



Observatoire ARGA

**Report on Procedural Abuses and Unfinished Administrative Proceedings as a Source of International Investment Disputes (in the Context of ISDS Reform by UNCITRAL Working Group III)**

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Report submitted by the Association *Asylum Research & Global Assistance* (ARGA) (France)

In the framework of the activities of:

- **ARGA Observatory** — the Association’s research and analytical project
- **ARGA Foundation (Netherlands)** — an institutional fund supporting human-rights and research initiatives

## 1. Introduction and Institutional Context

The Association *Asylum Research & Global Assistance* (ARGA) is an international human-rights and analytical organisation registered in France, working in the field of protecting the rights of investors, owners, and managers involved in cross-border disputes arising from administrative, regulatory, and quasi-criminal proceedings.

Within the Association, the ARGA Observatory operates, focusing on:

- monitoring judicial and administrative practices in countries with transitional economies;
- identifying systemic procedural defects;
- preparing analytical materials for international institutions, including UN mechanisms.

The Association also engages in expert and consultative cooperation with European regulatory and human-rights bodies on issues of due process, administrative fairness, and investment protection, within permissible and appropriate formats. This report is submitted in response to the agenda of the 53rd session of UNCITRAL Working Group III, devoted to the reform of investor–State dispute settlement (ISDS), and focuses on the procedural and cross-cutting issues placed on the agenda.

## 2. Executive Summary

Based on practical experience in accompanying investment and quasi-investment disputes in the CIS and Central Asian states, ARGA identifies a persistent systemic pattern of procedural abuses which:

- does not always manifest itself in a single act of direct expropriation;
- is implemented through a chain of unfinished administrative procedures, regulatory uncertainty, and judicial formalism;
- results in investors being effectively deprived of protection and provokes international investment disputes.

The report demonstrates that such practices directly affect matters under discussion within UNCITRAL Working Group III, including:

- allocation of arbitration costs;
- counterclaims by states;
- limitation periods;
- joint interpretative statements on investment treaties;
- mechanisms to prevent abuse of process.

### 3. Empirical Pattern: the “Chain of Procedural Abuse”

Based on the analysis of dozens of cases, ARGA Observatory identifies the following typical mechanism:

1. **Initiation of an administrative or regulatory procedure**

(supervision, inspection, licensing, oversight).

2. **Formal application of procedural rules**

(extension of deadlines, requests for documents, parallel inspections).

3. **Absence of a final administrative act**

or its substitution by correspondence and interim steps.

4. **Judicial formalism**

— national courts refuse to consider complaints, referring to the absence of a “final decision.”

5. **Regulatory uncertainty**

— the investor is deprived of the ability to:

- challenge the matter on the merits;
- record the moment of violation;
- determine the start of the limitation period.

It is precisely the *unfinished* nature of the procedure — not its absence — that becomes a key instrument of pressure.

## 4. Correlating the Identified Issues with the Agenda of UNCITRAL WG III

### 4.1. Allocation of Arbitration Costs

Procedural abuses are often accompanied by tactics aimed at exhausting the investor:

- prolonging domestic procedures;
- parallel proceedings;
- artificially inflating costs.

#### **Recommendation:**

In developing the provisions of WG III, consider:

- allocating costs to the party that engaged in abuse of process;

- taking into account the State's conduct at the pre-contractual and pre-dispute stages.

## 4.2. State Counterclaims

ARGA observes cases in which counterclaims are used:

- as an instrument of pressure;
- as a means of legitimising earlier procedural violations.

### **Recommendation:**

Establish clear procedural filters for the admissibility of counterclaims, including:

- a requirement of direct connection with the investment dispute;
- a good-faith criterion;
- a prohibition on retroactively justifying procedural abuses.

## 4.3. Limitation Periods

In the context of unfinished administrative procedures, a key issue arises: the moment when the limitation period begins is objectively indeterminable.

### **Recommendation:**

In ISDS reform, take into account:

- the cumulative nature of harm;
- the moment when the investor effectively realises the impossibility of obtaining effective redress at the national level.

## 4.4. Joint Interpretative Statements

Joint interpretative statements by States are sometimes used:

- to legitimise practices developed *post factum*;
- to diminish the investor's legitimate expectations.

### **Recommendation:**

Limit the binding force of such statements in cases where:

- they worsen the investor's position;
- they violate the principle of legal certainty.

## 4.5. Addressing Abuse of Process

Unfinished procedures and regulatory uncertainty should be regarded as a distinct form of abuse of process.

### **Recommendation:**

Include in ISDS reform provisions that allow:

- consideration of such practices when assessing the admissibility of State objections;
- application of early procedural filters (early dismissal).

## 5. Public Case Study: TogliattiAzot (Russian Federation)

As a public example, ARGA draws attention to the case of PJSC *TogliattiAzot*, in which:

- a corporate conflict was transformed into a multi-level administrative and criminal prosecution;
- parallel procedures with different legal regimes were used;
- procedural decisions were employed as a tool for reallocating control over the asset.

This case illustrates that:

- an investment dispute may form long before a formal arbitration claim is filed;
- procedural mechanisms play a decisive role in escalating the conflict.

## 6. Conclusions and Recommendations

The Association ARGA considers that ISDS reform must account not only for the final act of expropriation but also for the procedural dynamics that precede the dispute.

### **Key Recommendations:**

1. Recognise the unfinished nature of administrative procedures as a form of abuse of process.
2. Take State conduct into account when allocating costs.
3. Limit the use of State counterclaims as a tool of pressure.
4. Apply a flexible approach to calculating limitation periods.
5. Protect the investor's legitimate expectations from retrospective interpretations.

## 7. Final Remarks

This report is submitted with the aim of assisting UNCITRAL Working Group III in shaping a more predictable, equitable, and procedurally balanced system of investment dispute settlement that reflects the actual practices of States with transitional economies. The Association ARGA stands ready to continue expert dialogue and provide additional analytical materials within the mandate of UNCITRAL.

## 8. Appendices

1. Khrabrykh Sergei, ARGА Observatory, International Dossier on the Case of PJSC "Togliattiazot" (TOAZ), 9th January 2026, <https://doi.org/10.5281/zenodo.18201467>.
2. Khrabrykh Sergei, ARGА Observatory, Criminalization of Corporate Governance and Substitution of Justice: The Case of PJSC TogliattiAzot (TOAZ), 12th January 2026, <https://doi.org/10.5281/zenodo.18222405>.
3. <https://argaobservatory.org/en/>.