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Azerbaijan Files Biodiversity Claim Under Bern Convention

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On January 18, Azerbaijan’s Ministry of Foreign Affairs **announced** that it had commenced an action against Armenia under the **Bern Convention on the Conservation of European Wildlife and Natural Habitats** (Bern Convention). This development marks the first known interstate arbitration brought under the Bern Convention, which was signed on September 19, 1979. Azerbaijan argues that Armenia has caused “extensive destruction” of the environment and biodiversity of the area during Armenia’s near 30-year “illegal occupation of internationally recognized territories of Azerbaijan.” The press release states that “Armenia’s widespread deforestation, unsustainable logging, and pollution through significant construction and mining in areas that were protected nature reserves prior to occupation has put over 500 wildlife species at risk in Azerbaijan,” and that when “liberating” the territories in 2020, Azerbaijan was able to collect evidence of “Armenia’s destruction of the environment,” whose activities had caused “severe harm to the area’s natural habitats and species, depleted natural resources and destroyed biodiversity.” The statement references a 2022 UN Environment Programme **report** which describes “environmental impacts at three levels: i) deforestation and land degradation; ii) suspended sediment pollution in rivers; and iii) chemical pollution of water, soil, and biota [animal and plant life].”

According to its press release, Azerbaijan is seeking an order from the arbitral tribunal for Armenia to cease all ongoing violations of the Bern Convention and to make “full reparation for its environmental destruction.” The Bern Convention was signed in 1979 and entered into force in 1982. The aims of the Bern Convention, as established in Article 1, are “to conserve wild flora and fauna and their natural habitats, especially those species and habitats whose conservation requires the cooperation of several States, and to promote such cooperation.” Additionally, the Bern Convention gives particular emphasis to conserving “endangered and vulnerable species, including endangered and vulnerable migratory species.” The Convention has been signed by 50 countries as well as the European Union.

Taking the Temperature: It is significant that the Bern Convention, despite entering into force in 1982, is not known to have been utilized to resolve an interstate dispute. Disputes are resolved by a three-person arbitration panel (each side picking one arbitrator and those two picking the third), which is tasked with establishing its own rules of procedure. Decisions are by majority vote and final and binding. Given that the panel, once selected, has to draw up procedures without any precedent specific to the Bern Convention before it can begin to address this particular dispute, we do not anticipate a decision in anytime soon. More broadly, two points bear mention. First, much climate-related public discussion and media attention focuses on a few notable agreements and conferences, such as the [Paris Agreement](#) and the agreements reached recently at the [COP27](#) conference on climate change and the [COP15](#) biodiversity conference. But other international agreements exist, and it would not be surprising if countries make greater use of those agreements going forward as climate issues become more pressing. Second, climate-related dispute resolution continues to take varied forms. Regulators and NGOs have been increasingly aggressive in asserting climate claims under climate-specific and more general laws and regulations, as we have [discussed](#). We expect the filing of climate-related disputes to continue to accelerate, and companies and their boards can prepare by assessing the state of their climate-related governance and disclosure.