PCA CASE Nº 2022-49

IN AN ARBITRATION PURSUANT TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN AND THE GOVERNMENT THE AZERBAIJAN REPUBLIC ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

MOHAMMAD REZA KHALILPOUR BAHARI

Claimant

-and-

THE REPUBLIC OF AZERBAIJAN

Respondent

RESPONDENT'S STATEMENT OF REJOINDER

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29 October 2024

The Arbitral Tribunal

Professor Gabrielle Kaufmann-Kohler
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PART 1

INTRODUCTION

1. This Statement of Rejoinder (the **Rejoinder**) is submitted on behalf of the Republic of Azerbaijan (the **Respondent** or **Azerbaijan**) pursuant to the timetable set out in the Amended Procedural Calendar annexed to the Tribunal's letter dated 2 May 2024, and in response to the Statement of Reply dated 21 June 2024 (the **Reply**) submitted by Mr Mohammad Reza Khalilpour Bahari (the **Claimant** or **Mr Bahari**) in PCA Case No. 2022-49 brought under the terms of the Iran-Azerbaijan bilateral investment treaty (the **Treaty**). Unless otherwise stated, defined terms in this Rejoinder bear the meanings given in the Respondent's Defence.

I. EXECUTIVE SUMMARY

2. Repetitive, meandering, off-topic and coming in at nearly 450 pages, the Reply is notable for what it does not say. Numerous factual allegations are ignored or left unchallenged; Mr Bahari's preference is to use hyperbole and needless rhetoric to make outlandish, unsubstantiated claims such as: "*Mr. Mammadov is not a credible witness; nor is the entire* [Office of the Prosecutor General of Azerbaijan] *as a body*";[1] "*Azerbaijan's reliance on* [the Ayna Sultan] *proceedings*[…] *is a staggering exercise in chutzpah*";[2] "[t]*his defense theory* [of the sale of Mr Bahari's shares] […] *amounts to malfeasance upon malfeasance*";[3] "*Mr. Zeynalov is a repugnant con artist with no scruples*";[4] Azerbaijan's "*uncertainty and deniability remains an intractable obstacle to the truth*";[5] the diatribe goes on. This absurd rhetoric would almost be humorous if Mr Bahari was not seeking to extract close to a billion dollars from Azerbaijan.

3. Mr Bahari further appears to consider that vociferously pleading his case is a substitute for evidence. In lieu of citing evidence, he asserts that: "[t]he *harm suffered by Mr. Moghaddam is proven beyond a reasonable doubt*";[6] the signed sale agreement and

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1 Reply, para. 625.

2 Reply, para. 542.

3 Reply, para. 18.

4 Reply, para. 52.

5 Reply, para. 1092.

6 Reply, para. 1068.

supporting documents are "*necessarily forgeries*";[7] he claims to have "*conclusively establish*[ed] *the amounts* [he] *invested in Caspian Fish, Coolak Baku and Shuvalan Sugar*"; he claims it is "*indisputable that Mr. Bahari did not authorize or know about the* [Ayna Sultan] *appeal*".[8] None of these matters are proven at all. That is the Tribunal's job to decide.

4. As to the evidence, Mr Bahari's view is that not only is any witness for Azerbaijan *ipso facto* unreliable solely because they have appeared for Azerbaijan,[9] but all documents of Azerbaijan are unreliable because they emanate from the State. He refers to the Decision of Azerbaijan's Supreme Court as a "*purported Decision*",[10] and denies the accuracy of the State Border Service records, describing "*Azerbaijan's self-produced and self-serving records* [as] *not reliable*".[11] This rhetoric reflects a self-assured belief that Azerbaijan cannot succeed in its defence of these claims simply because it is Azerbaijan, irrespective of whether Azerbaijan's defence is true. Even the Official Gazette of his very own country, the Islamic Republic of Iran, is "*incorrect and unreliable*",[12] simply because it supports Azerbaijan's defence. Mr Bahari states that the fact Azerbaijan has presented a "*defense*" to his claims at all "*reveal*[s] *a State apparatus prepared to go to great lengths to protect its President and one of its seniormost Minister*".[13] This is a senseless submission. Azerbaijan has presented a robust and proper defence because Mr Bahari's factual allegations are untrue and his claims are meritless.

5. When Mr Bahari really does not like the evidence that contradicts his case, he cries fraud. He goes so far as to suggest that there are digital "anomalies" with the historic

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7 Reply, para. 18(c).

8 Reply, para. 542.

9 Mr Bahari claims that the fact that a company in which Mr Zeynalov is a director is located in the Aghdam District, Khindiristan "suggests possible connections to President Aliyev" (para. 56); "[i]t should be noted, however, that Ms. Izmaylova has Azeri citizenship and maintains her domicile and a continuous presence in Azerbaijan (para. 569); Mr Mammadov's testimony "absolved himself[…] asking to asking the proverbial fox to guard the hen house" (para. 648); even Azerbaijan's independent experts are not free from being painted with the same brush, Mr Hasanov's work at State-owned company Azerkhalcha "raises obvious questions about his qualifications as an independent expert" (para. 553).

10 Reply, para. 507.

11 Reply, para. 568.

12 Reply, para. 113.

13 Reply, para. 16.

judgments of Azerbaijan's Appellate Court.[14] Mr Bahari never quite makes clear what the purpose of such a submission is: it is raised and then left as a spectre from which the Tribunal is presumably supposed to infer that Azerbaijan has produced false court judgments for the purpose of this proceeding. Such an allegation is not made explicitly (when, if that is indeed Mr Bahari's case, it should have been), perhaps because even Mr Bahari recognises that it is ludicrous.

6. Other explicit claims of forgery, however, sweep through his pleadings: from the critical, foundational documents that contain Mr Bahari's signature, such as the Buyer and Seller Agreement under which he agreed to sell his shares in the BVI Co,[15] to the contract signed by Mr Bahari under which he agreed to sell his interest in Ayna Sultan to a third party,[16] to the Atabank payslips that show that Mr Bahari was reimbursed by Caspian Fish,[17] the answer is always: fraud, fraud, fraud.

7. Unfortunately for Mr Bahari, this is not how documentary evidence works. Mere *assertion* that a document is inauthentic is not any sort of evidence of fraud.

8. It is actually Mr Bahari's evidence that is deserving of scrutiny. Azerbaijan relies upon abundant *evidence* that demonstrates that Mr Bahari has adduced and seeks to rely upon fraudulent documents.

   (a) In the most extreme case, with respect to three documents upon which Mr Bahari relies to make good his claim that he invested his own money into Azerbaijan (the Purported Chartabi Contracts),[18] Mr Bahari has been forced to admit that he prepared these documents for the purposes of this arbitration and backdated them, and therefore misled the Tribunal. This is deplorable conduct. The Purported Chartabi Contracts must be disregarded in their entirety.

   (b) In respect of the documents allegedly issued by Azerbaijan's State authorities upon which Mr Abdulmajidov and Ms Ramazanova rely for their asylum

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14 Reply, para. 494.

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

16 Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Gambarov and Mr Bahari dated 14 December 1999, **R-62**.

17 *See* Atabank payment documents at **R-89** to **R-95**.

18 Purported contract between Chartabi Contracting and Coolak Baku Company dated 16 May 1996, **C-84**; Purported contract between Chartabi Contracting and Coolak Baku Company dated 10 July 1997, **C-85**; Purported contract between Chartabi Contracting and Caspian Fish Company dated 10 May 1999, **C-92**.

claim,[19] numerous external indica demonstrate that these documents are not authentic documents of the State of Azerbaijan and are in fact plain forgeries.

(c) The forensic evidence of Azerbaijan's handwriting expert establishes that the Purported Shareholders Agreement was not signed in April 1999, despite what it says on its face, but was in fact signed at least a year and a half later.[20]

9. The key take away from the Reply is that Mr Bahari has no answer to the vast majority of the factual rebuttal set out in the Defence.

(a) He cannot deny that he was paid USD 5.3 million by Mr Khanghah because his own email message (to which account he conveniently no longer has access) confirms it;[21] instead, he says that this was not for his shares in BVI Co, but repayment of unspecified "[redacted]" that he now cannot remember.[22] The Reply fails in its entirety to address the reason for his exit from Caspian Fish and Azerbaijan's understanding that he overcharged his partners in Caspian Fish.

(b) Mr Bahari's witness statement does not refer once to the matter of Ayna Sultan, and, importantly, the sale document that he signed under which he sold the property to a third party.[23]

(c) Similar goes for the 1999 Agreement in relation to Coolak Baku, pursuant to which the obligations to contribute to the business were terminated,[24] or the document which he signed which evidences that management of Coolak Baku had been transferred to a third party.[25]

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19 The Purported Summons dated 26 April 2022, **C-241**; the Purported Forensic Report dated 20 December 2021, **C-238**; and the Lawyer's Statement dated 13 January 2022, **C-240**.

20 Purported Shareholders Agreement dated 27 April 1999, **C-4**.

21 Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

22 Third Bahari Statement, para. 38.

23 Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Gambarov and Mr Bahari dated 14 December 1999, **R-62**.

24 Contract between ASFAN and Mr Bahari in relation to Coolak Baku Co dated 9 September 1999, **R-72**.

25 Invoice and Act of Transfer and Acceptance from M Aliyev to Mr Bahari dated 10 October 2000, **R-102**.

(d) Again, nothing is said about Mr Bahari's company, Petroqeshm, or the Carpet Sale Contract concluded between it and Ata Yolu, under which 211 carpets were shipped to Dubai.[26]

10. In the light of his silence, Mr Bahari should be taken as having accepted the factual record in respect of these matters. Those concessions are, in many instances, determinative of the issues in dispute. While Mr Bahari claims that Azerbaijan has "*deprive*[d] [him] *of evidence*",[27] the truth is that Mr Bahari does not like the evidence that Azerbaijan has produced. His claims that there "*must* [be]" documents that Azerbaijan has failed to produce[28] are at odds with his assertions that the documents Azerbaijan has produced are unreliable. Mr Bahari is desperately searching for evidence that will support his case and it is apparent from the example of the Purported Chartabi Contracts that he will go to any lengths to invent it.

11. Most, if not the entirety of, Mr Bahari's case thus rests upon his own testimony. Despite this, he does not appear to understand the significance of the documentary record which stands against him. He "*readily admits that, due to evidentiary decay over time, there is little information available*", yet he reverses the burden of proof by asking "*what due diligence* [Azerbaijan] *has undertaken to verify the asserted facts*".[29] This is not the right enquiry. Mr Bahari is required to prove his case on the balance of probabilities. His testimony alone, where challenged by documentary evidence and opposing testimony, is woefully insufficient to dislodge his burden of proof. Even where his evidence is challenged by submissions alone, he must demonstrate that it is more likely than not that the facts alleged which rely upon his testimony are true. He cannot do so.

12. Where there are significant evidentiary gaps in Mr Bahari's case, he resorts to inference from generalised allegations of unrelated conduct, which he hopes will elevate his grievances into a Treaty claim. Thus, he claims that the Purported Summons must be a genuine document because of "*a significant body of human rights reports*" which he alleges constitute evidence "*pointing to the fact that OPG (and Mr. Mammadov)*

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26 Contract No. 2 between "ATA-YOLU" Independent Company and Petro Geshm International Trading, dated 15 May 2002, **R-35**.

27 Reply, para. 27.

28 *See* Reply, para. 336.

29 Reply, para. 580.

regularly issue criminal summons based on trumped-up charges".[30] This allegation (which is denied) of course does not operate to discharge his burden of proof. To establish his case that there is a breach of BIT, he asserts that there must have been some form of "*resort to informal mechanisms*[…] *to 'get things done'*" on the basis that "*the Aliyev dynasty*[…] *since 1993 have always prioritized the short-term consolidation of political power*".[31] Again, these allegations are denied, and he has no evidence that even if true this occurred in the present case. He claims that Azerbaijan "*maintains a judicial system which restricts access to justice, and discourages litigants from ever asserting a claim in sensitive cases*" which is why bringing a case against Messrs Aliyev or Heydarov "*would be futile, if not extremely dangerous*", but he fails to establish in this case that he in fact sought to do so, or explain what his case against these individuals would be.[32] Indeed, although he denies it, the documentary record plainly evidences that at least in respect of Ayna Sultan, he did participate in local proceedings.

13. The vast majority of the factual section of the Reply focuses on the proceedings in the local courts, of which he claims (untruthfully) he was unaware at the time of filing the Statement of Claim. Save in respect of Caspian Fish, for which Mr Bahari maintains an awkward expropriation claim as he struggles to find conduct attributable to Azerbaijan, Mr Bahari's case has morphed from expropriation to denial of justice. This is yet again a desperate attempt to transform what even Mr Bahari cannot deny is private conduct into a treaty claim.

14. In short, nothing in the Reply leads Azerbaijan to change any aspect of its defence. To the contrary, certain of Mr Bahari's admissions, or his silence in the face of the evidence, strengthens it. This remains a tissue-thin case with a grossly exaggerated quantum that is severely lacking in evidence and has been brought with inordinate delay. It concerns private affairs, as opposed to conduct of the State, that largely look place before the Treaty entered into force. And it concerns alleged investments that are not typical investments, nor received the requisite approval of Azerbaijan even to be considered as such under the Treaty's express terms.

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30 Reply, para. 625.

31 Reply, para. 674.

32 *See* Reply, para. 1032.

II. SUPPORTING EVIDENCE AND AUTHORITIES

15. This Rejoinder is accompanied by: (a) the witness statement of Mr Ernst Rudman dated 15 October 2024; (b) the second witness statement of Mr Samir Valiyev dated 23 October 2024; (c) the second witness statement of Mr Habib Aliyev dated 24 October 2024; (d) the witness statement of Abulfaz Kazimov dated 24 October 2024; (e) the witness statement of Mr Arguj Kalantarli dated 25 October 2024; (f) the second witness statement of Mr Tahir Kerimov dated 25 October 2024; (g) the second witness statement of Qasim Mammadov dated 25 October 2024; (h) the witness statement of Zaur Salmanli dated 25 October 2024; (i) the witness statement of Mr Aydin Sultanov dated 25 October 2024; (j) the witness statement of Alfred Topf dated 25 October 2024; (k) the second witness statement of Mr Sabutay Hasanov dated 29 October 2024; and (l) the second witness statement of Mr Rasim Zeynalov dated 29 October 2024.

16. It is also accompanied by: (a) the second expert report of Rza Hasanov dated 24 October 2024; (b) the second expert report of Dr Mahnaz Mehrinfar dated 24 October 2024; (c) the second expert report of Professor Kenneth J Vandevelde dated 25 October 2024; (d) the expert report of Elizabeth Briggs dated 29 October 2024; (e) the expert report of Farhad Parvizi dated 29 October 2024; and (f) the second expert report of Dr Min Shi dated 29 October 2024.

17. References to a witness's statement(s) in this submission are described as "[Second] [Family name] Statement", and references to an expert's report are described as "[Second] [Family name] Report".

18. This Defence is also accompanied by supporting documents numbered consecutively from exhibit **R-236** to **R-452**, and legal authorities numbered consecutively from **RLA-251** to **RLA-327**.

III. STRUCTURE OF THIS SUBMISSION

19. This Rejoinder is structured in the same manner as the Defence. Part 1 summarises Azerbaijan's response to Mr Bahari's Reply submission and provides details of the supporting evidence and authorities relied upon by the Respondent. Part 2 addresses preliminary issues of evidence, attribution and jurisdiction before Part 3 develops the factual background based on the available documentary record and the testimony of individuals who were involved in the relevant facts at the relevant time. Part 4 addresses relevant legal principles concerning merits, causation and remedies.

PART 2

PRELIMINARY ISSUES, ADMISSIBILITY AND JURISDICTION

I. EVIDENCE

20. The evidence presented by Mr Bahari in support of his claims remains a serious issue. Not only is documentary evidence that should readily be available to Mr Bahari lacking, such as copies of his own bank records located outside of Azerbaijan, most troublingly Mr Bahari has admitted to recently recreating and backdating key documents he relies upon for his claims. This is an incurable blow to Mr Bahari's credibility, and speaks volumes about the (lack of) due diligence employed by Mr Bahari's counsel when amassing the evidence in support of his claims. The following sections of this brief set out the key issues with the evidence presented in this case and why Mr Bahari has failed to discharge his burden of proof.

A. The documentary record does not support Mr Bahari's case

1. Mr Bahari has admitted he presented false evidence with his Statement of Claim

21. The most significant evidence advanced by Mr Bahari in support of his claim that he invested "*his own money*"[33] into Azerbaijan are the Purported Chartabi Contracts, upon which his valuation expert rely to conclude that "[redacted]".[34] The Statement of Claim, and Mr Bahari's first witness statement in support of it, presents these contracts as dating variously between 1996 and 1999,[35] with Mr Bahari explicitly claiming, for example, that the Caspian Fish Purported Chartabi Contract "[redacted]".[36] On their face, the Purported Chartabi Contracts are dated 16 May 1996, 10 July 1997 and 10 May 1999.[37]

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33 Statement of Claim, para. 52.

34 First Secretariat Report, para. 5.38.

35 Statement of Claim, paras 52, 63 and 81.

36 First Bahari Statement, para. 46(ii).

37 Purported contract between Chartabi Contracting and Coolak Baku Company dated 16 May 1996, **C-84**; Purported contract between Chartabi Contracting and Coolak Baku Company dated 10 July 1997, **C-85**; Purported contract between Chartabi Contracting and Caspian Fish Company dated 10 May 1999, **C-92**.

22. In its Defence, Azerbaijan identified multiple concerns in respect of the authenticity of these documents, even calling them the Purported Chartabi Contracts. It was plain that despite their purported age these documents appeared to have been preserved in pristine condition, and – despite allegedly being dated three years apart – appeared to have been signed by the same type of pen (a navy blue ball-point) with exactly the same level of pressure.[38] At the same time, Mr Bahari did not provide, and Azerbaijan could not locate, *any record* of the existence of an entity called Chartabi Contracting, whether in Iran, Azerbaijan or elsewhere. The only other document relied upon by Mr Bahari in support of these contracts, a letter dated 7 January 2019 confirming that the Purported Chartabi Contracts had been fulfilled and paid by Mr Bahari,[39] was signed by Mr Bahari's brother-in-law, who has since deceased.

23. Naturally, Azerbaijan sought physical inspection of these documents, and, on 22 May 2024, Mr Bahari agreed to provide inspection.[40]

24. Inspection of the Purported Chartabi Contracts took place at the offices of Azerbaijan's forensic expert, Mrs Elizabeth Briggs, on 17 June 2024. The pages of the Purported Chartabi Contracts were disordered and certain pages were missing. The Respondent does not know if the pages were intentionally muddled to confuse and prevent proper scrutiny. On the same day that inspection took place, counsel for Azerbaijan wrote to counsel for Mr Bahari, requesting an explanation for the discrepancies and copies of the missing pages.[41] On 18 June 2024, counsel for Mr Bahari responded to say they were "[redacted]" where the missing pages were and would provide an update "[redacted]".[42]

25. Three days later, on 21 June 2024, Mr Bahari filed his Reply. In his third witness statement submitted in support of the Reply, Mr Bahari made the astonishing admission that he was unable to locate the purported original signed contracts, and what he had in fact presented with the Statement of Claim were "[redacted]" copies signed at some

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38 Defence, para. 90.

39 Letter from Chartabi Contracting dated 7 January 2019, **C-86**.

40 *See* Claimant's Objections to Respondent's Document Inspection Requests dated 22 May 2024, Request No. 2, pp. 2-3.

41 *See* email from Quinn Emanuel to Diamond McCarthy and others dated 17 June 2024, **R-339**, p. 7.

42 Email from Diamond McCarthy to Quinn Emanuel dated 18 June 2024, **R-339**, pp. 5-6.

unspecified date, but [redacted]".[43] This admission came almost two years after Mr Bahari commenced this arbitration, 14 months after his Statement of Claim, and would not have emerged but for the Respondent's persistence through correspondence to seek physical inspection of the documents.

26. The Reply makes light of the admission, addressing it only in one brief paragraph.[44] Counsel for Mr Bahari clearly recognised its significance, however, as Mr David Earnest of Diamond McCarthy LLP chose himself to submit a signed written statement – albeit not a witness statement upon which he could be cross examined – as a factual exhibit to the Reply (the **Earnest Exhibit**), in an attempt to explain away the fact that his client had deliberately misled the Tribunal by presenting false evidence with his Statement of Claim.

27. The Earnest Exhibit, dated 24 May 2024, is a peculiar document. With no qualification, it discusses at some length what are privileged communications between Mr Earnest and his client. The intention behind the Earnest Exhibit, though never stated expressly, is to distance Mr Bahari's counsel from any knowledge of the blatantly misleading evidence that had not been disclosed to date, but which was revealed with the Reply: Mr Earnest states that it was only [redacted]".[45] Prior to that point, Mr Earnest states in two brief paragraphs that "[redacted]".[46] That was the extent of their due diligence on documents, which – from their face – give rise to serious questions that should have been investigated at the time.

28. To the extent Mr Bahari's counsel seek to shift the blame to their client, the Earnest Exhibit does not achieve that objective. There is no explanation for the staggering lack of due diligence Mr Bahari's counsel carried out on these suspect documents, and no explanation of whether they made enquiries of their client as to the provenance of the

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43 Third Bahari Statement, para. 21. *See also* Reply, para. 141.

44 Reply, para. 141.

45 Earnest Exhibit dated 24 May 2024, **C-380**, paras 6-7.

46 Earnest Exhibit dated 24 May 2024, **C-380**, paras 3-4.

documents at the time the Statement of Claim was filed. On 5 July 2024, counsel for Azerbaijan wrote to Mr Earnest, seeking an explanation for this, as well as raising a number of other detailed queries on the Earnest Exhibit.[47] Mr Bahari's counsel, including Mr Earnest, declined to respond.[48] It can only be inferred from this failure to respond that providing answers to these queries would not have assisted his client's case.

29. The secondary objective of the Earnest Exhibit appears to be to verify the validity of the backdated Purported Chartabi Contracts. Thus, Mr Earnest claims in the concluding paragraph of the Earnest Exhibit: "[redacted]".[49] This is a self-serving statement as to the authenticity of documents which were misleadingly exhibited by Mr Bahari as being original documents (avowedly without the knowledge of his counsel) and which he subsequently admitted were backdated. Any counsel would take caution with such evidence; instead, the Earnest Exhibit attempts to authenticate it.

30. Of further concern is the fact that both the Earnest Exhibit and Mr Bahari's third witness statement fail to mention page 6 of each of the Purported Chartabi Contracts.

31. Page 6 of these documents has also been the subject of much correspondence between the parties. It is a one-page standalone document, written in the English language, with a summary of the terms of each respective Purported Chartabi Contract in bullet-point form appearing in identical format (for example, the font used in each document is the same). For convenience, the Respondent has referred to this page of each contract as the "Term Sheet".

32. Counsel for Azerbaijan first wrote to counsel for Mr Bahari about the Term Sheets on 21 June 2024, having noticed that no Farsi language version of the Term Sheets had been presented for inspection, nor was one contained in the electronic versions submitted with the Statement of Claim.[50] After several rounds of correspondence, on 9 July 2024, counsel for Mr Bahari finally confirmed that the Term Sheets were "[redacted]

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47 Letter from Quinn Emanuel to Diamond McCarthy and others dated 5 July 2024, **R-340**.

48 Letter from Chang Law to Quinn Emanuel dated 9 July 2024, **R-341**.

49 Earnest Exhibit dated 24 May 2024, **C-380**, para. 11.

50 Email from Quinn Emanuel to Diamond McCarthy and others dated 21 June 2024, **R-339**, pp. 4-5.

[redacted]".[51]

33. Again, no such explanation had been provided in the Statement of Claim or in Mr Bahari's prior witness statements, and this revelation would not have occurred without the Respondent's persistent inquiries.

34. Mr Bahari refused to answer any further questions about the creation or provenance of the Term Sheets, including how it could be that the Term Sheets were "[redacted]" when Mr Bahari himself professes not to speak or read the requisite English.[52]

35. On 26 July 2024, the Tribunal ordered Mr Bahari to produce native copies of Term Sheets by 2 August 2024.[53] On 2 August 2024, Mr Bahari failed to disclose native copies of the Term Sheets, with the following explanation:

[redacted][54]

36. Again, this explanation contained astonishing admissions. But first, it is of course clear that the PDF documents provided by Mr Bahari are of no assistance: they indicate when a PDF was created from a native Word document, but they say nothing about the date of creation of the Word document itself. It is also inherently implausible that a major

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51 Letter from Chang Law to Quinn Emanuel dated 9 July 2024, **R-341**.

52 *See* Letter from Quinn Emanuel to Diamond McCarthy and others dated 11 July 2024, **R-344**; email from Diamond McCarthy to Quinn Emanuel dated 16 July 2024, **R-345**.

53 Second Letter from Tribunal to the Parties dated 26 July 2024, p. 2.

54 Letter from Chang Law to Quinn Emanuel dated 2 August 2024, **R-346** (excluding enclosures).

law firm does not have an electronic Word version of a file that they allegedly created for a client. One charitable explanation is that the Word versions were emailed to Winston & Strawn LLP by their client, and were not created by any attorney of that firm at all.

37. As to that claim that Mr Bahari's former counsel, Winston & Strawn LLP "[redacted]",[55] Azerbaijan sought responses from Mr Bahari as to whether (among other things) Winston & Strawn LLP were aware, at the time of preparing the Term Sheets, that the Purported Chartabi Contracts were not original contemporaneous documents.[56] Azerbaijan also asked whether Winston & Strawn LLP even had copies of the Purported Chartabi Contracts when they (allegedly) prepared the so-called "translations" of the agreements. Mr Bahari declined to respond.[57]

38. One possible inference from his silence is that Winston & Strawn were indeed aware, and declined to support Mr Bahari's assertions as to the authenticity of the documents. Another explanation is that Winston & Strawn LLP never had sight of the Purported Chartabi Contracts at all. Notably, the Purported Chartabi Contracts were not exhibited to the Notice of Arbitration prepared by Winston & Strawn and filed on 5 April 2019, nor was it alleged that Chartabi Contracting had been the construction company that built Caspian Fish and which accounts for the lion's share of Mr Bahari's alleged expenditure on his "investment" in Azerbaijan.[58]

39. The authenticity of the Purported Chartabi Contracts, and Mr Bahari's story about them, cannot be accepted for the simple fact that the only possible reason he positively sought to mislead the Tribunal about the provenance of these documents when the Statement of Claim was initially filed is because they are not authentic.

40. Even if, however, there was any legitimacy to Mr Bahari's claims about these documents (which is denied), it remains a mystery how the documents were "reconstructed", who reconstructed them, and in such detail, in 2019 (assuming that to

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55 I.e., the claim initially filed by Mr Bahari under the Notice of Arbitration dated 5 April 2019, **R-54**.

56 Letter from Quinn Emanuel to Diamond McCarthy and others dated 29 August 2024, **R-347**.

57 Email from Diamond McCarthy to Quinn Emanuel dated 6 September 2024, **R-348**.

58 *See* List of Exhibits to 2019 Notice, **R-349**.

be the year they were created),[59] some 23 years after the earliest of them was allegedly originally signed, and in circumstances where it appears that neither Mr Bahari nor Mr Chartabi had retained the original versions, nor paper or electronic copies.[60] The most likely explanation, taking into account that Winston & Strawn LLP could not produce a native version of the Word files, is that the Term Sheets were prepared by Mr Bahari, as a template from which the Purported Chartabi Contracts were then drawn up in Farsi.

2. At least five other documents upon which Mr Bahari relies are evident forgeries or suspect and should be given little to no weight

41. Azerbaijan has addressed in some detail in its previous submissions its concerns relating to four other documents on which Mr Bahari relies, namely the Purported Shareholders Agreement, the Purported Summons, the Purported Forensic Report and the Lawyer's Statement (the latter three documents, together, the **Asylum Documents**).[61] Concerns arise in respect of a fifth too, discussed below.

42. In his Reply submission, Mr Bahari's response to these serious matters has been largely to ignore them.

43. The Purported Shareholders Agreement is suspect on its face, being written in a language (German) not said to be read or spoken by at least three of its signatories.[62] It also refers, on its face, to the number of a Vereinsbank bank account that was not in existence until a year and a half after the Purported Shareholders Agreement was purportedly signed on 27 April 1999. Remarkably, Mr Bahari does not once refer to the Purported Shareholders Agreement in any of his witness testimony. Despite the concerns raised by Azerbaijan in the Defence, he says nothing about how the Purported Shareholders Agreement was drawn up or signed, and in the German language, even though he is the only witness appearing in these proceedings who is a purported

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59 Counsel for Azerbaijan has asked, and put this to, Mr Bahari in several items of correspondence. He has never denied that the Purported Chartabi Contracts were signed in 2019. *See*, e.g. email chain between Quinn Emanuel, Diamond McCarthy and others dated 2 July to 17 June 2024, **R-339**.

60 *See* Letter from Quinn Emanuel to Diamond McCarthy and others dated 5 July 2024, **R-340**, para. 5.3.1.

61 As regards: the Purported Shareholders Agreement dated 27 April 1999, **C-4**, *see* Defence, para. 233; the Purported Summons dated 26 April 2022, **C-241**, *see* Respondent's Response to the Claimant's Application for Provisional Measures dated 5 April 2024, paras 59-71 and supporting evidence; the Purported Forensic Report dated 20 December 2021, **C-238**, *see* Respondent's Response to the Claimant's Application for Provisional Measures dated 5 April 2024, para. 48 and supporting evidence; and the Lawyer's Statement dated 13 January 2022, **C-240**, *see* Respondent's Response to the Claimant's Application for Provisional Measures dated 5 April 2024, paras 50-54 and supporting evidence.

62 Purported Shareholders Agreement dated 27 April 1999, **C-4**.

signatory. The Tribunal is asked to take particular note of this omission, which it is submitted is no mere coincidence.

44. Mr Bahari's counsel also fail to address these concerns through submissions in Reply. One sentence, addressing the Vereinsbank account opening form dated 13 November 2000 to the effect that "[t]*he fact that this Vereinsbank account was not fully established until 13 November 2000, in no way detracts from its relevance or makes is* [sic] *"suspect," as Azerbaijan contends*" entirely ignores Azerbaijan's principal concern about the Purported Shareholders Agreement (and not the Vereinsbank account opening form), i.e. the fact that the Vereinsbank account number is on the Purported Shareholders Agreement.

45. In fact, as Azerbaijan's handwriting expert Ms Elisabeth Briggs reveals, there is clear forensic evidence that the Purported Shareholders Agreement was not signed in April 1999, despite what it says on its face.[63] ESDA analysis of the Vereinsbank account opening form dated 13 November 2000 (**C-7**) reveals that this document contains physical indentations or "impressions" of the very signatures that appear on the Purported Shareholders' Agreement.[64] In other words, the Purported Shareholders Agreement was resting on top of **C-7** when the signatures (which are not admitted to have been made by the purported signatories) were applied to the Purported Shareholders Agreement. This explains the impossibly prescient reference to the Vereinsbank account number not in existence at the purported date of the Purported Shareholders Agreement, and means that the *earliest* the Purported Shareholders' Agreement can be dated is 13 November 2000 (assuming the date on the Vereinsbank account opening form is itself correct).

46. As to the Asylum Documents (each of which Mr Bahari refused to hand over for inspection),[65] copious evidence, both documentary and witness, was presented by Azerbaijan during the Provisional Measures phase to counter their authenticity. By way of recap, and among other things:

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63 *See* also Statement of Claim, para. 75; Reply, para. 280.

64 Briggs Report, paras 6.1.17 to 6.1.20.

65 *See* Letter from Chang Law to the Tribunal dated 2 July 2024, **R-350**, p. 4.

(a) Azerbaijan submitted witness testimony from Mr Mammadov (the purported signatory of the Purported Summons) confirming that he had not issued or signed the Purported Summons,[66] as well as extracts of the logbook showing outgoing correspondence from his department in which the Purported Summons did not appear;[67] an imprint of the true seal of Mr Mammadov's Department of Investigation, which differs from the seal appearing on the Purported Summons;[68] and sample anonymised summons from the same year and month as the Purported Summons (the **Specimen Summons**) which showed significant differences between the form and content of summons.[69]

(b) Ms Aysel Kishiyeva, acting head of the Scientific Research and Methodological Work Department at the Ministry of Justice's Forensic Expertise Centre which purportedly issued the Purported Forensic Report, gave evidence that the purported signatory of the Purported Forensic Report was not an expert doctor employed by the Centre, and the Centre had no expertise to issue medical reports.[70] Azerbaijan also submitted an imprint of the true seal of the Centre,[71] which differs from the seal appearing on the Purported Forensic Report, and a sample anonymised true forensic report prepared by the Centre which showed significant differences in the form and content of reports issued by the Centre.[72]

(c) In response to the Lawyer's Statement, Azerbaijan submitted testimony from Mr Bayram Orujov, the General Secretary of the Bar Association of Azerbaijan, who explained that the letterhead referring to the Ministry of Justice on the Lawyer's Statement formed no part of the Bar Association's letterhead,[73] and

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66 First Mammadov Statement dated 5 April 2023, paras 6, 13.

67 Extracts of the logbook of the Department of Investigation, **R-217**.

68 True Seal of the Department of Investigation of the Prosecutor's Office stamped on 4 April 2024, R-214.

69 Specimen anonymised witness summons issued in the year 2022, **R-216**.

70 Kishiyeva Statement dated 5 April 2023, paras 7 and 6; Decree of the President of the Republic of Azerbaijan "On the implementation of the Law of the Republic of Azerbaijan "On Forensic Expertise Activities"" No. 252 dated 15 January 2000, **RLA-224**, para. 2.6; "Regulations on Granting Court Expert Qualification at the Forensic Expertise Center" approved by Decision of the Collegium of the Ministry of Justice of the Republic of Azerbaijan No. 24-N dated 29 November 2012, **RLA-225**.

71 Seal of the Forensic Expertise Center included in Redacted Expert Report of the Forensic Expertise Centre dated 17 June 2020, **R-218**, p. 3.

72 Redacted Expert Report of the Forensic Expertise Centre dated 17 June 2020, R-218.

73 Orujov Statement, para. 3(c). Law of the Republic of Azerbaijan "On Lawyers and Legal Activity" No. 783- IQ dated 28 December 1999, **RLA-227**, arts. 1.I and 9.I.

the Lawyer's Statement did not follow the Bar Association's mandatory templates for private advocates.[74]

47. In his Reply submission, Mr Bahari describes without explanation Azerbaijan's claims of forgery of these documents as "*illogical and dishonest*",[75] but he only goes on to address the Purported Summons. He tries to single out Mr Mammadov to make out his allegations, as described below, but says nothing *at all* about the other two documents that have also been denounced as forgeries in signed witness statements. Nor do his witnesses who introduced these documents address Azerbaijan's evidence against them.[76] Mr Bahari has also failed to make these documents available for physical inspection, despite Azerbaijan's repeated requests. The Tribunal might expect him to allow inspection if he were confident of the authenticity of this evidence. Azerbaijan's objections to the authenticity of these documents should therefore be taken as unchallenged. They are not authentic documents, and Azerbaijan had no part in their preparation.

48. As for the Purported Summons, Mr Bahari relies on unrelated, unverified "media reports" which he claims show that Mr Mammadov is "*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*"[77] and therefore "*not a credible witness; nor is the entire* [Office of the Prosecutor General] *as a body*".[78] This is not evidence at all, let alone evidence that can rebut the direct evidence that Azerbaijan has submitted to disprove the authenticity of the Purported Summons. It is merely unsupported and unjustified inference.

49. Next, Mr Bahari suggests that there is something "[i]*nexplicabl*[e]" in the fact that the Specimen Summons contain no letterhead, and do not contain seals.[79] There is nothing sinister about this. As Mr Mammadov explained in his first statement, [redacted]

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74 Template letterheads from the Azerbaijani Bar Association for individual legal practice and for those members operating within the scope of a law office, available at the Bar Association's website, **R-195**.

75 Reply, para. 613.

76 *See* Ramazanova Statement and Abdulmajidov Statement.

77 Reply, para. 624.

78 Reply, para. 625.

79 Reply, para. 637.

[redacted][80] As to the fact that the specimen documents do not contain letterheads, as Mr Mammadov explains, that is because the document in fact sent is printed on letterhead, and the copy documents retained by the Department of Investigation are printed on plain paper.[81]

50. Finally, Mr Bahari relies on a summons directed to the leader of a political opposition party, Mr Isa Gambar, dated 14 June 2017 and issued by the Department of Investigation of Cases related to Grave Crimes (as it was then known) (the **Gambar Summons**).[82] First, Mr Bahari notes that the seal on the Gambar Summons differs from *both* the Purported Summons and the Specimen Summons exhibited by Azerbaijan.[83] It is unclear what point Mr Bahari is trying to make here; the seal on the Gambar Summons does nothing to prove or disprove the authenticity of the seal on the Purported Summons either way. As Mr Mammadov explains, the seal on the Gambar Summons is a genuine seal of his Department, but differs from the Specimen Summons because the seal was updated after the Department of Investigation changed its name in June 2020.[84] Second, Mr Bahari says, the Gambar Summons bears "*highly similar features to the* [Purported] *Summons at C-241, to include the letterhead*".[85] But, for the reasons explained above, the absence of the letterhead means only that the document originated from the Department of Investigation, as opposed to the recipient.

51. Mr Bahari concludes that the Specimen Summons were "*specifically selected for their purported variance with the* [Purported] *Summons*".[86] This is a baseless and bewildering conclusion. The Specimen Summons were selected quite obviously because they were issued in the same year (and, in one case, same month) as the Purported Summons. Mr Bahari has four specific complaints about the "*sample bias*"

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80 First Mammadov Statement, para. 17(b); Second Mammadov Statement, para. 7(b).

81 Second Mammadov Statement, para. 7(c).

82 *See* First Mammadov Statement, para. 3. Arqument article dated 14 June 2017, **C-394**. The article also includes a summons addressed to Mr Arif Hacili, although Mr Bahari does not expressly address that summons. The summons addressed to Mr Hacili is almost identical to the Gambar Summons, however, and all statements made in relation to the Gambar Summons apply equally to summons address to Mr Hacili.

83 Reply, para. 641.

84 Second Mammadov Statement, para. 7(a).

85 Reply, para. 642.

86 Reply, para. 643(a).

of the Specimen Summons, each of which is based on unsupported and false assumptions:

(a) First, he states that "*at a minimum, the apparent redaction of the letterhead nullifies any utility Mr. Mammadov's specimens might have had as possible comparators*".[87] This is weak conjecture. As explained above, however, the letterheads in the Specimen Summons were not "redacted". With his second witness statement, Mr Mammadov submits additional specimen summons dating between 2014 and 2020 as obtained from his Departments, none of which contain letterhead.[88]

(b) Second, Mr Bahari complains that the Specimen Summons do not affix seals, which he claims "*renders it impossible to make any comparison between seals*", whereas the Gambar Summons, as an "*objective example of a criminal summons issued by the OPG*", is affixed with a seal.[89] Mr Mammadov has explained, however, that only documents of certain importance would affix the seal.[90] The Gambar Summons had the seal affixed because it was issued to the leader of the opposition party, and it was therefore sealed for reasons of formality.[91]

(c) Third, Mr Bahari asserts that "*Mr. Mammadov's selection makes it impossible to make a comparison of his signature*" because in the Purported Summons the signature is "*purposely affixed entirely within the seal*", whereas the signatures in the Specimen Summons are not so constrained.[92] This, he states, makes Azerbaijan's "*assertion that the signature in the* [Purported] *Summons does not match Mr. Mammadov's specimen*[…] *disingenuous*". This is an absurd accusation. It is not "impossible" at all, especially where Mr Bahari relies on the evidence of document experts. Azerbaijan's forensic handwriting expert confirms that [redacted]

87 Reply, para. 643.

88 Redacted summons issued by Mr Qasim Mammadov, dated 2014 and 2020, **R-260**.

89 Reply, para. 643(b).

90 Mammadov Statement, para. 17(b).

91 Second Mammadov Statement, para. 7(b).

92 Reply, para. 643(c).

[redacted] and she concludes that "[redacted][93] Indeed, it is resoundingly obvious even to the casual observer that the partially obscured signature in the Purported Summons bears no resemblance to the true signature of Mr Mammadov, particularly when the signature within the seal is isolated using digital means:

Purported Summons, **C-241** Specimen Summons, **R-216**

(d) Finally, Mr Bahari claims that based on the Gambar Summons, the Purported Summons and the seal exhibited by Azerbaijan as the true seal of the Department of Investigation, there are "*at least three versions*" of the seal which Azerbaijan has "*failed to explain*".[94] This is yet again a submission made without foundation. As Mr Mammadov has explained, the seal on the Purported Summons is not a genuine seal of the Prosecutor General's Office, nor the Department of Investigation.[95] The seal on the Gambar Summons is the true seal of the Department of Investigation before its name was changed.[96]

52. Nothing in the Reply rebuts the clear and convincing evidence Azerbaijan has produced which demonstrates that it is more likely than not that the Purported Shareholders Agreement and the Asylum Documents are not genuine. Mr Bahari's failure to discharge his burden of proof in this regard is addressed further in PART 2I.C below.

53. The vast majority of factual documents Mr Bahari has filed with his Reply submission are not contemporaneous records, but recently created documents which purport to

93 Briggs Report, para. 1.14; *see also* paras 6.3.8 to 6.3.14.

94 Reply, para. 643(d).

95 Mammadov Statement, para. 17.

96 Second Mammadov Statement, para. 7(a).

verify historic matters.[97] These documents will be addressed at the appropriate juncture in this brief, suffice to say for present purposes that they are worth little more than the paper they are written on. There is one document, however, that Mr Bahari belatedly submitted with his Reply which is alleged to be contemporaneous and which Azerbaijan has identified as highly unlikely to be genuine.

54. That document is a Bank Melli cheque held in the account of Coolak Shargh purportedly dated 30 September 2000 and made out to Mr Chartabi for a sum of approximately USD 25 million (the **Purported Cheque**).[98] The signatory to the Purported Cheque appears to be Mr Bahari. Azerbaijan does not accept the authenticity of the Purported Cheque for the following reasons.

55. First, Mr Bahari claims that this document was "[redacted]" in some unspecified place and at some unspecified time presumably after the filing of the Statement of Claim. Mr Bahari has never been forthcoming about his record-keeping systems. To this day, despite making enquiries,[99] Azerbaijan does not know which types of devices Mr Bahari owns that may hold electronic or scanned documents, or where physical copies of documents belonging to Mr Bahari are located. He claims that "[a]*s a result of* [his] *sudden expulsion,*[…] [he] *can produce relatively limited documents to establish his damages*",[100] but he has no response to the fact that documents evidencing his alleged financial contribution should be in his possession, given that on his own case he held bank accounts outside of Azerbaijan.[101]

56. What we do know is that Mr Bahari apparently lost "[redacted]" to a yahoo.com email account he was using in 2013,[102] and, according to the oral testimony Mr Bahari gave at the Provisional Measures hearing in April 2024, that at some point after 2021, he

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97 *See*, e.g., Letter from Bank Saaderat to Mr Bahari dated 23 April 2024, **C-287**; Letter from Samad Chartabi dated 9 April 2024, **C-280**; Letter from Ambassador Ahad Ghazaei to Diamond McCarthy LLP dated 31 March 2024, **C-279**; Letter from Ahan Sanat Certificate of Purchase for Works Performed dated 1 January 2019, **C-376**.

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

99 *See* Letter from Quinn Emanuel to Diamond McCarthy and others dated 10 April 2024, **R-227**, para. 4; email from Quinn Emanuel to Diamond McCarthy and others dated 19 April 2024, **R-351**; and email from Chang Law to Quinn Emanuel dated 20 April 2024, **R-228**.

100 Statement of Claim, para. 643.

101 Defence, para. 28.

102 Third Bahari Statement, para. 37.

"[redacted]" and the data on it was irretrievably lost.[103] The alleged lost [redacted] to email accounts, which surely must still exist today, is left unexplained and the proverbial phone in the toilet as an excuse to evade disclosure obligations is embarrassing. Even if, for the sake of argument, it did occur, back-ups of accounts, emails, photos and files are still possible. Mr Bahari has offered no explanation for any of this.

57. And it is in this context, as if by magic, that the Purported Cheque addressed to Mr Chartabi appeared from nowhere, and only after Azerbaijan raised such serious doubts about the Purported Chartabi Contracts that Mr Bahari had to admit they were backdated. Mr Bahari has confirmed that he does not have the original of the Purported Cheque,[104] so the question remains: where did this scanned image come from? If the Purported Cheque was going to be of any value to Mr Bahari's own case, it could only ever be a copy (as the original would have been cashed at Mr Chartabi's bank, 24 years ago), but why a copy would exist at all, and why anyone would scan that copy, and not the original, is not explained.

58. Second, Mr Bahari describes the Purported Cheque as being "[redacted]", and the document appears to have been signed by him. This is suspect for a number of reasons:

(a) Mr Bahari provides no explanation as to why Coolak Shargh, which had no involvement in Caspian Fish (nor Coolak Baku on Mr Bahari's case)[105] would make a payment of almost USD 25 million from its bank account for work allegedly carried out by a third party for Mr Bahari. Coolak Shargh was a separate company operating a separate business in Iran. It is not understood what Mr Bahari could possibly mean by "[redacted]": the Bank Melli account belonged (ostensibly) to Coolak Shargh, and not to Mr Bahari.

(b) By the time the Purported Cheque was allegedly made out (13 September 2000), Mr Bahari had no interest in Coolak Shargh whatsoever. According to the

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103 Transcript of Provisional Measures hearing, 9 April 2024, p. 28, lns 11-21.

104 Letter from Chang Law and Diamond McCarthy to Quinn Emanuel dated 9 July 2024, **R-341**.

105 *See* Third Bahari Statement, para. 11.

Official Gazette of the Islamic Republic of Iran, Mr Bahari exited Coolak Shargh as a shareholder on 22 December 1999,[106] and by 29 December 1999, he was no longer a director of Coolak Shargh in any capacity.[107] He did not have the authority to write USD 25 million cheques in Coolak Shargh's name. Mr Bahari denies that he exited Coolak Shargh in 1999,[108] but he does not dispute the authenticity of the extracts of the Official Gazette. He has no explanation for the fact that his exit is described in the Official Gazette with reference to an "[redacted]".[109] The Reply simply describes the Official Gazette as "*incorrect and unreliable*" based on Mr Bahari's testimony alone[110] and the Tribunal should accept that the Official Gazette in fact accurately records Mr Bahari's status as a shareholder or director of Coolak Shargh.

59. The most likely explanation for the Purported Cheque is that a blank cheque in Coolak Shargh's cheque book was recently located and filled in by Mr Bahari in the misguided belief that it would persuade the Tribunal and support his claims in these proceedings. That is why the original conveniently cannot be located, and why Mr Bahari has refused to provide any explanation for the provenance of the document.[111]

60. Even if the Purported Cheque were genuine, which is not accepted, it is not evidence of a payment (discussed further at paragraph 372 below), let alone that such sums were paid to Mr Chartabi further to the Purported Chartabi Contracts. If anything, the Purported Cheque would be a further indication that the Purported Chartabi Contracts

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106 Extract from Official Gazette of the Islamic Republic of Iran, Notice on Transfer of Portion in the Company's Share Capital on 22 December 1999 dated 15 January 2000, **R-84**.

107 *See* Extract from Official Gazette of the Islamic Republic of Iran, Notice Decisions on 30 January 2000 dated 23 February 2000, **R-353**. For the avoidance of doubt, while this extract refers to a certain "Mohammad Reza Rahbari Asr" being appointed as a board member and the managing director of Coolak Shargh, this individual is not Mr Bahari, as is evident from the fact that in December 1997, Mr Rahbari Asr and Mr Bahari were both appointed to the board of Coolak Shargh: *see* Extract from Official Gazette of the Islamic Republic of Iran, Notice Decisions on 25 December 1997 dated 8 February 1998, **R-354**.

108 Third Bahari Statement, para. 10.

109 Extract from Official Gazette of the Islamic Republic of Iran, Notice on Transfer of Portion in the Company's Share Capital on 22 December 1999 dated 15 January 2000, **R-84**.

110 Reply, para. 113.

111 *See* Quinn Emanuel letter to Diamond McCarthy dated 11 July 2024, **R-344**, para. 6; and Diamond McCarthy response dated 16 July 2024, **R-345**.

are not genuine because of the sheer number of patent inconsistencies the Purported Cheque has with the Purported Chartabi Contracts. Thus:

(a) the cheque is made out to Mr Chartabi personally, instead of the alleged company Chartabi Contracting with whom the Purported Chartabi Contracts were concluded;

(b) it is made out in Iranian rials, instead of US dollars, which is the currency of the Purported Chartabi Contracts;

(c) the date of the Purported Cheque is unexplained; and

(d) the Purported Cheque is inconsistent in its date and amount with the payment schedules set out in the Purported Chartabi Contracts.[112]

61. The significance of the weight of evidence against the authenticity of these five documents is addressed in PART 2I.C below.

3. Mr Bahari's misguided complaints about Azerbaijan's document production fail to acknowledge that Caspian Fish is a private entity

62. Mr Bahari's primary complaint about Azerbaijan's document production concerns Caspian Fish. He complains that Azerbaijan has "*failed to produce a single document relating to: (i) the cost of Caspian Fish,* [or] *(ii) the production capacity of Caspian Fish*",[113] citing to a number of his document requests in a footnote.

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112 Each of the Purported Chartabi Contracts contains a payment schedule at article 4 which sets out in near-identical terms that a certain proportion of the payment is to be made on signing, a further tranche after half the work has been done, and then the remainder when the project is completed. The Purported Chartabi Contract in relation to Coolak Baku, **C-84**, is dated 16 May 1996, more than four years before the Purported Cheque is made out, and long after Mr Bahari alleges the construction work at Coolak Baku had finished in 1997 (see First Bahari Statement, para. 22). The Purported Chartabi Contract in relation to Shuvalan Sugar, **C-85**, is dated 10 July 1997, and Mr Bahari alleges that he was able to begin production within six months (First Bahari Statement, para. 31). If Mr Bahari had failed to pay Chartabi Contracting for some or all of the purported Coolak Baku and Shuvalan Sugar contracts for three years, it is difficult to understand why Chartabi Contracting would have agreed to carry out further work on Caspian Fish. Yet, the Purported Chartabi Contract in relation to Caspian Fish, **C-92**, is dated 10 May 1999 and was concluded by the end of 1999 (Third Bahari Statement, para. 23). Mr Bahari does not explain for which specific works the Purported Cheque for approximately USD 25 million relates to, but even it was just Caspian Fish, a payment of nearly 90% of the contract's value being made in September 2000 is completely at odds with the terms of the Purported Chartabi Contract in relation to Caspian Fish, which provide that the final instalment of 20% should have been paid some nine months earlier, when the construction was complete.

113 Reply, para. 29(c) (footnotes omitted).

63. A few preliminary points are worth noting. First, and most fundamentally, Caspian Fish's documents are not Azerbaijan's documents, but the documents of a third party over which Azerbaijan does not have (and cannot compel) possession, custody or control. Accordingly, in order to obtain any such documents, Azerbaijan has had to ask Caspian Fish, and it has not had control over what has been provided. Azerbaijan has also sought voluntary production of documents from Mr Heydarov and his group, Gilan, given its connection to Caspian Fish. Second, Mr Bahari overlooks that in many cases, his requests concern documents that are a quarter-century old. Obviously, it has not been so easy for Caspian Fish, Mr Heydarov and Gilan to locate such historic documents. Finally, and despite these difficulties, Azerbaijan has in fact produced some documents from these third parties, and it produces more with this Rejoinder as they have been provided to it on request.

64. As to Mr Bahari's specific complaints, he misunderstands the Tribunal's Procedural Order No. 6 (**PO6**) and the document production process. In many instances, the Tribunal *did not make an order* in respect of the documents Mr Bahari sought. Excepting Azerbaijan's agreement to limited production, each of the following document requests to which Mr Bahari cites was denied by the Tribunal in PO6 as being "[redacted]",[114] or on the basis that Mr Bahari had [redacted]":[115]

(a) Request No. 31 for "[redacted]";

(b) Request No. 124 for "[redacted]";

(c) Request No. 90 for "[redacted]";

[114] *See* Annex 1 of Procedural Order No. 6 dated 9 April 2024, Request Nos. 31, 124, 90 and 91.

[115] *See* Annex 1 of Procedural Order No. 6 dated 9 April 2024, Request Nos. 117, 118 and 120.

(d) Request No. 91 for "[redacted]";

(e) Request No. 117 for "[redacted]";

(f) Request No. 118 for "[redacted]"; and

(g) Request No. 120 for "[redacted]".

65. Where Azerbaijan agreed to request Caspian Fish to provide voluntarily documents, such documents were produced, as Mr Bahari himself acknowledges.[116]

66. Reinforcing his misunderstanding, however, Mr Bahari goes on to describe "[redacted]" (emphasis added) as "[redacted]".[117] Caspian Fish is not a party to this arbitration and is not subject to any disclosure obligations. Azerbaijan is not responsible for the documents provided to it by Caspian Fish nor any gaps in its records or the documents it has shared. Counsel for Azerbaijan indeed acknowledge that there are deficiencies in the available data. However, Azerbaijan has no legal process to persuade or compel Caspian Fish to share documents with it for the purposes of this arbitration.

67. In any event, Mr Bahari's complaints about the content of "Caspian's Fish's" production are at odds with his assertions of cherry-picking. He states that "*Azerbaijan*

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116 Reply, para. 39. *See* Letter from Caspian Fish to Quinn Emanuel dated 2 May 2024, **R-355** (Respondent's document production 60_02).

117 Reply, Part I.II.C(4) (emphasis added).

has been able to procure helpful documents from Caspian Azerbaijan when it suits",[118] yet in the same breath claims that the profit tax declarations in the Caspian Fish production contain "*anomalies*" which are a "*heavy indicator of fraud*".[119] As addressed in further detail at paragraphs 499 to 503 below, Azerbaijan denies that Caspian Fish provided it with fraudulent documents.

68. It is correct, however, that the profit tax declarations shared by Caspian Fish with Azerbaijan are inconsistent with Azerbaijan's own records of Caspian Fish's profit tax declarations as held with the State Tax Service. This inconsistency is explained by the fact that, as its present management has explained by letter, Caspian Fish provided out-of-date as filed tax returns that were later subject to corrections and further iterations.[120] If, as Mr Bahari claims, Azerbaijan has only obtained or sought to produce documents from Caspian Fish that are "helpful" to Azerbaijan, Mr Bahari cannot explain why Azerbaijan handed over a production that was inconsistent with its own records.

69. Mr Bahari's conclusion in respect of those profit tax declarations, that "*Azerbaijan has produced inauthentic and forged declarations in this Arbitration, to underreport the Revenues and Taxable Profits/Losses of Caspian Fish LLC*",[121] is a false and gross overstatement. Azerbaijan produced in the course of *inter partes* disclosure, documents sought and shared on a voluntary basis from Caspian Fish, further to Mr Bahari's request for disclosure. It did not, and does not, seek to rely on these documents, in these proceedings.

70. Mr Bahari further complains that the Defence seeks to "*conceal the custodians/courses of documents*[…] *most evident*[ly] *in relation to Azerbaijan's clear access (possession, custody or control) to Caspian Fish's files*", at the same time quoting from the Defence which clearly explains that these documents were provided to Azerbaijan from "*Caspian Fish's archives*".[122] Apparently, and for reasons he has never fully been able

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118 Reply, para. 39.

119 Reply, paras 42-43.

120 Letter from Caspian Fish to Quinn Emanuel, 24 October 2024, **R-356**.

121 Reply, para. 44.

122 Reply, para. 35.

to articulate, Mr Bahari seeks the specific "*identit*[ies] *of the custodians who provided the same*".[123]

71. Mr Bahari is aware, however, that Azerbaijan has had some limited access to Caspian Fish's archives through Mr Zeynalov,[124] and Mr Hasanov.[125] He is also aware that those archives are not organised, are incomplete, and that Caspian Fish has been non-operational for several years, with only a skeleton staff.[126] Its current management assisted with these disclosure requests, and also allowed Mr Sabutay Hasanov and Mr Rasim Zeynalov, both former employees of Caspian Fish, to search their historic documents to assist them in preparing their witness statements. It may be correct that Azerbaijan's witnesses have been able to obtain some limited "*helpful*" documents from Caspian Fish,[127] but the fact these witnesses were permitted to search their documents does not mean that adverse inferences can be drawn from other categories of documents that Caspian Fish did not or was not able to provide.

72. The sum of this allegedly "deficient" production, Mr Bahari claims, is that he is entitled to adverse inferences. Yet, in a surprisingly feeble conclusion, he claims that he is unable to formulate what those inferences should be, in case Azerbaijan should "*complete*[] *its document disclosure*", but he reserves his rights.[128] This is a bizarre position to take. Mr Bahari had the opportunity to set out his case in respect of adverse inferences when he filed his Reply, based on the existing state of disclosure at that time. The truth is that he has not formulated any adverse inferences because there are none that can be drawn from a third party's failure to produce documents in response to the Respondent's requests for their voluntary cooperation.

73. Under the IBA Rules by which this Tribunal is guided, adverse inferences can only be drawn if a party fails without satisfactory explanation to produce documents ordered to

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123 Reply, para. 36.

124 *See* Reply, para. 37.

125 First Hasanov Statement, para. 22.

126 *See* Letter from Caspian Fish to Quinn Emanuel dated 2 May 2024, **R-355** (Respondent's document production 60_02).

127 Reply, para. 37.

128 Reply, para. 47.

have been produced by the tribunal.[129] Moreover, it should be "*clear in each case that the evidence exists and is in Respondent's possession, custody or control but has been withheld*".[130] Mr Bahari's complaint is not that Azerbaijan has failed to produce any of its own documents, and he has not come anywhere close to meeting the standard required for the drawing of adverse inferences.

4. Mr Bahari has no evidence to support of his wide-ranging claims of fraud

74. Faced with documentary evidence that contradicts his claims, Mr Bahari claims that an astonishing number of Azerbaijan's documentary exhibits are inauthentic, to varying levels of deceit.[131]

75. These allegations include, in the strongest terms, that four of the key documents that Azerbaijan has exhibited which evidence that Mr Bahari agreed to sell his interest in BVI Co for USD 4.5 million (**R-50**, **R-51**, **R-52** and **R-129**, together referred to as the **Sale Documentation**) are "*necessarily forgeries, likely prepared for the purposes of this arbitration*", or in the case of the Stock Transfer Form, "*ex post facto*".[132] Among other things, Mr Bahari complains that "[i]*t is unclear how Azerbaijan came into possession*" of the Sale Documentation and that Azerbaijan "*has conspicuously refused to identify the custodian or provenance*" of these documents.[133]

76. Azerbaijan denies that the provenance of these documents casts any doubt upon their authenticity. The Sale Documentation is consistent with other documents in the record which Mr Bahari has been unable to challenge, such as his own email to the President's

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129 Procedural Order No. 1 dated 3 December 2022, para. 6.8; IBA Rules on the Taking of Evidence in International Arbitration 2020, art. 9(6).

130 *Latam Hydro v Peru*, ICSID Final Award (20 Dec. 2023), **RLA-257**, para. 253.

131 Azerbaijan notes that Mr Bahari attempts to cast doubt on certain documents without expressly disputing their authenticity, such as the 1999 Agreement in relation to Coolak Baku, **R-72**, which he claims is an "alleged" agreement without more: *see* Reply, para. 744.

132 *See* Reply, para. 18(c): Mr Bahari claims that the following documents: Buyer and Seller Agreement between Mr Khanghah and Mr Bahari dated 20 September 2001, **R-50**; Receipt for payment of USD 1.5 million signed by Mr Bahari dated 5 November 2001, **R-51**; and Receipt for payment of USD 2 million signed by Mr Bahari, undated, **R-52**. *See* also the Stock Transfer Form, undated, **R-129** and Reply, para. 381 (*e.g.*, 381(g): "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").

133 Reply, paras 366, 410, 381(b).

Office which confirms he received USD 5.3 million,[134] or which indeed he himself has relied upon, such as the 2002 Agreement.[135] Mr Bahari further accepts the authenticity of his handwriting and signature on certain of the Sale Documentation, including on the receipt of a USD 2 million payment,[136] although he attempts to deny its significance. His own forensic expert is unable to support his claim that he did not sign these documents; she merely says that it is "[redacted] that the signatures on these documents are "[redacted]" and her findings are inconclusive.[137] In summary: nothing in the evidence Mr Bahari has produced negates the authenticity of the Sale Documentation.

77. That notwithstanding, Azerbaijan can confirm that the Sale Documentation was provided to it from Minister Heydarov's personal archives.

78. The authenticity of certain documents obtained from Azerbaijan's local court files has also been challenged by Mr Bahari. In particular, Mr Bahari claims that the application documents evidencing his participation in local court proceedings in relation to Ayna Sultan (**R-172** and **R-173**, together the **Bahari Application Documents**) contain "*signatures* [that] *are obvious forgeries digitally added after the fact and prove*[…] *Mr Bahari did not participate in the Alleged 2009 Bahari Appeal and was defrauded with the likely participation of Azerbaijan's courts*".[138] These overstated accusations are quickly dispelled by the fact that the original versions of these documents (to which Mr Bahari has gained access since the Reply was filed) contain undeniably wet-ink signatures.[139] The apparent difference in "*tonal value*" surrounding Mr Bahari's signature in the electronic copies of the Bahari Application Documents is not on account of some nefarious digital cut-and-paste,[140] but likely simply attributable to the fact that the scanner which produced the Bahari Application Documents distinguished

134 Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

135 Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**.

136 Third Bahari Statement, para. 21(f).

137 Morrissey Report, paras 3.2.7-3.2.9 (**R-50**); 3.3.7-3.3.9 (**R-51**); 3.10.10-3.10.12 (**R-129**).

138 Reply, para. 522.

139 *See* Briggs Report, para. 5.1.26; *see also* Steer Report, para. 2.2.5.

140 *See* Reply, para. 26(b).

between the black and white text and the colour signature, applying a different filter or process for the signature block.[141]

79. Any suggestion that the Bahari Application Documents were otherwise not authorised by Mr Bahari again contradicts other documents on record which Mr Bahari accepts are true copies of original documents, such as the power of attorney Mr Bahari granted to Mr Amirahmadi which provides that the latter "[redacted]", including the power to "[redacted]".[142] Mr Bahari (and his experts) do not appear to consider the myriad of reasonable – and more likely – possible alternatives to fraud, such as the possibility that Mr Amirahmadi signed the Bahari Application Documents on Mr Bahari's behalf, given the wide scope of his authority under the power of attorney.

80. Moreover, Mr Bahari ignores the bizarre conclusion of his allegations in respect of the Bahari Application Documents. He appears to be claiming that Azerbaijan fabricated an appeal process (including fabricating documents of its appellate judicial authorities)[143] which allowed Mr Bahari to challenge the sale of Ayna Sultan documents, solely in order to deny a breach of treaty claim that Mr Bahari brought more than a decade later. This is nonsensical.

81. Other historic documents obtained from Azerbaijan's State records and archives are denied by Mr Bahari as being authentic on the basis that Mr Bahari claims to have no recollection of signing them. Thus, Mr Bahari alleges that the documents which indicate Mr Bahari's knowledge and involvement in the creation and operation of the LLC (**R-56** and **R-57**, the **LLC Establishment Documentation**),[144] contain "*Mr. Bahari's forged signature*".[145] To reach this conclusion, Mr Bahari relies on his own testimony, and the testimony of his handwriting expert who states that his signature on these documents "[redacted]

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141 Briggs Report, para. 5.1.25.

142 Power of Attorney issued by Mr Bahari to Mr Amirahmadi dated 20 April 2009, **R-152**.

143 *See* Reply, paras 474, 494-495.

144 Reply, paras 295-300.

145 Reply, para. 1085(a).

[redacted]".[146] Mr Bahari's claims that he "[redacted]" the documents, which are almost a quarter century old, and he denies that the signature is his.[147] This recollection, however, carries little to no weight in the face of the significant documentary record against it.[148]

82. As for Mr Bahari's handwriting expert, Ms Angela Morrissey, she does not conclude that the signatures are inauthentic. She states only that they are outside the range she has examined. It is impossible to draw any conclusions from that statement, however, as Ms Morrissey only considered four allegedly contemporaneous documents containing "[redacted]",[149] and the question of whether she reviewed those documents in electronic or original form remains unclear.[150] The latter point is important, as Ms Morrissey confirms that in the absence of original documents, she is "[redacted]".[151] In any event, Azerbaijan's handwriting expert, Ms Elizabeth Briggs explains that a sample set of the size Ms Morrissey has reviewed is nowhere near wide enough to assess the fluency and range of reasonable variation of Mr Bahari's signatures.[152] Her opinion,

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146 *See* Reply, paras 295 and 297; Morrissey Reports, pars 3.4.11(i) and 3.5.8.

147 Third Bahari Statement, paras 21(h) and (i).

148 *See* Defence, Part 3.V.B.2.

149 *See* Morrissey Report, section 3.1: **C-7**, **C-4**, **C-1** and **R-38**; Ms Morrissey also states that the Purported Chartabi Contract dated (on its face) 16 May 1996, but understood to have been signed by Mr Bahari in or around 2019, **C-84** and a photograph of 12 signatures written by Mr Bahari on request are "[redacted]" of Mr Bahari: *see* Morrissey Report, Appendix 1. *See* Briggs Report, para. 2.3, for an explanation as to why contemporaneously executed signatures are relevant to the sample set.

150 The Morrissey Report, para. 3.1.6 suggests that only copies were reviewed. Due to obvious differences in the images embedded in the Morrissey Report and the softcopies of the exhibits themselves, Azerbaijan first expressed concerns in June 2024 that its own forensic expert had not had access to the same original documentation in correspondence (see Letter from Quinn Emanuel to Diamond McCarthy and others dated 28 June 2024, **R-357**), and the Claimant insisted that Azerbaijan's "[redacted]" (*see* Letter from Chang Law to Quinn Emanuel dated 23 August 2024, **R-358**, p. 2). Subsequently, on 18 September 2024, Chang Law wrote to the Tribunal to state that "[redacted]" (**R-359**, p. 7). It speaks volumes to counsel for the Claimant's purported "[redacted]" that they were unable to verify for months whether a document that they themselves provided to Ms Morrissey had been provided in original or copy form. Azerbaijan understands (though it is not entirely clear) that of the contemporaneous documents, Ms Morrissey only reviewed **C-4** and **C-7** in original form.

151 Morrissey Report, para. 1.5.6.

152 Briggs Report, paras 3.3-3.4.

having reviewed 26 documents containing Mr Bahari's known and undisputed signatures,[153] is that the signatures on these documents [redacted]" and are "[redacted]".[154]

83. Mr Bahari further impugns that **R-56** was "*notarized in the presence of Mr. Bahari*", claiming that the "*Ministry of Justice was responsible for ensuring the activities of the notary public in Azerbaijan*".[155] The implicit suggestion (although never properly particularised) is that the notarisation itself is inauthentic, or the notary falsely verified Mr Bahari's signature. Either submission is pure assertion, based on no evidence at all. Indeed, with respect to other documents on the record, Mr Bahari complains that they are problematic precisely *because* they have not been notarised.[156] No matter which way, in Mr Bahari's submission, everything Azerbaijan produces is forged.

84. Finally, Mr Bahari relies again only on his claimed memory and the inconclusive testimony of Ms Morrissey to assert fraud with respect to two further categories of documents Azerbaijan obtained from Caspian Fish's archive:

(a) Mr Bahari claims that at least four of the documents which demonstrate that Mr Bahari continued to work at Caspian Fish following the Opening Ceremony (the **March/April 2001 CF Documents**) "*do not contain* [his] *authentic signature*".[157] For the reasons set out above, Mr Bahari's recollection, and Ms Morrissey's evidence in respect of his signatures on the March/April 2001 CF Documents, is unreliable. The fraud, according to Mr Bahari, is *not* that Azerbaijan has *recently* created documents for the purpose of the arbitration. Rather, Mr Bahari considers that he "[redacted]

153 Briggs Report, Appendix 1, Table 2. *See also* Briggs Report, paras 5.1.10 to 5.1.12, explaining her view on the reliability of reviewing electronic signatures.

154 Briggs Report, paras 4.7.5 and 4.8.7.

155 Reply, para. 1085(a).

156 *See* e.g., Reply, paras 365 (complaining that **R-50** is not notarised) and 410 (**R-51**).

157 **R-59**, **R-60**, **R-61** and **R-157**: *see* Reply, para. 314.

[redacted]".[158] There is no evidence to support that opinion, which is pure conjecture.[159]

(b) Mr Bahari also challenges the documents which evidence payments made for equipment for Caspian Fish from a bank account at Atabank (the **Atabank Documents**), which he claims are "*at best, unreliable; at worst, they are fabricated for the purpose of this Arbitration*".[160] These submissions are again based on Mr Bahari's fallible memory,[161] and the half-hearted submission that the BVI Co did not bank with Atabank.[162] As discussed further at paragraphs 379 to 380 below, in fact, the account referred to in the Atabank Documents is not and does not purport to be an account of the BVI Co, but is an account of the Representative Office.

85. In summary, Mr Bahari has not presented, and is unable to present, clear and convincing evidence that any of the documents upon which Azerbaijan relies are inauthentic.

B. The witnesses presented in this case do not support Mr Bahari's case

1. The "empty chairs" do not have relevant evidence to give

86. Mr Bahari complains that while Azerbaijan professes to have no knowledge of various facts pleaded in Mr Bahari's case, in fact "*Azerbaijan does have the knowledge*" and has "*made a conscious choice to conceal it*".[163] This is a nonsensical submission that ignores the fact that his whole case is not premised on any dealings with the Republic of Azerbaijan. The vast majority of Mr Bahari's factual allegations concern Mr Bahari's private affairs or the private affairs of third parties. Of course Azerbaijan has no direct knowledge of those matters. Nor does Azerbaijan accept that those matters have any bearing on Mr Bahari's claim for breach of Treaty (as opposed to being complaints about a private business dispute). That notwithstanding, to the extent

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158 Third Bahari Statement, para. 30.

159 Indeed, "[redacted]", Ms Briggs disagrees with Ms Morrissey's opinion that the signatures on **R-59**, **R-61** and **R-157** were made by somebody other than Mr Bahari (Briggs Report, para. 5.1.22); she also confirms that she could accept that the signature on **R-60** could have been written by Mr Bahari (Briggs Report, para. 4.23.4.1).

160 **R-89** to **R-95**: *see* Reply, para. 241.

161 Third Bahari Statement, para. 21(a).

162 Reply, paras 242-247.

163 Reply, para. 48.

Azerbaijan has been able indirectly to obtain factual evidence that is responsive to those allegations, it has produced it in these proceedings. Mr Bahari's dogged refusal to accept that his factual allegations concern the private acts of third parties does not make it so, and does not elevate his complaints into a Treaty claim.

87. Mr Bahari claims that the "*empty chairs in this arbitration*", i.e., the absence of Messrs Aliyev and Heydarov, "*to corroborate key defense theories*[…] *puts serious doubt into those theories*".[164] At paragraphs 49-50 of the Reply, Mr Bahari lists a number of factual matters (the vast majority of which occurred before the Treaty entered into force) that he claims these witnesses could speak to. What he fails to acknowledge, however, is that Azerbaijan's "*defense theories*" are not pure assertion. They are supported by a mass of contemporaneous *documentary* evidence that contradicts Mr Bahari's claims. Of course documents are a far superior source of evidence than witness evidence, generally, but especially so after the passage of so much time. Documentary evidence is already available which addresses the sale of Mr Bahari's interest in Caspian Fish,[165] who the investor was,[166] the creation and management of

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164 Reply, paras 49-50.

165 *See*, e.g., Buyer and Seller Agreement between Mr Khanghah and Mr Bahari dated 20 September 2001, **R-50**; Receipt for payment of USD 1.5 million signed by Mr Bahari dated 5 November 2001, **R-51**; and Receipt for payment of USD 2 million signed by Mr Bahari, undated, **R-52**; 2002 Stock Transfer Form, undated, **R-129**; Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**; Transcript of Mr Bahari's interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68**; Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

166 *See*, e.g., written admission in Third Bahari Statement, para. 21, that the Chartabi Contracts are not original documents; Invoices from International N.A.T Limited to Caspian Fish BVI, **R-31**; Summary of invoices from International N.A.T. Limited to Caspian Fish BVI, **R-48**; Atabank funds transfer request dated 7 January 2000 from "Caspian Fish Co. In." to Nissei ASB, **R-89**, Atabank payment order dated 10 August 2000 from "Caspian Fish Co. Inc." to Nissei ASB, **R-90**, and Atabank payment order dated 18 August 2000 from "Caspian Fish Co. Inc." to Mr Bahari's account at Commerzbank, **R-91**; Atabank payment orders to Victorplex dated 10 May 2000 for USD88,750, **R-92**, and 1 September 2000 for USD 75,907, **R-93** (referring to an invoice dated 25 August 2000). Mr Bahari also relies on an invoice from RFC Electronic dated 17 October 2000 for DM 7,561, **SEC-187**, and a waybill for items shipped by RFC Electronic to "Caspian Fish & Co" dated 26 October 2000, **SEC-188**; Azerbaijan has been provided a copy of an Atabank payment order to RFC Electronic to "Caspian Fish & Co" dated 10 August 2000 for USD207,500, **R-94**. Mr Bahari relies on an invoice from Schiller & Mayer to "Caspian Fish" dated 29 August 2000 for 96,767 DM and 73,238 DM, **SEC-167**; Azerbaijan has been provided a copy of an Atabank payment order to Schiller & Mayer dated 1 September 2000 for USD 15,700, **R-95**; Atabank payment order dated 18 August 2000 from "Caspian Fish Co. Inc." to Mr Bahari's account at Commerzbank for the sum of USD187,500, referring to "Partial payment according to the contract N 99611-RR1 DD 16/06/99", **R-91**. Azerbaijan has now also been provided with numerous banking documents which show Mr Khanghah depositing significant sums of money into Caspian Fish's Atabank accounts, which were then used to purchase US dollars: *see* Atabank payment slip and order showing deposit by Mr Khanghah dated 7 January 2000, **R-325**, and corresponding Memorial Order dated 7 January 2000, **R-326**; Atabank payment slip and order showing deposit by Mr Khanghah dated 11 January 2000, **R-327**, and corresponding Memorial Order dated 11 January 2000, **R-328**; Atabank

the LLC,[167] and the circumstances of Mr Bahari's so-called "expulsion".[168] Mr Bahari's approach to that evidence is to deny wholesale its authenticity. It is difficult to see why Mr Bahari considers that witness testimony addressing these same issues would be of any value.

88. In any event, Mr Bahari is determined to deny that the actions of Messrs Aliyev and Heydarov, acting in their private capacities (and indeed at a time before Mr Aliyev had the status of organ of State),[169] were not actions of Azerbaijan. His primary submission appears to be is that it is *impossible* for these individuals to "*act in a purely 'private' capacity*".[170] This is obviously wrong as a matter of law and fact for the reasons set out in section PART 2II below. Even Presidents are capable of purely private acts. Mr Bahari alternatively claims that it is "*irrelevant*" whether their past actions were taken in a private capacity on the basis that they are "*employees of the State and may be directed to testify*".[171] Again, Mr Bahari is wrong. Even if they could be considered

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payment slip and order showing deposit by Mr Khanghah dated 2 February 2000, **R-329**, and corresponding Memorial Order dated 2 February 2000, **R-330**; Atabank payment slip and order showing deposit by Mr Khanghah dated 8 February 2000, **R-331**, and corresponding Memorial Order dated 8 February 2000, **R-332**; Atabank payment slip and order showing deposit by Mr Khanghah dated 9 February 2000, **R-333**, and corresponding Memorial Order dated 9 February 2000, **R-334**; Atabank payment slip and order showing deposit by Mr Khanghah dated 28 February 2000, **R-335**, and corresponding Memorial Order dated 28 February 2000, **R-336**; Atabank payment slip and order showing deposit by Mr Khanghah dated 22 March 2000, **R-337**, and corresponding Memorial Order dated 22 March 2000, **R-338**.

167 *See*, e.g., Power of Attorney from BVI Co to Mr Bahari dated 29 August 2000, **R-69**; Application to the Ministry of Justice for the registration of the LLC dated 29 August 2000, **R-56**; Charter of the LLC dated 11 September 2009, **R-57**; Application to the Ministry of Justice for the registration of the LLC dated 29 August 2000, **R-56**, p. 1; Payment Slip and Receipt Order dated 18 September 2000, **R-240**; Letter from the LLC to Absheron District State Social Protection Fund dated 9 October 2000, **R-117**; Letter from the LLC to Absheron District Labour and Employment Center dated 9 October 2000, **R-118**; Letter from the LLC to Absheron District Territorial Tax Department dated 9 October 2000, **R-119**; Letter from the LLC to Absheron District Statistical office dated 9 October 2000, **R-120**; Letter from the LLC to Absheron District State Social Protection for Disabled Persons dated 9 October 2000, **R-121**; Protocol of LLC Meeting on addendum to Charter dated 6 October 2000, **R-122**.

168 *See*, e.g., Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**; Letter from the Republic of Azerbaijan State Migration Service to SSPI dated 22 December 2023, **R-177**; Letter from Kuehne & Nagel to Caspian Fish dated 14 February 2001, **R-64**; Letter from Caspian Fish Co Azerbaijan to DFT GmbH dated 26 March 2001, **R-60**; Letter from Caspian Fish Co Azerbaijan to Mr Marc Valluet dated 26 March 2001, **R-59**; Letter from Caspian Fish Co Azerbaijan to Baader GmbH dated 29 March 2001, **R-61**; Letter from Luxal France to Mr Bahari dated 30 March 2001, **R-127**; Contract between Caspian Fish Co Azerbaijan and Caviar House dated 7 April 2001, **R-157**; Notice of Arbitration dated 5 April 2019, **R-54**, paras 10 and 39.

169 *See* Defence, fn. 66.

170 Reply, para. 678.

171 Reply, para. 51.

akin to "employees" (which is not admitted), employees cannot be compelled to give evidence on behalf of their employer in respect of non-work related matters.

89. The simple fact is that Mr Bahari has brought a case which has very little to do with the State of Azerbaijan, save that he alleges to have partnered, with respect to Caspian Fish, with people who were (in the case of Mr Heydarov) or subsequently became (in the case of Mr Aliyev) State officials. Caspian Fish is a private company. Mr Bahari does not (and cannot) allege that it is or ever was a State-owned entity. The same goes for Coolak Baku (and Shuvalan Sugar, to the extent it can be considered as any kind of business at all). Ayna Sultan was a private dwelling. Mr Bahari's carpets also had nothing to do with the State.

90. It is for this reason that Azerbaijan has repeated that it has no direct knowledge of many of the facts pertaining to Mr Bahari's case.[172] They are not matters that concern the organs and authorities of the State.

91. Azerbaijan accepts that Mr Heydarov could likely give relevant evidence about certain factual matters concerning his private business activities in relation to Caspian Fish. Mr Heydarov has declined, however, to give evidence in these proceedings on the basis that they do not concern the State of Azerbaijan, but his private affairs.[173] He considers Mr Bahari's case to be an attempt to embarrass Azerbaijan, and he declines to have any part in that.[174] Mr Heydarov's position aside, it does not change the fact that while Mr Bahari is perhaps curious to see what Mr Heydarov would have to say about their previous business dealings, that relationship has nothing to do with Mr Bahari's claims against the State. Mr Bahari's case with respect to Mr Heydarov presents insurmountable difficulties, including the fact that save for the alleged October 2013 meeting (which is denied, but in any event in respect of which Mr Bahari makes no specific claim) *all* of the conduct that Mr Bahari could conceivably complain was carried out by Mr Heydarov acting as a representative of the State occurred before the Treaty entered into force. Put simply, there is no relevant evidence Mr Heydarov could give to Mr Bahari's investment treaty claim.

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172 The Claimant derides Azerbaijan's position as "*ad nauseam*": *see* Reply, paras 48, 87 and 1100.

173 *See* Letter from Mr Kamaladdin Heydarov to Quinn Emanuel dated 25 October 2024, **R-304**.

174 *See* Defence, para. 178; Letter from Mr Kamaladdin Heydarov to Quinn Emanuel dated 25 October 2024, **R-304**.

92. Similar goes for Mr Bahari's case in respect of President Aliyev. Mr Bahari pleads no specific factual case against President Aliyev, save for the claim that he had an interest in Caspian Fish (which is not admitted). There is nothing that President Aliyev needs to answer that is material and not already addressed by other documents.

2. Mr Bahari's attempt to attack the credibility of Azerbaijan's witnesses falls flat

93. Mr Bahari attempts to cast aspersions on the evidence of three of Azerbaijan's witnesses, namely, Mr Zeynalov, Mr Hasanov and Mr Kerimov. The common theme among these criticisms is that his witnesses have a "*conflict of interest*" through their ties to the Azerbaijani government, although Mr Zeynalov receives a "*special mention*" for being a "*repugnant con artist with no scruples*".[175] These inappropriate criticisms lack merit.

94. As to the claims about Mr Zeynalov's conduct, Mr Bahari puts the cart before the horse. None of facts which he claims should result in Mr Zeynalov's evidence being given no weight have been proven, and are each denied by Mr Zeynalov.[176] That is the purpose of the arbitration proceeding and each is a question for the Tribunal to determine. On Mr Bahari's case, Mr Zeynalov's evidence should be discredited simply because Mr Bahari contends that Mr Zeynalov is untrustworthy. This submission makes a mockery of the dispute resolution process.

95. As to the claims of conflict, the somewhat unenthusiastic suggestion is made that because Mr Zeynalov is a director of an inactive company registered in Aghdam District, Khindiristan, which is alleged to be a region "*firmly under the control of President Aliyev*", this "*suggests possible connections to President Aliyev, or possibly access to no-bid contracts*".[177] There is no factual basis for this speculation, and it is denied by Mr Zeynalov in its entirety.[178] In any event, Mr Bahari does not explain what is meant President Aliyev's alleged "control" of a region, or how the mere fact that Mr Zeynalov is a director of a company established in such a region could lead to this inference. It is akin to suggesting that anyone who is a director in any Azerbaijani

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175 Reply, para. 52.

176 *See* Reply, paras 52-53, and Second Zeynalov Statement, section V.

177 Reply, para. 56.

178 Second Zeynalov Statement, para. 41.

company is "*possibl*[y] *connect*[ed] *to President Aliyev*". This is baseless speculation and should be dismissed out of hand.

96. Mr Bahari also claims that Mr Hasanov "*failed to disclose*" the fact that "*Az Varvara is a company owned by Mr Heydarov*", which "*indicates concealed bias or motive; Mr. Hasanov's testimony should therefore be viewed with appropriate caution and given little, if any weight*".[179] This extraordinary conclusion to which Mr Bahari has jumped has no basis in fact or in logic:

(a) As a preliminary point, even if Mr Heydarov was the owner of Az Varvara (which is denied for the reasons set out below), Mr Hasanov's testimony can hardly be described as "*conceal*[ing]" any such connection in circumstances where Mr Hasanov openly disclosed his directorship of Az Varvara. Mr Bahari does not explain why he considers Mr Hasanov to have "concealed" or "failed to disclose" anything.

(b) In any event, Mr Heydarov is not the owner of Az Varvara. Mr Bahari relies on a Meydan TV article to support his assertion that Mr Heydarov is the owner of Az Varvara.[180] But that article is no support for his proposition. The article explains that it contains a list of companies the author considers are owned by Mr Heydarov or his family members but that while [redacted]".[181] Mr Khanghah is listed in that article as the director of the company, and in fact he is its owner.[182] Mr Sultanov, who has entered into a commercial profit-sharing arrangement with Mr Khanghah in connection with Az Varvara also confirms his understanding that it is Mr Khanghah's company.[183]

(c) Finally, even if Mr Hasanov had any ties to Mr Heydarov (which is not admitted), Mr Bahari does not explain what the alleged bias or motive would be. In circumstances where Mr Hasanov is giving evidence about matters that

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179 Reply, para 57-58.

180 Meydan TV, The extraordinary businessman Kamaladdin Heydarov, 4 March 2018, **C-36**.

181 Meydan TV, *The extraordinary businessman Kamaladdin Heydarov*, 4 March 2018, **C-36**, p. 3 of the PDF.

182 *See* Extract from State Registry on AzVarvara dated 8 February 2023, **R-298**.

183 Sultanov Statement, paras 16-17.

concern Mr Heydarov's historic private affairs, it would surely come of no surprise to Mr Bahari to learn that Mr Hasanov was connected to Mr Heydarov. Recalling Mr Bahari's allegations about the "empty chairs", it is apparent that even if Mr Heydarov were to give evidence, Mr Bahari's response would be to suggest that it could be given "no weight" because of his inherent bias. This is no proper challenge to evidence. The testimony of Azerbaijan's witnesses does not deserve to be accorded "little weight" simply by reason of the fact that it is produced by someone with whom Mr Bahari is in dispute, or a person connected to them. This appears to be the unifying theme which underlines Mr Bahari's critique of Azerbaijan's witnesses[184] (and indeed its documentary evidence):[185] it cannot be trusted, Mr Bahari says, because it has emanated from Azerbaijan. This is nonsense.

97. The third witness to be subjected to the conflict accusation is Mr Kerimov. Mr Bahari critiques Mr Kerimov on the basis that he has allegedly "*benefit*[ted] *from close ties to Minister Heydarov*" and "*enjoyed significant political favor from the Aliyev family*", including: (i) a political appointment alleged to be connected to Mr Heydarov; (ii) the appointment of his allegedly inexperienced son as CEO of SOCAR Romania; and (iii) the alleged award of 563 Government contracts to 74 companies alleged to be owned by Mr Kerimov's brother.[186] Again, Mr Bahari would do well to fact check thoroughly his claims before parroting the content of unverified press reports:

(a) Mr Kerimov's appointment in the Salyan district was not made on account of any specific relationship with Mr Heydarov: Mr Kerimov has been involved in politics since 1992 and was appointed to the role because he was qualified to hold it.[187]

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184 *See*, e.g., Reply, para. 569, where Mr Bahari says (without drawing any conclusions) of Ms Izmaylova's evidence that "it should be noted… that Ms. Izmaylova has Azeri citizenship and maintains her domicile and a continuous presence in Azerbaijan"; Reply, para. 648, where Mr Bahari says of Mr Mammadov's evidence that he did not sign the Purported Summons that "[o]f course, Mr. Mammadov absolved himself and found, to no one's surprise, that there was no ongoing criminal investigation".

185 *See*, e.g., Reply, para. 568, where he states that Azerbaijan's "self-produced and self-serving" State Border Service records "are not reliable"; Reply, para.

186 Reply, paras 60-61.

187 Second Kerimov Statement, para. 47.

(b) It is true that Mr Kerimov's son was appointed to the role of CEO at a Romanian subsidiary of SOCAR's in 2011, but that appointment was unrelated to Mr Kerimov. As Mr Kerimov explains, his son received his higher education and worked for oil company Petrom Service in Romania.[188] He obtained a PhD from the Academy of Economic Studies Bucharest in 2009.[189] When SOCAR decided to open in Romania, his son, as an Azerbaijani national who lived in Romania, spoke the language, and was a subject matter expert, as well as having valuable knowledge of the local sector and practices, was appointed to the relevant role.[190] The suggestion by Mr Bahari that Mr Kerimov was able to secure the role for his son on account of him being "*an important political figure in Azerbaijan*"[191] is pure speculation, unjustified as a matter of fact and, in any event, not connected to any alleged "favour" from President Aliyev.

(c) Alirza Kerimov is not Mr Kerimov's brother or otherwise connected to Mr Kerimov (Kerimov being a common surname in Azerbaijan).[192]

98. In short, Mr Bahari appears to argue that because Mr Kerimov is involved in politics, and is an important political figure, his evidence should be discredited as "*influenced, if not directed, by those connections* [to the Azerbaijan Government]".[193] For the reasons set out at paragraph 96(c) above, this is nonsense.

3. The written testimony of Mr Bahari's witnesses is highly unreliable

99. Mr Bahari has no real answer to the issues Azerbaijan has raised with the credibility of his witnesses.

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188 Second Kerimov Statement, para. 48(a).

189 Second Kerimov Statement, para. 48(a).

190 Second Kerimov Statement, para. 48(a).

191 Reply, para. 59(a).

192 Second Kerimov Statement, para. 48(b).

193 Reply, para. 60.

100. At least three of Mr Bahari's witnesses are convicted criminals (Mr Moghaddam, for drug offences;[194] Mr Allahyarov, for fraud;[195] and Mr Kousedghi, for offences in Iran).[196] As to each:

(a) Mr Moghaddam claims that his conviction was false, but he fails to address the handwritten note he submitted to the Baku Appellate Court in 2014 in which he expressly stated that he did not dispute the "[redacted]" for which he was jailed, but only sought to challenge the length of his sentence.[197]

(b) Mr Allahyarov claims that he was the subject of a malicious prosecution by a corrupt investigator, Mahir Samad oglu Naghiyev, but he conspicuously fails to explain why he would be targeted; he alleges that USD50,000 was extorted from his brother, but he does not explain to what end (as the charges against him were obviously not dropped as a result).[198] In fact, as transpires from the Criminal Court's judgment in the case against Mr Naghiyev, the Court convicted Mr Naghiyev (among other things) for illegally taking a payment from Mr Allahyarov's brother to reimburse Mr Allahyarov's victims in exchange for converting Mr Allahyarov's pre-trial detention to house arrest.[199] There was no malicious prosecution at all. Moreover, and crucially, Mr Allahyarov claims he protested his innocence in connection with his conviction,[200] but he fails to acknowledge that the Court's judgment records him as having "[redacted]", as well making certain admissions in audio tapes.[201]

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194 Decision of the Baku Court on Grave Crimes dated 17 July 2009, **R-97**.

195 *See* Judgment of Baku Appellate Court dated 17 July 2007, **R-151**.

196 *See* Letter from Mr Kousedghi to the Head of Judiciary of Iran (undated), **R-432**, para. 6 ("[redacted]."). Strictly without waiver of privilege, Azerbaijan has obtained this document through lawyers in Iran.

197 Mr Moghaddam's Handwritten Appeal Petition, undated, and judgment of the Baku Court on Grave Crimes dated 30 April 2014, **R-156**.

198 *See* Second Allahyarov Statement, para. 6.

199 *See* Supreme Court's decision dated 22 September 2010, **R-401**, upholding the verdict of Baku Court of Criminal Appeal dated 30 January 2009, **R-402**.

200 Second Allahyarov Statement, para. 6.

201 *See* Judgment of Baku Appellate Court dated 17 July 2007, **R-151**, pp. 6 and 10.

(c) Mr Kousedghi gives no further evidence at all.

101. The testimony of witnesses Mr Abdulmajidov and Ms Ramazanova holds little weight. They are currently claiming asylum and are accordingly motivated to concoct a story that is as extreme as possible in order to support their claims.

102. The statements given by Mr Bahari's witnesses echo his language in a way that can only be because they were not drafted by the witnesses themselves, but by Mr Bahari's lawyers.[202] The most stark example of this is the evidence of Mr Suleymanov, which was given to Mr Bahari's lawyers over meetings in Istanbul, Turkey from 10-13 April 2024,[203] and at which point he is said by Mr Earnest to have "[redacted]".[204] What is curious about this explanation is that the page Mr Suleymanov allegedly signed in April 2024 contains, in the signature block, a typewritten date in "May 2024". Mr Earnest has said that the witness statement was "[redacted]",[205] but this does not explain why Mr Suleymanov would have signed, in April 2024, a document that was *dated May 2024*. He cannot have known when he would approve the text of the statement.

103. Mr Suleymanov has since denied providing any such approval to Mr Bahari or his lawyers in several conversations with Mr Zeynalov, stating that the witness statement which has been submitted in the arbitration is "[redacted]".[206] This goes some way to explaining the more incoherent allegations in Mr Suleymanov's statement, such as the claim Mr Zeynalov told Mr Suleymanov that he had arranged a meeting for Mr Suleymanov with Mr Bahari's lawyers,[207] as well as those which are demonstrably false, such as the claim that Mr Suleymanov "[redacted]

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202 *See*, e.g., the inaccurate references consistently employed throughout the statements of Mr Bahari's Azerbaijani language speaking witnesses ("[redacted]" is misspelled as "[redacted]", and this is carried through to the Azerbaijani translations which shows that they are translations of the English, rather than being original Azerbaijani language versions; "[redacted]" is misspelled as "[redacted]", again carried through to the Azerbaijani versions).

203 Letter from Diamond McCarthy to the Tribunal dated 26 July 2024, **R-361**, p. 2.

204 Email from Diamond McCarthy to Quinn Emanuel dated 11 September 2024, **R-362**.

205 Email from Diamond McCarthy to Quinn Emanuel dated 11 September 2024, **R-362**.

206 *See* Transcript of audio recording of meeting between Mr Suleymanov and Mr Zeynalov on 10 July 2024, **R-231**, p. 3.

207 Suleymanov Statement, para. 54.

[redacted]".[208] After all, as counsel for the Claimant have readily admitted in correspondence, there have been several significant "[redacted]" and "[redacted]" between counsel for the Claimant and Mr Suleymanov in their "[redacted]".[209] In sum, the evidence Mr Suleymanov has allegedly provided on Mr Bahari's behalf in these proceedings cannot be trusted at all.

104. Another glaring indicator that these witness statements are the creation of Mr Bahari's lawyers is the fact that many of them have been signed in the English language by witnesses who do not speak English. Azerbaijan drew this point to the counsel for Mr Bahari's attention in the Defence, and, no doubt embarrassed by Mr Bahari's own surprise at seeing a signed English language version of his witness statement at the Provisional Measures hearing,[210] the response of Mr Bahari's counsel has been to submit what are clearly Azerbaijani translations of English language statements.[211] This does not rectify the problem. What counsel for Mr Bahari seemingly fails to understand is that these witnesses, who profess not to speak or read English, have signed witness statements in the English language, with an English language affirmation as to their truth.[212] Providing those witnesses with translations of what they have signed, as Mr Bahari confirmed was provided to him after the fact,[213] does nothing to dispel the very real concern that Mr Bahari's witnesses have not written what they say.

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208 Suleymanov Statement, para. 64; WhatsApp call record screenshots between Mr Suleymanov and Mr Zeynalov dated 12 July 2024, **R-229**, pp. 1-2, showing that they spoke for 3 minutes on 14 March 2024, and on 15 April 2024, Mr Suleymanov placed a call to Mr Zeynalov which lasted just under a minute.

209 Letter from Diamond McCarthy to the Tribunal dated 26 July 2024, **R-361**, p. 3 and fn. 5.

210 *See* Transcript of Provisional Measures Hearing, Day 1, 9 April 2024, p. 14 lns 17-21.

211 *See*, e.g. Second Moghaddam Statement, para. 3: "[redacted]".

212 *See* signature pages of the Suleymanov Statement, Ramazanova Statement, Abdulmajidov Statement, Third Bahari Statement and Second Moghaddam Statement. Only one of Mr Bahari's six Azerbaijani language speaking witnesses, Mr Allahyarov, signed his witness statement in the Azerbaijani language.

213 *See* Transcript of Provisional Measures Hearing, Day 1, 9 April 2024, p. 14 lns 17-21 ("[redacted]").

C. Burden of proof

1. Mr Bahari has failed to discharge his burden of proving his claims for breach of Treaty

105. The above summary of the state of the evidence in this case frames the discussion of Mr Bahari's glib assertion in the introductory section of his Reply that he has "*met his burden of proof of proving that he was the investor and made the investments*".[214] Even if that were so (which is denied), it goes nowhere to establishing Mr Bahari's claims that Azerbaijan breached the Treaty, which is a "*legal burden that rests squarely with the Claimant*".[215]

106. In terms of those legal claims, Azerbaijan has attempted to distil from the imprecise way in which Mr Bahari has pleaded his case what it understands to be the core elements of his claims:

(a) Mr Bahari claims that there is a breach of article 2(3) of the Treaty by the alleged harassment of people connected to him;[216] his alleged expulsion and consequent inability to access his investments;[217] the alleged differential treatment of Messrs Heydarov, Aliyev and Pashayev;[218] and alleged procedural deficiencies in the ASFAN and Ayna Sultan cases.[219]

(b) Mr Bahari claims that his alleged investment in Caspian Fish was expropriated by "*Azerbaijan's threats and intimidation, combined with his expulsion*",[220] although he appears to concede difficulty in identifying the specific Government action and inaction, which he attributes to Azerbaijan's "*veil of uncertainty and deniability*".[221]

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214 Reply, para. 67.

215 *UPS v Canada*, Ad Hoc Arbitration, Award on the Merits (24 May 2007), **RLA-258**, para. 84.

216 Reply, para. 946.

217 Reply, paras 957-958; paras 1045-1049.

218 Reply, paras 969, 971(b).

219 Reply, paras 1052 and 1055.

220 Reply, para. 1091.

221 Reply, para. 1092.

107. Mr Bahari asserts that he has "*met the burden of proof to prove his claims*",[222] but nowhere in the Reply submission does he expressly address how he has met his burden of proving that Azerbaijan breached the Treaty. It would not be enough for Mr Bahari to prove that he invested money into Azerbaijan (which is in any event denied). Mr Bahari must demonstrate that it is more likely than not that the State of Azerbaijan harassed his associates, "expelled" him from the country, expropriated or prevented him from accessing his investments, gave preferential treatment to Messrs Heydarov, Aliyev and Pashayev, was responsible for deficiencies in the local proceedings and/or threatened and intimidated him. It is impossible for Mr Bahari to demonstrate any one of these matters.

108. This is unsurprising: the acts of which Mr Bahari complains are largely the private actions of third parties, and he struggles to frame these complaints as acts of Azerbaijan that could amount to a breach of Treaty. This was particularly stark in the Statement of Claim, where he was forced to resort to hopeless arguments such as Azerbaijan is in breach of Treaty because its Ministries "*failed in* [their] *oversight role*[s]" to notice Mr Bahari's absence.[223] Now, with the benefit of disclosure of various court proceedings, he has transformed his case into one of denial of justice, with many vague and untenable allegations such as "*collusion*" by the Azerbaijani courts to "*enabl*[e…] *fraudulent schemes against Mr. Bahari*".[224] There is no evidence for any of this.

109. Not only does Mr Bahari fail to prove his case on the balance of probabilities, he also appears to think that Azerbaijan is responsible, in the face of Mr Bahari's pure assertion, to prove the opposite. Thus, Mr Bahari says in respect of his assertions about Mr Kilic: "*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*".[225] Such submissions do not discharge Mr Bahari's burden of proof. Similar allegations are made that Azerbaijan has "*failed to discharge its burden of proof to prove the facts it relies on for its Defense*",[226] but Mr Bahari fails to understand that Azerbaijan is not required to

222 Reply, para. 67.

223 Statement of Claim, paras 570-571.

224 Reply, para. 544.

225 Reply, para. 580.

226 Reply, para. 76.

disprove any allegation in circumstances where Mr Bahari has not done enough to establish the facts he alleges in the first place. Thus, for example, where Mr Bahari asserts that he invested his personal funds into Caspian Fish, it is not for Azerbaijan to prove that Mr Bahari did not make such an investment if Mr Bahari is unable to adduce evidence which demonstrates that he did.[227]

110. As to Mr Bahari's suggestion that any evidential deficit is on Azerbaijan's account, that submission too will not suffice to discharge his burden of proof. As the tribunal in *Lao Holdings v Laos (I)* explained:

> The Tribunal notes the Claimant's contention that against a sovereign state a Claimant "is often unable to furnish direct proof of facts giving rise to responsibility" because, as the Claimant argues, such evidence is often "exclusively within the control of the Government". Nevertheless where, as here, the Claimant's case is based on "inferences of fact and circumstantial evidence" (see Claimant's Submission, 27 March 2014, at para. 27) a Tribunal must be careful not to shift the onus of proof from the Claimant to the Respondent Government or to bend over backwards to read in inferences against "the sovereign state" that are simply not justified in the context of the whole case.[228]

111. After carrying out a review of the relevant jurisprudence in this area, the tribunal in *Muhammet Çap v Turkmenistan* said:

> …the Tribunal notes that it has been stated by some investment arbitration tribunals that no "general principle [of law] exists in ICSID proceedings providing that 'the party that is in a better position to prove a fact bears the burden of proof'". Rather, the tribunal in *Azurix v Argentina* considered "the general principle in ICSID proceedings, and in international adjudication generally, to be that 'who asserts must prove', and that in order to do so, the party which asserts must itself obtain and present the necessary evidence in order to prove what it asserts."
>
> Further, the tribunal in *Al-Bahloul v Tajikistan* was faced with a similar factual situation as in the present case, although the question of burden shifting was not specifically raised. The claimant in that case submitted limited and incomplete evidence to substantiate its allegations, arguing that this was caused by the fact that a lot of the documents were still in the respondent State to which it had no access. The tribunal found that although the claimant may have had "no or very limited access" to documents located in the respondent State, "this does not allow the

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227 [cite – prima facie / shifting?]

228 *Lao Holdings NV v Lao People's Democratic Republic (I)*, ICSID Case No. ARB(AF)/12/6, Decision on the Merits (10 June 2015), **RLA-259**, paras 10-11.

> Tribunal to make far-reaching assumptions to the detriment of Respondent."
>
> In this Arbitration, the Tribunal does not consider that Claimants' reasons for incomplete evidence to support their allegations suffices to shift the burden of producing evidence to Respondent. The Tribunal recognizes that documents may have been seized in 2010 by Respondent. However, the Tribunal concurs with the tribunals in *Amco v Indonesia*, William J. Levitt v Iran and the Knesivich Claim that "reasonably prudent investors are expected to keep business records outside of the host State as part of the ordinary course of business".[229]

112. As for the issue of proving attribution, Mr Bahari repeatedly makes the radical assertion that in Azerbaijan, "*State action via informal practices outweigh*[s] *State action via formal State institutions*",[230] and "[d]*ecision-making and action by the State bodies can be routinely arbitrary and, frequently, in complete contradiction to formal rules and institutions*".[231] As the tribunal in *Oostergetel v Slovakia* said when faced with similar assertions: "[m]*ere insinuations cannot meet the burden of proof which rests on the Claimants*".[232] Mr Bahari's generic assertions are not proof that any such conduct in fact occurred in the circumstances of this case. It did not.

2. Mr Bahari has no answer at all to numerous factual matters, which should be taken as unchallenged

113. The Reply submission fails entirely to address a significant number of factual allegations raised in the Defence. In the following paragraphs, Azerbaijan lists the most material of these unchallenged facts.

114. As to Coolak Baku:

(a) Mr Bahari has no answer to Azerbaijan's construction of the terms of the 1998 Agreement that Mr Bahari would be paid up to a total of USD 500,000 over three years from ASFAN's earnings.[233] The Tribunal should accordingly accept that Azerbaijan's construction of this agreement (which is the very same

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229 *Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd Sti v Turkmenistan*, ICSID Case No. ARB/12/6, Award (4 May 2021), **RLA-260**, paras 726-728 (emphasis added).

230 Reply, para. 662.

231 Reply, para. 664(c).

232 *See Oostergetel and ors v Slovakia*, UNCITRAL, Final Award (23 April 2012), **CLA-100**, para. 303; *Gaspar v Costa Rica*, ICSID Case No. ARB/19/13, Award (29 June 2022), **RLA-164**, para. 466.

233 *See* Defence, paras 203 and 205.

construction that Mr Bahari himself adopted when the 2019 Notice of Arbitration was filed) is the proper one.

(b) While Mr Bahari specifically denies having knowledge of the 1996 Agreement between Coolak Shargh and ASFAN and its addendum,[234] he says *nothing* in his responsive witness statement about the 1999 Agreement between himself and ASFAN in relation to Coolak Baku, which superseded all previous agreements concerning Coolak Baku and contained no contribution obligations on either party.[235] Mr Bahari has not sought to challenge the authenticity of this document and the Reply only refers to this document *once* in passing, describing it as "alleged", with no further particularisation.[236] The 1999 Agreement should accordingly be taken as proof of the Coolak Baku joint venture parties' agreement in 1999.

(c) Finally, and most importantly, Mr Bahari does not address anywhere in his testimony or the Reply submission Azerbaijan's understanding that he transferred the management of Coolak Baku to a third party, Malik, without ASFAN's consent in or around September 1999.[237] Mr Bahari does not challenge the authenticity of a document signed between himself and Mr Malik Aliyev which describes Mr Aliyev as the General Director of Coolak Baku as at October 2000; he says nothing about it at all.[238] While Azerbaijan has made significant efforts to understand what happened between Mr Bahari and his business partners in the context of their private business dispute, Mr Bahari has consciously chosen not to address this aspect of the factual narrative (as discussed further below in relation to Caspian Fish). This is an incredible omission, given Mr Bahari ought to have direct knowledge of what happened.[239] It also explains why Mr Bahari fails to provide any response at all to Azerbaijan's submission that Coolak Baku was never illegally seized by Mr

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234 Third Bahari Statement, para. 12(a) and (b).

235 Contract between ASFAN and Mr Bahari in relation to Coolak Baku Co dated 9 September 1999, **R-72**.

236 Reply, paras 773-774.

237 *See* Defence, paras 212-213.

238 Invoice and Act of Transfer and Acceptance from M Aliyev to Mr Bahari dated 10 October 2000, **R-102**.

239 *See* Defence, para. 272.

Heydarov (or anyone else for that matter).[240] In the face of his silence, Mr Bahari should be understood to have dropped his allegation that Mr Heydarov was involved in an "*overall plot*" to seize Coolak Baku[241] for want of evidence.

115. As to Caspian Fish:

(a) Mr Bahari says nothing about the concerns Azerbaijan raised that the Purported Shareholders Agreement is drawn up in the German language (which its other purported signatories are not alleged to be able to read) and refers to a bank account that was not opened until one and a half years later.[242] In the light of the forensic evidence submitted with this Rejoinder, as discussed above, the Tribunal should find that it is more likely than not that the Purported Shareholders Agreement is not a genuine document dating from April 1999, and further, that it was produced after the fact (at the same time as or after the Vereinsbank account opening form dated 13 November 2000). Given the events that subsequently transpired which Mr Bahari has failed to address (discussed directly below), one possible explanation for these documents is that they were drawn up by Mr Bahari in late 2000 in anticipation of a coming conflict and that he considered he could use them to protect himself in the future.

(b) Relatedly, Mr Bahari does not address the audit Mr Kerimov carried out at Caspian Fish in early 2001 at Mr Heydarov's request. His own witness, Ms Ramazanova, admits that Mr Kerimov came to Caspian Fish in February 2001.[243] But he and his witnesses are deafeningly silent about the audit Mr Kerimov carried out, which concluded that Mr Bahari had overcharged Mr Heydarov by inflating amounts spent on the project.[244] Mr Bahari also says nothing about Mr Hansen's affidavit, which identifies Mr Bahari's modus operandi of overstating the costs of a project and pocketing the excess,[245] Mr

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240 Defence, para. 288.

241 *See* Statement of Claim, para. 179(iii).

242 Defence, para. 233.

243 Ramazanova Statement, para. 17.

244 Defence, para. 269.

245 Defence, para. 274; Affidavit of Janke Hansen dated 10 November 2023, **R-114**.

Zeynalov's evidence that he suspected Mr Bahari produced inflated invoices[246] and was aware that Mr Bahari possessed copies of the corporate stamps of suppliers to Caspian Fish, including Nissei ASB and RFC,[247] or the suspicions Azerbaijan has raised in respect of DFT and Mirinda.[248] Mr Bahari's conspicuous failure to address any of these matters, including why he held the corporate stamps of Caspian Fish counterparties, leaves Azerbaijan's understanding of the factual background to Mr Bahari's exit wholly unchallenged. Mr Bahari has not addressed this factual background, because he is unable to deny it, and because it is further evidence that it was Mr Heydarov, and not Mr Bahari, who paid for the work carried out at Caspian Fish. The Tribunal should find that it is more likely than not that Mr Bahari left Caspian Fish (and Azerbaijan) after Mr Heydarov lost trust in Mr Bahari amid a suspicion that he had overcharged him by inflating the project costs.

116. As to Ayna Sultan:

(a) Mr Bahari does not mention this property once in his responsive evidence. This is an incredible omission in the light of the fact that Azerbaijan's case is that Mr Bahari sold his interest in Ayna Sultan before he left Azerbaijan.[249] Mr Bahari *does not deny* having sold Ayna Sultan at all.

(b) The Reply submission focuses instead on alleged procedural deficiencies in the Ayna Sultan litigations (discussed below), but says only once, and in passing, that "[a]*s discussed above, Mr. Bahari did not sell his interest in Ayna Sultan*".[250] The difficulty with this submission is that the allegation that Mr Bahari did not sell his interest in Ayna Sultan is *not* in fact "discussed above", or anywhere in the Reply, and not mentioned at all by Mr Bahari himself in his responsive witness evidence. The Reply submission complains that "*various individuals*[…] *took advantage of Mr Bahari's expulsion and forced absence*

246 First Zeynalov Statement, paras 32-33.

247 Defence, para. 273.

248 Defence, paras 94(c) and 109.

249 Defence, para. 323.

250 Reply, para. 787.

from Azerbaijan to fraudulently misappropriate Ayna Sultan".[251] It goes on to say that "[t]*wo 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*".[252] However, nowhere does Mr Bahari in fact deny that he sold the property to either one of these individuals.

(c) Further, Mr Bahari does not deny having signed the sale documentation in respect of Ayna Sultan, which is signed by Mr Bahari in Farsi and Azerbaijani.[253] In the course of making document inspection requests *inter partes*, Mr Bahari challenged the authenticity of the sale contract, on the basis that he had "[redacted]", and that [redacted]". He also made the (inaccurate) claim that the document "[redacted]".[254] These allegations are all noticeably missing from Reply submission and its accompanying evidence, without explanation. In sum, it is more likely than not, that Mr Bahari indeed sold Ayna Sultan before he left Azerbaijan, and his attempts to include it as an investment in his treaty claim are opportunistic.

117. As to Mr Bahari's carpets:

(a) Mr Bahari does not deny that the column titled "[redacted]" in the Ledger exhibited by him[255] reflects the price Mr Bahari paid to acquire each of the carpets.[256] This leaves his expert, Mr Iselin, in the awkward position of having to assert that [redacted][257] when in fact Mr Bahari could and should

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251 Reply, para. 478.

252 Reply, para. 478.

253 Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Gambarov and Mr Bahari dated 14 December 1999, **R-62**; Receipt issued by Mr Bahari to Mr Gambarov for payment dated 14 December 1999, **R-63**.

254 *See* Annex 1 to the Tribunal's letter to the Parties dated 28 May 2024, enclosing the Tribunal's rulings on the document inspection requests, Requests Nos 9 and 10.

255 Ledger, undated **C-79**.

256 Defence, para. 340.

257 Second Iselin Report, paras 19, 23 and 26.

have stated that the Ledger does not show the purchase prices, if that were true. He did not do so, because the Ledger does list the purchase price of the carpets.

(b) While Mr Bahari denies receiving any of his carpets in a single, brief paragraph of his responsive evidence,[258] Mr Bahari does not address or refer to the Carpet Sale Contract, which provides for the shipment of 211 carpets to Mr Bahari's company, Petroqeshm, in Dubai.[259] Indeed, Mr Bahari relies on the shipment to establish the prices of those carpets.[260] The authenticity of the Carpet Sale Contract has not otherwise been challenged, and should be accepted as evidence of an agreement to ship Mr Bahari's carpets to his company in Dubai.

118. As to Mr Bahari's activities outside Azerbaijan after 2001, other than an oblique reference to Mr Bahari's "*alleged difficulties in his other ventures*", which Mr Bahari says "*are not admitted*",[261] Mr Bahari does not address the factual allegations made by Azerbaijan in relation to his business ventures outside of Azerbaijan. Thus:

(a) He offers no denial of his involvement in Petroqeshm, a company which was incorporated in the UAE in or around August 2001 by Mr Bahari.[262] Nor does he speak to GFPC, which was a fish production and processing company registered in Iran on 7 November 2001, with Petroqeshm as a member of the board of directors and reportedly the financier of the project.[263] Mr Bahari was publicly referred to as the manager of GFPC and having coordinated the provision of German machinery to the plant.[264]

(b) Mr Bahari does not deny the fact that in May 2003, he registered IAV in Germany, and Mr Hansen was IAV's director between 2005 and 2010.[265] Nor does he deny that IAV used pictures of the LLC's production facilities and

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258 Third Bahari Statement, para. 27.

259 Defence, paras 348-349. Contract No. 2 between "ATA-YOLU" Independent Company and Petro Geshm International Trading, dated 15 May 2002, **R-35**.

260 Reply, para. 1161.

261 Reply, para. 424.

262 Defence, para. 207(c).

263 Defence, para. 279.

264 Defence, para. 291.

265 Defence, para. 292.

offices and presented them as its own.[266] Critically, Mr Bahari does not deny that IAV failed to pay a debt of more than half a million euros to MCI Mining Austria, or that this debt remains unpaid today.[267]

(c) More generally, Mr Bahari fails to address Mr Hansen's affidavit, which addresses the various projects Mr Bahari had in Afghanistan, Ukraine, Dubai and Russia and his "[redacted]", which "[redacted]".[268]

(d) These are all matters within the direct knowledge of Mr Bahari and which he was readily capable of denying, if they were not true. He has not done so. While Mr Bahari describes these allegations as a "*gratuitous character assassination*", perhaps hopeful that this plea will excuse his failure to address them, these factual matters remain unchallenged. Their relevance (which is addressed in the appropriate place further below) goes to both the reason for Mr Bahari's exit from Caspian Fish (and Azerbaijan), as well as his motivation for returning in 2013 (as well as bringing this treaty case).

119. As to Mr Bahari's claims of intimidation or harassment:

(a) As noted above, Mr Moghaddam conspicuously fails to address his handwritten note submitted to the Baku Appellate Court in 2014, in which he expressly stated that he did not dispute the "[redacted]" for which he was jailed, but only sought to challenge the length of his sentence.[269] This is critical: in contemporaneous documentary evidence in the local proceedings, Mr Moghaddam admits that he does not challenge the circumstances of his arrest and detention, and Mr Moghaddam fails to deny or refute that admission in these proceedings. The Tribunal should accordingly proceed on the basis that this document is unchallenged evidence that Mr Moghaddam was properly arrested and detained for drug-related offences (and not for his alleged association with Mr Bahari).

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266 Defence, para. 292.

267 Defence, para. 295.

268 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 4.

269 Mr Moghaddam's Handwritten Appeal Petition, undated, and judgment of the Baku Court on Grave Crimes dated 30 April 2014, **R-156**.

(b) Mr Kousedghi does not rebut *any* of the criticisms made of his evidence, including: that his evidence consists of submissions rather than factual evidence and repeats Mr Bahari's evidence without personal knowledge;[270] that he was expelled from diplomatic activity before the end of his term of service at the Iranian embassy in Azerbaijan;[271] the glaring inconsistencies in his testimony about the alleged Government plot to kill Mr Bahari;[272] the lack of support for the claim that Mr Bahari was a *persona non grata*;[273] or that his evidence about his sight of Mr Bahari's carpets is unreliable.[274] His failure to do so is left entirely unexplained, and these matters will be addressed at the evidentiary hearing assuming, perhaps optimistically, that he appears for cross-examination. In the event that he does not, his written evidence will carry no weight at all.

(c) Mr Bahari says nothing in response to Azerbaijan's factual investigation of his daughter's death in Dubai in 2009, which Azerbaijan understands was the result of a car accident.[275] The Tribunal should take as unchallenged Azerbaijan's evidence that Ms Bahari's death had nothing to do with Azerbaijan.

(d) Mr Bahari does not challenge Azerbaijan's explanation that the reason Mr Allahyarov has been unable to obtain information on Mr Bahari's properties is because he is not an advocate.[276] Indeed, Mr Allahyarov admits that his first witness statement was inaccurate, and he is not an advocate, describing his first statement as containing a "[redacted]" or "[redacted]"[277] (notably identical words to those used by Mr Bahari when describing the errors in Mr Suleymanov's account of events).[278] However, neither Mr Allahyarov or Mr Bahari deny that as a non-advocate, he is not entitled to property information.

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270 Defence, para. 259(a).

271 Defence, para. 259(a).

272 Defence, para. 261-262.

273 Defence, para. 264(c).

274 Defence, para. 351.

275 Defence, Part 3.VIII.B.

276 Defence, para. 366.

277 Second Allahyarov Statement, para. 5.

278 *See* paragraph 103 above.

In short, it is should be accepted that there is no nefarious reason that Mr Allahyarov has been unable to obtain the information Mr Bahari seeks; Mr Bahari has simply failed to instruct an advocate to do so.[279]

120. The preceding paragraphs of this Rejoinder address only the key or material aspects of Azerbaijan's evidence that Mr Bahari has failed to challenge. There are many more instances, which are addressed at the appropriate juncture in Part 3 below. The upshot of this analysis is that across all aspects of Mr Bahari's claims, Azerbaijan has produced copious documentary evidence which Mr Bahari has simply been unable to refute. In contrast, Mr Bahari has produced very little at all.

II. ATTRIBUTION

A. The alleged acts of Messrs Aliyev and Heydarov are not attributable to Azerbaijan

1. Mr Aliyev was not a State organ until 2003

121. The Parties generally agree which entities constitute State organs under Azerbaijani law and for the purposes of article 4 of the ILC Articles.[280] However, the Parties dispute whether Mr Aliyev was a State organ prior to his appointment as prime minister in 2003, during which time he was a member of parliament and the vice-president of SOCAR. He was not a State organ prior to 2003, and Mr Bahari's submissions are wrong.

122. An individual member of parliament is not a State organ. Article 81 of the Azerbaijan Constitution confers legislative power on the "*Milli Majlis of the Republic of Azerbaijan*" as a whole,[281] and not on its individual deputies. Consistent with this, article 8 of the Law on Public Service classifies the Milli Majlis as a State organ of the "Supreme Category", whereas an individual member of parliament is not listed as a

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279 *See* Reply, para. 161.

280 Azerbaijan does not dispute the President of the Republic of Azerbaijan, cabinet ministers, Azerbaijani Ministries, the Milli Majlis (as a whole), the Prosecutor's Office, Azerbaijani courts, and other bodies of the executive are State organs for the purposes of Article 4 of the ILC Articles. Consequently, the Parties agree that Mr Aliyev was a State organ in his role as prime minister from August 2003, and as president since October 2003. The Parties also agree that Mr Heydarov was a State organ in his role as Chairman of the State Customs Committee from 17 January 1995, and as Minister of Emergency Services from 6 February 2006.

281 Constitution of the Republic of Azerbaijan, 26 Sept. 2016, **CLA-16**, art. 81.

separate "organ" or body of the State.[282] Mr Bahari's submission that "[a]*s a Member of Parliament, Mr. Aliyev exercised*[…] *Azerbaijan's legislative power*" is fundamentally wrong as a matter of Azerbaijani law.[283]

123. Investment treaty authority supports this interpretation. Mr Bahari objects to Azerbaijan's reliance on *Burlington v Ecuador*, in which the tribunal stated that it did not "*intend to attribute responsibility to Ecuador for the statement of individual congressmen*",[284] on the basis that the tribunal "*made no determination on attribution, one way or the other*".[285] It is correct that the tribunal's pronouncement was *obiter*, but there is little direct jurisprudence on the attribution of conduct for the purposes of State responsibility by the acts of individual legislators, and the tribunal's dicta in *Burlington* is accordingly instructive guidance. In *Tradex v Albania*, the tribunal considered that a politician's speech "*was neither a legislative or executive act*".[286] Academic commentary also confirms that "*the act of a legislative assembly, acting as a collective body, is an act of the State. The conduct of individual members of Parliament, acting on their own behalf or on behalf of their constituencies, does not engage the responsibility of the State*".[287]

124. Mr Bahari also has no answer to the fact that SOCAR, and by extension its vice-presidents, are not State organs under Azerbaijani law.[288] He simply claims that "*since Azerbaijan's economy is heavily dependent on income generated by exports of oil and gas, being one of the highest-ranking executives of*[…] *SOCAR, certainly made Mr. Aliyev a crucial figure within Azerbaijan's circles of power*" and that it "*did not hurt that he was (also) the President's son and designated successor*".[289] These are not submissions that SOCAR (or its vice-presidents) are State organs (nor could it be possibly said that being within a "*circle of power*" or a successor to a role in government

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282 *See* Law of the Republic of Azerbaijan on Public Service dated 21 July 2000, **R-441**, art. 8.1.1.

283 Reply, para. 884(a).

284 *Burlington Resources v Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability (14 Dec. 2012), **CLA-144**, para. 405.

285 Reply, para. 885.

286 *Tradex v Albania*, ICSID Case No. ARB/94/2, Award (29 Apr. 1999), **RLA-261**, para. 156.

287 C Kovàcs, Attribution in International Investment Law (2018), **RLA-262**, pp. 65-66.

288 Defence, para. 36, fn. 66.

289 Reply, para. 886.

qualifies a person as a State organ under international or Azerbaijani law). Azerbaijan accordingly understands that Mr Bahari does not challenge Azerbaijan's submission that SOCAR and its vice-presidents are not State organs.

125. Finally, as to the Claimant's assertion that "*Azerbaijan accepts, therefore, that Messrs. Aliyev and Heydarov were powerful figures within the State apparatus during the 1990's and early 2000's*",[290] this submission is vague, unspecific, and irrelevant for the purposes of attribution.

2. The Allan & Makarenko Report's conclusions are erroneous and irrelevant

126. As set out in the Defence, Mr Bahari's case faces the insuperable difficulty that it concerns the alleged actions of third parties acting in their private, and not official, capacities. To escape this fact, Mr Bahari introduces the Allan & Makarenko Report, on which he relies for two broad and related propositions. First, he argues that there is a "*complete erasure between the so-called 'private' acts of high officials and acts that they take in an 'official capacity'*".[291] Second, he claims that Azerbaijan's "*ruling elites leverage* [an] *informal network of patron-client relationships that have colonized Azerbaijan's formal institutions, exploiting the State's administrative resources and coercive powers for personal enrichment*".[292] These conclusions are unproven, inaccurate as a matter of the law of attribution, nor do they meet any evidential standard as a matter of fact.

127. As to the law, Mr Bahari claims that Azerbaijan's position as to the non-attribution of private acts is "*overly narrow and unrealistic*"[293] because it "*fundamentally ignores the reality of Azerbaijan's system of governance*".[294] Mr Bahari fails, however, to engage with the law on the non-attribution of private acts, which reflects a long-standing customary rule that stretches back nearly two centuries.[295]

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290 Reply, para. 881.

291 Reply, para. 661.

292 Reply, para. 10.

293 Reply, para. 859.

294 Reply, para. 694.

295 Defence, para. 36 and footnote 68.

128. In the *John Bensley Case* from 1850, a governor of a Mexican state detained an American national whom he had requested visit his home. The board found that the detention was "*a wanton trespass committed by the governor, under no color of official proceedings, and without any connection with his official duties*".[296] The board held that it "*can not regard the Government of Mexico as liable*".[297]

129. Similarly, the mixed commission in the 1927 case of *Mallén v United States of America* did not attribute to the State an assault committed by an individual who was also a police officer. It found that the assault was the "*malevolent and unlawful act of a private individual*".[298] The commission explained that the impugned act was that of a person "*who happened to be an official, not the act of an official*".[299]

130. The mixed commission in the 1929 case *Caire v Mexico* explained that though *ultra vires* acts of State organs can be attributable to the State, there is a limit to such attribution. The commission explained that where *ultra vires* conduct is not linked to an organ's official functions and essentially amounts to the act of a private individual, it will not be attributable to the State.[300] In that case, the commission found the State liable for the unauthorised assassination of a French national by Mexican soldiers. Key to this finding was the fact that the soldiers held themselves out as such.[301]

131. Coming closer to the present day, in *Yeager v Iran*, the Iran-US Claims Tribunal held the conduct of an Iran Air official in demanding additional payment for an aeroplane ticket to be private conduct:

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296 *John Bensley Case*, Award (20 Feb. 1850), **RLA-263**, at 3018.

297 *John Bensley Case*, Award (20 Feb. 1850), **RLA-263**, at 3018.

298 *Mallén (United Mexican States) v United States of America*, Mixed Commission, Award (27 Apr. 1927), **RLA-130**, para 4.

299 *Mallén (United Mexican States) v United States of America*, Mixed Commission, Award (27 Apr. 1927), **RLA-130**, para 4.

300 *Caire (France) v United Mexican States*, Mixed Commission, Award (7 June 1929), **RLA-264** at 531.

301 *Caire (France) v United Mexican States*, Mixed Commission, Award (7 June 1929), **RLA-264** at 531 (Respondent's informal translation) ("The officers in question, whatever their antecedents, constantly presented themselves as officers of the brigade of the Villist general Tomás Urbina; in this capacity, they began by demanding the delivery of certain amounts of money and continued by having the victim taken to a barracks of the occupying troops, and it was obviously because of Mr. Caire's refusal to comply with the repeated requisition that they ended up shooting him. In these circumstances, there remains no doubt that the two officers, even if they must be deemed to have acted outside their authority, which is by no means certain, and even if their superiors issued a counter-order, have engaged the responsibility of the State, as having clothed themselves with their status as officers and used the means placed, as such, at their disposal.").

> Acts which an organ [of the State] commits in a purely private capacity, even if it has used means placed at its disposal by the State for the exercise of its function, are not attributable to the State.[302]

132. Finally, as the tribunal explained in *Gavrilović v Croatia*:

> The conduct of an organ of the State in an apparently official capacity may be attributable to the State, even if the organ exceeded its competence under internal law or in breach of the rules governing its operations. The corollary of this is that acts that an organ commits in its purely private capacity are not attributable to the State, even if it has used the means placed at its disposal by the State for the exercise of its function.[303]

133. These principles are reflected in the ILC Articles and commentary.[304]

134. As to the facts, while Mr Bahari claims that the conclusions in the Allan & Makarenko Report are "*not necessary in order to find Azerbaijan liable for the actions of Messrs. Aliyev and Heydarov*",[305] Mr Bahari in fact relies on the Allan & Makarenko Report as the *only* evidence in support of his conclusion that the alleged actions of Messrs Aliyev and Heydarov are attributable to the State,[306] as well as seeking to rely on them more generally in support of his claim that the Tribunal should find that there has been a breach of FET.[307]

135. The Allan & Makarenko Report does not suffice to discharge Mr Bahari's burden of proof in respect of these claims. Mr Bahari makes sweeping assertions such as "[t]*he pyramid of patron-client networks*[…] *is intrinsically and massively corrupt*";[308] "[d]*ecision-making and action by the State bodies can be routinely arbitrary and, frequently, in complete contradiction to formal rules and institutions*";[309] and "*the judiciary*[…] *has become an arm of the executive*".[310] These allegations by the authors

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302 *Kenneth P Yeager v Iran*, IUSCT Case No. 10199, Award No. 324-10199-1 (2 Nov. 1987), **RLA-131** para. 65.

303 *Gavrilovic v Croatia*, ICSID Case No. ARB/12/39, Award (26 July 2018), **CLA-81**, para. 801 (emphasis added).

304 *See* Commentary to the ILC Articles, 2001, **CLA-37**, art. 4, commentary (13).

305 Reply, para. 660.

306 *See*, e.g., Reply, paras 694, 872, 877, 898.

307 *See* Reply, fn. 1322, cross-referring to Part III.II.E; *see also* Reply, para. 1032.

308 Reply, para. 669.

309 Reply, para. 664(c).

310 Reply, para. 681.

(which are moreover opinion, not primary evidence at all) are not evidence of any factual matter that goes to the issues in dispute in these proceedings. As set out in the Defence, the tribunal in *Rumeli v Kazakhstan* held that this type of 'evidence' could not lead to an inference of attribution or conspiracy.[311] Mr Bahari gives no answer to *Rumeli* in his Reply submission. He has not and cannot distinguish this authority from the present case.

136. In sum, the probative value of the Allan & Makarenko Report is nil. For the avoidance of doubt, none of the wide-ranging allegations and conclusions set out in the Allan & Makarenko Report are accepted as correct. As they are not, however, relevant to determining the facts in dispute in this case, Azerbaijan does not address their substance for the purposes of this brief.

3. The alleged acts of Messrs Aliyev and Heydarov were carried out in a private capacity

137. Plainly, the acts of which Mr Bahari complains were not carried out, nor did they purport to be carried out, in an official capacity. On Mr Bahari's own case, Messrs Aliyev and Heydarov did not purport to act in the name of Azerbaijan. To the contrary, they acted in their private capacities, and expressly told Mr Bahari that they were doing so.[312]

138. Mr Bahari refers to the Commentary to the ILC Articles to claim that "*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*",[313] but this submission itself is misleading. The part of the Commentary cited by Mr Bahari discusses the "*status of a State organ*",[314] and not whether, on the facts of any particular case, such a State organ acted in an official capacity. As the Commentary explains, the question for the latter purpose is whether the organ is "*acting in the name of the*

311 *Rumeli Telekom and ors v Kazakhstan*, ICSID Case No. ARB/05/16, Award (29 Jul. 2008), **CLA-52** cited at Defence, paras 370-371.

312 *See* Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68** (of the June 2002 meeting: "[redacted]").

313 Reply, para. 889.

314 Commentary to art. 4 of the ILC Articles, **CLA-37**, para (11).

State",[315] that is, *holding itself out* to be so acting (and irrespective of the nature of the act in question, be it sovereign or commercial).[316]

139. Mr Bahari relies on three examples in support of his assertions that the alleged actions of Messrs Aliyev and Heydarov were carried out in an "official" capacity, each of which is hopeless.

(a) First, he claims that "*Messrs. Aliyev and Heydarov, and their close allies and relatives, directly benefit*[ed] *from Mr. Bahari's fabricated downfall*" and that the "*maintenance of the same and broader obfuscation of his investment cannot be achieved by purely private persons*".[317] This submission takes Mr Bahari nowhere. Even if the ultimate owners of Caspian Fish were Mr Aliyev (which is not accepted) and Mr Heydarov, that would be entirely consistent with the fact that they (on Mr Bahari's case) were his original business partners. The fact that they remained shareholders in the business after he left does not mean that their private business activity was carried out in the name of the State.

(b) Second, he claims at a general level that "[d]*istinguishing 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*".[318] This submission does not reflect international law, which confirms that there is always a distinction between private and public acts, regardless of whether a State organ's conduct is at issue.[319] It is also not correct as a matter of Azerbaijani law.[320] Nor can the Allan & Makarenko Report be relied upon as evidence of Messrs Aliyev and Heydarov acting in the name of the State in the context of Caspian Fish. The Allan & Makarenko Report, which

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315 Commentary to art. 4 of the ILC Articles, **CLA-37**, para (13).

316 *See* Commentary to art. 4 of the ILC Articles, **CLA-37**, paras (8)-(9), *cf.* Reply, para. 680, which appears erroneously to conflate the nature of the act with the capacity in which it is carried out.

317 Reply, para. 888.

318 Reply, para. 892.

319 *Cf.* Reply, para. 898 ("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").

320 *See* Law of the Republic of Azerbaijan on Public Service dated 21 July 2000, art. 1.1.4, **R-441**, which defines a State organ as follows: "a state institution established in accordance with the Constitution and laws of the Republic of Azerbaijan, which operates within the boundaries defined by the Constitution and laws of the Republic of Azerbaijan to fulfil the state's purposes and functions […]").

contains a series of generalised assertions, is no evidence of that (or indeed anything) at all.

(c) Third, Mr Bahari gives the "example" of the alleged October 2013 meeting between himself and Mr Heydarov (which is denied) to claim that this was a "*meeting with an organ of State*", for which Mr Heydarov arranged a visa to allow Mr Bahari access which "*can only be done through Minister Heydarov's State powers*".[321] Leaving aside that there is no evidence whatsoever that: (i) Mr Bahari met with Mr Heydarov at all (to the contrary, Mr Heydarov's assistant, Mr Kalantarli, who Mr Bahari accepts he met,[322] denies that Mr Bahari met Mr Heydarov at all);[323] (ii) Mr Heydarov arranged Mr Bahari's visa to enter Azerbaijan; or (iii) that any kind of special dispensation was required to allow him to travel to Baku, since his claims that he was designated *persona non grata* are hysterical and wrong, Mr Bahari's submissions on this alleged meeting fail to identify what demonstrates that Mr Heydarov was acting in the name of the State. On Mr Bahari's own case, the meeting (which is denied) was to discuss Mr Bahari's private business relationship with Mr Heydarov, not the State. Indeed, Mr Kalantarli recalls that when Mr Bahari was directed to the First Deputy Minister, Mr Rafail Mirzayev, Mr Bahari "[redacted]".[324]

(d) Moreover, even if Mr Bahari could establish that Mr Heydarov had used some State power to arrange or execute the alleged meeting (which is denied), as noted in the authorities set out above, it matters not if a State organ has used the means at its disposal for the exercise of State function, if that organ was acting in a private capacity.[325] Similar goes for the allegation (which is denied) that a follow-up threat was made by one of Mr Heydarov's associates which "*carries the full weight and power of the State, including under Article 8 of ARSIWA*".[326]

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321 Reply, para. 893.

322 Reply, para. 433(f).

323 Kalantarli Statement, para. 6.

324 Kalantarli Statement, para. 5.

325 *Gavrilovic v Croatia*, ICSID Case No. ARB/12/39, Award (26 July 2018), **CLA-81**, para. 801.

326 Reply, para. 894.

Mr Bahari also does not explain why that alleged threat was made by a person acting at the instructions of the State, as opposed to a State organ acting in a private capacity.

140. Mr Bahari makes similar arguments in support of his case that Mr Khanghah's actions are attributable to Azerbaijan under article 8 of the ILC Articles.[327] These arguments fall at the first hurdle. Nothing in the Allan & Makarenko Report evidences that Mr Khanghah, even if he was acting at Mr Heydarov's direction, was doing so at the behest of Mr Heydarov acting in the name of the State, as opposed to in his private capacity.

141. Mr Bahari claims that in June 2002, "*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*".[328] This submission, which is a mischaracterisation of the terms of the 2002 Agreement, fails to engage with Azerbaijan's Defence, which explains that: (i) in or around late 1999, Mr Bahari had transferred management control of Coolak Baku to a representative of Mr Heydarov, as a payment of certain of Mr Bahari's debts;[329] and (ii) Coolak Baku had unpaid taxes, and the only thing Mr Khanghah was proposing to do in the 2002 Agreement was to ensure that they were settled.[330] Further and in any event, Mr Bahari's submission also ignores the fact that the use of State apparatus to effect purely private conduct does not make that conduct attributable to the State if it was carried out in a private capacity.

B. There are no other relevant acts that are attributable to Azerbaijan

1. Mr Bahari cannot evidence that Azerbaijan has targeted his investments

142. Mr Bahari introduces a new argument with his Reply submission, namely that apart from Messrs Aliyev and Heydarov, there are separate "*known and demonstrable measures attributable to Azerbaijan under Article 4*" of the ILC Articles.[331] Mr Bahari cannot prove, however, that any of these alleged acts occurred, let alone were carried out by organs of State.

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327 Reply, paras 897-899.

328 Reply, para. 899.

329 Defence, paras 212-213.

330 Defence, paras 37(c), 214, 286(c).

331 Reply, para. 874.

143. First, Mr Bahari argues that his "*forced expulsion from the Caspian Fish facility*",[332] which he claims was carried out by "*special security officers*" or "*individuals*[…] *acting at the direction of Messrs. Aliyev and/or Heydarov*",[333] was an act of State. There is no evidence (other than Mr Bahari's unreliable testimony) that he was removed from the Opening Ceremony, much less by the Government's security officers.[334] Azerbaijan denies it. The further submission that this was directed by Messrs Aliyev and Heydarov is also dealt with above; even if private individuals escorted Mr Bahari from the premises (which is not admitted), that was not at the instruction of persons acting in the name of the State.

144. The claimant's witness testimony alone was unable to establish attribution in similar circumstances in *Petrolane v Iran*. In that case, the claimant alleged that representatives of the Iranian State took control of its offices and confiscated the keys. The claimant did not have any documentary evidence in support of this allegation. The tribunal concluded that while it was persuaded the claimant had indeed lost control of its equipment and offices:

> the evidence before it is not adequate to establish that this loss is attributable to the Government of Iran. [The claimant's witness's] recollections were too uncertain to establish, by themselves, that the seizure of [claimant's] facility was carried out by persons cloaked with governmental authority. Consequently, the claim based on direct expropriation by the [State] must be dismissed for lack of proof.[335]

145. Second, Mr Bahari claims that the State "*ensur*[es] *Mr. Bahari cannot return to Azerbaijan without special permission*"[336] and uses "*threats, intimidation, assault, or incarceration*" to prevent Mr Bahari from gaining information on this investments.[337] Again, Mr Bahari cannot evidence these matters, which Azerbaijan denies.[338]

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332 Reply, para. 870.

333 Reply, para. 872.

334 Defence, paras 257, 37(a) and (b).

335 *Petrolane, Eastman Whipstock Manufacturing and others v Iran and others*, IUSCT Case No. 131, Award No. 518-131-2 (14 Aug. 1991), **RLA-265**, para. 83.

336 Reply, para. 873(a).

337 Reply, para. 873(b).

338 *See* Defence, paras 264(c), 304, 37(d), 37(h); PART 3VI below.

146. Third, Mr Bahari relies on "*State organs choosing not to produce whole categories of documents*" in this arbitration,[339] as well as "*the numerous open questions and anomalies about the ownership, status, and economic performance of Caspian Fish*".[340] Azerbaijan denies that it "*chos*[e] *not to produce*" documents in response to any order of this Tribunal; Mr Bahari does not identify the document requests to which he refers, nor does he have any evidence to support his baseless assertion that Azerbaijan has wrongly "*den*[ied] *that such information exists (when it clearly does)*".[341] In any event, Azerbaijan's conduct in the course of these proceedings is irrelevant to attribution in the context of Mr Bahari's substantive case, which concerns attribution for the purposes of breach of the Treaty, not participation in the arbitration.

147. As for the suggestion that "open questions" about Caspian Fish are attributable to Azerbaijan, Mr Bahari does not particularise why it is he considers Azerbaijan would have any responsibility for answering such questions when it is undisputed that Caspian Fish is a private commercial entity. Azerbaijan is not responsible for it, and questions around its status have nothing in any event to do with attribution for the purposes of State responsibility.

148. Finally, Mr Bahari claims that 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*".[342] Azerbaijan does not dispute that the conduct of its Courts is attributable to the State. For the reasons set out below, however, nothing in the Courts' conduct is capable of amounting to an internationally wrongful breach of the Treaty.[343]

2. Azerbaijan did not "acknowledge" or "adopt" the alleged taking of Mr Bahari's investments

149. Mr Bahari returns in the Reply submission to the same claim made in the Statement of Claim, namely that the "*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,*

339 Reply, para. 873(c).

340 Reply, para. 873(e).

341 Reply, para. 873(c).

342 Reply, para. 873(d).

343 *See* PART 3II.B and PART 3IV below.

have been acknowledged and adopted by the Azerbaijani Government".[344] For the reasons set out in the Defence, these submissions are hopeless.[345]

150. The Reply submission adds very little to Mr Bahari's Statement of Claim. It relies on the Allan & Makarenko Report to claim that the "*wholesale adoption*" of illicit manoeuvres of the political elite is "*a distinctive and crucial feature of kleptocratic governance*".[346] Mr Bahari also claims that the "*administrative processes*" of Azerbaijan's Ministries are not "*general acknowledgment*" or "*routine*", but "*deliberate*[] *and unambiguous*[] *adopt*[ion] […]*, as shown by the fact that Minister Heydarov's ownership of Caspian Fish LLC is now admitted*".[347] He concludes that:

> 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 – about what happened to Mr. Bahari.[348]

151. These submissions are verbose, but devoid of any content. Mr Bahari does not challenge Azerbaijan's submission that the standard applicable to attribution-by-adoption under article 11 of the ILC Articles is very high. He merely claims that 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*".[349] *Resolute Forest* did not, however, concern the private acts of third parties. In that case, the tribunal determined that the State's approval of a proposed electricity rate negotiated between private parties did not lead to the conclusion that the rate itself was attributable to the State. Even in that case, the State's decision was not purely perfunctory but involved an evaluation "*to determine whether other ratepayers would be better off*".[350]

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344 Reply, para. 876.

345 Defence, paras 44-46.

346 Reply, para. 877.

347 Reply, paras 878 and 879.

348 Reply, para. 879.

349 Reply, para. 878.

350 *Resolute Forest Products v Canada*, PCA Case No. 2016-13, Final Award (25 Jul. 2022), **RLA-133**, para. 303.

152. Mr Bahari has failed to point to a single act by any Azerbaijani State organ that rises to this high standard required to adopt non-attributable conduct as its own under article 11 ILC Articles. This is because no such adoption or acknowledgment occurred.

III. JURISDICTION

A. The Treaty was not in force at the time the acts the Claimant complains of took place

153. As set out in the Defence, the Tribunal lacks temporal jurisdiction for the primary reason that the key acts which Mr Bahari complains give rise to a Treaty claim (his alleged expulsion and removal from Caspian Fish) took place before the Treaty came into force.[351] In the light of the Defence, Mr Bahari has been forced to recharacterise his Treaty claim, and he now accepts that he is unable to plead an expropriation case for any of his investments other than Caspian Fish.[352] Given that Mr Bahari also appears to accept that expropriation cannot be a continuing breach,[353] and in the light of the stark difficulties of shoehorning his expropriation arguments into an alleged post-Treaty breach (discussed further below), Mr Bahari is now forced to rely heavily on his FET case, which he states involves Azerbaijan's "*system that continuously prevents Mr. Bahari from managing or even accessing information about his investments; punishing any attempt to do so*".[354] These claims are extremely weak as a matter of fact, with the totality of the evidence brought in support of them comprising the unreliable testimony of Mr Bahari's witnesses.

154. As a preliminary remark, Mr Bahari has grossly mischaracterised the Defence by repeatedly insisting that in making its jurisdictional submissions Azerbaijan has "*admitt*[ed] *that acts of Messrs. Aliyev, Heydarov, and Khanghah are, in fact, attributable to the State*".[355] It has not. These claims can only be seen as facetious in circumstances where the very passage of the Defence cited in the preceding paragraph confirms that Azerbaijan's submissions are made "[o]*n the Claimant's case (which is*

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351 Defence, para. 51.

352 Reply, para. 1079.

353 Reply, para. 710 (referring only to FET and FPS).

354 Reply, para. 722.

355 Reply, para. 732. *See* also Reply, para. 702: "Azerbaijan tacitly asserts that it treated Mr. Bahari and his investments unlawfully pre-entry into force".

not accepted)".[356] Mr Bahari's attempts to portray some sort of concession on Azerbaijan's part only reflects his own acknowledgment of the weaknesses in his case.

1. Mr Bahari's case on "continuing breaches" of FET/FPS is factually unfounded

155. The parties are agreed that, in principle, FET and FPS are standards that are capable of being continuously breached.

156. However, the acts which Mr Bahari claims in this case are of a "continuing" character do not qualify as such, and the cases Mr Bahari relies upon are factually distinguishable. Thus:

(a) Mr Bahari claims that "[s]*tarting 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*".[357] There is no evidence at all (which Mr Bahari appears to accept)[358] for this vaguely pleaded assertion and it is impossible to distinguish this general assertion from Mr Bahari's more specific claims of alleged expulsion and removal, which are addressed below.

(b) Mr Bahari asserts that "*his expulsion from Azerbaijan and continued forced absence, to the detriment of his investments*" is a continuing breach.[359] Yet, Mr Bahari himself recognises that the authority he relies upon does not support his point – that authority concerns "*forced or involuntary disappearance*", and Mr Bahari accepts that he is "*thankfully accounted for*".[360] He also relies on *Ruiz v Spain* to cite dicta that a "*classic example*" of a continuous wrongful act is wrongful detention, but again, there is no such detention in this case.[361] Furthermore, in *Ruiz v Spain* the tribunal in fact considered that the acts of

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356 Reply, para. 732.

357 Reply, para. 715.

358 *See* Reply, para. 963 ("Azerbaijan did not even bother to issue any public decision or declaration to th[e] effect [that there was a decision by Azerbaijan to separate Mr. Bahari from his investments]").

359 Reply, para. 717.

360 Reply, para. 717

361 Reply, fn. 988.

which the claimants complained were *incapable* of amounting to continuing wrongful acts:

> As explained by the ILC, "[a]n act does not have a continuing character merely because its effects or consequences extend in time. It must be the wrongful act as such which continues". The examples of continuing wrongful acts given by the ILC 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". By comparison to those illustrations, the deposit withdrawals appear like instantaneous or one-time simple acts. The Claimants have made no serious effort to show how they could be "continuing" in nature. Being instantaneous acts, they fall outside of the Tribunal's temporal jurisdiction, because they were committed before the relevant cut-off dates of the Claimants' investments.[362]

(c) Mr Bahari also relies on *Pac Rim v Salvador* to assert in a generalised way that "*an alleged de facto ban was a continuous act*", ostensibly to extrapolate the findings in that case to Mr Bahari's case of alleged expulsion (although his case is never made explicit in that regard).[363] *Pac Rim* is wholly inapposite. It concerned the de facto withholding of mining-related permits and concessions,[364] and not any kind of alleged "ban" on entry into the country by a foreign national, whose existence but also continued character, unlike the withholding of a license, remains entirely unsubstantiated.

(d) Thus, even if it could be said that Mr Bahari had been expelled from Azerbaijan in 2001 (which is denied), there is no evidence that such a decision had any "continuing" character. To the contrary, Mr Bahari never *attempted* to return to Azerbaijan until 2013, or to obtain formal confirmation of any "travel ban" against him. When he did travel to Azerbaijan in 2013, he was admitted with no difficulty or indication of a prior travel ban against him. The allegation that

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362 *Antonio Del Valle Ruiz and others v Spain*, PCA Case No. 2019-17, Final Award (13 Mar.2023), **CLA-247**, para. 402.

363 Reply, para. 713.

364 *See Pac Rim v Salvador*, Decision on the Respondent's Jurisdictional Objections (1 June 2012), **CLA-246**, para. 3.24.

Mr Heydarov had to intervene specifically to arrange a travel visa is not substantiated at all and is contradicted by the evidence of Mr Kalantarli.[365]

(e) Finally, Mr Bahari claims that "[a]*ny attempt by Mr. Bahari, or though his legal counsel or former employees, was met with intimidation, imprisonment, and assault*",[366] but he does not specify how any of the alleged pre-entry into force acts (alleged assault and temporary detention of his alleged employees) can be construed as "continuing" and extending after the entry into force of the Treaty. They cannot. An instance of assault or brief period of detention (none of which are accepted as having occurred) cannot amount to a "continuous" act.

157. Separately, Mr Bahari complains that the "*Azerbaijani Courts facilitated the taking of Mr. Bahari's investments in Coolak Baku and Ayna Sultan*",[367] but those are alleged post-entry into force acts and are not relevant for the purpose of the present discussion, which concerns the issue of whether pre-entry into force acts are "continuing". Mr Bahari does not explain his passing reference to the *Oko Pankki v Estonia* case, but that case concerned an entirely different factual matrix, where a State-owned entity filed local legal proceedings seeking to invalidate the claimants' investments in what the tribunal described as "*an act of gross bad faith*".[368] Further and in any event, insofar as Mr Bahari relies on the *Oko Pankki* tribunal's finding that the respondent "*not only tolerated but indeed encouraged this litigation*",[369] there was no relevant litigation pre-entry into force in the present case.

158. Relatedly, Mr Bahari states that "[e]*ven if all of Mr. Bahari's investments were expropriated before 20 June 2002, Azerbaijan's FET obligations continue*", relying on *El Paso v Argentina* to assert there is no requirement of continuous ownership of an investment for purposes of asserting a treaty claim.[370] The latter point is not disputed, but Mr Bahari's reference to it is misplaced. Again, the temporal jurisdiction issue in

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365 Kalantarli Statement, para. 8.

366 Reply, para. 718.

367 Reply, para. 719.

368 *OKO Pankki Oyj v Estonia*, ICSID Case No. ARB/04/6, Award, 19 November 2007, **CLA-250**, para. 282.

369 Reply, para. 714; *OKO Pankki Oyj v Estonia*, ICSID Case No. ARB/04/6, Award, 19 November 2007, **CLA-250**, para. 283.

370 Reply, para. 716, citing to *El Paso v Argentina*, ICSID Case No. ARB/03/15. Decision on Jurisdiction, 27 Apr. 2006, **CLA-290**, para. 135.

this case concerns the Tribunal's jurisdiction over acts pre-entry into force. *El Paso* had nothing to do with temporal jurisdiction, but concerned the claimant's standing to bring a claim in circumstances where it sold its investment after filing the claim.[371]

159. Finally, Mr Bahari makes a one-line suggestion that "*Azerbaijan should be estopped from arguing that the* [T]*reaty cannot afford protections to investments it expropriated before the Treaty went into force*".[372] Mr Bahari does not give any particularisation of the criteria for estoppel or the applicability of estoppel in this context. He makes a bare submission, with no explanation and without reference to any authority, and which should be dismissed. Estoppel is neither applicable nor made out.[373]

2. There was no creeping or composite expropriation of Caspian Fish

160. Mr Bahari's submissions on the alleged "creeping" or "composite" expropriation of Caspian Fish in the jurisdiction section of his Reply submission are extraordinarily brief. He simply asserts that his investments were "*subject to an indirect composite expropriation, which crystalized after the Treaty entered into force*",[374] but makes no attempt to demonstrate how any existing authority, or the underlying facts, apply to his case.

161. Indeed, Mr Bahari has no response to Azerbaijan's submission that "*the composite acts doctrine* […] *has no application where there is an identifiable act of taking*",[375] and no response to the authorities cited by Azerbaijan in support of that submission.[376] He has no response to Azerbaijan's submission that creeping expropriation claims sustained by other tribunals have no similarity to the factual matrix of this case.[377]

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371 Reply, para. 716, citing to *El Paso v Argentina*, ICSID Case No. ARB/03/15. Decision on Jurisdiction, 27 Apr. 2006, **CLA-290**, para. 130-131.

372 Reply, para. 716.

373 *See* paragraph 252 below.

374 Reply, para. 726.

375 Defence, para. 59.

376 Defence, paras 59-61; *Aaron C Berkowitz and ors (formerly Spence International Investments and ors) v Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (25 Oct. 2016), **RLA-136**, para. 271; *Astrida Benita Carrizosa v Colombia*, ICSID Case No. ARB/18/5, Award (19 Apr. 2021), **RLA-23**, paras. 126, 151-167.

377 Defence, para. 59.

162. Against this clear and unchallenged legal framework, Mr Bahari now attempts to rewrite his case on the alleged taking of his investments.[378] In his analysis of the legal merits of the case, he asserts that "*in mid-June 2002, all parties involved considered that Mr Bahari effectively retained his rights to and control of Caspian Fish*".[379] This stands in stark contrast to his Statement of Claim, which submitted that as of his alleged expulsion, he considered himself "*shut off from his investments and any administrative or judicial means to recover them*".[380] Moreover, it is an inaccurate characterisation of the parties' positions for Mr Bahari to claim that that "all parties" considered Mr Bahari to have retained his rights in Caspian Fish in mid-June 2002. To the contrary, Azerbaijan understands that Mr Bahari sold his interest in Caspian Fish almost a year prior, in September 2001.

163. Seemingly undaunted by the incompatibility of his new expropriation theory with his own pleaded facts, Mr Bahari proceeds to allege that "*Azerbaijan's indirect expropriation did not occur until after 20 June 2002, but was most likely consummated by 1 January 2003*".[381] Yet, there are *no* relevant facts between 20 June 2002 and 1 January 2003, and Mr Bahari does not rely on any facts in this period. He simply asserts that "*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*".[382]

164. Mr Bahari does not identify (because he cannot) what happened between 20 June 2002 and 1 January 2003 that is alleged to have transformed or crystallised Azerbaijan's alleged acts into expropriation. The only relevant event, at the commencement of that period, is that the Treaty entered into force. Instead, Mr Bahari says that it is *Azerbaijan's* fault that Mr Bahari "*is having difficulty identifying specific Government action and inaction that supported or specifically effected the unlawful expropriation of Caspian Fish*".[383] This is nonsensical, and the excited submission that "*Azerbaijan's veil of uncertainty and deniability remains an intractable obstacle to the truth*" is empty

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378 Reply, paras. 1085-1986.

379 Reply, para. 1086.

380 Statement of Claim, paras 474(iii), 609.

381 Reply, para. 1083.

382 Reply, para. 1090.

383 Reply, para. 1092.

rhetoric that does not help Mr Bahari make good his case.[384] The simple fact is that on Mr Bahari's own case, there are no acts relevant to his expropriation case that occurred after the Treaty entered into force, and certainly none between entry into force and his wholly arbitrary valuation date of 1 January 2003.

165. Notably, Mr Bahari's retraction of expropriation claims in respect of Coolak Baku, Shuvalan Sugar, Ayna Sultan, and the carpets absolves him from asserting a date upon which his other investments were taken.[385] This is because Mr Bahari has no remedy to a fatal flaw in his case – namely that, *on his own case* (which is not accepted), his investments were seized and he lost control of them as of the (pre-entry into force) date of his alleged expulsion.[386] To recall, in addition to claiming that he considered himself "*shut off from his investments and any administrative or judicial means to recover them*" as of his alleged expulsion,[387] Mr Bahari also argued that on 15 June 2002, Azerbaijan tendered "*a remarkably candid admission that* [his] *investments had been unlawfully seized*".[388]

3. Each of the disputes crystallised before entry into force

166. Stripped of their hyperbolic and otiose rhetoric, Mr Bahari's submissions on the crystallisation of the dispute consist of two main substantive points. First, he relies on *Maffezini* in support of his submission that "*a dispute had not crystallized as of 15 June 2002*".[389] Second, he relies on the cases of *Mavrommatis Palestine Concessions* and *Astrida Benita Carriszosa* to assert that the Tribunal in any event has jurisdiction over disputes existing at the time the Treaty entered into force.[390] Neither submission has any merit for the following reasons.

167. As to the crystallisation of the dispute, under *Maffezini*, the critical date is when the parties exchange "*a conflict of legal views and interests*".[391] Mr Bahari fails, however,

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384 Reply, para. 1092.

385 *See* Reply, para. 1079.

386 Defence, para. 58.

387 Statement of Claim, para. 474(iii), 609.

388 Statement of Claim, para. 169.

389 Reply, paras 736 and 738.

390 Reply, paras 741-748.

391 *Maffezini v Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction (25 Jan. 2000), **CLA-253**, para. 96.

to cite the following passage of the *Maffezini* case, which distinguishes between a dispute and the submission of a legal claim:

> It should also be noted that the Kingdom of Spain has correctly argued that there is a difference between a dispute and a claim (…). While a dispute may have emerged, it does not necessarily have to coincide with the presentation of a formal claim. The critical date will in fact separate, not the dispute from the claim, but the dispute from prior events that do not entail a conflict of legal views and interests.[392]

168. Mr Bahari asserts that his "*unchallenged*" testimony is that there was "*no sequence of events and communications*" amounting to a dispute during the 15 June 2002 meeting.[393] It is of course inaccurate (as well as premature) for Mr Bahari to describe his account of events, which is disputed by Azerbaijan and will be tested at the evidentiary hearing, as "unchallenged". That notwithstanding, even by Mr Bahari's own account, there was on 15 June 2002 a "*minimum of communication between the parties, one party taking the matter with the other, with the latter opposing the* [other's] *position directly or indirectly*".[394] Mr Bahari claims that at the meeting he "[redacted].[395] In response to this understanding, Mr Bahari claims he [redacted]".[396]

169. Mr Bahari asserts that this "*is not a dispute under any definition*", but, once again, unsupported and hyperbolic assertion does not make his submissions true.[397] It is plain that in this sequence of alleged events a dispute had crystallised, because Mr Bahari's own testimony reveals "*a minimum of communication*" between opposing parties as to their differing positions.[398] Insofar as Mr Bahari considers a fully-fledged legal claim

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392 *Maffezini v Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction (25 Jan. 2000), **CLA-253**, para. 97.

393 Reply, para. 740.

394 *Maffezini v Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction (25 Jan. 2000), **CLA-253**, para. 96.

395 First Bahari Statement, para. 81.

396 First Bahari Statement, para. 84.

397 Reply, para. 740.

398 *Maffezini v Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction (25 Jan. 2000), **CLA-253**, para. 96, cited at Reply, para. 736.

is required, that is not correct.[399] But in any event, Mr Bahari's own case has been that that he was excluded from the opening ceremony and management of Caspian Fish from 10 February 2001, he was consequently deported from Azerbaijan in March 2001[400] and, *at this point in time*, he was "*shut off from his investments and any administrative or judicial means to recover them*".[401] If that is in doubt, Mr Bahari adds that by 15 June 2002 all parties recognised that "[his] *investments had been unlawfully seized*".[402] That is a dispute.

170. As to Mr Bahari's submission that the Tribunal has jurisdiction over pre-existing disputes, Mr Bahari relies on the 1924 PCIJ case of *Mavrommatis Palestine Concessions*, even though he accepts that the applicability of that case has been disputed in *Ping An*, which explains that the presumption in *Mavrommatis* "*finds almost no support in investor-State arbitration*".[403]

171. Mr Bahari's submissions about the *Ping An* case are misguided. In that case, the tribunal found that it had no jurisdiction over pre-existing disputes where the treaty provided for arbitration "[w]*hen a legal dispute arises between an investor of one Contracting Party and the other Contracting Party* […]".[404] Mr Bahari claims that the tribunal's decision in that case rested on a finding that there was an "*implied restriction in the language*" of the treaty in issue, whereas there is no such language in this Treaty.[405] That is a liberal interpretation of *Ping An*, which said no such thing, but in fact gave six reasons which led the tribunal to conclude that there was nothing in the language of the treaty which would justify its extension to pre-existing disputes.[406] In any event, however, the language of the Treaty which Mr Bahari quotes in a footnote as purporting to cite the Treaty which is on the record in these proceedings, is not, in

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399 *Maffezini v Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction (25 Jan. 2000), **CLA-253**, para. 97.

400 Statement of Claim, para. 152; First Bahari Statement, para. 75.

401 Statement of Claim, paras. 473(iii), 609.

402 Statement of Claim, para. 169.

403 *See* Reply, para. 748; Defence, para. 72 and *Ping An Life Insurance Company v Belgium*, ICSID Case No. ARB/12/29, Award (30 Apr. 2015), **RLA-24**, para. 184.

404 *Ping An Life Insurance Company v Belgium*, ICSID Case No. ARB/12/29, Award (30 Apr. 2015), **RLA-24**, para. 224.

405 Reply, para. 748.

406 *Ping An Life Insurance Company v Belgium*, ICSID Case No. ARB/12/29, Award (30 Apr. 2015), **RLA-24**, paras 223-231.

fact, a quote from the Treaty on record (Azerbaijan has no knowledge of where the language in Mr Bahari's Reply came from).[407] The Treaty, at **CLA-1**, provides that:

> In the event of occurrence of a dispute between a Party in whose territory an investment is made an one or more investors of the other Party with respect to an investment, the Party in whose territory the investment is made and the investor(s) shall primarily endeavor to settle the dispute in an amicable manner through negotiation and consultation.[408]

172. In fact, the language of the relevant treaty in the *Ping An* case was similar to the language of the Treaty in this case,[409] and accordingly the same implication can be drawn that there is a restriction on the adjudication of pre-entry into force disputes. Further and in any event, the tribunal's finding that the *Mavrommatis* case was of no assistance had nothing to do with treaty interpretation.

173. Mr Bahari also relies on the *Carrizosa* case in support of his submission that pre-entry into force disputes can come within the jurisdiction of the tribunal if there are post-entry into force breaches. For the same reasons as with respect to *Ping An*, the Claimant's reliance is misplaced. In *Carrizosa*, where the treaty was worded very differently to the Treaty in this case,[410] the tribunal found that the applicable treaty "*contains no temporal limitation with respect to disputes that may come under the Tribunal's jurisdiction*".[411] In this case, as set out above, the Treaty contains an implied restriction on the adjudication of pre-entry into force disputes.

174. Mr Bahari also attempts to distinguish the *MCI* case on the basis that its findings were only "*superficially restrictive*" and that the "*MCI tribunal ultimately held that a number*

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407 Reply, fn. 1028.

408 Treaty, **CLA-1**, art. 10(1). Contrast the language from footnote 1028 to Mr Bahari's Reply: "For the purpose of solving disputes concerning the investments between a hosting Party and an investor of the other Party…".

409 *See Ping An Life Insurance Company v Belgium*, ICSID Case No. ARB/12/29, Award (30 Apr. 2015), **RLA-24**, para. 224, citing article 10(2) of the Luxembourg-Belgium investment treaty ("[w]hen a legal dispute arises between an investor of one Contracting Party and the other Contracting Party, either party to the dispute shall notify the other party to the dispute in writing").

410 *Astrida Benita Carrizosa v Colombia*, ICSID Case No. ARB/18/5, Award (19 Apr. 2021), **RLA-23**, para. 15, citing to the US-Colombia Trade Promotion Agreement ("In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures"; "In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation (a) the claimant, on its own behalf, may submit to arbitration…").

411 *Astrida Benita Carrizosa v Colombia*, ICSID Case No. ARB/18/5, Award (19 Apr. 2021), **RLA-23**, paras. 135.

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".[412]

175. It is unclear what Mr Bahari means by the term "superficially restrictive". The tribunal in the *MCI* case found that pre-existing disputes, even those which continued after entry into force, were outside the tribunal's jurisdiction:

> The Tribunal observes that a prior dispute may evolve into a new dispute, but the fact that this new dispute has arisen does not change the effects of the non-retroactivity of the BIT with respect to the dispute prior to its entry into force. Prior disputes that continue after the entry into force of the BIT are not covered by the BIT.[413]

176. There is nothing "superficial" about this reasoning, and Mr Bahari wholly mischaracterises the tribunal's ultimate finding in that case. The tribunal found that "*the Claimants' allegations in respect of Ecuador's acts and omissions after the entry into force of the BIT*" affirmed the tribunal's jurisdiction, "*independently of whether those acts or omissions were composite or continuing*".[414]

B. There are insurmountable deficiencies with Mr Bahari's alleged investments at the time of the alleged breach

177. Mr Bahari purports to offer three overarching rebuttals concerning the threshold requirements for an asset to qualify as an investment under the Treaty. Each of his submissions is misguided.

178. First, Mr Bahari opposes the application of the *Salini* or 'objective' criteria in determining the meaning of investment, on the basis 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*".[415] This submission is a *non sequitur*. Tribunals which have determined that the 'objective' criteria should apply (or indeed that they should not) have done so precisely on the basis that they are

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412 Reply, para. 747.

413 *MCI Power Group v Ecuador*, ICSID Case No. ARB/03/6, Award (31 July 2007), **RLA-71**, para. 65 (emphasis added).

414 *MCI Power Group v Ecuador*, ICSID Case No. ARB/03/6, Award (31 July 2007), **RLA-71**, para. 95 (emphasis added).

415 Reply, para. 753.

interpreting the word "investment" as contained in the relevant treaty.[416] In any event, the authorities Mr Bahari cites do not support his submission:

(a) In *Glencore v Bolivia*, the treaty in question contained an express definition of investment in the following terms: "*'investment' means every kind of asset which is capable of producing returns*".[417] The tribunal declined to read an 'active investment' requirement into the treaty in that case, when the treaty was clear that "*if an asset is capable of satisfying th*[e] *condition* [of being capable of producing returns]*, it will fall under the definition*".[418] Similar goes for the case of *Rurelec v Bolivia* (which, being a decade old, is also not a "recent" case as Mr Bahari claims), where the treaty at issue contained the same definition of the term investment ("*every kind of asset which is capable of producing returns*").[419]

(b) The *Nachingwea v Tanzania* decision likewise declined to include a requirement that the investment was "actively made", with the tribunal stating that "*the preamble of the BIT, or its context, object and purpose, does not justify the introduction of an additional requirement that is not apparent from the ordinary language of the BIT*".[420] The *obiter* commentary about the *Salini* criteria was made in a context where "*both Parties* [] *appear*[ed] *to agree that it is not necessary to apply such criteria in this case*".[421]

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416 *See*, e.g., *Orazul v Argentina*, ICSID, Award (14 Dec. 2023), **RLA-266**, para. 446 ("The Tribunal considers that the ordinary meaning of the term "investment" comprises at a minimum the features of (i) a contribution or allocation of resources, (ii) a duration; and (iii) risk."); *Rand Investments v Serbia*, ICSID Case No. ARB/18/8, Award (29 June 2023), **RLA-267**, para. 228 ("the Tribunal turns to the rules of interpretation of treaties contained in Articles 31 and 32 of the Vienna Convention on the Law of Treaties ("Vienna Convention"). Applying those rules, the Tribunal must interpret the term "investment" in Article 25(1) by giving the term its ordinary meaning, in its context and in light of the object and purpose of the Treaty. As held by many investment awards, in the ordinary meaning of the term, an investment is (i) a contribution or allocation of resources, (ii) made for a duration; and (iii) involving risk, which includes the expectation of a profit (albeit not necessarily fulfilled)").

417 *Glencore v Bolivia*, PCA Case No. 2016-39, Award (8 Sept. 2023), **CLA-256**, para. 136.

418 *Glencore v Bolivia*, PCA Case No. 2016-39, Award (8 Sept. 2023), **CLA-256**, paras 138 and 142.

419 *Rurelec v Bolivia*, PCA Case No. 2011-17, Award (31 Jan. 2014), **CLA-202**, para. 163.

420 *Nachingwea v Tanzania*, ICSID Case No. ARB/20/38, Award (14 July 2023), **CLA-257**, paras 155-156.

421 *Nachingwea v Tanzania*, ICSID Case No. ARB/20/38, Award (14 July 2023), **CLA-257**, para. 170.

179. Ultimately, the arbitral jurisprudence concerning whether tribunal should adopt the *Salini* criteria to interpret the term investment is debated, as Mr Bahari recognises,[422] and there are also many recent (non-ICSID) decisions where the tribunal applied the objective criteria to the definition of the term investment.[423] In the case of the Treaty, where the term "investment" is not defined by reference to any criteria, other than to confirm that it "*shall include every kind of asset*",[424] the Tribunal is required to consider the ordinary meaning of the term with reference to the object and purpose of the Treaty. As the tribunal cogently explained in the *Doutremepuich* decision:

> Looking at the plain wording of Article 1(1), it does not contain a definition of investments. Indeed, the term "definition" does not even appear in Article 1(1). Rather, Article 1(1) only provides that the term "investments" – however to be defined – encompasses ("comprend") all types of assets ("toutes les catégories de biens"). Such a provision cannot play the gatekeeping role of establishing when a situation qualifies as an investment and when it does not. Nor can the non-exhaustive list of assets contained in Article 1(1) play such a role since, by its own terms, it only provides possible examples. The question of how to define investment therefore cannot be found in Article 1(1) of the Treaty. It has to be found in the objective and ordinary meaning of the term "investments."
>
> The Tribunal therefore needs to determine the objective meaning of "investment" that will operate as a benchmark definition for the purposes of Article 1(1) of the Treaty.[425]

180. In connection with the definition of investment, Mr Bahari raises two "*additional preliminary points*", neither of which have any immediate or obvious relevance:

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422 Reply, para. 753.

423 *See*, e.g., *Antonio del Valle Ruiz v Spain*, PCA, Final Award (13 Mar. 2023), **CLA-247**, para. 372 ("In line with other arbitral tribunals, this Tribunal considers that the terms "investment" in Article l(4) of the Treaty has an objective meaning which requires the presence of the elements of contribution, or commitment of resources, duration and risk"); *Muszynianka v Slovakia*, PCA, Award (7 Oct. 2020), **RLA-268**, para. 289 ("In connection with the components of the objective definition, the Parties agree, and rightly so, on the elements of allocation of resources, duration, and risk"); *AMF Aircraftleasing v Czech Republic*, PCA, Final Award (11 May 2020), **RLA-269**, para. 460 ("The term "investments" also has an inherent meaning. This inherent meaning consists of three unanimously accepted criteria: (i) contribution; (ii) duration; and (iii) risk").

424 Treaty, **CLA-1**, art. 1(1).

425 *Doutrempuich v Mauritius*, PCA Case No. 2018-37, Award on Jurisdiction (23 Aug. 2019), **RLA-20**, paras 117-118.

(a) First, he states that "[t]*here is no requirement in the Treaty or under international law*[…] *that a claimant must provide the origin of the capital*".[426] Subject to the issue (discussed below) that the investor should have made a contribution, this is not in dispute, however.[427] Mr Bahari claims that Azerbaijan "*repeatedly relies on its allegation that Mr. Bahari has failed to prove the origin of funds*",[428] when in fact these are factual rebuttal points which deal with Mr Bahari's copious submissions that he personally contributed the funds for his alleged investments and that he should be compensated for them.[429] It is Mr Bahari who has been at pains to prove that he provided the relevant capital, for reasons he has never clearly articulated.

(b) Second, Mr Bahari complains that Azerbaijan's submission that the mere purchase of machinery and equipment for Caspian Fish, Coolak Baku and Shuvalan Sugar cannot amount to investments made by Mr Bahari is "[i]*ntellectual*[] *dismantling*" that is "*disingenuous to the point of absurdity*".[430] This is not a legal submission but meaningless verbiage which does not address Azerbaijan's substantive point (namely that Mr Bahari has wrongly sought to include these assets as his own investments).

181. Finally, Mr Bahari claims to take issue with the notion that he must prove that he owned his alleged investments as at the date of alleged breach, on the basis that "[t]*his broad pronouncement is not entirely correct*".[431] Two points are made in support of this statement, neither of which take Mr Bahari anywhere.

(a) First, he states that insofar as there is an ownership requirement in cases of expropriation, "*there can be no dispute that Mr. Bahari owned Caspian Fish*

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426 Reply, para. 755(a).

427 *See Capital Financial Holdings v Cameroon*, ICSID Case No. ARB/15/18, Award (22 Jun. 2017), **RLA-270** para. 426 (Respondent's informal translation) ("It is true that origin, understood as the source of the investment as such, is certainly irrelevant… The investor may have obtained the amount of the investment from third parties. The fact remains that the real question remains whether the person acting has made the investment himself and bears the risks and, in this respect at least, the origin of the funds allegedly invested cannot be completely neglected.")

428 Reply, para. 755(a).

429 *See* Statement of Claim, section III(A)(2)(b),(c), (3), (4)(c), (5) and 6(b).

430 Reply, para. 755(b).

431 Reply, para. 756.

when it was eventually expropriated".[432] That is baseless assertion, given Mr Bahari himself describes "*Azerbaijan's central defense to Mr. Bahari's claim*" as being that "*Mr. Bahari sold* [his interest in Caspian Fish] *on 20 September 2001*".[433]

(b) Mr Bahari further contends, in a footnote, that Azerbaijan "*speaks out of both sides of its mouth*" because it supposedly has argued that Mr Bahari did not have ownership of Caspian Fish at the time of the alleged breach, "*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*".[434] Mr Bahari truly misunderstands either the relevant principles of investment treaty law, or Azerbaijan's pleading. Under the Treaty, an investor must prove ownership of an asset to have standing to claim that it was then expropriated.[435] In determining whether expropriation has occurred, however, it is less relevant whether the investor has formal title to his asset and more relevant whether and to what extent he has retained control over it.[436] This is the only point being made in the Defence, and it is one that has been accepted by Mr Bahari in the Statement of Claim.[437]

(c) Second, Mr Bahari asserts "*a claiming party does not have to demonstrate continuity of ownership at all times*",[438] relying on *Vladislav Kim v Uzbekistan*. That case, however, only stands for the proposition that ownership must be demonstrated at the time of breach, irrespective of what occurred before.[439] That is consistent with Azerbaijan's case, which is that Mr Bahari must show

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432 Reply, para. 756.

433 Reply, para. 362.

434 Reply, fn. 1040.

435 *See* Defence, paras 79-81.

436 *See*, e.g., *Gabriel Resources v Romania*, ICSID, Award (8 Mar. 2024), **RLA-271**, para. 930; *DTEK v Russia*, PCA, Award (1 Nov. 2023), **RLA-272**, para. 662.

437 Statement of Claim, para. 597.

438 Reply, para. 757.

439 *See Vladislav Kim and others v Uzbekistan*, ICSID Case No. ARB/13/6, Decision on Jurisdiction (8 Mar. 2017), **RLA-145**, para. 268 ("The burden on Claimants is to demonstrate its ownership at the time of the alleged breach. It is possible for Claimants to do so without a demonstration of continuity of ownership at all times from the first acquisition of KC shares by Nabolena. Therefore, subject to Claimants' satisfactory demonstration of ownership – i.e. through its holding structure – at the time of the alleged breach, its failure to demonstrate continuity of ownership at all times from the date of first acquisition will not impact upon jurisdiction.").

ownership at all *legally relevant* times. Mr Bahari concludes that he "*held the rights to all of his investments when Azerbaijan first breached the Treaty*",[440] but that is in dispute between the parties. It is also entirely unclear despite hundreds of pages of pleadings *when* it is alleged Azerbaijan first breached the Treaty.

182. Azerbaijan notes that is undisputed that a qualifying investment is required to be made in the territory of the host State.[441]

1. Mr Bahari cannot demonstrate any qualifying investment in Caspian Fish

183. Mr Bahari claims that Caspian Fish qualifies as an investment "*under multiple definitions*" in the Treaty,[442] attempting to particularise the vague pleading made in the Statement of Claim. None of his attempts succeed.

184. First, Mr Bahari contends that Azerbaijan's submission that shares in a BVI entity are not assets in the territory of Azerbaijan "*is a contrived distinction that ignores reality*",[443] ostensibly on the basis that "[t]*hrough Caspian Fish BVI,* [he] *owns a participation in the company's representative office in Azerbaijan*".[444] This argument is misplaced:

(a) Contrary to Mr Bahari's claims, the Representative Office does not qualify as an asset (let alone "investment") under article 1(1)(i) of the Treaty.[445] A representative office is not a legal entity of any kind under Azerbaijani law, but merely an office out of which a foreign entity is operated,[446] as recognised by the Representative Office in its own Charter.[447] Mr Bahari's indirect interest in it accordingly does not amount to "*participation in* [a] *compan*[y]", as required

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440 Reply, para. 757.

441 Reply, para. 758.

442 Reply, para. 760.

443 Reply, para. 761.

444 Reply, para. 762.

445 Reply, para. 760(a).

446 Law of the Republic of Azerbaijan "On Enterprises" No. 847 dated 1 July 1994, **RLA-162**, art. 17.

447 Charter of the Representative Office of Caspian Fish Co Inc dated 27 April 1999, **C-3** ("Representative Office is not a legal entity").

under the Treaty,[448] nor can it constitute an investment in the territory of Azerbaijan.

(b) Mr Bahari also asserts that "*via the BVI shareholding, Mr. Bahari had a right to profits and dividends from the business venture that was in-country*".[449] Again, this is not an asset that could constitute an investment within the territory of Azerbaijan. Mr Bahari's rights to "profits and dividends" arise directly as a result of the rights he had in his BVI shares in the BVI Co, and not because there is an underlying business venture in Azerbaijan.

185. Second, Mr Bahari continues to assert, without analysis or support, that the Purported Shareholders Agreement constitutes a chose-in-action that qualifies as an investment.[450] That submission is contrary to both facts and law:

(a) The available evidence strongly suggests that Purported Shareholders Agreement is inauthentic.[451]

(b) While Mr Bahari optimistically asserts that the Purported Shareholders Agreement "*pertains to Caspian Fish BVI's representative office*",[452] the Representative Office was not a company under Azerbaijani law. Indeed, Mr Bahari does not challenge this point as made in the Defence.[453] Accordingly, while the Purported Shareholders Agreement may have purported to regulate the affairs of the [redacted]" of the Representative Office,[454] there were no [redacted]" of the same, and it could only ever have regulated the relationship between the shareholders of the BVI Co.[455] This leaves Mr Bahari with the problem identified in the Defence: that the rights allegedly conferred by the Purported Shareholders Agreement do not constitute intangible property

448 Treaty, **CLA-1**, art. 1(1)(i).

449 Reply, para. 760(a).

450 Reply, paras 760(b), 763-765.

451 See paragraphs 43 to 45 above.

452 Reply, para. 763.

453 *See* Defence, para. 235.

454 *See* Purported Shareholders Agreement dated 27 April 1999, **C-4**, cl. 5.

455 Law of the Republic of Azerbaijan "On Enterprises" No. 847 dated 1 July 1994, **RLA-162**, art. 17.

situated in Azerbaijan.[456] Thus, even if there was any chose-in-action (which is denied for the reasons set out below), it would be "*situated where it is properly recoverable or can be enforced*", i.e., the BVI.[457]

(c) Mr Bahari fails to specify which precise rights under the Purported Shareholders Agreement are choses-in-action, other than making general assertions that the document entitles him to "*claims to money*" or "*performance having financial value*".[458] In fact, there is nothing in the terms of the Purported Shareholders Agreement which gives Mr Bahari any such right. As Professor Douglas notes, a right to performance in an investment treaty "*must be read as a right to performance in respect of the transfer of money*".[459] Nothing in the Purported Shareholders Agreement gives Mr Bahari a claim to money or performance in respect of the same.

186. Third, Mr Bahari claims he "*had the vision for, carried out, and paid for the design, construction, and equipment for the Caspian Fish facility*",[460] ostensibly referring to articles 1(1)(iii) and (iv) of the Treaty.[461] These articles of the Treaty provide that assets which can qualify as investments include "*movable and immovable property*" as well "*industrial and intellectual property rights*".[462] Mr Bahari does not, however, identify any property (movable, immovable or intellectual) that he owned in connection with Caspian Fish, because he owned none. He claims that he "*paid and was responsible for the development and creation of the Caspian Fish facility*",[463] but Mr Bahari does not claim to have owned the facility. In fact, he has no answer to Azerbaijan's submission in the Defence that the equipment, building or licences belonging to Caspian Fish are not assets of Mr Bahari, but would belong to Caspian Fish.[464]

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456 Defence, para. 84.

457 Z. Douglas, "Property, Investment and the Scope of Investment Protection" in *The Foundations of International Investment Law: Bringing Theory into Practice* (2014), **RLA-148**, p 383.

458 Reply, para. 764.

459 Z. Douglas, "Property, Investment and the Scope of Investment Protection" in *The Foundations of International Investment Law: Bringing Theory into Practice* (2014), **RLA-148**, p 387.

460 Reply, para. 766.

461 Reply, para. 760(c) and (d).

462 Treaty, **CLA-1**, arts 1(1)(iii) and (iv).

463 Reply, para. 766(a), *see also* para. 1093.

464 Defence, para. 100.

187. Assets and contracts belonging to a company in which an investor owns shares do not qualify as the "investments" of the investor. In *Casinos v Argentina*, for example, the tribunal said that the licence of the local entity, ENJASA, in which the claimants held shares:

> cannot be considered as an "investment" that is held indirectly by Claimants through their (indirect) participation in ENJASA. The same holds true for other assets owned by ENJASA; these as well do not qualify as "investments" that are indirectly held by Claimants through their participation in ENJASA.[465]

188. Mere financial contribution towards the facility (if such contribution were to be established, which is denied) would not constitute an investment.[466] A financial contribution is not an asset.[467]

189. Thus, it is impossible to identify what, if any, asset Mr Bahari held in Azerbaijan that could constitute an investment under the Treaty, save for his interest in the LLC via BVI Co.[468] As to that interest:

(a) Mr Bahari's expropriation case concerns his shareholding in BVI Co, not in the LLC (indeed, he claims to have had no knowledge of the LLC and alleges it is the vehicle through which the expropriation of his shares in BVI Co was effected).[469] He makes no case that the LLC itself has suffered any loss, as would typically be seen in a shareholder investment treaty claim.[470] His claim for expropriation is contrived in circumstances where the entity which he claims

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465 *Casinos Austria International v Argentina*, ICSID Case No. ARB/14/32, Decision on Jurisdiction (29 June 2018), **CLA-59**, paras 183-184. *See also El Paso v Argentina*, ICSID Case No. ARB/03/15, Award (31 Oct. 2011), **CLA-121**, paras 188, 189, 193, 214 (emphasis added); *Poštová banka v Hellenic Republic*, ICSID Case No. ARB/13/8, Award (9 Apr. 2015), **RLA-273**, paras 229, 245.

466 *See*, e.g., *Kaloti Metals v Peru,* ICSID Case No, ARB/21/29, Award (14 May 2024), **RLA-327**, at para. 348 ("The Tribunal does not accept that the existence of an investment can be established simply by showing that one characteristic of an investment exists. A commitment of capital, for example, has to be towards something that is capable of constituting an investment. A commitment of capital to an asset does not alone turn that asset into an investment.").

467 *See* Treaty, **CLA-1**, art. 1(1).

468 *See* Defence, para. 86; *see also* Reply, paras. 760(a), 767 and 1089.

469 *See* Statement of Claim, para. 484.

470 *See, e.g. RosInvest v Russia*, SCC Case No. 079/2005, Final Award (12 Sep. 2010), **RLA-147**, para. 608 ("the investor can also claim protection for the effect on its shares by measures of the host state taken against the company") (emphasis added).

was affected by Azerbaijan's conduct is outside Azerbaijan's territory and therefore control.

(b) In any event, Mr Bahari cannot demonstrate that he made an (indirect) investment in the LLC in the objective sense. Mr Bahari claims he made a "*contribution of at least US$ 44 million*",[471] but for the reasons set out below, he has failed to prove that he made any financial contribution to Caspian Fish at all.[472] Mr Bahari was the manager of the construction of the Caspian Fish facility, and, for a period of time, its general director.[473] In effect, he was an employee of the business. He may have had an expectation of return on his shares in the BVI Co, but he did not have any such expectation in connection with his employment at the LLC, nor did he take on any risk.

(c) Finally, and most crucially, Mr Bahari voluntarily sold his interest in Caspian Fish.[474] While Mr Bahari denies such a sale, he offers no response to the legal consequences of the sale, assuming such a sale is established. If the asset is not owned by the investor at the time of the Treaty's entry into force, the Tribunal has no jurisdiction to hear an expropriation claim as to that asset.[475]

2. Mr Bahari's "participation" in Coolak Baku and Shuvalan Sugar is not a qualifying investment

190. Mr Bahari continues to plead that his "*participation*" in Coolak Baku amounts to an investment, although he has, to some extent, belatedly particularised his claims. His claims, however, remain vague, because he has failed to plead properly how any alleged investment was the subject of a breach of Treaty.

191. He first relies on article 1(1)(i) of the Treaty to claim that his "*75% interest in the Coolak Baku JVA is unquestionably 'shares, stocks or any other form of participation in companies'*".[476] Given, however, that Mr Bahari now pivots from an expropriation case to one based on fair and equitable treatment, Mr Bahari has failed to particularise

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471 Reply, para. 768(a).

472 *See* PART 3III.A below.

473 *See* Defence, Part 3, section V.B.1.

474 *See* PART 3III.C below.

475 *See* Defence, para. 79.

476 Reply, para. 773.

why the Coolak Baku proceedings (discussed below) resulted in the alleged mistreatment of his *shares*. They had nothing to do with his shares.

192. Mr Bahari also claims that the Coolak Baku 1998 Agreement and 1999 Agreement qualify as investments under article 1(1)(ii) of the Treaty on the basis that "*Mr. Bahari has "claims to money or any other right to legitimate performance having financial value related to" Coolak Baku*".[477] This submission is meaningless without particularisation. Mr Bahari does not identify the alleged choses-in-action said to be set out in those agreements, and in fact the 1999 Agreement (which supersedes the 1998 Agreement and was accordingly the only existing alleged "chose-in-action" at the time the Treaty entered into force) contains no financial obligations owing to Mr Bahari at all. Nor does Mr Bahari particularise or explain how these alleged choses in action are the subject of his FET claim.

193. Finally, Mr Bahari repeats the hopeless submissions that his alleged "*pa*[yment] *for the design, construction, and equipment for the Coolak Baku facility*" (referring to article 1(1)(iii) of the Treaty),[478] and his "*experience and knowledge*[…] *are unquestionably 'know-how', 'design', and 'goodwill'*" (referring to article 1(1)(v) of the Treaty)[479] comprise investments.[480] For the reasons set out in the Defence and further detailed below,[481] there is no evidence that Mr Bahari in fact paid for design, construction or equipment; nor that he brought or created any know-how, design or good-will. Neither are these investments which meet the objective criteria under *Salini*, nor were they owned by Mr Bahari.[482]

194. Mr Bahari repeatedly asserts that Azerbaijan "*does not allege in the Statement of Defense that there was another investor in Coolak Baku, therefore it can only be Mr.*

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477 Reply, para. 774.

478 Reply, para. 775.

479 Reply, para. 776.

480 Notably, the claims that Mr Bahari owned land in connection with Coolak Baku appear to have been dropped entirely.

481 *See* PART 3II.A below.

482 Defence, paras 107-112; *Casinos Austria International v Argentina*, ICSID Case No. ARB/14/32, Decision on Jurisdiction (29 June 2018), **CLA-59**, paras. 183-184. *See also El Paso v Argentina*, ICSID Case No. ARB/03/15, Award (31 Oct. 2011), **CLA-121**, paras. 188, 189, 193, 214 (emphasis added); *Poštová banka v Hellenic Republic*, ICSID Case No. ARB/13/8, Award (9 Apr. 2015), **RLA-273**, paras. 229, 245.

Bahari who paid",[483] but this is a mischaracterisation of the Defence, which in fact submits that Mr Bahari has failed to prove that he himself, as opposed to Coolak Baku or some other person, paid.[484] It is for Mr Bahari to prove that he funded Coolak Baku. In any event, as discussed at paragraph 188 above, a mere financial contribution to the construction of the facility would not constitute an investment; it is the shares or other right to participate in a company that is an asset which can constitute an investment.

195. As to Shuvalan Sugar, Mr Bahari does not provide any real response to Azerbaijan's case that Shuvalan Sugar does not qualify as an investment. He asserts that he "*owned and participated in Shuvalan Sugar as part of the Coolak Baku JVA*",[485] referring to article 1(1)(i) of the Treaty, which provides that assets which can qualify as investments include "*shares, stocks or any other form of participation in companies*".[486] But it is undisputed that Shuvalan Sugar is not a company, and this appears to be a reference to the company Coolak Baku, which is addressed above, rather than any separate investment. Similarly, he asserts that he had "*choses-in-action in Shuvalan Sugar via the Coolak Baku JVA*",[487] but again this does not appear to be distinct from his general claims about an alleged investment in the form of the Coolak Baku JVA (addressed above).

196. Finally, he claims that he "*designed, constructed, equipped, and paid for the Shuvalan Sugar refining facility*",[488] referring to article 1(1)(i) of the Treaty, which provides that assets which can qualify as investments include "*moveable and immovable property*".[489] However, yet again, Mr Bahari does not claim to have owned directly the alleged equipment and buildings. Indeed, on Mr Bahari's own case he positively asserts that he *never* obtained ownership of the purported "Shuvalan Land Plot".[490] A mere financial contribution to the construction of the facility (which is denied in any event) would not constitute an investment.

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483 Reply, para. 775(b).

484 Defence, para. 107; *see* further PART 3II.A below.

485 Reply, para. 780(a).

486 Treaty, **CLA-1**, art. 1(1)(i).

487 Reply, para. 781.

488 Reply, para. 780(c).

489 Treaty, **CLA-1**, art. 1(1)(iii).

490 *See* Reply, Part II(A)(5)(b).

3. Mr Bahari's "ownership and contribution" to Ayna Sultan is not a qualifying investment

197. It is not disputed that Mr Bahari owned the property termed Ayna Sultan, nor is it disputed that immovable property is an asset. Contrary to Mr Bahari's optimistic suggestion that it is "*commonly agreed between the Parties that Mr. Bahari*[…] *made a qualifying investment in Ayna Sultan*",[491] Azerbaijan does not (and has never)[492] accepted that Ayna Sultan qualifies as an investment under the Treaty.

198. First, Mr Bahari sold his interest in Ayna Sultan before the Treaty entered into force.[493] In these circumstances, as discussed above in relation to Caspian Fish, the Tribunal has no jurisdiction.

199. Second, even if he had retained ownership of the property, it cannot qualify as an investment on the objective criteria set out in *Salini*. Mr Bahari attempts to distinguish *Seo v Korea* on the basis that the treaty in that case expressly referred to the *Salini* criteria in its definition of investment.[494] That does not, however, address the difficulty that several tribunals have applied the *Salini* criteria where there is no express reference in the treaty. For the reasons set out above, this Tribunal should interpret the term "investment" in accordance with its ordinary meaning, object and purpose, and thus as requiring something over and above a mere "asset".

200. Finally, Mr Bahari claims that even if the *Salini* criteria were applicable, Ayna Sultan was not a "*one-off transaction*", on the basis that it was purchased to "*ultimately become a prestigious office building that would be the headquarters for his various Azerbaijan businesses*".[495] This submission is based purely on Mr Bahari's testimony, which is contradicted by the documentary record which establishes that Ayna Sultan was a small residential dwelling of 45.2 square metres.[496] Mr Bahari has not answered Azerbaijan's case that this is not the 1,000 square metre office building he claims.[497]

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491 Reply, para. 472.

492 *See* Defence, para. 120.

493 *See* Defence, Part 3.VI.A.

494 Reply, paras. 788-290; see *Seo v Korea*, HKIAC Case No. 18117, Final Award, 27 Sep. 2019, **RLA-150**.

495 Reply, para. 790.

496 Title Registration Certificate issued by the Executive Authorities of Baku City to Mr Bahari and Technical Passport dated 28 January 1998, **C-16**.

497 Defence, para. 118.

4. Mr Bahari's "collection" of carpets is not a qualifying investment

201. As to Mr Bahari's carpets, while Azerbaijan accepts, that in principle, a carpet is moveable property, Azerbaijan does not accept that Mr Bahari possessed *any* carpets of any significant value,[498] nor that these movables comprised "investments" within the meaning of *Salini* in the territory of Azerbaijan.

202. Mr Bahari has no response to the fact that the carpets were, on his own case, purchased *abroad* and then imported into Azerbaijan.[499] That is not a financial contribution to the host State.

203. He claims that *Eyre and Montrose Developments*, in which the tribunal considered the criteria of risk under *Salini*, can be distinguished on the basis that Mr Bahari "*had already amassed*" the carpets and therefore the museum idea had gone beyond "*mere preparation*",[500] but this fails to address the point that "[t]*here must have been substantive commitments and arrangements entered into, involving specific commitments and financial costs, all of which would entail both certain risks as well as possible benefits*".[501] Mr Bahari does not evidence any such commitments (including the pure assertion that he had commissioned an architect to design the museum, which was contested by Azerbaijan in the Defence and Mr Bahari failed again to evidence with his Reply).[502] Indeed, his claims about the museum are contradicted by the fact that the Ledger itself evidences that the carpets were of no such value to be museum-worthy,[503] and Mr Bahari had in fact was selling various of the carpets he had purchased abroad, or stored them in Germany or Iran.[504]

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498 *See* Defence, Part 3.VII.A.

499 *See* Defence, para. 125.

500 Reply, para. 282.

501 *Eyre and Montrose Developments v Sri Lanka*, ICSID Case No. ARB/16/25, Award (5 Mar. 2020), **RLA-21**, paras 301-302. See also *Mihaly International Corporation Sri Lanka*, ICSID Case No. ARB/00/2, Award (15 Mar. 2002), **RLA-151**, para. 61 ("The Tribunal is consequently unable to accept as a valid denomination of "investment", the unilateral or internal characterization of certain expenditures by the Claimant in preparation for a project of investment.".)

502 *See* Defence, footnote 310.

503 *See* Defence, para. 123.

504 *See* Defence, para. 122.

C. Article 9 bars the application of the Treaty to Mr Bahari's alleged investments

204. Mr Bahari relies on the opinion of Professor Schill (the **Schill Opinion**) to argue for an interpretation of article 9 of the Treaty which would render it "[redacted]", [redacted]" or read as allowing "[redacted]".[505]

205. Professor Schill is an academic, who is frequently appointed as an arbitrator in investment treaty disputes. Unlike Professor Vandevelde, he does not possess experience or expertise of investment treaties as a policy maker or treaty negotiator. Nor has he performed a comprehensive review of investment treaties in the way Professor Vandevelde has in several published works. Professor Schill stands in a position no different from counsel and provides his opinion on the application of public international law to the Treaty, as to which he himself recognises that at least in respect of [redacted]".[506]

206. Likewise, Professor Schill does not profess to have any special experience or expertise in the field of treaty approval clauses. Indeed, he acknowledges that Iranian investment treaty approval clauses "[redacted]"[507] – including by himself – and identifies the "[redacted]" of treaty approvals as having been authored by someone else – Teerawat Wongkaew.[508]

207. The Schill Opinion offers no reasons or evidence sufficient to detract from the interpretation of article 9 of the Treaty as set out in Azerbaijan's Defence, which is that investors are required to obtain specific approval from the Competent Authority. The interpretation which Professor Schill advances imposes numerous implied additional requirements upon Azerbaijan and Iran in respect of article 9, which contravene traditional methods of treaty interpretation.

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505 Schill Opinion, para. 37.

506 Schill Opinion, para. 46.

507 Schill Opinion, para. 46.

508 Schill Opinion, para. 47.

1. Rule-of-law considerations do not take precedence over the plain words and meaning of article 9 of the Treaty

208. Professor Schill argues that rule-of-law considerations impact "[redacted].[509] However, this argument ignores that article 9 is a jurisdictional requirement and is therefore logically prior to any so-called rule-of-law consideration. Though the Treaty's *substantive* standards are designed to encourage investment based on rule of law considerations, the question of the State's consent to be bound by such standards, and indeed the question of whether the Treaty applies at all, is a different matter. Here, article 9 prescribes the scope of the State's consent to be bound by the Treaty and accordingly to arbitration.[510] It must therefore be interpreted on its own terms, and in light of the fact that the consent of a State to arbitration cannot be the subject of mere inference – it must be stated unequivocally on the face of the relevant document.[511]

209. Nonetheless, Professor Schill makes three rule-of-law based arguments which are not supported either by arbitral jurisprudence, treaty practice or as a matter of theory.

210. First, he concludes that [redacted]".[512] Thus, he says, there is no [redacted]" as to whether to approve particular investments. That is empty assertion and is frankly wrong. States, however, do have unfettered discretion to admit foreign investment, and to undertake international obligations: this is the principle of sovereign autonomy. Where the matter

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509 Schill Opinion, para. 65.

510 *See* Second Vandevelde Report, paras 5-14 (para. 11: "[redacted]").

511 *Daimler v Argentina*, ICSID Case No. ARB/05/1, Award (22 Aug. 2012), **CLA-107**, para. 175 ("[I]t is not possible to presume that consent has been given by a state. Rather, the existence of consent must be established."); *Plama v Bulgaria*, ICSID Case No. ARB/03/24, Decision on Jurisdiction (8 Feb. 2005), **RLA-274**, para. 198; *Latam Hydro v Peru*, ICSID Case No. ARB/19/28, Award (20 Dec. 2023), **RLA-257**, para. 345; *BSG Resources v Guinea*, ICSID Case No. ARB/14/22, Award (18 May 2022), **RLA-275**, para. 292 ("It is well-established that consent is not to be presumed"); *ICS v Argentina (I)*, PCA Case No. 2010-09, Award on Jurisdiction (10 Feb. 2012), **RLA-276**, para 280 ("Moreover, a State's consent to arbitration shall not be presumed in the face of ambiguity. (…). Where a claimant fails to prove consent with sufficient certainty, jurisdiction will be declined"); *Wintershall v Argentina*, ICSID Case No. ARB/04/14, Award (8 Dec. 2008), **RLA-277**, para. 160(3).

512 Schill Opinion, para. 67.

at hand concerns a jurisdictional threshold, the only relevant question is whether the State consented to be bound, for example, because the relevant authority gave the relevant approval – and not whether the relevant authority should have given the relevant approval. The latter matter is not a question for the tribunal.

211. The four investment treaty cases Professor Schill relies on do not assist him:

(a) Professor Schill relies on the tribunal's *obiter* in *von Pezold v Zimbabwe* to the effect that the respondent would have been estopped from contending approval requirements were not met as it was [redacted]".[513] That dicta concerns estoppel, and not "rule-of-law" considerations relevant to interpretation, and so it is an inapposite reference. In any event, it is distinguishable from the present case because the relevant treaty language in that case did not designate an approving authority like the present Treaty, and simply stated that "*specific*[] *approv*[al] *by the competent authorities*" was required.[514] Moreover, the tribunal's *obiter* turned on the facts that the respondent in that case had given "*many informal statements of approval*" and there was no evidence as to what else would have been required. No such statements of approval are present in this case, and the Treaty itself confirms that at the very least, Mr Bahari should have attempted to obtain approval from the MFER or any ministry which succeeded it.[515] He made no attempt to obtain approval. Nor could he, as by his own admission, he was not aware of the prospect of treaty protection until 2017.[516]

(b) The circumstances of *Yaung Chi Oo Trading v Myanmar* are also wholly distinguishable from the present case. In *Yaung Chi Oo*, Myanmar had a "*thorough process*" for the admission of foreign investments, comprising a "*specific approval of the Government of Myanmar acting through the* [Foreign Investment Commission][…] *given in writing* [under the Foreign Investment

513 *See* Schill Opinion, para. 68.

514 *von Pezold and others v Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 Jul. 2015, **CLA-117**, para. 404, citing Article 9(b) of the applicable treaty.

515 *See* Mustafayev Report, paras 41-42.

516 Notice of Arbitration, para. 71.

Law]".[517] In the passage Professor Schill relies upon, the tribunal found that there was no *additional* approval process required to meet the conditions in the treaty of "*specific*[] *approv*[al] *in writing and registered by the host country and upon such conditions as it deems fit for the purposes of this Agreement*".[518] In the present case, as already mentioned, Mr Bahari did not obtain or even attempt to obtain approval from the MFER or its successor authority, or indeed any Azerbaijani authority.

(c) Similarly, *Walter Bau v Thailand* diverges materially from the present case. In that case, Thailand had an approval process with the Board of Investment under its local law for the grant of concessions. Article 1(a) of the protocol provided that "[w]*hen a permit is issued the respective investment enjoys full protection of the Treaty*". The respondent attempted to rely on article 1(b) to argue that a further "*certificate of admission*" was required beyond the issue of permits. The tribunal found that articles 1(a) and 1(b) of the protocol "*must be construed together*",[519] finding that the permits and concessions issued to the claimant's investment met the requirements of the treaty, i.e. were "certificates of admission".[520]

(d) Finally, the passage in *Desert Line v Yemen* relied upon by Professor Schill in fact supports the Respondent's position. There, the tribunal found that a lack of certification was not a bar to jurisdiction where the treaty conferred jurisdiction over investments "*accepted, by the host Party, as an investment according to its laws and regulations, and for which an investment certificate*" was issued,[521] on the grounds that that "*if an imperative formality were intended to be required, it would have been appropriate, if not indispensable*[…] *to identify*

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517 *Yaung Chi Oo Trading v Myanmar*, ASEAN Case No. ARB/01/1, Award, 31 Mar. 2003, **CLA-33**, para. 58.

518 *Yaung Chi Oo Trading v Myanmar*, ASEAN Case No. ARB/01/1, Award, 31 Mar. 2003, **CLA-33**, para. 22.

519 *Walter Bau v Thailand*, Ad Hoc Arbitration, Partial Award on Jurisdiction, 5 Oct. 2007, **RLA-92**, paras. 4.21

520 *Walter Bau v Thailand*, Ad Hoc Arbitration, Partial Award on Jurisdiction, 5 Oct. 2007, **RLA-92**, paras. 4.19-4.26.

521 *See Desert Line Projects LLC v Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, **CLA-31**, para. 92 (citing art. 1(1) of the relevant treaty).

the issuing department" in the treaty.[522] Article 9 of the Treaty just does that by designating the Competent Authority as the MFER.

212. Relying on the rule-of-law considerations referenced by Professor Schill, Mr Bahari suggests that the US Department of State's 2005 report [redacted]".[523] This hyperbolic rhetoric bears no relation to the contents of the Department of State's report, or the Schill Opinion. In fact, the Department of State report says nothing about article 9 or its approval regime (indeed, the relevant treaty it discusses is the investment treaty between Azerbaijan and the United States – which has no equivalent to article 9). The Department of State report discusses the process of registration of companies with the Ministry of Justice (in respect of which Mr Bahari raises no complaint in these proceedings). It is an inapposite and superfluous reference.

213. Second, Professor Schill states that rule-of-law principles [redacted]".[524] On their facts, neither of the cases to which Professor Schill refers support his interpretation. In both cases, the tribunals found that – contrary to Mr Bahari's case – pre-existing investments were required to obtain the treaty approval at the relevant time:

(a) In *Yaung Chi OO Trading v Myanmar*, the treaty in question expressly required the investor to obtain the relevant approval, even if the investment in question had been made before the treaty entered into force.[525] The tribunal said nothing about how it would have interpreted the treaty had the express provision not existed, nor, contrary to the conclusion in the Schill Opinion, did it start from

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522 *Desert Line Projects LLC v Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, **CLA-31**, paras 109-110.

523 Reply, paras 809 and 810.

524 Schill Opinion, para. 76.

525 *Yaung Chi Oo Trading Pte Ltd v Myanmar*, ASEAN Case No. ARB/01/1, Award (31 Mar. 2003), **CLA-33**, para. 60 (art. II(3) of the ASEAN Agreement 1987, quoted at para. 22 of the Award).

any kind of "[redacted]" that the investment in question would have been protected in the absence of the express language.[526]

(b) In *Churchill v Indonesia*, the treaty contained no express provision concerning the time period within which the investment required admission. The tribunal found that the ordinary meaning and context of the admission clause required the relevant admission to have been given at the time of entry into the country.

214. Third, while accepting no Treaty amendment would be required, Professor Schill argues that "[redacted]" that any change to the Competent Authority would at least require such change to be "[redacted]".[527] Again, Professor Schill says that this is the effect of legal certainty for investors. For the reasons set out above, investors' expectations are not relevant to jurisdictional conditions; jurisdictional conditions must be met before any legitimate expectation of treatment may arise.

215. Even if that was not the case, however, as a matter of fact, it would have been clear to investors (or capable of being known by taking appropriate legal advice) that the functions of the MFER had been assumed by another ministry from the laws of Azerbaijan which were publicly available at the relevant time.[528] Neither Mr Bahari nor Professor Schill have any answer to the proposition that an investor simply could have written to the MFER, pursuant to the notice provision in the Treaty (just as parties may rely on notice provisions in contracts), and trust that Azerbaijan's internal arrangements would ensure that the successor authority receive and attend to the matter. But of course this is hypothetical, since no such letter was ever sent.

2. Article 12 must be read consistently with article 9

216. Elaborating on the Schill Opinion, Mr Bahari argues that article 12 of the Treaty, which provides that the Treaty "*shall apply to investments existing at the time of entry into*

526 Schill Opinion, para. 77.

527 Schill Opinion, para. 83.

528 *See* Defence, paras 141-146.

force as well as to investments made or acquired thereafter",[529] operates as an exception to article 9, on the basis that article 12 is otherwise rendered "*effectively meaningless*".[530] This is nonsensical. The plain meaning of article 12 (irrespective of article 9) is simply that the Treaty applies to investments made before its entry into force.

217. Mr Bahari recognises that Azerbaijan's reading of the Treaty is that no investment (pre-existing or otherwise) receives Treaty protection unless approved in accordance with article 9, but claims that reading leads to "*unwieldy and capricious*" results.[531] Again, no explanation for why that would be so is given. Whether the approval requirement applies to pre-existing investments is simply a matter of treaty interpretation, and that was precisely the matter in issue in *Yaung Chi OO Trading v Myanmar*, where the tribunal found that it did based on the express language of the treaty in question.

218. In this case, in accordance with the general rule of interpretation of treaties under article 31(1) of the VLCT, both the ordinary meaning and context of the clause support the same finding.[532] Article 9 provides: "*This Agreement shall only apply to the investments approved by the competent authorities of the host Party*".[533] In particular, the opening words, "*This Agreement shall only apply*" unambiguously indicate that article 9 imposes a clear condition on the State's consent to the applicability of the Treaty – irrespective of the point in time at which an investment is made. In contrast, the final sentence of article 12(1) reads: "[The Treaty] *shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter*".[534] The words "*as well as*" to the end of the sentence are important. They indicate that the Treaty shall apply to pre-existing investments on the same basis as it applies to those investments made after its entry into force. That basis can only include

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529 Reply, para. 800(a).

530 Reply, paras 817-819.

531 Reply, para. 817-818.

532 The Schill Opinion notes that the VCLT does not apply to the Treaty (para. 238 of the Schill Opinion and article 4 of the VCLT). The principles of interpretation set out in articles 31 and 32 of the VCLT are still applicable to the Treaty, however, as article 31 and 32 reflect customary international law: *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Judgment, ICJ Reports 2010, **RLA-278**, p. 14, at p. 46, para. 65; *Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua)*, Judgment, ICJ. Reports 2009, **RLA-279**, p. 213, at p. 237, para. 47.

533 Treaty, **CLA-1**, art. 9.

534 Treaty, **CLA-1**, art. 12(1).

the clear condition to the State's consent to the Treaty imposed by article 9. Thus, for an investor with a pre-entry into force investment seeking treaty protection, an application under article 9 was required.

219. The plain meaning of articles 9 and 12 is confirmed by their context. The "context" in treaty interpretation means "*the context of the terms of the treaty and not the context of the treaty generally* ([…]) [Adjudicators] *are allowed to refer only to the context of the terms of the Treaty, i.e. the internal consistency of the text as one whole*" (emphasis in original).[535] As well as reading the clauses coherently together, the headings of the Treaty's clauses are relevant to this analysis.[536] Article 9 is titled, "*Applicability of the Agreement*". This is broad, threshold language which demonstrates that article 9's approval requirement is cumulative, not alternative, to any other condition or requirement. It is a gateway through which all qualifying investments must pass for the Treaty to apply. On the other hand, article 12 is titled, "*Entry into Force, Duration and Termination*". Article 12(1) merely governs whether investments before entry into force are *capable* of qualifying for the Treaty's protection, but it does not determine the conditions on which either of those categories of investments must be made.

220. Mr Bahari relies on the fact that other wholly unrelated treaties involving third States were in force or being negotiated at the same time as the Treaty which expressly confirmed that pre-existing investments are subject to approval requirements.[537] He does not, however, explain why these unrelated treaties are relevant at all to the interpretation of this Treaty. They are not. He claims that if Azerbaijan had wanted to "*place parameters in the BIT for approval of pre-existing investments*[…] *they knew how to do so*".[538] This argument turns the language of the Treaty on its head. In fact, had the parties wished to exclude pre-existing investments from the scope of article 9, they would have done so expressly. They did not, and the Claimant has pointed to no good reason (as a matter of policy or even simple logic) why the Parties would wish to make such an exception.

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535 *HEP v Slovenia*, ICSID Case No. ARB/05/24, Individual Opinion of Jan Paulsson (Decision on the Treaty Interpretation Issue) (12 Jun. 2009), **RLA-280**, para. 44.

536 *See Plama v Bulgaria,* ICSID Case No. ARB/03/24, Decision on Jurisdiction (8 Feb. 2005), **RLA-274**, para 147.

537 Reply, paras 820-823.

538 Reply, para. 822.

221. As Professor Vandevelde notes, Mr Bahari's interpretation of article 12:

[redacted][540]

3. The *travaux préparatoires* of the Treaty do not support Mr Bahari's case

222. Professor Schill relies on the Treaty's *travaux préparatoires* to support his conclusions that: (a) "[redacted]",[541] ostensibly on the basis that an earlier draft provided for investors to receive an approval in the form of an "[redacted] and (b) "[redacted]",[542] ostensibly on the basis that the original proposal made by Azerbaijan contained a version of article 12, but not article 9. The *travaux préparatoires* support neither of those conclusions, but even if they did, the *travaux préparatoires* are in any event not an appropriate aid to interpretation in the present case.

223. Under article 32 of the VCLT, recourse may be had to *travaux préparatoires* in two circumstances: (i) first, "*to confirm the meaning resulting from the application of article 31*", or (ii) second, "*to determine the meaning when the interpretation according to article 31 (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which*

539 Second Vandevelde Report, para. 24.

540 Second Vandevelde Report, para. 27.

541 Schill Opinion, para. 105.

542 Schill Opinion, para. 106.

is manifestly absurd or unreasonable". For the reasons set out above, neither of the conditions under (ii) are met in the case of articles 9 and 12 of the Treaty.

224. As to the first condition, incomplete or fragmentary records of *travaux préparatoires* must be used with caution.[543] In the present case, the available evidence is limited to drafts of the Treaty. There is no record as to the positions taken by each of the State Parties. Consequently, the entirety of Professor Schill's analysis with respect to the *travaux préparatoires* are inferences. Indeed, inferences to the contrary of those put forward by Professor Schill are equally possible based on the available evidence. For example, it is possible to infer that the State Parties deliberately changed the requirement from an Admission Certificate to a more open ended approval precisely because they intended for each State to have broader discretion as to which investments to admit and more flexible administrative arrangements. In any event, in such circumstances, recourse to the *travaux* offers little insight into the meaning of article 9, and cannot be relied on to confirm the meaning of the Treaty language.[544]

225. Mr Bahari also relies on the *travaux préparatoires* to conclude that "*it is abundantly clear that* [article 9] *was extremely important to Iran, but not to Azerbaijan*",[545] relying on a "*side-by-side comparison of the first draft of the Azerbaijan-Iran BIT with the Azerbaijan-Turkey BIT*".[546] The Respondent addresses the probative value of Azerbaijan's BIT practice with respect to other treaties further below, but for present purposes it suffices to note that the Claimant ignores wholesale the evidence of Mr Valiyev, the Head of the Economic Department of the MFER at the time the Treaty was being negotiated,[547] who explains that Azerbaijan had a "*cautious approach towards Iran*" at the relevant time, and that "[redacted]

543 Weeramantry, "4 Supplementary Means of Interpretation" in *Treaty Interpretation in Investment Arbitration*, **RLA-281**, para. 4.12.

544 *Aguas del Tunari v Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction, **RLA-282**, paras 268-274.

545 Reply, para. 834.

546 Reply, para. 827.

547 Valiyev Statement, para. 9.

[redacted]".[548]

226. Mr Bahari further alights on the fact that "*Iran has entered into several BITs with asymmetrical, incomplete, or entirely one-sided approval requirements*" to claim that this is "*the most telling indicium of Article 9's asymmetrical importance to the Parties*",[549] but fails to explain why this is of any relevance to the case at hand, where Azerbaijan insisted on article 9's requirements applying reciprocally. If anything, it demonstrates that Azerbaijan, unlike other countries and unlike in its other treaties, considered article 9 to be very important when it came to extending the protections of the Treaty to Iranian investors.

227. In any event, Mr Bahari draws no express conclusions from his inaccurate speculation that article 9 was of lesser importance to Azerbaijan than Iran. Even if these claims were correct (which they are plainly not), this would have no effect on the interpretation of article 9 (nor article 12). It certainly would not indicate that the Parties intended that the requirements of article 9 should not apply to pre-existing investments under article 12, not least because article 12 applies in the same wording and form to Azerbaijani investments in Iran. *A fortiori*, there is nothing to suggest that a pre-entry into force Azerbaijani investment in Iran is excluded from the need to obtain approval from the Iranian authorities under article 9 if it is to benefit from Treaty protection.

4. General BIT practice is not an appropriate aid to interpretation and in any event does not support the Claimant's case

228. Professor Schill spends some 45 pages of his Opinion reviewing the general BIT practice of Iran and Azerbaijan in support of his claim that this is "[redacted]".[550] What he fails to do, however, is explain why Iran's or Azerbaijan's treaties with third States have any bearing upon the interpretation of the Treaty at hand, as a matter of law. They do not.

229. As noted by the tribunal in *Rompetrol v Romania*, "[t]*here is nothing in the Vienna Convention that would authorize an interpreter to bring in as interpretive aids when*

548 Valiyev Statement, paras 28-31. *See* also Second Valiyev Statement, para. 6.

549 Reply, para. 836.

550 Schill Opinion, para. 109.

construing the meaning of one bilateral treaty the provisions of other treaties concluded with other partner States".[551] Article 32 of the VCLT, which reflects customary international law, provides that supplementary means are those materials relating to "*the circumstances of the* [the treaty's] *conclusion*", such as *travaux préparatoires*.[552]

230. Absent a proven connection to the negotiation and conclusion of the Treaty, the treaty practices of Azerbaijan and Iran in relation to third States have no bearing on the interpretation of articles 9 and 12 of the Treaty. Here, there is no evidence of any such connection. This principle was recognised by the tribunal in *Mobil Investments v Canada (I)*, where the tribunal refused to rely on extraneous materials to interpret the North American Free Trade Agreement, holding "[t]*hese agreements and sources are not the NAFTA*, ([…]) *and the extent to which they did or did not influence the NAFTA parties in the preparation of the NAFTA is not well established*".[553]

231. Even if the Tribunal were to consider the State Parties' practice with regard to treaties concluded with third States, it would have little probative value to interpreting the terms of the Treaty at hand.[554] This is particularly so in circumstances where the conclusions Professor Schill draws from the fact that approval requirement in the Treaty was [redacted]" in Azerbaijan's other concluded investment treaties are all a matter of inference.[555] The Tribunal should "*decline*[] *to speculate*" why something was negotiated for one treaty and not another.[556]

5. Mr Bahari's argument about arbitrariness proceeds from the wrong starting point and is in any event wrong

232. Mr Bahari argues that there are "*inconsistencies*" in articles 2(1) (which provides for foreign investments to be made generally in accordance with local laws), 9 and 12 of

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551 *Rompetrol v Romania*, ICSID Case No. ARB/06/3, Award (6 May 2013), **CLA-51**, para. 108.

552 VCLT, **CLA-36**, art. 32(1).

553 *Mobil Investments v Canada (II)*, Decision on Liability and Principles of Quantum (22 May 2012), **RLA-283**, para. 230.

554 *See*, e.g. *Aguas del Tunari v Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction (21 Oct. 2005), **RLA-282**, paras 309-314.

555 *See* Schill Opinion, paras 209-213.

556 *See*, e.g. *Aguas del Tunari v Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction (21 Oct. 2005), **RLA-282**, para. 313.

the Treaty.[557] The crux of his argument appears to be that it is "*highly implausible*"[558] that article 9 could be a threshold condition to consent for all investments (irrespective of whether they are otherwise made in accordance with the local laws, or pre-date the entry into force of the Treaty). Relying on the Schill Opinion, he concludes that this cannot be the correct interpretation as it would "[redacted]".[559] These arguments, which refer back to the "rule of law" considerations discussed above, hold no water.

233. First, the starting point is that under customary international law, States are under no obligation to admit, let alone extend the preferential legal protections, to foreign investments.[560] The conclusion of investment protection treaties, including the extent to which such treaties guarantee protections to foreign investors, remains at the full discretion of States. For example, early friendship, commerce, and navigation treaties contained more limited investment protections and no standing for a foreign investor to bring a suit against a host State before an international tribunal.[561] Even if the proliferation of BITs has seen the rise of broader protections to foreign investors, the Treaty must be interpreted on its own terms.

234. Second, the object and purpose against which the plain meaning of articles 9 and 12 must be read is defined by the entirety of the Treaty's terms.[562] The Claimant asserts that the object and purpose of the Treaty is "*to encourage foreign investment by ensuring that foreign investors are protected under international law*".[563] That is an incomplete picture as to the object and purpose of the Treaty. The architecture and terms of the Treaty, including the distinction between admission and approval for treaty protection, means the object and purpose of the Treaty is to encourage foreign

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557 Reply, para. 844.

558 Reply, para. 847.

559 Schill Opinion, para. 85.

560 First Vandevelde Report, para. 19.

561 K. Vandevelde, *Bilateral Investment Treaties* (2010), **RLA-252**, pp 21- 26.

562 Weeramantry, "3 The General Rule of Treaty Interpretation" in *Treaty Interpretation in Investment Arbitration*, **RLA-284**, para. 3.80.

563 Reply, para. 906.

investment whilst retaining the State's regulatory power by providing for a discretionary application of the Treaty.[564]

235. Against this background, there is no ambiguity in the meaning of articles 9 and 12. As discussed above, Mr Bahari's reliance on incomplete *travaux préparatoires* is therefore unnecessary and inappropriate.[565] More inappropriate still is Mr Bahari's argument that the Tribunal "*might have had a harder question to answer had Mr. Bahari been an Azerbaijani investor in Iran*",[566] suggesting that different interpretations of the Treaty might arise based on the identity of the host State. If the States Parties had wished to provide for asymmetry in the discretion provided by article 9, they could have done so.

6. Article 9 cannot be severed, in whole or in part

236. Mr Bahari argues that because MFER was abolished, article 9 is [redacted], relying on the doctrine of severability as set out in the Schill Opinion.[567]

237. Azerbaijan agrees, as a matter of principle, that it is possible for states to agree to sever certain clauses of a treaty, and that article 44 of the VCLT provides guidance as to the operation of such a doctrine. Here, however, the States Parties have not so agreed. Moreover, Mr Bahari has no standing to claim that article 9 of the Treaty is inoperable or suspended. The suspension of the provisions of the Treaty can only be effected by inter-State dispute settlement, pursuant to article 11 of the Treaty, or by agreement of the States Parties.[568]

238. In *B3 Croatian Courier v Croatia*, Croatia challenged the validity of the investor-State dispute settlement clause in the Croatia-Netherlands BIT on the basis that it was incompatible with EU law. The tribunal found that even if Croatia had raised a ground for invalidating the provision, such invalidity "*would not have operated automatically, but only at the conclusion of a procedure clearly set out in Articles 65-67 of the VCLT*", which deal with the procedures to be followed in the event of (among other things)

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564 First Vandevelde Report, para. 60; Second Vandevelde Report, para. 5.

565 Reply, para. 841.

566 Reply, para. 844.

567 Reply, para. 848; Schill Opinion, paras 221-239.

568 *See* for reference, VCLT, **CLA-36**, art. 57 ("The operation of a treaty in regard to all the parties or to a particular party may be suspended: (a) in conformity with the provisions of the treaty; or (b) at any time by consent of all the parties after consultation with the other contracting States").

claims of invalidity and suspension of a treaty's operation.[569] Insofar as these articles contain general procedural principles which are based on the obligation to act in good faith, they reflect customary international law.[570]

239. The Treaty itself confirms the relative standing of States Parties and foreign investors. Article 11 reserves disputes "*concerning the interpretation or application*" of the Treaty to inter-State dispute settlement.[571] This contrasts with the scope of article 10, which permits investor-State arbitration for "*dispute*[s] ([…]) *with respect to an investment*".[572] Read in the context of article 10, the ordinary meaning of the term "application" in article 11 includes disputes about the validity, operability or termination of the Treaty's provisions.

240. Even if Mr Bahari had any standing to claim the inoperability of article 9, however, his argument that the clause should be severed fails in multiple respects.

241. Thus, Mr Bahari relies on the Schill Opinion, which concludes that Azerbaijan's alleged "[redacted]" leads to two possible outcomes: "[redacted]", or "[redacted]" is inoperable until remedied.[573] Professor Schill does not elaborate on the legal theory behind these two outcomes; he merely states that the latter is "[redacted]".[574] Professor Schill's starting point is wrong: the designation in article 9 of a Competent Authority in the form of the MFER (and its successor entities) was a sufficient means for Azerbaijan to prescribe its consent to arbitration. There was no further requirement of "operationalisation" into domestic law, as Professor Schill suggests, for the reasons set out in PART 2III.C.1 above.

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569 *B3 Croatian Courier v Croatia*, ICSID Case No. ARB/15/5, Award (5 Apr. 2019), **CLA-251**, paras 533-534.

570 *See Gabčíkovo-Nagymaros Project*, Judgment, ICJ Rep 1997 (25 Sept. 1997), **RLA-285**, para. 109; M. Prost, "1969 Vienna Convention: Article 65 Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty" in O. Corten, P. Klein, eds, *The Vienna Conventions of the Law of Treaties: A Commentary*, April 2011, **RLA-286**, paras 5-13.

571 Treaty, Article 11(1).

572 Treaty, Article 10(1).

573 Schill Opinion, para. 216.

574 Schill Opinion, para. 217.

242. In any event, Professor Schill's two outcomes do not take into account a cardinal rule of treaty interpretation: that the Treaty must be interpreted in good faith to give effect to its terms.

243. Professor Schill relies on a passage from the dissenting opinion of Judges Spender and Fitzmaurice in the *South West Africa Cases* at the ICJ to assert that [redacted].[575] He does not set out in detail what the requirements are for such a doctrine to apply, save for relying on the following passage from the dissenting opinion:

> If the inspection of a particular clause shows that, although an instrument or institution survives as such, the clause concerned is no longer possible of performance, or can no longer be applied according to its terms (as is the case with Articles 6 and 7 of the Mandate) then the *prima facie* conclusion must be that although the instrument or institution otherwise remains intact, that particular clause is at an end.[576]

244. However, the majority and concurring decisions in the *South West Africa Cases* do not set out such a test of *prima facie* severance. To the contrary, the majority opinion found that article 7 of the Mandate for South West Africa, which provided for disputes arising "*between the Mandatory and another Member of the League of Nations*" to be submitted to the Permanent Court of International Justice, was operative, despite the fact that the League of Nations had been dissolved before the applicants brought the proceedings. The Court found that article 7 was essential to the operation and supervision of the Mandate[577] and said:

> [T]he Court sees no valid ground for departing from the conclusion reached in the Advisory Opinion of 1950 to the effect that the dissolution of the League of Nations has not rendered inoperable Article 7 of the Mandate [i.e. the compromissory clause]. Those States who were Members of the League at the time of its dissolution continue to have

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575 Schill Opinion, para. 215, citing *South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa) (Preliminary Objections)*, Joint Dissenting Opinion of Sir Percy Spender and Sir Gerald Fitzmaurice, 21 December 1962, 1962 ICJ Reports 319, 518.

576 Schill Opinion, para. 215.

577 *South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)*, Preliminary Objections, Judgment, 21 December 1962, ICJ Reports 1962, 319 **RLA-287**, at 335-338.

> the right to invoke the compulsory jurisdiction of the Court, as they have the right to do before the dissolution of the League.[578]

245. Thus, despite the formal dissolution of a named legal entity involved in the scope of the Mandatory's consent to dispute resolution, the relevant treaty provision was given effect. Similarly, the Court found that South Africa remained obliged to render annual reports concerning the Mandate to the General Assembly of the United Nations, even though the Mandate provided for such reports to be made to the League of Nations. In reaching this conclusion, the Court cited from its 1950 advisory opinion that:

> It cannot be admitted that the obligation to submit to supervision has disappeared merely because the supervisory organ has ceased to exist, when the United Nations has another international organ performing similar, though not identical supervisory functions.[579]

246. Notably, there was no formal transfer of functions or succession as between the League of Nations and the United Nations with respect to the Mandate over South West Africa. Nonetheless, the PCIJ found that the obligation to render annual reports persisted.

247. Similarly, in the present case, at all times, a successor ministry to the MFER was available to consider requests for investment protection under the Treaty. This was the effect of Azerbaijani law in the reorganisations of the MFER and the successor Ministries.[580] Professor Schill himself "[redacted]".[581] In those circumstances, article 9 cannot be described as inoperable.

248. However, even if it was inoperable (which is denied), article 9 cannot simply be severed to remove a significant and critical limitation on Azerbaijan's consent to arbitration. The analysis presented by Professor Schill as to the application of article 44 of the VCLT as "[redacted]"[582] in that regard is fundamentally wrong. Specifically, article 44 of the VCLT provides a clause can only be severed if it is "*not an essential basis of the*

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578 *South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)*, Preliminary Objections, Judgment, 21 December 1962, ICJ Reports 1962, 319 **RLA-287**, at 338.

579 *South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)*, Preliminary Objections, Judgment, 21 December 1962, ICJ Reports 1962, 319 **RLA-287**, at 333.

580 *See* Defence, Part 2(III)(C)(2).

581 Schill Opinion, para. 30.

582 Schill Opinion, para. 241.

consent of the other party or parties to be bound by the treaty as a whole".[583] The Schill Opinion relies on the BIT practice of the State Parties to conclude that:

[redacted].[584]

249. The suggestion that these conclusions can be drawn from the BIT practice, either generally or as matter of interpretation, is wrong for the reasons set above. Further and in any event, this analysis ignores the plain language of article 9 which provides in terms: "*This Agreement shall only apply to the investments approved by the competent authorities of the host Party*".[585] While article 9 goes on to specify the relevant competent authorities in each State, it is the opening part of article 9, which does not distinguish between the competent authorities of Azerbaijan and Iran, and which delineates State consent. Even on Mr Bahari's case, article 9 cannot be "severed" without severing Iran's own critical consent to the Treaty.

7. There is no waiver or estoppel in relation to article 9

250. Alternatively to severance, Mr Bahari argues that the "*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*".[586] This argument is flawed as a matter of logic and fact.

251. Professor Schill opines that the existing case law can provide useful guidance on the application of waiver in circumstances where Azerbaijan "[redacted]".[587]

583 VCLT, **C-36**, art. 44(3)(b).

584 Schill Opinion, paras 247-248.

585 Treaty, **CLA-1**, art. 9.

586 Reply, para. 851.

587 Schill Opinion, paras 263-264.

However, none of the cases he cites bear any resemblance to the facts of the present case:

(a) The treaty in *H&H v Egypt* did not contain a pre-approval requirement comparable to article 9 of the Treaty. The treaty in that case provided: "*This Treaty shall also apply to investments by nationals or companies of either Party, made prior to the entering into force of this Treaty and accepted in accordance with the respective prevailing legislation of either party*".[588] The passage relied upon by Professor Schill concerning waiver was *obiter* that the tribunal considered after concluding that the evidence, including "*the signature of the* [relevant contract] *by GHE*", which was a State-owned company, and "*the endorsement of the project at the highest level of the State*", were sufficient to meet the acceptance requirement in the treaty. Consequently, the *H&H v Egypt* tribunal's *obiter* on waiver is of no assistance to the Claimant.

(b) The facts of *Desert Line v Yemen* differ vastly from the present case. In *Desert Line*, the tribunal found that with respect to a requirement in the relevant treaty that "*an investment certificate* [be] *issued*" for an investment to qualify for protection, "[t]*he effective certification of the investment* [was] *unambiguous in a number of written communications*".[589] This included a "*mass of uncontradicted written and oral evidence*", including a memorandum written by the Prime Minister to the Ministers of Finance, Planning, and Public Works directing them to ensure the execution of the works at issue.[590]

(c) The *dicta* Professor Schill relies upon in *von Pezold v Zimbabwe* was *obiter*, and in any event bears no similarity to the present case. First, the tribunal found that the treaty's provision relating to approval requirements had been modified or added to in light of a subsequent written protocol concluded between the relevant State parties,[591] which provided: "*Investments made in accordance with the laws* [of Zimbabwe] ([…]) *shall enjoy the full protection of the*

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588 Treaty Between The United States Of America And The Arab Republic Of Egypt Concerning The Reciprocal Encouragement And Protection Of Investments dated 1986, **RLA-288**, art. II(2)(b).

589 *Desert Line v Yemen*, ICSID Case No. ARB/05/17, Award (6 Feb. 2008), **CLA-31**, para. 118.

590 *Desert Line v Yemen*, ICSID Case No. ARB/05/17, Award (6 Feb. 2008), **CLA-31**, para. 118.

591 *von Pezold and others v Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015), **CLA-117**, para. 409.

Agreement".[592] This operated to override the main treaty's requirement that protected investments must have been "*specifically approved by the competent authorities*".[593] Second, in the *obiter* concerning estoppel even if the approval clause had been applicable, the tribunal referred to the "*many informal statements of approval given by the Respondent and its organs*" and its conclusions in relation to the "*unclear*[…] *process*" concerned the fact that no specific body (or its successor) was identified as the body to give approvals.[594] No parallel evidence of statements of approval exists in this case. Moreover, a specific approving body is identified in the Treaty.

252. Waiver and estoppel have high thresholds in investment treaty jurisprudence.[595] Even if Azerbaijan failed to "*operationalize*" article 9 (which is denied), such alleged failure cannot amount to a waiver or give rise to an estoppel. All of the cases the Claimant relies upon in this regard concern specific conduct by the State with respect to the specific investment at hand. A general failure to "operationalise" article 9 would not constitute a waiver or give rise to an estoppel, which requires "*a very definite, very consistent course of conduct on the part of the State*".[596] Moreover, Professor Schill glosses over the fact that estoppel also requires the asserting party to demonstrate that they relied on such representation or course of conduct to their detriment.[597] Mr Bahari has not shown reliance (much less detrimental reliance) on any specific representation. Even accepting *arguendo* that the various actions claimed by Mr Bahari to constitute

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592 *von Pezold and others v Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015), **CLA-117**, para. 405.

593 *von Pezold and others v Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015), **CLA-117**, para. 404.

594 *von Pezold and others v Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015), **CLA-117**, para. 354; 411.

595 *Pac Rim v El Salvador*, ICSID Case No. ARB/09/12, Award (14 Oct. 2016), **RLA-289**, para. 8.51.

596 *North Sea Continental Shelf (Germany v Denmark)*, Judgment (20 Feb. 1969), ICJ Reports 1969, p 3, **RLA-290**, para. 28.

597 *See Orazul v Argentina*, ICSID Case No. ARB/19/25, Award (14 Dec. 2023), **RLA-266**, para. 507 and Schill Report, fn. 170; and A. Kulick, *About the Order of Cart and Horse, Among Other Things: Estoppel in the Jurisprudence of International Investment Arbitration Tribunals*, EJIL (2016) Vol. 27 No. 1, **RLA-291**, which merely explains that investment treaty tribunals have not consistently applied detrimental reliance, despite it being a part of the ICJ's "jurisprudence constante" (p. 111), although some of those tribunal have referred "indiscriminately to 'estoppel' in order to address legal issues that could have been tackled more properly with other often more technical and precise rules" (p. 121) and concludes that "the strict view of estoppel as applied by the ICJ is the preferable one, in my opinion" (p. 124).

approvals was proven State conduct,[598] such conduct would not rise to the standard required to establish that Azerbaijan has waived its right to raise the article 9 objection, or that it should be estopped from doing so.

253. Finally, on Mr Bahari's own case, he accepts that doctrines of waiver, estoppel or reasonableness can apply only if the investor has "*made a good faith attempt to comply*" with the relevant clause.[599] Mr Bahari, however, never made any such attempt to comply with article 9.[600]

D. Mr Bahari misunderstands and misapplies the commentary and case law in relation to the scope of MFN

254. Mr Bahari continues to assert that the FET-limited MFN in article 2(3) of the Treaty can be extended from FET to FPS, and now seeks with his Reply submission to further extend the MFN also to an obligation to provide effective means.[601] Mr Bahari gives no explanation for how the MFN extends to effective means; it is addressed only in a single paragraph of the Reply. For all of the reasons set out below, the MFN also does not extend to an obligation to provide effective means.

1. The MFN in article 2(3) is limited to FET

255. Mr Bahari has no real answer to the difficulties provided by the language of the MFN clause in article 2(3) of the Treaty. He declines to engage with the plain meaning of the word "this" in Article 2(3), which provides that:

> Each Party shall ensure fair and equitable treatment within its territory to the investments of investors of the other Party. This treatment shall not be less favourable than that accorded by each Party to investments made within its territory by its own investors or than that accorded by each Party to the investments made within its territory by investors of the most favoured nation, if this latter treatment is more favourable.[602]

256. As set out in the Defence, Azerbaijan's interpretation of the MFN in article 2(3) is that, applying the *ejusdem generis* principle and with reference to the findings in *Quasar de*

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598 *See* Defence, paras 151-157.

599 Reply, paras 812-813.

600 *See* Defence, para. 146.

601 Reply, para. 1015.

602 Treaty, **CLA-1**, art. 2(3).

Valores v Russia and *Paushok v Mongolia*, the term "[t]*his treatment*" means "*fair and equitable treatment*", and no other substantive Treaty protection.[603]

257. In his Reply, Mr Bahari argues that this interpretation is "*not only incorrect, it is misleading*" (emphasis added).[604] This unreasonable submission fails to engage at all with the case law, relying instead on the work of Professor Baetens to support his argument that "*the ejusdem generis principle enables Mr. Bahari to rely on the FPS provision contained in other treaties which share the same object and purpose*".[605] However, Mr Bahari ignores the conclusion of Professor Baetens' study, which supports Azerbaijan's interpretation: "*In absence of specific and unequivocal guidance in the treaty, a narrow interpretation of the* ejusdem generis *principle would allow interpreters to avoid outcomes which the Contracting Parties could not have reasonably intended*".[606]

2. FET and FPS cannot be elided into a single standard of treatment

258. Mr Bahari further argues that the term "treatment" must include both FET and FPS "*because they both form categories of the broader customary minimum standard, even if they are distinct*".[607] In fact, the work he cites in support of that proposition states would suggest the opposite:

> some scholars have also argued that the [FPS standard] has long formed a part of the customary international law minimum standard[…] The incorporation of both of these standards into an investment treaty requires an interpretation in accordance with the principle of effectiveness or *effet utile* that accords a distinct meaning to each. If the terms were synonymous, the inclusion of both would be otiose.[608] (emphasis added)

259. Mr Bahari belatedly relies on the Azerbaijan-Kazakhstan BIT and Azerbaijan-UK BIT to assert that the MFN in article 2(3) of the Treaty covers FPS because these third State

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603 Defence, paras 159-169.

604 Reply, para. 902.

605 Reply, para. 906.

606 F. Baetens, "Chapter 7 Ejudem Generis and Noscitur a Sociis" in J Klinger, Y Parkhomenko, et al (eds), *Between the Liens of the Vienna Convention? Canons and Other Principles of Interpretation in Public International Law* (2018), **RLA-157**, p. 158.

607 Reply, para. 907.

608 C. McLachlin, L. Shore, and M Weiniger, *International Investment Arbitration: Substantive Principles* (2017), **CLA-263**, paras 7.260-261.

treaties "*provide for a protection of fair and equitable treatment that also includes full protection and security*".[609] He relies on a passage from *Paushok v Mongolia* where the tribunal stated that "*a clause in a BIT whereby the definition of* [FET] *would be written in broader terms*[…] *would clearly be covered by the MFN clause*".[610] In that case, however, the tribunal did not assimilate distinct standards into FET. The tribunal quoted directly from a treaty with an FET "written in broader terms" to which the MFN could apply, as being one which described the FET standard as follows: "*Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment*".[611]

260. Despite his attempt to obfuscate the position, the Claimant in fact argues and agrees that FET and FPS are distinct standards.[612] The Azerbaijan-Kazakhstan BIT promises "*fair and equitable conditions and full protection and security*".[613] The Azerbaijan-UK BIT promises that investments shall "*be accorded fair and equitable treatment and shall enjoy full protection and security*".[614] The fact that FET and FPS are promised in the same sentence does not assimilate FPS into FET. Just as the promises of national treatment and MFN are distinct even when promised in the same sentence,[615] so too are the FET and FPS standards of treatment in the comparator treaties.

3. New substantive protections cannot be imported by MFN

261. Mr Bahari misreads *Hochtief*, which is authority for the proposition that new substantive standards cannot be imported by MFN. Mr Bahari again inappropriately describes Azerbaijan's reliance on the arbitral jurisprudence as "*not only incorrect, but also misleading*".[616] It is Mr Bahari's whose submissions mischaracterise the authority.

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609 Reply, para. 908.

610 *See* Reply, fn. 1237; *Sergei Paushok and ors v Mongolia*, Ad Hoc Arbitration, Award on Jurisdiction and Liability (28 Apr. 2011), **CLA-134**, para. 571.

611 *Sergei Paushok and ors v Mongolia*, Ad Hoc Arbitration, Award on Jurisdiction and Liability (28 April 2011), **CLA-134**, para. 571.

612 Statement of Claim, para. 546; Defence, para. 166; Reply, para. 907.

613 Azerbaijan-Kazakhstan BIT, **CLA 260**, art. 3(2) (emphasis added).

614 Azerbaijan-UK BIT, **CLA-261**, art. 2(3) (emphasis added).

615 *See İçkale v. Turkmenistan*, ICSID Case No. ARB/10/23, Award (8 Mar. 2016), **RLA-87** paras 326-327.

616 Reply, para. 910 (emphasis added).

262. He argues that *Hochtief v Argentina* stands for the proposition that an MFN extends "*rights pertaining to the same subject matter as the treaty which contains the clause*",[617] but Mr Bahari does not explain what he means by "*same subject matter*", and that is not what the tribunal found.

263. In *Hochtief*, the MFN was not limited to FET but was broadly worded in the following terms: "*Neither Contracting Party shall subject investments in its territory*[…] *to treatment less favourable than it accords to*[…] *investments of nationals or companies of any third State*".[618] The tribunal found that the MFN could not be used to "*create wholly new rights where none otherwise existed*". Thus, the tribunal explained that even with such a broadly worded MFN, it could not be used to import "*rights of visa-free entry for the purposes of study, given to nationals of a third State*".[619] The question, accordingly, was whether the clause the claimant sought to import was a "*distinct right (in which case it would not be brought into the Argentina-Germany BIT by the operation of the MFN clause)*" or whether it was a "*provision that concerns the treatment of investors in relation to the exercise of an existing right*[…] *(in which case the MFN clause*[…] *could operate)*".[620]

264. As to the *Ickale v Turkmenistan* case, Mr Bahari is incorrect to assert that there is "*no rule under international law*" requiring a claimant to "*identify any treatment actually granted*" to foreign investors.[621] Though the tribunal's decision in *Ickale* did centre on the treaty language linking the MFN promise to "similar situations", the absence of such language in the Treaty does not impact the analysis. As authority relied upon by the Claimant makes clear:

> Many treaties do not contain such qualifying language [i.e., a comparator such as "in like circumstances"], yet the establishment of a qualifying class for purposes of comparison is inherent in the MFN test. As a recent UNCTAD Study put it, when such language is omitted 'the Contracting Parties do not intend to dispense with the comparative

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617 Reply, para. 912.

618 *HOCHTIEF v Argentina*, ICSID Case No. ARB/07/31, Decision on Jurisdiction, 24 Oct. 2011, **RLA-158**, para. 15 (citing article 3 of the Argentina-Germany investment treaty).

619 *HOCHTIEF v Argentina,* ICSID Case No. ARB/07/31, Decision on Jurisdiction, 24 Oct. 2011, **RLA-158**, para. 81.

620 *HOCHTIEF v Argentina,* ICSID Case No. ARB/07/31, Decision on Jurisdiction, 24 Oct. 2011, **RLA-158**, para. 82.

621 Reply, paras 912, 914.

> context, as it would distort the entire sense and nature of the MFN treatment clause.' Such a class must be established with more specificity than simply 'nationals or companies' of the third State. The test presupposes that the activities engaged by the comparator, and thus the effect of the host State's treatment upon those activities, are comparable.[622]

265. In *Parkerings v Lithuania*, the applicable treaty's MFN clause did not include language linking MFN treatment to "similar situations".[623] Nonetheless, the tribunal in that case found:

> The essential condition of the violation of a *MFN* clause is the existence of a different treatment accorded to another foreign investor in a similar situation. Therefore, a comparison is necessary with an investor in like circumstances.[624]

266. Accordingly, Mr Bahari's failure to identify a class of foreign investor in a similar situation, and actual treatment granted to such investor, means his claims with respect to FPS should fail.

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622 C. McLachlan, L. Shore, and M Weiniger, *International Investment Arbitration: Substantive Principles* (2017), **CLA-263**, para. 7.311.

623 *Parkerings v Lithuania*, ICSID Case No. ARB/05/8, Award (11 Sep. 2007), **CLA-63**, para. 362 ("[I]nvestments made by investors of one contracting party in the territory of the other contracting party, as also the returns therefrom, shall be accorded treatment no less favourable than that accorded to investments made by investors of any third state").

624 *Parkerings v Lithuania*, ICSID Case No. ARB/05/8, Award (11 Sep. 2007), **CLA-63**, para. 369.

PART 3

FACTUAL BACKGROUND

267. As set out above, Mr Bahari's Reply submission is exceedingly light in its factual rebuttal of Azerbaijan's Defence. The vast majority of is spent providing what he himself describes as an "*elongated narrative*"[625] of the conduct of private parties in the context of local Court proceedings. These private matters, which are wholly irrelevant to his Treaty case, now somehow form the basis of it with respect to his investments other than Caspian Fish, and despite his (Azerbaijan submits untruthful) claims that he commenced the Treaty claim with no knowledge of their existence.

268. This strategy is an avoidance tactic. Instead of engaging with the factual matters put in issue by Azerbaijan's Defence, Mr Bahari resorts to making outlandish and desperate claims, such as "*Azerbaijan's defense*[…] *reveals a State apparatus prepared to go to great lengths to protect its President and one of its seniormost Ministers*",[626] or "*Azerbaijan's conduct of impunity permeates*[…] *its factual defense on the merits*".[627] These baseless and hyperbolic claims only serve to underscore the weakness of Mr Bahari's factual case in these proceedings. Put simply, Mr Bahari cannot make out his case on the facts.

I. NOTHING IN MR BAHARI'S SUBMISSIONS EVIDENCE "SPECIFIC EXPERTISE AS A SERIAL ENTREPRENEUR AND INVESTOR"

269. Mr Bahari claims that the purpose of detailing his alleged historic business ventures in Iran is to show that "*he clearly had the experience, drive, and financial means to establish and build the investments in Azerbaijan*".[628] Unfortunately for Mr Bahari, the opposite is true. While he claims that his "*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*",[629] they in fact do not. As discussed below, there is no evidence he had any expertise in connection with the modest business of Kaveh Tabriz. His participation in

625 Reply, para. 100.

626 Reply, para. 16.

627 Reply, title to Part I.II.

628 Reply, para. 117.

629 Reply, para. 103.

Coolak Shargh was short lived, and he left it owing a significant debt (which to this date remains unpaid).

270. Most critically however, and in any event, neither business of Kaveh Tabriz or Coolak Shargh had anything to do with fish. As explained in the evidence of Azerbaijan's witnesses discussed below, Mr Bahari's inability to recognise this was the fatal flaw in the design and construction of Caspian Fish. Ironically, that Mr Bahari believed (and still believes to this day) that the same technology used for the packaging soft drinks or toothpaste can be simply transposed to the processing and packaging of fish only underscores his naivety and lack of experience.

271. Importantly, while Mr Bahari claims that Coolak Shargh and Kaveh Tabriz show he had "*financial means*", there *no* evidence that Mr Bahari's previous ventures were significant enough to generate the kind of profit that would give rise to dividends for Mr Bahari (notably, as a minority shareholder in both companies by the time he claims to have started Caspian Fish)[630] to the tune of the USD 84 million he claims to have spent.[631] As discussed further below, Mr Bahari submits less than a handful of documents showing nothing more than an unexceptional level of "turnover" in a bank account, or open letters of credit. These documents do not translate to profits. Nor does Mr Bahari claim to have used any loans to fund his alleged investments. He even insists (contrary to the plain documentary record) that he did not sell his shares in Coolak Shargh,[632] which may have netted him with some cash. Yet, he claims that he "[redacted]".[633] There is zero support for that statement.

272. Mr Bahari continues that "*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*".[634] This conceited

630 Mr Bahari had a 33.3% interest in Kaveh Tabriz (Extract from Official Gazette of the Islamic Republic of Iran, Notice of Amendments on 6 April 1984 dated 24 April 1984, **R-82**, numbered paras 1 and 2), and, by June 1997, less than 50% of Coolak Shargh (Extract from Official Gazette of the Islamic Republic of Iran, Notice of Decisions on 9 June 1997 dated 23 June 1997, **R-83**).

631 First Bahari Statement, paras 38 (USD 56 million on Caspian Fish) and 25 (USD 27-28 million on Coolak Baku and Shuvalan Sugar).

632 Third Bahari Statement, para. 10.

633 First Bahari Statement, para. 25.

634 Reply, para. 104.

submission is simply untrue. As discussed in the Defence and further below, Mr Bahari failed the Coolak Baku joint venture. Coolak Baku failed to produce soft drinks at all, and never managed to produce any beer for commercial purposes.[635] Mr Bahari effectively abandoned it, first by relinquishing its control to Mr Malik Aliyev,[636] and then by leaving Azerbaijan altogether. Shuvalan Sugar continues to be a vaguely defined non-entity that was not any kind of separate qualifying investment. As for Caspian Fish, the prospect of it having any success was *undermined* by Mr Bahari's involvement. In short, Mr Bahari did not bring money to these ventures – he spent excessively (and fraudulently) and brought losses.

273. As if his claims can be proved by flipping the burden to Azerbaijan, Mr Bahari further asserts that "*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*".[637] Again, this is fantasy. Coca-Cola was already established and active in the Azerbaijani market when Mr Bahari claims to have established Coolak Baku. As for Caspian Fish, as set out below, it is apparent that there were others with much more relevant experience and expertise in the Azerbaijani fishing industry. As far as Azerbaijan understands from the evidentiary record, the (evidently ill-advised) reason Mr Bahari was brought into Caspian Fish was to manage its construction and operation and be the outward "foreign" face of the project, and not because he was considered to have any particular financial resource or expertise in the fishing industry.

A. Kaveh Tabriz was a modest business for which Mr Bahari had no specific expertise

274. Mr Bahari maintains that he was "*was* [the] *majority owner and at all times managed and controlled Kaveh Tabriz*".[638] He fails completely, however, to address Azerbaijan's Defence in relation to these matters.[639] Mr Bahari was *never* the majority owner of Kaveh Tabriz. He owned 50%, and then 33.3%. He was never its managing director, and it is apparent that he was not the one who brought the industry expertise.[640]

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635 *See* Defence, paras 218-219.

636 *See* Defence, paras 212-213.

637 Reply, para. 104.

638 Reply, para. 105.

639 *See* Defence, para. 185(a).

640 *See* Defence, para. 185(a).

This is unsurprising, given Mr Bahari was only 21 years old when he co-founded Kaveh Tabriz with Dr Rahim Memarvar.[641] The submissions in the Defence were made based on the public reporting in the Official Gazette of Iran. Mr Bahari's response to that documentary evidence is that he "[redacted]".[642] His evidence is evasive and meaningless in the light of the reporting in the Official Gazette.

275. The documentary evidence Mr Bahari submits of Kaveh Tabriz's turnover and the status of its letters of credit further does not support Mr Bahari's claims of "*extreme*[] *success*[]"[643] or "*resources Mr. Bahari had throughout the 1990s*":[644]

(a) Mr Bahari claims that a 28 April 1991 letter from Bank Mellat to the Ministry of Commerce in Iran shows that Kaveh Tabriz had "*a positive balance of 152,581,694 Iranian Rials (US$ 2,260,470)*".[645] This is, of course, just cash in the bank. It is not Mr Bahari's money, nor does it show Kaveh Tabriz's profits. In fact, it shows nothing, given Mr Bahari claims to have began his investments in Azerbaijan over five years later, in 1996.[646] Notably, in 1993 the Iranian Rial suffered a significant devaluation against the US dollar.[647] By 1996, the same IRR 152.6 million in the Kaveh Tabriz bank account in April 1991 were worth approximately USD 87,000.[648] Likewise, the "*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)*" would have amounted to approximately USD 75,000.[649]

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641 *See* Extract from Official Gazette of the Islamic Republic of Iran, Notice of Establishment on 15 March 1982 dated 6 May 1982, **R-80**, *cf.* Mr Bahari's passport at **C-72**, showing his date of birth as 10 November 1960. Dr Memarvar, who Azerbaijan understands is now deceased, is understood to have been the qualified person with knowledge and expertise: *see* Defence, para. 185(a); Dr Memarvar's profile as a Professional Doctor of Pharmacy as listed on the Medical Council of the Islamic Republic of Iran, **R-451**.

642 Third Bahari Statement, para. 4.

643 Reply, para. 105.

644 Reply, para. 108.

645 Reply, para. 107(a); Letter from Bank Mellat to the Ministry of Commerce of Iran dated 28 April 1991, **C-286**.

646 Statement of Claim, para. 52.

647 *See* IMF Working Paper 03/26 prepared by Oya Celasun dated January 2003, **R-363**, paras 3-4.

648 Official Exchange Rate of Iranian Rial per USD from 1993 to 2000, World Bank Group DataBank, **R-417**.

649 Official Exchange Rate of Iranian Rial per USD from 1993 to 2000, World Bank Group DataBank, **R-417**.

These are very modest sums, and certainly not evidence that Kaveh Tabriz was extremely successful.

(b) In any event, according to Mr Bahari, just a year later in September 1992, Kaveh Tabriz was able to open a letter of credit at Saderat Bank "*totaling 487,000,000 Deutch Marks (US$ 312,179,487)*".[650] Mr Bahari relies on a non-contemporaneous letter dated 23 April 2024 alleged to be from Bank Saderat and addressed to "[redacted]".[651] This letter and its contents are suspect for numerous reasons.

(c) First, the suggestion that Kaveh Tabriz (which apparently had a small turnover with other commercial banks at the time) was able to procure a letter of credit in an amount of what, in today's money, would be more than *half a billion dollars* is totally implausible.[652] Nothing contemporaneous on the record indicates that Kaveh Tabriz had the kind of security available to support such a letter of credit.[653] Azerbaijan moreover notes that it is apparent from public reporting that there has been a practice in Iran of "[redacted]".[654]

(d) Second, the letter was sent in response to a letter from a Mr Vahab Monafi Farid, ostensibly on Mr Bahari's behalf. Mr Bahari has not produced the initial letter from Mr Farid in these proceedings, or explained the relevance or involvement of Mr Farid, including why he required Mr Farid to procure the letter instead of simply obtaining it himself.[655] Notably, the Earnest Exhibit referred to a witness

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650 Reply, para. 106.

651 Letter from Bank Saaderat regarding Mr. Bahari's Letters of Credit dated 23 April 2024, **C-287**.

652 Official Exchange Rate of Deutsche Mark per USD in 1992, World Bank Group DataBank, **R-418**; US Consumer Price Index in 1992 and 2024, International Monetary Fund, World Economic Outlook Database, **R-419**.

653 The company had a total share capital of USD 12,000: *see* Extract from Official Gazette of the Islamic Republic of Iran, Notice of Amendments on 6 April 1984 dated 24 April 1984, **R-82**, numbered paras 1 and 2.

654 NPR Press report, *Iran's Largest Banks Swindled Out Of $2.6 Billion*, dated 27 October 2011, **R-364**.

655 According to a Certificate of Managerial Ability and Business Cooperation from Manafi Trading dated 26 March 2024, **C-386**, Mr Farid is part of the management of "Manafi Trading Company" which allegedly had a power of attorney for Kaveh Tabriz and Coolak Shargh dated 1993. This Certificate, which is not contemporaneous, not mentioned in Mr Bahari's evidence, and not supported by any

statement to be given by Mr Farid on Mr Bahari's behalf in these proceedings; evidently, for whatever reason, Mr Farid ultimately declined to participate.[656] The circumstances of the procurement and preparation of the Bank Saderat letter are accordingly left unexplained, which only raises more questions in the light of the suspect nature of its contents.

B. Mr Bahari exited Coolak Shargh in 1999 leaving behind a significant debt which he never repaid

276. Mr Bahari similarly labels Coolak Shargh as "*extremely successful*",[657] providing photographs of the Vice President of Iran attending the opening ceremony[658] and an invoice from HAM to Coolak Shargh (the **HAM Invoice**).[659] The relevance of these documents is unclear. Insofar as he relies on them to demonstrate Coolak Shargh's success, they are no evidence of that:

(a) A Vice President's attendance at an opening ceremony does not make that company a success, just like the President of Azerbaijan's attendance at the Caspian Fish opening ceremony did not make Caspian Fish a success.

(b) Mr Bahari's claim that the HAM Invoice is evidence that he "*imported into Iran modern machinery and equipment*" is not supported by the document itself. The HAM Invoice says nothing about the quality or age of the equipment being shipped; indeed, it says very little at all about the equipment, other than it is [redacted] Mr Bahari has not provided the underlying contract or the proforma invoice, which might provide more detail about the quality and nature of the equipment. Insofar as Mr Bahari relies on the document to suggest that it is somehow demonstrative of a pattern

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evidence of Mr Farid, is nonsensical. It claims, for example, that it attaches 121 sheets of official documentation to support its claims that Mr Bahari spent USD 27.6 million on equipment for Kaveh Tabriz and Coolak Shargh, but none of those attachments are exhibited to Mr Bahari's Reply. Indeed, the Reply submission only refers to the Certificate once, in a footnote, and provides no elaboration or explanation of its contents. The Certificate can be given no weight in the circumstances; indeed, it seems likely that this letter was prepared for a purpose that was discarded shortly before the Reply submission was filed.

656 Earnest Exhibit dated 24 May 2024, **C-380**, para. 9. *See* letter from Chang Law to Quinn Emanuel dated 9 July 2024, **R-241**, p. 2 ("[redacted]").

657 Reply, para. 109.

658 Newspaper pictures of the Coolak Shargh grand opening, **C-289**.

659 Invoice from HAM Chemie to Coolak Shargh dated 3 March 1993, **C-385**.

of conduct, the HAM Invoice is of course not evidence that just because Mr Bahari imported into Iran certain equipment, he must also have imported it into Azerbaijan.

277. Mr Bahari also relies on three documents from Azerbaijan's document production, which he claims show that "*Azerbaijan was fully aware that Mr. Bahari was a successful entrepreneur in Iran and, in particular, that Coolak Shargh was a substantial company*".[660] These documents, namely (i) a letter confirming that Mr Bahari held a management position in Coolak Shargh in July 1995, (ii) a letter confirming Coolak Shargh was "active" dated February 1995, and (iii) a letter from Bank Refah Kargaran dated February 1996 confirming the "[redacted]" in Coolak Shargh's account in the past year, do not demonstrate any such thing, however.[661] Mr Bahari's position as a managing director does not translate to "[redacted]", nor does the fact that Coolak Shargh had a "turnover" (not even a positive account balance) in a bank in 1996. Indeed, Mr Bahari's own evidence is that by 1998, Coolak Shargh was "[redacted]", which "[redacted]".[662] Further and in any event, Mr Bahari does not particularise how any alleged knowledge on the part of Azerbaijan of Coolak Baku's [redacted]" is relevant to his claims in these proceedings. It is not.

278. As to the shareholders in Coolak Shargh, Mr Bahari expects his testimony to be accepted over the Official Gazette of Iran and Coolak Shargh's publicly filed financial statements. He describes these documents as "*incorrect and unreliable*", but he does not (and cannot explain) why they would be so. In support of his claim that "*Refah Chain Stores did not purchase a 50% shareholding in Coolak Shargh in 1997 for approximately USD 4,200*",[663] Mr Bahari exhibits a document which he titles "[redacted]", but a simple review of this document makes clear that it shows nothing of the sort.[664]

660 Reply, para. 115.

661 Letter from the Iranian Embassy in the Republic of Azerbaijan dated 13 July 1995, **C-275**; Letter from Bank Refah Kargaran to the Embassy of Republic of Azerbaijan dated 27 February 1996, **C-276**.

662 First Bahari Statement, para. 14.

663 Reply, para. 113.

664 Handwritten note on Refah Chain Stores notepaper dated 16 February 1997, **C-273**.

279. The first page of this document, which is dated 16 February 1997, states that the author confirms "[redacted]".[665] First of all, Mr Hamid Reza Emtenani is not Mr Bahari. Mr Emtenani was a member of the board of Coolak Shargh from November 1997.[666] Second, the document is confirming that Refah Chain Stores received cheques *to pay* it a sum of approximately USD 1.7 million. It is certainly not evidence that Mr Bahari "[redacted]".[667] It is not a document which shows any agreement *to receive* money from Refah Chain Stores in connection with Refah Chain Stores' purchase of shares. The document does not specify what the "[redacted]" is, but it appears that this document relates to cheques made out on Coolak Shargh's account (and presented or signed by Mr Emtenani) to purchase something (likely goods) from Refah Chain Stores.

280. The second page of the document appears to contain a completely unrelated note dated 18 September 1997, and confirms that "[redacted]".[668] Again, this document is a record of cheques made out *to* Azerbaijan Development Investment Company (**ADIC**), and not received from it in connection with any purchase of shares. The document does not specify the account in which these cheques are made out, only that they were delivered by Mr Bahari. ADIC ultimately ended up purchasing 40% of Coolak Shargh's shares for USD 5,000 in April 1999.[669]

281. Ultimately, even if these documents could somehow support Mr Bahari's claims that he considered, but never finalised, a sale in 1997 (which is denied), they would not evidence that Refah Chain Stores did not purchase 50% of Coolak Shargh for USD

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665 Respondent's translation of handwritten note on Refah Chain Stores notepaper dated 16 February 1997, **R-365**, p. 1.

666 Extract from Official Gazette of the Islamic Republic of Iran, Notice of Decisions on 25 December 1997 dated 8 February 1998, **R-354**.

667 Third Bahari Statement, para. 10.

668 Respondent's translation of handwritten note on Refah Chain Stores notepaper dated 16 February 1997, **R-365**, p. 2.

669 Extract from Official Gazette of the Islamic Republic of Iran, Notice of Decisions on 18 March 1999 dated 19 April 1999, **R-175**.

4,200 in June 1997, which is what the Official Gazette records evidence.[670] Indeed, Refah Chain Stores' entry into Coolak Shargh's share capital was not, in any event, by way of a transfer of shares from another shareholder, but by the issue of new shares in the company.[671]

282. Nor would these documents support Mr Bahari's claim that he did not sell his entire 48% shareholding in Coolak Shargh to ADIC on 21 December 1999, which is what the Official Gazette records show.[672]

283. Finally, Mr Bahari does nothing to address the financial statements which demonstrate that on his exit, and as far as Azerbaijan understands, to this day, he owes Coolak Shargh a total of approximately USD 4 million.[673] He simply denies it in a handful of words: "[redacted]".[674] His bare denial, coupled with his refusal to engage with Coolak Shargh's financial statements, does nothing to rebut the documentary record and in the face of a USD 4 million outstanding debt, it beggars belief that Mr Bahari had the *USD 84 million* he claims to have invested across Caspian Fish, Coolak Baku and Shuvalan Sugar.

II. COOLAK BAKU WAS A FAILED JOINT VENTURE THAT MR BAHARI REMAINS A SHAREHOLDER IN TO THIS DAY

A. Mr Bahari has failed to evidence his alleged investments in Coolak Baku and Shuvalan Sugar

1. Mr Bahari is unable to prove that he invested in Coolak Baku

284. Mr Bahari takes an excited point that "*Azerbaijan must and does concede*" that "*Mr. Bahari was the sole investor who brought the capital and know-how in Coolak Baku*".[675] As a matter of fact, this assertion is wrong. Contrary to Mr Bahari's

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670 Extract from Official Gazette of the Islamic Republic of Iran, Notice of Decisions on 9 June 1997 dated 23 June 1997, **R-83**.

671 Extract from Official Gazette of the Islamic Republic of Iran, Notice of Decisions on 9 June 1997 dated 23 June 1997, **R-83**.

672 See Extract from Official Gazette of the Islamic Republic of Iran, Notice on Transfer of Portion in the Company's Share Capital on 22 December 1999 dated 15 January 2000, **R-84**.

673 Coolak Shargh Financial Statements for the year ending September 2013, dated 21 December 2013, **R-161**; Coolak Shargh Financial Statements for the year ending September 2016, dated 19 December 2016, **R-162**.

674 Third Bahari Statement, para. 10.

675 Reply, para. 118.

suggestion, and as he well knows,[676] Azerbaijan has never accepted that Mr Bahari was the "sole investor" in Coolak Baku. The Defence pleads that "*the documentary record indicates that the funds used to purchase equipment were not his own funds*", citing to the letter from ASFAN to Mr Bahari dated 2 July 1998 which complains that "[redacted]".[677]

285. Mr Bahari appears to confuse the existence of an obligation under the 1998 Agreement "[redacted][678] with his fulfilment of it.[679] The fact that it was *intended* that Mr Bahari would contribute financially to the Coolak Baku joint venture is of course not proof that he *in fact* contributed. As set out in the Defence and further below, the evidentiary record shows that he did not.[680]

286. Mr Bahari also relies on "*Azerbaijan's document production*", which he claims "*shows that the Government of Azerbaijan performed extensive due diligence on Mr. Bahari prior to his entry into Azerbaijan as a foreign investor*".[681] It is entirely unclear, and Mr Bahari does not particularise, why he considers these documents "*confirm*" that "*Mr. Bahari was the sole investor in Coolak Baku*".[682] They do not. In any event, the extent of that production was a letter from the Iranian authorities, confirming that Mr Bahari was a manager of Coolak Shargh, and a letter from Bank Refah Karagan, confirming Coolak Shargh's turnover.[683] This is hardly "*extensive*" due diligence. In

676 *See* Reply, para. 132(e), where Mr Bahari describes Azerbaijan's denial that Mr Bahari himself was the source of funds as "an unfounded and careless statement".

677 Defence, para. 107; Letter from ASFAN to Mr Bahari dated 2 July 1998, **R-26**.

678 1998 Agreement, **C-1**, cl. 3.2 (error in translation provided by Claimant, which refers to clause "32").

679 *See* Reply, para. 125.

680 *See* Defence, paras 207-208 and further below.

681 Reply, para. 124.

682 Reply, para. 124.

683 *See* Reply, footnote 105, referring to Letter from the Iranian Embassy dated 13 July 1995, **C-275** and Letter from Bank Refah Kargaran to the Embassy of Republic of Azerbaijan dated 27 February 1996, **C-276**.

any event, the submission of these types of documents was a routine part of establishing a joint venture in Azerbaijan where one of the participants was foreign.[684]

287. Moreover, Mr Bahari's submissions are confused. As Mr Bahari acknowledges,[685] these documents were submitted with the application to register Coolak Baku under the terms of the 1996 Agreement and its 1996 Charter, that is, an agreement between *Coolak Shargh* – not Mr Bahari – and ASFAN. They show nothing about Mr Bahari as a personal investor. Indeed, Mr Bahari positively denies all involvement of Coolak Shargh in the Coolak Baku joint venture.[686] Even on his own case, therefore, these cannot be documents which concerned due diligence into him.

288. Finally, in support of his claim that he was the "sole investor", Mr Bahari relies on "[redacted]".[687] This (non contemporaneous) letter is evidence of nothing. Without explanation, Mr Gazai does not appear as a witness for Mr Bahari. The letter itself does not confirm how much Mr Bahari allegedly invested into these projects. Even if it had, it is a letter created for the purposes of these proceedings and written by a person who will not testify. It is certainly not proof of Mr Bahari's investment.

289. There are three other reasons Mr Bahari's suggestion that "*there could be no alternate source of capital*" than himself is hyperbole divorced from reality:[688]

(a) First, the other person who is understood to have installed equipment at Coolak Baku was Mr Heydarov's representative, Malik Aliyev, who Mr Bahari says nothing about.[689] The documentary record evidences that Mr M Aliyev joined Coolak Baku as a general director in or around 1999, at Mr Bahari's

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684 Law on the Protection of Foreign Investments, Law No. 57 of 1992, **C-212**, art. 18.

685 *See* Reply, footnote 105, noting that these documents were disclosed in response to a request for documents [redacted]

686 *See* Third Bahari Statement, para. 11.

687 Reply, para. 124; Letter from Ambassador Ahad Ghazaei to Diamond McCarthy LLP, dated 31 March 2024, **C-279**.

688 Reply, para. 132(e).

689 *See* Defence, para. 213.

invitation.[690] Mr H Aliyev understood this arrangement to have arisen on account of debts Mr Bahari owed.[691] Mr H Aliyev specifically recalls that during Mr Bahari's time, Mr M Aliyev installed some of the equipment at Coolak Baku, although it was not high quality.[692]

(b) Second, it is also evident that ASFAN itself was advancing sums towards the cost of relevant equipment. In a letter to Mr Bahari dated 2 July 1998, ASFAN complained that it had given Mr Bahari "[redacted]".[693] It appears that the sums used to purchase the brewing equipment were not advanced directly by Mr Bahari but "[redacted]" and ASFAN subsequently sought the return of the funds it had advanced.[694]

(c) Third, the documentary record further shows that Mr Bahari left Coolak Baku with significant debts, suggesting once again that Mr Bahari did not in fact pay for the supplies he arranged, and instead left them on Coolak Baku's books. At least the following significant debts to suppliers had not been paid by Mr Bahari by the time he left Azerbaijan: (i) USD 1.145 million was owed to a foreign company in relation to the sale of sugar; (ii) USD 55,200 was owed for jars imported from Turkey; and (iii) USD 15,900 was owed for construction material imported from Iran.[695]

2. The unchallenged documentary record evidences that Mr Bahari did not make the investments in Coolak Baku that he promised

290. Numerous contemporaneous documents are on the record which have not been challenged or otherwise explained by Mr Bahari and which evidence that, contrary to his assertions, Mr Bahari failed to make the investment he claims.

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690 Letter from ASFAN Ltd to Mr Bahari dated 20 September 1999, **R-28**; Invoice and Act of Transfer and Acceptance from M Aliyev to Mr Bahari dated 10 October 2000, **R-106**.

691 First H Aliyev Statement, para. 16.

692 H Aliyev Statement, para. 18.

693 Letter from ASFAN Ltd to Mr Bahari dated 2 July 1998, **R-26**.

694 Letter from ASFAN Ltd to Mr Bahari dated 2 July 1998, **R-26**.

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

291. Starting with the 1996 Agreement between ASFAN and Coolak Shargh to establish the Coolak Baku joint venture, Mr Bahari's only response is that "[redacted]".[696] That evidence is obtuse, given it must be clear to Mr Bahari that the reason Azerbaijan is alleging Coolak Shargh was the initial investor is because that is what the documents show, such as the 1996 Agreement,[697] the 1996 Addendum,[698] the application to register Coolak Baku,[699] the Charter of Coolak Baku,[700] the Certificate of Registration of Coolak Baku,[701] and the letter from the Ministry of Justice to the Founders of Coolak Baku.[702]

292. Mr Bahari has not challenged *any* of these documents. He obtained inspection of the 1996 Agreement and the application to register Coolak Baku,[703] but neither document is even mentioned by his handwriting expert, presumably because she considered that there were no grounds for challenging their authenticity. Mr Bahari did not even seek inspection of the other documents. In short, Mr Bahari has no challenge to the authenticity of the documentary record and it is time for him to drop the pretence that Coolak Shargh was not involved in Coolak Baku.

293. Likely the real reason Mr Bahari is claiming that Coolak Shargh was not involved in Coolak Baku is because the documentary record implicates Mr Bahari in a fraud in connection with Coolak Shargh's participation, to which Mr Bahari offers no response at all. Thus, in a letter to Mr Bahari dated 22 July 1998, ASFAN complained as follows:

[redacted]

696 Third Bahari Statement, para. 11.

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

698 Addendum to the 1996 Agreement dated 28 March 1996, **R-101**.

699 Application by Coolak Shargh to the Ministry of Finance for the registration of Coolak Baku enclosing Coolak Baku Charter dated 7 March 1996, **R-99**.

700 Coolak Baku Charter dated 7 March 1996, **R-99**.

701 Certificate of Registration for Coolak Baku dated 15 March 1996, **R-100**.

702 Letter from Ministry of Justice to Coolak Baku's founders dated 1 July 1999, **R-158**.

703 *See* Annex 1 to the Tribunal's letter dated 28 May 2024, Request Nos. 20 and 21.

[redacted].[704]

294. Mr Bahari claims that against his "*extensive documentation*" (discussed below), Azerbaijan relies on "*five alleged letters between ASFAN and Mr. Bahari to assert various alleged delays and underinvestment in Coolak Baku*"[705] (the **ASFAN Letters**) dating between 1997 and 1999, which he describes as a "*series of snapshots in time*".[706] In making this submission, Mr Bahari overlooks the Coolak Baku and ASFAN minutes of meetings dated in 2002 and 2004 respectively, which support the content of the ASFAN Letters and are evidence that the issues described in them were not "*temporary*" as Mr Bahari submits,[707] but persisted throughout the entire period of Mr Bahari's active involvement in Coolak Baku.[708]

295. In any event, Mr Bahari's evidence in respect of the ASFAN Letters is very careful. He has never challenged their authenticity or openly disputed their factual accuracy (to the contrary, he appears to accept that "*at most,* [they] *show possible delays, as sometimes occurs in complex construction projects*").[709] He describes them as "*alleged letters*",[710] but never particularises why they are "alleged".

296. Instead, he claims that he does not "*recall or recognize the alleged ASFAN correspondence*" and claims he [redacted]".[711] But *he himself signed* a

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704 Letter from ASFAN to Mr Bahari dated 22 July 1998, **R-27**.

705 Reply, para. 130.

706 Reply, para. 137.

707 *See* Defence, paras 196, 199, 207; Letter from ASFAN Ltd to Mr Bahari dated 8 January 1997, **R-24**. Letter from ASFAN to Mr Bahari dated 22 December 1997, **R-25**; Letter from ASFAN Ltd to Mr Bahari dated 20 September 1999, **R-28**; Letter from ASFAN Ltd to Mr Bahari dated 2 July 1999, **R-26**; Letter from ASFAN Ltd to Mr Bahari dated 28 July 1998, **R-27**.

708 *See* Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29** and Minutes of Meeting of ASFAN's founders dated 27 April 2004, **R-30**.

709 Reply, para. 132(c).

710 Reply, para. 130.

711 Reply, paras 138(b) and (c); Third Bahari Statement, para. 12(c).

document which he accepts as containing his genuine signature in this arbitration[712] – a power of attorney granted to Mr Zeynalov (the **Zeynalov PoA**) – which is in Cyrillic.[713] Mr Zeynalov's recollection is that Mr Bahari was indeed able to read Cyrillic, which was the script formally used in Azerbaijan until the early 2000s, and that Mr Bahari's wife at that time was helping him to learn how to speak Russian.[714] Mr Bahari is not being truthful in this evidence.

297. The sum of Mr Bahari's criticism of the ASFAN Letters is that they are "*contradicted by Mr. Suleymanov's testimony that soft drink production began in 1997 and beer production began in 1998*",[715] but he gives no reason why Mr Suleymanov's unreliable testimony which purports to recall with precision specific years of production from a quarter century ago should be accepted over an essentially unchallenged documentary record. It should not. Mr Bahari also weakly claims that "*it is unclear what ASFAN's complaints can be, given that the 1996 JVA put no specific timeframe to complete the project*",[716] but this submission does not address the fact of the delay and the underinvestment (nor is it relevant to any matter in dispute in these proceedings). He describes ASFAN's complaint that Mr Bahari invested in Coolak Baku "*20 times less than what was indicated*" as "*implausible*",[717] but he does not say why. Presumably he relies on the fact that the letter contradicts his case as to the amount invested, but this is mere assertion and not analytical submission.

298. The *pièce de résistance* of his submissions on the ASFAN Letters is that they "*were part of an overall scheme to strip Coolak Baku of its assets*".[718] For multiple reasons, this submission is absurd. Leaving aside the fact that there is absolutely no evidence of any kind of "scheme", again, Mr Bahari does not openly deny the *truth* of the matters set out in the ASFAN Letters. What, then, Mr Bahari means by this submission is a mystery that Azerbaijan is forced to surmise, like much of his pleading. Insofar as the allegation is that ASFAN somehow planned to use these letters to its advantage, Mr

712 Third Bahari Statement, para. 15.

713 Power of Attorney issued by Mr Bahari to Mr Zeynalov dated 17 December 1999, **R-38**.

714 Second Zeynalov Statement, para. 25.

715 Reply, para. 137(a).

716 Reply, para. 137(b).

717 Reply, para. 137(c).

718 Reply, para. 120.

Bahari appears to forget that the ASFAN Proceedings (discussed below, and which Azerbaijan understands Mr Bahari alleges were the vehicle through which ASFAN's "scheme" was effected) took place *some 10 years later*. His submission that these letters were a part of decade-old pre-planned "scheme" is speculative and baseless.

299. As a last-ditch attempt to dismiss the significance of the ASFAN Letters, Mr Bahari asserts that they are "*largely irrelevant to Mr. Bahari's claim for Coolak Baku, which relates to Amounts Invested*".[719] This is an odd submission, given the letters are evidence of Mr Bahari's *lack* of investment, as well as directly contradict Mr Bahari's repeated assertions that evidence of his investment is that Coolak Baku was "*completed and operational*" under his management.[720] It obviously was not, as discussed further below.

300. In response to the evidence that Mr Bahari failed to fulfil his obligations under the Coolak Baku joint venture, Mr Bahari relies on Mr Suleymanov's testimony to "*attest*[] *to the quality of the facilities and the product*",[721] although neither he nor Mr Suleymanov explain why – on their own evidence – a [redacted] untrained "[redacted]" with no "*s*[redacted][722] would be able to identify that the equipment at Coolak Baku "*was high quality and used the latest technology*".[723] Mr Suleymanov's evidence is directly contradicted by the documentary record, which describes the canning equipment as "[redacted]",[724] the beer production equipment as "[redacted]", "[redacted]",[725] and "[redacted]",[726] as well as the evidence of Mr Zeynalov, who confirms that the soft drink "[redacted]

719 Reply, para. 136.

720 Reply, paras 70, 121, 132(c);

721 Reply, para. 127; Suleymanov Statement, para. 15.

722 Suleymanov Statement, para. 7.

723 Reply, para. 127(d)

724 Letter from ASFAN to Mr Bahari dated 20 September 1999, **R-28**.

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

726 Letter from ASFAN to Mr Bahari dated 2 July 1998, **R-26** ("[redacted]").

[redacted]"[727] and the beer machinery was [redacted]".[728] Mr Suleymanov's evidence cannot be accepted over this record.

301. Mr Suleymanov further seems to have an extraordinary memory for not just dates, but figures as well. He claims that "[redacted]" and that "[redacted][729] Mr Bahari, the alleged investor behind the project, was unable to recall this level of detail in any of his evidence. Mr Zeynalov, who helped manage Mr Bahari's affairs in Coolak Baku,[730] and Mr H Aliyev, whose father was a co-founder of ASFAN, also could not recall this level of detail. Yet, somehow, Mr Suleymanov, the 17 year old unskilled labourer,[731] is able to recall the precise number of tanks and copper stills, as well as their weights. This cannot be from genuine recollection.

302. Indeed, it appears that in support of these assertions Mr Suleymanov relies on two videos of the Coolak Baku facilities, which Mr Bahari claims are "*contemporaneous*", and somewhat ironically "*encourage*[s]" the Tribunal to review them, when it is apparent that Mr Bahari himself did not look at them very closely.[732] Contrary to the misleading impression given by Mr Suleymanov that the videos are from Mr Bahari's time,[733] as Messrs Zeynalov and Aliyev explain, these videos are in fact from 2004 or 2005.[734] That much is obvious, given the "Attila" branded boxes of beer that are

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727 First Zeynalov Statement, para. 15.

728 First Zeynalov Statement, para. 17.

729 Suleymanov Statement, para. 11.

730 First Zeynalov Statement, para. 13.

731 Suleymanov Statement, para. 7.

732 Reply, para. 128.

733 Suleymanov Statement, para. 12 [redacted]").

734 Videos of Safaraliyeva Production Facilities, undated, **C-377** and **C-378**. *See* Second H Aliyev Statement, para. 7; Second Zeynalov Statement, para. 13(b). This is also consistent with Mr Suleymanov's border records, which show that he was in Azerbaijan for a continuous period between December 2003 and June 2005: *see* Letter from the State Border Service to the State Service on Property Issues dated 28 October 2024, **R-440**.

identifiable in the footage.[735] The Attila trademark was only received in June 2004,[736] after which bottled production commenced,[737] and Attila beer had nothing to do with Coolak Baku.[738]

303. Mr Zeynalov further recalls, consistently with the documentary record,[739] that the bottling line that can be seen in this video was not installed until around 2004, and was paid for by ASFAN.[740] As can be seen from a video time-stamped in April 2003 of the Safaraliyeva Production Facilities exhibited to Mr Zeynalov's second witness statement, construction and installation of machinery was being undertaken at the Safaraliyeva Production Facilities as late as April 2003.[741]

304. The remaining allegations in the Suleymanov Statement are equally contradicted by the documentary record and cannot be given any weight at all. Soft drink production did not "*beg*[in] *in 1997 and once up was continuous*"[742] – there was no soft drink production *at all*;[743] beer production did not "*beg*[in] *in 1998*"[744] – it was attempted, but failed;[745] and the suggestion that Mr Bahari engaged Chartabi Contracting[746] is

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735 Video of Safaraliyeva Production Facilities 1, **C-377**, at 2:55; Video of Safaraliyeva Production Facilities 2, **C-378,** at 0:04-0:14; 1:38-1:40; and 1:57-2:00.

736 Trademark Search Report dated 25 September 2024, **R-243**.

737 Second Zeynalov Statement, para. 13(b); Second H Aliyev Statement, para. 7.

738 First H Aliyev Statement, para. 28; Second H Aliyev Statement, para. 7.

739 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29** ("[redacted]

740 Second Zeynalov Statement, para. 13(b).

741 Video of Coolak Baku provided by Mr Zeynalov, filmed in April 2003, **R-292**, at 10:30.

742 Reply, para. 127(c); Suleymanov Statement, para. 12.

743 Letter from ASFAN to Mr Bahari dated 20 September 1999, **R-28** ("to this day, due to outdated canning equipment neither juice nor canned beer is produced, and no sugar is produced either"); Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29** ("[…] the JV was expected to commence production of soft drinks by operating at full capacity envisaged under the project. The works were subsequently delayed for two years for various excuses and were never executed followed by his further decision at the end of 1997 to replace soft drinks production with beer production."); Minutes of Meeting of ASFAN's founders dated 27 April 2004, **R-30** ("[…] the intended production of soft drinks and juices did not commence."); *see also* First Zeynalov Statement, para. 15; First H Aliyev Statement, para. 12.

744 Reply, para. 127(c); Suleymanov Statement, para. 13.

745 Minutes of Meeting of ASFAN's founders dated 27 April 2004, **R-30** ("[…] [Mr Bahari] only installed equipment for the production of draught beer at a low capacity using the earnings made from using the production area for trade purposes. As a result of material breach of the agreement committed by M. Khalilpourbahari, the JV operation during all these years ended up with a loss."); First Zeynalov Statement, para. 18; First H Aliyev Statement, para. 12.

746 Reply, para. 127(b); Suleymanov Statement, para. 15.

simply Mr Suleymanov peddling Mr Bahari's lies – there was never any major refurbishment work carried out by Mr Bahari at the Safaraliyeva Production Facilities.[747]

305. In sum, Mr Bahari's assertion that "[t]*he 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*"[748] is nonsense. The evidentiary record demonstrates that the facility was never completed (or operational) and is certainly not evidence of a USD 28 million investment.

3. USD 28 million was not invested in Coolak Baku

306. Mr Bahari claims that the documents Azerbaijan relies on "*do*[] *not rebut or even discuss Mr. Bahari's documentation of the construction works and the purchase and installation of the machinery*".[749] These are incredible submissions, which seem ignorant of the documentary record (including the various minutes of meeting after Mr Bahari left Baku), as well as the content of Azerbaijan's pleading. Mr Bahari's "documentation" has been extensively addressed by Azerbaijan.[750]

307. Since the filing of the Defence, Azerbaijan has discovered additional contemporaneous documents in the Economic Court file relating to the ASFAN Proceedings (discussed below), which further corroborate the content of the documents submitted with the Defence.

308. At a meeting of Coolak Baku dated 20 May 2002, with a single agenda item: "[redacted]", Mr A Aliyev set out his serious concerns with Mr Bahari's operation of the joint venture in the following terms:

[redacted]

747 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29** ("[redacted]"); Minutes of Meeting of ASFAN's founders dated 27 April 2004, **R-30** ("[redacted]"); First Zeynalov Statement, para. 17; First H Aliyev Statement, para. 12.

748 Reply, para. 129.

749 Reply, para. 137.

750 *See* Defence, paras 105-109, 196-199, 207-208, 212-216; First Shi Report, section 2B and Appendix 3.

[redacted].[751]

309. On 14 April 2003, the board of Coolak Baku met to discuss certain assets and inventories that had been removed from Coolak Baku by Mr Bahari. These minutes are notable for several reasons:

(a) First, they confirm that Mr A Aliyev not only sent letters to Mr Bahari, but in fact had telephone conversations with him. Mr Aliyev explained that: "[redacted]".[752] This contemporaneous record flies in the face of Mr Bahari's assertion that "[redacted]".[753] Not only was Mr A Aliyev writing to him, but he was also calling Mr Bahari to relay his concerns.

(b) Second, they explain that the assets and inventory taken by Mr Bahari had been brought to the charter fund as part of Mr Bahari's share: "[redacted]

751 Coolak Baku meeting minutes dated 20 May 2002, **R-366**.

752 Minutes of Meeting of Management Board of Coolak Baku dated 14 April 2003, **R-360**.

753 Third Bahari Statement, para. 12(c).

[redacted]".[754] Thus, despite Mr Bahari's wholly unsubstantiated claims 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*",[755] this document indicates that he did not. Indeed, the 1998 Agreement on which Mr Bahari relies provides for Mr Bahari [redacted]".[756] Mr Bahari is double counting.

(c) Third, Mr Zeynalov confirmed at this meeting that the equipment which had been taken from Coolak Baku had been taken because "[redacted]".[757] This confirmation corroborates Azerbaijan's understanding that Mr Bahari was already planning other projects in at least Iran at the time he should have been focusing on Coolak Baku.[758]

310. The following day, the fixed assets, inventory and materials that had been taken by Mr Bahari from the joint venture were itemised at a balance value totalling approximately AZM 509.4 million (approximately USD 100,000) and evaluated after depreciation at AZN 450 million (approximately USD 90,000).[759]

311. The documentary record indicates that as of 20 September 1999, Mr Bahari's "[redacted]", i.e. USD 1.4 million.[760] Mr Bahari describes this as a "*stunning conclusion*" based on a "*thin record*".[761] At this point, it becomes difficult to follow Mr Bahari's submissions, which are made as if he did not read Azerbaijan's Defence:

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754 Minutes of Meeting of Management Board of Coolak Baku dated 14 April 2003, **R-360**.

755 Reply, para. 126.

756 1998 Agreement, **C-1**, cl. 3.2 (error in translation provided by Claimant, which refers to clause "32").

757 Minutes of Meeting of Management Board of Coolak Baku dated 14 April 2003, **R-360**.

758 *See* Defence, paras 206 and 207(c); Letter from ASFAN Ltd to Mr Bahari dated 2 July 1998, **R-26** (Mr Bahari [redacted]" and the "[redacted]").

759 See Act of Coolak Baku dated 15 April 2003, **R-391**.

760 Letter from ASFAN Ltd to Mr Bahari dated 20 September 1999, **R-28**.

761 Reply, para. 131.

(a) He claims that Azerbaijan "c*ompletely ignores Mr. Bahari's detailed documentation of over $21 million in Amounts Invested, as analyzed and tabulated by Secretariat*",[762] when that is obviously untrue. The First Shi Report broke down Secretariat's analysis in detail to conclude that investment costs in the range of USD 134,577 to USD 846,822 were supported by sufficient evidence,[763] which is maintained in the Second Shi Report.[764]

(b) He asserts again that "*Azerbaijan – does not and cannot deny that Coolak Baku was a completed, fully operational facility and business that produced soft drinks and beers*",[765] when Azerbaijan denies *precisely* that. Turning the evidence on its head, Mr Bahari goes onto claim that the ASFAN Letters "*are contradicted by the fact that Coolak Baku was indeed completed and operational*".[766] This is nonsensical. The ASFAN letters (in addition to the meeting minutes, the witness testimony and the submissions made in the Economic Court) are evidence that the facility was neither completed or operational, which contradicts Mr Bahari's assertion that it was.

(c) Relying on the ASFAN Letters, Mr Bahari states that "*Azerbaijan also produces documentation that repeatedly reference this $28 million cost. In short, everyone is agreed that this was the cost for the completed facilities*".[767] But *nobody* is "agreed" that this was the cost of the completed facilities. Mr Bahari appears not to have read paragraph 198 of the Defence, which sets out Azerbaijan's understanding of these documents that USD 28 million "*is not indicative of an amount that was in fact spent by Coolak Shargh*", but "*was the amount Coolak Shargh had promised it would spend, but in fact did not*".[768]

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762 Reply, para. 132(a).

763 First Shi Report, section 2 and Appendix 3.

764 Second Shi Report, section 2D and Appendix 3.

765 Reply, para. 132(b).

766 Reply, para. 132(c).

767 Reply, para. 121, referring to Defence, para. 196; Letter from ASFAN Ltd to Mr Bahari dated 8 January 1997, **R-24**; Letter from ASFAN to Mr Bahari dated 22 December 1997, **R-25**; and Letter from ASFAN to Mr Bahari dated 22 December 1997, **R-26**.

768 Defence, para. 198 (emphasis added).

312. As to Mr Bahari's claim he invested USD 28 million, his best evidence of it is that he "*is adamant that he invested $28 million in constructing Coolak Baku and Shuvalan Sugar*".[769] As with many of the submissions that are based on his flimsy testimony, this assertion is hopeless. (And notably, despite how "*adamant*" he is, Mr Bahari fails to give a response or explanation for the fact that in a public interview in 2017, he claimed that only USD 6.6 million was spent on Coolak Baku.[770])

313. In support of his claims to have invested USD 28 million, Mr Bahari relies on the evidence of his valuation experts, who review documents provided by Mr Bahari to conclude that he paid approximately USD 15 million towards Coolak Baku (and USD 6.4 million on Shuvalan Sugar, discussed below).[771] Secretariat's conclusion in relation to Coolak Baku is based on the following items, which are simply unsupported by the evidence:

(a) Capital contributions, Mr Bahari claims, of USD 2 million under the terms of the 1999 Agreement.[772] Secretariat take the approach that it is "[redacted]" that Mr Bahari's unsubstantiated testimony on this point is true.[773] For the reasons set out at paragraph 309(b) above, this assessment contradicts the terms of the 1999 Agreement itself, as well as other documents on the record which indicate that Mr Bahari contributed to the charter capital by contributing equipment.

(b) The Purported Chartabi Contract in relation to Coolak Baku.[774] For all of the reasons set out above, this backdated contract can be given no weight at all.[775] Azerbaijan addresses Chartabi Contracting, as well as the Purported Cheque and the non-contemporaneous letters from various members of the Chartabi family, in further detail in the context of Caspian Fish below.

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769 Reply, para. 118.

770 Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68**.

771 Second Secretariat Report, Table 18 (p. 107).

772 Statement of Claim, para. 45; Bahari Statement, para. 21;

773 Second Secretariat Report, para. 7.35.

774 *See* First Secretariat Report, para. 5.38; Purported Chartabi Contract in relation to Coolak Baku backdated to 16 May 1996, **C-84**; Second Secretariat Report, paras 7.22-7.31.

775 *See* PART 2I.A.1 above.

(c) Various documents produced by Mr Bahari which Secretariat claim evidence that Mr Bahari paid USD 8.8 million for equipment and machinery.[776] The two most significant sums relate to what Secretariat describe as a "[redacted]" for USD 4.7 million (the **DFT Equipment**), and "[redacted]" for USD 3 million (the **Nissei Equipment**).[777] For the reasons set out in the Shi Reports and the Defence, neither document is reliable evidence of an investment by Mr Bahari into Coolak Baku.[778] As to the DFT Equipment, Mr Bahari has given no response to the concerns raised in the Defence that DFT was simply Mr Bahari's German company with no apparent experience in the trade of specialised drink equipment.[779] Nor can Mr Bahari explain why, given on his case "*soft drink production began in 1997*",[780] the DFT Equipment invoice is dated November 1998 and the Nissei Equipment documents (which are stated to be for the [redacted]) are dated February and March 1999.

314. Finally, Mr Bahari attempts to cast suspicion on Azerbaijan's document production, claiming that the Tribunal "*granted (or Azerbaijan affirmatively agreed to produce) 12 of Claimant's document requests relating to Coolak Baku. Azerbaijan produced just one document. A number of these document requests were expected to shed light capital expenditures, operations, and revenues*".[781] This submission is misleading, given only two of those 12 requests could have had any impact on Coolak Baku's financials, that is, Request No. 141 for "[redacted]" and Request No. 143 for [redacted]".[782] Azerbaijan had already provided the import-export documentation for Coolak Baku in its possession, however, which was exhibited to the

776 First Secretariat Report, para. 5.44; Second Secretariat Report, paras 7.92-7.116.

777 Second Secretariat Report, para. 7.92; Page of a proforma invoice issued by DFT to Mirinda dated 3 November 1998, **SEC-74**; Nissei ASB letter dated 21 March 1999, **SEC-70**; and handwritten notes on Nissei ASB letterhead dated 17 February 1999, **SEC-71**.

778 First Secretariat Report, Appendix 3; Second Secretariat Report, Appendix 3.

779 Defence, para. 94(c), para. 109. Respondent corrects errata in the Defence at para. 94(c), as DFT was not in fact struck off in 1999, but in 2010.

780 Reply, para. 127(c).

781 Reply, para. 135.

782 *See* Annex 1 to Tribunal's Procedural Order No. 6 dated 9 April 2024.

Defence.[783] In any event, Mr Bahari does not ask the Tribunal to draw any inferences from the lack of document production, and that is because there are none that can be drawn.

4. "Shuvalan Sugar" did not exist and Mr Bahari made no investment in it

315. It remains unclear what exactly Mr Bahari intends the Tribunal to understand Shuvalan Sugar to be. It is common ground that it was not a company. Mr Bahari appears to have rejected Azerbaijan's suggestion that it was a "*potential business activity under Coolak Baku*".[784] He describes it as a "*sugar refinery*",[785] but has nothing to back up that assertion. As set out in the Defence, the contemporaneous documentary record, including the terms of the 1998 Agreement and the ASFAN Letters, indicate that:

(a) ARHAD (a sister company of ASFAN) owned a number of buildings in Shuvalan, including the Shuvalan Warehouse,[786] where Mr Bahari was permitted to process sugar into lump sugar from time to time,[787] and which arrangement appears as though it was ultimately meant to be for Coolak Baku's benefit.[788]

(b) In January 1998, it was contemplated that ARHAD may become a shareholder in Coolak Baku, in which case it would contribute to Coolak Baku's share capital by transferring the Shuvalan Warehouse to Mr Bahari.[789] That situation never, however, materialised.

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783 Reference Certificates on the export-import operations of Coolak Baku Co for the years 1996 to 1999, **R-73** to **R-76**.

784 Reply, para. 145.

785 Reply, para. 146.

786 ARHAD Certificate of Ownership dated 1 May 1997, **R-42**.

787 *See* First H Aliyev Statement, para. 21 ("[redacted]").

788 *See* Letter from ASFAN to Mr Bahari dated 2 July 1998, **R-26** ("[redacted]"); Letter from ASFAN to Mr Bahari dated 2 September 1999, **R-28** ("[redacted]").

789 Agreement between Mr Bahari and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 23 January 1998, **C-1**, clause 3.1; *see* Defence, para. 203.

(c) It appears that in Mr Bahari's use of the Shuvalan Warehouse, he made certain representations to ASFAN about the level of sugar production that could be achieved at this building. These aspirations were never, however, met. In a letter dated 2 July 1998, ASFAN complained that [redacted]".[790] That letter also indicated that by the time it was written, Mr Bahari had made a further promise to [redacted]".[791] More than a year later, in September 1999, ASFAN complained that Mr Bahari had "[redacted]" but, to date, "[redacted]".[792] From this it should be inferred that the facility still had not been built.

316. Rather than address *any* of this evidence, Mr Bahari stubbornly claims that "[t]*he Chartabi Contract for Shuvalan Sugar is* prima facie *evidence that Mr. Bahari constructed a sugar refinery there*".[793] For the reasons set out elsewhere in this brief, this non-contemporaneous, back dated document, about whose provenance Mr Bahari positively misled the Tribunal, is a creation of Mr Bahari's imagination and can be given no weight at all.[794]

317. Mr Bahari belatedly introduces another item of non-contemporaneous "evidence" with his Reply, a letter dated 7 January 2019 from "Ahan Sanat" which purports to verify, 20 years after the fact, that in September 1998, it sold USD 2.7 million worth of sugar-making equipment to Mr Bahari.[795] This letter has very little probative value. Nothing is said about Ahan Sanat or its business. The date of the alleged sale of sugar-making equipment contradicts Mr Bahari's testimony that "[redacted]" – that is, the machinery was bought nearly two years after Mr

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790 Letter from ASFAN to Mr Bahari dated 2 July 1998, **R-26**.

791 Letter from ASFAN to Mr Bahari dated 2 July 1998, **R-26**.

792 Letter from ASFAN to Mr Bahari dated 2 September 1999, **R-28**.

793 Reply, para. 146.

794 *See* PART 2I.A.1 above.

795 Respondent's translation of Ahan Sanat Certificate of Purchase for Works Performed dated 7 January 2019, **R-297**. Mr Bahari's translation inaccurately transcribes the Iranian Shamsi calendar date of 1397/10/17 into the Gregorian calendar date of 1 July 2019, when it is in fact 7 January 2019. (Notably, Mr Bahari transcribes other Shamsi calendar dates accurately, *see* Statement of Claim, footnote 74.)

Bahari claims to have started sugar production.[796] Most interestingly, however, the Ahan Sanat letter is dated on exactly the same date as the non-contemporaneous letter from Ahad Chartabi purporting to verify that Mr Bahari had paid the sums under the Purported Chartabi Contracts,[797] and (we now know) was prepared at the same time as the Purported Chartabi Contracts. It is to be inferred that the reason Mr Bahari did not produce this document in the first round because he was concerned that it would arouse suspicion.[798]

318. Even if, however, the Ahan Sanat letter could evidence that Mr Bahari spent some money towards the purchase of equipment in connection with the Shuvalan Warehouse (which is denied), that would not evidence that Mr Bahari owned or constructed a "sugar refinery" in Azerbaijan. At most, it would show that, consistent with the ASFAN Letters, he was seeking to increase sugar production at the Shuvalan Warehouse as promised to ASFAN.

319. While the evidence of the witnesses contradicts each other, the evidence of Azerbaijan's significantly more reliable witnesses should be preferred:

(a) Instead of addressing the documents, Mr Bahari chooses to provide an inordinate and largely irrelevant amount of information about "[redacted]" in his responsive witness statement, going so far as to exhibit a stock photo of "*rock candy sticks*" which he claims were made with leftover sugar.[799] He introduces brand new claims that the sugar produced at Shulvan Sugar was exported abroad.[800] None of these assertions are supported by documents.

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796 First Bahari Statement, para. 31.

797 Letter from Chartabi Contracting dated 7 January 2019, **C-86**.

798 While Mr Bahari has provided no information about Ahan Sanat or its Managing Director Bagher Khaibani who signed the letter, Azerbaijan notes that a Mr Rahim Khaibani was a co-founder of Coolak Shargh (*see*: Extract from Official Gazette of the Islamic Republic of Iran, Notice of Establishment on 4 March 1991 dated 19 March 1991, **R-352**, numbered para. 5), who in fact was none other than Ahad Chartabi's son-in-law (*see*: Obituary Notice for Mr Ahad Chartabi dated 23 September 2021, **R-70**). One possible explanation, for example, is that these Khaibanis are related and it was decided that it would look odd to have all the evidence being connected to one source, Ahad Chartabi.

799 Reply, paras 148-149; Third Bahari Statement, paras 24-25.

800 Third Bahari Statement, para. 26.

(b) Mr Suleymanov claims that Shuvalan Sugar was "[redacted]" with "[redacted]" at which he performed welding work.[801] This evidence is contradicted by Mr Zeynalov's testimony, which is that Mr Suleymanov was "[redacted]", and that no building or restoration work was ever carried out there.[802] Mr H Aliyev concurs, describing the equipment used as "[redacted]",[803] and the Shuvalan Warehouse itself as too small to "[redacted]".[804] While Mr Aliyev does not know what Mr Bahari did with the sugar he processed there, Mr Aliyev's production was certainly not exported.[805]

320. Finally, Mr Bahari (but notably not his valuation experts) relies on a freight forwarding document dated 16 January 1997 from Shahriar Corp,[806] which he claims is "*an invoice for sugar freight for 20 lots of raw sugar, at 20 tons per lot (400 tons total)*".[807] Mr Bahari claims that this must be an invoice in connection with Shuvalan Sugar because "[r]*aw sugar would not have been used at Coolak Baku, as the soft drinks required granulated (processed) sugar*".[808] What Mr Bahari fails to identify, however, is where this invoice confirms that the sugar imported is raw. Indeed, the Coolak Baku import-export records in the same year show numerous imports of *granulated* sugar being delivered to Coolak Baku in 20 ton lots.[809] The Shahriar Corp invoice most likely relates to any 20 of them. Notably, the documentary record evinces that even these imports of sugar were not used to make soft drinks, but were sold by Mr Bahari at a loss to Coolak Baku.[810]

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801 Reply, para. 151; Suleymanov Statement, paras 24-25.

802 First Zeynalov Statement, para. 14; Second Zeynalov Statement, para. 13(f); *see also* First H Aliyev Statement, para. 12.

803 Second H Aliyev Statement, para. 9.

804 Second H Aliyev Statement, para. 13.

805 Second H Aliyev Statement, para. 13.

806 Shahriar Corp. Freight Forwarding document dated 16 January 1997, **C-87**.

807 Reply, para. 152.

808 Reply, para. 152(a).

809 Coolak Baku Import-Export Records for 1997, **R-74**.

810 Letter from ASFAN to Mr Bahari dated 2 July 1998, **R-26** ("[redacted]."); Minutes of

5. The relevance of the allegations against Mr H Aliyev is unclear, but in any event are inaccurate

321. Mr Bahari complains that "*ASFAN and Habib Aliyev breached their obligation to Mr. Bahari under the 1998 JVA transfer a 4 hectare land plot to Mr. Bahari*"[811] and that Mr H Aliyev's subsequent purchase of a plot of land where the Shuvalan Warehouse once stood "*from ARHAD*[…] *likely*[…] *amounted to self-dealing*".[812] Mr Bahari never explains the relevance of these allegations to his Treaty claim, and there is none. Azerbaijan accordingly deals with these aimless submissions briefly.

322. First, as set out above, Mr Bahari has misread the terms of the 1998 Agreement. There was no obligation on ASFAN (or ARHAD) to transfer anything to Mr Bahari.[813] Second, Mr H Aliyev did not purchase the land from ARHAD. Mr Bahari deliberately ignores the clear explanation set out in Mr H Aliyev's first statement that the land was purchased from local residents who privatised it.[814] There is no substance whatsoever to Mr Bahari's allegations, and his conclusion that "[t]*his almost certainly formed part of an overall scheme of fraud perpetrated by ASFAN on Mr. Bahari*" is baseless and desperate.[815]

B. No aspect of the ASFAN Proceedings allowing ASFAN to exit the JV was "sham"

323. In view of Mr Bahari's inevitable pivot in respect of Coolak Baku from expropriation to breach of FET, and presumably in recognition of the difficulties he faces with the private nature of the conduct in issue, he is now forced to rely on the proceedings in the Economic Court relating to ASFAN's withdrawal from Coolak Baku (the **ASFAN Proceedings**) to assert a breach of Treaty.

324. The difficulty for him is that the ASFAN Proceedings reveal no misconduct on the part of the Azerbaijani courts that could possibly give rise to a breach of Treaty. Mr Bahari

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Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29** ("[redacted]").

811 Reply, para. 153.

812 Reply, para. 156.

813 *See* Defence, para. 203.

814 First H Aliyev Statement, para. 30.

815 Reply, para. 156.

therefore devises an awkward and strained theory that the Economic Court "*enabled*" "*sham proceedings*" to allow "*ASFAN* [to] *strip*[] *Coolak Baku of its assets*",[816] hoping that this will come off alongside the "*wider context*"[817] that, he alleges, "*Azerbaijan's judiciary is widely reported to be corrupt*".[818] His optimism is misplaced and his submissions are farcical.

325. Nothing in the factual record supports his conjecture that there ASFAN had a "scheme", much less any suggestion of the Azerbaijani Court's participation in it. For the reasons set out above, generalised and unproven allegation of misconduct unrelated to the facts of these proceedings are not evidence, nor form a basis from which the Tribunal can draw any kind of inference.[819]

1. Mr Zeynalov maintained a relationship with Mr Bahari after his departure and until 2002

326. Mr Bahari argues that Mr Zeynalov:

> 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).[820]

327. These submissions are, by necessity, broadly and vaguely made. When considered in any detail, they are nonsensical. The Coolak Baku minutes of meeting upon which Mr Bahari relies to assert that Mr Zeynalov fraudulently used the Zeynalov PoA date from 2002.[821] They have nothing to do with *ASFAN's* decision to exit the joint venture which led to the ASFAN Proceedings, made two years later in 2004.[822] Contrary to Mr Bahari's suggestion, the Coolak Baku minutes from November 2002 have nothing to

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816 Reply, para. 159.

817 Reply, para. 164.

818 Reply, title to Part II.II.B(2).

819 *See* PART 2II.A.2 above.

820 Reply, para. 165.

821 Minutes of the Meeting of the Shareholders of Coolak Baku, 18 June 2002, **R-104**; Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**.

822 Minutes of ASFAN LTD founders meeting dated 27 April 2004, **R-30**.

do with "*strip*[ping] *Coolak Baku of all of its assets*".[823] As discussed above, those minutes concerned *Mr Bahari's* removal of assets from the joint venture for use in another project, which were valued (at USD 100,000) by Coolak Baku to reduce his share in the charter capital proportionately.

328. In short, ASFAN's decision to exit the joint venture that led to the ASFAN Proceedings, which is the basis of Mr Bahari's entire FET claim,[824] had nothing to do with the Coolak Baku minutes of 2002 at which Mr Zeynalov acted as Mr Bahari's representative. Indeed, Mr Bahari was never a member of ASFAN at all, and Mr Zeynalov did not and could not have represented him in relation to any decision made by ASFAN.

329. The above notwithstanding, Azerbaijan addresses Mr Bahari's factual allegations in relation to this alleged scheme in the following paragraphs.

330. As to the allegation that Mr Zeynalov engaged in "*fraudulent conduct*"[825] because the Coolak Baku minutes from 2002 describe Mr Zeynalov as Mr Bahari's "authorised representative",[826] when the Zeynalov PoA had been revoked in December 2000:[827]

(a) In his first witness statement, Mr Zeynalov openly acknowledged the fact that the Zeynalov PoA had been revoked[828] (in contrast to Mr Bahari's first witness statement, which failed to mention the Zeynalov PoA at all). It is unclear on what basis Bahari therefore alleges that Mr Zeynalov's witness statement tries to "*paper*[] *over Mr. Zeynalov's clear excess of authority and fraudulent behavior*".[829] That submission is nonsense.

(b) While Mr Zeynalov did not prepare the Coolak Baku minutes that are on the record,[830] it is likely that he was described as Mr Bahari's representative because he was one of the few people remaining in Baku who was still in contact with

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823 Reply, para. 170.

824 Reply, para. 165.

825 Reply, para. 165.

826 Reply, paras 166-168; Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**.

827 Reply, para. 167; Revocation of Rasim Zeynalov Power of Attorney dated 19 December 2000, **C-297**.

828 First Zeynalov Statement, para. 31.

829 Reply, para. 168.

830 Second Zeynalov Statement, para. 32.

Mr Bahari, and everyone knew that to be the case.[831] Mr Zeynalov visited Mr Bahari in Dubai throughout the course of 2002,[832] and he arranged for Mr Bahari's carpets to be shipped to him in Dubai in October that year.[833] It was only after 2002 that Mr Zeynalov stopped acting as Mr Bahari's representative.[834]

(c) While Mr Bahari claims that if Mr Zeynalov had acted as Mr Bahari's authorized representative, "*he would have been expected to participate in the* [ASFAN Proceedings] *on Mr. Bahari's behalf*",[835] this submission ignores the fact that Mr Zeynalov explained in his first statement that he stopped acting as such after 2002[836] (which is notably consistent with the documentary record, as the Coolak Baku minutes post-dating 2002 no longer describe Mr Zeynalov as acting as Mr Bahari's representative after 2002).[837]

(d) Mr Bahari does not address his post-departure relationship with Mr Zeynalov in his responsive statement at all. Instead, the Reply submission blithely claims that "*Mr. Zeynalov's statement that he told Mr. Bahari about ASFAN's exit (after the fact) is also a plain lie*".[838] This accusation, which is based on nothing other than Mr Bahari's unreliable testimony, is inappropriate and untrue. Even Mr Suleymanov claims that he was told by Mr Zeynalov that Mr Bahari continued to have an interest in Coolak Baku: "[redacted]

831 Second Zeynalov Statement, paras 29, 32.

832 Second Zeynalov Statement, para. 31. Mr Zeynalov's recollection is consistent with his border records which show his travel to Dubai several times in 2002: *see* Letter from State Border Service to the SSPI dated 28 October 2024, **R-434**.

833 *See* First Zeynalov Statement, para. 50; Protection Certificate granted by the Ministry of Culture for the period 26 July to 26 October 2002, **R-36**.

834 First Zeynalov Statement, para. 31; Second Zeynalov Statement, para. 29.

835 Reply, para. 171.

836 First Zeynalov Statement, para. 31.

837 *See* Minutes of Coolak Baku Management Board dated 14 April 2003, **R-360**.

838 Reply, para. 171.

[redacted]".[839] Mr Zeynalov affirms that he indeed conveyed the same thing to Mr Bahari.[840]

331. Second, even if Mr Zeynalov had wrongly relied on the revoked Zeynalov PoA (which is denied), Mr Bahari does not explain how that leads him to conclude that "*ASFAN*[…] *initiated a plot to strip Coolak Baku of all of its assets*" (emphasis added).[841] There is no suggestion that ASFAN was made aware of the revocation of the Zeynalov PoA (to the contrary, the meeting minutes suggest that it was not so aware). To the extent Mr Zeynalov had no actual authority to represent Mr Bahari in those meetings, that is no fault of ASFAN and Mr Bahari does not explain how it could be.

332. Indeed, one is left wondering what Azerbaijan has to do with any of this alleged scheme at all. In passing, Mr Bahari faintly suggests that "[t]*he presumption is that Mr. Pashayev was aware of this scheme*",[842] but he does not particularise what he intends by this reference (and, in any event, there is no evidence to suggest any kind of "scheme"). The alleged knowledge of a 20% shareholder in ASFAN of an alleged "*plot to strip Coolak Baku of all of its assets*",[843] even if true, could not somehow amount to a breach of Treaty by Azerbaijan.

333. Finally, Mr Bahari's repeated suggestion that this "scheme" involved a plot to strip "*all*" of Coolak Baku's assets is illogical. The documentary record evidences that Coolak Baku had significant *debts* and was a failing enterprise.[844] Mr Bahari had already stripped out at least USD 100,000 of equipment and material from the premises. As discussed in further detail below, the only thing ASFAN sought to do by bringing the ASFAN Proceedings was to withdraw from the joint venture. The consequence of this was that ASFAN would get the property it contributed back. As noted in the minutes of Coolak Baku's meeting in April 2004, ASFAN considered that the return of

839 Suleymanov Statement, para. 17.

840 Second Zeynalov Statement, para. 31.

841 Reply, para. 170.

842 Reply, para. 170.

843 Reply, para. 170.

844 *See*, e.g. Minutes of ASFAN LTD founders meeting dated 27 April 2004, **R-30** ("[redacted]").

the assets and property contributed by ASFAN would only [redacted] the "[redacted]".[845]

2. Mr Bahari was given notice of the proceedings in accordance with Azerbaijani law

334. The crux of Mr Bahari's complaint in respect of the ASFAN Proceedings appears to be that he did not receive notice of the proceedings. The Court file, however, demonstrates myriad attempts to serve Mr Bahari at various addresses in and outside the jurisdiction; obviously, his whereabouts were unknown and the Court therefore was required to proceed in the ordinary way, which was to try to draw the proceedings to his attention as best it could. It did so. Mr Bahari has no complaint that the Court deliberately sought to exclude him from the process or failed to even attempt to deliver documents to him. Instead, the complaint appears to be that the Court was unable to locate him in fact. That is not a procedural defect. Almost all systems of justice provide for deemed service in circumstances where the defendant is unable to be located; indeed, if they did not, any defendant would be able to avoid a civil proceeding by refusing to provide their whereabouts.

335. There is another important point which puts the entire discussion of the ASFAN proceedings in their proper context. Mr Bahari was not the subject of any claim brought by ASFAN, and he was not a necessary counterparty in respect of the application made and relief sought. That is, he had no basis under for objecting to ASFAN's claims under Azerbaijani law. Even if he was not notified of the proceedings (which is denied), he cannot show that if he had been notified, he would have had the ability to contest ASFAN's claims.

336. Azerbaijan has no knowledge as to why ASFAN decided to name Mr Bahari as a defendant. The decision was apparently made on Mr Allahyarov's advice; perhaps ASFAN had some lingering irritation with Mr Bahari after everything and wanted to have a claim against him. Whatever the rationale, Mr Bahari had no role to play as a defendant.

337. ASFAN's claim sought three forms of relief, namely (i) to void Coolak Baku's registration certificate, (ii) an order that ASFAN be released from Coolak Baku's debts

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[845] Minutes of ASFAN LTD founders meeting dated 27 April 2004, **R-30**.

and (iii) an order that ASFAN exit as a founder of Coolak Baku.[846] From an objective review, Mr Bahari's participation was not required for the purposes of the relief sought. As to the first limb, it is not clear what ASFAN meant by seeking to void Coolak Baku's registration certificate. If the intention was to liquidate Coolak Baku, then the process set out in the Civil Code should have been followed, which in no circumstances requires a claim to be brought against the other shareholders in the company.[847] As to the second limb, ASFAN never specified on what basis it (as a shareholder) was liable for the debts of Coolak Baku. Shareholders of limited liability companies like Coolak Baku are not liable for their debts.[848] Unsurprisingly, the Court ultimately rejected both of these aspects of ASFAN's claim.

338. The only part of ASFAN's application which was granted was that made under article 95 of the Civil Code of Azerbaijan, which provides that "[a] *founder of an LLC can exit the LLC at any time, irrespective of consent from the other founders*".[849] In other words, the Civil Code gives participants in limited liability companies an unfettered right to exit the company at any time, and ASFAN did not need Mr Bahari's consent to withdraw from Coolak Baku. Mr Bahari was therefore an unnecessary party to the claim, and had no rights in relation to ASFAN's application to withdraw.

339. Without prejudice to the above, the following paragraphs of this brief address Mr Bahari's submissions about the alleged failure to provide him notice of the ASFAN Proceedings.

340. As a preliminary point, Mr Bahari attempts to make something out of the fact that the Defence states that "*Mr Bahari was notified at an address in Iran with ASFAN's application of 19 January 2005*",[850] claiming that Azerbaijan "*conflates (purposefully or not)* [ASFAN's] *application for a claim and the court's decision to accept that application*".[851] There is nothing in this point, which appears to be a deliberate misreading of the Defence. At the time of writing the Defence, Azerbaijan did not have

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846 ASFAN Application to the Court received by the Court on 19 January 2005, **R-367**.

847 Civil Code of the Republic of Azerbaijan, **CLA-222**, arts. 59-62.

848 Civil Code of the Republic of Azerbaijan, **CLA-222**, arts. 52.2 and 87.1.

849 Civil Code of the Republic of Azerbaijan, **RLA-292**, art. 95.

850 Defence, para. 224.

851 Reply, para. 192, *see also* para. 175.

a copy of ASFAN's underlying application. The Court's decision to accept the application indeed refers to ASFAN's application and therefore does notify Mr Bahari of the same.[852]

341. Azerbaijan has since obtained copies of all documents on the Economic Court's file dating between 10 January 2005 and 24 April 2006,[853] and which contains ASFAN's application for a claim.[854] Mr Bahari states that there is a "*separate service of process requirement*" for this application under article 150 of the Civil Procedure Code (**CPC**),[855] and that "*Azerbaijan incorrectly states that Mr. Bahari was given proper service of the application*".[856] This submission is misconceived.

342. First, contrary to Mr Bahari's paraphrasing, the Defence does not state that Mr Bahari "*was given proper service of the application*",[857] as Azerbaijan did not have a copy of the application at the time of the Defence. It states only that, based on the Court's decision to accept the application, Mr Bahari was "*notified at an address in Iran with ASFAN's application*", as set out above.[858] Second, while Mr Bahari alleges there is a separate service of process requirement, he does not specify what it is. In fact, under article 150 of the CPC, an applicant is required to attach to its application a "*document certifying delivery of copies of claim petition and attachments thereto to other persons participating in case*",[859] and in the event it fails to do so, the judge shall reject the application.[860] Thus, the "service of process" requirement in relation to the application is one imposed on the *applicant*, not the Court.

343. The Economic Court file demonstrates that ASFAN indeed enclosed a document (courier delivery notification) certifying delivery of the application to Mr Bahari with its application,[861] and the Court accordingly had no reason to reject the application.

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852 Service of Process summons sheet from Judge to Mr Bahari dated 27 January 2005, **R-107**.

853 ASFAN Proceedings Economic Court file between 10 January 2005 and 24 April 2006, **R-368**.

854 ASFAN Application to the Court dated 10 January 2005, **R-367**.

855 Reply, para. 175.

856 Reply, para. 175.

857 Reply, para. 175.

858 Defence, para. 224.

859 CPC, **C-298**, art. 150.0.4.

860 CPC, **C-298**, art. 152.1.4.

861 Shimshek courier receipt dated 6 January 2005, **R-369**.

Azerbaijan notes that the delivery address for the application was Coolak Baku. Azerbaijan has no knowledge why ASFAN, acting through its representative Togrul Law Firm and Mr Allahyarov, sent the application for Mr Bahari's attention to Coolak Baku's address. Mr Allahyarov does not address this (or the ASFAN Proceedings at all) in the witness statements he has given in support of Mr Bahari. However, there were no specific rules under the CPC at the time which regulated to where or how the application was to be sent to the defendant, and the application accordingly satisfied the requirements of the CPC.

344. Mr Bahari also complains that the Court's delivery of various documents from the litigation were sent to the wrong addresses, but his submissions are misguided.

345. First, he complains that "*the writ of summons* [**R-107**] *is addressed to Mr. Bahari at Coolak Baku's address*",[862] which he alleges was a "defect" because of the Court's "*actual or constructive knowledge*" of Mr Bahari's absence from Azerbaijan.[863] This submission is wrong for multiple reasons:

(a) First, it appears from the Court file (to which Azerbaijan appreciates Mr Bahari did not have access at the time of his Reply submission) that the writ of summons confirming the initiation of the proceedings, **R-107**, was not only sent to Mr Bahari's address at Coolak Baku,[864] but also to Mr Bahari's address as set out in the 1999 Agreement, namely 25 Tabriz-Tehran-Abjari Road.[865]

(b) Second, in any event and more importantly, there is no concept of the Court's "*actual or constructive knowledge*" of a person's whereabouts under applicable Azerbaijani law. Under article 147 of the CPC, if a defendant's whereabouts are unknown, the Court is only required to obtain a receipt from "*the local self-governing body, the relevant* [local] *executive authority of his last known place of residence*", or "*the management at his last known place of work*" that the writ was indeed delivered in order to initiate proceedings:

> If the actual location of the respondent is not known, the court starts hearing the case after the court receives a summons with a

862 Reply, para 178(a).

863 Reply, para 178(a)

864 Service of Process summons sheet from Judge to Mr Bahari dated 27 January 2005, **R-107**.

865 Shimshek Courier Receipt dated 18 February 2005, **R-370**; 1999 Agreement, **R-72**.

> note confirming that a summons was received by the local self-government body, the relevant executive authority [local executive authority] at the respondent's last known place of residence or the management at the respondent's last known place of work.[866]

(c) **R-107**, sent to Mr Bahari's last known place of work, was countersigned and returned to the Court, evidencing that it had been delivered and received by someone on his behalf. Mr Bahari may claim that ASFAN itself signed this receipt, given that it appears from the postal receipts that the writ of summons was also sent to Coolak Baku for ASFAN.[867] If that was the case, that would be no fault of Azerbaijan's. The Court followed the procedure set out under the CPC for defendants whose whereabouts were unknown. Moreover, it appears likely that ASFAN itself (or the Court) also ensured the writ was sent to Mr Bahari's address in Tabriz.[868]

(d) In this connection, Mr Bahari appears to allege that the Court has failed to carry out some form of diligence, complaining that "[n]*o reflection whatsoever is given as to the reason for* [Mr Bahari's] *absence*",[869] that the Court "*made no inquiries*" despite the "*strong*[] *suggest*[ion] [of] *knowledge of Mr. Bahari's circumstances*".[870] These submissions reflect Mr Bahari's fantasy that every State authority in Azerbaijan was preoccupied with him and his historic business ventures, when the reality is that the Court had no idea who Mr Bahari was. The Court was not required to carry out any diligence. It was required to comply with the provisions of the CPC, which it did, as set out above.

346. Second and in any event, it appears that Court came to the conclusion that the best address for Mr Bahari was the Iranian address he gave in the 1999 Agreement. The CPC does not contain any specific rules on the address to which Court documents should be sent, and all other documents in the case (including the Economic Court's

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866 Azerbaijan's translation of extracts of the Civil Procedure Code of the Republic of Azerbaijan, **R-371**, art. 147.

867 Postal receipts for writs of summons sent to ASFAN and the State Registry of Legal Entities dated 4 and 5 February 2005, **R-372**.

868 Shimshek Courier Receipt dated 18 February 2005, **R-370**; 1999 Agreement, **R-72**.

869 Reply, para. 184.

870 Reply, para. 185.

decision of 4 April 2005) were addressed to Mr Bahari's address in Iran.[871] While Mr Bahari complains that he "*never used that address as his personal domicile*" and it was the address of Coolak Shargh,[872] he does not mention the fact that this was the address he gave for himself in the 1999 Agreement (despite the fact he was residing in Azerbaijan at the time). Mr Bahari claims that the fact the Court "*utilized two separate addresses*[…] *points to a serious – and possibly purposeful – due process defect*",[873] but he never explains what that defect is. Not only were the Court's actions in compliance with the CPC, but the use of multiple addresses suggests a thorough attempt to provide notice in circumstances where Mr Bahari's whereabouts were unknown.

347. Mr Bahari further complains that there were three additional procedural "defects" in the service of the writ of summons, but each of his submissions is wrong as matter of Azerbaijani law or as a matter of fact.

348. First, he claims that "[p]*ursuant 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*", and that where no consent is given, the court must adjourn under article 239.[874] While that may be so for proceedings *in absentia*, the Economic Court did *not* proceed *in absentia*, nor was it required to. If a defendant does not appear, the proceedings do not proceed *in absentia* automatically. It is article 185 of the CPC, which is titled "[c]*onsequences for failure to appear in court session of persons participating in case and their representatives*", that sets out the relevant rules:[875]

(a) The hearing shall be adjourned only if "*there is no information on delivery of writ to such* [non-appearing] *person*" (article 185.2).

(b) Otherwise, the Court has a discretion "*to proceed with hearing* [the] *case*", including 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*" (article 185.5).

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871 *See*, e.g., Letter from Economic Court to Mr Bahari dated 21 February 2005, **R-373**; Letter from Economic Court to Mr Bahari dated 11 March 2005, **R-374**.

872 Reply, para. 192.

873 Reply, para. 192.

874 Reply, para. 178(b).

875 Respondent's translation of article 185 of the CPC, **R-371**.

349. Thus, in circumstances where the Court had received a delivery signature on the writ of summons, and Mr Bahari did not appear, the Court had a discretion to proceed to hear the case, without considering the case *in absentia*. That is precisely what it did:

[redacted][876]

350. In fact, the Court's decision to proceed with hearing the case on the ordinary *inter partes* basis, instead of *in absentia*, afforded Mr Bahari more rights, in particular additional opportunities to appear,[877] rather than proceeding to an *in absentia* judgment quickly. For this reason, the provisions of the CPC concerning *in absentia* proceedings referred to in the Reply are irrelevant.[878] Even if the *in absentia* provisions were applicable (which is denied), however, Mr Bahari's interpretation of them is inaccurate:

(a) Mr Bahari is wrong to suggest that under article 240.1.2 of the CPC, his "*expulsion from Azerbaijan*" would qualify as valid reason or force majeure for his non-appearance.[879] Article 240.1.2 prevents the Court from proceeding *in absentia* where "*it is established in court*" that a party has failed to appear on account of "*valid reasons*[…] *natural disaster or an event of force majeure*".[880] The facts of Mr Bahari's so-called expulsion are disputed and Azerbaijan's case is that Mr Bahari left voluntarily after Mr Heydarov discovered he had been misled in connection with the Caspian Fish venture. In any event, however, the Court was not in a position to "establish" that there was any valid reason or force majeure for Mr Bahari's absence. No facts about the circumstances of Mr

876 *See* Judgment of the Economic Court of Azerbaijan dated 4 April 2005, **R-105**, p. 2.

877 CPC, **C-298**, art. 376.1 (the Court is obliged to adjourn the case if the defendant has not been duly notified, i.e. the Court does not have confirmation of delivery). In these proceedings, the Court in fact adjourned the case with ASFAN's consent when Mr Bahari did not attend: Minutes of Court Session on 2 March 2005, **R-376**.

878 *See* Reply, paras 183 and 185 (referring to CPC art. 238 to 240), and 193 (referring to CPC arts 244, 249 and 250).

879 Reply, para. 185.

880 Civil Procedure Code of the Republic of Azerbaijan, **C-289**, art. 240.

Bahari's alleged expulsion were put to the Court for it to make such a determination.

(b) Mr Bahari's complaint that he was "*never able to exercise* [the] *right*" to "*quash an* in absentia *decision within 10 days from the date of receipt*" under articles 244, 249 and 250 of the CPC, because he never received notice of it, is misplaced. Article 244 of the CPC provides the respondent with the right to apply to quash a resolution within 10 days "*from the date of receipt*".[881] If Mr Bahari claims never to have received the decision, the 10 day period would not have started to run and he would not have been "*deprived of his due process right to obtain a ruling on the matter*".[882]

351. Mr Bahari also complains that "*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*", but "*allowed the defect to persist*".[883] It is unclear what complaint is being made (if any) of Azerbaijan's Economic Court. The fault apparently lies with private parties ASFAN and Mr Zeynalov. It accordingly has no relevance to Mr Bahari's claims in these proceedings. In any event, Azerbaijan understands that Mr Zeynalov did not participate in the ASFAN proceedings[884] (nor was he required to), and moreover he did in fact apprise Mr Bahari of the fact of ASFAN's exit by faxing documents to Petroqeshm.[885] Mr Bahari does not particularise why he considers ASFAN "*had knowledge of Mr. Bahari's location in Dubai*",[886] other than through Mr Zeynalov, but as Mr Zeynalov confirms, he did not know Mr Bahari's postal address, which was required for service of process.[887]

352. Second, Mr Bahari claims that under article 140.5 of the CPC, the writ of summons should have been delivered to Mr Bahari 10 days in advance of the court session

881 Civil Procedure Code of the Republic of Azerbaijan, **C-289**, art. 244 (emphasis added).

882 Reply, para. 193.

883 Reply, para. 178(b).

884 Second Zeynalov Statement, para. 33.

885 First Zeynalov Statement, paras 26 and 52.

886 Reply, para. 192.

887 Second Zeynalov Statement, para 31; CPC, **C-298**, art. 36.1.

scheduled for 10 February 2005, whereas the postal receipt in **R-107** shows that the summons was delivered on 4 February 2005.[888] Insofar as Mr Bahari claims to have been unfairly prejudiced, the writ was delivered to *each* of the parties on 4 February 2005, i.e., without the required notice.[889] The Court's decision of 10 February 2005[890] was that the hearing of the case should be fixed for 2 March 2005, and Mr Bahari was notified of the Court's decision by a letter dated 21 February 2005.[891]

353. Following Mr Bahari's failure to attend the 2 March hearing, the hearing was adjourned to 4 April 2005 with ASFAN's consent,[892] and a letter dated 11 March 2005 was sent to Mr Bahari to advise him of the new date and notify him that this time if he did not attend, the court would "[redacted][893] Mr Bahari is accordingly wrong to describe as "*misleading*[…] *or a downright falsehood*" the dicta from the Economic Court's judgment that he was given "[redacted]".[894] He *was* given multiple warnings and a hearing was even adjourned in order to accommodate him.

354. Third, Mr Bahari complains that he never signed the summons and therefore under article 143 of CPC, "*there was no effective service of process*".[895] Again, Mr Bahari misreads the CPC and overlooks article 147. Article 143 governs the regime where the defendant's address is known and confirms that the recipient should indeed sign "*a portion of the writ to be returned to the court*".[896] However, under article 147, which applies "[i]*n case of lack of knowledge on actual place of location of a respondent*", the Court is not required to obtain the defendant's signature on the writ (for obvious

888 Reply, para. 178(c).

889 Service of Process summons sheet from Judge to Mr Bahari dated 27 January 2005, **R-107**, p. 2; Postal receipts for writs of summons sent to ASFAN and the State Registry of Legal Entities dated 4 and 5 February 2005, **R-372**.

890 Decision of Economic Court dated 10 February 2005, **R-377**.

891 Letter from Economic Court to Mr Bahari dated 21 February 2005, **R-373**.

892 Minutes of Court Session on 2 March 2005, **R-376**.

893 Letter from Economic Court to Mr Bahari dated 11 March 2005, **R-374**.

894 Reply, para 178(c).

895 Reply, para. 178(d).

896 Civil Procedure Code of the Republic of Azerbaijan, **C-289**, art. 143.1.

reasons). What is required, as set out above, is that a relevant person confirm receipt of the writ, which the Court had received.[897]

355. Finally, Mr Bahari separately argues that there was a "*further gross due process error*" because "*the notification* [of the Economic Court's judgment of 4 April 2005] *was sent over a month after the 4 April 2005 Judgment: the date of delivery by courier in Iran is dated 12 May 2005*", whereas CPC article 233 provides that a resolution which has not been appealed becomes effective within one month of its issue.[898] Mr Bahari claims he thus "*los*[t] […] *a fundamental appeal right*".[899] Again, Mr Bahari misinterprets the law, and the facts.[900]

(a) The notification was not "*sent over a month after the 4 April 2005 Judgment*" (emphasis added) as Mr Bahari claims.[901] As Mr Bahari himself recognises, the "*judge's cover letter enclosing the decision is undated*".[902] While the Economic Court file does not appear to contain any explicit reference to the date the judgment was sent to Mr Bahari, it does contain postal receipts which evidence that the judgment was sent to the other parties in the proceedings on 12 April 2005,[903] and it is likely, as per the practice adopted with all other decisions in the file, that it was also sent to Mr Bahari on the same date.[904] That it took a month to arrive in Tabriz is irrelevant, for the reasons explained below.

(b) Mr Bahari conspicuously fails to refer to the fact that, as he well knows, the judgment itself only came into force on 14 July 2005, that is, two full months after it arrived in Iran.[905]

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897 Service of Process summons sheet from Judge to Mr Bahari dated 27 January 2005, **R-107**.

898 Reply, para. 194.

899 Reply, para. 194.

900 Reply, para. 194.

901 Reply, para. 194.

902 Reply, para. 194; Judge's notification of Judgment to Mr Bahari, 12 May 2005, **R-108**.

903 Receipt slip from Mr Allahyarov on behalf of ASFAN confirming receipt of the Economic Court's judgment on 14 April 2005, **R-378**; delivery slip to State Registry for Legal Entities dated 12 April 2005, and postal receipt confirming delivery on 14 April 2005, **R-379**.

904 *See*, e.g. Service of Process summons sheet from Judge to Mr Bahari dated 27 January 2005, **R-107**, pp. 4-5.

905 Writ of Execution in case No 1-96/03-45/2005 dated 12 April 2006, **R-106**, referring to the fact that the Economic Court's determination entered into force on 14 July 2005. Azerbaijan notes that this is a longer

(c) The Reply submission asserts that prior to these proceedings, Mr Bahari had "*never heard of these litigations*".[906] Azerbaijan does not accept that is true. Even if Mr Bahari did not receive notice by the Court process (which is not admitted), Mr Zeynalov's evidence is that he apprised Mr Bahari of ASFAN's status in the joint venture, including that it had exited the joint venture.[907] While Mr Bahari claims in his responsive witness statement that Mr Zeynalov "[redacted]", that statement is in relation to Mr Bahari's conclusion that Mr Zeynalov "[redacted]".[908] That conclusion of Mr Bahari's is obviously wrong; Mr Zeynalov did no such thing, and Azerbaijan does not suggest that he did so. Again, Mr Bahari sees what he wants to see, rather than what has been pleaded or is set out plainly in the documentary record.

(d) In any event, Mr Bahari has never sought (belatedly or otherwise) to challenge the Economic Court's decision, and he accordingly cannot claim that he has lost any right to appeal it. For example, when he did seek to challenge the Ayna Sultan judgments four years after the fact, the Court agreed to restore time for the period of appeal in his favour. There is nothing to suggest that the Economic Court would not do the same in this case, per article 133 of the CPC.[909] In fact, the real reason Mr Bahari has not challenged the Economic Court's decision is because he has no reason to challenge it, as discussed below.

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than the ordinary one month from issue period provided by CPC art. 233.1, but it is not aware of the reasons why the decision is said to have entered into force two months after the date of the Court's judgment. In any event, it could have only been to Mr Bahari's benefit, as it afforded him more time to appeal.

906 Reply, para. 158.

907 First Zeynalov Statement, para. 26; Second Zeynalov Statement, para. 31.

908 Third Bahari Statement, para. 17.

909 Civil Procedure Code of the Republic of Azerbaijan, **C-289**, art. 133.

3. The Economic Court's judgment does not contain "flagrant substantive defects"

356. Mr Bahari attempts to attack the Court's substantive ruling, describing the judgment as "*plainly one-sided*"[910] and "*muddled and full of contradictions*",[911] but these are unsupported exaggerations that have no factual basis.

357. The Court's judgment was evidently not "one-sided". As discussed above, ASFAN's claim sought three forms of relief, and the Court declined to grant the first two limbs of the relief sought, holding that:

[redacted][912]

358. As to the relief granted allowing ASFAN to exit the joint venture under article 95 of the Civil Code of Azerbaijan, Mr Bahari complains that due to an alleged lack of notice, he was "*unable to respond to* [the claim]" or "*assert any counterclaims he may have had against ASFAN*".[913] In the light of the fact that Mr Bahari has no right to object to ASFAN's claim, however, there is no response Mr Bahari could have given, nor any counterclaim he could have raised.

359. As to the allegations of "*contradictions*", Mr Bahari complains that "*the Court only makes reference to the purported original 29 February 1996 Joint Venture Agreement*" when "*by 2005, the 23 January 1998 Amendment to the Joint Venture Agreement was in force*".[914] That submission mischaracterises the Court's judgment and is factually inaccurate. First, the reference to the 1996 Agreement in the judgment was made in the context of describing ASFAN's submissions and the initial establishment of the joint venture:

[redacted]

910 Reply, para. 184.

911 Reply, para 186.

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

913 Reply, para. 180.

914 Reply, para. 186.

[redacted][915]

360. Mr Bahari thus fundamentally mischaracterises the judgment by suggesting that the Court relied on the 1996 Agreement to reach its conclusions.

361. Second, as the Court was well aware from the materials exhibited to ASFAN's application, the 1998 Agreement was superseded by the 1999 Agreement (which Mr Bahari does not deny he signed or otherwise challenge in the Reply), which expressly invalidated all prior agreements between the parties.[916] It is accordingly wrong for Mr Bahari to claim that in 2005 the 1998 Agreement was in force.

362. Mr Bahari also complains that the Court "*does not itemize or calculate exactly what property and assets should be returned to ASFAN as part of its Capital Contributions*", referring to article 222 of the CPC to claim that "*a reasoned dispositive section of the judgment setting out title of property, valuation of the same, and other pertinent information*" is required.[917] Again, Mr Bahari misinterprets Azerbaijani law. The Court's decision was made on the basis of article 96.2 of the Civil Code,[918] as set out in the operative part of the judgment:

> In accordance with Article 96.2 of the [Civil] Code, if a limited liability company has the right to use property as a contribution to the Charter Capital of the company, the corresponding property is returned to the withdrawing participant. Normal wear and tear of the property is not compensated.[919]

363. In other words, the court ordered that the joint venture party could recover *its own* property previously contributed to the limited liability company. It was not for the court to itemise this property. Article 222 of the CPC, which is titled "[j]*udgment on recovery of property or seizure of funds*", concerns judgments in which the claimant has sought as part of their claim that the defendant pay property or money to the claimant. In such

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

916 Contract between ASFAN and Mr Bahari in relation to Coolak Baku Co dated 9 September 1999, **R-72**, cl. 5.2.

917 Reply, para. 188.

918 Civil Code of the Republic of Azerbaijan, **RLA-188**, art. 96.2.

919 Judgment of the Economic Court of Azerbaijan dated 4 April 2005, **R-105**, p. 3.

a case, the Court should set out in the judgment the "*title of property, value of property, which shall be recovered from the respondent in the event of absence of the property at the time of execution of the judgement*", as well as the "*place of location of property or a bank account of the respondent to be debited in favour of the claimant*" (emphasis added).[920] By contrast, the Economic Court's decision did not require any defendant to pay over property or monies to ASFAN. It merely recorded that as per article 96.2 of the Civil Code, ASFAN's property, as contributed to Coolak Baku's charter capital, should be returned to it.

364. Mr Bahari complains that the judgment was "*unclear about what assets, exactly, were to be returned to ASFAN*",[921] but the opposite is true. The judgment made clear that ASFAN was entitled to take back the property it contributed to Coolak Baku as its share of the charter capital. Under the terms of the 1998 Agreement, in return for 25% of the charter capital, ASFAN had contributed "[redacted]".[922] The judgment accordingly entitled ASFAN to take back the Safaraliyeva Production Facilities.

365. While it is difficult to distil principle from Mr Bahari's convoluted and verbose pleading, Mr Bahari's real complaint, it seems, is against ASFAN. Although he tries to implicate Azerbaijan through its Courts, the reality is that his claim is that ASFAN "*strip*[ped] *all Coolak Baku's assets*".[923] Although he has been free to do so, Mr Bahari has never taken any steps to challenge ASFAN. The reason for that, it must be inferred, is because he is well aware that he has no claim against ASFAN in circumstances where failed to fulfil his obligations under the joint venture, and when ASFAN exited, it did not "*strip*" anything from Coolak Baku.

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920 Respondent's translation of article 222 of the CPC, **R-371**.

921 Reply, para. 190.

922 1998 Agreement, **C-1**, para. 3.1.

923 Reply, para. 1052(f).

III. MR BAHARI WILLINGLY SOLD HIS INTEREST IN CASPIAN FISH AND WAS PAID FOR IT

A. Mr Bahari did not fund the construction of Caspian Fish

366. In characteristic fashion, the Reply submission is replete with hyperbolic rhetoric that Azerbaijan's evidence in relation to the financial investor in Caspian Fish "*cannot withstand even a* prima facie *examination*", is "*questionable*" and "*unsubstantiated*", whereas Mr Bahari's evidence is "*credible and comprehensive*", "*meticulous*[ly] *analys*[ed]" and "*substantively established*".[924] This tendentious language takes Mr Bahari nowhere: the Tribunal will decide based on the evidence, and not Mr Bahari's assertion, however vociferously put, whether it is more likely than not that Mr Bahari invested his own funds into Caspian Fish.

1. Mr Bahari fails to provide documentary evidence that shows he personally funded the construction of Caspian Fish

367. In fact, there is a paucity of documentary evidence to show that Mr Bahari "*personally invested*"[925] in the construction of Caspian Fish. The Purported Chartabi Contract in relation to Caspian Fish is a fabrication and the non-contemporaneous letter from the deceased Mr Chartabi is wholly unreliable (and in any event would not prove that Mr Bahari's own funds were spent on the project).[926] As set out in the Defence, the remaining documentary record upon which Mr Bahari relies, including invoices, contracts, shipping documents and a handful of banking documents, do not uniformly show that they relate to Caspian Fish, and certainly do not show that Mr Bahari's personal funds were used to finance its construction.[927] Even if these documents could be considered true and complete (which is denied),[928] at most the documents would demonstrate that USD 7.5 million was spent on equipment and machinery for Caspian Fish, but not that Mr Bahari's funds were used to finance it.[929]

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924 *See* Reply, paras 213-124 and 276.

925 Reply, para. 215.

926 *See* Letter from Chartabi Contracting dated 7 January 2019, **C-86**; Defence, para. 90.

927 *See* Defence, paras 240 and 93-95; First Shi Report, para. 3.9 and Appendix 4.

928 *See* comments in the First and Second Shi Reports on the lack of completeness of the documentation, at respective Appendices 4, and Azerbajian's concerns expressed with the DFT and Mirinda documentation, as well as Mr Bahari's possession of the stamps of certain suppliers, as set out at Defence, paras 109 and 273.

929 *See* Second Shi Report, Table 2.3.

368. For the purposes of his Reply submission, Mr Bahari's valuation expert Secretariat "[redacted]" the documentary evidence Mr Bahari submitted with his Statement of Claim to devise a new hypothesis for Mr Bahari's involvement in the financing of Caspian Fish. Secretariat concludes that: (i) Mr Bahari is "[redacted]" on 99.7% of the documents; (ii) "[redacted]" for 65.6% of the amount documented; and (iii) "[redacted]" for 89.5% of the amount documented.[930] This unconventional methodology proves nothing:

(a) Nowhere does Secretariat explain why Mr Bahari's name appearing on a document means that he personally funded the relevant purchase. With one exception, Mr Bahari is not the direct counterparty in *any* of these documents; where he is identified, it is in his capacity as a representative of Caspian Fish or Mirinda.[931] The exception is Mr Bahari's Commerzbank statements which indicate that he exchanged Deutsche marks for 1.2 million Malaysian ringgits in February 1998.[932] This document, however, does not evidence that the funds were in fact used, or (even if they were) that they were used for Caspian Fish.[933] Notably, the only supplier from Malaysia in connection with whom Mr Bahari has provided any documentary evidence is Victroplex, who (on Mr Bahari's own evidence) only began to supply Caspian Fish in 1999 and, even then, it appears that all Victroplex sums were paid in US dollars.[934] The most likely conclusion is that these Malaysian ringgits, purchased more than a year earlier, had nothing to do with Caspian Fish at all.

(b) As to the claim that payment can be "confirmed" for 65.6% of the tabulated amount, 99% of the "confirmed" payment amount relates to the Purported Chartabi Contract.[935] It is unclear whether Mr Bahari's experts have been told

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930 *See* Second Secretariat Report, para. 2.20 and Table 2. *See* also Reply, para. 219, although he figures set out in the Reply do not match the figures in the Second Secretariat Report.

931 *See* First and Second Shi Reports, Appendices 4.

932 Commerzbank Statements, 23-25 February 1998, **SEC-169**.

933 *See* Second Shi Report, Appendix 4.

934 Hay Statement, paras 6-7; Atabank payment orders to Victorplex dated 10 May 2000 for USD 88,750, **R-92**, and 1 September 2000 for USD 75,907, **R-93**; Victorplex invoices to "Caspian Fish Co" dated 17 June 2000 for USD18,211.70, **SEC-193**, and 4 October 2000 for USD 1,149, **SEC-196**.

935 *See* Second Secretariat Report, Appendix D.2.

that the Purported Chartabi Contracts are backdated; the Second Secretariat Report does not mention this admission at all. In any event, as Dr Shi notes, it is not for the valuation experts to determine whether the Chartabi Contracting in fact carried out the services.[936] It suffices for Dr Shi to opine that the Purported Chartabi Contracts and letter from Mr Ahad Chartabi do not evidence that a payment was made by Mr Bahari to Chartabi Contracting.[937] The remaining 1% of the Secretariat "confirmed" amount concerns the very same Commerzbank MYR statements showing the foreign exchange, which although *prima facie* evidence of the use of Mr Bahari's funds, cannot be "confirmation" of a payment for investing in Caspian Fish.[938]

(c) For the remaining documentation, Secretariat simply infers that Mr Bahari paid for the various goods and services, based, for example, on the existence of offer letters and invoices.[939] Secretariat's inferences are not reasonable, nor is it the role of the valuation experts to draw such inferences. Offer letters and invoices, for example, do not evidence that offers were accepted or invoices were paid (much less by Mr Bahari).[940]

369. Mr Bahari presents only three "new" documents with his Reply submission, and the witness statement of Mr Suleymanov "*in further support of his personal investment in Caspian Fish*".[941] None of these items of additional "evidence" assist him.

370. First, Mr Bahari exhibits two recently-created documents, namely a letter dated 31 March 2024 from the former ambassador of Iran to Azerbaijan, Mr Ahad Gazai, which states that he "[redacted]" the Caspian Fish project, which was

936 Second Shi Report, para. 2.5.

937 *See* First Shi Report, paras 2.9 and 3.9.

938 *See* Second Shi Report, para. 2.148 ("[redacted]").

939 Second Secretariat Report, para. 7.14.

940 *See* Second Shi Report, Appendices 3 and 4.

941 *See* Reply, para. 217.

[redacted]";[942] and a letter dated 9 April 2024 from Mr Samad Chartabi, the purported CEO of "[redacted]" and Mr Bahari's brother-in-law, which states that he is [redacted]" that Mr Bahari "[redacted]" Caspian Fish "[redacted]" and "[redacted]".[943] Neither document, which purport to verify matters occurring 20 years prior, are evidence of anything.

371. Mr Bahari has not produced Mr Gazai or Mr S Chartabi as witnesses. The one-paragraph descriptions they provide in their letters cannot be tested at the evidentiary hearing. Like Chartabi Contracting, Azerbaijan has been unable to locate any public record of Chartabi Metalworking's existence, although it purports to be registered at the same registered address.[944] It is apparent from the contents of the letter from Mr S Chartabi that he has no direct knowledge of Mr Bahari's alleged investments: he does not claim to have been involved in the construction himself, and states only that he is "[redacted]" (either through Mr Bahari himself or his deceased brother, Ahad Chartabi) of the project. Even if Mr S Chartabi was a witness, he would only have valueless hearsay evidence to give. Indeed, neither letter explains how the author is aware that Caspian Fish was a "[redacted]" of Mr Bahari, and it can be assumed that the authors are simply repeating what Mr Bahari has told them, rather than confirming they were privy to Mr Bahari's private financial arrangements at any time. Further and in any event, on their face neither document states the *amount* of any investment allegedly made by Mr Bahari, nor the nature of the "capital" or "investment" contributed (which conceivably may not have been financial).

372. Second, Mr Bahari also relies on the Purported Cheque,[945] which is not a genuine document for the reasons set out above. Even if it was authentic (which is denied), however, a cheque is not evidence that a payment was in fact made, much less by Mr Bahari (when the cheque is purported issued from Coolak Shargh's account). The document which would show whether the cheque was in fact cashed is a bank statement or other document from the bank at which it was deposited.

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942 Letter from Ahad Gazai to Diamond McCarthy LLP dated 31 March 2024, **C-279**.

943 Letter from Samad Chartabi dated 9 April 2024, **C-280**.

944 *Compare* Letter from Samad Chartabi dated 9 April 2024, **C-280**, with Purported Chartabi Contracts.

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

373. Finally, Mr Bahari says that there is further "evidence" of his personal investment in Mr Suleymanov, who "*testif*[ies] *that Mr. Bahari engaged Chartabi as the general contractor for Caspian Fish*".[946] For the reasons set out above, Mr Suleymanov's evidence is not reliable, and the Purported Chartabi Contracts are forged. In any event, Caspian Fish did not need or have a "general contractor", much less Chartabi Contracting:[947]

(a) Save for the Purported Cheque (discussed above), the contemporaneous documentary record contains no reference to Chartabi Contracting, and in fact shows that the LLC itself was the only entity licenced to carry out construction works.[948] Mr Bahari claims that the fact that such a licence exists does not prove Chartabi Contracting did not perform the works.[949] That may be so, but it remains that Chartabi Contracting is not identified in the contemporaneous documentary record, including as having any licence in Azerbaijan. He also claims that given the licence was granted only two months before the Grand Opening, that "*necessarily means that a contractor performed the works well before the LLC entity was even incorporated (in September 2000) – which was Chartabi Contracting*".[950] This is a *non sequitur* – the issue of a licence to the LLC in October obviously does not mean that Chartabi Contracting must have been the general contractor before that date.

(b) Mr Suleymanov claims that the "[redacted]" of Chartabi Contracting was a "[redacted]", but that allegation is refuted by Mr Zeynalov's testimony. Mr Zeynalov confirms that while it is true that the facilities were large, there was no construction company or its employees at the site.[951] Mr Zeynalov recalls that Mr Siyavush Sadagi, as well as Mr Bahari and two other

946 Reply, para. 217(d).

947 Defence, paras 89 and 250; First Zeynalov Statement, para. 28.

948 Protocol of LLC Meeting on addendum to Charter dated 6 October 2000, **R-122**; Licence granted to the LLC by the State Committee for Construction and Architecture dated 21 December 2000, **R-123**.

949 Reply, para. 234.

950 Reply, para. 235.

951 First Zeynalov Statement, para. 28; Second Zeynalov Statement, para. 16.

individuals named Vali and Mammad, oversaw the construction works, but none of them worked for Chartabi Contracting.[952]

(c) Mr Bahari's and Mr Suleymanov's responsive witness statements belatedly attempt to provide detail of the works Chartabi Contracting purportedly carried out at Caspian Fish, including alleged grading and levelling of a large "[redacted]" at the site.[953] Azerbaijan denies, however, that Mr Suleymanov would have had any knowledge of the detail of the construction required. While Mr Bahari describes Mr Suleymanov as a "*project manager*",[954] Mr Zeynalov and Mr Hasanov each recall that he was merely a welder,[955] who would have no reason to know or understand the detail of the construction. On Mr Suleymanov's own evidence, he was not more than 19 years old at the time he started working at Caspian Fish, with very little experience.[956] Further, Mr Zeynalov does not recall any such "[redacted]".[957] He recalls that while there was of course a need for excavation and earth works at the site, they were not carried out by Chartabi Contracting.[958]

(d) Mr Bahari also submits that it is "*inconceivable that a major construction project could be completed by informally hiring local workers, without the need for a general contractor*",[959] relying, ostensibly, on his own testimony[960] and the Purported Chartabi Contract.[961] The Purported Chartabi Contract is Mr Bahari's after-the-fact creation and evidence of nothing. As to his testimony, again, just because the facilities were large (Azerbaijan does not accept that they

952 Second Zeynalov Statement, para. 16.

953 *See* Suleymanov Statement, para. 29; Third Bahari Statement, para. 23.

954 Reply, para. 227.

955 *See* Second Zeynalov Statement, para. 17; Second Hasanov Statement, para. 6.

956 Suleymanov Statement, paras 5, 7 (Mr Suleymanov claims to have started working at Coolak Baku in 1996, at the age of 17 when he "did not have a specific trade and or skill set") and 28 (Mr Suleymanov claims to have started working at Caspian Fish in 1998).

957 Second Zeynalov Statement, para. 17.

958 Second Zeynalov Statement, paras 16-17.

959 Reply, para. 231.

960 *See* Third Bahari Statement, para. 22.

961 Reply, para. 232.

were "*complex*[] *and sophisticat*[ed]")[962] does not mean that a *company* was required to carry out the construction. As far as Azerbaijan understands, the construction was overseen by a team comprising Mr Bahari, Mr Sadagi, Vali and Mammad.[963]

(e) Azerbaijan has obtained testimony from Mr Ernest Rudman, a customs and construction specialist, who was asked by Mr Heydarov in the summer of 2000 to review Caspian Fish's progress in preparation for its opening.[964] Azerbaijan understands that Mr Heydarov had become concerned that the construction of the plant had not been properly documented by Mr Bahari.[965] Accordingly, Mr Rudman began an inspection of the plant (which included hiring Mr Hasanov to review the plant's accounts),[966] which spanned approximately half a year.[967] Mr Rudman asked Mr Bahari for contractual documents for the construction of the plant, but Mr Bahari did not provide him with any documents, and certainly not the Purported Chartabi Contract for Caspian Fish.[968] Mr Rudman has never heard of Chartabi Contracting.[969]

(f) Azerbaijan has obtained from Mr Zeynalov's personal archives an undated copy of a document prepared by Mr Rudman's team which sets out a list of remedial actions to be implemented before the plant was commissioned.[970] Given that there was no contract for the construction of the plant, that document sets out that a turnkey contract with none other than Mr Bahari's company, Mirinda, should be executed by 12 December 2000, and that by 14 December 2000, Mirinda should sign a contract with a construction company licensed to conduct construction works.[971] All this was to be done although construction was

962 Reply, para. 233.

963 Second Zeynalov Statement, para. 16.

964 Rudman Statement, para. 5.

965 Rudman Statement, para. 5.

966 *See* First Hasanov Statement, para. 8.

967 Rudman Statement, para. 14.

968 Rudman Statement, para. 9.

969 Rudman Statement, para. 9.

970 Second Zeynalov Statement, para. 19; Rudman Statement, para. 11(b); Caspian Fish Co Azerbaijan Plant Commissioning Work Plan, undated, **R-293**.

971 Caspian Fish Co Azerbaijan Plant Commissioning Work Plan, undated, **R-293**.

already essentially complete. There is no evidence to suggest that either of these objectives were ever achieved (which is unsurprising, given Mirinda had in fact been struck off the Irish register many months prior).[972] If anyone, Mr Bahari would know about Caspian Fish's plan to use Mirinda in this way, but he says nothing about Mr Heydarov's investigation into his management of the plant's construction. This is because he cannot deny the investigation or its findings.

374. Even if, however, Mr Suleymanov's evidence could be accepted (which is denied), it would not follow from Mr Bahari's "[redacted]" of Chartabi Contracting that he used his personal funds to pay them. Indeed, on his own evidence (which is not at all accepted by Azerbaijan), Coolak Shargh paid Chartabi Contracting, not Mr Bahari.[973]

375. Separately, it bears noting that in response to Azerbaijan's document production request for [redacted]", which Mr Bahari agreed to search for in its entirety,[974] Mr Bahari was only able to produce a total of 12 documents, dated in July 1999, and October and November 2001. This is the account that Mr Klaus claims Mr Bahari "[redacted]".[975] The limited documents produced by Mr Bahari show that his account balance never amounted to more than approximately EUR 100,000 (in July 1999).[976] This is around the time Mr Bahari claims to have engaged Chartabi Contracting and spent *millions* of dollars financing Caspian Fish's construction.[977]

376. Instead, the statements show sums being spent at an "[redacted]", "[redacted]", "[redacted]", "[redacted]", the "[redacted]" and "[redacted]".[978] Mundane, routine expenses for an individual who is not the "*serial entrepreneur*" he claims to be.[979] These documents also stand in stark contrast to Mr

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972 *See* Irish Companies Registration Office archived strike-off list dated 19 May 2000, **R-77**.

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

974 *See* Annex 2 of Procedural Order No. 6 dated 9 April 2024, Request No. 12.

975 First Klaus Statement, para. 12.

976 *See* Commerzbank Bank Statement dated 15 July 1999, **R-308**.

977 Statement of Claim, para. 79.

978 *See* Commerzbank Bank Statement dated 22 July 1999, **R-309**.

979 *See* Reply, para. 101.

Klaus's claim that [redacted]".[980] There is a gaping hole from August 1999 to October 2001, a period during which, on Mr Bahari's case, he was spending millions of dollars from this account. Mr Bahari will no doubt say that the account statements which show the material amounts spent have been lost given the passage of time. That does not explain why he took care to retain the unimportant ones.

2. Available documents show that payments to suppliers were made directly from Caspian Fish's Atabank accounts

377. Azerbaijan's witnesses state that Caspian Fish was funded by Mr Heydarov;[981] Mr Bahari's witnesses state that it was personally funded by Mr Bahari.[982] For the reasons set out in the Defence, the testimony of Mr Bahari's witnesses in this regard is not reliable.[983] In any event, documents in connection with this issue are obviously critical, and Mr Bahari has been unable to prove, on the basis of the documents he has exhibited, that he funded Caspian Fish's construction.

378. With the Defence, Azerbaijan produced a limited number of documents it obtained from Caspian Fish's archives, which show payments being made to suppliers and Mr Bahari from an Atabank account. Mr Bahari describes these documents as "*unreliable*" or "*fabricated for the purpose of this Arbitration*",[984] but they were not, and he fails to raise any meaningful challenge to their authenticity.

379. First, he claims that Caspian Fish's BVI corporate records do not corroborate the company having an Atabank account, but only a Barclays account.[985] The BVI corporate records are irrelevant (although, notably, they also do not refer to the

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980 First Klaus Statement, para. 10.

981 First Kerimov Statement, para. 20; First Hasanov Statement, paras 8, 9 and 11; First Zeynalov Statement, paras 30-31.

982 First Bahari Statement, para. 38; First Klaus Statement, para. 11; First Moghaddam Statement, para. 47.

983 Defence, paras 241-242.

984 Reply, para. 241.

985 Reply, paras 242-243.

existence of a Vereinsbank account for the BVI Co).[986] Azerbaijan has never suggested that the BVI Co held a local bank account in Azerbaijan.[987]

380. In fact, the Atabank account appearing on payment instructions exhibited at **R-89** to **R-95** is an account of the Representative Office (which had the same name as the BVI Co in Azerbaijan).[988] The funds transfer request exhibited at **R-89** and each of the Atabank payment orders at **R-90**, **R-91**, **R-94** and **R-95** refer to a "Caspian Fish Co., Inc." with "[redacted]".[989] "[redacted]" is the Taxpayer Identification Number (**TIN**), and [redacted] is the Representative Office's TIN.[990] While **R-92** and **R-93** are also sent by "[redacted]." but do not expressly refer to its TIN, it is inferred from the fact they reference the same account numbers which were held by the Representative Office, that they are also referring to the Representative Office's account at Atabank.[991]

381. Azerbaijan now understands that in addition to the Representative Office, the LLC held an account at Atabank.[992] Azerbaijan has been provided with a number of documents from Caspian Fish's archives which show payments being made from and to the LLC's Atabank accounts, which are discussed below. Again, and for the avoidance of doubt, it is not suggested that the BVI Co ever had any account at Atabank.

382. Second, Mr Bahari claims in the Reply submission that "*he is not aware of a Caspian Fish BVI account at Atabank and he never received any payments from such an account*" (emphasis added).[993] In support of this submission, he refers to his witness statement, which is set out in much broader terms than the careful language of the

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986 *See* Caspian Fish Co. Inc. Registers and Datasheet dated 3 May 2007, **C-109**, p. 3; Caspian Fish Co. Inc. Registers and Datasheet dated 1 February 2011, **C-107**, p. 4.

987 Indeed, the "Rules of the National Bank of the Republic of Azerbaijan on Opening of Settlement, Current and Other Accounts in Credit Organisations of the Republic of Azerbaijan " dated 1 November 1997 (in force until 10 April 2002), **RLA-293**, confirm that non-resident legal entities without a representative office in Azerbaijan could not open bank accounts in local banks: *see* section 7.

988 *See* Certificate of registration of the Representative Office dated 27 April 1999 [Respondent Document Production 02_10], **R-381**, which shows that the Representative Office was termed the Representative office of Caspian Fish Co. Inc., BVI.

989 Atabank funds transfer request to Nissei dated 7 January 2000, **R-89**.

990 *See* Letter from State Tax Service to SSPI dated 28 October 2024, **R-412**.

991 Notably, both R-92 and R-93 refer to an account number "[redacted]", which is also referenced on the payment orders for which the Representative Office TIN is provided (R-90, R-94 and R-95).

992 The LLC's TIN is [redacted]: *see* Notice of Issuance of TIN for LLC dated 5 October 2000, **R-382**.

993 Reply, para. 244.

Reply: "[redacted]".[994] This evidence is demonstrably untrue by reference to the documentary record:

(a) First, there is documentary evidence that Mr Bahari was paid directly by the Representative Office to make onward payments to suppliers. **R-91**, which is a payment order dated 18 August 2000 from the Representative Office to Atabank to send USD 187,500 to Mr Bahari's account at Commerzbank AG with account number 4636072 for "[redacted]". Mr Bahari cannot deny that this is his account (to the contrary, he relies on it).[995] Other supporting documents which are consistent with this document, such as the [redacted]" have been exhibited by Mr Bahari himself.[996] It is reasonable to infer that this transaction was but one example of a pattern of dealing.

(b) Second, there is documentary evidence that Mr Bahari himself paid sums into the LLC's account at Atabank. Azerbaijan has obtained from Caspian Fish's archives a memorial order, payment slip and receipt order[997] which show that on 18 September 2000 (the day before the LLC was registered in Azerbaijan),[998] Mr Bahari paid AZM 452,400 (equivalent to USD 100) into a "[redacted]" that "[redacted]", i.e., the LLC, held with Atabank.[999] The receipt order is personally signed by Mr Bahari. On 16 October 2000, that sum was transferred into the LLC's main account with Atabank.[1000] What appears to be an internal Caspian Fish summary of the transaction dated 2000 describes these deposits as made for "[redacted]

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994 Third Bahari Statement, para. 21(a).

995 *See* First Klaus Statement, para. 12; **SEC-77**, **SEC-169**, **SEC-61**.

996 Contract between Nissei ASB and "Caspian Fish Company" for USD 782,000 dated 16 June 1999, **SEC-72**.

997 Under Azerbaijan's banking system at the time, which was based on the Russian banking system, a memorial order was used to memorialise internal bank operations, including settlements with customers. A receipt order is an accounting document confirming the receipt of cash. Azerbaijan uses the shorthand "payment slip" to refer to an extract of the current account which shows the relevant transaction.

998 Certificate of State Registration No. 893 for the LLC dated 19 September 2000, **R-116**.

999 *See* Atabank Payment Slip and Receipt Order dated 18 September 2000, **R-240**, pp. 1, 3, referring to the beneficiary as "[redacted]".

1000 *See* Memorial Order dated 16 October 2000, **R-310**, pp. 1, referring to [redacted], which was the TIN for the LLC: *see* Notice of Issuance of TIN for LLC dated 5 October 2000, **R-382**.

[redacted]",[1001] and, indeed, the sum of AZN 425,400 corresponds with the charter capital set out at article 6.2 of the LLC's Charter.[1002] Mr Bahari himself exhibits a letter from Atabank to the Ministry of Justice confirming that the LLC deposited 452,400 Old Manat as share capital to a temporary account,[1003] although he does not particularise how he relies on this document other than to describe it as one of the documents produced by Azerbaijan.[1004]

383. Third, Mr Bahari submits testimony from Mr Chin Kwee Hay, the alleged founder and director of Victroplex, to whom two of the Atabank payment orders, **R-92** and **R-93** are directed. Mr Hay rather weakly testifies that "[redacted]".[1005] This is not surprising: the documents and transaction are a quarter-century old, and in the interim, Mr Hay had such a serious stroke he had to retire.[1006] Mr Hay's inability to recollect the name of Caspian's Fish local bank means nothing in the face of the Atabank payment documents at **R-92** and **R-93**. Notably, the sums being paid by Atabank to Victroplex (a total of approximately USD 165,000) pursuant to an "[redacted]" and "[redacted]"[1007] are far in excess of the sums listed on the invoices that Mr Bahari has managed to locate (which amount to approximately USD 19,000).[1008] Indeed, the Atabank payment orders are more consistent with Mr Hay's evidence that the equipment sold was "[redacted]".[1009]

384. Fourth, Mr Bahari submits that the Atabank payment order **R-90** to Nissei ASB in Dusseldorf is "*false*" because the Tehran branch of Nissei "*handled the orders*",

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1001 *See* Internal Caspian Fish table dated 2000, **R-311**.

1002 Charter of the LLC dated 11 September 2000, **R-57**, art. 6.1.

1003 Letter from Atabank to the Ministry of Justice dated 18 September 2000, **C-278** (note that the Claimant's translation of this document contains a typographical error, referring in the body of the letter to 8, rather than 18, September).

1004 Reply, footnote 211.

1005 Hay Statement, para 12.

1006 Hay Statement, para. 4.

1007 Atabank payment orders to Victorplex dated 10 May 2000 for USD 88,750, **R-92**, and 1 September 2000 for USD 75,907, **R-93**. Azerbaijan notes that Caspian Fish has not been able to locate copies of the underlying contract or invoice referred to in these payment orders.

1008 Victorplex invoices to "Caspian Fish Co" dated 17 June 2000 for [redacted], **SEC-193**, and 4 October 2000 for [redacted], **SEC-196**.

1009 Hay Statement, para. 7.

referring to **SEC-71**, and "*all payments went directly to Nissei Japan; the German office*[…] *was never involved and did not receive any payments*".[1010] The latter point appears to be pure assertion and is not supported by any evidence at all. It can accordingly be dismissed in the face of **R-90**. As to the claim that the Tehran branch "*handled the orders*", it is unclear what this means.[1011] The documents on which Mr Bahari himself relies indicate that at least the Tokyo branch contracted with Caspian Fish.[1012] Nothing in the documentary record excludes the possibility that the parties agreed that a payment should be made to Nissei's account in Germany.

385. Fifth, Mr Bahari claims that the Atabank documents are suspect because they are signed by Mr Zeynalov who "*did not, and would not, have had any authority to issue payments from a Caspian Fish BVI bank account*".[1013] That may be so, but as explained above, the account did not belong to BVI Co. The Atabank accounts belonged to the Representative Office and the LLC. Mr Zeynalov was the Deputy Director of these entities and was authorised to arrange payments by Caspian Fish to its suppliers.[1014]

386. In sum, none of the challenges Mr Bahari has raised to the Atabank payment documents exhibited at **R-89** to **R-95** have merit. He complains that Azerbaijan has not produced the originals for inspection, but that complaint was made at a time when Caspian Fish had advised Azerbaijan (as Mr Bahari is well aware) that it could not locate the originals.[1015] It has since been able to do so, and Mr Bahari is being provided with inspection of **R-89** to **R-95**.[1016]

387. Mr Bahari concludes that even if the Atabank documents were genuine, they "*do not actually offer any support that Mr. Bahari was not the investor in Caspian Fish*", when Mr Bahari was "*the majority owner and Director*" of the BVI Co and "*had exclusive*

1010 Reply, para. 246.

1011 In connection with this invoice, Azerbaijan notes that Mr Bahari provides no response to the fact that he had the corporate stamp of Nissei ASB in his possession. It does not exclude the possibility that he used it to manufacture invoices (including this one) for his benefit.

1012 Including Nissei ASB, Letter Confirming Sale and Delivery dated 21 March 1999, **SEC-70** and Contract between Nissei ASB and "Caspian Fish Company" dated 16 June 1999, **SEC-72**.

1013 Reply, para. 247.

1014 *See* Second Zeynalov Statement, paras 20-21.

1015 *See* email from Quinn Emanuel to Diamond McCarthy and others dated 26 July 2024, **R-375**.

1016 See email from Quinn Emanuel to Diamond McCarthy and others dated 22 October 2024, **R-380**.

authority to enter into contracts".[1017] These submissions further reflect Mr Bahari's tendency to exaggerate and in any event are a *non sequitur*. Mr Bahari was not the "majority owner" of BVI Co. On his own evidence, he was a 40% shareholder.[1018] Mr Bahari also did not have "*exclusive*" authority to contract on behalf of Caspian Fish. In fact, he was expressly empowered to appoint an agent to contract on behalf of Caspian Fish,[1019] and Mr Zeynalov was the Deputy Director of the Representative Office.[1020] In any event, neither point leads to the inference that Mr Bahari must have funded the construction of Caspian Fish.

388. In fact, Azerbaijan has now received a number of documents from Caspian Fish which show *Mr Khanghah* depositing significant sums of money into Caspian Fish's Atabank accounts to pay suppliers. Thus, in respect of a transaction with Dubai-based company Al Habtoor Trading Enterprises LLC (**Al Habtoor**):

(a) On 4 September 2000, Caspian Fish entered into contract no. 214 with Al Habtoor for the purchase of certain motor vehicles, including two freezer trucks of 3 and 4 ton capacities, at a total cost of USD 529,400.[1021] The contract was personally signed by Mr Bahari. It provided for a "[redacted]".[1022] The seller's bank account details were listed on the final page of the contract as "[redacted]" with account number "[redacted]".[1023] On the same day, Al Habtoor issued a proforma invoice to the LLC with invoice no. "[redacted]".[1024]

1017 Reply, para. 250.

1018 *See* Purported Shareholders Agreement, **C-4**.

1019 Power of Attorney from Caspian Fish BVI to Mr Bahari, notarised on 14 April 1999, **R-110**, para. 2.13.

1020 Second Zeynalov Statement, para. 20.

1021 Contract No. 214 between Al Habtoor and Caspian Fish dated 4 September 2000, **R-238**.

1022 Contract No. 214 between Al Habtoor and Caspian Fish dated 4 September 2000, **R-238**, cl. 2.

1023 Contract No. 214 between Al Habtoor and Caspian Fish dated 4 September 2000, **R-238**, cl. 6.

1024 Proforma Invoice from Al Habtoor to Caspian Fish dated 4 September 2000, **R-312**.

(b) On 24 November 2000, Mr Khanghah deposited USD 100,500 in cash into the LLC's Atabank account.[1025] On the same day, the LLC issued a payment order to Atabank to send USD 100,000 to Al Habtoor's ANZ Grindlays bank account as [redacted].[1026] Caspian Fish has also provided Azerbaijan with the corresponding SWIFT instruction to pay Al Habtoor USD 100,000 on 24 November 2000.[1027] On 27 November 2000, Atabank took USD 500 as commission for this transaction.[1028]

(c) Azerbaijan is not privy to the details of whether this contract was ultimately fulfilled, however, it has seen documents from Al Habtoor to Caspian Fish: (i) confirming receipt of the USD 100,000;[1029] (ii) updating Caspian Fish that some of the units have been "[redacted]" to be models which "[redacted]";[1030] (iii) chasing Caspian Fish for an update on the status of the letter of credit.[1031]

389. Caspian Fish has also provided Azerbaijan with copies of documents showing Mr Khanghah funding payments to other suppliers, although it has not been provided with copies of the underlying contracts relating to these payments, which it understands could not be located:

(a) On 10 October 2000, AVIRTEL Inc issued an invoice to the LLC for a total of USD 21,829 for the purchase of certain audio equipment.[1032] The bank account details listed on the invoice provided for the transfer to be made to a Wells Fargo account in the name of Mayrouyeh Malihi with number "[redacted]". On 11 December 2000, Mr Khanghah deposited USD 21,829 into the LLC's Atabank

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1025 *See* Payment Slip, Receipt Order and Memorial Order showing Mr Khanghah's deposit to the LLC (TIN [redacted]) Atabank account on 24 November 2000, **R-313**.

1026 Payment order from LLC to Atabank dated 24 November 2000, **R-165**.

1027 SWIFT instruction dated 24 November 2000, **R-314**.

1028 Memorial Order dated 27 November 2000, **R-315**.

1029 Letter from Al Habtoor to Caspian Fish dated 21 December 2000, **R-316**.

1030 Letter from Al Habtoor to Caspian Fish dated 22 December 2000, **R-383**.

1031 Letter from Al Habtoor to Caspian Fish dated 8 February 2001, **R-317**; Letter from Al Habtoor to Caspian Fish dated 6 March 2001, **R-318**.

1032 Invoice from Avirtel to the LLC dated 10 October 2000, **R-319**.

account.[1033] On the same day, the LLC issued a payment order to Atabank to send USD 21,829 to Mr Malihi's Wells Fargo bank account as [redacted]".[1034] Caspian Fish has also provided Azerbaijan with the corresponding SWIFT instruction to pay Mr Malili USD 21,829 on 11 December 2000.[1035]

(b) On 13 December 2000, Mr Khanghah deposited USD 50,250 in cash into the LLC's Atabank account.[1036] On the same date, the LLC issued a fund transfer request to Atabank to transfer USD 50,000 to Sudtronic M Schaff & Co (**Sudtronic**) with the details of the payment referring to "[redacted]".[1037] Caspian Fish has also provided Azerbaijan with the corresponding SWIFT instruction to pay Sudtronic USD 50,000 on 13 December 2000.[1038] Atabank took USD 250 as commission for this transaction.[1039]

390. Azerbaijan has also seen documents which evidence that in the first three months of 2000 alone, Mr Khanghah deposited the equivalent of at least USD 630,000 into the Representative Office's Atabank account.[1040] These deposits were made in old manat

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1033 *See* Payment Slip and Receipt Order showing Mr Khanghah's deposit to the LLC (TIN [redacted]) Atabank account on 11 December 2000, **R-320**.

1034 Payment order from LLC to Atabank dated 11 December 2000, **R-164**.

1035 SWIFT instruction dated 11 December 2000, **R-321**.

1036 *See* Payment Slip and Receipt Order showing Mr Khanghah's deposit to the LLC (TIN [redacted]) Atabank account on 13 December 2000, **R-322**.

1037 Fund Transfer Request from LLC to Atabank dated 13 December 2000, **R-163**.

1038 SWIFT instruction dated 13 December 2000, **R-323**.

1039 Memorial Order dated 13 December 2000, **R-324**.

1040 *See* Payment slip and Order showing deposit by Mr Khanghah into the Representative Office (TIN [redacted]) Atabank account of 1,330,000,000 manats on 7 January 2000, **R-325**, and corresponding Memorial Order dated 7 January 2000 showing the purchase of USD 300,500, **R-326**; Payment slip and Order showing deposit by Mr Khanghah into the Representative Office Atabank account of 389,400,000 manats on 11 January 2000, **R-327**, and corresponding Memorial Order dated 11 January 2000 showing the purchase of USD 88,000, **R-328**; Payment slip and Order showing deposit by Mr Khanghah into the Representative Office Atabank account of 22,125,000 manats on 2 February 2000, **R-329**, and corresponding Memorial Order dated 2 February 2000 showing the purchase of US dollars, **R-330**; Payment slip and Order showing deposit by Mr Khanghah into the Representative Office Atabank account of 88,500,000 manats on 8 February 2000, **R-331**, and corresponding Memorial Order dated 8 February 2000 showing the purchase of USD 20,000, **R-332**; Payment slip and Order showing deposit by Mr Khanghah into the Representative Office Atabank account of 35,400,000 manats on 9 February 2000, **R-333**, and corresponding Memorial Order dated 9 February 2000 showing the purchase of USD 8,000, **R-334**; Payment slip and Order showing deposit by Mr Khanghah into the Representative Office Atabank account of 137,175,000 manats on 28 February 2000, **R-335**, and corresponding Memorial

in cash and subsequently used to purchase dollars. Although Azerbaijan has no knowledge of what these payments were specifically applied towards, Mr Hasanov recalls that Caspian Fish usually paid its suppliers in US dollars,[1041] and it is reasonable to infer that these payments were likely to have been made to pay Caspian Fish's suppliers.

391. Mr Bahari will no doubt claim without basis that these documents are forged, or will invent new evidence to the effect he provided Mr Khanghah with the money. Any such belated testimony would fly in the face of the consistent evidence of Azerbaijan's witnesses, who confirm that these funds came from Mr Heydarov.[1042]

3. The documentary record establishes that Mr Heydarov funded Caspian Fish's construction

392. In addition to the Atabank deposits, which plainly evidence (even on Mr Bahari's case) that someone other than Mr Bahari was funding Caspian Fish's bank accounts, Azerbaijan has identified other documentary evidence which demonstrates that Mr Heydarov funded the construction of Caspian Fish. In particular, Azerbaijan relies on a set of 41 invoices issued by BVI company INL to Caspian Fish dating between February 1999 and December 2000.[1043] These documents were obtained from Caspian Fish's archives, but little else is known about their provenance.[1044] What Azerbaijan does know, as set out in the Defence, is that INL was a company incorporated in the BVI at the same time as ICCI,[1045] which is a company of which Mr Heydarov was a director,[1046] and whom Azerbaijan understands was also the beneficial owner.[1047]

Order dated 28 February 2000 showing the purchase of USD 31,000, **R-336**; Payment slip and Order showing deposit by Mr Khanghah into the Representative Office Atabank account of 30,975,000 manats on 22 March 2000, **R-337**, and corresponding Memorial Order dated 22 March 2000 showing the purchase of USD 7,000, **R-338**.

1041 Second Hasanov Statement, para. 39.

1042 *See*, e.g., First Hasanov Statement, para. 11, First Zeynalov Statement, paras 30-31; First Kerimov Statement, para. 20; Second Hasanov Statement, para. 39; Sultanov Statement, para. 25.

1043 Invoices from International N.A.T Limited to Caspian Fish BVI, **R-31**; Summary of invoices from International N.A.T. Limited to Caspian Fish BVI, **R-48**.

1044 First Zeynalov Statement, para. 7.

1045 *See* Defence, para. 243(b) and (c).

1046 ICCI Limited Register of Transfers dated 6 January 2004, **C-115**, at p. 6.

1047 Second Kerimov Statement, para. 37.

393. Mr Bahari claims that Azerbaijan takes an "*unintelligible, and unbelievable, position*" in relation to INL's "*involvement*[…] *in the construction of Caspian Fish*",[1048] but these submissions are ill-advised. First, Azerbaijan does not suggest that INL was "*involve*[d]" in the construction of Caspian Fish. To the contrary, it submits the opposite: that "[i]*t is unlikely that INL was in fact carrying out the construction services set out in the invoices*".[1049] Mr Bahari ought to take more care with his characterisation of Azerbaijan's submissions.

394. Second, and more importantly, Mr Bahari does not challenge the authenticity of the INL invoices. He did not seek inspection of the originals, and he did not ask for *any* disclosure related to them. He was well aware of INL's existence before the filing of the Defence, not least because INL is referenced in the disclosure he obtained from the BVI Co's registered agents. That disclosure confirms that on 2 February 2001, the Registered Office and Agent of both ICCI and INL were changed to Jordans (Caribbean) Limited.[1050] Mr Bahari did not mention these facts with his Statement of Claim, and Azerbaijan infers that Mr Bahari knows more about INL than he is willing to reveal.

395. It is therefore no surprise that Mr Bahari's submissions about INL are suitably vague. He refers to Azerbaijan's submissions, but then fails to critique them in substance, merely describing them as "*dubious*",[1051] "*tenuous*",[1052] and "*flimsy*".[1053] He then proceeds to suggest that an "*actual review of the INL invoices further establishes that they are unreliable and disconnected from reality*".[1054] Again, however, Mr Bahari's starting point is wrong. Azerbaijan does not rely on the INL invoice as invoices closely correlating to particular works, or to suggest that INL carried out any construction.[1055] Most likely, they were produced to record the cost, or what should have been the cost,

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1048 Reply, para. 251.

1049 Defence, para. 243(c).

1050 Fax from Jordans (Caribbean) Limited to Jordans (Isle of Man) Limited dated 2 February 2001, **R-395** (Claimant's disclosure in response to Request No. 45).

1051 Reply, para. 255.

1052 Reply, para. 258.

1053 Reply, para. 258.

1054 Reply, para. 260.

1055 *See* Reply, para. 269.

of the project, and they are believed to be historic records of Mr Heydarov's spend. This deals with the vast majority of Mr Bahari's complaints about the dates and descriptions on the face of the INL invoices.[1056] Azerbaijan does not rely on these documents for what they say about the construction of Caspian Fish; rather, it relies on them as further evidence that the Caspian Fish project was funded by Mr Heydarov.

396. Azerbaijan accepts that the INL invoices are not necessarily evidence of the "total" amount invested.[1057] They are, however, evidence of *an* amount invested. Azerbaijan has no knowledge of whether the total spend on construction was USD 24.5 million, and another USD 10 million was spent on equipment, or the total was less than this. Either way, it is apparent from the evidence of Azerbaijan's witnesses, which has not been challenged by Mr Bahari, that what was spent was too much.[1058]

397. Bahari concludes that his "*extremely broad and exclusive powers and decision-making capability under a power of attorney* […] *is consistent with Mr. Bahari being the investor for Caspian Fish*".[1059] In fact, it is consistent with him managing the construction project, which Azerbaijan has never denied.[1060] Even on Mr Bahari's case, Mr Heydarov had a larger share of the business than him. The most likely reason for Mr Heydarov's 50% share, given he appears nowhere in the evidentiary record other than in the testimony of the witnesses who confirm that he invested the funds, was because he was the one who invested the money. It is apparent from the documentary record that Mr Bahari was the front man or the "face" of the business,[1061] and that is consistent with Mr Kerimov's evidence that Mr Heydarov was "[redacted]".[1062] Mr Bahari managed the construction project for almost two years and was Caspian Fish's

1056 Reply, paras 264, 266-268.

1057 Reply, para. 270.

1058 First Kerimov Statement, paras 20 and 12; First Hasanov Statement, para. 14.

1059 Reply, para. 274.

1060 *See* Defence, paras 237-238.

1061 Power of Attorney from Caspian Fish BVI to Mr Bahari, notarised on 14 April 1999, **R-110**; Power of Attorney from BVI Co to Mr Bahari dated 29 August 2000, **R-69**; *see* multiple documents sent by or addressed to Mr Bahari as General Director of Caspian Fish, e.g. **SEC-70**; **SEC-72**; **SEC-181**; **R-117**, **R-118**; **R-119**; **R-120**; **R-121**; **R-64**.

1062 Second Kerimov Statement, para. 36.

general director. There is no suggestion that he was remunerated. His 40% stake in the company was likely the quid pro quo for his efforts.

398. Mr Bahari broadly complains that "*Azerbaijan volunteered or was directed to produce documents about Caspian Fish*", but "*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*".[1063] This is gross mischaracterisation. Azerbaijan was ordered to produce documents in its possession "[redacted]".[1064] Even if Azerbaijan had any such documents, they would not show who paid for the cost of constructing Caspian Fish. Further and in any event, in making these submissions Mr Bahari overlooks the Atabank evidence and the INL invoices.

399. Finally, Mr Bahari claims that "*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*",[1065] repeating the allegations made in the Statement of Claim.[1066] Azerbaijan's position on those allegations is set out in the Defence.[1067] It has no direct knowledge of the private business affairs of Messrs Aliyev and Heydarov. Azerbaijan denies, however, the authenticity of the document that Mr Bahari claims that Messrs Aliyev and Heydarov personally signed in 1999, namely the Purported Shareholders Agreement (**C-4**), for the reasons set out above. Nor does it accept the authenticity of the signatures on the Verinsbank account opening form (**C-7**). In particular, Azerbaijan's handwriting expert Ms Briggs concludes about Mr Aliyev's purported signature on both these documents that:

[redacted]

1063 Reply, para. 275.

1064 Annex 1 to Procedural Order No. 6 dated 9 April 2024, Request No. 79; *see* Reply, para. 275 and footnote 351, referring to Request No. 79.

1065 Reply, para. 282.

1066 Reply, paras 279-282.

1067 *See* Defence, para. 232.

[redacted].[1068]

400. Other than documents discussed above (**C-4** and **C-7**), there is no evidence of Mr Aliyev's involvement in Caspian Fish. In the Reply, Mr Bahari claims that "*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*".[1069] In the Statement of Claim, Mr Bahari alleges that "*Mr. Aliyev maintained control of Caspian Fish through his daughters, and can himself be considered a UBO of the company*".[1070] Neither statement is factually accurate or evidentially supported. The BVI records show that Mses Arzu and Leyla Aliyeva were *directors* of shareholders in the BVI Co.[1071] They say nothing about the beneficial ownership of Caspian Fish.

401. As far as Azerbaijan understands from the evidentiary record in these proceedings:

(a) ICCI was Mr Heydarov's company: as Mr Kerimov states, "[redacted]".[1072]

(b) Mr Heydarov funded Caspian Fish's construction; and

(c) Since Mr Bahari's exit, Caspian Fish has been majority owned and controlled by Mr Heydarov or his companies.[1073]

4. Press reports are not reliable evidence of what was spent on the construction of Caspian Fish

402. Other than his own witness testimony, Mr Bahari relies on the conclusions of his valuation experts, Secretariat, and a number of press reports, in support of a USD 56 million spend. Neither source is reliable evidence of a USD 56 million spend.

1068 Briggs Report, para. 6.1.29.

1069 Reply, para. 369.

1070 Reply, para. 236.

1071 Arblos Management Corp. Amendment to Articles of Incorporation dated 11 August 2006, **C-138**; Lynden Management Group Articles of Incorporation dated 17 August 2006, **C-139**; Hising Management S.A. Amendment to Articles of Incorporation dated 1 June 2012, **C-140**.

1072 Second Kerimov Statement, para. 37.

1073 Letter from Khazri Solutions dated 10 May 2024 [Respondent Document Production - 075_01], **C-318**.

403. Mr Bahari optimistically declares that "*Secretariat considers it more likely than not that Mr. Bahari invested the full US$ 56 million in Caspian Fish*".[1074] Mr Bahari is mistaken as to Secretariat's role.[1075] It is not to make assessment of the evidence. That is for the Tribunal. Secretariat's role is to give their independent opinion to the Tribunal on matters of valuation. In this regard, Secretariat claim that it has been "[redacted]"[1076] relying on statements made: (i) in the press by Mr Kerimov in 2001 and 2002; (ii) Caspian Fish's website; and (iii) subsequent press reports. Each of these sources is unreliable and can be traced to a single origin:

(a) As Mr Kerimov confirms, he personally "[redacted]".[1077] While he did convey to the media that this amount was invested, the only reason he did so is because "[redacted]".[1078] He did not want to, and he was asked not to, deviate from that message as a matter of national pride and so as not to damage the public perception of Caspian Fish.[1079]

(b) Consistent with that, statements on Caspian Fish's website as to the amount invested (or indeed the capacity of the plant)[1080] are not reliable. As Mr Kerimov explains:

[redacted].[1081]

1074 Reply, para. 221.

1075 *See* Second Secretariat Report, para. 3.23.

1076 Second Secretariat Report, para. 3.24.

1077 Second Kerimov Statement, para. 33.

1078 Second Kerimov Statement, para. 31.

1079 Second Kerimov Statement, para. 32.

1080 *See* Defence, paras 311, 444(c).

1081 Second Kerimov Statement, para. 32.

(c) Mr Kerimov thus considered it his duty to speak positively about Caspian Fish's attributes and opportunities, even if that meant press articles were "[redacted]" as a result.[1082]

(d) Subsequent media articles appear to have simply repeated the content of earlier articles, which also can be traced back to the late President's speech.[1083] Nothing in the articles on which Mr Bahari relies suggest that any independent verification or fact-checking exercise was carried out with respect to this figure.[1084]

404. Mr Bahari further relies on Secretariat's conclusion that "[redacted]".[1085] However, for the reasons set out in the Second Shi Report and summarised below, Secretariat's cost-to-capacity analysis does not provide support for a conclusion that an amount invested of USD 56 million was "*reasonable*":

(a) Secretariat consider 19 facilities constructed over a period of nearly 25 years, without accounting for inflation.[1086]

(b) There is a very wide range for the annual capacities of these 19 seafood processing facilities, all of which significantly differ from the one relied upon by Secretariat for Caspian Fish.[1087]

(c) The locations of the comparator projects are not similar to Azerbaijan.[1088]

405. Adjusting for these material problems with Secretariat's analysis, Dr Shi concludes that if the cost of construction had in fact been USD 56 million, its cost/capacity ratio would

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1082 Second Kerimov Statement, para. 30.

1083 Second Kerimov Statement, para. 31.

1084 Azertac, Tajik President Visited Caspian Fish Co. in Baku dated 13 August 2007, **SEC-11**; Azertac, Swiss President Familiarizes Himself with 'Caspian Fish Co. Azerbaijan' Corporation dated 11 May 2008, **SEC-12**; Caspian Fish Website, History of Foundation dated 25 February 2013 (accessed from the Wayback Machine), **SEC-15**; BastaInfo, Kamaladdin Heydarov sells his famous company dated 26 March 2018, **SEC-28**.

1085 Reply, para. 223; Second Secretariat Report, para. 3.25-3.26.

1086 Second Shi Report, para. 2.66.

1087 Second Shi Report, para. 2.68.

1088 Second Shi Report, para. 2.70.

have been higher than the median of other seafood processing facilities.[1089] Indeed, Mr Parvizi, a macroeconomic expert with experience in economic evaluation of Azerbaijani companies' operations and market assessments, opines that the maximum amount spent in Azerbaijan for the scope of work in the Purported Chartabi Contract would be approximately USD 4.5 million.[1090]

406. In sum, there is no credible evidence that USD 56 million was spent on the construction of Caspian Fish. In the absence of any financial or accounting records, the kind of evidence that would support amounts spent includes proof of payment documents, such as bank statements and receipts, not unverified press articles and the company's website. Mr Bahari's claim that USD 56 million was spent is pure speculation.

B. Mr Bahari actively participated in the establishment of the LLC

1. Copious documentary evidence demonstrates Mr Bahari's knowledge of and participation in the LLC

407. In the face of numerous documents that evidence Mr Bahari's active participation in and knowledge of the establishment of the LLC,[1091] Mr Bahari has only one answer: to cry fraud in relation to all of it, even where that narrative is inconsistent with other aspects of his pleaded case. For example, Mr Bahari insists that the LLC was "*purposefully hidden from him*",[1092] while at the same time arguing that after he left Azerbaijan, the LLC sought to "*expunge Mr. Bahari from the corporate record*" by obtaining a new registration certificate in April 2002.[1093] Leaving aside that these submissions are wildly misconceived (which is addressed below), Mr Bahari cannot explain why Caspian Fish, on Mr Bahari's case, needed to take steps to remove Mr

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1089 Second Shi Report, paras 2.67, 2.69, 2.71 and Table 2.5.

1090 Parvizi Report, para. 7.2; Report prepared by Scope Consulting dated 10 October 2024, **BT-39**.

1091 Power of Attorney from BVI Co to Mr Bahari dated 29 August 2000, **R-69**; Application for the Registration of the LLC dated 29 August 2000, **R-56**; Charter of the LLC dated 11 September 2000, **R-57**; Payment Slip and Receipt Order dated 18 September 2000, **R-240**; Letter from the LLC to Absheron District State Social Protection Fund dated 9 October 2000, **R-117**; Letter from the LLC to Absheron District Labour and Employment Center dated 9 October 2000, **R-118**; Letter from the LLC to Absheron District Territorial Tax Department dated 9 October 2000, **R-119**; Letter from the LLC to Absheron District Statistical office dated 9 October 2000, **R-120**; Letter from the LLC to Absheron District State Social Protection for Disabled Persons dated 9 October 2000, **R-121**.

1092 Reply, para. 328.

1093 Reply, para. 332.

Bahari from the LLC's corporate record, if his participation in the LLC was so well hidden that even he did not know he was its general director.

408. The truth is, Mr Bahari did know about the LLC, he was involved in its formation, and he knew he was its general director. The only evidence he offers in support of his assertions that he did not is his own testimony (and the inconclusive evidence of his handwriting expert); Azerbaijan offers numerous contemporaneous documents which show the opposite. Azerbaijan cannot fathom any rational or strategic reason for Mr Bahari to deny knowledge of the LLC; indeed, subject to article 9, his indirect interest in it is the only form of potentially qualifying investment under the Treaty in connection with Caspian Fish. Perhaps Mr Bahari is reluctant to concede that his memory is failing, given that he so strenuously denied knowledge of the LLC in his first witness statement,[1094] before Azerbaijan presented the documents which contradict these claims. Either way, his pleaded case can now be assessed based on the documents. His only defence now is to claim fraud, and this defence is hopeless.

409. In this connection, Mr Bahari challenges the BVI Co board minutes which resolved to establish the LLC (the **BVI Minutes**).[1095] Mr Bahari states that the BVI Minutes were not quorate under the BVI Co's articles[1096] and thus, he concludes, the BVI Co "*did not have the authority to establish and register Caspian Fish LLC*".[1097] Azerbaijan accepts that it appears that the BVI Minutes were not quorate, although it denies that this means that the BVI Co could not establish and register the LLC. Even if Mr Bahari's assessment were correct, however, it is unclear to what issue this point goes. It does not mean that Mr Bahari did not have knowledge of the LLC, nor does it mean that there was any deficiency in the establishment of the LLC from the Azerbaijani perspective. Azerbaijan's Ministry of Justice was only concerned to ensure conformity with its *own* legislation.[1098] If Mr Bahari has some complaint about the quorum for the BVI Minutes, that complaint belongs in the BVI.

1094 First Bahari Statement, para. 90.

1095 Minutes of the Meeting of the Board of Directors of Caspian Fish Co Inc dated 15 August 2000, **C-290**.

1096 Caspian Fish Co. Inc. Memorandum and Articles of Association dated 5 March 1999, **C-2**, p. 27.

1097 Reply, paras 291-294.

1098 Mustafayev Report, para. 53.

410. Notably, while Mr Bahari challenges the BVI Minutes, he says nothing about the power of attorney issued by the BVI Co in his favour on 29 August 2000 (the **BVI LLC PoA**), which provides:

[redacted].[1099]

411. The BVI LLC PoA is signed by Mr Khanghah in his capacity as director of BVI Co. It is not a board minute, and it did not require a quorum to be met. On its face, it is evidence of Mr Bahari's authority to make the relevant applications, which is precisely what happened next.

412. The LLC Establishment Documentation, being the application to register the LLC (**R-56**) and the Charter of the LLC (**R-57**), are signed by Mr Bahari. Mr Bahari's challenge to the authenticity of his signature on those documents is hopeless, as set out above.[1100] He makes a number of further scatter-gun allegations based on the contents of the documents, each of which are embarrassingly weak. None of these points demonstrate that Mr Bahari did not have knowledge of the LLC, nor do they go to the authenticity of the documents:

(a) Mr Bahari argues that in **R-57**, it is "*highly unusual*" that "*there is no printed line associated with* [Mr. Bahari's] *signature*", whereas "the *signature on the left of the document is written on a printed line*".[1101] This is not a serious submission. Mr Bahari gives no explanation for why this is "unusual" in the specific context of **R-57**, nor does this submission support any claim of forgery at all (to the extent that is what Mr Bahari is alleging).

(b) Mr Bahari makes another bad point in connection with **R-57**, claiming that the fact that the Charter describes the founder of the LLC as "[redacted]

1099 Power of Attorney issued by BVI Co dated 29 August 2000, **R-69**.

1100 Azerbaijan further notes that while Mr Bahari repeats the claims made in the Statement of Claim that his name has been "*misspelled*" in these documents (Reply, para. 295), he fails to engage with the point made in the Defence that his name is derived from Arabic script and has multiple, valid transliterations into Latin and Cyrillic (Defence, para. 277).

1101 Reply, para. 297.

[redacted]" is a "*significant error*".[1102] As Mr Bahari recognises, the Charter also states that this company is "[redacted]".[1103] While the name of the entity may have inaccurately added the word "Azerbaijan", its jurisdiction and date of incorporation, as well as its company number, were correct. This is evidently a clerical, and not a "significant", error and, in any event, has no bearing on Mr Bahari's knowledge of the LLC, nor the authenticity of the document.

(c) Finally, Mr Bahari makes a small point about another typographical error, in **R-56**, which describes the application as one for the registration of a "Representative Office", rather than the LLC, to claim that "*even if Mr. Bahari had signed this document (which is denied), he would not have known this was to register an LLC in Azerbaijan*".[1104] But Mr Bahari had already made an application to register the Representative Office by the time the BVI LLC PoA was issued.[1105] He knew, of course, that he was not establishing another representative office. In any event, it is obvious that the reference to the Representative Office was a typographical error, given the document also refers to the establishment of a legal entity under Azerbaijani law, i.e. "[redacted]",[1106] and not "[redacted]" (as the application to register the Representative Office stated).[1107] Moreover, the application was accompanied by other documents that plainly referred to the LLC, not least the confirmation of payment of "[redacted]" (emphasis added).[1108]

1102 Reply, para. 298.

1103 Reply, para. 298; Charter of the LLC dated 11 September 2000, **R-57**, cl. 3.1.

1104 Reply, para. 296.

1105 Application to the Ministry of Justice for the registration of the Representative Office dated 19 April 1999, **R-85**.

1106 Application to the Ministry of Justice for the registration of the LLC dated 29 August 2000, **R-56**.

1107 Application to the Ministry of Justice for the registration of the Representative Office dated 19 April 1999, **R-85**.

1108 Application to the Ministry of Justice for the registration of the LLC dated 29 August 2000, **R-56**, p. 1: "state duty for the registration of Caspian Fish Co Azerbaijan".

413. Separately, Mr Bahari attempts to cast doubt on a related document disclosed *inter partes* by Azerbaijan, which is a handwritten note by the Head of the State Registry of Legal Entities confirming that the LLC's "[redacted]".[1109] Mr Bahari asserts that it "*seems highly unusual for a State organ, i.e. the Ministry of Justice, to confirm compliance with requirements of legislation in a manuscript document*".[1110] Again, Mr Bahari gives no explanation for why the fact that it is in manuscript is "*highly unusual*". There was no prohibition on the State Registry writing documents by hand. Notably, there are other examples of similar handwritten testimonials prepared by the State Registry on the record which Mr Bahari has not questioned.[1111]

414. Mr Bahari raises objection to a third category of documents concerning an amendment to the LLC's Charter in October 2000,[1112] on the basis that these documents, which show Mr Zeynalov's involvement in the LLC, do not "*evidence that Mr. Bahari was aware of and involved with the incorporation and activities of Caspian Fish LLC*".[1113] Azerbaijan is not aware of the reason why the minutes of a meeting of the LLC dated 6 October 2000, which discussed an amendment to the LLC's Charter, describe Mr Bahari as an invited person.[1114] Contrary to Mr Bahari's submission, however, they evidence that he was at least invited to attend,[1115] and this document on its face therefore runs counter to Mr Bahari's narrative that he did not know about the existence or establishment of the LLC. Further and in any event, Mr Zeynalov's presence and

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1109 State Registry for Legal Entities testimonial, undated, **C-291** (Azerbaijan notes that there is a typographical error in the Claimant's translation of this document, where the reference to the state duty paid should be 825,000 and not 305,000 manats).

1110 Reply, para. 299.

1111 *See*, e.g., Handwritten Amendment to the Articles of Association of Caspian Fish Co Limited Liability Company, undated, **C-403** [Respondent Document Production - 049_02].

1112 Protocol of LLC Meeting on Addendum to the Charter dated 6 October 2000, **R-122**; Letter from Mr. Zeynalov, Deputy Director for General Operations, to F. Mammadov dated 28 October 2000 [Respondent Document Production - 049_01], **C-402**; Handwritten Amendment to the Articles of Association of Caspian Fish Co Limited Liability Company, undated [Respondent Document Production - 049_02], **C-403**; Certificate of Registration and Approval of Modification of Charter of Incorporation of Caspian Fish Co Limited Liability Company dated 11 April 1999 [Respondent Document Production - 049_03], **C-404**.

1113 Reply, para. 303. Azerbaijan did not rely on the vast majority of these documents with its Defence. It relied on the minutes at **R-122**. The remaining documents to which Mr Bahari refers were produced *inter partes* in the course of disclosure and have been exhibited by Mr Bahari.

1114 *See* Reply, para. 303.

1115 Protocol of LLC Meeting on Addendum to the Charter dated 6 October 2000, **R-122**.

involvement in the LLC (which Mr Bahari appears to accept) does not negate Mr Bahari's. If anything, it is evidence that Mr Bahari knew about the LLC, given the close working relationship between Mr Zeynalov and Mr Bahari at the time.[1116]

415. It remains unclear what benefit there would have been to anyone to exclude Mr Bahari from participation in the LLC. At the time of writing the Statement of Claim, it appears that Mr Bahari did not recall that the LLC was, from the date of its incorporation, a wholly owned subsidiary of BVI Co. Mr Bahari thus argued that the LLC was incorporated as part of "*Messrs. Aliyev, Heydarov, and Khanghah*['s] *plan*[]" to "*ouster* [Mr. Bahari] *from Caspian Fish*",[1117] and that the LLC was a "*fraudulent corporate vehicle*"[1118] into which "*Caspian Fish's physical assets were illegally transferred*".[1119] But this was wrong. Since it became clear to Mr Bahari and his counsel that the LLC was established from the outset as a wholly-owned subsidiary of BVI Co, these arguments from the Statement of Claim have been quietly dropped.

416. Instead, Mr Bahari claims, the reason the LLC was incorporated (allegedly) without his knowledge was "*to bring this extremely valuable 'asset' under the control of Azerbaijan and its kleptocratic system of governance*".[1120] This is nonsense. The incorporation of the LLC under BVI Co did nothing to change the structure of the parties' interests in BVI Co, which is the company in which Mr Bahari held his shares. Moreover, on Mr Bahari's own case, his partners in the project were Messrs Aliyev and Heydarov. From the beginning, they had a 50% share in Caspian Fish. Mr Bahari's exit did not change that, with or without the existence of a local subsidiary.

417. A final matter worth addressing is Mr Bahari's submissions on the fact that in April 2002, the LLC applied for a new registration certificate. This would be an innocuous event had it not formed part of Azerbaijan's disclosure (such documents existing in

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1116 *See* First Zeynalov Statement, para. 27 [redacted]"); Power of Attorney issued by Mr Bahari to Mr Zeynalov dated 17 December 1999, **R-38**.

1117 Statement of Claim, footnote 332.

1118 Statement of Claim, para. 289.

1119 Statement of Claim, title to III.G.

1120 Reply, para. 338.

Azerbaijan's State records, unlike documents responsive to the vast majority of Mr Bahari's requests) and Mr Bahari felt the need to make something of it.

418. His submissions in relation to the application are bizarre. He claims that the purpose of the application was to "*expunge*" Mr Bahari from the LLC's corporate record and that Azerbaijan "*had to address what had happened to Mr. Bahari*" in the light of the Azerbaijani President's meeting with the Iranian Foreign Minister.[1121] As Mr Kerimov explains, however, there was nothing nefarious in the application to obtain a new certificate.[1122] The documents state on their face that a new certificate was necessary because the original "[redacted]".[1123] Moreover, the replacement certificate was in *identical* form to the original, so it is not apparent why obtaining a new one would have had any effect of scrubbing Mr Bahari from the corporate record if that had even been the intention (which is denied).[1124]

419. Mr Bahari claims the original certificate was "*associated*" with him, whereas the replacement was not, but he does not explain what he means by "*associated*", and it is certainly not apparent on the face of the document that the certificate was associated with any particular individual.

420. Nor does Mr Bahari explain why making such an application would have the effect of "*addressing what had happened to Mr. Bahari*".[1125] He includes a throwaway line into his submissions on this issue, stating that "*it has now been confirmed by Iranian Ambassador Ghazaei that Mr. Bahari's investments in Azerbaijan were approved and certified investments by the Iranian Government*".[1126] The relevance of this point is never made clear. It has no bearing on the fact that Mr Bahari's investments were not approved by the Azerbaijani Government under the Treaty, and Mr Bahari does not suggest it should. Indeed, Dr Mehrinfar confirms that this letter would not have qualified if the requisite approval was the one required under the Treaty by Iran's

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1121 Reply, para. 331.

1122 *See* Second Kerimov Statement, paras 22-23.

1123 Letter from Caspian Fish Co Azerbaijan to Ministry of Justice of the Republic of Azerbaijan (with attachments) dated 11 April 2002, **C-293**, p. 6.

1124 *See* Second Kerimov Statement, para. 23.

1125 Reply, para. 331.

1126 Reply, para. 331.

government.[1127] There is no explanation at all what "*approved and certified investments*" even means.

421. In sum, Mr Bahari's efforts to deny his knowledge of the LLC fall flat. All of the evidence points towards his knowledge and participation, and he cannot provide any credible reason why the LLC would have been concealed from him.

2. Mr Heydarov or his companies have been the indirect owners of the LLC since Mr Bahari's exit

422. Recognising that he cannot succeed in any claim based on "*the legality of what occurred in the BVI*",[1128] Mr Bahari makes a number of submissions which are inconsistent with his case as to his knowledge of the LLC. He claims that actually the BVI is relevant because it shows how "*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*".[1129] Thus, Mr Bahari appears to accept that his relevant interest, for the purposes of the Treaty, is that in the LLC. That aside, his claims about the "*stripp*[ing]" of ownership are misconceived.

423. Mr Bahari claims that the "*prism of transparency that the BVI provides*" is important in circumstances where "*Azerbaijan has assured that Caspian Fish related information and documents* […] *have never been available to Mr. Bahari and are not disclosed in the Arbitration*".[1130] In particular, he complains that Azerbaijan failed to produce responsive documents to four categories of request, but his submissions are based on the erroneous premise that these documents "*necessarily must exist to some extent*".[1131] Mr Bahari provides no explanation for this bare assertion, and it is wrong. For example, Request No. 62 sought documents relating to the LLC's "[redacted]".[1132] Mr Bahari does not provide examples of the type of documents that might be anticipated to fall into this category, and there are none. The LLC was a

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1127 Second Mehrinfar Report, para. 11.

1128 Reply, para. 334.

1129 Reply, para. 334.

1130 Reply, para. 335.

1131 Reply, para. 336.

1132 Annex 1 of Procedural Order No. 6 dated 9 April 2024, Request No. 62.

locally registered entity. There was no documentation that concerned its "[redacted]" as a "[redacted]", and there is nothing to indicate that there was.

424. While Mr Bahari struggles to reconcile his insistence that the LLC was a corporate vehicle used to defraud him with the obvious fact that he indirectly had an interest in the LLC through BVI Co, it appears to be common ground based on the documentary record that: (i) the LLC was 100% owned by BVI Co from 2000 to around 2022;[1133] (ii) after that date (as well as before), the LLC was owned (directly or indirectly) by individuals associated with Gilan.[1134] Azerbaijan also understands from the evidentiary record that following Mr Bahari's exit from BVI Co, the company was majority owned and controlled by Mr Heydarov.[1135] Mr Bahari claims that "*both of these scenarios cannot be simultaneously 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*",[1136] but he seems to misunderstand corporate structures. Of course both can be true if Gilan or indeed, "[redacted]",[1137] were the owner of BVI Co.

425. Mr Bahari desperately wishes to know who the owners of the LLC are today, but it has less relevance to his Treaty claim than he appears to think. He insists that it is evidence of attribution,[1138] but, as discussed above, it is common ground that Mr Heydarov was one of Mr Bahari's initial partners in BVI Co. In the light of this, Mr Bahari's submissions that he has been "*kept in the dark and unable to understand who has historically owned and currently owns Caspian Fish LLC*" are nonsensical.[1139] Leaving aside the relevance of who owns Caspian Fish today (which is denied), on Mr Bahari's own case, he partnered with Mr Heydarov. Caspian Fish was a private investment of a member of government from the beginning.

1133 Reply, para. 341; Email communications between D. Pow and FHCS, Re: 2021 compliance review Part 2 dated 23 September 2021, **C-102**.

1134 Reply, para. 348; Letter from Khazri Solutions dated 10 May 2024 [Respondent Document Production - 075_01], **C-318**.

1135 *See* paragraph 401 above.

1136 Reply, para. 349.

1137 Letter from Khazri Solutions dated 10 May 2024 [Respondent Document Production - 075_01], **C-318**.

1138 *See* Reply, paras 888, 356.

1139 Reply, para. 353.

426. Mr Bahari makes another seemingly aimless submission that it is a "*legal impossibility*" for the Representative Office to still be on the State Registry, if the BVI Co was dissolved in July 2023.[1140] The purpose of this submission is left entirely unexplained (and its relevance is denied), but it is, in any event, inaccurate. Mr Bahari cites no law in support of the submission that "[a] *representative office cannot exist and act on behalf of its parent company if that parent company was dissolved*".[1141] While a representative office obviously has no basis to act on behalf of a dissolved parent, it can certainly still continue to be registered on the State Registry. Article 16.1 of the Law on State Registration and the State Register of Legal Entities provides for the liquidator of the representative office to be "*appointed by the head office*".[1142] Thus, the process for initiating the liquidation of a representative office is carried out by its head office, not the State. There is no reason why the liquidation of the head office abroad would even be brought to the attention of the State. If the head office fails to make the relevant appointment, the representative office can continue to exist, irrespective of what has happened to its foreign counterpart.

427. Finally, Mr Bahari complains that there has been a "*concerning and ongoing effort to wipe away the corporate history and information about Caspian Fish*",[1143] referring to the fact that Khazri Solutions (formerly known as Gilan Holding) is allegedly in the process of being liquidated, and claiming that this "*appears to be the culmination of an extended period of asset stripping at Gilan Holding*".[1144] Azerbaijan has no direct knowledge of the reason behind any liquidation or restructuring of Khazri Solutions. As far as it understands from archived copies of Gilan's website, Gilan was a multi-million dollar enterprise or group investing in large-scale projects across a variety of sectors ranging from construction, tourism, agriculture and logistics to daily demand goods.[1145] The group has been restructured in the past, and may be going through a further restructuring today. Again, Mr Bahari's arrogant and unfounded assumption is

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1140 Reply, para. 355.

1141 Reply, para. 355(b).

1142 Extract of the Law on State Registration and the State Register of Legal Entities, article 16, **R-409**. Mr Bahari wrongly refers to a law which was repealed on 12 December 2003 (**C-215**).

1143 Reply, para. 357.

1144 Reply, para. 359.

1145 *See*, e.g., "About Us" page of gilanholding.com as of 30 January 2019, **R-408**.

that everything that has ever been done is motivated by him, when it is apparent that could not be further from the truth.

428. As discussed further below, as far as Azerbaijan understands, Caspian Fish was a poorly thought out enterprise that had no real prospect of succeeding and whose operations were ultimately wound up when its losses became unsustainable.[1146] To the extent that any "[redacted]" (which is a bare assertion made by Mr Bahari and not a matter within Azerbaijan's knowledge),[1147] there is no basis for Mr Bahari to allege that is being done in order to "*shed physical evidence of malfeasance and/or the quality of the equipment*".[1148]

C. Mr Bahari agreed willingly to exit Caspian Fish after Mr Heydarov discovered Mr Bahari had deceived him

429. As set out above, in what can only be described as an incredible omission, Mr Bahari does not address Azerbaijan's understanding that there was a dispute between him and Mr Heydarov after Mr Heydarov discovered Mr Bahari had managed the construction project poorly and had overcharged him. Azerbaijan's evidence of this has been further corroborated by the testimony of additional witnesses, who confirm their understanding that Caspian Fish's relationship with Mr Bahari came to an end because Mr Bahari mismanaged the construction project, and was a "[redacted]".[1149] It has also been corroborated by additional documents, such as the Coolak Baku minutes of 20 May 2002, which were located in the Economic Court file:

[redacted]

1146 *See* Letter from Caspian Fish to Quinn Emanuel dated 24 October 2024, **R-356**.

1147 *See* Second Hasanov Statement, para. 75.

1148 Reply, para. 361.

1149 *See*, e.g., Sultanov Statement, para. 24.

[redacted][1150]

430. Mr Heydarov has also himself confirmed by letter that he "[redacted]".[1151] Allegations of dishonesty have been put to Mr Bahari, and Azerbaijan has been met with total silence. Mr Bahari's failure to speak to these matters can only be understood as an acceptance that they occurred.

1. Mr Bahari's mismanagement of the construction project was discovered by Mr Heydarov before the Opening Ceremony

431. Azerbaijan has now obtained the testimony of Mr Rudman, who was specifically asked by Mr Heydarov to inspect the plant before the planned opening, in the summer of 2000. Mr Rudman understands that already at that time, Mr Heydarov had concerns that there were some problems with the construction. Azerbaijan does not know if these issues were reported to Mr Heydarov by those working at the site, or whether Mr Heydarov was just generally concerned to ensure that the plant's construction had been carried out properly and all permits and paperwork were in order, given the plan was for the President to attend the opening ceremony.[1152] However, it quickly became apparent that those concerns were well founded. As Mr Rudman reported concurrently to Mr Heydarov, Mr Rudman requested but Mr Bahari failed to provide *any* documentation to support the construction and future operations of the plant, including [redacted]".[1153]

432. Azerbaijan understands that Mr Heydarov then instructed Mr Rudman to "[redacted]" before the plant's opening, and Mr Rudman proceeded to prepare the necessary documentation for the plant, after the fact.[1154] This included the preparation of an estimate of the costs for preparing documents and obtaining approvals

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1150 Coolak Baku meeting minutes dated 20 May 2002, **R-366**.

1151 Letter from Mr Heydarov to Quinn Emanuel dated 25 October 2024, **R-304**.

1152 Rudman Statement, para. 5.

1153 Rudman Statement, para. 8.

1154 Rudman Statement, para. 10.

which had not been prepared or obtained by Mr Bahari in advance of the construction, such as design work, fire alarm regulations, certificates of conformity, accounting documentation,[1155] as well as preparing a specific plan for executing a turnkey construction contract, to give the appearance that construction had been documented and carried out professionally, given that no construction documentation existed.[1156] As discussed above, it was in fact envisaged at the time that this contract would be executed between Mirinda and a local licensed construction company by mid-December 2000. However, it is apparent that these contracts never materialised, and the LLC itself ultimately obtained a licence on 21 December 2000.[1157] Mr Rudman's recollection, and the contemporaneous documents which support it, stand in stark contrast with Mr Bahari's own recently-created purported contracts with Chartabi Contracting.

433. Notably, Mr Rudman's evidence and the documents to which he speaks, are entirely consistent with Mr Bahari's recognition that the licence given to the LLC for carrying out construction was issued "*less than 2 months away from its 10 February 2001 Grand Opening*".[1158] Mr Rudman's investigation also explains the fact that the LLC was only incorporated in October 2000, when it was determined that a local entity would be required in order to ensure the project was able to operate and secure local permits in accordance with the various legal norms. As Mr Sultanov, a consultant to Mr Kerimov's team during his audit of the plant in 2001, notes, a local legal entity was necessary, among other things, to obtain a share of Azerbaijan's catch and export quotas for sturgeon and caviar.[1159]

434. Consistent with the evidence of Azerbaijan's other witnesses, Mr Rudman also discovered during his investigation that the equipment that had been installed at the plant and the production lines were second-hand, and had often been purchased at a low

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1155 Rudman Statement, para. 11(a); Need for funds required for commissioning of "Caspian Fish Co Azerbaijan" plant, undated, **R-294**.

1156 Rudman Statement, para. 11(b); "Caspian Fish Co Azerbaijan" Plant Commissioning Work Plan, undated, **R-293**.

1157 Licence granted to the LLC by the State Committee for Construction and Architecture dated 21 December 2000, **R-123**.

1158 Reply, para. 235.

1159 Sultanov Statement, para. 28.

cost from third parties, rather than directly from the manufacturer.[1160] In this regard, Azerbaijan notes that while Mr Bahari offers testimony from the former founder of one of Caspian Fish's suppliers, Victroplex, that his company [redacted]",[1161] in fact available documentary evidence suggests the opposite. In archived versions of Victroplex's website, it describes itself as a "[redacted]" company having rights to "[redacted]" equipment manufactured by Chen Hsong.[1162]

435. Mr Rudman also informed Mr Heydarov that the equipment appeared to be unsuitable for purpose, particularly for processing sturgeon or sturgeon caviar.[1163] He recalls that Mr Heydarov "[redacted]" upon learning of all of this.[1164] This breakdown in trust evidently occurred prior to the opening ceremony.

436. Plainly, Mr Rudman's investigation (similar to Mr Kerimov's later audit), bothered Mr Bahari. Mr Rudman's evidence is that as a result of asking for documentation which was not provided, "[redacted]",[1165] and Mr Bahari objected to Mr Rudman documenting the plant's construction.[1166] Mr Hasanov, who was an accountant working as part of Mr Rudman's team, explains that he "[redacted]" with Mr Bahari about the lack of accounting documentation,[1167] and, shortly after the opening ceremony, Mr Bahari ultimately asked Mr Hasanov to leave.[1168]

2. Mr Bahari's account of the Opening Ceremony and events immediately after is untruthful

437. While Azerbaijan has no direct knowledge of the reason for Mr Bahari's absence from the Caspian Fish opening ceremony, Mr Rudman's evidence (as well as Mr Hasanov's) provides context. Azerbaijan infers that Mr Bahari was not present because in the light

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1160 Rudman Statement, para. 13.

1161 Hay Statement, para. 7.

1162 Archived copy of Victroplex website, "Company" and "Products" pages, as at 18 June 2000, **R-384**; Chen Hsong website, About Us, **R-385**; CHEN-PET manual, undated, **R-386**.

1163 Rudman Statement, para. 13.

1164 Rudman Statement, para. 13.

1165 Rudman Statement, para. 8.

1166 Rudman Statement, para. 10.

1167 First Hasanov Statement, para. 13.

1168 First Hasanov Statement, para. 14.

of Mr Rudman's investigation, Mr Bahari was instructed by Mr Heydarov not to attend and, no doubt mortified that his mismanagement was starting to be uncovered, he acquiesced.[1169]

438. In his Reply submission, Mr Bahari claims that Azerbaijan's lack of knowledge of Mr Bahari's personal movements on the day of the opening ceremony[1170] is "*not* [] *credible*", on the basis that "*Azerbaijani State security most certainly took precautions to know who was attending* [the opening ceremony] *and where they were*".[1171] These submissions are an exaggeration. Azerbaijan has never denied that Mr Bahari was not present at the opening ceremony. To the contrary, it agrees that Mr Bahari was not present (although the Parties dispute the reasons for his absence).[1172] What Azerbaijan has no knowledge of, however, and would not even if "State security" personnel were present at the opening ceremony, is where Mr Bahari was instead of at the opening ceremony.

439. Mr Bahari takes the further, perverse position that it is "*highly likely that Mr. Bahari and Mr. Ilham Aliyev had a heated conversation*", simply because Azerbaijan has no knowledge of any such alleged conversation and has failed to make Mr Aliyev available to give testimony in relation to it.[1173] These submissions are nonsensical. The *only* evidence of the alleged conversation is Mr Bahari's unreliable testimony, as set out in the Defence.[1174] Azerbaijan's lack of knowledge of this private discussion does not mean Mr Bahari has met his burden of proving that it is more likely than not that such a conversation took place, let alone that it is "highly likely". In any event, this alleged conversation is immaterial to the matters in dispute.

440. As to Mr Bahari's claims of hospitalisation, Mr Zeynalov is "[redacted]", not least because he saw Mr Bahari at work, at Caspian Fish, the very next

1169 *See* Defence, para. 257(b).

1170 *See* Defence, para. 257.

1171 Reply, para. 305.

1172 Defence, paras 257(a) and (b).

1173 Reply, para. 308.

1174 Defence, para. 258.

day.[1175] As to that evidence, Mr Bahari claims Mr Zeynalov has a "*propensity and motivation to lie*", while in the same breath describing Mr Zeynalov's recollection that Mr Bahari was hospitalised at some point although he cannot recall when, as an "*unusual admission*".[1176] What it appears Mr Bahari is trying to say is that he accepts Mr Zeynalov's evidence on the latter issue to be true.

441. Although Mr Bahari claims there is a "*obvious contradiction between Mr. Zeynalov and the two hospital letters*" that Azerbaijan disclosed in response to Mr Bahari's disclosure requests, he does not explain what the contradiction is, and it is certainly not "obvious" to Azerbaijan. Those letters confirm that no hospital has records of Mr Bahari being admitted on or immediately after the day of the opening ceremony.[1177] Although Mr Zeynalov could not recall when Mr Bahari was hospitalised, it is apparent that his recollection relates to a different time period. A theme emerges with Mr Bahari's evidence. He spins real-life events – he may have been hospitalised at *some* point during his time living in Azerbaijan – into warped stories that suit his narrative and bear little resemblance to the truth.

442. Mr Bahari describes Azerbaijan's denial that there was ever a Government plot to kill Mr Bahari as "*to be expected*",[1178] but cannot otherwise offer any substantive response to the evidence of Mr Abbasov (junior), which is that no such plot existed, or was conveyed to Mr Kousedghi.[1179] Instead, Mr Bahari falls back into his predictable pattern of claiming that any evidence from Azerbaijan must be corrupted by virtue of it being from Azerbaijan. Thus, Mr Bahari claims that "[t]*his is not the first time Mr. Abbasov has changed his official position at the behest of the ruling families of Azerbaijan*", referring to an obscure historic investigation led by Mr Abbasov (senior) into Caspian Fish, which Mr Bahari claims Mr Abbasov was "*politically coerced*" to correct.[1180] Regrettably, Mr Abbasov has deceased since the filing of the Defence, and Azerbaijan has accordingly been unable to obtain direct evidence from him on this

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1175 First Zeynalov Statement, para. 36.

1176 Reply, para. 310; First Zeynalov Statement, para. 36.

1177 Letter from Neftchilar Hospital dated 22 May 2024, **C-292**; Letter from the Republican Clinical Hospital to SSPI dated 22 December 2023, **R-176**.

1178 Reply, para. 311.

1179 Abbasov Statement, para. 6; Letter from N Abbasov to Quinn Emanuel dated 14 December 2023, **R-65**.

1180 Reply, para. 311.

issue. However, Mr Kerimov, general director of Caspian Fish at the time of the investigation, confirms that the correction was made because the allegations being made were based on inaccurate information and were untrue.[1181] There is no merit whatsoever in Mr Bahari's claims of pressure on Mr Abbasov (senior), which are based on press reports, inference and speculation.

443. For the reasons set out above, Mr Bahari's attempt to distance himself from the documents signed by him, or in which he is mentioned, that are dated after the opening ceremony falls flat.[1182] As far as Azerbaijan understands from Messrs Kerimov and Hasanov, Mr Bahari stopped working at Caspian Fish in or around April or May 2001,[1183] and not in the immediate aftermath of the opening ceremony, as he alleges. Mr Bahari eagerly describes this evidence as a "*clear admission that Minister Heydarov wasted no time in-between expelling Mr. Bahari from Caspian Fish and finding someone to replace him*",[1184] but Azerbaijan does not deny that it is likely, in the light of all the evidence, that Mr Heydarov did indeed decide he no longer wanted to work with Mr Bahari. As far as Azerbaijan understands from the available evidence, Mr Bahari was also ready himself to leave. His deception had been uncovered, he was focused on developing another project in Iran at that time,[1185] and it is also consistent with his typical *modus operandi* in other projects in Iran,[1186] Germany,[1187] Dubai, Ukraine, Russia, and Afghanistan.[1188]

444. Notably, Ms Ramazanova's evidence is that she and "[redacted]" in fact "[redacted]" after the opening ceremony;[1189] whereas Mr Suleymanov claims that the day after the opening ceremony he was "[redacted]

1181 Second Kerimov Statement, para. 26.

1182 *See* paragraph 84(a) above.

1183 First Kerimov Statement, para. 11; First Sabutay Statement, para. 15.

1184 Reply, para. 316.

1185 *See* Defence, paras 207(c), 279. Mr Bahari does not deny these matters at all in his Reply.

1186 E.g., Coolak Shargh, which Mr Bahari exited with an approximately USD 4 million debt that Azerbaijan understands was never repaid: *see* Defence, para. 185(b).

1187 E.g., IAV, which was struck off with a debt of more than half a million euros to MCI Mining Austria: *see* Defence, paras 292-296; Topf Statement, paras 15, 16.

1188 *See* Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 4.

1189 Ramazanova Statement, paras. 16 and 19.

[redacted]".[1190] While Azerbaijan does not accept that Mr Bahari's workers were ever asked to leave (to the contrary, on their own evidence, at least some of those who worked for Mr Bahari, such as Mr Zeynalov and Ms Ramazanova, continued in their roles, at least for some months),[1191] the inconsistent accounts of Mr Bahari's own witnesses are further evidence that Mr Bahari was not "expelled" from Caspian Fish on 10 February 2001 as he alleges.

445. Finally, Mr Bahari has no answer to the fact that the State Border Service records evidence that he left Azerbaijan in December 2001, 10 months after the opening ceremony, and not in March 2001 as he claimed.[1192] Again, all Mr Bahari can do is to imply that such records are unreliable because they were "*procured from* [Azerbaijan's] *own State Border Service*",[1193] but this repeated, baseless allegation that evidence is unreliable because Azerbaijan has produced it must end. While it is true, given their age, that there is a small risk that there are possible *gaps* in the data provided by the State Border Service (i.e. further border crossings that were not captured),[1194] the data which was gathered by the act of processing passports at the border and which has been provided in this arbitration is accurate. Indeed, Mr Bahari does not deny that he took any of the multiple trips he made in and out of Azerbaijan, from the UAE and Germany, during the course of 2001 (and well after March 2001).[1195] Put simply, Mr Bahari lied about the date he left Azerbaijan to suit his fantastical narrative.

446. At the same time as denying the accuracy of the State Border Service records, Mr Bahari also claims that they show that "*Mr. Bahari was not welcome and could not return to Azerbaijan unless he was given safe passage by the Government after December 2001*".[1196] This is nonsense. Mr Bahari *chose* not to return between 2001 and 2013. His claims that he was designated *persona non grata* are groundless.[1197] He gives no

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1190 Suleymanov Statement, para. 42.

1191 Mr Zeynalov also notes that Mr Suleymanov, like other employees who had been employed during the construction phase, left a couple of months after the opening: *see* Second Zeynalov Statement, para. 24.

1192 Letter from the State Border Service of the Republic of Azerbaijan to the SSPI dated 2 November 2023, **R-58**.

1193 Reply, para. 318.

1194 *See* Defence, footnote 720.

1195 *See* Defence, para. 264(b).

1196 Reply, para. 319.

1197 *See* Defence, para. 264(c).

evidence about any *attempts* to return in that period which were denied, for example. When it comes to the time he decided to visit, he claims that "*Minister Heydarov issued* [him]" a visa to enter in 2013, but this is baseless assertion.[1198] His visa had nothing to do with Mr Heydarov[1199] and he has no evidence to speculate that it did. It was issued by the Ministry of Foreign Affairs, and was required because, like all non-nationals from non visa-exempt countries, a visa must be obtained to travel to Azerbaijan.

3. In September 2001, Mr Bahari agreed to exit Caspian for USD 4.5 million

447. Mr Bahari's response to the 2001 Sale Agreement[1200] is that it is "*a recent fabrication created for the purpose of this Arbitration*".[1201] For the reasons set out above, Mr Bahari's evidence of fraud, which is essentially his testimony, does not stand. The 2001 Sale Agreement is consistent with numerous, unchallenged facts in these proceedings, but in particular with the two critical unchallenged facts that: (a) Mr Heydarov discovered in or around early 2001 that Mr Bahari had overcharged him during the construction of the project; (b) Mr Bahari himself confirmed in 2013 that he had indeed received USD 5.3 million from Mr Heydarov.[1202] It is also consistent with the fact that for more than ten years, until 2013, Mr Bahari did not assert any ownership interest or right to manage Caspian Fish. It was only in 2013 when Mr Bahari, who has not denied Azerbaijan's understanding that he was short of money,[1203] first asserted that he had any residual entitlement to Caspian Fish or expectation of additional payment.[1204]

448. Other than his signature, Mr Bahari attempts to pick holes with the 2001 Sale Agreement, although his conclusions in respect of these points is never properly particularised:

1198 Reply, para. 319.

1199 *See* Kalantarli Statement, para. 8.

1200 Buyer and Seller Agreement between Mr Khanghah and Mr Bahari dated 20 September 2001, **R-50**.

1201 Reply, para. 363.

1202 Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

1203 *See* Reply, para. 424: "Mr Bahari's alleged difficulties in his other ventures" are "not admitted", which is a bizarre thing to plead given Mr Bahari of course has knowledge of whether the matters pleaded in the Defence in this regard are true. *See* further Kalantarli Statement, para. 4.

1204 Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

(a) He states the document is a "*single page, typewritten document*".[1205] How exactly this is supposed to cast doubt on the authenticity of the document is unclear, particularly given Mr Bahari himself relies upon single page typewritten documents in these proceedings, such as the Purported Shareholders Agreement.

(b) He states that the document is drafted "*in English language only*".[1206] Again, this point goes nowhere. Mr Bahari's entire 32-page first witness statement in this arbitration was drafted in the English language only, and he happily signed it. Plainly, he is willing to sign English language documents.

(c) He complains that "[p]*ayment is to be made in installments – which*[…] *is not permissible under Caspian Fish BVI's Articles of Association*".[1207] This is a bad point that is based on a misunderstanding of corporate law (and in any event Mr Bahari does not explain why a sale inconsistent with the Articles would have any impact on the authenticity of the 2001 Sale Agreement or the parties' underlying agreement to sell the shares). The BVI law opinion on which Mr Bahari relies (which is notably an exhibit, and not an expert report) confirms that under article 21 of the BVI Co's articles of association, shares are not to be "[redacted]" part paid.[1208] Mr Bahari appears to misunderstand the meaning of the term "[redacted]", which means an issue and allotment of *new* shares by a company.[1209] The 2001 Sale Agreement obviously did not concern a new share issue, but the transfer of *existing* shares.[1210]

(d) Mr Bahari states that "[c]*ritically, the signature is not notarized*".[1211] He gives no explanation, however, for why the parties would have considered it necessary

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1205 Reply, para. 365.

1206 Reply, para. 365.

1207 Reply, para. 365.

1208 Appleby's Legal Opinion dated 18 June 2024, **C-389**, para. 44.

1209 Sections 45 and 46(2), Division 2 (Issue of Shares), BVI Business Companies Act, **C-391**; *cf.* Division 3 (Transfer of Shares), BVI Business Companies Act, **C-391**.

1210 Notably, Applebys itself appears to recognise the fallacy of Mr Bahari's argument, as the opinion is qualified in its language by stating "[redacted]": Appleby's Legal Opinion dated 18 June 2024, **C-389**, para. 44 (emphasis added). Applebys does not use the word "transferred".

1211 Reply, para. 365.

to notarise a document such as the 2001 Sale Agreement. Nothing in law required it to be notarised for it to be a legally binding document. Moreover, as noted above, when documents are notarised it does not appear to stop Mr Bahari from alleging fraud.[1212] Nothing in the lack of notarisation in the 2001 Sale Agreement is an indicator of authenticity either.

449. No doubt recognising of the weakness of his evidence of fraud, Mr Bahari ultimately concludes that "*the Tribunal need not specifically find that R-50 is a forged document in order to conclude that the 2001 sale never took place*", on the basis that "*there is no proof of any 2001 sale in the BVI corporate records*".[1213] This is a farcical submission, which is as factually inaccurate as it is nonsensical. The BVI records demonstrate precisely that Mr Bahari's interest was sold. Even if they did not, however, it would not "*corroborate that R-50 is a forgery*", and Mr Bahari makes this bare assertion without particularisation.[1214] The position in the BVI does not negate the evidence which demonstrates that Mr Bahari agreed to sell his shares, and was paid for them.

450. This is an important point because Mr Bahari's primary case appears to be that he holds, to this day, a shareholding (albeit diluted) in BVI Co.[1215] He nevertheless claims expropriation on the basis that he lost his "*ability to control or manage Caspian Fish*".[1216] His own claim recognises, therefore, that whether he legally owned the shares is not relevant to his claims of indirect expropriation. If Mr Bahari voluntarily *agreed* to relinquish control of his alleged investment by the 2001 Sale Agreement, then irrespective of his claim that there has been any irregularity in filing the corporate records as a matter of BVI law, there can be no expropriation claim.

451. For these reasons, Mr Bahari's nearly 10-page discussion of the legal position in the BVI is irrelevant. It has no bearing at all on whether an agreement was concluded to sell his shares. That notwithstanding, and in order to correct what are plain factual inaccuracies in Mr Bahari's submissions, Azerbaijan sets out the factual position as it

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1212 *See* paragraph 83 above.

1213 Reply, para. 368.

1214 Reply, para. 376.

1215 Statement of Claim, para. 234; Reply, para. 394.

1216 Reply, para. 1091; Statement of Claim, paras 584, 596.

understands from the documentary record in these proceedings and Mr Bahari's *inter partes* disclosure:

(a) BVI Co was incorporated on 5 March 1999 with an authorised share capital of USD 50,000 divided into 50,000 shares with a nominal value of USD 1 each.[1217]

(b) That notwithstanding, a directors resolution dated 5 March 1999 (personally signed by Mr Bahari, and which Mr Bahari failed to disclose with the Statement of Claim) resolved to issue shares worth a total of USD 1,000,000 to each of the shareholders in various proportions, including 400,000 to Mr Bahari (the **1999 Share Issue Resolution**).[1218] The BVI disclosure contains copies of share certificates dated 5 March 1999 issued to each shareholder in the same proportions as set out in the 1999 Share Issue Resolution.[1219] It is this share certificate, "[redacted]" for 400,000 shares, upon which Mr Bahari relies in this arbitration to establish his interest in BVI Co[1220] (albeit it is apparent from the BVI records that this share certificate was subsequently cancelled).[1221]

(c) BVI Co's Articles of Association provide that [redacted]".[1222] Mr Bahari denies any recollection of signing a written resolution of the directors of BVI Co dated 5 March 1999 which effected an increase in the share capital from 50,000 to 1,000,000 shares (the **1999 Share Capital Increase Resolution**),[1223] but he fails to explain how, if that is the case, the share certificate he relies on is otherwise consistent with BVI Co's Articles of Association. The 1999 Share Capital Increase Resolution was not, however,

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1217 BVI Co Memorandum of Association dated 5 March 1999, **C-2**, cl. 6 and 7.

1218 BVI Co Board Resolution dated 5 March 1999, **R-387**.

1219 BVI Co share certificates 1 to 3 dated 5 March 1999, **R-388**.

1220 Mr Bahari's Share Certificate in Caspian Fish Co. Inc. dated 5 March 1999, **C-6**.

1221 BVI Co share certificates 1 to 3 dated 5 March 1999, **R-388**, p. 2.

1222 BVI Co Articles of Association dated 5 March 1999, **C-2**, art. 56.

1223 Statement of Claim, para. 199; BVI Board Resolution dated 5 March 1999, **C-110**.

filed with the BVI Companies Registrar at the time it is dated, and was only filed on 27 November 2006.[1224]

(d) It appears to be common ground that in or around late 2006, BVI Co sought to regularise the position in respect of its share capital and considering the provisions of BVI law.[1225] According to a board resolution dated on or after 8 December 2006 (the **2006 Corrective Resolution**), the effect of the limitation in the company's authorised share capital and the failure to file timely the 1999 Share Capital Increase Resolution with the BVI Registrar was that "[redacted]", including 20,000 for Mr Bahari, and the "[redacted]" with each subscriber having "[redacted]", including Mr Bahari having the right to 380,000 further shares.[1226]

(e) The 2006 Corrective Resolution resolved to: (i) cancel the defective share certificates, including Mr Bahari's Certificate Number Two, and issue a fresh share certificates reflecting a 50,000 share capital, including a "[redacted]" to Mr Bahari to reflect his 20,000 share;[1227] and (ii) instruct the secretary to amend the register of members to record these shareholdings.[1228] At the same time, it also resolved to: (i) accept the transfer of Mr Bahari's 20,000 shares, as well as his right to be allotted 380,000 shares, to Mr Khanghah; (ii) to cancel share Certificate Number Six issued to Mr Bahari and issue one in Mr Khanghah's favour to that effect; and (iii) instruct the secretary to update the register of members accordingly.[1229]

(f) It is apparent that the Register of Members was then updated in accordance with the 2006 Corrective Resolution's instructions, because it shows the issue of

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1224 IBC Filing by Jordans (Caribbean) Limited on behalf of BVI Co dated 27 November 2006, **R-445**, enclosing (among other things) an extract of the 1999 Share Capital Increase Resolution.

1225 *See* Appleby's Legal Opinion dated 18 June 2024, **C-389**, para. 43 ("[redacted]").

1226 BVI Co Board Resolution, undated but referring to 8 December 2006 on its face, **C-122**, 3.2, 4.3 and 4.4.

1227 BVI Co Board Resolution, undated but referring to 8 December 2006 on its face, **C-122**, 4.5 and 4.6.

1228 BVI Co Board Resolution, undated but referring to 8 December 2006 on its face, **C-122**, 4.7.

1229 BVI Co Board Resolution, undated but referring to 8 December 2006 on its face, **C-122**, 5.1.

400,000 shares to Mr Bahari as of 5 March 1999.[1230] It also shows, however, the transfer of Mr Bahari's shares to Mr Khanghah on the same date.[1231] Azerbaijan recognises that this is inconsistent with the date of the 2001 Sale Agreement, but whether this entry in the Register of Members was dated 5 March 1999 deliberately or in error is unclear. Either way, it does not change the fact that Mr Bahari is not recorded in the Register of Members as holding any shares in BVI Co. The BVI corporate records also contain an undated copy of the Stock Transfer Form,[1232] as well as confirmation that Mr Bahari resigned as a director on 15 November 2001.[1233]

(g) As Mr Bahari himself recognises, BVI law:

[redacted][1234]

(h) The answer, accordingly, in respect of any complaint Mr Bahari has with the way in which his shareholding was recorded in the BVI, was for Mr Bahari to make an application to the BVI Court to rectify the Register of Members.[1235] As far as Azerbaijan is aware, he never took any steps to do so. Importantly, given on Mr Bahari's case he had no knowledge of the existence of the LLC, the *only* shareholding interest in which he had any concern were his shares in BVI Co (which are of course also located outside of Azerbaijan, meaning he cannot suggest that Azerbaijan prevented him from checking the BVI Registry). For nearly *two decades*, until the BVI disclosure applications which post-date the commencement of these proceedings, Mr Bahari did not make *any* enquiries in the BVI to check on the status of his shares, which he claims to have retained.

1230 BVI Co Registers and Datasheet as at 3 May 2007, **C-109**, at p. 9.

1231 BVI Co Registers and Datasheet as at 3 May 2007, **C-109**, at pp. 9-10.

1232 Stock Transfer Form, undated, **R-129**.

1233 BVI Co Registers and Datasheet as at 3 May 2007, **C-109**, at pp. 12-13.

1234 Appleby's Legal Opinion dated 18 June 2024, **C-389**, para. 39.

1235 BVI Business Companies Act 2004, **C-391**, s. 43.

It beggars belief that Mr Bahari would have failed to do so, if he believed he still held his shares. The truth is, Mr Bahari did not check because he was well aware that he had sold his shares in the company.

452. With that background, Mr Bahari's submissions that he "*never sold his interest in Caspian Fish*" based on the BVI record are easily dismissed, as further discussed in the following paragraphs.[1236]

453. First, Mr Bahari's submission that the Stock Transfer Form[1237] is a forgery because 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*" is inapposite. The record of his shareholding as set out in the Register of Members bears no relation to the Stock Transfer Form, which does not purport to be dated 5 March 1999 and is in fact undated. It is likely that the Stock Transfer Form was executed by Mr Bahari in or around the time of the 2001 Sale Agreement, but was not delivered to the company as it should have been under BVI law,[1238] until much later, when the position was regularised in 2006.

454. Indeed, Ms Briggs has uncovered ESDA impressions on the 2001 Sale Agreement which confirm that the Stock Transfer Form was resting on top of the 2001 Sale Agreement when the Stock Transfer Form was signed.[1239] Forensic evidence thus dictates that the Stock Transfer Form was signed after the 2001 Sale Agreement (possibly immediately after, if they were signed on the same day, or at a later time, when the 2001 Sale Agreement was also present). Azerbaijan suggests that it is most likely, given the terms of the 2001 Sale Agreement which provide for Mr Bahari [redacted]", that the Stock Transfer Form was signed by Mr Bahari in Azerbaijan at or around the time he received the first instalment under the 2001 Sale Agreement in November 2001.[1240]

1236 Reply, para. 376.

1237 Stock Transfer Form, undated, **R-129**.

1238 *See* Appleby's Legal Opinion dated 18 June 2024, **C-389**, para. 13.

1239 Briggs Report, paras 4.5.4-4.5.7.

1240 Receipt for payment of USD 1.5 million signed by Mr Bahari dated 5 November 2001, **R-51**.

455. To the extent not already addressed elsewhere in Azerbaijan's submissions, Mr Bahari's remaining submissions about the authenticity of the Stock Transfer Form are feeble. He claims that the English transliterations of *both* his and Mr Khanghah's names have been misspelled,[1241] but it unclear what bearing this has on anything, given it is presumably Mr Khanghah (not a native English speaker) who Mr Bahari believes prepared the document. He also complains that the Stock Transfer Form fails to provide their addresses as required by the form instructions and the provisions of BVI law,[1242] but again any deficiency in respect of BVI law requirements does not mean it is not a genuine document. At most, it could only mean that those completing it erred in failing to provide their addresses. These submissions clutch at straws in their effort to challenge the Stock Transfer Form, and they are unimpressive.

456. Second, Mr Bahari claims that the BVI record contains "*no record of any Director's Resolution approving the Purported IOT at any time in 2001 (or even in the years prior or subsequent)*" (emphasis in original), which was required by BVI Co's Memorandum of Association.[1243] This submission is obviously wrong. As set out above, the 2006 Corrective Resolution resolved to approve the transfer of Mr Bahari's shares. Article 13 of the BVI Co's Memorandum of Association to which Mr Bahari refers provides that "[redacted]" (emphasis added).[1244] There was accordingly no need for a directors' resolution at the time of the 2001 Sale Agreement in order for the shares to be validly transferred under the company's Memorandum.

457. Third, Mr Bahari eagerly claims that he "*never relinquished his original Share Certificate no. 2 dated 5 March 1999, and still possesses it to this day*", which he claims "*proves that* [he] *never sold his shares*",[1245] ostensibly on the basis of 27(3) of the ICBA 1984. These submissions are wrong as a matter of law and fact. Section 27(3) of the ICBA 1984 provides that 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*

1241 Reply, paras 381(b) and (d).

1242 Reply, paras 381(c) and (e).

1243 Reply, para. 383-384.

1244 BVI Co Memorandum of Association dated 5 March 1999, **C-2**, cl. 13.

1245 Reply, para. 394.

of the member to the share specified therein" (emphasis in original).[1246] Mr Bahari fails to acknowledge the significance of the term "prima facie", which is underscored in the law. Mr Bahari's possession of a share certificate does not prove that there was no agreement to sell his shares or that his shares were not in fact sold, and indeed, Mr Bahari's certificate was cancelled as shown by the BVI corporate records.[1247]

458. Fourth, Mr Bahari relies on the 2006 Corrective Resolution to claim that "*as at 8 December 2006, Mr. Bahari was still listed as a Shareholder*".[1248] This submission is difficult to understand. Mr Bahari claims that if he had sold his shares, the 2006 Corrective Resolution "*would have captured this in the reallocation of shares*", and "*Mr. Bahari would have been entirely absent*".[1249] The 2006 Corrective Resolution, on its face, described its purpose as being "[redacted]".[1250] Given that to be so, it is hardly surprising that Mr Bahari's historic shareholding position was recorded.

459. Moreover, despite Mr Bahari's claims that the 2006 Corrective Resolution "*very clearly notes that Mr. Bahari still holds 400,000 shares as of that date, albeit with 380,000 shares held in trust*",[1251] it in fact states the opposite: that Mr Bahari's share certificates in the company (numbers two and six) be cancelled.[1252]

460. Fifth, Mr Bahari claims that Mr Khanghah "*falsified Mr. Bahari's alleged resignation as Director on 15 November 2001*"[1253] and therefore the 2006 Corrective Resolution allowed him to "*resolv*[e] *to transfer to himself*" Mr Bahari's shares.[1254] Azerbaijan accepts that the BVI disclosure does not contain any express resignation from Mr Bahari, nor any board resolution to that effect. That does not mean, however, that one was not provided. Mr Bahari offers no evidence to the effect that the BVI disclosure is

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1246 BVI International Business Companies Act, 1984 (as amended), **C-390**, s. 27(3).

1247 Share certificates 1 to 3 dated 5 March 1999, **R-388**, p. 2.

1248 Reply, para. 401.

1249 Reply, para. 401(b).

1250 BVI Co Board Resolution, undated but referring to 8 December 2006 on its face, **C-122**, para. 1.

1251 Reply, para. 401(a).

1252 BVI Co Board Resolution, undated but referring to 8 December 2006 on its face, **C-122**, paras 4.5 and 5.1(b).

1253 Reply, para. 403(a).

1254 Reply, para. 402.

a complete and accurate record of all filings made with BVI Co's registered agents from the inception of BVI Co to date. The discovery orders granted by the BVI Court were made in February and March 2023, and BVI law only requires a Registered Agent to keep copies of all notices and other documents filed by the company in the previous 10 years.[1255] It is accordingly perfectly possible that documents provided to BVI Co's registered agents more than 20 years after they were prepared have not been retained.

461. Moreover, it is notable that the date of entry of Mr Bahari's resignation is not 5 March 1999, like the record of the share transfer in the Register of Members, but in fact 15 November 2001. That date is not random. As mentioned, it coincides very closely with the 2001 Sale Agreement and Mr Bahari's receipt of the first instalment under it on 5 November 2001.[1256]

462. Sixth, Mr Bahari claims that there is no evidence he agreed to transfer the 380,000 shares that were still held in trust.[1257] That submission is contradicted by the terms of the 2001 Sale Agreement which provide that he "[redacted]".[1258]

463. Finally, Mr Bahari claims that Mr Khanghah acted in breach of his fiduciary duties to BVI Co, relying on the Applebys' opinion.[1259] He does not specify to what end this submission (which Azerbaijan does not accept) is made, and it is entirely irrelevant. Azerbaijan is obviously not responsible for any alleged breaches of fiduciary duty owed by Mr Khanghah to BVI Co.

4. Mr Bahari was paid USD 5.3 million for his shares in Caspian Fish

464. Mr Bahari attempts to challenge the remaining Sale Documentation on various bases, each of which is equally weak.

465. He first claims that the authenticity of the signed receipts **R-51** dated 5 November 2001, for USD 1.5 million (the **2001 Receipt**) and **R-52**, which is undated, but contains

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1255 BVI Business Companies Act 2004, **C-391**, s. 96(1)(d).

1256 Receipt for payment of USD 1.5 million signed by Mr Bahari dated 5 November 2001, **R-51**.

1257 Reply, para. 403(b).

1258 Buyer and Seller Agreement between Mr Khanghah and Mr Bahari dated 20 September 2001, **R-50**.

1259 Reply, para. 403(c).

reference to 14 June 2002, for USD 2 million (the **2002 Receipt**) are in doubt because "*no* [] *sale occurred in 2001*".[1260] That submission is a *non sequitur*, which is premised on the inauthenticity of the 2001 Sale Agreement. Obviously, the converse is true, i.e., that if the 2001 Sale Agreement is genuine, the 2001 and 2002 Receipts support it. The usual unconvincing complaints about his signature and handwriting follow,[1261] which are addressed elsewhere in this brief. Mr Bahari's admission that he received USD 5.3 million also supports the authenticity of the 2001 and 2002 Receipts. There is *no other plausible explanation* for why Mr Bahari received USD 5.3 million *after* he has left Caspian Fish and departed Azerbaijan than that he was paid off for his shares.

466. Nevertheless, Mr Bahari desperately tries to concoct a story. "*It appears*," he claims weakly, "*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*".[1262] That is, he believes that at some point (at least after June 2002) "[redacted]" located an old handwritten receipt of Mr Bahari's (which Mr Bahari claims dates from 1999 or 2000),[1263] which they then fed into a printer so that the typewritten portion would appear on the reverse of the page. This far-fetched version of events is implausible, as is Mr Bahari's claim as to what the payment relates.

467. Mr Bahari claims that the receipt relates to the repayment of "[redacted]".[1264] Although it is difficult to understand this explanation, it appears that Mr Bahari is claiming that the alleged loan advanced to Mr Heydarov itself was not related to Caspian Fish, but when Mr Bahari was repaid, he used the money to pay Caspian Fish debts.[1265] If that is his case (which is notably brand new evidence, as Mr Bahari has never mentioned before lending money to Mr Heydarov), Mr Bahari does nothing to explain the context or nature of the alleged loan. There is no reason why Mr

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1260 Reply, para. 409.

1261 Reply, para. 410.

1262 Reply, para. 412.

1263 Third Bahari Statement, para. 21(f).

1264 Third Bahari Statement, para. 21(f).

1265 Reply, para. 414.

Heydarov would need any loan in this amount, given Mr Bahari's own case is that Mr Heydarov was "*economically*" part of the "*most powerful fami*[y] *in Azerbaijan*",[1266] let alone why Mr Heydarov would choose to take one from Iranian national Mr Bahari, rather than from an Azerbaijani bank or other Azerbaijani personal sources (including "*powerful family*" members) closer to him. Moreover, the plain words of the 2002 Receipt do not support such a construction at all. The 2002 Receipt states that Mr Bahari received the money "[redacted]",[1267] not that he used the money he received to pay off Caspian Fish debts.

468. Indeed, Mr Bahari's reading of the words of the 2002 Receipt is incomprehensible. He states that "[o]*n its plain terms, this handwritten receipt* […] *is clear that it addresses a completely unrelated matter*".[1268] That is not remotely true. The "plain terms" of the 2002 Receipt are that Mr Bahari [redacted]" and the money was received "[redacted]".[1269] Mr Bahari is being disingenuous by suggesting that the receipt makes obvious it addresses a "*completely unrelated matter*". That is not obvious at all.

469. Azerbaijan has now received from Mr Heydarov extracts from two notebooks (the **Notebooks**) belonging to Mr Heydarov's former assistant (now deceased), who was responsible for keeping a record of payments in relation to Mr Heydarov's business affairs.[1270] They relate to payments in 2002. No other similar records were found for other years. The Notebooks were recovered from the assistant's private dwelling by his relatives, where Azerbaijan understands they have been located since they were last in use. The Notebooks have been redacted to protect private information unrelated to the present dispute, but can be made available for inspection by Mr Bahari's expert, on request.

1266 Statement of Claim, para. 7.

1267 Receipt for payment of USD 2 million signed by Mr Bahari, undated, **R-52**.

1268 Reply, para. 414.

1269 Receipt for payment of USD 2 million signed by Mr Bahari, undated, **R-52**.

1270 Extracts of Notebooks containing records of payments in relation to Mr Heydarov's business affairs from 2002, **R-389**. The two Notebooks are understood to contain overlapping records.

470. The Notebooks are contemporaneous records that at least the following payments in 2002, which are believed to have been recorded in US dollars, were made by Mr Heydarov, through Mr Khanghah or others, to Mr Bahari:

#	Date	Description		Amount
		Notebook 1	**Notebook 2**	
1.	17 April 2002	[redacted]		100,000
2.	6 April 2002	[redacted]	[redacted]	35,000
3.	5 April 2002	[redacted]	[redacted]	115,000
4.	6 May 2002		[redacted]	150,000
5.	8 May 2002		[redacted]	50,000
6.	17 June 2002		[redacted]	200,000
7.	July 2002		[redacted]	100,000
8.	August 2002		[redacted]	110,600

471. It is apparent that:

(a) the payment made in row 1 corresponds to a scheduled payment promised in numbered clause 3 of the 2001 Sale Agreement;[1271]

(b) the payments made in rows 2 to 5 correspond to scheduled payments promised in numbered clause 3 of the 2001 Sale Agreement, and comprise some of the payments referred to as having been received by Mr Bahari in the 2002 Receipt;

(c) the payment made in row 6 corresponds to the scheduled payment promised in clause 1(a) of the 2002 Agreement;[1272] and

(d) the payments made in rows 7 and 8 correspond to a scheduled payment promised in clause 1(b) of the 2002 Agreement.[1273]

1271 Buyer and Seller Agreement between Mr Khanghah and Mr Bahari dated 20 September 2001, **R-50**, cl. 3 ([redacted]).

1272 2002 Agreement, **C-17**, cl. 1(a) ([redacted]).

1273 2002 Agreement, **C-17**, cl. 1(a) ([redacted]).

472. The Notebooks run counter to Mr Bahari's claims that the 2002 Receipt relates to the repayment of a debt from 1999 or 2000. They evidence that Mr Bahari was being paid significant sums of money, which plainly correlate with sums promised under the terms of the 2001 Sale Agreement (and, later, the 2002 Agreement). As mentioned, there is no reason why Mr Bahari was being paid sums by Mr Heydarov in 2002, after he has admittedly departed from Azerbaijan, and on his case, been excluded from his investment, other than as payment for his shares.

473. Mr Bahari suggests that "[t]*he $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*".[1274] Not only is Mr Bahari's construction of the terms of the 2001 Sale Agreement wrong, but his submission that the USD 2 million sum does not correspond to the 2001 Sale Agreement is also wrong as a matter of fact.

474. The 2001 Sale Agreement provides that a total sum of USD 4.5 million shall be paid:

[redacted][1275] (emphasis added)

475. Thus, the sum of USD 1.6 million is to be paid in monthly instalments *from* 1 December 2001, not *by* 1 December 2001, as Mr Bahari wrongly states. This means that after the USD 1.5 million payment by 5 November 2001 (for which receipt is evidenced by the 2001 Receipt), Mr Bahari should have received USD 1.4 million by 1 December 2001 and, by June 2002 (which Azerbaijan understands is the true date of the 2002 Receipt), a further USD 600,000, i.e., a total of USD 2 million. The 2002 Receipt confirms and corroborates, consistently with the 2001 Sale Agreement, that Mr Bahari received a sum of USD 2 million. Mr Bahari claims that the 2002 Receipt "*purports to pay Mr. Bahari on 14 June 2002*",[1276] but this submission again bears no relation to the plain

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1274 Reply, para. 415.

1275 Buyer and Seller Agreement between Mr Khanghah and Mr Bahari dated 20 September 2001, **R-50**.

1276 Reply, para. 415.

words of the document, which state that *by that date* Mr Bahari has received USD 2 million through various payments methods and which plainly suggests payments made in the past, rather than on the date of signing.

476. It is unclear why Mr Bahari chose not to sign the English language receipt contained in the 2002 Receipt. Perhaps it was important to each side to record more precisely how the payment was made, given some part of the total was paid to Mr Bahari's associates. Perhaps he felt more comfortable writing in his own language, or he did not have with him at the time of signing someone who he felt could translate for him. Mr Bahari will no doubt say that the fact he accepts he signed this document (when he claims the rest are forged) shows that he is telling the truth about what it says. Azerbaijan would not accept such a submission. Mr Bahari likely accepts that he signed this document because it is written in Farsi, in his own hand, and he believes that accepting it will lend credence to his claims that the other documents are forged. Mr Bahari is mistaken. His acceptance of the 2002 Receipt only supports the authenticity of the remaining Sale Documentation, given the patent implausibility of his construction of the document.

477. Mr Bahari also claims that the 2002 Receipt is unreliable because "*the $2 million payment would surely have been mentioned in the terms of the 2002 Forced Sale Agreement – but there is no such acknowledgment*",[1277] but, again, Mr Bahari is wrong. The 2002 Agreement, **C-17**, indeed acknowledges that USD 3.5 million of the total USD 4.5 million has already been paid. Mr Bahari complains that "[t]*his reading rests entirely on the terms of the Alleged 2001 Sale Agreement*",[1278] but that is just wrong. It rests on the terms of the 2002 Agreement, which provides that Mr Khanghah [redacted]".[1279]

478. As to the 2002 Agreement, Mr Bahari's reading of it again bears no relation to the plain meaning of the words. Mr Bahari claims that "[t]*he plain subject matter of the 2002 Forced Sale Agreement is a negotiation for the 40% shareholding*",[1280] but the opposite

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1277 Reply, para. 415.

1278 Reply, para. 423.

1279 Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**, internal p. 1 (emphasis added).

1280 Reply, para. 419(a).

is true. The 2002 Agreement evidences a *prior* agreement to sell Mr Bahari's shares, and rescheduling of the payment obligations due thereunder. Thus it states that Mr Bahari has "[redacted]".[1281]

479. Mr Bahari also submits that "*the 2002 Forced Sale Agreement document is unsigned. In short, there was no deal*".[1282] He conveniently ignores, however, that the handwritten portion (which he admits to signing)[1283] evidences that an agreement *was* in fact reached. Mr Bahari quotes at length from a 2017 interview, apparently in the misguided belief that his interview assists his case in these proceedings. It does not. As much as Mr Bahari would like the Tribunal to read words which are not there,[1284] the interview confirms that Mr Bahari made an agreement with Mr Khanghah in June 2002, albeit he claims that when Mr Khanghah delivered the document to "*the*[m]" (presumably a reference to Mr Heydarov), it was not accepted: [redacted].[1285] Mr Bahari does not explain what each of these documents he is referring to in the interview concerns, but he will need to do so on the stand. There is no plausible explanation, other than an agreement to sell his shares in Caspian Fish.

480. The evidence does not support Mr Bahari's belated claim in 2017 that the 2002 deal was "[redacted]" by Mr Heydarov. To the contrary, the following facts prove otherwise: (i) the performance of the agreements' terms, including that Mr M Aliyev left Coolak Baku on or around 18 June 2002,[1286] just three days after the date of the 2002 Handwritten Addendum, which provided that Mr Khanghah would "[redacted]

1281 Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**, internal p. 1.

1282 Reply, para. 419(d).

1283 First Bahari Statement, para. 84.

1284 Reply, para. 421 ("Mr. Bahari's description in his interview that there was no agreement on the matter").

1285 Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68**.

1286 Minutes of the Meeting of the Shareholders of Coolak Baku dated 18 June 2002, **R-104**.

[redacted]";[1287] and the admitted payment of the full agreed consideration, in the total amount of USD 5.3 million;[1288] and (ii) Mr Bahari's silence for more than a decade, after the execution of the 2002 Agreement, until his email of December 2013.[1289]

481. Mr Bahari makes a series of confused submissions on the emails he sent in 2013. First, he claims that "[i]*t is difficult to understand why Azerbaijan cites to*" what Mr Bahari describes as a "*purported*" email to an Azerbaijani press service in June 2013,[1290] setting out a series of grievances which he labels as "[redacted]".[1291] Mr Bahari gives no explanation for why he considers this email to be "purported" – he claims it supports his case, but he is seemingly still unwilling to accept the authenticity of any document produced by Azerbaijan. In any event, it is obvious why Azerbaijan relies on this email. It provides crucial context for Mr Bahari's October 2013 visit to Azerbaijan, as set out in the Defence.[1292] Mr Bahari claims that Azerbaijan's assumption that the events of 2013 were Mr Bahari's attempt to extort money from Mr Heydarov that "*is wholly speculative and unconvincing*".[1293] If Mr Bahari truly believed he had a genuine claim, however, he does not explain why he then waited another *six* years to bring – and then drop without prejudice before recommencing three years later – this claim.

482. As to Mr Bahari's email to Mr Kalantarli, which confirms Mr Bahari's receipt of USD 5.3 million, it is again as if Mr Bahari is reading an entirely different document to the one that appears on the record. Again, he totally misconstrues plain words. The substance of the alleged meeting is addressed below. As to the receipt of monies, Mr Bahari claims the statement in this email "*refers to a portion of certain Coolak Baku debts being repaid to him*".[1294] This unsubstantiated statement is implausible. Mr Bahari has never mentioned being owed money by Coolak Baku. The documentary

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1287 Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**.

1288 Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

1289 Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

1290 Reply, para. 426.

1291 Email from Mr Bahari to ANS Press dated 28 June 2013, **R-145**.

1292 Defence, para. 300.

1293 Reply, para. 435.

1294 Reply, para. 433(h); Third Bahari Statement, para. 38.

record indicates, to the contrary, that *he caused* Coolak Baku to incur debts which he left unpaid.[1295] Mr Bahari's latest explanation also contradicts his public interview from 2017, in which he told yet another story, that he was paid USD 4.5 million for 50% of his share in Coolak Baku.[1296] Mr Bahari has told so many stories, he is incapable of getting them straight.

483. Finally, Mr Bahari appears to rely on an alternative theory of duress in respect of the 2001 Sale Agreement (and 2002 Agreement).[1297] The only evidence in support of that claim is that he would not have "*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*".[1298] This theory is premised on Mr Bahari being able to prove that he spent USD 56 million on Caspian Fish. For all of the reasons set out above, he cannot do so.

D. Caspian Fish was a poorly thought out investment and was never going to be successful

484. At the heart of Mr Bahari's claims is his blind belief (no doubt due to his initial involvement in its construction) that Caspian Fish was a "*success story*".[1299] He ignores the fact that it has since ceased operations (naturally attributing that decision to an attempt to "*shed* […] *evidence of malfeasance*"[1300] after Mr Bahari filed these proceedings),[1301] and dismisses the serious concerns raised by Caspian Fish's former general director, Mr Kerimov, and chief accountant, Mr Hasanov, on the basis that they did not produce documents to support what he calls their "*fuzzy recollections and impressions*".[1302] Instead, Mr Bahari wishes the Tribunal to rely on his *own* fuzzy recollections and impressions, given Mr Bahari's only evidence of Caspian Fish's

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1295 *See*, e.g., Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29** [redacted].")

1296 Transcript of Mr Bahari's interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68**. *See* also Defence, para. 281.

1297 Reply, para. 440.

1298 Reply, para. 440.

1299 Reply, para. 442.

1300 Reply, para. 361.

1301 Reply, para. 360.

1302 Reply, paras 445-446.

detailed "[redacted]" comprises his testimony,[1303] which is also unsupported by documentary evidence.

485. With his Reply submission, Mr Bahari introduces evidence from Mr Suleymanov, who he claims was "*a project manager on the Caspian Fish project*".[1304] He also relies on the research of his valuation experts, Secretariat, who refer to various press articles to conclude that Caspian Fish invested in various initiatives over the years which would have been [redacted]".[1305]

486. Mr Bahari's view of Caspian Fish is a fiction, however, and the evidence to which he refers is not reliable.

487. Mr Suleymanov's testimony is highly unreliable for the reasons set out above. On his own evidence, Mr Suleymanov was only a welder at Caspian Fish.[1306] While he describes himself as a "[redacted]", he does not particularise what he means by this, and even if that evidence was to be accepted (which is denied), it does not appear that he would have done anything other than manage other welders. True members of Caspian Fish's management, Messrs Hasanov (chief accountant) and Zeynalov (deputy manager), concur that Mr Suleymanov was merely a member of the welding team.[1307] According to Mr Hasanov, Mr Suleymanov was not even allowed to enter Caspian Fish's administrative building without first obtaining the permission of his group leader, Mr Siyavush.[1308]

488. Mr Suleymanov's disagreement with the evidence given by Messrs Hasanov, Kerimov and Zeynalov is thus hardly persuasive.[1309] Messrs Kerimov and Sabutay's comments were made based on their years of experience in the fish processing industry,[1310] and

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1303 First Bahari Statement, paras 40-45.

1304 Reply, para. 447.

1305 Second Secretariat Report, para. 3.32; Appendix G.

1306 Suleymanov Statement, para. 8.

1307 Second Hasanov Statement, para. 6; Second Zeynalov Statement, para. 5.

1308 Second Hasanov Statement, para. 8.

1309 Suleymanov Statement, paras 37-39.

1310 Second Kerimov Statement, para. 20; Second Hasanov Statement, para. 4.

Mr Zeynalov's based on his role as deputy manager.[1311] Mr Suleymanov, on the other hand, has little relevant experience when it comes to discussing the quality of the equipment for the Caspian Fish facility.

489. In any event, Azerbaijan has since been provided with copies of documents from Caspian Fish's archives, which lend further support to Messrs Hasanov, Kerimov and Zeynalov's testimony about the poor quality of the equipment installed at Caspian Fish and its lack of suitability. These documents include a report on some of the infrastructure issues facing Caspian Fish, which Mr Kerimov personally prepared for Mr Heydarov in or around 2001 or 2002, and which expressed the concern that there were "[redacted]".[1312]

490. The core problem with Caspian Fish is that it did not have a clear or promising business plan.[1313] Mr Bahari claims that he had "*experience and significant success in the production of consumer products in his Iranian businesses Coolak Shargh and Kaveh Tabriz pharmaceuticals*",[1314] but these were not businesses in the fishing industry. Thus, while he claims he had "*vision for Caspian Fish*" to "*harness the riches of the Caspian Sea that Azerbaijan enjoyed and to export related products abroad*",[1315] the truth is that he was not expert in fishing, and he did not know what he was doing.[1316] Azerbaijan's witnesses, who are experts in the Azerbaijan fishing industry with decades of experience, describe the two main problems with the Caspian Fish business as follows:

(a) A business based on a plan to export caviar harvested from wild sturgeon in the Caspian Sea lacked foresight, not least because of the declining wild sturgeon population in the Caspian Sea, the existence of quotas and the very real

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1311 Second Zeynalov Statement, para. 20.

1312 Document prepared by Mr Kerimov titled "Reference on works carried out at CF and other issues", undated, **R-246**; Second Kerimov Statement, para. 13.

1313 *See*, e.g., Salmanli Statement, para. 9; Sultanov Statement, para. 22.

1314 Reply, para. 444.

1315 Reply, para. 444.

1316 *See*, e.g. First Kerimov Statement, para. 8.

possibility that exports would be restricted.[1317] The total caviar export quota for Azerbaijan in 2001 was 6.8 tonnes, shared among a number of companies,[1318] whereas Mr Bahari seemed to have persuaded Mr Heydarov that Caspian Fish could somehow export 50 tonnes of caviar a year.[1319] In the light of these restrictions, it was already evident to experts in the fishing industry in 2001 that no business based on caviar would survive without diversifying into sturgeon farming, as export restrictions did not apply to caviar harvested from farmed sturgeon.[1320] Caspian Fish had no plan to do so, and, if it had, it would never have been built where it was due to the lack of access to fresh water supplies or the Caspian Sea.[1321]

(b) As for the processing of other species of fish, Caspian Fish did not have access to feedstock. It did not have a fleet of vessels and fishermen to catch its own fish.[1322] It was located a long way from the sea and the fishing companies that could supply fish, and it did not have access to efficient transportation links.[1323]

491. These difficulties were compounded by the facts that: (i) the machinery installed by Mr Bahari was not suitable for purpose and was of poor quality;[1324] (ii) the facility and

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1317 Second Hasanov Statement, para. 20; Salmanli Statement, paras. 10-15; CITES Website, "*Azerbaijan"*, **R-271**; FAO Database, "*Law No. 507-IQ on approval of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Resolution on conservation of sturgeon*", **R-272**; CITES Animals Committee, "*Review of Significant Trade*", pp. 27-28, **R-273**; Parvizi Report, para. 6.3, pp. 25-26.

1318 *See* First Kerimov Statement, para. 15(c); CITES Quotas 2001, **R-7**; First Hasanov Statement, para. 18.

1319 Sultanov Statement, para. 27.

1320 Second Kerimov Statement, para. 6; Salmanli Statement, para. 15.

1321 Second Kerimov Statement, para. 6; Salmanli Statement, para. 15.

1322 Second Hasanov Statement, para. 57; Second Kerimov Statement, para. 9; Sultanov Statement, para. 22(a); Summary chart with the issues to be solved in Caspian Fish, undated **R-248**.

1323 First Kerimov Statement, para. 15(a); Second Kerimov Statement, para. 9(d); Second Hasanov Statement, para. 28; Sultanov Statement, para. 32; Document prepared by Mr Kerimov for Mr Heydarov titled "Reference on works carried out at CF and other issues", undated, **R-246**, para. I.1; Memorandum titled "Shortcomings in the Production" from Mr Hamidov to Mr Kerimov dated 14 June 2001, **R-251**.

1324 First Kerimov Statement, para. 17; First Hasanov Statement, paras 38-42; Sultanov Statement, para. 33-34; Second Hasanov Statement, paras 13, 32, 34, 35, 76(a); Second Kerimov Statement, paras 18-19; Rudman Statement, para. 13; Document prepared by Mr Kerimov for Mr Heydarov titled "Reference on works carried out at CF and other issues", undated, **R-246**, paras. I.1, II.3-4; Presentation from G Valiyev to Mr Kerimov dated 4 April 2001, **R-250**. The refrigerators, smoking facilities and salting machine were unfit for purpose: *see* Hasanov Statement, para. 40; Second Hasanov Statement, paras 33, 34; Document prepared by Mr Kerimov for Mr Heydarov titled "Reference on works carried out at CF and other issues", undated, **R-246**, para. II.3-4; Memorandum prepared by Mr Hamidov to Mr Bahari titled "Information about shortcomings in facilities, dated 4 April 2001, **R-247**.

machinery were too large for the available feedstock, meaning it suffered significantly higher costs than its competitors;[1325] and (iii) there were numerous defects in the construction and design which impacted the functionality of the facility.[1326]

492. Thus, contrary to Mr Bahari's suggestion, neither Caspian Fish's CITES certification or ISO 22000 food safety certification show that Caspian Fish "*achieved*" Mr Bahari's alleged vision. Nor are his claims that these certifications would not have "*happen* [sic] *without Mr. Bahari ensuring that the Caspian Fish facility had the necessary equipment and production design to achieve compliance with European and international standards*"[1327] supported by the factual record, which in fact shows the opposite is true:

(a) Caspian Fish did not have quotas for catching sturgeon, so it was only a buyer of feedstock, cooperating with other companies which had quotas,[1328] and it only obtained its own caviar export quota in 2003.[1329] Wild sturgeon catch and export quotas would not have been distributed to a foreign company (such as BVI Co or its Representative Office) and therefore the only way for Caspian

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1325 First Kerimov Statement, para. 15(c); First Hasanov Statement, para. 34; Sultanov Statement, para. 32; Second Hasanov Statement, para. 18; Salmanli Statement, para. 8. Even a student at Azerbaijan University of Economics working at Caspian Fish at the time (from November 1999 for a period of two years), who "[redacted]", considered that the plant was uneconomical due to its size: "[redacted]": *see* Presentation of G Valiyev, Chief Operator of Production Area, undated, **R-249**.

1326 Caspian Fish had issues with utilities, heating and transport: *see* Second Hasanov Statement, paras 22-26; Second Kerimov Statement, para. 15; Document prepared by Mr Kerimov for Mr Heydarov titled "Reference on works carried out at CF and other issues", undated, **R-246**, para. I.1 and II.8; Summary chart with the issues to be solved in Caspian Fish, undated **R-248**; Report dated 5 April 2001 regarding video surveillance, the computer network, the power supply and the ventilation system, **R-255**; Memorandum prepared by Mr Hamidov to Mr Bahari titled "Information about shortcomings in facilities, dated 4 April 2001, **R-247**. It also had missing business lines, such as canning: *see* Second Hasanov Statement, para. 29; Second Kerimov Statement, para. 17; Document prepared by Mr Kerimov for Mr Heydarov titled "Reference on works carried out at CF and other issues", undated, **R-246**, para. I.2.

1327 Reply, para. 444.

1328 *See* First Hasanov Statement, para. 18; Second Hasanov Statement, para. 66; Second Kerimov Statement, para. 27; Sultanov Statement, para. 28. *See* from Respondent's document production 68_07: Letter from Caspian Fish to Ministry of Ecology and Natural Resources dated 3 April 2003, **R-442**; Letter from Caspian Fish to Ministry of Ecology and Natural Resources regarding export to "Caviar Centre INC" dated 12 February 2003, **R-443**; Internal "Service Letter" of the Ministry of Ecology and Natural Resources dated 3 April 2003, **R-342;** Internal "Service Letter" of the Ministry of Ecology and Natural Resources dated 2 April 2003, **R-343**; Joint operation agreement between "Caspian Fish Co Azerbaijan" LLC and "Neftchala Fish Combine" OJSC dated 10 October 2002, **R-433**.

1329 CITES Notification 2003/005, **R-10**.

Fish ever to have obtained catch and export quotas and a CITES certification was by incorporating a local entity.[1330] Mr Bahari, of course, denies all knowledge of the LLC.

(b) The suggestion that Mr Bahari was responsible for meeting any food safety standards is contradicted by the evidence of Azerbaijan's witnesses and the documentary record, which make plain that the manner in which the facility was designed and constructed failed to comply with international food standards, including problems with the refrigeration facilities, lighting and safe transportation of feedstock.[1331] These problems were only rectified after Mr Bahari's exit, and at Mr Heydarov's expense.[1332]

493. These myriad difficulties were the reality of the Caspian Fish enterprise, and not the public reporting on Caspian Fish, which merely parrots PR statements made by Caspian Fish without verification. As Mr Kerimov explains, he felt duty-bound to speak positively about the enterprise and its attributes, in order to maintain its public reputation.[1333] Press articles were often "[redacted]" as a result.[1334] Azerbaijan's witnesses address the inaccurate press reporting on the various initiatives that Caspian Fish was publicly reported to have undertaken and on which Secretariat erroneously relies for the purposes of their valuation.[1335]

494. This includes Mr Bahari's optimistic reliance on a press article dated June 2002 in which Mr Kerimov is reported to have said that "[redacted]", and on which Mr Bahari relies to conclude that Neftchala Fish Factory was owned by Caspian Fish. Mr Bahari's reliance on press statements, which he does not understand, to draw tenuous conclusions is ill-advised.

1330 Sultanov Statement, para. 28.

1331 *See* Defence, para. 310; Second Hasanov Statement, paras 31, 76(c); Memorandum titled "Shortcomings in the Production" from Mr Hamidov to Mr Kerimov dated 14 June 2001, **R-251**.

1332 First Hasanov Statement, paras 40-41; Second Hasanov Statement, paras 27, 31, 76(c).

1333 Second Kerimov Statement, paras 31-32.

1334 Second Kerimov Statement, para. 30.

1335 Azerbaijan's witnesses responses to Secretariat's statements on factual aspects of Caspian Fish's historical performance are summarised at Appendix 6 to the Second Shi Report: *see* Second Shi Report, para. 4.4. *See also* Second Shi Report, section 5B.1 and 6B, addressing why Secretariat's comparable companies are not comparable.

(a) First, as Mr Kerimov explains, the sturgeon plants in Neftchala had nothing to do with sturgeon farming for commercial purposes, as Mr Bahari seems to imply.[1336] Mr Kerimov was referring to an agreement between Caspian Fish and Azerbalig State Concern (**Azerbalig**), the state-owned entity informal regulator of the fishing sector, to update its sturgeon breeding equipment, exclusively for the purpose of releasing sturgeon fry into the Caspian Sea.[1337] The purpose of this investment was to assist Caspian Fish in obtaining a CITES quota, given that a relevant factor to obtain a share of Azerbaijan's CITES sturgeon quota, and for the size of the country's quota overall, was how many sturgeon fry had been released into the Caspian Sea from hatcheries in Azerbaijan.[1338] The press also reported an inaccurate figure of 20 million fry, when the true number was closer to 10 million.[1339]

(b) Second, while it remains unclear to which entity exactly Mr Bahari is referring when he refers to "Neftchala Fish Factory", Caspian Fish did not own it. Azerbalig had several departments located in Neftchala district, but the breeding farms of Azerbalig in Neftchala (or any entity Neftchala Baliq Kombinati OJSC, as referred to in the Second Secretariat Report)[1340] were never part of a Caspian Fish "group" of companies.[1341]

495. Mr Bahari mistakenly relies on Azerbaijan's document production to further his conspiracy theories about Neftchala Fish Factory. He states that Azerbaijan produced a letter from Azerbaijan Fish Farm (**AFF**), previously known as Neftchala Fish Farm, in response to his document request no. 61 for documents relating to Neftchala Fish Factory, but that AFF's letter "*raises more questions than it answers*".[1342] The reasons given for this submission are absurd:

1336 Second Kerimov Statement, para. 39.

1337 Second Kerimov Statement, para. 39; Contract on farming and restoration of fish reserves between Azerbalig and Caspian Fish dated 20 April 2001, **R-257**.

1338 Second Kerimov Statement, para. 42; Second Hasanov Statement, para. 44.

1339 Second Kerimov Statement, para. 41; Contract on farming and restoration of fish reserves between Azerbalig and Caspian Fish dated 20 April 2001, **R-257**.

1340 Second Secretariat Report, para. 1.3.

1341 Second Kerimov Statement, para. 27; Second Hasanov Statement, para. 58.

1342 Reply, para. 461.

(a) He complains that while AFF states it was previously known as Neftchala Fish Farm, his request concerned "Neftchala Fish Factory",[1343] but he is the one who failed to particularise to which entity he intended to refer by the term "Neftchala Fish Factory" when making the document request. Azerbaijan is not aware of any entity called "Neftchala Fish Factory" and infers that Mr Bahari intended to refer to "Neftchala Fish Farm".

(b) He complains that AFF's answer that it "[redacted]" the LLC[1344] is a "*non-answer*" because "*the focus is not on AFF, it is on 'Neftchala Fish Factory' or 'Neftchala Fish Farm'*".[1345] Leaving aside the fact that confusingly, here, Mr Bahari appears to accept that Neftchala Fish Farm is relevant, he also appears fundamentally to misunderstand corporate law. A change of name does not mean a change in the underlying entity. Neftchala Fish Farm (or AFF, as it is now known) was and is not owned by or otherwise related to the LLC.

(c) On the basis of AFF's response that AFF's fish farming facility in Neftchala was privatised in 2018, Mr Bahari concludes that "*before 2018, any fishing done in Neftchala was coordinated and authorized by the State*".[1346] This submission is so vague and disconnected from AFF's letter that it is impossible to understand. It is not understood what is meant by the broad terms "*any fishing done*", "*in Neftchala*" or "*coordinated and authorized by the State*".

(d) Finally, Mr Bahari concludes that "[i]*t is clear that Caspian Fish and the State were cooperating on Neftchala and other fish farms for years*", based on a nonsensical press report which states that the "*sole owner*" of certain "*territories of Azerbaijan with fish farms*" was Caspian Fish.[1347] The press report is obviously wrong. Caspian Fish did not own any "territories", much less the fish farms in them.[1348] Nor does Mr Bahari explain what is meant by

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1343 Reply, para. 461(a).

1344 Letter from Azerbaijan Fish Farm to Quinn Emanuel dated 10 May 2024, **C-322**.

1345 Reply, para. 461(b).

1346 Reply, para. 461(c).

1347 Reply, para. 461(d).

1348 Second Hasanov Statement, para. 58.

"*cooperating*[…] *on fish farms*".[1349] Caspian Fish cooperated with the State in connection with fish breeding, as did all companies who were allocated CITES quotas.[1350] This had nothing to do with commercial fish farming.[1351]

496. As to Mr Bahari's claim that "*LU-Mun Holding and AFF have stepping in and acquired Caspian Fish LLC's business*[…] *to the benefit of President Aliyev and his family*",[1352] this is pure speculation and, to Azerbaijan's knowledge, is denied.

497. Mr Bahari has further criticised Azerbaijan's document production relating to the LLC's financial information,[1353] which consisted of over 65 documents comprising profit tax returns, VAT filings, and caviar export data,[1354] claiming that while they "*appear to relate to Caspian Fish LLC's historical financial and/or operating performance*", they are an "*incomplete view into the financial and/or operating performance of Caspian Fish*".[1355] Mr Bahari wishes the Tribunal to infer that the reason for the "incomplete" production is that Azerbaijan seeks to "*diminish Caspian Fish LLC's true financial position and valuation*".[1356] This is hopeful submission is not, however, the truth.

498. The disclosed documents came from two sources. First, Azerbaijan's internal records and files (documents filed by Caspian Fish with the State Tax Service, for example, were produced). Second, Azerbaijan sought voluntary production from Caspian Fish of its financial records, and any documents shared by Caspian Fish were given to Mr Bahari.[1357] Azerbaijan accepts that documents produced by Caspian Fish are not

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1349 Reply, para. 461(d).

1350 Second Kerimov Statement, paras 28, 42, 44; Second Hasanov Statement, para. 44.

1351 Second Kerimov Statement, para. 39.

1352 Reply, para. 463.

1353 *See* Reply, footnote 669, referring to Annex 1 to Procedural Order No. 6 dated 9 April 2024, Claimant's Document Production Request Nos. 60 (seeking documents "[redacted]") and 69 (seeking documents "[redacted]").

1354 *See* Index of Respondent's Document Production as at 26 September 2024, **R-390**.

1355 Reply, para. 466.

1356 Reply, para. 1132.

1357 Letter from Caspian Fish to Quinn Emanuel dated 2 May 2024, **R-355** (Respondent's document production 60_02).

capable of providing a complete picture of Caspian Fish's financial health over all years, and that there may have at times been both exaggeration and underreporting. That does not, however, mean that there has been any fraud in the course of these arbitral proceedings.

499. As to the profit tax declarations produced by Caspian Fish, Mr Bahari claims based on the Steer Report that there are "*significant discrepancies and anomalies* […] *that strongly indicated the documents themselves were forgeries*".[1358] Mr Steer relies on his usual claims that the difference in tonal values suggest there have been "[redacted]" on the documents.[1359] As explained at above, these theories (which even Mr Steer accepts are limited, given he did not examine originals)[1360] are unsound. A difference in "[redacted]" does not mean anything was digitally superimposed, and certainly is not a mark of forgery. Mr Steer's conclusions are of no weight at all.

500. The second criticism Mr Bahari makes of the Caspian Fish-produced tax declarations is 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*".[1361] While it is true that the documents for Caspian Fish's profit tax declarations in certain years do not match those produced by the State Tax Service, Mr Bahari misrepresents the position. Azerbaijan had no involvement in the documents which were produced voluntarily to the Claimant by Caspian Fish. Nor did Azerbaijan report anything to the State Tax Service: Caspian Fish did. Mr Bahari muddles Caspian Fish and Azerbaijan, assimilating them to reach the conclusion that "*Azerbaijan produced inauthentic and forged declarations in the Arbitration to underreport the Revenues and Taxable Profit / Loss of Caspian Fish*".[1362] This is a gross and inappropriate misstatement which is completely wrong.

501. Nor is it the case that Caspian Fish forged documents for the purposes of the arbitration. As explained in Caspian Fish's letter dated 24 October 2024, the documents it shared

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1358 Reply, para. 1134.

1359 Reply, para. 1136.

1360 Steer Report, para. 2.2.5.

1361 Reply, para. 1142.

1362 Reply, para. 1142.

were downloaded from the State Tax Service's online tax filing system.[1363] They were not "*recently created documents*"[1364] but were the very documents that were filed with the State Tax Service at the relevant time.

502. The State Tax Service's online tax filing system contains filings made by a relevant entity in relation to a particular tax year. After an initial tax filing is made, the tax authorities are entitled to carry out an inspection or audit in order to determine the correct and timely calculation and payment of taxes. After the such an inspection (known as an "offsite tax audit") the tax authorities will amend the declaration submitted by the taxpayer, and recalculate the tax due.[1365] The revised declaration also appears on the State Tax Service online tax filing system.

503. It is for this benign reason that Caspian Fish shared copies of declarations with Quinn Emanuel that were inconsistent with the copies Quinn Emanuel received from the State Tax Service's files. As Caspian Fish explains, they do not have employees with knowledge of the historical tax position, and it appears that when copies of the tax filings were downloaded from the system, it did not download the final copy, as revised by the tax authorities:

[redacted].[1366]

1363 Letter from Caspian Fish to Quinn Emanuel dated 24 October 2024, **R-356**.

1364 Reply, para. 1134.

1365 Article 37 of the Tax Code, **R-394**; "Rules for Conducting Off-site Tax Audits of Declarations" approved by the decision of the Ministry of Taxes dated 7 September 2016, **R-392**; and "Rules for keeping records of calculated and paid tax funds in tax authorities", approved by the Order of the Ministry of Taxes dated 28 December 2018, **R-393**. The taxpayer will ordinarily calculate the amount of taxes it owes for the reporting period (article 82.1 of the Tax Code, **R-394**), but the tax authorities are entitled to carry out a recalculation (articles 37.4 and 83 of the Tax Code, **R-394**); "Methodical instructions on the rules for conducting an off-site tax audit of declarations" approved by the Order of the Ministry of Taxes dated 28 August 2003, **R-396**; "Methodical Instructions on the rules for accounting of funds calculated and paid in tax authorities" approved by the order of the Ministry of Taxes dated 7 July 2008, **R-397**.

1366 Letter from Caspian Fish to Quinn Emanuel dated 24 October 2024, **R-356**, including enclosure.

504. In sum, there is no credible basis for Mr Bahari to allege fraud or any kind of misconduct on the part of Caspian Fish, let alone Azerbaijan. Caspian Fish was a business that was doomed to fail. In the words of Mr Sultanov, founder of private fishing business Khazarbaliq who Mr Kerimov consulted at the time of his 2001 audit of Caspian Fish, Caspian Fish was "[redacted]" and a "[redacted]".[1367]

IV. MR BAHARI FAILED TO DISCLOSE HIS KNOWLEDGE AND INVOLVEMENT IN THE AYNA SULTAN PROCEEDINGS

505. Mr Bahari's denial that he sold Ayna Sultan to Mr A Gambarov is one that has to be read between the lines. It is not made explicit in his evidence, and it is barely addressed in the Reply submission. Instead, the Reply spends almost 20 pages describing in detail the allegations raised by the various individuals in the underlying litigation, seeking to establish that these private individuals "*attempt*[ed] *to fraudulently misappropriate Mr. Bahari's investment*".[1368] Mr Bahari has some difficulty attributing that conduct to Azerbaijan, of course, so he is forced to claim that there were defects in the Court proceedings that rise to the level of a breach of Treaty. There is no basis for these claims at all.

506. Mr Bahari's primary case concerns notice: he claims that the Court failed to notify him of the proceedings and therefore "*enabled the illegal transfer of Ayna Sultan*".[1369] Not only is the claim regarding notice incorrect, but Mr Bahari obviously obtained notice, as he in fact appealed the Ayna Sultan judgments. His only response to that difficulty is to claim that everything was forged and the procedure was highly defective, but this narrative does not hold up for the reasons discussed in more detail below.

507. There must be a reason that Mr Bahari so reluctant to discuss Ayna Sultan in his evidence. His Reply submission attempts to paint the Ayna Sultan proceedings as a "*sprawling, chaotic court fight*"[1370] carried on by "*various individuals*" who "*took advantage of* [Mr Bahari's] *expulsion and forced absence from Azerbaijan*".[1371]

1367 Sultanov Statement, paras 22-23.

1368 Reply, para. 475.

1369 Reply, title to Part II.IV.

1370 Reply, para. 475.

1371 Reply, para. 478.

Hyperbole aside, however, there is another, far more plausible, reason for the competing claims and judgments in the Ayna Sultan proceedings, which is that Mr Bahari indeed sold, or promised to sell, the property (potentially twice) before his departure from Azerbaijan.

508. Azerbaijan has no knowledge of the private dealings between Mr Bahari and the individuals involved in the Ayna Sultan proceedings. Only Mr Bahari can speak to the truth of what happened between him, Mr A Gambarov (who claimed to have been sold the property in December 1999 pursuant to the Ayna Sultan Sale contract)[1372] and Mr Pashayev (who claimed that Mr Bahari separately promised to sell the property to him in the same year).[1373] Contrary to what Mr Bahari would have this Tribunal believe, however, Messrs Pashayev and Gambarov were not random, vulturous individuals who leapt on an opportunity to steal a property as soon as they realised it had been abandoned. These individuals were known to Mr Bahari.

509. Azerbaijan understands that Mr Pashayev, who was represented in the underlying litigation by Mr Allahyarov (Mr Bahari's witness in these proceedings), was a realtor with whom Mr Bahari had previously worked.[1374] It is apparent that Mr Bahari also had a relationship with Mr A Gambarov, to whom Mr Bahari sold the property under the terms of the Ayna Sultan Sale contract. Mr Bahari has not given any evidence on his relationship with Messrs Gambarov and Pashayev. Mr Allahyarov, who also could have spoken to these matters, says nothing about them in his witness statement (see further below). Azerbaijan infers that the reason they have not done so is because their evidence would not help Mr Bahari's case.

1372 A Gambarov Statement of Claim dated 4 August 2004, **R-398**; Sale and purchase agreement between Mr Bahari and Mr Gambarov dated 14 December 1999, **R-62** and corresponding receipt, **R-63**. While Azerbaijan's forensic expert concludes that there is "[redacted]", she also confirms that the evidence for any of these signatures in isolation would be inconclusive (Briggs Report, para. 4.13.9). Azerbaijan has no knowledge of the circumstances of the conclusion of these documents, but it considers they are prima facie evidence, verified by the Azerbaijani Courts, of Mr Bahari's sale of Ayna Sultan to Mr Gambarov.

1373 S Pashayev Statement of Claim dated 29 April 2004, **C-344**.

1374 Second Zeynalov Statement, para. 36.

1. Nothing in the underlying litigation suggests "sham", "fraudulent" or "collusive" proceedings

510. Mr Bahari sets out what he describes as a "*methodical account*" of the appeals in the underlying litigation "*necessary to expose the pervasive irregularities in the Ayna Sultan Litigations that, taken together, robbed Mr. Bahari of his due process rights*".[1375] Very little in his lengthy description has anything to do with "due process" afforded to Mr Bahari, however. The primary issue of notice is addressed below; as to the remaining detail, it largely concerns the allegations and acts of private individuals in a private commercial litigation. These matters have no relevance to the claims in this arbitration. Perhaps the best example of this is Mr Bahari's allegation that:

> 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.[1376]

511. While Mr Bahari may find the triangle between Messrs Gambarov, Pashayev and Mrs Gambarova interesting, this kind of speculative submission is wholly irrelevant to the issues in dispute in these proceedings.

512. For these reasons, and while Azerbaijan does not accept Mr Bahari's summary of the proceedings, Azerbaijan does not consider it necessary to address each of the underlying facts relating to the Ayna Sultan proceedings as set out in the Reply submission in full.

513. There are four matters worth addressing, however, which are raised – albeit tentatively – by Mr Bahari in an attempt to implicate Azerbaijan.

514. First, Mr Bahari alleges that in Mr E Gambarov's statement of appeal, Mr Gambarov argued "*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*" (emphasis in original).[1377] This paraphrasing is inaccurate and in any event takes Mr Bahari nowhere – he claims only (wrongly) that an allegation

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1375 Reply, para. 477.

1376 Reply, para. 488.

1377 Reply, para. 482.

of collusion was made by one of the litigants, and not that there was any collusion in fact.[1378]

515. Mr E Gambarov's appeal concerned the Second 2004 Judgment of Judge Aliyev, which the appeal documentation described in the following terms:

[redacted][1379]

516. Mr E Gambarov's complaint, insofar as it concerned Mr Zeynalov's power of attorney, was as follows:

[redacted]

[1378] Indeed, Mr Bahari seems to credit the Court for "recogniz[ing] that the proceedings brought by Elchin Gambarov were fraudulent" (Reply, para. 493(d)), albeit his characterisation of the "proceedings" is inaccurate, when what the Court in fact recognised was that a criminal case had been opened against Mr E Gambarov after he sold the property: Claimant's Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, **C-309**, pp. 7-8. Mr Bahari appears to have retranslated the majority of the Court judgments in respect of Ayna Sultan, alleging in footnote 705 that the Respondent's translations "contain[] unexplained omissions that suggest translation bias". This is a bizarre allegation that is denied. As set out in Procedural Order No. 1 dated 3 December 2022, the parties are only required to translate the relevant parts of lengthy foreign language documents on which they rely (para. 5.8). As the Claimant has translated entire judgments, the Respondent refers to the Claimant's translations in this section of the brief.

[1379] Appeal Complaint by E. Gambarov (on behalf of A. Gambarov) dated 6 September 2004, **C-301**, p. 1.

[redacted].[1380] (emphasis added)

517. Thus, Mr E Gambarov was complaining that Mr Pashayev had described the power of attorney as "[redacted]" when it had in fact been [redacted]". Mr Zeynalov was not party to the Ayna Sultan proceedings, but was (for reasons unknown to Azerbaijan) nevertheless included as an object of Mr Gambarov's complaint.[1381] As to the involvement of the judge, Mr Gambarov stated only that by finding in Mr Pashayev's favour, the judge had allowed Mr Pashayev (and Mr Zeynalov) to "misappropriate" the property. Nothing in this language suggests that Mr Gambarov's complaint was that the judge personally participated in the alleged "fraud", and it is misleading of Mr Bahari to describe it as so.

518. Moreover, it is unclear why Mr Bahari considers that a mere allegation of collusion made by Mr E Gambarov would have any significance, when Mr Bahari's case is that Mr Gambarov himself too was a fraudster. As shown by his approach to the valuation of Ayna Sultan (discussed below), Mr Bahari picks and chooses which parts of the evidence he wishes to rely on from the various individuals he has blanket labelled as fraudsters. The inconsistent approach Mr Bahari takes with respect to his wide-ranging allegations of fraud further undermines his credibility.

519. Second, Mr Bahari claims that the reasoning in the Consolidated Appeal Judgment, which upheld Mr A Gambarov's appeal and title to the property, is "*nonsensical*", because it refers to article 43 of the Civil Code, which "*relates to legal entities and does not support the Court's legal conclusion*".[1382] While Mr Bahari appears to recognise that the relevant version of the Civil Code is the "*old Civil Code*", he erroneously cites from the *current* Civil Code, which relates to legal entities.[1383] In fact, entirely consistent with the Court's reasoning, article 43 of the old Civil Code provides:

1380 Appeal Complaint by E. Gambarov (on behalf of A. Gambarov) dated 6 September 2004, **C-301**, pp. 1-2.

1381 Indeed, Mr E Gambarov appears to have misread Mr Pashayev's claim entirely, which only referred to Mr Zeynalov in passing as the recipient of an expired power of attorney: *see* S Pashayev Statement of Claim dated 29 April 2004, **C-344** ("[redacted]

1382 Reply, para. 493(c).

1383 Reply, para. 493(c), referring to "C-299" as the Civil Code (presumably in error, as the correct exhibit is C-222, which is the current Civil Code as of 2000).

> if one of the parties has fully or partially performed the contract, which is subject to notarization, and the other party refuses to notarize it, the court has the right to consider the contract concluded at the request of the party who performed it, unless there are actions contrary to the law in the contract. In this case, notarization of the contract is not required.[1384]

520. Third, Mr Bahari concludes that the Consolidated Appeal Judgment "*prevailed without any living claimant*" and it is "*entirely unclear who finally took possession of Ayna Sultan*".[1385] This cannot be a serious submission. The Consolidated Appeal Judgment left in no doubt who owned the property. Mr A Gambarov was determined the legal owner of Ayna Sultan, and, given he was deceased, the property accordingly formed part of his estate. As Mr Bahari himself recognises, "[t]*he Court of Appeal equally acknowledged Mrs. Gambarova's appeal of the Second 2004 Judgment in her status as the "wife and legal heir" of Mr. Azad Gambarov*".[1386] The property plainly passed to Ms Gambarova, as she subsequently challenged Mr Bahari's attempt in 2009 to appeal the judgment (discussed further below).

521. Fourth and finally, Mr Bahari claims that it is "[o]*f note*" that the "*digital copy of the Consolidated Appeal Judgment* [**R-149**] *contains a number of anomalies*",[1387] relying on the Steer Report to claim that there is a "*cropped digital superimposition of the signature and stamp*".[1388] These are some of Mr Bahari's more inventive allegations. He did not seek inspection of the original of the Consolidated Appeal Judgment; if he had, he would have seen that its signatures and stamp are in wet ink. In any event, as discussed below, Mr Bahari has now received disclosure of the full Ayna Sultan case file, which contains images rather than scans of each page, and it is apparent from the photographs that the signatures and stamp are wet-ink.[1389] For the reasons explained above, the scanning of the file is likely to have isolated the coloured text and used a different scanning profile, hence the difference in tonal value from the black and white

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1384 Article 43 of the Civil Code of the Republic of Azerbaijan (in force from 1964 to 2000), **R-399**.

1385 Reply, para. 493(f).

1386 Reply, para. 493(a).

1387 Reply, para. 494.

1388 Reply, para. 494(c).

1389 *See* image of signature page of original Consolidated Appeal Judgment (disclosed at p. 216 of Respondent's Production 182_31), **R-400**.

text.[1390] That Mr Steer fails to even acknowledge this as a possibility speaks volumes to his credibility as an expert.

522. Neither is there anything in the allegation that the digital file was "*created on 21 December 2023 and was digitally amended twice on 28 December 2023*".[1391] The file is a combined PDF, which includes an English translation. Any amendments obviously concern the translated file and not, as Mr Bahari would apparently have it, nefarious meddling with the hardcopy scan.

523. In any event, Mr Bahari's only conclusion on the alleged digital anomalies in **R-149** is that it is "*unclear why an official court document*[…] *has affixed a digital superimposition of an official government stamp and signature*".[1392] He does not explicitly allege fraud, because he knows that the document is not forged, and it would be senseless for him to claim that it was.

2. Mr Bahari fails properly to address Mr Allahyarov's participation in the Ayna Sultan litigation

524. While Mr Bahari is quick to characterise all actors in the Ayna Sultan proceedings as fraudsters out to steal Mr Bahari's property, he cannot escape the fact that one of these alleged fraudsters, Mr Pashayev, was represented in the proceedings by Mr Bahari's very own witness, Mr Allahyarov. "*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*", Mr Bahari protests.[1393] Nor, he says, do the underlying claimants "*allege that Mr. Allahyarov knowingly participated in Mr. Pashayev's fraudulent claim*".[1394]

525. Be that as it may, shortly after the conclusion of the Ayna Sultan litigations, Mr Allahyarov, together with Messrs Mahmudzada and Ahmadov (who appeared as witnesses for Mr Pashayev) were arrested, and ultimately convicted, of being members of an organised crime group in connection with the fraudulent and abusive theft of

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1390 *See* Briggs Report, para. 5.1.25.

1391 Reply, para. 494(a).

1392 Reply, para. 495.

1393 Reply, para. 536.

1394 Reply, para. 536.

residential properties.[1395] Mr Bahari describes Mr Allahyarov's conviction as a "*red herring meant to discredit Mr. Allahyarov*",[1396] but it is no coincidence that these very same people were involved in litigation that Mr Bahari himself describes as an "*attempt*[] *to fraudulently misappropriate*" his property. Plainly, had there been any fraud in Mr Pashayev's conduct, Mr Allahyarov would have been well aware, and likely complicit, in it.

526. Critically, Mr Allahyarov does not address the substance of the criminal case against him, other than broadly to claim that he "[redacted]".[1397] He says absolutely nothing about the lengthy and disturbing details of the circumstances of his conviction, including the fact that he was found to have preyed on vulnerable individuals, such as alcoholics, and drugged them to a state of unconsciousness to carry out the theft.[1398] In fact, Mr Allayarov's claims of innocence are contradicted by the documentary record, which confirms that he in fact pleaded partly guilty, as described at paragraph 100(b) above.

527. Instead, Mr Bahari resorts to his usual narrative, claiming that "*Mr. Allahyarov's prosecution was politically motivated, due to his speaking out against Government interests*" (emphasis added).[1399] There is nothing, however, in evidence (including Mr Allahyarov's own testimony) that indicates that Mr Allahyarov ever "*sp*[oke] *out against Government interests*". Mr Bahari's submissions are baseless, made in the hope that if he repeats at length that Azerbaijan has a "*corrupt system of governance*",[1400] it will be true for his case. In fact, that Mr Bahari is forced to rely on these unsubstantiated allegations as opposed to any real evidence only serves to underscore that Mr Bahari's claims have no substance.

528. In a similar vein, Mr Allahyarov claims that he was "[redacted]", Mr Mahir Samad oglu Naghiyev, referring to Mr Naghiyev's

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1395 Defence, paras 329-332.

1396 Reply, para. 534.

1397 Second Allahyarov Statement, para. 6.

1398 *See* Judgment of Baku Appellate Court dated 17 July 2007, **R-151**, pp. 5-6.

1399 Reply, para. 535.

1400 Reply, title to Part III.

conviction in the Baku Appellate Criminal Court.[1401] The documents from the criminal case file demonstrate that Mr Allahyarov's claims of "[redacted] are simply not true. Mr Naghiyev was not convicted because he had carried out a malicious prosecution of Mr Allahyarov's organised crime group. He was convicted because he took bribes to convert the pre-trial detention of certain members of Mr Allahyarov's organised crime group from custodial to conditional.[1402] As for Mr Allahyarov, the Court found that Mr Naghiyev had breached the Criminal Procedure Code by taking USD 50,000 from Mr Allahyarov's brother to compensate the victims of Mr Allahyarov's crimes, when only the Court had the power to make such awards:

[redacted].[1403]

529. Mr Bahari attempts to divert the focus from Mr Allahyarov to Mr Zeynalov, claiming that Mr E Gambarov's "*appeal of the Second 2004 Judgment specifically argued that Messrs. Pashayev and Zeynalov had colluded to misappropriate Mr. Bahari's property*".[1404] It is unclear, however, why Mr Bahari considers Mr Gambarov's allegations to carry any weight, when Mr Bahari's primary allegation is that Mr Gambarov is a fraudster.

530. In any event, however, it is evident that Mr Zeynalov had nothing to do with the claims made in the Ayna Sultan proceedings. Mr Zeynalov explains that Mr Pashayev may have had a copy of the PoA, as he had previously worked with Messrs Bahari and

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1401 Second Allahyarov Statement, para. 6.

1402 Supreme Court's decision dated 22 September 2010, **R-401**, upholding the verdict of Baku Court of Criminal Appeal dated 30 January 2009, **R-402**.

1403 Supreme Court's decision dated 22 September 2010, **R-401**, p. 3.

1404 Reply, para. 537.

Zeynalov to register Mr Bahari to reside at Mr Zeynalov's mother's flat.[1405] Mr Zeynalov was not, however, involved in the transfer of Ayna Sultan to Mr Pashayev or anyone else, and he never shared the PoA with Mr Pashayev for that purpose.[1406]

3. The Ayna Sultan litigations did not violate Mr Bahari's due process rights

531. Mr Bahari's primary due process complaint appears to be that he was not given notice of the Ayna Sultan proceedings, despite being the named defendant. These submissions are premised, however, on the erroneous claim that "*Azerbaijan has* [at the time of the Reply] *produced*" what he describes as "*the full case files from the Ayna Sultan litigations*".[1407] This is incorrect, and a mischaracterisation of the repeated explanations provided by Azerbaijan that it was *not* producing the full case file, but only a limited set of documents, namely those within the possession of the Ministry of Economy.[1408] As explained in Quinn Emanuel's objections to document production, and its subsequent letters to the Tribunal:

[redacted]

1405 Second Zeynalov Statement, para. 37.

1406 Second Zeynalov Statement, para. 37.

1407 Reply, para. 476.

1408 *See* Annex 1 to Procedural Order No. 6 dated 9 April 2024, Objections to Request No. 181 ("[redacted]").

[redacted].[1409]

532. Since the filing of the Reply submission, Azerbaijan followed the additional legal procedures required to obtain a copy of the full case file in relation to Ayna Sultan, which was subsequently disclosed to Mr Bahari on 14 August 2024, after the filing of the Reply submission. Mr Bahari's complaints in the Reply about missing records of service and consequent breaches of his due process rights are accordingly misguided.[1410]

533. The Ayna Sultan Court file, which runs to over 400 pages, contains copious evidence that the Court duly notified Mr Bahari at each stage of the proceedings. Contrary to Mr Bahari's eager submission that "[t]*he case files contain no record of transmission of any such documents to Mr Bahari*",[1411] in fact:

(a) The Court notified Mr Bahari of its acceptance of each application, and addressed the corresponding writ of summons for the first Court hearing to Mr Bahari.[1412]

(b) When hearings were adjourned, among other things, on account of Mr Bahari's absence, the Court file contains numerous further writs of summons for new hearing dates that were each addressed to Mr Bahari.[1413] In the case of Mr A Gambarov's application, where the proceedings were not adjourned, the Court file contains a summons for the hearing fixed for 16 August 2004 addressed to Mr Bahari, as well as a stub that is signed by the local executive authority confirming receipt.[1414]

1409 Letter from Quinn Emanuel to the Tribunal dated 29 July 2024; *see also* Letter from Quinn Emanuel to the Tribunal dated 5 August 2024.

1410 Reply, para 479, 500.

1411 Reply, para. 500(a).

1412 Notification to Mr Bahari dated 10 May 2004 (Pashayev claim), **R-403**; Notification to Mr Bahari dated 10 August 2004 (Gambarov claim), **R-404**; Notifications to Mr Bahari dated 3 and 6 May 2005 (Gambarova appeal), **R-405**; Notifications to Mr Bahari dated 27 May and 3 June 2005 (Pashayev appeal), **R-406**; Notification to Mr Bahari dated 3 November 2005 (Pashayev cassation appeal), **R-407**.

1413 *See*, e.g., Protocol of the Preparatory Session of Narimanov District Court dated 31 May 2004, **R-444**, and Writ of Summons issued to Mr Bahari for 22 June 2004, **R-430**; Protocol of the Preparatory Session of the Appellate Court, **R-446**, and Notification issued to Mr Bahari dated 24 May 2005, **R-428**.

1414 Writ of summons, undated, issued to Mr Bahari in respect of a hearing on 16 August 2004, **R-426**; Countersigned Writ of Summons dated 13 August 2004, **R-447**.

(c) The Court file also contains evidence that Court decisions were addressed to Mr Bahari.[1415]

(d) While the Court file does not contain postal receipts or courier confirmations for the communications described above, they were each made by way of formal notification or letter addressed specifically to Mr Bahari, and there is no reason to believe that these documents were not in fact sent to the addresses specified, even if postal confirmations were not retained or placed in the Court file. The fact that the file contains evidence that certain of the summons were returned to the Court with a signed receipt[1416] also indicates that the documents were indeed being sent to the addresses listed.[1417]

534. Both the Pashayev and Gambarov applications confirmed that Mr Bahari's location was unknown.[1418] Accordingly, under article 147 of the CPC, the Court was only required to deliver its notifications to Mr Bahari's last known place of residence or work.[1419] The Court's communications were accordingly sent to Mr Bahari variously at Ayna Sultan's address (Baku city, Z. Bunyadov 62), or Samad Vurgun street, house 96, apartment 54 (and, in some cases, to both addresses). The Samad Vurgun street address was an address referred to by Mr Bahari as his own in the documents on the Court's file,[1420] and which Azerbaijan understands was used by Mr Bahari for the purpose of

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1415 *See*, e.g., Notification of 13 August 2004 ruling of Narimanov District Court to Mr Bahari, **R-421**; Notification of 16 August 2004 ruling of Narimanov District Court to Mr Bahari, **R-422**; Notification of 16 August 2004 ruling of Narimanov District Court to Mr Bahari, **R-423**; Notification of 17 September 2004 Narimanov District Court ruling to Mr Bahari, **R-424**; Notification of the 24 June 2005 Court of Appeal ruling issued to Mr Bahari on 4 July 2005, **R-425**; Notification of 22 June 2004 Narimanov District Court decision copied to Mr Bahari on 22 June 2004, **R-448**; Notification of 20 August 2004 Narimanov Court Resolution addressed to Mr Bahari on 20 August 2004, **R-450**.

1416 Writ of Summons dated 13 August 2004 issued to Mr Bahari in respect of a hearing on 16 August 2004, **R-447**.

1417 It also bears noting that the Court file contains the same type of document (i.e. notifications, but no postal confirmations) of its notifications to *all* participants in the case (including Mr Guliyev, who was joined as a third party to each of Messr Pashayev's and Gambarov's claims).

1418 Application by Mr Pashayev to the Narimanov District Court dated 19 April 2004, **R-449**; Application by Mr Gambarov to the Narimanov District Court dated 4 August 2004, **R-398**.

1419 Civil Procedure Code of Azerbaijan, **C-298**, art. 147.

1420 *See*, e.g., Mr Bahari's application to the State Notary Office No. 42 to revoke the Power of Attorney dated 19 December 2000, as contained in the Ayna Sultan case file **R-237**, referring to Samad Vurgun as Mr Bahari's address.

registering him as a shareholder in Coolak Baku.[1421] The Court was not required to send its notifications to Mr Bahari to any other address.[1422]

535. For the reasons set out at paragraphs 348 to 350 above, Mr Bahari's submissions on articles 150,[1423] 143[1424] and Chapter 17 of the CPC (on *in absentia* proceedings)[1425] are likewise misconceived. Like the ASFAN proceedings, the Ayna Sultan proceedings did not proceed *in absentia* and Mr Bahari did not lose any "*fundamental due process rights*"[1426] afforded to defendants in connection with *in absentia* proceedings.

536. Finally, Mr Bahari complains that because he "*never received*" notice, he was also "*unable to exercise his fundamental appeal rights*".[1427] Azerbaijan denies that Mr Bahari did not receive notice, or that he was unable to exercise his right of appeal. That statement is demonstrably false by reference to the documentary record, which evidences that Mr Bahari (through his representatives) appealed the Consolidated Appeal Judgment in 2009, as discussed below.

4. Mr Bahari instructed Mr Amirahmadi in 2009 to represent him in connection with Ayna Sultan

537. Mr Bahari claims that his 2009 appeal of the Consolidated Appeal Judgment "*is fraudulent from start to finish*".[1428] He makes three broad factual claims, each of which are contradicted by the documentary record, supported only by Mr Bahari's unreliable testimony, and in any event have no rational factual basis.

538. First, while Mr Bahari accepts that he provided a power of attorney to Professor Hooshang Amirahmadi dated 20 April 2009 (the **Amirahmadi PoA**),[1429] he claims that

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1421 Second Zeynalov Statement, para. 36.

1422 *See* paragraph 346 above.

1423 Reply, para. 500(b).

1424 Reply, para. 500(d).

1425 Reply, para. 500(e) to (i).

1426 Reply, para. 500.

1427 Reply, para. 500(j).

1428 Reply, para. 501. He also seeks to draw the Tribunal's attention to "the fact that Azerbaijan failed to provide the full case file from the Alleged 2009 Appeal responsive to Claimant's Request No. 181", but he again misunderstands that Azerbaijan was not ordered to do so. The Tribunal accepted Azerbaijan's explanation that it would provide what was in the possession of the Ministry of Economy, and denied the remainder of Mr Bahari's request as insufficiently specific: *see* Annex 1 to PO6 dated 9 April 2024, Request No. 181.

1429 Power of Attorney issued by Mr Bahari to Mr Amirahmadi dated 20 April 2009, **R-152**.

it was given "*to negotiate a settlement with the Azerbaijani Government in 2009*".[1430] This submission flies in the face of the documentary record and cannot be true:

(a) Contrary to Mr Bahari's assertions, the Amirahmadi PoA exhibited by Azerbaijan as **R-152** (English and Farsi, as well as an Azerbaijani translation) was taken from the Ayna Sultan case file. Mr Bahari claims that the documents in the case file "only *contain*[] *the Azeri-language version*" and therefore **R-152** must have been taken from elsewhere,[1431] but this submission is again premised on the inaccurate assumption that Mr Bahari had the full case file at the time the Reply submission was prepared. In fact, the full case file contains each of the English, Farsi and Azerbaijani language versions, the Azerbaijani version being a notarised translation of the original language (albeit the notarial certificate was excluded from the version exhibited at **R-152**).[1432] It is obvious that **R-152** was taken from the Ayna Sultan case file, as it contains the sequential numbering seen in the file on the top right hand corner of each page.

(b) The Amirahmadi PoA makes no reference to negotiations with the Azerbaijani Government. Nor is it clear why Mr Bahari would have needed to issue a formal power of attorney in order for any such alleged negotiations to be carried out. To the contrary, a power of attorney would have been required for Mr Amirahmadi to participate in local proceedings, and that is exactly what the document states on its face it is to be used for: Mr Amirahmadi is empowered "[redacted]", including the power to "[redacted]"[1433]

(c) Had Mr Amirahmadi truly been instructed to "*negotiate with the Pashayev family*"[1434] and Mr Bahari had executed such a power of attorney to that effect,

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1430 Reply, para. 503.

1431 Reply, para. 504.

1432 The notarial certificate at **C-310** was disclosed at p. 376 of Respondent's Production 182_31.

1433 Power of Attorney issued by Mr Bahari to Mr Amirahmadi dated 20 April 2009, **R-152**.

1434 Reply, title at Part II.VI.D.

it beggars belief that Mr Bahari "[redacted]"[1435] it. Notably, no details about this alleged negotiation are provided by Mr Bahari. They are a fabrication.

539. Second, Mr Bahari claims that "*no power of attorney was ever given to Mr. Abulfaz Kazimov*",[1436] and there is "*no document to demonstrate or support that alleged delegation*".[1437] Even at the time the Defence was filed, this submission was wrong. As Mr Bahari himself accepts,[1438] the Supreme Court's decision of 21 January 2010 made express reference to the power of attorney granted to Mr Kazimov.[1439] Azerbaijan has since obtained access to the full case file, and it has located a copy of the Kazimov power of attorney in the case file (the **Kazimov PoA**).[1440]

540. The Kazimov PoA was granted by Mr Amirahmadi to Mr Kazimov on 1 May 2009.[1441] To effect this, Mr Amirahmadi delegated his powers under the Amirahmadi PoA, which provided that Mr Amirahmadi "[redacted]".[1442] Thus, Mr Bahari's claims that he did not delegate power to Mr Kazimov are inapposite:[1443] he had already issued the broadly worded power of attorney to Mr Amirahmadi, and did not need to do anything further in order for Mr Amirahmadi to delegate his powers to Mr Kazimov.

541. State border records reveal that Professor Amirahmadi was in Azerbaijan between 26 April and 3 May 2009.[1444] Mr Kazimov, who has given evidence in these proceedings on Azerbaijan's behalf, confirms that during that time, Mr Amirahmadi instructed and engaged Mr Kazimov to "[redacted]

1435 Third Bahari Statement, para. 33.

1436 Reply, para. 502.

1437 Reply, para. 505.

1438 Reply, para. 507.

1439 Decision of Supreme Court of Azerbaijan dated 21 January 2010, **R-153**, p. 5.

1440 Power of Attorney issued by Mr Amirahmadi to Mr Kazimov dated 1 May 2009 (disclosed at p. 289 of Respondent's Production 182_31), **R-285**.

1441 Power of Attorney issued by Mr Amirahmadi to Mr Kazimov dated 1 May 2009, **R-285**.

1442 Power of Attorney issued by Mr Bahari to Mr Amirahmadi dated 20 April 2009, **R-152**.

1443 Reply, para. 505.

1444 Letter from State Border Service to State Service on Property Issues in respect of Mr Amirahmadi , **R-416**.

[redacted][1445] A copy of Mr Kazimov's advocates order to act for Mr Bahari dated 1 May 2009 contained in the case file describes the scope of his instruction as "[redacted]".[1446]

542. Mr Bahari concludes that 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*",[1447] but this is a total mischaracterisation of the Court's decision and the underlying documents. The Court did not rely on the "Azeri Version POA" just because "*it referred to the delegation occurring on 1 May 2009, which is the date that the* [Amirahmadi PoA] *translation was notarized*".[1448] This is an unfounded and wholly inaccurate assumption. The Court relied on the Kazimov PoA, which is also dated 1 May 2009, and of which Mr Bahari had not had sight at the time he made his Reply submissions.

543. Third, and finally, Mr Bahari complains that the application documents themselves (**R-172** and **R-173**) "*contain manifest digital forgeries*",[1449] first claiming that the signatures "*may be a traced simulation of a genuine signature*",[1450] and second repeating his claims that the signatures are "*cropped digital superimposition*[s]".[1451] Taking the second point first, as discussed above, the signatures on these documents are wet-ink. Mr Bahari's handwriting expert has since had inspection of these documents, and her conclusions in respect of the alleged digital anomalies on these documents, as well as those set out in the Steer Report, are accordingly moot. To the extent that Mr Bahari appears to suggest that counsel for Azerbaijan digitally altered the appeal documents,[1452] this allegation is wholly unwarranted, unprofessional and should immediately be withdrawn.

1445 First Kazimov Statement, para. 13.

1446 Advocates Order dated 1 May 2009, **R-244**.

1447 Reply, para. 508.

1448 Reply, para. 507.

1449 Reply, para. 511.

1450 Reply, para. 512.

1451 Reply, para. 515.

1452 Reply, para 521 ("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").

544. Azerbaijan accepts, as set out in the Briggs Report, that the lack of fluency and similarity of Mr Bahari's signatures on these documents suggests that "[redacted]".[1453] That does not mean, however, that the documents were not signed with Mr Bahari's authority. While Mr Kazimov does not recall precisely what happened with these specific documents given the passage of time, he prepared the appeal documentation and believes that it is likely he gave it to an associate of Mr Amirahmadi's to have executed on Mr Bahari's behalf.[1454] The documents were returned to Mr Kazimov with signatures, and he did not question them at the time.[1455]

545. Mr Bahari does not explain how he manages to conclude that the 2009 appeal was a "*fraud*[…] *consummated through a defective, if not collusive, court procedure lacking the most elemental due process checks*".[1456] The entire purpose of Mr Kazimov's application was to reverse the Consolidated Appeal Judgment, which on any view, can only have been for Mr Bahari's benefit. The suggestion therefore that Mr Kazimov sought to defraud him is illogical, and Mr Bahari cannot explain what fraud it is that he claims Mr Kazimov was allegedly trying to carry out. Mr Kazimov's application, which complained that Mr Bahari "[redacted]"[1457] is consistent with Mr Bahari's complaint in these proceedings.

546. Mr Bahari then proceeds to claim 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*",[1458] but this submission runs counter to his claim that he was "*defrauded with the likely participation of Azerbaijan's courts*".[1459] His submissions are vague, muddled and do not know what they are alleging. In short, he is unable to identify

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1453 Briggs Report, para. 4.22.8.

1454 Kazimov Statement, para. 16(b).

1455 Kazimov Statement, para. 16(b).

1456 Reply, para. 508.

1457 Claimant's translation of Decision of the Baku Appellate Court on Mr Bahari's Cassation Appeal dated 30 September 2009, **C-356**, p. 3.

1458 Reply, para. 523.

1459 Reply, para. 511.

anything in the 2009 appeal that indicates any wrongdoing on the part of Azerbaijan, because there is none.

5. Mr Bahari misinterprets and mischaracterises the Courts' reasoning for dismissing his 2009 appeal

547. Mr Bahari claims that the Defence gives the appellate Courts' decisions in respect of Mr Bahari's 2009 appeal only a "*cursory and incomplete*", "*superficial treatment*", whereas his analysis shows that "*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*" (emphasis added).[1460] In fact, it is Mr Bahari's analysis that is incomplete and superficial, as well as misleading.

548. As for the Appellate Court's decision of 30 September 2009 which restored time for filing an appeal, Mr Bahari misreads the Court's findings and provides incomplete and selective citations. What the Court in fact found was that "[redacted]" (emphasis added).[1461] This is *not* the same as Mr Bahari's paraphrasing that there was no evidence documents had been "*sent*" to Mr Bahari.

549. To the contrary, as set out above, the case file contains copious evidence that documents were addressed and sent to Mr Bahari. Whether he received them in fact is a separate matter. As long as the Court obtained a confirmation of delivery that complied with the rules set out in the CPC concerning service of proceedings on defendants whose whereabouts are unknown, the Court was entitled to proceed. The only thing the Appellate Court determined in its 30 September decision was that Mr Bahari "[redacted]" *in fact* of the court proceedings and he "[redacted]" *in fact* the summons and court resolutions.[1462] For this reason, the Appellate Court considered there was a valid reason for restoring the procedural period for filing an appeal.[1463]

1460 Reply, paras 525-526.

1461 Baku Appellate Court's decision dated 30 September 2009, **C-356**, p. 3.

1462 Baku Appellate Court's decision dated 30 September 2009, **C-356**, p. 3.

1463 Baku Appellate Court's decision dated 30 September 2009, **C-356**, p. 4.

550. As to the Supreme Court's decision of 21 January 2010, Mr Bahari only quotes from it to describe the Supreme Court's summary of the Appellate Court's reasoning, but he fails to complete the citation whereby the Court said of this reasoning that it "[redacted]".[1464] This was because, the Supreme Court found, the restoration of the appeal period based on Mr Bahari's "[redacted]" was "[redacted]".[1465] The Supreme Court raised three issues with the Appellate Court's findings:

(a) First, the Appellate Court "[redacted]" when [redacted]".[1466] Essentially, the Appellate Court had not investigated the reason for the near-three month delay.

(b) Second, the Appellate Court "[redacted]".[1467] In particular, [redacted]".[1468]

(c) Third, the Appellate Court failed to check the "[redacted]", as well as the "[redacted]".[1469]

1464 Supreme Court's decision dated 21 January 2010, **C-357**, p. 5.

1465 Supreme Court's decision dated 21 January 2010, **C-357**, p. 5.

1466 Supreme Court's decision dated 21 January 2010, **C-357**, p. 6.

1467 Supreme Court's decision dated 21 January 2010, **C-357**, p. 6.

1468 Supreme Court's decision dated 21 January 2010, **C-357**, pp. 6-7.

1469 Supreme Court's decision dated 21 January 2010, **C-357**, p. 7. Azerbaijan has located a copy of this receipt dated 22 April 2005 (the Court's judgment erroneously refers to the decision as dated 22 April 2005, when the decision is in fact dated 20 April 2005) in the case file, which appears to be on numbered

The Court also noted that "[redacted]".[1470]

551. It is inaccurate and inappropriate for Mr Bahari to describe the facts in the Supreme Court's decision as ones which Azerbaijan sought to "*conceal*[]".[1471] The Supreme Court's decision was exhibited to the Defence. Azerbaijan did not seek to "conceal" anything. It did not address the Supreme Court's decision in detail because these facts are largely irrelevant to these proceedings. Thus:

(a) Mr Bahari's claim that the "*appeal was brought by Mrs. Gambarova, but in a puzzling move, she was represented by Elchin Gambarov*" is not a "*critical fact*", and has no relevance whatsoever to the claims in these proceedings (indeed, Mr Bahari fails to explain its relevance).[1472]

(b) Mr Bahari's paraphrasing of the Supreme Court's rejection of the Appellate Court's decision is also wrong. He claims that the Supreme Court "*argu*[ed] *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*".[1473] For the reasons set out above, neither point is correct. The Supreme Court said nothing about the grounds for missing the deadline. It focused on points the Appellate Court had failed to take into account. Nor did the Supreme Court at any point suggest that Mr Bahari "*had never been afforded proper due process*". The Supreme Court did not comment on due process at all, and indeed rejected the suggestion that the Appellate Court had effectively investigated whether Mr Bahari had received notice in fact, given the signature acknowledging receipt of the 20 April 2005 decision.

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page 54 (as opposed to 64, albeit the numbering is handwritten and could easily be mistaken): *see* Judgment of Narimanov District Court dated 20 April 2005, **R-429**, and Receipt of copy of court decision, **R-431**. It appears to have been signed by someone who attended the Court to collect the Court's decision on Mr Bahari's behalf, rather than being sent to any address. Azerbaijan has no further knowledge of the details of this collection.

1470 Supreme Court's decision dated 21 January 2010, **C-357**, p. 7.

1471 Reply, para. 530.

1472 Reply, para. 530(a).

1473 Reply, para. 530(b).

(c) Mr Bahari claims that Azerbaijan sought to conceal an extract of the Supreme Court's decision concerning the comparison of Mr Bahari's signatures.[1474] This precise dicta was in fact quoted in the Defence at paragraph 334(f). It is not clear what Mr Bahari considers he is achieving by repeatedly seeking to attack the integrity of Azerbaijan (and indeed its counsel)[1475] in the conduct of this arbitration. Mr Bahari's submissions are needless rhetoric that do nothing to advance his case, but, to the contrary, support the theory that Mr Bahari is a fantasist who blows reality all out of proportion. That aside, Mr Bahari is also mistaken in suggesting that "*it is actually unclear what signatures (if any) the Supreme Court was referring to*".[1476] As set out above, the Court described each of the documents in the case file to which it referred as containing Mr Bahari's signature, even referring to their page numbers.[1477]

(d) Mr Bahari alleges that the Supreme Court "*accepted without scrutiny*" that the Amirahmadi PoA was given by Mr Bahari and the authority was transferred under the Kazimov PoA.[1478] Mr Bahari does not explain what he means by this allegation, and it is not understood. These documents were presented to the Court and were on the case file (indeed, Mr Bahari himself accepts the authenticity of the Amirahmadi PoA). In any event, the Court obviously scrutinised these PoAs, given its conclusion that the Appellate Court had failed to check the "*compliance or similarity of the*[] *signatures*" on these documents with other documents on the case file.

552. Mr Bahari claims that when the case was remanded, "*the Court of Appeal eventually came to the right solution – that Mr. Bahari had not authorized the Alleged 2009*

1474 Reply, para. 530(c) ("the issues of whether [Mr. Bahari's] signatures put on cassation appeal and motion were affixed willingly, and generally, identity of the person who affixed these signatures, the non-similarity of the mentioned signatures to other signatures affixed by the person named Mahammad Khalilpur Bahari who participates in the case and identity of the person who affixed his signature on the acknowledgement of receipt that confirms the taking of a copy of the ruling of Narimanov district court dated April 22, 2005.").

1475 *See*, e.g., Reply, paras 508, 521.

1476 Reply, para. 530(c).

1477 Supreme Court's decision dated 21 January 2010, **C-357**, pp. 6-7 ("[redacted]").

1478 Reply, para. 530(d).

Appeal",[1479] but this again is a misreading of the Court's judgment. The Appellate Court concluded that the petition was filed by an unauthorised person not because there was any deficiency with the PoAs, but because it was not clear that the person who was being represented under the PoAs was the same as the original owner of Ayna Sultan. Thus, the Court explained:

[redacted].[1480]

553. Contrary to Mr Bahari's submissions, there was accordingly no "*clear implication of fraud upon Mr. Bahari*" that was "*left unanswered*".[1481]

554. Finally, it is inaccurate for Mr Bahari to suggest that Mr Kazimov did not appeal the Appellate Court's decision because he was "*defeated*".[1482] As Mr Kazimov explains, after his initial instructions to issue the appeal, he never heard from Mr Amirahmadi again.[1483] The Kazimov PoA had expired, and he had no further instructions to proceed.[1484]

6. Mr Bahari's loss of Ayna Sultan is not attributable to Azerbaijan

555. To close, Mr Bahari leaps to a number of conclusions that are not supported by the matters he alleges. He claims that it was the "*fraudulent and collusive proceedings* [which] *resulted in Mr. Bahari's loss of Ayna Sultan*",[1485] yet, as discussed in PART 3IV.1 above, there is no evidence, and barely any allegation, that the proceedings

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1479 Reply, para. 532.

1480 Baku Appellate Court decision dated 26 May 2010, **C-358**, p. 3.

1481 Reply, para. 532(b).

1482 Reply, para. 533.

1483 Kazimov Statement, para. 18.

1484 Kazimov Statement, para. 18. *See* also Power of Attorney from Mr Amirahmadi to Mr Kazimov dated 1 May 2009, **R-285**.

1485 Reply, title at Part II.IV.G.

themselves were "fraudulent" or "collusive". He claims that the proceedings "*strongly implicate court corruption and involvement in the fraudulent misappropriation*",[1486] but he does not cross-refer to any evidence of this and there is none save the tentative allegations addressed above, which are not any, let alone "*strong*", implications of corruption. At a general level, he states that there was an "*astounding level of bias and partiality, ignorance of clear evidence, illogic, and systematic pattern of due process defects in the proceedings*",[1487] but again, this is just meaningless hyperbole that is unsupported by evidence. Put simply, Mr Bahari cannot show that Azerbaijan was the cause of his loss.

556. Perhaps the best example of the extent of Mr Bahari's delusion is his claim that "[o]*n Azerbaijan's own submitted evidence, it is <u>indisputable</u> that Mr. Bahari did not authorize or know about the* [2009] *appeal*" (emphasis added),[1488] when the precise opposite is true. All of Azerbaijan's evidence indicates that he authorised and knew about the appeal. For Mr Bahari now to claim – in the strongest terms, that it is "*indisputable*" – that he did not know, is a fantasy.

557. Mr Bahari's claims in respect of Ayna Sultan are accordingly bound to fail. Should, however, the Tribunal consider it necessary for any reason (which Azerbaijan denies) to address the value of the property, Mr Bahari's case that "*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*" is nonsense.[1489]

558. Mr Bahari relies on a sale that *he himself* describes as a "*plainly fraudulent act by Mr. Elchin Gambarov*"[1490] to establish a sale price for the property. There is no indication that the sale by Mr E Gambarov (an alleged fraudster on Mr Bahari's case) was a genuine, arm's length, market price sale. Indeed, Mr Pashayev's complaint was that the sale price should have been much lower.[1491] Moreover, Mr Bahari relies on this

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1486 Reply, para. 541.

1487 Reply, para. 544.

1488 Reply, para. 542.

1489 Reply, para. 483; Claimant's translation of an alleged sale and purchase agreement regarding Ayna Sultan dated 6 October 2004, **C-302**.

1490 Reply, para. 483.

1491 Pashayev appeal complaint dated 28 April 2005, **C-303** ("[…] [redacted]").

sale document on the basis that "[t]*he Contract for the sale is exhibited as an official court document and was accepted as such by the courts*",[1492] but overlooks the fact that the very document which Mr Bahari challenges in these proceedings as inauthentic (the Ayna Sultan Sale contract) is in fact the document which was truly "accepted" by the Courts. On the basis of the Ayna Sultan Sale contract, the Court made its determination that the property belonged to Mr A Gambarov, and rejected the document which Mr Bahari now seeks to rely on.[1493]

559. Indeed, Mr Bahari does not explain why the Ayna Sultan Sale contract between himself and Mr A Gambarov was any different to the contract of sale executed by Mr E Gambarov, given the Ayna Sultan Sale was accepted by the Court and given effect ultimately in the Consolidated Appeal Judgment. Mr Bahari describes the Ayna Sultan Sale as "*part of the fraudulent scheme to misappropriate Mr. Bahari's property and never happened*",[1494] but the Court found the opposite: that "[redacted]".[1495] In short, the Elchin Gambarov sale is not a reliable metric for valuation.

V. MR BAHARI HAS NO ANSWER TO THE EVIDENCE SHOWS THAT HIS CARPETS WERE SHIPPED TO HIM IN DUBAI

560. Mr Bahari's response to much of Azerbaijan's factual case on his alleged carpet collection is to ignore the evidence.

561. Nothing further is said about the seven purported Caspian Fish carpets, including the fact that the footage Mr Bahari claimed showed four of these alleged carpets in fact shows only two carpets,[1496] nor the fact that the carpet Mr Bahari claimed is now at Mr Khanmadov's residence is in fact a polyester carpet made in 2012.[1497] Similar goes for

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1492 Reply, para. 539.

1493 Claimant's translation of the Baku Appellate Court Decision dated 24 June 2005, **C-309**, p. 8 (Ms Gamabrova "[redacted]").

1494 Reply, para. 540.

1495 Claimant's translation of the Baku Appellate Court Decision dated 24 June 2005, **C-309**, p. 7.

1496 *See* Defence, para. 345.

1497 Defence, para. 344.

the alleged Nader Shah carpet. Mr Bahari is silent as to the fact that no such carpet is ever identified as having existed in public records, despite its alleged historical significance and value.[1498]

562. That leaves the "collection" of carpets described, ostensibly, in Mr Bahari's own Ledger.

563. Most critically, Mr Bahari ignores that Azerbaijan has presented documentary evidence which demonstrates that at least half of the carpets listed in this Ledger were shipped to him in Dubai. Mr Bahari claims that Azerbaijan's "*narrative rests on Mr. Zeynalov's highly doubtful evidence*",[1499] but he ignores the *documents* which support Mr Zeynalov's explanations. It seems the strongest criticism Mr Bahari can muster of Mr Zeynalov's testimony is that it is "*not very good*"[1500] because Mr Zeynalov admits that he included additional carpets in the shipment that had not been granted export certificates. To the contrary, Mr Zeynalov's frank admission and evidence on this point should be believed.

564. The reason that Mr Bahari ignores the documents is because he has no answer to them. He has not denied the authenticity of the Carpet Sale Contract,[1501] the export and customs declaration[1502] or the related photographs produced in disclosure and exhibited with his Reply submission.[1503] To the contrary, he positively accepts that the carpets referred to in these documents correspond to the carpets set out in his Ledger.[1504] He does not deny that he was in Dubai at the time the carpets were shipped. He merely says, based only on his own unsubstantiated testimony, that he "[redacted]".[1505] In the face of the documentary evidence which Mr Bahari does not challenge, that testimony is worthless.

1498 *See* Defence, para. 341.

1499 Reply, para. 555.

1500 Reply, para. 555.

1501 Contract No. 2 between "ATA-YOLU" Independent Company and Petro Geshm International Trading, dated 15 May 2002, **R-35**.

1502 Export Declaration by ATA-YOLU for 211 carpets to be sent to Petro Geshm dated 3 October 2002, **R-37**.

1503 Photographs of carpets, **C-430**.

1504 Reply, para. 550.

1505 Third Bahari Statement, para. 27.

565. Most concerningly, Mr Bahari disregards the best evidence of the value of his carpet collection, which is his very own evidence, the Ledger:[1506]

(a) As discussed at paragraph 117(a) above, Mr Bahari does not deny that the Ledger contains evidence of the price paid by Mr Bahari to acquire each of the carpets. The Ledger evidences a total maximum spend at most on *all* carpets retained by Mr Bahari in Azerbaijan of approximately USD 183,000.[1507]

(b) Mr Bahari accepts that 211 of the carpets listed in the Ledger were the subject of export,[1508] and puts forward a positive case that these 211 carpets were of "[redacted]".[1509] Mr Bahari's conclusion in this regard corresponds with the price paid column of the Ledger.[1510]

(c) While Mr Bahari claims that his collection contained "[redacted]"[1511] that were "[redacted]",[1512] he cannot explain why 211 insignificant and low quality carpets made up at least 43% of his allegedly "unique" collection.

(d) In view of the above, the best evidence of the value of all carpets listed in the Ledger (which includes the 264 carpets which were not the subject of export) is the Ledger itself,[1513] and in particular the price paid as set out in the Ledger.[1514]

566. Instead, Mr Bahari attempts to distract by suggesting that "*Azerbaijan does not seriously dispute Mr. Bahari's account of events*",[1515] on the basis that Azerbaijan

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1506 Ledger, undated **C-79**.

1507 Defence, para. 123.

1508 Reply, para. 550.

1509 Second Iselin Report, para. 28(2).

1510 *See* Second Hasanov Report, para. 27 and Annex B ("[redacted]").

1511 Bahari 1, para. 55.

1512 Bahari 1, para. 56.

1513 Second Hasanov Report, para. 30.

1514 First Hasanov Report, para. 21; Second Hasanov Report, para. 30.

1515 Reply, para. 547.

accepts that Mr Bahari purchased "hundreds" of carpets, as Mr Zeynalov testifies.[1516] Contrary to the impression Mr Bahari attempts to paint, there is nothing controversial in this. Azerbaijan indeed accepts, based on the available evidence, that Mr Bahari purchased likely hundreds of carpets during his time in Baku. That does not mean, however, that those carpets were valuable, or that they were not returned to him.

567. In a further bizarre stance, Mr Bahari positively relies on Mr Zeynalov's evidence to support his case. Mr Bahari cannot have it both ways, describing Mr Zeynalov as a "*repugnant con artist with no scruples*" whose evidence should be given "*no*[] [weight] *at all*",[1517] while at the same time happily accepting the parts of his evidence that are "*consistent with Mr. Moghaddam's testimony*".[1518]

568. As to Mr Bahari's summary of the matters the Defence purportedly "*admits*":[1519]

(a) Relying on Mr Hasanov's confirmation that Mr Bahari was known to carpet tradesmen at the time as someone who purchased carpets, Mr Bahari claims that "[i]*t is difficult to understand how these tradesmen would remember Mr. Bahari*"[1520] if the carpets were not valuable. This is point is speculative assertion and ignores the full context Mr Hasanov's evidence, which is that these tradesmen recall that he purchased "[redacted]" and did *not* remember Mr Bahari as having undertaken the sale of any "[redacted]".[1521] There is a much more plausible explanation for why these tradesmen remember Mr Bahari: the Azerbaijani carpet market is not large and Mr Bahari was a foreigner purchasing hundreds of carpets.[1522]

(b) Mr Bahari claims that Azerbaijan admits that after the warehouse lease expired, "*Mr. Zeynalov apparently moved all of the*[] [carpets] *to his mother's empty apartment, although he did not tell Mr. Bahari about this*".[1523] This is a blatant

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1516 Reply, para. 547(b).

1517 Reply, para. 52.

1518 Reply, paras 547 (c) and (e).

1519 Reply, para. 547.

1520 Reply, para. 547(a).

1521 First Hasanov Report, para. 19.

1522 *See* First Hasanov Report, paras 23, 30-31.

1523 Reply, para. 547(d).

mischaracterisation of Mr Zeynalov's evidence, which was in fact that while he did not "[redacted]", he was "[redacted]".[1524]

(c) Mr Bahari claims that Azerbaijan accepts that the carpets were "*in the hands of someone who worked at the Baku Prosecutor's Office, Mr. Khanmadov, an organ of the State*" but "*the State's awareness and involvement in Mr Bahari's carpet collection did not end there*" as "*the Azerbaijan Ministry of Culture also came to inspect Mr. Bahari's carpet collection*".[1525] These submissions contain inaccurate mischaracterisations, and Mr Bahari draws inaccurate conclusions. Mr Khanmadov was not an organ of the State, and Mr Bahari does not particularise how he reaches that conclusion, or in what context that submission is made. The further suggestion that the State was "*aware of or involved with*"[1526] the carpet collection on the basis of the Ministry of Culture's inspection is poorly particularised but in any event denied. There is no evidence the Ministry of Culture knew these were Mr Bahari's carpets. Even if they had, the Ministry was carrying out a routine inspection that did not differ from any of the many others it would carry out. Mr Zeynalov further confirms that the Ministry of Culture's inspection took place at the Safaraliyeva Production Facilities[1527] (contrary to any suggestion by Mr Bahari that the "*collection was last known to be in the possession of either Mr. Alzamin Khanmadov*[…]*, the Azerbaijan Ministry of Culture, or Mr. Rasim Zeynalov*").[1528]

569. Mr Bahari now hangs his case on the value of his carpet collection on the assumption that there remained, from the list set out in the Ledger, 264 carpets which were not granted export certificates that he claims "*Azerbaijan deemed so important that they forbid their export on the grounds they were national treasures*".[1529] These submissions are misconceived for several reasons.

1524 First Zeynalov Statement, para. 46.

1525 Reply, para. 549

1526 Reply, para. 549.

1527 Second Zeynalov Statement, para. 39.

1528 Reply, para. 1159.

1529 Reply, para. 550.

570. First, as Mr Zeynalov confirms, the carpets which were not exported did not amount to 264. There were "[redacted]" than that, "[redacted] which also explains how Mr Zeynalov was able to include them in the shipment without certificates.[1530] Azerbaijan does not know the reason why there were fewer carpets in Mr Zeynalov's custody than recorded on the Ledger. It is likely that the Ledger does not accurately reflect the total number of carpets that were left in the warehouse, given it is undated and the person who is alleged to have prepared it [redacted] Mr Sharabiani,[1531] does not appear as a witness for Mr Bahari in these proceedings to given any explanation for its status. Indeed, the Ledger itself records that many carpets had been sold, or were no longer in Baku,[1532] and it is likely that the version appearing on the record in these proceedings was not up to date by the time of Mr Bahari's departure in December 2001, because Mr Bahari had in fact sold many, if not most, of the carpets listed on the Ledger that were not exported to him.

571. Second, as to the limited number of carpets which were not granted export certificates, all of the available evidence indicates that these carpets were not valuable. As set out at paragraph above, the Ledger is evidence that *all* of the carpets listed on it were not valuable.[1533] Mr Zeynalov also recalls that almost all of the carpets were infested with moths, and that they did not appear to be any different in quality to the ones which were granted export certificates.[1534] Finally, as Mr Hasanov explains, carpets produced prior to 1960 were not permitted to be exported, irrespective of their actual value or historical significance.[1535] As is common ground between the Parties' respective carpet experts, the age of a carpet is not the sole indicator of its value.[1536] It is possible, therefore, that those few which were not granted export certificates, were simply old, as opposed to valuable, carpets.

1530 First Zeynalov Statement, para. 50; Second Zeynalov Statement, para. 39.

1531 First Bahari Statement, para. 58.

1532 *See* Defence, para. 122.

1533 *See also* Second Hasanov Report, para. 30 ("[redacted]").

1534 Second Zeynalov Statement, para. 40.

1535 Today, 1960. Mr Hasanov believes an earlier-cut off date was applicable in 2002, but cannot precisely recall it: *see* Second Hasanov Report, para. 24.

1536 First Iselin Report, para. 27ff; First Hasanov Report, para. 46.

572. In sum, nothing in Mr Bahari's Reply submission convincingly demonstrates that he possessed valuable carpets, or that they were not returned to him. Indeed, the unchallenged evidence demonstrates the opposite.

VI. THERE IS AND HAS NEVER BEEN A "CONTINUING CAMPAIGN OF HARASSMENT AND OBSTRUCTION" AGAINST MR BAHARI

573. Mr Bahari's case on harassment is epitomised by his introductory submission:

> 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.[1537]

574. That is, Mr Bahari's case should be accepted because Azerbaijan has a "*corrupt system of governance*"[1538] and Mr Bahari does not lie. This cannot be a serious submission.

575. To buttress his claims, Mr Bahari resorts to endless rhetoric, such as claims of a "*systematic and coherent through-line of affirmative State action*",[1539] or that treatment is a "*textbook example of how the State apparatus deal with people who get in the way*".[1540] Ultimately, he falls back on his claim that there is a "*lack of rule of law in Azerbaijan*",[1541] apparently to suggest that his claims must be true because the Respondent is Azerbaijan. He is forced to use these devices, because he has very little concrete evidence to establish the breaches of FET that he claims. Other than Ms Ramazanova and Mr Abdulmajidov (whose documents are highly unreliable for the reasons set out below), *all* of the evidence he relies on for his claims of harassment is unsubstantiated witness testimony.

576. Mr Bahari's witnesses are not, however, reliable.[1542] Mr Bahari is a fantasist who spins stories from real-life events. Ms Ramazanov and Mr Abdulmajidov are motivated by their desire to obtain asylum. Mr Moghaddam is a former drug addict, who is evidently seeking to help his friend. Mr Allahyarov is a convicted fraudster who failed to disclose

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1537 Reply, para. 558.

1538 Reply, title to Part III.

1539 Reply, para. 560.

1540 Reply, para. 564.

1541 Reply, paras 574-576.

1542 *See* PART 2I.B.3 above.

his involvement in legal proceedings relating to two of the investments of the Claimant on whose behalf he appears. Their flimsy testimony is directly contradicted by the evidence of Azerbaijan's witnesses. Where available (and it is, of course, difficult to prove a negative), Azerbaijan has produced documents which run directly counter to Mr Bahari's narrative. Ultimately, however, Mr Bahari has to show "*concrete evidence*" of harassment or intimidation if his claims are to succeed.[1543] He cannot do so.

1. Mr Bahari offers no further evidence of the claims of harassment pleaded in the Statement of Claim

577. The Reply repeats or summarises the submissions made in the Statement of Claim,[1544] without properly engaging with the evidence provided in the Defence.

578. As to Mr Moghaddam, who Mr Bahari claims was physically assaulted in April and June 2001 and June 2002, and wrongly arrested and convicted on falsified drug charges in 2009:[1545]

(a) As to the State Border Service records which demonstrate Mr Moghaddam was not in Azerbaijan at the time of the alleged attacks on him,[1546] Mr Bahari claims that "*Azerbaijan's self-produced and self-serving records are not reliable*".[1547] No explanation is given for why "*self-produced*" records are not reliable: obviously, the border records of a country will emanate from that country. Nor is the claim that they are "*self-serving*" particularised. The suggestion, although not made expressly, appears to be that the data contained in them has been manipulated to suit Azerbaijan's defence. Mr Bahari ignores that the State Border Service's letter explains that the data in is has been taken from the "[redacted]

1543 *See Manolium Processing v Belarus*, PCA Case No. 2018-06, Decision on Claimant's Interim Measures Request (7 Dec. 2018), **RLA-232**, paras 121, 141; *Churchill Mining v Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Procedural Order No. 14 (22 Dec. 2014), **CLA-227**, at paras 72, 87.

1544 *See* Reply, paras 565, 578, 583, 595, 600.

1545 *See* Reply, para. 565.

1546 Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues, **R-58**, p. 4.

1547 Reply, para. 569. See also Moghaddam 2, para 23.

[redacted]".[1548] He is either claiming that the State Border Service officials who produced the letter manipulated the data in it, or that the data itself as recorded in the system for the past 23 years was engineered to suit Azerbaijan's defence to this case. Either submission is of course nonsense.

(b) Mr Bahari further claims that "*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*".[1549] But he is wrong; the dates *do* matter. On Mr Bahari's case, Mr Moghaddam was assaulted in "*late June 2002 (just a few days after Mr. Bahari rejected the terms of the 2002 Forced Sale Agreement)*".[1550] The State Border Service records show that Mr Moghaddam was not in the country between 23 May and 20 September 2002. That is not a "[redacted]", as Mr Moghaddam suggests,[1551] or even a "*month or so*", as Mr Bahari pleads.[1552] It is a three month difference, and contradicts the suggestion that Mr Moghaddam was targeted (which itself is denied) in connection with the conclusion of the 2002 Agreement in June.

(c) As to Ms Izmaylova's evidence that she never saw Mr Moghaddam beaten in the way he claims and that he was a frequent drug user,[1553] Mr Bahari tries his usual tactic of making unparticularised insinuations about her independence. In Ms Izmaylova's case, her trouble is that she "*has Azeri citizenship*" and lives in Azerbaijan[1554] (not unlike Mr Bahari's own witness, Mr Allahyarov). These insinuations are ridiculous. Now, Mr Bahari considers anyone from Azerbaijan is potentially compromised; apparently, Azerbaijan should have non-Azerbaijani, non-resident witnesses. Mr Bahari does not appear to countenance the fact that she contradicted Mr Moghaddam not because she is an "*Azeri citizen*[]", but because she is telling the truth.

1548 Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues, **R-58**, p. 4.

1549 Reply, para. 569. See also Moghaddam 2, para 23.

1550 Reply, para. 565(c).

1551 Second Moghaddam Statement, para. 23.

1552 Reply, para. 569.

1553 Izmaylova Statement, paras 7-8.

1554 Reply, para. 569.

(d) Notably, while Mr Moghddam denies using drugs,[1555] his responsive witness statement quotes from his very own testimony in the underlying criminal proceedings against him, when he allegedly found unknown drugs planted at his home he decided to take them: "[redacted]".[1556] Azerbaijan has produced evidence of the Court's medical experts' assessment on Mr Moghaddam's condition, which he completely ignores.[1557] It is strong evidence of his addiction.

(e) Mr Bahari also relies on Mr Moghaddam's testimony in the underlying proceedings to claim that "*Mr. Moghaddam has maintained a consistent account of his arrest and conviction, as well as his innocence*", as if that shows that the drug charges were "*falsified*" to pressure Mr Bahari.[1558] This is unconvincing. In fact, the ordinary and expected response of someone who is being convicted of a crime is for them to deny it. Mr Moghaddam also fails to address the *physical* evidence before Court, which was that not one, but three stashes of drugs were found in Mr Moghaddam's house (heroin wrapped in yellow plastic on the table in the balcony, heroin in a "Dove" container in the bathroom, and crystal meth wrapped in white plastic under the dressing table).[1559] Moreover, it does not deal with the fact of Mr Moghaddam's subsequent admission after his conviction that he "[redacted]".[1560]

579. As to Mr Kilic, who Mr Bahari alleges was a Turkish lawyer he engaged in 2004 to investigate possible legal proceedings in Azerbaijan, but who "*abruptly declined to*

1555 Reply, para. 569.

1556 Second Moghaddam Statement, para. 28, referring to Decision of the Baku Court on Grave Crimes dated 17 July 2009, **R-97**, pp. 2-3.

1557 Opinion No. 434 of the Republican Narcological Dispensary of the Ministry of Health of the Republic of Azerbaijan dated 5 March 2009, **R-170**, p. 2; Decision of the Nasimi District Police Department dated 27 February 2009, **R-169**.

1558 Reply, para. 571.

1559 Decision of the Baku Court on Grave Crimes dated 17 July 2009, **R-97**, pp. 3 and 5.

1560 Mr Moghaddam's Handwritten Appeal Petition, undated, and judgment of the Baku Court on Grave Crimes dated 30 April 2014, **R-156**.

continue with the case" which Mr Bahari infers was a result of Government pressure:[1561]

(a) As set out in paragraph 109 above, Mr Bahari has been forced to admit that he has no evidence of Mr Kilic's existence. Not only did Mr Bahari's counsel place "*inquiries with local Turkish counsel*" and "*the Istanbul Bar Association*", but they even made "*a trip to Turkey*" to try to locate him.[1562] Mr Bahari claims Mr Kilic must have "*retired, or more likely, passed away*"[1563] but this does not explain the total absence of any kind of documentary record of his existence, particularly given it is claimed that he was a member of a registered profession.

(b) Other aspects of Mr Bahari's claim with regard to Mr Kilic are suspect or left unexplained. Mr Bahari has not explained why he (allegedly) hired a Turkish lawyer to bring claims in the Azerbaijani courts. A Turkish advocate would have no standing in Azerbaijani courts or ability to obtain documents from official sources, unless he was also an Azerbaijani advocate.

(c) Mr Bahari's further submission that "*Azerbaijan has offered no evidence to rebut Mr. Bahari's testimony besides its conclusory assertion that Mr. Bahari must be lying*" misses the point.[1564] When asserting serious claims of harassment and intimidation, Mr Bahari's testimony alone is not enough. In circumstances where Mr Bahari cannot even prove that Mr Kilic existed, it is can hardly be said he has met his burden of proving that Mr Kilic was pressured into dropping his alleged investigation into Mr Bahari's claims.

580. As to Mr Allahyarov, who Mr Bahari alleges was threatened by a female Deputy Head of Legal Department of the State Property Committee (now known as the State Service on Property Issues, **SSPI**) after making enquiries in a letter dated 14 January 2019 about Mr Bahari's alleged investments:[1565]

1561 Reply, para. 578.

1562 Reply, para. 579.

1563 Reply, para. 579.

1564 Reply, para. 581.

1565 Reply, para. 600.

(a) Mr Bahari claims that "*Azerbaijan splits hairs by arguing that there is no evidence the letter was delivered*[…] *Mr. Allahyarov confirms he hand delivered the letter*".[1566] This is not "splitting hairs". The only document in support of Mr Allahyarov's claims is a letter dated at the time Mr Bahari was preparing to file his 2019 Notice of Arbitration – notably, at the same time that the Purported Chartabi Contracts were created, and the Ahan Sanat letter was procured.[1567] Although Mr Allahyarov's letter was also plainly put together as a part of that preparation, nothing on the face of it indicates that Mr Bahari in fact chose to deploy it at the time. Indeed, in Mr Allahyarov's first witness statement, he claims to have "[redacted]" the letter;[1568] he only belatedly now claims it was hand delivered.

(b) Mr Bahari offers no criticism of the evidence of the current Head of the Legal Department of the SSPI, Ms Balakishiyeva, who confirms that there is no record of Mr Allahyarov's letter in the SSPI's digitised and generally comprehensive correspondence log, and there were no female heads of the legal department in the time Mr Allahyarov claims to have been threatened by one. Faced with a witness who has been convicted of fraud and who concealed his involvement in legal proceedings related to two of Mr Bahari's investments, the Tribunal should accept the unchallenged evidence of Ms Balakishiyeva.

2. Mr Heydarov's assistant, Arguc Kalantarli, confirms that Mr Bahari did not meet Mr Heydarov in 2013

581. Mr Bahari maintains that he met Mr Heydarov in October 2013, but this is untrue. Again, it appears to be an embellishment of the true story, which is that Mr Bahari was invited to Azerbaijan in 2013, likely by Mr Khanghah who managed the Kempinski hotel on behalf of Gilan, but he did not secure a meeting with the Minister at all.[1569]

582. The premise of Mr Bahari's evidence in respect of his claim appears illogically to be that because Azerbaijan accepts that Mr Bahari was in Baku, he must have met with Mr Heydarov. Thus, he claims "*Azerbaijan's own submitted evidence corroborates that*

1566 Reply, para. 601; Second Allahyarov Statement, para. 3.

1567 *See* paragraph 317 above.

1568 First Allahyarov Statement, para. 11.

1569 Kalantarli Statement, paras 5 and 8.

Mr. Bahari's meeting took place:[…] *Rasim Zeynalov confirms Mr. Bahari's presence in Baku at that time and that they met*".[1570] These submissions are a *non sequitur*. Obviously, Mr Bahari's presence in the jurisdiction is not evidence that he met with Mr Heydarov.

583. Yet again, Mr Bahari cherry picks from Mr Zeynalov's evidence the aspects which he likes. Of Mr Zeynalov's evidence that Mr Bahari invited him to meet Mr Heydarov, Mr Bahari asserts it is "*not credible*" and Mr Zeynalov "*cannot seriously assert*" that he was so invited.[1571] This rhetoric is not substantive criticism. The one substantive attempt to criticise Mr Zeynalov's evidence that Mr Bahari makes, which is that Mr Zeynalov's account of events does not "*accord neither with Mr. Bahari's account, nor State border records*",[1572] is hopeful assertion that is wrong as a matter of fact (and notably again cherry picks from the evidence of the State Border Service). All Mr Zeynalov stated was that *while* Mr Bahari was in town, Mr Zeynalov met with him the day before he left.[1573] Nothing in that account "*suggest*[s] *Mr. Bahari was in town for barely two days*".[1574]

584. Azerbaijan has now obtained the evidence of Mr Arguc Kalantari, assistant to Mr Heydarov at the time of Mr Bahari's October 2013 visit. Mr Kalantari met with Mr Bahari during his visit, and denies that Mr Bahari ever met with Mr Heydarov:

(a) Mr Kalantarli believes that it is likely that Mr Khanghah, who was one of Mr Heydarov's business partners at the time, led Mr Bahari to believe that Mr Bahari would be able to meet with Mr Heydarov.[1575] Contrary to Mr Bahari's repeated, baseless assertions,[1576] as far as Mr Kalantari understands, Mr

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1570 Reply, paras 587 and 589.

1571 Reply, para. 589.

1572 Reply, para. 589.

1573 First Zeynalov Statement, paras 52-53 ("[redacted]").

1574 Reply, para. 589.

1575 Kalantarli Statement, para. 3.

1576 Reply, paras 319, 873(a), 893, 1047(d).

Heydarov had nothing to do with the visa Mr Bahari obtained to travel in 2013.[1577]

(b) Mr Bahari came to the Ministry, but Mr Heydarov was not in the building that day, and so Mr Arguc met with him. Mr Bahari explained that he was "[redacted]", "[redacted]" and "[redacted]".[1578] Mr Bahari proposed a business idea in relation to gold trading and asked Mr Kalantarli if it was something he thought Mr Heydarov might be interested in.[1579]

(c) Since Mr Heydarov was not available, Mr Kalantarli brought Mr Bahari to the office of the First Deputy Minister, Mr Rafail Mirzayev. Mr Bahari was "[redacted]".[1580] Contrary to Mr Bahari's claims,[1581] Mr Kalantarli does not recall Mr Mirzayev suggesting that they would help Mr Bahari in court, or anything of the sort.[1582]

(d) While Mr Bahari met with Mr Kalantarli on at least two occasions, he never met Mr Heydarov.[1583]

(e) Mr Bahari called and emailed Mr Kalantarli several times after he left Baku.[1584] Mr Kalantarli did not have a particularly long relationship with the Minister at that time, and does not recall receiving any particular feedback or instructions in response.[1585] However, he denies, to the extent it is alleged, that he threatened Mr Bahari would "[redacted] if he kept harassing Mr Heydarov.[1586]

1577 Kalantarli Statement, para. 8.

1578 Kalantarli Statement, para. 4.

1579 Kalantarli Statement, para. 4.

1580 Kalantarli Statement, para. 5.

1581 Reply, para. 433(g).

1582 Kalantarli Statement, para. 5.

1583 Kalantarli Statement, para. 6.

1584 Kalantarli Statement, para. 7.

1585 Kalantarli Statement, para. 7.

1586 Kalantarli Statement, para. 7.

585. Following his visit to Baku, Mr Bahari sent an email to Mr Kalantarli in December 2013, copied to the President's Office, and which Azerbaijan exhibited to the Defence at **R-53**. Mr Bahari claims that the email shows that "*Mr. Bahari met "last month" with Minister Heydarov and was in Baku for 16 days (October 2013)*".[1587] The email says nothing of the sort, however. To the contrary, entirely consistent with Mr Kalantarli's evidence, it states that "[redacted]" but [redacted]".[1588] The email says only that Mr Heydarov passed Mr Bahari off to his assistant, exactly as Mr Bahari recognises,[1589] but it does not confirm in terms that Mr Bahari met with Mr Heydarov. This is because he did not.

586. In sum, Mr Bahari's evidence as to the alleged meeting and subsequent "threat" is fiction. He certainly has not "*met his burden of proof to prove that the meeting took place*",[1590] as he alleges. Mr Bahari claims that it is "*incorrect*" for Azerbaijan to suggest that whatever discussions occurred were not in an official capacity, but Mr Bahari misunderstands the law of attribution.[1591] These discussions were not had by Mr Kalantarli with Mr Bahari in the name of the State. The entire purpose of the meeting – on Mr Bahari's own case – was to deal with a relationship arising out of Mr Heydarov's private investment.

3. All of the available evidence indicates that the new claims of harassment raised in the Defence are fictitious

587. Mr Bahari introduces two new incidents of harassment or an alleged attempt to "*press his rights*"[1592] with the Reply submission. The first, concerning Mr Bahari's alleged efforts to regain his investments is a remarkably weak submission about Mr Amirahmadi, which in reality is a fig-leaf to cover the true reason behind the issue of the Amirahmadi PoA, which was to appeal the Ayna Sultan decision.

1587 Reply, para. 433(b).

1588 Email from Mr Bahari to A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

1589 Reply, para. 433(f).

1590 Reply, para. 594.

1591 Reply, para. 586.

1592 Reply, para. 582.

588. Thus, Mr Bahari claims that the purpose of the provision of the Amirahmadi PoA was "*to negotiate a settlement for his investments*" but that such negotiations were "*ultimately unsuccessful*".[1593] For the reasons set out above, those submissions contradict the terms of the PoA and are illogical. Nevertheless, Mr Bahari claims in his witness statement that Mr Amirahmadi was to negotiate with "[redacted]", without identifying who such officials were.[1594] At the same time, the Statement of Reply presents a confused narrative, unsupported by any evidence at all, that the meeting was either with "*the Pashayev family*"[1595] or "*Mehriban* [Aliyeva's] *staff*".[1596] There is simply no evidence that Mr Amirahmadi engaged in any such negotiations at all, let alone who with, or their content.

589. The second set of new allegations concern the individuals addressed in the Provisional Measures phase of these proceedings, namely Mr Abdulmajidov and Ms Ramazanova. In his Reply submission, Mr Bahari broadly repeats the submissions made in the Provisional Measures phase, and Azerbaijan's responsive submissions are likewise adopted in full in this brief. It is worth highlighting, however, certain key evidence that emerged during the Provisional Measures phase, and to which Mr Bahari has no credible response.

590. At the Provisional Measures Hearing, Azerbaijan drew to Mr Bahari's and the Tribunal's attention that Mr Abdulmajidov and Ms Ramazanova's public posts on social media revealed very clearly that:

(a) Their intention and their plan, well before their departure from Azerbaijan (on 7 April 2022) or the alleged delivery of the Purported Summons (dated 26 April 2022), was to leave Azerbaijan and settle in [redacted], together with their young daughter. In a public Tiktok posted on an account in the name of their daughter, [redacted], on 26 March 2022,[1597] a video of their young daughter is posted, and a voice is heard in the background mimicking a baby's cry. It appears that this

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1593 Reply, para. 582.

1594 Third Bahari Statement, para. 33.

1595 Reply, title to Part II.VI.D.

1596 Reply, para. 560(c). The reference to Mehriban Pashayeva is understood to be a reference to Mehriban Aliyeva, with an erroneous reference to her maiden name.

1597 Video taken from Tiktok account "[redacted]" and transcript dated 26 March 2022, **R-227** / **R-226**, p. 7.

voice was Ms Ramazanova herself, imitating a fictional, future conversation with her daughter.

[redacted][1598]

(b) The following month, on 13 April 2022, after Ms Ramazanova and Mr Abdulmajidov have left Azerbaijan, Mr Abdulmajidov sends his daughter a video wishing her a happy four months. "[redacted]", he says "[redacted]".[1599]

(c) They had no concerns about identifying their location. In a public Tiktok account called "[redacted]", starting in May 2022, Mr Abdulmajidov posts 44 videos detailing his experiences across the capital, and the country more generally, including one captioned [redacted]" and a video of bus keychains with the promise of "[redacted]".[1600] This account has nearly 10,000 followers and almost every video is captioned "#viral" or "#Azerbaijan".

591. While Mr Abdulmajidov and Ms Ramazanova now appear as witnesses in these proceedings, they make no attempt to speak to these public posts. It can only be inferred that Ms Ramazanova's testimony that their initial decision to leave for [redacted] on 7 April 2022 "[redacted]", and the subsequent decision to go to

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1598 Video taken from Tiktok account "[redacted]" and transcript dated 26 March 2022, **R-227** / **R-226**, p. 7.

1599 Video taken from Tiktok account "[redacted]" and transcript dated 13 April 2022, **R-228 / R-226**, p. 8.

1600 Mr Abulmajidov's Tiktok account [redacted]", **R-226**, pp. 1-3.

[redacted].[1601] As early as March 2022, Ms Ramazanova and Mr Abdulmajidov were planning to go [redacted], with the intention of having their daughter join them shortly afterwards.

592. Similarly, Ms Ramazanova's (and indeed Mr Abdulmajidov's) testimony that [redacted]", because someone "[redacted]"[1602] is not believable. Plainly, they are not so terrified for their lives that they wish to keep their location a secret, despite what Mr Bahari would have this Tribunal believe.

593. Nor does Ms Ramazanova speak to the copious rebuttal evidence Azerbaijan submitted in respect of the documents on which she and her husband rely. Strangely enough, while Mr Abdulmajidov insists upon the authenticity of the documents in support of the asylum application,[1603] Ms Ramazanova does not give any denial that these documents were procured for the purposes of asylum. She instead repeats the evidence set out in her asylum witness statement, almost word-for-word. It is apparent that she has looked at Azerbaijan's evidence, however, because certain sections of her previous evidence which Azerbaijan has discredited, such as the allegation that her father was harassed by the police and had a heart attack, have been quietly removed.[1604] All Ms Ramazanova has to say about the allegations of forgery is that she "[redacted]".[1605] But she, and counsel for Mr Bahari, do know why. It is because the evidentiary record shows that she is. Ms Ramazanova's failure to engage with that evidence leaves open the obvious inference that she was the one who procured the forged documents, even if her husband denies it.

594. Similar can be said for Mr Bahari's responsive evidence. He had the opportunity to explain why he made no reference in the Statement of Claim to the photos he allegedly asked Ms Ramazanova to take on 21 July 2021, or the alleged threats made by Caspian

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1601 Ramazanova Statement, paras 56 and 60.

1602 Ramazanova Statement, para. 58.

1603 *See* Abdulmajidov Statement, para. 87.

1604 *See* redline of Ramazanova Statement with **C-236**, **R-410**.

1605 Ramazanova Statement, para. 66.

Fish on 23 July 2021.[1606] It is implausible that Mr Bahari's Statement of Claim refers to alleged episodes of harassment which occurred more than two decades ago, but says *nothing* of the alleged harassment that occurred just months before he filed. The only possible reason that it did not do so is because the alleged harassment of Ms Ramazanova and Mr Abdulmajidov at Caspian Fish in July 2021 did not happen and was invented to create a story for the purposes of obtaining asylum.

595. No further documents are submitted to support the claims of the new witnesses, and their late introduction means that Azerbaijan has not been able effectively to seek disclosure from them. It is notable, however, that what they did very reluctantly provide from the underlying asylum proceedings[1607] grossly contradicted their case, and, to date, they have refused to provide originals of the Asylum Documents.[1608] It will

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1606 Respondent's Response to Provisional Measures Application dated 5 April 2024, paras 17-19; 24.

1607 *See* Respondent's letter to Tribunal, 14 March 2024 (Azerbaijan requests the Asylum Documents); Tribunal's letter to the Parties, 14 March 2024 (Tribunal directs production of the Asylum Documents); Claimant's letter to Tribunal, 14 March 2024 (Mr Bahari refuses to disclose the Asylum Decision and Asylum Application without a written undertaking from counsel to the Respondent and confirms that the Claimant did not then possess a copy of the Asylum Application); Tribunal's email to the Parties, 15 March 2024 (in which the Tribunal "[redacted]"); Claimant's letter to Tribunal, 15 March 2024 (Mr Bahari delays production of Asylum Documents further, resubmitting his request for an undertaking from Azerbaijan's counsel); Tribunal's email to the Parties, 17 March 2024 (Tribunal refuses request for additional conditions to Mr Bahari's production of the Asylum Documents); Respondent's letter to Tribunal, 18 March 2024 (Azerbaijan records Mr Bahari's breach of the Tribunal's direction to produce the Asylum Documents and requests urgent production of the originals); Claimant's letter to Tribunal, 18 March 2024 (Mr Bahari finally produces redacted Asylum Documents and opposes production of the originals for inspection).

1608 *See* Respondent's letter to Tribunal, 18 March 2024 (Azerbaijan requests urgent production of the originals of the Asylum Documents for inspection); Claimant's letter to Tribunal, 18 March 2024 (Mr Bahari opposes production of the originals for inspection); Respondent's letter to Tribunal, 19 March 2024 (Azerbaijan reiterates request for production of the Asylum Document originals, proposing an inspection protocol); Tribunal's letter to Parties, 19 March 2024 (Tribunal invites the Parties to seek agreement on a joint protocol for the inspection of originals); Respondent's email to Claimant, 19 March 2024 (Azerbaijan writes to Claimant to seek agreement on inspection protocol), **R-435**; Claimant's letters to Respondent and Tribunal, 20 Mar. 2024 (Mr Bahari opposes Azerbaijan's proposed inspection protocol); Respondent's letter to Claimant, 21 March 2024 (Azerbaijan reiterates the need for production of the Asylum Documents ahead of preparing its Response to the Application for Provisional Measures); Respondent's letter to Tribunal, 21 Mar. 2024 (Azerbaijan notes that Mr Bahari "has unreasonably refused to allow any independent expert appointed by the Respondent to inspect the Application Originals"); Tribunal's letter to the Parties, 28 May 2024, Annex 2 (Tribunal orders Claimant to request Asylum Document originals from custodians, failing which a detailed explanation for failure to produce must be provided); Claimant's email to the Respondent dated 12 June 2024 (Mr Bahari confirming that he "expects to be in a position to produce" the Application Originals), **R-436**; Claimant's email to the Respondent dated 17 June 2024 (Mr Bahari informing Azerbaijan that he "has been unable to obtain final permission to provide" the Application Originals), **R-437**; Respondent's letter to Tribunal, 20 June 2024 (Azerbaijan notes that Mr Bahari has failed to produce the Asylum Documents originals); Tribunal's letter to Parties, 22 June 2024 (Tribunal invites the Claimant to produce the Asylum Documents original and/or provide explanations why an original document is not available); Claimant's letter to Tribunal, 25 June 2024 (Claimant fails again to produce the Asylum Documents).

forever remain a mystery whether they are hiding documents which show how they arranged for the Asylum Documents to help their case, as will their communications with their family back home and the details and extent of Ms Ramazanova's continued involvement in the TK Travel business (despite her claims that [redacted]").[1609] As for the documents that Mr Bahari could have had which evidence his claims in respect of Ms Ramazanova, he conveniently dropped his phone in the toilet and lost everything.[1610]

596. In submissions, Mr Bahari makes a half-hearted attempted to rebut Azerbaijan's confirmation that the Purported Summons is a forgery, but for the reasons set out above, those submissions have no prospect of success. Moreover, his submissions are confused and again fail to engage with Azerbaijan's claim. He states, for example, that the Purported Summons "*accusations are patently false*", among other things because "[w]*ere there any truth to these criminal allegations, one would have expected Azerbaijan to bring charges back in 2001*" and "*present its alleged evidence of such criminal activity in in its Statement of Defense*".[1611] It is unclear if he is being deliberately obtuse, because it is obviously no part of Azerbaijan's case that the accusation in the Purported Summons are true.

597. To the contrary, as Mr Bahari should well know, Azerbaijan's case is that the Purported Summons is a forged document. It seems that Mr Bahari simply cannot accept that Azerbaijan has *not* opened criminal proceedings against him or Mr Abdulmajidov as suggested by Purported Summons, because he cannot accept anything Azerbaijan says could be true. In this connection, Mr Bahari complains that Azerbaijan's confirmation is insufficient because "*Mr. Mammadov himself led the search efforts*".[1612] These nonsensical submissions have been addressed at length in correspondence.[1613] In short, Azerbaijan has already taken all steps necessary to verify that there is no criminal claim against him or Mr Abdulmajidov as alleged in the Purported Summons. Mr Bahari's paranoia that nothing Azerbaijan says can be trusted has to stop.

1609 Ramazanova Statement, para. 7.

1610 Transcript of Provisional Measures hearing, 9 April 2024, p. 28, lns 11-21.

1611 Reply, para. 621(a) and (b).

1612 Reply, para. 653.

1613 Quinn Emanuel letter to the Tribunal dated 3 May 2024, paras 19-20 (Azerbaijan undertook searches of not only the Prosecutor's Office, but also within the Ministry of Internal Affairs as well as the police).

PART 4

LEGAL ANALYSIS

598. For the reasons set out in Part 2 of the Defence and PART 2 above, Mr Bahari's claims should be dismissed in their entirety. The following sections of this brief are without prejudice to Azerbaijan's case on jurisdiction, admissibility and attribution.

599. Mr Bahari's legal claims suffer significant and fatal defects. The facts of this case bear no similarity to any publicly available treaty decision. That is, no doubt, because there is no legal basis for the claims Mr Bahari brings against Azerbaijan, and others have chosen not to waste resources pursuing claims that have no prospects of success. Mr Bahari is only able to frame his expropriation case by claiming it is "*self-explanatory and incontrovertible*";[1614] his legal submissions on it cover barely five pages of his 426-page Reply. He claims that is because Azerbaijan has hidden from him the expropriatory acts it carried out, but that is plain nonsense. He simply has no claim. For the rest of his investments, Mr Bahari forges a new case based on denial of justice, but for the reasons set out above and further expounded below, the alleged conduct of Azerbaijan's Courts (even if proven) simply does not rise to the level of breach of Treaty. As for his carpets, Mr Bahari says very little: Azerbaijan and the Tribunal are left surmising that they form part of his more nebulous breach of FET claim, which is that he has been prevented from accessing his investments. Leaving aside the critical issue of evidence, factually his allegations do not breach any standard of the Treaty.

I. AZERBAIJAN HAS NOT BREACHED ARTICLE 2(3) OF THE TREATY

A. The threshold for violation of FET standard is high

600. Mr Bahari argues that contrary to "*Azerbaijan*['s] *assert*[ion]", the FET standard is not "*equivalent to the international minimum standard*".[1615] Mr Bahari misunderstands Azerbaijan's submission. First and foremost, the meaning of FET is a matter of Treaty interpretation.[1616] In practice, however, tribunals have concluded that "*the modern day*

1614 Reply, para. 1108.

1615 Reply, para. 921.

1616 *Saluka v Czech Republic*, PCA Case No. 2001-04, Partial Award (17 Mar. 2006), **CLA-56**, para. 296; *Oostergetel and ors v Slovakia*, UNCITRAL, Final Award (23 Apr. 2012), **CLA-100**, para. 221; *Addiko Bank AG v. Montenegro*, ICSID Case No. ARB/17/35, Award (Excerpts) (24 Nov. 2021), **RLA-294**, para. 543; *Vivendi v. Argentina (II)*, ICSID Case No. ARB/03/19, Decision on Liability (30 July 2010),

standard of treatment under customary law is not[…] *materially different from the approach taken by arbitral tribunals in applying the standard of 'fair and equitable treatment'*".[1617]

601. Second, Mr Bahari argues that Azerbaijan's reliance on the high standard espoused in *Biwater v Tanzania* is a "*red herring*",[1618] because whether the standard is breached falls to be determined on a case-by-case basis and there is "*no rigid standard or abstract threshold to be met*".[1619] Azerbaijan agrees that whether there has been a breach of FET standard mandates a case-specific enquiry.[1620] However, Mr Bahari is wrong that the standard is not a high one. The passage Mr Bahari cites from UNCTAD only confirms that certain conduct, such as bad faith or capricious and wilful discrimination, will be a *prima facie* breach of the standard. In fact, bad faith is not required to find a breach of the FET standard. What is required is "*treatment in such an unjust or arbitrary manner that the treatment rises to the level that is unacceptable from the international perspective*".[1621] As the tribunal said in *Gardabani and Silk Road v Georgia*:

> The infringement of the FET standard is a serious matter involving a significant threshold such that the respondent State's conduct is sufficiently serious to fall below the required standard of transparency, stability and predictability.[1622]

602. Mr Bahari further states that "*measures taken by Azerbaijan*" must be proportionate, in that they should bear a reasonable relationship to some rational policy and not impose an excessive burden.[1623] This is not disputed as a matter of principle, but is irrelevant in the present case where no State decision-making took place and no State measures were enacted. The extent of Mr Bahari's submission on this issue is that "*the persecution of Mr. Bahari, his investments and his associates*" had no "*rational policy*"

RLA-295, para. 211; *Micula and ors v Romania*, ICSID Case No. ARB/05/20, Final Award (11 Dec. 2013), **CLA-67**, para. 503-504.

1617 *Pildegovics v. Norway*, ICSID Case No. ARB/20/11, Award (22 Dec. 2023), **RLA-296**, para. 498.

1618 Reply, para 924.

1619 Reply, para. 925.

1620 *See* Defence, para. 382(a).

1621 *Saluka v Czech Republic*, PCA Case No. 2001-04, Partial Award (17 Mar. 2006), **CLA-56**, para. 263.

1622 *Gardabani and Silk Road v Georgia*, ICSID, Award (27 Oct. 2022), **RLA-297**, para. 501 (footnotes omitted).

1623 Reply, para. 926.

and thus it "*should be undisputed that Azerbaijan imposed an excessive and unreasonable burden on Mr. Bahari*".[1624] This pleading is unacceptably vague. No specific measures are identified and they cannot be, because no measures were in fact taken (and the term "persecution", insofar as it is intended to address Mr Bahari's claims of harassment, is dealt with below). As for the claims of "*excessive burden*", tribunals have repeatedly confirmed that this means a significant burden "*in financial terms*".[1625] Nothing in Mr Bahari's unparticularised pleading goes any way towards demonstrating any kind of financial burden, let alone an excessive one.

B. General legislation does not create legitimate expectations

603. As set out in the Defence, an investor can only rely on a State's general legal and business framework to extent that framework seeks to induce investments from specified investors.[1626] In his Reply, Mr Bahari describes this submission as "*artificially restrictive*", citing to *AWG v Argentina*.[1627] The passage cited by Mr Bahari from that case, however, is inapposite and selective. In *AWG v Argentina*, the tribunal discussed the application of the FET standard specifically in the context of a change in the law. Mr Bahari does not provide the tribunal's key conclusion from its review of the arbitral jurisprudence, which was that:

> It was the existence of such expectations created by host country laws, coupled with the act of investing their capital in reliance on them, and a subsequent, sudden change in those laws that led to a determination that the host country had not treated the investors fair and equitably.[1628]

604. As Mr Bahari accepts, he does not claim that Azerbaijan changed its legal system.[1629] *AWG v Argentina* accordingly has no application to the facts of the present case.

1624 Reply, para. 949.

1625 *Addiko Bank AG v. Montenegro*, ICSID Case No. ARB/17/35, Award (Excerpts) (24 Nov. 2021), **RLA-294**, para. 710; *EDF v Romania*, ICSID Case No. ARB/05/13, Award (8 Oct. 2009), **RLA-298**, para. 293.

1626 Defence, paras 386-387.

1627 Reply, para. 933.

1628 *AWG Group Ltd v Argentina*, Decision on Liability (30 July 2010), **CLA-73**, para. 226.

1629 Reply, para. 932.

605. For the reasons set out in the Defence and reiterated here, each of the alleged "*assurances and promises made by Azerbaijan*"[1630] described by Mr Bahari in his Reply submission cannot give rise to a legitimate expectation:

(a) Mr Bahari claims to have an expectation from "*Azerbaijan's legal regime*", which he claims was "*focused on attracting and guaranteeing protections of foreign investment*".[1631] General laws such as those cited by Mr Bahari cannot on their own give rise to legitimate expectations.[1632]

(b) Mr Bahari claims his alleged investments were "*reviewed, approved, and registered*" by Azerbaijan in a way which "*made specific reference to laws of the Republic of Azerbaijan on foreign investment protection*".[1633] General registration and approval with reference to the fact the investor was foreign does not give rise to legitimate expectations. Even in cases where a change in the legal regime has been in issue, tribunals have found that where registration is a "*mere administrative requirement*", it cannot give rise to an expectation of a specific right.[1634] Similarly in the present case, the registration process is a mere formality.[1635]

606. Even if these general laws were capable of giving rise to expectations (which is denied), these laws (and any other alleged promises or assurances Mr Bahari claims gave rise to expectations) are ones that were allegedly made before the Treaty entered into force, and are therefore not legally actionable promises.[1636] Mr Bahari does not deny the fact that these general laws and registration requirements existed before the Treaty's entry into force, but he argues that pre-entry into force promises can give rise to legitimate expectations, otherwise the "*very purpose of Article 12(1) of the Treaty, which covers*

1630 Reply, para. 934.

1631 Reply, para. 935.

1632 *WCV Capital v. The Czech Republic*, PCA Case No. 2016-12, Award (26 July 2023), **RLA-299**, para. 342; see also *Philip Morris v Uruguay*, ICSID Case No. ARB/10/7, Award (8 July 2016), **CLA-141**, para. 426.

1633 Reply, para. 938.

1634 *Charanne and Construction Investments v Spain*, SCC Case No. 062/2012, Final Award (21 Jan. 2016), **CLA-64**, para. 510.

1635 Mustafayev Report, paras. 46, 47(a), 57.

1636 *See* Defence, para. 385 and fn. 1084.

pre-existing investments", would be defeated.[1637] Mr Bahari relies on *Murphy v Ecuador (II)* in support of these submissions, but the facts of that case bear no similarity to the present.

607. As Mr Bahari himself acknowledges, the legitimate expectations in *Murphy v Ecuador (II)* did not arise at the time the investment was made, but almost a decade later, in 1996, when the claimant concluded a participation contract with the respondent State.[1638] Crucially in that case, while the contract was concluded the year before the treaty entered into force, the tribunal found that the investor's legitimate expectations arose "*within the context of th*[e] *positive legal reform*"[1639] Ecuador was then enacting as it sought to modernize its hydrocarbons industry, including by the conclusion of 19 bilateral investment treaties in the decade the investment was made.[1640]

608. The tribunal explained that the investor's expectation arose specifically "*at a time when Ecuador was striving to retain and attract foreign investment*" and when "[t]*hrough its legal reforms, it held itself out as being able to provide a modern, stable, and predictable legal and business framework that would operate for the mutual benefit of foreign investors and Ecuador*".[1641] Here, there is no reform or modernisation for the specific purpose of guaranteeing the rights of foreign investors that Mr Bahari can point to which led him to invest in Azerbaijan. The pre-existing laws and regulations of Azerbaijan accordingly do not give rise to any actionable breach.

C. Mr Bahari's vague formulations of his alleged legitimate expectations are not tenable

609. Even if general laws and registration requirements were capable of giving rise to a legitimate expectation (which is denied), the alleged expectations which Mr Bahari claims to have held are not expectations that are capable of giving rise to an independent breach of Treaty.

1637 Reply, para. 930.

1638 Reply, para. 930.

1639 *Murphy v. Ecuador (II)*, PCA Case No. 2012-16, Partial Final Award (6 May 2016), **CLA-264**, para. 256.

1640 *Murphy v. Ecuador (II)*, PCA Case No. 2012-16, Partial Final Award (6 May 2016), **CLA-264**, paras 256-257.

1641 *Murphy v. Ecuador (II)*, PCA Case No. 2012-16, Partial Final Award (6 May 2016), **CLA-264**, para. 258.

610. First, Mr Bahari claims that he expected Azerbaijan to treat his investments "*in accordance with Azerbaijani laws on the protection of foreign investors and investments*",[1642] which "*promise Azerbaijan would afford protection and fair treatment to foreign investment*".[1643] As explained in *Marfin v Cyrprus*, this is not a distinct basis upon which a breach of FET can be found: "*breach of an expectation that a State would conduct itself impartially, regularly and reasonably does not represent a separate legal basis for finding a breach of the FET standard*".[1644]

611. Second, Mr Bahari claims that he had an expectation that "*Azerbaijan would protect and recognize the time, money and effort he spent on his multiple investments*".[1645] This is not a serious submission. Mr Bahari has not identified any promise or representation from Azerbaijan to this effect and in any event, it would not be reasonable or legitimate for a foreign investor to expect the host State to take any special measures to recognize the time, money and effort spent. As the tribunal in *Saluka* noted, "*subjective motivations and considerations*" do not rise to the level of legitimate expectations.[1646]

612. Third, Mr Bahari claims that in contracting with "*two prominent figures of the State apparatus, Messrs. Aliyev and Heydarov*" he had "*every expectation that Azerbaijani authorities would treat the investment in compliance with the applicable legal regime*".[1647] It lies ill in the mouth of Mr Bahari to make such submissions in circumstances where he also alleges that Azerbaijan's "*legal code is largely a façade*",[1648] and that:

> […]because Messrs. Aliyev and Heydarov control the State's administrative resources through their command of the informal order, it was <u>always likely</u> that the Ministry of Justice would fail in its duty to protection Mr. Bahari and his investments. It was also <u>always likely</u> that other Azerbaijani authorities, for example Azerbaijan's Antitrust and

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1642 Reply, para. 940.

1643 Reply, para. 941.

1644 *Marfin v Cyprus*, ICSID Case No. ARB/13/27, Award (26 July 2018), **RLA-167**, para. 1215.

1645 Reply, para. 942.

1646 *Saluka v Czech Republic*, PCA Case No. 2001-04, Partial Award (17 Mar. 2006), **CLA-56**, para. 304. *See also Arif v Moldova*, ICSID Case No. ARB/11/23, Award (8 April 2013), **RLA-179**, para. 536.

1647 Reply, para. 939.

1648 Reply, para. 685.

> Notary Public Laws, would fail to prevent the transfer of the investments, shares and assets.[1649]

613. In the light of these submissions, Mr Bahari could not possibly have held or relied on any such expectation, which would need to be held "*in the exercise of an objectively reasonable business judgment*".[1650] Even if he did have or rely on any expectation (which is denied), an general expectation that a State will comply with its own laws is not a legitimate expectation for the purposes of FET.[1651]

614. Nor does Mr Bahari articulate precisely what it is that Azerbaijan is alleged to have done to breach his expectations. He claims that Azerbaijan's "*volte-face*"[1652] disregarded its own laws, but precisely what this "volte-face" constitutes is never identified. He complains that "[e]*very single organ of the State, including the Ministry of Justice, which registered and had oversight over these foreign investments*[…] *was conspicuously absent*" and the "*domestic foreign investment laws*[…] *were completely ignored*",[1653] but Azerbaijan's alleged failure through the passive inaction of the Ministry of Justice to reverse Mr Bahari's alleged "*forced removal and separation from his investments*"[1654] cannot constitute a breach of a legitimate or reasonable expectation that the Ministry of Justice's administrative departments would take positive action to identify and recognise that there was some allegedly improper basis for the registration and take steps to inhibit or reverse it.[1655] There could be no representation or assurance to give rise to such an expectation, which would be tantamount to requiring Azerbaijan to investigate the legal and commercial basis for every routine registration application made to its Ministry of Justice.

1649 Reply, para. 693, emphasis added.

1650 *WCV Capital v. The Czech Republic*, PCA Case No. 2016-12, Award (26 July 2023), **RLA-299**, para. 340.

1651 *See Crystallex v Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 April 2016), **CLA-66**, para. 552 ("… a simple general "expectation" of the state's compliance with its laws may not always and as such form the basis of a successful FET claim. …Laws are general and impersonal in nature; they will usually leave some degree of discretion to the state agencies for the making of their case-specific decisions and, in fact, are rarely unconditional in their provisions so that the investor would have difficulty founding an actual expectation akin to a vested right.").

1652 Reply, para. 941.

1653 Reply, para. 943.

1654 Reply, para. 946.

1655 This argument is reminiscent of Mr Bahari's claims regarding the allegedly expropriatory action of Azerbaijan, addressed at paragraphs 418 to 420 of the Defence.

D. Azerbaijan has not breached any of the obligations covered by the FET standard of protection

615. The Parties are generally agreed as to the various obligations encompassed by the FET standard.[1656] While Mr Bahari is quick to insist that he "*properly and comprehensively set out both his factual and legal case in the Statement of Claim*",[1657] he does attempt to further particularise his claim in his Reply submission. Unfortunately for Mr Bahari, this particularisation (which was notably absent from the Statement of Claim) does not help him. None of the facts he alleges constitute a breach of the FET standard, or, if they did as a matter of theory, Mr Bahari does not have the evidence to demonstrate that they in fact occurred.

1. Azerbaijan has not breached the obligation to refrain from harassment, coercion or abuse

616. Mr Bahari now claims that Azerbaijan engaged in a "*systematic and continuing campaign of harassment*" comprising acts alleged to have been have been taken the following categories of persons: (a) "*two lawyers*", Mr Kilic and Mr Allahyarov; (b) "*every person susceptible to provide any information to Mr Bahari*"; and (c) "*Mr. Bahari, his family and his close ones*".[1658]

617. Mr Bahari has not met the standard of proof to show any harassment, coercion or abuse. As Mr Bahari concedes, "*any allegation must be sufficiently proved by positive evidence*".[1659] Mr Bahari attempts to draw a distinction between this standard, and that cited by Azerbaijan in the Defence (i.e., a "*sufficient weight of positive evidence*"),[1660] claiming that Azerbaijan misinterprets *Rompetrol*, but these submissions are half-hearted.[1661] The short point, which Azerbaijan understands Mr Bahari would accept, is that while the test remains the balance of probabilities, the "*graver the charge, the more confidence there must be in the evidence relied on*".[1662]

1656 *See* Reply, para. 944; Defence, para. 391.

1657 Reply, para. 945.

1658 Reply, para. 946.

1659 Reply, para. 951.

1660 *Rompetrol v. Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2023, **CLA-51**, para. 182 and 273.

1661 *See* Reply, paras 950-951.

1662 *Lao Holdings v. Laos (I)*, ICSID Case No. ARB(AF)/12/6, Award (6 Aug. 2019), **RLA-301**, para. 110; *Libananco v. Turkey*, ICSID Case No. ARB/06/8, Award (2 Sept. 2011), **RLA-302**, para. 125.

618. Mr Bahari briefly attempts to justify his reliance on *Tokios* for "*the standard of proof the* [] *tribunal applied in its decision making*" and *Waste Management* for its "*consider*[ation] *that investor harassment can derive from various host State organs acting in unison*".[1663] He fails however to engage with the point made in the Defence, namely that the findings of the tribunals in those cases (whose facts differ significantly from the present) are indicative of the difficulty of proving harassment or abuse, as the tribunals in both cases did not find the requisite weight of evidence to have been established.

619. Mr Bahari's evidence of harassment turns entirely on the testimony of his witnesses. For the reasons set out above, those witnesses are unreliable and certainly do not demonstrate a sufficient weight of positive evidence:

(a) As to the "*two lawyers*", Mr Bahari himself "*readily admits that, due to evidentiary decay over time, there is little information*" on Mr Kilic.[1664] The alleged harassment of Mr Allahyarov is limited to a single alleged meeting at the State Committee for Property Issues where Mr Allahyarov claims to have been told he "[redacted]",[1665] which is denied by Azerbaijan's witnesses and, in any event, would not on its own constitute conduct of "*appropriate and sufficient seriousness*" to amount to harassment in breach of FET.[1666]

(b) As to "*every person ever susceptible to provide any information*", Mr Bahari cross-refers to "*Section V (Azerbaijan Prevents Any Efforts to Recover Investments)*" of his Reply submission, presumably intended to be a reference to Part II, section VI.[1667] That section contains various detail, and it is not for

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1663 Reply, paras 952-953.

1664 Reply, para. 580.

1665 First Allahyarov Statement, para. 8.

1666 *See Rompetrol v Romania*, ICSID Case No. ARB/06/3, Award (6 May 2013), **CLA-51**, para. 198 ("A final important point is that when a treaty provision such as Article 3(1) establishes a requirement to secure "fair and equitable treatment" for the investments of foreign investors, that requirement refers in the first instance to the host State's treatment of the investment, taken as a whole; the Claimant has said something similar when it framed its complaints in terms of a 'campaign of harassment'. The requirement may however also apply to specific individual acts attributable to the State, if the circumstances were appropriate and of sufficient seriousness as to lead a tribunal to conclude that the standard of 'fair and equitable treatment' had been breached.").

1667 *See* Reply, fn. 1296.

Azerbaijan to identify the persons who Mr Bahari claims have been the subject to harassment. Insofar as Mr Bahari's claims concern Mr Moghaddam, Mr Abdulmajidov or Ms Ramazanova, again, the only evidence in support of Mr Bahari's allegations is their witness testimony. That testimony is highly unreliable for the reasons explained above, and is contradicted in numerous places by the documentary record.

(c) As to "*Mr. Bahari, his family and his close ones*", Mr Bahari cross-refers to a section of the Reply submission that does not appear to exist ("*Section V.E (Harassment of Mr. Bahari and his Family)*").[1668] In the circumstances, Azerbaijan is unable to plead further to this allegation, but notes that there is no evidence (or particularisation) of any harassment of Mr Bahari or his family and close ones.[1669]

620. Moreover, as the tribunal in *Rompetrol v Romania* noted, to constitute a "systematic campaign" as Mr Bahari alleged, "proof is required, even if all of the actors have the status of State agencies, that different actions pursued on different paths by different actors are linked together by a common and coordinated purpose", again returning to the standard of a "sufficient weight of positive evidence", "as opposed to pure probability or circumstantial inference".[1670] Even if, therefore, Mr Bahari could prove that such acts of alleged harassment occurred, he cannot prove that all such action was part of a common design to harass Mr Bahari. The allegation that Mr Moghaddam's imprisonment was a "direct result[] of his association with Mr. Bahari"[1671] (which is denied), for example, has an alternative reasonable and evidenced explanation concerning his drug offences.[1672]

1668 *See* Reply, fn. 1297. Part 2, Section V.E of the Reply submission discusses Mr Bahari's 2013 visit to Azerbaijan.

1669 Azerbaijan notes in this regard that Mr Bahari does not rely on the death of his daughter in the Reply submission.

1670 *Rompetrol v Romania*, ICSID Case No. ARB/06/3, Award (6 May 2013), **CLA-51**, para. 273.

1671 Reply, para. 566.

1672 *See MOL Hungarian Oil and Gas Company v Croatia (I)*, ICSID Case No. ARB/13/32, Award (5 July 2022), **RLA-303**, paras 564-566 ("The Tribunal is of one mind with the *Rompetrol* tribunal that an investment tribunal would be very loth indeed to stand in the way of the exercise by a sovereign State of its prerogatives in the pursuit and punishment of serious crime, and all the more so when the criminality in question is one of recognized international concern. The Claimant maintains that the entire criminal investigation… was simply trumped up in bad faith, as a stick with which to beat a foreign investor…

621. The other related difficulty Mr Bahari has with these wide-ranging allegations is that the alleged harassment was not directed at Mr Bahari's investments, as required by the terms of the FET clause in the Treaty. Mr Bahari attempts to distinguish *Belokon*, which found that an obligation to accord FET to investments does not include former directors and management,[1673] by stating that Mr Moghaddam was a representative of Caspian Fish and Coolak Baku at the time he was harassed.[1674] Other than the unreliable testimony of Mr Bahari's witnesses, however, there is no evidence to support that claim. Azerbaijan's witnesses deny that Mr Moghaddam had any involvement in the Coolak Baku business,[1675] or that he was anything other than a carpenter who helped Mr Bahari prepare some furniture for Caspian Fish.[1676] Mr Bahari cannot show that Mr Moghaddam (or indeed Ms Ramazanova and Mr Abdulmajidov) were sufficiently associated with Mr Bahari's investments such that any conduct allegedly carried out against him could "*fairly be understood as implicating the protected interests of the investor itself*".[1677]

2. Azerbaijan did not breach any obligation to provide transparency or due process

622. Mr Bahari's Reply submissions on Azerbaijan's alleged failure to provide transparency or due process are characteristically vague and unsubstantiated. To the extent they can be distilled, the key elements of his case in Reply appear to be that:

(a) it is "*obvious there was a decision by Azerbaijan to separate Mr. Bahari from his investments*", but "*Azerbaijan did not even bother to issue any public decision or declaration to that effect*"[1678] and "*never provided Mr. Bahari any*

The Tribunal is not able to entertain this claim. …The independence of the prosecutorial function, just like the independence of the judicial function, is an important international value, and a central component in the rule of law. If the conclusions reached by the prosecutorial arm are not well-founded, the place for that to be set right is in court, together with appropriate remedies for wrongful prosecution. None of those are processes for oversight by an investment tribunal, which has not had conferred on it either the competence or the means to carry it out.").

1673 *See* Defence, para. 393(b).

1674 Reply, para. 948(a).

1675 First Zeynalov Statement, para. 20.

1676 First Zeynalov Statement, para. 29.

1677 *See Rompetrol v Romania*, ICSID Case No. ARB/06/3, Award (6 May 2013), **CLA-51**, para. 200.

1678 Reply, para. 963.

reason, justification or explanation".[1679] Mr Bahari sweepingly asserts that "*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 a decision*";[1680] and

(b) "*because the Azerbaijani's judiciary system is beholden to the ruling families*", Mr Bahari had "*no real prospect of Mr. Bahari getting back his investments or obtaining compensation through proceedings initiated in Azerbaijan*".[1681]

623. Leaving aside for the moment the gross lack of particularisation with this pleading, these submissions have no basis in fact or in law.

624. There is no evidence that a "decision" was made to separate Mr Bahari from his investments. Pleading that it is "*obvious*" that there was such a decision from "*all actions and omissions of Azerbaijan*" does not discharge Mr Bahari's evidential burden. Mr Bahari refers to article 2(2)(a) of the Treaty, which provides that nationals of Iran should be permitted to enter and remain in Azerbaijan for the purposes of establishing, developing, administrating or advising on the operation of their investments, but this article does not assist him.[1682] First, he makes no allegation of breach of this article of the Treaty. Second, and in any event, there is no evidence that there was, or has ever been, any restriction on Mr Bahari's ability to enter Azerbaijan. To the contrary, all of the available evidence indicates that Mr Bahari made a conscious decision voluntarily to leave Azerbaijan in late 2001, and when he chose to return in 2013, he did so freely.

625. As for due process, Mr Bahari relies on general claims based on the Allan & Makarenko Report that Azerbaijan's "*system of governance results in a lack of the rule of law*",[1683] rather than any specific evidence or action he took to bring a claim in Azerbaijan that was impeded. Indeed, in the one instance where he did try to bring a claim in Azerbaijan, the Azerbaijani courts allowed him an extension of time to appeal a case that had been closed for five years. Mr Bahari's claims of futility based on his generic concerns about the State of Azerbaijan are insufficient to demonstrate that Mr Bahari

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1679 Reply, para. 964.

1680 Reply, para. 964.

1681 Reply, para. 958.

1682 Treaty, **CLA-1**, art. 2.2(a).

1683 *See* Reply, fn. 1322, cross-referring to Part III(II)(E).

was not in fact accorded due process in pursuing legal remedies in country. The threshold for finding a breach of due process is high and "*must lead to an outcome which offends a sense of judicial propriety*".[1684] None of Mr Bahari's complaints come close to meeting that standard.

3. Azerbaijan's treatment of Mr Bahari was not arbitrary or discriminatory

626. In response to the criticisms in the Defence, Mr Bahari attempts to particularise his claim that he was subjected to arbitrary and discriminatory treatment. First, he claims that his "*Azerbaijani business partners were left untouched by Azerbaijan*", whereas he was forced out of the country, harassed and intimidated;[1685] and second, with regard to arbitrariness, he alleges that Azerbaijan has engaged in various conduct including his expulsion, harassment and exclusion from legal proceedings that he claims were acts "*so manifestly arbitrary, so unjust and surprising as to be unacceptable from the international perspective*".[1686] This particularisation does nothing to advance Mr Bahari's case.

627. As to the claim of discrimination, Mr Bahari fails to acknowledge that his own case is that his "Azerbaijani business partners" were emanations of the State themselves. Notably, nothing is said about the State's treatment of his other Iranian business partner, Mr Khanghah. It is Mr Khanghah who is in a like situation to Mr Bahari, not the State itself. Even if Mr Bahari accepted that his alleged Azerbaijani business partners were not acting *puissance publique*, he fails to address the evidence which shows that the reason he left Caspian Fish was because he had a private business dispute with Mr Heydarov. Discriminatory measures (to the extent any "measure" can be identified, which Azerbaijan denies) must be "*target*[ed] [at the] *Claimant's investments specifically as foreign investments*".[1687] There is no evidence of that in this case. Mr Bahari left Azerbaijan because he deceived his business partners, and they found out. Moreover, the consistent suggestion that his interests were "*unlawful*[ly] *transfer*[red]"

1684 *Orazul v. Argentina,* ICSID Case No. ARB/19/25, Award (14 Dec 2023), **RLA-266**, para. 733.

1685 Reply, para. 969.

1686 Reply, para. 971.

1687 *LG&E v Argentina*, ICSID Case No. ARB/02/1, Decision on Liability of 3 October 2006, **CLA-72**, para. 147.

to Messrs Aliyev or Heydarov is nonsensical:[1688] these individuals are the very people with whom he alleges he partnered with in the first place. After he exited Caspian Fish, on his very own case, these individuals were the shareholders left owning it.

628. Similarly, as regards the claims of arbitrary treatment, Mr Bahari's factual allegations of expulsion, harassment and exclusion are not substantiated for all of the reasons set out in the Defence and in this Rejoinder. Even if they were, however, Mr Bahari has not shown that such action was a result of a decision "*not founded in reason or fact but on caprice, prejudice or personal preference*",[1689] as opposed to being his own wrongful conduct in his management of Caspian Fish.

4. Azerbaijan acted in good faith at all times

629. Mr Bahari does nothing to particularise his claims of bad faith in the Reply submission, asserting only that "*there can be no doubt Azerbaijan consistently acted in bad faith*" and "*bad faith* [is] *evident*".[1690] Again, sweeping reference is made to Azerbaijan's alleged conduct "*from the day* [it] *made or adopted the decision to force Mr. Bahari out of Azerbaijan*"[1691] without any particularisation of the specific evidence which demonstrates "malice" or "bad faith" on the part of Azerbaijan. None of this is proper pleading, and Mr Bahari's claims that Azerbaijan acted in bad faith should be dismissed out of hand.

630. Notably, the key case upon which Mr Bahari relies to establish the obligation of good faith, *Siag v Egypt*, finds that good faith is only a "*yardstick*" by which to measure FET and that "*its precise ambit is not easily articulated*" save with reference to notions of "*transparency, protection of legitimate expectations, due process, freedom from discrimination and freedom from coercion and harassment*".[1692] On Mr Bahari's own case, good faith adds nothing to the obligations already espoused under the FET standard.

1688 Reply, para. 971(c).

1689 *Plama Consortium Limited v Bulgaria*, ICSID Case No. ARB/03/24, Award (27 Aug. 2008), **RLA-304**, para. 184.

1690 Reply, para. 977.

1691 Reply, para. 978.

1692 *Siag v Egypt*, ICSID Case No. ARB/05/15, Award (1 June 2009), **CLA-98**, para. 450.

E. There was no denial of justice or breach of effective means

631. Mr Bahari brings new claims of denial of justice and breach of effective means in the Reply, which he claims have come to light as result of evidence filed since the Statement of Claim.[1693] Nothing in the evidence, however, in fact demonstrates a denial of justice or breach of effective means.

1. Threshold for denial of justice is very high

632. Azerbaijan agrees that denial of justice forms part of the FET standard in the Treaty, as well as part of the minimum standard of treatment under customary international law.[1694] It takes issue, however, with Mr Bahari's characterisation of the following aspects of the obligation:

(a) While Mr Bahari is correct that denial of justice requires the showing of a failure of a "*judicial system, as a whole*",[1695] he fails to acknowledge that this means that the investor must prove that the remedies in the local system have been exhausted.[1696] As the tribunal explained in *Gramercy v Peru*, "*the host State judicial system, as a whole, must be granted an opportunity to rectify judicial errors of lower court instances*".[1697] The only exception to this rule is where remedies are "*futile, manifestly ineffective or simply unavailable*".[1698]

(b) Mr Bahari suggests that "*even if no single act rises to the threshold of denial of justice, it may result from* '*a combination of improper acts*'".[1699] There is little authority to support this broad assertion. The only recent authority Mr Bahari relies on, *Glamis Gold*, in fact states that "*without a finding of intent*", it would not be clear how acts taken together could breach the FET standard, if they did not so amount to a breach standing alone:

> The Tribunal determines that, for acts that do not individually violate Article 1105 to nonetheless breach that article when taken together, there must be some additional quality that exists

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1693 Reply, para. 981.

1694 Reply, paras. 986 and 987.

1695 Reply, para. 999.

1696 *Philip Morris v Uruguay*, ICSID Case No. ARB/10/7, Award (8 July 2016), **CLA-141**, para. 499.

1697 *Gramercy v Peru*, ICSID Case No. UNCT/18/2, Final Award (6 Dec. 2022), **RLA-305**, para. 1040.

1698 *Gramercy v Peru*, ICSID Case No. UNCT/18/2, Final Award (6 Dec. 2022), **RLA-305**, para. 1044.

1699 Reply, para. 1010 and fn. 1384.

> only when the acts are viewed as a whole, as opposed to individually. It is not clear, in general terms, what such quality would be in all circumstances.
>
> In this factual situation, however, the Tribunal holds that it cannot see that the conduct as a whole would be a violation of the fair and equitable treatment standard when the individual acts comprising that whole are not, without a finding of intent. The intent of the federal and California state governments to work together to halt the Imperial Project would be a powerful element in the Tribunal's determination of a violation of Article 1105.[1700]

(c) Mr Bahari cites article 7 of the 1961 Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens as "*encapsulat*[ing]" denial of justice,[1701] concluding that the "*cumulative failures to provide these opportunities* [listed in article 7] *may amount to a denial of justice*".[1702] Article 7 of the 1961 Draft Convention, however, is not a statement of customary law. As noted by one tribunal, the 1961 Draft Convention is "*of doubtful weight as persuasive authority of international law*". Further and in any event, it is not authority for Mr Bahari's proposition that "cumulative failure" can amount to a denial of justice. Mr Bahari cites no authority for that assertion, because there is none.

(d) Finally, Mr Bahari claims that *"the absence of notification about proceedings that exclude the possibility to challenge them could all result in denial of justice*", citing *Lion Mexico* (which in turn cites Paparinskis).[1703] This is a selective extract of the tribunal's findings in that case, which were in fact that "[t]*he case law and scholarly writings acknowledge that access to justice is impaired when a party is not notified of a proceeding that involves its rights and it is prevented from being heard by the local Courts*" (emphasis added).[1704] What is key here, returning to the failure of the justice system "as a whole" is that the claimant must show not only that they were not notified, but also that they were then prevented from being heard.

1700 *Glamis Gold v USA*, UNCITRAL (NAFTA) Award (8 June 2009), **CLA-74**, para. 825.

1701 Reply, para. 988.

1702 Reply, para. 1011.

1703 Reply, para. 1014.

1704 *Lion Mexico v Mexico*, ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021, **CLA-91**, para. 393.

633. In sum, the threshold to find a denial of justice is a "*demanding one*".[1705] As the tribunal in *Oostergetel and ors v Slovakia* noted:

> … it will not be enough to claim that municipal law has been breached, that the decision of a national court is erroneous, that a judicial procedure was incompetently conducted, or that the actions of the judge in question were probably motivated by corruption. A denial of justice implies the failure of a national system as a whole to satisfy minimum standards.[1706]

2. Effective means adds nothing to the FET standard

634. For the reasons set out above, Azerbaijan does not owe any obligation of effective means to Mr Bahari.[1707] Should the Tribunal find (contrary to the Respondent's primary position) that it does, Mr Bahari has failed to demonstrate that there is any separate standard of effective means that would be applicable in this case.

635. First, contrary to Mr Bahari's submission, it is not the case that "*several*" tribunals have considered effective means as a distinct and potentially less demanding standard.[1708] In fact, only *two* tribunals whose awards date back to 2010 and 2011 (*Chevron* and *White Industries*) have considered it to be so.[1709] All other decisions, including far more recent decisions, which have considered the effective means standard have concluded that it "*does not create an additional layer of protection, further to the* [minimum standard of treatment] *of aliens under customary international law, including denial of justice*".[1710]

636. Indeed, Mr Bahari is aware of the weakness of his argument, as he admits that "*it is not entirely settled and uncontroversial that denial of justice and effective means are separate, distinct standards*".[1711] He concludes that in a case where effective means

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1705 *Oostergetel and ors v Slovakia*, UNCITRAL, Final Award (23 April 2012), **CLA-100**, para. 273.

1706 *Oostergetel and ors v Slovakia*, UNCITRAL, Final Award (23 April 2012), **CLA-100**, para. 273.

1707 *See* PART 2III.D above.

1708 Reply, para. 1025.

1709 *Chevron and TexPet v. Ecuador (I)* PCA, Partial Award on the Merits, 30 March 2010, **CLA-267**; *White Industries v India*, Final Award, 30 November 2011, **CLA-284**.

1710 *See*, e.g., *Gramercy v Peru*, ICSID, Final Award, 6 December 2022, **RLA-305**, para. 1228; *OAO Tatneft v Ukraine*, PCA Case No. 2008-08, Award (29 July 2014), **CLA-89**, para. 441; *H&H v. Egypt*, ICSID Case No. ARB/09/15, Final Award (6 May 2014), **CLA-282**, paras. 400 and 406; *Duke v. Ecuador*, ICSID Case No. ARB/04/19, Award (18 August 2008), **CLA-286**, para. 391.

1711 Reply, para. 1028.

forms part of denial of justice, an obligation to provide effective means requires that the State "*establish a system of instrumentalities that are fit for the purpose of allowing the presentation of legal actions to enforce legal rights*", and entails a "*negative obligation not to prevent access to* [such] *system*".[1712] The latter point is made without reference to any authority, and both propositions are wrong insofar as Mr Bahari seeks to suggest that effective means supports the review of a case on an individual basis. The very authority Mr Bahari relies on, *Amto v Ukraine*, explains that what is important is the State's general framework – and not any individual case:

> …the State must provide an effective framework or system for the enforcement of rights, but does not offer guarantees in individual cases. Individual failures might be evidence of systematic inadequacies, but are not themselves a breach…[1713]

637. Second, even if it could be said that there was any separate standard (which is denied), that standard is not as broad as Mr Bahari postulates. The key finding of the *Chevron* and *White Industries* decisions was that "[f]*or any 'means' of asserting claims or enforcing rights to be effective, it must not be subject to indefinite or undue delay*".[1714]

638. In *Chevron* (upon which *White Industries* relies), the tribunal said that while it may "*examine individual cases*" in order to consider whether an effective means of enforcing rights and asserting claims has in fact been afforded,

> the provision requires that a measure of deference be afforded to the domestic justice system; the Tribunal is not empowered by this provision to act as a court of appeal reviewing every individual alleged failure of the local judicial system de novo.[1715]

639. Moreover, the tribunal confirmed that a "a *qualified requirement of exhaustion of local remedies applies under the 'effective means' standard*" and that it "*must consider whether a given claimant has done its part by properly using the means placed at its disposal*".[1716] It further confirmed that this was a matter of causation: "[s]*hould the*

1712 Reply, para. 1029.

1713 *AMTO v. Ukraine*, SCC Case No. 080/2005, Final Award (26 Mar. 2008), **CLA-278**, para. 88.

1714 *See Chevron and TexPet v. Ecuador (I)* PCA, Partial Award on the Merits (30 Mar. 2010), **CLA-267**, para. 250.

1715 *Chevron and TexPet v. Ecuador (I)* PCA, Partial Award on the Merits (30 Mar. 2010), **CLA-267**, para. 247.

1716 *Chevron and TexPet v. Ecuador (I)* PCA, Partial Award on the Merits (30 Mar. 2010), **CLA-267**, paras 323-324.

Claimants be found not to have exhausted available local remedies for delay, their inaction may be taken as a contributing cause of the delay".[1717]

640. Thus, contrary to Mr Bahari's claims, the effective means standard would not apply to Mr Bahari's "*attempts to litigate before the Azerbaijani courts, as well as the litigation proceedings that occurred in his absence*",[1718] even if *Chevron* and *White Industries* were followed. First, and fundamentally, there are no claims of indefinite or undue delay, which is the narrow proposition those cases stand for.

641. Even if Mr Bahari could somehow extrapolate the effective means standard beyond the findings in *Chevron* and *White Industries* to a more general breach, his claim would fail:

(a) He asserts that the "*proceedings that were contemplated*" by him "*were all in relation to investments Mr. Bahari made in Azerbaijan*".[1719] It goes without saying that the mere "contemplation" of proceedings (which are not, in any event, evidenced) does not get Mr Bahari off the ground.[1720] This "contemplation" is inside Mr Bahari's head, and nothing to do with Azerbaijan. He also claims that the proceedings "*initiated by its* [sic] *business partners were effectively meant to strip him away from certain of his investments, namely Coolak Baku and Ayna Sultan*".[1721] This is again an inconceivable stretch. Neither of these proceedings (on Mr Bahari's case) had anything to do with *him* attempting to use the Azerbaijani legal system to assert his rights. His claims to breach of effective means accordingly falls at the first hurdle.

(b) Second, Mr Bahari claims that while he "*attempted to protect its* [sic] *legal and contractual rights several times*", the "*sole effect*" was "*getting Azerbaijan to retaliate against his hired counsel*".[1722] Even if there was evidence of that

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1717 *Chevron and TexPet v. Ecuador (I)* PCA, Partial Award on the Merits, 30 March 2010, **CLA-267**, para. 327.

1718 Reply, para. 1020.

1719 Reply, para. 1021.

1720 *See*, e.g., *Mercuria Energy v Poland*, SCC Case No. V 2019/126, Award (29 Dec. 2022), **RLA-325**, para. 765 ("This Tribunal therefore considers that it is to assess the system of effective means under Polish administrative law not in abstract – but in relation to the specific circumstances of Claimant's assertion of claims and enforcement of rights within such system.").

1721 Reply, para. 1021.

1722 Reply, para. 1022.

(which is denied), on his own case Mr Bahari failed even to *try* to commence proceedings in Azerbaijan. He cannot assert that it would have been futile to try,[1723] when there is no evidence that he tried at all (and, to the contrary, the evidence indicates that when he did try, he was welcomed).

3. General complaints about the alleged "design" of Azerbaijan's judicial system cannot establish a denial of justice or breach of effective means

642. Mr Bahari spends several pages complaining that the "*design*[]" of the Azerbaijani judicial system is such that it "*systematically restricts access to justice*",[1724] based on general assertions of a "*kleptocratic system of governance*"[1725] as set out in the Allan & Makarenko Report. None of this general commentary is accepted. Moreover, it is not evidenced as applying in the specific case at hand, and it is entirely irrelevant.

643. As the tribunal said in *Manolium Processing v Belarus*:

> it is not sufficient for a claimant to base its claims on general allegations regarding the judicial system of the host State, if it is unable to prove that it has suffered a denial of justice on the facts of the case.[1726]

644. Similarly, in *Oostergetel v Slovakia*, where the claimants sought to premise a denial of justice claim by offering general reports of corruption in Slovak courts, the tribunal held that such general reports would not suffice:

> As regards a claim for a substantial denial of justice, mere suggestions of illegitimate conduct, general allegations of corruption and shortcomings of a judicial system do not constitute evidence of a treaty breach or a violation of international law.[1727]

645. In conclusion, Mr Bahari's weak attempts to portray a general presumption of a corrupt judicial system in Azerbaijan cannot discharge his burden of proof.

646. While he claims that Azerbaijan "*retaliat*[ed] *against every attempt by Mr. Bahari to resort to the courts*",[1728] this is a laughable submission. On his own case, Mr Bahari

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1723 Reply, para. 1032.

1724 Reply, para. 1030.

1725 Reply, para. 1031.

1726 *Manolium Processing v Belarus,* PCA Case No. 2018-06, Final Award (22 June 2021), **CLA-191**, para. 533.

1727 *Oostergetel and ors v Slovakia*, UNCITRAL, Final Award (23 April 2012), **CLA-100**, para. 296.

1728 Reply, para. 1030.

made no attempt to resort to the local courts (and, on Azerbaijan's case, when he did, he was welcomed).[1729] As discussed below, Mr Bahari's general assertions of a defective judicial system cannot relieve him of the requirement to exhaust local remedies before bringing a claim for denial of justice (or indeed effective means).[1730]

4. There is no evidence that Mr Bahari was denied access to justice or effective means

647. In a one-paragraph submission that is presumably intended to introduce Mr Bahari's claims, he asserts that there has been a denial of justice and failure to provide effective means on account of "*repeated and significant procedural irregularities in the claims brought against Mr. Bahari in Azerbaijan*", including "*fundamental breaches of due process, such as lack of independence and partiality*" and a "*failure of Azerbaijani courts to resist pressure from the executive*".[1731] The following sections of the Reply purport to describe the "*gross procedural irregularities*",[1732] which are addressed below, but no particularisation is offered for the claims of "*lack of independence and partiality*" or "*pressure from the executive*". These are bare assertions, supported presumably only by reference to Mr Bahari's generic claims of corruption, which are evidence of nothing in the circumstances of this case, as discussed above.

648. Mr Bahari then divides his submissions into three parts: (a) first, he claims that Azerbaijan "*actively denied Mr Bahari access to justice*";[1733] (b) second, he claims that there were "*gross procedural irregularities in Mr. Bahari's cases*";[1734] and (c) third, he claims to have "*exhausted all reasonably available domestic remedies*".[1735] Each of these submissions are have no basis in fact or law for the reasons set out below.

1729 *See Corona Materials v Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on the Respondent's Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA (31 May 2016), **RLA-326**, paras. 262, ("Claimant's case on denial of justice must fail because it can point to no act or any administrative adjudicatory proceeding before any court or administrative adjudicatory body in the Dominican Republic beyond the unanswered Motion for Reconsideration which, as noted above, did not itself amount to an administrative adjudicatory proceeding").

1730 Reply, paras 1032, 1043.

1731 Reply, para. 1044.

1732 Reply, Part VI(I)(D)(8).

1733 Reply, Part VI(I)(D)(7).

1734 Reply, Part VI(I)(D)(8).

1735 Reply, Part VI(I)(D)(9).

649. As to the claim that he was denied access to justice, Mr Bahari asserts that he was "*expelled from Azerbaijan in 2001, never to return*"[1736] and while he was away, he "*could not obtain information through third parties*".[1737] As a matter of fact, these submissions have no basis, as discussed in the Defence and above.[1738] Mr Bahari was not expelled from Azerbaijan (and indeed freely returned in 2013). The only evidence in support of his claims that third parties were prevented from making enquiries is unreliable witness testimony (including hearsay evidence purporting to relay events that took place two decades ago).[1739] Mr Bahari includes the alleged October 2013 meeting with Mr Heydarov in his claim that he was unable to obtain information through third parties,[1740] but it is unclear how the matters he alleges with respect to Mr Bahari bringing a claim against Mr Aliyev with Mr Heydarov's support (which are denied) have anything to do with a denial of access to his investments.

650. Even if Mr Bahari could prove any of these matters were true (which is denied), he fails to particularise how they would amount to the level of a denial of justice or breach effective means. They do not. Among other things, they do not show a failure of the Azerbaijani justice system as a whole, particularly in circumstances where Mr Bahari (on his case) did not in fact attempt to commence any proceedings.

651. As to Mr Bahari's claim that there were gross procedural irregularities in the local proceedings, as a preliminary point, neither litigation, given they were not commenced by Mr Bahari, can constitute a breach of effective means, as discussed at paragraph 641(a) above.

652. As for denial of justice:

(a) Mr Bahari does not explain why an alleged failure to "*receive* [] *notice*" of the local proceedings rises to the level of a denial of justice.[1741] Indeed, Mr Bahari does not cite one case where a failure to receive notice of proceedings

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1736 Reply, para. 1045.

1737 Reply, para. 1046.

1738 *See* Defence, paras 264-266; PART 3VI above.

1739 *See* Defence, paras 352-358 (Mr Moghaddam); 362-363 (Mr Kilic); 364-368 (Mr Allahyarov); 307 (Mr Heydarov's assistant).

1740 *See* Reply, para. 1047(d).

1741 *See* Reply, paras 1052(a), (b) and (d) and 1055(a) and (d)(ii) and (iii).

constituted a denial of justice. To the contrary, the cases establish that "[e]*ven the grossest misconduct by a lower court or manifest unfairness in its procedures is not by itself sufficient to amount to a denial of justice by a State*".[1742] As the tribunal said in *Philip Morris v Uruguay*:

> it is not enough to have an erroneous decision or an incompetent judicial procedure, arbitral tribunals not being courts of appeal. 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 improper and discreditable."[1743]

(b) In circumstances where (a) Mr Bahari was absent from the jurisdiction; (b) the local courts attempted to serve Mr Bahari with process multiple times; and (c) only proceeded after concluding that his absence was unjustified, there can be no suggestion of a procedural failing so serious that it amounted to a denial of justice. To the contrary, the Courts did their best to notify Mr Bahari which indicates that there was *no* deliberate intention to exclude him, or any "systemic injustice".

(c) Notably, in the case of Coolak Baku, there was no requirement for Mr Bahari to be joined to these proceedings at all. The Economic Court proceedings only determined that ASFAN be permitted to exit the joint venture, and take the property it had invested. As Mr Bahari accepts,[1744] the Court did not purport to (and indeed was not required to) make any determination as to the nature or quantum of that property. Insofar as Mr Bahari has a complaint that ASFAN "*strip*[ped] *all Coolak Baku's assets*"[1745] on its exit, that complaint lies with private party ASFAN, and not the Azerbaijani Courts. At all times (and today), Mr Bahari remained a shareholder of Coolak Baku, and was free to make enquiries as to the status of the company, as well as ASFAN's position in it, and challenge directly ASFAN in respect of its action. That he did not choose to do

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1742 *Chevron and TexPet v. Ecuador (II)*, PCA Case No. 2009-23, Second Partial Award on Track II (30 Aug. 2018), **RLA-306**, para. 7.117.

1743 *Philip Morris v. Uruguay*, ICSID Case No. ARB/10/7, Award, 8 July 2016, **CLA-141** para. 500, footnotes omitted.

1744 Reply, para. 1052(c)(ii).

1745 Reply, para. 1052(f).

so is no fault of Azerbaijan's. Insofar as he complains he was not able to do so,[1746] that complaint is no distinct from his general claims that he had no access to his investments, which are denied and addressed above.

(d) Mr Bahari also claims that as a result of the proceedings continuing without him, the Coolak Baku judgment is "*muddled and full of contradictions*",[1747] and the Ayna Sultan judgments are "*conflicting*",[1748] but he does not explain why either would amount to a denial of justice. They do not. A mere error in the application of a substantive law is not a denial of justice unless it is "*so lacking in seriousness as to indicate bias*".[1749] Nothing in the litigations suggests bias against Mr Bahari. Mere contradictory judgments are also "*not serious enough in itself to constitute a denial of justice. Outright conflicts within national legal systems may be regrettable but they are not unheard of*".[1750]

(e) Finally, Mr Bahari complains that the Ayna Sultan litigation exposed a "*myriad of fraudulent, almost comical acts*"[1751] perpetrated by the individuals conducting the litigation, but this has nothing to do with the Azerbaijani Court and cannot amount to a denial of justice. As the tribunal noted in *Waste Management v Mexico*, "[i]*t is not unusual for litigants to be difficult and obstructive*" and there can be no denial of justice where "*there is no evidence that* [the litigant] *was acting in collusion*[…] *with*[…] *the federal courts*".[1752]

653. Finally, and critically, Mr Bahari's claims fail because he has not exhausted local remedies. As set out above, it is not controversial that local remedies need not be exhausted where they are no available or effective remedies, or it would be futile to

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1746 *See* Reply, para. 1053.

1747 Reply, para. 1052(c)

1748 Reply, para. 1055(f).

1749 *Lidercón v. Peru*, ICSID Case No. ARB/17/9, Award (6 Mar. 2020), **CLA-307** para. 270

1750 *Philip Morris v. Uruguay*, ICSID Case No. ARB/10/7, Award (8 July 2016), **CLA-141**, para.529.

1751 Reply, para. 1055(c).

1752 *Waste Management v. Mexico (II)* ICSID Case No. ARB(AF)/00/3, Award (30 Apr. 2004), **CLA-86** para. 131. Notably, a reference in passing to an allegation made by the claimant in the Ayna Sultan litigation that the judge had participated in the fraud (see Reply, para. 482) is not repeated in the legal section of Mr Bahari's brief (Reply, para. 1055(c)), presumably as Mr Bahari himself realises there is no evidence to support this assertion.

resort to them. However, the authorities Mr Bahari cites in support of this proposition bear no resemblance to the facts of this case, or are otherwise inapposite:

(a) Mr Bahari claims that the *Mondev v USA* tribunal "*denied that "the denial of justice rule and the exhaustion of local remedies rue 'are interlocking and inseparable'*".[1753] He fails, however, to provide any context for this selective extract, which was explicitly tied to the fact that NAFTA Chapter 11 contains a waiver of local remedies on resort to arbitration, whereas the FET standard "*has to be applied in both situations, i.e., whether or not local remedies have been invoked*".[1754] The tribunal's commentary as quoted by Mr Bahari was accordingly preceded by the terms "*Thus under NAFTA it is not true that the denial of justice rule and the exhaustion of local remedies rule 'are interlocking and inseparable'*" (emphasis added).[1755]

(b) Mr Bahari asserts that the "*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*",[1756] relying on *Binder v Czech Republic*. This is a circular argument that takes him nowhere. As discussed above, it is only on the exhaustion of local remedies by the investor that it can be established that the system has failed "as a whole".

(c) Mr Bahari is correct that the tribunal in *Duke v Ecuador* considered that there was no obligation to pursue "improbable" remedies.[1757] In that case, however, the claimants sought to claim a denial of justice in the rendering of a local arbitral award in circumstances where they had not sought to challenge the award before the courts of Ecuador. They claimed that it was improbable for them to do so because the local law did not expressly provide for a challenge based on jurisdiction, although it did contain a provision for a challenge based on excess of powers. The tribunal declined to find that no adequate or effective

1753 Reply, para. 1059.

1754 *Mondev v United States*, Award (11 Oct. 2002), **CLA-39**, para. 96.

1755 *Mondev v United States*, Award (11 Oct. 2002), **CLA-39**, para. 96.

1756 Reply, para. 1059.

1757 Reply, para. 1060.

remedy existed. A "*lack of clarity*" over whether a jurisdictional challenge was available was "*not sufficient to demonstrate that a remedy was futile*".[1758]

(d) Mr Bahari is also correct that the tribunal in *Pantechniki v Albania* said that it is not necessary to initiate actions which "*exist on the books but are never in fact used*".[1759] However, the tribunal then immediately went on to say that:

> The Claimant's problem here does not involve such complications. This is a matter of a simple hierarchical organisation of civil-law jurisdictions: first instance/appeal/cassation. One cannot fault Albania before having taken the matter to the top.[1760]

654. Mr Bahari's factual case as to exhaustion of local remedies comprises his general complaint that the "*Azerbaijani judiciary system appears to have been specifically designed to restrict access to courts*".[1761] For the reasons set out above, that will not do. He also complains that the "intimidation" of those who made enquiries demonstrates that it would have been "*futile* [and] *dangerous*" for Mr Bahari to try to bring a claim in Azerbaijan.[1762] Again, this argument does not get off the ground. The one instance where Mr Bahari did attempt to bring proceedings in Azerbaijan, he was granted an extension of time to challenge the underlying judgment and (on his own submission) the Appellate Court "*came to the right solution*".[1763] Put simply, there is no evidence whatsoever that Mr Bahari would have been restricted, had he tried, to bring claims in the local courts. To the contrary, the evidence indicates that he would have been welcomed. Mr Bahari's claim that his alleged failure to receive notice of the Coolak Baku proceedings "*deprived* [him] *of his right to appeal*"[1764] should also considered in the context where he sought to appeal the Ayna Sultan judgment 4 years after the fact and was allowed an extension of time.

1758 *Duke v. Ecuador*, ICSID Case No. ARB/04/19, Award (18 August 2008), **CLA-286**, para. 401.

1759 Reply, para. 1062.

1760 *Pantechniki v. Albania*, ICSID Case No. ARB/07/21, Award (30 July 2009), **CLA-289**, paras. 96, 100 and 97.

1761 Reply, para. 1061.

1762 Reply, para. 1062.

1763 Reply, para. 532.

1764 Reply, para. 1052(d)(iii).

II. AZERBAIJAN HAS NOT BREACHED ANY OBLIGATION TO ACCORD FULL PROTECTION AND SECURITY

655. For the reasons set out at PART 2III.D above, Azerbaijan does not owe any obligation of FPS to Mr Bahari. Should the Tribunal find (contrary to the Respondent's primary position) that it does, Azerbaijan has not breached such obligation.

656. As to the physical protection afforded by FPS:

(a) Mr Bahari glosses over the fact that many of his claims concern events that took place before the Treaty entered into force, describing Azerbaijan's defence as an "*attempt to avoid responsibility*".[1765] Nothing in the Reply submission takes this matter further, given Mr Bahari accepts that the Tribunal does not have "*jurisdiction over Azerbaijan's acts that occurred prior to the Treaty's entry into force*".[1766]

(b) As to the matter of proof, Mr Bahari makes the extraordinary assertion that "[t]*he harm suffered by Mr. Moghaddam is proven beyond a reasonable doubt*".[1767] The *only* evidence of Mr Moghaddam's alleged assault and detention is his own unreliable testimony. Yet, not only does Mr Bahari suggest that testimony is proof, he suggests that it is proof to the *criminal* standard. The use of such language evinces a certain desperation; Mr Bahari is flailing in his attempts to prove the facts that underlie his claims. Similar difficulties present themselves with the alleged threats or assaults to Mr Kilic, Mr Allahyarov and Ms Ramazanova. The only evidence that any of these alleged evidence is unreliable witness and hearsay testimony. The limited "documentary" evidence that Mr Bahari has sought to adduce in support of Mr Abdulmajidov's claims has been admitted as being misleading (such what turned out to be a stock photo of a car damaged car, which Mr Abdulmajidov initially claimed was a photograph following the alleged truck ramming incident),[1768] bear no apparent

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1765 Reply, para. 1065.

1766 Reply, para. 704.

1767 Reply, para. 1068.

1768 *See* Respondent's Response to Application for Provisional Measures dated 5 April 2024, paras 33-36; photos exhibited to Mr Abdulmajidov's asylum appeal at **R-209**, compared with Extracts from Drive2.com including photos of a damaged Toyota Highlander, **R-189**; and Abdulmajidov Asylum Appeal Statement dated 26 February 2024, C-237, para. 62(i).

connection with the assault alleged (the knee x-ray examination protocol),[1769] or are patently forged (the Purported Forensic Report).[1770] In short, the Tribunal cannot find that any of these alleged assaults occurred on the balance of probabilities.

657. As to the extension of FPS to legal protection and security, Mr Bahari relies on the same authority previously cited, but he does not make reference to the more recent authority which supports Azerbaijan's position. In *Gabriel Resources v Romania*, the tribunal said "*a good faith interpretation of the meaning of the term 'full protection and security' leads to the conclusion that, as in the case of FET, it is an autonomous norm that must be interpreted according to its terms and the circumstances of the individual case*".[1771] The tribunal cogently went on to explain why the term was limited to physical protection as follows:

> […] although the use of the word "full" makes the term broad, the Tribunal does not consider that this protection has evolved to include legal or commercial protection. This is because legal protection is in any event covered by FET and there would have been no purpose served in including two standards with exactly the same scope. Further, the inclusion of commercial protection within the scope of the BIT and in particular the FPS provision would significantly lower the requirements for establishing liability and run counter to the objective of the BIT, which is to protect investors and investments from conduct that is wrongful under international law and not under domestic law. Moreover, the inclusion of an obligation to protect investors from commercial harm caused by third parties is an obligation that would be impossible for any State to fulfil.[1772]

658. Even if, contrary to Azerbaijan's primary submission, the Tribunal was to consider FPS to extend to legal protection, Mr Bahari's case fails. Insofar as the authorities Mr Bahari cites confirm that FPS requires a State to make a functioning system of courts and legal remedies available to an investor,[1773] Mr Bahari cannot explain why the allegedly threatened individuals *did not even try* to bring a claim in the Azerbaijani courts on Mr

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1769 *See* Respondent's Response to Application for Provisional Measures dated 5 April 2024, paras 45-47.

1770 *See* Purported Forensic Report dated 20 December 2021, **C-238**.

1771 *Gabriel Resources v. Romania (I)*, ICSID Case No. ARB/15/31, Award (8 Mar. 2024), **RLA-271**, para. 874.

1772 *Gabriel Resources v. Romania (I)*, ICSID Case No. ARB/15/31, Award (8 Mar. 2024), **RLA-271**, para. 874.

1773 *Frontier Petroleum v Czech Republic*, PCA Case No. 2008-09, Final Award (12 Nov. 2010), **CLA-123**, para. 273.

Bahari's behalf. Mr Bahari says that this "*should not be required of Mr. Bahari* […] *when counsel's efforts were met with harassment and intimidation*",[1774] but this is insufficient. There is no evidence to suggest that had they tried, they would have been foreclosed – to the contrary, the available documentary record in relation to the Ayna Sultan proceedings demonstrates precisely the opposite.

659. Further, irrespective of the content of the standard (physical or legal), FPS cannot require, as Mr Bahari claims, that Azerbaijan undertake positive steps to address the alleged seizure of Mr Bahari's investments in the manner he claims.[1775] Both authorities upon which Mr Bahari relies for this submission have no application to the facts of this case. The tribunal in *Biwater v Tanzania* only said was that the respondent *State's* positive action in removing management from office and seizing the premises amounted to a breach of the FPS standard.[1776] There is no such analogous conduct here, where Mr Bahari relies on various ministries and agencies *inaction* or "*administrative action*[]"[1777] to establish a breach of FPS.

660. He also relies on *Ampal v Egypt*, but in that case the tribunal determined that in the context of 13 third party attacks on the Trans-Sinai Pipeline, the respondent's State security forces had failed to "*to take any concrete steps to protect the Claimants' investment*",[1778] including because they reacted to the attacks "*months later*", adopting measures to heighten the security of the pipeline which were "*seldom implemented*", and, in one case, despite have notice that saboteurs were laying explosives, the security forces "*refused to mobilize*".[1779] Again, the inaction Mr Bahari alleges in this case bears no relation to *Ampal*.

661. Finally, Mr Bahari offers no substantive rebuttal to the point Azerbaijan made in the Defence that Azerbaijan had no awareness of what allegedly happened to his investments (a requirement for breach of FPS, as he accepts).[1780] He asserts only that

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1774 Reply, para. 1067.

1775 Statement of Claim, paras 569-572; Reply, para. 1074.

1776 *Biwater v Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008), **CLA-127**, para. 731.

1777 Reply, para. 1074.

1778 *Ampal-American v. Egypt*, Decision on Liability and Heads of Loss (21 Feb. 2017), **CLA-136**, para. 290.

1779 *Ampal-American v. Egypt*, Decision on Liability and Heads of Loss (21 Feb. 2017), **CLA-136**, paras 287-288.

1780 *See* Defence, para. 411.

this submission "*beggars belief*", without identifying how it could be said that Azerbaijan was aware.[1781] This empty assertion obviously does not suffice to make good his claim.

III. AZERBAIJAN HAS NOT EXPROPRIATED MR BAHARI'S INVESTMENTS

662. Mr Bahari's relatively brief legal submissions on expropriation comprise a series of haphazard comments with no legal rigour. He first butchers his submissions on the relevant expropriation date, claiming that it is "*highly likely*" that the expropriation occurred "*by 1 January 2003*",[1782] and then asserts without analysis that the expropriation "*cannot be disputed*" on the basis that it is "*clear*[]" that Azerbaijan's "*threats and intimidation, combined with his expulsion, prevented Mr. Bahari's ability to control or manage Caspian Fish*".[1783] For the reasons set out below, both submissions are wholly without merit.

663. As to the expropriation date, the insurmountable temporal difficulties with Mr Bahari's case are addressed above. Mr Bahari himself concedes that events prior to the Treaty entering into force are "*prima facie incapable of forming the evidentiary basis for a Treaty claim*",[1784] but claims that 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*".[1785] Mr Bahari fails, however, to explain this alleged "*context*", or particularise the acts which are said to comprise the post-entry into force "indirect expropriation". That is because there is no relevant context, and there are no such acts.

664. He refers to a series of allegedly "*known facts*"[1786] which pre-date the Treaty's entry into force to conclude that "*in mid-June 2002 all parties involved considered that Mr. Bahari effectively retained his rights to and control of Caspian Fish*".[1787] Nothing

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1781 Reply, para. 1076.

1782 Reply, para. 1090.

1783 Reply, para. 1091.

1784 Reply, para. 1084.

1785 Reply, para. 1084.

1786 Reply, para. 1085.

1787 Reply, para. 1086.

could be further from the truth, and the "facts" Mr Bahari recites are a warped and inaccurate summary of the terms of documents on the record:

(a) First, he claims that "*on Azerbaijan's own evidence and documents, Caspian Fish LLC was incorporated and operated without Mr. Bahari's knowledge or involvement*".[1788] This is a bizarre submission that is totally divorced from reality. Despite Mr Bahari's baseless claims of forgery (addressed above), the documents state the *precise opposite* of what Mr Bahari claims: all evidence Azerbaijan has submitted in connection with the LLC shows Mr Bahari's active involvement and participation in its establishment. Mr Bahari further claims that Azerbaijan "*acknowledged and adopted*" the incorporation of the LLC, but the suggestion that routine registration or approvals amount to an "adoption" or "acknowledgment" is untenable for the reasons set out in the Defence.[1789]

(b) Mr Bahari claims that "*it is Azerbaijan's case 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*".[1790] This submission is nonsensical. It ignores or denies the reality of the State border records, which show Mr Bahari leaving Azerbaijan on 24 December 2001.[1791] It simultaneously suggests that Mr Bahari's version of events (being that he left earlier than December) means that the taking of Caspian Fish occurred in 2001. Further, even if any sense could be made of this submission, it does not explain why the taking would be said (on Azerbaijan's case) to have occurred only *after* the Treaty entered into force on 20 June 2002, as opposed to before, in the first half og 2002.

(c) Mr Bahari's incorrect interpretation of the June 2002 Agreement is that "*Azerbaijan had yet to take full possession or control of Caspian Fish from Mr. Bahari*".[1792] In fact, the plain words of the document clearly show that an agreement had *already* been reached in respect of the purchase of Mr Bahari's

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1788 Reply, para. 1085.

1789 *See* Defence, paras 44-46.

1790 Reply, para. 1085(c).

1791 Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**, p. 3.

1792 Reply, para. 1085(d).

share in BVI Co, and the 2002 Agreement only sought to restructure the remaining payment.[1793]

(d) Mr Bahari repeatedly refers to the 2002 Agreement as a "*forced sale, under duress*",[1794] but he has no answer to the point made in Azerbaijan's Defence that on his own case, this could not have been a forced sale, given he claims he did not acquiesce.[1795] Indeed, on Mr Bahari's case (and the case he pleads in the Statement of Claim), the deprivation from his assets logically occurred *before* the date of the 2002 Agreement, i.e., at the time of his alleged expulsion from Caspian Fish in 2001.[1796]

665. The Reply then asserts with extraordinarily imprecise pleading that as of "*mid-June 2002*", Mr Bahari had "*rights and control… over the physical facility of Caspian Fish*", his "*shareholding via his ownership of 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*".[1797] For the reasons set out above, however, none of these assets are investments within the meaning of the Treaty over which Mr Bahari had rights or control (as of mid-June 2002, or ever):[1798]

(a) Mr Bahari had no right or control over the facility, and he does not (and cannot) identify any basis on which such rights are said to arise.

(b) While he accepts that investments must be made in the territory of the host State, he has no answer to the fact that his shareholding in BVI Co is not an asset in the territory of Azerbaijan.

(c) The Purported Shareholders Agreement says nothing about "*revenues*" and states only that Mr Bahari receives 40% of "*the profits and losses of the company*", i.e. is merely a reflection of equity held by the shareholders in BVI

1793 *See* paragraph 478 above.

1794 Reply, para. 1085(d).

1795 Defence, para. 286.

1796 *See* Statement of Claim, para. 474(iii), 609.

1797 Reply, para. 1086.

1798 *See* PART 2III.B.1 above.

Co, and does not give him any rights to money that are distinct from his shareholding in BVI Co.

666. Mr Bahari glosses over the alleged actions of the State which could be said to comprise expropriatory acts. The critical act, according to the Statement of Claim, was his alleged expulsion.[1799] Given the difficulties it poses with temporal jurisdiction, Mr Bahari attempts to row back from that submission in the Reply, but he simply cannot identify what acts constitute expropriatory acts after the date of his alleged expulsion. He is left claiming that his inability to do so is *Azerbaijan's* fault, and that "*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*".[1800] Once again, this is bare submission, made without reference to authority or any attempt to apply it to the facts. Mr Bahari does not identify what it is said that Azerbaijan is hiding or denying, or what insight or knowledge is said to be missing. For the reasons set out above, these bare submissions will not suffice to discharge Mr Bahari's burden of proof.

667. Mr Bahari describes *Biloune v Ghana* as a "*highly similar expropriation*"[1801] but that is an absurd comparison, where the rights in question in that case concerned concession rights under a contract with the State. Mr Bahari attempts to downplay the factual distinction, arguing that "*what is dispositive is whether there was a sovereign act to prevent Mr. Bahari from availing his rights*".[1802] That is a statement of the obvious, and Mr Bahari does not rely on any particular passage from *Biloune* to show the alleged "*similar*[ity]" with the present case. In *Biloune*, a municipal government of the State issued a stop work order against the construction under the second claimant's contract with the State, ordered a demolition, and subsequently arrested and detained the first claimant without charge, eventually deporting him.[1803] Nothing in the facts of the present case comes close.

1799 *See* Statement of Claim, para. 474(iii), 609.

1800 Reply, para. 1092.

1801 Reply, para. 1094.

1802 Reply, para. 1094.

1803 *See Biloune v Ghana*, UNCITRAL, Award on Jurisdiction and Liability (27 Oct. 1989), **CLA-140**, para. 79.

668. Mr Bahari continues to assert that an expropriation can be established on the basis of "*Azerbaijan's omissions*", which he alleges "*were sovereign interferences with Mr. Bahari's rights*".[1804] Mr Bahari does not particularise any further what those alleged omissions are, and he offers no rebuttal of the points made by Azerbaijan in the Defence.[1805] The Reply accordingly takes this submission no further.

669. Finally, Mr Bahari asserts, seemingly as an afterthought, that "*Caspian Fish was controlled by Messrs. Aliyev and Heydarov*" and that "*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*".[1806] This appears to be a point about attribution, and perhaps is Mr Bahari's way of saying that the relevant expropriatory acts were the alleged acts of Messrs Aliyev and Heydarov. For the reasons explained above, that submission has no merit, and the Allan & Makarenko Report is not relevant evidence. To the extent Mr Heydarov (and indeed Mr Aliyev, although Mr Aliyev's involvement in Caspian Fish is not admitted) retained an interest in Caspian Fish, that is because he was the initial investor in it, and not because the asset was unlawfully transferred to him by some act of the State.

IV. DAMAGES AND QUANTUM

A. Bahari is not entitled to damages

670. There is no disagreement between the parties as to the standard of full reparation under customary international law applicable in the event of a breach of the Treaty.[1807] However, as set out below, Mr Bahari's position on quantum suffers from numerous deficiencies that, taken together, establish that he is not entitled to damages at all, or in the alternative, that his total requested award in damages, including interest, must be reduced very significantly.

1. There is no causal link between Azerbaijan's allegedly wrongful acts and Mr Bahari's alleged loss

671. The parties are agreed Mr Bahari is required to show not only "but-for" causation, but also that the State's actions were the proximate cause of his alleged injury, which

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1804 Reply, para. 1095.

1805 Defence, paras 416-420.

1806 Reply, para. 1096.

1807 Statement of Claim, paras 621-624; Defence, para. 427; Reply, para. 1099.

includes that there was no "intervening cause" for the damage.[1808] As set out in the Defence and above, Mr Bahari cannot establish that any alleged loss of his results from Azerbaijan's conduct, as opposed to the conduct of private third parties.[1809]

672. Mr Bahari argues that a lack of causation is "*not a viable excuse*" on the basis that "*Azerbaijan engaged in and supported the unlawful treatment of Mr. Bahari and his investments at every step of the way*",[1810] but no factual basis for this assertion is particularised. While Mr Bahari appears to claim that finding the alleged actions of Messrs Heydarov and Aliyev is to be actions of Azerbaijan "*is not strictly necessary in order to find Azerbaijan liable under the* [Treaty]",[1811] he expends considerable effort attempting to link their conduct, by inference, to Azerbaijan, including by submitting the Allan & Makarenko Report. For the reasons set out above, these submissions are hopeless. Mr Bahari cannot establish that the acts of third parties taken in the BVI or in respect of his shares in BVI Co are attributable to Azerbaijan.

673. Insofar as Mr Bahari intends to refer to the tenuous involvement of Azerbaijan's authorities in following routine administrative procedures (including in relation to Mr Bahari's carpets),[1812] Azerbaijan's alleged attempts to prevent Mr Bahari from accessing his investments,[1813] or the alleged failures of Azerbaijan's Courts (in relation to Ayna Sultan and Coolak Baku), for all the reasons set out in the Defence and above, such allegations have no factual basis.[1814] Further and in any event the actions of Azerbaijan (however tenuously involved) are not the proximate cause of any alleged loss, which results from his very own actions (including the sale of his interest in Caspian Fish, or his failure to continue the Ayna Sultan appeal), or the actions of private third parties.

1808 Reply, para. 1099, agreeing with the principles set out in Defence, paras 425-427; *Lauder v Czech Republic*, UNCITRAL, Final Award, 3 Sep. 2001, **RLA-174**, para. 234.

1809 Defence, paras

1810 Reply, para. 1110.

1811 Reply, para. 14.

1812 *See* e.g., Statement of Claim, section V.2, 3 and 4; Reply, para. 549.

1813 Reply, Part II.IV.

1814 *See* PART 2II.B.2, PART 3VI, PART 3IV and PART 3II.B above.

2. Alternatively, Mr Bahari's conduct contributed to his loss

674. In the alternative, should the Tribunal decide that any conduct attributable to Azerbaijan was the direct legal cause of any alleged loss suffered by Mr Bahari, the overall award should be reduced to account for Mr Bahari's own contribution to his loss in this case.

675. The principle of contributory fault forms a part of the customary international law of full reparation.[1815] Article 39 of the ILC Articles, entitled "Contribution to the injury" provides:

> In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought.[1816]

676. The commentary to article 39 makes clear that it addresses situations where damage has been caused by a State "*but where the* (…) *individual victim of the breach*[] *has materially contributed to the damage by some wilful or negligent act or omission*."[1817] This principle and standard has found application in investor-State jurisprudence, including authorities upon which the Claimant relies.[1818]

677. While Azerbaijan denies that any of the impugned conduct of private third parties can possibly be attributable to Azerbaijan, if and to the extent the Tribunal finds that Azerbaijan has caused the Claimant any damage, Mr Bahari's conduct in relation to his alleged investments more than meets the standard of material contribution to such damage by wilful or negligent acts or omissions:

(a) As set out above, Mr Bahari mismanaged the construction of Caspian Fish.[1819] His exit was the natural result of that mismanagement being discovered by Mr Heydarov. The evidence also indicates that Mr Bahari dishonestly overcharged

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1815 *Occidental*, paras. 665-668.

1816 ILC Articles, **CLA-37**, art. 39

1817 ILC Articles Commentary, **CLA-37**, art. 39 commentary, para. 1.

1818 *MTD v Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, **CLA-54**; *Occidental v Ecuador (II)*, ICSID Case No. ARB/06/11, Award, 5 Oct. 2012, **RLA-308**; *Yukos Universal v Russia*, PCA Case No. 2005-04/AA227, Final Award, 18 Jul. 2014, **CLA-174**.

1819 PART 3III.C.1.

Mr Heydarov, consistent with a pattern of conduct employed by Mr Bahari in relation to his other business projects, as set out in the Defence and above.[1820]

(b) In relation to Coolak Baku and Shuvulan Sugar, the documentary record evidences that Mr Bahari failed to perform his obligations under the 1998 Agreement, as well as engaging in dishonest practices by forging the signatures of his business partners, and handing over control of Coolak Baku to a third party, Mr Malik Aliyev, without the consent of ASFAN.[1821]

(c) As for Ayna Sultan, Mr Bahari's own negligence caused him to fail to pursue the Ayna Sultan appeal.

678. The deal Mr Bahari struck with Mr M Aliyev to manage Coolak Baku is comparable to the claimant's conduct in *Occidental v Ecuador (II)*, for which the Tribunal substantially reduced the award of damages.[1822] There, the claimant unlawfully transferred rights in the investment to a third party. While the Tribunal found that the State's conduct was disproportionate and an expropriatory act, the claimant's conduct had provoked the State, holding that "*the Claimants should pay a price for having committed an unlawful act which contributed in a material way to the prejudice which they subsequently suffered*".[1823]

679. In *Yukos Universal v Russia*,[1824] the tribunal found that Yukos engaged in "*sham-like*"[1825] use of tax optimisation schemes and that this justified a significant reduction in the award of damages in that case. The tribunal reasoned that while the State's actions were not directly related to Yukos's use of tax optimisation schemes, Yukos's conduct "*made it possible for Respondent to invoke and rely on that conduct as a justification of its actions*".[1826] Thus, the investor's fault "*may be unrelated to the*

1820 *See* Defence, paras 268-274.

1821 *See*, e.g., Letter from ASFAN Ltd to Mr Bahari, 22 Jul. 1998, **R-27**; Defence, para. 208; Letter from ASFAN Ltd to Mr Bahari, 20 Sep. 1999, **R-28**; Defence, para. 214.

1822 *Occidental v Ecuador (II)*, ICSID Case No. ARB/06/11, Award, 5 Oct. 2012, **RLA-308**, paras 662-685.

1823 *Occidental v Ecuador (II)*, ICSID Case No. ARB/06/11, Award, 5 Oct. 2012, **RLA-308**, paras 680.

1824 *Yukos Universal v Russia*, PCA Case No. 2005-04/AA227, Final Award, 18 Jul. 2014, **CLA-174**.

1825 *Yukos Universal v Russia*, PCA Case No. 2005-04/AA227, Final Award, 18 Jul. 2014, **CLA-174** para 1611.

1826 *Yukos Universal v Russia*, PCA Case No. 2005-04/AA227, Final Award, 18 Jul. 2014, **CLA-174** para 1614.

wrongdoing of the state, but nevertheless reduce the latter's obligation to pay damages".[1827]

680. As the Tribunal in *Yukos Universal v Russia* explained, tribunals have a "*wide margin of discretion in apportioning fault*".[1828] In *MTD v Chile*, for example, the tribunal considered it appropriate to reduce the overall award by 50% to account for the claimant's contributory fault.[1829] For the reasons set out above, it would also be appropriate to reduce any award by 50% in this case by reason of Mr Bahari's conduct.

3. Mr Bahari's use of a 1 January 2003 *ex ante* valuation date shows that he seeks to claim for pre-entry into force alleged breaches

681. As a preliminary point, Mr Bahari's suggestion that "*Azerbaijan's position is that bad acts did occur, but they stopped before 20 June 2002*"[1830] is an inappropriate mischaracterisation of Azerbaijan's Defence. As Mr Bahari well knows, Azerbaijan makes no admission that "bad acts did occur". There is simply no evidence of it. Azerbaijan's position in relation to Mr Bahari's valuation case is obviously (and expressly) premised in the alternative, should the Tribunal find there has been a breach of Treaty contrary to Azerbaijan's Defence.[1831]

682. Mr Bahari's reply concerning his arbitrarily selected valuation date of 1 January 2003 confirms that, despite the empty words of protest, Mr Bahari does in fact attempt to claim for alleged events that took place before the Treaty came into force.[1832] For the reasons set out above, any expropriation plainly occurred before the Treaty entered into force, and Mr Bahari has made out no proper case of continuing breach.[1833]

683. As to Caspian Fish and the expropriation claim, Mr Bahari misapplies the concept of "indirect" expropriation. He claims that "*it is the proverbial 'straw that breaks the*

1827 I. Marboe, "Chapter 3, Valuation Standards and Criteria" in *Calculation of Compensation and Damages in International Investment Law* (2017), **RLA-310** para. 3.244.

1828 *Yukos Universal v Russia*, PCA Case No. 2005-04/AA227, Final Award, 18 Jul. 2014, **CLA-174**, para. 1600.

1829 *MTD v Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, **CLA-54** para. 246.

1830 Reply, para. 1109.

1831 Defence, para. 424.

1832 Defence, para. 434.

1833 *See* PART 2III.A above.

camel's back' that tilts the balance to form an indirect expropriation",[1834] but he fails to identify the cumulative measures that lead to his conclusion that 1 January 2003 is the date "*immediately prior to the first act in the series*" of wrongful acts.[1835] For the reasons set out above, he cannot.[1836] Instead Mr Bahari resorts to blaming Azerbaijan for his inability to do so, claiming that 1 January 2003 "*is a reasonable date in circumstances where Azerbaijan has deprived, and continues to deprive, both Mr. Bahari and the Tribunal of knowledge*".[1837] For the reasons set out above, these tired submissions are not only factually unfounded, but do not in any event discharge Mr Bahari's burden of proving that a breach of Treaty occurred and when it occurred.

684. As to Mr Bahari's other alleged investments and the breach of FET claim, Mr Bahari's use of 1 January 2003 as the valuation date also attempts to circumvent the temporal limitations of the Treaty. First, by retreating from his expropriation claims, Mr Bahari has absolved himself of the requirement to justify his *ex ante* valuation date in the context of a taking, despite claiming nebulously that he "*maintains that he conduct of Azerbaijan*[…] *resulted in an unlawful taking of all his investments*".[1838] In any event, he offers no authority at all to support his assertion that he "*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*".[1839] In principle, a claim for a "continuous" breach of treaty such a FET, is the date of the award.[1840]

B. The quantum of Mr Bahari's alleged loss is unproven

685. Mr Bahari alleges that he has proven the quantum of his loss on the basis of: (i) a "market approach" for Caspian Fish, his carpets and Ayna Sultan;[1841] and/or (ii) an

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1834 Reply, para. 1109.

1835 Statement of Claim, para. 633.

1836 *See* paragraphs 163 to 164 above.

1837 Reply, para. 1108.

1838 Reply, para. 1079.

1839 Reply, para. 1110.

1840 *See LSG Building Solutions v Romania*, ICSID Case No. ARB/18/19, Decision on Jurisdiction, Liability and Principles of Reparation (11 July 2022), **RLA-324**, para. 1326; I. Marboe, "Chapter 3, Valuation Standards and Criteria" in *Calculation of Compensation and Damages in International Investment Law* (2017), **RLA-310**, para. 3.324.

1841 Reply, Part VII.II.C.

"amounts invested approach" for Caspian Fish, Coolak Baku and Shuvalan Sugar.[1842] For all of the reasons set out in the Defence and further below, he has in fact fallen far short.

1. Financial information for Caspian Fish is not available nor necessarily reliable

686. Mr Bahari complains that "*a central theme*" of Azerbaijan's critique of the market approach with respect to Caspian Fish "*rests on a misleading complaint that there is little to no financial information about Caspian Fish that would support Secretariat's valuation*".[1843] It is unclear on what basis Mr Bahari asserts that this complaint is "*misleading*", given he himself accepts in the very next sentence of the Reply that it is true that there is little financial information about Caspian Fish, as he complains that "*the scarcity of this information is exclusively a situation of Azerbaijan's own, purposeful, doing*".[1844] As explained below, this groundless assertion is denied in its entirety. That notwithstanding, Mr Bahari does not explain why the lack of information (even if Azerbaijan's fault, which is denied) would prevent Secretariat from producing a reliable valuation. He rightly does not suggest that any adverse inference can or should be drawn from the lack of available information.

687. Put simply, as Dr Shi explains, "[redacted]".[1845]

688. As to Mr Bahari's claim that it is Azerbaijan who has "*maintain*[ed] *this veil of secrecy and obfuscation over Caspian Fish by failing to adhere to its obligation to comply with document production*",[1846] Mr Bahari mistakes Caspian Fish for Azerbaijan, wrongly believing the document production obligations of Azerbaijan extend to the documents of a private third party, Caspian Fish. These points are addressed above.

689. As to the documents which have been made available to Mr Bahari by disclosure of documents held in Azerbaijan's own records, or by voluntary disclosure from Caspian

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1842 Reply, Part VII.II.D.

1843 Reply, para. 1113.

1844 Reply, para. 1113.

1845 Second Shi Report, para. 1.39.

1846 Reply, para. 1115.

Fish, Mr Bahari complains that the data is "*truncated, facially untrustworthy, and most likely comprised of at least some forged documents and inauthentic financial data*".[1847] Azerbaijan accepts that it does not hold, and Caspian Fish has not produced, complete (or necessarily reliable) financial information on its operations. It strongly denies, however, that there are any "forged documents" in the production that has been provided for the reasons set out at paragraphs 499 to 504 above.

690. That notwithstanding, Secretariat misunderstands and misinterprets the production that has been provided to arrive at erroneous conclusions that are corrected in the Second Shi Report.[1848] The valuation experts are otherwise largely agreed that the various financial information produced in the disclosure phase of the arbitration cannot be used for the purposes of a market valuation as follows:

(a) The profit tax declarations do not cover the relevant period for Secretariat's ex ante valuation date of January 2003, and neither expert uses them in their assessment of Caspian Fish's fair market value as at January 2003.[1849] The Second Shi Report corrects, however, a fundamental error in the Second Secretariat Report which lead Secretariat to the inaccurate conclusion that the State Tax Service did not provide profit tax declarations for a period of 13 years (2001-2013).[1850] In fact, the State Tax Service provided profit tax declarations for a continuous period from 2006 to 2023, and Secretariat's failure to appreciate this caused them wrongly to allege a number of "[redacted]" in connection with these declarations. This issue is addressed in the Second Shi Report.[1851]

(b) Given Dr Shi does not have sufficient information to assess the exact amount of Caspian Fish's net debt as at January 2003 nor its available cash, she has adopted the same zero net debt assumption as Secretariat.[1852] Dr Shi notes,

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1847 Reply, para. 1115.

1848 Second Shi Report, para. 1.37 and Section 4D.

1849 Second Shi Report, para. 4.40. Azerbaijan further notes that profit tax declarations submitted to the State Tax Service prior to 2018 are in any event less reliable. In 2018, increased professionalism was introduced into the State Tax Service and there was more scrutiny on tax reporting.

1850 Second Shi Report, para. 4.30 and Table 4.1.

1851 Second Shi Report, paras 4.31-4.38.

1852 Second Shi Report, . 5.80.

however, that Secretariat's analysis of the Caspian Fish loan agreements is incomplete and inaccurate,[1853] and it is possible based on the documentary record that Caspian Fish had a positive net debt position as at January 2003.

(c) The experts are agreed that the VAT filings are not useful,[1854] and neither have used the export data.[1855]

2. It is not possible to reliably adopt the market approach for Caspian Fish, but in any event Secretariat grossly overstates its market value

691. Secretariat maintains the market valuation of Mr Bahari's interest in Caspian Fish as between "[redacted]" as at 1 January 2003[1856] and "[redacted]" as of the current date.[1857] To apply the "market approach", Secretariat identifies publicly traded companies it considers to be comparable to Caspian Fish to compute an enterprise value to processing capacity multiple to apply to Caspian Fish's processing capacity.[1858] For the reasons set out in the Shi Reports, Secretariat's market valuation is grossly overstated and thoroughly unreliable.

692. Dr Shi continues to consider that due to the lack of sufficient contemporaneous financial and operational information on Caspian Fish, it is not possible to arrive at a robust estimate of the fair market value of Caspian Fish as at January 2003.[1859] However, if Secretariat's comparables-based market approach is to be adopted, Dr Shi considers the EV / revenue multiple of Secretariat's ex ante comparable companies would be a more appropriate multiple than the EV / capacity multiple (though less ideal than earnings or cash flow-based multiples). The application of an EV / revenue multiple reduces

1853 Second Shi Report, section 4D.3.

1854 Second Shi Report, para. 4.51.

1855 Second Shi Report, para. 4.54.

1856 Reply, para. 1155; Second Secretariat Report, para. 5.48.

1857 Second Secretariat Report, para. 8.10.

1858 First Secretariat Report, para. 2.16.

1859 Second Shi Report, paras 1.39, 5.6.

Secretariat's estimate of the enterprise value of Caspian Fish as at 1 January 2003 to USD 3.1 million and Mr Bahari's corresponding 40% interest to USD 1.3 million.[1860]

693. The following paragraphs address briefly why Secretariat's "market approach" is deeply flawed.

694. First, Dr Shi criticised the companies identified by Secretariat on the basis that they were not in fact comparable to Caspian Fish. Secretariat's response is that "[redacted]",[1861] but no explanation for why her criteria are [redacted]" is given. As Dr Shi explains, the criteria she used "[redacted]".[1862] This includes considering: (i) the geographic location and stage of development of the countries in which the comparable companies are based; (ii) the stage of development and size of the comparable companies; and (iii) the fact that the comparable companies were more vertically integrated than Caspian Fish.[1863]

695. Dr Shi further notes that the estimates of the comparable companies' EV/capacity multiples prepared by Secretariat[1864] differ amongst themselves by a factor of over 5000x, indicating that the comparable companies themselves were not comparable to each other and therefore do not provide a reliable basis for valuing Caspian Fish.[1865]

696. Second, Dr Shi disagrees that the EV / capacity multiple is a reliable metric for valuing a fish processing company. Indeed, Secretariat accepts that earnings or cash flow multiples are "[redacted]", but rely on capacity as "[redacted]".[1866] That position is a *non sequitur*. The absence of financial information for Caspian Fish does not render an EV / capacity multiple a reliable valuation metric.[1867]

1860 Second Shi Report, para. 5.6; section 5B.

1861 Reply, para. 1148.

1862 Second Shi Report, para. 5.8.

1863 Second Shi Report, section 5B.1. See also e.g. Sultanov Statement, para. 36 and Second Hasanov Statement, para. 77.

1864 Second Secretariat Report, para. 5.47.

1865 Second Shi Report, para. 5.11.

1866 Reply, para. 1149; Second Secretariat Report, para. 5.30.

1867 Second Shi Report, para. 5.54.

697. As Dr Shi explains, "[redacted]".[1868] This is highlighted by the broad range of EV / capacity multiples for the allegedly comparable companies, estimated by Secretariat to range from 491x to 6,102x, which demonstrates that the value of fish and seafood processing companies is not primarily driven by their capacities.[1869]

698. Moreover, as to the capacity data itself that is relied upon by Secretariat:

(a) The data used by Secretariat for Caspian Fish is based on the processing capacity figure listed on Caspian Fish's website,[1870] which, for the reasons set out in the evidence accompanying the Defence, is not reliable.[1871] Mr Bahari claims that "*Azerbaijan's assertion that figures on the Caspian Fish website are unreliable is entirely unsupported*",[1872] but that submission fails to engage with the testimony of Azerbaijan's witnesses who were working in Caspian Fish's management at the time. The Second Secretariat Report relies on a number of press articles which repeat the figures from the website, but for the reasons explained by Messrs Kerimov and Hasanov, those figures were not realistic.[1873] As Mr Sultanov explains, installed processing capacity [redacted]".[1874]

(b) While Secretariat acknowledges that they have inconsistently applied the capacity figures of comparable companies that they have used, given some concern processing capacity, others concern final product capacity, and some do not indicate which type of capacity is being described at all,[1875] they do not make any correction to their analysis. As the Second Shi Report explains,

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1868 Second Shi Report, para. 5.53; First Shi Report, para. 4.29.

1869 Second Shi Report, para. 5.57.

1870 *See* Second Secretariat Report, section 3.B(vi).

1871 *See* First Hasanov Statement, para. 23; Second Hasanov Statement, para. 41; First Kerimov Statement, para 15(c); Second Kerimov Statement, paras 34-35.

1872 Reply, para. 1152.

1873 Second Kerimov Statement, para. 34; Second Hasanov Statement, para. 41.

1874 Sultanov Statement, para. 35.

1875 Second Secretariat Report, paras 5.34-5.35.

Secretariat's explanation for why they do not change their analysis is not properly particularised and in any event inconsistent with their first report.[1876]

699. As for the "ex post" valuation, first, Dr Shi considers that there should be no difference between the actual and the counterfactual scenarios, since there is no reason to assume the Claimant would have managed Caspian Fish differently in the counterfactual scenario relative to its actual performance. She notes that the issues that beset Caspian Fish and which have challenged the industry generally are independent of any alleged breach by Azerbaijan.[1877] Second, Dr Shi considers that given Caspian Fish's fish processing business is no longer operational and there is no information on its expected future performance, [redacted]".[1878] She has, however, been provided with a copy of a valuation report that Azerbaijan obtained from Caspian Fish's archives prepared in October 2022 determining the market value of its fixed assets (the **October 2022 Valuation**).[1879] On the basis of the October 2022 Valuation, Dr Shi considers it reasonable to conclude that the market value of Mr Bahari's 40% interest in Caspian Fish's residual assets today would not be more than USD 2.8 million.[1880]

700. Finally, Azerbaijan notes that the excessiveness of Secretariat's estimates is demonstrated by a comparison with the Azerbaijani domestic fish market as a whole. As noted by Mr Parvizi, Azerbaijan does not have a culture of consuming fish nor does it have large exports.[1881] In 2023, the entire Azerbaijani fishing sector's contribution to GDP was around USD 126.8 million.[1882] In comparison, the annual revenue implied from Secretariat's *ex post* valuation of Caspian Fish is more than three times greater than this figure, calculated at between USD 380.4 – 488.8 million.[1883] In the light of

1876 Second Shi Report, paras 5.65-5.69.

1877 Second Shi Report, paras 6.33-6.36.

1878 Second Shi Report, para. 6.30.

1879 Extracts from Valuation Report for Caspian Fish prepared by AZ Valuation Service dated 28 October 2022, **R-289**.

1880 Second Shi Report, para. 6.37.

1881 Parvizi Report, p. 13.

1882 Parvizi Report, p. 12, 23.

1883 Second Shi Report, footnote 506.

this objective measure of the value of the entire fishing sector's value, Secretariat's estimates for the value of Caspian Fish are implausible.

3. A market approach to the valuation of the carpets should be based on the purchase price of the carpets

701. Following the disclosure of photographs of the 211 carpets granted certificates for export,[1884] the Second Iselin Report significantly reduces its assessment of the market value of the carpets listed in the Ledger by a range of approximately USD 7.5 – 11 million in the "[redacted]",[1885] and USD 1.8 – 2.7 million in the "[redacted]".[1886] These reductions lower the overall value of Mr Iselin's assessment of the value of almost half of Mr Bahari's carpets as listed on the Ledger by 89-98%[1887] and approximately 60% overall.[1888]

702. This significant reduction reflects the fact that as Mr Iselin acknowledged in his first report, his decision to value these carpets based on international auction prices leaves more than a "[redacted]".[1889] To recall, Mr Iselin adopts a "[redacted]" or "[redacted]" value to assess the value of Mr Bahari's carpets,[1890] but noting that he is unable to undertake either of the "[redacted]" of physical inspection or the use high-resolution photographs,[1891] he applies "[redacted]" to arrive at a "[redacted]" retail value based on what he described as "[redacted]", being "[redacted]".[1892] As Azerbaijan's carpet expert, Mr Rza Hasanov, explains, this unconventional approach is deeply flawed:

[redacted]

1884 Photographs of 211 Carpets, **C-430**.

1885 *See* Second Iselin Report, section 4, para. 33 ([redacted]").

1886 *See* Second Iselin Report, section 4, para. 33 ([redacted]").

1887 Second Shi Report, para. 3.6.

1888 *See* Second Iselin Report, section 4, para. 33.

1889 First Iselin Report, para. 49.

1890 First Iselin Report, para. 44.

1891 First Iselin Report, paras 40-43.

1892 First Iselin Report, paras 49-52.

[redacted].[1893]

703. Thus, Mr Hasanov considers "[redacted]".[1894] Mr Hasanov maintains this opinion in his second report,[1895] and Dr Shi accordingly maintains her conclusion that the market value of the carpets listed in the Ledger is USD 202,037 in 2003 and USD 145,915 in 2023.[1896]

704. Mr Iselin offers very little substantive rebuttal to these conclusions. He notes that Mr Hasanov and him "[redacted]".[1897] Yet despite this, he claims that he "[redacted]" because it is a "[redacted]" than using the price listed in the Ledger.[1898] This latter opinion is seemingly based on a single, repeated assertion: that "[redacted]".[1899] This incredible conclusion is untenable:

(a) Just because Mr Bahari does not positively address the relevant column of the Ledger does not mean that these were not the purchase price of the carpets. To the contrary, his silence should be considered as an *acceptance* that these were the purchase prices. Mr Iselin's (and indeed Secretariat's)[1900] failure to consider this possibility as independent experts is baffling. Moreover, Mr Iselin does not opine at all on whether the use of the purchase price is an appropriate valuation methodology, if the data is available. Presumably, he considers that it is.

1893 First Hasanov Report, para. 49.

1894 First Hasanov Report, para. 51.

1895 Second Hasanov Report, section V.D.

1896 Second Shi Report, table 3.1.

1897 Second Iselin Report, para. 21.

1898 Second Iselin Report, para. 24.

1899 Second Iselin Report, paras 19, 23 and 26.

1900 *See* Second Secretariat Report, pars 6.10, 6.12 and 9.3.

(b) Mr Iselin's own assessment of the 211 photographs lead him to conclude that these carpets "[redacted]" to carpets that are "[redacted]".[1901] Consistently with this, Mr Hasanov notes that his assessment of the 211 photographs lead him to conclude that the average price of these carpets was "[redacted]",[1902] which corresponds to an average price of USD 450 in 2003 and USD 325 in 2023 for the *all* the carpets listed in the Ledger using Mr Hasanov's valuation.[1903] The Ledger itself further contains no distinction between the carpets listed in it which would lead Mr Hasanov to believe that some were of significantly higher value internationally.[1904]

(c) Despite this, Mr Iselin has not carried out any assessment of the purchase prices listed in the Ledger or considered the fact that the 211 photographs correlate with the price listed. Instead, he doggedly insists that there must have been "[redacted]".[1905] Leaving aside the fact that there is no evidence that the remaining carpets on the Ledger were refused export at all, let alone because they were valuable, Mr Iselin's deliberate disregard for the price listed column of the Ledger and brings into question his independence.[1906]

705. Faced with the plain evidence, Mr Bahari resorts to his usual smokescreen of suggesting that because Mr Hasanov now works at a state-owned company, this "*raises obvious questions about his qualifications as an independent expert*".[1907] What exactly these questions are is not particularised; they are certainly not "obvious" to Azerbaijan or Mr Hasanov.[1908] Insofar as Mr Bahari is suggesting that the evidence of any person

1901 Second Iselin Report, para. 28(2).

1902 Second Hasanov Report, para. 27; Annex B.

1903 Second Hasanov Report, para. 27; Second Shi Report, para. 3.36.

1904 Second Hasanov Report, para. 30.

1905 Second Iselin Report, para. 2.

1906 *See also* Second Shi Report, para. 3.24.

1907 Reply, para. 553.

1908 *See* Second Hasanov Report, para. 13.

connected to the State of Azerbaijan in some way no matter how tenuous is unreliable, that is obviously wrong as a matter of fact and logic. There is no basis for these repeated aspersions and they come across as a desperate and ill-advised attempt to distract from Mr Hasanov's reasonable and legitimate conclusions.[1909]

706. All of the above notwithstanding, there are in any event significant issues with Mr Iselin's approach to valuing the carpets based on international auction prices, as described in the Shi and Hasanov Reports.[1910] Most critically, Mr Iselin's opinion that the appropriate market for the valuation of carpets which "*could not leave the country*"[1911] having not been provided an export certificate ignores the fact that such carpets could only be valued with reference to the market in which they remained: the domestic Azerbaijani market.[1912]

4. A sale document Mr Bahari himself describes as "plainly fraudulent" is an inappropriate basis to adopt a market valuation for Ayna Sultan

707. Having put forward no quantification in respect of Ayna Sultan in his Statement of Claim on the basis that "*information on Ayna Sultan is* [] *not currently available*",[1913] Mr Bahari now claims that a "*reasonable value for the property as of* [the] Ex-*Ante Valuation Date is US$ 235,000*" on the basis of a sale price derived from a transaction disclosed in the Ayna Sultan Court File.[1914] As discussed above, however, that transaction has been characterised by Mr Bahari as "*a plainly fraudulent act*"[1915] and even on Mr Bahari's own case cannot be a reliable basis for a valuation.

708. Further and in any event, Secretariat's conclusion that the USD 235,000 sale price from a transaction dated 6 October 2004 can be transposed onto the 1 January 2003 valuation date is inappropriate, as it ignores the inflation and difference in exchange rate between

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1909 Similar goes for the other weak suggestion by Mr Bahari that Mr Hasanov makes "a number of assertions that call into question his credibility": these critiques are a matter of expert opinion and have nothing to do with the "credibility" of Mr Hasanov: *see* Reply, para. 553(a) and (b), and Mr Hasanov's response at Second Hasanov Report, paras 16-17 (re: laboratory analysis) and 18-19 (re: storage conditions).

1910 *See* First Shi Report, para. 5.14, pp. 50-51; Second Hasanov Report, paras 12, 29-31.

1911 Reply, para 552(b).

1912 Second Hasanov Report, para. 31.

1913 Statement of Claim, para. 659.

1914 Reply, para. 1165; Second Secretariat Report, para. 4.11.

1915 Reply, para. 483.

those dates.[1916] Adjusting for these factors would reduce the value of Ayna Sultan as of 1 January 2003 of USD 214,788.[1917]

5. Mr Bahari has failed to prove the quantum of the sums he claims on "amounts invested" approach

709. First and foremost, Dr Shi maintains that an amounts invested approach is an inappropriate valuation methodology to value Caspian Fish, Coolak Baku or Shuvalan Sugar.[1918] Secretariat offer no response at all to Dr Shi's observations that the cost approach is used to value a different type of asset, particularly where the asset is readily replaceable.[1919] Dr Shi elaborates in her second report that cost approach is accordingly often used to value an individual asset, rather than a business.[1920] Companies established to operate businesses such as Caspian Fish, Coolak Baku or Shuvalan Sugar do not fall within that category. Moreover, even if an "amounts invested" approach was appropriate method for deriving a market value, Secretariat fail to apply Mr Bahari's percentage interest in Caspian Fish and Coolak Baku to their analysis, thereby overestimating his share of their value.[1921]

710. That above notwithstanding, Secretariat maintains the conclusions reached in their first report that "[redacted]", Mr Bahari invested USD 44.4 million in Caspian Fish; and USD 14.99 million in Coolak Baku.[1922] They increase the amount invested in Shuvalan Sugar from USD 3.65 million to USD 6.39 million, based solely on the Ahan Sanat letter discussed above.[1923] Dr Shi maintains that there is only sufficient documentary evidence to support an investment by Mr Bahari of between USD 134,577 to USD 846,822, all in relation to Coolak Baku.[1924]

711. Mr Bahari complaints that Dr Shi's analysis is "*extreme*" and "*suggests* [she] *has not objectively reviewed the evidence and documents included with the Secretariat First*

1916 Second Shi Report, para. 2.74.

1917 Second Shi Report, para. 2.74.

1918 Second Shi Report, para. 1.12.

1919 First Shi Report, paras 3.5-3.6.

1920 Second Shi Report, para. 1.12; *see further* 2.32-2.35.

1921 Second Shi Report, para. 2.36-2.38.

1922 Second Secretariat Report, para. 7.121 and Table 18.

1923 Second Secretariat Report, paras 7.118, 7.121 and Table 18.

1924 Second Shi Report, para. 2.6.

Report".[1925] In fact, the key difference between Dr Shi and Secretariat is that Secretariat draws inferences from limited information. Secretariat's analysis [redacted]", which are either mistaken or inappropriately drawn.[1926] As Dr Shi notes, the drawing of inferences is an exercise reserved for the Tribunal, and not the damages experts.[1927]

712. As to those inferences, Secretariat make unreasonable assumptions which rely on recently created documents and ignore contemporaneous documents:

(a) For all of the reasons set out above and in the Shi Reports,[1928] Secretariat's reliance on the Purported Chartabi Contracts and related documents to evidence the cost of "construction services" (which comprises over half of the alleged amount invested)[1929] is misplaced.[1930] Among other things, it is not apparent whether Secretariat are aware that the Purported Chartabi Contracts are backdated. Their failure to refer to this admission in their second report indicates that they were not. Presumably, their reliance on these documents would differ if they knew these documents were not contemporaneous.

(b) Mr Parvizi has also considered the Purported Chartabi Contract with Caspian Fish[1931] and estimated that the maximum amount spent in Azerbaijan for the scope of work included therein would be approximately USD 4.5 million, with a significant margin for uncertainty.[1932] Even allowing for that uncertainty, the purported construction costs under the Chartabi Contract are over five or six times higher than that benchmarking, which is further indication that figures set out in the Purported Chartabi Contracts are not reliable

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1925 Reply, para. 1170.

1926 Second Shi Report, para. 2.10.

1927 Second Shi Report, para. 2.90.

1928 *See* First Shi Report, paras 2.9, 2.15 and 3.9; Second Shi Report, paras 2.75 to 2.83 and Appendix 2.

1929 *See* Second Secretariat Report, Table 18.

1930 Second Secretariat Report, para. 7.22-7.31.

1931 Purported Chartabi Contract for Caspian Fish dated 10 May 1999, **C-92**.

1932 Parvizi Report, pp. 58-62; Report prepared by Scope Consulting dated 10 October 2024, **BT-39**.

(c) Secretariat adopt an unorthodox approach of tabulating as a percentage the amount invested against documents which identify Mr Bahari's name.[1933] Quite what this is supposed to show is never explained. Mr Bahari's name being on a document does not signify that any payment was made, nor that it was made by him.[1934] Mr Bahari asserts that in respect of Coolak Baku, "*Oxera's rejection of almost all of the amount tabulated*[…] *is inconsistent and irrational considering that Azerbaijan does not challenge Mr. Bahari's status as the sole investor*".[1935] Insofar as "status as the sole investor" is intended to mean that Mr Bahari was the only one who contributed financially to Coolak Baku, that claim is denied for the reasons set out above.[1936] Among other things, it contradicts the statements made in the contemporaneous ASFAN Letters, which Secretariat has also ignored. Moreover, Mr Bahari is wrong that Dr Shi has been inconsistent or irrational. To the contrary, the reason she has found that there is support for investments made by Mr Bahari in relation to Coolak Baku is precisely because of [redacted]".[1937]

(d) As to Caspian Fish, Secretariat claim that "[redacted]".[1938] This position ignores the Atabank Documents which were available to Secretariat, and which are contemporaneous proof that costs were being paid from a Caspian Fish account, rather than by Mr Bahari, and indeed that that Caspian Fish account was putting Mr Bahari in funds to pay suppliers.[1939] All Secretariat has to say about these contemporaneous

1933 *See* Second Secretariat Report, Table 18 ("Claimant Identified on the Supporting Documents (%)").

1934 *See* First Shi Report, appendices 3 and 4; Second Shi Report, appendices 3 and 4.

1935 Reply, para. 1174.

1936 *See* PART 3II.A.

1937 Second Shi Report, para. 2.41.

1938 Reply, para. 1173; Second Secretariat Report, para. 7.16.

1939 *See* First Shi Report, para. 3.9; Second Shi Report, section 2F.

documents is that Mr Bahari's witnesses dispute them.[1940] Secretariat give no explanation for why they have relied on the testimony of Mr Bahari's witnesses and ignored the testimony of Messrs Hasanov, Kerimov, and Zeynalov, who each confirm that they understood Mr Heydarov to be the investor.[1941] That testimony is further corroborated by the testimony of Mr Rudman and a letter issued by Mr Heydarov, explaining his position with respect to this arbitration.[1942]

713. Irrespective of the identity of the investor, Dr Shi considers that there is sufficient evidence to support of investment costs in relation to Caspian Fish of between USD 11.4 million and 14.1 million based on: (i) an estimated construction cost of USD 4.5 million, based on Mr Parvizi's benchmarking exercise against the Purported Chartabi Contract; (ii) investment costs of between USD 5 million and USD 7.5 million for equipment and machinery; and (iii) between USD 1.8 to 2.1 million for other expenses or via Atabank documents.[1943] As Dr Shi notes, her assessment is only based on the state of the available documentary record.[1944] That record is incomplete, and investment costs in relation to equipment, machinery and other expenses may well have been higher, although there is no evidence to support it.

C. Mr Bahari is not entitled to the interest he claims

714. The vast bulk of Mr Bahari's claimed compensation is interest. It exceeds the principal claimed many times over. It is exorbitant, punitive, wrongly calculated with excessive rates, and inappropriate in the light of Mr Bahari's own delay in pursuing this claim. If compounded, it would also breach a prohibition in Azerbaijani law and the compensatory principle of international law. If any award is to be made, the Tribunal must look closely at interest, and cut it down to size. The following sub-sections elaborate on these points.

1940 Second Secretariat Report, paras 7.66 and footnote 424.

1941 First Kerimov Statement, para. 20; First Hasanov Statement, paras 8, 9 and 11; First Zeynalov Statement, paras 30-31.

1942 Second Hasanov Statement, para. 11; Second Kerimov Statement, para. 11; Rudman Statement, para. 5; Letter from Mr Heydarov to Quinn Emanuel, dated 25 October 2024, **R-304**.

1943 Second Shi Report, paras 2.11 to 2.12, Table 2.3.

1944 Second Shi Report, para. 2.11.

1. No interest can be awarded on speculative damages or where an award of interest would be punitive

715. As set out in Azerbaijan's Defence, as a matter of principle, interest should not be awarded on amounts that are "*estimates and approximations*".[1945] Mr Bahari does not challenge this principle, but only argues that it is not relevant in the present case, on the basis that Secretariat confirms that his "*damages are not estimates or approximations under any view*".[1946] However, the Secretariat Reports do not establish the damages asserted by Mr Bahari to the requisite standard of proof, or at all, as explained by Dr Shi in her second report and summarised above. Consistent with the reasoning of the Eritrea-Ethiopia Claims Commission, if the principal award has an "*element of approximation*", this in turn points against awarding interest on that sum.[1947] That is precisely the case before this Tribunal.

716. Nor does Mr Bahari does not challenge – or even engage with – Azerbaijan's arguments that article 38 of the ILC Articles: (i) does not give rise to any automatic entitlement to interest; (ii) that interest is only payable at the Tribunal's "*discretion*";[1948] and (iii) it should only be awarded where it is not punitive and necessary to ensure full reparation.[1949] It is a well-established principle of international law that "*interest must be compensatory, not punitive*"[1950] and Mr Bahari must be taken to accept this.

717. On its evidence, Azerbaijan has demonstrated with the support of Dr Shi that the quantum of Mr Bahari's claim is grossly overinflated and finds no support in proper documentation. Any interest on such speculative estimated damages – let alone at the exaggerated rate claimed and over a period of more than 20 years[1951] – would not be

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1945 Defence, para. 455; and *see* J Crawford, *State Responsibility* (Cambridge, 2013), **RLA-177**, p. 532.

1946 Reply, para. 1181.

1947 Defence, para. 455; *see* J Crawford, State Responsibility (Cambridge, 2013), **RLA-177**, p. 532 (referring to Eritrea-Ethiopia Claims Commission: "the amounts awarded in many cases reflect estimates and approximations, not precise calculations resting upon clear evidence. Like some other commissions, the Commission believes that this element of approximation reinforces the decision against awarding interest").

1948 *Kardassopoulos v Georgia*, ICSID Case No. ARB/05/18, Award (3 Mar. 2010), **CLA-165**, para. 659.

1949 Commentary to ILC Articles, **CLA-37**, Art. 38; Defence, para. 455; *MOL Hungarian Oil and Gas Company Plc v Republic of Croatia (I)*, ICSID Case No. ARB/13/32 (5 July 2022), para. 694 (2).

1950 *Venezuela US v Venezuela,* PCA Case No. 2013-34, Award (Quantum – 4 Nov. 2022), **RLA-313**, para. 80 ("International law does not accept the concept of punitive interests.")

1951 Secretariat 2, Table 24: Summary of Claimant's Ex-Ante Damages, p. 125.

truly compensatory. Such an award would be punitive and only liable to grant Mr Bahari a windfall.

2. No interest can be awarded where there is *laches,* bad faith, duress, or fraud on the part of the claimant

718. Mr Bahari also does not challenge the principle that interest cannot be awarded "*if there is laches, bad faith, duress, or fraud on the part of the claimant*"".[1952] Instead, without explanation or reference, Mr Bahari asserts that "*laches, bad faith, duress, or fraud*" has not been "*sincerely alleged*" against him in this arbitration.[1953]

719. Yet again, these submissions ignore Azerbaijan's clearly pleaded Defence. Azerbaijan's case has been – and continues to be – that Mr Bahari's claims have been severely delayed, are supported by falsified evidence and are an opportunistic attempt to embarrass Azerbaijan and extort money.[1954] In these circumstances, arbitral practice is again, in the interests of justice, to refrain from rewarding such a claimant with pre-award interest.[1955]

720. Indeed, Mr Bahari has no real answer to the protracted delay in which he engaged in bringing the claim.[1956] He alleges that "[t]*he raison d'etre for Azerbaijan's campaign has been to ensure that* [he] *could not and did not initiate a claim*", but these are empty words.[1957] If he thought he had a claim from 1 January 2003, he could and should have taken advice and brought it then. Instead, as set out above, there no credible evidence that Mr Bahari took *any* action in connection with his investments until his 2017 notice of dispute.[1958] Even then, Mr Bahari did not bring a claim. When he finally did in

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1952 Defence, para. 455; and *see* TJ Sénéchal and JY Gotanda, "Interest as Damages" (2009) 47 Colum J. Transnat'l L. 491, **RLA-178**, at p. 500.

1953 Reply, para. 1182.

1954 Defence, para. 455.

1955 Defence, para. 455; and *see* TJ Sénéchal and JY Gotanda, "Interest as Damages" (2009) 47 Colum J. Transnat'l L. 491, **RLA-178**, at p. 500 ("Claims for interest may be denied if the payment of interest would result in injustice, be otherwise unconscionable or violate public policy. In addition, interest may not be awarded if there is laches, bad faith, duress, or fraud on the part of the claimant").

1956 Defence, para. 456.

1957 Reply, para. 1184.

1958 *See* Letter from Slaney Advisors Limited to Minister of Justice dated 8 September 2017, **C-26**.

2019, he dropped it just seven months later, until he (presumably) obtained funding and recommenced the claim in 2022.[1959]

721. Mr Bahari will no doubt claim that Mr Allahyarov was intimidated in 2017 and in 2019 which led to Mr Bahari dropping the claim, but leaving aside the fact that there is no evidence other than the unreliable witness testimony in respect of those allegations, it does little to explain why Mr Bahari did not feel intimidated by why had allegedly happened to Ms Ramazanova and Mr Abdulmajidov just a few months before the Notice of Arbitration was filed. In sum: none of these claims of intimidation are true.

722. As explained in Azerbaijan's Defence, awarding any interest for the intervening period would unjustly reward Mr Bahari for his delay and result in a windfall.[1960] The arithmetic consequence of Mr Bahari's delay is a very large uplift in his damages claim. Indeed, under the market approach to valuation of the alleged Caspian Fish investment, for example, Secretariat compute Mr Bahari's pre-award interest entitlement at Azerbaijan's sovereign rate at nearly 700% of the alleged nominal losses.[1961]

723. Mr Bahari appears to acknowledge this apparent windfall, but attempts to brush it aside as an "*irony*" as "*by not awarding Mr. Bahari interest for the full duration of his loss, this would actually result in an unjust windfall for Azerbaijan*".[1962] This is a meritless submission, given that Azerbaijan "*did not benefit personally*"[1963] from any alleged losses to Mr Bahari and any pre-award interest entitlement is not a claim for disgorgement against Azerbaijan. It is not Mr Bahari's case – and it cannot be – that Azerbaijan has realised the sum of money he now claims as pre-award interest.

724. It follows that no pre-award interest is due to Mr Bahari. Mr Bahari failed to pursue his initial claim, and should not be compensated in interest for the delay that has resulted from that choice. It is also not unheard of for tribunals to exclude certain periods of time, and even the whole pre-award period, from the interest computation,

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1959 Notice of Arbitration dated 5 April 2019, **R-54**; Letter from Winston & Strawn to H Gharavi and G Griffith dated 14 November 2019, **R-55**.

1960 Defence, para. 456.

1961 Secretariat 2, Table 24: Summary of Claimant's Ex-Ante Damages, p. 125.

1962 Reply, para. 1183.

1963 *Venezuela US v Venezuela,* PCA Case No. 2013-34, Award (Quantum – 4 Nov. 2022), **RLA-313**, para. 83.

in the light of the facts and circumstances of the case.[1964] For instance, in *Glencore v Colombia (II)*, the claimant sought pre-award interest from the date of breach. The Tribunal rejected that approach and ruled that:

> interest shall begin to accrue on the date this Award is issued (dies a quo) and shall end on the date payment becomes effective (dies ad quem). The Tribunal firmly believes that such an approach is not only reasonable based on Claimants' comparative fault, but also fully serves the compensatory objective inherent in interest awards.[1965]

725. Mr Bahari is at fault for the protracted delay in bringing proceedings, and for his own choice in not pursuing his initial claim. For all of these reasons, Mr Bahari's interest entitlement, if any, should be limited to the period commencing from the date of award. In the alternative, as set out in the Defence, no interest should be awarded after 8 September 2017 (when Mr Bahari issued his first notice of dispute).[1966] Whether obtusely, or deliberately, Mr Bahari misstates Azerbaijan's position to be that "*pre-award interest only be awarded from 8 September 2017*".[1967] Azerbaijan's position was in fact that in the alternative to awarding no interest at all, any computation of pre-award interest should cease as at 8 September 2017.[1968]

726. As set out in the Defence, a final reason that interest should only run from the date of the award is that the nature of the breaches alleged by Mr Bahari are "*composite and continuous acts*",[1969] which continued over "*months and years*",[1970] and which he claims could not be pinned to a "*single date*".[1971] As the tribunal in *Arif v Moldova*

1964 *Arif v Moldova*, ICSID Case No. ARB/11/23, Award (8 April 2013), **RLA-179**, para. 618; *Glencore v. Colombia (II),* ICSID Case No. ARB/19/22, Award (19 April 2024), **RLA-314**, para. 344; *Goetz and ors v Burundi (II)*, ICSID Case No. ARB/01/2, Award (21 June 2012), **RLA-180**, para. 302.

1965 *Glencore v. Colombia (II),* ICSID Case No. ARB/19/22, Award (19 April 2024), **RLA-314**, para. 344 (emphasis added).

1966 Notice of Dispute dated 8 September 2017, **C-26**.

1967 Reply, para. 1188.

1968 Defence, para. 458.

1969 Reply, para. 90.

1970 Reply, para. 1090.

1971 *Arif v Moldova*, ICSID Case No. ARB/11/23, Award (8 April 2013), **RLA-179**, para. 618.

concluded, where there are a "*combination of factors over a period of time*",[1972] any obligation to pay interest should only arise from the date of the award.[1973]

727. In an apparent attempt to overcome this difficulty, Mr Bahari contradictorily argues that "*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*".[1974] He uses the same date for his other Treaty claims too. This is nonsensical, considering that there are no relevant events alleged to have taken place "*as of*" or "*starting on*"[1975] 1 January 2003. For instance, Mr Bahari's allegations of breach include various court proceedings in Azerbaijan that are said to have occurred over a period of time. Mr Bahari's various claims of harassment, intimidation (against himself and his associates) as part of FET and FPS are also said to have occurred over a period of time.

3. Mr Bahari is not entitled to compound interest

728. The Parties are agreed that Mr Bahari is not automatically entitled to compound interest.[1976] Mr Bahari simply states that compounding is "*appropriate and reasonable*" on the basis that "[i]*t is the type of interest that Mr. Bahari receives and expects as an entrepreneur from his commercial banking and other interest-bearing activities*".[1977] Contrary to Mr Bahari's submissions, compounding is neither appropriate nor reasonable in the circumstances of this case.

729. First, arbitral practice confirms where compounding is not lawful under the host state's law, simple interest may be the appropriate approach. In *Glencore v. Colombia (II)*, the Claimant argued that "*full reparation*" should include "*simple or compound*"

1972 *Arif v Moldova*, ICSID Case No. ARB/11/23, Award (8 April 2013), **RLA-179**, para. 618.

1973 *Arif v Moldova*, ICSID Case No. ARB/11/23, Award (8 April 2013), **RLA-179**, para. 618. While Mr Bahari asserts that Azerbaijan "misrepresents" the *Arif* case, this suggestion is not understood as Mr Bahari does not set out any alternative understanding of the case or particularise his objection; *see* Reply, para. 1186.

1974 Reply, para. 1185.

1975 Reply, para. 1187.

1976 Reply, para. 1189, quoting Defence, para. 459; see also *Air Canada v. Venezuela,* ICSID Case No. ARB(AF)/17/1, Award (13 September 2021), **RLA-316**, para. 701 ("..compounding as an element of full redress must be particularly justified. The Tribunal does not find that the present case provides such justification and therefore dismisses Claimant's compound interest claim").

1977 Reply, para. 1190.

interest.[1978] The tribunal found that simple interest was appropriate as compounding was prohibited under Colombian law.[1979]

730. Indeed, compound interest as a component of liability for non-performance or delayed performance of obligations is prohibited under Azerbaijani law.[1980] The prohibition has been in place since the inception of the modern Azerbaijani Civil Code, running throughout almost the entirety of the period for which interest is claimed, and only modified recently in the event the parties agree otherwise.[1981] On this basis alone, Mr Bahari's claim to compound interest should fail.

731. Second, as set out in the Defence, Mr Bahari should not be entitled to compound interest in circumstances where he grossly delayed in bringing his claim.[1982] The Reply offers no response to this submission.

732. Finally, even if compounding was appropriate (which is denied), Mr Bahari provides no evidence that it is the "*type of interest he receives and expects*".[1983] Without such evidence, any claim to interest should be limited to simple interest. As noted by the tribunal in *MOL v Croatia*:

> It is[…] clear that the award of compound interest requires to be justified as necessary to meet that result, and that the burden of doing so lies on the party claiming compound interest. In the absence, therefore, of any decisive argument by the Claimant, or any demonstration of what difference would result in the specific circumstances of the case between compound and simple interest, the Tribunal does not see itself justified in awarding compound interest for a discrete and limited financial loss.[1984]

1978 *Glencore v. Colombia (II),* ICSID Case No. ARB/19/22, Award (19 April 2024), **RLA-314**, para. 287.

1979 *Glencore v. Colombia (II),* ICSID Case No. ARB/19/22, Award (19 April 2024), **RLA-314**, paras. 342-343.

1980 Article 445.7 (in force from 1 September 2000 until 1 October 2023), Civil Code of Azerbaijan and Article 445.7 (current), Civil Code of Azerbaijan, **R-427**.

1981 Article 445.7 (in force from 1 September 2000 until 1 October 2023), Civil Code of Azerbaijan ("Payment of interest on interest is not allowed") and Article 445.7 (current), Civil Code of Azerbaijan ("Unless otherwise provided by this Code or the contract, if the debtor delays payment of a monetary amount, the creditor may demand payment of five percent per annum on the delayed amount for the period of delay"), **R-427**.

1982 Defence, para. 459.

1983 Reply, para. 1190.

1984 *MOL v. Croatia (I)*, ICSID Case No. ARB/13/32, Award (5 July 2022), **RLA-303,** para. 694.

4. Mr Bahari is not entitled to interest at the rate claimed

733. At the rates Mr Bahari proposes, interest, on Mr Bahari's ex-ante claim including a market approach for Caspian Fish, increases his claim (worth on his own case at most just over USD 100 million) by approximately *half a billion* (a US Prime + 2% rate) to *a billion* (sovereign rate) dollars.[1985] This is a grossly unjustified and inappropriate windfall, particularly in the light of the delay with which Mr Bahari has brought these claims.

734. The rate of interest to be applied is tied to whether interest should be compounded. In *MOL v Croatia*, where compound interest was rejected, the tribunal saw fit to apply LIBOR plus 2% calculated on a simple basis.[1986] In the present case, if there is any award of damages, given the protracted delay and the overall conduct of the Claimant, simple interest at LIBOR/SOFR would more than suffice for full reparation.[1987] Dr Shi calculates Mr Bahari's entitlement to simple interest at LIBOR/SOFR in her second report.[1988]

735. Should the Tribunal consider it appropriate to award compound interest, Dr Shi notes that Secretariat's computations are significantly overstated and defective in a number of respects:[1989]

(a) US Prime + 2% would reward Mr Bahari for both the time value of money but also investment risks that Mr Bahari was not exposed to since he allegedly lost his investment.[1990]

1985 Reply, para. 1198.

1986 *MOL v. Croatia (I)*, ICSID Case No. ARB/13/32, Award (5 July 2022), **RLA-303,** para. 695.

1987 See *PACC v. Mexico,* ICSID Case No. UNCT/18/5, Award (11 Jan. 2022), **RLA-317**, paras. 276 to 278, where the Tribunal found that LIBOR without any mark-up was "*commercially reasonable*" as required by the applicable Treaty.

1988 Second Shi Report, para. 7.26 and Table 7.4.

1989 First Shi Report, paras. 6.8 to 6.11, 6.14, 6.16; Second Shi Report, paras. 7.12 to 7.15, para. 10.11.

1990 First Shi Report, para. 6.10; Second Shi Report, para. 7.2; see also *Sevilla Beheer v. Spain*, ICSID Case No. ARB/16/27, Award (22 May 2023), **RLA-318**, para. 197 (the Tribunal rejected the Claimants' proposal to use the cost of equity as they could not substantiate "they actually faced the risk they alleged needs to be compensated by the suggested rate. The Tribunal therefore agrees with the Respondent that the Claimants should not be compensated for risks they did not prove to have borne").

(b) Azerbaijan's sovereign borrowing rate in USD also includes a return for the risk in investing in Azerbaijan's government bonds, which Mr Bahari did not bear.[1991]

736. There is no basis to compensate Mr Bahari at these higher rates. Dr Shi proposes a LIBOR/SOFR rate (without additional margin) and notes that a risk-free rate, which is significantly lower than the alternatives proposed by Secretariat, is more appropriate as it only compensates for the time value of money.[1992]

737. Secretariat's reasoning for excluding the risk-free rate is that a damages award is exposed to similar risks as a sovereign bond and the Claimant could have received greater returns through risky investments.[1993] These reasons in abstract do not assist Mr Bahari's case as he has failed to provide any evidence of his investment activities over the years and without evidence of the "*Claimant's borrowing rate*", tribunals consistently tend to adopt a "*conservative*" approach.[1994]

738. Further, Secretariat have not justified the proposed rate, except to contend that US Prime rate plus premium is "[redacted]", and base this conclusion on a sample set of 27 investment treaty awards.[1995] There are of course many awards that do not take this approach,[1996] but these awards are disregarded. In any event, even the cases that Secretariat did consider do not support their proposal in favour of pre-award interest at US Prime rate plus premium, and in fact, support Dr Shi's proposal of LIBOR/SOFR (with or without additional margin of 2%):

1991 First Shi Report, para. 6.14; Second Shi Report, paras. 7.18; see also, *Sevilla Beheer v. Spain*, ICSID Case No. ARB/16/27, Award (22 May 2023), **RLA-318**, para. 199 (the Tribunal rejected the reference to the yield on the Spanish 10-year bond, as "the amounts awarded to the Claimants have not been subject to the borrower default risks encapsulated by this rate").

1992 First Shi Report, paras. 6.10, 6.14; Second Shi Report, paras. 7.2, 7.12 to 7.15.

1993 Second Secretariat Report, para. 10.11.

1994 *National Grid v Argentina*, Award (3 November 2008), **CLA-115**, para. 294.

1995 Second Secretariat Report, para. 10.6 and Appendix J.

1996 By way of example only: *Burlington Resources, Inc. v Republic of Ecuador*, ICSID Case No. ARB/08/5, Award (7 Feb 2017), **RLA-311**, para. 535 (the Tribunal applied a "reasonable risk-free commercial rate" of "LIBOR plus two percent for three month borrowings"); *Venezuela US v. Venezuela*, PCA Case No. 2013-34, Award (Quantum 4 November 2022), **RLA-313**, para. 85 (the Tribunal applied the "interest rate agreed in the Hydrocarbons Purchase and Sales Contract for any delay by PDVSA in paying Petroritupano for the delivered hydrocarbons, which was an annual rate equal to LIBOR + 4 percent").

(a) Secretariat identify 12 arbitral awards to have adopted the benchmark rate for the pre-award interest computation; however, only one out of those 12 awards used the US Prime + 2%,[1997] and it is incomparable to Mr Bahari's case. That was the award in *Nachingwea and others v Tanzania,* where the parties "*agree*[d]" that the claimants were entitled to interest at a rate of US Prime + 2%[1998] and Tanzania's expert proposed simple interest at US Prime + 2% "*without explaining why compound interest is not suitable*".[1999] The Tribunal in *Nachingwea* observed that "*the Respondent has not put forward any 'special circumstances' that would justify an award of simple interest, rather than compound interest*" and proceeded to award compound interest at the "*agree*[d]" rate.[2000] In contrast, as explained above there exist "special circumstances" in the present case to justify an award of simple interest (if at all), including the strict prohibition against compound interest under Azerbaijani law and Mr Bahari's own contributory fault and self-inflicted delay.

(b) Eight out of the 12 awards identified by Secretariat to have adopted benchmark rates, in fact applied lower benchmark rates such as LIBOR/SOFR or EURIBOR[2001], either without premium, or up to a margin of 2%.[2002]

739. Dr Shi's approach – in favour of LIBOR/SOFR – is itself consistent with numerous arbitral decisions too, where Tribunals refused to compensate the claimants for risks

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1997 *Nachingwea and others v Tanzania*, ICSID Case No. ARB/20/38, Award (14 July 2023), **CLA-257**, para. 384; *see also* Shi 2, Summary of benchmark-rate-based pre-award interest rates adopted in arbitration awards identified by Secretariat, Table 7.2.

1998 *Nachingwea and others v Tanzania*, ICSID Case No. ARB/20/38, Award (14 July 2023), **CLA-257**, para. 378.

1999 *Nachingwea and others v Tanzania*, ICSID Case No. ARB/20/38, Award (14 July 2023), **CLA-257**, para. 379.

2000 *Nachingwea and others v Tanzania*, ICSID Case No. ARB/20/38, Award (14 July 2023), **CLA-257**, paras. 378, 384.

2001 It is worth noting that in the cases identified by Secretariat, EURIBOR was adopted only where the host State was European or Russia; see *BayWa v. Spain*, ICSID Case No. ARB/15/16, Award (25 January 2021), **RLA-319**, para. 63; *Sevilla Beheer v. Spain*, ICSID Case No. ARB/16/27, Award (22 May 2023), **RLA-318**, para. 203; *NJSC Naftogaz and ors v. Russia*, PCA Case No. 2017-16, Award (12 April 2023), **RLA-320**, para. 685; Rockhopper v. Italy, ICSID Case No. ARB/17/14, Award (23 August 2022), **RLA-321**, para. 318.

2002 Second Shi Report, Summary of benchmark-rate-based pre-award interest rates adopted in arbitration awards identified by Secretariat, Table 7.2.

they were not exposed to, and should be preferred in the circumstances of the present case. By way of example only:

(a) The tribunal in *Bank Melli v Bahrain* observed that "*it would be economically unjustified if the interest would also compensate for business risks associated with the investment for a period during which the Claimants did not bear these risks anymore because they had lost control of the investment*".[2003] The tribunal favoured a risk-free interest rate in that case, and also awarded simple interest, noting that the parties did not address whether interest at the US Treasury bond rate should be compounded.[2004]

(b) The Tribunal in *Burlington v Ecuador* recognised that an interest rate that rewards the Claimant for the risk of operation, which it did not bear, would be "*inappropriate*" and "*could overcompensate*".[2005] The Tribunal decided to apply LIBOR + 2% for three month borrowings, which was found to be "*a reasonable risk-free commercial rate*".[2006]

D. Mr Bahari is not entitled to moral damages

740. In his Reply, Mr Bahari completely fails to engage with the requisite standard for an award of moral damages, which Azerbaijan set out clearly in its Defence.[2007] He asserts, without any legal analysis and while wilfully ignoring Azerbaijan's Defence, that 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*".[2008] This is decidedly not the case for the reasons Azerbaijan has already put forward.[2009] Mr Bahari's sole response to the line of arbitral decisions

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2003 *Bank Melli Iran v Bahrain*, PCA Case No. 2017-25, Award (9 Nov. 2021), **RLA-322**, para. 799.

2004 *Bank Melli Iran v Bahrain*, PCA Case No. 2017-25, Award (9 Nov. 2021), **RLA-322**, para. 803.

2005 *Burlington Resources, Inc. v Republic of Ecuador*, ICSID Case No. ARB/08/5, Award (7 Feb. 2017), **RLA-311**, para. 533; see also Fisher & Romaine, *Janis Joplin's Yearbook and the Theory of Damages*, January 1990, **RLA-325**, p. 146.

2006 *Burlington Resources, Inc. v Republic of Ecuador*, ICSID Case No. ARB/08/5, **RLA-311**, Award (7 Feb. 2017), para. 535.

2007 Reply, paras 1200-1208; Defence, paras 464-490.

2008 Reply, para. 1200.

2009 Defence, paras 464-490.

demonstrating that the present case does not merit moral damages is: "*This cannot be correct*".[2010]

741. Mr Bahari then argues that since the filing of the Statement of Claim, he is now able to "*establish*[] *without a doubt the malice that underlies Azerbaijan's persecution of Mr. Bahari*",[2011] based on the allegations raised in respect of Ms Ramazanova and Mr Abdulmajidov.[2012] Apparently, Mr Bahari has not learned that merely pleading that there is "[no] *doubt*" does not discharge his burden of proof.[2013]

742. In any event, the specific basis of his claim is thrown into doubt as Mr Bahari later states that while an award of moral damages to Ms Ramazanova and Mr Abdulmajidov "*is not within the powers of this Tribunal*",[2014] what the Tribunal can and should do is "*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*",[2015] without any reference to alleged acts against Mr Moghaddam, Ms Ramazanova, or Mr Abdulmajidov. For the reasons set out in the Defence and above, there is no factual basis for these allegations, which do not in any event justify an award of moral damages, much less in the order of magnitude sought.[2016]

2010 Reply, para. 1207.

2011 Reply, para. 1206.

2012 Reply, paras 1201-1202.

2013 *See Churchill Mining and Planet Mining v Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 Dec. 2016, **RLA-300**, para. 244 ("more persuasive evidence is required for implausible facts").

2014 Reply, para. 1206.

2015 Reply, para. 1206.

2016 *See* Defence, para. 471-479.

PRAYER FOR RELIEF

743. For the foregoing reasons, the Respondent respectfully requests that the Tribunal:

(a) declare that it has no jurisdiction over the Claimant's claims and order the Claimant to bear all costs and fees incurred by the Respondent in connection with these proceedings, together with interest thereon at a rate to be determined; or

(b) dismiss in their entirety the claims over which the Tribunal determines it has jurisdiction and order the Claimant to bear all costs and fees incurred by the Respondent in connection with these proceedings, together with interest thereon at a rate to be determined.

Respectfully submitted,

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29 October 2024