ 63(d); **R-216** Redacted summons Gasim Mammadov, April and November 2022.

938 **C-393** Provisional Measures Hearing Transcript, 10 April 2024, Tr.40:9-25 ([redacted]"); Tr. 41:1-20 ([redacted]"); Tr. 41:21-22 ([redacted]"); Tr. 41:23 ([redacted].).

635. Azerbaijan presents a “true seal” of the Department of Investigation of the OPG, exhibited at **R-214**:

636. At **R-216**, Mr. Mammadov provides two specimens of prior criminal summons he has issued:





637. Inexplicably, Mr. Mammadov's specimens contain no official letterhead at all. It is unclear whether these were drafted as such or whether the letterheads were removed; however, given the amount of white space at the top of the two specimens, it appears that the letterheads have been removed. Each specimen uses a different font. Mr. Mammadov's specimens do not contain any seals, either the so-called "true seal" exhibited at **R-214** or otherwise.

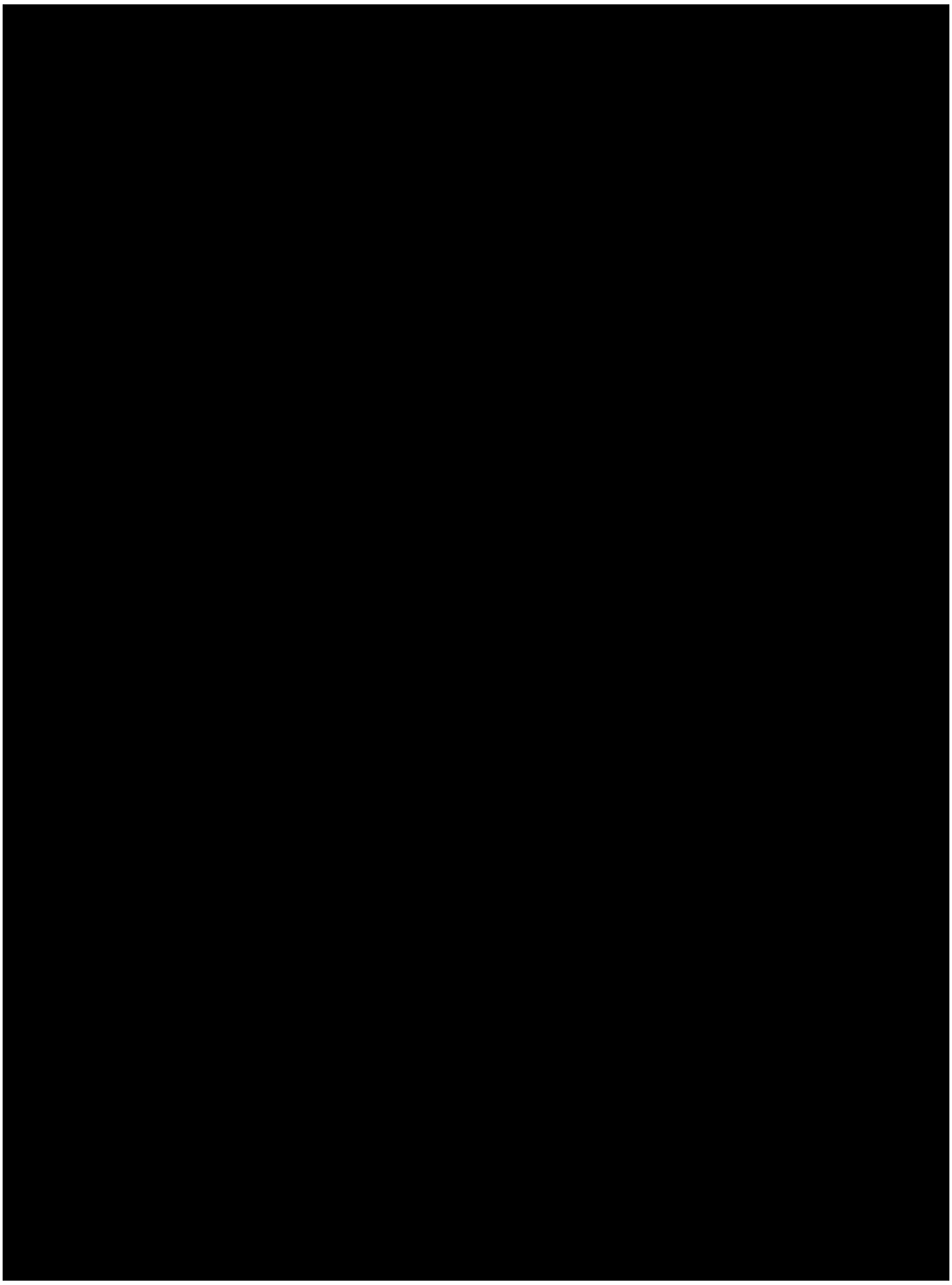
638. Claimant has identified a criminal summons issued by the OPG and obtained from a publicly available Azeri language news source, "Arqument," dated 14 June 2017.[939] The article reports on the OPG's issuance of a summons to Mr. Isa Gambar, an opposition politician and leader of the Equality Party (*Müsavat*),[940] directing Mr. Gambar to report to the Investigative Department for Serious Crimes. The summons related to the case of an imprisoned journalist, Afgan Mukhtarli. ("**Gambar Summons**.")

639. The Gambar Summons is a reliable comparator because it was published by an opposition leader with high visibility. There is no possibility that Mr. Gambar, who has previously been imprisoned for his political activism against the Aliyev family, would widely disseminate a forged criminal summons without risking arrest. The Gambar Summons therefore provides an objective comparator that is not issued from a Claimant or Respondent witness.

640. The Gambar Summons is reproduced below as a visual aid:

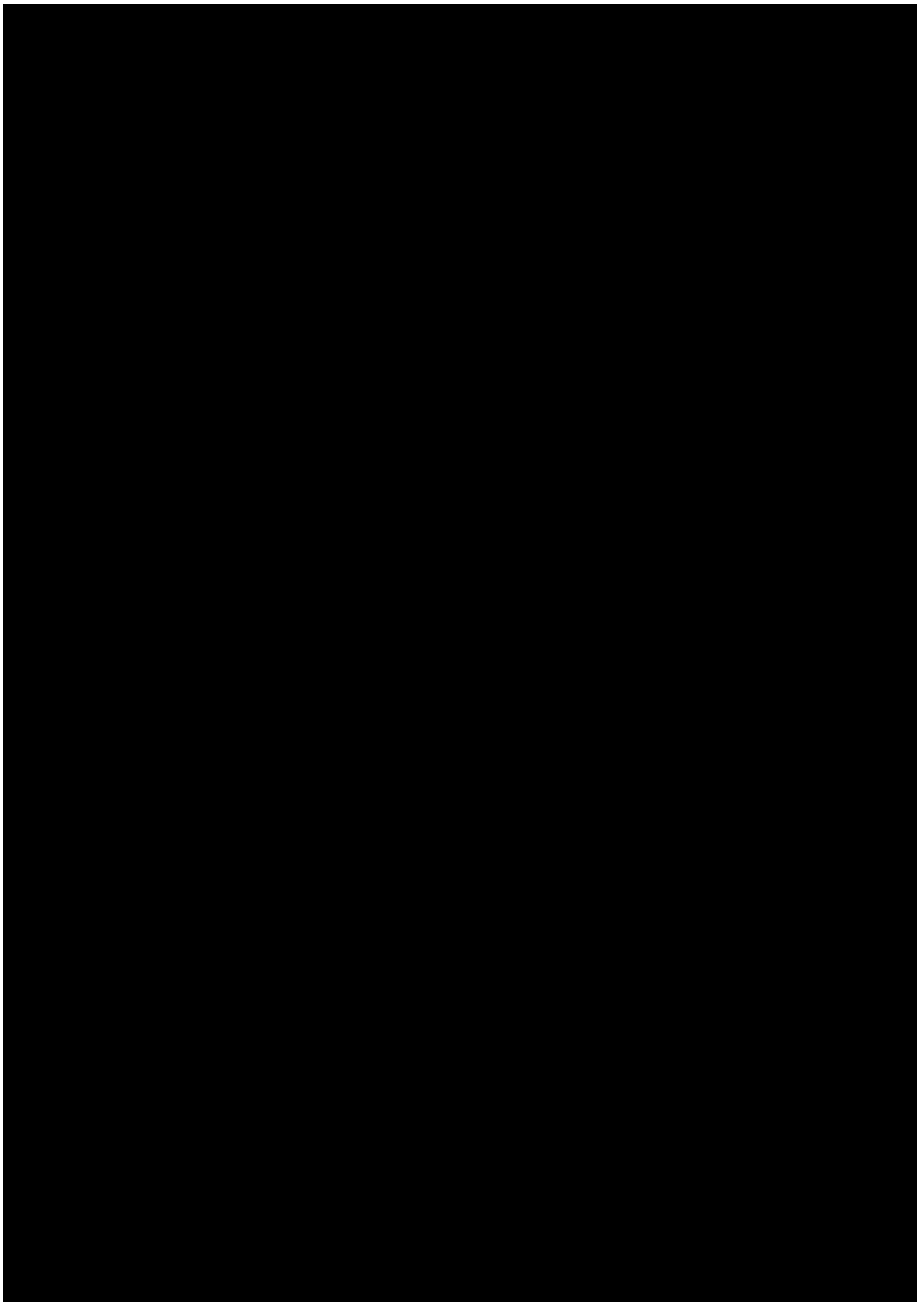
939 **C-394** Arqument Article (English online machine translation), available at https://tinyurl.com/yc6z79s8, 14 June 2017.

940 See **C-395** Wikipedia entry for Isa Gambar, *available at* https://en.wikipedia.org/wiki/Isa_Gambar, accessed on 19 June 2024.



641. Notably, the seal on the Gambar Summons is different from both **C-241** (the Criminal Summons) and **R-214** (Azerbaijan's purported "official" seal).

642. In other respects, the Gambar Summons bears highly similar features to the Criminal Summons at **C-241**, to include the letterhead. The first page of **C-241** is reproduced below for ease of comparison:



643. From this one single example, it becomes clear that Mr. Mammadov's specimens were specifically selected for their purported variance with the Criminal Summons – creating a purposeful sample bias:

a. Mr. Mammadov appears to have redacted or deleted the letterhead at the top of both his specimens for reasons unclear to Claimant. On its face, the redaction of documents meant to be used as comparators raises serious questions as to Mr. Mammadov's motives. Certainly, one result is that his specimens superficially look different from the Criminal Summons. However, the Gambar Summons shows a similar letterhead to the Criminal Summons. In any event, and at a minimum, the apparent redaction of the letterhead nullifies any utility Mr. Mammadov's specimens might have had as possible comparators.

b. Mr. Mammadov has selected two samples which do not affix seals. This conveniently renders it impossible to make any comparison between seals. Azerbaijan further appears to take the position that a "[redacted]" such as a summons would not be stamped with the "[redacted]" of the OPG.[941] Yet, the Gambar Summons is an objective example of a criminal summons issued by the OPG that is affixed with a seal. The Criminal Summons, of course, is another such example.

c. Furthermore, Mr. Mammadov's selection makes it impossible to make a comparison of his signature. In the Criminal Summons, the signature appears purposely affixed entirely within the seal; this would obviously tend to look different than a freehand signature from the same individual that is not similarly constrained. Azerbaijan's assertion that the signature in the Criminal Summons does not match Mr. Mammadov's specimen is disingenuous.[942]

d. It is readily apparent from the Gambar Summons that multiple seals exist. Between the Gambar Summons, Mr. Abdulmajidov's Criminal Summons, and Azerbaijan's so-called "true seal," there are at least three versions. Azerbaijan failed to explain this, offering up the "true seal" and implying it is the only seal that the OPG uses. The Gambar Summons negates this. One possible explanation for multiple seals is that seals are updated over time, but that the old seals continue to be used.

644. Thus, the Gambar Summons (1) rebuts Azerbaijan's point questioning the authenticity of the seal in the Criminal Summons; (2) shows that the OPG uses multiple seals; (3) shows

941 **C-299** Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, ¶ 60(c); **C-392** Witness Statement of Qesim Mammadov (English), 5 April 2024, ¶ 16.

942 **C-299** Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, ¶ 60(a); **C-392** Witness Statement of Qesim Mammadov (English), 5 April 2024, ¶ 16.

that, as an objective document from a third party with no ties to either Claimant or Respondent, it shares a high degree of similarity with the Criminal Summons, corroborating the authenticity of the latter.

645. To conclude, Mr. Mammadov's samples appear specifically chosen – and altered – to look different from the Criminal Summons and to avoid apples-to-apples comparisons. Yet, from just a single example that Claimant has been able to find, it is readily apparent that Mr. Abdulmajidov's Criminal Summons is authentic. Mr. Mammadov's evidence should further be viewed in light of his lack of credibility as a witness.

646. On balance, the Criminal Summons is a *prima facie* authentic document and there was never any reason to doubt its authenticity in the first place. Having been caught red-handed with a damning document, Azerbaijan's only defense was to try and sow doubt as much doubt as possible on the document. However, Azerbaijan's thin evidence proves nothing except Mr. Mammadov's attempt to mislead the Tribunal with a biased sample, and it fails to convince.

e. Azerbaijan's Document Search and Due Diligence Efforts Were Utterly Defective.

647. Azerbaijan further supports its theory of a forgery by claiming that there are no ongoing criminal proceedings by the OPG against Mr. Abdulmajidov, Ms. Ramazanova, or Mr. Bahari.[943]

648. Incredibly, Azerbaijan's proof is based on a due diligence "investigation" carried out by Mr. Mammadov himself. In other words, faced with a serious accusation of prosecutorial corruption specifically leveled against Mr. Mammadov, Azerbaijan's solution was to ask Mr. Mammadov to investigate his own conduct. Mr. Mammadov testified that he personally led and undertook the search into the Criminal Summons and related case files, and that he tasked other colleagues to assist him. Of course, Mr. Mammadov absolved himself and found, to no one's surprise, that there was no ongoing criminal investigation.[944] This was akin to asking the proverbial fox to guard the hen house,[945] and amounted to an astonishing lack of due diligence and compliance with good faith and best efforts duties.

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943 **C-299** Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, ¶ 67.

944 **C-392** Witness Statement of Qesim Mammadov (English), 5 April 2024, ¶¶ 28-31; **C-396** Provisional Measures Hearing Transcript, 9 April 2024, Tr. 80:13-25, 81:1-8.

945 **C-393** Provisional Measures Hearing Transcript, 10 April 2024, Tr. 35:4-23.

649. Azerbaijan's utterly defective internal investigation is all the more remarkable in light of the fact that every ministry and agency in Azerbaijan has an internal investigation or audit department charged with internal oversight of the ministry or agency. For example, the Ministry of Internal Affairs has an internal audit body called the Internal Investigations Department.[946] At the OPG, there is an Office of Service Investigations, which is an (ostensibly) "[redacted]" of the OPG, and whose main duties include "[redacted]"[947] This appears to be the relevant internal audit body at OPG. Incredibly, Mr. Mammadov confirmed the existence of such internal audit bodies at the hearing, but then denied such an internal affairs body has authority to perform any verification of the Criminal Summons.[948] That assertion is simply not credible. Mr. Mammadov's dissembling on this point destroys what little credibility he has a witness.

650. In the context of Claimant's assertions of serious abuse by the OPG and the various police stations, these departments would have been the natural choice to undertake any proper document search and overall due diligence efforts. However, they were not so tasked

651. Relatedly, Azerbaijan's document production efforts ahead of the Provisional Measures Hearing were equally deficient. Claimant submitted Supplemental Document Production Requests,[949] which the Tribunal granted on 3 April 2024.[950] The Tribunal directed Azerbaijan to provide a "[redacted]" if it was unable to locate responsive documents. By letter correspondence dated 8 April 2024,[951] Counsel for Azerbaijan noted that it had found no responsive documents for any of the 6 Supplemental Document Requests. This included the following explanation for each of the Requests:

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946 **C-397** OSCE Country Profile of Azerbaijan, *available at* https://web.archive.org/web/20231201090249/https://polis.osce.org/country-profiles/azerbaijan.

947 **C-401** OPG website, Office of Service Investigations, *available at* https://genprosecutor.gov.az/en/page/prokurorluq/bas-prokurorlugun-struktur-qurumlari/xidmeti-arasdirmalar-idaresi.

948 **C-396** Provisional Measures Hearing Transcript, 9 April 2024, Tr. 74:2-25, 75:1-2, 75:16-25, 77:6-8, 81:3-8.

949 **C-398** Claimant's Letter to Tribunal Enclosing Supplemental Document Request, 28 March 2024.

950 **C-399** Tribunal's Email to the Parties, 3 April 2024.

951 **C-400** Respondent's Second Letter to Claimant, 8 April 2024.

> [R]equests to carry out searches for documents were made to the following Ministries, agencies or entities:
>
> i. the Ministry of Justice;
>
> ii. the Prosecutor's Office;
>
> iii. the Azerbaijani Bar Association;
>
> iv. the Ministry of Internal Affairs, and the police; and
>
> v. Caspian Fish LLC.[952]

652. On its face, this explanation was not only deficient, but it was also misleading, if not deceptive.

653. As pertains to Request no.1, for example, Claimant established at the Evidentiary Hearing that Mr. Mammadov himself led the search efforts. Per his Witness Statement, Mr. Mammadov's search was limited to the Investigations Department of the Office of the Prosecutor General.[953] Mr. Mammadov did not affirm, either in his Statement or in oral testimony, that he conducted any searches at any other agency within the Ministry of Justice (whether at higher echelon or otherwise). Thus, it cannot be that Azerbaijan conducted searches at the Ministry of Justice (item (i) above), as distinct from the Prosecutor's Office (item (ii) above).

654. Moreover, Claimant's Supplemental Requests, as approved by the Tribunal, included requests to search for responsive documents with the Office of the President and Mr. Mammadov's own files.[954] Azerbaijan's 8 April 2024 letter makes no mention of any searches with either custodian,[955] exposing yet another glaring deficiency. Azerbaijan never bothered to explain this lacuna.

655. Thus, Azerbaijan's evidence that there were no criminal proceedings by the OPG against Mr. Abdulmajidov, Ms. Ramazanova, or Mr. Bahari is both lacking and seriously defective. Azerbaijan has failed to rebut Claimant's evidence of a bogus Criminal Summons issued against Mr. Abdulmajidov and also naming Mr. Bahari.

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952 **C-400** Respondent's Second Letter to Claimant, 8 April 2024.

953 **C-392** Witness Statement of Qesim Mammadov (English), 5 April 2024, ¶¶ 28-37.

954 **C-398** Claimant's Letter to Tribunal Enclosing Supplemental Document Request, 28 March 2024.

955 **C-400** Respondent's Second Letter to Claimant, 8 April 2024.

4. Azerbaijan's Criminal Summons and Campaign Against Mr. Abdulmajidov, Ms. Ramazanova, and Mr. Bahari Amount to Witness and Claim Tampering.

656. The Criminal Summons and Azerbaijan's campaign of coercion and pressure against Mr. Abdulmajidov and Ms. Ramanazova amount to an unlawful attempt to interfere with the arbitration proceedings.

657. As the chronology of the facts make clear, Azerbaijan's security and judicial apparatus engaged in unlawful conduct against Mr. Abdulmajidov and Ms. Ramazanova *specifically* because they aided Mr. Bahari in preparing his claim against Azerbaijan. That is claim tampering – and it is claim tampering that is ongoing, as the OPG continues to harass Mr. Abdulmajidov and Ms. Ramanazova's parents in Azerbaijan.

658. Further, both Mr. Abdulmajidov and Ms. Ramanazova have now agreed (after a long and difficult deliberation) to serve as witnesses with contemporaneous knowledge of events. To the extent that Azerbaijan's campaign of harassment continues against the couple and their families, that is witness tampering.

659. Similarly, Mr. Bahari is also identified in the Criminal Summons, which puts an incredible amount of undue pressure on him as both a witness and as Claimant. That is both claim and witness tampering. At the Provisional Measure Hearing, Mr. Bahari was asked whether he worried for his safety and that of his family, because of the dispute with Azerbaijan. Mr. Bahari responded in the affirmative.[956] Indeed, Mr. Bahari has suffered years of ongoing coercion and pressure from Azerbaijan, which has prevented him from returning to Azerbaijan to reclaim his investments or seek proper compensation for them.[957] Learning about Mr. Abdulmajidov and Ms. Ramanazova's upsetting experiences at the hands of Azerbaijan's security apparatus has only further confirmed Mr. Bahari's fears.[958]

956 **C-396** Provisional Measures Hearing Transcript, 9 April 2024, Tr. 13:3-5.

957 Bahari WS2 ¶¶ 32-35.

958 Bahari WS2 ¶¶ 34-35.

PART III: AZERBAIJAN'S CORRUPT SYSTEM OF GOVERNANCE ERASES ANY DISTINCTION BETWEEN "PRIVATE" AND OFFICIAL ACTION BY PRESIDENT ALIYEV AND MINISTER HEYDAROV

I. INTRODUCTION: MESSRS. ALIYEV AND HEYDAROV'S ACTIONS MUST BE UNDERSTOOD WITHIN THE CONTEXT OF AZERBAIJAN'S SYSTEM OF GOVERNANCE

660. Azerbaijan's defense insists that the acts of President Aliyev and Minister Heydarov were mere commercial matters taken by them as "third parties" in a private capacity and therefore not attributable to the State. Indeed, Azerbaijan uses the term "private capacity" or "private acts" no less than twenty-seven times throughout its Statement of Defense.[959] Azerbaijan's efforts to narrowly characterize and ring-fence the actions of its corrupt high officials is understandable – but it is wrong. Azerbaijan's position is entirely artificial and ignores the country's obvious political reality: for over thirty years, the Aliyev dynasty and its followers (including the Pashayev and Heydarov families) have leveraged their powerful positions within the State apparatus to engage in illicit commercial gain, and conversely, they have used the wealth generated from their illicit commercial gains to consolidate their political power atop of Azerbaijan's formal institutions. While this key insight is not necessary in order to find Azerbaijan liable for the actions of Messrs. Aliyev and Heydarov, it is helpful, and indeed critical, in fully understanding how they were able to openly take Mr. Bahari's investments for themselves with no repercussions.

661. This complete erasure between the so-called "private" acts of high officials and acts they take in an "official capacity" is not just an indicator of occasional corruption; it is, in fact, a feature inherent and essential to Azerbaijan's entire system of governance. Mr. Bahari's Claim is a classic case study in how Azerbaijan's political elite deploy or threaten the use of the coercive powers of the State apparatus for illicit commercial gain. In order to gain a full picture of how Messrs. Aliyev and Heydarov carried out their actions against Mr. Bahari, it is necessary to understand that Azerbaijan's system of governance completely erases the distinction between the formal order – actions taken by State institutions or State officials in an "official capacity"; and the informal order – actions taken through a powerful neopatrimonial patron-client network that has entirely colonized Azerbaijan's

[959] SoD ¶¶ 3, 11, 27, 32, 36-38, 177, 229, 232, 258, 282, 297, 300, 303, 315, 380, 388(c).

formal institutions. To focus only on State actions taken through the formal order or by taking it at face value is incomplete and misleading: it is the informal order that drives the entire political system in Azerbaijan.

662. Mr. Duncan Allan, M.B.E., and Dr. Tamara Makarenko, experts in political analysis of post-Soviet states, provide an expert report ("**Allan & Makarenko Report**") to explain Azerbaijan's system of governance as a 'limited access order' system, in which State action via informal practices outweigh State action via formal State institutions. This is key to understanding how and why Azerbaijan's system of governance functions as it does, and more precisely, how and why it has benefited the Aliyev dynasty and associated ruling elite (to include the Pashayev and Heydarov families). Put simply, every decision taken by President Aliyev, including those taken along informal channels, is ineluctably enmeshed with the full weight of the 'formal order' and the coercive capabilities of the State. In other words, Messrs. Aliyev and Heydarov control the administrative resources of the State and exploit these in their commercial dealings. Understanding that Azerbaijan's system of governance includes not just formal State actions (likened to the exposed tip of an iceberg), but a complex web of actions taken via an informal, patrimonial network (the vast, submerged part of the iceberg), informs the way in which President Aliyev and Heydarov moved against Mr. Bahari to take his investments for themselves. In short, their actions cannot be described as merely those of private individuals acting in a private commercial matter.

II. AZERBAIJAN'S 'LIMITED ACCESS ORDER' ALLOWS MESSRS. ALIYEV AND HEYDAROV TO LEVERAGE THE COERCIVE POWER OF THE STATE FOR PERSONAL GAIN

A. IN AZERBAIJAN, THE INFORMAL ORDER GOVERNS THE RELATIONS BETWEEN THE RULING ELITES, WHO IN TURN COMMAND THE STATE APPARATUS.

663. Azerbaijan can best be understood as a 'limited access order' system of governance characterized by the interaction between a 'formal order', where the State acts through formal institutions, and an 'informal order', where the State acts via informal practices. [960]

[960] 'Limited access orders' are opposite to 'open access orders', which organize themselves in ways that create comparatively high levels of access to, and competition within, their political and economic systems. In such orders, entry into the political and economic spheres is open if individuals abide by formal rules that are transparent, generally understood, and impartially enforced. Openness in the political and economic spheres

In this system, State agencies are controlled by a dominant coalition of elite interests founded on networks of patron-client relationships.[961] This system of patronage acts as the *de facto* 'carrot', while the 'stick' is the patron's ability to use the State coercive powers to control or influence individuals who pose a potential threat to the patron's political or business interests.

664. Azerbaijan's adoption of a 'limited access order' entails far-reaching consequences, which are all heavily featured in Azerbaijan's system of governance:

a. Controlling access to political advantages and economic profits ("rents") entails significant political interference in the economy. Those who control the State decide which individuals and organizations benefit from the goods, services, and material resources that they control through their command of State bodies, i.e. who becomes rich and who does not. As a result, the political and economic realms tend to be entwined, often to the point where the dividing lines between them are virtually meaningless.

b. Restricting access to the creation and distribution of rents is the elite's central dynamic. The governing elite manages the social order by limited access to, and competition within, the political and economic systems. This, to protect their control of political and economic profits. *Status quo* is the goal: elites calculate that rents will be reduced if social order breaks down and violence breaks out; they are therefore incentivized to work together to maintain peace, which makes their behavior quite predictable. Because the priority of the members of the dominant coalition is to preserve their control over rent creation and distribution, those who are allowed to manage State-owned and private commercial assets are frequently obliged to act in ways that run counter to wider societal interests.

c. The Rule of Law is significantly weaker. The State functions primarily according to the informal rules that determine relations among the ruling patron-client networks

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is therefore mutually reinforcing. Crucially, the 'rules of the game' that govern relations in and between the political and economic spheres are developed and enforced impersonally by a powerful, cohesive, and institutionalized central State, which operates with relative autonomy in its relations with individuals and social groups. This gives rise to the rule of law.

961 'Patron-client relationships' refer to a situation where individuals organize their political and economic pursuits around the personalized exchange of concrete rewards and punishments through chains of actual acquaintance, and not primarily around abstract, impersonal principles such as ideological belief or categorizations like economic class that include many people one has not actually met in person. This is a system of reward and punishment, where power goes to those who can position themselves as patrons with a large and dependent base of clients.

that control State bodies. In turn, public rules and institutions are largely drained of independent authority and power. Decision-making and action by the State bodies can be routinely arbitrary and, frequently, in complete contradiction to formal rules and institutions. The State's judiciary and coercive powers are often used as instruments of the ruling elite to ensure that its interests are safeguarded.

d. A good relationship with the State is a prerequisite for business security and success. Those who are granted market access by the patron-client networks that control the State become dependent on them for continued access, whereas those who are denied or lose privileged access to the State are at a disadvantage and vulnerable to attack from business rivals or from State agencies themselves (or both, acting in collusion).

665. Azerbaijan has clearly adopted a 'limited access order' system, where the informal order is the paramount element because it governs relations among Azerbaijan's ruling elite, who commands the country's formal institutions. This system is at the heart of the Aliyev family's ability to control the political system and enrich themselves and their followers.

B. THE INFORMAL ORDER DRIVES AZERBAIJAN'S ENTIRE POLITICAL SYSTEM AND OUTWEIGHS THE FORMAL ORDER.

666. Azerbaijan's political system is therefore comprised of a 'formal' order and 'informal' order. Duncan Allan and Dr. Tamara Makarenko explain that Azerbaijan's political system can be viewed as an iceberg: the visible part – the constitutional-legal order, institutionalized and impersonal – is the formal order. The cornerstone of this formal order is the 1995 Constitution, which sets out the institutional framework within which political power is contested and exercised. The invisible, submerged part of the iceberg is constituted of an agglomeration of unwritten and personal conventions, customs and practices that determine how power is organized, accessed, and used within the constitutional-legal order.

667. The formal and informal orders are deeply inter-connected, creating a 'dual' system. Although largely hidden from view by the constitutional-legal order, it is clearly the informal order which regulates relations among the country's elite patron-client networks that ultimately reach to the President. These networks can comprise immediate and extended family members. In Azerbaijan, these networks form a pyramid that extends downwards

from the President and the Aliyev family, permeating the system of government and reaching into society.

668. Azerbaijan's patronage pyramid is, however, not a monolith. They are numerous sub-networks, which are all subordinate to the President but come under the more direct operational control of important members of the elite at varying degrees of proximity to the President. These networks' interests do not always coincide and they constantly jockeying for preferential access to the top. The network consisting of the Aliyev, Pashayev and Heydarov families is now regarded as the most powerful that has ever existed in Azerbaijan and can be described as a *de facto* 'triumvirate.' The establishment and consolidation of power by the Aliyev dynasty over the last 30 years, with Azerbaijan's system steadily going from authoritarianism to personalist autocracy, is explained in further detail in the Allan & Makarenko Report.

669. The pyramid of patron-client networks exists to control and distribute political and economic rents. It is intrinsically and massively corrupt. The patrons appoint clients to positions beneath them in the pyramid, almost always for money, and the clients are, in turn, authorized to claim rents from those below them in the hierarchy. At the same time, they are required to share the rents that they collect with their patrons, who in turn share their rents with their superiors, and so on all the way to the top. It is unsurprising, therefore, that powerful positions are for sale in Azerbaijan: a position of local prosecutor is reportedly sold for US$ 2 million, but becoming prosecutor general will set you back US$ 5 million.[962]

670. The informal order provides the key to understanding how and why the system of governance functions as it does in Azerbaijan, to the benefit of the Aliyev family, and how and why it has made the Aliyev and associated ruling elites (i.e. the Pashayev and Heydarov families) as powerful and wealthy as they are. One cannot understand Azerbaijan's political system by focusing solely on the formal order or by taking it at face value; that would be incomplete and misleading. It is the informal order that drives the entire political system. For instance, while contractual relationships among individuals and organizations are based to some extent on public institutions and rules and laws, the informal rules that govern relations among the ruling networks and their leaders is much more important.

962 Allan & Makarenko Report, ¶ 44.

C. THE FUSION OF THE FORMAL AND INFORMAL ORDER ERASE ANY DISTINCTION BETWEEN THE POLITICAL AND ECONOMIC SPHERES OF ACTIVITY IN AZERBAIJAN.

671. The ruling elite manages the social order by limiting access to, and competition within, the political and economic system, with the primary objective of controlling rents. The creation and distribution of rents is at the centre of political and economic life. Controlling access to rent creation and distribution means that there is a significant political interference in the economy, including in private enterprise. As a result, there is little to no distinction between the political and economic spheres of activity. Access to the market, and subsequent business security and success, is highly dependent on a good relationship with those who control key State organs.

672. The fusion of the formal and informal orders within Azerbaijan's political system manifests itself in two important ways.

673. *First*, Azerbaijan's formal political institutions have been colonized by powerful patron-client networks, which are all ultimately subordinate to the President. Having hollowed out the State, these cliques become synonymous with it, converting the State into a vehicle for defending and promoting their own sectional interests, in particular retaining the reins of power and making money.

674. The best example of this political-commercial crossover is, of course, the triumvirate composed by the Aliyev, Pashayev and Heydarov families. President Aliyev, the ultimate patron, his wife (who is also the Vice President), and Minister of Emergency Situations Heydarov can all call on the State to secure their political and business interests. They can also resort to informal mechanisms to compensate for the myriad shortcomings of the formal order (e.g. corruption, inefficient administrative organs), which enables them to 'get things done'. This has often proved irresistible to the Aliyev dynasty, who since 1993 have always prioritized the short-term consolidation of political power of the long-term development of State institutions, i.e. putting regime-building ahead of State-building.

675. Once control over the formal State machine has been secured, these patron-client networks can take control of the panoply of State-controlled assets and capabilities (e.g. legislative, executive and regulatory bodies, the judiciary, the police, State-owned media), known colloquially in former Soviet Union States as 'administrative resources', which enables the ruling elites to maintain control over the political system and enrich themselves.

676. *Second*, the fusion of formal and informal orders affects governance. While formal, transparent rules and procedures do shape, to some extent, the operations of the political system, there are much less important than the informal codes and practices that govern the relationships among Azerbaijan's elite. The formal order mainly lends legitimacy to the political system, but it is the informal order that shapes this system to function as it does: it is the 'hidden wiring', the factor that explains why Azerbaijan's political system has favored the Aliyev dynasty to such an extent. It also explains why it operates to the benefit of individuals and groups whose significance may not be immediately obvious or fully grasped by outside observers but who have privileged backstage connections to the ruling patron-client networks.

D. EVERY ACTION BY PRESIDENT ALIYEV IS ENMESHED WITH THE FULL WEIGHT OF THE COERCIVE CAPABILITIES OF THE STATE.

677. It is the informal order that drives the entire political system; use of, or action through, the informal order can therefore be understood as an action of the State. In other words, every decision taken by the President, including those taken along informal channels, is ineluctably enmeshed with the full weight of the formal order and coercive capabilities of the State. This system is replicated from top to bottom.

678. Everyone in Azerbaijan knows who the President is, and who are his relatives, and that the President has immense formal powers at his fingertips. There is a *society-wide* understanding that the President wields this power to take actions within the informal order that advance his own commercial interests. Other actors understand that the President can wield the power of the coercive State and so they will not take actions that run counter to the President's interests, whether commercial or political. Thus, the President may take actions to advance his commercial interests entirely through the informal order, without necessarily involving any steps from formal State institutions of the formal order. This includes using proxies to take over private businesses. The Azerbaijani elites and public know this and act accordingly. In essence, the President of Azerbaijan cannot act in a purely 'private' capacity: it is always open to use his informal political power to achieve his political and business objectives, and he can always rely on the unobstructed political apparatus of the State to ensure that he would bear no formal consequences.

679. This system is replicated from top to bottom. When actions are taken through informal practices to advance commercial interests, it is important to understand that this does not

necessarily involve any measures from formal State institution. In fact, Azerbaijan's actions are normally taken in four ways:

a. In an unofficial capacity by State officials, with no formal record of such actions being taken;

b. With a formal record being transcribed to provide the *façade* of a contradictory action being taken;

c. By private parties or proxies who act on behalf of a powerful member of the political elite; and/or

d. Formal institutions looking the other way, thereby enabling the political elite to take action unhindered by formal institutional constraints.

680. In essence, there is no fundamental or material distinction between State and private commercial decisions made by Azerbaijan's most powerful elite patron-client network. In the same way, it is impossible to separate Messrs. Aliyev and Heydarov's powers when they act in the commercial sphere. They and other ruling elites consciously use the coercive powers of the State to secure their own business interests and those of their patron-client network. These actions cannot be interpreted as solely private in nature. This is especially so if they do wield the coercive power of the State apparatus in order to execute or force some commercial transaction – as happened in Mr. Bahari's case. But it is equally the case when the ruling elites act in a commercial capacity without explicit resort to the powers of the State apparatus: often, the implicit threat is sufficient to alter commercial relationships such that they cannot by any stretch of the imagination fairly be described as arms-length dealings.

E. AZERBAIJAN'S SYSTEM OF GOVERNANCE RESULTS IN A LACK OF THE RULE OF LAW.

681. One consequence of Azerbaijan's fusion of a formal and informal system of governance is that it results in a chronic weakness of the Rule of Law. This enables the patron-client networks that control State agencies to act with minimal, if any, restraint: using the informal order within the political system to prey on those commercial actors that lack political protection, and to gain privileged access to the assets and services that the State controls. For example, the judiciary is often used as an instrument of the ruling elite to ensure that their interests are safeguarded. It has become an arm of the executive. The same is true with regard to the coercive power of State agencies.

682. The fusion of the constitutional-legal and informal orders creates a potent tool of control for those who hold power. Because Azerbaijan's legal codes are incoherent, incomplete and contradictory, many people will have broken the law at some point, which makes them vulnerable to 'suspended punishment': if they contravene informal conventions and practices, or if they lose the patronage of those above them, they can be punished using the array of formal instruments available to the State. Turning formal rules and procedures against those who flout or break informal conventions is selective: it is a disciplining force that patrons use to incentivize clients to abide by their instructions and preferences. As patrons use this force, they further consolidate the supremacy of the informal patrimonial order within Azerbaijan's political system.

683. A fundamental reason for the economic dominance of the State is the weakness of the rule of law. Because the judiciary is obedient and biddable, members of the elite networks that control State organs have always been effectively unaccountable, except when they contravene the unwritten rules of the informal order or if they end up on the losing side in an inter-elite power struggle and fall out of political favor. Examples of 'raiding' attacks, where powerful individuals make use of the informal order with Azerbaijan's system and mobilize the administrative resources at their disposal for their personal interests, are legion.

684. Broadly speaking, such lack of restraint on State organs has profound consequences:

a. *First*, those who control the organs of the State and the administrative resources can pose a real and present danger to the property rights of others who lack the requisite political connections and protection. Local companies can be at the mercy of the political elite, or at least companies owned by individuals who have fallen foul of the accepted patron-client order. Similarly, foreign companies have also suffered from unscrupulous members of the Azerbaijani elite, who use the informal order within the political system to turn the administrative resource against them. Mr. Bahari's case is, of course, a textbook example of this long-established practice.

b. *Second*, this lack of restrain facilitates the economic dimension of 'State capture': making it possible for the cliques that control official bodies to appropriate State-owned assets outright, to get preferential access to assets and services controlled or distributed by those bodies (e.g. licenses or procurement contracts) and/or to ensure that regulatory organs do not interfere in their own commercial operations.

> At the same time, control of State agencies allows these same cliques to squeeze rents out of other businesses. As noted by Mr. Allan and Dr. Makarenko, nothing exemplifies this arrangement better than the group that sits at the top of Azerbaijan's pyramid of patron-client networks: the presidential family itself.

685. In short, the weakness of the rule of law has created a highly permissive environment for those in positions of power. The country's legal code is largely a façade; the formal legal norms do not always accord with the informal 'rules of the game', which predominate when the two conflict or which can be manipulated to suit the needs of those who control the State. Law therefore becomes a weapon in the hands of the powerful (*rule by law*), not an impartial framework applied equally to all (*rule of law*).

III. IN MR. BAHARI'S CASE, MESSRS. ALIYEV AND HEYDAROV'S ACTIONS LEVERAGED THE COERCIVE POWERS OF THE STATE AT THEIR COMMAND AND CANNOT BE DESCRIBED AS MERE PRIVATE ACTS

686. The circumstances of Mr. Bahari's claim nest logically within the framework of Azerbaijan's limited access order. Mr. Bahari's case is, however, unique in that Ilham Aliyev and Kamaladdin Heydarov, two of the most powerful figures in the country, are themselves involved and have a direct participatory interest in Caspian Fish (**A**). It is unsurprising that they exploited the State's administrative resources to seize Mr. Bahari's investments for themselves (**B**).

A. THERE COULD BE NO CREDIBLE FIREWALL SEPARATING MESSRS. ALIYEV AND HEYDAROV'S VAST POLITICAL POWER FROM THEIR COMMERCIAL DEALINGS WITH MR. BAHARI.

687. Mr. Allan and Dr. Makarenko note that Mr. Bahari's claim is unique in that Ilham Aliyev and Kamaladdin Heydarov had a direct participatory interest in Caspian Fish. In other words, Mr. Bahari's case involves the most powerful members of Azerbaijan's ruling elite.

688. This direct involvement typically shows that the most senior members of Azerbaijan's political elite are directly and actively involved in commercial activities. Given the nature of Azerbaijan's governance system, which fuses the formal and informal orders and erases any meaningful distinction between the political and economic spheres, it is illogical to argue that there is a credible firewall separating the vast political power that Mr. Aliyev or Mr. Heydarov wield and their interest in maintaining and developing their commercial empires.

689. What is also unique about Mr. Bahari's case is that Messrs. Aliyev and Heydarov were shareholders of Caspian Fish BVI. As such, there is no need to trace any opaque actions by middle layers within a patron-client network to ascertain who the ultimate actor is. Instead, what happened to Mr. Bahari traces directly to Messrs. Aliyev and Heydarov.

690. The fact that Mr. Aliyev was not the President when Mr. Bahari invested in Azerbaijan is irrelevant when considering whether his actions were State actions. As noted by Mr. Allan and Dr. Makarenko, Ilham Aliyev was, at the time, the son of an increasingly powerful President. In itself, this afforded him indisputable access to the formal organs of State power, the administrative resource, through his father's command of the informal order. In short, it is immaterial whether Mr. Aliyev occupied a senior formal political position when Mr. Bahari was investing in Azerbaijan. What matters is that he was generally recognized to be, after his father, arguably the most commanding and ascendant figure in the informal political order. As such, his actual influence and control over the formal coercive organs of the State was already considerable, and was only destined to grow further once he succeeded as President.

B. MESSRS. ALIYEV AND HEYDAROV EXPLOITED THEIR POWERFUL POSITIONS WITHIN THE INFORMAL PATRON-CLIENT NETWORK TO SEIZE MR. BAHARI'S INVESTMENTS.

691. Given the timing of Mr. Bahari's case, it is likely that Messrs. Aliyev and Heydarov were interested in capitalizing on the investments made by Mr. Bahari in a lucrative business. It is undisputed that Messrs. Aliyev and Heydarov were direct stakeholders of the Caspian Fish project. That Mr. Bahari's investments are now owned by the Heydarov and/or Aliyev networks strongly indicates that they acted through the informal order to seize Mr. Bahari's investments for their personal gain. Both individuals were, and still are, able to call on the coercive powers of the State because they were, and still are, senior members of the Aliyev patron-client network that dominated, and still dominates, Azerbaijan's informal order.

692. Critically, neither Mr. Aliyev nor Mr. Heydarov, given their positions within the country's most powerful patron-client network, needed to issue formal orders (e.g. via formal State institution channels) to take the coercive actions they did in the case of Mr. Bahari. Because informal rules determine relations among patron-client networks, it is highly unlikely that there would be any document evidence of coercive actions taken. In the same

manner, focusing narrowly on the formal order and formal agencies would provide a highly incomplete and misleading picture of what took place in Mr. Bahari's case.

693. It is not surprising that State organs would not consciously decide to interfere with Messrs. Aliyev and Heydarov's plan. Messrs. Aliyev and Heydarov's status enabled them to act with minimal restraint. As noted by Mr. Allan and Dr. Makarenko, Azerbaijan's adoption of a 'limited access order' explains why Azerbaijan's State organs did not protect Mr. Bahari's investments: because Messrs. Aliyev and Heydarov control the State's administrative resources through their command of the informal order, it was always likely that the Ministry of Justice would fail in its duty to protection Mr. Bahari and his investments. It was also always likely that other Azerbaijani authorities, for example Azerbaijan's Antitrust and Notary Public Laws, would fail to prevent the transfer of the investments, shares and assets.

IV. CONCLUSION: AZERBAIJAN'S DISTINCTION BETWEEN PRIVATE AND OFFICIAL STATE ACTS IS ARTIFICIAL AND IGNORES THE REALITY OF ITS SYSTEM OF POLITICAL GOVERNANCE

694. The Allan & Makarenko Report demonstrate the artifice and fallacy of characterizing President Aliyev and Minister Heydarov's actions vis-à-vis Mr. Bahari as mere commercial matters taken by them as "third parties" in a private capacity and therefore not attributable to the State. Azerbaijan's central argument fundamentally ignores the reality of Azerbaijan's system of governance, where the dominant element of that system is the informal order, and President Aliyev's undisputed place at the top of that order.

695. Azerbaijan's narrow view not only eschews reality, but it also deliberately obscures a full understanding of what happened to Mr. Bahari and his investments. As stated in the Report, one cannot understand Azerbaijan's political system – or Messrs. Aliyev and Heydarov's actions – by focusing solely on the formal order or by taking it at face value; that would be incomplete and misleading. In reality, it is the informal order that drives Azerbaijan's entire political system. In order to fully grasp Messrs. Aliyev and Heydarov's actions, it is necessary to look at both the exposed and submerged parts of the iceberg.

696. The artifice of Azerbaijan's position is perhaps best exemplified by the position it takes relative to a conversation between Mr. Bahari and Minister Heydarov's assistant in 2014.

697. Mr. Bahari's First Witness Statement recounts an incident following his 2013 meeting with Minister Heydarov, when he was given safe passage to Baku:

 [963]

698. Azerbaijan's response to this testimony is that "even if such a discussion occurred (which is not admitted) however, it was not said in any official capacity."[964]

699. If Mr. Bahari's testimony is accepted as true, this statement reveals the overly narrow view of how Azerbaijan's political elite govern and behave. Specifically, it ignores the enormous power that Mr. Heydarov wields, both in his official position as the Minister of Emergency Situations – a paramilitary organization – and in his favored and high-placed status within Azerbaijan's informal order (i.e. as a favorite subordinate of the Aliyev patron-client network). Whether Mr. Heydarov issued a threatening statement in his formal role as Minister or in an "unofficial" capacity misses the point entirely. As discussed above, Minister Heydarov can call on his considerable powers at any time and deploy the full coercive powers of his Ministry (or another agency) to enforce his threat – irrespective of whether he uttered his threat in a "formal" or "private" capacity.

700. In this case, Minister Heydarov manifested his political power without even needing to engage any official administrative resources. The implied threat of his political power was sufficient in frightening Mr. Bahari into not pursuing his claim further with Mr. Heydarov. This further demonstrates that, even without the actual deployment of official State administrative resources, the actions of Messrs. Aliyev and Heydarov are, at all times, synonymous with the full regalian/coercive powers of the State, even in so-called private commercial activities – or indeed, even private conversations.

701. This episode, and its impact on Mr. Bahari, shows the extent of Messrs. Aliyev and Heydarov's power, with and without their deployment of coercive State actions. The combination of implicit threats, as well as more overt coercive acts by formal State agencies (as demonstrated by the actions taken against Messrs. Moghaddam and

963 Bahari WS1 ¶ 98.

964 SoD ¶ 307 (emphasis added).

Abdulmajidov, for example) have forced Mr. Bahari to stay out of Azerbaijan for these many years and prevented him from protecting his interests and regaining his investments.

PART IV: JURISDICTION AND ATTRIBUTION

I. THE TRIBUNAL HAS JURISDICTION *RATIONE TEMPORIS* OVER MR. BAHARI'S CLAIMS

702. The thrust of Azerbaijan's argument is that, because the "vast majority of the actions in respect of which Mr Bahari complains took place and were concluded before the Treaty came into force,"[965] the Tribunal does not have jurisdiction. Specifically, Azerbaijan asks that Mr. Bahari's claims be dismissed by application of the principle of non-retroactivity because they were allegedly instantaneous and isolated events that occurred before 20 June 2002.[966] Ironically, to sustain this position, Azerbaijan tacitly asserts that it treated Mr. Bahari and his investments unlawfully pre-entry into force,[967] but at no point later. While this argument is clearly a means to deny the Tribunal jurisdiction, it is a significant admission.

703. But Azerbaijan's unlawful acts were not instantaneous, one-off events. Azerbaijan continuously and systematically failed to afford Mr. Bahari and his investments the protections that they are entitled to under the Treaty; not only in the weeks, months, and years after the Treaty entered into force, but as part of a sustained and recurring campaign by Azerbaijan that continues today.[968]

704. For the avoidance of doubt, and contrary to Azerbaijan's allegation,[969] Mr. Bahari does not allege that this Tribunal has jurisdiction over Azerbaijan's acts that occurred prior to the Treaty's entry into force. That is not to say, however, that acts which occurred before entry into force are irrelevant to the claim. It is well-settled that pre-entry into force acts or omissions can be considered for purposes of understanding *inter alia* the background of the case, the cause or scope of the violations of the treaty that occurred after the treaty's

965 SoD ¶ 48.

966 SoD ¶¶ 51-74.

967 See e.g. SoD ¶¶ 58, 66.

968 See Tribunal's 31 May 2024 Letter to the Parties amending its Provisional Order to add further protections for Mr. Abdulmajidov and Ms. Ramazanova's family members.

969 SoD ¶ 52.

entry into force and examining damages.[970] As articulated by the *Berkowitz v. Costa Rica* tribunal:

> Such conduct may constitute circumstantial evidence that confirms or vitiates an apparent post-entry into force breach, for example, going to the intention of the respondent (where this is relevant), or to establish estoppel or good faith or bad faith […].[971]

705. Here, Azerbaijan's actions before the Treaty was in force are highly relevant, not only as background and context, but also because they go to the underlying intent and purpose for Azerbaijan's unlawful treatment of Mr. Bahari and his investments post-entry into force.

706. Both Parties agree that the International Law Commission ("**ILC**") Articles on the Responsibility of States for Internationally Wrongful Acts ("**ARSIWA**") provide guidance on this issue.[972] Depending on their nature, Azerbaijan's acts or omissions may be governed by different parts of ARSIWA, specifically:

> Article 14 (Extension in time of the breach of an international obligation):
>
> 1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.
>
> 2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.
>
> 3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

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970 See e.g. *Société Générale in respect of DR Energy Holdings Limited and Empresa Distribuidora de Electricidad del Este, S.A. v. The Dominican Republic*, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction ("***Société Générale v. Dominican Republic***"), 19 September 2008 (**CLA-041**), ¶ 87; *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections ("***Pac Rim v. Salvador***"), 1 June 2012 (**CLA-246**), ¶ 2.105; *Antonio del Valle Ruiz et al v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award ("***Antonio Del Valle v. Spain***"), 13 March 2023 (**CLA-247**), ¶ 407; *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002 ("***Mondev v. United States***") (**CLA-039**), ¶¶ 69-70 ("Thus events or conduct prior to the entry into force of an obligation for the respondent State may be relevant in determining whether the State has subsequently committed a breach of the obligation.").

971 *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz v. Republic of Costa Rica* ("***Berkowitz v. Costa Rica***"), ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017 (**CLA-248**), ¶ 217.

972 SoC ¶¶ 456-457; SoD ¶ 53.

and

> Article 15 (Breach consisting of a composite act):
>
> 1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.
>
> 2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

707. It should be equally uncontroversial that the Tribunal has jurisdiction over continuous acts under Article 14, or composite acts under Article 15, that lasted (and continue to last) after the date of the entry into force of the Treaty and are not in conformity with Azerbaijan's obligations under the Treaty.[973]

708. To frustrate the Tribunal's jurisdiction, Azerbaijan's position on this issue is artificially constrained, namely, it asserts that *all* of its acts or omissions vis-à-vis Mr. Bahari that would constitute a breach of the Treaty were instantaneous, and only the effects continue (Article 14(1)). In other words, Azerbaijan's acts and omissions did not themselves have a continuing character (Article 14(2)) and were not composite acts (Article 15) in breach of the Treaty. This position is untenable.

709. Azerbaijan's wrongful conduct, in breach of its obligations under the Treaty, continued and was repeated in different forms, uninterrupted, since its offending conduct first started.[974] Moreover, Azerbaijan has still not remedied the actions and omissions that are not in conformity with its obligations under the Treaty (Article 14(3)). Azerbaijan also

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973 See e.g. *Société Générale v. Dominican Republic*, Award on Preliminary Objections to Jurisdiction, 19 September 2008 (**CLA-041**), ¶¶ 87-88.

974 See e.g. *Railroad Development Corporation (RDC) v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Second Decision on Objections to Jurisdiction ("***RDC v. Guatemala***"), 18 May 2010 (**CLA-184**), ¶ 124 (the tribunal found that there is "consistent arbitral case law considering 'continuing acts' in breach of a treaty when their occurrence spans a period before and after a treaty into force."); see also *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction ("***SGS v. Philippines***"), 29 January 2004 (**CLA-249**), ¶¶ 166-167; *Société Générale v. Dominican Republic*, Award on Preliminary Objections to Jurisdiction, 19 September 2008 (**CLA-041**), ¶ 87; *Oko Pankki Oyj, VTB Bank (Deutschland) AG and Sampo Bank Plc v. The Republic of Estonia (formerly OKO Osuuspankkien Keskuspankki Oyj and others v. Republic of Estonia)*, ICSID Case No. ARB/04/6, Award ("***Oko Pankki v. Estonia***"), 19 November 2007 (**CLA-250**), ¶ 193.

expropriated Caspian Fish through a series of acts or omissions, which, in aggregate, form a composite wrongful act (Article 15).[975]

A. THE TRIBUNAL HAS JURISDICTION OVER AZERBAIJAN'S CONTINUOUS BREACHES OF THE TREATY.

710. Whether a wrongful act is instantaneous or continuous first depends on the content of the primary obligation, which indicates whether the obligation is susceptible of being violated in a continuous manner.[976] FET and FPS are standards that are susceptible to be violated through continuous conduct.[977]

711. A finding that an act or omission presents a continuous character necessarily depends on the circumstances of every given case.[978] In accordance with Article 14(2) of the ARSIWA, to acquire a continuing character, the breach must be (i) continuing and (ii) uninterrupted.[979]

712. Examples of continuing wrongful acts include:

> the maintenance in effect of legislative provisions incompatible with treaty obligations of the enacting State, unlawful detention of a foreign official or unlawful occupation of embassy premises, maintenance by force of colonial domination, unlawful occupation of part of the territory of another State or stationing armed forces in another State without its consent.[980]

713. The tribunal In *Pac Rim v. Salvador* held that an alleged *de facto* ban was a continuous act under international law "which started at a certain point in time and continued over a certain period."[981] The tribunal d State's continuous act as "an omission that extends over

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975 See e.g. *Société Générale v. Dominican Republic*, Award on Preliminary Objections to Jurisdiction, 19 September 2008 (**CLA-041**), ¶ 88; *Pac Rim v. Salvador*, Decision on the Respondent's Jurisdictional Objections, 1 June 2012 (**CLA-246**), ¶ 2.105; *Antonio Del Valle v. Spain*, Final Award, 13 March 2023 (**CLA-247**), ¶ 407; *Mondev v. United States*, Award, 11 October 2002 (**CLA-039**), ¶ 69; *B3 Croatian Courier Coöperatief U.A. v. Republic of Croatia*, ICSID Case No. ARB/15/5, Award ("***Croatian Courier v. Croatia***"), 5 April 2019 (**CLA-251**), ¶ 616.

976 ARSIWA (**CLA-037**), Commentary, Art. 14, ¶ 4.

977 *See e.g.* in respect of the FET standard: *Carlos Ríos and Francisco Ríos v. Republic of Chile*, ICSID Case No. ARB/17/16, Award ("***Carlos Ríos v. Chile***"), 11 January 2021, [English translation extracts and Spanish original] (**CLA-252**), ¶ 213; See e.g. in respect of the FPS standard: *Waguih Elie George Siag & Clorinda Vecchi v. Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award ("***Siag v. Egypt***"), 1 June 2009 (**CLA-098**), ¶¶ 445-448.

978 ARSIWA (**CLA-037**), Commentary, Art. 14, ¶ 4.

979 See e.g. *Oko Pankki v. Estonia*, Award, 19 November 2007 (**CLA-250**), ¶ 194, referring to ARSIWA (**CLA-037**), Art. 14(2).

980 ARSIWA (**CLA-037**), Commentary, Art. 14, ¶ 3.

981 *Pac Rim v. Salvador*, Decision on the Respondent's Jurisdictional Objections, 1 June 2012 (**CLA-246**), ¶ 2.94.

a period of time and which, to the reasonable understanding of the relevant party, did not seem definitive."[982] Importantly, the tribunal found that the relevant measure was not "a specific and identifiable governmental measure that effectively terminated the investor's rights at a particular moment in time" but a "continuing practice" of the Respondent.[983]

714. In *Oko Pankki v. Estonia*, the tribunal found that local proceedings launched pre-treaty by a State entity to declare invalid a payment agreement concluded with the claimants, whereby the entity unambiguously signaled its intention not to comply with that agreement, constituted a breach that continued post-treaty for the period of the proceedings.[984] Importantly, the tribunal found that "[f]rom the outset" the respondent "not only tolerated but indeed encouraged this litigation" for the benefit of the State entity and to the detriment of the claimants.[985]

715. Starting in or around late 2000 or early 2001, Azerbaijan facilitated and engaged in preparatory actions for a sustained campaign against Mr. Bahari, the main goal of which was to separate him from his investments and ensure that the fruits of his efforts could be taken over unchallenged and retained by powerful individuals within the State apparatus. It is not, as Azerbaijan submits, that its offending act "was complete as at the moment of Mr. Bahari's alleged expulsion; while its effects may continue, the act itself did not."[986]

716. Even if Azerbaijan's offending act was dispossessing Mr. Bahari of all his investments, this did not result in Mr. Bahari also losing the FET and FPS protections afforded to him as an investor under the Treaty. As stated by the tribunal in *El Paso v. Argentina*, "there is no rule of continuous ownership of the investment," because the purpose of the Treaty protections "would be defeated if continuous ownership were required. Thus, the claim continues to exist, i.e., the right to demand compensation for the injury suffered at the hands of the State remains […]."[987] Even if all of Mr. Bahari's investments were expropriated before 20 June 2002, Azerbaijan's FET obligations continue. This rule is a *sine qua non* for the provision of any meaningful protection, in particular in respect of

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982 *Pac Rim v. Salvador*, Decision on the Respondent's Jurisdictional Objections, 1 June 2012 (**CLA-246**), ¶ 2.91.

983 *Pac Rim v. Salvador*, Decision on the Respondent's Jurisdictional Objections, 1 June 2012 (**CLA-246**), ¶ 3.43.

984 *Oko Pankki v. Estonia*, Award, 19 November 2007 (**CLA-250**), ¶ 195.

985 *Oko Pankki v. Estonia*, Award, 19 November 2007 (**CLA-250**), ¶ 283.

986 SoD ¶ 66.

987 *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Decision on Jurisdiction, 27 April 2006 (**CLA-290**), ¶ 135.

expropriation. Moreover, Azerbaijan should be estopped from arguing that the treaty cannot afford protections to investments it expropriated before the Treaty went into force.

717. Azerbaijan's position also ignores the commentary to ARSIWA Article 14, which states that: "the Inter-American Court of Human Rights has interpreted forced or involuntary disappearance as a continuing wrongful act, one which continues for as long as the person concerned is unaccounted for."[988] Mr. Bahari is thankfully accounted for, but his expulsion from Azerbaijan and continued forced absence, to the detriment of his investments, is a similarly continuing wrongful act.

718. The Statement of Claim and this Reply establish that Azerbaijan's campaign against Mr. Bahari and his investments is continuous and multifaceted. Any attempt by Mr. Bahari, or though his legal counsel or former employees, was met with intimidation, imprisonment, and assault, including after the Treaty came into force. It could not be clearer that Azerbaijan carefully maintains this campaign: over the course of preparing this Reply, Mr. Bahari learned that Mr. Abdulmajidov and Ms. Ramazanova had been forced to flee Azerbaijan for their safety solely due to their attempts to procure information about Mr. Bahari's investments and their perceived involvement in the dispute with Azerbaijan.[989]

719. In circumstances where Mr. Bahari was unable to be present, the Azerbaijani Courts facilitated the taking of Mr. Bahari's investments in Coolak Baku and Ayna Sultan in violation of Mr. Bahari's due process rights and in violation of the FET standard of protection. At the same time, Azerbaijan has been complicit in permitting Caspian Fish to be administered and governed to the detriment of Mr. Bahari and to the direct benefit of President Aliyev, Minister Heydarov, and their respective families.[990]

720. As discussed in detail below, Azerbaijan's actions and omissions vis-à-vis Mr. Bahari and his investment are a breach of the Treaty, each actionable on their own, and a direct and causal continuation of Azerbaijan's decision to separate Mr. Bahari from his investments.

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988 ARSIWA (**CLA-037**), Commentary, Art. 14, ¶ 4; *Antonio Del Valle Ruiz and others v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023 (**CLA-247**), ¶ 399 ("a classic example being a State's wrongful detention of an individual, which continues throughout the period of detention").

989 See generally Application for *Ex Parte* Preliminary Order and Interim Measures, 5 March 2024; Bahari Interim Measures WS ¶ 14.

990 SoC Section IV.B.

721. For the sake of completeness, we note that Azerbaijan refers to several cases that have dealt with allegations of breaches of a continuing character, presumably to contend that the acts against Mr. Bahari cannot be considered as such.[991] These are inapt.

722. In *Mondev v. USA*, the tribunal found "difficult to accept that there was a continuing expropriation" after having noted that the claimants' whole loss had finally occurred on the date of foreclosure of the project.[992] Those facts are not analogous and applicable to Mr. Bahari's case. First, Azerbaijan's conduct constitutes a continuous breach of the FET and FPS standards, not of its obligation not to unlawfully expropriate Mr. Bahari's investment. Second, Mr. Bahari has continuously been prevented from accessing his investments over the last two decades. The loss he suffered (and is still suffering) simply cannot be compared to an instantaneous, definitive expropriation: Azerbaijan has set in place a system that continuously prevents Mr. Bahari from managing or even accessing information about his investments; punishing any attempt to do so. Additionally, *Mondev* is distinguishable from the current facts because this is not just earlier conduct that has gone un-remedied or un-redressed after the Treaty enters into force.[993] Azerbaijan's earlier breaching conduct has not only gone without proper remedy and redress, but also has been continuously reaffirmed for more than two decades.

723. In *Paushok*, the tribunal found that negotiations between the claimant and the respondent could not be considered a continuing act but a "discrete event… which lasted for a few months."[994] The tribunal noted that the claimant's company did not raise the issue again for years "although there was nothing preventing it from doing so."[995] The facts could hardly be more different from the present case: over the last 20 years or so, Mr. Bahari attempted numerous times to shed light on the status of his investments, including by engaging legal counsel and former employees in Baku to investigate, and seeking to contact powerful representatives of Azerbaijan who he had every reason to believe were behind his downfall. On each and every attempt, Mr. Bahari observed that the decision to strip him of his investments remained in full place and was being enforced to ensure that he would not make any meaningful progress. Azerbaijan cannot compare Mr. Bahari's

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991 SoD ¶¶ 54-55.

992 *Mondev v. United States*, Award, 11 October 2002 (**CLA-039**), ¶ 61.

993 *Mondev v. United States*, Award, 11 October 2002 (**CLA-039**), ¶ 70.

994 Sergei *Paushok, CJSC Golden East Company and CJSCVostokneftegaz Company v. The Government of Mongolia*, Award on Jurisdiction and Liability ("***Paushok v. Mongolia***"), 28 April 2011 (**CLA-134**), ¶ 498.

995 *Paushok v. Mongolia*, Award on Jurisdiction and Liability, 28 April 2011 (**CLA-134**), ¶ 498.

multi-year efforts to a one-time negotiation that went nowhere, and was never spoken of again by the parties involved.

724. In short, simply because Mr. Bahari still suffers from the many distressing and continuous *effects* of Azerbaijan's decision to expel him does not mean that Respondent's actions do not amount to a continuous breach. Azerbaijan has maintained and continuously enforced its decision to separate Mr. Bahari from his investments, and this decision qualifies as a continuous wrongful act under Article 14(2) of the ARSIWA. It is because Azerbaijan has maintained and continuously enforced its decision after the Treaty's entry into force that this continuous wrongful act constitutes a violation of both the FET and FPS standards, as discussed below.

B. THE TRIBUNAL HAS JURISDICTION OVER AZERBAIJAN'S CREEPING EXPROPRIATION OF MR. BAHARI'S INVESTMENTS.

725. Azerbaijan does not dispute the criteria for an indirect or creeping expropriation.[996] Rather, if any expropriation occurred, Azerbaijan says it occurred directly and was completed before the Treaty entered into force.[997]

726. *First*, Respondent alleges that the investor's retention of legal title to the allegedly expropriated property is irrelevant, and rather, what matters is only when the expropriatory act was complete.[998] On Azerbaijan's case, this means that Mr. Bahari lost control of his investments in 2001 or early 2002, but in any event, prior to the Treaty's entry into force.[999] As discussed below, Mr. Bahari's investments were subject to an indirect composite expropriation, which crystalized *after* the Treaty entered into force.[1000] The Tribunal has jurisdiction over that breach under Article 15 of the ARSIWA.

727. *Second*, Azerbaijan asserts that Mr. Bahari's reliance on the composite act doctrine is misplaced because it does not apply where there is an identifiable act of taking.[1001] This argument is circular and provides no real assistance to the Tribunal. If Mr. Bahari can

996 SoD ¶ 57.

997 SoD ¶ 58.

998 SoD ¶ 58.

999 SoD ¶¶ 57-58.

1000 *Supra*, Part V, Section III (Expropriation).

1001 SoD ¶ 59.

establish that there was an indirect composite expropriation, then he can rely on the composite act doctrine. That is not contested by Azerbaijan.[1002]

728. Glossing over the test for a composite act, Respondent contends that, in the present case, there is no post-Treaty actionable breach independent from Azerbaijan's pre-Treaty conduct. This is wrong.

729. A composite act is composed of a series of different acts that extend over a certain period of time that, in the aggregate, are wrongful.[1003] When a State has committed a series of acts or omissions both before *and* after the entry into force of a treaty which, in aggregate, constitute a composite act, a tribunal may have jurisdiction over the portion of acts or omissions that occur after the treaty entered into force, to the extent they constitute an actionable breach.[1004] In other words, for the purpose of State responsibility, the first action or omission of the series of acts will be the first occurring after the Treaty entered into force,[1005] but the prior acts can be taken into account.[1006]

730. Respondent half-heartedly asserts that no such actionable breach occurred after 20 June 2002, so that no act can fall within the Tribunal's jurisdiction.[1007] Again, this is an unconvincing attempt to sidestep the larger question as to whether there was in fact a composite indirect expropriation. As Mr. Bahari has established in the Statement of Claim, and as further discussed below, there was a composite or creeping expropriation of Caspian Fish, and therefore the Tribunal has jurisdiction over this claim and Azerbaijan is responsible.

1002 SoD ¶ 59.

1003 ARSIWA (**CLA-037**), Art. 15.

1004 See e.g. *Société Générale v. Dominican Republic*, Award on Preliminary Objections to Jurisdiction, 19 September 2008 (**CLA-041**), ¶¶ 91-94; *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021 (**RLA-23**), ¶ 149; *Berkowitz (formerly Spence International Investments and others) v. Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award, 25 October 2016 (**RLA-136**), ¶¶ 217-218.

1005 ARSIWA (**CLA-037**), Commentary, Art. 15, ¶ 11.

1006 See e.g. *Antonio Del Valle v. Spain*, Final Award, 13 March 2023 (**CLA-247**), ¶ 407; *see also* ARSIWA (**CLA-037**), Art. 15, Commentary to Art. 15, para. 9 ("While composite acts are made up of a series of actions or omissions defined in aggregate as wrongful, this does not exclude the possibility that every single act in the series could be wrongful in accordance with another obligation.").

1007 SoD ¶¶ 59-63.

C. THERE IS NO DISPUTE BEFORE THE TREATY CAME INTO FORCE THAT WOULD DENY THE TRIBUNAL JURISDICTION.

731. Almost in passing, Respondent alleges that the Tribunal has no jurisdiction over this case because the dispute arose and crystallized before the Treaty came into force.[1008] This argument is also untenable, for numerous reasons.

732. Azerbaijan's argument is that, "[o]n the Claimant's case (which is not accepted) the acts of individual actors (namely Messrs Khanghah, Aliyev and Heydarov) are attributable to Azerbaijan. Accordingly, [ ] the 'dispute' with respect to the alleged expropriation of his investments arose on 15 June 2002, when according to him he made known to these individuals that he objected to any forced sale, and their opposing views were stated."[1009]

733. *First*, it is not clear why this alleged "dispute" would only pertain to an expropriation. If that is Azerbaijan's position, then the argument fails from the start, since Mr. Bahari would still have a later dispute with Azerbaijan about its failure to provide Mr. Bahari's FET and FPS under the Treaty.

734. *Second*, Azerbaijan's argument is contingent on it admitting that acts of Messrs. Aliyev, Heydarov, and Khanghah are, in fact, attributable to the State. This is an astonishing admission considering Azerbaijan's otherwise adamant stance that there is no attribution whatsoever because "Mr Bahari's case rests on the private acts of third parties […]." [1010] Azerbaijan sacrifices logical consistency in order to avoid the Tribunal's jurisdiction.

735. In any event, as discussed below, the facts that Azerbaijan relies on and the well-settled law on the temporal nature of disputes do not support Azerbaijan's position.

736. The facts that Azerbaijan relies on do not constitute a dispute between Mr. Bahari and Azerbaijan as of 15 June 2002.[1011] In *Maffezini v. Spain*, the tribunal said about a dispute:

> It begins with the expression of a disagreement and the statement of a difference of views. In time these events acquire a precise legal meaning through the formulation of legal claims, their discussion and eventual rejection or lack of response by the other party. The conflict of legal views and interests will only be present in the latter stage, even though the underlying acts predate them. It has also rightly

1008 SoD ¶¶ 69-74.

1009 SoD ¶ 74 (emphasis added).

1010 SoD ¶ 32.

1011 SoD ¶ 74.

> commented that the existence of the dispute presupposes a minimum of communication between the parties, one party taking the matter with the other, with the latter opposing the Claimant's position directly or indirectly. This sequence of events has to be taken into account in establishing the critical date for determining when under the BIT a dispute qualifies as one covered by the consent necessary to establish ICSID's jurisdiction.[1012]

737. Thus, a dispute evolves and crystallizes over time, involving a sequence of events and communications between the parties. A conflict of legal views and interests only appears at the latter stages, at which point the dispute crystallizes.

738. Evidence demonstrates that a dispute had not crystallized as of 15 June 2002. Mr. Bahari has testified that when he eventually reached Dubai, he:

[redacted][1013]

739. During that 15 June 2002 meeting, Mr. Bahari saw that his '[redacted]"[1014] Ultimately, Mr. Bahari '[redacted]"[1015]

740. Mr. Bahari's testimony (which stands alone, unchallenged) establishes that there was no dispute. There was no sequence of events and communications that "acquire[d] a precise legal meaning through the formulation of legal claims, their discussion and eventual

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1012 *Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000 (**CLA-253**), ¶ 96.

1013 Bahari WS1 ¶¶ 79-80.

1014 Bahari WS1 ¶ 81.

1015 Bahari WS1 ¶ 84.

rejection or lack of response by the other party."[1016] This was a unilateral offer by Messrs. Aliyev, Heydarov, and Khanghah, made to Mr. Bahari, under duress, which he rejected and to which he made a counteroffer. That is not a dispute under any definition.

741. More problematic for Azerbaijan is the fact that the Treaty does not contain express or implied restriction on the timing of the dispute. Accordingly, the Tribunal will have jurisdiction over a dispute existing at the time the Treaty entered into force. This is the leading view in investment arbitration jurisprudence.

742. *Case of Mavrommatis Palestine Concessions* held that unless a treaty includes an express exclusion or reservation, the jurisdiction *ratione temporis* of an international tribunal extends to disputes already existing (i.e. prior to) when the treaty comes into force.[1017] In reaching this position, the *Mavrommatis* tribunal concluded that the principle of non-retroactivity did not apply to investment "disputes," where that term was not otherwise expressly or implicitly limited as to its temporal scope.

743. *Mavrommatis*, decided in 1926, represents the classic and long-standing position on the issue. This was followed by the tribunal in *Chevron v. Ecuador*, which held that since the Ecuador-U.S. BIT used the term "disputes" without any express or implicit qualifications as to its temporal scope, the State parties accepted jurisdiction with respect to disputes existing at the time of entry into force of the agreement.[1018]

744. This position was more recently reaffirmed in *Astrida Benita Carrizosa v. Republic of Colombia*.[1019] The treaty at issue in *Carrizosa v. Colombia* contained no express or implied limitations to the temporal application of "disputes" – that is, it was silent on the "non-retroactivity" of a tribunal's jurisdiction *ratione temporis* to existing disputes when the treaty came into force. Similarly to Azerbaijan, Colombia argued that non-retroactivity excluded from the BIT's scope any dispute that existed prior to the treaty's entry into force.

1016 *Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000 (**CLA-253**), ¶ 96.

1017 *Case of Mavrommatis Palestine Concessions* (Greece v. UK), Judgment of 30 August 192 (Objection to the Jurisdiction of the Court) (**CLA-254**) ("The Court is of opinion that, in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment ... The reservation made in many arbitration treaties regarding disputes arising out of events previous to the conclusion of the treaty seems to prove the necessity for an explicit limitation of jurisdiction and, consequently, the correctness of the rule of interpretation enunciated above.").

1018 *Chevron Corporation (USA) and Texaco Petroleum Company (USA) v. The Republic of Ecuador*, UNCITRAL, PCA Case No. 34877 Interim Award (Dec. 1, 2008) (**RLA-72**), ¶¶ 265-267.

1019 *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021 (**RLA-23**).

745. In rejecting Columbia's argument, the *Carrizosa* tribunal held that it was "not persuaded that the temporal scope of its jurisdiction is limited to disputes that have arisen after the entry into force of the [US - Colombia TPA]. The text of the [US - Colombia TPA] contains no temporal limitation with respect to disputes that may come under the Tribunal's jurisdiction."[1020]

746. In particular, the tribunal held:

> if post-treaty conduct can constitute an independent cause of action under the treaty, it will come under the treaty tribunal's jurisdiction, irrespective of whether such conduct may pertain to a broader pre-treaty dispute.[1021]
>
> […]
>
> if post-treaty conduct is in itself an actionable breach of the treaty, the principle of non-retroactivity does not place such conduct outside the reach of the treaty even if the dispute to which the conduct pertains had risen before the treaty entered into force.[1022]

747. Azerbaijan's reliance on *MCI v Ecuador* for an alternative view is misplaced.[1023] Despite the MCI tribunal's superficially restrictive approach to jurisdiction over disputes arising prior to entry into force,[1024] the *MCI* tribunal ultimately held that a number of Ecuador's breaching "acts or omissions were composite or continuing" after the BIT entered into force, and therefore it had jurisdiction *ratione temporis* over the resulting dispute.[1025]

748. Likewise, Azerbaijan's reliance on *Ping An v Belgium* is based on a truncated review.[1026] While the *Ping An* tribunal questioned the application of the *Mavrommatis* case to investor-State arbitration, its decision to apply the non-retroactivity principle to disputes was due to it finding that there was an implied restriction in the language of the BIT at issue.[1027] No

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1020 *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021 (**RLA-23**), ¶ 135.

1021 *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021 (**RLA-23**), ¶ 141.

1022 *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021 (**RLA-23**), ¶ 149.

1023 SoD ¶ 71.

1024 *MCI Power Group v Ecuador*, ICSID Case No. ARB/03/6, Award (31 July 2007) (**RLA-71**), ¶ 61.

1025 *MCI Power Group v Ecuador*, ICSID Case No. ARB/03/6, Award (31 July 2007) (**RLA-71**), ¶ 95.

1026 SoC ¶ 72.

1027 *Ping An Life Insurance Company v Belgium*, ICSID Case No. ARB/12/29, Award (30 April 2015) (**RLA-24**), ¶ 224.

such express or implied language exists in the Treaty,[1028] nor has Azerbaijan suggested as such.

II. THE TRIBUNAL HAS JURISDICTION OVER MR. BAHARI'S INVESTMENTS

749. The Statement of Defense contends that Mr. Bahari did not make *any* qualifying investments in Azerbaijan that are subject to protection under the Treaty. Similar to its other jurisdictional arguments, Azerbaijan asks the Tribunal to apply an artificially narrow view of the facts and an unreasonable application of the law to reach its desired result.

750. For the reasons discussed below, the Tribunal should reject Azerbaijan's argument, and find that Mr. Bahari made qualifying investments under the Treaty that are subject to this Tribunal's jurisdiction and must be afforded protection.

A. MR. BAHARI MADE INVESTMENTS AS DEFINED UNDER THE TREATY AND INTERNATIONAL LAW.

751. To qualify as investments under the Treaty, Azerbaijan asserts that Mr. Bahari's "assets" must pass three relevant threshold requirements: (i) the asset must be an 'investment', which must; (ii) be owned by the investor at the date of the alleged breach; and (iii) have been made in the territory of Azerbaijan.[1029]

752. As to the first "threshold requirement," Azerbaijan contends that the Tribunal should depart from the terms of Article 1(1) of the Treaty in determining whether investments were made, and examine the "inherent meaning" of the word "investment" and the *Salini* criteria to establish the objective and ordinary meaning of the term investment.[1030] Azerbaijan's arguments rest heavily on findings in *Romak SA v. Uzbekistan* and *Doutremepuich v. Mauritius*.[1031] Notably, in *Romak* the issue was whether an arbitration award fell under the broad definition of investment within the meaning of the Switzerland– Uzbekistan BIT.

1028 Treaty (**CLA-001**), Article 10(1) ("Disputes Between One Party and Investor or The Other Party") provides that: "For the purpose of solving disputes concerning the investments between a hosting Party and an investor of the other Party…" There is no temporal limit to disputes in this Article; indeed, without any express limitations, the solitary reference to "disputes" in the plural suggests that it encompasses all disputes, including those existing when the BIT came into force.

1029 SoD ¶ 75.

1030 SoD ¶¶ 76-78.

1031 SoD ¶¶ 76-78; *Romak S.A. v. The Republic of Uzbekistan*, PCA Case No. 2007-07/AA280, UNCITRAL, Award, 26 November 2009 (**RLA-19**), ¶¶ 180-231; *Christian Doutremepuich and Antoine Doutremepuich v. Republic of Mauritius*, PCA Case No. 2018-37, UNCITRAL, Award on Jurisdiction, 23 August 2019 (**RLA-20**), ¶ 117.

753. Whether arbitral tribunals should examine requirements other than those provided in the applicable treaty is highly debated. Azerbaijan conveniently ignores that numerous (non-ICSID) tribunals, in recent decisions, have expressly decided that there is no need to resort to other criteria to define what is already defined in the treaty.[1032] In *Rurelec v. Bolivia*, the tribunal highlighted the particularities of the *Romak* holding:

> The Tribunal also considers that it is not appropriate to import "objective" definitions of investment created by doctrine and case law in order to interpret Article 25 of the ICSID Convention when in the context of a non-ICSID arbitration such as the present case. On the contrary, the definition of protected investment, at least in non-ICSID arbitrations, is to be obtained only from the (very broad) definition contained in the BIT concluded by Bolivia and the United Kingdom. The Tribunal agrees with the Claimants that Romak and Alps Finance are very "fact-specific" cases that can partially explain their reasoning, which remains exceptional in the case law outside the ICSID system.[1033]

754. In any event, Respondent's insistence on applying what is referred to as the objective approach to assess an investment goes nowhere given that Mr. Bahari's investments undoubtedly meet the criteria of a contribution, or commitment of resources, duration, and risk, as discussed in more detail below with respect to each investment.

755. Two additional preliminary points must be made:

a. Azerbaijan repeatedly relies on its allegation that Mr. Bahari has failed to prove the origin of funds he contributed to the investments.[1034] This is a red herring. There is no requirement in the Treaty or under international law, as confirmed by multiple tribunals, including in awards cited by Azerbaijan, that a claimant must provide the origin of capital.[1035] The Tribunal should dismiss Azerbaijan's objections on this

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The tribunal in *Doutremepuich v. Mauritius* also cited *Alps Finance and Trade AG v. The Slovak Republik* (see ¶ 117, fn. 132).

1032 See e.g. *Michael Anthony Lee-Chin v. Dominican Republic*, ICSID Case No. UNCT/18/3, Final Award, 6 October 2023 (**CLA-255**), ¶ 156; *Glencore Finance (Bermuda) Limited v. Plurinational State of Bolivia*, PCA Case No. 2016-39, Award ("***Glencore v. Bolivia***"), 8 September 2023 (**CLA-256**), ¶ 143; *Nachingwea U.K. Limited, Ntaka Nickel Holdings Limited and Nachingwea Nickel Limited v. United Republic of Tanzania*, ICSID Case No. ARB/20/38, Award ("***Nachingwea v. Tanzania***"), 14 July 2023 (**CLA-257**), ¶ 170; *Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia*, PCA Case No. 2011-17, Award ("***Rurelec v. Bolivia***"), 31 January 2014 (**CLA-202**), ¶ 364.

1033 *Rurelec v. Bolivia*, Award, 31 January 2014 (**CLA-202**), ¶ 364 (emphasis added).

1034 SoD ¶¶ 94(a), 94(b), 94(c), 95, 107.

1035 See e.g. *Arif v. Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013 (**RLA-179**), ¶¶ 382-383; *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award ("***Pezold v. Zimbabwe***"), 28 July 2015 (**CLA-117**), ¶ 288; *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award

basis alone. Regardless, the actual evidence in this Arbitration demonstrates that it was only Mr. Bahari who provided the capital for his investments and he had the means and experience to make such investments in Azerbaijan.[1036]

b. Azerbaijan repeatedly asserts that the purchase of machinery and equipment by Mr. Bahari for the Coolak Baku, Shuvalan Sugar, and Caspian Fish facilities are "one-off transactions" that lack the elements of duration, return and risk.[1037] Intellectually dismantling large processing facilities to their individual component purchases is disingenuous to the point of absurdity and demonstrates the weakness of Azerbaijan's overall argument.

756. In relation to the second "threshold requirement", Azerbaijan contends that Mr. Bahari must show "that he owned the relevant investment at the time of the alleged breach," with ownership being determined by the host State's law.[1038] This broad pronouncement is not entirely correct. Azerbaijan relies on *Emmis v. Hungary*, which applied an ownership requirement in the context of a claim for expropriation.[1039] In the present proceedings, there can be no dispute that Mr. Bahari owned Caspian Fish when it was eventually expropriated by Azerbaijan.[1040]

757. Additionally, Azerbaijan's own authorities make clear that a claiming party does not have to demonstrate continuity of ownership at all times for a tribunal to have jurisdiction over a claim.[1041] Mr. Bahari held the rights to all of his investments when Azerbaijan first breached the Treaty. Insofar as Mr. Bahari was deprived of his rights to his investments, this arose from a breach of the Treaty. Azerbaijan's ownership argument is not viable.

("***CME v. Czech Republic***"), 13 September 2001 (**CLA-153**), ¶ 418; *Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award ("***Gavrilovic v. Croatia***"), 26 July 2018 (**CLA-081**), ¶¶ 209-210.

1036 *Supra*, Part II, Section II (Mr. Bahari is the Investor).

1037 SoD ¶¶ 77, 100(a), 100(b), 112(a), 112(c) and 116(c).

1038 SoD ¶¶ 79-81.

1039 *Emmis International Holding and ors v. Hungary*, ICSID Case No. ARB/12/2, Award, 16 April 2014 (**RLA-143**), ¶ 170.

1040 In focusing on expropriation, Azerbaijan speaks out of both sides of its mouth: asserting here that Mr. Bahari did not own Caspian Fish at the time it was expropriated and therefore the Tribunal has no jurisdiction; while also asserting that what is important is not Mr. Bahari's ownership of Caspian Fish, but whether he was still in control of it (SoD ¶¶ 56-63).

1041 See e.g. *Vladislav Gustav and others v. Uzbekistan*, ICSID Case No. ARB/13/6, Decision on Jurisdiction, 8 March 2017 (**RLA-145**), ¶¶ 268 and 272.

758. Finally, in respect of the third "threshold requirement", the investment must be made in the territory of the host State,[1042] this is not disputed. As discussed below, each and every investment of Mr. Bahari was made in the territory of Azerbaijan.

B. MR. BAHARI'S SHARES AND RIGHTS IN CASPIAN FISH AND IN HIS OTHER PROJECTS ARE QUALIFYING INVESTMENTS UNDER THE TREATY.

759. Azerbaijan asserts a number of allegations regarding Mr. Bahari's investments in Caspian Fish.[1043] These are legally confused and divorced from reality.

760. Mr. Bahari previously established in the Statement of Claim that he made investments in Azerbaijan that fall within the scope of the broad, non-exhaustive list of assets under Article 1(1) of the Treaty and are afforded protection.[1044] Caspian Fish qualifies as an investment under multiple definitions:

a. Mr. Bahari owned and participated in the Azerbaijan representative office of Caspian Fish BVI and (unbeknownst to him) in Caspian Fish LLC (Article 1(1)(i));

b. Mr. Bahari had choses-in-action via the Caspian Fish Shareholders Agreement (Article 1(1)(ii));

c. Mr. Bahari designed, constructed, equipped, and paid for the Caspian Fish facility (Article 1(1)(iii));

d. Mr. Bahari contributed industrial designs, technical processes, goodwill and know-how, to Caspian Fish (Article 1(1)(iv)); and

e. Mr. Bahari had business rights conferred by law and contract, including the rights to search for, cultivate, extract or exploit natural resources in Azerbaijan through Caspian Fish (Article 1(1)(v)).

761. As an initial point, Azerbaijan asserts that Mr. Bahari's shares in Caspian Fish BVI are not assets located within the territory of Azerbaijan, which means that the Tribunal has no jurisdiction over them.[1045] This is a contrived distinction that ignores reality.

1042 SoD ¶ 82.

1043 SoD ¶¶ 83-101.

1044 SoC ¶¶ 434-436.

1045 SoD ¶ 83.

762. Through Caspian Fish BVI, Mr. Bahari owns a participation in the company's representative office in Azerbaijan that was established on 27 April 1999 under the Registration No. 496.[1046] This representative office was established to "[redacted]"[1047] Notably, it would "[redacted]"[1048] Equally, via the BVI shareholding, Mr. Bahari had a right to profits and dividends from the business venture that was in-country.

763. Mr. Bahari also entered into the Caspian Fish Shareholder Agreement, which pertains to Caspian Fish BVI's representative office.[1049] Under the express terms of that Agreement, the purpose of the company is "[redacted]." Each shareholder, including Mr. Bahari, is entitled to receive a specific portion of the profits in the company.

764. In other words, the Shareholders Agreement (which was executed in Baku) entitles Mr. Bahari to "claims to money" and "rights to legitimate performance having financial value related to an investment," as contemplated by the Treaty.[1050]

765. Azerbaijan's blunt assertion that Mr. Bahari's rights were not choses-in-action, but strictly *in personam* rights, is wrong on Respondent's own authority, as these rights "are not difficult because each are capable of being classified as a chose-in action, which is a form of intangible property."[1051] There is no question that these rights constitute investments, not only under the Treaty, but under international law.[1052]

766. Mr. Bahari had the vision for, carried out, and paid for the design, construction, and equipment for the Caspian Fish facility. This has been extensively covered in the Statement of Claim and this Reply Statement and need not be repeated here. To the

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1046 **C-003** Charter of Representative Office of Caspian Fish Co., Inc., 27 April 1999.

1047 **C-003** Charter of Representative Office of Caspian Fish Co., Inc., 27 April 1999, First General Provision.

1048 **C-003** Charter of Representative Office of Caspian Fish Co., Inc., 27 April 1999, First General Provision.

1049 **C-004** Shareholders Agreement for Caspian Fish Co. Inc., 27 April 1999.

1050 Treaty (**CLA-001**), Article 1.1(i).

1051 *The Foundations of International Investment Law: Bringing Theory into Practice*, Zachary Douglas (ed.) et al. (May 2014), Chapter 12 "Property, Investment and the Scope of Investment Protection Obligations (**RLA-148**), p. 383.

1052 See e.g. *The Foundations of International Investment Law: Bringing Theory into Practice*, Zachary Douglas (ed.) et al. (May 2014), Chapter 12 "Property, Investment and the Scope of Investment Protection Obligations (**RLA-148**), pp. 382-383.

extent Azerbaijan continues to rely on paragraphs 87 to 98 of the Statement of Defense alleging Mr. Bahari did not make the investments, these allegations are patently false and incoherent. But a few examples include:

a. Mr. Bahari clearly paid and was responsible for the development and creation of the Caspian Fish facility, including the engagement of Chartabi. [1053]

b. Azerbaijan's alleged documents and witness statements in support of an alternative investor are unsupported.[1054]

c. Secretariat's first and second expert reports on quantum exhaustively assess and establish that Mr. Bahari invested at least US$ 44.418 million, and likely US$ 56 million, in the Caspian Fish facility.[1055]

d. Mr. Bahari's contribution of knowledge and experience from his prior companies in Iran (Coolak Shargh and Kaveh Tabriz), and his overall role as the leader and manager of development and design and execution of the Caspian Fish facility, are unquestionably "know-how", "design", and "good-will."

e. There is significant contemporaneous evidence that Caspian Fish BVI and Caspian Fish LLC were issued licenses by Azerbaijan, including that Caspian Fish was authorized to process and export caviar.[1056]

767. Azerbaijan concludes that "the only possible interest Mr. Bahari can be said to have had in a company in Azerbaijan is his participation in the LLC via BVI Co."[1057] If it is correct that Caspian Fish BVI incorporated and held the shares in Capsian Fish LLC, then this is another "investment" in Azerbaijan that Mr. Bahari held an interest in.

768. To the extent the Tribunal sees fit to review Mr. Bahari's investment from an objectivist approach, Caspian Fish possess the hallmarks of an "investment,"[1058] including:

1053 **C-279** Letter from Ambassador Ahad Ghazaei to Diamond McCarthy LLP, 31 March 2024; **C-280** Letter from Samad Chartabi, the CEO of Chartabi Metalworking Industries, 9 April 2024; Suleymanov WS ¶ 10; **C-086** Letter from Chartabi Contracting confirming cost of construction Works.

1054 *Supra*, Part II, Section III (Caspian Fish Was Unlawfully Seized by Azerbaijan).

1055 *Infra*, Part VII, Section II (Quantum of Damages is Proven).

1056 SoD ¶¶ 99-101.

1057 SoD ¶ 86.

1058 SoD ¶ 78.

a. a contribution of at least US$ 44 million, and on all available evidence, actually US$ 56 million, as well as a contribution to Azerbaijan's overall economic development through a highly successful, "centerpiece" production facility;

b. a duration of approximately three years that encompassed hundreds of economic transactions, and which would have been extended but for the unlawful actions of Azerbaijan;

c. an expectation of return from the commercial operation of the fish and caviar production factory, including the commercial distribution of the products along with export; and

d. an element of risk, including unforeseen natural and economic risks.

769. Finally, Mr. Bahari did not "freely relinquish [ ] his interests in Caspian Fish in exchange for the sum of USD 4.5 million," as alleged by Azerbaijan.[1059] This is addressed above.[1060]

C. MR. BAHARI'S PARTICIPATION IN COOLAK BAKU QUALIFIES AS AN INVESTMENT UNDER THE TREATY.

770. Azerbaijan's argument that Coolak Baku is not a qualifying investment afforded protection under the Treaty is misplaced for many of the same factual and legal misconceptions expressed in relation to Caspian Fish.

771. Coolak Baku falls within the scope of the broad, non-exhaustive list of assets under Article 1(1) of the Treaty and is afforded protection:

a. Mr. Bahari owned and participated in the Coolak Baku JVA (Article 1(1)(i));

b. Mr. Bahari had choses-in-action via the Coolak Baku JVA (Article 1(1)(ii));

c. Mr. Bahari paid for the design, construction, and equipment for the Coolak Baku facility (Article 1(1)(iii));

d. Mr. Bahari contributed industrial designs, technical processes, goodwill and know-how, to Coolak Baku (Article 1(1)(iv)); and

e. Mr. Bahari had business and other rights that were conferred to Coolak Baku by law (Article 1(1)(v)).

1059 SoD ¶ 101.

1060 *Supra*, Part II, Section III (No Sale of Caspian Fish in 2001).

772. Azerbaijan's position on Coolak Baku as an "investment" under the Treaty is confused. Azerbaijan asserts that, to the extent that Mr. Bahari's shares in the Coolak Baku joint venture are an investment, those shares are still retained by Mr. Bahari.[1061] Even if that were true, it is not determinative of Coolak Baku qualifying as an investment under the Treaty.

773. In any event, Mr. Bahari's 75% interest in the Coolak Baku JVA is unquestionably "shares, stocks or any other form of participation in companies" under Article 1(1)(i) of the Treaty. Mr. Bahari disputes Azerbaijan's narrative about the evolution of the Coolak Baku shareholders and joint venture agreements, but even on Azerbaijan's own document,in the alleged 9 September 1999 version of the Coolak Baku JVA, Mr. Bahari owns 75% of the shares.[1062]

774. Both the Coolak Baku JVA (1998)[1063] and alleged Coolak Baku JVA (1999),[1064] provide for choses-in-action, whereby Mr. Bahari has "claims to money or any other right to legitimate performance having financial value related to" Coolak Baku under Article 1(1)(ii) of the Treaty.

775. Mr. Bahari had the vision for, carried out, and paid for the design, construction, and equipment for the Coolak Baku facility, which are assets of "moveable and immovable property" under Article 1(1)(iii) of the Treaty. This has been extensively covered in the Statement of Claim and this Reply Statement and need not be repeated here. To the extent Azerbaijan continues to rely on paragraphs 106 to 111 of the Statement of Defense, these allegations are patently false, incoherent, and, in some cases, fabricated. But a few examples include:

    a. Mr. Bahari paid and was responsible for the creation and development of the Coolak Baku facility, including the engagement of Chartabi.[1065]

1061 SoD ¶ 102.

1062 SoD ¶ 103; **R-72** Contract between ASFAN and Mr Bahari in relation to Coolak Baku Co (1999 Agreement), 9 September 1999, p. 2.

1063 **C-001** Coolak Baku Joint Venture Agreement, 23 January 1998, Clauses 6 and 10.

1064 **R-72** Contract between ASFAN and Mr Bahari in relation to Coolak Baku Co (1999 Agreement), 9 September 1999, p. 2

1065 **C-279** Letter from Ambassador Ahad Ghazaei to Diamond McCarthy LLP, 31 March 2024; **C-280** Letter from Samad Chartabi, the CEO of Chartabi Metalworking Industries, 9 April 2024; Suleymanov WS ¶ 10; **C-086** Letter from Chartabi Contracting confirming cost of construction Works.

b. Azerbaijan does not allege in the Statement of Defense that there was another investor in Coolak Baku, therefore it can only be Mr. Bahari who paid for the construction (i.e. refurbishment and renovation), equipment, and process design of Coolak Baku.

c. Secretariat's first and second expert reports on quantum exhaustively assess and establish that Mr. Bahari contributed at least US$ 14.995 million in the Coolak Baku facility.

776. Mr. Bahari's contribution of his experience and knowledge from prior companies in Iran (Coolak Shargh and Kaveh Tabriz), and his overall role as the leader and manager of development and design and execution of the Coolak Baku facility are unquestionably "know-how", "design", and "good-will" under Article 1(1)(iv) of the Treaty.

777. Additionally, the Coolak Baku JVA was issued a license by the Ministry of Agriculture dated 16 April 1999 for the production of 20,000 decalitres of beer a year, which is a "business right conferred by law" under Article 1(1)(v) of the Treaty.[1066]

778. As with Azerbaijan's position on Caspian Fish, Mr. Bahari's development and construction (refurbishment and renovation) of Coolak Baku, including the purchase of approximately US$ 8.84 million in equipment, is not a "one-off transaction lacking elements of duration, return and risk."[1067]

D. MR. BAHARI'S PARTICIPATION IN SHUVALAN SUGAR QUALIFIES AS AN INVESTMENT UNDER THE TREATY.

779. Azerbaijan makes a number of assertions regarding the status of Mr. Bahari's investment in Shuvalan sugar that are incorrect and not fully formed.[1068]

780. Shuvalan Sugar falls within the scope of the broad, non-exhaustive list of assets under Article 1(1) of the Treaty:[1069]

a. Mr. Bahari owned and participated in Shuvalan Sugar as part of the Coolak Baku JVA (Article 1(1)(i));

1066 **C-083** Coolak Baku License, Azerbaijan Ministry of Agriculture, 26 April 1999.

1067 SoD ¶ 112(a).

1068 SoD ¶¶ 83-101.

1069 SoC ¶¶ 434-436.

b. Mr. Bahari had choses-in-action in Shuvalan Sugar via the Coolak Baku JVA (Article 1(1)(ii)); and

c. Mr. Bahari designed, constructed, equipped, and paid for the Shuvalan Sugar refining facility (Article 1(1)(iii)).

781. The Statement of Defense concedes that Shuvalan Sugar was a business activity under the Coolak Baku JVA, although it asserts it never came to fruition or materialized.[1070] Thus, there should be no dispute that Mr. Bahari is entitled to assert that his interest in Shuvalan Sugar is part of the Coolak Baku JVA, which is an investment under Articles 1(1)(i)) and 1(1)(ii) of the Treaty.

782. The allegation that Shuvalan Sugar never materialized is false, and Azerbaijan's own witness testimony concedes that "Mr. Bahari had [ ] informal use of a small warehouse in the Shuvalan Buildings at which he occasionally processed sugar."[1071] This offhand admission, buried in a footnote, is consistent with Mr. Bahari's claim to have started and invested in the Shuvalan Sugar refinery. Azerbaijan's admission is also consistent with the evidence that Mr. Bahari submitted in the Statement of Claim, establishing that he invested not less than US$ 6.386 million to develop, construct, and equip the refinery operations of Shuvalan Sugar.[1072] The investment is also supported by Secretariat's first and second reports, and the witness statement of Mr. Elchin Suleymanov.[1073]

783. Accordingly, Shuvalan Sugar is a qualifying investment under Article 1(1)(iii) of the Treaty. To the extent necessary, Shuvalan Sugar also contains elements of duration, return and risk, similar to Caspian Fish and Coolak Baku.

E. MR. BAHARI'S OWNERSHIP AND CONTRIBUTION TO AYNA SULTAN QUALIFIES AS AN INVESTMENT UNDER THE TREATY.

784. Azerbaijan appears to agree that Mr. Bahari purchased the Ayna Sultan property (located at 62 Karl Marx Street, which became Bunyadov Street, in the Narimanov District of Baku) in or around 1998.[1074]

1070 SoD ¶ 114.

1071 SoD ¶ 203(a), fn. 483.

1072 Secretariat Report, Table 2.

1073 Suleymanov WS ¶¶ 22-26.

1074 SoD ¶¶ 118, 321.

785. As conceded by Azerbaijan, the registration voucher "evidences ownership of property under Azerbaijani law." [1075] In his Statement of Claim, Mr. Bahari produced Registration Voucher no. 109228. Azerbaijan does not contest this proof of ownership, and confirms that Mr. Bahari properly purchased the property in 1996.[1076]

786. Thus, it is commonly agreed between the Parties that Mr. Bahari purchased immovable property, which qualifies as an investment under Article 1(1)(iii) of the Treaty.[1077]

787. Faced with this, Azerbaijan contends that Mr. Bahari sold his interest in Ayna Sultan on 14 December 1999.[1078] As discussed above,[1079] Mr. Bahari did not sell his interest in Ayna Sultan, and the years of litigation relating to that alleged sale demonstrate that Mr. Bahari was robbed of his due process rights and never able to defend his interests in Ayna Sultan.

788. Finally, Azerbaijan claims that, since the Ayna Sultan property is a residential dwelling, it cannot qualify as an investment pursuant to the tribunal's holding in *Seo v. Korea*.[1080] Azerbaijan's reliance on *Seo v. Korea* is misplaced since it involved a dispute brought pursuant to the UK-Korea FTA,[1081] which defines investment as:

> **investment** means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:
>
> […]
>
> (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

789. This definition, akin to *Salini*, is very different from what is set out in Article 1 of the Treaty applicable to this Arbitration.

1075 SoD ¶ 321.

1076 **C-016** Ayna Sultan Registration Voucher and Technical Passport, 29 May 1996.

1077 **C-001** Coolak Baku Joint Venture Agreement, 23 January 1998.

1078 SoD ¶ 119.

1079 *Supra*, Part II, Section II.A (Ayna Sultan Qualifies as Investment) and Section IV.E (Ayna Sultan Taken through Courts).

1080 SoD ¶ 120, citing *Jin Hae Seo v. Korea*, HKIAC Case No. 18117, Final Award, 27 September 2019 (**RLA-150**), ¶¶ 123 and 126.

1081 Free Trade Agreement between the United States of America and the Republic of Korea, Chapter Eleven, adopted on 30 June 2007 (**C-258**).

790. Nonetheless, if necessary, Mr. Bahari's investment in Ayna Sultan is not a one-off transaction. As explained in the Statement of Claim, Mr. Bahari purchased Ayna Sultan to ultimately become a prestigious office building that would be the headquarters for his various Azerbaijan businesses.[1082] The fact that he was unable to follow through on that investment is a result of Azerbaijan failing to afford Mr. Bahari and Ayna Sultan the protections it guaranteed under the Treaty.

F. MR. BAHARI'S COLLECTION OF PERSIAN CARPETS WITH A VIEW TO CREATING A MUSEUM QUALIFIES AS AN INVESTMENT UNDER THE TREATY.

791. Azerbaijan contends that Mr. Bahari's collection of Persian Carpets cannot qualify as an investment.[1083] This contention relies on three arguments: (a) there is "a paucity of evidence concerning Mr. Bahari's ownership of the carpets he claims as investments"; (b) the carpets "do not fall within the objective meaning of the term investment in the Treaty; and (c) the "allegation of breach of Treaty in respect of the carpets in fact pre-dates the entry of force of the Treaty…."[1084] These arguments are incapable of pulling the carpet (as it were) from under Mr. Bahari's investment.

792. *First*, while Mr. Bahari possessed limited evidence concerning his ownership of the carpets, Mr. Zeynalov's testimony and the documents Azerbaijan produced with the Statement of Defense establish Mr. Bahari's ownership and the significant value and importance of his carpets:

a. Mr. Zeynalov testifies that he "[redacted]."[1085]

b. Mr. Zeynalov testifies that "[redacted]."[1086] Clearly, the Azerbaijani Government knew about Mr. Bahari's substantial carpet collection and felt it necessary to inspect the carpets before they were exported.

1082 SoC ¶ 95; Bahari WS1 ¶ 48.

1083 SoD ¶¶ 121-126.

1084 SoD ¶¶ 121-126.

1085 Zeynalov WS ¶ 44.

1086 Zeynalov WS ¶ 48.

c. The Ministry of Culture approved export for 211 carpets deemed not sufficiently historically, artistically or scientifically significant.[1087] However, and as noted by Claimant's carpet valuation expert, Mr. Wiliam Iselin, this leaves at least 264 carpets, following Azerbaijan's counting, which Azerbaijan deemed so important that they prohibited their export on the grounds of cultural significance.[1088]

793. *Second*, on Mr. Bahari's and Azerbaijan's combined facts, the carpet collection fall within both the subjectivist and the objectivist approach to the term investment in the Treaty:

a. Clearly Mr. Bahari's carpet collection qualifies as movable property under Article 1(1)(iii) of the Treaty.

b. Mr. Bahari's carpet collection also satisfies an objectivist approach. The carpet collection was not a one-off transaction, it was a repeated and comprehensive business effort to purchase and invest in assets, a carpet collection, which form the fundamental element of his Persian carpet museum located in Baku. Indeed, Mr. Bahari spoke of this project with Ilham Aliyev, who was very encouraging and even suggested that he could provide the land where the Museum could be built. Mr. Bahari had already engaged and commissioned an architect to design the museum.[1089]

c. As discussed, the Ministry of Culture, and therefore Azerbaijan, was fully aware of the importance and extent of Mr. Bahari's carpet collection and retained at least 240 of those carpets as national treasures.

d. On these bases, the carpets are certainly a financial contribution (including to the host State); they were purchased over a certain duration and constituted the foundational part of a business plan; and amassing such a collection and a related museum entails numerous risks, commercial, operational, and unforeseen.

e. Azerbaijan's reliance on *Eyre and Montrose Developments v. Sri Lanka* is distinguishable because Mr. Bahari had already amassed a very significant and

1087 **R-37** Export Declaration for 211 Carpets, 3 October 2002.

1088 Iselin Second Report, ¶ 3.

1089 Bahari WS1 ¶ 54.

valuable collection of the principal asset that was necessary for his carpet museum in Baku; it was not mere preparation. [1090]

794. *Third*, the date of Azerbaijan's breach of the Treaty vis-à-vis the carpets has no relevance as to whether they qualify as protected investments, particularly because Article 12 of the Treaty makes clear that it applies to investments existing at the time of entry into force. That said, Mr. Bahari denies he made any request or arrangement for his carpets to be shipped to him in Dubai, as Mr. Zeynalov and Azerbaijan allege. [1091] If that were true, and he received the carpets, Mr. Bahari would not be asserting a claim for them in this Arbitration. The carpets belonged to Mr. Bahari when the Treaty entered into force on 20 June 2002, but he was separated from them and ultimately lost possession and control because of his expulsion by Azerbaijan.

III. ARTICLE 9 OF THE TREATY DOES NOT ABSOLVE AZERBAIJAN OF ITS OBLIGATIONS TO MR. BAHARI

795. The Statement of Defense challenges the jurisdiction of the Tribunal based on the erroneous conclusion that Mr. Bahari's investments did not obtain a requisite approval under Article 9 of the Treaty. In particular, Azerbaijan critiques Mr. Bahari's "overly-optimistic submission" that because the Ministry of Foreign Economic Relations ("**MFER**") had been abolished by the time the Treaty entered into force, "that clause [of the Treaty], if not the entire Article, [is] inoperative."[1092]

796. As discussed in the sections below, the problem with Azerbaijan's Article 9 argument is not only that its abolishment of the MFER is a fundamentally threshold issue, but this is one of various different reasons why Mr. Bahari's investments are entitled to protection under the Treaty and the Tribunal has jurisdiction to adjudicate Mr. Bahari's claims in this Arbitration.

797. In support of its position on Article 9, the Statement of Defense relies on (a) the expert report of Professor Kenneth J Vandevelde dated 20 December 2023 "concerning the purpose of a provision such as Article 9" ("**Vandevelde Report**")[1093]; (b) the expert report

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1090 SoD ¶ 125.

1091 SoD ¶¶ 346-351; Zeynalov ¶¶ 48-51.

1092 SoD ¶¶ 129-129, citing to SoC ¶ 447.

1093 Vandevelde Report, ¶ 3.

of Dr Mahnaz Mehrinfar dated 21 December 2023 on "questions of Iranian law, particularly in relation to Article 9" ("**Mehrinfar Report**")[1094]; and (c) the expert report of Mr. Altay Mustafayev dated 22 December 2023 on "various questions of Azerbaijani law, including questions related to Article 9" ("**Mustafayev Report**").[1095]

798. Mr. Bahari asked Professor Stephan Schill to produce a legal opinion on the application of Article 9 and the Treaty to Mr. Bahari's claims, and the arguments made in the Statement of Defense and the related expert opinions in support.

799. Professor Schill concludes that, in this particular case, the language and circumstances of Article 9 and the Treaty do not deprive Mr. Bahari's investment of protection under the Treaty and the Tribunal's jurisdiction.

800. Professor Schill considers there to be multiple reasons why Azerbaijan's interpretation of Article 9 in this Arbitration is incorrect:

a. *First*, if Article 9 were the sole determinant of an investment's eligibility, it would call into question the need for Article 12 of the BIT, referring to the eligibility of investments predating the BIT's entry into force (as Mr. Bahari's were). Such predating investments come under the scope of application of the Treaty pursuant to Article 12(1)(3), without the need for being approved pursuant to Article 9 after the Treaty entered into force.[1096]

b. *Second*, Article 9 cannot be understood as a provision that permits the approval process and decision-making relating to foreign investments by the respective host State's competent authority to be entirely discretionary, so that the concomitant benefits an investment enjoys by being conferred protection under the Treaty essentially qualify as a privilege that depends on administrative fiat, rather than as the result of a legally guided and legally framed decision-making process.[1097]

c. Additionally, against the background of both Iran's and Azerbaijan's consistent BIT practice, it is inconceivable that the treaty approval requirement in Article 9 of the Treaty could have been intended to permit excluding the application of the Treaty to a specific investment for lack of approval in the absence of a domestic

1094 Mehrinfar Report, ¶ 1.

1095 Mustafayev Report, ¶ 1.

1096 Schill Opinion, ¶¶ 277-278.

1097 Schill Opinion, ¶¶ 279-280.

framework being put into place that determines the procedures and requirements for an investor to apply for and be granted, or be refused, approval of its investment. No such domestic regulatory framework exists in Azerbaijan, so that conditioning the application of the Iran-Azerbaijan BIT to the Claimant's investment on the basis of a lack of a treaty approval for which no legal basis exists in Azerbaijan's domestic law cannot have been the intended meaning of Article 9 of the Treaty.[1098]

d. *Third*, Professor Schill rejects as "formalistic" Azerbaijan's insistence that the strict language of the Treaty predicates approval of investments on the imprimatur of Azerbaijan's MFER.[1099] Such approval is of course impossible, since the MFER was abolished prior to the BIT's entry into force. Professor Schill likewise rejects the idea that a successor ministry must necessarily be consulted, since that in itself contradicts the formalistic criterion Azerbaijan sets forth in its argument. How, after all, can strict compliance with the terms of the Treaty be required when one of those requirements is supposedly to consult a ministry *not* listed in the Treaty?[1100]

e. In this respect, Professor Schill notes that the competent authority cannot be understood to be any of the successor ministries the Respondent introduced into the proceedings. While it may well be that these ministries are functional successors to the MFER under Azerbaijani law, for purposes of Article 9, it remains relevant that naming the specific ministry as the competent authority would have the important purpose of allowing Iranian investors to easily and reliably inform themselves of who the go-to authority for approval is. This purpose, which aligns with the rule-of-law character of BITs, and the need for transparency, legal certainty and predictability that flows from the duty to provide foreign investors with fair and equitable treatment, would be undermined if a State could unilaterally abolish and replace a competent authority expressly named in the treaty, without informing the other contracting State or its investors—here: Iran and Iranian investors.[1101]

1098 Schill Opinion, ¶¶ 279-280.

1099 Schill Opinion, ¶ 281.

1100 Schill Opinion, ¶¶ 281-284.

1101 Schill Opinion, ¶ 282.

f. *Finally*, investment arbitration decisions dealing with approval requirements have held that other forms of approval by a sufficiently important domestic authority are sufficient because all that mattered in order to meet the object and purpose of an approval requirement was to make clear that the host State knew of the existence of the investment, accepted it being made, and because of knowing of its existence could have intervened to limit or condition it being made.[1102]

801. Although we understand the Tribunal will scrutinize Professor Schill's Opinion for itself, we summarize its main points below in the context of Mr. Bahari's investments and claims.

A. THE MAIN PURPOSE OF THE BIT REGIME IS TO SUPPORT FOREIGN INVESTMENT AND THE RULE OF LAW.

802. Professor Schill grounds his findings and conclusions in the premise that the ultimate aim and purpose of BITs is to safeguard the rule of law for foreign investment:

[redacted][1103]

803. In this respect, Professor Schill reminds us that none other than Professor Vandevelde agrees with him: "[redacted]"[1104] and "[redacted]."[1105]

1102 Schill Opinion, ¶ 284.

1103 Schill Opinion, ¶ 62 (internal citations omitted).

1104 Schill Opinion, ¶ 62; *quoting* Kenneth J Vandevelde, 'A Unified Theory of Fair and Equitable Treatment' (2010) 43 New York University Journal of International Law and Politics 43, 53 (emphasis added).

1105 Schill Opinion, ¶ 65; *quoting* Kenneth J Vandevelde, *Bilateral Investment Treaties: History, Policy and Interpretation* (Oxford University Press 2010) 11.

804. In this context, however, neither Professor Vandevelde nor counsel for Azerbaijan makes any reference to the rule-of-law underpinnings of BITs.[1106] Professor Schill considers this a noteworthy omission for three reasons:

a. rule-of-law principles ought to govern the relationship between approval provisions such as Article 9 and the domestic implementing regulation for approvals (assuming there is any);

b. those same principles should inform the inter-relationship between Article 9-type approval requirements and provisions on pre-existing investments such as the one in Article 12; and

c. rule-of-law considerations should govern any considerations concerning changes to an authority responsible for approval under Article 9.[1107]

805. Professor Schill proceeds to demonstrate how this absence of rule-of-law considerations renders Azerbaijan's arguments about Article 9 arbitrary and capricious.

1. States Cannot Hide Behind Formalistic Approval Criteria to Deny Investors BIT Protection

806. Professor Schill's first point concerning the rule of law in BITs is that the investment treaty edifice cannot stand upon arbitrary and capricious principles, resting on formalistic criteria that result in absurd results. That, however, is precisely what would occur in a scenario in which Azerbaijan insists that only investments approved by the MFER receive investment treaty protection – a functional impossibility.

807. Unlike Iran, moreover, which has a BIT regime explicitly grounded in an approval process within a longstanding and still-existent domestic framework, Azerbaijan's position would effectively render the entire approval process arbitrary, according to the dictates of whichever ministry Azerbaijan designated as the successor entity to the MFER.

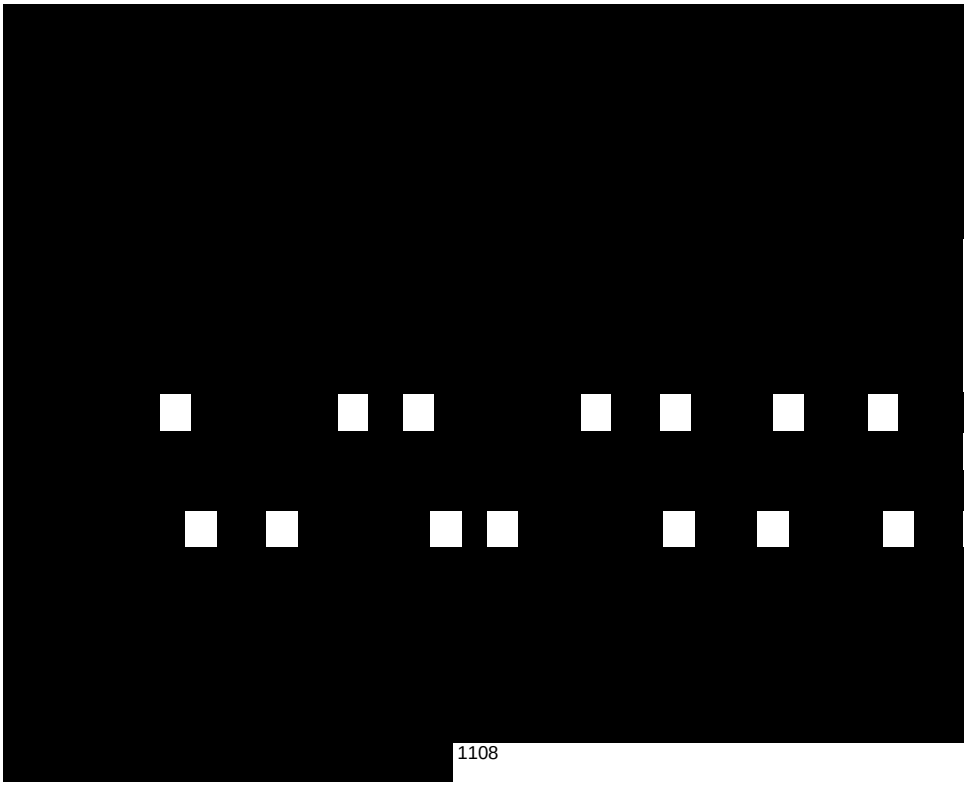
808. In a similar vein, Professor Schill's third point concerning the rule of law cautions against exactly this kind of designation – precisely because it is arbitrary and opaque to would-be Iranian investors seeking approval under Article 9.

809. If the Tribunal were in any doubt about Professor Schill's conclusions in this regard, the US Department of State's report on the investment climate in Azerbaijan from two decades

1106 Schill Opinion, ¶ 65.

1107 Schill Opinion, ¶ 66.

ago ought to settle the issue. Writing in 2005 about the regime that surrounds Article 9 approval, long after the MFER had disappeared, the State Department cautioned:

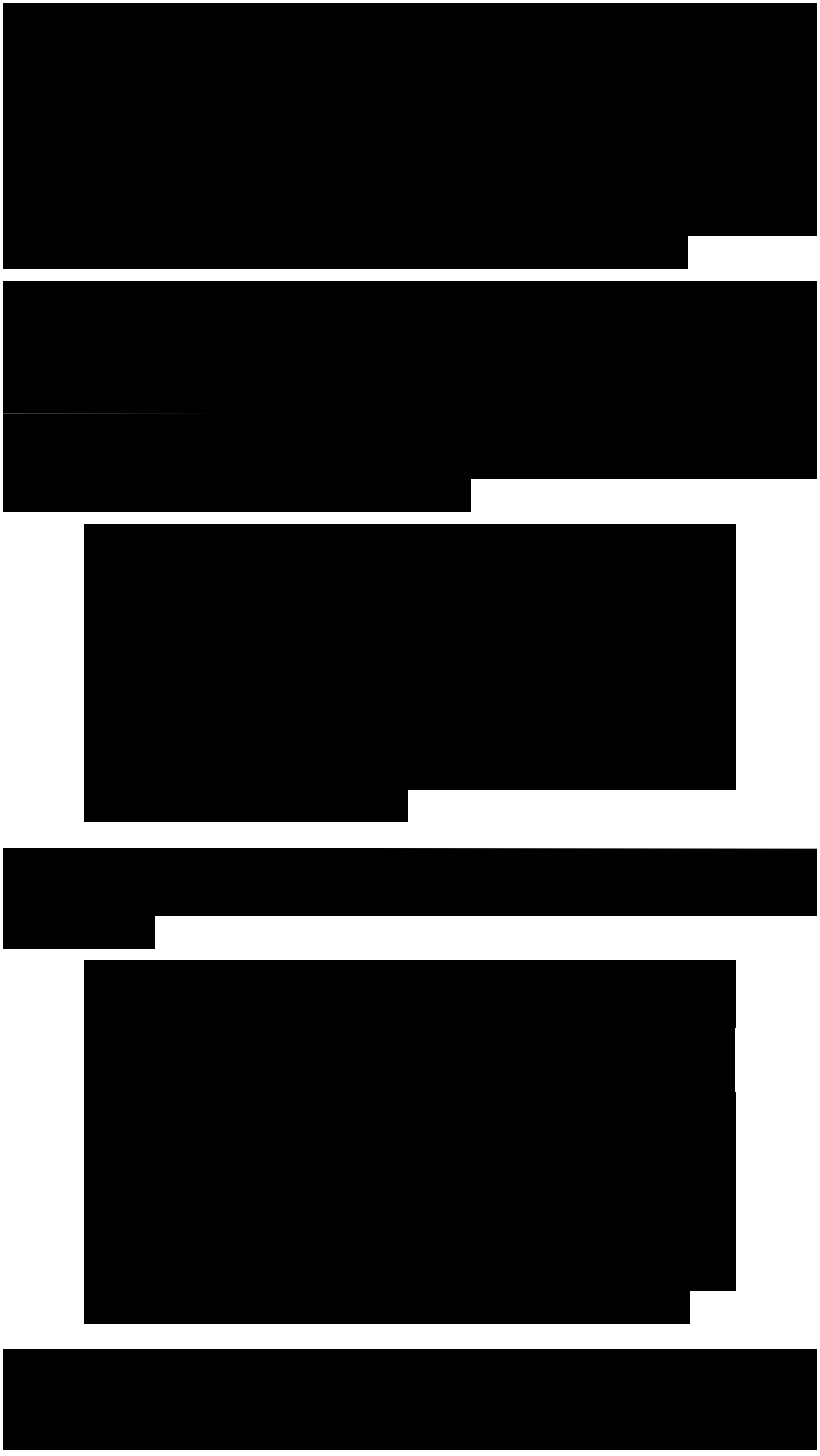


[1108]

810. The US State Department report thus sketches out precisely the kind of arbitrary, capricious, and rule-averse regime that Professor Schill warns about when a stray BIT provision becomes unmoored from its rule-of-law intentions.

811. Professor Schill discusses how the expectations of good faith and rule of law militate in the jurisprudence against finding that an investor must comply with hidden, opaque, or arbitrary approval requirements. His Opinion on this point is worth quoting at length:

[1108] **C-330** US State Dept. 2005 Inv. Climate Statement – Azerbaijan, 2005, p. 2 (emphasis added).



[redacted]

[redacted][1109]

812. Azerbaijan makes a fetish of the principle of *effet utile* – the idea that every portion of a treaty or contract must be given meaning.[1110] The case law cited extensively by Professor Schill shows that sometimes approval provisions are unacceptably vague, confusing, or – as here – functionally non-existent. In those cases, it makes sense to conclude that the investor, provided it has made a good faith attempt to comply, deserves the protection of the BIT.

813. Azerbaijan's construction of Article 9 asks Mr. Bahari to do the impossible: seek approval from a defunct Ministry or find its unspecified successor after he had already been forced to leave the country. These are precisely the circumstances in which *effet utile* must give way to doctrines of waiver, estoppel, and reasonableness. As Judge Cardozo of the New York Court of Appeal, and later the US Supreme Court, pithily put it more than a century ago:

[redacted][1111]

1109 Schill Opinion, ¶¶ 67-74 (emphasis added) (internal citations omitted).

1110 SoD ¶¶ 130 and 137; *see* Vandevelde Opinion ¶¶ 61, 63

1111 **C-375** *Wood v. Lucy, Lady Duff-Gordon*, 118 N.E. 214 (1917).

814. Accordingly, Azerbaijan cannot hide behind formalistic and impossible approval criteria to deny Mr. Bahari and other Iranian investors protection under the Treaty.

2. As Pre-Existing Investments, Mr. Bahari's Investments are Not Subject to Article 9 in Any Event

815. Were Article 9 to stand on its own in the Treaty, there would be no controversy – an Iranian investment in Azerbaijan would need to be approved by the MFER (if it existed) in order to qualify for protection under the BIT.

816. But Article 9 does not stand alone, it has to co-exist with other provisions of the Treaty, including Article 12. That provision reads in relevant part:

[redacted][1112]

817. The Parties agree that Mr. Bahari's activities in Azerbaijan (however legally characterized) began prior to the entry into force of the Treaty. Does Article 12 therefore mean that pre-existing investments need not conform with the terms of Article 9? The terms of the Treaty would certainly seem to so dictate. A pre-existing investment may have existed for years (as with those of Mr. Bahari) prior to the entry into force of the BIT. It would be unwieldy and capricious to subject such investments to these approval requirements. Article 12, in other words, makes most sense in the context of the BIT structure as a "grandfather" clause – a provision that exempts facts of long duration from prospective regulatory requirements in a new legal regime.

818. Azerbaijan (through Professor Vandevelde) opts to make sense of Article 12 by stating that *all* covered investments, before and after the Treaty's entry into force, are subject to the discretion of the host State.[1113] Azerbaijan's reading of the Treaty implies that neither pre-existing nor subsequent investments receive Treaty protection *unless* the host State deigns to bless specific investments with the coverage of the Treat under Article 9.[1114]

1112 Treaty (**CLA-001**), Art. 12 (emphasis added).

1113 Vandevelde Report, ¶ 42.

1114 Vandevelde Report, ¶ 43.

819. This is a clever way to avoid the problem of Article 12's existence but it has the unfortunate collateral effect of rendering the entire BIT regime, and in particular Article 12, effectively meaningless. Crucially, if Iran and Azerbaijan had wanted pre-existing investments under Article 12 to be subject to the requirements of Article 9, they could simply have said so. Although the two countries were not at that time the most sophisticated treaty drafters,[1115] it was surely not beyond their collective wit to specify that existent investments at the time of entry into force would need Article 9 approval, if that indeed is what they had intended.

820. As Professor Schill notes, a precedent was readily available to them in the form of the 1987 ASEAN Agreement, one of the foundational multilateral investment treaties, with which their international trade lawyers ought to have been familiar. Article II(3) of that treaty reads in relevant part that:

> [t]his Agreement shall also apply to investments made prior to its entry into force, provided such investments are specifically approved in writing and registered by the host country and upon such conditions as it deems fit for purpose of this Agreement subsequent in its entry into force.[1116]

821. Equally pertinent, Iran's 2001 BIT with Morocco – a virtually contemporaneous treaty with the one at issue, featuring one of the two States Parties here – provides in Article 11(2) that:

> [t]his Agreement will also apply to investments made prior to its implementation, provided that they are accepted by the competent authority of the host Contracting Party.[1117]

822. Hence, as Professor Schill observes, if Azerbaijan or Iran had wanted to place parameters in the BIT for approval of pre-existing investments (in the context of Article 9 or otherwise), they knew how to do so.[1118]

823. The fact that Article 12 of the Treaty is silent on any approval requirements for pre-existing investments should lead the Tribunal to conclude that the omission was deliberate, and Mr. Bahari's pre-existing investments did not require approval under Article 9.[1119]

1115 Schill Opinion, ¶ 102.

1116 Schill Opinion, ¶ 54, fn. 65.

1117 Schill Opinion, ¶ 54, fn. 63.

1118 Schill Opinion, ¶ 81.

1119 Schill Opinion, ¶ 86.

3. The Travaux Préparatoires and the States' Other BITs Reveal that Article 9 Was of Signal Importance to Iran, but Insignificant for Azerbaijan

824. The puzzling abolishment of the MFER, and Azerbaijan's subsequent failure to let Iran or its investors know of a successor entity for the purposes of the Treaty, begins to make sense when one examines the history of the Treaty's drafting. Invoking the interplay of Articles 9 and 12 as a cause of the Treaty's ambiguity – and therefore a need for resort to extrinsic evidence in order to interpret it – Professor Schill provides an analysis of the *travaux préparatoires* of the Treaty and the circumstances of its conclusion.[1120]

825. Broadly speaking, Professor Schill breaks this down into three phases: (a) the initial draft, proffered by Azerbaijan and modeled on its BIT with Turkey; (b) Iran's response; and (c) the synthesized version, leading to the final Treaty. Professor Schill's step-by-step comparison shows that the final version of the BIT is substantially similar to the initial draft put forward by Azerbaijan – but there is one exception: Article 9.

826. Professor Schill's review of the Treaty history begins with his recitation of correspondence in the first half of 1994 between Iran and Azerbaijan concerning the creation of a mechanism to protect foreign investments. That correspondence followed the conclusion, in February 1994, of Azerbaijan's BIT with Turkey.[1121]

827. A side-by-side comparison of the first draft of the Azerbaijan-Iran BIT with the Azerbaijan-Turkey BIT, shows how heavily Azerbaijan relied on the latter for the language of the former.[1122]It immediately brings to light two points of note:

a. the draft borrows from the Azerbaijan-Turkey BIT the idea that pre-existing investments explicitly deserve investment treaty protection; and

b. as with the Azerbaijan-Turkey BIT, the draft does not contemplate any mechanism for approving foreign investments through a regulatory authority. Again, that in itself is hardly unusual, since, as Professor Schill observes, BITs that explicitly provide approval mechanisms for investments are outnumbered by those which rely on provisions that a foreign investment be made "in accordance with domestic

1120 Schill Opinion, ¶¶ 87-89, citing Article 32 of the Vienna Convention on the Law of Treaties.

1121 Schill Opinion, ¶¶ 90-91.

1122 Schill Opinion, ¶ 92.

law" (without further specificity) in order to police an investment's viability under the treaty.[1123]

828. One of the States that *does* routinely call for a foreign investment approval mechanism in its BITs is Iran.[1124] Hence, when Iran responded to Azerbaijan's draft in 1996, it proposed several amendments to harmonize the BIT with its habitual practice. The amendments began by providing new definitions and terms, "Admission Certificate," "competent authorities," and "Admitted Investment":

> 3. The term "Admission Certificate" refers to a specific document delivered by the competent authorities of one Contracting Party to investors of the other Contracting Party indicating that their investments have been approved under the laws and regulations of the host party. The Admission Certificate may specify certain conditions under which the investment has been admitted.
>
> 4. The competent authority in each Contracting Party for issuance of the Admission Certificate is:
>
> (a) In the Islamic Republic of Iran:
>
> Organization for Investment, Economic and Technical Assistance of Iran (O.I.E.T.A.I.)
> 15th Khordad Square
> Tehran
> Iran
>
> (b) in the ……:
> ……
> ……
> ……
> ……
>
> 5. The term "Admitted Investment" refers to an investment for which an Admission Certificate has been delivered.[1125]

829. With these proposed edits, Iran made clear that foreign investments in Iran needed to be approved by the OIETAI. As Professor Schill exhaustively demonstrates, virtually all of Iran's BITs refer in some form or other to a specific, domestic regulatory framework for approval of foreign investments.[1126]Notably, Iran's draft proposal, while specifying the OIETAI as its relevant domestic authority, leaves Azerbaijan's blank. In the final version

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1123 Schill Opinion, ¶¶ 47-50.

1124 Schill Opinion, ¶¶ 108-157.

1125 Schill Opinion, ¶ 95.

1126 Schill Opinion, ¶ 108-157.

concluded on 28 October 1996, Azerbaijan supplies the MFER as the counterpart.[1127] As the Tribunal will recall, that Ministry was abolished less than eight months later, 24 June 1997, and years before the Treaty entered into force on 20 June 2002.

830. Professor Schill's comparison of the initial draft, the Iranian revisions, and the final version of the Treaty show that the initial draft proffered by Azerbaijan largely prevailed, with two substantive exceptions.

831. First, the initial draft contemplated litigation in the domestic courts of the host State for alleged BIT violations; while the Iranian revisions proposed arbitration in Paris under UNCITRAL Rules.[1128] Although this specific provision did not survive into the final version, the idea of arbitration, rather than domestic litigation, to resolve investor-state disputes, ultimately prevailed.

832. The second substantive exception was, of course, Article 9 of the Treaty. Professor Schill shows the evolution of this provision:[1129]

1127 Schill Opinion, ¶ 99.

1128 Schill Opinion, ¶ 98.

1129 Schill Opinion, ¶ 99.

833. Hence, the final version of the BIT incorporates the concept of domestic regulatory approval, but not the specific ideas of "Admission Certificates" for "Admitted Investments." We are thus back where we began, with two co-existing but collectively ambiguous provisions – the domestic approval regime of Article 9 and the pre-existing investment clause of Article 12.

834. To the extent, however, that Article 9 meant something to the parties, it is abundantly clear that it was extremely important to Iran, but not to Azerbaijan. We know this because, as noted above, the domestic regulatory qualifications set forth in Article 9 appear, *mutatis mutandis*, in virtually every Iranian BIT. By contrast, Professor Schill shows that an Article 9-type requirement is found in *not one* of Azerbaijan's other BITs.[1130]

835. By the same token, the coverage of pre-existing investments *is* a recurring concept in Azerbaijan's BITs. The vast majority of those BITs protect pre-existing investments in one form or another.[1131] Only four of Azerbaijan's BITs exclude pre-existing investments from

1130 Schill Opinion, ¶¶ 169-186.

1131 Schill Opinion, ¶¶ 187-191.

BIT protection, and in all of these BITs, that limitation of coverage to investments newly made after the respective BIT's entry into force is expressly provided for.[1132]

836. Perhaps the most telling indicium of Article 9's asymmetrical importance to the Parties (other than Azerbaijan's abolition of the relevant Ministry) is the fact that Iran has entered into several BITs with asymmetrical, incomplete, or entirely one-sided approval requirements.[1133] In these treaties, Iran bargained for approval requirements in which investments into its country are governed by OIETAI approval, but Iranian investments in the counterparty are subject to lesser regulations, or in which an Article 9-style clause exists, specifying the OIETAI as the responsible body for investments in Iran, but leaving the counterparty blank – the functional equivalent of the case here, where the MFER was dead on arrival. As Professor Schill writes:

[1134]

837. Professor Schill's analysis of Iran's BITs demonstrates that the Iran-Azerbaijan Treaty is unique:

[1135]

1132 Schill Opinion, ¶ 195.

1133 Schill Opinion, ¶¶ 140-152.

1134 Schill Opinion, ¶ 152.

1135 Schill Opinion, ¶ 168.

838. Professor Schill concludes that applying a good faith interpretation of the Treaty, which considers the importance Iran attributes to domestic legality and the rule of law seriously, would read Article 12(1)(3) on the protection of pre-existing investments as a scope-of-application provision, independent from Article 9, so pre-existing investments in Azerbaijan would only be subject to the requirement of having been lawfully made because there was no approval process in Azerbaijan at the time when such investments were made.[1136]

B. PROFESSOR VANDEVELDE'S INTERPRETATION OF ARTICLE 9 WOULD RENDER THE WHOLE BIT REGIME ARBITRARY.

839. As Professor Schill graciously acknowledges, Professor Vandevelde is an undoubted authority on BITs.[1137] The Vandevelde Report, however, ends up constructing a two-tier hierarchy in the Treaty that calls into question its very purpose: the first tier comprises foreign investments generally made in accordance with local laws and regulations (as set forth in Article 2(1)); the second tier comprises investors who specifically have received the blessing of the relevant authority under Article 9. Only the second tier of investors, in Professor Vandevelde's schema, benefit from the Treaty's protections.

840. This interpretation of the Treaty allows Professor Vandevelde to completely sidestep the issue of pre-existing investments under Article 12.[1138] This results in the view that any such investment may well qualify under Article 2(1), assuming it is made in accordance with a Party's local laws and regulations; but it will not receive Treaty protection, however, unless the investor has taken the further step of seeking, and receiving, Article 9 approval.

841. The difficulty with Professor Vandevelde's view is that it fails convincingly to engage and explain why the Treaty is written the way it is. As Professor Schill demonstrates, that reason was to accommodate two different visions of investment treaties: Iran's, which contemplates specific regulatory approval from a specially-designated domestic entity; and Azerbaijan's, which – whatever its position on any such entity – considers pre-existing investments as deserving of Treaty protection. There may be questions about how to interpret some provisions of the BIT, but this, quite simply, is not one of them.

1136 Schill Opinion, ¶ 168.

1137 Schill Opinion, ¶ 65.

1138 Oddly, the Vandevelde Report (¶ 42) only mentions Article 12 once, in passing, to simply make note of its existence.

842. This hybrid form is clear when we again review Professor Schill's comparison of the initial, revised, and final versions of the BIT:[1139]

843. The chart above shows that the Iranian revised draft contemplated the clause "in accordance with its laws and regulations" to be inextricably bound with the issuance of "Admission Certificates" to investors. The revised draft defined "Admission Certificates" in its Article 1, nominating OIETAI as the relevant entity to supply them. With the

[1139] Schill Opinion, ¶ 96 (emphasis added).

disappearance of this link in the final version of the BIT, there is quite simply an inconsistency in the text.

844. No treaty is perfect. This Tribunal might have had a harder question to answer had Mr. Bahari been an Azerbaijani investor in Iran. It would have had to balance the inconsistencies of Articles 2(1), 9 and 12, in light of the very clear Iranian preference for OIETAI approval of all foreign investments.As it stands, however, the Tribunal has an easier choice:

a. either it can conclude that the textual inconsistencies favor Mr. Bahari, since the provisions that point to protection under the Treaty were those advocated by Azerbaijan, and the one that does not both contradicts the other two and manifestly was of no importance to Azerbaijan; or

b. the Tribunal could adopt Professor Vandevelde's account of the BIT, holding that Article 2(1) merely describes an overall favorable environment for investors, while Article 9 overlays the additional requirement of approval by a specific regulator (albeit one not named in the BIT itself).

845. As Professor Vandevelde puts it:


[1140]

846. In Professor Vandevelde's view, therefore, some investors will apparently be enticed by the possibility of investing under the BIT, without the prospect of receiving the protections of the BIT.

847. This seems a highly implausible basis for the construction of a BIT whose purpose is a rule-bound, orderly inducement to foreign investment. As Professor Schill aptly puts it:

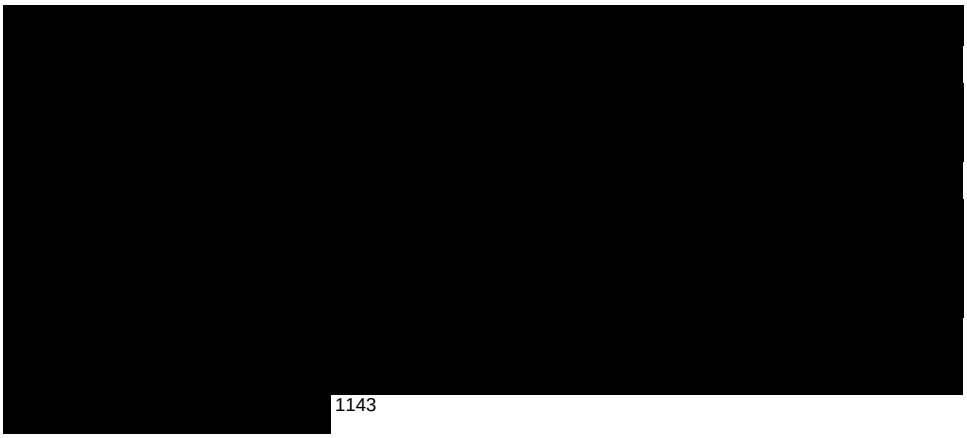
[1140] Vandevelde Report, ¶ 43.

[1141]

C. EVEN IF THE TRIBUNAL THINKS ARTICLE 9 IS NOT ENTIRELY MOOT, IT IS INOPERABLE AND/OR WAIVED WITH RESPECT TO MR. BAHARI'S INVESTMENTS.

848. Mr. Bahari's position remains unchanged from his Statement of Claim: Article 9 cannot possibly operate as a bar to his claim because: the Treaty explicitly encompasses his investments; such investments predate the entry into force of the Treaty; Article 9 fails to carve out a specific regime for pre-existing investments, suggesting that they need not operate under its rubric to receive protection under Article 12; but even if they did, the Azerbaijani entity responsible for Article 9 approvals (MFER) was abolished, thereby making this specific provision inoperable.[1142]

849. On this point, Professor Schill's Opinion explains that there is a presumption in the law of treaties that a clause that cannot be performed ceases to remain operative. In turn, he confirms the inoperability of Article 9 in the current circumstances, explaining that:



[1143]

1141 Schill Opinion, ¶ 85.

1142 SoC ¶¶ 443-452.

1143 Schill Opinion, ¶ 214.

850. Inoperability does not affect the Treaty as a whole, but only the specific part of it that can no longer be performed. Here, to do otherwise, in the specific case of Article 9, would allow one of the contracting States to prevent the Treaty's operation merely by rendering the process for approving investments dysfunctional. That would be inconsistent with a good faith interpretation of Article 9. Thus, faced with inoperability of Article 9, the remaining provisions of the Treaty continue to apply.[1144]

851. Professor Schill's Opinion considers there to be an alternative to the doctrine of inoperability, where Azerbaijan's failure to implement Article 9 through an appropriate domestic legal framework, and the abolishment of the MFER as the competent authority, may be analyzed through the concept of waiver or the often interchangeably used concept of estoppel.[1145]

852. There is broad support in both international law and the jurisprudence of investment-treaty tribunals that approval-type requirements, such as that in Article 9 of the Treaty, can be dispensed with unilaterally by the host State based on the concept of waiver.[1146]

853. Professor Schill discusses how not only formal and explicit approval by host State organs, but also informal approval, can result in a host State having waived its right to invoke a treaty approval requirement. Equally, investment treaty tribunals have considered the (non-) existence under domestic law and/or (lack of) clarity regarding approval procedures to be a relevant factor in considering whether the approval requirement had been fulfilled.[1147]

854. These considerations are particularly relevant to the current dispute because:

a. Azerbaijan has taken no steps whatsoever to allow for the operationalization in its domestic law of the approval requirement in Article 9 of the Treaty.

b. Azerbaijan even took the active step of abolishing the competent authority expressly named in the Treaty even before it entered into force.

c. Azerbaijan moreover failed to remedy the situation thus created by omitting to either indicate in its domestic legal framework or notify Iran (or Iranian investors)

1144 Schill Opinion, ¶¶ 219-250.

1145 Schill Opinion, ¶¶ 251-274.

1146 Schill Opinion, ¶¶ 252-262.

1147 Schill Opinion, ¶¶ 263-271.

that a purported successor authority would assume the role of "competent authority" under the Treaty.

855. In Professor Schill's Opinion, when Azerbaijan's actions and omissions are viewed against the existing case law on this issue, the conduct of Azerbaijan strongly militates in favor of concluding that Azerbaijan has for its part waived the approval requirement contained in Article 9 of the Treaty.[1148]

856. Finally, a host State's actions towards an investor must be considered in determining whether an approval requirement laid down in an investment treaty has been waived through the action or inaction of the host State. Relevant factors in assessing a potential waiver of the Article 9 requirement by Azerbaijan in the present case include: the identity and status of Azerbaijani officials and organs, and the extent to which, they have approved, endorsed, or given assurances in relation to the Claimant's investments; the lack of clarity on both the process that the Claimant should have followed to obtain Article 9 approval of his investments and as to the identity of the competent authority; the extent to which the Claimant has complied with other domestic law requirements when making his investments; and the extent to which Azerbaijan has granted the Claimant the relevant permits and allowed the Claimant to incorporate and/or register local affiliates.[1149]

857. As previously discussed in the Statement of Claim, all of Mr. Bahari's investments received express or *de facto* Government approval that reflected Mr. Bahari's status as an Iranian or foreign national making investments in Azerbaijan, including when he was incorporating and/or registering his investments.[1150] Indeed, Azerbaijan's recent document production demonstrates that Azerbaijan performed due diligence on Mr. Bahari and certain of his investments as part of a broader approval process.

858. Overall, the history and structure of Article 9, its co-existence with Article 12, the absence of a named successor to the MEFR, the absence of a domestic regulatory approval regime for foreign investment in Iran, the history of asymmetrical approval requirements in Iranian BITS – all militate in favor of an inevitable conclusion: the Treaty is applicable to Claimant's

1148 Schill Opinion, ¶ 269.

1149 Schill Opinion, ¶¶ 271-272.

1150 SoC ¶ 441.

investments, and the Tribunal should not decline jurisdiction based on a lack of approval under Article 9.[1151]

IV. THE MEASURES TAKEN AGAINST MR. BAHARI'S INVESTMENTS ARE ATTRIBUTABLE TO AZERBAIJAN

859. The Statement of Defense advances a singular position on attribution: "[t]he entirety of Mr Bahari's case rests on the private acts of third parties […]" and therefore "[n]one of the alleged conduct of the Messrs Aliyev, Heydarov, Khanghah, or Pashayev is attributable to Azerbaijan [and] [t]he entirety of Mr Bahari's case can accordingly be disposed of with this preliminary issue." [1152]

860. Azerbaijan's overly narrow and unrealistic position demonstrates its fallacy.

861. Azerbaijan's theory requires that this dispute exist in an alternate reality, disconnected from the evidence and Azerbaijan's conduct, and from independent and objective conclusions of experts, the global media, and other State governments that have considered the political and commercial environment in Azerbaijan.[1153]

862. In this respect, the words of the Allan & Makarenko Report are highly telling:

[redacted][1154]

863. The alternate reality that Azerbaijan asks this Tribunal to accept should be rejected wholesale. Everything that happened to Mr. Bahari and his investments bears the imprimatur of State action or omission.

1151 Schill Opinion, ¶ 285.

1152 SoD ¶¶ 32-35.

1153 See e.g. **C-368** Freedom House, Freedom in the World 2024 – Azerbaijan, 2024.

1154 Allan & Makarenko Report, ¶ 8, p. 6.

A. THE AZERBAIJANI AUTHORITIES HAVE TARGETED MR. BAHARI AND HIS INVESTMENTS FOR OVER TWO DECADES.

864. The conduct (i.e. actions and omissions) of State organs is attributable to the State, as codified in Article 4 of the ARSIWA.[1155] This is the case if these organs act *ultra vires*.[1156] Article 4(1) of the ARSIWA, in particular, takes a uniform approach regarding possible variations in attribution which may arise from the internal organization of a State: whatever the form of power allocation across sub-national entities or the organization of the separation of power, the conduct of organs from any governmental structure is attributable to the State.[1157]

865. Consistent with Article 4(2) of the ARSIWA, the first step to determine whether a body or a person is a State organ is to examine the internal law of the State.[1158] As noted in the commentaries, "[w]here the law of a State characterizes an entity as an organ, no difficulty will arise."[1159]

866. Azerbaijan's Law on Civil Service lists a number of "State bodies" which, for the purpose of attribution, can all be qualified as State organs of Azerbaijan.[1160] These State bodies include the "Administration of the President of the Republic of Azerbaijan," as well as "other bodies directly supporting the activities of the head of the Azerbaijani state and bodies implementing executive powers," which notably include the "National Assembly of the Republic of Azerbaijan."[1161] These constitute the "highest state bodies."[1162]

1155 ARSIWA (**CLA-037**), Art. 4; SoC ¶ 134.

1156 ARSIWA (**CLA-037**), Art. 7.

1157 ARSIWA (**CLA-037**), Commentary, Art. 4, ¶¶ 1 and 5: "The reference to a 'State organ' covers all the individual or collective entities which make up the organization of the State and act on its behalf. It includes an organ of any territorial governmental entity within the State on the same basis as the central governmental organs of that State: this is made clear by the final phrase…

The principle of the unity of the State entails that the acts or omissions of all its organs should be regarded as acts or omissions of the State for the purposes of international responsibility. It goes without saying that there is no category of organs specially designated for the commission of internationally wrongful acts, and virtually any State organ may be the author of such an act. The diversity of international obligations does not permit any general distinction between organs which can commit internationally wrongful acts and those which cannot. This is reflected in the closing words of paragraph 1, which clearly reflect the rule of international law in the matter."

1158 ARSIWA (**CLA-037**), Art. 4(2).

1159 ARSIWA (**CLA-037**), Commentary, Art. 4, ¶ 11.

1160 Law No. 926-IQ of the Republic of Azerbaijan "On Civil Service", Art. 8, 21 July 2000 (**RLA-196**), ¶ 8.1.1.

1161 Law No. 926-IQ of the Republic of Azerbaijan "On Civil Service", Art. 8, 21 July 2000 (**RLA-196**), ¶ 8.1.1.

1162 Law No. 926-IQ of the Republic of Azerbaijan "On Civil Service", Art. 8, 21 July 2000 (**RLA-196**), ¶¶ 8.1 and 8.1.1.

867. The immediate category below these bodies includes the "Prosecutor's Office of the Republic of Azerbaijan."[1163] Then follow appellate courts and then criminal, administrative, commercial courts, and the prosecutor's office of Baku.[1164] Respondent accepts that the aforementioned bodies are all State organs for the purpose of Article 4 of the ARSIWA.[1165]

868. While the Law on Civil Service's list of bodies does not expressly include the Azerbaijani Government or Ministers individually, the Azerbaijani Constitution provides that the President creates a "Cabinet of Ministers," which is the "supreme executive body of the President."[1166] It includes a Prime Minister, his deputies, ministers and "heads of other central executive authorities."[1167] It should not be disputed, therefore, that Ministries are State organs under Article 4 of the ARSIWA, and in fact Respondent does not dispute it.[1168]

869. Finally, it is generally undisputed under investment case law that police actions are attributable to the State.[1169] Azerbaijan does not dispute this.

870. Mr. Bahari's forced expulsion from the Caspian Fish facility during the 10 February 2001 grand opening ceremony was an act of the State. As discussed in the Statement of Claim, and above in Part II, Section IV, the State's oversight and involvement in the Caspian Fish opening ceremony is indisputable. The opening ceremony was attended and presided over by then-President Heydar Aliyev, whose personal security (and that of his family) is ensured by "special security officers" under the Azerbaijan Constitution.[1170]

871. Prior to the Statement of Defense, Mr. Bahari's forced expulsion marked the first known measure by Azerbaijan to separate Mr. Bahari from his investments, followed by actions that kept him out of Azerbaijan and consistently denied him the ability to ever obtain any information about their status or engage with any State organ to investigate or recover

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1163 Law No. 926-IQ of the Republic of Azerbaijan "On Civil Service", Art. 8, 21 July 2000 (**RLA-196**), ¶ 8.1.2.

1164 Law No. 926-IQ of the Republic of Azerbaijan "On Civil Service", Art. 8, 21 July 2000 (**RLA-196**), ¶¶ 8.1.3 and 8.1.4.

1165 See SoD ¶ 36, FN 66, where Respondent accepts that the entities listed in Article 8 of the Law on Civil Service are State organs.

1166 Constitution of the Republic of Azerbaijan, 26 September 2016 (**CLA-16**), Article 114.I and II.

1167 Constitution of the Republic of Azerbaijan, 26 September 2016 (**CLA-16**), Article 115.

1168 SoD ¶¶ 39-40.

1169 See e.g. *Gustav F W Hamester GmbH & Co KG v Republic of Ghana*, ICSID Case No. ARB/07/24, Award ("***Hamester v. Ghana***"), 18 June 2010 (**CLA-32**), ¶ 292.

1170 **CLA-16** Constitution of the Republic of Azerbaijan, 26 September 2016, Article 108(I) ("The President of the Republic of Azerbaijan and his family are provided at the expense of the state. The security of the President of the Republic of Azerbaijan and his family is ensured by special security services.")

them.[1171] An expulsion conducted or supported by Azerbaijani's Government security officers is attributable to Azerbaijan.[1172]

872. All available evidence points to the conclusion that, when expelling Mr. Bahari from the Caspian Fish facility, the special security officers enforced a decision which can only have been made directly by the State. Even if the persons who enforced the decision were private individuals, they were acting at the direction of Messrs. Aliyev and/or Heydarov.[1173] The State's actions had the transparent goal of serving the interests of powerful figures within the State apparatus and ruling families by enabling them and their associates and relatives to take over Mr. Bahari's investments. As discussed in the Allan & Makarenko Report:

[redacted][1174]

873. Crucially, Azerbaijan continues to enforce this decision, not only in respect of Caspian Fish, but for all of Mr. Bahari's investments that still exist. For example, what is currently known is that:

a. Mr. Bahari has been unable to make enquiries about his investments or take any steps to recover them via any Azerbaijani organ.[1175] The State enforces this by ensuring Mr. Bahari cannot return to Azerbaijan without special permission from the ruling families that took his investments under threat of possible sham prosecutorial action, extrajudicial action, or worse. Indeed, the single occurrence of Mr. Bahari's being able to return to Azerbaijan was in October 2013 with Minister Heydarov's express authorization and an accompanying visa).[1176]

1171 It is now clear that the Government was also involved, or at least adopted and supported, the clandestine efforts to incorporate Caspian Fish LLC, and allow that company to take control of the Caspian Fish assets, behind Mr. Bahari's back. See *Supra*, Part II, Section IV.C (Caspian Fish LLC).

1172 See e.g. *Hamester v. Ghana*, Award, 18 June 2010 (**CLA-32**), ¶ 292.

1173 ARSIWA (**CLA-037**), Art. 8.

1174 Allan & Makarenko Report, ¶ 116.

1175 SoC Sections III.E-K and *Supra*, Part II, Section V (Azerbaijan Prevents Any Efforts to Recover Investments).

1176 SoC Sections III.D, III.I, III.K and *Supra*, Part II, Section V.F (Meetings with Heydarov).

b. The State also enforces Mr. Bahari's absence and lack of agency over his investments through repeated threats, intimidation, assault, or incarceration against Mr. Bahari and those in Azerbaijan that tried to assist Mr. Bahari to gain information or take any legal or administrative steps.[1177] This is not only through conduct under the "informal order" discussed in the Allan & Makarenko Report,[1178] but through the "formal order": the Police, Prosecutor General, and the Courts are all involved.[1179]

c. The lack of information about the status of Mr. Bahari's investments (historical or current) has even extended to this Arbitration, with various State organs choosing not to produce whole categories of documents that the Tribunal ordered be produced, sending a letter denying that such information exists (when it clearly does), or obstinately refusing to cooperate at all.[1180]

d. The State and in particular the courts facilitated the taking of Mr. Bahari's investments in Coolak Baku and Ayna Sultan, by, at a minimum, offending Mr. Bahari's due process rights.[1181]

e. From an administrative and governance perspective, the numerous open questions and anomalies about the ownership, status, and economic performance of Caspian Fish is attributable to the State,[1182] undertaken by the "informal order' and "formal order" at the behest of Messrs. Aliyev and Heydarov and their respective families.

874. These are currently known and demonstrable measures attributable to Azerbaijan under Article 4 of the ARSIWA. By themselves, they establish the attribution of Azerbaijan for Mr. Bahari's claims in this Arbitration.

1177 SoC Sections III.D, III.I, III.K and *Supra*, Part II, Section V.B (Harassment of Mr. Moghaddam) and Section V.H (Harassment of Ms. Ramazanova and Mr. Abdulmajidov).

1178 SoC Section III.D and *Supra*, Part III, Section II (Azerbaijan's 'Limited Access Order' Political System); Moghaddam WS1 ¶¶ 64-65; 73-77; Moghaddam WS2 ¶¶ 24-30.

1179 SoC Sections III.D, III.I, III.K and *Supra*, Part III, Section II.D ((Coercive Capabilities of the State) and Section II.E (Azerbaijan Knows No Rule of Law).

1180 **C-427** Compilation of Official Letters from Azerbaijani Authorities.

1181 *Supra*, Part II, Section II.D (Coolak Baku Taken Through Courts) and Section II.E (Ayna Sultan Taken Through Courts); *Infra*, Part V, Section I.D (Azerbaijan Denied Mr. Bahari Justice and Failed to Provide Effective Means).

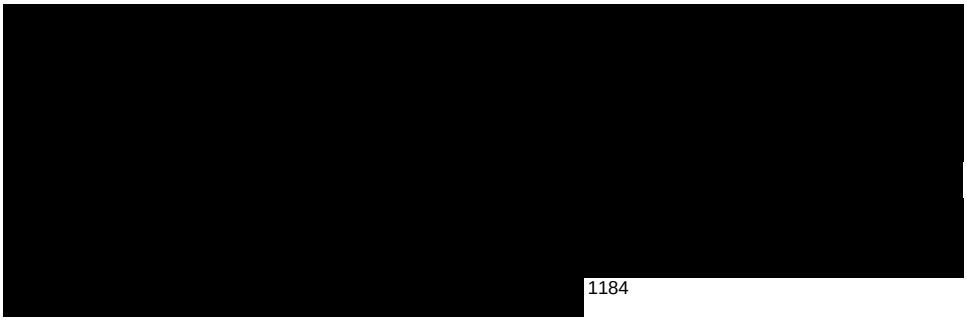
1182 SoC Sections III.F, III.G, III.H and *Supra*, Part IV, Section IV (Attribution).

B. AZERBAIJAN ACKNOWLEDGED AND ADOPTED THE TAKING OF MR. BAHARI'S INVESTMENTS.

875. Even if measures to separate Mr. Bahari from his investments are not directly attributable to Azerbaijan (which is denied), Azerbaijan has acknowledged and adopted the measures that were taken by powerful individuals to take Mr. Bahari's investments under Article 11 of the ARSIWA.

876. As a testament to the Azerbaijani authorities' servility to the political elite, the transfer of Coolak Baku's physical assets and operations to ASFAN, and of Caspian Fish's physical assets and operations to Caspian Fish MMC, have been acknowledged and adopted by the Azerbaijani Government despite raising a number of red flags.[1183]

877. Wholesale adoption by the Azerbaijani authorities of illicit maneuvers of the political elite is a distinctive and crucial feature of kleptocratic governance, one which enables and perpetuates this unfortunate and unjust system. Crucially, it transforms what is unlawful conduct into a domestic legal *status quo* within Azerbaijan. As discussed in the Allan & Makarenko Report report:

 [1184]

878. Azerbaijan contends that Article 11 of the ARSIWA imposes a "high standard" to attributing otherwise non-attributable conduct to the State, requiring "clear and unequivocal" acknowledgment and adoption on the part of the State.[1185] But the Azerbaijani Ministries' actions and omissions related to Mr. Bahari's investments did not simply constitute a general acknowledgment or "routine administrative approvals and authorizations."[1186]

1183 For instance, Mr. Bahari's 40% shareholding, and Caspian Fish Co's +35% share of the fishing market in Azerbaijan should have triggered antitrust reporting and approval by the Azerbaijani Antitrust Authority considering Mr. Bahari's absence from the transaction, whether by written consent or receipt of the proceeds of the sale (see SoC ¶¶ 571-572).

1184 Allan & Makarenko Report, ¶ 5 (emphasis added).

1185 SoD ¶ 44.

1186 SoD ¶¶ 44-46.

Azerbaijan's reliance on *Resolute Forest Products v. Canada* is a failing attempt to put this discussion back into its "private acts of third parties" alternate reality.[1187]

879. Through administrative processes, the Azerbaijani Ministries not only specifically acknowledged the political elite's illicit conduct, but they deliberately and unambiguously adopted it as their own, as shown by the fact that Minister Heydarov's ownership of Caspian Fish LLC is now admitted, but still entirely opaque because of what can only be described as corporate and administrative irregularities and inconsistencies. In other words, in accepting the oversight for Caspian Fish, Azerbaijan also accepts that the political elite exclusively possess this asset, for example, in circumstances where there are manifest questions – even acknowledged by the Courts[1188] – about what happened to Mr. Bahari. This can only be described as clear and unequivocal acknowledgement and adoption, which is conduct attributable to Azerbaijan under Article 11 of the ARSIWA.

C. MESSRS. ALIYEV AND HEYDAROV ARE STATE ORGANS ACTING IN THEIR OFFICIAL CAPACITY.

880. Much of Azerbaijan's discussion on attribution is dedicated to a tenuous (and transparent) attempt to exonerate Messrs. Aliyev and Heydarov from being deemed State organs.[1189] This discussion is irrelevant for the purpose of determining whether Azerbaijan ultimately breached the Treaty. Claimant nonetheless notes that Azerbaijan does not dispute that:

a. Mr. Ilham Aliyev became Prime Minister in August 2003, and then President of Azerbaijan in October 2003, a position he currently holds.[1190]

b. Mr. Aliyev's conduct in his capacity as Prime Minister and then President of Azerbaijan is attributable to Azerbaijan.[1191]

c. Before becoming Prime Minister, Mr. Aliyev was a member of Parliament from 24 November 1995 to 28 October 2003, as well as Vice-President and then First

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1187 SoD ¶¶ 32, 46.

1188 *Supra*, Part II, Section II.D (Coolak Baku Taken Through Courts) and Section II.E (Ayna Sultan Taken Through Courts).

1189 SoD ¶¶ 36-40.

1190 SoD ¶ 32; SoC ¶ 469.

1191 SoD ¶ 36, fn. 66 ("Mr Aliyev was not a State organ of the Republic until his appointment as prime minister in 2003").

Vice-President of SOCAR between April 1994 and December 1996 and December 1996 and August 2003, respectively.[1192]

d. Mr. Heydarov was the Chairman of the State Customs Committee from 17 January 1995 to 6 February 2006, when he became Minister of Emergency Situations, a position he holds to this day.[1193]

e. Mr. Heydarov's position as Chairman of the State Customs Committee qualifies him as a State organ under Article 4 of the ARSIWA and his conduct is attributable to Azerbaijan.[1194]

881. Azerbaijan accepts, therefore, that Messrs. Aliyev and Heydarov were powerful figures within the State apparatus during the 1990's and in the early 2000's, i.e. at the time Mr. Bahari made his investments and then when Azerbaijan decided that Mr. Bahari should be separated from them.

882. Respondent denies, however, that (**1**) Mr. Aliyev can be considered a State organ between 1995 and August 2003;[1195] and (**2**) Messrs. Aliyev and Heydarov acted as State organs in their business dealings with Mr. Bahari.[1196] Each of these incorrect propositions is incorrect.

1. Mr. Aliyev Was a State Organ Between 1995 and 2003.

883. Azerbaijan argues that Mr. Aliyev's position as a Member of Parliament of Azerbaijan from 1995 up to 2003 does not make him a State organ under Article 4 of the ARSIWA.[1197] According to Respondent, Azerbaijan's Constitution vests legislative power in the Parliament (the Milli Majlis), not in its individual members, and the Law on Civil Service only lists the Parliament as State body, not its individual legislators.[1198] This is unpersuasive.

1192 SoD ¶ 32; SoC ¶ 469.

1193 SoD ¶ 32; SoC ¶ 469.

1194 SoD ¶¶ 32 and 36; SoC ¶¶ 467-471.

1195 SoD ¶ 36, fn. 66.

1196 SoD ¶¶ 36-38.

1197 SoD ¶ 36, fn. 66.

1198 SoD ¶ 36, fn. 66.

884. *First*, contrary to what Azerbaijan asserts, a mere reading of the Constitution shows that Mr. Aliyev's position as a Member of Parliament makes him a State organ under Article 4 of the ARSIWA:

a. Article 81 of the Constitution of Azerbaijan provides that the legislative power of Azerbaijan is "exercised by the Milli Mejlis of the Republic of Azerbaijan," which, as provided by Article 82, "consists of 125 deputies."[1199] As a Member of Parliament, Mr. Aliyev exercised, therefore, Azerbaijan's legislative power, which materialized, for instance, by his right of legislative initiative.[1200]

b. Article 90 of the Constitution provides that, during the term of their office, "the identity of the deputy of the Milli Majlis of [Azerbaijan] is inviolable" and they are immune from criminal responsibility "except in cases of being caught in the act of committing a crime" during their mandate.[1201]

c. Articles 94 and 95 list a number of issues which the Parliament has the authority to address and on which it may establish general rules.[1202]

885. *Second*, Respondent misrepresents the holding in *Burlington v. Ecuador* when it suggests (without quoting the tribunal directly) that the tribunal concluded that "the conduct of an individual member of a legislature is not attributable to the State."[1203] The *Burlington* tribunal said no such thing.[1204] As the tribunal expressly explained, it only quoted declarations from Ecuadorian congressmen to "shed light on the manner in which at least some members of Congress understood the context leading to the enactment" of the detrimental regulation which was at the heart of the dispute.[1205] The tribunal clarified that, in doing so, it did not "intend to attribute responsibility to Ecuador for the statement of individual congressmen," which obviously means that the tribunal made no determination on attribution, one way or the other.[1206] Azerbaijan's assertion that the tribunal specifically

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1199 Constitution of the Republic of Azerbaijan, 26 September 2016 (**CLA-16**), Articles 81 and 82. See also Part III of Article 7.

1200 Constitution of the Republic of Azerbaijan, 26 September 2016 (**CLA-16**), Articles 81 and 82.

1201 Constitution of the Republic of Azerbaijan, 26 September 2016 (**CLA-16**), Article 90.

1202 Constitution of the Republic of Azerbaijan, 26 September 2016 (**CLA-16**), Articles 94 and 95.

1203 SoD ¶ 36, fn. 66.

1204 *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability ("***Burlington v. Ecuador***"), 14 December 2012 (**CLA-144**), ¶ 305.

1205 *Burlington v. Ecuador*, Decision on Liability, 14 December 2012 (**CLA-144**), ¶ 305.

1206 *Burlington v. Ecuador*, Decision on Liability, 14 December 2012 (**CLA-144**), ¶ 305 (emphasis added).

found that the conduct of an individual member of a legislature cannot be attributed to the State is, therefore, plainly disingenuous.

886. *Third* and *finally*, Azerbaijan denies that Mr. Aliyev was a State organ by virtue of him being a Vice President and then First Vice President of SOCAR, which, Azerbaijan alleges, is not a State organ as a matter of Azerbaijani law.[1207] As noted above, Mr. Aliyev's position as a Member of Parliament suffices for him to qualify as a State organ. However, since Azerbaijan's economy is heavily dependent on the income generated by its exports of oil and gas, being one of the highest-ranking executives of the State's national oil and gas company, SOCAR, certainly made Mr. Aliyev a crucial figure within Azerbaijan's circles of power. It certainly did not hurt that he was (also) the President's son and designated successor, and therefore he surely wielded significant power within and by the Government. The practice of Azerbaijan's governing authorities of mixing and matching their public and private functions is discussed below.

2. Messrs. Aliyev and Heydarov Acted in their Official Capacity in their Dealings with Mr. Bahari.

887. Azerbaijan cannot dispute that the many measures taken by State organs to separate and keep Mr. Bahari away from his investments are attributable to it. Further, it is clear that the driving forces and ultimate beneficiaries of these State measures were, themselves, State organs who made sure Mr. Bahari's investments were targeted for their own gain. These individuals are, first and foremost, Messrs. Aliyev and Heydarov.

888. Azerbaijan mainly disputes the depth of evidence that Messrs. Aliyev and Heydarov utilized their prerogatives of power over the State apparatus in a manner not available to normal private citizens.[1208] However, all available evidence points to Messrs. Aliyev and Heydarov, and their close allies and relatives, directly benefitting from Mr. Bahari's fabricated downfall.[1209] That benefit does not accrue but for Mr. Bahari's downfall, and the maintenance of the same and broader obfuscation of his investment cannot be achieved by purely private persons.

889. Respondent rests heavily on the cynical assertion that Messrs. Aliyev's and Heydarov's conduct cannot be attributed to Azerbaijan because it was carried out in a private

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1207 SoD ¶ 36, fn. 66.

1208 SoD ¶ 37.

1209 SoC Sections III.F, III.G, III.F and *Supra*, Part II, Section IV (Mr. Bahari's Investments Were Seized by Azerbaijan).

capacity.[1210] As noted in the commentary of the ILC Articles, "in some systems the status and functions of various entities are determined not only by law but also by practice, and reference exclusively to internal law would be misleading."[1211]

890. The practice of Azerbaijan's leaders within the State apparatus is, of course, particularly enlightening in terms of attribution:


[redacted]
[1212]

891. Respondent's attempt to draw a fictitious line between Messrs. Aliyev's and Heydarov's actions carried out in their official capacity and those carried out in their private capacity is disingenuous and misleading.

892. Messrs. Aliyev's and Heydarov's dealings with Mr. Bahari cannot be separated from their functions and powers as State organs. Distinguishing between private and public capacity for the purpose of Article 4 of the ARSIWA would make no sense in circumstances where the Azerbaijan's State organs themselves make no such distinction (and use the lack thereof to their own benefit).

893. For example, Azerbaijan takes the remarkable position that Minister Heydarov's October 2013 meeting with Mr. Bahari in Baku "took place in Minister Heydarov's private capacity" and that "[n]othing in Mr Bahari's claims of the substance of these alleged meetings would elevate them to a meeting with the State."[1213] First, this is a meeting with a Minister at a Government office to discuss the taking of Mr. Bahari's investments. This is a meeting with an organ of the State. Second, Minister Heydarov arranged for a visa and safe passage to allow Mr. Bahari to enter Azerbaijan for this meeting; an act that can only be

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1210 SoD ¶ 36.

1211 ARSIWA (**CLA-037**), Commentary, Art. 4, ¶ 12.

1212 Allan & Makarenko Report, ¶ 20.

1213 SoD ¶ 303.

done through Minister Heydarov's State powers.[1214] Third, this meeting is not "alleged," it was acknowledged in Mr. Zeynalov's witness statement.[1215]

894. In response to Mr. Bahari's testimony that "[redacted]" Azerbaijan contends that "[e]ven if such a discussion occurred (which is not admitted) however, it was not said in any official capacity."[1216] This was an associate or agent of one of the most powerful officials in Azerbaijan, who controls the coercive powers of the State (e.g. through the paramilitary Ministry of Emergency of Situations), telling Mr. Bahari that he would "lose his head." Such a threat may be made by a private individual (which is not clear), but it carries the full weight and power of the State, including under Article 8 of ARSIWA.[1217]

895. In sum, Azerbaijan's myopic construction ignores the obvious reality that President Aliyev and those in his orbit are, at all times, clothed with the immense powers of the State, and that every action they take – including so-called "private" action for commercial profit – is ineluctably enmeshed with, and thus inseparable from, the full weight of the formal order and the coercive capabilities of the State.

896. Over the two subsequent decades since Mr. Bahari was expelled from Azerbaijan, numerous State organs, in particular the Office of the Prosecutor General, have been involved. This is despite the fact that Mr. Bahari was never charged with – much less indicted for – any crime or infraction that would justify their involvement. The only explanation is that those who have benefited from the deprivation of Mr. Bahari were also the ones able to use the power of the State apparatus to clear the way and maintain their ownership and control over Mr. Bahari's investments.

D. THE ACTS OF MR. KHANGHAH AND OTHERS ARE ATTRIBUTABLE TO AZERBAIJAN.

897. Azerbaijan denies any knowledge of the acts of Mr. Khanghah, and "whether they were carried out on the instruction of Messrs. Heydarov, Aliyev or otherwise."[1218] To the extent

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1214 **C-183** Azerbaijan Visa for Mr. Bahari, 7 October 2013.

1215 Zeynalov WS ¶¶ 52-53.

1216 SoD ¶ 307, quoting Bahari WS1 ¶ 98.

1217 Allan & Makarenko Report, ¶¶ 8, 38-42.

1218 SoD ¶ 42.

that Mr. Khanghah's conduct was carried out following the instructions of Messrs. Heydarov and Aliyev, Respondent denies that their conduct was carried out in their official capacity, so that no action of Mr. Khanghah can be attributable to the State.[1219]

898. Again, Respondent's objection falls flat. As noted above, Messrs. Heydarov and Aliyev commonly use their status as State organs in circumstances which, in other jurisdictions, might be considered to relate to private capacity, but are indistinguishable from their official capacity. This is how it works in Azerbaijan: Messrs. Heydarov's and Aliyev's dealings with Mr. Bahari, and the way he was subsequently dealt with once it was decided he was no longer welcome in the country and could no longer own and manage his investments, were purposely commingled with their attributes as State organs of Azerbaijan. In circumstances where Messrs. Aliyev and Heydarov do not practically distinguish between their actions carried out in their official or private capacity, nor should the Tribunal for the purpose of attribution.

899. Against that background, Mr. Khanghah's actions are clearly attributable to Azerbaijan. Mr. Khanghah is the infamous "front man" of a significant portion of the Heydarov family conglomerate.[1220] As such, Mr. Khanghah must be considered under the effective control of Mr. Heydarov. It is also demonstrably clear that, when he negotiated the Forced Sale Agreement with Mr. Bahari in June 2002, Mr. Khanghah acted under the imperative direction of Mr. Heydarov (and possibly of Mr. Aliyev as well), who stood to benefit the most from any such agreement. Moreover, the negotiations purported to lift certain tax penalty issues – something Mr. Khanghah did not have the ability to do; only someone of Mr. Aliyev or Mr. Heydarov's authority could have done that. This indicates that Mr. Khanghah was acting at their behest. Mr. Khanghah's actions are therefore attributable to Azerbaijan under Article 8 of the ARSIWA.[1221] Since then, Mr. Khanghah was apparently

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1219 SoD ¶ 42.

1220 SoC ¶ 179(i); **C-005** Wikileaks U.S. Cable, Azerbaijan Who Owns What, Vol. 2, 25 February 2010, ¶ 9(C).

1221 *Italian Republic v. Republic of Cuba*, ad hoc state-state arbitration, Final Award [English translation extracts and French original] ("***Italy v. Cuba***"), 15 July 2008 (**CLA-259**), ¶ 175: "By the Republic of Cuba's own admission, Medi Club was paralyzed for over 8 months due to the problem posed by the relationship between Finmed Ltd and Finmed srl. The Arbitral Tribunal considers it impossible that the Ministry of Tourism, which owns Cubanacan, was not informed of this situation. It necessarily follows that if the blockage that prevented the transfer of the investment from Finmed Ltd to Finmed srl was the result of Cubanacan's conduct, as the Republic of Italy claims, the Ministry of Tourism, i.e. the Republic of Cuba, could not have been unaware of it.

We would then find ourselves in the situation referred to in Article 8 of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts, which imputes to the State the wrongful conduct of a person if this conduct could not have escaped its control. It follows from these observations that the question of whether the injury alleged by Finmed s.r.l. was caused by an internationally

rewarded with an executive position at Caspian Fish, on top of numerous Directorships in Gilan Holding-controlled companies.[1222]

V. THE TRIBUNAL HAS JURISDICTION OVER THE FPS CLAIMS

900. Azerbaijan submits that the Tribunal does not have jurisdiction over any FPS claim by virtue of the MFN clause contained in Article 2(3) of the Treaty because: (i) the scope of Article 2(3) is restricted to the FET standard; (ii) Article 2(3) "cannot be relied upon to import a standard of protection foreign to the main treaty" and "Claimant has failed to identify any actual discriminatory treatment as between him and a third State's investor"; and (iii) Azerbaijan is only bound from the comparator treaties' entry into force.[1223]

901. None of Azerbaijan's propositions prevents the Tribunal from exercising its jurisdiction over Claimant's FPS claims. Mr. Bahari is, therefore, entitled to benefit from the FPS guarantee, which is consistent with Azerbaijan's investment treaties with third party States like Kazakhstan and the UK,[1224] by operation of the MFN treatment provision in Article 2(3) of the Treaty.

A. THE SCOPE OF THE MFN IN ARTICLE 2(3) ENCOMPASSES THE FPS STANDARD.

902. Azerbaijan asserts that "[a] plain reading of Article 2(3) indicates that it applies only to more favourable guarantees of fair and equitable treatment."[1225] That is allegedly because: (i) the application of the *ejusdem generis* principle limits the word "treatment" in Article 2(3)'s second sentence to the specific language of "fair and equitable treatment" contained in the first sentence;[1226] and (ii) the use of the word "this" in the second sentence to qualify this treatment "refers to the promise of fair and equitable treatment made in the

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wrongful act of the Cuban State is inseparable from the examination of the allegations of the Republic of Italy that Cubanacan deliberately and wrongfully prevented the transfer of the investment from Finmed Ltd to Finmed srl" (our translation; emphasis added).

1222 **C-005** Wikileaks U.S. Cable, Azerbaijan Who Owns What, Vol. 2, 25 February 2010, ¶ 9(C).

1223 SoD ¶¶ 159-161.

1224 Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Azerbaijan on the promotion and protection of investments ("**Kazakhstan-Azerbaijan BIT**"), 16 September 1996 (**CLA-260**), Art. 2(3); Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Azerbaijan Republic for the Promotion and Protection of Investments ("**UK-Azerbaijan BIT**"), 4 January 1996 (**CLA-261**), Art. 2(3).

1225 SoD ¶ 160.

1226 SoD ¶¶ 160-161.

first sentence."[1227] In support of these contentions, Azerbaijan relies on the tribunals' reasoning in *Quasar de Valores v. Russia* and *Paushok v. Mongolia*.[1228] This position is not only incorrect, it is misleading.

903. *First*, the correct application of *ejusdem generis* enables Mr. Bahari, through the second sentence of Article 2(3), to invoke the FPS standard of treatment contained in Azerbaijan's investment treaties with third party States like Kazakhstan or the UK if it is more favorable than the treatment contained in the first sentence of Article 2(3).[1229]

904. The *ejusdem generis* principle is not as narrow as Azerbaijan presents it to. Azerbaijan only partially and selectively quotes Baetens, who summarized her study of the principle's application under international law as follows:

> In sum, the *sensu stricto* application of the *ejusdem generis* principle focuses on the interpretation of a phrase by reference to what is said in the preceding sentence or paragraph, even though occasionally also the object and purpose of a text are alluded to. Increasingly, however, such object and purpose form the main focus of the interpretative debate, leading to the adaptation and expansion of the *ejusdem generis* principle.[1230]

905. Baetens goes on to discuss a number of cases where:

> *ejusdem generis* serves neither to interpret a general word by reference to surrounding specific words nor to restrict the scope of a non-exhaustive list by reference to the items expressed in the list. Instead, it is used to understand whether a general word, or a right or obligation, in a treaty is of the same kind or class as another. That is, it functions as a way of comparing the subject-matter of distinct rights or obligations. In this broader use, the source of the genus is not immediately preceding or surrounding words; it can be the entire object and purpose of the treaty in which the right or obligation is located.

1227 SoD ¶ 161.

1228 SoD ¶¶ 161-167; *Quasar de Valores SICAV S.A., Orgor de Valores SICAV S.A., GBI 9000 SICAV S.A. and ALOS 34 S.L. v. The Russian Federation*, SCC Case No. 24/2007, Award on Preliminary Objections, 20 March 2009 (**RLA-70**); *Paushok v. Mongolia*, Award on Jurisdiction and Liability, 28 April 2011 (**CLA-134**).

1229 Kazakhstan-Azerbaijan BIT, 16 September 1996 (**CLA-260**), Art. 2(3); UK-Azerbaijan BIT, 4 January 1996 (**CLA-261**), Art. 2(3).

1230 F. Baetens, "Chapter 7: Ejusdem Generis and Noscitur a Sociis" in J. Klingler, Y. Parkhomenko, et al. (eds), Between the Lines of the Vienna Convention? Canons and Other Principles of Interpretation in Public International Law (2018) (**RLA-157**), p. 145 (emphasis added).

> The most frequent use of the *ejusdem generis* principle *sensu latu* is made in the context of MFN treatment…[1231]

906. Fair and equitable treatment and full protection and security are of the same kind or class; they share the same object of protecting an investor's rights against unlawful treatment.[1232] They are also connected through the object and purpose of the Treaty, which is to encourage foreign investment by ensuring that foreign investors are protected under international law.[1233] As such, according to Azerbaijan's own authority, the *ejusdem generis* principle enables Mr. Bahari to rely on the FPS provision contained in other treaties which share the same object and purpose.

907. *Second*, Azerbaijan's attempt to artificially limit the scope of Article 2(3) is unavailing. The Statement of Defense emphasizes the use of the terms "[t]his treatment" in Article 2(3) to claim that the MFN provision only targets the fair and equitable treatment described in the first sentence.[1234] However, this reference to the word "treatment" must encompass not only the FET standard but the FPS standard because they both form categories of the broader customary minimum standard, even if they are distinct.[1235]

908. More importantly, and in any event, both the Azerbaijan-Kazakhstan BIT (1996) and the Azerbaijan-UK BIT (1996) provide for a protection of fair and equitable treatment that also

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1231 F. Baetens, "Chapter 7: Ejusdem Generis and Noscitur a Sociis" in J. Klingler, Y. Parkhomenko, et al. (eds), Between the Lines of the Vienna Convention? Canons and Other Principles of Interpretation in Public International Law (2018) (**RLA-157**), pp. 145-146.

1232 See e.g. Organization of Economic Cooperation and Development, "Fair and Equitable Treatment Standard in International Investment Law", OECD Working Papers on International Investment, No. 2004/03 (2004) (**CLA-262**), pp. 23-24, citing Dr. Mann's proposition that investments shall have fair and equitable treatment and full protection and security constitutes the "overriding obligation" of the UK BITs.

1233 Treaty (**CLA-001**), Preamble ("The Government of the Islamic Republic of Iran and the Government of the Republic of Azerbaijan hereinafter referred to as the Parties; Desiring to promote greater economic cooperation between them, particularly with respect to investments by investors of one Party in the territory of the other Party;… Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources"); Kazakhstan-Azerbaijan BIT, 16 September 1996 (**CLA-260**), Preamble ("… 'the Contracting Parties', Desiring to strengthen economic cooperation on a long-term basis for the mutual benefit of both Contracting Parties, Intending to create and support favourable conditions for investors of one Contracting Party in the territory of the other Contracting Party, Recognizing that assistance and reciprocal protection of investments under this Agreement stimulates business initiative in this field"); UK-Azerbaijan BIT, 4 January 1996 (**CLA-261**), Preamble ("'the Contracting Parties'[]; Desiring to create favourable conditions for greater investment by nationals and companies of one State in the territory of the other State; Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States").

1234 SoD ¶ 161.

1235 *See* C. McLachlan, L. Shore and M. Weiniger, *International Investment Arbitration: Substantive Principles* (2nd ed.), (Oxford, 2017) (**CLA-263**), ¶¶ 7.260-7.2.62.

includes full protection and security.[1236] In other words, these clauses define FET in broader terms than in the Treaty and, as such, they are clearly covered by Article 2(3).[1237]

909. Accordingly, even if Claimant were to accept that the second sentence of Article 2(3) only extends MFN treatment to fair and equitable treatment, *quod non*, Claimant may use this provision to capture a broader FET standard that includes FPS, as provided in the two aforementioned BITs.

B. MR. BAHARI CAN RELY ON ARTICLE 2(3) TO IMPORT SUBSTANTIVE PROTECTIONS FROM OTHER TREATIES CONCLUDED BY AZERBAIJAN.

910. Respondent asserts that "Articles 2(3) is only engaged to the extent the Claimant can identify actual treatment accorded by Azerbaijan to the investor of a third State" and that Claimant has failed to identify "any such treatment granted to any investment of a third State".[1238] In support of these arguments, Respondent cites *Hochtief v. Argentina* and *İçkale İnşaat Limited Şirketi v. Turkmenistan*.[1239] Again, Azerbaijan's position is not only incorrect, but also misleading.

911. *First*, it is not true that "an MFN clause cannot be relied on to import substantive protections that are wholly foreign to the basic treaty."[1240] This assertion is based on a misleading reading of the tribunal's decision on jurisdiction in *Hochtief v. Argentina*. Again, Respondent misquotes *Hochtief* by failing to quote the preceding sentence, in which the tribunal held that:

> In contrast (to take an example comparable to the ILC example concerning commercial treaties and extradition), rights of visa-free entry for the

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1236 Kazakhstan-Azerbaijan BIT, 16 September 1996 (**CLA-260**), Art. 3(2) ("Investment made by investors of either Contracting Party shall be accorded fair and equitable conditions and full protection and security in the territory of the other Contracting Party"); UK-Azerbaijan BIT, 4 January 1996 (**CLA-261**), Art. 2(3) ("Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party").

1237 See *Paushok v. Mongolia*, Award on Jurisdiction and Liability, 28 April 2011 (**CLA-134**), ¶¶ 571. Finding that if "there exists any other BIT between Mongolia and another State which provides for a more generous provision relating to fair and equitable treatment, an investor under the Treaty is entitled to invoke it."

1238 SoD ¶¶ 170-172.

1239 SoD ¶¶ 171-172; *HOCHTIEF v Argentina*, ICSID Case No. ARB/07/31, Decision on Jurisdiction, 24 October 2011 (**RLA-158**); *İçkale İnşaat Limited Şirketi v Turkmenistan*, ICSID Case No. ARB/10/24, Award, 8 March 2016 (**RLA-87**).

1240 SoD ¶ 170.

> purposes of study, given to nationals of a third State, could not form the basis of such a complaint under the BIT.[1241]

912. The holding quoted by Azerbaijan is, therefore, much narrower than what it contends. According to *Hochtief*, an MFN provision must extend preexisting rights, or rights pertaining to the same subject matter as the treaty which contains the clause. An MFN provision does not, however, create wholly new rights. As mentioned above, the FPS standard forms part of the customary minimum standard of treatment, like the FET standard. There is no question that FPS protection pertains to the same subject matter as the Treaty. *Hochtief* actually supports Claimant's position.

913. *Second*, it is not true that the "MFN promise is designed to protect against actual discrimination as between foreign investors."[1242] Simply put, there is no such rule under international law. Azerbaijan's contention is exclusively based on the award in *Içkale v. Turkmenistan*, which involved a clause providing national treatment and MFN protection to investments "in similar situations" to national or third party investments.[1243] Interpreting this clause, the *Içkale* tribunal found that:

> When including the terms "similar situations" in Article II(2) of the BIT, the State parties must be considered to have agreed to restrict the scope of the MFN clause so as to cover discriminatory treatment between investments of investors of one of the State parties and those of investors of third States, insofar as such investments may be said to be in a factually similar situation.[1244]

914. There is no such comparator restriction in Article 2(3) of the Treaty. Whatever the tribunal held in respect of MFN treatment in *Içkale v. Turkmenistan* is entirely inapplicable to the present case. There is no need to identify any treatment actually granted. It suffices to show that the rights targeted by Article 2(3) share the same subject matter as the Treaty, as shown above, and that those rights belong to the same category of persons, i.e. Iranian investors in Azerbaijan.

1241 *HOCHTIEF v Argentina*, ICSID Case No. ARB/07/31, Decision on Jurisdiction, 24 October 2011 (**RLA-158**), ¶ 81.

1242 SoD ¶ 172.

1243 *İçkale İnşaat Limited Şirketi v Turkmenistan*, ICSID Case No. ARB/10/24, Award, 8 March 2016 (**RLA-87**), ¶¶ 326-332.

1244 *İçkale İnşaat Limited Şirketi v Turkmenistan*, ICSID Case No. ARB/10/24, Award, 8 March 2016 (**RLA-87**), ¶ 332.

C. THE TRIBUNAL HAS TEMPORAL JURISDICTION OVER THE FPS CLAIMS.

915. Finally, Respondent asserts that the Tribunal has no temporal jurisdiction over FPS claims. That is purportedly because Azerbaijan's BITs with Serbia and Switzerland only entered into force on 14 December 2011 and 25 June 2007, respectively.[1245]

916. As indicated in the Statement of Claim, these two treaties were mentioned as examples of treaties containing an FPS clause.[1246] Respondent does not dispute, however, that "[n]umerous IIAs concluded by Azerbaijan with third party States contain an unqualified formulation of the [FPS standard] to investors and investments."[1247] This includes numerous treaties that have entered into force before Azerbaijan's unlawful measures against Mr. Bahari and his investments, e.g. the Azerbaijan-Kazakhstan BIT (1996), which entered into force in April 1998 and the Azerbaijan-UK BIT (1996), which entered into force in December 1996.[1248] The former provides that "Investment made by investors of either Contracting Party shall be accorded fair and equitable conditions and full protection and security in the territory of the other Contracting Party," while the latter provides that "Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party."[1249] On Azerbaijan's own case, Mr. Bahari may benefit from these provisions from the date the Treaty entered into force.[1250]

917. Simply put, there is no question that Azerbaijan was under an obligation to provide MFN treatment under Article 2(3) of the Treaty at the time it took detrimental measures against Mr. Bahari and his investments in Azerbaijan, and there is equally no question that Article 2(3) also encompasses FPS.

1245 SoD ¶ 173.

1246 SoC ¶ 544.

1247 SoC ¶ 544.

1248 UNCTAD, Table of Azerbaijan's Bilateral Investment Treaties, retrieved 20 December 2023 (**RLA-161**).

1249 Kazakhstan-Azerbaijan BIT, 16 September 1996 (**CLA-260**), Art. 3(2); UK-Azerbaijan BIT, 4 January 1996 (**CLA-261**), Art. 2(3).

1250 International Law Commission, Draft Articles on Most-Favoured-Nation Clauses with commentaries, art. 20, 1978 (**RLA-159**), article 20(1) and p. 55, ¶ 11.

PART V: LEGAL MERITS

918. The Statement of Claim established that Azerbaijan's actions and omissions were a brazen and systematic exploitation of Mr. Bahari and taking of his investments, carried out by and for the benefit of Azerbaijan's ruling elite under a veil of impunity. This Reply has further strengthened and established this position, while demonstrating the fallacy of Azerbaijan's Defense. From both a factual and legal perspective, Azerbaijan has breached its obligations under the Treaty to afford protection to Mr. Bahari and his investments.

I. AZERBAIJAN FAILED TO TREAT MR. BAHARI'S INVESTMENTS FAIRLY AND EQUITABLY

919. Azerbaijan makes the following arguments in its Statement of Defense to escape its manifest breach of Article 2 of the Treaty: (i) the FET standard does not "differ materially from the minimum standard of treatment and the threshold to establish a breach of FET is high";[1251] (ii) Azerbaijan gave no assurances that could rise to legitimate expectations on the part of Mr. Bahari;[1252] and (iii) Azerbaijan did not otherwise breach the FET standard.[1253] These untenable arguments are discussed in turn.

A. THE FAIR AND EQUITABLE TREATMENT STANDARD IN ARTICLE 2 OF THE TREATY IS AN AUTONOMOUS AND FLEXIBLE STANDARD OF PROTECTION.

920. Azerbaijan "takes no issue with the propositions of law" submitted by Mr. Bahari at paragraphs 492 to 497 of the Statement of Claim, but only disputes that the autonomous FET standard is generally accepted as broader than the customary international law minimum standard of treatment.[1254] Azerbaijan asserts that the two are not materially different.[1255] Insofar as this suggests that the FET standard contained in Article 2(3) of the Treaty is equivalent to the international minimum standard, this is wrong.

921. Numerous tribunals have recognized that the FET standard as contained in modern treaties and applied by jurisprudence over the last three or four decades is autonomous,

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1251 SoD Part 4, Section II.A.

1252 SoD ¶¶ 384-390.

1253 SoD ¶¶ 391-404.

1254 SoD ¶ 381. See SoC ¶ 492.

1255 SoD ¶ 381.

i.e. it cannot be equated to the international minimum standard of treatment under customary international law.[1256] In short, the latter constitutes a "floor" rather than a "ceiling" in terms of the substantive protection afforded to foreign investors.[1257] This was notably held in *Saluka*, which Azerbaijan heavily relies on.[1258]

922. Even tribunals that have not decided that unqualified FET provisions like Article 2(3) set out an autonomous FET standard, they nonetheless accept that the FET standard has evolved, and is broader than the minimum standard as originally formulated in the *Neer* case.[1259]

923. Even if Claimant was to accept that Article 2(3) of the Treaty does not set out an autonomous FET standard (*quod non*), it should be undisputed that this provision offers a broad degree of protection to investors, and whether any treatment is deemed to comply with it ultimately depends on the circumstances of any given case.[1260]

924. Azerbaijan emphasizes that the specific circumstances of any given case are critical to any analysis of the FET standard.[1261] Of course they are. Azerbaijan jumps, however, to the conclusion that there is a high threshold to establish a breach of the FET standard,[1262] citing to *Biwater v. Tanzania*.[1263] This is a red herring.

1256 See e.g. *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award ("***Crystallex v. Venezuela***"), 4 April 2016 (**CLA-066**), ¶ 530; *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Award, 1 March 2012 (**CLA-061**), ¶ 265; *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Liability, 27 December 2010 (**CLA-075**), ¶ 107.

1257 See e.g. *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability ("***Lemire v. Ukraine***"), 14 January 2010 (**CLA-092**), ¶ 253.

1258 *Saluka Investments BV v. The Czech Republic*, PCA Case No. 2001-04, Partial Award ("***Saluka v. Czech Republic***"), 17 March 2006 (**CLA-056**), ¶ 295 ("Whichever the difference between the customary and the treaty standards may be, this Tribunal has to limit itself to the interpretation of the 'fair and equitable treatment' standard as embodied in Article 3.1 of the Treaty. That Article omits any express reference to the customary minimum standard. The interpretation of Article 3.1 does not therefore share the difficulties that may arise under treaties (such as the NAFTA) which expressly tie the 'fair and equitable treatment' standard to the customary minimum standard. Avoidance of these difficulties may even be regarded as the very purpose of the lack of a reference to an international standard in the Treaty. This clearly points to the autonomous character of a 'fair and equitable treatment' standard such as the one laid down in Article 3.1 of the Treaty").

1259 See e.g. *Philip Morris Brand Sàrl (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Award ("***Philip Morris v. Uruguay***"), 8 July 2016 (**CLA-141**), ¶¶ 316-320; *OAO Tatneft v. Ukraine*, PCA Case No. 2008-08, Award, 29 July 2014 (**CLA-089**), ¶ 392.

1260 See e.g. *Philip Morris v. Uruguay*, Award, 8 July 2016 (**CLA-141**), ¶ 320.

1261 SoD ¶ 382(a).

1262 SoD ¶ 382(b).

1263 *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award ("***Biwater v. Tanzania***"), 24 July 2008 (**CLA-127**), ¶¶ 595-600.

925. Whilst what tribunals might consider to be a "high" or "low" threshold mainly depends on any given tribunal's particular views, the FET standard is first and foremost flexible, i.e. it falls to a tribunal to determine the types of conduct that would breach the standard on a case-by-case basis. What constitutes fair and equitable treatment can only be ascertained through the actual application of Article 2(3) of the Treaty to the specific facts of the present case. There is no rigid standard or abstract threshold to be met.[1264] As summarized by UNCTAD, the approach is:

> to identify certain forms of behaviour that appear to be contrary to fairness and equity in most legal systems and to extrapolate from this the type of State action that may be inconsistent with fair and equitable treatment, using the plain meaning approach. Thus, for instance, if a State acts fraudulently or in bad faith, or capriciously and wilfully discriminates against a foreign investor, or deprives an investor of acquired rights in a manner that leads to the unjust enrichment of the State, then there is at least a prima facie case for arguing that the fair and equitable standard has been breached.[1265]

926. In so doing, the Tribunal must also inquire about the proportionality or reasonableness of measures taken by Azerbaijan, by determining whether those measures bear a reasonable relationship to some rational policy and were appropriately tailored, so as not to impose an excessive burden on Mr. Bahari.[1266]

B. AZERBAIJAN VIOLATED MR. BAHARI'S LEGITIMATE EXPECTATIONS IN BREACH OF THE FET STANDARD.

927. Azerbaijan starts its discussion of whether it breached Mr. Bahari's legitimate expectations by denying that the cases cited at paragraphs 499 to 502 of the Statement of Claim are relevant.[1267] In short, Azerbaijan argues that, contrary to the claimants in those cases, Mr. Bahari never received any specific promise or assurance from Azerbaijan that he could have relied on when he made his investments.

1264 By way of example, the tribunal in *Tatneft* found that a "high" standard of breach is not the only one relevant under the FET, and conduct which might not be as grave as to amount to egregiousness or bad faith "but which nonetheless interferes with the legitimate exercise of rights of the protected individual might equally qualify as a kind of conduct resulting in liability" (see *OAO Tatneft v. Ukraine*, PCA Case No. 2008-08, Award, 29 July 2014 (**CLA-089**), ¶ 411).

1265 See *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Liability, 27 December 2010 (**CLA-075**), ¶ 112.

1266 See e.g. *Philip Morris v. Uruguay*, Award, 8 July 2016 (**CLA-141**), ¶¶ 409-410; *Marfin v. Cyprus*, ICSID Case No. ARB/13/27, Award, 26 July 2018 (**RLA-167**), ¶¶ 1213 and 1215.

1267 SoD ¶ 384.

928. Azerbaijan notably makes the bizarre argument that, since Mr. Bahari invested in Azerbaijan before the Treaty entered into force, any promise or assurance he could have obtained during that period cannot be legally actionable under the Treaty.[1268] This is wrong for multiple reasons, but the following two are prominent.

929. *First*, Azerbaijan's sole support for this unorthodox submission is that the Tribunal only has "jurisdiction for alleged treaty violations over the acts and events that have taken place after the entry into force of the Treaty…, but not over those that have taken place before."[1269] This is a recitation of the inter-temporal principle, which is discussed at length above. This does not mean (and cannot mean as a matter of law) that an investor cannot ground a claim of legitimate expectations on the basis of representations made before any given treaty's entry into force.

930. *Second*, Azerbaijan's proposition of law would defeat the very purpose of Article 12(1) of the Treaty, which covers pre-existing investments.[1270] By definition, legitimate expectations arise at the time the investment is made.[1271] Azerbaijan's argument that legitimate expectations cannot arise as to assurances made prior to a treaty's entry into force amounts, therefore, to denying to all pre-existing investments the benefit of a significant aspect of the protection afforded by the FET standard. As discussed above, prior-treaty conduct can serve to establish the factual background, e.g. legitimate expectations, of a claim. This is what happened in *Murphy v. Ecuador.* The applicable treaty entered into force in 1997, whereas the claimant made its original investment in 1987 and asserted that legitimate expectations arose in 1996 when it entered into a participation contract with the respondent State.[1272] The tribunal saw no issue with regard

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1268 SoD ¶ 385.

1269 *Société Générale v. Dominican Republic*, Award on Preliminary Objections to Jurisdiction, 19 September 2008 (**CLA-041**), ¶ 84.

1270 Treaty (**CLA-001**), Article 12.

1271 See e.g. *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006 ("***LG&E v. Argentina***") (**CLA-072**), ¶ 130. They can also arise at the time the investors makes further investments, see *AES Summit Generation Limited and AES-Tisza Erömü Kft. v. Republic of Hungary (II)*, ICSID Case No. ARB/07/22, Award, 23 September 2010 (**CLA-128**), ¶¶ 9.3.13-9.3.16.

1272 *Murphy Exploration and Production Company International v. Republic of Ecuador II*, PCA Case No. 2012-16 (formerly AA 434), Partial Final Award (**CLA-264**), 6 May 2016, List of defined terms and abbreviations, ¶¶ 250 and 258.

to the inter-temporal principle in finding that legitimate expectations did, in fact, arise in 1996, i.e. one year before the treaty's entry into force.[1273]

931. Azerbaijan repeats several times in the Statement of Defense that legitimate expectations cannot arise from assurances made before the Treaty's entry into force.[1274] Azerbaijan is wrong every time.

932. Azerbaijan also takes issue with Mr. Bahari's claim that an investor's expectations can arise from representations or assurances, stating that both *CMS v. Argentina* and *LG&E v. Argentina* are inapposite because they concerned claims arising out of investments made as a result of privatization policy, which was then abrogated in apparent frustration of the investor's rights. Azerbaijan concludes that the focus of these cases was on stability and predictability, which, presumably, means that they are irrelevant.[1275] Mr. Bahari does not claim that Azerbaijan changed the legal system that first incited him to make his investments. Nor does Mr. Bahari claim that these cases share a factual resemblance with the present case. These two awards simply support Mr. Bahari's proposition that representations and assurances can be found in legislation and treaties, as well as licenses and other approvals by a host State, which Azerbaijan does not otherwise dispute.[1276]

933. Azerbaijan further asserts that Mr. Bahari "concedes" that expectations can arise from the legal and business framework put in place with a specific aim to induce foreign investments.[1277] Inasmuch as Azerbaijan suggests that Mr. Bahari can rely on the legal and business framework only to the extent that these were put in place to induce foreign investments from "specified foreign investors," this is not conceded.[1278] Respondent's proposition is artificially restrictive. As stated in *AWG v. Argentina*:

> When an investor undertakes an investment, a host government through its laws, regulations, declared policies, and statements creates in the investor certain expectations about the nature of the treatment that it may anticipate from the host State. The resulting reasonable and legitimate expectations are important factors that influence initial investment

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1273 *Murphy Exploration and Production Company International v. Republic of Ecuador II*, PCA Case No. 2012-16 (formerly AA 434), Partial Final Award (**CLA-264**), 6 May 2016, ¶ 273.

1274 SoD ¶¶ 388(b), 388(c) and 388(d).

1275 SoD ¶ 386.

1276 SoD ¶ 386.

1277 SoD ¶ 387.

1278 SoD ¶ 387.

> decisions and afterwards the manner in which the investment is to be managed…
>
> Where a government through its actions subsequently frustrates or thwarts those legitimate expectations, arbitral tribunals have found that such host government has failed to accord the investments of that investor fair and equitable treatment. [1279]

934. As a result of numerous assurances and promises made by Azerbaijan, which were relied on at the time Mr. Bahari made his investments in Azerbaijan, Mr. Bahari legitimately expected that Azerbaijan would not treat him and his investments unfairly and inequitably.

935. *First*, Azerbaijan's legal regime at the time of Mr. Bahari's investments was unambiguously focused on attracting and guaranteeing protections of foreign investment in that it ostensibly provided for a business and legal environment based on the rule of law.[1280] For example, this regime notably provided that:

a. State bodies and their executive officers will not interfere with a foreign investment except as permitted by legislation;

b. there is specific protection for foreign investments, including that investments are ensured by the relevant legislation of Azerbaijan, as well as by international agreements with other States (e.g. BITs);

c. foreign investors are guaranteed equal legal treatment, and shall be protected from measures of discriminatory nature which may hinder management, use, or termination of their investment;

d. foreign investors are entitled to compensation for unlawful damage caused by the actions of State bodies or their officials;

e. upon termination of investment activity a foreign investor has the right to get access to its investments and incomes connected with investments in monetary forms at real cost at the moment of termination; and

f. international treaties to which Azerbaijan is a party have priority over domestic legislation, where such international treaties establish norms different from the ones established under relevant domestic legislation.[1281]

1279 *AWG Group Ltd. v. The Argentine Republic,* Decision on Liability, 30 July 2010 (**CLA-073**), ¶¶ 222-223.

1280 SoC Section V.

1281 SoC ¶¶ 376-384.

936. Tellingly, the Statement of Defense does not mention or engage with any of these Azerbaijani laws and protections in its discussion of FET, or anywhere.

937. *Second*, these expectations were touted by Azerbaijan at every turn. This even included the plaque installed at Caspian Fish's entrance stating that "[redacted]"[1282]

938. Mr. Bahari's investments were reviewed, approved, and registered by the relevant Azerbaijani authorities, which acknowledged that his investments were foreign owned and controlled, which meant, in turn, that they would benefit from Azerbaijan's favorable regime towards foreign investments.[1283] Such approvals and registrations made specific reference to laws of the Republic of Azerbaijan on foreign investment protection and that the companies were foreign owned:

a. The Charter of Caspian Fish BVI's representative office expressly states the company is made according to *inter alia* the Law of the Azerbaijan Republic on "Protection of foreign investments."[1284]

b. The registration of Caspian Fish BVI's representative office expressly states that its "incorporation documents have been drawn up in accordance with the Laws of the Republic of Azerbaijan "On protection of foreign investments" and "On state registration of foreign entities."[1285]

c. The Charter of Caspian Fish LLC and its registration document from the Ministry of Justice both states that it is fully owned by a foreign investor.[1286]

d. The Coolak Baku JVA expressly notes that it is an Azerbaijani-Iranian Joint Venture, including Mr. Bahari's Iranian passport number, and that it "[redacted]".[1287]

1282 **C-062** Dieter Klaus Photograph – Heydar Aliyev Plaque.

1283 SoC ¶ 287.

1284 **C-003** Charter of the Representative Office of Caspian Fish Co. Inc., 27 April 1999.

1285 **C-365** [Respondent Document Production - 002_02] Opinion on foundation documents of Caspian Fish BVI Rep Office, undated.

1286 **R-57** Charter of the LLC, 11 September 2000; **C-366** [Respondent Document Production - 044_02] Opinion on foundation documents of Caspian Fish LLC, undated.

1287 **C-001** Coolak Baku Joint Venture Agreement, 23 January 1998, p. 1.

939. *Third*, Mr. Bahari entered into a contract with two prominent figures of the State apparatus, Messrs. Aliyev and Heydarov.[1288] At that time, Mr. Aliyev who is currently Azerbaijan's President, was a Member of the Azerbaijani Parliament (and, accessorily, the son of then-President Heydar Aliyev). It was Mr. Aliyev who introduced Mr. Bahari to Mr. Heydarov, now Minister of Emergency Situations, who was at the time the Chairman of the State Customs Committee of Azerbaijan.[1289] In contracting with these two gentlemen, Mr. Bahari had every expectation that Azerbaijani authorities would treat the investment in compliance with the applicable legal regime. This expectation was met, to a certain extent, and further reinforced, for a brief period of time, when it was announced that Azerbaijan's then-President Heydar Aliyev himself would attend and give an inaugural speech at the Caspian Fish grand opening ceremony. [1290]

940. Mr. Bahari reasonably relied on an expectation that his investments in Azerbaijan would be treated in accordance with Azerbaijani laws on the protection of foreign investors and investments.

941. In breach of these legitimate expectations, Azerbaijan's volte-face completely disregarded its own laws that expressly promise Azerbaijan would afford protection and fair treatment to foreign investment. [1291] Azerbaijan proceeded to separate Mr. Bahari from his investments without an iota of due process. Every single organ of the State, including the Ministry of Justice, which registered and had oversight over these foreign investments, and the judicial system as whole, was conspicuously absent. The domestic foreign investment laws that protected and attracted investment were completely ignored in favor of enriching members of the Azerbaijani government and their families, as well as other Azerbaijani nationals.

942. Mr. Bahari's legitimate expectations that Azerbaijan would protect and recognize the time, money and effort he spent on his multiple investments in Azerbaijan were entirely frustrated. Instead, Azerbaijan acknowledged and adopted and undertook the conditions for Mr. Bahari's forced removal and separation from his investments; and then continuously enforced its decision to do away with Mr. Bahari and make sure that he could

1288 **C-004** Shareholders Agreement for Caspian Fish Co. Inc., 27 April 1999.

1289 SoC ¶¶ 68-69.

1290 SoC ¶¶ 123-131.

1291 SoC ¶¶ 374-431.

never recover his investments, obtain compensation for them, or even access information about them. This frustration of Mr. Bahari's legitimate expectations continues to this day.

C. AZERBAIJAN BREACHES THE FET STANDARD IN MULTIPLE WAYS.

943. Azerbaijan devotes a significant portion of its submissions on FET to distinguishing the cases cited by Mr. Bahari in his Statement of Claim from the present proceedings, in the apparent hope that, should the Tribunal find that those cases do not present the same exact circumstances as the present one, this would necessarily mean that no FET breach occurred.[1292] This is unpersuasive and speaks volumes about Azerbaijan's inability to explain how it could be deemed to have acted fairly and equitably towards Mr. Bahari and his investments. Whilst circumstances from one case to the other may be dissimilar, the propositions of law made referred to in the Statement of Claim stay the same and they point to a finding that Azerbaijan breached Article 2(3) of the Treaty in a number of ways.

944. Azerbaijan does not dispute that the FET standard incorporates the obligation: (i) to refrain from harassment, coercion and abusive treatment; (ii) to refrain from arbitrary and discriminatory treatment; (iii) to provide transparency and due process; and (iv) to act in good faith.[1293] Azerbaijan's breaches of these obligations as contained Article 2(3) are discussed in turn.

1. Azerbaijan Harassed, Coerced and Abused Mr. Bahari and His Investments

945. Azerbaijan simply asserts that Mr. Bahari failed to particularize its claim with regard to harassment in the Statement of Claim.[1294] Not so. Claimant properly and comprehensively set out both his factual and legal case in the Statement of Claim, and how Azerbaijan's acts and omissions breached multiple provisions of the Treaty.

946. As discussed above, Azerbaijan has engaged in a systematic and continuing campaign of harassment of Mr. Bahari, his investments, and anyone related to Mr. Bahari one way or the other, in the transparent goal of taking Mr. Bahari's investments for the benefit of powerful individuals within the State apparatus. That such a systematic campaign was engaged is clear from the fact that, as soon as Mr. Bahari's main investment, Caspian Fish, was due to launch, Mr. Bahari was forcibly removed from it and then Azerbaijan as

1292 See SoD ¶¶ 394, 398, 400 and 403.

1293 SoD ¶ 391.

1294 SoD ¶ 392.

a whole. Azerbaijan has enforced, and keeps enforcing even today, its decision to ensure that Mr. Bahari would never receive the fruits of his investments. Whilst this campaign was initiated before the Treaty entered into force on 20 June 2002, known subsequent instances of harassment evidencing Azerbaijan's continuous breach of FET include, but are not limited to:

a. Harassment of two lawyers who, on different occasions, were instructed by Mr. Bahari to investigate the status of his investments and the possibility to bring a claim before Azerbaijani courts, thereby ensuring that Mr. Bahari would never obtain justice in Azerbaijan.[1295]

b. Harassment of every person ever susceptible to provide any information to Mr. Bahari about the status of his investments in Azerbaijan, thereby ensuring that Mr. Bahari could not only never re-access his investments by his own means, but also would have every difficulty obtaining evidence for domestic or arbitration proceedings.[1296]

c. Harassment of Mr. Bahari, his family and his close ones, thereby ensuring that Mr. Bahari would never feel safe again, wherever he lives, in the obvious goal of discouraging him to bring a claim.[1297]

947. Azerbaijan asserts that Mr. Bahari is unable to prove that any such conduct in fact occurred.[1298] This is false. To the contrary there is strong evidence that Azerbaijan assaulted or otherwise threatened not only Mr. Bahari and his relatives, but also his employees and legal advisors.[1299]

948. Azerbaijan also denies that its conduct occurred as a result of a campaign against Mr. Bahari's investments; at best, Azerbaijan says, any such campaign occurred against natural persons connected to Mr. Bahari.[1300] In support of this rather cynical submission, Respondent cites to *Belokon v. Kyrgyzstan*, where the tribunal found that the applicable investment treaty only required FET in accordance with investments, the definition of

1295 *Supra*, Part II, Section V.C (Harassment of Mr. Kilic) and Section V.G (Harassment of Mr. Allahyarov).

1296 *Supra*, Part II, Section V (Azerbaijan Prevents Any Efforts to Recover Investments).

1297 *Supra*, Part II, Section V.E (Harassment of Mr. Bahari and his Family).

1298 SoD ¶ 393(a).

1299 *Supra*, Part II, Section V (Azerbaijan Prevents Any Efforts to Recover Investments).

1300 SoD ¶ 393(b).

which did not encompass former directors and management of the investment company.[1301] The *Belokon* finding does not support Azerbaijan's position:

a. the *Belokon* tribunal insisted that investments did not encompass former employees of the investment company. Mr. Bahari and Mr. Moghaddamn were representatives of Caspian Fish and Coolak Baku *when* they were harassed. Moreover, Mr. Kilic and Mr. Allahyarov, legal counsel, were threatened *because* they investigated Mr. Bahari's investments. Azerbaijan acted against them for the sole reason that they were related to Mr. Bahari's investments.

b. In any event, whilst the *Belokon* tribunal found that it did not have authority to consider criminal proceedings against former employees in its analysis under the FET standard, that is "except insofar as they form a pattern which may be relevant in assessing the context as a whole."[1302] Here, the pattern of Azerbaijan's misdeeds towards Mr. Bahari and his investments has been amply demonstrated. Accordingly, the Tribunal may find a breach of the FET standard in relation to the harmful measures taken against Mr. Bahari and his close associates, including, *inter alia*, Messrs. Moghaddam, Kilic and Allahyarov.

949. Azerbaijan also fails to explain how any of the measures against Mr. Bahari, his investments, and his associates bears any reasonable relationship to any rational policy and was appropriately tailored to that policy. Azerbaijan cannot even suggest, much less sustain, the existence of a policy that would somehow have justified its treatment of Mr. Bahari and his investments. This is because neither Mr. Bahari nor his investments (while he was in country) was ever even alleged with any wrongdoing in Azerbaijan. Nor does Azerbaijan explain what policy could justify the persecution of Mr. Bahari, his investments, and his associates until today. In the absence of any such rational policy, it should be undisputed that Azerbaijan imposed an excessive and unreasonable burden on Mr. Bahari.[1303]

950. Azerbaijan also contends that while the standard of proof for a finding of FET breach remains the balance of probabilities, a sufficient weight of positive evidence is required where there are serious allegations of misconduct, as opposed to pure probabilities or

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1301 *Belokon v. Kyrgyzstan*, PCA Case No. AA518, Award, 24 October 2014 (**RLA-168**), ¶ 245.

1302 *Belokon v. Kyrgyzstan*, PCA Case No. AA518, Award, 24 October 2014 (**RLA-168**), ¶ 245.

1303 *Philip Morris v. Uruguay*, Award, 8 July 2016 (**CLA-141**), ¶¶ 409-410; *Marfin v. Cyprus*, ICSID Case No. ARB/13/27, Award, 26 July 2018 (**RLA-167**), ¶¶ 1213 and 1215.

circumstantial inferences.[1304] Again, Respondent cites an authority that does not support its proposition.[1305] In *Rompetrol v. Romania*, the tribunal discussed the parties' opposite views on the standard of proof (with, in short, the claimant disputing the respondent's submission that "clear and convincing evidence," as opposed to the "normal" standard of proof, was required "to sustain allegations of unlawful or malicious conduct, or of bad faith, against a State") and found that it was "unable to accept, in full, the position of either Party."[1306] The tribunal concluded its examination of the parties' arguments and relevant authorities as follows:

> Therefore the Tribunal, while applying the normal rule of the "balance of probabilities" as the standard appropriate to the generality of the factual issues before it, will where necessary adopt a more nuanced approach and will decide in each discrete instance whether an allegation of seriously wrongful conduct by a Romanian state official at either the administrative or policymaking level has been proved on the basis of the entire body of direct and indirect evidence before it.[1307]

951. In short, any allegation must be sufficiently proved by positive evidence.[1308] This does not depart substantially from the balance of probabilities test and is a far cry from the heightened standard of proof in case of allegations of harassment which Azerbaijan incorrectly describes as established by the *Rompetrol* tribunal.[1309]

952. Azerbaijan finally denies that the *Tokios* decision is relevant to the standard of proof because of the specific context of that case.[1310] Its argument appears to be that the findings in *Tokios* are not applicable here because the reasons behind Ukraine's campaign against the investor were different from the reasons behind Azerbaijan's campaign of harassment against Mr. Bahari and his investments. This makes no sense. A finding of breach does not require identifying the intention or malice behind the State's actions.[1311]

1304 SoD ¶ 394.

1305 *The Rompetrol Group N.V. v. Romania,* ICSID Case No. ARB/06/3, Award, 6 May 2013 ("***Rompetrol v. Romania***") (**CLA-051**).

1306 *Rompetrol v. Romania,* ICSID Case No. ARB/06/3, Award, 6 May 2013 (**CLA-051**), ¶ 181.

1307 *Rompetrol v. Romania,* ICSID Case No. ARB/06/3, Award, 6 May 2013 (**CLA-051**), ¶ 181.

1308 *Rompetrol v. Romania,* ICSID Case No. ARB/06/3, Award, 6 May 2013 (**CLA-051**), ¶ 273.

1309 SoD ¶ 394.

1310 SoD ¶ 394.

1311 See e.g. *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005 (**CLA-071**), ¶ 280 ("FET is an objective standard which is "unrelated to whether the Respondent has had any deliberate intention or bad faith in adopting the measures in question. Of course, such intention and bad faith can aggravate the situation, but are not an essential element of the standard.").

Ultimately, what matters for the present purposes is the standard of proof the *Tokios* tribunal applied in its decision making.[1312] Again, Respondent's argument falls flat.

953. The same goes for Azerbaijan's denial that *Waste Management v. Mexico* is relevant for the present case.[1313] The tribunal in *Waste Management* did not discuss in detail the applicable standard of proof; it simply found that the claimant had not proven its case.[1314] It nonetheless considered that investor harassment can derive from various host State organs acting in unison,[1315] which is the point Claimant made in the Statement of Claim.[1316]

2. Azerbaijan Failed to Act Transparently and Acted in Violation of Due Process

954. The Statement of Defense boldly denies that Mr. Bahari's claims have a factual basis.[1317] For example, in reference to the Ayna Sultan proceedings, Azerbaijan asserts that Mr. Bahari had access to Azerbaijani courts but chose not to avail himself of it.[1318] This is not a serious submission. As extensively discussed above, the Courts afforded Mr. Bahari zero due process, held unlawful proceedings *in absentia.* In any event, the evidence put forward to somehow demonstrate that Mr. Bahari took part is unreliable at best, and a fraud on this Arbitration at worst.[1319]

955. The reality is that, on numerous occasions, Mr. Bahari attempted to investigate the status of his investments and starting proceedings in Azerbaijan. All of Mr. Bahari's attempts were met with Azerbaijan resorting to direct threats and intimidation against Mr. Bahari and/or his contacts in Azerbaijan, whether they would be current or former employees or his legal counsel.[1320]

1312 *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Award, 26 July 2007 (**CLA-082**), ¶ 124 (emphasis added).

1313 SoD ¶ 395.

1314 *Waste Management v. United Mexican States (II),* ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004 ("***Waste Management v. Mexico***") (**CLA-086**), ¶ 139.

1315 *Waste Management v. Mexico (II)*, Award, 30 April 2004 (**CLA-086**), ¶ 138.

1316 SoC ¶ 518.

1317 SoD ¶ 397.

1318 SoD ¶ 397.

1319 *Supra*, Part II, Section II.E (Ayna Sultan Taken Through Courts); Bahari WS2 ¶ 17.

1320 SoC Sections III.D, III.E, III.I, III.J and III.K; *Supra*, Part II, Section V (Azerbaijan Prevents Any Efforts to Recover Investments).

956. The Treaty expressly contemplates that an investor must have the ability to be physically present in the host State. Article 2(2)(a) provides that:

> nationals of either Party shall be permitted to enter and remain in the territory of the other Party for purposes of establishing, developing, administering or advising on the operation of an investment […].[1321]

957. Azerbaijan ensured that Mr. Bahari could do none of these things after he was expelled from the country.

958. Moreover, because the Azerbaijani's judiciary system is beholden to the ruling families,[1322] there was no real prospect of Mr. Bahari getting back his investments or obtaining compensation through proceedings initiated in Azerbaijan.[1323] In fact, the proceedings that actually occurred in Azerbaijan had the exact opposite effect, and they were purposely conducted in Mr. Bahari's absence.[1324] Against this background, it is particularly disingenuous for Azerbaijan to claim that Mr. Bahari "chose ultimately not to avail himself of" his access to the Azerbaijani Courts.[1325]

959. Additionally, as discussed above, Azerbaijan maintains a veil of uncertainty and deniability over its conduct and Mr. Bahari's investments. This is ensured through the threats and intimidation, and even incarceration, discussed throughout Mr. Bahari's claim, as well as in Azerbaijan's domestic laws and its various State organs,[1326] all carefully crafted to ensure no sunlight permeates the veil. Astonishingly, Azerbaijan continues to ensure this opacity extends to these Arbitration proceedings.[1327]

960. Finally, Azerbaijan asserts that authorities relied on by Mr. Bahari in his Statement of Claim have no relevance to his claims because they concern the application of FET in the context of State decision-making processes, and no such process took place on these facts.[1328]

1321 Treaty (**CLA-001**), Art. 2(2)(a).

1322 Allan & Makarenko Report, ¶¶ 92-116; *Supra*, Part III, Section II.E Section II.E (Azerbaijan Knows No Rule of Law) and *Infra*, Part V, Section I.D (Azerbaijan Denied Mr. Bahari Justice and Failed to Provide Effective Means).

1323 *Supra*, Part III, Section II.E Section II.E (Azerbaijan Knows No Rule of Law) and *Infra*, Part V, Section I.D (Azerbaijan Denied Mr. Bahari Justice and Failed to Provide Effective Means).

1324 *Supra*, Part II, Section II.D (Coolak Baku Taken Through Courts) and Section II.E (Ayna Sultan Taken Through Courts).

1325 SoD ¶ 397.

1326 Allan & Makarenko Report, ¶¶ 28, 56-58.

1327 See e.g. *Supra*, Section V.H (Harassment of Ms. Ramazanova and Mr. Abdulmajidov).

1328 SoD ¶ 398.

Azerbaijan concludes, therefore, that since "Mr Bahari does not rely on any decision of a Government body concerning his alleged investments which can be scrutinized to determine the propriety of the process they undertook," the present facts of this case are not analogous to the aforementioned authorities, so that, presumably, they are not relevant.[1329] Again, this falls flat for two reasons.

961. *First*, Azerbaijan does not deny that the aforementioned authorities confirm that it is under an obligation to provide transparency and due process, which is the proposition of law in support of which they were cited.[1330] Nothing less, nothing more. It is entirely misleading to suggest that, since the facts in these cases are different from those in the present case, they are not relevant to ascertain the applicable law.

962. *Second*, and importantly, Azerbaijan's insistence that there is no apparent decision of a Government body concerning Mr. Bahari's investments proves the point.

963. It is obvious there was a decision by Azerbaijan to separate Mr. Bahari from his investments – there are multiple instances of Azerbaijan enforcing this decision, and it is not denied by Azerbaijan that Mr. Bahari has been separated from his investments. However, Azerbaijan did not even bother to issue any public decision or declaration to that effect. This is exactly how the law is used as a weapon in the hands of the powerful (rule *by* law), not an impartial framework applied fairly and equally to a foreign investor (rule *of* law).[1331]

964. For more than two decades now, Mr. Bahari has been made well-aware that he is not welcome in Azerbaijan and that his investments now belong to Government members or their families and affiliates. Azerbaijan never provided Mr. Bahari any reason, justification or explanation for this behavior. Notwithstanding the apparent absence of an express document by Azerbaijan – which, for all its faults, would have given at least some degree of insight to Mr. Bahari – all of Azerbaijan's actions and omissions since the fateful day of the grand opening ceremony until the date of this Statement of Reply indicate that Azerbaijan made such decision, and has continuously enforced it since then.[1332]

1329 SoD ¶ 398.

1330 SoC ¶¶ 522-529.

1331 Allan & Makarenko Report, ¶¶ 56-58.

1332 This is in line with Azerbaijan's practice of powerful figures within the State apparatus using their informal power to get formal State organs to act on their behalf, see Allan & Makarenko Report, ¶¶ 145-147.

965. Furthermore, as already explained above, Azerbaijan never explained what rational policy, if any, it may have been enforcing by taking the measures it took against Mr. Bahari, his investments and his associates, nor has it explained how those measures could be deemed to bear any reasonable relationship to that rational policy and how they could be deemed appropriately tailored to it.[1333] What could have driven Azerbaijan to act in the way it did over the last two decades is anyone's guess. There is, of course, strong evidence that Azerbaijan's behavior had nothing to do with any rational *policy*, but relates to the specific way the Azerbaijan kleptocratic system "works."[1334]

966. In short, Azerbaijan never acted transparently nor allowed transparency vis-a-vis Mr. Bahari and his investments, and failed to afford due process from the start and continued and reinforced that failure every time Mr. Bahari sought to solicit any information or assistance from the Azerbaijani authorities in relation to his investments.

3. Azerbaijan's Actions Were Arbitrary and Discriminatory

967. Azerbaijan alleges that Mr. Bahari offered no explanation of discrimination and failed to identify what possible prior guarantee was given by Azerbaijan before it turned its back on Mr. Bahari.[1335] As discussed above in relation to Mr. Bahari's legitimate expectations claim, Mr. Bahari had numerous reasons to reasonably believe that Azerbaijan would provide him and his investment protections guaranteed by law and with due process, and not turn its back on him as soon members of the Government and their families decided to take those investments for themselves.[1336]

968. Azerbaijan also again denies the relevance of Mr. Bahari's authorities as presented in the Statement of Claim.[1337] Citing to *Lemire* and *Glamis*, Azerbaijan states that discrimination requires a finding that the investor was treated differently from similar cases without justification.[1338] It also states that arbitrariness is where prejudice, preference or bias is

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1333 *Philip Morris v. Uruguay*, Award, 8 July 2016 (**CLA-141**), ¶¶ 409-410; *Marfin v. Cyprus*, ICSID Case No. ARB/13/27, Award, 26 July 2018 (**RLA-167**), ¶¶ 1213 and 1215.

1334 *Supra*, Part III, Section II (Azerbaijan's 'Limited Access Order' Political System); Allan & Makarenko Report, ¶¶ 4-7.

1335 SoD ¶ 399.

1336 *Supra*, Part V, Section I.B (Azerbaijan Violated Mr. Bahari's Legitimate Expectations).

1337 SoD ¶ 400.

1338 SoD ¶ 400; *Lemire v. Ukraine*, Decision on Jurisdiction and Liability, 14 January 2010 (**CLA-092**), ¶¶ 261, 263 and 356.

substituted for the rule of law.[1339] According to Azerbaijan, Mr. Bahari has not identified how any alleged conduct could be said to be discriminatory or arbitrary.[1340] This is risible.

969. With regard to discrimination, Mr. Bahari contracted with Azerbaijani nationals when making almost all of his investments. It should go without saying that these persons invested in the same business or economic sector as Mr. Bahari. If, as Azerbaijan constantly asserts, they only acted in their private capacities, they should have been treated the same way as Mr. Bahari, or at least Azerbaijan would have explained why there were not. Mr. Bahari's Azerbaijani business partners were left untouched by Azerbaijan, whereas Mr. Bahari was forced out of the country and his investments were taken from him. His Azerbaijani business partners also have not suffered two decades of harassment and intimidation for attempting to exercise their legal rights in Azerbaijan.

970. To the contrary, Mr. Bahari's Azerbaijani business partners were direct beneficiaries of Azerbaijan's unlawful and discriminatory treatment of Mr. Bahari. Azerbaijan cannot explain what could have justified this difference of treatment. All available evidence points to the Azerbaijani system operating in its traditional fashion of misappropriating wealth, whether it comes from natural resources or private investments, for the benefit of a few people within the State apparatus.[1341] This is discriminatory treatment.

971. With regard to arbitrariness, using the test set out in *Glamis*, a finding of arbitrariness "requires a determination of some act far beyond the measure's mere illegality, an act so manifestly arbitrary, so unjust and surprising as to be unacceptable from the international perspective."[1342] In a span of over two decades, Azerbaijan has, *inter alia*:

a. Made every effort to ensure that Mr. Bahari would be removed from, and never regain access to, his investments in Azerbaijan, without ever providing any reason. Mr. Bahari was never charged or indicted for any wrongdoing, nor did any of Azerbaijan's agencies allege that he committed any wrongdoing in the making of his investments. Mr. Bahari was always left to guess the arbitrary reason behind his forced expulsion from Azerbaijan and the taking of his investments.[1343]

1339 SoD ¶ 400; *Glamis Gold Ltd. v. United States of America*, UNCITRAL (NAFTA), Award, 8 June 2009 (**CLA-074**), ¶ 626.

1340 SoD ¶ 401.

1341 Allan & Makarenko Report, ¶¶ 28-33.

1342 *Glamis Gold Ltd. v. United States of America*, UNCITRAL (NAFTA), Award, 8 June 2009 (**CLA-074**), ¶ 626.

1343 *Supra*, Part II, Section V (Azerbaijan Prevents Any Efforts to Recover Investments).

b. Ensured that Mr. Bahari's business partners, including Messrs. Aliyev, Heydarov and Pashayev, would be left unharmed by any of the measures which targeted Mr. Bahari and persons associated to him, thereby adopting and acknowledging an undisturbed taking of Mr. Bahari's investments.[1344]

c. Organized the unlawful transfer of Mr. Bahari's ownership interests to the same powerful individuals within the State apparatus, thereby completing the disconnect between Mr. Bahari and his investments.[1345]

d. Ensured Mr. Bahari was unaware of and could not participate in the legal proceedings relating to Coolak Baku and Ayna Sultan, to the benefit of Mr. Bahari's former business partners for the former and Azerbaijani citizens overall.[1346]

e. Harassed two lawyers who, on different occasions, were instructed by Mr. Bahari to investigate the status of Azerbaijan and the possibility to bring a claim before Azerbaijani courts, thereby ensuring that Mr. Bahari would never obtain justice in Azerbaijan.[1347]

f. Harassed every person that was ever susceptible to provide any information as the status of Mr. Bahari's investments in Azerbaijan, thereby ensuring that Mr. Bahari could not only never re-access his investments by his own means, but would also have every difficulty obtaining evidence for domestic or arbitration proceedings purposes.[1348]

g. Harassed Mr. Bahari, his family and his close ones, thereby ensuring that Mr. Bahari would never feel safe again, wherever he lives, in the obvious goal of discouraging him (unsuccessfully) from ever bringing a claim.[1349]

972. It should go without saying at this point that Azerbaijan never explained what rational policy, if any, it may have been enforcing by taking the measures it took against Mr. Bahari, his investments and his associates; nor has it explained how those measures could be

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1344 *Supra*, Part II, Section V (Azerbaijan Prevents Any Efforts to Recover Investments).

1345 SoC Sections III.F, III.G, III.F and *Supra*, Part II, Section IV (Mr. Bahari's Investments Were Seized by Azerbaijan).

1346 *Supra*, Part II, Section II.A (Ayna Sultan Qualifies as Investment) and Section IV.E (Ayna Sultan Taken through Courts).

1347 *Supra*, Part II, Section V.C (Harassment of Mr. Kilic) and Section V.G (Harassment of Mr. Allahyarov).

1348 *Supra*, Part II, Section V.B (Harassment of Mr. Moghaddam) and Section V.H (Harassment of Ms. Ramazanova and Mr. Abdulmajidov)

1349 *Supra*, Part II, Section V.E (Harassment of Mr. Bahari and his Family).

deemed to bear any reasonable relationship to that rational policy and how they could be deemed appropriately tailored to it.[1350]

973. Azerbaijan's treatment of Mr. Bahari and his investments was discriminatory and arbitrary, in breach of Article 2(3) of the Treaty.

4. Azerbaijan Acted in Bad Faith

974. Finally, Azerbaijan summarily dismisses Mr. Bahari's claim that Azerbaijan treated him and his investments in bad faith.[1351]

975. The main argument appears to be that since none of the cases in the Statement of Claim found that the respondent States had acted in bad faith, they cannot be ground for a case of bad faith on the part of Azerbaijan.[1352] Again, this conveniently ignores the role of jurisprudence.

976. Azerbaijan does not seem to dispute that there is a requirement to act in "good faith" under the FET standard contained in Article 2(3). Nor could it, since these cases precisely make clear that the "general, if not cardinal, principle of customary international law that States must act in good faith is… a useful yardstick by which to measure the Fair and Equitable standard."[1353]

977. There can be no doubt that Azerbaijan consistently acted in bad faith towards Mr. Bahari and his investments. If, like the tribunal held in *Oostergetel*, the determination of bad faith turns on whether the Tribunal can identify "malice" in Respondent's actions, bad faith becomes evident.[1354]

978. As repeatedly and exhaustively discussed in the Statement of Claim and this Reply, from the day Azerbaijan made or adopted the decision to force Mr. Bahari out of Azerbaijan, it has deliberately used every means available to it to frustrate Mr. Bahari's rights and ensure that he: (i) could never regain his investments, in full or in part; and (ii) would have the hardest time accessing any relevant information about the status of his investments for

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1350 *Philip Morris v. Uruguay*, Award, 8 July 2016 (**CLA-141**), ¶¶ 409-410; *Marfin v. Cyprus*, ICSID Case No. ARB/13/27, Award, 26 July 2018 (**RLA-167**), ¶¶ 1213 and 1215.

1351 SoD ¶¶ 402-404.

1352 SoD ¶ 403.

1353 See e.g. *Waguih Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award ("***Siag v. Egypt***"), 1 June 2009 (**CLA-098**), ¶ 450 (citation omitted).

1354 *Jan Oostergetel and Theodora Laurentius v. The Slovak Republic*, Final Award ("***Oostergetel v. Slovakia***"), 23 April 2012 (**CLA-100**), ¶ 300.

purposes of bringing a claim, whether before domestic courts or before the present Tribunal.

979. There is no justification or purpose behind Azerbaijan's actions other than favoring the right people within the State apparatus and later make sure to cover its tracks and attempt to discourage or prevent Mr. Bahari from exposing its misdeeds. This cannot constitute a rational policy by any stretch of the imagination. Azerbaijan acted in bad faith, with malice, and breached Article 2(3) of the Treaty.

D. AZERBAIJAN DENIED JUSTICE AND FAILED TO PROVIDE EFFECTIVE MEANS TO MR. BAHARI

980. Azerbaijan's judiciary system is purposely dysfunctional and specifically targets any litigant who may question the *status quo* and disturbs the interests of the few families ruling over the country's destiny. This stands in stark contrast to Azerbaijan's duties under the Treaty to provide Iranian investors justice, due process, and effective means to assert claims.

981. In light of the Statement of Defense and its associated evidence, as well as document production, it is now clear that Azerbaijan's courts assisted the stripping of Mr. Bahari's investments and denied him any means of enforcing his rights.

1. Azerbaijan has an Obligation Not to Deny Justice to Foreign Investors under the Treaty and Under the Customary International Law Minimum Standard of Treatment

982. Article 2(3) of the Treaty requires Azerbaijan to ensure fair and equitable treatment within its territory to the investments of foreign investors. In particular, the FET standard entails an obligation not to deny justice (**a**). This obligation is also enshrined in the minimum standard of treatment under customary international law (**b**).

a. Denial of Justice under Article 2(3) of the Treaty

983. It is trite law that denial of justice principles are encompassed in FET clauses such as Article 2(3) of the Treaty. The prohibition on denial of justice is an essential element of the FET clause. By way of example, the United Nations Conference on Trade and

Development's ("**UNCTAD**") Report on Fair and Equitable treatment includes "denial of justice and due process" as a type of State conduct that violates the FET standard.[1355]

984. Arbitral tribunals have regularly discussed the obligation not to deny justice as a substantive element of FET obligations. In *Mondev v. USA*, the tribunal opined:

> The Tribunal is thus concerned only with that aspect of the Article 1105(1) [i.e. the FET clause] which concerns what is commonly called denial of justice, that is to say, with the standard of treatment of aliens applicable to decisions of the host State's courts or tribunals.[1356]

985. Similarly, in *Liman Caspian Oil v. Kazakhstan*, the tribunal held that:

> [T]he international delict of denial of justice is an example of the standard of fair and equitable treatment under Article 10(1), second sentence, of the ECT. In other words, fair treatment implies that there is no denial of justice.[1357]

986. There should not be any dispute that Azerbaijan undertook to prevent denial of justice to foreign investors under Article 2(3) of the Treaty. The customary minimum standard of treatment provides a similar protection.

b. Denial of Justice Under the Customary International Law Minimum Standard of Treatment

987. Azerbaijan asserts that the FET standard contained in Article 2(3) of the Treaty cannot be detached from the customary minimum standard of treatment, and that the FET standard contained in the Treaty cannot be considered an autonomous standard.[1358] Even accepting this, *quod non*, customary international law prescribes the same standard of denial of justice as the FET standard contained in Article 2(3) of the Treaty.

988. The prohibition on denial of justice is part of the minimum standard of treatment under customary international law. For example, denial of justice was encapsulated in the 1961 Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens ("**1961 Harvard Draft Convention**"). Article 7 of the 1961 Harvard Draft Convention describes the denial of a fair hearing as follows:

1355 "Fair and Equitable Treatment: A Sequel - UNCTAD Series on Issues in International Investment Agreements II, 2012 (**CLA-087**), pp. 80, 81.

1356 *Mondev v. United States*, Award, 11 October 2002 (**CLA-039**), ¶ 96.

1357 *Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan*, ICSID Case No. ARB/07/14, Excerpts of the Award ("***Liman Caspian Oil v. Kazakhstan***"), 22 June 2010 (**CLA-265**), ¶ 268 (emphasis added).

1358 SoD ¶¶ 381-383.

> The denial to an alien by a tribunal or an administrative authority of a fair hearing in a proceeding involving the determination of his civil rights or obligations or of any criminal charges against him is wrongful if a decision or judgment is rendered against him or he is accorded an inadequate recovery.[1359]

989. More recently, the 2004 Organization of Economic Cooperation and Development's ("**OECD**") Working Paper on Fair and Equitable Treatment concluded that the international minimum standard applies in the following areas: (i) the administration of justice, usually linked to the notion of the denial of justice; (b) the treatment of aliens under detention; and (c) full protection and security.[1360]

990. Modern investment treaty awards have recognized the customary nature of the denial of justice principle. The tribunal in *Chevron v. Ecuador I* categorically acknowledged a "prohibition of denial of justice under customary international law."[1361] A similar finding was made by the tribunal in *Rumeli Telekom v. Kazakhstan*.[1362]

991. Accordingly, States' obligation not to deny justice under the minimum standard of treatment exists even where the applicable investment treaty does not contain a FET or a specific denial of justice clause.

2. Lack of Independent and Effective Courts and Gross Procedural Irregularities Constitute a Denial of Justice.

a. The Elements of a Claim for Denial of Justice

992. A denial of justice occurs when there is a deficiency in the administration of justice by the host State towards a foreign investor. The duty not to deny justice involves two elements: the State's conduct must: (**i**) relate to the administration of justice; and (**ii**) involve a fundamental failure of the judicial system.

1359 Draft Convention on the international responsibility of States for injuries to aliens, Harvard Law School, 1961, Annex VII of Yearbook of the International Law Commission, Vol. II, 1969 (**CLA-266**).

1360 Organization of Economic Cooperation and Development, "Fair and Equitable Treatment Standard in International Investment Law", OECD Working Papers on International Investment, No. 2004/03 (2004) (**CLA-262**), p. 9, n. 34.

1361 *Chevron Corporation and Texaco Petroleum Company v. Republic of Ecuador (I)*, PCA Case No. 2007-02/AA277, Partial Award on the Merits ("***Chevron v. Ecuador I***"), 30 March 2010 (**CLA-267**), ¶ 242.

1362 *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16 ("***Rumeli v. Kazakhstan***"), Award, 29 July 2008 (**CLA-052**), ¶ 651 ("The parties agree that the duty not to deny justice arises from customary international law and can also be considered to fall within the scope of treaty provisions provided for 'fair and equitable treatment'.")

b. Administration of Justice

993. A denial of justice results from State conduct associated with the administration of justice, generally described as an exercise of adjudicative power rather than pure legislative or executive power.[1363] Denial of justice is not limited to acts of the State's judicial bodies: it may also arise when a State impedes investors from accessing its legal system, in which case, there will be denial of justice "even if the act comes from the executive or legislative body."[1364]

994. Denial of justice may thus result from acts related to the adjudicative process, including both procedural and substantive acts and omissions. The 1929 Harvard Draft Convention on Responsibility of States for Damage Done on Their Territory to the Person or Property of Foreigners ("**1929 Harvard Draft Convention**") defined denial of justice as including:

> [D]enial, unwarranted delay or obstruction of access to courts, gross deficiency in the administration of judicial or remedial process, failure to provide those guarantees which are generally considered indispensable in the proper administration of justice…[1365]

995. UNCTAD supported this formulation in its Report on Fair and Equitable Treatment, which listed the following instances as constituting denial of justice: (a) denial of access to justice and the refusal of courts to decide; (b) unreasonable delay in proceedings; (c) lack of a court's independence from the legislative and the executive branches of the State; (d) failure to executive final judgments or arbitral awards; (e) corruption of a judge; (f) discrimination against the foreign litigant; and/or (g) breach of fundamental due process guarantees, such as a failure to give notice of the proceedings and failure to provide an opportunity to be heard.[1366]

996. Likewise, arbitral tribunals have examined cases of denial of justice resulting from a variety of State conduct related to the administration of justice. The tribunal in *Robert Azinian v. Mexico* proposed an often-cited formulation of the doctrine:

1363 Z. Douglas, "International Responsibility for Domestic Adjudication: Denial of Justice Deconstructed", International and Comparative Law Quaterly, Vol. 63 No. 3 (2014) (**CLA-268**), internal p. 869.

1364 *Iberdrola Energía S.A. v. Republic of Guatemala*, ICSID Case No. ARB/09/5 ("***Iberdrola v. Guatemala***"), Award (English translation), 17 August 2012 (**CLA-269**), ¶¶ 443-444.

1365 Draft Convention on "Responsibility of States for Damage Done in their Territory to the Person or Property of Foreigners", Harvard Law School, 1929, Yearbook of the International Law Commission, Vol. II, 1956 (**CLA-270**), Article 9.

1366 "Fair and Equitable Treatment: A Sequel - UNCTAD Series on Issues in International Investment Agreements II, 2012 (**CLA-087**), p. 80.

> A denial of justice could be pleaded if the relevant courts refuse to entertain a suit, if they subject it to undue delay, or if they administer justice in a seriously inadequate way… There is a fourth type of denial of justice, namely the clear and malicious misapplication of the law. This type of wrong doubtless overlaps with the notion of 'pretence of form' to mask a violation of international law.[1367]

997. Applying this formulation, the tribunal in *Iberdrola v. Guatemala* concluded:

> Under international law a denial of justice could constitute: (i) the unjustified refusal of a tribunal to hear a matter within its competence or any other State action having the effect of preventing access to justice; (ii) undue delay in the administration of justice; and (iii) the decisions or actions of State bodies that are evidently arbitrary, unfair, idiosyncratic or delayed.[1368]

998. In sum, denial of justice extends to all acts or omissions by the host State in relation to its adjudicative process for foreign investors, irrespective of the status of the actor or its constitutional authority.

c. Fundamental Failure of the Judicial System

999. The State's conduct must involve a fundamental failure of the judicial system, as a whole, to render due process to aliens. This is an objective standard, which does not rely upon local standards within each national system. As noted by Professor Paulsson:

> National laws offer fundamentally different definitions of denial of justice. It is therefore dangerous to import such definitions into international law.[1369]

1000. The content of the denial of justice standard was explained by several tribunals such as in *RosInvestCo v. Russia*, where the tribunal held that:

> Respondent can only be held liable for denial of justice by the Russian courts if the Claimants are able to prove that the court system fundamentally failed. Such failure is mainly to be adopted in cases of major procedural errors such as lack of due process. The substantive outcome of

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1367 *Robert Azinian, Kenneth Davitian, & Ellen Baca v. The United Mexican States*, ICSID Case No. ARB (AF)/97/2, Award (English) ("***Robert Azinian v. Mexico***"), 1 November 1999 (**CLA-271**), ¶¶ 102-103.

1368 *Iberdrola v. Guatemala*, Award (English translation), 17 August 2012 (**CLA-269**), ¶ 432 (emphasis added).

1369 *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, UNCITRAL, Award (redacted version) ("***Grand River v. USA***"), 12 January 2011 (**CLA-272**), ¶ 223, citing Paulsson, Denial of Justice in International Law, p. 36.

> a case can be relevant as an indication of lack of due process and thus can be considered as an element to prove denial of justice.[1370]

1001. Similarly, the tribunal in *Corona Materials LLC v. Dominican Republic* held that:

> The international delict of denial of justice rests upon a specific predicate, namely, the systemic failure of the State's judicial system. When a claim is successfully made out at international law, it is because the international court of tribunal accepts that the respondent's legal system as a whole has failed to accord justice to the claimant.[1371]

1002. While the substantive outcome of a case can be relevant as an indicator of major procedural injustices, it is not entirely dispositive. The denial of justice standard is not an obligation for local courts to reach the "correct" substantive outcome of each particular case. Procedural errors that do not cause damage or affect the substantive result can also constitute denial of justice, as observed by the tribunal in *Philip Morris v. Uruguay*:

> For a denial of justice to exist under international law there must be 'clear evidence of… an outrageous failure of the judicial system' or a demonstration of 'systemic injustice' or that 'the impugned decision was clearly improbable and discreditable'.
>
> The Tribunal shares the view according to which 'grave procedural errors' may result in a denial of justice depending on the circumstances of each case. It believes that a denial of justice exists if the conditions outlined above for finding the same are satisfied, whatever impact it may have had on the outcome of the court proceedings.[1372]

1003. Arbitral tribunals have adopted various formulations of the threshold for a finding of denial of justice, which share the common ground that judicial conduct must be egregious to give rise to denial of injustice.[1373]

1004. As discussed below, the fundamental failure of Azerbaijan's judicial system has manifested itself in two ways: systemic restrictions on the possibility for Mr. Bahari to

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1370 *RosInvestCo UK Ltd. v. The Russian Federation*, SCC Case No. V079/2005, Final Award, 12 September 2010 (**RLA-147**), ¶ 279. See also *Liman Caspian Oil v. Kazakhstan*, Excerpts of the Award, 22 June 2010 (**CLA-265**), ¶ 279.

1371 *Corona Materials LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award ("***Corona v. Dominican Republic***"), 31 May 2016 (**CLA-273**), ¶ 254.

1372 *Philip Morris v. Uruguay*, Award, 8 July 2016 (**CLA-141**), ¶¶ 500-501.

1373 See e.g. *Liman Caspian Oil v. Kazakhstan*, Excerpts of the Award, 22 June 2010 (**CLA-265**), ¶ 274; *Robert Azinian v. Mexico*, Award (English), 1 November 1999 (**CLA-271**), ¶¶ 103, 105; *Oostergetel v. Slovakia*, Final Award, 23 April 2012 (**CLA-100**), ¶ 273; *Philip Morris v. Uruguay*, Award, 8 July 2016 (**CLA-141**), ¶ 499.

access justice, and grave procedural errors in proceedings which, unbeknownst to Mr. Bahari, were conducted in Azerbaijan, which are both constitutive of Respondent's systemic failure to provide any justice to Mr. Bahari and his investments.

3. Lack of Independent and Effective Judicial Authorities and Gross Procedural Irregularities Constitute Denial of Justice

1005. As discussed below: (**i**) the lack of independent and effective judicial authorities and (**ii**) gross deficiencies in the adjudicative process faced by Mr. Bahari are two quintessential examples of procedural injustices.

a. Lack of Independent and Effective Judicial Authorities Results in Denial of Justice

1006. The lack of independent and effective judicial authorities is an unequivocal example of denial of justice.[1374] The obligation to act independently and impartially is not limited to courts, but extends to all other institutions in the justice system. The Basic Principles on the Independence of the Judiciary, adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, specifically call upon States to guarantee the independence of their judiciary, and other crucial institutions in the justice system.[1375] Modern soft law codifications such as UNCTAD's Report on Fair and Equitable Treatment and the ALI/UNIDROIT Principles of Transnational Civil Procedure also emphasize "independence [and] impartiality of judges" as a key component of the right to fair trial.[1376] States are under an obligation to grant investors access to courts that are not only independent and impartial but also that enable them to vindicate their rights and

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1374 "Fair and Equitable Treatment: A Sequel - UNCTAD Series on Issues in International Investment Agreements II, 2012 (**CLA-087**), p. 80.

1375 Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, 1985 (**CLA-274**), Article 1: "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary."

1376 ALI/UNIDROIT Principles of Transnational Civil Procedure, Unif. L. Rev. 2004-4 (**CLA-275**), Article 1.1: "The court and the judges should have judicial independence to decide the dispute according to the facts and the law, including freedom from improper internal and external influence."

protect their investments.[1377] Denial of justice may result where the courts are unable to give effect to the law in an impartial and fair manner.[1378]

1007. For example, in *Petrobart Limited v. Kyrgyzstan*, an investor was deprived of a chance to enforce its judgment against the debtor after the Prime Minister requested the court to stay enforcement proceedings. The tribunal found the State liable for breach of its FET obligations, ruling that the lack of independence of the judiciary from the executive was "a clear breach of the prohibition of denial of justice under international law."[1379] While this case involved a blatant act of interference in judicial decision making by the highest levels of the executive, the tribunal's decision is instructive for all cases, such as the present one, were judicial authorities are notoriously subservient to the executive branch.[1380]

b. Gross Deficiencies in the Adjudicative Process Result in Denial of Justice

1008. Denial of justice may also result from gross procedural irregularities in the adjudicative process, which compromise the foreign investor's ability to obtain full protection of the law. In other words, the prohibition of denial of justice protects foreign investors from procedural injustices in local proceedings. As noted by Professor Douglas:

> The essential basis of a denial of justice is that a foreign national has suffered a procedural injustice, according to the standards of international law, in seeking to vindicate a substantive right within an adjudicative procedure for which the State is responsible in international law.[1381]

1377 *Rupert Joseph Binder v. Czech Republic*, Final Award, 15 July 2011 (**CLA-079**), ¶ 448.

1378 *Rupert Joseph Binder v. Czech Republic*, Final Award, 15 July 2011 (**CLA-079**), ¶ 448. See also *Grand River v. USA*, Award (redacted version), 12 January 2011 (**CLA-272**), ¶ 223. See also Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, 1985 (**CLA-274**), Article 2: "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

1379 *Petrobart Limited v. The Kyrgyz Republic*, SCC Case No. 126/2003, SCC Case No. 126/2003, Arbitral Award ("***Petrobart v. Kyrgyzstan***"), 29 March 2005 (**CLA-276**), p. 28.

1380 *Supra*, Part III, Section II.E Section II.E (Azerbaijan Knows No Rule of Law); Allan & Makarenko Report, ¶¶ 92-100.

1381 Z. Douglas, "International Responsibility for Domestic Adjudication: Denial of Justice Deconstructed", International and Comparative Law Quaterly, Vol. 63 No. 3 (2014) (**CLA-268**), internal p. 900; see also Draft Convention on "Responsibility of States for Damage Done in their Territory to the Person or Property of Foreigners", Harvard Law School, 1929, Yearbook of the International Law Commission, Vol. II, 1956 (**CLA-270**), Article 9 (""gross deficiency in the administration or remedial process [and] failure to provide those guarantees which are generally considered indispensable in the proper administration of justice.")

1009. Activities that constitute a procedural denial of justice include, *inter alia*, an effective refusal to hear an interested party, dereliction of duty by failing to exercise jurisdiction authorized by law or "a continued absence of seriousness on the part of the court."[1382]

1010. Treatment in various proceedings may cumulatively amount to a denial of justice.[1383] Further, even if no single act rises to the threshold of denial of justice, it may result from "a combination of improper acts."[1384] As explained in *Glamis Gold Ltd. V. USA*, acts that do not individually violate the applicable treaty standard can be viewed collectively to establish a breach of the treaty when there is "some additional quality that exists only when the acts are viewed as a whole, as opposed to individually."[1385]

1011. Article 7 of the 1961 Harvard Draft Convention lists a serious of considerations that are relevant for a tribunal when determining the fairness of a hearing, which include, *inter alia*, the possibility to obtain information in advance of a hearing and to have adequate time to prepare the case, and the full opportunity to have legal representation.[1386] The cumulative failures to provide these opportunities may amount to denial of justice.

1012. Arbitral tribunals and courts have found a denial of justice when there are gross procedural irregularities in the adjudicative process. The four-pronged formulation of denial of justice proposed by the tribunal in *Robert Azinian v. Mexico* categorically includes "administration of justice in a seriously inadequate way."[1387] In *Chattin v. Mexico*, the tribunal explained ambit of procedural injustices to include:

> Absence of proper investigations,… undue delay of proceedings, making the hearings in open court a mere formality, and a continued absence of seriousness on the part of the Court.[1388]

1013. The courts' failure to abide by the State's own laws is a relevant factor in determining whether justice was denied. The tribunal in *Dan Cake v. Hungary* held Hungary liable for

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1382 *B. E. Chattin (United States.) v. United Mexican States*, 23 July 1927 (**CLA-277**), ¶ 30.

1383 *Limited Liability Company Amto v. Ukraine*, SCC Case No. 080/2005, Final Award ("***Amto v. Ukraine***"), 26 March 2008, (**CLA-278**), ¶ 78.

1384 *Walter J. N. Glamis McCurdy (U.S.A.) v. United Mexican States* (US-Mexico Claims Commission, 4. R.I.A.A. 418), Opinion of the Commissioners, 21 March 1929 (**CLA-279**), internal p. 427. See also *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Award in Resubmitted Proceeding ("***Amco v. Indonesia***"), 31 May 1990 (**CLA-280**), ¶ 136.

1385 *Glamis Gold Ltd. v. United States of America*, UNCITRAL (NAFTA), Award, 8 June 2009 (**CLA-074**), ¶ 825.

1386 Draft Convention on the international responsibility of States for injuries to aliens, c Law School, 1961, Annex VII of Yearbook of the International Law Commission, Vol II, 1969 (**CLA-266**).

1387 *Robert Azinian v. Mexico*, Award (English), 1 November 1999 (**CLA-271**), ¶ 102.

1388 *B. E. Chattin (United States.) v. United Mexican States*, 23 July 1927 (**CLA-277**), ¶ 30.

denial of justice after its courts exercised their discretion to deprive the claimant of its legal rights.[1389] In the local proceedings, the Hungarian court refused to convene a prompt composition hearing, in violation of Hungarian law. The composition hearing could have prevented the sale of claimant's assets and the loss of its investment in Hungary. The tribunal ruled that the actions of a Hungarian court in declining to convene a liquidation composition hearing were "shocking" and resulted in a violation of denial of justice under the FET obligation.[1390]

1014. A claiming party's ability to participate in the domestic proceedings has also been deemed a relevant factor.[1391] In particular, "the absence of notification about proceedings that exclude the possibility to challenge them could all result in denial of justice."[1392]

c. Azerbaijan Also Has a Duty to Provide Mr. Bahari with Effective Means of Asserting Claims and Enforcing Rights

1015. By virtue of the MFN clause in the Treaty, Mr. Bahari can also benefit from the more favorable protection offered by the US-Azerbaijan BIT, pursuant to which Azerbaijan is required to provide Mr. Bahari with effective means of asserting claims and enforcing rights.

1016. Pursuant to the MFN treatment provision contained in Article 2(3) of the Treaty, Azerbaijan is required to provide Mr. Bahari with treatment which "shall not be less favorable" than that accorded to investments made "within its territory by investors of the most favoured nation". The definition of "treatment" includes the substantive protection of effective means of asserting claims and enforcing rights, which is available in other Azerbaijan investment treaties, such as the one entered into with the USA.

1017. The US-Azerbaijan treaty and the present Treaty both deal with the same subject matter: the protection of the foreign investment. Given the lack of substantive protection of

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1389 *Dan Cake S.A. v. Hungary*, ICSID Case No. ARB/12/9, Decision on Jurisdiction and Liability, 24 August 2015 (**CLA-281**).

1390 *Dan Cake S.A. v. Hungary*, ICSID Case No. ARB/12/9, Decision on Jurisdiction and Liability, 24 August 2015 (**CLA-281**), ¶ 160.

1391 *H&H Enterprises Investments, Inc. v. Arab Republic of Egypt*, ICSID Case No. ARB 09/15, Excerpts of Award ("***H&H v. Egypt***"), 6 May 2014 (**CLA-282**), ¶ 403; *Arif v. Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013 (**RLA-179**), ¶ 447. See more generally *Lion Mexico Consolidated L.P. v. United Mexican States*, ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021 (**CLA-091**), ¶¶ 393-395.

1392 *Lion Mexico Consolidated L.P. v. United Mexican States*, ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021 (**CLA-091**), ¶ 394, citing Paparinskis "The International Minimum Standard and Fair and Equitable Treatment", 2013, p. 191.

effective means in the Treaty, it is clear that Mr. Bahari's investments enjoy less favorable treatment than similarly situated investments of investors of the USA. Consequently, pursuant to the Article 2(3) of the Treaty, Azerbaijan is obligated to provide Mr. Bahari with the more favorable standard of effective means contained in the US-Azerbaijan BIT. This is also the case should the Tribunal accept Respondent's contention that the Treaty's MFN provision is limited to FET,[1393] *quod non*, since the effective means principle, at the very least, forms part of the protection against denial of justice contained in FET, as discussed below.

1018. The Effective Means standard, enshrined in Article II.4 of the US-Azerbaijan BIT reads as follows:

> Each Party shall provide effective means of asserting claims and enforcing rights with respect to covered investments.[1394]

1019. This provision imposes a positive obligation on Azerbaijan to provide investors with effective means of enforcing their rights. A breach of the effective means standard occurs when a State fails to provide effective means to investors to enforce rights, and assert and defend claims, or if the means provided by the State are not adequate to accomplish the same.[1395] The plain meaning and context of Article II.4 of the US-Azerbaijan BIT supports this interpretation: it obliges Azerbaijan to provide "effective means" to "assert claims" and "enforce rights" with respect to "covered investments."

4. The Effective Means Clause is Applicable to Mr. Bahari's Investments

1020. This effective means clause is squarely applicable to Mr. Bahari's attempts to litigate before the Azerbaijani courts, as well as the litigation proceedings that occurred in his absence.

1021. *First*, as noted above, the proceedings that were contemplated by Mr. Bahari were all in relation to investments Mr. Bahari made in Azerbaijan.[1396] Moreover, the sham proceedings initiated by its business partners were effectively meant to strip him away

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1393 SoD ¶¶ 160-161.

1394 Treaty Between the Government of the United States of American and the Government of the Republic of Azerbaijan Concerning the Encouragement and Reciprocal Protection of Investment, 1 August 1997 (date of signature) (**CLA-283**), Article II.4.

1395 *White Industries Australia Limited v. The Republic of India*, UNCITRAL, Final Award ("***White Industries v. India***"), 30 November 2011 (**CLA-284**), ¶¶ 11.3.2-11.3.3.

1396 *Supra*, Part II, Section V.C (Harassment of Mr. Kilic) and Section V.G (Harassment of Mr. Allahyarov).

from certain of his investments, namely Coolak Baku and Ayna Sultan.[1397] As such, there is little doubt that Azerbaijan's obligation to provide effective means is applicable here as relating to covered investments.

1022. *Second*, Article II.4 of the US-Azerbaijan BIT requires that the means provided by Azerbaijan must be "effective." As defined in Merriam-Webster, the plain and ordinary meaning of 'effective' is to "produce a desired effect."[1398] In the present case, Mr. Bahari attempted to protect its legal and contractual rights several times, the sole effect of which was getting Azerbaijan to retaliate against his hired counsel.[1399] From Mr. Bahari's perspective, it is fair to say that this was not the desired effect. In addition, the proceedings that occurred in his absence did not have the "desired effect" of enforcing the rule of law and Mr. Bahari's rights; these were sham proceedings that only served to strip Mr. Bahari from his rights, in order to serve the interests of powerful individuals.[1400]

1023. *Third*, the effective means clause requires Azerbaijan to allow Mr. Bahari to "enforce rights." To satisfy this obligation, States must not only provide a general framework or system for enforcement of rights, but they must also ensure effective enforcement of the rights at issue on a case-by-case basis. Tribunals are empowered to directly review the facts and circumstances of individual cases to assess whether the investor has effective means available to enforce its rights.[1401]

1024. Claimant contends that the effective means standard is a *lex specialis*, which is distinct from denial of justice. Should the Tribunal disagree, Mr. Bahari can still benefit from the effective means protection as forming part of the denial of justice principle.

a. Effective Means as *Lex Specialis*

1025. The effective means standard has been found to be a *lex specialis*, distinct from denial of justice which is an *ex post facto* remedy.[1402] Scholars have argued that "the Effective

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1397 *Supra*, Part II, Section II.D (Coolak Baku Taken Through Courts) and Section II.E (Ayna Sultan Taken Through Courts).

1398 **C-367** Legal definition of "*effective*", Merriam-Webster (last consulted on 6 June 2024).

1399 *Supra*, Part II, Section V.C (Harassment of Mr. Kilic) and Section V.G (Harassment of Mr. Allahyarov).

1400 *Supra*, Part II, Section II.D (Coolak Baku Taken Through Courts) and Section II.E (Ayna Sultan Taken Through Courts).

1401 See e.g. *White Industries v. India*, Final Award, 30 November 2011 (**CLA-284**), ¶¶ 11.3.1-11.3.3; *Chevron v. Ecuador I*, Partial Award on the Merits, 30 March 2010 (**CLA-267**), ¶ 250.

1402 See e.g. *Chevron v. Ecuador I*, Partial Award on the Merits, 30 March 2010 (**CLA-267**), ¶ 242.

Means Clause embodies an autonomous standard."[1403] This was confirmed by several arbitral tribunals, who ruled that, in contrast to denial of justice, effective means is "a distinct and potentially less demanding standard."[1404]

1026. In the landmark cases of *Chevron v. Ecuador I* and *White Industries v. India*, the tribunals found that effective means is *lex specialis* and an easier standard to meet than denial of justice.[1405] In *Chevron v. Ecuador I*, the tribunal was persuaded that the object and purpose of the effective means clause in the Ecuador-US BIT was to have a standard that was *lex specialis*, notably finding support in Professor Vandevelde's observation that, at the time the Ecuador-US BIT was entered into, treaty protection for 'judicial access' was desirable because there was disagreement about the content of right of access to the courts of the host State.[1406] The US-Azerbaijan BIT was signed in 1997, i.e. the year the Ecuador-US BIT entered into force,[1407] and contains the exact same provision.[1408] Professor Vandevelde's observation is, therefore, entirely applicable. In short, provisions such as Article II.4 of the US-Azerbaijan BIT were "created as an independent treaty standard to address a lack of clarity in the customary international law regarding denial of justice."[1409]

1027. As summarized by the tribunal in *White Industries v. India*, the effective means standard: (i) sets a test that is distinct and less demanding than that of denial of justice; (ii) requires both that the host State establish a "proper system of laws and instructions and that those systems work effectively in any given case"; (iii) does not require the claimant to establish that the host State interfered in judicial proceedings to establish a breach; (iv) may be established by evidencing a systemic problem with the court system; (v) must be measured against an objective, international standard; and (vi) does not require

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1403 See e.g. O. Garibaldi, "Chapter 26: Effective Means to Assert Claims and Enforce Rights", in Building International Investment Law: The First 50 Years of ICSID (M. Kinnear et al. eds., 2015) (**CLA-285**), pp. 372-373.

1404 *Chevron v. Ecuador I*, Partial Award on the Merits, 30 March 2010 (**CLA-267**), ¶ 244.

1405 *White Industries v. India*, Final Award, 30 November 2011 (**CLA-284**), ¶¶ 11.3.2(a) and 11.3.3; *Chevron v. Ecuador I*, Partial Award on the Merits, 30 March 2010 (**CLA-267**), ¶¶ 244 and 250.

1406 *Chevron v. Ecuador I*, Partial Award on the Merits, 30 March 2010 (**CLA-267**), ¶ 243, fn. 76.

1407 See *Chevron v. Ecuador I*, Partial Award on the Merits, 30 March 2010 (**CLA-267**), p. 5.

1408 See *Chevron v. Ecuador I*, Partial Award on the Merits, 30 March 2010 (**CLA-267**), p. 5.

1409 *Chevron v. Ecuador I*, Partial Award on the Merits, 30 March 2010 (**CLA-267**), ¶ 243.

exhaustion of local remedies, it simply requires that the claimant utilize the means available to it to assert claims and enforce rights.[1410]

b. Effective Means as Forming Part of Denial of Justice

1028. Claimant appreciates that it is not entirely settled and uncontroversial that denial of justice and effective means are separate, distinct standards. Some have argued that effective means constitutes an access to justice provision, which seeks only to implement and form part of the more general guarantee against denial of justice.[1411] In *H&H v. Egypt*, the tribunal applied the same reasoning to the claimant's claims for denial of justice and breach of effective means.[1412] Similarly, in *Amto v. Ukraine*, the tribunal considered the claimant's claims under Articles 10(1) and 10(2) of the Energy Charter Treaty together, without differentiation.[1413] In *Duke v. Ecuador*, the tribunal found that the effective means provision contained in the Ecuador-US BIT "seeks to implement and form part of the more general guarantee against denial of justice."[1414]

1029. Should the Tribunal adopt this view, Claimant is also entitled to benefit from the effective means protection, because it forms part of the denial of justice obligation contained in the FET standard of Article 2(3) of the Treaty. In such case, the ordinary meaning of "effective means of asserting claims and enforcing rights" obliges the State to establish a system of instrumentalities that are fit for the purpose of allowing the presentation of legal actions to enforce legal rights.[1415] It entails a negative obligation not to prevent access to the system or instrumentalities established for presenting legal actions to enforce legal rights.

5. The Azerbaijani Judiciary System is Designed to Restrict Access to Justice

1030. Azerbaijan actively prevented Mr. Bahari from ever accessing justice in the country, first by designing a judicial system that systematically restricts access to justice, secondly by retaliating against every attempt by Mr. Bahari to resort to the courts.

1410 *White Industries v. India*, Final Award, 30 November 2011 (**CLA-284**), ¶¶ 11.3.2(a)-(g).

1411 *Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award ("***Duke v. Ecuador***"), 18 August 2008 (**CLA-286**), ¶ 391.

1412 *H&H v. Egypt*, Excerpts of Award, 6 May 2014 (**CLA-282**), ¶ 406.

1413 *Amto v. Ukraine*, Final Award, 26 March 2008 (**CLA-278**), ¶¶ 90-95.

1414 *Duke v. Ecuador*, Award, 18 August 2008 (**CLA-286**), ¶ 391.

1415 See e.g. *Amto v. Ukraine*, Final Award, 26 March 2008 (**CLA-278**), ¶¶ 87-88.

1031. The grip of Messrs. Aliyev and Heydarov and their respective families' over Azerbaijan's political and economic structures, resulting in a nearly unmatched kleptocratic system of governance, has been described at length in the Statement of Claim[1416] and in the Allan & Makarenko Report.[1417] It is heavily documented and not seriously in dispute in the present Arbitration.[1418]

1032. All elements point to Azerbaijan maintaining a judicial system which restricts access to justice, and discourages litigants from ever asserting a claim in sensitive cases or, more specifically, matters which are perceived unfavorably by the Government (e.g. political cases, commercial cases involving powerful figures within the State apparatus, human rights issues etc.). Indeed, the judicial system undertakes and supports criminal and civil cases against those who seek to challenge the Government or the ruling families.[1419] This is the judicial system which Mr. Bahari faced when considering bringing a case against Messrs. Aliyev and Heydarov. Indeed, by 2013, Mr. Bahari was well aware that such a case would be futile, if not extremely dangerous.[1420]

1033. *First*, Azerbaijan has direct control over the judiciary, which merely enforces the executive's demands. On paper, the separation of powers is firmly established in the State's constitution.[1421] This is, however, only the "formal order" tip of the iceberg.[1422]

1034. As noted in numerous reports on the Azerbaijani judicial system, the independence and impartiality of the courts, and of the judiciary system in general, is virtually non-existent.[1423]

1416 SoC Sections IV.A and B.

1417 Allan & Makarenko Report, ¶¶ 26-29.

1418 **C-368** Freedom House, Freedom in the World 2024 – Azerbaijan, 2024, Overview ([redacted]").

1419 Application For Ex Parte Preliminary Order and Interim Measures, 5 March 2024; See e.g. the targeted prosecution of the Aliyev brothers (unrelated to President Aliyev), as discussed in Allan & Makarenko Report, ¶¶ 30-33.

1420 Bahari WS1 ¶ 96.

1421 **C-369** The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders, Netherlands Helsinki Committee and Helsinki Foundation for Human Rights, September 2016, p. 18.

1422 Allan & Mararenko Report, ¶¶ 26-29.

1423 **C-369** The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders, Netherlands Helsinki Committee and Helsinki Foundation for Human Rights, September 2016, p. 19 ("[redacted]").

In practice, the "strong links" between the judiciary and the government manifest themselves, *inter alia*, in: (a) the selection of judges, which is administered by the Judicial Legal Council, an organ that is composed in majority by members appointed by the government and presided by the Minister of Justice;[1424] (b) the selection of judges of the Azerbaijani Supreme Court, which is administered by the President of Azerbaijan and his party;[1425] (c) the public prosecution service forming part of the judicial branch, with lower-rank public prosecutors being subordinated to their superiors and receiving instructions from them, such as changing, abrogating, recalling and substituting their decisions and acts, leaving little space for independent decision-making;[1426] (d) the Azerbaijani judiciary and the criminal justice system serving as a "tool of persecution" of human rights defenders and any other individuals seen as critical to the system in place;[1427] (e) more generally, laws and the legal culture prevalent in Azerbaijan, which "enable the executive branch to use the justice system to systematically persecute journalists, human rights activists and political leaders."[1428]

1035. The lack of independence of the judiciary has been flagged by many independent institutions over the last decades, with no progress being made towards a more fair and transparent system.[1429] In a 2024 report conducted by Freedom House, the question of whether there is an independent judiciary system in Azerbaijan was answered as follows:

1424 **C-369** The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders, Netherlands Helsinki Committee and Helsinki Foundation for Human Rights, September 2016, pp. 22-24.

1425 **C-369** The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders, Netherlands Helsinki Committee and Helsinki Foundation for Human Rights, September 2016, pp. 25-26.

1426 **C-369** The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders, Netherlands Helsinki Committee and Helsinki Foundation for Human Rights, September 2016, p. 17.

1427 **C-369** The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders, Netherlands Helsinki Committee and Helsinki Foundation for Human Rights, September 2016, pp. 33-46.

1428 **C-370** Submission on "Corruption and Human Rights in Azerbaijan" for the 30th session of the Universal Periodic Review, October 2017, internal pp. 11 and 15. See also **C-369** The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders, Netherlands Helsinki Committee and Helsinki Foundation for Human Rights, September 2016, pp. 23-32

1429 **C-370** Submission on "Corruption and Human Rights in Azerbaijan" for the 30th session of the Universal Periodic Review, October 2017, internal p. 15 ("[redacted]")

[redacted][1430]

1036. In short, the separation of powers "[redacted]" because "[redacted]"[1431] The Constitution's balance of powers is nothing but paper and, in practice, "[redacted]."[1432] As a result, fundamental principles like the right to a fair trial, the presumption of innocence or the right to judicial review, despite being enshrined in the constitution and the procedural laws of Azerbaijan, are not respected in practice.[1433] Azerbaijani lawyers themselves understand that "[redacted]."[1434]

1037. *Second*, and as a direct consequence of the above, the Azerbaijani judiciary is described as "[redacted]," with judicial independence being flatly "[redacted]" in sensitive cases and judges responding and adopting the executive's demands and, in criminal cases, for instance, simply rubber-stamping the prosecution's motions.[1435] Violations of due process in civil and criminal matters are innumerable, as shown by the fact that:

1430 **C-368** Freedom House, Freedom in the World 2024 – Azerbaijan, 2024, Section F. Rule of Law, F1.

1431 **C-369** The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders, Netherlands Helsinki Committee and Helsinki Foundation for Human Rights, September 2016, p. 6.

1432 **C-369** The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders, Netherlands Helsinki Committee and Helsinki Foundation for Human Rights, September 2016, p. 6.

1433 **C-369** The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders, Netherlands Helsinki Committee and Helsinki Foundation for Human Rights, September 2016, p. 6.

1434 **C-371** Half-measures: Azerbaijani judicial reform brings 'no independence' from government, OC Media, 12 July 2019.

1435 **C-370** Submission on "Corruption and Human Rights in Azerbaijan" for the 30th session of the Universal Periodic Review, October 2017, internal p. 17 ([redacted].") See also **C-369** The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders, Netherlands Helsinki Committee and Helsinki Foundation for Human Rights, September 2016, p. 33 ([redacted]

a. Arbitrary arrests by police in uniform or dressed as civilians and detentions are common, and detainees are often held for long periods before trial.[1436]

b. Political detainees have reported restricted access to legal counsel, fabrication and withholding of evidence, and physical abuse to extract confessions.[1437]

c. Law enforcement bodies regularly monitor private telephone and online communications. As noted by Freedom House, the "[redacted]."[1438]

d. Property rights are affected by government-backed development projects that often force evictions, unlawful expropriations, and demolitions with little or no notice.[1439]

e. Corruption and the economic dominance of state-owned companies and politically connected elites pose obstacles to ordinary private business activity.[1440]

f. The government often restricts freedom of movement, particularly foreign travel, for opposition politicians, journalists, and civil society activists.[1441]

g. Political interference in the work of the courts is prevalent (although it was noted in 2019, quite ironically, that since the Azerbaijani economy was becoming more and more concentrated and less pluralistic, this might result in fewer interferences [redacted]")[1442]

[redacted]."); Allan & Makarenko Report, ¶¶ 97-99.

1436 **C-368** Freedom House, Freedom in the World 2024 – Azerbaijan, 2024, Section E. Associational and Organizational Rights, E3 and Section F. Rule of Law, F2.

1437 **C-368** Freedom House, Freedom in the World 2024 – Azerbaijan, 2024, Section F. Rule of Law, F2.

1438 **C-368** Freedom House, Freedom in the World 2024 – Azerbaijan, 2024, Section D. Freedom of Expression and Belief, D4.

1439 **C-368** Freedom House, Freedom in the World 2024 – Azerbaijan, 2024, Section G. Personal Autonomy and Individual Rights, G2.

1440 **C-368** Freedom House, Freedom in the World 2024 – Azerbaijan, 2024, Section G. Personal Autonomy and Individual Rights, G2.

1441 **C-368** Freedom House, Freedom in the World 2024 – Azerbaijan, 2024, Section G. Personal Autonomy and Individual Rights, G1.

1442 **C-371** Half-measures: Azerbaijani judicial reform brings 'no independence' from government, OC Media, 12 July 2019.

h. Both torture and impunity for the perpetrators of such abuse are endemic in the Azerbaijani criminal justice system. Police regularly beat suspects during arrest or while breaking up protests. Prison conditions are substandard. Medical care is generally inadequate, and overcrowding is common.[1443]

1038. In February 2019, in a case brought against Azerbaijan before the ECHR by a well-known Azerbaijani human rights activist, the court observed that events exposed in Azerbaijani judgments against lawyers, political activists, human rights activists and other critics of the Azerbaijani system:

[redacted][1444]

1039. *Third*, and quite notably considering the circumstances of the present case, access to justice in Azerbaijan is further restricted by the dramatically small number of lawyers practicing in the country. Simply put: [redacted]"[1445] In 2016, the International Commission of Jurists noted:

[redacted][1446]

1443 **C-368** Freedom House, Freedom in the World 2024 – Azerbaijan, 2024, Section F. Rule of Law, F3.

1444 **C-372** *Case of Aliyev v. Azerbaijan*, Applications nos. 68762/14 and 71200/14, European Court of Human Rights, 4 February 2019, ¶¶ 223-224 (emphasis added).

1445 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal pp. 7, 11.

1446 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 7.

1040. There appear to be many reasons for this shortage including: (a) examinations of candidates to qualify as lawyers are frequently not held (no new members were admitted to the Bar Association between "at least" 1999 and 2005[1447]); (b) there are restrictions depending on the background of the candidates, with certain professional backgrounds automatically barring a person from qualifying, including work with NGOs or with lawyers who are identified with political group opposed to the government.[1448]

1041. To make things worse, the Azerbaijani Bar Association, which is the main governing body of the legal profession, is dependent on the executive and is itself corrupt. As such it plays an instrumental role in restricting access to justice. Its governing body, the 'Presidium', consists of advocates who are supposed to be elected, but it has no practical independence from the executive. The head of the Presidium, who is *ex officio* the President of the Bar Association, seems to work hand-in-hand with the Ministry of Justice to maintain the *status quo*.[1449] A fair description of the role of the Azerbaijani Bar Association was provided in 2016 by the International Commission of Jurists:

[redacted][1450]

1447 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 11.

1448 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 22.

1449 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 16 ([redacted].")

1450 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 13 (emphasis added).

1042. *Finally*, even for litigants who find lawyers willing and able to represent them, the Azerbaijani disciplinary system enforced by the Bar Association plays "[redacted]."[1451] Far from protecting lawyers, the Azerbaijani Bar Association plays "[redacted]."[1452] While the Bar Association turns a blind eye to lawyers engaging in corrupt activities or acting in direct contradiction to their clients' interests,[1453] it is "[redacted]".[1454] As noted by the International Commission of Jurists, lawyers "[redacted]."[1455] Against this background, it is unsurprising that many lawyers in Azerbaijan provide substandard advice, when they are not flat-out corrupt.[1456] Lawyers who do not fall in line are directly targeted. Azerbaijani lawyers carrying out their functions with integrity may face criminal prosecutions, freezing of assets, disciplinary action (going as far as disbarment) and administrative measures.[1457] They may also face physical threats, harassment, beatings and other interference with their work, or simply be removed from the cases they handle. This obviously has a chilling effect on the work of other lawyers.[1458] This led one Azerbaijani lawyer interviewed by the

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1451 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 6.

1452 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 6.

1453 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 31 ([redacted])

1454 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 25.

1455 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 25.

1456 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 25.

1457 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal pp. 30-32, 36.

1458 **C-374** Joint Oral Statement (delivered by the International Commission of Jurists) in the General Debate under Agenda Item 4 – Threats to the Independence of Lawyers in Azerbaijan, 22 June 2016.

International Commission of Jurists to describe the work of lawyers in the country as '[redacted]' or '[redacted]'.[1459]

1043. Against this background, the mere suggestion that Mr. Bahari could have had any chance to obtain justice in the cases he contemplated bringing against his business partners – one of whom was, and currently remains, the President of Azerbaijan, and another of whom is the all-powerful Minister of Emergency Situations – is simply absurd.

6. Azerbaijan's Failure to Enable Mr. Bahari to Have his Claims Examined by its Domestic Courts Violates the Denial of Justice Standard and a Failure to Provide Effective Means

1044. Azerbaijan's conduct amounts to a denial of justice and a failure to provide effective means because of repeated and significant procedural irregularities in the claims brought against Mr. Bahari in Azerbaijan. This includes fundamental breaches of due process, such as lack of independence and partiality, and failure of Azerbaijani courts to resist pressure from the executive.

7. Azerbaijan Actively Denied Mr. Bahari Access to Justice

1045. Mr. Bahari never had any chance to obtain justice from the Azerbaijani courts. All attempts to access to the Azerbaijani courts were met with immediate retaliation to strongly discourage Mr. Bahari from taking another step.

1046. *First*, Azerbaijan ensured Mr. Bahari could not directly obtain any relevant information as to the status of his investments. Mr. Bahari was expelled from Azerbaijan in 2001, never to return.[1460] This is in line with Azerbaijan's frequent use of travel bans, house arrests and similar restrictions, which are designed to limit a person's ability to investigate and build a case before the courts.

1047. *Second*, Azerbaijan made sure that, while he was kept away from Azerbaijan, Mr. Bahari could not obtain information through third parties. This continuous conduct surfaced in multiple instances:

1459 **C-373** Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan – ICJ Mission Report 2016, internal p. 6.

1460 With a unique exception, in 2013, when he met Mr. Heydarov several times. As explained in the Statement of Claim, the main takeaway from these meeting was Mr. Heydarov's professed financial support for a claim Mr. Bahari would have to bring directly against Mr. Aliyev, the sitting President. Quite understandably, Mr. Bahari did not pursue any such claim (SoC ¶¶ 312-313).

a. After Mr. Bahari rejected and resisted the 15 June 2002 Forced Sale Agreement, Mr. Moghaddam was intimidated and interrogated about Mr. Bahari. He was notably asked about Mr. Bahari's whereabouts and plans for the future.[1461]

b. In 2004, Mr. Bahari hired Mr. Serhat Killic, a Turkish lawyer, to investigate possible legal proceedings against Messrs. Aliyev, Heydarov and Pashayev before the Azerbaijani courts. After speaking to various persons and organizations in Azerbaijan, Mr. Killic had a sudden change of heart and abruptly declined to continue the case.[1462]

c. Around the end of 2008 and into early 2009, Mr. Bahari renewed his efforts to obtain some information about his investments and tasked Mr. Moghaddam to do so. Mr. Moghaddam spoke to a few people who still worked at Caspian Fish. In February 2009, he was arrested on false drug possession charges and subsequently sentenced to nine years in jail. He was only released, and then immediately deported to Iran, in May 2014 under a pardon from President Aliyev.[1463]

d. In October 2013, Mr. Bahari was finally able to enter into contact with Mr. Heydarov, who invited him to Azerbaijan, issued Mr. Bahari a visa and guaranteed him safe passage. Mr. Heydarov made the astonishing suggestion to financially back a legal action by Mr. Bahari against President Aliyev for the taking of his investments. The meetings ended with Mr. Bahari realizing he was just a pawn in Messrs. Aliyev's and Heydarov's power struggle.[1464] After leaving Azerbaijan, Mr. Bahari kept texting and calling Mr. Heydarov until one of Mr. Heydarov's associates contacted him to threaten him to stop calling or else he would "[redacted]," which effectively put an end to this line of inquiries.[1465]

e. In or around 2017, Mr. Azerbaijan instructed Mr. Yusif Allahyarov, an Azerbaijani lawyer, to investigate and determine the status and value of the properties for Shuvalan Sugar and Coolak Baku. After a period of limited progress using publicly available information, Mr. Allahyarov made a formal inquiry to Azerbaijani

1461 SoC ¶¶ 185-186; *Supra*, Part II, Section V.B (Harassment of Mr. Moghaddam).

1462 SoC ¶¶ 187-189; *Supra*, Part II, Section V.C (Harassment of Mr. Kilic).

1463 SoC ¶¶ 305-308 and 311; *Supra*, Part II, Section V.B (Harassment of Mr. Moghaddam).

1464 SoC ¶¶ 312-313.

1465 SoC ¶ 318; Bahari WS2 ¶ 36.

authorities in early 2019. Shortly thereafter, Mr. Allahyarov was summoned to a meeting at the building of the State Committee for Property Issues where he was threatened. After that meeting, Mr. Allahyarov discontinued any further inquiry.[1466]

f. In 2021, when preparing his claim for arbitration against Azerbaijan, Mr. Bahari contacted Ms. Ramazanova, a former employee at Caspian Fish, and asked her if she would be willing to take pictures of his investments in Azerbaijan. Ms. Ramazanova and her husband, Mr. Abdulmajidov, travelled to locations of Mr. Bahari's investments to take photographs and videos. On 23 July 2021, while at the Caspian Fish facility to take photos and videos, Ms. Ramazanova and Mr. Abdulmajidov were detained and questioned. Since this incident, the couple has been directly targeted by the Azerbaijani authorities, who repeatedly threatened, assaulted and detained them. An attempt was even made on Mr. Abdulmajidov's life. In fact, when Ms. Ramazanova and Mr. Abdulmajidov sought legal counsel to assert a claim against those where were persecuting them, the Azerbaijani counsel told them what they were asking was an impossible task.[1467] Azerbaijan's continuing targeted actions against the couple ultimately left them no choice but to seek asylum in a third country.[1468] Azerbaijan continues to target Ms. Ramazanova and Mr. Abdulmajidov and their families to this day.[1469] This is further evidence that Azerbaijan's decision to deprive Mr. Bahari from the possibility of accessing any direct information with regard to his investments is still being enforced.

1048. *Third*, on at least two separate occasions, Mr. Bahari instructed counsel to investigate the status of his investments. Each time Azerbaijan retaliated and forced Mr. Bahari's lawyers to shut down the investigation. Considering the extreme difficulty of getting legal assistance in "normal circumstances" in Azerbaijan, as explained above, it is clear that Mr. Bahari was never in a position to obtain the assistance he would have needed even simply to bring a claim before the Azerbaijani courts (much like what Ms. Ramazanova and Mr. Abdulmajidov experienced).

1466 SoC ¶¶ 319-324; *Supra*, Part II, Section V.G (Harassment of Mr. Allahyarov).

1467 **C-240** Advocate Statement for Mr. Timur, 13 January 2022.

1468 Application For Ex Parte Preliminary Order and Interim Measures, 5 March 2024, ¶¶ 13-47.

1469 Application For Ex Parte Preliminary Order and Interim Measures, 5 March 2024, ¶¶ 48-60; *Supra*, Section V.H (Harassment of Ms. Ramazanova and Mr. Abdulmajidov).

1049. *Fourth*, the Azerbaijani courts are so subservient to the executive that the prospects of Mr. Bahari being successful in any proceeding involving the names of Messrs. Aliyev and Heydarov is simply risible. As explained above, the Azerbaijan judiciary system and Bar Association ensures sure that the powerful and the wealthy are kept untouched.

1050. *Finally*, while Mr. Bahari was being kept away, Azerbaijan's judiciary system ensured that his investments were taken from him. In doing so, the Azerbaijani courts committed gross procedural errors which, in themselves, amount to denial of justice and failure to provide effective means, as discussed below.

8. Gross Procedural Irregularities in Mr. Bahari's Cases

1051. The Azerbaijani judiciary facilitated the stripping of Mr. Bahari's investments through sham proceedings of which Mr. Bahari remained entirely unaware and were thus conducted *in absentia*.[1470] Unsurprisingly, they resulted in judgments by the Economic Court based on gross procedural errors and substantive defects. Specifically, there were two sham proceedings relating to Coolak Baku and Ayna Sultan.

1052. As thoroughly discussed above, the Coolak Baku proceedings were initiated by ASFAN, which applied to the Economic Court to: (1) invalidate the Coolak Baku JVA; (2) withdraw from the joint venture; and (3) exempt itself from Coolak Baku's purported debts.[1471] The proceedings that followed were marred with serious defects, enabling ASFAN's plan to strip Coolak Baku of its assets:

a. Mr. Bahari never received any notice of ASFAN's application, in breach of CPC Article 150, which provides for a separate service of process. The court's decision to accept ASFAN's application itself shows that:

    i. The service of process was incorrectly sent to Mr. Bahari at Coolak Baku's address, whereas the court knew that Mr. Bahari no longer resided in Azerbaijan;

    ii. Neither ASFAN nor Mr. Zeynalov bothered to cure this defective service of process, either by alerting the Economic Court as to Mr. Bahari's whereabouts or by notifying Mr. Bahari directly of the ongoing litigation;

1470 Bahari WS2 ¶ 17.

1471 *Supra*, Part II, Section II.D (Coolak Baku Taken Through Courts).

iii. Knowing full well that Mr. Bahari had not been properly notified, ASFAN consented, as required by Azerbaijani law for the hearing to proceed *in absentia*, to the proceedings being held without Mr. Bahari's participation;

iv. The Economic Court failed to obtain Mr. Bahari's signature on the summons, again in breach of Azerbaijani law. Without Mr. Bahari's signature, there could be no effective service of process; and

v. The Economic Court failed to deliver the summons at least 10 days prior to the date of its court session, in breach of Azerbaijani law. The court date was set for 10 February 2005, whereas the delivery date of the summons is purported to have occurred on 4 February 2005, i.e. less than the required 10 days. Despite this glaring failure, the judgment asserts that Mr. Bahari was given "[redacted]"[1472] The reality is that he was not.

b. While it is obvious that Mr. Bahari was not duly notified of the proceedings, the Economic Court nonetheless asserted the opposite and determined that Mr. Bahari's absence was unjustified, so that the proceedings could be conducted in his absence. In doing so, the Economic Court ignored all the Azerbaijani law safeguards to ensure that *in absentia* proceedings follow due process.[1473] For example, the Economic Court failed to enforce CPC Article 240.1.2, which prohibits *in absentia* proceedings where the absent party has valid reasons or in case of a natural disaster or even of *force majeure*, in circumstances where it itself acknowledges that Mr. Bahari "[redacted]"[1474] This is a blatant breach of due process and of Mr. Bahari's procedural rights.

c. As a direct consequence of the Economic Court's failure to notify him, Mr. Bahari was unable to assert claims or counterclaims he may have had against ASFAN and to enforce his rights. Unsurprisingly, the judgment rendered by the Economic Court is muddled and full of contradictions, and plainly one-sided:[1475]

1472 **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005, p. 1; *Supra*, Part II, Section II.D (Coolak Baku Taken Through Courts).

1473 *Supra*, Part II, Section II.D (Coolak Baku Taken Through Courts).

1474 **R-107** Service of Process summons sheet from Judge to Mr Bahari, 27 January 2005, pp. 1, 2.

1475 *Supra*, Part II, Section II.D (Coolak Baku Taken Through Courts).

i. The Economic Court only refers to the purported original 29 February 1996 Joint Venture Agreement, and completely ignores the 23 January 1998 Amendment to the Joint Venture Agreement.

ii. The Economic Court accepted ASFAN's claim to withdraw from the joint venture and retrieve "[redacted]," but rejected ASFAN's claim to be exempted from Coolak Baku's debts.[1476] By way of reminder, ASFAN's main contribution was the 4,030 m2 production site at 25 Safar Aliyev Street in Baku, along with existing buildings and infrastructure on the site.[1477] In breach of Azerbaijani law, the court failed, however, to itemize or calculate exactly what property and assets should be returned to ASFAN as part of its Capital Contributions, and what property should remain with Coolak Baku as property contributed by Mr. Bahari. This enabled ASFAN to rely on the judgment to strip all Coolak Baku's assets and completely take over the production facility and business.

d. Mr. Bahari never received any notice of the judgment of the Economic Court:[1478]

i. Quite inexplicably, the notification was, this time, not sent to Coolak Baku but to a different address at "[redacted]" which is the address of Coolak Shargh, not Mr. Bahari.[1479] Mr. Bahari did not even reside in Iran at that time and he had never used that address as his personal domicile.[1480] The fact that the Economic Court utilized two separate addresses for notifications to Mr. Bahari – both of them incorrect – in the course of a single proceeding points to a serious due process defect.

ii. By failing to notify Mr. Bahari of the judgment, the Economic Court deprived him of his right to apply to quash the *in absentia* decision, as would have been his right pursuant to CPC Articles 244 and 250. Consequentially,

1476 **R-105** Judgment of the Economic Court, 4 April 2005, p. 3.

1477 **R-105** Judgment of the Economic Court, 4 April 2005, p. 1; **R-98** Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company, 29 February 1996, Clause 3.1.

1478 Bahari WS2 ¶ 17.

1479 **R-105** Judgment of the Economic Court, 4 April 2005, p. 3.

1480 Bahari WS2 ¶ 17.

Mr. Bahari was also deprived of his due process right to obtain a ruling, as he would have been untitled under CPC Article 249.

iii. Importantly, even if the notification had been sent to the right address and Mr. Bahari had received it, it was sent so late that, when it was delivered in Iran on 12 May 2005, more than a month *after* the issuance of the judgment had already passed, which means that the deadline provided by Azerbaijani law to challenge the judgment had expired. Mr. Bahari was, therefore, deprived of his right to appeal the 4 April 2005 Judgment.[1481]

e. Over a year later, on 12 April 2006, a Writ of Execution was issued, which further illustrates the sham nature of these proceedings. The Writ of Execution mirrors the vague and incomplete text of the 4 April 2005 Judgment as it only states that [redacted]".[1482]

f. Aided by the writ's vagueness, ASFAN stripped the entire business enterprise itself.[1483] Azerbaijan candidly confirms today that the production facilities were all "returned" to ASFAN.[1484] This was ASFAN's only goal all along: before the litigation was initiated, ASFAN had already taken back its contributed assets and acknowledged, internally, that it was not entitled to recover Mr. Bahari's contribution in the joint venture. It applied to the Economic Court nonetheless. There is little doubt that ASFAN knew, not least because of Mr. Pashayev's prior ownership interest,[1485] that the state of the Azerbaijani courts was such that it would get what it was not lawfully entitled to. It was proved right.

1053. The amount of gross deficiencies that occurred in a single proceeding is astonishing. By all standards, the way the Economic Court dealt with this case was grossly and manifestly inadequate; the Economic Court never notified Mr. Bahari of the proceedings. Mr. Bahari could not participate in the proceedings and was, therefore, deprived of his basic rights of

1481 *Supra*, Part II, Section II.D (Coolak Baku Taken Through Courts).

1482 **R-106** Writ of Execution in case No 1-96/03-45/2005, 12 April 2006, p. 1.

1483 *Supra*, Part II, Section II.D (Coolak Baku Taken Through Courts).

1484 SoD ¶ 222.

1485 SoD ¶ 189 ("Mr Pashayev held only a 20% interest in ASFAN"); **R-41** ASFAN Incorporation Agreement dated 26 September 1995.

presenting claims and challenging the decision; the Economic Court consistently and repeatedly failed to abide by Azerbaijan's own procedural laws; since he was kept away from Azerbaijan, also in breach of the Treaty, Mr. Bahari was left unable to challenge the unlawful enforcement of the 4 April 2005 judgment. In short, the Economic Court handled the case with a continued and astonishing absence of seriousness, which effectively paved the way for the stripping of Mr. Bahari's assets.

1054. These proceedings were, however, relatively well conducted when compared to the farcical proceedings that led to the deprivation of Mr. Bahari's rights to Ayna Sultan.

1055. As thoroughly discussed above, the Ayna Sultan Litigations reveal a sprawling, chaotic court fight between a number of individuals who are all attempting to fraudulently misappropriate Mr. Bahari's investment for himself or herself.[1486] A detailed account of these anarchic proceedings, the "Gambarov Litigation" and the "Pashayev Litigation," is provided above, of which the main highlights are:

a. *First*, Mr. Bahari was not properly served or otherwise notified of the proceedings in either the Gambarov Litigation or in the Pashayev Litigation, and was therefore prevented from enforcing any rights or asserting any claims he may have had. Azerbaijan's document production shows no record of any proper service of process, writ of summons, or other court notifications that would evidence that Mr. Bahari was put on notice of the claims. Simply put, it is transparent that the Ayna Sultan Litigations were conducted with Mr. Bahari's procedural rights amounting to zero.[1487]

b. *Second*, the Ayna Sultan Litigations, both in the first and second instance, were conducted *in absentia*, without Mr. Bahari's participation. While Azerbaijani procedural law sets out a framework and rules to follow for proceedings to be conducted *in absentia*, which are meant to protect due process rights in these circumstances, these rules were consistently ignored and Mr. Bahari's rights were treated as an afterthought deserving no consideration whatsoever. [1488]

1486 *Supra*, Part II, Section II.E (Ayna Sultan Taken Through Courts).

1487 *Supra*, Part II, Section II.E (Ayna Sultan Taken Through Courts).

1488 *Supra*, Part II, Section II.E (Ayna Sultan Taken Through Courts).

c. *Third*, these proceedings exposed a myriad of fraudulent, almost comical acts, among which: [1489]

i. Mr. Rasim Zeynalov falsely claimed to have a power of attorney to sell Ayna Sultan to Mr. Pashayev on Mr. Bahari's behalf. All evidence points to Mr. Zeynalov having sought to misuse the power of attorney to steal Ayna Sultan, just like he did to strip Coolak Baku's assets for the benefit of ASFAN.

ii. Mr. Elchin Gambarov – the lawyer representing the claimant in the Gambarov Litigation, who died during the proceedings – argued specifically that Messrs. Pashayev and Zeynalov had colluded to misappropriate Mr. Bahari's property, and that the judge in Mr. Pashayev's case, Judge M.G. Aliyev, also participated in this fraud.

iii. On one hand, Mr. Elchin Gambarov, "acting on behalf of" the deceased Azad Gambarov, sold Ayna Sultan to a certain Rasim Sanvaliyev. On the other hand, Mr. Azad Gambarov's wife, Mrs. Gulshan Abbas Gambarova sought to be recognized as heir and obtain the same property.

iv. At some point, Messrs. Elchin Gambarov and Pashayev apparently came to some sort of arrangement between themselves and sought to cut out Mrs. Gambarova of that deal.

v. Mr. Pashayev then quickly discovered that Mr. Elchin Gambarov had sold Ayna Sultan to Racim Sanvaliyev, which apparently incited him to reveal that, following Mr. Azad Gambarov's death, Mr. Elchin Gambarov had procured a fake identification card in order to procure a new, false power of attorney for himself on behalf of the deceased. This fake identification card enabled Mr. Elchin Gambarov to sell Ayna Sultan to Racim Sanvaliyev.

vi. Mr. Pashayev went on to initiate a criminal case against Mr. Elchin Gambarov.

vii. Mrs. Gambarova herself initiated a claim against Racim Sanvaliyev.

[1489] *Supra*, Part II, Section II.E (Ayna Sultan Taken Through Courts).

d. *Fourth*, the Pashayev Litigation case file contains a purported Minutes of the Proceedings which contains a number of irregularities. Notably, Azerbaijan heavily relies on this to purport that Mr. Bahari had access to the Azerbaijani courts and that he "egregiously" failed to mention this in the Statement of Claim:[1490]

   i. The Minutes contain unexplained anomalies in the signatures of the Presiding Judge and Secretary of Court, which appear to be digitally copy-pasted. As already noted, this anomaly is repeated later on with R-172 and R-173, which contain digitally copy-pasted signatures allegedly belonging to Mr. Bahari and are clear forgeries.

   ii. The Minutes record the court's deliberation on the claimant's request for the case to proceed without Mr. Bahari, which clearly shows that the court did not give proper consideration to this issue in breach of Azerbaijani law.

   iii. The Minutes record a hearing held on the very same day of the rendering of the Second 2004 Judgment, which reveals an unusually rushed procedure.

e. Fifth, the Gambarov and Pashayev Litigations were conducted in parallel by the same Narimanov Court, which issued two separate judgments within four days of each other, granting Messrs. Gambarov and Pashayev conflicting titles to the same Ayna Sultan property.[1491]

1056. The "Gambarov Litigation" and the "Pashayev Litigation" demonstrate that Mr. Bahari was afforded no due process, much less notice, of these proceedings and therefore had no ability whatsoever to engage and resist the taking of his Ayna Sultan investment. Perhaps even more concerning, is that the Statement of Defense failed to fully consider what actually happened in these proceedings, and then unbelievably relies on clearly forged and fraudulent documents to boldly assert that Mr. Bahari actually had his day in court.

9. Mr. Bahari Has Exhausted All Reasonably Available Domestic Remedies

1057. In assessing claims for denial of justice, some tribunals have required claimants to exhaust all procedural remedies before local courts. This is based on the rationale that when local

1490 *Supra*, Part II, Section II.E (Ayna Sultan Taken Through Courts).

1491 *Supra*, Part II, Section II.E (Ayna Sultan Taken Through Courts).

remedies are still effectively available, judicial ill-treatment may still be corrected by higher courts.

1058. Any obligation to exhaust local remedies is not absolute but subject to a qualification of reasonableness, which calls for a flexible application of the local remedies rules based on the context of any given case. In his dissenting opinion in the case of *Elettronica Sicula S.p.A. (ELSI) (Italy v. U.S.)*, Judge Schwebel explained the reasonableness qualification:

> First, the Judgment applies a rule of reason in its interpretation of the reach of the requirement of the exhaustion of local remedies. It holds not that every possible local remedy must have been exhausted to satisfy the local remedies rules but that, where in substance local remedies have been exhausted, that suffices to meet the requirements of the rule even if it may be that a variation on the pursuit of local remedies in the particular case was not in fact played out. It has of course long been of the essence of the rule of exhaustion of local remedies that local remedies need not be exhausted where there are no effective remedies to exhaust.[1492]

1059. Tribunals have recognized that there is no absolute requirement of exhaustion of local remedies. In *Mondev v. USA*, the tribunal denied that "the denial of justice rule and the exhaustion of local remedies rue 'are interlocking and inseparable'." [1493] Crucially, exhaustion of local remedies is not required for denial of justice to be found when there is evidence of failure of the judicial or administrative system as a whole.[1494]

1060. Claiming parties do not have to exhaust all domestic remedies when access to local courts is denied, when there are no available or effective remedies to exhaust, or when it would be futile to resort to them.[1495] In *Duke v. Ecuador*, the tribunal agreed that there is no obligation for claimants to pursue "improbable" remedies.[1496] In *Pantechniki v. Albania*, the tribunal held that, for denial of justice to occur, the respondent State must be given a "reasonable opportunity to correct aberrant judicial conduct," but it "does not mean that

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1492 *Elettronica Sicula S.p.A. (ELSI) (Italy v. U.S.)*, Dissenting Opinion of Judge Schwebel, 1989 I.C.J. Reports 15, 1989 (**CLA-287**), p. 94.

1493 *Mondev v. United States*, Award, 11 October 2002 (**CLA-039**), ¶ 96.

1494 *Rupert Joseph Binder v. Czech Republic*, Final Award, 15 July 2011 (**CLA-079**), ¶¶ 450-451.

1495 See e.g. *OOO Manolium Processing v. The Republic of Belarus*, PCA Case No. 2018-16, Final Award ("***Manolium v. Belarus***"), 22 June 2021 (**CLA-191**), ¶ 541; *Philip Morris v. Uruguay*, Award, 8 July 2016 (**CLA-141**), ¶ 503; *Lion v. Mexico*, Award, 20 September 2021 (**CLA-091**), ¶ 562.

1496 *Duke v. Ecuador*, Award, 18 August 2008 (**CLA-286**), ¶¶ 399-400. See also *Saipem S.p.A. v. The People's Republic of Bangladesh*, ICSID Case No. ARB/05/07, Award ("***Saipem v. Bangladesh***"), 30 June 2009 (**CLA-288**), ¶ 182 (in reference to a case of expropriation by the courts).

remedies must be pursued beyond a point of reasonableness."[1497] In that sense, it is not "necessary to initiate actions which exist on the books but are never in fact used."[1498] In any event, such determination must be made on a case-by case basis.[1499] As summarized by the tribunal in *Binder v. Czech Republic*:

> When a set of decisions or procedures in relation to the same investor (or class of investors) or in relation to the same issue reveals a state of a manifestly defective judicial or administrative process, irrespective of whether all local avenues or redress have been pursued, the test [for denial of justice] will be met.[1500]

1061. As shown above, the Azerbaijani judiciary system appears to have been specifically designed to restrict access to courts, as: (i) access to information is very limited, with travel bans, pretrial detentions or other harassment measures being implemented on a daily basis (ii) lawyers are unavailable, corrupt, incompetent and/or harassed and thereby discouraged from taking on sensitive cases; and (iii) courts are not independent and follow directions from the executive. The flaws of the Azerbaijani judiciary system would be highly problematic in any circumstances; they are particularly problematic given that Mr. Bahari's business partners, and the ones who benefitted the most of his downfall, are powerful figures within the executive.

1062. In this context, it is unsurprising that any time Mr. Bahari attempted to get information on the status of his investments, through third parties or hired counsel, those attempts were quickly shut down and were followed by intimidation measures against those who had been mandated by Mr. Bahari. These intimidation measures continue to this day, while there is an order from this Tribunal requesting Azerbaijan to refrain from such measures, with little to no effect. In such circumstances, it would not only have been futile, but dangerous, for Mr. Bahari to bring proceedings before the courts himself, at the risk of ending up in jail, or worse. When proceedings were brought, they were initiated against Mr. Bahari and he was never made aware of them. Even if he had been made aware of the judgments rendered against him, the Azerbaijani courts made sure that he could not appeal.

1497 *Pantechniki S.A. Contractors & Engineers (Greece) v. The Republic of Albania*, ICSID Case No. ARB/07/21, Award ("***Pantechniki v. Albania***"), 30 July 2009 (**CLA-289**), ¶ 96.

1498 *Pantechniki v. Albania*, Award, 30 July 2009 (**CLA-289**), ¶ 96.

1499 *Pantechniki v. Albania*, Award, 30 July 2009 (**CLA-289**), ¶ 96.

1500 *Rupert Joseph Binder v. Czech Republic*, Final Award, 15 July 2011 (**CLA-079**), ¶ 451.

1063. In short, the Azerbaijani judiciary system as a whole failed Mr. Bahari, and no exhaustion of remedies is required in the circumstances.

II. AZERBAIJAN BREACHED ITS OBLIGATION TO ACCORD FULL PROTECTION AND SECURITY

1064. Azerbaijan denies that it failed to provide both physical and legal protection and security to Mr. Bahari's investments.[1501]

1065. *First*, Azerbaijan alleges that there is no evidence that it took unlawful action against Mr. Bahari when it forcibly removed him from the Caspian Fish facility on 10 February 2001, and that this action is excusable in any event because it took place before the Treaty came into force.[1502] This attempt to avoid any responsibility for the measures it took against Mr. Bahari's investments, or for its failure to protect those investments, blatantly misrepresents Claimant's case.

1066. As is clear from the Statement of Claim, and explained in this Reply, Azerbaijan's unlawful measures against Mr. Bahari's investments include, but are not limited to, the expulsion of Mr. Bahari from the Caspian Fish facility on the day of the facility's opening ceremony. That decision continues to this day. In addition to forcibly detaining and then expelling Mr. Bahari from Azerbaijan, with the sole purpose of denying him access to, and control of, his investments, Azerbaijan has, since then, made every effort to prevent Mr. Bahari from re-entering Azerbaijan safely and allowed the Government and private parties to ultimately seize physical and legal control of Mr. Bahari's investments.[1503]

1067. Azerbaijan went as far as to make direct or veiled threats against Mr. Bahari's counsel, Messrs. Kilic and Allahyarov.[1504] Against this background, Azerbaijan's suggestion that Mr. Bahari should have attempted to bring a case in the Azerbaijani courts is particularly disingenuous.[1505] As Respondent admits, a State is under an obligation to make a functioning system of courts and legal remedies available to investors.[1506] It should also be undisputed that this obligation is breached when a State intimidates and harasses an

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1501 SoD ¶¶ 405-411.

1502 SoD ¶ 406(a).

1503 *Supra*, Part II, Section V (Azerbaijan Prevents Any Efforts to Recover Investments).

1504 *Supra*, Part II, Section V.C (Harassment of Mr. Kilic) and Section V.G (Harassment of Mr. Allahyarov).

1505 SoD ¶ 408.

1506 SoD ¶ 408.

investor's legal counsel, i.e. the very person in charge of defending the investor's interests before the domestic courts. Just as the exhaustion of domestic remedies is not required for a case of denial of justice to be brought when there are no available or effective remedies to exhaust,[1507] as discussed above, it should not be required of Mr. Bahari to have brought multiple claims before Azerbaijani courts when counsel's efforts were met with harassment and intimidation. At that point, Azerbaijan had already demonstrated that it did not, and still does not, provide a functioning system of courts and legal remedies available to Mr. Bahari.

1068. Azerbaijan also claims that the physical assault and detention of Mr. Moghaddam is unproven and, in any event, that harm suffered by Mr. Moghaddam is irrelevant for the purpose of establishing a breach of the FPS standard.[1508] The harm suffered by Mr. Moghaddam is proven beyond a reasonable doubt. Moreover, the argument entirely ignores the chilling effect Azerbaijan's actions towards Mr. Moghaddam had on Mr. Bahari. It also ignores the persecution Azerbaijan has more recently inflicted on Ms. Ramazanova and Mr. Abdulmajidov, which was not known to Mr. Bahari before January 2024, but was certainly acknowledged and adopted by Azerbaijan years earlier.[1509]

1069. In short, Azerbaijan's conduct towards people associated with Mr. Bahari necessarily harmed his investments in that it prevented Mr. Bahari from ever hoping to obtain justice in Azerbaijan.[1510]

1070. *Second*, Azerbaijan denies that the FPS standard extends to legal protection and security. Azerbaijan nonetheless accepts that "some tribunals have found that to be so,"[1511] but describes this as a "radical position" departing from "the vast majority of tribunals."[1512] Thus, Respondent does not dispute the relevance of the authorities submitted by Claimant in support of that proposition.[1513]

1507 *See e.g. Loewen v. United States*, ICSID Case No. ARB(AF)98/3, Award, 26 June 2003 (**CLA-096**), ¶¶ 165-171.

1508 SoD ¶ 406(b)-(c).

1509 *Supra*, Section V.H (Harassment of Ms. Ramazanova and Mr. Abdulmajidov).

1510 *Supra*, Part II, Section V (Azerbaijan Prevents Any Efforts to Recover Investments), notably Part II, Section V.C (Harassment of Mr. Kilic) and Section V.G (Harassment of Mr. Allahyarov).

1511 SoD ¶ 407.

1512 SoD ¶ 407.

1513 SoC ¶¶ 558-563. See also *CME v. Czech Republic*, Partial Award, 13 September 2001 (**CLA-153**), ¶ 613.

1071. As Azerbaijan admits, several tribunals have concluded that the FPS standard should be interpreted to reach measures that deprive an investment of protection and security without being limited to physical security (e.g. a breach of FPS may be found if the investor or its property has been subject to harassment, even without being physically harmed or seized).[1514] In the absence of limiting words in the relevant treaty, similarly to the FPS clauses at hand here, tribunals concluded from the coupling of the FPS standard with that of FET and/or protection against arbitrary or discriminatory conduct, that FPS reaches any measure that deprives an investment of protection and security. [1515]

1072. Tribunals have also held that, because the terms "protection" and "security" are qualified by "full," it "implies a State's guarantee of stability in a secure environment, both physical, commercial and legal." [1516] It should be undisputed that the terms "protection" and "security" are qualified by "full" in the treaties at hand here. [1517] Azerbaijan had an obligation to provide legal security to Mr. Bahari's investments. It failed to do so.

1073. *Third*, Azerbaijan denies that it ever was under a positive obligation to address the physical and legal seizure of Mr. Bahari's investments. [1518] The obligation of a host State to provide protection and security is one of "due diligence" and a reasonable degree of vigilance. [1519]

1074. As noted in *Biwater*, however, the FPS standard "extends to actions by organs and representatives of the State itself."[1520] In the present case, instead of taking measures to address the physical and legal seizure of Mr. Bahari's investments, various ministries and agencies stood by or even took affirmative administrative actions, while the harmful conduct endured. Even worse, Azerbaijan has doubled down on its harassment campaign

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1514 *Azurix Corp. v. The Argentine Republic (I)*, ICSID Case No. ARB/01/12, Award ("***Azurix v. Argentina***"), 14 July 2006 (**CLA-057**), ¶ 406; *Frontier Petroleum Services Ltd. v. The Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010 (**CLA-123**), ¶ 263 and cases cited therein.

1515 *See* e.g. *Azurix v. Argentina*, Award, 14 July 2006 (**CLA-057**), ¶¶ 406-408.

1516 *See Biwater v. Tanzania*, Award, 24 July 2008 (**CLA-127**), ¶ 729.

1517 *Supra*, Part IV, Section V (FPS Jurisdiction); Kazakhstan-Azerbaijan BIT, 16 September 1996 (**CLA-260**), Art. 3(2) ("Investment made by investors of either Contracting Party shall be accorded fair and equitable conditions and full protection and security in the territory of the other Contracting Party"); UK-Azerbaijan BIT, 4 January 1996 (**CLA-261**), Art. 2(3) ("Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party").

1518 SoD ¶ 409.

1519 SoC ¶¶ 564-566.

1520 *Biwater v. Tanzania*, Award, 24 July 2008 (**CLA-127**), ¶ 730.

since this Arbitration was initiated, blatantly ignoring the Tribunal's order to leave potential witnesses and their families in peace.[1521]

1075. As discussed in the Statement of Claim, the application of the FPS standard and a host State's diligence is not a question of the actions that gave rise to the harm to an investor's investment: "[r]ather the focus is on the acts or omissions of the State in addressing the unrest that gives rise to the damage."[1522]

1076. *Finally*, Azerbaijan denies that it failed to (or chose not to) apply its own laws that would have offered Mr. Bahari protection.[1523] As is often the case, Azerbaijan denies any and all awareness of the facts at hand.[1524] The suggestion that "in no sense can it be said that Azerbaijan obtained an awareness of any what [sic] had allegedly happened to Mr Bahari's investments in a manner that would qualify to establish a breach of the FPS standard" beggars belief.[1525] Azerbaijan's State organs chose not to intervene, blatantly ignored those alerts, and chose not to apply Azerbaijan's own laws that would have offered Mr. Bahari protection against the unlawful taking of his investments. While doing so, Azerbaijan failed to protect Mr. Bahari's investments in breach of the FPS standard.

III. AZERBAIJAN UNLAWFULLY EXPROPRIATED MR. BAHARI'S INVESTMENTS

1077. With regard to expropriation, Azerbaijan claims that "[n]one of Mr Bahari's claims can succeed" [1526] because: (i) Mr Bahari's expulsion took place before the Treaty entered into force; (ii) there was no sovereign interference in Mr Bahari's rights; and (iii) there was no conduct on the part of Azerbaijan resulting in the "substantial deprivation" of Mr Bahari's investments.[1527] These arguments are unsustainable for the following reasons.

1078. As a preliminary matter, the Statement of Claim necessarily discussed Azerbaijan's indirect expropriation of Mr. Bahari's investments as the following:

> Mr. Bahari invested millions of U.S. Dollars in Azerbaijan; Government officials stole these investments for themselves; and (a) Mr. Bahari no

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1521 *Supra*, Section V.H (Harassment of Ms. Ramazanova and Mr. Abdulmajidov).

1522 *Ampal-American v. Egypt*, Decision on Liability and Heads of Loss, 21 February 2017 (CLA-136), ¶ 245.

1523 SoD ¶ 410.

1524 SoD ¶ 411.

1525 SoD ¶ 411.

1526 SoD ¶ 414.

1527 SoD ¶¶ 415-421.

> longer owns or controls his investments. However, (b) the expropriatory acts do not manifest as a single direct breach in time; rather, (c) there were composite and continuous acts which ripened into an indirect expropriation over a certain length of time.[1528]

1079. Having now had the ability to learn certain facts from the Statement of Defense and document production, and with the benefit of his own additional fact finding, Mr. Bahari is now in a position to be more precise, and assert that Azerbaijan's expropriation is most readily established in his loss of Caspian Fish. Accordingly, Claimant's expropriation claim is limited to Caspian Fish. That said, Mr. Bahari maintains that the conduct of Azerbaijan, through "malfeasance, misfeasance, or nonfeasance, or some combination of the three,"[1529] resulted in an unlawful taking of all his investments.

1080. The Statement of Defense does not dispute that Azerbaijan is under an obligation not to unlawfully expropriate investors under Article 4 of the Treaty. It also does not contend that Azerbaijan lawfully expropriated Mr. Bahari's investments.

1081. Instead, what Azerbaijan argues is a precarious (and untenable) balancing act.

a. On the one hand, Azerbaijan argues that any taking of Mr. Bahari's investments was complete before the Treaty entered into force on 20 June 2002.

b. On the other hand, Azerbaijan argues that there was no indirect expropriation by Azerbaijan at all, it was the same nefarious "private acts of third parties," namely Messrs. Aliyev, Heydarov, Pashayev, and Khanghah (although that is not admitted).[1530]

1082. The reality is that neither of these propositions is correct or true.

1083. The following review of the facts in evidence and relevant case law establishes that Azerbaijan's indirect expropriation did not occur until after 20 June 2002, but was most likely consummated by 1 January 2003.[1531] Further, the indirect expropriation is

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1528 SoC ¶ 582.

1529 SoC ¶ 585, citing Rudolf Dolzer, Ursula Kriebaum, and Christoph Schreuer: Principles of International Investment Law, Third ed. Oxford, United Kingdom (2022 OUP) (**CLA-050**), pp. 156-157; citing WM Reisman and RD Sloane, "Indirect Expropriation and its Valuation in the BIT Generation", (2003) 74 BYLL 115, 121 (**CLA-150**).

1530 SoD ¶ 32.

1531 Throughout the document production phase, Azerbaijan has sought to use this 1 January 2003 date as some sort of cut off for its breaches of the Treaty. This is not what Claimant stated in his Statement of Claim. This date was selected because, "based on the current known facts, it is reasonable to select 1 January 2003 as the appropriate valuation date for restitution to re-establish the status quo ante" (SoC ¶ 463). Claimant also

attributable to Azerbaijan, there cannot be this all-encompassing excuse that the relevant composite events were solely "private acts of third parties."[1532]

1084. Azerbaijan's contention that events prior to the Treaty entering into force are "*prima facie* incapable of forming the evidentiary basis for a Treaty claim"[1533] is correct, but that is a truncated statement of the appropriate analysis. The Tribunal can and should take into consideration facts that pre-date the Treaty's entry into force to examine the context in which Azerbaijan's indirect expropriation took place *after* the Treaty entered into force.[1534]

1085. The following known facts occurred before the Treaty entered into force on 20 June 2002:

a. Starting in September 2000, Azerbaijan and Mr. Bahari's business partners in Caspian Fish (Messrs. Aliyev, Heydarov, and Khanghah) implemented what appears to have been the initial phase of a broader campaign against Mr. Bahari and his investment in Caspian Fish by incorporating Caspian Fish LLC, but without Mr. Bahari's knowledge or approval.[1535] This included numerous documents with Mr. Bahari's forged signature, including at least one which is said to have been notarized in the presence of Mr. Bahari.[1536] The Ministry of Justice was responsible for ensuring the activities of the notary public in Azerbaijan.[1537] Overall, on Azerbaijan's own evidence and documents, Caspian Fish LLC was incorporated and operated without Mr. Bahari's knowledge or involvement. Azerbaijan acknowledged and adopted all of this.

b. At the Caspian Fish opening ceremony on 10 February 2001, Azerbaijan unlawfully detained and then ultimately expelled Mr. Bahari from Azerbaijan, thereby denying

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stated that, "for the purposes of valuing the date on which Azerbaijan breached the Treaty via a specific act, or when it can be said that the State first started to disregard its obligations under the Treaty, Mr. Bahari has identified 1 January 2003 as the relevant date" (SoC ¶ 635).

1532 SoD ¶ 32.

1533 SoD ¶¶ 51-52.

1534 *Pey Casado v. Chile*, ICSID Case No ARB/98/2, Award [English translation and French original], 8 May 2008 (**RLA-135**), ¶ 611 (own translation: "Once the treaty has entered into force, it is however not prohibited for the Tribunal to take into account facts predating the treaty's entry into force to examine the context in which have occurred the acts that the claimants allege qualify as violations postdating the treaty's entry into force. This was recalled by the arbitral Tribunal constituted in the *MCI v. Ecuador* matter…"), ¶ 618.

1535 *Supra*, Part II, Section IV.C (Caspian Fish LLC).

1536 **R-56** Application to the Ministry of Justice for the registration of the LLC dated 29 August 2000. According to Claimant's independent forensic expert, "[t]he signature on R-056 therefore lies outside the range of variation of Mr Bahari's known signatures" (Morrissey Report, ¶ 3.4.9).

1537 SoC ¶ 396.

him any physical access to Caspian Fish.[1538] Despite a threat to his life by the Azerbaijani Government,[1539] Mr. Bahari made best efforts to understand the justification, if any, for Azerbaijan's behavior and how to address the situation.[1540]

c. It is Azerbaijan's case that Mr. Bahari continued to engage in the business of Caspian Fish throughout February and March 2001, and that Mr. Bahari did not permanently leave Azerbaijan until December 2001. If that is correct (which is denied), then the taking of Caspian Fish could not have been complete until at least 2002.

d. In June 2002, Azerbaijan had yet to take full possession or control of Caspian Fish from Mr. Bahari, as evidenced by the opening of discussions between Mr. Bahari and Minister Heydarov,[1541] which culminated in Minister Heydarov's proposal made at the 15 June 2002 meeting in Dubai to purchase and take over Mr. Bahari's interests and control of Caspian Fish.[1542]

e. Mr. Heydarov's proposal was a forced sale, under duress, whereby Mr. Bahari was pressured to give up his shareholding in Caspian Fish in exchange for his other investments in Coolak Baku, Shuvalan Sugar, and his carpet collection. This meant that Mr. Bahari was offered the chance to keep his own investments against the forced abandonment of his biggest investment in Azerbaijan. Minister Heydarov, as well as President Aliyev and Mr. Khanghah, would only have made such an offer of millions of dollars if they considered Mr. Bahari to continue to own and control Caspian Fish.

f. As can be seen from the settlement proposal itself, Mr. Bahari rejected the terms of the forced sale and made a counteroffer.[1543]

1086. Thus, in mid-June 2002, all parties involved considered that Mr. Bahari effectively retained his rights to and control of Caspian Fish. Those rights and control were not only over the physical facility of Caspian Fish, but also Mr. Bahari's shareholding via his ownership of

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1538 Employees associated with Mr. Bahari were also denied any further access to the Caspian Fish facility. See Suleymanov WS ¶ 42; Moghaddam WS1 ¶ 67.

1539 Kousdeghi WS1 ¶¶ 18-19, 23-24.

1540 Bahari WS1 ¶ 79.

1541 SoC ¶¶ 593-595.

1542 SoC ¶¶ 593-595.

1543 **C-017** Settlement Proposal, 15 June 2002, pp. 5-6.

Caspian Fish BVI, as well as his 40% interest under the Caspian Fish Shareholders Agreement, which also entitled him to 40% of the Caspian Fish revenues.

1087. Frustrated with Mr. Bahari's refusal to relinquish Caspian Fish, Azerbaijan attacked Mr. Moghaddam in Azerbaijan, in a transparent attempt to add more pressure on Mr. Bahari. Mr. Moghaddam recalls that he was kidnapped and then interrogated "at the end of June 2002" about Mr. Bahari and his investments in Azerbaijan.[1544] While Mr. Moghaddam cannot recall specifically when those events occurred, it is highly likely that they took place after the 20 June 2002 meeting in Dubai as an act of retaliation against Mr. Bahari.

1088. Since the meeting between Mr. Bahari and Mr. Khanghah in Dubai occurred on 15 June 2002, i.e. just 5 days before the Treaty entered into force, it is not plausible that Azerbaijan had completed its expropriation of Caspian Fish at that time.

1089. Notably, Mr. Bahari's qualifying investments in Azerbaijan under the Treaty included *inter alia* his (a) ownership and participation in the Azerbaijan representative office of Caspian Fish BVI and (unbeknownst to him) in Caspian Fish LLC (Article 1(1)(i)); (b) choses-in-action via the Caspian Fish Shareholders Agreement (Article 1(1)(ii)); and (c) the Caspian Fish facility (Article 1(1)(iii)). Even if it could somehow be considered that Azerbaijan had expropriated Mr. Bahari's investment in the Caspian Fish facility before the Treaty entered into force, it could not have expropriated his ownership and participation in the Azerbaijan representative office of Caspian Fish BVI and in Caspian Fish LLC and/or his claims under the Caspian Fish Shareholders Agreement.[1545]

1090. It is highly likely that Azerbaijan's composite acts can be considered to have crystalized in an expropriation of one of Mr. Bahari's different Caspian Fish "investments' by 1 January 2003. If that is not the date upon which Azerbaijan's composite acts were sufficient to constitute an unlawful indirect expropriation under Article 4 of the Treaty, then Azerbaijan's continuing malfeasance and campaign against Mr. Bahari in months and years subsequent would have ultimately constituted an indirect expropriation.

1091. Clearly, Azerbaijan's threats and intimidation, combined with his expulsion, prevented Mr. Bahari's ability to control or manage Caspian Fish, much less assert his rights in

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1544 Moghaddam WS1 ¶ 72.

1545 It is well-settled that a State can expropriate contractual rights through and exercise of sovereign authority. See *Azurix v. Argentina (I)*, Award, 14 July 2006 (**CLA-057**), ¶ 315; *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, 1 March 2023 (**CLA-291**), ¶ 556 (It is undisputed that contractual rights are susceptible to expropriation).

Azerbaijan that the facility and his contract rights had been unlawfully taken from him by and through action and inaction of the State. That cannot be disputed.

1092. To the extent Azerbaijan complains that Mr. Bahari is having difficulty identifying specific Government action and inaction that supported or specifically effected the unlawful expropriation of Caspian Fish, that difficulty is solely a result of Azerbaijan's own design. As discussed above, Azerbaijan's veil of uncertainty and deniability remains an intractable obstacle to the truth.[1546] Azerbaijan has aggressively maintained this situation over the past two decades, and continues to do so in this Arbitration. Azerbaijan has unclean hands, it cannot seek to benefit from purposefully denying Mr. Bahari and the Tribunal such insight and knowledge to argue that it did not expropriate Mr. Bahari's investment in Caspian Fish.

1093. What Mr. Bahari and the Tribunal currently know establishes that the expropriation of Caspian Fish was not just the physical facility itself, which is clearly an investment made by Mr. Bahari for the purposes of the Treaty, but also an expropriation of his ownership via Caspian Fish BVI and his contractual rights in the Caspian Fish Shareholders Agreement.[1547]

1094. A highly similar expropriation based on State acts and omission was addressed in *Biloune v. Ghana*.[1548] Azerbaijan seeks to distinguish *Biloune* by stating that the expropriation at issue was "concession rights under a contract between the investor and an agency of the Ghanaian government."[1549] But the principle of expropriating contractual rights remains squarely applicable, what is dispositive is whether there was a sovereign act to prevent Mr. Bahari from availing his rights.

1095. Additionally, as discussed by the tribunal in *CME v. Czech Republic*, for the purpose of an expropriation claim "it makes no difference whether the deprivation was caused by actions or by inactions."[1550] Even if one were to accept Azerbaijan's argument that Mr. Bahari's expropriation case is solely based on omissions on the part of Azerbaijan, which it is

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1546 *Supra*, Part II, Section IV.C (Caspian Fish LLC).

1547 **C-004** Shareholders Agreement for Caspian Fish Co. Inc., 27 April 1999.

1548 SoC ¶ 580; *Antoine Biloune and Marine Drive Complex Ltd. v. Ghana Investments Centre and the Government of Ghana*, Award on Jurisdiction and Liability ("***Biloune v. Ghana***"), 27 October 1989 (**CLA-140**).

1549 SoD ¶ 422(a).

1550 *CME v. Czech Republic*, Partial Award, 13 September 2001 (**CLA-153**), ¶ 605 and the cases cited therein. See also *Eureko B.V. v. Republic of Poland*, Partial Award ("***Eureko v. Poland***"), 19 August 2005 (**CLA-065**), ¶ 186.

not,[1551] this is still sufficient to establish an expropriation because Azerbaijan's omissions were sovereign interferences with Mr. Bahari's rights.[1552]

1096. Further, Caspian Fish was controlled by Messrs. Aliyev and Heydarov, at times through and by their daughters and sons, respectively, and by Gilan Holding. The alleged separation between private and State is indistinguishable. As discussed in the Allan & Makarenko Report, there is no fundamental or material distinction between State and private commercial decisions made, and activities undertaken, by Azerbaijan's most powerful elite patron-client. [1553] Azerbaijan's attempt to distance itself from the malfeasance that resulted in the taking of Mr. Bahari's investment in Caspian Fish is unsustainable.

1551 In that sense, this case is clearly different from the facts at hand in *Olguín*, where the tribunal could not identify how Paraguay may have been deemed to appropriate the claimant's investment, whose loss of money, the tribunal found, was due to the crisis suffered by the financial company which held the investment and by the Paraguayan financial system in general (*Olguín v Paraguay*, ICSID Case No. ARB/98/5, Award, 26 July 2001 (**RLA-172**), ¶ 65(d)).

1552 *CME v. Czech Republic*, Partial Award, 13 September 2001 (**CLA-153**), ¶ 602.

1553 Allan & Makarenko Report, ¶ 5.

PART VII: QUANTUM

1097. As discussed in the Statement of Claim,[1554] Azerbaijan's failure to afford the required protections under the Treaty deprived Mr. Bahari of the entire value of his investments in Azerbaijan, causing him substantial financial and personal damage. Well-settled principles of international law entitle Mr. Bahari to full compensation for the loss of the entire value of his investments in Azerbaijan. Mr. Bahari's entitlement to full compensation arises whether Azerbaijan is found to have committed a single or a combination of the Treaty breaches described above.

1098. This Part responds to and addresses Azerbaijan's position on the quantum of damages that Mr. Bahari is entitled to and certain opinions in the "Shi Report" ("**Oxera Report**" or "**Oxera**"),[1555] including by reference to and incorporation of the **Secretariat Second Report** and **Iselin Second Report** submitted in support of this Reply.

I. MR. BAHARI IS ENTITLED TO DAMAGES FOR AZERBAIJAN'S BREACHES OF THE TREATY

A. THERE IS A DIRECT CAUSAL LINK BETWEEN AZERBAIJAN'S UNLAWFUL ACTS AND MR. BAHARI'S LOSSES.

1099. Azerbaijan submits that damages for any violation of the Treaty will only be due if there is a sufficient causal nexus between the actual breach and the Treaty and the loss sustained by Mr. Bahari.[1556] Mr. Bahari agrees with and relies on this established principle in investment treaty arbitration.

1100. The crux of Azerbaijan's argument that there is no causal nexus is its *ad nauseum* contention that the harm suffered by Mr. Bahari and his investments is the result of conduct by third parties that is not attributable to Azerbaijan.[1557] This is not a viable excuse, as addressed throughout this Reply Statement. Azerbaijan engaged in and supported the unlawful treatment of Mr. Bahari and his investments at every step of the way.

1554 SoC Section IX.

1555 The "Shi Report" is the Expert Report of Dr. Min Shi of Oxera Consulting submitted with the Statement of Defense. The Secretariat Second Report refers to this report as the "**Oxera Report**" or simply "**Oxera**." This Reply adopts the terminology used by Secretariat.

1556 SoD ¶¶ 425-427.

1557 SoD ¶ 424.

1101. The fallacy of this argument is apparent from Azerbaijan's reliance on Ayna Sultan as an example in support of this proposition.[1558] Azerbaijan contends that it was Mr. Bahari's own failure to pursue his interests in the Ayna Sultan property which led to his loss. As Azerbaijan is well aware, and as discussed previously, Mr. Bahari was afforded zero due process, much less notice, of the various proceedings that took place *in absentia* to enable and ensure third parties took control and retained the Ayna Sultan property.[1559]

B. SUMS AWARDED MAY BE SET OFF IN PRINCIPLE.

1102. Azerbaijan's Defense is largely premised on the fabricated allegation that Mr. Bahari voluntarily agreed to sell his interests in Caspian Fish for a fraction (less than 10%) of what he invested, after strenuously working for approximately three years to bring the Caspian Fish to fruition. As discussed above, Mr. Bahari never sold his interest in Caspian Fish.[1560]

1103. Likely recognizing that any such sale, even if it were somehow true, would have nevertheless been made under duress, with the proverbial gun to Mr. Bahari's head, the Statement of Defense submits that any sums already received by Mr. Bahari for the sale of his interest in Caspian Fish should be offset against any damages awarded.[1561]

1104. Mr. Bahari agrees with this, in principle, but maintains that it is a moot discussion because he did not sell his interest in Caspian Fish, much less receive any related monies for his interests in Caspian Fish.

C. THE 1 JANUARY 2003 VALUATION DATE IS REASONABLE AND SUPPORTED

1105. Azerbaijan's discussion on the timing of the harm to Mr. Bahari and his investments is another *ad nauseum* argument that cannot succeed. It is not Mr. Bahari's case that the alleged breach occurred before the Treaty entered into force, as stated by Azerbaijan.[1562] That is a manifest misrepresentation and a legal impossibility under the principle of non-retroactivity.

1558 SoD ¶ 428(b).

1559 *Supra*, Part II, Section II.E (Ayna Sultan Taken Through Courts).

1560 *Supra*, Part II, Section III (No Sale of Caspian Fish in 2001).

1561 SoD ¶¶ 429-430.

1562 SoD, Part 4.V.C.

1106. Mr. Bahari has established in the Statement of Claim and in this Reply Statement that Azerbaijan's campaign of unlawful measures against him and his investments began before the Treaty came into force, and continued, uninterrupted, after the Treaty came into force, for weeks, months, and years, if not decades. It is incontrovertible that Azerbaijan's unlawful measures took place after the Treaty came into force, including, for example, the court proceedings in relation to Ayna Sultan and Coolak Baku, and the mistreatment and eventual jailing of Mr. Moghaddam on false drug charges as a way to intimidate Mr. Bahari and frustrate his efforts to recover his investments and enforce his rights.

1107. Azerbaijan has played fast and loose throughout this Arbitration when discussing Mr. Bahari's 1 January 2003 valuation date. During document production and other submissions, Azerbaijan sought to transform Mr. Bahari's 1 January 2003 valuation date into some type of artificial cut-off date to Azerbaijan's responsibility for its bad acts or its obligation to produce documents.[1563] This position is inapposite to the fundamental principles of continuing breach and the actual facts and evidence in this Arbitration.

1108. The selection of 1 January 2003 as the valuation date for the composite acts that resulted in Azerbaijan's indirect expropriation of Caspian Fish is a reasonable date in circumstances where Azerbaijan has deprived, and continues to deprive, both Mr. Bahari and the Tribunal of knowledge that would assist in understanding exactly what happened and when vis-à-vis Caspian Fish. Mr. Bahari stands behind his submission that the expropriation of Caspian Fish is one of *res ipsa loquitur* – what has happened is self-explanatory and incontrovertible.[1564]

1109. Azerbaijan's position is that bad acts *did* occur, but they stopped before 20 June 2002, is not correct on the facts or the law. As stated by the tribunal in *Siemens v. Argentina*, it is the proverbial "straw that breaks the camel's back" that tilts the balance to form an indirect expropriation.[1565] As discussed above, by 20 June 2002, it was not clear that Mr. Bahari's

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1563 See e.g. SoD ¶ 434 ("None of the post-January 2003 acts are said independently or together to comprise a breach of the Treaty"); See e.g. Procedural Order No. 6, Annex 1, p. 4, Azerbaijan's Objection (Temporal Scope) to Claimant's Document Production Request No. 2.

1564 SoC ¶ 583; citing *AMT v. Zaire*, Award, 21 February 1997 (**CLA-118**), ¶ 6.09; *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines (I)*, ICSID Case No. ARB/03/25, Award, 16 August 2007 (**CLA-035**), ¶ 399 ("this is a case in which *res ipsa loquitur*. The relevant facts, all of which are found in Fraport's own documents, are incontrovertible.")

1565 *Siemens v. Argentina*, Award, 6 February 2007 (**CLA-055**), ¶ 263.

loss of control of Caspian Fish was more than temporary.[1566] But on what we currently know of Azerbaijan's acts and omissions vis-à-vis Mr. Bahari and Caspian Fish, it is reasonable to say that his loss of control was absolute by 1 January 2003: the record shows no more attempts to negotiate a sale of Caspian Fish from Mr. Bahari (under duress) after the 15 June 2002 meeting in Dubai; Mr. Bahari was plainly unable to return to Azerbaijan due to threats and intimidation by Azerbaijan against him and those associated with him; and, Mr. Bahari's business partners and Azerbaijan carried on with business as usual at this point, without Mr. Bahari or any concern for his rights in Caspian Fish. Mr. Bahari submits those circumstances had crystalized into Azerbaijan's indirect expropriation of Caspian Fish as of 1 January 2003.

1110. With respect to Azerbaijan breach of protections of the Treaty's FET and FPS for all of Mr. Bahari's investments, 1 January 2003 is also a reasonable date for the purposes of valuation. The evidence in this Arbitration establishes that Mr. Bahari is entitled to assert that on 21 June 2002, one day after the Treaty came into force, is an appropriate date for valuation because Azerbaijan was in breach of its obligations under the Treaty at that exact moment in time; Azerbaijan had not "cured" any of the bad acts that it performed prior to the Treaty being force. However, strictly for the purposes of valuation, Mr. Bahari has proposed that 1 January 2003 be taken as the applicable date of breach.

II. THE QUANTUM OF MR. BAHARI'S DAMAGES IS PROVEN

1111. The Statement of Defense submits that Mr. Bahari bears the burden of proving the quantum of his damages.[1567] This is not controversial and was extensively discussed in the Statement of Claim.[1568] However, Azerbaijan's blurred discussion of the principles that apply to that burden is largely inapt since Mr. Bahari has established his damages with sufficient and reasonable certainty, such that the Tribunal can, with reasonable confidence, estimate the extent of his loss.[1569]

1566 *Supra*, Part V, Section III (Expropriation). See *Wena Hotels v. Egypt*, Award, 8 December 2000 (**CLA-122**), ¶ 99 (The tribunal considered that there was expropriation of a hotel after an extended period of seizure lasting nearly a year); *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award, 13 September 2001 (**CLA-153**), ¶ 605.

1567 SoD ¶ 437.

1568 SoC ¶¶ 643-650.

1569 SoD ¶ 437.

1112. Relying on opinions expressed in the Oxera Report, the Statement of Defense primarily takes issue with Secretariat's opinions on how to apply the "Market Approach" and the "Amounts Invested Approach" to Mr. Bahari's investments.[1570] The Secretariat Second Report addresses the Oxera Report and Azerbaijan's contentions.

1113. As a preliminary and overarching issue, a central theme of Azerbaijan's and Oxera's critique of Secretariat's Market Approach rests on a misleading complaint that there is little to no financial information about Caspian Fish that would support Secretariat's valuation. But the scarcity of this information is *exclusively* a situation of Azerbaijan's own, purposeful, doing.

A. AZERBAIJAN PRODUCED INCOMPLETE, UNTRUSTWORTHY, AND INAUTHENTIC FINANCIAL INFORMATION FOR CASPIAN FISH LLC.

1114. As discussed throughout this Reply, Mr. Bahari, and those that he has sought assistance from through the years, were prevented from unearthing reliable and actual information in Azerbaijan that would have enabled Mr. Bahari some basis to seek to recover Caspian Fish and his other investments in Azerbaijan. This included such information as who owns the investments, the investment's legal, financial, or corporate status, or economic information.

1115. Now, when Mr. Bahari has the full weight of these Arbitration proceedings behind him, Azerbaijan unabashedly maintains this veil of secrecy and obfuscation over Caspian Fish by failing to adhere to its obligation to comply with document production and arbitrate in good faith. The pittance of financial and corporate information that Azerbaijan has produced about Caspian Fish is truncated, facially untrustworthy, and most likely comprised of at least some forged documents and inauthentic financial data.

1116. Article 9.4 of the Charter of Caspian Fish LLC requires that the company engage a professional auditor annually to carry out an external audit (from an independent third party).[1571] Despite this, and in response to Claimant Document Production Request 60, Azerbaijan (belatedly) produced a 3 May 2024 letter from the "Deputy Head of the State Service for Property Issues under the Ministry of Economy of the Republic of Azerbaijan" stating that:

1570 SoD ¶¶ 443-445.

1571 **R-57** Charter of the LLC, 11 September 2000.

[redacted][1572]

1117. This letter fails to explain why all of these documents, including audited financial statements of Caspian Fish LLC, are not available.

1118. This letter is indicative of Azerbaijan's approach to document production, and in particular its disclosure of any information about Caspian Fish. As discussed below, in the rare instances where Azerbaijan does disclose financial information about Caspian Fish, this creates more questions than answers, and reinforces Claimant's fundamental concern that Azerbaijan's evidence and documents are, at best, not reliable.

1119. On 2 May 2024 Counsel for Azerbaijan produced documents from Caspian Fish LLC that were said to relate to the company's historical financial and/or operating performance. This was in response to the same Request No. 60 above, but was comprised of what Counsel for Azerbaijan said were "[redacted]"[1573] The documents produced were said to include: (i) profit tax declarations; (ii) loan documents; (iii) monthly value added tax filings; (iv) a summary of caviar exports; and (v) a summary of exports of fish products.[1574]

1120. Secretariat has reviewed this production and notes that the documents Caspian Fish LLC allegedly produced are incomplete and do not reflect the entire period since the company started operations.[1575] Azerbaijan has not explained with any specificity why it was able to

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1572 **C-417** [Respondent Document Production - 060_47] Letter from Ministry of Economy Regarding Caspian Fish LLC Financials, 3 May 2024.

1573 See Procedural Order No. 6, Annex 1, pp. 106-108

[redacted]

1574 It is not clear what level or review or oversight Counsel for Azerbaijan conducted over this disclosure because in its cover email dated 2 May 2024 (after document production was due by both Parties) Counsel stated that: "[redacted]"

1575 Secretariat Second Report, Section 3.C.

produce information for certain periods, but not others. The following Table 9 in the Secretariat Second Report summarizes the period covered (and not covered) by Azerbaijan's Request No. 60 production from 2 May 2024.

Table 9: Summary of the ROA's Production Request No. 60[1576]

1121. For the purposes of its Second Report, Secretariat conducted a forensic analysis of these documents and their implications for Caspian Fish's financial position throughout the years. Secretariat's review, from an economic perspective, raises at least seven questions and/or red flags, which include, but are not limited to, the following.[1577]

1. Profit Tax Declarations.

1122. The profit tax declarations show that Caspian Fish allegedly incurred losses totaling US$ 5.9 million from 2014-2023, and therefore, the fact that Caspian Fish continued to operate for so many years despite being a loss-making enterprise raises questions as to whether the information contained in these declarations is accurate and/or potentially depressed (especially in light of the contemporaneous reporting on the industry being

1576 Secretariat Second Report, Section 3.C (emphasis added).

1577 Secretariat Second Report, Section 3.C.

lucrative). Secretariat further noted that it is possible that Caspian Fish's earnings may have been underreported in order to avoid paying taxes. This appears to be consistent with a lawsuit against Caspian Fish that was filed in October 2022 for tax evasion.[1578]

1123. The equity portion of the 2018 profit tax declaration appears to show US$ 3.6 million in "[redacted]". That Caspian Fish had a positive retained earnings balance of US$ 3.6 million at the end of 2018 may be surprising given the magnitude and frequency of losses leading up to 2018 shown in the declarations (i.e. *losses* of US$ 1.8 million in 2014, US$ 3.0 million in 2015, and US$ 0.8 million in 2018 respectively).[1579]

1124. The documents produced include a list that purportedly captures Caspian Fish's caviar exports showing that Caspian Fish generated US$ 5 million in revenue from just caviar exports in 2007 (an amount that does not include any domestic sales of caviar or domestic sales or exports of fish products). A 2007 profit tax declaration, however, appears to show that Caspian Fish's total revenues in 2007 were only US$ 0.522 million.[1580]

1125. Additionally, an independent Food and Agriculture Organization (FAO) report from 2013 appears to show that Caspian Fish generated revenues from just fish products of at least US$ 6.4 million in 2009. This amount does not include any caviar sales. However, the 2009 profit tax declaration appears to show that Caspian Fish's total revenues were only US$ 2.2 million.[1581]

1126. The reported pre-tax profits in 2010 and 2011 were exactly the same (AZN 220,413). This could be purely coincidental; however, it is surprising that a company would earn the exact same profits from one year to the next.[1582]

1127. Even for the years provided, the profit tax declarations are incomplete and inconsistent with respect to the company's reported assets, liabilities, and equity. For example, no

1578 Secretariat Second Report, Section 3.B.

1579 Secretariat Second Report, ¶ 3.85.

1580 Secretariat Second Report, ¶ 3.79.

1581 Secretariat Second Report, ¶ 3.79.

1582 Secretariat Second Report, ¶ 3.87.

information was reported on the company's assets, liabilities, or equity in the 2006 to 2013, 2014, and 2017 declarations.[1583]

2. Monthly VAT Filings.

1128. The VAT filings that Azerbaijan produced appear to include Caspian Fish's itemizations of such expenses and appear to primarily include relatively small amounts for various goods and services, such as hotels and telecommunications. Notwithstanding that these documents cover only the period from July 2001 to December 2003 (1.5 years), Secretariat does not consider them useful to understanding a complete view of Caspian Fish's financial and operating performance since 2001.[1584]

3. Caviar Exports.

1129. Azerbaijan produced one document titled "EXPORT KÜRÜ," which is understood to translate to caviar exports and which appears to include a list of exports. The file does not mention Caspian Fish, but Azerbaijan represents that the document is for Caspian Fish. Amongst other inconsistencies, this list suggests that Caspian Fish's caviar exports decreased dramatically after 2007; however, this trend appears inconsistent with the contemporaneous reporting on Caspian Fish and statements by the company's own managers.[1585]

1130. For example, the Secretariat Second Report discusses a BBC report that referred to Caspian Fish in December 2007 as a big and very lucrative enterprise that was generating millions of dollars.[1586] A Eurasianet article in December 2010, reporting on a Wikileaks blog post covering Azerbaijan's caviar and juice manufacturing, referred to Caspian Fish as the company which controls the lucrative (and previously Russian Mafia-controlled) Beluga Caviar production in Azerbaijan. Notably, in 2012, Mr. Khanghah stated that Caspian Fish successfully met its caviar quotas every year.[1587]

1583 Secretariat Second Report, ¶ 3.88.

1584 Secretariat Second Report, ¶ 3.96.

1585 Secretariat Second Report, ¶¶ 3.97-3.99.

1586 Secretariat Second Report, ¶ 3.100.

1587 Secretariat Second Report, ¶ 3.100.

4. Exports of Other Fish Products.

1131. Azerbaijan produced one file titled "EXPORT Baliq məhsullari," which is understood to translate to exports of fish products. This file also does not mention Caspian Fish, but Azerbaijan represents that the file is for Caspian Fish. The information covers only one month in 2006, appears to cover 2007 and 2008, but then only three months in 2009 and one month in 2011. It is an incomplete picture.[1588]

B. AZERBAIJAN'S ADDITIONAL DISCLOSURE DIRECTLY CONTRADICTS THE 2 MAY 2024 DOCUMENTS DEMONSTRATING LIKELY FRAUD.

1132. Since the documents Azerbaijan produced on 2 May 2024 presented *prima facie* issues, Counsel for Mr. Bahari wrote to the Tribunal on 3 May 2024 to raise the issue of significant anomalies in Azerbaijan's recent production, and to provide an update on Azerbaijan's delayed and inadequate document production in breach of the Tribunal's Procedural Order No. 6.[1589] In particular, we advised the Tribunal that:

[redacted][1590]

1133. Our initial concerns are now, as discussed above, confirmed by Secretariat in its Second Report.

1134. In addition to the questionable financial information contained in the Caspian Fish LLC documents, the letter also raised concerns about significant discrepancies and anomalies on the face of the documents that strongly indicated the documents themselves were forgeries. For example, the income tax returns were clearly not officially filed returns, and appeared to have been recently created documents. They contained no signatures, no execution dates, and no Government stamps / approvals whatsoever. At best, they were pro forma documents filled with numbers.

1135. To better understand the authenticity and electronic integrity of these documents, Claimant engaged Mr. Robert Alan Steer of FRP Advisory Trading Limited ("**FRP Advisory**"), who is an expert specializing in digital forensics. Mr. Steer's Expert Report is

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1588 Secretariat Second Report, ¶ 3.102.

1589 **C-424** Claimant Letter to Tribunal, 3 May 2024.

1590 **C-424** Claimant Letter to Tribunal, 3 May 2024, p. 2.

enclosed with this Reply Statement (the "**Steer Report**"). The Steer Report is an exhaustive digital forensic review of 52 documents produced by Azerbaijan as exhibits to its Statement of Defense and as part of the document production. In summary, Mr. Steer concludes that a number of the documents Azerbaijan produced under Request 60 contain anomalies and irregularities, including in the metadata, and time inconsistencies between various digital files, resulting in a lack of confidence in regard to when and how files were digitally created.[1591]

1136. At least one document that Mr. Steer reviewed has anomalies such as signatures which appear to have different backgrounds to the rest of the page, or inked stamp graphics which also appear to have different backgrounds. He further notes that there appears to be wet-ink signatures, stamps and writing that were originally part of separate unknown documents. These separate documents appear to have been scanned. In the process, the background of these documents took on an off-white tonal value. That scan then further appears to have been cropped, and digitally superimposed to at least 16 of the documents that Caspian Fish produced under Request No. 60 on 2 May 2024.[1592]

1137. While Mr. Steer's conclusions as to these documents and their provenance is necessarily limited because they were only produced electronically, his report identifies a very significant number of issues with Azerbaijan's documents that were produced as evidence with the Statement of Defense and during document production.

1138. In response to our 3 May 2024 letter to the Tribunal, on 15 June 2024 (less than one-week before this Reply Statement was due), Counsel for Azerbaijan made an additional disclosure responsive to Request 60. These documents were stated to be Caspian Fish profit tax declarations for the years 2014 to 2023 from the State Tax Service of Azerbaijan (STS). These documents were said to be specifically produced in response to our queries about certain of the documents in the 2 May 2024 production that were "[redacted]"[1593]

[1591] Steer Report, ¶ 2.3.

[1592] Steer Report, ¶¶ 2.2.12-13.

[1593] **C-425** Counsel for Respondent Email to Claimant, 15 June 2024.

1139. Notably, in its cover e-mail, Counsel for Respondent stated that: "[redacted]." Counsel's need to provide us with a warning about the "[redacted]" between the first and second tranches of produced documents speaks volumes. It is an acknowledgement of the serious issues these documents create for Azerbaijan and Caspian Fish.

1140. In the very limited time available to us (which may have been by Azerbaijan's design), Secretariat was able to review this second 15 June 2024 tranche of Caspian Fish profit declarations for the years 2014 and 2023 and compare these to what Azerbaijan previously produced on 2 May 2024.

1141. The following table shows some of the differences between what was originally produced from Caspian Fish on 2 May 2024 ("Declaration from CF") and what was produced from Azerbaijan's State Tax Service of Azerbaijan ("Declaration from STS") in relation to Caspian Fish's (1) Revenues and (2) Taxable Profit or Loss for the years 2014 to 2019.[1594]

Amounts in AZN

Year	Revenues			Taxable Profit or Loss		
	Declaration from CF	Declaration from STS	Difference	Declaration from CF	Declaration from STS	Difference
2014	983,516	4,208,096	3,224,580	-1,400,323	924,167	2,324,490
2015	695,403	3,043,818	2,348,415	-3,045,641	0	3,045,641
2017	265,000	1,303,244	1,038,244	175,814	130,451	-45,363
2018	1,382,199	1,385,999	3,800	-1,341,871	-172,120	1,169,750
2019	1,551,013	1,705,223	154,210	-1,008,375	-485,644	522,731

1142. This immediately establishes that what Azerbaijan originally produced to Claimant as responsive to Request No. 60 is entirely inconsistent with what it reported to the State Tax Service.[1595] In other words, Azerbaijan produced inauthentic and forged declarations in the Arbitration to underreport the Revenues and Taxable Profit / Loss of Caspian Fish.

1594 See also Secretariat Second Report, Appendix H.1.

1595 It is highly unlikely that what Caspian Fish reported to the STS is actually accurate and trustworthy considering the various reported instances of tax fraud by Caspian Fish LLC, most recently in October 2022 for tax evasion and failure to pay fees and unemployment insurance, compulsory health insurance, and/or compulsory state social insurance. See Secretariat Second Report, ¶ 3.103.

1143. By way of example, the 2014 declaration produced by the State Tax Service shows revenues and profits for Caspian Fish that are AZN 3,224,580 (US$ 1,896,811.75) and AZN 2,324,490 (US$ 1,896,811.75) *greater* than the 2014 declaration produced from Caspian Fish.

1144. Overall, Azerbaijan and Caspian Fish have produced a paucity of financial documents (and corporate documents) in this Arbitration. The limited documents Azerbaijan did produce contain very serious irregularities that make it highly probable that Azerbaijan is not complying with its obligation to arbitrate in good faith, and in any event, its evidence is not reliable.

C. MR. BAHARI HAS PROVEN THE QUANTUM OF HIS LOSS UNDER A MARKET APPROACH.

1145. Secretariat's Second Report reaffirms its conclusions and calculations expressed in its First Report about the quantum of Mr. Bahari's loss under a Market Approach, including based on additional information it has identified and documents submitted in this Reply, as well as a broad rejection of the opinions expressed in the Oxera Report.

1146. The following discusses Secretariat's Market Approach to quantifying Caspian Fish, the Persian Carpets, and the Ayna Sultan property.

1. *Ex-Ante* Market Approach Analysis of Mr. Bahari's Investments In Caspian Fish

1147. The Statement of Defense, adopting the opinion of Oxera, submits that Secretariat's conclusions about the *ex-ante* market approach to valuing Mr. Bahari's interest in Caspian Fish is based on numerous flaws. The following summarizes Secretariat's response to those alleged flaws, which is more thoroughly dealt with in the Secretariat Second Report.

a. Comparability of the Publicly Traded Companies.

1148. Oxera contends that *none* of the companies relied on for Secretariat's *ex-ante* analysis as of January 2003, and most of the 20 companies Secretariat relied on for its *ex-post* analysis as of March 2023, are comparable to Caspian Fish. In response, Secretariat explains that Oxera's criteria are either overly strict or too strictly applied. Secretariat maintains that the companies relied on in its First Report (both the *ex-ante* and *ex-post*

companies) can be used to compute an indicative valuation multiple for Caspian Fish, including through an analysis of the criteria identified by Oxera.[1596]

b. Sector Specific Capacity Multiple.

1149. Oxera suggests that the absence of relevant financial data about Caspian Fish does not render the EV/capacity multiple reliable for valuing Caspian Fish and that an earnings or cash flow-based multiple is preferable.[1597] Secretariat agrees that earnings or cash flow multiples are commonly used and can be preferred, but notes that there is no reliable financial data available for Caspian Fish.[1598]

1150. As addressed by Secretariat's Second Report, and more thoroughly in the discussion below, the little financial information produced by Azerbaijan in this Arbitration is completely unreliable, and raises more questions than it answers, including about the veracity of documents Caspian Fish and/or Azerbaijan have produced and are relying on for its Defense.[1599]

1151. In any event, Secretariat notes that Caspian Fish, even in its early stages, had replaced Azerbalyg (the prior monopolistic player in Azerbaijan's fishing industry) as the controlling entity of the "[redacted]."[1600] This shows Caspian Fish had the ability to generate cash flows. It is therefore appropriate to use the EV/capacity multiple is to determine an indicative value range for Caspian Fish.[1601]

c. Caspian Fish Capacity / Capacities of Publicly Traded Companies.

1152. Azerbaijan submits that the 300-ton figure on the Caspian Fish website is not a reliable indicator of Caspian Fish's processing capacity and that Oxera questions the capacity Secretariat relies on using comparable companies.[1602] Azerbaijan's assertion that figures on the Caspian Fish website are unreliable is entirely unsupported. It is also entirely appropriate, and indeed necessary in light of the absence of (reliable) information, for

1596 Secretariat Second Report, Section 5.B.i.

1597 SoD ¶ 444(b); Oxera Report ¶¶ 4.29-4.31.

1598 Secretariat Second Report, ¶ 5.30.

1599 Secretariat Second Report, Section 3.C.

1600 Secretariat Second Report, ¶ 5.31.

1601 Secretariat Second Report, Section 5.B.ii.

1602 SoD ¶ 444(c).

Secretariat to rely on contemporaneous statements from Caspian Fish about its own production capacity. Secretariat has also identified that 300-ton figure in contemporaneous reporting in numerous sources (including by Caspian Fish itself).[1603]

1153. While Secretariat considers Oxera's comments about capacity metrics to be correct in theory, it maintains that its median multiple potentially captures any variations and an upward adjustment to the production capacities. However, the low end of the multiple range Secretariat provisionally applied may be a reasonable proxy given it is almost 30% lower than the median it calculated in the First Report (and almost 50% lower than the revised median multiple calculated in Table 12).[1604]

d. Caspian Fish Net Debt.

1154. Azerbaijan and Oxera consider Secretariat overestimates the equity value of Caspian Fish by assuming it held no net debt.[1605] Secretariat's Second Report disagrees with this for multiple reasons. For example, Oxera calculates Caspian Fish's implied net debt on the basis of the same companies that she alleges are not comparable to Caspian Fish. Nonetheless, Secretariat considers that the capital structure of the comparable companies may misstate (and potentially significantly) Caspian Fish's net debt. Additionally, the testimony of S. Hasanov, that capital was injected into Caspian Fish in the form of shareholder loans, appears unsupported. In fact, the **R-13** document that Respondent and Mr. S. Hasanov rely on to allegedly summarize Caspian Fish's operations for 2001 does not show any shareholder loans. Thus, Secretariat considers that, "[redacted]"[1606]

e. Overall Ex-Ante Valuation of Caspian Fish.

1155. Based on a review of the Oxera Report, and its own further analysis, Secretariat's Second Report calculates an enterprise value range for Caspian Fish of US$ 247.5 million to US$ 346.5 million. Applying Mr. Bahari's 40% ownership of Caspian Fish, Secretariat estimates

1603 Secretariat Second Report, ¶ 5.33.

1604 Secretariat Second Report, ¶¶ 5.34-5.38.

1605 SoD ¶ 444(d).

1606 Secretariat Second Report, Section 5.B.v.

the value of his interest to be in the range of US$ 99 million to US$ 138.6 million (a midpoint of US$ 118.8 million).[1607]

2. *Ex-Post* Market Approach Analysis of Mr. Bahari's Investments In Caspian Fish.

1156. The Statement of Defense makes a passing reference to Mr. Bahari's entitlement to damages under an *ex post* Market Approach for Caspian Fish, referring to Mr. Bahari's claim as plainly opportunistic. This is unhelpful and incorrect.

1157. The Secretariat Second Report summarizes the finding of its First Report, thoroughly addresses Oxera's comments, and provides its updated *ex post* Market Approach Analysis to Caspian Fish.[1608]

1158. Overall, the Secretariat Second Report estimates the value of Claimant's 40% shareholding between US$ 152.162 million and US$ 195.506 million, as summarized in Table 22 (a midpoint of US$ 173.835 million). Secretariat notes that it is possible that this range may understate the value of Caspian Fish.

Table 22: Current Value of Claimant's Interest in Caspian Fish – Ex-Post Comparable Publicly Traded Company Method[1609]

3. *Ex-Ante* Market Approach Analysis of Mr. Bahari's Investments In the Persian Carpets.

1159. On Azerbaijan's own evidence, all of the carpets that formed Mr. Bahari's expansive collection exist; the collection was known by the Azerbaijan Government; and the

1607 Secretariat Second Report, Section ¶ 5.48.

1608 Secretariat Second Report, Section 8.

1609 Secretariat Second Report, Table 22, p. 118.

collection was last known to be in the possession of either Mr. Alzamin Khanmadov from the Baku Prosecutors' Office, the Azerbaijan Ministry of Culture, or Mr. Rasim Zeynalov.

1160. Additionally, Azerbaijan's evidence establishes that, with the exception of 211 carpets, all of Mr. Bahari's carpets were sufficiently rare and valuable to Azerbaijan that the Ministry of Culture deemed them protected as national treasures and not available for export.[1610] Mr. Iselin consider this to encompass 264 carpets of Mr. Bahari's collection.[1611]

1161. Taking into account Azerbaijan's admitted facts and related evidence, the limited amount of contemporary evidence about the carpets, and the overall constrains of not being able to assess the physical condition of the carpets, Mr. Iselin's opinion is that the most practical solution is to assign a 1 January 2003 average auction value of US$ 500 per carpet to the 211 carpets on the Ministry of Culture export list.[1612] He applies the same 200% uplift to these carpets that he explained in his First Report,[1613] to decide on an international retail value of $1,000 for each of the 211 carpets.[1614]

1162. Applying this pragmatic reduction, Mr. Iselin has revised his overall valuation of Mr. Bahari's carpet collection to include the adjusted value of the 211 carpets approved for export. On this basis, the current value of Mr. Bahari's Persian carpet collection is between US$ 3.121 million and US$ 16.776 million, set out in the table below:

(amounts in US$)

	Auction Prices – Median			Auction Prices – Top 25%		
	Base	Mid	High	Base	Mid	High
Traditional Carpets	2,692,251	3,248,909	3,805,566	11,733,212	13,807,837	15,882,461
Caspian Fish Carpets	428,736	732,424	893,200	428,736	732,424	893,200
Total	**3,120,987**	**3,981,333**	**4,698,766**	**12,161,948**	**14,540,261**	**16,775,661**

1163. As discussed in his Second Report, Mr. Iselin's pragmatic and reasoned valuation approach does not imply that he accepts the views of Mr. Rza Hasanov or Dr. Min Shi. On

1610 Iselin Second Report, ¶ 3; see **R-36** Protection Certificate granted by the Ministry of Culture of the Republic of Azerbaijan for No. 300 issued on 26 July 2002.

1611 Iselin Second Report, ¶ 28.

1612 Iselin Second Report, ¶ 32.

1613 Iselin Second Report, ¶ 28.

1614 Iselin Second Report, ¶ 31, Appendix A.

the contrary, based on his experience, Mr. Iselin disagrees with significant portions of their opinions and analysis of Mr. Bahari's carpet collection.[1615]

4. *Ex-Ante* Market Approach Analysis of Mr. Bahari's investment in the Ayna Sultan Property.

1164. The Secretariat First Report noted that Mr. Bahari had an investment in property, referred to Ayna Sultan. At that time, Secretariat did not have sufficient information to implement the Market Approach to value this investment.

1165. As a result of information contained in the Statement of Defense, Secretariat was provided with documents concerning the sale of the Ayna Sultan property which indicate that a reasonable value for the property as of Ex-Ante Valuation Date is US$ 235,000. Secretariat includes this amount in its assessment of Mr. Bahari's *ex-ante* losses.[1616]

D. MR. BAHARI HAS PROVEN THE QUANTUM OF HIS LOSS FOR AMOUNTS INVESTED.

1166. The Statement of Defense relies exclusively on an argument that Mr. Bahari is unable to prove he invested the amounts claimed in Caspian Fish, Coolak Baku and Shuvalan Sugar.[1617] This is incorrect and grossly ignores the evidence in the Statement of Claim and addressed in the Secretariat First Report. Azerbaijan's position is optimistic fiction at best.

1. Mr. Bahari Was the Only Investor.

1167. Section II in Part II of this Reply thoroughly revisits and adds facts and evidence that conclusively establish the amounts Mr. Bahari invested in Caspian Fish, Coolak Baku and Shuvalan Sugar.[1618] Conversely, Azerbaijan makes no attempt whatsoever to present evidence of an alternative investor in either Coolak Baku or Shuvalan Sugar. As already discussed, Azerbaijan's contention that there was an alternative investor in Caspian Fish, namely Minister Heydarov and his company Gilan, is entirely unsupported and is contradicted by Azerbaijan's own evidence and unsound conclusions.

1615 Iselin Second Report, Section 1-2; see also Secretariat Second Report, Sections 6.B and 9.

1616 Secretariat Second Report, ¶¶ 2.15, 4.10-4.11.

1617 SoD ¶ 446.

1618 *Supra*, Part II, Section II (Mr. Bahari is the Investor).

2. Oxera's Analysis is Inconsistent and Artificially Constrained.

1168. As Mr. Bahari's investment in Caspian Fish, Coolak Baku and Shuvalan Sugar has already been addressed in this Reply, the following summarizes the Secretariat Second Report, and in particular its response the Oxera Report in relation to Amounts Invested.

1169. Secretariat first notes that information included in its First Report indicated that Mr. Bahari likely invested at least US$ 63.062 million in the three companies as follows: (i) US$ 44.418 million in Caspian Fish; (ii) US$ 14.995 million in Coolak Baku; and (iii) US$ 3.65 million in Shuvalan Sugar. These amounts were based on 63 individual transactions. Notably, Secretariat considered that these amounts were likely understated.[1619]

1170. Based on a review of the documents Secretariat produced in support of its tabulation in the First Report, Oxera alleges that the documents do not sufficiently evidence that Claimant invested the amounts claimed. Oxera concluded that only between US$ 0.135 million and US$ 0.847 million (related to equipment and machinery for Coolak Baku) is supported with sufficient evidence.[1620] Whether the Oxera conclusion is premised on particular accounting criteria or different economic modeling, this is an extreme position. A position that strongly suggests Oxera has not objectively reviewed the evidence and documents included with the Secretariat First Report.

1171. Secretariat also finds Oxera's position perplexing, noting that Oxera (a) does not explicitly set out the criteria used to determine whether a claimed amount was sufficiently supported; and (b) does not even appear to consistently apply its own criteria when it is identified.[1621]

1172. As an example of Oxera's unusual approach, Secretariat notes that one of Oxera's reasons for excluding the amounts that Mr. Bahari paid to Chartabi (totaling US$ 36.605 million) appears to be that, even though Mr. Bahari signed the three contracts with Chartabi, the contracts were said to be with Caspian Fish, Coolak Baku, and Shuvalan Sugar, but not Mr. Bahari.[1622] Similarly, with respect to a letter of understanding ("LOU"), which Mr. Bahari signed, and a contract for the purchase of a bottle production machine and other equipment from Nissei ASB Machine Co., Ltd ("Nissei") for US$ 782,000, Oxera

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1619 Secretariat Second Report, ¶ 7.13.

1620 Secretariat Second Report, ¶ 7.9.

1621 Secretariat Second Report, ¶¶ 7.12-7.16.

1622 Secretariat Second Report, ¶ 7.15.

comments that the LOU and contract were between Caspian Fish and Nissei, not Mr. Bahari.[1623]

1173. Oxera does not explain these comments, but Secretariat interprets them to mean that Caspian Fish (and not Mr. Bahari), as the contracting party, was obligated to provide payment. Oxera must also assume that absent explicit evidence that Mr. Bahari provided payment, the company must have done so. But, even if the company is presumed to have paid for a good or service, it may be reasonable to assume that the company's funds came from Mr. Bahari. For example, on the basis that Mr. Bahari was the investor in Caspian Fish, it seems reasonable to infer that any contacts and purchases between Caspian Fish and a third-party (whether Mr. Bahari is mentioned on the purchase document or not) were de-facto purchases by Mr. Bahari.[1624]

1174. The difficulty with Oxera's approach is even more pronounced with Coolak Baku. Mr. Bahari's name is on the documents supporting 86.1% of the amount tabulated as invested in Coolak Baku.[1625] Oxera's rejection of almost all of the amount tabulated in Secretariat's First Report for Coolak Baku is inconsistent and irrational considering that Azerbaijan does not challenge Mr. Bahari's status as the sole investor.[1626]

1175. Equally unreasonable is Oxera's acceptance of certain documents as sufficient evidence of an investment by Mr. Bahari even though they are addressed to only one of the companies (and not Mr. Bahari directly). For example, Oxera accepts an invoice for a small amount (US$ 3,380) between Coolak Baku (and not Mr. Bahari) and the supplier (Eul & Günther) as sufficient evidence.[1627] It is unclear why Oxera considers this purchase document appropriate evidence of Mr. Bahari's investments, but not, for example, the agreement between Coolak Baku and Chartabi that Mr. Bahari signed on behalf of the company and which the contractor confirmed Mr. Bahari had made payment in full.[1628] For Secretariat, this type of inconsistency raises questions as to whether Oxera applied

1623 Secretariat Second Report, ¶ 7.15.

1624 Secretariat Second Report, ¶ 7.16.

1625 Secretariat Second Report, ¶ 7.17.

1626 Secretariat Second Report, ¶ 7.17.

1627 Secretariat Second Report, ¶ 7.18.

1628 Secretariat Second Report, ¶ 7.18.

different criteria (or more strictly applied certain criteria) depending on the amount claimed.[1629]

3. Documentation Overwhelmingly Establishes that Mr. Bahari Made Payment.

1176. To respond to Oxera's comments and assist the Tribunal, Secretariat's Second Report includes updates to its calculations and additional commentary on each of the transactions that form the basis of Mr. Bahari's Amounts Invested claim. In particular, Secretariat notes the parties identified in the supporting documents (such as the company name and whether Mr. Bahari is mentioned), whether payment can be confirmed, whether Mr. Bahari made the payment (or, in Secretariat's view, can be reasonably assumed or inferred to have made the payment), and delivery status. Where necessary, Secretariat draws reasonable inferences as to the relevant parties, payment, and delivery status.[1630]

1177. The below table summarizes Secretariat's current bottom-up tabulation of the amounts that Mr. Bahari invested in Caspian Fish, Coolak Baku, and Shuvalan Sugar based on the documents available.

Table 18: Summary of Claimant's Investments in Caspian Fish, Coolak Baku, and Shuvalan Sugar[1631]

1178. This shows that Claimant likely invested at least US$ 65.799 million in these companies.[1632] While the supporting documents do not explicitly evidence that Mr. Bahari paid for 100% of the amounts tabulated, Secretariat considers that they do show that for

1629 Secretariat Second Report, ¶ 7.19.

1630 Secretariat Second Report, ¶ 7.21.

1631 Secretariat Second Report, Table 18, p. 107.

1632 US$ 44,417,931 for Caspian Fish; US$ 14,994,505 for Coolak Baku; and US$ 6,386,910 for Shuvalan Sugar, respectively.

all of Caspian Fish, Coolak Baku, and Shuvalan Sugar (as a percentage of the amount tabulated):[1633]

a. Mr. Bahari was an identified party on a significant majority of the amount invested (96.7%);

b. Mr. Bahari's payment can be confirmed for a majority of the amount tabulated (57.4%); and

c. Mr. Bahari's payment can be confirmed or reasonably inferred for a significant majority of the amount tabulated (89.8%).

1179. Secretariat notes that these percentages are similar or higher for Caspian Fish.[1634]

III. MR. BAHARI IS ENTITLED TO FULL REPARATION THAT INCLUDES INTEREST.

A. INTEREST FOR THE FULL DURATION OF MR. BAHARI'S LOSS IS NECESSARY AND APPROPRIATE.

1180. The Statement of Defense argues that Mr. Bahari should not be entitled to interest because he was delayed in bringing his claim. This is unsupported by the facts and the law applicable to this dispute.

1181. As a starting point, the support cited for Azerbaijan's argument is *prima facie* inapposite.[1635] Azerbaijan submits that interest should not be awarded on amounts that are estimates or approximations. However, Secretariat's First and Second Reports support and calculate Mr. Bahari's damages based on specific, verified documentation and well-accepted quantum and financial principles. Mr. Bahari's damages are not estimates or approximations under any view.

1182. Azerbaijan also relies on an authority for the proposition that interest may not be awarded "if there is laches, bad faith, duress, or fraud on the part of the claimant."[1636] None of these elements have been sincerely alleged in this Arbitration in relation to Mr. Bahari and his claim.

1633 Secretariat Second Report, ¶ 7.121.

1634 Secretariat Second Report, ¶ 7.121.

1635 SoD ¶ 455, fn. 1288.

1636 SoD ¶ 455, fn. 1288.

1183. In essence, the thrust of Azerbaijan's argument against awarding Mr. Bahari interest is that his claims have been delayed, and therefore awarding interest from a valuation date of 1 January 2003 would result in a "windfall" of some sort. The irony in this position is that, by not awarding Mr. Bahari interest for the full duration of his loss, this would actually result in an unjust windfall for Azerbaijan. Azerbaijan has maintained a continuous campaign of intimidation and harassment, as well as false imprisonment and actual violence in some cases, against Mr. Bahari and those associated with him and this dispute for decades.

1184. The *raison d'etre* for Azerbaijan's campaign has been to ensure that Mr. Bahari could not and did not initiate a claim to recover his investments. Even the prospect of Ms. Ramazanova and Mr. Abdulmajidov assisting Mr. Bahari in 2021 to prepare his claim resulted in Azerbaijan's intimidation and assault against them, which continues today, both for their families in Baku and their having to flee to third country for safety. To suggest that Mr. Bahari has delayed his claim against Azerbaijan by his own volition is absurd and requires this Tribunal to take a myopic view of the dispute.

1185. In making this argument, Azerbaijan yet again misrepresents Mr. Bahari's claim and the law to find some support for its position. Azerbaijan quotes the Statement of Claim to suggest that on Mr. Bahari's own case, there was no single direct breach in time, "but rather 'composite and continuous acts which ripened into an indirect expropriation over a certain length in time'."[1637] Of course, if there was an indirect expropriation, there must have been a single direct breach, which Mr. Bahari has identified as likely occurring as of 1 January 2003. Likewise, Mr. Bahari has identified numerous other breaches by Azerbaijan of both the FET and FPS standards of protection in the Treaty.

1186. Likewise, Azerbaijan cites to *Arif v. Moldova* for the proposition that "where a breach of [sic] Treaty occurs '<u>as a result of a combination of factors over a period of time</u>'," tribunals have found that there is no obligation to pay interest before the date of the award.[1638] This truncated (above underlined) quote misrepresents what the *Arif* tribunal actually said:

> In the current case, there is no single date when the breach of Claimant's legitimate expectations occurred or was manifested; rather the breach was the <u>result of a combination of factors over a</u>

[1637] SoD ¶ 457.

[1638] SoD ¶ 457, *citing Arif v. Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013 (**RLA-179**), ¶ 618 (emphasis added).

> period of time. Further, Claimant's damages, including the moral damages, were not capable of quantification until the Hearing. In these circumstances, the Tribunal considers that the obligation to pay interest only arises from the date of the award.[1639]

1187. Even if Azerbaijan put *Arif* forward for a general principle of law, that principle clearly does not apply because Mr. Bahari has identified numerous specific breaches by Azerbaijan, starting on 1 January 2003, if not as soon as the Treaty came into force on 20 June 2002.

1188. As an alternative, Azerbaijan suggests that pre-award interest only be awarded from 8 September 2017, that being when Mr. Bahari first sent a notice of dispute to Azerbaijan under the Treaty.[1640] Secretariat finds this comment hard to understand from an economic perspective since Mr. Bahari should be compensated for the entire period of his loss.[1641] We agree. Mr. Bahari is entitled to full reparation for the damages he has suffered.

B. MR. BAHARI IS ENTITLED TO ANNUALLY COMPOUNDED INTEREST AT THE RATES SET OUT IN THE SECRETARIAT REPORTS

1189. While Azerbaijan agrees that annually compounded interest is often awarded in investment treaty cases, it submits that "there is no rule of law that it must be awarded" and that "[e]ach case turns on its own facts."[1642] This is not disputed. However, Azerbaijan's suggestion that Mr. Bahari's alleged delay in asserting his claim should result in simple rather than compound interest is as equally untenable as its preceding argument about a "windfall" – anything less than full reparation for Mr. Bahari will be a "windfall" for Azerbaijan.

1190. As noted in the Statement of Claim, annual compounding is appropriate and reasonable. It is the type of interest that Mr. Bahari receives and expects as an entrepreneur from his commercial banking and other interest-bearing activities.[1643]

1639 *Arif v. Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013 (**RLA-179**), ¶ 618 (emphasis added).

1640 SoD ¶ 458. The only support cited for this suggestion is *Goetz v. Burundi (II)*, which his clearly inapposite since it involved a suspension of the legal proceedings due to the death of the claimant. *Goetz v. Burundi (II)*, ICSID Case No. ARB/01/2, Award, 21 June 2012 (**RLA-180**), ¶ 302.

1641 Secretariat Second Report, ¶ 10.5.

1642 SoD ¶ 459.

1643 SoC ¶ 689.

1191. The Secretariat First and Second Reports address the fundamentals underlying its proposed interest rates, namely (1) US Prime + 2%; or (2) Azerbaijan's sovereign rate of borrowing.[1644]

1192. The Secretariat Second Report addresses and fully responds to Oxera's comments on the applicable interest rate. Overall, Secretariat considers Oxera's comments unsuitable and maintains that (1) US Prime + 2% or (2) Azerbaijan's sovereign rate of borrowing are reasonable and appropriate.[1645]

C. INTEREST ON CLAIMANT'S NOMINAL LOSSES AND TOTAL DAMAGES

1193. The below **Table 23** summarizes Secretariat's assessment of Mr. Bahari's losses under the *Ex Ante* Market Approach and Amounts Invested Approach as of 1 January 2003, excluding interest.[1646]

Table 23: Summary of Claimant's Ex-Ante Nominal Losses

1194. In the below **Table 24**,[1647] Secretariat calculates interest on Mr. Bahari's ex-ante nominal losses from Table 23 above on an annual compound basis from 1 January 2003 to the date of this report at (a) the US Prime rate plus 2% and (b) Secretariat's estimate of Azerbaijan's cost of borrowing.[1648]

1644 Secretariat First Report, Section 7; Secretariat Second Report, Section 10.

1645 Secretariat Second Report, Section 10.A.

1646 Secretariat Second Report, Table 23: Summary of Claimant's Ex-Ante Nominal Losses, p. 121. The "n/a" references in Table 23 identify the instances where Secretariat was not able to implement an approach for one of Claimant's investments.

1647 Secretariat Second Report, Table 24: Summary of Claimant's Ex-Ante Damages, p. 125. Secretariat updated its calculations to calculate interest at the sovereign rate of 10.08% rather than 8.83% as in our first report.

1648 The Secretariat Second Report includes a summary of Mr. Bahari's *ex post* damages, which are limited to Caspian Fish and only for current value. See Table 25: Summary of Claimant's Ex-Post Damages.

Table 24: Summary of Claimant's Ex-Ante Damages

IV. FULL COMPENSATION REQUIRES A MARKET VALUATION WHEN AVAILABLE.

1195. Mr. Bahari maintains his position previously set out in his Statement of Claim that a Market Approach valuation is required where available.[1649]

1196. The Secretariat Second Report further confirms and substantiates its well-established Market Approach valuation of Caspian Fish. Based on the availability of that information, it is therefore more appropriate to apply the Market Approach to Caspian Fish in awarding Mr. Bahari damages. This also applies to Mr. Bahari's Persian Carpets, which have been updated in light of additional evidence to reach a Market Approach valuation, as described in the Iselin Report. As well as the Ayna Sultan property.

1197. As was previously the situation with the Statement of Claim, the Market Approach still cannot be implemented for Coolak Baku or Shuvalan Sugar because financial or production/capacity information is not publicly available and because Azerbaijan has not complied with its document production obligations in respect of these companies.[1650] Azerbaijan should not be rewarded for holding back this information.

1649 SoC ¶¶ 690-694.

1650 See e.g. **C-426** [Respondent Document Production - 140_01] Letter from Azad Jafarli, Head of Administration of Ministry of Agriculture, to the State Service for Property Issues, 22 May 2024, sent in response to Claimant Document Production Request No. 140 (

1198. Accordingly, based on the valuation established by the Secretariat Second Report, Mr. Bahari is entitled to *ex-ante* damages based on a Market Valuation for Caspian Fish, the Persian Carpets, and Ayna Sultan; and an Amounts Invested Approach for Coolak Baku and Shuvalan Sugar; all plus applicable interest at US Prime +2% or Azerbaijan's Sovereign Rate.[1651] This is summarized in the table below:

BLENDED EX-ANTE DAMAGES

Investment	Market Approach Nominal Loss	Amounts Invested Approach Nominal Loss	Nominal Loss plus Interest at U.S. Prime + 2%	Nominal Loss plus Interest at the Sovereign Rate
Caspian Fish	118,800,000		468,996,521	935,231,243
Persian Carpets	3,981,333		13,558,407	26,308,861
Coolak Baku		14,994,505	59,195,040	118,041,495
Shuvalan Sugar		6,386,910	25,214,129	50,279,779
Ayna Sultan	235,000		927,729	1,849,994
Total (US$)			**567,891,826**	**1,131,711,373**

1199. In the alternative, Mr. Bahari is entitled to an Amounts Invested Approach for each of his investments, as established in the Secretariat Second Report, plus applicable interest at US Prime +2% or Azerbaijan's Sovereign Rate. This is summarized in the table below:

[redacted]

As to Shuvalan Sugar, Azerbaijan has failed to produce, or explain its lack of production, for Request No. 154 ([redacted])

1651 Secretariat Second Report, Section 10.A.

EX-ANTE DAMAGES AMOUNTS INVESTED ONLY

Investment	Amounts Invested Approach Nominal Loss	Nominal Loss plus Interest at U.S. Prime + 2%	Nominal Loss plus Interest at the Sovereign Rate
Caspian Fish	56,000,000	221,075,801	440,849,744
Coolak Baku	14,994,505	59,195,040	118,041,495
Shuvalan Sugar	6,386,910	25,214,129	50,279,779
Total (US$)		**305,484,970**	**609,171,019**

V. MORAL DAMAGES REMAIN APPROPRIATE IN LIGHT OF FURTHER EVIDENCE OF AZERBAIJAN'S DEPLORABLE CAMPAIGN AGAINST MR. BAHARI.

1200. The Statement of Claim established that Azerbaijan's treatment of Mr. Bahari and his investments are the exact egregious and exceptional circumstances warranting the award of moral damages.[1652] Since the Statement of Claim was filed, it has become even more apparent that Azerbaijan's conduct toward Mr. Bahari and this claim is worse than what was previously known.

1201. As the Tribunal is aware, in January 2024 Mr. Bahari learned of the tragic persecution that Azerbaijan was inflicting on two persons who sought to assist Mr. Bahari with his claim, Ms. Ramazanova and Mr. Abdulmajidov. But Azerbaijan's broad and violent persecution was not limited to them, it also included the 26 April 2022 criminal Summons from the Azerbaijan Prosecutor General falsely alleging that Mr. Mr. Bahari was involved in the production of narcotics at Caspian Fish and, moreover, that Mr. Bahari is wanted in the Republic of Azerbaijan.[1653]

1202. As Mr. Bahari testified in his Witness Statement in support of Interim Measures, the Summons did not surprise him because the Azerbaijani Government has sought to persecute him for more than two decades. The Summons further confirmed to him that if

1652 SoC ¶¶ 695-709.

1653 **C-241** Prosecutor General Summons for Mr. Timur, 26 April 2022

he had returned to Azerbaijan to take any action while in-country to regain his investments, he would have been arrested on false charges and subjected to the same treatment, or worse, as Konul and Timur, as well as Tabesh Moghaddam years earlier.[1654]

1203. Azerbaijan characterizes the treatment of Mr. Bahari and his family and associates as "sensationalized" and suggests that because Mr. Bahari has not been physically assaulted or detained he has not actually been harmed. In its oft repeated tacit admission, Azerbaijan states that "such conduct if proven (which is denied) pre-dates the entry into force of the Treaty and cannot therefore form the basis of any award of damages."[1655]

1204. Considering Azerbaijan's callous attempts to simply absolve itself of any responsibility, it was entirely unsurprising that Azerbaijan responded in the same fashion when it was caught red-handed for what it had done to Ms. Ramazanova and Mr. Abdulmajidov. Attempting to gaslight them, Azerbaijan has forcefully asserted it was Ms. Ramazanova and Mr. Abdulmajidov who were in the wrong, alleging that they had forged multiple official government documents to support a fraudulent attempt to gain citizenship in a country where neither of them have family or cultural ties, and without their 5 month-old daughter. As explained earlier in this Response, Azerbaijan's excuse that the Criminal Summons is forged is unfounded and demonstrably incorrect.

1205. Ms. Ramazanova and Mr. Abdulmajidov have bravely agreed to be witnesses in this Arbitration, despite Azerbaijan's continuing intimidation and harassment of their families in Baku. They will be available to testify at the merits hearing January 2025, and Azerbaijan will have to face what it has done to them.

1206. While Ms. Ramazanova and Mr. Abdulmajidov arguably should be entitled to receive moral damages for what Azerbaijan has done to them and their families, that is not within the powers of this Tribunal. What is within the powers of this Tribunal is to award moral damages to Mr. Bahari for the stress, anxiety, suffering, and overall deterioration of his physical and mental health that he has suffered due to Azerbaijan's campaign of intimidation and harassment against him and his family. The intensity of what happened to Ms. Ramazanova and Mr. Abdulmajidov establishes without a doubt the malice that underlies Azerbaijan's persecution of Mr. Bahari.

1654 Bahari Interim Measures WS ¶ 22.

1655 SoD ¶ 465.

1207. Azerbaijan's strenuously attempts to distinguish what has happened to Mr. Bahari, and the threat that currently hangs over him and his family, from other cases that have awarded moral damages. This cannot be correct.

1208. As to the quantum of moral damages that Mr. Bahari is entitled to, that is a question for the Tribunal. Mr. Bahari's request for moral damages equal to US$10 million, or 5% (five percent) of the total material damages awarded for Azerbaijan's Treaty breaches, whichever is greater, and subject to post-award interest until paid in full, is reasonable. The harm that Azerbaijan has inflicted on Mr. Bahari and his family is not.

REQUEST FOR RELIEF

1209. On the basis of the foregoing, and without limitation to Mr. Bahari's right to amend these submissions and prayers for relief, Mr. Bahari respectfully request that the Tribunal enter an Award in his favor and against Azerbaijan as follows:

i. a declaration that the dispute is within the Tribunal's jurisdiction and competence;

ii. a declaration that Azerbaijan has breached its obligations under the Treaty with respect to Mr. Bahari's investments in Azerbaijan;

iii. an order directing Azerbaijan to compensate Mr. Bahari for his losses resulting from Azerbaijan's breaches of the Treaty for an amount of at least $567,891,826 or $1,131,711,373 (as determined by applicable pre-Award interest), which may be supplemented in a subsequent report, plus post-Award interest until the date of full and effective payment, at a commercially reasonable rate, compounded annually;

iv. an order directing Azerbaijan to compensate Mr. Bahari for moral damages of $10 million, or five (5) percent of the total material damages awarded, whichever is greater, plus post-Award interest until the date of full and effective payment, at a commercially reasonable rate, compounded annually;

v. an order directing Azerbaijan to pay all of Mr. Bahari's costs and fees incurred in these arbitration proceedings, including all of its attorneys' fees and expenses; and

vi. an order for such other and further relief as the Tribunal deems just and proper in the circumstances.

Dated: 21 June 2024

Respectfully submitted on behalf of Claimant
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