

**VOLUME 16(2): DEVELOPING COUNTRIES AND THE FUTURE OF INVESTOR-
STATE DISPUTE SETTLEMENT (ISDS)**

Introduction

Investor–State Dispute Settlement (ISDS) is a cornerstone of international economic law, designed to protect foreign investments by allowing investors to bring claims against host States for alleged treaty violations. Despite being the most frequent respondents in ISDS cases, the voices of developing countries remain underrepresented in academic discourse and reform proposals. This special issue aims to rebalance this asymmetry.

Further, as foreign investment flows grow, so too has scrutiny of how ISDS affects the policy space and development goals of emerging economies. A recent UNCTAD report notes that 60 new treaty-based ISDS cases were initiated in 2023, bringing the total to approximately 1,332 known cases. Notably, developing countries have borne the brunt of these disputes: about 62% of all ISDS claims name developing-country governments as respondents, even though most claimants come from developed countries. These trends have sparked debate over whether ISDS is balanced or whether it unduly constrains regulatory action in areas like public health, environmental protection and economic development. In particular, concerns about “regulatory chill” – where governments may hesitate to adopt progressive policies for fear of investor lawsuits – have drawn attention worldwide. In this context, it is timely to examine the future of ISDS from the perspective of developing countries, where the stakes include both attracting investment and preserving democratic policy autonomy.

Vision for the Issue

This Special Issue of IJIEL is prompted by ongoing debates about the design and reform of investor–State dispute settlement in the post-COVID, climate-conscious era. We seek to foreground the perspective of developing countries in these debates, recognizing their disproportionate exposure to ISDS challenges and their unique policy priorities. For many emerging economies, ISDS cases have involved critical industries and public services, leading to multi-million-dollar awards that can strain public budgets or limit policy options. At the same time, global developments – such as rising public debt, climate imperatives, and a shift towards more sustainable investment models – are reshaping the investment landscape. Governments and international organizations (e.g., UNCITRAL’s Working Group III and UNCTAD) are proposing reforms, from new arbitration rules to possible carve-outs for

climate measures. Against this backdrop, our Special Issue seeks to unpack the legal, economic, and policy dimensions of these reforms and their implications for development.

In particular, we invite contributions that explore how ISDS can be recalibrated to serve development and sustainability objectives. *Sub-themes of interest include:*

- (A) **Compensation in Investment Arbitration:** Examining how damages and compensation are calculated in investment cases, and whether current practices yield fair or excessive awards. Recent studies show that the average ISDS award has ballooned from about US\$25 million (1994–2003) to roughly US\$256 million (2014–2023), with over a quarter of successful claims exceeding \$100 million. These trends raise questions about valuation methods (e.g., speculative future profits, loss of chance) and the adequacy of treaty provisions. We welcome analyses of valuation techniques, alternative remedies (e.g., structured settlements), and treaty provisions (such as valuation standards or caps) aimed at moderating compensation.
- (B) **Beyond Investment Arbitration: Alternative Approaches and Future Pathways:** Exploring dispute-resolution models outside the traditional investment arbitration framework. This includes treaty-based mediation or conciliation mechanisms, negotiation pathways, multilateral investment courts or appellate bodies, and state-to-state alternatives. For example, UNCITRAL Working Group III has highlighted growing interest in alternative dispute resolution (ADR) such as mediation, and several recent treaties (including some featuring India) now explicitly provide for mediation or multi-tiered dispute clauses. We also welcome proposals for new institutional models (such as the “multilateral investment court” concept), state-centric channels, or stronger pre-arbitration negotiation requirements. Analyses of the institutional design, legal framework, and prospects of these alternatives – especially their suitability for developing-country contexts – are encouraged.
- (C) **Investment Arbitration and Climate Change: Emerging Challenges and Opportunities:** Investigating how climate change and environmental regulation intersect with investment arbitration. Challenges include investor claims against climate and environmental measures (e.g., renewable energy subsidies, coal-phase-out policies) that some argue are protected under existing treaties. High-profile cases, such as those involving fossil fuel projects or renewable energy incentives, highlight this tension. We invite scholarship on how investment law is adapting to climate goals – for instance, the effectiveness of proposed treaty “carve-outs” for climate measures, the integration of climate obligations into disputes, or the use of ISDS as a tool for sustainable development. Papers could examine how tribunals have treated climate-related defenses, or how treaty drafting could protect legitimate climate policy without unduly

chilling investment. The intersection of investor rights with human rights and environmental duties is an especially timely topic.

- (D) Procedural and Interpretational Issues in Investment Arbitration:** Addressing procedural dynamics and interpretative controversies in ISDS. This broad category includes questions of jurisdiction (e.g., definitions of “investment” or investor, pre-arbitration requirements), admissibility and bifurcation of claims, consolidation of related claims, and cost allocation. It also encompasses doctrinal debates such as the scope of core treaty provisions (fair and equitable treatment, indirect expropriation, national treatment) and defenses (necessity, regulatory exception clauses). For instance, the recent overhaul of the ICSID Arbitration Rules (effective 2022) introduced new provisions on transparency and third-party funding, which are now being tested in cases. We seek analyses of such rule changes, as well as commentary on emerging case law that clarifies or disputes these procedural norms. Contributions could also examine how arbitral institutions handle issues like consolidation of multiple claims against one state, or the enforceability of awards in different jurisdictions.
- (E) Third Party Funding in ISDS: Trends, Implications, and Regulatory Responses:** Third-party funding (TPF) – where a funder finances one side of a dispute in return for a share of any award – has become increasingly prevalent in investment arbitration. This has raised questions about access to justice versus fairness: while TPF can enable claimants to pursue large claims (democratizing access), it may also increase the risk and cost for respondent States, which may end up paying both their own legal costs and portions of claimant costs inflated by the funder’s fees. We welcome papers that assess the current landscape of TPF (e.g., how common it is, who the funders are, the economics of financing), its impact on investment disputes (including cost awards and case outcomes), and the range of regulatory approaches. Recent reforms – such as disclosure requirements in the ICSID Arbitration Rules and new funder code of conduct proposals – illustrate how institutions are grappling with these issues. We also encourage analysis of state-level initiatives (for example, security-for-cost rules) and the implications of TPF for states with limited resources.

The Special Issue will include both invited and submitted contributions. We cordially invite scholars, practitioners, and policymakers to submit papers – including Articles, Essays, and Case Notes or Commentaries – that provide rigorous analysis of ISDS in the context of developing countries. Comparative and interdisciplinary approaches (drawing on law, economics, political science or other fields) are particularly welcome. By focusing on developing-country perspectives, we aim to enrich understanding of how international

investment law can evolve to balance investor protection with sustainable development and regulatory sovereignty.

Submission Guidelines

Submissions for Vol. 16(2) of IJIEL must conform to the journal's standard guidelines. We accept:

- **Articles (6,000–10,000 words, exclusive of footnotes):** comprehensive analyses of broad issues in international economic law.
- **Essays (4,000–6,000 words):** concise treatment of specific contemporary topics.
- **Case Notes and Legislative Commentaries (1,500–3,000 words):** focused discussions of recent arbitral decisions or new legal developments.

Further details on the substantive as well as formatting guidelines can be accessed on this [link](#).

Manuscripts should be submitted via the [IJIEL Digital Commons](#) portal by the deadline of **October 15, 2025**. Please refer to this [guide](#) for instructions and clarifications with respect to navigating Digital Commons. Submissions by email will not be considered. The Editorial Board will conduct an internal review followed by double-anonymized peer review. Authors should allow up to two months for the review process and be prepared to make revisions as requested by reviewers.

Contact

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