

Editorial

Tracking the Shifts in International Investment Law or the Dream of Symmetry in Investment Liability

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Abstract

If I were to identify a common thread running through the articles in this issue of the International Investment Law Journal, the concept of symmetry in investment liability would seem the most appropriate. Investment law is currently undergoing a phase in which capital protection is increasingly coming into conflict with states' climate obligations, the use of artificial intelligence in economic decision-making, ISDS reform, the diversity of arbitrators, the legal governance of the digital economy, and the enforcement of arbitral awards against states. The topicality of this subject stems from the convergence of recent developments, such as the publication of the World Investment Report 2026, the fifty-ninth session of the United Nations Commission on International Trade Law, the ruling of the Supreme Court of the United Kingdom in March 2026 concerning the registration of arbitral awards rendered under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, the United Nations General Assembly resolution of May 2026 concerning the International Court of Justice's Advisory Opinion on climate change, and the forthcoming general application of the European Union Regulation on artificial intelligence. The articles in this issue point in the same direction: starting from the legitimacy of investment protection, which is reinforced by linking investors' rights to public diligence, and leading towards technological accountability, professional pluralism, the quality of public administration and post-arbitration discipline. Through these contributions, this issue links the regulatory transformations of 2026 to a practical agenda for treaties, arbitration, public administration and legal research.

Keywords: international investment law, investment accountability, investor – state arbitration, climate transition, artificial intelligence.

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1. Introduction

July 2026 finds international investment law at a rare moment of normative

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convergence. At the start of the month, UNCITRAL announced the completion of significant reforms concerning investor–state dispute settlement during its fifty-ninth session; the documents submitted to the Commission included the Statute of the Consultative Centre for the Settlement of Investment Disputes and supplementary provisions on the conduct of proceedings. On 7 July, UNCTAD published *the World Investment Report 2026*, noting a 6 per cent increase in global foreign direct investment in 2025, to USD 1.6 trillion, against the backdrop of the expansion of projects related to artificial intelligence and digital infrastructure².

We are witnessing a shift that is reshaping the discipline’s core vocabulary, given that the classic question concerned the extent of protection afforded to the investor in relation to public authority³. The current question concerns the distribution of responsibility throughout the entire investment relationship, starting with who anticipates the risk, who justifies the decision, and extending to who maintains the traceability of information, who is accountable for climatic or algorithmic effects, who adjudicates, and who transforms the decision into an effective legal outcome. It seemed appropriate to me, in this regard, to put forward the idea of symmetry in investment liability, as it is evident that economic rights gain institutional strength when accompanied by the state’s due diligence, the investor’s responsible conduct, the integrity of the dispute settlement body, and the consistency of the post-decision phase.

The articles featured in this issue flesh out this idea from various angles. The study on the gender dimension in ISDS reform examines legitimacy through the lens of the composition of adjudicatory bodies and appointment practices; the climate study analyses the relationship between states’ obligations and investor protection; the contribution on sovereign immunity examines the gap between the recognition of an award and the satisfaction of the claim; the analysis of Vietnam’s digital economy shifts the focus to the legality of economic administration; the article on the algorithmic investor explores the themes of attribution, causation and due diligence in an economy where software plays a direct role in capital allocation.

2. Corpus Disputationum

The climate dimension illustrates this shift most clearly. The advisory opinion

² United Nations Commission on International Trade Law (UNCITRAL), *Possible Reform of Investor-State Dispute Settlement (ISDS): Draft Supplementary Provisions on the Conduct of Proceedings to Resolve International Investment Disputes*, A/CN.9/1246, advance copy (2026), https://uncitral.un.org/sites/default/files/2026-04/a_cn9_1246_advance_copy.pdf (accessed 16 August 2026); UNCITRAL, *Summary of the Third Meeting on the Operationalisation of the Advisory Centre on International Investment Dispute Resolution and Updates to the Statute Thereof*, A/CN.9/1265 (2026), <https://undocs.org/en/A/CN.9/1265> (accessed 16 August 2026); UNCITRAL, *Issues Relating to the Operationalisation of the Advisory Centre on International Investment Dispute Resolution – Interim Secretariat*, A/CN.9/1266, advance copy (2026), https://uncitral.un.org/sites/default/files/2026-06/a_cn9_1266_for_submission_2.pdf (accessed 16 August 2026); UNCITRAL, *Issues Relating to the Operationalisation of the Advisory Centre on International Investment Dispute Resolution – Article 9 of the Statute and a Draft Decision by the Commission*, A/CN.9/1268, advance copy (2026), https://uncitral.un.org/sites/default/files/2026-05/a_cn9_1268_for_submission_water.pdf (accessed 16 August 2026).

³ These observations have also found their way into the specialist literature; see Dominik Stefer and Victoria Fricke, ‘From Algorithms to Awards: Exploring the Technological and Legal Boundaries of AI’s Contributions to the Work of Arbitrators,’ *Arbitration International* 41, no. 1 (2025): 49–70, <https://doi.org/10.1093/arbint/aiae046> (accessed 16 August 2026).

of the International Court of Justice of 23 July 2025 clarified states' obligations regarding climate protection, and the analysis presented in this issue's article emphasises the role of public diligence and the regulation of private actors. On 20 May 2026, the General Assembly adopted Resolution 80/263, with 141 votes in favour, 8 against and 28 abstentions, continuing the institutional trajectory set out in the Advisory Opinion. The approaching anniversary of this resolution, coinciding with the month of this issue's publication, lends particular relevance to the discussion on climate and ISDS⁴.

In the field of international investment law, the intellectual landscape is shaped by all these trends, which highlight the need for new, more appropriate regulations. Energy transition measures are being brought before arbitral tribunals as regulatory acts, and legal analysis is expanding to encompass public policy considerations, the proportionality of the intervention, the investor's conduct and the allocation of risk. A mature doctrine of investment protection should take climate objectives into account when interpreting standards of treatment and assessing compensation, whilst maintaining the legal rigour of each test⁵. It is a framework within which investment dispute resolution serves as the meeting point where property rights and climate responsibility converge within the same argumentative matrix.

The second transformation stems from the automation of investment decision-making. The article on the algorithmic investor highlights an issue with potential doctrinal significance, namely that the investor remains a natural or legal person, whilst essential aspects of their conduct may be generated by artificial intelligence models. The attribution of knowledge, predictability, causation, due diligence and contributory negligence thus acquire a technical dimension⁶. The issue is now entering a practical phase, as Regulation (EU) 2024/1689 has a general date of application of 2 August 2026, with distinct phases for certain obligations, and UNCITRAL organised a colloquium in February 2026 dedicated to artificial intelligence in dispute resolution, including its effects on arbitration, recognition and enforcement⁷.

For practitioners, this shift calls for a new discipline of evidence. The traceability of data used by a model, decision logs, rules for human oversight, the validation of results and the architecture of corporate accountability become relevant for establishing an investor's conduct or for defending an algorithm-assisted public measure. For research, this phenomenon concerns the shift from a theory of corporate intent to a theory of responsible control over automated processes. Such a perspective keeps the legal person at the centre of liability and treats technology as a medium of action subject

⁴ United Nations Secretary-General Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change: Note: Addendum, 2025, <https://digitallibrary.un.org/record/4099792> (accessed 16 August 2026).

⁵ Jorge E. Viñuales, 'Investment Treaties and Climate Change Policy: A Possible Legal Pathway,' *ICSID Review – Foreign Investment Law Journal* 40, no. 2 (2025): 216–238, <https://doi.org/10.1093/icsidreview/siaf010> (accessed 16 August 2026).

⁶ See some examples in João Ilhão Moreira and Jiawei Zhang, 'ChatGPT as a Fourth Arbitrator? The Ethics and Risks of Using Large Language Models in Arbitration,' *Arbitration International* 41, no. 1 (2025): 71–84, <https://doi.org/10.1093/arbint/aiae031> (accessed 16 August 2026).

⁷ European Union, 'Rules for Trustworthy Artificial Intelligence in the EU,' summary of Regulation (EU) 2024/1689 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=LEGISSUM%3A4762484> (accessed 16 August 2026).

to scrutiny and evaluation⁸.

The third dimension concerns the legitimacy of adjudication. The contribution on gender diversity shows that the reform of ISDS also has a component relating to who makes the decisions. ICSID data for the calendar year 2025 indicate that women accounted for 30 per cent of all appointments; for appointments made by ICSID, the proportion reached 41 per cent. Also in 2025, 13 per cent of appointees received their first appointment in an ICSID case, and women accounted for 31 per cent of these first-time appointees. The figures highlight a key distinction between diversifying the professional pool and actual selection practices⁹.

The UNCITRAL reform heightens the relevance of this discussion. Codes of conduct, mediation, dispute prevention tools, the Advisory Centre and projects on permanent mechanisms shift the focus from mere procedural efficiency to the institutional quality of adjudication. The Advisory Centre, adopted in principle in 2024 and finalised in 2026, will expand states' access to expertise and has the potential to make the selection of professionals more transparent and diverse. Diversity thus becomes a matter of functional legitimacy in that it concerns access to talent, the circulation of expertise and confidence in the universality of investment practice.

The fourth dimension emerges following the delivery of the award. The study on sovereign immunity shows that the economic significance of an arbitral award is realised through the mechanisms of recognition and enforcement. The judgment of the Supreme Court of the United Kingdom of 4 March 2026, *Spain v Infrastructure Services Luxembourg; Zimbabwe v Border Timbers*, provides an important clarification: Article 54(1) of the ICSID Convention constitutes, under English law, sufficient submission to jurisdiction for the registration of ICSID awards, whilst Article 55 keeps the issue of immunity from enforcement distinct. The Court emphasised the distinction between recognition and enforcement, on the one hand, and measures relating to sovereign assets, on the other¹⁰.

This distinction has immediate practical significance in that creditors of an award must consider their post-arbitration strategy as early as the investment and dispute structuring phase, by identifying the relevant jurisdictions, the nature of the assets and the wording of any waivers of immunity. States, for their part, benefit from precise legal formulations and the consistent administration of assets serving public or commercial

⁸ United Nations Commission on International Trade Law (UNCITRAL), Working Group II: Dispute Settlement, 83rd Session, 'UNCITRAL Colloquium on the Use of Artificial Intelligence (AI) in Dispute Resolution and Remote Hearings in Arbitration and Mediation,' New York, 16–20 February 2026, https://uncitral.un.org/en/colloquium_aidisputeresolution (accessed 16 August 2026). See also Migliorini, Sara, and João Ilhão Moreira. 'Clashing Frameworks: The EU AI Act and Arbitration.' *European Journal of Risk Regulation* 17, no. 1 (2026): 140–60. <https://doi.org/10.1017/err.2025.10043>.

⁹ International Centre for Settlement of Investment Disputes (ICSID), *The ICSID Caseload – Statistics*, Issue 2026-1 (Washington, DC: ICSID, 2026), https://icsid.worldbank.org/sites/default/files/publications/2026-1_ENG_TheICSIDCaseloadStatistics.pdf (accessed 16 August 2026).

¹⁰ *Infrastructure Services Luxembourg S.À.R.L. & Anor v. The Kingdom of Spain; Border Timbers Limited & Anor v. Republic of Zimbabwe*, [2024] EWCA Civ 1257, Court of Appeal (Civil Division), 22 October 2024, <https://caselaw.nationalarchives.gov.uk/ewca/civ/2024/1257> (accessed 16 August 2026); or *The Kingdom of Spain v. Infrastructure Services Luxembourg S.À.R.L. and Another; Republic of Zimbabwe v. Border Timbers Ltd and Another*, [2026] UKSC 9 UK Supreme Court, 4 March 2026, <https://www.supremecourt.uk/cases/judgments/uksc-2024-0155> (accessed 16 August 2026).

functions. The outcome of the arbitration is of particular interest, as it highlights a problem of transnational legal engineering, and the distinction between the title to a claim and its enforcement deserves a central place in future research.

The contribution on Vietnam completes the picture with an observation that the investment relationship is formed long before arbitration. The quality of domestic law, the predictability of the administration, the proportionality of intervention, data governance and access to remedies shape the investor’s experience and the scope of the state’s action. This is a relevant point, a very subtle observation that takes on heightened importance in a global economy where UNCTAD notes a concentration of projects in strategic sectors. In 2025, these sectors accounted for 44 per cent of the value of greenfield projects worldwide, compared with 16 per cent in 2020, whilst low- and lower-middle-income economies attracted only around one tenth of strategic greenfield investment between 2020 and 2025¹¹.

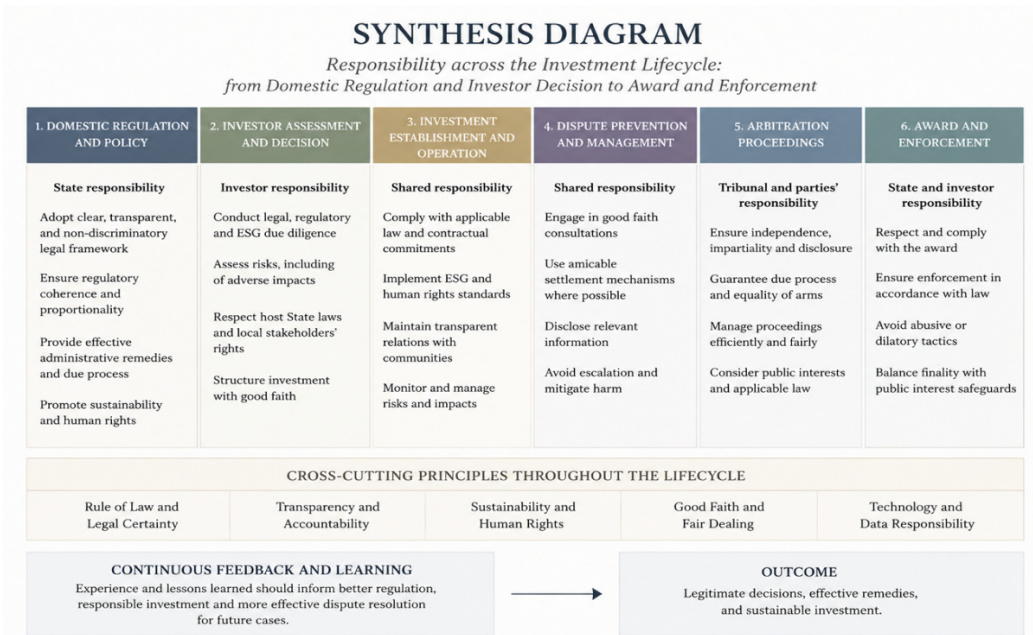


Figure 1 represents, in the editor-in-chief’s view, a status quo that underpins future expectations, as reflected in the articles in this issue.

This is where investment law and development policy converge. Competition for data centres, semiconductors, critical minerals, energy transition technologies and other strategic assets heightens the importance of domestic legal certainty. As shown in **Figure 1**, an accountable digital administration, coherent procedures and proportionate rules are, in fact, elements of investment attractiveness, alongside infrastructure, human capital and access to markets¹². For countries undergoing economic transformation, the

¹¹ United Nations Conference on Trade and Development (UNCTAD), ‘Investment in Strategic Sectors Is Expanding, but Many Developing Economies Risk Being Left Behind,’ 9 July 2026, <https://unctad.org/news/investment-strategic-sectors-expanding-many-developing-economies-risk-being-left-behind> (accessed 16 August 2026).

¹² Tanguy Bonnet, ‘Foreign Direct Investments and Energy Transition Critical Minerals,’ *Resources*

quality of day-to-day legality can influence both capital inflows and the nature of any potential disputes.

3. Conclusions

Taken together, the contributions in this issue depict a discipline that is broadening its scope. Investor protection remains a cornerstone, and around it are taking shape more extensive public obligations, expectations regarding investor conduct, requirements for technological transparency, criteria for institutional legitimacy, and post-judgement challenges. The symmetry of investment responsibility captures precisely this maturation, whereby every legal advantage must be considered alongside the power, information and risk held by the party invoking it.

In practice, this points to a clear direction in that future treaties will incorporate more precise wording regarding regulatory rights, responsible investor conduct, digital technologies, transparency, the selection of arbitrators and enforcement.

In arbitration, technical evidence and behavioural analysis will gain ground. For states, dispute prevention will begin within domestic administration and in the quality of the reasoning behind administrative acts. In research, the most fruitful topics will bring together climate, AI, corporate responsibility, institutional design and the post-arbitration phase within a joint analysis. The developments at UNCITRAL in 2026 and the global concentration of investment in strategic sectors lend this agenda a concrete sense of urgency.

July is, therefore, a fitting month for this shift in perspective. One year on from the ICJ's Climate Opinion, in the month in which UNCTAD has observed an investment landscape increasingly concentrated on technology and strategic assets, at the conclusion of a UNCITRAL session devoted to ISDS reform, and on the eve of the general implementation phase of the European Regulation on artificial intelligence, investment law is revealing its nature as the law of interdependencies. The legal outlook for the coming period lies in transforming these interdependencies into a clearer mechanism of accountability that must both accompany and underpin investment, public authority and the legitimacy of adjudication within the same legal framework.

Bibliography

1. Stefer, Dominik and Victoria Fricke, 'From Algorithms to Awards: Exploring the Technological and Legal Boundaries of AI's Contributions to the Work of Arbitrators,' *Arbitration International* 41, no. 1 (2025): 49–70, <https://doi.org/10.1093/arbint/aiae046> (accessed 16 August 2026).
2. European Union, 'Rules for Trustworthy Artificial Intelligence in the EU,' summary of Regulation (EU) 2024/1689 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=LEGISSUM%3A4762484> (accessed 16 August 2026).
3. *Infrastructure Services Luxembourg S.À.R.L. & Anor v. The Kingdom of Spain; Border*

Policy 105 (June 2025): 105,551, <https://doi.org/10.1016/j.resourpol.2025.105551> (accessed 16 August 2026). See also Joshua Paine, 'Beyond Investment Protection and ISDS: Towards an Investment Law Research Agenda Focusing on Investment Facilitation and Liberalisation Commitments,' *World Trade Review* (2025), <https://doi.org/10.1017/S1474745624000546> (accessed 16 August 2026).

- Timbers Limited & Anor v. Republic of Zimbabwe*, [2024] EWCA Civ 1257, Court of Appeal (Civil Division), 22 October 2024, <https://caselaw.nationalarchives.gov.uk/ewca/civ/2024/1257> (accessed 16 August 2026).
4. International Centre for Settlement of Investment Disputes (ICSID), *The ICSID Caseload – Statistics*, Issue 2026-1 (Washington, DC: ICSID, 2026), https://icsid.worldbank.org/sites/default/files/publications/2026-1_ENG_TheICSIDCaseloadStatistics.pdf (accessed 16 August 2026).
 5. Moreira, João Ilhão and Jiawei Zhang, ‘ChatGPT as a Fourth Arbitrator? The Ethics and Risks of Using Large Language Models in Arbitration,’ *Arbitration International* 41, no. 1 (2025): 71–84, <https://doi.org/10.1093/arbint/aiae031> (accessed 16 August 2026).
 6. Viñuales, Jorge E., ‘Investment Treaties and Climate Change Policy: A Possible Legal Pathway,’ *ICSID Review – Foreign Investment Law Journal* 40, no. 2 (2025): 216–238, <https://doi.org/10.1093/icsidreview/siaf010> (accessed 16 August 2026).
 7. Paine, Joshua, ‘Beyond Investment Protection and ISDS: Towards an Investment Law Research Agenda Focusing on Investment Facilitation and Liberalisation Commitments,’ *World Trade Review* (2025), <https://doi.org/10.1017/S1474745624000546> (accessed 16 August 2026).
 8. Migliorini, Sara, and João Ilhão Moreira. ‘Clashing Frameworks: The EU AI Act and Arbitration.’ *European Journal of Risk Regulation* 17, no. 1 (2026): 140–60. <https://doi.org/10.1017/err.2025.10043>.
 9. Bonnet, Tanguy, ‘Foreign Direct Investments and Energy Transition Critical Minerals,’ *Resources Policy* 105 (June 2025): 105,551, <https://doi.org/10.1016/j.resourpol.2025.105551> (accessed 16 August 2026).
 10. *The Kingdom of Spain v. Infrastructure Services Luxembourg S.À.R.L. and Another; Republic of Zimbabwe v. Border Timbers Ltd and Another*, [2026] UKSC 9 UK Supreme Court, 4 March 2026, <https://www.supremecourt.uk/cases/judgments/uksc-2024-0155> (accessed 16 August 2026).
 11. UNCITRAL, *Issues Relating to the Operationalisation of the Advisory Centre on International Investment Dispute Resolution – Interim Secretariat*, A/CN.9/1266, advance copy (2026), https://uncitral.un.org/sites/default/files/2026-06/a_cn9_1266_for_submission_2.pdf (accessed 16 August 2026).
 12. UNCITRAL, *Issues Relating to the Operationalisation of the Advisory Centre on International Investment Dispute Resolution – Article 9 of the Statute and a Draft Decision by the Commission*, A/CN.9/1268, advance copy (2026), https://uncitral.un.org/sites/default/files/2026-05/a_cn9_1268_for_submission_water.pdf (accessed 16 August 2026).
 13. UNCITRAL, *Summary of the Third Meeting on the Operationalisation of the Advisory Centre on International Investment Dispute Resolution and Updates to Its Statute*, A/CN.9/1265 (2026), <https://undocs.org/en/A/CN.9/1265> (accessed 16 August 2026).
 14. United Nations Commission on International Trade Law (UNCITRAL), *Possible Reform of Investor-State Dispute Settlement (ISDS): Draft Supplementary Provisions on the Conduct of Proceedings to Resolve International Investment Disputes*, A/CN.9/1246, advance copy (2026), https://uncitral.un.org/sites/default/files/2026-04/a_cn9_1246_advance_copy.pdf (accessed 16 August 2026).
 15. United Nations Commission on International Trade Law (UNCITRAL), Working Group II: Dispute Settlement, 83rd Session, ‘UNCITRAL Colloquium on the Use of Artificial Intelligence (AI) in Dispute Resolution and Remote Hearings in Arbitration and Mediation,’ New York, 16–20 February 2026, https://uncitral.un.org/en/colloquium_aidisputeresolution (accessed 16 August 2026).
 16. United Nations Conference on Trade and Development (UNCTAD), ‘Investment in Strategic Sectors Is Expanding, but Many Developing Economies Risk Being Left

- Behind,' 9 July 2026, <https://unctad.org/news/investment-strategic-sectors-expanding-many-developing-economies-risk-being-left-behind> (accessed 16 August 2026).
17. United Nations Secretary-General Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change: Note: Addendum, 2025, <https://digitallibrary.un.org/record/4099792> (accessed 16 August 2026).