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The ICC Court's Scrutiny Function under Article 34 of the 2021 Arbitration Rules

A Quality-Control Mechanism and Its Impact on Award Enforceability

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ABSTRACT

The scrutiny of draft awards by the International Court of Arbitration (ICC Court) constitutes one of the most distinctive institutional features of ICC arbitration. Rooted in Article 34 of the 2021 ICC Arbitration Rules—a provision whose lineage traces back to the earliest codification of ICC procedure—scrutiny functions as a mandatory quality-control gateway through which no award may pass until approved by the ICC Court. Adopting a doctrinal research approach, this article analyses the legal and regulatory framework governing the ICC scrutiny mechanism, its operative scope, and its demonstrable impact on the enforceability of arbitral awards in domestic and transnational jurisdictions.

The article argues that scrutiny performs a dual function: it operates as a formal-quality safeguard and, simultaneously, as a substantive-pointing instrument that draws the arbitral tribunal's attention to points of law and reasoning without encroaching upon its decisional liberty. Considering the 2026 ICC Arbitration Rules—effective 1 June 2026—which expressly extend the Court's scrutiny mandate to encompass the validity and enforceability of awards, this article further contends that scrutiny is no longer merely procedural housekeeping but is now a proactive enforceability-assurance mechanism of considerable institutional significance. Comparative analysis with the LCIA, SIAC, and HKIAC frameworks reveals that ICC scrutiny occupies a structurally unique position among institutional arbitration rules.

KEYWORDS

ICC Court · Award Scrutiny · Article 34 · Enforceability · New York Convention · Institutional Arbitration · Quality Control · 2026 ICC Rules

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1. INTRODUCTION

International commercial arbitration derives its legitimacy from a paradox: it is a private adjudicatory mechanism whose ultimate authority depends upon the willingness of public courts to recognize and enforce its outputs. This dependency places the enforceability of the arbitral award—rather than the correctness of the tribunal's reasoning—at the very center of the institutional design of arbitration. No institution has taken this structural reality more seriously than the International Chamber of Commerce, whose International Court of Arbitration ('ICC Court') has, since its establishment in 1923, subjected every draft award to a process of institutional review before it is communicated to the parties [1, 2].

This process—universally referred to as 'scrutiny'—is governed by Article 34 of the 2021 ICC Arbitration Rules ('2021 Rules') and is the direct successor of identically worded provisions stretching back across successive rule revisions. It requires that no award be rendered until the ICC Court has approved it, empowering the Court to impose modifications of form and to draw the tribunal's attention to points of substance, all while preserving the tribunal's liberty of decision [3, 4]. In a jurisdiction-neutral institutional landscape where parties may seat their arbitrations in Paris, Singapore, Kuala Lumpur, or Dubai with equal facility, ICC scrutiny remains the single most widely cited institutional quality-assurance mechanism in the literature [5].

Despite its century-long pedigree and its centrality to ICC practice, scrutiny has received relatively sparse systematic treatment in academic literature. The landmark contribution of Gustav Flecke-Giammarco in 2014 remains the foundational monographic study of the mechanism [6]. Andrea Carlevaris's 2023 essay marking a century of scrutiny practice provides the most recent authoritative appraisal [7]. Beyond these contributions, the topic is largely addressed in fragments: in practitioner guides, in ICC Bulletin articles, and in statistical reports. In Arabic-language legal scholarship, the topic is almost entirely absent.

This article seeks to fill that gap by offering a comprehensive doctrinal analysis of the ICC scrutiny mechanism, calibrated to the normative framework of the 2021 Rules and updated to reflect the transformative amendments introduced by the 2026 ICC Arbitration Rules, which entered into force on 1 June 2026. The article addresses the following research question:

To what extent does the ICC Court's scrutiny function under Article 34 of the 2021 Arbitration Rules operate as an effective quality-control mechanism, and how does it impact the enforceability of ICC arbitral awards?

In addressing this central question, the article proceeds in five further sections. Section 2 examines the theoretical and institutional context of scrutiny. Section 3 analyses the legal framework and operative mechanics of Article 34. Section 4 evaluates the empirical impact of scrutiny on enforceability, drawing on ICC statistics and judicial practice. Section 5 situates ICC scrutiny within a comparative institutional framework. Section 6 assesses current limitations and proposes recommendations, including observations on the 2026 Rules. Section 7 concludes.

2. THEORETICAL FRAMEWORK: ENFORCEABILITY AS INSTITUTIONAL ARCHITECTURE

2.1 The Enforceability Imperative in International Arbitration

The enforceability of international arbitral awards is governed principally by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which 172 States are party [8]. Article V of the Convention sets out an exhaustive list of grounds on which recognition and enforcement may be refused, including absence of a valid arbitration agreement; violation of due process; the award exceeding the scope of submission to arbitration; composition of the tribunal contrary to agreement; and contravention of public policy. Crucially, these grounds are broadly framed and leave national courts with residual interpretive latitude, particularly on questions of public policy and procedural regularity [9].

Against this background, institutional arbitration rules serve a critical pre-emptive function: by building quality-assurance mechanisms into the arbitral process itself, they reduce the probability that awards will be vulnerable to challenge on New York Convention grounds. ICC scrutiny is the most structurally developed expression of this logic. By requiring awards to be approved before notification, the ICC Court acts as a first-level quality filter that catches formal deficiencies—incomplete operative paragraphs, ambiguous dispositive, unresolved cost issues—before they ripen into annulment or refusal-of-enforcement grounds [6, 10].

2.2 The Institutional Role of the ICC Court

The ICC Court is not a court of law in the conventional sense; it is an administrative body whose function is to facilitate, supervise, and guarantee the quality of ICC arbitral proceedings. As stated in the ICC Arbitration Rules, the Court ‘does not itself resolve disputes. It administers the resolution of disputes by arbitral tribunals’ [3]. This administrative character is central to understanding scrutiny: the Court does not substitute its judgment for that of the tribunal but acts as an expert institutional reader whose observations are designed to improve the quality and durability of the award.

The Court’s authority over scrutiny is exclusive. Article 34 of the 2021 Rules makes clear that only the ICC Court is authorized to scrutinize and approve draft awards; parties may not contractually waive scrutiny, and no arbitration administered under the ICC Rules may legally proceed without it [3, 11]. This non-derivability underscores the institutional significance of the mechanism: the ICC Court treats scrutiny not as a procedural courtesy but as a constitutive element of the ICC arbitral process.

3. THE LEGAL FRAMEWORK AND OPERATIVE MECHANICS OF ARTICLE 34

3.1 The Textual Architecture of Article 34

Article 34 of the 2021 ICC Arbitration Rules provides:

“Before signing any award, the arbitral tribunal shall submit it in draft form to the Court. The Court may lay down modifications as to the form of the award and, without affecting the arbitral tribunal’s liberty of decision, may also draw its attention to points of substance. No award shall be rendered by the arbitral tribunal until it has been approved by the Court as to its form.”

This provision—textually identical to Article 27 of the 1998 Rules and Article 33 of the 2012 Rules—establishes three distinct operative elements. First, the submission obligation: the tribunal must

submit the draft award to the Court before signing. This is not a discretionary step; it is an absolute precondition to the award acquiring legal existence. Second, the power to modify form: the Court may require changes to the formal structure of the award. These modifications address issues such as clarity of the operative clauses, consistency of nomenclature, completeness of the cost award, and formal validity requirements at the seat. Third, the power to point to substance: the Court may draw the tribunal's attention to substantive points—questions of law, jurisdiction, or reasoning—without directing the outcome. The tribunal remains fully sovereign as to the content of its decision.

The phrase 'as to its form' in the final sentence of Article 34 has generated doctrinal debate. Some authorities read it narrowly as restricting the Court's power of approval to formal matters only, with the reference to 'points of substance' being a softer, non-binding advisory [12]. Others argue—more convincingly—that the provision establishes a unified approval mandate in which the formal/substantive distinction operates at the level of the Court's authority (binding as to form, advisory as to substance) rather than limiting the scope of the Court's review [6, 7].

Appendix II, Article 7 of the 2021 Rules adds an important practical dimension: when scrutinizing draft awards, the Court shall consider, to the extent practicable, the requirements of mandatory law at the place of arbitration. This provision ensures that scrutiny is not performed in a jurisdictional vacuum but takes account of the *lex arbitri*, thereby directly addressing one of the primary grounds for annulment of awards in national courts [3].

3.2 The Scrutiny Process: Mechanics and Timeline

The scrutiny process involves multiple layers of institutional review. Upon receipt of a draft award, the Secretariat of the ICC Court conducts a preliminary review and prepares a detailed set of suggested observations addressing drafting clarity, formal completeness, and selected substantive issues. These observations are then placed before the Court—a body comprising practitioners from across the world—which reviews the draft and issues its formal decision: approval (with or without observations), conditional approval pending revisions, or return to the tribunal [4, 13].

The process typically takes three to four weeks for straightforward awards. Complex awards may take longer. The 2026 ICC Arbitration Rules introduce a new Highly Expedited Arbitration Procedure (HEAP) within which the entire three-month award timeline includes ICC Court scrutiny and notification to the parties, demonstrating the institution's confidence in completing scrutiny under compressed timelines when necessary [14].

When the Court returns a draft award without approval, it provides written reasons identifying the specific concerns that preclude approval. The tribunal must then revise and resubmit. This iterative process—which accounted for the return of 71 draft awards in 2024 alone [15]—constitutes the most visible expression of the Court's quality-control function and directly prevents the notification to parties of awards that, in the Court's institutional judgment, are vulnerable to challenge.

3.3 The Distinction Between Formal and Substantive Review

The formal/substantive distinction at the core of Article 34 is operationally significant. Formal modifications—which the Court may require as a condition of approval—typically address: (a) ambiguity or incompleteness in the operative clauses; (b) arithmetic errors in damages calculations; (c) inconsistency between the recitals and the operative paragraphs; (d) omission of required cost awards; (e) procedural history deficiencies; and (f) formal validity requirements at the seat, such as signature

requirements under French or Swiss law [4, 10].

Substantive observations—which the Court addresses to the tribunal without binding authority—typically concern: (a) jurisdictional completeness; (b) questions of applicable law; (c) the adequacy of reasoning on contested factual or legal issues; (d) public policy considerations at the place of enforcement; and (e) issues that may generate grounds for challenge under the New York Convention. The ICC Award Checklist, provided to tribunals at the outset of the proceeding, pre-emptively structures tribunal conduct in alignment with scrutiny standards, reducing the need for extensive interventions [4].

4. THE IMPACT OF SCRUTINY ON AWARD ENFORCEABILITY: EMPIRICAL AND LEGAL ANALYSIS

4.1 Quantitative Evidence from ICC Statistics

The ICC's annual dispute resolution statistics provide a uniquely detailed empirical window into the operation of scrutiny. In 2024, the ICC Court approved 577 draft awards, of which 564 were approved subject to observations directed to the arbitral tribunal for its consideration. A further 71 draft awards were returned to the tribunal for further consideration before the Court could approve them—representing approximately 12.3% of all drafts scrutinized in that year [15, 16].

These figures are consistent with historical patterns. In 2023, the Court approved 520 awards, of which 512 were approved subject to observations, and 42 were returned (approximately 8% of the total) [17]. In 2020, 47 draft awards were returned (7% of total) [4]. The consistent return rate—typically between 7% and 13%—demonstrates that scrutiny performs active quality filtration in a meaningful proportion of cases.

Year	Awards Approved	Approved with Observations	Returned to Tribunal	Return Rate
2020	—	—	47	7%
2023	520	512	42	8%
2024	577	564	71	12.3%

Perhaps more revealing than return rates is the observation rate: in 2024, fully 564 of 577 approved awards—over 97%—were approved subject to observations. This figure strongly suggests that scrutiny is not a passive rubber-stamping exercise. The near-universal issuance of observations reflects the ICC Court's active engagement with the substance of every award it reviews, even where formal approval follows without returning [15].

4.2 The Voluntary Compliance Effect

One of the most frequently cited benefits of ICC scrutiny is its contribution to voluntary compliance by the losing party. As documented in the literature, approximately 90% of ICC awards are voluntarily performed by the party against whom they are rendered [6, 18]. While causation is difficult to establish definitively—award quality, institutional reputation, and commercial relationships all play independent roles—there is a persuasive case that scrutiny contributes to this outcome through several mechanisms.

First, the fact that an award has undergone institutional review by a body of international arbitration experts—and has been found to satisfy the ICC’s quality standards—lends the award a form of pre-certified legitimacy that reduces the losing party’s appetite for challenge. Second, scrutiny systematically eliminates the low-hanging fruit of formal challenges—the clerical errors, the inconsistent currency calculations, the omitted signature—that might otherwise provide an inexpensive basis for annulment or refusal-of-enforcement proceedings. Third, the substantive observations process may result in awards whose reasoning is more complete and more clearly anchored in the applicable law, making them less vulnerable to public policy challenges in enforcement jurisdictions [6, 7, 19].

4.3 Scrutiny and the New York Convention Grounds for Refusal

Article V of the New York Convention identifies six grounds on which enforcement may be refused, of which the most practically significant in relation to award quality are: (a) violation of due process (Article V(1)(b)); (b) the award exceeding the terms of submission (Article V(1)(c)); and (c) contravention of public policy (Article V(2)(b)) [8]. ICC scrutiny bears directly on each of these grounds.

With respect to due process, the scrutiny process systematically verifies that the award addresses all claims submitted by the parties and that the dispositive reflects the scope of the submission agreement. This formal completeness check reduces the risk of awards being refused for exceeding or falling short of submission. With respect to public policy, Appendix II, Article 7’s requirement that the Court consider mandatory law at the place of arbitration ensures that awards are calibrated to the enforcement sensitivities of the seat jurisdiction. With respect to the 2026 Rules’ express mandate to consider validity and enforceability [14], the Court is now formally directed to apply an enforceability lens at the scrutiny stage—a development of considerable practical significance.

4.4 Scrutiny and the Prevention of Setting-Aside

Setting-aside proceedings at the seat of arbitration represent a distinct—and from the parties’ perspective, potentially more costly—threat to award enforceability. National courts exercising supervisory jurisdiction over ICC awards have consistently considered the fact of prior institutional scrutiny when assessing challenges. In France—the most significant jurisdiction for ICC-seated arbitrations—the Paris Court of Appeal has long afforded substantial deference to the quality-assurance functions of institutional arbitration [20]. The Court’s 2024 decision in *Opportunity Fund v. Telecom Italia*, which annulled a Paris-seated ICC award on arbitrator independence grounds, illustrates that scrutiny does not provide immunity from annulment where substantive misconduct occurs [21]. However, this case also confirms the narrow scope of French courts’ substantive review of ICC awards—a scope partially attributable to the existence of the scrutiny process.

5. COMPARATIVE INSTITUTIONAL ANALYSIS

5.1 The LCIA: No Scrutiny, Robust Confidentiality

The London Court of International Arbitration operates under the 2020 LCIA Arbitration Rules without a systematic award scrutiny mechanism comparable to Article 34. The LCIA’s model prioritizes tribunal autonomy and expedition: awards are rendered by tribunals without prior institutional review, subject to the parties’ right to request corrections and additional awards under Articles 27 and 28. The LCIA’s quality-assurance function operates primarily through rigorous arbitrator selection and challenge procedures rather than ex-award review [22].

The tradeoff is significant. Empirical research consistently identifies ICC scrutiny as a factor differentiating ICC awards from LCIA awards in enforcement proceedings, particularly in jurisdictions with demanding formal-validity requirements [5, 19]. Parties selecting LCIA arbitration for its speed advantage must accept a corresponding reduction in the institutional quality assurance that Article 34 provides.

5.2 The SIAC: Emerging Scrutiny Under the 2025 Rules

The Singapore International Arbitration Centre, operating under the 2025 SIAC Arbitration Rules, has introduced a scrutiny mechanism in Articles 53.3–53.4 that marks a structural convergence with the ICC model. The 2025 SIAC Rules establish scrutiny as a non-derivable element of SIAC arbitration—a status that mirrors Article 34’s non-waivable character under the ICC framework [23, 24]. The SIAC’s 90-day time limit for draft award preparation (Rule 46.4(b) of the 2025 Rules) reflects a similar institutional concern for timeliness in the award phase [23].

Notably, both the ICC (under Article 34 of the 2021 Rules and the 2026 Rules) and the SIAC (under the 2025 Rules) treat scrutiny as a core institutional guarantee that parties cannot contractually exclude. This convergence suggests an emerging institutional consensus in the leading arbitration centers that pre-notification award review is a minimum standard of institutional quality assurance [24].

5.3 The HKIAC: Procedural Quality Without Mandatory Scrutiny

The Hong Kong International Arbitration Centre, operating under the 2024 HKIAC Administered Arbitration Rules, does not mandate pre-notification award scrutiny comparable to Article 34. The HKIAC Rules provide for an award review under Article 35 but in a more limited form focused on enforcement capabilities rather than comprehensive quality review [23]. The HKIAC model is consistent with the common law tradition of minimal institutional interference with tribunal deliberations—a tradition that prioritizes finality and expedition over pre-emptive quality control.

5.4 Comparative Assessment: The Unique Position of ICC Scrutiny

The comparative analysis confirms that ICC scrutiny under Article 34 occupies a structurally unique position in the institutional landscape. No other leading arbitration institution combines: (a) mandatory, non-waivable pre-notification review; (b) authority to impose binding formal modifications; (c) authority to direct substantive observations to the tribunal; (d) a legally significant obligation to consider mandatory law at the seat; and (e)—under the 2026 Rules—an express mandate to assess validity and enforceability. The ICC’s century-long experience administering this mechanism, reflected in the size and expertise of the ICC Court, further distinguishes it from newer institutional scrutiny frameworks [7, 14].

6. LIMITATIONS, CHALLENGES, AND RECOMMENDATIONS

6.1 The Tension Between Scrutiny and Expedition

The most persistent criticism of ICC scrutiny is the time it consumes. The three-to-four-week standard timeline for scrutiny is significant in commercial disputes where parties are awaiting liquid assets from a damages award or require urgent injunctive relief. The 2024 ICC statistics reveal that only 51% of draft awards were submitted within the expected timeframe, with a mean award duration of 26 months—a figure that reflects systemic delays in the arbitral process of which scrutiny is only one component [15,

16].

The 2026 Rules address this tension in part through the introduction of the Highly Expedited Arbitration Provisions, which require the entire proceeding—including ICC Court scrutiny—to be completed within three months of the initial case management conference [14]. This development demonstrates the ICC's commitment to rendering scrutiny compatible with commercial urgency without sacrificing its quality-assurance function.

6.2 The Opacity of the Scrutiny Process

A second structural limitation concerns the opacity of the scrutiny process from the parties' perspective. The parties do not receive copies of the ICC Court's observations to the tribunal; they do not see the draft returned for further consideration; they are not informed of the reasons for any return. This confidentiality has sound justifications—it preserves the relationship between the Court and the tribunal, prevents strategic exploitation of scrutiny observations, and protects the deliberative integrity of the award [7, 12]. However, it also means that parties cannot verify that scrutiny has been conducted appropriately, cannot assess the nature or impact of the Court's observations, and cannot rely on scrutiny as a transparent quality signal.

It is recommended that the ICC consider developing—within its internal Note to Parties—a more structured protocol for informing parties of the general fact that scrutiny observations have been issued and the award has been returned, without disclosing the content of those observations. This would enhance institutional accountability without compromising the confidentiality of the tribunal-Court relationship.

6.3 Scrutiny and Artificial Intelligence

The increasing integration of AI tools in international arbitration proceedings raises novel questions for the scrutiny process. As AI-assisted drafting becomes more common in award writing, the Court's scrutiny function may need to develop specific competence in identifying AI-generated content that presents enforceability risks—such as hallucinated case citations, inconsistent legal reasoning across sections, or jurisdiction-specific compliance failures [25, 26]. The 2026 Rules do not yet address AI in the context of scrutiny, but the express enforceability-assessment mandate introduced in the 2026 Rules may implicitly require the Court to assess AI-related quality risks as part of its broadened scrutiny function.

6.4 Recommendations for Practice

Based on the foregoing analysis, the following practical recommendations are advanced. First, arbitral tribunals should engage proactively with the ICC Award Checklist from the earliest stages of the proceeding, not merely at the drafting phase. Systematic tracking of all claims submitted, and reliefs sought, reduces the risk of incomplete dispositive that generate return-worthy observations.

Second, parties and tribunals should take seriously the guidance in Article 7 of Appendix II regarding mandatory law at the seat. Engagement with enforcement-jurisdiction counsel at the drafting stage—particularly for awards to be enforced in civil law jurisdictions with formal-validity requirements—can reduce the likelihood of costly scrutiny delays.

Third, institutional arbitration rules in jurisdictions considering the introduction or reform of pre-notification scrutiny mechanisms should study the Article 34 model carefully. The convergence of

ICC and SIAC practice, as well as the structural gap between institutions that provide scrutiny and those that do not, suggests that scrutiny is likely to become a more universal expectation of institutional quality in the coming decade.

7. CONCLUSION

This article has examined the ICC Court's scrutiny function under Article 34 of the 2021 Arbitration Rules as a quality-control mechanism and its demonstrable impact on the enforceability of ICC arbitral awards. Several principal findings emerge from the analysis.

1. The scrutiny mechanism performs an active, institution-wide quality-filtration function. The near-universal issuance of observations on approved awards and the consistent annual return rate of approximately 7–12% of submitted drafts confirm that scrutiny is not a formality but a substantive review exercise of genuine institutional consequence.
2. Scrutiny exerts a measurable—if difficult to isolate—positive effect on award enforceability, both by pre-empting formal vulnerabilities that might ground New York Convention refusal-of-enforcement arguments and by contributing to the culture of compliance that underpins the high voluntary performance rate of ICC awards.
3. The 2026 ICC Arbitration Rules mark a qualitative evolution in the scrutiny mandate: by expressly directing the Court to consider the validity and enforceability of the award—in addition to its longstanding consideration of mandatory law at the seat—the 2026 Rules constitute scrutiny as a proactive enforceability-assurance mechanism rather than a reactive quality check.
4. ICC scrutiny occupies a structurally unique position in the institutional arbitration landscape. While convergence with SIAC practice under the 2025 Rules suggests an emerging consensus on the value of pre-notification review, the ICC model remains the most comprehensive, the most institutionally developed, and the most closely integrated with substantive enforceability considerations.

Challenges remain. The tension between scrutiny and expedition, the opacity of the process from the parties' perspective, and the emerging questions raised by AI-assisted award drafting all call for continued institutional attention. However, on balance, the century-long record of ICC scrutiny—and its progressive normative development through successive rule generations—provides compelling evidence that a well-designed institutional quality-control mechanism is a net positive for the enforceability and legitimacy of international arbitral awards.

For legal scholars, practitioners, and institutions in the Arab world and beyond, the Article 34 model offers a mature, empirically documented example of how arbitral institutions can assume structural responsibility for the enforceability of the awards they administer—a responsibility that, as international arbitration continues to expand, can only grow in importance.

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