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THE DOCTRINE OF RES JUDICATA IN INTERNATIONAL ARBITRATION

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Abstract

The doctrine of res judicata plays a crucial role in ensuring legal certainty, procedural efficiency, and the finality of dispute resolution. While firmly embedded in national judicial systems, its application in international arbitration remains complex due to the absence of a uniform codified framework. This article examines the operation of res judicata in international arbitration, focusing on its conceptual foundations, practical challenges, and comparative dimensions. The analysis explores the dual manifestations of res judicata in arbitration—claim preclusion and issue preclusion—and highlights the difficulties arising from divergent national standards, the role of the lex arbitri, and the recognition and enforceability requirements under the New York Convention. Particular attention is given to the absence of explicit regulation of res judicata in major international instruments, including the UNCITRAL Model Law on International Commercial Arbitration, and to the resulting reliance on choice-of-law approaches and general principles of law by arbitral tribunals. By examining comparative perspectives from the procedural laws of Uzbekistan and Italy, the article demonstrates that res judicata is consistently grounded in the triple identity test and extends to matters that were or could have been raised in prior proceedings.

Keywords: res judicata; international arbitration; claim preclusion; issue preclusion; lex arbitri; New York Convention; UNCITRAL Model Law; general principles of law; comparative law

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Introduction

The doctrine of res judicata was established to guarantee the finality of legal proceedings and to stop repeated lawsuits concerning the same matter, usually involving the same parties. It became apparent over time that courts must prevent parties from bypassing this principle by filing claims in a fragmented manner to obtain a more favorable result than what was achieved in a prior unsuccessful case. By contrast, the private interest in protection from the expense and potential for harassment that inheres in the repeated assertion of a claim is, in principle, no less in an arbitral than in a litigation forum.

In arbitration, the principle of res judicata is mainly seen in two ways: claim preclusion — claims that have been resolved in a previous arbitration are not considered again; Issue preclusion — legal or factual situations determined in a previous award are not considered again in a subsequent arbitration [1].

Practical problems in the application of res judicata in international arbitration - Arbitration rules usually do not directly regulate the principle, so it is usually resolved through the lex arbitri (procedural law of the State where the arbitration is held) or a provision set out in the contract. If the court is satisfied that the new claims could and ought to have been raised in the earlier litigation, the fresh action could be barred by the extended doctrine of res judicata (the "extended doctrine"), the rationale being that a party should not be twice vexed over essentially the same claim and the public interest requires finality in litigation [2]. The magnitude of the challenge res judicata presents to international arbitral tribunals can best be seen by contrasting res judicata in arbitration with res judicata in litigation. Obviously, the defendant in a national court proceeding may seek to have an action dismissed due to its advancing a claim that arguably has already been finally adjudicated. In order to exert a positive claim preclusive effect – whether in arbitration or national court – the judgment or award upon which the assertion of res judicata is based must be final and binding. While the criteria of the finality of judgments within national law are ordinarily well-settled, the

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finality of arbitral awards is determined in accordance with the lex arbitri, which may not have a settled rule on the matter and as to which different jurisdictions, in any event, have different rules [3]. Moreover, as noted, an arbitral award subject to the New York Convention must meet certain requirements and avoid certain defects in order to achieve recognition, i.e., eligibility to exert claim preclusive effect; without recognition, an award cannot enjoy the preclusive effect [4].

The UNCITRAL Model Law on International Commercial Arbitration [9], widely viewed as "state of the art", has no provision addressed to res judicata in arbitral proceedings, and no consideration was apparently given to including one. None of this should come as a great surprise. In practice, two distinct approaches to res judicata have emerged in international arbitration. One may be called a "choice of law" approach, where a tribunal turns to a specific body of national law to determine whether a given claim is subject to claim preclusion. Contrary to what might ordinarily be supposed, national laws adopt significantly different res judicata standards from each other, which is, of course, why a "choice of law" method might commend itself. The choice of law made may well be outcome-determinative. If res judicata applies, the arbitral proceeding will presumably come to an end; if it does not, the proceeding will presumably go forward (unless, of course, there is some other reason for it to be dismissed).

Given its definitionally international character, international arbitration lends itself to a consciously more cosmopolitan approach to res judicata. Unsurprisingly, however, while there exist international treaties and conventions in international arbitration, they do not come close to addressing a matter such as res judicata [5]. The supposition, if any, would be that whether and how to apply principles of claim preclusion are to be determined by an arbitral tribunal according to whatever set of principles it deems most appropriate to apply.

Article 38 of the Statute of the International Court of Justice (ICJ) recognizes "general principles of law" as a proper source of international law. To employ

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this source, one must examine a vast number of national laws with a view to detecting important commonalities. Perhaps because of its evident utility, for the reasons set out earlier, the general notion of res judicata is widely embraced among legal systems worldwide. It is safe to say that an international consensus has emerged that res judicata constitutes a general principle of law within the meaning of Article 38 of the ICJ Statute and merits status as an international legal norm [6]. Arguably, it also forms part of customary international law [7]. Under a general principle of res judicata, there should be no reconsideration of a right, question or fact distinctly put in issue and distinctly determined by a court of competent jurisdiction as a ground for recovery. Under national law, international res judicata has both positive and negative aspects.

The principle of res judicata is explicitly recognized in the procedural legislation of the Republic of Uzbekistan. In particular, Article 110 of the Economic Procedural Code of the Republic of Uzbekistan [8] provides that if a final and binding decision has already been rendered concerning a dispute between the same parties, involving the same subject matter and the same legal grounds, the court shall terminate the proceedings.

In Italy, only judgments that are no longer subject to review through ordinary means of challenge — including appeal and recourse to the Corte di Cassazione (ie, the Italian Supreme Court) — are granted res judicata effects (Article 324 of the Italian Code of Civil Procedure, addressing formal res judicata). Substantive res judicata is addressed by Article 2909 of the Civil Code (ICC), which provides that 'the decision [accertamento] set out in a judgment that has acquired the authority of res judicata is binding in all respects on the parties, their heirs and assignees.

Res judicata pursuant to Article 2909 of the ICC is held to preclude the re-litigation of claims already determined. Claim preclusion turns on the identity of claims assessed according to the triple identity test, which requires comparing the elements of the claim already decided with those of the claim brought in new

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proceedings. Its scope is therefore determined by the elements that identify a claim: parties, object (petitum) and cause (causa petendi). Italian courts have repeatedly held that res judicata covers il dedotto e il deducibile, literally what was raised and what could have been raised. This holding has been interpreted as indicating that the causa petendi encompasses all legal grounds and facts, albeit not invoked, giving rise to the same right or legal effects [9].

The doctrine of res judicata plays a fundamental role in ensuring legal certainty, procedural economy, and the finality of dispute resolution, values that are equally important in litigation and international arbitration. Although international arbitration lacks a uniform, codified regime governing res judicata, arbitral tribunals increasingly recognize its relevance as an inherent and necessary principle to prevent abuse of process and repetitive claims. The analysis demonstrates that res judicata in arbitration operates primarily through claim preclusion and issue preclusion, yet its practical application remains complex due to differences in national laws, the role of the lex arbitri, and the requirement of recognition and enforceability of arbitral awards, particularly under the New York Convention.

The absence of explicit provisions on res judicata in key international instruments, such as the UNCITRAL Model Law [9], has led arbitral tribunals to adopt either a choice-of-law approach or a more transnational perspective grounded in general principles of law. In this regard, the widespread acceptance of res judicata across domestic legal systems supports the view that it constitutes a general principle of law under Article 38 of the ICJ Statute [10], and arguably a rule of customary international law. Comparative references, including the procedural legislation of Uzbekistan and the Italian legal framework, further confirm that res judicata is consistently anchored in the triple identity test and extends not only to matters actually litigated, but also to those that could and should have been raised earlier.

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Ultimately, while differences between national procedural systems and arbitral frameworks persist, the growing convergence around res judicata underscores its indispensable function in international arbitration. Its careful and balanced application by arbitral tribunals remains essential to safeguarding both the parties' procedural rights and the broader public interest in the finality and integrity of dispute resolution.

References

1. Res judicata From Wikipedia https://uz.wikipedia.org/wiki/Res_judicata
2. Steven Chong JCA, Belinda Ang Saw Ean JCA and Judith Prakash SJ Court of Appeal — Civil Appeal (No 44 of 2024) 31 January 2025
3. Hobér, 'Res Judicata and Lis Pendens' (2014), 258–69.
4. See Arts. III to V of the New York Convention. See also ILA Final Report (2009)
5. Hobér, 'Res Judicata and Lis Pendens' (2014), 287.
6. I. Scobbie, 'Res Judicata: Precedent and the International Court: A Preliminary Sketch', in Australian Yearbook of International Law, vol. XX (Australian National University, 1999), 299.
7. Dodge, 'National Courts and International Arbitration' (2000), 365.
8. Economic Procedural Code of the Republic of Uzbekistan https://lex.uz/ru/docs/-3523891
9. UNCITRAL Model Law on International Commercial Arbitration https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration
10. Statute of the international court of justice https://www.icj-cij.org/statute