INVESTMENT COURT SYSTEM: IS IT A VIABLE ALTERNATIVE FOR INVESTOR-STATE DISPUTE SETTLEMENT?

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ABSTRAK

Penyelesaian Sengketa Investor-Negara (ISDS) telah menghadapi krisis legitimasi yang berkepanjangan, dikritik karena ketidakkonsistenan, kurangnya transparansi, dan persepsi bias. Sebagai respons, Investment Court System (ICS) telah muncul sebagai model yang lebih disukai oleh Uni Eropa (UE) dalam perjanjian-perjanjian terbaru. Penelitian ini bertujuan untuk menganalisis apakah ICS dapat menjadi alternatif yang lebih sah dan berkelanjutan dibandingkan dengan ISDS tradisional. Dengan menggunakan metode doktrinal dan komparatif, artikel ini menganalisis teks perjanjian, praktik penegakan hukum, dan kebijakan investasi. Temuan menunjukkan bahwa ICS bersifat konstruktif dan dapat direplikasi, terutama bagi negara-negara non-UE yang berusaha menyeimbangkan perlindungan investor dengan otonomi regulasi. ICS sering dianggap sebagai perbaikan yang signifikan. Kesimpulannya, kelangsungan jangka panjangnya bergantung pada penyelesaian ketidakpastian penegakan hukum melalui mekanisme multilateral. Mengambil pelajaran dari Pasal 54 Konvensi ICSID, pengadilan nasional harus memperlakukan putusan ICS sebagai setara dengan putusan domestik yang final.

Kata Kunci: Investment Court System, Uni Eropa, Indonesia, Konvensi New York, *Investor-State Dispute Settlement.*

ABSTRACT

Investor-State Dispute Settlement (ISDS) has faced a prolonged legitimacy crisis, criticised for inconsistency, lack of transparency, and perceived bias. In response, the Investment Court System (ICS) has emerged as the preferred model by the European Union (EU) in the recent agreements. This research aims to examine whether the ICS can serve as a more legitimate and sustainable alternative to traditional ISDS. Using a doctrinal and comparative method, this article analyses treaty texts, enforcement practice, and investment policy. The findings reveal that the ICS is constructive and replicable, particularly for non-EU states that seek to strike a balance between investor protection and regulatory autonomy. The ICS is often viewed as a significant improvement. It concludes that its long-term viability depends on resolving enforcement uncertainties through a multilateral mechanism. Learning from Article 54 of the ICSID Convention, national courts must treat ICS awards as equivalent to final domestic judgments.

Keywords: *Investment Court System, European Union, Indonesia, New York Convention, Investor-State Dispute Settlement.*

I. INTRODUCTION

1.1. Background

Over the past decade, disputes initiated by foreign investors against host states have expanded considerably, both in terms of their frequency and the scale of the claims pursued. These proceedings have largely been grounded in

the dense network of international investment agreements, most notably bilateral investment treaties (hereinafter referred to as the "**BITs**").[1] Besides providing a legal tool for regulating and managing investment disputes, BITs also grant foreign investors the ability to bring claims against the host country in cases where state actions lead to expropriation or other detrimental effects on the investment.[2] Foreign investors may pursue compensation through international arbitral tribunals rather than relying on the domestic judiciary of the host state.[3]

According to the United Nations Conference on Trade and Development (UNCTAD), more than 2,200 BITs are currently in force, covering the majority of states globally.[4] It guarantees substantive and procedural protection specifically provided to foreign investors because the agreement regulates the behavior of a host country toward foreign investment and investors.[5] This protection typically includes guarantees from the host country to provide foreign investors with, among other things, compensation equivalent to expropriation, freedom from unreasonable or discriminatory actions, national treatment guarantees, fair and equitable treatment, and full protection and security, and foreign investors must receive treatment no less favorable than that provided by international law.[6] This development has triggered what is widely described as a legitimacy crisis in Investor-State Dispute Settlement (hereinafter "**ISDS**").[7] Critics argue that the existing arbitral model lacks consistency, transparency, and accountability, thereby undermining states' regulatory autonomy.[8] These concerns have sparked reform efforts across multiple forums, including the United Nations Commission on International

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[1] Brodija, Fahira. "The Multilateral Investment Court: Necessary ISDS Reform of Self-Fulfilling Prophecy?." *Arbitration Law Review* 15, No. 1 (2024): 1.

[2] Eichler, Stefan. and Nauerth, Jannik A. "Bilateral Investment Treaties and Sovereign Default Risk: Evidence for Emerging Markets." *International Journal of Finance and Economics* 30, No. 2 (2025): 1803.

[3] *Ibid.*, 1804.

[4] UN Trade and Development, 'International Investment Agreements Navigator' <https://investmentpolicy.unctad.org/international-investment-agreements> accessed 16 August 2025.

[5] Franck, Susan. "The Legitimacy Crisis in Investment Treaty Arbitration: Privatizing Public International Law Through Inconsistent Decisions." *Fordham Law Review* 73, No. 4 (2005): 1521.

[6] De Brauw Blackstone Westbroek and International Centre for Settlement of Investment Disputes, 'Presentation on Investment Protection' (Workshop, Jakarta, 19 June 2025).

[7] Dietz, Thomas. "The Legitimacy Crisis of Investor-State Arbitration and the New EU Investment Court System." *Review of International Political Economy* 26, No. 4 (2019): 749.

[8] Papadimos, Nektarios. "A Golden Mean Approach to Independence and Impartiality in Investment Arbitration." *Journal of International Dispute Settlement* 16, No. 3 (2025). *See also* Kim, J. W. and Winnington-Ingram, L. M. "Investment Court System Under EU Trade and Investment Agreements: Addressing Criticisms of ISDS and Creating New Challenges." *Global Trade and Customs Journal* 16, No. 5 (2021): 181.

Trade Law (UNCITRAL) Working Group III, where alternatives to traditional arbitration are being debated.[9]

Over recent months, the global trade environment has experienced renewed turbulence. In late July 2025, the United States and the European Union announced a framework agreement that reduced tariffs on most European Union exports to 15 percent, averting a full-scale transatlantic trade war.[10] This dynamic underscores how even major economic partners like the European Union and the United States are vulnerable to geo-economic shifts, prompting major players to diversify their trade investment strategies.[11] Against this backdrop, the European Union (EU) has increasingly shifted away from ad-hoc ISDS toward the two-tier Investment Court System (hereinafter "**ICS**") in its preferential trade and investment agreements.[12]

The EU has emerged as the primary proponent of institutional reform in ISDS. Among the various reform models that have been discussed in international forums, the EU has consistently championed the establishment of a standing adjudicatory mechanism, formally known as the ICS.[13] This approach is the reflection not only of the EU's commitment to restoring the legitimacy of international investment law, but also its determination to create a dispute settlement mechanism compatible with the principles of judicial independence and transparency that are embedded in European constitutional traditions.[14]

The intellectual and political foundations of the EU's commitment to ICS was established during negotiations on the Transatlantic Trade and Investment Partnership (TTIP) with the United States in 2015.[15] During these negotiations, civil society organisations, academic experts, and national parliaments expressed strong opposition to the inclusion of the traditional investor-state

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[9] M A Khalique, 'Analyses of the European Union and its Member States' Proposals on Reforming the ISDS System Under the UNCITRAL Working Group III' (2024) Green and Digital Transitions: Global Insights into Sustainable Solutions 2024. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4884284> accessed 24 August 2025.

[10] A Gray and A Shalal, 'US and EU avert trade war with 15% tariff deal' (*Reuters*, 28 July 2025) <https://www.reuters.com/business/us-eu-avert-trade-war-with-15-tariff-deal-2025-07-28/> accessed 18 August 2025.

[11] N Martin, 'Trump tariffs drive China, EU to diversify trade' (*DW*, 11 April 2025) <https://www.dw.com/en/trump-tariffs-trade-eu-car-industry-cheap-goods-wto/a-72176478> accessed 12 August 2025.

[12] Commission, 'The Investment Court System (ICS): What it is and how it works' <https://trade.ec.europa.eu/access-to-markets/en/content/investment-court-system?> accessed 13 August 2025.

[13] Commission Press Release, Trade: European Court of Justice confirms compatibility of Investment Court System with EU Treaties, 30 April 2019. https://ec.europa.eu/commission/presscorner/detail/en/ip_19_2334 accessed 4 September 2025.

[14] Art 8.21 EU–Canada CETA.

[15] Kuang, Shuxiao. "The European Commission's Discourses on Sustainable Development in 'Trade for All': An Argumentative Perspective" *European Foreign Affairs Review* 26, No. 2 (2021): 265.

arbitration model. Critics argued that ad hoc arbitration panels undermine democratic control over regulatory policy and grant foreign investors special procedural access that is not available to domestic companies or citizens.[16] This backlash has put significant political pressure on the European Commission to propose alternatives that are more acceptable to both policymakers and the wider public.[17] In response, the European Commission introduced the ICS model, which replaces party appointed arbitrators by the parties with a permanent court composed of pre-selected judges, supported by an appeal mechanism.[18] The institutionalized design of the ICS is intended to address concerns regarding arbitrator conflicts of interest, inconsistencies in jurisprudence, and the absence of an appeal mechanism that were often identified as the central flaws of traditional ISDS.[19] The Commission's proposal was not merely tactical in the context of TTIP. Instead, it marked the beginning of a systematic policy shift in all subsequent trade and investment negotiations.

From a rule-of-law perspective, this evolution is attractive. The ICS answers well-known critiques of traditional ISDS: concerns over arbitrator conflicts, double-hatting, inconsistent awards, and the absence of appellate error correction.[20] Institutionalisation, in the form of fixed rosters, tenure, an appellate level, and codified ethics, seeks to thicken adjudicative independence and foster coherence across cases. [21] The EU's preference is also consistent with recent systemic reforms outside treaty texts, particularly the UNCITRAL–ICSID Code of Conduct for Arbitrators in International Investment Disputes in 2023, which sets stricter and clearer standards on impartiality, disclosure, and double-hatting than most legacy International Investment Agreements (IIAs) ever contemplated.[22]

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[16] Alkhayer, Jaffar. et al. "The ICS vs the ICSID system: a possible compromise in the light of the sustainable development." *IOP Conference Series: Earth and Environmental Science* 1279, No. 4 (2023).

[17] Tabet, Sylvie and Brown, Colin. "Trans-Atlantic Trade: The Comprehensive Economic and Trade Agreement Between Canada and the European Union and Its Member States" in *The Oxford Handbook of International Trade Law Second Edition* (Oxford University Press, 2022), Chapter 10.

[18] Kim and Winnington-Ingram, *Op. Cit.,* 182.

[19] Ngobeni, T. L. "The International Court System: A Solution to the Crisis in Investor-State Arbitration."*Potchefstroom Electronic Law Journal* 27, No. 1 (2024): 12

[20] Kaufmann-Kohler, Gabriella and Potestà, M. "Investor-State Dispute Settlement and National Courts" in *European Yearbook of International Economic Law* (Springer Open, 2020).

[21] Council Decision (EU) 2018/1676 of 15 October 2018 on the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part.

[22] News Releases, UN Member States Adopt ICSID and UNCITRAL Code of Conduct for Arbitrators in International Investment Disputes (*ICSID*, 14 July 2023). <https://icsid.worldbank.org/news-and-events/news-releases/un-member-states-adopt-icsid-and-uncitral-code-conduct-arbitrators?> accessed 15 August 2025; See also Langford, Malcolm et al. "The Revolving Door in International Investment Arbitration" *Journal of International Economic Law* 20, No. 2 (2017): 301.

That policy shift was initially tested in the EU–Canada Comprehensive Economic and Trade Agreement (CETA) which is now replicated in agreements with several partners, reflecting a conviction that legitimacy, independence, and predictability are better secured by standing adjudicators operating under a strict code of conduct, robust transparency norms, and appellate review.[23] In parallel, the EU has tabled a multilateral project to generalise the model, called a Multilateral Investment Court, through the UNCITRAL Working Group III reform track.[24] While the multilateral court remains under negotiation, the bilateral ICS has matured into a consistent EU negotiating template.

1.2. Research Problems

Based on the background description above, there are two problem formulations that are the focus of this study:

1. What are the characteristics of the ICS awards within the scope of the New York Convention?
2. How is the enforceability of the ICS awards in the non-EU states?

1.3. Purpose of Writing

Based on the research questions, the objectives of this study are:

1. To examine the legal characteristics and nature of awards rendered under the ICS, particularly in relation to their qualification and treatment within the framework of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
2. To analyze the enforceability of ICS awards in non-EU states, with a focus on the legal challenges, interpretative issues, and practical implications arising from their enforcement under existing international enforcement regimes.

3. RESULT AND DISCUSSION

3.1. Characteristics of ICS Decisions within the Scope of the New York Convention

The first treaty to fully embody the ICS was the CETA between the EU and Canada. Concluded in 2016, CETA introduced a two-tier system comprising a tribunal of first instance and an appellate tribunal, with both staffed by judges appointed by the parties to the agreement rather than selected by disputing investors and respondent states. [25] Judges under CETA are appointed for a fixed term, remunerated through a retainer fee, and subject to a

[23] Ngobeni, *Op. Cit.*, 6.
[24] UNCITRAL WGIII (2025)
[25] Bungenburg, Marc and Reinisch, August. "From Bilateral Arbitral Tribunals and Investment Courts to a Multilateral Investment Court" in *European Yearbook of International Economic Law* (Springer Nature, 2019), 1-216.

binding code of conduct that requires strict impartiality and prohibits outside professional engagements that could threaten their independence.[26]

Following CETA, the ICS was incorporated into the IPA between EU and Vietnam as well as between the EU and Singapore.[27] Both agreements reproduce the essential institutional features of CETA: a permanent tribunal of fifteen judges, an appellate tribunal, transparent proceedings in line with the UNCITRAL Transparency Rules, and provisions for third party participation through *amicus curiae* submissions.[28] The inclusion of ICS in these treaties shows that ICS has become the EU's standard negotiation template. Unlike previous practices, where dispute resolution mechanisms varied between agreements, the inclusion of ICS in agreements with diverse partners such as Canada, Vietnam, and Singapore reflects a deliberate standardization policy. Such standardization has two objectives. First, it demonstrates the EU's credibility as a negotiating partner by presenting a clear and stable policy position. Second, it increases the likelihood that ICS will gradually develop into a customary practice that could support the establishment of a Multilateral Investment Court in the future.[29]

The EU's commitment to ICS has also shaped negotiations with developing countries, including Indonesia. The I-EU CEPA reached political agreement in July 2025 and incorporates ICS as the dispute settlement mechanism for ISDS.[30] The application of ICS in the I-EU CEPA shows that the EU has succeeded in convincing even cautious partners to accept this model. For Indonesia, the appeal of ICS lies in the promise of greater judicial independence, legal certainty, and protection against unfounded lawsuits, which were concerns that prompted Indonesia's withdrawal from the previous traditional ISDS system.[31] Indonesia's decision to terminate several BITs between 2014 and 2016 was largely driven by the perception that ISDS mechanisms unduly restricted its capacity to implement development oriented policies and public interest regulations. These included domestic processing

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[26] Investment Protection in the Joint Interpretative Instrument on the CETA between Canada and the European Union and its Member States <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017X0114(01)> accessed 8 September 2025.

[27] The EU signed a Trade Agreement and an Investment Protection Agreement with Vietnam on 30 June 2019. It also reached agreements with Singapore in the form of the EUSFTA and EUSIPA, which were endorsed by the European Parliament on 13 February 2019.

[28] Art 3 (6) EU–Vietnam IPA; Art 3 (2) EU–Singapore IPA.

[29] Titi, Catherine. "International Investment Law and the European Union: Towards a New Generation of International Investment Agreements." *European Journal of International Law* 26, No. 3 (2015): 639.

[30] Commission, 'EU and Indonesia choose openness and partnership with political agreement on CEPA' <https://ec.europa.eu/commission/presscorner/detail/fi/statement_25_1818> accessed 23 August 2025.

[31] Titi, Catherine. "The European Union's Proposal for an International Investment Court: Significance, Innovations and Challenges Ahead" (forthcoming) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2711943> accessed 24 August 2025.

requirements and environmental safeguards, under the constant risk of investor litigation. [32]

ICS represents one of the most ambitious institutional innovations in the history of international investment law.[33] The EU's implementation of the ICS marks a fundamental shift away from the arbitration model that has dominated ISDS for decades. The rationale behind the ICS is rooted in a prolonged crisis of legitimacy.[34] Critics of ISDS have repeatedly argued that ad hoc arbitration lacks transparency, is prone to conflicts of interest, and fails to produce consistent and predictable jurisprudence. The EU responded to this by institutionalizing dispute resolution. This section explains why ICS is considered a positive reform. The analysis focuses on its institutional design, its ability to enhance the legitimacy, its impact on transparency, and its potential benefits for non-EU countries such as Indonesia.

The structure of ICS departs fundamentally from arbitration. In arbitration, parties to a dispute appoint their own arbitrators, who then select a presiding chair. This practice has been criticised for generating perceptions of bias and for enabling "double-hatting", where arbitrators also act as counsel in other disputes.[35] These practices actually undermine confidence in impartiality. ICS replaces this structure with a permanent roster of judges appointed in advance by the contracting states. These judges serve fixed terms and receive remuneration through retainer fee.[36] This structural change aligns ICS more closely with public law adjudication than with private arbitration.

Another major innovation is its appellate tribunal. One of the enduring weaknesses of ISDS has been the absence of appeal. Arbitration awards are final, subject only to limited annulment procedures under the ICSID Convention or domestic law.[37] This has produced inconsistent jurisprudence. The existence of an appeal mechanism enhances predictability and reduces the risk of fragmentation. [38]

Transparency is also fundamental to ICS. Traditional ISDS has often been criticised for secrecy. Hearings are closed and documents are rarely disclosed.

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[32] Wong, Lucas Jun Hao. "Indonesia's Termination of Bilateral Investment Treaties"*SMU ASEAN Perspectives* 1, No. 1 (2022): 1.

[33] Alshahrani, Sarah M. "What Should We Know About the Origins of International Investment Law?" *International Journal of Legal Information* 48, No. 3 (2020): 122.

[34] Dietz, *Op. Cit.*, 749.

[35] ICSID, UN Member States Adopt ICSID and UNCITRAL Code of Conduct for Arbitrators in International Investment Disputes (14 July 2023) <https://icsid.worldbank.org/news-and-events/news-releases/un-member-states-adopt-icsid-and-uncitral-code-conduct-arbitrators?> accessed 15 August 2025.

[36] Kinanti, F. M. and Wiko, G. "Investment Court System Sebagai Alternatif Penyelesaian Sengketa Penanaman Modal Asing." *Arena Hukum: Jurnal Ilmu Hukum* 16, No. 2 (2023): 338-361.

[37] Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention, Regulation and Rules).

[38] Schill, Stephan W. "Reforming Investor – State Dispute Settlement: A (Comparative and International) Constitutional Law Framework." *Journal of International Economic Law* 20, No. 3 (2017): 649–72 .

Critics argue that these undermine democratic accountability and public trust.[39] ICS, by contrast, requires transparency in line with UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration 2014. Hearings are public and submissions are published. Third parties can participate through *amicus curiae* briefs. [40] This openness allows affected communities, journalists, and scholars to monitor proceedings. Transparency also reflects broader developments in international adjudication, including in human rights and trade law.[41]

Ethical obligations also mark a sharp break from earlier practice. The ICS Code of Conduct requires judges to disclose financial interests, prior professional relationships, and other potential conflicts of interest.[42] This addresses the problem of double-hatting directly. It also mirrors judicial ethics standards in domestic courts.[43] By introducing these standards into international adjudication, ICS helps shift investment dispute settlement from a commercial model to one that resembles public judicial practice.[44] The legitimacy gains from these reforms are substantial. ISDS has long been criticised as privileging foreign investors with a special forum not available to domestic investors.[45] Decisions were often rendered by a narrow group of arbitrators who frequently reappeared across cases.[46] This raised concerns about bias and insularity. ICS mitigates these concerns by relying on a roster of permanent judges subject to clear ethical rules.[47] The availability of an appeal and transparent proceedings further enhance credibility.[48] This improves the balance between investor protection and state sovereignty.[49] ICS therefore represents pragmatic reform that balances competing interests.[50]

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[39] Fyock, Claiton. "Getting 'real' about ISDS Reform: A Critical Realist View of International Investment Law's Status Quo." *Journal of International Dispute Settlement* 16, (2025): 3.

[40] Art 8.36 EU–Canada CETA.

[41] IISD, 'Transparency and the UNCITRAL Arbitration Rules' <https://www.iisd.org/projects/transparency-and-uncitral-arbitration-rules> accessed 23 August 2025.

[42] Art 8.30 (1) EU–Canada CETA.

[43] Brown, Colin M. and Koumadoraki, Niki. "Ethical Concerns in Investor-State Dispute Settlement: Seeking a Permanent Solution." *BCDR International Arbitration Review* 7, No. 2 (2020): 429.

[44] Schill, *Op. Cit.*, 670.

[45] Zarbiyev, *Op. Cit.*, 526.

[46] Kalantzi, A. C. "Conflict of Interest in International Commercial Arbitration: The Issue of Repeat Appointments of Arbitrators." E*rasmus Law Review* 15, No. 1 (2020): 45.

[47] Ünüvar, G. "Investment Court Judges and the "Right to An Independent Tribunal: An Assessment of the Qualification and Ethics Rules in EU FTAs in Light of Opinion 1/17."*European Papers* 6, No. 1 (2020): 757.

[48] Schill, *Op. Cit.*, 678.

[49] Moehlecke, Carolina et al. "Global Value Chains as a Constraint on Sovereignty: Evidence from Investor-State Dispute Settlement." *International Studies Quarterly* 67, No. 1 (2023).

[50] Lavranos, *Op. Cit.*, 852.

Academic opinion broadly supports ICS as an improvement.[51] Stephan Schill argues that institutionalisation addresses many weaknesses of ISDS.[52] Van Harten regards ICS as a step towards integrating public law values into investment arbitration.[53] Collectively, scholars recognise that ICS is not perfect but represents a genuine improvement.

The New York Convention is widely regarded as the most effective multilateral instrument in the field of private international law.[54] Contracting states are obligated to acknowledge arbitration agreements and enforce foreign arbitral awards, with refusal permitted only on narrowly defined grounds.[55] Its nearly universal membership and tendency to support enforcement of awards have made arbitration the primary method of resolving international trade and investment disputes.[56]

The New York Convention does not provide a precise definition of an arbitral award. Article I of the New York Convention refers to awards "arising out of differences between persons, whether physical or legal."[57] Domestic courts have therefore developed their own tests, focusing on party consents, the adjudicatory nature of the proceedings, and the final and binding effect of the decision.[58] Supporters of the application of the New York Convention to ICS emphasize that the system is still rooted in state consent. States consent to ICS jurisdiction through treaties such as the CETA and IPA, while investors accept that offer by filing claims. ICS proceedings remain adversarial, apply international law, and culminate in binding decisions awarding compensation or declaratory relief.[59] In this view, the institutional refinements of ICS, such as the establishment of a permanent tribunal and appellate review, do not negate its arbitral character but rather strengthen its legitimacy.

Critics argue, however, that ICS departs too far from the essence of arbitration. Party autonomy, traditionally the cornerstone of arbitration, is severely limited.[60] Parties no longer appointed arbitrators and awards are subject to appellate scrutiny, which undermines finality. Moreover, ICS judges resemble international judges more than arbitrators, given their fixed salaries,

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[51] Charris-Benedetti, *Op. Cit.,* 92.

[52] Schill, *Op. Cit.,* 663.

[53] Harten, Gus Van. *Investment Treaty Arbitration and Public Law* (Oxford University Press, 2007).

[54] International Council for Commercial Arbitration, *ICCA's Guide to The Interpretation of the 1958 New York Convention: A Handbook for Judges* (2nd, International Council for Commercial Arbitration, 2024).

[55] Berg, Albert Jan van den. *The New York Arbitration Convention of 1958* (Kluwer Law and Taxation Publishers, 1981).

[56] Fouchard, Philippe. "Fouchard Gaillard Goldman on International Commercial Arbitration" in Emmanuel Gaillard and John Savage (eds.), *Uniform Law Review* (Kluwer Law International, 1999).

[57] Art I of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

[58] Born, Gary. *International Commercial Arbitration* (3rd edn, Kluwer Law International, 2021).

[59] Art 8.41 EU–Canada CETA; Art 3.57 EU – Vietnam IPA.

[60] Papadimos, *Op. Cit*.

ethical codes, and prohibition of outside professional engagements. From this perspective, ICS awards are more akin to judgements of an international court than to arbitral awards. If domestic courts adopt this reasoning, ICS decisions may not benefit from the New York Convention's enforcement regime.[61] The International Centre for Settlement of Investment Dispute (ICSID) provides a useful comparator. The ICSID Convention creates an autonomous enforcement regime, for example, Article 54 obliges Contracting States to enforce ICSID awards "as if it were a final judgment of the courts of a constituent state."[62] Crucially, ICSID awards are not subject to review under the New York Convention.[63] This self-contained enforcement mechanism has been widely praised for providing certainty and has been a decisive factor in the popularity of ICSID arbitration.[64] ICS, by contrast, has no equivalent multilateral enforcement treaty. Unless a future Multilateral Investment Court establishes its own enforcement regime, ICS will depend on the New York Convention or on ad hoc recognition as foreign judgements. This reliance introduces uncertainty: while ICS may enhance legitimacy, it could paradoxically weaken enforcement compared with some traditional ISDS mechanisms.[65] ICS decisions do not fully comply with the classic notion of arbitral awards, creating interpretative uncertainty.

3.2. Enforcement of ICS Decisions in Non-EU Countries

The interpretative uncertainty surrounding the legal nature of ICS decisions under the New York Convention has direct implications for their enforceability, particularly in non-EU countries. Enforcement therefore constitutes the most vulnerable aspect of the ICS framework when viewed from the perspective of host states outside the EU. In this context, ICS should not be understood as a dispute settlement mechanism, but also as part of a broader institutional reform agenda. However, the effectiveness of this agenda depends on the enforceability of ICS awards beyond the EU.

The enforceability of awards under the New York Convention has been a key reason why states and investors have preferred arbitration over diplomatic protection or reliance on domestic courts.[66]

However, the application of the New York Convention to ICS awards is not straightforward. Unlike traditional arbitral tribunals, ICS is designed as a permanent adjudicatory body with standing judges, tenure security, appellate

[61] Lavranos, *Op. Cit.*, 852.

[62] Art 54(1) EU–Canada CETA.

[63] Aceris Law LLC, Compliance with ICSID Awards <https://www.acerislaw.com/compliance-with-icsid-awards/> accessed 24 August 2025.

[64] Shihata, I. F. I and Parra, Antonio R. "The Experience of the International Centre for Settlement of Investment Disputes." *ICSID Review – Foreign Investment Law Journal* 14, (1999): 299.

[65] Dietz, *Op. Cit.*, 751.

[66] Yuan, Luo Yuan. "Application of the New York Convention to International Investment Arbitration Awards: An Analysis from the Perspectives of Indonesia and China." *Indonesia Law Review* 15, No. 1 (2025): 37.

review, and a code of conduct.[67] These features reflect judicialization rather than arbitration in the traditional mechanisms. The question is whether ICS awards can be assimilated to arbitral awards under the New York Convention or whether they fall outside its scope, potentially leaving investors without the legal certainty that arbitration has historically guaranteed.

The practice of domestic court will be decisive. Courts have historically demonstrated flexibility in interpreting the scope of arbitral awards.[68] For example, awards from specialized international claims bodies, such as the Iran – United States Claims Tribunal (hereinafter "**IUSCT**"), have been successfully enforced by domestic courts under the New York Convention despite their unique public international law character and institutional features.[69] Evidently, the New York Convention can serve as the foundation for the enforcement of decisions from this forum. Provisions regarding the enforcement of ICS award are contained in Article 8.41 paragraph 5 of CETA (EUVFTA also contains the same provisions), which stipulates: "A final award issued pursuant to this Section shall be considered an arbitral award connected to claims stemming from a commercial relationship or transaction, within the meaning of Article I of the New York Convention."

Such an interpretation aligns with prior practice, where the New York Convention has served as the legal foundation for recognizing and enforcing awards issue by the IUSCT.[70] The doctrine of party autonomy, which guarantees the freedom of the parties to determine the applicable law and procedure in arbitration proceedings, must equally be understood in relation to procedural choices.[71] In arbitral practice, the principle of party autonomy has long been regarded as a cornerstone, since the parties' agreement constitutes the foundation of jurisdiction.[72] Accordingly, the conclusion of a BIT by the Contracting States is sufficient to establish ICS as the applicable arbitral forum and to ensure that its decisions qualify as arbitral awards.[73] Moreover, if a business-to-government investment contract expressly incorporates reference to ICS as the chosen method of dispute settlement, this contractual clause would further consolidate the authority of ICS awards as arbitral awards for the purposes of recognition and enforcement.[74]

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[67]Ngobeni, *Op. Cit.,*6.

[68] Brenninkmeijer, Mees. "Jurisdictional Overlap Between Domestic Courts and Investment Arbitration: An Occasion for Judicial Doalogue." *Arbitration International* 39, No. 3 (2023): 379.

[69] Ministry of Defence of the Islamic Republic of Iran v. Gould Inc., 887 F.2d 1357 (9th Cir. 1989) (holding that awards of the Iran-U.S. Claims Tribunal qualify for enforcement under the New York Convention).

[70] Bungenberg, Marc and Reinisch, August. *CETA Investment Law* (Nomos, 2022).

[71] Brozolo, Luca G. Radicati di. "Emmanuel Gaillard's Theory of International Arbitration: The Basis for a Uniform Law of International Arbitration' < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4950262> accessed 24 August 2025.

[72] Born, *Op. Cit.,* 212.

[73] Kinanti and Wiko, *Op. Cit.,* 358.

[74] Douglas, Zachary. *The International Law of Investment Claims* (Cambridge University Press, 2009).

Yet divergence is possible. Certain courts might determine that ICS awards do not qualify as arbitral awards and refuse enforcement under the New York Convention, treating them instead as foreign judgments.[75] Such fragmentation would undermine the EU's efforts to establish a predictable and uniform system of investment dispute settlement. Investors would face uncertainty depending on the jurisdiction where enforcement is sought, which could reduce confidence in ICS as a viable alternative to arbitration.

Recognising the risks associated with uncertainty over enforcement, the EU has incorporated explicit enforcement clauses in its agreements. Article 8.41 of CETA provides that ICS awards "shall be treated as arbitral awards" for purposes of the New York Convention.[76] The EU-Vietnam IPA and EU-Singapore IPA contain similar provisions.[77] These clauses reflect a deliberate attempt to secure enforcement by instructing courts to apply the New York Convention.

Nevertheless, the effectiveness of such clauses is not guaranteed. Courts in thirds states that are not signatories to the treaties may set them aside and make their own determination as to whether ICS awards are covered by the New York Convention.[78] The enforceability of ICS awards outside the EU and its treaty partners therefore remains vulnerable.

In addition to these legitimacy-enhancing reforms, ICS also offers strategic advantages for partner countries. By adopting the EU model, they align themselves with one of the world's largest economic blocs which strengthens credibility with foreign investors. It also integrates partner states into ongoing global debates on ISDS reform.[79]

The EU has been a leading advocate of establishing a Multilateral Investment Court. Participation in ICS positions states as early adopters of reforms that may later become international standards. This increases their bargaining power in future negotiations. The consistent application of ICS in bilateral agreements is not an isolated strategy.[80] Rather it is part of the EU's broader ambition to establish a permanent Multilateral Investment Court through ongoing discussions in UNCITRAL Working Group III.[81] Since 2017, the EU Commission has proposed ICS as an intermediate step towards

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[75] Charris-Benedetti, *Op. Cit.*, 94.

[76] Art 8.41 para 5 EU–Canada CETA.

[77] Art 3.57 (7) EU–Vietnam IPA; Art 3.22 (5) EU–Singapore IPA

[78] Kaufmann-Kohler and Potestà, *Op. Cit.*, 93.

[79] Ortino, Federico. "The Evolving Role of the European Union in International Investment Policy Reforms: Challenges, Achievements, and Future Directions" in Baltag and Feldman (eds.), Reforming Arbitration Reform: Emerging Voices, New Strategies and Evolving Values. Forthcoming, Available at SSRN: <https://ssrn.com/abstract=4765274> accessed 3 September 2025.

[80] Brabandere, Eric De. "Coherencce, Consistency, and the Reform of Investment Treaty Arbitration" in R Buchan et al. (eds.), *The Changing Character of International Dispute Settlement* (Cambridge University Press, 2023).

[81] Damjanovic, Ivana. "The EU and UNCITRAL" in *The European Union and International Investment Law Reform* (Cambridge University Press, 2023) 349-368.

multilateralism.[82] By first integrating ICS into its bilateral agreements, the EU is building a track record of treaty practice that can be used to advocate for the codification of the model at the global level.

This approach reflects a deliberate strategy of incrementalism. The EU recognized that immediate consensus on a multilateral court is politically difficult to achieve. However, by ensuring that ICS becomes the default mechanism in EU agreements, it creates momentum for future convergence.[83] The EU has also undertaken extensive diplomatic efforts, including a joint proposal with Canada, to convince other countries to support the multilateral option.[84] Several normative arguments underpin the EU's consistent preference for ICS. Firstly, ICS is seen as a means of strengthening the rule of law in international investment disputes.[85] Permanent judges appointed for fixed terms and bound by ethical obligations are considered more reliable in maintaining impartiality than arbitrators who depend on repeated appointments.[86] Secondly, ICS integrates elements of transparency and participation that are consistent with modern good governance principles, such as public hearings and the publication of files.[87] Third, the appeal mechanism is designed to ensure legal consistency and correct errors, a feature that is absents in traditional arbitration.[88] While critics argue that ICS does not go far enough, it remains a meaningful step. Civil society organisations contend that ICS still privileges foreign investors with a special forum. Others argue that costs may be high, as maintaining permanent judges and an appellate body requires resources.

From the EU's perspective, this institutional reform not only addresses the legitimacy crisis of the ISDS itself, but also aligns investment dispute resolution with broader EU legal principles, including judicial independence and accountability.[89] The Court Justice of the European Union (CJEU) has repeatedly emphasized the need to preserve the autonomy of EU law in external agreements, as demonstrated in its Opinion 1/17 on CETA.[90] The ICS

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[82] UNCITRAL Working Group III, A/CN.9/WG.III/WP.166, 2019.

[83] Bungenburg and Reinisch, *Op Cit.*, 117.

[84] Council of the European Union, 13541/16 WTO 300 SERVICES 28 FDI 23 CDN 24. https://data.consilium.europa.eu/doc/document/ST-13541-2016-INIT/en/pdf.

[85] Damjanovic, Ivana. "The Reform of International Investment Law: Whose Rule of Law?." *European Journal of Risk Regulation* 15, No. 3 (2024): 524.

[86] Sucharitkul, Vanina. "From Arbitration to the Investment Court System (ICS): Comparing CETA, EVIPA, and TTIP" in *Handbook of International Investment Law and Policy* (Springer Nature, 2021).

[87] 2014 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

[88] Lavranos, N. "The ICS and MIC Projects: A Critical Review of the Issues of Arbitrator Selection, Control Mechanisms, and Recognition and Enforcement" in *Handbook of International Law and Policy* (Springer Nature, 2021), 841–63.

[89] European Parliament, 'Multilateral Investment Court: Framework Options', < https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690642/EPRS_BRI(2021)690642_EN.pdf> accessed 4 September 2025.

[90] Opinion 1/17 of the CJEU, ECLI:EU:C:2019:341.

model has therefore been carefully designed to comply with the constitutional requirements of the EU.

Although CETA faced domestic political challenges, including a constitutional challenge in the German Federal Constitutional Court and parliamentary debates across member states, the investment chapter has been provisionally applied and continues to serve as a reference for subsequent agreements. The Commission has consistently defended the ICS provisions in CETA as a model that balances investment protection with the right of states to regulate in the public interest.[91] Despite the consistency of its policy, some challenges come to existence. Critics argue that the ICS still gives foreign investors preferential treatment by providing them with exclusive access to a special forum that is not available to domestic investors.[92] Others question whether ICS award can be enforced under the New York Convention, which traditionally limits enforcement to arbitral awards.[93] This uncertainty could erode one of the main advantages of ISDS, namely the relative ease of cross-border enforcement.

In addition, some member states have expressed concerns about the budgetary implications of maintaining a permanent tribunal appellate body, particularly if this model is extended to multiple agreements simultaneously.[94] However, these criticisms have not deterred the Commission from proposing ICS as a non-negotiable default option in its negotiations.[95] Nevertheless, ICS has been accepted in treaties with Canada, Vietnam, and Singapore.[96] This demonstrates its political feasibility.[97] Radical alternative, such as abolishing ISDS altogether, remain politically unattainable.[98] The EU's incremental approach is also instructive. Rather than seeking a multilateral court from the outset, the EU embedded ICS in bilateral agreements, which builds treaty practice.[99] Over time, repeated use of ICS may contribute to the development of

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[91] German Federal Constitutional Court, Order of 13 October 2016, 2 BvR 1368/16 (CETA provisional application).

[92] Zarbiyev, Fuad. ''These are my principles. If you don't like them I have others.' on Justifications of Foreign Investment Protection under International Law." *Journal of International Economic Law* 26, No. 3 (2023): 525.

[93] Charris-Benedetti, Juan. "The Proposed Investment Court System: Does it Really Solve the Problems?" *Revista Derecho del Estado* 42, No. 42 (2018): 83.

[94] According to the UK Parliament Committee's findings of 22 November 2017, the proposed approach to a Multilateral Investment Court fails to guarantee coherence in case law and is likely to strain the EU's financial and administrative resources as separate courts are established through successive FTAs.

[95] EU Commission, 'Reform of the ISDS Mechanism' <https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/investment-disputes/reform-isds-mechanism_en?> accessed 28 August 2025.

[96] EU–Canada CETA; EU–Vietnam FTA [2019] OJ L186/3; EU–Singapore Investment Protection Agreement [2019] OJ L294/3.

[97] Schill, *Op. Cit.*, 665.

[98] Sornarajah, M. *Resistance and Change in the International Law on Foreign Investment* (Cambridge University Press, 2015), 451.

[99] UNCITRAL Report of Working Group III, para 60.

customary expectations. This gradualism is more effective than radical proposals that would face resistance.[100] The EU's consistent use of ICS illustrates how institutional reform can spread through incremental adoption.

One of the most pressing and underexplored questions regarding the ICS relates to the enforceability of its awards under the New York Convention. The effectiveness of any international dispute settlement mechanism depends not only on its procedural legitimacy but also on the enforceability of its outcomes. Investor-state arbitration is appealing largely due to the widespread adoption of the New York Convention, allowing investors to enforce awards against host states in nearly 170 countries. Without effective enforcement, ICS could lose its predictability and credibility.

For developing states, ICS can have spillover benefits. Exposure to transparent and ethical adjudication may influence domestic governance. Indonesia offers a good example. Between 2014 and 2016, Indonesia terminated a number of its bilateral investment treaties due to concerns that ISDS undermined its development policies.[101] policymakers (in this context, the Government of the Republic of Indonesia under the Ministry for Foreign Affairs, the Ministry of Trade, and the Ministry of Investment and Downstream Industry) feared that arbitration restricted regulatory freedom. However, Indonesia later agreed to include ICS in the EU–Indonesia CEPA. This indicates that ICS provides sufficient safeguards for judicial independence and regulatory autonomy. For Indonesia, ICS represents a compromise. It allows re-engagement with investor protection while addressing the concerns that prompted treaty terminations. These dynamics in turn raise broaders questions about how Indonesia's experience informs the position of other non-EU states.

The experience of the Indonesian enforcement dilemma is highly relevant. Indonesia's earlier decision to terminate multiple bilateral investment treaties between 2014 and 2016 was motivated by concerns that ISDS constrained its space for regulatory measures.[102] By accepting ICS, Indonesia has sought a compromise between investor protection and sovereignty. The duality suggests that Indonesia and other non-EU States should adopt complementary strategies, such as enacting domestic legislation recognising ICS awards as enforceable, or negotiating supplementary agreements clarifying enforcement obligations.[103] Alternatively, they may support EU efforts within UNCITRAL Working Group III to establish a Multilateral Investment Court with its own enforcement mechanisms.[104]

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[100] Schill, *Op. Cit.,* 667.

[101] Price, David. "Indonesia's Bold Strategy on Bilateral Investment Treaties: Seeking an Equitable Climate for Investment?" *Asian Journal of International Law* 7, No. 1(2016): 124.

[102] Oktaviandra, Surya. "Creating A Balance in Bilateral Investment Treaty: A Perspective from Indonesia." *Andalas International Journal of Socio-Humanities* 4, No. 1 (2022): 10.

[103] UNCTAD, Reform of Investor-States Dispute Settlement: In Search of a Roadmap (IIA Issues Note, 2013).

[104] UNCITRAL, Report of Working Group III (Investor–State Dispute Settlement Reform), UN Doc A/CN.9/1004 (2019).

The enforcement dilemma underscores the reason why the EU has advocated for a multilateral solution. A future Multilateral Investment Court could adopt an enforcement regime modelled on the ICSID Convention, obligating states to treat its judgements as final and directly enforceable. Until then, ICS awards will operate in a legal grey zone, dependent on the interpretive generosity of domestic courts and the willingness of treaty partners to honour enforcement clauses.

The adoption of the ICS in the CEPA carries broader implications not only for Indonesia but also for other non-EU states that may be considering similar arrangements in their bilateral or regional investment treaties. As one of the first developing countries to accept ICS in a treaty with the EU, Indonesia occupies a strategic position in demonstrating whether the system can be transplanted beyond the European context. The lessons drawn from Indonesia's experience may serve as an important reference for other states in Asia, Africa, and Latin America that have historically been cautious towards investor-state arbitration.

Indonesia's decision to embrace ICS must be viewed against the background of its earlier scepticism towards investment arbitration. This skepticism was not merely theoretical. In disputes such as *Churchill Mining v. Indonesia* and *Newmont v. Indonesia,* the government faced billions of dollar claims challenging its resource management and environmental policies.[105] These experiences reinforced the perception that ISDS could be weaponised against legitimate regulatory measures, fuelling the political decision to terminate several BITs. Concerns were particularly pronounced in sectors linked to natural resources, environmental regulation, and industrial policy, where arbitral claims were perceived as threatening the government's capacity to pursue development-oriented objectives.[106]

By accepting the ICS in the I-EU CEPA, Indonesia signalled a recalibration, rather than a complete reversal of its previous policy. The institutional safeguards of ICS, as discussed above, directly respond to Indonesia's earlier concerns about arbitrator bias, lack of transparency, and inconsistent awards. For Indonesian policymakers, these institutional features appear to provide a better balance between investor protection and preserving policy space.[107]

Nevertheless, Indonesia's embrace of ICS also entails new responsibilities. Maintaining a permanent tribunal requires financial contributions and administrative cooperation. Domestic institutions must also adapt to new obligations, such as the publication of pleadings and facilitation of

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[105] *Churchill Mining PLC and Planet Mining Pth Ltd v. Republic of Indonesia* [2012] ICSID Case No. ARB/12/14 and 12/40; *Nusa Tenggara Partnership B.V. and PT Newmont Nusa Tenggara v. Republic of Indonesia* [2014] ICSID Case No. ARB/14/15

[106] Lise Johnson, 'The Impact of Investment Treaties on Governance of Private Investment in Infrastructure' (2014) 32 EUI Working Paper RSCAS, <http://ssrn.com/abstract=2411575> accessed 20 August 2025.

[107] Brodija, *Op. Cit.*, 17.

public hearings, which may require adjustments to bureaucratic practice and inter-ministerial coordination.[108] These practical considerations should not be underestimated in assessing the sustainability of Indonesia's commitment.[109] These commitments, however, also expose Indonesia to the same enforcement challenges faced by other ICS adopters.

The principal challenge for Indonesia lies in enforcement. As noted earlier, doubts persist over whether ICS awards qualify as "arbitral awards" under the New York Convention. For a country like Indonesia, where foreign investors often seek to enforce awards against assets located abroad, the reliability of cross-border enforcement is central to the credibility of any dispute settlement mechanism.[110]

One possible response would be the adoption of domestic legislation expressly recognising ICS awards as enforceable within Indonesia's legal system. Such legislation could mirror the approach taken in Article 54 of the ICSID Convention, obliging courts to treat ICS awards as equivalent to final domestic judgments.[111] While this would not guarantee recognition abroad, it would at least signal Indonesia's seriousness in honouring its obligations and thereby strengthen investor confidence.[112]

Another complementary strategy could be the negotiation of supplementary protocols with key investment partners clarifying the enforceability of ICS awards under the New York Convention. This would provide investors with an additional layer of legal certainty and mitigate the risk of divergent interpretations by domestic courts in third countries.[113] The unresolved enforcement dilemma also frames the broader lessons that Indonesia's experience offers to other non-EU states.

Indonesia's experience illustrates both the promise and the limitations of the ICS model for non-EU countries. On the one hand, ICS provides an opportunity to rebuild credibility with foreign investors after a period of scepticism towards arbitration. The system offers institutional guarantees that are likely to resonate with states concerned about the perceived imbalances of traditional ISDS. On the other hand, ICS does not completely resolve the

[108] Kim and Winnington-Ingram, *Op. Cit.*, 187.

[109] UNCITRAL A/CN.9/WG.III/WP.156 –In its submission, the Government of Indonesia emphasized its active engagement in WG III, promoting reforms designed to strike a balance between protecting state sovereignty and preserving the public interest.

[110] Dolzer, R. and Schreuer, C. *Principles of International Investment Law* (Oxford University Press, 2008).

[111] Art 54 (3) ICSID Convention.

[112] Azizah, D. E. and Amalia, A. "Legal Certainty and Investor Confidence: An Analysis of Indonesia's Capital Market Regulations." *International Journal of Law Dynamics Review* 3, No. 1 (2025): 1.

[113] Ishikawa, Tomoko. "Provisional Application of Treaties at the Crossroads between International and Domestic Law." *ICSID Review – Foreign Investment Law Journal* 31, No. 2 (2016): 270.

enforcement dilemma, which may continue to generate legal uncertainty until a multilateral solution is reached.[114]

For other non-EU states, three key lessons emerge. **First**, acceptance of ICS may enhance bargaining power in treaty negotiations with the EU and other major partners.[115] By agreeing to a dispute settlement mechanism that is already part of the EU's standard negotiating template, states may be able to secure concessions in other sensitive areas such as market access, regulatory cooperation, or sustainable development commitments. **Second**, institutional design matters. The degree to which ICS can accommodate domestic concerns depends on how effectively states can integrate transparency, ethics, and appellate review into their broader legal systems. Countries with weaker institutional capacity may find it more challenging to implement these commitments, risking reputational costs if compliance falters.[116] **Third**, regional dynamics should not be overlooked.[117] If multiple states in each region adopt ICS through bilateral agreements with the EU, a form of *de facto* standard may emerge. This could accelerate convergence towards judicialised models of dispute settlement and create momentum for the eventual establishment of a Multilateral Investment Court. Conversely, reluctance by key states to accept ICS could fragment treaty practice and limit the model's normative influence. These lessons also highlight why the success of ICS for non-EU countries ultimately depends on the outcome of multilateral reform.

The ability of ICS to act as a bridge to a genuinely multilateral system will ultimately determine its worth to non-EU governments. The stated goal of the EU is to establish a permanent Multilateral Investment Court by using bilateral treaties as stepping stones. Early adopters like Indonesia may profit from influencing the institutional architecture and making sure that the final court represents the interests of developing nations if this objective is achieved. Conversely, if the multilateral project stalls, states that have adopted ICS may be left with a hybrid mechanism that offers greater legitimacy but weaker enforceability than traditional ISDS. For Indonesia, the strategic calculation is therefore twofold. In the medium term, ICS offers a way to maintain regulatory space while re-engaging with investor protection. To guarantee that the enforcement dilemma is settled in a way that preserves state sovereignty and investor confidence, Indonesia must continue to play an active role in the multilateral reform process over the prolonged period.

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[114] Dietz, *Op. Cit.*, 751.

[115] Cremona, M. "Shaping EU Trade Policy Post-Lisbon: Opinion 2/15 of 16 May 2017." *European Constituional Law Review* 231, No. 14 (2018): 233.

[116] Kucik, Jeffrey and Puig, Sergio. "Towards an Effective Appellate Mechanism for ISDS Tribunals." *World Trade Review* 22, No. 5 (2023): 574.

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4. CONCLUSION

The Investment Court System, initiated by the European Union, marks a fundamental shift from the ad hoc arbitration model that has long dominated ISDS. This study finds that ICS awards, characterised by a judicial structure, permanent judges, and an appeal mechanism, do not fully comply with the definition of "arbitral awards" under the New York Convention, creating interpretative uncertainty in domestic courts.

Their enforceability in non-EU states is likewise uncertain: while some jurisdictions may allow enforcement under the Convention, others may only recognise them as foreign judgements or through domestic legislation. This comparative study shows that although ICS offers greater legitimacy and transparency than traditional ISDS, its long-term viability depends on resolving the enforcement dilemma, making a multilateral enforcement system an essential option for it to function as a truly global model. In this regard, it is important to consider the ICSID system, which provides a clear benchmark for enforcement where national courts must treat ICS awards as final domestic judgments.

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