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Summary of Young-OGEMID Symposium No. 22: "Global Voices from the South: Rethinking Engagement with ISDS - African Perspective" (16-18 February 2026) by A. Singh

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Summary of Young-OGEMID Symposium No. 22: "Global Voices from the South: Rethinking Engagement with ISDS – African Perspective" (16-18 February 2026)

by Aayushi Singh[1]

Executive Summary

Young-OGEMID conducted its twenty-second virtual symposium, *Global Voices from the South: Rethinking Engagement with ISDS*, from 16-18 February 2026. The discussion focused on evolving regional perspectives toward Investor–State Dispute Settlement (**ISDS**), with particular attention to experiences from the Global South.

The structure of the symposium and list of speakers who kindly agreed to share their insights are as follows:

- **16 February 2026 - Cecilia Azar** and **Funke Adekoya**
- **17 February 2026 - Mairée Uran Bidegain** and **Professor Julien Chaisse**
- **18 February 2026 -** Open engagement and discussion involving all panellists and members of the listserv

The participants, members of the Young-OGEMID mailing list, were junior practitioners, early-career academics, and law students from different regions of the world. Several of them made relevant contributions by sharing their comments and asking questions that enriched the discussions.

Day 1 – 16 February 2026

Speaker 1 – Funke Adekoya SAN

Ms. Singh opened the first day of the symposium by introducing the first speaker Ms. Funke Adekoya SAN.[2] The initial question posed to her was:

> *"Across Africa, States are increasingly focused on dispute prevention, institutional capacity building, and regional cooperation, while also navigating ongoing reform discussions at both the multilateral and regional levels. Drawing on your extensive experience in arbitration and dispute resolution, from an African perspective, what trends are shaping how States manage, prevent, and respond to investment disputes*

[1] Aayushi Singh is a Senior Young OGEMID Rapporteur. She is a Juriste at Three Crowns, Paris and a graduate of the MIDS Geneva-National University of Singapore double degree programme.

[2] Funke Adekoya SAN practices as an independent arbitrator, having recently retired as a Partner and the head of the Dispute Resolution practice group at ÆLEX, a commercial law firm operating in Lagos, Nigeria and Accra, Ghana. While at AELEX, her dispute resolution experience included providing litigation advice and legal representation to international organisations such as the African Development Bank and the Islamic Development Bank. She has over 45 years' experience in commercial litigation and corporate dispute resolution; and regularly sits as an arbitrator in high value institutional proceedings under the LCIA, ICC and ICSID Arbitration Rules. She has also acted as either party appointed, sole or chair of the arbitration panel in ad hoc arbitration proceedings in both international and domestic disputes.

today, and what role do regional instruments, institutions, and capacity-building efforts play in this evolution?"

Ms. Adekoya responded:

"*My response is that the principal concerns of African States about ISDS have shaped current trends. These concerns have centred on perceived restraints on the exercise of state sovereignty, the high costs of defending investor claims, and a perceived structural imbalance in favour of investors, resulting in damages awards that often reach a high percentage of a State's annual budget. The reactive approach is exemplified by States such as South Africa and Tanzania; South Africa withdrew from and terminated most of its bilateral investment treaties (BITs) that contained Investor-State Dispute Settlement (ISDS) mechanisms, opting, as did Tanzania, for local legislation to protect foreign investments, with dispute resolution located in domestic courts and forums.*

More recently, however, African states have transitioned from a reactive approach to investment arbitration to a more proactive, strategic, and comprehensive approach characterised by prevention, treaty recalibration, and enhancing institutional capacity. This is exemplified by States such as Nigeria, which have opted to retain and renegotiate their BITs. New treaties being signed by African States are based on sustainable development-oriented frameworks that enable States to incorporate protections that allow greater regulatory freedom [one of the main complaints about ISDS] while ensuring investor obligations are clearly stated. The SADC Model BIT Template and the Morocco–Nigeria BIT illustrate this trend, aiming to align investment protections with the public interest and the Sustainable Development Goals. The Investment Protocol to the AfCFTA includes a chapter on investor obligations, thereby ensuring a more balanced allocation of treaty obligations between the host state and investors.

African states are also increasingly prioritising dispute prevention by investing in proactive measures to identify regulatory stress points in sectors such as extractives and telecommunications. State Ministries of Justice are also giving increasing attention to training their state counsel to enhance in-house institutional specialisation. African states are also investing in frameworks that include early dispute warnings, dispute avoidance strategies and support coordinated defence strategies, thereby strengthening their ability to respond effectively to investment disputes. Initiatives such as the African Legal Support Facility and ICSID itself support States by providing training to strengthen legal and negotiation capacities on the African continent.

In the context of UNCITRAL Working Group III's reform process, African states advocate establishing an Advisory Centre on International Investment Dispute Resolution to address inequities in ISDS proceedings, with an emphasis on ethics and transparency. Their engagement reflects a collective diplomatic effort, focusing on practical reforms that minimize costs and enhance the legitimacy of dispute resolution mechanisms.

In conclusion, the overall trajectory suggests a shift toward early intervention, balanced treaty designs, and strengthening of states' capabilities to manage disputes effectively, ultimately aiming to improve outcomes in investment arbitration."

Ms. Singh asked a follow-up question:

> *Among the newer generation of African investment treaties and regional instruments you mentioned, are there specific provisions or drafting innovations - such as investor obligations, dispute prevention mechanisms, or limits on damages - that you have found to be especially effective or influential in practice?*

Ms. Adekoya responded:

> "*Yes. A number of "new generation" African instruments contain drafting choices that can be especially influential in practice because they (i) narrow the gateway into treaty protection, (ii) create concrete consequences for investor misconduct, and (iii) embed administrative and cooperative features that prevent disputes from crystallising.*
>
> *One of the most operationally effective innovations is pairing investor obligations with clear consequences at the jurisdiction/admissibility or remedy stage. The AfCFTA Investment Protocol expressly frames itself as setting out "rights and obligations for State Parties, investors and investments" and includes a robust "denial of benefits" clause that targets treaty shopping and, importantly, allows denial where "an investor or investment has committed a breach of a specific binding obligation under Part V" (investor obligations). In practical terms, this turns investor conduct standards into more than aspirational language: it creates an early filter that can be invoked before (or alongside) merits, and it strengthens a host State's ability to defeat abusive structuring.*
>
> *A second influential innovation is to tighten the definition and scope of "investment" and to carve out categories of disputes, thereby indirectly limiting damages exposure by narrowing claim eligibility. Under the AfCFTA Protocol, "investment" is defined as an enterprise/company established in conformity with host-state law, coupled with characteristics including a "significant contribution" to the host State's sustainable development, and it excludes portfolio investment, certain debt, pure contract claims for sale of goods/services or credit, and claims arising from judgments/awards. It also excludes disputes arising solely from an alleged breach of a contract between a State and an investor. These are not merely conceptual refinements; they directly reduce the range of disputes that can be "treaty-upgraded," which in turn reduces the likelihood of very large damages claims premised on contract expectations or financial instruments.*
>
> *However, these are all new instruments, so it will take some years before we know whether the drafting choices have been effective in curbing treaty access*."

Mr. Andres Mazuera, *Young-OGEMID Rapporteur,* asked:

> "*I would like to ask you about the impact and interaction of the African Legal Support Facility in defending investment claims. How does the African Legal Support Facility complement the shift from a reactive to a proactive approach in managing investment disputes? Particularly, are you aware of any cases where the ALSF has supported an African State in early dispute prevention or defence strategies?"*

Ms. Adekoya responded:

> "*One major complaint made by African States about ISDS was the costs and expertise required to defend proceedings, and which resulted in the initial reaction to move away from a system which seemed to be skewed against them. By providing these training programmes for state counsel, a more balanced playing field in technical expertise is created. The ALSF also provides training in negotiating BITS and investment contracts, all of which have contributed to Africa's change in approach towards ISDS.I am not aware, however, of any case in which the ALSF has directly intervened in a dispute by way of providing defence strategies or early dispute prevention techniques.*"

Speaker 2 – Ms. Cecilia Azar[3]

Ms. Singh introduced the second speaker for the Symposium and asked:

> "*In recent years, Latin American States have adopted diverse and, at times, contrasting approaches to ISDS - ranging from treaty renegotiation and termination to renewed engagement with arbitration, alongside evolving domestic court practice and regulatory reforms. Against this backdrop, how is engagement with ISDS currently evolving in Latin America, and how do recent treaty practice, domestic court interaction, or political and regulatory dynamics shape how States in the region approach investment disputes and reform?"*

Ms. Azar added the following comments on ISDS evolution in Latin America and its engagement:

> **"*New Political Landscapes in Honduras and Venezuela:***
>
> a. ***Honduras****: Under the government of Xiomara Castro (2022–2025), the country became one of the States with the highest number of active investment arbitrations (currently 13), giving rise to multiple claims before the International Centre for Settlement of Investment Disputes (ICSID) (9 since Castro took office). The most significant case is Próspera, with an approximate amount of USD 11 billion. In this context, Honduras notified its denunciation of the ICSID Convention in 2024, reinforcing a critical stance toward investor-State arbitration. However, the change of government and the election of Nasry Asfura in January 2026 opened a new scenario, with announcements of an intention to rejoin ICSID, sending more investor-friendly signals and demonstrating how the region's approach to ISDS depends on domestic political and regulatory dynamics*

[3] Cecilia Azar co-leads the Arbitral Litigation practice of Galicia. Her practice focuses on conducting arbitration proceedings from the perspective of a party's attorney. She also serves as an arbitrator, mediator and expert in Mexican law for national and international commercial disputes. She joined Galicia as a partner, focusing her practice on complex domestic and international commercial disputes. She has developed extensive experience, particularly in cases related to energy, infrastructure and shareholder conflicts. Cecilia is recognized for her expertise and record of accomplishment in complex, arbitration-related judicial proceedings before Mexican courts, such as enforcement of awards and interim measures, among others. In close collaboration with other practice areas of the Firm, she advises clients in ISDS matters, specifically by analyzing investment protection provisions in Investment Treaties to which Mexico is party.

b. ***Venezuela:*** *Venezuela is the second most sued State in the history of ICSID (57 cases), primarily as a result of the nationalization process initiated during the presidency of Hugo Chávez in 2007. Recent developments in the country and the establishment of a new regime "under the supervision" of the United States may have several implications for investment arbitration: i) for investors with outstanding awards pending enforcement, new opportunities to enforce those awards may arise; ii) the new reform of the "Ley Orgánica de Hidrocarburos" eliminates the requirement of majority control by PDVSA over investors and allows recourse to arbitration in the event of disputes, which could foster foreign investment; and iii) U.S. oil companies are among Venezuela's main arbitral creditors, particularly the awards obtained by ConocoPhillips and ExxonMobil. These creditors, along with others, are seeking enforcement of their claims in foreign jurisdictions, while reports by Reuters indicate that U.S. authorities have conditioned compensation on reinvestment in Venezuela's oil sector.*[4]

c. ***Mexico****: Several legal modifications from 2018 to 2024 in sectors such as Energy and Tax have led to the filing of various Notices of Intent. However, the current administration has opted to approach claimants and attempt to settle the cases. The success of such settlement approaches remains to be seen. It is true that the country has faced a high volume of investor-state claims in recent years, making it one of the most frequently targeted states under international investment treaties, with significant amounts of public funds potentially at risk in arbitration proceedings. Judicial reforms and perceived challenges to the domestic judiciary have influenced how investors view dispute resolution, prompting many to select arbitration and other alternative dispute resolution mechanisms over domestic courts due to concerns about judicial predictability and independence. While Mexico historically maintains a well-developed legal framework for arbitration and remains party to key international treaties, uncertainties around enforcement and evolving case law continue to impact investor confidence and strategic choices in arbitration matters.*

- ***Latin American States continue to play a central role in investment arbitration:*** *In 2025, 109 new cases were registered before ICSID, approximately 25% of which involved States from Latin America (28 cases), mostly concentrated in the mining sector.*

- ***Recognition and participation of indigenous communities in investment arbitration:*** *The right of Indigenous peoples to ownership of their lands, as well as their right to prior consultation, has been recognized by the Inter-American Court of Human Rights, the International Labour Organization (ILO), and by academic scholarship as a rule of customary international law. In 2025, investment arbitral tribunals addressed the tension between these rights and investment protection obligations, particularly in Latin America. A particularly relevant case is Daniel W. Kappes and Kappes, Cassiday & Associates v. Guatemala, in which the investor alleged violations of DR-CAFTA arising from the suspension of mining projects ordered by the Constitutional Court of Guatemala due to non-compliance with Indigenous peoples' right to prior consultation under ILO Convention 169. The*

[4] Jarrett Renshaw, *US pushes oil majors to invest big in Venezuela if they want to recover debts*, 5 January 2026, https://www.reuters.com/business/energy/us-pushes-oil-majors-invest-big-venezuela-if-they-want-recover-debts-2026-01-04/, Accessed on 16 February 2026.

Arbitral Tribunal declined to award damages to the investor. A key issue going forward will be to identify emerging trends and the repercussions in similar cases where States impose regulations affecting foreign investments in order to comply with human rights agendas or to protect Indigenous peoples' rights."

Mr. Christian Campbell, *Center for International Legal Studies (CILS), FDI Moot,* added a follow-up:

"*Thank you for the excellent overview of recent developments and differing approaches to investments and investment claims in North, Central, and South America. On the rights of indigenous peoples to be consulted, to what extent does this fall on the investor and to what extent does it fall on the Government(s) of the State(s) recognized as having international sovereignty over the territory in question?*

To the extent it falls on investors, how is this similar to or different from "social license"?"

Ms. Azar responded:

"*Your first question goes to the core of the debate concerning the allocation of obligations with respect to the right of Indigenous peoples to prior consultation. There is no clear consensus, nor a definitive answer, in my opinion.*

For example, this issue was central in Bear Creek Mining Corporation v. Peru. Although the Tribunal did not treat the absence of a social license as essential and ultimately found that the measures adopted by Peru constituted an indirect expropriation, the Award illustrates two conceptions of responsibility in the consultation process.

On the one hand, the majority emphasized that the obligation to ensure proper consultation rests with the State, expressly noting that ILO Convention 169 "imposes direct obligations on States only." On the other hand, Professor Sands, on his dissenting opinion, suggested that securing a social license to operate should be understood as the investor's responsibility, and that the failure to obtain meaningful acceptance from Indigenous communities ought to have influenced the Tribunal's assessment. Thus, although ILO Convention 169 "may not impose obligations directly on private foreign investors," this does not render it "without significance or legal effects" for the investor.

This debate is likely to continue resurfacing in investment arbitrations, particularly in Latin America, not only in connection with the rights of Indigenous peoples but more broadly concerning the extent to which private investors bear responsibilities to respect human rights. The remarks in Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia v. Argentina are illustrative in this regard, where the tribunal observed that "it is therefore to be admitted that the human right for everyone's dignity and its right for adequate housing and living conditions are complemented by an obligation on all parts, public and private parties, not to engage in activities aimed at destroying such rights."

Regarding your second question, I consider that the rights of Indigenous peoples to prior consultation are different from the concept of social license. As the tribunal

in Bear Creek Mining v. Peru recognized, the notion of "social license" is not clearly defined in international law. This is because the concept encapsulates a broad range of considerations—extending beyond the prior right of consultation of Indigenous communities—to include issues such as human rights protection, environmental safeguards, public participation in decision-making, access to information, etc. It therefore operates as a undefined social standard rather than a rigid articulated legal norm.

By contrast, the right of Indigenous peoples to prior consultation is firmly grounded in international law. It is expressly recognized in ILO Convention 169 and in the United Nations Declaration on the Rights of Indigenous Peoples, and has been consistently affirmed in the jurisprudence of the Inter-American Court of Human Rights. Unlike social license, it constitutes a specific legal right with identifiable content and normative force under international law."

Ms. Singh asked another question:

"*Following Chris' question, I was particularly interested in the developments concerning Indigenous rights and regulatory measures and had a follow-up:*

In your view, are tribunals increasingly integrating human rights considerations into their interpretation of investment treaties, or are they still approaching these issues primarily through the lens of State regulatory powers?"

Ms. Azar responded*:*

"While it remains difficult to identify a uniform trend in how investment tribunals integrate human rights considerations, much of the existing jurisprudence suggests that tribunals continue to approach human rights primarily through the framework of States' regulatory powers rather than as autonomous normative obligations within investment law.

A good example is Philip Morris v. Uruguay, where the tribunal upheld Uruguay's tobacco-control measures, recognizing that they were adopted to protect public health. Rather than applying human rights law as an independent legal standard, the tribunal treated the protection of public health as a legitimate objective falling within the State's regulatory powers. In this way, human rights considerations reinforced the State's police powers, instead of reshaping the substantive content of the investment treaty obligations.

Interestingly, tribunals do possess interpretive tools that would allow for a more direct engagement with human rights law. The principle of systemic integration, reflected in Article 31(3)(c) of the Vienna Convention on the Law of Treaties, permits consideration of "any relevant rules of international law" when interpreting treaty provisions. However, tribunals have generally exercised caution in relying on this principle to directly apply human rights norms. For instance, in South American Silver v. Bolivia, the tribunal acknowledged this principle but approached it cautiously: see "It is not disputed that Article 31(3)(c) of the Vienna Convention is a rule applicable to the interpretation of the Treaty. Based on this provision, Bolivia argues that the Tribunal must apply certain international rules on human rights protection. However, it has not

justified why the Tribunal must apply in this particular case various rules that do not constitute customary law, nor has it shown that either of Bolivia or the United Kingdom are parties to the human rights treaties invoked".

Mr. Momin Mohsin*, Young-OGEMID Rapporteur,* had a follow-up query*:*

If I may add a brief follow-up to Aayushi's question, do you see the ICJ's recent advisory opinion on climate change having any impact on how investment tribunals approach environmental and human rights considerations, either directly or as part of the broader normative framework within which investment treaties are interpreted?

Ms. Azar responded:

"We are likely to see the impact of the ICJ's recent advisory opinion on climate change unfold in the coming years. In this regard, it is also relevant to consider the advisory opinion of the Inter-American Court of Human Rights, which goes even further by recognizing as jus cogens the obligation not to cause irreversible damage to the climate and the global environment.

Although advisory opinions are not formally binding, States may invoke them to justify regulatory measures affecting foreign investors, particularly where such measures are adopted to comply with international climate and environmental obligations. It will be especially interesting to observe how investment tribunals engage with these instruments, whether as contextual elements under general international law, or, more interesting, in relation to the characterization of certain environmental obligations as jus cogens."

Day 2 – 17 February 2026

Speaker 3 – Prof. Julien Chaisse[5] and Speaker 4 – Mairee Udan Bidegain[6]

Ms. Singh introduced **Prof. Chaisse** and kicked off discussion by asking him:

> *"At the systemic level, ISDS reform debates have generated a wide range of responses across the Global South, shaped by multilateral initiatives, regional frameworks, and experimentation with alternative dispute resolution models. From a comparative perspective, how are States in the Global South navigating current ISDS reform debates, and what role do multilateral initiatives, regional frameworks, and alternative models of dispute resolution play in shaping future pathways?"*

Prof. Chaisse responded:

> "*Let me reply below and make linkages with some of the very good insights from yesterday.*
>
> *Step 1. Define the problem the State wants to solve.*
>
> *First, budget exposure is the full liability package, not only the headline damages number. Valuation method drives principal. Interest can rival principal once proceedings stretch. Costs include adverse cost risk plus internal government time that never appears on an award. Enforcement risk adds pressure even after an award.*
>
> *Second, regulatory measures often succeed or fail on the record. A tribunal looks for a chain of authority, a defensible process, and consistency across agencies. Consultation disputes and climate measures both turn on this. The core question is whether the State can prove a lawful public process, not whether it chose a popular policy label.*
>
> *Third, institutional capacity is about repeatability and learning, not heroics. A State with capacity can do five things reliably. First, receive and triage investor grievances through one channel, so the first response does not depend on whoever happens to pick up an email. Second, convene the line ministry, regulator, finance ministry, and attorney*

[5] Professor Julien Chaisse is Professor and RGC Senior Research Fellow at the School of Law, City University of Hong Kong. A leading scholar of transnational economic governance, his research explores how law structures markets, technology, and strategic interdependence across borders. He serves as Editor-in-Chief of the Journal of World Investment & Trade, is an Area Editor for Data & Policy (Cambridge University Press), and writes the bimonthly Global Lawyer column for Financial Times fDi Intelligence. He has been listed among Stanford University's Top 2 per cent Most Highly Cited Scientists in 2023, 2024, and 2025, and his work has been cited by international tribunals and domestic courts across multiple jurisdictions.

[6] Mairée Uran Bidegain is a Colombian, Uruguayan, and French national with extensive experience in international dispute resolution, having served as an arbitrator, counsel, and secretary in arbitral tribunals, annulment committees, and conciliation commissions. She has advised the Government of Chile on foreign investment matters, including leading the State's defence in investor–State disputes and representing Chile in multilateral negotiations such as UNCITRAL Working Group III on ISDS Reform. Mairée previously served as Team Leader and Senior Legal Counsel at ICSID, where she oversaw the administration of more than 60 cases. She has also held academic positions at American University, Georgetown University, and the Heidelberg Center for Latin America, and is co-editor of Building International Investment Law: The First 50 Years of ICSID. She holds degrees from Université Panthéon-Assas, Université Panthéon-Sorbonne, and an LL.M. from the University of Pennsylvania Law School, and is admitted to practice in New York.

general's office quickly, with clear roles. Third, preserve documents early, including drafts, emails, and technical records that later become exhibit battles. Fourth, decide who has authority to settle, under what constraints, and with what approvals. Many States lose settlement windows because nobody can sign. Fifth, capture lessons from a completed case and feed them back into regulation and contract practice, so the next dispute does not repeat the same administrative error.

Step 2. Match the problem to the forum.

I treat the multilateral track as the venue for problems that need a common procedural baseline across many treaties. Party conduct rules, transparency tools, funding disclosure practices, and dispute prevention guidance fit that description. A State does not need to renegotiate dozens of instruments to benefit from a Code of Conduct, mediation guidance, or a prevention toolkit. This is also where the Advisory Centre belongs, because it targets the resourcing gap that affects how States run cases and how they evaluate settlement options, which connects to Funke's cost point.

A different forum is needed for problems that turn on consent and on standards of protection. Working Group III does not rewrite fair and equitable treatment, indirect expropriation, or the definition of investment. Those moves sit in treaty text and in binding joint interpretations.

On the politics of the multilateral forum itself, Mehranvar and Di Salvatore provide useful evidence.[7] *They track Working Group III participation across five sessions from September 2022 to January 2024, and report that high income States accounted for 39.4 %of interventions, even though they were respondents in 8.8 % known treaty based cases and home States in 68%. They also note that from September 2022, remote delegates could observe but could not make live interventions. Their account also links to yesterday's themes, including developing State pushes to prioritise damages work and coalition action during the Code of Conduct talks.*

Step 3. Read current State practice as parallel tracks.

Treaty and regional text is where States change consent and exposure in a way a tribunal must apply at jurisdiction and admissibility. Local remedies as a gate, shorter limitation periods, tighter definitions of investor and investment, clearer rules on parallel proceedings, and investor conduct clauses that can support counterclaims must sit in binding text. Procedural tools can change how a case runs. They do not change who can sue and on what terms.

Prevention and settlement machinery is where States reduce dispute volume and improve the record when a case still proceeds. This connects to Cecilia's Mexico point on settlement outreach and to the consultation disputes she raised. One entry point for investor grievances, an interministerial process that gathers facts early, document preservation, reasons recorded in a form that can be produced later, and a real settlement pathway with mapped approvals all change outcomes. When arbitration follows, the same machinery often decides whether the State can defend consultation,

[7] Julien Chaisse, 'Structural Barriers and Power Dynamics in UNCITRAL WGIII: Upholding the Status Quo?' (2025) 26(6) *Journal of World Investment & Trade* 1001–1055 https://doi.org/10.1163/22119000-12340373.

environmental assessment, and permit legality claims cleanly, and whether those issues spill into quantum."

Ms. Singh introduced **Ms. Bidegain** and asked her:

"*As States increasingly seek to manage investment disputes more strategically, attention has shifted toward dispute prevention, improved case management, and institutional learning - often informed by experience within arbitral institutions and reform processes. Drawing on your work across the public and private sectors, arbitral institutions and your role as ICSID arbitrator, how are Latin American States rethinking their engagement with ISDS in practice, particularly in relation to dispute prevention, case management, and reform?*"

Ms. Bidegain responded:

"*In response to your question, I would like to submit the following points:*

Latin America has been, in many respects, front and center to the evolution of investor–State dispute settlement (ISDS). Many system-shaping cases — from privatizations to disputes arising from regulatory measures in natural resources, environmental protection, and public health — have emerged from the region, exposing both the complexity of public-interest regulation and the limits of traditional arbitration models. Rather than disengage, most States have treated ISDS as a structural governance issue, establishing centralized or specialized units to coordinate defense strategy and dispute prevention, often on an inter-ministerial basis. The result is not only proactive engagement but growing institutional maturity.

This consolidation has strengthened case management and fostered regional learning. Networks such as the Asociación Latinoamericana de Abogacías y Procuradurías de Estados (ALAP), initiatives under the Alianza del Pacífico, and participation in UNCITRAL Working Group III, have facilitated exchanges on prevention strategies, strategic defense and procedural reform. Over the past two decades, the region has shifted from reactive, ad hoc litigation to more systematic governance frameworks aligned with broader public policy objectives.

Moreover, Latin America's history underscores the value of peaceful, rule-based dispute settlement in investment matters. The 1902–1903 blockade of Venezuela by European powers marked the limits of "gunboat diplomacy" in enforcing debt and property claims, and arbitration emerged as the substitute. A century later, the wave of investor claims against Venezuela following nationalizations by the Chávez government showed both the practical importance and limits of the ISDS system. Yet recent geopolitical developments — including the January 2026 U.S. military operation in Venezuela— remind us that the alternative to adjudication can be coercion, and that there are real risks when political power and the use of force displace rules-based processes.

Perhaps cognizant of this risk, most Latin American States have focused their reform efforts on improving and modernizing ISDS rather than seeking its wholesale elimination."

Mr. Mohit Dang, *Young-OGEMID Rapporteur,* asked both the panelists:

> "*The past year has seen the "hyper-politicisation" of tariffs, not just as trade policy instruments but also as bargaining chips to drive negotiations.*
>
> *In your view, what does the response of the Global South to these measures suggest about the resilience (or failure?) of institutions and frameworks (such as the WTO and ICSID) which are designed to uphold a rules-based system and make international law predictable? For the Global South, what should be the takeaways from this for the ISDS reforms debate, if any?*"

Prof. Chaisse responded:

> *"Thank you, Mohit. I read your question as probing a fundamental threshold issue: when major powers treat rules as optional, does international law retain normative force? And, I agree with Mairée that abandoning rules invites coercion.*
>
> *So, to answer your question on what the Global South response suggests about resilience or failure of the WTO and similar institutions. I read it as partial resilience, not failure. One hand the Appellate Body has been unable to hear appeals since December 2019, which means a losing party can file an appeal that cannot be completed. On the other hand, many members have tried to preserve closure through the Multi Party Interim Appeal Arbitration Arrangement (**MPIA**). It is grounded in Article 25 of the Dispute Settlement Understanding, so it stays inside WTO law. The WTO lists a large and varied set of participants, including many developing economies such as Brazil, China, Pakistan, Mexico, Peru, Colombia, Ecuador and others.*
>
> *For me, the MPIA is evidence of resilience through coalition design: members keep appellate type review for disputes among themselves even when the central appellate organ is not operating. One way to read this is through the lens of plurilateralism. In recent work with Richard Chen and Georgios Dimitropoulos, I argue that plurilateralism is not merely a second best tactic when multilateral consensus stalls. It is a method of preserving legal effects inside a broader multilateral frame through multi party, sector specific arrangements by a subset of members, distinct from preferential trade agreements and informal coalitions.[8] The MPIA fits that logic: it keeps appellate type review alive for willing members inside WTO law, rather than pushing disputes into ad hoc power bargaining. That is also why plurilateral design choices matter for the Global South: open architecture can keep participation possible but there is still a real risk that rule design moves ahead without those who bear the brunt of adjustment costs. There is a nice full special issue on the theme of plurilateralism.[9] The unifying theme is that plurilateral design is now a general technique for keeping rule making and adjudication alive when full consensus stalls. The issue runs from WTO adjudication to national security trade measures, digital rule making, investment, and even tax, and it keeps coming back to the same test: does the arrangement stay anchored*

[8] Julien Chaisse, 'Plurilateralism: A New Form of International Economic Ordering?' (2025) 26(1–2) *Journal of World Investment & Trade* 1–30 https://doi.org/10.1163/22119000-12340350

[9] *Journal of World Investment & Trade*, Volume 26, Issues 1–2 (2025) (Brill), https://brill.com/view/journals/jwit/26/1-2/jwit.26.issue-1-2.xml

in an existing multilateral frame, remain open to later joiners and avoid hard exclusion of developing countries.

That is why the MPIA is more than a trade curiosity... It is one instance of a broader institutional response that also speaks to ISDS reform choices. The second point is that the Global South response has been pragmatic. Many States pursue legal routes when they have a credible path to a final outcome, but they also negotiate interim arrangements when market access is under immediate threat. India is a good example and this also speaks directly to your "hyper politicisation" point.

The White House joint statement of 6 February 2026 describes a proposed interim agreement and a reciprocal tariff rate of 18% on originating goods of India, with further steps tied to a broader bilateral trade agreement.

Professor Prabhash Ranjan wrote in Hindustan Times few days ago[10] that even a deal that provides breathing space can still raise WTO law issues, in particular MFN and tariff bindings, unless the arrangement is structured and notified in a way that fits GATT Article XXIV. He also makes a practical observation that links straight back to institutional resilience: if the US Supreme Court were to strike down the legal basis for the tariffs, India could adjust its own commitments under the deal's modification clause. 4

PS: Just a mention of domestic institutional control in US. A striking feature of the current tariff episode is that the dispute is also being litigated inside US! The legal question is framed around the scope of executive authority under the International Emergency Economic Powers Act and the availability of refunds if tariffs are found unlawful. The Supreme Court review is in play and SCOTUS decision might come out later this week; market actors are watching closely. What does this imply for ISDS reform debates? Well, one takeaway is that finality is institutional capital. The MPIA is an attempt to restore finality in WTO disputes among participating members. Investment reform proposals that add review layers or standing bodies will only help if appointment, financing, and participation rules make it hard for any single actor to freeze the system.

A second takeaway is that States are building fallback options in parallel. In trade, it is MPIA plus bargaining. In investment, it is procedure reform plus treaty design plus domestic prevention and settlement authority. That mix is not a theoretical preference. It is how States avoid turning every dispute into a geopolitical bargaining chip. --A third takeaway is that domestic courts still matter for international economic governance. The tariff litigation in the United States is a reminder that a rules based order is not only multilateral. It also depends on internal constitutional checks that can constrain executive trade power. I would be very interested in examples from colleagues where tariff measures have already triggered investment treaty claims, or credible threats of such claims, and how States managed those files alongside trade negotiations."

[10] Julien Chaisse, 'India–US Trade Deal and International Law' *Hindustan Times* (online, 2025) https://www.hindustantimes.com/opinion/indiaus-trade-deal-and-international-law-101770558383380.html accessed 19 February 2026.

Ms. Bidegain responded:

> *"I fully agree with Julien's observation that the reaction of many States—both from the Global North and the Global South—to preserve appellate review through mechanisms such as the MPIA reflects an important degree of institutional resilience. At the same time, we may indeed be entering a phase in which multilateralism coexists with more flexible forms of cooperation, including plurilateral arrangements and strategic alliances among like-minded countries or coalitions within regions of the Global South. These developments, in my view, suggest adaptation rather than abandonment of the rules-based order.*
>
> *However, from the perspective of both the WTO and the ISDS system, in my opinion, it may still be too early to draw definitive conclusions about the long-term impact of recent departures from established rules by some major actors, or about how States in the Global South will ultimately respond. Much will depend on whether those States that currently test or strain the system continue to engage with and comply with its processes when their own interests are at stake. For example, if measures adopted by the current U.S. administration were to give rise to ISDS claims, the response of the United States—whether continued engagement and compliance, or disengagement—would be highly instructive. Continued participation would reinforce the credibility and normative force of the system. Conversely, disengagement would pose a more fundamental test of institutional resilience, requiring the system to demonstrate its ability to maintain legitimacy and functionality in a more fragmented and contested international environment.*
>
> *For the Global South, one key takeaway for the ISDS reform debate may be the importance of preserving mechanisms that ensure predictability, finality, and meaningful participation. The experience of both WTO dispute settlement and ISDS suggests that States—particularly those in the Global South—continue to view rules-based adjudication as preferable to purely power-based bargaining, and that they value institutions capable of delivering credible, neutral, and enforceable outcomes, even as they seek to refine and improve them. In that sense, recent developments may ultimately reinforce—not weaken—the importance of maintaining and strengthening adjudicatory frameworks that allow States to resolve disputes through law rather than through coercion or unilateral action.*
>
> *Thank you once again, for your interesting question.*"

Ms. Adekoya made a comment regarding **Prof. Chaisse's** earlier response:

> *"For African States, I think it is too soon to tell the extent to which any of the tracks you have referred to will have changed behaviour in a measurable way. A shift towards dispute prevention strategies, tighter investor--definition language in new treaties, and the enhancement of home-grown skills in defending disputes will, however, have a definite and positive impact in the coming years."*

Prof. Chaisse responded:

> "*Dear Funke,*
>
> *Many thanks. I agree that it is early for clean measurement and your caution is well taken. One way I try to think about "measurable" in this area is to separate outcome metrics from process metrics. Outcomes such as fewer notices of dispute or lower awards take YEARS and depend on investment cycles (and also commodity prices, etc). Process indicators show up sooner. For example, whether new treaties actually change jurisdictional sorting through tighter investor definitions and denial of benefits clauses, whether early funding disclosure and security for costs requests reduce opportunistic filings, and whether ministries can settle fast because authority and approvals are mapped before a notice arrives. On the African side, I would add one more practical indicator: whether prevention units gain the ability to intervene at the contracting stage. Many disputes begin with a weak allocation of regulatory risk in licences and concessions, then become an investment claim when the project hits political resistance. If the prevention function sits close enough to procurement and line ministries to clean up those contract terms early that tends to produce the most durable change.*
>
> *If you have examples of prevention structures that you think are working already, even in a small way, I would welcome them*."

Ms. Singh asked a follow-up question regarding **Ms. Bidegain**'s observations:

> "*Thank you for this thoughtful and historically grounded reflection. I was particularly struck by your point that Latin American States have increasingly approached ISDS as a structural governance issue rather than merely a litigation risk.*
>
> *I would be very interested to hear your views on how this institutional consolidation is shaping States' positions in the ongoing UNCITRAL Working Group III reform process - especially regarding proposals for a multilateral investment court, appellate mechanisms, or enhanced dispute-prevention frameworks. Do you see Latin American practice converging around particular reform models, or does significant divergence remain across the region?*"

Prof. Chaisse added a comment after **Ms. Singh**'s question:

> "*I second Aayushi's question and I will add one observation from the way Latin American States have professionalised ISDS management.*
>
> *On dispute prevention and case management, there is a sort of convergence. Chile is the clearest example because it built a dedicated State defence function and then used that experience in UNCITRAL Working Group III. Mexico is another, but through a 'different route': after USMCA narrowed consent for many claims, Mexico has leaned harder on early settlement and tight file handling in the remaining treaty space. Brazil sits at the other end. It has treated prevention as the centrepiece through its cooperation and facilitation model rather than trying to improve classic arbitration procedure.*

On institutional architecture, I do not see a Latin America bloc for a standing court and I do not see consistent support for a standing appeals body either. Positions remain somehow split and this split tracks each State's treaty network and exposure. States that kept broad treaty consent and have faced large dockets tend to want stronger consistency tools, including some form of appellate review. States that narrowed consent through treaty redesign or have moved away from investor state arbitration tend to treat court proposals as unnecessary and too rigid.

So, Mairée, from what you have seen in Working Group III which States in the region are actively backing an appellate mechanism now and which are concentrating on the prevention package and procedural tools instead?"

Ms. Bidegain thanked **Prof. Chaisse** and **Ms. Singh** for the question and responded:

"*Based on my experience participating in UNCITRAL Working Group III between 2018 and 2022 as Chile's representative, and again since last year as a delegate observer, I tend to agree with Julien that there is, overall, limited appetite among Latin American States for the establishment of a Multilateral Investment Court. This reflects, in part, the fact that important questions remain regarding the Court's financing, structure, representativeness, and practical workability. It also reflects the reality that many countries in the region have invested significantly over the past two decades in building institutional capacity and expertise within the existing ISDS framework, which they are now able to navigate with increasing confidence. At the same time, I have observed greater openness among Latin American States to the idea of a standing appellate mechanism, provided that its final architecture is clearly workable and that it operates as a second-level review mechanism built upon the current system. In this regard, my observations diverge from those of Julien.*

In addition, there has been meaningful convergence across the region on several so-called "cross-cutting issues," including, for example, counterclaims, enhanced transparency and regulation of third-party funding, and greater discipline in the allocation of costs, to mention just a few. Latin American States also played a constructive and influential role in shaping what is now the Code of Conduct, reflecting their broader interest in strengthening the legitimacy and consistency of the system. Overall, while views across the region are not entirely uniform, there appears to be a discernible preference for pragmatic reforms that build incrementally on the existing framework, rather than replacing it wholesale, as I mentioned earlier.

As to dispute prevention, my experience has been that most Latin American States recognize and emphasize the importance of putting in place early warning mechanisms, building institutional capacity through the training of public officials on ISDS risks and claim prevention, and engaging meaningfully during the consultation phase. However, these efforts are generally viewed as complementing their active engagement with ISDS, rather than as alternatives to it. In this sense, dispute prevention is understood as an integral component of the broader institutional architecture that underpins the structural governance approach I mentioned earlier, but not necessarily as a structural reform mechanism, even though it is one of the topics that has been addressed in Working Group III."

Prof. Chaisse thanked **Ms. Bidegain** and remarked that her distinction is useful because it separates *political preference* from *implementable design*. He followed up with his observations and another query:

> "*On a multilateral court, I agree that financing and appointments are only part of the issue. A standing first instance court also changes the economics of defence. It can lock States into permanent participation costs even when they have few or no disputes in a given cycle. That is a hard sell for many finance ministries in the region and even where legal ministries are sympathetic.*
>
> *On a standing appellate mechanism, your point about "second level review built upon the current system" is the hinge. The design question is not only whether States like the idea. It is what the appeal would review and how it would sit alongside existing post award control. If the appeal is meant to correct clear legal error and improve consistency, then a narrow standard of review is workable. It needs strict time limits, a closed record and a deferential posture on fact finding. If the appeal is also expected to discipline quantum, then the scope almost inevitably widens, because quantum disputes often turn on factual assessments and expert evidence. That creates delay risk and higher costs. That risk matters for respondent States as much as for claimants. There is also an institutional interaction point. In an ICSID case, States already have annulment on limited grounds. An appellate mechanism layered on top has to be designed so that it does not create parallel tracks that run in different directions, or a longer path that undermines finality. One solution is to treat appeal as a substitute for annulment among States that opt in, not an addition. Another is to structure appeal only for non ICSID awards, though that reduces the value of the mechanism for many States. Your message suggests Latin American States might support appeal if it is narrow, fast and integrated into the present architecture rather than bolted on. That would also align with the convergence you noted on cross cutting issues. States can adopt funding disclosure rules, cost discipline, and counterclaim tools now, and those reforms reduce some of the pressure that drives appetite for large institutional change.*
>
> *A follow up, if you are willing. In your Working Group III discussions which objective do Latin American delegations prioritise when they say "appeal": consistency of treaty interpretation, correction of legal error or closer control of quantum? Each objective implies a different standard of review and (I suspect) that is where regional views will diverge most sharply."*

Ms. Bidegain thanked **Prof. Chaisse** for engaging with the issue and responded:

> "*Responding to your question, if I had to prioritize among the three objectives you mention—consistency of treaty interpretation, correction of legal error, or closer control of quantum—I would say that, based on my experience in Working Group III, the correction of legal error, and more broadly the legal correctness of awards, tends to come first. There is a strong sense among many Latin American delegations that the legitimacy of the system depends fundamentally on the legal soundness of decisions. Ensuring that tribunals correctly interpret and apply the applicable law, including the instrument of consent, is seen as essential for maintaining confidence in the system as a whole.*

That said, consistency of interpretation is also an important consideration, and could be viewed as a natural consequence of correcting legal error through a structured review mechanism, rather than as a fully independent objective. By contrast, closer control of quantum has generally been discussed somewhat more cautiously. It has without doubt been a concern raised and actively advanced by countries in the African region, and one that Latin American States have generally supported, particularly in light of broader concerns about proportionality, predictability, and the methodologies used in damages assessment."

Ms. Mallory Silberman, *Young-OGEMID Moderator,* joined the discussions and added*:*

I just wanted to add my voice to the choir: thank you so much for sharing your insights with the listserv! I've been following along with great interest, and couldn't resist posing a question of my own.

Earlier on in the reform era, one State delegate had this line about how sovereigns play a "trinity" of roles in the system; if I remember correctly, the gist was that States simultaneously (i) are regulators/must govern, (ii) act as parties in cases, and (iii) also aim to protect their own nationals when the latter have invested abroad.

So far, our discussions have centered around the first two dimensions, and I'm wondering about the third. Any thoughts on that front? What, if anything, are States in your region doing in respect of this last prong? How do they strike the balance, to the extent you may know?"

Prof. Chaisse thanked **Ms. Silberman** for the question and responded:

"Thank you. On the third role, I see States acting through legal tools that sit next to treaties and sometimes matter more than treaties in day to day protection of nationals abroad.

One example is political risk cover for outward investment. India's Export Credit Guarantee Corporation is offering Overseas Investment Insurance for Indian investors' equity and shareholder loans abroad; it can cover equity capital and untied loans for outward investment, with political risk cover that includes expropriation and restrictions on remittance.

A second example is outward finance and capital support. Brazil's development bank describes an "internationalization" function that supports Brazilian companies' investments abroad including support for subsidiaries outside Brazil.

A third example is early grievance handling through an administrative channel. Korea's Foreign Investment Promotion Act[11] *provides for an Investment Ombudsman who can request cooperation from administrative agencies, and it places an Investment Support Center in KOTRA. KOTRA's Ombudsman materials describe that cooperation and the use of public officials dispatched from multiple ministries.*

[11] Korea's Foreign Investment Promotion Act, https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=55490&type=part&key=19

These examples (and there may be more) answer your third prong in a practical way. Even States that face inbound claims still invest in outward investor support through insurance, finance and coordinated problem solving. So that helps explain why many States support reforms that improve procedure and reduce cost without abandoning a neutral forum altogether. They want a system that remains usable when their nationals invest abroad, while tightening exposure and improving government practice at home."

Ms. **Adekoya** asked **Ms**. **Bidegain**:

"*What has been your experience at UNCITRAL Working Group III regarding the appetite of African States for a multilateral investment court? African scholars have taken a position contrary to the Latin American States regarding a regional / multilateral investment court as there are ongoing discussions in academic journals and at conferences as to whether African States under the AfCFTA regime should establish an African Investment Court.*"[12]

Ms. Bidegain thanked **Ms. Adekoya** for the question and responded:

"*Based on my experience, my perception is that a number of African States do view the possible establishment of a Multilateral Investment Court (MIC) as a potentially meaningful avenue to address some of the structural concerns that have long been identified within the current ISDS system. Under this perspective, the MIC is seen as a mechanism capable of introducing deeper institutional reform than incremental procedural adjustments alone.*

At the same time, and as you mentioned in your post, my impression is that the Advisory Centre on International Investment Disputes is widely viewed by African States as closely complementary to the MIC effort, as well as an immediate and pragmatic priority. There appears to be strong recognition that strengthening the internal capacity of States, would help address existing asymmetries and contribute to a more balanced system, regardless of the ultimate outcome of the discussions on systemic reform. In that sense, the Advisory Centre is often seen both as a standalone reform, and also as an important institutional pillar that could support broader structural changes, including the potential establishment of a MIC.

I would be very interested in learning more about the African Investment Court, how these regional initiatives are evolving and how they are perceived in relation to the multilateral reform efforts currently underway at UNCITRAL (thank you for providing already some information)."

Day 3 – 18 February 2026

On the last day of the Symposium, **Ms. Singh** added the resulting word bubble from the Mentimeter on "*If you had to describe the approach of nations in the Global South towards ISDS in one word – what would it be*?" The responses pointed towards a cautious, critical, and at times skeptical reassessment of how States in the Global South are approaching their

[12] Won L. Kidane, The Case for an African Investment Court (AIC), 2026(1) UCT Arbitration and Dispute Resolution Collected Papers 1 (2026). Available at: https://digitalcommons.law.villanova.edu/facpubs/244

engagement with ISDS. In view of the responses, **Ms. Singh** invited all panelists to reflect on the following question:

> "*Does this prevailing caution signal a transition away from ISDS as we know it, or a reconfiguration of how it is used and what might that transformation look like in practice?"*

Prof. Chaisse responded:

> *"The word cloud reads to me as caution about three legal risks that States can now price more clearly than they could twenty years ago.*
>
> *First, consent risk. Many States have learned that broad consent, paired with broad substantive standards, turns regulatory disagreement into jurisdiction with surprising ease. The practical response is not necessarily exit. It is narrower consent and stricter admissibility. You see more attention to who qualifies as an investor, what qualifies as an investment, time limits, waiver requirements, limits on treaty shopping and even domestic steps that must be taken before arbitration starts. That is not a retreat from dispute settlement. It is a more controlled entry gate.*
>
> *Second, remedial risk. Even when liability findings are uncertain, exposure on quantum, interest, and costs is hard to manage politically. This is where reform becomes concrete. States push for clearer rules on third party funding disclosure, security for costs, cost allocation discipline, and more demanding proof on causation and valuation. Some also pursue text that makes counterclaims viable so that unlawful investor conduct can be pleaded as more than background narrative. The aim is not to make claims impossible. It is to make outcomes more predictable and defensible in public finance terms. Third, legitimacy risk in fact finding and process. Consultation, environmental assessment, and permit legality disputes often turn on whether the State can show a coherent administrative record. That pushes States toward dispute prevention as lawyering and governance, not as a public relations project. Better record keeping, clearer delegation of authority, early legal review of high risk licences, and credible consultation files can change the merits and can change quantum, because they affect both breach and causation.*
>
> *So, does caution mean a transition away from ISDS as we know it, or a reconfiguration?*
>
> *I read it as reconfiguration with narrower core and more structured alternatives around it. ISDS remains the backstop in many instruments but it is increasingly paired with earlier consultation and mediation steps, stronger admissibility filters, and procedural constraints that target cost and duration. At the same time, States build parallel routes that can resolve disputes without a full arbitration. State to state mechanisms, ombuds channels, investment facilitation offices, and political risk insurance all become part of the toolkit. When they work, they reduce the number of disputes that ever reach a tribunal. When they fail, the arbitration that follows begins with a clearer factual record and a clearer view of settlement ranges.*
>
> *One side point. It is normal to focus only on investment protection/liberalisation instruments, but investment facilitation agreements (IFAs) are now a second track that*

deserves as much attention. They are on the upswing and they usually handle disputes through State to State consultation, focal points, joint committees, ombuds type problem solving and other administrative channels rather than arbitration. Examples include the Central Asian CARTIF, the EU-Angola Sustainable Investment Facilitation Agreement, the EU Eastern & Southern African countries approach, ASEAN work on investment facilitation, and, of course, the WTO Investment Facilitation for Development Agreement. The legal consequence is that more disputes may be filtered and resolved through process and administration before they ever resemble a treaty claim and some disputes will be channelled into State to State procedures rather than investor claims.

If this is the direction, the transformation in practice is not a single new institution. It is a more segmented system. Narrower consent for arbitration. More procedural discipline inside arbitration. More prevention and negotiated settlement before arbitration. More use of State to state tools where the dispute is embedded in diplomacy. That is the kind of caution I see in the word cloud. Not paralysis. Controlled risk taking."

Ms. Adekoya responded:

"*I agree with Julien that, from an African perspective, a cautious, more enlightened, and controlled engagement with ISDS is the likely path forward. This is clear from efforts to level the playing field by restricting access to treaty protection through investment definitions, providing for investor obligations that could form the basis for counterclaims, and focusing on dispute-avoidance mechanisms.*

Noting, however, that "independent' experts may be merely a figure of speech, the lack of financial expert witness organisations located in the global south that are available to address the quantum of damages claims remains an issue that troubles Africa. That may be the draw toward considering an African Investment Court. To that extent, the verdict is still open."

Ms. Chenglei Hu, *Young-OGEMID Rapporteur,* thanked Prof. Chaisse on his insightful reflections on how States' increasing caution is shaping a more structured and risk-managed approach to ISDS. She added that his analysis of narrower consent, enhanced procedural discipline, and the rise of alternative preventive mechanisms was particularly illuminating. She asked a follow-up question to Prof. Chaisse:

"Building on your observations, I hoped to pose one further question:

To what extent do you think this gradual shift toward segmented dispute-resolution pathways, especially the growing reliance on State-to-State mechanisms and administrative facilitation channels, might influence the strategic behaviour of investors themselves? In other words, do you anticipate that these structural adjustments will meaningfully alter how investors assess political risk, plan compliance, or approach pre-dispute engagement with host States?

I would be very grateful for any thoughts you might share, and I look forward to continuing the discussion."

Prof. Chaisse responded:

> *"Thank you, Chenglei! I believe that segmented pathways change investor incentives, even if the magnitude differs by sector and by host State. First, they increase the value of contract based risk allocation. If treaty arbitration is no longer a default backstop, investors and lenders have stronger incentives to rely on contract terms, forum clauses and enforcement planning; this is because those are the instruments they can control at signing. Second, they reward early documentation. When a dispute starts in a focal point, joint committee, or consultation phase, an investor has an incentive to frame the grievance in legal and factual terms, request reasons in writing, and preserve a clear record of engagement. That record can matter later, whether the dispute escalates into contract litigation, State to State engagement, or a narrower treaty claim Third, they affect risk pricing. If the legal route to damages becomes less predictable, investors may rely more on political risk insurance, lender conditions, and exit options. Those tools tend to require clear compliance representations and evidence that the investor took reasonable steps to mitigate loss.*
>
> *So I would not say investors will stop using law. The adjustment is that more of the dispute work shifts earlier in the project life cycle and so more of the protection work moves into contract terms, documentation and risk transfer instruments."*

Ms. **Singh** thanked **Ms**. **Adekoya** and **Prof**. **Chaisse** for their thoughtful interventions and asked another question:

> "*One thread that seems to connect the ideas of calibrated consent, remedial discipline, and Africa's concern with epistemic and institutional asymmetries is the question of who ultimately shapes credibility in the system-not only tribunals, but also experts, records, and pre-dispute governance structures. If ISDS is indeed moving toward segmentation rather than replacement, might the next phase of reform hinge less on formal architecture (courts versus arbitration) and more on redistributing technical authority and evidentiary capacity, particularly in the Global South?*
>
> *In that light, the relative absence of locally grounded quantum expertise that Ms. Adekoya highlights could become as structurally significant as jurisdictional reform itself, because control over valuation often determines settlement gravity long before liability is decided. This raises a further question for the group: could capacity-building in damages assessment, administrative record-making, and dispute-prevention practice become the quiet but decisive layer of ISDS reform-one that reshapes outcomes without formally reshaping the system?*"

Prof. Chaisse thanked **Ms. Singh** for the question and responded:

> *"I agree that the next phase of reform may turn less on institutional form and more on technical control. I will restate that point using propositions tribunals apply in damages phases. I believe that three evidentiary questions recur across cases, whatever the treaty text. First, causation because a claimant must link the breach to the loss claimed. Tribunals separate breach from loss and reject parts of a claim when the causal chain is weak or when other causes are plausible. Evidence on project viability, permitting status, financing and market conditions becomes decisive. Second, the counterfactual. Every valuation method rests on an assumption about what happens absent the breach.*

Tribunals test that assumption against contemporaneous documents, not only expert models. A coherent decision file that shows independent barriers, unresolved approvals, or investor delay often shifts the counterfactual and reduces the claim value. Third, method choice and inputs. Tribunals accept more than one method in principle, but they scrutinise assumptions. DCF is treated cautiously when a project lacks a track record, still needs key approvals or depends on contingent future cash flows. In those settings, tribunals often prefer sunk costs or other conservative proxies. To me, the legal point is not that one method is always wrong. The point is that the party advancing valuation bears the burden of proof on its inputs. This is where the quantum expertise point becomes 'structural'. If a respondent State cannot test the counterfactual and the inputs early, settlement gravity shifts toward the claimant simply because the respondent cannot quantify risk with confidence. And the same logic applies to administrative record making. In consultation, environmental assessment, licensing and taxation disputes, tribunals turn to the contemporaneous record to evaluate whether the decision is consistent and procedurally fair. So a weak record affects liability. It also affects quantum because it weakens causation and counterfactual arguments. So yes, an infrastructural layer of reform can shift outcomes without any new court.

A State can improve its position quickly by doing three things that have immediate legal pay off. One, use a standard record template for high risk regulatory decisions that captures legal basis, reasons, evidence relied on, and responses to the investor's submissions. Two, set an automatic preservation trigger when an investor grievance arrives so that key emails, drafts, and technical materials are kept and can be produced later. Three, build a small damages capability that is usable early, even if it is not a permanent in house unit. A standing arrangement that allows the respondent to instruct a valuation expert at the first sign of escalation, plus training for State counsel on testing counterfactual assumptions, can shift settlement ranges because the State can speak in quantified terms earlier. This does not replace consent reform. It complements it. Narrower consent reduces the number of cases. Better proof capacity changes the value of the cases that still proceed."

Ms. Bidegain added to **Prof. Chaisse**'s comments and responded:

"*In my view, the caution you express is less indicative of a transition away from ISDS as such, and more reflective of an ongoing reconfiguration of the system—both in terms of who participates in it and how investment obligations are understood and applied.*

One important dimension of this transformation is that international investment law is no longer confined to relatively small, specialized circles. A broader community of international lawyers—both academics and practitioners whose primary focus may lie in other areas of public international law, including environmental law, human rights, or international economic law more generally—is now actively engaging with investment law questions. This reflects the growing recognition that investment law does not operate in isolation, but rather as part of the broader international legal system. In parallel, parties, tribunals, and civil society increasingly recognize that the interpretation and application of investment obligations cannot be confined solely to the instrument expressing consent. Other applicable rules of international law, including those relating to environmental protection, human rights, and climate change, are increasingly part of the normative context within which investment disputes arise and must be resolved.

At the same time, States themselves have become significantly more sophisticated actors within the system. This is evident both in their strategic conduct of their defenses and in treaty negotiations, where States are increasingly incorporating lessons learned, clarifying substantive standards, and introducing procedural innovations, in other words, controlling the "entry gate" as Julien said.

The landscape of representation is also evolving. While large international law firms continue to play an important role, there has been a notable increase in the participation of specialized boutique firms, including many based in the Global South, representing both States and investors. This diversification is contributing to a broader range of perspectives and reflects the continued globalization and maturation of the field.

I also agree with Julien that we are witnessing a greater openness to complementary and alternative mechanisms for the resolution of investment related disputes. These include facilitation and dispute prevention mechanisms, State-to-State dispute settlement, and other cooperative approaches, already mentioned. These mechanisms are not necessarily replacing ISDS but rather expanding the available toolkit and offering States and investors additional pathways to manage and resolve disputes in ways that may be better aligned with their evolving needs and priorities.

Finally, I agree with Funke that the role of independent experts—particularly in relation to the preparation, assessment, provenance, and application of damages reports—is indeed an area that could benefit from a more thorough recalibration. At present, however, it remains insufficiently studied and could need a more systematic reflection.

Taken together, these developments suggest not a retreat from ISDS, but a gradual transformation toward a more plural, integrated, and globally distributed system—one in which States exercise greater agency, a wider range of actors participate, and investment law is increasingly situated within the broader framework of international law."

Ms. Singh built on **Ms. Bidegain's** observations and asked another question:

"Investment law is increasingly interpreted in light of other applicable rules of international law—such as environmental and human rights norms—how should tribunals manage that integration in practice?

Should this be primarily a matter of treaty drafting and express clauses, or is it appropriate for tribunals to operationalize systemic integration through interpretation even where the treaty text is silent?"

Ms. Adekoya responded:

"*I believe that tribunals can utilise the provisions of Article 31(3)(c) of the Vienna Convention on the Law of Treaties, which requires that treaty provisions be interpreted in light of "any relevant rules of international law applicable in the relations between the parties" to ensure interpretative integration to the extent required to determine the dispute before them, especially where both parties are parties to the relevant environmental treaties or human rights conventions.*

In such cases, integration of these norms may legitimately impact the interpretation of standards such as fair and equitable treatment, indirect expropriation, police powers, or full protection and security."

Ms. Azar added concluding comments:

"*In my view, International Investment Law is not a self-contained system, nor is it an isolated normative capsule equipped with all the tools necessary for self-sufficiency. Rather, it forms part of the broader system of international law.*

There is now certain consensus that international law governs the merits of investment treaty disputes. Since international human rights law forms part of international law—and international law governs investment disputes —it follows that investment treaties must be interpreted considering applicable human rights norms.

Moreover, arbitrators already possess sufficient normative tools to perform this integration. The principle of systemic integration, enshrined in Article 31(3)(c) of the VCLT, provides that treaty interpretation must consider "any relevant rules of international law applicable in the relations between the parties." This provision offers a foundation for considering human rights norms to interpret investment law.

This reasoning is similar with the decision of the ad hoc Committee in Tulip v. Turkey. In that case, the Committee concluded that, based on systemic integration, international human rights norms applicable to both parties — and the related case law —were relevant to interpreting the notion of a "fundamental rule of procedure" under Article 51(1)(d) of the ICSID Convention."

Comments:

Across three days, the symposium mapped a clear arc: Global South engagement with ISDS is not best understood as "exit" versus "embrace," but as a shift toward calibrated participation, tightening the entry gate, professionalising internal governance, and rebalancing the system through targeted reforms rather than wholesale replacement.

From an African perspective, Ms. Adekoya traced the evolution from reactive treaty termination and domestication of dispute resolution toward a more strategic agenda built on prevention, treaty recalibration, and capacity-building. Newer instruments, particularly those embedding investor obligations with legal consequences, refined definitions of "investment," and denial of benefits mechanisms, signal a deliberate effort to reduce abusive access and align investment protection with sustainable development. Yet Africa's concerns also remain structural: the costs of defence, the politics of damages, and the continuing asymmetry in technical expertise, especially in quantum, continue to shape reform preferences, including interest in an African or multilateral investment court alongside the Advisory Centre.

Latin American interventions, by contrast, emphasized institutional consolidation rather than disengagement. Ms. Azar highlighted how rapidly shifting domestic politics and regulatory agendas in Honduras, Venezuela, and Mexico can reconfigure ISDS posture in real time, while the region's heavy docket ensures that arbitration remains a practical reality. She also underlined a second, increasingly central front in investment disputes: the intersection between investment protection and Indigenous rights, consultation duties, and broader human rights

norms. In this area, tribunals still tend to channel rights-based arguments through the language of police powers and regulatory authority, even while systemic integration under Article 31(3)(c) of the VCLT remains available as an interpretive route. Ms. Bidegain's account reinforced the governance turn: Latin American States have invested in inter-ministerial coordination, professional defence units, and regional learning networks, and now tend to favour incremental, workable reforms, including greater openness to an appellate mechanism than to a standing multilateral court, and meaningful convergence on cross-cutting issues such as transparency, third-party funding, costs, and counterclaims.

Prof. Chaisse tied these regional accounts into a single analytic framework. The "caution" expressed in the final-day word cloud reflects States' clearer pricing of consent risk, remedial risk, and legitimacy risk. His emphasis on process metrics, including document preservation, settlement authority mapping, inter-agency coordination, and repeatable prevention systems, made the central point that reform is not only about institutional architecture. It is also about the daily mechanics that determine who controls the record, how causation and counterfactuals are proved, and therefore how liability and quantum are ultimately decided. In this sense, the symposium's most consequential insight may be that the next phase of ISDS reform will be shaped by the "infrastructure" layer: administrative record-making, early-warning and settlement pathways, and locally grounded expertise in valuation and damages.

The discussions therefore suggest a future of segmentation rather than substitution. ISDS is likely to remain a backstop, but increasingly surrounded by tighter admissibility filters, more disciplined procedure, and complementary tools, including mediation and consultation mechanisms, investment facilitation arrangements, ombuds-style channels, and state-to-state processes. At the same time, investment law's relationship with other fields of international law will continue to deepen. As speakers noted, tribunals already possess interpretive tools, especially systemic integration under the VCLT, to engage with environmental and human rights norms where applicable, while treaty drafting can clarify how that engagement should operate and what weight it should carry.

In conclusion, the "global voices from the South" presented here converge on a shared objective: not to abandon dispute settlement, but to redistribute agency through smarter consent design, fairer allocation of obligations, credible dispute prevention, and stronger technical capacity, so that outcomes are more predictable, legitimate, and publicly defensible. If ISDS is being rethought, it is being rethought in practical terms: who gets access, on what conditions, with what evidence, and with what institutional support. The reconfiguration underway is therefore less a dramatic rupture than a steady rebalancing, one that may ultimately reshape the system not by replacing it, but by changing how it functions in practice.

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