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Experts Discuss Emerging Trends In International Arbitration For 2026

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Commentary

Experts Discuss Emerging Trends In International Arbitration For 2026

Mealey's International Arbitration Report recently asked industry experts and leaders for their thoughts on the international arbitration landscape in 2026 and what types of disputes are on the rise.

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Mealey's: What types of international arbitration disputes are emerging, trending or becoming more common in 2026?

Popova: Global economic shocks and technological advancements are shaping international disputes. Three areas stand out: geopolitical disruption, energy transition, and the commercial deployment of artificial intelligence.

First, geopolitical disruption is driving a surge in high-value contract disputes, particularly in commodities and energy trading. The conflict in Iran and resulting disruptions in the Strait of Hormuz have triggered billions of dollars in disputes over non-delivery, reduced cargo volumes, and termination rights. Russia-related sanctions continue to generate claims over blocked payments, frozen assets, and curtailed gas deliveries, while tariff and export control measures—particularly for semiconductors and critical minerals—create disputes over price adjustment, force majeure, and hardship.

Second, the energy transition continues to drive both commercial and investment disputes. Retroactive changes to feed-in tariffs and subsidy regimes for renewable energies, particularly in Europe, continue to prompt claims. Newer projects—such as hydrogen supply chains, carbon capture and storage—see claims over construction delays and underperformance. Investors also continue to bring claims in response to fossil fuel phase-out measures (including bans on offshore drilling or fracking) and broader environmental regulation.

Third, artificial intelligence is becoming a direct source of commercial disputes. The use of proprietary data to train AI models, particularly in technology and life sciences, will be a source of disputes. In addition, AI-enabled systems generate claims where outputs are inaccurate or commercially damaging: algorithmic trading strategies producing significant losses, automated pricing tools mispricing goods at scale, or AI-driven operational systems causing supply failures. These disputes raise recurring issues around

performance standards, liability allocation for flawed outputs, and causation when decision-making processes are opaque.

For users of arbitration, these trends underscore the importance of contractual risk allocation as an investment protection tool.

Birt: Three categories of dispute are dominating international arbitration dockets in 2026, each driven by the collision of geopolitical volatility, regulatory intervention and rapid technological change.

Energy-Sector Disputes Tied To The Transition And To Geopolitics

The energy transition continues to generate a wave of complex arbitration. Disputes arising from large-scale renewables projects are increasing in both volume and sophistication. A recurring flashpoint is change-in-law risk: governments that offered generous subsidies to attract investment in green hydrogen or battery storage are now scaling back or restructuring those incentives, triggering claims under stabilisation clauses, legitimate expectations doctrines, and price-review mechanisms. EPC disputes on transition-related mega-projects — particularly in the Middle East, where timelines are aggressive and technology is often first-of-its-kind — are similarly on the rise again, frequently involving multi-contract structures that raise questions of joinder and consolidation. At the same time, geopolitical realignments are reshaping LNG trade flows, with diverted cargoes, destination-clause disputes and force majeure claims becoming increasingly common as buyers and sellers navigate competing sanctioned and non-sanctioned markets.

Trade-Disruption Disputes Arising From The U.S.–Iran Conflict

The escalation of the U.S.–Iran conflict in 2025–2026 is expected to produce a sharp uptick in arbitration across the shipping, aviation, insurance and commodities sectors. Vessel detentions, cargo stranding, and the triggering of sanctions compliance clauses in charter parties and sale contracts are generating claims at pace. Insurers are relying on war-risk and sanctions exclusions, with policyholders deciding to commence arbitration. For parties with Middle Eastern trade exposure, the practical challenge is acute: contracts concluded in good faith are being rendered unlawful or commercially impossible by the imposition of secondary sanctions, giving rise to frustration, illegality and hardship claims that tribunals must resolve against a fast-moving regulatory backdrop.

Digital Economy And AI-Related Disputes

Finally, the digital economy is producing its own distinct arbitration caseload. Data-centre construction disputes — driven by the extraordinary pace of hyperscaler expansion — are emerging as a significant sub-category of international construction arbitration. Beyond infrastructure, disputes over AI technology licensing, intellectual property ownership in AI-generated outputs, and alleged breaches of algorithmic-transparency or data-localisation obligations are reaching arbitral tribunals with increasing frequency, particularly where cross-border regulatory divergence creates compliance uncertainty for multinational technology deployments.

Dimitroff: Several trends are driving the international arbitration docket in 2026.

The first trend comes from a wave of disputes arising from the data center and AI infrastructure buildout. AI demand alone is driving roughly $1.6 trillion in computing infrastructure investment, and the disputes are following the money. They are clustering in several predictable areas: aggressive construction timelines, power purchase agreements (including novel co-location arrangements with nuclear and renewable generation), resource adequacy and grid interconnection failures, latency guarantees, and evolving data-localization regimes. Many of these are fueling a rise in high-value, multi-party commercial arbitrations, but the investor-state dimension is likely going to become increasingly important, particularly in Latin America and parts of EMEA, where regulatory frameworks are still being written.

Second, resource nationalism is reshaping investor-state arbitration once again. Driven by the energy transition and defense-sector demand for critical minerals, states are revising mining frameworks, expanding state participation, and in some cases expropriating assets outright. Investor-treaty claims are following close behind. The interesting doctrinal frontier is how tribunals will weigh treaty protections against expanded "national security" and "essential interests" defenses.

Third, the technology sector is being used to push arbitration's boundaries. Arbitration remains the preferred forum for resolving conflicts over digital assets, although the headline debate continues over the arbitrability of crypto-exchange terms of use. The real growth is in mass arbitrations, post-M&A tech claims, AI training-data disputes, and patent disputes migrating from parallel court litigation to single-forum arbitration. Institutions are also confronting AI inside the process itself, from AAA-ICDR's "AI Arbitrator" function to emerging guidance on confidentiality and data security.

Finally, there is a surge in trade and tariff-related disputes triggered by the second Trump administration's tariff regime. Cross-border supply contracts, long-term offtake arrangements, and construction agreements are being stress-tested by sudden cost increases, supply chain disruption, and delayed performance. Parties are reaching for force majeure, material adverse change, change-in-law, and impracticability arguments, and we are beginning to see bespoke "tariff" or "Trump majeure" clauses written into new agreements. The doctrinal question tribunals will work out this year is whether tariff volatility constitutes a foreseeable commercial risk or an extraordinary event excusing performance. Significant case law should develop on that point.

Each of these trends presents the international practitioner with new strategic considerations: what claims can be brought, before what forum, and against what parties. 2026 should prove to be one of the more substantively interesting years in the practice.

Barnes: As a damages expert, to me, the more interesting question is not the trends dispute types *per se,* but rather the implications of such trends for the quantum phase of an arbitration. In this respect, one thing stands out—**uncertainty** (or **risk**) is no longer simply a feature of the world, it is the dominant theme—and this has potentially major ramifications for the work of a quantum expert.

Even in a world where uncertainty was primarily project-specific, dealing with it from a quantum perspective was not always straightforward. To see this, witness the perennial debate—exemplified by the ruling in *Gold Reserve v. Venezuela*—as to whether it is appropriate to account for expropriation risk by adding a country risk premium to the discount rate used in a discounted cash flow (DCF) analysis. But in such a world, constructing a counterfactual by stripping out the impact of the alleged wrongdoing was relatively—and I emphasise the word "relatively"—straightforward.

In a world where unanticipated macroeconomic shocks seem to now be the rule rather than the exception, this is no longer the case. Events such as the war in Ukraine, the conflict in Iran, and the "on-again, off-again" tariffs implemented by the U.S. have cemented geopolitics as a central issue to be considered in many cross-border investment disputes, and distinguishing the impact of the alleged wrongdoing of the impact from these concurrent shocks can be challenging in the extreme. The need to account for these shocks also influences the valuation approaches a damages expert will employ. For example, is it even feasible to generate a reliable set of projections of future cash flows—a key input to any DCF analysis—for a business that is materially impacted by one or more of the aforementioned shocks?

Clearly, a simple extrapolation of historical data to predict future performance is unlikely to be the answer, and while presenting a range of clearly articulated scenarios (rather than a single "base-case") may assist a tribunal, constructing such scenarios will be far from a mechanical exercise.

To be clear, the suggestion is not that DCF analysis should be abandoned. Rather, what will increasingly be needed is a more sophisticated implementation of such analysis, an acknowledgement of its limitations, and the use of market evidence to stress-test the outcomes.

Haden: Though it is difficult to know with certainty the exact trends for types of international arbitration emerging in 2026, given the confidential nature of many of those proceedings, it seems likely that the below categories of disputes will be frequently decided in those proceedings:

Tariff And Trade Disputes

The flagship plank of President Trump's economic agenda has been his implementation of tariffs on a variety of countries, often at extremely high rates. Those tariffs were often met with reciprocal measures imposed by other countries on U.S. goods, raising the costs of foreign trade across the world. Those tariffs

have downstream effects on importers, intermediaries, and the consumer, causing prices to increase and supplies to be more limited. These issues, affecting a large swath of the global supply chain, will inevitably lead to increased arbitrations between parties seeking to recoup losses or force counterparties to honor contracts at no-longer-favorable terms. Force majeure clauses and other contractual provisions will undergo a new round of legal scrutiny by panels as parties seek to use (or avoid) them in tariff-related disputes.

Energy Disputes

Energy-related disputes will continue to be a central focus of arbitral proceedings globally. Energy supply, projects involving renewable energy, and resource-related disputes will continue to occupy arbitral tribunals, particularly given the increases in costs for obtaining, shipping and importing energy and energy-related products. PWC [PricewaterhouseCoopers] noted in a report released during Paris Arbitration Week earlier this year that the energy sector was the largest driver of international arbitration cases, with utilities and oil and gas sectors together comprising over 40% of surveyed disputes. The U.S. Supreme Court's disposition of the pending case before it concerning Spain's Energy Charter Treaty arguments may impact investment into renewable energy projects both in Europe and worldwide.

Technology And Data Security

Artificial intelligence ("AI") continues to transform a variety of industries, and the international arbitration community is no different. Panels will be confronting both substantive disputes about AI, data security, and other technology-related issues, particularly relating to licensing, cybersecurity and the protection of personal information. Similarly, arbitral tribunals will need to continue determining the proper role (and corresponding limitations on the use) of AI in proceedings.

Willis, Robbins and Witt: Like the world around it, international arbitration is rapidly evolving, driven by geopolitical disorder, technological revolution and evolving regulatory landscapes. Here is a snapshot of what practitioners should be watching.

AI As An Economic Force

As artificial intelligence reshapes everything it touches, litigation necessarily springs up in its wake. Cross-border AI supply chain failures, data localization rules, and nascent AI safety regulations may spur all manner of international disputes. Perhaps the clearest example is the global race to build data centers. Many U.S.-based companies are investing billions, if not trillions, of dollars into new facilities away from home, such as in Spain and the United Arab Emirates. And where investment goes, litigation follows. Expect these shifting regulatory and political landscapes—and the intense competition to stake out new territory, including the related land and water rights issues—to drive disputes.

The Energy Transition And ESG

The renewable energy transition continues to be fertile ground for international arbitration as investors clash with governments over shifting policy incentives and canceled projects. ESG regulations are becoming more stringent in some jurisdictions but less so in others, leaving investors and entities straddling uneven ground and facing material compliance exposure.

Geopolitical Upheaval

2026 has been a year of turbulent change and disruption across the geopolitical landscape. The imposition (and retraction) of sky-high tariffs by the U.S. has interrupted trade and strained commercial relationships globally. Armed conflicts, sanctions regimes, the rise of nationalism, resistance to resource extraction, and defense sector expansion are all compounding the volume and complexity of both commercial and investor-state claims.

Sports As Big Business

The business of sports—from the World Cup to the Olympics to e-sports—has experienced unprecedented growth in recent years. Big money precipitates large-scale and high-stakes arbitration, such as the Premier League's arbitration to enforce its profitability and sustainability rules. 2026 has seen increasing disputes arise over commercial sponsorship arrangements, financing and shareholder rights, and broadcasting and media roles.

The common throughline across these trends: arbitration remains the forum of choice for resolving high-stakes and cross-border disputes.

Sabbath and Richman: Geopolitical tensions and an increase in armed conflicts in 2026 continue

to shape international arbitration and have led to an increase in disputes involving (1) force majeure provisions, (2) sanctions, and (3) energy projects and regulations.

Force Majeure Disputes

- An estimated two billion people currently live in fragile conflict zones, and that number continues to grow.

- As a result, there has been an increase in force majeure claims brought by contractors and suppliers facing delays, increased costs, heightened security risks, impracticality, and other issues. Tribunals must determine if such delays and increased costs due to wartime conditions are covered by force majeure clauses.

- In some instances, the triggering event may not be the conflict itself, but rather a downstream consequence of the conflict.

- For example, the ongoing U.S.-Iran conflict has impacted numerous Middle East construction projects, including through procurement constraints and cash flow disruption tied to the closure of the Hormuz Strait.

Sanctions Disputes

- As the use of international sanctions continues to grow, the number of sanctions-related disputes continues to increase, in both investor-state and commercial arbitrations.

- Sanctions clauses are increasingly included in commercial contracts, leading to disputes regarding the application of such clauses.

- In addition, trade sanction disputes have also become common as the volatile tariff landscape continues to evolve.

Energy Disputes

- This year continues to see design, defect, and delay claims arising from a global increase in renewable and transitional energy projects.

- Due to this transition to more renewable energy forms, this sector will likely notice a growth in decommissioning disputes over ageing fossil fuel assets, especially offshore oil and gas facilities.

- Regulatory changes, environmental issues, pricing and competition for land, and grid infrastructure projects relating to the energy transition will likely lead to disputes.

- An advisory opinion issued by the International Court of Justice in July 2025 requires member countries to protect the climate and prevent environmental damage from greenhouse gas emissions, which will likely further contribute to a rise in disputes this year.

While the current geopolitical climate and other issues have led to additional disputes, recent changes to the International Chamber of Commerce (ICC) Rules (applicable to arbitrations commenced on or after 1 June 2026) may allow certain disputes to be resolved more expeditiously than in the past. Under the new ICC Rules, parties can agree to use a highly expedited procedure to resolve their disputes in a shorter timeframe. Moreover, tribunals are now authorized to dismiss unmeritorious claims, issues, or defenses at an early stage of proceedings.

Abrahamson: A trend in international arbitration is the problem of the empty seat across the table: a responding party who either refuses to participate or withdraws during the process. Earlier this year, ICC President Claudia Salomon noted that almost 17% of ICC final awards issued between 2020 and 2025 involved a nonparticipating party.[1] This trend is expected to grow across international arbitration institutions. Here are some suggestions for navigating a case with an empty seat.

Be Prepared To Advance All Fees

Article 35.3 of the JAMS International Arbitration Rules permits a party to advance the other side's costs to allow the case to proceed. To obtain relief in an international arbitration, when faced with an empty seat, the participating party will have to advance all costs.

Be Prepared To Prove The Case

There are no default judgments in international arbitration. JAMS Rules, like those of other institutions, make it clear that a party cannot rely upon

the absence of the other side to obtain a judgment in their favor. JAMS Article 27.2 precludes an arbitrator from making a "final award upon the default of a party without a determination made upon the submission of proof by the non-defaulting party of the validity and amount of that party's claim." What sets the JAMS rules apart from those of the ICC and other institutions is Article 27.3, which provides "[i]f a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules . . . the tribunal may draw the inferences that it considers appropriate."

Notice Is Key

From the arbitrator's perspective, the tribunal can "fix the date, time and place of any hearings [including virtual hearings]," pursuant to Article 23.2, as long as "reasonable notice" is given to all parties, including a party who refuses to participate. Article 27, like those of other institutions, empowers a tribunal to "proceed with the arbitration and make an award" if "any party fails to avail itself of the opportunity to present its case." Whether they are absent from the outset or withdraw along the way, documenting adequate notice has been given to the non-participating party of all conferences and hearings is the best way to protect an award, as it demonstrates the non-participating party was afforded an equal right to be heard at each stage of the proceeding.

Endnotes for Abrahamson

1. The author acted as counsel in one of those reported ICC awards.

Fernández: Over the past year, the United States has increasingly deployed trade policy and sanctions as instruments of economic statecraft, with immediate and often disruptive consequences for cross-border commercial relationships. When coupled with recent U.S. and allied foreign policy actions in the Middle East, these measures have resulted in a growing wave of international arbitrations in which the central issues arise from the cascading effects of state action on the ability of market participants to perform contractual obligations across jurisdictions.

As an initial matter, the increasingly interventionist U.S. trade policy and geopolitical developments in the Middle East have given rise to a growing body of arbitrations centered on price volatility and supply chain disruption. Parties are more frequently invoking price adjustment mechanisms, hardship clauses, and renegotiation frameworks to address sharp cost increases and market dislocations driven by tariffs, export controls, and regional instability—including disruptions to shipping routes and insurance markets linked to tensions affecting the Strait of Hormuz. These disputes often require tribunals to determine whether such policy-driven shocks fall within the risks contractually assumed by the parties or instead justify rebalancing or excusing performance.

In parallel, the sustained expansion of U.S. and EU sanctions regimes has, in many instances, rendered contractual performance illegal or commercially impracticable, while simultaneously affecting agreed payment and settlement mechanisms. The broad extraterritorial reach of sanctions, combined with heightened enforcement risk and financial institutions' de-risking practices, has generated a steady pipeline of arbitral disputes, particularly in commodities and energy markets. These disputes require tribunals to grapple with questions of contractual allocation of regulatory risk, often in the context of force majeure, illegality, frustration, and hardship defenses.

Taken together, the convergence of trade policy, sanctions, and military and geopolitical developments as tools of statecraft has blurred the boundary between political and commercial risk. In that regard, the ongoing regulatory and geopolitical volatility—and its downstream impact on performance, payment, and pricing—has become a defining feature of the contemporary arbitration landscape and is likely to remain a central driver of disputes at least in the near term. ■

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