

Beyond the EU  
Jurisdictions Actively Resisting  
the Enforcement of Arbitral Awards

Seminar on International Investment  
Arbitration and Dispute Settlement

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## Scene-Setting: Resistance Beyond Europe

### Within the seminar

- Achmea spillover; Greek administrative supreme court
- Recent EU precedents and sports arbitration
- Costello v Ireland; future of ISDS, Middle East and Africa

### Central thesis

- Resistance to enforcement is not uniquely European.
- States across Latin America, Africa, Russia and the CIS, and Asia deploy domestic courts, legislation and constitutional provisions to resist enforcement of investor-state arbitral awards.



## Latin America – Part 1

### ICSID Denunciations: A Two-Decade Pattern

**2007**

Bolivia

First state to denounce  
the ICSID Convention

**2009**

Ecuador

Rejoined 2021; April 2024  
referendum reaffirmed  
Art. 422

**2012**

Venezuela

Denunciation amid  
wave of expropriation  
claims

**Feb 2024**

Honduras

Prompted by USD 11 bn  
Próspera claim (~1/3 of  
GDP)

**Constitutional anchor** — Ecuador's Article 422 bars yielding sovereign jurisdiction to international arbitration entities, reaffirmed by referendum in April 2024.

## Latin America – Part 2

### Venezuela: Non-Compliance and Regional Spillover

#### Regional Echoes

Colombian Supreme Court (2024) denied recognition of the Rusoro Mining v. Venezuela award on sovereign-immunity grounds.

2023 Colombia–Venezuela BIT expressly excludes ICSID arbitration — a deliberate retreat from investor–state dispute settlement at the treaty drafting stage.

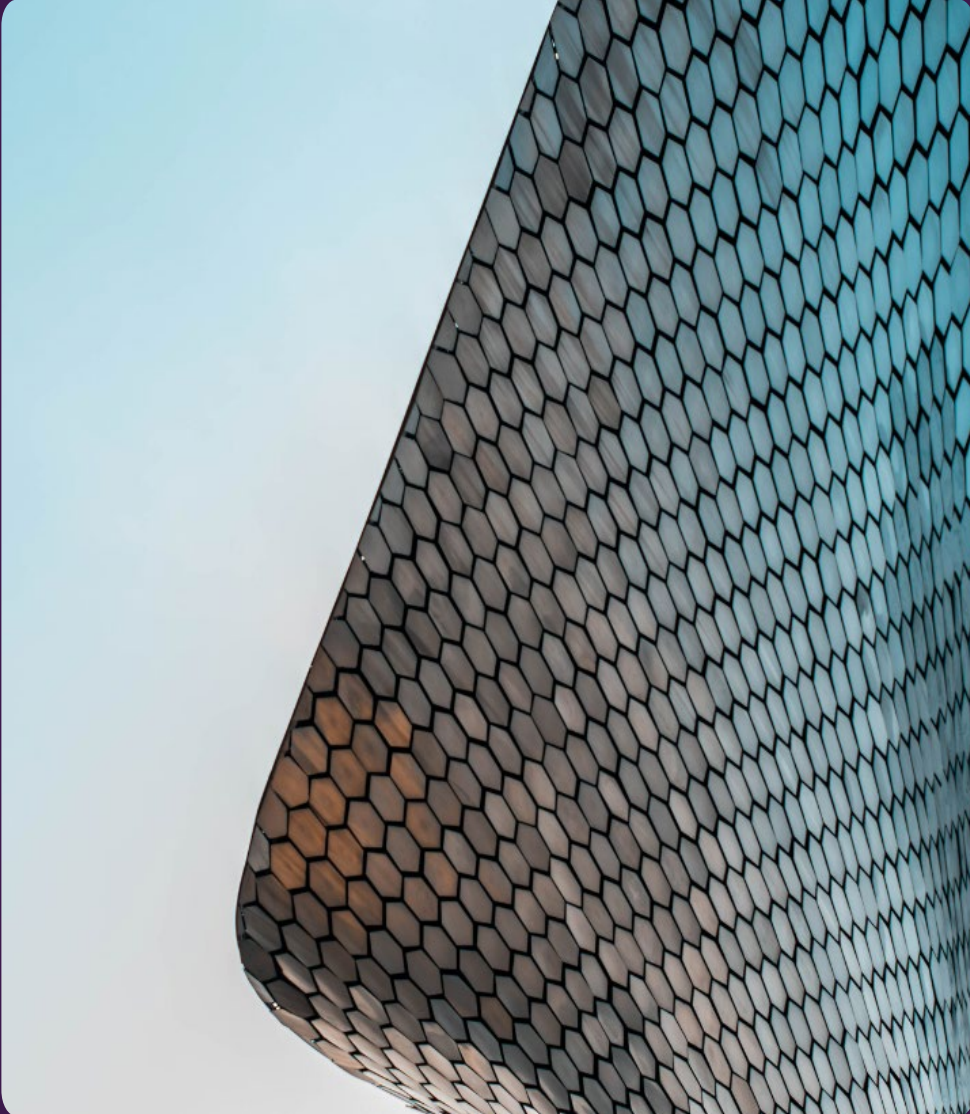
Domestic courts as gatekeepers — even where the state itself is not the respondent, neighbouring jurisdictions can frustrate enforcement against Venezuelan assets.

# #2

Most non-compliant state  
*2024 International Law Compliance Index*

# USD 8.4 bn

ConocoPhillips award - unpaid



## Africa

Treaty Termination, Domestication, Regional Reform

### South Africa

Protection of Investment Act 2015

Following BIT terminations, disputes are confined to South African domestic courts — a deliberate move away from ISDS as the default forum.

### Tanzania

Natural Wealth and Resources (Permanent Sovereignty) Act 2017

Following Prohibits international arbitration of disputes concerning extraction and management of the country's natural resources.

### AFCFTA

Act 2017 Investment Protocol (2023)

Continental shift toward dispute prevention and a possible permanent investment court – a regional alternative to ad hoc ISDS.



## Russia and the CIS

### Systematic Resistance Across Branches of the State

#### Mechanisms of Resistance

- ICSID Convention signed 1992 — never ratified.
- 2020 constitutional amendment establishing primacy of Russian law over international law.
- Russian Supreme Court, July 2024 — presumption of lack of impartiality of arbitrators from "unfriendly" states.
- Anti-arbitration injunctions, e.g., *Wintershall v. Russia (II)*, 2025.
- Kazakhstan and others: uneven enforcement landscape across the CIS.

USD

**50.2 bn**

Yukos arbitrations

*Dutch Supreme Court dismissed Russia's  
appeal – early 2024*

Asia, India

From Restriction Toward Possible Recalibration

**2016**

Restrictive Model BIT

Adopted after a series of adverse ISDS decisions — narrows protections, requires exhaustion of local remedies.

**Ongoing**

CC/Devas v. India

Sovereign immunity invoked across multiple enforcement jurisdictions; Ministry of Finance guidelines discourage arbitration.

**2025-26**

Possible Course Correction

Budget signals suggest a more investor-friendly model BIT — a tentative pivot rather than a settled policy shift.

## Synthesis

### Three Emerging Themes — and a Paradox

01

#### Sovereignty & Constitutional Supremacy

Ecuador, Tanzania, Russia, India — domestic constitutional or quasi-constitutional norms reasserted over international arbitral authority.

02

#### Legitimacy Concerns

Pro-investor bias, inconsistency, and high costs — echoing the criticisms voiced within UNCITRAL Working Group III.

03

#### Domestication

Disputes channelled to national or regional fora through new-generation BITs and restrictive legislation.

**Paradox** — ISDS caseloads continue to rise despite — and partly because of — these patterns of resistance.

On the Horizon

## **UNCITRAL Working Group III**

Mandated to conclude its work by the end of 2026.

## **Multilateral Investment Court**

Proposed standing body – a possible structural answer to the legitimacy critique.

## Conclusion

### A Systemic Reckoning — Not a Parochial Concern

Resistance to enforcement is not a narrow European concern — it reflects a systemic reckoning with the legitimacy of investor–state dispute settlement.

### Key Question:

Can a reformed system reconcile sovereign autonomy with investor-protection expectations?

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