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Re-Thinking Expropriation In The Age Of Climate Transition: A Central Asian Perspective On Investment Arbitration

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ABSTRACT

This paper analyzes the implications of Central Asia's green transition for investor-State dispute settlement, with a particular focus on expropriation claims. In recent years, Central Asian countries have pledged to shift from fossil fuels to a green economy, adopting national strategies and promoting sustainable development in line with global commitments. However, most investment treaties governing foreign investment remain unchanged, creating potential conflicts between climate policies and investor protections. Given the region's significant foreign investment in fossil fuel industries, abrupt regulatory changes could lead to claims under international investment agreements, particularly for indirect expropriation. This study analyzes why such claims may arise and proposes measures for the Central Asian States to implement to mitigate legal risks while promoting sustainability.

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1. Introduction

Investment treaty arbitration, also known as investor-State dispute settlement (ISDS), remains a central dispute settlement mechanism at the global level, enabling investors to bring claims directly against investment-importing States in response to certain adverse measures allegedly taken in breach of international investment agreements (IIA). While this mechanism carries clear procedural and substantive advantages for foreign investors, it also yields benefits for host States. In particular, by giving consent to international arbitration, a host State may signal its commitment to investor protection and its willingness to incur international responsibility in case of breaches of international investment obligations, thereby improving its investment climate and attracting more foreign investment.[1]

From a Central Asian perspective, despite the existence of a limited number of bilateral investment treaties (BITs) concluded during the Soviet period, investment arbitration did not function in the Central Asian republics prior to their independence. This can be explained by two principal factors. First, the republics were not States under international law at the time; thus, any investor-State dispute would have been filed against the Union of Soviet Socialist Republics (USSR), not an individual republic. Second, most Soviet BITs

[1] Kriebaum U, Schreuer C and Dolzer R, *Principles of International Investment Law* (3rd edn, Oxford University Press 2022) 340 (online edn, Oxford Law Pro), https://doi.org/10.1093/law/9780192857804.001.0001, accessed 7 January 2026.

included an arbitration clause of limited scope. In particular, with respect to expropriation, consent to arbitration was confined to disputes concerning the amount or mode of payment of compensation for expropriation, rather than the existence or legality of the expropriation itself.[2] By contrast, investment arbitration began to develop in the five Central Asian States following their independence from the USSR,[3] as these newly sovereign States sought foreign direct investment (FDI) in the sectors that needed economic growth.

To date, the Central Asian States are parties to more than 150 BITs in force.[4] Virtually all of these BITs contain provisions governing expropriation. In international investment arbitration, expropriation concerns two principles: first, the sovereign right of States to regulate and exercise control over their territory and resources; and second, the obligation of States to respect and protect foreign-owned property. While the former recognizes that a State may, under certain conditions, expropriate foreign investments, the latter requires that any such expropriation be lawful, meaning it must meet the legality criteria.[5] Guarantee against expropriation of investments in IIAs is one of the vital provisions a foreign investor would want to see before contributing assets to an alien State. Historically, expropriation (direct or indirect) has been one of the most frequently invoked substantive bases in ISDS, alongside fair and equitable treatment. Across the entire ISDS caseload (1987-2023), the guarantee against indirect expropriation provision was invoked by claimants in about 70 per cent of ISDS cases.[6]

In recent years, the international community has become increasingly mobilized around a shared commitment to environmental sustainability, reflected in not only in climate policy but also in investment treaty-making and reform practices. The global tendency toward supporting renewable energy development and decarbonization has also affected Central Asian region. Although most Central Asian States remain heavily dependent on fossil fuel production and exports, particularly in Kazakhstan, Turkmenistan and Uzbekistan, all five States have endorsed the United Nations 2030 Sustainable Development Goals (SDGs) and submitted Nationally Determined Contributions (NDCs) under the Paris Agreement. Influenced by the international frameworks, Central Asian governments have adopted long-term decarbonization strategies, including carbon-neutrality objectives, with some states aiming to achieve net-zero emissions by 2060. At the same time, these policy shifts raise salient questions regarding the extent to which the implementation of climate-regulatory measures may affect investment protection under existing investment treaties.

As of 31 July, 2025, UNCTAD documented 1440 publicly known ISDS cases. Central Asian respondent States have been involved in several major disputes, often related to expropriation claims linked to resource management and regulatory changes. Meanwhile, following climate commitments, some international community members are adjusting their ISDS exposure through withdrawal from the Energy Charter Treaty (ECT), treaty reforms, and interpretative annexes. These actions aim to prevent claims filed by investors after their activities are phased out or restricted on environmental grounds. In Central Asia, FDI is still heavily focused on fossil fuels and energy-intensive infrastructure, with governments announcing reform efforts but still limited progress on explicit climate-aligned investment treaty revisions.

This article explores how Central Asian governments can manage future expropriation claims arising from climate-related phase-outs and regulatory measures, considering their sustainable development commitments,

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[2] RosInvestCo UK Ltd v Russian Federation (Award on Jurisdiction, SCC Case No V079/2005, 2007; Final Award, 12 September 2010). A notable example in which the Stockholm Chamber of Commerce (SCC) tribunal relied on the most-favored-nation clause of the UK-USSR BIT to extend consent to arbitration beyond disputes concerning amount of compensation for expropriation.

[3] Gore, Kiran Nasir and Duggal, Kabir and Putilin, Elijah and Baltag, Crina, International Investment Law and Investor-State Disputes: Introductory Reflections on the Central Asian Experience (August 17, 2022). Chapter in: International Investment Law and Investor-State Disputes in Central Asia: Emerging Issues, Gore, Putilin, Duggal, & Baltag (eds) (Wolters Kluwer, 2022, Forthcoming), Available at SSRN: https://ssrn.com/abstract=4192801 or http://dx.doi.org/10.2139/ssrn.4192801.

[4] As per data available on https://investmentpolicy.unctad.org/ (as of 9 Jan. 2026).

[5] A. Newcombe and L. Paradell, "Chapter 7 Expropriation" in *Law and Practice of Investment Treaties: Standards of Treatment* (2009), p. 321.

[6] UN Conference on Trade and Development (UNCTAD), Facts and Figures on Investor–State Dispute Settlement Cases (IIA Issues Note No 3, November 2024), https://unctad.org/system/files/official-document/diaepcbinf2024d5_en.pdf, accessed 10 January 2026.

and how arbitral tribunals are likely to interpret first-generation investment treaties with broad protections that rarely explicitly address environmental issues. The analysis discusses how emerging treaty practices and trends may influence the handling of expropriation claims related to climate regulation that are likely to emerge in the future, and how investment protection can be reconciled with States' climate transition goals in Central Asia.

2. *Expropriation in Investment Arbitration: Classical Claims and State Defenses*

Expropriation is not, in itself, unlawful under international law. Early classical writings in public international law recognized the sovereign prerogatives of States to take private property for purposes deemed to serve the public good.[7] However, this right is not unlimited. For expropriation to be considered legal, it must satisfy well-established conditions. These typically include the pursuit of public interest, observance of non-discrimination, adherence to due process of law, and the provision of prompt, adequate, and effective compensation.[8]

Direct expropriation, or nationalization, occurs only in exceptional circumstances, since the open seizure of foreign-owned property may undermine the host State's investment climate and generate adverse international publicity. In addition, in many modern cases of investment deprivation, the legal title of the owner is preserved, but it is deprived of the value, use, control, or management of its investment. Thus, the more common form is indirect expropriation, often referred to as creeping expropriation. The principal challenge in such cases lies in determining whether expropriation has in fact taken place. Unlike direct takings, indirect expropriation does not typically involve legislation or formal measures that a tribunal can easily identify and evaluate, as those explicitly deprive the investor of property. Rather, its existence depends on specific facts and circumstances of the case, including the gravity and duration of governmental interference, the rights of the parties under a contract or general legislation and other contextual factors.[9]

If there has been expropriation, and it is unlawful, the host State bears responsibility to pay compensation. Conversely, the investor must incur the economic consequences of the measure unless compensation is available under other claims advanced in the proceedings.

Tribunals usually apply the substantial deprivation test to determine whether indirect expropriation has occurred. This test focuses on the effect of the act, rather than the purpose. The decisive factor is whether the investor can still "control" its investment and "enjoy" its benefits. This approach had been endorsed by tribunals in *Tecmed v. Mexico*,[10] *Metalclad v. Mexico*,[11] *Tippets, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran*[12] and other well-known cases. Prevailing number of cases show the tendency of relying on the "sole effect doctrine"[13] to hold on expropriation while subsequent analyses consider purpose, duration and proportionality to distinguish compensable takings from bona fide regulation.

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[7] Andreas Reinisch and Christoph Schreuer, *International Protection of Investments: The Substantive Standards* (Cambridge University Press 2020) para 5, 5, citing Hugo Grotius, *The Rights of War and Peace* (1625) bk I ch I §§6–10.

[8] Energy Charter Treaty (signed 17 December 1994, entered into force 16 April 1998) art 13(1). Paras. 2 and 3 of Article 13 address the right to prompt review and shareholders' rights.

[9] Francisco Orrego Vicuña, 'Carlos Calvo, Honorary NAFTA Citizen' (2002) 11 *NYU Environmental Law Journal* 19, 28.

[10] *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States* (*Tecmed v. Mexico*), ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, paragraph 113 ('Although formally an expropriation means a forcible taking by the Government of tangible or intangible property owned by private persons by means of administrative or legislative action to that effect, the term also covers a number of situations defined as *de facto* expropriation, where such actions or laws transfer assets to third parties different from the expropriating State or where such laws or actions deprive persons of their ownership over such assets, without allocating such assets to third parties or to the Government.').

[11] *Metalclad Corporation v. The United Mexican States* (*Metalclad v. Mexico*), ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, paragraph 103 ('expropriation . . . includes not only open, deliberate and acknowledged takings of property, such as outright seizure or formal or obligatory transfer of title in favour of the host State, but also covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property even if not necessarily to the obvious benefit of the host State.').

[12] *Tippets, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran*, (1984) 6 Iran-USCTR 219, Award, 29 June 1984, at 225.

[13] Máté Csernus, 'Indirect Expropriation' (Jus Mundi, 11 September 2025) https://jusmundi.com/en/document/publication/en-indirect-expropriation accessed 11 January 2026.

International instruments governing the protection of foreign investment consistently include provisions on expropriation, typically covering direct and indirect takings and measures equivalent or tantamount to expropriation, and they usually condition lawful expropriation on public purpose, non-discrimination, due process, and compensation. These protections are chiefly founded in IIAs. In addition to BITs, Central Asian States participate in regional and multilateral instruments with investment protection from expropriation and ISDS provisions, most notably the ECT and the Convention among the Commonwealth of Independent States (CIS) on the Protection of Investor Rights; and four (all except Tajikistan) are also parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), which provides the principal procedural framework for ISDS under many IIAs. The India-Uzbekistan BIT (2024) exemplifies this standard approach with the classical four-element formulation to define the legality of expropriation.

Once the existence of an expropriatory measure has been established, the focus shifts to the question of lawfulness. While the investor bears the initial burden of demonstrating that an expropriation has occurred, the host State must show that the act complied with the conditions under which expropriation is permitted under international law. It is at this stage that States typically invoke the police powers doctrine, arguing that the measure constituted a legitimate exercise of sovereign regulatory authority rather than a compensable taking.

Under this doctrine, States are recognized as having the right to undertake regulatory measures within their territory in pursuit of public order and other legitimate objectives, even where such measures adversely affect foreign investments. Arbitral tribunals have consistently acknowledged that a State cannot be required to compensate for every regulatory act that incidentally impairs an investor's property rights. Accordingly, States seek to demonstrate the public purpose of the measure, the absence of discrimination, and the procedural framework within which it was adopted.

However, the mere existence of a legitimate public purpose is not enough to render expropriation lawful. There has to be compensation alongside lawful measures taken, irrespective of the State's regulatory motives or the public interest pursued.

This principle is illustrated in *Rumeli Telekom A.S. & Telsim v. Kazakhstan*, where Kazakhstan denied any expropriation and maintained that its measures were legitimate regulatory acts. The tribunal ultimately found the case of "creeping" expropriation and awarded compensation to the claimants.[14]

A similar approach was taken in *Güneş Tekstil and others v. Uzbekistan*, in which Uzbekistan invoked the legitimate enforcement of tax and customs laws to justify the seizure of a shopping mall owned by foreign investors. Tribunal rejected the argument, holding that Uzbekistan's measures effectively deprived the investors of their property and economic value, and thereby constituted expropriation requiring compensation[15]

These cases demonstrate that tribunals face persistent difficulties in distinguishing between legitimate regulation and regulatory expropriation. In practice, extensive State control and regulatory interventions may blur the line between legitimate governance and investor rights violations, requiring tribunals conduct scrupulous fact-assessment of the case.

3. Climate Transition and Sustainable Development Strategies in Central Asia

One of the primary concerns of the 21st century is climate change, and Central Asia is among Eurasia's most climate-vulnerable regions.[16] The region's inland geography makes its climate swing between very hot and very cold. That forces businesses and individuals to use a lot of energy in both summer and winter, which increases demand for fossil fuels and aggravates existing environmental problems. Since the 20th century,

[14] *Rumeli Telekom AS and Telsim Mobil Telekomunikasyon Hizmetleri AS v Republic of Kazakhstan* (Award) ICSID Case No ARB/05/16 (29 July 2008) para 708.

[15] *Güneş Tekstil Konfeksiyon Sanayi ve Ticaret Ltd Şti and others v Republic of Uzbekistan*, ICSID Case No ARB/13/19, Award (4 October 2019)

[16] Anne Sophie Daloz, 'Climate Change: A Growing Threat for Central Asia' in *Climate Change in Central Asia* (SpringerBriefs in Climate Studies, Springer Nature 2023) 15–21, https://link.springer.com/chapter/10.1007/978-3-031-29831-8_2.

Central Asia has warmed up faster than the global average, whereas mean precipitation remains almost unchanged.[17] Scientific consensus attributes this accelerated warming primarily to human-induced greenhouse gas (GHG) emissions.

Environmental consequences are already visible. Air quality and critical natural resources have deteriorated significantly. In recent years, Tashkent has repeatedly ranked among the world's most polluted cities, at times topping IQAir's real-time charts, with particulate matter (PM) concentrations far exceeding the World Health Organization guidelines.[18]

Energy dependence compounds these vulnerabilities. Central Asia's economies remain heavily dependent on fossil fuels for power generation and industrial activity. In Kazakhstan, coal continues to dominate, accounting for roughly 70% of electricity and 80% of thermal energy generation, making coal combustion the single largest source of GHG emissions.[19] Uzbekistan's energy profile is similarly carbon-intensive, with natural gas providing about 80% of total energy consumption as of 2023.[20] Relying so much on fossil fuels makes it clear that the region needs new ways of managing resources and supporting a sustainable transition.

Recently, Central Asian nations, particularly Kazakhstan and Uzbekistan, have announced renewable energy targets and ambitions to supply green energy to Europe.[21] However, before achieving this goal, these countries must first effectively integrate renewable energy and sustainable development in their economies. Sustainability, low-carbon development, and resource efficiency are core pillars in the United Nations (UN) and European Union (EU) green economy frameworks. Among the most effective strategies for achieving green economy investments in renewable energy, green infrastructure, and sustainable technologies have played a special part. Renewable energy sectors create more jobs per unit of energy than fossil fuels do,[22] and thereby help offset employment losses from fossil fuel industries.

We can see a successful transition to clean energy and a green economy in the example of the EU countries. The EU is widely recognized as one of the leading regions in clean energy, largely because it attracts the highest levels of investment in this sector. Following the global energy crisis triggered by the Russia-Ukraine war and the cut in Russian gas supplies, clean energy investment in the EU surged. In 2023, investment in renewable energy totaled about USD 110 billion, and according to the International Energy Agency, in 2025, the EU committed to increase its clean energy investments to USD 390 billion.[23]

Notably, the global community has increasingly incorporated sustainability commitments into treaty-making practices. In particular, newer investment treaties reflect sustainability principles, including renewable energy carve-outs, special provisions designed to support green projects. This trend is driven by the Paris Agreement (2015), SDGs, and ongoing UNCITRAL Working Group III ISDS reform, as many states have raised concerns that excessive investor protections create a chilling effect on their ability to implement sustainability measures. A good example is the EU Model BIT Clauses from 2023.[24] In the preamble, European countries express their commitment to sustainable development and encourage foreign investment aligned with the objectives and principles of sustainability. Furthermore, the article on regulatory measures reaffirms the parties' right to regulate for environmental protection and climate change. While it is not an explicit carve-out, this provision

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[17] World Meteorological Organization, *Rising Temperatures and Extreme Weather Hit Asia Hard* (Press Release, 23 June 2025), https://wmo.int/news/media-centre/rising-temperatures-and-extreme-weather-hit-asia-hard.

[18] Kun.uz, 'Tashkent Ranks Among World's Most Polluted Cities' (2 October 2024), https://kun.uz/en/news/2024/10/02/tashkent-ranks-among-worlds-most-polluted-cities.

[19] Low-Carbon Power, *Kazakhstan Electricity Generation Mix 2024* (2024), https://lowcarbonpower.org/region/Kazakhstan.

[20] CEIC Data, *Uzbekistan Total Energy Consumption: Natural Gas* (US Energy Information Administration, 2023), https://www.ceicdata.com/en/uzbekistan/energy-production-and-consumption-annual/total-energy-consumption-natural-gas.

[21] Uzbekistan, Azerbaijan and Kazakhstan sign founding agreement on green energy corridor", *Gazeta.uz* (31 December 2024), https://www.gazeta.uz/en/2024/12/31/green-corridor/.

[22] Bochun Ma and Aang Wang, Exploring the role of renewable energy in green job creation and sustainable economic development: An empirical approach (2025) *Energy Strategy Reviews*, https://doi.org/10.1016/j.esr.2025.101642.

[23] International Energy Agency, 'World Energy Investment 2025: European Union' (IEA, 2025)б https://www.iea.org/reports/world-energy-investment-2025/european-union.

[24] European Union, *Annotations to the Model Clauses for Negotiation or Re-negotiation of Member States' Bilateral Investment Agreements with Third Countries* (EU Model BIT Clauses, 2023), https://edit.wti.org/document/show/74fa928b-21bd-4ff6-b80d-e21dda7e13c7.

effectively safeguards policy space for renewable energy projects and climate-related actions, reducing the number of claims that can be raised.

Another significant reform in the sustainability sphere concerns the modernized version of the ECT. The updated treaty seeks to strike a new balance between investment protection and sustainable development, with changes that appear to favor the interests of Contracting State Parties as respondents.[25] Specifically, the changes phase out the coverage of fossil fuels from the ECT's investment protections and expressly prohibit any EU investor from bringing a claim against an EU Member State.[26] For now, these amendments apply only to the EU, UK, and Switzerland, mainly because these jurisdictions initiated the reform process following their withdrawal from the treaty and criticism of ISDS. Another reason is that other Contracting Parties, including Central Asian states, still heavily rely on fossil fuels and therefore cannot yet remove protections for such investments. Furthermore, Central Asian States have not publicly commented on the ongoing controversy surrounding the ECT. In this context, commentators highlight the importance of open dialogue among stakeholders to understand each country's position and develop coherent regional perspectives.[27]

From a Central Asian perspective, all five countries participate in SDGs implementation frameworks and have submitted NDCs under the Paris Agreement. They are adopting renewable energy strategies, often with support from the World Bank, the European Bank for Reconstruction and Development (EBRD), the United Nations Development Program (UNDP), and Chinese investors. For example, EBRD and Kazakhstan have agreed to cooperate to achieve carbon neutrality in the energy sector by 2060.[28] In addition, the Team Europe Initiative supports programs such as Sustainable Energy Connectivity in Central Asia (SECCA), the Central Asia Water and Energy Program (CAWEP), and the Rogun Hydropower Plant project.[29]

Concerning treaty-making practice, although there is no single model treaty harmonizing investment protection laws across Central Asia as in the EU, environmental objectives are gradually being incorporated into modern treaties. For instance, the BIT between the People's Republic of China and Tajikistan, concluded in 2024, highlights environmental protection objectives and explicitly excludes actions aimed at environmental protection from the scope of indirect expropriation.[30] Similarly, the 2024 India-Uzbekistan BIT

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[25] The ECT Reform Finally Moves Forward: Fossil Fuels Phased Out and Intra-EU Disputes Excluded (10 February 2025), https://www.bakerbotts.com/thought-leadership/publications/2025/february/the-ect-finally-moves-forward-with-fewer-members-but-significant-changes.

[26] *Amendments to the Energy Charter Treaty* (3 December 2024), https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2024/CCDEC202412_EN.pdf.
Modification and Changes to Annexes to the Energy Charter Treaty (3 December 2024), https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2024/CCDEC202413_EN.pdf.

[27] Hannepes Taychayev, Event Report: Exploring International Investment Law and Disputes in Central Asia (Panel at Oxford University) (ARIA Blog, 12 June 2023), https://aria.law.columbia.edu/exploring-international-investment-law-and-disputes-in-central-asia/.

[28] European Bank for Reconstruction and Development, EBRD Will Help Kazakhstan Achieve Carbon Neutrality by 2060 (News, 2023), https://www.ebrd.com/home/news-and-events/news/2023/ebrd-will-help-kazakhstan-achieve-carbon-neutrality-by-2060.html.

[29] European External Action Service, Partnering for a Sustainable Future: EU–Central Asia Cooperation on Water, Energy, Climate and Digitalisation (EEAS, 2023), https://www.eeas.europa.eu/eeas/partnering-sustainable-future-eu-central-asia-cooperation-water-energy-climate-and-digitalisation_en.

[30] Agreement between the Government of the People's Republic of China and the Government of the Republic of Tajikistan on the Promotion and Reciprocal Protection of Investments (signed 2024), https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/8654/download.

includes explicit sustainable development objectives in its preamble and reaffirms the right to regulate to ensure sustainable development.[31]

Although existing investment treaties in the Central Asian region remain fragmented, consisting of a mix of both old and new IIAs, sustainable development goals are slowly gaining prominence and being implemented in new agreements. These agreements simultaneously limit the scope of expropriation and extend the regulatory powers of states. This raises critical questions regarding what consequences they bring to investors in fossil fuel industries, how those respond to such developments, what types of claims may arise, and how arbitral tribunals will address such disputes.

4. Re-Thinking Expropriation in Central Asia: Towards a Refined Interpretative Approach

As mentioned earlier, Central Asian countries are striving to align with global trends in promoting sustainable development. Although the pace is gradual, sustainability provisions are being integrated into legal and policy frameworks.

For instance, comparing old-generation and new-generation BITs, the India-Uzbekistan BIT of 1999 contained no sustainability provisions, nor did it reference sustainable development objectives.[32] By contrast, the 2024 India-Uzbekistan BIT includes sustainability language in its preamble and also contains an explicit clause in Article 3, allowing the Contracting States to implement regulatory measures aimed at sustainability.[33] This is one of the few Central Asian IIAs that explicitly promote green transition goals. On the other hand, sustainability appears more in broad cooperation agreements. A notable example in this regard is the Enhanced Partnership and Cooperation Agreement (EPCA) between the EU and Kyrgyzstan from 2024.[34] The EPCA includes a dedicated chapter on investment relations and reaffirms both parties' commitments to sustainable development and combating climate change. This agreement demonstrates the EU's strong allegiance to sustainability and signals Central Asian countries' growing inclination to align with sustainable development principles.

Meanwhile, there are still abundant agreements that lack meaningful sustainability provisions despite political declarations to support green development. For example, the Kazakhstan-Kyrgyzstan BIT[35] merely references sustainability in its preamble, without substantive provisions, similar to the Hungary-Turkmenistan BIT[36].

As a result, it remains unclear whether Central Asian Contracting States will be protected from treaty claims arising from legislative changes in favor of renewable energy and green transition in the future.

There is a high probability that, in the coming years, Central Asian countries will amend their national legislation to align with proclaimed NDCs, SDGs and related initiatives. Uzbekistan has already begun

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[31] Agreement between the Government of the Republic of India and the Government of the Republic of Uzbekistan on the Promotion and Protection of Investments (signed 2024), https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/8596/download.

[32] *Agreement on the Reciprocal Promotion and Protection of Investments between the Government of the Republic of India and the Government of the Republic of Uzbekistan*, signed 18 May 1999, in force 28 July 2000, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/1615/download.

[33] *Bilateral Investment Treaty between the Government of the Republic of India and the Government of the Republic of Uzbekistan*, signed 5 October 2024, https://edit.wti.org/document/show/f9061cec-381c-43d8-b7d2-85b71414e364.

[34] *Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Kyrgyz Republic, of the other part*, signed 2024, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/8490/download.

[35] *Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on the Promotion and Reciprocal Protection of Investments*, signed 27 November 2024, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/8521/download.

[36] *Agreement between the Government of Hungary and the Government of Turkmenistan on the Promotion and Reciprocal Protection of Investments*, signed 9 June 2023, entered into force 5 April 2024, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/8420/download.

implementing rules on environmental protection and measures to reduce GHG emissions. For example, the Resolution of the Cabinet of Ministers dated 28 November 2025 introduces stricter environmental standards for vehicles. It implements an eco-labeling system from 1 January 2026, under which vehicles are categorized as clean (green sticker), medium (yellow sticker), or harmful (red sticker).[37] In case the eco-sticker rules were to significantly restrict diesel-related foreign investments, they could potentially give rise to expropriation claims. While the regulation may not appear highly adverse to foreign investors now, it likely marks the beginning of broader sustainability-oriented reforms.

A useful comparison is *Methanex v United States*,[38] which concerned a ban on the gasoline additive (MTBE) adopted for environmental reasons. The investor alleged expropriation, but the tribunal ruled in favor of the United States, holding that non-discriminatory environmental regulation in good faith does not, by itself, constitute expropriation. That said, outcomes turn on the specific treaty language and case facts, so the analysis could differ in Uzbekistan.

Although foreign investors in diesel-vehicle manufacturing do not have a prominent presence in Central Asia, numerous foreign fossil-fuel investors operate in the region, particularly in Uzbekistan, Kazakhstan and Turkmenistan. These investors work under production-sharing agreements, service contracts, and joints ventures, primarily concentrated in major oil and gas fields. Consequently, as Central Asian States begin implementing sustainability-driven measures, such as gradual phase-out of coal-fired power plants, stricter emissions standards for oil and gas operations, or carbon pricing, these measures may conflict with investors' expectations under older BITs. Since many old-generation BITs, and even some new-generation ones, either lack sustainability carve-outs or provide vague criteria for indirect expropriation, investors may resort to arbitration seeking protection.

In identifying indirect expropriation, tribunals apply different tests such as substantial deprivation, legitimate expectations, and proportionality. These tests are often ambiguous and lack clear definitions in international conventions. When a treaty does not provide explicit language on their scope, tribunals typically infer boundaries from the circumstances of the case. If sudden regulatory shifts occur before updates to the investment treaty framework, investors are likely to allege a breach of their legitimate expectations. The inconsistency highlighted in the previous section, where some BITs permit sustainability-related regulatory measures while others do not, illustrates this challenge. Given that major fossil fuel investors such as Chevron, ExxonMobil, Shell, and Lukoil operate in Central Asian countries, future measures could trigger billion-dollar claims. The mere existence of environmental provisions is insufficient to exempt a State from international responsibility.

Because the earlier version of the ECT contained broad and investor-friendly provisions on expropriation, without a precise definition of indirect expropriation or carve-outs for environmental or climate measures, its investment protections have not only served to protect fossil fuel investors, but also led to numerous high-value claims. Spain and Italy, for example, have faced allegations from investors in the solar power industry. As of May 2020, twenty arbitral decisions have been rendered in what is now referred to as the "Spanish renewables saga", with more than forty-six cases being lodged under ECT.[39] Another prominent case in recent

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[37] *Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No 750, dated 28 November 2025, "On measures for implementing the 'Ecological transport' system to reduce the harmful impact of motor vehicles on the atmospheric air"*, entered into force 29 November 2025, https://lex.uz/docs/7873600.

[38] *Methanex Corp. v United States of America* (UNCITRAL, Final Award on Jurisdiction and Merits, 3 August 2005) 44 ILM 1345 (2005), https://jusmundi.com/en/document/decision/en-methanex-corporation-v-united-states-of-america-final-award-of-the-tribunal-on-jurisdiction-and-merits-wednesday-3rd-august-2005.

[39] *Charanne B. V. & Construction Investments S.A.R.L. v the Kingdom of Spain*, SCC Arb No 062/2012 (Award 21 January 2016) ('Charanne'); *Isolux Infrastructure Netherlands B.V. v Spain*, SCC Arb No 2013/153 (Award 17 July 2016) ('Isolux'); *Eiser Infrastructure Limited and Energía Solar Luxembourg S.à.r.l. v Kingdom of Spain*, ICSID Case No ARB 13/36 (Award 4 May 2017) ('Eiser'); *Novenergia II - Energy & Environment (SCA) (Grand Duchy of Luxembourg), SICAR v The Kingdom of Spain*, SCC Arb No 2015/063 (Award 15 February 2018) ('Novenergia'); *Masdar Solar & Wind Cooperatief U.A v Kingdom of Spain*, ICSID Case No ARB 14/1 (Award 16 May 2018) ('Masdar'); *Antin Infrastructure Services Luxembourg S.à.r.l and Antin Energia Termosolar B.V vKingdom of Spain*, ICSID Case No ARB 13/31 (Award 15 June 2018) ('Antin'); *Foresight Luxembourg Solar and al. v*

years is the *Vattenfall* dispute, related to the German government's environmental permit conditions and its nuclear phase-out after Fukushima in which the investor claimed indirect expropriation alongside other claims.[40] Therefore, Central Asian States need clear clauses defining regulatory space for sustainability to avoid liability, to prevent leaving interpretation entirely to the tribunal's discretion.

5. Conclusion

Central Asia is at a crossroads, needing to reconcile two interconnected priorities: combating climate change through a shift to a green economy and attracting foreign investment. To achieve this balance, countries in the region must carefully review and modernize their investment treaties to ensure investor protections while preserving sufficient regulatory space for environmental policies.

Issues related to climate change are becoming increasingly pressing. The primary drivers of these changes are largely linked to industrial activity and extensive use of fossil fuels. In response to these challenges, Central Asian States have recently declared their commitment to transitioning toward renewable energy sources, in line with the SDGs and obligations under the Paris Agreement. Governments have pledged to reduce dependence on coal, oil, and gas, as well as to cut GHG emissions.

Nevertheless, despite sustainability-driven declarations, most IIAs with Central Asian countries still lack sustainable development carve-outs or precise definitions for indirect expropriation and legitimate expectations. Meanwhile, in light of the global green transition, numerous claims have arisen from sudden legislative changes aimed at implementing climate policies.

Practice has shown that broadly worded provisions on expropriation and regulatory powers can have adverse effects when treaties lack clear definitions and boundaries. Provided that Central Asian countries implement stricter environmental standards and phase out fossil fuels, investors under older treaties may initiate expropriation claims. Because the tests applied by tribunals are ambiguous in nature, without clear treaty language, case outcomes will remain unpredictable. As international practice is moving toward sustainability-oriented investment treaties, Central Asia should align with these trends to reduce international liability risks. In this context, useful steps would be to incorporate sustainability carve-outs and engage in open dialogue to discuss future practical approaches to investment protection and climate transition.

Kingdom of Spain, SCC Arb No 2015/150 (Final Award 14 November 2018) ('Greentech'); *REEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v Kingdom of Spain*, ICSID Case No ARB 13/30 (Decision on Responsibility and on the Principles of Quantum 30 November 2018) ('RREEF'); *Cube Infrastructure Fund SICAV and Others v Kingdom of Spain*, ICSID Case No ARB 15/20 (Decision on Jurisdiction, Liability and Partial Decision on Quantum 19 February 2019) ('Cube Infrastructure'); *NextEra Energy Global Holdings B.V et al v Kingdom of Spain*, ICSID Case No ARB 14/11 (Decision on Jurisdiction, Liability and Quantum Principles 12 March 2019) ('NextEra'); *9REN Holding S.à.r.l. v Kingdom of Spain*, ICSID Case No ARB 15/15 (Award 31 May 2019) ('9REN'); *SolEs Badajoz GmbH v Kingdom of Spain*, ICSID Case No ARB 15/38 (Award 31 July 2019) ('SolEs Badajoz'); *InfraRed Environmental Infrastructure GP Limited and others v Kingdom of Spain*, ICSID Case No ARB 14/12 (Award 2 August 2019) ('InfraRed'); *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v Kingdom of Spain*, ICSID Case No ARB 15/36 (Award 6 September 2019) ('OperaFund'); *Stadtwerke München GmbH, RWE Innogy GmbH and others v Kingdom of Spain*, ICSID Case No ARB 15/1 (Award 2 December 2019) ('Stadtwerke'); *BayWa r.e. Renewable Energy GmbH and BayW r.e Asset Holding GmbH v Kingdom of Spain*, ICSID Case No ARB 15/16 (Decision on Jurisdiction, Liability and Directions on Quantum 2 December 2019) ('BayWa r.e.'); *RWE Innogy GmbH and RWE Innogy Aersa S.A.U. v Kingdom of Spain*, ICSID Case No ARB 14/34 (Decision on Jurisdiction, Liability, and Certain Issues on Quantum 30 December 2019) ('RWE Innogy'); *Watkins Holding S.à.r.l. and al v Kingdom of Spain*, ICSID Case No ARB 15/44 (Award 21 January 2020) ('Watkins'); *The PV Investors v Kingdom of Spain*, PCA Case No 2012- 14 (Final Award 28 February 2020) ('the PV Investors'); *Hydro Energy 1 S.à r.l. and Hydroxana Sweden AB v Kingdom of Spain*, ICSID Case No ARB 15/42 (Decision on Jurisdiction, Liability and Directions on Quantum 9 March 2020) ('Hydro.Energy').

[40] *Vattenfall AB & ors v Federal Republic of Germany (ICSID Case No ARB/09/6)*, Award embodying the parties' settlement (11 March 2011); *Vattenfall AB & ors v Federal Republic of Germany (ICSID Case No ARB/12/12)*, Order taking note of the discontinuance of the proceeding (9 November 2021).

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