Kluwer Arbitration Blog

2025 PAW: Amplifying Dialogue—Central Asia's Perspective on the Future of Investment Arbitration

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On Day 3 of the 2025 Paris Arbitration Week ("PAW"), Nyenrode University organized a comprehensive conference, hosted by Linklaters Paris, examining the future of investment arbitration in the five Central Asian countries (Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan).

The event featured a keynote address by Anna Joubin-Bret (UNCITRAL) and welcome remarks from Roland Ziadé (Linklaters). The first panel, moderated by Dr. Yulia Levashova (Nyenrode University/Asia Pacific FDI Network), focused on "Dispute Prevention and Investment Mediation." Speakers Kiran Gore (Law Offices of Kiran N. Gore PLLC), Dr. Diora Ziyaeva (Dentons), Alexander Korobeinikov (Baker & McKenzie), and Dr. Natalia Alenkina (American University of Central Asia) explored strategies for prioritising dispute prevention and mediation efforts in Central Asia.

The second panel on "Code of Conduct," led by Dr. Pascale Accaoui Lorfing (CREDIMI), tackled independence and impartiality of arbitrators. As speakers, Christopher Campbell-Holt (AIFC Court & IAC), Gulirano Abdullajonova (ICC), and Sergey Alekhin (ELWI) addressed issues ranging from appointment of arbitrators, State's perspectives on arbitrators' selection in Central Asia, and independence and impartiality of arbitrators.

The final panel, "Procedural Rules and Cross-Cutting Issues," was moderated by Dr. Yulia Levashova, and featured Dr. Dafina Atanasova (UNCTAD), Dmitry Bayandin (ELWI), Prof. Kamalia Mehtiyeva (University Paris-Est Créteil), and Dr. Ilia Rachkov (NSP). Discussions included transparency, third-party funding ("TPF"), damages and compensation, and innovative treaty practices in ISDS within the Central Asian region.

This post summarizes the key points of all panels.

Dispute Prevention and Investment Mediation

Kiran Gore set the stage by explaining the particular role of Central Asia in investment arbitration. Though Central Asia's engagement with UNCITRAL Working Group III remains minimal, the region actively participates in investment arbitration as both States and foreign investors. In

coming years, given the age of many investment treaties currently in place, Gore predicts dynamic treaty negotiations in the region, alongside development of Model BITs reflecting the country's negotiating position. Diora Ziyaeva shifted focus to Uzbekistan's evolving arbitration framework. With mediation gaining traction, new questions surface—like the availability of qualified mediators and the procedural mechanisms to be adopted. She forecast that where there is demand for mediation, supply will follow, suggesting the growth of infrastructure to support these processes in response to the need. Agreeing on a detailed and structured procedure for mediation will definitely be the key to success of this ADR mechanism. Alexander Korobeinikov proceeded by illustrating the transformation in Kazakhstan's approach to settling investment disputes. Kazakhstan has shifted its focus from contesting disputes to exploring settlement options, aiming to avoid prolonged legal battles. This strategic pivot is evidenced by the government's trend of settling cases, which typically occurs after arbitration proceedings but before the enforcement of an award. He underlined the importance of capacity building and creating a culture where amicable dispute resolution between investors and States is encouraged. Natalia Alenkina highlighted Kyrgyzstan's dispute prevention strategies through a business ombudsman and an investor protection agency. These initiatives, primarily funded by international organisations, focus on transparency and resolution. Future plans include an international settlement centre and ratifying the Singapore Convention. Alenkina acknowledged that while adopting the Singapore Convention is an important stride, it marks just the beginning of the journey. There is a pressing need to promote and raise awareness of its benefits to effectively reduce disputes between investors and States, fostering a more harmonious international business landscape.

Codes of Conduct

Gulirano Abdullajonova outlined the ICC Court's approach to ensuring arbitrator independence and impartiality, emphasizing the importance given to the ongoing disclosure duty under the Rules. She explained that the ICC Court decides on any concerns raised regarding arbitrators' independence and impartiality through decisions on arbitrator challenges and confirmations, assessing each case individually based on its specific facts. Gulirano shared some common grounds for challenges and objections to arbitrator confirmations, including professional or personal relationships between arbitrators and parties or counsel, repeat appointments, and alleged lack of impartiality. While objections to confirmation are more common than challenges, statistical data from 2016 to 2023 showed that only 20 to 32 objections to confirmation were successful in preventing the confirmation of an arbitrator while more than 1 000 confirmations take place each year, and only 3 to 8 challenges upheld each year out of the 30 to 92 challenges that are being examined by the ICC Court annually. She concluded with anonymized examples of decisions, particularly involving parties from Central Asia and cases based on BITs, illustrating the ICC Court's commitment to upholding the integrity of the arbitration process through meticulous evaluation of each situation.

Christopher Campbell-Holt discussed the pivotal role Kazakhstan is playing in advancing international dispute resolution within Central Asia. As the region's largest gross domestic product (GDP) producer, Kazakhstan is keen to attract foreign direct investment and establish robust international dispute resolution institutions. Kazakhstan's AIFC Court and IAC exemplify this ambition. Parties engaging with the AIFC Court can select arbitrators from a meticulously curated panel renowned for their expertise and credentials. Despite the region's limited historical practice of arbitration, Kazakhstan aims to create a highly efficient dispute resolution system, catering to

expectations for swift and cost-effective solutions.

Sergey Alekhin explored the nuanced criteria for selecting arbitrators from the perspective of Central Asian States, highlighting several key considerations in the process. He underscored the importance of experience, technical proficiency, language capabilities—which are often understated—familiarity with transitional economies, and legal systems. Independence and impartiality remain paramount. Drawing on an engaging quote from Martin Hunter, Alekhin highlighted the delicate balance needed when choosing arbitrators: "You are looking for someone with maximum predisposition towards your client and minimum appearance of bias." The adoption of AI technologies may assist in selecting arbitrators. These digital tools can identify patterns in awards and dissenting opinions, and assess inconsistencies and consistencies in thinking.

Procedural Rules and Cross-Cutting Issues

Dafina Atanasova inaugurated the third panel by providing a bird's eye overview of the current state of treaties in Central Asia. Central Asia's treaty network is largely composed of old-generation investment treaties, with about 83% of the treaties in force concluded before 2010. The old-generation treaties are characterised by broad language and a lack of right to regulate refinements. A particular complexity for the reform of the Central Asian investment treaty networks is the fact that countries in the region in addition to BITs have several regional treaties that apply to all or part of them in parallel. Historically, Central Asian States have predominantly taken the role of respondents in investment arbitration cases, with at least 66 cases brought against them. In contrast, only nine cases involved foreign investors from Central Asia as claimants. Currently, Central Asian States are making advancements which reflect broader global trends in treaty reform. For example recent investment treaties in Central Asia often include core safeguards to States' right and duty to regulate in the public interest and are beginning to reform ISDS, including in relation to the key question of assessment of damages and valuation methods (India-Kyrgyzstan BIT (2019); *see also* UNCTAD (2024)), as well as in relation to such procedural issues as TPF (*see, e.g.*, Kazakhstan-Kyrgyzstan BIT (2024); Kazakhstan-Singapore Services and Investment Agreement (2023)).

Dmitry Bayandin spoke on the shifting landscape of TPF regulation in the region. He noted an observable decline in the funders' enthusiasm for financing investment cases coinciding with a trend towards greater transparency in the use of TPF across treaties and case law. Dmitry highlighted the *Sehil v. Turkmenistan* case where one of the first orders for disclosure of the TPF arrangement in ICSID arbitration was issued. Prominently, the order in question was concerned not only with the existence of the TPF arrangement as such and the identity of the funder, but also with the particular terms of the funding arrangement. Dmitry also pointed out the new Kyrgyzstan-Kazakhstan BIT, which contains a specific provision on the disclosure of TPF, as a sign of Central Asian countries aligning with a general trend towards greater transparency in ISDS.

Kamalia Mehtiyeva delved into counterclaims, highlighting the procedural and substantive challenges that arise. Mehtiyeva argued that discussion on counterclaims should take into consideration not only States' perspectives, but also, more generally, difficulties of managing complex transnational disputes. The consequence of an inability to bring counterclaims leads to several critical issues, such as fragmentation of disputes and parallel claims. For investors, allowing counterclaims could ensure predictability and security. Despite some innovative

developments in drafting BITs binding some Central Asian States regarding counterclaims, major case law remains sparse, leaving an uncharted territory ripe for exploration. Nevertheless, Mehtiyeva identified the *Burlington v. Ecuador* case as a pivotal example demonstrating how counterclaims can be significant in ISDS not only from a procedural standpoint, but also for emergence of substantial rights and improvement of the legal regime.

Ilia Rachkov summarized the approaches of investment arbitral tribunals to the issue of damages in ISDS, highlighting the valuation methodologies employed in Central Asian cases. Valuation approaches vary since neither customary international law nor treaty-based standards mandate a specific methodology, leaving decisions to each tribunal's discretion based on factors such as the nature and extent of loss and investment return expectations. For example, in the *Petrobart v. Kyrgyzstan* case, distinct views emerged over whether contract claims constituted foreign investment under Kyrgyz foreign investment law and the Energy Charter Treaty ("ECT"). Faced with executive interference in domestic proceedings, the tribunal opted for a general assessment of losses using available submissions, recovering 75% of Petrobart's claims. In *Valeri Belokon v. Kyrgyz Republic*, a $15 million award used price-to-book methodology instead of discounted cash flow analysis. Arbitrators opted for prudence amidst business uncertainties, depriving investors of the ability to challenge the political risks related to their investment. *AIG Capital Partners v. Kazakhstan* highlighted challenges over appropriate compensation, emphasising fair market value while differentiating between cash flow and asset valuation methods based on profitability evidence. Overall, cases showcase the key elements in assessing damages, including investment prospects, political risks, and fair compensation based on factual analysis, reflecting significant challenges that Central Asian tribunals must consider within the region's context.

UNCITRAL's reform elements—dispute prevention and mediation, codes of conduct, and procedural and cross-cutting issues—play a vital role in shaping the evolving ISDS landscape in Central Asia. These elements not only enhance the region's investment framework but also reflect efforts to modernise BITs, improve national investment laws, and effectively address early investor grievances. As Central Asian countries embrace these reforms, a more responsive and balanced investment environment is likely to develop, fostering increased investor confidence and supporting regional economic growth.

This post is part of Kluwer Arbitration Blog's coverage of ***Paris Arbitration Week 2025****.*

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