

A COMMON LAW JUDICIARY IN THE POST-SOVIET SPACE: THE AIFC COURT AS A FORUM FOR INTERNATIONAL COMMERCIAL ADJUDICATION

AVASKHAN Z. ASANALIYEV*

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* S.J.D. Candidate, Michigan Grotius Research Scholar University of Michigan Law School, LL.M. Duke University School of Law, LL.B., Adjunct Assistant Professor KAZGUU University Law School; Partner ADM Valner LLP. I’m grateful to Professors Vikramaditya Khanna, Julian Mortenson, and Nicholas Howson for their invaluable comments and suggestions. I would also like to express my gratitude to Professors Laura Beny, Rebecca Eisenberg, Nina Mendelson, and Adam Pritchard for their thoughtful guidance and feedback on the earlier drafts. I have also benefited from presentations at the S.J.D./Research Scholar Colloquium and Student Scholarship Workshop held at the University of Michigan Law School. Mistakes are my own.

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This contribution aims to explore the role of the Astana International Financial Centre's common-law judiciary in the development of commercial laws within the former Soviet republics and beyond. The globalization of access to the high-caliber international commercial courts, operating under common law and striving to offer the world's finest dispute settlement services, has made the creation of strong financial markets possible in emerging economies. Despite the challenges caused by the COVID-19 pandemic, active utilization of technological advances has facilitated these courts' continuous operations. Unlike arbitral tribunals, such forums also focus on the development of a substantive international commercial law. Along with accommodating convenient procedures, the increasing pace of global commerce is requiring new approaches to dispute settlement that may produce sound legislation. The legal reforms granting jurisdiction to international commercial courts to consider disputes on par with private arbitral tribunals, and universal recognition of the resulting judgments, are therefore timely.

I. INTRODUCTION

In 2017, Kazakhstan hosted an international exhibition, Astana EXPO-2017.¹ Based on EXPO-2017 international exhibition's infrastructure and state-of-the-art facilities, the Republic of Kazakhstan (the RK) was the first among the post-Soviet countries to create an offshore financial center² (the OFC) or financial free zone³ in its territory, operating within a special legal regime. Astana International Financial Center (the AIFC) is expected to

¹ The theme chosen for the exhibition was "Future Energy," focusing on ensuring sustainable access to energy while simultaneously reducing CO2 emissions. *See Expo 2017 Astana Future Energy*, QAZEXPO CONGRESS, <https://qazexpocongress.kz/en/event/expo-2017-astana/> [<https://perma.cc/7A9R-SEUS>] (last visited Nov. 2, 2022).

² *See* Nicolas Zambrana-Tevar, *The Court of the Astana International Financial Center in the Wake of Its Predecessors*, 12 ERASMUS L. REV. 122, 122 (2019) (citing International Monetary Fund (IMF) referring to the OFC as "any financial center where offshore activity takes place.").

³ *Id.* ("[A] financial free zone . . . is an entity with only a very small or nominal territory and whose goal is mainly the provision of offshore corporate and financial services.").

create an attractive investor-friendly climate⁴ for various financial activities.⁵ The AIFC is intended to be an international financial hub for Central Asia, the Commonwealth of Independent States (CIS),⁶ the Eurasian Economic Union

⁴ Among the countries of the former Soviet Union, the Republic of Kazakhstan (the RK) is second only to the Russian Federation (the RF) in terms of the amount of attracted foreign direct investment (FDI). *Country Comparison: Stock of Direct Foreign Investment* – At Home, THE CIA WORLD FACTBOOK, <https://web.archive.org/web/20201224025625/https://www.cia.gov/library/publications/the-world-factbook/rankorder/2198rank.html> [<https://perma.cc/27F2-J5PV>] (last visited Nov. 2, 2022). As of December 31, 2017, the cumulative value of all FDIs in Kazakhstan was 156,200,000,000 USD (in Russia, it was 479,700,000,000 USD). *Id.* Kazakhstan ranked thirty-sixth worldwide, while Russia ranked nineteenth by the amount of received FDI. *Id.* Although unprecedented sanctions against Russia following its invasion of Ukraine have significantly deteriorated Russia's investment climate, their direct effect on Kazakhstan remains to be seen. Roza Nurgozhayeva, *Where Does Kazakhstan Stand on Russia's Invasion of Ukraine?*, JURIST (Mar. 22, 2022, 10:16 AM), <https://www.jurist.org/commentary/2022/03/roza-nurgozhayeva-russia-ukraine-invasion-kazakhstan/> [<https://perma.cc/C63L-AG2U>]. To date, however, the spillover effect from the sanctions has pulled down Kazakhstan's national currency and led to significant losses borne by some publicly traded Kazakhstan companies. *Id.* Despite that, some experts think the current crisis offers new opportunities for the country. *Id.* Because of Russia's isolation, Kazakhstan may become the region's most attractive and stable destination for international investments. *Id.*

⁵ HORACE YEUNG, ZHANYL BEKMURZAYEVA, FLORA HUANG & DINA SULEIMENOVA, INSTITUTIONAL DEVELOPMENT AND THE ASTANA INTERNATIONAL FINANCIAL CENTRE 18 (2018).

⁶ "The Commonwealth of Independent States (CIS) is a regional intergovernmental organization focused on cooperation on political, economic, environmental, humanitarian, cultural and other issues between a number of former Soviet Republics. On December 8, 1991 in Minsk the Agreement on the Establishment of the Commonwealth of Independent States was signed by the heads of Belarus, Russia and Ukraine." *Commonwealth of Independent States*, MINISTRY FOREIGN AFF. THE REP. BELR., <https://mfa.gov.by/en/multilateral/organization/list/c2bd4cebdf6bd9f9.html> (last visited Nov. 2, 2022). Along with Russia and Kazakhstan, the CIS Member States are Azerbaijan, Belarus, Kyrgyzstan, Armenia, Moldova, Tajikistan, and Uzbekistan.

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(EAEU),⁷ the Caucasus, Western China, and beyond.⁸ One key feature of the AIFC is that it functions within an autonomous common law regime

⁷ “The Eurasian Economic Union [EAEU] is an international organization for regional economic integration. It has international legal personality and is established by the Treaty on the Eurasian Economic Union. The EAEU provides for free movement of goods, services, capital and labor, pursues coordinated, harmonized and single policy in the sectors determined by the Treaty and international agreements within the Union. The Member-States of the [EAEU] are the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation.” EURASIAN ECON. UNION, <http://www.eaeunion.org/?lang=en#about> [https://perma.cc/4H7Z-MWGX] (last visited Nov. 2, 2022). Apart from economic integration, the CIS Member States also formed a military alliance, known as the Collective Security Treaty Organization (the CSTO). *From the Treaty to the Organization*, COLLECTIVE SEC. TREATY ORG., <https://en.odkb-csto.org/25years/> [https://perma.cc/BYP8-7EM2] (last visited Nov. 2, 2022). On May 15, 1992, heads of six post-Soviet states signed the Collective Security Treaty that laid the foundation for establishing the CSTO. *Id.* Along with Russia and Kazakhstan, its current Member States are Armenia, Belarus, Kyrgyzstan, and Tajikistan. *Id.*

⁸ The AIFC is strategically located in Kazakhstan, an area occupying 2,724,900 square kilometers (1,052,090 square miles), and is the ninth largest country and largest landlocked country in the world. *The 30 Largest Countries in the World by Total Area*, STATISTA (Mar. 29, 2022), <https://www.statista.com/statistics/262955/largest-countries-in-the-world/> [https://perma.cc/7KMD-KUBL]. The country is oil-rich and also possesses significant gas and mining resources. It is for that major reason that many foreign corporations and international firms have established their businesses there. The country is active in the international arena and contributes to regional economic integration. Kazakhstan was a non-permanent member of the United Nations Security Council in 2018. *Current Members*, U.N. SEC. COUNCIL, <https://www.un.org/securitycouncil/content/current-members> [https://perma.cc/7KGV-KZF3] (last visited Nov. 2, 2022); *Sweden, Bolivia, Ethiopia and Kazakhstan Elected to Security Council*, U.N. (June 28, 2016), <https://news.un.org/en/story/2016/06/533342-sweden-bolivia-ethiopia-and-kazakhstan-elected-security-council>. [https://perma.cc/32AB-RC5D] It is a member of the WTO and the World Bank. *Members & Observers*, WTO, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm [https://perma.cc/3RC5-Y5RE] (last visited Nov. 2, 2022); *Member Countries*, THE WORLD BANK (Nov. 20, 2020), <https://www.worldbank.org/en/about/leadership/members> [https://perma.cc/A3CN-6XG7]. Kazakhstan was also chair of the Organization for Security and Co-Operation in Europe (OSCE) in 2010 and the Organization of Islamic Conference (OIC) in 2011-2012. *Kazakhstan Takes Over OSCE Chair, Seeks to Strengthen Organization and Advance Dialogue on Future European Security Architecture*, ORG. FOR SEC. & CO-OPERATION IN EUR. (Jan. 1, 2010), <https://www.osce.org/cio/51810> [https://perma.cc/88ZE-H4PW]; Richard Weitz, *Kazakhstan Promotes Central Asian Interests Within OIC*, EURASIA DAILY MONITOR (Feb. 15, 2013, 11:17 PM), <https://jamestown.org/program/kazakhstan-promotes-central-asian-interests-within-oic/> [https://perma.cc/VL4D-5LAT].