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Arbitration in the BRICS+ Era: Harmonization, Institutional Practice, and Judicial Enforcement in Brazil

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Abstract. The expansion of BRICS into BRICS+ has transformed the bloc into a significant actor in global trade and dispute resolution. This article provides the first comprehensive examination of arbitration practices within the BRICS+ framework, combining doctrinal analysis, comparative legal study, and empirical research. It maps

the treaty commitments, legislative frameworks, and institutional preferences of BRICS+ jurisdictions. It analyzes over a decade of case law from Brazil's Superior Court of Justice (2014–2025) concerning the recognition and enforcement of foreign arbitral awards. The findings reveal uneven alignment with the New York Convention, persistent divergences in public policy standards, and notable asymmetries in institutional participation—particularly China's dominance and Africa's limited engagement. However, recognition decisions remain overwhelmingly supportive of enforcement, indicating a trend toward convergence. By situating these dynamics within broader debates on regionalization, judicial control, and Global South arbitration initiatives, this study provides new empirical evidence and theoretical insights into how emerging powers are reshaping transnational dispute resolution, offering policy-relevant recommendations to enhance cooperation and harmonize arbitration practices across the BRICS+ landscape.

Keywords: BRICS+; international commercial arbitration; foreign arbitral award recognition; public policy exception; regional dispute resolution.

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Introduction

Since its first summit in 2006, BRICS has transformed from a loose coalition of emerging economies into a significant geopolitical and economic bloc.¹ The 2024

¹ BRICS Brazil. (2025, April 30). *What is BRICS*. <https://brics.br/pt-br/sobre-o-brics>

expansion, which welcomed Saudi Arabia, Egypt, the United Arab Emirates, Ethiopia, Indonesia, and Iran, and the introduction of a partner state category mark a new phase of institutional maturity.² This broader configuration, known as BRICS+, is reshaping patterns of trade, investment, and legal cooperation across the Global South.³ As commercial ties deepen, cross-border disputes are expected to grow in number, underscoring the central role of international arbitration as a preferred mechanism for resolving them.⁴

This article examines the development of arbitration within the BRICS+ context from both international and domestic perspectives, with a particular focus on Brazil as a case study for judicial engagement.⁵ Internationally, it analyses the arbitration frameworks of BRICS+ jurisdictions, their levels of harmonization, and their participation in major arbitral venues and institutions. Domestically, it examines how Brazilian courts, particularly the Superior Court of Justice (STJ), have addressed the recognition and enforcement of foreign arbitral awards involving BRICS+ parties. This dual approach sheds light on which jurisdictions are most active in arbitration with Brazil, where significant commercial partnerships are emerging, and on how differences in legal traditions may shape future dispute-resolution dynamics.⁶

While scholarship on BRICS dispute resolution has expanded in recent years, significant gaps remain. Few studies provide empirical analysis of arbitration activity involving BRICS+ members, and none have systematically examined recognition and enforcement practices within a domestic jurisdiction. This article addresses that gap by combining doctrinal, comparative, and empirical approaches to analyze case law, institutional reports, and arbitral statistics (including ICC, LCIA, and SIAC data). Grey literature, particularly arbitration surveys and institutional reports, plays a crucial role

² Gromova, E. A. (2025). Creation of the BRICS+ arbitration institution: Problems and prospects. *Herald of Civil Procedure*, 15(1), 203–215. (In Russian); Baboolal Frank, R. (2024). The future of ADR within the developing and expanding BRICS. In R. Baboolal Frank (Ed.), *Dispute resolution within Africa: A journey forward* (pp. 141–146). Springer Nature; Simões, F. D. (2017). *A dispute resolution centre for the BRICS?* In R. J. Neuwirth, A. Svetlicinii & D. De Castro Halis (Eds.), *The BRICS-lawyers' guide to global cooperation* (pp. 270–286). Cambridge University Press; Meyer, P. G. (2023). *Immunity and civil liability of arbitrators in international commercial arbitration of BRICS countries*. Unpublished dissertation. University of Johannesburg.

³ Fatima, N. (2022). Future of dispute resolution and investment in BRICS. *Brazilian Journal of Alternative Dispute Resolution*, 4, 187–209; Skvortsov, O. Y. (2023). About BRICS investment arbitration. *Eurasian Integration: Economic, Law, Policy*, 17(1), 89–97. (In Russian).

⁴ White & Case LLP and Queen Mary University of London. (2021). *International arbitration survey: Adapting arbitration to a changing world*. <https://www.whitecase.com/publications/insight/2021-international-arbitration-survey-adapting-arbitration-changing-world>

⁵ ICC. (2025, June 6). *ICC dispute resolution statistics: 2023*. <https://iccwbo.org/news-publications/news/icc-dispute-resolution-statistics-2023/>; LCIA. (2023). *LCIA annual casework report 2023*. <https://www.lcia.org/News/lcia-news-annual-report-on-2023-lcia-court-and-african-users-c.aspx>; SIAC Annual Report (2023). https://siac.org.sg/wp-content/uploads/2024/04/SIAC_AR2023.pdf

⁶ Born, G. (2020). *International Commercial Arbitration*. Kluwer Law International.

in contextualizing these findings, enabling a comparative assessment of arbitration preferences, volumes, and regional positioning among BRICS+ states.

Methodologically, the study adopts a triangulated approach (doctrinal, comparative, and content analysis) to provide a comprehensive view of BRICS+ arbitration.⁷ Comparative analysis enables a cross-jurisdictional examination of arbitration legislation and practice, while content analysis of STJ case law reveals patterns in recognition decisions, particularly regarding public policy exceptions. This approach also facilitates a deeper exploration of whether a unified BRICS+ arbitration institution could emerge as a viable mechanism to harmonize diverse legal traditions.

The article makes several contributions to the literature. First, it is among the earliest studies to systematically map arbitration engagement across the expanded BRICS+ bloc. Second, it situates this engagement within broader debates on regionalization, public policy review, and judicial deference. Third, it provides original empirical evidence on how Brazilian courts apply international enforcement standards, thereby illustrating the interaction between global norms—particularly the New York Convention—and domestic judicial practice. It seeks to answer three central questions: (1) To what extent do BRICS+ arbitration regimes align with the international legal framework established by the New York Convention? (2) How do BRICS+ parties engage with leading arbitral institutions and choose their dispute resolution venues? (3) How do Brazilian courts approach the recognition and enforcement of foreign arbitral awards involving BRICS+ parties?

This article builds on and extends a growing body of scholarship examining the intersection of regional arbitration frameworks and global enforcement regimes.⁸ Recent literature on the “regionalization” of arbitration and the rise of “Global South arbitration initiatives” provides an essential foundation for situating BRICS+ within ongoing transformations in transnational dispute resolution. By combining doctrinal, comparative, and empirical methods, this study offers new insights into a field that remains underexplored, particularly regarding enforcement practices. It assesses how BRICS+ may shape the future architecture of international arbitration.

1. Literature Review

The evolution of international commercial arbitration has been shaped by enduring debates about its nature, functions, and relationship with state authority. A central theme in this discourse is the tension between delocalization and territorialism. Cordero-Moss argues that arbitration has developed as a transnational

⁷ Cordero-Moss, G. (2024). Delocalization and re-localization in commercial law and the law of arbitration. In J. Allen & G. Dannemann (Eds.), *F.A. Mann: The lawyer and his legacy* (pp. 179–202). Oxford University Press; Linh, T. H. T. (2025). Commercial arbitration in Asia: Legal developments and regional dynamics from an ASEAN perspective. *Asia Pacific Law Review*, 33(2), 377–395.

⁸ Kidane, W. (2017). *The state of international arbitration and the global south*. PhD thesis.

dispute resolution mechanism whose legitimacy derives from party autonomy rather than state oversight.⁹ Born similarly emphasizes that, despite its private-law foundations, arbitration ultimately relies on domestic courts for the recognition and enforcement of awards, which grounds the process within the sovereignty of the state.¹⁰ Classic comparative works by Lew and Mistelis, as well as by Fouchard and Goldman, demonstrate that this duality between autonomy and judicial support continues to underpin arbitral practice across jurisdictions.¹¹

Public policy constitutes one of the most contested dimensions of this relationship. Mayer conceptualizes international public policy as a necessary safeguard against awards that contravene fundamental principles of justice or sovereignty.¹² Subsequent scholarship, including Curtin's and Zhang's, explores how national courts interpret public policy in light of mandatory laws, revealing substantial divergence across jurisdictions.¹³ Bray and Bray's comprehensive volume provides a doctrinal overview of how courts balance international obligations with domestic imperatives. At the same time, Kleinheisterkamp critiques the notion of a "transnational" public policy as largely illusory.¹⁴ The UNCITRAL Secretariat's Guide on the New York Convention underscores that, although Article V(2)(b) is interpreted narrowly, it remains an essential mechanism for protecting domestic legal order.¹⁵ This complexity is particularly evident in jurisdictions with diverse legal traditions, such as those within the BRICS+ bloc, where approaches to public policy vary considerably.

Empirical research has further enriched the field by demonstrating how arbitration functions in practice. Drahozal's analysis illustrates how quantitative data reveal patterns in enforcement and procedural choices,¹⁶ while van den Berg's commentary on the New York Convention documents its pivotal role in facilitating the cross-border recognition

⁹ Cordero-Moss, 2024.

¹⁰ Born, 2020.

¹¹ Lew, J. D. M., & Mistelis, L. A. (2003). *Comparative international commercial arbitration*. Kluwer Law International; Fouchard, P., & Goldman, B. (1999). *Fouchard, Gaillard, Goldman on international commercial arbitration*. Kluwer Law International.

¹² Mayer, P. (2006). Effect of international public policy in international arbitration. In J. D. M. Lew & L. A. Mistelis (Eds.), *Pervasive problems in international arbitration* (p. 61–69). Kluwer Law International.

¹³ Curtin, K. M. (1997). Redefining public policy in international arbitration of mandatory national laws. *Defence Counsel Journal*, 64(2), 271–284; Zhang, S. (2023). Public policy in international arbitration law. In S. Zhang, *The public policy exception in the judicial review of international commercial arbitral awards: Lessons from and for China* (pp. 15–40). Springer.

¹⁴ Kleinheisterkamp, J. (2023). The myth of transnational public policy in international arbitration. *American Journal of Comparative Law*, 71(1), 98–141.

¹⁵ UNCITRAL Secretariat. (2017). *Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards: New York, 1958*. Brill Nijhoff.

¹⁶ Drahozal, C. R. (2006). Arbitration by the numbers: The state of empirical research on international commercial arbitration. *Arbitration International*, 22(2), 291–308.

of awards.¹⁷ These studies underscore that state practice and judicial attitudes are as influential as doctrinal principles in shaping the effectiveness of arbitration. Regional perspectives have also gained prominence. Nottage and Ubilava trace the emergence of Asia's evolving investment arbitration regime, highlighting how regionalism is reshaping substantive norms and institutional preferences.¹⁸ Hoang Tu Linh situates ASEAN's arbitration developments within broader economic and geopolitical contexts, demonstrating the increasing significance of regional legal orders.¹⁹

The role of the Global South has become an important focus of contemporary scholarship. Kidane argues that states outside the traditional arbitration centers are no longer passive participants but active contributors to the development of procedural and normative frameworks.²⁰ This perspective challenges conventional assumptions about neutrality and legitimacy, reflecting a growing redistribution of authority in international arbitration. Empirical evidence suggests that emerging jurisdictions not only engage more actively in arbitral proceedings but also shape enforcement practices and institutional design in ways that reflect their domestic legal cultures and strategic priorities.

Despite the depth of this scholarship, important gaps remain. Research on how multipolar institutional frameworks, such as BRICS+, influence enforcement practice, public policy interpretation, and institutional governance remains limited. Moreover, much of the existing empirical literature focuses on Europe and North America, leaving the interaction between domestic courts and international norms in the Global South underexplored. This article aims to fill these gaps by examining how Brazil and other BRICS+ jurisdictions approach recognition and enforcement, how their courts interpret public policy (specifically, the Brazilian Superior Court of Justice), and how their participation in arbitral institutions reflects broader shifts toward regionalization and multipolar governance in international arbitration.

2. Methods and Data

This study employs a triangulated methodology that combines doctrinal analysis, comparative legal examination, and empirical case-law research. This multi-layered approach captures the full spectrum of arbitration practice, encompassing legal frameworks, institutional structures, and real-world enforcement outcomes. The

¹⁷ Van den Berg, A. J. (2008). The New York Convention of 1958: An overview. In E. Gaillard & D. Di Pietro (Eds.), *Enforcement of arbitration agreements and international arbitral awards: The New York Convention in Practice* (pp. 39–68). Cameron May.

¹⁸ Nottage, L., & Ubilava, A. (2018). Asia's changing international investment regime: Sustainability, regionalization and arbitration. *University of Western Australia Law Review*, 44(2), Paper No. 18/34.

¹⁹ Linh, 2025.

²⁰ Kidane, W. (2017). *The state of international arbitration and the global south*. PhD thesis.

doctrinal analysis examines legislative regimes and treaty commitments across BRICS+ jurisdictions, with a particular focus on their alignment with the 1958 New York Convention. The comparative component situates these regimes within the global arbitration landscape, highlighting points of convergence and divergence in legislative design, institutional preferences, and procedural standards. The empirical component grounds the analysis in practice by systematically reviewing decisions of the Brazilian Superior Court of Justice (STJ) concerning the recognition and enforcement of foreign arbitral awards. Taken together, these three dimensions provide a more nuanced and accurate picture of BRICS+ arbitration than any single-method approach could achieve.

Doctrinal analysis focuses on national arbitration laws, treaty obligations, and judicial principles governing the recognition and enforcement of arbitration, clarifying how arbitration is regulated in each jurisdiction. The comparative analysis builds on this foundation by situating national regimes within broader international practice, identifying shared features and distinctive approaches. The empirical analysis complements these insights by examining how Brazilian courts interpret and apply key principles in recognition proceedings, thereby illustrating the practical dynamics of cross-border enforcement.

Data were drawn from multiple authoritative sources. Institutional data on party participation, caseloads, and dispute distribution were obtained from the *ICC Dispute Resolution Statistics 2023*, the *LCIA Casework Report 2023*, and the *SIAC Annual Report 2023*. Broader trends in seat selection, procedural preferences, and enforcement considerations were contextualized using the *White & Case–Queen Mary University of London International Arbitration Survey 2021*. Jurisprudential data were collected through a structured review of the STJ's official database, covering the period from January 1, 2004, to August 31, 2025. Searches employed targeted Portuguese-language keywords—including “*sentença arbitral estrangeira*,” “*ordem pública*,” and “*reconhecimento de sentença arbitral*”—to identify relevant decisions. Each judgment was coded based on its outcome (recognition granted or refused), the grounds for refusal (as referenced in Article V of the New York Convention and Articles 38–39 of the Brazilian Arbitration Act), and the nationality of the parties.

Being comprehensive, this methodology has certain limitations. Institutional data from arbitral bodies, such as the ICC, LCIA, and SIAC, are not always comprehensive, and keyword-based jurisprudence searches may have missed decisions indexed under alternative terms. Moreover, the focus on Brazil as a representative jurisdiction may not fully capture enforcement dynamics in other BRICS+ states. Nevertheless, the triangulation of doctrinal, comparative, and empirical methods, combined with consistent results across data sources, significantly enhances the reliability and validity of the findings.

This approach aligns with recent trends in international arbitration scholarship, which increasingly emphasize integrating doctrinal analysis with empirical and

institutional data.²¹ By linking legislative frameworks, institutional behavior, and judicial enforcement outcomes, the study contributes both explanatory depth and practical relevance to the analysis of BRICS+ arbitration practices.²²

3. Arbitration in Brazil: Background and Status

The development of arbitration in Brazil reflects a gradual transition from scattered legislative provisions to a sophisticated, internationally aligned legal framework. Arbitration was recognized as a legitimate form of dispute resolution under Portuguese colonial law. It appeared intermittently in Brazil's early constitutional texts, beginning with the 1824 Constitution and later reaffirmed in the 1988 Federal Constitution, which explicitly endorses peaceful methods of dispute settlement and underpins the country's "multidoor" justice system. Early commercial legislation, including the Commercial Code of 1850 and the Civil Procedure Codes of 1939 and 1973, provided limited regulation of arbitration but required judicial confirmation of awards. This constraint curtailed its practical effectiveness.

A decisive transformation occurred with the enactment of the Brazilian Arbitration Act (Law No. 9.307/1996), often regarded as the cornerstone of modern Brazilian arbitration law. Inspired by the 1985 UNCITRAL Model Law and influenced by the former Spanish Arbitration Law (Law 36/1988), the Act firmly entrenched the principle of party autonomy, recognized the binding nature of arbitration agreements, and granted arbitral awards the same legal effect as judicial decisions. Most importantly, it abolished the requirement for court homologation of domestic awards, aligning Brazil with international best practices. The Federal Supreme Court (STF) confirmed the Act's constitutionality in SE 5.206-EX (2001), a landmark decision that provided the legal certainty necessary for arbitration to flourish.

Brazil further strengthened its arbitration regime by acceding to the New York Convention through Decree No. 4,311/2002, thereby joining the global enforcement framework and facilitating the recognition of foreign awards. Institutional competence over such recognition was transferred from the STF to the Superior Court of Justice (STJ) in 2004 (Constitutional Amendment No. 45), streamlining enforcement procedures and reinforcing the judiciary's supportive stance toward arbitration. Subsequent reforms, particularly Law No. 13,129/2015, expanded the scope of arbitration to include disputes involving public administration entities, reaffirmed the *kompetenz-kompetenz* doctrine, and further consolidated judicial non-interference.

Brazil's trajectory parallels the evolution of arbitration regimes in jurisdictions such as France and Singapore, where legislative reform, judicial deference,

²¹ Drahozal, 2006.

²² Lew & Mistelis, 2003.

and institutional capacity have worked in tandem to establish a robust arbitral ecosystem.²³ However, unlike common law jurisdictions, such as England, where Section 69 of the Arbitration Act 1996 permits appeals on points of law, Brazil maintains a stricter, non-interventionist approach, limiting annulment grounds to procedural irregularities.²⁴ This comparative restraint reinforces party autonomy and legal certainty, further enhancing Brazil's attractiveness as an arbitral seat.

A robust institutional infrastructure complements this supportive legal environment. Brazilian arbitral institutions are widely respected for their independence, procedural sophistication, and adherence to international standards. São Paulo has emerged as a leading seat for international arbitration in Latin America, surpassing Miami and Lima according to the 2021 White & Case and Queen Mary University of London International Arbitration Survey.²⁵ Factors such as judicial predictability, enforcement reliability, and the neutrality of the local legal system make Brazil an increasingly attractive jurisdiction for resolving cross-border disputes.

Despite occasional legislative initiatives aimed at revising the Arbitration Act, Brazil's arbitration ecosystem remains stable and well-supported by an active legal community, including the Brazilian Arbitration Committee (CBAr) and the Chartered Institute of Arbitrators (CIArb)—Brazil Branch. This synergy between legislative clarity, judicial restraint, and institutional capacity has positioned Brazil as a regional leader and a global reference point in international commercial arbitration.

4. Arbitration in the BRICS+ Countries: Is There Any Harmonization?

The concept of the BRICS was first proposed in 2001 by Jim O'Neill, an economist at Goldman Sachs.²⁶ Initially, the group was known as BRIC and only became BRICS with the addition of South Africa in 2011. The BRICS functions as an informal grouping and has no founding treaty. However, in 2014, the group established the New Development Bank (NDB) to provide developmental funds to its member countries. The New Development Bank (NDB) defines itself as *a multilateral development bank established by Brazil, Russia, India, China and South Africa (BRICS) with the purpose of mobilizing resources for infrastructure and sustainable development projects in emerging markets and developing countries (EMDCs)*.²⁷

²³ Fouchard & Goldman, 1999.

²⁴ Tweeddale, K., Tweeddale, A., & Nguyen, N. (2014). Section 69 of the English Arbitration Act 1996—when fact and law collide. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*, 80(2), 136–146.

²⁵ See White & Case LLP and Queen Mary University of London, 2021.

²⁶ O'Neill, J. (2001). *Building better global economic BRICs*. Goldman Sachs. <https://www.almendron.com/tribuna/wp-content/uploads/2013/04/build-better-brics.pdf>

²⁷ New Development Bank. (2025). *About NDB*. <https://www.ndb.int/about-ndb/>

A group expansion went into effect in 2024 with the addition of six member countries: Saudi Arabia, Egypt, the United Arab Emirates, Ethiopia, Indonesia, and Iran. This addition gave rise to the acronym BRICS+. In 2024, during the 16th BRICS Summit in Kazan, the group approved the creation of the category of partner countries, which currently includes Belarus, Bolivia, Kazakhstan, Cuba, Malaysia, Nigeria, Thailand, Uganda, and Uzbekistan.²⁸

Considering the 11 member countries, the BRICS+ represent 45% of the world's population, 35% of the global GDP, 39% of the global economy, and 24% of international trade.²⁹ With its growing business tendency and increasing number of memberships and partnerships, analyzing the members' conflict resolution legal framework is paramount.

There are two mandatory questions to address when analyzing the international dispute resolution framework of member countries, primarily concerning arbitration. Is there any harmonization between the countries' legal frameworks? Additionally, before considering the creation of a BRICS+ dispute resolution system, what are the preferred seats and dispute resolution providers currently selected by the parties from these countries?

The three tables below provide a comprehensive analytical assessment of various inquiries, thereby facilitating a deeper understanding of arbitration within the BRICS+ nations.

Table 1 provides a comparative overview of the extent to which BRICS+ jurisdictions are integrated into the global arbitration framework. It examines four key indicators of international harmonization: accession to the 1958 New York Convention, participation in the ICSID Convention, signature or ratification of the Singapore Convention, and the status of each state as a globally or regionally preferred arbitral seat, as reflected in the 2021 White & Case and Queen Mary University of London International Arbitration Survey.³⁰ Together, these indicators reveal how deeply each jurisdiction is embedded within the international enforcement architecture and the degree to which they serve as attractive venues for cross-border dispute resolution.

Table 2 complements this international perspective by outlining the domestic arbitration landscape in BRICS+ jurisdictions. It focuses on four principal dimensions: the underlying legal tradition (civil law, common law, hybrid, or religious), the degree of influence of the UNCITRAL Model Law on domestic legislation, the structure and chronology of national arbitration laws, and the presence of internationally recognized arbitral institutions. This domestic-level analysis highlights significant variations in legal infrastructure and institutional development, offering insight into how national legal systems interact with, and sometimes diverge from, the broader international arbitration regime.

²⁸ BRICS Brazil. (2025). *What is BRICS*. <https://brics.br/pt-br/sobre-o-brics>

²⁹ BRICS Brazil, 2025.

³⁰ White & Case LLP and Queen Mary University of London, 2021.

To evaluate how BRICS+ jurisdictions engage with the global arbitration landscape, it is necessary to look beyond treaty participation and examine both their institutional preferences and actual patterns of participation. Table 3 consolidates this information, combining data on the most frequently chosen arbitral seats and institutions with empirical evidence of case volumes involving BRICS+ parties at the ICC, LCIA, and SIAC. This integrated view reveals important trends in the regionalization of dispute resolution, including a continued reliance on established arbitration hubs such as London, Paris, Singapore, and Hong Kong, alongside uneven participation rates across the bloc. While certain jurisdictions, most notably China, demonstrate significant institutional engagement, others remain underrepresented, highlighting disparities in access, experience, and market integration within the BRICS+ group. Understanding these dynamics is essential to assessing the bloc's current position in the international arbitration system and its prospects for developing a more autonomous dispute resolution infrastructure.

Table 1: BRICS+ treaty participation and preferred arbitration seats (as of 2025)

Country	New York Convention (Year)	ICSID Convention (Year)	Singapore Convention (Year)	Preferred International Arbitration Seats
Brazil	Yes (2002)	No	Yes (2025)	São Paulo (preferred regional seat)
Russia	Yes (1960)	Signed (1992, not ratified)	No	–
India	Yes (1960)	No	Signed (2019, not ratified)	–
China	Yes (1987)	Yes (1993)	Signed (2019, not ratified)	Hong Kong (3rd), Beijing (7th), Shanghai (8th), Shenzhen (regional)
South Africa	Yes (1976)	No	No	–
Saudi Arabia	Yes (1994)	Yes (1980)	Yes (2020)	–
Egypt	Yes (1959)	Yes (1972)	No	Cairo (regional)
United Arab Emirates	Yes (2006)	Yes (1981)	No	Dubai (10 th globally)
Ethiopia	Yes (2020)	Signed (1965, not ratified)	No	–
Indonesia	Yes (1981)	Yes (1968)	No	–
Iran	Yes (2001)	No	Signed (2019, not ratified)	–

Source: UNCITRAL, ICSID, Singapore Convention databases (accessed April 2025)

Table 2: Domestic arbitration regimes and institutional landscapes in BRICS+ jurisdictions

Country	Legal System	Model Law Influence	Year of Arbitration Law	Preferred Institutions
Brazil	Civil Law	No	1996	–
Russia	Civil Law	Yes	2015 (domestic); 1993 (international)	–
India	Common Law	Yes	1996	–
China	Civil Law	Partial	1994	CIETAC, HKIAC
South Africa	Hybrid	Yes	1965 (domestic); 2017 (international)	–
Saudi Arabia	Sharia-based	Yes	2012	–
Egypt	Civil Law/ Sharia	Yes	1994	–
United Arab Emirates	Hybrid	Yes	2018	DIAC
Ethiopia	Civil/ Customary	No	2021	–
Indonesia	Hybrid	No	1999	–
Iran	Sharia-based	Yes	1997 (international); 2000 (domestic)	–

Source: National arbitration laws and institutional websites

While BRICS+ jurisdictions generally align with key international instruments, such as the New York Convention, their approaches to arbitration law and institutional frameworks tend to be more fragmented compared to established arbitration hubs. Countries such as Singapore have not only adopted the UNCITRAL Model Law but also developed extensive judicial jurisprudence, which enhances predictability and consistency in enforcement. In contrast, some BRICS+ countries (such as India and Ethiopia) have adopted these models partially or with delay, potentially undermining procedural uniformity and confidence in their arbitral centers for cross-border disputes.

Enforcement practices also vary significantly. Courts in England typically intervene only in exceptional cases and generally adopt a pro-enforcement stance, even in sensitive matters of public policy. Brazilian courts are generally arbitration-friendly, but they occasionally scrutinize procedural aspects, such as notice and capacity. Despite significant legislative development and a more structured judicial review process, the enforcement of foreign arbitral awards in China continues to face notable

challenges. Chinese courts apply a multilayered scrutiny that includes assessing the presence of foreign elements, the validity of arbitration agreements, compliance with procedural standards, and compatibility with public policy. While China generally honors its obligations under the New York Convention and maintains an enforcement rate of approximately 70%,³¹ the judiciary still exercises considerable discretion, and internal reporting requirements give the Supreme People's Court a significant role in enforcement outcomes. This layered approach reflects a cautious balancing act between China's treaty commitments, domestic legal principles, and broader state interests, illustrating both the progress made and the persistent tensions shaping the country's approach to foreign arbitral awards.

These differences highlight that, although BRICS+ jurisdictions are aligning with global arbitration norms, notable gaps remain in judicial approach, legislative development, and institutional reliability.

Table 3: Regional seat preferences, institutional choices, and representation of BRICS+ parties in leading arbitral forums (2023)

Country	Top Regional Seats	Preferred Institutions	ICC Cases (% of total)	LCIA Cases (% of total)	SIAC Cases (% of total)
Brazil	Paris, New York, São Paulo, Singapore, Geneva	ICC, LCIA, ICSID, SIAC, ICDR	80 (3.35%)	4.8%	1 (0.0003%)
Russia	London, Paris, Singapore, Beijing, Geneva	ICC, LCIA, SIAC, ICSID, HKIAC	46 (1.93%)	2.8%	11 (0.004%)
India	Singapore, Hong Kong, London, Beijing, Paris	SIAC, ICC, LCIA, HKIAC, CIETAC	52 (2.18%)	–	141 (0.05%)
China	Singapore, Hong Kong, London, Beijing, Paris	SIAC, ICC, LCIA, HKIAC, CIETAC	72 (3.01%)	Mainland: 1.3%; HK: 1.2%	Mainland: 837; HK: 644 (53.44%)
South Africa	London, Paris, Singapore, Beijing, Hong Kong	ICC, LCIA, SIAC, ICSID, HKIAC	–	0.8%	2 (0.0007%)

³¹ See Zhang, M. (2018). Enforceability: Foreign arbitral awards in Chinese courts. *San Diego International Law Journal*, 20, 1.

Country	Top Regional Seats	Preferred Institutions	ICC Cases (% of total)	LCIA Cases (% of total)	SIAC Cases (% of total)
Saudi Arabia	London, Paris, Singapore, Beijing, Hong Kong	ICC, LCIA, SIAC, ICSID, HKIAC	54 (2.26%)	4.2%	1 (0.0003%)
Egypt	London, Paris, Singapore, Beijing, Hong Kong	ICC, LCIA, SIAC, ICSID, HKIAC	–	–	–
UAE	London, Paris, Singapore, Beijing, Hong Kong	ICC, LCIA, SIAC, ICSID, HKIAC	84 (3.52%)	4.8%	55 (0.02%)
Ethiopia	London, Paris, Singapore, Beijing, Hong Kong	ICC, LCIA, SIAC, ICSID, HKIAC	–	–	–
Indonesia	Singapore, Hong Kong, London, Beijing, Paris	SIAC, ICC, LCIA, HKIAC, CIETAC	–	–	42 (0.015%)
Iran	London, Paris, Singapore, Beijing, Hong Kong	ICC, LCIA, SIAC, ICSID, HKIAC	–	–	–

Source: ICC, LCIA, SIAC Annual Reports (2023); Queen Mary University of London & White & Case, International Arbitration Survey (2021)

Table 1 elucidates the alignment of BRICS+ countries with the international arbitration framework, revealing that all eleven jurisdictions are signatories to the New York Convention. Notably, Egypt was the first nation to ratify the convention in 1959, whereas Ethiopia marked its accession in 2020, representing the most recent addition. A notable observation is that four BRICS+ members—specifically, Iran, Brazil, the United Arab Emirates, and Ethiopia—ratified the New York Convention after 2001. The unanimous membership of these countries in the New York Convention enhances the security of international arbitration, particularly regarding the enforcement of foreign arbitration awards within their respective jurisdictions.

Furthermore, Table 1 outlines the status of the BRICS+ countries with respect to the ICSID Convention. The landscape of investment arbitration presents distinct challenges when compared to international commercial arbitration. A significant portion, exceeding 55% of BRICS+ nations, namely Brazil, Russia, India, South Africa, Ethiopia, and Iran, are not members of the ICSID Convention. This absence

necessitates reliance on bilateral investment treaties (BITs) to provide for dispute resolution.³² It is noteworthy that, while both Russia and Ethiopia signed the ICSID Convention, neither has proceeded with domestic ratification. In contrast, China, which boasts the largest GDP among the BRICS+ nations, has been a member of the convention since 1993.

To evaluate the international alternative dispute resolution capabilities of the BRICS+ nations, as well as the potential for more secure implementation of hybrid dispute resolution clauses (Med-Arb)³³—where mediation precedes arbitration—it is pertinent to examine the status of ratification of the 2019 Singapore Convention on Mediation among these countries. As shown in Table 1, India, China, and Iran have signed the Convention but have not yet ratified it. Notably, Saudi Arabia and Brazil in 2025 are the only BRICS+ countries to have ratified the Convention since 2020.³⁴ Presently, the Convention has 59 signatory countries and 19 contracting parties.

The final subject addressed in Table 1 concerns the internationally and regionally preferred seats for Arbitration, as delineated in the 2021 White & Case and Queen Mary University of London International Arbitration Survey: *Adapting Arbitration to a Changing World*.³⁵ Within the context of global preferences, China is notable for its representation in three venues in the international arbitration ranking, with Hong Kong ranking third. At the same time, Beijing and Shanghai rank seventh and eighth, respectively. Furthermore, Shenzhen represents China as a preferred seat within the Asia-Pacific region. In the broader global context, Dubai emerges as another significant venue in the international arbitration arena, establishing the United Arab Emirates as a key location for such proceedings.

Additionally, São Paulo ranks as a preferred regional venue for international Arbitration within the Caribbean and Latin America. At the same time, Cairo is a favored seat for the African continent. This analysis highlights the growing significance of BRICS+ countries as hubs for international Arbitration; however, as indicated in Table 3, it remains evident that parties from these nations frequently prefer traditional international arbitration venues. Notably, London, Singapore, and Paris continue to dominate this landscape, with Hong Kong being an exception, occupying the third position in the global rankings of preferred arbitration seats.

³² Murphy, S. D. (2022). Temporal issues relating to BIT dispute resolution. *ICSID Review—Foreign Investment Law Journal*, 37(1-2), 51–84.

³³ Ferreira, D. B., & Giovannini, C. J. G. J. (2020). Multi-tier and hybrid dispute resolution clauses as a solution for times of uncertainty: Some comparative law experiences. *Rev Eletrônica Dir Newton Paiva*, 42, 366. (In Portuguese).

³⁴ Singapore Convention Status. (2025). <https://www.singaporeconvention.org/jurisdictions>; Mason, P. E. (2021). The Singapore convention and its benefits for Brazil. *Brazilian Journal of Alternative Dispute Resolution*, 2(4), 181–193. (In Portuguese); Cometti, A. K. F., & Moschen, V. R. B. (2022). The Singapore Convention in the framework of the investor-state dispute settlement system. *Brazilian Journal of Alternative Dispute Resolution*, 4, 37.

³⁵ White & Case LLP and Queen Mary University of London, 2021.

Table 2 elucidates the domestic arbitration ecosystems of BRICS+ countries, highlighting the diversity and distinctions inherent within their respective jurisdictions. Notably, there exists a semblance of similarity among seven jurisdictions—namely, Russia, India, South Africa, Saudi Arabia, Egypt, the United Arab Emirates, and Iran—whose arbitration legislations are either based on or inspired by the UNCITRAL Model Law. Similarly, China, along with its Special Administrative Regions of Hong Kong and Macao, adheres to this schema (UNCITRAL, 2025). While Brazil is not listed as a UNCITRAL Model Law jurisdiction, the Brazilian Arbitration Act of 1996 (Law nº 9.306/1997) is significantly influenced by this model. It aligns with internationally recognized best practices in arbitration. In terms of regulatory frameworks, eight jurisdictions adopt monist arbitration regimes, encompassing Brazil, India, China, Saudi Arabia, Egypt, the United Arab Emirates, Ethiopia, and Indonesia. Conversely, three jurisdictions—Russia, South Africa, and Iran—exhibit a dual regime, implementing distinct legislative frameworks for domestic and international arbitration. A considerable divergence emerges upon examination of the jurisdictions' legal systems, which span civil law, common law, hybrid legal systems (which may integrate elements of civil law, common law, customary law, or religious law), and systems grounded in religious principles. Specifically, Brazil, Russia, and China represent pure civil law systems, while Egypt incorporates Sharia law within its civil law framework. India is characterized as the sole nation with a pure common law system.

Additionally, South Africa exemplifies a hybrid legal system that encompasses civil, common, and customary law. The United Arab Emirates operates under a civil law system influenced by Sharia and common law, while Indonesia incorporates elements of Sharia and customary Adat law. Saudi Arabia and Iran, on the other hand, operate under religiously based legal systems rooted in Sharia. The interplay of these disparate legal traditions has the potential to engender significant clashes in arbitration proceedings, particularly regarding evidentiary presentations and procedural conduct during hearings.³⁶

Moreover, Table 2 identifies the BRICS+ jurisdictions that have regional or globally recognized arbitration institutions, as reported in the 2021 White & Case and Queen Mary University of London International Arbitration Survey: *Adapting Arbitration to a Changing World*.³⁷ China is distinguished by the presence of the Hong Kong International Arbitration Centre (HKIAC), ranked third among the most favored global arbitration institutions, and the China International Economic and Trade Arbitration Commission (CIETAC), ranked fifth. In the Middle Eastern context, the

³⁶ Ferreira, D. B., & Gromova, E. A. (2024). Digital evidence: The admissibility of leaked and hacked evidence in arbitration proceedings. *International Journal for the Semiotics of Law*, 37(3), 903–922; Barkett, J. M., & Paulsson, J. (2009). The myth of culture clash in international commercial arbitration. *Florida International University Law Review*, 5(1), 1–11; Cremades, B. M. (1998). Overcoming the clash of legal cultures: The role of interactive arbitration. *Arbitration International*, 14(2), 157–172.

³⁷ White & Case LLP and Queen Mary University of London, 2021.

United Arab Emirates is represented by the Dubai International Arbitration Centre (DIAC) as a preferred regional institution. In contrast, the absence of globally or regionally preferred arbitration institutions in the remaining jurisdictions underscores a significant opportunity to develop and promote local arbitration institutions.

Table 3 consolidates data on the preferred arbitral seats and institutions of BRICS+ jurisdictions alongside their actual participation rates in leading forums, providing an integrated view of their engagement with the global arbitration landscape. The data reveal a consistent preference for well-established venues, with London, Paris, Singapore, Hong Kong, and Beijing dominating across most jurisdictions. Singapore emerges as the leading seat in the Asia-Pacific region, while London remains the most frequently chosen forum for parties in Europe, Africa, and the Middle East. Paris is particularly influential in Latin America, where it surpasses London as a preferred seat. The presence of Hong Kong and Beijing among the top five venues for four of the five regions further underscores the growing weight of Asian arbitral hubs.

Institutional preferences mirror these trends. The ICC, LCIA, and SIAC consistently rank as the most trusted arbitral institutions across BRICS+ jurisdictions, reflecting the enduring dominance of established Western and Asian forums. ICSID maintains a notable presence despite several BRICS+ members not being signatories to the Washington Convention, underscoring the continuing relevance of investment arbitration in these jurisdictions. The inclusion of HKIAC and CIETAC among the top-ranked institutions, particularly in the Asia-Pacific region, signals the growing centrality of Asian arbitral institutions in shaping dispute-resolution practices across the Global South.

Participation data provide an important complement to these preference patterns. While countries such as Brazil, Russia, India, Saudi Arabia, and the United Arab Emirates show meaningful engagement with institutions like the ICC and LCIA, the most striking finding is China's overwhelming representation—particularly at SIAC, where parties from Mainland China and Hong Kong account for more than half of all cases. By contrast, jurisdictions such as Egypt, Ethiopia, and Iran show no recorded participation, and African states generally remain underrepresented. This uneven distribution suggests that, while BRICS+ jurisdictions continue to rely heavily on established arbitration centers, significant disparities in engagement persist, posing both a challenge and an opportunity for the development of a future BRICS+ dispute-resolution framework.

Our findings highlight the challenges posed by the expansion of BRICS+ in terms of dispute resolution. Although all eleven jurisdictions exhibit significant harmonization in international arbitration as members of the New York Convention, their domestic arbitration systems differ considerably. This variation is evident in their legal frameworks and arbitration legislation, particularly in terms of whether the legislation is based on the UNCITRAL Model Law and whether the arbitration regime is monist or dualist. A positive analysis indicates that most jurisdictions

are accustomed to managing disputes internationally, with China leading in the number of parties involved in international arbitrations. China also boasts prominent international arbitration venues, such as Beijing and Hong Kong, as well as esteemed institutions, including the Hong Kong International Arbitration Centre (HKIAC) and the China International Economic and Trade Arbitration Commission (CIETAC).

We must highlight that there are ongoing arbitration initiatives within the BRICS framework. This reflects an evolving strategy to strengthen dispute-resolution mechanisms among member states and their partners, moving from centralized institutional models toward a more flexible, decentralized, and network-based system. One of the earliest projects in this regard was the *BRICS Supranational Arbitration Center*, initiated by India in 2014. This initiative aimed to create a single, supranational institution to resolve disputes among BRICS countries. However, the project was eventually discontinued after the decision to adopt a delocalized approach involving cooperation among leading arbitration institutions in each BRICS member state rather than establishing a single, centralized body.

The next significant step came in 2021, when St. Petersburg State University advanced the idea of establishing the *BRICS Arbitration Institute*. This proposal emerged in response to the need to strengthen investment protection mechanisms, particularly amid the economic instability caused by the COVID-19 pandemic. The Institute was envisioned as a forum for resolving investment disputes involving BRICS member states and third countries joining the system. Its legal foundation was to be based on conventions concerning the mutual protection of investments and the establishment of an arbitration institute. A distinctive characteristic of this initiative was its commitment to delocalization, ensuring that the institution would operate independently of national courts in resolving disputes.

In 2023, further development occurred when the Guangzhou Arbitration Commission (GZAC) initiated the establishment of the BRICS Arbitration Court, a supranational body designed to resolve investment and trade disputes between representatives of BRICS countries. This court would consist of arbitrators drawn from BRICS member states and would be supported by a Scientific Advisory Board composed of academics and practitioners with expertise in international arbitration. The structure of the court reflects an effort to build a high-level, expert-driven mechanism that maintains both flexibility and legitimacy in cross-border dispute resolution.³⁸

The most recent and comprehensive initiative to date was presented in 2024 by the Russian Arbitration Center (RUIE) as the *BRICS+ Arbitration Mechanism (BRICSAM)*. This project was developed by a special working group of the Russian Union of Industrialists and Entrepreneurs (RSPP) that included representatives from the Russian Bar Association and foreign BRICS partners. BRICSAM represents an idea toward a fully institutionalized yet cooperative model. It envisions the establishment

³⁸ Gromova, 2025.

of its own institutional system governed by an International Council functioning as an advisory body, alongside national BRICS+ Appointments Committees within each member state's arbitration institution. One of the core ideas behind BRICSAM is the joint administration of arbitral proceedings by national institutions (decentralized model) under unified rules and shared procedural standards.

The legal framework for BRICSAM is intended to include an agreement among arbitration institutions establishing a single mechanism, the BRICS+ Arbitration Rules setting out the structure of costs and fees, and a model arbitration clause for the referral of disputes under these rules. Arbitrators will be selected from a unified roster of experts representing the BRICS countries, ensuring a balance of perspectives and expertise. In addition, the initiators propose the creation of a Maritime Arbitration Commission within BRICSAM, bringing together specialists in maritime arbitration from across BRICS+ member states.

Overall, the trajectory of these initiatives—from the initial proposal for a centralized supranational arbitration center to the current design of a delocalized, multi-institutional mechanism—illustrates a strategic shift toward flexible governance, investment protection, and procedural harmonization within BRICS. This evolution reflects broader trends in international dispute resolution, where networks of institutions and shared standards increasingly replace traditional, centralized models. By aligning arbitration practices across BRICS member states, these initiatives aim to enhance legal predictability, facilitate cross-border trade and investment, and strengthen BRICS's collective influence in global governance. However, there are still many challenges in developing a BRICS Arbitration Mechanism, such as legal fragmentation, public policy uncertainty, varying levels of judicial intervention among BRICS+ members, gaps in arbitration award enforcement, institutional imbalances among domestic arbitration bodies lacking global credibility, and geopolitical pressures like sanctions, trade conflicts, and state interests that could influence judicial decisions. Overall, these initiatives still have a long way to go.

5. Recognizing and Enforcing a Foreign Arbitration Award in Brazil: Definition, Procedure, and Public Policy

The legislator chose to adopt an objective definition for a foreign arbitral award by applying the territorial criterion, as provided in Article 34, paragraph 1, of the Arbitration Act; in other words, a foreign arbitral award is one rendered outside the national territory. In Brazil, only foreign arbitration awards must be recognized by the Brazilian Superior Court of Justice; however, this does not necessarily apply to international arbitration awards, as they may also be issued in a domestic venue.³⁹

³⁹ De Barros, V. C. M. (2017). *Exceção de ordem pública na homologação de sentença arbitral estrangeira no Brasil*. Quartier Latin. (In Portuguese).

The Superior Court of Justice stated that an arbitral award issued in an international arbitration in Brazilian territory is considered a domestic award, making the court's recognition unnecessary.⁴⁰

The New York Convention, ratified in Brazil by Decree No. 4.311/2002, also establishes the territorial criterion in Article I (1), which states that this Convention applies to the recognition and enforcement of arbitral awards made in a territory other than that of the State where the recognition and enforcement of such awards are sought.

At this point, it is essential to distinguish between the terms confirmation (homologation), recognition, and enforcement, as outlined in Article 34 of the Brazilian Arbitration Act. Briefly, *confirmation* is the procedure through which a foreign award is recognized—it does not confer effectiveness on the foreign award. However, according to the Superior Court of Justice, *it merely allows the effectiveness it already contains to operate*.⁴¹ *Recognition* refers to the acknowledgment of the legal effects of the award, including its validation as *res judicata*. *Enforcement* entails the coercive aspect—the use of state power, as requested by the judiciary, to compel compliance with the decision. In summary, for a foreign arbitral award to be enforced in Brazil, it must first be recognized, and such recognition occurs only through the confirmation procedure before the Superior Court of Justice (STJ), as established by Article 35 of the Arbitration Act and Article 105, I, i of the Brazilian Constitution of 1988.

The process of recognizing a foreign arbitral award involves limited contentious jurisdiction. In other words, the judge cannot examine the award's merits but must evaluate whether the legal criteria for the decision to produce effects in the country are satisfied. The recognition decision has a constitutive nature, as it grants effectiveness to the foreign decision, thereby creating a new legal situation within the domestic legal system. Conversely, a decision denying recognition is of a negative declaratory nature, as it acknowledges that the foreign award does not meet the legal requirements.⁴²

The procedure for recognizing foreign decisions is governed by Article 37 (which sets the formal requirements of the homologation procedure) of the Brazilian Arbitration Act, Articles 960 to 965 of the Code of Civil Procedure (on a subsidiary basis), and Articles 216-A to 216-X of the Internal Rules of the Superior Court of Justice.⁴³ Article 216-C of the aforementioned Internal Rules confirms the provision contained in the Arbitration Act, as follows:

⁴⁰ Brazilian Superior Court of Justice. (2011, June 11). Special Appeal 1.231.554/RJ.

⁴¹ Brazilian Superior Court of Justice. (2015, December 16). Foreign Judgment SEC 5.782/EX – Argentina.

⁴² Schmidt, G. D. R., Ferreira, D. B., & Oliveira, R. C. R. (2021). *Comentários à Lei de Arbitragem*. Editora Método. (In Portuguese).

⁴³ Brazilian Superior Court of Justice. (2024, December 9). Foreign Judgment HDE 6018/EX.

The recognition of a foreign decision shall be requested by the claimant, and the initial petition must contain the requirements outlined in the procedural law, as well as those provided for in Article 216-D, and be accompanied by the original or a certified copy of the decision to be recognized and other indispensable documents, duly translated by an official or sworn translator in Brazil and authenticated by the competent Brazilian consular authority, where applicable.

In 2025, according to the Superior Court of Justice Administrative Resolution n° 7/2025,⁴⁴ the court costs for recognizing a foreign decision (either judicial or arbitral) amount to R\$ 259,08 (Brazilian reais). Nevertheless, the court may impose the prevailing party's attorney fees on the losing party. According to Article 85 § 2° of the 2015 Brazilian Civil Procedure Code, these fees can range from 10% to 20% of the total amount established in the arbitration award.⁴⁵

The Superior Court of Justice's case law is clear regarding the court's role in confirming foreign awards. It affirms that

in cases involving the recognition of foreign arbitral awards, the Superior Court of Justice (STJ) conducts only a deliberative examination, limited to assessing whether the request complies with the requirements established by the Code of Civil Procedure, the STJ's Internal Rules, the Law of Introduction to Brazilian Law (LINDB), and the Arbitration Act.⁴⁶

The court also outlines the essential requirements for recognizing a foreign decision: (i) the decision must have been rendered by a competent authority (Art. 963, I of the Code of Civil Procedure and Art. 216-D, I of the Internal Rules of the STJ); (ii) the defendant must have been duly summoned, even if the proceedings resulted in a default judgment (Art. 963, II of the Code of Civil Procedure and Article 216-D, II of the Internal Rules of the STJ); (iii) the decision must be effective in the country where it was rendered (Art. 963, III of the Code of Civil Procedure); (iv) it must not conflict with a final and unappealable decision rendered in Brazil (Art. 963, IV of the Code of Civil Procedure); (v) it must not manifestly violate public policy (Art. 963, VI of the Code of Civil Procedure), national sovereignty, or human dignity (Art. 216-F of the Internal Rules of the STJ).⁴⁷

Although the Brazilian Arbitration Act of 1996 predates the ratification of the Brazilian New York Convention in 2002, Articles 38 and 39 are analogous to Article V (I) (II) of the Convention as per the tables below:

⁴⁴ Superior Court of Justice. (2025). Administrative Resolution No. 7/2025 on Court Costs. <https://www.stj.jus.br/sites/portalp/Paginas/Processos/Despesas-processuais/Informacoes-Gerais.aspx>

⁴⁵ Brazilian Superior Court of Justice. (2018, August 21). Foreign Judgment SEC 14.385/EX – United States.

⁴⁶ Brazilian Superior Court of Justice. (2024, December 9). Foreign Judgment HDE 6018/EX.

⁴⁷ Brazilian Superior Court of Justice. (2024, December 9). Foreign Judgment HDE 6018/EX.

Table 4: Comparative refusal grounds: Brazilian Arbitration Act (Art. 38) and New York Convention (Art. V(1))

Ground for Refusal	Brazilian Arbitration Act (Art. 38)	New York Convention (Art. V(1))
Capacity and validity of agreement	Refusal where parties lacked legal capacity or the arbitration agreement was void under the law chosen by the parties or, absent such choice, under the law of the seat.	Refusal where parties lacked capacity under applicable law or the agreement is invalid under the law chosen or, failing that, under the law of the seat.
Due process and notice	Refusal if the defendant was not adequately notified of arbitrator appointment or proceedings, or if the right to a complete defense was violated.	Refusal if the party was not given proper notice or was otherwise unable to present its case.
Excess of authority	Refusal if the award exceeded the scope of the arbitration agreement, and the offending portion cannot be separated from the remainder.	Refusal if the award deals with matters beyond the scope of the submission to arbitration; partial enforcement is permitted if the issues are separable.
Procedural irregularities	Refusal if proceedings were not commenced in accordance with the arbitration clause or submission agreement.	Refusal if the composition of the tribunal or procedure was not in accordance with the party agreement or, failing that, the law of the seat.
Non-binding or annulled award	Refusal if the award is not yet binding, has been annulled, or suspended by a competent authority in the seat.	Refusal if the award is not binding or has been set aside or suspended by a competent authority in the seat.

Source: Brazilian Arbitration Act (Law No. 9.307/1996), art. 38; New York Convention (1958), art. V(1)

Table 5: Ex officio refusal grounds: Brazilian Arbitration Act (Art. 39) and New York Convention (Art. V(2))

Ground for Ex Officio Refusal	Brazilian Arbitration Act (Art. 39)	New York Convention (Art. V(2))
Arbitrability	Refusal if the subject matter is not capable of settlement by arbitration under Brazilian law.	Refusal if the subject matter is not arbitrable under the law of the enforcing state.
Public policy	Refusal if enforcement would contravene Brazilian public order.	Refusal if enforcement would be contrary to the public policy of the enforcing state.

Source: Brazilian Arbitration Act (Law No. 9.307/1996), art. 39; New York Convention (1958), art. V(2)

The Brazilian Superior Court of Justice endorses arbitration and typically recognizes foreign arbitration awards, except in cases of evident procedural violations. Recognition may be denied on public policy grounds, particularly when there are due process infringements, such as bias on the part of arbitrators, undisclosed conflicts of interest, inadequate notice regarding arbitration proceedings, or missing signatures on the arbitration agreement.

Comparative scholarship has long emphasized that the public policy exception should be construed narrowly, serving as a safety valve rather than a substantive review mechanism.⁴⁸ Brazilian jurisprudence reflects this orthodoxy, aligning with the position of leading jurisdictions such as France, Switzerland, and Singapore.⁴⁹ The STJ's approach also resonates with recent ICSID and UNCITRAL recommendations, which advocate for minimizing judicial intervention to enhance legal certainty and cross-border enforceability.⁵⁰

In searching the jurisprudence backlog of the Superior Court of Justice's search engine⁵¹ conducted on June 9, 2025, using the search terms "foreign arbitral award" (in Portuguese: *sentença arbitral estrangeira*) and "public policy" (in Portuguese: *ordem pública*), we identified a total of fifty-eight decisions related to the topic. Only seven decisions partially recognized or refused to recognize foreign arbitration awards based on public policy grounds, resulting in a 12% rate. Of these seven, four awards were entirely denied recognition, while three were partially recognized. The most common reason for non-recognition is the absence of a proper signature in the contracts that included the arbitration agreement, which served as the basis in two of the seven cases. The table below (Table 7) presents the cases from oldest to most recent, examining their outcomes and the grounds for accepting the public policy argument.

Although this current search has limitations, it provides a satisfactory sample of the Superior Court of Justice's rulings on the recognition of foreign arbitration awards and the potential refusal to recognize them based on the public policy argument. The Court demonstrates an arbitration-friendly stance, refusing to recognize an award only in cases of serious procedural violations. It focuses its analysis on formal grounds, exercising caution to avoid interfering with the merits of the issued decision. In brief, Brazilian law and the STJ uphold the finality of the arbitration award, unlike in other jurisdictions where an appeal on the merits of the arbitration award is permitted, albeit in a limited manner, such as in England and Hong Kong.⁵²

⁴⁸ Van den Berg, 2008.

⁴⁹ Mayer, 2006; Curtin, 1997; Zhang, 2023; Bray, D. & Bray, H. L. (2014). *International arbitration and public policy*. Juris Publishing; Kleinheisterkamp, 2023.

⁵⁰ UNCITRAL Secretariat, 2017.

⁵¹ Superior Court of Justice. (2025, June 9). Search Engine of the Superior Court of Justice. <https://scon.stj.jus.br/SCON/>

⁵² Gu, W. (2005). Recourse against arbitral awards: How far can a court go? Supportive and supervisory role of Hong Kong courts as lessons to mainland China arbitration. *Chinese Journal of International Law*, 4(2), 481–500; Tweeddale, Tweeddale & Nguyen, 2014.

Table 6: Superior Court of Justice decisions refusing recognition of foreign arbitral awards on public policy grounds

Case (STJ)	Outcome	Ground Invoked	Summary of Court's Reasoning
SEC 967/GB (20 Oct 2006)	Recognition refused	Formal defect – invalid arbitration agreement	The absence of proper signatures in contracts containing the arbitration clause rendered the agreement unenforceable.
SEC 833/US (30 Oct 2006)	Recognition refused	Due process – lack of notice	Recognition was denied because the respondent did not receive proper notice of the proceedings, violating the right to a fair hearing.
SEC 978/GB (5 Mar 2009)	Recognition refused	Formal defect – absence of signature	Enforcement was denied due to the absence of a valid signature in the arbitration agreement, its addendum, and the appointment act of the arbitrator.
SEC 854/EX (7 Nov 2013)	Partially recognized	Jurisdictional sovereignty – concurrent jurisdiction	The part of the award ordering the withdrawal of a pending annulment action before Brazilian courts was not recognized, to preserve judicial sovereignty.
SEC 2410/EX (19 Feb 2014)	Partially recognized	Economic policy – monetary adjustment and exchange variation	The STJ refused to enforce the part of the award that applied monetary adjustment and exchange rate variation simultaneously, considering it contrary to Brazilian public policy.
SEC 9412/EX (30 May 2017)	Recognition refused	Arbitrator bias – duty of disclosure	Enforcement was denied due to a breach of impartiality obligations resulting from the arbitrator's failure to disclose relevant circumstances.
SEC 14385/EX (21 Aug 2018)	Partially recognized	Due process – lack of standing	Recognition was partially denied because one party lacked legal standing, violating fundamental procedural guarantees.

Source: Superior Court of Justice (STJ) case law database, SEC decisions (2006–2018)

6. The Brazilian Superior Court of Justice and the Recognition of BRICS+ Foreign Arbitration Awards: A Data Analysis

The BRICS+ group currently consists of eleven members: Brazil, Russia, India, China, South Africa, Saudi Arabia, Egypt, the United Arab Emirates, Ethiopia, Indonesia, and Iran. We included Hong Kong in the analysis because it is a Special Administrative Region (SAR) of the People's Republic of China. In this topic, we will analyze motions to recognize a foreign arbitral award by parties from BRICS+ countries in the Brazilian Superior Court of Justice. To achieve this goal, we examined the jurisprudence backlog of the Superior Court of Justice's search engine (STJ, 2025) conducted on April 5, 2025, using the search terms "Recognition of foreign judgment" (In Portuguese: *Homologação de decisão estrangeira*) followed by the country's name. This means that when searching for motions to recognize a foreign arbitration award from China, we would use the search term *recognition of foreign judgment China*, translated into Portuguese. By not restricting the search to arbitral awards, we expanded the search to include judicial court decisions of BRICS+ members, thereby attempting to encompass all relevant decisions, including both arbitral awards and judicial court decisions.

The table below presents the BRICS+ members, the number of judgments by the STJ panel and by a single justice, the number of decisions related to other topics, and the number of decisions regarding the recognition of arbitral awards. It is important to note that the number of decisions made by a panel and a single justice may not equal the sum of decisions concerning the recognition of an arbitration award and those on other topics. This discrepancy arises because many decisions are interlocutory appeals in the same case, which do not constitute final decisions.

Table 7: Recognizing Foreign Awards by the Superior Court of Justice Regarding BRICS+ Members

Country	Panel Decisions	Single-Justice Decisions	Decisions on Recognition of Arbitral Awards	Decisions on Other Arbitration-Related Matters	Observations
China	1	88	10	56	China is the most active BRICS+ jurisdiction before the STJ, with a significant number of recognition decisions.
Egypt	0	13	0	13	All cases relate to ancillary arbitration matters; no recognition decisions recorded.

Country	Panel Decisions	Single-Justice Decisions	Decisions on Recognition of Arbitral Awards	Decisions on Other Arbitration-Related Matters	Observations
Ethiopia	0	0	0	0	No recorded participation in STJ arbitration jurisprudence.
Hong Kong	0	21	1	10	Despite a relatively high number of cases, recognition decisions remain rare.
India	0	2	0	2	Very limited involvement; no recognition decisions.
Indonesia	0	7	0	7	All cases relate to procedural or ancillary matters, with no recognition decisions.
Iran	0	0	0	0	No recorded cases involving Iranian parties.
Russia	1	28	0	29	Although relatively active, Russian-related cases do not include recognition decisions.
Saudi Arabia	0	4	0	2	Limited engagement, with no recognition-related jurisprudence.
South Africa	0	31	0	20	Significant volume of arbitration-related cases, but none on award recognition.
United Arab Emirates	0	1	1	1	Only one recognition decision recorded, reflecting limited but growing engagement.

Source: Superior Court of Justice (STJ) database, SEC and HDE decisions (2006–2024)

We also expanded our research to the leading arbitration institutions to identify possible arbitral awards involving parties from the BRICS+ countries. The search was conducted on April 05, 2025. The search terms used included the full name of the arbitration institution in both English and Portuguese. For example, for the ICC, we searched for both *Câmara de Comércio Internacional* and *International Chamber of Commerce*. In this way, we searched for the following institutions, considering the

likelihood of arbitration awards involving BRICS+ country parties, as presented in Table 3: ICC, LCIA, SIAC, CIETAC, HKIAC, AAA and AAA-ICDR.

Table 8: Superior Court of Justice decisions involving major arbitral institutions (2006–2024)

Arbitral Institution	Panel Decisions	Single-Justice Decisions	Total Decisions	Observations
ICC	6	72	78	ICC is by far the most frequently involved institution, reflecting its dominant role in cross-border disputes involving Brazil
LCIA	1	13	14	LCIA appears in a moderate number of cases, primarily resolved by single justices
CIETAC	0	9	9	All decisions are single-justice rulings, reflecting limited but notable involvement of Chinese institutions
AAA	1	12	13	The American Arbitration Association is often featured, particularly in commercial contract disputes
AAA-ICDR	0	1	1	Rarely present, with only a single decision recorded
SIAC	0	0	0	No cases involving the Singapore International Arbitration Centre
HKIAC	0	0	0	No cases involving the Hong Kong International Arbitration Centre

Our findings in Tables 7 and 8 reinforce the patterns identified in Table 3, particularly the prominent role of the ICC and LCIA in disputes involving Brazilian parties. Both institutions are among Brazil's most frequently selected forums, underscoring their significance in the country's cross-border arbitration practice. A particularly notable finding is the relatively high number of recognition decisions related to China and Hong Kong, ten and one, respectively, which demonstrates the depth of commercial engagement between China and Brazil and highlights the disproportionate involvement of Chinese parties in international arbitration compared to other BRICS+ jurisdictions.

Table 8 further reveals that only parties from China (ten cases), Hong Kong (one case), and the United Arab Emirates (one case) have initiated recognition proceedings for foreign arbitral awards before the Superior Court of Justice (STJ). All other foreign

judgments involving BRICS+ countries concern unrelated matters, primarily family law disputes such as adoption and divorce. To date, the STJ has recognized twelve foreign arbitral awards involving BRICS+ jurisdictions, and none of these cases have resulted in refusals based on public policy grounds—an indication of the growing alignment between Brazilian judicial practice and international enforcement standards.

Our research also identified a notable case involving an arbitral award rendered by the ICC in favour of a Chinese subsidiary established in Brazil, which was duly recognized by the STJ. Significantly, Table 7 shows that none of the foreign arbitral awards refused recognition involved BRICS+ parties. However, the absence of recognition proceedings involving Ethiopia and Iran, as well as the relatively low number of filings from India, Saudi Arabia, and the UAE (each with fewer than ten cases), suggests that commercial interactions and judicial cooperation remain limited with several BRICS+ members. These findings indicate both a current imbalance in cross-border arbitration engagement and a clear opportunity to strengthen institutional cooperation and deepen commercial ties within the BRICS+ framework.

In conclusion, as BRICS+ members and their expanding network of partners deepen economic and legal cooperation, sustained dialogue to harmonize arbitration practices and standardize dispute-resolution clauses becomes essential. Such coordination would not only enhance the overall efficiency and predictability of arbitral proceedings but also provide greater legal certainty regarding the enforcement of foreign awards across member jurisdictions. Strengthening this collaborative framework is a crucial step toward establishing BRICS+ as a cohesive and reliable platform for cross-border dispute resolution.

Conclusion

The expansion of BRICS into BRICS+ marks a significant milestone in the evolution of global dispute resolution. As economic ties grow stronger and multipolar governance gains momentum, international arbitration will become an increasingly prominent method for resolving cross-border disputes among these countries. This article has demonstrated that, although all BRICS+ members are parties to the New York Convention and most domestic arbitration laws broadly follow its framework, notable differences in legal traditions, institutional maturity, and judicial approaches persist. These differences create both challenges and opportunities for building a unified regional arbitration system.

The initiatives examined in this study, ranging from the early proposal for a BRICS Supranational Arbitration Center to the more recent BRICS+ Arbitration Mechanism (BRICSAM), reflect the gradual institutionalization of a distinct BRICS arbitration identity. Their evolution demonstrates a strategic shift away from purely national

or centralized models toward a *network-based, delocalized structure* capable of accommodating the diversity of legal systems and institutional capacities within the bloc. By promoting harmonized rules, coordinated institutional activity, and shared appointment mechanisms, these projects lay the groundwork for a coherent transnational arbitration space. In particular, BRICSAM represents a pragmatic compromise between respecting national sovereignty and achieving procedural convergence, positioning BRICS+ as a future hub of arbitration activity. If successfully implemented, these mechanisms could not only enhance legal predictability and investor confidence but also serve as a model for other regional integration efforts in the Global South.

To ensure the long-term effectiveness, legitimacy, and global appeal of this emerging system, the most promising approach would be to establish a treaty-based BRICS+ Arbitration Center, formally linked to the New Development Bank (NDB). Such a structure would mirror the institutional design of ICSID or the PCA, providing treaty-based legal personality, recognized privileges and immunities, and a clear jurisdictional framework. Linking the arbitration center to the NDB would anchor it within the broader BRICS+ development architecture, ensuring its integration with the bank's infrastructure, investment, and trade projects. This model would also strengthen investor confidence by providing a neutral and stable forum for dispute resolution, thereby enhancing the BRICS+ bloc's credibility in the global legal order and increasing its attractiveness to non-member states and private investors.

This study demonstrates that while BRICS+ jurisdictions increasingly participate in the global arbitration system, significant divergences persist in treaty adherence, institutional engagement, and judicial enforcement practices. The evidence from Brazil's Superior Court of Justice shows a high rate of recognition of foreign arbitral awards, including those involving BRICS+ parties, with public policy objections rarely upheld. This suggests a growing convergence toward pro-enforcement judicial behavior, consistent with the objectives of the New York Convention. At the same time, disparities, such as China's dominant institutional presence, Africa's minimal participation, and the absence of recognition cases involving some BRICS+ members, underscore the unevenness of this development.

For policymakers and practitioners, these findings underscore the pressing need for deeper dialogue and cooperation among BRICS+ states to harmonize arbitration laws, clarify public policy standards, and foster a more predictable enforcement environment. Strengthening judicial training, increasing transparency in recognition decisions, and fostering collaboration between arbitral institutions could significantly enhance legal certainty and commercial confidence. For scholars, this study opens avenues for future research on the intersection between judicial practice, state policy, and institutional strategy in emerging economies. As BRICS+ evolves from a geopolitical bloc into a legal and economic actor, its approach to arbitration will be critical in shaping the future landscape of transnational dispute resolution.

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