

The System of International Investment Dispute Settlement in Light of UNCITRAL Initiatives

Reyhaneh. Sadeghiani¹, Fatemeh. Fathpour^{2*}, Amirsaeed. Vakil³

¹ PhD Student, Department of Law, ST.C., Islamic Azad University, Tehran, Iran

² Department of Law, ST.C., Islamic Azad University, Tehran, Iran

³ Assistant Professor, Department of Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran

* Corresponding author email address: ffathpour@iau.ac.ir

Received: 2026-05-08

Revised: 2026-07-07

Accepted: 2026-07-15

Published: 2026-07-30

EDITOR:

Asgar Jafari

Associate Professor, Department of Psychology, Kashan University, Iran. Email: as_jafari@sbu.ac.ir

REVIEWER 1:

Asgar Jafari

Associate Professor, Department of Psychology, Kashan University, Iran. Email: as_jafari@sbu.ac.ir

REVIEWER 2:

Asgar Jafari

Associate Professor, Department of Psychology, Kashan University, Iran. Email: as_jafari@sbu.ac.ir

1. Round 1

1.1. Reviewer 1

Reviewer:

The Introduction states that “Arbitration became the dominant institutional mechanism for resolving these disputes because it offered a comparatively neutral forum outside domestic courts.” This proposition requires more analytical qualification. The manuscript should explain that the preference for international arbitration emerged not merely from perceived neutrality but also from the development of treaty-based consent, depoliticization of disputes, enforceability of awards, specialized adjudication, and concerns about the adequacy or independence of some domestic legal systems. The current wording risks presenting arbitration's emergence as a straightforward institutional choice rather than the product of historical, political, and legal developments. The author should revise this paragraph to differentiate between normative justifications advanced for ISDS and empirically demonstrated advantages.

In the paragraph beginning “The institutionalization of investment arbitration was significantly advanced by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States,” the discussion of ICSID is accurate but insufficiently differentiated from UNCITRAL arbitration. Since the article's core contribution concerns UNCITRAL initiatives, the author should explain at an early stage the institutional distinction between ICSID as an international organization administering disputes under a treaty-based framework and UNCITRAL as a body that develops procedural rules and reform instruments but does not itself function as an arbitral institution in the conventional sense. Without this clarification, readers may incorrectly perceive ICSID and UNCITRAL as parallel arbitral institutions. This distinction should also be maintained consistently throughout the article.

The Introduction identifies “legitimacy, transparency, consistency, costs, duration, arbitrator independence, regulatory autonomy, and the absence of a comprehensive appellate mechanism” as major criticisms of ISDS. This list is central to the

manuscript but is presented descriptively rather than through a structured analytical framework. The author should explain how these concerns are categorized within the UNCITRAL Working Group III reform process, particularly the distinction among concerns relating to consistency and correctness of outcomes, concerns regarding arbitrators and decision-makers, and concerns regarding cost and duration. Organizing the manuscript around the actual reform taxonomy would create a much stronger connection between the article's analytical structure and the institutional reform process that it claims to examine.

In the paragraph beginning “UNCITRAL arbitration has occupied an important position alongside institutional arbitration,” the manuscript correctly notes that UNCITRAL does not function as a permanent investment arbitration institution, but the discussion should be technically refined. The author should explain that UNCITRAL Arbitration Rules can be used in ad hoc proceedings while administrative support may be provided by institutions such as the Permanent Court of Arbitration or other appointing authorities. This is particularly important because the manuscript later discusses “UNCITRAL reform” in a manner that could be misconstrued as reform of an institution administering investment cases. The article should consistently distinguish UNCITRAL's norm-making and reform functions from case administration.

The second section states that “One of the principal strengths traditionally attributed to investment arbitration is neutrality.” This paragraph would be strengthened by acknowledging the contested nature of this proposition. Neutrality is frequently advanced as an advantage of arbitration, but the legitimacy debate partly arises because some States and commentators dispute whether appointment structures, repeat appointments, professional networks, and asymmetries between claimants and respondents actually produce institutional neutrality. The manuscript should therefore distinguish between perceived neutrality as a justification for arbitration and demonstrated institutional impartiality. This distinction would also provide a stronger transition to the later discussion of adjudicator independence under UNCITRAL reform.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The sentence “The contemporary investment regime must accordingly confront the question of how far treaty commitments constrain regulatory action and how tribunals should distinguish legitimate regulation from compensable interference with investor rights” raises one of the manuscript's most significant doctrinal issues, but the article does not subsequently develop a sufficiently precise legal framework for answering it. The author should distinguish among police powers doctrine, indirect expropriation, fair and equitable treatment, legitimate expectations, proportionality, and express treaty provisions preserving regulatory space. The article currently discusses “the right to regulate” largely as a policy concept. A stronger revision should demonstrate how regulatory autonomy operates doctrinally within investment treaty interpretation and how procedural reforms under UNCITRAL may or may not affect these substantive standards.

In the Introduction, the statement that “the decentralized nature of international investment adjudication can generate both flexibility and inconsistency” should be developed more carefully because inconsistency is one of the principal rationales for reform. The author should distinguish among inconsistent interpretations of identical treaty language, divergent outcomes based on materially different treaty provisions, inconsistent factual assessments, and legitimate jurisprudential evolution. Not every difference between arbitral awards constitutes systemic inconsistency. The revised manuscript should explain the criteria by which inconsistency becomes normatively problematic and should avoid treating diversity of reasoning as automatically equivalent to legal incoherence.

The final paragraph of the Introduction states that the study “adopts a descriptive-analytical legal methodology based on the examination of international investment dispute settlement mechanisms, institutional reform proposals, arbitral practice, and relevant scholarly literature.” This methodological statement is too general for an article of this scope. The author should specify the doctrinal sources analyzed, the temporal scope of the UNCITRAL reform materials considered, the criteria for selecting arbitral practice, and the method used to evaluate reform proposals. It should also be clarified whether the article conducts doctrinal legal analysis, institutional analysis, comparative analysis, or normative evaluation. At present, the methodology does

not explain how the study proceeds from description to its conclusions regarding legitimacy, institutionalization, or the desirability of hybrid reform.

In the second main section, the paragraph beginning “The international investment dispute settlement system developed in response to the distinctive risks associated with the movement of capital across national borders” offers a useful historical account but compresses several stages of legal development into a single narrative. The manuscript would benefit from a more precise distinction among diplomatic protection, mixed claims commissions, concession arbitration, the emergence of the ICSID Convention, bilateral investment treaties, and the expansion of direct treaty-based investor claims. Although subheadings are not required, the chronological progression should be made clearer within the prose. This would prevent the impression that contemporary treaty arbitration emerged directly from diplomatic protection without significant intermediate institutional developments.

The paragraph discussing consent to ICSID arbitration states that “Consent may arise through investment contracts, domestic legislation, bilateral investment treaties, multilateral agreements, or other legal instruments.” This important jurisdictional issue should be developed further because consent is the juridical foundation of investor–State arbitration. The manuscript should explain the distinction between a State's unilateral standing offer to arbitrate contained in legislation or a treaty and the investor's subsequent acceptance of that offer through initiation of proceedings. The author should also address the concepts of *ratione personae*, *ratione materiae*, *ratione temporis*, and consent *ratione voluntatis*, at least briefly, because they are essential to understanding why jurisdictional disputes occupy such a prominent place in investment arbitration.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.

Editor in Chief's decision: Accepted.