

Lack of arbitrability of sanctions-related disputes

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International sanctions



Key Q:
whether disputes arising
from commercial contracts
which fall within sanctions
regime are capable of
being settled by
arbitration?

Long-
standing
controversy

No unified
approach:
both YES and NO
(majority says
YES)

International sanctions

Imposed by individual states

- Russian Federation
- Myanmar
- Sudan



Imposed by the UN

- Iran
- Libya
- North Korea



Domestic Public Policy?

Transnational Public Policy?

“YES”: for arbitrability (US)



Ministry of Defense of Iran v Cubic Defense Systems

- sale and service of air combat manoeuvring range
- individual sanctions against Iran
- public policy in favour of recognition is stronger

“YES”: for arbitrability (Switzerland)



agent for sale of diesel engines for electrical power plants

UN embargo against Iraq

arbitration law at the place of arbitration determines effect of sanctions

“NO”: against arbitrability (Italy)

Fincantieri-Cantieri v. Ministry of Defense of Iraq



supply of corvettes for the Iraqi Navy

UN embargo against Iraq

1st Instance declined jurisdiction

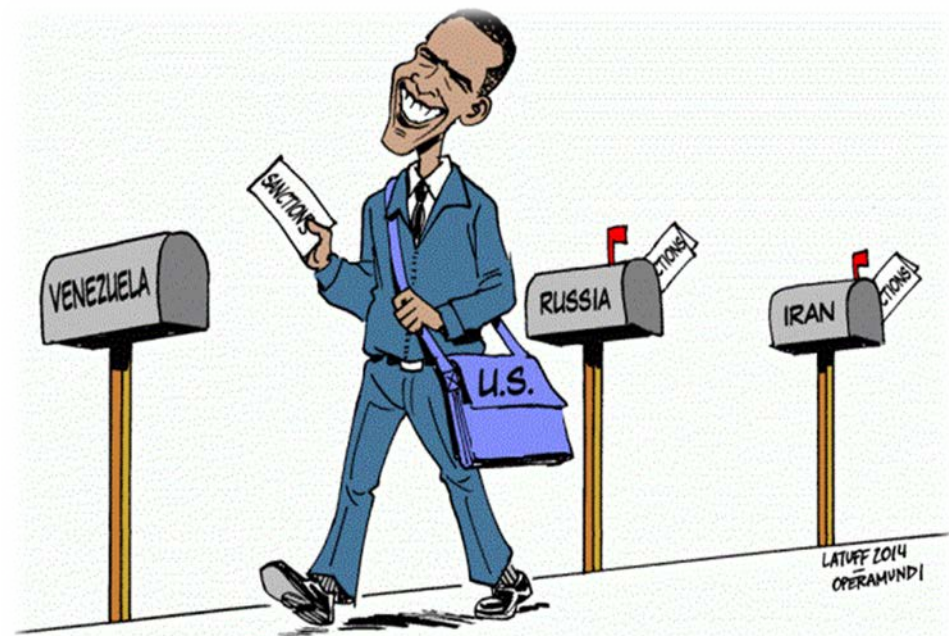
appeal declared non-arbitrable

“YES” and/or “NO”? (Russian Federation)

sanctions by the US, EU,
Norway, Canada,
Switzerland, etc.

impact:
rejection to arbitrate? or
just impartiality?

ultimately:
shift in choice of forum?
and applicable law?
Asia?



Questions?



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