NAVIGATING ARBITRATION IN AN ERA OF EXPANDING SANCTIONS: LEGAL HURDLES AND ENFORCEMENT RISKS

Aditya Gandotra*

Abstract: *Growth in global economic activity has been accompanied by increasing geopolitical issues. In response, economic sanctions may be imposed against a State by one or more countries, thereby affecting cross-border transactions. This article examines the interplay between sanctions and arbitration through three dimensions: (i) their impact on arbitrability, (ii) contractual obligations and the arbitration process, and (iii) their impact on enforceability.*

It first analyzes arbitrability, considering the law of the seat, mandatory rules, the principle of separability, and emerging case law on UN, EU, and unilateral sanctions. Next, it examines contractual performance, including sanctions clauses, force majeure, illegality, frustration, and the procedural effects on arbitration. Finally, it explores enforceability, focusing on public policy objections, national practices, EU standards, and other practical challenges from licensing requirements.

The article concludes that while disputes are not automatically rendered inarbitrable by sanctions, the increasing use of sanctions as jurisdictional and public policy tools places structural pressure on the transnational enforcement framework of the New York Convention. Despite uncertainty caused by sanctions, stakeholders, including parties, arbitrators, institutions, and courts, play crucial roles in safeguarding arbitration, which can continue to operate effectively with careful engagement.

Keywords: *Arbitration, Sanctions, Arbitrability, Contract, Enforcement*

I. INTRODUCTION

I.1 Background

On a global level, commercial activities are increasingly being impacted by sanctions. The prevalence of sanctions regimes has influenced how cross-border transactions are carried out by private players. Sanctions typically involve measures such as import/export controls, asset seizures, restrictions on access to financial markets, sectoral sanctions, such as an oil price cap, and travel bans, all with the intention of influencing the financial landscape. The need to impose sanctions arises against countries indulging in terrorist activities, international norms violations, unfair trade practices and nuclear weapons proliferation. By implementing sanctions against the targeted State, other countries condemn such actions.[1] The effects of sanctions usually extend beyond their intended political objectives.

At the centre of these developments is international arbitration, which, for cross-border transactions, has been the most sought-after mechanism for dispute resolution.

---

* Aditya Gandotra is a Ph.D. scholar at the *Albrecht Mendelssohn Bartholdy Graduate School of Law, University of Hamburg, Germany.* He is the recipient of the DAAD-GSSP scholarship. He is also a visiting researcher at the *Max Planck Institute for Comparative and International Private Law*, Hamburg, Germany. E-mail: aadi.gandotra@gmail.com. ORCID: https://orcid.org/0000-0002-6183-8136.

[1] KRISHNA, C. Imposition of Economic Sanctions: An Embargo on International Commercial Arbitration? *The American Review of International Arbitration.* 2023. In: *aria.law.columbia.edu* [online]. 19. 7. 2023 [2025-10-01]. Available at: https://aria.law.columbia.edu/imposition-of-economic-sanctions-an-embargo-on-international-commercial-arbitration/.

Even though concepts like party autonomy, delocalisation, neutrality and enforceability are fundamental to arbitration, the arbitral processes in current times are witnessing increased participation from parties, sectors and transactions subjected to sanctions, highlighting the fact that the institution of arbitration is under extreme pressure because of sanctions regimes, making it imperative to discern the interaction between sanctions and international arbitration.

After Crimea and Donbas were invaded in 2014, economic sanctions were imposed by several countries on the Russian Federation and Russian companies. After the invasion of Ukraine in 2022, sanctions on Russia have been tightened. There is no indication that sanctions will be lifted or that no further tightening will occur in the future.[2] The response of the European Union and the United States of America to the invasion has been significant.[3] These sanctions are aimed at diminishing Russia's ability to fund its military operations and at creating diplomatic and economic pressure on Moscow. Other countries that imposed sweeping sanctions on Russia to endorse peace and Ukraine's territorial integrity include the United Kingdom, Japan, Switzerland and Australia, effectively making Russia the most heavily sanctioned nation globally.[4]

I.2 Typology and structure of sanctions regimes

Sanctions may be classified according to both their source and their substantive content, and in the arbitration context, this distinction becomes even more important. Sanctions, under public international law, do not constitute a single legal category, and their legal character depends on the authority from which they arise. When the UN Security Council adopts sanctions measures under Chapter VII of the UN Charter, they bind all UN Member States. The position is different in relation to regional sanctions, such as EU restrictive measures; they derive their force from the constitutional and treaty framework of the regional organization and bind members within that legal order. Unilateral sanctions are more difficult to classify and are usually grounded in domestic law and foreign policy. Under international law, their legality depends on their nature and effects, particularly on whether they can be understood as lawful retorsion, permissible countermeasures, or measures that unlawfully interfere with another State's rights. Other regional organizations may also impose sanctions if their constituent instruments confer the necessary authority.

With this distinction in mind, sanctions may be classified by source according to their legal origin. Sanctions regimes can be implemented autonomously by sovereign States through their domestic legislation, or multilaterally through the European Union or the United Nations. The former constitute independent instruments of State policy lacking

[2] MARK, J. – OLIINYK, O. The Consequences of the Sanctions against the Russian Federation of the Russian Countermeasures for International Arbitration. In: *Global Arbitration News* [online]. 27. 7. 2022 [2025-10-01]. Available at: https://www.globalarbitrationnews.com/2022/07/27/the-consequences-of-the-sanctions-against-the-russian-federation-and-of-the-russian-countermeasures-for-international-arbitration/.

[3] SCARD, A. Arbitrable or Arbitrary? The Impact of Sanctions on International Arbitration. In: *Kennedys* [online]. 19. 8. 2022 [2025-10-02]. Available at: https://www.kennedyslaw.com/en/thought-leadership/article/arbitrable-or-arbitrary-the-impact-of-sanctions-on-international-arbitration/.

[4] KRYVOI, Y. The Effect of Sanctions on Investment Arbitration. In: *BIICL* [online]. 24. 10. 2022 [2025-10-03]. Available at: https://www.biicl.org/blog/46/the-effect-of-sanctions-on-investment-arbitration.

international validation. Even though not universally binding, unilateral sanctions have a significant extraterritorial impact through secondary mechanisms and financial system integration. The latter are legally binding under international law. These sanctions have universal legitimacy, though their implementation mechanisms and compliance procedures may vary from one jurisdiction to another. Both unilateral and multilateral sanctions regimes often share common features, but there are also significant differences, making it essential to examine the underlying rules.

Questions such as which sanctions are actually in place and who and what they are intended to target depend on the sanctions regime in question. The nature of the sanction will also determine what is required by way of compliance. For example, if it is an asset freeze case, the "sanctioned person/entity" is barred from accessing or using the frozen funds and economic resources, and no funds can be provided to the "designated person." Additionally, any actions intended to bypass or evade the sanction are strictly prohibited. These considerations illustrate the importance of a substantive (or jurisdictional) classification. This classification focuses on the operational design of sanctions and the scope of compliance obligations they generate. The two types of sanctions within this framework are primary and secondary sanctions. Primary sanctions target individuals and entities within the jurisdiction of the sanctioning State, prohibiting them from conducting financial transactions or engaging in trade with the designated target. Straightforward compliance obligations are imposed on parties principally within the sanctioning State's economic sphere. Secondary sanctions apply to foreign individuals and entities not under the jurisdiction of the sanctioning State, but threaten penalties if they maintain financial and/or commercial relations with the target.[5]

In the context of the Russia-Ukraine conflict, sanctions imposed by the US, the UK and the EU can broadly be categorized into three principal categories based on their substantive content: financial, trade, and transport-related restrictions.

a. **Financial sanctions:** The US blocked major Russian financial institutions, froze their assets, and prohibited transactions with them. It also designated hundreds of individuals, companies, and facilitators worldwide, effectively banning dealings and access to assets. The EU implemented multiple sanction packages, including bans on transactions with Russian banks using the Russian financial messaging system and restrictions on providing SWIFT-equivalent services, as well as asset freezes and transaction prohibitions targeting Russian individuals and entities, including energy companies and third-country banks supporting sanctions evasion. The UK imposed similar measures, targeting major Russian banks and oil companies through asset freezes and bans on correspondent banking relationships, while also sanctioning insurers and other financial facilitators that support Russia's war effort.[6]

[5] DA SILVEIRA, M. A. – DEN HARTOG, S. US Secondary Sanctions Against Iran: Why Arbitral and Financial Institutions Should be Cautious. In: *Kluwer Arbitration Blog* [online]. 11. 11. 2021 [2025-10-05]. Available at: https://legalblogs.wolterskluwer.com/arbitration-blog/us-secondary-sanctions-against-iran-why-arbitral-and-financial-institutions-should-be-cautious/#footnote1_UUCUeCHgkz1w9KMLZrYVrXPlPH6LkoONoBIygP5TTaA_mBHFECtrif6V.

[6] A Guide to US, UK and EU Sanctions and Export Controls on Russia and Belarus. In: *Debevoise and Plimpton* [online]. 19. 10. 2025 [2026-02-28]. Available at: https://www.debevoise.com/-/media/files/insights/publications/2025/09/a-guide-to-us-uk-and-eu-sanctions-and-export.pdf.

b. **Trade restrictions:** The US imposed broad export controls and trade sanctions, prohibiting the export of goods and services to Russia, particularly dual-use and military-related items. It also restricted imports of Russian goods. The EU implemented import bans on Russian crude oil, petroleum products, coal, liquefied natural gas (LNG), and liquefied petroleum gas (LPG), as well as prohibitions on exporting energy-sector and mining-related technology and goods to Russia. The EU also banned transactions connected to the Nord Stream pipelines and other major trade flows. The UK applied trade sanctions targeting oil products refined in third countries from Russian crude and expanded export bans on dual-use technologies and other critical goods.[7]

c. **Transport-related restrictions:** The US targeted hundreds of vessels in Russia's shadow fleet that breach oil price caps, denying them access to services and exposing them to potential blocking. The EU closed its airspace to all Russian aircraft, including private jets, and imposed export bans on aircraft parts and aviation technology. It also prohibited Russian road transport operators from moving goods into the EU, closed EU ports to Russian vessels and many non-EU vessels associated with the "shadow fleet," and imposed bans on the export of maritime navigation goods and related services. The UK applied similar measures, targeting hundreds of Russian and "shadow fleet" tankers with port access bans and restrictions on shipping services, and prohibiting Russian aircraft from flying over or landing in UK territory, with enforcement powers for aviation and transport sanctions.[8]

These raise distinct issues for international arbitration. Financial sanctions primarily affect payment flows and the realization of the arbitral award. Trade sanctions raise illegality and force majeure issues, and transport-related sanctions may affect performance feasibility and give rise to jurisdictional disputes involving maritime or aviation contracts.

I.3 Commercial challenges created by sanctions

The comprehensive sanctions enacted in response to Ukraine's invasion by Russia have prompted numerous companies to re-evaluate their business partnerships. Various companies have halted the execution of their contractual responsibilities. In many cases, they have made these decisions quickly without proper consideration. Companies have not always had sufficient time to contemplate termination rights as stipulated in their contracts in the environment that has existed. As a result, there is a possibility that a considerable number of commercial disputes may emerge soon. It is probable that the parties would have chosen arbitration as their favoured approach for resolving these disputes.[9]

The abundance of sanctions is not the only challenge they pose or that they are dispersed across various sources of law and can be quite intricate, causing significant diffi-

[7] Ibid.

[8] Ibid.

[9] MIZRAHI, E. Impact of International Sanctions on Arbitral Proceedings. In: *Norton Rose Fulbright Blog* [online]. 13. 6. 2022 [2025-10-07]. Available at: https://www.nortonrosefulbright.com/en/inside-turkey/blog/2022/06/impact-of-international-sanctions-on-arbitral-proceedings.

culties but the most challenging aspect from the commercial standpoint is the inability of a business to anticipate whether its counterpart, initially free from sanctions at the time when the commercial transaction was entered into, might face sanctions in future because new subjects are consistently being subjected to new sanctions with no clear or transparent reasoning behind these actions. Furthermore, the challenge of gauging and evaluating the likelihood of "secondary" sanctions makes it exceedingly difficult to predict legal exposure or mitigate potential penalties. Consequently, the most cautious players in the market may frequently opt to refrain from engaging in transactions, for example, with Russian counterparts, including those without sanctions, in order to minimize even small potential risks.[10]

I.4 Practical challenges in arbitration involving sanctioned parties

In arbitration, numerous practical challenges surface in connection with sanctioned entities. These issues can manifest at different phases of the arbitration process, such as arbitrator appointment, engaging experts, retaining legal representation, the involvement of individuals subject to sanctions as witnesses, and payment of legal counsel fees and expenses incurred for conducting the arbitration. When legal representatives, arbitrators or arbitral institutions are based in a jurisdiction that has imposed sanctions on one of the parties to a dispute, they might need to secure authorization (generally referred to as a "licence") from the relevant regulatory authority in that jurisdiction.

This licence permits them to fulfil their duties in the arbitration proceedings. For example, a person from the United States (be it a law firm, a national or a resident) will be hesitant to act as counsel, expert or arbitrator in an arbitral proceeding that involves a sanctioned entity except where explicit permission is granted by the US Treasury Department's Office of Foreign Assets Control (OFAC).[11] It is essential to note that even individuals who are not US residents or citizens should consider the possibility of secondary sanctions if they participate in such an arbitration. This is due to the possibility that an arbitral award could be considered a "significant" transaction involving an entity subject to US sanctions restrictions.

Sanctions may impact a dispute in three principal ways: (i) from a jurisdictional standpoint, determining whether a dispute involving sanctions is capable of being resolved through arbitration, (ii) in terms of substantive issues and quantum, by evaluating how sanctions affect the parties' contractual obligations and the scope of their liability; and (iii) pertaining to the arbitral award, where a party might raise sanctions-related concerns when seeking to annul the award or during the recognition and enforcement process.[12] Building on this, the central argument of this article is that sanctions do not automatically render a dispute inarbitrable; in fact, the main impact is observed at the jurisdictional and post-award stages of the process, where sanctions increasingly function

[10] KROLL, K. Impact of Sanctions on International Arbitration Involving Russian Parties: New Developments. In: *Thomson Reuters Practical Law Arbitration Blog* [online]. 23. 6. 2020 [2025-10-08]. Available at: http://arbitrationblog.practicallaw.com/impact-of-sanctions-on-international-arbitration-involving-russian-parties-new-developments/.

[11] Ibid.

[12] SCARD, A. *Arbitrable or Arbitrary? The Impact of Sanctions on International Arbitration.*

as public policy tools to influence jurisdiction or restrict enforcement. Therefore, the real tension does not lie between sanctions and arbitration per se, but between sanctions and the transnational enforcement architecture of the New York Convention. To defend this claim, the article adopts a three-pronged approach. Section II distinguishes arbitrability from enforcement review and argues that sanctions rarely eliminate jurisdiction ex ante. Section III demonstrates that sanctions operate primarily as substantive and procedural constraints within arbitration. Section IV shows that the true structural tension emerges at the enforcement stage under Article V of the New York Convention. Section V draws the analysis together.

The article adopts a primarily doctrinal method, complemented by comparative analysis. It examines statutory provisions, judicial decisions, and arbitral practice across jurisdictions that either impose sanctions (the EU, the UK, and the US) or implement counter-sanctions frameworks (Russia and China). These jurisdictions have been selected for their systemic relevance to international arbitration. The EU and the US are leading sanctions regimes; the UK remains a major arbitral seat; Russia illustrates the jurisdictional expansion associated with counter-sanctions; and China represents an emerging regulatory response with growing global economic influence.

II. IMPACT ON THE ARBITRABILITY OF THE DISPUTE

II.1 Arbitrability of disputes affected by sanctions

The arbitrability of disputes affected by sanctions will be determined by the context in which they arise. Although administrative or criminal penalties cannot be imposed by an arbitral tribunal to enforce sanctions, it may still rule on the contractual implications of sanctions.[13] After the formation of a tribunal, it might be necessary to assess the arbitrability of the dispute, that is, whether the tribunal is competent to decide the matters before it. This principle is reflected in the New York Convention[14] and the UNCITRAL Model Law,[15] which allow courts to deny enforcement of an arbitral award if the dispute is non-arbitrable.

Here, it is crucial to distinguish arbitrability from enforcement review. The former concerns the tribunal's jurisdiction to hear a dispute and operates ex ante. Under the New York Convention, this relates primarily to Article II (validity and enforceability of the arbitration agreement) and Article V(1)(a)–V(2)(a) (examining objective non-arbitrability of certain disputes). The latter pertains to the recognition and recognition and enforcement of an arbitral award and operates ex post. It allows national courts to refuse recognition or enforcement of an award if it violates fundamental principles of law or public policy, as set out in Article V(2)(b).[16] Sanctions primarily take effect ex post, imposing public policy and enforcement limitations rather than negating arbitrability ex ante.

[13] Ibid.

[14] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention).

[15] UNCITRAL Model Law on International Commercial Arbitration (adopted 21 June 1985, amended 7 July 2006) UN Doc A/40/17.

[16] *New York Convention.*

In many cases, the tribunal is authorized to bring up the issue of arbitrability on its own, regardless of whether the parties raise it. Despite the existence of an arbitration agreement, the tribunal might determine that the dispute cannot be submitted to arbitration due to applicable sanctions legislation and must instead be presented to a domestic court. However, this is not a straightforward matter, as the impact of sanctions on the arbitrability of a dispute is linked to the intricate question of how various laws are applied in arbitration.[17]

An initial aspect that arbitrators need to take into account is the principle of separability. This principle is unique to arbitration, holding that an arbitration clause should be treated as a separate and independent agreement, distinct from the main contract in which it is contained. While the specifics of how the separability doctrine is interpreted may differ across jurisdictions, its main consequence remains consistent: even if the contract containing the arbitration clause is terminated or deemed void, the arbitration agreement may still remain enforceable.[18]

Certainly, this does not imply that an arbitration clause is impervious to invalidation. In certain cases, a country's public policy might require that disputes concerning that country's sanctions be adjudicated in a court, even if the parties had initially consented to arbitration. Nevertheless, while a public policy exception to the enforcement of arbitration agreements is a recurring element in arbitration laws worldwide, it is often construed narrowly in most jurisdictions, primarily encompassing matters of "international" public policy rather than specific domestic policy concerns of that particular nation. Notably, even though economic sanctions against Russia have been broadly applied, they have not achieved universal consensus and lack formal endorsement from the United Nations, leaving uncertainty regarding their classification as "international" public policy.[19]

However, there is still a question worth considering: whether impediments to arbitrating a dispute might arise not from broad public-policy considerations but from mandatory legal provisions, including sanctions legislation. To put it briefly, there may be instances in which the law of contract, the law of the seat, or some other jurisdiction's law may explicitly bar arbitration of the dispute or have a direct impact on how the arbitration process is carried out. A tribunal is then faced with the question of the extent to which such constraints should be taken into account. Among arbitration professionals, there is significant disagreement concerning the effect that a mandatory provision of the law of the seat may have on the ability of a tribunal to decide a dispute.[20]

From one point of view, the arbitral tribunal is a private entity appointed by the parties, separate from the court system of the seat. Consequently, certain arbitrators contend that this "delocalized" character of arbitration signifies the non-binding nature of

[17] COLE, T. Examining Russian Sanctions and Their Effects on Arbitration. In: *JAMS ADR Insights* [online]. 19. 4. 2022 [2025-10-10]. Available at: https://www.jamsadr.com/blog/2022/examining-russian-sanctions-and-their-effects-on-arbitration.

[18] Ibid.

[19] Ibid.

[20] KOTELNIKOV, A. Economic Sanctions Arbitrability and Public Policy. *International Arbitration Law Review.* 2020, Vol. 23, No. 1; SHORE, L. *Applying Mandatory Rules of Law in International Commercial Arbitration.* 2007, Vol. 18, No. 1-2.

mandatory provisions of the law of the seat, even though, for practical reasons (for instance, to prevent the courts of the jurisdiction where the arbitration is seated from rendering the award unenforceable), they may be considered. From another point of view, each commercial arbitration is associated with a specific jurisdiction where it is seated. Some arbitrators believe that this affiliation imposes an obligation to comply with the mandatory laws of that jurisdiction, because even though the tribunal may not formally be part of the court system of the seat, the parties have agreed amongst themselves to get their dispute arbitrated in consonance with the arbitration laws of the seat. Due to the extensive disagreement on this matter, whether a tribunal will consider itself obligated to adhere to the seat's mandatory laws relies on the individual perspectives of the arbitrators involved.[21]

In the case of *Fincantieri v Ministry of Defence of Iraq,*[22] a Syrian private individual and two Italian shipbuilding companies entered into a contract for selling military goods to Iraq. This contractual arrangement clashed with the sanctions imposed on Iraq by the United Nations Security Council. The question of whether the dispute was arbitrable due to the sanctions became a central issue in the arbitration that was initiated against the Italian companies. The arbitral tribunal issued an interim decision, making a clear distinction between how the sanctions affected the substantive issues of the dispute and the question of whether the dispute was suitable for arbitration. Although the sanctions framework affects the legal considerations of the dispute's substantive issues, it does not render the dispute unsuitable for arbitration. While the Swiss Federal Tribunal reaffirmed this stance, the parties were still cautioned that the arbitrability of the dispute might run counter to the public order of Switzerland, which may create difficulties during the enforcement of the award. In spite of this, arbitrability was not affected by the sanctions regime.

In *La Compagnie Nationale Air France v Libyan Arab Airlines,*[23] a similar approach was taken. The contract that the parties had entered into was affected by the UN Security Council-imposed international embargo. It is worth highlighting that the United Nations Resolution expressly rejected any assertions made at the behest of a Libyan individual or organization regarding a business agreement or transaction. As a consequence, Air France argued that the dispute could not be resolved through arbitration; however, the Quebec Court of Appeal dismissed these claims, but the Court provided insights into the relationship between the arbitrability of the dispute and the sanctions regime. Taking into consideration the Resolution's language, the Court established a differentiation between the claims that arose before and after it. This established the time-bound character of sanctions, requiring the tribunal to address matters that arose both prior to and following the Resolution while adhering to established norms of public international law and principles of public order.

A further dimension of this debate emerges when distinguishing between questions of jurisdiction and those of arbitrability under the New York Convention. Although lack

[21] COLE, T. *Examining Russian Sanctions and Their Effects on Arbitration.*
[22] Fincantieri Cantieri Navali Italiani SpA et OTO Melara Spa v. ATF, [1991] ICC Award Number: 6719.
[23] La Compagnie Nationale Air France v. Libyan Arab Airlines [2003] CanLII-35834 (Quebec Court of Appeal).

of jurisdiction and arbitrability are two distinct grounds under Article V(1)(a) and V(2)(a) of the Convention, arbitrability is intimately connected to the tribunal's jurisdiction *ratione materiae*. It may be argued by the litigants that the arbitral tribunal does not have jurisdiction in cases where arbitrators must interpret or apply the economic sanctions framework. The predominant contrary view, however, is that though economic sanctions are relevant to the dispute at hand, they should not be a ground to deprive arbitrators of their jurisdiction to hear the matter or bar arbitrability.[24] This follows the broader principle that, just because rules pertaining to public policy are relevant to the dispute, they will not, by themselves, bar the dispute from being arbitrable. This, however, does not mean that jurisdictional and arbitrability concerns become irrelevant.

Economic sanctions have an *erga omnes* effect within their geographical boundaries, which makes them similar to areas in which the jurisdiction of tribunals is inherently limited, for instance, patent validity. While the arbitral tribunal may well be within its rights to decide on matters pertaining to the parties and their specific disputes, it cannot determine the overall validity of sanctions themselves.[25] Within the European Union (EU), this becomes particularly significant. EU Member States are obligated to enforce the economic sanctions regime set out in EU regulations. In connection with the economic sanctions framework, numerous preliminary references have been generated by EU Member States' domestic courts, demonstrating their complexity and the need for authoritative interpretation.[26]

Through its decisions, the Court of Justice of the European Union (CJEU) has forged a distinct legal order over the years, requiring that Member States yield elements of their sovereign discretion to the EU's supranational framework. Historically, viewed from a national perspective, public policy has functioned to uphold mandatory norms and protect essential societal interests, including public safety.[27] However, through its jurisprudence, the CJEU has cultivated a distinct EU conception of public policy.[28] Landmark cases such as *Van Gend & Loos v Netherlands Inland Revenue Administration* and *Flaminio Costa v E.N.E.L* serve as prime examples of the EU's core principles, notably the doctrines of direct effect and the primacy of EU law over national law.[29]

The CJEU delivered landmark judgments in *Eco Swiss China Time Ltd v Benetton International NV*[30] and *Elisa María Mostaza Claro v Centro Móvil Milenium SL*.[31] In the former, it was held that EU Competition Law, as enshrined in Article 101 of the Treaty on the

[24] BORN, G. *International Commercial Arbitration, 3rd Edition.* Alphen aan den Rijn: Kluwer Law International B.V., 2020.

[25] FADLALLAH, L. The Impact of Economic Sanctions on the Recognition and Enforcement of International Arbitration Awards. *Legal Issues of Economic Integration.* 2025, p. 428.

[26] Ibid.

[27] AKKERMANS, B. Public Policy (ordre public): A comparative analysis of national, private international law, and EU Public Policy. *European Property Law Journal.* 2019, Vol. 8, No. 3, p. 260.

[28] Ibid.

[29] SALOMONSSON, A. S. – POSHIVALOV, V. Arbitrability, EU Public Policy, and EU Sanctions: The Svea Court of Appeal's Referral to the CJEU in NV Reibel v. JSC VO Stankoimport. *European Investment Law and Arbitration Review.* 2025, Vol. 10, No. 1, p. 111.

[30] Case C-126/97 Eco Swiss China Time Ltd v. Benetton Int'l NV [1999] E.C.R. I-3055.

[31] Case C-168/05 Elisa María Mostaza Claro v. Centro Móvil Milenium SL [2006] E.C.R. I-10421.

Functioning of the European Union (TFEU) constitutes a matter of EU public policy. The Court was of the view that the internal market's proper operation is predicated upon adherence to competition law norms, and these norms, therefore, are an integral part of the EU legal order. In the latter, consumer protection law, as enshrined under Article 4(2)(f) TFEU, was considered as a matter of EU public policy. The Court highlighted consumer protection as an essential policy objective, contributing to the Union's commitment to elevating living standards and safeguarding the quality of life of people, thus recognising it as forming part of the Union's legal framework.

Against this background, the question arises whether EU sanctions may likewise be characterized as part of EU international public policy. Regarding this, the Svea Court of Appeal, in the specific context of EU sanctions, has indicated that Regulation 833/2014 reflects the broader aims guiding the Union's external action under Article 21 of the Treaty on European Union (TEU). Article 21 establishes the framework for the EU's external conduct, emphasizing the 'protection of its values, fundamental interests, security, independence and integrity as well as the maintenance of peace, conflict prevention and reinforcement of international security.'[32] By linking the Regulation to these constitutional objectives, the Svea Court of Appeal considers EU sanctions to be embedded in the Union's fundamental principles and to form part of its legal order.[33]

After the CJEU decisions in *Slovak Republic v Achmea BV*[34] and *Republic of Moldova v Komstroy LLC.,*[35] questions arose as to whether matters that require interpretation of EU law could be addressed by investor-State arbitration. Yet sanctions regimes are not "intra-EU" in character, which means they do not align perfectly with the limitations set out in *Achmea* and *Komstroy*. Instead, they should be viewed as matters implicating EU public policy.

The arbitrability of disputes impacted by sanctions may soon be clarified by a new development. In *NV Reibel v JSC VO Stankoimport*, the Svea Court of Appeal, in November 2024, referred a preliminary question to the CJEU for decision, assessing the arbitrability of disputes related to sanctions. In this case, a partial payment had been made in advance by Stankoimport (the Russian client) to Reibel (the Belgian supplier) in furtherance of a supply contract signed in December 2015 by both parties. However, Reibel was unable to perform the contract owing to export restrictions imposed by Belgium in furtherance of the EU sanctions framework, including EU Regulation No. 833/2014.[36] In the arbitral proceedings, the Russian client claimed reimbursement

[32] Article 21, Treaty on European Union. Official Journal of European Union. In: *EUR-Lex* [online]. 7. 6. 2016 [2026-03-04]. Available at: https://eur-lex.europa.eu/eli/treaty/teu_2016/art_21/oj.

[33] SALOMONSSON, A. S. – POSHIVALOV, V. *Arbitrability, EU Public Policy, and EU Sanctions: The Svea Court of Appeal's Referral to the CJEU in NV Reibel v. JSC VO Stankoimport.*

[34] Case C-284/16 Slowakische Republik (Slovak Republic) v. Achmea BV [2018] EU:C:2018:158.

[35] Case C-741/19 Republic of Moldova v. Komstroy LLC [2021] EU:C:2021:655.

[36] EU Regulation No. 833/2014, Article 11: 'No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by: [...] (b) any other Russian person, entity or body'.

of the payments made in advance to the Belgian supplier, and the arbitral tribunal held that Article 11 of the said Regulation did not bar Stankoimport's claim from being entertained.

This provision primarily addresses the admissibility of the claim, meaning whether the claim is suitable for adjudication, rather than the jurisdiction of the arbitral tribunal itself. However, the first preliminary question of the three from the Svea Court to the CJEU deals with the issue of arbitrability.[37] Response of the CJEU may provide clarity on whether EU sanctions can limit not only the substantive outcome of the dispute but also the ability of parties to seek arbitration for those disputes altogether.

If the Svea Court's position is affirmed by the CJEU, and it is further held that Regulation 833/2014 falls within the scope of EU public policy, national courts would need to undertake independent assessments of arbitral awards or other rulings that could conflict with its stipulations. This reasoning aligns with the broader approach of the CJEU towards arbitration-related norms. The Court in *Eco Swiss China Time* and *Mostaza Claro* affirmed that EU public policy, which encompasses competition and consumer protection law, can impose restrictions on arbitration outcomes by obligating national courts to examine arbitral awards for ensuring compliance with mandatory EU norms. In the same vein, if Regulation 833/2014 is affirmed as a matter of EU public policy, its provisions shall be respected by arbitral tribunals, and national courts would be obligated to evaluate any award that conflicts with them. The CJEU's jurisprudence establishes a framework of binding norms that shapes how EU law interacts with arbitration, confirming that EU public policy can act as a compulsory constraint on both tribunal jurisdiction and award enforcement.

II.2 The legal status of sanctions in arbitration

The foregoing discussion demonstrates the conceptual and structural complexity surrounding the role of sanctions in arbitration. Because of the absence of a clear doctrinal classification, it becomes difficult to analyze how sanctions and international arbitration interact. In addition to appearing at different stages of the arbitral process, sanctions perform different legal functions, making it necessary to differentiate between three possible characterizations, namely sanctions as mandatory rules (*lois de police*), sanctions as elements of international public policy, and sanctions as external factual constraints. In order to understand the impact of sanctions on arbitrability, party autonomy, and enforcement, clarifying this taxonomy is pertinent.

a. *Sanctions as mandatory rules (lois de police)*

At the tribunal stage, sanctions most commonly operate as mandatory or overriding rules of law. States, for safeguarding their public interests, have mandatory rules in place that they consider crucial, and these apply irrespective of the law otherwise governing the

[37] Must Regulation 833/2014 (1) be interpreted as meaning that parties to an agreement are precluded from reaching an agreement out of court on claims which, under Article 11(1) of that regulation, are not to be satisfied and that amicable settlements reached by parties to an agreement on claims covered by Article 11(1) are null and void in civil law?

contract.[38] Such rules may become relevant, especially in the context of international arbitration, where they form part of the lex causae, the law of the seat, or another legal system sufficiently connected to the dispute. In instances where sanctions prohibit certain transactions, freeze assets, or restrict the provision of services, it is the legality of contractual performance that is affected rather than the existence of the arbitration agreement itself. It is not the duty of the arbitral tribunal to impose administrative or criminal measures in order to enforce sanctions. Instead, tribunals are required to discern the impact of sanctions on contractual rights and obligations. In this regard, sanctions are similar to other mandatory norms, for example, export controls or currency regulations, shaping the substantive outcome of the dispute while preserving the jurisdiction of the arbitral tribunal.

The view that sanctions do not render a dispute inarbitrable is further strengthened by conceptualizing sanctions as mandatory rules at the jurisdictional stage because the mere fact that a tribunal is required to interpret whether a dispute involves the application of sanctions legislation does not in itself raise questions about the competence of the tribunal to hear the dispute. Instead, sanctions play a role in the substance of the case, influencing aspects like illegality, force majeure, and frustration.

b. ***Sanctions as international public policy***

At the stage of enforcement of an arbitral award, a distinct question arises under Article V(2)(b) of the New York Convention. According to this provision, recognition or enforcement of an arbitral award may be refused if the award is contrary to the forum State's public policy. In this context, sanctions may transition from being viewed strictly as mandatory rules to being recognized as elements of international public policy. However, this depends on the approach of the enforcing court. The understanding of whether sanctions form part of international public policy differs across States, as some States, while adopting a restrictive conception, limit public policy to violations of fundamental principles of morality and justice, whereas others integrate sanctions regimes (especially those adopted at supranational or multilateral levels) into their conception of international public policy. In these situations, enforcement of an award may be refused if it directly contravenes sanctions, notwithstanding the fact that the arbitration itself was properly conducted. It is worth noting that this transition typically occurs ex post, and sanctions do not negate arbitrability at the outset. In fact, they become decisive when it is evaluated by a court as to whether giving effect to the award would undermine core regulatory commitments. Therefore, it is not at the stage of jurisdiction that structural tension emerges, but at the interface between arbitral autonomy and State enforcement authority.[39]

[38] MASUMY, M. – EL AZOUZI, S. R. The Arbitrability of Secondary Sanctions: A System with a Coherent Standard of Review. In: *Kluwer Arbitration Blog* [online]. 24. 5. 2020 [2026-03-03]. Available at: https://legalblogs.wolterskluwer.com/arbitration-blog/the-arbitrability-of-secondary-sanctions-a-system-with-a-coherent-standard-of-review/.

[39] DARWAZEH, N. – GRÉMAUD, S. PAW: Sanctions and Arbitration: Lessons Learned and Possible Strategies. In: *Kluwer Arbitration Blog* [online]. 23. 3. 2024 [2026-03-03]. Available at: https://legalblogs.wolterskluwer.com/arbitration-blog/2024-paw-sanctions-and-arbitration-lessons-learned-and-possible-strategies/.

c. ***Sanctions as external factual constraints***

Sanctions frequently operate as external factual impediments to the conduct of arbitration; for instance, the transfer of funds required to pay advances on costs or satisfy awards may be restricted owing to asset freezes, physical participation in hearings may be limited due to travel bans, and involvement of counsel, arbitrators, or experts may be complicated due to licensing requirements. It is not the legal validity of the arbitration agreement or the tribunal's jurisdiction that is altered by these constraints; instead, they affect the practical exercise of procedural rights. From a doctrinal perspective, regulatory obstacles such as sanctions should not be confused with issues of arbitrability and public policy, as they pose practical challenges that arbitration must address.[40] They do not undermine the legitimacy of arbitration as a dispute resolution mechanism. It is important to distinguish these factual constraints from jurisdictional limitations. If sanctions are viewed as undermining arbitrability in every instance, it may lead to excessive caution and a reluctance to uphold arbitration agreements, thereby undermining the intended stability and predictability that these agreements are meant to provide.

The view adopted in this article is that sanctions should not be conceptualized as inherently affecting arbitrability. The principal impact of sanctions on arbitration is structural rather than existential; instead of invalidating the arbitral process, they exert pressure at specific doctrinal points. This can most notably be observed at the enforcement stage. This shapes but does not extinguish the transnational architecture of arbitration.

Having established that sanctions generally do not bar arbitrability, it is important to acknowledge the significant impact they may have on contractual obligations and the arbitration process. In arbitration, sanctions do not generally redefine the theoretical limits of party autonomy; rather, they constrain its practical exercise by introducing mandatory regulatory overlays at the jurisdictional and enforcement stages. Only in counter-sanctions regimes such as Russia's, discussed later, do sanctions operate to redefine the limits of party autonomy themselves. The next section delves into the practical and legal consequences of sanctions, emphasizing the difficulties they create for fulfilling contractual obligations, tribunal procedures, and the overall arbitration process.

III. IMPACT ON CONTRACTS AND THE ARBITRATION PROCESS

Sanctions have a material impact on the substantive issues of a dispute. Depending on the applicable law and the contractual terms, a party wishing to escape contractual duties in light of the sanctions may invoke either a specific sanctions clause in the contract, claim force majeure, or argue that performing the contract has become either impossible or illegal under the circumstances. Even where a party's claim is allowed, and the party is found entitled to an award, sanctions may considerably lessen the monetary value of the award. The English court in *Ministry of Defence and Support for Armed Forces of the Islamic Republic of Iran v International Military Services* held that the EU sanctions re-

[40] KOTELNIKOV, A. *Economic Sanctions Arbitrability and Public Policy,* p. 19.

gime prevented the claimant from recovering interest for the period during which it was a sanctioned entity.[41]

The Court of Appeal in *Lamesa Investments v Cynergy Bank* emphasized the significance of precisely drafted sanctions clauses and the potential for disputes if such clauses are not carefully formulated.[42] The Court reviewed a contract governed by English law that contained a standard clause commonly included in international banks' facility agreements. This clause provided that the bank (Cynergy in this case) would not be considered in breach of its payment obligations if it could demonstrate that certain payments were withheld "in order to comply with any mandatory provision of law, regulation or order of any court of competent jurisdiction". The Court had to determine whether the clause applied when the bank withheld payment to avoid breaching US secondary sanctions, which did not directly bind the bank but posed a risk of penalties if payment was made, as opposed to a situation where the bank refused payment to comply with a "mandatory" law that directly applied to it and explicitly prohibited the payment.[43]

Whether parties can terminate the contract by invoking the force majeure clause when sanctions are in place depends on how the clause is drafted and the terms of the contract. Some force majeure clauses explicitly include sanctions as a qualifying event, whereas others may exclude them. Because many force majeure clauses rely on broad, category-based wording, the precise events they enumerate become key to determining whether sanctions and their effects fall within their scope.[44] A range of additional drafting issues also influences how force majeure clauses operate in practice, such as notification requirements, reasonable endeavours obligations,[45] the need, in certain situations, to demonstrate causation, and the impact required for force majeure to be invoked.[46]

Another way in which sanctions may affect contracts in the absence of any express contractual provision is when they trigger the application of the doctrine of frustration under UK common law (or equivalent doctrines in other jurisdictions). It should, however, be noted that this doctrine has a narrow application, and the English courts have consistently stressed that it should not be invoked to relieve parties of their obligations under their contracts.[47] When the parties have already included provisions for the events at issue (e.g. sanctions or force majeure clauses), it is rare for the doctrine of frustration to be applicable. This is because frustration applies only when contractual obligations are

---

[41] Ministry of Defence and Support for Armed Forces of the Islamic Republic of Iran v. International Military Services Ltd [2019] EWHC 1994 (Comm).

[42] Lamesa Investments v. Cynergy Bank [2020] EWCA Civ 821.

[43] CAMERON, T. – ENDERBY, C. – BENKHADRA, S. – BENKHADRA, T. The Effects of Sanctions on Contracts and International Arbitrations. In: *Global Legal Insights* [online]. 7. 4. 2025 [2025-10-15]. Available at: <before https://www.globallegalinsights.com/practice-areas/international-arbitration-laws-and-regulations/the-effects-of-sanctions-on-contracts-and-international-arbitrations/.

[44] MCDOUGALL, K. – ROGERS, J. Impact of International Sanctions on Arbitral Proceedings. In: *Norton Rose Fulbright International Arbitration Report* [online]. 11. 5. 2022 [2025-11-01]. Available at: https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/publications/international-arbitration-report-issue-18.pdf.

[45] The UK Supreme Court in 2024 addressed the extent of the obligations arising under such a provision in the case concerning sanctions titled RTI Ltd v. MUR Shipping BV [2024] UKSC 18.

[46] Cameron, Smith and Benkhadra (n 43).

[47] Canary Wharf (BP4) T1 Ltd v. European Medicines Agency [2019] EWHC 335.

significantly altered. If the events at issue have already been addressed in the contract, then there is usually no substantial change.

Even without clear contractual or legal rights to terminate the contract, parties may still choose to terminate it to escape the penalties that can result from breaching sanctions. Consequently, parties may become embroiled over how contractual terms should be interpreted and may even find themselves exposed to claims regarding breach of contract. To resolve their disputes, they may resort to arbitration, and arbitration proceedings may, in turn, be affected by sanctions.[48] Sanctions may impact arbitration proceedings in the following ways:[49]

i. **Financial implications**: With financial sanctions such as an asset freeze, payment may be required for various purposes, including counsel's fee advances for tribunal and institution fees and expenses, the registration fee when filing the claim, and payments under the arbitral award. In order to effect the transfer of funds, a licence may be necessary for the paying and/or receiving party.[50]

ii. **Jurisdiction and applicable law considerations**: An arbitration may also be affected by the applicable sanctions regime because of where a party or arbitrator is resident or holds nationality, the jurisdiction in which business transactions occur, legislation with cross-border applicability and sanctions in force where the seat of arbitration is located.

iii. **Due process and access to justice issues**: A travel ban may prevent a party or witness from participating in the proceeding. Parties may be unable to engage legal representatives qualified in sanctioned States.

iv. **Tribunal constitution issues**: This includes situations where arbitrators may be subject to sanctions or prevented from deciding the matter at hand objectively due to their residence or nationality, particularly when a sanctioned party is involved in the dispute.

v. **Expert evidence issues**: Appointing and using experts can become complicated, as an expert who is subject to sanctions may not render an impartial opinion, especially on legal matters concerning sanctions themselves. Additionally, the expert may be hesitant to provide certain information if the case involves goods and services subject to sanctions or export controls.

In such circumstances, the obstacles may give rise to claims of denial of justice or breaches of due process by a party, ultimately leading to enforcement problems under the New York Convention. A party may argue that it was not able to present its case. The imposition of sanctions does not mean that parties are prevented from accessing justice. It might, however, complicate the process. It merely creates procedural and administrative obstacles in the arbitration process, which can be overcome through due diligence and compliance. To reassure the arbitration participants, three international arbitral institutions, i.e., the LCIA, ICC and SCC, issued a joint note after sanctions were imposed on Russia following the annexation of Crimea, emphasizing that the credibility of arbi-

[48] MCDOUGALL, K. – ROGERS, J. *Impact of International Sanctions on Arbitral Proceedings.*

[49] International Arbitration Trends and Topics for 2025. In: *Cleary Gottlieb Steen & Hamilton LLP Blog* [online]. 6. 1. 2025 [2025-11-05]. Available at: https://www.clearygottlieb.com/-/media/files/alert-memos-2025/international-arbitration-trends-and-topics-for-2025.pdf.

[50] SCARD, A. *Arbitrable or Arbitrary? The Impact of Sanctions on International Arbitration.*

tration proceedings and their neutrality (despite being located in the EU, the jurisdiction issuing sanctions) would be maintained.[51]

These developments indicate that sanctions not only operate as external regulatory constraints but also affect contractual obligations and dispute resolution pathways. While initial concerns focused on force majeure, illegality, and frustration, the issue has evolved into a significant challenge to the cohesion of the international arbitration framework. Parties find it difficult to be certain of where their disputes will be adjudicated and the awards enforced, given that States continue to impose sanctions and counter-sanctions, claim exclusive jurisdiction, and even refuse to acknowledge arbitration agreements. Russia's approach, amongst these developments, is particularly significant. It subordinates arbitration law to State-directed objectives, creating systemic challenges for party autonomy and enforcement. The broader implications of these jurisdictional conflicts, particularly how enforcement dynamics are affected by sanctions, are explored in the following section on Russian counter-sanctions jurisdiction.

III.1 Russian counter-sanctions: jurisdiction and arbitration overrides

In addition to concerns regarding sanctions and arbitration discussed earlier, other concerns that exist include whether disputes can be adjudicated by tribunals when sanctions are in place, or whether courts have exclusive jurisdiction; whether sanctioned parties have a right to participate in arbitration; and whether the imposition of sanctions could justify modifying or ending the parties' arbitration agreement. The approach of Russian courts differs fundamentally from that of other jurisdictions, as they are subordinated to Kremlin anti-sanctions policies rather than to traditional arbitration principles. The recent amendments to the Arbitrazh Code of Procedure (APC) allow courts in Russia to assert exclusive jurisdiction over disputes concerning sanctioned parties, overriding arbitration clauses in contracts.[52]

For example, in the 2024 dispute between an affiliate of Russia's Gazprom [RusChem Alliance (RCA)] and Linde plc, a German multinational company, an HKIAC arbitration clause was refused to be enforced by a Russian court. Linde was also ordered not to litigate or arbitrate the matter anywhere else.[53] As a result of suspending its performance due to sanctions, Linde was ordered by a Russian court to pay nearly 2 billion euros in relation to contracts for a Russian gas processing plant and an LNG project.

Conflicting jurisdictional decisions are also not unusual. For example, in May 2024, a Russian court permitted RCA to take control of €700 million in assets belonging to three European banks under English-law contracts that required arbitration under ICC rules,

---

[51] The Potential Impact of the EU Sanctions Against Russia on International Arbitration Administered by EU-Based Institutions. In: *LCIA* [online]. 20. 8. 2015 [2025-11-10]. Available at: https://www.lcia.org/News/the-potential-impact-of-the-eu-sanctions-against-russia-on-inter.aspx.

[52] GOTTLIEB, C. Amendments to the Russian Arbitrazh Procedure Code on Sanctions-Related Disputes. In: *Cleary Gottlieb* [online]. 29. 6. 2020 [2026-03-02]. Available at: https://www.clearygottlieb.com/-/media/files/alert-memos-2020/amendments-to-the-russian-arbitrazh-procedure-code-on-sanctions-related-disputes.pdf.

[53] BALLANTYNE, J. – FISHER, T. Russian Court Restrains HKIAC Claim Against Gazprom Venture. In: *Global Arbitration Review.* [online]. 19. 4. 2024 [2025-11-11]. Available at: https://globalarbitrationreview.com/article/russian-court-restrains-hkiac-claim-against-gazprom-venture.

with Paris as the seat. Although an English court had upheld the arbitration clause, the Russian ruling directly contradicted that decision.[54]

These procedural complications also intersect with broader jurisdictional tensions between national courts, particularly in disputes involving Russian parties affected by sanctions. Russia's approach is not a neutral divergence: the difference with the UK and EU is that Russian courts rely on APC amendments to subordinate arbitration agreements to State-directed outcomes, treating sanctions as an obstacle to a party's entitlement to fair adjudication.[55] Consequently, there has been a notable increase in anti-suit injunctions, anti-anti-suit injunctions, and anti-enforcement injunctions, resulting in significant difficulties not only for Russian litigants but also for international litigants.[56]

The Russian Supreme Court's pivotal 2022 decision in *Uraltransmash* held that the imposition of sanctions inherently undermines the rights of a sanctioned party and, therefore, the party filing the petition is not required to demonstrate how these measures have impacted or could potentially impact its access to justice. The presumption of Russian courts, underlying this reasoning, is that sanctions are, in themselves, a barrier to justice, making it impossible to fulfil an arbitration agreement without conducting any further substantive evaluation.[57] This presumption marks a significant departure from international practice, where tribunals generally require concrete evidence that sanctions prevent participation in foreign proceedings.

III.2 Other jurisdictions

Beyond the UK-Russia dynamic, another trend is observable. China, after enacting the Anti-foreign Sanctions Law of the People's Republic of China (AFSL), issued the Regulations on the Implementation of AFSL in March 2025. With the establishment of the counter-sanctions network, a Chinese court allowed the first lawsuit under AFSL filed by a Chinese company against an overseas customer for non-payment after the latter was added to the Specially Designated Nationals (SDN) List by OFAC. Even when the contract between the parties contained an arbitration clause, the Court agreed to hear the matter. The inclusion of this case in the People's Court Casebooks by the Supreme People's Court of China as a persuasive authority nationwide underscores the judicial support for jurisdiction under AFSL, despite the prior agreement of the parties to arbitrate.[58]

While other States also link domestic courts to sanctions enforcement, Russia's approach is uniquely significant because it directly overrides arbitration agreements and neutral principles, rather than merely asserting jurisdiction in line with domestic law. As parties navigate these complex and sometimes conflicting legal landscapes, questions

---

[54] Ibid.

[55] NESSI, S. – MURASHKO, E. The Battle for Jurisdiction: Navigating the Irreconcilable Divide Between UK and Russian Courts in Disputes Involving Sanctions and Arbitration Agreements. *ASA Bulletin.* 2025, Vol. 43, p. 317.

[56] Ibid.

[57] GALPERIN, M. Living and Dead Water Under Russian Jurisdiction. On The Application of Article 248.1 of the Arbitration Procedure Code of the Russian Federation. *Bulletin of Economic Justice of the Russian Federation.* 2023, p.198.

[58] CHEN ZHU, B. – RAO, D. Enforcement of China's Anti-Foreign Sanctions Law Strengthens Through Private Cause of Action and New Implementing Rules. In: *Morrison Foerster* [online]. 4. 6. 2025 [2025-11-20]. Available at: https://www.mofo.com/resources/insights/250604-enforcement-of-china-anti-foreign.

of award recognition and enforcement under international instruments, particularly the New York Convention, become increasingly critical, critical and are addressed in the next section.

IV. IMPACT ON THE ENFORCEABILITY OF THE AWARD

Ultimately, the core purpose of any arbitration process is to result in an award that can be effectively enforced; however, the issue of sanctions may become a hurdle in enforcing an arbitral award. Under Article V(2)(b) of the New York Convention a court may refuse to enforce an award if, first, the dispute is not arbitrable under its domestic law; and second, if enforcing the award would violate that State's public policy.

The first ground pertains to the matter of arbitrability, and as mentioned earlier, courts generally permit disputes to be resolved through arbitration, irrespective of the presence of sanctions. However, when it comes to enforcement, the legal regime of the nation where enforcement is sought may raise arbitrability concerns. It is, therefore, imperative for the arbitrators to consider and deal with concerns regarding enforcement and arbitrability beforehand to prevent any conflicts at a later stage. Findings on arbitrability should be framed with the enforceability forum in mind, ensuring that potential enforcement barriers are proactively addressed by arbitrators.

The second ground concerning public policy has become a central issue in cases involving sanctions. Sanctions legislation may be held to constitute public policy.[59] In order to resist recognition and enforcement of an award, parties may argue that the award contravenes the public policy requirement as stipulated under Article V(2)(b). However, due to varying conceptions of public policy across States, courts have generally adopted a restrictive interpretation of public policy objections, determining whether the subject matter of the dispute was genuinely impacted by sanctions or whether it is a tactic to avoid enforcement. Even when the court is in the State that imposed sanctions, recognition of the award is not automatically denied.[60] This restrictive approach indicates a judicial inclination to maintain finality of arbitral awards unless there is a clear demonstration of a violation of fundamental legal principles.

India, for instance, does not allow the ground of public policy to be invoked unless the award is so egregious that it *shocks the conscience of the court.* An award would shock the conscience of the court if it were induced or affected by fraud or conflicts with the most basic notions of morality and justice.[61] Analysis of national court decisions in the Kluwer Arbitration Database shows that public policy objections were invoked in 44% of enforcement cases and 38% of annulment proceedings, with successful outcomes occurring in only 19% and 21% of instances, respectively. This trend is particularly relevant in the context of disputes related to sanctions. As the circumstances under which national courts accept public policy arguments are narrow and well-defined, they are usually

[59] MCDOUGALL, K. – ROGERS, J. *Impact of International Sanctions on Arbitral Proceedings.*
[60] DE BRABANDERE, E. – HOLLOWAY, D. Sanctions and International Arbitration. In: Larissa van den Herik (ed.). *Research Handbook on UN Sanctions and International Law.* Cheltenham: Edward Elgar, 2017.
[61] Associate Builders v. Delhi Development Authority [2015] 3 SCC 49.

reluctant to treat sanctions as a sufficient basis for refusing enforcement. Nonetheless, the data suggests that public policy objections do sometimes prevail, highlighting the possibility that sanctions-related arguments may be used by parties in enforcement or setting-aside proceedings.[62] Therefore, as the data highlights, public policy exceptions remain an exceptional remedy rather than a standard tool for resisting enforcement, even when they are frequently raised.

Another key element of public policy analysis is evaluating whether a sanctions framework forms part of a State's international public policy as defined under the New York Convention and UNCITRAL Model Law. Divergent views emanate from various jurisdictions. For instance, French courts view international public policy as a fundamental principle that must be adhered to even in an international context and classify sanctions accordingly. International public policy has been considered by French courts in several arbitration-related matters. In relation to Iran sanctions, the Paris Court of Appeal made distinctions among UN, EU, and US sanctions. UN sanctions are considered an integral part of French international public policy due to their emphasis on international peacekeeping and security, and hence should be taken into account by arbitral tribunals. EU sanctions are also regarded as part of French international public policy. US sanctions with territorial effect do not enjoy universal backing and therefore cannot be considered as French international public policy.[63]

Similar reasoning was observed in a German case, where the High Regional Court of Stuttgart denied enforcement of a Russian arbitral award (delivered by a Moscow-seated tribunal) on the grounds that enforcement would violate the EU sanctions regime and therefore contravene German public policy.[64] In contrast, US courts have a narrow interpretation of public policy, typically declining to consider their own economic sanctions as a basis for refusing enforcement of awards. As is evident from US case law relating to the enforcement of intra-EU investor-State awards, the enforcement of the award will not be denied if it is in violation of the sanctions framework of the EU until and unless the award has been annulled at its seat due to this violation.[65] When viewed collectively, these diverging approaches indicate that the relationship between sanctions and public policy varies significantly by jurisdiction, so parties must anticipate how each enforcement forum views international public policy.

In another case, the US Court of Appeals in *Parsons & Whittemore Overseas Co. v Société Générale de l'Industrie du Papier (RAKTA)* held that a narrow interpretation should be given to public policy defence and that a validly obtained arbitral award should 'only be refused enforcement if it violates the forum State's most basic notions of morality and

[62] SASSON, M. Public Policy: Is This Catch-All Provision Relevant to the Legitimacy of International Commercial Arbitration? In: *Kluwer Arbitration Blog* [online]. 18. 6. 2022 [2025-11-22]. Available at: https://legalblogs.wolterskluwer.com/arbitration-blog/public-policy-is-this-catch-all-provision-relevant-to-the-legitimacy-of-international-commercial-arbitration/.

[63] TCM FR S.A. v. NGSC (Paris Court of Appeal, 3 June 2020, No 19/07261).

[64] WINTERMUTH, S. G. Arbitral Award Recognition, but not Enforcement, in Light of EU Sanctions: A Case for 'Breakout Force Majeure' Recognition. In: *SSRN* [online]. 24. 10. 2025 [2025-11-22]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5687842.

[65] Mercuria Energy Group Ltd v. Republic of Poland, No 23-3572, United States District Court for the District of Columbia, 8 September 2025.

justice.' Since the claimant argued that US national policy, rather than international or national sanctions, prevented enforcement of the award, the Court dismissed the claim without difficulty. It also noted that treating the public policy exception as a parochial tool for pursuing national political interests would severely jeopardise the utility of the Convention.[66] This ratio has been applied in various other decisions.[67] This jurisprudence highlights that neither political considerations nor foreign policy disagreements are sufficient to justify invoking the Convention's public policy defence.

At the EU level, the second question[68] referred by the Svea Court of Appeal to the CJEU for a preliminary ruling was whether EU Regulation No. 833/2014 forms part of the public policy of the EU, requiring domestic courts to invoke it on their own initiative when assessing the validity and enforcement of international arbitral awards. Amendments made to the Regulation in July 2025 imply an affirmative response. Investor-State awards that undermine the EU sanctions regime are prohibited from being recognized in accordance with Article 11. A duty has also been cast upon Member States to present all objections available to them during the recognition and enforcement proceedings when arbitral awards are delivered against them in ISDS proceedings related to measures imposed under EU Regulation No. 833/2014 or 269/2014. The preamble to EU Regulation No. 2025/1494 (paragraphs 22 to 24[69] provides valuable insights into the underlying rationale. This development signals a more interventionist stance at the EU level, transforming compliance with sanctions from a mere regulatory requirement to an integral component of EU public policy at the award enforcement stage.

In addition to arbitrability and public policy concerns, sanctions bring about significant practical challenges to the enforcement of arbitral awards. The nature of these challenges will depend on whether the award creditor or the award debtor is subject to sanctions. If the sanctions are imposed on an award creditor, transfer of funds or economic resources to such person or entity is often restricted. The award, even if it is valid and enforceable under the New York Convention, may not be realized in the absence of an exemption, licence or specific government approval. This means that the creditor may

[66] Parsons & Whittemore Overseas Co v. Société Générale de l'Industrie du Papier (RAKTA) 508 F 2d 969 (2nd Cir. 1974).

[67] See for example Ministry of Defense of the Islamic Republic of Iran v. Gould, Inc. 887 F.2d 1357 (9th Cir. 1989); MGM Productions Group v. Aeroflot Russian Airlines 573 F. Supp. 2d 772 (S.D.N.Y. 2003); Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Defense Systems, Inc., 29 F. Supp. 2d 1168 (S.D. Cal. 1998); Iranian Co. Z v. Swiss Co. X 4A_250/2013 (21 January 2014) (Tribunal Fédéral Suisse).

[68] Must Article 11 of Regulation 833/2014 be interpreted as meaning that a national court hearing an application for setting aside or annulment of an arbitration award in which that article has been applied must determine of its own motion whether the arbitration tribunal's application of the law is compatible with Regulation 833/2014 and, in such a case, must the national court annul or set aside the arbitration award in whole or in part if the arbitration tribunal's application of the law was contrary to the regulation?

[69] Where Member States are confronted with arbitral awards rendered against them in investor-State dispute settlement proceedings in connection with measures imposed under Regulation (EU) No 833/2014 or Regulation (EU) No 269/2014, they should invoke any objection available to them in domestic or foreign proceedings for the recognition and enforcement of such awards. This includes raising the objection that the recognition or enforcement of the award would be contrary to the public policy of the country where recognition and enforcement is sought, pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

prevail on the merits but may not be able to collect the amount in actuality.[70] In practice, this leads to a gap between the legal validity of the award and the creditor's ability to realize the economic value of the award.

If the award debtor is subjected to sanctions, enforcement efforts are usually hampered due to asset freezes. Although the asset continues to exist, seizure, attachment, or transfer of it may not be permissible. In such a case, enforcement may still be possible if the competent authority provides for derogations, and it is usually helpful to secure it before enforcement is proceeded with. For instance, in France, the Ministry of Economy may provide for derogations. The prohibition extends to conservatory measures, as clarified by the CJEU, even if they do not cause a transfer of property.[71] This raises concerns regarding limitation periods, as enforcement actions may be delayed for years while sanctions are in effect. Some courts, such as the Supreme Court of France, have clarified that limitation periods remain suspended for the entire duration of the asset freeze.[72] As a result, even if enforcement proceedings are successful, they may not facilitate immediate practical recovery, thereby prolonging disputes and transactional uncertainty.

V. CONCLUSION

This article examines the relationship between sanctions and international arbitration, highlighting their impact on the arbitration process. It discusses important legal factors, such as the effect of sanctions on the arbitrability of disputes, the fulfilment of contractual obligations, and the enforceability of arbitral awards. It has been highlighted that the existence of sanctions does not automatically render a dispute inarbitrable. However, this needs to be approached with caution, as the law of the seat, the governing law of the arbitration agreement, and the interpretation of the sanctions regime will all impact the arbitrability of disputes subject to international sanctions.

On the discussion regarding how sanctions shape the contractual obligations and the arbitral process, what is discernible is that sanctions do impact contractual obligations through sanctions clauses, force majeure, illegality and frustration and also introduce significant uncertainty into the arbitration process, affecting commencement of arbitration, pursuing the arbitration, appointment of the tribunal, payment of arbitrator, institutional and counsel fees, working of arbitral institutions, etc. Regarding the enforceability aspect, it is evident that every step in the recognition and enforcement of arbitral awards is impacted by economic sanctions. If the applicant is subject to sanctions, the admissibility of the enforcement application may be impacted, and enforcement may be denied on grounds such as inarbitrability, lack of jurisdiction, or even violation of international public policy. Any enforcement or conservatory measures taken on the basis of the award may also be barred.

---

[70] FADLALLAH, L. *The Impact of Economic Sanctions on the Recognition and Enforcement of International Arbitration Awards.*

[71] Case C-340/20 Bank Sepah v. Overseas Financial Limited and Anr. [2021] EU:C:2021:903.

[72] Cour de cassation (Assemblée plénière), 29 April 2022, nos 18-18.542 and 18-21.814. In: *courdecassation.fr* [online]. [2025-11-22]. Available at: https://www.courdecassation.fr/en/getattacheddoc/626b7fba3ec8da057dc34ce7/6daa3d300da968063554feb1694d7f05.

As sanctions continue to expand in scope, complexity, and extraterritorial reach, creating profound challenges for the international arbitration system, stakeholders in arbitration can still play a significant role and strive to preserve the neutrality and effectiveness of arbitration. Arbitrators must be diligent in their approach and must consider strict compliance with applicable rules, laws and sanctions provisions to ensure that the award is rendered without any breach. Arbitral institutions should ensure that, in light of increasing geopolitical tensions and the imposition of sanctions, their rules and guidelines incorporate measures that address the concerns of parties involved. It is in the best interest of parties to the dispute to identify business activities and business partners that pose heightened sanctions and export control-related risks, and to navigate strategies that balance competing laws across different jurisdictions. Courts in different jurisdictions have different approaches to recognizing and enforcing awards. To ensure that the pro-arbitration approach is upheld, national courts should ensure uniform and consistent enforcement of these awards across jurisdictions.