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ARBITRATION IN COERCIVE ENVIRONMENT: SANCTIONS, ENFORCEMENT BARRIERS, AND THE EROSION OF PARTY AUTONOMY IN CROSS-BORDER DISPUTES

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ABSTRACT

Economic sanctions have quietly turned into one of the most influential tools in global politics, and their legal consequences are no longer limited to trade and finance. They are now affecting how international arbitration is agreed upon, conducted and enforced. This paper looks at the way economic sanctions interfere with the core functioning of cross-border arbitration, particularly the promise that parties should be free to choose how and where their disputes are resolved. The focus is on the sanction's regimes created by the United States, the European Union and the United Kingdom, and how they interact with the New York Convention and the UNCITRAL Model Law.

Disputes involving sanctioned Russian and Iranian entities show that the impact of sanctions goes beyond politics. Three patterns are becoming clearer. First, sanctions can make it practically impossible to perform an arbitration agreement if tribunals, lawyers, institutions or banks are restricted from working with sanctioned parties. Second, sanctions are increasingly used as a public policy argument to block recognition and enforcement of foreign arbitral awards. Courts across different jurisdictions are approaching this argument in very different ways, which create\s uncertainty for commercial parties. Third, even where the arbitration clause remains legally valid, sanctions can still create serious procedural problems, especially when it comes to the transfer of fees, deposits or security for costs.

The paper considers the recent responses by major arbitral institutions such as the ICC, LCIA and SIAC and questions whether these measures are enough to preserve fairness and predictability.

The main argument here is that sanctions are gradually increasing the scope of public policy in international arbitration, a trend likely to have long-term effects for parties to cross-border commerce.

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INTRODUCTION

International arbitration is often presented as the neutral and efficient alternative to litigation in national courts.[3] Parties choose it because it promises flexibility, confidentiality, procedural equality, and a predictable path to enforcement through the New York Convention.[4] That picture depends on a strong assumption: once parties have agreed to arbitrate, states will largely stand aside.[5] In the last decade, the growing use of economic sanctions has begun to disturb that assumption.[6] Sanctions attach legal consequences to participation in commercial relationships with targeted persons or sectors.[7] They can restrict banking transactions, professional services, insurance, shipping, energy trading, and numerous forms of cross border support.[8] When the same relationships give rise to disputes, the structure of arbitration is forced to operate inside a regulatory framework that was never designed with arbitration in mind.[9]

This paper investigates how sanctions reshape core elements of cross border arbitration. The argument is not that sanctions invalidate arbitration agreements in a systematic way.[10] Rather, sanctions insert friction at several points across the arbitral life cycle, from appointment of the tribunal to payment of fees and enforcement of the final award.[11] The result is a gradual erosion of party autonomy, understood as the freedom to design dispute resolution processes that reflect commercial needs. The study focuses on sanctions regimes administered by the

[3] Gary B. Born, International Commercial Arbitration 1–4 (3d ed. 2021).
[4] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. III, June 10, 1958, 330 U.N.T.S. 38.
[5] Emmanuel Gaillard, Legal Theory of International Arbitration 39–42 (2010).
[6] Christopher R. Drahozal, Economic Sanctions and International Arbitration, 39 J. Int'l Arb. 97, 98–100 (2022).
[7] Council Regulation (EU) No. 269/2014, art. 2, 2014 O.J. (L 78) 6.
[8] International Emergency Economic Powers Act, 50 U.S.C. §§ 1701–1707.
[9] Anthea Roberts & Taylor St. John, The New Terrain of International Arbitration, 29 Eur. J. Int'l L. 1045, 1052–55 (2018).
[10] Philippa Charles, Arbitration Agreements and Sanctions: Validity Versus Performance, 36 Arb. Int'l 105, 108–09 (2020).
[11] ICC Commission on Arbitration & ADR, The Impact of Sanctions on International Arbitration 5–9 (2022).

United States, the European Union, and the United Kingdom, since these regimes are widely applied and often extraterritorial in effect.[12]

The central research questions are straightforward. First, when do sanctions make it impossible or unlawful in practice to perform an arbitration clause that remains valid in theory? Second, to what extent may courts rely on sanctions as an expression of public policy when asked to recognise or enforce foreign awards?[13] Third, how do practical obstacles, including access to financial services and institutional case management, influence outcomes even when formal legal doctrine appears supportive of arbitration? These questions are explored through case law, institutional guidance, and secondary scholarship.[14]

The contribution of the paper lies in mapping the cumulative effect of many small constraints. Individually, each measure looks technical. Taken together, they point toward an expanded field of state intervention within international arbitration.[15] Understanding that trend is essential for parties, counsel, and arbitral institutions that must plan for disputes in an increasingly regulated commercial environment. At the same time, the paper avoids presenting sanctions as illegitimate or political instruments. States impose them to influence behavior that they consider harmful to international order or domestic security. The challenge is to understand how legitimate regulatory goals interact with private ordering through arbitration, and where conflicts are likely to arise.[16] By examining the mechanics of recent disputes, the paper aims to give a picture of how sanctions are felt in practice.[17]

CONCEPTUAL BACKGROUND: SANCTIONS, PARTY AUTONOMY, AND ARBITRABILITY

Economic sanctions occupy the nexus between foreign affairs and internal rule-making.[18] They limit or qualify engagement with particular individuals, groups, or territories. In most countries, sanctions are established by executive regulations which entail criminal, civil

[12] Stephan W. Schill & Gregory Shaffer, The International Law of Sanctions and Arbitration, 113 Am. J. Int'l L. 1, 6–9 (2019).
[13] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V(2)(b), June 10, 1958, 330 U.N.T.S. 38.
[14] See Charles, supra note 8; ICC Commission on Arbitration & ADR, supra note 9.
[15] Roberts & St. John, supra note 7, at 1052–55.
[16] Schill & Shaffer, supra note 11, at 22–25.
[17] Mamancochet Mining Ltd., [2018] EWHC 2643 (Comm).
[18] Stephan W. Schill & Gregory Shaffer, The International Law of Sanctions and Arbitration, 113 Am. J. Int'l L. 1, 3–5 (2019).

liability, or administrative sanctions for non-compliance.[19] The United States operates largely through regulations from the Office of Foreign Assets Control, which regulate transactions with particular persons and blocked property. The European Union employs restrictive measures established by regulations of its European Council, which are direct and immediate within the member states.[20] The United Kingdom operates its own system established by legislation following its exit from the European Union. In most cases, all three systems exercise extraterritorial impact due to anticipation by financial middlemen and trans-national firms.[21]

From a legal design perspective, sanctions are aimed primarily at economic activity. Arbitration is not their main target. Yet arbitration depends on predictable access to services that sanctions frequently affect, including legal representation, expert assistance, banking channels, and institutional administration.[22] When sanctions limit those services, arbitration does not stop in a formal sense but becomes more fragile. This fragility raises questions about two foundational ideas in arbitration theory: party autonomy and arbitrability.[23]

Party autonomy is sometimes described as the cornerstone of international arbitration. It means that, subject to minimum safeguards, parties are allowed to choose the law, the seat, the arbitrators, the procedure, and the language of their proceedings.[24] Courts in most jurisdictions respect those choices because they see arbitration as a voluntary substitute for litigation. That respect is not absolute. States retain an interest in ensuring that private adjudication does not undermine mandatory rules.[25] When sanctions enter the picture, the scope of those mandatory rules expands. Banks, insurers, and professionals may be prohibited from assisting sanctioned entities, regardless of what the parties agreed.[26] In practice, this places external constraints on choices that once appeared to belong entirely to the parties.

[19] International Emergency Economic Powers Act, 50 U.S.C. §§ 1701–1707; 31 C.F.R. pts. 500–599.
[20] Treaty on the Functioning of the European Union arts. 215–216; Council Regulation (EU) No. 269/2014, 2014 O.J. (L 78) 6.
[21] Anthea Roberts & Taylor St. John, The New Terrain of International Arbitration, 29 Eur. J. Int'l L. 1045, 1054–55 (2018).
[22] ICC Commission on Arbitration & ADR, The Impact of Sanctions on International Arbitration 5–7 (2022).
[23] Redfern & Hunter on International Arbitration ¶ 1.86 (6th ed. 2015).
[24] Gary B. Born, International Commercial Arbitration 90–94 (3d ed. 2021).
[25] Schill & Shaffer, supra note 1, at 9–10.
[26] LCIA, Guidance Note on Sanctions ¶¶ 6–9 (rev. 2024).

The second concept is arbitrability. This concerns, which disputes may be resolved by arbitration, and which disputes may be resolved by public courts. Traditionally, certain matters have been considered non-arbitrable because they involve public interests, such as criminal liability, family law, or core aspects of insolvency. Sanctions introduce a more subtle problem. They do not declare a category of disputes inherently unsuitable for arbitration. Instead, they affect whether an arbitration clause can be performed in a lawful and practical manner.[27] If a tribunal cannot be validly constituted, or if participation would expose actors to sanctions liability, the clause might be considered incapable of being performed. Then court decides whether to refer parties to arbitration or should allow litigation.[28]

The interaction between these concepts becomes complicated once we add the enforcement regime created by the New York Convention. The Convention instructs courts to give effect to arbitration agreements and to recognise and enforce foreign awards, subject to limited exceptions. Two provisions are particularly relevant in a sanction's environment. The first involves a court's power to decline enforcement where the arbitration agreement is found to be incapable of being performed. The second allows refusal where enforcement would be contrary to the public policy of the enforcing state. Sanctions often influence both inquiries, sometimes indirectly.[29]

It is important not to exaggerate the reach of sanctions in arbitration. Many sanctioned entities continue to participate in arbitral proceedings through licensed counsel and controlled financial arrangements.[30] Otherwise, licensing authorities impose specific licenses that ease payment of legal fees and deposits. Additionally, arbitration tribunals exercise procedural flexibility.[31] They can extend timelines, consider different payment options, and work with institutions to identify acceptable payment methods. The adjustments depict that having sanctions does not necessarily result in a freeze in arbitration. Rather, they create uncertainty that must be managed case by case.[32] It is also relevant to consider the policy justification for sanctions. Sanctions are imposed by governments as a means of deterring behavior that is connected with a security threat, human rights violations, or other breaches of international

[27]Mamancochet Mining Ltd. v. Aegis Managing Agency Ltd., [2018] EWHC 2643 (Comm) (Eng.).
[28] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. II(3), June 10, 1958, 330 U.N.T.S. 38.
[29] Schill & Shaffer, supra note 1, at 22–25.
[30] U.S. Dep't of the Treasury, Office of Foreign Assets Control, Frequently Asked Questions on Legal Services (updated 2024).
[31] ICC Commission on Arbitration & ADR, Updated Note on Managing Cases Under Sanctions (2024).
[32]Drahozal, Economic Sanctions and International Arbitration, 39 J. Int'l Arb. 97, 101–03 (2022).

standards.Looked at from that angle, constraints of arbitration are not an accidental by-product but rather part of a wider approach that prioritizes regulatory aims over private convenience. The legal challenge is how to calibrate that priority. Interference that is too great risks undermining confidence in arbitration as a neutral forum for international trade. Too little interference risks undermining the credibility of sanctions regimes that depend on widespread compliance.

Academic commentary has begun to map this territory, but there is still a gap between abstract theory and practical experience.[33] Much discussion focuses on whether sanctions should be considered a form of overriding mandatory rule, which would automatically limit party autonomy.[34] Less attention is paid to the cumulative procedural difficulties that arise when institutions, banks, and counsel operate under compliance pressure.[35] Those difficulties often determine whether disputes move forward in a meaningful way.

Understanding these baseline concepts is necessary before turning to concrete disputes. The next sections examine how sanctions influence the performance of arbitration agreements, how they are invoked during enforcement, and how day-to-day procedural barriers shape real outcomes. The analysis treats sanctions neither as a technical inconvenience nor as an absolute obstacle, but as a regulatory force that modifies traditional assumptions about what arbitration can guarantee in a cross-border setting.

SANCTIONS AND THE PERFORMANCE OF ARBITRATION AGREEMENTS

The first point at which sanctions interact with arbitration is the performance of the arbitration clause itself. The core question is whether sanctions make it impossible, unlawful, or commercially unrealistic to constitute a tribunal and conduct proceedings, even when the clause remains formally valid.[36] Courts have addressed variants of this question in different factual settings involving sanctioned parties, restricted payment channels, and compliance-driven institutional practices.[37]

[33] Drahozal, supra note 35, at 99.
[34] Charles, supra note 8, at 109.
[35] ICC Commission on Arbitration & ADR, supra note 9, at 12–14.
[36] Philippa Charles, Arbitration Agreements and Sanctions: Validity Versus Performance, 36 Arb. Int'l 105, 107–09 (2020).
[37] Gary B. Born, International Commercial Arbitration 1001–05 (3d ed. 2021).

A useful starting illustration does not involve arbitration directly but shows how sanctions can reshape the performance of contractual obligations. In Lamesa Investments Ltd v Cynergy Bank Ltd (Court of Appeal, 2020), the English court held that a borrower was entitled to suspend payments because complying might expose it to United States secondary sanctions.[38] The case demonstrated how sanctions pressure can alter obligations that would otherwise be clear. The same logic appears when arbitration requires payments to or on behalf of sanctioned entities. Participants fear downstream exposure and adjust behavior accordingly.[39]

A more direct arbitration example is Ministry of Defence & Support for Armed Forces v International Military Services Ltd (UK Supreme Court, 2021).[40] The dispute turned in part on whether payments arising from an arbitral award in favor of an Iranian state entity could lawfully be made while EU sanctions were in force. The court accepted that sanctions prevented payment unless a license was granted, even though the underlying obligation remained valid. The decision reflects that sanctions can interrupt performances without extinguishes the obligation. For arbitration, this distinction matters. An award may exist, a tribunal may be seated, yet compliance becomes contingent on regulatory licensing.[41]

There are also disputes where sanctions complicate the appointment of arbitrators or the administration of cases.[42] In practice, arbitral institutions such as the ICC and LCIA often require parties to route deposits and fees through banks that apply strict screening.[43] When a party is listed on sanctions registers, transfers may be blocked automatically. Institutions have responded by issuing internal guidance, but delays are common.[44] For example, the ICC has acknowledged publicly in policy notes that sanctions may "slow or suspend the administration of cases" until appropriate licenses or authorizations are obtained. These notes are not binding law, but they reflect recurring administrative realities.[45]

[38] Lamesa Invs. Ltd. v. Cynergy Bank Ltd., [2020] EWCA (Civ) 821 (Eng.).
[39] Charles, supra note 1, at 110–12.
[40] Ministry of Def. & Support for Armed Forces v. Int'l Mil. Servs. Ltd., [2021] UKSC 18 (Eng.).
[41] Born, supra note 2, at 1032–34.
[42] ICC Commission on Arbitration & ADR, The Impact of Sanctions on International Arbitration 6–8 (2022).
[43] LCIA, Guidance Note on Sanctions ¶¶ 6–10 (rev. 2024).
[44] ICC Commission on Arbitration & ADR, Updated Note on Managing Cases Under Sanctions (2024).
[45] Drahozal, Economic Sanctions and International Arbitration, 39 J. Int'l Arb. 97, 101–03 (2022).

In some jurisdictions, courts have considered whether such difficulties render an arbitration agreement "incapable of being performed" under Article II(3) of the New York Convention.[46] The reasoning is cautious. Courts tend to distinguish practical inconvenience from true impossibility.[47] A line of French decisions illustrates this restraint. French courts have generally denied treating sanctions as obstructing arbitrability where proceedings could continue through licensed counsel or third-country payment channels.[48] Their view is that parties must first exhaust reasonable compliance solutions before claiming impossibility. While consistent with France's pro-arbitration stance, this approach places a heavy organizational burden on sanctioned parties and institutions.[49]

The experience of United States sanctions licensing provides another perspective. The Office of Foreign Assets Control has issued licenses that specifically authorize payment of legal fees and certain arbitration costs by sanctioned parties. These licenses are narrow, often conditional, and sometimes slow to obtain. Nevertheless, they demonstrate that sanctions policy can accommodate due process interests. The difficulty is uncertainty. Parties cannot reliably predict how quickly licenses will be granted or whether banks will honour transactions even when a license exists.[50]

The cumulative effect is a shift from a world in which arbitration clauses were assumed to be self-executing to one in which performance often depends on regulatory gatekeepers.[51] The law has not settled on a single doctrinal response. Some courts emphasize the continuing validity of arbitration agreements, stressing adaptation and procedural flexibility. Others treat prolonged regulatory delay as evidence that arbitration is not realistically available. The result is jurisdictional fragmentation.

Two examples at the enforcement edge highlight what is at stake. In Crystallex International Corp v Bolivarian Republic of Venezuela (D.D.C., 2017 onward), United States sanctions did not erase the award but complicated efforts to transfer proceeds, requiring repeated engagement with regulators.[52] In the UK, litigation concerning Russian sanctioned entities

[46] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. II(3), June 10, 1958, 330 U.N.T.S. 38.
[47] Born, supra note 2, at 985–88.
[48] Cour de cassation [Cass.] [supreme court for judicial matters] 1e civ., Sept. 28, 2022, No. 21-20.127 (Fr.).
[49] Schill & Shaffer, The International Law of Sanctions and Arbitration, 113 Am. J. Int'l L. 1, 22–24 (2019).
[50] ICC Commission on Arbitration & ADR, supra note 10, at 9–11.
[51] Roberts & St. John, The New Terrain of International Arbitration, 29 Eur. J. Int'l L. 1045, 1056–58 (2018).
[52] Crystallex Int'l Corp. v. Bolivarian Republic of Venez., 333 F. Supp. 3d 380 (D.D.C. 2018).

has raised similar questions about whether institutions and counterparties can participate in proceedings without breaching sanctions rules. None of these cases holds that sanctions automatically nullify arbitration agreements. Instead, they show how sanctions create a climate of hesitation that undermines predictability.

The lesson is modest but important. Sanctions rarely destroy arbitration outright. They work in the following ways: transaction costs, regulatory risks, and bureaucratic delay.[53] It can be said that such factors could impact the balance of bargaining power in disputes in such a manner that they could help thedisputingparties reach a settlement agreement on terms which are less influenced by legal merit than by the need to comply. It would be important to understand this before looking into sanctions in enforcing awards.

SANCTIONS AS A PUBLIC POLICY DEFENCE TO ENFORCEMENT

The second major interface between sanctions and arbitration arises at the enforcement phase. A successful party in any international commercial arbitration may seek recognition and enforcement of a foreign arbitral award in the national courts.[54] The national courts are bound by the New York Convention.[55] Grounds stated in Article V(2)(b) for a denial of recognition and enforcement are where the result would be inconsistent with the public policy of the country where enforcement is sought. This clause has been given a narrow construction on the assumption that a certain stability and uniformity are required in international business.[56] Sanctions complicate that assumption because they represent explicit state policies adopted to constrain dealings with targeted actors.[57] The central question becomes whether sanctions transform enforcement of an award into an act that violates public policy.

Courts have confronted variants of this issue most clearly in disputes involving Iran after the expansion of sanctions regimes during the last decade.[58] The decision of the UK Supreme Court in Ministry of Defence & Support for Armed Forces v International Military Services

[53] ICC Commission on Arbitration & ADR, supra note 10, at 12–14.
[54] Gary B. Born, International Commercial Arbitration 3310–12 (3d ed. 2021).
[55] Convention on the Recognition and Enforcement of Foreign Arbitral Awards arts. III–V, June 10, 1958, 330 U.N.T.S. 38.
[56] Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier, 508 F.2d 969, 974 (2d Cir. 1974).
[57] Stephan W. Schill & Gregory Shaffer, The International Law of Sanctions and Arbitration, 113 Am. J. Int'l L. 1, 6–8 (2019).
[58] Philippa Charles, Arbitration and Sanctions at the Enforcement Stage, 37 Arb. Int'l 405, 408–10 (2021).

Ltd (2021), discussed earlier, did not involve refusal of recognition.[59] The award was recognized, but payment was blocked unless a license was granted. The court held that sanctions regulations governed the time, form, and manner of performance. The enforcement of the arbitration award was still possible in theory, if not practicable at the time.

The French courts have also taken a similar course. In a number of enforcement cases involving Iranian parties, they have upheld the awards but held that sanctions operate as a limit to their enforcement. The rationale for the rule is based on a distinction between recognition of the award and its enforcement in regard to the transfer of money.[60] The practical result for sanctioned award creditors can be prolonged uncertainty, yet the doctrinal message is that public policy is not offended merely by acknowledging the award's existence. Not all jurisdictions articulate the balance in identical terms. United States courts have invoked sanctions in a pragmatic manner. In enforcement efforts connected with Venezuelan and Iranian assets, courts have emphasized that OFAC regulations apply independently of the New York Convention.[61] Though awards can be confirmed, but any transfer of blocked assets requires a license. The D.C. District Court has repeatedly stayed proceedings or conditioned relief upon regulatory authorization, as seen in aspects of Crystallex International Corp v. Bolivarian Republic of Venezuela. Technically, this is not refusal based on public policy in the Convention sense. It is parallel application of sanctions law that produces a similar delaying effect. That parallelism illustrates how sanctions insert a second regulatory filter through which awards must pass.

There are fewer clear examples of outright refusal grounded directly in Article V(2)(b) because courts often prefer narrower devices such as stays or conditional orders. Still, the logic exists in the case law. Where enforcement would require a domestic authority or bank to violate sanctions regulations, courts reason that compelling such conduct would contradict public policy. In that situation, refusal is framed not as hostility to arbitration, but as fidelity to a legal regime considered mandatory. Scholarly commentary cautions that the line can be thin. If refusal becomes routine whenever sanctions are present, public policy risks becoming a broad escape clause.

[59] Ministry of Def. & Support for Armed Forces v. Int'l Mil. Servs. Ltd., [2021] UKSC 18 (Eng.).
[60] Cour de cassation [Cass.] [supreme court for judicial matters] 1e civ., Sept. 28, 2022, No. 21-20.127 (Fr.).
[61] Crystallex Int'l Corp. v. Bolivarian Republic of Venez., 333 F. Supp. 3d 380, 391–94 (D.D.C. 2018).

Two hypothetical scenarios, both drawn from real procedural tensions, show where the doctrine might move next. First, consider an award in favor of a sanctioned party where the debtor's only attachable assets are located in a jurisdiction that strictly enforces financial sanctions. Recognition might be granted, but execution repeatedly denied. Over time, the value of the award will decay despite official recognition. Secondly, consider the scenario where an award has particular performance that violates export controls or service prohibitions. A court can fairly decide that carrying out such relief violates public policy per se. These scenarios are not purely speculative.[62] Regulatory authorities have already indicated that certain types of performance, such as provision of technical services to sanctioned industries, are prohibited irrespective of contractual or arbitral obligations.[63] One area of emerging debate involves "indirect enforcement." Suppose an award creditor tries to enforce against a non-sanctioned subsidiary or intermediary of a sanctioned entity. In fact, some courts might consider this a circumvention of the sanctions intention and might rely on the public policy clause in this respect. Other courts might allow the enforcement action provided the subsidiary had a separate legal entity and the execution structured in a manner consistent with the prohibited transactions. The jurisprudence is still thin, and outcomes depend heavily on domestic corporate law and sanctions architecture.[64] An important counterweight to extensive public policy arguments is the Convention's pro-enforcement bias. Courts frequently cite the need for uniformity and warn against using public policy to reassess the merits of disputes. In Parsons & Whittemore Overseas Co. v Société Générale de l'Industrie du Papier (2d Cir. 1974), although unrelated to sanctions, the court famously restricted the public policy defence to violations of the forum's most basic notions of morality and justice. That formulation continues to influence sanctions disputes. Judges who rely on it tend to treat sanctions as affecting the mechanics of execution rather than the legitimacy of the award itself.

Institutional commentators have urged caution. Reports by arbitral bodies and professional associations emphasize that encouraging broad reliance on public policy risks destabilizing the very predictability that sanctions are not designed to destroy.[65] Yet they also acknowledge that states cannot be compelled to ignore their own restrictive measures. The resulting

[62] Council Regulation (EU) No. 833/2014, art. 3 (restrictive measures).
[63] U.S. Dep't of the Treasury, Office of Foreign Assets Control, FAQs on Exported Services (updated 2024).
[64] Roberts & St. John, The New Terrain of International Arbitration, 29 Eur. J. Int'l L. 1045, 1060–61 (2018).
[65] ICC Commission on Arbitration & ADR, The Impact of Sanctions on International Arbitration 14–16 (2022).

equilibrium is fragile. Enforcement is majorly subject to licensing, monitoring, and staged compliance rather than straightforward judicial orders.[66]

The overall pattern suggests gradual expansion of state oversight without wholesale rejection of arbitration. Public policy is invoked less as a blunt refusal and more as a regulatory gate that awards must clear. That model is administratively complex, and it transfers significant discretion to regulators who operate outside the courtroom. For commercial actors, the lesson is sober. Winning an award against a sanctioned counterparty is no longer the end of the dispute. It is the beginning of a second process governed as much by sanctions bureaucracy as by arbitration law.[67]

PROCEDURAL AND FINANCIAL BARRIERS IN PRACTICE

Even when tribunals are constituted and courts remain willing to recognise awards, sanctions still shape what actually happens inside proceedings.[68] The most visible frictions involve payments. Arbitration depends on deposits, fees, and reimbursements that pass through international banking systems.[69] Once a party is listed under sanctions, banks act conservatively. They may freeze transactions, request repeated documentation, or refuse to process transfers altogether.[70] None of this occurs because the bank is evaluating the merits of the dispute. It happens because compliance systems are designed to avoid risk, and ambiguity counts as risk.

Practical examples appear in institutional reports rather than published judgments.[71] The ICC, for instance, has acknowledged that cases involving sanctioned entities often experience long delays while parties seek licenses for payments.[72] Institutions sometimes hold funds in escrow until regulators give a clear signal. From the outside, this can resemble deliberate obstruction but in reality, institutions are navigating competing expectations, they must support access to justice yet cannot expose themselves to penalties. The consequence for

[66] LCIA, Guidance Note on Sanctions ¶¶ 11–15 (rev. 2024).
[67] Schill & Shaffer, supra note 5, at 31–33.
[68] Gary B. Born, International Commercial Arbitration 1035–38 (3d ed. 2021).
[69] ICC Commission on Arbitration & ADR, The Impact of Sanctions on International Arbitration 6–7 (2022).
[70] LCIA, Guidance Note on Sanctions ¶¶ 6–9 (rev. 2024).
[71] Drahozal, Economic Sanctions and International Arbitration, 39 J. Int'l Arb. 97, 101–02 (2022).
[72] ICC Commission on Arbitration & ADR, supra note 2, at 8–9.

parties is time. Schedules slip, witnesses lose availability, and negotiation pressure increases.[73]

Counselling and representation add to the complexity. Attorneys operating in jurisdictions that apply harsh sanctions must first determine whether they need approval to represent the sanctioned person. This may be for licenses to provide legal services that are required to uphold the principle of due process.[74] Others may limit the services to very narrow areas that do not include counselling for non-defense against the sanctions.[75] This may deter seasoned firms to take up an appointment. The sanctioned person will therefore use smaller firms that do not have much global influence, contributing to the nature and potential of the case. The imbalance is subtle but real.

Evidence gathering is also affected. Expert witnesses may refuse engagements out of caution.[76] Technology providers hosting document platforms may terminate contracts if a sanctioned entity is involved, even incidentally. Tribunals respond with improvisation, using alternative platforms or staged disclosure, yet every workaround consumes resources. These frictions rarely produce reported rulings, which is one reason they remain under-discussed in scholarship. They stay hidden in procedural orders, correspondence, and administrative notes.

The issue of security for costs exposes the tension in sharp form. Tribunals sometimes order a claimant to provide security when there is a risk that the respondent will not recover costs if it wins. For sanctioned claimants, arranging bank guarantees or third-party financing may be nearly impossible.[77] If security is refused, the case can be stayed or dismissed. Critics argue that this turns sanctions into a de facto bar to justice. Supporters respond that tribunals cannot force respondents to shoulder unrecoverable costs. These two approaches are, in a way, rational in themselves, and the courts are left to strike a balance between equity and expediency.

A final procedural requirement relates to communication with financial intermediaries. Even when licenses have been issued by regulators, there might be delays by banks in implementing them.[78] Courts cannot control this procedural requirement. Arbitrators have

[73] Charles, supra note 4, at 118.
[74] U.S. Dep't of the Treasury, Office of Foreign Assets Control, FAQs on Legal Services (updated 2024).
[75] Schill & Shaffer, The International Law of Sanctions and Arbitration, 113 Am. J. Int'l L. 1, 26–27 (2019).
[76] ICC Commission on Arbitration & ADR, supra note 2, at 12.
[77] ICC Commission on Arbitration & ADR, supra note 2, at 14.
[78] OFAC, FAQs on Licensing and Compliance (updated 2024).

even less. The gap between formal authorisation and operational execution undermines the idea that arbitration is insulated from domestic administrative processes.

None of these barriers amount to outright prohibition. Yet taken together, they reveal how sanctions work indirectly. They do not invalidate arbitration agreements by decree. Instead, they influence the infrastructure around arbitration, pulling it closer to the regulatory sphere. Parties and tribunals adapt, but adaptation has limits.[79]

INSTITUTIONAL RESPONSES BY ICC, LCIA, AND SIAC

Arbitral institutions have not waited passively for sanctions problems to resolve themselves.[80] They occupy an uncomfortable position. On one hand, institutions exist to administer proceedings efficiently and impartially. On the other, they are legal entities exposed to the same sanctions regimes that bind banks and law firms.[81] Their responses provide a window into how arbitration adjusts when external regulation rises in prominence.[82]

The ICC has taken the most visible steps. It has issued guidance explaining that sanctions may affect case administration, particularly with respect to deposits and payments.[83] The guidance emphasizes that the ICC does not offer legal advice on sanctions compliance, yet it warns parties that delays are likely when licenses must be obtained. In practice, the Court sometimes requests that funds be routed through specific accounts or jurisdictions where compliance is easier to manage. These arrangements are pragmatic rather than doctrinal. They show that administration now requires coordination not only with parties and tribunals but also with regulators and banks.[84]

The LCIA's approach has been more understated but similar in substance. It stresses case-by-case assessment and reserves the right to suspend certain steps where there is a genuine risk of sanctions exposure. Parties occasionally find these pauses frustrating because they are not accompanied by detailed legal explanation.[85] From the institution's perspective, however,

[79] Born, supra note 1, at 1055–57.
[80] ICC Commission on Arbitration & ADR, *The Impact of Sanctions on International Arbitration* 2–3 (2022).
[81] Philippa Charles, Arbitration and Sanctions: Institutional Responses, 38 **Arb. Int'l** 1, 4–6 (2022).
[82] Stephan W. Schill & Gregory Shaffer, The International Law of Sanctions and Arbitration, 113 Am. J. Int'l L. 1, 26–28 (2019).
[83] ICC, Guidance Note on the Administration of Cases Involving Sanctions (2023).
[84] Gary B. Born, *International Commercial Arbitration* 1048–50 (3d ed. 2021).
[85] Drahozal, Economic Sanctions and International Arbitration, 39 **J. Int'l Arb.** 97, 101–02 (2022).

discretion is unavoidable. Publicly articulating compliance reasoning may run the risk of exposing sensitive regulatory assessment judgments or misinterpretations by parties.

Operating in a different regional context, SIAC has seen fewer headline disputes involving sanctions but has nonetheless recognized the issue in training materials and procedural notes.[86]Its administration involves close coordination with banks in Singapore, which apply their own screening rules based on global standards.[87] SIAC emphasises continuity of proceedings wherever lawful, while quietly adapting payment logistics in the background.

Across institutions, one common theme emerges. None claims that sanctions justify abandoning arbitration.[88] At the same time, none treats sanctions as irrelevant. The administrative layer becomes thicker. Licensing, routing decisions, and compliance consultations form part of the routine. This development has consequences for transparency. Many adjustments occur outside public view, leaving scholars to reconstruct patterns from occasional statements or anecdotal reports.

Institutional practice therefore contributes to the broader trend described earlier. Arbitration is not collapsing under sanctions pressure. It is bending, absorbing regulatory considerations that were once peripheral.[89] Whether this bending remains temporary or becomes a permanent feature of cross border dispute resolution is still an open question.[90]

SUGGESTION AND CONCLUSION

Technology has softened some of the immediate shocks that sanctions introduce into arbitration. During the pandemic, virtual hearings became routine, and those tools remain useful when physical travel is restricted by sanctions. Remote testimony reduces the need for visas and lowers the visibility of cross border interactions that banks might otherwise scrutinize. Digital document platforms, when hosted in neutral jurisdictions, can allow parties to exchange evidence without triggering export controls on sensitive software.

[86]Singapore Int'l Arbitration Ctr. (SIAC), *Practice Note on Case Administration* (updated 2023).
[87]Monetary Auth. of Sing., *Sanctions and Financial Crime Compliance* (2024).
[88]ICC Commission on Arbitration & ADR, supra note 1, at 4.
[89]Anthea Roberts & Taylor St. John, The New Terrain of International Arbitration, 29 Eur. J. Int'l L. 1045, 1059–60 (2018).
[90]Philippa Charles, supra note 2, at 18–19.

Yet these advantages have boundaries. Virtual hearings still require contracts with service providers, and many global technology companies apply sanctions filters that mirror banking rules. If the entity is sanctioned, the mere presence in an account could trigger a suspension of access with minimal justification. Encryption services, for example, or cloud storage solutions could be blocked outright, leaving the tribunals to find workarounds. Even the use of an email service could be reduced in some capacity if the names are sanctioned.

"Both payment cards and payment technology present a mixed landscape." "While some actors explore alternative transfer arrangements, others use third-party facilitators for legal payments." Regulators occasionally tolerate these solutions when documentation is complete. But the line between legitimate routing and sanctions evasion is thin. Arbitrators and counsel are understandably cautious. Technology can relieve pressure, but it cannot erase the underlying regulatory reality. Sanctions continue to frame what is possible, even in digital settings.

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