

Enforcing International Arbitral Awards in the Age of Geopolitical Tensions

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Abstract: The enforcement of international arbitration awards faces a growing threat: the specter of sanctions. This article explores the complex challenges when award creditors seek to enforce arbitral awards against sanctioned states. The current framework, embodied by the New York Convention, offers a foundation, but its effectiveness dwindles in the face of sanctions regimes and claims of sovereign immunity. Award creditors navigate a labyrinth, their path entangled with geopolitical tensions and the ever-shifting landscape of international relations. This article dissects the intricate interplay between sanctions, sovereign immunity, and the impact of the New York Convention on sanctions regimes. It analyses how these factors affect enforcement, jeopardising the core of international arbitration – the promise of a predictable and enforceable method for resolving cross-border disputes. The article concludes by acknowledging potential solutions but emphasising the urgent need to address the fundamental challenges before establishing a robust and predictable enforcement system. International arbitration can only fulfil its role as a cornerstone of global commerce and investment.

Keywords: Arbitration. Awards. Enforcement. Sanctions. Public Policy.

Summary: Introduction – Sanctions – The New York Convention and its Impact on Sanctions Regimes – Sovereign Immunity – Russia Case Study – The Search for Solutions – Conclusion – References

Introduction

International trade and investment have flourished in recent decades, driven by globalisation.¹ As cross-border interactions increase, so too does the potential for disputes.² In this context, international arbitration has emerged as a favoured method for resolving these disagreements.³ It offers a neutral forum with specialised arbitrators, often considered preferable to navigating unfamiliar court systems in different countries.⁴

¹ McLean, David J. *Toward a New International Dispute Resolution Paradigm: Assessing the Congruent Evolution of Globalization and International Arbitration* *University of Pennsylvania Journal of International Law*, vol. 30, no. 4, p. 1087-1097, 2009

² *Ibid.*

³ *Ibid.*

⁴ *Id.* at 1088, 1092.

The ability to enforce arbitration awards is critical to the continued viability of this dispute resolution mechanism.⁵ Award creditors rely on the knowledge that a favourable arbitral award will be enforceable.⁶ Without this certainty, the very foundation of international arbitration crumbles.⁷ The growing significance of international trade is, however, accompanied by an increasingly complex geopolitical landscape.⁸ Geopolitical tensions can lead countries to view arbitration awards issued in rival nations with suspicion.⁹ National security concerns, political pressure, and even public opinion can all influence a government's willingness to uphold a foreign arbitral decision. Furthermore, legal loopholes and bureaucratic hurdles can further complicate the process, creating delays and frustrations for parties seeking to enforce their awards.¹⁰

This article delves into the issue of enforcing international arbitral awards against sanctioned states, where upholding the sanctity of legal agreements clashes with the principle of sovereign immunity that shields nations from foreign legal actions. By examining the delicate balance between upholding arbitral awards in a complex international environment, this article sheds light on dispute resolution in a globalised, politically charged era. The following sections will explore the impact of sanctions, the doctrine of sovereign immunity, and the challenges highlighted by a case study on Russia. Additionally, the article will assess the implications of the New York Convention in the context of sanctions regimes. Finally, it will propose potential solutions to the challenges of enforcing arbitral awards in and against sanctioned states.

This article's primary aim is to critically examine the issue of enforcing arbitral awards when sanctions regimes are in place. It relies on the doctrinal analysis of international laws and treaties, with a special focus on the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).¹¹ The analysis of the legal framework for the enforcement

⁵ *Id.* at 1092.

⁶ Dautaj, Ylli. Enforcing Arbitral Awards Against State and the Defense of Sovereign Immunity from Execution: A U.S. Perspective. *University of Pennsylvania Journal of International Law*, vol. 11, no. 2, p. 98-141, 2023.

⁷ *Ibid.*

⁸ Krishna, Charvi. Imposition of Economic Sanctions: An Embargo on International Commercial Arbitration? <https://aria.law.columbia.edu/imposition-of-economic-sanctions-an-embargo-on-international-commercial-arbitration/>. Accessed 10 October 2024.

⁹ Liu, Joe. 11 October 2017. Keep Calm and Arbitrate? The Impact of Political Events on International Arbitration. <https://arbitrationblog.kluwerarbitration.com/2017/10/11/keep-calm-arbitrate-impact-political-events-international-arbitration/>. Accessed 10 October 2024.

¹⁰ Yakimova, Valeriia. 14 February 2023. The Enforcement of Awards Against Sanctioned Parties: Mission (Im)possible? <https://arbitrationblog.kluwerarbitration.com/2023/02/14/the-enforcement-of-awards-against-sanctioned-parties-mission-impossible/>. Accessed 10 October 2024.

¹¹ UNCITRAL, New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (adopted 10 June 1958) 330 UNTS 38 (New York Convention).

of arbitral awards helps identify how sanction regimes interact with the grounds for refusal to enforce awards such as arbitrability and public policy. Legal doctrines such as sovereign immunity and its impact on the enforcement of arbitral awards against sanctioned states are also reviewed. Doctrinal analysis is supplemented by an examination of case laws on how courts have navigated the enforcement of arbitral awards against sanctioned states, and its interplay with sovereign immunity, as well as arbitrability and public policy considerations. The article concludes with a normative assessment of the implications of the findings by reflecting on potential reforms that could enhance the enforceability of arbitral awards amid complex geopolitical tensions.

Sanctions

The enforcement of international arbitral awards, while often portrayed as a systematic legal process, is fraught with complexities that arise from geopolitical realities. The interplay of sanctions, political alliances, and enduring international disputes significantly complicates the landscape for the recognition and execution of these awards across borders.¹² Navigating this intricate landscape necessitates a nuanced understanding of the geopolitical environment influencing enforcement actions, requiring parties to consider not only legal dimensions but also the broader political context in which arbitration operates.

Sanctions are described as ‘coercive measures applied against states, non-state entities or individuals that pose a threat to protected principles such as international peace or national security’.¹³ Sanctions can target ‘a state, an activity or a legal or natural person’.¹⁴ The purpose of sanctions is ‘to assert economic pressure in order to modify the behaviour of the relevant target by reducing its capacity for manoeuvre or weakening its economic power, ultimately altering its strategic decisions on a given matter’.¹⁵

Sanctions can be categorised into trade sanctions, financial sanctions and travel restrictions.¹⁶ Trade sanctions, such as quotas, tariffs and embargoes, are

¹² *Supra* note 9; Tsang, Stephanie. 4 April 2024. Sanctions in Current Geopolitical Climate: Challenges to International Arbitration in the Context of the Russia-Ukraine War. <https://arbitrationblog.kluwerarbitration.com/2024/04/04/sanctions-in-current-geopolitical-climate-challenges-to-international-arbitration-in-the-context-of-the-russia-ukraine-war/>. Accessed 10 October 2024.

¹³ Carlevaris, Andrea and Öhleberger, Veit. *Economic Sanctions and Arbitration: A Practical Guide for Parties, Counsel and Arbitrators*. International Association of Lawyers, 2023, 6; Banerjee, Prerona. 28 April 2024. Arbitration or Sanctions: Who Survives the Battlefield? <https://aria.law.columbia.edu/arbitration-or-sanctions-who-survives-the-battlefield/?cn-reloaded=1>. Accessed 10 October 2024.

¹⁴ *Supra* note 13 at 9.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

intended to restrict trade relations with or within a sanctioned state.¹⁷ Financial sanctions restrict the sanctioned party's ability to use its finances.¹⁸ These include asset freezes, limitations on fund transfers, exclusion from cooperative financial organisations such as the Society for Worldwide Interbank Financial Telecommunications (SWIFT), and prohibitions to invest in sanctioned states.¹⁹ Travel restrictions, as is obvious, limit a person's ability to travel to and from sanctioned states.²⁰ Sanctions can also be differentiated based on the entity imposing them. Sanctions may be imposed by international organisations such as the United Nations (UN) and the European Union (EU), or unilaterally by states and enforced by national regulatory bodies such as the Office of Foreign Assets Control (OFAC) in the United States of America (USA) or the Office of Financial Sanctions Implementation (OFSI) in the United Kingdom (UK).²¹ Sanctions may also be classified based on its scope.²² For instance, comprehensive sanctions or embargoes prohibit any transactions or relationships with a sanctioned state or region.²³ List-based sanctions, on the other hand, prohibit relationships with targeted persons, entities or organisations within a state, rather than the state in its entirety.²⁴ Further, sectoral sanctions, which may be comprehensive or list-based, prohibit specific activities of strategic importance for the state whose policy or conduct the sanctions are intended to alter.²⁵ Additionally, sanctions regimes often include exemptions, or licenses, that allow certain transactions despite general limitations.²⁶ These licenses can be either general, applying broadly to specific types of transactions, or specific, granted on a case-by-case basis for individual transactions.²⁷

While sanctions do not typically target arbitral proceedings directly, they can nonetheless exert substantial influence over the process.²⁸ Sanctions regimes can introduce complexities into international arbitration proceedings when the nationality or residence of any party, arbitrator, or critical figures like experts and

¹⁷ *Ibid.*: Afesorgbor, Sylvanus Kwaku. The Impact of Economic Sanctions on International Trade: How Do Threatened Sanctions Compare with Imposed Sanctions? *European Journal of Political Economy*, vol 56, p. 11-26, 2019, 14.

¹⁸ *Supra* note 13 at 10.

¹⁹ *Ibid.*; *Supra* note 17 at 14.

²⁰ *Supra* note 13 at 10.

²¹ *Id.* at 10-13.

²² *Id.* at 13.

²³ *Ibid.*; Institute for Financial Integrity. 4 June 2024. Types of Sanctions. <https://finintegrity.org/types-of-sanctions-a-vast-constantly-changing-landscape/>. Accessed 20 November 2024.

²⁴ *Supra* note 13 at 14; *Supra* note 23.

²⁵ *Id.* at 15; Gonzalez, Roberto, J., and Thompson, Joshua, R. Sanctions 2023. 4th ed. International Comparative Legal Guides, 2023, 132.

²⁶ *Supra* note 13 at 16.

²⁷ *Ibid.*

²⁸ *Id.* at 6; Opilio, Laura., and Shenk, Olga. Sanctions and Arbitration (2022) *International Disputes Digest*, pp. 33-36, 2022, 34.

witnesses is of a sanctioned state.²⁹ Additionally, the location where the underlying business transaction occurred or the chosen seat of arbitration can also be subject to sanctions, further complicating the process.³⁰ Sanctions may also impact every step of the arbitral proceeding from choosing the seat, the arbitral institution, selection of the counsel as well as the arbitral tribunal, right up to the enforcement of the award.³¹ This article will focus on the impact of sanctions on the enforcement of arbitral awards.

Asset freezes, and sanctions on the transfer of funds impact the enforcement of arbitral awards in significant ways. Targeted economic sanctions can directly hinder enforcement by imposing restrictions on the assets of the sanctioned state.³² These frozen assets, which could otherwise serve as a source of satisfaction for the arbitral award, become inaccessible to the prevailing party.³³ While sanctions regimes may contain stipulations which permit the usage of frozen assets to satisfy arbitral awards, these are usually not applicable since they require the award to be rendered before the sanctions were imposed.³⁴ Therefore, the enforceability of the award could be compromised if the sanctioned party's assets are frozen, thereby limiting their ability to satisfy the award.³⁵ Further, sanctions regimes frequently incorporate limitations on financial transactions.³⁶ In international arbitration, several essential payments occur throughout the process.³⁷ These include the registration fee upon filing an arbitration request, an advance payment to cover the anticipated costs of the arbitral tribunal and the administering institution, the fees paid to legal counsel representing each party, and finally, the settlement amount stipulated in the final arbitral award.³⁸ Sanctions on financial transactions can disrupt the smooth flow of payments necessary to compensate the prevailing party.³⁹ Consider a scenario where the prevailing party is domiciled in a sanctioned state, while enforcement is sought in a nation actively imposing sanctions. Transferring the awarded funds becomes a logistical labyrinth, potentially necessitating the exploration of complex workarounds or the acquisition of special licenses. This process that can be both time-consuming and cost-prohibitive.

²⁹ *Supra* note 13 at 17.

³⁰ *Ibid.*

³¹ *Id.* at 17-19.

³² *Supra* note 12.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Kleiner, Caroline, and Le Goff, Pierrick. Deference in International Arbitration and Economic Sanctions. *Revista Internacional de Arbitragem e Conciliação*, vol. XVIII, pp. 65-91, 2022, 73.

³⁶ *Supra* note 13 at 33.

³⁷ Tarabelloni, Dario. 22 December 2022. The Impact of International Financial Sanctions in the Administration of International Arbitration Proceedings. <https://www.dlapiper.com/en/insights/publications/2022/12/the-impact-of-international-financial-sanctions>. Accessed 10 October 2024.

³⁸ *Ibid.*

³⁹ *Ibid.*

The cumulative effect of these legal, political, and economic measures creates a formidable environment for investors seeking redress through arbitration. As countries continue to navigate this complex terrain, the need for innovative legal solutions and international cooperation becomes increasingly evident to mitigate the adverse impacts on foreign investment and uphold the integrity of international arbitration mechanisms. The New York Convention establishes a framework for the recognition and enforcement of foreign arbitral awards, aiming to simplify and streamline this process.⁴⁰ However, in the context of complex geopolitical tensions marked by sanctions regimes, it can add further layers of complexity. The following section will demonstrate how these factors interplay to complicate the enforcement of foreign arbitral awards.

The New York Convention and its Impact on Sanctions Regimes

Under the New York Convention, signatory states are obligated to enforce awards made in other contracting states, provided certain criteria are met.⁴¹ These criteria include the validity of the arbitration agreement, the absence of due process violations, arbitrability of the dispute and the award not being contrary to the public policy of the enforcing state.⁴² Article V of the New York Convention provides specific grounds under which a court may refuse to recognise and enforce a foreign arbitral award.⁴³ One critical aspect is the arbitrability of disputes, which dictates whether certain types of disputes can be resolved through arbitration rather than through national courts.⁴⁴ This provision permits the denial of enforcement if courts find that a dispute's nature renders it non-arbitrable.⁴⁵ Arbitrability is bifurcated into objective arbitrability (*ratione materiae*) and subjective arbitrability (*ratione personae*).⁴⁶ Objective arbitrability concerns the type of disputes eligible for arbitration, while subjective arbitrability addresses the parties' competence to form a binding arbitration agreement.⁴⁷ In the context of economic sanctions, objective arbitrability is crucial since arbitration, a private process with public repercussions, must respect national and international legal norms.⁴⁸ Although

⁴⁰ New York Convention.

⁴¹ *Id.* at art III and V.

⁴² *Id.* at art V.

⁴³ *Id.* at art V(1).

⁴⁴ *Id.* at art V(2)(a).

⁴⁵ *Ibid.*

⁴⁶ Kotelnikov, Andrey. Economic Sanctions, Arbitrability and Public Policy. *International Arbitration Law Review*, vol. 23, no. 1, pp. 19-56, 2020, 35.

⁴⁷ *Ibid.*

⁴⁸ *Supra* note 8.

sanctions might invalidate the main contract, arbitration clauses often remain valid due to the principle of separability.⁴⁹ National courts generally uphold arbitrability in sanction-related disputes, recognising that arbitration in commercial contexts rarely impacts public law significantly.⁵⁰ This stance supports the principle of *Kompetenz-Kompetenz*, where arbitral tribunals rule on their jurisdiction.⁵¹

Courts have, however, navigated the complex intersection of arbitrability and sanctions with nuanced rulings. In *Fincantieri v Ministry of Defence of Iraq*,⁵² the imposition of UN sanctions on Iraq challenged the arbitrability of a military goods contract.⁵³ The arbitral tribunal and Swiss Federal Tribunal distinguished between non-arbitrability and the effect of sanctions on substantive issues, concluding that sanctions do not inherently render disputes non-arbitrable.⁵⁴ However, the Swiss Tribunal warned that arbitrability could conflict with public order during enforcement.⁵⁵ Similarly, in *La Compagnie Nationale Air France v Libyan Arab Airlines*,⁵⁶ the Québec Court of Appeal addressed a UN embargo affecting a commercial contract with Libyan entities.⁵⁷ The court differentiated claims arising before and after the embargo, highlighting the temporal nature of sanctions.⁵⁸ It upheld arbitrability while cautioning against potential public order violations, emphasising that the interpretation of sanctions regulations is pivotal in determining arbitrability.⁵⁹

Despite general judicial support for arbitrability in sanction-related disputes, courts remain vigilant against agreements designed to circumvent sanctions.⁶⁰ If an arbitration agreement appears to evade mandatory regulations, it may be invalidated, which is crucial for maintaining the integrity of arbitration in compliance with international sanctions.⁶¹ Moreover, subsequent Security Council Resolutions often mirror language that explicitly restricts claims arising from specific contracts, impacting the admissibility of substantive issues even if the dispute is deemed arbitrable.⁶² Thus, the arbitrability of a dispute involving sanctions depends on the sanctions' language, the law governing the arbitration seat, and the arbitration

⁴⁹ *Ibid.*

⁵⁰ *Supra* note 46 at 36.

⁵¹ *Supra* note 8.

⁵² *Fincantieri Cantieri Navali Italiani SpA and OTO Melara Spa v ATF*, ICC Award No. 6719, 25 November 1991.

⁵³ *Ibid.*

⁵⁴ *Supra* note 8.

⁵⁵ *Ibid.*

⁵⁶ *La Compagnie Nationale Air France v Libyan Arab Airlines*, CanLII 35834 (2003).

⁵⁷ *Ibid.*

⁵⁸ *Supra* note 8.

⁵⁹ *Supra* note 56.

⁶⁰ *Supra* note 8.

⁶¹ *Ibid.*

⁶² *Ibid.*

agreement.⁶³ This multifaceted approach ensures that arbitration respects both international sanctions and domestic public policy, maintaining a delicate balance between party autonomy and legal compliance. This dynamic underscores the importance of a careful judicial approach in enforcing arbitral awards amid geopolitical tensions, where the New York Convention plays a pivotal role in harmonising international arbitration standards with national legal imperatives.

Apart from arbitrability, Article V(2)(b) of the New York Convention states that courts may refuse the enforcement of arbitral awards if it violates the public policy of the State.⁶⁴ The interpretation of the term ‘public policy’ has been a subject of ongoing debate, as its meaning can vary significantly from one state to another.⁶⁵ In *Parsons & Whittemore Overseas Co. v RAKTA*,⁶⁶ the US Court of Appeals narrowly interpreted public policy and held that valid foreign arbitral awards should be enforced unless it ‘violates the basic principles of morality and justice of the concerned State’.⁶⁷ This approach discourages viewing sanctions solely as tools to safeguard national political interests, emphasising the importance of upholding international legal principles instead.⁶⁸

When economic sanctions are imposed, questions arise about whether enforcing a foreign arbitral award when sanctions are in place conflicts with the public policy of the relevant state.⁶⁹ In the *Eco Swiss* case,⁷⁰ the Court of Justice of the EU determined that Article 101 of the Treaty on the Functioning of the European Union (TFEU), which prohibits anti-competitive behaviour, is a fundamental provision for the functioning of the EU internal market and thus represents EU public policy.⁷¹ Consequently, it has been argued that EU sanctions should be treated similarly within EU member states since they reflect the fundamental objectives and values of the EU.⁷² Further, companies with assets primarily located in the EU are required to seek authorisation from relevant authorities to transact with sanctioned parties to comply with an arbitral award, failing which, the enforcement may be resisted on the grounds of public policy, potentially leading to the refusal or postponement of

⁶³ *Ibid.*

⁶⁴ New York Convention, art V(2)(b).

⁶⁵ *Supra* note 8.

⁶⁶ *Parsons & Whittemore Overseas Co. v. Societe General de l’Industrie du Papier (RAKTA)*, 508 F.2d 969.

⁶⁷ *Ibid.*

⁶⁸ *Supra* note 8.

⁶⁹ *Supra* note 46 at 43.

⁷⁰ *Eco Swiss China Time Ltd v Benetton International NV* [1999] E.C.R.

⁷¹ *Ibid.*; Haga, Aadne. M., Vigmostad, Tine Elisabeth., Kolstad, Aksel., and Haugse, Mads K. 13 February 2024. Enforcing an Award Contrary to Sanction, an Issue of ‘Public Policy’?. <https://www.wr.no/en/news/enforcing-an-award-contrary-to-sanctions-an-issue-of-public-policy>. Accessed 20 November 2024.

⁷² *Supra* note 71.

enforcement until sanctions are lifted.⁷³ Further, courts in EU member states may be required to apply these overriding provisions *ex officio*.⁷⁴

However, the treatment of sanctions outside the EU varies.⁷⁵ For example, the Paris Court of Appeal in *Sofregaz v NGSC* differentiated between UN and EU sanctions, which it deemed part of international public policy, and unilateral US sanctions, which it did not.⁷⁶ The court emphasised that a violation of international public policy must be concrete and effective to set aside an arbitral award.⁷⁷ Ultimately, the jurisdiction's public policy, the nature of the sanctions, and the potential for manifest violations of sanctions determine whether an arbitral award involving sanctioned entities will be enforced.⁷⁸ Therefore, while EU sanctions may prevail in EU jurisdictions, enforcement outside the EU is less certain, and assets in non-EU countries may still be subject to seizure even if the award is unenforceable within the EU.⁷⁹

The Ukrainian Supreme Court in *JSC Avia Fed Service v SJSHC Artem* definitively determined the issue and ruled that enforcing an arbitration award in favour of a sanctioned Russian company against a Ukrainian defense enterprise would violate Ukraine's public policy.⁸⁰ As a result, the court refused to enforce the award.

A recent case demonstrates the approach of the Russian courts on this issue, whereby the claimant had secured an arbitral award from the International Commercial Court at the Ukrainian Chamber of Commerce and Industry against two Russian companies.⁸¹ However, the Commercial Court of the Moscow Circuit upheld a lower court's decision to refuse enforcement of the award on the ground that the director of the Ukrainian claimant company, rather than the company itself, was included on a sanctions list established by a 2018 Russian Presidential Decree targeting entities deemed unfriendly to Russia.⁸²

The New York Convention can also be invoked to challenge the enforcement of an arbitral award if a party can demonstrate that they were unable to present their case effectively due to sanctions-related constraints on legal representation.⁸³

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Société Française d'Etudes et de Réalisation d'Equipements Gaziers (Sofregaz) v. Iranian Natural Gas Storage Company (NGSC)*, Paris Court of Appeal, Decision No. 19-07261 of June 3, 2020.

⁷⁷ *Ibid.*; *Supra* note 71.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *JSC Avia Fed Service v SJSHC Artem*, Case N 761/46285/16-ts, Ukraine Supreme Court.

⁸¹ The Decrees of the Commercial Court of the Moscow Circuit of 11.02.2019 N F05-24305/2018, case number N A40-221986/2018; and of 11.02.2019 N F05-87/2019, case number N A40-221976/2018.

⁸² *Ibid.*

⁸³ New York Convention, art v(1)(b).

Such constraints could include travel restrictions that prevented legal counsel from traveling to the arbitration venue, the closure or termination of law firms due to sanctions, or the disassociation of law firms from a party due to concerns about violating sanctions regulations.⁸⁴ If a party can establish that these sanctions-related constraints significantly impeded their ability to present their case, they may have grounds to challenge the award's enforcement under the New York Convention.⁸⁵ However, the specific grounds for challenging enforcement will depend on the circumstances of the case and the applicable laws.⁸⁶

Thus, it is evident that sanctions create a complex web of limitations that hinder the effective enforcement of international arbitration awards against states. These limitations not only restrict access to assets but also disrupt the enforcement process, leading to delays, increased costs, and an overall sense of uncertainty for prevailing parties. Further, the New York Convention remains a critical framework for enforcing international arbitration awards. Still, its efficacy is challenged by the interplay between sanctions regimes, arbitrability and public policy exceptions. The intricate balance between upholding arbitral agreements and respecting national and international legal norms underscores the complexity of enforcing awards against sanctioned states. Courts worldwide have taken nuanced approaches, recognising the importance of arbitrability while also safeguarding public order and complying with international sanctions. However, the variations in judicial interpretation and the potential for sanctions to override arbitral awards highlight the precarious position of award creditors. Sanctions regimes are, however, not the only hurdle in the enforcement of international arbitral awards. When arbitral awards are issued against state parties, the doctrine of sovereign immunity also acts as a hurdle in their enforcement.

Sovereign Immunity

The ability to enforce international arbitration awards against states presents a unique challenge due to the concept of sovereign immunity.⁸⁷ Sovereign immunity, a principle of customary international law, relies on the idea that sovereign states are equal, and therefore, one sovereign state cannot be subject to the jurisdiction

⁸⁴ *Supra* note 13.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ Yanos, Alexander A., and Bromberek, Kristen K. 8 June 2021. Enforcement Strategies where the Opponent is a Sovereign. <https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/2nd-edition/article/enforcement-strategies-where-the-opponent-sovereign>. Accessed 10 October 2024.

of another.⁸⁸ This long-established principle in international law grants states broad immunity from lawsuits in foreign courts.⁸⁹

There are two primary approaches to sovereign immunity: absolute immunity and restrictive immunity.⁹⁰ Absolute immunity, rarely applied today, grants states complete immunity from suits in foreign courts, regardless of the dispute's nature.⁹¹ Under restrictive immunity, the more prevalent approach, states can be sued under certain exceptions, typically categorised as commercial activity or waiver of immunity.⁹² Restrictive immunity recognises a distinction between a state's commercial activities and its sovereign acts (*acta jure imperii*).⁹³ As such, a state's assets used for commercial purposes can be subject to legal action.⁹⁴

The two most common exceptions to sovereign immunity are the commercial activity exception and the implied waiver doctrine.⁹⁵ The commercial activity exception, for instance, brings with it the question of how to determine whether an activity is commercial or not.⁹⁶ Consequently, two tests have emerged – the Nature Test (based on the nature of the act) and the Purpose Test (based on the purpose of the act).⁹⁷ However, the Purpose Test has been rejected because all the acts of the State are presumed to have a public purpose.⁹⁸ Therefore, in applying the Nature Test, a State loses the claim to sovereign immunity if the act is of such nature that a private person could perform it.⁹⁹

Further complicating matters is the ambiguity surrounding waivers of immunity. Sovereign immunity can protect state or state-owned entities from being sued (immunity from jurisdiction) or it can prevent the enforcement of court rulings or arbitral awards against state-owned assets (immunity from execution).¹⁰⁰ Even if a state waives sovereign immunity by agreeing to arbitration, the scope of the waiver might be unclear. Did the state waive immunity for the arbitration only, or did it also waive immunity for the enforcement of any potential award?

⁸⁸ *Supra* note 10.

⁸⁹ *Supra* note 6 at 106.

⁹⁰ *Id.* at 100.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Dautaj, Ylli. 4 June 2018. Sovereign Immunity from Execution: Caveat Emptor. <https://arbitrationblog.kluwerarbitration.com/2018/06/04/sovereign-immunity-from-execution-caveat-emptor/>. Accessed 10 October 2024.

⁹⁴ *Ibid.*

⁹⁵ *Supra* note 6 at 106.

⁹⁶ *Ibid.*

⁹⁷ *Id.* at 107.

⁹⁸ Motoo, Ogiso. Jurisdictional Immunities of States and Their Property. *Yearbook of the International Law Commission*, vol. II, no. 1, pp. 59-73, 1989, 63.

⁹⁹ *Ibid.*

¹⁰⁰ Patterson, Stuart. 28 October 2018. Contracting with Governments: Pitfalls, Arbitration, Sovereign Immunity and Enforcement. <https://www.herbertsmithfreehills.com/notes/arbitration/2018-10/contracting-with-governments-pitfalls-arbitration-sovereign-immunity-and-enforcement>. Accessed 10 October 2024; *Ibid.*

It is now generally accepted that signing an arbitration clause implies a waiver of its immunity from jurisdiction.¹⁰¹ However, this implied waiver does not extend to immunity from execution.¹⁰² The differential treatment accorded to immunity from execution arises from the recognition that enforcement measures against state property constitute a more significant intrusion upon a state's autonomy in managing its internal affairs and pursuing its public objectives, as compared to the mere issuance of a judgment or order by a foreign court.¹⁰³ Despite the same, there are exceptions to the immunity from execution which are determined by using the Purpose Test, which is discredited in the determination of immunity from jurisdiction.¹⁰⁴ The court will examine whether the asset is used for public or commercial purposes, and if is used for commercial purposes, it is not immune from execution.¹⁰⁵ Additionally, the requirement of a territorial nexus between the dispute and the asset is applied with even greater rigor in the context of enforcing and executing judgments against the property of foreign states.¹⁰⁶

A state's consent to arbitration, evidenced by an arbitration agreement, appears to contradict the potential invocation of sovereign immunity.¹⁰⁷ This paradox arises because a state agrees to a dispute resolution mechanism but then potentially shields itself from the consequences of an unfavourable outcome through sovereign immunity.¹⁰⁸ The interplay between sovereign immunity and enforcement of international arbitration awards creates a problematic situation whereby award creditors frequently encounter a scenario where despite successfully achieving recognition and enforcement of the arbitral award, they face significant hurdles when attempting to seize and execute against the assets of the state against whom the award was issued.¹⁰⁹

Therefore, while international arbitration offers a valuable mechanism for resolving disputes in a globalised world, the doctrine of sovereign immunity presents a significant obstacle to enforcing awards against states, especially in the context of sanctions regimes. Finding solutions that balance the legitimate interests of states with the need for effective enforcement is crucial for upholding the sanctity of international arbitration and fostering trust in the system. These issues will be examined within the framework of a case study below.

¹⁰¹ *Supra* note 6 at 107-8.

¹⁰² *Id.* at 108.

¹⁰³ Fox, Hazel, and Webb, Philippa. *The Law of State Immunity*. 3rd ed. Oxford: OUP, 2013, 481.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Supra* note 93.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Supra* note 6 at 110.

Russia Case Study

The recent armed conflict between Russia and Ukraine and the subsequent imposition of sanctions on Russia by the United States of America (USA), the United Kingdom (UK), Australia, Singapore, Canada, the European Union (EU) and others serve as a perfect case study to examine the impact of sanctions and the invocation of the doctrine of sovereign immunity on the enforcement of arbitral awards. The sanctions imposed by the EU include individual sanctions, as well as oil price caps, import and export bans and freezing of assets.¹¹⁰ Russia has also imposed reciprocal sanctions on several ‘unfriendly’ states.¹¹¹ This situation creates a remarkably intricate geopolitical landscape with potentially significant ramifications for foreign direct investment (FDI) in Russia and the wider region.¹¹² Notably, Russia has concluded over 60 international investment agreements (IIAs) with various countries.¹¹³ These agreements frequently incorporate arbitration mechanisms, enabling foreign investors with holdings in Russia to pursue claims against the state for compensation in cases where breaches of the treaty provisions have resulted in losses.¹¹⁴ Foreign investors may have two main claims against Russia under relevant treaties.¹¹⁵ The first concerns investments within Russia itself, which could include situations where Russia nationalises assets, restricts financial transfers, or eliminates intellectual property rights.¹¹⁶ The second claim relates to investments in Ukrainian territory currently occupied or claimed by Russia, involving assets being seized, destroyed, or otherwise made inaccessible by Russian forces or authorities in these areas.¹¹⁷

Historically, enforcing awards against Russia has been difficult, partly due to its claims of sovereign immunity.¹¹⁸ However, since the invasion of Ukraine, allied nations have focused on freezing Russian assets tied to sanctioned individuals within their jurisdictions. For example, the European Union has frozen

¹¹⁰ *Supra* note 10.

¹¹¹ Aceris Law LLC. 26 June 2023. Arbitration Against Russia. <https://www.acerislaw.com/arbitration-against-russia/>. Accessed 10 October 2024.

¹¹² Allman, Daniel. November 2022. Impact of the Current Geopolitical Climate on Award Enforcement Against States. <https://www.nortonrosefulbright.com/en-fr/knowledge/publications/ff8b73e2/impact-of-the-current-geopolitical-climate-on-award-enforcement-against-states>. Accessed 10 October 2024.

¹¹³ *Ibid.*; United Nations Conference on Trade and Development. Russian Federation. <https://investmentpolicy.unctad.org/international-investment-agreements/countries/175/russian-federation>. Accessed 20 November 2024.

¹¹⁴ *Supra* note 112.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*; Li, Cecilia. 8 March 2023. Shield Against Accountability: How Russia Avoids Honoring Arbitration Awards While Being Tied Up with War and Sanctions. <https://the Arbitration Brief.com/2023/03/08/shield-against-accountability-how-russia-avoids-honoring-arbitration-awards-while-being-tied-up-with-war-and-sanctions/>. Accessed 10 October 2024.

roughly €13.8 billion of Russian assets, the United Kingdom around US\$13 billion, and Canada approximately CAD\$123 million.¹¹⁹ Estimates suggest that a US-led international task force, including the European Commission and Britain, has frozen a total of US\$330 billion worth of Russian assets.¹²⁰ This raises the question of how frozen assets could be utilised in the enforcement of arbitral awards and how this aligns with the sanctions rules of the enforcing jurisdiction, as well as its broader enforcement framework.¹²¹ In response to the geopolitical situation, numerous Western law firms enacted a swift withdrawal, terminating or significantly reducing their representation of Russian clients.¹²² Arbitral institutions had to halt proceedings involving sanctioned entities, and financial institutions stopped processing related payments simultaneously.¹²³

In response to sanctions against Russia, the Russian Parliament introduced amendments to its Commercial Procedure Code in 2020 whereby Russian courts were granted exclusive jurisdiction over commercial contracts between Russian and foreign entities subjected to sanctions unless there is no dispute resolution clause.¹²⁴ In case a dispute resolution clause exists, parties can challenge its enforceability on the ground that it imposes obstacles to access justice due to the sanctions.¹²⁵ Sanctioned parties can also seek anti-suit injunctions against foreign courts or arbitral tribunals, thereby conferring exclusive jurisdiction on Russian courts.¹²⁶ This enables sanctioned Russian entities to bypass mutually agreed contractual terms for resolving disputes through arbitration.¹²⁷ In essence, this amendment makes arbitration clauses in commercial contracts between Russian and foreign entities unenforceable.¹²⁸ In a 2021 decision, the Supreme Court of Russia affirmed the constitutionality of the aforementioned legislation and upheld the government's position that this legal shield is necessary due to concerns that international arbitral tribunals may not be able to guarantee impartial proceedings for Russian entities.¹²⁹ This also adds further complexity to the enforcement process, as will be evident from the cases examined below.

¹¹⁹ Allman, Daniel., and FitzGerald, Alison G. Impact of the Current Geopolitical Climate on Award Enforcement Against States. *International Arbitration Report*, 19, November 2022, 28.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² Bernitsa, Amaryllis. 15 December 2023. The Impact of Sanctions on International Arbitration – Key Issues. <https://www.biiicl.org/blog/72/the-impact-of-sanctions-on-international-arbitration-key-issues>. Accessed 10 October 2024.

¹²³ *Ibid.*

¹²⁴ *Supra* note 13.

¹²⁵ *Ibid.*

¹²⁶ *Supra* note 8.

¹²⁷ *Ibid.*

¹²⁸ *Supra* note 118.

¹²⁹ *Ibid.*

In *JSC Tsargrad Media v Google* (Case No. A40-155367/2020), the petitioner claimed that commencing arbitration against Google was not feasible due to a travel ban imposed on the owner of the petitioner company, which would impact its right to engage a lawyer or participate in the arbitration proceedings.¹³⁰ This was upheld by the Moscow City Arbitration Court, which held that the reasons cited by the petitioner amount to obstacles to the access to justice.¹³¹ This decision demonstrates how sanctions regimes can affect not only the enforcement of arbitral awards but also the ability to commence arbitration proceedings as well.

In *Hulley Enterprises Ltd v The Russian Federation*, the petitioner sought to enforce an arbitral award against the Russian Federation rendered by the Permanent Court of Arbitration valued at around 50 Billion USD.¹³² The respondent sought the dismissal of the application for enforcement of an arbitral award before the United States District Court of Columbia on the grounds of foreign sovereign immunity.¹³³ The respondent also argued that the nature of the relationship between the parties in this case was not commercial to attract the application of the New York Convention.¹³⁴ This case illustrates the arduous journey of enforcing arbitral awards against sovereign states invoking immunity defenses. Even though the US District Court of Columbia dismissed Russia's sovereign immunity claims based on the exceptions in the Foreign Sovereign Immunities Act, the enforcement process spanned decades, reflecting the intrinsic difficulties in overcoming sovereign immunity defenses.

The *Angophora Holdings Limited v. Ovsyankin* case, decided by the Alberta Court of King's Bench of Canada, provides crucial insights into the application of Canada's economic sanctions under the Special Economic Measures (Russia) Regulations.¹³⁵ The court examined whether enforcement activities by an entity indirectly controlled by a designated person would contravene these sanctions.¹³⁶ Key takeaways include the recognition that entities not directly designated can still fall under sanctions if controlled by designated persons, termed 'Shadow Designated Persons'.¹³⁷ The case underscores the complexity of determining control and highlights the risk of contravening sanctions in transactions involving such

¹³⁰ *Supra* note 13.

¹³¹ *Ibid.*

¹³² Thomson Reuters Practical Law. 22 November 2022. DC District Court Rejects Russia's Claim to Sovereign Immunity to Resist Enforcement of Yukos Arbitration Awards in the US. [https://uk.practicallaw.thomsonreuters.com/w-041-4689?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-041-4689?transitionType=Default&contextData=(sc.Default)&firstPage=true). Accessed 10 October 2024.

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ *Angophora Holdings Limited v. Ovsyankin*, 2022 ABKB 71.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

entities.¹³⁸ Justice Romaine found a strong prima facie case that the respondent was controlled by Gazprombank, a designated entity, making enforcement actions risky under the Russia Sanctions.¹³⁹ However, the court did not find irreparable harm to the applicant if the enforcement proceeded and dismissed the stay application.¹⁴⁰ The ruling suggests that enforcement steps can proceed but urges caution, especially regarding the distribution of proceeds from asset sales.¹⁴¹ The ruling highlights the legal uncertainties and procedural challenges in enforcing awards against entities potentially subject to sanctions. Despite obtaining a recognition and enforcement order (REO) in good faith, the respondent faced significant legal hurdles due to the subsequent designation of Gazprombank as a sanctioned entity.¹⁴² This suggests that even legally sound awards and orders can be complicated by evolving sanctions regimes, affecting the predictability and reliability of enforcement. The court acknowledged that while the enforcement of the REO itself might not violate sanctions, the distribution of proceeds from asset sales to a controlled entity could likely breach them.¹⁴³ This creates a risk for judgment creditors and enforcement agencies, deterring them from pursuing enforcement actions due to potential legal repercussions.¹⁴⁴

The sanctions imposed, the legislative measures adopted and the judicial decisions rendered in connection with Russia's armed conflict with Ukraine demonstrate the complex landscape in which the enforcement of arbitral awards is sought. These measures indicate that while sanctions serve as powerful tools to pressure states like Russia, they simultaneously complicate the enforcement of arbitral awards by entrenching sovereign immunity claims. The evolving geopolitical climate may necessitate more robust international legal frameworks to address these challenges, balancing the enforcement of arbitral awards with respect for state sovereignty and the realities of international sanctions. The next section will focus on exploring potential solutions to these challenges by examining innovative strategies that could harmonise international arbitration practices with the realities of a politically fragmented world.

¹³⁸ Boscarior, John W., Zaccaria, Melina., and Sathananthan, Gajan. 21 November 2022. Courts Take on the "Control Question" under Canadian Economic Sanctions. <https://www.mccarthy.ca/en/insights/blogs/terms-trade/courts-take-control-question-under-canadian-economic-sanctions>. Accessed 20 November 2024.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ Ellam, Timothy St. J., Bierkos, Jordan, and Ward, Emily. 21 November 2022. War & Peace: Enforcement of International Arbitral Awards in Canada in an Age of Monetary Sanctions. <https://www.mccarthy.ca/en/insights/blogs/international-arbitration-blog/war-peace-enforcement-international-arbitral-awards-canada-age-monetary-sanctions>. Accessed 10 October 2024.

¹⁴² *Ibid.*

¹⁴³ *Supra* note 138.

¹⁴⁴ *Supra* note 141.

The Search for Solutions

The multifaceted challenges posed by enforcing international arbitral awards amidst geopolitical tensions calls for a nuanced and multi-pronged approach. The intersection of international arbitration with the realms of geopolitics necessitates a robust framework encompassing diligent legal practices, proactive institutional measures, international cooperation, and innovative legal solutions.

Due Diligence by Legal Professionals

First and foremost, the role of lawyers and arbitrators is paramount in navigating the complexities introduced by sanctions and claims of sovereign immunity.¹⁴⁵ Legal practitioners must engage in rigorous due diligence to understand the geopolitical contexts of the involved states.¹⁴⁶ This includes comprehensive research into current sanctions regimes and potential future developments.¹⁴⁷ By drafting arbitration clauses with foresight, lawyers can anticipate and mitigate enforcement obstacles. This involves selecting arbitration seats and institutions known for their supportive stance on arbitration, their interpretation of public policy in the context of sanctions and minimising enforcement interference.¹⁴⁸

Furthermore, developing risk mitigation strategies is crucial. Legal advisors should assist clients in structuring transactions to reduce exposure to sanctions, possibly through the use of escrow accounts for holding potential award amounts. Additionally, lawyers must advise on asset tracing and recovery strategies, making clients aware of the complexities and costs of enforcing awards against sanctioned or sovereign entities.

Role of Arbitral Institutions

Arbitral institutions play a critical role in enhancing the enforceability of awards.¹⁴⁹ They can develop and disseminate guidelines for handling cases involving sanctioned states or entities, providing clear protocols for arbitrators and parties to manage sanctions-related issues during proceedings.¹⁵⁰ For example, the London Court of International Arbitration (LCIA) Rules 2020, in Article 24A.10 provides that the LCIA may refuse to act on any instruction and, or make any payment if it finds that doing so may involve a breach of sanctions or may otherwise expose the LCIA

¹⁴⁵ *Supra* note 8.

¹⁴⁶ Linney, Barbara D., and Cadet, Orga. 20 June 2024. Sanctions Issues Arising in Corporate Transactions. <https://globalinvestigationsreview.com/guide/the-guide-sanctions/fifth-edition/article/sanctions-issues-arising-in-corporate-transactions>. Accessed 10 October 2024.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Supra* note 13 at 17-18, 45.

¹⁴⁹ *Supra* note 8.

¹⁵⁰ *Ibid.*

to enforcement action from any law enforcement agency.¹⁵¹ Additionally, training and awareness programs can ensure that all stakeholders are well-informed and prepared to navigate these challenges.

Moreover, arbitral institutions often maintain close connections with regulatory authorities and banks, enabling them to assist parties in complying with applicable sanctions regimes.¹⁵² This is particularly useful when it is unclear whether a specific sanction applies or if a license is required.¹⁵³ Moreover, arbitral institutions can help coordinate compliance logistics, such as securing any necessary licenses.¹⁵⁴ Offering expedited procedures for cases with urgent enforcement issues, such as the risk of asset dissipation, can also be a significant measure.

International Cooperation

International cooperation is indispensable for developing a coordinated approach to enforcing arbitral awards amidst geopolitical tensions.¹⁵⁵ Bilateral and multilateral agreements between countries can streamline the enforcement process, establishing clear frameworks and procedures for cooperation. Harmonising legal frameworks and enforcement procedures across jurisdictions can reduce inconsistencies and uncertainties.¹⁵⁶

Encouraging judicial dialogue can facilitate the exchange of information best practices, challenges and solutions related to enforcing arbitral awards in sanctioned environments. Additionally, establishing global task forces comprising representatives from major arbitral institutions, national authorities, and international organisations can monitor and address enforcement challenges in real time.

Conclusion

This article has explored the challenges of enforcing international arbitration awards against states in a geopolitical landscape increasingly shaped by sanctions regimes, sovereign immunity, and political tensions. It argues that while the New York Convention provides a foundational framework for enforcement, its effectiveness is often undermined by the complex interplay of sanctions, public policy exceptions, and immunity defenses. Using case studies, including the evolving dynamics surrounding Russia, the article demonstrates how sanctions

¹⁵¹ The London Court of International Arbitration Rules 2020, art 24A.10.

¹⁵² *Supra* note 13 at 30.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Supra* note 8.

¹⁵⁶ *Ibid.*

complicate the enforcement process by freezing assets, restricting financial transactions, and creating procedural hurdles. The doctrine of sovereign immunity further exacerbates these challenges, as states leverage immunity defenses to avoid compliance with adverse awards. Against this backdrop, the article highlights the need for innovative legal strategies, institutional reforms, and enhanced international cooperation to address these pressing issues.

The enforcement of arbitral awards against states demands proactive engagement by legal professionals, who must adopt forward-looking approaches to drafting arbitration clauses, selecting supportive arbitration seats, and structuring transactions to minimise enforcement risks. Lawyers must conduct meticulous due diligence to anticipate the impact of sanctions regimes and sovereign immunity, while leveraging tools such as escrow accounts and asset-tracing mechanisms to navigate enforcement barriers effectively.

Arbitral institutions must rise to the challenge by updating their procedural frameworks and providing clear guidance on managing sanctions-related issues. Institutions like the London Court of International Arbitration (LCIA) have taken steps to address these challenges by including provisions to manage sanctions-related issues, as seen in Article 24A.10 of the LCIA Rules 2020. By maintaining close relationships with regulatory authorities and offering compliance assistance, arbitral institutions can offer crucial support during enforcement.

At the international level, the article underscores the importance of harmonising legal frameworks to reduce inconsistencies in enforcement practices. Bilateral and multilateral agreements can streamline cross-border enforcement processes, while judicial dialogue can promote greater coherence in addressing issues related to sanctions and immunity. The creation of international task forces, comprising key stakeholders such as arbitral institutions, state authorities, and financial regulators, can provide real-time solutions to enforcement challenges and ensure greater predictability in sanctioned environments.

The New York Convention remains a critical tool for the recognition and enforcement of arbitral awards, but its efficacy must be enhanced to address the unique challenges posed by modern sanctions regimes and sovereign immunity. Supplementary guidelines developed in collaboration with organisations like UNCITRAL can strengthen the Convention's application, ensuring it remains relevant in an era of increasing geopolitical complexity.

In conclusion, the enforcement of international arbitration awards against states requires sustained effort across multiple fronts. Legal practitioners, arbitral institutions, and international actors must collaborate to create a robust enforcement framework grounded in the rule of law. By addressing the challenges of sovereign immunity and sanctions through innovative strategies and global

partnerships, the international arbitration system can continue to uphold its promise as a fair, predictable, and reliable mechanism for resolving disputes. This will not only enhance trust in arbitration but also support global trade and investment, ensuring accountability and the stability of the international legal order.

Resumo: A execução de sentenças arbitrais internacionais enfrenta uma ameaça crescente: o espectro das sanções. Este artigo explora os complexos desafios que surgem quando credores de sentenças buscam executá-las contra Estados sancionados. O atual marco jurídico, representado pela Convenção de Nova York, oferece uma base, mas sua eficácia diminui diante de regimes de sanções e alegações de imunidade soberana. Os credores de sentenças percorrem um verdadeiro labirinto, cujo caminho está entrelaçado com tensões geopolíticas e o cenário em constante mudança das relações internacionais. O artigo analisa a intrincada inter-relação entre sanções, imunidade soberana e o impacto da Convenção de Nova York sobre os regimes de sanções. Examina como esses fatores afetam a execução, colocando em risco o próprio cerne da arbitragem internacional – a promessa de um método previsível e exequível para a resolução de disputas transnacionais. Conclui reconhecendo que existem soluções potenciais, mas enfatiza a necessidade urgente de enfrentar os desafios fundamentais antes de se estabelecer um sistema de execução robusto e previsível. Só então a arbitragem internacional poderá cumprir seu papel como um dos pilares do comércio e do investimento globais.

Palavras-chave: Arbitragem. Sentenças. Execução. Sanções. Ordem Pública.

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