

IIDRC

Institutional & Industrial Dispute Resolution Centre

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Institutional & Industrial Dispute Resolution Centre

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TABLE OF CONTENTS

01

CEO'S MESSAGE

02

EVENTS HELD AT IIDRC

- 2.1 WEBINAR ON INVESTMENT ARBITRATION
- 2.2 OPEN HOUSE & HIGH TEA WITH IIDRC
- 2.3 INSIGHTS FROM THE PANEL DISCUSSION
- 2.4 IN CONVERSATION WITH MS. THARA GOPALAN
- 2.5 IWIA X IIDRC WEBINAR

03

ARTICLES

- 3.1 THE CONFLICT BETWEEN INVESTMENT TREATIES & CLIMATE ACTION - *authored by Shubham Kumar Jha.*
- 3.2 COUNTERCLAIMS BY STATES IN ISDS: TURNING POINT? - *authored by Vasavi Trivedi.*

04

ABOUT IIDRC

- 4.1 UPCOMING EVENTS
- 4.2 NETWORKING GROUPS FOR STUDENT AND PROFESSIONALS

CEO'S MESSAGE



Building an institution from scratch is, among other things, an exercise in patience. We started IIDRC with a straightforward belief: that arbitration and dispute resolution in India deserves institutions that take the work seriously. This magazine is one small expression of that belief.

I want to acknowledge our team directly. They came in early, stayed late, and did the kind of disciplined work that actually builds something.

This magazine, in particular, exists because of two people. **Vediccaa Ramdane** conceived it, drove it, and saw it through, the kind of initiative that doesn't wait to be asked. **Atiya Kausar** supported its development with the same quiet diligence that marks good institutional work. Between the two of them, they turned an idea into something you're actually reading.

IIDRC focuses on institutional and industrial dispute resolution, arbitration, mediation, and the legal education that supports practitioners at every stage. We're not trying to be everything. We're trying to be good at this, and then better at it.

The lawyers, students, and General Counsels reading this are exactly the community we built for. Some of you will come to us with disputes. Some with questions. Some simply because you find this area of law as interesting as we do. All of that is welcome here.

We'll use this magazine to share thinking on arbitration, not just announcements about ourselves. If something we publish is worth arguing with, we've probably done our job.

We're glad you're reading.

Hamid

Founder & CEO, IIDRC

INSIGHTS FROM THE AAI KNOWLEDGE SERIES

WEBINAR ON INVESTMENT ARBITRATION

WEBINAR- INVESTMENT ARBITRATION : BITS, STATE CONDUCT, INVESTOR RIGHTS & INDIA'S EVOLVING TREATY LANDSCAPE

MODERATOR

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Founder, Transnational
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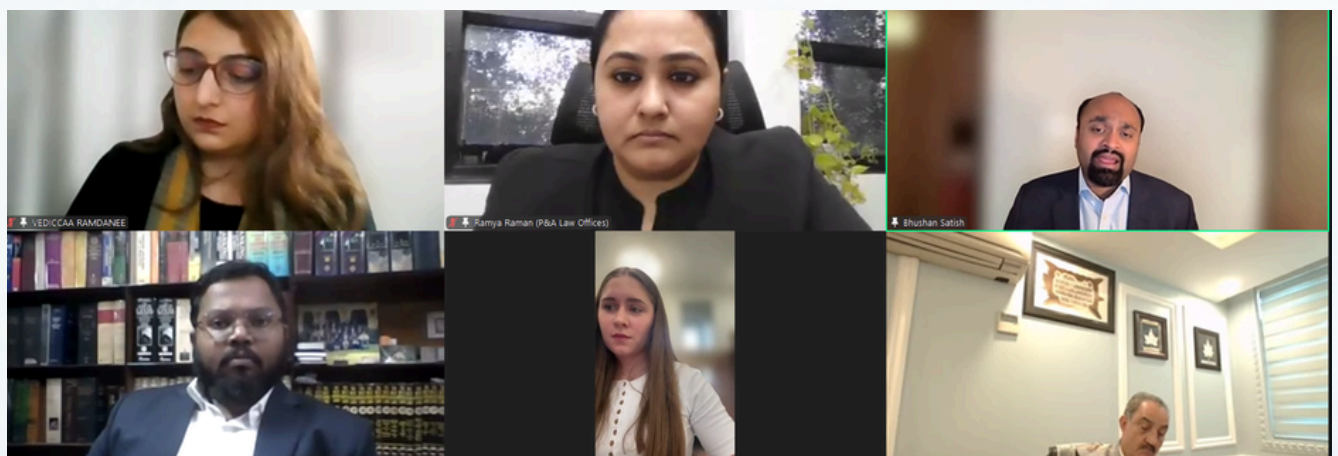
GET IN TOUCH

JOIN US

On **7 February 2026**, IIDRC hosted the second session of the **AAI Knowledge Series**, bringing together leading voices from the global dispute resolution community for an engaging webinar on **Investment Arbitration: BITS, State Conduct, Investor Rights & India's Evolving Treaty Landscape**. The session reflected IIDRC's continued commitment to creating platforms that encourage meaningful dialogue on emerging developments in international arbitration.

The discussion featured an eminent panel comprising **Justice A.M. Magrey**, Former Chief Justice of the Jammu & Kashmir High Court; **Mr. Bhushan Satish**, Counsel at Sidley Austin LLP; **Ms. Ramya Raman**, Partner at P&A Law Offices; and **Dr. Argha Kumar Jena**, Partner at Transnational Legal Advisor, moderated by **Ms. Helene Schramm**, Programme Associate at CELIS Institute.

The webinar reaffirmed IIDRC's vision of fostering informed conversations and strengthening the arbitration ecosystem through knowledge-sharing initiatives that bridge practice, policy, and academia.



OPEN HOUSE & HIGH TEA WITH IIDRC



On 13 February 2026, IIDRC hosted an **Open House & High Tea** with IIDRC, an evening envisioned as more than just a networking gathering—a space where professional relationships could evolve into meaningful collaborations. The initiative created an informal yet purposeful platform for members of the dispute resolution community to connect beyond professional titles and structured discussions.

In January, IIDRC held an **Open House** at **Mitti Cafe, Supreme Court of India**, the evening brought together practitioners, researchers, and professionals from across the arbitration and mediation ecosystem for candid conversations & exchange of ideas. High Tea with IIDRC reflects our continued commitment to fostering collaboration and community-building within the ADR landscape. The gatherings reinforce, that meaningful professional ecosystems are nurtured not only through conferences and discussions, but also through spaces that encourage genuine connection and shared vision.



We were pleased to have associates from **Law Chambers of Pooja Dua**—Ms. Aayushi Diwan, Ms. Urzica Chauhan, and Ms. Simran Kaur to join us. Their presence added depth to the discussions and further enriched the spirit of collaboration that defined the evening.



We were also joined by **Mr. Prashant Vyas, CA and Arbitrator**. His perspectives provided a subject matter expertise to the discourse.

INSIGHTS FROM THE PANEL DISCUSSION

INSIDE THE BOARDROOM: THE GENERAL COUNSEL'S PLAYBOOK ON ADR



On 21 February 2026, IIDRC proudly hosted an engaging panel discussion as part of the **MediateGuru Global ADR Summit 2026**, bringing together leading voices from corporate leadership and the international dispute resolution community. The discussion featured an esteemed panel comprising **Dr. Mukul Shastri**, **Mr. W. Patrick McPhilamy, III**, **Ms. Mehak Oberoi**, and **Mr. Rajiv Malik**, with the session expertly moderated by **Mr. Zafar Khurshid**.



The session witnessed enthusiastic participation from practitioners, and ADR professionals, fostering meaningful engagement and thought-provoking dialogue. The discussions were followed by a vibrant networking session, allowing attendees to interact with panellists and peers, exchange ideas, and strengthen professional connections within the dispute resolution community.

Supported by **Law Chambers of Pooja Dua**, the event stood as a testament to IIDRC's continued commitment to creating impactful platforms that encourage collaboration, knowledge-sharing, and community building within the ADR landscape.



IN CONVERSATION WITH MS. THARA GOPALAN

PODCAST EPISODE



On **23 February 2026**, IIDRC hosted a special podcast episode featuring **Ms. Thara Gopalan**, Vice President at the **International Centre for Dispute Resolution (ICDR)** of the **American Arbitration Association (AAA)**, for an insightful discussion on how modern corporations are rethinking dispute management in an increasingly complex commercial landscape.

Moving beyond traditional conversations on dispute resolution, the episode explored how forward-looking organisations design effective dispute frameworks before conflicts arise. Drawing from her extensive international experience, Ms. Gopalan shared perspectives on the growing preference for arbitration over litigation, practical challenges distinguishing institutional and ad hoc proceedings, and the often-overlooked risks stemming from poorly drafted arbitration clauses.

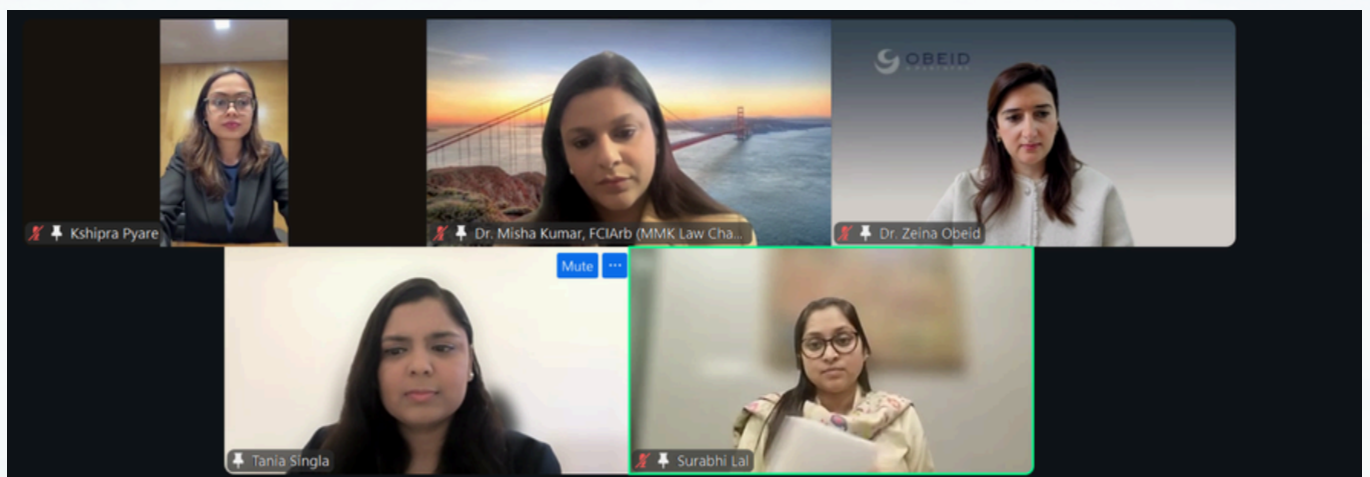
The discussion also examined the expanding role of artificial intelligence in ADR processes and the importance of building credible dispute resolution ecosystems to enhance investor and corporate confidence, particularly within emerging markets.

IIDRC extends its sincere appreciation to **MMK Law Chambers**, our Knowledge Partner for this episode, for supporting this initiative. Through conversations such as these, IIDRC continues to foster dialogue that bridges global expertise with evolving dispute resolution practices.



IWIA IN COLLABORATION WITH IIDRC

WEBINAR ON PRACTICAL INSIGHTS FOR EMERGING ARBITRATORS & COUNSELS



On 26 February 2026, Indian Women in International Arbitration, in collaboration with IIDRC, successfully hosted an insightful webinar titled “**Building Confidence as a Young Arbitrator & Counsel in Arbitration: Practical Insights for Emerging Practitioners.**” The session brought together emerging practitioners, young professionals, and ADR enthusiasts for an engaging discussion focused on navigating the early stages of a career in arbitration.

The webinar featured an exceptional panel of practitioners who shared candid reflections drawn from their professional journeys. **Ms. Surabhi Lal** offered valuable perspectives on transitioning between institutional and advocacy roles, while **Ms. Tania Singla** highlighted the realities of cross-border arbitration practice and the importance of adaptability in international disputes. **Dr. Zeina Obeid** shared insights on building credibility and visibility within the global arbitration community, and **Dr. Misha Kumar**, FCI Arb, emphasized the role of interdisciplinary expertise and continuous learning in shaping confident arbitration professionals. The session was thoughtfully moderated by **Ms. Kshipra Pyare**, who guided a dynamic and practical exchange of ideas.

The discussion explored key themes including overcoming early-career challenges, developing advocacy skills, finding mentorship opportunities, and building professional confidence in high-stakes arbitration environments. What stood out most was the shared message that confidence in arbitration is built through preparation, participation, and persistence.

ARTICLE # 1 BY SHUBHAM KUMAR JHA

THE CONFLICT BETWEEN INVESTMENT TREATIES & CLIMATE ACTION



Introduction

As nations around the world race to meet the targets set by the Paris Agreement, governments are facing an unexpected challenge. It is not political opposition or a lack of technology, but a specific mechanism within international law known as Investor-State Dispute Settlement (ISDS). Previously this system operated in the background of global trade. Today, however, it has moved to the centre of conflict between the sovereign right to regulate the environment and the protection of foreign capital.

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While the original intent was to prevent the uncompensated seizure of physical assets, the interpretation of these treaties has expanded significantly. Today, corporations frequently argue that new regulations including environmental laws amount to "indirect expropriation" because they reduce the value of an investment or interfere with a company's legitimate expectations of profit.

While the original intent was to prevent the uncompensated seizure of physical assets, the interpretation of these treaties has expanded significantly. Today, corporations frequently argue that new regulations including environmental laws amount to "indirect expropriation" because they reduce the value of an investment or interfere with a company's legitimate expectations of profit.

The Energy Charter Treaty and the Fossil Fuel Problem

The tension is most visible regarding the Energy Charter Treaty (ECT). Established in the 1990s to integrate the energy sectors of the former Soviet Union with Western Europe, the ECT has become the most disputed investment treaty in the world.

The problem with the treaty lies in the timing. The ECT was designed to protect fossil fuel investments long before the consensus on climate change was established. As a result, it locks in protections for coal, oil, and gas projects that governments are now readily shutting down.

A prominent example occurred in the Netherlands. When the Dutch government passed a law prohibiting the use of coal in electricity generation by 2030 to meet its climate goals, it triggered legal action. German energy giants RWE and Uniper utilized the ECT to claim compensation for the "stranded assets" of their coal plants.

These cases highlight a fundamental asymmetry that while the companies are aware of the changing regulatory landscape regarding climate change, the treaty structure allows them to shift the financial risk of the energy transition onto the individual taxpayer. The argument is no longer about whether a government can regulate to save the planet, but how much it must pay corporations for the privilege of doing so.

The High Cost of Environmental Protection

The financial implications of these disputes are severe. Unlike domestic courts, where damages are often limited to actual money lost, investment tribunals often award "lost future profits." This means a company can be compensated not just for the money they spent building a project, but for the hypothetical money they would have earned over the project's lifespan.

This was vividly illustrated in the case of *Rockhopper v. Italy*. After the Italian government reintroduced a ban on oil and gas exploration near its coastline due to environmental concerns, the British company Rockhopper Exploration sued. In 2022, an arbitration panel ordered Italy to pay approximately €190 million. Notably, Rockhopper had reportedly invested a fraction of that amount in the actual project. The award effectively compensated the company for oil that was never drilled, based on speculative valuations of what the field might have produced. Various critics argue that such payouts create a perverse incentive. They turn environmental regulation into a liability, potentially making it more profitable for companies to litigate against a climate policy than to adapt their business models to it.

Beyond the direct costs of payouts, there is the silent threat of "regulatory chill." This phenomenon occurs when a government delays, weakens, or abandons necessary public interest legislation because it fears a lawsuit. For developing nations, this threat is existential. A claim for \$500 million can represent a significant portion of a country's public health or education budget. Faced with the prospect of a costly and prolonged trial against a wellfunded multinational corporation, many governments may choose the path of least resistance i.e, inaction.

The Intergovernmental Panel on Climate Change (IPCC) has acknowledged this risk, noting in recent reports that investment agreements can limit a country's ability to implement aggressive climate protective policies. When the threat of arbitration looms, the sovereign right to regulate is effectively held on hold.

A System in Transition

Recognizing these dangers, the geopolitical landscape is beginning to shift. The era of uncritical acceptance of investment treaties appears to be ending.

In a historic move, several European nations, including France, Germany, and Spain, have announced their intention to withdraw from the Energy Charter Treaty, citing its incompatibility with the Paris Agreement. They have concluded that remaining within the treaty undermines their ability to achieve net-zero emissions.

Simultaneously, the drafting of new treaties is evolving. Modern agreements are increasingly including specific carve-outs for environmental regulation. These provisions explicitly state that non-discriminatory measures taken to protect public health or the environment cannot be considered a breach of the treaty. Countries like India are pushing for a "right to regulate" that supersedes investor protection.

Conclusion

The system of investment arbitration was built for a different world one where the primary concern was political instability, not planetary stability. While the protection of foreign investment remains necessary for global economic development, the current mechanism has tipped the scales too far.

As the climate crisis accelerates, the legal frameworks governing the global economy must adapt. A system that penalizes governments for passing environmental laws is unsustainable. If the international community fails to reform these treaties, the cost of the green transition will be measured not just in the price of new infrastructure, but in billions of rupees paid to the industries of the past.

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ARTICLE # 2 BY VASAVI TRIVEDI

COUNTERCLAIMS BY STATES IN ISDS: A TURNING POINT?



Introduction

Investor–State Dispute Settlement (ISDS) has long been criticized for its structural asymmetry: foreign investors can sue host states, but states rarely assert claims against investors within the same forum. This perceived imbalance has triggered debates around legitimacy, fairness, and accountability in investment arbitration. One emerging doctrinal mechanism that may address these concerns is the use of counterclaims by host states. Counterclaims allow respondent states to bring independent claims against investors within the same arbitration, potentially addressing investor misconduct, environmental harm, or human rights violations

Although counterclaims are procedurally recognized in most arbitral frameworks, their success has historically been limited due to jurisdictional constraints, treaty drafting asymmetry, and the absence of enforceable investor obligations. However, recent jurisprudential and treaty developments suggest a gradual shift toward a more balanced system.

A. Understanding Counterclaims in Investment Arbitration

A counterclaim is an independent claim brought by a respondent against the claimant within the same proceedings. In domestic legal systems, counterclaims are commonplace. However, in ISDS, their operation is complex due to the consent-based nature of arbitration.

Historically, investment treaties focused primarily on investor protections, such as, fair and equitable treatment (FET) or protection from expropriation while imposing few obligations on investors. As a result, tribunals often lacked jurisdiction over state counterclaims because arbitration consent was narrowly framed around investor claims. Nevertheless, arbitral rules like the ICSID Convention permit counterclaims where three conditions are met:

- a. Tribunal jurisdiction exists over the counterclaim.
- b. The counterclaim is connected to the subject matter of the dispute.
- c. A valid legal basis supports the claim.

In practice, satisfying these conditions has been difficult, particularly due to treaty silence on investor obligations.

B. The Asymmetry Problem in ISDS

One of the most persistent criticisms of ISDS is its one-sided design, which privileges investors while limiting state agency. Investors can seek monetary damages for regulatory actions, yet affected communities often lack standing in arbitration. States thus act as proxies for broader public interests but are largely confined to defensive roles.

Scholars argue that counterclaims could address this structural imbalance by enabling states to hold investors accountable for wrongdoing. This would enhance procedural fairness and potentially restore legitimacy in a system facing increasing political and academic scrutiny.

The asymmetry critique is particularly relevant in cases involving environmental degradation or human rights abuses, where domestic remedies may be ineffective and arbitration offers a centralized forum.

C. Environmental and Human Rights Counterclaims

The most dynamic evolution in this field concerns environmental and human rights (EHR) counterclaims.

The counterclaims, such as in the case of *Urbaser v. Argentina* aimed to recalibrate for the first time, the possibility of counter-claim based on human right.

Environmental counterclaims, for instance, allow states to seek damages or remediation where investors violate domestic environmental laws. They may also reflect broader policy goals, including sustainable development and climate accountability. Human rights counterclaims similarly enable states to assert claims based on labour violations, community harm, or corporate misconduct.

D. Jurisdictional and Procedural Barriers

Despite growing interest, counterclaims face several doctrinal obstacles:

1. Consent and Treaty Drafting - Consent remains the cornerstone of any arbitration. Many early-generation BITs do not explicitly permit counterclaims, leading tribunals to adopt restrictive interpretations. Without clear consent, tribunals are reluctant to assert jurisdiction.
2. Connection Requirement - Most arbitral rules require a factual or legal nexus between the main claim and counterclaim. This has led tribunals to reject counterclaims deemed insufficiently connected to the investment dispute.
3. Lack of Investor Obligations - A major structural barrier is the absence of enforceable investor duties in older treaties. Without explicit obligations, tribunals struggle to identify a legal basis for counterclaims.
4. Applicable Law Issues - Questions also arise regarding whether counterclaims can rely on domestic law, international law, or both. Divergent approaches among tribunals have created doctrinal uncertainty.

E. Emerging Trends and Jurisprudential Shifts

Despite these challenges, recent developments indicate a gradual doctrinal shift:

- New-generation investment treaties increasingly include provisions on environmental protection, anti-corruption, and corporate social responsibility.
 - Some tribunals have demonstrated greater openness to counterclaims, particularly where treaties contain broader consent clauses.
 - States are actively advocating counterclaims as tools to protect regulatory space and public policy interests.
- These trends suggest a slow but meaningful evolution toward reciprocity in ISDS.

F. Legitimacy and Systemic Implications

The rise of counterclaims is closely tied to the broader legitimacy crisis of ISDS. Critics argue that arbitration disproportionately favours multinational corporations and constrains state sovereignty. Counterclaims could mitigate these concerns by:

- Enhancing procedural symmetry.
- Enabling holistic dispute resolution.
- Incorporating public interest considerations into arbitration.

However, expanding counterclaims also raises concerns. Critics warn that overly expansive counterclaim regimes could complicate proceedings, increase costs, and deter foreign investment. There is also a risk of politicization if states misuse counterclaims strategically.

G. The Future of Counterclaims in Investment Arbitration

The trajectory of counterclaims in ISDS will likely depend on three factors:

1. Treaty Reform: Modern treaties may explicitly recognize investor obligations and counterclaim jurisdiction.
2. Tribunal Practice: Progressive interpretations of consent and applicable law could normalize counterclaims.
3. Global Governance Trends: Rising emphasis on ESG norms and corporate accountability may further institutionalize counterclaims.

Ultimately, counterclaims may evolve from exceptional procedural tools into central mechanisms for balancing investor rights and responsibilities.

H. Conclusion

Counterclaims in investment treaty arbitration mark an important doctrinal shift within ISDS. Once constrained by structural and jurisdictional limits, they now hold potential to promote investor accountability, particularly in environmental and human rights contexts. Their effectiveness, however, depends on treaty reform and progressive arbitral interpretation, enabling a more balanced and legitimate dispute settlement system.

This article has been authored by

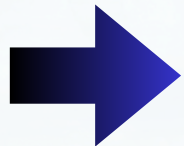
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UPCOMING EVENTS

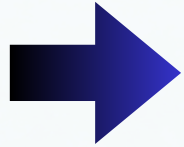
7 March 2026:



IIDRC AAI Webinar on *ADR in Tech & Startup Conflicts*, with **JUS MUNDI** as the knowledge partner. Topics include founder agreements, SaaS disputes, and digital contracts.



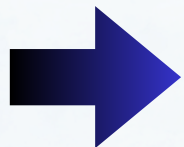
27 & 28 March 2026:



Join *Concordia 3.0*, a two-day international conference on dispute resolution and arbitration. Organized by the ADR Board at Hamdard Institute of Legal Studies with IIDRC as institutional partner.



13 & 27 March 2026:



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