

Kluwer Arbitration Blog

Istanbul Arbitration Week 2022 Recap: Global Developments in Turkey and Istanbul's Place in the World of Arbitration

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As part of the 2022 [Istanbul Arbitration Week](#) (ISTAW) organized from 10 to 14 October 2022, the [Energy Disputes Arbitration Center](#) (EDAC) hosted two panels in relation to arbitration developments in Turkey and Istanbul's place in the world of arbitration, on which this post aims to report (see also our coverage of ISTAW energy-related panels).

These panels followed a dynamic format and fostered an open discussion regarding the future of international arbitration, new arbitration techniques, developments, evolving interpretations and views, and discussed the best practices for international arbitration in the new virtual reality. The novelties and the conflicts brought by the energy transition and the Energy Charter Treaty were also evaluated during the panels.

Panel 1: Global Developments Affecting Turkey and The Region

Moderated by [Andrew Clarke](#), the first panel discussion was held on "Global Developments Affecting Turkey And The Region". [Sebastian Neave](#), [Danielle Morris](#), [Genevieve Poirier](#), [Svetlana London](#) and [Prof. Dr. H. Ercument Erdem](#) gave their insights into practical consequences and implications of the global developments affecting Turkey and the region, in particular centring on the various impacts of the crisis in the Ukraine.

Andrew Clarke observed that "disruption" is the key word for the energy markets. Russian gas has been taken off the European market such that European countries are now seeking alternative suppliers. [The intention was to replace 60% from LNG sources and 33% from an increase in renewables.](#) While European storage of gas is at 90%, there has also been an increase not only in gas prices but also in electricity prices. Mr. Clarke concluded that all markets are, therefore, challenged. Prof. Dr. H. Ercument Erdem also emphasized that the costs of energy resources are increasing day by day. The tension in the region has a direct impact on the production of electricity from natural gas. The price increase has a domino effect in the market. Turkey purchases gas from Russia and pays in ruble while it also signed a Memorandum of Understanding ("MoU") with Ukraine for the reconstruction of the country. Istanbul may perfectly be the suitable place for the seat of any related arbitration. Prof. Dr. H. Ercument Erdem suggested that Istanbul should be promoted in this sense.

Sebastian Neave centered his remarks on the role of Turkey in the midst of global developments. The mediating role of Turkey in the conflict is clearly a difficult job. But Turkey has managed to achieve a number of notable successes in the form of securing a grain deal in July 2022 and negotiating a number of prisoner swaps between the parties. Turkey's maintenance of relations with both sides to act as a facilitator of talks between them has become an imperative for the future peace.

Genevieve Poirier highlighted that some sanctions, such as freezing the assets of individuals, is an old tactic but now on a new scale. Thousands of Russian individuals are now subject to sanctions. Some of the new sanctions are in relation to the provision of services to Russia and Russian businesses in the fields of, *e.g.*, IT consultancy, architecture, engineering, legal and auditing services.

Svetlana London provided observations regarding the US and EU sanctions and Russia's counter-sanctions. Some industries cannot exit the market such as medical instrument providers. The framework enables Russian companies to comply with the obligations, in a way they can, such as making payments in Russian rubles inside Russia or break down relationships. Although *force majeure* became a relevant legal principle, some companies failed to terminate contracts on this ground, Russian courts relying on other relevant reasons to terminate such contracts under Russian Law.

Genevieve Poirier considered that under Russian law, external courts or arbitration bodies are restricted from hearing certain sanctions-impacted disputes, and it is possible to get an anti-suit or anti-arbitration injunction if it is demonstrated that the party is properly affected by sanctions. That paved the way for any party, who felt that sanctions might play a role in their disputes, to get an anti-suit or anti-arbitration injunction and have the matter heard instead in new Russian arbitral courts. The risk is that the Court has the power to award the reverse of the claim (plus cost) that is against the party disadvantaged by the spectrum of sanctions.

Sebastian Neave stated that the global developments gave rise to new issues while commodities disputes in Europe and complicated shipping issues in the Black Sea are rampant. It is not surprising to see that various sanction packages disrupted efforts to enforce against Russian assets both privately held and linked to the State. There has been a huge growth in requests both from Turkish parties and otherwise against Turkish parties.

Danielle Morris focused on broader trends impacting disputes in the region, noting that an increased policy focus on environmental issues is likely to lead to an increase in investment arbitration claims. The investment arbitrations may fall into two different categories. *The first category* corresponds to disputes where the State has acted out of purportedly environmental concerns but an arbitral tribunal determines that in fact the government was motivated by political interests or desire to favor domestic competitors where the State is held liable.

The second category is comprised of disputes where the State is motivated by legitimate environmental concerns which is more difficult because an arbitral tribunal needs to balance the competing concerns holding the State's commitments in an investment protection treaty on the one hand with the State's recognised right to regulate on the other hand. For this reason, the outcome of these cases has been less uniform. Some arbitral tribunals have required the State to pay compensation for the damage to foreign investment whereas others have held that the State was acting within its police powers and no compensation was due.

Panel 2: Istanbul's Place in The World of Arbitration

Prof. Dr. Can Yeg?insu delivered a keynote speech on “Istanbul's Place in the World of Arbitration”, starting by looking at Istanbul's geopolitical importance. Istanbul indeed unites Europe with Asia. The constant of this city's geopolitical significance should not be allowed to overshadow another long term and longstanding distinguishing feature of the city: Istanbul is above all a city of transformation.

Prof. Dr. Can Yeg?insu focused on Istanbul's potential future place in the world of arbitration.

He stated that international cooperation, such as inward and outward investment, innovation, transportation and distribution, is indispensable to any thriving Turkish economy. Any party's concerns, whatever their nationality is, about being given a fair chance to be heard is going to become more acute the moment one crosses a border. Just as the English party might worry about Istanbul historically so the Turkish party has worried about London.

But the concern here for the Turkish party is about inequality of arms. This can be everywhere. So long as Turkish parties feel like and act like outsiders in the system of international adjudication there is only so far Turkey can progress as an international center for the peaceful settlement of disputes. The reality on the ground is encouraging as this stage is well passed in Turkey. The greater confidence comes from the experience. This has been a critical shift and a considerable step forward. Today international arbitration is increasingly accepted by Turkish parties as a natural incident. Now eminent Turkish arbitrators are selected by arbitral institutions or joint nomination of arbitrators to decide cases having no connection with Turkey.

Then, Prof. Dr. Can Yeg?insu focused on arbitral institutions as key actors of arbitration. The International Chamber of Commerce (ICC) is the leading arbitral institution in Turkey. Other international centers used by Turkish parties include the Swiss Arbitration Center (SAC), the Stockholm Chamber of Commerce (SCC) and the London Court of International Arbitration (LCIA). Turkish parties are also turning to their homegrown institutions such as the Istanbul Arbitration Center, the Istanbul Chamber, the Turkish Union of Chambers and most prominently the [EDAC](#). The majority of the parties using arbitral institutions based in Turkey are themselves Turkish and the majority of the cases are domestic. The process of internationalization will slowly take on. The Turkish arbitration centers, such as EDAC, have made a remarkable contribution through their efforts to raise awareness of international arbitration both nationally and internationally in Turkey.

Conclusion: Turkey's Geopolitical Importance in The Midst Of Energy Crisis

Due to its geopolitical importance, Turkey is located on Russia, Azerbaijan and Iran natural gas and Iraq oil pipelines, thus making Turkey an energy crossroads. Turkey has important energy projects and new projects are foreseeable. In the context of the worldwide energy crisis, the energy arteries of the EU may pass through Turkey. This means that as a country, Turkey needs to keep the energy infrastructure active and improve the latter. As energy projects increase, so do contracts arising from energy law. For this reason, the possibility of new disputes increases. Therefore, an active period in terms of energy arbitration in the upcoming period is highly likely.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The circle is composed of four colored segments: blue, green, red, and white.

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