The new front line: Why defence sector disputes are changing

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As geopolitical uncertainty grows, governments are reassessing their defence priorities and increasing military investment. Last March, the Government of Canada announced that it had met NATO's spending target on defence of 2 per cent of the GDP, bringing Canadian defence expenses to more than $63 billion for 2025 to 2026[1]. Canada has now committed to NATO to increase its defence spending to 4 per cent of GDP by 2030 and 5 per cent by 2035, which would represent annual spending of approximately $163 billion.[2]

With defence investment expected to continue rising, the sector is poised for significant growth. But increased spending is only part of the story. The disputes arising in the defence sector are also changing, increasingly shaped by geopolitical tensions, multi-jurisdictional supply chains, state involvement, national-security considerations and emerging technologies.

Why are the amount and nature of the disputes changing?

As the defence sector undergoes rapid structural and technological change, its dispute landscape is evolving. Geopolitical instability, rearmament initiatives and increased defence spending are driving new procurement activity, while increasingly complex and decentralized supply chains create additional points of friction. Defence companies are also relying more heavily on international partnerships, joint procurement initiatives and cross-border suppliers. At the same time, new entrants—including companies specializing in defence technology, artificial intelligence and cybersecurity—are bringing new capabilities, business models and risks into the sector.

These developments are changing not only the number of disputes, but also their complexity. Defence disputes increasingly involve multiple parties, contracts and jurisdictions, and may give rise to claims involving force majeure, change in law, sanctions and export controls. Intellectual property, technology integration and cybersecurity obligations can add further layers of contractual and regulatory risk. Disruptions to the supply of critical components or ammunition can lead to disputes over delays, cost escalation, contractual performance and responsibility across

interconnected supply chains. Similarly, changes in military priorities can require joint ventures and other international partnerships to adapt existing contractual arrangements. The sensitive nature of the information underlying many of these disputes can add a further layer of complexity, particularly at the document disclosure stage, where parties may face obstacles in obtaining relevant information from the opposing party or producing evidence needed to support their position.

The result is a dispute landscape that looks markedly different from the traditional delivery, performance or warranty dispute.

Arbitration as the preferred method for resolving defence-sector disputes

Arbitration remains particularly well suited to defence-sector disputes because of the confidentiality and neutrality of the arbitral process, the availability of specialist decision-makers and its flexibility in cross-border disputes. Confidentiality is often one of arbitrations' biggest attractions in this sector, where disputes may involve classified information, sensitive technologies, defence capabilities and commercially valuable know-how.

However, confidentiality is not automatic and does not necessarily extend to related court proceedings. This is particularly important in the defence sector, where sensitive information may need to be addressed not only in the arbitration itself, but also in enforcement proceedings, set-aside applications and requests for interim measures. Confidentiality should therefore be considered throughout the lifecycle of a dispute, rather than treated as a feature of the arbitration alone.

State and international organisation counterparties create additional challenges

States and international organisations are also playing an increasingly prominent role as counterparties in defence procurement, with NATO, in particular, becoming a more significant participant.[3] Given its immunity from national court proceedings[4], arbitration may be the only practical avenue for resolving certain contractual disputes involving the alliance. Similar considerations may arise where the counterparty is a foreign state, a ministry of defence or a state-owned entity.[5]

The challenges do not necessarily end when an award is rendered. Enforcement against a state or state-related entity can raise complex questions of sovereign immunity, the assets against which enforcement may be sought and the jurisdictions in which recovery may be pursued. In other words, obtaining an award and recovering amounts due under it are two distinct exercises. Recent decisions concerning the enforcement of arbitral awards against states underscore this distinction. In 2026, for example, the UK Supreme Court confirmed that Spain and Zimbabwe could not rely on sovereign immunity to resist recognition and enforcement of ICSID awards, while preserving the separate question of immunity from execution against state assets.[6]

Emerging legal battlegrounds

The next generation of defence-sector disputes may look very different from traditional procurement disputes. The use of artificial intelligence, for example, is one factor driving this shift. In February 2026, a dispute emerged between Anthropic and the U.S. Department of Defense over restrictions on the military use of artificial intelligence. Anthropic sought to restrict certain uses of its Claude model, including its use in fully autonomous weapons, while the Department raised concerns that overly rigid restrictions could interfere with military operations. The dispute, which led to the Pentagon excluding Claude artificial intelligence models from its supply chain[7], illustrates emerging questions around contractual rights, operational restrictions, liability and the regulatory framework applicable to AI in the defence sector.

The increasing use of dual-use technologies presents similar challenges. Technologies developed for civilian applications may subsequently be incorporated into defence programmes, creating additional contractual, regulatory and export-control considerations. Governments may also seek greater access to technical data and other technology, while contractors seek to protect proprietary technology and intellectual property.

These issues are likely to generate disputes not only over performance and delivery, but also over who controls the technology, how it may be used and transferred, and how regulatory or military requirements may affect the parties' contractual rights.

Practical takeaways

In defence contracts, the dispute-resolution clause should be viewed as part of the broader risk-allocation architecture, rather than as boilerplate. In-house counsel and contractors should consider, at the contracting stage, questions such as:

- Does the dispute-resolution clause adequately address confidentiality requirements?
- Have potential enforcement and immunity issues been considered where the counterparty is a state or international organisation?
- Are arbitration clauses aligned across prime contracts, subcontracts and related project agreements?
- Who owns the intellectual property, technical data and improvements developed during the project?
- Does the contract adequately address sanctions, export controls and regulatory change?

Defence-sector disputes are becoming more international, technology-driven and legally complex. Although arbitration remains particularly well suited to many of these disputes, parties should consider their dispute-resolution strategy when allocating contractual risks—not only once a dispute arises. As defence investment grows and the sector evolves, anticipating how and where disputes may arise will be an increasingly important part of managing those risks.

Footnotes

[1] Canada achieves the 2% of gross domestic product defence spending benchmark - Canada.ca.

[2] Canada's Defence Spending Commitments: A Primer

[3] Increasing defence industrial production, NATO, July 2026

[4] Article XII of the *Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff*,signed in Ottawa September 20, 1951.

[5] *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening),* Judgment, I.C.J. Reports 2012, p. 99.

[6] *Kingdom of Spain v Infrastructure Services Luxembourg S.À.R.L. and another; Republic of Zimbabwe v Border Timbers Ltd and another,* [2026] UKSC 9.

[7] Anthropic Urges DC Circ. To Revisit Defense Supply Risk Ban - Law360

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