Научная статья / Research Article
https://doi.org/10.17323/jil.2025.31994

АКТУАЛЬНЫЕ ПРОБЛЕМЫ | TOPICAL ISSUES

The impact of sanctions on the procedural aspects of arbitration

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Abstract

In recent years, international sanctions have evolved from narrowly targeted financial measures into complex legal instruments with significant procedural consequences. As arbitral disputes increasingly involve parties, jurisdictions, or institutions affected by these sanctions, tribunals are compelled to operate in a legal landscape shaped less by party autonomy than by political imperatives and regulatory risk. Sanctions, particularly those of extraterritorial effect, now threaten to unsettle fundamental assumptions underpinning arbitration: neutrality, accessibility, and procedural equality. This article examines the profound impact of contemporary sanctions on the procedural dimensions of international arbitration. It underscores the longstanding premise that arbitration offers a neutral and effective forum for resolving commercial and investment disputes, largely insulated from geopolitical fluctuations. Yet the growing extraterritorial scope and complexity of sanctions regimes challenge this premise. These measures generate legal and procedural obstacles by restricting access to financial resources, impeding legal representation, and promoting the nationalisation of dispute resolution mechanisms. The article examines the mechanisms of this erosion in six key areas: the doctrine of extraterritoriality, financial barriers, restrictions on legal representation, nationalisation of dispute resolution at the initiative of the State, the deterrent effect on arbitration institutions and the consequences of the latest package of EU sanctions. It contends that sanctions not only undermine the procedural integrity and equality of arms essential to arbitration but actively transform it into a process constrained by political considerations. This transformation jeopardises the principles of party autonomy, procedural neutrality, and access to justice, as parties from sanctioned jurisdictions face difficulties in funding, representation, and participation. Furthermore, the trend towards nationalisation weakens the enforceability of arbitral awards, thereby destabilising arbitration's reliability as a dispute resolution mechanism. The article concludes that safeguarding the legitimacy and

functionality of international arbitration amid growing geopolitical interference requires institutional reforms, including the clarification of compliance policies, harmonisation of legal exemptions for arbitration-related activities, and reinforcement of protections against State interference. Absent such measures, arbitration risks to lose its credibility, compromised by extraterritorial sanctions and national interests.

Key words: international arbitration, sanctions, procedural integrity, extraterritoriality, legal representation, nationalisation of dispute resolution, access to justice, EU sanctions package

Citation: Chobotova A., Kholmatov D. The impact of sanctions on the procedural aspects of arbitration. *HSE University Journal of International Law*. 2025. Vol. 3. No. 4. P. 56–74.

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Влияние санкций на процессуальные аспекты арбитража

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Аннотация

В последние годы международные санкции эволюционировали от узконаправленных финансовых мер к сложным правовым инструментам, применение которых могло повлечь значительные процессуальные последствия. Поскольку арбитражные споры все чаще затрагивают стороны, юрисдикции или институты, подверженные санкциям, арбитражные трибуналы вынуждены действовать в правовой среде, определяемой не столько автономией сторон, сколько политическими императивами и регуляторными рисками. Санкции, особенно экстерриториальные, теперь угрожают подорвать фундаментальные предположения, лежащие в основе арбитража: нейтральность, доступность и процессуальное равенство. В этой статье рассматривается влияние современных санкций на процессуальные аспекты международного арбитража. Исследование подчеркивает давнюю предпосылку о том, что арбитраж представляет собой нейтральный и эффективный форум для разрешения коммерческих и инвестиционных споров, в значительной степени защищенный от геополитических колебаний. Однако растущий экстерриториальный охват и сложность санкционных режимов ставят под сомнение данную предпосылку.

Эти меры создают правовые и процессуальные препятствия, ограничивая доступ к финансовым ресурсам, препятствуя юридическому представительству и способствуя национализации механизмов разрешения споров. В статье рассматриваются механизмы этой эрозии в шести ключевых областях: доктрина экстерриториальности, финансовые барьеры, ограничения на юридическое представительство, национализация разрешения споров по инициативе государства, сдерживающий эффект на арбитражные институты и последствия последнего пакета санкций ЕС. Делается вывод о том, что санкции не только подрывают процессуальную целостность и равенство сторон, необходимые для арбитража, но и активно превращают его в процесс, ограниченный политическими соображениями. Эта трансформация ставит под угрозу принципы автономии сторон, процессуальной нейтральности и доступа к правосудию, поскольку стороны из подсанкционных юрисдикций сталкиваются с трудностями в финансировании, представительстве и участии. Кроме того, тенденция к национализации ослабляет возможность принудительного исполнения арбитражных решений, тем самым дестабилизируя надежность арбитража как механизма разрешения споров. В заключение утверждается, что для обеспечения легитимности и функциональности международного арбитража в нестабильной геополитической обстановке необходимы институциональные реформы, в частности уточнение комплаенс-политики, гармонизация подходов к определению исключений из правовых режимов деятельности, связанной с арбитражем, усиление защиты от государственного вмешательства. В ином случае под воздействием экстерриториальных санкций и национальных интересов доверие к арбитражу может быть окончательно подорвано.

Ключевые слова: международный арбитраж, санкции, процессуальная целостность, экстерриториальность, юридическое представительство, национализация разрешения споров, доступ к правосудию, пакет санкций ЕС

Для цитирования: Чоботова А. К., Холматов Д. Д. Влияние санкций на процессуальные аспекты арбитража. *Журнал ВШЭ по международному праву / HSE University Journal of International Law*. 2025. Том 3. № 4. С. 56–74.

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> *The effect of sanctions on international arbitration proceedings is a multifaceted issue which parties encounter with increasing frequency.*[1]
>
> P. Sandosham, T. Forge

Introduction

International arbitration has long been a cornerstone of cross-border dispute settlement as an alternative to national courts. Its legitimacy is based on the fundamental principles of party autonomy, procedural neutrality, and the

[1] Sandosham, P., & Forge, T. (2024, 8 July). The effect of Russian sanctions on international arbitration. Clifford Chance. https://www.cliffordchance.com/insights/resources/blogs/arbitration-insights/2024/07/effect-of-russian-sanctions-on-international-arbitration.html.

enforceability of arbitral awards. This system is founded on the assumption that commercial and investment disputes can be settled in a modified forum isolated from the volatile winds of geopolitics and the narrow interests of sovereign States. Over a long period of time, this has allowed global trade to flourish, providing a reliable, neutral conflict resolution mechanism.

However, the increasing use of complex unilateral sanctions regimes in recent years has begun to challenge this paradigm fundamentally. Previously, sanctions were narrowly focused financial instruments, but now they have turned into extensive legal instruments with deep extraterritorial coverage. The problem lies not so much in regulation as in the actual actions of participants in international arbitration. The situation is exacerbated by the growing influence of the public order of States, which increasingly impose prohibitions and restrictions. Such actions negatively affect international arbitration and reduce the level of trust in it among the potential participants.

This article argues that sanctions directly affect the procedural aspects of arbitration, including depriving the parties of access to the agreed form of justice. The main problem lies not only in the logistic differences, but also in the fundamental contradiction between the political logic of sanctions and the apolitical foundations of arbitration. The existing literature lists the symptoms of sanctions, such as blocking payments, recall of a lawyer, and jurisdictional conflicts, but it does not clearly articulate how these disparate issues collectively undermine the very procedural integrity that gives arbitration its value. A critical gap remains in summarising these issues to demonstrate that sanctions not only undermine arbitration, but also actively transform it into a process limited by the very geopolitical imperatives it was designed to overcome.

Thus, the purpose of this study is a systematic analysis of the multifaceted impact that modern sanctions have on the procedural framework of international arbitration. Due to their extraterritorial application, financial strangulation, and forced nationalisation, sanctions create a procedural asymmetry that systematically puts arbitration participants at a disadvantage. This undermines the basic principles of equality of arms and access to justice, transforming a neutral legal process into an extension of a political conflict. Further, the article will examine the mechanisms of this erosion in six key areas: the doctrine of extraterritoriality, financial barriers, restrictions on legal representation, nationalisation of dispute resolution at the initiative of the State, the deterrent effect on arbitration institutions and the consequences of the latest package of EU sanctions. That said, the article seeks to demonstrate that preserving the future of arbitration requires not only adaptive procedures, but also concerted efforts to restore its integrity from encroachments by geopolitical forces.

1. Exterritoriality of sanctions

Unilateral sanctions imposed by individual States or collectively, such as those imposed by the United States, the European Union, or the United Kingdom, do not form part of public international law (Claypoole, 2022, p. 1036). Their legal force and scope of application are determined solely by the domestic law of the jurisdiction applying the sanctions. As a result, the applicability of such measures varies significantly depending on the legal framework and approach to law enforcement in each State. In light of the differences in the jurisdiction of Western sanctions and the ongoing disputes over their extraterritorial application, it is important to clarify the categories of persons and activities that fall under the relevant regulatory regimes.

The principle of extraterritoriality[2] refers to the imposition of domestic legal obligations on foreign individuals or entities operating outside the sanctioning State's jurisdiction. This term made its appearance in public international law in 1927, with the *Lotus Affair*.[3] In the modern world, such expansive reach has created a legal and procedural minefield, often forcing third-party actors to comply with foreign policies under the threat of severe penalties.

The US represents the most prominent example of a State employing secondary sanctions — measures aimed not only at the sanctioned party but also at third-country nationals engaging with them. Under statutes such as the Section 5 of the CAATSA,[4] non-U.S. firms can be penalised for "significant" transactions with blacklisted entities, even if such interactions are legal in their own jurisdictions. These measures effectively force companies worldwide to conduct due diligence according to U.S. law, regardless of their nationality or place of operation. For example, the Chinese company *COSCO Shipping Tanker (Dalian) Co., Ltd.* was sanctioned for transporting Iranian crude oil which demonstrates how extraterritorial reach may paralyse legitimate international commerce.[5]

Sanctions which operate to prevent the provision of services to sanctioned entities may potentially prevent an arbitrator from acting or accepting payment in

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2 The terms 'extraterritoriality' and 'extraterritorial jurisdiction' refer to the competence of a State to make, apply and enforce rules of conduct in respect of persons, property or events beyond its territory. See Kamminga, M. (2020, September). Exterritoriality in *Max Planck Encyclopedias of International Law*. https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1040.

3 Named after the 1927 case between France and Turkey before the Permanent Court of International Justice (former ICC).

4 Countering America's Adversaries Through Sanctions Act, [Public Law 115–44].

5 Sanctions List Search. https://sanctionssearch.ofac.treas.gov/Details.aspx?id=27465.

an arbitration.[6] For instance, an arbitrator who is not a UK national must still adhere to the UK sanctions regulations if the arbitration is seated in London (Masumy & Ahuja, 2019).

The difficulty in classifying such measures as truly extraterritorial stems from the global interconnectedness of financial systems and commercial relationships. In many cases, what appears to be extraterritorial pressure is actually a reflection of risk-averse behaviour by intermediaries (banks, insurers, or law firms) who seek to avoid any exposure to sanctions enforcement mechanisms (Claypoole, 2022, p. 1038). These actors act autonomously but in alignment with the policy objectives of the sanctioning State, effectively globalising the enforcement footprint of national law. From a doctrinal perspective, international jurisprudence has not settled the legality of such spillover effects.[7]

In summary, sanctions that restrict State's own nationals from interacting with designated foreign actors do not inherently constitute extraterritorial regulation. However, the global consequences of such sanctions, amplified by private-sector compliance behaviour, can produce functional extraterritoriality that constrains the legal capacity of foreign persons. This emerging reality poses significant challenges to existing legal frameworks and calls for a reassessment of jurisdictional boundaries in the age of regulatory interdependence. Thus, while formally a question of legal theory, the extraterritorial nature of modern sanctions has tangible and regressive effects on arbitration practice. It transforms a delocalised and private legal process into one shaped and constrained by geopolitical imperatives, weakening confidence in the enforceability and procedural fairness of arbitral outcomes.

2. Difficulties with arbitration fees

The most immediate and tangible impact of sanctions manifests in the financial barriers that prevent parties from properly funding their arbitration proceedings. Access to justice — a cornerstone principle of international arbitration — becomes illusory when parties from sanctioned jurisdictions face insurmountable obstacles in making necessary payments.

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6 Impact of international sanctions on arbitral proceedings. https://www.nortonrosefulbright.com/fr-fr/knowledge/publications/92ca5faf/impact-of-international-sanctions-on-arbitral-proceedings.

7 See, for example, Council Regulation (EC) No. 2271/96, the preamble of which reads: "Whereas by their extra-territorial application such laws, regulations and other legislative instruments violate international law…".

Access to justice is unfeasible without the possibility of paying registration and arbitration fees, as these payments are a prerequisite for initiating and conducting arbitration proceedings.[8]

Despite the formal legal position under the EU and UK sanctions law that allows the provision of legal services to sanctioned Russian entities in contentious proceedings, practice reveals a conflicting reality. For example, Article 4(1)(b) of Council Regulation (EU) No. 269/2014[9] and Schedule 5, Part 1, Regulation 3 of the UK Russia (Sanctions) (EU Exit) Regulations 2019[10] specifically permit the unfreezing of assets to pay for reasonable legal fees in the context of litigation or arbitration. Furthermore, Recital 19 of Council Regulation (EU) 2022/1904 clarifies that the prohibition on "legal advisory services" does not apply to representation in legal, arbitral, or administrative proceedings. Nevertheless, if a party (especially from an authorised jurisdiction) faces the blocking of banking transactions, restrictions on currency conversion, or the refusal of financial institutions to make payments due to sanctions, it is effectively deprived of the right to defend its interests in international arbitration. Despite the formal exceptions provided for paying for legal services under the sanctions regimes,[11] in practice the parties face systemic restrictions due to a general ban on transactions with certain jurisdictions or individuals.[12] In an effort to minimise the risks of violating sanctions laws, financial institutions often refuse to make payments related to States under restrictions, even if such payments are aimed at covering arbitration costs and are formally authorised by the current regulation.[13] The situation is aggravated by overcompliance, when banks and payment systems voluntarily tighten internal verification procedures, which leads to blocking or significantly slowing down transaction processing. Even in cases where arbitration proceedings are conducted in a neutral State and are nominally not subject to restrictions, intermediate correspondent banks may block transfers at the stage of interbank interaction, citing potential sanctions risks.

At the same time, arbitration practice demonstrates that in some cases considerations of access to justice and the principle of due process mitigate the effect of sanctions restrictions. A striking example is the granting of general

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8 The Costs of Arbitration. https://www.acerislaw.com/the-costs-of-arbitration/.

9 Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

10 *The Russia (Sanctions) (EU Exit) Regulations 2019*, SI 2019/855, Schedule 5, Paragraph 3. https://www.legislation.gov.uk/uksi/2019/855/schedule/5/paragraph/3.

11 State-Owned Enterprises Related Provision: Article 5aa OF COUNCIL REGULATION 833/2014.

12 Kamenskaya, R. (2024, 12 November). *How sanctions are changing international arbitration involving Russian parties* (in Russian). Право.Ru. https://pravo.ru/story/256107/.

13 Ibid.

licenses to the LCIA.[14] This license creates a legal "corridor", directly allowing the institute to accept from the sanctioned parties the payments necessary for conducting arbitration: fees, expert fees and other costs. In fact, arbitration centers receive a special status that partially takes their activities beyond the general financial constraints.

Thus, while sanctions are not imposed with the direct aim of disrupting arbitration, their collateral impact on payment systems, service provision, and institutional engagement has far-reaching implications. They introduce procedural asymmetries that favour non-sanctioned parties, distort the playing field, and ultimately compromise the legitimacy of arbitration as a neutral forum for dispute resolution.

3. Challenges to legal representation

Sanctions imposed on certain States and entities have significantly hindered their ability to secure legal representation in international arbitration proceedings. Legal professionals often face complex regulatory environments, reputational risks, and practical obstacles when considering representation of sanctioned parties, leading to a reluctance or outright refusal to provide legal services.

A notable example is the EU's ban on legal services, upheld by the General Court of the EU in October 2024.[15] This ruling confirmed the prohibition on providing legal advice to Russian entities and individuals, except in cases directly linked to judicial proceedings. The court's decision emphasised that legal advice not connected to such proceedings remains restricted, thereby limiting the scope of permissible legal services to sanctioned parties. In the United Kingdom, the impact of sanctions has been particularly pronounced. A report highlighted that only 30% of Russian litigants engaged legal representation in London commercial courts, a significant decline from previous years. Another example is how the OFSI in the UK fined the law firm *Herbert Smith Freehills* £465,000 for breaching anti-Russian sanctions.[16] The firm's Moscow office had made payments to sanctioned Russian banks,

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[14] General licence – London Court of International Arbitration (LCIA) Arbitration Costs (INT/2022/1552576).

[15] Corsoni-Housein, A., Molloy, V., Mantrali, E., & Lanitis, A. (2024, 7 October). European Court confirms validity of legal services ban on Russian entities. *Harneys.* https://www.harneys.com/our-blogs/regulatory/european-court-confirms-validity-of-legal-services-ban-on-russian-entities/.

[16] Davis, R. (2025, March 20). Elite London law firm fined £465,000 for Russian sanctions breaches. *The Guardian*. https://www.theguardian.com/law/2025/mar/20/elite-london-law-firm-fined-465000-for-russian-sanctions-breaches.

demonstrating the complexities and risks law firms face in ensuring compliance with sanctions regimes.

A notable illustration of how sanctions can impair procedural rights is the case of *C. Thywissen GmbH v. JSC Novosibirskhleboproduct*, heard by the FOSFA (Federation of Oils, Seeds and Fats Associations). During the enforcement phase of an arbitral award, the Russian respondent referred to the inability to exercise the right to receive legal aid in the UK due to the inability of Russian participants in the proceedings to pay the necessary litigation fees and representative services. This was because foreign banks rejected payments related to the Russian Federation, which deprived the company of the opportunity to exercise its procedural rights when considering the case in the FOSFA Arbitration.[17]

The detrimental effects of sanctions on legal representation constitute one of the most pernicious challenges facing international arbitration. Numerous legal practitioners and firms have explicitly refused to represent parties from sanctioned jurisdictions, creating a crisis of access to qualified counsel that fundamentally undermines the principle of equality of arms in arbitral proceedings. The pattern of counsel withdrawal is evident across multiple jurisdictions and practice areas. Following the implementation of comprehensive sanctions against Russia in 2022, several prominent international law firms publicly announced their withdrawal from representing Russian State entities and companies. *Allen & Overy* and *Linklaters*, inter alia, terminated existing client relationships and refused new mandates involving Russian parties, citing reputational risks and compliance concerns.[18]

The fear of regulatory prosecution has proven particularly powerful in deterring legal representation. The Council Decision (CFSP) 2022/1909 explicitly prohibits the provision of legal advisory services related to the EU sanctions measures, creating significant uncertainty regarding what constitutes permissible legal assistance.[19] This regulatory ambiguity has led firms to adopt overly conservative interpretations, refusing even arbitration-related representation that might technically fall within permitted exceptions. The lack of clear guidance from regulatory authorities exacerbates this problem, with

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17 *C. Thywissen GmbH v. JSC Novosibirskhleboproduct*, Judgment of the Supreme Court of the Russian Federation, Case No. A45-19015/2023 of 26 July 2024.

18 Rigby, B., & Malpas, J. (2022, March 2). Allen & Overy pledges to refuse new Russia-related instructions. *The Global Legal Post.* https://www.globallegalpost.com/news/allen-overy-pledges-to-refuse-new-russia-related-instructions-331156742; see also*:* Booth, J. (2022, March 2). Linklaters shifts to condemn Russia over Ukraine, Allen & Overy breaks silence. *Financial News.* https://www.fnlondon.com/articles/linklaters-shifts-to-condemn-russia-over-ukraine-allen-overy-breaks-silence-20220302.

19 COUNCIL DECISION (CFSP) 2022/1909 of 6 October 2022.

OFAC's general licenses providing limited clarity on what legal services remain permissible under U.S. sanctions. Beyond regulatory fears, reputational considerations have prompted many firms to distance themselves from sanctioned clients.

A striking illustration of how sanctions may create artificial procedural obstacles can be found in the case of *Navigator Equities Ltd v. Oleg Deripaska*, heard before the High Court of England.[20] Following his designation in the U.S. Specially Designated Nationals list, Mr. Deripaska faced substantial difficulties in obtaining timely legal representation in the United Kingdom. As a result, a Worldwide Freezing Order was issued against him, allegedly without adequate opportunity to defend himself. While his legal team eventually secured the necessary U.S. licenses to continue acting on his behalf, the initial delay underscores a critical procedural gap: sanctioned individuals may be deprived of their right to legal protection not through a formal denial of access to justice, but due to the cumulative effect of financial and regulatory constraints.[21]

4. Nationalisation of dispute resolution and denial of the right to arbitration

In recent years, the growing trend towards nationalisation in international dispute resolution has signalled a stronger assertion of State control over arbitration, particularly in jurisdictions affected by international sanctions. Government intervention frequently undermines the enforceability of arbitral awards, calling into question the fundamental principle of party autonomy. As sanctions restrict access to financial systems and foster hostility towards neutral arbitral mechanisms, procedural integrity is weakened, casting doubt on both impartiality and efficiency. Such conditions deter parties from selecting arbitration, especially when sanctions hinder the organisation of hearings or financial transactions necessary for proceedings. Consequently, the neutrality and reliability of arbitration in cross-border disputes are undermined, discouraging international commercial engagement with States where sovereign interests override arbitral independence (Paulsson, 1981, p. 360). When States adopt protectionist measures to control dispute resolution, particularly in

[20] Mr. Deripaska stated in *Deripaska v. United States Department of the Treasury case* filings that “in a recent action before an English court, [he] was unable to retain legal counsel in time to prevent the imposition of a Worldwide Freezing Order (‘WFO’) against him.” While the exact case is not named, legal commentators and subsequent references indicate that he was likely referring to *Navigator Equities Ltd & Vladimir Chernukhin v. Oleg Deripaska*, Case No: CA-2023-000833, before the High Court of England and Wales.

[21] *Deripaska v. United States Department of the Treasury* (1:19-cv-00727), COMPLAINT for Declaratory and Injunctive Relief against All Defendants (Filing fee $ 400 receipt number 0090-6003249) filed by OLEG DERIPASKA, para. 46.

the context of sanctions, the procedural fairness and neutrality of arbitration are significantly compromised.

In seeking to assert greater control over arbitral proceedings, States may introduce measures that restrict or even prevent the enforcement of arbitral awards. In some instances, they may go further still, with national courts declining to recognise foreign arbitration clauses altogether. This makes the arbitration process less reliable and, in some cases, inaccessible to foreign claimants. An example of such measures can be the so-called Lugovoy Law,[22] which has been incorporated into Russian legislation and is aimed at ensuring the right of Russian parties under sanctions to a fair trial. The Lugovoy Law refers to amendments introduced into the Arbitration Procedure Code of the Russian Federation, which establish the exclusive jurisdiction of Russian arbitration courts over disputes involving individuals or entities subject to restrictive measures, commonly known as sanctions.[23] Articles 248.1 and 248.2 were added to the Code, which prohibit initiating or continuing such cases in foreign courts and allow sanctioned parties to transfer their cases to Russian arbitration courts. This legislation was introduced in response to Western sanctions and is intended to protect the interests of Russian companies and individuals from foreign judicial authorities, though it raises concerns about the international recognition of Russian court decisions. The Russian Constitutional Court affirmed the law's constitutionality, emphasising its legitimacy amid sanction pressures.[24]

Despite its protective aims, the law has faced criticism for potentially limiting the parties' autonomy and complicating international commercial relations, as many foreign courts and arbitration bodies do not acknowledge its provisions. In response, the European Union introduced measures to counter Russian claims, highlighting the jurisdictional tensions. Overall, while the Lugovoy Law serves as a jurisdictional safeguard under sanctions, it simultaneously introduces risks regarding the global enforcement and acceptance of Russian judicial and arbitral decisions. A notable precedent, as pointed out by

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[22] Federal Law on amendments to the Arbitration Procedure Code of the Russian Federation to protect the rights of individuals and legal entities in connection with restrictive measures imposed by a foreign State, State association, and/or union, or foreign State or State (intergovernmental) institution of a foreign State or State association and/or union, No. 171-FZ of 8 June 2020 (latest edition).

[23] See Sultanov. S., Gritsuk, A., Ibragimova, D., & Loukoianova, M. (2025, July 30). *The Lugovoy law metamorphosis: The Russian Constitutional Court declined the request but partly aligned with the amicus curiae briefs*. Wolters Kluwer Arbitration Blog. https://legalblogs.wolterskluwer.com/arbitration-blog/the-lugovoy-law-metamorphosis-the-russian-constitutional-court-declined-the-request-but-partly-aligned-with-the-amicus-curiae-briefs/.

[24] Moody, S. (2025, 28 March). Russia's Lugovoy law faces constitutional challenge. *Global Arbitration Review*. https://globalarbitrationreview.com/article/russias-lugovoy-law-faces-constitutional-challenge.

S. Sultanov, is the dispute involving the sanctioned company *Uraltransmash* and the Polish firm *PESA Bydgoszcz*,[25] stemming from a tram carriage manufacturing contract.[26] In 2021, the Supreme Court ruled that sanctions themselves impede access to justice for the company, as a unilateral declaration by the sanctioned party is sufficient to transfer the dispute to Russian jurisdiction, without the necessity to prove specific difficulties. Since then, courts, including the Supreme Court, have consistently reiterated this ruling.[27]

Moreover, as many legal experts have pointed out, the current official practice of applying the Lugovoy Law is highly inconsistent due to varying factual circumstances in cases, resulting in contradictory interpretations and a lack of a uniform approach. A pertinent example is the case of *NS Bank versus Lukoil*,[28] which, while following the general trend of judicial practice, is unique due to its specific facts. This case deals with non-payment of coupon income on eurobonds because of Western sanctions. Although the contract stipulates that disputes should be resolved by the LCIA, NS Bank applied to Russian courts, which initially refused to accept the case.[29]

The Supreme Court overturned these decisions and sent the matter back for reconsideration. The Court emphasised that recognising the legality of anti-Russian sanctions in unfriendly States could undermine the impartiality of the dispute, contradicting the principles of independence and equality of the parties. Nonetheless, this case differs from others in the absence of sanctions directly against the parties involved and because both the claimant and defendant are Russian entities.[30] As S. Sultanov notes, Russian nationals or entities may face a double-edged sword when seeking to resolve disputes with foreign parties.[31] On the one hand, they are subject to domestic laws that favour national interests and restrict their ability to engage in arbitration or comply with international rulings. On the other hand, they may find themselves excluded from neutral, impartial dispute resolution mechanisms, thus limiting their options for resolving cross-border conflicts and potentially discouraging international commercial activity with foreign counterparts (Bédard & Hussein, 2024).

Anti-suit injunctions are commonly employed in cross-border disputes to enforce arbitration agreements when one party attempts to bypass the agreed

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25 Russian Supreme Court. (2021, December 2). Uraltransmash v. PESA Bydgoszcz, case No. A60-36897/2020. Supreme Court of the Russian Federation

26 The Supreme Court clarified the interpretation of the Lugovoy law. (2024, December 3). *KIAP*. https://kiaplaw.ru/press-centr/public/63012.html.

27 Ibid.

28 *NS Bank v. Lukoil*, case No. A40-214726/2023. Decision of the Supreme Court of the Russian Federation of 28 November 2024.

29 Ibid.

30 Ibid.

31 See The Supreme Court clarified the interpretation of the Lugovoy law. (2024, December 3). *KIAP*. https://kiaplaw.ru/press-centr/public/63012.html.

forum by initiating proceedings elsewhere (Lévy, 2005, p. 129). Typically issued by courts at the seat of arbitration, these injunctions reinforce party autonomy by restraining litigation in foreign jurisdictions that threatens the efficacy of the original agreement (Lévy, 2005, p. 126). However, their use often provokes jurisdictional conflict, especially where the restrained forum considers itself competent or rejects the issuing court's authority. Enforcement challenges particularly arise in States unwilling to recognise foreign injunctions due to sovereignty or public policy concerns. While intended to protect arbitration, such measures can restrict access to justice, especially for parties already constrained by sanctions. Procedural delays, increased legal costs, and difficulties in evidence preservation may follow, undermining both the fairness and efficiency of arbitration and leaving the enjoined party with limited recourse for resolving the dispute (Fisher, 2010).

Recent case studies have revealed the procedural consequences of anti-suit injunctions in disputes involving sanctioned States, particularly where conflicting legal regimes collide. In disputes arising from the extraterritorial application of U.S. sanctions connected to the Iran nuclear deal, European courts issued injunctions restraining parties from pursuing claims that would, in effect, give indirect force to U.S. sanctions in contravention of EU law.[32] These interventions obliged sanctioned entities to reconsider their dispute resolution strategies, prolonged proceedings, and increased litigation costs. In certain instances, parties anticipating neutral arbitration found themselves unable to proceed without risking breaches of national or international sanctions, thereby undermining the enforceability of arbitration agreements.

The denial or manipulation of arbitration to serve national interests, particularly through sanctions and restrictive domestic legislation, undermines the neutrality, enforceability, and procedural fairness that have long defined international arbitration in trade and investment. Such measures compel foreign parties into domestic legal systems lacking transparency or impartiality. This often results in coerced settlements, procedural delays, increased costs, and limited access to unbiased adjudication. When States unilaterally alter or nullify arbitration agreements, they erode party autonomy and deter cross-border commerce by casting doubt on the reliability of arbitration clauses. This growing nationalisation threatens to fragment the international arbitration framework, shifting dispute resolution towards politicised, State-centric models (Polanco & Arp, 2022). To preserve the integrity of arbitration, reforms must reinforce

[32] Dehshiri, A. (2023, July 19). Sanctions on Iran also limit its access to international dispute resolution mechanisms. *Stimson Center*. https://www.stimson.org/2023/sanctions-on-iran-also-limit-its-access-to-international-dispute-resolution-mechanisms/.

arbitral neutrality, restrict the misuse of anti-suit injunctions, and establish robust international safeguards against State interference. This must be supported by clearer legal frameworks and strengthened cooperation through international institutions.

Thus, the indirect coercion exerted by sanctions, combined with the procedural hurdles they create, can result in the erosion of fair dispute resolution standards, where the interests of justice are subordinated to the realities of political and economic power. By effectively removing the procedural right to arbitration, sanctions compromise the ability of the parties to assert their legal rights is severely compromised, leading them to settle for terms that are neither just nor equitable.

5. The chilling effect on arbitral institutions: procedural constraints under sanctions

Arbitral institutions, entrusted with safeguarding efficient and impartial dispute resolution, are facing mounting procedural and operational challenges as a result of the extraterritorial application of sanctions. Measures directed against particular States, entities, or individuals often conflict with the neutral and flexible character of arbitration, generating obstacles that strike at the heart of its procedure: (i) the payment of arbitral fees, (ii) the appointment of arbitrators, and (iii) the participation of witnesses and experts. Asset freezes may prevent sanctioned parties from accessing the funds required to meet arbitration costs or legal fees, with the result that proceedings are delayed or even brought to a standstill. Likewise, trade restrictions can obstruct access to essential evidence or expert testimony, thereby curtailing a party's ability to participate effectively.

The intersection of sanctions with national laws poses significant procedural and operational challenges for arbitral institutions, which are caught between compliance obligations and their duty to uphold neutrality. Financial restrictions imposed by sanctioning jurisdictions, such as the U.S. or EU,[33] often prohibit the transfer of funds to or from sanctioned entities, directly impeding arbitral institutions' ability to process payments, accept deposits, or provide administrative support. Even when not directly targeted, institutions face indirect barriers, as banks and payment processors may refuse transactions involving sanctioned parties, resulting in delays, suspension, or cancellation of proceedings. If arbitral institutions are based in sanctioning jurisdictions,

[33] See Mezrahi, E. (2022, June 13). Impact of international sanctions on arbitral proceedings. *Norton Rose Fulbright*. https://www.nortonrosefulbright.com/de-de/inside-turkiye/blog/2022/06/impact-of-international-sanctions-on-arbitral-proceedings.

domestic laws may prevent them from administering cases involving sanctioned individuals or entities, regardless of the parties' agreement to arbitrate (Kleiner & Le Goff, 2022). This compromises the institution's capacity to function impartially and may deprive affected parties of meaningful access to arbitration. In extreme cases, sanctions render compliance with procedural requirements impossible, leading to the denial of arbitration altogether and undermining the foundational principles of neutrality, party autonomy, and procedural fairness (Shahrokhi & Kazemi, 2021).

In response to sanctions-related challenges, arbitral institutions have adapted their procedures to comply with legal restrictions while upholding the core principles of arbitration: fairness, neutrality, and efficiency.[34] A key measure has been the modification of payment systems, often involving intermediaries or third-party financial institutions to facilitate fee transfers when direct transactions are blocked by sanctions (Dumas, 1911, pp. 934–957). While this approach seeks to ensure compliance without halting proceedings, it introduces complexities such as the need for rigorous due diligence to avoid sanctioned intermediaries and potential delays from routing payments through multiple channels. Additionally, sanctions targeting specific financial institutions or jurisdictions may reduce the availability of suitable intermediaries, further complicating the administration of arbitration and placing procedural burdens on both parties and institutions.

In addition to adapting payment systems, arbitral institutions have increasingly turned to virtual hearings and electronic communications to mitigate the impact of sanctions on arbitration (Łągiewska & Bhatia, 2024, p. 822). Virtual hearings allow parties, counsel, and arbitrators to participate remotely, circumventing travel bans and logistical obstacles while reducing delays or cancellations caused by sanctions. However, this reliance on technology presents challenges, including dependence on stable and secure communication platforms, which may be restricted in certain jurisdictions, and concerns about the diminished quality of witness testimony and the tribunal's ability to fully engage with evidence and parties without physical presence (Ferreira & Gromova, 2023, p. 30). Despite these limitations, institutions have broadly embraced electronic means for document exchange, submissions, and pre-hearing conferences, helping to maintain procedural continuity and efficiency despite restrictions on the physical movement of documents and

[34] For example, the Russian Arbitration Association (RAA) Working Group on the preparation of the Protocol for Effective Arbitration in the context of unilateral sanctions (Anti-Sanctions Arbitration Protocol, ASAP) has presented several Surveys, Protocols and recommendations. See e.g. Arbitration Association. Analysis of sanction's impact on Russian arbitration. Arbitration.ru. https://arbitration.ru/en/arbitration-association/working-groups/analysis-of-sanction-s-impact-on-russian-arbitration/.

evidence (Proskurina, 2023, p. 155). This shift streamlines proceedings and reduces delays caused by traditional methods, particularly significant in sanctioning jurisdictions like the U.S. and EU, where compliance with national laws and extraterritorial sanctions risks undermining the perceived neutrality of arbitration (Scherer, 2020).

Arbitral institutions have sought to safeguard procedural integrity amid sanctions by issuing clear policies that balance compliance with neutrality. These guidelines cover the identification of sanctioned parties, the verification of funding sources, and the resolution of payment difficulties caused by sanctions. This fosters transparency and fairness while making parties aware of necessary procedural adjustments. A striking illustration of this can be seen in the continuing difficulties faced by Iranian entities subject to U.S. sanctions, whose participation in arbitration is often obstructed by asset freezes and financial restrictions. This has created significant challenges for arbitral institutions, notably the International Chamber of Commerce (ICC), which has been required to devise practical means of facilitating proceedings in the face of such constraints.[35] One practical solution that emerged was the use of intermediary financial institutions to process arbitration costs, fees, and deposit payments on behalf of sanctioned parties. Although this approach allowed proceedings to continue, it also gave rise to complications, notably delays and increased scrutiny of financial transactions.[36] However, the arbitral institution is still indentured by the international, EU and US sanctions:

> ICC is bound to operate in conformity with applicable sanctions regulations, such as those imposed by the United Nations, European Union and Office of Foreign Assets Control.[37]

The increasing impact of Western sanctions is prompting those affected to seek arbitration outside of traditional Western institutions, favouring non-Western centres in Asia, the Middle East, and elsewhere that offer more

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[35] World Bank Group. (2010, 19 November). International Centre for Settlement of Investment Disputes. ICC guidelines on agents, intermediaries and other third parties. Document 195-11 Rev2 Final EN VS/zse. https://icsid.worldbank.org/sites/default/files/parties_publications/C3765/Respondent%27s%20Counter-Memorial/Pièces%20juridiques/RL-0051.pdf.

[36] It is also mentioned in "Note to Parties and Arbitral Tribunals on ICC Compliance." See International Chamber of Commerce. (2025, October 10). Note to parties and arbitral tribunals on ICC compliance. https://iccwbo.org/wp-content/uploads/sites/3/2017/11/note-to-parties-and-arbitral-tribunals-on-icc-compliance-english.pdf.

[37] International Chamber of Commerce. Costs and payment. ICC Dispute Resolution. https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/costs-and-payment/.

politically neutral forums less affected by such sanctions.[38] This trend challenges the dominance of well-established bodies like the ICC, LCIA, and ICSID, potentially decentralising international arbitration as alternative institutions gain prominence by providing more stable environments free from geopolitical pressures. While the future interplay between sanctions and arbitration is uncertain, ongoing legal developments and efforts towards harmonising sanction regimes may ease procedural difficulties.

Conclusion

The procedural integrity of international arbitration, once celebrated for its neutrality, flexibility, and detachment from sovereign interference, is now under unprecedented strain due to the rise of sanctions and counter-sanctions. This research has demonstrated that while sanctions regimes are primarily tools of foreign policy, their extraterritorial reach and collateral consequences have begun to reshape the core mechanisms of arbitral practice. Legal theory and institutional doctrine have not yet fully adapted to this transformation. Formally, the foundational principles of arbitration (e.g. party autonomy, procedural equality, and enforceability) remain intact. In practice, however, these principles are being steadily eroded by legal uncertainty, financial constraints, and political fragmentation.

Sanctions impair arbitration at every procedural stage. They limit access to legal representation, obstruct financial transactions required for arbitral proceedings, and encourage overcompliance behaviors that prevent institutions, arbitrators, and service providers from engaging with sanctioned parties. Even when formal exceptions are available under the EU, UK, or U.S. sanctions regimes, the reluctance of private intermediaries to engage with sanctioned individuals or entities renders these exceptions largely ineffective. Moreover, State-driven countermeasures further politicise dispute resolution, resulting in national courts asserting jurisdiction in violation of valid arbitration agreements. This not only jeopardises enforcement, but also deters investors from relying on arbitration in high-risk jurisdictions.

In simple terms, the legal community must now answer a key question: can international arbitration maintain its legitimacy and functionality in a world where the boundaries between law and geopolitics are becoming increasingly blurred? To preserve its fundamental promises, the system must adapt. This requires

[38] This trend could be seen in the “2022 Russian Arbitration Association survey on sanctions and arbitration.” See Russian Arbitration Association. (2022). 2022 Russian Arbitration Association survey on sanctions and arbitration. https://events.arbitration.ru/upload/medialibrary/319/rwbwb3rdjvkywize5jo5e6nu12t8c6it/RAA-2022-Study-on-sanctions_eng.pdf.

greater institutional clarity, harmonised exemptions for legal services and arbitration proceedings, and coordinated guidance on the application of sanctions in enforcement proceedings are urgently needed. Without such reforms, arbitration risks becoming a legal formality without practical substance — accessible in theory, but inaccessible in practice.

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