Safeguarding Climate Policy in Third-Party Funded Investment Arbitration Through Legal Solidarity Mechanisms: The Potential Role of the Forthcoming UNCITRAL's Advisory Centre[1]

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Abstract

This article explores how the forthcoming UNCITRAL Advisory Centre on International Investment Dispute Resolution (ACIIR) can assist states, particularly developing countries, in defending climate policies against investor claims backed by third-party funding (TPF) in investment arbitration. As climate-related regulatory measures increasingly trigger Investor-State Dispute Settlement (ISDS) claims – increasingly financed by non-party funders – the risk of a 'regulatory chill' grows, disproportionately affecting climate-vulnerable states. The article examines how TPF alters the dynamics of ISDS and creates systemic imbalances in arbitration proceedings that can ultimately jeopardise national climate policies. The article argues that the ACIIR, envisioned as a multilateral support hub, could function as a mechanism of legal solidarity by offering technical assistance, procedural guidance, legal representation, and training tailored to climate-focused disputes. It also offers practical recommendations – such as equipping the Centre with environmental law expertise and fostering peer networks among similarly situated states – to enhance the Centre's climate-defensive potential. Ultimately, the article proposes that, with adequate resources and mandates, the ACIIR can help support investor-state arbitration toward safeguarding public interests, including climate change ones.

Keywords: *Investor-State Dispute Settlement; Climate Policies; Third-Party Funding; UNCITRAL; Advisory Centre on International Investment Dispute Resolution.*

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UNCITRAL's Advisory Centre', *International Investment Law Journal* 5, no. 2 (July 2025): 156-170.

1. Introduction

Investor-State Dispute Settlement (ISDS) mechanisms were originally created to protect investors from non-discriminatory treatment in host states and to provide investors with a neutral tool that would ensure the enforcement of the host state's investment-related obligations. However, especially in the last few years, several doubts have arisen with respect to the suitability of ISDS to adjudicate investor-state disputes, due to several factors, like the suitability of ISDS to adjudicate disputes potentially involving states' public policies and/or public interests.[3]

In this respect, the rise of third-party funding (TPF) – also known as litigation funding or litigation finance against a state, where outside financiers (with no prior interest in the merits of a dispute) bankroll arbitrations in return for a share of the relevant final arbitral award if the dispute is decided in the claimant's favour – has amplified these concerns.[4] Indeed, the relevant litigation-finance industry has boomed in recent years (an estimated 17.5 bn USD in 2024)[5].

Supporters of TPF typically argue that their participation makes the justice system more accessible.[6] At the same time, TPF may increase the number of ISDS cases (allowing claimants to bring cases that otherwise would be financially unsustainable for them) and may also impact decisions to settle, or not settle, investment claims (e.g. by pushing claimants to settle the dispute or to keep it going). Additionally, TPF is increasingly sponsoring cases brought by mineral, energy and manufacturing firms against host states that adopt climate or social policies that can impact their profits.[7]

According to a recent report published by The Guardian, of all the TPF cases in

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[3] See, for a general overview, Marta Latek and Laura Puccio, 'Investor-State Dispute Settlement (ISDS) – State of Play and Prospects for Reform,' *European Parliamentary Research Service Briefing* (January 2015), https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/545736/EPRS_BRI(2015)545736_EN.pdf, Harshad Pathak, 'Reimagining Investor – State Dispute Settlement – Or How to Map Indeterminacy and Reform Identity,' *Journal of International Dispute Settlement* 16, no. 2 (2025): 1–25, https://doi.org/10.1093/jnlids/idaf021 and Ana Ubilava, 'Amicable Settlements in Investor-State Disputes: Empirical Analysis of Patterns and Perceived Problems,' *Journal of World Investment & Trade* 21, no. 4 (2020): 528–557, https://doi.org/10.1163/22119000-12340183.

[4] Hughes Hubbard & Reed L L P, 'What is Third Party Funding? How Is It Used in International Arbitration?,' *Dispute Client Advisories* (March 6, 2024), https://www.hugheshubbard.com/news/third-party-funding-in-international-arbitration.

[5] Patrick Greenfield and Phoebe Weston, 'Revealed: how Wall Street is making millions betting against green laws,' *The Guardian* (March 5, 2025), https://www.theguardian.com/environment/2025/mar/05/revealed-how-wall-street-is-making-millions-betting-against-green-laws-isds-aoe#:~:text=Internationally%2C%20the%20litigation%20finance%20industry,the%20justice%20system%20more%20accessible.

[6] Patrick Greenfield and Phoebe Weston, 'Revealed: how Wall Street is making millions betting against green laws,' *The Guardian* (March 5, 2025, https://www.theguardian.com/environment/2025/mar/05/revealed-how-wall-street-is-making-millions-betting-against-green-laws-isds-aoe#:~:text=Internationally%2C%20the%20litigation%20finance%20industry,the%20justice%20system%20more%20accessible.

[7] Alessandro Camillo, « Big Finance Is Making Millions in Lawsuits Against Environmental Legislation, » *Impakter* (April 23, 2025), https://impakter.com/big-finance-making-millions-lawsuits-environmental-legislation/#:~:text=Through%20ISDS%20courts%2C%20companies%20have,damaging%20industries%20in%20the%20world.

ISDS, 'half were instigated by US, British, or Canadian investors. More than 50% of these cases were related to mining or fossil fuels. According to data the Guardian obtained from Jus Mundi, a legal intelligence company, more than 75% of cases were filed against developing countries'.[8]

In this scenario, national governments may fear a regulatory chill; accordingly, unwilling or fearing to face costly claims by well-funded foreign plaintiffs, states may hesitate to enact or enforce strong climate laws or other public-interest measures. Indeed, in some cases, arbitral tribunals have decided in favour of claimants and have awarded huge sums that governments had to pay, as in the case of *South American Silver Limited v. Bolivia*.[9] In that case, a subsidiary of South American Silver had acquired mining concessions in a part of Bolivia inhabited mainly by indigenous peoples; these concessions were revoked in 2010 by the Bolivian government when the company was accused of polluting sacred land and threatening indigenous communities. As a result of a TPF ISDS case, the Bolivian government was forced to pay the mining company USD 18.7 million.[10]

This way, as also Prof. Muthucumaraswamy Sornarajah, an international lawyer and ISDS arbitrator, stated, 'Third-party funding has made ISDS into big business'.[11] In a dissenting opinion on the case of *Teinver v Argentina*, one of the arbitrators, Kamal Hossain, stated that 'the creation of a "gambler's Nirvana" by allowing third-party funders to use investor-state dispute settlements as a means of financial speculation […] is deeply problematic'.[12] This phenomenon has also triggered investment treaty

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[8] Patrick Greenfield and Phoebe Weston, 'Revealed: how Wall Street is making millions betting against green laws,' *The Guardian* (March 5, 2025), https://www.theguardian.com/environment/2025/mar/05/revealed-how-wall-street-is-making-millions-betting-against-green-laws-isds-aoe#:~:text=Internationally%2C%20the%20litigation%20finance%20industry,the%20justice%20system%20more%20accessible and Alessandro Camillo, 'Big Finance Is Making Millions in Lawsuits Against Environmental Legislation,' *Impakter* (April 23, 2025), https://impakter.com/big-finance-making-millions-lawsuits-environmental-legislation/#:~:text=Through%20ISDS%20courts%2C%20companies%20have,damaging%20industries%20in%20the%20world. In general, on climate litigation, see David J. Hess, 'Mobilized Publics in Local Environmental Conflicts: Comparing Types of Expertise and Outcomes.' *Science as Culture* (2025): 1–28. https://doi.org/10.1080/09505431.2025.2475315; Peter Hill, 'Strategy and Justice: Managing the Geopolitics of Climate Change.' LSE IDEAS – Grantham Research Institute on Climate Change and the Environment Policy insight (September 2024). https://www.lse.ac.uk/granthaminstitute/publication/strategy-and-justice-managing-the-geopolitics-of-climate-change; Bridget Lewis, *Environmental Human Rights and Climate Change. Current Status and Future Prospects* (Springer, 2018), p. 70 et seq.; Hari M. Osofsky, 'The Geography of Climate Change Litigation: Implications for Transnational Regulatory Governance.' *Washington University Law Quarterly* 83. no. 6 (2005): 1789–1855. https://openscholarship.wustl.edu/law_lawreview/vol83/iss6/3; Joana Setzer and Higham, Catherine. 'Global Trends in Climate Change Litigation: 2024 Snapshot.' Grantham Research Institute on Climate Change and the Environment-LSE Policy Report (June 27, 2024). https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2024-snapshot and Joana Setzer, Benjamin, Lisa. 'Climate Change Litigation in the Global South: Filling in Gaps.' *AJIL Unbound* 114 (2020):56–60. https://doi.org/10.1017/aju.2020.6.

[9] *South American Silver Limited v. Bolivia*, PCA Case No. 2013-15, https://www.italaw.com/cases/2121.

[10] *South American Silver Limited v. Bolivia*, PCA Case No. 2013-15, Award, 22 Nov 2018.

[11] As reported by Patrick Greenfield and Phoebe Weston, 'Revealed: how Wall Street is making millions betting against green laws,' *The Guardian* (March 5, 2025), https://www.theguardian.com/environment/2025/mar/05/revealed-how-wall-street-is-making-millions-betting-against-green-laws-isds-aoe#:~:text=Internationally%2C%20the%20litigation%20finance%20industry,the%20justice%20system%20more%20accessible.

[12] *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic*, ICSID Case No. ARB/09/1, Dissenting Opinion of Dr. Kamal Hossain 8 April 2016, https://www.

withdrawals from states (notably from the Energy Charter Treaty),[13] and has fuelled an increasing call for an urgent reform of the ISDS system, which seems to lack the necessary tools to deal with these potentially risky situations.[14]

Against this background, the forthcoming Advisory Centre on International Investment Dispute Resolution (ACIIR) under discussion at Working Group III (Investor-State Dispute Settlement Reform) of the United Nations Commission on International Trade Law (UNCITRAL) might help in providing legal assistance to states involved in such kind of ISDS.[15] The ACIIR's draft statute, adopted in principle by UNCITRAL in 2024, envisions the establishment of a permanent multilateral body aimed at providing legal support, training, and capacity-building to states (especially developing countries) in ISDS proceedings.

This article explores how the ACIIR can be mobilised as a climate-defensive tool, establishing a kind of 'legal solidarity' mechanism. The article starts by outlining the policy concerns raised by TPF investment climate disputes. It then describes the ACIIR's proposed mandate and services, and discusses how these can be tailored to protect states' climate policies and objectives in ISDS, especially when TPF is involved. Finally, it offers some preliminary conclusions and recommendations, from legal training to procedural strategies, to ensure that the Centre is well equipped to effectively support states' defences of climate policies in the context of TPF ISDS.

2. Third-Party Funding in ISDS: Challenge to National Climate Policies (?)

TPF in ISDS has grown rapidly, though empirical data on this phenomenon is quite challenging to obtain. This is especially due to the lack of transparency rules on TPF in ISDS. To date, only the World Bank's International Centre for Settlement of Investment Disputes (ICSID) requires disclosure of the existence of 'third-party funding', thanks to an amendment of its ICSID Arbitration Rules in 2022, where a dedicated Rule was included (Rule 14, Notice of Third-Party Funding). According to this new Rule, parties should disclose immediately at the beginning of the proceeding the existence of any third party funding the proceeding, and the arbitral tribunal, 'may order disclosure of further information regarding the funding agreement and the non-party providing funding'.[16]

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italaw.com/cases/1648.

[13] See, among others, Isabelle Wenger and Ellen Dixon, 'A Reflection on the Withdrawal from the Energy Charter Treaty,' *Daily Jus* (March 19, 2025), https://dailyjus.com/world/2025/03/a-reflection-on-the-withdrawal-from-the-energy-charter-treaty, 'UK departs Energy Charter Treaty,' *Gov.Uk Press Release* (February 22, 2024), https://www.gov.uk/government/news/uk-departs-energy-charter-treaty#:~:text=The%20UK%20government%20confirms%20its,to%20agree%20vital%20modernisation%20fail.&text=The%20UK%20will%20leave%20the,today%20(Thursday%2022%20February), Lorenzo Cotula, 'International Investment Law and Climate Change: Reframing the ISDS Reform Agenda,' *Journal of World Investment & Trade* 24, no. 4–5 (2023): 766–791, https://doi.org/10.1163/22119000-12340310.

[14] Josef Ostřanský, Florencia Sarmiento and Suzy H. Nikièma, 'Why Is Investment Treaty and Investor-State Dispute Settlement Reform Needed? Questions & Answers,' *IISD Report* (March 11, 2025), https://www.iisd.org/publications/report/investment-treaty-and-isds-reform-questions-answers.

[15] Kristóf Pap, 'Clearing the Air: Demystifying ISDS in the Climate Debate,' *International Law and Politics* 56 (2024):951–963, https://nyujilp.org/wp-content/uploads/2024/09/PAP-FINAL_NYI_56_3-125-137.pdf.

[16] Rule 14 of the 2022 ICSID Arbitration Rules: '(1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, has received funds for the pursuit

Notwithstanding this innovative provision, transparency issues remain, firstly, since often notifications of disclosure are not placed on the public record, and secondly, since this is a rule valid only for ICSID ISDS, while ISDS managed according to other procedural rules do require such a disclosure. Accordingly, the real number of TPF in ISDS remains unknown. Moreover, apart from the disclosure rule in ICSID ISDS, TPF remains largely unregulated in investment treaties and arbitration rules.

Despite such empirical difficulties, studies on TPF in ISDS have highlighted how TPF is increasing, especially in cases involving public policy concerns, like climate change. The above-mentioned report published by The Guardian has managed to analyse 75 cases, though it made it clear that 'this […] is likely to be a substantial underestimate: many treaties include no obligation to disclose third-party funding of cases, and the largest dispute-resolution body only began demanding disclosure in 2022'.[17]

Among the data available on TPF ISDS, it seems, however, clear the increasing number of externally funded cases affecting national climate policies. It has been observed that this tendency follows 'the disruption caused by Covid-19 which galvanised companies to carefully consider how to make capital growth more resilient, and where to prioritise their investments, and the resulting wave of investment strategies that target climate change-combative projects [and funders are rising to the demand by ringfencing specific funds for climate change-related disputes'.[18]

And while, in principle, TPF can be a way to improve access to justice (in particular, guaranteeing the affordability of an arbitral proceeding), it has de facto become a tool that can potentially pressure the host states; indeed, it seems that 'TPF in ISDS is primarily about balance-sheet management, offering typically well-resourced claimants the ability to minimise the risk associated with bringing a claim, and does not focus on providing funding to impecunious or disadvantaged claimants'.[19]

Published data shows, indeed, a disproportionate share of funded cases involves fossil-fuel or resource investors challenging environmental measures.[20] Of those

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or defence of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding ("third-party funding"). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person. (2) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for arbitration, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice. (3) The Secretary-General shall transmit the notice of third-party funding and any notification of changes to the information in such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 19(3)(b). (4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 36(3)' (2022 ICSID Arbitration Rules, https://icsid.worldbank.org/sites/default/files/Arbitration_Rules.pdf).

[17] Patrick Greenfield and Phoebe Weston, 'Revealed: how Wall Street is making millions betting against green laws,' *The Guardian* (March 5, 2025), https://www.theguardian.com/environment/2025/mar/05/revealed-how-wall-street-is-making-millions-betting-against-green-laws-isds-aoe#:~:text=Internationally%2C%20the%20litigation%20finance%20industry,the%20justice%20system%20more%20accessible.

[18] Pamela McDonald, 'Third Party Funding of Climate Change Arbitration,' *Pinsentmasons Out-Law Guide* (April 5, 2022), https://www.pinsentmasons.com/out-law/guides/third-party-funding-climate-change-arbitration.

[19] Frank J. Garcia, 'The Case Against Third-Party Funding in Investment Arbitration,' *Investment Treaty News* (July 30, 2018), https://www.iisd.org/itn/2018/07/30/the-case-against-third-party-funding-in-investment-arbitration-frank-garcia/.

[20] Patrick Greenfield and Phoebe Weston, 'Revealed: how Wall Street is Making Millions Betting Against

disclosed TPF cases in ISDS courts, half had been instigated by US, British, or Canadian investors, and more than 50% of these cases were related to mining or fossil fuels, while more than 75% of cases were filed against developing countries.[21]

Among those cases that are still pending, worth mentioning are especially *Silver Bull Resources, Inc. v. United Mexican States* and *Greenland Minerals v. Greenland & Denmark*.

In the former one, the case has been brought by a Canadian mining company, Silver Bull, financially supported by Bench Walk Advisors, a UK investment fund,[22] which is seeking USD 408 million in damages from the Mexican government for failing to disband a blockade by miners protesting against Silver Bull's operations.[23] On the other hand, in *Greenland Minerals v. Greenland & Denmark, Burford Capital,* the US's largest litigation finance firm in the world, is backing a case against the government of Greenland. A mining company operating in Greenland is arguing that a uranium mining ban effectively ended its development of one of the largest rare earth mineral deposits in the world. Should Greenland lose the case, they can either allow mining to continue or pay up to $11.5 billion in settlement compensation.[24]

Actually, the combination of TPF and ISDS can thus lead to a situation where climate-vulnerable developing countries might be hesitant to enforce or enact critical environmental rules.

This issue has also attracted UNCITRAL's attention: the Working Group III 34th Session Report already noted that 'third – party funding […] causes [s…] significant concern and creates [s…] a structural imbalance between States and investors […] and [does…] not ensure a level playing field. […I] sees third-party funding relate[s…] not just to costs, but also has [s…] an impact on other issues, such as conflicts of interest […]'.[25]

The Working Group has already proposed measures such as mandatory disclosure of fund-identity and funding terms.[26] Several modern treaties (e.g. the Vietnam – EU investment pact)[27] now obligate disclosure TPF in investment arbitral

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Green Laws,' *The Guardian* (March 5, 2025), https://www.theguardian.com/environment/2025/mar/05/revealed-how-wall-street-is-making-millions-betting-against-green-laws-isds-aoe#:~:text=Internationally%2C%20the%20litigation%20finance%20industry,the%20justice%20system%20more%20accessible.

[21] Alessandro Camillo, 'Big Finance Is Making Millions in Lawsuits Against Environmental Legislation,' *Impakter* (April 23, 2025), https://impakter.com/big-finance-making-millions-lawsuits-environmental-legislation.

[22] *Silver Bull Resources, Inc. v. United Mexican States,* ICSID Case No. ARB/23/24, Claimant's Press Release, 18 Jun 2024, https://www.italaw.com/cases/10666.

[23] *Silver Bull Resources, Inc. v. United Mexican States*, ICSID Case No. ARB/23/24, https://www.italaw.com/cases/10666.

[24] Patrick Greenfield and Phoebe Weston, 'Fearing Toxic Waste, Greenland Ended Uranium Mining. Now, They Could be Forced to Restart – or Pay $11bn,' *The Guardian* (March 5, 2025), https://www.theguardian.com/environment/2025/mar/05/greenland-mining-energy-transition-minerals-environmental-laws-uranium-rare-earth-toxic-waste-investor-state-dispute-settlement-isds-aoe.

[25] UNCITRAL, Report of Working Group III (Investor-State Dispute Settlement Reform) on the Work of its Thirty-Fourth Session, A/CN.9/930/Rev.1, at 10 (Vienna, 27 November – 1 December 2017).

[26] UNCITRAL, Working Group III (Investor-State Dispute Settlement Reform), Possible reform of investor-State dispute settlement (ISDS), Third-party funding – Possible solutions, Note by the Secretariat, A/CN.9/WG.III/WP.172, 2 August 2019.

[27] EU-Vietnam Investment Protection Agreement (signed on 30 June 2019, not yet in force), Chapter 3, Article 3.37 (Third-Party Funding).

proceedings. But beyond reforming the rules, states also need practical defence assistance – especially developing states, which might lack specialised legal capacity.

This is the context in which the new UNCITRAL ACIIR comes into consideration as a potentially useful tool for the climate-defensive strategy in ISDS.

3. The UNCITRAL Proposal for an Advisory Centre on International Investment Dispute Resolution: An Overview

In response to calls for balanced support to states in ISDS, UNCITRAL Working Group III has drafted the Statute of the ACIIR. The Draft Statute, adopted in principle by UNCITRAL in 2024,[28] envisions the establishment of a permanent multilateral body to assist states and regional economic integration organisations in all phases of investment dispute resolution. Key objectives of its mandate include providing 'training, support and assistance with regard to international investment dispute resolution',[29] with the aim 'to enhance the capacity of States and regional economic integration organisations to prevent and handle international investment disputes, in particular least developed countries and developing countries'.[30]

The ACIIR is expressly intended to level the playing field for states, especially vulnerable ones, confronting ISDS claims.

The ACIIR would be established under a multilateral treaty ('Protocol'), with a Governing Committee (with representatives of all Members of the Centre)[31], an Executive Committee (temptative, 6 members, who would 'serve in their personal capacity and shall be selected on the basis of their professional qualifications, including in particular in international investment dispute resolution')[32] and a Secretariat headed by an Executive Director.[33]

According to Article 4 of the Statute it affirms that 'Each Member is entitled to the services of the Advisory Centre'.[34] Although membership is voluntary, developing and climate-vulnerable countries are expected to join to access the Centre's benefits; indeed Article 2 highlights that developing states are a special focus.[35]

The Statute sets out clear objectives (Article 2): to 'provide training, support and assistance with regard to international investment dispute resolution'; it also mandates that the Centre 'shall operate in a manner that is effective, affordable, accessible and financially sustainable'[36] and specifies that it 'shall be independent and free from undue external influence, including from its donors'.[37] In practical terms, the Centre must coordinate with other organisations (like the UN and ICSID) to leverage resources

[28] Statute of the Advisory Centre on International Investment Dispute Resolution (adopted in principle), available on the UNCITRAL WGIII official website at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/2413025e.pdf.
[29] Article 2(1) of the Statute.
[30] Article 2(2) of the Statute.
[31] Article 5(2) of the Statute.
[32] Article 5(5) of the Statute.
[33] Article 5 (10–12) of the Statute.
[34] Article 4(2) of the Statute.
[35] Article 2(2) of the Statute.
[36] Article 3(1) of the Statute.
[37] Article 3(2) of the Statute.

efficiently.[38]

Article 6 of the Statute further details the ACIIR's technical assistance and capacity-building functions, which would include '(a) advising on issues pertaining to dispute prevention; (b) providing tailored training with regard to possible means of preventing and resolving disputes; (c) holding seminars and conferences; (d) functioning as a forum for the exchange of information and sharing of best practices; (e) functioning as a repository of information and related resources; and (f) performing any other functions as assigned by the Governing Committee'.[39]

In practice, these provisions mean the Centre can offer specialised workshops, training courses, model resources, and networking opportunities. For instance, it could organise seminars on negotiating investment treaties with environmental exceptions, or compile a database of climate-related ISDS precedents. As a repository of information, the Centre would collect materials – past awards, model clauses, treatises – that states can draw on. Overall, Article 6 positions the Centre as a potential hub of knowledge and expertise on investment disputes, including prevention strategies.

But maybe the most critical element for states is Article 7 of the Statute, related to 'Legal advice and support with regard to international investment dispute proceedings'. Indeed, according to this article, the Centre can, upon a Member's request, provide comprehensive legal assistance 'with regard to an international investment dispute proceeding prior to and after its initiation'.[40]

The scope is quite broad and the Centre can '(a) provid[e…] a preliminary assessment of the case, including the appropriate means to resolve the dispute; (b) assist[…] in the selection of mediators, arbitrators or other types of adjudicators (including any challenge), as well as experts, taking into account geographical diversity and gender balance; (c) support[…] the preparation of statements, pleadings and evidence, as well as other aspects of the proceeding; (d) represent[…] the Member in the proceeding, including in a hearing, at the instruction of and in conjunction with that Member; (e) facilitat[e…] the appointment of external legal representatives; and (f) perform[…] any other functions as assigned by the Governing Committee'.[41]

In short, the ACIIR is conceived as a support mechanism for states in ISDS: from policy advice and training to hands-on case lawyering.

The mandate of the ACIIR as drafted in the Statute, however, seems to be a bit different from what was the initial proposal: during the 36th session of Working Group III, indeed, it was stated that the Centre could 'assist States faced with difficulties in ISDS proceedings, particularly with regard to cost […and eventually] provid[e] financial aid to developing countries'.[42] Also the UNCITRAL Secretariat recalled that the proposals to establish an Advisory Centre 'were made in relation to the concerns regarding the cost and duration of ISDS, and in light of the consideration that the cost of ISDS creates a burden on States, in particular developing and least developed countries'.[43]

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[38] Article 3(3) of the Statute.
[39] Article 6(1) of the Statute.
[40] Article 7(1) of the Statute.
[41] Article 7(1) of the Statute.
[42] UNCITRAL, Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-sixth session (Vienna, 29 October–2 November 2018), 6 November 2018, A/CN.9/964, para. 119.
[43] UNCITRAL, Possible reform of investor-State dispute settlement (ISDS) – Advisory Centre – Note by the

In the current draft of the Statue, there is no express reference to the fact that the ACIIR can eventually provide financial assistance to States: only Article 7(1)(f) provides that the Centre should 'perform[…] any other functions as assigned by the Governing Committee', in that eventually leaving the faculty to the Governing Committee to provide such an opportunity for states. This would be a concrete way to counterbalance TPF in ISDS, especially in those cases where big investment funds are backing up claimants.

The following paragraphs consider how, overall, the ACIIR can specifically support states in ISDS climate-related cases, especially supported by TPF.

3.1. Assisting States in ISDS Climate-Related Cases: The Potential Role of the ACIIR

How exactly can the ACIIR's services be efficiently used by states in ISDS climate-related cases? And how can it be also useful for TPF ISDS that challenge national climate policies?

The following are the first considerations based on the current draft Statute.

Firstly, states may benefit from preventive measures; ACIIR experts could assist governments in negotiating or revising IIAs to include environmental safeguards and especially to include provisions on TPF. It can also train trade negotiators to recognise investor rights that threaten climate goals, and suggest alternative treaty designs (e.g. limiting FET obligations or excluding fossil fuel investments).

Secondly, once disputes arise, ACIIR can guide states on procedural responses tailored to TPF. These include expressly requesting disclosure of funding agreements (to detect conflicts or insurer arrangements), and/or seeking cost sanctions against frivolous funder-driven claims. The Centre can also prepare model motions for disclosure under existing rules, and advice on how to invoke new UNCITRAL draft provisions. It could also help draft or amend domestic regulations to require funder disclosure in both arbitration and court investment proceedings.

Moreover, the Centre can participate in ISDS proceedings beyond individual cases. For instance, it could author amicus briefs or policy papers for tribunals on the importance of climate change. It might also organise mock hearings or moot tribunals on climate disputes to help state counsel practice. All of this would enhance states' readiness when facing real claims.

Thirdly, the Centre can develop and host dedicated workshops on topics like 'Defending Renewable Energy Incentives' or 'Responding to Coal-Phaseout Claims'. These programs would cover substantive law, witness preparation, cost management, and case studies. For example, ACIIR might convene seminars featuring guest experts who have successfully defended environmental measures in ISDS. By building a community of practice, the Centre can disseminate know-how among developing states. ACIIR can also convene states to share experiences. Its forums (conferences, working groups) can include panels on climate claims. Through such platforms, developing states can learn how peers have handled, say, compensation negotiations or public campaigns to explain their climate policies.Altogether, these roles suggest that the ACIIR – if properly resourced – could materially improve how states handle climate disputes.

Secretariat, 25 July 2019, A/CN.9/WG.III/WP.168, para 4.

Rather than presenting ISDS claims as a foreign policy blunder waiting to happen, states could have a team of advisors.

4. Some Concluding Remarks: The Advisory Centre as a Potential Legal Solidarity Mechanism

As mentioned, the forthcoming ACIIR can rise as a mechanism of legal solidarity – a collective hub for states safeguarding national climate policy in the face of investor claims, especially supported by TPF. To this end, the following recommendations can harness the Centre's potential.

Firstly, the Centre's in-house capacity must reflect deep knowledge of climate and environmental law. The ACIIR Secretariat should include lawyers with expertise in international environmental agreements and climate science. Training programs must explicitly cover climate-related topics. For example, the Centre could develop modules on invoking the 'public purpose' doctrine and police powers in climate regulation, and on effectively presenting scientific evidence of climate urgency to arbitrators.

Secondly, when it comes to TPF issues, the Centre should treat them as a recurring theme in its guidance, given the outsized role funders now play in climate-related claims. Accordingly, it can develop checklists and template submissions for common procedural moves. The Centre might also coordinate with UNCITRAL Working Group III to test and refine best practices on TPF. For instance, it could run simulations on when tribunals should order disclosure of a funder's fee arrangements. ACIIR's involvement could range from behind-the-scenes advice on handling funder-related discoveries, to perhaps even amicus briefs in landmark cases addressing the limits of third-party funding.

Thirdly, to enhance its potential 'legal solidarity' character, the Centre should foster cooperation among similarly situated states. The Centre should proactively create networks or working groups of states facing analogous climate investment disputes. By serving as a hub for an 'association of climate-concerned respondent states,' the Centre would strengthen the collective capacity to defend national climate measures in ISDS cases.

Lastly, for the Advisory Centre to fulfil these ambitious roles, it must itself be sustainably funded and politically supported – an area that implicates solidarity from wealthier nations.

By adopting these measures, the Advisory Centre can realise its potential as a legal solidarity mechanism. When a state on the climate frontline is hit with a high-stakes arbitration funded by speculative capital, the Centre should stand ready as a dedicated advisor.

Climate change is a collective action problem; defending the regulatory measures to address it must also be a collective endeavour. Through the Centre, states can share the burden of defending against claims that seek to make climate policy financially untenable. The road ahead is not without obstacles – securing sufficient funding from a broad base of states (including those whose investors frequently use ISDS)[44] will be a test of true international solidarity. A well-resourced, well-utilised

[44] Kristóf PaP, 'Clearing the Air: Demystifying ISDS in the Climate Debate,' *International Law and Politics* 56 (2024): 951–963, https://nyujilp.org/wp-content/uploads/2024/09/PAP-FINAL_NYI_56_3-125-

Advisory Centre would have the potential to bring the balance back towards the public good in investment disputes.

Annex. Selected Recent ISDS Cases Involving Environmental Measures (with Third-Party Funding)

The table below highlights major ISDS cases in which national environmental or climate measures were challenged by investors and the disputes are known to involve TPF. For each case, the table lists the name of the dispute, the year the claim was filed, the investment treaty invoked, the government measure at issue, the procedural outcome (if concluded or known), and any known third-party funding arrangements.

Case	Year (Claim)	Treaty Invoked	National Measure Challenged	Procedural Outcome	Third-Party Funding
Rockhopper Exploration v. Italy[45]	2017	ECT	Italy's ban on offshore oil & gas drilling within 12 nautical miles of the coast (enacted for environmental protection)	Award issued in favour of investors: Italy held liable and ordered to pay ~€190 million plus interest (August 2022)	Rockhopper announced that it secured litigation funding, but did not disclose the identity of the funder.[46]
Ascent Resources v. Slovenia[47]	2022	ECT + UK-Slovenia Bilateral Investment Treaty (BIT)	Slovenia's requirement of an environmental impact assessment (EIA) for hydraulic fracturing operations, and later 2019 ban on fracking enacted for environmental reasons.	Pending (case registered at ICSID; the claimant is seeking approx. €656.5 million in damages)	Ascent announced it secured litigation funding from Enyo Law L L P.[48]
South American Silver v. Bolivia[49]	2011	UK – Bolivia BIT	Bolivia's revocation of mining concessions at the Malku Khota mine in 2012 due to local Indigenous protests and environmental	Award issued. Tribunal found expropriation; Bolivia ordered to pay $18.7 million to the investor.	South American Silver Ltd. entered into a third-party funding agreement shortly after filing the arbitration, entitling the funder to a share

137.pdf.

[45] *Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italian Republic*, ICSID Case No. ARB/17/14, https://www.italaw.com/cases/5788.

[46] Claimants' Press release on the Commencement of Arbitration, https://www.italaw.com/sites/default/files/case-documents/italaw8848.pdf.

[47] *Ascent Resources Plc and Ascent Slovenia Ltd v. Republic of Slovenia*, ICSID Case No. ARB/22/21, https://www.italaw.com/cases/8289.

[48] Michael Green, 'Ascent Resources. Legal matters moving ahead in Slovenia,' *Align Research* (March 12, 2023), https://www.alignresearch.co.uk/ascent-resources/ascent-resources-legal-matters-moving-ahead-in-slovenia/#:~:text=Ascent%20Resources%20,ECT%29.

[49] South American Silver Limited v. Bolivia, PCA Case No. 2013-15, https://www.italaw.com/cases/2121.

Case	Year (Claim)	Treaty Invoked	National Measure Challenged	Procedural Outcome	Third-Party Funding
			concerns (contamination of sacred areas).		of any recovery. The identity of the funding entity has not been disclosed.[50]
Silver Bull Resources v. Mexico[51]	2023	USMCA (Annex 14-C)	Failure of local authorities to break up an illegal blockade of Silver Bull's mining site by protestors, which halted a silver-zinc project. Mexico's inaction is alleged to be expropriation and denial of justice.	Pending (Claimant is seeking $408 million in damages)	Silver Bull Resources announced to have secured funding by Bench Walk Advisors LLC.[52]
Greenland Minerals v. Greenland & Denmark[53]	2022	Australia – Greenland (Denmark) investment agreement (ad hoc UNCITRAL arbitration)	National ban on uranium mining imposed by Greenland in 2021 for environmental and health safety reasons, which effectively halted the Kvanefjeld rare-earth mining project (one of the world's largest rare-earth deposits).	Pending (Claimant is seeking $11.5 billion in compensation)	Greenland Minerals announced to have secured funding by Woolridge Investments LLC, a wholly owned subsidiary of Burford Capital Limited.[54]
Odyssey Marine Exploration v. Mexico[55]	2019	NAFTA (Chapter 11)	Denial of an environmental permit for undersea phosphate mining off Baja California. Mexico's	Tribunal held Mexico liable for denial of fair treatment; $37.1 million awarded to	Odyssey Marine Exploration announced to have secured funding by Poplar Falls, LLC.[56]

[50] South American Silver Corp., Arbitration Claim against the Bolivian Government for the Expropriation of Malku Khota Project, 2014, https://soamsilver.com/arbitration-update.asp.

[51] *Silver Bull Resources, Inc. v. United Mexican States*, ICSID Case No. ARB/23/24, https://www.italaw.com/cases/10666.

[52] Silver Bull Resources, 'Silver Bull Files Memorial in Claim Against Mexico,' *Press Release* (June 18, 2024), https://silverbullresources.com/news/silver-bull-resources-announces-5.35-billion-pounds-zinc-87.4-million-ounces-silver-in-updated-sierra-mojada-measured-and/.

[53] *Greenland Minerals A/S (GMAS) v. Government of Greenland and the Government of the Kingdom of Denmark*, https://jusmundi.com/en/document/other/en-greenland-minerals-a-s-gmas-v-government-of-greenland-and-the-government-of-the-kingdom-of-denmark-press-release-of-energy-transition-minerals-ltd-on-request-for-stay-of-arbitration-monday-14th-april-2025.

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[55] *Odyssey Marine Exploration, Inc. v. United Mexican States,* ICSID Case No. UNCT/20/1, https://www.italaw.com/cases/7261.

[56] Jen Moore, Ellen Moore and Carla García Zendejas, 'Third-party Funder is the Only Winner in Odyssey

Case	Year (Claim)	Treaty Invoked	National Measure Challenged	Procedural Outcome	Third-Party Funding
			environmental agency SEMARNAT refused the permit in 2018 due to anticipated ecological damage to the marine ecosystems	investors (plus interest)	

Table no. 1. *Selected Recent ISDS Cases Involving Environmental Measures (with Third-Party Funding)*

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