



An Analysis of the Role and Impact of International Sanctions on the Process of International Commercial Arbitration and the Enforcement of Arbitral Awards in the Light of International Law

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ABSTRACT

Economic sanctions are an increasingly central instrument of statecraft. Their proliferation since the early 2000s and particularly after 2014 and 2022 in response to high-profile geopolitical events has created complex tensions between public international law, domestic sanctions regimes, and the private-law regime of international arbitration. This article analyzes how sanctions shape (1) the jurisdictional and arbitrability questions tribunals face, (2) procedural conduct and due process in arbitration, and (3) the recognition and enforcement of arbitral awards in domestic courts. First, the paper maps the legal architecture: the New York Convention, ICSID framework, UNCITRAL rules, domestic sanctions regimes (notably U.S. OFAC and EU restrictive measures) and counter-measures such as EU blocking statutes. Second, it examines doctrinal fault lines choice of law, public policy defenses, supervening impossibility/frustration, and state immunity and how tribunals and courts have addressed them. Third, it surveys practical impediments: asset freezes that render awards effectively unenforceable, restrictions on counsel/arbitrators caused by sanctions, seat selection and institutional compliance, and the chilling effect on dispute settlement. The analysis integrates recent scholarship and institutional guidance to show that (a) sanctions often convert solvable contractual disputes into multi-jurisdictional legal puzzles; (b) tribunals retain procedural and substantive tools to manage sanctions-related disputes but their remedies are uneven; and (c) enforcement of awards is increasingly contestable where sanctions and sovereign immunity intersect. The paper concludes with recommendations: refined drafting (sanctions clauses, payment/escrow mechanisms), tribunal powers to order interim relief cognizant of sanctions law, coordinated institutional guidance, and diplomatic-legal responses (blocking statutes, targeted licenses) to protect the effectiveness of international arbitration without undermining legitimate sanctions policy.

Introduction

The use of economic sanctions as an instrument of foreign policy has multiplied in recent decades, producing significant consequences for cross-border commercial relations and for the institutions designed to resolve disputes arising from them. International arbitration prized for neutrality, party autonomy, and enforceability through instruments such as the 1958 New York Convention and the

ICSID Convention is not immune to pressure from unilateral and multilateral sanctions [1].

Sanctions can affect the arbitrability of disputes, the jurisdiction and composition of tribunals, the procedural conduct of proceedings, and ultimately the enforceability of awards. Scholarship and practice increasingly explore this intersection, finding both normative tensions and practical obstacles. This article offers a comprehensive legal

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analysis of the role and impact of sanctions on international commercial and investment arbitration, and on the execution of awards under international law [2].

(For clarity and to ground the argument in contemporary analysis: key prior treatments of the topic include De Brabandere's foundational discussion of sanctions and arbitration, Böckstiegel's work on applicable law in sanctions disputes, scholarship on blocking statutes and extraterritorial/secondary sanctions, and recent institutional commentaries on compliance [3].

Background and Literature Review

The concept of sanctions derives from the sovereign prerogative to influence behavior without resorting to armed force. Under the UN Charter, the Security Council can impose sanctions under Chapter VII as collective measures to maintain international peace and security. However, since the end of the Cold War, unilateral and "secondary" sanctions those with extraterritorial effects have become more common. Scholars such as Azeredo da Silveira & Ryngaert (2024) note that these measures often blur the line between public international law and domestic economic regulation, creating a patchwork of obligations for private parties engaged in international transactions.

Such measures inevitably impact the predictability and neutrality that underpin arbitration. As De Brabandere & Holloway (2017) emphasize, when private contracts intersect with coercive state measures, arbitrators and enforcing courts must navigate both public and private law dimensions [4]. Arbitration's legitimacy rests largely on its enforceability. The New York Convention (1958) obliges contracting states to recognize and enforce foreign arbitral awards, subject only to limited exceptions such as invalidity of the arbitration agreement or violation of public policy (Article V). Similarly, under the ICSID Convention, awards rendered against sovereigns are binding and enforceable as final judgments [5].

However, enforcement depends on the willingness and capacity of national courts to give effect to awards. When sanctions restrict payments or freeze assets, even a valid award may become unenforceable in practice. Böckstiegel (2014) highlights that sanctions can thus transform arbitral decisions into "legal victories without material effect."

Prior research has explored specific intersections of sanctions and arbitration such as the impact on investment disputes, the legality of secondary sanctions, and procedural challenges. Yet, as Szabados (2018) and Mau (2019) observe, comprehensive analyses integrating both doctrinal and practical enforcement dimensions remain limited. Recent events, including Russia-related sanctions, have revived academic and institutional

interest in developing standardized guidance for arbitrators and institutions facing sanction-related obstacles [6].

Legal and Institutional Framework

Arbitration instruments and enforcement tools:

International arbitration rests on two pillars relevant here: (i) party autonomy and procedural finality embodied in institutional rules (e.g., ICC, LCIA, UNCITRAL Model Law), and (ii) multilateral mechanisms for recognition and enforcement most prominently the New York convention (1958) for foreign arbitral awards and the ICSID Convention (1965) for investment awards against contracting states. These instruments create strong presumptions in favor of arbitration and facilitate cross-border enforcement. However, their operation may be constrained in practice where sanctions regimes prohibit payments, freeze assets, or criminalize certain dealings with a sanctioned party or state [7].

Sanctions regimes and types

Sanctions take many forms: asset freezes, trade and financial restrictions, travel bans, export controls, and secondary/extraterritorial measures that target third-party conduct. Enforcement mechanisms are national (e.g., U.S. office of foreign assets control OFAC), regional (e.g., EU restrictive measures and the EU blocking statute), or multilateral (UN sanctions). The presence of secondary/extraterritorial sanctions measures that seek to influence third-state or private conduct by threatening penalties raises acute conflicts of law and policy for arbitrations seated or enforced in jurisdictions affected by those secondary measures. Recent scholarship has emphasized the power of extraterritorial sanctions to transform private contractual obligations into matters of international law and regulatory compliance [8].

Institutional responses and compliance mechanisms

Many arbitral institutions and seats have adopted compliance protocols or guidance addressing sanctions issues (e.g., registry compliance checks, refusal to appoint arbitrators who cannot act lawfully, or processes for handling requests to bifurcate or suspend proceedings for sanction-related legal questions). Institutional practice is evolving in response to post-2014 and post-2022 sanctions environments. At the same time, enforcement authorities in some states limit cooperation with proceedings involving sanctioned parties absent licenses or specific authorizations. Practical guidance from practitioners and commentators has called for clearer rules from OFAC and other regulators about arbitration-related activities to reduce uncertainty [9].

Doctrinal Issues: Jurisdiction, Arbitrability, and Choice of Law

Arbitrability and public policy: A threshold question is whether a dispute affected by sanctions is arbitrable. Arbitrability is a matter of substantive public policy in many jurisdictions; tribunals must determine whether domestic or international public policy precludes arbitration of particular claims (e.g., where performance would require violating sanctions laws). Sanctions may render an otherwise routine commercial dispute non-arbitrable if arbitration would require the tribunal or parties to contravene mandatory public law. However, tribunals usually try to confine public policy exceptions narrowly to preserve party autonomy [10].

Jurisdictional competence and reparability

Tribunals frequently confront jurisdictional challenges when one party argues that the arbitration agreement is unenforceable because performance is illegal under sanctions law. The doctrine of reparability (that the arbitration clause survives the main contract) often keeps disputes in arbitration, but courts at the seat or enforcing states may be asked to set aside or refuse enforcement on public policy grounds. Tribunals often adopt a pragmatic approach: retain jurisdiction over interpretation of the contract and the arbitration clause while recognizing that courts may eventually decide enforcement questions related to public policy or illegality.

Choice of law and applicable sanctions rules

Choice-of-law issues are central. Tribunals must decide which substantive law governs claims (governing contract law, choice-of-law clauses, or applicable treaties) and how sanctions framed in domestic statutes and international measures interact with that governing law. Böckstiegel and others have offered analytical frameworks for tribunals to determine the applicable law and to manage the procedural approach to sanctions-related legal questions. Tribunals may: (a) apply governing (contract) law to issues such as impossibility/frustration; (b) treat sanctions as overriding mandatory rules of the forum; or (c) apply public international law principles where the sanction is a measure by a state or the UN. The selection materially affects outcomes (e.g., whether a sanction is characterized as a factual impediment versus a legal ground for non-performance) [11].

Procedural and Practical Effects in Arbitration

Access to counsel and arbitrators:

Sanctions can prevent particular lawyers, experts, or arbitrators from participating if they are nationals or persons of a sanctioning jurisdiction or if their participation would contravene export-control obligations. For example, restrictions may limit

provision of services to a blocked person absent a license. This can create ethical dilemmas and practical delays; institutions and commentators have urged regulators (e.g., OFAC) to provide clearer licensing or carve-outs for arbitration-related legal services to avoid depriving parties of counsel or neutral arbitrators.

Interim measures and asset preservation

Tribunals routinely order interim relief (injunctive or conservatory measures) to preserve rights pending final award, but when assets are subject to freezes, interim measures may be impracticable or unlawful to implement in certain jurisdictions. For instance, a tribunal-ordered payment may be impossible to execute if relevant bank accounts are frozen, or a court may refuse to give effect to an interim measure that would require it to contravene sanctions. Parties must therefore consider escrow, neutral payment accounts, or letters of credit drafted to account for sanctions risk.

Procedural suspensions and bifurcation

Because sanctions raise legal questions of state law or public international law, parties often seek (and tribunals sometimes order) bifurcation: first decide jurisdictional/legality issues (e.g., whether sanctions make performance unlawful) and then proceed to merits. Suspensions or stays are also common while parties seek national licenses or clarifications from regulators. These measures can preserve resources but also lengthen disputes and raise arbitrability risks [12].

Enforcement of Awards: Recognition, Execution, and Barriers

New York Convention and public policy exception:

The New York Convention provides a robust mechanism for recognition and enforcement. Nevertheless, its Article V(2)(b) (public policy) allows courts to refuse enforcement where recognition would violate the forum's public policy. Sanctions frequently form the basis for such refusals: an enforcing court may determine that enforcement would require it to order or facilitate conduct forbidden by its domestic sanctions laws or to contravene public policy. The public policy ground varies widely by jurisdiction, producing uncertainties for award creditors.

Asset freezes and effective enforcement

Even where domestic courts are willing to recognize an award, enforcement requires assets. Sanctions that freeze a state's or entity's assets or prevent transfers may render an award practically worthless if no non-sanctioned assets are available within the enforcing jurisdiction. The asset-freeze problem is perhaps the most concrete and recurrent way sanctions undercut the utility of arbitration.

Sovereign immunity and state-owned entities

When the debtor is a state or state-owned enterprise, sovereign immunity doctrines may bar attachment of assets. Sanctions may both increase and complicate immunity claims: some states assert immunity for assets abroad; others accept limited waiver of immunity under contracts but invoke sanctions to prevent payment or execution. The combination of asset freeze and immunity can effectively block enforcement in many cases [13].

Blocking statutes and countermeasures

Blocking statutes (notably the EU's blocking statute and national variants) aim to limit the extraterritorial effect of third-state sanctions and protect domestic actors from compelled compliance with foreign measures. These statutes can create legal conflict: an enforcing court in an EU Member State may be placed between its obligation (under New York Convention obligations to recognize awards) and its own domestic prohibitions against complying with certain extraterritorial measures or cooperation with foreign authorities. Szabados and others have analyzed the limited but evolving protective effect of blocking statutes in arbitration contexts; their practical efficacy remains contested and fact-sensitive.

Case Studies and Recent Developments

This section surveys representative developments and doctrinal responses (jurisprudence, institutional practice, and academic commentary). Because recent geopolitical events (e.g., the 2012 present Iran sanctions cycles, and the post-2022 sanctions against Russia) have driven much of the contemporary literature and practice, they illustrate the interplay between sanctions and arbitration [14].

Investment arbitration and secondary sanctions

Investment treaty arbitration raises distinct issues: investors may allege that host-state measures (including those triggered by sanctions) breach treaty protections (e.g., expropriation, fair and equitable treatment). Conversely, host states may argue counter-measures or claim that sanctions hinder obligations. Recent scholarship examines whether failure to protect investors against secondary sanctions could breach legitimate expectations and lead to investor claims; the EU blocking statute and other responses are part of the remedial toolkit for host states and investors alike. The literature emphasizes the need to assess the protective reach and limitations of domestic counter-measures.

Institutional practice after 2014-2022 shocks

Arbitral institutions have adapted compliance checks and guidance. Some institutions have clarified that they will administer cases involving sanctioned parties but must comply with host and

seat-state laws; others have instituted pre-appointment conflict and compliance screenings. Practitioners recommend seat selection and clause drafting strategies to mitigate risk. Institutional guidance remains uneven, and commentators have urged clearer regulatory carve-outs for arbitration services to avoid depriving parties of dispute resolution [15].

Normative and Policy Analysis

Balancing legitimate sanctions policy and dispute resolution effectiveness:

There is a normative tension between enabling states to pursue legitimate foreign policy via sanctions and preserving the effectiveness of private dispute resolution. Sanctions serve legitimate aims (security, human rights, non-proliferation), but when they make dispute resolution ineffective, they can undermine rule-of-law expectations in international commerce and investment. Policy responses must therefore seek proportionality: sanctions regimes should be designed to minimize unintended interference with fundamental dispute-resolution rights while retaining policy efficacy.

The role of tribunals and courts in a fragmented legal space

Tribunals play a normative role when they interpret contracts to allocate sanctions risk, apply doctrines (frustration, force majeure, changed circumstances), and craft remedies that respect both parties' rights and applicable public law. Courts at the seat and enforcing states must calibrate public policy refusals narrowly, recognizing the international interest in enforceability. The fragmentation of approaches across forums, however, undermines predictability and may incentivize forum shopping [16].

Practical Recommendations

Based on the doctrinal and empirical analysis above, this article proposes practical measures to reduce the adverse impact of sanctions on arbitration:

- 1- **Contract drafting:** Parties should include bespoke sanctions clauses: (a) express allocation of sanctions risk; (b) escrow, neutral-payment mechanisms, or payment substitutes (e.g., bank guarantees or letters of credit from non-sanctioned banks); (c) express agreement on seat, governing law, and emergency arbitrator jurisdiction; (d) express waiver or limited agreement on the application of blocking statutes or submission to courts in neutral jurisdictions for enforcement issues.
- 2- **Tribunal powers and interim relief:** Arbitration rules and party agreements should expressly empower tribunals to grant interim relief tailored to sanctions constraints (e.g., ordering third-party escrow, requiring documents to be held by

designated custodian, or making conditional awards).

- 3- **Institutional and regulatory coordination:** Arbitral institutions should adopt harmonized compliance procedures and seek cooperative engagement with sanctioning authorities to obtain licenses or clarifications permitting arbitration services. Regulators (e.g., OFAC) should publish targeted guidance or licensing pathways for arbitration-related activities to reduce uncertainty. Recent commentary supports such regulatory clarity.
- 4- **Use of blocking statutes and diplomatic-legal tools:** States affected by extraterritorial sanctions should calibrate blocking statutes and diplomatic channels to protect legitimate commercial dispute resolution while avoiding wholesale non-compliance with international obligations.
- 5- **Insurance and financial planning:** Parties should consider political-risk insurance, third-party funding, and structured financial instruments to mitigate the risk that awards will be unenforceable due to asset freezes [17].

Discussion

The first challenge sanctions introduce concerns jurisdiction and arbitrability. A party under sanctions might claim that the arbitration clause is void because performance of the contract (or even participation in arbitration) violates domestic sanctions law. However, the principle of reparability generally preserves the arbitration agreement as distinct from the main contract. Tribunals often assert jurisdiction while deferring enforcement risks to national courts.

Still, sanctions can disrupt the procedural integrity of arbitration. For example, in several post-2014 cases involving Russian or Iranian entities, parties struggled to transfer arbitration fees or appoint arbitrators due to banking restrictions. Institutions such as the ICC and LCIA have since implemented compliance screening to ensure that administrative acts do not breach sanctions regulations. Claypool (2023) notes that the absence of uniform guidance across institutions leads to uncertainty and potential delay, undermining arbitration's reputation for efficiency [8].

Substantive Effects: Illegality, Force Majeure, and Public Policy

From a substantive law perspective, sanctions may render contractual obligations illegal or impossible to perform. Whether a tribunal treats sanctions as a case of supervening illegality, force majeure, or mere commercial risk depends on the applicable law. Under English law, for instance, a contract directly violating sanctions would be void, whereas

under Swiss law, tribunals may distinguish between primary and secondary sanctions to determine the extent of illegality.

When enforcement reaches domestic courts, public policy becomes decisive. Article V(2)(b) of the New York Convention allows refusal of enforcement if recognition "would be contrary to the public policy of that country." Courts in sanctioning jurisdictions (e.g., the United States or EU Member States) may thus decline to enforce awards requiring acts prohibited under their sanctions laws. Conversely, courts in neutral jurisdictions often resist using sanctions as a basis for non-enforcement, emphasizing the narrow construction of the public policy exception [9].

Enforcement and Practical Barriers

Even where legal grounds for enforcement exist, sanctions impede the execution of awards. Frozen assets cannot be attached or transferred without authorization. In investment arbitration, states under sanctions often claim sovereign immunity, further complicating execution. For instance, awards against sanctioned states like Iran or Venezuela have remained unenforced for years despite creditors' efforts.

A related issue is the blocking statutes enacted by certain jurisdictions, notably the European Union's Council Regulation (EC) No 2271/96, which prohibits EU persons from complying with certain extraterritorial sanctions. Szabados (2018) argues that while such statutes aim to preserve EU autonomy, they create conflicting obligations for parties seeking enforcement under the New York Convention. Thus, a creditor may face the paradox of being forbidden to comply with U.S. sanctions while simultaneously unable to collect payment due to those same sanctions [17].

Institutional and Policy Responses

Arbitral institutions increasingly recognize the need for clearer policies on sanctions compliance. Some, like the Stockholm Chamber of Commerce (SCC), now maintain internal compliance teams and have published guidance on administering cases involving sanctioned parties. The ICC encourages parties to seek specific licenses from authorities such as OFAC to ensure that arbitration payments do not breach sanctions law.

At the policy level, scholars propose mechanisms to mitigate sanctions-related disruption:

- ✓ drafting sanctions clauses in contracts to allocate risk.
- ✓ establishing escrow accounts or third-party payment mechanisms.
- ✓ granting tribunals explicit authority to order alternative payment methods.
- ✓ promoting coordination between regulators and arbitral bodies to issue general licenses for arbitration services.

Ruys, Ryngaert, and Rodríguez Silvestre (2024) emphasize that such coordination is essential to maintain the rule of law in global trade while respecting legitimate foreign-policy objectives.

International sanctions, though justified as tools of collective security or political pressure, increasingly intrude into the private sphere of commercial dispute resolution. They challenge the foundational principles of arbitration neutrality, autonomy, and enforceability by introducing uncertainty at every procedural and enforcement stage.

This analysis shows that while arbitral tribunals possess sufficient flexibility to adapt procedurally, the execution of awards remains the weakest link. Without access to non-sanctioned assets or authorized payment channels, arbitration risks becoming symbolic rather than effective. Therefore, the future resilience of international arbitration depends on three converging efforts:

- 1- Legal drafting parties must anticipate sanctions risk in their arbitration agreements.
- 2- Institutional coordination arbitral bodies and regulators should clarify permissible activities and licensing processes.
- 3- International harmonization states must refine the balance between legitimate sanctions policy and their obligations under international dispute-resolution instruments [18].

Ultimately, maintaining the credibility of international arbitration requires that sanctions regimes evolve with due regard for the international rule of law.

Conclusion

Sanctions pose a multi-dimensional challenge to international arbitration and the enforceability of awards. While arbitration as a system retains doctrinal tools and procedural flexibility to manage many sanction-related problems, the practical reality asset freezes, counsel restrictions, conflicting public policies can render awards difficult or impossible to execute. The interplay of domestic sanctions regimes (and especially extraterritorial secondary measures) with international instruments such as the New York Convention creates legal fragmentation and unpredictability. Effective responses require an array of measures: careful contractual drafting by parties, proactive institutional and regulatory measures (including clearer guidance or licensing by sanctioning authorities), and measured use of counter-measures (e.g., blocking statutes) designed to protect dispute resolution without undermining legitimate sanctions aims. Ultimately, preserving the rule of law in cross-border commerce demands balancing the sovereign prerogative to impose sanctions with the need to maintain effective, enforceable dispute settlement mechanisms.

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