Reaching peace through responsibility: The role of international arbitration's stance on the South Caucasus' environmental post-war recovery

Valentina Chabert*

In light of multiple instances of environmental damage committed by Armenia and foreign corporations during the three decades of occupation of Azerbaijani territory, the present article aims at investigating the necessity of bolstering peace negotiations through the recognition of Armenia's legal responsibility for ecosystem harm in the territories of Azerbaijan. To this purpose, the role of international arbitration in promoting Azerbaijan's environmental post-war recovery is investigated. Specifically, the article explores the current framework of international humanitarian law providing for the protection of the environment during armed conflict, as well as the relationship between the law of occupation and natural resource exploitation. Against this background, the ultimate objective of this article lies in the investigation of Azerbaijan's requests for inter-state arbitration pursuant to the Bern Convention and the Energy Charter Treaty. This is considered to be potentially the most successful option for Azerbaijan to get compensation for environmentally harmful acts committed by Armenia. Additionally, this article considers that arbitration emerges as the best legal solution for Azerbaijan to seek redress for environmental wrongdoing, as international law is poorly equipped to tackle the issue of corporate actors' responsibility. Indeed, obtaining compensation by directly suing corporate actors that have committed environmental damage in occupied territories under Armenia's jurisdiction before national tribunals appears to be extremely complicated.

Keywords: Arbitration, Energy Charter Treaty, Bern Convention, environmental damage, South Caucasus.

* **Valentina Chabert** is a Ph.D. Fellow in International Law at Sapienza University of Rome, Italy; Teaching Assistant in Security and Strategic Studies, LUMSA University of Rome; Member of the Advisory Board, The Hague Research Institute for Eastern Europe, the South Caucasus and Central Asia.

Introduction

From the outbreak of the First Karabakh War in the early 1990s until Azerbaijan's restoration of its territorial integrity in 2023, three decades of Armenian occupation resulted in multiple instances of environmental damage on the sovereign territory of Azerbaijan. Among these are landmine contamination, eco-terrorism activities, water pollution, and illegal exploitation of natural resources.[1] Harm to the natural ecosystem of Azerbaijan was also instigated by foreign companies. Specifically, evidence of the involvement of corporations with foreign and Armenian registration in the formerly occupied territories of Azerbaijan has been collected by the present author.[2]

Against this background, the intent of this article is to contribute to the post-conflict recovery discourse in Azerbaijan by advancing the idea that compensation for environmental wrongdoing committed by Armenia, and foreign corporations acting under its jurisdiction in the occupied territories, could be a first step to achieving responsibility, which in turn could be beneficial for peace with Azerbaijan. In particular, the underlying objective of this article is to outline the current attempts by Azerbaijan to seek Armenia's responsibility for environmental damage before international tribunals. Markedly, among different legal strategies, the present article considers recourse to arbitration to be potentially the most successful procedure both to receive compensation from Armenia for environmental wrongdoings and, therefore, to promote post-war environmental recovery in Azerbaijan.

For the above-mentioned reasons, the first section of the article will be dedicated to the examination of the framework of international humanitarian law dealing with the protection of the environment during armed conflicts, with a view to outlining the possible legal instruments that can be invoked in the event of serious environmental damage committed in the context of war or during an armed conflict. Along these lines, the second section will specifically cover the relationship between the law

1 Chabert, V., "Contractualization of Environmental Protection: Prospects for Post-conflict Recovery of the Formerly Occupied Territories of Azerbaijan", *Caucasus Strategic Perspectives*, Volume 4, Issue 2, 2023, Available at: https://cspjournal.az/post/contractualization-of-environmental-protection-prospects-for-post-conflict-recovery-of-the-formerly-occupied-territories-of-azerbaijan-513 (Accessed: April 27,2024).

2 Azercosmos, *Report on space monitoring of mineral deposits on the territory of the Republic of Armenia*, August 25, 2023, Available at: https://en.trend.az/azerbaijan/politics/3788658.html (Accessed: April 27,2024).

of occupation[3] and environmental protection. The results of this section are specifically relevant as the law of occupation provides rules for the protection of the environment when military hostilities have ceased. At the same time, the rules for the protection of the environment under the law of occupation differ from the regulatory framework provided by international humanitarian law, as in the latter case armed hostilities are present. Notably, this is of particular interest for the case of the formerly occupied territories of Azerbaijan, as environmental damage has been committed not only during armed conflict but also during the occupation. Finally, the third and fourth sections will extensively investigate the role of international arbitration in addressing damages to the natural ecosystem and activities detrimental to the environment committed by Armenia. More precisely, Azerbaijan's requests for inter-state arbitration pursuant to the Bern Convention and the Energy Charter Treaty will be carefully scrutinized. In the author's view, resorting to arbitration represents the most viable and potentially successful option for Azerbaijan to overcome the main difficulties of international law when it comes to corporate actors' responsibility. As a matter of fact, it should be noted here that several obstacles which are inherent to international law represent obstacles to assessing the responsibility of corporations that have been involved in environmental damage. Among these are the transnational nature of the corporation, its unclear status as a subject of international law, and the difficulties in assessing which state (either the host or the home state of a corporation operating abroad) is competent to adjudicate a case of environmental damage committed by a private entity. At the same time, seeking redress for environmental wrongdoing committed by corporations would likely be extremely complicated and potentially unsuccessful for Azerbaijan. For this reason, arbitration could ultimately emerge as the most efficient legal remedy in promoting environmental responsibility and eventually assigning compensation, thereby benefiting post-war environmental recovery in the conflict-affected territories of Azerbaijan.

Protection of the environment during armed conflicts

Before approaching the specific issue of arbitration, a brief investigation of the current framework of international humanitarian law on the protection of the environment in time of armed conflicts appears to be

3 For more information about the law of occupation Lieblich, E., Benvenisti, E., *Occupation in International Law* (Oxford University Press 2022).

necessary. In fact, a similar focus would enable understanding which norms are applicable in the case of damage to the ecosystem in a context of war.

International humanitarian law is specifically designed to deal with the conduct of warfare and the protection of certain groups of persons not participating in the hostilities. Within this framework, the protection of the environment can be configured as either direct or indirect, to the extent that the environment can be considered a civilian object.[4] In most cases, however, it has to be acknowledged that environmental damage occurring as a result of hostilities is collateral damage.

For a more in-depth examination of *ius in bello* treaty law provisions for environmental protection, article 35(3)[5] and article 55[6] of the Additional Protocol I to the Geneva Conventions of August 12, 1949, provide for direct protection of the environment in times of armed conflict. For the first time, these provisions expressly prohibited the environment being a specific military target and conceived it as being inherently valuable beyond the mere provision of benefit for human beings.[7] Article 55 imposes due diligence obligations on state parties, which are required to undertake an environmental impact assessment prior to the launch of military operations on an ongoing basis and for both offensive and defensive operations.[8] What is more, the same article compels belligerents to protect the natural environment against widespread, long-term, and severe damage in order to protect civilians. Furthermore, article 23(g) of the 1907 *Hague Regulations Respecting the Laws and Customs of War on Land* prohibits acts that "destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war".[9] Despite having been

4 Sjöstedt, B., Bruch, C., Payne, C., "Armed Conflict and the Environment," in Rajamani, & J. Peel (eds.), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2021) p. 871.

5 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, article 35(3).

6 *Ibid.,* art. 55.

7 *Ibid.*

8 Hulme, K., "Environmental protection in armed conflict", in: Fitzmaurice, Ong, Merkouris, *Research Handbook on International Environmental law* (Celtenham: Edward Elgar Publishing, 2010).

9 Hague Convention (IV) Respecting the Laws and Customs of War on Land, October 18, 1907, art. 23(g).

drafted without specific consideration of the environment, the reference to human property in article 23(g) potentially protects natural resources pertaining to the state, as in the case of oil facilities and refineries that may also become military targets of a war.[10]

In another instance, the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare[11] further provides a valuable framework for environmental protection during armed conflicts. Moreover, a few years after the end of the Second World War, states codified the rules and customs of warfare, specifically tackling the issue of wartime environmental protection in art. 53 and 147 of the 1949 Geneva IV Convention relative to the Protection of Civilian Persons in Time of War. Notably, the above-mentioned articles envisage the unlawful destruction and appropriation of property in the absence of military necessity as a breach of the Convention. Eventually, article 1 of the Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques (ENMOD) of December 10, 1976, prohibits the contracting parties from engaging in "military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State party".[12]

In addition to treaty provisions, the environment is further protected in times of war by a number of customary rules of international law. The International Committee of the Red Cross confirmed that the relevant principles on the conduct of hostilities equally apply to the environment.[13] Indeed, on the basis of the fact that the environment could easily be affected by hostilities, Rule 43 of the *Study on Customary Law* affirms that no part of the natural environment can be attacked,

10 Low, L., Hodgkinson, D., "Compensation for Wartime Environmental Damage: Challenges to International Law after the Gulf War", *Virginia Journal of International Law,* 1995, pp. 405-438; See also: Schwabach, A., "Envionmental Damage Resulting from the NATO Military Action against Yugoslavia", *Columbia Journal of Environmental Law,* 2000, pp. 117-124.

11 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 1925.

12 United Nations, Convention on the prohibition of military or any other hostile use of environmental modification techniques, 1976, art.1.

13 International Committee of the Red Cross, Application of General Principles on the Conduct of Hostilities to the Natural Environment, rule 43, Available at: https://ihl-databases.icrc.org/en/customary-ihl/v1/rule43 (Accessed: April 27, 2024).

unless it is a military objective.[14] Therefore, the civilian nature of the environment appears to be confirmed.[15]

The protection of the environment is further enhanced by reference to the principles of military necessity and proportionality. According to the principle of necessity, to be lawful, weapons and tactics involving the use of force must be reasonably necessary to the attainment of their military objective.[16] As a result, actions intended to destroy or seize the opposing side's property that are not imperatively demanded by the necessities of war appear to be outlawed. Additionally, under the principle of discrimination, attacks targeting environmentally meaningful areas, such as national parks and forests, are to be considered contrary to this principle.[17] Accordingly, all forms of deliberate ecological damage, such as the poisoning of water supplies or the destruction of agricultural land, would appear to fall within the scope of application of the present prohibition.[18]

To conclude on the general framework of international humanitarian law providing for the protection of the environment during armed hostilities, it is possible to affirm that the activities of Armenia and private companies operating under its supervision[19] in the formerly occupied territories of Azerbaijan are contrary to a great number of the treaty law and customary international law provisions described in this section.

The law of occupation and environmental protection

Alongside international humanitarian law, mentioning the law of occupation in relation to environmental protection appears to be relevant for the case considered. As a matter of fact, the widely recognized occupation of the territory of Azerbaijan by Armenia for

14 *Ibid.*

15 Henckaerts, J.M., Doswald-Beck, L., *Customary International Humanitarian Law – Volume I: Rules* (Cambridge: Cambridge University Press, 2009), Rule 43.

16 Afriansyah, A., "The adequacy of international legal obligations for environmental protection during armed conflict", *Indonesia Law Review*, Volume 3, Issue 1, January – April 2013, p.70.

17 *Ibid*, p.71.

18 Kirchner, A., "Environmental protection in time of armed conflict*", European Environmental Law Review*, October 2020, p.269.

19 Chabert, *op.cit.*

almost three decades opens the possibility of applying the body of law of occupation to the context at issue. The law of occupation is part of international humanitarian law, and it includes the rules applicable when no hostilities exist, since an occupying power has established itself in the territory it has conquered. Indeed, the main difference from general international humanitarian law concerns the fact that the armed conflict in the specific occupied territory has stopped.

The sources of international law regulating occupation can be traced back to the Regulations Annexed to the Hague Convention IV on War on Land of 1907 (and specifically articles 42–56), the Geneva Convention (IV) of 1949 on the Protection of Civilian Persons in Time of War, and the Additional Protocol I of 1977. These legal documents also contain provisions that are applicable to environmental protection during occupation. At the same time, the jurisprudence of international tribunals appears to be relevant. Hence, the *Advisory Opinion on the Wall in Palestine* of the International Court of Justice of 2004 and the Case *DRC. v. Uganda* of 2005 are of great importance for the law of occupation, since these provide relevant interpretation of the rules applicable when an occupying power establishes itself in a territory previously affected by war.

Against this background, it has to be noted that occupation and armed conflicts differ in many aspects. First of all, the absence of active hostilities typically characterizes occupation. Secondly, during occupation, the authority over a certain territory is transferred without the consent of a territorial state (in this case, Azerbaijan) to the occupying power. The occupation is extended only to the territory where such authority has been established and can be exercised.[20] As they are of interest for the present paper, the main rules of the international law of occupation as derived from the abovementioned Conventions can be summarized as follows:

a. Sovereignty over the occupied territory remains under the dispossessed state.

b. According to article 55 of the Hague Convention (IV), the occupying state is not the owner but only the usufructuary of the occupied territory and properties therein, that must be handled in good faith.

20 Dinstein, Y., *The international law of belligerent occupation,* (Cambridge: Cambridge University Press, 2011).

c. The safeguard of the natural resources of the occupied territory according to the principle of conservation directly originates from article 55 and it is further remarked in the Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.[21] Accordingly, the occupying power has no legal authority to exploit any of the resources and property of the territory for the benefit of its own economy. The purpose of this rule is to remove any incentive for the occupying power to act in a predatory or avaricious manner towards the occupied territory and its wealth, thereby discouraging war and prolonged alien rule.

d. The occupying power's administration and use of natural resources in the occupied territory may only be for the benefit of the population of the occupied territory and for other lawful purposes under the law of armed conflict.

e. The prohibition of pillage of natural resources is applicable to occupation.

f. Each state has the obligation to avoid causing significant harm to the environment of other states or areas beyond national jurisdiction, as stated in the 1996 Legality of the Threat or Use of Nuclear Weapons Advisory Opinion of the International Court of Justice, which confirmed its customary nature.[22]

Along these lines, in 2022 the International Law Commission adopted at the first reading 27 Draft Principles on Protection of the Environment in Relation to Armed Conflicts.[23] Notably, part four of the Draft Principles is devoted to the codification of principles applicable in situations of occupation. In this regard, according to principle 19, "an occupying power shall respect and protect the environment of the occupied territory in accordance with applicable international law and take environmental

21 Human Rights Council 40th Session, Agenda Item 7, *Human rights situation in Palestine and other occupied Arab territories*, A/HRC/40/73, March 15, 2019, Available at: https://www.ohchr.org/EN/pages/home.aspx (Accessed: March 2, 2024).

22 International Court of Justice, "Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons", 1996, Available at: https://www.icj-cij.org/public/files/case-related/95/095-19960708-ADV-01-00-EN.pdf (Accessed: March 4, 2024).

23 International Law Commission, "Draft principles on protection of the environment in relation to armed conflicts", 2022, Available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_7_2022.pdf (Accessed: March 4, 2024).

considerations into account in the administration of such territory."[24] Similarly, paragraph 2 of the same principle affirms that the occupying power shall take appropriate measures to prevent significant harm to the environment of the occupied territory.[25] In addition, principle 20 clarifies the law of occupation with respect to the sustainable use of natural resources, entirely in accordance with the provisions enshrined in the Hague Conventions that deal with environmental protection. More precisely, principle 20 indicates that the occupying power is permitted to administer and use the natural resources in an occupied territory for the benefit of the protected population under the law of armed conflict "in a way that ensures their sustainable use and minimizes harm to the environment".[26]

The Bern Convention and Inter-state Arbitration

In light of the examination of the current framework of international humanitarian law on the protection of the environment during armed conflict, this section considers inter-state arbitration to be the most efficient and potentially successful legal strategy for Azerbaijan to obtain compensation from Armenia for the breach of the above-mentioned rules of international law. As has been explained in the previous sections, and especially in the introduction, this mainly depends on the difficulties associated with both the legal impediments (namely the status of corporations in international law and the identification of which state is competent to adjudicate a case of environmental damage involving a corporation) in seeking redress before national tribunals, as well as in suing allegedly responsible foreign corporations before their home state's court. For these reasons, pursuing the road of arbitration could be configured as a relatively comprehensive strategy to assess Armenia's responsibility and eventually receive compensation for the illegal exploitation of Azerbaijan's natural and mineral resources in the formerly occupied territories during the occupation. This same strategy appears to be meticulously followed by Azerbaijan, which up to the present has launched two interstate arbitrations against Armenia for environmental damage committed on its territory during the past thirty years.

24 *Ibid*. at principle 19(1).

25 *Ibid.* at principle 19(2).

26 *Ibid*. at principle 20.

Evidence collected by Azerbaijan includes indication of severe harm to the Garabagh region's natural habitats and species; depletion of natural resources; destruction of biodiversity; widespread deforestation; pollution through significant mining in protected nature reserves; and, especially, water pollution of transboundary rivers that run from Armenia into Azerbaijan's territory.

Within the framework of the Council of Europe, on January 18, 2023, Azerbaijan commenced the first known inter-state arbitration under the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) adopted in 1979, the aim of which is to ensure conservation of wild flora and fauna species and their habitats (including endangered and vulnerable ones).[27] According to a recent press release of the Ministry of Foreign Affairs of Azerbaijan, the arbitration aims at holding Armenia accountable for the extensive harm caused to Azerbaijan's environment and biodiversity over the period of nearly thirty years during which the internationally recognized sovereign territory of Azerbaijan was occupied.[28]

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Furthermore, Azerbaijan demands the cessation of all ongoing violations of the Bern Convention and the payment of full reparation for the environmental harm perpetrated in the formerly occupied territories. Before this reaches the arbitration panel, however, a standing committee composed of all the contracting parties will have to use its best endeavours to facilitate a friendly settlement of the dispute, as envisaged by article 18 of the Bern Convention.[29] Only in case of failure can a formal arbitration process be launched before an arbitration tribunal. Nonetheless, as the procedure has never been activated, the

27 Council of Europe, Convention On The Conservation Of European Wildlife And Natural Habitats, Standing Committee, 43rd meeting Strasbourg, April 14, 2023, Available at: https://rm.coe.int/tpvs07e-2023-meeting-report-1st-bureau-2023/1680aac4cb (Accessed: March 16, 2024).

28 Ministry of Foreign Affairs of the Republic of Azerbaijan, "Press Release on arbitration filed by Azerbaijan against Armenia for widespread environmental destruction", No: 015/23, January 18, 2023, Available at: https://www.mfa.gov.az/en/news/no01523 (Accessed: March 17, 2024).

29 Council of Europe, "Convention on the Conservation of European Wildlife and Natural Habitats", ETS No.104, 1979, art. 18.

advancement of any possible prediction concerning the development of the lawsuit and the kind of compensation states will be able to request does not yet appear to be feasible. Given the nature of Azerbaijan's claims, rules relating to scientific evidence and the possible appointment of experts in respect of the identification, attribution, and assessment of environmental damage will, in all likelihood, be of great relevance. In any case, if the proceedings launched by Azerbaijan against Armenia were to result in an arbitral award on the merits, this would be an important precedent with potentially significant repercussions on the Council of Europe's approach to environmental protection in armed conflict.[30]

The Energy Charter Treaty Arbitration

Separately from the Bern Convention action, on February 27, 2023, Azerbaijan filed a further arbitration case against Armenia pursuant to article 27 of the Energy Charter Treaty (ECT)[31] on the grounds of illegal exploitation of natural resources in the territory of Azerbaijan, which further caused environmental damage in the area. Having entered into force on April 16, 1998, the ECT is a fundamental legal instrument for the promotion of international cooperation in the energy sector, as well as a relatively important political basis for an open international energy market. Indeed, the treaty was preceded by a political declaration adopted in the Hague in 1991 that contains the commitment of state parties to negotiate in good faith regarding the subsequently adopted ECT.[32]

The initiation of arbitration proceedings by Azerbaijan is aimed at addressing the multiple breaches of the ECT and of international law

30 Abualrob, W., Longobardo, M., Mackenzie, R., "Applying International Environmental Law Conventions in Occupied Territory: The Azerbaijan v. Armenia Case under the Bern Convention", *EJIL Talk*, May 12, 2023, Available at: https://www.ejiltalk.org/applying-international-environmental-law-conventions-in-occupied-territory-the-azerbaijan-v-armenia-case-under-the-bern-convention/ (Accessed: April 27, 2024).

31 Ministry of Foreign Affairs of Azerbaijan, "Press Release on arbitration case filed by Azerbaijan against Armenia under the Energy Charter Treaty for illegal exploitation of Azerbaijan's energy resources", No:093/2327, February 2023, Available at: https://mfa.gov.az/en/news/no09323 (Accessed: March 20, 2024).

32 The International Energy Charter, Consolidated Energy Charter Treaty with Related Documents, Last updated January 15, 2016, Available at: https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ECTC-en.pdf (Accessed: March 20,2024).

According to the Azerbaijan's arguments, during the period of unauthorized control, not only did Armenia prevent Azerbaijan from accessing its own energy resources, but it also appropriated them, thereby preventing Azerbaijan from exploiting and developing their potential.

committed by Armenia. In particular, the intention is to seek redress and financial compensation for Armenia's violation of Azerbaijan's sovereign rights over its energy resources during the former's occupation.[33] According to the Azerbaijan's arguments, during the period of unauthorized control, not only did Armenia prevent Azerbaijan from accessing its own energy resources, but it also appropriated them, thereby preventing Azerbaijan from exploiting and developing their potential. These resources include hydropower, wind and solar energy in the entire Garabagh region.[34] Therefore, on February 5, 2024, the first procedural meeting between Armenia and Azerbaijan was held before the Permanent Court of Arbitration in The Hague, the Netherlands.[35] The meeting was chaired by Ms Jean E. Kalicki from the United States, and it marked a significant step in the ongoing arbitration process, with both parties engaging in discussions concerning the procedural framework.[36] Indeed, the delegation of Azerbaijan, led by Deputy Minister of Foreign Affairs Elnur Mammadov, and the Armenian counterpart headed by the country's Representative on International Legal Matters, Yeghishe Kirakosyan, subsequently appointed their respective arbitrators. Alongside Ms Kalicki, the three-arbitrator panel will be composed of Professor Donald M. McRae from New Zealand, appointed by Azerbaijan, and French professor Brigitte Stern, designated by Armenia.[37] Within this framework, there is reason

33 Center of Analysis of International Relations, "Azerbaijan seeks justice against Armenia in landmark Energy Charter Treaty arbitration", *Monthly Bullettin*, January 2024.

34 Moody, S., "First inter-state ECT claim gets underway", *Global Arbitration Review*, January 16, 2024, Available at: https://globalarbitrationreview.com/article/first-inter-state-ect-claim-gets-underway (Accessed: March 22, 2024).

35 Permanent Court of Arbitration, The Republic of Azerbaijan V. The Republic of Armenia, Case No. 2023-65, Press Release, February 5, 2024, Available at: https://docs.pca-cpa.org/2024/02/aa96edc1-2023-65-20240205-press-release.pdf (Accessed: March 22, 2024).

36 Diplomat Magazine, *The Republic of Azerbaijan V the Republic of Armenia: First Procedural Meeting in Arbitration under energy Charter Treaty*, February 10, 2024, Available at: https://diplomatmagazine.eu/2024/02/10/the-republic-of-azerbaijan-v-the-republic-of-armenia-first-procedural-meeting-in-arbitration-under-energy-charter-treaty/ (Accessed: March 24, 2024).

37 Permanent Court of Arbitration, "The Republic of Azerbaijan v. The Republic of Armenia", Case number 2023-65, Available at: https://pca-cpa.org/en/cases/312/ (Accessed: March 25, 2024).

to suppose that a possible positive outcome will follow Azerbaijan's request for arbitration as, unlike the previously discussed potential case involving the Bern Convention, there is previous case law of successful arbitration advanced under the Energy Charter Treaty relating to the exploitation of natural resources.

Indeed, in a further difference from the Bern Convention arbitration, the Energy Charter Treaty can count on a wide range of precedents and extensive jurisprudence on this matter. In this regard, the first international arbitration invoking the ECT dates back to the dispute between the company AES and Hungary in 2001, only three years after the ECT entered into force.[38] Moreover, an increasing trend in the number of arbitrations pursuant to the ECT between 2003 and 2013 can be observed, with a peak in 2015 with 25 arbitration cases. At the moment, there are more than 150 publicly known ECT proceedings.[39] The increasing number of arbitration cases went hand in hand with an evolution of the subject matter of ECT arbitrations to include renewable energy matters.[40] For the above-mentioned reasons, the arbitration requested by Azerbaijan pursuant to the ECT appears to be a potentially practicable and successful route to obtain compensation for wrongful acts in terms of illegal exploitation of Azerbaijan's energy resources by Armenia during the period of the latter's occupation.

Conclusion

In considering environmental protection during armed conflict under international humanitarian law and the law of occupation, the present article is an attempt to demonstrate that the road pursued by Azerbaijan toward compensation for ecosystem damage committed during Armenia's occupation of the former's territories could be a

38 *AES Summit Generation Limited v. The Republic of Hungary*, ICSID Case No. ARB/01/04, 2001.

39 International Energy Charter, "List of all Investment Dispute Settlement Cases", Available at: https://www.energychartertreaty.org/cases/list-of-cases (Accessed: 25 March 2024).

40 Patrizia, C. A., Profaizer, J. R., Cooper, S. V., Timofeyev, I. V., "Investment Disputes Involving the Renewable Energy Industry Under the Energy Charter Treaty", *Global Arbitration Review*, October 2, 2015, Available at: https://globalarbitrationreview.com/guide/the-guide-energy-arbitrations/4th-edition/article/investment-disputes-involving-the-renewable-energy-industry-under-the-energy-charter-treaty (Accessed: April 27,2024).

viable option to obtain compensation for environmental wrongdoing and assess Armenia's responsibility.

As a matter of fact, seeking compensation by resorting to arbitration has more probability of succeeding due to positive jurisprudence in this regard. More specifically, unlike the uncertainties that have been revealed in the present article, arbitration will, once started, necessarily achieve a final award, and companies could be involved alongside the opposing States. Indeed, arbitration is traditionally the best option for bringing claims against a private company and, as corporations played a role in environmental wrongdoing during the occupation of Azerbaijani territory, this legal attempt could prove a viable solution to obtain compensation. Even though inter-state arbitration launched pursuant to the Bern Convention of the Council of Europe is the first of its kind and the result still appears to be uncertain, successful examples in the jurisprudence of the Permanent Court of International Arbitration with respect to the Energy Charter Treaty potentially shed a positive light on the future successful outcome of the arbitration launched by Azerbaijan against Armenia.

In any case, in the author's view, arbitration remains the most efficient legal instrument for seeking compensation for irresponsible environmental behaviour committed on the territory of Azerbaijan during the occupation as, in comparison with inter-state disputes before other national or international courts, it gives a quick and tangible response to the wide set of impediments intrinsic to international law, as well as to the eventual difficulties in suing foreign corporations before national tribunals. At the same time, receiving compensation would represent a first step towards the acknowledgement of environmental responsibility and opening the road to post-war environmental recovery in the region.