PCA Case No. 2022-49

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

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

Between

MOHAMMAD REZA KHALILPOUR BAHARI

Claimant

and

THE REPUBLIC OF AZERBAIJAN

Respondent

CLAIMANT'S STATEMENT OF REJOINDER ON JURISDICTION

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10 December 2024

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

2. Claimant's SoRJJ is submitted in response to Respondent's Statement of Rejoinder dated 29 October 2024 ("**Respondent's Rejoinder**", "**Rejoinder**" or "**SoRJ**"). To the extent not expressly admitted herein, Claimant does not accept the allegations made by Respondent in its Rejoinder.

3. This Statement of Rejoinder on Jurisdiction is accompanied by the following documents in support:

4. Witness Statements:

   - Mohammad Reza Khalilpour Bahari dated 10 December 2024
   - Shahbaz Khalilov dated 4 December 2024

5. Expert Reports

   - Prof. Stephan Schill dated 5 December 2024 (Second Legal Opinion on Article 9 of the Treaty)
   - Tom Gaines, Secretariat Advisors, dated 10 December 2024 (Construction Report)

6. Factual Exhibits set out in the Fact Exhibit Index

7. Legal Authorities set out in the Legal Authority Index

8. Adverse Inferences set out in Appendix A – Adverse Inferences Table

[1] Treaty (**CLA-001**), signed 28 October 1996, entered into force 20 June 2002. All capitalized terms not specifically defined herein shall have the meaning given to them in Claimant's Statement of Claim and Statement of Reply. For ease of reference, a complete list of defined terms is included as **Annex 1**.

PART I: INTRODUCTION

9. In its Statement of Rejoinder, Azerbaijan continues to assert jurisdictional defenses that are largely premised on alternative narratives and obfuscating details about how and what Mr. Bahari invested in Azerbaijan and how the Treaty should apply to those investments. As a factual affirmative defense, Azerbaijan heavily relies on a sprawling, evolving narrative that substitutes Minister Heydarov as the true investor in Mr. Bahari's two principal investments. A close review of the record demonstrates that these affirmative defenses are built on a near-absence of evidence; as such, Azerbaijan has not and cannot meet its burden of proof. Likewise, Azerbaijan's Rejoinder continues to artificially narrow the Treaty's application to Mr. Bahari's investments and this dispute, such that it would render the Treaty protections into meaningless, illusory commitments.

1. Mr. Bahari's Claim Is Straightforward and He Has Amply Met His Burden of Proving His Claim.

10. Cutting through the noise created by Azerbaijan's alternate narratives, Mr. Bahari's claim remains, at its heart, uncomplicated. Applying the balance of probabilities standard, Mr. Bahari has amply met his burden of proving his claim. This is despite the imbalance in this case to the Parties' access of documents and information, which has been exacerbated by Azerbaijan's obstructive conduct and guarded document production.

11. Despite these challenges, the record amply meets Mr. Bahari's burden and standard of proof to show he was the investor; that he made the investments; and that Azerbaijan breached its Treaty obligations causing the loss of these investments.

12. Mr. Bahari has spent the better part of twenty-five years seeking to recover his investments – at great personal cost, and to those who assisted in his efforts. The Tribunal has an opportunity to redress this injustice by awarding Mr. Bahari the damages he is entitled to under the Treaty and international law.

2. Azerbaijan Advances Five Jurisdictional Defenses that it Must Prove.

13. Claimant's Statement of Claim and Statement of Reply demonstrated this Tribunal has jurisdiction over the dispute and Mr. Bahari's claims.[2] In those briefs, Mr. Bahari established the following fundamental points, which Azerbaijan does not dispute:

[2] SoC PART IV; SoR PART IV.

a. The Arbitration was commenced under the Iran-Azerbaijan BIT, which is in force;

b. Under that Treaty, Azerbaijan consented to arbitrate disputes with foreign investors of Iranian nationality;

c. Mr. Bahari is an investor of Iranian nationality; and

d. A dispute under the Treaty exists between Mr. Bahari and Azerbaijan, notwithstanding that there is no agreement about when that dispute arose.

14. The Tribunal may take these points as uncontested and the corresponding Treaty requirements as met.

15. This leaves only the five jurisdictional objections advanced in Azerbaijan's Statement of Defense and its Rejoinder which remain to be determined. These are:

1) A *ratione temporis* argument that the Treaty was not in force at the time of the breaching acts;[3]

2) A jurisdictional defense argument that Mr. Bahari's investments are not covered under the Treaty;[4]

3) An affirmative defense that Mr. Bahari did not invest in Caspian Fish and Coolak Baku and is therefore not a qualifying investor;[5]

4) An affirmative defense that Mr. Bahari sold Ayna Sultan in 1999 and Caspian Fish in 2001 and therefore no longer has qualifying investments;[6]

5) An attribution defense that the acts of President Aliyev and Minister Heydarov cannot be attributed to Azerbaijan;[7] and

6) An affirmative defense that Article 9 of the Treaty acts as a bar to Mr. Bahari's claim in its entirety.[8]

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3 SoRJ PART 2, § III.A.

4 SoRJ PART 2, § III.B.

5 SoRJ PART 3, §§ II, III.

6 SoRJ PART 2, §§ III.C, IV.

7 SoRJ PART 2, § III.B.

8 SoRJ PART 2, § III.B.

3. Both Parties Must Satisfy Their Respective Burden of Proof.

16. Mr. Bahari's claim, which is established on the balance of probabilities, must be compared side by side with Azerbaijan's specious defense, both on jurisdiction and the merits.

17. The Rejoinder's discussion of burden of proof focuses exclusively on Claimant's burden to prove its claim, but remains entirely silent on Azerbaijan's own burden of proof. As discussed below, Azerbaijan maintains a burden to prove each of its affirmative defenses, which include each of its five jurisdictional objections.[9]

18. As set out in this Rejoinder, Azerbaijan fails to discharge its burden as to each jurisdictional objection. This failure is readily apparent with Azerbaijan's baseless alternative investor defense for both Coolak Baku and Caspian Fish. The alleged sale of Mr. Bahari's shares in Caspian Fish in 2001 rests on an equally unfounded narrative devoid of reliable and objective evidence. Not only did Azerbaijan's own forensic expert determine that the documents Azerbaijan relies on for the purported sale are unreliable, but Azerbaijan cannot overcome the absence of any evidence of this alleged share sale in the entire BVI record.

19. In assessing whether Azerbaijan meets its burden of proof, the Tribunal must consider Azerbaijan's conduct vis-à-vis evidence throughout these proceedings. As discussed in this Rejoinder,[10] both Parties are expected to comport with principles of good faith in the performance of their obligations. Thus a State's conduct must be consistent– it may not "blow hot or cold" and take contradictory approaches to evidence. In this case, Azerbaijan has produced documents helpful to its case sourced from certain entities or individuals, while withholding evidence on the basis that it has no possession, custody, or control over the exact same entities or individuals. This includes, for example, Azerbaijan's entire production of evidence relating to Caspian Fish: it clearly has access to the company's archives while at the same time deploying a strategy of obstructing document requests on the premise that Caspian Fish is a private entity that it has no control over.

20. In a similar vein, Azerbaijan hides behind its attribution defense that Minister Heydarov is a private individual (and therefore that Azerbaijan cannot compel Minister Heydarov to

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9 *Infra* PART II, §III.

10 *Infra* PART II, §§ III.B.

disclose documents), while producing documents from his personal files,[11] or most recently, the files of his deceased assistant. Most egregiously, Azerbaijan alleges Minister Heydarov is the sole investor in Caspian Fish, while refusing to produce him to testify and answer the Tribunal's or Claimant's questions.

21. Because of Azerbaijan's obstructive conduct in failing to produce any documents for the vast majority of document requests granted under PO6, Claimant is entitled to certain adverse inferences.[12]

4. Azerbaijan Fails to Meet its Burden of Proof as to Each of Its Jurisdictional Objections.

22. Azerbaijan fails to discharge its burden of proof as to each of its five jurisdictional objections.

23. As to its *ratione temporis* defense:[13] Mr. Bahari complains of acts that span the Treaty's entry into force, including a continuing breach on Azerbaijan's part of its FET obligations and a composite breach of its duty to not expropriate Mr. Bahari's investments. Both of these – the continuing FET obligation and the creeping expropriation – may have begun prior to the entry into force of the BIT, but neither was completed by then. The record demonstrates that Azerbaijan's unlawful conduct vis-à-vis Mr. Bahari and his investments is an ongoing breach that continued for years, if not decades, after the Treaty came into force. In any event, Azerbaijan's argument ignores that the Treaty contains an affirmative obligation in Article 2(2)(a) to allow passage to foreign investors through the territory of Azerbaijan -obligation which continued to be breached long after the Treaty entered into force. It also ignores the Tribunal has jurisdiction over breaches of the customary Minimum Standard of Treatment owed to a foreign investor prior to the Treaty.

24. As to its argument that Mr. Bahari has no investment:[14]

    a. An interpretation in light of VCLT 31.1 of the present Treaty does not support a reading that the *Salini* criteria apply to the Treaty's definition of "investment." The reading Azerbaijan advocates is called for neither by the Treaty's plain text, nor by

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11 *See, e.g.,* SoRJ ¶ 77 ("Azerbaijan can confirm that the Sale Documentation was provided to it from Minister Heydarov's personal archives.")

12 *Infra* Part II, § 4.

13 *Infra* Part IV, § II.

14 *Infra* Part IV, § I, A.

its object and purpose, and the cases Azerbaijan cites in support of its argument are unavailing. Nevertheless, even on application of the *Salini* criteria, Mr. Bahari's investment is protected by the Treaty.

b. Azerbaijan's argument that Mr. Bahari's investment is not protected by the Treaty because it is not in Azerbaijan's territory also fails as a matter of Treaty interpretation. Indirect investments, such as Mr. Bahari's investment in Caspian Fish through the BVI, are subject to Treaty protection, and significant support exists in case law and commentary that indirect investments are located in the territory of the ultimate asset. In any event, Azerbaijan's argument regarding the location of Mr. Bahari's investment affects at most his investment in Caspian Fish, as Coolak Baku, Ayna Sultan, and Mr. Bahari's carpets are all unquestionably located in the territory of Azerbaijan.

25. As to the affirmative defense that Mr. Bahari did not make an investment in Caspian Fish or Coolak Baku:[15]

a. As noted above, Azerbaijan's defense narrative presenting Minister Heydarov as the alternate investor in Caspian Fish falls far short of meeting its burden of proof. Minister Heydarov (and Gilan Holding) does not appear on a single document evidencing that he financed the construction of Caspian Fish.

b. As for Coolak Baku, Azerbaijan's case is even weaker. The best it can say is that ASFAN advanced some sums towards equipment – an allegation that is itself disproven. In any event, Azerbaijan's claim that Mr. Bahari invested 'only' $1.4 million in Coolak Baku is sufficient to make Mr. Bahari an investor under the Treaty.

c. Ultimately, two large agro-industrial facilities were built. They exist, and both Parties agree on this. Even accounting for the Parties' dispute as to the exact cost of these facilities, they each easily cost tens of millions of US$ to build. Azerbaijan denies that Mr. Bahari made the necessary investments. Having failed to present credible alternative investors, Azerbaijan's defense case leaves the open question: if not Mr. Bahari, then who?

[15] *Infra* Part IV, § II.

26. As to Azerbaijan's Attribution defense:[16] President Aliyev and Minister Heydarov at all times relevant to Mr. Bahari's investments acted under color of their respective offices, exercising powers that no private party would have. Mr. Bahari always understood them to be acting on behalf of the Government, as Azerbaijan's own evidence supports, and that understanding permeated his dealings with them. By adopting the cloak of governmental power and authority, the actions of President Aliyev, whose status as an organ of the State Respondent contests only prior to 2003, and Minister Heydarov, whom Respondent concedes was always an organ of Azerbaijan, are attributable to the State.

27. As to Azerbaijan's Article 9 defense: Azerbaijan cannot argue that Article 9 of the Treaty would nullify the Tribunal's jurisdiction in light of its own failure to enact implementing domestic legislation or administration as necessitated by Article 9. Thus, as Professor Schill explains, Article 9 of the Treaty cannot be read as requiring approval for pre-existing investments at the time the Treaty entered into force.

28. For the above reasons, and others set out in the remainder of this memorial, Azerbaijan's jurisdictional challenge fails, and must be rejected.

[16] *Infra* Part III, § I-II.

PART II: THE BURDEN AND STANDARD OF PROOF

29. Mr. Bahari has met his burden of proof to support his claims. As set out in his Statement of Claim ("**SoC**"), Statement of Reply, and the present submission, Mr. Bahari has proved on a balance of probabilities that (i) the Tribunal has jurisdiction over his claims and (ii) Azerbaijan breached its obligations to accord Mr. Bahari's investments fair and equitable treatment, guarantee his investments full protection and security, and ensure they are safe from expropriation. At the same time, Azerbaijan has advanced its own case against the Tribunal's jurisdiction, claiming *inter alia* that his investments were in fact made by another investor, and has thereby incurred its own burden of proof, which it has not met.

I. MR. BAHARI HAS MET HIS BURDEN OF PROOF TO PROVE HIS CLAIM.

A. THE PROPER STANDARD OF PROOF TO BE APPLIED IS THE BALANCE OF THE PROBABILITIES.

30. As Claimant, Mr. Bahari has the burden of proof to prove his claim. Generally, the Parties agree that the applicable standard of proof is the balance of probabilities.[17] Pursuant to this standard, a tribunal assesses the investor's proof of its jurisdiction as in a vacuum: taking the facts as pleaded by the claimant, assuming "there are no factual allegations being advanced against the jurisdictional case," the tribunal should "assess the proof submitted by the claimant (and the claimant alone) and determine whether if this proof were unrebutted it would suffice to satisfy the tribunal that it had jurisdiction."[18] And, "[i]f on the basis of that record—and that record alone—the claimant meets the applicable standard of proof, the claimant's burden has been discharged."[19]

31. With respect to the evidence submitted, this does not imply that the claimant must produce a perfect documentary record or comply with the rules of evidence applicable in state courts. As the Singapore Court of Appeal observed in *Sanum v. Laos*, "public international law does not feature the same level of specificity as national legal systems in describing

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17 *See, e.g.* Reply, ¶ 276; SoRJ ¶ 109. Azerbaijan at times seems to hold Mr. Bahari to a higher standard of proof. *See, e.g.* Oxera Report, ¶ 2.11 and Appx. 3.

18 Sourgens, Duggal and Laird, Evidence in International Investment Arbitration, Chapter 2: "Burden of Proof in Investor-State Arbitration," 2018, (**CLA-292**), ¶¶ 2.34-35.

19 Sourgens, Duggal and Laird, Evidence in International Investment Arbitration, Chapter 2: "Burden of Proof in Investor-State Arbitration," 2018, (**CLA-292**), ¶ 2.35.

the applicable standards of proof," and "the level of specificity of the rules of evidence found in international law can therefore be expected to be simpler than those found in national systems."[20] Redfern and Hunter describe current practice as follows:

> The practice of arbitral tribunals in international arbitrations is to assess the weight to be given to the evidence presented in favour on any particular proposition by reference to the nature of the proposition to be proved. For example, if the weather at a particular airport on a particular day is an important element in the factual matrix, it is probably sufficient to produce a copy of a contemporary report from a reputable newspaper, rather than to engage a meteorological expert to advise the tribunal.
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> In general, the more startling the proposition a party seeks to prove, the more rigorous the arbitral tribunal will be in requiring that proposition to be fully established.[21]

32. In *Bridgestone v. Panama*, for example, claimant BSAM (a Nevada subsidiary of Bridgestone) alleged that it made an investment in Panama consisting of, *inter alia*, license and intellectual property rights related to the use of the Firestone trademark through an entity called BSCR.[22] The applicable investment treaty – the United States-Panama Trade Promotion Agreement – defines an investment as "every asset that an investor owns or controls, directly or indirectly."[23] Panama objected to jurisdiction, claiming that BSAM did not make an investment under the treaty, because trademark and license rights are not "assets," and in any event, BSAM did not own or control those rights.[24] The tribunal held that BSAM bore the burden of proving it had an investment "according to the normal standard of proof, namely on balance of probabilities."[25]

33. Applying this standard, the tribunal turned to the question at hand – whether rights to the Firestone mark constituted an investment under the treaty – and thereupon noted the "absence of any document evidencing the delegation to BSCR of the exploitation of the

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20 *Sanum Investments Ltd. v. the Government of the Lao People's Democratic Republic*, Court of Appeal of the Republic of Singapore, [2016] SGCA 57, Judgment, 29 September 2016, (**CLA-293**), ¶ 61.

21 Nigel Blackaby & Constantine Partasides, Redfern and Hunter on International Arbitration (5th ed.), 2009 (**CLA-294**), ¶¶ 6.94-6.95.

22 *Bridgestone Americas, Inc. and Bridgestone Licensing Services, Inc. v. Republic of Panama*, ICSID Case No. ARB/16/34, Decision on Expedited Objections, 13 December 2017 ("***Bridgestone v. Panama***") (**CLA-295**), ¶ 125.

23 *Bridgestone v. Panama* (**CLA-295**), ¶ 155.

24 *Bridgestone v. Panama* (**CLA-295**), ¶ 127.

25 *Bridgestone v. Panama* (**CLA-295**), ¶ 153.

right to use the FIRESTONE mark that had been conferred on BSAM" by BSLS, a Bridgestone Group subsidiary that owned the mark.[26] Panama contended that such a document should exist, and the tribunal agreed that its absence "suggests a degree of disarray on the part of the Bridgestone Group."[27] Nevertheless, the tribunal

> concluded that it does not matter whether the document under which BSAM granted authority to BSCR to sell tires bearing the FIRESTONE trademark in Panama has been lost or whether it has never existed. BSLS entered into the FIRESTONE Trademark License with BSAM in order to confer on BSAM the right, either directly or through its subsidiaries, to sell tires bearing the FIRESTONE mark in countries where the mark was registered. In reliance on that right, BSAM has procured BSCR to sell tires bearing the FIRESTONE mark in Panama and has itself assisted with the marketing of those tires. Whether or not BSCR acted under a formal sub-license granted by BSAM, it was plainly authorized by BSAM to act as it did.[28]

The tribunal made clear that it "reached these conclusions on the balance of probability on the basis of the evidence before it and…[was] satisfied that the result accords with [the] reality"[29] that the claimants had an investment.

34. As Mr. Bahari has previously acknowledged, evidentiary decay over time has rendered the documentary record of this case imperfect.[30] Indeed, Azerbaijan critiques Mr. Bahari's case for his dependence on witness testimony.[31] As has been true for nearly a century in the practice of the PCIJ, however, "[t]he Parties may present any proof that they judge useful, and the Court is entirely free to take the evidence into account to the extent that it deems it pertinent."[32] Likewise, with respect to the relevance and admissibility of evidence, the American Law Institute and UNIDROIT Principles of Transnational Civil Procedure provide in Rule 25.4 that "[a] party has a right to proof through testimony or evidentiary

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26 *Bridgestone v. Panama* (**CLA-295**), ¶ 208.

27 *Bridgestone v. Panama* (**CLA-295**), ¶ 209.

28 *Bridgestone v. Panama* (**CLA-295**), ¶ 210.

29 *Bridgestone v. Panama* (**CLA-295**), ¶ 217.

30 *See, e.g.*, SoR ¶ 580.

31 *See, e.g.*, SoD, ¶¶ 16, 110, 182, 184, 207(d), 217; SoRJ ¶¶ 87 ("Of course documents are a far superior source of evidence than witness evidence generally, but especially so after the passage of so much time"), 575.

32 PCIJ, Series D, Acts and Documents Concerning the Organization of the Court, Remarks of Judge Huber, Addendum to No. 2, Revision of the Rules of Court, 1926 (**CLA-296**), p. 250.

statement."[33] Pursuant to the commentary to that rule, "[i]n applying the principle of relevance, the primary consideration is the usefulness of the evidence" and "there is no valid reason to restrict the use of circumstantial evidence when it is useful to establish a fact in issue."[34]

35. Furthermore, in the unique circumstances of a case such as this, where the Respondent has exclusive access to the necessary evidence, tribunals have consistently found that the claimant is entitled to rely more on inference and circumstantial evidence to satisfy its burden of proof. As the ICJ noted in the *Corfu Channel* case, in the context of a state-to-state dispute:

> [T]he fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof …. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion.[35]

36. Even where the tribunal declines to shift the burden from the claimant to the respondent in these circumstances (discussed below at PART II § II.C), tribunals have acknowledged that the respondent's exclusive access to documents may trigger a duty to disclose on the part of the respondent in addition to the claimant's right to rely on circumstantial evidence. Thus, the tribunal in *AMTO v. Ukraine* acknowledged that "the relative accessibility of evidence…would support a duty to disclose evidence so that a [claimant] could request the disclosure of specific documents from the [respondent] where the documentation is not otherwise accessible."[36] A recurring issue in this Arbitration has been Azerbaijan's

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33 ALI/UNIDROIT Principles of Transnational Civil Procedure, Appendix: Rules of Transnational Civil Procedure, UNIDROIT 205, Study LXXVI – Doc. 13, 2005 (**CLA-297**), p. 57.

34 ALI/UNIDROIT Principles of Transnational Civil Procedure, Appendix: Rules of Transnational Civil Procedure, UNIDROIT 205, Study LXXVI – Doc. 13, 2005 (**CLA-297**), p. 58, Commentary to Rule 25, R-25B and R-25C.

35 *The Corfu Channel Case*, International Court of Justice, Judgment, 9 April 1949 (**CLA-298**), p. 18.

36 *AMTO v. Ukraine*, (**CLA-278**) ¶ 65. In an apparent attempt to get around this, Respondent cites to *Muhammet Çap v. Turkmenistan* for the proposition that "reasonably prudent investors are expected to keep business records outside of the host State as part of the ordinary course of business." SoRJ, ¶ 111 (citing **RLA-260** *Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd Sti v Turkmenistan*, ICSID Case No. ARB/12/6, Award (4 May 2021), ¶ 728). Neither *Muhammet Çap* nor any of the cases cited therein favors Respondent here. In *Muhammet Çap*, the evidentiary issue was the seizure of the claimant's property in Turkmenistan following their voluntary departure from the country in 2010, which led to a "de facto [taking] over [of their] premises,

exclusive access to the relevant documents that go to the proof of the investments (a jurisdictional issue), but also to proof of breach (a merits issue). Equally, Azerbaijan has failed to adhere to its document production commitments, including incomplete and delayed productions, and the production of inauthentic documents.[37]

B. MR. BAHARI HAS DEMONSTRATED HIS CLAIM ON THE BALANCE OF THE PROBABILITIES.

37. Applying the balance of probabilities standard, Mr. Bahari has amply met his burden of proving his claim. This is despite the heavy evidentiary imbalance in this case, which has been exacerbated by Azerbaijan's abysmal document production.

38. Looking at the claim on the basis of Mr. Bahari's submitted record – and that record alone – Mr. Bahari has discharged his burden to prove his claim.[38] The totality of the evidence provided shows that he was an investor, that he made the investments, and that Azerbaijan breached its Treaty obligations, with the result that Mr. Bahari lost all of these investments.

39. As regards Coolak Baku:

    a. Mr. Bahari has established his track record as an entrepreneur with specific experience in line processing technology applied to the consumables sector. The evidentiary record shows no one else with this technical and business experience. Of note, Coolak Baku adopted an identical business model to Coolak Shargh.[39]

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documents, computers, and equipment." *Id*. ¶ 383; *see also id*. ¶¶ 513-17. Claimant acknowledged, however, that its company in Turkmenistan had a branch in Turkey at which they stored documents. *Id*. ¶ 517. In ruling that the claimant was not entitled to a shift in the burden of proof, the tribunal noted that "during the document production stage Claimants were shown to possess many documents relating to" the contracts in question, and that "Claimants also received documents from Respondent." *Id*. ¶ 729. In issuing its ruling that a prudent investor should store documents outside of the host state, the ad hoc committee in *Amco v. Indonesia* was focused on "important documents such as those relating to the registration or the registerability of foreign exchange supposedly infused into the project." *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Ad hoc Committee Decision on the Application for Annulment, 16 May 1986, (**CLA-299**), ¶ 90. In so doing, the tribunal acknowledged that "PT Amco was expelled from its business premises under circumstances imposing at least a risk of loss of records," and thus also noted "the incomplete character of the evidence submitted by Indonesia – e.g. the lack of copies of complete tax returns and financial statements…and of investment reports of PT Amco." To the annulment committee, this indicated that the tribunal had properly accounted for "these difficulties…in distributing the burden of proof between the parties" in its award. *Id*.

37 See e.g. SoR ¶¶ 1114-1144; Secretariat Second Report, Section 3.C; *infra* Part.III, § III, C.

38 Sourgens, Duggal and Laird, Evidence in International Investment Arbitration, Chapter 2: "Burden of Proof in Investor-State Arbitration," 2018 (**CLA-300**), ¶¶ 2.34-35.

39 *Infra* PART III, § II.B.2.

b. The Coolak Baku JVA provides *prima facie* evidence that Mr. Bahari was the majority investor, made the necessary financial contributions to purchase and install the equipment, and stood up an operational business. There is no contractual record of anyone else being responsible for the capital outlays for the construction and installation of machinery at both Coolak Baku and Shuvalan Sugar.[40]

c. Numerous independent sources of evidence confirm that Mr. Bahari invested in Coolak Baku. This includes, notably, Mr. Dieter Klaus, who was Mr. Bahari's private banking advisor and specifically recalls Mr. Bahari moving large sums into Azerbaijan for both Coolak Baku and Caspian Fish.[41]

d. Mr. Bahari has submitted surviving documentation substantiating his investments in Coolak Baku and Shuvalan Sugar, which Secretariat has tabulated at over $21 million. This is entirely in line with the evidentiary record (submitted by both Parties) that Coolak Baku was expected to be a $28 million project upon completion.[42]

e. Mr. Bahari has established Azerbaijan's denial of justice breach by demonstrating a court proceeding that allowed ASFAN to withdraw from Coolak Baku, but take the entire production facility and drinks business along with it. ASFAN subsequently produced beer using the same facility and business model, under its own brand.[43]

40. As regards Caspian Fish:

a. Once again, Mr. Bahari has an established entrepreneurial track record and no one else had the requisite technical and business experience. Notably, there is no disagreement between the Parties that Mr. Bahari had legal control of Caspian Fish and directed the investment, including all technical aspects of the design and construction, the selection of manufacturers, and the transportation and installation of that equipment.[44]

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40 *Infra* PART III, § II.B.3.

41 *Infra* PART III, § II.B.4.

42 *Infra* PART III, § II.B.5.

43 *Infra* PART III, § II.E.

44 *Infra* PART III, § III.

b. The Shareholders Agreement and related corporate documents establish Mr. Bahari as the foreign investor. Notably, none of the other shareholders (Messrs. Aliyev, Heydarov, and Khanghah) had the expertise or capability to mount an investment of this size and complexity.[45]

c. Contemporaneous, publicly available sources corroborate that Caspian Fish was a foreign investment and cost $56 million to construct.[46]

d. Mr. Bahari submitted surviving documentation substantiating his investment in Caspian Fish, which Secretariat has tabulated at over $44 million.[47]

e. Once again, numerous independent sources of evidence confirm that Mr. Bahari invested in Caspian Fish. This includes a number of witnesses with first-hand, contemporaneous knowledge of the construction phase of Caspian Fish.[48]

f. Mr. Bahari has established Azerbaijan's breach, which included his expulsion, followed by a concerted campaign to prevent Mr. Bahari from regaining Caspian Fish. As a result, Caspian Fish was held by the children of Messrs. Aliyev and Heydarov.[49]

41. As regards Ayna Sultan:

a. Both Parties are in agreement that Mr. Bahari owned the property.

b. The Ayna Sultan litigation include unchallenged evidence that the property was sold in 2004 for approximately $235,000.[50]

c. Mr. Bahari has established Azerbaijan's denial of justice breach by exposing a court proceeding that contained gross, systematic procedural and substantive defects that allowed Mr. Bahari's property to be transferred to fraudsters.[51]

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45 **C-004** Shareholders Agreement for Caspian Fish Co. Inc., translated and original, 27 April 1999; *infra* PART III § II.A.5.

46 *Infra* PART III, § III.A.6; see also SoC ¶¶ 68-89; SoR ¶¶ 214-255.

47 Secretariat Report1 at ¶ 2.19; *infra* PART III, § III.B.1-2.

48 *Infra* PART III, § III.B.2.

49 SoC ¶¶ 271-274; SoR ¶¶ 282 e) f), 248, 369.

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

51 *Infra* PART III, § III.

42. As regards the carpets:

a. Both Parties agree that Mr. Bahari owned 451 carpets.[52]

b. There is evidence of 240 carpets not being granted export permits (to be allegedly shipped to Mr. Bahari outside Azerbaijan). This indicates the historic and/or artistic value of at least those 240 carpets.[53]

43. Despite the evidentiary challenges, the record above amply meets Mr. Bahari's burden of proof to prove that he was more likely than not the investor and that he made the investments (and that Azerbaijan subsequently breached its Treaty obligations which resulted in the loss of these investments).

44. In this case, the Tribunal should take appropriate evidentiary considerations given Azerbaijan's exclusive access to relevant documents and especially given its recalcitrant attitude towards document production. Applying the *Corfu Channel* case, this Tribunal should allow a "more liberal recourse to inferences of fact and circumstantial evidence"[54] to Mr. Bahari's case-in-chief. To be clear, however, it is Mr. Bahari's case that even without this evidentiary consideration, he has met his basic burden of proof as to his claim on the balance of probabilities.

II. AZERBAIJAN MUST MEET ITS OWN BURDEN OF PROOF.

45. In its Rejoinder, Azerbaijan's section on burden of proof[55] contains no discussion at all of its own burden of proof to prove its objections to jurisdiction; prove that Minister Heydarov allegedly paid for the entirety of Caspian Fish, as opposed to Mr. Bahari; and to prove it did not breach its obligations under the Treaty.

46. As a matter of law, a respondent can (and Azerbaijan here does) incur a burden of proof in at least three separate circumstances: first, as a matter of course, needing to prove the facts on which it relies; second, as a matter of course, needing to prove its affirmative defenses; and third, as a matter of the shifting burden resulting from its control over the requisite evidence.

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52 SoD ¶ 122; SoR ¶ 75; **C-79**.

53 SoD ¶ 348-350; Zeynalov ¶ 50; SoR ¶ 75, 555-557; **R-36**; **R-37**

54 *The Corfu Channel Case*, International Court of Justice, Judgment, 9 April 1949 (**CLA-298**), p. 18.

55 *See* SoRJ, ¶¶ 105-120.

A. AZERBAIJAN HAS THE BURDEN TO PROVE THE FACTS IT ASSERTS IN SUPPORT OF ITS DEFENSE.

47. First, under the maxim *onus probandi incumbit actori*, the party – whether claimant or respondent – that makes an assertion bears the burden of proving the facts in support of that assertion. The UNCITRAL Rules, which govern this arbitration, contain an express codification of the *onus probandi incumbit actori* principle.[56]

48. The tribunal in *Rompetrol v. Romania* found that it could

> …safely rest, so far as the burden of proof is concerned, on the widely accepted international principle that a party in litigation bears the burden of proving the facts relied on to support its claim or defence. This is often put as a maxim: he who asserts must prove (onus probandi incumbit actori). A claimant before an international tribunal must establish the facts on which it bases its case or else it will lose the arbitration. … [I]n that sense …if [Respondent] fails where necessary to throw sufficient doubt on the claimant's factual premises, it runs the risk of losing the arbitration.[57]

49. Thus, pursuant to "he who asserts must prove," Azerbaijan bears the burden of proof of the facts that support any legal theory on which it relies to challenge jurisdiction.[58] Azerbaijan's assertion that "Mr Bahari fails to understand that Azerbaijan is not required to disprove any allegation in circumstances where Mr Bahari has not done enough to establish the facts he alleges in the first place"[59] utterly ignores this principle, because Respondent's burden to prove its allegations is <u>independent</u> of Mr. Bahari's.

50. Put differently, a "respondent cannot introduce new materials into the tribunal's jurisdictional analysis and yet continue to insist that it remains claimant's burden to overcome respondent's objections."[60] Thus, numerous tribunals have recognized that the Respondent, in objecting to jurisdiction, incurs its own burden of proof to prove its objections. In *Pey Casado v. Chile (II)*, for example, the tribunal noted that, "[a]s the Party

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56 UNCITRAL Rules (2013), Art. 27(1) ("Each party shall have the burden of proving the facts relied on to support its claim or defence"); *see* Procedural Order No. 1, ¶ 9.1(2).

57 *The Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2013 (**CLA-051**), ¶ 179.

58 Rudolf Dolzer & Christoph H. Schreuer, Principles of International Investment law (2d ed.), pp. 88-90, 2008 (**CLA-301**).

59 SoRJ, ¶ 109.

60 Sourgens, Duggal and Laird, Evidence in International Investment Arbitration, Chapter 2: "Burden of Proof in Investor-State Arbitration,", 2018 (**CLA-292**), ¶ 2.53; *see also id*. ¶ 2.52 ("What matters is that the tribunal is asked to look outside the record as assembled by the claimant—and thus no longer prompted to ask the question whether the record if unrebutted would satisfy jurisdiction. Rather, the tribunal is prompted to look at a record that is materially different from what was before the tribunal before the objection.")

raising an objection to jurisdiction, Respondent bears the burden of demonstrating that its objection has merit and that the Tribunal should decline to hear the case for lack of jurisdiction."[61]

51. This does not imply that the burden of proof shifts in its entirety. Rather, the burden of proof is properly conceived of as comprising two aspects: the legal burden and the evidentiary burden. "The legal burden of proof – sometimes referred to as the onus of proof – specifies which party is obliged to prove a particular issue; the evidential burden of proof determines which party is obliged to bring forward evidence in relation to a particular issue."[62] The legal burden of proof does not shift, and thus a claimant must prove the elements of its claims, and the respondent the elements of its defenses.[63] The evidential burden, however, may shift. As the tribunal noted in *Kardassapolous v. Georgia*, "where a claimant has made a *prima facie* evidentiary showing on a particular issue…[t]his burden may, in certain circumstances, shift to the respondent."[64]

52. Thus, while the respondent's raising of a jurisdictional objection does not absolve the claimant of its legal burden, "with respect to…jurisdiction, the burden of proof is shared by the parties: it is for Claimant[] to establish jurisdiction (with evidence), and it is for

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61 *President Allende Foundation, Victor Pey Casado and Coral Pey Grebe v. Republic of Chile (II)*, PCA Case No. 2017-30, Award, 28 November 2019 (**CLA-302**), ¶ 264.

62 Gary Born, *On Burden and Standard of Proof*, in Building International Investment law: The First 50 Years of ICSID (Meg Kinnear, Geraldine Fischer, eds., 2015 (**CLA-303**), p. 46.

63 Gary Born, *On Burden and Standard of Proof*, in Building International Investment law: The First 50 Years of ICSID (Meg Kinnear, Geraldine Fischer, eds., 2015 (**CLA-303**), p. 46.

64 *Ioannis Kardassopoulos and Ron Fuchs v. The Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010 (**CLA-165**), ¶¶ 228, 230; *accord Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Final Award, 27 June 1990 (**CLA-135**), ¶ 56 ("in case a party 'adduces some evidence which prima facie supports his allegation, the burden of proof shifts to his opponent.'"). The same is true with respect to the merits and quantum, each of which must also be proven to the balance of probabilities standard. In addition, because Azerbaijan's submissions on jurisdiction call into question the quantum of Mr. Bahari's investment, Mr. Bahari takes this opportunity to note that damages must be proven with reasonable confidence. *See, e.g.*, *Lemire v. Ukraine*, ICISD Case No. ARB/06/18, Award, 28 March 2011 (**CLA-181**), ¶ 246 ("The Tribunal agrees that it is a commonly accepted standard for awarding forward looking compensation that damages must not be speculative or uncertain, but proved with reasonable certainty; the level of certainty is unlikely, however, to be the same with respect to the conclusion that damages have been caused, and the precise quantification of such damages. Once causation has been established, and it has been proven that the *in bonis* party has indeed suffered a loss, less certainty is required in proof of the actual amount of damages; for this latter determination Claimant only needs to provide a basis upon which the Tribunal can, with reasonable confidence, estimate the extent of the loss."); *Hrvatska v. Slovenia*, ICSID Case No. ARB/05/24, 17 December 2015 (**CLA-166**), ¶ 175 ("the Tribunal recalls that the burden of proof falls on the Claimant to show it suffered loss. The standard of proof required is the balance of probabilities and damages cannot be speculative or uncertain. However, scientific certainty is not required. Naturally, some degree of estimation will be required when considering counterfactual scenarios and this, of itself, does not mean that the burden of proof has not been satisfied.").

Respondent to challenge it (with evidence)."[65] Respondent is also required to carry its burden to the same standard of proof as the Claimant:

> The respondent's burden of proof means that a tribunal can find that it has jurisdiction even if the respondent has created significant factual issues and raised some doubts as to the tribunal's jurisdiction. **If the respondent makes submissions that are plausible on their face but not sufficiently well supported to meet the standard of proof the sheer creation of doubt in the tribunal's mind should not lead to a rejection of jurisdiction**. Such a conclusion would impermissibly reverse applicable burdens of proof.[66]

B. AZERBAIJAN HAS THE BURDEN TO PROVE ITS AFFIRMATIVE DEFENSES.

53. Second, where a respondent advances affirmative defenses, it bears the burden of proof to establish those defenses. As the tribunal noted in *LSF-KEB v. Korea*, "facts and legal argument extraneous to the Claimants' case on jurisdiction (for example facts and legal argument necessary to support a limitation defense)…are for the Respondent to establish on a balance of probabilities."[67] Likewise, as the tribunal noted in *Gallo v. Canada*, "if the Respondent raises defenses, of fraud or otherwise, the burden shifts, and the defenses can only succeed if supported by evidence marshalled by the Respondent."[68] And as summarized in *Rompetrol*, "if the respondent chooses to put forward fresh allegations of its own in order to counter or undermine the claimant's case, then by doing so the respondent takes upon itself the burden of proving what it has alleged."[69]

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65 *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015 (**CLA-117**), ¶ 175. The tribunal continued: "In concrete terms, this means that Claimants bear the burden of demonstrating that they had an investment at the time of the violations alleged to be in breach of the Treaty and of showing what that investment consisted of, and it is for Respondent to show that Claimants had no such investment." Respondent's argument here that, with respect to jurisdiction, "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 he did," Respondent's Rejoinder, ¶ 109, fails for this reason: Respondent has argued that Claimant did not make his investment. It bears the burden to prove that.

66 Sourgens, Duggal and Laird, Evidence in International Investment Arbitration, Chapter 2: "Burden of Proof in Investor-State Arbitration, 2018 (**CLA-292**), ¶ 2.55 (emphasis added).

67 *LSF-KEB Holdings SCA and others v. Republic of Korea*, ICSID Case No. ARB/12/37, Award, 30 August 2022 (**CLA-304**), ¶ 250.

68 *Vito G. Gallo v. The Government of Canada*, PCA Case No. 2008-03, Award, 15 September 2011 (**CLA-305**), ¶ 277.

69 *The Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2013 (**CLA-051**), ¶ 179.

54. As noted by tribunals and commentators, the following assertions by a respondent qualify as examples of affirmative defenses triggering the respondent's burden of proof:

a. The imposition of acceptance requirements contained within the applicable BIT,[70] such as Azerbaijan's argument that Article 9 of the BIT bars the Tribunal's jurisdiction;[71] and

b. Non-retroactivity of a BIT to disputes predating its entry into force and non-protection of disputes that crystalized before the entry into force of the BIT,[72] such as Respondent's argument that Mr. Bahari's claims are barred *ratione temporis*.[73]

55. Respondent's other theory refuting the Tribunal's jurisdiction—namely, that Mr. Bahari was not, in fact, the investor in his investments—appears to be unique in investment treaty practice. As a threshold matter, Claimant notes that Respondent frames that argument two ways: first, in its Statement of Defense ("**SoD**"), it alleged that Mr. Bahari had failed to prove the existence of his investment and claimed that "Mr Bahari did not fund the purchase of the equipment or the construction of the buildings" that comprise part of his investment in Azerbaijan.[74] Now, in its Rejoinder, Respondent goes one step further: it now alleges that Minister Heydarov was the investor in Caspian Fish.[75]

56. Taken as framed in its Statement of Defense, Azerbaijan's objection could represent an attempt to question Mr. Bahari's evidence; taken as framed in its Rejoinder, Azerbaijan's objection is now an affirmative defense that another person funded the investment. Either way, Azerbaijan bears a burden of proof: it must prove the facts upon which it relies in questioning Mr. Bahari's evidence; it must also prove its affirmative argument that Minister Heydarov funded Caspian Fish. To the extent that, by arguing Mr. Bahari did not fund the investment, Azerbaijan is attempting to call his evidence into question, Azerbaijan bears the burden of challenging Mr. Bahari's evidence of his investment.

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70 *See*, *e.g.*, *Tethyan Copper Company Ptd Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, Award, 12 July 2019 (**CLA-176**), ¶ 1436.

71 *See infra*, PART V.

72 *See, e.g.*, *LSF-KEB Holdings SCA and others v. Republic of Korea*, ICSID Case No. ARB/12/37, Award, 30 August 2022 (**CLA-304**), ¶ 251. Claimant's primary case is, nonetheless, that the dispute clearly crystalized well-after the Treaty entered into force in June 2002.

73 *See infra*, PART IV § II.

74 SoD, ¶¶ 87-88.

75 SoRJ, ¶ 377; First Kerimov Statement ¶ 20; First Hasanov Statement ¶¶ 8, 9 and 11; First Zeynalov Statement ¶¶ 30-31. Azerbaijan's SoD alleged this on a superficial basis (*see* SoD ¶¶ 300, 343). Its Rejoinder marks the first time it makes this argument in earnest.

C. THE FACTUAL BURDEN SHOULD SHIFT TO AZERBAIJAN BECAUSE IT CONTROLS NEARLY ALL OF THE RELEVANT EVIDENCE.

57. Third, in circumstances in which the respondent controls all of the applicable evidence, the factual burden may shift to the respondent to refute the claimant's case. While it is a rare circumstance that triggers a shifting of the burden, it stems from the concept that the respondent's position allows it alone to access the necessary documents: "since the respondent is a state or a state entity with police powers, it might have access to information that a claimant would never be able to gain access to."[76] Indeed, although the *Mohammet Çap v. Turkmenistan* tribunal, whose award is cited by Azerbaijan,[77] declined to shift the burden to the respondent, it acknowledged that "there are instances where such burden of presenting evidence to prove an allegation can shift if certain circumstances are present."[78]

58. The tribunal's decision in *Apotex v. United States* is illustrative. Although the discussion in that case arose with respect to evidence of the respondent's breach, the tribunal acknowledged the role of the information imbalance in imposing the burden of proof on the investor. The claimants in that case claimed violations of the United States' national treatment and most-favored nation treatment obligations under the NAFTA Agreement,[79] a claim which required them to demonstrate that (i) they were accorded treatment, (ii) were in like circumstances with domestic or foreign investors or investments and (iii) the treatment they received was less favorable than that accorded to those in like circumstances.[80] In turn, the United States argued that a failure on the claimant's part to establish any one of those elements of its claim would prove fatal.[81] Although it acknowledged that it bore the legal burden of proof, the claimant argued that in those circumstances, the evidential burden of proof should shift to the respondent.[82] In agreeing with the claimant, the tribunal acknowledged that the claimant would encounter great

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76 Sourgens, Duggal and Laird, Evidence in International Investment Arbitration, Chapter 2: "Burden of Proof in Investor-State Arbitration," 2018 (**CLA-300**) ¶ 2.93

77 *See* SoRJ ¶ 111.

78 *Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd Sti v Turkmenistan*, ICSID Case No. ARB/12/6, Award, 4 May 2021 (**RLA-260**), ¶ 721.

79 See *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Award, 25 August 2014 ("***Apotex v. United States***") (**CLA-306**), ¶¶ 8.4-8.5.

80 *Apotex v. United States* (**CLA-306**), ¶¶ 8.4-8.5.

81 *Apotex v. United States* (**CLA-306**), ¶ 8.6.

82 *Apotex v. United States* (**CLA-306**), ¶ 8.7.

difficulties in proving it was in "like circumstances" to other investors, both foreign and domestic, particularly in circumstances in which documents could be properly withheld by the United States because the necessary documents included tax information.[83] Thus, claimant argued, there was no means by which it could discharge its burden of proof. The tribunal acknowledged that, if the burden did not shift, "the claimant would be left to prove its case from whatever incomplete documentary evidence and witness testimony the respondent State may choose to present. That burden would be, invariably, an almost impossible task."[84]

59. In the present case, in which all of the evidence is in Azerbaijan's hands (and indeed, in Azerbaijan) and thus whether the requisite evidence comes into the record is entirely in Azerbaijan's discretion, it would be reasonable to require that Azerbaijan bear the burden to disprove Mr. Bahari's investment case.

III. AZERBAIJAN FAILS TO DISCHARGE ITS BURDEN OF PROOF TO PROVE ITS DEFENSES.

A. AZERBAIJAN AS A BURDEN OF PROOF WHETHER ITS DEFENSE FACTUALLY CHALLENGES MR. BAHARI'S CASE-IN-CHIEF, OR WHETHER IT ASSERTS AFFIRMATIVE DEFENSES.

60. Azerbaijan appears to take the position that, as Respondent, it carries no burden of proof at all: "Mr Bahari fails to understand that Azerbaijan is not required to disprove any allegation in circumstances where Mr Bahari has not done enough to establish the facts he alleges in the first place."[85] Azerbaijan misconstrues the applicable law and its obligations on this point.

61. Azerbaijan bears the burden of proving those facts it relies on to support its defense. This is a requirement separate from Mr. Bahari's burden of proof as a claimant. Azerbaijan must therefore discharge its burden of proof as to those facts. To the extent Azerbaijan

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83 *Apotex v. United States* (**CLA-306**), ¶¶ 8.10, 8.66 ("Where crucial documents are properly withheld by a respondent State on grounds of strict confidentiality or other like privilege and not ordered for production by a tribunal (on those grounds), how then can the claimant investor discharge the legal burden of proving its positive case under NAFTA Article 1103 in regard to factual matters essentially within the exclusive domain of the respondent State?")

84 *Apotex v. United States* (**CLA-306**), ¶ 8.68. (emphasis added.) Such is the situation Mr. Bahari faces here.

85 SoRJ ¶ 109.

seeks to "throw sufficient doubt on the claimant's factual premises, it runs the risk of losing the arbitration" if it fails to prove the facts it asserts.[86]

62. To the extent Azerbaijan's position is that it is not required to disprove any allegation in circumstances where Mr. Bahari has not sufficiently established the facts, it appears that Azerbaijan is saying that its defense rests entirely on whether Mr. Bahari has met his burden of proving his claim. As discussed above, Mr. Bahari has met the burden of proving his claim.

63. Of course, Azerbaijan also puts forward a number of alleged facts in rebuttal to the claim. To the extent it does so, Azerbaijan bears the burden of proof as to those facts. As discussed *infra*, Azerbaijan has failed to discharge its burden as to its factual rebuttals to Mr. Bahari's claim.

64. Furthermore, Azerbaijan has asserted a number of affirmative defenses. This includes certain jurisdictional defenses such as its Article 9 defense. But it also includes a theory of an alternative investor and an alleged sale of Caspian Fish in 2001. As explained above, Azerbaijan bears a separate burden of proving these affirmative defenses. As discussed *infra*, it has failed to do so.

65. Even though Azerbaijan omits any discussion of its burden of proof, it appears to understand this obligation at least implicitly. Thus, in its Statement of Defense, Azerbaijan put forward a defense theory that Mr. Bahari had a mere "managerial role at Caspian Fish," but that he could not "prove that he paid for anything."[87] This approach raised an obvious follow-on question, which is that if Mr. Bahari was not the investor who paid for the investments, then who did? In the Statement of Defense, Azerbaijan included only two pieces of testimonial evidence on this point: Mr. Hasanov, who only began working at Caspian Fish in 2000 and who states "[redacted]";[88] and Mr. Kerimov, who briefly joined Caspian Fish in 2001, and states "[redacted]."[89]

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86 *The Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2013 (**CLA-051)**, ¶ 179.

87 SoD ¶¶ 239-40.

88 Hasanov WS1 ¶ 8.

89 Kerimov WS1 ¶ 20; SoD ¶ 97.

66. Perhaps sensing that these two statements were wholly inadequate to meet its burden of proof, Azerbaijan's Rejoinder further developed this affirmative defense theory of Minister Heydarov as an alternative investor. Azerbaijan must discharge its burden of proof to prove this and its other affirmative defenses. As discussed *infra*, it has failed to do so.

B. IN ASSESSING THE BURDEN OF PROOF INCUMBENT UPON BOTH PARTIES, THE TRIBUNAL MUST CONSIDER AZERBAIJAN'S CONDUCT REGARDING EVIDENCE.

67. In evaluating the burden of proof incumbent upon both Parties, the Tribunal must consider Azerbaijan's conduct in light of the principle of good faith.

68. Parties to an investment arbitration are expected to comport with good faith in the performance of their obligations.[90] Specifically, "[i]t is a principle of good faith that [a party] not be allowed to…affirm at one time and deny at another…Such a principle has its basis in common sense and common justice."[91] Dr. MacGibbon further explains that "a State ought to be consistent in its attitude to a given factual or legal situation."[92] Lord McNair succinctly summarized this principle – *allegans contraria non audiendus est* – thusly: "a State cannot blow hot and cold."[93]

69. As a threshold matter, the Reply Statement has already set out in detail Azerbaijan's strategy of obstruction intended to deprive Claimant of evidence.[94] The Tribunal should approach its evaluation of the evidence and burden of proof matters with this conduct in view.

70. In its Statement of Defense Azerbaijan took the position that the "claims do not concern the Republic of Azerbaijan. They concern the conduct of third parties acting in their private capacities, whose personal documents Azerbaijan does not possess or have a right to possess. Azerbaijan cannot force third parties to cooperate or otherwise provide

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90 See VCLT (**CLA-036**), Art. 26

91 Bin Cheng, *General Principles of law as Applied by International Courts and Tribunals,* 1953 (**CLA-307**), pp. 141-149.

92 I. MacGibbon, *Estoppel in International Law*, 7 International and Comparative Law Quarterly 468, 1958 (**CLA-308**), p. 45.

93 A. McNair, "The Legality of the Occupation of the Ruhr", 5 British Yearbook of International Law 17, 1924 (**CLA-309**), p. 35 ("international jurisprudence has a place for some recognition of the principle that a State cannot blow hot and cold – *allegans contraria non audiendus est*.")

94 SoR ¶¶ 27-62.

documents."[95] By hiding behind this attribution defense, Azerbaijan deployed a strategy of withholding evidence. Both the Statement of Defense and the Rejoinder are replete with sentences to the effect that Azerbaijan has no knowledge of matters pleaded.[96]

71. Azerbaijan may not assert facts based on Minister Heydarov's so-called private conduct while hiding behind its attribution defense (which fails in any event):[97]

a. Azerbaijan now advances an affirmative defense that Minister Heydarov was the investor who paid for the entire Caspian Fish project. This defense relies on alleged acts by Minister Heydarov in his so-called private capacity. Azerbaijan cannot blow hot and cold by asserting such "private" acts on the one hand, while hiding behind its attribution defense to withhold evidence on the other hand.

b. Thus, Azerbaijan categorically opposed production of Claimant document requests directed to Messrs. Aliyev and Heydarov, on the basis that they were acting in their private capacities and that such documents were not within the possession, custody, or control of Azerbaijan.[98] Subsequently, however, Azerbaijan relied in its Rejoinder on alleged sale documentation "provided to it from Minister Heydarov's personal archives."[99]

c. Both Minister Heydarov and Mr. Aliyev remain absent from these proceedings, apart from a single letter now submitted by Minister Heydarov declining to testify.[100] Azerbaijan acknowledges that each could give "relevant evidence," but fails to produce them as witnesses.[101]

d. As a broader remark, Azerbaijan's document production has been deplorably lacking. This was discussed at length in the Statement of Reply.[102]

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95 SoD ¶ 27; SoRJ¶ 86 ("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.")

96 SoD ¶¶ 187, 229, 258, 278, 301, 307, 315, 336, 345, 359, 363, 364; SoRJ ¶¶ 336, 343, 390, 394, 438, 508.

97 *Infra* PART V.

98 *See*, *e.g.*, PO6 Annex 1, Claimant's Document Request no. 33, at 63.

99 SoRJ ¶ 77.

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

101 *See* SoRJ ¶ 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"); ¶ 92 ("There is nothing that President Aliyev needs to answer that is material and not already addressed by other documents.")

102 SoR ¶¶ 29-30. *See also* **C-518** Updated Table of Respondent's Document Production Deficiencies (C-379), 10 December 2024.

e. In evaluating whether Azerbaijan has met its burden of proof to prove its theory of an alternative investor, the Tribunal should take into consideration Azerbaijan's uncooperative stance, which has resulted in an exceptionally thin evidentiary record in support of its affirmative defense. This includes, most conspicuously, Minister Heydarov's non-participation in these proceedings, but also a substantial evidentiary gap showing any proof that Minister Heydarov advanced any sums towards Caspian Fish.

72. Azerbaijan's position also extends to private parties who are not government officials, including Caspian Fish and Coolak Baku. Thus, in its objections to Claimant's Document Requests, Azerbaijan took the blanket position that documents held by third parties are "not in the possession, custody or control of Azerbaijan, nor has the Claimant provided an indication as to why the documents would be expected to be in the possession of the Respondent…"[103] It relied on this position to object to document production requests directed at Caspian Fish, Coolak Baku, and other private parties. However:

a. Azerbaijan clearly had access to Caspian Fish files and produced documents from those files.[104] Azerbaijan did, in fact, produce some documents from Caspian Fish responsive to Claimant's document requests (although the production appeared incomplete and even fraudulent).[105] Azerbaijan also produced witnesses who clearly have access to the Caspian Fish files.

b. Despite this access, Azerbaijan conspicuously failed to exhibit the Caspian Fish construction record, which would be dispositive of the issue of who brought the investment. Notably, Azerbaijan has not claimed that these records do not exist or were lost. As Claimant's expert Mr. Tom Gaines states, the absolute lack of documentation contemporaneous to the construction of the Project is abnormal, even 25 years later. "[redacted]

103 *See*, *e.g.*, PO6 Annex 1, Claimant's Document Request no. 3, at 9 (request relating to Caspian Fish.)

104 SoR ¶¶ 34-35, *citing to* SoD ¶¶ 95, 109, 213, 489; *see also* SoRJ ¶¶ 71, 699; **C-387** Letter from Claimant's Counsel to Quinn Emanuel regarding sources of exhibits, 13 January 2024.

105 SoR ¶¶ 39-44; 1132-1144 (citing to Azerbaijan's document production responsive to Claimant's Document Request no. 60.)

[redacted]"[106]

c. With regards to Coolak Baku, Azerbaijan failed to produce financial documents, tax records, licenses and permits, and other evidence ordered by the Tribunal. These documents would substantiate whether Coolak Baku had any revenues, which would be dispositive of Azerbaijan's allegation that the company was never operational and never produced soft drinks or beer.[107]

d. Azerbaijan has access to Coolak Baku's files through its witnesses.[108] However, as with Caspian Fish, Azerbaijan failed to produce any construction records for Coolak Baku (including Shuvalan Sugar).[109]

73. As Professor Bin Cheng has noted, however, "a party having the burden of proof must not only bring evidence in support of his allegations, but must also convince the Tribunal of their truth, lest they be disregarded for want, or insufficiency of proof."[110] These evidentiary deficiencies in Azerbaijan's case should be construed against it when assessing whether it has discharged its burden of proof.

74. Azerbaijan's conduct regarding evidence also impacts Claimant's burden of proof. As noted above, in circumstances where the respondent controls all of the relevant evidence, the Tribunal may shift the factual burden to the respondent to refute the claimant's case. As with the claimant in *Apotex*, Mr. Bahari finds himself in a situation where his case is limited by "whatever incomplete documentary evidence and witness testimony the respondent State may choose to present."[111] While Mr. Bahari submits he has met his burden of proof to prove his claim despite the evidentiary challenges, the Tribunal may and should take into consideration the heavy evidentiary imbalance – exacerbated by Azerbaijan's obstructive conduct – when evaluating Mr. Bahari's claim.

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106 Secretariat Second Report ¶ 3.2.

107 *Infra* PART III, § I.C.

108 *Infra* PART III, § I.C; H. Aliyev WS dated 21 December 2023, producing a number of Coolak Baku documents; SoD ¶ 196 (stating that Mr. Zeynalov provided the correspondences relating to Coolak Baku.)

109 SoR ¶ 58.

110 Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953) (**CLA-307**), p. 329.

111 *Apotex v. United States* (**CLA-306**), ¶ 8.68.

C. AZERBAIJAN FAILS TO PROVE ITS FACTUAL DEFENSE ALLEGATIONS.

75. Turning to the defense allegations themselves, Azerbaijan's proffered evidence in support falls far short of meeting its burden of proof.

76. As a threshold matter, Claimant notes the significant number of Respondent exhibits whose provenance is unknown.[112] This heavily mitigates the evidentiary value of these documents, especially in cases where the authenticity of the documents is in dispute between the Parties.

77. With respect to Coolak Baku, Azerbaijan has not carried its burden to prove the following allegations:

a. Azerbaijan fails to prove that Coolak Baku was never operational and that Coolak Baku did not produce soft drinks or beer. The evidentiary support for these assertions is based entirely on five alleged correspondences and five minutes of meetings of the Coolak Baku board which, as discussed below, were fraudulently convened without Mr. Bahari's knowledge or approval. Moreover, the proffered evidence is internally inconsistent; for example, certain passages in the correspondence explicitly state that Coolak Baku was operational by 1998.[113]

b. Azerbaijan fails to prove that Mr. Bahari invested at most $1.4 million in Coolak Baku. This implausible assertion is based on a single sentence in one of the five alleged correspondences. Azerbaijan provides no other support, documentary or testimonial, to support this allegation.[114] There is no explanation as to where the rest of the funds came from, if not Mr. Bahari.

c. Azerbaijan fails to prove that there was an alternate investor. Unlike its narrative for Caspian Fish, Azerbaijan does not present a clear alternative investor for Coolak Baku. Azerbaijan alleges that ASFAN made some contributions towards equipment, but this is again based on a single correspondence, without any other

112 SoR ¶¶ 35-38.

113 *Infra* PART III, § I.C.3.

114 *Infra* PART III, § I.C.4.

corroborating evidence. Even if accepted, this allegation would not show that ASFAN contributed the millions required to stand up Coolak Baku.[115]

d. Azerbaijan fails to prove that the Coolak Baku litigation was not defective and failed to provide adequate justice to Mr. Bahari. Azerbaijan is unable to explain why the Baku Economic Court allowed ASFAN to withdraw from the Coolak Baku joint venture while taking with it the entire production facility and equipment, as well as the drinks business.[116]

78. With respect to Caspian Fish, Azerbaijan has not carried its burden to prove the following allegations:

a. Azerbaijan fails to prove that Minister Heydarov held any interest in Caspian Fish.[117] Indeed, Azerbaijan contests the authenticity of the Shareholders Agreement, which is the only legal document through which Minister Heydarov could have any interest in Caspian Fish.

b. Azerbaijan fails to prove that Minister Heydarov made any monetary investment in Caspian Fish. Azerbaijan's evidence is limited to the alleged International N.A.T. Limited (BVI) invoices, documents which Azerbaijan itself notes has evidentiary issues. Even if accepted at face value, the documents do not show who, if anyone, paid these invoices. Similarly, Azerbaijan produces various ATABank documents that, on their face, fail to show any payment by or even a connection to Minister Heydarov.[118]

c. Azerbaijan fails to prove that Caspian Fish cost $24.5 million, not $56 million. Azerbaijan's only documentary proof of the $24.5 million price is based on the International N.A.T. Limited (BVI) invoices, which Azerbaijan itself admits listed services which were never performed.[119] Azerbaijan's evidence is contradicted by

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115 *Infra* PART III, § I.C.4.

116 *Infra* PART III, § I.E.

117 *Infra* PART III, § II.A.1.

118 *Infra* PART III, § I.A.2.

119 Secretariat Second Report, ¶¶ 3.21-3.24, Table 5, p. 18; SoD ¶ 243(b)-(c) ("It is unlikely that INL was in fact carrying out the construction services set out in the invoices, given the documentary record does not otherwise support the participation of INL in the construction of Caspian Fish; nor does Mr Zeynalov recall INL as a company involved in the construction at the time.")

numerous contemporaneous sources stating that Caspian Fish cost $56 million to construct.

d. Azerbaijan fails to prove that Mr. Bahari sold Caspian Fish to Minister Heydarov for $4.5 million.[120] Most notably, the single-page Alleged 2001 Sale Agreement finds no corresponding evidence in the BVI corporate records. Any sale of shares would require a submission, approval, and recording of the same under Caspian Fish's corporate bylaws and pursuant to applicable BVI company law. There is no record or even mention of any such sale in 2001.[121]

IV. ADVERSE INFERENCES ARE APPROPRIATE AND NECESSARY.

79. On the facts of this case, Mr. Bahari is entitled to adverse inferences. Adverse inferences are appropriate and necessary, because Azerbaijan must be made to bear the evidentiary consequences of its disclosure failures and obstructive behavior.

80. "When a party has access to relevance evidence, the Tribunal is authorized to draw adverse inferences from the failure of that party to produce such evidence."[122] As Vera Van Houtte explains in her chapter on Adverse Inferences, the adverse inference "is in fact a presumption that a party that presumably has control over certain evidence does not produce it because it is harmful to its case."[123] In that sense, an adverse inference "contributes to the administration of justice by not preventing a party from fully presenting its case when evidence is withheld by the other party."[124]

81. Adverse inferences are governed by IBA Rule 9.6, which provides that "if a Party fails without satisfactory explanation to produce any Document … ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party.[125] The well-known "Sharpe Test," formulated by Jeremy

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120 *Infra* PART III, § III.

121 *Infra* PART III, § III.D.

122 *Ultrasystems, Inc. v. Iran*, Award in IUSCT Case No. 27-84-3 of 4 March 1983, Concurring Opinion of R. Mosk, 2 Iran–US CTR 114, 1983, (**CLA-310**), p. 115.

123 V. Van Houtte, Written Evidence and Discovery in International Arbitration: New Issues and Tendencies (Giovanni and Mourre (eds.)), Chapter 5: Adverse Inferences in International Arbitration, January 2009, (**CLA-311**).

124 M. Polkinghorne and C. Rosenberg, *The Adverse Inference in ICSID Practice*, in ICSID Review, Vol. 30 No. 3, 2015, (**CLA-312**), p. 742.

125 IBA Rules (2020), Rule 9(6); *see* Procedural Order No. 1, ¶ 6.8.

Sharpe and as set out and applied by the tribunal in *FREIF v. Spain*, establishes five factors for consideration of when an adverse inference is appropriate:

a. The party seeking the inference must produce all available evidence corroborating the inference sought.

b. The evidence is accessible to the inference opponent.

c. The inference sought is reasonable; that is, it must be consistent with facts and other evidence.

d. Prima facie evidence of the requesting party has to be reasonably consistent with the inference sought.

e. The non-producing party must be aware of its obligation to produce rebuttal evidence.[126]

82. Azerbaijan appears to agree in its Rejoinder that adverse inferences may be drawn where (i) a party "fails without satisfactory explanation to produce documents ordered to have been produced by the tribunal" and (ii) it is "clear in each case that the evidence exists and is in Respondent's possession, custody, or control but has been withheld."[127] These precise circumstances exist here with respect to the evidence Respondent has failed to produce.

83. The nature of an adverse inference depends on the circumstances underlying it. For example, in the *INA* case, although Iran submitted a separate valuation of expropriated property pursuant to certain special rules and directives, it did not submit documents supporting that valuation. The tribunal noted that Iran "has furnished neither the texts of such rules and directives nor the underlying documents, though it was ordered to do so" and that the only excuse it had offered for not complying with the production order was that "the documents were 'voluminous,'" an excuse the tribunal found "not convincing."[128] Thus, in assessing the evidentiary weight of that report, the tribunal found that it "must draw negative inferences from the Respondent's failure to submit the

126 *FREIF Eurowind Holdings Ltd v. Kingdom of Spain*, SCC Case No. 2017/060, Final Award, 8 March 2021 (**CLA-313**), ¶ 120.

127 SoRJ ¶ 73 (quoting *Latam Hydro v Peru*, ICSID Final Award, 20 December 2023 (**RLA-257**), ¶. 253.

128 *INA Corp. v. Government of the Islamic Republic of Iran*, 8 Iran-US CTR 382, 1985 (**CLA-314**), ¶. 37.

documents which it was ordered to produce."[129] It therefore declined to credit Iran's valuation as reflecting the value of the expropriated property.[130]

84. Claimant sets out at **Appendix C**, a table setting out the specific adverse inferences sought, along with details supporting each request, including discussions of the Sharpe elements for each adverse inference requested. These adverse inferences are based on Azerbaijan's failure to produce specific documents as granted by the Tribunal in PO6. The adverse inferences are narrowly tailored and reasonable.

85. For Coolak Baku, the adverse inferences sought are as follows:

    a. "The Coolak Baku facility was operational."

    b. "Coolak Baku started producing soft drinks in 1997 and beer in 1998."

    c. "The Coolak Baku Import/Export data provided by Azerbaijan at **R-73** to **R-76** is incomplete."

86. For Caspian Fish, the adverse inferences sought are as follows:

    a. "In 2001, Azerbaijan accepted that US$ 56 million was used to build the Caspian Fish plant."

    b. "Azerbaijan stated that Caspian Fish was a successful fish processing and production plant that held significant market control in Azerbaijan."

    c. "Azerbaijan removed evidence of Caspian Fish BVI's ownership in Caspian Fish LLC."

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129 *INA Corp. v. Government of the Islamic Republic of Iran*, 8 Iran-US CTR 382, 1985 (**CLA-314**), ¶. 37.

130 *INA Corp. v. Government of the Islamic Republic of Iran*, 8 Iran-US CTR 382, 1985 (**CLA-314**), ¶. 37.

PART III: FACTUAL BACKGROUND

I. MR. BAHARI INVESTED IN COOLAK BAKU.

A. INTRODUCTION AND ROADMAP TO THE SECTION.

87. Azerbaijan's jurisdictional defense alleges that Mr. Bahari was not an investor and did not invest in Coolak Baku. That defense relies almost exclusively on sparse, one-sided documentation provided by Messrs. Adil Aliyev and Zeynalov, themselves unreliable parties with self-serving agendas. This section looks at Mr. Bahari's evidence of his construction of Coolak Baku and compares it side by side with Azerbaijan's allegations contesting that Coolak Baku was completed and operational:

a. **Section B** summarizes Mr. Bahari's evidence, showing he meets his burden of proving that he was the investor and made the investments into Coolak Baku – and that no one else had the ability to do so. Notably, the section addresses the reasonableness of Mr. Bahari's evidence showing he invested $21 million in constructing Coolak Baku (including Shuvalan Sugar) and installing equipment. This is contrasted with the Oxera Report restrictive approach, which essentially creates a higher burden of proof in evaluating Mr. Bahari's evidence of amounts invested.

b. **Section C** addresses Azerbaijan's implausible argument that Mr. Bahari only spent $1.4 million on Coolak Baku and that the facility was *never* operational, and *never* produced soft drinks or beer. This section demonstrates that Azerbaijan fails to meet its burden of proving those allegations, as its supporting evidence is based on just five alleged correspondences from Mr. Adil Aliyev (of ASFAN) covering a 3-year period (1996-1999), as well as five Coolak Baku board meeting minutes from 2002-2003 which were convened without Mr. Bahari's knowledge or participation and relied on Mr. Zeynalov's revoked POA. In reality, Azerbaijan's submitted evidence shows that Messrs. A. Aliyev and Zeynalov conspired together to defraud Mr. Bahari. What is more, this evidence is full of internal inconsistencies and contradictions and simply does not support Azerbaijan's categorical conclusions that Coolak Baku was never operational and never produced soft drinks or beer.

c. **Section D** addresses Azerbaijan's own evidence confirming that by 2002, Minister Heydarov had taken control of Coolak Baku and withholding profits from ASFAN. This shows that ASFAN's true issues were with Minister Heydarov and not Mr. Bahari. Moreover, it corroborates Mr. Bahari's assertion that Minister Heydarov took control of his investments (and that this action is attributable to Azerbaijan). In any event, this evidence of withheld profits contradicts Azerbaijan's jurisdictional allegations that Coolak Baku was never operational.

d. **Section E** addresses the Economic Court's sham proceedings and decision that were designed to allow ASFAN to defraud Mr. Bahari by stripping Coolak Baku of both its equipment and its business line. This demonstrated scheme expose ASFAN and Mr. Zeynalov's lack of credibility; it also undercuts the ASFAN-sourced evidence that Mr. Bahari failed to stand up an operational facility. Indeed, in the court litigation, ASFAN never alleged that it had paid for the equipment and did not claim any such sums as part of its contribution to the joint venture.

B. MR. BAHARI HAS MET HIS BURDEN OF PROOF TO ESTABLISH THAT HE INVESTED IN COOLAK BAKU.

5. On Azerbaijan's Own Case, Mr. Bahari Has Met the Threshold Jurisdictional Showing That He Was an Investor Who Made Investments.

88. As a threshold matter, Azerbaijan overreaches in its attempt to shoehorn a merits issue of quantum into a jurisdictional argument that Mr. Bahari was not the investor and did not make the investment in Coolak Baku (including Shuvalan Sugar). However, on Azerbaijan's own proffered evidence disposes of its jurisdictional argument.

89. As part of its jurisdictional defense, Azerbaijan alleges that "Mr. Bahari has failed to prove that he himself, as opposed to Coolak Baku or some other person, paid [for Coolak Baku]."[131] However, the First and Second Shi Reports accept that there is sufficient evidence that Mr. Bahari invested between $134,577 and $846,822 in Coolak Baku;[132] Similarly, Azerbaijan's stated defense is that Mr. Bahari only invested $1.4 million.[133] While Mr. Bahari obviously contests these very low alleged amounts, they meet the Treaty

131 SoRJ ¶ 194.

132 SoRJ ¶ 311(a); Oxera 1, § 2, Appx. 3; Oxera 2, § 2.D, Appx.3.

133 SoD ¶ 207(h); SoRJ ¶ 311.

requirements to establish Mr. Bahari as an investor who made an investment into Coolak Baku. In reality, the dispute concerns the *quantum* of Mr. Bahari's investment, rather than a threshold Treaty inquiry.

6. Mr. Bahari Was the Only Individual with the Background and Experience to Establish Coolak Baku.

90. Mr. Bahari has met his burden to prove that, of all the individuals associated with Coolak Baku, he was the only person with the technical know-how and entrepreneurial experience to launch that business in post-Soviet 1990's Azerbaijan.

91. The timeline of Mr. Bahari's successive projects demonstrates a logical progression in his increasing technical expertise and experience with line-processing and packaging technology, applied to various consumables sectors (pharmaceuticals, then food and beverage).[134] This progression corroborates he invested in Azerbaijan, including both Coolak Baku and Caspian Fish.

92. With Kaveh Tabriz, Mr. Bahari installed modern machinery from Sweden and Japan to produce uniform packaging for pharmaceutical products – an innovation in Iran at the time.[135] Azerbaijan contests the exact percentage of Mr. Bahari's ownership in Kaveh Tabriz[136] and alleges that it was not successful[137] (which is denied), but these arguments elide the main point that Mr. Bahari himself developed and installed the packaging machinery for the pharmaceutical products – a point that Azerbaijan cannot rebut.[138]

93. Mr. Bahari next founded Coolak Shargh, a soft drinks manufacturing and distribution company in Iran. With this company, Mr. Bahari installed innovative PET bottle packaging equipment, as well as processing lines. Azerbaijan attempts to create a narrative of failed investments with Coolak Shargh. This is also denied[139] – but again, those allegations are irrelevant to the main point regarding Mr. Bahari's technical and entrepreneurial expertise

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134 Azerbaijan's statement that "critically…neither business of Kaveh Tabriz or Coolak Shargh had anything to do with fish" is a *non sequitur* that fails to acknowledge the application of the underlying line processing and packaging technology to different consumables sectors. SoR ¶ 270.

135 SoC ¶¶ 25-26.

136 SoD ¶ 185(a).

137 SoRJ ¶ 275.

138 Azerbaijan's allegation that Dr Memarvar "appears to have contributed the specialist pharmaceutical knowledge for the business" is irrelevant as it does not address the point that Mr. Bahari brought the technological innovation to develop uniform packaging for the pharmaceutical products. SoD ¶ 185(a).

139 SoR ¶¶ 112-117.

with soft drinks line processing, bottling, and distribution, which Azerbaijan does not and cannot rebut.

94. The relevance of this prior experience is that Mr. Bahari subsequently replicated the Coolak Shargh business model, including the technology and processes used, in Coolak Baku. Mr. Bahari has shown that out of all of the individuals involved with Coolak Baku, no one but he possessed the capability to not only install the necessary technology and equipment, but equally, bring the operational and business know-how. Certainly, Azerbaijan cannot – and indeed does not – point to any alternative investor, at ASFAN or elsewhere, who had such experience and expertise.[140]

95. In sum, the evidence of Mr. Bahari's experience corroborates his claim that he invested in Coolak Baku, while Azerbaijan's narrative proffers no credible alternative investor.

7. The 1998 Coolak Baku JVA Provides Compelling Prima Facie Evidence That Mr. Bahari Made the Necessary Financial Contributions and Stood Up an Operational Business.

96. As a key contemporaneous document whose authenticity is agreed by both Parties, the 23 January 1998 JVA provides compelling evidence that Mr. Bahari was an investor in Coolak Baku and invested the majority of the capital investment to complete the facility.

97. It is agreed by both Parties that under the 1998 JVA, Mr. Bahari was the 75% majority shareholder in Coolak Baku.[141] As such, he was entitled to benefit economically from the venture – that is to say, he was an investor as understood by the Treaty.[142]

98. Azerbaijan discounts the JVA, stating that the contractual expectation that Mr. Bahari would contribute financially to the joint venture is not proof that he in fact contributed.[143] Instead, Azerbaijan alleges that, for years, Mr. Bahari contributed no funds at all and that

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140 Azerbaijan argues that there were others experienced in soft drink bottling technology because Coca-Cola was established in Azerbaijan at the time. SoRJ ¶ 273. This statement misses the mark, as Azerbaijan does not allege that Coca-Cola bottling experts were brought in to work on Coolak Baku.

141 **C-001** at Clause 5. The alleged 1999 Amendment to the 1998 JVA, as produced by Azerbaijan, maintains the basic 75%/25% shareholding interest as between Mr. Bahari and ASFAN, respectively. **R-72** at Clause 3.

142 Pursuant to the terms of the 1998 JVA, Mr. Bahari's contribution to the JVA was to invest in the repair of the existing production facility and to construct, deliver and install the technology and equipment required for production of beer and soft drinks, as well as contribute to the business operations, including marketing, staff training, sale and export, and so on. (**C-001,** Clauses 3.1, 5.5.) This was the case even under the 1996 JVA that Azerbaijan submitted. (**R-98**.) The clear commercial logic of the joint venture was that Mr. Bahari would inject the capital necessary to build the facility, run operations, and would correspondingly receive a majority of its profits.

143 SoRJ ¶ 285.

the Coolak Baku "facility was never completed (or operational)."[144] This narrative is contradicted by the parties' conclusion and adherence to the 1998 JVA for 7 years, until its termination in 2005 via the Coolak Baku Litigation (discussed below). Indeed, were Azerbaijan's allegation true, ASFAN would have renegotiated the terms of the joint venture,[145] or else terminated the joint venture much earlier than 2005. In sum, the signature of the 1998 JVA and the parties' subsequent adherence to it over a period of 7 years confirm that Mr. Bahari did, in fact, keep up his end of the bargain, and build an operational facility.

99. Indeed, Azerbaijan produces a 9 September 1999 Amendment to the 1998 JVA.[146] That amendment explicitly reiterates the 75%-25% shareholding split between Mr. Bahari and ASFAN. If Mr. Bahari had entirely failed to make any investments in Coolak Baku from 1996 to 1999, it is difficult to see why ASFAN would have renegotiated the JVA with the exact same shareholding percentages.

100. As a final point, Azerbaijan's own quantum expert, Oxera, expressly relies on the terms of the joint venture as corroborating evidence when evaluating and accepting claimed amounts for Coolak Baku, on the basis that "[redacted]"[147]

8. Multiple Independent Sources of Evidence Further Corroborate Mr. Bahari's Status as Investor in Coolak Baku.

101. Mr. Bahari has provided multiple sources of evidence to further corroborate his investment in Coolak Baku. These are independent, corroborating sources in addition to Mr. Bahari's direct documentary evidence of amounts invested, discussed in the next subsection below. It is critical to note that Azerbaijan does not actually refute the truth of the matters asserted in each submitted document or testimony. Thus:

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144 SoRJ ¶ 305. As discussed below, these allegations are contradicted by the same evidence submitted by Azerbaijan.

145 Azerbaijan alleges that per the alleged original 1996 JVA, Mr. Bahari held a 93% interest in Coolak Baku, while ASFAN held the remaining 7%. **R-98**; SoD ¶ 190. Mr. Bahari does not recognize this version of the JVA - it is written in Cyrillic, which Mr. Bahari does not read (Bahari WS2 ¶ 12(a)); however, on Azerbaijan's own case and evidence, if Mr. Bahari had completely failed to perform under the 1996 JVA, it is difficult to see why ASFAN would agree to renegotiate Mr. Bahari's shareholding down by only 18% in the 1998 JVA.

146 **R-72**. Claimant notes that the authenticity of that document is not clear. However, as Azerbaijan's own evidence, it undercuts the narrative of Mr. Bahari's failure to invest any sums or complete an operational facilty.

147 Oxera 2 ¶ 2.141; Oxera 1 ¶ 2.5.

a. Ahad Gazai, Iran's former Ambassador to Azerbaijan, confirms Mr. Bahari's investment in Coolak Baku, Shuvalan Sugar, and Caspian Fish, noting they were made with Mr. Bahari's personal investments.[148] Azerbaijan discounts the notarized letter because it is not contemporaneous,[149] but does not actually rebut the factual truth of the letter's contents. Ambassador Gazai is a respected and senior member of the Islamic Republic of Iran who had visibility into Mr. Bahari's investments and is in a position to speak to those investments.

b. Mr. Dieter Klaus, Mr. Bahari's private banking advisor at Commerzbank, recalls Mr. Bahari's investments in Azerbaijan.[150] Mr. Klaus managed Mr. Bahari's business accounts and attests that Mr. Bahari was investing millions into Coolak Baku and Caspian Fish at the time.[151] Azerbaijan does not (and cannot) refute Mr. Klaus' recollections. Instead, it engages in base character assassination via an allegation that Mr. Klaus has a gambling addiction – a *non sequitur* accusation (denied by Mr. Klaus) put forward in a letter by Mr. Janke Hansen, who will not testify to his written remarks and was paid a $2,500 *per diem* to draft five substantive paragraphs.[152]

c. Azerbaijan undertook a due diligence to verify Mr. Bahari's status as an investor before permitting his entry into the country to invest in Coolak Baku, including verification of Mr. Bahari's participation in Coolak Shargh and Coolak Shargh's annual turnover.[153] Azerbaijan attempts to downplay these documents[154] and

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148 SoR ¶ 124; **C-279**.

149 Azerbaijan criticizes that the letter was created for the purposes of the proceedings by a person who will not testify. SORJ ¶ 288. This position could well be directed back to Azerbaijan, which has a number of conspicuous empty chairs in these proceedings: this notably includes Minister Heydarov, a central player in the dispute who, Azerbaijan admits, "could likely give relevant evidence," but who declines to participate in these proceedings, and instead has submitted a single page letter. SoRJ ¶ 91; **R-304**.

150 Klaus WS ¶ 7

151 Klaus WS ¶ 11.

152 **R-114**; SoD ¶ 242 and fn. 623.

153 **C-275**, **C-276**; SoR ¶ 124.

154 Azerbaijan states that two documents "is hardly '*extensive*' due diligence;" (SoRJ ¶ 286), but this may say more about the extent of Azerbaijan's document production than it does the actual due diligence efforts. Claimant's Document Request 127, which was granted, requested all registration documents in the possession, custody, or control of Azerbaijan. Azerbaijan's various state agencies produced only 10 documents. PO6. Azerbaijan further argues that the due diligence focused on Coolak Shargh as opposed to Mr. Bahari personally. (SORJ ¶ 287.) This statement misunderstands the point of the due diligence: as an investor coming in to build what was essentially a carbon copy of the Coolak Shargh business model, Azerbaijan would obviously have focused on the company and its profitability.

states that "*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*."[155] Precisely so: Azerbaijan's statement, while oblique, recognizes that Mr. Bahari came in as a foreign *investor*, and was thus subject to oversight and due diligence by the Azeri authorities prior to his admission in-country. Following this due diligence, the Ministry of Justice was satisfied and approved Coolak Baku.

102. In addition to the above, Claimant produces a new witness statement from Mr. Shahbaz Khalilov, who was a construction worker on all of Mr. Bahari's projects, corroborates Claimant's other witness testimonies (notably Messrs. Bahari, Moghaddam, and Suleymanov) that Mr. Bahari constructed Coolak Baku; hired Chartabi Contracting; and successfully produced soft drink and beer production. Mr. Khalilov attests (*inter alia*) to the start of soft drink production around 1997 and beer production around 1998.[156]

9. Mr. Bahari's Documentation of $21 Million Spent on Coolak Baku Is Corroborated By the Larger Evidentiary Context.

103. Mr. Bahari has submitted numerous documents substantiating his investment in Coolak Baku and which Secretariat has tabulated at $21,381,415. This includes $14,994,505 spent on Coolak Baku, and $6,386,910 for Shuvalan Sugar.[157]

104. Azerbaijan disputes that these documents show Mr. Bahari paid the various vendors for various equipment for Coolak Baku. However, Secretariat notes that Mr. Bahari (1) was an identified party on 90.3% of the documents; (2) payment by him can be confirmed for a significant portion of amounts tabulated (40.4%); and (3) payment by him can be confirmed or reasonably inferred for 74% of the amounts tabulated.[158]

105. In evaluating whether it is reasonable to conclude that Mr. Bahari paid for the tabulated equipment, Secretariat makes a number of reasonable inferences on the basis of the documents as well as extrinsic facts. The Tribunal should consider the totality of this evidence, which together create a consistent, cohesive, and credible narrative.

106. By way of example, Mr. Bahari submits an invoice #924 issued by DFT to Mirinda on 3 November 1998 for $4.763 million for purchase of a CO_2 machine and related

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155 SoRJ ¶ 286. (Emphasis added).

156 Khalilov WS1 at ¶¶ 8-14.

157 Second Secretariat Report at 8, Table 2.

158 Second Secretariat Report at ¶ 2.20 (including Coolak Baku and Shuvalan Sugar.)

equipment, indicating the equipment was meant for Coolak Baku.[159] While the DFT invoice is addressed to Mirinda, Mr. Bahari states that he set up Mirinda to transact with vendors, and that he paid all Mirinda invoices himself.[160]

107. Azerbaijan has not refuted this statement,[161] and indeed Mr. Zeynalov himself attests that Mr. Bahari used Mirinda to purchase equipment for Caspian Fish.[162]

108. Separately, Mr. Bahari made a direct payment of DM 1.4 million to DFT from his Commerzbank account on 23 December 1998.[163] That payment related to a purchase of a fish processing line from DFT for Caspian Fish in a contract entered into on the same day.[164] This evidence (1) demonstrates a prior history of direct payments by Mr. Bahari to DFT, via his Commerzbank account; (2) establishes an ongoing contractual relationship with DFT for machinery for both Coolak Baku and Caspian Fish; (3) confirms Mr. Bahari's (uncontested) testimony that he paid Mirinda invoices himself; and thus (4) corroborates that Mr. Bahari paid invoice #924 for the CO_2 machines.

109. This evidence is further reinforced by Mr. Klaus, who specifically recalls the DM 1.4 million payment to DFT. The Commerzbank deposit slip for the payment features Mr. Klaus' own handwriting, in which he wrote "[redacted]," and he confirms Mr. Bahari's signature on the same slip. Mr. Klaus recalls that DFT was one of the vendors who sold machinery for both Caspian Fish and Coolak Baku.

110. Thus, given (1) Mr. Bahari's ongoing relationship with DFT for both Caspian Fish and Coolak Baku; (2) proof of prior payments to DFT; (3) Mr. Klaus' recollections that DFT was a vendor and that Mr. Bahari made payments to DFT; (4) Mr. Bahari's uncontested

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159 SEC-74; Second Secretariat Report ¶¶ 7.93-7.98.

160 Bahari WS1 ¶ 38.

161 Azerbaijan describes Mirinda as "highly suspect," (SoD ¶ 109), but fails to articulate why. Azerbaijan claims that Mirinda was established by Mr. Bahari and Mr. Zeynalov in 1998 in equal shares. (Id, citing to Irish Companies online registration information at **R-178**, and Mirinda Annual Return dated 29 January 2001 at **R-150**.) Even if accepted (which it is not), it is unclear why this makes Mirinda "suspect" or invalidates transactions where it is a party. In any event, it is contested that Mr. Zeynalov had any shareholding interest in Mirinda: the Morrissey Report concludes that Mr. Bahari's alleged signature at **R-150** is outside the range of variation of known signatures and it is therefore possible that it has been written by someone other than Mr. Bahari. Morrissey Report at 5.6.3 – 5.6.4. As a further aside, Azerbaijan's allegation that Mr. Zeynalov was a 50% shareholder since 1998 is not supported by its own documents: at best, the evidence shows that Mr. Zeynalov had a shareholding interest recorded in January 2001 (Comp. **R-150** with **R-178**).

162 Zeynalov WS1 at ¶ 32 [redacted]")

163 SEC-66, also exhibited as **C-47**; Second Secretariat Report ¶ 7.94.

164 Second Secretariat Report ¶ 7.39; **SEC-95**.

testimony that he paid all of Mirinda's invoices; and even (5) Mr. Zeynalov's corroborating testimony that he was instructed to purchase equipment through Mirinda, it is more than reasonable to conclude that Mr. Bahari paid DFT for the CO_2 machine.

111. As a separate but related note, Azerbaijan alleges that because the Coolak Baku documentation for DFT – as well as Nissei – are dated in 1999, this contradicts that soft drink production began in 1997.[165] However, the date of the letters are not indicative of the dates of installation.[166] For example, the 21 March 1999 Nissei letter confirmed sale and delivery of two PET bottle production machines and related equipment, models ASB-650NH and ASB-650EXHIII. First, the ASB-650EXHIII was for Caspian Fish, not Coolak Baku. The ASB-650NH was indeed for Coolak Baku but installed much earlier. Nissei simply sent a confirmation letter regarding both pieces of equipment in a single correspondence.[167] In any event, even if the ASB-650NH was installed in 1999, this would undermine Azerbaijan's claim that Coolak Baku was <u>never</u> operational and <u>never</u> produced soft drinks.[168]

10. Oxera's Overly Narrow Methodology and Criteria Effectively Apply a Higher Standard of Proof in Evaluating Amounts Invested in Coolak Baku.

112. By contrast, Azerbaijan's quantum expert, Oxera, adopts an overly narrow approach that applies an ill-defined set of criteria to determine whether a claimed amount is sufficiently supported.[169] Oxera generally rejects extrinsic evidence of payment outside the four corners of each proffered document from which an inference can be drawn that Mr. Bahari made a certain payment, irrespective of how logical or reasonable that inference may be.

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165 SoRJ ¶ 313. In the same paragraph, Azerbaijan seeks to cast doubt on DFT as "Mr Bahari's German company with no apparent experience in the trade of specialized drink equipment." Azerbaijan puts forth evidence that DFT is owned by a sole shareholder. (SoD ¶ 94(c), citing to **R-87**.) Thus, on Azerbaijan's own evidence, Mr. Bahari has no interest in DFT and its statement that DFT belongs to Mr. Bahari is incorrect.

166 Bahari WS3 ¶ 23. **SEC-74** (DFT invoice to Mirinda dated 3 November 1998); **SEC-70** (Nissei letter dated 21 March 1999); **SEC-71** (Nissei letter dated 17 February 1999).

167 Bahari WS3 ¶ 25. Moreover, the ASB-650EXIII was damaged on arrival in Azerbaijan. (Id. ¶ 26.) As a result, Mr. Bahari ordered another machine and entered into a Letter of Understanding and a new contract no. 99611-R1 on 16 June 1999. (Id ¶ 26; **SEC-72**.) The new machine in question was a different model, ASB-650EXHD. (Id.) Given the damage in transit for the ASB-650EXIII, Mr. Bahari obtained an insurance policy to cover transport of the ASB-650EXHD with IMAN Travel. (**SEC-73**.)

168 Bahari WS3 ¶ 27.

169 See, generally, Second Secretariat Report at ¶¶ 7.10 *et seq*., including ¶¶ 7.92 to 7.121 discussing Coolak Baku and Shuvulan Sugar.

As a result, Oxera's methodology effectively creates a much higher standard of proof than the applicable balance of probabilities in evaluating Mr. Bahari's amounts invested.

113. Thus, in the above example, Oxera discounts DFT invoice #924, on the basis that no contract was provided and that there is no evidence that the payment for the CO_2 equipment was made or even that the equipment had been delivered.[170] This overly narrow approach ignores all of the corroborating evidence discussed above.[171]

114. Oxera's narrow approach is based on her overarching opinion that it is not appropriate for damages experts to draw inferences concerning factual points from limited documentary evidence and critiques Secretariat for doing so.[172] Oxera further states that drawing such inferences is the responsibility of the Tribunal, not damages experts.[173] This statement is fundamentally at odds with generally accepted practice by damages experts, who routinely exercise judgment and advance factual inferences and assumptions to assist tribunals.[174] The Tribunal evaluates the reasonableness and persuasiveness of the inferences and accompanying conclusions or opinions.

115. However, in instances where it is helpful to Azerbaijan, Oxera disregards its own injunction against making inferences and considers extrinsic evidence in order to reject a particular claimed amount. For example, in considering evidence of the purchase of a bottle production machine from Nissei for $3 million,[175] Oxera considers **R-73** to **R-76**, showing alleged Coolak Baku import data between 1996 and 1999. Oxera notes that the data allegedly shows that Coolak Baku only imported $751,000 of equipment in those years. Oxera makes two critical, but unarticulated assumption as to the import data: (1) that it is complete; and (2) that it is more reliable than the Nissei documentation. Oxera then infers that the Nissei documentation cannot be accurate since its amount exceeds the alleged

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170 Oxera 1 ¶ 2.11 and Appx. 3.

171 This evidence is relied upon by Secretariat. First Secretariat Report ¶ 5.44; Second Secretariat Report ¶¶ 7.93 to 7.103.

172 Oxera 2 ¶ 2.5.

173 Oxera 2 ¶ 2.44.

174 For example, in U.S. court litigation, it is recognized that it is permissible for experts to suggest the inference which should be drawn from applying.

175 Oxera 1 ¶ 2.10 and Table 2.1; *see also* Second Secretariat Report at ¶¶ 7.99-7.103; **SEC-70**, Nissei ASB letter confirming sale and delivery, 21 March 1999.

total value of imported equipment noted in the import data.[176] This is despite the fact that the Nissei documentation clearly states that the equipment was "[redacted]."[177] (It should be noted that per Claimant's Document Request no. 143, Azerbaijan agreed to search for export records from 1996 to 2003 – but failed to produce anything or provide a detailed explanation for this failure.)[178]

116. In fact, Azerbaijan's own evidence contradicts the implausible notion that only $751k was spent on equipment from 1996 to 1999 – evidence unknown to or ignored by Oxera:

a. On Azerbaijan's own case, Mr. Bahari allegedly spent $1.4 million. This is based on an alleged correspondence from ASFAN to Mr. Bahari dated 20 September 1999. Oxera either ignores this, or else Azerbaijan has not provided this document and made Oxera aware of its assertion regarding the alleged $1.4 million spent. While Mr. Bahari contests the low $1.4 million amount, the obvious discrepancy between two documents submitted by Azerbaijan highlights the unreliable and/or incomplete nature of the import data documents at **R-73**.

b. The export certificate for 1998 purports to show no granulated sugar purchases that year.[179] However, on Azerbaijan's own submitted evidence (an alleged correspondence from Mr. Adil Aliyev to Mr. Bahari dated 2 July 1998), 3400 tons of granulated sugar were imported into Azerbaijan in 1998.[180] The 3400 tons are again referenced in a Minutes of Coolak Baku dated 30 November 2002.[181] Mr. A. Aliyev's correspondence directly contradicts the export certificate data, once again highlighting the latter's unreliability and/or incomplete nature. Again,

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176 Oxera 1 ¶ 2.10 and Table 2.1. Secretariat notes that it is extremely unlikely that only $751,000 was needed and imported to develop and operationalize Coolak Baku. (Second Secretariat Report ¶ 7.103.) The same import data shows $1.18 million of granulated sugar imported between 1996 and 1997; Secretariat notes that it [redacted]; and that the low values for equipment import data "[redacted]." (Second Secretariat Report at ¶¶ 7.102-7.103.)

177 **SEC-70**.

178 PO6, Annex 1, Document Request 143 at 229-230.

179 **R-75**.

180 **R-26**.

181 **R-29** at 2. In this 2002 document, Mr. A. Aliyev now suggests that the entirety of the 3400 tons of granulated sugar was sold rather than used for soft drink production, which contradicts his 1998 assertion that Mr. Bahari sold 3/4 of the imported sugar. While Claimant generally disputes these allegations of sale, the internal inconsistency in Mr. A. Aliyev's statements is underlined.

either Oxera ignores this, or else Azerbaijan has not provided these documents to Oxera.

c. Thus, Oxera appears to have uncritically accepted the import data at face value, without considering other extrinsic evidence (and common sense) which expose the data's incompleteness and unreliability as conclusive evidence. Nevertheless, Oxera compares the Nissei documentation to the import data and infers that the Nissei document is unreliable, running afoul of its own admonishment about making inferences.

117. In another example, Oxera makes a number of inferences in order to reject all three Chartabi construction contracts. For those contracts, Oxera relies on Mr. Zeynalov's witness statement alleging that Chartabi Contracting was not involved at all.[182] Notably, Oxera does not consider or even discuss Claimant's witness statements discussing Chartabi Contracting's presence. Oxera thus makes a tacit assumption that Mr. Zeynalov's testimony is more credible than Mr. Bahari's. Accepting Mr. Zeynalov's testimony as truthful, Oxera infers and concludes the Chartabi Contracts cannot be accurate.

118. Beyond Oxera's own recourse to making inferences, it is notable that Oxera also doesn't apply its own internal criteria to evaluate documents. This effectively permits Oxera to reach cherry-picked conclusions. Thus, for example, Oxera excludes the Chartabi contracts (totaling $36 million) on the basis that, even though they were signed by Mr. Bahari, the parties to the agreement were Caspian Fish, Coolak Baku, and Shuvalan Sugar, and not Mr. Bahari.[183] However, she accepts an invoice for a small amount ($3,380) from Eul & Günther, even though the invoice is addressed to Coolak Baku, not Mr. Bahari.[184]

119. The upshot is that Oxera's report appears to apply a double standard, admonishing Secretariat for considering extrinsic evidence and making reasonable inferences but doing

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182 Oxera 1 ¶¶ 2.9 (rejecting Chartabi contract for Coolak Baku), 2.15 (rejecting Chartabi contract for Shuvalan Sugar), 3.9 (rejecting Chartabi contract for Caspian Fish, also referring to Hasanov WS1.)

183 Oxera 1 ¶¶ 2.9, 2.15, 3.9.

184 Oxera 1 Appx. 3; **SEC-182**. In a similar vein, Oxera considers the invoices from International NAT Limited (INL) and notes these invoices [redacted]." However, even though these documents should be flatly rejected on the basis of her criteria (*i.e.*, there is no proof that the invoices were paid of services rendered – as appears to be conceded even by Azerbaijan (SoD ¶ 243(c)), Oxera does not reject these invoices, but merely notes that "[redacted]." Oxera 2 ¶ 2.82; Oxera 1 ¶ 1.29.

the same when it suits, as well as inconsistently applying its own criteria when evaluating documents. The lack of consistency in Oxera's approach is markedly unsatisfactory and indicative of cherry-picked data and selectively applied methodologies in order to reach a specific conclusion.

C. AZERBAIJAN FAILS TO MEET ITS BURDEN TO PROVE ITS ALLEGATIONS THAT MR. BAHARI UNDERINVESTED IN COOLAK BAKU AND THAT IT WAS NEVER OPERATIONAL.

120. Azerbaijan's core defense is that Mr. Bahari fails to prove that he invested in Coolak Baku, and that the production facility was never operational and never produced soft drinks or beer. These allegations are exclusively based on five one-sided and self-serving correspondences, as well as five Coolak Baku minutes of board meetings that were convened without Mr. Bahari's knowledge and participation, on the basis of Mr. Zeynalov's revoked POA. These documents were provided by Messrs. Adil Aliyev (of ASFAN) and Mr. Zeynalov, both of whom are unreliable parties who conspired to defraud Mr. Bahari. Furthermore, that evidence is full of internal inconsistencies and contradictory statements and therefore do not support Azerbaijan's sweeping conclusions.

1. Azerbaijan Bases its Defense for Coolak Baku on A Handful of Unreliable Correspondences.

121. As part of its jurisdictional defense, Azerbaijan alleges that "Mr. Bahari has failed to prove that he himself, as opposed to Coolak Baku or some other person, paid [for Coolak Baku]."[185] Azerbaijan then alleges that "ASFAN itself was advancing sums towards the cost of relevant equipment."[186] Azerbaijan's evidentiary proof for this rests entirely on five alleged correspondences from ASFAN to Mr. Bahari, as well as five Minutes of Coolak Baku's board between 2002 and 2003.[187]

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185 SoRJ ¶ 194. Azerbaijan's reference to Coolak Baku is illogical but is understood to mean ASFAN as one of the two shareholders in Coolak Baku.

186 SoRJ ¶ 289(b).

187 The board meetings are addressed in the section below.

122. For starters, Azerbaijan obtained the five correspondences[188] from Mr. Zeynalov,[189] who repeatedly engaged in fraud against Mr. Bahari by using a revoked POA;[190] was promised a reward by Azerbaijan in return for his assistance in these proceedings;[191] and threatened a Claimant witness in these proceedings.[192] The authenticity and completeness of the correspondences are suspect based on their source:

a. Azerbaijan's sweeping allegation that Mr. Bahari failed to invest in Coolak Baku and that the facility was never operational relies on just these five correspondences, covering a three-year period from 1997 to 1999.

b. The five exhibits include only alleged communications from Mr. Adil Aliyev to Mr. Bahari, and contain no responses from Mr. Bahari or any other follow-up. The evidence is markedly one-sided, clearly cherry-picked, and self-serving.

c. Mr. Bahari testifies that he has never received these letters, does not read Cyrillic, and did not correspond with ASFAN via formal letters.[193]

d. There is no proof of the complaints asserted in the alleged correspondence. Indeed, the substantive allegations are largely uncorroborated by any extrinsic evidence.

e. In fact, the correspondences are internally inconsistent and themselves contradict Azerbaijan's assertions that Mr. Bahari did not invest in the Coolak Baku equipment, or that Coolak Baku was never operational and did not produce soft drinks or beer.

f. In sum, and as detailed below, the correspondence does not support the propositions that Mr. Bahari only invested $1.4 million; that the company was never

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188 **R-24**, Letter from ASFAN to Mr. Bahari dated 8 January 1997; **R-25**, Letter from ASFAN to Mr. Bahari dated 22 December 1997; **R-26**, Letter from ASFAN to Mr. Bahari dated 2 July 1998; **R-27**, Letter from ASFAN to Mr. Bahari dated 22 July 1998; **R-28**, Letter from ASFAN to Mr. Bahari dated 20 September 1999.

189 SoD ¶ 196.

190 SoR ¶¶ 165-173 (discussing Mr. Zeynalov's fraudulent use of a revoked POA to represent Mr. Bahari at Coolak Baku board meetings); ¶¶ 478, 482, 493, 527, 543 (discussing the false sale of Ayna Sultan on the basis of the same revoked POA); *see also Infra* PART III § I.C.2.

191 Suleymanov WS ¶ 50.

192 Suleymanov WS ¶ 52; **C-528** Claimant Letter to Tribunal, 11 July 2024; Tribunal Letter to the Parties, 13 July 2024; **C-530** Claimant Letter to Tribunal, 16 July 2024; **C-531** Claimant Letter to Tribunal, 26 July 2024; Tribunal Letter to the Parties, 7 August 2024.

193 Bahari WS2 ¶ 12.

operational; and that ASFAN paid any significant amount of money towards equipment in lieu of Mr. Bahari.

123. Critically, Azerbaijan has failed to produce any other documents that would conclusively prove its assertions that Mr. Bahari did not construct Coolak Baku and that the joint venture did not turn a profit. This failure extends to its defective document production:

a. Through its witnesses, Azerbaijan clearly has access to Coolak Baku's files.[194]

b. Azerbaijan could have produced records of Coolak Baku's construction, including complete records of payments for the equipment. Such information would conclusively substantiate payment of the various equipment installed. As noted by Claimant's construction expert, Mr. Tom Gaines, owners of even the smallest of construction projects usually preserve records of a construction project.[195] Azerbaijan's evidentiary gap on this point is glaring.[196]

c. Azerbaijan was ordered to produce financial documents, tax records, records of licenses and permits, and other evidence relating to Coolak Baku's profitability (including Shuvalan Sugar) responsive to a number of Claimant Document Requests.[197] These documents would demonstrate revenues and expenses, thus showing whether Coolak Baku was operational. Azerbaijan has failed to produce any documents and did not provide a satisfactory explanation as to why it did not produce any such documents.

2. Azerbaijan Further Bases Its Defense on Illegitimately Convened Board Meetings In Which Messrs. Zeynalov and A. Aliyev Actively Defrauded Mr. Bahari.

124. Azerbaijan exhibits five Coolak Baku board meetings between 2002 and 2003 (well after Mr. Bahari was expelled) and leans heavily on ASFAN's various accusations against

194 H. Aliyev WS dated 21 December 2023, producing a number of Coolak Baku documents; SoD ¶ 196 (stating that Mr. Zeynalov provided the correspondences relating to Coolak Baku.)

195 Secretariat Second Report ¶ 3.2.

196 Azerbaijan notably does not assert that the documents are no longer available or no longer exist.

197 Doc. Req. 140 (licenses, permits, etc. re: for sale of alcohol, soft drinks, and other products); Doc. Req. 141 (Coolak Baku tax records); Doc. Req. 143 (documents related to export exhibits **R-73** to **R-76**); Doc. Req. 154 (tax records for Shuvalan Shirniyat JSC); Doc. Req. 159 (licenses, permits, etc. granted to ASFAN); Doc. Req. 161 (Zeynalov tax records 2003 to present); Doc. Req. 162 (property records for 25 Safar Aliyev land plot)). Azerbaijan failed to provide any documents for each of these requests and failed to provide any explanation for a number of Claimant's document requests which were granted. (PO6 Annex 1.) In such an instance, per PO1 Article 6.7, the Tribunal is entitled to draw adverse inferences that the documents would be adverse to the interests of the Party failing to produce the document.

Mr. Bahari recorded in the minutes of those meetings. However, ASFAN and Mr. Zeynalov illegitimately convened every single one of these meetings without Mr. Bahari's participation or knowledge, using Mr. Zeynalov's revoked POA. In essence, the minutes of improperly convened boards record one-sided alleged criticisms of Mr. Bahari while purposely precluding his ability to respond or react. As evidence, they are singularly unreliable.

125. The 20 May 2002 meeting of Coolak Baku was convened on the basis of Mr. Zeynalov's participation as the [redacted]" of Mr. Bahari:[198]

a. The minutes record Mr. Adil Aliyev as explicitly stating that the meeting was properly convened on the basis of Mr. Bahari's POA to Mr. Zeynalov:

." (emphasis added)

b. As noted in Claimant's Statement of Reply, Mr. Bahari explicitly revoked his POA to Mr. Zeynalov on 19 December 2000, two years earlier.[199]

c. Because Mr. Bahari was the 75% majority shareholder in Coolak Baku, the meeting could not have been convened without his participation. Mr. Zeynalov and ASFAN thus fraudulently convened a Coolak Baku meeting by falsely representing himself as Mr. Bahari's representative.

d. Azerbaijan produces this document without addressing this manifest evidence of fraud.[200]

126. At the 18 June 2002 Minutes of Meeting of Coolak Baku, Rasim Zeynalov was fraudulently appointed as General Director by Coolak Baku's Board without Mr. Bahari's knowledge or approval:[201]

198 **R-366**.

199 SoR ¶¶ 165-173; **C-297** Revocation of Rasim Zeynalov Power of Attorney, 19 December 2000.

200 SoRJ ¶¶ 308, 429.

201 **R-104**.

a. The minutes explicitly state that Mr. Zeynalov was an "Authorized representative" of Mr. Bahari [redacted]."[202] Once again, that POA was revoked two years earlier.[203]

b. Thus, Mr. Zeynalov explicitly relied on the revoked POA to convene the meeting and orchestrate his appointment to the position of General Director.

c. In its Rejoinder, Azerbaijan fails to provide any response to or explanation for this clear instance of fraud.[204]

127. The 22 June 2002 Coolak Baku meeting was again convened on the basis of Mr. Zeynalov's presence as the "[redacted]" of Mr. Bahari.[205]

a. At that fraudulently convened meeting, ASFAN appointed two new board members, Messrs. Sadagi and Nabi.

b. In addition to these two new board members, Mr. Zeynalov is inexplicably listed as one of the five board members – but there is no record of his appointment. Mr. Zeynalov's status as a Board Member indicates further fraud: as noted in the minutes themselves, Mr. Bahari could appoint 3 board members, while ASFAN could appoint two.[206] Mr. Zeynalov himself states that by 2002, he went to work for ASFAN.[207] This would mean that ASFAN now controlled 3 of the 5 board positions, in contravention of the express terms of the joint venture. Certainly, Mr. Bahari did not approve Mr. Zeynalov's appointment to the Board, any more than he approved Mr. Zeynalov's "[redacted]" of his interests at the meetings.

128. The 30 November 2002 Coolak Baku meeting was again convened on the basis of Mr. Zeynalov's presence as the "[redacted]" of Mr. Bahari.[208]

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202 **R-104**, citing to POA dated 17 December 1999 at **R-38**.

203 **C-297**.

204 SoRJ ¶¶ 326-333.

205 **C-520** Minutes of the meeting of the founders of Coolak Baku [p. 20 of R-368 Updated], 22 June 2002.

206 **R-98**, Clause 7.1. Per the 1996 JVA setting out a 5-member Board with ASFAN appointing 2 members and Mr. Bahari appointing 3. Thus, ASFAN had representation on the Board – indeed, it had a greater representation (40%) than its share participation (25%). Neither the 1998 JVA (**C-001**, Clause 7.1) nor the 1999 amendment (**R-72**) changed this. In the 22 June 2002 Meeting, ASFAN carried on this practice and appointed 2 new members. **C-520** Minutes of the meeting of the founders of Coolak Baku [p. 20 of R-368 Updated], 22 June 2002. The 1999 amendment to the JVA did not change these terms. (**R-072**.)

207 Zeynalov WS1 ¶¶ 25, 37.

208 SoR ¶¶ 165-173; **R-29** (Minute of Coolak Baku dated 30 November 2002.)

a. In its Rejoinder, Azerbaijan presents an unconvincing explanation that Mr. Zeynalov was "likely" described as a representative because he was still in contact with Mr. Bahari. Even if this were true (which it is not), this would not be sufficient grounds to convene a Board Meeting.

b. In light of ASFAN and Mr. Zeynalov's explicit reliance on the revoked POA at the 20 May and 18 June 2002 meeting (discussed above), Azerbaijan's explanation fails to persuade.

129. By 14 April 2003, ASFAN convened board meetings of Coolak Baku without even the pretense of having Mr. Bahari's interests represented by Mr. Zeynalov.[209]

a. The minutes do not mention Mr. Zeynalov's presence as an "[redacted]" of Mr. Bahari. Yet, at the time, Mr. Bahari still held his 75% interest in Coolak Baku – and, as Azerbaijan has taken great pains to point out, he remains a shareholder in the company to this day.[210]

b. Thus, this meeting of Coolak Baku should have required his presence and was improperly convened.

c. Remarkably, Azerbaijan relies on this illegitimate board meeting to assert that Mr. Bahari had stripped Coolak Baku of certain fixed assets worth around $190,000 total.[211] That meeting alleged that Mr. Bahari had built another production site and transferred Coolak Baku equipment to use there.[212] This astonishing assertion is unsupported by any other evidence, and Azerbaijan has not otherwise asserted in these proceedings that Mr. Bahari set up some parallel drinks manufacturing production site that cannibalized Coolak Baku's machinery. Yet on the basis of this allegation – which Mr. Bahari could not contest, as he had no knowledge of this board meeting – ASFAN purported to inventory a list of materials that Mr. Bahari had allegedly taken from Coolak Baku to supply his mysterious other production site.[213]

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209 **R-360** Minutes of Coolak Baku, 14 April 2003.

210 SoRJ PART 3.II; SoD ¶ 224.

211 SoRJ ¶¶ 309-310.

212 SoRJ ¶ 309(c); **R-360**.

213 SoRJ ¶ 310; **R-391**.

130. Thus, every single Coolak Baku board meeting between 2002 and 2003 was illegitimately convened, with Mr. Zeynalov's knowledge and active participation. Azerbaijan's reliance on these documents is both cynical and particularly objectionable. Indeed, Azerbaijan's reliance on these documents not only fails to support its allegations; the documents support Mr. Bahari's overall claim on the merits that he was deprived of his investment following his expulsion. The meetings amount to performative theater to justify further fraudulent actions taken against Mr. Bahari's interest, ultimately setting up and leading to the sham legal proceedings that stripped Mr. Bahari of his investment.

3. Azerbaijan's Own Evidence Contradicts Its Implausible Conclusions That Coolak Baku Was Never Operational and Never Produced Soft Drinks or Beer.

131. Azerbaijan makes the implausible allegations that the Coolak Baku "facility was never completed (or operational);"[214] that "there was no soft drink production *at all*"; that beer production "was attempted, but failed";[215] and that Mr. Bahari never engaged Chartabi Contracting because "there was never any major refurbishment work carried out by Mr. Bahari at the Safaraliyeva Production Facilities."[216]

132. These sweeping assertions are based entirely on the five alleged correspondences and the five minutes of meetings, documents whose unreliability is discussed above. That unreliability is compounded by the fact that these documents are internally inconsistent.

133. Azerbaijan's own submitted evidence contradicts its position that Coolak Baku was never completed or operational and never produced soft drinks or beer:

a. In the Minutes of Coolak Baku dated 20 May 2002, ASFAN (Mr. Adil Aliyev) states [redacted]"[217] The specific reference to a two-year delay from the date the joint venture was created in 1996 is repeated in the Minutes of Coolak Baku dated

214 SoRJ ¶ 305.

215 SoRJ ¶ 304; *see also* ¶ 299; ¶ 311(b)-(c) (Azerbaijan denies that Coolak Baku was completed and fully operational). As noted above, this assertion runs squarely against the Parties' conclusion and execution of the 1998 JVA. It is also directly contradicted by the witness testimonies of Mr. Bahari, Mr. Moghaddam, Mr. Elchin, and Mr. Shahbaz. Bahari WS1 ¶ 22; Bahari WS3 ¶ 22-27; Moghaddam WS1 ¶¶ 30-33, 37, 39; Moghaddam WS2 ¶ 14; Suleymanov WS ¶¶ 12-13; Shahbaz ¶¶ 13-14.

216 SoRJ ¶ 304.

217 **R-366**, p. 1. (Emphasis added).

30 November 2002.[218] Thus, on Azerbaijan's own evidence, ASFAN conceded that Coolak Baku was operational at most two years following the creation of the joint venture, that is, 1998.[219] Mr. A. Aliyev's admissions on this point are conspicuously at odds with his statements at the same 30 November 2002 meeting that "there was never any major refurbishment work carried out by Mr. Bahari at the Safarliyeva Production Facilities."[220]

b. The same 30 November 2002 minutes mention that production of beer commenced in 1999.[221] Although Claimant's position is that beer production commenced in 1998, the point remains that on Azerbaijan's evidence, Coolak Baku produced beer – directly contradicting Azerbaijan's position.

c. Azerbaijan exhibits four export certificates from 1996 to 1999, allegedly showing the totality of items Coolak Baku imported into Azerbaijan during those years.[222] As discussed above, Claimant contests these documents, in particular the assertion that they are exhaustive records. That said, the export certificate for 1997 shows importation of barley and malt in November of that year.[223] The barley and malt could only have been used for production of beer; the timing of these imported ingredients corresponds with the start of beer production around 1998.[224] By contrast, there would be no reason to import these perishable ingredients in 1997 if, as Azerbaijan alleges, Coolak Baku did not produce beer around that timeframe. Thus, Azerbaijan's own submitted evidence directly contradicts its witness testimonies regarding the lack of beer production.[225] Neither Azerbaijan nor the Oxera Report address this.

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218 **R-29**, p. 1 ("[redacted]")

219 Of course, Mr. Bahari maintains that soft drink production began in 1997 and beer production in 1998.

220 SoRJ ¶ 304; **R-29**.

221 **R-29**, p. 1 ([redacted])

222 **R-73**, **R-74**, **R-75**, **R-76**.

223 **R-74**, p. 13 (PDF).

224 SoR ¶ 127(c); Suleymanov WS ¶ 13; Shahbaz ¶¶ 14.

225 Zeynalov WS1 ¶ 18 (of note, Mr. Zeynalov states that there was "[redacted]," and states that Coolak Baku sold "[redacted]y." Id. While Claimant contests these low amounts, they contradict Azerbaijan's position that beer production failed); H. Aliyev WS1 ¶ 12. The Minutes of Coolak Baku dated 30 November 2002 also refer to commencement of beer production in 1999. Although Claimant contests this late start date, this statement is inconsistent with Azerbaijan's categorical assertion that beer production failed. (**R-29**, p. 2.)

d. The same export certificates show considerable amounts of granulated sugar being imported in 1996 and 1997, amounting to over $1 million, a considerable sum during that time period.[226] This sugar was logically meant for production of soft drinks and corroborates that soft drink production was underway around that time period. Again, there would be no reason to import such perishable consumables in 1996 and 1997 if soft drinks were not being produced around that timeframe.

e. Notably, Mr. A. Aliyev notes himself that 3400 tons of granulated sugar was imported into Azerbaijan in 1998.[227] This again demonstrates that important quantities of granulated sugar was being imported, thus corroborating that Coolak Baku was producing soft drinks. This statement also conclusively shows that the export certificates are incomplete records: the 1998 certificate purports to show no granulated sugar purchases that year,[228] which is obviously inconsistent with Mr. A. Aliyev's statement that 3400 tons were imported. The 3400 tons are again referenced in a Minutes of Coolak Baku dated 30 November 2002.[229]

134. The upshot is that Azerbaijan's defense relies on documents which are a muddle of contradictory statements from M. A. Aliyev, an unreliable narrator who called and ran illegitimately convened board meetings. Azerbaijan's selective cherry-picking from its own internally inconsistent evidence simply does not permit its categorical conclusions that Coolak Baku was *never* operational, and *never* produced soft drinks or beer.

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226 **R-73**, **R-74**; *see* Oxera 1, Table 2.1, at 17. Again, Claimant contests that these export certificates are complete or exhaustive, and it may be that more granulated sugar was imported during those years than appears on these documents.

227 **R-26**. Mr. A. Aliyev alleges that only a quarter of the 3400 tons of sugar imported was stored at Coolak Baku and accuses Mr. Bahari of selling the rest to finance equipment. Id at 1. This is denied; in any event, Mr. A. Aliyev himself concedes that Mr. Bahari was importing sugar – at his own expense, it should be added.

228 **R-75**.

229 **R-29**, p. 2. In this 2002 document, Mr. A. Aliyev now suggests that the entirety of the 3400 tons of granulated sugar was sold rather than used for soft drink production, which contradicts his 1998 assertion that Mr. Bahari sold 3/4 of the imported sugar. While Claimant generally disputes these allegations of sale, the internal inconsistency in Mr. A. Aliyev's statements is underlined.

4. Azerbaijan Fails to Prove That Mr. Bahari Only Invested $1.4 Million Into Coolak Baku or That ASFAN Advanced the Balance of the $28 Million.

135. Azerbaijan makes the equally implausible allegation that Mr. Bahari invested no more than $1.4 million into Coolak Baku,[230] then presents ASFAN as the alternate investor who was "advancing sums towards the cost of relevant equipment."[231]

136. To start with, Azerbaijan's astounding statement that Mr. Bahari only spent $1.4 million on Coolak Baku is based upon a single line from a single sentence in one of the five alleged correspondences (dated 20 September 1999) from Mr. Aliyev, which reads as follows:

137. As noted above, Azerbaijan has access to Coolak Baku's documentation and could have easily supported this statement with construction records. However, Azerbaijan provides no extrinsic evidence to support this single self-serving sentence contained in an unreliable exhibit.

138. All Parties agree that the completed production facility should cost $28 million.[232] (Bahari WS1 ¶ 25; SoD ¶ 196; **R-24**, **R-25**, **R-26**.) Clearly, the facility exists. As demonstrated above, even on Azerbaijan's submitted evidence, Coolak Baku was operational by 1998. If Mr. Bahari only invested $1.4 million into an operational facility, the question naturally arises as to who invested the balance of the $28 million to construct the facility (i.e., roughly $26.6 million), if not Mr. Bahari.[233] In order for Azerbaijan's $1.4 million theory to be true, there must be another investor who fronted the capital necessary to stand up Coolak Baku. The best Azerbaijan can do is advance a vague statement that "it is also evident that ASFAN itself was advancing sums towards the cost of relevant

230 SoD ¶ 207(h).

231 SoRJ ¶ 289(b).

232 Bahari WS1 ¶ 25; SoD ¶ 196; **R-24**, **R-25**, **R-26**.

233 To the extent Azerbaijan contests that the completed/operational facility cost $28 million, it is clear that the final cost would still be in the many millions. Of note, neither Azerbaijan nor Oxera contest that the various equipment mentioned in Claimant's submitted documents were not required to put up an operational drinks production facility – only that there is insufficient evidence that Mr. Bahari paid for the equipment. That equipment is tabulated at $21 million, corroborating the significant amounts that would have to be invested into Coolak Baku and Shuvalan Sugar.

equipment."[234] However, Azerbaijan's support for this statement comes nowhere close to reaching the $26.6 million needed to complete the Coolak Baku production facility.

139. The main evidence that Azerbaijan provides its assertion that ASFAN invested in the cost of equipment is sourced from the 2 July 1998 correspondence. In that document, Mr. A. Aliyev alleges that ASFAN had given Mr. Bahari a $500,000 "[redacted]" (understood as a credit) for the purchase of the beer production machine. That concession was based on ASFAN's assertion that Mr. Bahari had used the sale of granulated sugar to purchase the machine; because the sugar was purportedly the property of the joint venture, ASFAN reasoned that this amounted to some sort of credit from ASFAN to Mr. Bahari.[235] However:

    a. This allegation is not supported by any other evidence.

    b. Even if the allegations were true, the $500,000 figure comes nowhere close to meeting the balance of the $28 million necessary to complete the facility.

    c. It is an incorrect statement that ASFAN had any sort of property interest in the sugar such that it could purport to formalize a "[redacted]" of $500,000 to Bahari. While the sugar would ultimately be used to produce soft drinks, ASFAN, as a shareholder, only had a right to sale profits. Indeed, Mr. A. Aliyev omits that Mr. Bahari himself paid for the sugar, which he imported from Iran (ASFAN itself never imported sugar and Azerbaijan does not claim this or present evidence of this). As the joint venture partner who had responsibility over business operations, Mr. Bahari would have had the prerogative to sell sugar (presumably at a profit) to then purchase necessary equipment. Stated differently, even if Mr. A. Aliyev's allegations are accepted (which is denied), ASFAN had no rights to the sugar and its "[redacted]" to forgive the $500,000[236] was an improper accounting fiction. Mr. Bahari never responded to this allegation, because he has never seen the correspondence.

234 SoRJ ¶ 289(b).

235 **R-26**.

236 Indeed, under ASFAN's flawed logic, it appears that ASFAN incorrectly assumes that it had a 100% property interest in the sugar. Assuming the sugar was the property of the joint venture (which is again denied), ASFAN, as 25% shareholder, would only have a corresponding 25% interest in said sugar. It is unclear whether ASFAN accounted for this in asserting the $500,000 "[redacted]" – which highlights the unsupported nature of its allegation.

140. Azerbaijan also alleges that Mr. Bahari engaged in debts in the amount of around $1.2 million "by the time he left Azerbaijan."[237] This allegation is sourced from the illegitimately convened 30 November 2002 board meeting.[238] Azerbaijan produces no other records to corroborate the one-sided allegations from board meetings convened without his participation or authorization. Even if these allegations were true (which is denied), the debts have nothing to do with how much Mr. Bahari invested into Coolak Baku between 1996 and 2001 and are certainly not proof that ASFAN advanced any sums towards the cost of relevant equipment.

141. Azerbaijan states elsewhere that construction and installation of machinery was being undertaken at Coolak Baku as late as April 2003.[239] Azerbaijan relies on the Second Witness Statement of Mr. Zeynalov, who provides a video allegedly dated April 2003.[240] The second segment of the video with the 2003 datestamp starts at approximately 05:27. That section of the video does not show largescale construction or installation of machinery at all. Moreover, any construction work shown does not mean that the facility wasn't already operational. Again, Azerbaijan's own evidence shows ASFAN accepting that Coolak Baku was operational by 1998.[241]

142. In short, having alleged that Mr. Bahari only advanced $1.4 million, Azerbaijan fails to provide convincing evidence that ASFAN advanced the bulk of the funds necessary to install the equipment. This evidentiary gap must be compared against the documentation provided by Mr. Bahari: not a single document shows ASFAN as a contracting party or payor for equipment. As noted above, Oxera, applying its own narrow methodology, would not accept that ASFAN (or anyone else) had paid for any of the items listed in the $21 million in amounts claimed.

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237 SoRJ ¶ 289(c).

238 **R-29**.

239 SoRJ ¶ 303.

240 Zeynalov WS2 ¶ 13(c); **R-292**.

241 **R-366**, p. 1 (Mr. A. Aliyev mentioning that Coolak Baku took two years to become operational.)

D. MINISTER HEYDAROV TOOK CONTROL OF COOLAK BAKU AND EMBEZZLED THE PROFITS DUE TO BOTH MR. BAHARI AND ASFAN.

143. As noted above, Azerbaijan's own evidence disproves its narrative that Mr. Bahari underinvested in Coolak Baku. Azerbaijan's same submitted evidence goes further, and reveals that in reality, it was Minister Heydarov who took control over Coolak Baku and its profits, to both Mr. Bahari's and ASFAN's detriment. Thus, it appears ASFAN's true difficulties were with Minister Heydarov, not Mr. Bahari.

144. In the Minutes of Coolak dated 20 May 2002.[242] Mr. A. Aliyev made a series of remarkably candid admissions that its profits were being withheld by Minister Heydarov and that it was being "[redacted]" by Minister Heydarov – not Mr. Bahari:

[redacted]

242 **R-366**.

[redacted]

145. Mr. A. Aliyev's statements reveal several critical points:

a. The "[redacted]" at Caspian Fish in question is clearly Minister Heydarov, who partnered with Mr. Bahari on Caspian Fish.[244] Mr. A. Aliyev notes that everyone feared Minister Heydarov; his own apprehensiveness is notable – he does not even dare refers to Minister Heydarov by name.

b. Mr. A. Aliyev's statement indicates that Minister Heydarov has taken control of Coolak Baku. This is in line with Mr. Bahari's testimony: at the Forced Sale Meeting in June 2002, Mr. Khanghah (acting as an agent of Minister Heydarov) told Mr. Bahari that [redacted]."[245]

c. The statements corroborate Mr. Bahari's claim that Minister Heydarov, along with President Aliyev, expelled Mr. Bahari and took over his investments – both Coolak Baku and Caspian Fish. The reference to Mr. Bahari leaving Azerbaijan to avoid being "[redacted]" is a reference to his forced expulsion under threat.

d. It is apparent that Mr. A. Aliyev complains of not receiving any profits from Coolak Baku. This further demonstrates two critical points: (1) Coolak Baku was generating profits – and by implication, sufficient investments were made and the production facility was operational (contrary to Azerbaijan's allegations); and (2) the profits were being withheld by Minister Heydarov, not Mr. Bahari – who was no longer in country in 2002.

e. The reference to Mr. Zeynalov visiting "[redacted]" is a reference to Caspian Fish, whose director following Mr. Bahari's expulsion was Mr. Khanghah.[246] Mr. Aliyev states that he visited Mr. Khanghah at Caspian Fish; Mr. Khanghah was evidently controlling Coolak Baku's profits on behalf of Minister Heydarov, but

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243 **R-366** (emphasis added).

244 **C-005**, **C-36** (noting Minister Heydarov's ownership/control over Caspian Fish.)

245 Bahari WS1 ¶ 83.

246 **C-102**, p. 11 (Caspian Fish BVI corporate correspondences listing Mr. Khanghah as President of Caspian Fish LLC); **C-168** (interview with Mr. Khanghah regarding Caspian Fish).

Mr. Khanghah's own "[redacted]" of Minister Heydarov prevents him from distributing profits to Mr. A. Aliyev.

f. The final sentence states that ASFAN's profits are being embezzled by Minister Heydarov – as opposed to Mr. Bahari. Thus, Mr. A. Aliyev's statements reveal that ASFAN's true difficulties were with Minister Heydarov, not Mr. Bahari. Once Minister Heydarov took over Coolak Baku, he refused to pay out profits to ASFAN.

146. Mr. A. Aliyev notes that Mr. Malik Aliyev (then General Director of Coolak Baku) represents the interests of Minister Heydarov. Azerbaijan's assertion that Mr. Bahari was responsible for "transferring" Coolak Baku to Minister Heydarov through Mr. Malik Aliyev is not only unproven; it is contradicted by the evidence:

a. Azerbaijan's "understanding" is that Mr. Bahari "transferred the management of Coolak Baku to a third party, Malik [Aliyev], without ASFAN's consent in or around September 1999."[247] This allegation is unproven and denied. Per the joint venture agreement, ASFAN had a 40% representation on the Board of Directors, who appointed the General Director position.[248] Thus, ASFAN had a say in Mr. M. Aliyev's appointment. In any event, to the extent Mr. Malik Aliyev later represented Minister Heydarov's interests and withheld profits from ASFAN, that is not Mr. Bahari's fault. Elsewhere, Mr. Bahari recalls an early discussion with Minister Heydarov to include him in the shareholding of Coolak Baku; however that was in 1996 or 1997, and in any event ended up not happening. Mr. Bahari denies every handing control to Minister Heydarov while he was still in Azerbaijan.[249]

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247 SoRJ ¶ 114(a), citing to SoD ¶¶ 212-213; **R-28**. Azerbaijan's "[redacted]" is not supported by **R-28**. That correspondence is a muddled and internally contradictory narrative that alleges that Mr. Bahari forced new investors into Coolak Baku while pushing ASFAN's (unnamed) investors out and stating that Mr. A. Aliyev has been [redacted]" This is patently untrue, as he remained a shareholder of Coolak Baku right through ASFAN's withdrawal from the joint venture in 2005. Moreover, as discussed below, ASFAN alleges the introduction of new investors due to Coolak Baku not being operational as of 1998. As discussed, this is a demonstrably false assertion – and contradicted (*inter alia*) by Mr. A. Aliyev himself.

248 **R-98** Clause 7.1. Per the 1996 JVA setting out a 5-member Board with ASFAN appointing 2 members and Mr. Bahari appointing 3. Thus, ASFAN had representation on the Board – indeed, it had a greater representation (40%) than its share participation (25%). Neither the 1998 JVA (**C-001** Clause 7.1) nor the 1999 amendment (**R-72**) changed this. Indeed, in a 22 June 2002 Meeting, ASFAN carried on this practice and appointed 2 new members. **C-520** Minutes of the meeting of the founders of Coolak Baku [p. 20 of R-368 Updated], 22 June 2002. The 1999 amendment to the JVA did not change these terms. (**R-072**.)

249 Bahari WS3 ¶¶ 15-21.

b. Thus, Azerbaijan concedes that Minister Heydarov took control of Coolak Baku,[250] but Mr. Bahari was obviously not responsible for "transferring" such control to him; it is illogical and absurd that Mr. Bahari would simply give up his investment in Coolak Baku to Minister Heydarov, who had no shareholding interests in the company. Minister Heydarov's takeover was illegal and certainly not approved or enabled by Mr. Bahari. Thus, Azerbaijan's own evidence disproves its defense that "Coolak Baku was never illegally seized by Minister Heydarov (or anyone else for that matter).[251]

c. In any event, it appears that some sort of resolution between ASFAN and Minister Heydarov was reached by June 2002. Exactly one month later, on 18 June 2002, Mr. M. Aliyev stepped down and Mr. Zeynalov was appointed as General Director (relying on Mr. Zeynalov's false representation of Mr. Bahari).[252] Mr. Zeynalov worked for ASFAN and thus represented its interests.[253] Less than a week later, on 22 June 2002, ASFAN appointed two new board members.[254]

147. Significantly, ASFAN's flurry of activity (appointing Mr. Zeynalov as General Director and appointing a slate of board members) occurred days after Mr. Bahari's 15 June 2002 meeting with Mr. Khanghah in Dubai, where he rejected the Forced Sale Agreement.[255] The inference is that with Mr. Bahari's rejection of the deal, Minister Heydarov and ASFAN came to some agreement on Coolak Baku.

148. With Minister Heydarov no longer controlling Coolak Baku, ASFAN was free to pursue its next step, which was to engage in fraudulent court proceedings to strip Mr. Bahari of his investment in Coolak Baku. This is described in the next section below.

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250 SoD ¶ 288.

251 SoRJ ¶ 114(c); SoD ¶ 288.

252 **R-104** Minutes of Coolak Baku, 18 June 2002.

253 Zeynalov WS1 ¶¶ 25, 37.

254 **C-520** Minutes of the meeting of the founders of Coolak Baku [p. 20 of R-368 Updated], 22 June 2002.

255 **C-017**; SoC § III.C (discussing the 15 June 2002 Dubai meeting with Mr. Khanghah in which the latter presented the Forced Sale Agreement.)

E. THE BAKU ECONOMIC COURT RENDERED A SHAM DECISION WHICH SPECIFICALLY ENABLED ASFAN TO UNLAWFULLY STRIP COOLAK BAKU'S ASSETS.

149. The Coolak Baku Litigation purportedly involved ASFAN's request to withdraw from the Coolak Baku joint venture and take its capital contribution with it, which consisted of the land plot at 25 Safar Aliyev. The Baku Economic Court's decision accepted ASFAN's request to withdraw and take back its capital contributions. However, in an aberrant and intentional omission, the Court failed to rule on Mr. Bahari's contribution to the joint venture – the drinks production equipment and overall facility he had built on top of the land plots. The Court's conspicuous inaction effectively gave ASFAN a green light to execute the judgment and take back possession of not only its land plot, but the production facility and equipment sitting atop the land plot, as well as Coolak Baku's entire drinks business.

150. This result is plainly absurd: ASFAN, as the withdrawing participant from the Coolak Baku venture, ended up taking 100% of the joint venture assets and its commercial activity, with zero compensation to Mr. Bahari as the other joint venture participant. Mr. Bahari lost his investment in Coolak Baku as a direct result of that litigation, which was manifestly unjust.

1. Claimant Asserts a Denial of Justice Claim in Addition to its FET Claim.

151. As a threshold matter, Claimant notes that Azerbaijan put forward evidence of the Economic Court litigation to support its jurisdictional claim that Mr. Bahari never made any investment into Coolak Baku, thus allegedly occasioning ASFAN's court claim to exit the joint venture. [256] Claimant therefore responds to Azerbaijan's further arguments concerning the litigation in its Rejoinder in order to quash its jurisdictional defense.

152. It should also be noted that Mr. Bahari's FET claims should be considered in conjunction with his denial of justice claim, because they rest on an overlapping and entwined factual nexus.[257] Thus, Mr. Bahari's expulsion and the subsequent actions taken to prevent him from coming back to Azerbaijan to defend his interests give rise to a FET claim. The same forced absence created the conditions for ASFAN and the Economic Court to engage in

256 SoD ¶ 215-224

257 Of note, Azerbaijan contends that Mr. Bahari has abandoned his FET Claim in relation to Coolak Baku and pivots to only rely on a denial of justice claim. Not so. Mr. Bahari maintains all of his prior asserted Treaty breaches relative to Coolak Baku. In its Statement of Defense, Azerbaijan revealed, for the first time, the sham proceedings brought by ASFAN against Mr. Bahari – which was the first time Mr. Bahari had heard of the litigation. The highly irregular proceedings give rise to an additional and separate breach under international law for denial of justice. (SoRJ ¶ 323.)

sham proceedings without Mr. Bahari's knowledge and participation, further harming his investment interests and giving rise to a denial of justice claim (as well as an additional FET claim). Stated differently, multiple arms of Azerbaijan's government apparatus, including its judiciary, acted concurrently to deprive Mr. Bahari of his investments.

2. The Economic Court Should Have Addressed Mr. Bahari's Contributions to the Joint Venture and Proceeded to a Division of Assets/Contributions Between ASFAN and Mr. Bahari.

153. In January 2005, the Baku Economic Court was seized of what appeared to be a run-of-the-mill corporate dispute between joint venture partners. ASFAN sought, *inter alia*, to withdraw from the Coolak Baku joint venture and take back its contribution to the joint venture, which consisted of the land plot at 25 Safar Aliyev Street.[258] As will be detailed in the next subsection, the Court instead allowed ASFAN to take back not only its land plot, but the entire Coolak Baku facility and equipment built on top of that land.

154. The Court heard ASFAN's case on 4 April 2005[259] and on the very same day issued a judgment allowing ASFAN to withdraw from the Coolak Baku joint venture.[260] In reaching its decision, the Court cited to Article 64.1 of Azerbaijan's Civil Code, pursuant to which the property contributed by a joint venture partner belongs to that partner,[261] as well as Article 96.2 of the Civil Code, which states that "[w]here a right of property use was contributed into the charter capital of the limited liability company, the relevant property shall be returned to a withdrawing participant."[262]

155. It is agreed by all Parties that ASFAN's contribution to the Coolak Baku joint venture was a 4,030-meter squared land plot at 25 Safar Aliyev Street with an existing workshop

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258 SoD ¶ 220; **R-168** Decision on the acceptance of ASFAN's Statement of Claim, 19 January 2005. Incidentally, ASFAN began this court litigation without following the liquidation commission process outlined in the 1999 JVA at Clause 4.2. (**R-72**.) This is perhaps not surprising, as the procedure would have required Mr. Bahari's participation.

259 **C-521** Protocol of the Economic Court [p. 76 of R-368 Updated], 4 April 2005.

260 **R-105** Judgment of the Economic Court of Azerbaijan dated 4 April 2005 at 3 ([redacted]") The court rejected ASFAN's two other requests to (1) invalidate the registration certificate of Coolak Baku and (2) be exempted from Coolak Baku's debts. Id. at 1, 3 ("[redacted].")

261 **R-105**, p. 3; **C-222** Civil Code of the Republic of Azerbaijan, Art. 64.1, p. 17 (PDF).

262 **R-105**, p. 3; **C-222**, Art. 96.2, p. 27 (PDF).

building. This is noted in the Court Application,[263] in the Court's Judgment,[264] by Azerbaijan in its pleadings,[265] and as noted in the joint venture agreement itself.[266] On paper, ASFAN thus purportedly sought to take back the Safar Aliyev land plot – and the land plot only.

156. The Court also noted that Mr. Bahari's contribution to the joint venture was to renovate the facility, bring technology, and install technical equipment for drinks manufacturing.[267] Thus, pursuant to the same Article 64.1 of the Civil Code, Mr. Bahari's contributions to the joint venture belonged to him and should remain with him at Coolak Baku.[268]

157. In a normal corporate/joint venture dissolution dispute, any competent commercial court should logically proceed to an orderly division of assets contributed by each participant. In cases where assets are difficult or impossible to split – as was the case here – the court would have to give the assets to one party, but compensate the other. A normal process involves a court-appointed expert to undertake a market valuation of the assets and allocate a cash equivalent to one or both of the participants.

158. In the case of the joint venture, it was obviously not possible to easily divide ASFAN's contribution (the land plot and workshop building) from Mr. Bahari's contribution, which included renovating the building and installing all of the technological equipment necessary to run a drinks manufacturing operation (i.e., processing lines, bottling machinery, and so on). Mr. Bahari's contribution essentially sat atop ASFAN's land plot contribution. Thus, the Economic Court should have appointed an expert to value ASFAN's land plot and building, and the Court should have directed Mr. Bahari and/or Coolak Baku to pay the fair market value of the same to ASFAN.

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263 **R-367**, p. 1 ("[redacted].")

264 **R-105**, p. 1 (copying verbatim the language from ASFAN's Application.)

265 SoRJ ¶ 364 ("[redacted]") (citing to **C-001**, 1998 Coolak Baku JVA, Clause 3.1.)

266 **C-001**, Clause 3.1.

267 **R-105**, p. 1.

268 While ASFAN alleged delays in installation, minimal production and operational losses, it did not assert (or provide evidence) that it had paid for all or even a portion of the equipment at Coolak Baku, and the Court did not consider any such allegation. **R-367**, p. 1.

159. It is critical to note that, as the withdrawing participant, ASFAN would logically be leaving Coolak Baku and the drinks business as a whole. This is because the drinks business was Coolak Baku's commercial activity, belonged to it, and would remain with it. By leaving the Coolak Baku joint venture, ASFAN made the decision to leave the drinks business. Mr. Bahari, as the sole remaining shareholder of Coolak Baku, would keep the equipment he had contributed and carry on Coolak Baku's soft drink and beer business.[269]

3. Instead, The Economic Court Allowed ASFAN To Take Back Not Only Its Land Plot, But The Entire Facility And Equipment Mr. Bahari Built On Top Of The Land Plot.

160. No such division of assets occurred. The Economic Court merely issued a judgment ruling that ASFAN could withdraw from the joint venture and take back its land plot contribution. The Court remained inexplicably silent about Mr. Bahari's contributions to the joint venture and the exact property that would remain with Mr. Bahari and Coolak Baku.[270] This purposely vague judgment created a legal fig leaf paving the way for ASFAN to enforce the judgment and say that it was rightfully recovering its land plot contribution, *while taking everything else along with it*.

161. This is precisely what happened: ASFAN utilized the 2006 Writ of Execution to not only take back the Safar Aliyev land plot – but the entire production facility and, in fact, the drinks business as well – leaving Coolak Baku as an empty corporate shell.[271] This result is plainly absurd: the withdrawing participant from a joint venture ended up taking over 100% of the joint venture assets, as well as the joint venture's entire commercial activity, with zero compensation to the other participant.

162. ASFAN and Azerbaijan do not even bother to hide this act of corporate theft. Mr. Habib Aliyev confirms that "[redacted]

269 It would not make sense for the expert to value the business and the equipment and order ASFAN to pay Mr. Bahari for the fair market value of the same, since Mr. Bahari was not the partner withdrawing from the joint venture.

270 It is important to note that in its application, while ASFAN alleged delays in installation, minimal production and operational losses, it did not assert (or provide any evidence) that it had paid for all or even a portion of the equipment at Coolak Baku, and the Court did not consider any such allegation in its decision. **R-367**, p. 1. If ASFAN had paid for all of the equipment, it would have specifically stated this, provided proof, and claimed that equipment as part of its contribution to the joint venture that it would take back. ASFAN did not do so, because Mr. Bahari had made those investments.

271 **R-105**.

[redacted]."[272] Azerbaijan does not contest that the Atilo beer brand was produced at the Coolak Baku facility using the equipment that had previously belonged to Coolak Baku. ASFAN even marketed itself as "[redacted]," using a brewery "[redacted]," thus touting the specific know-how and technology that Mr. Bahari had labored to bring and install at Coolak Baku.[273]

163. The Rejoinder completely ignores and fails to discuss the Economic Court's facilitation of ASFAN's brazen theft. Indeed, Azerbaijan maintains the legal fiction enabled by the Economic Court when it makes the remarkably obtuse conclusion that [redacted]." [274] The Rejoinder simply ignores the fact that ASFAN took over the equipment and drinks business, which should have remained with Mr. Bahari and Coolak Baku.

164. In conclusion, ASFAN and Mr. Zeynalov's scheme could not have happened without the involvement and actions of the Economic Court. Certainly, if Mr. Bahari had been able to participate, he would not have allowed ASFAN to strip Coolak Baku of its assets. Although not a required element to prove denial of justice or a breach of fair and equitable treatment, the circumstances of the case and especially its outcome strongly indicate corruption by the Court. In any event, it is clear that the Economic Court failed to give any meaningful justice to Mr. Bahari and fell far short of any reasonable expectations of a fair and stable legal and judicial environment that was promised to Mr. Bahari as an investor.

4. In The Court Litigation, ASFAN Never Alleged That It Had Paid For The Soft Drink And Beer Production Equipment, Thus Undermining Its Post-Hoc Argument That Mr. Bahari Was Not The Investor.

165. ASFAN's posture in the litigation contradicts and seriously undermines Azerbaijan's jurisdictional defense that ASFAN, not Mr. Bahari made the investments in Coolak Baku.

166. While ASFAN alleged delays in installation, minimal production and operational losses in its application to the Court, it never asserted – or provided any evidence – that it had paid for all or even a portion of the equipment at Coolak Baku as opposed to Mr. Bahari.[275] The Court correspondingly did not consider any such allegation in its decision. If ASFAN had

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272 H. Aliyev WS1 ¶ 28.

273 SoR ¶ 204; **C-176** – Attila Beer – ASFAN MMC.

274 SoRJ ¶ 364.

275 **R-367**, p. 1.

truly paid for all of the technical equipment at Coolak Baku, it would have logically asserted this in the litigation, so as to claim that equipment as part of its contribution to the joint venture that it would take back upon exiting the joint venture.

167. ASFAN did not make this argument. In fact, it acknowledged the opposite: ASFAN's claim application complained about the alleged lack of profits and noted that it [redacted]"[276] This statement explicitly recognizes that Mr. Bahari had indeed invested and installed equipment at Coolak Baku. Curiously, the Economic Court picked up and repeated this specific statement,[277] while conspicuously failing to address the disposition of that equipment – an inexplicable juxtaposition that further corroborates its enabling of ASFAN's theft.

5. The Economic Court's Service Of Process And Notifications Were Defective And Contain Suspicious Anomalies.

168. The Economic Court's failure to provide adequate service of process and thus access to justice to Mr. Bahari can be reduced to a simple observation: the Court had full knowledge of Mr. Bahari's expulsion from Azerbaijan, yet failed to make even the most basic inquiry or undertake the most basic step to find his whereabouts when he failed to show up to the hearings.

169. In its 4 April 2005 Judgment, the Court noted that "[redacted]",[278] and further, that this disappearance occurred "[redacted]" [279] In doing so, the Court's language specifically tracks ASFAN's claim application, in which ASFAN noted that [redacted]" and that "[redacted]"[280] Thus, as a starting point, the Economic Court was aware that Mr. Bahari had left Azerbaijan in early 2001 and was not in country. Indeed, ASFAN's entire premise for its claim to the Court was that Mr. Bahari was not in Azerbaijan and that this was causing difficulties with Coolak Baku's operations.

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276 **R-367**, p. 2.

277 **R-105**, p. 2.

278 **R-105**, p.1.

279 **R-105**, p. 2.

280 **R-367**, p. 2.

170. Despite this knowledge, the Economic Court accepted or else itself undertook the most barebones service and notification efforts. There is zero record of the Court undertaking any effort to locate Mr. Bahari by asking ASFAN, or taking other measures. ASFAN itself also made barely performative, if not deficient, efforts. Thus:

a. A copy of ASFAN's claim application was apparently sent to Coolak Baku's address, although ASFAN knew full well that Mr. Bahari would not be found at that address. Notably, Mr. Zeynalov, who began working at ASFAN in 2002,[281] claims that he corresponded with Mr. Bahari over several years. This allegedly included communications by fax, including faxing Mr. Bahari about ASFAN's exit per the Court judgment.[282] There is no explanation why the copy of the application was sent to Coolak Baku's address, other than to ensure that Mr. Bahari would remain unaware of the proceedings and not participate.[283]

b. The Court's decision to accept ASFAN's claim,[284] dated 19 January 2005, was also sent to Coolak Baku.[285] At this stage, the Court would have read the ASFAN's application (noting Mr. Bahari's "[redacted]")[286] and understood that Mr. Bahari was not in the country, and thus that its notification sent to Coolak Baku would be ineffective. Azerbaijan retorts that a copy was also sent to Mr. Bahari's address in Tabriz, Iran.[287] However, the courier receipt shows no delivery date, time, or signature.[288] Azerbaijan's assertion is plainly misleading. Moreover, the existence of an undelivered notification casts suspicion on the Economic Court itself. Of note, the notification supposedly sent to Iran is filled out on a domestic courier service.[289]

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281 Zeynalov WS1 ¶¶ 25, 37.

282 Zeynalov WS1¶ 26 (noting "[redacted]" with Mr. Bahari after 2002, including by fax to Dubai), ¶ 52 (noting Mr. Bahari was aware of ASFAN's exit because Mr. Zeynalov had communicated this "[redacted].)

283 SoR ¶ 176 (noting Mr. Bahari never received any notice of the application.)

284 **R-168**.

285 **R-107**, p. 4 (PDF).

286 **R-367**, p. 2.

287 **R-370**. In any event, Mr. Bahari did not reside in Tabriz.

288 **R-370**.

289 **R-370**.

c. Having failed to receive any notifications, Mr. Bahari did not attend the 4 April 2005 hearing. At that hearing, the Court again openly referred to Mr. Bahari's mysterious disappearance from Azerbaijan. Yet, the Protocol of the Court hearing (the transcript) records that the judge failed to ask a single question to ASFAN about Mr. Bahari's whereabouts or take any other actions to find out Mr. Bahari's whereabouts or attempt to secure his attendance. Instead, the judge rotely noted that the defendant (Mr. Bahari) had failed to provide any information regarding his absence, and that he would therefore proceed in accordance with Article 185.5 of the Civil Procedure Code and moved on.[290] As noted, however, the Court (1) knew for a fact that the notification sent to Coolak Baku had never reached Mr. Bahari; (2) had inexplicably failed to send the notification to Iran; and therefore (3) Mr. Bahari was obviously completely unaware of the case at that point in time, and certainly could not "[redacted]" to the Court.

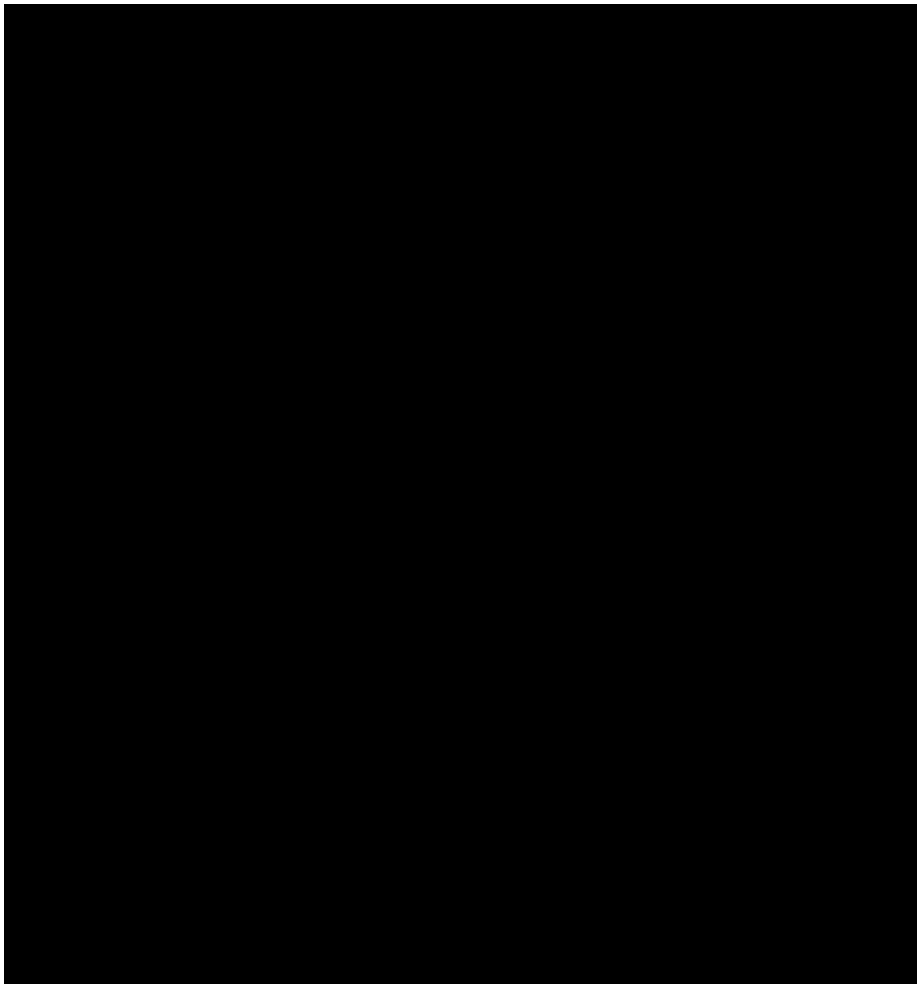
d. Finally, as previously noted, Mr. Bahari was never notified of the Court's 4 April 2005 Judgment.[291] Azerbaijan exhibits an alleged receipt of service to an address in Tabriz, Iran.[292] On its face, the document does not confirm actual delivery: the receipt lists the receiver as "[redacted]" and is signed *by the courier himself*, a certain "[redacted]"[293] Furthermore, the same domestic courier is utilized, even though this is purportedly couriered to Iran; the "[redacted]" is listed as "[redacted]" but the listed address is the physical address for Coolak Shargh, not an Iranian post office or post office box:

290 **R-368**, p. 43 (PDF) ("[redacted]")

291 SoR ¶¶ 191-194.

292 **R-108**.

293 **R-108**. "[redacted]" is also listed as the courier for the purported notification of the Court's acceptance of ASFAN's claim at **R-370** (and which also shows no delivery confirmation.)



171. Each of the notification anomalies described above are problematic on their own. Combined with the Economic Court's aberrant substantive judgment, it is difficult to escape the conclusion that the Court engaged in sham proceedings designed to defraud Mr. Bahari by leveraging his forced absence from Azerbaijan.

II. MR. BAHARI WAS THE INVESTOR IN CASPIAN FISH

172. The Caspian Fish plant has been built and was operational for at least two decades. On any view, a considerable amount of monetary investment was spent to develop and construct Caspian Fish before its grand opening on 10 February 2001. This is not in dispute.

173. The Parties also largely agree that Mr. Bahari was the driving force behind every aspect necessary to develop and construct Caspian Fish, and that Mr. Bahari had legal control and directed the investment. This includes that:

a. Mr. Bahari was responsible for the design vision and engineering, procurement, and construction of Caspian Fish[294];

b. Mr. Bahari selected, ordered, and contracted with manufacturers and suppliers of equipment for Caspian Fish[295];

c. Mr. Bahari was responsible for the transportation and import of equipment for Caspian Fish[296]; and

d. Mr. Bahari alone was delegated broad legal authority to do all of these things.[297]

174. Thus, the singular issue for purposes of jurisdiction (and ultimately the merits and quantum of damages) is, therefore: who made the monetary investment in Caspian Fish. Mr. Bahari has consistently claimed it was him; while Azerbaijan's Rejoinder now applies further effort to argue an affirmative jurisdictional defense by way of a counterfactual that it was Minister Heydarov.

175. In asserting that Minister Heydarov made the entire monetary investment in Caspian Fish, Azerbaijan is also asserting that Mr. Bahari made no monetary investment whatsoever. Thus, any level of investment by Mr. Bahari in Caspian Fish would suffice to clear Azerbaijan's present jurisdictional argument.[298]

176. Hence, Azerbaijan is asking the Tribunal to make a choice: (i) either it was Mr. Bahari who made the monetary investment in Caspian Fish or (ii) it was Minister Heydarov. Said differently, Azerbaijan invites a binary decision to be made, only one scenario can be true. As this section summarizes, the evidentiary record overwhelmingly establishes that on any standard of proof, it was Mr. Bahari who provided the monetary investment.

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294 SoD ¶¶ 237-238; SoRJ ¶ 397 ("[…] *it is consistent with* [Mr. Bahari] *managing the construction project, which Azerbaijan has never denied.* […] Mr Bahari managed the construction project for almost two years.")

295 Zeynalov WS1 ¶ 32 ("[redacted]"); ¶ 270, discussing Mr. Hasanov asking Mr. Bahari for evidence of costs of machinery (Hasanov WS1 ¶ 12.)

296 SoD ¶¶ 259 (c)(d).

297 SoD ¶¶ 237(a), "Mr Bahari was given a broad and wide-ranging authority, including (among other things) the power to "carry on the business of [Caspian Fish]"; SoRJ, ¶ 368 (c), "his capacity as a representative of Caspian Fish"; ¶ 397 "It is apparent from the documentary record that Mr Bahari was the front man or the "face" of the business"; *See* Power of Attorney from Caspian Fish BVI to Mr Bahari, notarized 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**.

298 Importantly, Azerbaijan does not claim there were any other investors other than Minister Heydarov. Further, Mr. Bahari has already established more than one type of qualifying investment for Caspian Fish under the Treaty, and therefore this is not a threshold jurisdictional issue.

Conversely, Azerbaijan has failed to meet its positive burden of proof, and its affirmative defense fails.

177. Further, if the Tribunal finds that Mr. Bahari made the significant investment in Caspian Fish, then this severely undermines Azerbaijan's position that Mr. Bahari voluntarily abandoned or sold his investments in Azerbaijan for next to nothing, and that he voluntarily exited Azerbaijan never to return.

178. Overall, the Parties' evidence on this issue reveals a remarkable disparity in what Mr. Bahari has been able to adduce in support of his claims; as compared with the lacuna of evidence on this issue adduced by Azerbaijan, which enjoys broad access to its own records and personnel, and that of Caspian Fish and its former management.

A. AZERBAIJAN HAS ADDUCED INSUFFICIENT EVIDENCE TO SUPPORT A FACTUAL FINDING THAT MINISTER HEYDAROV WAS THE SOLE INVESTOR IN CASPIAN FISH.

1. There Is No Documentary Evidence Establishing That Minister Heydarov Held Any Interest In Caspian Fish

179. For Azerbaijan to rely on its defense that Minister Heydarov was the monetary investor in Caspian Fish, at a minimum the burden of proof requires Azerbaijan to establish that Minister Heydarov held at least one type of ownership interest in Caspian Fish. Otherwise, it is entirely implausible that he provided tens of millions of dollars to build the Caspian Fish plant.

180. Azerbaijan has not submitted *any* evidence demonstrating that Minister Heydarov held a legal or beneficial interest in Caspian Fish,[299] whether that is through:

a. ICCI's fifty percent interest in Caspian Fish BVI;

b. the Caspian Fish BVI representative office in Azerbaijan[300]; or

c. Caspian Fish LLC.

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299 As a fundamental aspect of an affirmative defense that Claimant contests, this is for Azerbaijan to establish on its own evidence. It has not done so.

300 *See e.g.* SoRJ ¶ 52 and **C-007**. Azerbaijan's Rejoinder argues, incorrectly, that the Shareholders Agreement for the Caspian Fish BVI representative office in Azerbaijan is "not genuine." On that basis, Azerbaijan rejects the sole piece of evidence adduced in the Arbitration that shows Minister Heydarov had an interest in a Caspian Fish entity.

181. Indeed, in response to being requested to produce documents that would establish any ownership in these above entities, "[redacted]."[301] As previously stated, Minister Heydarov is a State official, a refusal by him is a refusal by Azerbaijan.

182. Further, in July 2002, Azerbaijan's witness, Mr. Kerimov (who immediately replaced Mr. Bahari as manager of Caspian Fish), robustly denied to the Azerbaijani press that Minister Heydarov was a shareholder or owner of ICCI or Caspian Fish.[302]

183. Accordingly, having not met this minimum burden of proof, Azerbaijan's defense must fail.

2. There Is No Documentary Evidence Establishing That Minister Heydarov Made A Monetary Investment In Caspian Fish

184. Azerbaijan has also not produced *any* documentary evidence of Minister Heydarov's monetary investment in Caspian Fish. Instead, Azerbaijan asks this Tribunal to rely on two categories of documents that it contends, without support, relate to Minister Heydarov's funding of Caspian Fish. However, none of these documents establish a connection to Minister Heydarov and, even on Azerbaijan's own case, what they actually relate to is unknown.

a. International N.A.T Limited (BVI) Has No Connection To Caspian Fish Or Minister Heydarov

185. Azerbaijan has produced in evidence 41 invoices from International N.A.T Limited (BVI) ("**INL**") and a summary of those invoices.[303]

186. In its Defense, Azerbaijan distances itself from the INL documents it has produced, stating that Azerbaijan has "*very little information on the provenance of*" them.[304] Azerbaijan also states that "[i]*t is unlikely that INL was in fact carrying out the construction services set out in the invoices, given the documentary record does not otherwise support the participation*

301 **C-319** [Respondent Document Production - 033_01] Letter from Khazri Solutions, dated 10 May 2024 (emphasis added).

302 Second Secretariat Report, **SEC-207** Mammedov, An Error Crept into the MNS Message, 11 July 2002.

303 **R-031** Invoices from International N.A.T Limited to Caspian Fish BVI; **R-048** Summary of invoices from International N.A.T. Limited to Caspian Fish BVI.

304 SoD ¶ 243(b).

of INL in the construction of Caspian Fish […]."[305] As discussed in Mr. Bahari's Reply, Azerbaijan's disclaimers are highly unusual and raise a host of unanswered questions.[306]

187. Yet, Azerbaijan's Rejoinder asks the Tribunal to afford significant evidentiary weight to these INL documents, in circumstances where Azerbaijan itself not only questions their provenance, but their relevance to the actual construction of Caspian Fish. The best Azerbaijan can muster in its Rejoinder is to state that the INL invoices "*are believed to be historic records of Mr Heydarov's spend*"[307] and that they are "*evidence of* an *amount invested.*"[308] It is unclear and unexplained on what actual basis, if any, Azerbaijan forms this belief.

188. Nevertheless, Azerbaijan robustly maintains that the INL invoices are "*documentary evidence which demonstrates that Mr Heydarov funded the construction of Caspian Fish*."[309] The problem is that the INL documents do not, in fact, actually qualify as "documentary evidence" for this proposition. For example, Azerbaijan has not provided a single discussion of how, when, or if the INL invoices were ever paid, and crucially, *by whom*.[310]

189. According to Azerbaijan, "what [it] does know […] is that INL was a company incorporated in the BVI at the same time as ICCI, which is a company Mr Heydarov was a director, and whom Azerbaijan understands was also the beneficial owner."[311] Again, unexplained knowledge and understandings, but no substance:

    a. The fact that INL was incorporated in the BVI at the same time as ICCI does not establish that Minister Heydarov is the beneficial owner of INL.

    b. Azerbaijan's "understanding" of Minister Heydarov's beneficial ownership of ICCI is devoid of any documentation. Rather, this "understanding" is premised on

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305 SoD ¶ 243(c).

306 SoR ¶¶ 251-277.

307 SoRJ ¶ 395.

308 SoRJ ¶ 396.

309 SoRJ ¶ 392.

310 Counsel for Azerbaijan chides Claimant for highlighting the inconsistent position about INL's involvement in the construction of Caspian Fish, stating that "*Azerbaijan does not suggest that INL was 'involve*[d]' *in the construction of Caspian Fish*." SoRJ ¶ 393. However, what Counsel for Respondent apparently ignores is that all 41 INL invoices are signed with the statement "[redacted]." While it is not clear that INL is representing that it performed the construction services, this certification suggests INL was at the Caspian Fish construction site. On the other hand, Mr. Zeynalov says he does "[redacted]." Zeynalov WS1 ¶ 7.

311 SoRJ ¶ 392 (emphasis added).

witness testimony from Mr. Kerimov, who says that "[redacted]."[312] But this is a circular position: Mr. Kerimov's knowledge is only based on Minister Heydarov's unsupported representation.

190. More broadly, and unlike Mr. Bahari, Azerbaijan has not been forced into a situation where it has extremely limited access to relevant documents and persons who can speak directly to these issues. Instead, Azerbaijan has access to, *inter alia*, Minister Heydarov (as evidenced by his correspondence to the Counsel for Azerbaijan (**C-304**)) and the person who apparently acts as the formally authorized representative for Khazri Solutions LLC (formally Gilan Holding) (**C-318, C-319**)[313]). Notably, both Minister Heydarov and Khazri Solutions LLC have forcefully declined to cooperate and produce any documents that could, in theory, support Azerbaijan's counterfactual.

191. Overall, Azerbaijan's unfounded and heavy reliance on the INL Invoices, which have no demonstrable connection to Minister Heydarov (or Gilan Holding) or to the Caspian Fish project itself,[314] is indicative of the house of cards that Azerbaijan's affirmative defense is premised upon.

b. ATABank Documents Have No Connection To Minister Heydarov

192. Azerbaijan's production of various additional ATABank documents with its Rejoinder is another sleight of hand that fails to provide evidentiary support for Minister Heydarov's alleged monetary investment in the development and construction of Caspian Fish.

193. With its Rejoinder, Azerbaijan has said it produced a collection of historical documents obtained from Caspian Fish's archives "*which show payments being made to suppliers and Mr. Bahari from an Atabank account*"[315] and "*which show Mr Khanghah depositing significant sums of money into Caspian Fish's Atabank accounts to pay suppliers*."[316] Even taking these statements as true (they are not), they do not establish, much less suggest, a connection to Minister Heydarov. In fact, these ATABank document do not make any

312 Kerimov WS1 ¶ 37; SoRJ ¶ 392, fn. 1047.

313 **C-318** [Respondent Document Production - 075_01] Letter from Khazri Solutions, dated 10 May 2024; and **C-319** [Respondent Document Production - 033_01] Letter from Khazri Solutions, dated 10 May 2024.

314 *See* SoR ¶¶ 251-277; Second Secretariat Report ¶¶ 7.26-27, Table 17. "[redacted]

315 SoRJ ¶ 377.

316 SoRJ ¶ 388.

reference to Minister Heydarov (or Gilan Holding), or support an inference that Minister Heydarov (or Gilan Holding) provided the funds in those accounts.[317]

194. Azerbaijan instead references payments that allegedly involved Mr. Khanghah, but it is not clear why that is relevant. During the period in question, Mr. Bahari presumed that Mr. Khanghah was working with him. Afterall, Mr. Bahari allocated 10 percent of his shares in Caspian Fish BVI to Mr. Khanghah and made him his co-director of that company as compensation for Mr. Khanghah's contributions to the company. Thus, if Mr. Khanghah was indeed receiving funds to deposit in ATABank accounts, it is more likely that those funds came from Mr. Bahari.

195. The best Azerbaijan can muster is to assert that "*Azerbaijan's witnesses* […] *confirm that these* [ATABank] *funds came from Mr Heydarov.*"[318] As discussed below, not a single witness actually provides this unsupported confirmation, and any reference to Minister Heydarov is only based on a witness's "understanding," there are no corroborating facts or direct witness testimony that establish Minister Heydarov provided any funds for Caspian Fish.

196. While the Parties' have highly divergent views on the veracity and reliability of the sampling of the ATABank documents that Azerbaijan has produced, there can be no real dispute that the ATABank documents, on their face, have no connection to Minister Heydarov or Gilan Holding. As a result, there is no evidence in the arbitral record that lends support to the contention that it was Minister Heydarov who made the monetary investment for the construction of Caspian Fish.

197. In this respect, Azerbaijan has repeatedly demonstrated in this Arbitration that it has access to, and has relied on, documents from:

    a. Caspian Fish's archive of documents[319];

    b. Minister Heydarov[320];

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317 Additionally, the ATABank and other bank documents (**R-89** to **R-95** and **R-325** to **R-338**) are *all* from January 2000 and later. As the Parties agree that major construction on Caspian Fish was complete by this time, these documents do not lend any support to the idea that Minister Heydarov paid for any of the construction.

318 SoRJ ¶ 391.

319 *See e.g.* SoRJ ¶¶ 71, 84, 378.

320 SoRJ ¶ 77.

c. the alleged ultimate beneficial owner(s) of Caspian Fish[321];

d. alleged current and former employees and managers of Caspian Fish[322]; and

e. the entire Azerbaijani government apparatus that has oversight over Caspian Fish, including its compliance with numerous laws, regulations, and certifications.[323]

198. Despite such broad and unconstrained resources, Azerbaijan did not produce a single document that directly supports its position that Minister Heydarov funded the construction of Caspian Fish.[324] Certainly, Azerbaijan would have produced such a document(s) in support if there was any truth to its position. But clearly there is not.

199. In light of the significant weight that Azerbaijan attaches to this allegation within its overall jurisdictional and merits defense, the absence of any documentary evidence in support speaks volumes.

3. Azerbaijan's Witness Testimony About Minister Heydarov's Alleged Investment In Caspian Fish Is Second-Hand, Indirect, And Vacuous

200. As a preliminary point, Azerbaijan responds to Mr. Bahari's complaints about "'empty chairs in this arbitration', i.e. the absence of Messrs. Aliyev and Heydarov" by asserting that there is "a mass of contemporaneous documentary evidence that contradicts Mr Bahari's claims."[325] As discussed above, there is most certainly not "a mass of contemporaneous documentary evidence" that contradicts Mr. Bahari's claims that he was the one who paid for the construction of Caspian Fish. In fact, with respect to Minister Heydarov's alleged investment of any funds in Caspian Fish, there is zero "contemporaneous documentary evidence."

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

322 SoRJ ¶ 71. *See* Hasanov WS1; Hasanov WS2; Zeynalov WS1; Zeynalov WS2.

323 Azerbaijan's witness, Mr. Ernst Rudman, testifies about the numerous construction certifications and administrative compliance that was required "[redacted]." If that is true, Azerbaijan must therefore have access to documents relevant to the construction of Caspian Fish. *See* Rudman WS1 ¶¶ 8-10.

324 The Second Secretariat Report make this same conclusion following Azerbaijan's Statement of Defense (¶ 7.91 "[redacted]").")

325 SoRJ ¶ 87.

a. Azerbaijan's Only Witness Who Was Present At The Time Of Caspian Fish's Construction Does Not Testify That Minister Heydarov Invested The Funds

201. Azerbaijan's lead witness, Mr. Rasim Zeynalov, claims to have acted as the (informal) deputy director of Caspian Fish LLC,[326] and then belatedly claims in his second witness statement (but does not attempt to explain on what authority) that he also [redacted]."[327] This is the first time we have heard of this role and, by Mr. Zeynalov's own admission, there is no document that supports his questionable statement.

202. Presumably based on these alleged roles on Caspian Fish, Mr. Zeynalov's states that:

[redacted][328]

203. A reading of the above shows that Mr. Zeynalov did not testify that Minister Heydarov or Gilan Holding were funding the development and construction of Caspian Fish. While Mr. Zeynalov suggests that Mr. Bahari asked for money "[redacted]," Mr. Zeynalov does not explain the basis for this statement, does not put it into any time frame, and does not provide any context or corroborating facts. He also does not say Mr. Bahari actually received any money from said "[redacted]", much less from Minister Heydarov.

204. Instead of providing testimony about Minister Heydarov's investment in Caspian Fish, Mr. Zeynalov makes a baseless accusation that he "[redacted]

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326 Zeynalov WS1 ¶ 27 [redacted].")

327 Zeynalov WS2 ¶ 20.

328 Zeynalov WS1 ¶ 31.

[redacted]."[329] Once again, Mr. Zeynalov makes no effort to explain the basis for his accusations against Mr. Bahari, which he clearly acknowledges by his careful use of the phrase [redacted]," and the express caveat that he actually has no details to form this suspicion.

205. Mr. Zeynalov's second statement says that:

[redacted][330]

206. Again, no detail of when or how Mr. Zeynalov formed this opinion. Moreover, this does not directly address that Minister Heydarov was paying all the monetary investment in Caspian Fish. Rather, Mr. Zeynalov's testimony is clearly focused on the allegation that Mr. Bahari was somehow overcharging Minister Heydarov. That allegation is also entirely unsupported and has only been advanced as supposition by Azerbaijan's witnesses.

207. Thus, despite submitting two witness statements in this Arbitration, and being the only witness for Azerbaijan who was present during construction of Caspian Fish, [331] Mr. Zeynalov never testifies that Minister Heydarov or Gilan Holdings funded the whole of Caspian Fish, and only suggests without any support or detail that Minister Heydarov paid for something.

208. Considering that Mr. Zeynalov affirmatively states that he signed some of the ATABank payment orders for Caspian Fish suppliers,[332] it is equally telling that he does not testify that the funds for these payments were from Minister Heydarov or Gilan Holding.

b. The Director Of Caspian Fish Does Not Have First-Hand Or Direct Knowledge Of Minister Heydarov Funding Caspian Fish

209. In his first witness statement, Mr. Tahir Kerimov states that [redacted]." [333]

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329 Zeynalov WS1 ¶ 33 (emphasis added).

330 Zeynalov WS2 ¶ 27. Notably, Mr. Zeynalov ties this into why Mr. Bahari revoked the Power of Attorney, which Mr. Zeynalov has been untruthful about.

331 Zeynalov WS2 ¶¶ 20-21.

332 Zeynalov WS2 ¶ 21. Mr. Zeynalov notably also qualifies this statement: "[redacted]."

333 Kerimov WS1 ¶ 20 (emphasis added.)

Mr. Kerimov does not provide the basis for his "understanding." Clearly, however, that understanding must have been formed after February 2001, which is when Mr. Kerimov says he became the director of Caspian Fish,[334] which is also after construction of Caspian Fish was complete.[335]

210. The Secretariat Second Report considered Azerbaijan's witness testimony about who funded Caspian Fish, specifically Mr. Kerimov, and noted:

[redacted][36]

211. Thus, despite Claimant's Reply and the Second Secretariat Report expressly drawing out the glaring lack of support, Mr. Kerimov's subsequent second witness statement makes no attempt to add any additional detail about how he formed his understanding or how Minister Heydarov allegedly funded Caspian Fish.

212. Instead, Mr. Kerimov proffers a few unsubstantiated statements, including about Mr. Kerimov's "[redacted]"[337] and that he does "[redacted]."[338] Again, it is entirely unclear on what basis Mr. Kerimov comes to these alleged understandings and he provides no corroborating facts or context.

213. In fact, the thrust of Mr. Kerimov's second statement on this point is to try and explain why in June 2002, when he was the Director of Caspian Fish, he publicly stated that Caspian Fish was a result of US$ 56 million dollars of foreign investment.[339] And as Secretariat expressly noted, a month later, in July 2002, Mr. Kerimov reiterated that "[redacted]

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334 Kerimov WS1 ¶ 10 (emphasis added.)

335 Rudman WS1 ¶¶ 5-6.

336 Secretariat Second Report, ¶ 3.16 (internal citations omitted).

337 Kerimov WS2 ¶ 19 (emphasis added).

338 Kerimov WS2 ¶ 33.

339 Secretariat Second Report, **SEC-206**.

[redacted]

[redacted]."[340]

214. According to Mr. Kerimov, he allegedly lied, repeatedly, to the press and others about where the investment in Caspian Fish to support national pride.[341] On this basis, Mr. Kerimov suggests that former President Heydar Aliyev was also lying, or at least making known misrepresentations, to the people of Azerbaijan and other Azeri and foreign officials, when he stated at the grand opening ceremony that US$ 56 million had been invested in Caspian Fish.[342] Either way Mr. Kerimov wants to spin it, at the relevant time, when there was no arbitration, Mr. Kerimov repeatedly represented that the investment in Caspian Fish was from foreign capital.

215. Mr. Kerimov also spends part of his second statement denying that he enjoys the patronage of the Azerbaijani Government[343] This also appears to be another circumstance that is inconsistent with the domestic and international press and investigations.[344]

c. Even the Chief Accountant Of Caspian Fish Does Not Have First-Hand Or Direct Knowledge Of Minister Heydarov Funding Caspian Fish

216. Mr. Sabutay Hasanov, who allegedly acted as the chief accountant of Caspian Fish in October 2000,[345] takes a similar approach, stating that: "[redacted]."[346] Mr. Hasanov provides no basis for this statement. Instead, Mr. Hasanov says he believes that Mr. Bahari did not have the money to invest in Caspian Fish.[347] It is not stated how Mr. Hasanov formed that belief.

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340 Secretariat Second Report, **SEC-207**, Mammedov, An Error Crept into the MNS Message, 11 July 2002. (emphasis added).

341 Kerimov WS2 ¶¶ 34-37.

342 Kerimov WS2 ¶ 31.

343 Kerimov WS2 ¶ 46.

344 *See e.g.*, **C-532** XalqXeber.Az, "*The Karimov family's wealth in London - The former chief executive moved millions out of the country*", 14 August 2019; **C-529** Teref.Az, "*The names of Tahir Karimov and his close circle are being slandered again*", 28 November 2018.

345 Mr. Hasanov admits he was not actually employed by Caspian Fish until May 2001, well after Mr. Bahari's expulsion. In fact, Mr. Elchin Suleymanov has testified that he knew Mr. Hasanov, and during Mr. Suleymanov's time at Caspian Fish until February 2001, he never saw Mr. Hasanov there and questions why he is representing that he was. Suleymanov WS1 ¶ 46.

346 Hasanov WS1 ¶ 8 (emphasis added).

347 Hasanov WS ¶ 9.

217. Mr. Hasanov does appear to recall with some specificity that when he arrived at Caspian Fish (it is not clear when), [redacted]," and Mr. Hasanov was apparently present and saw an exchange of cash between Mr. Masoudi and Gilan representatives and also Mr. Bahari at some undefined point in time.[348] Despite being the alleged chief accountant of Caspian Fish (after Mr. Bahari was removed), and his memory of these particular events, Mr. Hasanov says he is "[redacted]" and he is "[redacted]."[349]

218. While Mr. Hasanov is unique in his alleged direct knowledge of a purported exchange of funds (for something, at some point in time), the timing of his arrival at Caspian Fish necessarily curtails his scope of knowledge to at least after October 2000. By then, all major construction on Caspian Fish was complete,[350] and the vast majority of equipment had been purchased, delivered, and installed.[351] Thus, to the extent Mr. Hasanov is telling truth (which is denied), his knowledge pertains to a very limited amount of time and transactions that are, in any event, unspecified and highly unlikely to relate the funding of the construction of Caspian Fish.

219. Like Messrs. Zeynalov and Kerimov, Mr. Hasanov sees fit to make baseless allegations that he "[redacted]" Mr. Bahari was overstating amounts spent on equipment and construction and "[redacted]."[352] While Mr. Hasanov appears to be completely uncertain about these baseless allegations, one would expect a chief accountant to have some direct knowledge to support such a serious suspicion. You would also expect an investigation or audit to have been conducted.

220. Mr. Hasanov's second witness statement does no better, and again provides a second-hand, indirect "[redacted]" that money deposited by Mr. Khanghah into Caspian Fish accounts was provided by Minister Heydarov, "[redacted]."[353] Notwithstanding that this is hearsay, Mr. Hasanov fails to mention what time period he is

348 Hasanov WS1 ¶ 11.

349 Hasanov WS1 ¶ 11.

350 *See* Rudman WS1 ¶¶ 5-6 ("[redacted]").

351 Suleymanov WS1 ¶ 40.

352 Hasanov WS1 ¶ 14.

353 Hasanov WS2 ¶ 39.

referring to or what these funds were for.[354] Again, as chief accountant, it is reasonable to expect that Mr. Hasanov would have more than an understanding about how Caspian Fish was being funded, including by whom, and for what.

d. Other Relevant Azerbaijan Witnesses Have No First-Hand Or Direct Knowledge Of Minister Heydarov Funding Caspian Fish

221. Mr. Aydin Sultanov, who first provided a statement with Azerbaijan's Rejoinder about his experience in the Azerbaijani fish sector, states that he "[redacted]" Mr. Bahari [redacted]"[355] Mr. Sultanov does not offer any explanation about this understanding. Instead, he makes clear that he has never met Mr. Bahari and he was not involved with Caspian Fish until after its February 2001 grand opening.[356]

222. Mr. Ernst Rudman, who also first provided a statement with Azerbaijan's Rejoinder, makes one reference to Minister Heydarov covering expenses for a budget comprised of [redacted]."[357] This alleged expenditure is consistent with Minister Heydarov's role in Caspian Fish as the person responsible for obtaining State approvals and licensing.[358] It does not imply that Minister Heydarov (or Gilan Holding) funded the development and construction of Caspian Fish in the months or years prior.

e. No Azerbaijan Witness Has Testified To Any First-Hand Or Direct Knowledge About Minister Heydarov Funding All Of Caspian Fish

223. Thus, of the five witnesses and numerous statements that Azerbaijan has produced in this Arbitration that touch on the alleged funding of the development and construction of Caspian Fish, *none* of them testify that they have direct or first-hand knowledge that Minister Heydarov provided the funds for Caspian Fish. Likewise, none of them provide details or corroborating facts to support or explain their various "*understanding*" about this

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354 This understanding also appears to be at odds with Mr. Hasanov's statement that in the early 2000s "[redacted]" for sturgeon farming. Hasanov WS2 ¶ 47.

355 Sultanov WS1 ¶ 25.

356 Sultanov WS1 ¶¶ 21, 25.

357 Rudman WS1 ¶ 11(a).

358 *See* SoC ¶ 70; Bahari WS1 ¶ 35; Moghaddam WS1 ¶ 42.

issue, even in circumstances where they submitted a second statement and had been critiqued for a lack of corroborating detail.

224. Considering the lack of *any* documentation in support, and Azerbaijan's witnesses' complete inability to provide *any* affirmative, direct, first-hand, or corroborated knowledge of Minister Heydarov's alleged monetary investment in Caspian Fish, it is impossible to understand where the "consistent evidence of Azerbaijan's witnesses, who confirm that these funds [for Caspian Fish] came from Mr Heydarov"[359] actually exists. The truth is that Azerbaijan's affirmative defense is a patently unfounded and untenable fiction that can and should be rejected by the Tribunal.

4. Minister Heydarov's Prior Contemporaneous Statements Demonstrate The Fallacy That He Was The Ultimate Investor In Caspian Fish

225. As late as March 2018, there are press reports quoting Minister Heydarov discussing Caspian Fish as:

[redacted].[360]

226. Presumably Azerbaijan will argue that any reference to foreign investment is actually Caspian Fish BVI. But even if that is correct (which it is not), Mr. Bahari is a 40 percent shareholder in Caspian Fish BVI and, on Azerbaijan's own case, Mr. Bahari was the figurehead and legal director of that company for all activities in Azerbaijan.[361]

227. Moreover, it is Azerbaijan's specific affirmative defense that Minister Heydarov and/or Gilan Holding made the entire investment. But neither Minister Heydarov nor Gilan Holding are foreign, and Azerbaijan has never asserted that the foreign investment was made via ICCI, the 50 percent Caspian Fish BVI shareholder during the relevant time period (which,

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359 SoRJ ¶ 391.

360 Secretariat Second Report, **SEC-28** BastaInfo, Kamaladdin Heydarov sells his famous company, 26 March 2018 (emphasis added.)

361 SoRJ, ¶ 368 (c), "*his capacity as a representative of Caspian Fish*"; ¶ 397 "*It is apparent from the documentary record that Mr Bahari was the front man or the "*face*" of the business*"; *See* Power of Attorney from Caspian Fish BVI to Mr Bahari, notarized 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**.

in any event, Azerbaijan has not established that Minister Heydarov has an interest in ICCI).

228. Counsel for Azerbaijan is acutely aware of the numerous contradictory historical statements about Caspian Fish being funded by foreign investment and the complete lack of evidence to support Minister Heydarov's alleged investment. Azerbaijan's Rejoinder thus makes a candid admission that it "has also sought voluntary production of documents from Mr Heydarov and his group, Gilan, given its connection to Caspian Fish."[362] However, no production ultimately took place, apparently because "[redacted]."[363] As previously stated, Minister Heydarov is a State official, a refusal by him is a refusal by Azerbaijan.

229. Likewise, Azerbaijan states, as it must, that it "accepts that Mr Heydarov could likely give relevant evidence about certain factual matters concerning his private business activities in relation to Caspian Fish. Minister 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."[364] This is not a credible justification to not appear as a witness. In reality, if Minister Heydarov had real and honest evidence to support the position that he (or Gilan Holding) funded Caspian Fish, most certainly he would have appeared under the qualification that his testimony was only being provided in his personal capacity and not as the State.

230. Instead, the *only* document before the Tribunal on this issue that has any direct connection to Minister Heydarov is his 25 October 2025 [*sic*] correspondence to Quinn Emanuel, which was submitted with Azerbaijan's Rejoinder as **R-304**.

231. Therein, Minister Heydarov states that be must "[redacted]" to provide witness testimony because of an alleged "[redacted]" that Mr. Bahari is attempting to use against Azerbaijan. This has been a contention of Azerbaijan since the very start of the Arbitration, yet the memorials in this Arbitration have been public for almost all of 2024, and no [redacted]" has ensued by Mr. Bahari's doing or otherwise.

232. Minister Heydarov's correspondence affirmatively states that the project to construct Caspian Fish was paid for with his own money. Yet, that singular statement is entirely

362 SoRJ ¶ 63.

363 **C-319** Letter from Khazri Solutions, 10 May 2024; *See* SoR ¶ 344.

364 SoRJ ¶ 91.

unsubstantiated and is devoid of any corroborating information. It also cannot be tested by Counsel for Mr. Bahari or the Tribunal, which Minister Heydarov and Counsel for Azerbaijan are of course aware.

233. What Minister Heydarov's correspondence acutely demonstrates is his palpable discomfort and unwillingness to engage with this issue on the facts. This is because even basic scrutiny, as applied in the discussion above, readily establishes that Azerbaijan and Minister Heydarov are not willing to engage with the Tribunal about who funded the development and construction of Caspian Fish.

234. Accordingly, in weighing the evidence Azerbaijan has failed to adduce in support of this affirmative defense, the Tribunal should equally consider both the unwillingness and apparent inability of Minister Heydarov to put forward *any* evidence in support.

235. Azerbaijan cannot have it both ways: it cannot assert that Minister Heydarov was the monetary investor in Caspian Fish and submit his correspondence to counsel saying that; while at the same time refusing to make Minister Heydarov (a State official under Azerbaijan's control) available to testify, and refusing to provide documents ordered by the Tribunal.

5. Evidence Does Not Support That Minister Heydarov Had The Background And Capability To Fund Caspian Fish

236. Azerbaijan has not submitted any evidence or even seen fit to discuss Minister Heydarov's business activities or financial capability to fund what is agreed to be a significant investment in Caspian Fish in the late 1990s and 2000. As a high-ranking government employee, Minister Heydarov's annual salary was presumably relatively modest.

237. We also know nothing in this Arbitration about Gilan Holding, which is alleged to be Minister Heydarov's business and the investor in Caspian Fish. Azerbaijani State Register Data of Commercial Entities states that Gilan Holding was not incorporated in Azerbaijan *until* 7 September 2005.[365] This raises the obvious question how Gilan Holding could have funded the development and construction of Caspian Fish more than five years before it existed.

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[365] **C-416** State Register Data of Commercial Entities, Result for TIN Search #1400725191. As discussed in Claimant's Reply at ¶ 344, Khazri Solutions LLC, became the new corporate form of Gilan Holding on 16 May 2023. *See* **C-318** and **C-319**, Letters from Khazri Solutions, 10 May 2024.

238. As discussed in the Reply, after the start of this Arbitration, on 16 May 2023, Gilan Holding changed its name to Khazri Solutions LLC for unexplained reasons.[366] In fact, Khazri Solutions LLC is in bankruptcy proceedings. When considered in the broader context of this dispute, the company's bankruptcy raises the reasonable prospect that there is a coordinated effort to expunge the corporate history and information about Caspian Fish (and any link to Mr. Bahari).[367] This may explain why almost no documentary evidence was produced by Azerbaijan and its various State organs in response to affirmative document production obligations.

239. Accordingly, as there is no evidence in this Arbitration establishing that Minister Heydarov or Gilan Holding had the financial capability to invest tens of millions of dollars to build Caspian Fish, Azerbaijan cannot meet its burden of proof to establish this affirmative defense.

6. Statements By President Heydar Aliyev

240. Azerbaijan's affirmative defense also effectively asserts that former President Heydar Aliyev was being dishonest with the Azeri people when he discussed Caspian Fish as the result of foreign investment at the grand opening ceremony on 10 February 2001. As reported in the Azerbaijani press:

[redacted][368]

241. Azerbaijan's position also directly contradicts the plaque that President Heydar Aliyev mounted outside the Caspian Fish facility for the grand open, announcing that:

366 SoR ¶ 344.

367 SoR ¶¶ 357-361.

368 **C-099** *President Inaugurates New Fishery*, Azernews: Business, 14 February 2001, *available at:* https://www.bakupages.com/pubs/azernews/602_en.php.

[redacted]"[369]

242. Again, only one of the Parties' two factual claims can be true: either Caspian Fish was funded by foreign investment (i.e. Mr. Bahari), which has been the consistent position of the Azerbaijani Government and Caspian Fish's management until this Arbitration; or, it was funded by domestic parties, namely Minister Heydarov and Gilan Holding, which means that President Heydar Aliyev, the Azerbaijani Government, and Caspian Fish management have repeatedly stated this falsehood about foreign investment until this Arbitration.

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243. The Tribunal has great discretion to assess the evidence in the Arbitration. In light of Azerbaijan's chosen approach to Minister Heydarov's (non)testimony, and refusal to produce documents ordered by the Tribunal, the Tribunal would be well justified to treat Azerbaijan's claim that Minister Heydarov was the investor as nothing more than creative story telling.

369 **C-062** Dieter Klaus Photograph – Heydar Aliyev Plaque, 10 February 2001.

B. MR. BAHARI'S ARGUMENTS IN THIS REJOINDER CONFIRM BEYOND DOUBT THAT HE WAS THE MONETARY INVESTOR IN CASPIAN FISH.

244. Mr. Bahari has adduced broad evidence in this Arbitration that establishes and in fact confirms that he was the monetary investor in Caspian Fish. Taken together with the dearth of evidence from Azerbaijan on this issue, the evidence in the record makes the scale tip heavily, if not entirely, on Mr. Bahari's side.

1. Mr. Bahari Has Submitted a Significant Documentary Evidence Establishing He Was The Monetary Investor In Caspian Fish

245. Mr. Bahari has produced three categories of documentary evidence that establish his monetary investment in Caspian Fish: (a) documents showing that Mr. Bahari contracted, ordered, and paid for Caspian Fish equipment; (b) documents establishing that Mr. Bahari contracted with and paid Chartabi Contacting, as the only general contractor for the Caspian Fish project; and (c) documents confirming that it was Mr. Bahari who had the background and personal funds to build Caspian Fish.

a. Mr. Bahari Procured And Paid For The Equipment Of Caspian Fish

246. Mr. Bahari has produced over 35 documents to his independent quantum expert, Secretariat, that establish he invested at least US$ 11,117,931 in equipment and machinery for Caspian Fish.[370]

247. Mr. Bahari's independent damages expert, Secretariat, has reviewed these documents and concluded that Mr. Bahari: [redacted]." [371] If any part of Secretariat's opinion is accepted, Mr. Bahari has satisfied his burden of proof on this issue.

248. More broadly, the documentary evidence in the record (also reviewed and confirmed by Claimant's independent quantum expert, Secretariat) can account for $44.418 million, or

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370 *See* Secretariat First Report, p. 9 Table 2, and Appendix D; Secretariat Second Report, p. 8 Table 2, p. 107 Table 18.

371 Secretariat Second Report ¶ 7.91.

almost 80 percent, of the US$ 56 million that Mr. Bahari invested in Caspian Fish. This exceeds a balance of probabilities standard.

249. For completeness, it is important to note that Azerbaijan's damage expert has never been provided with any documents that are said to demonstrate an investment by Minister Heydarov or Gilan Holding. As an affirmative defense, Azerbaijan should have produced that evidence.

b. Mr. Bahari Contracted With And Paid For The General Contractor On The Caspian Fish Project

250. Mr. Bahari explained in his first witness statement that his expulsion from Caspian Fish and Azerbaijan meant that he was unable to retain the vast majority of documents relating to the development and construction of Caspian Fish.[372] Nevertheless, Mr. Bahari has been able to produce numerous documents that establish he was the one who funded the general contractor, Chartabi, who carried out the design, engineering, and construction of Caspian Fish:

a. Mr. Bahari has produced in evidence a contract between Caspian Fish, represented by Mr. Bahari, and "Chartabi Contracting Services" ("**Chartabi**") (**C-092**).[373]

   i. That document, which is on Chartabi letterhead and is signed by both parties, records the parties' agreement for Chartabi to carry out what is an engineering, procurement, and construction contract (EPC) for Caspian Fish.

   ii. Meeting minutes, signed and agreed between those same two parties, further records that the works carried out by Chartabi were completed and delivered.

   iii. As discussed below, whilst Azerbaijan seeks to raise questions and sow doubt about the reliability of these documents, it cannot dispute that both Mr. Bahari and Chartabi agreed to and signed this contract and the meeting minutes. Thus, it is a legal contract.

372 Bahari WS1 ¶ 39.

373 **C-092** Chartabi Contracting Caspian Fish Construction Contract.

b. Mr. Bahari has produced an Iran Melli Bank check dated 30 September 2000, drawing funds from the account of Mr. Bahari's Iranian company, Coolak Shargh, and made out to Mr. Ahad Chartabi for "[redacted]" for 43,700,000,000 Iranian Rials (US$ 24,761,170.86).[374] This is consideration for the works carried out by Chartabi under the Caspian Fish contract.

c. Mr. Bahari has further produced a letter from Chartabi Contracting Services, and signed by Mr. Ahad Chartabi, confirming that Mr. Bahari paid in full for the construction works carried out on Caspian Fish (and Coolak Baku and Shuvalan sugar plants) as per the contracts that were signed for each project.[375]

251. Each of these documents is *prima facie* documentary evidence of Mr. Bahari's personal investment in the construction of Caspian Fish.

252. In light of Azerbaijan's allegations that Chartabi was not engaged or even present for the construction of Caspian Fish, and that Mr. Bahari did not personally pay for the development and construction of Caspian Fish, Mr. Bahari obtained additional evidence from persons directly involved at the relevant time and with first-hand knowledge:

a. With his Reply, Mr. Bahari produced into evidence a letter dated 31 March 2024 from Ahad Ghazaei, the former Iranian Ambassador to Azerbaijan during the time period when Mr. Bahari was investing in Azerbaijan and building Caspian Fish (**C-279**).[376] Ambassador Ghazaei confirms that Mr. Bahari implemented, launched, performed, and invested his own personal capital in Caspian Fish. Ambassador Ghazaei's notarized letter provides first-hand and direct knowledge about Mr. Bahari's investment in Caspian Fish.

b. Mr. Bahari has produced into evidence a letter dated 9 April 2024 from Mr. Samad Chartabi, the current CEO of Chartabi Metalworking Industries and the brother of Mr. Ahad Chartabi, the CEO of Chartabi Contracting (**C-280**).[377] Mr. Samad Chartabi confirms that Mr. Ahad Chartabi and his company carried out the construction for Caspian Fish. He also confirms that Mr. Bahari implemented

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

375 **C-086** Letter from Chartabi Contracting confirming cost of construction works.

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

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

Caspian Fish with his own capital. Mr. Samad Chartabi's notarized letter provides first-hand and direct knowledge about Mr. Bahari's engagement of Mr. Ahad Chartabi's company and his personal investment in building Caspian Fish.

253. Mr. Bahari requested that Ambassador Ahad Ghazaei and Mr. Samad Chartabi submit witness statements in this Arbitration discussing the matters set out in their correspondence. Both of them respectfully declined to do so in light of this dispute being with the Azerbaijani Government and its ruling families.

254. In view of the foregoing, Mr. Bahari has fully satisfied his burden of proof to establish that he personally paid for Chartabi, as the general contractor, to perform and complete the Caspian Fish project.

c. Documents Demonstrates That Mr. Bahari Had The Background And Capability To Fund Caspian Fish

255. There is significant evidence supporting Mr. Bahari's *bona fides* to make the monetary investment in Caspian Fish. In stark comparison, and as discussed previously, there is no evidence that supports Minister Heydarov's background and capability, or that of Gilan Holding.

256. Mr. Bahari entered Azerbaijan as a wealthy and successful owner and manager of various Iranian companies.[378] This has been established in evidence via multiple historic bank statements and correspondence that Mr. Bahari has produced to demonstrate the significant success of his Iranian companies.[379] This is also established by the detailed witness testimony of his personal bank manager at Commerzbank, Mr. Dieter Klaus.[380] Mr. Bahari's success has been further confirmed by Dr. Kousedghi[381] and Ambassador

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378 SoC ¶¶ 24-36; SoR ¶¶ 101-117; **C-289** Newspaper pictures of the Coolak Shargh grand opening, showing the Vice President of the Islamic Republic of Iran, Mr. Habibi, attending the ceremony.

379 **C-274** Letter of Credit of Coolak Shargh, 23 January 1996; **C-276** Letter from Bank Refah Kargaran to the Embassy of Republic of Azerbaijan, 27 February 1996; **C-286** Letter from Bank Mellat to the Ministry of Commerce of Iran, 28 April 1991; **C-287** Letter from Bank Saaderat regarding Mr. Bahari's Letters of Credit, 23 April 2024.

380 Klaus WS1 ¶¶ 5-6. "[redacted]".

381 Kousedghi WS ¶ 13. [redacted]."

Ahad Ghazaei,[382] both of whom are uniquely placed to have direct and first-hand knowledge of Mr. Bahari's wealth and business activities in both Iran and Azerbaijan.

257. Additionally, Mr. Bahari's position is that he generated very significant cash profits from the export of his Tabriz-based Coolak Shargh company from sales to the Azerbaijani market and others.[383] This has been confirmed in testimony from witnesses with direct and first-hand knowledge.[384] Notably, the significant success of Coolak Shargh's exports and sales in Azerbaijan has not been challenged by Azerbaijan.

258. Viewing this issue in the round, Mr Bahari's success in Iran and Azerbaijan were not isolated incidents, but the result of repeated and collective success that provided Mr. Bahari with the experience and financial capital to create new businesses and engage new partners that wanted to be part of Mr. Bahari's entrepreneurship and business acumen.

259. Case in point, it was because of Mr. Bahari's significant success in Iran that he was able to export drinks into the young and growing Azerbaijani commercial market. In turn, this allowed him the credentials to partner with Arif Pashayev, a significant figure in Azerbaijan, and his company ASFAN, to embark on the Coolak Baku joint venture, where Mr. Bahari held a majority 75 percent stake.[385] Likewise, it was Mr. Bahari's early success in Coolak Baku that led both current-President Ilham Aliyev and Minister Heydarov to seek out Mr. Bahari and create what would become the crown jewel for foreign investment in Azerbaijan at the time, Caspian Fish.

260. Each of these sequential opportunities were dependent on Mr. Bahari not only being someone people wanted to partner with because of his track record, but someone who had the financial means to make new opportunities get off the ground in the first place. Otherwise, these opportunities in Azerbaijan for an Iranian would not have been possible.

2. First-Hand And Direct Witness Statements In The Arbitration Further Demonstrate Mr. Bahari Funded Caspian Fish

261. On the issue of who made the monetary investment in Caspian Fish, there is a fundamental line drawn in the sand between the witness testimony in this Arbitration:

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

383 Bahari WS1 ¶¶ 7-15; Moghaddam WS1 ¶¶ 15-24; Khalilov WS1 ¶¶ 8-9.

384 *See e.g.*, Bahari WS1 ¶¶ 11-15; Moghaddam WS1 ¶¶ 15-24; Khalilov WS1 ¶¶ 8-9.

385 SoC ¶¶ 37-42 ; Bahari WS1 ¶¶ 25-27.

Mr. Bahari and his witnesses provide first-hand knowledge and direct contemporaneous experience on this issue. As discussed above, Azerbaijan's witnesses only possess second-hand *post hoc* "understandings" of this issue.

262. Mr. Bahari submits through testimony, and as a principal basis for his claims in this Arbitration, that he personally invested US$ 56 million in Caspian Fish.[386] For more than two decades Mr. Bahari has maintained that position while seeking the return of his investments in Azerbaijan. Indeed, you do not have to take Mr. Bahari's or his witnesses' word for it, prior to this Arbitration, Azerbaijan's former President Heydar Aliyev, numerous State officials, international NGOs, and Caspian Fish itself, have consistently asserted for decades that Caspian Fish was built with US$ 56 million of foreign investment.[387]

a. Mr. Bahari's Personal Banker Has Provided First-Hand, Detailed, And Corroborated Witness Testimony About Mr. Bahari's Monetary Investment In Caspian Fish

263. Mr. Bahari's personal banking advisor from Commerzbank, Mr. Dieter Klaus, testifies that shortly after he started at Commerzbank in 1993, he was assigned to Mr. Bahari as he was "[redacted]."[388] Mr. Klaus also testifies that he could see "[redacted]." Mr. Klaus also states that [redacted]

264. When asked if he could recall or can confirm that Mr. Bahari expended around $56 million on Caspian Fish, Mr. Klaus testified that: "[redacted]

386 Bahari WS1 ¶ 38.

387 *See e.g.* SoR ¶¶ 214-225; **C-011** to **C-015**.

388 Klaus WS1 ¶ 5.

[redacted]." This statement is based on Mr. Klaus (and his brother) attending the grand opening ceremony of Caspian Fish, at the invitation of Mr. Bahari. Mr. Klaus also testifies that he met with Mr. Bahari at Caspian Fish on the day of the grand opening ceremony.

b. Mr. Bahari's Project Manager Has Provided First-Hand, Detailed, And Corroborated Witness Testimony About Mr. Bahari's Investment In Caspian Fish

265. Mr. Naser Tabesh Moghaddam, a manager who was involved in all of Mr. Bahari's projects in Iran and Azerbaijan, has also provided sworn testimony about his direct and first-hand knowledge of Mr. Bahari's investment in Caspian Fish (and his other investments in Azerbaijan). Mr. Moghaddam testifies [redacted]."[389]

266. Mr. Moghaddam also testifies that he "[redacted]." [390] Likewise, Mr. Moghaddam states that: "[redacted]."[391]

c. A Former Iranian Diplomat Has Testified About His First-Hand Knowledge Of Mr. Bahari's Investment Activities In Caspian Fish

267. Dr. Fereydoun Kousedghi, the Deputy Head of Mission for Iran in Azerbaijan from 1999 to 2003, has provided sworn testimony about his direct and first-hand knowledge of Mr. Bahari's investment in Caspian Fish. Dr. Kousedghi testifies that Mr. Bahari was the largest Iranian investor in Azerbaijan and one of the most successful businessman in Iran at that time. [392] Part of Dr. Kousedghi's governmental duties was to keep track of

389 Moghaddam WS1 ¶ 42.

390 Moghaddam WS1 ¶ 45.

391 Moghaddam WS1 ¶ 46.

392 Kousedghi WS ¶ 13.

Mr. Bahari's investments in Azerbaijan, noting that [redacted]."[393] Consistent with Dr. Kousedghi's testimony, and as discussed above, Ahad Ghazaei, the former Iranian Ambassador to Azerbaijan during the time period when Mr. Bahari was investing in Azerbaijan, confirms that Mr. Bahari implemented, launched, performed, and invested his own personal capital in Caspian Fish.[394]

268. With the exception of Ambassador Ghazaei's confirmation and certification, all of the above testimony was provided with Mr. Bahari's Statement of Claim. It therefore stands alone, and was not submitted in response to Azerbaijan's concocted counterfactual that Minister Heydarov personally funded the construction and creation of Caspian Fish.

3. Chartabi As General Contractor Was A Necessary And Required Cost Of The Caspian Fish Project

269. As part of its affirmative defense, Azerbaijan's Rejoinder continues to advance an equally untenable position to challenge the existence of Mr. Bahari's general contractor, Chartabi Contracting, on the Caspian Fish project. This porous and illogical position is a manifest attempt to instill doubt about Mr. Bahari's investment. For the reasons set out below, not only is this position devoid of any support, it also is nonsensical from a construction perspective, as more fully discussed in the expert report of Tom Gaines of Secretariat International.[395]

270. *First*, Azerbaijan has not adduced any documentary evidence to challenge Chartabi's role as Mr. Bahari's general contractor on the Caspian Fish project. This stands in stark contrast to the numerous documents Mr. Bahari has put in evidence about Chartabi and Caspian Fish.

271. *Second*, Azerbaijan's witness testimony contains no first-hand or direct knowledge about Mr. Bahari engaging Chartabi for the Caspian Fish project. In fact, Mr. Zeynalov is the only witness who contends that he was even involved with the Caspian Fish project during the time period when Chartabi was performing works on site, *i.e.* before construction was

393 Kousedghi WS ¶¶ 14, 14(a).

394 **C-279** – Letter from Ambassador Ahad Ghazaei to Diamond McCarthy LLP.

395 Secretariat Construction Report, ¶¶ 3.45-3.50.

complete in 2000.[396] Mr. Zeynalov's position is that Mr. Chartabi was only a welder on the project.[397]

272. The remainder of Azerbaijan's witnesses say they arrived at Caspian Fish well after construction was complete, which means Chartabi and his workers would have demobilized from the Caspian Fish project:

a. Mr. Rudman, a representative of Minister Heydarov, says he arrived after construction was complete in the summer of 2000 and states that he never heard of Chartabi Contracting Services or its representatives.[398]

b. Mr. Hasanov, who allegedly arrived at Caspian Fish in October 2000 does "[redacted]"[399]

c. Mr. Kerimov, who says he replaced Mr. Bahari as the director of Caspian Fish in or around late February 2001, does not discuss Chartabi at all in either his first or second statements.

273. Thus, the total of Azerbaijan's witness testimony about Chartabi's existence and works on the Caspian Fish project is limited to one witness who says Chartabi was a welder; two witnesses who arrived well after construction was complete and say they never heard of Chartabi; and the director of Caspian Fish who immediately replaced Mr. Bahari provides no testimony on this issue.

274. Mr. Bahari's evidence, in the form of first-hand, direct, and detailed witness testimony, stands in stark contrast:

a. Mr. Bahari testifies that he engaged Chartabi on all of his project in Iran and Azerbaijan, including Caspian Fish.[400]

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396 Rudman WS ¶¶ 5-6 ("[redacted]")

397 Zeynalov WS1 ¶ 28.

398 Rudman WS1 ¶ 9.

399 Hasanov WS1 ¶ 10.

400 Bahari WS1 ¶¶ 25, 30, 38, 45(ii); Bahari WS2 ¶¶ 22-23.

b. Mr. Moghaddam testifies that "[redacted]" and that "[redacted]."[401]

c. Mr. Suleymanov, a welder on Mr. Bahari's Azerbaijani projects, testifies that Chartabi was the general contractor, in particular on Caspian Fish, and that "[redacted]",[402] a gentleman Mr. Zeynalov has admitted worked on Mr. Bahari's projects. Mr. Suleymanov, being an actual construction worker on the Caspian Fish project,[403] testifies that Mr. Zeynalov's characterization of Chartabi "[redacted]"[404]

d. Mr. Shahbaz Khalilov, who was a construction worker on all of Mr. Bahari's project in Azerbaijan, including Caspian Fish, testifies that Mr. Bahari engaged [redacted]" and that on Coolak Baku there were a [redacted]."[405] He also testifies, from his personal and direct experience at the Caspian Fish construction site, that [redacted]."[406] And that he "[redacted]."[407]

275. Consistent with the evidentiary record on the issue of who made the monetary investment in Caspian Fish, Mr. Bahari has thus adduced documentary and witness testimony that satisfies his burden of proof.

401 Moghaddam WS1 ¶¶ 30, 37, 45; Moghaddam WS2 ¶ 13.

402 Suleymanov WS1 ¶ 10.

403 Suleymanov WS1 ¶ 32.

404 Suleymanov WS1 ¶ 30.

405 Shahbaz WS1 ¶ 11.

406 Shahbaz WS1 ¶ 28.

407 Shahbaz WS1 ¶ 28.

276. *Third*, Azerbaijan reveals the falsehood of its position about the nonexistence of Chartabi (and Minister Heydarov's alleged investment) by asserting that there was no general contractor and no construction contract for the Caspian Fish project.[408]

277. Indeed, Mr. Zeynalov, Azerbaijan's only witness who is allegedly familiar with the construction of Caspian Fish, asserts that [redacted],"[409] and that "[redacted]."[410]

278. As discussed in the expert report of from Secretariat submitted with this Rejoinder, a project of Caspian Fish's size and complexity "[redacted]"[411] More specifically, Mr. Gaines concludes that:

> [redacted][412]

279. Mr. Gaines also considers the Chartabi contract to reflect the type of project where a general contractor was required and was developing and implementing the majority of the work:

> [redacted].[413]

280. Having reviewed the specific Chartabi contract for Caspian Fish in detail, as well as evidence in the record of this Arbitration, Mr. Gaines also determines that:

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408 SoRJ, ¶¶ 373, 373(a).

409 Zeynalov WS1 ¶ 28.

410 Zeynalov WS1 ¶ 16.

411 Secretariat Construction Report, ¶ 1.4.

412 Secretariat Construction Report, ¶ 4.29.

413 Secretariat Construction Report, ¶ 3.11.

[redacted][414]

281. Finally, with respect to the price of the Chartabi contract for the overall Caspian Fish project, Mr. Gaines provides:

[redacted][415]

282. Accordingly, the Secretariat independent expert report about the Chartabi contract and its role on the Caspian Fish project demonstrates that (a) the complexity and requirements of the project required the use of a general contractor; (b) the Chartabi contract is the type of Lump Sum Design-Build contract – specifically a Lump Sum EPC (Engineer-Procure-Construct) – that would be appropriate for the project; (c) the project described in the Chartabi contract was what was built for Caspian Fish; and (d) the combination of various contingencies for this project resulted in a certain risk premium the Chartabi likely built into the contract price.

283. Put more simply, Chartabi was the general contractor for the Caspian Fish project and the Chartabi contract is appropriate, and represents what was built, for the Caspian Fish plant.

284. Azerbaijan's untenable contention that Chartabi did not exist thus fails to challenge the credibility of all the Chartabi contracts that Mr. Bahari has put into evidence for Caspian Fish, Coolak Baku, and Shuvalan Sugar. Mr. Bahari, and his Counsel, have been transparent and forthright with the Tribunal and Azerbaijan's Counsel about the circumstances surrounding the reissued nature of the original contracts.[416] Azerbaijan's

414 Secretariat Construction Report, ¶ 1.3.

415 Secretariat Construction Report, ¶ 1.3.

416 SoR ¶ 141.

pounding of the table that there is something nefarious going with the reissued Chartabi contracts is unsupported by the actual evidence in this Arbitration and on the ground in Azerbaijan in the form of the Caspian Fish plant and former Coolak Baku plant.

285. Additionally, as discussed above, the reissued contracts are legally sound, they have been signed by both parties, were issued by Chartabi on company letterhead, and Mr. Bahari has produced numerous documents demonstrating that he paid Chartabi for the work under the contracts. Likewise, Secretariat has reviewed and confirms that the contractual terms are consistent with the Caspian Fish facility and expert experience of what would be required under an EPC contract, which is what the Chartabi contract is.[417]

286. On these bases, it is more likely than not that Mr. Bahari and Chartabi entered into the contracts that are in evidence, and that it was Mr. Bahari who made the monetary investment in Caspian Fish.

III. EVIDENCE DOES NOT SUPPORT THE ALLEGATION THAT MR. BAHARI SOLD HIS SHARES IN CASPIAN FISH

A. AZERBAIJAN HAS FAILED TO MEET ITS BURDEN OF PROOF ON ITS AFFIRMATIVE DEFENSE THAT MR. BAHARI SOLD HIS SHARES IN CASPIAN FISH.

287. Azerbaijan's Rejoinder maintains its position that Mr. Bahari sold his shares in Caspian Fish to Minister Heydarov. As explained Part II, above, Azerbaijan bears the burden of proving its own allegations. Respondent has not met that burden with respect to the alleged sale of Mr. Bahari's shares in Caspian Fish.

288. Documents Azerbaijan submitted prior to Claimant's Rejoinder allegedly showing a sale of Mr Bahari's shares in Caspian Fish do not support a conclusion that Mr. Bahari sold his shares. Indeed, he Azerbaijan's own forensic expert retained to address the authenticity of Mr. Bahari's signature on these share sale documents, states that she "[redacted]."[418] Her assessment

417 Secretariat Construction Report, ¶ 3.45-3.50.

418 Briggs Report ¶ [1.8].

is therefore inconclusive and, thus, provides no support for the authenticity of the disputed share sale documents and Azerbaijan's burden of proof.

289. The witness evidence Respondent submitted prior to Claimant's Rejoinder also do not support a conclusion that Mr. Bahari sold his shares in Caspian Fish. Despite having proffered almost 15 witnesses in this Arbitration, the only witness that mentions an alleged share sale is Mr. Zeynalov, who states:

[redacted]."[419]

290. But what Mr. Zeynalov understands does not match Azerbaijan's story that: (a) Mr. Bahari sold his shares to Minister Heydarov, not Mr. Khanghah; and (b) that the sale took place in September 2001[420] (and had nothing to do with the return of Coolak Baku). In any event, Mr. Zeynalov clearly does not have actual knowledge about the alleged share sale.

291. With its Rejoinder, Azerbaijan did not produce any additional witness testimony in support of this allegation. All Azerbaijan produced are two documents:

a. the 25 October 2025 [*sic*] correspondence from Minister Heydarov to Quinn Emanuel refusing to appear as a witness in this Arbitration, thereby avoiding any exposure to fact finding diligence (**R-304**); and

b. highly redacted extracts from two notebooks Azerbaijan claims it has "now received" from Minister Heydarov's deceased (yet unidentified) former assistant (**R-389**).

292. Neither of these two new documents help Respondent meet its burden of proof on this point.

1. Heydarov's Correspondence Is Self-Serving And Of No Evidentiary Value

293. With regard to Caspian Fish, Minister Heydarov's correspondence states that:

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419 Zeynalov WS1 ¶ 25.

420 **R-050**.

a. he "[redacted]." Mr. Bahari has but in witness evidence that he did not agree that Minister Heydarov would buy out his interest.[421]

b. Minister Heydarov also writes that this "[redacted]." As also discussed above, this cannot be correct since it was Mr. Bahari who made the monetary investment in Caspian Fish, it was not just his "[redacted]."

c. Minister Heydarov further writes that he [redacted]." [422] Mr. Bahari has repeatedly denied that Minister Heydarov paid him US$ 4.5 million when they "[redacted]" or at any time for his shares in Caspian Fish.[423] To ensure there is no confusion about this, Mr. Bahari's third witness statement addresses this further.[424]

294. This single page of correspondence from Minister Heydarov, the person who is most relevant and uniquely able to speak to this significant issue, is evidentially deficient. First, the statements made in the letter should have taken the form of a witness statement. Second, Minister Heydarov should have affirmed the truthfulness of his statements at the hearing, in front of the Tribunal, and under oath. Third, Minister Heydarov should have made himself available for cross examination by Claimant, and should have made himself available to questioning by the Tribunal.

295. Minister Heydarov refused to engage in this Arbitration as a witness. This "empty chair" raises more questions than it answers.

296. But what is worse is that Claimant's and the Tribunal's inability to test Azerbaijan's evidence extends to the provenance of the alleged sale documents themselves. Despite Claimant's repeated requests that Azerbaijan disclose where its evidence came from, it was finally disclosed in the Rejoinder that we learned "Azerbaijan can confirm that the

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421 Bahari WS2 ¶¶ 21(d)-(g), 36-38.

422 An obvious question arising from Minister Heydarov's statement (which appears to have been carefully drafted by someone who is trained in British English) is what this US$ 4.5 million he allegedly paid to Mr. Bahari relates to. Minister Heydarov's correspondence does not say what this was for, much less does it identify it as relating to Mr. Bahari's Caspian Fish shares. Minister Heydarov has not been made available by Azerbaijan to answer any of these types of fact finding questions.

423 Bahari WS2 ¶¶ 21(d)-(g), 36-38.

424 Bahari WS3 ¶¶ 15-21.

Sale Documentation was provided to it from Minister Heydarov's personal archives."[425] Again, this raises more questions than it answers. What else is in Mr. Heydarov's personal archives? The *only* documents Minister Heydarov apparently deemed fit to produce in this Arbitration are the alleged sale documents. Why?

297. As discussed above, even Azerbaijan recognizes it is Minister Heydarov (a member of the Government that is the Respondent in this Arbitration) who is most likely to have relevant evidence.[426] But Minister Heydarov has repeatedly declined to produce anything more than the alleged sale documents,[427] or to appear in these proceedings to answer questions about this dubious transaction.[428]

298. Significantly, Azerbaijan is talking out both sides of its mouth. Azerbaijan cannot simultaneously assert that " [i]t *has no direct knowledge of the private business affairs of Messrs Aliyev and Heydarov*"[429] while also relying on Minister Heydarov to claim Mr. Bahari sold his Caspian Fish shares.[430] Obviously, regardless of whether it casts them as personal, Azerbaijan has direct knowledge of Minister Heydarov's dealings with respect to Caspian Fish and the State. And it has access to archives of documents potentially relevant and material to this dispute.

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425 SoRJ ¶ 77.

426 SoRJ ¶ 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*.")

427 *See* **C-319** Letter from Khazri Solutions, 10 May 2024; SoR ¶ 344.

428 Amongst the numerous questions that Minister Heydarov allegedly could speak to at a hearing on this issue, certainly the Tribunal would be assisted by understanding why Minister Heydarov apparently preserved the originals of these documents but not others for over 20 years; why is Minister Heydarov only producing these documents, but not other documents that would speak directly to Azerbaijan's numerous affirmative defenses and counterfactuals; why, Minister Heydarov, did Mr. Bahari sell his shares to you; why are all of the alleged sale documents entered into with Mr. Khanghah and not Minister Heydarov, as the alleged purchaser; where were these sale documents signed; if Minister Heydarov purchased Mr. Bahari's shares and the shares were transferred in 2001, why is there no record of this sale in the registrar of Caspian Fish BVI; why is there no record whatsoever of Minister Heydarov acquiring Mr. Bahari's shares in the registrar of Caspian Fish BVI?

429 SoRJ ¶ 399.

430 There is a well-developed pattern by Azerbaijan throughout this Arbitration of feigning ignorance when it suits its position. See e.g., SoRJ ¶ 86 ("Of course Azerbaijan has no direct knowledge of those matters."); ¶ 90 ("Azerbaijan has repeated that it has no direct knowledge of many of the facts pertaining to Mr Bahari's case."); ¶ 336 ("Azerbaijan has no knowledge as to why […]."); ¶ 343 ("Azerbaijan has no knowledge why […]."); ¶ 390 ("Although Azerbaijan has no knowledge of what these payments were specifically applied towards […]."); ¶ 396 ("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 […]."); ¶ 427 ("Azerbaijan has no direct knowledge of the reason behind any liquidation or restructuring of Khazri Solutions."); ¶ 437 ("While Azerbaijan has no direct knowledge of the reason for Mr Bahari's absence from the Caspian Fish opening ceremony […]."); ¶ 508 ("Azerbaijan has no knowledge of the private dealings […].")

299. Ultimately, besides what Counsel for Azerbaijan chooses to introduce with its submissions and what documents Minister Heydarov chooses to disclose, neither Mr. Bahari nor the Tribunal can learn anything more about the alleged sale documents and transactions that purportedly underly the voluntary sale of Mr. Bahari's shares. Clearly, submissions by counsel cannot stand as evidence and Minister Heydarov is not being forthright. These tactics are unacceptable, should be rejected, and determined to be a dispositive failure by Azerbaijan to meet its burden of proof on its affirmative defense.

2. The New Notebooks Do Not Establish Mr. Bahari Received Any Money For His Shares In Caspian Fish

300. Azerbaijan has proffered highly redacted extracts from two notebooks "now received" by Azerbaijan from Minister Heydarov's deceased and unidentified former assistant (**R-389**).[431] While Counsel for Azerbaijan states that these were found by relatives of the unidentified former assistant, there is no corroborating witness testimony or other evidence about these alleged notebooks, and Minister Heydarov's 25 October 2025 [*sic*] correspondence to Quinn Emanuel (**C-304**) makes no mention of these notebooks either.

301. However, Counsel for Azerbaijan tells us that these notebooks "relate to payments in 2002. No other similar records were found for other years."[432] Apparently, someone found the proverbial needle in the haystack.

302. Counsel for Azerbaijan further tells us that 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."[433] These specific conclusions are patently devoid of any support. For example, there is no indication in the notebooks that the currency is U.S. dollars. There is no indication that a reference in the 8 May 2002 entry translated only as "[redacted]" is Mr. Bahari.[434] In fact, a review of these highly redacted notebooks shows that such tenuous conclusions are cobbled together from numerous entries.

303. Even if these 2002 notebook entries were reliable and somehow authenticated (which they are not), there is no indication what the payments are actually for. There is certainly no

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431 SoRJ ¶ 469.

432 SoRJ ¶ 469.

433 SoRJ ¶ 470.

434 SoRJ ¶ 470; **R-389**, p. 6 (PDF.)

mention of shares or even of Caspian Fish. Nevertheless, Counsel for Azerbaijan strains to draw parallels with the alleged dates and amounts of payment in these notebooks with the alleged 2001 Sale Agreement (**R-50**).[435] This does not track.

304. For example, clause 3 of the alleged 2001 Sale Agreement calls for US$ 1.6 million to be paid in sixteen monthly installments of US$ 100,000 starting from 1 December 2001. But, this alleged notebook only contains 8 entries, in random amounts (not US$ 100,000) and not in monthly installments, for a grand total of US$ 860,000 (not US$ 1.6 million). Thus, there is no connection between these payments and the alleged amounts owed under the alleged 2001 Sale Agreement.[436]

305. The only thing these notebook entries actually demonstrate is that Azerbaijan has no evidence, reliable or otherwise, to support its affirmative defense that Mr. Bahari sold his shares to Minister Heydarov.

B. THE ALLEGED RATIONALE FOR MR. BAHARI'S SALE OF HIS SHARES IS UNSUPPORTED BY AZERBAIJAN'S OWN EVIDENCE.

306. According to Azerbaijan's Rejoinder, Mr. Bahari walked away from *all* his investments in Azerbaijan, including the sale of his shares in Caspian Fish, and the life he had established in Azerbaijan, because Minister Heydarov discovered in or around early 2001 that Mr Bahari had overcharged him during the construction of the project. Not so. There is no basis for a dispute between Minister Heydarov and Mr. Bahari about the construction of Caspian Fish in early 2001.

307. As an initial remark, Mr. Bahari could not have overcharged Minister Heydarov if Mr. Bahari was the monetary investor in Caspian Fish. There is also no document that suggests Mr. Bahari charged Minister Heydarov for anything on the Caspian Fish project. The best Azerbaijan can muster are statements from a few witnesses that they harbored suspicions about Mr. Bahari.[437] If there was any actual truth to this allegation, certainly

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435 SoRJ ¶ 471.

436 Notably, all of the recorded payments in **R-389** are from 2002. On Azerbaijan's own evidence, Mr. Bahari was not in Azerbaijan in 2002. Thus, any of the payments that are recorded in this manuscript notebook would necessarily have to have been made by some form of international transfer or wire. These types of accounting notebooks do not suggest that is the case and therefore do not support the conclusion that they relate to Mr. Bahari.

437 *See e.g.* Zeynalov WS1 ¶ 33; Zeynalov WS2 ¶ 27.

Azerbaijan would have made it part of the voluminous record that already spans this Arbitration.

308. Azerbaijan and its Counsel are well aware of this deficiency, and therefore Azerbaijan's Rejoinder takes a different tack by proffering a new witness that allegedly can attest to "*Mr. Bahari's mismanagement of the construction project.*"[438] This is the aforementioned Mr. Rudman who, prior to his work on Caspian Fish, was a consultant for the Azerbaijan Customs Committee, which presumably is how he knows Minister Heydarov.

309. Mr. Rudman testifies that in the summer of 2000, "[redacted]" and that "[redacted]."[439]

310. It is not explained what the alleged construction problems were, but according to Mr. Rudman, Mr. Bahari declined to provide him with "[redacted]"; and Mr. Rudman considered this to be in non-compliance with construction legislation, which he reported to Minister Heydarov.[440] Apparently, Minister Heydarov instructed Mr. Rudman "[redacted]."[441]

311. Azerbaijan has made some of this post hoc documentation available,[442] which is said to address issues associated with "[redacted]s" and other "[redacted]"[443] Mr. Rudman also testifies that "[redacted]."[444]

438 SoRJ, ¶¶ 431-436.

439 Rudman WS1 ¶ 5.

440 Rudman WS1 ¶¶ 8-10.

441 Rudman WS1 ¶ 10 (emphasis added).

442 **R-293** Caspian Fish Co Azerbaijan" Plant Commissioning Work Plan, undated; **R-294** Need for funds required for commissioning of "Caspian Fish Co Azerbaijan" plant, undated.

443 Rudman WS1 ¶ 11.

444 Rudman WS1 ¶ 12.

312. Azerbaijan thus relies on Mr. Rudman's testimony and these documents to robustly assert that Mr. Bahari mismanaged the construction of the project.[445] Not only do these not rise to the level of serious infractions, according to the division of responsibility between the Caspian Fish business partners, it was Minister Heydarov who was responsible for these types of administrative formalities and permits under Azerbaijani law.[446]

313. Mr. Rudman also testifies that the equipment installed by Mr. Bahari was second-hand and, instead of being suitable for processing sturgeon or sturgeon caviar, it was designed for species of herring.[447] Mr. Rudman fails to explain how he formed these specific views. Mr. Rudman only has unrelated training and background at the "[redacted]" and prior work experience in customs legislation and processes.[448]

314. It is also unexplained on what basis Mr. Rudman categorically states that: "[redacted]."[449] There is no evidence in the arbitral record to support this statement. It is equally unclear how Mr. Rudman formed this specific view considering he complains that Mr. Bahari never provided him with documents relating to the purchase of equipment and cost-estimate documents at Caspian Fish.[450]

315. Attempting to draw this together, Azerbaijan alleges that there was ultimately some type of breakdown of trust between Minister Heydarov and Mr. Bahari before the opening ceremony because of events described in Mr. Rudman's testimony.[451] In turn, Azerbaijan asserts that it [redacted]

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445 SoRJ ¶¶ 434-436.

446 Bahari WS1 ¶ 35. Notably, Mr. Hasanov has confirmed Mr. Bahari's testimony about the division of responsibility with his business partners. Mr. Hasanov states that [redacted] " Hasanov WS1 ¶ 33 (emphasis added.)

447 SoRJ ¶ 434. It is not clear what piece of equipment Mr. Rudman is referencing, but herring are widely fished in the Caspian Sea. See e.g., Report of Mr Farhad Parvizi, p. 20. Since Caspian Fish is widely reported to have had a monopoly over the Azerbaijani market, it is not unsurprising that equipment was designed to process herring. See e.g., **C-537** USAID – AZERBAIJAN - Azerbaijan Competitiveness And Trade (Act) Project, 29 November 2011, p. 10 ("[redacted]")

448 Rudman WS1 ¶ 2.

449 Rudman WS1 ¶ 13.

450 Rudman WS1 ¶ 8.

451 SoRJ ¶ 435.

[redacted]."[452] This assertion, and alleged support for Azerbaijan's affirmative defense, speaks volumes.

316. *First*, Azerbaijan submits that (a) Mr. Bahari's failure to undertake and comply with Azerbaijani certifications and licensing (i.e. Minister Heydarov's role on the project), and (b) the highly questionable opinion of Mr. Rudman, led to such an extreme loss of trust in Mr. Bahari that Minister Heydarov [redacted]" Mr. Bahari not to attend the grand opening ceremony. This is difficult to imagine.

317. Based on this version of events, there are two possibilities:

    a. This alleged loss of trust and dispute between Minister Heydarov and Mr. Bahari did not happen, and is being advanced by Azerbaijan as part of its broadly unsupported counternarrative. Based on evidence in the record (or the lack thereof), Mr. Rudman's questionable testimony, and Minister Heydarov's refusal to engage in these proceedings in any manner, this is the most likely possibility.

    b. The second and less likely possibility is that Azerbaijan's position is a partial description of events that took place before the opening ceremony. But considering the relatively minor infractions that Mr. Rudman raises, Minister Heydarov's alleged loss of trust and dispute with Mr. Bahari was in reality a manufactured excuse to exclude Mr. Bahari from the grand opening ceremony and then expel him from the company and Azerbaijan, all to the direct benefit of Minister Heydarov and President Aliyev and their families.[453]

318. In any event, these alleged facts do not provide evidentiary support for Azerbaijan's position that Mr. Bahari voluntarily *sold* all of his shares in Caspian Fish to Minister Heydarov. At best, these alleged facts are a dubious explanation why Mr. Bahari did not attend the opening ceremony.

319. *Second*, and more importantly, is the apparent admission by Azerbaijan that Minister Heydarov [redacted]" Mr. Bahari not to attend the Caspian Fish grand opening ceremony. This contradicts Azerbaijan's repeated position to date and has serious consequences for Azerbaijan's overall jurisdictional and merits defense.

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452 SoRJ ¶ 437 (emphasis added.)

453 SoC III.F and G.

320. Claimant's case is that his business partners, President Ilham Aliyev and Minister Heydarov, used their State authority and the full power and apparatus of the Azerbaijan Government to remove Mr. Bahari from his investments, expel him from Azerbaijan, and engage in a sustained campaign to deny Mr. Bahari any ability to recover his investments.[454] Azerbaijan has vehemently denied that any of this is true, including that it had anything to do with Mr. Bahari not attending the grand opening ceremony.[455] Now, however, Azerbaijan "infers" that Minister Heydarov in fact took an affirmative step and [redacted]" Mr. Bahari not to attend the opening ceremony.

321. Further, using Azerbaijan's own words, Mr. Bahari "acquiesced" to Minister Heydarov's instruction not to attend.[456]

C. FORENSIC ANALYSIS SHOWS THAT AZERBAIJAN'S DOCUMENTS IN SUPPORT OF MR. BAHARI'S ALLEGED SALE OF SHARES ARE INCONCLUSIVE AND UNRELIABLE.

322. Azerbaijan's Rejoinder expends considerable effort responding to Mr. Bahari's robust criticisms about the authenticity of the documents Azerbaijan exclusively relies on to allege that Mr. Bahari sold his shares in Caspian Fish.[457] As discussed above, Azerbaijan's Rejoinder did not however adduce any reliable evidence in support of this position. It is simply Counsel for Azerbaijan making additional arguments.

323. The only potentially reliable information on this issue submitted with Azerbaijan's Rejoinder is the expert report of Mrs. Elisabeth Briggs dated 29 October 2024 ("**Briggs Report**"). Overall, while the Briggs Report provides a number of insights into contested documents, it is ultimately inconclusive and unable to determine if *any* of the questioned signatures of Mr. Bahari at issue is his or not:

[redacted]

454 SoC ¶¶ 10-18, 176-185, 284-291, 467-478.

455 SoRJ ¶ 143.

456 SoRJ ¶ 437.

457 To be sure, Mr. Bahari contests and denies all of Azerbaijan's arguments in favor of the authenticity of these documents, or that he sold his shares in Caspian Fish.

[redacted].[458]

324. In particular, the Briggs Report sets out the following about the specific documents Azerbaijan exclusively relies on for Mr. Bahari's alleged sale of his shares to Minister Heydarov:

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

The Briggs Report considers the authenticity of Mr. Bahari's signature in **R-50** to be inconclusive. An [redacted]" in Mr. Bahari's alleged signature is expressly identified, but the Briggs Report makes no finding beyond this observation.[459]

R-51 *– Alleged Receipt for USD 1.5 million signed by Mr. Bahari dated 5 November 2001*

The Briggs Report considers the authenticity of Mr. Bahari's alleged signature in **R-051** to be inconclusive.

R-52 *– Alleged Receipt for Payment of USD 2 million signed by Mr. Bahari*

The Briggs Report explains that "[redacted]."[460] Thus, the analysis is inconclusive.

C-121 / R-129 *- Stock Transfer Form*

The Briggs Report considers the authenticity of Mr. Bahari's alleged signature in **C-121 / R-129** to be inconclusive.[461]

The Briggs Report further considers that "[redacted]."[462] Notably, this is only half of Mr. Bahari's

458 Briggs Report ¶ 1.8.

459 Briggs Report ¶ 4.5.

460 Briggs Report ¶ 4.27.5.

461 Briggs Report ¶ 4.16.

462 Briggs Report ¶ 4.16.14 (emphasis added.)

written name on the document. It is not entirely clear what Ms. Briggs' opinion is about the latter two words of Mr. Bahari's name, but she does opine that "[redacted]."[463]

325. Overall, the Briggs Report makes no conclusive findings that support Azerbaijan's position that the share sale documents contain Mr. Bahari's authentic signature.

326. By comparison, Mr. Bahari's independent forensic expert, Ms. Angela Morrissey, determined that:

a. the authenticity of Mr. Bahari's alleged signature in **R-50** (*Alleged Buyer and Seller Agreement for the Shares*) and **R-51** (*Alleged USD1.5m payment receipt for the shares*) is inconclusive.[464]

b. Ms. Morrissey is "[redacted]."[465]

c. "[redacted]."

327. Thus, both Parties' independent forensic experts consider the authenticity of Mr. Bahari's signature on **R-50** and **R-51** to be inconclusive; and that it is not possible to determine which of the handwriting or printing on either side of **R-52** were applied to the paper first.

328. While Ms. Briggs considers Mr. Bahari's signature on **C-121** / **R-129** to be inconclusive, Ms. Morrissey considers it to be sightly outside the range of variation of Mr. Bahari's known signatures. Ms. Briggs considers there to be limited evidence the handwritten entry showing the first two words "Mohamad Bahari" on **R-129** was written by Mr. Bahari

463 Briggs Report ¶ 4.16.10.

464 Morrissey Report ¶¶ 1.5.24, 3.2.9, 3.3.9.

465 Morrissey Report ¶ 4.1.3.

(Ms. Morrissey did not assess this), although she does not consider there to be evidence that the latter two words in Mr. Bahari's name was written by Mr. Bahari.

329. Accordingly, neither expert is able to take a definitive forensic view on the authenticity of Mr. Bahari's signature in the documents Azerbaijan heavily relies on to support its contention that Mr. Bahari sold his shares in Caspian Fish. Considering these findings, and the paucity of any corroborating documentary or witness evidence in support, Azerbaijan cannot meet its burden of proof with respect the alleged share sale documents (particularly in light of contradicting circumstances in the BVI corporate record, discussed below).

330. Additionally, and relevant to the overall exercise of affording weight (and authenticity) to Azerbaijan's evidence, the Briggs Report determines that at least six documents produced by Azerbaijan as evidence contain some level of notable inconsistency of Mr. Bahari's signature:

a. **R-62** and **R-63** relate to the alleged sale of Ayna Sultan, which Azerbaijan asserts supports its position that Mr. Bahari sold the property and therefore has no qualifying investment. The Briggs Report finds that [redacted]"[466]

b. **R-172** and **R-173** relate to Azerbaijan's false allegation that Mr. Bahari had access to its national courts. The Briggs Report finds that [redacted]"[467]

c. **R-157** and **R-60** relate to Azerbaijan false allegation that Mr. Bahari continued to work at Caspian Fish in the months following his expulsion from the grand opening ceremony and the company. For **R-157**[468] the Briggs Report finds that Mr. Bahari's alleged signature "[redacted]." While the Briggs Report does not expressly conclude that **R-60** contains some level of notable inconsistency, the Briggs Report does specifically

466 Briggs Report ¶¶ 1.9,

467 Briggs Report ¶¶ 1.10,

468 **R-157** Contract between Caspian Fish Co Azerbaijan LLC and Caviar House dated 7 April 2001.

highlight this document and that "[redacted]"[469]

331. These significant findings raise obvious questions as to whether Azerbaijan has submitted and relies on evidence that contain forged signatures of Mr. Bahari. This should be particularly concerning as Azerbaijan has put these documents forward in support of specific factual and legal arguments.

332. The Briggs Report is not alone in questioning the reliability of Azerbaijan's documentary evidence. Ms. Morrissey previously determined that that **R-57**, **R-59**, **R-61**, and **R-157** are unlikely to contain Mr. Bahari's authentic signature:

a. **R-57** relates to Azerbaijan's false allegation that Mr. Bahari took part in and signed the Charter of Caspian Fish LLC[470];

b. **R-59**, **R-60**, and **R-157** relate to Azerbaijan false allegation that Mr. Bahari continued to work at Caspian Fish in the months following his expulsion from the grand opening ceremony and the company.[471]

333. Thus, both independent forensic experts from the Parties also raise questions about the authenticity and reliability of at least ten documents Azerbaijan relies on for its affirmative defenses.

D. THERE IS NO EVIDENCE OF A 2001 SHARE TRANSFER IN THE BVI RECORD, WHICH CONCLUSIVELY DISPROVES THE EXISTENCE OF A 2001 SALE.

334. Claimant's Reply demonstrated that there is no evidence whatsoever of a 2001 share transfer in the Caspian Fish BVI corporate record, thus conclusively disproving Azerbaijan's allegation that Mr. Bahari sold his shares to Mr. Khanghah (or Minister Heydarov) in September 2001.[472]

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469 Briggs Report ¶¶ 4.23.4.1. Counsel for Azerbaijan appears truncate this conclusion, stating that Mrs. Briggs "[redacted]" That is not exactly what Mrs. Briggs said. See SoRJ ¶¶ 84(a), fn. 153 and 159.

470 Morrissey Report ¶ 3,5.

471 Morrissey Report ¶¶ 3.6, 3.7, 3.11.

472 SoR PART II, § III.D.

335. Nothing in Azerbaijan's Rejoinder changes this conclusion. Azerbaijan's discussion of the BVI corporate record is either confused, or seeks to obfuscate, because it plainly concedes that Mr. Bahari still held shares right up until a 2006 Director's Resolution yet insists that Mr. Bahari transferred his shares to Mr. Khanghah in 2001. Obviously, both facts cannot be true. Claimant does not address every point in Azerbaijan's Rejoinder (which should not be taken as an acceptance of any given point) but highlights the main flagrant errors in its argument.

1. Azerbaijan Accepts That Up Until the 8 December 2006 Director's Resolution, Mr. Bahari Still Held Shares in Caspian Fish – Thus Directly Contradicting Its Allegation That Mr. Bahari Sold Those Shares in 2001.

336. Azerbaijan openly admits that as of 8 December 2006 (the date of a Director's Resolution[473]), Mr. Bahari still maintained his shareholding in Caspian Fish:

a. Both Parties are in agreement that in 2006, Caspian Fish BVI sought to regularize an oversubscription of shares (1 million shares at $1 par value) relative to the original authorized capital of $50,000.[474]

b. Azerbaijan accepts that on 8 December 2006, Mr. Bahari was issued a new share certificate to reflect 20,000 shares, with 380,000 held in trust.[475]

c. Azerbaijan also accepts that once Mr. Bahari's new 20,000 share certificate was issued, those 20,000 shares and the 380,000 shares held in trust were transferred to Mr. Khanghah in a second, follow-on transaction.[476]

337. What this means is that up until the 8 December 2006 Director's Resolution, Mr. Bahari still held his entire shareholding interest in Caspian Fish:

a. If, as Azerbaijan claims, Mr. Bahari had sold his shares in September 2001 to Mr. Khanghah, that would have been recorded in the Register of Members. There is no record of any such transfer in (or around) 2001.[477]

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473 **C-122** Caspian Fish Co Inc. Director's Resolution in writing; *See also* SoR ¶¶ 396-406. Azerbaijan calls this 8 December 2006 Director's Resolution the "2006 Corrective Resolution." SoRJ ¶ 451(d).

474 SoR ¶ 400; SoRJ ¶ 451(d).

475 SoRJ ¶ 451(e).

476 SoR ¶ 402; SoRJ ¶ 451(e).

477 **C-109** Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007, at 12-13 (PDF) (showing no update to the Register of Members in 2001); SoR ¶¶ 388-395.

b. Furthermore, if a sale had occurred in September 2001, Mr. Bahari's shares would have been transferred to Mr. Khanghah at that time. This means that in 2006, there would only be two shareholders: Mr. Khanghah and ICCI Ltd. The 8 December 2006 Director's Resolution would have simply regularized the oversubscription by issuing a single new certificate for 25,000 shares to Mr. Khanghah plus 475,000 shares in trust.[478] Mr. Bahari would be absent from that 2006 transaction, since he would have long sold his shares. Stated differently, it would not have been necessary to undertake a two-step process of issuing shares to Mr. Bahari, only to immediately transfer them to Mr. Khanghah.

c. Thus, Mr. Bahari's presence in that 2006 Director's Resolution and the issuance of his *pro rata* 20,000 shares means that up until that date, he still held his shares and had not sold them.[479] Azerbaijan's argument that Mr. Bahari appears in the 2006 Director's Resolution merely to record a historic position is unconvincing.[480] If that were true, the Resolution would have recorded that historic position, but also recorded a historic 2001 sale, and only dealt with Mr. Khanghah as the remaining shareholder, rather than engage in a two-step transaction.

338. Azerbaijan struggles to square its allegation of a 2001 sale with the 2006 evidence of Mr. Bahari's shareholding, but ultimately it cannot reconcile the two: Azerbaijan states that following the 2006 Director's Resolution, the Register of Members was updated accordingly

478 Mr. Khanghah was originally issued 10,000 shares reflecting his 10% stake under the Shareholders Agreement. The *pro rata* reissue means he was issued 5,000 shares, with 95,000 held in trust. Assuming a 2001 sale had occurred, he would have also taken Mr. Bahari's 20,000 shares plus 480,000 shares held in trust (5,000 + 20,000 = 25,000 shares; 95,000 + 380,000 = 475,000).

479 Azerbaijan's assertion that the 2006 Resolution "states the opposite" because Mr. Bahari's share certificates are cancelled is nonsensical. That cancellation occurred only because his shares were transferred in a second step to Mr. Khanghah *at that time* (2006), in a transaction effective as of that date – not in 2001. Again, if there had been a 2001 sale, the 2006 Resolution would have recorded it and explicitly sanctioned it.

480 SoRJ ¶ 458.

[redacted]"[481]

339. This statement contains a number of errors and sidesteps the main evidence of Mr. Bahari's shareholding in the 2006 Director's Resolution:

a. The 5 March 1999 date is fatally problematic for Azerbaijan. The backdating of the transfer of Mr. Bahari's entire 400,000 shares to that date clearly points to fraud, since Mr. Bahari would never have agreed to be issued a 40% shareholding upon incorporation only to transfer it on the same day.[482] Inconveniently for Azerbaijan, that fraud also precludes a 2001 sale theory.

b. Even assuming the backdating was some clerical error (which is denied), this still would not explain why, in 2006, Caspian Fish reissued a share certificate to Mr. Bahari. Again, that evidence clearly precludes a 2001 sale. If the 5 March 1999 backdating of Mr. Bahari's transfer of his 400,000 shares to Mr. Khanghah was a clerical error, then the only other applicable date would be 8 December 2006 – not September 2001.

c. Azerbaijan does not address the Applebys Opinion that, under BIV law and the company's Memorandum of Association, a valid share transfer requires (1) an instrument of transfer and (2) per the Memorandum, a Director's Resolution consenting to such a sale.[483] Azerbaijan cannot point to any Director's Resolution occurring in or around 2001.[484]

d. Azerbaijan's argument that the 2006 Resolution counts as a subsequent approval of a 2001 sale is completely unsupported by the terms of the Resolution itself.[485] The explicit terms of the 2006 Resolution point to a regularization of the oversubscription of <u>all</u> of the existing shareholders at that date, including Mr. Bahari, and then a transfer of shares to Mr. Khanghah effective as of that

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481 SoRJ ¶ 451(f). (Emphasis added.)

482 SoR ¶ 381(a).

483 **C-389** Applebys Legal Opinion, 17 June 2024, ¶¶ 19-23; SoR ¶¶ 382-387.

484 Azerbaijan's statement that "[i]t 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, until much later" reveals its weak factual position, but is also notable in that it elides the additional need for a Director's Resolution dated in 2001 for such an alleged sale to be effective.

485 SoRJ ¶ 456.

date.[486] In short, nothing in the 2006 Resolution (or elsewhere in the corporate records) speaks to the existence of a 2001 sale, much less its regularization.

2. Azerbaijan's Remaining Arguments Relating to the BVI Record Are Unconvincing.

340. Claimant addresses a few remaining Respondent arguments:

a. Caspian Fish's Articles of Association prohibit issuance of any shares unless consideration is paid in full. Thus, the installment terms of the Alleged 2001 Sale Agreement would be prohibited under the corporate bylaws.[487] Azerbaijan parses the term "issue" to argue that this applies only to new shares, not a transfer of existing shares.[488] That is a nonsensical argument that finds no support in the text of the Articles of Association, nor any legal citation on Azerbaijan's part.

b. Azerbaijan's argument that the "legal position in the BVI is irrelevant" to the discussion of an alleged 2001 sale is astonishing.[489] The BVI position has *everything* to do with proof of whether a 2001 sale occurred or not. Azerbaijan's jurisdictional defense exhibits alleged evidence that Mr. Bahari sold his shares in Caspian Fish to Minister Heydarov in 2001. The existence of such a sale would have to be recorded in the BVI corporate documentation – but it is not. The total lack of any evidence pointing to a 2001 sale reveals the Alleged 2001 Sale Agreement for what it is – a falsified document advanced as part of an equally false *post-hoc* defense theory.

c. Azerbaijan chides Mr. Bahari for not recalling a Director's Resolution dated 5 March 1999 increasing the share capital from 50,000 to 1,000,000, but then concedes the anomalous fact that the resolution was only filed on 27 November 2006.[490]

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486 Mr. Bahari contests this transfer as fraudulent, but once again, the 2006 fraud inconveniently precludes a 2001 sale theory. SoR ¶ 403(b).

487 SoR ¶ 387; **C-002 *bis*** Memorandum and Articles of Association for Caspian Fish Co. Inc., 5 March 1999, Art.21, p. 16 (PDF).

488 SoRJ ¶ 448(c).

489 SoRJ ¶¶ 450-451.

490 SoRJ ¶451(c); **C-110**.

d. Azerbaijan infers from Mr. Bahari's decision not to pursue his rights in the BVI that he must have sold his shares in the company.[491] This inference requires an immense logical leap of faith that fails to persuade and does little to help Azerbaijan meet its burden to prove a 2001 sale. It also ignores Mr. Bahari's multiple attempts to press his rights on the ground in Azerbaijan, where the actual physical investments are located.

e. Azerbaijan alleges that the Purported IOT (Stock Transfer Form) was resting on top of the 2001 Alleged Sale Agreement when it was signed, suggesting that the Purported IOT was signed after the 2001 Sale Agreement. Azerbaijan "suggests it is likely" that the Purported IOT was signed after he received a first installment.[492] Assuming the forensic evidence is reliable (which is not admitted), this does not advance Azerbaijan's case. Claimant's position is that both are fraudulent documents; both could have been signed at any point in time. The forensic analysis does not support in any way Azerbaijan's conclusion that Mr. Bahari signed the Purported IOT, or that he signed it after receiving an installment, or that the alleged signing took place in 2001 as opposed to any other date.

f. Azerbaijan concedes that there is no evidence of a Director's Resolution that removed Mr. Bahari as Director, leaving Mr. Khanghah as Sole Director, but concludes that this is likely due to an incomplete record.[493] Given the totality of evidence showing irregular and even fraudulent transactions in the BVI corporate documents, Claimant submits that the record supports that Mr. Bahari's alleged resignation was falsified. On this point, and contrary to Azerbaijan's argument,[494] Mr. Khanghah's breach of his fiduciary duties is absolutely relevant, as it significantly undermines his credibility and in turn the allegation of a sale of Mr. Bahari's shares to him.

341. To conclude, Azerbaijan has the burden to prove its allegation of a 2001 sale, but its evidentiary support is paper thin. The BVI record conclusively contradicts the theory of a 2001 sale of Mr. Bahari's shares to Mr. Khanghah (much less Minister Heydarov). The BVI record contains zero evidence of a 2001 sale; from an evidentiary point of view, this

491 SoRJ ¶ 451(h).

492 SoRJ ¶ 454; Briggs Report ¶¶ 4.5.4 – 4.5.7.

493 SoRJ ¶ 460.

494 SoRJ ¶ 463; SoR ¶ 403(c).

is highly problematic for Azerbaijan. First, because the BVI documents are objective and reliable documents. Second, because any sale of shares necessarily had to be submitted, approved, and recorded in Caspian Fish's corporate records and in accordance with its bylaws. Azerbaijan is simply unable to corroborate its single one-page Alleged 2001 Sale Agreement with any corresponding documents in the BVI records.

IV. MR. BAHARI HAS A QUALIFYING INVESTMENT IN AYNA SULTAN.

A. INTRODUCTION: AZERBAIJAN'S COURTS FAILED TO PROVIDE JUSTICE TO MR. BAHARI AND PROTECT HIS PROPERTY RIGHTS.

342. Soon after Mr. Bahari was expelled from Azerbaijan, various individuals utilized the Azeri court system to misappropriate his investment in Ayna Sultan. To paraphrase Azerbaijan, vulturous individuals leapt on an opportunity to steal Mr. Bahari's property as soon as they realized Mr. Bahari was not around to protect his interests.[495] Instead of protecting Mr. Bahari's property rights and fairly administering justice, Azerbaijan's judiciary participated in these fraudulent schemes. The court proceedings contained gross procedural and substantive defects that resulted in manifest injustice to Mr. Bahari. As a direct result, Mr. Bahari lost his investment in Ayna Sultan.

343. As with Caspian Fish, Azerbaijan advances a jurisdictional defense that Mr. Bahari sold Ayna Sultan and therefore does not have a qualifying investment. Azerbaijan's evidence of the alleged sale is drawn entirely from the Ayna Sultan Litigation case file. As such, Mr. Bahari addresses Azerbaijan's discussion of that case file. As with the Coolak Baku Litigation, Mr. Bahari maintains his prior asserted Treaty Breaches relating to the loss of his Ayna Sultan property, but, having learned of the Ayna Sultan Litigation for the first time in Azerbaijan's Statement of Defense, Mr. Bahari equally asserts a denial of justice claim under international law.

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[495] SoRJ ¶ 508.

B. THE AZERI COURTS TRANSFERRED MR. BAHARI'S PROPERTY IN A SET OF HIGHLY IRREGULAR PROCEEDINGS.

1. The Same Azeri Court Awarded the Ayna Sultan Property to Three Separate Claimants, Including a Deceased Man.

344. Azerbaijan's continued insistence that "[n]othing in the underlying litigation suggests 'sham', 'fraudulent' or 'collusive' proceedings"[496] collides with the reality of the Ayna Sultan Litigation.

345. The proceedings reveal a startlingly abnormal court process: a single court, the Narimanov District Court, heard two competing claims (one by Mr. Gambarov, one by Mr. Pashayev) for the same property and granted that single property to each of the two claimants within four days of each other.[497]

346. Mr. Bahari owned the property was the named defendant in both cases, but had no knowledge of the claims, received no notifications, and was unable to make an appearance throughout the proceedings.

347. Subsequently, one of the two claimants, Mr. Gambarov, died.[498] Yet, an appeal was filed directly in his name (by his nephew) – not in the name of an heir, successor, or assign – which proceeded without issue.[499] In other words, a dead man was able to continue to press a claim in court for the property of an absent defendant who was never notified of the proceedings. Azerbaijan attempts to explain this by alleging that the property "[redacted]."[500] That statement papers over entire portions of the record:

a. Ms. Gambarova did indeed intervene in the proceedings as the legal heir to the deceased Mr. Gambarov. However, a court initially rejected her appeal on the basis that the Second 2004 Judgment "[redacted]" Mr. Gambarov, and not Ms. Gambarova – a bizarre statement, since Mr. Gambarov was by now long dead and Ms. Gambarova was the surviving heir.[501] Ms. Gambarova appealed the

496 SoRJ Part 3, § IV.1.

497 SoR ¶¶ 478-480.

498 SoR ¶ 480.

499 SoR ¶¶ 481, 483.

500 SoRJ ¶ 520.

501 SoR ¶ 487. Ms. Gambarova tried to appeal the Second 2004 Judgment, which had granted Ayna Sultan to Mr. Pashayev.

Second 2004 Judgment at the same time that her dead husband Mr. Gambarov appealed the same judgment.[502] Thus, two different individuals pursued the Ayna Sultan property on the basis of the original claim by the deceased Mr. Gambarov.[503] Azerbaijan fails to address this blatant irregularity.

b. This situation was not normalized until the Baku Court of Appeal consolidated the Gambarov and Pashayev litigations and ultimately rejected Mr. Pashayev's claim. It was only at this late stage that the Court of Appeal acknowledged Ms. Gambarova's status as legal heir to Mr. Gambarov. However, the dead Mr. Gambarov's appeal (brought by his nephew) appears to simply fall by the wayside, with no explanation, no procedural resolution, and no effort to sanction the nephew for fraudulently advancing the dead Mr. Gambarov's claim.[504]

c. At one point, the Court of Appeal held a hearing in which it stated that although the *deceased* Mr. Gambarov and the absent Mr. Bahari were "[redacted]" of the hearing, they both failed to attend; the court then proceeded without any further inquiries.[505] This absurd situation is illustrative of the manner in which Azeri courts purposely fail to apply any scrutiny to parties unable to appear at hearings.

348. At best, the case file shows a judiciary that failed to afford Mr. Bahari the most rudimentary level of justice and fair administration of his property rights. At worst, the case file paints a picture of multiple claimants each leveraging corruptible judges in order to seize Mr. Bahari's property.

2. The Case File Contains No Evidence of Notifications to Mr. Bahari.

349. Azerbaijan advances the categorical statement that its courts "notified Mr. Bahari at each stage of the proceedings,"[506] citing to numerous court notification letters allegedly sent to Mr. Bahari.[507] By Azerbaijan's own admission, however, the Ayna Sultan court case file contains no postal receipts or courier confirmations for any of the cited notifications.[508]

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502 Again, the deceased Mr. Gambarov's appeal was filed by his nephew.

503 SoR ¶¶ 483-489.

504 SoR ¶¶493(d), (e), (f).

505 SoR ¶ 491.

506 SoRJ ¶ 533.

507 See SORJ ¶ 533(a)-(d) and FNs 1412, 1413, 1414, 1415, 1416.

508 SoRJ ¶ 533(d).

(These courier confirmations should be similar to the few that appear in the Coolak Baku litigation described above.)[509] Furthermore:

a. This lack of notification is specifically noted by the Baku Court of Appeal during Mr. Bahari's alleged Cassation Appeal in 2009. In a 30 September 2009 Decision, the Court of Appeal noted that "[redacted]"; and that [redacted]."[510]

b. The courts knew as early as August 2004 (during Mr. Gambarov's initial application to the court) that Mr. Bahari did not reside at the address used in the various notifications. At this early stage, a writ of summons to Mr. Bahari was returned by the local municipality with a note that [redacted][511] Yet, for the duration of the litigation, both the Narimanov court and the Baku Court of Appeal continued to use that same address in their various alleged notifications. In doing so, the courts failed to undertake even the most basic inquiry as to his whereabouts.[512] In a decision dated 21 January 2010, the Supreme Court of Azerbaijan specifically noted this failure, stating that the lower courts had not "[redacted]."[513]

509 See e.g., Shimshek Courier notices at **R-108**.

510 **C-356**, Claimant's Translation of R-174, Decision of Baku Appellate Court on Mr. Bahari's Cassation Appeal, 30 September 2009, p. 2 (emphasis added); SoR ¶ 527. Azerbaijan argues that the court only noted that Mr. Bahari had not received the notifications, and that this is different than saying the courts did not send those notifications. SoRJ ¶¶ 547-548. In the absence of any evidence of postal receipts or courier confirmations, that distinction has no relevance.

511 **R-447**; SoRJ ¶ 533(b). (emphasis added). The address was 62 Ziya Bunyadov Street, the address of the Ayna Sultan property – which the court must have known Mr. Bahari no longer resided at, since the property was the subject of the alleged sales to Messrs. Gambarov and Pashayev.

512 Equally, there is no record of the courts asking the litigants what efforts they had made to locate Mr. Bahari.

513 **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010, p. 5 (emphasis added); SoR ¶ 527.

c. The case file contains an acknowledgment of receipt allegedly signed for by Mr. Bahari [redacted].") – but clearly contains a signature that is not his.[514] In the 21 January 2010 decision, the Supreme Court highlights this anomaly:[515]

(Extract of R-431)

350. Thus, Azerbaijan's explanation that "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" is specifically contradicted by the evidence and should not be accepted. Rather, the record supports the opposite conclusion: there is every reason to believe these notifications never reached Mr. Bahari. The total and systematic absence of postal receipts or courier confirmations of notifications to Mr. Bahari is a significant irregularity in an already highly irregular proceeding. This is compounded by the other indicia of forgeries, such as at **R-431** discussed above, as well as at **R-172** and **R-173**, discussed further below.

514 **R-431**. Azerbaijan's conclusion is that the receipt "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." SoRJ ¶ 550(c) fn. 1469. This assumption is unsupported. Given that there is no indication that Mr. Bahari ever had knowledge of the Ayna Sultan litigation in 2005, the obvious conclusion is that someone forged Mr. Bahari's name.

515 **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010, p. 7; see also SoRJ ¶ 550(c). Azerbaijan further submits **R-430** as alleged proof of notification, but the document (a confirmation of receipt of a subpoena addressed in Mr. Bahari's name) is unsigned. (**R-430**; SoRJ ¶ 533(b), fn. 1413.)

3. One of the Narimanov District Court Judges Was Specifically Accused of Fraud.

351. Azerbaijan submits that nothing in the court case file suggests that Judge M. Aliyev (who granted Mr. Pashayev's claim) participated in fraud, and that "it is misleading of Mr. Bahari to describe it as so."[516]

352. In fact, the case file does contain such an accusation. In his appeal of the judgment in favor of Mr. Pashayev, Mr. Gambarov explicitly accuses Judge M. Aliyev of [redacted]":

[redacted][517]

353. Given the quote above, it is difficult to see how Azerbaijan can argue that Claimant's mischaracterized Mr. Gambarov's accusation that the judge colluded with Messrs. Zeynalov and Pashayev's illegality.

354. On this same point, Azerbaijan argues that Claimant "picks and chooses which parts of the evidence [from the case file] he wishes to rely on from the various individuals he has blanket labelled as fraudsters."[518] Claimant is entirely consistent: Mr. Gambarov, Mr. Pashayev, and Ms. Gambarova were indeed fraudsters who all falsely claimed they owned Ayna Sultan. But because these individuals contested each other for the same property, they correctly pointed out each other's frauds in a bid to secure the property for themselves. Thus, for example, while Mr. Gambarov filed a false claim that Mr. Bahari sold him the property, in his appeals against the judgment in favor of his rival, Mr. Pashayev, he did correctly point out that Mr. Zeynalov had illegally sold Mr. Bahari's property to Mr. Pashayev utilizing a revoked POA from Mr. Bahari.[519]

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516 SoRJ ¶ 517.

517 SoRJ ¶ 516, citing to **C-301**, pp. 1-2 (emphasis added).

518 SoRJ ¶¶ 518, 529 ("[i]t is unclear…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").

519 SoR ¶ 482.

C. MR. ZEYNALOV MISUSED HIS REVOKED POA TO SELL MR. BAHARI'S PROPERTY.

355. Azerbaijan insists that "Mr Zeynalov had nothing to do with the claims in the Ayna Sultan proceedings."[520] This is demonstrably false, and the court proceedings themselves show that Mr. Zeynalov misused his revoked POA from Mr. Bahari to illegally sell the Ayna Sultan property to Mr. Pashayev.

356. The Second 2004 Judgment in favor of Mr. Pashayev clearly states that Mr. Pashayev alleges to have purchased the property from Mr. Bahari, which was formalized by Mr. Bahari's "[redacted]" using a power of attorney allegedly given by Mr. Bahari.[521] The POA was included in the case file. Mr. Gambarov contested this judgment in favor of Mr. Pashayev on the basis that Mr. Zeynalov participated with Mr. Pashayev in a scheme to misappropriate Mr. Bahari's property (adding judge M. Aliyev as a participant to the scheme).[522]

357. The 24 June 2005 Consolidated Appeal Judgment ultimately agreed with Mr. Gambarov and explicitly rejected Mr. Pashayev's claim on the basis that Mr. Zeynalov's POA had been revoked and that the deed was not duly notarized, and therefore invalid.[523] Azerbaijan's sole rebuttal to this is a denial by Mr. Zeynalov in his second witness statement, where he states that "[redacted]."[524]

358. This denial not credible, especially in light of Mr. Zeynalov's demonstrated reliance on the same revoked POA to fraudulently convene the various Coolak Baku board meetings in 2002.[525] Mr. Zeynalov's repeated misuse of his revoked POA to cheat Mr. Bahari out of two of his investments destroys any credibility he has as a witness.

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520 SoRJ ¶ 503.

521 **R-148**, p. 1.

522 SoR ¶ 482; **C-301**, pp. 1-2.

523 SoR ¶ 493; **C-309**, p. 5.

524 SoRJ ¶ 503; Zeyanlov WS2 ¶ 37.

525 Supra at PART III § I.C.2.

D. MR. BAHARI NEVER SOLD HIS PROPERTY AT AYNA SULTAN.

1. Azerbaijan's Own Handwriting Expert Casts Doubts on the Alleged Property Sale Between Mr. Gambarov and Mr. Bahari.

359. Azerbaijan's handwriting expert, Ms. Briggs, inspected the alleged sale and purchase agreement between Mr. Bahari and Mr. Gambarov (**R-62**), as well as the corresponding receipt (**R-63**). Ms. Briggs noted that the [redacted]"; that [redacted]" Ms. Briggs concluded that there is [redacted]." [526]

Extract of Briggs Report at ¶ 4.13.7.

[redacted]

360. Thus, Azerbaijan's own handwriting expert casts doubt on the alleged property sale between Mr. Bahari and Mr. Gambarov.

2. Faced With the Irregularities in the Ayna Sultan Case File, Azerbaijan Has Changed Its Narrative of the Alleged Property Sale.

361. Azerbaijan's explanation for the Ayna Sultan litigation shifts the blame onto Mr. Bahari, alleging that he must have sold the property twice. This allegation improperly shifts the burden of proof and is furthermore unsupported by the evidence.

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526 Briggs Report ¶¶ 4.13.7 – 4.13.9.

362. It is important to note that Azerbaijan's characterization of the Ayna Sultan litigations has changed considerably over its two submissions. In its initial Statement of Defense narrative (only a few pages long and exhibiting a very limited set of documents from the court case file) Azerbaijan's position was that the Ayna Sultan litigation demonstrated that Mr. Bahari had sold Ayna Sultan to Mr. Gambarov, and Mr. Gambarov only.[527] Azerbaijan papered over the competing claim from Mr. Pashayev (and never mentioned Ms. Gambarova) and quickly skipped ahead to the 24 June 2005 Consolidated Appeal Judgment which reinstated the judgment in favor of Mr. Gambarov. In this way, Azerbaijan advanced a narrative of Mr. Bahari selling his property to Mr. Gambarov, and presented the ensuing litigation as routine and above-board, with no discussion of the teeming procedural irregularities contained therein.

363. Following Claimant's Statement of Reply, Azerbaijan was forced to explain these irregularities, including the competing claims by two putative buyers. As a result, Azerbaijan now drops its narrative of a single sale to Mr. Gambarov and instead argues that Mr. Bahari must have sold his property twice.[528] In adopting this new narrative, Azerbaijan seeks to place the burden of proof on Mr. Bahari to explain the alleged double sale, stating, for example, that he has "not given any evidence on his relationship with Messrs Gambarov and Pashayev."[529]

364. Azerbaijan's shift in narrative is unconvincing. Nowhere in the Ayna Sultan Litigation case file (as defective as the proceedings were) is there any indication that Mr. Bahari himself engaged in any misconduct or sold the property twice. Azerbaijan's attempt to insinuate such misconduct is improper and entirely unsupported by the available evidence. What the proceedings reveal instead is a frenzied free-for-all by fraudulent individuals circling in on Mr. Bahari's investments in his forced absence.

365. Throughout the proceedings, each claimant pointed out flaws, defects, and irregularities in the other's claim. Taken as a whole, the Ayna Sultan Litigation reveals that none of the claiming parties had a truthful, meritorious claim – *not* that Mr. Bahari sold his property twice. Mr. Bahari does not have a burden to prove Azerbaijan's unsupported accusation;

527 SoD ¶¶ 323-328.

528 SoRJ ¶ 507.

529 SoRJ ¶ 509.

rather, the onus is clearly on Azerbaijan to explain the clear failure of its courts to provide a fair process to Mr. Bahari.

E. MR. BAHARI HAD NO KNOWLEDGE OF THE AYNA SULTAN LITIGATION AND NEVER FILED AN APPEAL.

1. Mr. Bahari Had No Knowledge of the Ayna Sultan Litigations and Would Not Have Known to Appeal the Case.

366. Azerbaijan maintains its allegation that in 2009, Mr. Bahari appealed the Consolidated Appeal Judgment (the Alleged 2009 Appeal). Azerbaijan relies on this alleged appeal to assert that Mr. Bahari "was given access to the Azerbaijani Courts."[530] The implied conclusion is that Mr. Bahari had the ability to come back to Azerbaijan at any time to press his rights – and get a fair trial in the courts – but failed to do so. Mr. Bahari categorically rejects any knowledge or involvement in the proceedings.[531] He also rejects the idea that he could have freely and safely come back at any time to Azerbaijan.[532]

367. It is agreed by both Parties that Mr. Bahari never appeared in the Ayna Sultan litigations, through the 24 June 2005 Consolidated Appeal Judgment. Azerbaijan does not (and cannot) assert that Mr. Bahari had actual knowledge of the litigations, as all notifications were sent to addresses in Baku. According to Azerbaijan's own alleged State Border Service records, Mr. Bahari left Azerbaijan in 2001 and did not return until 2013, when he met Minister Heydarov.[533] Thus, Mr. Bahari would not have appealed a litigation he had no knowledge of in the first place.

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530 SoD ¶ 335.

531 Bahari WS2 ¶ 17.

532 Bahari WS2 ¶ 35 [redacted]

533 **R-58**, p. 3.

2. The Signatures on the Court Documents Are Forged and Were Not Signed by Mr. Bahari.

368. Azerbaijan's most direct evidence that Mr. Bahari knew of approved the Alleged 2009 Appeal are two alleged signatures of his that appear at **R-172** (an Application to the Baku Court of Appeal for an extension of time to submit a cassation appeal (undated)) and **R-173** (the Cassation Appeal dated 11 August 2009).

369. Azerbaijan continues to insist that these signatures are proof that Mr. Bahari fully participated in the 2009 proceedings,[534] despite the fact that its *own* expert expresses doubts about these signatures, as did the Supreme Court itself in a 21 January 2010 decision.[535]

370. Indeed, both Parties' respective handwriting experts remark that the signatures are anomalous. Claimant's expert, Ms. Morrissey, notes that the "[redacted]."[536] Azerbaijan's expert, Ms. Briggs, states that "[redacted]"[537] Similar to her analysis on **R-62** and **R-63**, Ms. Briggs notes the "[redacted]."[538]

Excerpt of Briggs Report ¶ 4.22.5:

[redacted]

534 SoD ¶ 335; SoR ¶ 510.

535 SoR ¶ 530(c).

536 Morrissey Report ¶ 5.7.1.

537 SoRJ ¶ 544; Briggs Report ¶ 4.22.8.

538 Briggs Report ¶ 4.22.5.

371. Claimant submits to the Tribunal that these two signatures were clearly traced and are forgeries, proving that Mr. Bahari never authorized the Alleged 2009 Appeal.

372. The Supreme Court of Azerbaijan itself highlighted the anomalous signatures in a decision dated 21 January 2010,[539] in which it stated:

[redacted][540]

373. Thus, Azerbaijan's own highest court rejected that Mr. Bahari actually made an appeal in the case. Azerbaijan has never provided a substantive response to this very clear admonishment by the Supreme Court about the irregularity of the signatures at **R-172** and **R-173**.[541]

3. The Alleged Kazimov Power of Attorney Was Added After The Fact to the Ayna Sultan Case File.

374. The Supreme Court decision dated 21 January 2010 indirectly raised doubts about the alleged POA from Mr. Bahari to Mr. Amirahmadi, as well as the follow-on alleged POA from Mr. Amirahmadi to Mr. Kazimov, stating that despite the evidence of these POA's, the Court of Appeal didn't adequately examine the alleged signatures of Mr. Bahari on **R-172** and **R-173** [redacted].")[542]

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539 Following the filing of the Alleged 2009 Appeal, Ms. Gambarova herself filed an appeal contesting the decision granting Mr. Bahari an extension of time to file the appeal. The Supreme Court of Azerbaijan granted Ms. Gambarova's appeal and remanded back to the Baku Court of Appeal. In doing so, the Supreme Court specifically noted

540 **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010, p. 6; SoR ¶ 530(c).

541 SoD ¶ 334(f); SoRJ ¶ 551(c).

542 **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010, p. 7.

375. Notwithstanding the above, Azerbaijan submits the alleged POA delegating power to Mr. Kazimov and exhibits it as **R-285**:

a. In the Statement of Reply, Claimant noted that the then-available case file[543] contained no POA to Mr. Kazimov, the lawyer allegedly representing Mr. Bahari in the 2009 Appeal. While Mr. Bahari accepted that he had given a power of attorney to Mr. Hooshang Amirahmadi, the provided case file contained no follow-on delegation from Mr. Amirahmadi to Mr. Kazimov,[544] as Azerbaijan alleged.[545]

b. Claimant requested the full case file for review in time to file his Reply Statement on 21 June 2024. Azerbaijan delayed in submitting the full Ayna Sultan case file,[546] only doing so on 14 August 2024. Azerbaijan was able to review Claimant's arguments, including the lack of a follow-on POA to Mr. Kazimov, before producing the full case file. Subsequently, in its Rejoinder, Azerbaijan claims that "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…"[547]

376. A review of the full case file produced on 14 August 2024 suggests that the alleged POA delegation to Mr. Kazimov is a set of photographs separately inserted into the case file:[548]

a. The entire case file – save for the alleged POA delegation at issue – appears to have been photographed on top of a beige surface, likely in a single sitting.

b. Although the alleged POA to Mr. Kazimov displays a handwritten numbering at the top right (173) which follows the general sequencing of the case file, it is clear that

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543 Claimant's Document Requestion no. 181 requested the full case file for the Ayna Sultan litigation. (See Annex 1 to PO6.) Azerbaijan objected, but made an apparent concession when it agreed [redacted] (*Id*.) The resulting document production was clearly an incomplete case file. **C-512**, Respondent's document production, 1 March 2024. In retrospect, Azerbaijan's seeming concession to produce documents "[redacted]" was a maneuver to avoid disclosing the full case file while appearing to provide a concession. It is unclear why the Supreme Court sent an incomplete file; the inference is that that production was not fulsome and candid.

544 SoR ¶¶ 502-509.

545 SoD ¶ 334(a), citing only to a reference of such a delegation in the Decision of the Supreme Court dated 21 January 2010 (**R-153**), but failing to provide any actual POA delegation.

546 **C-513** Respondent Email to Claimant, 18 July 2024; **C-514** Claimant Letter to Tribunal, 23 July 2024; **C-515** Letter from Respondent to Tribunal, 29 July 2024; **C-516** Claimant Second Letter to Tribunal, 30 July 2024; and **C-517** Letter from Respondent to Tribunal, 5 August 2024.

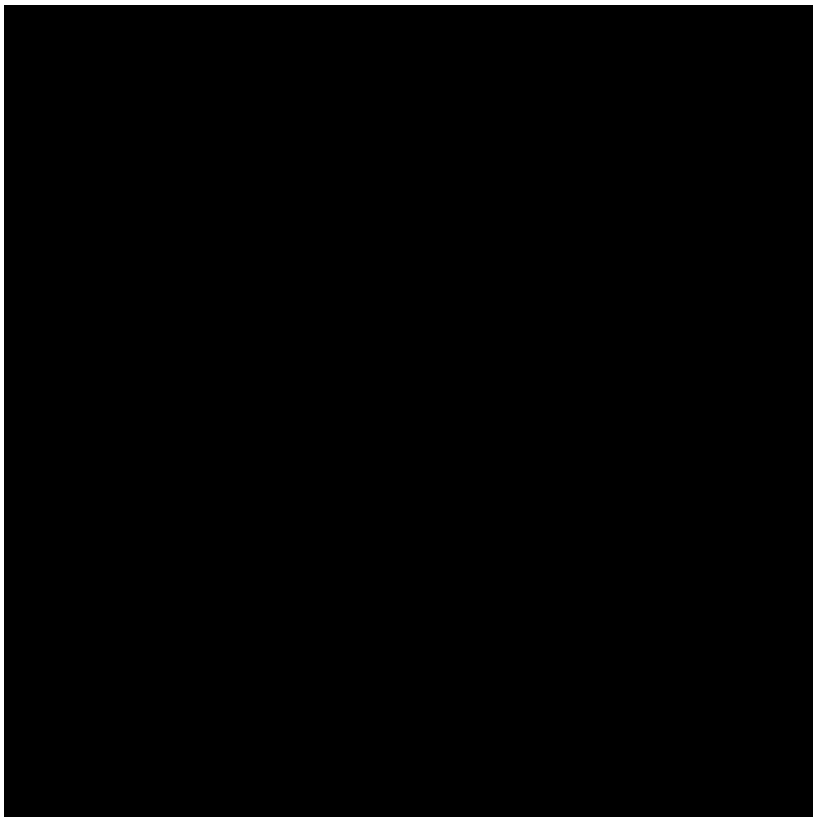
547 SORJ ¶ 539, **R-285**.

548 **C-511** [Respondent Document Production - 182_31] Full Ayna Sultan Case File produced by Respondent 14 August 2024.

the document (as well as the preceding delivery receipt) was photographed in a different setting. It is equally apparent that the document file was separately inserted into the case file.

c. When viewed in any browser, the POA appears as a much larger size than the remainder of the case file – a further conspicuous anomaly:

Extracts of C-511



377. It is unclear why the alleged POA to Mr. Kazimov appears to have been separately inserted into the case file. This is yet a further anomaly in a case file replete with irregularities and further undermines Azerbaijan's assertion that Mr. Bahari made an appearance in the case.

4. Mr. Bahari Never Paid the Advocate's Order for Mr. Kazimov.

378. As proof that Mr. Bahari authorized Mr. Kazimov to act as his lawyer, Azerbaijan exhibits a copy of an advocate's order to act on behalf of Mr. Bahari, dated 1 May 2009.[549] What Azerbaijan does not exhibit is a payment receipt that accompanies the alleged advocate's order.[550]

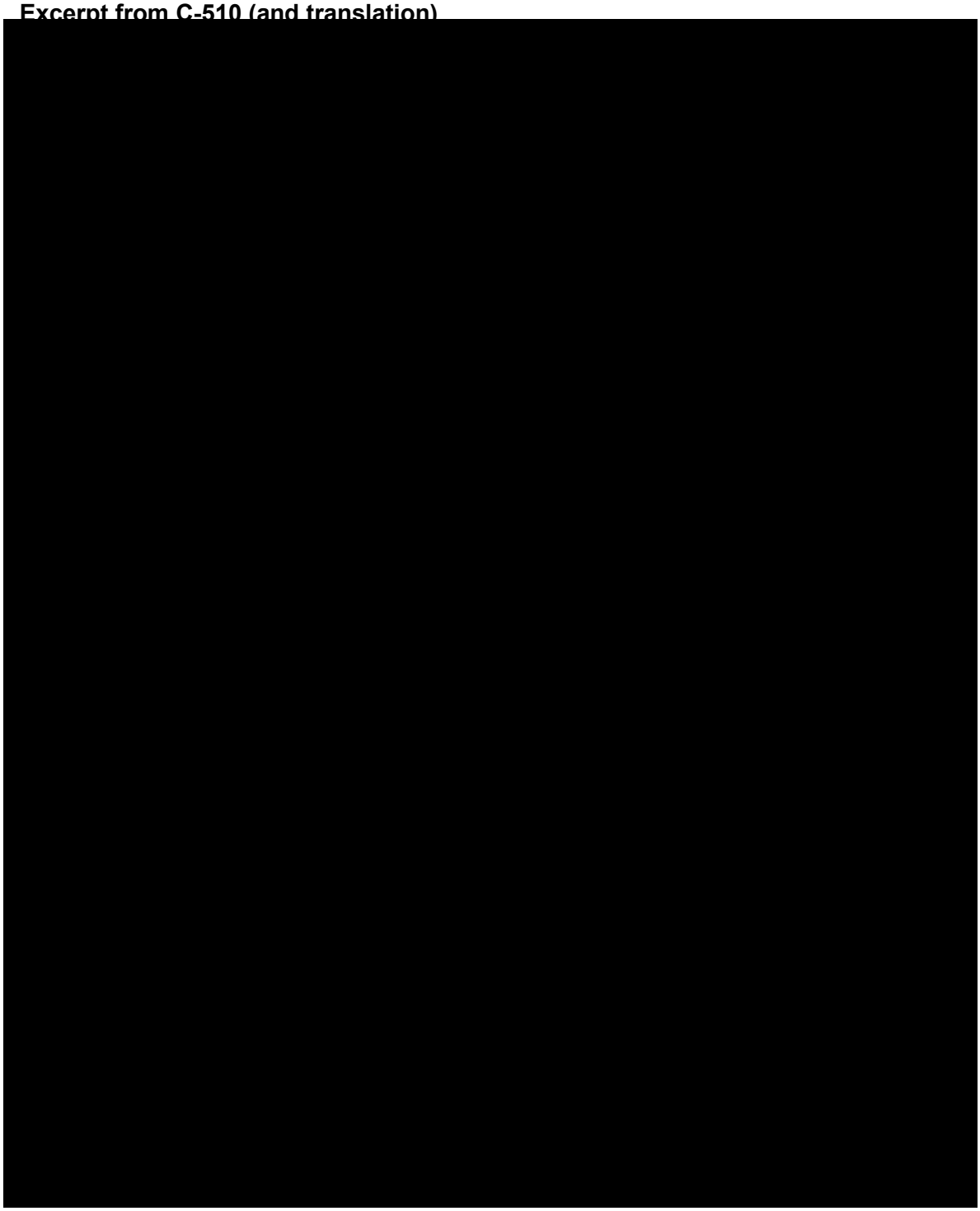
379. The payment receipt purports to be from Mr. Bahari; Mr. Bahari's name is handwritten on the "from" line. The handwriting is not Mr. Bahari's and his name is misspelled. In the

549 SoRJ ¶ 541; **R-244**.

550 **C-510** [Respondent Document Production - 182_29 and 30] Mr Kazimov's alleged advocate's order, 1 May 2009 (R-244) and Payment slip, 11 August 2009. The color version of the advocate's order and the accompanying payment receipt were produced by Azerbaijan as 182_29 and 182_30 on 18 July 2024. Claimant previously wrote to the Tribunal on 23 July 2024 regarding this late production, which occurred well after Claimant had filed his Reply Brief.

payer signature line at the bottom, the signature is clearly not Mr. Bahari's – Mr. Bahari was not even in-country on 11 August 2009, when this receipt was filled out.[551]

Excerpt from C-510 (and translation)



[551] The Kapital Bank OJSC branch is located in the Yasamal District of Baku.

380. It thus appears that someone other than Mr. Bahari made a payment related to the advocate's order for Mr. Kazimov to act on behalf of Mr. Bahari. This is further evidence that Mr. Bahari did not authorize the Alleged 2009 Appeal and had no knowledge of it.

5. In Remanding the Case, the Supreme Court Signaled That the Alleged Bahari Appeal Was Brought by an Unauthorized Person.

381. Ultimately, the Supreme Court annulled the Court of Appeal's 30 September 2009 Decision granting an Extension to Mr. Bahari to file a cassation appeal and remanded the matter back to the Court of Appeal for reconsideration.[552]

382. In doing so, the Supreme Court explicitly and repeatedly noted the anomalies relating to Mr. Bahari's identity, as explained above (and as conceded by Azerbaijan).[553] In particular, the Supreme Court notably focused on the forged signatures at **R-172** and **R-173**, mentioning these three separate times. Without saying so explicitly, the Supreme Court signaled to the Court of Appeal that the Alleged 2009 Appeal had been brought by an unauthorized person other than Mr. Bahari.

383. On remand, the Court of Appeal fell in line with the Supreme Court: in a decision dated 26 May 2010 rejected the application for an extension to file a cassation appeal.[554] Azerbaijan attempts to salvage its defense and argues that the court's reasoning did not state that there was any deficiency in the POA's.[555] This argument is flatly contradicted by the Court of Appeal's specific ruling that [redacted]"[556]

384. The Court of Appeal gave leave for Mr. Kazimov to appeal this decision within 10 days.[557] No such appeal was filed. Azerbaijan spins this to say that Mr. Bahari abandoned his appeal efforts;[558] of course, the reality is that Mr. Kazimov and whoever was behind the Alleged 2009 Appeal perfectly understood the Supreme Court and Court of Appeal's signals that they would no longer entertain any fraudulent efforts.

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552 **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010, p. 7.

553 SoRJ ¶ 550(a)-(c).

554 **C-358** Claimant Translation of R-159, Decision of the Baku Appellate Court, 26 May 2010, p. 4.

555 SoRJ ¶ 552.

556 **C-358** Claimant Translation of R-159, Decision of the Baku Appellate Court, 26 May 2010, p. 4.

557 **C-358** Claimant Translation of R-159, Decision of the Baku Appellate Court, 26 May 2010, p. 4.

558 SoD ¶ 334(g).

6. Mr. Bahari Did Not Receive Fair Treatment by Azerbaijan's Courts.

385. Azerbaijan concludes from the Ayna Sultan Litigation that "Mr Bahari can have no complaint about the Ayna Sultan Sale…He was given access to the Azerbaijani Courts…Most egregiously of all, he failed to mention any of this in his witness statement, in a troubling a seriously misguided attempt to mislead this Tribunal."[559]

386. Mr. Bahari draws a very different conclusion from the evidence. Taken as a whole, the Ayna Sultan proceedings point to the Narimanov District Court and Baku Court of Appeal's roles in enabling various individuals' schemes to defraud Mr. Bahari. Whether the courts knowingly colluded with these individuals or not, they administered justice in a seriously inadequate way which resulted in manifest injustice to Mr. Bahari, who was unable to defend his interests and lost his investment as a result. Equally important, Mr. Bahari clearly had no knowledge of this litigation and never participated in it. This is in line with Mr. Bahari's overall inability to return to Azerbaijan to defend and recover his investments following his expulsion.

V. MR. BAHARI HAS A QUALIFYING INVESTMENT IN HIS CARPETS

387. In its Rejoinder, Azerbaijan "accepts...in principle, [that] a carpet is moveable property."[560] It contests, however, (i) that the carpets had "any significant value" and (ii) that they meet the *Salini* definition of investments.[561] The latter point Mr. Bahari addresses as a matter of law below,[562] but as for their value, any argument that Azerbaijan may make regarding the quality of the carpet is belied by its own evidence.

388. Azerbaijan yet again blows hot and cold, contending for the purposes of this arbitration that the carpets "were of no such value to be museum-worthy,"[563] an argument that stems

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559 SoD ¶ 335.

560 SoRJ ¶ 201.

561 SoRJ ¶ 201.

562 *See infra*, Part IV § 1. The principal case Azerbaijan relies on, *Eyre and Montrose Developments v Sri Lanka*, ICSID Case No. ARB/16/25, Award, 5 Mar. 2020 (**RLA-21**), assessed the question as a matter of the *Salini* factors under the ICSID Convention. It is, on that basis, inapposite to the present situation, in which the *Salini* factors are not relevant, as explained below. As also explained below, however, the risk criterion of *Salini*, even if it were applicable, is not limited to situations of necessary operational risk. Rather, it includes all risk arising from the possession of the investment, including the risk of the dispute at hand.

563 SoRJ ¶ 203.

from the purchase price listed in Mr. Bahari's ledger,[564] and which ignores the simple fact that, on Azerbaijan's own evidence, Azerbaijan's Ministry of Culture assessed the entirety of Mr. Bahari's collection in order to issue export permits for them and deemed more than half of them too culturally significant to allow them to leave Azerbaijan.[565]

389. As Mr. Iselin explained in his second report, "[redacted]."[566] Thus, the protection certificate issued by the Ministry of Culture lists out the 211 carpets that it deemed did "[redacted]" and thus for which "[redacted]."[567] That certificate is silent as to Mr. Bahari's other carpets. The only inference that can be drawn from that silence is that, on Azerbaijan's own evidence, the remaining carpets had "[redacted]." Assuming the carpets had value, by Azerbaijan's argument, they are investments.

VI. AZERBAIJAN'S BREACHES OF ITS OBLIGATIONS UNDER THE TREATY FALL WITHIN THE TREATY'S TEMPORAL SCOPE.

390. Due in no small part to Azerbaijan's enlargement of the scope of this Arbitration via its presentation of counterfactuals and competing narratives, Mr. Bahari's statement of facts to date have spanned hundreds of pages of briefing. He therefore considers it helpful, in this final Rejoinder on Jurisdiction, to present a brief timeline of the establishment of his investments in Azerbaijan and the measures affecting those investments, as follows.

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564 SoRJ ¶ 203 (citing SoD ¶ 123 ("A column in the ledger titled "[redacted]" (which neither Mr Bahari nor his other witnesses or experts speak to) presumably indicates the price at which each carpet was purchased in US dollars… The contemporaneous document records that the total maximum spend by the Claimant on the carpets retained by him in Azerbaijan is approximately USD 183,000.").

565 Zeynalov WS ¶ 49; **R-37** Export Declaration for 211 Carpets, 3 October 2002; **R-36** Protection Certificate granted by the Ministry of Culture of the Republic of Azerbaijan for No. 300 issued on 26 July 2002,

566 Second Iselin Report, ¶ 2. Respondent's only evidence in support of its argument that the carpets were "all shipped to" Mr. Bahari in 2002 is the testimony of Mr. Zeynalov who claims he was somehow able to ship both the 211 carpets that had protection certificates "[redacted]." SoD ¶ 349 (citing Zeynalov WS ¶ 50). Mr. Zeynalov's testimony is, however, not sufficient to counteract Respondent's own evidence: the protection certificates exhibited at **R-36** note the opinion of the "[redacted]" that only 211 of Mr. Bahari's carpets are "[redacted]." *See* **R-36** Protection Certificate granted by the Ministry of Culture of the Republic of Azerbaijan for No. 300 issued on 26 July 2002.

567 **R-36** Protection Certificate granted by the Ministry of Culture of the Republic of Azerbaijan for No. 300 issued on 26 July 2002.

Date	Event
Around 1994	Mr. Bahari began traveling frequently to Azerbaijan to develop the export market for Coolak Shargh.[568]
Around 1996	Mr. Bahari began to engage in a concentrated effort to purchase antique carpets in and around Azerbaijan to build his collection, intending to open a world-class Persian Carpet Museum. He hired an Iranian gentleman, Mr. Golchini, to create designs for the museum, which Mr. Bahari shared with Mr. Aliyev.[569]
29 February 1996	Mr. Bahari formed a joint venture with ASFAN to create Coolak Baku.[570]
16 May 1996	Mr. Bahari signed a construction contract with Chartabi Contracting for the Coolak Baku facility.[571]
29 May 1996	Azerbaijan registered Mr. Bahari's legal title to the Ayna Sultan property at entry number 623 in Registry Book 93547.[572]
January or February 1997	The Coolak Baku facility started production.[573]
10 July 1997	Mr. Bahari executed a construction contract with Chartabi Contracting for Shuvalan Sugar.[574]
End of 1997	Shuvalan Sugar began production, producing around 12 to 13 metric tons of refined sugar daily.[575]
End of 1997	Mr. Bahari and his business partners discuss plans for Caspian Fish.[576]

568 Bahari WS1 ¶ 16.

569 Bahari WS1 ¶¶ 54.

570 **C-001** Coolak Baku Joint Venture Agreement - 23 January 1996.

571 **C-084** Chartabi Contracting Coolak Baku Construction Contract, 16 May 1996.

572 **C-016** Ayna Sultan Registration Voucher and Technical Passport, 29 May 1996.

573 Bahari WS1 ¶ 26; Suleymanov WS ¶¶ 12-13.

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

575 Bahari WS1 ¶ 31.

576 Moghaddam WS1 ¶ 39.

Date	Event
23 January 1998	Mr. Bahari and ASFAN executed an amendment to the Coolak Baku JVA that provided for Coolak Baku to be leased to ASFAN for a period of three years while Mr. Bahari focused on development of Caspian Fish.[577]
1998	Works on the Caspian Fish site and plant begin.
1999	Mr. Bahari asked Adil Sharabiani to put together a ledger indexing Mr. Bahari's carpet collection.[578]
5 March 1999	Caspian Fish (BVI) Ltd. was incorporated by Mr. Bahari, with the assistance of Mr. Khanghah, to own the assets of Caspian Fish. Its initial registered agent was Morgan & Morgan Trust Company.[579]
5 March 1999	On that same date, the Directors of Caspian Fish (BVI) (Mr. Bahari and Mr. Khanghah) purportedly resolved by written resolution to increase its share capital from 50,000 to 1,000,000 shares. Mr. Bahari does not recall signing this resolution.[580]
5 March 1999	Also on that same date, the Register of Members of Caspian Fish (BVI) shows that Mr. Bahari purportedly transferred all of his shares in the company to Mr. Khanghah. The purported instrument of transfer was executed by Mr. Khanghah as purported sole director of Caspian Fish (BVI). Mr. Bahari categorically denies ever having agreed to this transfer or having transferred his shares.[581]
26 April 1999	Coolak Baku received a license to produce beer from the Ministry of Agriculture.[582]
27 April 1999	Caspian Fish established a representative office in Azerbaijan pursuant to the terms of a Charter registered on the Azeri State Registry for Legal Entities Certification No. 496.[583]

577 **C-001** Coolak Baku Joint Venture Agreement, 23 January 1998, Clause 3.1.

578 **C-079** Carpet Ledger.

579 **C-107** Caspian Fish Co. Inc. Registers and Datasheet - 1 February 2011.

580 **C-110** Caspian Fish Co. Inc. Directors Resolution - 5 March 1999; **C-111** IBC Notice of Change in Authorized Capital for Caspian Fish Co. Inc. – 27 November 2006; **C-112** Extract of Caspian Fish Co. Inc. Directors Resolution - 27 November 2006; Bahari WS1 ¶ 89.

581 **C-109** Caspian Fish Co. Inc. Registers and Datasheet – 3 May 2007; **C-121** Purported Instrument of Transfer, undated; Bahari WS1 ¶ 89.

582 **C-083** Coolak Baku License, 26 April 1999.

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

Date	Event
27 April 1999	Mr. Bahari entered into a Shareholder Agreement for Caspian Fish with Messrs. Aliyev, Heydarov, and Khanghah.[584]
10 May 1999	Mr. Bahari executed a contract with Chartabi Contracting for the construction works for Caspian Fish.[585]
17 December 1999	Mr. Bahari issued a 3-year power of attorney to Mr. Zeynalov.[586]
December 2000 / January 2001	Major construction of Caspian Fish plant is complete, installation of machinery begins.[587]
Summer 2000	Construction of Caspian Fish plant is complete.[588]
15 August 2000	Minutes of a purported meeting of the Board of Directors of Caspian Fish BVI, attended by Mr. Khanghah and a company Secretary. According to the minutes, the Directors resolved to register and open a Branch Enterprise within Azerbaijan with Mr. Bahari as branch director.[589] Mr. Bahari was not present and had no knowledge of this.
29 August 2000	Purported Application from Caspian Fish BVI to the Ministry of Justice of Azerbaijan requesting registration of an LLC in Azerbaijan.[590]
11 September 2000	Charter of Caspian Fish LLC purportedly bearing Mr. Bahari's signature. Charter contains incorrect reference to Caspian Fish BVI under the "[redacted]" section. Mr. Bahari does not recall signing this document and his name is misspelled on it.[591]
19 September 2000	Caspian Fish Co. Azerbaijan LLC was registered in Azerbaijan. Mr. Bahari has no knowledge of this company and was never involved with it.[592]

584 **C-004** Shareholders Agreement for Caspian Fish Co. Inc., 27 April 1999.

585 **C-092** Chartabi Contracting Caspian Fish Construction Contract,10 May 1999.

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

587 Suleymanov WS1 ¶ 40.

588 Rudman WS1 ¶¶ 5-6.

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

590 **R-56** Application to the Ministry of Justice for the registration of the LLC, 29 August 2000.

591 **R-57** Charter of Caspian Fish LLC, 11 September 2000; Bahari WS2 ¶ 21(i).

592 **C-153** Azerbaijan State Tax Service Caspian Fish Co State Registry of Commercial Enterprises; Bahari WS1 ¶ 90.

Date	Event
5 October 2000	Caspian Fish LLC is issued a Tax Identification Number (TIN).[593] Reference to the "[redacted]" of Caspian Fish LLC (i.e. Caspian Fish BVI) is omitted.
13 November 2000	The four shareholders of Caspian Fish (Messrs. Bahari, Aliyev, Heydarov, and Khanghah) opened a bank account in the name of Caspian Fish with Vereinsbank.[594]
19 December 2000	Mr. Bahari revoked the power of attorney he issued to Mr. Zeynalov. Notwithstanding that revocation, Mr. Zeynalov has testified that he continued to act as Mr. Bahari's representative until 2002.[595]
23 January 2001	The three-year lease of Coolak Baku to ASFAN expired.[596]
10 February 2001	Grand opening of the Caspian Fish facility. The event was attended by 400-500 guests and was hallmarked by a speech from then-President Heydar Aliyev.[597]
10 February 2001	Witnesses recall meeting with and seeing Mr. Bahari at Caspian Fish before the grand opening ceremony started.[598]
10 February 2001	Security forces removed Mr. Bahari from the Caspian Fish facilities before the opening ceremony began. He was placed into a car and driven from the premises. While in the car, Mr. Bahari reached Mr. Aliyev, who refused initially to answer his questions but then stated that "[redacted]." After that phone call, the security forces returned Mr. Bahari to his Baku residence.[599]
10 February 2001	Later that night, the stress of the day caused Mr. Bahari's blood pressure to rise, and he momentarily lost consciousness. He was taken to Republic Hospital, where he remained for several days.[600]

593 **R-382** Notice on issuance of Tax Identification Number for Caspian Fish LLC, 5 October 2000.

594 **C-007** Vereinsbank Opening of Account Statement – 13 November 2000.

595 **C-297** Revocation of Rasim Zeynalov Power of Attorney, 19 December 2000; Zeynalov WS ¶ 31.

596 **C-001** Coolak Baku Joint Venture Agreement - 23 January 1998, Clause 3.1.

597 **C-091** President Heydar Aliyev's Opening Speech for Caspian Fish Co. Inc.,10 February 2001; **C-101** Absheron District Page - CF Opening – 10 February 2001.

598 Kousedghi WS1 ¶ 17; Khalilov WS1 ¶ 36.

599 Bahari WS1 ¶¶ 69-71.

600 Bahari WS1 ¶ 72.

Date	Event
mid-February 2001	Deputy Head of Mission for Iran, Dr. Fereydoun Kousedghi, is informed that Azerbaijani secret police had detained and removed Mr Bahari from the Caspian Fish opening ceremony. Later, Dr. Kousedghi is contacted by the Azeri Minister of Intelligence and told Mr. Bahari's life is in danger.[601]
late-February 2001	Mr. Tahir Kerimov replaces Mr. Bahari as Director of Caspian Fish.[602]
mid-February through March 2001	Mr. Bahari was kept under house arrest at his residence in Baku.[603]
10 February 2001	Caspian Fish MMC, styling itself as Caspian Fish Co. Azerbaijan, reports that it was established the same date as the opening ceremony. According to its website, Caspian Fish MMC occupies the Caspian Fish facility and has Mr. Khanghah as its director.[604]
Late March 2001	Three government agents visited Mr. Bahari's home in Baku and told him that he and his family needed to leave Azerbaijan. They presented him with plane tickets and the passports of Mr. Bahari and his family, which they obtained from the safe at Caspian Fish. Mr. Bahari and his family left Azerbaijan on a plane to Dubai. Between his expulsion from Azerbaijan and the date Mr. Khanghah came to visit him in Dubai in June 2002, Mr. Bahari undertook efforts to protect his investments, including numerous calls to Minister Heydarov to discuss the situation.[605]
March 2001	Although not an official statement, Dr. Kousedghi is informed by an Azeri Government official that Mr. Bahari was persona non grata in Azerbaijan.[606]

601 Kousedghi WS1 ¶¶ 18-19.

602 Kerimov WS1 ¶ 10.

603 Bahari WS1 ¶ 74; Moghaddam WS ¶ 60; Kousedghi WS ¶ 22.

604 **C-043** Caspian Fish archived website - Main Page, accessed via 4 July 2014 snapshot through Google WayBack Machine,

available at: https://web.archive.org/web/20140828082750/http://www.caspianfish.com/static,159/lang,az/

605 Bahari WS1 ¶¶ 75, 79.

606 Kousedghi WS1 ¶ 27.

Date	Event
26 March 2001 through 7 April 2001	Someone sent a series of letters purportedly from Mr. Bahari on behalf of Caspian Fish to businesses working with Caspian Fish. Mr. Bahari does not recall sending these letters and does not know why they were allegedly sent in his name.[607]
Late April 2001	Mr. Moghaddam, Mr. Bahari's trusted business manager, was detained and assaulted by plainclothes members of the Azeri police.[608]
Middle of June 2001	Mr. Moghaddam was again detained and attacked by individuals while he was walking home.[609]
August 2001	Mr. Moghaddam contacted a Government official to enquire about the status of Mr. Bahari's investments. Baku's head of police informed Mr. Moghaddam that he had been instructed to remove Mr. Bahari's carpets from the Nasimi District Warehouse. Following that conversation, Mr. Moghaddam went to the warehouse and found many of Mr. Bahari's carpets missing.[610]
20 September 2001	Azerbaijan relies on an alleged 2001 Sale Agreement to claim that Mr. Bahari sold his investment in Caspian Fish to Mr. Khanghah. Mr. Bahari denies this.[611]
15 November 2001	The Caspian Fish Register of Directors reports that Mr. Bahari reportedly resigned as a director of Caspian Fish on 15 November 2001, leaving Mr. Khanghah as sole director of the company until 18 February 2021. Mr. Bahari denies ever having resigned his role as Director of Caspian Fish (BVI).[612]
29 January 2002	Jordans Trust Company (BVI) Limited became the new registered agent of Caspian Fish (BVI), replacing Morgan & Morgan.[613]

607 **R-60** Letter from Caspian Fish Co Azerbaijan to "DFT GmbH", 26 March 2001; **R-59** Letter from Caspian Fish to Caviar House, 26 March 2001; **R-61** Letter from Caspian Fish Co Azerbaijan to Baader, 29 March 2001; **R-127** Letter from Mr Marc Valluet of Luxal France to Caspian Fish Co, 30 March 2001; **R-157** Contract between Caspian Fish Co Azerbaijan and Caviar House, 7 April 2001; Bahari WS2 ¶ 30.

608 Moghaddam WS ¶ 64.

609 Moghaddam WS ¶ 65.

610 Moghaddam WS ¶ 69.

611 **R-50** Buyer and Seller Agreement between Mr Bahari and Mr Khanghah, 20 September 2001; Bahari WS2 ¶¶ 21(e), 21(g), 21(d).

612 **C-118** BVI Financial Services Commission Caspian Fish Co. Inc. Register of Directors - 26 February 2021; **C-119** FHCS Caspian Fish Co. Inc. Register of Directors & Officers, undated; Bahari WS1 ¶ 89.

613 **C-107** Caspian Fish co. Inc. Registers and Datasheet, 1 February 2011.

Date	Event
11 April 2002	Mr. Karimov, acting as the Director General of Caspian Fish LLC, applied to the Head of the Department for State Registration of Legal Entities under the Ministry of Justice of the Republic of Azerbaijan for a new Certificate of State Registration No. 893 for Caspian Fish LLC, premised on the original Certificate having been lost.[614]
12 April 2002	Azerbaijan newspaper reports that the original Certificate of Registration of Caspian Fish would be deemed invalid as lost.[615]
17 May 2002	A new Certificate of Registration No. 893 was issued for Caspian Fish LLC by the Ministry of Justice of the Republic of Azerbaijan.[616]
11 June 2002	Mr. Kerimov, new Director of Caspian Fish, denies that Minister Heydarov has any interest in the company.[617]
15 June 2002	Mr. Khanghah came to Dubai to meet with Mr. Bahari and presented him with a document containing Forced Sale Terms, by which Mr. Bahari's former partners sought to force the sale of his 40% shareholding in Caspian Fish in exchange for his other investments. Mr. Bahari rejected the Forced Sale Terms and counter-offered with a handwritten proposal on the back of the same document.[618]
18 June 2002	At a meeting of the Coolak Baku Shareholders, Mr. Zeynalov appeared styled as an "[redacted]" of Mr. Bahari. He nominated himself as Director General of the company.[619]
20 June 2002	**The Treaty entered into force.**

614 **C-293** Letter from Caspian Fish Co Azerbaijan to Ministry of Justice of the Republic of Azerbaijan (with attachments), 11 April 2002.

615 **C-293** Letter from Caspian Fish Co Azerbaijan to Ministry of Justice of the Republic of Azerbaijan (with attachments), 11 April 2002.

616 **C-317** Duplicate of the state registration certificate of Caspian Fish Co Azerbaijan, 17 May 2002.

617 Second Secretariat Report, **SEC-207** Mammedov, An Error Crept into the MNS Message, 11 July 2002

618 Bahari WS1 ¶ 81; **C-017** Settlement Proposal, 15 June 2002.

619 **R-104** Minutes of the Meeting of the Shareholders of Coolak Baku, 18 June 2002.

Date	Event
Late June 2002	Mr. Moghaddam was again detained by Government security agents for over a week. He was held in a room with no windows that had a table and chairs, but was otherwise empty. The men who detained him carried themselves like police or security forces. Although they did not beat or physically harm Mr. Moghaddam, they interrogated him about Mr. Bahari for several hours every other day. In particular, the security forces repeatedly asked Mr. Moghaddam what plans Mr. Bahari had to try to recover his business in Azerbaijan and whether he intended to return to Azerbaijan. Mr. Moghaddam did not dare disclose where Mr. Bahari was. Eventually, the men blindfolded him and put him back in a car, then dropped him off in his neighborhood. When he got out of the car, he was informed that it would be in his best interest if he stopped looking into Mr. Bahari's businesses and left Azerbaijan.[620]
Latter part of 2002	Baku's head of police took Dr. Kousedghi to see a number of Mr. Bahari's carpets, which were stored in a storage facility.[621]
3 October 2002	Mr. Zeynalov purportedly arranged to ship some of Mr. Bahari's carpets to Dubai.[622]
30 November 2002	As of November 2002, Mr. Zeynalov attended Staff Meetings for Coolak Baku as "[redacted]."[623]
5 May 2003	ASFAN LTD LLC was incorporated in Azerbaijan. ASFAN LTD LLC is listed as the manufacturer of a beer called Attila Premium, with Coolak Baku's address. Mr. Zeynalov is listed as ASFAN's Director.[624]
31 October 2003	Mr. Ilham Aliyev became President of Azerbaijan after a two-month stint as Prime Minister.

620 Moghaddam WS ¶¶ 73-78.

621 Kousedghi WS ¶ 31.

622 **R-37** Export Declaration for 211 Carpets, 3 October 2002; Zeynalov WS ¶ 50.

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

624 **C-176** Attila Beer Logo ASFAN TLD MMC; **C-177** Azerbaijan State Tax Service ASFAN LTD LLC State Registry of Commercial Enterprises.

Date	Event
2004	Mr. Bahari hired a Turkish lawyer, Mr. Serhat Kilic, to investigate possible legal proceedings against Messrs. Aliyev, Heydarov, and Pashayev in the Azeri courts. Mr. Kilic undertook due diligence work, including work in Azerbaijan, but two months into his inquiries he returned to Mr. Bahari shaken and declined to continue his work on the case.[625]
16 August 2004	First 2004 Judgment issued by the Narimanov District Court granting title to the Ayna Sultan property to Mr. Gambarov.[626] Mr. Bahari was not notified or allowed to participate in the proceedings.
20 August 2004	Second 2004 Judgment issued by the Narimanov District Court granting title to the Ayna Sultan property to Mr. Pashayev.[627] Mr. Bahari was not notified or allowed to participate in the proceedings.
6 September 2004	The family of Mr. Gambarov filed an appeal against the Second 2004 Judgment that was issued in favor of Mr. Pashayev. They argued that Mr. Zeynalov and Mr. Pasheyev colluded to misappropriate the Ayna Sultan property.[628] Mr. Bahari was not notified or allowed to participate in the proceedings.
6 October 2004	Mr. Elchin Gambarov sold the Ayna Sultan property to a Mr. Rasim Sanvaliyev.[629]
19 January 2005	The Economic Court decided to accept an application from ASFAN requesting to initiate proceedings to withdraw from the Coolak Baku Joint Venture.[630]

625 Bahari WS1 ¶ 86.

626 **R-147** Decision of the Narimanov District Court, 16 August 2004.

627 **R-148** Decision of the Narimanov District Court, 20 August 2004.

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

629 **C-302** [Respondent Document Production - 182_18] Contract for Sale of Immovable Property, 6 October 2004.

630 **R-138** Eurasianet press article, Rouhani Visits Baku As Azerbaijan-Iran Conflicts Fade Into Past, available at https://eurasianet.org/rouhani-visits-baku-as-azerbaijan-iran-conflicts-fade-into-past, 17 November 2014.

Date	Event
4 February 2005	Mr. Bahari is reportedly served with the summons to appear regarding ASFAN's application to withdraw from the Coolak Baku Joint Venture.[631]
10 February 2005	Hearing held to consider ASFAN's application to withdraw from the Coolak Baku Joint Venture.[632]
4 April 2005	Judgment of the Economic Court on ASFAN's application to withdraw from the Coolak Baku Joint Venture.[633]
15 April 2005	The wife of the then-deceased Mr. Gambarov also filed an appeal against the Second 2004 Judgment.[634] Mr. Bahari was not notified or allowed to participate in the proceedings.
18 April 2005	Judge Aliyev rejected Mrs. Gambarova's Appeal.[635] Mr. Bahari was not notified or allowed to participate in the proceedings.
26 April 2005	Shuvalan Shirniyat is incorporated in Azerbaijan.[636]
28 April 2005	Mr. Pashayev filed a cassation appeal against the First 2004 Judgment.[637] Mr. Bahari was not notified or allowed to participate in the proceedings.
12 May 2005	Purported date of delivery of the 4 April 2005 judgment of the Economic Court to Iran.[638]

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

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

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

634 **C-305** [Respondent Document Production - 182_06] Appeal Complaint by V.N. Khasayev (on behalf of G. Gambarova),15 April 2005.

635 **C-307** [Respondent Document Production - 182_07] Narimanov District Court Decision, 18 April 2005.

636 **C-181** Azerbaijan State Tax Service Shuvelan Shirniyat JSC State Registry of Commercial Enterprises.

637 **C-303** [Respondent Document Production - 182_20] Appeal Complaint by S. Pashayev to Narimanov District Court, 28 April 2005.

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

Date	Event
14 June 2005	The Court of Appeal granted Mr. Pashayev's cassation appeal of 28 April 2005.[639] Mr. Bahari was not notified or allowed to participate in the proceedings.
14 June 2005	The Court of Appeal reversed the dismissal of Mrs. Gambarova's appeal.[640] Mr. Bahari was not notified or allowed to participate in the proceedings.
14 June 2005	The Court of Appeal consolidated the appeals of the First 2004 Judgment and the Second 2004 Judgment.[641]
24 June 2005	The Court of Appeal rendered a decision on the consolidated appeals related to the disposition of the Ayna Sultan property, finding that the First 2004 Judgment would have full force and effect.[642]
14 July 2005	Following the decision of the Economic Court on its application to withdraw, ASFAN was purportedly removed as a founder in Coolak Baku. It is on this date that Azerbaijan states that the Coolak Baku facilities were "[redacted]" to ASFAN, which then undertook production of Atilo beer.[643]
12 April 2006	The Economic Court issued a Writ of Execution following its 4 April 2005 Judgment, allowing ASFAN to purport to "satisfy" its judgment from the assets of Coolak Baku.[644]
27 November 2006	The BVI Companies Register received the Notice of Change in Authorized Capital for Caspian Fish, increasing its share capital as of purportedly 5 March 1999, in November 2006.[645]

639 **C-306** [Respondent Document Production - 182_21] Decision of the Appeal Court of the Republic of Azerbaijan, 14 June 2005.

640 **C-300** [Respondent Document Production - 182_09] Appellate Court Decision, 14 June 2005.

641 **C-308** [Respondent Document Production - 182_22] Decision of the Appeal Court of the Republic of Azerbaijan, 14 June 2005.

642 **R-149** Judgment of the Baku Appellate Court in Case No 1mk-4123/2005 [English translation and Azerbaijani original], 24 June 2005.

643 SoD ¶ 222; Aliyev WS ¶ 28.

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

645 **C-111** IBC Notice of Change in Authorized Capital for Caspian Fish Co. Inc., 27 November 2006.

Date	Event
8 December 2006	The alleged 3 September 2002 Director's Resolution of Caspian Fish (BVI), which purported to increase the company's share capital and was signed by Mr. Khanghah alone, was submitted to the Registrar of Corporate Affairs in the BVI.[646]
8 December 2006	Mr. Khanghah transferred both his own shares and the 400,000 that had belonged to Mr. Bahari to Southmead Management Limited, a BVI company of which he was a Director and sole shareholder.[647]
8 December 2006	On that same date, Mr. Khanghah, as sole director of Caspian Fish (BVI), issued new shares in the company for the benefit of Southmead and two other companies: Carnivore Capital Markets Limited of the BVI and Lacey Enterprises SA of Panama.[648]
15 December 2007	Carnivore transferred its shares to Lanisten International SA, a Panamanian company. Lacey transferred its shares in Caspian Fish (BVI) Arblos Management Corp., Hising Management SA, and Lynden Management Group Inc., all Panamanian companies of which Mr. Aliyev's daughters are Directors.[649]
2008	Mr. Zeynalov informed Mr. Suleymanov that he had sold the Coolak Baku facility.[650]
End of 2008 and beginning of 2009	Mr. Bahari continued his efforts to regain his investments in Azerbaijan. He asked Mr. Moghaddam to look into the status of his investments and identify their current owners. Mr. Moghaddam spoke with a few people who still worked at Caspian Fish, who told him that the company was busy and successful but he was not welcome there.[651]

646 **C-125** Caspian Fish Co. Inc. Extract of Director's Resolution - 3 September 2002.

647 **C-109** Caspian Fish Co. Inc. Registers and Datasheet – 3 May 2007; **C-127** Southmead Management Limited Signed Director Consent Letter – 8 April 2009; **C-128** Southmead Management Limited Registers and Datasheet – 1 May 2009.

648 **C-109** Caspian Fish Co. Inc. Registers and Datasheet – 3 May 2007; **C-130** Caspian Fish Co. Inc. Share Application to Southmead 2006; **C-131** Caspian Fish Co. Inc. Stock Transfer Form, undated, issuing 22,400,000 shares to Carnivore Capital Markets Limited; **C-132** Caspian Fish Co. Inc. Directors Resolution in writing – 8 December 2006, issuing 28,000,000 shares to Lacey Enterprises S.A.; **C-133** Caspian Fish Co. Inc. Share Application - 2006, issuing 60,000 shares to Lacey Enterprises S.A..

649 **C-136** Caspian Fish Co. Inc. Register of Members, 17 August 2009; **C-137** Caspian Fish Co. Inc. Share Certificates – 15 November 2007; **C-138** Arblos Management Corp. Amendment to Articles of Incorporation – 11 August 2006; **C-139** Lynden Management Group Articles of Incorporation - 17 August 2006; **C-140** Hising Management S.A. Amendment to Articles of Incorporation – 1 June 2012.

650 Suleymanov WS ¶¶ 19-20.

651 Bahari WS1 ¶ 92; Moghaddam WS ¶¶ 80-82.

Date	Event
February 2009	Mr. Moghaddam was arrested on narcotics charges.[652]
25 February 2009	Mr. Moghaddam was convicted of drug possession and sentenced to 9 years in prison.[653]
20 April 2009	Mr. Bahari issued a power of attorney to Professor Hooshang Amirahmadi, an American-Iranian professor at Rutgers University, to negotiate a settlement with the Azerbaijani Government on his behalf.[654]
21 May 2009	Mr. Bahari's 13-year-old daughter, Gloria, was killed in Dubai in a hit-and-run car accident.[655]
2009	Prof. Amirahmadi attempted to negotiate with the Pashayev family on behalf of Mr. Bahari, but was ultimately not successful.[656]
21 September 2009	Mr. Pashayev filed a cassation appeal against the Court of Appeals decision giving full force and effect to the First 2004 Judgment.[657]
30 September 2009	The Baku Court of Appeal granted an Application for Extension of Time to File a Cassation Appeal of the Consolidated Appeal Judgment, acknowledging that the records of the Ayna Sultan litigations showed no evidence that any writs of summons or notifications of hearings and court resolutions were sent to Mr. Bahari.[658]
9 November 2009	Mrs. Gambarova appealed the Decision granting the extension.[659]
1 December 2009	The Supreme Court terminated the cassation proceeding, noting Mr. Pashayev's withdrawal of his cassation appeal on 29 November 2005.[660]

652 Moghaddam WS ¶¶ 83-84.

653 Moghaddam WS ¶¶ 83-85.

654 **R-152** Power of Attorney issued by Mr Bahari to Mr Amirahmadi, 20 April 2009; Bahari WS2 ¶ 33.

655 Bahari WS1 ¶¶ 93-94.

656 Bahari WS1 ¶ 92.

657 **C-347** [Respondent Document Production - 182_24] Cassation Complaint by S. Pashayev to the Supreme Court, 21 September 2005.

658 **R-174** Decision of the Baku Appellate Court on Mr Bahari's Cassation Appeal, 30 September 2009;**C-356** Claimant's Translation of R-174, Decision of the Baku Appellate Court on Mr. Bahari's Cassation Appeal, 30 September 2009.

659 **R-153** Decision of the Supreme Court of Azerbaijan, 21 January 2010; **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010.

660 **C-349** [Respondent Document Production - 182_25] Decision of the Supreme Court (termination Mr. Pashayev's cassation appeal), 1 December 2005.

Date	Event
21 January 2010	The Supreme Court of Azerbaijan issued a decision in the alleged 2009 appeal by Mr. Bahari against the court decisions regarding Coolak Baku. The Court credited an Azeri translation of the POA issued to Professor Amirahmadi as delegating representation authority for Mr. Bahari from Professor Amirahmadi to Mr. Kazimov, who allegedly represented him in the proceedings.[661]
21 January 2010	The Supreme Court granted Mrs. Gambarova's appeal and remanded the case to the Court of Appeal for further consideration. In doing so, it found that the Court of Appeal had failed to clarify whether Mr. Bahari's signatures were affixed willingly and whether they may have been affixed by another person.[662]
26 May 2010	The Court of Appeal remanded the alleged Cassation appeal by Mr. Bahari and granted leave for appeal within ten days. The Court found that the "[redacted]."[663]
21 January 2011	Forbes Hare Corporate Services Limited served was appointed the registered agent of Caspian Fish (BVI).[664]
2013	Mr. Bahari was suddenly able to contact Minister Heydarov, who invited him to Azerbaijan to discuss his investments.[665]
7 October 2013	Minister Heydarov issued Mr. Bahari a 30-day visa to enter Azerbaijan for their meeting.[666]

661 **R-153** Decision of Supreme Court of Azerbaijan, 21 January 2010.

662 **R-153** Decision of the Supreme Court of Azerbaijan, 21 January 2010; **C-357** Claimant's Translation of R-153, Decision of the Supreme Court of Azerbaijan, 21 January 2010.

663 **R-159** Decision of the Baku Appellate Court, 26 May 2010; **C-358** Claimant's Translation of R-159, Decision of the Baku Appellate Court, 26 May 2010.

664 **C-104** BVI Register of Companies Search Report, 10 November 2020.

665 Bahari WS1 ¶ 95.

666 **C-183** Azerbaijan visa for Mr. Bahari dated 7 October 2013; *see also* **R-58** Letter from the State Border Service of the Republic of Azerbaijan to the SSPI.

Date	Event
October 2013	Mr. Bahari and Minister Heydarov met in the latter's office at the Ministry of Emergency Situations over a three-day period. Each meeting lasted between 30 minutes and three hours. Minister Heydarov informed Mr. Bahari that his only option was to sue President Aliyev. Mr. Bahari did not agree to this plan, and left Azerbaijan without a solution. Following that meeting, Mr. Bahari continued to try to contact Minister Heydarov.[667]
October 2013	During his visit to Azerbaijan, Mr. Bahari ran into Mr. Zeynalov and realized he was working at Coolak Baku.[668]
2014	One of Minister Heydarov's associates contacted Mr. Bahari and threatened him to stop calling or he would "[redacted]."[669]
27 May 2014	Mr. Moghaddam was released from jail on presidential pardon from President Aliyev. Upon his release, he was immediately moved to a holding facility for deportation.[670]
29 May 2014	Within two days of being released from prison in Azerbaijan, Mr. Moghaddam was deported to Tehran. He was not able to see his wife or daughter before being deported.[671]
2017	Mr. Bahari instructed a local lawyer in Azerbaijan, Mr. Yusif Allahyarov, to investigate the status and value of his properties for Shuvalan Sugar and Coolak Baku.[672]
Between 2017 and 2018	Mr. Allahyarov looked into the status of Shuvalan Sugar and Coolak Baku using publicly available sources, but had no success.[673]
Early January 2019	Mr. Bahari asked Mr. Allahyarov, via Mr. Moghaddam, to make a formal inquiry to the relevant Azeri Government agencies to ask about his properties in Azerbaijan.[674]

667 Bahari WS1 ¶¶ 95-96; *see also* Zeynalov WS ¶ 52 (corroborating that he encountered Mr. Bahari in Baku at that time and that Mr. Bahari told him he was in Azerbaijan to meet with Minister Heydarov.)

668 Bahari WS1 ¶ 97.

669 Bahari WS1 ¶ 97.

670 **C-071** Penitentiary Service of the Ministry of Justice of Azerbaijan Release Document for Naser Tabesh Moghaddam, dated 26 May 2014; Moghaddam WS ¶ 88.

671 Moghaddam WS ¶ 88.

672 Bahari WS1 ¶ 99; Allahyarov WS ¶¶ 7-8.

673 Allahyarov WS ¶¶ 7-8 .

674 Bahari WS1 ¶ 99; Allahyarov WS ¶¶ 7-8.

Date	Event
14 January 2019	Mr. Allahyarov wrote a letter to the Chairman of the State Committee for Properties Issues to inquire about the status of Mr. Bahari's properties.[675]
18 January 2019	Mr. Allahyarov received a call from the Deputy Head of the Legal Department of the State Committee for Property Issues, who invited him to a meeting in her offices. She informed Mr. Allahyarov that she had received his letter, but informed him that he should stop inquiring about the properties mentioned in it as they were beyond a "[redacted]," and that if he stuck his head out he would "[redacted]."[676]
Second half of January 2019	Following that meeting, Mr. Allahyarov refused to continue to represent Mr. Bahari.[677]
2020	Mr. Bahari prevailed on a colleague to visit Coolak Baku. The colleague informed him that the Coolak Baku facility was gone and someone had begun construction on a high-rise building at the site.[678]
21-23 July 2021	Mr. Bahari ask his former secretary, Konul Ramazanova, and her husband, Timur Abdulmajidov, to take pictures of his investments in Azerbaijan to help prepare his claim against Azerbaijan. On 23 July 2021, Ms. Ramazanova and Mr. Abdulmajidov are detained and questioned at Caspian Fish about their connection to Mr. Bahari.[679]
August 2021 to April 2022	Ms. Ramazanova and Mr. Abdulmajidov are subject to repeated harassment, intimidation, and assault by Azerbaijan because of their assistance to and relationship with Mr. Bahari.[680]
26 April 2022	Summons from the Azerbaijan Office of the Prosecutor General is issued to Mr. Abdulmajidov alleging that he and Mr. Bahari had been manufacturing of illegal drugs at the Caspian Fish company. Mr. Abdulmajidov would have been 6 or 7 years old the last time Mr. Bahari was in Azerbaijan at Caspian Fish.[681]

675 **C-068** Letter from Yusuf Allahyarov to Chairman of the State Committee for Property Issues, 14 January 2019.

676 Allahyarov WS ¶¶ 11-12.

677 Bahari WS1 ¶ 98.

678 Bahari WS1 ¶ 29.

679 Ramazanova WS1 ¶¶ 21-28; Abdulmajidov WS1 ¶¶ 10-19.

680 Ramazanova WS1 ¶¶ 29-68; Abdulmajidov WS1 ¶¶ 20-78.

681 **C-241** Prosecutor General Summons for A. Timur dated 26 April 2022; Ramazanova WS1 ¶ ; Abdulmajidov WS1 ¶¶ 65-71; C-241.

Date	Event
25 July 2022	Caspian Fish (BVI) was struck off the BVI Registry of Corporate Affairs.[682]

[682] **C-152** BVI Register of Companies Search Report Caspian Fish Co. Inc., 5 April 2023.

PART IV: LEGAL ARGUMENT - THE TRIBUNAL HAS JURISDICTION OVER MR. BAHARI'S CLAIMS

I. MR. BAHARI MADE AN INVESTMENT IN AZERBAIJAN.

391. Azerbaijan's principal objection against Mr. Bahari's evidence at this stage is that he did not make an investment in Azerbaijan. That argument fails on the facts, as explained above, but it also fails as a matter of law for two simple reasons: first, in attempting to import the *Salini* test and arguing that Mr. Bahari's investments through a BVI company are not in the territory of Azerbaijan, Azerbaijan refuses to abide by the simple terms of the Treaty, which clearly defines investment and does not bar indirect investments. Second, Azerbaijan impermissibly parses out Mr. Bahari's investment to claim that he did not own it at the relevant times. As explained herein, both attempts fail.

A. MR. BAHARI'S INVESTMENTS ARE QUALIFYING INVESTMENTS UNDER THE TREATY.

1. The *Salini* Test Does Not Apply

392. Azerbaijan, in its Rejoinder, continues to contend that the so-called *Salini* criteria (risk, contribution, and duration) apply to the definition of "investment" contained in Article 1(1) of the Treaty, which, irrespective of its actual text, Respondent contends implies some 'objective' definition of investment.[683] In so doing, Azerbaijan makes the confusing statement in its Rejoinder that "[t]ribunals 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 interpreting the word 'investment' as contained in the relevant treaty."[684] In support of that statement, Azerbaijan cites two ICSID cases, both of which were interpreting the meaning of the word "investment" as it is used in the ICSID Convention.[685]

393. Neither case is, for that simple reason, availing. Indeed, the *Salini* test came about as a creation of the ICSID Convention, which contains no definition of investment while

683 SoD § 2(III)(B); SoRJ § 2(III)(B).

684 SoRJ, ¶ 178.

685 *See* SoRJ ¶ 178 (citing Orazul International España Holdings S.L. v. Argentine Republic, ICSID Case No. ARB/19/25, Award, 14 December 2003 (**RLA-266**), ¶ 446; Rand Investments v Serbia, ICSID Case No. ARB/18/8, Award, 29 June 2023; (**RLA-267**), ¶ 228).

simultaneously limiting its application to 'investment' disputes.[686] And, even in the ICSID context, which this case is not, there is no consistent deployment of the *Salini* test. As the annulment committee in *Malaysian Historical Salvors* recognized:

> It is those bilateral and multilateral treaties which today are the engine of ICSID's effective jurisdiction. To ignore or depreciate the importance of the jurisdiction they bestow upon ICSID, and rather to embroider upon questionable interpretations of the term "investment" as found in Article 25(1) of the Convention, risks crippling the institution.[687]

394. Thus, numerous tribunals have, even in ICSID cases, declined to read any definition into the meaning of "investment" as that term is used in the ICSID Convention, acknowledging the importance of not supplanting the judgment of the drafters of a BIT when they defined "investment" for purposes of their bilateral relations.[688]

395. The Parties agree that the application of the *Salini* test is debated in cases to which the ICSID Convention does not apply.[689] Nevertheless, Respondent insists that "[i]n the case of the Treaty, where the term 'investment' is not defined by reference to any other criteria," recourse to the *Salini* test is required in light of "the ordinary meaning of the term with reference to the object and purpose of the Treaty."[690] That interpretation fails on its premise: the Treaty does define investment, and its ordinary meaning, interpreted in light

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686 *See* C. Schreuer, L. Malintoppi, A. Reinisch, and A. Sinclair, *The ICSID Convention: A Commentary*, (2nd ed. Cambridge), Commentary on Article 25, 2009 (**CLA-315),** ¶ 113 ("The concept of investment is central to the Convention. Yet, the Convention does not offer any definition or even description of this basic term.").

687 *Malaysia Historical Salvors, SDN, BHD v. Malaysia*, ICSID Case No. ARB/05/10, Decision on Annulment, 16 April 2009 (**CLA-316**), ¶ 73.

688 *See, e.g.*, *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Decision on Jurisdiction, 8 March 2010 (**CLA-317**), ¶ 130 ("in most cases—including, in the Tribunal's view, this one—it will be appropriate to defer to the State parties' articulation in the instrument of consent (e.g. the BIT) of what constitutes an investment. The State parties to a BIT agree to protect certain kinds of economic activity, and when they provide that disputes between investors and States relating to that activity may be resolved through, inter alia, ICSID arbitration, that means that they believe that that activity constitutes an "investment" within the meaning of the ICSID Convention as well. That judgment, by States that are both Parties to the BIT and Contracting States to the ICSID Convention, should be given considerable weight and deference. A tribunal would have to have compelling reasons to disregard such a mutually agreed definition of investment"); *Alois Schönberger v. Republic of Tajikistan*, ICSID Case No. ARB/(AF)/19/1, Award, 8 December 2003 (**CLA-318**), ¶ 229 ("[w]here, as here, the contracting states to the BIT have expressly articulated such criteria, there can be no basis for the implication of further criteria – whether in the form of the *Salini* criteria or otherwise").

689 SoRJ, ¶ 179.

690 SoRJ, ¶ 179.

of Vienna Convention Article 31, is sufficiently clear as not to require recourse to any extrinsic yardstick such as the *Salini* criteria.

396. Article 1 of the BIT is titled "Definitions," and Article 1(1) defines investments to include "in conformity with the hosting Party's laws and regulations…every kind of assets[.]"[691] Article 1(1) then goes on to list five types of assets that qualify "in particular" as investments, although "every kind of assets" encompasses, by its plain meaning, more than only the enumerated types of assets.[692]

397. The term "assets" has meaning within international law. Black's Law Dictionary defines assets to include:

> **Asset**. (16c) **1.** An item that is owned and has value. **2.** (pl.) The entries on a balance sheet showing the items of property owned, including cash, inventory, equipment, real estate, accounts receivable, and goodwill. **3.** (pl.) All the property of a person (esp. a bankrupt or deceased person) available for paying debts or for distribution.[693]

398. Taking the literal definition of "investments" in context, and in light of the Treaty's object and purpose, does not lead to the conclusion Azerbaijan draws. First, the context of the definition of "investment" does not lead to a conclusion that the term has any inherent meaning beyond its text. Article 1(3) defines "returns" as that term is used in Article 1(1)(ii), to include "the amounts legally yielded by investments" including "profit, payments deriving from loans, capital gains, dividends, royalties and fees."[694] Thus, passive returns qualify as investments, as defined by the Treaty Likewise, nothing in the substantive protections accorded to investments in the BIT implies that "investments" means anything other than "assets," as defined in Article 1(1).

399. Second, the preamble to the Treaty, laying out its object and purpose, indicates the Contracting Parties' "desir[e] to promote greater economic cooperation between them," to "stimulate the flow of capital and technology and the economic development of the Parties" and "maintain a stable framework for investment and maximum effective utilization of

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691 Treaty (**CLA-001**), Art. 1(1).

692 *Id*; *Accord Romak S.A. v. The Republic of Uzbekistan*, PCA Case No. 2007-07/AA280, UNCITRAL, Award, 26 November 2009 ("***Romak***") (**RLA-19**), ¶ 175 ("Both Parties agree that the list is not exhaustive – which is confirmed by a straightforward reading of the introductory expression 'and particularly.'")

693 Black's Law Dictionary, Ninth Edition. WEST (**CLA-319**). This same definition was considered by the tribunal in *Romak*. *See Romak* (**RLA-19**), ¶ 177, n. 153.

694 Treaty (**CLA-001**), Art. 1(3).

economic resources."[695] None of those implies the need for an 'objective' definition of investment based on intrinsic criteria either.[696]

400. Azerbaijan's argument in favor of adopting the *Salini* criteria to provide an objective definition of investment in the BIT at hand skips entirely over any assessment of the context of the BIT. Rather, in its Statement of Defense Azerbaijan quotes the text of Article 1(1) and then immediately moves to a "consider[ation] [of] the Treaty's object and purpose in line with Article 31 VCLT" to conclude that the Contracting Parties to the Treaty did not intend to protect "mere one-off commercial transactions."[697] It is rare, however, for the preamble to a BIT to shed much light on the notion of "investment" as the *Romak* tribunal acknowledged, the Treaty's "stated object and purpose shed little light on the meaning of the term 'investments' and 'leaves it ambiguous or obscure.'"[698]

401. Azerbaijan's otherwise reliance on *Romak* to argue that reference only to the non-exhaustive list of assets included in Article 1(1) "would eliminate any practical limitation to the scope of the concept of 'investment'"[699] is unavailing. While the *Romak* tribunal held that the term investment had an "inherent meaning…entailing a contribution that extends over a certain period of time and that involves some risk,"[700] they did so on the specific facts of that case.

402. In *Romak*, the claimant claimed that its investment consisted of wheat deliveries made under a supply agreement, which were not paid for, and an ICC award requiring payment for those deliveries.[701] As elaborated below, much of the tribunal's reasoning in that case

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695 Treaty (**CLA-001**), Preamble.

696 As the tribunal noted in *Tza Yup Shum*, when confronted with an argument from Peru that would have had it reading an exclusion of indirect investments into the BIT that was not included in its text, "[t]his…would result in an unusual hermeneutic exercise, to the extent that the Tribunal would be inferring conclusions not in the express purposes of the [BIT] to encourage and protect investments, but rather on implicit exceptions to them." *Tza Yap Shum v. Peru*, ICSID Case No. ARB/07/6, Decision on Jurisdiction and Competence, 19 June 2009 (**CLA-320**), ¶ 108.

697 *See* SoD ¶ 77.

698 *Romak* (**RLA-19**), ¶ 189.

699 SoD, ¶ 77.

700 *Romak* (**RLA-19**), ¶ 207.

701 *Romak* (**RLA-19**), ¶ 209. With respect to the latter alleged investment, the tribunal expressed particular concern. It noted that a "mechanical application" of the categories of assets included in the definition of investment "would create, *de facto*, a new instance of review of State court decisions concerning the enforcement of arbitral awards. Under the scenario advocated by Romak, any award rendered in favor of a national of a Contracting Party (even one rendered in a purely commercial arbitration procedure) would be considered a 'claim to money' or, arguably – as pleaded by Romak – a 'right given by decision of the authority.' The refusal or failure of the host State's courts to enforce such an award would therefore arguably provide

seems to have been motivated by a desire to ensure that arbitral awards would not qualify as investments subject to treaty protection, a notion that would offend the system of investor-state dispute settlement.

403. The tribunal also seemed offended that the claimant intended to resort to defining "investment" on the basis of its text alone, ignoring the other criteria in Article 31 of the Vienna Convention. Indeed, it concluded that a "literal construction" of the definition of investment was "untenable" as a matter of international law,[702] because "a literal application of the terms of the BIT effectively ignores the second sentence of Article 31(1) of the Vienna Convention."[703] Thus, the tribunal determined, it was necessary to assess those terms in light of their context and the object and purpose of the BIT.

404. In terms of the context of the BIT, the tribunal focused on two sources:

a. First, it acknowledged that, "on the same day the BIT was signed, the Swiss Confederation and the Republic of Uzbekistan also entered into an Agreement on Trade and Economic Cooperation," which "specifically regulates the two States' mutual rights and obligations in relation to contracts for the sale of goods between parties established in the two States."[704] Acknowledging the existence of this agreement, the tribunal was "therefore persuaded that the Contracting Parties to the BIT adopted a distinction – also drawn in international practice – between trade and investment" and that the BIT constituted "a special and discrete treaty…concluded with respect to investment."[705]

b. Second, the tribunal assessed the text of other sections of the BIT, including its preamble, the fact that it defined the term "returns," repeatedly referenced "territory" in relation with the investment, and the BIT's substantive FET

sufficient grounds for a de novo review – under a different international instrument and on grounds different from those that would normally apply – of the State courts' decision not to enforce an award." *Id*. ¶ 186. This concern motivated in large part the tribunal's determination that a literal interpretation of investment would lead to a manifestly absurd or unreasonable result. *See id*. ¶¶ 184-187.

702 *Romak* (**RLA-19**), ¶ 188.

703 *Romak* (**RLA-19**), ¶ 181.

704 *Romak* (**RLA-19**), ¶ 182.

705 *Romak* (**RLA-19**),

protections,[706] all of which it found "denote an economic activity involving some permanence or duration in relation to the host State."[707]

405. With respect to the BIT's object and purpose, the tribunal noted that the preamble to the BIT included "economic cooperation to the mutual benefit of both States" and the "aim to foster the economic prosperity of both States," which it found "suggests an intent to protect a particular kind of assets, distinguishing them from mere ordinary commercial transactions."[708]

406. Thus, the *Romak* tribunal concluded that the BIT at issue (the Switzerland-Uzbekistan BIT) intended "investments" to encompass more than any type of asset. In doing so, it acknowledged the ongoing debate regarding the scope of the definition of 'investment' in the ICSID Convention and acknowledged that it did not need to assess the meaning of 'investment' within the Convention, but it also noted that it could not "ignore the fact that Article 9(3) of the BIT provides for the possibility to resort to ICSID Arbitration."[709] Its adoption of a test like *Salini* was, therefore, at least partially motivated by its necessary acknowledgment that Romak's proposed interpretation of the definition would mean "the definition of the term 'investment' may vary depending on the investor's choice between UNCITRAL or ICSID Arbitration," with the "definition of 'investment' in UNCITRAL proceedings (i.e., under the BIT alone) [being] wider than in ICSID Arbitration."[710] In its assessment, that issue too meant that adopting the asset-based definition of investment in its broadest form would lead to an unreasonable result, given that it "would imply that the substantive protection offered by the BIT would be narrowed or widened, as the case may be, merely by virtue of a choice between the various dispute resolution mechanisms sponsored by the Treaty."[711] Claimant notes that no such consideration is at play here, given that the Treaty makes no reference to ICSID Arbitration, and ICSID Arbitration is in fact unavailable because Iran has neither signed nor ratified the ICSID Convention.

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706 Article 3(1) of the Switzerland-Uzbekistan BIT provides for protection of investments made "within [the] territory" of both contracting parties.

707 *Romak* (**RLA-19**), ¶ 206.

708 *Romak* (**RLA-19**), ¶ 189.

709 *Romak* (**RLA-19**), ¶¶ 191-193.

710 *Romak* (**RLA-19**), ¶ 193

711 *Romak* (**RLA-19**), ¶¶ 193-194; *see id*. ¶ 195 (noting that applying a different definition of investments in UNCITRAL and ICSID proceedings "would…render meaningless – or without ***effet utile*** – the provision granting the investor a choice between ICSID or UNCITRAL Arbitration.").

407. Having completed its assessment, the *Romak* tribunal concluded that the claimant's rights "were embodied in and arise out of a sales contract, a one-off commercial transaction pursuant to which Romak undertook to deliver wheat against a price to be paid by the Uzbek parties."[712] It thus declined them treaty protection.

408. As other tribunals have noted, the *Romak* decision is somewhat an outlier among cases under the UNCITRAL Rules. The *Guaracachi America* tribunal, for example, referred to *Romak* as "fact-specific" and "exceptional in the case law outside the ICSID system."[713] That tribunal, which was also constituted under the UNCITRAL Rules, continued that it would be "not appropriate to import 'objective' definitions of investment created by doctrine and case law in order to interpret Article 25 of the ICSID Convention when in the context of a non-ICSID arbitration such as the present case."[714]

2. Even If The *Salini* Test Did Apply, Mr. Bahari's Investments Qualify

409. Even if some objective definitions of investment were called for here, requiring contribution, duration, and risk, Mr. Bahari's investments meet that definition.

410. Contribution. The *Romak* tribunal considered that "[a]ny dedication of resources that has economic value…can be a 'contribution."[715] Tribunals have not limited their assessment of "contribution" to solely money contributions, but have consistently recognized that contribution includes the provision of knowledge, personnel, and materials.[716] Tribunals have likewise recognized that contribution need not be made directly in the host state to qualify.[717]

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712 *Romak* (**RLA-19**), ¶ 242.

713 *Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2013 (**CLA-202**), ¶ 364.

714 *Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2013 (**CLA-202**), ¶ 364

715 *Romak* (**RLA-19**), ¶ 207.

716 This was in fact the contribution recognized in *Salini*: ""It is not disputed that [the Italian companies] used their know-how, that they provided the necessary equipment and qualified personnel for the accomplishment of the works, , that they set up the production tool on the building site, that they obtained loans enabling them to finance the purchases necessary to carry out the works and to pay the salaries of the workforce, and finally that they agreed to the issuing of bank guarantees…The Italian companies, therefore, made contributions in money, in kind, and in industry." *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001 (**RLA-65**), ¶ 53.

717 *See LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction, 12 July 2006 (**CLA-321**), ¶ 73 ("It is also common for these investments to be made in the country concerned, but this is not an absolute condition either. In fact, there is nothing to prevent

411. Mr. Bahari's investments included two companies whose operations he built up and financed, as well as his large and valuable carpet collection and his property in Ayna Sultan. With respect to both Caspian Fish and Coolak Baku, Mr. Bahari's contributions totaled more than $65 million, based solely on the evidence as verified by Secretariat.[718] It cannot, therefore, be seriously disputed that Mr. Bahari contributed to his investments. By contrast, the tribunal in *GEA Group AG v. Ukraine*, which applied but did not adopt the *Salini* test,[719] found that a contract for the conversion of raw materials into finished products satisfied the contribution criterion.[720]

412. Duration. As the *Romak* tribunal found, "as a matter of principle, there is [no] fixed minimum duration that determines whether assets qualify as investments. Short-term projects are not deprived of 'investment' status solely by virtue of their limited duration."[721] Thus, they found, "[d]uration is to be analyzed in light of all of the circumstances, and of the investor's overall commitment."[722] This same view is taken by Dolzer and Schreuer in their work on *Principles of International Investment Law*, in which they note that the assessment of duration "will boil down to distinguishing an 'investment' from a one-off deal in the form of a trade transaction (or sale), with no component of duration."[723] In assessing duration, tribunals have consistently held that two to five years is sufficient duration to qualify.[724]

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investments being at least partly made from the contracting party's country of residence, but with a view to and as part of the project to be carried out abroad.").

718 *See supra*, PART III § I.B.9 ; PART III § II.B.1.

719 *See GEA Group Aktiengesellschaft v. Ukraine*, ICSID Case No. ARB/08/16, Award, 31 March 2011 ("***GEA v. Ukraine***") (**CLA-322**), ¶ 143 (having considered the debate regarding *Salini*, the tribunal noted that "In the circumstances of this case, this is a controversy that need not be resolved…the Tribunal has considered all potentially applicable criteria and…each leads to the same conclusion.").

720 *See GEA v. Ukraine* (**CLA-322**), ¶ 151.

721 *Romak* (**RLA-19**), ¶ 225.

722 *Romak* (**RLA-19**), ¶ 225.

723 Dolzer and Schreuer, Principles of International Investment Law (2nd Ed.), 2012, p. 75 (**CLA-323**).

724 *See, e.g.*, *GEA v. Ukraine* (**CLA-322**), ¶ 152 (finding that claimant had met the *Salini* criteria given that "the relationship extended over a certain duration (a three year period if one considers only the time period when the Claimant was involved)."); *Chevron Bangladesh Block Twelve, Ltd. and Chevron Bangladesh Blocks Thirteen and Fourteen, Ltd. v. People's Republic of Bangladesh*, ICSID Case No. ARB/06/10, Award, 17 May 2010 (**CLA-324**), ¶ 125(b) ("in ICSID Case No. ARB/05/07, Saipem S.p.A. v. People's Republic of Bangladesh, Bangladesh acknowledged that a two year period would generally be sufficient to satisfy the Salini standard. Other cases, notably Salini itself, suggest a period of two to five years[.]")

413. Mr. Bahari began investing in Azerbaijan in 1996 and maintained his investments there on an active basis until his expulsion from the country in 2001. This five-year period more than meets the threshold for duration.[725]

414. Risk. The *Romak* tribunal illustrated risk, for these purposes, as "a situation in which the investor cannot be sure of a return on his investment, and may not know the amount he will end up spending, even if all relevant counterparties discharge their contractual obligations."[726] Other tribunals have recognized the same, including *Salini* itself, in which the tribunal held that the claimant's risk consisted of:

> the risk associated with the prerogatives of the Owner permitting him to prematurely put an end to the contract, to impose variations within certain limits without changing the manner of fixing prices; the risk consisting of the potential increase in the cost of labour in case of modification of Moroccan law; any accident or damage caused to property during the performance of the works; those risks relating to problems of co-ordination possibly arising from the simultaneous performance of other projects; any unforeseeable incident that could not be considered as force majeure and which, therefore, would not give rise to a right to compensation; and finally those risks related to the absence of any compensation in case of increase or decrease in volume of the work load.[727]

415. There can be no question that Mr. Bahari's investments were subject to risk. He opened two businesses in post-Soviet Azerbaijan, incurring both market and country risk, and he could not be certain of his probable returns from either enterprise.[728]

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725 *Accord* C. Schreuer, L. Malintoppi, A. Reinisch, and A. Sinclair, *The ICSID Convention: A Commentary*, (2nd ed. Cambridge), Commentary on Article 25, 2009, (**CLA-315**), ¶ 162 ("Tribunals seem to have regarded a period of two to five years as sufficient."). Nor is it relevant that this period extended before the Treaty entered into force. Mr. Bahari notes that the Treaty expressly covers investments made prior to its entry into force in its Article 12. *See* Treaty (**CLA-001**), Art. 12(1) ("This Agreement…shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.")

726 *Romak* (**RLA-19**), ¶ 230.

727 *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001 (**RLA-65**), ¶ 55.

728 *Accord* C. Schreuer, L. Malintoppi, A. Reinisch, and A. Sinclair, *The ICSID Convention: A Commentary*, (2nd ed. Cambridge), Commentary on Article 25, 2009, (**CLA-315**), ¶ 163 (To many tribunals, "[t]he very existence of the dispute was seen as an indication of risk").

B. MR. BAHARI HAD OWNERSHIP OVER HIS INVESTMENT AT ALL RELEVANT TIMES.

1. Mr. Bahari's Investments Should Be Treated As A Whole.

416. Respondent parcels out the component parts of Mr. Bahari's investments to allege that he did not own his investments at the time Azerbaijan breached the Treaty.[729] With respect to Caspian Fish, for example, Azerbaijan complains that the equipment Mr. Bahari imported into Azerbaijan for the facility was then placed and used in it, meaning Mr. Bahari no longer held title to the equipment at the time of the breach; Azerbaijan likewise claims that he did not own the building in which Caspian Fish was operating at the time of the breach.[730] This nonsensical approach ignores that the scope of Mr. Bahari's investment was his work in Caspian Fish and Coolak Baku (which included Shuvalan Sugar), two operating Azerbaijani companies,[731] as well as Ayna Sultan and his collection of carpets.[732]

417. As the United Nations Conference on Trade and Development (UNCTAD) explains:

> It is questionable whether an investor (or tribunal) may slice the relevant business into discrete elements in order to isolate one that has been most seriously impacted by the measure, especially in cases of indirect expropriation. . . . The purpose of the definition of investment, which lists individual assets, is to define the general scope of the treaty application but, presumably, not to enable the individual treatment of those items or assets where they function as part of an integral business operation.[733]

Thus, where a claimant's investment consists of various property interests that the investor used together as part of a going concern, **tribunals typically consider the investment as a whole** in determining whether a given measure has had expropriatory effect, a finding tied closely to Respondent's framing that Mr. Bahari must show he owned his investment "at the time of the breach."

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729 It should be noted that, for the Tribunal to find jurisdiction over Mr. Bahari's claims, it is sufficient to find that he owned any part of his claimed investment at the time Azerbaijan breached the Treaty.

730 SoD ¶¶ 100(a)-(b).

731 Indeed, Respondent itself argued in its Statement of Defense that "the only possible interest Mr. Bahari can be said to have had **in a company in Azerbaijan** is his participation in the LLC via BVI co." SoD ¶ 86 (emphasis added).

732 Respondent's case with respect to Ayna Sultan and Mr. Bahari's carpet collection is that he reportedly sold both prior to leaving Azerbaijan. This is wrong on the facts, as explained above. *See supra* Part III § IV-V.

733 Expropriation, UNCTAD Series on Issues in International Investment Agreements II (2012) (**CLA-142**), p. 24.

418. In *Telenor v. Hungary*, for example, the investor was a telecommunications company that claimed, as its investment, a radiotelephone network, customers, rights under a concession agreement, and expectations of income.[734] Hungary took a series of measures against the company, including levying fees in excess of those specified in the parties' concession agreement, subsidizing the investor's main competitor, and capping the fees it could charge its customers.[735] Although each of these targeted different parts of the claimant's investment, the tribunal concluded that "the investment must be viewed as a whole" and held that the test it should apply "is whether, viewed as a whole, the investment has suffered substantial erosion of value."[736]

419. The present case does not present a situation in which the investor acquires shares in an existing company and therefore has, as its primary investment, those shares. This is the rarer shareholder case in which Mr. Bahari, as the initial and primary investor, himself handled and funded the startup of the investment, including by importing equipment and coordinating construction of both the Caspian Fish and Coolak Baku facilities. The harm he has suffered is the loss of the value of his investment in both companies, a loss which is due, not only to his loss of shares following their forced transfer to other individuals, but also the expectations formed at the time of his making his investment that he would see return for the amounts he paid to finance construction and startup. In any event, Azerbaijan cannot deny that as an indirect shareholder in Caspian Fish and a direct shareholder in Coolak Baku, Mr. Bahari retained an ownership stake in their equipment and other immovable and movable assets even after he conveyed them to both companies.

420. Azerbaijan argues in its Rejoinder that "[a]ssets and contracts belonging to a company in which an investor owns shares do not qualify as 'investments' of the investor,"[737] relying on *Casinos v. Argentina*. That decision is, however, tied to the requirements of the BIT that governed it. The Argentina-Austria BIT, which applied in that case, provided that investors are those who make investments, and thus the tribunal found that only "an

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734 *Telenor Mobile Communications v. Republic of Hungary*, ICSID Case No. ARB/04/15, Award, 13 September 2006 (**CLA-325**), ¶ 61.

735 *Telenor Mobile Communications v. Republic of Hungary*, ICSID Case No. ARB/04/15, Award, 13 September 2006 (**CLA-325**), ¶ 35.

736 *Telenor Mobile Communications v. Republic of Hungary*, ICSID Case No. ARB/04/15, Award, 13 September 2006 (**CLA-325**), ¶ 67.

737 SoRJ, ¶ 187.

'investment' that is owned by an Austrian 'investor'" would be protected under the BIT.[738] On that basis, it declined to extend treaty protection to the investor over the assets of a local subsidiary, which owned its assets as a national of Argentina.

421. In any event, a series of other cases based on BITs like the one at hand have held that an investor may make a direct claim for the assets associated with a local company, as Mr. Bahari does here. In *von Pezold v. Zimbabwe*, for example, the tribunal acknowledged that the enquiry "must be a matter of interpretation of the relevant BIT."[739] It noted that the BITs at issue there contained broad, asset-based definitions of "investment" like that in the Treaty applicable here, and analyzed how each of the assets claimed by the claimants, including both their shareholding and the underlying assets, fell within the BIT's defined categories of assets.[740] On that basis, it held "it would be artificial and unjust to limit the…Claimants to a claim for the indirect expropriation of their shareholdings."[741]

422. As one tribunal elaborated:

> To restrict the BIT's scope of application only to assets that are established or acquired directly by the investor would require the investor to hold title to each and every asset in the host State. It is of course free to States to stipulate such a requirement in their treaty, but this would require express language to qualify the ordinary meaning of ownership and control. Reading in such a requirement in the absence of treaty text would tend to negate treaty protection for investments made with any sort of corporate structure. Such a restrictive reading would not be consonant with commercial reality and simply cannot be read into the BIT.[742]

738 *Casinos Austria v. Argentina* (**CLA-059**), ¶ 183. The Austria-Argentina BIT provides that an investor includes an individual or entity "who makes an investment in the territory of the other Contracting Party." In its assessment of the claim, the tribunal emphasized the timeline of the claimant's investment, and noted that the assets of the local company they were claiming as their investments included the operating license which "was an asset that belonged, already at the time of the public tender, to ENJASA….the participants in the privatization process did not bid for the 30-year operating license and later create[] ENJASA to hold that license. They participated in the bid in order to become shareholders of ENJASA." *Id*. ¶ 184. Mr. Bahari's situation is the opposite: he invested the assets, and then created a BVI shareholding entity to hold them.

739 *Bernhard v. Zimbabwe*, (**CLA-117**), ¶ 322.

740 *Bernhard v. Zimbabwe*, (**CLA-117**), ¶ 322.

741 *Bernhard v. Zimbabwe*, (**CLA-117**), ¶ 325.

742 *Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India*, PCA Case No. 2016-07, Final Award, 21 December 2020 (**CLA-326**), ¶ 718. That case differs from the present scenario because the applicable BIT provided a direct right of action to shareholders to claim for the loss of the assets of their investment company. *See id*. ¶ 725.

423. Likewise, the annulment committee in *Azurix v. Argentina* rejected an argument from the respondent seeking to overturn the award on the basis that it would have allowed a shareholder to make a direct claim for assets held by the local company, noting that:

> the Committee considers that, even where a foreign investor is not the actual legal owner of the assets constituting an investment, or not an actual party to the contract giving rise to the contractual rights constituting an investment, that foreign investor may nonetheless have a financial or other commercial interest in that investment. This is so, irrespective of whether the actual legal owner of the assets or contractual rights constituting the investment is a wholly or partly owned subsidiary of the investor, or whether the actual legal owner is an unrelated third party. The Committee sees no reason in principle why an investment protection treaty cannot protect such an interest of a foreign investor, and enable the foreign investor to bring arbitration proceedings in respect of alleged violations of the treaty with respect to that interest.[743]

2. In Any Event, Mr. Bahari Owned His Investments At The Time Azerbaijan Breached Its International Obligations.

424. As is explained in full *supra* and in Mr. Bahari's prior submissions, all of Azerbaijan's arguments that he ceased to own his investments are baseless.[744] Thus, as of the date of breach of 1 January 2003, Mr. Bahari retained:

a. Ownership of his shares in Caspian Fish;

b. Ownership of his shares in Coolak Baku;

c. Ownership of his property at Ayna Sultan; and

d. Ownership of his carpets.

425. Any argument Azerbaijan makes to the contrary misstates the record.

C. MR. BAHARI'S INVESTMENTS WERE IN THE TERRITORY OF AZERBAIJAN.

426. Azerbaijan's complaints that Mr. Bahari's investments were not made in the territory of Azerbaijan suffer the same analytical misstep as its complaints about his ownership over

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743 *Azurix Corp. v. The Argentine Republic (I)*, ICSID Case No. ARB/01/12, Decision on Application for Annulment, 1 September 2009 (**CLA-327**), ¶ 108.

744 *See supra* Part III § III.

it: Azerbaijan parses out the component parts of his investment without considering the whole.[745]

427. Regardless, however, Azerbaijan's principal complaint about Mr. Bahari's shareholding in Caspian Fish seems to be that what he held were shares in a BVI company that in turn owned the assets in Azerbaijan. Tribunals, however, routinely find that investments held indirectly through an intermediary (such as the BVI company) are protected under BITs.[746] Indeed, broad and illustrative asset-based definitions like the one contained in the Treaty applicable here have been consistently found to include investments held indirectly by an investor.[747]

428. In such cases, no express reference to "indirect investments" is required for them to achieve treaty protection. As the tribunal in *Guaracachi America v. Bolivia* explained:

> According to the Tribunal, the fact, invoked by the Respondent, that other BITs concluded by Bolivia explicitly include indirect investments, is insufficient to support an a contrario sensu interpretation that only those BITs containing such an explicit reference cover indirect investments, since it is well accepted that this kind of argument is not on its own strong enough to justify a particular interpretation of a rule of law. **The mere absence of an explicit mention of the different categories of investment (direct and indirect) cannot be interpreted as narrowing the definition of investment under the BIT to only direct investment**.[748]

The tribunal in *Hesham Talaat M. al-Warraq v. Indonesia* reached the same conclusion. It found that Indonesia's argument in that case that "investment treaties must explicitly include indirect investments in their definition, or else the protection of investments is confined to direct investments" was unsupported by "contemporary arbitral jurisprudence," which "adopts a broader definition of 'investment.'"[749]

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745 And, in any event, Respondent cannot complain that Ayna Sultan was not in Azerbaijan.

746 *See, e.g.*, *Société Ouest Africaine des Bétons Industriels (SOABI) v. Senegal*, ICSID Case No. ARB/82/1, Decision on Jurisdiction, 1 August 1984 (**CLA-328**), ¶ 1 (recognizing that investors may choose to invest their capital through intermediate entities for a variety of legitimate reasons).

747 *See, e.g.*, *Siemens, A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8. Decision on Jurisdiction, 3 August 2004 (**CLA-329**), ¶ 137; *Ioannis Kardassopolous v. Republic of Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction, 6 July 2007 (**CLA-044**), ¶¶ 123-124; *Guaracachi America, Inc. v. Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014 (**CLA-202**), ¶¶ 352-54; *Hesham Talaat M. al-Warraq v. Republic of Indonesia*, UNCITRAL, Final Award, 15 December 2014 (**CLA-222**), ¶¶ 503, 511, 514, 516.

748 *Guaracachi America, Inc. v. Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014 (**CLA-202**), ¶ 354 (emphasis added).

749 *Hasham Talaat M. al-Warraq v. Republic of Indonesia*, UNCITRAL, Final Award, 15 December 2014 (**CLA-222**), ¶ 514.

429. The *Guaracachi America* tribunal also rejected an argument that, because the investment was indirectly held, it could not have been made in the territory of Bolivia. In doing so, the tribunal "consider[ed] that the reference in the BIT to territory of a Contracting Party…cannot be interpreted in such a manner to exclude indirect investments, **as long as the ultimate investment that was allegedly expropriated is located in the territory of a Contracting Party** [to the BIT], in this case Bolivia."[750] The tribunal in *CEMEX Caracas Investments v. Venezuela* noted the same, finding that

> when the BIT mentions investments made "in' the territory of a Contracting Party, all that it requires is that the investment itself be situated in that territory. It does not imply that those investments must be "directly" made in such territory.[751]

430. In this respect, it is significant that, by Azerbaijan's own admission,[752] Mr. Bahari was in control of his investments in Caspian Fish and Coolak Baku, and by extension, Shuvalan Sugar. In *Tza Yup Shum v. Peru*, the claimant held its investment in a company in Peru through an intermediate BVI entity, in the time period prior to the time when the dispute arose.[753] Peru objected that the claimant's indirectly held investment was not an investment "Peruvian territory," which it claimed abrogated the tribunal's jurisdiction over the claimant's investment.[754] In finding that the investment was covered by the BIT, the tribunal noted that other tribunals to have considered this issue "understood that their primary task is that of identifying the investment—not with regard to the manner in which it was channeled, but rather its actual relationship with investors that meet the nationality requirements under the…[BIT]."[755] In ruling that indirect investments were covered by the BIT, the tribunal noted that "in the absence of express language in the [BIT], it cannot be simply assumed that the intent of the agreement is to exclude indirect investments of

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750 *Hasham Talaat M. al-Warraq v. Republic of Indonesia*, UNCITRAL, Final Award, 15 December 2014 (**CLA-222**),. ¶ 158.

751 *CEMEX Caracas Investments B.V. & CEMEX Caracas II Investments B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/08/15, Decision on Jurisdiction, 30 December 2010 (**CLA-330**), ¶ 157.

752 *See supra* Part III.

753 *See Tza Yap Shum v. Peru*, ICSID Case No . ARB/07/6, Decision on Jurisdiction and Competence, 19 June 2009 (**CLA-320**), ¶¶ 81, 85. The dispute commenced with an audit of the local company, which began in May of 2004, and which involved the garnishment of the claimant's bank accounts in January 2005. *Id*. ¶ 87. In February 2005, the claimant acquired shares in the local company directly. *Id*. ¶ 85.

754 *Tza Yap Shum v. Peru*, ICSID Case No . ARB/07/6, Decision on Jurisdiction and Competence, 19 June 2009 (**CLA-320**), ¶¶ 85, 92.

755 *Tza Yap Shum v. Peru*, ICSID Case No . ARB/07/6, Decision on Jurisdiction and Competence, 19 June 2009 (**CLA-320**), ¶ 100.

natural persons when they exercise ownership and control thereof."[756] That Mr. Bahari's management of Caspian Fish and Coolak Baku remains unchallenged thus indicates that his investment should enjoy treaty protection.

431. Finally, nothing in the Treaty's definition of investor, which for an individual investor comprises "natural persons who, according to the laws and regulations of that Party, are considered to be its nationals,"[757] implies that investments cannot be held through a third party either. The claimant in *Guaracachi America* held its investment in Bolivia through three intermediate entities, all incorporated in the BVI.[758] In ruling that those investments were protected by the BIT, the tribunal held:

> the fact that the [intermediate entities] are incorporated in the British Virgin Islands—in whose territory the BIT is not applicable—is not relevant, **since none of them is a claimant in this arbitration and, according to the BIT, only the Claimants need to be nationals of a Contracting Party.**[759]

432. That Mr. Bahari's investment is held through a BVI company thus provides no basis in the Treaty to deny it protection, particularly because the Respondent was well aware of Mr. Bahari's activities in Azerbaijan. As the tribunal noted in *Flemingo DutyFree v. Poland*, although it was aware of no case in which a tribunal had "den[ied] bilateral investment treaty protection to an indirect controlling shareholder…a possible cut-off has only been envisaged for entities that were so remote from the original investment that they could not have been foreseen by the host State."[760] That is hardly the case for Mr. Bahari, whose professed business partners were high-ranking members of the Government.

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756 *Tza Yap Shum v. Peru*, ICSID Case No . ARB/07/6, Decision on Jurisdiction and Competence, 19 June 2009 (**CLA-320**), ¶ 111.

757 Treaty (**CLA-001**), Art. 1(2).

758 *Guaracachi America Inc. and Rurelec PLC v. The Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014 (**CLA-202**), ¶ 361.

759 *Guaracachi America Inc. and Rurelec PLC v. The Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014 (**CLA-202**), ¶ 362 (emphasis added).

760 *Flemingo DutyFree Shop Private Limited v. The Republic of Poland*, PCA Case No. 2014-11, Award, 12 August 2016 (**CLA-331**), ¶ 336.

II. THE TEMPORAL SCOPE OF THE TREATY DOES NOT PRECLUDE MR. BAHARI'S CLAIMS

A. THE TRIBUNAL HAS JURISDICTION OVER PRE-TREATY BREACHES OF CUSTOMARY INTERNATIONAL LAW.

433. In its Rejoinder, Azerbaijan argues that "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*".*[761]

434. This argument fails for a simple reason. It ignores the fact that, at the time it was initiated in 2001, Mr. Bahari's expulsion from Caspian Fish constituted a breach of the minimum standard of treatment under customary international law ("**MST**"), and this tribunal has jurisdiction over such pre-treaty breaches of customary law.[762]

435. As explained below, the arbitration agreement at Article 10 of the Treaty is worded in the broadest possible terms both as to the types of breaches it covers (conventional or customary), and as to the **timing** of breaches (pre- or post-treaty).

436. Article 10 reads in relevant part as follows:

> 1. In the event of occurrence of a **dispute** between a Party in whose territory an investment is made and 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.
>
> 2. In the event that [the host state] and the investor(s) are unable to agree within six months from the notification of the claim by one party to the other, each of them may refer the dispute to the [host state's courts], or, with due regard to its own laws and regulations, refer the dispute to a three member arbitration board […].[763]

761 SoRJ ¶ 153. *See also* SoD, ¶¶ 51 *et seq*.

762 *See* NOA, ¶133 (b) (relief), ([Claimant requests …] "a declaration that the Republic of Azerbaijan has breached its obligations under the Treaty **and international law** with respect to Claimant's investments in the Republic of Azerbaijan") (emphasis added).

763 Treaty (**CLA-001**), Article 10 (emphases added).

437. Contrary to the arbitration agreements found in other treaties,[764] Article 10 *does not* limit the jurisdiction of the Tribunal to disputes relating to breaches of the treaty itself (*e.g.*, breaches of treaty clauses on expropriation or fair and equitable treatment). Instead, Article 10 extends to all disputes "with respect to an investment", regardless of whether the dispute concerns breaches of conventional or customary obligations.

438. Further, Article 10 does not restrict the Tribunal's jurisdiction to breaches that post-date the Treaty's entry into force. The Treaty is entirely silent as to the timing of breaches (and, indeed, as to the timing of investor-state disputes).[765] At the same time, the Treaty expressly contemplates its application to investments made prior to as well as after its entry into force.[766]

439. Construing Article 10 in accordance with the interpretative cannons of Article 31.1 of the VCLT (*i.e.,* in good faith in accordance with the ordinary meaning of the terms in their context, and in light of the treaty's object and purpose), Article 10 does not bar this Tribunal from considering breaches of customary law that predate the Treaty's entry into force.

440. Mr. Bahari's interpretation of Article 10 above is supported by leading academic authorities. According to Dr. Borzu Sabahi, Noah Rubins and Don Wallace Jr.:

> Some investment protection treaties include consent to arbitration that is **broad enough** to accommodate such claims [based on norms other than treaty], and in such cases the fact that the breach occurred **prior to the entry into force** of the investment treaty **may not raise a jurisdictional bar**. This reflects a distinction between jurisdiction

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764 See, *e.g.*, Article XI.1 of the Agreement between the Kingdom of Spain and the Republic of El Salvador on the Reciprocal Promotion and Protection of Investments, adopted on 14 February 1995 (**CLA-324**) ("Any investment-related dispute which may arise between a Contracting Party and an investor of the other Contracting Party with respect to the issues regulated by this Agreement shall be notified…"). *See, also*, Article 1116 of the North American Free Trade Agreement (NAFTA), signed 1992, with entry into force 1 January 1994 (**CLA-323**) ("An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under: (a) Section A or Article 1503(2) (State Enterprises), or (b) Article 1502(3)(a) (Monopolies and State Enterprises) […]"). *See also* the US-Colombia Trade Promotion Agreement (20006), as relied upon in *Astrida Benita Carrizosa v. Republic of Colombia,* ICSID Case No. ARB/18/5, Award, 19 April 2021 (**RLA-23**), ¶ 153. *See further*, Energy Charter Treaty, Article 26(1) (**CLA-333**) ("[d]isputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment […], which concern an alleged breach of an obligation of the former under Part III […]*"*).

765 For the avoidance of any doubt, Claimant's position is that the present dispute –including with respect to Azerbaijan's pre-treaty violation of the MST— only crystallized *after* the treaty entered into force (*See infra* Part 4 § II(C)). For that reason, decisions of arbitral tribunals declining jurisdiction over pre-treaty "acts" on the basis that they gave rise to *disputes* before the applicable treaty's entry into force are irrelevant here.

766 Treaty (**CLA-001**), Article 12.1.

> (the temporal scope of consent to arbitrate) and admissibility (the existence over time of substantive obligations.)[767]

441. Likewise, the ICSID commentary edited *inter alios* by Respondent's counsel Anthony Sinclair confirms:

> The general rule is that the law applicable to acts and events will normally be the law at the time they occurred. Therefore, **it is entirely possible** that a tribunal exercising jurisdiction on the basis of consent expressed in a treaty will **apply customary international law to events that occurred before the treaty's entry into force**.[768]

442. Similarly, Professor Christoph Schreuer explains that:

> [t]he practice of tribunals […] **overwhelmingly supports** the conclusion that a tribunal, whose jurisdiction is based on an offer of consent in a treaty, will not be restricted to applying the substantive protections of that treaty if the clause circumscribing its jurisdiction is broad and refers to investment disputes in general terms. **Under a wide jurisdictional clause of this nature the tribunal is authorised to entertain claims based on other sources of law**, such as domestic law, other treaties **and customary international law**."[769]

443. Elsewhere Professor Schreuer confirms that this includes breaches of norms **pre-dating** the treaty's entry into force:

> **In some situations a tribunals [sic] has to apply substantive rules of international law that are entirely outside the treaty** that is the basis of its jurisdiction. […] These substantive rules may derive from **an earlier treaty** that has since been terminated, from other treaties that relate to the subject matter of the dispute, **from customary international law** and from domestic law.[770]

444. Mr. Bahari's interpretation of Article 10 of the Treaty above is also supported by prior investment arbitration decisions. In the *Tekfen and TML v. Libya* arbitration, the tribunal

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767 'XII. Jurisdiction Ratione Temporis', in Borzu Sabahi, Noah Rubins, et al., *Investor-State Arbitration* (Second Edition), Oxford University Press, 2019, 412 – 431 (**CLA-334**), at p. 423 (emphasis added). *See also,* KJ Vandevelde, *United States Investment Treaties: Policy and Practice*, Kluwer, Boston, 1992, p. 66 (**CLA-335**).

768 Schreuer CH, Malintoppi L, Reinisch A, Sinclair A., *The ICSID Convention: A Commentary*. (Second Edition), Cambridge University Press, 2009 (**CLA-336**), p. 229, ¶ 507 (emphasis added).

769 (**CLA-337**), pp. 9-10 (emphasis added).

770 Christoph Schreuer, *Jurisdiction and Applicable Law in Investment Treaty Arbitration McGill Journal of Dispute Resolution,* 2014, Vol 1:1 2 (**CLA-337**), p. 25 (emphasis added); see also KJ Vandevelde, United States Investment Treaties: Policy and Practice (Kluwer, Boston, 1992) 66 (**CLA-335**).

found that it had jurisdiction to hear an investor's claims of breach of the MST having taken place before the relevant treaty had entered into force. The tribunal noted:

> The procedural right of an investor to bring a dispute before a tribunal constituted under Article 8 [the treaty's arbitration clause] says nothing about the substantive rights which the investor may invoke before such a tribunal. **Article 8 itself contains no limitation on the substantive rights that can be invoked by an investor**. However, it is trite law that an investor must be entitled to the substantive rights it claims were breached by the State. An investor may not claim breaches of rights to which it was not entitled. In this case for instance, Claimants may not claim breaches of the substantive rights guaranteed by the Treaty before the Treaty's entry into force - those substantive rights would apply to Claimants only after the Treaty's entry into force on 22 April 2011. **Claimants may well however claim breaches of other rights owed by the State to them before the Treaty enters into force.** In fact, they do so here - Claimants claim damages for Libya's failure to provide full protection and security to them prior to the Treaty's entry into force.[771]

445. The *Tekfen* award is particularly instructive because the applicable arbitration clause (Art. 8 of the Libya-Turkey BIT) is substantially similar to Article 10 of the Iran-Azerbaijan BIT. Similarly to the Iran-Azerbaijan BIT, the Tekfen arbitration clause is worded in broad terms to cover disputes "**in connection with"** the investment.[772] And, like the Iran-Azerbaijan BIT, the Tekfen BIT applies to "investments in the territory of a Contracting Party **before or after** the entry into force of this Agreement".[773] In fact, the *Tekfen* arbitration clause was arguably less permissive than the Iran-Azerbaijan BIT's because it expressly excluded **disputes** having arisen before the treaty's entry into force. Our treaty contains no such restriction (in any event the present dispute, including with respect to the MST violation, arose **after** the treaty entered into force).[774]

446. The *Tekfen* decision builds upon a long line of decisions finding that a broadly-worded arbitration clause referring to disputes "with respect to", or "in connection with", or "in

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771 See *Tekfen TML Joint Venture v Libya (II),* ICC Case No. 21371/MCP/DDA, Final Award, 11 February 2020, (**CLA-338**) ¶7.4.2 (emphases added).

772 Libya-Turkey BIT, (**CLA-339**), Article 8.

773 Libya-Turkey BIT, (**CLA-339**), Article 12.

774 *See infra* Part 4 § II(B)-(C).

accordance with", or "concerning" an investment, allows a tribunal to examine breaches of norms other than the treaty, including customary international law.[775]

447. The *Tekfen* decision is also consistent with the *Jan de Nul v. Egypt* decisions on jurisdiction and merits[776], in which the tribunal exercised its jurisdiction over internationally wrongful acts that had occurred **before** the applicable treaty entered into force.[777] That arbitration involved two successive BITs, dated respectively 1977 and 2002. The arbitration clause in the 2002 BIT covered "[a]ny dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment"[778]. The Tribunal found that, under the 2002 BIT, it had jurisdiction over the entire dispute, including acts that had occurred before the 2002 BIT was in force (*i.e.,* under the 1977 treaty).[779] The Tribunal rejected Egypt's contention that the Tribunal lacked jurisdiction over facts pre-dating the 2002 BIT. Instead, it found that the legality of events that had taken place before the entry into force of the 2002 BIT could be examined in the light of the 1977 BIT.[780]

448. To summarize, Azerbaijan consented to arbitrate claims under a clause whose scope is broad enough to encompass disputes for violations of customary international law predating the Treaty's entry into force. When, in breach of the MST, Mr. Bahari was forcibly evicted from Caspian Fish in 2001, the Respondent was bound by that customary norm. Today, this Tribunal has jurisdiction over Claimant's claim that Mr. Bahari's expulsion from Caspian Fish in 2001 constitutes a breach of the MST under customary international

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775 See, *e.g.*, *SGS v Paraguay*, ICSID Case No. ARB/07/29, Decision on Jurisdiction, 12 February 2010 (**CLA-340**), ¶¶118-123; *SGS Société Générale de Surveillance SA v Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, 29 January 2004 (**CLA-249**), ¶¶130-135; *Parkerings-Compagniet AS v Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007 (**CLA-063**),¶¶ 261; *Metal-Tech v Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013 (**CLA-341**), ¶¶ 372-373.

776 *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006 (**CLA-342**); and *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award, 6 November 2008 (**CLA-343**).

777 *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006 (**CLA-342**).

778 *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006 (**CLA-342**), ¶ 31 (citing Article 8 of the Agreement Between the Belgo-Luxemburg Economic Union and the Arab Republic of Egypt for the Encouragement and Reciprocal Protection of Investments, adopted on 28 February 1977).

779 This is confirmed by the merits award: *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt, ICSID Case No. ARB/04/13*, Award, 6 November 2008 (**CLA-343**), ¶ 128.

780 *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award, 6 November 2008 (**CLA-343**), ¶¶ 131-139.

law.[781] Azerbaijan's argument that the Tribunal lacks temporal jurisdiction because Mr. Bahari was evicted from Caspian Fish in 2001 fails for this reason alone. In any event, as explained in the next section, the 2001 expulsion of Mr. Bahari from Azerbaijan, in conjunction with Azerbaijan's ongoing conduct in opposition to his investments, amounted to a breach of the substantive norms of the Treaty after its entry into force as well.

B. THE TRIBUNAL HAS JURISDICTION OVER BREACHES THAT OCCURRED AFTER ENTRY INTO FORCE OF THE TREATY.

449. Azerbaijan makes no reply to Mr. Bahari's submission that acts predating the entry into force of the Treaty can be considered for purposes of understanding the background of the case and the scope of the violations.[782] Indeed, Azerbaijan does not challenge the relevance of that evidence, but instead contends that none of it amounts to a breach of the Treaty that occurred after its entry into force. It is to this submission that Mr. Bahari responds below. Nevertheless, it bears repeating that conduct that occurred before the Treaty entered into force "may constitute circumstantial evidence that confirms or vitiates an apparent post-entry into force breach, for example, going to the intention of the respondent."[783] Azerbaijan's intentions with respect to Mr. Bahari's investment only became clear after the Treaty entered into force, as discussed herein.

1. Azerbaijan Has Continuously Breached Its FET Obligations

450. Azerbaijan takes issue with the case law cited by Mr. Bahari as being "factually distinguishable" from the case at hand.[784] No factual distinctions between the cases Mr. Bahari cited in his Reply and the nature of the breaches he pleads suffices to undermine his claim, however.

451. Notably, the tribunal's decision in *Pac Rim Cayman* is of particular assistance here. Respondent is correct that that case "concerned the de facto withholding of mining-related

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781 *See,* NoA, ¶ 133 (b) (relief), ([Claimant requests …] "a declaration that the Republic of Azerbaijan has breached its obligations under the Treaty **and international law** with respect to Claimant's investments in the Republic of Azerbaijan") (emphasis added).

782 SoR ¶ 704.

783 *Aaron c. Berkowitz, Brett E. Berkowitz and Trever B. Berkowitz v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017 (**CLA-248**), ¶ 217.

784 SoRJ ¶ 156.

permits and concessions,"[785] but this does not render it "wholly inapposite."[786] To the contrary, although the circumstances and legal claims were different, the base legal questions put to the tribunal and the procedural posture of those questions is similar to those at hand, and its reasoning is therefore analogous.

452. In *Pac Rim*, the claimant, Pac Rim Cayman LLC, was a wholly owned subsidiary of Pacific Rim Mining Company, a Canadian corporation, which had applied for an environmental permit and mining exploitation concession in El Salvador through several locally-incorporated subsidiaries in 2004.[787] Pac Rim Cayman LLC was originally incorporated in the Cayman Islands.[788] In December 2007, in the midst of the measures complained of in the arbitration, Pacific Rim Mining Company reincorporated Pac Rim Cayman LLC as a United States company with headquarters in Nevada.[789] It thereafter brought the dispute pursuant to the CAFTA-DR, a treaty to which El Salvador and the United States are parties, but Canada and the Cayman Islands are not.

453. In that case, the respondent made an objection that the change of nationality of Pac Rim Cayman LLC was an abuse of process, an allegation it premised on the reincorporation of Pac Rim Cayman LLC in the United States to gain access to CAFTA.[790] Crucial to that objection was El Salvador's allegation that the reincorporation was carried out "to bring a **pre-existing** dispute before this Tribunal under CAFTA."[791] The claimant responded that its change in nationality was part of an "overall plan to restructure the Pac Rim group of companies,"[792] but acknowledged that "the availability of international arbitration (under CAFTA and ICSID) was one of the elements of its decision to change…nationality."[793] The tribunal found that the claimant's concession regarding access to CAFTA was significant

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785 SoRJ, ¶ 156(c).

786 SoRJ, ¶ 156(c).

787 *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections, 1 June 2012 ("***Pac Rim v. El Salvador***") (**CLA-246)**, ¶¶ 1.1, 2.16.

788 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.16.

789 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 1.1.

790 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.17.

791 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.17 (emphasis added); *see also id*. ¶ 2.19 ("In presenting this main objection, the Respondent does not object to prospective nationality planning made in good faith before any investment. The Respondent objects to the Claimant's change in nationality because of tis timing at a much later date, made in bad faith.").

792 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.21.

793 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.22.

for its analysis, noting that it was a "relevant fact, based on the Claimant's own evidential materials, that one of the principal purposes of the change in the Claimant's nationality was the access thereby gained to the protection of investment rights under CAFTA."[794] In order to determine whether the claimant's change in nationality was an abuse of process the tribunal deemed it necessary to determine whether the relevant measures or practices the claimant alleged caused damage to its investments took place before or after the change in its nationality.[795] In other words, the *Pac Rim* tribunal faced a situation akin to that here: a decisive factor in determining its jurisdiction, which could attach only with respect to investment claims after CAFTA entered into force between the parties, was whether the dispute arose before the treaty came into effect for the parties or after.

454. Prior to Pac Rim Cayman's change in nationality, El Salvador had undertaken actions and omissions that affected its investment. The relevant ministry was obligated to respond to Pac Rim's license application within 60 days, but in December 2004, shortly after Pacific Rim Mining Company applied for the mining license and exploration permit through its local subsidiaries, the Government missed its deadline;[796] and it did the same in October and December 2006.[797] Throughout that time, the Government delayed its responses to requests and additional applications from the claimant, though the claimant contended that it was given to understand from the relevant authorities that, despite their having missed the statutory deadlines to respond, its applications for the mining license and environmental permit remained under consideration.[798]

455. The respondent argued that any measures taken against the claimant constituted a one-time act within the meaning of the ARSIWA, noting that the statutory time periods for response and revival of the claimant's applications after they were presumed denied had all expired before January 2007, and contending that "the relevant acts alleged by the Claimant were completed before the change in" its nationality.[799] For its part, the claimant argued the relevant measure was a composite act consisting of the "de facto mining ban

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794 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.41.

795 *Pac Rim v. El Salvador* (**CLA-248**), ¶¶ 2.43, 2.45 ("the circumstances of the case are decisive as to the time when the relevant measure(s) occurred and the Parties' dispute arose, whether before or after the change in the Claimant's nationality on 13 December 2007"); 2.52.

796 *See Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.76.

797 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.77.

798 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.83.

799 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.76.

consisting of a practice of withholding mining-related permits and concessions which only became public and known to the Claimant in March 2008…and which then wiped out the value of its mining investments."[800] The tribunal disagreed that the measures could constitute a one-time act, noting that the claimant complained of a "practice, necessarily comprising several acts and omissions," though if it were a one-time act the tribunal held it would have arisen in March 2008.[801] The tribunal likewise found that the measure could not consist of a composite act, "[a]s no relevant act was pleaded by the Claimant occurring after the change of nationality that could be a component part of the alleged practice only publicly disclosed in March 2008."[802] Rather, the tribunal deemed the measures a continuous act within the meaning of ARSIWA, finding that the ongoing omission that began with El Salvador not granting the permits and concession and remained a controversy over a practice of not doing so was a continuous act under international law.[803]

456. Here, Azerbaijan would have the Tribunal cast its expulsion of Mr. Bahari from its territory as a one-time act that started and completed in March 2001. This submission ignores the evidence of Mr. Bahari's having to be specifically allowed back into Azerbaijan to meet with Minister Heydarov in 2013, among other factual submissions. But more fundamentally, it ignores that Article 2(2)(a) of the Treaty provides that "nationals of either Party shall be permitted to **enter and remain** in the territory of the other Party for purposes of establishing, developing, administering or advising on the operation of an investment."[804] Azerbaijan's policy of keeping Mr. Bahari out of Azerbaijan over the period after his expulsion and until the present is an ongoing and continuous violation of this substantive protection, to which he is entitled as an investor of Iran in Azerbaijan. Thus, as in *Pac Rim*, the tribunal has jurisdiction over an ongoing act against Mr. Bahari, irrespective of the reality that some conduct in support of that act (which continues to this day) occurred before the Treaty became opposable between the Parties.

457. Furthermore, Azerbaijan's focus on Mr. Bahari's claim of breach consisting of his banishment from Azerbaijan misses the point. Although that banishment breached

800 *Pac Rim v. El Salvador* (**CLA-248**),¶ 2.78.

801 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.86; *see also id*. ¶ 2.84 (finding the dispute could not have arisen before December 2007 "because even at that time there still seemed to be a reasonable possibility, as understood by the Claimant, to receive such permit and concession notwithstanding the passage of time")

802 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.88.

803 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.92.

804 Treaty (**CLA-001**), Art. 2(2)(a) (emphasis added).

multiple substantive protections guaranteed to an Iranian investor under the Treaty, what gives rise to Mr. Bahari's damage is the ongoing inability, resulting from his expulsion, for him to enforce his rights to his investments. In other words, the harm to Mr. Bahari does not crystalize upon his being ousted from Azerbaijan. It crystalized at the moment he was, after being ousted from Azerbaijan, unable to vindicate his rights as his investments were transferred away to other people and understood that to be the case. Likewise, the campaign to separate Mr. Bahari from his investments, of which his expulsion from Azerbaijan played a part, may have begun prior to 20 June 2002, when the Treaty came into force, but like Pac Rim Cayman LLC, Mr. Bahari did not become aware of it or the reach of its effects until after June 2002, when it finally became clear to him that neither Mr. Khanghah nor anyone else would return to negotiate the terms of the return of his investments with him.

2. Azerbaijan Carried Out A Creeping Expropriation Of Mr. Bahari's Investments

458. A creeping expropriation constitutes a composite act within the meaning of ARSIWA. As the *Pac Rim* tribunal explained, "a composite act is composed of acts that are legally different from the composite act itself" and "a series of unlawful acts interfering with an investment (which by themselves are not expropriatory) can by their aggregation result in an unlawful expropriation."[805]

459. With respect to composite acts, the commentary of ARSIWA is clear that

> In cases where the relevant obligation did not exist at the beginning of the course of conduct but came into being thereafter, the 'first' of the actions or omissions of the series for the purposes of State responsibility will be the first occurring after the obligation came into existence. This need not prevent a court taking into account earlier actions or omissions for other purposes (e.g. in order to establish a factual basis for the later breaches or to provide evidence of intent).[806]

Numerous tribunals faced with a situation like this one, in which some expropriatory conduct occurred prior to the entry into force of the BIT and some after, have assessed the facts on a composite basis and assumed jurisdiction over the breach. These include:

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805 *Pac Rim v. El Salvador* (**CLA-248**), ¶ 2.71.

806 ILC ARSIWA (**CLA-037**), Rule 15(1), Comment 11.

a. In *Tecmed v. Mexico*, the respondent State replaced the claimant's landfill operating permit, which had previously been of unlimited duration, with one that needed to be renewed on an annual basis. Renewal of this new permit required the State's consent. Following the entry into force of NAFTA, Mexico refused to renew the permit.[807] The tribunal found that Mexico's pre-entry into force conduct "set the stage" for its eventual expropriation, and thus that it could consider that conduct to the extent it "reached its consummation point *after* [NAFTA's] entry into force."[808]

b. In *Chevron v. Ecuador*, the claimant alleged a denial of justice through a series of separate and parallel lawsuits in the courts of Ecuador, some of which began before the Ecuador-United States BIT entered into force. As alleged by claimant, all of those suits, including both those that pre-dated entry into force and those that post-dated it, had consequences after the BIT took effect. The tribunal found that the suits constituted a composite act within its temporal jurisdiction, noting that the "alleged breach commenced upon the occurrence of the action or inaction that consummated the denial of justice."[809]

c. Likewise, in *Walter Bau AG v. Thailand*, the investor concluded its contract with Thailand, which allowed it to construct and operate a toll highway, six years before the Germany-Thailand BIT entered into force.[810] Pursuant to that contract, the respondent was to provide financing and, given its regulatory control over the toll rates, ensure that they increased periodically.[811] Notwithstanding those obligations, Thailand almost immediately began breaching its obligations under the contract, first by providing financing in the wrong currency and then by decreasing, rather than increasing, toll rates.[812] The tribunal found that these breaches

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807 *Tecnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003 (**CLA-040**), ¶ 57 n. 9.

808 *Tecnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003 (**CLA-040**), ¶ 66 (emphasis in original).

809 *Chevron Corporation (USA) and Texaco Petroleum Company (USA) v. The Republic of Ecuador*, UNCITRAL, PCA Case No. 34877 Interim Award (**RLA-72**), ¶ 301.

810 *Walter Bau AG (In Liquidation) v. The Kingdom of Thailand*, UNCITRAL, Award, 1 July 2009 (**CLA-344**), ¶¶ 12.14-12.15.

811 *Walter Bau AG (In Liquidation) v. The Kingdom of Thailand*, UNCITRAL, Award, 1 July 2009 (**CLA-344**), ¶¶ 12.14-12.15.

812 *Walter Bau AG (In Liquidation) v. The Kingdom of Thailand*, UNCITRAL, Award, 1 July 2009 (**CLA-344**), ¶¶ 12.14-12.15.

constituted composite acts that crystallized into a breach two years after the Germany-Thailand BIT came into force, following an announcement of forced toll reductions that the tribunal considered "demonstrated in a dramatic way the longstanding non-fulfillment of the Claimant's legitimate expectation of a proper toll regime as a means of rewarding its investment."[813] In deeming this a composite act, the tribunal found that "the consequential formal reduction of the tolls [w]as distinct from the failure to increase them" and deemed it a "triggering factor for a dispute," which "started before but which continued after the entry into force of the BIT."[814]

460. Azerbaijan continues to contend, as it did in its Statement of Defense, that Mr. Bahari's case "bears…similarity" to *Berkowitz v. Costa Rica*, but that case is factually distinct.[815] *Berkowitz* involved a situation in which many of the claimant's properties were directly expropriated by decree prior to the entry into force of CAFTA (which applied), and made its indirect expropriation claim on the basis that Costa Rica had delayed and ultimately failed to compensate them for the taking.[816] In other words, the conduct that came after the BIT's entry into force was part and parcel of the taking that had already occurred prior. The tribunal found that "[i]nsofar as any issue of indirect expropriation arises in respect of these properties, this is inseparable from the alleged direct expropriation measures that the Tribunal…concluded are not justiciable" because the CAFTA did not cover them.[817] That is not the case here.

461. Rather, Mr. Bahari's investments were subject to a connected campaign to divest him of his ownership, but the acts by which that campaign was carried out differed. As discussed *supra*, his shares were transferred without his knowledge or authorization to other parties. His physical assets in Caspian Fish and Coolak Baku were stripped off and sold away, in the former case only recently and in the latter case over several years and following a legal process that allowed ASFAN to claim it was owed the assets in execution on a

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813 *Walter Bau AG (In Liquidation) v. The Kingdom of Thailand*, UNCITRAL, Award, 1 July 2009 (**CLA-344**), ¶¶ 12.24-12.26.

814 *Walter Bau AG (In Liquidation) v. The Kingdom of Thailand*, UNCITRAL, Award, 1 July 2009 (**CLA-344**), ¶ 12.26.

815 *See* SoD ¶¶ 59-60; SoRJ ¶ 161.

816 *Berkowtiz (formerly Spence International Investments and others) v Costa Rica*, ICSID Case No UNCT/13/2, Interim Award, 25 October 2016, (**RLA-136**), ¶ 229.

817 *Berkowtiz (formerly Spence International Investments and others) v Costa Rica*, ICSID Case No UNCT/13/2, Interim Award, 25 October 2016, (**RLA-136**), ¶ 271.

judgment. Mr. Bahari's investment in Coolak Baku was also subject to a coercive tax campaign designed to force him to sell Caspian Fish to avoid further damage to Coolak Baku. His carpets were moved from their warehouse and handed out, in some cases, into private homes. And his investment in Ayna Sultan was the subject of numerous court proceedings of which he was provided neither notice nor an opportunity to participate. All of these acts, *inter alia*, added up to a creeping expropriation of his investments.

C. IN ANY EVENT, THE DISPUTE CRYSTALIZED AFTER THE BIT ENTERED INTO FORCE.

462. Azerbaijan's Rejoinder continues to pretend that this is a simple case of the non-retroactivity of treaties.[818] It is not. But even if it were, as explained in Mr. Bahari's Reply, *Mavrommatis* remains the leading view. Azerbaijan reasserts its reliance on *Ping An* for its critique of *Mavrommatis*, taking issue with Mr. Bahari's characterization of that decision as stemming from the specific language of the BIT that applied.[819] In arguing that *Ping An* is instructive here, Azerbaijan asserts that "the language of the relevant treaty in the *Ping An* case was similar to the language of the Treaty in this case" and thus that the Tribunal should draw "the same implication…that there is a restriction on the adjudication of pre-entry into force disputes."[820] Azerbaijan's assertion about the language of the Treaty is baseless.

463. In *Ping An*, the tribunal looked closely at the language of the China-Belgium BIT at issue in that case, which was the 2009 BIT that replaced an earlier BIT from 1986, and concluded that "there is nothing in the wording of the 2009 BIT to justify on the basis of its express language, or on the basis of an implication or inferences, that the more extensive remedies available under the 2009 BIT would be available to pre-existing disputes that had been notified under the 1986 BIT but not yet subject to arbitral or judicial process."[821] Looking to the plain language of that BIT, the tribunal noted that its dispute resolution provision referred to settlement of disputes "[w]hen a legal dispute arises between an

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818 *See* SoRJ ¶¶ 170-176.

819 *See* SoRJ ¶ 171.

820 SoRJ, ¶ 172. It is true that Mr. Bahari quoted from the wrong translation of the Treaty in his Reply (*see* SoR ¶ 748 & n. 1028), but that does not make the actual Treaty language comparable to that of *Ping An*.

821 *Ping An Life Insurance Company v Belgium*, ICSID Case No. ARB/12/29, Award, 30 April 2015 (**RLA-24**), ¶ 231.

investor of one Contracting Party and the other."[822] The tribunal inferred that it could not read that provision to "mean '[w]hen a legal dispute arises or has arisen,'" and therefore found that the plain language "refers only to disputes which arise after the 2009 BIT comes into force."[823] The tribunal likewise found that it was not assisted by the preamble to the BIT or what it called the "common provision…that the 2009 BIT applies to all investments made before or after its entry into force."[824] The tribunal also did not credit the claimant's other submissions making inference from the language of the BIT.[825]

464. In contrast, the Treaty applicable here provides, as elaborated in PART IV § I.B.1. above, coverage for disputes regardless of when they arise. The language of Article 10 – providing for recourse to arbitration "in the event of occurrence of a dispute between a Party in whose territory an investment is made and one or more investors of the other Party"[826] – is silent as to when the dispute must have arisen for it to be justiciable. And that language, contrary to Azerbaijan's submission, stands in sharp contrast to the "[w]hen a legal dispute arises" language in *Ping An*. No implication from *Ping An* should thus be drawn here.

465. Instead, as Mr. Bahari has previously explained, far more instructive is the decision of the tribunal in *Carrizosa*, whose assessment involved language much closer to that of the Treaty here. In *Carrizosa*, the US-Colombia Trade Promotion Agreement at issue provided that "[i]n the event of an investment dispute" the parties might submit it to arbitration.[827] On this basis it found that the US-Colombia TPA applied retroactively to pre-existing disputes. Thus, Mr. Bahari submits that there is no reason on the face of the Treaty, or otherwise indicated by Azerbaijan, for the Tribunal to not follow the majority view on retroactivity of the Treaty here.

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

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

824 *Ping An Life Insurance Company v Belgium*, ICSID Case No. ARB/12/29, Award, 30 April 2015 (**RLA-24**), ¶¶ 225-226.

825 *Ping An Life Insurance Company v Belgium*, ICSID Case No. ARB/12/29, Award, 30 April 2015 (**RLA-24**), ¶¶ 226-228 (declining to infer anything from the articles of the BIT providing for the transition from the 1986 BIT to the 2009 BIT, and noting that the claimant's interpretation would expand the scope of arbitrable disputes arising under the 1986 BIT by giving them recourse to the dispute resolution mechanisms of the 2009 BIT).

826 Treaty (**CLA-001**), Art. 10.

827 *Astrida Benita Carrizosa v Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021 (**RLA-23**), ¶ 15; *see also* SoRJ ¶ 173 & n. 410. Azerbaijan incorrectly submits that the US-Colombia Trade Promotion Agreement is "worded very differently to the Treaty in this case," *id*., but it is structured identically to the Treaty ("In the event of an investment dispute" vs. "In the event of occurrence of a dispute").

466. In any event, Azerbaijan ignores that the crucial date for assessment of jurisdiction is not when a dispute (writ large) arose, but rather when the dispute between the Parties crystallized into a justiciable investment dispute. This was the point of the tribunal's distinction in *Maffezini* between "the expression of a disagreement and the statement of a difference of views" and a dispute with "precise legal meaning through the formulation of legal claims."[828] In its assessment of the claimant's claims in that case, the *Maffezini* tribunal noted that the claimant "relie[d] on facts and events that took place as early as 1989 and throughout 1990, 1991, and the first part of 1992," and that the primarily applicable BIT entered into force in September 1992.[829] It found, however, that "the dispute in its technical and legal sense began to take shape in 1994" when the parties commenced discussion of disinvestment.[830] That was the point, according to the tribunal, when "the conflict of legal views and interests came to be clearly established."[831]

467. The delineation of a dispute in the sense of a disagreement of fact, on the one hand, and a dispute as a technical and legal matter of claim, on the other, hinges on its concreteness. As Professor Schreuer explains, a cognizable "dispute must relate to clearly identified issues between the parties and must not be merely academic…The dispute must go beyond general grievances and must be susceptible of being stated in terms of a concrete claim."[832]

468. In light of this principle, a State's expropriation of and interference with an investment does not crystalize until it becomes permanent. As the Iran-United States Claims Tribunal has explained

> While assumption of control over property by a government does not automatically and immediately justify a conclusion that property has been taken by the government, thus requiring compensation under international law, such a conclusion is warranted whenever events demonstrate that the owner was deprived of fundamental rights of

828 *Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000 (**CLA-253**), ¶ 96.

829 *Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000 (**CLA-253**), ¶ 92.

830 *Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000 (**CLA-253**), ¶ 98.

831 *Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000 (**CLA-253**), **¶ 98.**

832 C. Schreuer, L. Malintoppi, A. Reinisch, and A. Sinclair, *The ICSID Convention: A Commentary*, (2nd ed. Cambridge), Commentary on Article 25, (**CLA-315**), ¶ 44.

> ownership **and it appears that this deprivation is not merely ephemeral**.[833]

469. With respect to a continuous act, such as Azerbaijan's breach of its fair and equitable treatment obligations here, the date of breach is the day after the BIT comes into effect. As the tribunal explained in *Société Générale*, "there might be situations in which the continuing nature of the acts and events questioned could result in a breach…which only become legally characterized as a wrongful act in violation of an international obligation **when such an obligation had come into existence after the effective date of the treaty**."[834] In those circumstances, as here, "the act is indeed continuous but its legal materialization as a breach **occurs when the Treaty has come into force and the investor qualifies under its requirements**."[835]

470. As far as when composite acts amount to an expropriation, such as here, it is well settled that the proper date of expropriation is at the moment of the final act in the composite chain. In *Pac Rim Cayman*, although the tribunal found that the alleged breaching measure was a continuous act, it assessed composite acts and noted that "[i]n this situation, the unlawful composite act is composed of aggregated acts and takes place at a time when the last of these acts occurs and violates (in aggregate) the applicable rule."[836] Likewise, in *Société Générale*, the tribunal found that, with respect to composite acts, "[t]here might be situations in which each act considered in isolation will not result in a breach of a treaty obligation, but if considered as a part of a series of acts leading in the same direction they could result in a breach at the end of the process of aggregation, when the treaty obligations will have come into force."[837]

471. Thus, for assessment of when an indirect expropriation occurred, the relevant time is when it became clear that the deprivation was permanent. As Professor Christie summarized:

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833 *Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran, The Government of the Islamic Republic of Iran, and others*, IUSCT Case No. 7 (141-7-2), Award, 28 June 1984 (**CLA-345**), p. 222 (emphasis added).

834 *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, 29 January 2004 (**CLA-249**), ¶ 87 (emphasis added).

835 *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, 29 January 2004 (**CLA-249**), ¶ 88 (emphasis added).

836 *Pac Rim v. El Salvador* (**CLA-246**). ¶ 2.74.

837 *Société Générale in respect of DR Energy Holdings Limited and Empresa Distribuidora de Electricidad del Este, S.A. v. Dominican Republic*, UNCITRAL, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction, 19 September 2008 (**CLA-041**), ¶ 91.

> When a seizure which is not originally deemed to be an expropriation ripens into one, the date of 'taking' should not be held to go back to the time when the property was initially seized, but the 'taking' should, rather, date from the time at which it is determined that there was no reasonable prospect that the property would ever be returned.[838]

472. Azerbaijan contends that the dispute between it and Mr. Bahari arose during the 15 June 2002 meeting between Mr. Bahari and Mr. Khanghah.[839] That the dispute had not yet crystallized on that date, however, is evident even from Azerbaijan's recitation of the relevant facts in its Rejoinder. As Azerbaijan explains, quoting selectively from Mr. Bahari's First Witness Statement, the 15 June 2002 meeting represented the moment he "[redacted]" that "[redacted]."[840] Crucially, however, Respondent also quotes Mr. Bahari's testimony that he "[redacted]."[841] This last statement is significant, because it makes clear that Mr. Bahari still thought there was a chance he would recover his investments.[842] Indeed, the counter-proposal that Mr. Bahari made offered to sell his shares in Caspian Fish in exchange for Coolak Baku, his carpets, and the sums he invested in Caspian Fish.[843] At that moment, the contemporaneous evidence thus supports that he expected to be able to recover at least some of his investments and understood that he had legal title to his shares that was susceptible to sale.

473. It was only after that date – and Mr. Bahari has placed the critical date as 1 January 2003 – that he understood that there was no chance. Numerous tribunals have noted the significance of an investor's understanding in determining the date at which its deprivation was permanent. In *Phillips Petroleum v. Iran*, for example, the Iran-United States Claims Tribunal set the date of expropriation as of September 1979, which was when the claimant had the requisite understanding:

> [I]n circumstances where the taking is through a chain of events, the taking will not necessarily be found to have occurred at the time of either the first or the last such event, but rather when the interference

838 G C Christie, What Constitutes a Taking of Property under International Law?, 38 BRIT. YB. INT'L L. 307, 1962 (**CLA-346**), p. 337.

839 SoRJ ¶ 168.

840 SoRJ ¶ 168 (quoting First Bahari Statement, ¶¶ 81,84).

841 SoRJ ¶ 168 (quoting First Bahari Statement, ¶ 84).

842 *Accord Pac Rim v. El Salvador* (**CLA-246**), ¶ 2.83.

843 Bahari WS ¶ 83; **C-017** Settlement Proposal, 15 June 2002, p. 3.

> has deprived the Claimant of fundamental rights of ownership and such deprivation is "not merely ephemeral", or when it becomes an "irreversible deprivation."
>
> Claimant's loss was felt from the time of the first refusals to permit it to [export] petroleum in April 1979. At that time *the Claimant was still uncertain whether that situation was to be permanent,* and NIOC first indicated that it would at some later time be willing to discuss the Claimant's request concerning its 1979 [export rights]. …
>
> It became clear, however, in the meeting which the [claimants] had with the [supervising committee] on 29 September 1979 that there was no reasonable prospect of return to an arrangement with NIOC on the basis of the [joint venture agreement (JVA)]. For it was in this meeting that the [claimants] were told not only that they should regard the JVA as terminated, but also that their letter of 26 June did not deserve an answer.[844]

474. Mr. Bahari never received an answer to his counter-proposal. He nevertheless had a reasonable basis to believe that an answer would be forthcoming. After all, Mr. Khanghah attended that meeting as a representative of Messrs. Aliyev, Heydarov, and Pashayev, and he was purporting to negotiate on their behalf.[845] The forced sale agreement itself contemplated that its implementation would involve future conduct, including the expulsion of Minister Heydarov's agents from Coolak Baku (had Mr. Bahari accepted it).[846] And Mr. Khanghah's leverage in attempting to get Mr. Bahari to sign the Forced Sale Agreement was a threat of future harm – in the form of allegations of unpaid back taxes – against Coolak Baku.[847]

475. Thus, Mr. Bahari fixes the date of dispute at 1 January 2003, the date on which he was reasonably forced to understand that Azerbaijan had no intention of restoring his investment or allowing him entry back into the country.

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844 *Phillips Petroleum Company Iran v. Islamic Republic of Iran, National Iranian Oil Company,* Iran-U.S. Claims Tribunal Case No. 39 (425-39-2), Award, 21 IUSCT Rep. 79, 29 June 1989 (**CLA-348**) 83, 86, ¶¶ 101-102 (emphasis added).

845 *See* SoC § (III)(C)(2).

846 **C-017** Settlement Agreement, 15 June 2002, p. 4.

847 *See* Bahari WS1 ¶ 83.

III. AZERBAIJAN CANNOT ESTABLISH HOW ARTICLE 9 OF THE TREATY SHOULD ABSOLVE AZERBAIJAN OF ITS OBLIGATIONS TO MR. BAHARI AND HIS INVESTMENTS

476. Claimant's Reply and the Professor Schill's Legal Opinion on the Application of Article 9 of the Azerbaijan-Iran Bilateral Investment Treaty dated 14 June 2024 ("**Schill First Opinion**") demonstrated that the language and circumstances of Article 9 and the Treaty do not deprive Mr. Bahari's investments of protection under the Treaty and the Tribunal's jurisdiction.

477. Nothing in Azerbaijan's Rejoinder, or the second expert reports of Professor Vandevelde and Dr. Mehrinfar, and second witness statement of Mr. Valiyev, changes this conclusion. Azerbaijan's interpretation of Article 9 continues to contravene the Treaty's object and purpose of promoting and protecting foreign investments in the relations between Iran and Azerbaijan. Further, Azerbaijan's interpretation makes the protection of Iranian investments illusory and unreasonable. As stated by Professor Schill:

[redacted][848]

478. Notwithstanding that Azerbaijan's arguments are patently unworkable, Claimant has asked Professor Schill to provide a second legal opinion ("**Schill Second Opinion**") to respond to the positions of Azerbaijan, its legal experts, and its fact witness set out in Respondent's Rejoinder. The Schill Second Opinion is enclosed with this Rejoinder and, for conciseness, is summarized below. A full review and consideration of the Second Schill Opinion in the context of Azerbaijan's Rejoinder is encouraged.

848 Schill Second Opinion ¶ 32.

A. AZERBAIJAN'S CONCEPTUAL AND METHODOLOGICAL OBJECTIONS TO THE SCHILL FIRST OPINION ARE MISPLACED.

479. Azerbaijan's Rejoinder advances a number of objections to the conceptual and methodological analysis that forms part of the Schill First Opinion's interpretation of the Treaty. Broadly speaking, these objections are misplaced. They either misconstrue the Schill First Opinion or they rely on positions that are inapposite to the underlying principles of international treaty law and customary international law.

480. *First*, the Rejoinder advances various arguments that seek to elevate Azerbaijan's sovereign discretion to admit foreign investment into its territory above its commitments in the Treaty. Under Azerbaijan's view, this can and should restrict how the text, context, and the object and purpose of Article 9 of the Treaty can be understood under rule of law considerations and treaty interpretation principles. As Professor Schill explains, none of these arguments in favor of restricting and narrowing the ability to interpret Article 9 and the Treaty find purchase.[849] Specifically, this concerns both Azerbaijan's arguments on its sovereignty under customary international law being unaffected by Article 9 and its rejection of arguments that rule-of-law considerations, which ultimately stem from the object and purpose of the Treaty apply to Article 9.

481. *Second*, Azerbaijan's Rejoinder criticizes Professor Schill for his reliance on arbitral jurisprudence that Respondent considers inapposite and does not "bear any resemblance of the facts of the present case."[850] Throughout its memorials, Azerbaijan has relied on this same type of criticism to avoid the arbitral jurisprudence that Claimant has relied on for its jurisdictional and merits arguments. It is an odd and evasive position to take, and as Professor Schill notes, there is value in considering prior arbitral jurisprudence "[redacted]"[851]

482. *Third,* the Rejoinder categorically states that "the travaux préparatoires are … not an appropriate aid to interpretation in the present case."[852] Professor Schill rightly considers

849 Schill Second Opinion § 2.1. (Relevance of customary international law) and § 2.2. (on the role of rule-of-law considerations.)

850 SoRJ ¶ 251.

851 Schill Second Opinion ¶ 36.

852 SoRJ ¶¶ 222-227.

this to be a highly surprising position, as it was Azerbaijan who first introduced and relied on the Treaty's *travaux* in its Request for Bifurcation. However, Professor Schill acknowledges that caution is appropriate due to the fragmentary nature of *travaux*,[853] but this does not change his view that reliance on the *travaux* of the Treaty is methodologically sound under Article 32 of the VCLT and that the *travaux* support his conclusions.[854]

483. *Finally*, Azerbaijan also takes issue with the Schill First Opinion's in-depth and helpful overview of the BIT practice of Azerbaijan and Iran. Not only did Azerbaijan already suggest this type of analysis is appropriate when it filed its Request for Bifurcation, but arguments in Azerbaijan's Rejoinder rely on this same type of analysis.[855]

484. Notwithstanding the critiques of Azerbaijan, Professor Schill reaffirms that the position adopted in his First Opinion to analyze the treaty practices of Iran and Azerbaijan methodologically stands on solid ground, and is a well-accepted and oft-relied-upon interpretative exercise deployed by investment-treaty arbitration tribunals to assist in their interpretation of BITs.[856]

B. AZERBAIJAN'S SUBSTANTIVE OBJECTIONS TO THE SCHILL FIRST OPINION ARE EQUALLY MISPLACED AND FIND NO SUPPORT.

485. Azerbaijan's Rejoinder raises substantive objections to the analysis and conclusions in the First Schill Opinion, focusing on:

a. the scope of application of Article 9, in particular in respect of its application to pre-existing investments;

b. the domestic implementation of Article 9, including in respect of making changes to the competent authority named in Article 9; and

c. the application of the doctrine on severance of inoperable treaty clauses to the situation at hand.

486. As with its critiques of Professor Schill's conceptual and methodological analysis, each of Azerbaijan's substantive objections are premised on arguments that do not accord with

853 Schill Second Opinion ¶ 41.

854 Schill Second Opinion ¶ 48.

855 Schill Second Opinion ¶ 50.

856 Schill Second Opinion ¶ 66.

the plain terms and goals of the Treaty, well-accepted principles of international treaty law and customary international law, and the factual reality that Azerbaijan has not implemented Article 9 domestically.

1. Article 9 approval can only be required if it was provided for under domestic law at the time the investment was made.

487. Azerbaijan contends that Mr. Bahari and Professor Schill misconstrue Article 12 of the Treaty to render Article 9 as "effectively meaningless."[857] This characterization is not consistent with the First Schill Opinion. The position in the First Schill Opinion is a context-specific analysis that considers and applies the reality that there was no implementing domestic legislation and administration in Azerbaijan vis-à-vis Article 9 when Mr. Bahari made his investments, or at any time since.

488. As fully articulated in the Second Schill Opinion, Article 9 cannot be read as requiring approval for pre-existing investments *after* the Treaty entered into force; and the need for approval is limited in respect of pre-existing investments to situations where an approval *was* provided for under the host-State's domestic law when the investment was made.[858] In other words, the focus of Professor's Schill's analysis is on the need for Iran and Azerbaijan to implement an Article 9 approval under its domestic law, which Iran has clearly done, but Azerbaijan has not. Conversely, if Article 9 applied to pre-existing investments, even when no domestic approval provision existed when the investment was made, this would render Article 12(1)3 superfluous.[859]

489. Thus, Professor Schill maintains his position that:

[redacted][860]

857 Schill Second Opinion ¶ 68.

858 Schill Second Opinion ¶ 71.

859 Schill Second Opinion ¶ 75.

860 Schill Second Opinion ¶ 88.

490. Moreover, as Professor Schill notes, "[redacted]."[861] Azerbaijan cannot rewrite the terms of the Treaty in light of the current Arbitration.

491. Azerbaijan's Rejoinder also maintains its tenuous position that under Article 9 "[t]here was no further requirement of 'operationalisation' into domestic law"[862] and that no notice was required to alert Iran and its investors when there was a change to the competent authority under Article 9 of the Treaty.[863]

492. Amongst other reasons why these positions are not viable,[864] the question arises, how would Mr. Bahari, or any other Iranian investor, actually apply for approval if Azerbaijan "[redacted]."[865]

493. Likewise, on what basis would Azerbaijan consider and decide to provide approval under Article 9. Without a framework for Iranian investors to have an opportunity to receive approval under Azerbaijani domestic law (which Azerbaijan retains the discretion to implement), Azerbaijan's interpretation of Article 9 results in an empty promise of protection under the Treaty and imbalance as between its Parties. Such an interpretation would not only contravene Article 31 of the VCLT, but would undermine the Treaty's object and purpose and undermine Azerbaijan's obligation to protect Iranian investments whereas Iran does provide a domestic framework. and cannot be accepted.

494. A change to the competent authority listed in Article 9 of the Treaty has international consequences. Naming the competent authority has to be understood as a designation, which has an international character and is not purely an internal matter (as suggested in by Mr. Valiyev).[866] For such designations there are international rules and practices that require notification, including in cases of changes to the designation, for a designation to

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861 Schill Second Opinion ¶ 87.

862 SoRJ ¶ 241.

863 SoRJ ¶¶ 210, 241 and 247.

864 See Second Schill Opinion § 3.2.

865 Second Schill Opinion ¶ 95.

866 Valiyev WS1 ¶ 7.

take effect. As Professor Schill explains, the need to notify designations of the kind in Article 9 have an important publicity function, and:

[redacted][867]

495. Thus, the contention that Azerbaijan need not have provided notice of a change to the competent authority under Article 9 contravenes the need for legal certainty. It is also incompatible with existing investment-treaty arbitration jurisprudence dealing with "[redacted]" under Article 25(1) of the ICSID Convention of constituent subdivisions or agencies.[868]

496. It appears uncontested that Azerbaijan did not provide any notice about the alleged change of the competent authority listed in Article 9,[869] and Azerbaijan's current arguments that [redacted]" are wrong for numerous reasons.[870] For example, and as further discussed in the Schill Second Opinion, the record in this Arbitration shows that information on a possible succession to the MFER would have required "[redacted]"[871] and did not comply with the need for redesignations to meet a "[redacted]."[872] Indeed, this is illustrated by Azerbaijan's need to submit the expert opinion of Mr. Mustafayev on the issue, and by the fact that apparently no other Iranian investor has ever sought Article 9 approval.[873]

867 Second Schill Opinion ¶ 101.

868 Second Schill Opinion ¶¶ 102-103.

869 Second Schill Opinion ¶ 105.

870 Second Schill Opinion ¶¶ 105-107.

871 Second Schill Opinion ¶ 106.

872 Second Schill Opinion ¶ 107.

873 Valiyev WS1 ¶ 33 ("[redacted]").")

2. Azerbaijan failed to implement the necessary steps to transfer competence to the alleged successor entities.

497. It is equally unconvincing that the Tribunal should accept Azerbaijan's position that a successor ministry filled the shoes of the competent authority (MFER) listed in Article 9 of the Treaty. In relying on the ICJ's approach in the *South West Africa Cases* (that Respondent mistakenly relies on to support its own position), Professor Schill notes that, at a minimum:

[redacted][874]

498. This is most certainly not the situation the Tribunal faces in the case at hand. Again, Azerbaijan cannot rewrite history to meet its desired goal in this Arbitration to deny Mr. Bahari's investments protection under the Treaty.

3. The doctrine on severance of inoperable treaty clauses applies to the situation at hand.

499. Azerbaijan's Rejoinder contends that the approval requirement under Article 9 cannot be severed, including under the principle of severability of treaty clauses or that Article 44 of the VCLT provides useful guidance in this respect.[875]

500. As a preliminary point, Professor Schill notes that if "[redacted]"[876] Thus, the Tribunal need not consider this severability argument unless it somehow disagrees with Professor Schill's primary position.

501. Azerbaijan's argument that Mr. Bahari lacks standing to argue that Article 9 of the Treaty is inoperative is also broadly unsupported. For example, Mr. Bahari relies on Article 10 of

874 Second Schill Opinion ¶ 119.

875 SoRJ ¶¶ 236-249.

876 Second Schill Opinion ¶ 124.

the Treaty, which provides for investor-State arbitration in the event of "a dispute … with respect to an investment."[877] Professor Schill notes that:

[redacted][878]

502. As Mr. Bahari is bringing a specific claim that his rights under the Treaty have been breached, he is entitled to assert arguments about the interpretation and application of the Treaty.[879] Azerbaijan cannot artificially narrow what it has committed to under the Treaty.

503. Professor Schill denies that Mr. Bahari's standing would be affected by the provisions of Articles 65-67 of the VCLT, stating at the outset, that Azerbaijan has failed "[redacted]."[880] Articles 65-67 do not reflect customary international law,[881] and even if they were accepted as doing so, they would not apply to the issue of severing inoperable treaty clauses.[882] Further, Articles 65-67 provide for the procedure to be followed for the State trying to invalidate, suspend, etc. a treaty, but not the one where a State is trying to keep a clause alive.[883]

504. Finally, Azerbaijan's argument that Article 9 cannot be severed because it is said to be a significant and critical limitation on Azerbaijan's consent to arbitration is untenable. As Professor Schill notes, his first Opinion already discussed numerous instances where severance was considered appropriate in the specific context of limitations to a state's consent to international dispute settlement.[884] He discusses those instances in more detail in his Second Opinion.[885] Professor Schill also specifically rejects Azerbaijan argument

877 Treaty (**CLA-001**), Article 10(1) (emphasis added).

878 Second Schill Opinion ¶ 127.

879 Second Schill Opinion ¶ 130.

880 Second Schill Opinion ¶ 132.

881 Second Schill Opinion ¶¶ 133-137.

882 Second Schill Opinion ¶ 138.

883 Second Schill Opinion ¶ 139.

884 Second Schill Opinion ¶ 141.

885 Second Schill Opinion ¶¶ 142-143.

that naming the MFER in Article 9, or perhaps Article 9's application in respect of Iranian investments in Azerbaijan more generally, is essential and cannot be severed. This position is inconsistent with the fact that Azerbaijan never proceeded to implement an Article 9 approval process in its domestic legislation; changed the designated authority without notification of Iran; and has not included a similar approval requirement in any of its other BITs.[886] Iranian BIT practice, in turn, gives several examples of asymmetrical approval requirements so that severing Article 9 in respect of the application of the Treaty to Iranian investments in Azerbaijan would seem to be unproblematic.[887]

505. Overall, having thoroughly considered the arguments put forward in Azerbaijan's Rejoinder, including the two new expert reports and new witness statement, Professor Schill concludes that he sees no reason to change the analysis and conclusions of the First Schill Opinion.[888]

506. Accordingly, Article 9 of the Treaty does not preclude Mr. Bahari's investment from protection under the Treaty nor does it deny this Tribunal jurisdiction.

IV. AZERBAIJAN'S INTERPRETATION OF THE MFN PROVISION OF THE TREATY IS ARTIFICIALLY NARROW, BUT THE TRIBUNAL DOES NOT NEED TO DECIDE IT TO AWARD MR. BAHARI THE RELIEF HE IS DUE

507. Azerbaijan's argument that the Tribunal does not have jurisdiction over any FPS claim by virtue of the MFN clause contained in Article 2(3) of the Treaty continues to rely on an artificial and incorrect narrowing of the plain language.[889] As comprehensively discussed in Mr. Baharir's Claim and Reply,[890] Mr. Bahari is entitled to benefit from the FPS guarantee, which is consistent with Azerbaijan's investment treaties with third party States like Kazakhstan and the UK,[891] by operation of the MFN treatment provision in Article 2(3) of the Treaty.

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886 Second Schill Opinion ¶ 152.

887 Second Schill Opinion ¶ 153.

888 Second Schill Opinion ¶¶ 155-156.

889 SoRJ ¶ 254.

890 SoC ¶¶ 541-546; SoR ¶¶ 900-914.

891 Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Azerbaijan on the promotion and protection of investments ("**Kazakhstan-Azerbaijan BIT**"), 16 September 1996 (**CLA-260**), Art. 2(3); Agreement between the Government of the United Kingdom of Great Britain and

508. For the sake of simplicity, and without any waiver of his arguments on the Article 2(3) of the Treaty, Claimant notes that the Tribunal need not determine the operation and scope of this MFN clause to provide Mr. Bahari with the relief he is due. While Azerbaijan's actions against Mr. Bahari and his investments clearly constitute a breach of both FPS and effective means, it is readily evident that Azerbaijan has breached its obligation to afford Mr. Bahari and his investments fair and equitable treatment under the Treaty.

509. Moreover, as discussed above, it is clear that Azerbaijan has breached the broader customary minimum standard of treatment under customary international law, and this Tribunal has jurisdiction over such pre-treaty breach of customary law.[892]

Northern Ireland and the Government of the Azerbaijan Republic for the Promotion and Protection of Investments ("**UK-Azerbaijan BIT**"), 4 January 1996 (**CLA-261**), Art. 2(3).

892 *See* NOA, ¶133 (b) (relief), ([Claimant requests …] "a declaration that the Republic of Azerbaijan has breached its obligations under the Treaty **and international law** with respect to Claimant's investments in the Republic of Azerbaijan") (emphasis added).

PART V: THE ACTS MR. BAHARI COMPLAINS OF ARE ATTRIBUTABLE TO AZERBAIJAN

A. MESSRS. ALIYEV AND HEYDAROV ARE, AND AT ALL RELEVANT TIMES HAVE BEEN, AZERBAIJAN STATE ORGANS.

510. Mr. Bahari's argument that the conduct of Mr. Aliyev and Minister Heydarov in breaching his rights as an investor in Azerbaijan is attributable to the State is quite clear: both men, wearing the colors of their official roles in the Government, directed that he be expelled from Azerbaijan, intimidated his friends and colleagues, and forcibly took or destroyed his investments. In doing so they engaged in conduct that can only be carried out by a government official, for which the State is responsible.

511. As a threshold point, at this stage of the case the Parties are in agreement on a few points relative to attribution:

a. First, Respondent states in its Rejoinder that "Azerbaijan does not dispute the President of the Republic of Azerbaijan, cabinet ministers, Azerbaijani Ministers, the Milli Majlis (as a whole), the Prosecutor's Office, Azerbaijani Courts, and other bodies of the executive are State organs for purposes of Article 4 of the ILC Articles."[893]

b. They continue: "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 Minister 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."[894]

c. Likewise, Respondent explained that "Azerbaijan does not dispute that the conduct of its Courts is attributable to the State."[895]

512. Where the Parties disagree is whether, prior to August 2003, Mr. Aliyev was a State organ of Azerbaijan.[896] For the reasons stated below, Claimant argues he was.

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893 SoRJ, ¶ 121 n. 280.

894 SoRJ, ¶ 121 n. 280 (emphasis added).

895 SoRJ ¶ 148.

896 *See* SoRJ ¶¶ 121-125.

513. In any event, however, the Tribunal need not find that Mr. Aliyev was a State organ prior to 2003 to find that Respondent breached the BIT by its conduct between 2002 and 2003 (and continuing thereafter), because Respondent concedes that Minister Heydarov was an Organ of the State of Azerbaijan continuously, and starting in 1995. As Mr. Bahari noted in his Statement of Claim, the significant acts carried out against him by the Azerbaijani Government apparatus were predominantly undertaken at Minister Heydarov's direction or at minimum with his involvement:

a. Government security forces forcibly removed Mr. Bahari from the grand opening ceremony of Caspian Fish; put him under house arrest for weeks without officially charging him; then expelled Mr. Bahari and his family from Azerbaijan;

b. Government security forces repeatedly detained and physically beat Mr. Naser Tabesh Moghaddam, Mr. Bahari's in-country manager; later, Mr. Moghaddam was imprisoned for 5 years on falsified criminal charges;

c. Messrs. Aliyev, Heydarov, and Pashayev pressured Mr. Bahari to accept forced sale terms, threatening false tax audits and the continued takeover of Coolak Baku by agents under Minister Heydarov's control;

d. Messrs. Aliyev and Heydarov illegally transferred Caspian Fish (BVI)'s assets in Azerbaijan into a local LLC vehicle; subsequently, that LLC vehicle became a subsidiary of Gilan Holding, whose ownership is shared between the Aliyev, Pashayev, and Heydarov families;

e. Parallel to the above, Messrs. Aliyev, Heydarov, Pashayev, and Khanghah stripped and divested Mr. Bahari's rights in Caspian Fish (BVI), ultimately placing the company's shareholding interest with Talit and Nijat Heydarov (Minister Heydarov's sons), as well as Leyla and Arzu Aliyeva (daughters of President Aliyev and Vice-President Aliyeva, and granddaughters of Mr. Pashayev);

f. Coolak Baku's assets and business were stripped and transferred to ASFAN LTD via proceedings before the Baku Economic Court/Shuvalan Sugar was also shut down and its assets possibly transferred to another company;

g. Mr. Bahari's remaining assets, to include the valuable Persian Carpets and the Ayna Sultan property, were seized with the knowledge and assistance of Government security forces and other organs of the Government;

h. Government officials, including Minister Heydarov himself, issued various threats against Mr. Bahari and his representatives, as further means to intimidate Mr. Bahari and thwart his efforts to recover his investments.[897]

514. Regardless, however, Respondent's assertion that Mr. Aliyev was not a State organ prior to 2003 is wrong. Respondent turns to its internal law, specifically Article 81 of the Azerbaijan Constitution, to claim that power is conferred on its Parliament as a whole and not on individual deputies. Notwithstanding that Azerbaijan's internal law lends to a reading that a member of Parliament is indeed a State organ,[898] that enquiry is not dispositive. Indeed, although ILC Article 4(2) points to the internal law of a State to define who may be its organ,[899] the commentary to the ILC Articles makes clear that

> Where the law of a State characterizes an entity as an organ, no difficulty will arise. **On the other hand, it is not sufficient to refer to internal law for the status of State organs. 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. The internal law of a State may not classify, exhaustively or at all, which entities have the status of "organs". **In such cases, while the powers of an entity and its relation to other bodies under internal law will be relevant to its classification as an "organ", internal law will not itself perform the task of classification**.[900]

515. Thus, as the Allan and Makarenko Report explains, with respect to Azerbaijan":

> [redacted].
>
> …

897 *See* SoC ¶ 15.

898 *See* SoR, ¶ 884.

899 *See* ILC ARSIWA (**CLA-037**), Art. 4(2).

900 *Id*. Art. 4, comment (11) (emphasis added); *see also Muhammet Çap Sehil Inşaat Endustri ve Ticaret Ltd Sti v. Turkmenistan*, ICSID Case No. ARB/12/6, Award, 4 May 2021 (**RLA-260**), ¶ 745 ("the fact that an entity is not specifically classified as a State organ under domestic law, while relevant, is not outcome-determinative for the attribution inquiry under ILC Article 4, which is carried out pursuant to international law… Conduct is thereby attributed to the State as a subject of international law and not as a subject of internal law…international law does not permit a State to escape its international responsibilities by a mere process of internal subdivision. The State as a subject of international law is held responsible for the conduct of all the organs, instrumentalities and officials which form part of its organization and act in that capacity, whether or not they have separate legal personality under its internal law.")

[901]

516. Azerbaijan points to a series of cases as indicative of the law on the non-attribution of private acts finding that conduct of, respectively, a governor,[902] a police officer,[903] and an Iran Air official[904] did not amount to conduct attributable to the State.[905] This misses the point. Claimant does not dispute that state officials can undertake private acts that are not attributable to their public capacity. This was not, however, the case here.

517. Azerbaijan also attempts to distinguish the *Caire* case, in which the Mixed Commission found that an assassination carried out by Mexican soldiers was attributable to the State as a decision in which it was "key…that the soldiers held themselves out as such.[906] Respondent quotes in a footnote the finding of the Commission in that case, which noted that "the two officers…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**."[907]

518. But this is precisely the point of attribution of acts to the State: when an official acts, in whatever capacity, cloaked with the authority of his position and using the tools available to him as a result of his position, he acts as an organ of the State.[908] As the Commentary

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901 Allen & Makarenko, ¶¶ 1-2.

902 *John Bensley Case*, Award, 20 February 1850 (**RLA-263**).

903 Mallén (United Mexican States) v United States of America, Mixed Commission, Award, 27 April 1927 (**RLA-130**).

904 *Kenneth P Yeager v Iran*, IUSCT Case No. 10199, Award No. 324-10199-1, 2 November 1987 (**RLA-131**).

905 *See* SoRJ ¶¶ 127-132.

906 *See* SoRJ, ¶ 130 (citing *Caire (France) v. United Mexican States*, Mixed Commission, Award, 7 June 1929 (**RLA-264**), at 531).

907 SoRJ n. 301 (emphasis added).

908 *Accord Gavrilovic v Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018 (**CLA-81**), ¶ 801 ("the conduct of an organ of the State **in an apparently official capacity** may be attributable to the State…") (emphasis added).

to the ILC Articles clarifies, when an individual "**acts in an apparently official capacity, or under colour of authority**, the actions in question will be attributable to the State."[909]

519. Respondent relies on *Gravrilovic v. Croatia* for its quote 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."[910] That statement is, however, expressed as the corollary to the general rule that "[t]he conduct of an organ of the State in an apparently official capacity may be attributable to the State."[911]

520. Respondent also repeats its discussion of *Burlington v. Ecuador*, which it says represents "instructive guidance" in determining whether the acts of an individual legislator can be attributable to his State, in its Rejoinder.[912] In *Burlington*, the discussion of attribution to legislators arose in the context of the tribunal recognizing that the statements of individual legislators were relevant to its understanding of how Congress had understood the context of its own law, and were not binding on the Ecuadorian state to interpret that law. The *obiter* of that case does not indicate that an individual holding the role of member of Parliament in a country other than Ecuador could never undertake acts attributable to his Government by exercising the power of his office, as Mr. Aliyev did here.

521. In any event, Mr. Aliyev was a State organ of Azerbaijan prior to 2003 by virtue of his role in SOCAR. Azerbaijan argues that Mr. Aliyev's position as the Vice President of SOCAR, Azerbaijan's state-owned oil company, does not make him a State organ for attribution purposes, because SOCAR "is not a State organ as a matter of Azerbaijani law."[913] Though that is true, it is not "the end of the matter."[914] In *Elliott v. Korea*, the claimant

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909 ILC ARSIWA (**CLA-037**), Art. 4, comment (13).

910 *See* SoRJ ¶ 132 (quoting *Gravrilovic v. Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018 (**CLA-81**), ¶ 801.

911 *See* SoRJ ¶ 132 (quoting *Gravrilovic v. Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018 (**CLA-81**), ¶ 801.

912 SoRJ ¶ 123. Respondent suggests *Burlington v. Ecuador* is authoritative because "there is little direct jurisprudence on the attribution of conduct for the purposes of State responsibility by the acts of individual legislators." *Id*. Claimant is aware of at least one other case that contended with the question of whether legislators' conduct could be attributed to the State. In *Lidercón v. Peru*, the claimant alleged xenophobia on the part of Peru, and relied on the contents of a congressional debate to make its claim. *See Lidercón S.L. v. Republic of Peru*, ICSID Case No. ARB/17/9, Award, 6 March 2022 (**RLA-307**), ¶ 244. That case is, however, unavailing for Respondent for the same reason as *Burlington v. Ecuador*: Mr. Aliyev was not a State organ of Azerbaijan over the requisite period because he was a member of Parliament; he is a State organ of Azerbaijan because he is a member of Parliament who used the power of his office to cloak himself with Governmental authority and carry out acts against Mr. Bahari for the benefit of his Government as well as himself.

913 SoD ¶ 36, n. 66.

914 *Elliott Associates, L.P. v. Republic of Korea*, PCA Case No. 2018-51, Award, 20 June 2023 (**CLA-347**), ¶ 444.

complained of conduct undertaken by the National Pension Service (NPS) of Korea, and thus the tribunal was tasked with determining whether the NPS's conduct was attributable to the State.[915] The parties agreed that NPS, which was organized as a corporation under private law in Korea, was not a *de jure* State organ under Korean law.[916] As the tribunal noted, however, that did not exclude its role as a potential *de facto* State organ under Korean law.[917] In determining that it was in fact a *de facto* State organ, the tribunal relied on the following facts: (i) the NPS was formally created by a statute; (ii) the NPS served government functions in administering the National Pension Fund; (iii) the NPS was fully state-owned in the sense that all of its shares were owned by Korea; (iv) NPS was fully State funded; and (v) the Ministry of Health and Welfare had the power to appoint and supervise the NPS's officials.[918]

522. Thus, "in light of the wealth of evidence before it, linking the NPS to the State both functionally and financially" the tribunal found that NPS was a State organ whose conduct was attributable to Korea.[919] In so doing, the tribunal noted that a finding that NPS was a State organ for attribution purposes did not require a finding that it "exercises any governmental authority, or *puissance publique*" or even whether that authority was exercised at the time of the conduct complained of by the claimant.[920] Rather, relying on the ILC Articles, it noted that "it is irrelevant, for purposes of attribution, whether the relevant conduct of a State organ is to be classified as exercise of governmental authority, or a sovereign act, or as a commercial conduct."[921]

523. The tribunal in *Muhammet Çap v. Turkmenistan* formulated a test to determine whether an entity may be considered a State organ as a matter of international law:

> (i) whether the entity carries out an overwhelming governmental purpose; (ii) whether the entity relies on other State organs for making and implementing decisions; (iii) whether the entity is in a relationship of complete dependence on the State; and (iv) whether

915 *Elliott Associates, L.P. v. Republic of Korea*, PCA Case No. 2018-51, Award, 20 June 2023 (**CLA-347**), ¶ 438.

916 *Elliott Associates, L.P. v. Republic of Korea*, PCA Case No. 2018-51, Award, 20 June 2023 (**CLA-347**), ¶ 444.

917 *Elliott Associates, L.P. v. Republic of Korea*, PCA Case No. 2018-51, Award, 20 June 2023 (**CLA-347**), ¶ 444.

918 *Elliott Associates, L.P. v. Republic of Korea*, PCA Case No. 2018-51, Award, 20 June 2023 (**CLA-347**), ¶ 444.

919 *Elliott Associates, L.P. v. Republic of Korea*, PCA Case No. 2018-51, Award, 20 June 2023 (**CLA-347**), ¶ 445.

920 *Elliott Associates, L.P. v. Republic of Korea*, PCA Case No. 2018-51, Award, 20 June 2023 (**CLA-347**), ¶ 445.

921 *Elliott Associates, L.P. v. Republic of Korea*, PCA Case No. 2018-51, Award, 20 June 2023 (**CLA-347**), ¶ 445 (citing ILC Articles, Commentary p. 41 ("It is irrelevant for purposes of attribution [under Article 4 of the ILC Articles] that the conduct of a State organ may be classified as 'commercial' or as *acta iure gestionis*.").

> the entity carries out the role of an executive agency, merely implementing decisions taken by State organs.[922]

524. There can be no question that SOCAR possesses characteristics similar to NPS or that it meets the *Muhammet Çap* test. SOCAR was created by Presidential Decree on 13 September 2002.[923] SOCAR is fully state owned.[924] Its supervisory board, which carries out the general management and control of SOCAR, is "[redacted]."[925] The President is also empowered to reorganize and liquidate SOCAR, as well as to appoint its executive body.[926] The State funds SOCAR through financial guarantees, cash contributions, and equity injections.[927] Fitch notes also that "[redacted]"[928] Each of these facts puts SOCAR squarely in the category of state owned entities whose actions are attributable to the State. All the more so for SOCAR's state-appointed executives, like Mr. Aliyev.

B. MESSRS. ALIYEV AND HEYDAROV EXERCISED THE POWER OF THE STATE TO DRIVE OUT MR. BAHARI FROM HIS INVESTMENTS.

525. Each of the acts listed in PART V.A. above, as well as those complained of by Mr. Moghaddam and Mr. Allahyarov in the wake of Mr. Bahari's expulsion from Azerbaijan[929] and the other acts complained of throughout Mr. Bahari's pleadings,[930] could only have been undertaken under cloak of Governmental authority.

526. Azerbaijan contests that <u>any</u> acts in furtherance of the harm to Mr. Bahari were undertaken under color of State authority. Mr. Bahari responds to its points as follows:

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922 *Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd Sti v Turkmenistan*, ICSID Case No. ARB/12/6, Award, 4 May 2021 (**RLA-260**), ¶ 746.

923 *See* **C-533** Presidential Decree of the Azerbaijan Republic No. 200, 'On Creation of the State Oil Company of Azerbaijan.', 13 September 1992.

924 *See* **C-534** FitchRatings Report, State Oil Company of the Azerbaijan Republic (SOCAR), 2024.

925 **C-535** SOCAR Annual Report, 2023, p. 6.

926 *See* **C-536** Azerbaijan Investment Holding, "SOCAR Supervisory Board was established," 23 January 2021.

927 **C-534** FitchRatings Report, State Oil Company of the Azerbaijan Republic (SOCAR), 2024.

928 **C-534** FitchRatings Report, State Oil Company of the Azerbaijan Republic (SOCAR), 2024.

929 *See* Moghaddam WS1 ¶¶ 63-89; Moghaddam WS2 ¶¶ 20-30; Allahyarov WS1 ¶¶ 10-13.

930 *See, e.g.*, SoR ¶ 893 (discussing the 2013 meeting between Mr. Bahari and Minister Heydarov in Baku, which was held at the latter's office, and for which Minister Heydarov arranged for safe passage and a visa for Mr. Bahari to enter Azerbaijan.)

a. Azerbaijan contends that "[t]he fact that [Messrs. Aliyev and Heydarov] remained shareholders in the business after [Mr. Bahari] left does not mean that their private business activity was carried out in the name of the State."[931] This submission misses the point. It is not that Messrs. Aliyev and Heydarov are now the sole ultimate owners, to the exclusion of Mr. Bahari, of Caspian Fish. It is how they came to be that way. Messrs. Aliyev and Heydarov arranged, on the day of Caspian Fish's opening ceremony, to have Mr. Bahari expelled from Azerbaijan, an act that no private person could have carried out. They then sent a henchman to coerce him into signing over his shares in exchange for the evidence of their misconduct, and when that did not secure the rights they were looking for, invited Mr. Bahari back to Azerbaijan, arranged for his passage (an act no private person could do), and then issued threats against him. Those threats carried weight because of the office they hold in Azerbaijan. They likewise, both through their own offices and through other organs of the State, arranged to harass and intimidate Mr. Bahari's associates and anyone who came to Azerbaijan to inquire after his investments. Those are not acts that any private person could take either.

b. Azerbaijan likewise takes issue with Mr. Bahari's statement that "distinguishing between private and public capacity for the purposes of Article 4 of the ARSIWA would make no sense in circumstances where the Azerbaijan's State organs themselves make no such distinction."[932] Azerbaijan contends this comports with neither international law nor Azerbaijani law.[933] That too is wrong for the reasons noted above, namely that the ILC Articles are clear that reference to internal law alone does not tell the whole story of what entities constitute organs of a State.

c. Third, Azerbaijan takes issue with Mr. Bahari's characterization of Minister Heydarov's arrangement of the 2013 meeting as an exercise of State power, contending that "Mr. Bahari's submissions on this alleged meeting fail to identify what demonstrates that Mr. Heydarov was acting in the name of the State."[934] First, there can be no question that Mr. Heydarov held himself out as acting in the name of the State: he held the meeting at his office during normal business hours.

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931 SoRJ ¶ 139(a).

932 SoRJ ¶ 139(b) (quoting Reply, ¶ 892).

933 SoRJ.

934 SoRJ ¶ 139(c).

Second, this complaint from Respondent also sidesteps the issue. The issue is not the purpose of the meeting, which was to discuss a business relationship. The issue is how Mr. Bahari got there: in order to arrange for a meeting to discuss his business, Minister Heydarov arranged for Mr. Bahari's travel, and, critically, promised safe passage for Mr. Bahari for the duration of his visit.

d. Finally, Azerbaijan contends that a State organ using the means at its disposal for the exercise of a State function can do so in a private capacity without its conduct becoming attributable to the State.[935] As noted above, the language Respondent is leaning on from *Gavrilovic* was presented as the corollary to the general rule that an organ acting under color of its office can undertake actions attributable to the State.[936] The *Gavrilovic* tribunal, on the facts of that case, found that "the principles of attribution are not relevant."[937] And Claimant is aware of only one case in which a tribunal (the Iran-US Claims Tribunal) found that action undertaken by someone who may have been an organ of the State[938] would not have been attributable because it was committed "in a purely private capacity."[939] In that case, the claimant complained, *inter alia*, that a gate agent for Iran Air had forced him to pay an additional sum to get onto a flight for which he had a confirmed ticket.[940] The tribunal found that the issue was whether the agent had "acted in [his] official capacity as an organ" of the State. It found that he had acted for personal profit, there being no evidence that he "act[ed] on behalf of or in the interest of Iran Air."[941] That case is distinguishable from the case at hand, where (i) there is no question that Minister Heydarov is a State organ (and it is clear that Mr. Aliyev is as well), and (ii) their actions are beneficial to the Government they represent – Azerbaijan purported to welcome foreign investment with the plaque hung at Caspian Fish, recognizing the value of investors such as Mr. Bahari, who will stand up local

935 SoRJ. ¶ 139(d) (citing **CLA-81** *Gavrilovic v. Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018, ¶ 801).

936 *See supra* ¶ 458.

937 *Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018 (**CLA-81**), ¶ 804.

938 Because the case arose in the context of the 1979 Iranian Revolution and the Claims Tribunal found that the conduct was all private, it did not reach a determination on whether a gate agent for Iran Air would have been a State agent. *See Kenneth P. Yeager v. The Islamic Republic of Iran* (**RLA-131**), ¶ 64.

939 *Kenneth P. Yeager v. The Islamic Republic of Iran* (**RLA-131**), ¶¶ 64-65.

940 *Kenneth P. Yeager v. The Islamic Republic of Iran* (**RLA-131**), ¶ 64.

941 *Kenneth P. Yeager v. The Islamic Republic of Iran* (**RLA-131**), ¶ 65.

businesses, for the benefit of local development.[942] In any event, the tribunal in that case was relying, not on Article 4 of the ILC Articles, but the commentary to Article 10, which covers situations of insurrectionist or other movements.[943]

527. In arguing that Messrs. Aliyev and Heydarov were acting in their personal capacities, Azerbaijan further relies on a transcript of a Facebook interview that aired in March 2017, in which Mr. Bahari, relaying his June 2002 conversation with Mr. Khangagh, states that Mr. Khangagh informed him Mr. Aliyev and Minister Heydarov "[redacted]." [944] That interview, regardless of what Mr. Khangagh informed Mr. Bahari about whether he understood Minister Heydarov and Mr. Aliyev to be working in their personal capacities, demonstrates two important things:

a. First, Mr. Bahari understood that he had partnered, not with Minister Heydarov and Mr. Aliyev in their personal capacities, but with the State. He says, "[redacted]"[945]

b. Second, Mr. Khangagh informed Mr. Bahari that he "[redacted]."[946]

Thus, Mr. Bahari understood Minister Heydarov and Mr. Aliyev to have held themselves out as State business partners, and was informed after his expulsion from Azerbaijan that the State had a monopoly on his investments, *i.e.* they had become fully State-owned.

942 *See* SoC ¶ 12 (recounting the plaque placed by then-President Heydar Aliyev at the main entrance of Caspian Fish proclaiming "Foreign Investors and Investments are Welcome in Azerbaijan.")

943 As was the case during the 1979 Revolution in Iran, the backdrop to the claims in that case. *Kenneth P. Yeager v. The Islamic Republic of Iran* (**RLA-131**),, ¶¶ 8-16. *See id*. ¶ 65 ("It must have acted in its official capacity as an organ, however. See ILC-Draft Article 10. Acts which an organ commits in a purely private capacity, even if it has used the means placed at its disposal by the State for the exercise of its function, are not attributable to the State. See Commentary on the ILC-Draft Article 10, Yearbook of the International Law Commission 1975, Volume II, p. 61.").

944 **R-068** Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live, 6 March 2017, p. 3.

945 **R-068** Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live, 6 March 2017, p. 3.

946 **R-068** Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live, 6 March 2017, p. 3.

PART VI: REQUEST FOR RELIEF

528. On the basis of the foregoing, and without limitation to Mr. Bahari's right to amend these submissions and prayers for relief, Mr. Bahari respectfully request that the Tribunal enter an Award in his favor and against Azerbaijan as follows:

i. a declaration that the dispute is within the Tribunal's jurisdiction and competence;

ii. a declaration that Azerbaijan has breached its obligations under the Treaty and international law with respect to Mr. Bahari's investments in Azerbaijan;

iii. an order directing Azerbaijan to compensate Mr. Bahari for his losses resulting from Azerbaijan's breaches of the Treaty for an amount of at least $567,891,826 or $1,131,711,373 (as determined by applicable pre-Award interest), which may be supplemented in a subsequent report, plus post-Award interest until the date of full and effective payment, at a commercially reasonable rate, compounded annually;

iv. an order directing Azerbaijan to compensate Mr. Bahari for moral damages of $10 million, or five (5) percent of the total material damages awarded, whichever is greater, plus post-Award interest until the date of full and effective payment, at a commercially reasonable rate, compounded annually;

v. an order directing Azerbaijan to pay all of Mr. Bahari's costs and fees incurred in these arbitration proceedings, including all of its attorneys' fees and expenses; and

vi. an order for such other and further relief as the Tribunal deems just and proper in the circumstances.

Dated: 10 December 2024

Respectfully submitted on behalf of Claimant
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s/ Paul Cohen

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Appendix A – Claimant's Requested Adverse Inferences

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		COOLAK BAKU
1	"The Coolak Baku facility was operational."	**Background:** Respondent alleges that Coolak Baku "*facility was never completed (or operational)*" (SoRJ ¶ 305). Azerbaijan's allegation relies on just five correspondences, covering a three-year period from 1997 to 1999 (**R-24 to R-28**). As explained, the correspondences are internally inconsistent and themselves contradict Azerbaijan's assertion. (SoRJJ PART III § I.C.3.) They do not support the propositions that the company was never operational. Azerbaijan has failed to produce any other documents that would conclusively establish that Coolak Baku facility was never operational. **1. Claimant produced all available evidence corroborating the inference sought.** Claimant's Statement of Claim (SoC), Statement of Reply (SoR), and Statement of Rejoinder on Jurisdiction (SoRJJ) have set out in detail Mr. Bahari's investment in Coolak Baku and that soft drink production began in 1997, while beer production began in 1998. (See, e.g., SoRJJ PART III § I.B.4.) **2. The evidence is accessible to Azerbaijan.** Azerbaijan has access to Coolak Baku's files and has produced a number of Coolak Baku exhibits, obtained, *inter alia*, through its witnesses. (See, e.g., SoD ¶ 196 (stating that Mr. Zeynalov produced certain correspondences), H. Aliyev WS1; SoRJJ PART III § I.C.2.) This includes alleged contemporaneous correspondences (**R-24** to **R-28**) and minutes of board meetings (**R-366**, **R-104**, **C-520**, **R-29**, **R-360**), as well as versions of the joint venture agreement dated 1996 and 1999 (**R-98**, **R-72**). **3. The inference sought is reasonable and consistent with the facts and other evidence.** The bulk of Claimant's evidence shows that equipment was brought in and installed at Coolak Baku. Witnesses have provided testimony that the facility was operational. (See, e.g., Bahari WS1 ¶¶ 16-27; Moghaddam WS1 ¶¶ 25-38; Suleymanov WS ¶¶ 7-21; Khalilov WS1 ¶¶ 12-14.) Respondent's own evidence contains statements that the facility was operational by 1998. (SoRJJ PART III § I.C.3.) **4. Claimant's prima facie evidence is reasonably consistent with the inference sought.** Again, the bulk of Claimant's evidence regarding Coolak Baku corroborates that the facility was up and running. Claimant's SoC, SoR, and SoRJJ have set out in detail Mr. Bahari's investment in Coolak Baku and that soft drink production began in 1997, while beer production began in 1998. (See, e.g., SoRJJ PART III § I.B.4; SoR PART II § II.A.1; SoC § III.A.2.c-d.

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		5. Azerbaijan is aware of its obligation to produce rebuttal evidence. In PO6, Azerbaijan was ordered to produce financial documents, tax records, records of licenses and permits, and other evidence relating to Coolak Baku's profitability. Each category of requested documents would demonstrate whether Coolak Baku was operational: - **Claimant Doc. Req. 140:** [redacted] o Existence of licenses and permits would corroborate soft drink and beer production. Azerbaijan did not produce any documents. The Ministry of Agriculture stated in a 22 May 2024 letter that such information "[redacted]," without further details. (**C-426**.) - **Claimant Doc. Req. 141:** "[redacted]." o This request was directed to the State Tax Service. Azerbaijan did not produce any documents and did not offer any explanation of why it failed to do so. Tax records would clearly show whether Coolak Baku had any revenues in the relevant years, which would be dispositive to the issue of whether it was operational or not. - **Claimant Doc. Req. 143** "[redacted]." o Azerbaijan presents these export exhibits as complete and its quantum expert relies on them as such. (SoRJJ PART III § I.B.10.) However, Azerbaijan's own evidence shows that these records are not complete. (SoRJJ PART III § I.B.10, § I.C.3.) Claimant requested production of the complete records. Azerbaijan did not produce any documents and did not offer any explanation as to why it failed to do so. - **Claimant Doc. Req. 154:** [redacted]" o Claimant states upon information and belief that Shuvalan Shirniyat may be the successor entity for Shuvalan Sugar. (SoC ¶ 296.) Azerbaijan denies this, but provides a single

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		witness statement that "[redacted]." (H. Aliyev WS1 ¶ 31; SoD ¶ 228.) No documentary evidence is provided. o Shuvalan formed part of Coolak Baku; Azerbaijan claims that it was never operational, or even built. (SoD ¶¶ 225-228.) The requested tax records would conclusively establish whether Shuvalan Shirniyat took over the business and operations of Shuvalan Sugar, and whether it had revenues, and was therefore operational. Azerbaijan did not produce any documents in response to this request and did not offer any explanation of why it failed to do so. - **Claimant Doc. Req. 159:** [redacted]." o Similar to Request no. 140, existence of licenses and permits would corroborate drink and beer production. ASFAN eventually produced beer under its own corporate name under the "Atila brand. (SoR ¶ 204; **C-176** – Attila Beer – ASFAN MMC.) Even if Coolak Baku did not receive licenses or permits, proof of ASFAN obtaining such permits during the relevant period from 1996 onwards would corroborate that Coolak Baku was operational. Azerbaijan did not produce any documents in response to this request and did not offer any explanation of why it failed to do so. - **Claimant Doc. Req. 161:** "[redacted]" o Mr. Zeynalov's reported income and expenses while at ASFAN would indicate whether Coolak Baku was operational. Azerbaijan did not produce any documents in response to this request and did not offer any explanation of why it failed to do so. Taken as a whole, the requested documents that Azerbaijan was ordered to produce would demonstrate whether Coolak Baku was operational. Azerbaijan not only failed to produce any responsive documents, it

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		also failed to confirm whether no documents were identified (save for Request no. 140), or provide a description of its search efforts, as it was required to do. (PO6 ¶¶ 4(ii)-(iii).)
2	"Coolak Baku started producing soft drinks in 1997 and beer in 1998."	**Background** Azerbaijan alleges that "*there was no soft drink production at all*"; that beer production "*was attempted, but failed*" (SoRJ ¶ 304; see also ¶ 299, ¶ 311(b)-(c).) As explained, the correspondences are internally inconsistent and themselves contradict Azerbaijan's assertion. (SoRJJ PART III § I.C.3.) They do not support the propositions that the company never produced soft drinks or beer. Azerbaijan has failed to produce any other documents that would conclusively establish that Coolak Baku facility never produced such drinks. **1. Claimant produced all available evidence corroborating the inference sought.** See point 1 at Item 1 above. **2. The evidence is accessible to Azerbaijan.** See point 2 at Item 1 above. **3. The inference sought is reasonable and consistent with the facts and other evidence.** See point 3 at Item 1 above. In the 30 November 2002 Minutes of Coolak Baku, ASFAN states that beer production began in 1999. (**R-29**.) **4. Claimant's prima facie evidence is reasonably consistent with the inference sought.** See point 4 at Item 1 above. **5. Azerbaijan is aware of its obligation to produce rebuttal evidence.**

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		See point 5 at Item 1 above. The same document requests would demonstrate whether Coolak Baku went into production or not. For example, tax records at Request no. 141 would show income and expense data, which would corroborate start of production. Azerbaijan not only failed to produce any responsive documents, it also failed to confirm whether no documents were identified (save for Request no. 140), or provide a description of its search efforts, as it was required to do. (PO6 ¶¶ 4(ii)-(iii).)
3	"The Coolak Baku Import/Export data provided by Azerbaijan at **R-73** to **R-76** is incomplete."	**Background** Azerbaijan exhibits four export certificates from 1996 to 1999. (**R-73**, **R-74**, **R-75**, **R-76**). Azerbaijan presents these export exhibits as complete and its quantum expert relies on them as such. (SoRJJ PART III § I.B.10.) However, Azerbaijan's own evidence shows that these records are not complete. (SoRJJ PART III § I.B.10, § I.C.3.) **1. Claimant produced all available evidence corroborating the inference sought.** Claimant's SoC, SoR, and SoRJJ have set out in detail Mr. Bahari's investment in Coolak Baku. Claimant has submitted extensive evidence that he imported and installed the equipment at the Coolak Baku facility (as well as at Shuvalan Sugar). Claimant has also provided evidence that he imported sugar into Azerbaijan. (SoRJJ PART III § I.B.10, § I.C.3 , SoR ¶ 152, SoC ¶ 65.) **2. The evidence is accessible to Azerbaijan.** **R-73** to **R-76** were produced by Azerbaijan itself. It therefore has access to Coolak Baku's import-export data. **3. The inference sought is reasonable and consistent with the facts and other evidence.** As noted, Claimant has demonstrated (based on Azerbaijan's own evidence) that the export documents at **R-73** to **R-76** are incomplete. (SoRJJ PART III § I.B.10, § I.C.3.) **4. Claimant's prima facie evidence is reasonably consistent with the inference sought.** See points 1 and 3 above. Mr. Bahari's overall claim regarding Coolak Baku shows at least $21 million invested in equipment. The incomplete export data at **R-73** to **R-76** show only $751,000 in equipment imported from 1996 to 1999. The requested inference that these records are incomplete is consistent with Mr. Bahari's prima facie evidence regarding the amounts he invested in Coolak Baku. **5. Azerbaijan is aware of its obligation to produce rebuttal evidence.** - **Claimant Doc. Req. 143** [redacted]

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		[redacted]." o Azerbaijan presents these export exhibits as complete and its quantum expert relies on them as such. (SoRJJ PART III § I.B.10.) However, Azerbaijan's own evidence shows that these records are not complete. (SoRJJ PART III § I.B.10, § I.C.3.) Claimant requested production of the complete records. Azerbaijan did not produce any documents and did not offer any explanation as to why it failed to do so. The requested documents that Azerbaijan was ordered to produce would provide a complete (or at least more complete) record of Coolak Baku's import-export data and dispel Azerbaijan's assertion that the exhibited records at **R-73** to **R-76** are exhaustive. Azerbaijan not only failed to produce any responsive documents, it also failed to confirm whether no documents were identified (save for Request no. 140), or provide a description of its search efforts, as it was required to do. (PO6 ¶¶ 4(ii)-(iii).)
CASPIAN FISH		
4	"In 2001, Azerbaijan accepted that US$ 56 million was used to build the Caspian Fish plant."	**Background** Mr. Bahari's case is that he personally invested US$56 million into Caspian Fish. Azerbaijan contends that Mr. Bahari did not invest US$ 56 million in the Caspian Fish plant and/or that US$ 56 million was not the cost to build the plant. President Heydar Aliyev, represented at the Caspian Fish grand opening ceremony on 10 February 2001 that US$ 56 million in foreign investment was used to build the Caspian Fish plant. (SoC ¶ 79; **C-091**.) That US$ 56 million figure has been repeatedly and consistently mentioned by, *inter alia*, members of the Azerbaijani government, including Minister Heydarov; during heads of State visits to the Caspian Fish plant; and by Caspian Fish's own management (which is controlled by members of the Government). (See e.g., **C-043; C-011; C-012; C-013; C-090; SEC-028);** Second Secretariat Report, pp. 18-19, Table 5). **1. Claimant produced all available evidence corroborating the inference sought.** As noted above, Claimant's SoC, SoR, and SoRJJ have submitted extensive evidence demonstrating Azerbaijan's knowledge of and representations about US$ 56 million being the foreign investment in the Caspian Fish plant.

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		2. The evidence is accessible to Azerbaijan. Azerbaijan has access to the records of government organs and officials relating to the US$ 56 million investment to build Caspian Fish and Azerbaijan's awareness and acceptance of the same. This includes the historical records of President Heydar Aliyev, and Azerbaijan already pledged to [redacted] which is the time period when President Heydar Aliyev would have prepared and presented his statement at the Caspian Fish grand opening ceremony (See **Azerbaijan Response to Claimant Document Production Request 033**). **3. The inference sought is reasonable and consistent with the facts and other evidence.** As noted above, Azerbaijan and the management of Caspian Fish have repeatedly and consistently (until this Arbitration) represented that US$ 56 million from foreign investment was made to build the Caspian Fish plant. **4. Claimant's prima facie evidence is reasonably consistent with the inference sought.** Claimant's SoC, SoR, and SoRJJ have set out in detail Mr. Bahari's investment in Caspian Fish, including documentary evidence that establishes that he spent at least US$ 44.418 million for Caspian Fish, as assessed and confirmed by an independent quantum expert, Secretariat. This evidence is entirely consistent with the inference sought. (See e.g., Secretariat Second Report, ¶ 7.3). **5. Azerbaijan is aware of its obligation to produce rebuttal evidence.** Pursuant to PO6, Azerbaijan was ordered by the Tribunal to produce documents relevant to this requested inference. Azerbaijan has not produced any documents or responses despite being ordered and/or committing to search and do so. - **Claimant Doc. Req. 31**: [redacted]. Azerbaijan committed to "[redacted]" Azerbaijan has not produced any documents or response about this search or this topic.

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		Azerbaijan not only failed to produce any responsive documents, it also failed to confirm whether no documents were identified, or provide any description of its search efforts, as it was required to do. (PO6 ¶¶ 4(ii)-(iii).)
5	"Azerbaijan stated that Caspian Fish was a successful fish processing and production plant that held significant market control in Azerbaijan."	**Background** Azerbaijan alleges that the Caspian Fish plant was an incorrectly conceived fish processing plant that never achieved significant production capacity and was financially unsuccessful. This characterization is contradicted by contemporaneous records and statements. These include statements by Azerbaijan about the success and productivity of the plant, starting at the grand opening on 10 February 2001, and repeatedly confirmed over two decades by Caspian Fish and international organizations. This included statements that Caspian Fish effectively held a monopoly position in Azerbaijan. (See e.g., **C-537**; Secretariat Report, pp. 22-26, Table 7; **SEC-221** ("A USAID report commented that in the ROA, [redacted] " and "a [redacted] ") **1. Claimant produced all available evidence corroborating the inference sought.** Claimant has submitted an extensive body of contemporaneous evidence establishing representations and statements made by Azerbaijan, Caspian Fish, and other third-party sources about the high quality, production value, and market share of the Caspian Fish plant. (See above.) **2. The evidence is accessible to Azerbaijan.** Azerbaijan has established that it has access to Caspian Fish archives and has produced documents from those archives on a rolling basis throughout the Arbitration; many of which were produced after the document production (See e.g., SoD ¶¶ 95; 312; SoR ¶¶ 71; 378; 381, 382(b); 392; 489; 699). Azerbaijan also has access to numerous government organs that had oversight over Caspian Fish and the tightly controlled domestic market it operated in, including its exports to various Caspian Fish subsidiaries in Switzerland, the United Kingdom, and Germany, amongst others (See e.g., **C-146**; **C-155**; SoC ¶¶ 271-274). **3. The inference sought is reasonable and consistent with the facts and other evidence.** As noted above, Azerbaijan, Caspian Fish, and independent third parties have made consistent and repeated statements, as well as produced market reports about, the success of Caspian Fish and its monopolistic share of the fish processing and production market in Azerbaijan. **4. Claimant's prima facie evidence is reasonably consistent with the inference sought.**

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		Claimant's Statement of Claim, Statement of Reply, and Statement of Rejoinder on Jurisdiction have set out in detail evidence that supports this inference, as discussed above. The available evidence is therefore reasonably consistent with the inference sought. **5. Azerbaijan is aware of its obligation to produce rebuttal evidence.** Save for Cl. Doc. Req. 60 (discussed below), Azerbaijan has failed to produce a single document responsive to Claimant's document requests that would rebut this inference. The inference is that such production would confirm the inference statement sought. Instead, Azerbaijan has produced witness statements and alleged expert reports that are unsupported by reliable documentary evidence. Pursuant to Procedural Order No. 6, Azerbaijan was ordered by the Tribunal to produce documents relevant to this requested inference. Azerbaijan has not produced any documents or responses despite being ordered and/or committing to search and do so. - **Claimant Doc. Req. 117:** [redacted] - **Claimant Doc. Req. 120:** [redacted] - **Claimant Doc. Req. 122:** [redacted]

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		- **Claimant Doc. Req. 123:** [redacted] Taken as a whole, the requested documents that Azerbaijan was ordered or committed to produce would demonstrate whether Caspian Fish was a successful business. Azerbaijan not only failed to produce any responsive documents (save for Doc. Req. 60, discussed below), it also failed to confirm whether no documents were identified, or provide a description of its search efforts. (PO6 ¶¶ 4(ii)-(iii).) *Additionally*, Azerbaijan's document production has resulted in at least one category of documents that raise serious questions. - **Claimant Doc. Req. 60:** Azerbaijan produced documents from Caspian Fish that it represented relate to the company's historical financial and/or operating performance that appear to have been filed with the Ministry of Tax. Both Claimant and his independent expert, Secretariat, have highlighted broad anomalies and inconsistencies in the financial figures represented in those documents and other documents produced by Azerbaijan. (SoR ¶¶ 1119-1114; Secretariat Second Report, § 3.C; **C-424** Claimant Letter to Tribunal, 3 May 2024).
6	"Azerbaijan removed evidence of Caspian Fish BVI's ownership in Caspian Fish LLC."	**Background** Mr. Bahari contends that Caspian Fish LLC was created without his knowledge and substituted for Caspian Fish BVI so as to sever any interest he might have in the investment in Azerbaijan. At its incorporation, Caspian Fish LLC was a 100% subsidiary of the Caspian Fish BVI foreign entity (where Mr. Bahari held a 40% shareholding). Thus, any interest Mr. Bahari might have in the LLC flowed through the BVI's 100% ownership of that LLC. Azerbaijan subsequently removed any reference to the foreign BVI entity in Caspian Fish LLC's official documentation. Within Azerbaijan, this had the effect of severing any interest Mr. Bahari might have in the local LLC. (SoR ¶¶ 288-304; **R-382**; R-57; R-116). Azerbaijan denies that Caspian Fish LLC was established without Mr. Bahari's participation and knowledge and that it was not part of an overall plan by Azerbaijan (including Messrs. Aliyev and Heydarov) to strip Mr. Bahari of his interest in his investment. **1. Claimant produced all available evidence corroborating the inference sought.**

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		From the start of his Claim, Mr. Bahari possessed no knowledge or documents about Caspian Fish LLC, although it was apparent that Caspian Fish LLC took over the physical facility and business. (SoC ¶¶ 253-259.) Mr. Bahari has produced all available evidence in his possession or found through investigation on Caspian Fish LLC. Mr. Bahari subsequently requested document production from Azerbaijan to shed light on how this heretofore unknown LLC entity came to substitute itself and take over the facility and business. The Tribunal granted a number of these document requests. (Annex 1, PO6.) Azerbaijan engaged in obstructive conduct and broadly failed to produce documents responsive to several document requests granted by the Tribunal. In doing so, Azerbaijan has effectively prevented Mr. Bahari from obtaining evidence on Caspian Fish LLC that he was entitled to. Conversely, Azerbaijan has evident access to Caspian Fish LLC's archives and has been able to selectively exhibit documents it deems helpful to its case. **2. The evidence is accessible to Azerbaijan.** Azerbaijan has access to and has produced all of the evidence relating to Caspian Fish LLC in the Arbitration to date. That evidence is highly selective, clearly one-sided, and largely stops after Mr. Bahari is expelled from Caspian Fish and Azerbaijan in 2001, with only a handful of documents in 2002. Thus, Azerbaijan has demonstrated that it has the access, and possession, custody, or control over the documents themselves and/or persons or entities holding such documents. Azerbaijan has produced documents from more than 23 years ago and therefore must have similar access and ability for additional documents at that time and after 2001 to current. **3. The inference sought is reasonable and consistent with the facts and other evidence.** As discussed above, Azerbaijan has produced documents to support its allegation that Mr. Bahari was aware of Caspian Fish LLC, but it has refused and failed to produce any documents responsive to the granted document requests, including but not limited to documents relevant to the time period after Mr. Bahari was expelled from Caspian Fish and Azerbaijan. The obstructionist intent in this refusal is evident in the total lack of explanation as to why no documents were found and what search methods were used – as Azerbaijan was required to do under PO6 ¶¶ 4(ii)-(iii). Given Azerbaijan's systematic stonewalling, there is a strong inference that it has refused to produce documents because those documents would establish Mr. Bahari's claim that various Azeri agencies removed evidence of Caspian Fish BVI's ownership in Caspian Fish LLC, as part of an overall ploy to sever any interest Mr. Bahari might have in the LLC vehicle and his investment overall. For example, from the documents Azerbaijan has produced, it can already be seen that:

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		- As early as 5 October 2000, Azerbaijan removed reference to Caspian Fish BVI (and therefore Mr. Bahari's ownership) in Caspian Fish LLC's tax registration (**R-382** – "[redacted]").[1] This is one of multiple examples of Caspian Fish LLC documents misconstruing or excluding a reference to its parent / ownership when such should have been included (See **R-57**; **R-116**). - Azerbaijan has deployed a strategy of administrative musical chairs in order to avoid producing documents as ordered by the Tribunal: o The Tribunal ordered Azerbaijan to produce "[redacted]." (**Cl. Doc. Req. 071**). o Azerbaijan produced a Letter from the Ministry of Justice stating that the documents had been transferred from the "[redacted]" to the "[redacted]"[2] However, the State Tax Service was already ordered to produce documents relating to Caspian Fish LLC pursuant to several other document requests (Cl. Doc. Reqs. 45, 55, 58, 59, 60). Neither the State Register of Commercial Organizations nor the State Tax Service produced any documents responsive to Cl. Doc. Req. 071. o The Ministry of Justice letter also stated that the Ministry supervised that transfer (**C-314**). There is no mention in that letter of the documents not existing – nor any information on what search methods were employed (as required). **4. Claimant's prima facie evidence is reasonably consistent with the inference sought.** As explained above, Mr. Bahari has set out a prima facie evidence that Azerbaijan removed references to the foreign BVI entity in Caspian Fish LLC's official documentation. **5. Azerbaijan is aware of its obligation to produce rebuttal evidence.** Azerbaijan has failed to produce documents responsive to a number of Claimant document requests relating to Caspian Fish LLC.

1 **R-382** Notice of Issuance of TIN for LLC dated 5 October 2000

2 **C-314** [Resp. Doc. Production 071_01] Letter from Ministry of Justice, 24 April 2024.

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		Pursuant to Procedural Order No. 6, Azerbaijan was ordered by the Tribunal to produce documents relative to Caspian Fish LLC and relevant to the requested inference. Azerbaijan has not produced any documents or responses despite being ordered to do so for the following document requests: - **Claimant Doc. Req. 045:** [redacted] - **Claimant Doc. Req. 055:** [redacted] - **Claimant Doc. Req. 058:** [redacted] - **Claimant Doc. Req. 059:** [redacted] - **Claimant Doc. Req. 060:** See above discussion at Inference #5 about highly irregular production from Azerbaijan. - **Claimant Doc. Req. 062:** [redacted] - **Claimant Doc. Req. 062:** [redacted] - **Claimant Doc. Req. 063:** [redacted] - **Claimant Doc. Req. 064:** [redacted]

N°	Adverse Inference sought by Claimant	Reason why the Adverse Inference sought is appropriate and necessary
		- **Claimant Doc. Req. 071**: [redacted] Taken as a whole, the requested documents that Azerbaijan was ordered to produce would demonstrate that Caspian Fish LLC was used to separate Mr. Bahari from his investments. Azerbaijan not only failed to produce any responsive documents, it also failed to confirm whether no documents were identified.