„Preliminary Study on the Feasibility and Design of a Specialized Arbitration Mechanism for Sustainability-Related Commercial Disputes“

Submitted by
LawCom.Institute GmbH
16th of May 2025

LAWCOM
INSTITUTE

LawCom.Institute GmbH
Kattrepelsbrücke 1, 20095 Hamburg
info@lawcom.institute

Preliminary Study on the Feasibility and Design of a Specialized Arbitration Mechanism for Sustainability-Related Commercial Disputes

Customer:
Chamber of Commerce in Hamburg ("Handelskammer Hamburg")
Adolphsplatz 1, 20457 Hamburg

Contractor:
LawCom Institute GmbH
Kattrepelsbrücke 1, 20457 Hamburg

Scope of Assignment:
Drafting of a preliminary study on the feasibility and design of an arbitration mechanism for sustainability-related commercial disputes:

Basic Assumptions

Business activities have an increasingly strong direct and indirect impact on the social, ecological, and economic development. As a result, we find increasing legal regulation to address the more complex links between economic activity and sustainable development. For example, the EU obliges companies to integrate sustainability criteria into their corporate practices with sustainability reporting, the Supply Chain Act or the EU Taxonomy. Companies must ensure compliance with these criteria in their B2B or B2G contracts. An increase in sustainability-related disputes can therefore be expected.

Against this backdrop and based on the assumption that corporate activities and business investments can be both part of the solution and part of the problem – the study examines the feasibility and the extent to which a specialized arbitration mechanism for sustainability-related disputes can be useful. Assuming that legal certainty is crucial to strengthen the positive impact of business activity on sustainability, a reliable and competent framework could provide the necessary security and legal resilience for companies' investments. If companies have a legitimate expectation that their efforts will be rewarded in the event of a dispute, compliance with international and national sustainability standards, whether legally binding or as a normative guideline in the sense of soft law and codes of conduct, will be encouraged. A dispute resolution mechanism specializing in sustainability could offer such legal certainty and assure companies in their efforts to define demanding sustainability targets.

This target perfectly matches with the goals of the newly established *Hamburg Sustainability Conference (HSC)* and its efforts to address the topic of sustainability comprehensively and with new perspectives for international cooperation. As the HSC aims to become a lasting platform that seeks to strengthen cooperation between public

and private actors and to also create stable conditions for investment in sustainability, a reliable mechanism for conflict resolution could be an important building block for achieving global sustainable transformation.

Purpose of the Preliminary Study

The purpose of this preliminary study is to determine the need, suitability, and effectiveness of an arbitral dispute resolution mechanism specializing in sustainability issues. In particular, the following questions shall be addressed:

- To what extent are existing dispute resolution mechanisms sufficient to address the challenges raised above?

- Which arbitral dispute resolution mechanisms specializing in sustainability issues already exist at the international level?

- What legal, economic, and social requirements would such an arbitral dispute resolution mechanism have to meet?

Executive Summary

Business plays an important role in the implementation of sustainability goals. The economy is part of the problem, but also an indispensable part of the solution. Accordingly, one of the goals of the HSC is to focus more strongly on the role of the economy. Against this background, the preliminary study deals with the question of how – in the event of a dispute over the contract – dispute resolution should be set up, what options for action are available for this purpose to enable efficient and effective dispute resolution in the light of the goals of sustainability or, against this background, to make it easier in the knowledge of the existence of effective dispute resolution and thus legal certainty: to engage economically in this area.

Having said this, the following results can be noted:

1. Compliance with sustainability criteria is increasingly becoming a central component of responsible corporate governance. Companies must ensure compliance with these sustainability criteria in their B2B or B2G contracts.

2. An increase in ESG / SDG-related disputes can therefore be expected. To achieve the greatest possible legal certainty for their investments as regards contractual compliance with sustainability criteria, businesses must be able to rely on expert dispute resolution mechanisms.

3. The preliminary study was based on the following definition of sustainability disputes:
   A sustainability dispute is any commercial or legal disagreement that arises from the actual or alleged failure to uphold environmental, social, or economic obligations. These disputes typically involve actions or omissions that compromise ecological integrity, social justice, or responsible economic conduct, particularly where such standards are expressly included in contractual terms, corporate governance frameworks, regulatory regimes, or international sustainability norms. A dispute may be classified as a sustainability-related dispute if it meets one or more of the following criteria:
   - Environmental Impact
   - Social and Human Rights Dimensions
   - ESG and Corporate Accountability
   - Sustainable Resource Use
   - Undermining of Global Sustainability Goals

4. Regarding the resulting question of whether the current design of arbitration proceedings for cases in the area of ESG and sustainability is sufficient to arrive at convincing decisions that take into account the interests of sustainability, the discussions, relevant arbitration rules, and proposals, as well as interviews

conducted in this regard were evaluated. According to this, the following points of criticism (a) and the following proposals (b) can essentially be recorded:

a) Criticisms
   - Power imbalance and access to justice
   - Lack of Transparency and Legitimacy
   - Practical Limitations

   In sum, the use of arbitration in sustainability-related disputes reveals a deeper acceptance problem within the global business community as well as civil society.

b) Proposed elements in arbitration rules in regard of ESG and Sustainability-related disputes
   - Transparency
   - Party-Appointed Experts
   - Appointing independent experts
   - Emergency arbitrator mechanism
   - Third-party participation (joinder)
   - Amicus Curiae (Amici Clause)

5. A recurring concern is the limited expertise of arbitrators and experts in complex sustainability matters, including environmental law, human rights, and social standards. Establishing a dedicated training center for arbitrators would directly address this gap, equipping them with the necessary knowledge of international frameworks. It could therefore also be advisable to combine such training, which is tailored to arbitrators, with certification. It would, among other things, underline the acceptance of arbitration in sustainability disputes.
   A list of qualified Arbitrators and Experts for the various ESG and Sustainability-related cases would complete this.

6. Based on this, the establishment of an Institute for Sustainability Arbitration (ISA) is proposed. Such an institution could consist of five pillars:
   - Drafting specific Arbitration Rules for sustainability-related disputes
   - Capacity-building of arbitrators and experts with specialized ESG and Sustainability Expertise through Training and Certification
   - Creation of a list of qualified Arbitrators and experts for the various ESG and sustainability related disputes
   - Research and Policy Advice
   - Stakeholder Engagement

7. It is proposed that the Institute be linked to the Hamburg International Arbitration Center (HIAC) and thus to the Hamburg Chamber of Commerce (a) and attached to the HSC (b):

   a) HIAC and Chamber of Commerce Hamburg
      - The Institute would be embedded in an environment of internationally oriented arbitration organizations: Asian European Arbitration Centre (ASEAC), European Latinamerican Arbitration Center (ELArb), the African German Arbitration Cooperation (AFGAC), and the traditional commodity arbitration courts, all part of HIAC. This would enable cooperation with these arbitral tribunals, which are active in countries where sustainability issues are important in connection with contracts.
      - The Institute would benefit from the good reputation of the Hamburg Chamber of Commerce as a corporation under public law. And the Chamber stands with its own claim for the importance of sustainable economic action for the economy.

   b) HSC

      A connection of the Institute to the HSC could make an important contribution to the achievement of the goals of the conference, which is to promote and stimulate the commitment of the economy to achieve sustainability goals. Legal Certainty for contracts plays an important role for business decisions. Here, an Institute for Sustainability Arbitration, which is also (co-)located at the conference, could gain special significance given its importance for the quality assurance of arbitration proceedings in the field of ESG and sustainability. And the conference could stimulate agreements between states, that they commit themselves to implement standards for Arbitration procedures regarding the requirements for sustainability-related cases in contracts where they are part of. This would be important for establishing new approaches in arbitration procedures.

8. It is conceivable that, after appropriate further conception of the suggested Institute, the Institute will be presented at the third HSC as a supplementary module of the conference to strengthen economic commitment in the field of sustainability.

1. Introduction

This study explores the feasibility and potential added value of establishing a dedicated arbitral sustainability dispute resolution mechanism for commercial disputes arising in the context of ESG (environmental, social, and governance) and sustainability-related business activities. As sustainability becomes a central organising principle in global commerce — driven by regulatory changes, voluntary corporate commitments, and increasing investor pressure, contractual arrangements are evolving to reflect sustainability-related performance indicators such as climate mitigation targets and broader ESG criteria. This evolution has created a new class of disputes, where the legal and factual questions go beyond traditional commercial considerations and enter the complex terrain of environmental and social responsibility, technical standards, or climate-related risks.

The core aim of this study is to assess whether existing arbitral frameworks can resolve these new types of disputes effectively and consistently, or whether a dedicated mechanism is required to fill emerging procedural and normative gaps. Specifically, the study is concerned with private commercial relations, meaning that the disputes are between private parties engaged in contractual relationships, such as supply agreements, technology transfer arrangements, construction and engineering contracts, and sustainability-linked service contracts. It does not address investor–state arbitration or public international law forums. The focus is squarely on business-to-business (B2B) relationships in which ESG-related issues such as climate change, green technology, or environmental and social performance indicators are contractually embedded, either explicitly or implicitly.

Firstly, the study sets the scene by generally highlighting the increasing number and diversity of sustainability-linked commercial disputes, and the resulting demand for legal certainty.[1] As environmental, social, or human-rights centred obligations become financially material, businesses require dispute resolution mechanisms that are both technically capable and commercially reliable.

Secondly, to incorporate further perspectives, the study provides an analysis of various points of criticism that arise in regard of the specific properties of private arbitration, both from the perspective of companies as well as from the position of civil society actors.

Thirdly, the study undertakes an analysis of existing frameworks that are relevant in this context. This includes a review of current arbitral rules and institutional approaches that have been developed to address ESG-related commercial

[1] International Chamber of Commerce (ICC). ICC Dispute Resolution 2022 Statistics, Paris: ICC 2023.; Arbitration of ESG Disputes: Opportunities and Challenges", Global Arbitration Review, 2022, London; Law Business Research, 2022. Available at: https://globalarbitrationreview.com/review/the-european-arbitration-review/2025/article/arbitrating-contractual-disputes-over-corporate-sustainability

disputes. By examining these frameworks, the study seeks to identify best practices, procedural innovations, and potential limitations in the way current mechanisms address the challenges.

Additionally, the study is based on semi-structured interviews with selected interlocutors from business, academia and law firms to substantiate the resulting recommendations. The arguments brought forward provide important insights from the perspective of stakeholders.

The study finally builds on the empirical findings to reflect on the possible institutional design, functions, and challenges of a sustainability-specific arbitral dispute resolution mechanism with attention to legitimacy, efficiency, and sector-specific expertise. It concludes, that, for the time being, an Institute closely linked to an arbitral dispute resolution mechanism and focused on upskilling arbitrators as well as designing new rules for sustainability-related cases would best suit current needs.

2. Scope of the study

The dynamic in the field of ESG responsibilities and sustainability demands unfolds in many ways: through direct legal obligations arising from international legal instruments – for example European directives – or national legislation, through indirect market incentives such as the risk of reputational damage when non-compliance is being detected or through the standardization of sustainability criteria via soft law norms in international agreements – to name just a few. In many aspects, ESG and sustainability standards have become important indicators for investors to value the status and attractiviteness of a company. Compliance with those standards can give companies a competitive advantage, when raising capital and participating in tenders with high corporate responsibility requirements.

The study addresses disputes arising in commercial contexts, encompassing both private contractual relationships and cases involving state-owned enterprises (SOEs), provided these disputes relate to commercial activities rather than investor-state dispute settlement (ISDS) mechanisms or treaty-based claims. The inclusion of state-owned enterprises reflects their expanding commercial role in regional and international markets, particularly in sectors such as infrastructure, energy, and extractives.

This study focuses on the following propositions:

A. Empirical Starting Points

As the global shift towards sustainable development accelerates, legal systems and dispute resolution mechanisms are increasingly being drawn into the complex landscape of ESG-related claims, among others. This transformation is not merely normative — it has materialized in a growing number of legal disputes tied to sustainability goals, environmental regulations, and green investment projects. The volume and complexity of these disputes are expanding in parallel with the rise of sustainability-linked finance, clean energy transitions, and climate accountability mechanisms. For investors, developers, and states alike, legal certainty is becoming a cornerstone of corporate governance, in particular as regards climate-aligned decision-making.[2]

Across multiple sectors — including energy, construction, finance, agriculture, and infrastructure — parties are encountering new sources of conflicts related to environmental obligations, compliance with evolving climate regulations, and the technical execution of sustainability initiatives. Disputes often emerge where contracts are closely tied to performance benchmarks such as emission reductions, renewable energy outputs, or adherence to national and international climate targets. In other instances, disputes arise indirectly: for example, when regulatory changes — such as the introduction of carbon pricing, withdrawal of subsidies, or the tightening of environmental standards — render a project less viable or lead to claims of breach, frustration, or force majeure.[3]

A growing category of disputes involves projects explicitly designed to support climate mitigation or adaptation efforts.[4] Examples include renewable energy installations, sustainable infrastructure funded through climate finance mechanisms, or carbon offset and emissions trading arrangements. These projects are frequently structured through public-private partnerships or rely on multi-jurisdictional agreements, which adds to the legal complexity when performance is contested. A common area of dispute concerns the failure of such projects to meet environmental or efficiency targets, especially when linked to disbursement of funds or continuation of contractual obligations.

Equally important are disputes that arise from investments affected by regulatory shifts, even when the original purpose of the contract was not i.e., climate-

[2] Greenwood,Lucy, The Canary Is Dead: Arbitration and Climate Change', in Maxi Scherer (ed), Journal of International Arbitration, (Kluwer Law International; Kluwer Law International 2021, Volume 38 Issue 3) pp. 316.
[3] Corbett, Jessica M. Resolving Environmental Disputes in International Arbitration, 21 Am. U. Int'l L. Rev. 215 (2005).
[4] Gouiffès, Laurent &, Melissa Ordonez. Climate change in international arbitration, the next big thing?, Journal of Energy & Natural Resources Law,40, no. 2, (2022): 203-224, pp. 212

focused.[5] For example, fossil fuel infrastructure projects may be challenged following new climate legislation or decarbonization strategies, leading to claims for compensation or breach of legitimate expectations. Similarly, supply chain and trade-related disputes are increasingly incorporating sustainability clauses, with parties disagreeing over ESG compliance, due diligence standards, or reporting obligations.

There are also emerging legal tensions tied to financial instruments, such as green bonds or sustainability-linked loans, where performance is measured against predefined environmental or social targets.[6] Failure to meet these targets — or disputes over how they are defined and measured — can trigger conflicts involving investors, regulators, and project developers. As financial markets place more weight on climate risk and ESG metrics, the stakes of such disputes are expected to grow.

Hence, empirical evidence from arbitration practice points to an increase in the number and range of disputes that intersect with sustainability goals. This trend is reinforced by recent case law in contractual arbitration involving climate finance, environmental damage, and regulatory change.[7]

At the same time, legal uncertainty remains a key concern. Many jurisdictions lack a consistent or specialized framework for resolving disputes that involve technical climate data, cross-border obligations, or fast-evolving environmental standards.[8] In this context, access to dispute resolution mechanisms that offer both, subject-matter expertise and procedural flexibility, is essential.[9]

To give an example: The Bangladesh Accord arbitrations are widely regarded as a landmark in business and human rights dispute resolution, demonstrating that arbitration, when equipped with appropriate procedural safeguards – can play a vital role in enforcing sustainability commitments and providing access to justice. The Bangladesh Accord on Fire and Building Safety in Bangladesh, following the 2013 Rana Plaza disaster, was established as a legally binding agreement between global fashion brands and labor organizations and includes a dispute resolution mechanism that relies on arbitration to ensure enforceability of safety commitments. The cases initiated under the Accord resulted in tangible outcomes: one company agreed to implement remedial safety measures, while another paid financial compensation. As such, affected workers and labor organizations were provided with a realistic path to remedy – something that would

[5] Gouiffès & Ordonez (2022), pp. 212.

[6] Gouiffès & Ordonez (2022), pp. 212.

[7] International Chamber of Commerce (ICC). ICC Commission report (2019), Resolving Climate Change Related Disputes through Arbitration and ADR, para 3.9

[8] Schmidt-Ahrendts, Nils. Arbitration of Environmental Disputes, 27 J. Int'l Arb. 569 (2010).

[9] D. Grierson, Jacob & Annet van Hooft. Arbitration in Complex Environmental Disputes, 23 Arb. Int'l 345 (2007).

have been difficult to achieve through litigation in national courts or through voluntary mechanisms.[10]

Even though the Bangladesh Accord falls short of procedural demands that have already become widely accepted, it shows that effective dispute resolution can ensure accountability and support the implementation of complex sustainability projects. For private actors, a predictable legal environment seems critical to the viability of long-term sustainable investments.

B. Investment arbitration as an additional driver for innovation

Although this report is grounded in the study of commercial arbitration, a brief examination of investor-state dispute resolution (ISDS) seems appropriate to situate the current debates around arbitration in their full legal and political context and to gain better insight on possible reform options.

Despite sharing procedural features, such as the use of arbitrators, the flexibility of proceedings, and the enforceability of awards, — ISDS diverges significantly in terms of public law implications and systemic consequences. Most notably, ISDS tribunals often sit in judgement over state regulatory actions, with consequences that can directly affect domestic public policy in areas such as climate action, environmental protection, public health, and financial regulation.

However, a variety of discussions have taken place in connection with investor-state disputes, especially regarding the design of arbitration proceedings. There have been repeated calls for reforms, especially of the procedure. These include the demand for transparency as stipulated in the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration and the Mauritius Convention, the involvement of third parties, the integration of international standards as well as the handling of public goods such as air, water, and soil. In view of some parallels, especially in the context of sustainability, it is useful to include these reforms and reform proposals from the area of investor-state disputes in the considerations of this study.

[10] IndustriALL Global Union v. Respondent, 2016-36; 2016-37 PCA Case Repository (Perm. Ct. Arb. 2016). More information is available at Bangladesh Accord Arbitrations, PERMANENT CT. OF ARB., https://pca-cpa.org/en/cases/152 .

C. Definition of Sustainability-Related Commercial Disputes

Assuming a significant increase in sustainability-related disputes and for the sake of identifying possible gaps in the handling of cases to date, weaknesses in the system, and the need for reforms, it is necessary to define the relevant criteria of these disputes. Insofar, empirical evidence of the study is informed by a review of commercial arbitration cases involving green technology administered by the Stockholm Chamber of Commerce (SCC) between 1 January 2019 and 1 October 2022.[11]

However, given the interdisciplinary and often overlapping nature of sustainability concerns, the definition of a sustainability-related dispute needs a broader approach. The best working definition we could arrive at is as follows:

A sustainability dispute is any commercial or legal disagreement that arises from the actual or alleged failure to uphold environmental, social, or economic obligations. These disputes typically involve actions or omissions that compromise ecological integrity, social justice, or responsible economic conduct, particularly where such standards are expressly included in contractual terms, corporate governance frameworks, regulatory regimes, or international sustainability norms.

To provide clarity and consistency in application, a dispute may be classified as a sustainability-related dispute if it meets one or more of the following criteria[12]:

1. **Environmental Impact**: The matter concerns pollution, ecosystem degradation, resource depletion, or other environmental harms with measurable consequences for sustainability.

2. **Social and Human Rights Dimensions**: The issue implicates the rights of communities, including access to a healthy environment, labour rights, indigenous land claims, or equitable resource use.

[11] Stockholm Chamber of Commerce. Green Technology Disputes at the SCC Arbitration Institute, November 2022. Available at: https://sccarbitrationinstitute.se/wp-content/uploads/2024/12/green-technology-disputes.pdf

[12] Norton Rose Fulbright. (2023). What are climate change and sustainability disputes? Norton Rose Fulbright. https://www.nortonrosefulbright.com/de-de/wissen/publications/9dd6b170/what-are-climate-change-and-sustainability-disputes; ICC Task Force Report & Stockholm Chamber of Commerce, Green Technology Disputes at the SCC Arbitration Institute, November 2022. https://sccarbitrationinstitute.se/wp-content/uploads/2024/12/green-technology-disputes.pdf

3. **ESG and Corporate Accountability**: The dispute involves alleged breaches of Environmental, Social, and Governance (ESG) obligations or sustainability-linked contractual clauses and corporate disclosure duties.
4. **Sustainable Resource Use**: The conflict arises from the overuse, mismanagement, or unsustainable exploitation of natural resources, with implications for long-term ecological balance or economic stability**.**
5. **Undermining of Global Sustainability Goals**: The conduct in question materially frustrates progress toward the Sustainable Development Goals (SDGs), especially those linked to climate action, clean energy, life below water, life on land, or responsible production and consumption.

Together, these trends point to a growing demand for institutions and frameworks capable of managing the distinct characteristics of sustainability-related disputes. The study is therefore focused on the practical needs of businesses seeking efficient, transparent, and sustainable mechanisms for resolving complex commercial disputes, while considering the special requirements of sustainability at the same time. At its core, it raises the question of whether a specialized sustainability-related arbitral dispute resolution mechanism or an Institute for Sustainability Arbitration could meet those needs.

3. Fundamental Critiques of Sustainability-Related Arbitration

At its core, international commercial arbitration is grounded in principles of party autonomy, procedural flexibility, and neutrality. Parties retain significant control over the arbitral process, including the choice of arbitrators, procedural rules, seat of arbitration, and governing law. These features provide a neutral forum, free from the potential bias or inefficiencies of national courts, and enable parties to resolve disputes efficiently and confidentially.

The legal and institutional foundations of international commercial arbitration are the result of nearly a century of progressive development. From the Geneva instruments of the 1920s to the New York Convention, the UNCITRAL Model Law, and the establishment of global arbitral institutions, each layer of the system has enhanced the legitimacy, efficiency, and enforceability of arbitration. Together, these frameworks enable businesses to engage in international trade with confidence, knowing that a robust mechanism exists to resolve disputes impartially, effectively, and in a manner aligned with commercial needs.

However, the global arbitration landscape is undergoing a period of profound transformation. As sustainability becomes a defining principle in international

commerce, investment, and regulation, traditional arbitration mechanisms are increasingly confronted with disputes that are not only more numerous, but also more complex and technically demanding.

Empirical evidence from arbitral institutions shows that disputes are emerging not only from explicitly "green" projects, but also from conventional business activities affected by new sustainability regulations.[13] For example, fossil fuel infrastructure projects have faced arbitration claims following the introduction of decarbonization policies, while supply chain contracts are increasingly litigated over ESG compliance and reporting obligations.[14]

For businesses, the financial stakes of sustainability-linked disputes are significant. Unresolved conflicts can result in project delays, loss of investment, reputational harm, and regulatory penalties. As sustainability obligations become financially material, driven by regulations such as the EU Green Deal and national due diligence laws – companies increasingly require dispute resolution mechanisms that offer both: legal certainty and technical competence.[15]

Although the need for safe dispute resolution is increasing, arbitration — long favoured for resolving cross-border commercial conflicts — faces scepticism when proposed as a mechanism for specifically resolving sustainability-related claims. Not only do businesses remain cautious, and in many cases reluctant, to adopt arbitration for disputes touching on public interest values, due in part to concerns about transparency, legitimacy, enforceability, and reputational risk.

One core reason for the hesitation, especially from civil society, lies in the private nature of arbitration. Traditionally designed for commercial parties to resolve their disputes confidentially and efficiently, arbitration – in particular investor-state arbitration – has often been criticized for lacking the transparency and inclusiveness necessary in disputes with public dimensions.

In the following, this study will take a closer look at selected points of criticism, also to show the scope and possibilities in which part of this criticism can be addressed or where efforts have already been made to bridge the gap between business interests in efficiency and civil society demands in accountability. This section therefore outlines why a new, sustainability-focused approach in arbitration is both necessary and timely.

[13] Freshfields Bruckhaus Deringer. ESG in Arbitration: The Role of International Arbitration in Resolving ESG Disputes. 2022.
[14] OECD. (n.d.). Responsible Business Conduct. OECD. https://www.oecd.org/en/topics/policy-issues/responsible-business-conduct.htmlh
[15] European Commission. (n.d.). European Green Deal. European Commission. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_enhttps://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en

Risks of Undermining Sustainability Standards and Weakening International Norms

A central critique of private arbitration in cases that also affect public goods concerns the absence of uniform, binding substantive norms governing corporate conduct in environmental, social, and human rights matters. Arbitration, by its nature, focuses primarily on procedural resolution and depends on existing substantive law or contractual terms. Sustainability disputes however are often grounded not only in contract law, but in broader public norms and international soft law frameworks. Arbitration, traditionally structured around bilateral commercial obligations, may struggle to incorporate these broader normative standards in a consistent and enforceable way and bears the risk of ignoring national or international legal norms as well as intergovernmental agreements.

Currently, arbitration often lacks clearly defined and enforceable sustainability standards, which makes it challenging to consistently uphold universally applicable norms in such disputes. Embedding clear and enforceable sustainability standards within arbitration frameworks would not only enhance the effectiveness of arbitration in these cases but also help ensure that broader public interest and international norms are adequately protected.

Power imbalance and access to justice

Another persistent concern is the significant power asymmetry between multinational business entities and affected individuals or communities. Efforts to alleviate resulting bias – by ensuring diverse and independent arbitral panels – are seen as essential to promoting fairer outcomes in sustainability-related disputes. Nevertheless, even with specialized and inclusive rules that would give affected parties a say in the hearings as well as better-trained arbitrators with expert knowledge, vulnerable parties would often have difficulties putting forward their arguments as they still face barriers, including limited resources, lack of legal expertise, and fear of retaliation. Especially in sectors like energy, infrastructure, and large-scale development projects, one party often holds significantly more economic, political, or informational leverage than the other. For affected communities, this problem is amplified many times. As a result, outcomes may be biased and can prioritize commercial interests over broader sustainability concerns. This imbalance can undermine fairness in outcomes and accessibility for public interest – even though it often plays a crucial role in sustainability-related commercial disputes.

Lack of Transparency and Legitimacy

Arbitration is favored for its confidentiality, which protects sensitive business information and encourages candid communication between parties. It can offer a platform for negotiation and can be an asset in terms of efficiency and quick

judgement. However, when disputes involve public interests such as environmental concerns or human rights, confidentiality can prevent the public from understanding how their interests are affected. This can reduce public trust in the dispute resolution process as such and in its results specifically. If decisions of public concern are made behind closed doors, the public cannot scrutinize the reasoning. Results may be perceived as being potentially biased towards commercial interests. This can become a general accountability and legitimacy problem.

Additionally, concerns are being raised that the lack of transparency makes it difficult to help build case law. The publication of arbitral awards, including their reasoning, would however enhance consistency in later rulings and could help to anticipate decisions in similar cases. Future tribunals could even be required to judge according to previous rulings, and companies could make better-informed decisions and draft their contracts accordingly. The critique of a lack of transparency therefore addresses essential problems of the arbitration process in terms of developing a coherent and trustworthy body that has the legitimacy to rule in sustainability-related cases.

Practical Limitations

One of the persistent challenges in dispute resolution of sustainability-related issues — particularly in developing jurisdictions — is the limited number of arbitrators with both the legal expertise and technical literacy required to effectively adjudicate complex issues in the field of commercial and sustainability-related areas of law. Many sustainability-related disputes involve a highly specialized subject matter, such as climate science, environmental impact assessments, renewable energy technologies, or intricate supply chain dynamics. Arbitrators are often required not only to interpret and apply evolving international standards but also to understand the underlying scientific, technical, and socio-economic contexts that shape these disputes. [16]

The Need for a New Approach in Sustainability-Related Commercial Arbitration

In sum, the use of arbitration in sustainability-related disputes reveals a deeper acceptance problem within the global business community as well as civil society. While arbitration offers neutrality, flexibility, and international enforceability — valuable traits for resolving complex cross-border disputes — it remains a contested forum when the underlying issues implicate human rights, the environment, and other issues of public concern.

[16] This is also a problem for proceedings before courts.

The proliferation of sustainability-related disputes is not limited to commercial imperatives; it reflects a broader normative shift. International agreements such as the Paris Agreement and the UN Sustainable Development Goals (SDGs) have established binding and voluntary standards for environmental protection, climate action, and social responsibility.[17] National and regional regulations are increasingly embedding these standards into law, making them justiciable in private contracts.

The nature of sustainability-related disputes differs substantially from classic B2B cases: In sustainability disputes, the consequences often extend beyond the immediate parties to broader communities, workers, or ecosystems. The traditional arbitral model — where parties appoint private adjudicators, proceedings are kept confidential, and the law applied is often narrowly commercial — appears ill-suited to address issues that touch upon human rights or environmental justice. For many critics, such matters are best adjudicated by national courts embedded in the public legal system, where procedural safeguards and public accountability are more robust.

Given the increase in sustainability-linked arbitration cases and the unique challenges they present, there is a compelling case for establishing a dedicated Sustainability Pillar within the arbitration landscape. Such a pillar would not only provide tailored procedural rules and access to technical expertise but could also enhance the legitimacy and effectiveness of arbitration in sustainability-related contexts. If arbitration is to play a meaningful role, it must evolve to reflect these values and meet at least part of the criticism raised above.

4. The value of new rules: Lessons learned from past attempts

As the empirical and normative complexity of sustainability-related disputes increases, the limitations of traditional arbitral frameworks become more apparent. The need for purpose-built procedural rules is underscored by recent innovations and landmark cases that have sought to bridge the gap between commercial arbitration and the evolving demands of environmental protection, human rights, and responsible business conduct. They also address the above-mentioned criticism in many aspects. Especially two developments – the PCA Optional Rules for Arbitration Relating to Natural Resources and/or the Environment and the Hague Rules on

[17] European Commission. (n.d.). European Green Deal. Available at: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en; United Nations. (n.d.). The 17 Sustainable Development Goals. United Nations. Available at: https://sdgs.un.org/goals

Business and Human Rights Arbitration – illustrate both the feasibility and the added value of such innovations.

In a similar vein, the ICC Taskforce Report on Arbitration of Climate Change-related Disputes (2019)[18] highlights that the need for change is widely accepted nowadays. It discusses the growing need to adapt existing arbitral frameworks to the specific challenge posed by climate-related conflicts. Rather than introducing an entirely new set of rules, the ICC Taskforce provides detailed recommendations for modifying and supplementing the ICC Arbitration Rules to better accommodate sustainability-related disputes. Their key recommendations include an integration of climate expertise, more procedural efficiency as well as transparency and third-party participation. The report demonstrates that even within established arbitral institutions, there is recognition of the necessity for procedural innovation to ensure that arbitration remains a viable and effective mechanism for resolving sustainability and climate-related disputes.

PROCEDURAL INNOVATIONS

A. UNCITRAL Arbitration Rules

The UNCITRAL Arbitration Rules[19] provide a comprehensive and widely adopted set of procedural rules for the conduct of arbitral proceedings arising from commercial relationships. These rules are frequently used in ad hoc and institutional arbitrations and are designed to cover the entire arbitral process – from the model arbitration clause to the appointment of arbitrators, the conduct of proceedings, and the form and interpretation of arbitral awards.

Since their initial adoption in 1976, the UNCITRAL Arbitration Rules have served as a foundational framework for resolving a broad spectrum of disputes, including those between private parties, investor-state cases, state-state disputes, and cases administered by arbitral institutions. Recognizing the evolving needs of international arbitration, the Rules have undergone several revisions: the original 1976 version was updated in 2010 to enhance procedural efficiency and reflect changes in arbitral practice, without altering the core structure style of the text.

[18] International Chamber of Commerce (ICC). ICC Commission on Arbitration and ADR. Report on Resolving Climate Change Related Disputes through Arbitration and ADR, Paris: International Chamber of Commerce, 2019. Available at: https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/icc-arbitration-and-adr-commission-report-on-resolving-climate-change-related-disputes-through-arbitration-and-adr/#top

[19] United Nations Commission on International Trade Law (UNCITRAL) https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/21-07996_expedited-arbitration-e-ebook.pdf

Their ongoing development, particularly regarding transparency and efficiency, demonstrates their relevance for contemporary challenges, including those arising in the context of sustainability and ESG-related disputes.

The UNCITRAL Arbitration Rules are a widely used set of procedural rules for ad hoc and institutional arbitration. Although originally developed in 1976 and primarily intended for international commercial disputes, the revision modernized several provisions to reflect evolving practices, including a modest shift toward greater procedural clarity.

While the Rules do not impose mandatory transparency obligations, they contain several features that support predictability and procedural openness where parties so desire. For example:

- Article 17(1) guarantees equal treatment of parties and the right to be heard, ensuring fair and transparent proceedings.
- Article 34(5) permits publication of arbitral awards, but only with the consent of the parties, preserving confidentiality as the default.
- The Rules leave room for parties to incorporate additional transparency measures by agreement, such as public hearings, publication of procedural orders, or third-party access to documents.

In the context of commercial arbitration, where confidentiality remains a valued principle, the UNCITRAL Arbitration Rules offer a flexible framework that allows parties to balance transparency with privacy according to their specific needs and preferences. As such, they continue to play a central role in shaping fair and efficient arbitral procedures without mandating disclosure beyond what the parties agree.

B. PCA Optional Rules for Arbitration Relating to Natural Resources and/or the Environment[20]

The PCA Optional Rules for Arbitration Relating to Natural Resources and/or the Environment, introduced by the Permanent Court of Arbitration in 2001 were a significant innovation in terms of including a sustainability-related dimension into arbitration. The PCA Optional Rules are based on the UNCITRAL Model Arbitration Rules with certain changes to:

(i) reflect the particular characteristics of disputes having a natural resources, conservation, or environmental protection component;

(ii) reflect the public international law element which pertains to disputes which may involve States and utilization of natural resources and

[20] Permanent Court of Arbitration (PCA). PCA Arbitration Rules 2012 (as adopted on December 17, 2012) The Hague: PCA, 2012. Available at: https://docs.pca-cpa.org/2015/11/PCA-Arbitration-Rules-2012.pdf

environmental protection issues, and international practice appropriate to such disputes;

(iii) indicate the role of the Secretary-General and the International Bureau of the Permanent Court of Arbitration (PCA) at The Hague;

(iv) provide freedom for the parties to choose to have an arbitral tribunal of one, three or five persons;

(v) provide for the establishment of a specialized list of arbitrators mentioned in article 8(3) and a list of scientific and technical experts mentioned in article 27(5) of these Rules.

vi) provide suggestions for establishing procedures aimed at ensuring confidentiality.

The changes were specifically designed to address the unique complexities of environmental and natural resource disputes, which often involve multiple parties and scientific uncertainty.

Key features of the Optional Rules include:

- Specialized Expertise: lists for the appointment of experienced arbitrators and experts with expertise[21]
- Broad scope of applicability
- Procedural Adaptability: full discretion for the parties to adopt the rules to their specific needs.

While these specifically designed rules seem to address much of the criticism raised above, they have been put to practice only in very few cases so far. Those cases however also show the limits of the PCA Optional Rules. As arbitrators' themselves argue, third-party involvement, especially NGO participation, is often needed in cases concerning public goods.[22]

[21] See Arts. 8 (3) and 27 (5) of the Optional Rules; the lists are published as Annexes 2 and 3 of the yearly Annual Reports of the PCA Permanent Court of Arbitration

[22] Meshel, Tamar, The Permanent Court of Arbitration and the Peaceful Resolution of Transboundary Freshwater Disputes, 2016. ESIL Reflections, Vol. 5, No. 1, January 2016, Available at SSRN: https://ssrn.com/abstract=2721249

C. Hague Rules on Business and Human Rights Arbitration: A Blueprint for Rights-Sensitive Arbitration

The Hague Rules on Business and Human Rights Arbitration (2019) represent an even more advanced attempt to adapt international arbitration to the unique challenges of disputes involving human rights and sustainability obligations, procedurally as well as substantially. Developed by a multi-stakeholder group of experts, the Hague Rules build on the UNCITRAL Arbitration Rules – with important changes to reflect:

i. the particular characteristics of disputes related to the human rights impacts of business activities;

ii. the possible need for special measures to address the circumstances of those affected by human rights impacts of business activities;

iii. the potential imbalance of power that may arise in disputes under these rules;

iv. the public interest in the resolution of such disputes, which may require, among other things, a high degree of transparency of the proceedings and an opportunity for participation by interested third persons and states;

v. the importance of having arbitrators with expertise appropriate for such disputes and bound by high standards of conduct; and

vi. the possible need for the arbitral tribunal to create special mechanisms for the gathering of evidence and protection of witnesses.

The critical innovations include:

- Wider Access and Participation: The rules enable not only corporations but also affected individuals and communities to participate in proceedings, reflecting the multi-stakeholder reality of sustainability disputes.

- Transparency and Accountability: Enhanced provisions for public hearings, the publication of awards and acceptance of amicus curiae[23] submissions

[23] Amicus curiae (latin for „friend of the court“) is a third party who is not a party to the dispute but is permitted to intervene in the proceedings to assist the arbitral tribunal by providing information, expertise, or a perspective relevant to the issues at stake.

address the public interest dimension of such cases.

- Integration of Expert Evidence: The rules provide for the systematic use of technical and scientific experts, recognizing the complexity of environmental and human rights issues.

- Normative Clarity: Explicit reference to international standards ensures that tribunals are guided by evolving sustainability and human rights norms.

The Hague Rules thus offer a procedural model that is more attuned to the realities of modern sustainability disputes, supporting both legitimacy and effectiveness.

SUBSTANTIAL INNOVATIONS

D. UN Guiding Principles on Business and Human Rights: Preventing adverse impacts and holding businesses accountable

While the procedural rules of the PCA are essential, they must be complemented by substantive normative frameworks to fully capture and address all facets of sustainability. An example for the attempt of the international community to hold businesses accountable is the UN Guiding Principles on Business and Human Rights. They were endorsed by the UN in 2011 and provide the following substantial norms:

- The UNGPs outline corporate responsibilities, requiring businesses to conduct due diligence to identify, prevent, and mitigate human rights risks. These obligations can form the basis for contractual commitments between businesses, enabling arbitration tribunals to assess compliance with agreed-upon human rights standards.

- The UNGPs provide a globally recognized framework for human rights due diligence, reducing ambiguities in contractual obligations. By referencing the UNGPs in B2B agreements, parties can establish clear benchmarks for human rights compliance, minimizing disputes over undefined responsibilities.

The UNGPs' universal acceptance provides a common language for resolving transnational disputes, particularly in jurisdictions with weak human rights protections. This consistency aids enforceability under instruments like the New York Convention.

Synthesis and Implications

The fact that the international community has agreed on new procedural and substantive rules in various sets of frameworks to better address the challenges in sustainability-related cases, shows that awareness of the necessity of reforms in arbitration has increased significantly in recent years. The new procedural rules also show that striving for such reforms has the potential to enhance the legitimacy and acceptance of arbitration among civil society and affected stakeholders.

The PCA Optional Rules, the Hague Rules on Business and Human Rights Arbitration, the UNCITRAL Transparency Rules in combination with the Mauritius Convention, and the UNGPs exemplify the benefits of adapting arbitration procedures to the specificities of sustainability-related disputes:

- New rules can address gaps in representation, transparency, and technical expertise that are critical for the legitimacy and effectiveness of sustainability–related arbitral dispute resolution mechanisms.

- Specialized mechanisms can provide meaningful redress where traditional litigation or voluntary approaches fall short.

- Tailored arbitration frameworks can secure the participation of both powerful commercial actors and vulnerable stakeholders by balancing confidentiality with accountability.

5. Insights from Experts

To deepen the understanding of the practical implications and stakeholder perspectives regarding specialized procedural rules for sustainability-related arbitral dispute resolution mechanisms, a series of semi-structured interviews was conducted with key actors in this field. These included experienced arbitrators, corporate representatives from sectors actively engaged in sustainability initiatives, and academic experts specializing in environmental law, human rights, and sustainable business practices.

In the following, the pros and cons of a full-fledged arbitration court focused on sustainability issues, as well as possible alternatives as identified by the interview participants, are systematically outlined. The results of this evaluation serve as the

basis for the subsequent recommendations on institutional design and procedural innovations.

Methodological approach

To ensure a focused and comprehensive discussion, questionnaires were developed and used as interview guidelines. These questionnaires were specifically adapted to the background and expertise of each interviewee group:

- **For arbitrators:** The questionnaire focused on their practical experience and daily activities as decision-makers. It sought to explore how practitioners assess the need for a dedicated sustainability pillar or specialized rules within arbitration, and whether such innovations would enhance the effectiveness, legitimacy, or efficiency of arbitral proceedings in sustainability-related cases.

- **For corporate representatives:** The questionnaire was designed to evaluate the actual demand for specialized dispute resolution mechanisms. It aimed to identify current conflict resolution pathways, assess the willingness of businesses to utilize a sustainability-specific arbitral dispute resolution mechanism, and explore what features or alternatives would be necessary for such an institution to be accepted and used by the business community.

- **For academic experts:** The focus was on the normative, legal, and technical challenges of sustainability disputes, as well as the potential for arbitration to contribute to the development and enforcement of environmental and human rights standards.

The primary objective of this chapter is to synthesize the insights gathered from these interviews, highlighting the perceived benefits and challenges associated with specialized procedural frameworks. By capturing the diverse perspectives of practitioners, business actors, and scholars, this analysis aims to inform the design of arbitration rules and institutions that are both effective in addressing the complexity of sustainability-related disputes and broadly accepted by their users and the public.

Evaluation of Interviews

A key finding emerging from the interviews with arbitrators, corporate representatives, and sustainability experts is a broad skepticism regarding the necessity of establishing a fully-fledged, dedicated Arbitration Sustainability Court (ASC). Almost all interviewees considered the creation of such an institution as either premature, overly ambitious, or disproportionate to the current state of sustainability-related disputes in arbitration.

Instead, the consensus leaned strongly towards more incremental and pragmatic measures to address the challenges posed by sustainability-related disputes. In particular, three interrelated areas were highlighted as more urgent and feasible priorities:

- **Development of Specialized Procedural Rules:**
  Interviewees emphasized the value of adapting existing arbitration rules to better accommodate the specificities of sustainability-related disputes. This includes clearer provisions for handling technical and scientific evidence, integrating evolving international sustainability standards, and allowing for greater procedural flexibility without the need to create an entirely new institution.

- **Integration of Third-Party Expertise and Stakeholder Participation:**
  Many interviewees stressed the importance of institutionalizing the role of independent experts and possibly third-party stakeholders within the arbitration process. This could take the form of expert panels, amicus curiae submissions, or other mechanisms that bring specialized knowledge and broader perspectives into the dispute resolution process, thereby enhancing legitimacy and decision quality.

- **Upskilling and Capacity Building for Arbitrators:**
  A recurrent theme was the pressing need to enhance the expertise of arbitrators in sustainability-related matters. This involves targeted training on environmental law, climate science, ESG criteria, and human rights frameworks, enabling arbitrators to competently assess complex technical evidence and normative questions arising in these cases.

Overall, the predominant view among practitioners and stakeholders was that the immediate focus should be on refining procedural frameworks and strengthening arbitrator expertise within existing institutions. Such an approach is seen as more realistic, cost-effective, and better aligned with the current demand and caseload of sustainability-related arbitration.

This nuanced assessment provides important guidance for policymakers and arbitral institutions contemplating reforms in this area. It suggests that building specialized rules and capacity, alongside mechanisms for expert involvement, may constitute the most effective and widely accepted pathway for improving dispute resolution in sustainability cases.

6. Recommendations and Institutional Implementation

This chapter brings together the key findings from the preceding analysis and interviews, developing concrete recommendations for the effective resolution of sustainability-related disputes. The aim is not only to outline actionable measures but also to provide a framework for their practical and institutional implementation. The recommendations presented are grounded in a thorough analysis of existing arbitration frameworks as well as a series of expert interviews conducted with practitioners and stakeholders in the field of sustainability dispute resolution. This approach ensures that the proposed measures are both theoretically sound and practically relevant.

The above criteria for sustainability-related disputes, the feedback from the interviews with stakeholders as well as a review of existing procedural rules and innovations result in the following recommendations for action:

1. **Establishment of an Institute for Sustainability Arbitration**
    a. Drafting specific Arbitration Rules for sustainability-related disputes
    b. Capacity-building of arbitrators and experts with specialized ESG and Sustainability Expertise through Training and Certification
    c. Creation of a list of qualified Arbitrators and experts for the various ESG and sustainability-related disputes
    d. Research and Policy Advice
    e. Stakeholder Engagement
2. **Leveraging an existing platform to give effect to new rules**

First proposal: Establishment of an Institute for Sustainability Arbitration

To anchor the new standards and procedures sustainably and independently, it is proposed to establish a dedicated Institute for Sustainability Arbitration. This would serve as a central hub for all activities related to the professionalization and further development of sustainability arbitration.

The successful implementation of the following proposed recommendations for sustainability arbitration depends not only on the development of specialized rules and the qualifications of arbitrators but also on their effective institutional

embedding. Establishing robust structures and clear processes is essential to ensure the long-term viability, credibility and accessibility of these measures.

The main tasks of the Institute could include:

- Drafting of sustainability-specific Arbitration Rules
- Training and Certification
- Management of Expert Lists
- Research and Policy Advice
- Stakeholder Engagement

Affiliating the Institute for Sustainability Arbitration with established organizations at the Hamburg Chamber of Commerce – the Asian European Arbitration Center (ASEAC), the European Latinamerican Arbitration Center (ELArb), the African German Arbitration Cooperation (AFGAC) and the traditional commodity arbitration courts, the Hamburg International Arbitration Center (HIAC) and the Hamburg Chamber of Commerce itself – could further enhance its credibility and ensure access to existing networks and resources. At the same time, the Institute should maintain its independence and clear focus on sustainability to guarantee impartiality and public trust.

In this context, the African German Arbitration Cooperation with its current members Cairo Regional Centre for International Commercial Arbitration (CRICICA), Kigali International Arbitration Centre (KIAC), the Nairobi Centre for International Arbitration (NCIA) and the Chamber of Commerce Hamburg should be emphasized. Particularly in view of the importance of sustainability projects for the African continent, the related private law contracts in B2B and B2G contexts, and the need to ensure legal certainty, an Institute for Sustainability Arbitration can leverage these Centres. The significance of arbitration in the field of sustainability in Africa is underscored for example by the 2nd Nairobi Arbitration Week, themed "Arbitrating in the Age of Sustainability," which took place from 17th to 21st March 2025 and was organized by NCIA.

The integration of the Institute into existing arbitration infrastructure offers several advantages: By leveraging the experience, reputation, and international connections of established centers like HIAC, the Institute can benefit from administrative support, established best practices and a broad pool of potential arbitrators and experts. Additionally, it can benefit from existing institutional structures, particularly in the area of education, i.e. from the Handelskammer Hamburg Education-Service.[24]

[24] For further information on the training courses offered by the Hamburg Education Service of the Hamburg Chamber of Commerce, see https://hkbis.de/ .

a. Drafting Specific Arbitration Rules

The analysis of current arbitration rules and procedures revealed several gaps when it comes to addressing the unique challenges posed by sustainability disputes. Notably, existing frameworks often lack explicit provisions for transparency, the involvement of independent experts, and mechanisms for third-party participation – elements that are increasingly recognized as essential for the credibility and effectiveness of sustainability arbitration. Furthermore, there is a need for more specialized rules that reflect the complex interdisciplinary nature of sustainability issues.

The interviews with practitioners and stakeholders underscored the importance of developing tailored arbitration rules and procedures. Practitioners mentioned the value of increased transparency, the use of certified experts and the establishment of dedicated lists of arbitrators as a possible improvement.

Given the voluntary nature of arbitration and the diversity of disputes, the development of specialized, flexible arbitration rules for sustainability matters is both necessary and pragmatic. New rules should allow parties to tailor procedural safeguards – such as transparency measures, stakeholder participation, and publication of awards – to the specific needs and sensitivities of each case. This flexibility would encourage greater acceptance among businesses while institutionalizing sustainability considerations within the arbitral process.

The following proposed arbitration rules for sustainability disputes could include, but are not limited to these elements:

1. **Transparency**:
    - Provisions for the publication of key procedural documents
    - Public hearings
    - Publication of awards
    - Publication of dissenting opinions

2. **Use of Experts**: Guidelines for the appointment and involvement of independent, certified experts to provide technical input on complex sustainability issues:
    - Findings should be subject to cross-examination
    - Need to include model terms of reference for expert reports, ensuring standardized, comprehensive, and comparable submissions

3. **Emergency Arbitrator mechanism**
   The introduction of mechanisms for the rapid appointment of emergency arbitrators to address urgent matters, such as requests for interim measures that aim to prevent irreparable harm to, for example, the environment of affected communities:
   - Requests for emergency measures must be heard within a specified time frame (e.g., 7 days), with arbitrators empowered to issue binding interim orders
   - Emergency arbitrators should have authority to compel preventive actions or disclosure of environmental data

4. **Third-party participation**
   Rules enabling the participation of third parties, such as NGOs or affected communities, either as intervenors or through the submission of written statements. This would ensure that a broader range of interests is considered in the arbitral process.

5. **Amicus Curiae Submissions (Amici Clause):**
   Procedures allowing for submission of amicus curiae briefs by qualified organizations or individuals with relevant expertise, thereby enriching the tribunal's understanding of the broader implications of the dispute.

   These measures would enhance both the fairness and the democratic legitimacy of arbitration, particularly in cases with significant societal or environmental impact.

   The rules should allow for the admission of amicus curiae submissions by NGOs, international organizations, indigenous groups, and other stakeholders with demonstrated interest in the dispute.

   - Tribunals should consider amicus submissions particularly in cases involving systemic or cross-border implications, precedent-setting potential, or alleged community-level harm
   - A standard procedure for amicus submission should be included in the rules, ensuring timeliness, impartiality, and procedural economy

By incorporating these elements, the new arbitration rules would provide a robust framework for the fair, efficient and credible resolution of sustainability disputes, addressing both substantive and procedural challenges unique to this field.

b. Capacity-Building of Arbitrators through Training and Certification

A recurring concern is the limited expertise of arbitrators and experts in complex sustainability matters, including environmental law, human rights, and social standards. Establishing a dedicated training center for arbitrators would directly address this gap, equipping them with the necessary knowledge of international frameworks (such as the UN Guiding Principles or the Paris Agreement), technical subject matter, and the evolving landscape of sustainability regulation. Enhanced expertise would not only improve the quality of arbitral awards but also strengthen the legitimacy and public trust in arbitration outcomes.

It could therefore also be advisable to combine such training, which is tailored to arbitrators, with certification. On the one hand, this would make it more attractive for arbitrators to undergo further training, because they can provide qualified proof of their expertise. On the other hand, it would underline the acceptance of arbitration in sustainability disputes and foster consistency and quality in decision-making.

It should also be assumed that there is a need for both appropriate training and certification for arbitrators. Although there are already several training and certifications in ESG and sustainability that aim to provide and demonstrate expertise in these areas. However, these are usually not specifically aimed at arbitrators, but at a broader target group. Training therefore, should be tailored to the special task and duties of an arbitrator.

The existing sustainability certificates and courses, such as "Certified Sustainability Reporting Specialist (CSRS)“, "Sustainability Auditor IDW", ISCC certifications, or various TÜV and CSC certificates, are primarily aimed at companies, auditors, consultants or specialists and managers, but not explicitly at arbitrators.

It is proposed to establish a structured certification system for arbitrators and experts in the field of sustainability arbitration. This could include accredited training modules on relevant legal frameworks, technical scientific aspects, practical case studies, assessment and evaluation procedures. It could also offer different certification levels to reflect varying degrees of expertise, ongoing professional development requirements, and a publicly accessible register of certified arbitrators and experts. Such a system would help to build a pool of qualified professionals, increase the quality of consistency of dispute resolution, and promote greater trust among parties and stakeholders.

c. List of qualified Arbitrators and Experts for the various ESG and Sustainability-related cases

For the effective resolution of ESG and sustainability-related disputes, parties must have access to a list of qualified arbitrators and experts who possess specialized knowledge in areas such as environmental law, social standards and corporate governance. The increasing complexity of sustainability standards and the diversity of stakeholder interests require decision-makers who are not only legally proficient but also familiar with the latest scientific and regulatory frameworks.

Creation and Management of the List

- The list should be maintained by a neutral and independent institution that is recognized for its commitment to sustainability and impartiality – this could be the dedicated Institute for Sustainability Arbitration.

- The criteria for inclusion in the list should be transparent and based on objective qualifications, such as proven expertise, relevant training, and ideally certification in sustainability and ESG matters.

- Regular updates and reviews are necessary to ensure that only current and competent professionals remain on the list.

Benefits

- Parties can select arbitrators and experts who are demonstrably qualified for complex ESG and sustainability cases, which significantly improves the quality and acceptance of arbitral decisions.

- Affiliation with a neutral institution such as the Institute for Sustainability Arbitration ensures independence and credibility.

The creation and transparent management of a list of qualified arbitrator experts for ESG and sustainability cases is a key step toward professionalizing and legitimizing dispute resolution in this rapidly evolving field. It addresses the specific needs of parties and stakeholders and helps

ensure that sustainability disputes are resolved by the most competent professionals available.

d. Research and Policy Advice

A core function of the proposed Institute for Sustainability Arbitration should be the provision of independent research and policy advice in the field of sustainability-related dispute resolution. Continuous monitoring and analysis of legal, regulatory, and practical developments are essential to ensure that arbitration frameworks remain responsive to the rapidly evolving landscapes of international environmental law and the interfaces between legal issues and the impact of economic activity on sustainability.

An institute based in Hamburg could draw on the expertise of research institutions such as the Max Planck Institute for Comparative and International Private Law, the Faculty of Law at the University of Hamburg with the Chairs of International Law of the Sea and Environmental Law, International Law and Public Law as well as Environmental Law, the Center for International Dispute Resolution at Bucerius Law School and relevant other institutions at the University of Hamburg, the University of Applied Sciences and the Technical University of Hamburg-Harburg. The policy advice should also draw on the expertise from sustainability research, or from regional studies, i.e. from the German Institute for Global and Area Studies.

e. Stakeholder Engagement: Establishment of a Fund

While the involvement of amici curiae is recognized as important for the legitimacy and transparency of investment arbitrations, at the same time the financial burden is seen as an issue.

There have been discussions on how to control and distribute the additional costs caused by amici curiae for some time in the past (e.g. reaction of the main parties to amici curie pleadings, prolongation of proceedings). An example of a regulation of the costs incurred by the participation is Appendix III Investment Treaty, Article 3.10 Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce from 2023: The Arbitral Tribunal may, as condition for allowing a Third Person to make a submission, require that the amicus curiae provide security for reasonable legal or other costs expected to be incurred by the disputing parties as a result of the submission.[25]

[25] Stockholm Chamber of Commerce Arbitration Institute, SCCA Arbitration Rules 2023 (Stockholm: SCC Arbitration Institute, 2023) https://sccarbitrationinstitute.se/wp-content/uploads/2024/12/SCC_Arbitration_Rules_2023_English.pdf

For NGOs or affected parties, this can represent a high hurdle that effectively prevents participation through amicus briefs. The right for participation alone is therefore not always sufficient. One possible solution could be the establishment of a fund that enables amici curiae to participate in arbitration proceedings accordingly and has the aim to cover the costs. These can range from the costs of hiring a legal representative or to any other procedural costs that may arise.

The task of an Institute for Sustainability Arbitration would therefore also be to think about the actual design of such a fund: The criteria for access to the fund and criteria for eligible applicants would have to be developed. It would also have to be clarified from which resources the fund would be fed in the first place. One option would be to transfer part of the costs for training courses directly to the fund and supplement it with additional money raised; another to have one of the main participants to pay for or contribute to the costs – e.g. the party that is defeated on the basis of the arguments of the amici curiae.

Second proposal: Leveraging an existing platform to give effect to new rules

Moreover, close cooperation with other national and international organizations active in the field of sustainability, dispute resolution, and standard setting is crucial. Partnerships with academic institutions can facilitate research and the development of innovative training programs. Collaborating with NGOs and business associations can help ensure that the Institute for Sustainability Arbitration‘s activities remain relevant to the needs and challenges.

Joint projects and events with these partners can also help to amplify the Institute’s visibility and impact, both nationally and internationally, while leveraging synergies to drive innovation and best practices. By continuously engaging with a broad spectrum of stakeholders, the Institute can ensure that its work remains at the forefront of evolving sustainability standards and dispute resolution practices.

Beyond the focus on establishing new rules and the upskilling of arbitrators, it is crucial to ensure a far-reaching international acceptance of the developed rules. Only then can the Institute fulfill its mission and contribute meaningfully to sustainable dispute resolution worldwide. To give this goal even more emphasis the involvement of states seems essential. It increases the likelihood of the rules being applied if the states themselves incorporate them into their commercial

contacts. Their endorsement might therefore make the difference and could leverage the idea for new rules in sustainability-related cases.

The Hamburg Sustainability Conference (HSC) with its international attendees and its focus on sustainability would be an ideal venue to launch this new initiative and work on such a shared commitment. It would secure political support among high-level representatives from governments, international organizations, the private sector, academia and civil society. The conference's interdisciplinary and inclusive character stands for the idea to foster open dialogue and the building of trust among diverse actors. It creates a unique environment where innovative ideas can be translated into concrete commitments and collaborative action. This special atmosphere of change could therefore generate momentum for a transformative action also in arbitration.

Hence, after extensive preparation over the coming months, the HSC 2026 could be used as a venue for a signing ceremony of a Memorandum of Understanding (MoU) on the establishment of an Institute for Sustainability Arbitration with a shared commitment to making arbitration more sustainable in its procedural rules and its use of substantial norms. During such a ceremony, states and relevant actors could publicly and formally commit to adopting the developed arbitration rules and to supporting the Institute.

By anchoring the initiative in the context of the HSC, the Institute can benefit from the conference's convening power, media attention, and network of engaged stakeholders – laying the groundwork for the widespread adoption of sustainable arbitration standards. This strategic use of the HSC will help ensure that the Institute's work is not only recognized but also implemented in practice, creating lasting impact in sustainability dispute resolution.