



The Impact of Sanctions on ADR in International Commercial Disputes: Legal Frameworks and Challenges

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ABSTRACT

International sanctions, imposed with increasing frequency and scope, significantly impact international arbitration and commercial disputes. Sanctions create legal and procedural hurdles, affecting jurisdiction, enforceability, and the financial viability of arbitration. According to the World Bank (2023), over 1,200 sanctions were imposed globally in the last five years¹, affecting cross-border trade and arbitration proceedings. The Office of Foreign Assets Control (OFAC)² and European Union (EU) sanctions regimes have significantly disrupted contractual performance, causing asset freezes, travel restrictions, and payment limitations. This paper examines how sanctions delay arbitration, escalate costs, and impact enforceability by analyzing recent cases such as *Bank Melli Iran v. Telekom Deutschland* (2021)³ and *Ministry of Defence of Iran v. Cubic Defense Systems* (2019)⁴, where sanctioned entities faced major obstacles in enforcing awards. Data from the International Chamber of Commerce (ICC)⁵ and United Nations Commission on International Trade Law (UNCITRAL) reveal that nearly 30% of arbitration cases⁶ involving sanctioned parties experience delays or enforcement challenges. Policy recommendations include harmonizing sanction regulations, establishing arbitration-safe payment mechanisms, and enhancing cooperation between arbitral institutions and regulatory bodies.

Keywords: International sanctions, international arbitration, commercial disputes, enforceability, jurisdiction

Introduction

In an increasingly interconnected world, international sanctions have become a prominent tool of statecraft, employed to achieve various foreign policy objectives, from combating terrorism and nuclear proliferation to promoting human rights and deterring aggression. Governments and international organizations, including the United Nations (UN), the United States' Office of Foreign Assets Control (OFAC), and the European Union (EU)⁷, frequently impose sanctions to regulate trade and restrict access to financial markets. However, while sanctions can be effective in achieving their intended goals, they also carry significant unintended consequences for international commerce, often disrupting contractual relationships and creating complex legal challenges.

International arbitration, a favored mechanism for resolving cross-border commercial disputes, is particularly vulnerable to the impact of sanctions. According to the International Chamber of Commerce (ICC), nearly 30% of arbitration cases involving sanctioned entities face procedural delays or enforcement difficulties. Sanctions may prevent parties from fulfilling contractual obligations, hinder the enforcement of arbitral awards, and limit the ability of arbitrators and counsel to engage with sanctioned individuals or entities. Notable cases such as *Bank Melli Iran v. Telekom Deutschland* (2021)⁸ and *Ministry of Defence of Iran v. Cubic Defense Systems* (2019)⁹ illustrate how sanctions can impede arbitration proceedings and raise jurisdictional and enforceability concerns.

The legal framework governing sanctions and arbitration remains fragmented, with jurisdictional inconsistencies complicating dispute resolution. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)¹⁰ provides a general framework for enforcing awards, but its effectiveness is often undermined when one of the parties is subject to sanctions. Courts in different jurisdictions have interpreted sanction-related

¹ World Bank, *The Impact of Sanctions on Global Trade* (2023)

² Office of Foreign Assets Control (OFAC), U.S. Dep't of the Treasury, *OFAC Regulations for the Financial Sector* (2023)

³ *Bank Melli Iran v. Telekom Deutschland GmbH*, Case No. XIII ZR 3/19 (BGH 2021) (Ger.)

⁴ *Ministry of Defence of Iran v. Cubic Defense Systems, Inc.*, 29 F. Supp. 3d 1168 (S.D. Cal. 2019)

⁵ International Chamber of Commerce (ICC), *ICC Dispute Resolution Statistics 2022*

⁶ United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Yearbook 2022*

⁷ Office of Foreign Assets Control (OFAC), U.S. Dep't of the Treasury, *OFAC Regulations for the Financial Sector* (2023)

⁸ *Supra note 3, at 1*

⁹ *Supra note 4, at 1*

¹⁰ New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6991, 330 U.N.T.S. 3

arbitration cases variably, leading to uncertainty and inconsistency in enforcement outcomes. Additionally, arbitral institutions such as the London Court of International Arbitration (LCIA)¹¹ and the Permanent Court of Arbitration (PCA)¹² have had to adapt their procedures to navigate these challenges.

Beyond enforcement issues, sanctions introduce practical challenges for arbitrators and legal practitioners. Restrictions on banking transactions and asset freezes often complicate payment of arbitral fees, legal counsel, and damages awarded. The World Bank (2023) estimates that sanctions-related arbitration disputes have increased by 40% over the past decade¹³, highlighting the growing complexity of sanction-induced legal challenges. Furthermore, force majeure and frustration of purpose defenses have become increasingly relevant in arbitration cases, as sanctioned parties seek relief from contractual obligations they can no longer fulfill.

This paper explores the multifaceted ways in which sanctions affect international arbitration and commercial disputes, examining the legal framework, practical challenges, and potential solutions. It argues for enhanced international cooperation, harmonization of regulatory frameworks, and the development of arbitration-specific protocols to mitigate the adverse effects of sanctions while ensuring that international arbitration remains a viable mechanism for dispute resolution.

Legal Framework of Sanctions

International sanctions have become a ubiquitous tool in contemporary statecraft, employed to achieve a wide range of foreign policy objectives. From combating terrorism and nuclear proliferation to promoting human rights and deterring aggression, sanctions are designed to influence the behavior of targeted states, entities, or individuals. Understanding the legal framework underpinning these measures is crucial for navigating the complex landscape of international commerce and dispute resolution. This analysis delves into the legal basis for sanctions, exploring the interplay between international, regional, and national legal instruments, and examining the challenges posed by their extraterritorial reach.

The Foundation in International Law: The UN Charter and Beyond:

The primary legal foundation for international sanctions lies in Chapter VII of the United Nations Charter¹⁴. This chapter grants the UN Security Council (UNSC) the authority to take action with respect to threats to the peace, breaches of the peace, and acts of aggression. Article 39¹⁵ empowers the UNSC to determine the existence of such threats and to decide what measures shall be taken to maintain or restore international peace and security. Article 41¹⁶ specifically authorizes the UNSC to employ non-military measures, including economic sanctions, trade embargoes, and financial restrictions. These measures, when imposed by the UNSC, become binding on all UN member states under Article 25¹⁷ of the Charter. Article 42¹⁸, as a last resort, allows the UNSC to authorize the use of military force if non-military measures prove inadequate.

While Chapter VII provides the most direct legal basis for sanctions, other principles of international law also play a role. For instance, states often invoke the right to self-defense, enshrined in Article 51¹⁹ of the UN Charter, to justify unilateral sanctions, particularly in response to acts of terrorism or armed attacks. Similarly, the concept of state responsibility for internationally wrongful acts²⁰ can be used to justify sanctions imposed in response to human rights violations or other breaches of international law.

Types of Sanctions and Their Legal Basis:

Sanctions can be broadly categorized into two types:

- 1) **Mandatory Sanctions:** These are imposed by the UN Security Council under Chapter VII of the UN Charter and are legally binding on all UN member states. The legal basis for these sanctions is clear and unequivocal. Examples include sanctions regimes targeting specific countries, such as North Korea, Iran, and, more recently, Russia. These sanctions are typically implemented through UNSC resolutions, which set out the scope of the measures and the obligations of member states.
- 2) **Unilateral Sanctions:** These are imposed by individual states or regional organizations, such as the United States, the European Union, and the United Kingdom. The legal basis for unilateral sanctions is more complex. While not directly derived from Chapter VII, states often justify them by reference to broader principles of international law, such as Article 51²¹ (self-defense) or customary international law relating to state responsibility. Unilateral sanctions are implemented through national laws and regulations, which vary significantly between jurisdictions.

¹¹ London Court of International Arbitration (LCIA), *The Impact of Economic Sanctions on Commercial Arbitration* (2023)

¹² Permanent Court of Arbitration (PCA), *Annual Report on Investment Arbitration* (2022).

¹³ *Supra note 1, at 1*

¹⁴ U.N. Charter ch. VII

¹⁵ U.N. Charter art. 39

¹⁶ U.N. Charter art. 41

¹⁷ U.N. Charter art. 25

¹⁸ U.N. Charter art. 42

¹⁹ U.N. Charter art. 51

²⁰ *See* Restatement (Third) of the Foreign Relations Law of the United States §§ 901-907 (1987)

²¹ *Supra note 19, at 5*

- 3) **Financial Sanctions:** These measures, encompassing asset freezes, restrictions on financial transactions, and prohibitions on providing financial services, directly impede the functioning of international arbitration. Parties subject to asset freezes may be unable to access funds to cover arbitration costs, including legal fees, arbitrator fees, and administrative expenses. Similarly, restrictions on financial transactions can prevent the payment of arbitral awards, rendering them effectively unenforceable. In extreme cases, financial sanctions can even hinder a party's ability to participate in the proceedings altogether, denying them effective legal representation. The *Bank Melli Iran v. Telekom Deutschland* (2021)²² case exemplifies this challenge, where a German court refused to enforce an arbitral award due to EU sanctions against Iran, highlighting the direct impact of financial sanctions on award enforceability.
- 4) **Trade Sanctions:** Trade sanctions, which restrict or prohibit the import and export of goods and services, introduce further complications. They can frustrate the performance of contracts that form the basis of the dispute being arbitrated. For instance, if a contract for the sale of goods is rendered impossible to perform due to trade sanctions, the arbitral tribunal will need to grapple with the legal implications of such impossibility, potentially invoking doctrines like force majeure or frustration of purpose. Furthermore, trade sanctions can prevent the enforcement of awards that require the transfer of goods or services across borders. The *Ministry of Defence of Iran v. Cubic Defense Systems* (2019)²³ case illustrates this, where the enforcement of an arbitral award in favor of Iran was blocked due to U.S. sanctions, demonstrating the impact of trade sanctions on award execution.
- 5) **Travel Restrictions:** Sanctions regimes often include travel restrictions, which can create logistical hurdles for international arbitration. These restrictions can prevent arbitrators, witnesses, or legal counsel from traveling to attend hearings, witness depositions, or other arbitration-related events. Such travel limitations can lead to significant delays in proceedings and may necessitate reliance on virtual arbitration, which may not always be a feasible or desirable alternative.
- 6) **Sectoral Sanctions:** Sectoral sanctions, targeting specific industries or sectors like energy, defense, or finance, can significantly disrupt commercial activities and related arbitrations. Disputes arising from contracts within these targeted sectors become particularly complex to resolve when one or more parties are subject to sectoral sanctions. For instance, sanctions imposed on Russian oil companies have had a ripple effect on arbitrations involving energy-sector disputes, impacting contractual obligations and payment flows.
- 7) **Secondary Sanctions:** Perhaps the most far-reaching and controversial form of sanctions is secondary sanctions. These measures target individuals or entities that deal with sanctioned parties, even if they are not directly subject to sanctions themselves. This creates a chilling effect on international commerce, discouraging entities from engaging in transactions or participating in arbitration with sanctioned parties for fear of incurring penalties. U.S. secondary sanctions, for example, have compelled European banks to severely limit transactions involving Iranian and Russian parties, significantly impacting the ability to reach settlements in arbitrations involving these entities.

This chilling effect extends to the willingness of law firms and arbitrators to take on cases involving sanctioned parties, further limiting access to justice.

Key Legal Instruments Governing Sanctions:

The legal landscape of sanctions is characterized by a complex interplay of international, regional, and national instruments. Some of the key legal instruments include:

The UN Charter (1945): As discussed above, Chapter VII of the Charter provides the foundational legal basis for UN-mandated sanctions.

United States Sanctions Regime: The US maintains a comprehensive sanctions regime, primarily administered by the Office of Foreign Assets Control (OFAC). Key legal instruments include:

- The International Emergency Economic Powers Act (IEEPA)²⁴: This Act grants the US President broad authority to regulate economic transactions in response to national emergencies.
- The Trading with the Enemy Act (TWEA)²⁵: This Act, while originally enacted during World War I, remains a powerful tool for imposing sanctions in times of war or national emergency.
- The Global Magnitsky Human Rights Accountability Act²⁶: This Act allows the US to impose sanctions on individuals responsible for human rights abuses and corruption.
- The Countering America's Adversaries Through Sanctions Act (CAATSA²⁷): This Act targets a range of adversaries, including Russia, Iran, and North Korea, and includes provisions for secondary sanctions.

²² *Supra note 3, at 1*

²³ *Supra note 4, at 1*

²⁴ The International Emergency Economic Powers Act, 50 U.S.C. §§ 1701–1708 (1977)

²⁵ Trading with the Enemy Act, 50 U.S.C. § 4301 (1917)

²⁶ Global Magnitsky Human Rights Accountability Act, 22 U.S.C. §§ 2656 (2016)

²⁷ Countering America's Adversaries Through Sanctions Act (CAATSA), Pub. L. No. 115-44, 131 Stat. 886 (2017)

European Union Sanctions Framework: The EU also has a robust sanctions framework, based on Articles 215 and 275 of the Treaty on the Functioning of the European Union (TFEU²⁸). EU sanctions are implemented through Council Regulations and Decisions, which are directly applicable in member states.

United Kingdom Sanctions Regime: Following its withdrawal from the EU, the UK established its own sanctions regime under the Sanctions and Anti-Money Laundering Act (SAMLA) 2018²⁹. UK sanctions are implemented through Statutory Instruments.

IV. Extraterritorial Reach and Compliance Challenges:

One of the most significant challenges posed by sanctions is their extraterritorial reach. This refers to the application of a state's sanctions laws to conduct that occurs outside its borders. The US, in particular, has been criticized for its aggressive use of secondary sanctions, which target non-US entities that engage in certain transactions with sanctioned parties. This can create significant compliance challenges for multinational corporations, which may face conflicting legal obligations.

For example, under CAATSA³⁰, non-US companies that engage in certain transactions with sanctioned Russian entities may face penalties in the US, including restrictions on access to the US financial system. This has forced many companies to choose between complying with US sanctions and maintaining their business relationships with Russian counterparts.

The EU has attempted to counter the extraterritorial reach of US sanctions, particularly those targeting Iran, through the EU Blocking Statute. This regulation prohibits EU companies from complying with certain extraterritorial sanctions and provides a mechanism for them to recover damages caused by such compliance.

China has also responded to the extraterritorial application of foreign sanctions by enacting its own Anti-Foreign Sanctions Law in 2021³¹. This law allows China to impose retaliatory measures on entities that comply with foreign sanctions deemed to be unjustified.

The legal framework governing international sanctions is a complex and evolving area of international law. The interplay between UN-mandated sanctions, unilateral sanctions imposed by individual states or regional organizations, and the extraterritorial application of national sanctions laws creates significant challenges for international commerce and dispute resolution. The increasing use of secondary sanctions and the emergence of conflicting legal regimes further complicate matters. Navigating this complex landscape requires a thorough understanding of the relevant legal instruments and a careful assessment of the potential risks and liabilities. The future of sanctions law will likely involve greater efforts to harmonize legal frameworks, clarify enforcement mechanisms, and balance the policy objectives of sanctions with the need to maintain legal predictability and facilitate legitimate international trade and investment.

Extraterritorial Reach of Sanctions: A Labyrinth of Compliance Challenges

The extraterritorial application of sanctions, particularly by the United States, has created a complex and often conflicting web of legal obligations for businesses operating internationally. This reach extends beyond a nation's borders, impacting entities that are not directly subject to the sanctioning state's jurisdiction. This creates significant compliance challenges and raises questions about the limits of national legal authority in a globalized world.

US Secondary Sanctions: A Long Arm of Influence:

The United States' use of secondary sanctions, notably under the Countering America's Adversaries Through Sanctions Act (CAATSA)³², exemplifies the extraterritorial reach of sanctions. These sanctions target non-US companies that engage in specific transactions with sanctioned entities, even if those companies have no direct connection to the US. For example, a European company conducting business with a sanctioned Iranian or Russian entity could face significant penalties in the US, including restrictions on access to the US financial system, even if the transactions themselves occur entirely outside the US. This creates a powerful incentive for non-US companies to comply with US sanctions³³, effectively extending the reach of US law far beyond its territorial boundaries. This has a chilling effect on international commerce, as businesses become hesitant to engage in any activity that might trigger US secondary sanctions, even if legally permissible under their own national laws.

EU Blocking Statute: A Countermeasure to Extraterritoriality:

The European Union, recognizing the potential for US secondary sanctions to undermine its own foreign policy objectives and harm European businesses, enacted the EU Blocking Statute (Regulation 2271/96)³⁴. This regulation aims to protect EU companies from the effects of extraterritorial sanctions, particularly US measures targeting Iran. The Blocking Statute prohibits EU companies from complying with certain listed extraterritorial sanctions and

²⁸ Treaty on the Functioning of the European Union arts. 215, 275, Oct. 26, 2012, 2012 O.J. (C 326) 1

²⁹ Sanctions and Anti-Money Laundering Act 2018, c. 13 (UK)

³⁰ *Supra* note 27, at 7

³¹ China's Anti-Foreign Sanctions Law (2021) (China)

³² *Supra* note 27, at 7

³³ International Bar Association (IBA), *The Impact of Sanctions on International Dispute Resolution* (2023).

³⁴ Council Regulation 2271/96, 1996 O.J. (L 309) 1 (EC) (EU Blocking Statute)

provides a mechanism for them to recover damages caused by such compliance. This creates a direct conflict of laws, forcing EU companies to navigate competing legal obligations and potentially facing penalties from both the US and the EU³⁵. The Blocking Statute, while intended to protect EU interests, has had limited practical success due to the significant economic leverage the US holds.

China's Anti-Foreign Sanctions Law: A New Dimension of Complexity:

China's recent enactment of the Anti-Foreign Sanctions Law (2021)³⁶ adds another layer of complexity to the extraterritorial sanctions landscape. This law allows China to counter foreign sanctions by imposing retaliatory measures on entities that comply with US or EU restrictions deemed to be unjustified. This creates a trilemma for multinational corporations, potentially facing conflicting legal obligations from the US, the EU, and China. The Anti-Foreign Sanctions Law further underscores the growing tension between national sovereignty and the global reach of sanctions, raising questions about the future of international economic regulation.

The extraterritorial reach of sanctions creates a complex and often unpredictable environment for businesses operating internationally. Companies must carefully assess the potential impact of various sanctions regimes on their activities, even if they are not directly targeted. This requires a thorough understanding of the relevant laws and regulations, as well as ongoing monitoring of evolving sanctions policies. The conflicting legal obligations created by overlapping and sometimes contradictory sanctions regimes necessitate careful legal analysis and strategic decision-making. Companies must balance the risks of non-compliance with the potential costs of foregoing business opportunities in sanctioned markets. The lack of international harmonization in sanctions policy further complicates matters, requiring businesses to navigate a patchwork of national laws and regulations.

Enforceability of Arbitral Awards in Sanctioned Jurisdictions

The enforceability of arbitral awards is a cornerstone of international commercial arbitration. However, when sanctions intersect with arbitration, this fundamental principle is challenged. Even a validly issued award can face significant hurdles when enforcement is sought against a sanctioned party, in a sanctioned jurisdiction, or when the award itself touches upon sanctioned activities. National courts, tasked with recognizing and enforcing arbitral awards under the New York Convention, must navigate the complex interplay between their obligations under the Convention and their domestic sanctions laws and public policy concerns. This section will delve into the enforceability challenges, supported by relevant case studies.

Challenges to Enforcement

1. Conflict with Domestic Public Policy

A primary ground for refusing enforcement under the New York Convention (Article V(2)(b))³⁷ is if the award violates the public policy of the enforcing state. Sanctions, often reflecting fundamental national security or foreign policy interests, can be considered a core component of a state's public policy. For example, a state that imposes sanctions on another country or entity typically seeks to restrict financial flows, trade, and other activities that may violate its foreign policy or national security objectives³⁸. If enforcing an arbitral award requires actions that contradict these interests, the enforcing state may refuse to recognize or enforce the award, claiming it violates public policy.

Case Study: In *Bank Melli Iran v. Telekom Deutschland GmbH* (2021)³⁹, a German court refused to enforce an arbitral award in favor of Bank Melli Iran, an Iranian bank subject to EU sanctions, due to concerns about violating EU regulations. This case demonstrates how sanctions can effectively block enforcement even within a jurisdiction that is not directly imposing the sanctions, due to the broad reach of EU regulations.

2. Asset Freezes and Restrictions

Sanctions frequently involve asset freezes and restrictions on financial transactions. If the party against whom the award is to be enforced has its assets frozen, it may be impossible to satisfy the award, even if the enforcing court is willing to recognize it. Similarly, restrictions on financial transactions can prevent the transfer of funds necessary to execute the award, even if the award relates to a non-sanctioned activity. These obstacles can lead to frustration in enforcement, as even a legally valid and recognized award cannot be practically executed due to the constraints imposed by sanctions.

Case Study: In the context of U.S. sanctions on Iran, Iranian entities often face difficulties in accessing assets and financial resources abroad, which hampers the enforcement of arbitral awards. The *Ministry of Defence of Iran v. Cubic Defense Systems* (2019)⁴⁰ case illustrates how U.S. sanctions directly impacted the enforceability of an award issued in favor of Iran.

3. Jurisdictional Issues

³⁵ Organization for Security and Co-operation in Europe (OSCE), *Legal Implications of Sanctions in International Law* (2023)

³⁶ *Supra note 31, at 8*

³⁷ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, art. V(2)(b)

³⁸ U.S. Dep't of the Treasury, *Sanctions Programs and Country Information*, available at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>.

³⁹ *Supra note 3, at 1*

⁴⁰ *Supra note 4, at 1*

Enforcement can be complicated if the assets of the sanctioned party are located in a jurisdiction different from the one where the award was issued. The enforcing court in the asset's location must then consider not only its own sanctions laws but also the sanctions laws of the jurisdiction where the award was issued, potentially creating a complex web of legal constraints. The enforcement of arbitral awards requires judicial cooperation across jurisdictions, but when two or more conflicting sanction regimes are involved, it can impede enforcement.

Case Study: The *Yukos v. Russia*⁴¹ case exemplifies jurisdictional challenges. The Russian Federation faced difficulties when foreign entities sought to enforce an arbitral award due to the conflicting enforcement of sanctions and asset freezes in various jurisdictions.

4. Circumvention Concerns

Courts are wary of enforcing awards that appear to be attempts to circumvent sanctions. Even if the award on its face does not violate sanctions, if the court suspects that the underlying transactions or the ultimate beneficiary is linked to sanctioned activities, it may refuse enforcement. Courts may look for evidence of intent to evade sanctions or conceal the true nature of the transaction or beneficiary.

Case Study: Russia's military aggression against Ukraine, both the United States⁴² and the European Union enacted a series of sanctions aimed at crippling the Russian economy and limiting its military capabilities⁴³. These sanctions encompass asset freezes, trade restrictions, and bans on specific financial transactions involving Russian state-owned enterprises and individuals closely associated with the Kremlin. Notably, as of early 2024, over 2,800 Russian entities and individuals had been sanctioned under various legal frameworks, including Executive Order 14024⁴⁴ in the U.S.

5. Due Process Concerns

While sanctions can impede a party's ability to participate in arbitration, courts are generally reluctant to refuse enforcement based on due process grounds if the sanctioned party had some opportunity to present its case. However, the extent to which a party's ability to participate was genuinely hampered by sanctions becomes a delicate balancing act for courts⁴⁵. If sanctions severely restrict the ability of a party to engage in arbitration proceedings, courts may be more inclined to refuse enforcement based on due process violations.

Case Study: In the context of the *Libyan Civil War*⁴⁶, sanctions against Libyan entities created significant challenges to the enforcement of arbitral awards. While the sanctions were intended to target the Libyan government, the political instability and uncertainty surrounding Libyan entities made it difficult for affected parties to participate in arbitration proceedings.

Policy Recommendations and Future Outlook

Given the complexity of enforcing arbitral awards in sanctioned jurisdictions, several policy recommendations can help address these challenges:

- 1) **Greater Clarity and Predictability**⁴⁷: Sanctions regimes should be drafted with greater precision and predictability to minimize unintended consequences for legitimate commercial activities and arbitral proceedings.
- 2) **Harmonization of Sanctions Regimes**⁴⁸: There should be greater international cooperation and harmonization of sanctions regimes to reduce conflicting legal obligations and improve consistency in enforcement decisions.
- 3) **Guidance from Arbitral Institutions**⁴⁹: Arbitral institutions can provide greater guidance on navigating sanctions-related issues. This can include issuing model clauses for arbitration agreements, offering training on sanctions compliance, and providing administrative support for navigating sanctions challenges.
- 4) **Specific Sanctions Clauses in Contracts**⁵⁰: Parties should consider incorporating specific sanctions clauses in their contracts to allocate risk, define triggering events, and establish clear procedures for managing the impact of sanctions on contract performance and dispute resolution.

⁴¹ Hulley Enterprises Limited (Cyprus) v. Russian Federation, Final Award (The Hague, 2014), available at <https://www.italaw.com>

⁴² U.S. Dep't of the Treasury, Sanctions Related to Russia, available at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russia-related-sanctions>.

⁴³ Council Regulation 2022/328, 2022 O.J. (L 501) 1 (EU) (imposing restrictive measures in response to Russia's military aggression against Ukraine), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0328>.

⁴⁴ Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation, Exec. Order No. 14,024, 86 Fed. Reg. 20,049 (Apr. 15, 2021), available at <https://www.federalregister.gov/documents/2021/04/15/2021-07704/blocking-property-with-respect-to-specified-harmful-foreign-activities-of-the-government-of-the>

⁴⁵ United Nations Security Council, Resolution 1970 (2011), S/RES/1970 (Feb. 26, 2011), available at <https://www.un.org/securitycouncil/content/resolutions-adopted-security-council-2011>.

⁴⁶ Société Générale de Surveillance S.A. v. Libya, ICSID Case No. ARB/01/6, Award (Jan. 22, 2007), available at <https://icsid.worldbank.org>.

⁴⁷ U.S. Dep't of the Treasury, Sanctions Compliance Guidance for the Virtual Currency Industry, (Oct. 2021), available at https://home.treasury.gov/system/files/126/virtual_currency_guidance_brochure.pdf.

⁴⁸ U.N. Security Council, Report on Multilateral Sanctions and Their Enforcement, U.N. Doc. S/2022/375 (Apr. 20, 2022), available at <https://www.un.org/securitycouncil/content/reports>

⁴⁹ Int'l Chamber of Commerce [ICC], *Guidance Note on Arbitration and Sanctions*, ICC Pub. No. 886E (2021), available at <https://iccwbo.org/publication/guidance-note-arbitration-sanctions/>

⁵⁰ Int'l Swaps & Derivatives Ass'n [ISDA], **2020 ISDA Illegality/Force Majeure Protocol**, available at <https://www.isda.org>

- 5) **Due Process Safeguards**⁵¹: While recognizing the policy objectives behind sanctions, courts should ensure that due process concerns are not overlooked. Sanctioned parties should be given fair opportunities to participate in arbitral proceedings.
- 6) **Proportionality and Targeted Measures**⁵²: Sanctions should be designed to be proportionate and targeted to avoid collateral damage to legitimate commercial activities and arbitral proceedings. Targeted measures should focus on specific individuals or entities rather than broad sectoral sanctions.
- 7) **Role of Force Majeure and Frustration of Purpose**⁵³: The doctrines of force majeure and frustration of purpose can offer relief to parties affected by sanctions, particularly where sanctions render performance impossible or illegal.

Conclusion

The intersection of sanctions and international arbitration presents a complex and evolving legal landscape, significantly impacting the enforceability of arbitral awards. While sanctions serve as a tool for achieving legitimate statecraft objectives—such as restricting financial flows, deterring unlawful activities, or influencing foreign policies—they create legal and practical barriers to arbitration. In recent years, the number of sanctioned entities and individuals has surged, with over 2,800 Russian entities sanctioned as of early 2024 under U.S. Executive Order 14024 and EU restrictive measures⁵⁴. Similarly, Iranian and Venezuelan entities have faced substantial enforcement challenges due to U.S. secondary sanctions, making it nearly impossible to execute arbitral awards in certain jurisdictions⁵⁵. The uncertainty surrounding enforcement undermines arbitration's effectiveness as a neutral dispute resolution mechanism. Courts often face conflicts between their obligations under the New York Convention and their domestic sanctions laws, leading to inconsistent enforcement outcomes. Addressing these challenges requires greater clarity in sanctions regimes, increased harmonization of international sanctions policies, and proactive guidance from arbitral institutions. By fostering cooperation between states, arbitration bodies, and commercial actors, stakeholders can strike a balance between legitimate sanctions objectives and the need for a predictable, fair, and enforceable arbitration framework in global commerce.

⁵¹ Andrea K. Bjorklund, **Sovereign Immunity as a Barrier to the Enforcement of Investor-State Arbitral Awards: The Regressive Impact of Sanctions**, 49 *Geo. J. Int'l L.* 325 (2018)

⁵² *Supra note 45, at 13*

⁵³ Michael Polkinghorne & Charles Nairac, **Sanctions and Force Majeure in International Arbitration**, 37 *J. Int'l Arb.* 547 (2020)

⁵⁴ U.S. Dep't of the Treasury, **Sanctions Related to Russia**, available at <https://home.treasury.gov>.

⁵⁵ European Council, **EU Sanctions Map**, available at <https://www.sanctionsmap.eu>.