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From Zero to One: How the Vis Moot is Shaping Arbitration in Afghanistan

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Afghanistan, in January 2007, enacted its [Commercial Arbitration Law](#) to facilitate prompt, fair and neutral resolution of commercial and economic disputes through arbitration. However, despite enactment of the Law, Afghan courts [exhibited reluctance](#) to defer to dispute resolution clauses in contracts which directed parties to arbitration. Consequently, till 2013, arbitration was neither considered a viable option to resolve disputes nor was there any progress in arbitral jurisprudence. This lack of development can probably be attributed to the then prevailing armed conflict and volatile political situation. However, after 2014, some focus returned to arbitration. Although slowly, discourse on arbitration, over the past six years, has grown so much that the arbitration circuit's chatter is now audible even outside Afghanistan. Interestingly, this current renaissance has its roots in the [11th Willem C. Vis East International Commercial Arbitration Moot](#) (Vis East).

In 2014, [Commercial Law Development Program](#) (CLDP), a division of the U.S. Department of Commerce, sponsored Kabul University's all-women team to participate in the 11th Vis East. This marked the first time that any team from Afghanistan participated in the Vis East. The competition influenced the participants so much that they decided to pass on the baton and along with CLDP's support conducted, in 2015, the 1st Afghan Vis Pre-Moot at the US Embassy in Kabul. That year, CLDP supported three teams (consisting of twenty students) that participated in the Afghan Pre-Moot by taking them to the 5th Vis Middle East Pre-Moot in Jordan and the 12th Vis East in Hong Kong. These initiatives fairly piqued the country's younger generation's interest in arbitration but the turning point was the release of the documentary titled '[Afghan Dreams](#)' which showcased how the 2014 all-female team of four had overcome cultural and systemic challenges to compete in one of the world's most prestigious moot court competitions.

This set the stage for establishment of the [Afghanistan Vis Alumni Network](#) (AVAN). AVAN was established as a voluntary group for the purpose of better preparing students for the competition through trainings and shoulders the mantle of conducting the Afghan Pre-Moot annually. CLDP continues to sponsor teams to the Middle East Pre-Moot and Vis East, but the Afghan Pre-Moot serves as the battleground where teams have to fight for the top spot. In its 6th year, the latest edition of the competition witnessed participation of eleven teams from across Afghanistan. The contributions of AVAN and CLDP have been such that at least three Afghan teams have participated in Vis East every year since the 12th edition in 2015. In fact, the American University of Afghanistan even broke into the elimination rounds of the 13th edition and were semi-finalists in the Pan Asia Division.

Simultaneously, other developments, separate from field of academics, have been critical in bringing focus on the practice of arbitration. In June 2015, Afghanistan Chamber of Commerce and Industries (ACCI) and Afghanistan Investment Climate Facility Organization (AICFO) set up [Afghanistan Center for Commercial Dispute Resolution \(ACDR\)](#), the country's first arbitral institute. ACDR's portfolio of services, besides administering arbitrations, includes issuing certifications for arbitrators, conducting international and domestic trainings for Afghan lawyers, judges and Ministry of Justice employees, and providing technical assistance in reviewing the arbitration law in force. In July 2018, ACDR signed a memorandum of understanding (MoU) with AVAN to use their resources to improve future use of ADR, specially arbitration. In August 2019, ACDR successfully issued its first arbitral award.¹⁾ On the other hand, in February 2017, [Afghanistan International Chamber of Commerce \(ICC-Afg\)](#) officially launched its operations in Afghanistan. In 2018, ICC-Afg established an [Arbitration & ADR Commission](#) which annually conducts the ICC Young Arbitrators Forum (YAF) conference.²⁾ In August 2019, ICC-Afg and AVAN signed a MoU under which ICC-Afg will host trainings and provide internship opportunities to Vis Moot participants.

It is pertinent to highlight that ACDR's incumbent Executive Director, ICC-Afg's incumbent Head of Dispute Resolution & Policy and a considerable number of members on ICC-Afg's Arbitration & ADR Commission, are former Vis East participants. This not only evidences the Moot's contribution to the arbitration eco-system in Afghanistan but also provides context to why two competing institutions, ACDR and ICC-Afg, are, at least so far, cooperating with each other to overcome obstacles and improve national arbitration practice.

The combined efforts of AVAN, ACDR and ICC-Afg have over the past couple of years led to the following:

- Presidential assent for bringing into effect the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;³⁾
- Proposal to the Ministry of Justice to amend the 2007 Commercial Arbitration Law;
- Proposal to the Ministry of Commerce and Industry to lay down guidelines regulating enforcement of arbitral awards;
- Addition of arbitration and mediation modules in Afghanistan Independent Bar Association's 6-month legal course;⁴⁾
- Lobbying for amendment of Article 27 of the Law on the Manner of Acquisition of Rights⁵⁾ to include arbitral awards in the list of documents so that the General Directorate of Rights can enforce an arbitral award as if it were a court order;
- Plans to establish a task force which will identify barriers to arbitration and develop an operative framework to eliminate them; and
- Proposal to create a single-stop section for arbitration related affairs in local commercial courts.

Afghanistan has, over the past decade, gone through a transitional period in the field of arbitration *i.e.* from a barely active to an active stage. This initiative that kickstarted by virtue of Vis East was taken forward by AVAN, ACDR and ICC-Afg. Although the initial headway has been substantial, continued efforts would be required to move towards a comprehensive arbitral regime. This would necessitate not only seasoned national experts but also increased interest of business houses in arbitration and, most importantly, governmental support. Going ahead, the question that arises is not whether the new arbitration brigade has the potential to bring about meaningful change in the

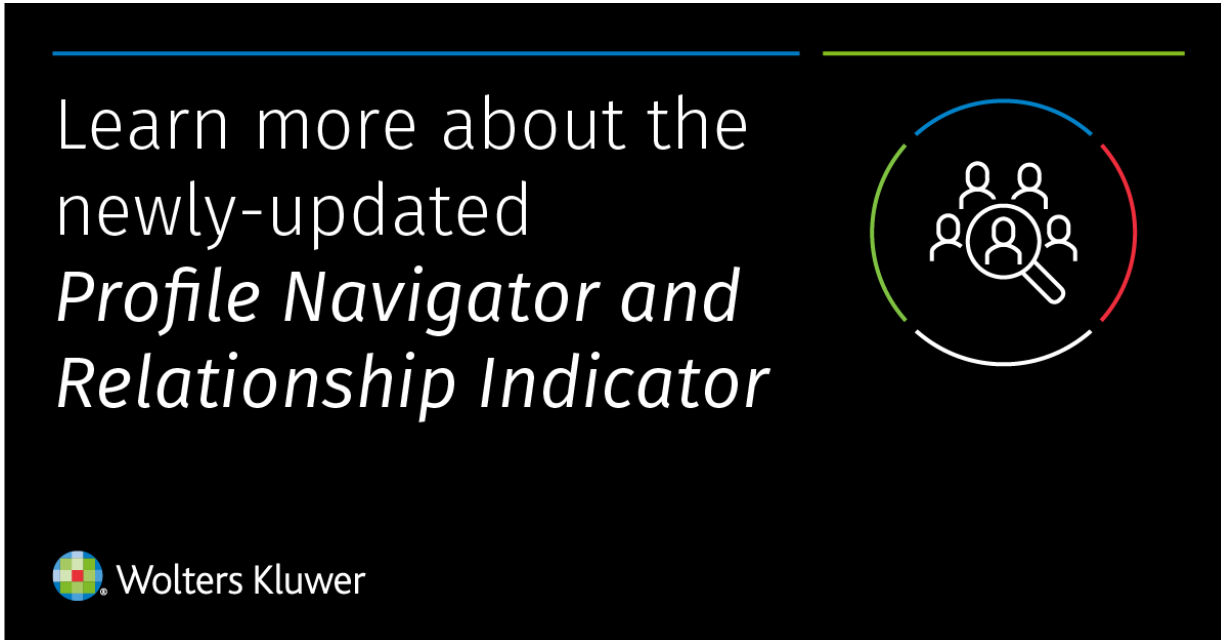
arbitration landscape, rather is, whether it will get support from the government in the aftermath of the US-Taliban peace deal.

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References

- ?1 As on March 2020, ACDR has issued 4 arbitral awards.
- ?2 The 3rd ICC YAF Conference on Arbitration in Afghanistan was held in May 2019.
- ?3 Presidential Decree No. 31 dated 1398/11/23 (Hijri Calendar).
- ?4 Pursuing which is a mandatory prerequisite for obtaining a Bar license.
- ?5 The Law on the Manner of Acquisition of Rights, Gazette Number 1309, 2018.

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