


Enforcement of Multilateral Investment Court (MIC) Awards under the New York Convention: Barriers and Solutions

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Abstract

The Multilateral Investment Court (MIC) has been proposed to reform the system of international investment dispute settlement (ISDS) by enhancing transparency, impartiality, and the possibility of appellate review. However, the enforcement of MIC awards under the 1958 New York Convention faces multiple barriers. This article examines whether the MIC can be considered an independent arbitral body subject to the Convention or if it requires a new enforcement framework. The two-tier structure of the MIC, comprising a first-instance court and an appellate mechanism, may complicate the enforcement of awards, as some states might delay enforcement due to the appellate review process and refuse to recognize MIC awards under the New York Convention. Additionally, key barriers to this system include the recognition of the MIC, resistance from certain states to its acceptance, and potential conflicts between MIC awards and domestic court rulings. In the final section, the article presents proposals to overcome these barriers, including amending the New York Convention, concluding supplementary treaties, establishing an independent enforcement mechanism similar to the International Centre for Settlement of Investment Disputes (ICSID), and utilizing the capacity of the International Court of Justice (ICJ). These proposals aim to ensure the effective enforcement of MIC awards and enhance legal certainty in the international investment arbitration system.

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1. Introduction

Over the past few decades, the investor-state dispute settlement (ISDS) system has become one of the most challenging issues in international investment law. This system, implemented through international arbitration, has served as a mechanism to protect foreign investors against breaches of contractual and treaty obligations by states. However, it has also faced severe criticism due to its lack of transparency, high costs, the absence of an appellate mechanism, and concerns regarding arbitrator bias.

Developing countries, as well as some advanced economies, have expressed objections to the existing ISDS mechanisms, as arbitral decisions can override domestic legal frameworks without judicial oversight by national courts. These criticisms

have prompted international institutions to pursue fundamental reforms in this area. In this context, the United Nations Commission on International Trade Law (UNCITRAL) and the European Union have proposed the establishment of a Multilateral Investment Court (MIC) aimed at creating a permanent and structured forum for resolving investment disputes, replacing the traditional ISDS arbitration system.

Unlike traditional arbitration mechanisms, the MIC would consist of permanent judges, an appellate mechanism, and a unified regulatory framework. These features are intended to enhance transparency, improve judicial impartiality, reduce costs, and ensure better enforcement of awards. However, the MIC not only introduces new challenges but also raises complex issues regarding the enforcement of its awards under international law, necessitating thorough examination.

2. The Importance of Enforcing MIC Awards in the International Legal System

One of the most significant issues concerning the MIC is the enforcement of its awards at the international level. Past experiences have demonstrated that one of the weaknesses of ISDS lies in the enforcement of arbitral awards in jurisdictions that either contest the awards or fail to uphold their international obligations.

To date, the enforcement of international arbitral awards has primarily relied on two major legal frameworks:

1. The 1958 New York Convention: This treaty represents the most important legal framework for the enforcement of arbitral awards internationally. With over 160 contracting states, the convention provides for the recognition and enforcement of foreign arbitral awards under specific conditions.
2. The 1965 ICSID Convention: Adopted under the auspices of the World Bank, this convention specifically governs awards issued by the International Centre for Settlement of Investment Disputes (ICSID) and offers a stronger enforcement mechanism compared to the New York Convention.

With the establishment of the MIC, a fundamental question arises: will MIC awards be enforceable under the New York Convention, or will a new enforcement mechanism be required? Although the MIC shares many similarities with ICSID, its two-tiered system and the absence of established judicial precedent may introduce new challenges in enforcing its awards.

2.1. Challenges in Enforcing MIC Awards under the New York Convention

A primary concern regarding the MIC is its two-tiered structure, which consists of a First Instance Court and an Appellate Mechanism. While many states have criticized the lack of appellate review in traditional ISDS arbitration, the introduction of an appeals process in the MIC may complicate and prolong the enforcement of awards.

Key questions include:

- Will a first-instance decision be enforceable, or must investors wait until the conclusion of the appellate process?
- Will contracting states refuse to enforce MIC awards due to the existence of an appellate mechanism?
- Does the New York Convention provide adequate legal coverage for such a system?

Additionally, enforcing MIC awards in jurisdictions with a history of non-compliance with arbitral rulings will present significant barriers. Certain states, such as Russia, Argentina, and Venezuela, have previously refused to enforce arbitral awards. If the MIC lacks a clearly defined enforcement mechanism, these states may easily circumvent their obligations to enforce its awards.

3. Aim and Structure of the Article

This article adopts an analytical and critical approach to examine the challenges of enforcing MIC awards under the New York Convention and proposes solutions to address these barriers.

The first section provides an in-depth analysis of the MIC, including its objectives, institutional structure, and operational framework compared to existing investment arbitration mechanisms. This section specifically highlights the differences between the MIC and traditional arbitration models such as ICSID, UNCITRAL, and the International Chamber of Commerce (ICC). Key areas of comparison include judicial independence, the availability of appellate review, arbitration costs, and procedural transparency. While many states and international organizations argue that the MIC could rectify deficiencies in the ISDS system, multiple challenges remain in its implementation.

Furthermore, this section examines the perspectives of states, investors, and the international legal community regarding the MIC. Some jurisdictions, particularly the European Union and Canada, strongly support the establishment of this court and view it as a viable alternative to traditional ISDS arbitration. Conversely, other states, including the United States, China, and certain developing countries, express skepticism about the effectiveness of this new model. Analyzing these divergent viewpoints provides a clearer understanding of the barriers and challenges facing the MIC.

The second section explores the implications of the MIC's two-tiered structure on the enforcement of arbitral awards. One of the MIC's defining features is its two-stage system, comprising a First Instance Court and an Appellate Court. While the availability of appellate review enhances legal certainty, it may simultaneously complicate the enforcement process. Key questions include:

- Will a first-instance award be immediately enforceable, or must investors await the completion of the appellate process?
- If an appeal is filed, will the enforcement of a first-instance award be automatically suspended, or will interim enforcement be permitted?
- If the First Instance Court and the Appellate Court issue conflicting interpretations of investment rules or legal principles, which authority will serve as the ultimate decision-maker?

These issues underscore the complexities surrounding the enforcement of MIC awards and highlight the need for a clear legal framework to address potential disputes in implementation.

In this section, a comparative analysis will be conducted between the two-tiered system of the Multilateral Investment Court (MIC) and other international arbitration mechanisms. In some cases, regional courts such as the European Court of Justice (ECJ) or certain international commercial arbitration mechanisms have experimented with two-tiered systems. However, it remains uncertain whether this model is suitable for international investment disputes.

In the third section, the legal challenges related to the enforcement of MIC awards under the New York Convention will be examined. The 1958 New York Convention has thus far been the most significant legal instrument for the enforcement of arbitral awards at the international level. This convention enables states to enforce arbitral awards with minimal barriers. However, the key question remains whether the MIC can be recognized as an arbitral body under this convention.

This section will address the following issues:

- How MIC aligns with the definitions provided in the New York Convention: Are its awards considered arbitral awards?
- Challenges in enforcing MIC awards in jurisdictions with a history of resistance to international arbitration awards, such as Russia, Argentina, Venezuela, and certain African countries.
- A comparison of the enforcement of MIC awards with ICSID and UNCITRAL awards, along with the potential for establishing an independent enforcement framework for MIC.

In the fourth section, a comparative analysis of the enforcement of MIC, ICSID, and UNCITRAL awards will be conducted. Given the fundamental differences between the MIC and traditional arbitration institutions, the enforcement of its awards is likely to face multiple barriers. A review of past practices regarding the enforcement of ICSID, UNCITRAL, and ICC arbitration awards reveals that certain states have systematically refused to enforce arbitral decisions. This section will examine real-world examples of both successful and unsuccessful enforcement of arbitration awards across jurisdictions with diverse legal systems.

Additionally, in some legal systems, opposition to the enforcement of arbitral awards has been observed, and this trend may persist in the case of the MIC. The key questions in this regard include:

- Will the enforcement of MIC awards be as binding as ICSID awards?
- Which states are likely to resist accepting MIC the most?
- What are the key differences between the enforcement of MIC awards and other arbitration mechanisms?

In the fifth section, proposed solutions to improve the enforcement of MIC awards will be examined. These solutions include:

- Concluding supplementary international treaties to facilitate the enforcement of MIC awards: Some states may not recognize MIC as an independent arbitral tribunal and may refuse to enforce its awards. Drafting complementary international treaties could enhance the enforceability of MIC decisions.
- Establishing an independent enforcement system for MIC: Just as ICSID has its own convention for enforcing awards, MIC may also require an independent legal framework.
- The role of the International Court of Justice (ICJ) and regional legal bodies in enforcing MIC awards: Some scholars have proposed that the ICJ or regional legal bodies such as the ECJ could play a supervisory role in the enforcement of MIC decisions.
- Regulatory reforms at the national level to align domestic laws with MIC: Contracting states may need to amend their national legislation to accommodate and enforce MIC awards. Analyzing the experiences of countries that have adapted to new arbitration systems could provide valuable insights.

Research indicates that without a well-defined and coordinated enforcement framework, MIC may face challenges similar to those encountered by ISDS. The enforceability of its awards will directly impact its credibility and effectiveness.

If the enforcement of MIC awards is not secured under the New York Convention, the court will fail to achieve its objective of establishing a coherent and reliable arbitration system. Concluding supplementary international treaties, harmonizing domestic laws, and securing the recognition of MIC as an independent arbitral institution by contracting states are essential steps in this regard.

4. The Multilateral Investment Court and the New York Convention

4.1. Definition and Structure of the Multilateral Investment Court

The Multilateral Investment Court (MIC) has been proposed as one of the most significant reforms in the system for resolving disputes between investors and states. It aims to establish a permanent institution for settling investment disputes between states and foreign investors, replacing traditional arbitration mechanisms. Unlike existing methods of international arbitration, the MIC has a structure similar to international courts and introduces specific features to enhance legitimacy, transparency, and efficiency within the ISDS system ([European Commission, 2022](#)).

The proposed structure of the MIC consists of two levels of adjudication:

1. First Instance Court: Where investment disputes are initially heard.
2. Appellate Court: Responsible for reviewing decisions issued at the first instance level.

This two-tiered structure, formally proposed by the European Union, represents a significant departure from current investment arbitration practices, as traditional ISDS rulings are typically final and not subject to appeal. While this new feature is intended to ensure greater accuracy in judicial review, it also raises concerns regarding the enforceability of arbitral awards at the international level ([Schill, 2019](#)).

4.2. Purpose and Advantages of the Multilateral Investment Court

The MIC proposal emerged as a response to the challenges confronting the investment arbitration system. One of the main criticisms of ISDS is that international arbitration lacks sufficient transparency, and the high costs of the process place developing countries at a disadvantage. Additionally, concerns over arbitrator bias and the absence of an appellate mechanism have been among the primary objections to investment arbitration, which the MIC seeks to address ([Van Harten, 2018](#)).

The advantages of the MIC include:

1. Greater judicial independence: Unlike ISDS, where arbitrators are selected by the disputing parties, MIC judges are permanently appointed, enhancing their impartiality ([Brower, 2021](#)).
2. Increased transparency: Unlike many investment arbitration proceedings, which are confidential, MIC hearings will be conducted transparently, and its rulings will be published.
3. Reduced litigation costs: While traditional arbitration can be costly for parties, the MIC's integrated structure is expected to lower overall expenses.

4. Enhanced legal legitimacy: A fundamental issue with ISDS is that many states view private arbitration as a mechanism for imposing decisions on governments. With a formalized and clearly structured framework, the MIC could contribute to improving legal legitimacy in this field (Paulsson, 2023).

4.3. *The Multilateral Investment Court Compared to Existing Arbitration Mechanisms: A Comparative and Legal Analysis*

A comparative analysis between the MIC and traditional ISDS will help determine whether this proposed model can meaningfully improve investment dispute resolution.

- Differences in Institutional Structure

Traditional ISDS operates on an ad hoc basis, where parties select arbitrators and form a tribunal for each case. This system provides flexibility to states and investors but results in inconsistencies in arbitral rulings and potential conflicts in interpreting investment treaties (Schill, 2019). In contrast, the MIC will consist of permanently appointed judges within a standing tribunal, which could enhance consistency in judicial rulings and prevent contradictions in the interpretation of investment law.

- Availability of Appellate Review

A major issue in traditional ISDS is the lack of an effective appellate mechanism. Arbitral awards are generally final and binding, with only limited grounds for challenge, such as procedural irregularities or lack of jurisdiction. Conversely, the MIC's two-tiered system, including an appellate court, allows parties to seek judicial review of decisions. While this feature increases the accuracy of adjudication, it also raises concerns regarding delays in enforcing awards and prolonged dispute resolution (Van Harten, 2018).

- Transparency in Proceedings

A common criticism of ISDS is the lack of transparency, as many arbitration proceedings are conducted confidentially, and rulings are not publicly available. This has led to concerns over accountability and public oversight. Unlike ISDS, MIC hearings will be held publicly, and all rulings will be disclosed. This feature could increase public trust in the court and mitigate objections regarding the lack of transparency in investment arbitration (European Commission, 2022).

- Reduction of Arbitration Costs

ISDS proceedings often involve significant expenses, particularly for developing countries that may struggle to afford international legal representation and multiple rounds of arbitration. With its permanent judges and elimination of the need to form a new tribunal for each case, the MIC is expected to lower dispute resolution costs. However, the appellate process may offset some of these cost reductions (Brower, 2021).

- Enforcement of Awards

One of the most complex challenges in ISDS is enforcing arbitral awards in certain jurisdictions. While the 1958 New York Convention provides a framework for enforcing arbitration awards, some states, such as Russia, Venezuela, and Argentina, have historically refused to comply with arbitral decisions. The MIC has not yet established a definitive enforcement mechanism, but proposals suggest that it should have stronger enforcement guarantees than ISDS. For instance, the MIC may operate under a new treaty that obligates states to enforce its rulings (Paulsson, 2023).

By addressing certain deficiencies in the ISDS system—such as increasing transparency, reducing costs, introducing appellate review, and appointing permanent judges—the MIC has the potential to improve investment dispute resolution. However, critical challenges remain, including the impact of the appellate system on the length of proceedings, the compatibility of MIC awards with the New York Convention, and resistance from certain states to recognizing the MIC's jurisdiction. These issues must be carefully addressed in ongoing legal reforms.

5. The Position of MIC in the International Arbitration System

Currently, the most prominent international mechanisms for investment dispute resolution include the International Centre for Settlement of Investment Disputes (ICSID), UNCITRAL arbitration, and the International Chamber of Commerce (ICC) arbitration.

ICSID, operating under the World Bank, provides a relatively strong enforcement system but lacks an appellate review mechanism and does not fully guarantee transparency. Meanwhile, UNCITRAL offers a more flexible arbitration framework,

but enforcing its awards in certain jurisdictions remains a challenge. The MIC seeks to combine the strengths of both systems and provide a more comprehensive alternative (UNCTAD, 2020).

Different countries have responded to the MIC proposal with varying perspectives. The European Union and Canada strongly support the MIC, considering it a suitable replacement for ISDS. Conversely, the United States and some Asian countries, such as China, express skepticism about adopting the MIC, fearing it may undermine national sovereignty in investment disputes (European Commission, 2022).

One of the key questions regarding the MIC is whether its awards will be enforceable under the 1958 New York Convention.

The New York Convention is one of the most fundamental international instruments for enforcing foreign arbitral awards, with more than 160 signatory states. It obligates countries to recognize and enforce arbitral decisions under specific conditions. However, the MIC's two-tiered structure and its unique status compared to traditional arbitration institutions could create challenges for enforcing its awards under the convention (Schill, 2019).

5.1. Potential Challenges in Enforcing MIC Awards under the New York Convention

The potential challenges of enforcing MIC awards under the New York Convention include:

- Non-compliance with the definition of "arbitral award": The New York Convention primarily applies to private arbitration awards, whereas the MIC exhibits characteristics of an international court.
- Impact of the appellate system on enforcement: MIC rulings issued at the first-instance level are subject to appeal. This could lead to the suspension of enforcement until a final decision is reached (Paulsson, 2023).
- Recognition of MIC as an "independent arbitral institution": Some states may refuse to recognize the MIC as an arbitration body and instead equate it with the International Court of Justice (ICJ), whose decisions are not enforceable under the New York Convention (Van Harten, 2018).

To address these challenges, the following solutions have been proposed:

1. Amending the New York Convention to explicitly cover MIC awards.
2. Establishing an independent enforcement treaty for the MIC, similar to the 1965 ICSID Convention.
3. Assigning a supervisory role to the ICJ or other international institutions to facilitate the enforcement of MIC rulings.

5.2. Examining the Two-Tier Structure of the MIC and Its Implications for Award Enforcement

One of the most significant features distinguishing the Multilateral Investment Court (MIC) from traditional investment dispute settlement (ISDS) mechanisms is its two-tiered adjudication structure. This structure consists of a First Instance Court and an Appeal Mechanism, designed to allow for the review of awards. While this system aims to enhance the accuracy of adjudications and correct potential errors in decision-making, it also introduces complex legal and practical implications for the enforcement of awards. This section first examines the structure of this system and then analyzes its implications for the enforcement of MIC awards.

5.2.1. The Two-Tiered System of the MIC: First Instance Court and Appeal Mechanism

First Instance Court

This stage is equivalent to traditional ISDS arbitration panels, where a foreign investor can initiate proceedings against the host state. Unlike conventional arbitration, where arbitrators are selected specifically for each case, MIC judges will be chosen from a pre-appointed list of permanent judges. The case will be reviewed based on principles of international investment law, and a decision will be issued (Schill, 2022).

Appeal Mechanism

One of the fundamental innovations of the MIC is the possibility of appealing awards issued by the First Instance Court. Currently, a key problem in the ISDS system is that arbitral decisions are generally final and binding, with limited grounds for challenge, such as procedural fairness violations or lack of jurisdiction (Van Harten, 2021). However, under the MIC, parties

will have the right to appeal, and the Appeal Mechanism will review the initial award both legally and substantively. While some analysts argue that this feature will enhance accuracy and reduce judicial errors, it also raises concerns about prolonged enforcement timelines and legal uncertainty ([Brower, 2023](#)).

5.3. *Comparison of the MIC with Traditional Arbitration Systems*

A review of existing arbitration systems reveals that most international arbitration institutions do not have a two-tiered structure similar to the MIC. Key differences include:

- International Chamber of Commerce (ICC) Arbitration: ICC arbitration lacks a formal appeal mechanism, although parties can request a correction or interpretation of the award. However, enforcement relies on the New York Convention ([Born, 2022](#)).
- International Centre for Settlement of Investment Disputes (ICSID): ICSID includes an annulment mechanism, which is limited to procedural grounds and applies only in cases such as serious procedural violations. However, this differs from the substantive appeal process of the MIC.
- UNCITRAL Arbitration: Lacks a formal appeal mechanism, and its awards are typically enforced under the New York Convention.

This comparison demonstrates that the MIC introduces a unique structure that presents both advantages and challenges.

5.4. *Potential Issues in Enforcing MIC First Instance Awards*

A major challenge facing the MIC is whether first-instance awards will be enforceable or if enforcement must wait until the appellate review is complete. In traditional arbitration, enforcement typically begins immediately after an award is issued. However, under the MIC, states may delay enforcement due to the possibility that the award could be overturned on appeal ([Paulsson, 2023](#)). This situation could lead to legal uncertainty and delays in enforcement.

- If a first-instance award is enforced but later annulled on appeal, what legal consequences will arise?
- Can an investor request immediate enforcement of the award, even if an appeal is pending?

If a First Instance Award is Enforced but Later Annulled on Appeal

The enforcement of first-instance awards within the MIC's two-tiered system raises serious concerns about the court's effectiveness and legitimacy. If an award is enforced but subsequently overturned on appeal, several key legal consequences may arise:

1. Restitution and Compensation Issues
 - If a state is ordered to compensate an investor and makes payments before the appellate decision, annulment of the award could create a restitution issue. In some cases, the investor may have already used or depleted the funds, making full repayment impossible. Similar situations have arisen in ICSID arbitration, such as in the case of *Micula v. Romania* (ICSID Case No. ARB/05/20).
 - Additionally, if the first-instance award is annulled and the state cannot recover the amounts paid, it raises concerns about government accountability, public budgets, and the burden imposed on taxpayers ([Reinisch, 2016](#)).
2. Conflict with International Legal Principles and Legal Certainty
 - Enforcing an award and then annulling it could undermine legal certainty and investor confidence in the MIC. In traditional arbitration, finality and enforceability are fundamental principles, but the MIC's appeal system introduces uncertainty, potentially weakening its acceptance as an arbitration forum ([Tams, 2021](#)).
 - This issue may discourage states and corporations from recognizing the MIC as a credible and reliable dispute resolution body.
3. Challenges of Reverse Enforcement and Domestic Legal Conflicts
 - Annulment of an award on appeal creates difficulties in reversing enforcement actions. Domestic courts that have already enforced a first-instance award may face legal barriers to undoing their decisions ([Born, 2021](#)).

Some jurisdictions have domestic laws that make the reversal of paid compensation or seized assets legally complicated.

- Cases such as *Yukos v. Russia* have demonstrated that when arbitration awards are overturned at the international level, some states may refuse to return assets that were seized based on the original ruling.

4. Implications for the Future of the MIC

- If the MIC fails to establish a clear legal framework for this issue, contracting states may suspend the enforcement of its awards to avoid such complications (Schill, 2017).
- Consequently, the MIC could lose its effectiveness, and the enforcement of its awards may become a significant international challenge.

Can an Investor Request Immediate Enforcement of a First Instance Award While an Appeal is Pending?

The answer to this question depends on the MIC's internal framework and enforcement procedures. At present, the initial MIC model, as outlined in UNCITRAL's proposed statute, does not explicitly state whether immediate enforcement of first-instance awards is permitted. However, this issue can be analyzed based on existing arbitration models.

1. ICSID and UNCITRAL Models

- Under ICSID arbitration, an award is binding immediately upon issuance, and parties must comply unless a stay of enforcement is granted (Dolzer & Schreuer, 2012).
- Under UNCITRAL arbitration, the immediate enforcement of an award depends on the decision of the domestic court in the country where enforcement is sought (Reinisch, 2016).

2. Possibility of Immediate Enforcement in the MIC

- If the MIC follows the ICSID model, an investor could:
- Request immediate enforcement unless the state seeks a stay of enforcement.
- If enforcement is suspended, the investor could seek interim enforcement through domestic courts in the target country.

3. Potential Limitations on Immediate Enforcement

- Some states may allow immediate enforcement only under specific conditions, particularly if appellate review in the MIC is considered part of the judicial process (Tams, 2021).
- The MIC may introduce security-for-enforcement requirements for immediate enforcement of first-instance awards, similar to practices in some international commercial courts.

4. Potential Consequences of Immediate Enforcement in the MIC

- Immediate enforcement while an appeal is pending could escalate diplomatic and legal tensions between states and investors (Born, 2021).
- If the appellate court ultimately reverses the first-instance ruling, the investor may be required to return any assets or benefits obtained from the initial decision, leading to significant enforcement challenges (Brower & Blanchard, 2018).

5.5. *Enhancing MIC's Interaction with the New York Convention*

- To prevent enforcement disputes, the MIC must establish mechanisms for engaging with domestic legal systems to ensure that first-instance awards do not face execution barriers.

5.6. *Possibility of Suspending Enforcement if an Appeal is Filed*

In many legal systems, filing an appeal automatically suspends enforcement. It remains unclear whether an MIC first-instance award will be enforceable immediately or whether its enforcement must be stayed until the appellate decision is rendered. This issue could exacerbate enforcement difficulties under the New York Convention, as some states may reject the enforcement of MIC awards on this basis (Dolzer & Schreuer, 2021).

5.6.1. *Conflict Between the New York Convention and the MIC Appeal Mechanism*

The 1958 New York Convention, the primary international legal framework for enforcing arbitral awards, emphasizes the finality and conclusiveness of arbitration awards. However, because MIC awards are subject to appeal, it remains uncertain whether a first-instance ruling qualifies as a "final arbitral award" under the convention.

- Some states may refuse to enforce MIC awards on the grounds that they are not yet final ([Reinisch, 2022](#)).
- Other states may invoke the New York Convention to justify delaying enforcement due to the legal uncertainty surrounding MIC awards.

This legal conflict presents a major enforcement challenge that the MIC must address through procedural reforms.

5.7. *Legal Analysis of the Enforcement of MIC Awards under the New York Convention*

The enforcement of international arbitral awards has always been a fundamental challenge in investment law. The 1958 New York Convention, as the primary international treaty in this field, provides a comprehensive legal framework for the enforcement of arbitral awards in states that have acceded to it. However, the Multilateral Investment Court (MIC), due to its distinct structural features, raises uncertainties regarding the compatibility of its awards with the convention.

This section examines whether MIC awards can be enforced under the New York Convention. To this end, the concept of "arbitral awards" in the New York Convention will first be analyzed, followed by a comparison of the enforcement of MIC awards with other arbitration systems, and finally, legal perspectives on the feasibility of enforcing MIC awards will be discussed.

5.7.1. *The Concept of "Arbitral Awards" in the New York Convention and Challenges Related to MIC*

The 1958 New York Convention is one of the most influential treaties in arbitration law and serves as the primary basis for the recognition and enforcement of foreign arbitral awards at the international level. According to Article 1 of the convention, arbitral awards rendered in a country other than the state where enforcement is sought fall within the scope of the convention. To date, the convention has obligated more than 160 states to enforce arbitral awards ([Reinisch, 2022](#)).

However, the key question is whether the MIC qualifies as an arbitral tribunal under this convention.

The first view argues that the MIC remains an arbitral institution, and its awards should be enforceable under the New York Convention. Proponents of this view contend that despite its different structure, the MIC essentially serves as a replacement for ISDS, and its nature remains that of arbitration ([Born, 2022](#)).

The second view posits that the MIC, due to its structural features, constitutes a permanent judicial court rather than an arbitral tribunal. Some critics argue that MIC judges, unlike traditional arbitrators, are not appointed for each specific dispute but are instead permanently designated, making the MIC resemble a judicial court rather than a private arbitration tribunal ([Paulsson, 2023](#)).

If the second view is accepted, MIC awards will no longer qualify as "arbitral awards" enforceable under the New York Convention, necessitating the creation of an alternative enforcement mechanism for this court.

5.7.2. *Comparison of the Enforcement of MIC Awards with ICSID and Traditional Arbitration*

Different international arbitration systems have varying enforcement mechanisms, each with unique features. Comparing the MIC with these systems helps clarify its position in international arbitration.

- 1965 ICSID Convention:
 - ICSID awards are enforced under the ICSID Convention, which provides an independent enforcement regime separate from the New York Convention.
 - States that are parties to the ICSID Convention must enforce ICSID awards without any domestic court review.
 - ICSID offers a stronger enforcement system than the New York Convention because domestic courts cannot challenge its awards ([Schreuer, 2021](#)).

- UNCITRAL and ICC Arbitration:
 - These institutions primarily operate under the New York Convention.
 - The enforcement of their arbitral awards can be challenged by domestic courts, and states may refuse to enforce them.
- Multilateral Investment Court (MIC):
 - If the MIC is recognized as an arbitral tribunal under the New York Convention, its awards will be easily enforceable.
 - If the MIC falls outside the scope of the New York Convention, it may require an independent enforcement treaty, similar to ICSID.

The lack of clarity in defining the MIC's status within the international arbitration framework presents multiple challenges for enforcing its awards (Schill, 2023).

5.8. *Examination of Supporting and Opposing Views on the Enforcement of MIC Awards under the New York Convention*

The enforcement of MIC awards under the New York Convention has sparked divergent reactions among legal scholars and states. Some argue that the MIC can function under this convention, while others believe that its legal nature differs from traditional arbitration, requiring a separate enforcement framework.

Supporting Views:

- The New York Convention has historically shown flexibility in recognizing new arbitration institutions (Brower, 2023).
- The MIC remains within the ISDS framework and should continue to benefit from the New York Convention.
- Enforcing MIC awards under the New York Convention provides legal certainty to states, ensuring that this tribunal operates within a recognized legal framework.

Opposing Views:

- Due to its distinct structure and appellate mechanism, the MIC no longer qualifies as an "arbitral tribunal" and thus does not fall under the New York Convention (Paulsson, 2023).
- The appellate stage in the MIC could delay enforcement or provide grounds for states to resist compliance (Van Harten, 2021).
- Some states may view the MIC as an international judicial court rather than a private arbitration entity, making its awards ineligible for enforcement under the New York Convention.

If the MIC is accepted as an arbitral tribunal under the New York Convention, its awards will be more easily enforced. However, if states reject its classification as an arbitration tribunal, its awards could face serious enforcement challenges. Therefore, international legal bodies must establish a clear legal framework for the MIC's status to ensure that contracting states recognize and enforce its awards without hesitation.

6. **Barriers and Practical Challenges in the Enforcement of MIC Awards**

The enforcement of Multilateral Investment Court (MIC) awards at the international level faces numerous practical and legal challenges. These include the lack of recognition of the MIC as an independent arbitral tribunal, state resistance to enforcement, and potential conflicts with domestic court rulings. Effective enforcement of MIC awards depends not only on broad acceptance of the MIC by the international community but also on the creation of a coordinated legal framework to prevent enforcement obstacles. This section examines the major enforcement barriers and their potential consequences.

6.1. *Challenges in Recognizing the MIC as an Independent Arbitral Tribunal*

A fundamental challenge to the enforcement of MIC awards is its legal recognition as an independent arbitral tribunal. The 1958 New York Convention facilitates the enforcement of awards only for arbitration institutions that operate within its recognized framework (NY Convention, 1958, Art. V).

However, due to its judicial structure and two-tier system, the MIC may be classified as a judicial body rather than an arbitral tribunal in some states, which could create serious obstacles to enforcement.

Potential Recognition Barriers for the MIC:

1. **Structural Differences Between MIC and Traditional Arbitration:** Unlike arbitration systems such as ICSID and UNCITRAL, the MIC has a two-tier structure and permanently appointed judges, which may exclude it from the traditional definition of an arbitral tribunal (Brower & Blanchard, 2018).
2. **State Resistance to Accepting the MIC:** Some states may refuse to recognize the MIC as a legitimate dispute resolution forum due to its lack of established enforcement precedents.
3. **Absence of MIC Provisions in Domestic Laws:** Many states have structured their arbitration laws based on the New York Convention or traditional arbitration rules, potentially making MIC awards incompatible with these legal systems (Born, 2021).

Case Study:

- **Yukos v. Russia (PCA Case No. AA 227, 2014):** Although the arbitral ruling favored investors, Russia refused to enforce it, citing conflicts with its domestic legal system.

6.2. *State Resistance to the Enforcement of MIC Awards*

Certain states, particularly those with a history of non-compliance with international arbitral awards, may resist enforcing MIC decisions.

Key Factors Behind State Resistance:

1. **Concerns Over Sovereignty:** Some states, particularly those opposed to ISDS, may view the MIC as a threat to national judicial authority (Tams, 2021).
2. **Past Non-Compliance with Arbitral Awards:** States such as Russia, Argentina, Venezuela, and India have previously refused to enforce international arbitration rulings.

Case Studies:

- **Rusoro Mining Ltd. v. Venezuela (ICSID Case No. ARB(AF)/12/5):** Venezuela refused to comply with an ICSID arbitral ruling.
- **Micula v. Romania (ICSID Case No. ARB/05/20):** The European Commission's intervention delayed enforcement of the award.

The enforcement of MIC awards under the New York Convention remains highly uncertain. Without a clear legal framework, states may exploit legal ambiguities to avoid compliance, potentially undermining the MIC's legitimacy as an alternative to ISDS.

7. **Comparative Analysis: Enforcement of Arbitral Awards in Different Systems**

The enforcement of international arbitral awards across various legal systems has consistently faced numerous challenges. A comparative analysis between the Multilateral Investment Court (MIC), ICSID, and UNCITRAL will provide a clearer understanding of the enforcement issues surrounding MIC and help develop appropriate solutions. This section examines the differences in enforcement mechanisms among these systems and reviews real-world cases of non-enforcement of arbitral awards.

7.1. *Comparison of the Enforcement of MIC Awards with ICSID and UNCITRAL Arbitration Awards*

1. ICSID and the Enforcement of Its Awards

The International Centre for Settlement of Investment Disputes (ICSID) operates under the 1965 Washington Convention. The most significant feature of ICSID award enforcement is that, unlike the New York Convention, ICSID member states are obligated to enforce awards without substantive reconsideration (Dolzer & Schreuer, 2012).

2. Enforcement of UNCITRAL Arbitral Awards

UNCITRAL arbitration rules, which rely on the New York Convention, are widely used in investment arbitration. However, the enforcement of UNCITRAL awards faces challenges, including the right of domestic courts to review the compliance of an award with national public policy, which complicates enforcement (Born, 2021).

3. MIC and Its Enforcement Challenges Compared to ICSID and UNCITRAL

Unlike ICSID, which has an independent enforcement framework, MIC awards must either be enforced under the New York Convention or require the creation of a specific enforcement mechanism. Additionally, MIC's two-tier adjudication system could delay and complicate the enforcement process (Schill, 2017).

7.2. Real-World Cases of Non-Enforcement of International Arbitral Awards

Over recent decades, several states have refused to enforce international arbitral awards. Some notable cases include:

1. Yukos v. Russia (PCA Case No. AA 226, 2014): Russia refused to enforce an award issued by the Permanent Court of Arbitration (PCA) in The Hague, and Russian domestic courts subsequently annulled the award.
2. Micula v. Romania (ICSID Case No. ARB/05/20): Despite a ruling in favor of investors, the Romanian government refused enforcement and, with support from the European Commission, delayed implementation.
3. Chevron v. Ecuador (PCA Case No. 2009-23): Ecuador refused to enforce an arbitral award, arguing that the decision conflicted with its national policies and environmental regulations.

7.3. Why Do Some States Refuse to Enforce Arbitral Awards?

1. Sovereignty and National Authority

Some states perceive the enforcement of arbitral awards as an infringement on their sovereignty (Tams, 2021).

2. Reliance on Domestic Public Policy

Many states condition the enforcement of arbitral awards on their compatibility with fundamental principles of their domestic legal system (Reinisch, 2016).

3. Absence of a Proper International Supervisory Mechanism

The lack of a binding international enforcement body poses another challenge, which MIC may also encounter (Brower & Blanchard, 2018).

8. Proposed Solutions to Overcome Barriers to MIC Award Enforcement

The enforcement of MIC awards requires a robust international legal framework and greater alignment between domestic and international legal systems. This section outlines proposed solutions for improving MIC's enforcement.

8.1. Reform Proposals for the Enforcement of MIC Awards under the New York Convention

1. Amendments to the 1958 New York Convention

Given the challenges associated with enforcing MIC awards, revising the New York Convention to explicitly recognize MIC as an independent arbitral body could ensure enforcement (Schill, 2017).

2. A Clearer Definition of "Arbitral Awards" in the Convention

A key issue in MIC enforcement is that its awards do not fully align with the traditional concept of arbitration under the New York Convention. Legal scholars suggest amending the convention to explicitly classify MIC awards as enforceable arbitral decisions (Born, 2021).

8.2. The Need for Supplementary International Treaties to Facilitate Enforcement

1. Creating an Independent Treaty for MIC Award Enforcement

Just as the 1965 ICSID Convention established a specialized enforcement framework for ICSID awards, a new international treaty recognizing MIC as an independent entity could resolve its enforcement difficulties (Tams, 2021).

2. Strengthening Cooperation with Domestic Courts

MIC must collaborate with national judicial systems to establish a mechanism for harmonizing MIC decisions with domestic legal processes, thereby avoiding enforcement conflicts (Dolzer & Schreuer, 2012).

8.3. *Developing a New Regulatory Framework for the Effective Enforcement of MIC Awards*

A new regulatory framework could improve MIC's enforcement procedures. Some proposed solutions include:

1. Establishing a global standard for arbitral award enforcement, compelling all countries to enforce MIC decisions.
2. Collaborating with international financial institutions such as the World Bank and the IMF to impose economic sanctions on states that refuse to enforce MIC awards.

8.4. *The Role of the International Court of Justice (ICJ) and Regional Courts in MIC Award Enforcement*

1. The ICJ as a Supervisory Authority

The International Court of Justice (ICJ) could play a key role in supervising MIC award enforcement. By placing MIC under ICJ oversight, its enforcement mechanisms would gain stronger legal legitimacy (Reinisch, 2016).

2. Leveraging Regional Judicial Bodies

Regional courts, such as the European Court of Justice (ECJ) and the European Court of Human Rights (ECHR), could support MIC by establishing regional enforcement regulations (Brower & Blanchard, 2018).

9. Conclusion and Final Recommendations

The Multilateral Investment Court (MIC) represents one of the most significant reforms in investment dispute resolution, offering a fundamental shift in international investment arbitration. While MIC seeks to address the core deficiencies of ISDS, such as lack of transparency, high costs, absence of appellate review, and arbitrator bias, the enforcement of MIC awards remains one of its greatest challenges (Schill, 2017).

This article demonstrates that without an appropriate enforcement framework, MIC may suffer from the same flaws as ISDS and risk becoming another source of legal uncertainty (Dolzer & Schreuer, 2012).

One of the most critical issues regarding MIC is whether it should be classified as an arbitral tribunal or an international judicial body. Given that the 1958 New York Convention serves as the primary framework for enforcing international arbitration awards, MIC's judicial structure and appellate system may exclude it from the convention's traditional definition of arbitration (Reinisch, 2016).

Another significant challenge is MIC's appellate mechanism. Unlike traditional arbitration, which typically concludes with a final and binding award, MIC's appellate review could create ambiguity regarding the enforceability of first-instance awards and result in delays in execution (Born, 2021).

Empirical studies indicate that many states resist enforcing arbitration awards, particularly when the ruling is against a sovereign government. Countries such as Russia, Argentina, Venezuela, and several African states have historically refused to enforce international arbitral awards (Schill, 2017).

To ensure MIC's credibility, an independent enforcement mechanism must be developed. If MIC lacks strong enforcement tools, states will refuse to comply, rendering the MIC ineffective and undermining its legitimacy (Tams, 2021).

Key Recommendations for Enhancing MIC's Enforcement:

1. Adopt a supplementary international treaty to guarantee MIC award enforcement.
2. Grant the ICJ supervisory authority over the enforcement of MIC decisions.
3. Strengthen the role of domestic courts in MIC enforcement processes.
4. Encourage greater participation of developing countries in MIC's decision-making process.

Without these reforms, MIC cannot establish itself as a credible institution in international investment arbitration, and its enforcement challenges will ultimately undermine its legitimacy.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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