

## Applying the Rules of a Third Country Establishing a Sanction: “the Existence of a Close Connection” and “the Prevalence of the Benefits of Giving Effect to a Sanction” Requisites

*Esmat Golshani\**  
*Seyed Mahdi Hosseini Modarres\*\**

DOI: 10.22096/law.2022.131873.1726

[Received Date: 17/04/2022 Acceptance Date: 28/08/2022]

### Abstract

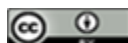
Once, between parties to a contract, a dispute arising out of sanctions imposed by a third country is raised before the dispute resolution authority, the authority can apply the sanctions to the contract and obligation of the parties thereto as “overriding mandatory rules” only if three significant requisites are fulfilled: “application worthiness of the sanction”, “close connection between the disputed contract and enacting state” and “prevalence of the benefit of a decision to give effect to a sanction over a decision to disregard it”. The lack of each of the requisites will preclude the application of the sanctions enacted by a third country. This research will provide an answer to this question: concerning a sanction enacted by third countries, what the nature and the criteria to fulfill “the existence of a close connection” and “prevalence of the benefit of giving effect to a sanction” requisites are.

The criteria to ascertain the “close connection” are: “to assimilate the sanction of governing law into foreign law”, “to apply the law of sanctioning state in case of no choice of the law by the parties”, “performance of the contract in the sanctioning state”, and “the connection of the contracting parties with sanctioning state through domicile or nationality. In over-territorial sanctions, in particular, “close connection” requisite will be ascertained if the over-territorial legislative jurisdiction of the sanctioning state is accepted based on the accepted standards and criteria in public international law.

**Keywords:** Sanction imposed by a third country; over-territorial sanctions; close connection requisite; prevalence of the benefit of a decision to give effect to a sanction; overriding mandatory rules.

\*Assistant Professor, Department of Law, Imam Sadeq University, Tehran, Iran.  
Email: Esmat.Golshani@isu.ac.ir

\*\*Assistant Professor, Faculty of Law, Shahid Beheshti University, Tehran, Iran.  
Email: m\_modarres@sbu.ac.ir



### Bibliography

- AliKhani, Hossein. *Sanctioning Iran: anatomy of a failed policy*. Translated by Mohammad Mottaghinejad. Tehran: Institute for Political and International Studies, 2000. [In Persian]
- Azeredo da Silveira, Mercédeh. *Trade Sanctions and International Sales- an Inquiry into International Arbitration and Commercial Litigation*. Netherland: Wolters Kluwer, 2014.
- Bahmaei, Seyyed Mohammad Ali, and feyzallah jafari. "Ravie Ghazaie Faranse va Ejraye Arae Davarie Ebtal Shode dar Mahalle Sodur." *Legal Research Quarterly* 14, no. 7 (2011): 133-178. [In Persian]
- Bahmaei, Seyyed Mohammad Ali. "Hoghughe Davarie Beynalmelali." Master's degree textbook, University of Shahid Beheshti, Tehran, 2010. [In Persian]
- Barraclough, Andrew, and Jeff Waincymmer. "Mandatory Rules of Law in International Commercial Arbitration." *Melbourne Journal of International Law* 6, no. 2 (2005): 205-244.
- Brunner, Christoph. *Force Majeure and hardship under general contract principles: Exemption for Non-performance in International Arbitration*. Austin etc.: Wolters Kluwer, 2009.
- Compagnie Européene des Pétroles SA v. Sensor Nederland BV, Arrondissements rechtbank, The Hague, 17 September 1982, ILM 1983.
- Cortese, Bernardo. "International Economic Sanctions as a Component of Public Policy for Conflict of Laws Purposes." In *Economic Sanctions in International Law*, edited by Picchio Forlati/Sicilianos, Leiden Boston: Martinus Nijhoff, 2004.
- Council Regulation (EC), n. 2271/96 of 22 November 1996.
- Export Administration Act (EAR).1979.
- Gharavi, Hamid G. *The International Effectiveness of the Annulment of an Arbitral Award*. Netherland/ the Hague: Kluwer Law International, 2002.
- Giuliano, Mario, and Paul Lagarde. "Report on Convention on the law applicable to contractual obligations." *Official Journal*, no. C 282 (1980): 1-50.
- Golshani, Esmat. "Impact of Trade Sanctions on International Commercial Contracts." PhD diss., University of Shahid Beheshti, 2017. [In Persian]
- ICC Award n. 1859, 1973, In Derains, L'ordre public et le droit applicable au fond du litige dans l'arbitrage international, Rev. arb. 1986, p. 407, n. 54.

- ICC Award n. 2136, 1974, In Derains, Les norms d'application immediate dans la jurisprudence arbitral internationale, in Le droit des relations économiques internationaux – Etudes offertes à Berthold Goldman, n. 21.
- ICC Award, n. 2178, 1973, In Derains, L'ordre public et le droit applicable au fond du litige dans l'arbitrage international, Rev. arb. 1986, n. 55.
- ICC Award, n. 2375, 1975, JDI 1976.
- ICC Award, n. 6500, 1992, JDI 1992.
- ICC Preliminary Award n. 4132, 22 September 1983, JDI 1983, pp. 891 et seq., Yearbook of Commercial Arbitration, 1985.
- Ismailpour Fadakar, Shahin. "Enforcement of voided foreign arbitration awards in the issuing country." Master's thesis, Shahid Beheshti University, 2016. [In Persian]
- Jafarzadeh Mirghasem, Esmat Golshani, and seyed Mahdi Hosseini Modarres. "The Role of "Application worthiness requirement" for applying sanctions enacted by a third country." *Comparative Law Researches Quarterly* 25, no. 2 (2021): 51-75. [In Persian]
- Kern, Alexander. *Economic Sanctions—Law and Public Policy*. UK: Palgrave Macmillan, 2009.
- Lando, Ole. *The conflict of laws of contracts: general principles*. Dordrecht/Boston/London: MARTINUS NIJHOFF PUBLISHER- Hague Academy of International Law, 1984.
- LaRae-Perez, Cassandra. "Economic Sanctions as a Use of Force: Re-Evaluating the Legality of Sanctions from an Effects-Based Perspective." *BU Int'l LJ* 20 (2002): 161-188.
- Lew, Julian D. M., Loukas A. Mistelis, and Stefan M. Kröll. *Comparative international commercial arbitration*, Translated by Mohammad. Habibi Mojandeh, 1st edition, Qom: Mofid University, 2012. [In Persian]
- Libyan Arab Foreign Bank v. Manufacturers Hanover Trust Co., 1989, 1 Lloyd's Rep 608.
- Libyan Arab Foreign Bank v. Bankers Trust Co., 1988, 1 Lloyd's Rep 259.
- Lowe, Vaughan. "US Extraterritorial Jurisdiction: The Helms Burton and Damatos Acts." *International & Comparative Law Quarterly* 46, no. 2 (1997): 378-390.
- Merciai, Patrizio. "The Euro-Siberian Gas Pipeline Dispute-A Compelling Case for the Adoption of Jurisdictional Codes of Conduct." *Md. J. Int'l L. & Trade* 9, no. 1 (1984): 1-52.

- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. 1958.
- Nikbakht, Hamid Reza. "Mahdudiathaye Emale Ghanune Khareji dar Taaroz-e Qavanin." *Legal Research Quarterly* 9, no. 44 (2006): 109-137. [In Persian]
- Philip, Allan. "Mandatory Rules, Public Law (Political Rules) and Choice of Law in the EEC Convention on the Law Applicable to Contractual Obligations." In *Contract Conflicts – The EEC Convention on the Law Applicable to Contractual Obligations: A Comparative Study*, edited by Peter. M. Nort, 81-110. Amsterdam/New York: North-Holland Publishing Company, 1982.
- Rome Convention. 1980.
- Rome I Regulation . 2008.
- "S.S. Lotus Case." In *Collection of Judgments*, Series A.-n. 10, Judgment n. 9, Hague: Publications of the Permanent Court of International Justice, 7 September 1927.
- Saedi Bonab, Behzad. "Economic sanctions in international law." Master's thesis, University of Shahid Beheshti, 2000. [In Persian]
- Sanders, Pieter. *Yearbook of Commercial Arbitration*. Volume 8, Amsterdam: Grain Trade Association Award, 1983.
- Shahbazinia, Morteza, Mohammad Isaei Tafreshi, and Hossein Elmi. "The Concept of Public Order in Private International Law and its Place in International Commercial Arbitration." *Private Law Studies Quarterly* 43, no. 1 (2013): 93-111. [In Persian]
- Société Fruehauf Corporation V. Massardy et autres, Cour d'appel, Paris, 22 May 1965, ILM 1966.
- Swiss, loi sur les cartels et organisations analogues. 20 December 1985.
- Swiss, Private International Law Act. 1987.
- The Dutch-American Friendship Treaty (DAFT).1956.
- The Treaty on the Functioning of the European Union. 2007.
- UNIDROIT Principles of International Commercial Contracts (PICC). 2010.
- Van Houtte, Hans. "The Impact of Trade Prohibitions on Transnational Contracts." *Int'l Bus. LJ*, no. 2 (1988):141- 154.
- Voser, Nathalie. "Mandatory Rules of Law as a Limitation on the Law Applicable to International Commercial Arbitration." *American Review of International Arbitration* 3, no. 3-4 (1996): 319-357.