COLUMBIA CLIMATE SCHOOL
COLUMBIA CENTER ON SUSTAINABLE INVESTMENT

Columbia FDI Perspectives
Perspectives on topical foreign direct investment issues
Editor-in-Chief: Karl P. Sauvant (karlsauvant@gmail.com)
Managing Editor: Charles Denis (cd3427@columbia.edu)

The Columbia FDI Perspectives are a forum for public debate. The views expressed by the authors do not reflect the opinions of CCSI or our partners and supporters.

No. 416 August 18, 2025

Climate-change disputes: is there a role for international arbitration?

by
John Gaffney and Janice Singson*

A 2024 report on "Global trends in climate change litigation: 2024" noted that 5% of all climate-change cases were filed before international or regional courts, tribunals and authorities, with half in EU courts. Outside the EU, climate-change cases were filed before international human rights tribunals, UNFCCC's dispute resolution bodies and investor-state dispute-settlement (ISDS) tribunals; ISDS accounted for 25% of the non-EU cases.

But what about the broader role of international arbitration as a means of resolving climate-change disputes? Aside from ISDS cases, the report does not appear to mention other kinds of international arbitration.[1] This omission, while possibly stemming from its private and confidential nature, risks implying a secondary role for international arbitration in resolving climate-change disputes. This would be both misguided and unfortunate, considering its comparative advantages over litigation,[2] and the requirements of EU corporate sustainability due-diligence rules that present significant opportunities for international arbitration.

The EU Directive on corporate sustainability due diligence (Directive 2024/1760) (the CSDDD) that entered into force in July 2024 provides a harmonized EU liability regime for breaches of due diligence in cross-border supply chains. An Omnibus package, introduced by the European Commission in February 2025, contains a proposal to now abolish the EU-wide harmonized liability regime and to remove member states' obligation to implement the remaining elements of the uniform liability regime as overriding mandatory provisions.

The proposed removal of the EU-wide liability regime may facilitate a more flexible and tailored approach to enforcement across different member states. This begs the question whether—considering the flexibility of arbitral procedures for parties and the finality of arbitration awards that may enable a more rapid and effective resolution of climate-change related disputes than in domestic courts—international arbitration could, and should,

complement this approach, increasing the appeal of private, contract-based and climate-related dispute resolution.

Indeed, for individuals and communities adversely harmed by foreign investors' business operations or their supply chains, recourse to arbitration will be appealing if, for example, there is a serious risk that domestic courts or supervisory authorities cannot provide a timely and meaningful remedy for violations. Courts cannot always be counted on to provide victims with a timely and meaningful remedy for violations wherever there is inaccessibility, lack of independence, corruption, lack of capacity, or underdeveloped legal frameworks. And, for claims against MNEs, courts in a company's home state may refuse such cases based on jurisdictional, corporate-law and other legal doctrines. Domestic litigation may be expensive and slow, and cross-border enforcement of judgments remains challenging.

A second area where the requirements of the CSDDD may present significant opportunities for international arbitration relates to its obligation on companies to obtain contractual assurances from direct business partners to ensure they adhere to due diligence and prevention plans related to human rights and environmental impacts. This requirement shifts general sustainability principles into directly enforceable contractual obligations. Any failure by a business partner to uphold agreed-upon due diligence or prevention plans would thus constitute a breach of contract.

This contractualization directly establishes a private right of action for companies against their partners, creating a clear legal avenue for dispute resolution concerning sustainability breaches that might not have previously existed. The requirement for contractual assurances that can be in the form of specific clauses within contracts or separate agreements significantly increases the potential for disputes, creating a key—and often overlooked—role for arbitration as a suitable dispute-resolution mechanism.

International arbitration offers a structured, efficient way to resolve such disputes. This would not be a supporting role, but a primary one for resolving commercial disputes arising from these sustainability-related supply chain obligations. The proactive use of arbitration clauses in multi-stakeholder and global framework agreements underscores international arbitration's active evolution in this area, as does its increasing role in resolving disputes related to sustainability, such as disputes related to environmental damage or breaches of environmental regulations or to human rights abuses or violations of labor standards.[3]

In conclusion, while efforts have been made to promote international arbitration in resolving climate-change related disputes, this *Perspective* suggests that the CSDDD—in its current and potential future iterations—provides a golden opportunity for international arbitration to play a leading role in the resolution of climate-change related disputes, rather than playing a secondary role in the shadow of climate litigation.

[*] John Gaffney (j.gaffney@beauchamps.ie) is a Partner with Beauchamps LLP, Dublin, Ireland. Janice Singson (singsonj@tcd.ie) is an LL.B. graduand of Trinity College Dublin (The University of Dublin), Ireland. The authors wish to thank Kate Miles, Joana Setzer and Gus van Harten for their helpful peer reviews.

[1] While ISDS is a form of international arbitration, it primarily (if not exclusively) involves treaty-based claims by foreign investors against states. Other forms of international arbitration are largely contract-based. It is the latter form of international arbitration that forms the focus of this *Perspective*.

[2] These advantages include: (i) neutrality of forum; (ii) specialist expertise of arbitral tribunals; (iii) flexibility of procedure and availability of specialized procedural rules; (iv) the global coverage of the New York Convention; and (v) accessibility by states, private parties and intergovernmental organizations.

[3] Thus, undermining the argument that the ostensibly consensual nature of international arbitration, limited jurisdiction of arbitral tribunals *ratione personae* and *materiae*, limited scope for coercive powers (as compared to courts), and/or the perception that arbitration is not apt for resolving questions of public interest limits the potential usefulness of international arbitration.

Most recent *Columbia FDI Perspectives*

- No. 415, Louis T. Wells, 'Mining terms: "Use-it-or-lose-it" provisions,' *Columbia FDI Perspectives*, August 4, 2025.
- No. 414, Tomoko Ishikawa and Alla Olifirenko, 'Host states' unilateral climate-change sanctions may be justified—but so may be investors' objections,' *Columbia FDI Perspectives,* July 21, 2025.
- No. 413, Błażej Kuźniacki, 'How best to minimize conflicts between the Global Anti-Base Erosion tax rules and international investment agreements,' *Columbia FDI Perspectives,* July 7, 2025.
- No. 412, Robert Perkuhn, 'Mine closure and FDI: a long-term challenge,' *Columbia FDI Perspectives,* June 23, 2025.
- No. 411, Sergio Mariotti, 'Preventing the misuse of antitrust against FDI: key action points,' *Columbia FDI Perspectives*, June 9, 2025.